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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing a temporary leave transfer program that permits Federal employees to donate annual leave for the use of other Federal employees for medical or family emergency or other handship situations. This rule sets forth procedures under which a potential leave recipient may submit an application to his or her employing agency and establishes rules for agencies to administer the program. This program was authorized by Pub. L. 100–202 and will terminate on September 30, 1988.

DATES: This interim rule becomes effective on March 8, 1988, and will expire on September 30, 1988; comments must be received on or before April 7, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Martha Hoehn, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Public Law 100–202, December 22, 1987, Further Continuing Appropriations for Fiscal Year 1988, directs the Office of Personnel Management to establish by regulation a program under which the unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave because of a personal emergency. This authority will terminate on September 30, 1988. The program established by these regulations continues and expands the temporary leave transfer program established under Public Laws 99–500 and 99–591 and Executive Order 12589 of March 18, 1987, which authorized leave transfer in three cases of personal emergency.

The expanded temporary leave transfer program has Governmentwide applicability and will continue to test the concept of providing income protection through the transfer of annual leave to an employee affected by a personal emergency. Under the interim regulations, an employee who has been affected by a personal emergency *on or after December 22, 1987,* may submit an application to his or her employing agency to become a leave recipient. Annual leave transferred under the interim regulations will be available for use on a current basis or may be retroactively substituted for leave without pay or used to liquidate advanced annual or sick leave granted to an *approved* leave recipient on or after October 30, 1986 (the date of enactment of Pub. L. 99–591), in response to the personal emergency.

Because the interim regulations delegate to each Federal agency the responsibility for approving applications to become a leave recipient, each Federal agency must establish procedures for administering this program as quickly as possible. Before approving an application to become a leave recipient, the interim regulations require the potential leave recipient's employing agency to determine that the absence from duty without available paid leave because of the personal emergency is (or is expected to be) at least 10 workdays. Though an agency must accept applications to become a leave recipient before establishing its administrative procedures, the approval and actual transfer of annual leave to a leave recipient cannot be accomplished until those procedures have been established.

We anticipate that the needs of most leave recipients can be satisfied through the transfer of annual leave from other employees of the leave recipient's employing agency. However, if the leave recipient's employing agency determines that the amount of annual leave transferred by leave donors within the agency may not be sufficient to meet the needs of the leave recipient, the employing agency may accept the transfer of annual leave from a leave donor of another agency. In addition, the interim regulations limit the total amount of annual leave that may be donated by any employee in a leave year to ensure that each leave donor retains some annual leave for personal use and to control the donation of annual leave that otherwise would be subject to forfeiture at the end of the leave year.

Under 5 U.S.C. 7351, an employee is prohibited from soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay. Therefore, the interim regulations prohibit a leave recipient's employing agency from transferring annual leave to a leave donor's official superior or an employee in a position at a higher grade or pay level than the leave donor.

A leave recipient may use transferred annual leave for the same purposes as if he or she had accrued the leave. However, the transferred annual leave will not be the basis for a lump-sum payment upon separation of the recipient. As required by Pub. L. 100–200, to the extent administratively feasible (as determined by the leave recipient's employing agency), any transferred annual leave remaining to the credit of the leave recipient will be restored to the leave donors when the personal emergency terminates. The interim regulations also provide that if a leave recipient's application for disability retirement has been approved by the Office of Personnal Management, the leave recipient may not receive or use any additional transferred annual leave, and the personal emergency is considered to be terminated.

Pursuant to section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the implementation of the temporary leave transfer program by Federal agencies.

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E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.601 and Subpart F also issued under E.O. 12228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–202.

2. In Part 630, Subpart I is revised to read as follows:

* * * * *

Subpart I—Temporary Leave Transfer Program

Sec.

630.901 Purpose and applicability.
630.902 Definitions.
630.903 Administrative procedures.
630.904 Application to become a leave recipient.
630.905 Approval of application to become a leave recipient.
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630.913 Termination of temporary leave transfer program.
630.914 Treatment of leave recipients selected under Public Laws 99–500 and 99–591 and Executive Order 12589 of March 18, 1987.

Subpart I—Temporary Leave Transfer Program

§ 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a temporary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a personal emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom subchapter I of chapter 63 of Title 5, United States Code, applies.

§ 630.902 Definitions.

"Agency" means an "Executive agency," as defined in 5 U.S.C. 105.

"Employee" has the meaning given that term in 5 U.S.C. 6301(2).

"Leave donor" means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

"Leave recipient" means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

"Personal emergency" means a medical or family emergency or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

"Representative rate" has the meaning given that term in § 536.102 of this chapter.

§ 630.903 Administrative procedures.

Each Federal agency shall establish procedures to administer the temporary leave transfer program established by the Office of Personnel Management under Pub. L. 100–202 and this subpart.

§ 630.904 Application to become a leave recipient.

(a) An employee who has been affected by a personal emergency on or after December 22, 1987, may make written application to his or her employing agency to become a leave recipient. If such an employee is not capable of making application on his or her own behalf, another employee of the potential leave recipient's employing agency may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) A brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the potential leave recipient; and

(3) Any additional information that may be required by the potential leave recipient's employing agency, including medical documentation, if appropriate.

§ 630.905 Approval of application to become a leave recipient.

(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient has been affected, on or after December 22, 1987, by a "personal emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the personal emergency is (or is expected to be) at least 10 workdays.

(c) In making a determination as to whether a "personal emergency" is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 10 workdays.

(d) If the application is approved, the employing agency shall notify the leave recipient (or another employee who made application on behalf of the leave recipient), within 30 calendar days after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later), that—

(1) The application has been approved; and

(2) Other employees of the leave recipient's employing agency may request the transfer of annual leave to the account of the leave recipient.

(e) If the application is not approved, the employing agency shall notify the applicant (or another employee who made application on behalf of the potential leave recipient), within 30 calendar days after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later)—

(1) That the application has not been approved; and

(2) Of the reasons for its disapproval.

§ 630.906 Transfer of annual leave.

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued

annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (e) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(b) Except as provided in paragraph (c) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.909 of this part, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing agency.

(c) A leave recipient's employing agency shall not transfer annual leave to a leave donor's official superior or an employee in a position at a higher grade or pay level than the leave donor. In the case of annual leave transfers between employees under different pay schedules or pay systems, the representative rate of the grade or pay level of the leave recipient shall be compared with the representative rate of the grade or pay level of the potential leave donor. If the representative rate of the grade or pay level of the leave recipient is greater than the representative rate of the grade or pay level of the potential leave donor, the leave recipient's employing agency shall not transfer annual leave from the potential leave donor to the leave recipient.

(d) Annual leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after October 30, 1986, or a later date fixed by the leave recipient's employing agency as the beginning of the period of personal emergency for which LWOP or advanced annual or sick leave was granted.

(e) A leave recipient's employing agency may accept the transfer of annual leave from leave donors employed by one or more other agencies when, in its judgment, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient. Before accepting the transfer of annual leave from a leave donor of another employing agency, the leave recipient's employing agency shall verify that the leave donor's employing agency has approved the leave donor's request to transfer annual leave to the specified leave recipient.

§ 630.907 Limitations on donation of annual leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) A leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a) may donate no more than the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

§ 630.908 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 of this part in the same manner and for the same purposes as if he or she had accured the annual leave under 5 U.S.C. 6303. However, annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.

(b) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(c) Transferred annual leave may not be—

(1) Transferred to another leave recipient under this subpart;

(2) Transferred to another Federal agency upon the leave recipient's transfer of employment;

(3) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(4) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

§ 630.909 Termination of personal emergency.

(a) The personal emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's employment is terminated by the agency that approved his or her application to become a leave recipient;

(2) At the end of the biweekly pay period in which the leave recipient's employing agency determines that the leave recipient is no longer affected by a personal emergency; or

(3) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

(b) The leave recipient's employing agency shall continously monitor the status of the personal emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a personal emergency.

(c) When the personal emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.910 of this part.

§ 630.910 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the personal emergency terminates shall be restored, to the extent administratively feasible (as determined by the leave recipient's employing agency), by transfer to the annual leave accounts of leave donors currently employed by a Federal agency and subject to Chapter 63 of Title 5, United States Code, on the date the personal emergency terminates, as provided in paragraphs (b) and (c) of this section.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) Transferred annual leave restored to the account of a leave donor before the beginning of the third biweekly pay period before the end of the leave year shall be subject to the limitation imposed by 5 U.S.C. 6304(a).

(e) Transferred annual leave restored to the account of a leave donor after the beginning of the third biweekly pay period before the end of the leave year shall not be subject to the limitation imposed by 5 U.S.C. 6304(a) until the end of the leave year following the leave year in which the transferred annual leave was restored.

§ 630.911 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.912 Records and reports.

The Office of Personnel Management may require agencies to maintain records and report pertinent information to the Office concerning the administration of the temporary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

§ 630.913 Termination of temporary leave transfer program.

(a) The temporary leave transfer program shall terminate on September 30, 1988.

(b) If the temporary leave transfer program terminates before the termination of the personal emergency affecting a leave recipient, any annual leave transferred to the leave recipient before the termination of the temporary leave transfer program shall remain available for use by the leave recipient until the termination of the personal emergency.

§ 630.914 Treatment of leave recipients selected under Public Laws 99–500 and 99–591 and Executive Order 12589 of March 18, 1987.

(a) Except as provided in paragraph (b) of this section, the regulations governing the program established by the Office of Personnel Management under Public Law 100–202 shall apply to leave recipients selected under Public Laws 99–500 and 99–591 and Executive Order 12589 of March 18, 1987.

(b) The authority to transfer sick leave to a leave recipient selected under Public Laws 99–500 and 99–591 and Executive Order 12589 of March 18, 1987, shall continue until April 7, 1988. After that date, no further transfers of sick leave may be permitted. However, any sick leave transferred to such a leave recipient before that date shall remain available for use by the leave recipient until the termination of the personal emergency.

[FR Doc. 88–5118 Filed 3–7–88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 907 and 908 for the 1987–88 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: November 1, 1987, through October 31, 1988 (§§ 907.225 and 908.227).

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was issued on January 27, 1988, and published in the **Federal Register** (53 FR 2850, February 2, 1988). That document contained a proposal to add §§ 907.225 and 908.227 to establish expenses and assessments for the Navel Orange Administrative Committee and the Valencia Orange Administrative Committee (Committees), respectively. That rule provided that interested persons could file comments through February 12, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the Committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges, Navel, Valencia.

For the reasons set forth in the preamble, §§ 907.225 and 908.227 are added as follows:

PARTS 907 AND 908—[AMENDED]

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 907.225 and 908.227 are added to read as follows: (*These sections will not appear in the Code of Federal Regulations.*)

§ 907.225 Expenses and assessment rate.

Expenses of $1,160,020 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.026 per carton of navel oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

§ 908.227 Expenses and assessment rate.

Expenses of $669,030 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.029 per carton of Valencia oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

Dated: March 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–4969 Filed 3–7–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 959

Onions Grown in South Texas; Amendment to Rules and Regulations To Authorize Collection of Planting Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires handlers to provide information to the South Texas Onion Committee on onion plantings periodically during the planting season. Planting times for onions are staggered so that the entire crop will not mature at the same time. By knowing when the onions were planted and the number of acres planted, the industry will be better able to judge the volume of available supplies during the shipping period and plan the activities of the marketing development program to coincide with the heaviest volume.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0074.

Notice was given in the December 28, 1987, **Federal Register** (52 FR 48826), affording interested persons 30 days in which to file written comments. None were filed.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of onions subject to regulation under the South Texas Onion Marketing Order and approximately 160 onion producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

This rule requires handlers to report to the committee the acreage and planting dates of all onions that they anticipate handling during the shipping season. Growers typically contract with handlers prior to the beginning of the season to arrange for sorting, grading, packing and, in some cases harvesting. During this period, handlers and the growers they service usually decide jointly on planting schedules so that acreage that matures during a specific interval does not exceed the capacity of the handler's facilities. Hence, handlers are well aware of the size and timing of plantings since they took an active part in the planting phase.

For the past five seasons the South Texas Onion Committee has undertaken a market development program aimed at finding ways to increase the movement of production area onions. The program has expanded each year, its budget increasing from $25,000 the first season to $141,351 for the upcoming season. The program has centered around promoting South Texas onions within the trade, with emphasis on receivers, retailers, and food page editors.

Experience during the past five seasons has indicated a need for information concerning the anticipated volume of marketings on a weekly or bi-weekly basis during the shipping season. With this information available, plans can be developed before the season begins in order to allocate program resources to produce the best results. The committee believes the best method for obtaining the necessary information is to require handlers to report actual plantings to the committee every two weeks during the planting season. Additionally, the information developed from these reports will be made available to the industry, on a composite basis to avoid divulging individual handlers' operations. This should further aid growers and handlers in making marketing decisions during the season. Inasmuch as the information desired by the committee is already available, having been developed by the handlers themselves, the additional reporting burden will be minimal.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee and other available information, it is found that adding § 959.115 will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

For the reasons set forth in the preamble, 7 CFR Part 959 is amended as follows;

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959, Onions Grown in South Texas, continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Part 959, Subpart—Rules and Regulations, is hereby amended by adding a new § 959.115 as follows:

§ 959.115 Planting reports.

Each handler shall furnish every two weeks during the planting season to the committee, on a form provided by the committee, the number of acres of onions planted by the handler or growers for whom the handler packs onions during such period and the location of such plantings.

Dated: March 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–4970 Filed 3–7–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1823, 1900, 1940, 1951, 1955, 1962, 1965, and 1980

Highly Erodible Land and Wetland Conservation

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to finalize an interim rule and to include servicing requirements which set forth the terms and conditions under which a person who has produced an agricultural commodity on highly erodible land or converted wetland shall be declared ineligible for insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations administered by the Farmers Home Administration, as required by Subtitles B and C of Title XII of the Food Security Act of 1985 (Pub. L. 99–198). This rule implements and is consistent with the Department of Agriculture's rule for implementing Subtitles B and C which was issued in the **Federal Register** of September 17, 1987 (52 FR 35194).

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Hansel, Environmental Protection Specialist, Farmers Home Administration, USDA, Room 6309, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–9619.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and in conjunction with the Departmental rule on this subject has been classified as major. It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this rule and the Department's rule on this same subject. Copies of the Department's regulatory impact analysis are available upon request from Mr. Alex King, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, telephone: (202) 382–9886.

It has been determined that this action in combination with the Department's rule on this same subject may have a significant economic impact on a substantial number of small entities. The Department's analysis prepared for this action includes a regulatory flexibility analysis.

Intergovernmental Consultation

For the reasons set forth in 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" (December 1, 1983), Emergency Loans (10.404), Farm Operating Loans (10.406), Farm Ownership Loans (10.407) and Indian Tribes and Tribal Corporations (10.421) are excluded from the scope of Executive Order 12372. This order requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs are listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Loans to Indian Tribes and Tribal Corporations

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." Based on the Department's environmental assessment prepared for the interim rule and the review of this assessment made in connection with issuance of the Department's final rule (See 52 FR 35194), it has been determinated that the final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

The interim rule was published by the Office of the Secretary, USDA, and Farmers Home Administration (FmHA), on June 27, 1986, in the **Federal Register** (51 FR 23496–23514). The Department has finalized all of the interim rule except for the FmHA portion which is being finalized by this publication.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is issuing as a final rule to implement Subtitles B and C of Title XII of the Food Security Act of 1985 (Pub. L. 99–198). I find that these regulations comply with that statute and that FmHA has the authority to issue such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989) and section 1244 of the Food Security Act of 1985 (16 U.S.C. 3844).

Christopher Hicks,

General Counsel.

December 11, 1987.

The Farmers Home Administration (FmHA) consequently amends its regulations to provide for the requirements of Subtitles B and C of Title XII of the Food Security Act of 1985 (the Act), 16 U.S.C. 3801 *et seq.* Those provisions of the Act remove any incentives that the FmHA financial assistance programs could provide recipients to cultivate highly erodible land or to convert wetlands for the purpose of producing an agricultural commodity. Sections 1211 and 1221 of the Act provide, generally, that any person who, in any crop year, produces an agricultural commodity, without an approved conservation system, on a nonexempt field in which highly erodible land is predominant or produces an agricultural commodity on any wetland converted after December 23, 1985, will be ineligible for loans made, insured, or guaranteed under any provision of law administered by the FmHA if it is determined that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland for agricultural commodity production.

Discussion of Comments and FmHA's Responses

Section 1940.304—Special policy: Seven comments were received concerning the FmHA wetland protection policy contained within this section. Respondents were concerned that this policy was weaker than that required by the wetland conservation provisions of the Food Security Act. After reviewing the comments received on this point, it is evident that there is a

misunderstanding and that clarifications are necessary.

The reason for the confusion is that this section predates the Act. The wetland protection policy within it was originally based upon the requirements of Executive Order 11990, Protection of Wetlands, and applies to all FmHA financial assistance programs. Under the requirements of the Executive Order, FmHA will not finance the conversion of a wetland unless there is no practicable alternative to the conversion and all practicable mitigation measures have been included in the proposal.

On the other hand, the wetland conservation provisions of the Food Security Act apply only to Farmer Program loans and loans to Indian Tribes and Tribal Corporations and are more restrictive than the Executive Orders. No discretion is provided FmHA. Financial assistance cannot be provided for the conversion of a nonexempt wetland in order to produce an agricultural commodity.

The interim rule amended this section and incorporated for the above-mentioned activities the more restrictive provisions of the Act by a cross-reference to the FmHA implementation requirements contained in Exhibit M of Subpart G of Part 1940 of this chapter. Since the cross-reference has resulted in confusion, the section has been further amended to clarify that the Act's wetland conservation requirements supersede those of the Executive Order for these activities.

Exhibit M of Subpart G of Part 1940, Paragraph 2.—Applicability: Numerous FmHA field offices have asked why the interim rule does not apply to loans for the sale of inventory property, loans to Indian Tribes and some loan servicing actions on loans made prior to the effective date of the Food Security Act. Some servicing actions can be the equivalent of new financial assistance and, therefore, this is a valid question. After reviewing these concerns, it has been determined that the following loan servicing actions fall under the requirements of Exhibit M: subordinates, transfers, and assumptions. Loans to Indian Tribes and Tribal Corporations as well as loans for the sale of inventory property have also been included under the scope of Exhibit M.

Exhibit M of Subpart G of Part 1940, Paragraph 3.b.—Highly Erodible Land Conservation: Six comments were received indicating that Exhibit M only provides for approval of conservation plans and conservation systems by the SCS. Since conservation districts also have these approval authorities, the commenters requested that the district's authorities also be referenced. This change has been made at all relevant points in Exhibit M with the provision that FmHA will consult with SCS to determine if a conservation district has approved a conservation plan or system.

Exhibit M of Subpart G of Part 1940, Paragraph 3.c.—Wetland conservation: As requested by one commenter, the language in this subparagraph has been revised to repeat the definition of a converted wetland contained in Section 12.2(a)(6) of Subpart A of Part 12 of this chapter.

Exhibit M of Subpart G of Part 1940, Paragraph 3.d.—Use of loan proceeds: One commenter strongly supported the FmHA requirement that if FmHA loan proceeds are substituted to pay other farming costs while non-FmHA funds are used by the borrower to undertake a prohibited activity, this substitution will be deemed to be a violation of the provisions of Exhibit M. Another commenter stated that this was a restrictive approach. Three others recommended that since it will be very difficult for FmHA to prove that such a substitution of resources has occurred, FmHA should conclude that substitution has occurred whenever during the term of a loan covered by Exhibit M, the borrower undertakes a prohibited activity with non-FmHA funds. Since the Agency's field staff has frequently raised the same concern over the difficulty of identifying a substitution of resources, Exhibit M has been changed in the manner recommended. Affected borrowers who believe that they have not substituted resources will be able to explain the facts of their case to the Agency and appeal any adverse decision under the Agency's appeal process.

Also under paragraph 3.d., another party commented that it was unfair of FmHA to deny a farm ownership loan to an applicant because a previous owner had converted a wetland on the property after the date of the act. This is not a correct understanding of Exhibit M's requirements. FmHA would not categorically deny such a loan request. FmHA could approve the loan and meet the requirements of Exhibit M if (1) the applicant agreed not to cultivate the converted wetland for at least ten crop years after the crop year in which the wetland was converted and (2) the applicant can demonstrate, should it desire to cultivate the converted wetland, that after the expiration of the ten-year period it will be able to repay the loan without reliance upon any USDA financial assistance programs subject to wetland conservation restrictions. As was stated in the preamble to the interim rule, the ten-year prohibition is necessary in order to provide an economic disincentive to the approach of using non-FmHA funds to convert a wetland and then applying to FmHA for a loan to assist in cultivating the converted wetland.

Exhibit M of Subpart G of Part 1940, Paragraph 6.—FmHA's application review: FmHA field officials recommended that rather than inserting into loan approval documents on a case by case basis special loan conditions for compliance with Exhibit M, these conditions should be printed on FmHA loan approval documents. This recommendation has been followed and paragraphs 6 and 7 of the exhibit have been revised accordingly. So that borrowers will not miss the significance of these conditions, affected borrowers will be notified of the conditions by letter at the time of loan acceptance.

Exhibit M of Subpart G of Part 1940, Paragraph 11.c.—Exemptions from wetland conservation: In addition to amending the interim rule in response to public comments, additional amendments are included in this final rule in order to incorporate the changes made by the Department's final rule. The most important of these incorporations implements for FmHA's inventory property the Department's position regarding abandonment of crop production on a converted wetland. (See § 12.32 of 52 FR 35208) Whenever abandonment occurs and wetland conditions return, the affected area is considered to be wetland again for purposes of the rule. FmHA has determined that for its inventory properties, crop production will be considered to have been abandoned on a converted wetland either at the earlier of the time the former owner so abandoned crop production or at the time FmHA caused crop production to be abandoned after the property comes into FmHA's inventory. Additionally, should FmHA inventory property containing a converted wetland be leased, the lease will restrict the converted wetland from crop production.

Finally, the interim rule has been amended to provide editorial changes and clarifications where our experience showed that some confusion existed. All portions of the interim rule that have been amended are reprinted below in this **Federal Register** publication Unchanged portions are not reprinted and are effective as originally published.

List of Subjects

7 CFR Part 1823

Credit, Indians.

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7 CFR Part 1900

Appeals, Credit, Loan Programs-housing and community development.

7 CFR Part 1940

Endangered and threatened wildlife, Environmental Protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

7 CFR Part 1951

Accounting, Agriculture, Claims, Community development, Community facilities, Credit, Government employees, Grant programs—housing and community development, Housing, Loan programs—agriculture, Loan programs—housing and community development, Low and Moderate income housing, Reporting and recordkeeping requirements, Rural areas, Wages.

7 CFR Part 1955

Government acquired property, Government property management, Sale of government acquired property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—agriculture, Rural areas.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

1. The authority citation for Part 1823 continues to read as follows:

Authorities: 25 U.S.C. 490; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Communities and Rural Development, 7 CFR 2.70.

Subpart N—Loans to Indian Tribes and Tribal Corporations

2. Section 1823.405 is revised to read as follows:

§ 1823.405 Ineligible Loan Purposes.

Loan funds may not be used for any improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, refinancing of debts, payment of finder's fees, or similar costs. Loans also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

PART 1900—GENERAL

3. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Farmers Home Administration Appeal Procedure

4. Section 1900.55 is amended by redesignating paragraphs (c) through (f) as (d) through (g), and by changing the references to paragraphs (c) and (d) in the first sentence of the newly redesignated paragraphs (f) and (g) to (d) and (e), and by adding a new paragraph (c) to read as follows:

§ 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(c) Appeals from applicants for, or borrowers of, Farmer Programs loans or loans to Indian Tribes and Tribal Corporations who are denied assistance based on reasons relating to highly erodible land, wetland or converted wetland (see Exhibit M of Subpart G of Part 1940 of this chapter for applicable FmHA requirements) will be handled as follows: Appeals questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property or application to a property of the exemptions identified in paragraph 11 b and c of Exhibit M of Subpart G of Part 1940 of this chapter must be filed directly with the USDA agency making the determination in accordance with its administrative appeal procedures. If the denial of assistance involves an adverse decision based on determinations made both by FmHA and another USDA Agency, the appeal will be handled by both agencies in two separate appeals which as much as possible should be handled concurrently. See § 12.12 of Subpart A of Part 12 of Subtitle A (Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter which is available in any FmHA office).

* * * * *

PART 1940—GENERAL

5. The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 16 U.S.C. 3844; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

6. Section 1940.304 is amended by revising paragraph (a)(1) to read as follows:

§ 1940.304 Special policy.

(a) * * *

(1) FmHA recognizes that its special mission of assisting rural areas composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500–3, "Land Use Policy," which is included as Exhibit A. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Agency's regional offices have been included as Exhibit J, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that—

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

For Farmer Program loans and guarantees and loans to Indian Tribes and Tribal Corporations, Exhibit M of this subpart imposes additional and more restrictive requirements regarding wetland and highly erodible land conservation. Unless otherwise exempted by the provisions of Exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA cannot be used (i) for a purpose that will contribute to excessive erosion of highly erodible land (as defined in Exhibit M) or (ii) for a purpose that will contribute to conversion of wetlands (as defined in Exhibit M) to produce an agricultural commodity.

* * * * *

7. Exhibit C to Subpart G is amended by revising paragraph 1. to read as follows:

Exhibit C—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500–3, Land Use Policy

1. *Background.* Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97–98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Departmental Regulation 9500–3, "Land Use Policy" (the Departmental Regulation), also requires the consideration of alternatives, but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this subpart. For additional requirements that apply to some Farmer Program loans and guarantees and loans to Indian Tribes and Tribal Corporations and that cover the conservation of wetlands and highly erodible land, see Exhibit M of this subpart.

* * * * *

8. Exhibit M to Subpart G is revised to read as follows:

Exhibit M—Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations

1. *Background.* This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of Title XII of the Food Security Act of 1985, Pub. L. 99–198. The purposes of these Subtitles are to: Reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. *Applicability.* The provisions of this exhibit apply to insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations, subordinations, transfers and assumptions of such loans and leases and credit sales of inventory property. For the purpose of this exhibit, "Farmer Program loans" means Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed loan and borrower means a recipient of either an insured or guaranteed loan.

3. *FmHA prohibited activities.* Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA will not be used either (a) for a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See § 12.2(a)(1) of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. *U.S. Department of Agriculture (USDA) definitions.* In implementing this exhibit, FmHA will use the USDA's definitions of the terms found at § 12.2 of Subpart A of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office).

b. *Highly erodible land conservation.* FmHA will conclude that excessive erosion of highly erodible land results or would result whenever (1) a field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved either by SCS or the appropriate conservation district, as evidenced by a statement from SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. *Wetland conservation.* FmHA will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS, (1) a wetland has or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (a) such production would not have been possible but for such action and (b) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland; and (2) neither the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. *Use of loan proceeds.* To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

(1) The purchase of the affected land;

(2) Necessary planning, feasibility, or design studies;

(3) Obtaining any necessary permits;

(4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;

(5) Any labor costs;

(6) The planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs;

(7) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or

(8) For the same time period as in subparagraph 3d(7) above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land.

(9) Additionally, if loan proceeds will be or have been substituted to pay other costs at anytime during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. *Prohibited activities under other USDA financial assistance programs.* Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Conservation Reserve

Program Contract. Farmer Program applicants and borrowers and applicants for, and borrowers of, loans to Indian Tribes and Tribal Corporations, therefore, can be affected not only by the FmHA prohibited activities but also by the broad USDA sweep of the Subtitles B and C restrictions. Should such an applicant rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or the lender of and FmHA guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in Part 12 of Subtitle A of Title 7, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. *Applicant's responsibilities.*

a. *Required information.* Every applicant for a Farmer Program loan or a loan to an Indian Tribe or Tribal Corporation will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA. Once an applicant has provided FmHA with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility on FmHA borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 11 below. The property or properties will be listed and described in accordance with the Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification."

b. *Required actions.* If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop a conservation system approved by SCS or the appropriate conservation district, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. *FmHA's application review.* The FmHA County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by Subparts A, B, and C of Part 12 of Subtitle A of Title 7 and further explained in this exhibit, to be final and controlling in the remaining FmHA decisionmaking process for this exhibit. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of Subpart G of Part 1940.

a. *No highly erodible land, wetland, or converted wetland present.* The requested loan can be approved under the provisions of this exhibit and, except for documenting this result in accordance with paragraph 8 of this exhibit, no further action is required.

b. *Converted wetland present.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph c (1) of paragraph 11 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph d of paragraph 3 of this exhibit. If not, the County Supervisor will so document this as specified in paragraph 8 of this exhibit; complete step two immediately below; and, if an insured loan will be approved, notify the applicant in writing, coincident with the transmittal of Form FmHA 1940–1, "Request For Obligation of Funds," and by using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's converted wetland. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph e of this paragraph.

c. *Highly erodible land or wetland present.* The County Supervisor will discuss with the applicant (and lender, in the case of a guaranteed loan) and review the intended uses of the FmHA loan proceeds as evidenced in any relevant application materials.

(1) *Proceeds to be used for prohibited activity.* If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of its ineligibility for the FmHA loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially feasible eligible loan purposes that could be helpful in implementing a conservation plan or installing a conservation system, should either be an appropriate cure. Substitution of non-FmHA monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) *Proceeds not to be used for a prohibited activity.* If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 8 of this exhibit.

(b) If an insured loan will be approved and the requirements of subparagraph c (2)(c) of this paragraph do not apply, notify the applicant in writing, coincident with the transmittal of Form FmHA 1940–1, "Request For Obligation of Funds," and by using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land and/or wetland.

(c) Review the term of the proposed loan and take the following actions, as applicable.

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an

agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See § 12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan payment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA 1940–1, "Request For Obligation of Funds," and using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by

(ii) *Loan term exceeds January 1, 1995.* If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of the exhibit up until that date (see subparagraph b (4) of paragraph 11 of this exhibit) the County Supervisor will determine if it is financially feasible for the applicant, after January 1, 1995, to produce an agricultural commodity on the highly erodible land in compliance with a conservation system approved by SCS or the appropriate conservation district. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of compliance with a conservation system using the financial projection method(s) indicated in subparagraph c (2)(c)(i) of this paragraph. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form 1940–1, "Request for Obligation of Funds," and using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to January 1, 1995, and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance.

(d) Implement the actions in subparagraph e of this paragraph if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance program subject to wetland or highly erodible land conservation restrictions.

d. *Highly erodible land present that was or is planted in alfalfa.* If the applicant plans to cultivate highly erodible land for the purpose of producing an agricultural commodity and that highly erodible land during each of the 1981 to 1985 crop years was planted in alfalfa in a crop rotation determined by SCS to be adequate for the protection of highly erodible land, the applicant is exempt until June 1, 1988, from the requirement to fully implement an approved conservation system on the highly erodible land. The County Supervisor, following procedures similar to those indicated in subparagraph c (2)(c)(i) of this paragraph, will determine if it is financially feasible for the applicant to apply a conservation system to the highly erodible land prior to the loss of the exemption on June 1, 1988. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to June 1, 1988 and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance with this requirement.

e. *Highly erodible land, wetland, or converted wetland present and applicant intends to use the USDA financial assistance program(s), including crop insurance, to repay FmHA loan.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed.

7. *Required provisions in loan approval documents.*

a. *Insured loans.*

(1) *Promissory Notes.* For all loans to which this exhibit applies, all promissory notes must contain the provision indicated below: (Form FmHA 1940–17, "Promissory Note," has been revised so that the language will no longer be inserted as an addendum, but the following provision must be inserted as an addendum to Form FmHA 440–22, "Promissory Note (Association or Organization)," if the loan is being made to an Indian Tribe or a Tribal Corporation.)

"Addendum for Highly Erodible Land and Wetland Conservation"

Addendum to promissory note dated ________________ in the amount of $____________ at an annual interest rate of ____ percent. This agreement supplements and attaches to the above note.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M. If (1) the term of the loan exceeds January 1, 1990, but not January 1, 1995, and (2) Borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of Exhibit M until either January 1, 1990 or two years after the U.S. Soil Conservation Service (SCS) has completed a soil survey for the Borrower's land, whichever is later, the Borrower further agrees that, prior to the loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR Part 12, Borrower must demonstrate that Borrower is actively applying on that land which has been determined to be highly erodible a conservation plan approved by the SCS or the appropriate conservation district in accordance with SCS's requirements. Furthermore, if the term of the loan exceeds January 1, 1995, Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with a conservation system approved by SCS or the appropriate conservation district in accordance with SCS's requirements.

____

(Name of Borrower)

____

(Signature of Executive Official)

____

(Signature of Attesting Official)

(2) *Mortgages, deeds of trust and security agreements.* State Directors will consult with the Office of General Counsel and ensure that for all loans to which this exhibit applies a covenant is included in all mortgages, deeds of trust, and security agreements which reads as indicated below. Form FmHA 440–15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA 440–4,

"Security Agreement (Chattels and Crops)," have been revised accordingly. Equivalent forms required in State supplements must be similarly revised.

[For mortgages or deeds of trust:]

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

[For security agreements:]

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

b. *Guaranteed loans.*

(1) *Form FmHA 449–14, "Conditional Commitment for Guarantee," and Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)."* These forms must contain a condition that includes the following provisions:

(a) Informs the lender that FmHA's commitment is conditioned upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained in this exhibit;

(b) Informs the lender of the lender's monitoring responsibilities under paragraph 10 of this exhibit; and;

(c) Requires the lender, for all borrowers having highly erodible land, wetland, or converted on their farm properties, to include provisions in its loan instruments similar to those contained in subparagraphs a (1) and (2) of this paragraph.

(2) *Lender's loan and security instruments.* These instruments must be modified as specified in subparagraph b(1)(c) of this paragraph.

8. *Required FmHA documentation.* The actions taken and determinations made by FmHA to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All actions subject to this exhibit will undergo at a minimum the completion of Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions." On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA loan under this exhibit, and (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility. If the application under review meets the definition of a Class I action as defined in § 1940.311 of this subpart, the above documentation will be included as an exhibit to Form FmHA 1940–21, "Environmental Assessment for Class I Action." If the application meets the definition of a Class II action as defined in § 1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV.4. of Exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

9. *Borrowers' responsibilities.* In addition to complying with any loan requirements resulting from FmHA's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibility under the loan provisions.

10. *FmHA and lender monitoring.* As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contracts with borrowers, FmHA staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan requirements. If at anytime FmHA becomes aware of the borrower's violation of these provisions or related loan requirements, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetland and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA guaranteed loans must also monitor compliance as part of their servicing responsibilities.

11. *Exemptions and determining their applicability.* Following is a list of exemptions from the provisions of this exhibit as well a description of how FmHA will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in Subparts A, B, and C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office) and does not modify or limit any of those exemptions.

a. *Exemption from wetland and highly erodible land conservation.* Any loan which was closed prior to December 23, 1985, or any loan for which either Form FmHA 1940–1, "Request for Obligation of Funds," Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. *Exemptions from highly erodible land conservation.* The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS–CPA–26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting. The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the later of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b (3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the appropriate SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b (5), (6), (7), and (8) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate for the production of a specific agricultural commodity or commodities on any highly erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

(8) Highly erodible land planted or to be planted in an agricultural commodity that was planted in alfalfa during each of the 1981 and 1985 crop years in a crop rotation determined by SCS to be adequate for the protection of highly erodible land is exempt until June 1, 1988, from the requirement that the highly erodible land be planted in compliance with an approved conservation system.

c. *Exemptions from wetland conservation.* The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS–CPA–26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) A converted wetland is exempt if the conversion of such wetland was completed or commenced before December 23, 1985. The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA purposes. Additionally, the County Supervisor will request evidence of ASCS's consultation with the U.S. Fish and Wildlife Service on each commenced determination reached for an FmHA applicant or borrower. SCS will determine if a wetland is a converted wetland using the criteria contained in § 12.32 of Subpart C of Part 12 of Subtitle A of Title 7 (Attachment 1 of this exhibit which is available in any FmHA office). Under these criteria, however, a converted wetland determined to be exempt may not always remain exempt. The criteria include the provision that if crop production is abandoned on a converted wetland and the land again meets the wetland criteria, that land has reverted to a wetland and is no longer exempt. For purposes of FmHA inventory farm properties, crop production will be considered to have been abandoned on a converted wetland either at the earlier of the time the former owner so abandoned crop production or at the time FmHA caused crop production to be abandoned after the property came into FmHA's inventory. While in its inventory FmHA will not lease the converted wetland for the purpose of producing an agricultural commodity. Whether or not the wetland criteria are met on the abandoned land will be determined by SCS immediately before FmHA's lease or sale of the property.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) An artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, colling, rice production, or flood control; (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation and (c) lands in Alaska identified by SCS as having a predominance of permafrost soils. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt is SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

12. *Appeals.* Any applicant or borrower that is directly and adversely affected by an administrative decision made by FmHA under this exhibit may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter (see especially § 1900.55).

13. *Working with other USDA agencies.*

a. *Coordination.* FmHA State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA requests for site information or for the application of the exemptions contained in paragraph 11 of this exhibit. State Directors will ensure that FmHA field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of this paragraph will be established.

b. *Information exchange.* FmHA State Directors will develop with ASCS State Executive Directors a system for FmHA to routinely receive notification whenever a violation has occurred under ASCS's wetland and highly erodible land conservation restrictions. FmHA State Directors will in turn provide to any interested USDA agency the following information.

(1) Upon request, copies of site information or exemption decision made by SCS for FmHA application reviews;

(2) Upon request, copies of exemption decisions made by FmHA; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. *Relationship of the requirements of this exhibit to the wetland protection requirements of Exhibit C of this subpart.* The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in Exhibit C of this subpart regarding wetland protection cover all FmHA loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of Exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA could make the loan, the requirements of Exhibit C of this subpart would have to be met to include an FmHA finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of Exhibit C of this subpart before FmHA approval of the requested financial assistance could be provided.

PART 1951—SERVICING AND COLLECTIONS

9. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants.

10. Section 1951.207 is amended by adding a new paragraph (e)(1)(xii) to read as follows:

§ 1951.207 General Servicing actions.

* * * * *

(e) * * *

(1) * * *

(xii) For Indian Tribes and Tribal Corporations, the loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

* * * * *

11. Section 1951.210 is amended by adding a new paragraph (a)(8) to read as follows:

§ 1951.210 Transfer of security and assumption of loans.

(a) * * *

(8) For Indian Tribes and Tribal Corporations, the requirements found in Exhibit M of Subpart G of Part 1940 of this chapter are met.

* * * * *

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PART 1955—PROPERTY MANAGEMENT

12. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management of Property

13. Section 1955.66 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 1955.66 Lease of real property.

(a) * * *

(2) * * *

(iii) *Farm property.* Any CONACT property with a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by one who was personally liable for a Farmer Program loan must be considered for dwelling retention under § 1955.73 of this subpart prior to lease under this section. The County Supervisor may approve the lease of farm property. When a lease with an option to purchase is signed, the lessee should be told that FmHA cannot make a commitment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property.

(A) The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(B) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. All prospective lessees will be notified in writing of the presence of highly erodible land, converted wetlands and wetlands on inventory property. This notification will enclose a copy of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetland or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M to FmHA Instruction 1940–G (which is available in any FmHA office and which is the same as Exhibit M to Subpart G of Part 1940 of this chapter). If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity. Additionally, a copy of Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955–20, "Lease of Real Property," prohibiting the use of the property as specified above.

* * * * *

Subpart C—Disposal of Inventory Property

14. Section 1955.106 is amended by adding paragraph (e)(7) to read as follows:

§ 1955.106 Sale of suitable property (CONACT).

* * * * *

(e) * * *

(7) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

15. Section 1955.107 is amended by revising the introductory paragraph to read as follows:

§ 1955.107 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part, concerning dwelling retention, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for 3 years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands and wetlands on inventory property.

* * * * *

PART 1962—PERSONAL PROPERTY

16. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

17. Section 1962.30 is amended by adding a new paragraph (b)(8) to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(b) * * *

(8) The loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

* * * * *

18. Section 1962.34 is amended by adding paragraphs (a)(4) and (b)(5) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(a) * * *

(4) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(b) * * *

(5) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

* * * * *

PART 1965—REAL PROPERTY

19. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases

20. Section 1965.12 is amended by adding paragraph (a)(9) to read as follows:

§ 1965.12 Subordination of FmHA mortgages to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

* * * * *

(a) * * *

(9) The funds obtained will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

* * * * *

21. Section 1965.27 is amended by revising paragraph (b)(20) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(20) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter are met, as well as those requirements found in Exhibit M to Subpart G of Part 1940.

* * * * *

PART 1980—GENERAL

22. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

Appendix B to Subpart A—[Amended]

23. Appendix B to Subpart A is amended by adding a new paragraph IX C 12 to read as follows:

Lender's Agreement

* * * * *

IX * * *

C. * * *

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

* * * * *

Appendix E to Subpart A—[Amended]

24. Appendix E to Subpart A is amended by adding a new paragraph IX C 12 to read as follows:

Lender's Agreement

* * * * *

IX * * *

C. * * *

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessvie erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

* * * * *

Subpart B—Farmer Program Loans

25. Section 1980.113 is amended by adding paragraph (d)(12) to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

(d) * * *

(12) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter, including Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification."

* * * * *

Exhibit A to Subpart B—[Amended]

26. Exhibit A to Subpart B, Attachment 1—FARMERS HOME ADMINISTRATION APPROVED LENDER PROGRAM (ALP) is amended by adding a new paragraph VII C 12 to read as follows:

Lender's Agreement (Loan Note Guarantees Only) for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO)

* * * * *

VII * * *

C * * *

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

* * * * *

27. Exhibit A of Subpart B, Attachment 2—FARMERS HOME ADMINISTRATION, APPROVED LENDER PROGRAM (ALP) is amended by adding a new paragraph VII C 12 to read as follows:

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

* * * * *

VII * * *

C * * *

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

* * * * *

Signed at Washington, DC, on November 25, 1987.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–4856 Filed 3–7–88; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 310

Privacy Act Regulations

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending the title of a Privacy Act system of records listed as exempt by regulation from certain provisions of the Privacy Act in order to reflect a name change made to the system as amended.

DATE: Effective May 23, 1988, unless a superseding notice to the contrary is published before that date.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Assistant Executive Secretary, FDIC, 550 17th Street NW., Washington, DC 20429, telephone (202) 898–3811.

SUPPLEMENTARY INFORMATION: Section 310.13(a) of the FDIC's regulations (12 CFR 310.13(a)) currently lists a Privacy Act system of records entitled "Bank and proposed bank irregularity records system" (FDIC 30–64–0002) as a system exempt from certain provisions of the Privacy Act. As part of its continuing review of its Privacy Act systems of records, the FDIC is elsewhere in today's issue of the **Federal Register** amending the system, including its name. To accommodate the change in the name of the system, the FDIC hereby amends 12 CFR 310.13(a) as described below.

Because the amendment is simply a "housekeeping" matter, it is being published in final form without opportunity for public comment under authority of section 553(b)(A) of the Administrative Procedure Act, which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure. As these amendments neither alter any existing nor create any new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. Finally, the requirements of the Regulatory Flexibility Act are inapplicable as the amendments are not subject to required public comment under the Administrative Procedure Act.

List of Subjects in 12 CFR Part 310

Privacy.

For the foregoing reason, 12 CFR Part 310 is amended to read as follows:

1. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 310.13 [Amended]

2. Paragraph (a) of § 310.13 is amended by removing the words "Bank and proposed bank irregularity records system" and adding, in their place, the words "Financial institutions investigative and enforcement records system."

By order of the Board of Directors.

Dated at Washington, DC, this 1st day of March 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-4979 Filed 3-7-88; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Parts 620 and 621 on February 5, 1988 (53 FR 3335). The final amendments to Part 620 relate to disclosure of the condition or classification of loans to senior officers and directors and their immediate families and affiliated organizations and the final amendment to Part 621 deletes references to FCA examining classifications. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 8, 1988.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4483, TDD (703) 883-4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: March 3, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-5054 Filed 3-7-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

Description of Office, Procedures, and Public Information

AGENCY: Federal Financial Institutions Examination Council (Council).

ACTION: Final rule.

SUMMARY: The Council has adopted a final rule implementing recent amendments to the Freedom of Information Act (FOIA). The amendments to FOIA and this final rule concern Exemption 7 (law enforcement records) and the provisions of FOIA relating to fees and fee waivers.

EFFECTIVE DATE: March 8, 1988.

ADDRESS: Federal Financial Institutions Examination Council, 1776 G Street, Suite 701, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: Recent amendments to the FOIA modified Exemption 7 (relating to disclosure of law enforcement records) and the provisions concerning charging and waiving of fees. The amendments required that agency regulations contain a fee schedule that conforms to guidelines issued by the Office of Management and Budget (OMB). OMB issued final guidelines on March 27, 1987. (See 52 FR 10012, March 27, 1987). On August 6, 1987, the Council issued proposed rules implementing these amendments and updating its address. (*See* 52 FR 29865, August 12, 1987.)

The Council received only one comment letter on its proposed rules. The comment letter, submitted by an association of reporters, raised three issues discussed below.

The first issue concerns the definition of "representative of the news media" found in § 1101.4(b)(5)(i)(H) of the rules. (Representatives of the news media are to be charged only for duplication costs under the amended FOIA.) The definition, taken from OMB's guidelines, is:

> any person gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

The commenter suggested that either (1) the definition be deleted; (2) the word "news" in the first phrase be changed to "information"; or (3) the second sentence defining news be deleted. The commenter reasons that Council personnel should not be determining what is or is not newsworthy and that the term "representative of the news media" is self-explanatory. The Council has determined not to change the definition. Since the Council, pursuant to the FOIA amendments, must establish a FOIA fee schedule in conformance with OMB guidelines, it has adopted OMB's definition. The Council believes that adoption of the definition is in conformance with the FOIA amendments and that Council personnel will be able to determine who are representatives of the news media using the definition.

The second issue concerns Department of Justice (DOJ) guidelines with respect to FOIA fee waivers and reductions. As noted in the proposed rule, (§ 1101.4(b)(5)(ii)(H) concerns waiving and reducing fees and is based upon guidelines issued by the Department of Justice. The commenter expressed concern that the Council's regulation does not set forth the fact that when a requester is a "representative of the news media" that status will be taken into account in determining the public understanding criteria of the fee waiver or reduction test. The fact that a requester is a "representative of the news media" is a logical consideration in determining whether waiver or reduction of fees will further the public understanding of the operations or activities of the government. It is neither necessary nor practical, however, to set forth all such considerations in the regulation. The commenter states further that, in promulgating the FOIA amendments, Congress intended to exclude the Department of Justice guidance on fee waivers. The FOIA refers to Department of Justice efforts to encourage agency compliance with the FOIA. (*See* 5 U.S.C. 552(e).) It has provided the fee waiver guidance in this capacity.

Lastly, the commenter was concerned with the requirement in the rule for advance payment of FOIA fees. The commenter noted that advance payment will be required of all requesters who do not have previous payment records for FOIA requests. The proposed and final rules require advance payment of requesters with no history of payment however, *only* if the estimated bill exceeds $250. (*See* § 1101.4(b)(5)(vii).) The FOIA amendments specifically allow for advance payment under these circumstances. In addition, Council has rarely, if ever, received a FOIA request where the estimated cost exceeds $250. The Council believes the advance payment requirement is in compliance with the FOIA amendments and is not unduly burdensome.

Regulatory Procedures

Regulatory Flexibility Act

The Council has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The regulations do not place burdens on requesters of information under the FOIA. Accordingly, the Council has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The commenter stated that the provisions on fee waiver or reduction (§ 1101.4(b)(5)(ii)(H)) may cause requesters to submit information to the Council that would invoke clearance from OMB under the Paperwork Reduction Act. The Paperwork Reduction Act and its implementing regulation define collections of information in part to mean information collected from ten or more persons. (*See* 5 CFR 1320.7(c).) The Council has never received ten requests for fee waivers in one year. Further, submission of FOIA requests and any attendant requests for fee waivers or reductions are entirely voluntary. They simply facilitate the provision of information and determination of fees under the FOIA. Accordingly, FOIA requests would not be subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1101

FOIA exemptions, Criminal investigations, Schedule of fees, Waivers or reductions of fees.

By the Federal Financial Institutions Examination Council on March 1, 1988.

March 3, 1988.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

Accordingly, the Council amends its regulations as follows:

PART 1101—[AMENDED]

1. The authority citation for Part 1101 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 3307.

2. Section 1101.3(e) is revised to read:

§ 1101.3 [Amended]

* * * * *

(e) *Council address.* Council offices are located at 1776 G Street, NW., Suite 701, Washington, DC 20006.

3. Section 1101.4(b)(1)(vii) is revised to read:

§ 1101.4 [Amended]

* * * * *

(b) * * *

(1) * * *

(vii) Records or information compiled for law enforcement purposes, including records relating to a proceeding by a financial institution's regulatory agency for the issuance of a cease-and-desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual.

4. Section 1101.4(b)(5) is amended to read:

§ 1101.4 [Amended]

* * * * *

(b) * * *

(5) *Fees for document search, review, and duplication; waiver and reduction of fees*—(i) *Definitions*—(A) *Direct costs* means those expenditures which the Council actually incurs in searching for, duplicating, and reviewing documents to respond to a FOIA request.

(B) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(C) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request.

(D) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* § 1101.4(b)(5)(i)(E)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(F) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(G) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 1101.4(b)(i)(E), and which is operated solely for the purposes of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(H) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events

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or that would be of current interest to the public.

(ii) *Fees to be charged.* The Council will charge fees that recoup the full allowable direct costs it incurs. The Council may contract with the private sector to locate, reproduce, and/or disseminate records. Provided, however, that the Council has ensured that the ultimate cost to the requester is no greater than it would be if the Council performed these tasks. Fees are subject to change as costs change. In no case will the Council contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(A) *Manual searches and review.* The Council will charge fees at the following rates for manual searches for and review of records:

(*1*) If search/review is done by clerical staff, the hourly rate for GS-7, step 5, plus 16 percent of the rate to cover benefits;

(*2*) If search/review is done by professional staff, the hourly rate for GS-13, step 5, plus 16 percent of the rate to cover benefits.

(B) *Computer searches.* The Council will charge fees at the hourly rate for GS-13, step 5, plus 16 percent of the rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(C) *Duplication of records.* (*1*) The per-page fee for paper copy reproduction of a document is $.25;

(*2*) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5, plus 16 percent for benefits if clerical staff, and GS 13, step 5, plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, labels, etc.).

(*3*) If any other method of duplication is used, the Council will charge the actual direct cost of duplicating the documents.

(D) If search, duplication and/or review is provided by personnel of member agencies of the Council, fees will reflect their actual hourly rates, plus 16 percent for benefits.

(E) *Fees to exceed $25.* If the Council estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. In the case of such notification by the Council, the requester will then have the opportunity to confer with Council personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(F) *Other services.* Complying with requests for special services is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

(G) *Restriction on assessing fees.* The Council will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(H) *Waiving or reducing fees.* The Council shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(*1*) The Council will make a determination of whether the public interest requirement above is met based on the following factors:

(*i*) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(*ii*) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*iii*) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(*iv*) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(*2*) If the public interest requirement is met, the Council will make a determination on the commercial interest requirement based upon the following factors:

(*i*) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(*ii*) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure; that disclosure is primarily in the commercial interest of the requester.

(*3*) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, the Council will waive or reduce fees.

(iii) *Categories of requesters.* (A) Commercial use requesters. The Council will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, the duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(B) Requesters who are representatives of the news media, educational and noncommercial scientific institution requesters. The Council shall provide documents to requesters in these categories for the cost of reproduction alone, excluding fees for the first 100 pages.

(C) All other requesters. The Council shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(D) All requesters must specifically describe records sought.

(iv) *Interest on unpaid fees.* The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(v) *Fees for unsuccessful search and review.* The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(vi) *Aggregating requests.* A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, the Council may aggregate any such requests and charge accordingly. In no case will the Council aggregate multiple requests on unrelated subjects from the same requester.

(vii) *Advance payment of fees.* The Council will not require a requester to make an assurance of payment or an advance payment unless:

(A) The Council estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Council will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges

in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in § 1101.4(b)(5)(iv) or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under § 1101.4(b)(5)(vii) (A) or (B), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

[FR Doc. 88-5053 Filed 3-7-88; 8:45 am]

BILLING CODE [illegible]

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Rev. 7; Amdt. 2]

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule permits the Small Business Administration (SBA) to suspend or revoke the privilege of lenders, brokers, dealers and registered holders to sell or otherwise deal in section 7(a) secondary market loan or pool certificates for significant violations of the Rules and Regulations of the secondary market and for certain other offenses. It also clarifies that the disclosure requirements for individual loan certificates and pool certificates apply equally to certificates placed into or used as the backing for a trust, investment pool, mutual fund or any other security. Finally, it modifies the existing regulatory requirements for pool assembles eligibility to require that pool assemblers be regulated by the appropriate regulatory agency, as defined in the Government Securities Act of 1986 (Pub. L. 99-571, 100 Stat. 3208). On November 4, 1987, SBA published in the Federal Register (52 FR 42305) a notice of proposed rulemaking.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Allan S. Mandel, Assistant Deputy Associate Administrator for Financial Assistance, (202) 653-6696.

SUPPLEMENTARY INFORMATION: Under the authority of sections 5(f)-5(h) of the Small Business Act (15 U.S.C. 634(f)-(h)) ("Act"), SBA operates a secondary market in SBA guaranteed loan and pool certificates. The process works as follows: A lender, previously approved by SBA to make guaranteed loans under section 7(a) of the Act, makes such a loan to a small business. The lender may sell the guaranteed portion of the loan to a secondary market broker-dealer, which then resells the loan to an investor. Alternatively, broker-dealers that are approved by SBA as pool assemblers may form pools backed by the guaranteed portions of several SBA guaranteed loans, and sell certificates representing total or fractional ownership in such pools to investors.

The final rules described herein enable SBA to carry out its responsibilities to develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations (section 5(f)(3) of the Act); require the seller of a certificate to disclose to a purchaser information on the terms, conditions and yield of the security (section 5(h)(3) of the Act); and regulate brokers and dealers in this market (section 5(h)(4) of the Act).

SBA is amending its regulations to permit the Agency to suspend or revoke the privilege of lenders, brokers, dealers and registered holders to sell or otherwise deal in loan or pool certificates under certain circumstances.

Section 120.605 as amended permits SBA to suspend or revoke the privilege of a lender, broker, dealer or registered holder to sell, purchase, or deal in loans, loan certificates or loan pool certificates if such lender, broker or registered holder commits a significant violation, as determined by SBA, of the Rules and Regulations of the Secondary Market. SBA is also authorized to suspend or revoke such entities for (1) a significant violation, as determined by SBA, of any of the provisions of the contracts entered into by the parties, including, but not limited to, Standard Forms 1085, 1086, 1088 and 1454 or (2) knowingly submitting false or fraudulent information in support of its participation in the Secondary Market to SBA or the fiscal and transfer agent (FTA). SBA would provide written notice of such determination at least 10 business days prior to the effective date of such determination. The notice would inform the broker, dealer, or registered holder of the opportunity for a hearing pursuant to Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA remains in effect. It should also be noted that action under this regulation would not preclude SBA from taking additional action to debar or suspend a lender, broker, dealer or registered holder under the Nonprocurement Debarment and Suspension rule scheduled to be published in final form in May of 1988 in cases where the SBA believes that such action is warranted. (Proposed Nonprocurement Debarment and Suspension Rule published October 20, 1987, at 52 FR 39015.)

Subparts G (pooling of SBA guaranteed portions) and H (individual SBA guaranteed portions sold into the secondary market) of Part 120 of this chapter are amended to exclude any broker or dealer from selling or otherwise dealing in pool certificates if the broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the broker or dealer would be suspended by SBA for the duration of the suspensions by the supervisory agency. If the broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for pool certificates, the broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated. When the broker or dealer has suffered an adverse final civil judgment, holding that the broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for certificates may be terminated.

Under the final regulation, SBA could, for any of the reasons stated above, suspend or revoke the privilege of any broker or dealer to participate in this market. SBA would give written notice at least ten business days prior to the effective date of such an action. The notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this Chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect. It should also be noted that action under this regulation would not preclude SBA from taking additional action to debar or suspend a broker or dealer under the Nonprocurement Debarment and Suspension rule scheduled to be published in final form in May of 1988 in cases where the SBA believes that such action is warranted. (Proposed Nonprocurement Debarment and Suspension Rule published October 20, 1987 at 52 FR 39015.)

These regulatory changes are counterparts of the existing regulations on suspension and termination of brokers and dealers in the Small Business Investment Company (13 CFR 107.201(c)(4)) and Development Company (13 CFR 108.505(1)) programs. As such, they make the regulations of the section 7(a) secondary market consistent on this subject with those of the other two programs.

SBA received two comments on this aspect. The first commentator stated its support of each of the proposed changes. However, it suggested that the hearings and appeals procedure must be spelled out specifically. SBA believes that the hearings and appeals procedure is detailed quite specifically in Part 134 of its Regulations, pertaining to the Office of Hearings and Appeals (13 CFR Part 134).

The second commentator raised two issues. First, it was concerned that ten days' prior notice of any suspension or revocation is insufficient. "We believe that it is more appropriate for the SBA, should it have any objection to an SBA lender's course of conduct, to first take steps to work out the problem with the lender before the SBA resorts to suspension or revocation * * *. Alternatively, we suggest that the proposed regulations be amended to require the SBA to use best efforts to resolve a problem with the lender before the SBA gives notice of suspension or revocation."

SBA has used and will continue to use its best efforts to work out solutions to problems without resorting to suspension or revocation. However, SBA disagrees with the commentator's implicit assumption that suspension or revocation are unwarranted as long as the offending party agrees to cease its rule violations. SBA believes that it must reserve the right of suspension or revocation with ten days notice where such action is required in the public interest. Such cases would include but not be limited to instances in which the suspended party has a history of repeated rule violations, where there is a pattern of concurrent violations, or where the violation is egregious.

This commentator also raised the issue of SBA's proposal that, during the period of any appeal proceedings under Part 134, the action of the SBA (suspension or revocation) would remain in effect. "We believe that, given the severity of suspension or revocation, a fairer result would be to allow the SBA lender to continue operations pending a final determination under Part 134." As we discussed above, SBA believes that it must reserve the right of suspension with ten days notice where such action is required in the public interest.

As an alternative the commentator suggests "that the lender should have the opportunity, at the initiation of any proceedings under Part 134, to seek a stay of the SBA's action pending resolution of the appeal under Part 134." In response, SBA notes that its regulations already provide the alternative that the commentator requests. Under Part 134 a judge has authority to issue protective orders, as follows: "Under motion by a party, or by any person from whom discovery is sought, for good cause shown, or upon his or her own motion, the judge may issue such orders as justice requires to protect a party or person from harassment, embarrassment, oppression, or undue burden or expense, or from breach of confidentiality of material or information warranting protection." 13 CFR 134.18(c) In addition, a judge has the authority to "issue decisions and orders" and to "take any other appropriate action authorized by this Part or the Delegations of Authority to the Office [of Hearings and Appeals]." 13 CFR 134.18(b) (11) and (12).

Sections 120.713 and 120.809 of this Part 120 requires a seller of individual loan and pool certificates to disclose to the purchaser information on the terms, conditions and yield of the security as described in the Secondary Market Program Guide. The final regulations clarify that this requirement applies equally to loan or pool certificates placed into or used as the backing for a trust, investment pool, mutual fund or any other security. In such cases the same disclosure information must be provided to investors through the prospectus and any promotional material and any other written description of the security. If loan or pool certificates are placed into or used as the backing for money market funds, the yield calculation on the SBA loan or pool certificate portion of such funds must be calculated according to the methodology and assumptions described in the Secondary Market Program Guide.

SBA and the Public Securities Association have agreed upon a methodology for estimating yields on these securities, pursuant to SBA's responsibilities under section 5(h)(3) of the Act. The methodology for estimating the yield on these securities must be carefully specified because SBA guaranteed loans may be prepaid prior to the scheduled maturity if (1) the borrower defaults and SBA honors its guaranty or (2) the borrower voluntarily prepays. (SBA loans may be prepaid by the borrower without penalty.) The occurrence of either of these events cannot be predicted with certainty. Prepayment has a significant impact upon yield, particularly with certificates priced substantially away from par.

The purpose of the disclosure requirements is to provide investors with a benchmark constant annual prepayment rate (CPR) based upon an analysis of the prepayment history of SBA guaranteed loans. The purpose of the benchmark is twofold: (1) to produce a cash flow yield calculation based upon the past performance of SBA loans and (2) to help investors choose between alternative SBA loan and pool certificates and between SBA loan and pool certificates and alternative investments. The elements that form the disclosure requirements enable investors to know the facts and assumptions used to develop the benchmark cash flow yield estimate.

These final regulatory changes are necessary because a mutual fund backed by SBA guaranteed portions is sold in the same marketplace as SBA pool and individual loan certificates. Accuracy and consistency in the quoting of yields are necessary to prevent investor confusion, to maintain an orderly and credible market, and to provide accurate information to investors.

Under the authority of the Small Business Secondary Market Improvements Act, enacted in 1984 (98 Stat 329), SBA has required pool assemblers to be (1) regulated by a state or federal financial regulatory agency, (2) regulated by SBA, or (3) a member of the National Association of Securities Dealers (13 CFR 120.703(a)). The passage of the Government Securities Act of 1986 (100 Stat. 3208) established for the first time a Federal Government-wide system for regulation of brokers and dealers who transact business exclusively in government securities or a government securities business combined with business in certain other activities. Accordingly, SBA is revising § 120.703(a) to require pool assemblers to be regulated by the appropriate regulatory agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 as amended (15 U.S.C. 78c(a)(34)(G)), pursuant to the mandate of the Government Securities Act of 1986.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this rule is likely to have a significant economic impact on a substantial number of small entities. This action is being taken to ensure that the secondary market for SBA guaranteed loans is operated efficiently, honestly, and openly. Section 5 of the

Small Business Act authorizes SBA to develop procedures for the facilitation, administration, and promotion of secondary market operations. The statute requires disclosure of information to purchasers and allows SBA to regulate brokers and dealers. These regulations implement the statutory authority. It is not possible or feasible to estimate how many of the existing or potential lenders, brokers, dealers, or registered holders are or will be small entities, but it may be safely assumed that of the total universe there will be a large number of small entities. There are no reporting or recordkeeping requirements created by these regulations. The entities operating in the secondary market, in the nature of things, must operate properly, and the thrust of these regulations is to give SBA the authority to revoke the privilege of participating in the SBA secondary market from a broker or dealer which is acting improperly. There are no Federal rules which duplicate, overlap or conflict with the final rule. There are no significant alternatives since the final regulations are consistent with existing SBA regulations on the suspension and termination of brokers and dealers in the Small Business Investment Company and Development Company programs. Further, the Agency must implement the provisions of the Government Securities Act which was effective in July 1987 in regulating brokers and dealers which transact business in government securities.

SBA certifies that this rule does not constitute a major rule for the purpose of Executive Order 12291, since the changes are not likely to result in an annual effect on the economy of $100 million or more.

This final rule contains no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act. 44 U.S.C. Ch. 35. The disclosure requirements set forth in §§ 120.808 and 120.809 are clarifications of preexisting requirements, which have already received OMB approval under the Paperwork Reduction Act.

List of Subjects in 13 CFR Part 120

Loan programs/business, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends Part 120, Chapter I, Code of Federal Regulations, as follows.

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).)

2. Section 120.605–1 is amended by revising the first sentence to read as follows:

§ 120.605–1 Transferability.

Except as indicated below in § 120.605–2, certificates issued by the FTA shall be freely transferable. * * *

§ 120.605–3 [Redesignated from § 120.605–2]

3. Section 120.605–2 is redesignated as § 120.605–3, and a new § 120.605–2 is added to read as follows:

§ 120.605–2 Violation of Secondary Market Rules and Regulations.

SBA reserves the right to suspend or revoke the privilege of a lender, broker, dealer or registered holder to sell, purchase, broker, or deal in loans, loan certificates or loan pool certificates if such lender, broker, dealer or registered holder:

(a) commits a significant violation, as determined by SBA, of the Rules and Regulations of the Secondary Market (Subparts F, G and H of this Part);

(b) commits a significant violation, as determined by SBA, of any of the provisions of the contracts entered into by the parties, including, but not limited to, Standard Forms 1085, 1086, 1088 and 1454; or

(c) knowingly submits false or fraudulent information in support of its participation in the SBA Secondary Market to SBA or the FTA. SBA shall provide written notice of such determination at least 10 business days prior to the effective date of such determination. Such notice shall inform the lender, broker, dealer, or registered holder of the opportunity for a hearing pursuant to Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

4. Section 120.703 is amended by revising paragraph (a)(1) to read as follows:

§ 120.703 Eligible pool assemblers.

(a) * * *

(1) Is regulated by the appropriate regulatory agency as defined in Section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

* * * * *

§§ 120.705—120.712 [Redesignated as §§ 120.706—120.713]

5. Section 120.705 through 120.712 are redesignated as §§ 120.706 through 120.713, and a new § 120.705 is added to read as follows:

§ 120.705 Suspension or revocation of broker or dealer.

(a) In addition to the provisions of Section 120.605–2, SBA may exclude any broker or dealer from selling or otherwise dealing in certificates:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been so suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for certificates may be terminated.

(b) SBA may, for any of the reasons stated above, suspend or revoke the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such action. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this Chapter.

(c) Procedures for appealing the decision to suspend or revoke are found in Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

6. Section 120.713, as redesignated, is revised to read as follows:

§ 120.713 Disclosure requirements.

Prior to any sale, the pool assembler or any subsequent seller of a certificate must disclose to the purchaser, either orally or in writing, information on the terms, conditions and yield as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to the sale, provide such disclosure information in writing to the purchaser. If all or part of a pool certificate is placed into or used as the backing for a trust, investment pool, mutual fund or any other security, this same disclosure information must be provided to investors through the prospectus and any promotional material.

7. Section 120.809 is revised to read as follows:

§ 120.809 Disclosure requirements.

Every registered holder of the guaranteed portion must, prior to any sale, disclose to the purchaser either orally or in writing the terms and conditions and yield of such instrument as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to sale, provide such disclosure information in writing to the purchaser. If all or part of a certificate is placed into or used as the backing for a trust, investment pool, mutual fund or any other security, this same disclosure information must be provided to investors through the prospectus and any promotional material.

8. Section 120.810 is added to read as follows:

§ 120.810 Suspension or revocation of broker or dealer.

(a) In addition to the provisions of § 120.805–2, SBA may suspend or revoke any broker or dealer from selling or otherwise dealing in certificates:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been so suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for certificates may be terminated.

(b) SBA may, for any of the reasons stated above, suspend or revoke the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension or revocation. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this chapter.

(c) Procedures for appealing the decision to suspend or revoke are found in Part 134 of this chapter. During the period of any proceedings under Part 134 the action of the SBA shall remain in effect.

Date: January 28, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-5015 Filed 3-7-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-172-AD; Amdt. 39-5867]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires repetitive inspections of the Auxiliary Power Unit (APU) fuel supply line for leaks and repair, if necessary. Replacement of existing APU fuel line shroud drain tube and APU fuel pump drain tube assemblies with new parts terminates the need for repetitive inspections. This action is prompted by a report of fuel leak at a coupling on the APU fuel line shroud. Fuel was found in the forward cargo compartment and in several of the overwing floor beam bays. This condition, if not corrected, could result in a fire.

EFFECTIVE DATE: March 25, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Propulsion Branch, ANM-140S; Telephone (206) 431-1970. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been a recent report of fuel found in the forward cargo compartment and in several of the overwing floor beam bays on a Boeing Model 747 airplane. A fuel leak was found at a coupling on the APU fuel line shroud. The source of the fuel in the shroud was attributed to a leaking APU engine fuel pump seal. The pump drain line is connected to the fuel line shroud by a tee adjacent to the common drain exit. The flow from the pump was sufficient to pressurize the fuel line shroud through the tee connection. Operation of an airplane with a fuel leak such as this could result in a fire.

The FAA has reviewed and approved Boeing Commercial Airplane Company Service Bulletin 747-49-2051, dated November 5, 1987 which describes replacement of the existing APU fuel line shroud drain tube and APU fuel pump drain tube assemblies with independent drain tube assemblies and routing separate locations in the drain mast. The service bulletin also describes replacement of the turbine drain tube assembly and routing the new tube assembly to a newly created body drain.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspection of the APU fuel supply line for leakage and repair, if necessary. Replacement of the existing APU fuel line shroud drain tube and other APU fuel drain system components, and changes in the turbine drain assembly, in accordance with the service bulletin previously mentioned, terminates the requirement for inspection.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Service Bulletin 747-49-2051, dated November 5, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for a fire due to fuel leaking from the auxiliary power unit (APU) drain system, accomplish the following:

A. Within the next 30 days after the effective date of this AD, and at intervals not to exceed 30 days thereafter, inspect the APU fuel supply line for fuel leaks, in accordance with Boeing Model 747 Maintenance Manual Section 28-25-00, page 601, dated August 25, 1987, or later FAA-approved revision. If leakage is detected, repair in accordance with the Maintenance Manual, before further flight.

B. Modification of the APU fuel line drain system, fuel pump drain, and turbine drain assembly, in accordance with Boeing Service Bulletin 747-49-2051, dated November 5, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspection requirement of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 25, 1988.

Issued in Seattle, Washington, on February 26, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-4945 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-151-AD; Amdt. 39-5870]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model H.S. 748 series airplanes, which requires inspection of certain inboard main landing gear pivot bracket forgings for cracks. This amendment is necessary because cracks have been reported in airplanes on which Modification 6175 has been accomplished. This condition, if not corrected, could lead to collapse of the main landing gear.

EFFECTIVE DATE: April 18, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113, telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain British Aerospace Model H.S. 748 series airplanes, which requires inspection of certain inboard main landing gear pivot bracket forgings for cracks, was published in the Federal Register on December 11, 1987 (52 FR 47015).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, no Model H.S. 748 airplanes of U.S. registry will be affected by this AD. However, should a Model H.S. 748 airplane be imported to the U.S. in the future, it will take approximately 12 manhours per airplane to accomplish the required actions, and the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to a U.S. operator will be $480 per airplane.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the critiera of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 series airplanes, on which Modification 6175 has been accomplished (post Mod 6175), certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent collapse of the main landing gear, accomplish the following:

A. Prior to accumulating 25,000 landings or within the next 750 flight hours after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 landings, perform an inspection of inboard main pivot bracket assemblies in accordance with paragraph 2A of the British Aerospace H.S. 748 Service Bulletin 57/59, Revision No. 1, dated April 1984. Any assembly found to exhibit corrosion, loose bolts, and/or cracks must be repaired in accordance with paragraph 2D of the above mentioned service bulletin. If corrosion to a depth greater than 0.080-inch is found, repair in accordance with a method approved by the FAA.

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414 Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 18, 1988.

Issued in Seattle, Washington, on February 29, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-4946 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-06-AD; Amdt. 39-5860]

Airworthiness Directives; The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd; Model DHC-8 Series Airplanes Equipped With Eldec Proximity Switch Electronic Control Unit (PSEU) P/N 8-410-03 or 8-410-04

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain de Havilland Model DHC-8 series airplanes by individual telegrams. This AD requires a revision to the airplane flight manual (AFM) to include a pre-flight check of the nose gear cockpit indication system, and repair, if necessary. This action is prompted by a report of a fault identified in the PSEU which can result in the nose gear failing to extend and an incorrect gear position indication in the cockpit.

DATES: Effective March 25, 1988.

This AD was effective earlier to all recipients of telegraphic AD T88-03-51, dated January 28, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems Branch, ANE–173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York, 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: On January 2, 1988, an incident occurred wherein a de Havilland Model DHC-8 series airplane landed with the nose gear retracted and nose gear doors closed. This was contrary to the cockpit display (three green lights), which indicated that the gear was in the down and locked position. While in flight prior to this landing, there had been an unsafe indication (red nose gear in transit light and amber nose gear light illuminated), which was cleared by cycling the gear. Because the cockpit display erroneously indicated that the nose gear was in the extended position, the pilot did not use the alternate gear extension system.

It has been determined that this incident was caused by a certain fault in the proximity switch electronic control unit (PSEU). The existence of such a fault can be detected while performing the anti-skid check listed in the airplane flight manual (AFM), as part of the cockpit pre-flight check. This fault does not affect the alternate gear extension system.

On January 28, 1988, the FAA issued telegraphic AD T88-03-51, applicable to certain de Havilland Model DHC-8 series airplanes, which requires an AFM revision to include a pre-flight check of the nose gear cockpit indication system prior to each flight, and repair, if necessary. This is considered to be an interim action until final action has been identified, at which time the FAA may consider further rulemaking.

Paragraph C. of the final rule has been revised to require concurrence of the FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. Paragraph C. has also been revised to delegate the authority for adjustment of the compliance time to the Manager of the New York Aircraft Certification Office. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd.: Applies to de Havilland Model DHC-8-101 and -102 series airplanes, certificated in any category, equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8-410-03 or 8-410-04. Compliance is required within 24 hours after the effective date of this AD.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the following:

A. Add the following to the Limitations Section of the airplane flight manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM:

"1. Perform the following check prior to each flight. This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch—'OFF'

b. Anti-skid switch—'ON'

c. Check that inboard and outboard anti-skid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears the fault."

"2. While performing the 'After Take Off' and 'Approach' procedures:

a. Monitor the landing gear indication system during landing gear retraction and extension.

b. If there is any irregularity in gear indication or operation at any time throughout the flight, the gear must be confirmed 'DOWN AND LOCKED' using the alternate down-lock verification system, irrespective of a gear 'DOWN AND LOCKED' (green) indication on the normal landing gear indicating system."

B. Any in-flight landing gear irregularity must be corrected after landing by maintenance action prior to further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of the Principal Maintenance Inspector, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the maintenance requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective March 25, 1988.

It was effective earlier to all recipients of telegraphic AD T88-03-51, dated January 28, 1988.

Issued in Seattle, Washington, on February 26, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-4944 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-32]

Amendment of Control Zone; Altus, OK, and Amendment of Transition Area; Hobart, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will amend the existing control zone located at Altus, OK, and amend the existing transition area located at Hobart, OK. The development of two new standard instrument approach procedures (SIAP) for the Altus Municipal Airport, Altus, OK, has made this multiple amendment necessary. The intended effect of this multiple amendment is to provide additional controlled airspace for aircraft executing the new SIAP's to the airport.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 19, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the control zone located at Altus, OK, and the transition area located at Hobart, OK (52 FR 35586).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will amend the control zone located at Altus, OK, and the transition area located at Hobart, OK. The development of two new SIAP's to the Altus Municipol Airport, Altus, OK, has necessitated this multiple amendment. The intended effect of this multiple amendment is to provide additional controlled airspace for aircraft executing the two new SIAP's to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Altus, OK [Amended]

By deleting the words, "excluding that airspace within a 1½-mile radius of the Altus Municipal Airport (latitude 34°41′57″ N.,

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longitude 99°20′21″ W.);" and by adding the words, "and within a 5-mile radius of the Altus Municipal Airport (latitude 34°42′00″ N., longitude 99°22′00″ W.)."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Hobart, OK [Amended]

By deleting the words, "within an 8-mile radius of the Altus AFB;" and by adding the words, "within an 11-mile radius of the Altus AFB."

Issued in Fort Worth, TX, on February 24, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–4942 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–34]

Revision of Transition Area; Johnson City, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Johnson City, TX. The closure of the Shepherd Farm Airport, the decommissioning of the Johnson City Nondirectional Radio Beacon (NDB), and the subsequent cancellation of the associated standard instrument approach procedures (SIAP) have made this revision necessary. The intended effect of this revision will release that controlled airspace no longer required for aircraft executing the SIAP's to the Shepherd Farm and Johnson City Airports. This revision will provide adequate controlled airspace for the VOR–B SIAP now serving the Johnson City Airport. Coincident with this action, the instrument flight rules (IFR) status of the Shepherd Farm Airport is canceled.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Johnson City, TX (52 FR 48715). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Johnson City, TX. The closure of the Shepherd Farm Airport, the decommissioning of the Johnson City NDB, and the cancellation of the associated SIAP's necessitated the need for this revision. The intended effect of this revision will release that controlled airspace no longer required for aircraft executing the respective SIAP's to the Shepherd Farm and Johnson City Airports. This revision will reduce the existing 700-foot transition area to a 7-mile radius of the Johnson City Airport and will provide adequate controlled airspace for the VOR–B SIAP now serving the Johnson City Airport. Coincident with this action, the IFR status of the Shepherd Farm Airport is canceled.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Johnson City, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Johnson City Airport (latitude 30°15′05″ N., longitude 98°37′21″ W.).

Issued in Fort Worth, TX, on February 25, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–4941 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AGL–5]

Alteration of VOR Federal Airways; Knox, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–126 and V–340 located in the vicinity of Knox, IN. The current alignment of these airways has created operational and navigational problems due to the reduced reliability of the O'Hare very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). This action improves safety and reduces controller workload.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–126 and V–340 located in the vicinity of Knox, IN (52 FR 26350). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and changes to V–126 and V–340 by substituting the Peotone,

IL, radial for the Chicago Heights radial, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–126 and V–340 located in the vicinity of Knox, IN. Currently, the navigation fix for arrival aircraft for O'Hare and satellite airports utilizes the O'Hare VORTAC and Chicago Heights radials, however, the O'Hare radial is not reliable and this action changes those radials.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–126 [Amended]

By removing the words "From Chicago Heights, IL; Goshen, IN;" and substituting the words "From INT Peotone, IL, 053° and Knox, IN, 297° radials; INT Knox 297° and Goshen, IN, 270° radials; Goshen;"

V–340 [Revised]

From INT Peotone, IL, 053° and Knox, IN, 297° radials; Knox; Fort Wayne, IN, to Richmond, IN.

Issued in Washington, DC, on February 26, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–4940 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–22]

Alteration of VOR Federal Airways; Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the descriptions of several Federal Airways located in the vicinity of Missoula, MT. Changes to instrument flight procedures to the Missoula Airport now require the Salt Lake City Air Route Traffic Control Center (ARTCC) controllers to position arriving aircraft on published routes or approach transition prior to transfer of control to the Missoula Air Traffic Control Tower. This action is compatible with the new instrument approach procedures thus expediting the traffic in the Missoula terminal area and increasing flight safety.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 28, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–2, V–120, V–257 and V–343 located in the vicinity of Missoula, MT (52 FR 36278). Changes to the instrument flight procedures at the Missoula Airport now require the Salt Lake City ARTCC to position arriving aircraft on a published route prior to transfer of control to the Missoula Air Traffic Control Tower. This procedure involves radar vectors at altitudes compatible with the instrument approach procedures. This proposed action would reduce the vectoring requirement, thereby reducing the controller workload and improving traffic flow. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the descriptions of several Federal Airways located in the vicinity of Missoula, MT. Changes to instrument flight procedures to the Missoula Airport now require the Salt Lake City ARTCC controllers to position arriving aircraft on published routes or approach transition prior to transfer of control to the Missoula Air Traffic Control Tower. This action is compatible with the new instrument approach procedures thus expediting the traffic in the Missoula terminal area and increasing flight safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–2 [Amended]

By removing the words "Mullan Pass, ID; 5 miles, 53 miles, 91 MSL, Missoula, MT; 6 miles, 84 MSL, Drummond, MT; 11 miles, 84 MSL," and by substituting the words "Mullan Pass, ID; Missoula, MT; Drummond, MT;"

V–120 [Amended]

By removing the words "Mullan Pass, 5 miles, 55 miles, 96 MSL, 43 miles, 125 MSL," and by substituting the words "Mullan Pass;"

V–257 [Amended]

By removing the words "22 miles, 85 MSL"

V–343 [Revised]

From Dubois, ID; Bozeman, MT; to Drummond, MT.

Issued in Washington, DC, on March 1, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–4936 Filed 3–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 87–AWP–36]

Subdivision of Restricted Areas R–3104 and R–3107; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment subdivides Restricted Areas R–3104 and R–3107 in Hawaii into R–3104A, R–3104B, R–3107A and R–3107B with changes in altitude structures and times of use. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency U.S. Navy to release previously restricted airspace for public use.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations subdivides Restricted Areas R–3104 and R–3107 in Hawaii with changes in altitude structures and times of use. This action also amends the Continental Control Area. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Sections 71.151 and 73.31 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R–3104B Island of Kahoolawe, HI [New]

R–3107B Kaula Rock, HI [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510, 1522; E.O.10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.31 [Amended]

4. Section 73.31 is amended as follows:

R–3104 Island of Kahoolawe, HI [Removed]

R–3104A Island of Kahoolawe, HI [New]

Boundaries. Beginning at lat. 20°34'20" N., long. 156°40'30" W.; thence clockwise 1 mile from and parallel to the shoreline to lat. 20°36'20" N., long. 156°36'30" W.; to lat. 20°36'20" N., long. 156°34'50" W.; to lat. 20°35'20" N., long. 156°31'45" W.; thence clockwise 1 mile from and parallel to the shoreline to lat. 20°30'20" N., long. 156°31'45" W.; to lat. 20°30'00" N., long. 156°31'00" W.; to lat. 20°28'30" N., long. 156°30'45" W.; thence clockwise 3 nautical miles from and parallel to the shoreline to lat. 20°35'25" N., long. 156°43'00" W.; to the point of beginning.

Designated altitudes. Surface to but not including 5,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Honolulu ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Pearl Harbor, HI.

R–3104B Island of Kahoolawe, HI [New]

Boundaries. Beginning at lat. 20°34'20" N., long. 156°40'30" W.; thence clockwise 1 mile from and parallel to the shoreline to lat. 20°36'20" N., long. 156°36'30" W.; to lat. 20°36'20" N., long. 156°34'50" W.; to lat. 20°35'20" N., long. 156°31'45" W.; thence clockwise 1 mile from and parallel to the shoreline to lat. 20°30'20" N., long. 156°31'45" W.; to lat. 20°30'00" N., long. 156°31'00" W.; to lat. 20°28'30" N., long. 156°30'45" W.; thence clockwise 3 nautical miles from and parallel to the shoreline to lat. 20°35'25" N., long. 156°43'00" W.; to the point of beginning.

Designated altitudes. 5,000 feet MSL to 18,000 feet MSL.

Time of designation. 0700–2200 local time daily; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Honolulu ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Pearl Harbor, HI.

R–3107 Kaula, HI [Removed]

R–3107A Kaula, HI [New]

Boundaries. The airspace within 3 nautical miles of the Island of Kaula (lat. 21°39'30" N., long. 160°32'30" W.).

Designated altitudes. Surface to but not including 5,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Honolulu ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Pearl Harbor, HI.

R–3107B Kaula, HI [New]

Boundaries. The airspace within 3 nautical miles of the Island of Kaula (lat. 21°39'30" N., long. 160°32'30" W.).

Designated altitudes. 5,000 feet MSL to 18,000 feet MSL.

Time of designation. 0700–2200 local time daily; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Honolulu ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Pearl Harbor, HI.

Issued in Washington, DC, on March 1, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–4939 Filed 3–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 87–ACE–8]

Alteration and Establishment of Restricted Areas; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions alter the times of use of Restricted Areas R–4501A, B, C, and D and establish R–4501F, G, and H located near Fort Leonard Wood, MO These actions provide the Department of Army the necessary airspace to accommodate increased training activities.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On December 11, 1987, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the times of use of Restricted Areas R–4501A, B, C, and D and to establish R–4501F, G, and H located near Fort Leonard Wood, MO (52 FR 47021). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.45 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations will alter the times of use of Restricted Areas R–4501A, B, C, and D and will establish R–4501F, G, and H located near Fort Leonard Wood, MO. This action will increase the total number of restricted areas from four to seven. The establishment of R–4501F, G, and H will be located adjacent to the existing R–4501A, B, C, and D located at Fort Leonard Wood, MO. R–4501F and G located just southwest of the Forney Army Air Field (AAF) is established from the surface to 3,200 feet MSL to contain hazardous training activities. R–4501H located just east of Forney AAF is also established from the surface to 3,200 feet MSL to contain hazardous training activities.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.45 [Amended]

2. Section 73.45 is amended as follows:

R–4501A, B, C, and D Fort Leonard Wood, MO [Amended]

By removing the present time of designation and substituting the following:

Time of designation. 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.

R–4501F Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41'00" N., long. 92°09'04" W.; to lat. 37°41'00" N., long. 92°10'52" W.; to lat. 37°43'02" N., long. 92°12'10" W.; to lat. 37°43'10" N., long. 92°08'45" W.; to the point of beginning.

Designated altitudes. Surface to 3,200 feet MSL.

Time of designation. 0700–1800 daily; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Headquarters U.S. Army Training Center, Fort Leonard Wood, MO.

R–4501G Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41'00" N., long. 92°10'52" W.; to lat. 37°41'00" N., long. 92°14'08" W.; to lat. 37°44'48" N., long. 92°12'19" W.; to lat. 37°44'48" N., long. 92°08'45" W.; to lat. 37°43'10" N., long. 92°08'45" W.; to lat. 37°43'02" N., long. 92°12'10" W.; to the point of beginning.

Designated altitudes. Surface to 3,200 feet MSL.

Time of designation. By NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Headquarters U.S. Army Training Center, Fort Leonard Wood, MO.

R–4501H Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°42'50" N., long. 92°07'20" W.; to lat. 37°44'00" N., long. 92°07'15" W.; to lat. 37°44'45" N., long. 92°05'40" W.; to lat. 37°44'50" N., long. 92°04'48" W.; to lat. 37°46'15" N., long. 92°05'30" W.; to lat. 37°47'45" N., long. 92°06'00" W.; to lat. 37°48'00" N., long. 92°06'00" W.; to lat. 37°48'00" N., long. 92°02'40" W.; thence south and along the Big Piney River and Reservation boundary to lat 37°46'45" N., long. 92°01'40" W.; to lat. 37°42'30" N., long. 92°04'05" W.; to lat. 37°42'15" N., long. 92°06'05" W.; to the point of beginning.

Designated altitudes. Surface to 3,200 feet MSL.

Time of designation. 1500–1600 Wednesday; other times by NOTAM.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Headquarters U.S. Army Training Center, Fort Leonard Wood, MO.

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-4943 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket Nos. RM87-3-091, et al., Order No. 472-C]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

Issued January 25, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing; notice of OMB control numbers.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 472-C on January 14, 1988 (53 FR 1748 (January 22, 1988)). This order on rehearing clarified several portions of the Commission's final rule and order on rehearing of the final rule in this docket. This notice states that the Office of Management and Budget has approved the information collection requirements of FERC Form Nos. 2 and 2A as revised in Order No. 472-C.

EFFECTIVE DATE: January 23, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On January 22, 1988, OMB approved the information collection requirements of FERC Form Nos. 2 and 2A as amended by Order No. 472-C under Control Numbers 1902-0028 and 1902-0030, respectively. Therefore, these revised forms are effective as of January 23, 1988. No amendment to the Table of OMB Control Numbers in 18 CFR 389.101(b) is necessary.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4967 Filed 3-7-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule clarifies the Office of Foreign Assets Control's interpretation of § 500.563 of the Foreign Assets Control Regulations, 31 CFR Part 500 ("the Regulations"), which pertains to transactions incident to travel to, from, and within Vietnam, Cambodia, and North Korea.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (Telephone: (202) 376-0392).

SUPPLEMENTARY INFORMATION: Due to the heightened interest in travel to Vietnam and Cambodia, the Office of Foreign Assets Control ("FAC") is issuing this revised version of § 500.563 of the Regulations, which authorizes certain transactions incident to travel to, from, and within Vietnam, North Korea, and Cambodia. The revisions clarify FAC's interpretation of this section. Certain technical amendments have also been made.

The rule makes clear that the only service travel service providers, including persons such as travel agents, tour operators, and carriers, may provide to persons subject to U.S. jurisdiction is the booking of passage aboard a third-country carrier traveling to or from Vietnam, North Korea, or Cambodia. Other transactions, such as the arrangement, promotion, or facilitation of group or individual tours; the arrangement, promotion, or facilitation of hotel accommodations, ground transportation, local tours, and similar travel activities in one of the designated countries; the entry into business arrangements with one of the designated countries; and the acceptance of fees, commissions, or other compensation from one of the designated countries, are prohibited. These prohibitions extend to dealings with or through third-country intermediaries, including the acceptance of compensation from a third-country source for referrals of business to the person.

With respect to transactions by individuals incident to travel within one of the countries designated under 31 CFR Part 500, the Regulations as amended now state explicitly that use of charge cards, including debit or credit cards, is prohibited. Likewise, the processing and payment of charge card transactions, as well as related transactions by persons subject to the jurisdiction of the United States, are prohibited.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking; opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 500

Cambodia, North Korea, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR Part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

2. Section 500.563 is revised to read as follows:

§ 500.563 Certain transactions incident to travel to and in North Korea, North or South Vietnam, or Cambodia.

(a) *Travel transactions by individuals.* The following transactions are authorized:

(1) All transactions by individuals ordinarily incident to their own travel to and from any foreign country designated under § 500.201 of this part.

(2) All transactions by individuals ordinarily incident to their own travel in any foreign country designated under § 500.201 of this part, including payment of living expenses and the acquisition of goods for personal consumption there.

(3) The purchase in any foreign country designated under § 500.201 of this part, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. Single copies of publications do not count against the $100 limit set forth in this paragraph. For purposes of this section, the term "publications" includes books, newspapers, magazines, films, phonograph records, tapes, photographs, microfilm, microfiche, posters, and similar materials. The authorization in this paragraph may be used only once in every six consecutive months.

(b) Persons who travel to any foreign country designated under § 500.201 of this part for the purpose of gathering news, making news films, engaging in professional research, or for similar activities, are authorized to acquire and import into the United States, as accompanied baggage or otherwise, such publications (as defined in paragraph (a) of this section) as are directly related to their professional activities, without limitation as to value. Such merchandise may only be acquired and imported for their own professional use or that of their employers at the time of the travel, and may not be resold to other persons.

(c) Persons who travel pursuant to the general licenses set forth in paragraph (a) of this section after March 18, 1977, and who prior to that date were not designated nationals of any foreign country designated under § 500.201 of this part, are licensed as unblocked nationals. This paragraph does not authorize any transactions prohibited by any other section of this part.

(d) *Travel Service Providers.* (1) All transactions by travel service providers are authorized in connection with the booking of passage to and from a foreign country designated under § 500.201 of this part aboard a third-country carrier, *i.e.*, a carrier that is neither owned, controlled, nor chartered by a person subject to the jurisdiction of the United States, an embargoed country, or a national of an embargoed country. The term "travel service providers" includes, but is not limited to, travel agents; commercial and noncommercial organizations that promote or arrange travel; persons arranging through transportation; persons chartering an aircraft or vessel on behalf of others; persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities; carriers; and ticket agents.

(2) The provision of any service related to travel by individuals to a foreign country designated under § 500.201 of this part is prohibited, other than that licensed by paragraph (d)(1) of this section. Thus, no person subject to U.S. jurisdiction may arrange, promote, or facilitate group or individual tours or travel to any foreign country designated under § 500.201 of this part; arrange, promote, or facilitate hotel accommodations, ground transportation, local tours and similar travel activities within a designated country; enter into business agreements or arrangements with those countries or their nationals with respect to travel; or accept fees, commissions, or other compensation from them. These prohibitions extend to dealings with or through third-country intermediaries, including the acceptance of compensation in any form from a third-country source for referrals of business to the intermediary.

(e) *Use of Charge Cards.* (1) Unless specifically provided, neither this section nor any general or specific license contained in or issued pursuant to this section authorizes persons subject to U.S. jurisdiction to utilize charge cards, including, but not limited to, debit cards, credit cards or other credit facilities, for expenditures in a country designated pursuant to § 500.201 of this part. Such transactions are prohibited by § 500.201.

(2) This section does not authorize the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (*e.g.*, vouchers, drafts, or sales receipts) for expenditures in any country designated pursuant to § 500.201 of this part. Also, it does not authorize a domestic charge card issuer, or a foreign charge card firm owned or controlled by U.S. persons, to deal with an enterprise owned or controlled by a foreign country designated under § 500.201 of this part; a national of such a foreign country; or a third-country party, such as a franchisee, in connection with the extension of charge card services to any person in one of the countries designated under § 500.201 of this part.

Dated: February 5, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 16, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-5008 Filed 3-3-88; 2:51 pm]

BILLING CODE 4810-25-M

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31 CFR Parts 535, 540, 545, and 550

Iran, Nicaragua, South Africa, and Libya; Prepenalty and Penalty Procedures

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the regulations concerning Iran (31 CFR Part 535), Nicaragua (31 CFR Part 540), South Africa (31 CFR Part 545), and Libya (31 CFR Part 550) by the addition of prepenalty and penalty procedures to Subparts G of these regulations. The amendments establish a procedure for imposition of civil monetary penalties for violations as provided in section 206(a) of the International Emergency Economic Powers Act, 50 U.S.C. 1705(a), and section 603(b)(1) of the Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. 5113(b)(1). These changes do not alter any substantive obligations imposed by the regulations, but set forth an additional enforcement tool to secure compliance with those obligations.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas F. Baker, Enforcement Advisor, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, 202/376-0970.

SUPPLEMENTARY INFORMATION: The Office of Foreign Assets Control of the Department of the Treasury (FAC) is entrusted with the responsibility of enforcing economic sanctions and restrictions imposed pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and the Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. 5001 *et seq.* Although both statutes provide explicitly for civil penalties, no procedural regulations have previously been issued, and only criminal prosecutions have been brought against violators. Establishment of a civil administrative procedure will provide additional flexibility in enforcement. The following regulations establish a system of administrative enforcement that will permit FAC directly to assess civil monetary penalties, with referral to the Department of Justice for collection when necessary.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

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List of Subjects in 31 CFR Part 535, 540, 545, and 550

Foreign assets, Foreign trade, Penalties.

For the reasons set out in the preamble, Title 31, Chapter V of the Code of Federal Regulations, is amended as set forth below.

31 CFR Part 535 is amended as follows:

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685.

2. Section 535.702 is added to read as follows:

§ 535.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control (hereinafter "Director") has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall: (i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

3. Section 535.703 is added to read as follows:

§ 535.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

4. Section 535.704 is added to read as follows:

§ 535.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

5. Section 535.705 is added to read as follows:

§ 535.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

31 CFR Part 540 is amended as follows:

PART 540—NICARAGUAN TRADE CONTROL REGULATIONS

1. The authority citation for Part 540 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12513.

2. Section 540.703 is added to read as follows:

§ 540.703 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control (hereinafter "Director") has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall: (i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

3. Section 540.704 is added to read as follows:

§ 540.704 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

4. Section 540.705 is added to read as follows:

§ 540.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

5. Section 540.706 is added to read as follows:

§ 540.706 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice, for appropriate action to recover the penalty in a civil suit in a Federal district court.

31 CFR Part 545 is amended as follows:

PART 545—SOUTH AFRICAN TRANSACTIONS REGULATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12532, 50 FR 36861, Sept. 10, 1985; E.O. 12535, 50 FR 40325, October 3, 1985. Pub. L. 99–440, 100 Stat. 1086; Pub. L. 99–631, 100 Stat. 3515; E.O. 12571, 51 FR 39505, Oct. 29, 1986.

2. Section 545.702 is added to read as follows:

§ 545.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control (hereinafter "Director") has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Comprehensive Anti-Apartheid Act of 1986, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall: (i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

3. Section 545.703 is added to read as follows:

§ 545.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

4. Section 545.704 is added to read as follows:

§ 545.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

5. Section 545.705 is added to read as follows:

§ 545.705 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

31 CFR Part 550 is amended as follows:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for Part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12543, 51 FR 875, January 9, 1986; E.O. 12544, 51 FR 1235, Jan. 10, 1986.

2. Section 550.703 is added to read as follows:

§ 550.703 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control (hereinafter "Director) has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall: (i) Describe the violation.

(ii) Specify the laws and regulations allegedly violated.

(iii) State the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within thirty (30) days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

3. Section 550.704 is added to read as follows:

§ 550.704 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if

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imposed, why it should be in a lesser amount than proposed.

4. Section 550.705 is added to read as follows:

§ 550.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

5. Section 550.706 is added to read as follows:

§ 550.706 Referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within thirty days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Dated: January 14, 1988.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved:

John P. Simpson,
Acting Assistant Secretary (Enforcement).
January 26, 1988.

[FR Doc. 88-5007 Filed 3-3-88; 2:51 pm]
BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 295

[DMA Instruction 5400.7]

Defense Mapping Agency (DMA), Freedom of Information Act (FOIA) Program

AGENCY: Defense Mapping Agency, DoD.

ACTION: Final rule.

SUMMARY: This part is revised to conform with the revision of Department of Defense Freedom of Information Act Regulation, DoD 5400.7-R. It also implements 32 CFR Part 286.

EFFECTIVE DATE: January 21, 1988.

ADDRESS: Defense Mapping Agency Building 56, U.S. Naval Observatory, Washington, DC 20305-3000.

FOR FURTHER INFORMATION CONTACT: Mr. Del Malkie, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305-3000, telephone (202) 653-1131.

SUPPLEMENTARY INFORMATION: In 40 FR 6336 appearing on Tuesday, February 11, 1975, the Defense Mapping Agency (DMA) published Part 295 of this title establishing the policy of the Defense Mapping Agency regarding the availability to the public of DMA information and implemented 5 U.S.C. 552. This rule states the policy of the DMA with regard to making DMA records available to members of the public and implements Department of Defense Directive 5400.7 and Department of Defense Regulation 5400.7-R, DoD Freedom of Information Act Program. (32 CFR Part 286).

List of Subjects in 32 CFR Part 295

Freedom of information.

Accordingly, 32 CFR Part 295 is revised as follows:

PART 295—DMA FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.
295.1 Purpose.
295.2 Applicability and scope.
295.3 Definition of pertinent records.
295.4 Policy.
295.5 Responsibilities.
295.6 Procedures.
295.7 Coordination with Department of Justice.
295.8 Information requirements.
295.9 Component supplementation.
Appendix A—Sample Letter Complying with Request
Appendix B—Sample Letter Notifying Requester of Extension of Time
Appendix C—Sample Letter Denying Request or Partial Denial for Access to or for Obtaining Copy of Records
Appendix D—Sample Letter Notifying Requester of Misdirected Request

Authority: Sections 295.1 to 295.11 issued under 5 U.S.C. 301, 552 as amended by Act of November 21, 1974 (Pub. L. 93-502, 88 Stat 1-3).

§ 295.1 Purpose.

(a) To prescribe Defense Mapping Agency (DMA) policy and procedures for handling requests under the Freedom of Information Act (FOIA).

(b) To implement 5 U.S.C. 552 and DoD Directive 5400.7.[1]

§ 295.2 Applicability and Scope.

(a) The provision of this part apply to all elements of DMA.

(b) Maps, charts, map compilation manuscripts, map research materials software and data if not created or used as primary sources of information about organizations, policies, functions, decisions or procedures of a DoD Component are not considered "records" for the purposes of 5 U.S.C. 552, DoD Directive 5400.7, and DoD 5400.7-R.[2] For additional items not considered under the definition of "record," see paragraph 1-402 of DoD 5400.7-R.

(c) This part does not apply to requests from members of Congress, who are governed by DoD Directive 5400.4[3] or from the General Accounting Office, which is governed by DoD Directive 7650.1.[4]

§ 295.3 Definition of pertinent records.

For the purpose of this part records shall be considered "pertinent" if they concern either an individual who is, or foreseeably may become, involved in litigation involving the United States or a matter which is, or foreseeably may become, the subject of litigation involving the United States.

§ 295.4 Policy.

(a) *Creating a record.* A record must exist and be in the possession and control of DMA at the time of a request to be considered subject to the FOIA. There is no obligation to create nor compile a record to satisfy a FOIA request; however, a new record may be compiled when so doing would result in a more useful response to the requester, or be less burdensome to DMA, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. (See paragraph 1-506 of DoD 5400.7-R).

(b) *Public requests.* It is DMA policy to make available to the public the maximum amount of information concerning its operations and activities. Exemptions to this policy are stated in 5 U.S.C. 552 and DoD 5400.7-R. However, exempt records may be released to the public when their disclosure would not be inconsistent with the Privacy Act, DMA Instruction 5400.11[5] or any other statutory requirements, and when no legitimate government purpose would be served by withholding them. DoD 5400.7-R provides additional policy guidance regarding the release of DMA records.

(c) *News media requests.* Requests from news media for records that would not be withheld under FOIA shall be released promptly in order to provide timely information to the public and eliminate the need to invoke the provisions of FOIA.

(d) *Contractor requests.* Guidance for the release of information received from a non-U.S. Government source is contained in paragraph 5-207 of DoD 5400.7-R.

(e) *Classified records.* If classified records are requested, see additional guidance outlined in Chapter VII, DMA manual 5200.1[6].

(f) *FOUO records.* (1) Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(2) The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) apply, the record may be released when it is determined that no governmental interest will be jeopardized by its release.

(g) *Historical paper.* Records such as notes, working papers and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(h) *Fees.* Chapter VI, DoD 5400.7-R, should be consulted before fees are assessed. Fee application is discussed in paragraph 6-101, fee restrictions in paragraph 6-102, fee waivers in paragraph 6-103, and fee assessment in paragraph in 6-104.

§ 295.5 Responsibilities.

(a) The Director, Public Affairs (DMA(PA)), is designated Freedom of Information Officer and is responsible for administering the FOIA program within DMA.

(1) DMA(PA) will: (i) Receive, log, and prepare initial responses to all FOIA requests received at Headquarters. PA will coordinate its response with the office responsible for making the determination to release or withhold requested records, and the General Counsel (GC). Responses to appeals will be made by GC. All other correspondence relating to FOIA will be coordinated through PA.

(ii) Notify GC prior to release of requests for records which are pertinent to pending or potential litigation involving the United States.

(iii) Prepare an Annual Report on FOIA and forward it to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD) (PA)), as directed.

(2) Component PAs (or those acting in that capacity) will: (i) Receive, log and prepare initial responses to all FOIA requests received. PA will coordinate its response with the office making the determination to release or withhold requested records, and the Component Associate General Counsel (AGC). All other correspondence relating to FOIA will be coordinated through PA.

(ii) Notify the Component Associate General Counsel prior to release about requests for records which are pertinent to pending or potential litigation involving the United States.

(iii) Submit an Annual Report to HQ DMA(PA) by 15 January each year. (See Chapter VIII of DoD 5400.7-R for guidance.)

(iv) Forward a copy of their Component supplement to DMA (PA) 90 days after receiving this part.

(b) The Chief of Staff and the Deputy General Counsel are delegated authority to initially deny release of DMA records at HQ DMA. This denial authority is also delegated to Component Directors and Associate General Counsels as follows:

(1) AGC AC—for AC and IAGS.
(2) AGC HTC—for HTC, CSC and DMS.
(3) AGC SC—for SC, OTS and RC.

This authority may not be redelegated. A copy of all Component denial letters will be forwarded to HQ DMA (GC).

(c) The DMA Deputy Director (DD) and GC are delegated authority to make final determinations on appeals in accordance with the provisions of Sections 3, Chapter V of DoD 5400.7-R.

(d) The DMA Director of Personnel (PO) will establish and implement appropriate procedures for responding to any corrective actions recommended by the Office of Personnel Management in cases involving arbitrary or capricious withholding or records by DMA officials pursuant to Section 4, Chapter V, DoD 5400.7-R. PO and PA shall implement training and information requirements as outlined in Chapter VIII, DoD 5400.7-R.

§ 295.6 Procedures.

(a) *Mandatory expeditious handling.*—(1) *Record released.* The initial determination of whether to release a record upon request will normally be made and a decision reported to the requester within 10 working days. The record requested will be forwarded promptly, usually with the initial response, provided the requester has met the criteria for release. A sample letter is shown at Appendix A.

(2) *Interim response.* If the requested record cannot be made available within 10 working days, an interim response will be forwarded. Any delay beyond the initial 10 working days may not exceed 10 additional working days and will be authorized only for the reasons described in Section 2, Chapter V, DoD 5400.7-R. A sample letter is shown at Appendix B.

(3) *Record denied.* If a request for a record is denied, in whole or in part, the requester will be given a written explanation for such a determination by an official designated in § 295.5. The requester will also be advised of his/her right to appeal the denial to the GC within 60 days from the date of the denial letter. The letter will also include the name and address of the official responsible for the denial. A sample letter is shown at Appendix C.

(4) *Request appealed.* Final determinations on appeals will normally be made within 20 working days of receipt by the Deputy Director or General Counsel. If, due to unusual circumstances, additional time is needed to decide the appeal, the final determination may be delayed for the number of working days, not to exceed 10, which were not used as additional time for responding to the initial request. Final denials to provide a requested record will be made in writing by the Deputy Director or General Counsel in accordance with appeal procedures prescribed in Section 3, Chapter V, DoD 5400.7-R.

(5) *Request referred.* If the record requested was originated by another Agency or Component, it will be referred promptly to the originating Agency or Component for disposition. The period allowed for responding to a request misdirected by the requester

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[1] Copies may be obtained if needed, from the U.S. Naval Publication and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 1 to § 295.1(b).

[4] See footnote 1 to § 295.1(b).

[5] Copies may be obtained, if needed, by written request to Defense Mapping Agency, Attn: AO, Building 56, U.S. Naval Observatory, Washington, DC 20305-3000.

[6] See footnotes 5 to § 295.4(b).

will not begin until it is received by the referral. A sample letter is shown at Appendix D.

(b) *Facilities for inspection and copying records.* (1) The handling of all requests from the public to inspect and copy records will be in strict accordance with the procedures prescribed in DoD 5400.7–R. Subject to exemptions contained in 5 U.S.C. 552, DMA will ensure easy access by the public for inspection and copying of records described in 5 U.S.C., unless such records have been published and copies offered for sale. This inspection and copying will take place in appropriate rooms designated by DMA(PA) and Components.

(2) HQ DMA and Components will make available current indexes which identify material described in paragraph (a)(2) of 5 U.S.C. 552.

(3) Use of DMA inspection and copying facilities by the public will be made by appointment only. Appointments will normally be requested by letter to FOIA officers or those acting in that capacity.

(c) *Identification of records requested.* Requests to inspect or obtain copies of records will normally be submitted by letter and should contain at least the following information:

(1) As complete an identification as possible of the desired record, including (if known) its title or a description thereof, date and the issuing office.

(2) With respect to matters of official record concerning civilian or military personnel, the first name, middle name or initial, and surname of the individual concerned, if known.

(3) A statement as to whether the requester wishes to inspect the record at a DMA facility or obtain copies thereof by return mail.

(d) *Addressing requests.* Requesters should address their inquiries to the appropriate official as follows:

(1) Director, Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305–3000.

(2) Director, DMA Aerospace Center, 3200 South Second Street, St. Louis, Missouri 63118–3399.

(3) Director, DMA Hydrographic/Topographic Center, 6500 Brookes Lane, Washington, DC 20315–0030.

(4) Director, DMA Combat Support Center, 6101 MacArthur Blvd. Washington, DC 20315–0019.

(5) Director DMA Inter American Geodetic Survey, Bldg. 144 Fort Sam Houston, Texas 78234–5000.

(6) Director, DMA Systems Center, 8301 Greensboro Drive, Suite 800, McLean, Virginia 22100–3692.

(7) Director, DMA Office of Telecommunications Services, 1840 Michael Faraday Court, Reston, Virginia 22090–5304.

(8) Director, Defense Mapping School, Fort Belvoir, Virginia 20060–5828. If the requester is not certain to which DMA Component his inquiry should be addressed, it may be submitted to the Director, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305 where prompt action will be taken to direct it into proper channels. The requester should always ensure that the words "Freedom of Information Act Request" are conspicuously placed on the front of the envelope of each FOIA request.

§ 295.7 Coordination with Department of Justice.

(a) *Policy.* The appropriate United States Attorney shall be notified prior to release about any FOIA request for records which are pertinent to pending litigation against the United States.

(b) *Procedure.* The DMA custodian of records sought under the FOIA shall determine whether such records are pertinent to pending or potential litigation involving the United States. The custodian may request the assistance of Counsel in making a determination. The custodian shall advise PA, in writing, whether any of the requested records have been determined to be pertinent to such litigation. Prior to release of such records, DMA PA shall notify GC of the request. Component PAs shall notify their Associate General Counsel; Components without PAs shall notify the Associate General Counsel assigned to their Component. GC or Component Associate Counsels shall notify the appropriate United States Attorney and shall coordinate the release of such records with DMA PA and the Department of Justice.

§ 295.8 Information requirements.

The reporting requirements prescribed by this part have been assigned Report Conrol Symbol DD–PA(A)1365 (See Chapter VIII, DoD 5400.7–R)

§ 295.9 Component supplementation.

Component supplementation is mandatory. Forward one copy of Component supplements to DMA(PA) within 90 days of receiving this part

Appendix A—Sample Letter Complying with Request

Dear———

We refer to your letter of

(date)

received in this office on

(date)

in which you requested (identify record requested).

After careful review and consideration of your request, we have determined that the record(s) you seek under the Freedom of Information Act, 5 U.S.C. 552, as amended, is releaseable and it is enclosed.

(See Chapter VI, DoD 5400.7–R, for guidance).

Sincerely,

(Signed)

(Signature block of releasing official)

Appendix B—Sample Letter Notifying Requester of Extension of Time

Dear———

We refer to your letter of

(date)

received in this office on

(date)

in which you requested (identify record requested).

In order to properly process your request for (record(s)) under the Freedom of Information Act, 5 U.S.C., section 552, as amended, an extension of time will be necessary because of (use one of the follow):

a. The need to search for, collect and properly examine a voluminous amount of separate and distinct records covered by your request;

b. The need to search for and collect the requested records from geographical separated elements within DMA;

c. The need for consultation, which will be conducted with all practicable speed, with another or geographical separated element of DMA having a substantial interest in the determination of your request.

d. Other.

A determination regarding your request will be made by

(date)

Sincerely,

(Signed)

—(Signature block of authorized official) ——

Note: Specify a date that will not result in an extension of time of more than the authorized 10 working days.

Appendix C—Sample Letter Denying Request or Partial Denial for Access to or for Obtaining Copy of Records

Dear———

We refer to your letter of

(date)

received in this office on

---

in which you requested (identify the record requested)

After careful review and consideration of your request, we have determined that (the) (a portion of the) document(s) you seek is exempt from disclosure under the Freedom of Information Act, 5 U.S.C., section 552, as amended. It is not releaseable because it contains information that (copy or paraphase the applicable exemption as set forth in DoD 5400.7–R).

The decision to withhold release of this record(s) may be appealed in writing to the General Counsel, Defense Mapping Agency, within 60 days from the date of this letter. You should include in your appeal any reasons for reconsideration you wish to present. A copy of this letter should be attached to your appeal, and should be forwarded to the Defense Mapping Agency, Attn: GC, Building 56, U.S. Naval Observatory, Washington, DC 20305–3000.

Note: If this is a partial denial, add the paragraph below if copies of releasable records are to be sent to the requester.)

Copies of the releaseable portion of the requested record(s) (are enclosed) (will be sent promptly under separate cover).

Note: Any deletions made in the records should be justified on the grounds of the exemptions provided in DoD 5400.7–R).

Sincerely,

(Signed)

(Signature block of authorized denial authority)

Note: This format should be varied to fit the situation.

Appendix D—Sample Letter Notifying Requester of Misdirected Request

Dear———

We refer to your letter of

(date)

I received in this office on

(date)

in which you requested (identify record requested).

Your letter was misdirected to this Agency. We have forwarded same to (activity or agency to which the request was referred). You may expect to hear from them shortly.

For further reference, any other requests for similar records should be addressed to (Name and address of agency).

Sincerely,

(Signed)

(Signature block of authorized official)

Note: This format should be varied to fit the situation. Notify GC or Component Counsel prior to forwarding any request to NSA or CIA.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 1, 1988.

[FR Doc. 88–4842 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87–6]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Reconsideration of final rule.

SUMMARY: The Federal Maritime Commission in response to a petition from three Peruvian carriers to reconsider its Final Rule in Docket No. 87–6 or, in the alternative, to stay the Final Rule under which Petitioners' tariffs would be suspended effective March 7, 1988, has determined to reconsider the Final Rule, insofar as the unfavorable conditions therein found to exist in the U.S./Peru trade arose from certain laws and decrees which have recently been rescinded by the Government of Peru. Further, the Commission has decided to continue the proceeding for the purposes of determining whether the unfavorable conditions previously found continue to exist and whether some other disposition is warranted with respect to the Final Rule. Interested parties are asked to submit comments, views and information.

Further, the Commission has denied a Petition from Empresa Naviera Santa, S.A., to reconsider and amend the Final Rule to exclude it from the remedies imposed in the Final Rule.

DATE: Comments due on or before March 31, 1988.

ADDRESS: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Compania Peruana de Vapores ("CPV"), Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa, S.A. ("Santa") (jointly—"Petitioners") on February 4, 1988, filed a Petition for Reconsideration ("Petition") of the Federal Maritime Commission's ("Commission" or "FMC") Final Rule issued in this proceeding, or, in the alternative, to stay the Final Rule under which Petitioners' tariffs would be suspended effective March 7, 1988, pending certain events. Replies to this Petition were received from the Executive Agencies of the United States ("Executive Agencies"), [1] the Chemical Manufacturers Association ("CMA"), Shippers for Competitive Ocean Transportation ("SCOT"), Great Lakes Transcaribbean Line ("GLTL"), Compania Sud Americana de Vapores ("CSAV"), the Government of Chile, Crowley Caribbean Transport, Inc. ("CCT"), and Lykes Bros. Steamship Co., Inc. (Lykes").

Santa also filed a separate Petition for Reconsideration ("Santa Petition"), requesting that the Commission reconsider and amend the Final Rule to exclude Santa from its applicability. A Reply to this Petition was received from CSAV.

Background

On December 2, 1987, the Commission issued a Final Rule in this proceeding (52 FR 46356, December 7, 1987) stating that it finds "conditions unfavorable to shipping" within the meaning of section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19"), exist in the foreign oceanborne trade between the United States and Peru ("Trade"). The Commission advised in its Final Rule that the Government of Peru ("GOP"), through its laws and regulations, imposed burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-Flag carriers.

The GOP laws and regulations to which the Commission referred in its Final Rule include Supreme Decree No. 00986–TC [2] ("Decree 009–86"), which reserved 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers. The amount of cargo reserved by Decree 009–96 for Peruvian-flag carriers could be reduced: (1) On the basis of strict reciprocity;[3] (2) pursuant to government or commercial agreements [4] among non-Peruvian and

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[1] This filing was submitted by the Department of Transportation on its own behalf and on behalf of the Department of State, Justice and Commerce.

[2] Decree 009–86 amended Supreme Decree No. 036–82–TC ("Decree 036–82"), effective in 1982. Decree 036–82 reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements for non-Peruvian-flag carriers. The exact percentage of cargo reserved for Peruvian-flag carriers is not specified in Decree 036–82. Apparently, an earlier decree states that 50 percent of Peruvian import and export cargo is reserved for Peruvian-flag carriers.

[3] *E.g.*, U.S. carriers' access to Peruvian cargoes will be proportional to Peruvian carriers' access to U.S. cargoes.

[4] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the GOP. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Decree Nos. 009–86 and 036–82.

Peruvian-flag carriers, preferably including CPV, the Peruvian state-owned shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or Non-associate carriers permission to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers would be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days [5] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

Subsequent to issuance of the Proposed Rule which initiated this proceeding,[6] regulations ("Regulations") [7] were issued by the GOP pursuant to a Memorandum of Understanding ("MOU") signed by the United States Government ("USG") and the GOP on May 1, 1987. These Regulations set forth new requirements and procedures that shipping lines operating third-flag vessels must observe in order to obtain authorizations from the GOP Ministry of Transportation and Communications ("Ministry") to participate in the Trade.[8] The GOP advised through the Department of State that the "authorization" system under the Regulations totally replaced the existing "waiver" system for granting third-flag carriers access to the Trade.

In its Final Rule the Commission advised that shippers had been deterred or restricted from employing the carrier of their choice. It was concluded, therefore, that the restrictions imposed by the GOP have had an injurious effect on carriers, shippers and the Trade, generally.

In addition, the Commission noted that while it recognized the good faith efforts made by the USG and GOP to address the situation in the Trade through diplomatic means, the resultant Regulations which implement the MOU do not satisfactorily resolve that situation. The Commission stated that, in fact, the Regulations, in effect, continue in place the very types of restrictions and impediments which prompted this proceeding in the first instance. Although third-flag carriers were no longer required to obtain "waivers" for individual shipments, they were to obtain "authorizations" to participate in the Trade. The Commission found this authorization process as inconsistent with free access to trade, as was the waiver system it replaced. In this regard, the Commission also added that it was unknown whether Chilean-flag carriers would be granted authorizations and allowed to operate in the Trade, particularly in light of the existence of Peruvian Resolution No. 044–86–TC/AC ("Resolution 044–86"), which excludes Chilean-flag carriers from certain Peru/third-country trades.

Finally, the Commission further indicated that it could not accept as a satisfactory resolution of this matter an accommodation which would permit the GOP to deny authorization to a third-flag operator in the Trade if the country of nationality of that operator bars participation to Peruvian-flag carriers in any of its third-country trades. The Commission explained that to accept the proposition that the GOP can settle disputes with foreign nations by imposing burdens on U.S. commerce, in effect would allow the GOP to hold the U.S.-Peru trade hostage to obtaining concessions elsewhere.

Thus the Final Rule suspended the tariffs of the Peruvian-flag carriers operating in the Trade, with the exception of Naviera Amazonica Peruana, S.A. ("NAPSA"), [9] unless such carriers obtain authorized status from the Commission.[10] The suspension of these tariffs was made effective March 7, 1988.

Petitions for Reconsideration

A. Petition of CPV, Neptuno and Santa

1. Summary of the Petition

Petitioners request that the FMC reconsider its Final Rule, or, in the alternative, stay the present effective date of the Final Rule on grounds that the rule is basically directed at Decree 009–86 of February 28, 1986, which has been rescinded by GOP Supreme Decree No. 004–88–TC ("Decree 004–88") of January 22, 1988.[11] Further, Petitioners submit that the Regulations which implement the MOU also have been rescinded.

Petitioners indicate that with such action by the GOP, Peruvian cargo preference law has reverted to its status prior to enactment of Decree 009–86, and prior to the initiation of this proceeding which resulted from complaints to the Commission about Decree 009–86. They contend that while Decree 009–86 reserved 100 percent of all Peruvian import and export cargoes, Decree 004–88 reestablishes legislation in existence between 1970 and 1986 which reserves 50 percent of Peruvian cargoes to Peruvian-flag or associated carriers. Petitioners take the position that since, as the Commission states in its Final Rule, this proceeding arose from complaints about the enactment, implementation and enforcement by the GOP of Decree 009–86, the Commission should now reconsider its Final Rule and terminate the proceeding due to the rescission of Decree 009–86.

As an alternative to reconsideration and termination of the proceeding, the Petitioners suggest that the Commission stay its Final Rule pending investigation of present conditions in the Trade or judicial review,[12] whichever is later, particularly if the Commission determines that it has insufficient knowledge of present conditions in the Trade to order termination of the proceeding. Petitioners contend that a stay would allow time for the Commission to gather any facts required for reconsideration and, if necessary, for the Court to clarify "serious legal issues in this proceeding."

2. Replies to the Petition

a. Comments of the Executive Agencies. The Executive Agencies state that although Decree 009–86 has been rescinded, the legislation currently in effect, Decree 036–82 and Ministerial Resolution No. 054–82–TC/AC ("M.R. 054"), depending on the GOP's implementation thereof, might have essentially the same effects on access to the Trade as Decree 009–86. They state that, "[i]n that event, it would be the view of the Executive Agencies that there were no basis upon which to reconsider the Final Rule or to stay its March 7, 1988, effective date."

The Executive Agencies submit that they are unable at this time to provide the Commission with a fully informed view concerning the GOP's implementation of Decree 036–82. They advise that they are arranging for consultations with the GOP, at the GOP's request, which should be concluded prior to the March 7 effective date of the Final Rule. During these consultations the Executive Agencies expect to obtain clarification regarding certain aspects of the operation of Decree 036–82. The Executive Agencies advise that after consultations with the Peruvians, they expect to be able to provide the Commission with a fully considered recommendation regarding the outcome of this proceeding.

b. *CMA.* CMA maintains that Petitioners have failed to justify the relief sought.[13] CMA asserts that Petitioners have provided no indication or assurance that the rescission of Decreee 009–86 will enable non-Peruvian-flag carriers to compete freely in the Trade. Thus CMA opposes Petitioners' request for reconsideration or stay. However, it does not oppose a short extension of the compliance deadline for tariff suspension, if such an extension were based on GOP assurances that it needed more time to comply with the Final Rule, *i.e.*, remove all restrictions on non-Peruvian-flag carrier access to the Trade.

c. *SCOT.* SCOT notes that Petitioners have provided no indication that unfavorable conditions in the Trade will be corrected with the rescission of Decree 009–86. SCOT also points out that Petitioners do not clarify whether waivers and cargo manifest certifications will continue to be required and third-flag carriers will be permitted to reenter the Trade promptly. Unless these unfavorable conditions are removed, SCOT asserts that there is no basis for reconsideration or stay of the Final Rule. Should the GOP provide the USG with assurances that it will remove these unfavorable conditions promptly, SCOT opines that "a stay of preferably 30 days or, at the most, 60 days might be acceptable."

d. *GLTL.* In view of the continued existence of cargo manifest certification and waiver requirements under Decree 036–82, GLTL contends that the rescission of Decree 009–86 has not opened the Trade. GLTL urges the Commission to reaffirm its Final Rule. It opposes any stay of the Final Rule unless assurances are received from the GOP that GLTL will be able to continue service in the Trade without applying for cargo manifest certificates or waivers and without fear of fines.

e. *CSAV.* CSAV contends that the grounds stated by Petitioners are not adequate to support the relief requested. It is CSAV's position that the rescission of Decree 009–86 falls short of meeting the Commission's requirement in its Final Rule that Peruvian carriers must provide evidence that no GOP law, regulation or policy will hinder free access to the Trade. CSAV notes that Petitioners do not state that all barriers to third-flag carrier access have been removed. Given the requirements under Decree 036–82, CSAV maintains that, for all practical purposes, Chilean-flag carriers would be prevented from carrying cargo in the Trade. CSAV submits that the Petition should be denied because unfavorable conditions to shipping continue to exist.

f. *The Government of Chile ("GOC").* The GOC submitted separate comments on the rescission of Decree 009–86 and Peruvian Resolution 044–86, which had as of September 1986, excluded Chilean-flag carriers from participating in certain Peru/third-country trades. With regard to the rescission of Decree 009–86, the GOC states that the legal regime in Peru applicable prior to the implementation of Decree 009–86 was that establishment by Decree 036–82 and M.R. 054. The GOC maintains that under this legislation foreign-flag vessels are required to obtain cargo manifest certification to carry Peruvian import cargoes and waivers for export cargoes should there be no Peruvian-flag vessels available within 15 days following the embarkation date. The GOC advises that these requirements do not apply to foreign-flag associate carriers.

The GOC maintains that Decree 036–82, when enacted in 1982, restricted access of foreign-flag carriers to Peruvian cargoes. It is explained that in April 1983, in an effort to resolve this problem, the GOC and GOP signed an "Accord" to provide Chilean and Peruvian-flag carriers free access to cargoes generated by the two countries' foreign trade. The GOC contends that this Accord was unilaterally invalidated by the GOP on June 18, 1986; as a result, Chilean-flag carriers were no longer granted free access to Peruvian cargoes. The GOC advises, however, that Peruvian-flag vessels have free access to Chilean cargoes.[14]

g. *CCT.* CCT fully supports the Petition. It advises that it has not experienced any operating difficulties in the Trade,[15] and, thus, urges the Commission to grant the relief requested by Petitioners.

h. *Lykes.* Lykes supports the Petition and requests that it be granted by the Commission. It is Lykes' position that because complaints were filed with the Commission due to the enactment, implementation and enforcement of Decree 009–86, the rescission of the Decree raises questions about the original basis for the Final Rule and has changed the factual underpinnings for the Rule enough to require the Commission to reconsider it in view of those changes. Further, Lykes believes that reconsideration is required because the implementation of the Final Rule would potentially disrupt the movement of cargo in the Trade.

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[5] Supreme Decree No. 033–86–TC modified Decree 009–86 by reducing the number of days a shipment must wait for a Peruvian or associate carrier from 15 days to 12 days.

[6] *See* Notice of Proposed Rulemaking, 52 FR 11832, April 13, 1987.

[7] These Regulations were contained in Ministerial Resolution No. 027–87–TC/AC ("Resolution").

[8] Among other things, the Regulations provided that: (1) Prior authorization must be obtained by third-flag operators from the Ministry to participate with free access to the Trade; (2) the Ministry may deny authorization if the country of nationality of the third-flag operator bars participation with free access to Peruvian-flag carriers in any of its trade dealings with third countries, based on the principle of reciprocity; (3) any authorization granted will be valid for a period of two years and may be renewed for subsequent two-year periods; (4) the granting of any authorization implies an obligation by the operator obtaining it to abide by all GOP laws and regulations applicable to the activity to be performed; and (5) any authorization granted may be revoked if: The authorization was obtained through false statements, information or documents; the country of the operator's nationality has not maintained the reciprocity required; or, the authorized operator fails to comply with the commitments undertaken.

[9] Under the Final Rule, NAPSA's tariff, FMC No. 3, covering the U.S./Iquitos, Peru trade, would not be suspended because the Commission found this subtrade distinguishable from the Trade generally, and, therefore, entitled to different treatment. The Final Rule noted that the Commission did not receive any complaints regarding this subtrade. Further, it stated that there is no alternative to NAPSA's service in this subtrade. (*See* Docket No. 87–6, 52 FR 46362, December 7, 1987.)

[10] The Final Rule states that authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submitting to the Commission a certificate from the GOP stating unequivocally that no law, regulation or policy of the GOP will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009–86–TC; and

(iii) Impose any administrative burden, including but not limited to the necessity to secure an authorization based on the national status of the carrier, or otherwide discriminate against any non-Peruvian-flag carrier in the Trade.

[11] Decree 004–88 was published in the Peruvian Official Gazette, "El Peruano," on January 25, 1988.

[12] A petition for review of the Final Rule was filed by the Peruvian-flag carriers in the U.S. Court of Appeals for the District of Columbia Circuit ("Court") on January 29, 1988. *Compania Peruana de Vapores, et al. v USA and FMC*, D.C. Cir No. 88-1073.

[13] Along with arguing the merits of the Petition, CMA, with certain other commentators, notes that the Petition was filed in an untimely manner pursuant to 46 CFR 502.261.

[14] In separate comments regarding the suspension on January 16, 1988, of Peruvian Resolution 044–86, the GOC takes the position that this suspension does not resolve the problem of access by Chilean-flag carriers to Peruvian cargoes. The GOC maintains that while Chilean-flag carriers would not be excluded specifically from the Trade as they had been under the Peruvian Resolution 044–86, they would continue to be subject to the restrictions contained in Decree 009–86. This comment appears to have been written and transmitted to the Chilean Embassy in the U.S. prior to the rescission of Decree 009–86.

Further, the GOC contends that the rescission of Peruvian Resolution 044–86 was in response to the GOC's March 1987 suspension of Resolution No. 2, which had excluded Peruvian-flag vessels from Chilean trade with the third countries. In defense of Chilean Resolution 2, the GOC submits that it was enacted on August 6, 1986, in response to Decree 009-86.

[15] CCT and Lykes are members of the U.S./Peru Equal Access Agreement, FMC Agreement No. 204-010986, thereby making them associate carriers.

B. Santa Petition

Santa requests that the Commission reconsider and amend its Final Rule to eliminate Santa from its scope and, thus, from the sanctions it would impose. It is Santa's position that because the focal point of the proceeding is Decree 009–86 and the alleged inadequate service of CPV, the Peruvian state-owned carrier and main beneficiary of Decree 009–86, the remedy of the Final Rule is unnecessarily broad and contrary to shipping interests in the U.S. trade. Santa contends that because Decree 009–86 reflects the special interest of the GOP and CPV, and Santa did not request the adoption of the Decree, a narrower remedy which excludes Santa, a privately-owned carrier, would satisfy the aims of the Commission.

Santa maintains that excepting it from the Final Rule will serve U.S. shipping interests and promote an atmosphere more conducive to resolving this matter through diplomatic channels. Further, Santa believes that such action would increase the likelihood of a reciprocally tempered response to the Final Rule from the GOP, *i.e.*, something less than the total exclusion of U.S.-flag carriers from the Trade.

In reply, CSAV requests that the Commission deny the Santa Petition. It contends that Santa has given no relevant reason why it should be excluded from the scope of the Final Rule. CSAV advises that in past submissions from Santa, it has been supportive of the GOP cargo preference restrictions under which it has been able to increase its market share in the Trade through the exclusion of third-flag carriers. It is CSAV's position that the Commission's Final Rule is no more severe than necessary to meet the requirements of U.S. law and policy which protect the rights of shippers to select the carrier of their choice. CSAV believes that if the Commission were to modify its section 19 actions because of potential retaliation by another government, it could never use section 19 in an effective manner.

Discussion

A. Petition for Reconsideration or Stay

The comments on the Petition for Reconsideration or Stay reflect a great degree of uncertainty as to the precise nature and operating characteristics of the shipping regime which will regulate traffic between the U.S. and Peru following the rescission of Decree 009–86. The actual effect of the rescission of Decree 009–86 on non-Peruvian-flag carriers' access to the Trade is largely unknown at this time. Most commentators express uncertainty as to the effects of rescission of Decree 009–86, or disbelief that its repeal will have any practical effect on access for third-flag carriers, such as CSAV.

The U.S.-flag carriers, Lykes and CCT, support the Petition, urging that the Commission reconsider the Final Rule and grant the relief requested by Petitioners. The Petition also requests that the Commission terminate this proceeding. Without regard to our action on the Final Rule itself, we are disinclined to terminate this proceeding before the situation in the Trade is clarified and some stable basis for participation of all carriers has been reached.

CSAV and the GOC suggest that rescission of Decree 009–86 will have no practical effect in terms of third-flag carrier access to the Trade, and therefore ask the Commission to permit the Rule to go into effect. GLTL is similarly pessimistic, and urges the Commission to reconsider and reaffirm the Final Rule. We believe these views may unreasonably minimize the GOP action.

The Executive Agencies express skepticism as to the ultimate effects of the recission of Decree 009–86 on the Trade, but suggest only that the Commission await notification by the Executive Agencies of the outcome of talks with the GOP to be held before March 7, 1988. This does not appear to us to be practical in view of the imminent effective date of tariff suspension under the Final Rule.

The remaining commentators, SCOT and CMA, indicate, in effect, that some recognition of the possible ameliorative effects of rescission of Decree 009–86 is appropriate. SCOT and CMA do not concede that the GOP action materially affects the unfavorable conditions found by the Commission, arguing that the Petition contains no grounds for either form of relief requested.[16] They nevertheless suggest that the Commission extend for a short period (30 to 60 days says SCOT), the date on which tariffs would be suspended under the Final Rule, but only upon the receipt of assurances from the GOP that the unfavorable conditions will be promptly removed.

The Commission first expressed its concern that conditions unfavorable to shipping appeared to exist in the Trade in April, 1986. This proceeding followed a period in which the various affected parties, including the GOP and the Executive Agencies of the United States, held discussions, reached agreements and understandings, and attempted to find some mutually acceptable basis for third-flag carrier participation in the Trade. At least until the latest GOP action, the numerous actions and assurances undertaken by the GOP during the past two years, notwithstanding the Executive Agencies' efforts and the Commission's forbearance, have not appreciably improved third-flag carriers' access or the burdens imposed on U.S. shippers by the decrees.

Events occurring since service of the Final Rule on December 2, 1987, have created a situation in flux, with great current uncertainty as to what the ultimate outcome of the new GOP initiatives will be. Because the Final Rule becomes fully effective on March 7, 1988, by suspending the tariffs of Peruvian-flag carriers, some action by the Commission is necessary to recognize the changed status of the issues brought about by the GOP's recent action and to avoid undue disruption of the Trade.

Initially, and as a technical legal matter, the rescission of Decree 009–86 and Resolution 044–86 appears to have undermined the basis cited in the Final Rule for the Commission's findings of conditions unfavorable to shipping in the Trade. At a minimum, some changes in the Final Rule, particularly in regard to references to Decree 009–86 in the certificate required under 46 CFR 586.1(b),[17] would appear necessary as a result of the rescission.

Possible technical adjustments in the Final Rule aside, however, the repeal of Decree 009–86, its implementing regulations, and Resolution 044–86, appears to be a dramatic and significant action. We note also that a Commission to re-examine Peruvian maritime policy was appointed in connection with the rescission of Decree 009–86. These actions by the GOP appear to reflect a serious commitment to resolve the problems in our maritime trade which were identified in this proceeding. We recognize, however, that rescission alone may not resolve the unfavorable conditions which the Final Rule addressed.

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[16] CMA and other commentators opposed to the Petition also raised a procedural argument against granting reconsideration. They note that the Commission's Rules of Practice and Procedure, at 46 CFR 502.261, provide that requests for reconsideration of a Commission decision must be filed within 30 days of service of the order effecting that decision, and argue that the Petition is therefore untimely. Inasmuch as the GOP action rescinding these decrees occurred more than 30 days after service of the Final Rule, the Petitioners' failure to comply with this aspect of the Commission's rules appears reasonable. The Commission may, in any event, waive application of its Rules of Practice and Procedure.

[17] See footnote 16, *supra*.

In promulgating the Final Rule, the Commission consistently alluded to the detrimental effects of the waiver system implemented under Decree 009–86 as the basis for its original concern that conditions unfavorable to shipping might exist, as well as our determination that the "authorization" system which replaced the waiver system following conclusion of the MOU was not a material improvement in the inherently discriminatory system. If the discriminatory nature of the existing trade conditions remains in the absence of Decree 009–86, the Commission is prepared to act swiftly to reinstate the Final Rule on the basis of new findings that conditions unfavorable to shipping continue to exist because of continued exclusion of the Chilean or other third-flag carriers and compliance burdens placed on U.S. shippers and trade interests. Withdrawal of the Final Rule accompanied by termination of this proceeding, therefore, does not appear to be an appropriate Commission response in view of the totally unknown nature of the practical effects of the rescission of these enactments.

The Commission has determined not to grant Petitioners' request for a stay, but herein grants the request for reconsideration, withdrawing the Final Rule to await clarification of the GOP legal regime which will govern the Trade at present and the nature of the scheme which the GOP intends to put in place for the future. In order to accommodate further action on this matter, the proceeding will continue and to that end the Commission also requests further information from any interested party by March 31, 1988, including the Executive Agencies, carriers and shipper organizations who previously filed comments.

B. Santa Petition

No basis appears to exist for granting the Santa Petition on its merits. Although Santa may not have requested passage of the cargo preference decrees by the GOP, as it states, the preferences established by those decrees were intended to and did benefit *all* Peruvian-flag carriers directly by increasing their share of the market at the expense of their third-flag competitors. Neither Decree 009–86 nor Resolution 044–86 distinguished between state-owned and privately-owned carriers. Decree 009–86 imposed a waiver system on all non-Peruvian-flag carriers (except those which obtained "associate status" through agreements with Peruvian-flag carriers) without regard to the private or public nature of their owners. Similarly, Resolution 044–86 banned service by Chilean-flag carriers without regard to their ownership.

In its petition, Santa states that it previously had financial and management problems but began regular service in April 1986, under new management. Santa further states that its market share for the January 1986–July 1987 period was 25 percent. Santa's ability to garner such a large proportion of the Trade during this period suggests that its position was aided by the existence of the GOP decrees. In any event, Santa appears to have been a significant beneficiary of these decrees. The Santa Petition is, therefore, denied.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, Part 586 of Title 46, Subchapter D of the Code of Federal Regulations, published at 52 FR 46362, December 7, 1987 is withdrawn for reconsideration. Interested parties are invited to submit comments, views and information on or before March 31, 1988, concerning whether the unfavorable conditions previously found in this proceeding continue to exist, whether other conditions unfavorable to shipping in the U.S. foreign trade with Peru now exist, and what action should be taken with respect to the Final Rule.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–5009 Filed 3–7–88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 532, and 552

[Acquisition Circular AC–88–1]

Prompt Payment and Ratification of Unauthorized Commitments

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule.

SUMMARY: This Acquisition Circular temporarily amends Parts 501, 532 and 552 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement and supplement the Federal Acquisition Regulation (FAR) requirements on the ratification of unauthorized commitments; to add material to prescribe constructive acceptance or approval periods for recurring building services, supplies and other nonpersonal services, construction, architect-engineer and other professional services; to add and prescribe a Payments by Electronic Funds Transfer clause for use in solicitations and contracts when payments may be made by GSA and other agencies; to add and prescribe a Prompt Payment clause for acquisitions of leasehold interests in real property; and to make other miscellaneous changes for clarity. The intended effect is to implement FAR (FAC–84–33) and to provide guidance to GSA contracting activities pending a permanent revision to the regulation.

DATES:

Effective Date: March 8, 1988.

Expiration Date: March 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4765.

SUPPLEMENTARY INFORMATION: This rule was not published in the **Federal Register** for public comment because it merely implements and supplements a higher level issuance that was previously published for public comment. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule simply implements and supplements the FAR and OMB Circular A–125 requirements regarding the Prompt Payment Act. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain any additional information collection requirements beyond those already imposed by OMB which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The information collection regarding electronic funds transfers was approved by OMB pursuant to a request from the Department of the Treasury. OMB Control No. 1510–0056 was assigned to this information collection.

List of Subjects in 48 CFR Parts 501, 532 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 501, 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 501, 532 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC–88–1)

To: All GSA contracting activities.
Subject: Implementation of Federal Acquisition Circular (FAC) 84–33.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5, (APD 2800.12) to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84–33.

2. *Background.* The Federal Acquisition Regulation (FAR) was amended by FAC 84–33 to implement Office of Management and Budget (OMB) Circular A–125, "Prompt Payment." FAC 84–33 also amended the FAR to provide policy and procedures on ratification of unauthorized commitments. This Acquisition Circular amends the GSAR as necessary to conform to the FAR as amended by FAC 84–33.

3. *Effective date.* March 8, 1988. All solicitations issued on or after March 8, 1988, shall include the clauses prescribed by this Circular.

4. *Expiration date.* This Acquisition Circular expires March 7, 1989, unless canceled earlier.

5. *Reference to regulation.* Sections 501.675, 501.675–1, 501.675–2, 501.675–3, 532.111, 552.232–70, 552.232–71, 552.232–72, and 552.232–73 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

a. Section 501.602–3 is added to read as follows:

50.1.602–3 Ratification of unauthorized commitments.

(a) *Authority.* Subject to the limitations and in accordance with the procedures prescribed in FAR 1.602–3, contracting officers may ratify contractual commitments made by employees who do not have the requisite authority to enter into contracts on the Government's behalf if the head of the contracting activity (HCA) has approved the ratification action. The authority to approve ratification actions may not be redelegated.

(b) *Procedures.* (1) Generally, the Government is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the GSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments should be considered as serious employee misconduct and consideration given to initiating disciplinary action. In any instances where suspected irregularities may involve fraud against the Government, or any type of misconduct which might be punishable as a criminal offense, either the employee's supervisor or the contracting officer should immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee who shall be identified in the determination.

(3) The appropriate contracting director will assign the request for ratification action to an individual contracting officer for processing. The contracting officer assigned the action will be responsible for preparing a summary statement of facts addressing the limitations in FAR 1.602–3(c) and making a recommendation as to whether the transaction should be ratified and stating the reasons therefore. Advice against ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum merit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See also FAR 1.602–3(d)).

(4) The request for ratification, the information required by paragraph (b)(3) above, and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels, to the HCA for consideration.

(5) The HCA, upon receipt and review of the complete file, may approve the ratification if determined to be in the Government's best interest, or direct other disposition as appropriate. Acquisitions which have been approved for ratification shall be forwarded to the appropriate contracting officer for issuance of the necessary contractural documents. If the request for ratification is not justified, the HCA shall return the request without approval and provide an explanation for the decision not to approve ratification.

(6) Each HCA shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized commitment. This file shall be made available for review by the Office of Acquisition Policy and the Inspector General.

b. Sections 501.675, 501.675–1, 501.675–2 and 501.675–3 are deleted.

c. Section 532.111 is amended by revising paragraphs (b) and (c) to read as follows:

532.111 Contract clauses.

* * * * *

(b) *Adjusting payments.* The contracting officer shall insert the clause at 552.232–78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(c) *Final payment.* The contracting officer shall insert the clause at 552.232–79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

* * * * *

d. Section 532.904 is added to read as follows:

532.904 Payment due date.

The time specified by the contracting officer for constructive acceptance or approval in subparagraph (a)(6)(i) of FAR basic clause 52.232–25, Prompt Payment, or subparagraph (a)(5)(i) of Alternate I shall usually be 1 day for recurring building services, 5 days for supplies and other nonpersonal services or 30 days for construction, architect-engineer and other professional or technical services, unless some other number of days is justified in the contract file.

e. Section 532.908 is added to read as follows:

532.908 Contract clause.

(a) The Contracting Officer shall insert the clause at 552.232–70 in solicitations and contracts when

payments may be made by GSA and other agencies. (e.g. multiple award schedule contracts).

(b) The contracting officer shall insert the clause at 552.232–71 in solicitations and contracts for the acquisition of leasehold interests in real property. Contracting officers shall use Alternate I instead of the basic clause if the lease contract will contain provisions for ordering alterations or overtime utility services. If payment may be made by electronic funds transfer, the contracting officer shall use Alternate II with the basic clause or Alternate I.

f. Section 552.232–70 is revised to read as follows:

552.232–70 Payments by electronic funds transfer.

As prescribed in 532.908(a), insert the following clause:

Payments by Electronic Funds Transfer (Feb 1988)

The requirement that the Contractor submit, no later than 14 days before an invoice or financing request, a designation of a financial institution for receipt of electronic fund transfer payments in paragraph (c) of the clause entitled "Prompt Payment" at FAR 52.232–25 (Alternate II) does not apply to this contract. Instead, the Contractor is directed to submit its designation of a financial institution for receipt of electronic funds transfer payments as a part of, or as an attachment to, each invoice requesting payment of $25,000 or more (exclusive of any discount for prompt payment) unless the invoice is submitted to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans Administration in accordance with special instructions provided by that agency. Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic fund transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor.

(End of Clause)

g. Section 552.232–71 is revised to read as follows:

552.232–71 Prompt payment.

As prescribed in 532.908(b) insert the following clause:

Prompt Payment (Feb 1988)

Notwithstanding any other payment clause in this contract, the Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made.

(a) *Payment due date.*

The initial monthy rental payment under this contract shall become due on the first workday of the month following the month in which the lease or supplemental agreement establishing commencement of the lease term is executed, or the first workday of the month following the month in which the occupancy of space is effective, whichever is later. Subsequent rent shall be paid in arrears, and will be due on the first workday of each successive month, and only as provided for by the lease.

(b) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made within 15 days after the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the**Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30 day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Disputes clause or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause.

(End of Clause)

Alternate I (Feb 1988)

If the lease contract will contain provisions for ordering alterations or overtime utility services, the text of paragraph (a) of the basic clause should be designated as subparagraph (1) and the following subparagraph (a)(2) and paragraph (b) should be added. Paragraph (b) of the basic clause should be redesignated (c).

(a) *Payment due date.*

(2) The due date for making payments for alterations or overtime utilities by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after acceptance of the service.

(b) *Invoice and inspection requirements for alterations and overtime utilities.*

(1) An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subparagraphs (b)(1) (i) through (vii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 15 days after receipt of the invoice at the designated billing office. Untimely notifications will be taken into account in the computation of any interest penalty owed the Contractor.

(i) Name and adddress of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Order number or other authorization for delivery of services.

(v) Description, price, and quantity of property or services actually delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number and mailing address of person to be notified in the event of a defective invoice.

(2) The Government agrees to inspect and determine the acceptability of alterations performed or services rendered within 10 calendar days after the date of completion of alterations or performance of services unless a different period is specified for inspection at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(End of Clause)

Alternate II (FEB 1988)

If payment may be made by electronic funds transfer, add the following paragraph (c) to the basic clause. When Alternate I is used this paragraph should be designated (d).

(c) *Electronic funds transfer.* Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. Not later than 14 calendar days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(1) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent.

(2) For payment through TFCS, the Contractor shall provide the following information:

(i) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(ii) The American Bankers Association 9-digit identifying number of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(iii) Payee's account number at the financial institution where funds are to be transferred.

(iv) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number used for TFCS).

(3) For payment through ACH, the Contractor shall provide the following information:

(i) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS).

(ii) Number of account to which funds are to be deposited.

(iii) Type of depositor account ("C" for checking, "S" for savings).

(iv) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," TFS 3881, must be completed before payment can be processed.

(4) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(5) The document furnishing the information required in this paragraph (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(6) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due.

(End of Clause)

552.232-72 and 552.232-73 [Removed and Reserved]

h. The current text of sections 552.232-72 and 552.232-73 is removed and the sections are reserved.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-4985 Filed 3-7-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 71279-7279]

Red Drum Fishery of the Gulf of Mexico; Extension of Effective Date

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule that reduced the current annual recreational and commercial catch allowances of red drum to zero in the Gulf of Mexico exclusive economic zone (EEZ) is in effect through March 30, 1988. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days (through June 28, 1988) to allow the Gulf of Mexico Fishery Management Council (Council) sufficient time to prepare an amendment to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) that would continue these zero catch allowances. The intent of this rule is to protect the red drum spawning stock in the EEZ from exploitation until the FMP amendment is implemented.

EFFECTIVE DATE: This rule is effective 0001 hours, local time, March 31, 1988, through 2400 hours, local time, June 28, 1988.

ADDRESS: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act, the Secretary promulgated an interim emergency rule (53 FR 244, January 6, 1988) effective for 90 days, January 1 through March 30, 1988, in response to an emergency situation in the red drum fishery. The Secretary extends the emergency interim rule for an additional 90 days in accordance with section 305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action remain unchanged. The 90-day extension will prevent the resumption of red drum harvest in the EEZ.

The initial emergency interim rule prohibited the harvest or possession of red drum in the EEZ of the Gulf of Mexico based on the most recent scientific stock assessment, which indicated that an emergency situation existed regarding the red drum resource. The assessment concluded that red drum less than 12 years of age were poorly represented in the offshore population, and that continued harvest of adults would further reduce the spawning stock and increase the risk of collapse of this fishery.

The Council, at its meeting during the week of January 25, 1988, noted that there is no short-term solution to the resource conditions that exist and recommended that the emergency rule be extended for an additional 90 days. The Secretary reviewed this recommendation and concluded that this extension is consistent with provisions of the Magnuson Act, and will afford protection to the red drum resource while the Council proceeds with an FMP amendment that will continue the zero catch allowances until such time as the FMP objectives are obtained. A detailed discussion of the background, present situation, and classification of the rulemaking is set forth in the initial emergency interim rule and is not repeated here.

All provisions of the emergency interim rule remain effective through June 28, 1988.

This extension of the emergency interim rule is exempt from the usual review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that order. The action is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 2, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-4977 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 45
Tuesday, March 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

Washington Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 946 for the 1988-89 fiscal period. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by March 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administation Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 946 (7 CFR Part 946) regulating the handling of potatoes grown in the State of Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes under this marketing order, and approximately 360 Washington potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revneues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and dicsussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The State of Washington Potato Committee met on February 10, 1988, and unanimously recommended a budget for the 1988-89 fiscal period of $33,000, and an assessment rate of $.004 per hundredweight of potatoes. This compares to the 1987-88 budget of $29,400 and an assessment rate of $.002 per hundredweight of potatoes. The proposed budget is $3,600 more than last year's, reflecting an increase of $1,000 in committee expenses and $2,600 in compliance audits. All other budget categories remain the same. The assessment rate since the 1983-84 fiscal period has been $.002. This rate was set to reduce what was considered an undesirably high reserve amount. Believing this this goal has been met, the 1988-89 recommended assessment rate is double the rate of the previous fiscal period in order to maintain an adequate reserve amount and meet new added expenses. Anticipated fresh market shipments of eight million hundredweight will yield $32,000. This, along with $1,000 from the reserve, will be adequate for budgeted expenses. Reserves are expected to amount to $18,000 at the end of the 1987-88 fiscal period and will be carried over into the next fiscal period.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS had determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes (Washington).

For the reasons set forth in the preamble, it is proposed that § 946.241 be added (the following section prescribes annual expenses and assessment rate and will not be published in the Code of Federal Regulations):

PART 946—POTATOES GROWN IN STATE OF WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.241 is added to read as follows:

§ 946.241 Expenses and assessment rate.

Expenses of $33,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: March 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–4966 Filed 3–7–88; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations governing cooperative marketing associations in order to: (1) Allow producers to place commodities in a pool of eligible commodities which may then be pledged by a cooperative as collateral for a CCC price support loan without the cooperative being required to distribute the loan proceeds within 15 days of their receipt if the commodities are redeemed within 15 days of such date; and (2) delete a repetitive provision found at 7 CFR 1425.19. The proposed amendment provides members of cooperative marketing associations the same marketing flexibility as individual producers.

DATE: Written comments must be received on or before April 8, 1988, in order to be assured of consideration.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Head, Cooperative & Analysis Section, Price Support Branch, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–6685.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Memorandum 1512–1 and Executive Order 12291, and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no environment assessment or Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases: Number 10.051; as found in the Catalog of Federal Domestic Assistance. This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The regulations governing the eligibility of cooperative marketing associations to receive price support loans and purchases from CCC are set forth at 7 CFR Part 1425. The regulations at 7 CFR 1425.16 provide that a pool of commodities shall be eligible to receive price support if certain conditions are met. The provisions at 7 CFR 1425.16(b)(1)(iii) currently provide that a cooperative must exclude commodities delivered by members for marketing from an eligible pool until the members delivering such commodities agree to accept an initial payment from the cooperative with respect to such commodities. The regulations at 7 CFR 1425.17 provide that net loan proceeds, less authorized charges, must be distributed to eligible pool members within 15 days from the receipt of such loan proceeds from CCC. Both these requirements were designed to ensure that price support loan proceeds are distributed to the cooperatives' producer members in a timely manner and not withheld by the cooperative in order to finance the cooperatives' general operations. Provisions of some CCC price support and production adjustment programs allow for the pledging of eligible commodities as collateral for CCC price support loans and for immediate redemption of the collateral at a lesser amount (i.e. marketing loans). Other provisions of these programs provide that individuals and entities which have outstanding CCC price support loans may, in accordance with 7 CFR Part 770, obtain the commodities which have been pledged as collateral for such loans through the use of CCC commodity certificates. In order to provide producers who receive price support through cooperative marketing associations greater flexibility in marketing their commodities, this proposed rule would amend 7 CFR 1425.16 and 1425.17 to allow a cooperative to pledge eligible commodities as collateral for a CCC price support loan without being required to disburse the loan proceeds within 15 days of their receipt if the commodities are redeemed within 15 days of such date.

The regulations at 7 CFR 1425.19(c) duplicate the regulations found at 7 CFR 1425.13(c). Accordingly, this proposed rule would delete the provisions of 7 CFR 1425.19(c).

Proposed Rule

Accordingly, 7 CFR Part 1425 is proposed to be amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR Part 1425 continues to read as follows:

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c, and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1444(a), 1441, 1446d, 1447, 1421(a)).

2. 7 CFR 1425.16(b)(1)(iii) is revised to read as follows:

§ 1425.16 Eligible commodity and pooling.

* * * * *

(b) *Eligible pool.* * * *

(iii) Except with respect to a quantity of a commodity pledged as collateral for a price support loan and which is redeemed within 15 days from the date the cooperative receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

* * * * *

3. 7 CFR 1425.17(a)(1) is revised to read as follows:

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Except with respect to commodities which are pledged as collateral for a price support loan and which are redeemed within 15 days from the date the cooperative receives the loan proceeds from CCC, such proceeds shall be distributed within 15 days from such date.

* * * * *

§ 1425.19 [Amended]

4. 7 CFR 1425.19(c) is removed.

Signed at Washington, DC, on March 1, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–4909 Filed 3–7–88; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–175–AD]

Airworthiness Directives; Avions Marcel Dassault-Brequet Aviation (AMD–BA) Model Fan Jet Falcon Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain AMD–BA Model Fan Jet Falcon series airplanes, that would require modification of the main landing gear (MLG) release mechanism. This proposal is prompted by a report of jamming of the rear lock when the emergency manual control is operated. This condition, if not corrected, could result in failure of the MLG to extend.

DATE: Comments must be received no later than May 2, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–175–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Falcon Jet Corporation, 77737 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–175–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction Général de L'Aviation Civile (DGAC) of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist or develop on certain AMD–BA Model Fan Jet Falcon series airplanes. There have been reports of jamming of the main landing gear (MLG) lateral door rear lock when the emergency manual control is operated. The synchronization of the front and rear locks of the MLG lateral doors is ensured by a teleforce cable. If this cable breaks, the rear lock may jam when the emergency manual control is operated, due to the control lever having moved downwards. This condition, if not corrected, could prevent the MLG from being extended by means of the emergency manual system.

AMD–BA has issued Fan Jet Falcon Service Bulletin FJF–32–45(502), Revision 1, dated May 27, 1987, which describes installation of a stop on the control lever to limit possible downward movement, after failure of the teleforce synchronization cable, and to prevent jamming of the rear lock. The DGAC has issued French Airworthiness Directive 87–077–018(B), dated May 27, 1987, which requires compliance with the AMD–BA service bulletin.

This airplane model is manfactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model

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registered in the United States, an AD is proposed that would require modification of the MLG lateral doors release mechanism, in accordance with the previously mentioned AMD-BA service bulletin.

It is estimated that 117 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $14,040.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to Model Fan Jet Falcon series airplanes as listed in AMD-BA Service Bulletin FJF-32-45(502), Revision 1, dated May 27, 1987, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the main landing gear (MLG) due to the lateral door rear lock jamming, accomplish the following:

A. Install a stop on each MLG lateral door rear lock in accordance with AMD-BA Fan Jet Falcon Service Bulletin FJF-32-45(502), Revision 1, dated May 27, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, 77737 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 26, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-4949 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-96-AD]

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a Notice of Proposed Rulemaking (NPRM), applicable to certain Boeing Model 757 series airplanes, which would have required inspection of the indicator switches in the wing and engine anti-ice control panel, replacement of the panel if certain switches are installed, and repetitive functional testing of the panel. That action was necessary to prevent an inoperative wing or engine anti-ice system with no annunciation to the flight crew. Since issuance of the NPRM, the FAA has issued additonal rulemaking to eliminate the potential for the unsafe condition addressed in the NPRM. Therefore, the NPRM is no longer necessary and should be withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems & Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by adding a new airworthiness directive (AD), was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on September 9, 1987 (52 FR 33947). The proposal would have required inspection of the indicator switches in the wing and engine anti-ice control panel, replacement of the panel if certain switches are installed, and repetitive functional testing of the panel on certain Boeing Model 757 series airplanes.

Since issuance of that proposal, the FAA issued AD 88-01-08, Amendment 39-5827 (53 FR 493; January 8, 1988), applicable to all Boeing Model 757 series airplanes, which requires repetitive functional testing of the wing and engine anti-ice control system. That action was prompted by additional reports of problems associated with the switches used in anti-ice control panels, and of the inadequacy fo the anti-ice circuit logic that can result in the flight crew not being warned that the anti-ice ice system has not been activated. The FAA has determined that the requirements of AD 88-01-08 effectively eliminate the potential for the unsafe condition addressed in the NPRM. Therefore, the NPRM is no longer necessary and is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By withdrawing the proposed airworthiness directive, Notice of Proposed Rulemaking (NPRM), Docket 87-NM-96-AD, published in the Federal Register on September 9, 1987 (52 FR 33947), FR Doc. 87-20602.

Issued in Seattle, Washington, on Feburary 29, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-4948 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-174-AD]

Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain SAAB-Fairchild Model SF-340A series airplanes, which currently requires modification to the wiring and connectors associated with separation (explosive) bolts in the main landing gear (MLG) emergency extension system. This action, in addition to previously required modifications, would require the separation bolt wiring harness to be lengthened and the existing harness to be re-routed and secured. This action is necessary to prevent failure of the separation bolt wiring harness, which would prevent activation of the separation bolt. This, in turn, could prevent full extension of the MLG and subsequently cause main gear collapse upon landing in the event the main gear emergency extension system is utilized.

DATE: Comments must be received no later than May 2, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-174-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB, Aircraft Product Support AB, S. 58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, Seattle Aircraft Certification Office, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-174-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On June 19, 1987, FAA issued AD 87-13-07, Amendment 39-5662 (52 FR 23947; June 26, 1987), to require modification of the wiring and connectors of the MLG extension system on SAAB-Fairchild Model SF-340A series airplanes, in accordance with SAAB Service Bulletin SF340-32-028, Revision 1, dated November 25, 1986.

SAAB Service Bulletin SF-340-32-028, Revision 1, describes the addition of a protective shrink sleeve to the electrical connectors of the separation bolts and re-routing of the separation bolt grounding wires. These design changes were intended to strengthen the wire/connector interface and reduce the stresses in the ground connections. However, since issuance of AD-87-13-07, wire/connector interface failures have continued to occur. It has been determined that premature failure is caused by torsional flexure in the cable through normal operation of the main landing gear extension system.

SAAB issued Service Bulletin SF-340-32-041, Revision 1, dated October 9, 1987. This service bulletin provides instructions to lengthen the existing electrical harnesses for the separation bolts, (modified in accordance with previous Service Bulletin SF340-32-028, Mod. 1409), and to re-route and secure the existing harness. The purpose of this modification is to reduce the torsional flexure for a given length of wire. The Swedish Civil Aviation Authority issued Airworthiness Directive SAD No. 1-023, dated September 14, 1987, that requires compliance with SAAB Service Bulletin SF-340-32-041, Revision 1, dated October 9, 1987.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed which would require modification of the harnesses in accordance with the service bulletins previously mentioned.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost of parts per airplane is $1,475. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,735.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,075). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87–13–07, Amendment 39–5662 (52 FR 23947; June 26, 1987), with the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF-340A airplanes, manufacturer's serial numbers SF340A–003 through –078 inclusive, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the reliability of the emergency main landing gear extension system, accomplish the following:

A. Prior to November 3, 1987, modify the wiring and connectors of the main landing gear emergency extension system in accordance with SAAB Service Bulletin SF340–32–028, Revision 1, dated November 25, 1986.

B. Within 90 days after effective date of this AD, lengthen the electrical harnesses for the separation bolts, and re-route and secure the existing harnesses, in accordance with SAAB Service Bulletin SF340–32–041, Revision 1, dated October 9, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB, Aircraft Product Support AB, S.58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 26, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–4950 Filed 3–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–52]

Proposed Establishment of Airport Radar Service Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period and notice of informal airspace meetings.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to establish an Airport Radar Service Area (ARSA) at Palm Springs, CA, and Santa Barbara, CA, and gives notification of informal airspace meeting.

DATES: Comments must be received on or before June 13, 1988. Informal airspace meeting dates are as follows: Santa Barbara, CA—May 12, 1988, and Palm Springs, CA—May 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Airspace Docket No. 87–AWA–52, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Santa Barbara, CA, ARSA

Date: May 12, 1988
Time: 7:00 p.m.
Location: Santa Barbara County School's Office Auditorium, 4400 Cathedral Oaks, Santa Barbara, CA 93105

Palm Springs, CA, ARSA

Date: May 11, 1988
Time: 7:00 p.m.
Location: City Hall Council Chambers, 3200 Taquito-McCallum Way, Palm Springs, CA 92262

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AWA–52." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

Airspace Docket No. 87–AWA–52, published on January 11, 1988 (53 FR 674), proposed to establish an Airport Radar Service Area (ARSA) at five locations which included Palm Springs, CA, and Santa Barbara, CA. An informal airspace meeting was scheduled for each location to receive additional public comment on the proposal. Due to an administrative error not all of the individual mailings were made in a timely manner.This action extends the period for public comment on Airspace Docket No. 87–AWA–52, as it applies to Palm Springs, CA, and Santa Barbara, CA, only, and schedules additional informal airspace meetings.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

List of Subjects in 14 CFR Part 71

Aviation safety, airport radar service areas.

Extension of Comment Period and Notice of Public Meetings

The comment period for Airspace Docket No. 87–AWA–52 as it applies to Palm Springs, CA, and Santa Barbara, CA, is extended to close on June 13, 1988. Informal airspace meetings are scheduled for May 11, 1988, and May 12, 1988, respectively.

(Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69)

Issued in Washington, DC, on March 1, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–4935 Filed 3–7–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–54]

Proposed Revision of Transition Area; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This summary proposes to revise the transition area located at Albuquerque, NM. The closure of the Alameda Airport, resulting in the cancellation of the standard instrument approach procedure (SIAP) serving the Alameda Airport, and the development of a new SIAP to the Double Eagle Airport have made this proposed revision necessary. The intended effect of this proposed revision is to return that controlled airpspace no longer required for aircraft executing the SIAP to the Alameda Airport. Additionally, this proposed revision will provide adequate controlled airspace for aircraft executing the new SIAP to the Double Eagle Airport. Coincident with this action, the instrument flight rules (IFR) status of the Alameda Airport is canceled and the status of the Double Eagle Airport is changed from visual flight rules (VFR) to IFR.

DATES: Comments must be received on or before April 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–54, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–54."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Albuquerque, NM. The closure of the Alameda Airport, resulting in the cancellation of the SIAP serving the Alameda Airport, and the development of a new SIAP to Runway 22 at the Double Eagle Airport have necessitate this proposed revision. The intended effect of this proposed revision is to return that controlled airspace no longer required for aircraft executing the SIAP to the Alameda Airport and to provide adequate controlled airspace for aircraft executing the new SIAP to the Double Eagle Airport. Coincident with this action, the IFR status of the Alameda Airport is canceled and the status of the Double Eagle Airport is changed from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Albuquerque, NM

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Albuquerque International Airport (latitude 35°02'30" N., longitude 106°36'23" W.), and within an 11.5-mile radius of the Double Eagle Airport (latitude 35°08'42" N., longtude 106°47'41" W.).

Issued in Fort Worth, TX on February 24, 1988.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 88–4953 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–53]

Proposed Removal of Transition Area; Kirbyville, TX and Proposed Amendment of Transition Area; Jasper, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Kirbyville, TX, and revise the transition area located at Jasper, TX. This multiple proposed action is necessary due to the removal of the Boggy Creek and Pine Nondirectional Radio Beacons (NDB) and the subsequent cancellation of the associated standard instrument approach procedures (SIAP) utilizing these two NDB's. The intended effect of this proposed action is to release that controlled airspace no longer required due to the cancellation of the SIAP's. Coincident with this action, the status of the Kirbyville Airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATE: Comments must be received on or before April 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–53, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–53."

The postcard will be date/time stamped and returned to the commenter All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Kirbyville, TX, and revising the transition area located at Jasper, TX. The removal of the Boggy Creek and Pine NDB's and the subsequent cancellation of the SIAP's to the Kirbyville and Jasper County Airports utilizing these NDB's have necessitated this proposed multiple action. The intended effect of this proposed multiple action is to return that controlled airspace no longer required due to the cancellation of the SIAP's. Coincident with this action, the status of the Kirbyville Airport will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kirbyville, TX [Removed]

Jasper, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Jasper County Airport (latitude 30°53'32"N., longitude 94°02'53"W.), within 3.5 miles each side of the 360° bearing from the Jasper NDB (latitude 30°57'16"N., longitude 94°02'08"W.), extending from the 5-mile radius area to 11.5 mile north of the Jasper NDB.

Issued in Fort Worth, TX, on February 24, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–4952 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 87–ASW–65]

Proposed Establishment of Restricted Area R–5115; Deming, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R–5115 located near Deming, NM. This action would provide for the deployment of a tethered aerostat-borne radar system at the request of the United States Customs Service. This action would provide the Customs Service with the capability to provide surveillance of a volume of airspace from ground level to an altitude of 15,000 feet mean sea level and detect low altitude suspect aircraft attempting to penetrate the airspace.

DATE: Comments must be received on or before April 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 87–ASW–65, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC. 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy related aspects of the proposals. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Division, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 566–5371. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–65." The postcard will be dated/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Area R–5115 located near Deming, NM. The U.S. Customs Service would deploy a tethered aerostat-borne radar system with the capability to detect low altitude suspect aircraft attempting to penetrate

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the airspace. The system would increase the probability of intercept/interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve their mission, it would be necessary to restrict airspace from the surface to 15,000 feet MSL, within a 2-statute-mile radius. R–5115 would also be added to the Continental Control Area. Sections 71.151 and 73.51 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§71.151 [Amended]

2. Section 71.151 is amended as follows:

R–5115 Deming, NM [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§73.51 [Amended]

4. Section 73.51 is amended as follows:

R. 5115 Deming, NM [New]

Boundaries. A 2-mile radious centered at lat. 32°01'07"N., long. 107°51'52"W.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. United States Customs Service.

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–4947 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 87–AGL–29]

Proposed Alteration of Restricted Areas R–5503A and R–5503B, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Restricted Areas R–5503A and R–5503B near Wilmington, OH, by moving the areas slightly to the south and east in order to better accommodate access to the national airspace system for local aviation activities.

DATES: Comments must be received on or before April 22, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87–AGL–29, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC. 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to relocate Restricted Areas R–5503A and R–5503B several miles to the south and east in order to better accommodate access to the national airspace system

by local aviation users. Section 73.55 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§73.55 [Amended]

2. Section 73.55 is amended as follows:

R–5503A Wilmington, OH [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 38°54'40" N., long. 83°54'45" W.; to lat. 39°10'45" N., long. 83°53'00" W.; to lat. 39°27'45" N., long. 83°23'00" W.; to lat. 39°24'20" N., long. 82°49'30" W.; to lat. 39°18'00" N., long. 82°44'15" W.; to lat. 38°58'45" N., long. 82°50'00" W.; to lat. 38°47'00" N., long. 82°58'45" W.; to lat. 38°46'20" N., long. 83°14'20" W.; to lat. 38°52'15" N., long. 83°34'00" W.; thence to the point of beginning.

R–5503B Wilmington, OH [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 38°54'40" N., long. 83°54'45" W.; to lat. 38°59'00" N., long. 84°05'00" W.; to lat. 39°16'00" N., long. 84°06'00" W.; to lat. 39°29'20" N., long. 83°41'00" W.; to lat. 39°27'45" N., long. 83°23'00" W.; to lat. 39°10'45" N., long. 83°53'00" W.; thence to point of beginning.

Issued in Washington, DC, on February 24, 1988.

Signed by: **Daniel J. Peterson,**

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–4938 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 87–25]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of discontinuance.

SUMMARY: The Federal Maritime Commission discontinues this proceeding and withdraws the proposed rule because of recent developments in the United States/Taiwan trade. This action makes unnecessary the filing of any further comments on the Proposed Rule.

DATE: This action is effective March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573 (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("Section 19"), by a Notice of Proposed Rulemaking ("Proposed Rule") published in the Federal Register on December 8, 1987 (52 FR 46505) based on the apparent existence of conditions unfavorable to shipping in the United States/Taiwan trade ("Trade"). The Proposed Rule addressed practices which appeared to unreasonably restrict U.S.-flag carriers from competing in the Trade on the same basis as Taiwan-flag carriers with respect to the ownership and operation of dockside equipment and facilities, and the ability of U.S.-flag carriers to obtain container terminal licenses.[1] The remedies proposed as alternative sanctions were suspension of the tariffs of Taiwan-flag carriers serving U.S. ports, and suspension of transshipment and terminal agreements at U.S. ports to which Taiwan-flag carriers are parties. Comments on the Proposed Rule are to be submitted by March 7, 1988.[2]

On February 1, 1988, the Commission received a comment (dated January 21, 1988) to the Proposed Rule from the Taiwan Coordination Council for North American Affairs ("CCNAA") which incorporated a request (hereinafter referred to as "the Petition") that the Commission discontinue this proceeding.[3] Letters in support of CCNAA's request were received from Taiwan-flag carriers Evergreen Marine Corporation ("Evergreen") (letter dated February 17, 1988) and OOCL (letter dated February 16, 1988).[4]

U.S.-flag interests have also filed replies to CCNAA's Petition. APL's reply, received February 18, 1988, supports discontinuance of this proceeding but requests that the Commission gather additional information concerning the Trade under section 15 of the 1984 Act. Sea-Land's reply, received February 22, 1988, also supports termination of this proceeding and continuation of the Commission's section 15 inquiry. The U.S.-Flag Far East Discussion agreement ("Agreement 10050") likewise supports termination of this proceeding and continued monitoring of the Trade.[5]

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[1] The information which formed the factual basis for the Proposed Rule had been obtained through an order pursuant to section 15 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 814. *See Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade*, issued April 15, 1987 ("Section 15 Order"). The Section 15 Order sought information from non-Taiwan-flag ocean common carriers serving the Trade. Although a number of other areas were explored in the Section 15 Order, ownership of dockside equipment and container terminal licensing were the two issues of paramount concern identified in the responses to the Section 15 Order.

[2] The original deadline for submission of comments was January 7, 1988. Requests to extend the time for comments were received from Orient Overseas Container Line ("OOCL") and Yang Ming Marine Transport Corporation ("Yang Ming"). American President Lines ("APL") and Sea-Land Service, Inc. ("Sea-Land") informally advised that they did not oppose a reasonable extension of time. The Department of State ("DOS") and Department of Transportation ("DOT") informally indicated that they supported the requested extension. On January 8, 1988, the Commission extended the comment period to March 7, 1988.

[3] CCNAA filed its request pursuant to 46 CFR 585.13 which provides in relevant part that:

"The Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part."

CCNAA's request therefore is being treated as a petition to discontinue the proceeding and, in the interest of time and orderly procedure, is now being separately considered.

[4] Yang Ming, also a Taiwan-flag carrier, filed a letter on February 4, 1988 which, while not responding directly to the Petition, did request that this proceeding be "closed."

[5] The United Shipowners of America ("USA") submitted a letter on February 16, 1988 which supported the position of U.S.-flag carriers and noted "changes in factual circumstances in Taiwan" but did not address the question of whether this proceeding should be discontinued.

Summary of Comments Addressing the Petition for Discontinuance

Although the comment period has not yet expired, the Commission has received a number of comments from shippers, ports and other interested persons on the Proposed Rule, some of which also request that the Proposed Rule be withdrawn. These comments, some of which were filed prior to the CCNAA Petition, however, do not directly address the question raised by that Petition which is before the Commission at this time and will not be further discussed here. The following is a summary of the Petition, the replies to the Petition from Taiwan-flag and U.S.-flag carriers, and relevant communications from the U.S. Government agencies.

The Petition

CCNAA asserts that the two issues raised in this proceeding have been resolved and therefore requests that this proceeding be withdrawn. With regard to the question of ownership and operation of dockside equipment, CCNAA believes that new contracts between Kaohsiung Harbor Bureau ("KHB") and U.S.-flag carriers, expected to be signed by January 31, 1988, should resolve this matter. With regard to the question of container terminal licenses, CCNAA alleges that recent revisions of regulations by the Ministry of Communications greatly liberalize the requirements for obtaining a dockside container freight station license. CCNAA therefore urges that "the FMC withdraw any and all action in * * * [this] matter, on the basis that the issues targeted for this action have already been resolved * * *"

Replies to the Petition

1. *Evergreen.* Evergreen urges that this proceeding be terminated. Evergreen's Reply references its comment of January 5, 1988 to the Proposed Rule which notes the progress recently made citing the recent revision of the container terminal regulations and the then pending contract negotiations between KHB and U.S.-flag carriers.

2. *OOCL.* OOCL supports the Petition and urges the Commission to discontinue this proceeding based on the new contracts and the revised regulations.

3. *APL.* APL believes that the two issues raised in this rulemaking have been substantially resolved and that it would be appropriate to terminate this proceeding. With regard to the issue of ownership of dockside facilities and equipment, APL reports that it has entered into long-term agreements with KHB which provide that APL may import, own, operate and re-export certain container handling equipment subject to certain terms and conditions. APL believes that it is now able to operate on "commercially reasonable terms." With regard to the question of operation of container terminals, APL notes that it is satisfied that the revision of the container terminal licensing regulations has removed" * * * the primary regulatory obstacle to the establishment by APL of a container terminal in Taiwan * * *." Finally, although APL believes that this proceeding may be discontinued, it requests that the Commission permit interested persons to supplement their responses to the Section 15 Order to address other possible issues in the Trade.

4. *Sea-Land.* Sea-Land states that "[t]here has been significant progress made toward eliminating unfavorable conditions existing in the U.S./Taiwan trades, particularly with respect to the ownership and operation of dockside equipment and facilities, and with respect to the licensing of container terminal operations." Sea-Land cites a new agreement it has concluded with KHB. Sea-Land concludes that termination of this proceeding would be appropriate, but asks that "the Section 15 Inquiry be continued."

5. *U.S.-Flag Far East Discussion Agreement.* Agreement No. 10050, two of whose members are APL and Sea-Land, also supports discontinuance of this proceeding at this time. Agreement No. 10050 notes that "" * * significant progress * * * has been made toward alleviating the particular trade conditions addressed in this proceeding * * *." Agreement No. 10050 cites recent new contracts between U.S.-flag carriers and KHB and the revision of the terminal licensing regulations. Agreement No. 10050 also urges the Commission to continue to closely monitor conditions in the Trade.

U.S. Government Communications

By letter to the Commission, dated February 22, 1988, submitted on behalf of the Departments of Transportation and State, the Maritime Administrator forwarded to the Commission an exchange of correspondence between CCNAA (letter dated January 6, 1988) and the American Institute in Taiwan ("AIT") (letter dated January 13, 1988). The February 22 letter also refers to an earlier letter from the Maritime Administrator, dated January 15, 1988, which summarized recent developments in the Trade as they relate to the issues in this proceeding. The sum and substance of these various communications is to confirm the fact that significant progress has been made to alleviate the burdens on the operations of U.S.-flag carriers in Taiwan which are the subject of this proceeding.[6]

Discussion

Although the comment period in this proceeding has not expired, the Commission now has before it the CCNAA request, filed pursuant to 46 CFR 585.13, that the Commission discontinue this proceeding. The Petition is supported by Taiwan-flag carriers that would be affected by the sanctions in the Proposed Rule. In addition, the U.S.-flag carriers, whose operations in Taiwan were the subject of this rulemaking, also support discontinuance of this proceeding. Finally, the U.S. Government has submitted letters to the Commission which confirm the two most significant recent developments in this Trade. The Commission therefore believes that it is appropriate to consider and act on the Petition at this time.

The positions taken by the Taiwan and U.S.-flag interests disagree over the issuance of the Proposed Rule. With regard to those factual developments that have a bearing on the two issues in this proceeding, however, all affected parties appear to be in fundamental accord. The first issue addressed in this rulemaking concerned restrictions placed on U.S.-flag carriers with regard to the ownership and operation of dockside equipment and facilities. The comments filed indicate that both APL and Sea-Land have recently concluded contracts with KHB which resolve this problem. It appears that these restrictions have been substantially lifted and that U.S.-flag carriers can operate on terms which they believe are commercially reasonable.

The second issue concerned the Taiwan regulatory scheme which unreasonably hampered the ability of U.S.-flag carriers to obtain licenses to operate container terminals. The comments represent that the chief regulatory impediments have now been removed. The Commission is aware of the fact that, as of this date, the process of licensing U.S.-flag carriers to operate port container terminals is not yet complete. We note especially the concern expressed in AIT's letter to CCNAA, which was forwarded to the Commission by the Maritime Administrator, that the licensing process not be expensive, burdensome, or time-consuming for U.S. carriers. While this matter is not totally concluded, it does not appear that the current regulatory regime will pose any unreasonable impediments to the ability of U.S.-flag carriers to oeprate container terminal facilities. We presently expect that the remaining administrative matters will be completed satisfactorily.

Based on these developments, the Commission has concluded that the objectives of this rulemaking have been achieved and that no further regulatory purpose would be served by continuing this proceeding. The Commission therefore shall grant the Petition of CCNAA and shall discontinue this proceeding and withdraw the Proposed Rule.

This action is taken without prejudice to the Commission instituting a new proceeding under section 19 should conditions in the Trade warrant it. Such an action could occur if the expected progress with respect to container terminal licensing does not materialize. Moreover, we note that the U.S.-flag carriers in their comments urge that the Commission continue to closely monitor the Trade and the progress of governmental and commercial efforts to eliminate any conditions unfavorable to shipping in that Trade. To that end, the Commission is expressly requested to continue its section 15 inquiry to address other issues raised in that inquiry and to update information on the Trade situation generally.

It is not necessary at this time to take any action on the request of the U.S.-flag carriers that the Commission conduct a further inquiry into conditions in the Trade through the section 15 process. The Commission, however, will continue to closely monitor the Trade and will take further appropriate action under section 15 or under section 19 as Trade conditions may warrant. The Commission remains committed to take action (including imposition of sanctions on foreign carriers) where it considers that step necessary to ensure fair and reasonable treatment of U.S.-flag carriers or otherwise to correct unfavorable shipping conditions in U.S. foreign commerce.

Therefore, it is ordered, That the Petition of the Coordination Council for North American Affairs is granted; and

It is further ordered, That the Proposed Rule is withdrawn and this proceeding is discontinued.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 88–4890 Filed 3–7–88; 8:45 am]

BILLING CODE 6730-01-M

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[6] The February 22, 1988 letter from the Maritime Administrator does not address CCNAA's Petition or take a position as to whether this proceeding should be discontinued. The January 13, 1988 AIT letter to CCNAA does express the hope that the terminal licensing process will not be burdensome for U.S. carriers.

Notices

Federal Register
Vol. 53, No. 45
Tuesday, March 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Renewal of Advisory Board

Notice is hereby given that the Secretary of Agriculture has renewed the Human Nutrition Board of Scientific Counselors. The purpose of the Board is to provide the Secretary of Agriculture with an independent assessment of and recommendation on program and policy matters relating to human nutrition research and education by qualified individuals. The Human Nutrition Board of Scientific Counselors was initially established by the Secretary of Agriculture on April 9, 1981, in conformance with provisions of the Conference Report No. 95–1579, which accompanied H.R. 13125, dated September 18, 1978, on the FY 1979 Appropriations Act for the Department of Agriculture.

The Board meets annually in Washington, DC, to receive reports from Department of Agriculture staff on research progress, educational activities, and long-range goals. The Board's findings are reported in writing to the Secretary of Agriculture.

It was determined that the renewal of this Board would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC, this 3rd day of March 1988.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 88–4972 Filed 3–7–88; 8:45 am]

BILLING CODE 3410-03-M

Office of Advocacy and Enterprise, Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: March 28 & 29, 1988.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Time: 8:30 a.m.–5:00 p.m.

Purpose:

—Review all aspects of the U.S. Department of Agriculture's policies, practices, and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to ensure USDA activities are free of discrimination;
—Advise the Secretary on the effectiveness of compliance program directives;
Additionally, the Committee will focus on:
—Employment, constituent services, and operational programs in the Extension Service.
—Follow-up reports on implementation strategies to make Secretary Lyng's initiative on equal opportunity a reality, and;
—An in-depth discussion of compliance reviews completed thus far.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Naomi Churchill, Esq., Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 14th & Independence avenue SW., Room 1228 South Building, Washington, DC 20250, (202) 447–5061.

Written statements may be submitted until March 21.

Naomi Churchill,

Associate Director, Equal Opportunity.

[FR Doc. 88–4971 Filed 3–7–88; 8:45 am]

BILLING CODE 3410-94-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 13–88]

Foreign-Trade Zone 23, Erie County, NY; Request for Manufacturing of Laser Printers at Subzone 23A, Zerox Plant, Monroe County

The County of Erie, New York, grantee of FTZ 23 and Subzone 23A at Zerox Corporation's manufacturing plant in Monroe County, New York, which has approval to use zone procedures in the production of photo copiers (Board Order 220, 48 FR 35479, 8/4/83), requests approval from the Foreign-Trade Zones Board to extend the use of zone procedures at the Zerox plant for the production of laser printers. The request was filed February 26, 1988.

Zerox sources less than one-third of the value of the parts for laser printers abroad, including motors, power supplies, display units incorporating cathode ray tubes, clutches, fans, connectors, conductors, and fasteners. About one-fourth of the products manufactured at the plant are exported.

Zone procedures would exempt Xerox from Customs duty payments on the foreign products used in its exports. On its domestic sales, the company would be able to pay duties at the rate applicable to complete laser printers. The rate on the printers is 3.7 percent, whereas the rates on the components range from 0 to 6.2 percent. The company indicates that zone procedures for this extended purposes will help improve its international competitiveness.

Comments on the proposed manufacturing operation are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked before April 12, 1988.

A copy of the application is available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 2, 1988.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 88–5021 Filed 3–7–88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 12–88]

Foreign-Trade Zone 62, Brownsville, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brownsville Navigation District (BND), grantee of Foreign-Trade Zone 62, requesting authority to expand the zone to include two additional sites in Harlingen, Texas, within the Brownsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board

(15 CFR Part 400). It was formally filed on February 24, 1988.

The Brownsville zone was approved in October 1980 and expanded in September 1983. It presently covers the BND port complex, with authority to activate up to 2000 acres, as well as a site at the Brownsville International Airport. The current proposal calls for an extension of the zone to include sites in Harlingen, Texas consisting of two parcels (320 acres) of publicly owned property. Parcel 1, Harlingen Industrial Airpark (203 acres), is located at Valley International Airport on Rio Hondo Road in Harlingen. Parcel 2, Harlingen Industrial Park (117 acres), is located at FM 106 and FM 1595, also in Harlingen.

The application indicates there is a need for zone services in the Harlingen area and this expansion is designed to accommodate prospective users who cannot use the existing Brownsville zone.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Don Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057-3012; and Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553–1229.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 18, 1988.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, International Border Station, Brownsville, TX 78520
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Room 1529, Washington, DC 20230.

Dated: March 1, 1988.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 88–5022 Filed 3–7–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than March 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping duty proceeding	Period
Brass Sheet and Strip from France.	08/22/86–02/29/88
Brass Sheet and Strip from Italy.	08/22/86–02/29/88
Brass Sheet and Strip from Sweden.	08/22/86–02/29/88
Brass Sheet and Strip from West Germany.	08/22/86–02/29/88
Canned Bartlett Pears from Australia.	03/01/87–02/29/88
Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand.	03/01/87–02/29/88
Certain Brass Fire Protection Products from Italy.	03/01/87–02/29/88
Certain Fresh Cut Flowers from Canada.	11/03/86–02/29/88
Certain Fresh Cut Flowers from Colombia.	11/03/86–02/29/88
Certain Fresh Cut Flowers from Ecuador.	11/03/86–02/29/88
Chloropicrin from the People's Republic of China.	03/01/87–02/29/88
Iron Construction Castings from Canada.	03/01/87–02/29/88
Ferrite Cores (of the type used in consumer electronic products) from Japan.	03/01/87–02/29/88
Oil Country Tubular Goods from Israel.	08/25/86–02/29/88
Sodium Nitrate from Chile	03/01/87–02/29/88
Standard Carnations from Chile.	11/03/86–02/29/88
Television Receivers, Monochrome and Color, from Japan.	03/01/87–02/29/88
Viscose Rayon Staple Fiber from Finland.	03/01/87–02/29/88
Viscose Rayon Staple Fiber from France.	03/01/87–02/29/88

Countervailing duty proceeding	Period
Brass Sheet and Strip from France.	06/09/86–12/31/87
Cargon Steel Wire Rod from New Zealand.	01/01/87–12/31/87
Certain Apparel from Thailand.	01/01/87–12/31/87
Certain Castor Oil Products from Brazil.	01/01/87–12/31/87
Certain Iron-Metal Construction Castings from Mexico.	01/01/87–12/31/87
Certain Textile Mill Products from Mexico.	01/01/87–12/31/87
Certain Textile Mill Products and Apparel from Peru.	01/01/87–12/31/87
Certain Textile Mill Products and Apparel from Sri Lanka.	01/01/87–12/31/87
Certain Welded Carbon Steel Pipe and Tube Products from Turkey.	01/01/87–12/31/87
Cotton Shop Towels from Pakistan.	01/01/87–12/31/87
Cotton Yarn from Brazil	01/01/87–12/31/87
Ferrochrome from South Africa.	01/01/87–12/31/87
In-Shell Pistachios from Iran	01/01/87–12/31/87
Leather Wearing Apparel from Argentina.	01/01/87–12/31/87
Oil Country Tubular Goods from Israel.	06/11/86–12/31/87
Standard Carnations from Canada.	10/27/86–12/31/87
Standard Carnations from Chile.	02/03/87–12/31/87
Standard Chrysanthemums from the Netherlands.	10/27/86–12/31/87
Textile Mill Products and Apparel from Argentina.	01/01/87–12/31/87

Suspended investigation	Period
Certain Textile Mill Products and Apparel from Colombia.	01/01/87–12/31/87
Certain Textile Mill Products from Thailand.	01/01/87–12/31/87
Frozen Concentrated Orange Juice from Brazil.	01/01/87–12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 31, 1988.

If the Department does not receive by March 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: March 2, 1988.

[FR Doc. 88-5023 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Import Limits and Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia; Correction

March 3, 1988.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 31, 1987 (52 FR 49466), correct the heading in the second column to read "Six-Month Restraint Limit," instead of "Twelve-Month Restraint Limit."

In addition, the six-month limit for Categories 445/446 should correctly read 25,503 dozen, instead of 255,025 dozen.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5001 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

March 3, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 9, 1988. For further information contact Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current limits for Categories 347/348 and 647/648/847 exported from Mauritius.

Background

A CITA directive dated September 25, 1987 (52 FR 36604) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 347/348 and 647/648/847, produced or manufactured in Mauritius and exported during the agreement year which began on October 1, 1987 and extends through September 30, 1988. Pursuant to the Bilateral Textile Agreement of June 3 and 4, 1985, as amended, and at the request of the Government of Mauritius, the limits for Categories 347/348 and 647/648/847 are being increased for carryover of shorfalls in the previous restraint periods.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of September 25, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the agreement year which began on October 1, 1987 and extends through September 30, 1988.

Effective on March 9, 1988, the directive of September 25, 1987 is hereby amended to include the following adjusted restraint limits for Categories 347/348 and 647/648/847, under the terms of the bilateral agreement of June 3 and 4, 1985, as amended [1]:

Category	Adjusted 12-mo restraint limit [1]
347/348	488,140 dozen.
647/648/847	408,100 dozen.

[1] The limits have not been adjusted to account for any imports exported after September 30, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5002 Filed 3-7-88; 8:45am]

BILLING CODE 3510-DR-M

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[1] The agreement, provides in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

March 3, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 9, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements

directs the Commissioner of Customs to increase the current limit for cotton textile products in Category 369-S, produced or manufactured in Turkey and exported to the United States. As a result, the limit for Category 369-S, which is currently filled, will re-open.

Background

A CITA directive dated December 31, 1987 (53 FR 185) established import restraint limits for certain cotton and man-made fiber textile products, including Categories 300/301 and 369-S, produced or manufactured in Turkey and exported during the period which began on January 1, 1988 and extends through June 30, 1988.

Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 15, 1985, as amended and extended, and at the request of the Government of Turkey, the current limit for Category 369-S is being increased by application of swing. The current limit for Category 300/301 is being reduced to account for the swing applied to Category 369-S.

A description of the textile categories in terms of T.S.U.S.A. number is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 3, 1988.

Commissioner of Customs,
Department of Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 31, 1987, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Effective on March 9, 1988, the directive of December 31, 1987 is amended to include the following adjustments to the previously established restraint limits for cotton textile products in the following categories, as provided under the terms of the bilateral agreement of October 15, 1985, as amended as extended: [1]

Category	Six-month adjusted limit [1]
300/301	3,337,410 pounds.
369-S [2]	876,090 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369-S, only TSUSA number 366.2840.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5003 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-DR-M

Official Authorized to Issue Export Visas and Guaranteed Access Level Certifications for Certain Cotton and Man-Made Fiber Apparel from Costa Rica

March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

The Government of Costa Rica has notified the United States Government that the officials listed below have been authorized by the Government of Costa Rica to issue export visas and guaranteed access level (GAL) certifications for certain cotton and man-made fiber apparel products exported from Costa Rica.

Annia Segura
Alberto Tacon
Danilo Rodriguez
Elizabeth Hasbun

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5004 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be increased by 7 percent swing during an agreement period; and (2) specific limits may be increased by carryover and carryforward up to 11 percent of which carryforward shall not constitute more than 6 percent of the applicable category limit.

Textile and Apparel Categories; Changes in Visa Arrangements to Coincide with the Onset of the New Category System

March 3, 1988.

In the "Country Specific Section" of the letter to the Commission of Customs published in the **Federal Register** on December 30, 1987 (52 FR 49189), make the following corrections:

China

Footnote 1, line 4: 384.0212 should be 384.0213

Philippines

Footnote 2, line 2: 381.550 should be 381.9550

Taiwan

Footnote 4, line 7: 659-C should be 659-S
Footnote 9, line 2: 381.550 should be 381.9550
Footnote 10, line 2: 381.550 should be 381.9550

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5005 Filed 3-7-88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 88-1]

Philip A. Dye and Marilyn J. Dye, d/b/a P & M Enterprises; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under Provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Printed below is a complaint in the matter of Philip A. Dye and Marilyn J. Dye, d/b/a P & M Enterprises.

Date: February 29, 1988.

SUPPLEMENTARY INFORMATION:

Sheldon D. Butts,

Deputy Secretary.

In the matter of Philip A. Dye and Marilyn J. Dye d/b/a P & M Enterprises, CPSC Docket No. 88-1.

Complaint

Nature of Proceedings

1. This is an administrative adjudicative proceeding pursuant to section 15 of the Consumer Product

Safety Act (CPSA), 15 U.S.C. 2064, for public notification and remedial action to protect the public from substantial risks of injury presented by an electric worm probe. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR Part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in sections 15 (b), (c), (d), and (f) of the CPSC, 15 U.S.C. 2064 (b), (c), (d), and (f).

Respondents

3. Respondents Philip A. Dye and Marilyn J. Dye own and operate a proprietorship and jointly control the acts, practices and policies of the proprietorship with a business office located at 1202 Arthur Street, Caldwell, Idaho, 83605.

4. Whenever this complaint refers to any act of the Respondents, the reference shall be deemed to mean that one or both of the co-owners, their employees or agents authorized such act while actively engaged in the management, direction or control of the affairs of the respondents and while acting within the scope of their employment. Whenever this complaint refers to any act of Respondents, the reference shall be deemed to mean the act of each Respondent jointly and severally.

The Consumer Product

5. The "WORM GETT'RS" are electric worm probes designed to deliver, by means of metal shafts (or probes), electric current into the earth to cause worms to come to the surface of the earth. The Respondents manufacture three models of the "WORM GETT'R" consisting of 2, 6, or 12 metal probes. The more probes used the larger the surface area that can be "wormed" at one time.

6. The "WORM GETT'RS" are manufactured by Respondents for sale to and used by consumers in or around a permanent or temporary household or residence, in recreation or otherwise and are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

7. "WORM GETT'RS" are distributed by Respondents in commerce within the meaning of sections 3(a) (11) and (12) of the CPSA, 15 U.S.C. 2052(a) (11) and (12), and sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d).

8. Respondents are a manufacturer of "WORM GETT'RS" within the meaning of sections 3(a) (4) and (e) of the CPSA, 15 U.S.C. 2052(a)(4) and (8).

Substantial Product Hazard

9. Paragraphs 1 through 8 are hereby realleged.

10. The "WORM GETT'RS" are designed to deliver, and do deliver, full line voltage, 120 volts of electricity through each ten (10) inch bare metal shaft of the worm probe.

11. The "WORM GETT'RS" are designed to be used outdoors in wet soil and users of the product are instructed by Respondents to water the soil before using the "WORM GETT'RS".

12. "WORM GETT'R" users, and/or persons in the vicinity of the "WORM GETT'R" while it is being used, can easily come in contact with the product's exposed bare metal shaft(s).

13. The "WORM GETT'R" constitutes a design defect under 15 U.S.C. 2064 because it deliver 120 volts of electricity through metal shafts accessible to consumers.

14. No use instructions or warning label, whatsoever, appear on the "WORM GETT'R" and this failure to warn also constitutes a defect under 15 U.S.C. 2064.

15. If a consumer is electrically grounded and touches a metal shaft of the "WORM GETT'R" that is properly plugged into an electrical outlet, an electrical current of up to 80 milliamperes can flow through his body.

16. Human exposure to electrical current levels over 5 milliamperes is regarded as harmful.

17. Human exposure to electrical current levels over 20 milliamperes can cause asphyxia, ventricular fibrillation (erractic movement of the heart muscle) leading to severe internal injuries and death by electrocution as well as secondary reaction injuries from shock.

18. This severe risk is not apparent from the product or from the nonexistent labeling and poses a latent risk to consumers.

19. The same risk of severe injury or death to consumers is present in each of the "WORM GETT'RS" during reasonably foreseeable use or misuse.

20. The defects in the "WORM GETT'RS" create a substantial risk of injury to consumers within the meaning of section 15(a)(2), of the CPSA, 15 U.S.C. due to the large number of products, the high risk of injury associated with each product and the severity of injuries that can be incurred.

21. The "WORM GETT'RS", which can electrocute a person contacting its metal shaft, is a substantial product hazard as described in sections 15(a)(2), (c) and (d) of the CPSA, 15 U.S.C. 2064 (a)(2), (c) and (d).

Relief Sought

Wherefore, in the public interest, the Administrative Litigation Division of the Directorate of Compliance and Administrative Litigation, (hereinafter, Complaint Counsel) requests that the commission:

A. Determine that Respondents' "WORM GETT'RS" present a "substantial product at hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c) is required to protect adequately the public from the substantial product hazard presented by the "WORM GETT'RS" which have been distributed and order that the Respondents:

(1) Give public notice that the WORM GETT'RS present a substantial risk of injury to consumers and of the remedies available to remove the risk of injury; and

(2) Mail notice to each person who is or has been a distributor or retailer of the WORM GETT'R, and

(3) Mail notice to every person to whom Respondents know the WORM GETT'R was delivered or sold; and

(4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the "WORM GETT'R" immediately; and clear instructions for returning the WORM GETT'R to Respondents, and specify the form and content of any notice required to be given.

C. Determined that action under section 15(d) of the CPSA, 15 U.S.C. 2064(d) is in the public interest and order Respondents:

(1) To cease manufacturing for sale, offering for sale, and distributing in commerce "WORM GETT'RS" which present the substantial product hazard described above; and

(2) With respect to all "WORM GETT'RS" that have been distributed or sold, to elect to repair the "WORM GETT'RS" so they will not create an electrocution hazard to consumers, to replace the "WORM GETT'RS" with a like or equivalent product which will not create an electrocution hazard or to refund to consumers the purchase price of the "WORM GETT'RS".

(3) To make no charge to consumers and to reimburse them for any reasonable and foreseeable expenses incurred is availing themselves of any remedy provided under any order issued in this matter 15 U.S.C. 2064(e)(1); and

(4) To reimburse distributors and dealers for expenses in correction with carrying out any Commission Order issued in this matter 15 U.S.C. 2064(e)(2); and

(5) To submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in paragraphs c (1) through c (4) above be taken in a timely manner

(6) Prohibit Respondents from manufacturing, selling and distributing the defective "WORM GETT'RS" in commerce. 15 U.S.C. 2064(d).

(7) To keep records of their actions taken to comply with paragraphs c (1) through c (5) above; and to supply these records to the Commission for a period of three (3) years after entry of a Final Order issued by the Commission requiring notice and remedial action, for the purpose of monitoring compliance with the Final Order.

(8) To notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale, or by petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance obligations under a final Order issued by the.Commission requiring public notice and corrective action for applied of three years after issuance of said final Order.

(9) To take such other and further actions as the Commission deems necessary to protect the public health and safety and to implement the CPSA.

Issued by Order of the Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

William J. Moore, Jr.,

Complaint Counsel, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

[FR Doc. 88-4990 Filed 3-7-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Competitive Strategies; Change in Advisory Committee Meeting Date

ACTION: Change in date of advisory committee meeting date.

SUMMARY: The meeting of the Defense Science Board Task Force on Competitive Strategies scheduled for May 27, 1988 as published in the Federal Register (Vol. 52, No. 224, Page 44625, Friday, November 20, 1987, FR Doc. 87–26803) will be held on May 20, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 3, 1988.

[FR Doc. 88-5058 Filed 3-7-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit; Change in Date of Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit scheduled for February 24–25, 1988 as published in the Federal Register (Vol. 52, No. 17, Page 2266, Wednesday January 27, 1988, FR Doc. 88-1616) will be held on March 29–30, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 3, 1988.

[FR Doc. 88-5057 Filed 3-7-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28 and 29 March 1988.

Time of Meeting: 0800–1730 hours, both days.

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to gather facts for this study. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-5013 Filed 3-7-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent). Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent Application 066,442: DIALLYL TELLURIDE AND SYNTHESIS OF DIOGANO TELLURIDES; 26 June 1987.

Patent Application 073,238: METHYL ALLYL TELLURIDE AND SYNTHESIS OF UNSYMMETRIC ALLKYL—(ALKYL) TELLURDIES; field 13 July 1987.

Patent Application 136,610: PREPARATION OF DITERTIARYBUTYLELLURIDE; field 21 December 1987.

March 2, 1988

William R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-4980 Filed 3-7-88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet April 27–28, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: March 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S., Navy, Federal Register Liaison Officer.

[FR Doc. 88–4962 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet March 23–24, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: March 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–4958 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-AE-M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 11 April 1988, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 4:00 p.m., 11 April 1988, in Room 301, Rickover Hall.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Capt John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402–5017, (301) 267–4361.

Date: March 2, 1988.

William R. Babington, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 88–4957 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on March 16, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 No. Quincy Street, Arlington, Virginia. The meeting will commence at 9:30 a.m. and terminate at 4:00 p.m. on March 16, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to meet in Executive Session to discuss 1988 study initiatives. The agenda will include technical briefings and discussions related to Superconductivity, Means to Detect Land Mines, Survivability of Tactical Communications in a Hostile Environment, Automation of Ship Systems, Importance of Environmental Knowledge, and the Role of Unmanned Vehicles in Support of Naval Warfare These briefing and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: March 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–4959 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Grant Partially Exclusive Patent License; SOFEC, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; SOFEC, Inc.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to SOFEC, Inc. a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 3,910,218 entitled "Propellant-Actuated Deep Water Anchor," issued October 7, 1975; inventors: Robert J. Taylor and Richard M. Beard and U.S. Patent No. 4,328,736 entitled "Fuseless Explosive Propellant Cartridge," issued May 11, 1982; inventors: Daniel G. True and Robert J. Taylor.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000.

DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217–500, telephone (202) 696–4001.

March 2, 1988

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–4961 Filed 3–7–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Strengthening Institutions and Endowment Challenge Grant Programs; Application Preparation Workshops

AGENCY: Department of Education.

ACTION: Notice of dates and locations for application preparation workshops.

SUMMARY: The Office of Postsecondary Education will conduct Application Preparation Workshops to assist fiscal year 1988 designated eligible institutions to develop applications for grants under the Strengthening Institutions and Endowment Challenge Grant Programs, Title III, Parts A and C of the Higher Education of 1965, as amended.

DATES: Workshops are scheduled to be held on March 16, 18, and 21.

ADDRESSES: The locations for the workshops are as follows:

March 16

Washington, DC, Health and Human Services Building Auditorium, First Floor, 330 Independence Avenue SW.

March 18

Kansas City, Missouri, Federal Office Building Auditorium, 601 East Twelfth Street

March 21

San Francisco, California, Federal Office Building Conference Room, 450 Golden Gate Avenue

FOR FURTHER INFORMATION CONTACT: Division of Institutional Development, Room 3042, ROB–3, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732–3314.

SUPPLEMENTARY INFORMATION: Each application workshop will last one day. The presentation will include a review of the requirements for filing applications and a review of the statute and program regulations. (Sections 311–314, 331–332, and 351–360 of the Higher Education Act of 1965, as amended, and 34 CFR Parts 607 and 628). Each application workshop will begin with registration at 9:00 a.m. Presentations are scheduled until 5:00 p.m. Time will be provided in the afternoon for questions and answers. There is no registration fee for the workshops.

(Catalog of Federal Domestic Assistance Number: 84.031A Strengthening Institutions Program and 84.031C Endowment Challenge Grant Program)

Dated: March 1, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–5016 Filed 3–7–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Statement of Findings for the Selected Rubble Landfill at the Los Alamos National Laboratory, NM

AGENCY: Department of Energy.

ACTION: Floodplain/Wetlands statement of findings.

SUMMARY: Pursuant to the regulations of 10 CFR Part 1022, DOE's "Compliance with Floodplains/Wetlands Environmental Review Requirements", the following is submitted for public review and comment. Information contained in this Statement of Findings is presented in support of the decision to locate the landfill at Sandia Canyon. The related Floodplain/Wetland Involvement Notification was published in the **Federal Register**, Vol. 53, No. 14 Page 1820, dated Friday, January 22, 1988.

DATE: Comments must be filed on or before March 23, 1988.

ADDRESS: Address any comments or requests to the Albuquerque Operations Office, Department of Energy/EHD, P.O. Box 5400, Albuquerque, New Mexico, 87115. All correspondence should refer to the project by title.

FOR FURTHER INFORMATION CONTACT: Harold E. Valencia, Area Manager, U.S. Department of Energy, Los Alamos Area Office, Los Alamos, NM 87544, (505) 667–5105.

SUPPLEMENTARY INFORMATION:

I. Project Description

The Los Alamos National Laboratory proposed project entails the construction and operation of a selected rubble landfill within a floodplain/wetlands area at Los Alamos National Laboratory. The purpose of the landfill is to provide space to dispose of non-biodegradable construction rubble as the current landfill site is non-expandable, and the expected life of the landfill dictates the need for a new site. The proposed landfill location will be in the head of Sandia Canyon approximately 0.1 south of East Jemez Road. It will be an extension of the present Los Alamos County sanitary landfill. The landfill will occupy an area approximately 2.5 acres in size. Once the proposed site has been filed, it will be compacted and leveled to the existing grade to allow for future expansion of the Laboratory facilities. The characteristics of the local terrain and the need for future facility expansion were factors used in determing the size and the location of the proposed landfill. Once the proposed site has been filled, a new site would be selected using similar selection criteria. No building facilities will be needed to complete the proposed landfill projects. A road to the site will be constructed by extending the access road to the present sanitary landfill. Materials to be buried at the site are defined as solid waste or excavated materials from Laboratory construction operations that have been culled of organic, hazardous, or other degradable or deformable materials. No materials that would lead to subsidence of the fill over an extended period or impact the air or water quality at the landfill site will be allowed. Approximately 85% of the volume needed for the proposed landfill is readily available in the immediate area.

II. Alternatives

Placement of a selected rubble landfill at Los Alamos National Laboratory is limited by the availability of land, space requirements, archaeological resources, drainage, accessability, and aesthetics. Although several sites were considered, the proposed sited is adjacent to an operating sanitary landfill which allows for easy access and provides for cost-effective burial of rubble for up to five years. In addition, this location will provide valuable space for the location of new facilities. Streamflow within the proposed site and the integrity of a marsh below the site can be maintained by means of the placement of a 400 foot long, seven-foot diameter culvert. The culvert would serve the two-fold purpose of diverting floodwaters and maintaining streamflow under normal conditions to protect the marsh. The present location of the Laboratory rubble, landfill is not expandable because of the adjacent presence of buildings and an airport; thus making a no-action alternative inoperable.

III. Mitigation

Mitigation measures will include good engineering practices that will be approved prior to construction and shall be used to prevent excessive erosion and escape of debris from the site.

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Areas disturbed by construction will be reseeded by native grasses, shrubs, and trees in consultation with the Los Alamos National Laboratory-U.S. Forest Service Liaison Officer. In addition to reseeding areas to minimize sheet erosion, structural measures such as rock rip-rap surfacing, gravel surfacing, and earthberm construction will be done. A hydrological analysis performed by the Los Alamos National Laboratory allowed the proper sizing of the seven-foot diameter culvert, which will have sufficient capacity to convey the runoff from 100-year storm through the reach of Sandia Canyon adjacent to the landfill operation.

IV. Determination

Benefits derived from the proposed selected rubble landfill have been determined to outweigh the potential for environmental impacts. As a result of its review of alternatives and evaluation of the environmental impacts, the DOE has determined that there is no practicable alternative to the proposed action and that the proposed action, as described, has been designed to minimize harm to and within the floodplain and wetlands. All actions will be in conformity with local ordinances.

Dated: February 29, 1988.

Troy E. Wade II,

Acting Assistant Secretary, Defense Programs Department of Energy.

BILLING CODE 6450-01-M

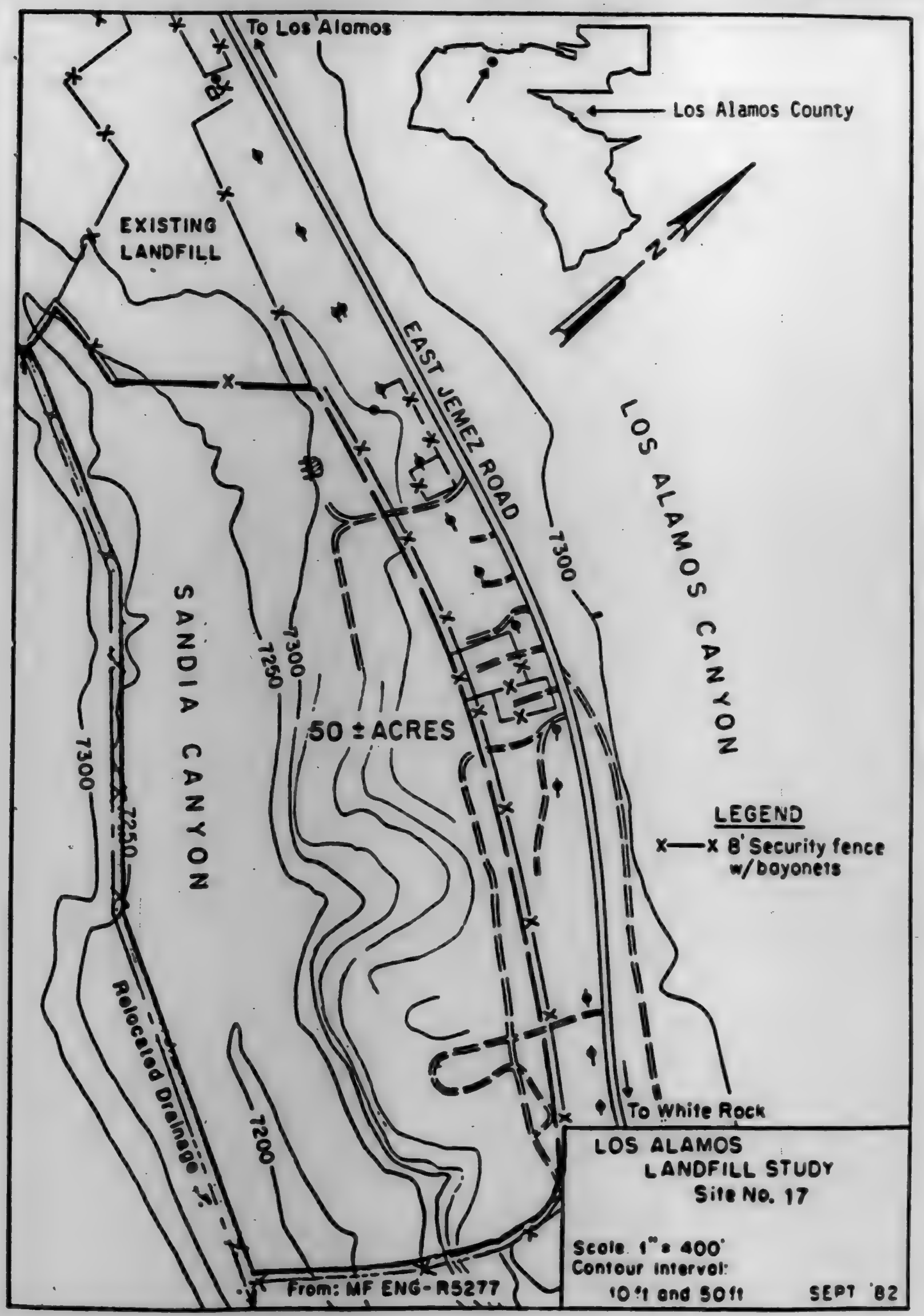
To Los Alamos
Los Alamos County
N
EXISTING LANDFILL
EAST JEMEZ ROAD
LOS ALAMOS CANYON
SANDIA CANYON
50 ± ACRES
7300
7250
7200
Relocated Drainage
To White Rock
LEGEND
x—x 8' Security fence w/bayonets
LOS ALAMOS LANDFILL STUDY
Site No. 17
Scale 1" = 400'
Contour interval: 10 ft and 50 ft
SEPT '82
From: MF ENG-R5277

[FR Doc. 88-5049 Filed 3-7-88; 8:45 am]

BILLING CODE 6450-01-C

Voluntary Agreement and Plan of Action To Implement The International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on March 15 and 16, 1988, and possibly continuing on March 17, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 2:30 p.m. on March 15. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry technical subgroup which has been established by the IEA for the preparation of the sixth IEA Allocation Systems Test (AST–6). The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

1. Adoption of the agenda.
2. Review of the draft AST–6 Test Guide. The following elements will require special attention:
    a. Scope and possible scenarios.
    b. Test duration/number of cycles.
    c. Sequence of activities.
    d. Timetable: Work on weekends and holidays.
    e. Consideration of price elements in AST–6.
    f. The voluntary offer process.
    g. Random non-implementation of some voluntary offers.
3. ISAG staffing.
4. Preparations for briefing sessions.
5. Supply Data Book.
6. Other issues.
7. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee A of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, March 2, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88–5049 Filed 3–7–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–244–000 et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Co. et al.

March 2, 1988.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88–244–000]

Take notice that on February 18, 1988, El Paso Natural Gas Company ("El Paso"), a Delaware corporation, whose mailing address is Post office Box 1492, El Paso, Texas, 79978, filed an application at Docket No CP88–244–000, under section 7(b) of the Natural Gas Act, for permission and approval to (i) abandon by conveyance to Meridian Oil Production Inc. (MOPI) certain existing pipeline and metering facilities, hereinafter referred to as the "Quinlan System," located in Woodward County, Oklahoma and (ii) abandon the delivery of gas to Northern Natural Gas Company, Division of Enron Corp. (Northern),[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that by orders issued July 18, 1973, as amended, and January 2, 1975 at Docket Nos. CP73–220 and CP75–102, respectively, El Paso received Commission authorization for: ((i) The construction and operation of certain facilities comprising the Quinlan System; and (ii) the delivery, on an exchange basis, to Northern of certain quantities of natural gas produced in the Northwest Quinlan Field supply area of the Hugoton-Andarko Basin in Woodward County, Oklahoma. It is stated that the quantities of natural gas obtained by El Paso are delivered by El Paso to Northern in Woodward County, Oklahoma, by means of the Quinlan System as a part of the total exchange quantities which El Paso has heretofore been authorized to deliver to Northern in accordance with the "1963 Services Agreement" dated August 17, 1962, as amended, between El Paso and Northern.

The application states further that El Paso notes that the Quinlan System has a maximum design capacity of approximately 8,470 Mcf per day. El Paso indicates that the production tests and reserve and deliverability data developed in 1972 and 1973 indicated that the total proven recoverable gas reserves underlying a portion of El Paso's then present total dedicated leasehold acreage in the Northwest Quinlan Field were estimated at 26.4 Bcf. However, it is stated that by 1975 El Paso was required to install and operate a 350 horsepower field compressor unit for the purpose of offsetting the rapidly declining reservoir pressures in the Northwest Quinlan Field and thereby enable continued production from the above area. It is further stated that this trend of rapidly declining reservoir pressures, as well as significant reductions in supplies available from the Northwest Quinlan Field, has continued. Specifically, based on reserve and availability studies for the Northwest Quinlan Field as of July 1, 1986, El Paso has determined that the remaining recoverable reserves are now estimated at 8.3 Bcf. El Paso states that these reserves equate to an estimated average day availability of 2,400 Mcf, 2,300 Mcf and 2,200 Mcf for the years 1987, 1988, 1989 and 1990, respectively. With the lower volumes available from the Northwest Quinlan Field, El Paso's states that unit costs in the operation of the Quinlan System have continued to rise.[2] Based upon the Quinlan System's decreasing volumes and increasing unit cost, El Paso has determined the system to be uneconomical for El Paso to continue to own and operate. Moreover, El Paso states that low market requirements cannot justify the continued operation of the Quinlan System, which serves as a gathering facility for a small quantity of gas. Therefore, it is stated that continued operation of the Quinlan System would frustrate El Paso's goal of optimizing system operations.

El Paso concluded that the Quinlan System no longer was necessary as an integral system gas supply acquisition facility and therefore, was a candidate for abandonment. It is stated that MOPI indicated to El Paso an interest in acquiring the Quinlan System to

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[1] Specifically, the Quinlan System includes: (i) One (1) 350 horsepower field compressor unit; (ii) approximately 28.72 miles of 6–5/8" O.D. pipeline; (iii) approximately 23.30 miles of 4–½" O.D. and 6–⅝" O.D. well-tie and gathering pipelines; (iv) one (1) 16 MMcf/d dehydration facility; and (v) one (1) dual 4–½" O.D. meter station. Only the facilities set forth under items (ii) and (v) above are subject to the instant abandonment application. The facility under item (i) will be abandoned under the provisions of El Paso's blanket authority at Docket No. CP82–435 and the facilities under items (iii) and (iv) are non–jurisdictional, affect no jurisdictional services, other than those described herein, and thus require no abandonment authorization.

[2] Based upon the operating costs for the twelve (12) months ended November 30 .1987, which includes depreciation and excludes return and taxes, and assuming an estimated average day availability of 2,400 Mcf, Applicant's unit rate is $0.3785.

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facilitiate its existing and future gas acquisition and marketing efforts in the proximity of said system. It is stated that as a result of MOPI's interest in the Quinlan system, El Paso and MOPI have entered into an Agreement of Sale Concerning the Quinlan Field Plant and Gathering System dated January 29, 1988 ("Agreement"). El Paso states it agreed to sell the Quinlan System to MOPI at a sales price of $100,000.00. Accordingly, El Paso herein proposes to abandon by conveyance to MOPI: (1) Approximately 28.72 miles of 6–5/8" O.D. pipeline; and (2) one (1) dual 4–½" O.D. meter station. MOPI will continue to operate the Quinlan System as a gathering facility. However, it is stated that MOPI will not enter into any jurisdictional exchange agreements with any interstate pipelines. It is stated that abandonment of the Quinlan System will have a *de minimis* effect upon El Paso's system gas supply activities, as well as the existing exchange arrangement with Northern.[3] Further, it is stated that the proposed abandonment will have no significant effect upon EL Paso's ability to render natural gas service to its customers in the same manner as existed prior to the subject abandonment. Finally, it is further stated there will be no adverse environmental effects upon effectuation of the abandonment proposed herein. It is indicated that the proposed abandonment will not require any change in El Paso's FERC Gas Tariff, and no material change in El Paso's average cost-of-service will result therefrom.

Comment date: March 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP85–511–003]

Take notice that on February 12, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–511–003 a petition to amend the Commission order issued February 24, 1987, in Docket Nos. CP85–511–000 and CP85–511–001 so as to change the effective date of Northern's General Service Rate Schedule (Rate Schedule GS–1) and to request rate approval in accordance with that originally proposed in Northern's Stipulation and Agreement of Settlement at Docket No. RP82–71–000 (Docket No. RP82–71–000 settlement), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued February 24, 1987, in Docket Nos. CP85–511–000 and CP85–511–001, Northern was granted authorization to establish Rate Schedule GS–1. It is indicated that such order granted authority for Rate Schedule GS–1 to become effective October 27, 1985, instead of March 27, 1985, as requested.

Nothern is presently requesting authorization to permit an effective date of March 27, 1985, as agreed to in the Docket No. RP82–71–000 settlement. Northern states that the March 27, 1985, effective date was an integral part of the settlement negotiated by all parties to the Docket RP82–71–000 Settlement and that this proposed effective date would result in great benefit to Northern's firm entitlement customers by further providing an economical source of natural gas from March 27, 1985, to October 27, 1985.

Northern also requests rate approval in accordance with that originally proposed in the Docket No. RP82–71–000 settlement. It is stated that such rate derivation is included in Exhibit P to this petition to amend and that this rate would be effective for the limited term from March 27, 1985, to October 26, 1985. No other changes are proposed.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP88–226–000]

Take notice that on February 5, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–226–000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon sales service in excess of its wholesale customers' currently effective Seasonal Entitlements, for authorization to implement a new rate schedule for interruptible sales service, and for blanket authorization to increase and decrease seasonal levels of service to serve future increases and decreases in Seasonal Entitlements on a firm basis, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant proposes the following changes in its current levels of service and effective tariff:

1. To authorize the seasonal level of service for each wholesale customer at a level equivalent to the customer's currently effective Seasonal Entitlements, stated separately for the Winter Season and the Summer Season, thereby abandoning any obligation Applicant may have to provide sales service in excess of the Seasonal Entitlement level;
2. To include a new rate schedule in its tariff for seasonal sales overruns, pursuant to which Applicant would deliver on an interruptible basis quantities of gas in excess of Seasonal Entitlements; and
3. To adjust from time to time, on a self-implementing basis, its authorized seasonal levels of service for each wholesale customer within that customer's Contract Demand level as necessary to correspond to future increases and decreases in the customer's Seasonal Entitlements made in accordance with Applicant's FERC Gas Tariff.

Applicant submits that the requested abandonment and certificate authorizations are required by the public convenience and necessity since these proposals are consistent with the Commission's order in Docket No. RP87–93–000, which indicated that any sales made by Applicant in excess of its customers' Seasonal Entitlements would constitute interruptible service and that Applicant's firm sales obligation on a seasonal basis necessarily must be limited to its customers' Seasonal Entitlements. Applicant states it has never been in a position to serve its customers' daily contract demands every day of the year, and that while it recognizes that it must stand ready to supply the Total Daily Entitlements of its customers on any given day, it has never had either the gas supplies or the transmission capacity necessary to serve the aggregate of its customers' contract demands every day of the year.

Applicant claims that the ability of its customers to purchase substantial portions of their requirements from sources other than Applicant has resulted in the customers using Applicant as a backstop for their other sources of supply, and that as a result it is seeking to establish a sales obligation which bears some logical resemblance to customers' anticipated needs for gas supply from Applicant.

Applicant states that after its firm sales obligation has been defined a mechanism will be needed to enable Applicant to accommodate requests by its wholesale customers for service in excess of their Seasonal Entitlements. Applicant therefore proposes to establish Rate Schedule SO to provide seasonal overrun services in essentially the same way it uses its Rate Schedule SR to deliver quantities of gas on a daily basis in excess of its customers' certificated contract demands. It is claimed that Rate Schedule SO is similar in all respects to Applicant's Rate Schedule SR except that it would accommodate seasonal overruns instead of daily overruns. It is stated that deliveries by Applicant under Rate Schedule SO would be made on an interruptible basis, with the gas being priced at the then-effective 100 percent load-factor rate under Rate Schedules CDS and G and that the service would have the same priority as interruptible transportation service.

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[3] The existing exchange point between El Paso and Northern will be retained under the "1963 Services Agreement" dated August 17, 1962, as amended, between El Paso and Northern until such time as El Paso no longer has gas available for exchange delivery at such point.

Applicant states that section 16 of the General Terms and Conditions its FERC Gas Tariff provides its wholesale customers with the right to increase or decrease their Seasonal Entitlements, subject to certain conditions and limitations, and that section 16 also provides that Applicant may accommodate a requested increase in Seasonal Entitlements whenever and to the extent the increase will not adversely impact its ability to render adequate service to other customers under its firm service rate schedules.

Applicant claims that if it is permitted to reduce its certificated levels of service, authorization would then be required to adjust its levels of service each time it grants an increase or decrease in Seasonal Entitlements and that Applicant would be precluded from serving any increase or decrease in firm Seasonal Entitlements until it receives authorization from the Commission. Applicant anticipates that this process could place a substantial burden upon the Commission and its staff, as well as upon Applicant and its customers, and to obviate the need for the preparation and the processing of numerous applications requesting specific authorization to effectuate minor changes in authorized services, Applicant requests blanket authority to increase, and pre-granted abandonment authority to decrease, its certificated seasonal levels of service. Applicant proposes in this regard to automatically adjust, on a self-implementing basis, its seasonal firm sales obligation to accommodate increases or decreases in Seasonal Entitlements and that no later than 30 days after the effective date of any such increase or decrease, Applicant would file the revised service agreement and the revised tariff sheets necessary to conform its Index of Entitlements with the Commission, which would serve as notice to the Commission, Applicant's customers, and the general public.

Comment Date: March 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP88-233-000

Take notice that on February 12, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-233-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to construct and operate an additional delivery point, consisting of measuring, regulating and appurtenant facilities, in Johnson County, Missouri, for the sale and delivery of gas to The Kansas Power and Light Company (KPL Gas Service), under the authorization issued in Docket No. CP82-479-000, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG state KPL Gas Service has requested this additional delivery point in order to serve certain space heating requirements at Whiteman Air Force Base. It is stated that, the projected volume of delivery through these facilities is approximately 1,486 Mcf the first year and 21 Mcf on a peak day increasing to 31,812 Mcf annually and 141 Mcf on a peak day by the third year. It is estimated that the total cost of the facilities is $13,220, which will be paid from available cash.

WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP88-201-000]

Take notice that on January 19, 1988, as supplemented February 16, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-201-000, a request pursuant to §§ 157.205 and 157.212(a) of the Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212(a)) for authorization to add a new transportation receipt point and a new delivery point for Mountain Fuel Resources, Inc. (MFR), an existing customer of Northwest's, under the blanket authorization issued September 1, 1982, to Northwest in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that by Commission order issued November 24, 1982, in Docket No. CP82-149-000 (21 FERC ¶62,310), Northwest was authorized to transport, on an interruptible basis, up to 35,000 MMBtu equivalent of natural gas per day for MFR pursuant to a March 27, 1981, transportation and exchange agreement (agreement). Specifically, the gas acquired by MFR in the designated Patterson Canyon and Bug Field areas of southeastern Utah and tendered to Northwest at the Dove Creek receipt point on Northwest's mainline would be transported by Northwest and delivered to MFR at the Piceance Creek delivery point in Rio Blanco County, Colorado.

It is also stated that Northwest and MFR entered into an amendment dated October 1, 1987, to the agreement to add the Papoose interconnect in Dolores County, Colorado, as a new receipt point and the Crossover 16 interconnect in Sweetwater County, Wyoming, as a new delivery point.

Northwest states that MFR is presently purchasing gas in the Bug Field and Patterson Canyon area which is processed at the Dove Creek processing plant and then delivered to Northwest at Dove Creek, the original transportation receipt point under the agreement. Inasmuch as a portion of this gas is pipeline qualify dry gas, the producers selling to MFR want it delivered directly to Northwest and to bypass the processing plant. The addition of Papoose as a second receipt point would allow the subject gas to bypass this plant. Northwest also states that MFR has informed Northwest that approximately 2,000 MMBtu equivalent of natural gas per day of the approximately 8,000 MMBtu equivalent of natural gas per day currently being transported under the agreement would be delivered to Northwest at the Papoose receipt point instead of at the existing Dove Creek receipt point.

Northwest states that MFR supplies natural gas through two components of its system, a northern component and a southern component. The original transportation delivery point under the agreement is located on MFR's southern system.

It is Northwest's understanding that MFR has an excess supply of natural gas on its southern system so that the addition of the Crossover 16 delivery point on MFR's northern system would allow MFR the flexibility of utilizing the subject natural gas on its system where it is needed the most. It is also stated that currently, when it is not needed on MFR's southern system, approximately 8,000 MMBtu equivalent of natural gas per day is being transported under the agreement for delivery to the Crossover 16 delivery point for use on MFR's northern system.

Northwest requests authority to utilize these new points under the agreement in order to provide MFR additional flexibility both in tendering its supplies in the Patterson Canyon and Bug Field areas of southeastern Utah to Northwest for transportation and in taking deliveries of transported volumes.

It is alleged that the total quantity of natural gas to be transported for MFR would not exceed the currently authorized maximum quantities of 35,000 MMBtu equivalent of natural gas per day for MFR pursuant to a March 27, 1981, transportation and exchange agreement. During 1987, Northwest transported an average of approximately 7,183 MMBtu equivalent of natural gas per day for MFR under the agreement. Northwest states that the proposed interruptible deliveries would have no significant impact on Northwest's peak day and annual deliveries.

Northwest asserts that it has sufficient existing mainline capacity to accomplish the deliveries at the proposed additional delivery point without detriment or disadvantage to any of its existing customers. Northwest also states that the proposed delivery point addition is not prohibited by Northwest's existing tariff.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company, a Division of Enron Corp.

[Docket No. CP88-240-000]

Take notice that on February 18, 1988, Northern Natural Gas Company, a Division of Enron Corp. (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-240-000, pursuant to § 284.223 of the Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Shell Gas Trading Company (Shell Gas), a marketer of natural gas, under the blanket certificated issued in Docket No. CP86-435-000, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a Gas Transportation Agreement dated January 24, 1988, Northern will transport up to 50,000 MMBtu/d for Shell Gas from one point of receipt to Texas offshore to one point of delivery in Texas. Construction of facilities will not be required to provide the proposed service.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Border Pipeline Company

[Docket No. CP88-250-000]

Take notice that on February 23, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-250-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) and the Natural Gas Policy Act (NGPA) (18 CFR 284.223) for authorization to provide a transportation service for Petrorep (Canada) Ltd. (Petrorep) a marketer, under the certificate issued in Docket No. CP86-395-000 and 001 pursuant to section 7(c) of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border states that pursuant to an IT-1 Transportation Agreement dated December 15, 1987, it proposes to transport natural gas for Petrorep from a point of receipt located near Port of Morgan, Montana, to delivery points interconnecting Northern Border and Northern Natural Gas Company, the immediate downstream transporter.

Northern Border further states that the maximum daily and annual quantities would be 25,000 MMBtu and 8,100,000 MMBtu, respectively. Northern Border asserted that service under § 284.223(a) commenced January 12, 1988, as reported in Docket No. ST88-2189-000.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Border Pipeline Company

[Docket No. CP88-251-00

Take notice that on February 23, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-251-000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for Dyco Gas Marketing (Dyco), a marketer, under the certificate issued in Docket Nos. CP86-395-000 and CP86-395-001, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border states that pursuant to an IT-1 Transprotation Agreement dated December 15, 1987, it proposes to transport natural gas for Dyco from a point of receipt located near Port of Morgan, Montana, to delivery points interconnecting Northern Border and Northern Natural Gas Company, the immediate downstream transporter.

Northern Border further states that the maximum daily and annual qualities would be 100,000 MMBtu and 36,500,000 MMBtu, respectively. Northern Border asserted that service under § 284.223(a) commenced January 1, 1988, as reported in Docket No. ST88-1920-000.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Border Pipeline Company

[Docket No. CP88-252-000]

Take notice that on February 23, 1988 as supplemented February 25, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-252-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Placer CEGO Petroleum, a Division of Placer Dome Inc. (Placer Dome), a producer, under the certificate issued in Docket No. CP86-395-000 and CP86-395-001 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern Border states that pursuant to a transportation agreement dated November 27, 1987, it proposes to transport natural gas for Placer Dome from a point of receipt located near Port of Morgan, Montana, to four specified delivery points located in Iowa, Minnesota, North Dakota and South Dakota interconnecting Northern Border and northern Natural Gas Company, the immediate downstream transporter. Northern Border also indicates that the transportation agreement provides that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule IT-1.

Northern Border further states that the average day, maximum day, and annual quantities would be 25.0 billion Btu, 25.0 billion Btu, and 8,100 billion Btu, respectively. Northern border asserted that service under § 284.223(a) commence January 21, 1988, as reported in Docket No. ST88-2189-000.

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Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP88–237–000]

Take notice that on February 16, 1988, Arkla Energy Resources, a Division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88–237–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish and operate an additional delivery point for sales service to a refinery owned by Calumet Industries, Inc. (Calumet), in Bossier Parish, Louisiana, under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection

AER states that Calumet has installed a hydro treating facility that will increase the peak requirements of the Calumet refinery to approximately 6,500 MMBtu per day. It is stated that AER and Calumet have entered into agreements providing for the delivery to Calumet of volumes up to that amount through a combination of sales from AER's system supply and volumes purchased from other suppliers and transported by AER to Calumet.

AER further states that, because of capacity constraints at AER's existing delivery point and increased pressure requirements for the volumes to be used in the hydro treating facility, it has installed at an estimated cost of $93,167 a new 4-inch tap and appurtenant facilites downstream of the existing delivery point to the Calumet refinery. AER asserts that it has constructed these facilities pursuant to section 311 of the Natural Gas Policy Act of 1978 and has transported volumes to the Calumet plant through the new tap for the purpose of testing the hydro treating facility. AER requests authorization to operate said tap and appurtenant facilities under section 7(c) of the Natural Gas Act and establish these facilities as a new sales delivery point so that it can also deliver to Calumet sales gas to be used in the hydro treating facility.

Comment date: April 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to interene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5055 Filed 3–7–88; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed Amended Systems of Records and Final Amendment to a System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed amended systems of records—Financial Institutions Investigative and Enforcement Records System (formerly Bank and Proposed Bank Irregularity Records System), Changes in Bank Control Ownership Records, and Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records (formerly Municipal Securities Principals and Representatives System); and final amendment to a system of records—Telephone Call Detail Records.

SUMMARY: The FDIC is issuing in proposed form amendments to three of its existing Privacy Act systems of records and in final form an amendment to another system. First, the FDIC proposes to broaden its system related to those individuals who have been involved in reported irregularities at FDIC-insured banks and individuals who have been the subject of background checks bearing on an individual's fitness to be involved with FDIC-insured banks so that the system will no longer be limited to FDIC-insured institutions.

Second, the FDIC is proposing to amend its system related to individuals who have been involved in the change of bank control or ownership in FDIC-insured banks to reflect that the scope of the information actually contained in the system is less than the notice of the existing system indicates and that all information contained in the system is public.

Third, the FDIC is proposing to amend its existing Privacy Act system of records related to persons who are or seek to be municipal securities principals and representatives associated with municipal securities dealers which are insured state nonmember banks so that it will encompass certain information about associated persons of government securities brokers and dealers which are insured state nonmember banks. The forms containing the information about government securities brokers and dealers are required by Department of the Treasury regulations issued under the Government Securities Act of 1986, effective July 25, 1987. Because of the similarities between the Forms G–FIN–4 and G–FIN–5 for government securities brokers and dealers and Forms MSD–4 and MSD–5 for municipal securities principals and representatives, the existing system is a logical location into which to integrate Forms G–FIN–4 and G–FIN–5.

Finally, the FDIC is amending in final form its recently established Telephone Call Details Records system to limit disclosures under routine use no. 6 of that system to federal agencies exclusively, when a request for information is made in connection with the hiring or retention of an employee.

DATES: Comments on the amendments to system FDIC 30–64–0002, FDIC 30–64–0004, and FDIC 30–64–0016 must be submitted by April 7, 1988. The amendments will become effective May 23, 1988, unless a superseding notice to the contrary is published before that date. The amendment to system FDIC 30–64–0020 is effective on March 8, 1988.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 of the same address between 9:00 a.m. and 5:00 p.m., Monday-Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Assistant Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–3811.

SUPPLEMENTARY INFORMATION: As part of its continuing review of its Privacy Act systems of records, the FDIC is proposing to amend three of its existing systems of records and is amending in final form another system. First, the FDIC is proposing to amend its Bank and Proposed Bank Irregularity Records System. Currently, the system covers records about individuals who have been involved in reported irregularities at FDIC-insured banks and individuals who have been subject of background checks bearing on an individual's fitness to be a director, officer, employee, or controlling shareholder of an FDIC-insured bank. The amended system will be entitled "Financial Institutions Investigative and Enforcement Records System" and will cover the same types of materials as the existing system except that the categories of covered individuals will be expanded from those who are or wish to be associated with FDIC-insured banks to those who are or wish to be associated with any type of financial institution.

Secondly, the existing Changes in Bank Control Ownership Records system will be amended to reflect the fact that much of the information listed in "Categories of records in the system" in the existing system notice has in practice not been filed in the system. The information contained in the system has been limited to the information contained on Form FDIC 6620/06, entitled "Notice of Acquisition of Control and Changes in Bank Ownership," the contents of which are described under "Categories of records in the system" in setting out the proposed amended sytem below. The amended system will reflect the actual FDIC recordkeeping practice and will also complement § 309.4(d)(2) of the FDIC's regulations (12 CFR 309.4(d)(2)). Section 309.4(d)(2) provides that certain information about notices filed with the FDIC pursuant to the Change in Bank Control Act of 1978 will be made available, upon request of any member of the public, at the appropriate FDIC regional office. The amended system will contain exactly that information available under § 309.4(d)(2) in a form indexed by name of the acquiring person(s).

Third, the FDIC is proposing to amend its system of records regarding persons who are or seek to be municipal securities principals and representatives associated with municipal securities dealers which are insured state nonmember banks. The Treasury Department has adopted a rule (17 CFR 400.4) that requires every associated person (as defined in 17 CFR 400.3(c)) of a financial institution that is a government securities broker or dealer to file with such financial institution a completed Form G–FIN–4, unless such person has on file with such financial institution a completed and current Form U–4 or Form MSD–4, which are forms required by associated persons of broker/dealers and bank municipal securities dealers. Further, every government securities broker or dealer that is a financial institution is required to file such forms, within 10 days after receipt, with its appropriate regulatory agency. In addition, when an associated person's employment or association with a financial institution is terminated, notification of termination (Form G–FIN–5) is required to be filed with the financial institution's appropriate regulatory agency within 30 days after termination unless the financial institution has filed a Form U–5 or MSD–5 with respect to such person. In accordance with section 3(a)(34)(G) of the Securities Exchange Act of 1934, as amended by the Government Securities Act of 1986, the FDIC is the appropriate regulatory agency for FDIC-insured banks other than a member of the Federal Reserve System or a federal savings bank. While the FDIC has generally been responsible for the supervision of insured, state-licensed branches of foreign banks, section 3(a)(34)(G) specifically names the Federal Reserve Board as the appropriate regulatory agency for such branches with respect to government securities brokers or dealers.

Similarly, under rules of the Municipal Securities Rulemaking Board ("MSRB"), financial institutions that are municipal securities dealers must obtain and verify information regarding associated persons' work history, background, and professional qualifications. The FDIC, OCC, and the Federal Reserve Board developed Forms MSD–4 and MSD–5 for reporting information on associated persons of municipal securities dealers that are banks and arranged for the National Association of Securities Dealers, Inc. ("NASD") to operate a central computerized records system, which would be separate from but comparable to that maintained for securities industry personnel. Each agency separately adopted a Privacy Act system of records with respect to the institutions it supervises at the time the arrangements with NASD were made. The system of records currently maintained by the FDIC for persons engaged in municipal securities dealer activities, as required by rules of the MSRB, is well suited for the maintenance of forms relating to persons associated with financial institutions are government securities brokers or dealers, as is required by Treasury Department regulations.

Finally, the FDIC is changing the scope of routine use no. 6 of its recently adopted Telephone Call Detail Records system. Routine use no. 6 currently permits information in the system to be disclosed in response to a federal, state, local, or private employer's request made in connection with the hiring or retention of an employee or, in the case of a government agency, the letting of a contract or issuance of a grant, license, or other benefit. In accordance with Office of Management and Budget requirements, the scope of the routine use is hereby limited to disclosures to federal agencies exclusively. Accordingly, the FDIC proposes to adopt the amended systems of records, FDIC 30–64–0002, FDIC 30–64–0004, and FDIC 30–64–0016, and adopts in final form the amendment to system or records, FDIC 30–64–0020, as set forth below

FDIC 30-64-0002

SYSTEM NAME:

Financial Institutions Investigative and Enforcement Records System.

SYSTEM LOCATION:

Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who participate or have participated in the conduct of or who are or were connected with financial institutions, such as directors, officers, employees, and customers, and who have been named in criminal referrals, investigatory records, or administrative enforcement orders or agreements. Financial institutions include banks, savings and loan associations, credit unions, and other similar institutions, whether or not federally insured and whether or not established or proposed.

(2) Individuals, such as directors, officers, employees, proponents, controlling shareholders, or person seeking control of financial institutions, who are the subject of background checks designed to uncover criminal activities bearing on the individual's fitness to be a director, officer, employee, or controlling shareholder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains, as pertinent, interagency or intra-agency correspondence or memoranda; criminal referral reports; newspaper clippings; federal, state, or local criminal law enforcement agency investigatory reports, indictments and/or arrest an conviction information; and administrative enforcement orders or agreements. Certain records contained in this system (principally criminal investigation reports prepared by the Federal Bureau of Investigation, Secret Service, and other federal law enforcement agencies) are the property of those agencies. Upon receipt of a request for such records, the FDIC will immediately notify the proprietary agency of the request and seek guidance with respect to disposition. The FDIC may forward the request to that agency for processing in accordance with that agency's regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5, 6, 7, 8, 9, 18, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1815, 1816, 1817, 1818, 1819, 1828, 1829).

ROUTINE USES OF RECORDS MAINTAINED (OTHER THAN PROPRIETARY RECORDS OF ANOTHER AGENCY) INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(2) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

(3) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(4) To a financial institution affected by enforcement activities or reported criminal activities.

(5) To other financial institution supervisory authorities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on file cards, in file folders, and on computer discs.

RETRIEVABILITY:

Indexed by name of the individual.

SAFEGUARDS:

Index cards and file folders are maintained in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained for ten years from the date of the creation of the record, then destroyed by shredder. Records contained on computer discs are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Individuals requesting their own records must provide their name and address and a notarized statement attesting to the individual's identity.

RECORD ACCESS PROCEDURE:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Financial institutions; financial institution supervisory or regulatory authorities; newspapers; criminal law enforcement and prosecuting authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT.

Pursuant to § 310.13(a) of the FDIC's rules and regulations, investigatory material compiled as part of this system for law enforcement purposes is exempted from the provisions of § 310.10(d)(2) of the FDIC's rules and regulations and may be withheld from disclosure to the extent that such withholding is permissible under any of the exemptive provisions of the Freedom of Information Act (5 U.S.C. 552). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

FDIC 30-64-0004

SYSTEM NAME:

Changes in Bank Control Ownership Records.

SYSTEM LOCATION:

Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW, Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

Individuals who have been involved in a change of bank control or ownership of FDIC-insured banks or who filed or were a member of a group that filed a Notice of Acquisition of Control of an FDIC-insured bank.

CATEGORIES OF RECORDS IN THE SYSTEM:

For proposed transactions, the names of proposed acquirers; name and location of the bank; number of shares to be acquired and outstanding; date Change in Control Notice was accepted by the FDIC regional office; name and location of the newspaper in which the notice was published and date of publication. For consummated transactions, names of sellers/transferors; names of purchasers/transferees and number of shares owned

after transaction; date of transaction on bank's books; number of shares acquired and outstanding. If stock of a holding company is involved, the name and location of the holding company and the bank it controls.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the system is available to the general public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained on file cards, in file folders, and on computer discs.

RETRIEVABILITY:

Indexed by name of the individual.

SAFEGUARDS:

Index cards and file folders are maintained in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW, Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Individuals requesting their own records must provide their name and address.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Persons who are acquiring control of an FDIC-insured bank, the bank or holding company in which control is changing or has changed; state and federal financial institution supervisory authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FDIC 30-64-0016

SYSTEM NAME:

Municipal Securities Dealers and Government Securities Brokers/Dealers Personnel Records.

SYSTEM LOCATION:

Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW, Washington, DC 20429. Records are also stored in computerized files maintained off-premises on a contract basis with the National Association of Securities Dealers, Inc., 9513 Key West Avenue, Rockville, Maryland 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons who are or seek to be municipal securities principals or municipal securities representatives associated with muncipal securities dealers which are FDIC-insured, state-chartered banks (including insured state-licensed branches of foreign banks), not members of the Federal Reserve System, or are subsidiaries, departments, or divisions of such banks.

(2) Persons who are or seek to be persons associated with government securities dealers or government securities brokers which are FDIC-insured state-chartered banks, other than members of the Federal Reserve System, or are departments or divisions of such banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain identifying information as well as educational, employment, and disciplinary information, if any, and, where applicable, information regarding termination of employment of individuals covered by the system. Identifying information includes name, addresses, date and place of birth, and may include social security account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 15B, 15C, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4, 78o-5, and 78w).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE: INFORMATION IN THE SYSTEM MAY BE DISCLOSED:

(1) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(2) To the appropriate federal, state, local, or foreign agency or authority or to a self-regulatory organization, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto.

(3) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(4) To assist in any proceeding in which the federal securities or banking laws are in issue or a proceeding involving the propriety of a disclosure of information contained in this system, in which the FDIC or one of its past or present employees is a party.

(5) To a federal, state, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to an FDIC inquiry concerning a person who is or seeks to be associated with a municipal securities dealer as a municipal securities principal or representative or a government securities broker or a government securities dealer (as described in "Categories of individuals covered by the system" above).

(6) To a federal, state, local, or foreign governmental authority or a self-regulatory organization in connection with the issuance of a license or other benefit to the extent that the information is relevant and necessary.

(7) To a registered dealer, a registered broker, a registered municipal securities dealer, a government securities dealer, a government securities broker, or an insured bank that is a past or present employer of an individual that is the subject of a record, or to which such individual has applied for employment, for purposes of identity verification or for purposes of investigating the qualifications of the subject individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer discs.

RETRIEVABILITY:

Indexed by name, social security number, and/or sequence number

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assigned by the National Association of Securities Dealers, Inc.

SAFEGUARDS:

File folders are stored in lockable metal file cabinets; computers discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEM MANAGER(S) ADDRESS:

Associate Director, Supervision, Enforcement & Surveillance Branch, Division of Bank Supervision, FDIC, 550 17th Street, NW., Washington DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Individuals requesting their own records must provide their name and the date and place of their birth, and may be required to include a notarized statement attesting to identity.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained, municipal securities dealers and government securities dealers and brokers (as such dealers are described in "Categories of individuals covered by the system" above), and federal, state, local, and foreign governmental authorities and self-regulatory agencies which regulate the securities industry.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FDIC 30–64–0020

SYSTEM NAME:

Telephone Call Detail Records.

(Complete text appears at 52 FR 34296 (Sept. 10, 1987))

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

(6) To respond to a federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this first day of March, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 88–4960 Filed 3–7–88; 8:45 am]

BILLING CODE 6714–01–M

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed changes to a system of records: "Employee Financial Disclosure Statements."

SUMMARY: The FDIC is issuing for public comment a revision to its system of records for Employee Financial Disclosure Statements. This change is being proposed to reflect the addition of the Confidential Report of Employment Upon Resignation to the system.

DATES: Comments must be submitted by April 7, 1988. The amendments will become effective April 22, 1988, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Assistant Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street NW., Washington, DC 20429, telephone (202) 898–3811.

SUPPLEMENTARY INFORMATION: The FDIC's Privacy Act system of records entitled "Employee Financial Disclosure Statements" is being amended to include within the categories of records in the system the Confidential Report of Employment Upon Resignation, which is designed to identify potential post-employment conflicts of interest and is used as a counseling tool as well as for enforcement of compliance with statutes governing the activities of former government employees. Documents related to the report will also be included in the system. The report is required pursuant to 12 CFR 336.24 and is intended for an employee to disclose pertinent information regarding prospective employment at least two weeks prior to the effective date of resignation. A companion amendment to the categories of individuals covered by the system will be made to account for the addition of the report to the system.

Accordingly, the Board of Directors of the FDIC proposes to revise the Employee Financial Disclosure Statements system to read as follows.

FDIC 30–64–0006

SYSTEM NAME:

Employee Financial Disclosure Statements.

(Complete text appears at 47 FR 42162 (Sept. 24, 1982).)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC officers and employees, including Special Corporation employees and employees occupying noncompetitive positions, required to file Public Financial Disclosure Reports pursuant to the Ethics in Government Act of 1978 (92 Stat. 1836); current and former employees required to file Confidential Statements of Employment and Financial Interests pursuant to Executive Order 11222 and 12 CFR Part 336; current and former bank examiners and assistant bank examiners required to file disclosures of their personal indebtedness to insured banks or affiliates thereof pursuant to Part 336; all current and former employees required to disclose their ownership of insured bank securities and other outside interests pursuant to Part 336; and all current and former employees required to file Confidential Reports of Employment Upon Resignation pursuant to 12 CFR Part 336.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Paragraph (4) is amended by removing the period at the end of the paragraph and inserting in its place "; and".

* * * * *

(5) Confidential Report of Employment Upon Resignation—Contains information as to the employee's prospective employer; the nature of the business or organizational activities of the prospective employer; the position that the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, if any, with the prospective employer; may also contain other documents related to the Confidential Report of Employment Upon Resignation generated in the course of administering the provisions of Executive Order 11222, as amended, and Part 336.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this first day of March, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–4961 Filed 3–7–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Reissuance of Ocean Freight Forwarder License; Interaped Systems, Inc. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date reissued
2984R	Interaped Systems, Inc., 496 S. Airport Blvd., So. San Francisco, CA 94080.	Feb. 5, 1988.
2426	Shigehiro Uchida dba Jupiter Forwarding Company, 2585 Commerce Way, City of Commerce, CA 90041.	Feb. 22, 1988.
1584A	Winair Freight, Inc., 5520 N.W. 35th Avenue, Miami, FL 33142.	Feb. 24, 1988.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 88–5010 Filed 3–7–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Pacific Freight, Inc., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Pacific Freight, Inc., 110 West Ocean Blvd., Suite 344, Long Beach, CA 90802
  Officers: Byeng Choll Chon, Pres./Dir./Stockholder, Seoung Rock Kim, Dir.

HWH Overseas, 99 Hudson Street, New York, NY 10013
  Officers: Wolfgang Anderson, Pres./Dir./Stockholder, George Pratsikas, Sec./Treasurer

Drew Freight, Inc., 29 Broadway, New York, NY 10006–3030
  Officer: Hernan Poza, Jr., Pres./Dir./Shareholder

Seajet Express Inc., 440 McClellan Highway, Suite 107, East Boston, MA 02128
  Officer: Ronald W. Heimann, President/Stockholder

International Shipping & Marketing, Inc., 11104 W. Airport Blvd., Suite 160, Stafford, TX 77477
  Officers: John C. Louviere, President, Janice L. Merten, Vice President, Samuel Griffin III, Stockholder

Immediate Transportation Company of New York, Inc., 100 Atlantic Avenue, Lynbrooke, New York 11563
  Officers: Steven M. Gelobter, President, Reginald Mantek, Vice President

Associated Customhouse Brokers, Inc., One Airport Way, Suite 205, P.O. Box 22670, Rochester, NY 14692
  Officers: Jerry J. Gambino, Jr., Pres./Treas./Stockholder, Johanna M. Gambino, Secretary, Jerry J. Gambino, Sr., Dir./Stockholder, Everett Gardner, Controller

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 2, 1988.

[FR Doc. 88–5011 Filed 3–7–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Transmares et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1258
Name: Violet A. Wilson dba Transmares
Address: No. 7 Helen Ave., Jefferson, LA 70121
Date Revoked: December 16, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2905
Name: Cargo Master Corp.
Address: 1462 N.W. 82nd Ave., Miami, FL 33126
Date Revoked: January 10, 1988
Reason: Failed to maintain a valid surety bond

License Number: 1061
Name: Mercury International Forwarders, Inc.
Address: 820 East D St., Wilmington, CA 90744
Date Revoked: January 11, 1988
Reason: Failed to maintain a valid surety bond

License Number: 12
Name: United States Forwarding Corporation
Address: One World Trade Ctr., #2109, New York, N.Y. 10048
Date Revoked: January 20, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2384
Name: Ark International Forwarding, Inc.
Address: 2250 N.W., 96th Ave., Bay 4, Miami, FL 33172
Date Revoked: January 28, 1988
Reason: Failed to maintain a valid surety bond

License Number: 782
Name: Beauseigneur Moving & Storage Corp.
Address: 242 East 122nd Street, New York, N.Y. 10035
Date Revoked: January 29, 1988
Reason: Failed to maintain a valid surety bond

License Number: 1221R
Name: Global International U.S.A., Inc.
Address: 21 West Street, New York, N.Y. 10006–2908
Date Revoked: February 6, 1988
Reason: Surrendered license voluntarily

License Number: 2155
Name: James J. Gallegos dba James J. Gallegos & Co.
Address: 10910 LaCienega, Inglewood, CA 90306
Date Revoked: Feburary 19, 1988
Reason: Failed to maintain a valid surety bond

License Number: 2299
Name: Oscar Import & Export Corp.
Address: 120 Broadway, New York, N.Y. 10005
Date Revoked: February 19, 1988
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 88–5012 Filed 3–7–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 52, No. 108, pp. 21375–21377, dated Friday, June 5, 1987) is amended to reflect changes to certain organizational titles and a minor realignment of functions within the Office of Management and Budget (OMB).

The specific changes to Part F. are as follows:

- Section FH.20.A.1., Office of Personnel, Health and Resource Management (FHA6) is amended by changing the organizational title to Office of Human Resources (FHA6).
- Section FH.20.A.1.a., Division of Classification and Organizational Analysis (FHA61) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Classification and Organizational Analysis (FHA61)

Plans, directs, and implements a comprehensive HCFA position classification and position management program. Classifies all central office wage grade and general schedule positions at or below the GS–15 level. Evaluates programs for adequacy and recommends corrective action when deficiencies are disclosed. Plans, implements, and monitors HCFA position classification surveys and issues reports and recommendations for improvements. Coordinates the survey results with the Office of the Secretary and/or the Office of Personnel Management. Interprets legislation, regulations, guides, directives and bulletins concerning position classification. Provides information on HCFA's classification structure for entry into the automated personnel information system and prepares statistical information related to HCFA's position classification program. Provides services, policy direction, and coordination with respect to organizational analysis functions and delegation of authority activities. Conducts studies of HCFA's organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization. Designs, develops, implements, and maintains a system for initiating, analyzing, reviewing, and approving HCFA-Wide program and administrative delegations of authority.

- Section FH.20.A.1.b., Division of Staffing and Employee and Health Services (FHA62) is amended by changing the organizational title to the Division of Staffing and Employee Services (FHA62) and deleting the functional statement in its entirety and replacing it with the following functional statement:

b. Division of Staffing and Employee Services (FHA62)

Provides service to all central office HCFA components in the areas of recruitment, in-service staffing, and pre-employment investigations for all types of appointments and all occupational classes and levels of work. Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optional staffing mixes, recruitment sources, qualification factors, etc. Interprets regulations, guides, directives, and bulletins related to staffing and personnel services. Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population. Plans and controls the central system for all personnel transaction processes, serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements, and other related areas. Plans, administers, and evaluates HCFA-wide employee relations activities. Provides general employee counseling on such matters as employee/management communication, retirement, life insurance, health plans, worker's compensation claims, and related areas. Serves as the central HCFA reference point for inquiries, guidance, and interpretation on employee relations matters. Processes insurance claims for survivors of deceased employees. Assures due process in adverse personnel actions and provides procedural advice in the processing of grievances and appeals under Agency and negotiated agreements. Directs programs for health nationwide, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the entire ethics program for both central and regional offices. Reviews the financial disclosure reports prior to Departmental submittal and coordinates outside activities requests and approvals.

- Section FH.20.A.1.c., Division of Policy, Performance, and Development (FHA63) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

c. Division of Policy, Performance, and Development (FHA63)

Provides leadership, direction, and control with respect to HCFA's personnel-related policies; employee training, career development, and counseling activities; and performance management and awards programs. Serves as the agency's representative in dealing with the Department of Health and Human Services, other Federal agencies, contractors, and employee/management/Union organizations. Plans, coordinates, and executes a wide range of major studies and projects involving personnel issues of Agency-wide magnitude.

- Section FH.20.A.1.d., Division of Labor/Management Relations (FHA64) is deleted in its entirety and replaced by the Labor/Management Relations Staff (FHA6–1). The new section reads as follows:

d. Labor/Management Relations Staff (FHA6–1)

Plans, directs, and administers HCFA-wide labor relations activities including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, and regulations. Serves as Agency representative in dealing with the Department of Health and Human Services, other Federal agencies, employee and supervisory organizations, and third-party representatives, including negotiations in the resolution of grievances and appeals under the negotiated grievance procedure. Formulates HCFA-wide policy regarding the development, implementation, and evaluation of labor relations activities. Provides management advisory service on all labor/management relations issues. Directs the development and implementation of a labor relations training program in conjunction with other Office of Human Resources components. Plans and coordinates the integration of the HCFA Labor Relations Program with other personnel management functions and related management assistance activities.

- Section FH.20.A.4., Management Planning and Analysis Staff (FHA–1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

4. Management Planning and Analysis Staff (FHA–1)

Provides management support to the Director of the Office of Management and Budget. Provides Agency-wide services, policy direction, and coordination with respect to HCFA's management planning and control programs; including workplanning, management analysis, management/productivity improvement functions, Privacy Act responsibilities, internal control program, advisory and assistance services, commercial and industrial activities, administrative issuances system, and memoranda of understanding and interagency agreements. Develops HCFA policy in these areas and assures the implementation of these policies throughout HCFA. Conducts special studies and analyses in these functional areas.

Date: February 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–4973 Filed 3–7–88; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 41780–41781, October 30, 1987), is amended to reflect the following changes:

1. Establish the Office on Smoking and Health at the division level within the Center for Health Promotion and Education;
2. Revise the functional statements for the Procurement and Grants Office, Office of Program Support, to reflect current operations and terminology;
3. Revise the functional statements for the AIDS Program, Center for Infectious Diseases, by substituting the term "human immunodeficiency virus (HIV)" for "HTLV–III/LAV;" and
4. Update the list of officials in the Order of Succession.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the heading and statements for the *Center for Health Promotion and Education (HCK), Office of the Director (HCK1)*, insert the following title and statements: *Office on Smoking and Health (HCK4)*. (1) Administers a national program to inform Americans about the dangers of tobacco use in order to reduce death and disability due to smoking and smokeless tobacco use; (2) promotes and stimulates research on the determinants and health effects of smoking and smokeless tobacco use; (3) coordinates all PHS research and educational programs and other HHS activities related to tobacco and health; (4) establishes and maintains liaison with other Federal agencies, private organizations, State and local governments, and international agencies on tobacco-and-health matters; (5) serves as a clearinghouse for the collection, organization, and dissemination of information on all aspects of tobacco and health; (6) develops materials on tobacco use in relation to health; (7) provides assistance for educational programs on smoking and health; (8) produces Congressionally-mandated Reports to Congress; (9) conducts surveys, and coordinates and conducts epidemiologic studies related to tobacco behavior and tobacco control; (10) provides staff support for a Congressionally-mandated Federal advisory committee on smoking and health; (11) pursuant to Public Laws 98–474 and 99–252, collects, maintains, and analyzes information provided by the tobacco industry on cigarette additives and smokeless tobacco additives and nicotine content; (12) serves as a World Health Organization (WHO) Collaborating Center on smoking and health; (13) serves as the lead for the Smoking and Health 1990 objectives for the Nation; (14) provides staff support to the Surgeon General on activities related to smoking and health.

After the heading for the *Procurement and Grants Office (HCA58)*, change the statement to read: (1) Advises the Director, CDC, and the Director's staff, and provides leadership and direction for CDC acquisition, assistance, and materiel management activities; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition, assistance, and materiel management areas; (3) obtains research and development, services, equipment, supplies, and construction through acquisition processes; (4) maintains personal property, transportation, and warehousing operations; (5) awards, administers, and terminates contracts, purchase orders, grants, and cooperative agreements; (6) maintains a continuing review of CDC-wide acqusition, assistance, and materiel mangement operations to ensure adherence to laws, policies, procedures, and regulations; (7) maintains liaison with HHS, PHS, GSA, and other Federal agencies on acquisition, assistance, and materiel management policy, procedure, and operating matters.

Under the heading *AIDS Program (HCRK)*, in item (1) change "HTLV–III/LAV" to "human immunodeficiency virus (HIV)," and in item (9) change "HTLV–III/LAV" to "HIV."

Section HC–C Order of Succession. After the first sentence, delete the listing of officials and substitute the following: (1) Deputy Director, (2) Assistant Director/Washington, (3) Assistant Director for Public Health Practice, (4) Assistant Director for International Health, (5) Assistant Director for Science, (6) Assistant Director for Minority Health, (7) Director, Office of Program Support, (8) Director, Office of Program Planning and Evaluation, (9) Deputy Director (AIDS).

Date: March 1, 1988.

Wilford J. Forbush,

Director, Office of Management/PHS

[FR Doc. 88–5018 Filed 3–7–88; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–3110–10–7202, NM 68533]

Realty Action-Exchange; Federal Minerals in Cibola, Valencia, Bernalillo and Socorro Counties, NM, for State of New Mexico Minerals Within El Malpais National Conservation Area and National Monument

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following described Federal mineral estate which is located under State surface estate within Cibola, Socorro, Valencia, and Bernalillo Counties has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 and section 503(a) of the Pub. L. 100–225 of December 31, 1987, which established the El Malpais National Conservation Area and National Monument.

New Mexico Principal Meridian

T. 3 N., R. 5 W.,
  Section 1, All;
  Section 12, All;
  Section 13, All;
  Section 24, N½, SW¼, N½SE¼,
    SW¼SE¼.

T. 3 N., R. 14 W.,
Section 26, S½;
Section 27, SE¼.
T. 4 N., R. 4 W.,
Section 2, Lots 8–9, E½SE¼.
T. 4 N., R. 5 W.,
Section 6, Lots 1–6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Section 12, All;
Section 24, All.
T. 4 N., R. 7 W.,
Section 24, SW¼NW¼;
Section 26, E½.
T. 4 N., R. 15 W.,
Section 6, Lots 1–13, SE¼, NE¼SW¼;
Section 8, All;
Section 17, N½, SE¼;
Section 21, E½, E½W½, W½NW¼,
Section 25, W½W½.
T. 5 N., R. 4 W.,
Section 4, Lots 1–4, S½N½, S½;
Section 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Section 8, All;
Section 10, All;
Section 14, NE¼, W½, N½SE¼, SW¼SE¼;
Section 18, Lots 1–4, E½, E½W½;
Section 20, All
Section 22, All;
Section 26, W½, W½SE¼SE¼;
Section 28, All;
Section 30, Lots 1–4, E½, E½W½;
Section 34, All.
T. 6 N., R. 20 W.,
Section 18, Lots 1–4, E½, E½W½;
Section 20, All;
Section 30, Lots 1–4, E½, E½W½.
T. 8 N., R. 3 W.,
Section 28, All;
Section 30, Lot 1, E½, E½W½;
Section 34, Lots 1–4, W½E½, W½.
T. 10 N., R. 2 W.,
Section 31, Lots 1–4, E½, E½W½;
Section 32, N½NE¼, SE¼NE¼, NE¼SE¼;
Section 33, N½N½, S½NE¼, N½SE¼;
Section 34, All;
Section 35, All.

Containing 21,171.32 acres.

In exchange for this Federal mineral estate, the United States has selected approximately 16,209.65 acres of State minerals within Cibola County in the El Malpais National Conservation areas and National Monument as listed below:

New Mexico Principal Meridian

T. 4 N., R. 9 W.,
Section 2, Lots 1–4, S½NW¼, S½;
Section 6, Lots 1–5.
T. 4 N., R. 10 W.,
Section 2, Lots 1–12, S½.
T. 5 N., R. 9 W.,
Section 2, Lots 1–4, S½N½, S½;
Section 12, S½SW¼, NE¼SE¼, SW¼SE¼;
Section 16, all;
Section 24, E½W½;
Section 30, N½NE¼, SE¼NE¼, SE¼SW¼, SW¼SE¼;
Section 32, All;
Section 36, All.
T. 5 N., R. 10 W.,
Section 32, All;
Section 34, SW¼SE¼;
Section 36, All.
T. 6 N., R. 11 W.,
Section 32, All.
T. 7 N., R. 9 W.,
Section 16, All.
T. 8 N., R. 9 W.,
Section 32, All.
T. 8 N., R. 10 W.,
Section 2, Lots 1–4, S½N½, S½;
Section 16, All;
Section 36, All.
T. 8 N., R. 13 W.,
Section 14, NW¼NE¼, SE¼NW¼;
Section 16, All.
T. 9 N., R. 12 W.,
Section 14, All;
Section 20, All;
Section 22, All;
Section 24, All;
Section 26, All;
Section 28, All;
Section 30, Lots 1–4, E½, E½W½;
Section 32, All;
Section 34, All.

Containing 16,209.65 acres.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible.

The purpose of the exchange is to consolidate Federal mineral ownership for the Federal government within the recently enacted El Malpais National Conservation Area (NCA) and National Monument (NM). This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan approved January 16, 1986.

The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1(b) shall segregate the Federal minerals as described in this notice, to the extent that they will not be subject to appropriation under mineral leasing and mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the Federal Register of a termination of the segregation or two years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107.

For a period of forty-five (45) days after publication of this Notice interested parties may submit comments to the District Manager at the above address.

Dated: March 1, 1988.

Robert T. Dale,

District Manager.

[FR Doc. 88-4827 Filed 3-7-88; 8:45 am]

BILLING CODE [illegible]

Bureau of Reclamation

Draft Supplement to the Final Environmental Statement, Dolores Project, CO

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and public hearings on the Draft Supplement to the Final Environmental Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Draft Supplement to the Final Environmental Statement on the Dolores Project, Colorado, originally filed with the Environmental Protection Agency on May 9, 1977 (INT FES 77–12). Comments on the draft supplement must be received by the date indicated on the cover sheet of the document.

A meet has been scheduled to solicit public views concerning the proposed modifications and refinements to the Dolores Project.

The meeting will be held on April 21, 1988, from 3:00 p.m. to 5:00 p.m. and from 6:30 p.m. to 8:30 p.m. at the Anasazi Heritage Center, Bureau of Land Management, 27501 Colorado Highway 184, Dolores, Colorado 81323, telephone (303) 882–4811.

FOR FURTHER INFORMATION CONTACT: Organizations or individuals desiring to present statements at the hearings should write or call Ken Beck, Team Leader, Dolores Project, Bureau of Reclamation, Durango Projects Office, P.O. Box 640, Durango, Colorado 81302–0640, telephone (303) 385–6529. Speakers will be scheduled according to their time preference, if any, as requested by letter or telephone. Speakers not present when called will lose their privilege in the scheduled order and their names will be recalled at the end of presentations by the other scheduled speakers. Requests for scheduled presentations will be accepted until 4 p.m. on April 20, 1988. Any subsequent requests will be handled on a first-come, first-served basis following the scheduled presentations at the meeting.

The facility and room where the meeting is to be held are accessible to handicapped persons. Hearing impaired, visually impaired, or mobility impaired persons planning on attending the meeting may arrange for needed special services by calling (303) 385–6529 by March 21, 1988.

Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings should be sent to the Regional Director, Attention UC–730, in Salt Lake City, Utah, by May 6, 1988, to be included in the hearing record.

Copies of the draft supplement to the final environmental statement are available for inspection at the following locations.

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7423, Washington, DC 20240, Telephone: (202) 343–4991
Division of Management Support, General Service, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3019
Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, UC–730, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524–5580
Projects Manager, Durango Projects Office, Bureau of Reclamation, 835 Second Avenue, P.O. Box 640, Durango, Colorado 81302–0640, Telephone: (303) 385–6500
Project Construction Engineer, Cortez Projects Office, Bureau of Reclamation, 60 South Cactus, P.O. Drawer Q, Cortez, Colorado 81321, Telephone: (303) 565–4473

Single copies of the document may be obtained by request to the addresses listed above. Copies also will be available for inspection at libraries in the project area.

SUPPLEMENTARY INFORMATION: The Dolores Project will provide water from the Dolores River for irrigation, municipal and industrial use, power production, recreation, salinity control, and fish and wildlife enhancement. It also will provide flood control and cultural resources mitigation and will aid in area economic redevelopment.

The supplement assesses the environmental impacts of proposed modifications and refinements to the Dolores Project. The salinity control modification would include lining sections of the Lone Pine and Upper Hermana irrigation laterals to prevent seepage; abandoning the Rocky Ford Ditch, a major contributor of salt, and incorporating its flows into the new alignment of the Towaoc Canal east of Cortez; abandoning the Lower Hermana Lateral and Highline Ditch and also including their flows, along with the Ute Mountain Ute Tribe's full service irrigation project water supply, in the Towaoc Canal; and constructing eight buried pipe laterals from the Towaoc Canal to the Rocky Ford Ditch service area.

Since the 1977 FES, some refinements to the project plan have been made as a result of economic and design criteria considerations. Such refinements are a normal function of the design and construction process. Those refinements include deleting Monument Creek Reservoir and the Cortez-Towaoc Municipal and Industrial Pipeline from McPhee Reservoir to the Ute Mountain Ute Reservation. The Dolores Water Conservancy District has agreed to construct those two features without Federal financing, subject to financing from the State of Colorado. Other refinements would include combining capacities of two pumping plants for sprinkler irrigation into one pumping plant, constructing a booster pumping plant, modifying the capacities of the McPhee and Towaoc Powerplants, and using a computerized control system to operate the project.

Dated: March 1, 1988.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 88–4877 Filed 3–7–88; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–725116

Applicant: National Museum of Natural History, Washington, DC

The applicant requests a permit to import salvaged specimens of ungulates in families Bovidae and Cervidae from Academia Sinica, Ministry of Forestry, Xining, Qinghai, China and from Zoological Survey of Pakistan, Karachi, Pakistan for scientific purposes Specimens will be accessioned into the museum's collection and made available for scientific research.

PRT–724664

Applicant: WE-DU Nurseries, Marion, NC

The applicant requests a permit to sell in interstate and foreign commerce, divisions of Harper's Beauty (*Harperocallis flava*) from a plant collected in the wild in Florida for the purpose of enhancement of propagation of the species.

PRT–725285

Applicant: Gladys Porter Zoo, Brownsville, TX

The applicant requests a permit to import two captive born female Philippine crocodiles (*Crocodylus novaeguineae mindorensis*) from Silliman University, Dumagete City, Philippines, for the purpose of captive breeding. The applicant currently maintains two males of this species.

PRT–724754

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase and import one male and two female captive born Parma wallabies (*Macropus parma*) from the Wellington Zoological Gardens, Wellington, New Zealand, and sell the wallabies to the Phoenix Zoo, Phoenix, AZ, for the purpose of captive propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC, or by writing to the Director, Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number and applicant when submitting comments.

Dated: February 29, 1988.

Larry LaRochelle,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–4954 Filed 3–7–88; 8:45 am]

BILLING CODE 4310-AN-M

National Park Service

Notice of Intent To Negotiate Concession Contract; Belle Haven Marina, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Belle Haven Marina, Incorporated authorizing it to continue to provide services for the public at George Washington Memorial Parkway, Alexandria, Virginia, for a period of five

(5) years from January 1, 1988, through December 31, 1992.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the authorization and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, George Washington, Memorial Parkway, Turkey Run Park, McLean, Virginia, 22101, for information as to the requirements of the proposed contract.

Dated: January 20, 1988.

Lowell V. Sturgill,

Acting Regional Director, National Capital Region.

[FR Doc. 88-4996 Filed 3-7-88; 8:45 am]

BILLING CODE 4310-70-M

[DES 88-13]

Availability of Draft Environmental Impact Statement; Wilderness Recommendation Kenai Fjords National Park, AK; Public Hearings and Public Meetings

ACTION: Notice of the availability of the Draft Environmental Impact Statement (DEIS) regarding Wilderness Recommendation Kenai Fjords National Park, Alaska and the holding of public hearings and a public meeting.

Four alternatives were examined for Kenai Fjords National Park. They range from no action, which means no wilderness designation, to the designation of all lands in the study area as wilderness. Alternative 2, the proposed action, excludes 12 percent of the study area from wilderness designation. The 12 percent would remain available for recreational development.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end May 27, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. Comments must be received by May 27, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Yukon-Charley Rivers National Preserve and Bering Land Bridge National Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, April 18, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive at a time to be announced later in local newspapers.

A public meeting on Kenai Fjords National Park Wilderness DEIS will be held in Seward, Alaska, on Wednesday, April 20, 1988, 7:00 p.m., at Park Headquarters.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters in Seward, Alaska will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC., 18th and C Streets NW.

Dated: March 3, 1988.

Gerald D. Patten,

Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-4997 Filed 3-7-88; 8:45 am]

BILLING CODE 4310-70-M

[DES 88-12]

Availability of Draft Environmental Impact Statement; Wilderness Recommendation Yukon-Charley Rivers National Preserve, AK

ACTION: Notice of the availability of the Draft Environmental Impact Statement (DEIS) regarding Wilderness Recommendation Yukon-Charley Rivers National Preserve, Alaska and the holding of public hearings and public meetings.

For Yukon-Charley Rivers National Preserve, alternatives were examined ranging from no action, which means no wilderness designation, to the designation of all suitable lands as wilderness. Alternative 2, the proposed action, excludes 51 percent of the lands suitable from wilderness status.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end May 27, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. Comments must be received by May 27, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Bering Land Bridge National Preserve and Kenai Fjords National Park draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, April 18, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing will be held in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive at a time to be announced later in local newspapers.

In addition, two public meetings will be held on Yukon-Charley Rivers National Preserve Wilderness DEIS, one on Tuesday, April 19, 1988, 7:00 p.m., in Fairbanks, Alaska, at the Alaska Public Lands Information Office, Third and Cushman Streets; the other in Eagle, Alaska, on Wednesday, April 20, 1988, 7:00 p.m., at Preserve Headquarters.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907)

257-2654. The headquarters in Eagle, Alaska will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC., 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: March 3, 1988.

[FR Doc. 88-4998 Filed 3-7-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; Arizona et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 27, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 23, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Sutherland Wash Archeological District
Tucson, *Arizona Inn*, 2200 E. Elm St.

MARYLAND

Montgomery County

Derwood vicinity, *Ridge, The*, 1900 Muncaster Rd.

MISSISSIPPI

Holmes County

Lee, Frances, Mound Group (22HO654)
Oswego Site (22HO658)

Leflore County

McLean Site (22LF513)

Sharkey County

Spanish Fort Site (22SH500)

Warren County

Vicksburg, *Johnson, Fannie Willis, House*, 2430 Drummond St.

NEW YORK

Chemung County

Elmira, *Fire Station No. 4*, 301 Maxwell Pl.

NORTH CAROLINA

Wake County

Wake Forest vicinity, *Purefoy—Dunn Plantation*, E side US 1, .3 mi. N of US 1A

OHIO

Warren County

Waynesville, *Satterthwaite, John, House* 498 N. Third St.

TENNESSEE

Bedford County

Shelbyville, *Shelbyville Railroad Station*, Depot St.

Dickson County

Bellview Furnace (40DS23) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Laurel Furnace (40DS4) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)

Hardin County

Tanyard Branch Furnace (40HR121) (Iron Industry of the Western Highland Rim 1790s—1920s MPS)

Hickman County

Lee and Gould Furnace (40HI125) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
New Aetna Furnace Historic District (40HI149) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Oakland Furnace and Forge (40HI146) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Old Aetna Furnace (40HI148) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Standard Furnace (40HI145) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)

Stewart County

Bear Spring Furnace (40SW207) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Brunsoni Furnace (40SW219) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Clark Furnace (40SW212) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Cross Creek Furnace (40SW217) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Eclipse Furnace (40SW213) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Rough and Ready Furnace (40SW215) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Saline Furnace (40SW218) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Cumberland City vicinity, *Hollister, Henry, House (Iron Industry on the Western Highland Rim 1790s—1920s MPS)*, Chapel Ridge Rd.
Dover vicinity, *Stacker, Samuel, House (Iron Industry on the Western Highland Rim 1790s—1920s MPS)*, Long Branch Rd.

Wayne County

Forty-eight Forge (40WY83) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Marion Furnace (40WY81) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)
Collinwood, *Collinwood Railroad Station*, Old RR Bed

Williamson County

Harpeth Furnace (40WM83) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)

WEST VIRGINIA

Raleigh County

Phillips-Sprague Mine

WISCONSIN

Racine County

Racine, *Historic Sixth Street Business District*, Roughly bounded by Water St. and Fifth St., Main, Seventh St., and Grand Ave.

Sauk County

Sauk City, *Freethinkers' Hall*, 309 Polk St.

[FR Doc. 88-4999 Filed 3-7-88; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Transfer Unexpended State Abandoned Mine Land Reclamation Funds; Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of intent to transfer unexpended monies previously allocated to the State of Tennessee.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is proposing to transfer to the Secretary's share of the abandoned mine land reclamation (AMLR) all State AMLR monies allocated to Tennessee but not expended and to no longer allocate AMLR funds to the State, under the authority of section 402(g)(2) and 405(c) of the Surface Mining Control and

Reclamation Act of 1977, Pub. L. 95–87 (SMCRA).

DATES: *Written Comments:* OSMRE will accept written comments on the notice until 5:00 p.m., Eastern time on April 7, 1988. Comments received after that time may not necessarily be considered nor included in the administrative record.

ADDRESSES: *Written comments:*

Hand deliver to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC

Or mailed to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

All comments, notices of public meetings and summaries of the meetings will be available for inspection in Room 5131, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Division of Abandoned Mine Land Reclamation, 1951 Constitution Avenue NW., Room 120, Washington, DC 20240, Telephone (202) 343–5384.

Public Meetings: Representatives of OSMRE will be available to meet between March 8, 1988, and April 7, 1988, at the request of members of the public, State/Federal representatives, industry officials, labor representatives, environmental organizations, and any other interested group, to receive advice and recommendations concerning the proposed action. OSMRE representatives will be available for such meetings from 9:00 a.m. to noon and 1:00 p.m. to 4:00 local time, Monday through Friday, excluding holidays. Summaries of each meeting will be prepared and made available for public review in Room 5131, 1100 L Street, NW., Washington, DC. Persons wishing to meet with representatives of OSMRE during that time period may request a meeting. The person to contact to schedule a meeting is: Jim Fary Division of Abandoned Mine Land Reclamation, 1951 Constitution Ave., NW., Room 120, Washington, DC 20240 Telephone (202) 343–5384.

SUPPLEMENTARY INFORMATION: The Abandoned Mine Land Fund (Fund) was established by the Surface Mining Control and Reclamation Act of 1977 in response to concerns over the extensive environmental damage caused by past coal mining activities. Monies from the fund are appropriated by Congress for grants to the States and Tribes to plan and implement reclamation programs and projects; for Federal reclamation projects administered by the Secretary of the Interior through OSMRE; and for the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture through the Soil Conservation Service.

Title IV of SMCRA provides that fifty percent of the AMLR funds collected within a State or on Tribal lands are to be allocated to that State or Tribe to accomplish the purposes of Title IV. "Allocated" means the administrative identification in the records of OSMRE of monies in the Fund for use by a State or Tribe for accomplishing the purposes of Title IV. States are eligible to receive such allocated funds only after they have an approved regulatory program pursuant to section 503 of SMCRA and an approved reclamation plan under section 405 of SMCRA. If allocated funds have not been expended by the State, section 402(g) (2) of SMCRA provides the Secretary authority to withdraw such funds from the State accounts and utilize them for other purposes of Title IV. If a State does not have an approved regulatory program, section 405(c) provides the Secretary authority to no longer allocate AMLR funds to the State.

The State of Tennessee repealed most of the Tennessee Coal Surface Mining Law of 1980 and the implementing regulations for the active coal mining regulatory program effective October 1, 1984. On this date, OSMRE instituted a Federal regulatory program for active mining and effective November 5, 1984 suspended the State's AMLR plan. Since that date Tennessee's share of the AMLR funds collected within the State have been administratively allocated to the State share, but because of the implementation of a Federal regulatory program, the State has been ineligible to receive annual grants utilizing those allocated funds.

Therefore, effective in FY 1988, pursuant to the authority in sections 402(g)(2) and 405(c) of SMCRA, all funds allocated to the State but not granted to the State will be transferred to the Secretary's discretionary share and OSMRE will no longer allocate funds to the State of Tennessee and all fees collected in the State will be credited to the Secretary's discretionary share.

Dated: March 2, 1988.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88–5019 Filed 3–7–88; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32000 and Docket No. MC–F–19057]

Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Co.; Control, Southern Pacific Transportation Co.; and Rio Grande Industries, Inc., SPTC Holding, Inc.; Control; Pacific Motor Trucking Co.; Pacific Motor Transport Co.; and PMT of The Southwest, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 7.

SUMMARY: The Commission is accepting for consideration the application filed February 22, 1988, for Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Company to control the Southern Pacific Transportation Company. Applicants also petition to exempt under 49 U.S.C. 10505 their acquisition of indirect control of Pacific Motor Transportation Company, Pacific Motor Trucking Company, and PMT of the Southwest, Inc.

DATES: Initial lists of protective conditions and descriptions of anticipated responsive applications must be filed no later than April 12, 1988. Written comments and responsive applications must be filed no later than May 6, 1988. For further information, see the attached procedural schedule.

FOR FURTHER INFORMATION CONTACT.

Joseph H. Dettmar (202) 275–7245

(TDD for hearing impaired: (202) 275–1721)

or

Thomas Shick (202) 275–7972

or

Ellen Goldstein (202) 275–7976

ADDRESSES: Unless otherwise indicated, an original and 20 copies of all documents must be sent to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32000, Interstate Commerce Commission, Washington, DC 20432.

Five copies of all pleadings in this proceeding must be sent to:

Room 2118, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Samuel R. Freeman, Vice President and General Counsel, The Denver and Rio Grande Western Railrod Company, P.O. Box 5482, Denver, CO 80217

E. Barrett Prettyman, Jr., Hogan & Hartson, Columbia Square, 555 Thirteenth Street, NW., Washington, DC 20004–1109.

SUPPLEMENTARY INFORMATION: We are accepting for consideration the control application and related motor carrier petition filed in these proceedings. On February 22, 1988, Rio Grande Industries, Inc. (Rio Grande), SPTC Holding, Inc. (SPTC Holding), and The Denver and Rio Grande Western Railroad Company (DRGW) (collectively, applicants) filed an application under 49 U.S.C. 11343 and 11344 for approval of the acquisition of control of the Southern Pacific Transportation Company (SPT) and its transportation subsidiaries by Rio Grande and SPTC Holding, non-carrier holding companies, and DRGW, a wholly-owned carrier subsidiary of Rio Grande. SPT controls three motor carriers: Pacific Motor Transport Company, Pacific Motor Trucking Company, and PMT of the Southwest, Inc. Applicants have filed a petition for exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, 11344, and 11345 to permit applicants to acquire indirect control of the three motor carriers.

If the application in Finance Docket No. 32000 is approved, applicants intend that Rio Grande will acquire, through its wholly-owned subsidiary, SPTC Holding, all of the issued and outstanding shares of SPT common stock beneficially owned by Southern Pacific Company (SPC), a wholly-owned subsidiary of SFSP. The SPT stock is currently held in a voting trust created in connection with Finance Docket No. 30400, under which the LaSalle National Bank of Chicago, IL, serves as trustee. The acquisition by applicants would permit the voting trust to be terminated and will satisfy SFSP's obligation to divest itself of its interest in SPT.

Following acquisition of SPT, applicants plan to continue SPT's separate corporate existence but expect that the rail operations or SPT and DRGW will be consolidated. The two carriers may eventually be merged, but applicants have no current plans to do so.

DRGW operates 2,211 miles of railroad in Utah, Colorado, Kansas, and Missouri. This consists of 1,528 miles of mainline and 683 miles of branch line. DRGW serves the Central Corridor from principal western terminals of Ogden, Salt Lake City, and Provo, UT, to the eastern intermountain terminals of Denver, Colorado Springs, and Pueblo, CO, the important midwestern terminal of Kansas City, MO/KS, and the interchange gateway of Herington, KS. DRGW operates principal yards at all major terminals and at Grand Junction, CO.

SPT, including its subsidiaries the St. Louis Southwestern Railway Company and the Northwestern Pacific Railroad Company, operates 11,699 miles of railroad throughout the western and southwestern United States. This system serves 14 States, over 7,767 miles of mainline and 3,932 miles of branch line.

Principal routes of SPT include: The Overland Route, serving the Central Corridor between points in Northern California and Oregon and the intermountain gateway of Ogden; the West Coast Route, covering the territory from the Los Angeles Basin to Portland, OR, via San Francisco/Oakland and Sacramento, CA; the Sunset Route, serving the Southern Corridor between West Coast ports and the principal Gulf ports and terminals of New Orleans and Lake Charles, LA, and Houston, Galveston, Beaumont, and Corpus Christi, TX; the Golden State Route, connecting the major midwestern gateways of St. Louis, MO/IL and Kansas City, through grain shipping communities at Hutchison and Liberal, KS, to El Paso, TX, and then to southern California via the Sunset Route; and the Cotton Belt Route, extending from the Missouri River gateways of St. Louis and Memphis, TN, to Shreveport, LA, and Texas cities including Dallas, Ft. Worth, and San Antonio.

Other principal yards and interchange points of SPT include Eugene, OR, Roseville, ICTF/Long Beach, and West Colton, CA; Herington, KS; Pine Bluff, AR; Eagle Pass, TX; and Deming and Nogales, AZ.

Rio Grande's proposed purchase of SPT's common stock for a price of One Billion Twenty Million Dollars, together with transaction-related fees and costs, will be financed by a combination of: (1) $700 million in bank financing; (2) $200 million in subordinated debt to be issued by SPTC Holding and to be underwritten or privately placed by Morgan Stanley & Co. Incorporated (Morgan Stanley); (3) $111 million in common equity capital to be contributed by Morgan Stanley Leveraged Equity Fund II, L. P. (the Morgan Stanley Fund) in exchange for Rio Grande common stock, and (4) $75 million to be obtained through private placement by Morgan Stanley of Rio Grande preferred stock. Applicants have sought approval under 49 U.S.C. 11301 for the issuance of securities in the event the Commission asserts jurisdiction over the relevant securities under 49 U.S.C. 11348. Pursuant to 49 U.S.C. 10505, applicants also have requested that the Commission exempt the issuance of securities from the requirement of approval under section 11301.

The application was filed under 49 U.S.C. 11343 *et seq.* and 49 CFR Part 1180, and the petition was filed under 49 U.S.C. 10505. We are accepting them for consideration because they substantially comply with the applicable regulations, waivers, and requirements. We request corrections, clarification, and additional information as follows.

(1) Applicants shall make available to the Commission the underlying work papers and supporting documentation used to construct Exhibits 16, 17 and 18 of the application.

(2) Contrary to our clarification in Decision No. 3, served January 22, 1988, page 2, applicants have failed to provide SPT's Form S–14, as required at 49 CFR 1180.6(b)(2). They must do so.

(3) It appears that Exhibit 12—Impact Analysis—(49 CFR 1180.7) is missing or not labelled as such. A correction or clarification is required.

(4) Applicants shall clarify the sources of revenues upon which their projected public benefits are based, and clearly distinguish between revenues attributable to traffic diversion (rail and motor) and those attributable to efficiencies and other service improvements. For example, applicants estimate $200–$275 million in additional revenues from the combined system (VS-A.L. Thiessen). Marketing estimates are that nine programs should produce between 48,000 and 77,000 additional carloads and between $81 million and $127 million in additional revenues (VS-H.C. Brown). However, there is no clear distinction made as to whether this new revenue includes the approximately $124 million estimated to be diverted from other carriers.

Applicant also suggested that several new and changed marketing strategies, referred to as "wholesale/retail" transportation philosophies, would contribute about $88,139,150 in additional revenues (VS-T.R. Harvey). This seems to rely heavily on traffic diversions from motor carriers. However, there was no effort to align these revenues with other revenues as either additional or diverted revenues.

(5) Applicants shall provide more detailed information concerning the proposed changes in use of the Roseville and Fresno yards. The plan would eliminate SP's practice of combining many southbound trains from the Roseville Yard and the Bay area at the Fresno Yard. Under the proposed plan, Roseville will classify all southbound traffic into trains which will enable the Fresno Yard to handle only cars originating or terminating at Fresno. This change will allow STP/DRGW to

eliminate two switch engine shifts at Fresno, saving $520,000 annually.

This raises some questions: (1) Does DRGW plan to move southbound traffic from the Bay Area to Roseville for proper classification and further movement south from Roseville; or (2) does DRGW plan to run southbound traffic from the Bay Area through Fresno to other locations in separate trains which require the use of more road crews, that would offset the costs of switch crews at Fresno? The Operating Plan does not provide answers to these questions.

(6) Under the operating plan, a new classification will be made at Eugene, OR, for certain stations in the Los Angeles Basin. Applicants shall submit information showing: (a) the volume of traffic in this classification; (b) the trains that will carry the traffic; and (c) how trains will move to the City of Industry without moving through the West Colton yard.

(7) Although savings from reduced car detention and reduced switching requirements at West Colton are projected, neither Mr. Kenyon's verified statement nor the operating plan shows reduced switching crew starts at West Colton. A clarification is required.

(8) Page 3 of Appendix 3 of the Operating Plan contains an error in reporting the changes in traffic density from the base year to post-consolidation; the information in the "Tons" column post-consolidation appears to be understated. A correction is required.

(9) Applicants have not complied with the requirement at 49 CFR 1180.8(a)(1) that yards expected to have an increase in activity greater than 20 percent be identified. This information shall be provided.

(10) Applicants shall also provide copies of their current freight train classification listing, blocking guides, and schedules for major terminals.

Twenty copies (plus 5 for the Office of Proceedings) of all of the above information must be filed within 5 days of the service date of this decision.

We reserve the right to require the filing of supplemental information from applicants, SPT, The Santa Fe Southern Pacific Corporation (SFSP), or any other party or individual, as necessary to complete the record in this matter.

In our Decision No. 4, served February 12, 1988, we adopted an expedited procedural schedule, a copy of which is included here. All of the filing deadlines ordered here are in accordance with the governing regulations as modified by the expedited schedule. We advise applicants and all other parties to this proceeding that, particularly because of the expedited schedule we have adopted, they must strictly comply with all requirements. If questions arise concerning an interpretation of a requirement, they may contact the Commission's Rail Section, 202-275-7245, for assistance. *See* 49 CFR 1180.4(c)(6)(iii).

The Commission's Section of Energy and Environment (SEE) has reviewed applicants' energy and environmental reports and found them generally to comport with our reporting requirements. The applicants have identified areas where minor effects of limited extent may occur. SEE intends to prepare an Environment Assessment in accordance with 49 CFR 1105.6(b)(2). Applicants shall cooperate with SEE and provide information it requests.

The applications and exhibits are available for inspection in the Public Docket Room, Room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the applications. Comments must be filed no later than May 6, 1988. An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Pursuant to Decision No. 4, five additional copies of all pleadings in this proceeding must be filed directly with the Office of Proceedings, Room 2118, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Written comments shall include:

1. The docket number and title of the proceeding;

2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

3. The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

4. A statement on whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

5. An analysis of the issues the Commission must consider in this proceeding. Particular attention should be given to our General Policy Statement for the merger or control of at least two Class I railroads, 49 CFR 1180.1, the statutory criteria, and antitrust policy.

Because we have adopted an expedited procedural schedule and determined that this proceeding constitutes a major transaction within the meaning of our General Acquisition Procedures, 49 CFR Part 1180, as we noted in Decision No. 5 any railroad that intends to file an inconsistent application or a petition for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission must submit a general statement of what that application is expected to include by April 12, 1988. This will be considered a prefiling notice without which the Commission will not entertain applications for this type of relief.

Parties shall not be permitted to seek any protective conditions other than those requested in their final list of protective conditions.

Parties seeking to file responsive applications must do so no later than May 6, 1988. Responsive applications include inconsistent applications and petitions for inclusion or any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). Parties should contact Ellen Goldstein, (202) 275-7969, to obtain docket number for their responsive applications.

Petitions for waiver or clarification by responsive applicants shall be filed no later than April 12, 1988. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding.

In our Decision No. 4, *supra*, we directed all parties to begin discovery immediately. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal voluntarily to supply information will be treated as an objection to the request for discovery. Responses must be served upon all parties of record, and five copies of those responses must be concurrently filed with the Commission.

The Chief Administrative Law Judge (CALJ) shall conduct a discovery conference on this matter on March 14, 1988, and another on May 12, 1988. He is authorized to resolve any discovery disputes that may arise, and to conduct further discovery conferences as necessary to resolve matters in this proceeding expeditiously. Appeals from the rulings of the CALJ will be strictly construed according to the provisions of 49 CFR 1113.15, *Interlocutory appeals*. We do not anticipate that the CALJ will certify interlocutory appeals to the entire Commission except for good cause clearly shown as provided in the regulations.

We will conclude the evidentiary phase of this proceeding by July 21, 1988. The initial decision will be waived, and the determination of the merits of the applications will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

Any traffic studies and data submitted in opposition to the primary application must use calendar year 1986 data and, where relevant, use depreciation accounting, in order to be comparable with the evidence submitted by applicants. Evidence supporting protestants' responsive applications must use 1986 as the base year, and the depreciation accounting system, and applicants' evidence in opposition to the responsive applications must use 1986 and depreciation accounting.

In calculating the cost savings protestants expect as a result of traffic diverted to applicants' system, protestants must use an avoidable cost approach rather than a Rail Form A approach. *See Burlington Northern, Inc.-Control & Merger-St. L.*, 360 I.C.C. 784, 1106 (1980).

We advise protestants that, if they seek to have the primary application denied or seek conditions if approved, because they contend their ability to provide essential service and/or competition will be harmed, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The application in Finance Docket No. 32000 and petition in Docket No. MC-F-19057 are accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on the date served.

Decided: March 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterret, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,
Secretary.

Schedule For The DRGW-SPT Consolidation

Discovery begins immediately.

Day 1 Application filed.
D+15 Notice of the application published in the **Federal Register**.
D+20 Discovery conference on application held.
D+50 Initial list of protective conditions and description of anticipated inconsistent applications due.
D+75 Comments and protests due on the application; requested conditions and inconsistent applications due.
D+80 Discovery conference on comments, protests, conditions and inconsistent applications held.
D+100 Response to comments, protests, conditions and rebuttal in support of primary application due.
D+125 Rebuttal in support of comments, protests, conditions, and inconsistent applications due.
D+140 Briefs due, all parties.
D+150 Oral Argument.
D+160 Commission Voting Conference.
D+180 Target date for service of decision.

[FR Doc. 88-4955 Filed 3-7-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 9, 1988, disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, and January 12, 1988, COS filed additional written notifications.

The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), and February 19, 1988 (53 FR 5060), respectively.

On November 29, 1987, the National Bureau of Standards became a member of COS, and on December 29, 1987, Combustion Engineering became a member of COS. On January 1, 1988, E.I. du Pont de Nemours & Company, Inc., The Equitable, GTE Service Corp/Telephone Operations, and the Procter & Gamble Company ceased membership in COS.

Joseph H. Widmar,
Director of Operations Antitrust Division.

[FR Doc. 88-4954 Filed 3-7-88; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

Narcotics Control Discretionary Grant Program

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

ACTION: Final notice.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing the program announcement for the Narcotics Control Discretionary Grant Program of the "Anti-Drug Abuse Act of 1986" [SUBTITLE K—STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE] and is requesting proposals for announced programs.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: For general information about the priorities and range of discretionary programs contact James C. Swain, Director, Discretionary Grant Programs Division, 633 Indiana Avenue NW., Washington, DC 20531. For specific information on program requirements, contact the person indicated in the text for each program.

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ADDRESS: All final applications and concept papers (original plus two copies) should be addressed to the Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531. A copy of the concept paper and/or the application should also be sent to the State Office which administers the Narcotics Control Program in the state(s) affected by the proposed program.

SUPPLEMENTARY INFORMATION: The "Anti-Drug Abuse Act of 1986" that established the State and Local Assistance for Narcotics Control Program was signed into law on October 27, 1986. Section 1311 of the Act sets aside 20 percent of the total amount appropriated for the Program in a special discretionary fund for use by the Director of BJA in carrying out the purposes established in section 1302 of the Act. Those purposes can be summarized as follows:

- —Providing more widespread apprehension of persons who violate state and local laws relating to the production, possession, and transfer of controlled substances;
- —Providing more widespread prosecution of persons accused of violating such states and local laws;
- —Providing more widespread adjudication of cases involving persons accused of violating such state and local laws;
- —Providing additional public correctional resources for the detention of persons convicted of violating state and local laws relating to the production, possession, or transfer of controlled subtances; and, establishing and improving treatment and rehabilitative counseling provided to drug dependent persons convicted of violating state and local laws;
- —Conducting programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;
- —Providing programs that identify and meet the needs of drug-dependent offenders;
- —Conducting demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by identifying major drug offenders and moving these offenders expeditiously through the judicial system.

The Bureau of Justice Assistance solicited recommendations from more than a thousand Federal, state, and local law enforcement, prosecution, judicial, corrections, and treatment practitioners to assist with the development of the priorities for the discretionary grant program. The Bureau of Justice Assistance will respond under separate cover to each respondent. Working groups of practitioners and national experts were established to review the recommendations received, to identify effective programs that are responsive to those recommendations and to recommend funding priorities in each of the program areas.

- —Developing drug data sources, disseminating drug data, and developing techniques for analyzing drug data for the purpose of defining the problem and assessing the impact and effectiveness of drug control efforts;
- —Extending and disseminating programs of proven effectiveness to areas of need;
- —Developing and testing the effectiveness of new programs and practices;
- —Developing programs that focus on key areas of criminal justice dilemme and discretion; and
- —Providing training and technical assistance to assist with the implementation of effective programs and practices.

The strategy for the discretionary programs is to provide direct, and progressively more complete, information and guidance for the states in their development and implementation of statewide strategies for the conduct of the block grant program. The discretionary program is designed to enhance the capacity of each state to define the drug problem and to focus program development on areas of greatest need.

The program strategy also reflects cognizance of: (1) The specific mandate of the Bureau of Justice Assistance and its relationship to the mandates of the Departments of Education and Health and Human Services, thus the programs are limited to criminal justice and to certain key areas of linkage with other social service systems; (2) the anticipated short-term nature of Federal funding, thus programs selected are those which will provide the most direct and lasting impact; and (3) the need to put the money to work in the most immediate, responsible manner, thus program selection has been influenced by the availability of strong interest and expertise in the field. The timetables set out below in each Program Description are established to permit our obligation of these funds by the end of this Fiscal Year.

Application and Award Process:

This program announcement contains proposal requests for the major portion of the approximately $13.7 million available. The Bureau of Justice Assistance has made every effort to establish an open and competitive application process. Applications or concept papers are being requested from government agencies as well as public and private nonprofit organizations. A panel of experts will be established in each of the program areas to review those applications submitted on a competitive basis. Some awards will be negotiated directly with organizations that are uniquely qualified to provide specific services. Such awards are described in this announcement.

All applications will be reviewed to insure that they are cost effective, in addition to meeting the requirements outlined in the program description. Geographic distribution of projects will be considered for all programs that result in grants for implementation in several sites.

It should be noted that the State and Local Assistance Program received only approximately 33 percent of its FY1987 appropriation. Accordingly, many of the programs reflected herein are continuations of previously funded efforts.

Description of Discretionary Programs:

The following is a description of the programs included in this announcement and the due dates for concept papers and applications.

Authority: 1302(1).

Program Title: Crack/Focused Substance Enforcement Program.

Background: This program is a hybrid enforcement approach incorporating elements successfully utilizes in Drug Enforcement Administration (DEA), State, and Local Task Forces, Organized Crime/Narcotics Program (OCN) Task Forces and the old Law Enforcement Assistance Administration Organized Crime Discretionary Grant Program to focus on the enforcement of laws dealing with "Crack" in major urban areas. The Task Force approach to drug enforcement is recognized by enforcement and prosecutorial officials as a viable method for dealing with drug activities and can be readily adopted to the enforcement of a specific drug problem.

Goal/Objective: The goal of the Crack Task Force (CTF) Program is to improve the capabilities of State and Local law enforcement agencies to investigate and immobilize crack cocaine trafficking organizations, and to:

- —Enhance the ability of law enforcement agencies to attack higher-level crack cocaine trafficking organizations significant to their areas;
- —Increase the rates of arrests, prosecution, conviction, drug removals, and asset forfeitures related to crack traffickers and/or organizations;
- —Reduce the incidence of armed robberies and property related crimes committed to support crack cocaine habits;
- —Reduce the incidence of violent crime (i.e., homicides) related to crack cocaine distribution;
- —Improve the ability of state and local officers to develop strong Federal prosecution against crack traffickers by utilizing the current Federal statutes;
- —Increase the utilization of Continuing Criminal Enterprise (CCE) and Racketeer Influenced Corrupt Organisations (RICO) statutes to target and immobilize crack trafficking organizations; and,
- —Facilitate the development, implementation, and dissemination of intelligence information on crack trafficking organizations by all members involved in the CTFs.

Program Description: This particular effort will significantly enhance state, local, and Federal efforts to combat the rapidly growing availability of crack and the threat it poses to our nation's youth. This enhancement reflects the basis of our overall enforcement strategy of integrated operations and makes available the resources to establish viable crack task forces in metropolitan areas where they presently do not exist. The program includes the participation of the U.S. Attorneys and the Drug Enforcement Administration. Federal Agency participation in each project is a program requirement. Grant funds will be used primarily for confidential expenditures, purchase of evidence/purchase of informants (PE/PI), overtime, specialized equipment, if necessary, and some administrative costs. DEA will pledge personnel and technical assistance support to each of these efforts.

Grant Period: Sites will generally be selected from the FY1987 competitive list by BJA based on the developed criteria used by peer panels. The projects duration will be 15 months to include 3 months start-up and 12 months of operation.

Award Amounts: The three individual projects will be funded at approximately $350,000 each for a program total of $1,050,000.

Eligibility Criteria: N/A.

References: **Federal Register** / Vol. 52, No. 53 / Thursday, March 19, 1987.

Due Dates: Since applicants will be selected from the FY 1987 competitive list, no due dates are being announced.

Contact person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Authority: 1302 (1).

Program Title: Expert Systems for Residential Burglaries—A Demonstration Program.

Background: This program was first announced in the May 6, 1987, **Federal Register**; however, the Bureau made the decision not to fund the entire program at that time. Rather, under the Justice Assistance Act, we supported Phase One of a two-phase program, which is the design and preparation work for the demonstration program. Phase One included the search and preliminary screening for up to four demonstration sites. This announcement concerns Phase Two. Funding for Phase Two will be made available in two distinct awards, one under the Justice Assistance Act, and another under the Anti-Drug Abuse Act, as research results clearly indicate a direct link between drug crime and burglary. The January 21, 1988, report from the new Drug Use Forecasting (DUF) System shows from 59 percent to 79 percent of arrestees for serious crimes, including burglary, in 12 major cities tested positive for illicit drugs.

The focus of the demonstration program is an artificial intelligence system, based on research originally conducted in the United Kingdom, designed to assist police agencies in the successful investigation of residential burglaries. An advanced system is now being implemented simultaneously in Devon-Cornwall, England, and in Baltimore County, Maryland, utilizing more powerful hardware and more sophisticated software. The Baltimore County system will be operational this month. Operations and results will be evaluated by the Bureau, and if successful, we will proceed with the demonstration phase.

This effort will provide a specific drug crimes focus to this system and analyze trends in drug use and trafficking, to target suppliers, and fences, particularly those who trade drugs for stolen goods.

Goal/Objective: 1. To introduce expert systems to the law enforcement community and demonstrate their effectiveness in narcotics trafficking control.

2. To reduce the developmental costs of these systems by transferring existing operational systems to other sites under an orderly schedule.

Program Description: The Bureau will supplement the existing Cooperative Agreement with the Jefferson Institute for Justice Studies. The Jefferson Institute has been a major contributor to the earlier British research, and is currently responsible for the implementation of the Baltimore County system. Potential sites to install up to four artificial intelligence systems following the Baltimore prototype have been selected by BJA under Phase One. Personnel from demonstration sites will be trained by the Jefferson Institute and Baltimore County, based on the Baltimore system and experience. Technical assistance will be provided to each site in the development of site-specific "rules" for the artificial intelligence system.

Grant Period: The Bureau will enter a Cooperative Agreement with the Jefferson Institute for Justice Studies for a period of 18 months.

Award Amounts: Approximately $275,000 will be awarded under this program.

Eligibility Criteria: N/A.

References: N/A.

Due Dates: The Cooperative Agreement will be negotiated by May 14, 1988.

Contact Person: The BJA contact person for additional information is Fred W. Becker, Law Enforcement Branch, 202/272–4605.

Authority: 1302 (1).

Project Title: Clandestine Laboratory Enforcement Training and Technical Assistance Program.

Background: Safety, legal, administrative, and regulatory issues surrounding the seizure of clandestine laboratories and the prosecution of criminals responsible for the laboratories are very complex. Law enforcement officials are beginning to have a better knowledge of the special kinds of information needed by our uniformed and non-uniformed officers and investigators. This information has been accumulated through the detection and seizure of several hundred clandestine laboratories. These hard won experiences have helped to identify the hazards associated with these operations. Clandestine laboratories contain poisonous, flammable, and explosive chemicals. These chemicals are used, by criminals, with inadequate training and equipment to perform dangerous syntheses of controlled substances. There is a clear danger to the immediate community adjacent to the clandestine laboratory, to our law enforcement officers, and to the officers families.

Goal/Objective: To provide law enforcement officials, prosecutors, state and local government elected officials, and government regulatory agency personnel with the information necessary and the opportunity to learn the protocols and methodologies necessary to safely investigate clandestine laboratories.

Program Description: BJA will negotiate and award a cooperative agreement with the National Sheriffs' Association (NSA) to provide law enforcement officials, state and local government elected officials, and government regulatory agency personnel with the information necessary to act in defense of the health of law enforcement officers assigned to investigate and seize clandestine laboratories, collect dangerous chemicals as evidence for prosecution, and transport and store dangerous chemicals. The NSA has been operating the HAZARDOUS MATERIAL INFORMATION SYSTEM working with State and local law enforcement officials through the National Law Enforcement Telecommunication System. This on-going experience coupled with the ready made organizational structure of the state sheriffs' associations, will enhance BJA's ability to begin the flow of information as soon as possible. All of the state and/or regional training and awareness efforts will include the input of the officials of the Drug Enforcement Administration (DEA).

Grant Period: The National Sheriffs' Association Cooperative Agreement will be funded for an 18 month period.

Award Amount: Approximately $450,000 will be awarded to the National Sheriffs' Association.

Eligibility Criteria: N/A/.

References: N/A.

Due Dates: The Cooperative Agreement will be negotiated by April 15, 1988.

Contact Person: The Bureau of Justice Assistance contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (1).

Project Title: Clandestine Laboratory Model Enforcement Program.

Background: This program is designed to develop and implement law enforcement, prosecution, and forensic chemist teams in different geographic areas of the country, for the purpose of responding to requests to investigate clandestine laboratories. The program is complementary to the Clandestine Laboratory Enforcement Training and Technical Assistance Program, in that it is envisioned that these teams could also act as technical assistance resource teams for law enforcement agencies and prosecutors, in addition to their actual investigations.

Goal/Objective: To develop law enforcement resources that have a comprehensive understanding of the techniques and methodology to plan, organize, and manage the investigation of clandestine laboratories and the prosecution of the offenders.

Program Description: A number of statewide enforcement projects will be funded to develop and implement centrally coordinated multi-jurisdictional activities to investigate clandestine laboratories and prosecute the perpetrators responsible for these crimes. Emphasis will be on establishment of an interdisciplinary response to clandestine laboratories throughout a state area and a formal mechanism whereby investigative (including forensic chemists) and prosecutorial resources can be allocated, trained, equipped, focused, and managed to achieve maximum criminal and civil remedies with maximum safety. Critical to the success of this program is a shared management system of integovernmental law enforcement and prosecutorial resources. An appropriate representative of the Drug Enforcement Administration must be among the intergovernmental law enforcement members of each project.

BJA will also provide funds for a limited number of clandestine laboratory safety kits, that will be modeled after those kits developed by DEA. The kits will be purchased and maintained by each of the BJA's Regional Information Sharing System (RISS) sites to effect a coordianted delivery of the kits to law enforcement officials who have been certified by DEA to use the kits for entry into clandestine laboratories.

Grant Period: The Regional Clandestine Laboratory Enforcement Projects will be funded for 18 months with an expected three months start up phase that will allow for a fifteen month implementation phase.

Each of the RISS projects will be funded for a period of six months to purchase the safety kits and coordinate subsequent delivery and maintenance activities with DEA for BJA approval.

Award Amounts: Each of the Regional Clandestine Laboratory Enforcement Projects will be funded in the range of $250,000 to $275,000 not to exceed a total amount of $1,400,000. Each of the six RISS projects will be awarded supplemental grants in the amount of approximately $25,000. The total Program amount will be approximately $1,511,600.

Eligibility Criteria: BJA, with input from the DEA, will select applicant law enforcement agencies based on observed capacity to conduct a complete and fully coordinated investigation program in areas in which there is evidence of significant clandestine laboratory operations. Applicant agencies will be limited to agencies with statewide law enforcement jurisdiction. BJA will also consider the following criteria:

—Joint agency management and direction of investigations and prosecutions including the presentation of signed formal agreements;

—A coordinated approach to the clandestine laboratory problem that results in a major impact on illicit drug trafficking not achievable through a single agency;

—Standardized procedures for central collection and dissemination of information for joint case administration and for investigative techniques and approaches;

—organizational and staffing plan;

—anticipated safety protocols to be worked out with local, state, and Federal regulatory agencies and appropriate state and local elected officials;

—standardized procedures for the seizing of the clandestine laboratories and evidence handling, storage, and destruction.

References: N/A.

Due Dates: All applications are due at BJA by April 15, 1988.

Contact Person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (1).

Project Title: Street Sales Enforcement Program.

Background: In theory, street-level drug enforcement is one of the most effective uses of local police resources to combat drugs and the problem they create. For every innovative program that has succeeded, an almost identical program has been much less successful. This suggests that jurisdictions should design and implement their own program tailored to their own local conditions, and relying on the full range of local law enforcement, municipal, and community resources available. Collection and analysis of drug market and abuse data is important. Without them, the police run the risk of concentrating on less important markets or individuals, or of displacing the

problem to different times, places, and distribution networks. The lack of good information also makes it difficult to redirect efforts once they have begun.

Goal/Objective: To demonstrate effective police efforts to target street level narcotic dealers and buyers through effective planning, investigation, and prosecution.

Program Description: This demonstration program will be offered for the purpose of strengthening urban enforcement and prosecution efforts targeted on street narcotics dealers and buyers.

One project, to be selected from the FY1987 competitive list by BJA, will be funded to plan for and implement or strengthen existing large city narcotic investigation and prosecution efforts targeted at street level narcotic dealers and buyers.

Grant Period: The site will be selected from the FY1987 competitive list by BJA based on the developed criteria used by peer panels. The project will be funded for 18 months with the expectation that it will go through a 3 month organization and planning phase, and a 15 month implementation phase.

Award Amounts: One project will be awarded for approximately $350,000.

Eligibility Criteria: N/A.

References: Federal Register Vol. 52, No. 53/Thursday, March 19, 1987.

Due Dates: Since the applicant will be selected from the FY1987 competitive list, no due dates are being announced.

Contact Person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (1).

Program Title: National Forensic Crime Laboratory Information System.

Background: DEA's purchases and seizures now largely constitute the System to Retrieve Information from Drug Evidence (STRIDE). The BJA and the DEA have long been interested in developing a comprehensive, nationwide information system that includes the forensic analysis data generated from the buys and seizures of local and state law enforcement agencies, as well as DEA. The local and state system could be used to better describe the drug problem, provide intelligence information, and guide operational and policy issues connected with illegal drug distribution.

The feasibility of such a new system is based on a survey of forensic laboratories conducted in the spring of 1986 by DEA. The survey collected information about organization, staffing, workload, procedures, kind of drug testing information kept by laboratories, and whether labs would report drug testing results to a system that would accumulate such data from many laboratories. In addition, representatives of BJA, DEA, the National Criminal Justice Association, the Criminal Justice Statistics Association, and the American Society of Crime Laboratory Directors met several times during the summer and fall of 1987 to discuss the feasibility of this system. Support for the system appears to be unanimous. It also appears that building a single information system from data provided by a heterogeneous group of forensic crime laboratories is realistic. In the end, however, feasibility depends on the scope, volume, and type of data; data uniformity; data accessibility; and willingness of agencies to cooperate.

Goal/Objective: To develop and implement a comprehensive, nationwide information system that includes the forensic analysis data generated from the buys and seizures of illegal narcotics and drugs by local and state law enforcement agencies, as well as DEA.

Program Description: BJA will negotiate a cooperative agreement with a private nonprofit corporation for the purpose of, (1) providing guidance for decision making and policy in this area; (2) developing a software program to operate a data reporting system; (3) provide for regional training of forensic laboratory personnel to generate uniform data from laboratory to laboratory; and (4) provide technical assistance to a minimum of four forensic crime laboratories for the purpose of creating host sites to demonstrate the system. Program development and implementation must be overseen by a Project Advisory Board made up of Federal, state and local officials.

Grant Period: This Cooperative Agreement will have a duration of fifteen months.

Award Amounts: The award will be in the amount of $300,000.

Eligibility Criteria: Private non-profit organizations are requested to submit proposals. Award recommendations will be made based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds.

References: N/A.

Due Dates: The application will be due to the Bureau of Justice Assistance by April 15, 1988.

Contact Person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (1).

Program Title: Drug Corruption Program.

Background: The Bureau of Justice Assistance is currently spending a great deal of Federal funds to implement drug control strategies in various local and state law enforcement agencies. These programs are intended to impact nearly every level of narcotics and dangerous drug interdiction and control, from street level to organized crime. Regardless of the monies provided by the Federal Government, unless the programs implemented by local and state law enforcement are managed and operated by police officers that maintain high standards of integrity, the programs will be seriously hampered by corruption, abuse, and neglect.

Goal/Objective: To aid local and state law enforcement officials in planning, implementing, managing, and evaluating programs, projects, and processes designed to ensure police integrity against the threat of corruption from illicit drug activity.

Program Description: The Bureau of Justice Assistance will negotiate a Cooperative Agreement with a national law enforcement professional association to study corruption and integrity problems caused by the unusual amounts of money involved with illicit drug and narcotic trafficking. BJA proposes that a front end study into the causes of corruption and the positive things law enforcement agencies are doing to prevent the problems be implemented in four to five sites. The final product will be a monograph to be provided to law enforcement officials upon request.

Grant Period: This program will be funded for a period of 15 months.

Award Amount: This cooperative agreement will be funded up to $375,000.

Eligibility Criteria: National law enforcement professional associations are requested to submit applications for the study. Award recommendations will be made based on the quality of task performance plans, the expertise of applicant staff, and the proposed use of funds.

References: N/A.

Due Dates: Applications are due at BJA by April 15, 1988.

Program Contact: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (1).

Program Title: Problem—Oriented Approach to Drug Enforcement.

Background: Problem—oriented policy is the outgrowth of 20 years of research into police operations that converge on three main themes: Increased effectiveness by attacking underlying

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problems that give rise to incidents that consume patrol and detective time; reliance on the expertise and creativity of line officers, as well as other agency support systems, to study problems carefully and develop innovative solutions; and closer involvement with the various communities within a jurisdiction to make sure the police are addressing the needs of citizens.

Goal/Objective: To create a controlled substance abuse assessment mechanism that incorporates the views of line officers, department support groups, and citizens for guiding policy and resource allocation to effect a coordinated response to the illicit drug problem by law enforcement officials, medical facilities, local schools, drug treatment facilities, and other community organizations.

Program Description: The purpose of this program is to help police and their communities deal more effectively with illicit drug trafficking and use. Although progress has been made in some areas, the search for solutions remains foremost on the agendas of criminal justice administrators, educators, parents, and the community at large. Success in addressing this problem has been limited due to five complex factors that are present to some degree in every community:

—The diversity of the controlled substances (both legal and illegal) abused and the changing patterns of abuse;
—The dynamic nature of communities in general, their changing population patterns, social interactions, and changing values;
—The inadequacy of information and data measuring techniques to evaluate the extent and scope of the overall problem and underlying causes of the problem;
—The lact of comprehensive strategies to combat the problem; and,
—The lack of full coordination of the resources employed to control the problem.

One to two additional law enforcement sites will be funded to develop reliance on the expertise and creativity of line officers and support personnel to study the drug enforcement problem carefully and develop innovative responses for arrest of drug traffickers and users, to seize illicit drugs and offender assets, and to complete successful prosecutions.

Grant Period: A supplement to the existing Cooperative Agreement will be awarded to the Police Executive Research Forum (PERF) to assist BJA with site selection and to provide assistance to the sites for a period of 18 months.

Award Amount: The supplement to the existing Cooperative Agreement will be awarded in the amount of $200,000.

Eligibility Criteria: One to two sites will be recommended by PERF and selected by BJA according to their ability to:

—Develop a community/police organizational structure for implementing the program;
—Generate a community-based data collections system for selected controlled substance abuse indicators;
—Implement a method for correlation and analysis of controlled substance abused data with census track demographic data;
—Utilize a method which will yield information from line officers and department support services together with data from the community that will allow for problem assessment and a coordinated response to the problem; and,
—Develop a weighting system to establish and demonstrate the relationship between controlled substance and serious criminal activity.

References: N/A

Due Dates: Since these funds will be contracted by PERF to BJA selected sites, no due dates are being announced.

Contact Person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, (202) 272–4601.

Authority: 1302 (1).

Program Title: Drug Use Forecasting (DUF)

Background: This program provides continued support to efforts by the National Institute of Justice (NIJ) to report on the prevalence and type of drug use among arrestees in American cities. The program was initially based on extensive research conducted by NIJ in two major cities. This research was designed to determine the relative risk to the public resulting from pretrial release of drug using arrestees. One by-product of this effort was the determination that drug use was much more prevalent than anticipated; over half of the arrestees at these two sites having used drugs just prior to the arrest. Testing conducted, under the initial DUF effort, in ten additional cities indicates that these two major cities are representative of the country as a whole.

Goal/Objective: This program will provide, to local, state, and Federal governments, specific information on the prevalence and type of drug use among arrestees, in up to 25 sites and by inference in the country as a whole.

Program Description: An Interagency Agreement will be negotiated with the National Institute of Justice to support periodic urinalysis of arrestees, in up to 25 sites, for the purpose of determining the prevalence of drug use and the kinds of drugs being used. This continuation will provide a broader base of information, by which to determine the rates and kinds of drug use in the nation as a whole, and by which to identify regional variations. The NIJ will identify sites in addition to the twelve now participating, will test a representative sample of arrestees quarterly, and will report on the findings. This effort is directly supportive of BJA efforts underway to document and transfer the testing approach employed in Washington, DC, and will contribute directly to the development of other testing efforts which are a part of this discretionary program and which are envisioned in state block programs.

Grant Period: This award will be for eighteen months.

Award Amount: One award, through an Interagency Agreement, will be negotiated in the amount of $500,000.

Eligibility Criteria: The Interagency Agreement will transfer the funds to the National Institute of Justice; criteria for site selection will be the responsibility of the National Institute of Justice.

References: N/A.

Due Date: Application for the Interagency Agreement will be due to the Bureau of Justice Assistance by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is John Gregrich, Chief, Information Systems Branch, 202/272–4601.

Authority: 1302 (1).

Program Title: State Strategies Assessment.

Background: The Sections of the Anti-Drug Abuse Act, which are administered by the Bureau of Justice Assistance, require each participating state to develop a statewide drug strategy. A data based strategy process is essential to maximize the impact of the program funds on the drug problem; but it is also a substantial burden, given the dynamic state of information related to drugs and crime. Given the nature of the challenge facing state and local criminal justice systems, BJA is intent on providing assistance regarding strategy development and implementation.

Goal/Objective: This program will assist the states and the Bureau with the identification of existing data sources, the use of various data collection and analysis techniques, and the evaluation

of the impact of the statewide drug strategies.

Program Description: The BJA has negotiated a grant with the Criminal Justice Statistics Association to: Provide technical assistance to the states in data collection and analysis techniques; design a scheme for the evaluation of the impact of statewide strategies on the drug problem and the criminal justice system; evaluate the strategy implementation in selected states to determine the factors that are critical to an effective approach to drug control; and develop criteria, based on these evaluations, that BJA should use in reviewing the state strategies. This process was in place for the FY 1987 Formula Grant Strategies. BJA will supplement the project with $200,000 to continue the effort through the FY1988 funding cycle.

Grant Period: This award will be for eighteen months.

Award Amount: One supplemental award will be made in the amount of $200,000 to the Criminal Justice Statistics Association.

Eligibility Criteria: The award will be made to the Criminal Justice Statistics Association, on a non-competitive basis, due to the Association's unique qualifications and relationship with the Statistical Analysis Centers in the states.

References: N/A.

Due Date: The application will be due to the Bureau of Justice Assistance by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is Patricia Malak, Program Policy and Management Division, 202/272–6838.

Authority: 1301 (1).

Program Title: Criminal Justice Management of High-Risk Populations.

Background: The link between drug use, particularly intravenous drug use, and virulent communicable diseases like hepatitis, is well established. Intravenous drug users, injecting a variety of drugs, are now a particularly important conduit for the spread of the acquired immune deficiency syndrome (AIDS). These drug users represent the second largest group of persons to have developed AIDS in the United States. A 1986 study by the Center for Disease Control documented persistent fear of AIDS among law enforcement and corrections personnel. One CDC survey of criminal justice personnel indicates that 93 percent are concerned about the possibility of contracting the disease via methods not associated with its transmission.

To ensure that law enforcement officers and other criminal justice professionals engaged in the control of drug abuse perform their duties effectively and without unnecessary fear, training programs that address the management of individuals arrested and incarcerated for drug trafficking and abuse, and are suspected or diagnosed with AIDS, need to be developed and implemented in a timely and systematic manner.

Goal/Objective: To provide local and state law enforcement and other criminal justice officials engaged in the control of drug abuse with the necessary knowledge and management skills to develop and implement appropriate policies and procedures for offenders suspected of or diagnosed with AIDS.

Program Description: The Bureau of Justice Assistance will negotiate a Cooperative Agreement with the National Sheriffs' Association to provide criminal justice officials with training materials, to serve as a broker and/or provider of technical assistance, and to provide regional training sessions throughout the nation concerned with drug abuse and aids. The National Sheriffs' Association (NAS) has taken the lead among criminal justice organization in developing and delivering comprehensive AIDS training for corrections officers through a 1986 effort with the National Institute of Correction. NSA will use this experience as basis for this program.

Grant period: This Cooperative Agreement will be negotiated for a period of 18 months.

Award Amount: The award will be in the amount of $425,000.

Eligibility Criteria: A Cooperative Agreement will be negotiated with the National Sheriffs' Association (NSA), a national, field based association, expert in AIDS training and technical assistance, and in AIDS related issues facing criminal justice personnel.

References: The National Institute of Corrections/National Sheriffs' Association publications, *AIDS, Improving the Response of the Correctional System,* and *AIDS: 100 Questions and Answers.*

Due Dates: The National Sheriffs' Association's application is due at the Bureau of Justice Assistance April 15, 1988.

Contact Person: The Bureau of Justice Assistance contact person for additional information is Jody Forman, Information Systems Branch, 202/272–4001.

Authority: 1302 (1)

Program Title: Drug Evaluation and Classification Demonstration and Documentation Program.

Background: State and local law enforcement have dealt with a growing number of cases in which impaired drivers have registered below the legal level for impairment on tests generally used for the presence of alcohol. It has been the view of many officials that many of these drivers are impaired by other or additional drugs, for which tests have not been routinely administered. In response to this problem, the Los Angeles Police Department and the Department of Transportation, over the past ten years, have refined a specific procedure and training curriculum for drug impairment recognition and classification. It is a standardized, systematic method of examining a person suspected of a drug related offense to determine: Whether the person is impaired; whether the impairment is drug related; and which of the seven categories of drugs is the likely cause of the impairment.

Goal/Objective: To provide local and state law enforcement agencies with documented procedures for the detection of categories of drugs used by drug offenders.

Program Description: Under an Interagency Agreement, negotiated with the Department of Transportation, the Bureau of Justice Assistance will provide support for additional resources to transfer the Drug Evaluation and Classification Process to pilot sites. Information gathered through this demonstration will be made available to the states to guide state and local Formula Grant allocations for continued technology transfer.

Grant Period: This award will be for a period of 12 months.

Award Amounts: One Award, through a negotiated Interagency Agreement, will be made in the amount of $80,000.

Eligibility Criteria: An Interagency agreement will be negotiated with the Department of Transportation.

References: N/A.

Due Date: The Interagency Agreement will be negotiated by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is John Gregrich, Chief, Information Systems Branch, 202/272–4601.

Authority: 1302 2.

Project Title: Statewide Drug Prosecution Program.

Background: BJA has undertaken a Demonstration Program that is designed to enhance the ability of state and local

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criminal justice agencies to investigate and prosecute multi-jurisdictional narcotics trafficking crimes through the establishment of statewide prosecution capabilities. In many states, drug trafficking conspiracies and offenders do not contain themselves within one city, county, or judicial district. The diffusion of responsibility among state and local jurisdictions usually works to the advantage of the criminal groups. The enforcement and prosecution communities' response to the conspiracy/offense may be fragmented, duplicative, or limited, resulting in the lack of prosecution or, at least, a reduction in the level or seriousness of the crimes prosecuted.

Goal/Objective: To develop statewide enforcement and prosecution projects to assist state and local law enforcement agencies bring the full impact of state law to bear on specifically targeted narcotics trafficking conspiracies and offenders in states that have statutory authority to undertake statewide prosecutions but lack the necessary resources to initiate activities under these statutes.

Program Description: Two additional statewide enforcement/prosecution projects will be funded to develop and implement centrally coordinated multijurisdictional activities within a state to investigate drug trafficking conspiracies that cross jurisdictional lines and to undertake statewide prosecutions. Emphasis will be placed on the enforcement of both civil and criminal statutes that are similar to the Federal Racketeer Influenced and Corrupt Organizations (RICO) statute, the Federal Continuing Criminal Enterprise (CCE) statute, and Title I of the Federal Anti-Drug Abuse Act. Emphasis will also be placed on a formal mechanism whereby investigative and prosecutorial resources can be allocated, focused, and managed against targeted drug traffickers. Critical to the success of this program is a shared management system of intergovernmental law enforcement/prosecutorial resources.

Grant Period: Projects will be funded for 18 months with the expectation that they go through a 3-month organization and planning phase, and a 15-month implementation phase.

Award Amounts: Two additional sites will be awarded funds in the range of $375,000 to $400,000 each and a potential technical assistance component funded for a total amount of up to $1,200,000.

Eligibility Criteria: Final selection will be based on the following eligibility criteria·

—The capacity of the participating agencies to conduct a complete and fully coordinated approach;

—The presence of requisite legal authority coupled with willingness of executive officials to utilize available authority, as evidenced by:

(1) The presence of an attorney general, statewide prosecutor, or other prosecutorial official with statewide or multi-jurisdictional prosecutive authority, coupled with adequate available investigative authority;

(2) The presence of a special prosecution unit at the state level with appropriate operational experience in prosecuting multi-jurisdictional or complex criminal conspiracy cases in areas such as narcotics trafficking, organized crime, financial or white collar crime, corruption, racketeering forfeiture, and related areas; and

(3) The presence of an office at the state level with criminal law jurisdiction either primary or concurrent with local prosecutors (district attorneys) in the investigation and trial prosecution of all criminal cases, or primary or concurrent selected trial level prosecution in multi-jurisdictional or complex cases (as specified above);

—the existence of a coordinated approach to the narcotic crime problem, as evidenced by:

(1) Statutory authority or formal agreements coordinating local law enforcement/prosecutive agencies and efforts with state agencies; and

(2) Statutory authority or formal agreements coordinating investigative agencies and efforts with prosecutive agencies;

—The availability of investigative resources and capabilities necessary to support prosecutive operations, as accomplished by either an appropriate statewide investigative authority or a formalized agreement of coordinated local agency support to the statewide prosecutive effort;

—Proposed criteria to be used in the selection and prosecution of cases, including jurisdictional definition of categories of criminal cases acceptable and criteria for level of significance and impact, whether by statute, mandate, or official policy; and

—The anticipated impact on illicit drug conspiracies and the criminal justice system as measured by the level of drug related crime, criminal offenders, and criminal activity in such areas as seriousness, type, amount, and nature, along with outcomes, results, cases, arrests, prosecutions, convictions, recoveries, and asset seizures.

References: N/A.

Due Dates: Applications must be postmarked no later than April 15, 1988.

Contact Person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302(2).

Program Title: Utilization of State Racketeer Influenced and Corrupt Organization (RICO) Statutes to Interrupt Criminal Enterprises Trafficking in Illicit Drugs and Narcotics.

Background: Following the Federal Government's example, at least 20 states have enacted RICO statutes; however, these statutes vary significantly in the effectiveness of their specific provisions and their utilization as law enforcement and prosecutorial tools to attack criminal enterprise. Four states have been identified as currently utilizing a RICO statute as an effective means of curtailing or eliminating such illegal enterprises. Individual reviews are being completed for each of these States' statutory provisions and the Attorney General's Office successful use of RICO in proceeding against organizations or individuals engaged in drug trafficking.

Goal/Objective: To provide technical assistance and limited financial assistance to selected state Attorneys General offices to enhance their state's RICO statute's provisions and to conduct statewide investigation and approrpiate criminal and civil proceedings to attack and interrupt enterprises trafficking in drugs.

Program Description: This effort will enhance the capabilities of a State's Attorney General, as the highest law enforcement official, to become more effective in coordinating and directing state-wide efforts to disrupt major organizations involved in illegal drug activities. Through technology transfer and direct assistance to selected Attorneys General, improvements to a state's RICO statute will be recommended. The Attorney General's Office will also adopt the procedures and techniques proven most effective in the state successfully utilizing a RICO statute to attack and cripple criminal enterprises. An emphasis will be on Attorneys General assuming the primary role for coordination and assisting in state-wide (multi-jurisdictional) investigations, including the development of a capability for complex finanical investigations associated with the seizure and forfeiture of ill-gotten assets. The Attorney General's Office will follow the investigation with aggressive application of all the

appropriate legal procedures available under the state's RICO statute to remove the organizations or individuals from illegal drug trafficking.

Grant Period: This program will be funded for an eighteen month period.

Award Amounts: Approximately $500,000 will be awarded to provide technical assistance to state Attorneys General; two state Attorneys General offices are to be selected as model demonstration sites and each will be awarded funds up to $100,000, for a program total of $700,000.

Eligibility Criteria: The National Association of Attorneys General is expected to be the grantee. The National Association of Attorneys General is uniquely qualified to serve as the grantee for this effort due to their ongoing work in this area and their organizational network of contracts necessary to successfully achieve this program's objectives.

References: N/A.

Due Dates: Application to be submitted by 15 April 1988.

Program Contact: The Bureau of Justice Assistance contract for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272-4601.

Authority: 1302(7).

Program Title: Organized Crime/Narcotics Trafficking Enforcement Technical Assistance and Training Program.

Background: A clear picture of the changing nature of organized crime emerged from the records of the President's Commission on Organized Crime. Its methods are brutal, and its scope is pervasive. The principal income-generating activity for organized crime is the production and distribution of illegal drugs, at $80 billion a year.

Development of successful cases against organized crime narcotics trafficking conspiracies requires utilization of unique investigative techniques. Civil and criminal forfeiture of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations.

Goal/Objective: To provide specialized technical assistance and training in support of the Anti-Drug Abuse Act Formula and Discretionary Grant programs in the area of multi-jurisdictional law enforcement and prosecution approaches to narcotics trafficking. This program is designed to assist state and local criminal justice agencies develop and implement shared management programs involving multiple jurisdictions, and directed toward disrupting illegal narcotics trafficking at the highest conspiratorial levels.

Program Description: The Institute for Intergovernmental Research (IIR) will provide and manage the delivery of technical assistance and training services for multi-jurisdictional law enforcement and prosecution efforts. These services will be provided in conjunction with the continuing coordination role of IIR with regard to the Organized Crime Narcotics Trafficking (OCN) Program. Expertise and examples derived from the OCN program will be applied to other jurisdictions experiencing similar problems on an as needed basis after approval by BJA.

The inter-jurisdictional nature of drug trafficking today requires cooperation and coordination not only among multiple law enforcement agencies, but also between law enforcement and prosecution. These coordinated efforts face unique impediments that must be overcome in order to assure effective operations. Technical assistance and training will be provided in areas that include: Geographical differences; varying authorities and disciplines; interagency agreements; case control; case managment and tracking (including the use of micro-computer capabilities); investigative target selection; matters of liability; and, conflicts in agency policy and procedures.

In order to provide service delivery as efficiently as possible, consideration will be given to cost savings, cost sharing by the recipient agencies, regional scheduling, and use of current OJP and OCN resources wherever relevant and practical. Technical assistance needs will be handled by screening and verifying assistance requested, developing a pool of practitioner experts, facilitating and providing assistance, arranging followup, and evaluating service provision. Training needs will be met by developing course curricula, selecting training sites, developing a pool of expert instructors, delivering and supervising services, and evaluation of training.

Grant Period: The duration of the grant will be 18 months.

Award Amounts: One grant will be awarded for $100,000.

Eligibility Criteria: This award will be made to the Institute for Intergovernmental Research to expand BJA efforts under the OCN Program awarded in FY1987.

References. N/A.

Due Date: N/A.

Program Contact: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Authority: 1302 (7).

Program Title: Organized Crime/Narcotics Trafficking Enforcement Combined Operations Program.

Background: Development of successful cases against organized crime narcotics trafficking conspiracies requires utilization of unique investigative techniques. Civil and criminal forfeitures of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations.

During the implementation of the twenty-one Organized Crime Narcotics (OCN) Trafficking Enforcement projects, funded during FY1987, an awareness developed of the commonality and mobility among the project regions of certain criminal elements and organizations. These criminal cartels, primarily interstate in nature, were observed to operate in two or more OCN project locations as well as in non-project locations.

Global/Objective: To develop regional enforcement projects to assist state and local law enforcement agencies through joint operations with Federal personnel and to remove specifically targeted major organized crime narcotic trafficking conspiracies and offenders through investigation, arrest, prosecution, asset forfeitures and conviction.

Program Description: Funds awarded under this program will be used to augment and expand current activities being administered by the Institute for Intergovernmental Research under the OCN project. Law enforcement officials from participating jurisdictions will identify common targets operating in two or more OCN project sites.

OCN project network cases will move beyond information sharing to shared management of resources in joint, multi-state enforcement operations aimed at the arrest and prosecution of the individual criminals, wherever they may be located within the program area. OCN project network cases will be developed on an ad hoc basis, pooling together a control group of affected agencies for the limited time necessary to secure successful investigative conclusions.

Appropriate participants would include Federal and prosecutive agencies, as well as state and local law enforcement agencies. DEA concurrence would be mandatory in these operations. The control group will develop an investigative plan and an investigative budget, consistent with existing OCN guidelines. For the purpose of each such investigation, one participating state or local agency will agree to be administratively responsible for the network investigative funds.

Grant Period: The project will be funded for 18 months.

Award Amount: $100,000 is allocated for the program.

Eligibility Criteria: The Institute for Intergovernmental Research will be the designated grantee for this program, and will recommend sites to BJA from among existing OC/N projects.

Due Date: N/A.

Program Contact: The BJA contact for additional information about this program is Richard H. Ward, Chief, Enforcement Branch, 202/272–4001.

Authority: 1302 (2)(3)(4).

Program Title: Adjudication Technical Assistance Program.

Background: Since FY1986, The Bureau of Justice Assistance (BJA) has been providing technical assistance in prosecution and court related matters to state and local jurisdictions through the Adjudication Technical Assistance Program (ATAP). During this time, the volume and complexity of drug-related problems confronting courts and other parts of the justice system have become apparent. This supplement will allow the EMT Group, Inc., to augment the current operations of this program to meet the increased need for technical assistance in this area.

Goal/Objective: BJA's Adjudication Technical Assistance program will be given additional resources to assure that it can respond adequately and effectively to state and local jurisdictions needing help in court management, case processing, and new programming related to drug offenses, offenders, and users.

Program Description: The impact of large increases in the number of drug offenders arrested on prosecutor and public offender agencies, pretrial services agencies, courts, and jails; the desire of local justice systems and, frequently, states to implement new technologies such as drug testing as a tool to aid the court in decisions about drug users and drug offenders; and, the growing evidence that a substantial number of all persons arrested, at least in larger jurisdictions, are drug users with problems attendant to that status as well as involved in the underlying crime, have all lead to an increase in the requests for technical assistance made by courts and related justice agencies. These problems are frequently more complex and require greater investment of time and funds than many of the other court management, case processing and new programming issues that ATAP has traditionally addressed. This supplement will allow ATAP to better respond to these types of drug-related problems within the context of the total program now on-going.

Grant Period: The current grant period to end March 31, 1989, will be extended through negotiations.

Award Amount: One award, through the cooperative agreement, will be made for $200,000.

Eligibility Criteria: A supplemental award to the cooperative agreement will be made to EMT Group, Inc.

References: N/A.

Due Date: Supplemental application will be due at BJA by March 31, 1988.

Program Contact: The BJA contact for additional information on this program is Linda McKay, Courts Branch, 202/272–4601.

Authority: 1302 (3).

Program Title: Comprehensive Drug Adjudication Program.

Background: During FY1985, the Bureau of Justice Assistance (BJA) initiated the Drug Monitoring of Drug Arrestees Program (DMDA). Three pilot jurisdictions participate in this program. In FY1987, the Comprehensive Drug Adjudication Program (CDAP) was developed to mount drug testing/monitoring operations in three additional sites. These new sites will be selected by April 1988 and will begin implementing the program in mid-summer. The initial sites under the DMDA Program will have only nine months of operation, which is too short a period of time to fully document and evaluate their success. Additionally, there are numerous advantages to consolidating administration of these two ongoing programs. Therefore, a supplemental award will be made to the Pretrial Services Resource Center to allow continued project operations in the DMDA sites under the Comprehensive Drug Adjudication Program.

Goal/Objective: To allow continued testing and demonstration of the effectiveness, for courts and other criminal justice agencies, of utilizing drug testing as one means of case screening and as a monitoring device during the pretrial stage.

Program Description: Three jurisdictions, Tucson, Arizona; Portland, Oregon; and the State of Delaware, have been participating in the DMDA Program since July 1987. The Program is based on the success of an ongoing Washington, DC project, and involves urine testing of all or a significant number of arrestees to determine drug usage. Test results are utilized both as a means of giving the court relevant information about the arrestees at the time of the initial detention/release hearing and, if the initial test is positive, intermittently, thereafter, during the pretrial process. Such information has increasingly been found to be relevant to the chances of rearrest while on release prior to trial and to the arrestees amenability to treatment, if the arrestee is referred to treatment pending case disposition. Both the complexity and expense involved in initiating such a project suggests that substantial time is necessary for full program development. Therefore, to allow continued review and documentation of the potential of this approach, with the aim of eventually transferring viable program technology to other jurisdictions, BJA will supplement the DMDA Program sites.

Grant Period: A twelve month continuation period, per site, is anticipated.

Award Amount: Three site awards are anticipated with a total program cost of $800,000.

Eligibility Criteria: Only those jurisdictions already participating in the DMDA Program will be considered.

References: N/A.

Due Dates: Applications are due at BJA by July 1, 1988.

Program Contact: The BJA contact for additional information on this program is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Authority: 1302 (3).

Program Title: Enhanced Pretrial Services Delivery Program.

Background: Sampling conducted through research and operational programs confirm that between 50 and 70 percent of arrestees are drug users. However, only 40 percent of these individuals are so identified through existing pretrial screening. Many large and medium sized urban areas lack the technical and financial resources to implement a pretrial service program that can more accurately identify the drug abusing population entering the criminal justice system prepare arrestee profiles to include risk assessments, assist the court in identifying an appropriate pretrail status (detention,

ROR, Conditional Release) for the arrestee, and monitor the arrestee to ensure appearance at trial. Over the past decade, pretrial services agencies have demonstrated their value by providing technical, coordinating, and advisory services that result in a more effective and comprehensive adjudication process. The incidence of drug abuse and resulting arrests, along with the special responses to the drug abuser, underscore the importance of such services being available.

Goal/Objective: The goal of the Enhanced Pretrial Service Delivery Program is to promote the concept and use of pretrial service agencies as a critical tool for the appropriate and expeditious adjudication of drug arrestees.

Program Description: The program will (1) recognize selected pretrial service agencies as demonstration sites, (2) use those sites to promote pretrial services in other jurisdictions through technical and financial assistance, (3) augment traditional drug screening techniques to enhance detection of drug users, (4) develop a more reliable risk assessment/profile of the arrestee, and (5) help jurisdictions build a comprehensive inventory of appropriate conditional release options. The results of this work will enable the courts to ensure drug abusing arrestees/offenders receive appropriate pretrial disposition (i.e., detention, treatment, monitoring). The National Association of Pretrial Service Agencies (NAPSA) and the Pretrial Services Resource Center will coordinate implementation of the program.

Grant Period: A Cooperative Agreement will be awarded for a 12 month effort.

Award Amount: An award will be made for $500,000.

Eligibility Criteria: The award will be made to the Pretrial Services Resource Center in consultation and coordination with the National Association of Pretrial Service Agencies.

References: N/A.

Due Date: The application is due at BJA June 30, 1988.

Program Contact: The BJA contact for additional information is Linda McKay, Courts Branch, 202/272–4601.

Authority: 1302 (3).

Program Title: Large Court Capacity Program.

Background: Last year, the Bureau of Justice Assistance (BJA) and the National Center for State Courts began a major initiative to enhance performance of large jurisdiction courts in light of significant case backlogs created by narcotics trafficking and drug abuse cases. Three major components of the program were: (1) Development and integration of trial court performance standards and recognition of those trial courts that demonstrate achievement of these standards, (2) analysis of case flow activity in trial courts as a means to focus technical assistance resources on courts that exhibit significant delays in case processing, and (3) review of case characteristics to support a different case management approach to further expedite the adjudication of cases.

Goal/Objective: The goal of this program is to promote systematic and permanent improvements in court operations, expecially in large jurisdiction trial courts, so that these courts can provide fair and efficient adjudication of drug arrestees/offenders.

Program Description: Additional funding will accelerate and conclude the development of trial court performance standards and begin a marketing strategy to integrate them into trial courts in large urban areas where drug cases are inundating the system. The Commission on Trial Court Performance Standards will continue to guide the completion of those standards and the marketing strategy. In addition to the standards, attention will be given to the Differentiated Case Management Analysis component. The initial effort will be expanded to include a greater sample of cases from which characteristics can be analyzed and structured to permit better use of court management resources in achieving expeditious adjudication of drug cases.

Grant Period: A supplemental award will be given for an additional 18 months of operation.

Grant Amount: The grant award will be made for $800,000.

Eligibility Criteria: A supplemental award will be made to the National Center For State Courts.

References: N/A.

Due Date: Application will be due at BJA July 1, 1988.

Program Contact: The BJA contact for additional information on this program is Jay Marshall, Chief, Courts Branch, (202) 272–4601.

Authority: 1302 (3)(6).

Program Title: Assessing the Impact of Drug-Related Cases on Community Safety, Court Delay, and Jail Crowding: Significant Problems; Possible Strategies.

Background: The Bureau of Justice Assistance (BJA) has funded the development and demonstration of a number of approaches that have proven themselves in a number of sites. As these approaches are documented and made available to states and local government, it is particularly important that they be shaped in a manner that is directly responsive to the most critical problems being experienced by local criminal justice systems. More specifically, it is essential that recommended programs take full cognizance of the interrelated nature of community safety, court delay, jail crowding, and the manner in which drug-related crime exacerbates the burden already experienced by local criminal justice systems. This program will enable BJA to provide extensive information quickly on the relative burden presented by drug-related cases in three jurisdictions, to assess the relative success of these jurisdictions in addressing this burden, and to determine the relative applicability of approaches now being demonstrated to the problems found.

Goal/Objective: This program will provide, to local, state, and Federal governments, specific information on the particular burden placed on the local criminal justice system by drug-related cases, on the relative success of strategies employed, and on the likely success of strategies under development.

Program Description: A Cooperative Agreement will be awarded to the Department of Criminal Justice, Temple University, to support a modest data collection effort and specific analysis of that data and of data and information already collected. Extensive arrestee information has been gathered in Boston, Miami, and Phoenix in 1984, 1985, and 1987, in support of a National Institute of Justice project on bail guidelines; and access to additional data is still immediately available. Although gathered for another purpose, this information lends itself directly to the detailed analysis of the burden of drug-related cases compared to other cases. It will be analyzed to determine: The economic and resource burden of drug-related cases (e.g., detention days, trial days); the risks to community safety (e.g., pretrial rearrests); the relative success of approaches taken to address these problems; and the likely applicability of approaches and strategies now being demonstrated by BJA. At least two reports will be prepared addressing these four areas and will be made available to state and local criminal justice agencies to inform strategy development. The first, graphically addressing burdens and risks, will be available within six months of project start-up. Information from these reports will contribute directly to BJA efforts to transfer models under development for detection and monitoring of drug using arrestees, focused offender disposition, comprehensive drug adjudication, and problem-oriented policing.

Grant Period: This award will be for twelve months.

Award Amount: One award, through Cooperative Agreement, will be negotiated in the amount of $175,000.

Eligibility Criteria: The Department of Criminal Justice, Temple University, has been selected as uniquely qualified to conduct this program. This Department has demonstrated substantial expertise in each of the areas to be addressed and, more specifically, has collected and possesses the data to be analyzed and has maintained direct access to additional data required at the sites involved.

References: N/A.

Due Date: Application for the Cooperative Agreement will be due at Bureau of Justice Assistance by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is John Gregrich, Chief, Information System Branch, 202/272–4601.

Authority: 1302 (4).

Program Title: Intensive Supervision Probation/Parole Demonstration Program.

Background: BJA has initiated a highly structured Intensive Supervision program to include nine pilot jurisdictions, as well as the provision for national technical assistance, training, and independent evaluation. FY1988 will primarily be a year of consolidation and continuation funding.

Goal/Objective: This program will provide continuation funding for up to three current pilot projects and, possibly, one additional project to be selected from the FY1987 competitive list. The project is aimed at serious offenders who would normally show a high rate of recidivism on probation or parole.

Program Description: This program has two components: (1) The refunding of current Intensive Supervision sites and, possibly, one additional site; and (2) the funding of a national technical assistance project that will include training, consultations, and evaluation.

Each project will involve state-of-the-art risk/ needs assessment, appropriate counseling/treatment services, and the elements of team supervision. Projects may allow for direct sentencing to intensive supervision, or transfer from regular probation or parole caseloads based on fixed criteria. Each project will emphasize surveillance, urinalysis, and treatment standards. Projects may emphasize early intervention in prison or jail settings where probationers are serving a split sentence.

National Technical Assistance Grant: This component will provide continuation funding to the National Council on Crime and Delinquency to provide training, technical assistance, and evaluation for this program.

Grant Period: Continuation awards will be made for up to 12 month project periods. The additional site award will be for 18 months.

Award Amount: $450,000 has been earmarked for this program: $200,000 is set aside for continuation grants; $150,000 may be awarded to one new project site. $100,000 will be awarded to the National Council on Crime and Delinquency to provide national program coordination.

Eligibility Criteria: Demonstration Sites—Eligibility criteria will include: Probation/parole organizational plan; proposed sanction and control mechanisms; client screening system; local resources input; and replication potential.

The additional project will be selected from the original peer panel selections made in FY1987. No new applications are being accepted. Protects must budget travel and per diem for one training session. Training sites will be determined based on the locations of the selected sites. Some weight will be given to geographical distribution of the projects.

National Technical Assistance Grant: The National Council on Crime and Delinquency should submit a SF 424 and a completed application showing their commitment to continue providing the following:

Training workshops to provide operational and management training;

Provision of on-site consultation and information dissemination to assist development and implementation of intensive supervision sites, which may include some ad hoc provision of technical assistance to non-demonstration sites;

Provide administrative oversight of sites selected for program demonstration to include assessment and coordination of services;

Independent evaluation that provides some important assessment of demonstration sites.

References: "Granting Felons Probation: Public Risks and Alternatives," National Institute of Justice study by the Rand Corporation, January, 1985.

"Intensive Supervision Program: Report to the Judicial College," New Jersey Administrative Office of the Courts, November, 1985.

"Taking Quality into account: Assessing the Benefits and Cost of the New Jersey's Intensive Supervision Program," Institute for Criminal Research, Rutgers University, 1986.

"New Dimensions in Probation: Georgia's Experience with Intensive Probation Supervision (IPS)," National Institute of Justice Report, January, 1987.

Due Dates: Completed applications for demonstration sites and the National Technical Assistance Grant are due on April 15, 1988.

Program Contact: The BJA contact for information on this program is Kim Rendelson, Corrections Branch, 202/272–4605.

Authority: 1301 (4).

Program Title: Comprehensive State Department of Corrections Treatment Strategy for Drug Abuse.

Background: This program was initiated in FY1987 to assist state departments of corrections to expand and upgrade drug treatment and rehabilitation activites in all state institutions. The Bureau of Justice Assistance (BJA) selected Narcotic and Drug Research, Inc. (NDRI) as the national program coordinator to assist with national technical assistance and training.

Six states were selected for Phase 1 Planning contracts for the first year: Connecticut, New York, Delaware, Florida, Alabama, and New Mexico. Three of those states: Florida, Delaware, and New Mexico have received implementation grants of $400,000 each. Technical assistance and training are provided by Narcotic and Drug Research, Inc.

Goal/Objective: The goal of this program is to reduce recidivism rates of major drug using offenders by a range of drug treatment programs and community supervision and treatment.

Program Description: Three new states will be added to the current six states for a total of nine.

The major objective is to develop a range of model state drug treatment activities including: Therapeutic communities, drug resource centers, drug education, and self-help groups that can be integrated into existing and proposed institutions.

An ancillary objective is to train corrections and treatment staffs in the latest techniques of drug treatment.

Lastly, the program has an evaluation objective, whereby both the treatment process and the impact will be assessed.

Grant Period: This project will be extended for twelve months through June 1989.

Award Amount: $1,700,000 is earmarked for this program as follows: $1,200,000 for three implementation grants to the Phase 1 planning states as they complete their implementation plans, and the plans are approved by BJA and NDRI. $500,000 is allocated for three new state Departments of Corrections Phase 1 Planning contracts (average $80,000 per state) and continuation of the technical assistance and training with NDRI.

Eligibility Criteria: Planning Phase (three states): Interested jurisdictions should submit a concept paper of approximately 10–12 pages plus a one page summary budget to Narcotic and Drug Research, Inc., 11 Beach Street, 3rd Floor, Research, New York, New York 10013, Attention: Dr. Harry Wexler, Projector Director.

Eligibility criteria will include:

Analysis of range and scope of current drug addiction in the inmate population; proposed department organizational plan; proposed screening system; state resources available for implementation (including Federal Block Grant funds); and replication potential for other states:

An independent selection panel will screen planning phase papers and make recommendations on a competitive basis. Some weight will be given to geographical distribution of projects.

Reference: A program information packet may be secured by calling Lenny Posner, Narcotic and Drug Research, Inc., at 212/941–2320.

Due Dates: Planning and Phase 1 Concept papers are due at NDRI by April 30, 1988. Sites will be selected by the end of May, and start-up activities are projected for July 1, 1988.

Implementation projects: Applicants must submit completed SF 424 applications and submit them to BJA upon completion of the comprehensive plan. The current planning states should be ready for implementation projects in the Spring of 1988.

Program Contact: The BJA contact for further information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Authority: 1302 (4).

Program Title: Evaluation of Drug Treatment for Individual State Corrections Institutions.

Background: The Bureau of Justice Assistance (BJA) funded six projects in individual state correctional institutions in FY1987. These projects were designed to test a variety of drug treatment and rehabilitation modules.

Goal/Objective: This project will provide for a small scale evaluation of the six projects funded under the FY1987 Program entitled "Drug Treatment for Individual State Corrections Institutions."

Program Description: This project, under a grant to Narcotics and Drug Research, Inc., will gather and analyze data from each of the six state correctional institutions. It will document some of the options available to state correctional institutions for drug treatment and rehabilitation. Three on-site data collection and technical assistance visits are projected for each demonstration site.

Grant Period: This award will be for 12 months.

Award Amount: $100,000 is earmarked for this evaluation project.

Eligbility Criteria: A supplement to the current Cooperative Agreement will be negotiated with Narcotics Drug Research, Inc., New York.

References: N/A.

Due Dates: Completed Application with SF 424 is due at BJA on April 30, 1988.

Program Contact: The BJA contact for this program is Kim Rendelson, Corrections Branch, 202/272–4506.

Authority: 1302(4).

Program Title: Youthful Offender Alternative—Boot Camp/Close Supervision Assessment.

Background: In the past four years, a number of states and counties have initiated youthful offender alterative programs, sometimes called "Regimented Inmate Discipline" programs, or more commonly referred to as "Boot Camp Prison." These projects appear to be experiencing a high degree of administrative support for youthful offenders, showing a potential of lowering recidivism rates. States presently operating Boot Camp Prison projects include Oklahoma, Mississippi, Georgia, Louisiana, Michigan, Florida, and Colorado.

Goal/Objective: The goal of this program is to provide an assessment of six to ten already operating Boot Camp Prison projects. This effort will target those projects involving a high proportion of drug offenders and will determine which are successful for use as possible model projects for dealing with drug offenders. BJA and NIJ are discussing the potential of a cooperative effort in this venture.

Program Description: N/A.

Grant Period: An evaluation effort may be awarded for a period of 12 months.

Award Amount: The award amount is contemplated at approximately $100,000.

Eligibility Criteria: To be announced in a later notice.

References: "Doing a tour in a 'Boot Camp' Prison," Corrections Compendium, Vol. IX, No. 5, dated November 1986.

"Boot Camp, Shock Incarceration: Discipline for Young Offenders," Criminal Justice Newsletter, March 3, 1988.

"Impact of Intensive Incarceration, Project Proposal." National Institute of Justice, 1987, Project #87–IJ–CX–0020.

Due Dates: To be announced in a later notice.

Contact Person: The BJA contact for further information on this program is Kim Rendelson, Corrections Branch, 202/272–4605.

Authority: 1302(6).

Program Title: Drug Treatment in the Jail Setting—National Demonstration Program

Background: This is an expansion of a program first begun in FY1987. The American Jail Association proposed a national research and demonstration program to assist jails and community corrections agencies in improving screening and treatment for drug offenders. This program is an outgrowth of that proposal.

Goal/Objective: This program will assist local jails and community corrections agencies to improve drug screening and treatment services. This program will provide funding for the development of one additional national model for possible replication. While the emphasis will be on drug treatment in large metropolitan jails, training and clearinghouse service will be provided for smaller jails as well.

Program Description: This program is divided into two components:

Funding of one additional pilot project. The project will receive $300,000. The model site will cooperate in the transfer of project components from the model jail to other jails through documentation and host visits.

$100,000 is set aside for the National Program Coordinator for the administration, training, and technical assistance.

Grant Period: The duration of the program will be for 18 months. The suggested start-up date for the new pilot project is July 1, 1988.

Award Amount: $400,000 is earmarked for this program.

Eligibility Criteria: Eligibility criteria for the demonstration sites will include: Level of integration of jail and community treatment components; comprehensiveness of the drug treatment component; support for local correctional and drug treatment officials; and local funding sources committed to the project.

The American Jail Association will be the National Program Coordinator for this program.

References: N/A.

Due Dates: These funds will be used to expand this program, begun in FY1987, to include one additional demonstration site. The additional project will be selected from the original peer panel selections made in FY1987. No new applications are being accepted. The American Jail Association should submit a completed application, SF 424, by April 30, 1988.

Program Contact: The BJA contact for this program is Kim Rendelson, Corrections Branch, 202/272-4605.

Authority: 1302(6).

Program Title: Probation and Parole Drug Testing Standards Project.

Background: The correlation between drug use and crime has been well established through a variety of studies. Drug testing (urinalysis) has been utilized within the criminal justice system as an acceptable method to identify and monitor drug abusing offenders. Within the past year, with the advent of the Anti-Drug Abuse Act of 1986, drug testing has been encouraged. With the increase in drug testing, there has also been an increase in the amount of questions, procedures, and case law regarding drug testing. Each jurisdiction or program within a jurisdiction has virtually had to develop its own procedures for drug testing. This has resulted in confusion, unnecessary duplication of efforts, and in many cases unnecessary law suits that could have been avoided. It is safe to assume that this will continue unless some steps are taken to consolidate current information, review and apply case law, and develop consistent procedures and guidelines for testing of drug abusing offenders.

Goal/Objective: It is the intent of this program to develop standards and guidelines in the probation and parole areas for the testing of drug abusing offenders.

Program Description: A Cooperative Agreement will be awarded to the American Probation and Parole Association (APPA) to develop standards and guidelines for offender drug testing (urinalysis) in the probation and parole systems. The APPA has been chosen because they are the national association that represents the probation and parole professionals and, therefore, the best suited group to develop these standards. The standards will address (but not be limited to) issues, such as who should be tested, when should testing be done, and how the results of the tests should be used. Suggested case law on this subject will be given. Rationale for each standard will be stated. These standards will be written, published, and distributed throughout the probation and parole systems of the country.

Grant Period: This award will be for a period of 12 months.

Award Amount: One award, through a Cooperative Agreement, will be made in the amount of $100,000.

Eligibility Criteria: The Cooperative Agreement will fund the American Probation and Parole Association.

References: N/A

Due Date: The Cooperative Agreement will be due at the Bureau of Justice Assistance by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is Karen McFadden, National Policy Research and Coordination Branch, 202/724-5972.

Authority: 1302(6).

Program Title: Case Management Applications of Drug Use Forecasting (DUF) and TACS Informaiton in Selected Cities

Background: The Drug Use Forecasting (DUF) research on prevalence and types of drug use among offender populations, co-funded by BJA, was conducted by the National Institute of Justice in 12 cities during the FY1987, with an expected expansion to 25 cities in FY1988. The Treatment Alternatives to Street Crime (TASC) program, recognized as effective by criminal justice and drug treatment professionals, is being used increasingly by the criminal justice system as a method for monitoring and managing offenders while on pre-trial release, probation, or parole. There are now over 100 TASC sites in 18 states, several of which are in DUF cities. Basic operational information from all TASC programs is being collected by the National Consortium of TASC Programs (NCTP) under a current BJA cooperative agreement. Data from both the DUF and from the NCTP efforts must be used to inform strategies for national, regional, state, and local case management planning. Therefore, it is wise to gauge the applications and anticipate the implications of information from the DUF and from the TASC baseline data on future treatment and case management resources.

Goal/Objective: This project will provide state and local criminal justice agencies and block grantees with specific quarterly assessments of the national and regional applications and implications of drug use trends among offender populations on case management resources.

Program Description: A Cooperative Agreement will be awarded to the National Consortium of TASC Programs to provide quarterly assessments and analyses of drug use trends, identified in the DUF reports and from other sources, to criminal justice managers and planners. The quarterly assessments will include, but not be limited to, describing the effects of the information on enforcement, probation, parole, and case management resources.

Grant Period: This award will be for 12 months.

Award Amount: One award, through a negotiated Cooperative Agreement, will be made in the amount of $100,000.

Eligibility Criteria: A Cooperative Agreement will be negotiated with the National Consortium of TASC Programs, a national, field based organization of case management programs and current collector of one of the subject data sources.

References: N/A.

Due Date: Application for the Cooperative Agreement will be due at the Bureau of Justice Assistance by April 15, 1988.

Program Contact: The Bureau of Justice Assistance contact for additional information is Jody Forman, Information Systems Branch, 202/272-4601.

General Requirements

Match: Grants may be awarded for up to 100 percent of program or project costs.

Eligibility: Public agencies and private non-profit organizations are eligible to apply in accordance with the specific eligibility requirements set forth in the individual announcements.

Period of Support: Grants may support projects for up to three years.

Financial Requirements: Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The Circulars along with additional information and guidance are contained in the "Financial and Administrative Guide for Grants," OJP Guideline Manual, OJP M71001C, available from the Office of Justice Programs.

Non-Discrimination: The Anti-Drug Abuse Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of the Title VI of the Civil Rights Act of 1964;

section 504 of the Rehabilitation Act of 1973, as amended; Title XI of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Subparts C, D, E, and G.

Intergovernmental Review of Federal Programs: On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," to provide state and local governments increased and more effective opportunities to influence federal actions affecting their jurisdictions. Final regulations (28 CFR Part 30) implementing the Order for the Department of Justice were published in the **Federal Register** on June 24, 1983 (48 FR 29238). The Order and the regulations permit states to establish a state process for the review of Federal programs and activities, to select which programs and activities (from a previously published list) they wish to review, to review proposed Federal programs and activities, and to make their views known to the Department through a State "Single Point of Contact" (SPOC). The Order and the implementing regulations revoke the former A-95 clearance process.

Applicants for this program, except those programs national in scope, must submit a copy of their application to the applicant agency State "Single Point of Contact," if one has been established and if the State has selected this program to be covered in its review process. Applications must be submitted to the SPOC for review and comment at the same time they are submitted to BJA. Under the regulations, the State process has at least thirty (30) days to comment on non-competing continuation applications and at least sixty (60) days to comment on all other applications.

George A. Luciano,

Director.

[FR Doc. 88-4975 Filed 3-7-88; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 86-50]

Raymond A. Carlson, M.D.; Revocation of Registration

On May 26, 1986, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued an Order to Show Cause to Raymond A. Carlson, M.D., Respondent, of 1417 Stevenson Street, Vinton, Louisiana, proposing to revoke DEA Certificate of Registration AC3408374, and to deny any pending applications for renewal of that registration. The statutory predicates for seeking the revocation of Respondent's registration were that: (1) Respondent was convicted of a felony offense relating to controlled substances; (2) Respondent falsified the application for renewal of his registration; and (3) Respondent's continued registration was inconsistent with the public interest.

Respondent, through counsel, filed a timely request for an administrative hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, an administrative hearing was held before Administrative Law Judge Mary Ellen Bittner in New Orleans, Louisiana on August 25 and 26, 1987.

On December 4, 1987, Judge Bittner issued her findings and conclusions of law, recommending that the Administrator revoke Respondent's DEA Certificate of Registration and deny any pending applications for renewal of his registration. Neither counsel for Respondent nor the Government filed exceptions to the findings and recommended ruling of the Administrative Law Judge.

After careful review of the entire record in this proceeding, the Administrator adopts all of the findings of fact, conclusions of law, and recommended ruling of the Administrative Law Judge.

The Administrator finds that on September 19, 1985, in the Fourteenth Judicial District Court for Calcasieu Parish, Louisiana, Respondent was convicted, after entering a plea of guilty, of one count of unlawful distribution of diazepam, in violation of L.S.A.-R.S. Section 40:969.A, a felony conviction relating to controlled substances.

Respondent's conviction resulted from a criminal investigation into his controlled substances handling activities initiated by the Louisiana State Police. The investigation was initiated after a reliable cooperating individual approached the police to inform them that Respondent had provided her with controlled substances or prescriptions for controlled substances in exchange for sexual favors on numerous occasions over a three year period. She also told the police that on some occasions, Respondent used controlled substances, including Marijuana, with her, and that on one occasion, he gave her money to purchase a small quantity of marijuana for him. In addition, she informed the police that Respondent had requested that the young woman find other individuals to "party" with them. Based upon this information, the Louisiana State Police began an undercover investigation into Respondent's controlled substances handling practices.

In April 1985, a meeting between the Respondent, the young woman, and a female undercover police officer was arranged to take place at a local motel. Prior to the meeting, the young woman called Respondent and asked if he would prescribe some Valium tablets in the name of "Jill Anderson," the alias of the undercover officer, so that she could take them prior to meeting with Respondent later that evening. Respondent agreed and issued a telephone prescription for 50 dosage units of Valium in the name of "Jill Anderson," although he had not examined or even met the officer before issuing the prescription. Later that evening, Respondent met the young woman and the undercover officer at a local motel. After some small talk, Respondent gave each woman two Halcion tablets and one Valium tablet. Shortly thereafter, Respondent removed a syringe and tourniquet from his medical bag. At that point, the undercover officer explained that she did not like receiving injections. Respondent attempted to persuade her to accept the injection, explaining that the young woman never had any problems receiving similar injections in the past. The undercover officer dissuaded Respondent from injecting her, and requested that he give her a pill instead. Respondent acquiesced and gave the officer two broken pieces of a Dilaudid tablet, and was subsequently arrested. Following his arrest, a search of Respondent's medical bag revealed three syringes containing Dilaudid, and a marijuana cigarette. There is no indication that Respondent gave the women controlled substances during that meeting for any legitimate medical purposes. To the contrary, Respondent's actions supported the cooperating individual's earlier information that he would provide her with controlled substances in exchange for sexual favors.

Based upon Respondent's conviction relating to controlled substances, in February 1986, the Louisiana State Board of Medical Examiners suspended his medical license in that state for a period of four months, placed him on probation for a period of five years following his suspension, and ordered that his state Schedule II controlled substance privileges be forfeited during the period of his suspension and probation. In Louisiana, Schedule II controlled substances also include substances listed under Federal Schedules II and IIN. The four-month suspension was to remain in effect from March 19, 1986, to July 18, 1986. During this four-month suspension period, Respondent allowed his state controlled substance license to expire for the period from May 1, 1986, to December 1986.

Since September 1, 1985, Respondent has only been registered with the Drug Enforcement Administration to handle Schedule II and IIN controlled substances. Since Louisiana suspended his state Schedule II privileges as of March 19, 1986, Respondent has not been authorized to handle *any* controlled substances since that date. Despite Respondent's lack of authority to handle controlled substances as of March 19, 1986, he continued to issue controlled substance prescriptions after that date.

The Administrator also finds that between January 1, 1984, and August 31, 1984, Respondent was registered with the Drug Enforcement Administration only to handle Schedule II controlled substances; yet, during that time, he issued several prescriptions for Schedule IIN, III, IIIN, IV and V controlled substances. Between September 1, 1984, and August 31, 1985, Respondent was registered with the Drug Enforcement Administration only to handle Schedule II and IIN controlled substances; yet, during that time, he issued several prescriptions for Schedule III, IIIN, IV and V controlled substances.

The Administrator also finds that on July 10, 1986, Respondent executed an application for renewal of his DEA Certificate of Registration. On the application, Respondent indicated that as of the date of execution he was authorized to handle controlled substances in that State of Louisiana, when, in fact, his license remained suspended in that state until July 18, 1986. In addition, he indicated he was authorized by the State of Louisiana to handle Schedule II and IIN controlled substances, even though his state Schedule II controlled substance handling privileges were suspended until 1991.

Respondent elected not to testify during the administrative hearing. Instead, Respondent presented several character witnesses who testified that he enjoyed an excellent reputation in his community; a psychiatrist who testified that Respondent's unlawful actions were not the result of some psychological disturbance; and his probation officer who testified that he met with Respondent only five or six times, for no longer than ten minutes during each visit, during his one-year probation period.

Under the Controlled Substances Act, at 21 U.S.C. 824(a)(2), a felony conviction relating to controlled substances constitutes a sufficient basis for the revocation of a practitioner's DEA Certificate of Registration. See *Amante L. Medina, M.D.*, 51 FR 45068 (1986). There is no dispute in this instance that Respondent was convicted of a felony offense relating to controlled substances. Therefore, the conviction alone provides sufficient statutory authority to support the revocation of Respondent's DEA Certificate of Registration.

The only issue which remains is whether, notwithstanding the conviction, the Administrator should allow Respondent to remain registered to handle controlled substances. The Administrator finds that Respondent indeed prescribed, dispensed and administered controlled substances for other than legitimate medical purposes on a number of occasions to the young woman who assisted in the undercover investigation which resulted in his arrest and conviction. In addition, he prescribed and dispensed, and attempted to administer controlled substances to an undercover police officer for other than legitimate medical purposes. Furthermore, for a period of several years, Respondent issued several hundred prescriptions for controlled substances he was not properly authorized to handle. Also, Respondent falsified the application for renewal of his DEA Certificate of Registration. Each of these offenses, standing alone, is sufficient to warrant the revocation of Respondent's DEA Certificate of Registration and the denial of his pending application for renewal. When considered together, the offenses clearly demonstrate Respondent's disregard for the laws and regulations which govern the handling of controlled substances.

The Administrator may draw a negative inference from Respondent's failure to testify during the administrative hearing. See *Antonio C. Camacho, M.D.*, 51 FR 11654 (1986); *Book v. United States Postal Service*, 675 F.2d 158 (8th Cir. 1982); and *N.L.R.B. v. Local Union No. 46, Metallic Lathers*, 727 F.2d 234 (2d Cir. 1984). The negative inference which is drawn from Respondent's failure to testify is that he was unwilling to be forthright and completely honest with the Administrative Law Judge and the Drug Enforcement Administration. See *Antonio C. Camacho, M.D.*, supra.

Respondent's character witnesses provided no support to the position that he should be permitted to maintain his DEA Certificate of Registration. Based upon the testimony presented at the administrative hearing, none of the character witnesses knew the full extent of the wrongful acts committed by Respondent. In addition, none of these witnesses was in a position to make an adequate assessment of Respondent's ability to properly handle controlled substances.

The Administrator concludes that, based upon Respondent's conviction, the conduct which led to his arrest and conviction, the evidence that before and after his arrest he issued prescriptions for controlled substances he was not authorized to handle, and the falsification of his application for renewal of his registration, Respondent has demonstrated an absolute disregard for state and Federal restrictions on his handling of controlled substances. Nothing presented during respondent's case persuades the Administrator that Respondent is willing to carefully abide by the laws and regulations governing the handling of controlled substances. Thus, in order to protect the public interest, the Administrator cannot permit Respondent to maintain his DEA Certificate of Registration.

Having concluded that Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders DEA Certificate of Registration AC3408374, previously issued to Raymond A. Carlson, M.D., be, and it hereby is, revoked. The Administrator further orders that Respondent's application for renewal of said registration, executed on June 10, 1986, and any other pending applications for renewal, be, and they hereby are, denied.

This order is effective March 8, 1988.

John C. Lawn,

Administrator.

Dated: March 2, 1988.

[FR Doc. 88–5008 Filed 3–7–88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments

on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3038, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Occupational Safety and Health Administration
Access to Employee Exposure and Medical Records 1218–0065; OSHA 243
On occasion; annually
Businesses or other for-profit
1,170,979 Respondents, 1,502,275 burden hours, 0 forms

Requires employers to preserve and provide access to records associated with employees' exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment and prevention of occupational illness and disease.

Extension

Mine Safety and Health Administration
Quarterly Mine Employment and Coal Production Report (MSHA Form 7000–2)
1291–0006
Quarterly
Businesses and other for profit; small businesses or organizations
80,346 responses; 20,087 hours

Requires mine operators to report to MSHA quarterly employment levels and coal production. The employment and production data when correlated with the accident data provides information for making decisions on improving safety and health enforcement programs, improving education and training efforts, and establishing priorities in technical assistance activities in safety and health.

Extension

Mine Safety and Health Administration
Mine Accident, Injury, and Illness Report (MSHA Form 7000–1)
1219–0007
On occasion
Businesses and other for profit; small businesses or organizations
37,117 responses; 18,558 hours

Mine operators are required to submit Form 7000–1 to MSHA to report on accidents, injuries, and illnesses at their mines shortly after an accident or injury has occurred or a work-related illness has been identified. The use of the form provides for uniform information gathering.

Occupational Safety and Health Administration
Hazard Communication, 1218–0072
Recordkeeping, On occasion
Businesses and other for-profit; Federal agencies or employees; Small businesses or organizations
Number of responses varies; 54,780,000 burden hours, 1 form

The Hazard communication standard requires all employers to establish hazard communication programs to transmit information on the hazards associated with chemicals to their employees by means of container, labels, material safety data sheets and training programs.

Signed at Washington, DC, this 3rd day of March, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88–5025 Filed 3–7–88; 8:45 am]

BILLING CODE 4510-26-M

Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on April 19, 20 and 21, 1988, as described below:

SUMMARY: The Secretary of Labor's Committee on Veterans' Employment is announcing a National forum on "Workforce 2000 and America's Veterans". The Forum will provide interested parties with the opportunity to present oral and/or written statements of their views, as well as participate in a colloquy concerning the employment and training needs of veterans, the institutions and systems designed to serve those needs, and the Nation's ability to ensure that current and future veterans are able to participate successfully in a rapidly changing labor market. The findings from this Forum will also be used to develop training for those individuals that will be directly involved in providing employment assistance to veterans.

DATE: The Forum will be held on April 19–21, 1988 in Washington, DC.

ADDRESSES: The Forum is open to the public. The first segment of the Forum will be conducted from 9:30 a.m. to 11:30 a.m. on April 19, 1988 in the Great Hall of the U.S. Department of Labor at 200 Constitution Avenue, NW., Washington, DC 20210. The remainder of the Forum, from 1:30 p.m. to 5:30 p.m. on April 19, 8:30 a.m. to 5:00 p.m. on April 20, and 9:00 a.m. to 12:30 p.m. on April 21, will be conducted at the Holiday Inn-Capitol, 500 C Street, SW., Washington, DC. Persons wishing to attend the Forum to present oral or written statements or to observe the proceedings must provide the Secretary's Committee with a completed pre-registration form or other notice of their intent to attend. Such notice must be postmarked on or before April 5, 1988. Pre-registration materials (including a tentative agenda) may be obtained from the National Veterans' Training Institute (NVTI), University of Colorado at Denver, 1250 14th Street, Suite 650, Denver, CO 80202; Tel. (800) 331–0562. Persons not attending the Forum may submit written statements (three copies) by mail, postmarked no later than April 20, 1988 and mailed to NVTI at the above address. Participants are responsible for making their own arrangements with respect to travel, lodging, meals and other costs associated with the Forum. Information regarding area hotels, hotel rates, restaurants, transportation within the Washington, DC area, and handicapped accessibility of Forum facilities will be included in pre-registration materials referenced above.

FOR FURTHER INFORMATION CONTACT: Lesley A. Elliott, Executive Assistant to the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue, NW., Room S–1313, Washington, DC 20210; Tel. (202) 523–9116.

SUPPLEMENTARY INFORMATION: Secretary of Labor Ann McLaughlin has strongly endorsed the recommendation of the Secretary's Committee on Veteran's Employment that the Committee sponsor a National forum to assess the needs of America's veterans as part of the Workforce 2000 initiative launched by her immediate predecessor, Secretary William E. Brock.

The Secretary's Committee on Veterans' Employment is authorized at 38 U.S.C. 2010 and consists of representatives of the Department of Defense, Department of Health and Human Services, Veterans Administration, Office of Personnel Management, Small Business Administration, Equal Employment Opportunity Commission and the federally chartered veterans' service organizations. The Committee is charged with the responsibility for advising the Secretary of Labor on problems and issues relative to veterans' employment and training.

In June of 1987, the Hudson Institute, under contract with the Department, published the seminal study, "Workforce 2000: Work and Workers for the 21st Century", which profiled labor force and labor market trends through the year 2000. The study concluded that the United States' economy will continue the rapid transition from manufacturing, agricultural, and other goods-producing industries, to service industries. Moreover, the nature of the labor force itself will change, with the Nation's population growing older, and its rate of growth slower than at centered on Workforce 2000, the Secretary's Committee, in October 1987, concluded that future development of veterans' employment and training policies and programs should be examined in light of the conclusions of the study.

To this end, Secretary McLaughlin has approved the recommendation that the Committee conduct a National forum which would solicit the views of Members of Congress, Federal, state and local agencies, private sector employers, and interested organizations pertaining to three basic concerns:

1. The employment and training problems and needs of the veteran population and targeted subgroups, particularly severely disabled veterans.

2. The effectiveness, efficiency, and appropriateness of institutions, programs and policies currently in place to address those needs.

3. Legislative or administrative actions aimed at refining or redesigning the Federal Government's veterans' employment and training efforts to serve the current and future veteran workforce.

This Federal Register notice briefly discusses conclusions of the Workforce 2000 study, demographic data on veterans and key issues related to each of the three basic concerns above. It also poses questions to elucidate the issues and elicit facts and views from Forum participants.

The Committee intends the scope of the Forum to be broad, encompassing issues from entrepreneurship to veterans' preference in the public employment, in addition to job placement and job training programs. Participants are encouraged to examine the issue of work and veterans holistically with a view toward developing recommendations for a coordinated and effective National veterans' employment policy

Workforce 2000

The Hudson Institute study identified a number of distinct trends which will define the relationship of workers to the job market in the Year 2000.

The Workplace

- The rapid pace of job creation in the United States will continue through the end of the century. As a result of slower labor force growth, there may be tighter labor markets and—potentially—skill shortages.
- Employment expansion will be accompanied by rapid changes in the nature and composition of jobs, as existing industries and firms adapt and new enterprises emerge in response to new technologies and the pressure of foreign competition.
- As a result of this accelerated rate of change, the culture of the American work place will be profoundly affected: workers will change jobs five or six times during a normal worklife.
- Also, as a result of these technological and competitive pressures, many new and existing jobs will require higher levels of analytic, quantitative and verbal skills.
- These trends will have a significant geographic dimension. While most additional jobs through the Year 2000 will be in large, established metropolitan areas, the highest rates of job growth will be in smaller, developing urban areas, largely in the sun-belt. Labor supply and demand are likely to be in imbalance in many areas.

The Workforce

- There will be a slowdown in the growth of the work force over the next 15 years; the rates of increase will be slower than at any time since the 1930's.
- The pool of young workers entering the labor market will shrink—declining both relatively and absolutely.
- However, the proportion of the youth labor force that is minority will increase substantially.
- Women will account for two-thirds of labor force growth.
- Immigrants will represent the largest share of the increase in population and work force since the first World War
- Thus, most labor force growth through the Year 2000 will come from sectors in the population—women, minorities, immigrants—which have traditionally been underutilized and suffer from labor market problems

Veteran Demographics

The VA estimates the number of war veterans in the United States in the year 2000 at 23,951,000, down approximately 3.5 million from current levels. Barring another armed conflict, which would generate large numbers of new veterans, this population will age relatively more rapidly, than the U.S. population as a whole. The median age of the veteran in the Year 2000 will be 58.11. Separated by era, the population profile is presented below

Era	Population (in 000's)	Median age
Vietnam-Era	7,942	52.95
Korea	3,770	68.76
World War II	5,317	77.34
World War I	8	90.51
Peacetime	7,911	42.62

The Department of Defense estimates that approximately 300,000 new veterans are being released from active duty each year. Thus, the number of post-Vietnam-era veterans will double by the Year 2000 and will be nearly a generation younger—with a median age of 36.8—than their Vietnam-era counterparts.

In 1986, female veterans constitute approximately 4% of the total veterans population, with a median age of 51; by the Year 2000, the VA estimates that that proportion will increase to 5.24%. Significantly, the incidence of women among post-Vietnam-era veterans will be 11 percent by the Year 2000.

Veterans Administration projections for the veteran population in the Year 2000 do not include data on minority veterans. Current information, however, would indicate an increasing proportion of minorities in the veterans population as the end of the century approaches. Currently, minority veterans constitute approximately 14% of the veteran population; 28.8% of all personnel currently in the service, however, are minorities, according to the Defense Data Manpower Center. Of these, 34.5% are women compared with a total of 10.1% representation of women in active service.

The overall decline in the number of living veterans in the coming years will not be distributed evenly among the states. According to the VA, in general, the Northeast and industrial Midwest will lose the most veterans while the sun-belt will lose the fewest veterans. In all 50 states and the District of Columbia, veteran deaths outnumbered new veterans being released from active duty in 1986. Therefore, veteran population gains will only occur in those states experiencing noticeable immigration. Only four states are projected to show veteran population increases between 1986 and 2000—Alaska, Arizona, Florida, and New Mexico.

During the next 14 years, there will be an explosion in the number of veterans aged 65 and older from the current 4.8 million to about 9 million. All states will experience a marked increase in their veteran population aged 65 years and older. There will be some variation in the magnitude of the anticipated growth, however. States in the Southwest and those along the southeast coast (excluding Florida) are expected to show the largest increase (90 percent or more).

Specific projections of unemployment in the veteran population for the Year 2000, of course, are not possible to develop. Some distinctive historical trends may be worthy of focus by the Forum:

1. Unemployment problems among Vietnam-era veterans because significant in the late 1960s and lasted nearly fifteen years. Their unemployment rate peaked at 12.3% or about 880,000 persons in February 1983.

2. There has been seemingly intractable unemployment among disabled and minority veterans, which have remained largely unchanged since the mid-1970's. This incudes the high incidence of disabled veterans who are no longer in the labor force.

3. According to the Bureau of Labor Statistics, while veterans constitute approximately 13–14% of the labor force in the United States, 26 percent of all dislocated workers are veterans.

Key Issues

The United States has historically acknowledged as a national responsibility, the task of ensuring that former members of the Armed Forces are provided the opportunity to enjoy successful and productive lives. A vital element in obtaining that goal is employment. How is that responsibility best discharged in the next twelve years?

In order to frame the discussion, the Secretary's Committee has identified four comprehensive subject areas through which the Forum's deliberations will be structured. Each such area will focus upon needs, policies and programs, and recommendations to optimise job opportunities for the veteran workforce in the Year 2000. In considering these subject areas, participants additionally are urged to be mindful of certain institutional factors currently evident. First, the Administration has endorsed, and Congress is considering enactment of legislation which would elevate the Veterans Administration to Cabinet level. Second, the job and job training programs under the purview of the Department of Labor have become increasingly decentralized over the past decade and a half, and that trend is expected to continue.

The four key subject areas are: labor exchange, training for employment, model programs and new approaches, and veterans' employment and training in the Year 2000. The questions provided under each subject area are not inclusive and the Committee welcomes examination of additional topics.

1. Labor Exchange

The most basic of all employment tasks is matching the potential worker with an employer seeking to fill a position. The public vehicle for this essential labor exchange function has been the 55-year old Federal/State Employment Service system. As old as the Employment Service itself is its role as the keystone of the Federal Government's efforts to assist unemployed and underemployed veterans. Under Federal law, veterans are entitled to preferential services in the system's 2,000 employment offices. Over the past few decades, however, the Employment Service has been burdened with an increasing number of special programs, special emphases, and other administrative and enforcement responsibilities.

a. In absolute terms, how good are the labor exchange services provided to veterans through the Employment Service? Are veterans really the first priority in the system? To what extent are other Employment Service responsibilities diluting this priority?

b. Should the States assume greater or total responsibility for the operation of the Employment Service? What effect might this have on Federal mandates for veterans preference within the agencies?

c. Have veterans, as a class, benefited from the integration of the Employment Service and Job Training Partnership Act (JTPA) programs where such a configuration has been tested?

d. What services should the Employment Service provide to veterans? Which services should other agencies provide?

e. How well coordinated are the service efforts of the Employment Service and the VA? Where is improvement needed, and how should it be accomplished?

f. Should the Employment Service continue to be the central focus of Federally mandated veterans' employment programs? What are the alternatives?

g. How effective are the Federal Contractor Job Listing and Affirmative Action Programs for special disabled and Vietnam-era veterans?

2. Employment Training

For veterans who are job-ready and possess skills in demand in the labor market, a labor exchange may be the only service such veterans need. For those veterans who are unskilled or otherwise not job-ready, however, employment training is essential. The

Workforce 2000 study concludes that without adequate planning, structural unemployment and underemployment will pose difficult problems for large segments of the labor force. With workers changing jobs five or six times during their working lives, the need for training will extend beyond the pool of new labor market entrants, and will be an economic necessity for older workers as well.

Federal policy on skill training for veterans has historically been ambiguous. Programs such as HIRE and the Veterans Job Training Act have periodically been created administratively or legislatively, but have nearly always been short term in nature, responding to cyclical elevations in unemployment, chiefly among Vietnam-era veterans. During the 1970's, disabled and Vietnam-era veterans were identified as target groups in national employment and training programs for the general public, such as the Comprehensive Employment and Training Act (CETA). Yet, such national programs have become increasingly decentralized, with their priorities and operations determined by State and local governments. The passage of the Job Training Partnership Act in 1982 marked the end of most nationally mandated veterans' target group provisions in the Federal Government's major job training programs. Except in Title IV–C at present, veterans are not statutorily given preference over non-veteran JTPA applicants in the program which has averaged around $3.5 billion per year. Amendments to JTPA in 1986 introduced the term "veterans" in a number of places to ensure that JTPA program operators include veterans' representatives in their decision-making processes, and give special attention to veteran participants.

Some policymakers at both the State and local levels have concluded that the VA provides for the job training needs of veterans, and that JTPA and other training programs are supplemental to VA programs. The VA does, in fact, provide for such training, but its resources are limited, and eligibility for programs is restricted. Disabled veterans determined by the VA to have an employment handicap may receive employment training through the VA's Vocational Rehabilitation and Counseling program. Post-Vietnam-era veterans may train on the job and receive an assistance allowance similar to that granted for the veteran in an educational institution. Since 1983, the VA has administered the Veterans' Job Training Act in cooperation with the Department of Labor, a temporary program on-the-job training for Korean conflict and Vietnam-era veterans, with liberalized provisions for disabled veterans of those armed conflicts. The program has been extended three times by Congressional action.

a. Are current job training programs which are designed for the general public (e.g., JTPA) suitable to the needs of unemployed and underemployed veterans? How accessible are JTPA programs to veterans?

b. Should the same priority mandated by Federal law for veterans in the Employment Service be extended to apply to Federally funded job training programs?

c. Separate from JTPA Title IV–C, should there be a permanent, separate job training program for veterans? If so, should VJTA serve as a model for such a program? What types of training, other than on-the-job, would be useful to veterans?

d. How well does the VA's Vocational Rehabilitation program succeed in placing veterans into jobs for which they have been trained? Should eligibility for the program be broadened or restricted?

e. Should Congress create a separate program for dislocated workers who are veterans? Should veterans be targeted in a general dislocated workers program, and how?

3. Model Programs and New Approaches:

Beyond, and in concert with, the labor exchange and job training programs which serve veterans are new policies and experimental programs which the Secretary's Committee asks be examined for their potential for better serving veterans during the next twelve years. Some of these programs involve other Federal agencies, such as the Department of Defense, Small Business Administration and Office of Personnel Management. Others are funded under the veterans programs portion of Title IV of JTPA.

a. What specially targeted programs have had the most success in effectively serving:

- Disabled veterans.
- Female veterans.
- Minority veterans.
- Dislocated veterans.
- Veterans recently-separated from military service.
- Other target groups.

b. Have veterans' unemployment, underemployment, and other employment and training-related data (including data on the targeted groups specified above) been adequate to determine needs and assess service outcomes?

c. Assess the value of current pilot projects funded under Title IV–C of JTPA, including:

- Entrepreneurship programs.
- Military transition programs.
- Jobs for homeless veterans.

d. What are the limitations and other difficulties of JTPA Title IV–C generally? What changes should be made, either through administrative or legislative initiatives?

e. How effective is veterans preferences in the federal sector? How effective are the Disabled Veterans Affirmative Action, Veterans Readjustment Appointment and 30 percent Disabled Veterans Excepted Appointment programs in assessing eligible veterans in obtaining Federal employment?

f. What new technologies should be tapped to improve the quality and raise the level of employment and training services to veterans?

g. How can national veterans' service organizations best apply their vast human resources and ready access to millions of veterans to assist veterans in obtaining the skills and opportunities for personal and economic growth?

4. Veterans Employment and Training in the Year 2000

In examining the veterans' employment and training system, it is a relatively easier task to identify present needs and deficiencies, and the Secretary's Committee is hopeful that the Forum will elicit ideas to strengthen the ability of today's veterans to participate successfully in the workforce. But Workforce 2000 makes clear that, with the slow demise of regional industries, spreading worker dislocation and changes in the nature of work and available workers, that the labor market will be profoundly different by the Year 2000. While recognizing that the process of change is a continuum, the Committee wishes to examine the veterans' employment and training system and how that system might best be configured during the next twelve years to prepare for change.

a. What balance of Federal, State, local and private resources will optimize the delivery of job and job training services to veterans twelve years hence?

b. What relevance will existing services have to the emerging needs of the veterans' labor force at the end of the century? These services include:

- Labor exchange.
- VJTA and Targeted Jobs Tax Credit.
- Vocational Rehabilitation.
- JTPA and dislocated workers programs.

c. What other employment and training initiatives should or could be developed as an alternative or in addition to the above programs?

d. Should all veterans employment and training programs be gathered under a single agency or Department at the Federal level? If so, which department should it be?

- Veterans Administration.
- Department of Labor.
- Other.

e. If employment and employment training responsibilities remain divided among several State and local agencies, what effective means of coordination can be developed to avoid duplication of effort and to provide a smoothly functioning partnership for serving unemployed veterans?

f. What role should the Employment Service and JTPA service providers play in referring qualified individuals to employment and training opportunities in the U.S. Armed Forces or in assisting them to prepare for entry into military service?

g. What new programs and/or policies not now in existance should be developed to meet new needs which will emerge as we approach the Year 2000?

h. As part of the Total Force model in national defense, should National Guard and reserve members receive special services from employment and job training programs? If so, what services should they receive? Would their delivery impinge upon priorities for veterans?

i. Do veterans benefit more from separate employment and training programs, or from integration of veterans services in programs designed for the general public?

j. What will be the cost of reconfigured systems considered at the Forum? What cost-saving elements can be included in a reconfigured system?

k. What role would the U.S. Armed Forces play in assisting soon-to-be-separated military personnel in preparing for the civilian workforce, and considering continued military active duty service or entering Guard or Reserve components?

Forum Report

A draft report of Forum findings and recommendations will be prepared by the National Veterans' Training Institute which will record the Forum proceedings audio-visually for approval by the Secretary's Committee on Veterans' Employment. This information will be used by NVTI to build training courses for employment and training staff who will be directly involved in the delivery and provision of services of veterans through the year 2000. The written Forum Report will be widely distributed. All Forum participants will receive copies.

Signed at Washington, DC, this 3rd day of March, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88–5047 Filed 3–7–88; 8:45 am]

BILLING CODE 4510–79–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Bethlehem Rebar Industries, Inc.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 29th day of February 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers, firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Rebar Industries, Inc. (Workers)	Houston, TX	2/29/88	2/15/88	20,483	Rebar (steel).
Bethlehem Rebar Industries, Inc. (Workers)	Lehigh Valley, PA	2/29/88	2/15/88	20,484	Rebar steel.
Control Data Corp., (Workers)	Normandale, MN	2/29/88	2/18/88	20,485	Head arm assemblies.
Copley Square (Workers)	Fall River, MA	2/29/88	2/11/88	20,486	Sportswear.
Dow Corning Corp. (USWA)	Springfield, OR	2/29/88	2/19/88	20,487	Silicon metal.
Colt Industries Holley Automotive Div. (Workers)	Bowling Green, KY	2/29/88	2/14/88	20,488	Carburators.
Lectromelt Corporation (USWA)	Pittsburgh, PA	2/29/88	2/12/88	20,489	Machinery.
Milan Sportswear (Workers)	Milan, TN	2/29/88	2/12/88	20,490	Sportswear.
Muller Manufacturing Co. (USWA)	Syracuse, NY	2/29/88	2/12/88	20,491	Machinery.
Paccar Defense System (Workers)	Renton, WA	2/29/88	2/15/88	20,492	Castings and forgings.
Pressure Cast, Ltd (AIW)	Grafton, WI	2/29/88	2/18/88	20,493	Castings.
Southwestern Sunbelt Cement (Workers)	El Paso, TX	2/29/88	2/1/88	20,494	Portland cement.
Tee Oil, Inc. (Workers)	Lafayette, LA	2/29/88	2/19/88	20,495	Gas and oil.
Varity International Services (Workers)	Racine, WI	2/29/88	2/19/88	20,496	Machinery parts books.
Vermont Marble Co. (USWA)	Proctor, VT	2/29/88	2/19/88	20,497	Mining and marble.

[FR Doc. 88–5026 Filed 3–7–88; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-20,213]

Dismissal of Application for Reconsideration; National Aluminum Corp., Murrysville, PA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at National Aluminum Corporation, Murrysville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,213; National Aluminum Corporation, Murrysville, Pennsylvania (February 24, 1988)

Signed at Washington, DC, this 26th day of February 1988.

Marvin M. Fooks,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-5027 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Westran Corp.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 22, 1988–February 26, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have deceased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,362; Westran Corp., Alloy Steel Div., Duncan, OK

TA-W-20,310; GBR Fabrics, Inc., Teaneck, NJ

TA-W-20,311; Jeremy Industries, Inc., Teaneck, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,366; Control Data Corp., Arden Hills, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,372; M & G Convoy, Inc., New Stanton, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,358; Peabody Coal Co., Montcoal, WV

U.S. imports of coal are negligible.

TA-W-20,359; Peabody Coal Co., Twilight, WV

U.S. imports of coal are negligible.

Affirmative Determinations

TA-W-20,453; Melinda Frocks, Inc., Newark, NJ

A certification was issued covering all workers of the firm separated on or after January 25, 1987–January 31, 1988.

TA-W-20,341; Crosetti Frozen Foods, Watsonville, CA

A certification was issued covering all workers of the firm separated on or after August 1, 1987.

TA-W-20,376; Samax Dress Co., Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after December 8, 1986.

TA-W-20,379; Volkswagen of America, Inc., Valley Forge, PA

A certification was issued covering all workers of the firm separated on or after December 18, 1986.

TA-W-20,380; Westinghouse Electric Corp., Heavy Industry Motor Div. Round Rock, TX

A certification was issued covering all workers of the firm separated on or after December 17, 1986.

TA-W-20,381; Action International Ltd, Mt. Clemens, MI

A certification was issued covering all workers of the firm separated on or after August 1, 1987.

TA-W-20,377; Texaco, Inc., New Orleans Operational Div. & Southern Exploration Div., Headquartered in New Orleans, LA and Operating at Various Locations in the Following States:

TA-W-20,377A	Alabama
TA-W-20,377B	Arkansas
TA-W-20,377C	Connecticut
TA-W-20,377D	Delaware
TA-W-20,377E	Florida
TA-W-20,377F	Georgia
TA-W-20,377G	Louisiana
TA-W-20,377H	Maine
TA-W-20,377I	Maryland
TA-W-20,377J	Massachusetts
TA-W-20,377K	New Jersey
TA-W-20,377L	New York
TA-W-20,377M	North Carolina
TA-W-20,377N	Pennsylvania
TA-W-20,377O	Rhode Island
TA-W-20,377P	South Carolina
TA-W-20,377Q	New Orleans Operational Division, All Locations in the State of Texas

A certification was issued covering all workers of the firm in various locations in the States Listed above separated on or after December 17, 1986.

I hereby certify that the aforementioned determinations were issued during the period February 22, 1988–February 26, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW. Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 1, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-5028 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-2-C]

Arch on The North Fork, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch on The North Fork, Inc., P.O. Box 928, Jackson, Kentucky 41339 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Nix Branch Mine (I.D. No. 15-14352) located in Breathitt County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. The mine elevation is 1437 feet which is 350 feet plus above river drainage and there is no history of methane in the coal seam.

3. Due to very poor conditions, roof falls, mud and water, certain areas of the mine are too hazardous to travel and efforts to rehabilitate would be hazardous and neither practical nor feasible.

4. As an alternate method, petitioner proposes that two monitoring stations will be maintained in order to evaluate bleeder return aircourses. In support of this request, petitioner states that—

(a) Methane and air readings will be made by a certified person on a weekly basis. A record of the examinations, including the date, time, and initials of the person making the readings, will be kept in the mine office and on a chalkboard at each measuring station;

(b) Methane will not be allowed to accumulate in the return aircourses beyond legal limits;

(c) The measuring stations will be maintained in a safe condition at all times;

(d) A map showing the area around the measuring station along with the direction of airflow will be posted at each station; and

(e) Persons working in the area will be instructed in emergency evacuation procedures and will be equipped with self-contained self-rescuers.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Dated: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5029 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-44-M]

Cripple Creek & Victor Gold Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Cripple Creek & Victor Gold Mining Company, P.O. Box 191 Victor, Colorado 80860 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Heap Leach Project (I.D. No. 05-04050) located in Teller County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; swablades; fan inlets; and similar exposed moving machine parts which may be contracted by persons, and which may cause injury to persons be guarded.

2. As an alternate method, petitioner proposes to enclose the line shaft area in a fence with a locked gate in lieu of guarding each piece of equipment individually. In support of this request, petitioner states that —

(a) The feeders are controlled by a clutch handle that extend to a guarded walkway on the opposite side of the belt;

(b) The locked gate contains an electrical contract that is connected to the interlocking system on the entire crushing area. As soon as the gate is opened, the power to the conveyors, pan feeder, and crushers is disengaged. Upon closing the gate, each piece of equipment must be manually restarted;

(c) Warning signs will be posted indicating the interlocking system;

(d) With the control, lever on the opposite side of the feeders, the operator will never need access to the line shaft. Maintenance personnel will be the only ones requiring access to the area;

(e) The lock-out procedure for entering the area will require the entire line shaft, conveyor belt and jaw crusher to be locked out both locally and at the motor control center; and

(f) The door to the area will be kept by Mill Management and Shift Supervisors.

3. Fot these reasons, petitioner requests a modification of the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Dated: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5030 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-1-C]

Cross Mountain Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cross Mountain Coal, Inc., P.O. Box 547, Lake City, Tennessee 37769 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Katie No. 1 Mine (I.D. No. 40-02648) located in Campbell County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to roof falls certain areas of the mine are unsafe to travel. Miners walking in these areas are constrantly exposed to changing roof conditions which have become hazardous, and attempts to restore these areas have been unsafactory.

3. As an alternate method, petitioner proposes to establish an air measure station. In support of the request, petitioner staters that—

(a) Access to and from the measuring station will be kept in a travelable and safe condition;

(b) A record book containing current air flow and methane readings will be located on the surface;

(c) Checks for methane and the velocity and direction of air flow will be made by a qualified person as needed, but at least weekly;

(d) All access areas to the roof falls will be timbered and dangered off;

(e) The roof falls have not materially affected the efficiency of the mine's ventilation system; and

(f) No escapeways travel through the affected areas.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Dated: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5031 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-7-C]

Davidson Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Davidson Mining, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 1 Mine (I.D. No. 46-08898) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to house the belt transformer in a fireproof structure, and not return the air currents that will be ventilating this structure directly into the return. In support of this request, petitioner states that—

(a) The doors of the fireproof structure will be held open on each end by heat links that would melt and cause the door to close automatically with a rise in temperature;

(b) A chemical fire suppression system will be installed over the transformer; and

(c) A fire sensor that will give an alarm at an attended surface location will be installed over the transformer.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88-5032 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-12-C]

Emco Coal Company Inc.; Petition for Modification of Application of Mandatory Safety Standard

Emco Coal Company, Inc., HC 66, Box 1012, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16250) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip; provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88-5033 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-25-C]

Helvetia Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Helvetia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment—belt conveyors) to its Lucerne No. 9 Mine (I.D. No. 36-05374) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system is required to be stored at strategic locations along the belt conveyor.

2. Petitioner states that during cold weather periods, the waterlines used for fire protection along the slope belt freezes and becomes inoperative.

3. As an alternate method, petitioner proposes to utilize a dry waterline system, which will be pressurized with water by manually activating a water valve either at the top of the slope (surface) or at the bottom of the slope (underground), from October 1 through May 1. In support of this request, petitioner states that—

(a) The dry waterline will be equipped with firehose outlets with valves at 300-foot intervals;

(b) At least 500 feet of firehose with fittings suitable for connection to the valves will be stored at the top of the slope and at strategic locations along the belt conveyor;

(c) All persons in the vicinity of the slopes will be instructed as to the operation of the system;

(d) Sufficient water will be available for the system at all times;

(e) A pressure gauge will be installed on the surface to indicate that a supply of water under pressure is available to the system; and

(f) The water supply system on the surface will be protected from freezing and will be easily accessible for manual operation.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88-5034 Filed 3-7-88 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-21-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 7 Mine (I.D. No. 01-01401) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that entries used as intake and return aircources be separated from belt haulage entries, and the belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to develop a three entry system using split ventilation, in which the No. 1 entry will be a future tailgate entry and a return aircourse; the No. 2 entry will be the track entry an intake aircourse; and the No. 3 entry will be the longwall belt entry and a return aircourse.

3. In support of this request, petitioner states that in order to maintain the quantity of air required by mining conditions, the belt needs to be located in the return aircourse. The three entry system using a 24 foot wide intake aircourse and split system of ventilation will provide minimum pressure loss and maximum air quantities for full panel drivage. A split system of face ventilation will prevent mining support operation for being down wind of the continuous miner.

4. In further support of this request, petitioner states that—

(a) Bulkheads will be provided between the belt drive and the point where air in the belt entry flows into the return aircourse. This will maintain the conveyor belt electric motor and starter in an intake split of air coursed directly to the return:

(b) The alternate escapeway will be in the return aircourse other than the belt return aircourse;

(c) An atmospheric monitoring station capable of monitoring for methane and carbon monoxide (CO) will be located immediately inby the point where leakage through the bulkhead and air in the belt return mix. Due to leakage anticipated across the line curtain at the feeder, an additional methane and CO monitoring station will be located 500 feet downwind of the tailpiece and also at the normal 2,000 foot intervals;

(d) An audible and visual alarm will be activated when the methane level exceeds .9 percent or when the CO level exceeds 10 parts per million (ppm) above ambient air. An investigation will be made to determiene the cause for the alert, and when the source is discovered, The CO level will be reduced to acceptable levels. When the methane level exceeds 1.0 percent or the CO level exceeds 15 ppm above ambient air, the belt conveyor center will deenergize automatically. All miners in the affected area will be evacuated to the monitor location outby the location of the monitor detecting alarm level concentrations. In the event that a fire is encountered, the evacuation plan will be implemented. When the methane alarm signal sounds minor changes and adjustments in airflow will be made during the time that the conveyor belt is deenergized. The belt conveyor power center will be arranged for manual reset only;

(e) The system will be capable of giving warning of a fire for a minimum of four hours should the power fail;

(f) The system will be capable of monitoring electrical continuity and detecting electrical malfunctions;

(g) The system will be visually examined at least once every day that coal is produced and tested for functional operation weekly to insure the system is functioning properly. The system will be calibrated with known concentrations of CO and methane air mixtures at least monthly;

(h) If the system or any portion of the system is deenergized for routine maintenance of for failure of a sensor unit, the belt conveyor will contianue to operate and qualified persons will continuously patrol and monitor for CO and methane;

(i) The belt return aircourse will be examined as required; and

(j) All electric components in the return downwind of the feeder will be maintained permissible or intrinsically safe. The feeder will be outby the last open crosscut and will be maintained on intake air along with the sequence switch located at the tailpiece. The alarm located at the feeder will also be on intake air.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration,

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Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1989. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5035 Filed 3-7-88 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-20-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1, No. 6 Seam Fluids Borehold, (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuits to monitor continuously. The ground check circuit is required to cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480 volt, three phase, power distribution without the use of the ground check circuit in the No. 6 seam fluids borehole. In support of this request, petitioner states that—

(a) The fluids borehole is constructed with concrete floors with the roof and rib wire meshed and sealed with a nonhazardous pressure applied fibrous sealant;

(b) Galvanized rigid conduit will be used throughout the fluids borehole area. The conduit will be supported by strut fastened to the roof.

(c) All electrical panels, starters, boxes, etc., will be of type NEMA 12;

(d) All 480 volt, three phase equipment will be stationary and connected by galvanized rigid conduit;

(e) All equipment will be bonded to the grounding system through the conduit system and through a ground wire pulled in the conduit system;

(f) Power will be fed to NEMA 12 electrical panels from a mine duty distribution box by MSHA approved cables and protected at the distribution box by MSHA approved ground monitor, ground fault, under voltage release, thermal and magnetic overload protection; and

(g) The design and installation of this electrical system will conform to the 1987 National Electrical Code.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in the office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 88-5036 Filed 3-7-88 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-8-C]

Marie Enterprises Inc., Petition for Modification of Application of Mandatory Safety Standard

Marie Enterprises Inc., 222 Nutwood Road, Middlesboro, Kentucky 40965, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15872) and its Mine No. (I.D. No. 2 15-13819) both located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane build up between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88-5037 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-288-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Dutch Creek No. 1 Mine (I.D. No. 05-00301) and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) both located in Pitkin County, Colorado. The petition is filed under section 101(c) of the the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that seals and return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to the depth of the coal seams, which range from 2,500 to 3,500 feet of direct overburden, destressing of the surrounding and upper geologic formations manifested by floor heave bounces and outbursts, and roof deterioration certain areas of the mine are unsafe to travel.

3. As an alternate method, petitioner proposes to establish evaluation points at specific locations to adequately monitor seal or seal-set or airways' ventilation performance, check ventilation air quality returning from a designated seal or seal-set and check for and ensure airway continuity. In support of this request, petitioner states that—

(a) A certified examiner will make tests of air volume and quality at evaluation points on a weekly basis;

(b) A book or date board will be established at each evaluation site for the purpose of recording the results of examinations at each evaluation point. The results of each weekly examination will be recorded;

(c) If a deterioration of air volume, velocity or quality is detected by the examiner, an immediate investigation of the affected area will be conducted;

(d) A diagram showing the normal direction of the air current flow will be posted at each evaluation point, and will be maintained in a legible condition. Any change in the flow of air will be reported to the foreman immediately. If at any time the air quantity at any evaluation point indicates a change of air quantity of 20 percent from the last previous reading, an immediate investigation of the affected area will be conducted;

(e) Methane gas or other harmful, noxious, or poisonous gases will not be permitted to accumulate in these airways in excess of the legal limits. An increase of 0.5 per centum methane above the last previous reading will be immediately reported to the mine foreman and cause an immediate investigation of the affected area;

(f) All air measurement stations and approaches to such stations will be maintained in a safe condition at all times. The roof will be supported in accordance with the approved roof control plan; and

(g) All ventilation evaluation points will be shown on the mine ventilation system and methane and dust control map and will be a part of the approved ventilation plan for the mine.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5038 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-26-C]

Poverty Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Poverty Coal Company, Inc., 109 Broad Bottom Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-08431) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1988.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 mine is 47 inches in height and is located in the No. 1 Elkhorn seam. The seam ascends and descends on sharply pitching grades, and has several inconsistencies affecting normal haulage procedures.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the cabs or canopies could strike and dislodge roof bolts, and cause the machine to become wedged in place. The cabs or canopies would restrict the equipment operator's vision, causing the operator to lean from under the cab or canopy to attempt to see around the machine, creating the potential for an accident. the cabs or canopies would also limit the equipment operator's seating position, resulting in fatigue and reduced alertness.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Dated: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5039 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-27-C]

Scotts Branch Mine; Petition for Modification of Application of Mandatory Safety Standard

Scotts Branch Mine, Route 1, Box 816, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Scotts Branch Mine (I.D. No. 15-08079) located in Pike County, Kentucky The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatice fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-88-28-C), petitioner proposes to use air in the belt haulage entry to ventilate active working places.

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3. In lieu of a point-type sensor system, petitioner proposes to use an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyors. The system will be installed and operated with specific conditions in all belt entries utilized as intake aircourses.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5040 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-28-C]

Scotts Branch Mine; Petition for Modification of Application of Mandatory Safety Standard

Scotts Branch Mine, Route 1, Box 816, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Scotts Branch Mine (I.D. No. 15-08079) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt haulage entry to ventilate active working places. This will give the active working sections optimum access when such access is desired and believed to be safely advantageous to intake air for use in ventilating working places that are presently required under the approved methane and dust control plan.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide detection system will be installed in all belt entries utilized as intake air courses. The low-level CO system will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above the ambient level and an audible signal will sound at 15 ppm above the established ambient level. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity and deleting electrical malfunctions.

4. The CO monitoring system will be visually examined at least once each day during production periods. To ensure proper functioning, more extensive examinations will be made on a schedule recommended by the manufacturer. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance of failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry will be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices.

6. The details for the fire detection system including, but not limited to, type of monitor and specific sensor location on the mine map will be included as a part of the Ventilation System and Methane Dust Control Plan.

7. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be approved in the Ventilation System and Methane and Dust Control Plan for the mine.

8. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5041 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-15-C]

Summar Coal Inc.; Petition for Modification of Application of Mandatory Safety Standard

Summar Coal Inc., P.O. Box 150, Woodbine, Kentucky 40771 has filed a petition to modify the application of 39 CFR 75.313 (methanemonitor) to its Mine No. 7 (I.D. No. 15-16227) and its Mine No. 8 (I.D. No. 15-16108) both located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and

will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5042 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-41-M]

Tenneco Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard

Tenneco Minerals Company, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22218 (seals and stoppings) to its Tenneco Soda Ash Project (I.D. No. 48-01295) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all seals, and those stoppings that separate main intake from main return airways be of a substantial construction, except that stoppings constructed of brattice materials be used in the face areas.

2. As an alternate method, petitioner proposes to construct stoppings in any crosscut with styrofoam blocks approximately 24 inches high and 20 inches thick with joints and perimeter sealed with rigid urethane foam. Petitioner states that this construction would provide safer conditions for miners while providing excellent ventilation control throughout the mine.

3. Petitioner further states that the light weight styrofoam blocks will reduce the potential for injury associated with stoppings construction. In the event of ground movement, styrofoam block stoppings behave like large squeeze blocks, easily crushing and conforming to the new opening shape while maintaining and possibly improving tight joints and perimeter contact. Little or no short-circuiting of ventilation air would occur. The material is not likely to propagate flame, but does shrink in size immediately and melt when exposed to flame temperature heat. If a fire occurs near a stopping, the shrinkage would result in a rapid and desirable short-circuit of air directly into the return entries, carrying away any harmful fumes and gases from the fire with it and preventing them from circulating to the face areas and the miners.

4. The storage of any flammable or combustible material or the parking of any diesel powered equipment will not be permitted in any crosscut in which a foam stopping has been constructed.

5. In the event it becomes necessary to run a power cable through a foam stopping, the cable will be run through a steel pipe where it passes through the stopping.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Date: February 29, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-5043 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-306-C]

West Fork Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

West Fork Energy, Inc., 106 Suffolk Avenue, Richlands, Virginia 24641 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its West Fork Mine No. 1 (I.D. No. 44-01488) located in Tazewell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to an unintentional roof fall certain areas of the mine cannot be safely traveled. Petitioner states that both sides of the fall have had considerable supplemental support, cribs and timbers, installed, and it would be unsafe to remove these for cleanup. The volume of air over the fall is 78,000 CFM, and it is possible to inspect the air courses up to both sides of the fall.

3. As an alternate method, petititioner proposes to establish check points on each side of the fall. The area will be supported and made safe to examine the bleeder from the pillar works, and a man door will be installed.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88-5044 Filed 3-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-17-C]

Wolf-Creek Collieries Co.; Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries Company, P.O. Box 179, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation;) to its No. 4 Mine (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. Petitioner states that with the use of point-type sensors, a temperature of 135 degrees Fahrenheit must be attained directly under the sensor, before it will activate and sound an alarm. With these point-type sensors spaced 125 feet apart the potential for a small fire to become a raging inferno is greatly increased.

3. In lieu of point-type sensors, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system will be installed and operated with specific conditions in all belt entries used as intake aircourses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: February 29, 1988.

[FR Doc. 88–5045 Filed 3–7–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-18-C]

Wolf-Creek Collieries Co.; Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries, Company, P.O. Box 179, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 4 Mine (I.D. No. 15–04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. Petitioner states that with continuing development of the mine, ventilation requirements have become greater as the mine develops. Increased resistance is created by longer lengths and higher velocities which are needed in order to insure sufficient ventilation. With the gain of an additional intake, resistance should decrease and result in an increase in the quantity of air delivered to the working sections.

3. As an alternate, method petitioner states that an early warning fire detection system will be installed. A low-level carbon monoxide detection system will be installed in all belt entries utilized as intake air courses. The low-level CO system will be capable of giving warning of a fire for fours hours should the power fail; a visual alert signal will be activated when the CO level is 10 ppm above the ambient level and an audible signal will sound at 15 ppm above the established ambient level. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system will initiate the fire alarm signals at an attended surface location. This responsible person will notify the working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity and deleting electrical malfunctions.

4. The CO monitoring system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry will be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices.

6. The details for the fire detection system including, but not limited to, type of monitor and specific sensor location on the mine map will be included as a part of the Ventilation System and Methane Dust Control Plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

Date: February 29, 1988.

[FR Doc. 88–5046 Filed 3–7–88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-7188 et al.]

Proposed Exemptions; Edgewater Associates Profit Sharing Plan and Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Edgewater Associates Profit Sharing Plan and Trust (the Plan) Located in Chicago, IL

[Application No. D-7188]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted: (1) The restrictions of section 406(b)(2) of the Act shall not apply to the proposed loan (the Refinanced Loan) by the Plan to the Edgewater Physical Therapy Associates, Inc. Employees' Benefit Association Trust (the VEBA); provided that the terms and conditions of the Refinanced Loan are no less favorable to the Plan than similar terms negotiated at arm's-length with an unrelated third party; and (2) the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the guaranty of the Refinanced Loan by the current sponsor of the Plan.

Temporary Nature of Exemption

The proposed exemption is temporary and if granted will expire ten (10) years after the date of grant with respect to the making of the Refinanced Loan.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan established under section 401 of the Code on December 28, 1970. The Plan had, as of December 31, 1986, approximately 35 participants and net assets on the same date of $846,884. Charles Kaplan (Mr. Kaplan) is a participant in and one of the trustees of the Plan. Terry Garbaciak is the co-trustee of the Plan with Mr. Kaplan.

2. In 1970, when the Plan was established, the name of the original sponsor was Cotovsky-Kaplan Physical Therapy Associates, Ltd. On March 10, 1983, that name was changed to Edgewater Physical Therapy Associates, Inc. (EPTA). EPTA limited its practice primarily to Medicare patients. On January 5, 1983, another entity, Edgewater Rehabilitation Associates, Inc. (ERA), was incorporated for the purpose of providing physical therapy to non-Medicare clients. ERA adopted the Plan for its employees and became a participating employer of the Plan along with EPTA. On December 31, 1985, in order to reduce the cost of maintaining two corporations, ERA merged into EPTA, leaving EPTA as the surviving corporation. Simultaneously, with the merger, EPTA changed its name to Edgewater Rehabilitation Associates, Inc. (the Employer), the current sponsor of the Plan.

The Employer is located at 1801 North Lincoln Avenue, Chicago, Illinois, and hires licensed physical therapists to provide services to various private and public schools, hospitals, nursing homes, and other health care providers in the Chicago area. Mr. Kaplan is a shareholder of 98% of the stock of the Employer and serves as the president, treasurer, and a director of the Employer. Terry Garbaciak and Donald Kravets own a one percent (1%) interest in the Employer each and serve as officers of the Employer. It is represented that the Employer's current gross assets are approximately $526,612.

3. The VEBA is a voluntary employee benefit association established December 28, 1962, for the sole purpose of supplying fringe benefits to all qualifying employees of the VEBA's sponsor, the Employer. On June 3, 1983, the VEBA was qualified as a plan under section 501(c)(9) of the Code for payment of benefits to members of the VEBA. Mr. Kaplan is a participant in and the trustee for the VEBA. The VEBA's assets as of December 31, 1986, total $57,206. On May 1, 1983, the VEBA added as a benefit to its members the use of the Condo for the purpose of enhancing the Employer's ability to attract and retain highly qualified physical therapists in a competitive employment market. It is represented that the VEBA and the Plan do not supply any services with respect to one another and are not parties in interest with respect to one another, pursuant to section 3(14) of the Act.

4. The Condo is described as Unit 2G, Baileys Harbor Yacht Club Condominiums, Baileys Harbor, Door, Wisconsin. The Condo was constructed eight years ago, is fully furnished, has a fieldstone fireplace, a deck, and is located on the waterfront. Condo users have access to common pool and tennis court areas.

The Condo was acquired by the VEBA from an unrelated seller at a price of $130,000. To provide for a down payment on the Condo, and to provide funds for the purchase of furnishings, the Employer made a contribution to the VEBA. The balance of the money needed for the VEBA to purchase the Condo was obtained from a loan to the VEBA in the amount of $80,000 from a local third party bank (the Bank) at an annual interest rate of 12.75%. As part of the financing terms, the Bank took a promissory note and a first mortgage on the Condo from the VEBA and a guaranty for payment of the loan from the Employer. It is represented that the payments on the loan are made from the Employer's contributions to the VEBA and that the current unpaid balance on the loan is approximately $74,483.

5. The Plan proposes to refinance for the VEBA the existing loan with the Bank from proceeds of money market funds yielding a return of approximately 5.5%, as of August 20, 1987. It is represented that long term investment yields for the Plan, as of August 20, 1987, average 6% before payment of commissions. The trustees anticipate a higher rate will be paid by the VEBA to the Plan on the Refinanced Loan.

It is represented that the proposed Refinanced Loan will be evidenced by a written promissory note from the VEBA, and will have the following terms: (a) An adjustable rate mortgage with an interest rate of two (2) points over the prime rate published by the Exchange National Bank of Chicago (the Exchange Bank), to be determined initially by the independent fiduciary for the Plan and thereafter annually on the anniversary date of the Refinanced Loan; (b) equal monthly payments of principal and interest amortized over the ten (10) year term for the Refinanced Loan; (c) a fee in the amount of one percentage point of the amount of the Refinanced Loan to be paid to the Plan at closing; (d) collateral in the form of a first mortgage on the Condo with a prohibition in such first mortgage against secondary financing; and (e) standard provisions involving acceleration of the note upon default or upon sale of the Condo. The applicant represents that commercial real property financing procedures will be followed with respect to the Refinanced Loan, including the acquisition of title insurance for the benefit of the Plan, closing, disbursement, and release of the existing mortgage to be handled by the title company, and a recorded first mortgage as a perfected lien on the Condo running to the benefit of the Plan.

The Employer represents that it will guaranty in writing the full repayment of the Refinanced Loan. In the event the VEBA defaults on its obligation to the Plan, pursuant to the guaranty, the Employer will timely pay the amount necessary to cure the default. It is also represented that hazard and liability insurance covering the replacement value of the Condo will be purchased and will name the Plan as first loss payee. Further, paid receipts for such insurance premiums and certificates of insurance, receipts for paid real estate tax and Condo membership fees will be supplied to the Plan at least annually.

6. John E. Gilson (Mr. Gilson) of Vacation Properties Network-Gilster Co., located at 4086 Main Street, Fish Creek, Wisconsin, appraised the Condo on August 12, 1987, at $119,500. In addition, Mr. Gilson estimated that were the Condo to be sold with its furnishings the appraised value would increase to $127,000 which would account for a market value on the furnishings of approximately $7,500. It is represented that the appraisal will be updated before the Plan invests in the Refinanced Loan.

7. Richard Golden (Mr. Golden) has agreed to serve as the independent fiduciary for the purpose of determining the suitability of the proposed transactions for the Plan. With respect to acting as independent fiduciary for the Plan, Mr. Golden represents that he has obtained advice as to his fiduciary responsibilities and duties under the Act from a legal counsel who does not represent Mr. Kaplan, the Plan, or the Employer, and that he has accepted these fiduciary duties and responsibilities. Mr. Golden asserts that he has negotiated and consummated real estate loans secured by residential and commercial real estate and that his experience includes negotiating the terms of currently outstanding substantial lines of credit secured by vehicles used in a business in which he is a principal shareholder. In addition, Mr. Golden was a principal for several years in a corporation which lent money to various businesses on a secured basis.

It is represented that Mr. Golden is independent in that he is not an officer, debtor, or creditor of, and has no corporate affiliation with the Employer or the VEBA. Mr. Golden also stated that he has not received any compensation for services to the Plan, the Employer, or the VEBA, nor does he have any other pecuniary interest in the proposed transactions which would affect his best judgment as a fiduciary for the Plan.

8. After reviewing the application for exemption dated September 17, 1986, as well as all exhibits thereto, Mr. Golden has determined that: (i) The Refinanced Loan is appropriate and suitable for the Plan, (ii) the terms of the Refinanced Loan are fair market terms for similar transactions, and (iii) the Refinanced Loan is in the best interest and protective of the Plan and its participants and beneficiaries. Mr. Golden represents that he will make the same determinations immediately prior to the refinancing and will take into account all relevant facts and circumstances at the time of such refinancing.

In arriving at this conclusion, Mr. Golden has reviewed the proposed Refinanced Loan with respect to (a) the Plan's overall investment portfolio, (b) the cash flow needs of the Plan, (c) the necessity for the sale of any assets of the Plan, (d) the diversification of the Plan's assets, both before and after the refinancing, and (e) the terms of the Refinanced Loan, as such terms conform with the Plan's investment policy. Mr. Golden states that the propsoed interest rate of two points over the prime rate charged by Exchange Bank is appropriate given the type of loan, the amount of the loan, the terms of the loan, and the collateral used to secure the loan. Mr. Golden made such a determination after Patricia A. Beilat (Ms. Beilat), an officer of Affiliated Bank, an unrelated third party bank, located in Morton Grove, Illinois, reviewed the terms and provisions of the Loan on November 17, 1987. After considering current market conditions for mortgage loans on residential property, Ms. Beilat confirms that the terms and conditions of the loan represent fair market value.

9. It is represented that the refinancing is protective of the Plan and its participants and beneficiaries, as the Plan will receive adequate collateral by holding a first mortgage on the Condo and the face amount of the Refinanced Loan will not exceed the amounts described in the paragraph below.

In advance of the Plan's investment in the Refinanced Loan, Mr. Golden represents that he will ascertian that:

a. The interest rate stated on the Refinanced Loan will initially equal two percent (2%) over the prime rate charged by the Exchange Bank and will be adjusted at the end of each twelve month period on the anniversary date of the Refinanced Loan to equal two percent (2%) over the then prime rate published by the Exchange Bank;

b. The outstanding balance of the Refinanced Loan plus the sum of the then outstanding balances of all loans made pursuant to section 408(b)(1) of the Act from the Plan to any "party in interest," as such term is defined in ERISA section 3(14),[1] does not exceed 25% of the then fair market value of all Plan assets;

c. The fair market value of all collateral for the Refinanced Loan is and at all times will remain at least 150% of the unpaid balance of the Refinanced Loan;

d. Either additional collateral for the Refinanced Loan from the VEBA and/or the Employer will be made available or immediate payment of the Refinanced Loan will be due in full, if the fair market value of all collateral drops below 150% of the unpaid balance of the Refinanced Loan;

e. The Plan retains counsel independent of the Employer and the VEBA to review all loan documents before closing, including the title insurance commitment, note, mortgage, closing statement, insurance certificates, and all other loan documents; and

f. The first mortgage on the Refinanced Loan is duly recorded as a perfected first lien on the Condo.

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[1] As of December 31, 1986, the financial documents of the Plan indicate a loan in the amount of $42,878.18 is outstanding to Mr. Kaplan. It is represented that such loan meets the requirements for participant loans, pursuant to section 408(b)(1) of the Act and section 4975(d)(1) of the Code. The Department expresses no opinion as to whether the outstanding loan to Mr. Kaplan satisfy the conditions set forth in section 408(b)(1) of the Act and section 4975(d)(1).

10. Mr. Golden will monitor and enforce the Plan's rights with respect to the terms of the Refinanced Loan, institute collection proceedings on the Refinanced Loan, and/or enforce the Plan's rights against the guarantor. Further, he will monitor the value of the Plan's assets to insure the unpaid amount of the Refinanced Loan, plus the outstanding balances of loans to other parties in interest, never exceeds 25% of the assets of the Plan and the collateral pledged is equal to or greater than 150% of the unpaid balance of the Refinanced Loan. Finally, Mr. Golden, accepts the responsibility to enforce the terms of the Refinanced Loan between the VEBA and the Plan. He will make demands for timely payment, bring suit, or take any other appropriate process against the VEBA, any guarantor, or the Employer, and will direct that accurate records are kept regarding the Refinanced Loan.

11. In summary, the applicant represents that the proposed Refinanced Loan satisfies the statutory criteria of section 408(a) of the Act because: (a) Mr. Golden, as independent fiduciary, has determined that the terms of the Refinanced Loan are commensurate with current fair market terms for similar loans negotiated at arm's-length with unrelated parties; (b) the Refinanced Loan will be secured by collateral with a value determined by an independent appraisal of at least 150% of the outstanding principal balance of the Refinanced Loan; (c) the payments on the Refinanced Loan will be monitored by the independent fiduciary who will take necessary and appropriate steps to protect the Plan's interests during the duration of the Refinanced Loan; and (d) the outstanding balance of the Refinanced Loan, plus the sum of the outstanding balances of all other loans by the Plan to parties in interest, will not exceed 25% of the fair market value of the assets of the Plan.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

The Boldt Holding Corporation Master Trust (Master Trust) The Boldt Holding Corporation Plan #1 Located in Appleton, WI

[Application Nos. D–7208 and D–7211]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan (the Loan) from the Master Trust to Valley Medical Building Association Limited Partnership (Valley Medical), a party in interest with respect to one of several employee benefit plans whose assets are invested in the Master Trust; provided that the terms of such Loan are at least as faverable to the Master Trust as are those negotiated at arm's length with unrelated parties for similar transactions.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire within three (3) years after the inception of the Loan, unless the independent fiduciary extends the term of the Loan for one renewal period of three (3) years. Should the applicants wish to extend the term of the Loan beyond that described in this exemption, the applicants must submit another application for exemption relief.

Summary of Facts and Representations

1. The Boldt Group Inc. (Group Inc.), a Wisconsin corporation, is the parent entity of four (4) wholly owned subsidiaries (the Subsidiaries). The Subsidiaries are the W.S. Patterson Company (Patterson Co.), the Boldt Development Company (Development Co.), the Oscar J. Boldt Construction Company (Construction Co.), and the Paper Valley Corporation, Inc. (Paper Corp). The shares of Group Inc. are owned equally by Charles Boldt, Thomas Boldt, and Margaret Boldt Anderson.

2. Group Inc. sponsors two plans, the Boldt Holding Corporation Pension Plan (Boldt Pension) for one participant and the Boldt Holding Corporation Salaried Profit Sharing Plan (Boldt P/S) for two participants. As of February 1987, Boldt Pension and Boldt P/S have assets of approximately $356,256 and $63,703, respectively. Patterson Co., Development Co., and Construction Co. sponor, respectively, the W.S. Patterson Company Salaried Profit-Sharing Plan (Patterson P/S) for 48 participants, the Boldt Development Company Salaried Profit-Sharing Plan (Development P/S) for two (2) participants, and the Oscar J. Boldt Construction Company Salaried Profit Sharing Plan (Construction P/S) for 108 participants. Patterson P/S, Development P/S, and Construction P/S, respectively, as of February 1987, had assets of approximately $976,157, $13,131, and $8,218,094.

The trustees (the Trustees) with respect to all of the plans (the Plans), with the exception of the Boldt Pension, are Carol Westphal and James Zeller, who also are employees of Construction Co. and Patterson Co., respectively. The trustee of the Boldt Pension is Louis A. Mayer, III of Emjay Corporation, Milwaukee, Wisconsin. A separate committee handles the administration for each of the Plans.

3. As of February 28, 1987, Boldt Pension, Boldt P/S, Patterson P/S, Development P/S, and Construction P/S had invested in the Master Trust the following approximate amounts, $202,645, $30,013, $853,145, $5,267, and $7,724,779, respectively, which constituted approximately 2.3%, .3%, 9.8%, .06%, and 88.7%, respectively, of the net assets of the Master Trust.[2] As of the same date, the Master Trust had net assets of approximately $8,702,000. The Master Trust invested primarily in money market accounts, mortgage loans, common stocks, corporate obligations, government and agency obligations, cash, and real estate. The Master Trust employs four investment managers to manage its assets.

4. The proposed transaction is the Loan in the amount of $1.8 million from the Master Trust to Valley Medical, a Wisconsin limited partnership. The general partners of Valley Medical with an .8% interest each are Valley Health Facility Inc. and Paper Corp, one of the Subsidiaries of Group Inc. The limited partner, Construction Co., owns a 98.4% limited partnership interest in Valley Medical. Some of the proceeds of the Loan from the Master Trust will be used by Valley Medical to repay Construction Co. for two existing unsecured demand notes made July 24, 1985, and December 30, 1986, in the amounts of $1,404,725 and $20,000, respectively, at an interest rate of prime plus ½%.

The Loan will bear interest at a fixed rate of 10½% per annum and will be payable in 36 equal monthly installments of principal and interest based on a fifteen (15) year amortization schedule. The provisions of the Loan include a balloon payment at the end of the initial three (3) year term of the Loan or at the conclusion of any renewal period of the Loan. The Loan, when made, will constitute 20.6% of the assets of the Master Trust.[3] The Trustees maintain that the Loan would be in the best interest of the Plans participating in the Master Trust.

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[2] The applicants represent that, effective March 1, 1986, Construction P/S transferred the majority of its assets to the Master Trust. Included in the transfer was a lease (the Lease) by Construction Co. of land and an office building located on Badger Avenue in Appleton, Wisconsin. The Lease was the subject of a previously granted exemption. See Prohibited Transaction Exemption 79–51 (44 FR 54795, September 21, 1979; proposed at 44 FR 44266, July 27, 1979) for a complete description of the facts and circumstances surrounding the Lease. The applicants represent that Construction Co. no longer occupies the land and the office building and that unrelated third parties currently rent the land and office building.

The Loan will be secured by three types of collateral: (a) A first mortgage in favor of the Master Trust on a building (the Building) owned by Valley Medical; (b) the assignment of rents from the Building to the Master Trust; and (c) a letter of commitment (the Commitment Letter) in which Valley Bank, Appleton, Wisconsin (Valley Bank) agrees to lend Valley Medical up to $1.8 million for the purpose of repaying the Loan from the Master Trust. Valley Bank is a subsidiary of Valley Bancorporation (Bancorp), a bank holding company registered in Wisconsin since 1963. Bancorp also wholly owns Valley Trust Company, one of four investment managers for the Master Trust. It is represented that Valley Bank is unrelated to Valley Medical.

5. The Building which will serve as part of the collateral for the Loan is a three story office building constructed in 1984, by Construction Co. for Valley Medical at a cost of approximately $2,337,702. Located at 820 Grant Street, Appleton, Wisconsin, the Building is situated on a parcel (the Parcel) of real property adjacent to the Appleton Medical Center (Med Center), a non-profit charitable hospital, and is connected to the Med Center by an overhead walkway.

Med Center owns the Parcel underlying the Building and rents it to Valley Medical, pursuant to a ground lease entered on June 12, 1984. The provisions of the ground lease include a thirty (30) year term and three options for renewal of ten (10) years each. Aid Association for Lutherans (Aid) holds a blanket mortgage from Med Center, in the amount of $3,456,000 on the Parcel which underlies the Building and on all other real estate and improvements which make up the Med Center hospital complex. As a provision in the subordination of a mortgage agreement, Aid has agreed that the existing blanket mortgage to Aid on the Parcel underlying the Building shall be subordinate to the first mortgage interest in the Building which will secure the Loan by the Master Trust to Valley Medical.

At the time the application was filed, the third floor of the Building was unfinished, and Construction Co. was under contract with Valley Medical to complete the construction. It is represented that Construction Co. will waive all lien rights for both real and personal property related to the Building to the extent the exemption for the Loan is granted.

6. As additional security for the Loan, the applicants propose to assign to the Master Trust the right, upon default of the Loan, to receive directly from the tenants the rentals on the Building. The tenants who together rent 100% of the Building are Appleton Cardiology Associates, Appleton Heart Surgeons, the Med Center, Jeffrey R. Whiteside, M.D., S.C., Kevin C. Garrett, M.D., S.C., and Maria T. Aristigueta, M.D., S.C., all of which are unrelated third parties with respect to the Plans participating in the Master Trust.

7. The applicants propose as the third form of collateral for the Loan, a Commitment Letter to the Master Trust. The Commitment Letter has an initial term of three (3) years. The Commitment Letter states that upon notification in writing from the Master Trust in the event of default on the Loan or at least thirty (30) days prior to the end of the initial three (3) year term of the Loan, Valley Bank will, within thirty (30) days after receipt of such notice, lend to Valley Medical up to but not more than $1.8 million. It is represented that the proceeds from the $1.8 million will be used for the purpose of repaying the unpaid principal and interest on the Loan from the Master Trust to Valley Medical.

Under the terms of the Commitment Letter, Valley Medical authorizes Valley Bank to make payment of the amount due on the Loan directly to the Master Trust on behalf of Valley Medical. Upon repayment in full of the Loan amount, the Master Trust has agreed to release its first mortgage on the Building, security agreements, and assignments of leases and rents.

Valley Bank, as of June 30, 1987, had total assets of $256 million and capital of $185 million. Of those assets, Valley Bank currently has outstanding loans or lines of credit to Construction Co., Patterson Co., Development Co., and Paper Corp. in the amounts of $8 million, $2 million, $800,000, and $227,893, respectively. The amount extended on the line of credit with Construction Co. as of August 1987, was $1,030,967, while the line of credit with Patterson Co. was not in use, as of August 31, 1987. It is represented that loan amounts or liens of credit in excess of Valley Bank's limits will be shared among affiliate banks of Bancorp which, as of March 31, 1987, had $1.23 billion in outstanding loans and assets in excess of $2 billion.

8. John Pfefferle (Mr. Pfefferle), president of Appraisal Associates, Inc., which is located at 500 W. Franklin Street, Appleton, Wisconsin, appraised the Parcel and the Building, as of January 29, 1987, at $2,500,000. Because auxiliary offsite parking is available to the Parcel, Mr. Pfefferle concluded that the appropriate unit value of $4.00 per square foot multiplied by the total land area (26,153 square feet) for the Parcel indicates a fair market value of $105,000 for the Parcel alone. Mr. Pfefferle also noted that while Valley Medical leases, but does not own the Parcel, the appraisal takes into account the value of the long term lease on the site and the subordination of the blanket mortgage to Aid. Because the third floor of the Building was unfinished at the time of the appraisal, Mr. Pfefferle stated that his appraisal is conditioned on the completion of construction on the third floor at the estimated cost of $200,000.

Mr. Pfefferle represents that the fair market rental for the space in the Building is $12.50 per square foot, as of January 29, 1987. According to Mr. Pfefferle, all of the space in the Building was, as of Janaury 29, 1987, leased at that rate. In addition, the existing leases provide that any operating expense in excess of $3.50 per square foot is the responsibility of the tenant.

9. The Marine Trust Company, N.A. (Marine Trust) located at 200 College Avenue, Appleton, Wisconsin, has agreed to act as independent fiduciary with complete and sole authority and responsibility with respect to the custody, supervision, enforcement, and monitoring of compliance with the terms of the Loan.

The Marine Trust represents that it is qualified to serve as independent fiduciary for the Master Trust. Since 1930, Marine Trust has provided trust services to its customers, and as of August 24, 1987, its Appleton office administers $350 million in accounts of which approximately $120 million consist of assets attributable to employee benefit plans.

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[3] The applicants represent that included in the assets of the Master Trust is a loan with Mr. and Mrs. Popp (the Popps) originally in the amount of $380,000. The loan to the Popps was the subject of a previously granted exemption. See Prohibited Transaction Exemption 83–77 (48 FR 18962, April 28, 1983; proposed at 48 FR 9392, March 4, 1983) for a complete description of the facts and circumstances surrounding the loan. It is represented that the outstanding amount on the loan to the Popps as of December 28, 1987, is $280,000 which constitutes 3.3% of the assets of the Master Trust. Therefore, the applicants represent that the total of the subject Loan and the amount outstanding on the loan to the Popps together constitute approximately 23.9% of the assets of the Master Trust.

It is represented that Marine Trust has no relationship with any of the parties to the transaction, including Group, Inc. or its Subsidiaries, and Valley Medical or its partners. Further, less than one percent (1%) of the assets of its affiliate, Marine Bank Appleton, N.A., is involved in outstanding loan obligations with the indirect owners of Valley Medical.

The duties of Marine Trust, as independent fiduciary with respect to the Loan, will include but are not limited to:

(1) Investing payments collected from the Loan in a short term money market fund while such payments are awaiting transfer to the Master Trust;

(2) Verifying that insurance is in force on the Building;

(3) Verifying payment of real estate taxes;

(4) Performing an annual drive-by inspection of the Building;

(5) Arranging for an appraisal of the Building every three years;

(6) Providing periodic statements of account on the Loan to the Master Trust, as often as monthly, but not less frequently than annually;

(7) Retaining legal counsel or an abstract company to record all relevant documents; and

(8) Enforcing the terms of the Commitment Letter at maturity or upon default on the Loan. In this regard, Marine Trust will have authority upon default on the Loan, at the expiration of the initial three (3) year term of the Loan, or at the expiration of one three (3) year renewal period, to call the Loan and receive payment of the outstanding principal and interest on the Loan from the Valley Bank.

Marine Trust represents that the terms of the Loan are similar to those negotiated in arm's length transactions between unrelated parties. Pursuant to an examination of the terms of the Loan and related documents and after a review of the financial statement of the Master Trust, Marine Trust has determined that the proposed Loan to Valley Medical is consistent with the cash flow and liquidity requirements of the Master Trust and as such would be in the overall best interest of the Plans participating in the Master Trust. In the opinion of Marine Trust, the portfolio of the Master Trust is weighted too heavily toward equity securities and the addition of the Loan to the portfolios holdings will increase the representation in fixed income securities.

Marine Trust states that the investment in the Loan is well protected. The real estate that secures the Loan is valued at $2.5 million and additional protection is provided in the form of the assignment of the rents on the Building. The projected analysis supplied by Marine Trust estimates a total present value of rents for the first three years of the Loan at $869,945. Marine Trust represents that while the Loan is adequately secured by the Building and assignment of rents, the most important protection for the Master Trust is the additional security of the Commitment Letter. According to Marine Trust, the Commitment Letter provides an unconditional commitment by Valley Bank to lend up to $1.8 million to Valley Medical and provides a means to transform the Loan to cash for the Master Trust upon any event of default or upon maturity of the Loan.

It is represented that Marine Trust has authority to renew the Loan for an additional three (3) year period provided that:

(a) The extension of the Loan does not exceed one additional period of three (3) years and that no further extensions will be authorized;

(b) No default has occurred during the initial three (3) year term either with respect to the required payments on the Loan or with respect to any of the other obligations of Valley Medical associated with the terms of the Loan, pursuant to the mortgage note, mortgage, mortgage loan agreement, or assignment of rents;

(c) The payments of principal and interest will continue in accordance with the Loan which was based upon an amortization over a period of fifteen (15) years with a balloon payment of the outstanding amount of the Loan at the conclusion of the renewal period;

(d) All security agreements and loan agreements remain in force for the extended term of the Loan;

(e) A new appraisal by an independent qualified appraiser of the Building is obtained;

(f) The fair market value of the rents on the Building is redetermined;

(g) The total annual rental income from the Building is at least as high as the 1987 calendar year rentals in the amount of $292,000;

(h) The appraised value of the Building and the fair market value of the rents for this Building represent at least 150% of the outstanding amount of the Loan as of the commencement of the extended term;

(i) The subordination of the Aid blanket mortgage to the Loan is continued for the extended term;

(j) Valley Medical maintains a cash reserve in the amount of at least $50,000 at all times during the extended term, and the general and limited partners of Valley Medical agree to be jointly and severally liable to supply Valley Medical with sufficient cash to insure a $50,000 minimum cash reserve is maintained;

(k) The outstanding amount of the Loan does not exceed twenty-five percent (25%) of the assets of the Master Trust;

(l) A review of the potential distribution to participants is completed and a determination is made that the liquidity of the assets of the Master Trust is sufficient to meet such potential distributions during the extended term of the Loan;

(m) The interest rate on the Loan for the extended term equals at least two percentage points above the average interest rate for a three year U.S. Treasury Note, as determined during the six (6) months previous to the commencement of the extended term of the Loan; provided that the interest rate determined by such formula must be at least equal to the fair market value interest rate based upon the circumstances at the time of any renewal of the Loan;

(n) Valley Bank issues an unconditional letter of commitment or extends the existing Commitment Letter to cover the renewal period; and

(o) After an overall review of the terms for the extension and all other relevant factors, Marine Trust is able to make the same representations with respect to the extension as it made with respect to the initial Loan. Marine Trust reserves the right not to approve the extension of the Loan, even though all of the foregoing requirements may be satisfied.

10. In summary, the applicants represent that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Loan will account for less than twenty-five percent (25%) of the assets of the Master Trust;

(b) Marine Trust, the independent fiduciary, has reviewed the terms of the Loan and has determined that the transaction is in the best interest and protective of the Plans participating in the Master Trust;

(c) Marine Trust will monitor and enforce the terms of the Loan, the assignments of rents, and the Commitment Letter;

(d) Marine Trust has determined that the Loan is in keeping with the cash flow and liquidity requirements of the Master Trust;

(e) Marine Trust has determined that the value of the Building which serves as collateral for the Loan and the fair market value of the rents for the Building together exceed 150% of the Loan amount; and

(f) Marine Trust has determined that the Commitment Letter provides an unconditional means to transform the Loan into cash for the Master Trust upon an event of default or upon maturity of the Loan.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Concho Construction Company, Inc. Profit Sharing Plan (the Plan) Located in Garland, Texas

[Application No. D–7308]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to certain improved real property to the Concho Construction Company, Inc. (the Employer), the sponsor of the Plan; provided that such sale is on terms no less favorable to the Plan than those which the Plan could obtain in arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan which was terminated effective November 1, 1985, at which time there were twenty eight Plan participants. The Employer is a closely-held Texas corporation engaged in general construction services and located in Garland, Texas. The Plan participants include employees of an affiliate of the Employer, the Concho Equipment Company. The Plan assets, which are in the process of liquidation and distribution, had a total fair market value of $2,771,800 as of Decembver 31, 1986. The Dallas, Texas office of the Internal Reserve Service (the Service) issued a favorable determination letter on December 4, 1986, with respect to the Plan termination. The Plan's trustee is the First City Bank of Dallas (the Trustee), which exercises full control over the investment and disposition of Plan assets.

2. Among the remaining assets of the Plan is a 2.51 acre parcel of commercially-zoned real property (the Property) located at 196 International in Garland, Texas. The Property is improved with a small office building, a metal storage building and a small repair-shop building. The Plan acquired the Property in 1981 for approximately $47,000 and commenced leasing it to the Employer in November, 1981 under a net lease (the Lease) under which the Employer bears all expenses of maintenance, taxes and improvements. The Employer represents that the Lease was exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.[4] The Employer represents that it has paid the applicable excise taxes imposed by section 4975(a) of the Code since June 10, 1984. The Trustee represents that the rentals paid by the Employer under the Lease have been and remain no less than the Property's fair market value.

3. In order to complete the liquidation and distribution of the Plan's assets and to terminate the ongoing prohibited transaction which the Lease constitutes, the Trustee seeks to divest the Plan of the Proeprty. The Trustee and the Employer are proposing that the Employer purchase the Property from the Plan and are requesting an exemption to permit such transaction. The Employer will pay the Plan cash for the Property in the amount of the Property's fair market value as of the date of the sale. The Property was appraised as of July 13, 1987 by Ronald R. Payne, SRPA (Payne), an independent professional real estate appraiser in Garland, Texas who represents that as of that date the Property, including improvements, had a fair market value of $380,000. Payne's appraisal will be updated as of the date of the proposed sale to reflect any increase in the Property's value since July 13, 1987 and the purchase price paid for the Property by the Employer will be in accordance with such update but in no event less than $380,000. The Plan will pay no commissions or other costs or expenses related to the proposed sale. The Employer represents that it will continue to pay to the Plan rentals of no less than the Property's fair market rental value as determined by the Trustee through the sale date and that it will continue to pay applicable excise taxes for the continuation of the Lease until its termination on the sale date.

4. The Trustee, which represents itself to be independent of the Employer, maintains that it has closely and thoroughly reviewed the proposed transaction and all its terms and that it has determined that the proposed sale transaction will be in the best interests and protective of the participants and beneficiaries of the Plan. The Trustee represents that a sale of the Property to an unrelated party could not be accomplished expeditiously, due to the depressed condition of the real estate market in which the Property is situated. The Trustee further represents that the Employer constitutes the only likely cash buyer of the Property for its full appraised fair market value, as the Proeprty's improvements are useful to the Employer and not really adaptable to other uses.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The proposed transaction will enable the Trustee to proceed with distribution of the assets of the Plan, which is terminated; (2) The Plan will receive cash for the Property in an amount no less than its appraised fair market value as of the sale date; (3) The Plan will incur no costs or expenses related to the proposed transaction; and (4) The Trustee represents that the proposed transaction will be in the best interests and protective of the Plan's participants and beneficiaries and that the proposed terms are more favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Nabors Chevrolet-Toyota, Inc. Employees Retirement Plan (the Plan) Located in Clarksdale, MI

[Application No. D–7322]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash of a certain parcel of improved real property (the Property) by the Plan to Nabors Chevrolet-Toyota, Inc. (the Employer), a party in interest with respect to the Plan; provided that the sales price is the greater of $249,250 or the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. On January 1, 1963, the Plan was established by Owen Chevrolet Company (the Owen Co.), an automobile dealership located at 621 De Soto Avenue, Clarksdale, Mississippi. On January 2, 1965, the Owen Co. sold the Property to the Plan. It is represented that the fair market value on the land underlying the Property was used to determine the sales price of the land on that date and that the improvements on the Property were sold to the Plan at the actual cost of construction. After the Plan acquired the Property in 1965, the Owen Co. entered into a lease (the Lease) of the Property with the Plan, for a term of five (5) years at a net rental rate of $24,000 per year. Subsequently, on October 6, 1982, the Owen Co. sold its interest in the automobile dealership to the Employer who then became the sponsor of the Plan. At that time, the Lease of the Property was continued between the Plan and the Employer.[5]

2. The Plan, a money purchase pension plan, currently has approximately 43 participants. As of December 31, 1986, the net assets of the Plan totaled $931,837. The trustee for the Plan is Grady Nabors who is the president and 100% shareholder of the Employer and is also a participant in the Plan.

3. The Property, located on the northwest corner of De Soto Avenue and Seventh Street and on the northeast corner of LeFlore Avenue and Seventh Street, is level, has access to public utilities, and is divided by a small alley. The frontage for hte Property facing De Soto Avenue is 310 feet wide and 205 feet deep and consists of six (6) lots. The frontage for the Property facing LeFlore Avenue is 160 feet wide and 205 feet deep and consists of three lots.

The improvements of the Property located on De Soto Avenue include a twenty year old brick and metal building of 25,437 square feet which is occupied as the showroom, offices, parts department, and shop. A large metal building of 7,000 square feet used as an automobile body shop (the Body Shop) is located on LeFlore Avenue.

The Property is located in two different zoning districts. The part of the Property facing De Soto Avenue is zoned for general commercial use; while the part of the Property facing LeFlore Avenue is zoned for multi-family residences. It is represented that since the Body Shop lcoated on LeFlore Avenue was erected twelve (12) years ago before the effective date of the residential zoning restriction, the Body Shop is in compliance with such regulation.

The value of the Property currently constitutes 26.75% of the assets of the Plan.

4. The Employer proposes to purchase the Property from the Plan for the greater of cash in the amount of $249,250 or the fair market value of the Property on the date of the sale. The Employer wishes to purchase the Property in order to terminate the prohibited Lease between the Employer and the Plan. The Plan will incur no fees, commissions, or other costs as a result of the sale of the Property to the Employer. It is represented that economic conditions in the vicinity of the Property are depressed, such that there is no unrelated third party willing to purchase the Property from the Plan. By selling the Property to the Employer, it is represented that the Plan will benefit by the receipt of cash for an illiquid real estate investment. The trustee for the Plan states that the proceeds from the sale of the Property will be used to diversify the investments of the Plan.

5. Mr. R.D. Peay, III (Mr. Peay), real estate appraiser with R.D. Peay & Son in Clarksdale, Mississippi, valued the Property on June 25, 1984. Mr. Peay revised his appraisal of the Property on May 19, 1987, to reflect more current values of property in the area. Mr. Peay states that there has been a loss in the value of the Property during the period 1984 to 1987 due to the "soft" real estate market in the Clarksdale community and to general economic conditions in that area. As of May 19, 1987, Mr. Peay has determined that the fair market value of the Property was $249,250.[6]

Mr. Peay states that he is qualified to appraise the Property, as he has twenty-four (24) years experience in selling, financing, managing, developing, and appraising urban, rural, commercial, and residential real estate. Mr. Peay represents his independence from the subject transaction in that he has no present or contemplated future interest in the Property and has no personal interest or bias with respect to the subject matter or the parties involved in this transaction. Further, Mr. Peay certifies that neither his employment nor his fee is contingent on the value of the Property appraised.

6. In summary, the applicants represent that the proposed transaction satisfies the criteria for exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the Property will be a one time transaction for cash;

(b) The Plan will sell the Property at the fair market value as determined by a qualified independent appraiser;

(c) The sale will terminate a prohibited Lease between the Plan and the Employer;

(d) No fees, commissions, or other costs will be incurred by the Plan as a result of the sale; and

(e) Plan will use the proceeds from the sale to diversify the Plan's investment portfolio.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Harry R. Shaw, D.D.S. Profit Sharing Plan (the Plan) Located in Owings Mills, Maryland

[Application No. D–7420]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a computer system to Dr. Harry R. Shaw (Dr. Shaw), a party in interest with respect to the Plan, provided that the terms of the transaction are no less favorable to the Plan than those available in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

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[4] The Department expresses no opinion as to whether the Lease was exempt from the prohibitations of section 406 of the Act by virtue of section 414(c)(2) of the Act.

[5] The applicants represent that the Lease between the Plan and the Employer was exempt from the prohibited transaction provisions of the Act because the Lease was entered into before July 1, 1974, the date specified in the Act. Therefore, the applicants maintain that the Lease was covered by the statutory exemption provided by section 414(c)(2) of the Act until June 30, 1984. The Department, herein, expresses no opinion as to whether the Lease met the requirements of section 414(c)(2) of the Act. The applicants represent that within 60 days of the date of the grant of this proposed exemption, they will file Form 5330 with the Internal Revenue Service, and will pay any applicable excise tax due on the Lease of the Property by the Employer after June 30, 1984. In addition, the applicants will pay to the Plan an amount equal to any difference between the fair market rental value on the Property for the period June 30, 1984 to the date of the sale proposed herein and the sum actually paid to the Plan by the Employer, plus interest thereon.

[6] The Department is expressing no opinion herein as to whether the continued holding of the Property by the Plan constituted a violation of any of the fiduciary responsibility provisions of Part 4 Subtitle B. of Title I of the Act.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 2 participants. Dr. Shaw is the trustee of the Plan.

2. On October 21, 1987, the Plan invested $10,000 in a 10 year certificate of deposit paying interest of 8% per annum with the John Hanson Saving Bank (the Bank).

As an incentive to open the account the Bank offered as a gift a Macintosh Plus computer with Imagewriter II (Computer System). Dr. Shaw represents that no other gift options were available to the Plan based on the amount invested. The fair market value of the Computer System as determined by the Bank is $2,204.90 (amount to be reflected on Form 1099 to the Plan).

3. Dr. Shaw represents that the Plan has no use for the Computer System and he has offered to purchase it from the Plan for $2,204.90 in cash.

4. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed sale will be a one-time transaction for cash; and

(b) The Plan will receive the fair market value for the Computer System.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of partipants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of March 1988.

Robery J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 88–4974 Filed 3–7–88 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comment.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value of warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before April 22, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. *Department of the Army (N1–338–87–1).* Records of the U.S. Army Refugee Reception Center, Camp Kilmer, relating to routine administrative and/or housekeeping matters (schedule provides for permanent retention of

records relating to significant policies and programs).

2. *Department of the Army (N1–338–87–2).* Records of Army Bases relating to routine administrative and/or housekeeping matters (schedule provides for permanent retention of records relating to significant policies and programs).

3. *Department of the Army (N1–338–87–3).* Records of Army Agencies relating to routine administrative and/or housekeeping matters (schedule provides for permanent retention of records relating to significant policies and programs).

4. *Department of the Army (N1–338–87–6).* Records of the U.S. Army Inter-American Geodetic Survey relating to routine administrative and/or housekeeping matters (schedule provides for permanent retention of records relating to significant policies and programs).

5. *Department of the Army (N1–338–87–8).* Records of the U.S. Army Armed Forces Institute relating to administrative and/or housekeeping matters (schedule provides for permanent retention of records relating to significant policies and programs).

6. *Department of the Army (N1–338–87–3).* Records of Army cemeterial organizations relating to routine administrative and/or housekeeping matters (schedule provides for permanent retention of records relating to significant policies and programs).

7. *Department of Agriculture, Forest Service, Forest Pest Management Staff (N1–95–87–20).* Standard replies to routine inquiries and forms reporting the number of employees trained or certified in pesticide use.

8. *Federal Deposit Insurance Corporation, Legal Division (N1–34–88–1).* Records created in the course of providing assistance to ailing open banks and conducting litigation.

9. *Federal Deposit Insurance Corporation, Division of Accounting and Corporate Services (N1–34–88–2).* Call delinquent files, bank structure source documents.

10. *International Boundary and Water Commission, United States and Mexico, United States Section (N1–76–88–2).* Aerial mosaic files.

11. *Department of Justice, Federal Bureau of Investigation (N1–65–88–2).* Visa Applicant Correspondence Files.

12. *Department of Justice, Civil Division, Foreign Litigation Section (N1–131–88–1).* Office of Alien Property accounting records and card indices to case files and correspondence files previously appraised as disposable.

13. *National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–88–4).* Reduction in retention period for position descriptions in General Records Schedule 1, Civilian Personnel Records.

Dated: March 2, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–4983 Filed 3–7–88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Atlas Minerals, Division of Atlas Corp.; Final Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA–917 for Operation of Atlas Minerals' Moab Uranium Mill Located in Grand County, UT

February 25, 1988.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

(1) Proposed Action

The proposed administrative action is to renew Source and Byproduct Material License SUA–917 authorizing Atlas Minerals Corporation to continue operation of their Moab Mill located in Grand County, Utah.

(2) Reasons for Final Finding of No Significant Impact

An Environmental Assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the operation. Documents used in preparing the assessment included operational data from the licensee's prior milling activities, the licensee's renewal application dated May 31, 1984, additional submittals dated December 17, 1984, January 18, 1985, June 5, and December 4, 1986, January 26, 1988, and the Final Environmental Statement prepared by the Commission staff dated January 1979. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the final Finding of No Significant Impact and summarize the conclusions resulting from the environmental assessment.

(a) The ground water monitoring program in effect at the Moab Mill is sufficient to detect releases and thereby minimize any impact on ground water.

(b) Radiological effluents from the proposed operation of the mill will be minimal and well within the regulatory limits and will be continuously monitored.

(c) Environmental monitoring is comprehensive enough to detect any significant impacts due to radiological releases from the milling operation.

(d) Radioactive wastes will be minimal and will be disposed of in the tailings impoundment which will be reclaimed in accordance with applicable Federal and state regulations.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft Finding of No Significant Impact. A draft Finding of No Significant Impact was published (FR 49802) on December 4, 1985, and no comments were received.

In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final Finding of No Significant Impact. This finding, together with the Environmental Assessment setting forth the basis for the finding, and other related environmental documents are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Denver, Colorado, this 19th day of February, 1988.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, Region IV.

[FR Doc. 88–4985 Filed 3–7–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–498, LICENSE NO. NPF–71]

South Texas Project, Unit 1; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated January 26, 1988, the Government Accountability Project requested that the Commission delay voting on a full-power operating license for the South Texas Project (STP), Unit 1 until there has been a complete investigation of all allegations regarding the STP and public release of a report disposing of each allegation. The Petition asserts as grounds for this request that: (1) The results of the NRC's limited investigation into allegations were predetermined, in that the NRC inspection team had prepared a draft of its findings before leaving the site after its site inspection; (2) in an on-site inspection with one of the allegers, the alleger was not permitted to show the NRC team any of his allegations relating to Unit 1; (3) the NRC review was subjected to overwhelming scheduling pressures, resulting in disposition of most of the allegations without interviewing the allegers and in a failure to thoroughly address the 60 selected allegations that were the focus of the team's review; and (4) none of the allegations of wrongdoing have been investigated by the NRC. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by 10 CFR 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of February, 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4986 Filed 3-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-19960, License No. 37-10059-03, EA 87-175]

BP Oil, Inc., Marcus Hook, PA; Order Imposing Civil Monetary Penalties

I

BP Oil, Inc., Marcus Hook, Pennsylvania 19061 (the "licensee") is the holder of License No. 37-10059-03 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to possess and use various fixed nuclear gauges. The license was issued on May 2, 1983, replacing License No. 37-10059-02, and is due to expire on April 30, 1988.

II

An NRC safety inspection of the licensee's activities under the license was conducted on July 20–22, 1987. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated October 22, 1987. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount for each of the violations. Two responses, both dated December 17, 1987, to the Notice of Violation and Proposed Imposition of Civil Penalties, were received from the licensee.

In its responses, the licensee admits that the violations occurred but request mitigation of the proposed civil penalty. Upon consideration of the answers received, the statements of facts, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, and as set forth in the Appendix to this Order, the Deputy Executive Director for Regional Operations has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2282 and 10 CFR 2.205, it is hereby ordered that:

The licensee pay cumulative civil penalties in the amount of Two Thousand Dollars ($2,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be clearly marked as a request for hearing and shall be addressed to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, the proposed civil penalty should be imposed, in whole or in part.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 1st day of March 1988.

Appendix

Evaluation and Conclusion

On October 22, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties was issued for violations of a license issued to BP Oil, Inc. The licensee responded to the Notice by two letters, dated December 17, 1987, and admits the violations, but requests mitigation of the cumulative amount of the civil penalties. The NRC's evaluation and conclusion regarding the licensee's responses are as follows:

I. Restatement of Violations

A. Condition 15 of License No. 37-10059-03 requires, in part, that removal from service and relocation of non-portable devices containing sealed sources be performed only by persons specifically licensed by the NRC or and Agreement State to perform such service. Conditon 16 of License No. 37-10059-03 requires that the licensee conduct its program in accordance with the licensee's application for license dated March 28, 1983, which states, in Item IV, that the licensee will contact the nuclear gauge manufacturer to assist in removing the gauge from service and relocation.

Contrary to the above, on July 16, 1987, four Ohmart model SHLM sealed-source non-portable gauges, each containing approximately 20 millicuries of cesium-137, were removed from Acid Storage Drum No. PV-2504:

1. By persons not specifically licensed to perform this service, and

2. Without the gauge manufacturer being contacted prior to removal of the gauges from service.

This is a Severity Level III violation (Supplement IV).

Civil Penalty—$500.

B. 1. 10 CFR 20.105(b)(1) requires that radiation levels in unrestricted areas be limited so that an individual continuously present in the area could not receive a radiation dose in excess of 2 millirems in any hour. 10 CFR 20.3(a)(17) defines an unrestricted area to include any area to which access is not controlled by the licensee for the purpose of protection of individuals from exposure to radiation and radiocative materials.

Contrary to the above, on July 14–16, 1987, radiation levels existed in an unrestricted area, namely, the inside of

Acid Storage Drum No. PV-2504, such that an individual present in the area for one hour could receive a radiation dose of greater than 2 millirems.

2. 10 CFR 20.203(b) requires that each radiation area be conspicuously posted with a sign bearing the radiation caution symbol and the words, "Caution (or Danger)—Radiation Area."

Contrary to the above, on July 14–16 1987, a radiation area existed on the inside of Acid Storage Drum No. PV-2504, and the access points to the radiation area were not posted with the required caution sign.

3. 10 CFR 20.203(f) requires that each container of licensed radiocative material bear a clearly visible lable identifying the radioactive contents.

Contrary to the above, on July 20, 1987, four Ohmart nuclear gauges, each containing 20 millicuries of cesium-137, a licensed radioactive material, did not have a clearly visible lable identifying the radioactive contents. The labels has been partially obliterated by paint and/or covered with tape.

Collectively, these violations have categorized as a Severity Level III problem (Supplement IV).

Civil Penalty—$500 assessed equally among the violations.

C. Condition 16 of License No. 37-10059-03 requires that licensed material be used in accordance with the statements, representations and procedures contained in an application dated March 28, 1983 and letters dated April 15, 1983, August 14, 1986 and September 26, 1986.

1. Item 1 of the "Nuclear Radiation Gauging Device" procedure, included with the April 15, 1983 letter, requires that the nuclear gauge be locked-out prior to work being conducted in inside a vessel.

Contrary to the above, on July 14–16, 1987, approximately 27 individuals worked inside and on a vessel, Acid Storage Drum No. PV-2504, and four nuclear gauges, each containing approximately 20 millicuries of cesium-137, had not been locked-out prior to the work being conducted.

2. Item 3 of the "Nuclear Radiation Gauging Device" procedure, included with the April 15, 1983 letter, requires that a radiation survey be conducted prior to entering a vessel bearing a nuclear gauge.

Contrary to the above, on July 14–16, 1987, approximately 27 individuals worked inside and on a vessel, Acid Storage Drum No. PV-2504, without a radiation survey first being conducted.

3. Item 5 of the "Nuclear Radiation Gauging Device" procedure, included with the April 15, 1983 letter, requires that whenever nuclear gauges are removed from a vessel where they have been installed, the gauges should be transferred immediately to lead shielded containers.

Contrary to the above, on July 16, 1987, four nuclear gagues, each containing approximately 20 millicuries of cesium-137, were removed from a vessel Acid Storage Drum No. PV-2504, and as of July 20, 1987, these gauges, had not been placed in lead shielded storage containers.

Collectively these violations have been categorized as a Severity Level III problem (Supplements IV and VI).

Civil Penalty—$500 assessed equally among the violations.

D. 10 CFR 20.405(a)(1)(v) requires that each licensee make a report within 30 days of its occurrence, of levels of radiation (whether or not involving excessive exposure of an individual) in an unrestricted area in excess of ten times of any applicable limit set forth in 10 CFR Part 20.

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual continuously present in the area could not receive a radiation dose in excess of 2 millirems in any hour. 10 CFR 20.3(a)(17) defines an unrestricted area to include any area to which access is not controlled by the licensee for the purpose of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on January 19, 1983, an incident occurred in which an individual, who was not a radiation worker, entered an unrestricted area (the Surge Hopper on the Platformer Unit) for approximately 30 minutes, and the individual received a radiation exposure which was estimated by the licensee to be approximately 84 millirem. The level of radiation that existed in the area was approximately 160 millirem per hour, which is greater than ten times the limit of two millirem in an hour for an unrestricted area, as specified in 10 CFR 20.105(b)(1), and as of July 22, 1987, the licensee had not filed a written report of the occurrence with the NRC.

This is a Severity Level III violation (Supplement IV).

Civil Penalty—$500.

II. Summary of Licensee Response

The licensee, in its two responses, admits the occurrence of the violations, one of which involved an incident similar to an incident which occurred in 1983. Further, the licensee does not contest classification of the Severity Level of the violations. However, the licensee takes issue with the NRC statement, in its October 22, 1987 letter, that "mitigation [of the civil penalties] was considered inappropriate in view of the significance of this event, and the previous event in 1983" since its corrective actions were unusually prompt and extensive. Further, the licensee indicated that the 1983 event occurred, in part, because they relied on the advice of an employee of the Ohmart Corporation (the gauge manufacturer and distributor) and that incident should not be used to deny mitigation in the present case. In addition, the licensee indicated that a written report of the 1983 incident was not filed with the NRC because of advice given by an Ohmart employee.

III. NRC Evaluation of Licensee Response

It is not clear, from the licensee responses, whether the advice provided by Ohmart Corporation actually contributed to the 1983 incident (involving excessive radiation levels in an unrestricted area), or contributed to the licensee's failure to report the incident to the NRC. In any case, the advice provided by Ohmart Corporation is not relevant to whether mitigation is appropriate since it is the responsibility of the licensee to ensure that all NRC requirements, including the conditions of the license, are met.

Furthermore, even if the responsibility for the 1983 incident, and/or the failure to report it to the NRC, rested solely with Ohmart, it would not form the basis for mitigation in this case since that incident provided the licensee prior notice of a problem, yet effective corrective actions were not taken to prevent recurrence, as evidenced by the 1987 incident. Accordingly, the NRC actually considered escalating the cumulative amount of the civil penalties in accordance with Sections V.B.3 and V.B.4 of the Enforcement Policy. However, in light of the prompt and comprehensive actions taken by licensee management in response to this recent incident in July 1987, the NRC determined that, on balance, neither escalation nor mitigation of the amount of the civil penalties was considered appropriate.

IV. NRC Conclusion

The licensee did not provide a sufficient basis for mitigation of the cumulative amount of the civil penalties. Therefore, the NRC concludes that cumulative civil penalties of $2,000 should be imposed.

[FR Doc. 88-4987 Filed 3-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 999904, License No. General License EA 87-223]

Wrangler Laboratories, Larsen Laboratories, Orion Chemical Co., and John P. Larsen; Order Suspending Licenses (Effective Immediately)

I

Wrangler Laboratories, Larsen Laboratories, and Orion Chemical Company (the licensees), 3853 North Sherwood Road, Provo, Utah 84604, are firms using source material under general licenses granted by the Nuclear Regulatory Commission (the Commission/NRC) pursuant to 10 CFR 40.22. The general license granted by 10 CFR 40.22 authorizes the use or transfer of not more than 15 pounds of source material at one time and the receipt of not more than 150 pounds of source material in any one calendar year.

Larsen Laboratories is also a holder of a specific Radioactive Material License UT 2500183 issued by the State of Utah. The specific license, which authorizes possession of up to 150 kilograms of depleted uranium (DU) at one time, is currently suspended by the State of Utah.

Mr. Larsen has been doing business as (dba) Wrangler Laboratories, Larsen Laboratories, and Orion Chemical Company and is the owner and sole proprietor of these firms. Mr. Larsen's companies are all involved in the chemical processing of DU. The licensees receive slugs of DU, dissolve the material in boiling nitric acid, precipitate uranyl acetyl acetate (UAA) using 2,4 pentanedione, dissolve the UAA precipitate in benzene to produce recrystallized UAA, and subsequently dry, grind, filter, package and ship the pure UAA product. The UAA product is ultimately used as a catalyst in the production of Department of Defense munitions.

II

On August 23, 1982, an inspection was conducted at Orion Chemical Company. During the inspection NRC determined that the licensee was in violation of several regulatory requirements. These violations included possession of source material at one time in excess of the 15 pound limitation on such material, refusal to make records available to NRC, unauthorized disposal of DU, and failure to maintain complete records. Subsequently, on September 3, 1982, the NRC issued an Order To Show Cause and Order Temporarily Suspending License (Effective Immediately). On October 25, 1982, the NRC issued an Order Rescinding Order to Show Cause and Order Temporarily Suspending License. This action was taken following the licensee's corrective measures, to bring the operations into compliance. On December 15, 1982, the NRC issued a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty for the above violations. The amount of the Civil Penalty was $500. On March 16, 1983, the licensee responded to the NOV and paid the Civil Penalty.

A specific license (SUB-1436) was issued by the NRC in December 1983 to Larsen Laboratories of Provo, Utah. The responsibility for overseeing this specific license was transferred to the State of Utah upon its becoming an Agreement State. On May 13, 1985, Utah reissued the specific license to Larsen Laboratories.

On April 15, 1986, NRC received an allegation of improper activities being conducted by Larsen Laboratories. The allegation was transferred to the State of Utah which performed inspections and found numerous violations. In all, the State of Utah found 5 contaminated facilities that Mr. Larsen had abandoned.

At one of these facilities, contaminated liquids were leaking from drums that had been stored on a truck for approximately 2 years. On November 5, 1986, the State of Utah issued an Order Suspending License (Effective Immediately) and Order Imposing Civil Monetary Penalties in the amount of $13,000. The Order, which is still in effect, required, among other specified actions, that the licensee (1) not receive or use source material except to secure or transfer such source material in its possession, (2) dispose of radioactive wastes, (3) decontaminate 2 facilities in the Oren area, (4) move to production facilities that have been approved through license amendment procedures, and (5) obtain a qualified Radiation Protection Officer. On January 15, 1987, a Settlement Agreement between the State of Utah and Larsen Laboratories was signed. The Agreement required that the specified activities in the Order be completed by April 15, 1987, and that $8,000 of the civil penalties would be suspended. The licensee paid the remaining $5,000 civil penalties but has not complied with items (4) and (5) of the Order.

On October 28, 1987, the State of Wyoming informed the NRC of an allegation that it had received concerning improper activities at Wrangler Laboratories in Evanston, Wyoming. On November 4–5, 1987, NRC inspected Wrangler Laboratories and found that Mr. Larsen, doing business as Wrangler Laboratories, was conducting chemical operations in a temporary facility and appeared to have exceeded uranium possession limits. As a result of NRC concerns, NRC Region IV staff discussed with Mr. Larsen, the potentially hazardous conditions at his Evanston facility and obtained an agreement for certain corrective measures. Those actions were specified in Confirmation of Action Letters (CAL) issued on November 12, 1987, December 8, 1987, and December 31, 1987.

An enforcement conference was held with Mr. Larsen on December 2, 1987, in Salt Lake City. During the course of the enforcement conference a number of matters of regulatory concern arose:

1. Mr. Larsen stated that he had previously conducted chemical processing of DU operations in the State of California (Foundain Valley, Huntington Beach area) about 10 to 11 years ago and in the State of Nevada (in the back of a pickup truck in the Henderson area) between November 1986 and March 1987. These statements were contradictory to those he gave to the NRC inspector during the November 4–5, 1987 inspection. During the NRC inspection, Mr. Larsen was specifically asked whether he conducted operations with source material at any place outside of the States of Utah and Wyoming. Mr. Larsen responded that he hadn't.

2. In the November 12, 1987 CAL, the licensee committed to having employees submit urine samples for uranium analyses before resuming and following the completion of the processing of the licensed material on hand at the Evanston, Wyoming, facility. During the enforcement conference, Mr. Larsen provided a November 25, 1987, letter that gave the results of such sampling. The licensee deviated from the commitment described in the November CAL in that baseline analyses were not conducted and, instead, only post-cleanup analyses were obtained on one of two individuals in these activities. The indicated post-cleanup analyses were slightly in excess of NRC action levels for uranium bioassays. Mr. Larsen stated the reason for the elevated uranium concentrations was the use of laboratory glassware that might have been contaminated with uranium. On about November 19, 1987, four samples were taken with pharmaceutically clean glassware. Two of these four samples showed higher than baseline concentrations and none of the specimens were controlled or independently verified. Another deviation from the November 12, 1987 CAL was a failure by the licensee to require individuals who were to perform

the processing of licensed material on hand to wear lapel air samplers.

3. Mr. Larsen stated that his companies were the only ones supplying UAA for Department of Defense (DOD). The NRC has determined that, contrary to this assertion, DOD purchases UAA from others.

4. Prior to and during the enforcement conference, Mr. Larsen told the NRC that UAA shipments from Wrangler Laboratories were made from Provo, Utah. Mr. Larsen provided NRC with records to support his statements. These statements, however, were contrary to statements given previously to the State of Utah authorities, who were told that all Wrangler Laboratory shipments were from Evanston, Wyoming. In addition, the records provided by Mr. Larsen also show that, notwithstanding the 15 pound possession limit, a shipment sent to the UAA buyer on August 7, 1987 from Provo, Utah, contained 16.768 pounds of source material.

5. Mr. Larsen was asked whether he or any of his companies had purchased DU from any supplier other than Nuclear Metals, Inc. Mr. Larsen responded that they hadn't. Contrary to that statement, the NRC obtained records from Aerojet Heavy Metals Company that show that they had made DU shipments to Larsen Laboratories on more than one occasion.

In late December 1987, the NRC learned from Mr. Larsen that urine samples analyzed pursuant to the commitments in the December 8, 1987 CAL had indicated some uranium intake by persons involved in cleanup of the Evanston facility. On December 31, 1987, another CAL was issued confirming termination of activities at the Evanston facility involving uranium until further notice from the NRC and the performance of further bioassays. In deviation from a commitment specified in the December 31st CAL, the licensee failed to have two individuals submit urine samples for uranium analyses until January 10, 1988, nine days after the agreed upon date. As a result, the uranium intakes for these individuals could not be estimated.

III

The NRC is currently conducting an investigation of Mr. Larsen's NRC-licensed activities. Based on the information to date, Mr. Larsen has failed to fulfill commitments made on behalf of his firms to the NRC, has made contradictory statements to NRC and the State of Utah authorities, and his firms have processed uranium in an unsafe manner with inadequate controls and resulting contamination. These actions demonstate an unwillingness to comply with NRC regulatory requirements and safe work practices which cannot be tolerated. Therefore, I lack the requisite reasonable assurance that Mr. Larsen, individually, and the companies, which he is the owner of and/or principal of, will comply with Commission requirements in the future. Therefore, I have determined, pursuant to 10 CFR 2.201(c) and 2.202(f), that the public health, safety, and interest require that pending the results of the investigation and further order of the NRC, the general license authorization for Mr. Larsen, as well as the named licensees, to receive and use NRC licensed material under their respective general licenses should be suspended to conditions, as described below, effective immediately, and that no prior notice is required.

IV

Accordingly, in view of the foregoing and pursuant to sections 62, 63, 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 40, *It Is Hereby Ordered, Effective Immediately, That:*

A. The general license authority of 10 CFR 40.22 with respect to Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company, and Mr. Larsen is suspended and the foregoing licensees and Mr. Larsen shall not receive or use source material, except as permitted in Condition B below.

B. 1. Mr. Larsen, dba Wrangler Laboratories, shall decontaminate all surfaces and equipment within the Evanston, Wyoming, facility to or below the following levels:

Average[1] fixed—5,000 dpm alpha per 100 cm^2

Maximum fixed—15,000 dpm alpha per 100 cm^2

Removable—1,000 dpm alpha per 100 cm^2

2. Mr. Larsen, dba Wrangler Laboratories, shall dispose of licensed material (DU) remaining in the Evanston, Wyoming, facility. Material in process, but not recovered as UAA to date, must be disposed of as radioactive waste in accordance with NRC requirements.

3. Mr. Larsen, dba Wrangler Laboratories, shall complete the disposal and decontamination work required by Items B.1 and B.2 within 30 days of the date of this Order.

4. Mr. Larsen shall notify the Region IV office that the decontamination and disposal has been in accordance with this Order before vacating the Evanston Wyoming facility. Upon vacating the facility, Mr. Larsen, dba Wrangler Laboratories, shall remove all items belonging to the licensee.

C. Within 30 days of the date of this Order, Mr. Larsen, dba the licensees, any other company, or himself shall provide, in writing, to the Region IV office the address, if available, or a description of all locations at which DU in any form or quantity has at any time been received, processed, or shipped by Mr. John P. Larsen or by any other person or firm on Mr. Larsen's behalf.

D. Mr. Larsen, dba the licensees, shall submit a report of the results of all urine sample uranium analyses which were committed to NRC on and since December 4, 1987, to NRC Region IV within 30 days of the date of this Order.

The Regional Administrator, Region IV may, in writing, relax or rescind any of the above provisions in Section IV for good cause.

V

Pursuant to 10 CFR 2.202(b), the licensees and Mr. Larsen, may show cause why this Order should not have been issued by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensees and Mr. Larsen rely. The licensees and Mr. Larsen, may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section IV above. Upon consent of Mr. Larsen or the licensees, to the provisions set forth in Section IV of this Order, or upon their failure to file an answer within the specified time, the provisions specified in Section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), Mr. Larsen and the licensees, or any other person adversely affected by this Order may request a hearing within 20 days of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Enforcement, Office of General Counsel at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than Mr. Larsen, dba the licensees requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this Order.

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[1] Average over an area not greater than 1 square meter.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 25th day of February 1988.

[FR Doc. 88-4989 Filed 3-7-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a new information collection from the public. RI 92-2, Alternative Annuity Election, will enable non-disability FERS retirees to elect to receive either the annuity ordinarily payable, or an alternative annuity (reduced) and lump sum payment of the retirement deductions and interest to their credit. OPM estimates that 3,000 will be completed annually, for a respondent burden of approximately 1,000 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before March 22, 1988.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-4922 Filed 3-7-88; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Intent To Prepare a Supplemental Draft of Environmental Impact Statement, General Mail Facility, New York, NY

Notice is hereby given that the United States Postal Service (USPS) intends to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) further documenting the assessment of effects related to development of a new General Mail Facility (GMF) in New York City on a site bounded by Ninth Avenue, 29th Street, Tenth Avenue and 28th Street. This facility will supplement or replace certain existing mail processing facilities in Manhattan. The project includes development of approximately 268 units of New York City-sponsored housing that would be erected over the GMF. The SDEIS will evaluate the following alternatives to the proposed project: rehabilitation of the existing James A. Farley Station (JAF) bounded by Eighth Avenue, 31st Street, Ninth Avenue, and 33rd Street, and its retention for mail processing; and a "No Action" alternative in which JAF will be retained for mail processing.

The SDEIS will consider construction of public housing as part of the project on this site in accordance with Pub. L. 92-313. Because a public scoping hearing has already been held on this project on June 26, 1985, the public's comments have already been incorporated into the SDEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Coven, Director, Attention: Mr. Charles A. Vidich, U.S. Postal Service, Windsor Facility Service Center, 8 Griffin Road North, Windsor, CT 06006-0300, (203) 285-7254.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-4964 Filed 3-7-88; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25410; File No. SR-MBS-87-11]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corp. Relating to MBS Clearing Corporation's Division Rules; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 1988, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A are proposed changes, together with a summary of changes, to the Depository Division ("Depository Division") rules of MBS Clearing Corporation (the "Corporation"). The changes revise and amend the Depository Division rules to, among other things, provide for assessments of Participants in certain cases and clarify the Corporation's rights in connection with the financing of principal and interest payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes clarify and revise certain Depository Division rules applicable to Depository Transactions, Depository Services and Depository Participants. Capitalized terms used herein have the same meanings ascribed to them in the Depository Division Rules.

Proposed rule changes to Article II, Rule 5, sections 5(a) and 5(b) permit the Corporation, in the event that any Participant fails to pay any Debit Balance for its Depository Account arising from the purchase of Securities or the assessment, to assess those Participants which received credits to their Cash Balances and/or credits of Securities to their Depository Accounts (valued at market value) as a result of transactions with the Depository Account of the defaulting Participant.

When a Participant defaults in payment of a Debit Balance arising from the purchase of Securities, there will always be Participant(s) with corresponding credits to their Cash Balances. When a Participant defaults in paying a Debit Balance arising from an assessment, however, there may not always be a Participant with a corresponding credit to its Cash Balance although there may be Participants who assumed the risk of dealing with the defaulting Participant by purchasing Securities from such Participant. The changes to section 5(a) and 5(b) permit the Corporation to assess those Participants as well.

Article III, Rule 2, Section 1 is amended to make clear that principal and interest payments on deposited Securities may be received from either the issuer or a paying agent. In addition, the new term "principal and interest advance" has been added to mean an advance by the Corporation of principal and interest not yet collected from an issuer or paying agent in immediately available funds, and the new term "subject principal and interest payment" has been added to mean principal and interest which is the subject of such advance.

Article III, Rule 2, Section 2 has been divided into three parts—Section 2(a) addresses principal and interest advances made with the Corporation's own funds, Section 2(b) addresses principal and interest advances made with funds borrowed from "third-party lenders", and Section 2(c) addresses principal and interest advances made with a combination of the Corporation's own funds and borrowed funds. In order to address concerns raised by certain third-party lenders regarding their ability to perfect a security interest in assigned principal and interest payments, the proposed rule change provides that each Participant receiving a principal and interest advance made with borrowed funds assign its right to the subject principal and interest payments directly to the Corporation's third-party lenders and guarantee the repayment of the advance directly to the lenders. The Corporation is also granted a power of attorney from each Participant to execute any necessary documents, including financing statements.

The foregoing proposed rule change to Article III, Rule 2, Section 2 results in no substantive change to the rights and obligations of Participants since the rules previously provided that in the event that either the Corporation or a third-party lender did not receive or was not entitled to retain (e.g., because of an unperfected security interest) a principal and interest payment, the Participant receiving the related principal and interest advance would be required to repay it to the Corporation or such third party lender, as the case may be.

Article III, Rule 2, Section 4 has been amended to extend the Corporation's ability to reverse erroneous credits of principal and interest arising from circumstances other than issuer or paying agent error (e.g., data processing error). Section 6 (Enforcement of Guarantee) now contemplates principal and interest advances made with a combination of the Corporation's own funds and borrowed funds.

Finally, a new sentence has been added to the last paragraph of Article IV, Rule 1, Section 11 to make it clear that if a Participant fails to pay any debit balance resulting from assessment of an indemnification payment, the provisions of Article II, Rule 5, Section 5 (permitting assessment of other Participants) generally will apply.

The proposed rule changes are consistent with the Securities Exchange Act of 1934 in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule changes have not yet been solicited nor received. However, copies of the text of the proposed rule change will be distributed to Depository Division Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-87-11 and should be submitted by March 29, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 1, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

Note: Italics indicate addition; brackets indicate deletion.

MBS DEPOSITORY DIVISION—PROPOSED RULE CHANGES

Article II—Depository Transactions

Rule 5. Failure of Participants To Meet Cash Settlement Obligations

* * * * *

Sec. 5. Assessments to Cover Losses. If, by reason of a Participant's default in payment of its Debit Balance, the

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Corporation suffers a loss or incurs an obligation which remains uncovered after exercise of the remedies available under section 4 of this Rule 5 (including without limitation any obligations to third party lenders which cannot be discharged with proceeds from the sale of any collateral assigned to secure such obligations, whether on account of adverse claims with respect to any such collateral or declines in the market value of collateral or otherwise):

(a) The Corporation shall assess the Participants which received credits to their Cash Balances *and/or credits of Securities to their Depository Accounts (valued at Market Value)* as a result of transactions involving the Depository Account with respect to which the defaulting Participant has failed to pay the Debit Balance in proportion to the relative dollar amount of such credits. All assessments shall be made by debiting the Cash Balances of the non-defaulting Participants which previously were credited *with cash or which relate to Depository Accounts previously credited with Securities.*

(b) In the event any Participant defaults in payment of an assessment debited to the Cash Balance for its Depository Account pursuant to paragraph (a) above, the Corporation shall assess in like manner those Participants which received credits to their Cash Balances *and/or credits of Securities to their Depository Accounts (valued at Market Value)* as a result of transactions involving [such] *the* Depository Account *of the defaulting Participant.* In the event any such Participant defaults in payment of such assessment, the Corporation shall repeat the assessment process in like manner until the Corporation has fully recovered its loss or repaid its obligation or until their remain no Participants subject to assessment subject to this paragraph (b).

* * * * *

Article III—Depository Services

Rule 2. Principal and Interests Payments

Sec. 1. Credit of Payments. The Proprietary Cash Balance or Agency Cash Balance of each Participant shall be credited with principal and interest, as calculated by the Corporation in accordance with accepted industry standards, on all Securities held in such Participant's Proprietary Account and associated Seg Accounts and in its Agency Account and associated Seg Accounts, as of the close of business on the applicable Record Date (after giving effect to any transfers from the associated MBSCC Transfer Accounts pursuant to section 3 of Rule 3 of Article II), as adjusted in such manner as the Corporation from time to time may prescribe to reflect the settlement of transactions which were scheduled to settle on or before the Record Date but in fact settled after that date. For this purpose, except as otherwise provided in Rule 3 or section 4 of Rule 4 of Article IV, the Participant's Proprietary Account and Agency Account shall be increased by Securities in the Participants' Proprietary Repo Out Position and Agency Repo Out Position, respectively, or previously transferred from the Proprietary Account, Agency Account or associated *MBSCC* Transfer Account to a Pledgee Account and reduced by Securities in the Participants' Proprietary Repo in Position and Agency Repo in Position, respectively. Participants' Cash Balances shall be credited with principal and interest: (a) When the Corporation has received such principal and interest from the *issuer(s) or* paying agent(*s*), *as the case may be,* in immediately available funds; or (b) subject to the availability to the Corporation of sufficient funds (which may be the Corporation's own funds and/or funds borrowed *by the Corporation* from third party lenders), on the Principal and Interest Payment Date or such Business Day thereafter as the Corporation shall determine, irrespective of whether such payments have been collected by the Corporation from the *issuer(s) or* paying agent(*s*). [The availability of funds from third-party lenders to permit advances of principal and interest, to any Participant may be conditioned upon the Participant's compliance with such conditions as the lender may impose.] *Any advance by the Corporation to a Participant pursuant to clause (b) above of principal and interest not yet collected from the issuer(s) or paying agent(s) in immediately available funds is hereinafter referred to a "principal and interest advance," and the principal and interest which is the subject of such advance is hereinafter referred to as the "subject principal and interest payment."*

Sec. 2. Financing of Payments.

(a) If the Corporation, *using only its own funds,* has [credited Participants' Cash Balances with] *made a* principal and interest *advance* [which have not been received from the Paying Agents in immediately available funds,] the Corporation shall be entitled to retain *the subject* principal and interest *payment* when received from the *issuer(s) or* paying agents(s) to the extent of *the principal and interest advance.* [any amounts advanced and to assign to third party lenders its rights to such payments.]

(b) If the Corporation, using only the proceeds of a loan or loans made by one or more third-party lenders to the Corporation to fund one or more principal and interest advances (the loan made by each such third-party lender being hereinafter referred to as a "third-party loan"), has made a principal and interest advance, the Corporation shall be entitled to retain, as agent for the sole benefit of such third-party lender(s), the subject principal and interest payment when received from the issuers(s) of paying agent(s) to the extent of the principal and interest advance made with the proceeds of such third-party loan(s).

(c) If the Corporation, using a combination of its own funds and the proceeds of one or more third-party loans, has made a principal and interest advance, the Corporation shall (i) until each third party loan has been repaid in full, be entitled to retain, as agent for the sole benefit of the third-party lender(s) making such third-party loan(s), the subject principal and interest payment when received from the issuer(s) or paying agent(s) to the extent of the principal and interest advance made with the proceeds of such third-party loan(s) and (ii) after each such third-party loan has been repaid in full, be entitled to retain, for the Corporation's own benefit, the subject principal and interest payment when received from the issuer(s) or paying agent(s) to the extent of the remainder of the principal and interest advance. If the Corporation, using a combination of its own funds and the procees of one or more third-party loan(s), had made prinicipal and interest advances on any Business Day to more than one Participant, the principal and interest advance to each Particpant shall be deemed to have been made pro rata with the Corporation's own funds and the proceeds of such third-party loan(s).

(d) The availability of third-party loans may be conditioned upon Participants' compliance with such conditions as the third-party lender(s) may impose. Without limiting the generality of the foregoing, each Participant agrees (i) to guarantee the full and prompt payment when due of all third-party loans to the Corporation the proceeds of which are used, in whole or in part, to fund one or more principal and interest advances of such Participant (with the right of recovery against such Participant being limited to its pro rata share of such principal and interest advances made by the Corporation to Participants on Business Day using the proceeds of third-party loans made by such third-party lender(s), less the amount of all subject principal and interest payments relative to such principal and interest advances received and retained by such third-party lender(s), plus interest on such amount and all expenses incurred by such third-party lender(s) in enforcing such guarantee) and (ii) to assign to such third-party lender(s), or any agent of such third party lender(s), all rights of such Participant in and to all subject principal and interest payments relating to all principal and interest advances made by the Corporation to such Participants using, in whole or in part, the proceeds of third-party loans made by such third-party lender(s). Each Participant hereby (i) irrevocably appoints the Corporation as such Participants attorney-in-fact, with full authority in the place and stead of such Participant and in the name of such Participant or otherwise, from time to time in the Corporation's discretion, to take any action and to execute any document required by any third-party lender to affect the guarantee(s) and assignment(s) referenced in the immediately preceding sentence of this Section 2(d), including without limitation, financing statements, and (ii) agrees to be bound by the terms and provisions of any such document as may from time to time be executed by the Corporation, including any such document executed by the Corporation prior to such Participants becoming a Participant.

(*e*) Any financing costs relating to [payment of uncollected] principal and interest *advances* [on Securities] *funded with the Corporation's own funds and/or the proceeds of third-party loans,* net of any savings to the Corporation arising by reason of prepayments of principal and interest, determined on an issue-by-issue basis, shall be charged to Participants in proportion to their Record Date positions in such Securities, as adjusted pursuant to Section 1 of this Rule 2. As used in this section 2(*e*), the term "financing costs" shall mean, [(a)] (*i*) to the extent the Corporation has borrowed funds from third-party lenders, the costs of such borrowing charged by such *third-party* lenders and [(b)] (*ii*) to the extent the Corporation has advanced its own funds, interest at the highest rate that would have been charged to the Corporation by its third-party lenders if they had made a loan.

(*f*) If for any reason the Corporation or a third-party lender, *or any agent for a third-party lender,* to which [the Corporation] a Participant has assigned, *pursuant to the terms of Section 2(d),* its rights [pursuant to the Section 2] *in and to subject principal and interest payments* does not promptly receive *the subject* principal and interest payments form the *issuer(s)* or paying agent(s) or is not entitled to retain them when received, [each] *such* Participant agrees that is shall [be liable to], *upon demand by* the Corporation or such *third-party* lender, *as the case may be, promptly* pay the Corporation or such third-party lender an amount equal to *the product of (i) the subject principal and interest payments multiplied by (ii) the percentage of* [such payments on the same basis as the Participant received advances of such payments on the same basis as the Participant received advances of such payments] *the principal and interest advance funded by the Corporation or such third-party lenders, as the case may be.*

* * * * *

Sec. 4. Adjustments. In the event an Issuer or paying agent errs in a principal and interest payment [and] *of for any reason* a Participant's Cash Balance has been credited to reflect [the] *an* erroneous payment, the Corporation reserves the right, upon written or electronic notice to the Participant, to reverse such credit.

* * * * *

Sec. 6. Enforcement of Guarantees. To the extent entitled or permitted to do so, the Corporation shall, in the event that any issuer or paying agent fails to timely pay principal or interest on any desposited Securities registered in the name of MBSCC's nominee, file appropriate claims for payment under any guarantee by FHLMC, FNMA or GNMA, as the case may be. Except to the extent that (i) the Corporation has made a principal and interest advance to a Participant *pursuant to section 2(a), (b) or (c) of this Rule 2* with the Corporation's own funds [pursuant to Section 2(a) of this Rule 2 and is entitled to retain the subject principal and interest payment] and/or [has] borrowed funds *obtained* from [a] *one or more* third-party lenders [pursuant to Section 2(b) of this Rule] and the subject principal and interest payments *is retainable by the Corporation and/or* has been assigned to the third-party lender(*s*) or (ii) the Securities with respect principal and interest *are payable* have been pledged pursuant to Section 1 of Rule 5 of Article II, the Corporation, in filing such claim for payment and in receiving, holding and disbursing any funds received pursuant to such claim be deemed to be acting solely as agent for the benefit of the Participant entitled to crediting of principal and interest under Section 1 of this Rule 2.

Article IV—Participants

Sec. 11. Indemnification. The Corporation shall be entitled to indemnification from Participants as described below:

(a) In consideration of the Corporation's provision of despository services, Participants shall indemnify the Corporation against any loss, reasonable cost or expense, damage or liability arising out of the performance, non-performance or misperformance of such duties except to the extent that the Depository's conduct violated the standard of care set forth in section 2 of Rule 6 of Article VI[I].

(b) In consideration of the Corporation maintaining custody of Participants' Securities, Participant shall indemnify the Corporation and any nominee of the Corporation in the name of which such Securities are registered against any loss, reasonable cost or expense, damage or liability which they may sustain as a result of maintaining custody of such Securities including (i) assessments, (ii) losses, liabilities and expense arising from claims of third parties (including without limitation claims of a prior lien or other interest in Securities or other property in which the Corporation is granted a lien or acquired title pursuant to these Rules or in principal and interest retainable by the Corporation *or assign to a third-party lender* pursuant to Section [1] *2* of Rule 1 of Article III) and from taxes and other governmental charges and (iii) related expenses in respect of any such Securities, except to the extent that the Depository's conduct violated the standard of care set forth in Section 1 of Rule 6 of Article VI.

* * * * *

As provided in section 2 of Rule 2 of Article II, the amount of any indemnification owed by a Participant to the Corporation shall be charged against such Participant's Proprietary Cash Balance, Agency Transfer Cash Banalde and/or Pledgee Cash Balance in such proportions as the Corporation in its sole judgment shall determined. *If such participant fails to pay any resulting Debit Balance, the assessment procedures described in section 5 of Rule 5 of Article II shall apply.*

[FR Doc. 88–5050 Filed 3–7–88; 8:45 am]

BILLING CODE 8010-01-M

BEST COPY AVAILABLE

[Release No. 34-25306; File No. SR-NYSE-87-38]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Revised Specialist Job Description

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 27, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a proposed new Specialist Job Description (the Description). The Description restates and consolidates the Specialist Job Description and the Code of Acceptable Business Practices for Specialists which were adopted in June, 1976 and are being rescinded and replaced in their entirety by the Description.

Section I of the proposed Description points out that an Exchange member registered as a specialist is accountable to the Exchange for the quality of the Exchange markets in the securities in which the specialist is registered. It notes that the specialist is responsible for fostering and acting to maintain liquid and continuous two-sided agency auction markets by acting as agent and principal in those securities on the Exchange Floor and that the specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities. Section I points out that all specialists are expected to comply with all applicable federal laws and regulations, as well as with Exchange rules and policies and that by so doing the specialist actively contributes to maintaining high quality Exchange markets in the public interest. It is also explained that because of the specialist's central position in the Exchange's continuous two-way agency auction market, the manner in which and the degree to which the specialist performs significantly affects the efficiency, competitiveness and overall quality of Exchange markets, and largely determines the Exchange's success as a national securities market. For these reasons, the Description explains that specialists are expected to exhance their performance in the ways set forth in the Description. Section I also points out that a specialist occupies a position of public trust and therefore should act at all times in a manner consistent with that trust. It states that it is essential for the specialist to adhere to the highest standards of business and ethical conduct in the performance of all aspects of his job and that failure to do so can be detrimental to the Exchange and may constitute a breach of the public trust. Section I also points out that acts of omissions by specialists that appear to be inconsistent with the primary duties of the specialist as described in Section II of the Description are addressed by the Market Performance Committee of the Exchange's Board of Directors via the regulatory process under applicable Exchange rules and, in particular, under Exchange Rule 103A which provides the standards that are applied with respect to the adequacy of the performance of a specialist in the discharge of his duties. Exchange Rule 103A as proposed to be amended has been filed with the Commission and awaits approval.

Section II of the Description explains the primary duties of the specialist under seven separate headings: "Agency Function", "Dealer Function", "Maintaining the Auction Market", "Communication Function", "Administrative Function", "Competitive Responsibilities" and "Other Market Responsibilities".

Under the heading, "Agency Function", the specialist is reminded that he is expected to act as agent on behalf of orders entrusted to him and to hold the interests of such orders above his own. He is expected to properly represent each order, regardless of its size or source, in the marketplace to ensure the timely and best possible execution in accordance with ther terms of the order and the rules and policies of the Exchange.

Under the heading, "Dealer Function", the specialist is reminded that in performing as principal he is expected to discharge both his affirmative obligation and his negative obligation. He is also expected to make firm and continuous two-sided quotations and effect principal transactions in a manner consistent with his financial resources. Section II explains the affirmative obligation of a specialist acting as principal as the obligation to buy and sell securities as principal when such transactions are necessary to minimize an actual or reasonably anticipated short-term imbalance between supply and demand in the auction market and do not upset the natural longer term forces of supply and demand, and to effect such transactions when their absence could result in an unreasonable lack of continuity and/or depth. The negative obligation of the specialist acting as principal is explained as the obligation to provide an opportunity for public orders to be executed against each other without undue dealer intervention within the context of the current market, and to refrain from dealing in a manner that is inconsistent with the overall objective of maintaining a fair and orderly market. The specialist is reminded that the negative obligation includes a requirement that, given a reasonable time frame and lack of substantive change in market conditions, the specialist should refrain from interfering with a cross when the specialist has previously indicated "no interest" and that the specialist should also refrain from interfering with a "clean" agency cross unless his bid or offer has been previously solicited or unless the reasonably anticipated needs of the market require the specialist to do so in order to be able to fulfill his market maintenance responsibilities and a Floor Official of the Exchange has been consulted in the event of any disagreement.

Section II explains that the continuous market obligation of a specialist acting as principal requires the specialist to make firm and continuous two-sided quotations that are timely and accurately reflect market conditions, and to ensure that principal transactions are calculated to contribute to the maintenance of price continuity with reasonable depth, and that such transactions are effected relative to the general market, the market in the particular security and the adequacy of the specialist's total position in the security with respect to the actual or reasonably anticipated needs of the market. It is explained that the continuous market requirement also requires the specialist to ensure that the election of Stop Orders results from the fair and orderly price movement of the stock and not from poor performance by the specialist or inadequate depth.

Finally, in performing his dealer function, Section II explains that the specialist should effect principal transactions in a manner that is consistent with his financial resources and in a manner that maximizes the efficient use of those resources. He is reminded to report promptly to the Exchange any actual or imminent financial problems that may affect his ability to fulfill his responsibilities to the market.

Under the heading, "Maintaining the Auction Market", the Description explains the specialist's responsibilities in opening and reopening trading in a listed security. First, insofar as market openings and reopenings are concerned, the specialist is reminded that he should initiate trading in the affected security as soon as market conditions allow, and at a price that reflects a thorough, professional assessment of market conditions at the time and appropriate consideration of the balance of supply and demand as reflected by orders represented in the auction market. He is reminded to take extra care, however, when the opening or reopening price is significantly different from the preceding closing price. The specialist is also reminded of the need to maintain continuous, fair and orderly trading in the aftermarket and to seek the advice of Floor Officials in a timely manner when requesting delays in openings or trading halts. Also, as a part of his duty to maintain the auction market, Section II explains the specialist's duties as market coordinator and reminds him of the need to serve as the market coordinator for all of the securities in which he is registered by exercising leadership and managing trading crowd activity and by promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate.

The Description also explains that the specialist is expected to act as a market catalyst for the securities in which he is registered by making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders without acting as principal unless reasonably necessary.

In performing his communication function, Section II points out that in view of the specialist's central position in the Exchange's continuous two-way agency auction market, the specialist should equally and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner and that he should also indicate the depth of the current maket, to the extent his agency responsibility allows, in response to any reasonable inquiry from a member. Finally, it is explained that the specialist should equally and impartially provide all inquiring members with accurate, complete and current opening price indications and pre-opening information, such as the amount of stock paired off and the excess to buy or sell.

In discharging his administrative function, Section II of the Description points out that the specialist's administrative and operating practices can have a significant impact on the quality and competitiveness of the Exchange's market. The Description explains that, for this reason, the specialist should:

1. Employ efficient administrative procedures that enable the specialist to maintain accurate and up-to-date records, process trade documents efficiently and accurately, and respond promptly to requests for order or market information.
2. Promptly provide information when necessary to research the status of an order or a questioned trade, and cooperate with other members in resolving and adjusting errors.
3. Accurately report executions of orders entrusted to the specialist in a timely and complete manner and provide information, when requested, on the status of orders and the confirmation of open orders.
4. Maintain a level of trained staff on the Exchange Floor at all times sufficient to meet periods of reasonable demand, and provide the supervision necessary to insure the efficiency and professionalism of the specialist's operation.
5. Insure that, during an absence from the post, the replacement on the Floor is aware of all pertinent information related to the securities in which the specialist specializes.
6. Make arrangements for supplementary staff and financial resources that may be necessary to meet extraordinary market conditions.
7. Utilize Exchange systems and procedures.

In discharging his competitive responsibilities, Section II points out the intensely competitive environment in which the specialist operates and, in light of that environment, explains that the specialist should:

1. Make every effort to be fully competitive in all segments of the market and to maintain and increase market share in the securities in which he acts as specialist.
2. Establish a positive professional relationship with Exchange listed companies and each year extend an invitation to meet with representatives of the listed companies that have issued the securities in which he specializes to acquaint them with the workings and operational aspects of the agency auction market system.
3. Each year extend an invitation to meet with appropriate on and off-floor representatives of those member firms with which the specialist conducts a significant business and such other member firms as are deemed appropriate to discuss the service, operational and competitive requirements of the member firms.

Finally, Section II of the proposed Specialist Job Description lists a number of other market responsibilities the specialist is expected to discharge. Under this heading, the Description explains that the specialist is expected to:

1. Assist the Exchange in developing and implementing systems and procedures designed to enhance the efficiency and competitiveness of the Exchange's agency auction market, and to satisfy Federal requirements.
2. Comply with all measures and standards of performance established by the Exchange, understanding that failure to meet these standards could subject the specialist to prescribed performance improvement procedures, which may include the reallocation of a security or securities.
3. Keep records required by Federal and Exchange rules, promptly and accurately report required information to the Exchange, and comply with all Exchange rules which govern the financing of specialist operations.
4. Take any actions not prohibited by Federal or Exchange rule or policy or precluded by professional judgment to foster and maintain liquid continuous two-sided agency auction markets on the Exchange Floor and to ensure that such markets are fair, orderly and efficient in the public interest and competitive with non-Exchange markets in Exchange listed securities; and avoid any action which would hinder the achievement of these objectives.

The Description concludes with a Section III which lists the requirements an Exchange member must comply with if he wishes to be registered as an Exchange specialist. These include the requirement that he be associated with an existing or newly created specialist unit approved by the Exchange; that he complete an adequate training period under the supervision of an experienced specialist; that he pass the Exchange administered specialist examination; that he ensure that the specialist unit with which he is to be associated meets the Exchange's specialist capital requirements; and that he participate in an orientation session with a panel of market professionals, whose membership is to be drawn from the Market Performance Committee of the Exchange's Board of Directors, to discuss the responsibilities and duties of being an Exchange specialist.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Description is to guide specialists in the performance of their duties in a manner that is consistent with the rules of the Exchange and the provisions of the 1934 Act and the rules thereunder. The Description adds specificity to the rules of the Exchange applicable to registered specialists. It augments and reinforces those rules; and, thus, is in the nature of an interpretation of Exchange rules that govern the conduct of registered specialists on the Exchange.

Given the length of time that had transpired since the Specialist Job Description and the Code of Acceptable Business Practices for Specialists were adopted by the Exchange in 1976, the Exchange commenced a review of those documents in late 1983 to determine whether a restatement of them was necessary to more accurately reflect the specialist's role in the mid-80's. It was recognized that such a restatement might be appropriate in light of the significant changes that had been experienced in the securities markets generally since 1976 and the new trading support systems that had been introduced by the Exchange in the interim.

Input was solicited from the Exchange's various constituent groups as to the revisions thought to be necessary to update the Specialist Job Description and Code. Initial recommendations were developed by a group of specialists and those recommendations were reviewed by Exchange staff with each of the advisory committees of the Board of Directors of the Exchange. Those recommendations were also reviewed with representatives of floor brokers, institutional and upstairs traders, regional and specialty firms of the Exchange, listed companies, and the operations staffs of major Exchange member firms. As a result of this review and dialogue, the Description, restating and consolidating the former Specialist Job Description and Code, had emerged.

By describing with some specificity the performance expected of Exchange members who are registered as specialists with the Exchange, the proposed Specialist Job Description is consistent with the requirements of section 6(b)(5) of the 1934 Act which requires that rules of an exchange be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, * * * and, in general, to protect investors and the public interests * * * ."

The Description is also consistent with requirements of Rule 11b–1(a)(2)(ii) under the 1934 Act which requires that the rules of a national securities exchange which permit a member of the Exchange to register as a specialist and to act as a dealer shall include "requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market * * *". By explaining the course of conduct expected by the Exchange from its specialists as a consequence of Exchange rules, the 1934 Act and the rules thereunder, the Description will help assure that the dealings of Exchange specialists comport with the requirements of Rule 11b–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been received, nor are written comments to be solicited, from any person relating to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the propose rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 29, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5051 Filed 3-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16297; (812-6275)]

ML Convertible Securities, Inc.; Application

March 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: ML Convertible Securities, Inc. ("the Company").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from the provisions of section 30(f).

Summary of Application: The Company requests an order exempting any affiliated person of Merrill Lynch Asset Management, Inc. ("MLAM") from

section 30(f) of the 1940 Act, other than (1) Any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of the Company's shares, (2) any director or officer of the Company, (3) the President and all Executive and Senior Vice Presidents of MLAM, and (4) any other officer of MLAM who manages, or supervises the management of, or who makes recommendations or participates in the determination of which recommendations shall be made, or in connection with his duties obtains information concerning which securities are being purchased or sold for the Company.

Filing Dates: The application was filed on January 6, 1986 and amended on August 4, and September 5, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Company with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. ML Convertible Securities, Inc., P.O. Box 9011, Princeton, New Jersey 08543-9011.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272-3024 or Houghton R. Hallock, Special Counsel (202) 272-3030, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Company, registered under the 1940 Act as a closed-end, diversified management investment company, is a "dual-purpose" type of investment company which has issued two classes of securities, both of which are listed for trading on the New York Stock Exchange, Inc. The Company is registered under section 12 of the Securities Exchange Act of 1934 ("1934 Act") (File No. 1-8950). The Company's by-laws provide that neither MLAM nor any officer, director or employee with managerial responsibilities of MLAM or the Company may own beneficially more of one class of the Company's securities than the other. MLAM, a wholly owned subsidiary of Merrill Lynch & Co., Inc. ("Merrill Lynch"), which serves as investment adviser to the Company, employed 92 officers and assistant officers as of December 6, 1985.

2. Because the Company is registered pursuant to section 12 of the 1934 Act, any 10% shareholders, directors and officers of the Company are directly subject to the reporting requirements and liabilities of section 16 of the 1934 Act. According to the Company, the significant effect of section 30(f) of the 1940 Act, therefore, on the Company is to subject all other affiliated persons of MLAM—i.e., those affiliated persons who are not also 10% stockholders, directors or officers of the Company—to the requirements and liabilities of section 16 of the 1934 Act.

3. Neither Merrill Lynch nor any Merrill Lynch subsidiary other than MLAM participates in, or is privy to, investment decision making on behalf of the Company (except to these same extent that any unaffiliated purchaser or seller of portfolio securities from or to the Company may be aware of transactions made or declined to be made by the Company). In addition, such participation within MLAM is highly prescribed.

4. Nonetheless, to assure that the purposes of section 30(f) of the 1940 Act are satisfied with respect to the Company's shares, the exemption requested by the Company would not extend to the President or any Executive or Senior Vice President of MLAM. Additionally, a MLAM affiliate who may be a 10% stockholder, director or officer of the Company would remain subject to section 30(f) of the 1940 Act to avoid any implication that the Commission has, in some way, relieved him of his direct responsibilities and liabilities purusant to section 16 of the 1934 Act. Currently, the President, the sole Executive Vice President, two senior Vice-Presidents and two Vice Presidents of MLAM are directly subject to section 16 of the 1934 Act as directors and/or officers of the Company.

Applicant's Legal Conclusions

1. The Company submits that the exemption requested is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. To subject all individuals and corporations affiliated with MLAM to the routine filing of dozens of Form 3's and 4's (the forms required by section 16 of the 1934 Act) will result in increased regulatory costs, both to the Company and to the Commission, without meaningful public benefit. This request for exemption accords with the Commission staff's longstanding analyses of section 30(f) under the 1940 Act as expressed in various no-action letters.

2. The application would in no way diminish the scope or applicability of the anti-fraud provisions of section 10(b) and Rule 10b-5 under the 1934 Act as to any person.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5052 Filed 3-7-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0007]

Bankit Financial Corp.; Surrender of License

Notice is hereby given that Bankit Financial Corporation, 111 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Bankit Financial Corporation was licensed by the Small Business Administration of June 13, 1977.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on November 27, 1987, and accordingly, all rights privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 2, 1988.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-5059 Filed 3-7-88; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee, Generalized System of Preferences (GSP) Subcommittee; Notice of Withdrawal of Petition Under the 1987 Annual Review

This publication serves notice that Howes Leather Comapny, Inc. has withdrawn its petition (Case numbers 87–70 and 87–HS–69) concerning TSUS item 791.28 and proposed Harmonized System subheading 6406.99.60 from consideration. These cases were being considered on a expedited basis under the GSP Program. The Trade Policy Staff Committee (TPSC) has formally initiated the expedited review of these cases in a notice of September 22, 1987 (52 FR 35605). The GPS is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 88–5020 Filed 3–7–88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Advisory Circular 121.195(d)–1A]

Operational Landing Distances for Wet, Grooved or Porous Friction Course Overlayed Runways; Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 121.195(d)–1A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to operational landing distances on wet runways. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before May 9, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Flight Technical Programs Branch, AFS–210, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Gough, AFS–210, at the address above, telephone (202) 267–3728.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 121.195(d)–1A and submit comments in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Technical Programs Branch before issuing the final AC.

Background

In determining safe operational runway lengths that provide for operational variables not included in type certification tests, § 121.195(b) of the Federal Aviation Regulations (FAR) requires a runway length adequate to allow a full-stop landing within 60 percent of the effective length of the runway. Section 121.195(d) requires an additional 15 percent runway length for operations into wet or slippery runways. As an alternative, § 121.195(d) allows operational wet distances to be used if they are based "on a showing of actual operating landing techniques on wet runways." Guidelines for operational certification under § 121.195(d) have existed for many years in AC 121.195(d)–1, dated November 19, 1965. Because of the vast amount of operational experience gained since publication of the original AC, it is considered appropriate to issue a revised AC to reflect guidelines more fitting of modern transport category airplanes and their operating environment.

Issued in Washington, DC, on February 22, 1988.

William T. Brennan,

Acting Director of Flight Standards

[FR Doc. 88–4951 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 87–20]

Contract Procedures; Buy America Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Denial of national waiver of Buy America.

SUMMARY: The FHWA hereby provides notice of its determination to deny a request for a national waiver of Buy America requirements for Reno Mattresses. The federal regulations in 23 CFR 635.410 provide, with exceptions, that no Federal-aid highway construction project in which steel materials are to be used is to be authorized for advertisement or authorized to proceed unless all manufacturing processes for such material occur in the United States. The decision to deny the request for a national waiver is based on a review of docket comments and other information developed from internal FHWA sources.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart A. Bender, Office of the General Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On October 8, 1987, at 52 FR 37701 the FHWA published a notice of request for a national waiver of the requirements of 23 CFR 635.410 (Buy America Requirements) for Reno Mattresses (Gabion Wire Baskets) and requested that comments be submitted to Docket No. 87–20 on or before December 7, 1987 The request for the waiver was made by Terra Aqua, Inc., Reno, Nevada. After the closing date for receiving comments, FHWA reviewed and considered all of the comments received.

Assessment of Comments

Six comments were received in response to the request for comments. Comments were submitted by representatives from the following interest groups: four state transportation agencies, two private industries. Three state transportation agencies expressed support for the waiver, if it would stimulate competition. The fourth state transportation agency expressed opposition to the waiver, in part due to the small quantity of Gabion wire baskets used on its construction projects.

Of the two comments received from private industry, one company was against the waiver, in part due to its contention that a sufficient domestic quantity exists which is of satisfactory quality. The other company was in favor of only granting a limited waiver for foreign manufactured products made of domestic steel.

After a careful consideration of the public comments received as well as other information developed internally the FHWA has determined that a national waiver of Buy America is not justified for several reasons.

Pursuant to FHWA regulations (23 CFR 635.410(b)(4)), Buy America

requirements do not apply if the amount of foreign steel involved does not exceed 0.1 percent of the total contract cost or $2,500.00, whichever amount is greater. Based on the comments received and internal agency information, it has been determined that Reno Mattresses compose only a small percentage of the cost of Federal-aid highway construction projects. This small percentage in many cases would be too low to trigger the application of the Buy America Act.

Additionally, internal FHWA information reveals that in the past 7 years, four out of five Federal-aid highway construction projects in Illinois involving Reno mattresses and gabions used a quantity of steel less than the $2,500.00 limit allowed for foreign steel.

Furthermore, the comments revealed that Reno Mattresses are not frequently used in sufficient quantity on highway construction projects to warrant granting a national waiver of Buy America. Additionally, internal agency information reveals a limited usage of Reno Mattresses and that such Mattresses are usually used in small quantities. A national waiver seems unnecessary where in fact there is little or nor applicability of Buy America.

Finally, the comments reveal that, in addition to Maccaferri, other U.S. domestic companies, such as Hilfiker, Inc., currently exist to provide competition. Also, internal FHWA information shows that the domestic supply is considered to be adequate. Moreover, an additional source of competition is provided by manufacturers of polypropylene mattresses, which offer an alternative design which has been accepted as equivalent to steel mattresses by several states. These circumstances negate the factual basis for granting the waiver under the regulation, which is lack of production in the United States "in sufficient and reasonably available quantity which are of a satisfactory quality."

Conclusion

In light of the information available from the public comments and FHWA's internal information, the FHWA has determined that the requested national waiver of Buy America requirements for Reno Mattresses is not justified and is not in the public interest and, therefore, is denied. (Sec. 165 of Pub. L. 97–424, 96 Stat. 2097, 2136 as amended; 23 U.S.C. 315; 49 CFR 1.48)

Issued on March 2, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88–5056 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[BS–Ap–No. 2728]

CSX Transportation Co.; Public Hearing

The CSX Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the signal systems currently installed on its line between Cottage Grove, Indiana, and LaCrosse, Indiana, a distance of approximately 177 miles. This proceeding is identified as FRA Block Signal Application No. 2728.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on April 28, 1988, in Room 201–D of the YMCA at 6th and Wabash Streets In Peru, Indiana.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on March 1, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–4995 Filed 3–7–88; 8:45 am]

BILLING CODE 4910-06-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 16, 1988, in Room 600, 301 4th Street SW., Washington, DC from 10:30 a.m. to 12:00 p.m.

The Commission will meet with USIA Deputy Director Marvin Stone to discuss the Agency's participation in international expositions. Subsequently, the Commission will meet with Dr. Bruce Porter, Executive Director, Board for International Broadcasting (BIB), and Mr. Mark Polmar, Deputy Executive Director, to discuss programs and facilities modernization of Radio Free Europe and Radio Liberty.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 2, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88–4976 Filed 3–7–88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 45
Tuesday, March 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To Be Published March 4, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, March 8, 1988.

CHANGE IN THE MEETING:

Closed Session

The following item was approved by Notation Vote on March 3, 1988, to be added to the closed portion of the meeting by Commissioners, Thomas, Silberman and Kemp.

"Litigation Authorization: General Counsel Recommendations"

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634-6748.

Date: March 8, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued March 3, 1988.

[FR Doc. 88-5117 Filed 3-4-88; 11:21 am]

BILLING CODE 6750-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 3, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, March 9, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Local Union 2333, District 29, UMWA v. Ranger Fuel Corp., Docket No. WEVA 86-439-C. (Issues include whether the judge erred in denying both of the parties' motions for summary decision in a section 111 compensation proceeding.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subjects to 20 CFR 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-5160 Filed 3-4-88; 3:44 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 14, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement of the Board's organization and procedures and delegation of administrative responsibility and authority.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Systems employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5184 Filed 3-4-88; 3:45 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 7, 14, 21, and 28, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 7

Thursday, March 10

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Restart (Tentative)

Friday, March 11

11:00 a.m.
Classified Security Briefing (Closed—Ex. 1)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing on the Status of Efforts to Develop a De Minimis Policy (Public Meeting)

Thursday, March 17

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-2 (Public Meeting)

2:00 p.m.
Briefing on Status of TMI-2 (Public Meeting)

3:30 P.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 18

10:00 a.m.
NRC Participation in International Agreements and Research (Public Meeting)

Week of March 21—Tentative

Monday, March 21

2:00 p.m.
Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)

Tuesday, March 22

10:00 a.m.
Discussion/Possible Vote on Rancho Seco (Public Meeting)

2:00 p.m.
Briefing on High Priority AEOD Issues (Public Meeting)

Thursday, March 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 28—Tentative

Thursday, March 31

10:00 a.m.
Briefing on Proposed Final Rule on Station Blackout (Public Meeting) (Tentative)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note:—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VARIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

March 3, 1988.

[FR Doc. 88-5165 Filed 3-4-88; 3:46 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 5683 February 25, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, February 22, 1988.

CHANGES IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting scheduled on Tuesday, March 1, 1988, at 2:00 p.m.

Litigation matter.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan G. Katz,

Secretary.

March 2, 1988.

[FR Doc. 88-5119 Filed 3-4-88; 1:19 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 53, No. 45
Tuesday, March 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Whiskeytown Unit; Whiskeytown-Shasta-Trinity National Recreation Area; Gold Panning Regulations

Correction

In proposed rule document 88-2681 beginning on page 3759 in the issue of Tuesday, February 9, 1988, make the following correction:

§ 7.91 [Corrected]

On page 3760, in the second column, in § 7.91(d)(3)(i), in the first line, "any method" should read "any other method".

BILLING CODE 1505-01-D

MERIT SYSTEMS PROTECTION BOARD

Performance Improvement Periods in Chapter 43 Actions

Correction

In notice document 88-4483, beginning on page 6712 in the issue of Wednesday, March 2, 1988, make the following corrections:

1. On page 6712, in the third column, under **ADDRESS**, in the third line, "Brief" was misspelled.

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the eighth line, and in the third paragraph, in the first line, "OMP" should read "OPM".

3. Make the same correction on page 6713, in the first column, in the third line.

4. Also on page 6713, in the second column, in paragraph b, in the 12th line, "be" should read "a".

BILLING CODE 1505-01-D

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federal register

Tuesday
March 8, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–AWA–2]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Fresno Air Terminal, CA; Moline Quad City Airport, IL; Monterey Peninsula Airport, CA; and Greater Peoria Airport, IL. With the exception of Fresno, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before June 17, 1988. Informal airspace meeting dates are as follows: Fresno Air Terminal, CA—May 18, 1988; Moline Quad City Airport, IL—May 12, 1988; Monterey Peninsula Airport, CA—May 16, 1988; and Greater Peoria Airport, IL—May 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Airspace Docket No. 88–AWA–2, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Fresno Air Terminal, CA, ARSA

Date: May 18, 1988
Time: 7:00 p.m.
Location: National Guard Armory, 5140 East Dakota Avenue, Fresno, CA

Moline Quad City Airport, IL, ARSA

Date: May 12, 1988
Time: 7:00 p.m.
Location: Elliott Beechcraft, Quad City Airport, Moline, IL

Monterey Peninsula Airport, CA, ARSA

Date: May 16, 1988
Time: 7:00 p.m.
Location: Ingersoll Hall, Naval Post Graduate School, Third and Sloat, Monterey, CA

Greater Peoria Airport, IL, ARSA

Date: May 18, 1988
Time: 7:00 p.m.
Location: Byerley Aviation Hangar, Greater Peoria Airport, Peoria, IL.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves four locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AWA–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC. 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the

improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 101 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at four locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at three of the locations at which ARSA's are proposed in this notice. Fresno is a radar facility currently providing Stage II service. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). Stage II service, with the exception of separation, provides the same. TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to operate with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately adddress the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR § 91.87 can exacerbate a problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action. At the five proposed locations, the volume and density of traffic have increased to the point where the implementation of ARSA's is strongly recommended.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Fresno Air Terminal, CA; Moline Quad City Airport, IL; Monterey Peninsula Airport, CA; and Greater Peoria Airport, IL, which are public airports, three of which currently have nonregulatory TRSA's in effect. The proposed locations are depicted on charts to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.98.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at these locations is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours and these facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to the appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an

effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiently and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall inprovements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in the notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Fresno Air Terminal, CA [New]

That airspace within a 5-mile radius of the Fresno Air Terminal (lat. 36°46′28″ N., long. 119°42′58″ W.), extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,800 feet MSL to and including 4,400 feet MSL.

Moline Quad City Airport, IL [New]

That airspace within a 5-mile radius of the Moline Quad City Airport (lat. 41°26′55″ N., long. 90°30′29″ W.) extending upward from the surface to and including 4,600 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,200 feet MSL to and including 4,600 feet MSL.

Monterey Peninsula Airport, CA [New]

That airspace within a 5-mile radius of the Monterey Peninsula Airport (lat. 36°35′19″ N., long. 121°50′52″ W.) extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of the airport beginning at the Pacific Ocean shoreline southwest of the airport clockwise to the 140° bearing from the airport extending upward from 1,500 feet MSL to and including 4,200 feet MSL; and that airspace within a 10-mile radius of the airport beginning at the 140° bearing from the airport clockwise to the Pacific Ocean shoreline, extending upward from 3,200 feet MSL to and including 4,200 feet MSL. The airspace contained within Restricted Area R–2511 is excluded when it is in use.

Greater Peoria Airport, IL [New]

That airspace within a 5-mile radius of the Greater Peoria Airport (lat. 40°39′53″ N., long. 89°41′31″ W.) extending upward from the surface to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from the surface to and including 4,700 feet MSL, from the 284° bearing from the airport clockwise to the 154° bearing from the airport; and that airspace within a 10-mile radius of the airport extending upward from 1,800 feet MSL to and including 4,700 feet MSL from the 154° bearing from the airport clockwise to the 284° bearing from the airport.

Issued in Washington, DC, on March 1, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

FRESNO, CALIFORNIA
FRESNO AIR TERMINAL
FIELD ELEV. 332′ MSL

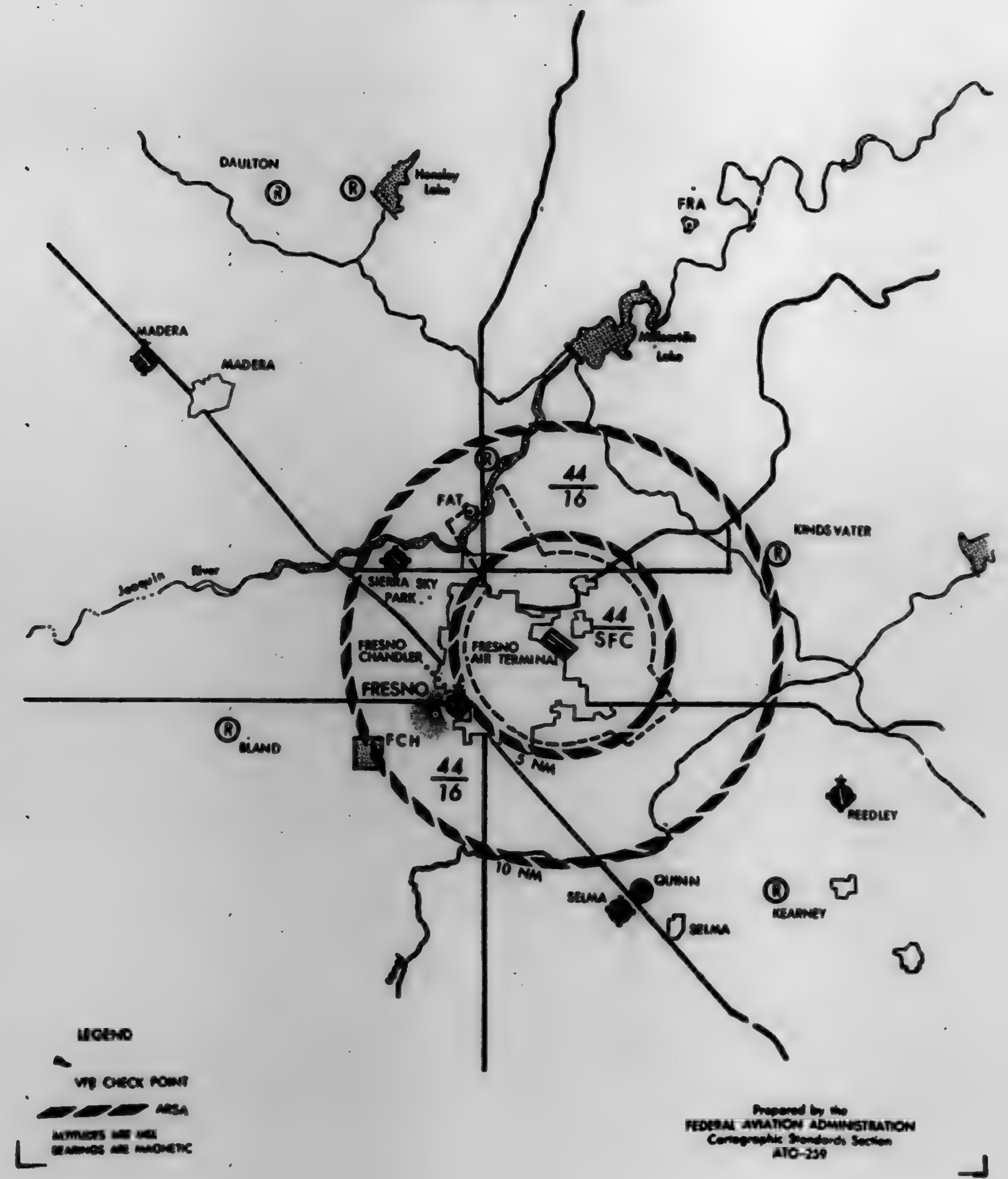

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

MOLINE, ILLINOIS
QUAD CITY AIRPORT
FIELD ELEV. 589' MSL

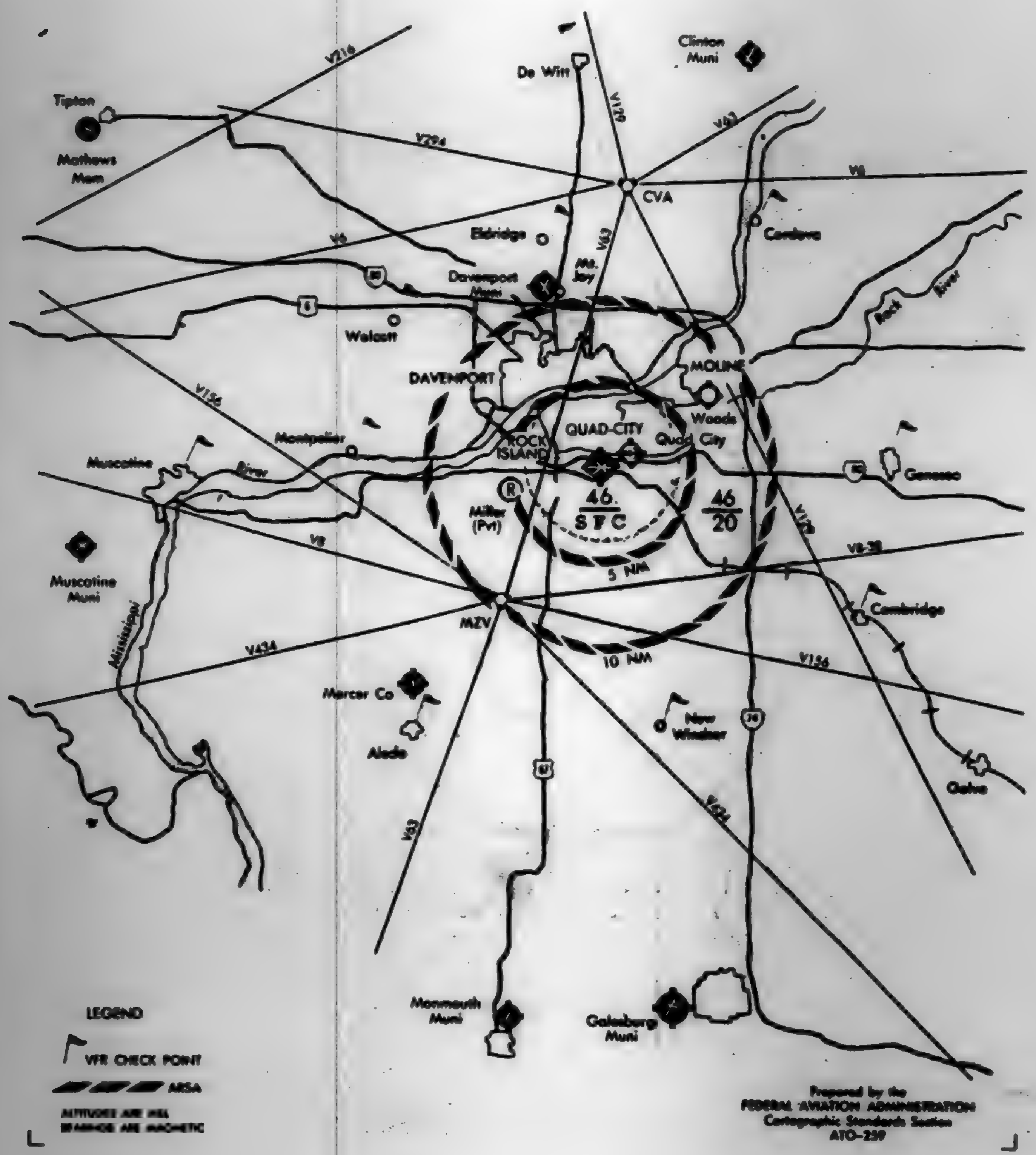
Tipton
Mathews Mem
V216
De Witt
V470
Clinton Muni
V67
V294
CVA
V8
Eldridge
V62
Cordova
Davenport Muni
Mt. Joy
80
Walcott
Rock River
DAVENPORT
MOLINE
Woods
QUAD-CITY
Quad City
ROCK ISLAND
V156
Montpelier
Muscatine
River
Geneseo
Miller (Pvt)
46 / SFC
46 / 20
V172
V8
V8-38
5 NM
MZV
Muscatine Muni
Cambridge
V434
10 NM
V156
Mississippi
Mercer Co
Aledo
New Windsor
Galva
V63
Monmouth Muni
Galesburg Muni
LEGEND
VFR CHECK POINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the FEDERAL AVIATION ADMINISTRATION Cartographic Standards Section ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

MONTEREY, CALIFORNIA
MONTEREY PENINSULA AIRPORT
FIELD ELEV. 244' MSL

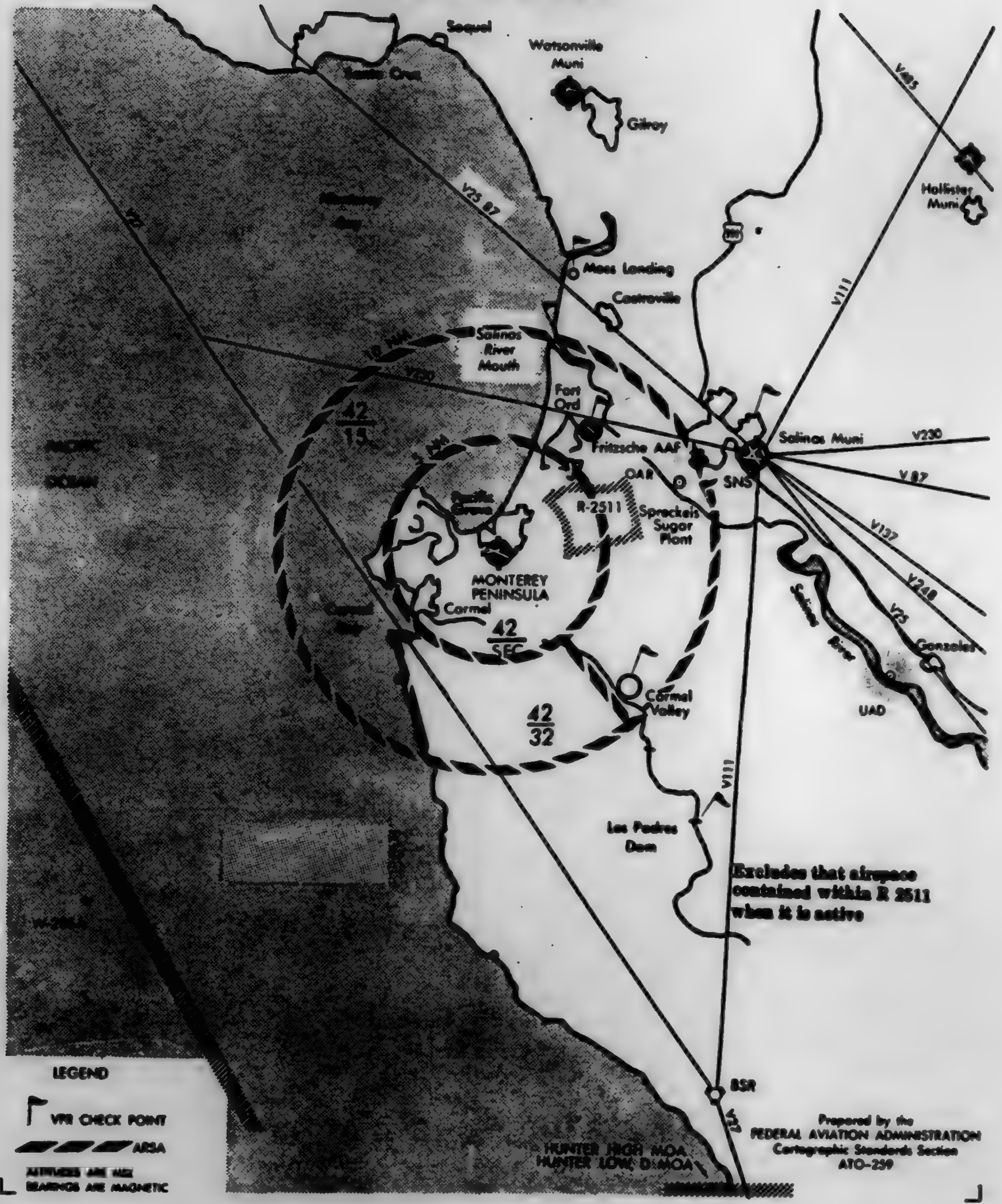
Soquel
Santa Cruz
Watsonville Muni
Gilroy
V485
Hollister Muni
Monterey Bay
V25 87
V27
101
Moss Landing
Castroville
V111
Salinas River Mouth
V230
Fort Ord
42 / 15
Fritzsche AAF
Salinas Muni
V230
SNS
V87
OAR
R-2511
Spreckels Sugar Plant
PACIFIC OCEAN
V137
MONTEREY PENINSULA
V248
Carmel
V25
42 / SFC
Salinas River
Gonzales
Carmel Valley
UAD
42 / 32
V111
Los Padres Dam
BSR
V27
HUNTER HIGH MOA
HUNTER LOW, D MOA
LEGEND
VFR CHECK POINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Excludes that airspace contained within R 2511 when it is active

Prepared by the FEDERAL AVIATION ADMINISTRATION Cartographic Standards Section ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

PEORIA, ILLINOIS
GREATER PEORIA AIRPORT
FIELD ELEV. 660' MSL

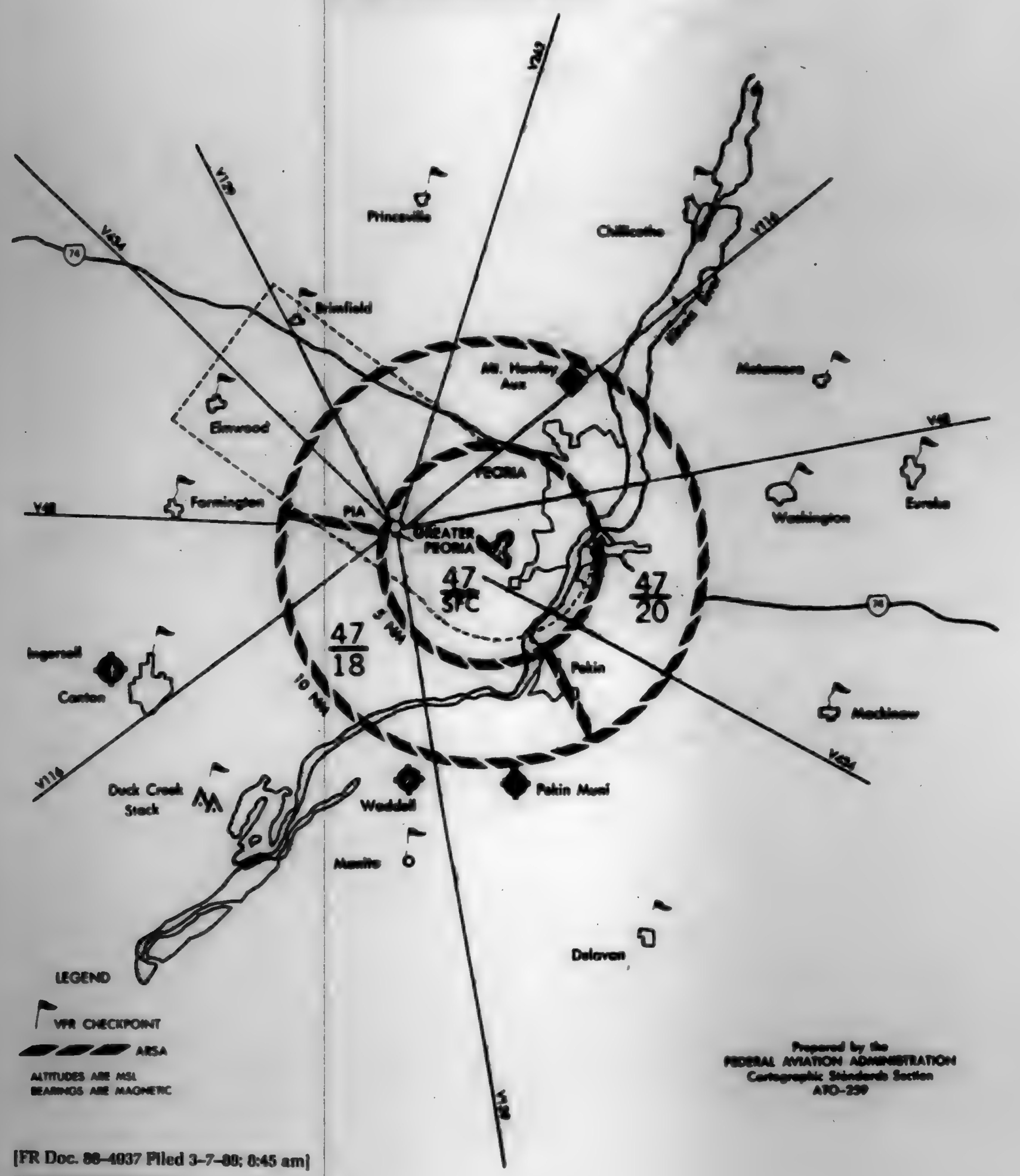
V262
V10
Princeville
Chillicothe
V434
74
V116
Brimfield
Mt. Hawley Aux
Metamora
Elmwood
V48
PEORIA
Farmington
PIA
GREATER PEORIA
Washington
Eureka
47/SFC
47/20
47/18
5 NM
10 NM
Pekin
Ingersoll
Canton
Mackinaw
V116
V434
Duck Creek Stack
Waddell
Pekin Muni
Manito
Delavan
V10
LEGEND
VFR CHECKPOINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
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Cartographic Standards Section
ATO-259

[FR Doc. 88-4937 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-C

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federal register

Tuesday
March 8, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Airworthiness Standards for Rotorcraft; Normal and Transport Category and Emergency Medical Services; Proposed Rules; Announcement of Public Meeting

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 25287; Notice No. 87-4]

Occupant Restraint in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; announcement of public meeting and reopening of comment period.

SUMMARY: This notice announces that the comment period for the notice of proposed rulemaking which concerns occupant restraint in normal and transport category rotorcraft (52 FR 20938; June 3, 1987) is being reopened to allow additional time for comment. This notice also announces that a public meeting will be held to discuss this proposed rule.

DATES: The public comment period which closed December 30, 1987, is being reopened until May 6, 1988.

The public meeting will begin at 9 a.m. on April 20, 1988.

ADDRESSES: Comments on the notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. 25287, 800 Independence Avenue SW., Washington, DC 20591.

The meeting will be held at the FAA, Southwest Region, Training Room, Room 167, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. J.H. Major, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5117

SUPPLEMENTARY INFORMATION: Notice 87-4 proposes to revise Parts 27 and 29 of the Federal Aviation Regulations (FAR). The proposals would add the dynamic crash impact design requirement conditions for seat and occupant restraint systems, increase the static design load factors for seating devices and items of mass in the cabin or adjacent to the cabin as prescribed, prescribe a shoulder harness for each occupant, and add human impact injury criteria for the dynamic crash impact conditions. These proposals are intended to significantly improve occupant protection levels in a survivable emergency landing impact.

As a result of substantial opposition to some of the proposals by small domestic rotorcraft manufacturers, foreign rotorcraft manufacturers, and foreign airworthiness authorities, the FAA has determined that a public meeting is necessary. The diverging positions of these important segments of the rotorcraft community and the larger domestic manufacturers merit extending the comment period and allowing a public forum for presentation of the issues involved.

Accordingly, the comment period is extended, and a public meeting has been scheduled.

Issued in Fort Worth, Texas, on February 29, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-4933 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 27 and 29

Emergency Medical Services (EMS) Configuration Airworthiness and Operational Forum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of public meeting.

SUMMARY: This notice announces a public meeting to discuss current EMS issues that are related to the application of rotorcraft airworthiness and operational standards for both normal and transport category rotorcraft.

DATE: The public meeting will be held on April 20, 1988

ADDRESS: The meeting will be held at the FAA, Southwest Region, Training Room, Room 167, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. J.H. Major, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5117 or Mr. Max Halliburton, FAA, Operations Branch, Flight Standards Division, Fort Worth, Texas 76193-0265, telephone (817) 624-5265.

SUPPLEMENTARY INFORMATION: The FAA is seeking input from all segments of industry and foreign airworthiness authorities regarding the possible need for advisory material and regulatory changes to assure safety and standardization of certification of rotorcraft designed for use in EMS operations.

Some issues which will be considered include but are not limited to the following:

(1) Patient oxygen systems and other life support systems.

(2) Seat, berth, and litter design criteria or standards.

(3) Patient incubators (isolettes) and power supply assurance.

(4) Shoulder harnesses.

(5) Emergency evacuation criteria or standards.

(6) Occupant protection.

(7) Operations specifications.

(8) Weather minimums.

(9) Flight and rest requirements.

(10) Training requirements.

In the interest of conservation of time and travel resources of meeting participants, the FAA has scheduled this EMS meeting to immediately follow a meeting to discuss Notice of Proposed Rulemaking No. 87-4 (52 FR 20938; June 3, 1987) on occupant restraint in rotorcraft which will begin at 9 a.m. on April 20, 1988. (See notice, this issue of **Federal Register.**) The EMS discussion will begin immediately following the close of discussion of the occupant restraint proposals and may continue the following day, if necessary.

Issued in Fort Worth, Texas, on February 26, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-4934 Filed 3-7-88; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
March 8, 1988

Part IV

Department of the Interior

Minerals Management Service

Training and Qualifications of Personnel in Well-Control Training; Notice of Approval

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Training and Qualifications of Personnel in Well-Control Training Schools

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved well-control training schools.

SUMMARY: As published in the Federal Register on December 21, 1978, (43 FR 59551) the Minerals Management Service (MMS) is providing, for public information, a current list of MMS approved well-control schools.

FOR FURTHER INFORMATION CONTACT: Mr. T.C. Cable, Minerals, Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 648-7751.

SUPPLEMENTARY INFORMATION: On January 19, 1982, the MMS was established under Secretarial Order No. 3071. The Federal Register Notice of February 19, 1982, (47 FR 7506) published the MMSS-OCS-T 1 Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," Second Edition. The following is a list of MMS approved well-control schools:

MMS Approved Well-Control Schools

Legend

Job Classification

RH—Rotary Helper
DM—Derrickman
DR—Driller
TP—Toolpusher
OR—Operator's Representative

Blowout-Preventer Stack Type

SUR—Surface BOP Stack
SUB—Subsea BOP Stack

It is anticipated that periodic Notices of this will be published in the future on an as needed basis.

Dated: February 24, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

BILLING CODE 4310-MR-M

BASIC SCHOOLS

No.	SCHOOL NAME	TYPE	CLASS	APPROVED EXPIRES	COMMENTS
1	ALASKA VOCATIONAL TECHNICAL CENTER	SUR SUB	DR TP OR	04-23-88 to 04-23-92	
2	ARCO OIL AND GAS COMPANY	SUR SUB	TP OR	12-10-84 to 12-10-88	
3	BASIC RESEARCH AND TRAINING, INCORPORATED	SUR SUB	DR TP OR	11-09-84 to 11-09-88	
4	CHEVRON SERVICES COMPANY	SUR SUB	OR	02-10-86 to 02-10-90	
5	CITIES SERVICE COMPANY	SUR SUB	DR TP OR	06-19-87 to 06-19-91	
6	COLORADO NORTHWESTERN COMMUNITY COLLEGE	SUR SUB	DR TP OR	06-07-84 to 06-07-88	
7	CONOCO, INCORPORATED	SUR SUB	OR	11-01-86 to 11-01-90	
8	CUDD PRESSURE CONTROL, INCORPORATED	SUR SUB	DR TP OR	04-29-85 to 04-29-89	
9	DIAMOND M. COMPANY	SUR SUB	DR TP OR	05-31-87 to 05-31-91	
10	DIXILYN-FIELD DRILLING COMPANY	SUR SUB	DR TP OR	04-30-85 to 04-30-89	
11	DRILCO	SUR SUB	DR TP OR	12-07-84 to 12-07-88	
12	EASTERN NEW MEXICO UNIVERSITY	SUR SUB	DR TP OR	08-19-85 to 08-19-89	
13	EXXON COMPANY U.S.A.	SUR SUB	DR TP OR	09-18-86 to 09-18-90	
14	GLOBAL MARINE DRILLING COMPANY	SUR SUB	DR TP OR	04-21-86 to 04-21-90	
15	H_2S SPECIALTIES, INC.	SUR SUB	DR TP OR	04-21-86 to 04-21-90	
16	HOUSTON COMMUNITY COLLEGE	SUR SUB	DR TP OR	09-18-87 to 09-18-91	
17	INCO SERVICES	SUR SUB	DR TP OR	07-06-86 to 07-06-90	
18	INTERNATIONAL DRILLING SCHOOLS	SUR SUB	DR TP OR	11-10-86 to 11-10-90	
19	LOFFLAND BROTHERS COMPANY	SUR	DR TP OR	01-24-88 to 01-24-92	
20	LOUISIANA STATE UNIVERSITY	SUR SUB	DR TP OR	11-10-86 to 11-10-90	
21	MILPARK DRILLING FLUIDS	SUR SUB	DR TP OR	01-18-87 to 01-18-91	
22	MURCHISON DRILLING SCHOOLS	SUR SUB	DR TP OR	05-29-87 to 05-29-91	
23	NL PETROLEUM SERVICES	SUR SUB	DR TP OR	07-02-87 to 07-02-91	
24	NORTHWESTERN MICHIGAN COLLEGE	SUR SUB	DR TP OR	02-04-85 to 02-04-89	
25	OCEAN DRILLING & EXPLORATION COMPANY (ODECO)	SUR SUB	DR TP OR	05-29-87 to 05-29-91	
26	ODESSA COLLEGE	SUR SUB	DR TP OR	05-11-88 to 05-11-92	
27	OILFIELD TRAINING CONSULTANTS	SUR SUB	DR TP OR	06-13-84 to 06-13-88	
28	OILFIELD TRAINING SEMINARS INCORPORATED	SUR SUB	DR TP OR	07-30-87 to 07-30-91	
29	OKLAHOMA PETROLEUM TRAINING CORPORATION	SUR SUB	DR TP OR	07-31-84 to 07-31-88	
30	OPERATORS, INC.	SUR SUB	DR TP OR	07-01-84 to 07-01-88	
31	PARKER DRILLING COMPANY	SUR SUB	DR TP OR	10-29-84 to 10-29-88	
32	PENNSYLVANIA STATE UNIVERSITY	SUR SUB	DR TP OR	09-03-85 to 09-03-89	**
33	POOL OFFSHORE COMPANY	SUR SUB	DR TP OR	03-19-87 to 03-19-91	
34	PRENTICE TRAINING COMPANY	SUR SUB	DR TP OR	01-15-85 to 01-15-89	
35	PRESTON L. MOORE, INCORPORATED	SUR SUB	DR TP OR	04-20-86 to 04-20-90	*
36	READING & BATES DRILLING COMPANY	SUR SUB	DR TP OR	01-15-86 to 01-15-90	
37	RIKE SERVICE, INCORPORATED	SUR SUB	DR TP OR	10-16-87 to 10-16-91	

COMMENTS:
* = approval pending the results of onsite evaluation
** = subsea approval pending the results of onsite evaluation

BASIC SCHOOLS (continued)

No.	SCHOOL NAME	TYPE	CLASS	APPROVED	EXPIRED	COMMENTS
38	SANTA FE DRILLING COMPANY	SUR SUB	DR TP OR	05-29-88 to	05-29-92	
39	SEDCO FOREX	SUR SUB	DR TP OR	02-01-86 to	02-01-90	
40	SHELL OIL COMPANY	SUR SUB	DR TP OR	07-07-87 to	07-07-91	
41	SONIO PETROLEUM COMPANY	SUR SUB	DR TP OR	01-24-85 to	01-24-89	
42	TEXACO	SUR SUB	DR TP OR	02-15-87 to	02-15-91	
43	THE TRAINING COMPANY INCORPORATED	SUR SUB	DR TP OR	01-06-87 to	01-06-91	
44	TRITON ENGINEERING SERVICES	SUR SUB	OR	03-11-87 to	03-11-91	
45	UINTAH BASIN AREA VOCATIONAL CENTER	SUR SUB	DR TP OR	01-04-85 to	01-04-89	
46	UNIVERSITY OF HOUSTON AT VICTORIA	SUR SUB	DR TP OR	10-04-86 to	10-04-90	
47	UNIVERSITY OF OKLAHOMA	SUR SUB	DR TP OR	07-10-87 to	07-10-91	
48	UNIVERSITY OF SOUTHWESTERN LOUISIANA	SUR SUB	DR TP OR	11-17-87 to	11-17-91	
49	UNIVERSITY OF TEXAS (PETEX)	SUR SUB	DR TP OR	05-08-87 to	05-08-91	
50	UNOCAL	SUR SUB	DR TP OR	09-16-84 to	09-16-88	
51	VENTURA COLLEGE	SUR SUB	DR TP OR	03-15-87 to	03-15-91	
52	WELL CONTROL SCHOOL	SUR SUB	DR TP OR	11-09-84 to	11-09-88	
53	WESTEC-TAFT COLLEGE	SUR SUB	DR TP OR	04-12-87 to	04-12-91	
54	WESTERN OCEANIC, INCORPORATED	SUR SUB	DR TP OR	05-01-85 to	05-01-89	
55	WESTERN WELL CONTROL SCHOOL	SUR SUB	DR TP OR	05-30-85 to	05-30-89	**

The following schools' Basic well-control programs have expired:

AMOCO PRODUCTION COMPANY	SUR SUB	OR	10-08-79 to	10-08-83	Expired
ATLANTIC PACIFIC MARINE CORPORATION	SUR SUB	DR TP OR	12-11-79 to	12-11-83	Expired
CAPE COD COMMUNITY COLLEGE	SUR SUB	DR TP OR	02-09-81 to	02-09-85	Expired
DELTA-US CORPORATION	SUR SUB	DR TP OR	07-05-82 to	07-05-86	Expired
DIGITRAN, INCORPORATED	SUR SUB	DR TP OR	05-31-80 to	05-31-84	Expired
DRESSER INDUSTRIES/MAGCOBAR	SUR SUB	DR TP OR	08-27-83 to	08-27-87	Expired
GULF OIL EXPL. AND PROD. COMPANY	SUR SUB	DR TP OR	09-12-83 to	02-10-86	Expired
KEYDRIL COMPANY	SUR SUB	DR TP OR	05-29-84 to	03-07-86	Expired
MAURER ENGINEERING, INCORPORATED	SUR SUB	DR TP OR	10-15-81 to	10-15-85	Expired
PETROLEUM TRAINING & TECHNICAL SERVICES	SUR SUB	DR TP OR	04-29-79 to	04-29-83	Expired
PRENTICE AND RECORDS ENTERPRISES, INC.	SUR SUB	DR TP OR	05-07-83 to	05-07-87	Expired
ROCKY MOUNTAIN WELL CONTROL SCHOOL	SUR SUB	DR TP OR	02-09-83 to	02-01-84	Expired
SAIPEM SpA	SUR SUB	DR TP OR	12-12-85 to	01-01-87	Expired
SHELL OFFSHORE INCORPORATED	SUR SUB	DR TP OR	07-15-86 to	07-07-87	Expired
STURGIS/SHEFFIELD, INCORPORATED	SUR SUB	DR TP OR	05-14-82 to	05-14-86	Expired
TDA TRAINING, INCORPORATED	SUR SUB	DR TP OR	04-06-82 to	04-06-86	Expired

COMMENTS:

* = approval pending the results of onsite evaluation

** = subsea approval pending the results of onsite evaluation

REFRESHER SCHOOLS

No.	SCHOOL NAME	TYPE	CLASS	APPROVED	EXPIRED	COMMENTS
1	ALASKA VOCATIONAL TECHNICAL CENTER	SUR SUB	DR TP OR	04-23-88 to	04-23-92	
2	AMOCO PRODUCTION COMPANY	SUR SUB	OR	04-18-88 to	04-18-92	
3	ARCO OIL AND GAS COMPANY	SUR SUB	TP OR	12-10-84 to	12-10-88	
4	BASIC RESEARCH AND TRAINING, INCORPORATED	SUR SUB	DR TP OR	11-09-84 to	11-09-88	
5	CHEVRON SERVICES COMPANY	SUR SUB	OR	02-10-87 to	02-10-91	
6	CITIES SERVICE COMPANY	SUR SUB	DR TP OR	06-19-87 to	06-19-91	
7	COLORADO NORTHWESTERN COMMUNITY COLLEGE	SUR SUB	DR TP OR	06-07-84 to	06-07-88	
8	CONOCO, INCORPORATED	SUR SUB	OR	11-01-86 to	11-01-90	
9	CUDD PRESSURE CONTROL, INCORPORATED	SUR SUB	DR TP OR	04-29-85 to	04-29-89	
10	DIAMOND M. COMPANY	SUR SUB	DR TP OR	05-31-87 to	05-31-91	
11	DIXILYN-FIELD DRILLING COMPANY	SUR SUB	DR TP OR	04-30-85 to	04-30-89	
12	DRILCO	SUR SUB	DR TP OR	12-07-84 to	12-07-88	
13	EASTERN NEW MEXICO UNIVERSITY/ROSWELL	SUR SUB	DR TP OR	08-19-85 to	08-19-89	
14	GLOBAL MARINE DRILLING COMPANY	SUR SUB	DR TP OR	04-21-86 to	04-21-90	
15	H_2S SPECIALTIES, INC	SUR SUB	DR TP OR	04-21-86 t	04-21-90	*
16	HOUSTON COMMUNITY COLLEGE	SUR SUB	DR TP OR	09-18-87 to	09-18-91	
17	IMCO SERVICES	SUR SUB	DR TP OR	07-06-86 to	07-06-90	
18	INTERNATIONAL DRILLING SCHOOLS	SUR SUB	DR TP OR	11-10-86 to	11-10-90	
19	LOFFLAND BROTHERS COMPANY	SUR	DR TP OR	01-24-88 to	01-24-92	
20	LOUISIANA STATE UNIVERSITY	SUR SUB	DR TP OR	11-10-86 to	11-10-90	
21	MILPARK DRILLING FLUIDS	SUR SUB	DR TP OR	01-18-87 to	01-18-91	
22	MURCHISON DRILLING SCHOOLS	SUR SUB	DR TP OR	05-29-87 to	05-29-91	
23	NL PETROLEUM SERVICES	SUR SUB	DR TP OR	07-02-87 to	07-02-91	
24	NORTHWESTERN MICHIGAN COLLEGE	SUR SUB	DR TP OR	02-04-85 to	02-04-89	
25	OCEAN DRILLING & EXPLORATION COMPANY (ODECO)	SUR SUB	DR TP OR	05-29-87 to	05-29-91	
26	ODESSA COLLEGE	SUR SUB	DR TP OR	05-11-88 to	05-11-92	
27	OILFIELD TRAINING CONSULTANTS	SUR SUB	DR TP OR	06-13-84 to	06-13-88	
28	OILFIELD TRAINING SEMINARS INCORPORATED	SUR SUB	DR TP OR	07-30-87 to	07-30-91	
29	OKLAHOMA PETROLEUM TRAINING CORPORATION	SUR SUB	DR TP OR	07-31-84 to	07-31-88	
30	OPERATORS, INC	SUR SUB	DR TP OR	07-01-84 to	07-01-88	
31	PARKER DRILLING COMPANY	SUR SUB	DR TP OR	10-29-84 to	10-29-88	
32	PENNSYLVANIA STATE UNIVERSITY	SUR SUB	DR TP OR	09-03-85 to	09-03-89	**
33	POOL OFFSHORE COMPANY	SUR SUB	DR TP OR	03-19-87 to	03-19-91	
34	PRENTICE TRAINING COMPANY	SUR SUB	DR TP OR	01-15-85 to	01-15-89	
35	PRESTON L. MOORE, INCORPORATED	SUR SUB	DR TP OR	04-20-86 to	04-20-90	*
36	READING & BATES DRILLING COMPANY	SUR SUB	DR TP OR	01-15-86 to	01-15-90	
37	RIKE SERVICE INCORPORATED	SUR SUB	DR TP OR	10-16-87 to	10-16-91	

COMMENTS:

* = approval pending the results of onsite evaluation

** = subsea approval pending the results of onsite evaluation

REFRESHER SCHOOLS (continued)

No.	SCHOOL NAME	TYPE	CLASS	APPROVED EXPIRES	COMMENTS
38	SANTA FE DRILLING COMPANY	SUR SUB	DR TP OR	05-29-88 to 05-29-92	
39	SEDCO FOREX	SUR SUB	DR TP OR	02-01-86 to 02-01-90	
40	SHELL OIL COMPANY	SUR SUB	DR TP OR	07-07-87 to 07-07-91	
41	SOHIO PETROLEUM COMPANY	SUR SUB	DR TP OR	01-24-85 to 01-24-89	
42	TEXACO	SUR SUB	DR TP OR	02-15-87 to 02-15-91	
43	THE TRAINING COMPANY INCORPORATED	SUR SUB	DR TP OR	01-06-87 to 01-06-91	
44	TRITON ENGINEERING SERVICES	SUR SUB	OR	03-11-87 to 03-11-91	
45	UINTAH BASIN AREA VOCATIONAL CENTER	SUR SUB	DR TP OR	01-04-85 to 01-04-89	
46	UNIVERSITY OF HOUSTON AT VICTORIA	SUR SUB	DR TP OR	10-04-86 to 10-04-90	
47	UNIVERSITY OF OKLAHOMA	SUR SUB	DR TP OR	07-10-87 to 07-10-91	
48	UNIVERSITY OF SOUTHWESTERN LOUISIANA	SUR SUB	DR TP OR	11-17-87 to 11-17-91	
49	UNIVERSITY OF TEXAS (PETEX)	SUR SUB	DR TP OR	05-08-87 to 05-08-91	
50	UNOCAL	SUR SUB	DR TP OR	09-16-84 to 09-16-88	
51	VENTURA COLLEGE	SUR SUB	DR TP OR	03-15-87 to 03-15-91	
52	WELL CONTROL SCHOOL	SUR SUB	DR TP OR	11-09-84 to 11-09-88	
53	WESTEC-TAFT COLLEGE	SUR SUB	DR TP OR	04-12-87 to 04-12-91	
54	WESTERN OCEANIC, INCORPORATED	SUR SUB	DR TP OR	05-01-85 to 05-01-89	
55	WESTERN WELL CONTROL SCHOOL	SUR SUB	DR TP OR	05-30-85 to 05-30-89	**

The following schools' Refresher well-control programs have expired:

ATLANTIC PACIFIC MARINE CORPORATION	SUR SUB	DR TP OR	12-11-79 to 12-11-83	Expired
CAPE COD COMMUNITY COLLEGE	SUR SUB	DR TP OR	02-09-81 to 02-09-85	Expired
DELTA-US CORPORATION	SUR SUB	DR TP OR	07-05-82 to 07-05-86	Expired
DIGITRAN, INCORPORATED	SUR SUB	DR TP OR	05-31-80 to 05-31-84	Expired
DRESSER INDUSTRIES/MAGCOBAR	SUR SUB	DR TP OR	08-27-83 to 08-27-87	Expired
GULF OIL EXPL. AND PROD. COMPANY	SUR SUB	DR TP OR	09-12-83 to 09-12-87	Expired
KEYDRIL COMPANY	SUR SUB	DR TP OR	05-29-84 to 03-07-86	Expired
MAURER ENGINEERING, INCORPORATED	SUR SUB	DR TP OR	10-15-81 to 10-15-85	Expired
PETROLEUM TRAINING & TECHNICAL SERVICES	SUR SUB	DR TP OR	12-06-79 to 12-06-83	Expired
PRENTICE AND RECORDS ENTERPRISES, INC	SUR SUB	DR TP OR	05-07-83 to 05-07-87	Expired
ROCKY MOUNTAIN WELL CONTROL SCHOOL	SUR SUB	DR TP OR	02-09-83 to 02-01-84	Expired
SAIPEM SpA	SUR SUB	DR TP OR	03-06-86 to 01-01-87	Expired
SHELL OFFSHORE INCORPORATED	SUR SUB	DR TP OR	07-15-86 to 07-07-87	Expired
STURGIS/SHEFFIELD, INCORPORATED	SUR SUB	DR TP OR	07-26-82 to 07-26-86	Expired
TDA PRODUCTS, INCORPORATED	SUR SUB	DR TP OR	04-06-82 to 04-06-86	Expired

COMMENTS:

* = approval pending the results of onsite evaluation

** = subsea approval pending the results of onsite evaluation

ROTARY HELPER (RH)/DERRICKMAN (DM) SCHOOLS

No.	SCHOOL NAME	CLASS	APPROVED
1	ALASKA UNITED DRILLING COMPANY	RH DM	10-28-83
2	ALASKA VOCATIONAL TECHNICAL CENTER	RH DM	10-21-83
3	ANGLO ALASKA/NABORS ALASKA	RH DM	01-07-82
4	ATLANTIC PACIFIC MARINE CORPORATION	RH DM	12-11-79
5	ATWOOD GROUP, INCORPORATED	RH DM	08-08-79
6	ATWOOD OCEANICS, INCORPORATED	RH DM	09-07-79
7	BAILEY-SHANNON DRILLING	RH DM	11-16-81
8	BASIC RESEARCH AND TRAINING, INCORPORATED	RH DM	08-09-82
9	BOKENKAMP DRILLING COMPANY	RH DM	09-13-79
10	BOOKER DRILLING	RH DM	01-10-80
11	BROUGHTON DRILLING	RH DM	01-16-80
12	CACTUS INTERNATIONAL	RH DM	12-10-79
13	CANADIAN MARINE DRILLING LTD	RH DM	06-11-85
14	CHALLENGER DRILLING	RH DM	12-14-79
15	CHILES DRILLING COMPANY	RH DM	05-14-79
16	CIRCLE BAR DRILLING	RH DM	01-24-80
17	CYCLOPS DRILLING	RH DM	11-28-79
18	DAN-TEX INTERNATIONAL	RH DM	02-29-80
19	DIAMOND M. COMPANY	RH DM	03-01-79
20	DIXILYN-FIELD DRILLING COMPANY	RH DM	03-06-79
21	DOLPHIN-TITAN INTERNATIONAL	RH DM	05-07-85
22	DUAL OFFSHORE COMPANY	RH DM	12-06-79
23	FLUOR DRILLING SERVICE	RH DM	02-08-80
24	FLUOR OF CALIFORNIA	RH DM	06-07-84
25	GLOBAL MARINE DRILLING COMPANY	RH DM	03-06-79
26	GOLDRUS MARINE DRILLING	RH DM	10-28-80
27	GRIFFIN-ALEXANDER DRILLING	RH DM	08-26-80
28	HOUSTON OFFSHORE	RH DM	08-14-79
29	HOUTECH ENERGY	RH DM	05-07-85
30	HUTHANCE DRILLING COMPANY	RH DM	03-06-79
31	J.F.P. DRILLING COMPANY	RH DM	07-02-80
32	KEYES OFFSHORE	RH DM	11-01-79
33	LOFFLAND BROTHERS COMPANY	RH DM	01-24-80
34	MARINE DRILLING COMPANY	RH DM	03-20-79
35	MAURER ENGINEERING, INCORPORATED	RH DM	03-25-80
36	MAYRONNE COMPANY	RH DM	10-05-79
37	MORAN DRILLING CORPORATION	RH DM	03-25-80
38	MUDTECH	RH DM	11-07-79
39	NICKLOS DRILLING	RH DM	10-30-79
40	NOBLE DRILLING	RH DM	08-24-79

RH/DM SCHOOLS (continued)

No.	SCHOOL NAME	CLASS	APPROVED
41	O & U DRILLING	RH DM	08-20-79
42	OCEAN DRILLING & EXPLORATION COMPANY (ODECO)	RH DM	10-16-79
43	OILFIELD TRAINING SEMINARS	RH DM	03-07-85
44	OPERATORS, INC.	RH DM	06-14-79
45	PARKER DRILLING COMPANY	RH DM	07-02-84
46	PENROD DRILLING	RH DM	07-18-79
47	PETER BAWDEN DRILLING	RH DM	10-01-79
48	PHOENIX SEADRILL	RH DM	09-25-79
49	POOL OFFSHORE COMPANY	RH DM	11-20-79
50	PRENTICE & RECORDS ENTERPRISES, INCORPORATED	RH DM	02-15-79
51	PRENTICE TRAINING COMPANY	RH DM	05-29-85
52	READING & BATES DRILLING COMPANY	RH DM	05-19-78
53	ROWAN COMPANIES	RH DM	08-10-78
54	SAIPEM SpA	RH DM	05-10-85
55	SALEN OFFSHORE COMPANY	RH DM	03-20-79
56	SANTA FE DRILLING COMPANY	RH DM	10-17-79
57	SAVAGE DRILLING	RH DM	11-02-82
58	SCAN DRILLING COMPANY	RH DM	07-25-79
59	SEA DRILLING	RH DM	11-28-79
60	SEDCO FOREX	RH DM	06-11-82
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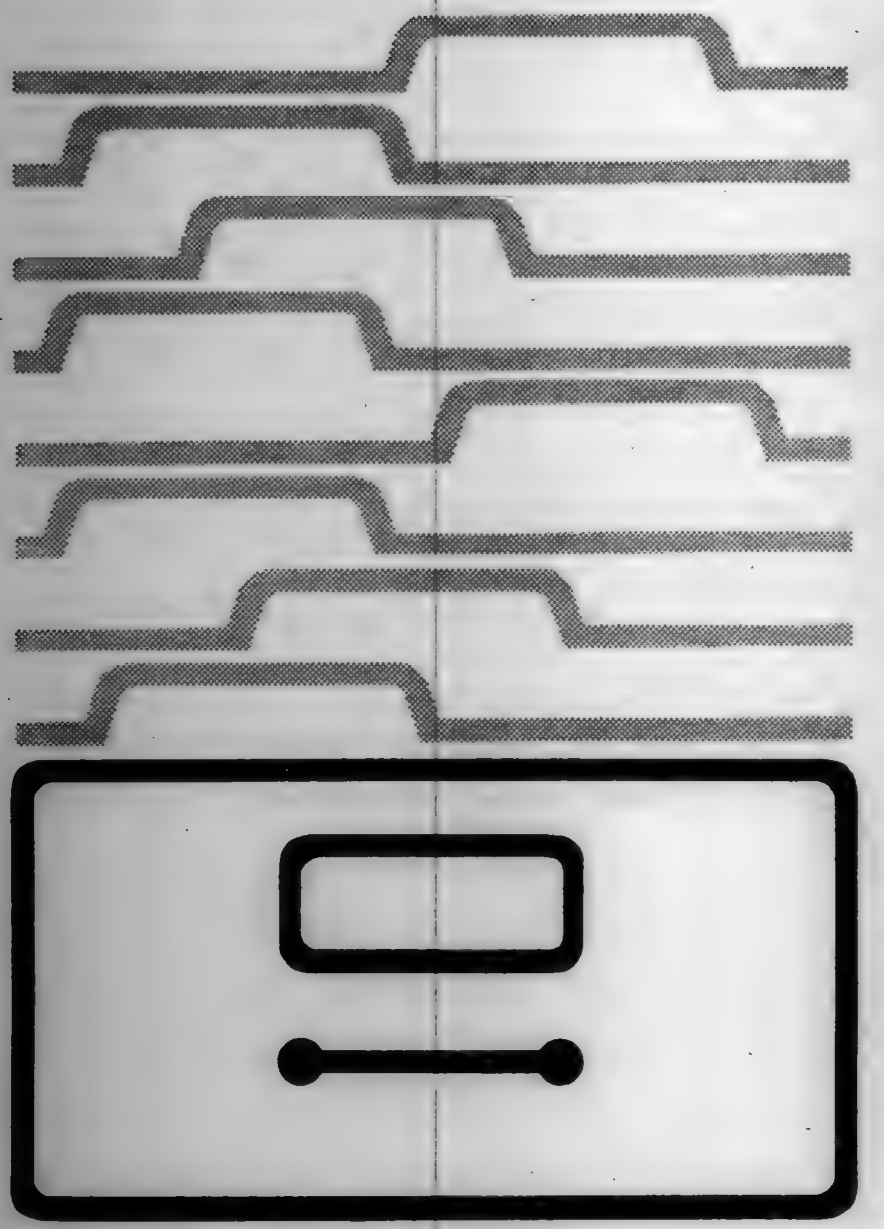

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Rules and Regulations

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 88–011]

Overtime Work at Border Ports, Sea Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for overtime work performed by Plant Protection and Quarantine inspectors of the U.S. Department of Agriculture at border ports, sea ports, and airports. The regulations are amended by: (1) Increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service; and (2) increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the employee's regular tour of duty. These increases reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), and Executive Order 12622 dated December 31, 1987.

EFFECTIVE DATE: March 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, National Administrative Planning and Operations Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7250.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not have a signficant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are amending the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at any airport outside of the regularly established hours of service. The rates are increased by $0.56 per hour for services performed outside the regularly established hours on a Sunday and by $0.40 per hour for services performed outside of the regularly established hours on a holiday or any other period.

We are also amending the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of the employee. The rates are increased by $0.64 per hour for services performed outside the regular tour of duty on a Sunday and by $0.48 per hour for services performed outside the regular tour of duty on a holiday or any other period.

Services of an employee of Plant Protection and Quarantine at an airport during regularly established hours and during a regular tour of duty are still provided free of charge to those requesting the service. Based on information compiled by the Department, we have estimated that Plant Protection and Quarantine provided an average of 9,467 hours per week of services for which charges were assessed during 1987, and these services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1988.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The hourly rate for services of an employee of Plant Protection and Quarantine depend entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. A cost analysis was performed to determine if fees for overtime are adequate to recover the cost of providing the services. Unless the rates are raised, the Department will not be able to recover the costs for providing services outside regularly established hours or outside regular tours of duty hours.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable, unnecessary, and contrary to the public interest; we also find good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Papework Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1(a)(1) is revised to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during the overtime or Sunday or holiday period, and shall pay the Government therefore at a rate of $33.28 per work-hour per employee on a Sunday and at the rate of $24.96 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $28.64 and for work performed outside of the regularly established hours of service for a holiday or any other period will be $21.48 per hour, which charges exclude administrative overhead costs.

* * * * *

Done at Washington, DC, this 4th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5189 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 602; Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period February 28, through March 5, 1988, from 335,000 cartons to 360,000 cartons. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulations 602, Amendment 1 (§ 910.902) is effective for the period February 28 through March 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee conducted a telephone poll on February 26, 1988, and, upon considering the current and prospective conditions of supply and demand, voted 10-3 to recommend that the quantity of lemons deemed advisable to be handled during the specified week be increased from 335,000 cartons to 360,000 cartons. The committee reports that the market for lemons has improved beyond what was anticipated by the Board on February 23, 1988, when the 335,000 cartons recommendation was made.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.902 is revised to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.902 Lemon Regulation 602, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period February 28, 1988, through March 5, 1988, is estalished at 360,000 cartons.

Dated: March 4, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5124 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1944 and 1965

Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Section 515, Rural Rental Housing Loan Policies, Procedures, and Authorizations. This action is taken to incorporate a change mandated by the Housing and Community Development Act of 1987. The intended effect of this action is to change the maximum contribution by the borrower to equity from 5 percent to 3 percent.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Karen King, Senior Loan Officer, Multi-Family Housing Processing Division, USDA, Farmers Home Administration, Room 5331, South Agriculture Building, Washington, DC 20250, telephone 202-382-1620.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. The Executive Order 12291 provision requiring submission to OMB 10 days prior to publication is waived due to the emergency situation created by the Act.

This action requries no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action.

The action is caused by an emergency situation exempt from the publication requirements of the Housing and Urban Rural Recovery Act of 1983.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking due to the emergency situation described below under Statutory authority.

Statutory Authority

The Housing and Community Development Act of 1987 has mandated that Section 515 of the Housing Act of 1949 be amended to require not more than a 3 percent contribution to equity by the borrower (the borrower currently has to supply a 5 percent contribution to equity).

Subpart E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations is being amended to implement this change. The change is being published as a Final Rule under Section 534(c) of the Housing Act of 1949, Title V, on an emergency basis. The following paragraphs provide a justification for publishing as a Final Rule on an emergency basis.

The current Regulation requires that borrowers supply at least a 5 percent contribution to equity. This is in direct conflict with the Congressional mandate of Pub. L. 100-242 which limits FmHA ability to require applicant contribution to equity to not more than 3 percent. The discrepancy between FmHA Regulation and Pub. L. 100-242 must be resolved before new loans can be approved.

This amendment is very straightforward. There are no administrative decisions for the Agency to make in implementation; the Agency is simply putting a statutory requirement in place. Therefore, to minimize the adverse impact on the program, the proposed rule stage is being waived and public comment is not being sought.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

List of Subjects

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, and Rural housing.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing-Rental, Mortgages and Rurals areas.

Therefore, 7 CFR Chapter XVIII, is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.205 [Amended]

2. In § 1944.205 paragraph (t) is amended by replacing "95 percent" with "97 percent".

§ 1944.211 [Amended]

3. In § 1944.211 paragraph (a)(4) is amended by replacing "5 percent" with "3 percent".

§ 1944.213 [Amended]

4. In § 1944.213 paragraph (a)(2) is amended by replacing "95" with "97" in both places it occurs.

5. In § 1944.213 paragraph (b)(11) is amended by replacing "5" with "3".

§ 1944.215 [Amended]

6. In § 1944.215 the introductory text of paragraph (l) is amended by replacing "5" with "3".

7. Section 1944.237 is amended by revising paragraphs (c)(1), (c)(2) and (d)(2) to read as follows:

§ 1944.237 Subsequent RRH loans.

* * * * *

(c) * * *

(1) If the applicant/borrower provided an initial investment greater than required under the initial FmHA loan, the excess may be credited toward the required 3 percent initial investment of the subsequent loan; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial O and M requirements.

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional 3 and 2 percent amounts to cover the subsequent loan.

(d) * * *

(2) The applicant/borrower must provide the initial 3 percent investment unless it provided more than the required initial investment when the initial loan was made. When the applicant/borrower has more than the required amount invested in the initial loan, the excess may be credited toward the required 3 percent investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA loan.

* * * * *

Exhibit A–6 of Subpart E [Amended]

8. In Exhibit A–6 of Subpart E, paragraph I.A.(6) is amended by replacing the term "5 percent" with "3 percent".

PART 1965—REAL PROPERTY

9. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

10. In § 1965.65, the introductory text of paragraph (c)(10) is amended by removing the phrase "5 percent of the original loan amount" in the fourth sentence and replacing it with "the amount shown in the transferor's loan agreement/resolution".

11. In § 1965.65 paragraph (c)(10)(ii) is amended by inserting the phrase "(97% for loan agreements dated on or after March 11, 1988)" after the "95%".

12. In § 1965.65 paragraph (c)(10)(iii) is amended by inserting the phrase "(3% for loans approved on or after March 11, 1988)" after the "5%".

Dated: February 23, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–5125 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 88–010]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for overtime work performed by Veterinary Services inspectors of the U.S. Department of Agriculture at laboratories, border ports, ocean ports, and airports. The regulations are amended by: (1) Increasing the hourly rates charged an owner or opertor of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service; and (2) increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Veterinary Services on a Sunday or holiday or at any other time outside the employee's regular tour of duty. These increases reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), and Executive Order 12622 dated December 31, 1987.

EFFECTIVE DATE: March 13, 1988.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are amending the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service. The rates are increased by $0.56 per hour for service performed outside of the regularly established hours on a Sunday and by $0.40 per hour for services performed outside of the regularly established hours on a holiday or any other period.

We are also amending the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of the employee of Veterinary Services on a Sunday or holiday or at any other time outside the regular tour of duty of the employee. The rates are increased by $0.64 per hour for services performed outside the regular tour of duty on a Sunday and by $0.48 per hour for services performed outside the regular tour of duty on a holiday or any other period.

Services of an employee of Veterinary Services at an airport during regularly established hours and during a regular tour of duty are still provided free of charge to those requesting the service. Based on information compiled by the Department, we have estimated that Veterinary Services provided an average of 979 hours per week of services for which charges were assessed during 1987, and these services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1988.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The hourly rate for services of an employee of Veterinary Services depends entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. A cost analysis was performed to determine if fees for overtime are adequate to recover the cost of providing the services. Unless the rates are raised, the Department will not be able to recover the costs for providing services outside regularly established hours or outside regular tours of duty hours.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable, unnecessary, and contrary to the public interest; we also find good cause that this rule be made effective less than 30 days after publication of this document in the Federal Register.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. The first sentence of § 97.1(a) and the last sentence of § 97.1(b) are revised to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and Subchapter G of this Chapter, and who requires the services of an employee of Veterinary Services on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Veterinary Services provided in paragraph (b) of this section, shall pay the Government therefor at a rate of $33.28 per work-hour per employee on a Sunday and at the rate of $24.96 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, that total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(b) * * * When services are performed outside of the regularly established hours of service on a holiday or Sunday or any other day, the rate to be charged owners or operators of aircraft shall be $28.64 per hour on a Sunday and $21.48 per hour on a holiday or any other day, which charges exclude administrative overhead costs.

* * * * *

Done in Washington, DC, this 4th day of March 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–5188 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 317, 318 and 381

[Docket No. 87-006F]

Glucono Delta-Lactone as an Acidifier in Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations and the poultry products inspection regulations to permit the use of glucono delta-lactone as an acidifier in meat food and poultry products. FSIS has also been petitioned to approve the use of glucono delta-lactone as an acidifier alternate to encapsulated lactic acid (lactic acid and calcium lactate) in the binder matrix containing sodium alginate and calcium carbonate used in the production of restructured meat food products. The Food Safety and Drug Administration has affirmed glucono delta-lactone as generally recognized as safe (GRAS) for use as a direct human food ingredient. FSIS has determined that it is now appropriate to add glucono delta-lactone to the tables of substances as an alternate acidifier in the aforementioned binder matrix, and to the list of acceptable acidifying agents in the Federal meat and poultry products inspection regulations. This action will provide for the use of an additional acidifier.

EFFECTIVE DATE: April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule would not be a major rule under Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

OL 53 ISS 46 MR 9 988 MI

This final rule provides for the use of glucono delta-lactone as an alternate acidifier in an approved meat binder, and as a general acidifier in various meat and poultry products. Industry may benefit from this action through the ability to use a wider variety of acidifying agents. Use of glucono delta-lactone is voluntary. Firms may choose to use this substance or they may use other acidifiers currently permitted in the regulations.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking would impose no new requirement on industry; rather, it would permit the meat and poultry industries to use a wider variety of acidifiers in formulating meat food and poultry products. The use of glucono delta-lactone would be voluntary.

Background

This is a final rule issued without prior proposal for public comment under authority of § 318.7(a) of the Federal meat inspection regulations (9 CFR 318.7(a)). Under that provision, the Administrator may approve new substances, new uses, or new levels of substances in meat or meat food products provided that (1) the substance has been previously approved by the Food and Drug Administration (FDA) for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe, and is listed in 21 CFR Parts 73, 74, 81, 172, 173, 179, 182, or 184, and (2) that its intended use would be in compliance with applicable FDA requirements. If these criteria are met, the Administrator may issue a final rule without prior proposal for public comment upon further finding that (1) the use of the substance will not render the product in which it is used adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), and (2) that the substance is functional and suitable for the product and is permitted for use at the lowest level necessary to accomplish the stated technical effect.

FSIS is amending the Federal meat inspection regulations and the poultry products inspection regulations to permit the use of glucono delta-lactone as an acidifier in meat food and poultry products. In addition, FSIS has been petitioned by Finnsugar Biochemicals, Inc., to approve the use of glucono delta-lactone as an alternate acidifying agent to encapsulated lactic acid (lactic acid and calcium lactate) in the binder matrix containing sodium alginate and calcium carbonate for use in restructured meat food products. This request is a follow-up to the final rule approving a binder consisting of sodium alginate, calcium carbonate, lactic acid and calcium lactate for use in restructured meat food products published in the Federal Register on August 18, 1986 (51 FR 29456). Colorado State University researchers submitted supporting data for use of glucono delta-lactone in their original petition to FSIS for the aforementioned binder. However, glucono delta-lactone did not yet have GRAS affirmation by the FDA. Consequently, Colorado State researchers revised their petition by substituting encapsulated lactic acid for glucono delta-lactone in the binder matrix even though their data suggested that glucono delta-lactone performed better as the acidifying agent and was less expensive as an ingredient.

As an acidulant, glucono delta-lactone has unique functional properties. In the crystalline state, glucono delta-lactone is not an acid, but in the presence of water it slowly hydrolizes into gluconic acid. This is a very weak and bland tasting acid. Its rate of hydrolysis is temperature-dependent and virtually no acid is formed at refrigerated temperatures. This unique ability provides processors with greater flexibility during formulation and production. Data on the functions and properties of glucono delta-lactone are available free of charge from the Standards and Labeling Division at the address given under "For Further Information Contact."

Glucono delta-lactone was affirmed as GRAS by the FDA on September 24, 1986, for use as a direct human food ingredient (51 FR 33896). It is also listed in the Federal meat inspection regulations in 9 CFR 318.7(c)(4) as a color fixing accelerator permitted for use in cured, comminuted products and genoa salami. FDA advised FSIS on April 23, 1987, in an opinion letter that "the proposed use of glucono delta-lactone either as an acidifier in meat and poultry products or as an alternate acidifier to encapsulated lactic acid in restructured meat food products is consistent with the use as a 'pH control agent' listed in 21 CFR 170.3(o)(23)." FDA advised further that it saw no conflict between the provisions of 21 CFR 184.1318 and our proposed uses.

FSIS has determined, based on its technical review of available data and information, that these two uses of glucono delta-lactone are appropriate. FSIS has also determined that the following use levels will accomplish the desired technical effects: (1) Glucono delta-lactone as an acidifier—an amount sufficient for purpose (this amount is determined on a case-by-case basis during label review by the Standards and Labeling Division); (2) glucono delta-lactone as an acidifier alternate in the binder matrix—0.3 percent of product formulation in place of lactic acid and calcium lactate.

The Administrator concurs with FDA's conclusions regarding the safety and uses of the substance in meat food and poultry products. He further finds that information provided by petitioner and other data available to the Agency indicates that (1) the proposed use of this substance as described will be in compliance with applicable FDA requirements, (2) its use will be functional and suitable for the products intended, (3) the substance will be used at the lowest level necessary to accomplish the intended technical effect, and (4) the use of this substance will not render the products in which it is used, adulterated, misbranded, or otherwise not in compliance, with the Federal Meat Inspection Act.

Therefore, the FSIS is amending the tables of approved substances in the Federal meat and poultry products inspection regulations (9 CFR §§ 318.7(c)(4) and 381.147(f)(4)) to include the use of glucono delta-lactone as an acidifier in various meat food and poultry products and as an acidifier alternate in place of encapsulated lactic acid when used in the binder matrix containing sodium alginate and calcium carbonate for addition to restructured meat food products.

This approval of glucono delta-lactone as an acidifier alternate in the binder matrix containing sodium alginate and calcium carbonate necessitates a technical amendment to labeling provisions contained in § 317.8(b)(36) of the Federal meat inspection regulations (9 CFR § 317.8(b)(36)). This section requires that whenever this binder matrix is added to restructured meat food products, a statement indicating the use of these substances must appear contiguous to the product name. Therefore, § 317.8(b)(36) is being amended to reflect the approval of glucono delta-lactone as an acidifier alternate, which, when used in the matrix, requires its declaration contiguous to the product name.

List of Subjects

9 CFR Part 317

Meat inspection, Food labeling.

9 CFR Part 318

Food additives, Meat inspection.

9 CFR Part 381

Food additives, Food labeling, Poultry, Poultry products and inspection.

For the reasons set out in the preamble, Parts 317, 318 and 381 are amended as set forth below.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Paragraph (b)(36) of § 317.8 is revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(36) When sodium alginate, calcium carbonate, and lactic acid and calcium carbonate (or glucono delta-lactone) are used together in a dry binding matrix in restructured, formed meat food products, as permitted in Part 318 of this subchapter, there shall appear on the label contiguous to the product name, a statement to indicate the use of sodium alginate, calcium carbonate and lactic acid and calcium carbonate (or glucono delta-lactone).

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Section 318.7(c)(4) is amended by adding the substance "glucono delta-lactone" to the chart of substances. This substance is placed in alphabetical order (1) under the class of substances entitled "Acidifiers," and (2) under the class of substances entitled "Binders" in the entry entitled "A mixture of sodium alginate, calcium carbonate, lactic acid and calcium lactate" as follows:

§ 318.7 Approval substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Glucono delta-lactone	do	do	Do.
Binders	A mixture of sodium alginate, calcium carbonate, and calcium lactate/lactic acid (or glucono delta-lactone).	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Ingredients of mixture must be added dry.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted:

6. Section 318.147(f)(4) is amended to add the substance "glucono delta-lactone" to the chart of substances. This substance is placed in alphabetical order under the class of substances entitled "Acidifiers" as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Glucono delta-lactone	do	do	Do.

Done at Washington, DC, on: March 4, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 5126 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM86-14-001; Order No. 483-A]

Revisions to the Purchased Gas Adjustment Regulations

Issued March 2, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 483) on November 10, 1987, in Docket No. RM86-14-000, amending its regulations governing the procedures by which a natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. (Revisions to

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the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987), III FERC Stats. & Regs., ¶ 30,788.)

This order grants rehearing of Order No. 483 in part and denies rehearing in part and clarifies in response to 18 requests for rehearing filed in response to the final rule.

EFFECTIVE DATE: This rule is effective April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8020

For Further Technical Information Contact: Sherri L. Booye, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The FERC Form No. 542–PGA (Form 542), although not published in this order, is currently available at the Division of Public Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, during regular business hours.

Order on Rehearing

Before Commissioners Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

On November 10, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 483) amending its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers.[1] In that rule, the Commission retained the existing PGA mechanism consisting of a current adjustment and surcharge rate adjustment to the base rates a pipeline establishes in a NGA section 4 general rate proceeding. The rule requires a pipeline to revise its projections of gas costs four times per year.

Under the rule, a pipeline submits a current adjustment that reflects three months of projected gas costs in an annual PGA filing and in three quarterly PGA filings which will track any changes in gas costs that occur after the annual filing becomes effective. The final rule established a schedule of annual and quarterly PGA effective dates for each pipeline that filed a PGA under the former PGA regulations. The final rule also permitted a pipeline to use its flexible PGA tariff as an optional cost tracking mechanism.

This order grants clarification and rehearing of Order No. 483 in part and denies rehearing in part in response to 18 requests for rehearing filed in response to the final rule.[2] [3]

II. Discussion

A. Projections of Gas Costs for the Current Adjustment

1. *Changes in Pipeline Supplier Rates.* Columbia Gas Transmission Corporation's (Columbia) and Columbia Gas Distribution Companies' (CDC) request the Commission to allow a pipeline to include in its current adjustment cost estimates based on a pipeline supplier's suspended rate which will come out of suspension during the PGA effective period.

The Commission agrees with Columbia and CDC. Under current Commission policy, when a pipeline supplier files a section 4(e) general rate increase, it is often suspended by the Commission to take effect, subject to refund, at a later date. In fact, the Commission suspends rate filings if a preliminary study leads the Commission to believe that the filing may be unjust, unreasonable or inconsistent with other statutory standards.[4]

The Commission is modifying its regulations. This change will result in a more accurate projection of the gas costs a pipeline will experience and should prevent the pipeline from undercollecting its gas costs when a pipeline supplier's rates increase during the effective period of the PGA.[5]

2. *Spot Market Projections.* Enron Interstate Pipeline (Enron) argue that it is unnecessary for a pipeline to provide additional detailed support in the PGA for projected spot market purchases. The Commission required the filing of additional information in the final rule because it was concerned that spot market transactions are typically of short duration and the cost of a spot market purchase is usually much lower than the cost of a long term supplement commitment.

However, the Commission no longer believes that detailed support for spot gas projections is necessary. As argued by Enron, the final rule's provisions relating to the assessment of past performance should provide an adequate oversight of the accuracy of a pipeline's projections of gas costs.[6] However, the Commission is still requiring a pipeline to project its spot purchases in accordance with the provisions for estimating supplier costs in § 154.305(c)(1) (i) and (ii), as amended by this order. Also, a pipeline will be required to support its spot market projections in conjunction with the assessment of past performance.

3. *Estimates of Contract Prices Undergoing Renegotiation.* In the final rule, the Commission permitted estimates of gas purchase prices to allow for known and measurable changes that occur during the PGA effective period based on contractual obligations. However, the Commission will not permit pipelines to estimate the price of contracts that are undergoing renegotiation, as requested by ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG) and Enron on rehearing. As the Commission recently noted,[7] projections of gas prices in contracts undergoing renegotiation are too speculative to accurately reflect future costs.[8]

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[1] Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov 17 1987), III FERC Stats & Regs. ¶ 30,778.

[2] *See* Appendix for complete listing of persons filing requests for rehearing or clarification.

[3] As a final background note, the Commission observes that Order No. 483 is a complex, 172 page document that does not lend itself to brief summarization. Therefore, this rehearing order proceeds on the assumption that the reader is already familiar with Order No 483 and that the issues on rehearing may discussed here with a minimum of explanatory background

[4] *See e.g.,* Great Lakes Gas Transmission Co., 13 FERC ¶ 61,292 (1980).

[5] Section 154.305(c)(1)(ii) provides that the projected rate for pipeline supplier costs will be the rate in effect as of the effective date of the PGA filing. Consolidated Gas Transmission Corp. (Consolidated) argues that this provision prevents a pipeline from estimating the rate of its pipeline supplier when both pipelines' rates are effective on the same date Consolidated is incorrect In fact, the pipeline may estimate the rate of an upstream pipeline supplier that will become effective on the same date as the estimating pipeline's PGA

[6] Section 154.308.

[7] Colorado Interstate Gas Company 37 FERC ¶ 61,300 (1986).

[8] ANR/CIG's argument that many existing tariffs allow pipelines to include estimates of contract prices undergoing renegotiation is incorrect The Commission recognizes that some pipeline that now file annual PGAs have tariffs that allow some

Continued

The Commission disagrees with ANR/CIG's interpretation that the final rule restricts a pipeline's ability to project market-out prices. The Commission is clarifying that a pipeline's plan to exercise its contractually authorized market-out rights in an upcoming PGA period, is a known and measurable change that the pipeline could include in its gas cost projections under § 154.305. Also, a pipeline may file an interim adjustment under § 154.309 on 24-hours' notice to reflect market-outs in its rates.

4. *Effect of 60-day Notice Period on Cost Projection in the Annual PGA.* The Commission agrees with the arguments that the annual PGA 60-day notice requirements makes it harder for a pipeline to project gas costs for the current adjustment accurately.[9] Therefore, the Commission will accept revisions to the original projections of gas costs contained in Schedule A–1 up to 30 days before the effective date of an annual PGA.[10] The revision to the cost projection will be optional, will be filed in the quarterly format specified by the FERC Form No. 542–PGA, and will not require a filing fee.

The Commission agrees with Panhandle/Trunkline that NGA section 4(d) requires a pipeline to provide a minimum 30-day notice before its rates can go into effect. However, the NGA does not preclude a pipeline from voluntarily providing more than 30-days notice in return for receiving a PGA mechanism.

B. Refunds

1. *Amounts Included in the Refund Subaccount.* Order No. 483 requires a pipeline to maintain a separate refund subaccount in Account No. 191 in which supplier refunds, billing adjustments, and revenue credits are recorded.[11] These amounts will be disbursed in lump sum to the pipeline's customers when the refund subaccount reaches a set amount.[12] A pipeline must record in the refund subaccount all past period credit billing adjustments that decrease gas costs, including meter or computation adjustments. However, all past period debit billing adjustments that increase gas costs must be recorded in the other subaccounts of Account No. 191 to be collected through the annual PGA surcharge adjustment.

Several pipelines argue on rehearing that the deferred gas costs in Account No. 191 will be distorted if past period amounts in settlement of gas purchase transactions are separated.[13] The Commission intends that the lump sum refund requirement will operate to ensure that a large credit balance in the deferred account does not accumulate so as to distort current rates. Accordingly, the Commission will require pipelines to offset the refund, billing adjustment, and revenue credit subaccount balance with past period debit billing adjustments.[14] However, a pipeline still will be prohibited from offsetting refunds against current period deferred purchased gas costs and a pipeline still must maintain a separate refund subaccount.

The Commission will require each component of the amount ultimately paid to a supplier to be separately identified in the refund subaccount. In other words, a pipeline may not "net" past period debit against past period credit billing adjustments before it records the remainder in the refund subaccount. Because credit billing adjustments are treated as refunds for purposes of computing carrying charges, they must be separately identified.

Some pipelines state that their accounting systems cannot report the discrete components of each gas purchase transaction.[15] Therefore, the Commission will consider a pipeline's request for waivers of the refund reporting requirements on a case-by-case basis.

A pipeline is required to record all out-of-period debit billing adjustments in the refund subaccount every month. If the resulting balance is a net debit balance, a pipeline must carry the refund subaccount balance forward to the next month. The next month's credit billing adjustments, refunds, and revenue credits would be offset against this net refund subaccount balance. At the end of the deferral period a net debit balance must be transferred to the current deferral subaccount.

If after a month's entries are recorded to the refund subaccount, the result is a net credit balance, and the refund disbursement level is reached, a pipeline must make a cash refund. If a net credit balance remains at the end of the deferral period the pipeline may either make a cash refund or transfer the balance to the current deferral subaccount.

When a refund subaccount debit or credit balance is transferred to the current deferral subaccount, a pipeline must treat the credit component as refunds for purposes of computing carrying charges. The pipeline must continue to treat these credits as refunds when computing carrying charges until the effective date of the surcharge rate that amortizes the current deferral subaccount balance.

2. *Pipeline Supplier Refunds.* The Commission will not allow a pipeline to credit its deferred purchase gas costs in Account No. 191 when it receives refunds from an upstream pipeline supplier. Columbia and Consolidated contend that a pipeline supplier's rates are generally higher than the rates ultimately determined through settlement and hearing to be just and reasonable. The Commission often suspends the effectiveness of a pipeline's rate change for up to five months. While the pipeline's rate change is suspended it cannot cause a significant buildup of the deferred account balance of a downstream pipeline.

3. *Refund Disbursement.* In response to arguments raised by ANR/CIG and El Paso, the Commission is amending the regulations [16] to require a pipeline to make cash refunds within 90 days after the month in which the refund subaccount balance reaches the disbursement level. Although the Commission required in the final rule that cash refunds be made within 30 days, monthly actual purchased gas costs are determined on a 60-day accounting cycle.[17] Therefore, a pipeline may not be able to determine the extent of all the transactions in the refund subaccount until 60 days after an accounting month.

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latitude to estimate some costs during the 12-month PGA period. However, no tariff on file with the Commission gives a pipeline the authority cited by ANR/CIG.

[9] *See.* Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle/Trunkline) and Texas Eastern Transmission Corporation (TETCO).

[10] The Commission also will consider on a case-by-case basis allowing a pipeline to make an adjustment to the surcharge rate in effect during an annual PGA period should a pipeline experience a substantial unexpected gain or loss of sales load.

[11] Section 154.305(i).

[12] Under § 154.305(i)(1)(iii), this amount is the lesser of $2 million or one cent per MMBtu of a pipeline's most recent 12 months of sales.

[13] *See, e.g.,* El Paso Natural Gas Co. (El Paso), Enron, Panhandle/Trunkline, Tennessee Gas Pipeline Co. (Tennessee), and Transcontinental Gas Pipe Line Co. (Transco).

[14] Debit billing adjustments are defined as any pricing adjustments that are increases to a prior month's actual gas costs and are recorded outside the prior month's 60-day billing and payment cycle.

[15] El Paso claims that its purchase gas account settlement system can only retrieve the net amounts payable to a supplier. Northwest Pipeline Corporation (Northwest) states that it previously received special accounting and reporting relief in Docket No. SA82–31–001 because the company cannot separately track prior period adjustments and billing adjustments for purchases from unitized wells. The PGA refund accounting rules are not intended to terminate the relief given Northwest in Docket No. SA82–31–001.

[16] Section 154.305(i)(1)(iii). The Commission is also adding the term "billing adjustment" because it was inadvertently omitted from the regulations in Order No. 483.

[17] Section 154.305(g)(1)(iii).

The Commission is not changing the refund disbursement level or providing for semi-annual refunds as suggested by Panhandle/Trunkline. In fact, the lump sum refund requirement ensures that customers are actually provided with the benefits of the refunds a pipeline obtains. If a pipeline includes refunds in Account No. 191 and offsets refunded amounts against costs incurred, that pipeline may simply absorb the refund amounts by incurring additional gas costs or by delaying cost reductions. The Commission established the refund disbursement levels in the final rule based on the level of refunds and total system sales reported in the Annual Report of Major Natural Gas Companies (FERC Form No. 2) of several pipelines.[18] The Commission believes that the disbursement level it established will ensure that pipeline customers receive refunds as soon as possible. Furthermore, the Commission believes that a pipeline will want to reduce the amount in its refund subaccount as soon as possible because interest also is computed on the refund balances and disbursed to customers.

Arizona Direct Customers (Arizona) argue that pipelines should allocate cash refunds of past period overcharges by matching customers' purchases to actual sales levels during the period of overcharges.[19] The Commission declines to adopt Arizona's suggestion. To do so on a generic basis would be administratively burdensome. Instead, the Commission intends to consider requests for a special allocation of extraordinary prior period refunds on a case-by-case basis.

C. Storage Issues

1. *Effect of Storage Inventory Accounting on Quarterly Adjustments.* The Commission is not amending its regulations to allow pipelines to make annual estimates of their supply and requirements for the quarterly PGA adjustment, as requested by Consolidated, Columbia, and National Fuel Gas Supply Corporation (National Fuel). These pipelines have large gas storage operations and use the "Last In First Out" (LIFO) storage inventory costing methodology. They contend that the quarterly current adjustments will result in significant price swings, artificially inflated demand and commodity rates in winter, and artificially decreased demand rates in summer.[20]

In Order No. 483, the Commission noted that it had rejected an annual supply and requirements proposal of Consolidated's in 40 FERC ¶ 61,205 (1987). On rehearing, Consolidated states that the Commission ultimately approved its proposal. The Commission's approval of Consolidated's tariff revision under the former PGA regulations to use annualized supply and requirement estimates is not a precedent for this proceeding. The emphasis of the revised PGA regulations is on rapid transmission of market signals which is inconsistent with the annualization of current costs.

The Commission recognizes that pipelines with extensive storage operations that employ an annualized LIFO inventory costing methodology experience fluctuating commodity rates.[21] Therefore, the Commission will consider a company's allegation that storage accounting causes significant price swings between quarterly adjustments on case-by-case basis. However, the Commission believes that those costs as incurred and adjusted for storage are representative of the costs a pipeline will incur during the PGA period and should be passed through on a quarterly basis.

2. *Adjustment to the Carrying Charge Base for Estimates of Storage Costs.* Order No. 483 requires a pipeline to reduce its carrying charge base in Account No. 191 for computing interest to a cash basis if it uses estimates to compute storage costs. The carrying charge base must be adjusted for the difference between the estimated storage gas rates and storage gas rates computed using a rolling weighted average inventory costing methodology.[22]

Natural Gas Pipeline Company of America (Natural) requests that the Commission allow it to incorporate in its next general rate case an appropriate procedure to achieve the effect of a cash-based Account No. 191 and eliminate the use of estimated storage rates reflect a LIFO inventory allowance that was based on estimates. However, Natural's current LIFO credit does not result in a cash based Account No. 191 because storage inventory is considered as part of the rate base.

The Commission will require Natural to compute carrying charges only on the cash balances in Account No. 191. Even a pipeline with a current LIFO credit in its base rate must compare the difference between the cash-based Account No. 191 and the credit in its rate base and return any difference to its jurisdictional customers. However, the Commission will consider other suggestions as to how to compute a cash-based Account No. 191 for carrying charge purposes.

Enron requests clarification of whether a rolling weighted average inventory costing methodology would include the costs and volumes associated with cushion gas (Account No. 117) and those costs and volumes associated with cycle gas (Account Nos. 164.1 and 164.2): The rolling weighted average inventory costs should be determined using those volumes and costs that are part of the cycle gas because cycle gas is sold and replaced by the pipeline. However, a pipeline should not include cushion gas to determine its rolling weighted average inventory costs unless those volumes are withdrawn from storage for resale to its customers. Ordinarily, cushion gas is not sold and replaced by the pipeline.

Transco argues that the carrying charge base adjustment for LIFO storage estimates would require the company to maintain two sets of accounting records to differentiate between the LIFO valuation of storage costs and storage costs determined using a rolling weighted average inventory costing methodology. The Commission believes that most pipelines have all the data necessary to compute the rolling weighted average inventory costing methodology without keeping two sets of books. However, even if a company has to maintain two sets of books, the benefit to the customer and the pipeline of receiving the time value of funds out-of-pocket outweighs any additional accounting burden.

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[18] See discussion in the Preamble to the Notice of Proposed Rulemaking (NOPR), Revisions to the Purchased Gas Adjustment Regulations, IV FERC Stats. & Regs. ¶ 32,443 at 30,469 (1987).

[19] Under § 154.305(i)(2), a customer's share of the cash refund is determined by reference to the customer's purchases and the pipeline's actual sales during the 12-month period ending three months prior to the month that the disbursement level is reached.

[20] When these pipelines inject gas into storage during summer, the injections are priced at an annualized LIFO rate and are treated as a credit to purchased gas costs. When the pipelines withdraw gas from storage during winter, the withdrawals are priced at the annualized LIFO rate and are treated as a debit to purchased gas costs. The annualized LIFO rate is equal to the estimated average annual purchased gas unit cost and may include demand costs if gas purchased from a pipeline with a two-part rate is in the storage inventory.

[21] National Fuel includes in Appendix A of its request for rehearing an illustration of the effect storage gas costs have on the quarterly commodity rates during the year.

[22] Order No. 483 defined "rolling weighted average inventory costing methodology," in § 154.302(e), as a way to price gas inventory where injections are priced at the month's jurisdictional system cost of purchase gas and withdrawals are priced by dividing the total purchase costs of the gas in storage by the quantity of gas in storage.

D. Schedule of Annual and Quarterly PGA Effective Dates

Three pipelines request the Commission to change the PGA effective dates established for them in Order No. 483.

Consolidated requests that its annual PGA effective date be changed from June 1 to September 1, in order to maintain a consistent amortization of its Account No. 191 balance. Consolidated states that its current annual surcharge is effective on September 1. National Fuel requests that its annual PGA effective date be changed from February 1 to January 1 because its largest pipeline supplier, Tennessee, has a January 1 annual PGA effective date. Neither pipeline requested a change of PGA effective dates in their comments filed in response to the NOPR.

Panhandle and its subsidiary Trunkline renew their request to have the same annual PGA effective date instead of Panhandle's March 1 date and Trunkline's September 1 date. They argue that this change would allow Panhandle to track Trunkline's rates without the need for special tracking filings. The Commission previously denied this request in Order No. 483.

The Commission is granting Consolidated's and National Fuel's requests. The Commission is persuaded that its transition procedures would prevent Consolidated from recovering nearly 20 months of its deferred purchased gas costs, until its second annual PGA filing to be effective June 1, 1989.[23] Similarly, the change of National Fuel's effective date will enable the company to track its major pipeline supplier's rates on a more current basis.

The Commission is affirming its denial of Panhandle/Trunkline's requests for a change in PGA effective date. As the Commission stated in Order No. 483, to do so would disrupt the balanced schedule of effective dates the Commission established because of the number of pipelines that track these companies' rates. The Commission recognizes that Panhandle must file its March 1 annual PGA 30 days before Trunkline's March 1 quarterly PGA is filed. However, Pandhandle can amend its current adjustment 30 days after filing to reflect Trunkline's March 1 PGA under new § 154.305(c)(4).

E. Accounting Cycle for Determining Monthly Actual Purchased Gas Costs

The Commission is clarifying in this order that pipelines must determine their monthly actual purchased gas costs using a 60-day billing and payment cycle.[24] As discussed in Order No. 483, the Commission's experience with gas purchase contracts and the terms of gas sales service agreements in pipeline tariffs indicates that the majority of gas purchase transactions anticipate the completion of a gas purchase transaction within 60 days.[25]

The Commission agrees with ANR/CIG and Transco that certain transactions involving marketing affiliate purchases and purchases at the tailgate of gas processing plants have extended billing and payment cycles. However, the Commission believes that a pipeline should determine the cost of its gas purchases as soon as possible. If it does so, it will be better able to compete. Therefore, a pipeline should shorten its billing and payment cycle for gas payments from its marketing affiliate or purchases behind the plant. The Commission notes that an extended billing and payment cycle is only important to a pipeline when it determines its actual costs under the assessment of past performance procedures. If the pipeline does not have the ability to change its billing and payment cycle, the pipeline will have the opportunity to explain why the exclusion of certain transactions caused the pipeline to exceed the three-percent margin for underrecoveries.[26]

F. Assessment of Past Performance

The Commission established procedures to review a pipeline's performance in projecting gas costs during the 12-month deferral period when the company files its annual PGA filing. Without prior Commission approval, a pipeline may include in its surcharge balance any underrecovered actual gas costs accumulated in each of its four test intervals, provided these underrecovered gas costs do not exceed, in each interval, three percent of the company's projeted gas costs. The Commission received requests to rehear several aspects of the procedures that relate to its assessment of past performance.

1. *Actual costs included in the Assessment of Past Performance.* The regulations require a pipeline to include all its valid actual gas supply costs. For purposes of the performance test, actual gas costs are those amounts known or paid within the 60-day accounting cycle (as determined in § 154.305(g)(1)). The Commission excluded from the test adjustments for exchange and transportation imbalances and all prior month adjustments (§ 154.306(d)). However, it included in the test actual amounts of Canadian gas costs, demand charges, pipeline supplier costs, and minimum bill costs if these costs were projected as gas costs during the test period.

ANG/CIG and El Paso request the Commission to clarify whether adjustments should be included in the assessment test. They explain that in certain situations a pipeline may not receive billings for gas purchases promptly. Therefore, they argue that their unadjusted gas costs will not be accurate.

The Commission recognizes that certain gas purchase transactions may involve accounting cycles beyond the 60-day billing and payment cycle established in the regulations. Therefore, the Commission is clarifying that a pipeline may use any out-of-period costs attributable to delayed billing transactions to justify why it exceeded the three-percent margin for underrecoveries during the test period. However, a pipeline must first compute the test without using out-of-period adjustments. Then, the Commission will permit the pipeline to recalculate the test by moving the adjustments from the month they were recorded into the applicable purchase month to satisfy the assessment. When it recalculates the test, the pipeline must separately identify the adjustments. Also, the Commission will not permit a pipeline to use only credit adjustments to bring its monthly deferrals within the appropriate level for surcharge recovery.[27]

In response to El Paso, the Commission is clarifying that a pipeline may include billing adjustments as actual gas costs for the assessment of past performance if they are attributable to quantities of gas purchased and received during a month, and if the billing adjustments are made or known within 60 days of that month. However, a pipeline must include billing adjustments in the refund subaccount even though they were made (or known) within 60 days after a purchase month if the credit adjustments are not related to gas purchased and received during the purchase month.[28]

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[23] In Order No. 483, the Commission granted Mountain Fuel Resources, Inc. a change in effective date so the company could maintain a consistent amortization of its surcharge balance.

[24] The Commission will continue to require a pipeline to record as an accrued expense (unpaid accrual) known amounts that remain unpaid after the 60-day billing and payment cycle, instead of 90 days as suggested by ANR/CIG.

[25] See ANR/CIG, Exxon, Transco.

[26] This should alleviate Tenneco's concern over the accounting cycle for Plant Volume Reduction (PVR) credits it receives for volumes of purchased gas lost during plant processing operations.

[27] For example, a pipeline may not include only credit billing adjustments to lower a test interval's actual cost of gas if the pipeline also receives debit billing adjustments applicable to that test interval's purchase volumes.

The Commission agrees with arguments that pipeline supplier demand costs should not be included in the assessment of past performance if a pipeline has a two-part rate structure.[29] The purpose of the test is to ensure that customers receive the most accurate price signals for the gas they purchase. Unlike commodity costs, demand costs are charged to a pipeline and passed on to the pipeline's customers based on predetermined billing determinants. Neither a pipeline nor its customers, therefore, have any discretion to pay for these costs. Instead, customers make purchasing decisions on the basis of the relative variable costs amongst supply options. Since the assessment test's purpose is not served by reviewing demand costs, the Commission will exclude from the test any demand costs that are permitted to be passed through a pipeline's two-part rates on an "as billed" basis. However, pipelines with one-part rates may not adjust for demand costs because these costs are imbedded in the overall rate charged their customers and could impact the market signals sent by the commodity portion of the rate.

The Commission is requiring a pipeline to include the commodity portion of its pipeline supplier costs in the assessment review. This is because the pipeline has control over the amount of its pipeline supply purchases, even though it may not control the rates charged by its pipeline suppliers.

The Commission also received arguments that storage operations cause fluctuations in gas costs which are beyond the control of the pipeline.[30]

Since the Commission considers storage as legitimate gas supply costs, they must be included in the assessment of past performance as actual gas costs. The Commission recognizes that the seasonal storage cycle will give rise to cost fluctuations. These price fluctuations are caused, in part, by the LIFO accounting method because the demand costs embedded in the pipeline suppliers' rates are included in the LIFO rates and thus are treated as commodity costs.[31] Since the pipeline has the discretion to choose the methodology it uses to price its storage gas, the Commission does not agree that the price fluctuations are beyond the control of the pipeline. Also, if a cost item causes the pipeline to exceed the threshold of three percent during a particular test interval, it will have the opportunity to explain the overage in its annual PGA filing.

The Commission is not granting Northwest's request that the Commission list specific reasons a pipeline must file to justify its inability to meet the three-percent margin. A pipeline's argument that it is unable to meet the three-percent test must be considered on its own merits. This kind of review does not lend itself to a generic determination. The Commission expects a pipeline to cite the particular circumstances which led to its inability to control its costs within the threshold and to provide sufficient data to support the pipeline's position.

Great Lakes Transmission Company (Great Lakes) seeks rehearing of the Commission's decision in Order No. 483 to include Canadian gas costs in the assessment of past performance. Great Lakes believes that it should not be subject to the assessment, because it acts as a conduit for the purchase of Canadian gas by its resale customers and has no control over the price or the volumes of these supplies.[32] The Commission notes that Great Lakes continues to pass its purchased gas costs through a PGA clause. Therefore, the company must remain subject to the PGA regulations until such time as Great Lakes restructures its tariff to reflect its service obligations to its customers.

2. *The need for the assessment of past performance.* Several pipelines argue on rehearing that the assessment of past performance is not necessary, justified, or legal.[33] The Commission disagrees. The three percent margin for underrecoveries is not an arbitrary standard and was justified in Order No. 483. In the final rule, the Commission traced the history of the three-percent margin which had been applied in individual pipelines' flexible PGA rate proceedings. In fact, the Commission noted that its approved in individual proceedings not only pipelines' initial requests to adopt a three-percent margin for underrecoveries, but also pipelines' requests to continue using this margin after the mandatory one-year review period. Therefore, the Commission adopted this standard on a generic basis.

The assessment of past performance does not replace existing statutory standards under the NGA and the Natural Gas Policy Act (NGPA) for reviewing the passthrough of purchased gas costs. The Commission recognizes that the test does not give the Commission the authority to deny passthrough of gas costs automatically. Section 601(c)(2) of the NGPA [34] limits the Commission's ability to deny the passthrough of statutorily defined "just and reasonable" purchased gas costs unless the Commission finds that the amounts were excessive due to fraud, abuse, or similar grounds.

However, the Commission has the authority to suspend the effective date of rate filings pending review under section 4 of the NGA. As such, the Commission may suspend the effectiveness of that portion of a surcharge rate that reflects costs above the three-percent margin for up to five months. During the suspension period, the Commission may conduct an evidentiary hearing to determine if a pipeline violated the statutory tests under either the NGA or the NGPA. Alternatively, the Commission may permit the full surcharge to become effective after a one-day suspension, subject to further proceedings. Whether the Commission suspends the filing for up to five months will depend on the extent to which a pipeline shows that its incurred costs over the three-percent margin were beyond its control.

G. FERC Form No. 542–PGA

1. *Annual statement of purchasing policies.* The Commission is requiring a pipeline to submit an annual statement of the purchasing policies that gave rise to the pipeline's actual and projected gas costs contained in Schedule A–1 of the FERC Form No. 542–PGA (Form 542). However, while the Commission recognizes that the pipeline may deviate from the plan due to operating conditions, it expects the pipeline to follow its purchasing policies as much as possible. Furthermore, the Commission will not require pipelines to disclose confidential information as argued by Enron. The Commission only requires a pipeline to make a general statement about its past and future purchasing policies. In particular, the Commission expects a pipeline to explain why its projected or actual costs include purchases above the prevailing market rates, and if the pipeline is

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[28] This is consistent with the Commission's regulations at § 154.305 (g)(1)(iii) and (g)(2).

[29] Columbia, Consolidated, and National Fuel.

[30] Columbia, Consolidated, and National Fuel.

[31] *See*, Request of National Fuel for rehearing, page 7, n. 2.

[32] Great Lakes argues that the Commission issued orders on December 9, 1987, in Docket No. TA88-6-51-004 and TA87-1-51-002 which found that its resale customers negotiate directly with the company's Canadian supplier, TransCanada PipeLines Limited, concerning the price and other terms and conditions relative to the importation of Canadian gas.

[33] Consolidated, Panhandle/Trunkline, Northwest, TETCO, and Williams Natural Gas Company (Williams).

[34] 15 U.S.C. 3431(c) (2) (1982).

taking any steps to reduce its high cost purchases.

2. *Reporting of Order No. 451 negotiations.* Enron and Panhandle/Trunkline claim that the reporting of negotiated contracts under Order No. 451 [35] will require a pipeline to disclose properietary information and may hamper negotiations with other producers. Collection of this information is necessary for the Commission to review the impact of Order No. 451 on the pipelines' purchased gas costs. However, a pipeline may file a request for confidential treatment of the data if the company believes that its ongoing negotiation efforts would be at risk.

3. *Report of actual purchase data in Schedule A1.* The Commission denies Transco's request that pipelines gradually phase in the computerized reporting of actual purchase data in Schedule A1. Transco states that it will need additional time to develop this capability because the level of detail in Schedule A1 was not necessary for compliance with the prior PGA Regulations. The Commission believes that most pipelines will be ready to comply with this reporting requirement when they file their first annual PGA. However, the Commission will consider individual pipelines' requests for a waiver on a case-by-case basis.

4. *Revisions to the Form 542.* In response to Transco's petition, the Commission will not require pipelines to submit the transmittal letter, form of notice, and service list for a PGA filing on nine-track magnetic computer tape. Submitting these documents in a computerized format will not enhance the Commission's ability to review the data submitted with a PGA filing.

The Commission will adopt Natural's suggestion to add a column in Schedule C2—"Carrying charges on Account No. 191", to report the storage inventory cost adjustments required by the regulations.[36] Also, added to Schedule C2 is a column for "other adjustments" because pipelines may need additional adjustments to the carrying charge base.

Finally, the revised Form 542 reflects corrections of typographical errors; conforming changes to reflect amendment of the regulations; corrections to the computerized format; and clarifications of the instructions.

On March 15, 1988, the Commission Staff will conduct a technical conference in the offices of the Commission.[37] The Commission Staff will be present to answer questions concerning the revised Form 542.

H. Miscellaneous Issues and Clarifications

1. *General comments to the PGA revisions.* The Commission disagrees with the arguments of several pipelines [38] that the Commission failed to justify the revisions to the PGA mechanism mandated in this proceeding. In both the NOPR and in Order No. 483, the Commission fully discussed the pipelines' requests for waivers of the existing PGA regulations on a case-by-case basis to allow them to compete in an unstable gas market. Therefore, based on the large number of waiver requests the Commisison received, it was reasonable for the Commission to conclude that a more flexible PGA mechanism was necessary.

Also, the Commission discounts claims that the quarterly filing schedule is burdensome because it now receives numerous PGA filings from pipelines in addition to their scheduled annual or semi-annual filings.[39] Therefore, the Commission will maintain a schedule of quarter PGA filings for all pipelines that elect a PGA clause under the regulations.

Finally, the Commission is not persuaded by arguments that the new PGA regulations make it difficult for pipelines to compete with unregulated sellers of gas. An unregulated seller of gas must absorb the cost of any gas it purchases and is unable to sell. However, the passthrough provision in NGPA section 601(c) gives the jurisdictional pipeline an advantage over the unregulated seller because, in most cases, it guarantees the pipeline's right to make up any underrecovered costs in the surcharge rate.

2. *Application of Opinion No. 256.* The Commission intends to apply its Canadian gas "as billed" policy expressed in *Natural Gas Pipeline Company of America*,[40] and review the appropriate classification of imported natural gas demand costs in both PGA filings and section 4 general rate proceedings. However, the Commission denies Producer Association's request to delay a pipeline's inclusion of Canadian supplier purchases in its PGA until the Commission reviews the underlying contracts. To conduct such a review would intrude on the jurisdiction of the Department of Energy's Economic Regulatory Administration.

3. *Concurrent exchange transactions.* In response to Columbia's request for clarification, there are no gas costs associated with concurrent exchange transactions. The assignment of a weighted average cost of gas to exchange imbalances under § 154.305(i) is intended to remove the rate impact of the imbalances for pipelines that compute their monthly deferred costs on a unit-of-sales basis.

4. *Unpaid accruals.* The regulations permit a pipeline to include suspended payable (SP)[41] unpaid accruals as a gas cost in the PGA. To prevent the possibility that a pipeline would be unjustly enriched if SP accruals are never paid, the Commission requires that a pipeline list and describe in its annual PGA filing each unpaid accrual if it has remained unpaid for three or more years from the month it was originally recognized as a gas cost. The Commission agrees with Transco that the separate tracking and listing of unpaid accruals may impose a burden on some pipelines. However, the Commission believes that this burden is justified because the regulations allow a pipeline to collect for gas costs that the pipeline has not paid. If a pipeline finds the tracking and reporting requirements overly burdensome the pipeline will not be required to list its outstanding SP accruals. However, the pipeline must forgo collection of the accrued gas costs until it makes payment.

5. *Transition rules.* Although requested by ANG/CIG, the Commission will not delay implementation of Order No. 483 until a pipeline files its first PGA scheduled six months after this order on rehearing is effective. The Commission established a uniform effective date of June 1, 1988, to ensure that pipelines do not gain a competitive advantage over others during the transition. However, the Commission agrees with ANR/CIG that the transition procedures may create a hardship for certain pipelines. Therefore, the Commission will consider requests for waivers of certain provisions of the transition rules on a case-by-case basis.

In response to a request by El Paso, the Commission is clarifying that only the purchased gas costs a pipeline projects to occur after June 1, 1988 will be tested in the assessment of past

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[35] Specifically, the good faith negotiation provisions in 18 CFR 270.201 (1987).

[36] Section 154.305(h) (3) (D).

[37] Notice of Technical Conference issued January 27, 1988; 53 FR [illegible] (Feb. 2, 1988).

[38] ANC/CIG, Enron, TETCO, Panhandle/Trunkline, and Williams.

[39] Pipelines submit out-of-cycle PGA filings and interim adjustments under their flexible PGA tariffs.

[40] Natural Gas Pipeline Company of America, Opinion No. 256, 37 FERC ¶ 61,215 (1986); Opinion No. 256–A, 38 FERC ¶ 61,218 (1987). The Commission codified the specific cost classification and rate design principles embodied in these opinions in Order No. 483.

[41] These are known amounts that are not paid because some impediment of payment.

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performance in the pipeline's first annual PGA effective after June 1, 1988.

III. Paperwork Reduction Act and Effective Date

The Paperwork Reduction Act[42] and the Office of Management and Budget's (OMB) regulations[43] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this order on rehearing have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–5311). Comments on the provisions of this order on rehearing can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This order on rehearing is effective on April 8, 1988. In the event OMB has not approved this order, the Commission will issue a notice postponing the effective date.

List of Subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 154, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,
Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriation Act, 31 U.S.C. 9701 (1970).

2. In § 154.304, paragraph (c) is revised to read as follows:

§ 154.304 Scheduled annual and quarterly PGA filings.

* * * * *

(c) *Effective dates.* A pipeline must file its annual and quarterly PGA filings with the Commission to be effective as follows:

Annual Date: January 1

(Quarterly Dates: April 1, July 1, October 1)

Alabama-Tennessee Natural Gas Company
Granite State Gas Transmission, Inc.
East Tennessee Natural Gas Company
Northern Natural Gas Company
Sea Robin Pipeline Company
Tennessee Gas Pipeline Company
National Fuel Gas Supply Corporation

Annual Date: February 1

(Quarterly Dates: May 1, August 1, November 1)

Lawrenceburg Gas Transmission Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation

Annual Date: March 1

(Quarterly Dates: June 1, September 1, December 1)

Algonquin Gas Transmission Company
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company

Annual Date: April 1

(Quarterly Dates: July 1, October 1, January 1)

Arkla Energy Resources, A Division of Arkla, Inc.
Commercial Pipeline Company, Inc.
Midwestern Gas Transmission Company, Southern Division
Northwest Pipeline Corporation
Southern Natural Gas Company

Annual Date: May 1

(Quarterly Dates: August 1, November 1, February 1)

ANR Pipeline Company
Columbia Gas Transmission Company
Florida Gas Transmission Company
Kentucky-West Virginia Gas Company
MIGC, Inc.
Williams Natural Gas Company

Annual Date: June 1

(Quarterly Dates: September 1, December 1, March 1)

Mississippi River Transmission Corporation
Mountain Fuel Resources, Inc.
Pacific Interstate Transmission Company
Valero Interstate Transmission Company

Annual Date: July 1

(Quarterly Dates: October 1, January 1, April 1)

Distrigas of Massachusetts Corporation
El Paso Natural Gas Company
Gas Gathering Corporation
South Georgia Natural Gas Company
Transwestern Pipeline Company

Annual Date: August 1

(Quarterly Dates: November 1, February 1, May 1)

Bayou Interstate Pipeline System
Transcontinental Gas Pipe Line Company
Western Gas Interstate Company
Williston Basin Interstate Pipeline Company

Annual Date: September 1

(Quarterly Dates: December 1, March 1, June 1)

CNG Transmission Corporation
Carnegie Natural Gas Company
Equitable Gas Company
Locust Ridge Gas Company
Mid Louisiana Gas Company
Trunkline Gas Company

Annual Date: October 1

(Quarterly Dates: January 1, April 1, July 1)

Colorado Interstate Gas Company
Raton Gas Transmission Company
Reliance Pipeline Company
Southwest Gas Corporation
United Gas Pipeline Company
West Texas Gas, Inc.

Annual Date: November1

(Quarterly Dates: February 1, May 1, August 1)

Eastern Shore Natural Gas Company
Great Lakes Gas Transmission Company
Inter-City Minnesota Pipeline, Ltd., Inc.
Texas Gas Pipe Line Corporation
Valley Gas Transmission
Midwestern Gas Transmission Company, Northern Division

Annual Date: December 1

(Quarterly Dates: March 1, June 1, September 1)

KN Energy, Incorporated
Louisiana-Nevada Transit Company
Western Transmission Corporation.

3. In § 154.305, paragraphs (c)(1)(ii), (h)(3)(i), (i)(1)(i), (i)(1)(ii), (i)(1)(iii), and (i)(3) are revised and a new paragraph (c)(4) is added to read as follows:

§ 154.305 Annual PGA filing.

* * * * *

(c) *Determining the current adjustment.*

(1) *Method for projecting cost of purchased gas.* * * *

(ii) Known and measurable changes in the rate, for all but pipeline supplier rates, based on contractual obligations that are in existence on the date the PGA is filed. The rate to be used for each projected purchase of pipeline supply will be the rate in effect as of the effective date of the PGA or a rate which will come out of suspension during the PGA effective period. The rate for producer supply may be adjusted, if applicable, by the monthly ceiling price escalations allowed under the Natural Gas Policy Act of 1978; and

* * * * *

(4) *Revision to the current adjustment.* A pipeline may file a revision to the current adjustment filed with its annual PGA. The revision must be filed with the Commission and posted under § 154.16, at least 30 days before a pipeline's annual PGA effective date, as established in § 154.304(c). At the same time, the pipeline must serve its jurisdictional customers and interested state commissions with a copy of the filing as described in paragraph (a) of this section. The revision must conform to the following:

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[42] 44 U.S.C. 3501–3520 (1982).

[43] 5 CFR Part 1320 (1987).

(i) The filing must contain tariff sheets as specified in paragraph (a)(1) of this section.

(ii) This report must contain detailed computations that clearly show the derivation of the revision to the current adjustment. The format in which this report must be submitted and the information that the report must contain should conform to the format for the quarterly PGA filing as set forth in FERC Form No. 542–PGA, Purchased Gas Adjustment (PGA) Filing.

(iii) The current adjustment must be determined as described in paragraphs (b) and (c) of this section. A pipeline must not make an adjustment to the surcharge rate in this filing.

* * * * *

(h) *Carrying charges.* * * *

(3) *Carrying charge base.* (i) The carrying charge base for the refund, revenue credits and billing adjustments subaccount will be the prior month's ending refund, revenue credit and billing adjustment subaccount balance of Account No. 191 adjusted for any applicable deferred income taxes recorded consistent with § 154.303(c)(3) and reduced for unpaid accruals, if any.

* * * * *

(i) *Refunds.* (1) *General rule.* * * *

(i) Establishing a separately identified refund subaccount of Account No. 191. During a deferral period a pipeline must:

(A) Credit the subaccount with the jurisdictional portion of all refunds, revenue credits, and the related interest received;

(B) Debit the subaccount with the out-of-period billing adjustments; and,

(C) Debit if the subaccount balance is a debit balance or credit if the subaccount balance is a credit balance with the carrying charges computed under paragraph (h) of this section.

(ii) If the refund subaccount balance is a credit balance, disbursing to its jurisdictional customers in cash the total refund subaccount balance when the total refund subaccount balance equals or exceeds an amount which is the lesser of:

(A) $2 million, or

(B) 1 cent per MMBtu, determined by dividing X by Y where:

X = The monthly ending refund balance, and
Y = The quantity of a pipeline's most recent 12 months of actual jurisdictional sales.

(iii) The disbursement must be made by the pipeline within 90 days of the end of the month in which a pipeline receives a refund, revenue credit, or billing adjustment which causes the refund subaccount balance to reach the level stated in paragraph (1)(ii)(A) or (l)(ii)(B) of this section.

* * * * *

(3) *Debiting refund subaccount.* * * *

(i) If the balance is a credit balance, disburse the amounts in cash in the manner described in paragraphs (h)(2)(i) or (h)(2)(ii) of this section; or

(ii) If the balance is a debit balance or the pipeline elects not to make a cash disbursement under paragraph (h)(3)(i) of this section, transfer the amounts to the current deferral subaccount balance determined under paragraphs (e) and (g) of this section.

* * * * *

4. In § 154.306, paragraphs (d)(1) and (d)(2) are revised and paragraph (d)(3) is added to read as follows:

§ 154.306 Assessment of past performance.

* * * * *

(d) *Actual cost of gas purchased.* * * *

(1) Less adjustments for exchange transactions and transportation imbalances;

(2) Including only the gas cost components that were used to compute the projected average cost of gas that is compared in a test interval; and

(3) Excluding any demand costs permitted to be passed through a pipeline's two-part rates on an as-billed basis under § 154.305(b) (2) and (3).

Note: This appendix will not be published in the *Code of Federal Regulations.*

Appendix—Petitions for Rehearing Filed by:

Arizona Direct Customers
ANR Pipeline Company/Colorado Interstate Gas Company
Columbia Gas Distribution Companies
Columbia Gas Transmission Corporation
Consolidated Gas Transmission Corporation
El Paso Natural Gas Company
Enron Interstate Pipelines
Great Lakes Transmission Company
Natural Gas Pipeline Company of America
National Fuel Gas Supply Corporation
Northwest Natural Gas Company
Northwest Pipeline Corporation
Panhandle Eastern Pipe Line Company/Trunkline Gas Company
Producer Associations
Tennessee Gas Pipeline Company
Texas Eastern Transmission Corporation
Transcontinental Gas Pipe Line Corporation
Williams Natural Gas Company.

[FR Doc. 88-4966 Filed 3-8-88; 8:45 am]

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18 CFR Part 157

[Docket Nos. RM86-3-003 through -068, Order No. 451-A]

Ceiling Prices; Old Gas Pricing Structure; Correction

Issued March 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing; correction.

SUMMARY: Order No. 451–A, issued December 15, 1986, revised the due date for reports of sales made under the authority of the blanket certificate granted by 18 CFR 157.301 (1987) from March 1 to April 1 (51 FR 46762 at 46805 (Dec. 24, 1986)). This notice corrects the text of § 157.301 to reflect the April 1 deadline for such reports.

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8224.

SUPPLEMENTARY INFORMATION: In Order No. 451 (51 FR 22168 (June 18, 1986)), the Commission promulgated 18 CFR 157.301, granting certificates of public convenience and necessity to authorize sales of natural gas abandoned under the good faith negotiation procedures of 18 CFR 270.201. Section 157.301(c) required first sellers who make sales under such certificates to file reports with the Commission by March 1 of each year providing certain information with respect to sales initiated during the preceding calendar year. In Order No. 451–A, granting rehearing in part and clarifying the final rule, the Commission revised the deadline for filing such reports from March 1 to April 1 (51 FR 46762 at 46805 (Dec. 24, 1986)). However, the text of § 157.301 was not amended accordingly. This correction notice is issued, as a ministerial action, to incorporate the revised deadline in the text of the *Code of Federal Regulations.*

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 157, Chapter I, Title 18, *Code of Federal*

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Regulations, is corrected at set forth below.

Lois D. Cashell,

Acting Secretary

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act 1978, 15 U.S.C. 3301–3432 (1982).

Subpart G—Natural Gas Producer Blanket Authority for Sales and Abandonment

§ 157.301 [Amended]

2. In § 157.301, paragraph (c) introductory text is amended by removing the word "March", and inserting in lieu thereof the word "April".

[FR Doc. 88-4776 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs not Subject to Certification; Levamisole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. providing for use of levamisole as a pour-on liquid for treating cattle for stomach, intestinal, and lung worm infestation.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Division, Wayne, NJ 07470, filed NADA 140-844 providing for the use of a 200-milligram-per-milliliter levamisole pour-on liquids (TRAMISOL®) for treatment of cattle for stomach worm, intestinal worm, and lung worm infections. Levamisole is currently approved as a bolus, drench, gel, injectable, and pour-on liquid to treat cattle for stomach worm, intestinal worm, and lung worm infections. Based on the data in the NADA and additional information, the NADA is approved and 21 CFR 524.1240(b) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 is revised to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1240 [Amended]

2. Section 524.1240 *Levamisole* is amended in paragraph (b) by inserting the phrase "010042 and" before sponsor number "011716".

Dated: March 2, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-5115 Filed 3-8-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8186]

Income Tax, Taxable Years Beginning After December 31, 1953; Election To Be Taxed as a Real Estate Mortgage Investment Conduit and Other Administrative Matters; and OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to real estate mortgage investment conduits. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986. These regulations prescribe the manner in which an entity elects status as a real estate mortgage investment conduit (REMIC) for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require a REMIC to file information returns with the Internal Revenue Service and to provide notice to holders of interests in the REMIC of income and certain allocable expenses attributable to their interests.

DATES: The temporary regulations are effective after December 31, 1986, and, with respect to certain reporting requirements contained in §§ 1.67–3T (f)(3)(ii), 1.67–3T (f)(5)(i)(B), 1.860F–4T (e)(1)(i)(D) and (E), 1.6049–7T (f)(2)(ii) (C), (D), and (G), and 1.6049–7T (f)(3), for calendar quarters and calendar years after 1987.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202-566-3297), with respect to the allocation of expenses by REMICs and Laura Ann M. Lauritzen (202-566-3829), with respect to all other matters, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations to the Income Tax Regulations (26 CFR Part 1) under sections 67, 860D, 860F, and 6049 (d)(7) of the Internal Revenue Code of 1986 (Code), relating to real estate mortgage investment conduits. Section 671 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code new sections 860A through 860G to provide rules relating to real estate mortgage investment conduits, or REMICs, while section 674 of the 1986 Act amended section 6049 to impose certain information reporting requirements with respect to REMIC interests and certain other debt instruments. In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The temporary regulations under section 860D prescribe the manner in which an entity elects status as a REMIC. The temporary regulations under section 860F govern the filing of a REMIC's income tax return and, together with the temporary regulations under section 6049, require that the REMIC provide notice of income and other information to its investors and the Internal Revenue Service.

Section 132 of the 1986 Act added to the Code new section 67 which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed 2 percent of the individual's adjusted gross income section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The temporary regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

Under section 675(a) of the 1986 Act, new sections 860A through 860G of the Code and the conforming amendments made to other sections are effective for taxable years beginning after December 31, 1986. Section 106(v)(1) of the Technical Corrections Bill would amend section 675(a) of the 1986 Act so that all provisions relating to REMICs take effect as of January 1, 1987. Accordingly, the Service has announced that it will apply these provisions to any holder of an interest in a REMIC as of January 1, 1987, regardless of the holder's taxable year. See Notice 87–41, 1987–24 I.R.B. 17 (June 15, 1987).

Explanation of Provisions

Treatment of a REMIC as a Partnership

Section 860F(e) provides that, for purposes of Subtitle F of the Code (Procedure and Administration), a REMIC is treated as a partnership and any holder of a residual interest is treated as a partner. Thus, the rules relating to the tax treatment of partnership items (Subchapter C of Chapter 63 of Subtitle F) generally apply to a REMIC. For example, under § 1.860F–4T(d), a REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T. If there is only one holder of the REMIC residual interest, however, § 1.860F–4T(a) provides an exception to the application of those rules.

REMIC Income Tax Return and Election

Section 1.860F–4T(b) generally requires a REMIC to file an income tax return annually with the Internal Revenue Service. The Service has developed new Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for this purpose. As required by section 860F(e), the return must include the amount of the daily accruals determined under section 860E(c). The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership that uses the calendar year. Form 1066 may be signed by any one of the holders of a residual interest during that taxable year or, as provided in section 6903, by a fiduciary as defined in section 7701(a)(6).

As provided in § 1.860D–1T(a), an entity or a segregated pool of assets within an entity elects to be treated as a REMIC by furnishing certain information and by computing its taxable income (or net loss) as a REMIC in accordance with section 860C(b) and the regulations thereunder. This election is made on the Form 1066 for the first taxable year of the entity's existence. Once made, the election is irrevocable for that taxable year and all succeeding taxable years.

Section 1.860D–1T(b) requires that the REMIC provide certain information with its income tax return for the year of the election. That information includes the REMIC's employer identification number (a REMIC may apply for an EIN on Form SS–4, "Application for Employer Identification Number"), information concerning the terms of each class of regular interest and the designated residual interest, and any other information that is required by the form. The REMIC must also provide on its first return a description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6). Finally, under § 1.860D–1T(c), an entity or segregated pool of assets that elects to be a REMIC must keep sufficient records concerning investments and other assets to be able to show that it is in compliance with the provisions of sections 860A through 860G during each taxable year.

Notice to Residual Interest Holders

At the close of each calendar quarter, a REMIC is required under § 1.860F–4T(e)(1) to provide to each person who held a residual interest in the REMIC during the quarter notice on Schedule Q (Form 1066) of certain information. That information includes (a) the residual holder's share of REMIC taxable income or net loss for the calendar quarter, (b) the amount of the excess inclusion with respect to the holder's residual interest, (c) in the case of certain holders, the allocable investment expenses for the quarter, (d) for calendar years after 1987, certain information with respect to the percentage of the REMIC's assets that are qualifying real property loans under section 593, assets of a domestic building and loan association (as described in section 7701(a)(19)), and real estate assets under § 1.860F–4T(e)(1)(ii)(C). The requirements concerning real estate assets under section 856 anticipate certain provisions of the Technical Corrections Bill amending the 1986 Act.

Generally, § 1.860F–4T(e)(2) requires that Schedule Q be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter. Under § 1.860F–4T(e)(2)(ii), however, the notice for each of the four calendar quarters of 1987 must be mailed (or otherwise delivered) to each holder no later than March 28, 1988. Finally, § 1.860F–4T(e)(4) provides that a copy of Schedule Q for each person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder must be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Reporting to Regular Interest Holders

Section 6049 of the Code requires that certain returns of information be made regarding payments of interest. Under section 6049(d)(7) and § 1.6049F–7T(a), the term "interest" includes amounts includible in the gross income of any holder of a REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. In accordance with Notice 87–41, this expanded definition of the term "interest" is effective, for purposes of section 6049(a), with respect to any REMIC regular interest or any other debt instrument to wich section 1272(a)(6) applies that is issued after December 31, 1986.

As required by § 1.6049–7T(b)(1), an information return must be made with respect to any amount aggregating $10 or more that is includible as interest under § 1.6049–7T(a). This return must be made by any REMIC or other issuer of a debt instrument to which section 1272(a)(6) applies and by any broker or middleman who holds as a nominee any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. Under § 1.6049–7T(c), information returns are not required to be made with respect to amounts includible as interest by certain holders.

In the case of an amount includible as interest, other than original issue discount, § 1.6049–7T(b)(3)(i) requires that the information return be made on Form 1099 for each calendar year showing the aggregate amount includible, the name, address, and taxpayer identification number of the person in whose income this amount is includible, and such other information as is required by the form. Section 1.6049–7T(b)(3)(ii) requires similar information with respect to amounts of original issue discount includible by any holder of a REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

The information returns required under § 1.6049–7T are to be filed annually in the manner prescribed in paragraph (e) of that section. Generally, § 1.6049–7T(f) requires that the same information that is provided to the Service also be furnished to each person in whose income amounts are includible as interest. Under § 1.6049–7T(f)(3), certain information regarding REMIC assets must be also be provided to investors. The additional information specified in §§ 1.67–3T(f)(3)(ii), 1.6049–7T(f)(2)(ii) (C), (D) and (G), and 1.6049–7T(f)(3) shall be furnished to investors for calendar years after 1987.

The Service is interested in comments on possible alternatives that would simplify the reporting requirements to holders of REMIC regular interests by brokers and middlemen who hold as nominees. These comments should address the cost and administrability of any suggested alternative methods.

Information Required on Debt Instrument

Under § 1.6049–7T(g), the issuer of any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies is required to set forth certain information on the face of the regular interest or other debt instrument. This requirement is effective, however, only with respect to any regular interest or other debt instrument that is issued after April 8, 1988.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter. In general, a pass-through interest holder (as defined in § 1.67–3T(a)(2)(i)(A)) is any holder of a residual interest that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as in the case of an individual, or a pass-through entity, interests in which are owned by either an individual or a person that computes its taxable income in the same manner as in the case of an individual.

The term "pass-through interest holder" includes, pursuant to §1.67–3T(a)(3)(i), a grantor trust, a partnership, an S corporation, a common trust fund, a regulated investment company, and a REMIC. It does not include an estate, a nongrantor trust, a cooperative, a real estate investment trust, or other entities such as a qualified pension plan, an individual retirement account, or an insurance company holding assets in a separate asset account to fund certain variable contracts. The term "allocable investment expenses" (as defined in § 1.67–3T(a)(4)) means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

Under § 1.67–3T(b)(1)(i), a pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter takes into account such amounts in those calendar quarters that fall within the holder's taxable year. Separate inclusion rules apply under § 1.67–3T(b)(1)(ii) to a holder whose taxable year does not end with a calendar quarter. An interest holder in a REMIC that is not a pass-through interest holder does not take into account in computing its taxable income any amount of its proportionate share of allocable investment expenses. Under § 1.67–3T(c)(1), a REMIC generally computes a pass-through interest holder's proportionate share of its allocable investment expenses by determining the daily amount of such expenses and allocating this daily amount to the pass-through interest holder in proportion to its respective holdings on that day. Generally, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of a REMIC residual interest, whether or not pass-through interest holders.

A REMIC is required under § 1.67–3T(f)(1) to provide written notice to each pass-through interest holder to whom an allocation of expenses is required to be made. Except in the case of notice to a regular interest holder in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), notice is furnished quarterly on Schedule Q (Form 1066). The notice must list the aggregate amount of expenses paid or accrued during each calendar quarter for which the REMIC is allowed a deduction under section 212 and the interest holder's proportionate share of these expenses for the calendar quarter. This information must also be furnished annually by the REMIC to the Internal Revenue Service pursuant to § 1.67–3T(f)(3)(i).

If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may provide the written notice to the nominee and make the information return to the Internal Revenue Service with respect to the nominee. Section 1.67–3T(f)(5) provides reporting requirements for nominee to which a REMIC provides notice.

In the case of a single-class REMIC, the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as in the case of an individual, or a pass-through entity, interests in which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

As required under § 1.67–3T(f) for all other REMICs, a single-class REMIC must report to pass-through interest holders and the Internal Revenue Service the holder's proportionate share of allocable investment expenses Such a REMIC is required to report this information quarterly to pass-through interest holders who hold residual interests on Schedule Q (Form 1066) and annually to the Internal Revenue Service as required in § 1.860F–4T(e)(4). A single-class REMIC is required to report the information quarterly to pass-through interest holders who hold regular interests on a separate statement and annually to the Internal Revenue Service on information return Form 1099.

Special Analyses

The Commissioner of Internal Revenue has determined that these temporary regulations do not constitute a major rule as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(d) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

The collection of information requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal authors of these temporary regulations are Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service and Michel A. Dazé, formerly of that office. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.851–1 through 1.860F–4T

Income taxes, Investment companies, Real estate investment trusts, Real estate mortgage investment conduits.

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements. *Adoption of amendments to the regulations.*

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * § 1.67–3T also issued under 26 U.S.C. 67(c). * * * § 1.860F–4T also issued under 26 U.S.C. 860G(c)(3). * * * § 1.6049–7T also issued under 26 U.S.C. 1275(c) and 27 U.S.C. 6049(d)(7)(D). * * *

Par. 2. New § 1.67–3T is added immediately following §1.63–2 and reads as set forth below:

§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).

(a) *Allocation of allocable investment expenses*—(1) *In general.* A real estate mortgage investment conduit or REMIC (as defined in section 860D) shall allocate to each of its pass-through interest holders that holds an interest at any time during the calendar quarter the holder's proportionate share (as determined under paragraph (c) of this section) of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

(2) *Pass-through interest holder*—(i) *In general*—(A) *Meaning of term.* Except as provided in paragraph (a)(2)(ii) of this section, the term "pass-through interest holder" means any holder of a REMIC residual interest (as definition in section 860G(a)(2)) that is—

(*1*) An individual (other than a nonresident alien whose income with respect to his or her interest in the REMIC is not effectively connected with the conduct of a trade or business within the United States),

(*2*) A person, including a trust or estate, that computes its taxable income in the same manner as in the case of an individual, or

(*3*) A pass-through entity (as defined in paragraph (a)(3) of this section) if one or more of its partners, shareholders, beneficiaries, participants, or other interest holders is (*i*) a pass-through entity or (*ii*) a person described in paragraph(a)(2)(i)(A) (*1*) or (*2*) of this section.

(B) *Examples.* The provisions of this paragraph(a)(2)(i) may be illustrated by the following examples:

Example (1). Corporation X holds a residual interest in REMIC R in its capacity as a nominee or custodian for individual A, the beneficial owner of the interest. Because the owner of the interest for Federal income tax purposes is an individual, the interest is owned by a pass-through interest holder.

Example (2). Individual retirement account I holds a residual interest in a REMIC. Because an individual retirement account is not a person described in paragraph (a)(2)(i)(A) of this section, the interest is not held by a pass-through interest holder.

(ii) *Single-class REMIC*—(A) *In general.* In the case of a single-class REMIC, the term "pass-through interest holder" means any holder of either—

(*1*) A REMIC regular interest (as defined in section 860G(a)(1)), or

(*2*) A REMIC residual interest, that is described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section.

(B) *Single-class REMIC.* For purposes of paragraph (a)(2)(ii)(A) of this section, a single-class REMIC IS either—

(*1*) A REMIC that would be classified as an investment trust under § 301.7701–4(c)(1) but for its qualification as a REMIC under section 860D and § 1.860D–1T, or

(*2*) A REMIC that—

(*i*) Is substantially similar to an investment trust under § 301.7701–4(c)(1), and

(*ii*) Is structured with the principal purpose of avoiding the requirement of paragraph (a)(1) and (2)(ii)(A) of this section to allocate allocable investment expenses to pass-through interest holders that hold regular interests in the REMIC.

For purposes of this paragraph (a)(2)(ii)(B), in determining whether a REMIC would be classified as an investment trust or is substantially similar to an investment trust, all interests in the REMIC shall be treated as ownership interests in the REMIC, without regard to whether or not they would be classified as debt for Federal income tax purposes in the absence of a REMIC election.

(C) *Examples.* The provisions of paragraph (a)(2)(ii) of this section must be illustrated by the following examples:

Example (1). Corporation M transfers mortgages to a bank under a trust agreement as described in Example (2) of § 301.7701–4(c)(2). There are two classes of certificates. Holders of class C certificates are entitled to receive 90 percent of the payment of principal and interest on the mortgages; holders of class D certificates are entitled to receive the remaining 10 percent. The two classes of certificates are identical except that, in the event of a default on the underlying mortgages, the payment rights of class D certificates holders are subordinated to the rights of class C certificate holders. M sells the class C certificates to investors and retains the class D certificates. The trust would be classified as an investment trust under § 301.7701–4(c)(1) but for its qualification a REMIC under section 860D, the class C certificates represent regular interests in the REMIC and the class D certificates represent residual interest in the REMIC. The REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*1*) of this section and, accordingly, holders of both the class C and class D certificates who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

Example (2). Assume that the facts are the same as in Example (1) except that M structures the REMIC to include a second regular interest represented by class E certificates. The principal purpose of M in structuring the REMIC to include class E certificates is to avoid allocating allocable investment expenses to class C certificate holders. The class E certificate holders are entitled to receive the payments otherwise due the class D certificate holders until they have been paid a stated amount of principal plus interest. The fair market value of the class E certificate is ten percent of the fair market value of the class D certificate and, therefore, less than one percent of the fair market value of the REMIC. The REMIC would not be classified as an investment trust under § 301.7701–4(c)(1) because the existence of the class E certificates is not incidental to the trust's purpose of facilitating direct investment in the assets of the trust. Nevertheless, because the fair market value of the class E certificates is de minimis, the REMIC is substantially similar to an investment trust under § 301.7701–4(c)(1). In addition, avoidance of the requirement to allocate allcoable investment expenses to regular interest holders is the principal purpose of M in structuring the REMIC to include class E certificates. Therefore, the REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*2*) of this section, and, accordingly, holders of both residual and regular interests who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

(3) *Pass-through entity*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of this section, a pass-through entity is—

(A) A trust (or any portion thereof) to which Subpart E, Part 1, Subchapter J, Chapter 1 of the Code applies,

(B) A partnership,

(C) An S corporation,

(D) A common trust fund described in section 584,

(E) A nonpublicly offered regulated investment company (as defined in paragraph (a)(5)(i) of this section),

(F) A REMIC, and

(G) Any other person—

(*1*) Which is not subject to income tax imposed by Subtitle A, Chapter 1, or which is allowed a deduction in computing such tax for distributions to owners or beneficiaries, and

(*2*) The character of the income of which may affect the character of the income recognized with respect to that person by its owners or beneficiaries.

Entities that do not meet the requirements of paragraphs (a)(3)(i)(G) (*1*) and (*2*), such as qualified pension plans, individual retirment accounts, and insurance companies holding assets in separate asset accounts to fund variable contracts defined in section 817(d), are not described in this paragraph (a)(3)(i).

(ii) *Exception.* For purposes of this section, a pass-through entity does not include—

(A) An estate,

(B) A trust (or any portion thereof) not described in paragraph (a)(3)(i)(A) of this section,

(C) A cooperative described without regard to subparagraphs (A) and (C) thereof, or

(D) A real estate investment trust.

(4) *Allocable investment expenses.* The term "allocable investment expenses" means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

(5) *Nonpublicly offered regulated investment company*—(i) *In general.* For purposes of this section, the term "nonpublicly offered regulated investment company" means a regulated investment company to which Part I of Subchapter M of the Code applies that is not a publicly offered regulated investment company.

(ii) *Publicly offered regulated investment company.* For purposes of this section, the term "publicly offered regulated investment company" means a regulated investment company to which Part I of subchapter M of the Code applies, the shares of which are—

(A) Continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(B) Regularly traded on an established securities market, or

(C) Held by or for no fewer than 500 persons at all times during the taxable year.

(b) *Treatment of allocable investment expenses*—(1) *By pass-through interest holders*—(i) *Taxable year ending with calendar quarter.* A pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year.

(ii) *Taxable year not ending with calendar quarter.* A pass-through interest holder whose taxable year does not end with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the sum of—

(C) The pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year, and

(D) For each calendar quarter that overlaps the beginning or end of the taxable year, the sum of the daily amounts of the allocable investment expenses allocated to the holder pursuant to paragraph (c)(1)(ii) of this section for the days in the quarter that fall within the holder's taxable year.

(2) *Proportionate share of allocable investment expenses.* For purposes of paragraph (b) of this section, a pass-through interest holder's proportionate share of the allocable investment expenses is the amount allocated to the pass-through interest holder pursuant to paragraph (a)(1) of this section.

(3) *Cross-reference.* See § 1.67–1T with respect to limitations on deductions for expenses described in section 212 (including amounts treated as such expenses under this section).

(4) *Interest income to holders of regular interests in certain REMICs.* Any amount allocated under this section to the holder of a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall be treated as interest income.

(5) *No adjustment to basis.* The basis of any holder's interest in a REMIC shall not be increased or decreased by the amount of the holder's proportionate share of allocable investment expenses.

(6) *Interest holders other than pass-through interest holders.* An interest holder of a REMIC that is not a pass-through interest holder shall not take into account in computing its taxable income any amount of income or expense with respect to its proportionate share of allocable investment expenses.

(c) *Computation of proportionate share*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a REMIC shall compute a pass-through interest holder's proportionate share of the REMIC's allocable investment expenses by—

(i) Determining the daily amount of the allocable investment expenses for the calendar quarter by dividing the

total amount of such expenses by the number of days in that calendar quarter.

(ii) Allocating the daily amount of the allocable investment expenses to the pass-through interest holder in proportion to its respective holdings on that day, and

(iii) Totaling the interest holder's daily amounts of allocable investment expenses for the calendar quarter.

(2) *Other holders taken into account.* For purposes of paragraph (c)(1)(ii) of this section, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of residual interests in the REMIC, whether or not pass-through interest holders.

(3) *Single-class REMIC*—(i) *Daily allocation.* In lieu of the allocation specified in paragraph (c)(1)(ii) of this section, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall allocate the daily amount of the allocable investment expenses to each pass-through interest holder in proportion to the amount of income accruing to the holder with respect to its interest in the REMIC on that day.

(ii) *Other holders taken into account.* For purposes of paragraph (c)(3)(i) of this section, the amount of the allocable investment expenses that is allocated on any day to each pass-through interest holder shall be determined by multiplying the daily amount of allocable investment expenses (determined pursuant to paragraph (c)(1)(i) of this section) by a fraction, the numerator of which is equal to the amount of income that accrues (but not less than zero) to the pass-through interest holder on that day and the denominator of which is the total amount of income (as determined under paragraph (c)(3)(iii) of this section) that accrues to all regular and residual interest holders, whether or not pass-through interest holders, on that day.

(iii) *Total income accruing.* The total amount of income that accrues to all regular and residual interest holders is the sum of—

(A) The amount includible under section 860B in the gross income (but not less than zero) of the regular interest holders, and

(B) The amount of REMIC taxable income (but not less than zero) taken into account under section 860C by the residual interest holders.

(4) *Dates of purchase and disposition.* For purposes of this section, a pass-through interest holder holds an interest on the date of its purchase but not on the date of its disposition.

(d) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) During the calendar quarter ending March 31, 1989, REMIC X, which is not a single-class REMIC, incurs $900 of allocable investment expenses. At the beginning of the calendar quarter, X has 4 residual interest holders, who hold equal proportionate shares, and 10 regular interest holders. The residual interest holders, all of whom have calendar-year taxable years, are as follows:

A, an individual.

C, a C corporation that is a nominee for individual I.

S, an S corporation, and

M, a C corporation that is not a nominee.

(ii) Except for A, all of the residual interest holders hold their interests in X for the entire calendar quarter. On January 31, 1989, A sells his interest to S. Thus, for the first month of the calendar quarter, each residual interest holder holds a 25 percent interest (100%/4 interest holders) in X. For the last two months, S's holding is increased to 50 percent and A's holding is decreased to zero. The daily amount of allocable investment expenses for the calendar quarter is $10 ($900/90 days).

(iii) The amount of allocable investment expenses apportioned to the residual interest holders is as follows:

(A) $75 ($10 × 25% × 30 days) is allocated to A for the 30 days that A holds an interest in X during the calendar quarter. A includes $75 in gross income in calendar year 1989. The amount of A's expenses described in section 212 is increased by $75 in calendar year 1989. A's deduction under section 212 (including the $75 amount of the allocation) is subject to the limitations contained in section 67.

(B) $225 ($10 × 25% × 90 days) is allocated to C. Because C is a nominee for I, C does not include $225 in gross income or increase its deductible expenses by $225. Instead, I includes $225 in gross income in calendar year 1989, her taxable year. The amount of I's expenses described in section 212 is increased by $225. I's deduction under section 212 (including the $225 amount of the allocation) is subject to the limitations contained in section 67.

(C) $375 [($10 × 25% × 30 days) + ($10 × 50% × 60 days)] is allocated to S. S includes in gross income $375 of allocable investment expenses in calendar year 1989. The amount of S's expenses described in section 212 for that taxable year is increased by $375. S allocates the $375 to its shareholders in accordance with the rules described in sections 1366 and 1377 in calendar year 1989. Thus, each shareholder of S includes its pro rata share of the $375 in gross income in its taxable year in which or with which calendar year 1989 ends. The amount of each shareholder's expenses described in section 212 is increased by the amount of the shareholder's allocation for the shareholder's taxable year in which or with which calendar year 1989 ends. The shareholder's deduction under section 212 (including the allocation under this section) is subject to the limitations contained in section 67.

(D) No amount is allocated to M. However, M's interest is taken into account for purposes of determining the proportionate share of those residual interest holders to whom an allocation is required to be made.

(iv) No allocation is made to the 10 regular interest holders pursuant to paragraph (a) of this section. In addition, the interests held by these interest holders are not taken into account for purposes of determining the proportionate share of the residual interest holders to whom an allocation is required to be made.

(e) *Allocable investment expenses not subject to backup withholding.* The amount of allocable investment expenses required to be allocated to a pass-through interest holder pursuant to paragraph (a)(1) of this section is not subject to backup withholding under section 3406.

(f) *Notice to pass-through interest holders*—(1) *Information required.* For each calendar quarter, a REMIC shall provide to each pass-through interest holder to which an allocation of allocable investment expenses is required to be made pursuant to paragraph (a)(1) of this section notice of—

(i) The aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212, and

(ii) The proportionate share of these expenses allocated to that pass-through interest holder for the calendar quarter, as determined under paragraph (c) of this section.

(2) *Statement to be furnished*—(i) *To residual interest holder.* For each calendar quarter, a REMIC shall provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F–4T(e).

(ii) *To regular interest holder*—*(A) In general.* For each calendar quarter, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) generally shall provide to each pass-through interest holder who holds a regular interest during the calendar quarter the notice required under paragraph (f)(1) of this section on a separate statement mailed (or otherwise delivered) in a separate mailing to the regular interest holder's last known address no later than the last day of the month following the close of the calendar quarter. No promotional or advertising information may be included on the statement. The information required to be included in the notice for the last calendar quarter of the calendar year may, however, be separately stated on the statement described in § 1.6049–

7T(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7T(f) (4) and (6)(i)(A).

(B) *Special rule for 1987.* The statement required under paragraph (f)(2)(ii)(A) of this section for any calendar quarter of 1987 shall be mailed (or otherwise delivered) to each pass-through interest holder who holds a regular interest during that calendar quarter no later than March 28, 1988.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f) (1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest shall also furnish such information to the Internal Revenue Service as required in § 1.860F–4T(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to paragraphs (a) (1) and (2)(ii) of this section and for which the REMIC is required to make an information return to the Internal Revenue Service pursuant to section 6049 and § 1.6049–7T(b)(2)(i) (or would be required to make such information return but for the $10 threshold described in section 6049(a)(1) and § 1.6049–7T(b)(1)). The REMIC shall state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in § 1.6049–7T(a)(2) (i) and (ii)), for the calendar year, and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to paragraph (a) of this section, and

(B) Such other information as may be specified by the form or its instructions.

(4) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2 (i) and (ii) of this section to such nominee in lieu of the pass-through interest holder.

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides, pursuant to paragraph (f)(4) of this section, a written statement to the nominee of the pass-through interest holder for a calendar quarter—

(A) The nominee shall furnish each pass-through interest holder with a written statement described in either paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, for the calendar quarter showing the information described in paragraph (f)(1) of this section, and

(B) If—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), and

(*2*) The nominee is required to make an information return pursuant to section 6042 and § 1.6049–7T (b)(1) and (2)(ii) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7T(b)(1)) with respect to the pass-through interest holder,

the nominee shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to the pass-through interest holder and state on this information return the information described in paragraph (f)(3)(ii) (A) and (B) of this section.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter shall be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC.

(6) *Special rules*—(i) *Time and place for furnishing returns.* The return required by paragraphs (f)(3)(ii) and (5)(i)(B) of this section for any calendar year shall be filed at the time and place that a return required under section 6049 and § 1.6049–7T(b) is required to be filed. See § 1.6049–4(g) and § 1.6049–7T(e).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (5)(i)(B) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6049 and § 1.6049–7T(b) that contains the information required by paragraph (f)(3)(ii) of this section.

Par. 3. New §§ 1.860D–1T and 1.860F–4T are added immediately following § 1.860–5. These new sections are set forth below.

§ 1.860D–1T Election to be treated as a real estate mortgage investment conduit (temporary).

(a) *In general.* An entity, or a segregated pool of assets within an entity, shall elect to be treated as a REMIC by complying with the requirements of paragraph (b) of this section and computing taxable income as a REMIC on its return (as prescribed in §1.860F–4T(b)) for the first taxable year of its existence. Once made, this election is irrevocable for that taxable year and all succeeding taxable years.

(b) *Required information.* When electing to be treated as a REMIC, the entity, or segregated pool of assets within an entity, shall provide either on its return or in a separate statement attached to its return—

(1) The REMIC's employer identification number, which shall not be the same as the identification number of any other entity,

(2) Information concerning the terms and conditions of the regular interests and the designated residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information,

(3) A description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and the regulations thereunder, including a statement supporting the selection of the prepayment assumption,

(4) The form of the electing entity under State law or, if an election is being made with respect to a segregated pool of assets within an entity, the form of that latter entity under State law, and

(5) Such other information as the Commissioner may by form or revenue procedure require.

(c) *Determination of status.* An entity, or segregated pool of assets within an entity, that elects to be a REMIC shall keep sufficient records as to investments and other assets to be able to show that it has complied with the provisions of sections 860A through 860G and the regulations thereunder during each taxable year.

§ 1.860F–4T REMIC reporting requirements and other administrative rules (temporary).

(a) *In general.* For purposes of Subtitle F of the Code, a REMIC shall be treated as a partnership and any holder of a residual interest in the REMIC shall be treated as a partner. A REMIC shall not be subject, however, to the rules of Subchapter C of Chapter 63 of Subtitle F, relating to the treatment of partnership items, for a taxable year, if there is at no time during the taxable year more than one holder of a REMIC residual interest.

(b) *REMIC tax return*—(1) *Return of income.* To satisfy the requirement under section 6031 to make a return of income for each taxable year, a REMIC shall file the return required by paragraph (b)(2) of this section. The due date and any extensions for filing the REMIC's annual return shall be determined as if the REMIC were a partnership.

(2) *Income tax return.* Because a REMIC, unlike a partnership, may be liable for taxes imposed under Subtitle A of the Code (for example, the tax imposed under section 860F(a) on net income from prohibited transactions), the REMIC shall make a return, as required by section 6011(a), for each taxable year on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return. The return shall include—

(i) The amount of principal outstanding on each class of regular interests as of the close of the taxable year,

(ii) The amount of the daily accruals determined under section 860E(c),

(iii) The REMIC's employer identification number, and

(iv) Such other information as the Commissioner may by form or revenue procedure require.

(c) *Signing of REMIC return.* For purposes of section 6063, a REMIC's income tax return for any taxable year may be signed by any one of the holders of a residual interest during that taxable year or, as provided in section 6903, by a fiduciary as defined in section 7701(a)(6) who is acting for the REMIC and who has furnished adequate notice in the manner prescribed in § 301.6903–1(b).

(d) *Designation of tax matters person.* A REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T. For purposes of applying that section, all holders of a residual interest in the REMIC are treated as general partners.

(e) *Notice to holders of residual interests*—(1) *Information required*—(i) *In general.* At the close of each calendar quarter, a REMIC shall provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q (Form 1066) of all the information required by the form and the information required by paragraphs (e) (1) (i) (A) Through (F) of this section.

(A) The REMIC shall provide to a residual interest holder that person's share of the taxable income or net loss of the REMIC for the calendar quarter.

(B) The REMIC shall provide to a residual interest holder the amount of the excess inclusion (as defined in section 860E and the regulations thereunder), if any, with respect to that person's residual interest for the calendar quarter.

(C) If the holder of a residual interest is also a pass-through interest holder (as defined in § 1.67–3T (a) (2)), the REMIC shall provide to that holder the allocable investment expenses (as defined in § 1.67–3T (a) (3)) for the calendar quarter.

(D) For calendar quarters after 1987, if the percentage of the REMIC's assets, computed on the basis of the average fair market value of the assets held during the calendar quarter (as described in paragraph (e) (1) (ii) (A) of this section), represented by each of the following categories:

(*1*) Qualifying real property loans under section 593,

(*2*) Assets of a domestic building and loan association (as described in section 7701 (a) (19)), and

(*3*) Real estate assets as defined in paragraph (e) (1) (ii) (C) of this section,

is at least 95 percent, the REMIC shall provide a statement for each category for which the REMIC met this test, specifying that at least 95 percent of the REMIC's assets were represented by that category. If the REMIC fails to meet the 95 percent test for any category, the percentage of the REMIC's assets represented by that category shall be provided.

(E) For calendar quarters after 1987, if less than 95 percent of the assets of the REMIC are real estate assets (as defined in paragraph (e) (1) (ii) (C) of this section), the REMIC shall also provide to any real estate investment trust (REIT) that holds a residual interest the following information:

(*1*) The percentage of the REMIC's assets described in section 856 (c) (5) (A), excluding from real estate assets any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, computed on the bases of the average fair market value of the assets of the REMIC during the calendar quarter (as described in paragraph (e) (1) (ii) (A) of this section), and

(*2*) The percentage of the REMIC's gross income (as defined in paragraph (e) (1) (ii) (B) of this section) described in section 856 (c) (3) (A) through (F), computed as of the close of the calendar quarter. For purposes of this paragraph, the term "foreclosure property" contained in section 856 (c) (3) (F) shall have the meaning specified in section 860G (a) (8).

In determining whether a REIT satisfies the limitations of section 856 (c) (2), all gross income shall be deemed to be derived from a source specified in section 856 (c) (2).

(F) For calendar quarters in 1987, the percentages of assets required in paragraph (e) (1) (i) (D) and (E) of this section may be computed on the basis of the fair market value of the assets of the REMIC as of the close of the calendar quarter, instead of on the basis of the average during the calendar quarter.

(ii) *Special provisions.* For purposes of this paragraph (e) (1) (ii) and paragraph (e) (1) (i) (D), (E), and (F) of this section:

(A) The average fair market value of the assets during each calendar quarter is determined by making the appropriate computation as of the close of each month, week, or day, and by using the quarterly average of the monthly, weekly or daily percentages. The monthly, weekly, or daily computation period shall be applied uniformly during the calendar quarter to all categories of assets and gross income, and may not be changed in succeeding calendar quarters without the consent of the Commissioner.

(B) Gross income shall mean gross income excluding gross income from prohibited transactions defined in section 860F (a) (2).

(C) Real estate assets shall mean real estate assets and defined in section 856 (c) (6) (B) excluding any property (not otherwise a real estate asset) attributable to the temporary investment of new capital.

(2) *Quarterly notice required*—(i) *In general.* Schedule Q shall be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter.

(ii) *Special rule for 1987.* Notice to any holder of a REMIC residual interest of the information required in paragraph (e) (1) of this section for any of the four calendar quarters of 1987 shall be mailed (or otherwise delivered) to each holder no later than March 28, 1988.

(3) *Nominee reporting*—(i) *In general.* If a REMIC is required under paragraphs (e) (1) and (2) of this section to provide notice to an interest holder who is a nominee of another person with respect to an interest in the REMIC, the nominee shall furnish such notice to the actual owner or owners.

(ii) *Time for furnishing statement.* Under paragraph (e) (3) (i) of this section, the nominee shall furnish the required notice to the actual owner or owners of a REMIC interest no later than 30 days after receiving such information.

(4) *Reports to the Internal Revenue Service.* A copy of Schedule Q for each

person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder shall be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Par. 4. New § 1.6049–7T is added immediately after § 1.6049–6 and reads as set forth below.

§ 1.6049–7T Returns of information with respect to REMIC regular interests and certain other debt instruments (temporary).

(a) *Definition of interest*—(1) *In general.* For purposes of section 6049(a) in taxable years beginning after December 31, 1986, the term "interest" includes amounts includible in the gross income of any holder (other than a holder described in paragraph (c) of this section) of—

(i) A REMIC regular interest (as defined in section 860G(a)(1)), or

(ii) Any other debt instrument to which section 1272(a)(6) applies.

(2) *Amounts includible.* Amounts includible in gross income as interest under paragraph (a)(1) of this section may consist of—

(i) Interest actually paid to the holder,

(ii) Interest accrued, but not paid, with respect to the REMIC regular interest or other debt instrument, or

(iii) Original issue discount accrued with respect to the REMIC regular interest or other debt instrument.

(b) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, an information return shall be made by any person described in paragraph (b)(2) of this section with respect to any amount aggregating $10 or more includible as interest under paragraph (a)(1) of this section by any other person during a calendar year.

(2) *Person required to make reports.* The persons required to make an information return under section 6049(a) of this section are—

(i) The REMIC or other issuer of a debt instrument to which section 1272(a)(6) applies, and

(ii) Any broker or middleman who holds as a nominee any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

(3) *Information to be reported*—(i) *Amounts other than original issue discount.* In the case of an amounts includible as interest, other than original issue discount treated as interest, an information return on Form 1099 shall be made for the calendar year showing the aggregate amount includible, the name, address, and taxpayer identification number of the person in whose income these amounts are includible, and such other information as is required by the forms.

(ii) *Original issue discount.* In the case of original issue discount, an information return on Form 1099 shall be made for each calendar year of any holder of a REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, with respect to which there is original issue discount includible in gross income aggregating $10 or more (as determined under section 1272(a)(6) and the regulations thereunder). The information return shall show—

(A) The name, address, and taxpayer identification number of each record holder for whom an amount of original issue discount is includible in gross income,

(B) The account or serial number, or other identifying number or information, of each REMIC regular interest or other debt instrument with respect to which a return is being made,

(C) The aggregate amount of original issue discount includible in the gross income of each holder for the period during the calendar year for which the return is made,

(D) The name and address of the person filing the return, and

(E) Such other information as is required by the form.

(iii) *Cross-reference.* See § 1.67–3T(f)(3)(ii) for additional information required to be included on an information return on Form 1099 with respect to certain holders of regular interest in REMICs described in § 1.67–3T(a)(2)(ii).

(c) *Information returns not required.* An information return shall not be required under section 6049(a) and this section with respect to amounts includible as interest by the holder of a REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, if the holder is—

(1) An organization exempt from taxation under section 501(a) or an individual retirement plan,

(2) The United States or a State, the District of Columbia, a possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing,

(3) A foreign government, a political subdivision thereof, or an international organization,

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1) to be a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency), or

(5) Any trust which is described in section 4947(a)(1) (relating to certain charitable trusts).

(d) *Special rules*—(1) *Incorporation by reference.* Except as provided in paragraph (d)(2) of this section, the special rules of § 1.6049–4(d) are incorporated in this section, as applicable.

(2) *Exception.* Sections 11.6049–4(d)(2) and 1.6049–5(c) shall not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies until such time as the Commissioner determines that the broader reporting of amounts includible as interest required by this section is not sufficient for an accurate accounting for those amounts by the holder of any such interest. At that time, the Commissioner may by ruling or other announcement require the submission of Form 8281 (or similar form) to the Internal Revenue Service with respect to any such interest.

(e) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under this section for any calendar year with respect to amounts includible as interest to which this section applies shall be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 of the following year. These returns shall be filed with the appropriate Internal Revenue Center, the address of which is listed in the instructions for Form 1099. For extensions of time for filing returns under this section, see § 1.6081–1. For magnetic media filing requirements, see § 301.6011–2.

(f) *Requirement of furnishing statement to recipient*—(1) *In general.* Every person filing a Form 1099 under section 6049(a) and this section shall furnish to the person whose identifying number is required to be shown on the form a written statement showing the information required by paragraph (f)(2) of this section.

(2) *Form of statement*—(i) *Amounts other than original issue discount.* With respect to amounts includible as interest (other than original issue discount) in the gross income of any person during a calendar year, the written statement required to be furnished under paragraph (f)(1) of this section shall show—

(A) The aggregate amounts shown on Form 1099 to be included in income by that person,

(B) The name and address of the person filing the form, and

(C) A legend, including a statement that the amount is being reported to the

Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient.

(ii) *Original issue discount.* With respect to original issue discount includible in the gross income of a holder, during the calendar year, of a REMIC regular interest or other debt instrument to which section 1272(a)(6) applies, the written statement required to be furnished under paragraph (f)(1) of this section shall show—

(A) The aggregate amount of original issue discount includible in gross income by (or on behalf of) the holder for the calendar year with respect to the regular interest or other debt instrument,

(B) The information required by paragraph (b)(3)(ii)(B) of this section,

(C) For calendar years after 1987, the daily portion of original issue discount that is allocated to each day of an accrual period as determined under section 1272(a)(6) and the regulations thereunder,

(D) For calendar years after 1987, the length of the accrual period,

(E) All other items shown on Form 1099 for the calendar year,

(F) A legend, including a statement that the information required under paragraphs (f)(2)(ii) (A), (B), and (E) of this section is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient,

(G) For calendar years after 1987, the adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the regular interest at the beginning of each accrual period with respect to which interest income is required to be reported on Form 1099–OID, and

(H) Information necessary to compute accrual of market discount. [Reserved.]

(3) *Information with respect to REMIC assets*—(i) *95 percent asset test.* For calendar years after 1987, the statement required by paragraph (f) of this section with respect to any REMIC regular interest shall also specify for each calendar quarter during which the percentage of the REMIC's assets, computed on the basis of the average fair market value of assets held during the calendar quarter (as described in § 1.860F–4T(e)(1)(ii)(A)), represented by each of the following categories:

(A) Qualifying real property loans under section 593,

(B) Assets of a domestic building and loan association (as described in section 7701(a)(19)), and

(C) Real estate assets as defined in § 1.860F–4T (e)(1)(ii)(C) is at least 95 percent, that, for each category for which the REMIC meets this test, at least 95 percent of the REMIC's assets were represented by that category for that calendar quarter. If the REMIC fails to meet the 95 percent test for any category in any calendar quarter, the percentage of the REMIC's assets represented by that category for that calendar quarter shall be provided.

(ii) *Additional information required if the 95 percent test not met.* For calendar years after 1987, if for any calendar quarter less than 95 percent of the assets of the REMIC are real estate assets (as defined in § 1.860F–4T(e)(1)(ii)(C)), the REMIC shall also report for each such calendar quarter to any real estate investment trust (REIT) that holds a regular interest the following information:

(A) The percentage of the REMIC's assets described in section 856(c)(5)(A), excluding from real estate assets any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, computed on the bases of the average fair market value of the assets of the REMIC during the calendar quarter (as described in § 1.860F–4T(e)(1)(ii)(A)), and

(B) The percentage of the REMIC's gross income (as defined in § 1.860F–4T(e)(1)(ii)(B)) described in section 856(c)(3)(A) through (F), computed as of the close of the calendar quarter. For purposes of this paragraph, the term "foreclosure property" contained in section 856(c)(3)(F) shall have the meaning specified in section 860G(a)(8).

In determining whether a REIT satisfies the limitations of section 856(c)(2), all gross income shall be deemed to be derived from a source specified in section 856(c)(2).

(4) *Cross-reference.* See § 1.67–3T(f)(2)(ii) for additional information that may be separately stated on the statement required by paragraph (f) of this section with respect to certain holders of regular interest in REMICs described in § 1.67–3T(a)(2)(ii).

(5) *Time for furnishing statements—(i) In general.* Each statement required under paragraph (f) of this section to be furnished to any person for a calendar year with respect to amounts includible as interest shall be furnished to that person after April 30 of that year and on or before January 31 of the following year, but not before the final interest payment (if any) for the calendar year.

(ii) *Nominee reporting.* Each statement required under paragraph (f) of this section to be furnished by a nominee shall be furnished to the actual owner or owners of a REMIC interest no later than 30 days after the nominee receives such information.

(6) *Special rules*—(i) *Copy of Form 1099 permissible.* The requirements of paragraph (f) of this section for the furnishing of a statement to any person, including the legend requirement of paragraphs (f)(2)(i)(C) and (ii)(F) of this section, may be met by furnishing to that person—

(A) A copy of the Form 1099 filed pursuant to paragraph (b) of this section in respect of that person, plus a separate statement that contains the information described in paragraphs (f)(2)(ii)(C), (D), and (G) (f)(3), and (f)(4), if applicable, of this section, or

(B) A substitute form that contains all the information required under paragraph (f) of this section and that complies with any current revenue procedure concerning the reproduction of paper substitutes of Forms 1099 and the furnishing of substitute statements to forms recipients.

(ii) *Statement furnished by mail.* A statement mailed to the last known address of any person shall be considered to be furnished to that person within the meaning of this section.

(g) *Information required to be set forth on face of debt instrument.* In the case of any REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, that is issued after April 8, 1988, and that has original issue discount, the issuer shall set forth on the face of the regular interest or other debt instrument—

(1) The amount of the original issue discount,

(2) The issue date,

(3) The rate at which interest is payable (if any) as of the issue date, and

(4) The yield to maturity, including a statement as to the assumption made under section 1272(a)(6)(B)(iii), the method used to determine yield where there is a short accrual period, and the amount of the original issue discount allocable to the short accrual period.

In cases where it is not possible to set forth the information required by this paragraph (g) on the face of the regular interest or other debt instrument by the issue date, the issuer shall deliver to the holder a sticker containing this information within 10 days after the issue date. For rules relating to the penalty imposed for failure to show the information required by this paragraph (g) on the regular interest or other debt instrument, see section 6706(a) and the regulations thereunder.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

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§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by adding to the table in the appropriate place—

"§1.67–3T . . . . . . 1545–0118",
"§1.860D–1T . . . . 1545–0118",
"§1.860F–4T . . . . 1545–0118", and
"§1.6049–7T . . . . 1545–0118".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) or section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
February 23, 1988.
[FR Doc. 88–5127 Filed 3–8–88; 3:03 pm]
BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3291–1]

Standards of Performance for New Stationary Sources; Appendix B, Performance Specification 6; Addition of Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 9, 1987, EPA proposed an amendment to Appendix B of 40 CFR Part 60 to add Performance Specification 6 (PS 6) to address continuous emission rate monitoring systems (CERMS's) that may be required by subparts to Part 60 (52 FR 7178). This action promulgates the amendment. The intended effect of this addition is to provide a protocol needed for the evaluation of the quality of the data produced by a CERMS. PS 6 contains specifications for acceptable data quality, and describes how test procedures from Appendix A of Part 60 are to be used to measure that quality. PS 6 will apply to Subpart LLL and any other stationary source category where CERMS's are required, except when specifically excluded by the governing regulation.

DATES: *Effective Date:* March 9, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this notice. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–86–21, containing information considered by EPA in development of the promulgated rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Grimley or Mr. Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A performance specification for continuous emission rate monitoring systems is being added to Appendix B of 40 CFR Part 60. Subpart LLL of Part 60 specifies the use of such systems, and this performance specification is needed for their evaluation.

This rulemaking does not impose emission monitoring requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add a protocol for evaluating the achievement of emission monitoring requirements that would apply irrespective of this rulemaking.

II. Public Participation

The proposed amendment to Appendix B was published in the Federal Register on March 9, 1987 (52 FR 7178). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed procedures, a public hearing was scheduled for April 23, 1987, beginning at 10:00 a.m. The hearing was not held because no one requested to speak. The public comment period was from March 9, 1987, to May 26, 1987. Two comment letters were received concerning issues related to the proposed amendment. The comments have been considered carefully and, where determined to be appropriate by the Agency, changes have been made to the proposed rulemaking.

III. Significant Comments and Changes to the Proposed Standards

Two comment letters were received on the proposed addition—one that contained five comments from a State agency, and one that contained two comments from an industry trade association.

The State agency's first comment was that an operational test period specification should be added to verify the short-term reliability of the sensor.

The test period for the calibration drift (CD) is 7 consecutive days. The CD specification for all measurement parameters provides the verification of short-term reliability for any portion of the CERMS, including the flow rate sensor.

The State agency's second comment was that a calibration error specification should be added to verify sensor accuracy and repeatability throughout the entire measurement range.

The CD definition already encompasses calibration error, since CD is defined in terms of an established reference value, as opposed to a previous instrument reading. The extent of calibration error, in terms of the CD, is determined at both zero and high level values. In addition, the midpoint error is determined by the results of the relative accuracy (RA) test.

The State agency's third comment was that a response time specification which would verify that the flow sensor response is at least as quick as pollutant concentration analyzers should be added to prevent inaccurate emission rates being reported during periods of fluctuating flow.

It is the EPA's opinion that flow rate sensors have a response time equally as fast as pollutant concentration analyzers. It is also the EPA's opinion that a response time specification is not necessary because the applicable regulations specify an averaging time of generally 60 minutes or more. The potential for problems in meeting the RA specification due to the type of situation described by the commenter is considerably lessened because of the averaging of nine separate paired measurements to yield one RA value. No reporting requirement for instantaneous emission rate values is envisioned.

The State agency's fourth comment was that an orientation sensitivity specification should be added to verify that the flow sensor is not overly sensitive to alignment.

The EPA agrees that some flow sensors may be more sensitive to alignment than others; however, if the flow sensor is overly sensitive to alignment, then the CERMS will not pass the RA test.

The State agency's fifth and final comment was that since other PS's require RA to be determined in units of the applicable standard, there is no reason to repeat this specification in PS 6 for cases where the flow sensor is used to convert pollutant concentrations to mass emission rates. However, an RA specification that would apply only to the flow sensor should be added for cases where the flow sensor would be used for other purposes (e.g., estimation of emission rates using factor-generated concentrations, or back-calculation of heat inputs to combustion units).

An RA specification that would apply only to the flow sensor cannot be added because no regulatory requirement exists for such a specification. However, a regulatory requirement does exist for determining emission rates as total mass in a measured quantity of stack gas per unit of time. PS 6 includes a flow rate sensor and, therefore, the RA specification is not a repetition of other PS's.

The trade association's first comment was that the proposed 3 percent CD specification does not appear to be consistent with those in other PS's. The commenter noted that the 3 percent is lower than the 5 percent span value limit (6 out of 7 days) specified in PS 5 for total reduced sulfur (TRS) monitors. The commenter also noted that, although PS 2 has a 2.5 percent drift limit for SO_2 and NO_x monitors, it does not include the O_2 and CO_2 monitors which are allowed a CD of no more than 0.5 percent from the reference value. The commenter then suggested language to include in PS 6 to state that the CD shall be determined separately for each analyzer in terms of its specific measurement, and that for analyzers for which PS's have been established (e.g., PS 2 for SO_2 and NO_x monitors, PS 3 for CO_2 and O_2 monitors, and PS 5 for TRS monitors), the CD limit shall be the same as in the applicable PS.

The EPA is in agreement with this comment, and PS 6 has been revised accordingly.

The trade association's second and final comment dealt with the RA specification. The commenter questioned whether the 20 percent RA requirement was developed with an allowance for flow measurement errors, and noted that a 20 percent RA requirement also applies to PS 2, where flow measurements are not required. The commenter then stated that if flow measurement errors have not been considered, an increase in the 20 percent figure may be appropriate.

The 20 percent RA specification of PS 6 includes an allowance for errors in the flow measurement. PS 2 has the same RA specification which includes an allowance for error in the measurement of O_2 or CO_2. Errors in the measurement of flow rate are essentially the same magnitude as errors in the measurement of CO_2 or O_2 concentration, so no change has been made in the RA specification.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (Clean Air Act, Section 307(d)(7)(A)).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission monitoring requirements beyond those specified in the current regulations; instead, it provides a protocol for evaluating the achievement of emission monitoring requirements that would apply irrespective of the rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any economic impact on small entities, because the rule does not add either to the existing requirement for the installation of continuous monitoring systems or increase their associated maintenance costs. These costs (initial investment $45,000; annualized operating $40,000) for Subpart LLL were considered at the time that the regulation was developed, and the costs have not increased.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Onshore natural gas processing, Reporting and recordkeeping requirements, Incorporation by reference.

Date: March 3, 1988.

Lee M. Thomas,
Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding Performance Specification 6 to Appendix B as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 6—Specifications and Test Procedures For Continuous Emission Rate Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability. The applicability for this specification is the same as Section 1.1 of Performance Specification 2 (PS 2), except this specification is to be used for evaluating the acceptability of continuous emission rate monitoring systems (CERMS's). The installation and measurement location specifications, performance specification test procedure, data reduction procedures, and reporting requirements of PS 2, Section 3, 5, 8, and 9, apply to this specification.

1.2 Principle. Reference method (RM), calibration drift (CD), and relative accuracy (RA) tests are conducted to determine that the CERMS conforms to the specification.

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2. Definitions

The definitions are the same as in Section 2 of PS 2, except that this specification refers to the continuous emission rate monitoring system rather than the continuous emission monitoring system. The following definitions are added:

2.1 Continuous Emission Rate Monitoring System (CERMS). The total equipment required for the determination and recording of the pollutant mass emission rate (in terms of mass per unit of time).

2.2 Flow Rate Sensor. That portion of the CERMS that senses the volumetric flow rate and generates an output proportional to flow rate. The flow rate sensor shall have provisions to check the CD for each flow rate parameter that it measures individually (e.g., velocity pressure).

3. Performance and Equipment Specifications

3.1 Data Recorder Scale. Same as Section 4.1 of PS 2.

3.2 CD. Since the CERMS includes analyzers for several measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement. The calibration for each analyzer used for the measurement of flow rate except a temperature analyzer shall not drift or deviate from either of its reference values by more than 3 percent of 1.25 times the average potential absolute value for that measurement. For a temperature analyzer, the specification is 1.5 percent of 1.25 times the average potential absolute temperature. The CD specification for each analyzer for which other PS's have been established (e.g., PS 2 for SO_2 and NO_x), shall be the same as in the applicable PS.

3.3 CERMS RA. The RA of the CERMS shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

4. CD Test Procedure

The CD measurements are to verify the ability of the CERMS to conform to the established CERMS calibrations used for determining the emission rate. Therefore, if periodic automatic or manual adjustments are made to the CERMS zero and calibration settings, conduct the CD tests immediately before these adjustments, or conduct them in such a way what CD can be determined.

Conduct the CD tests for pollutant concentration at the two values specified in Section 4.1 of PS 2. For each of the other parameters that are selectively measured by the CERMS (e.g., velocity pressure), use two analogous values: one that represents zero to 20 percent of the high-level value (a value that is between 1.25 and 2 times the average potential value) for that parameter, and one that represents 50 to 100 percent of the high-level value. Introduce, or activate internally, the reference signals to the CERMS (these need not be certified). Record the CERMS response to each, and subtract this value from the respective reference value (see example data sheet in Figure 6–1).

5. RA Test Procedure

5.1 Sampling Strategy for RM's Tests, Correlation of RM and CERMS Data, Number of RM's Tests, and Calculations. These are the same as PS 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively. Summarize the results on a data sheet. An example is shown in Figure 6–2. The RA test may be conducted during the CD test period.

5.2 Reference Methods (RM's). Unless otherwise specified in the applicable subpart of the regulations, the RM for the pollutant gas is the Appendix A method that is cited for compliance test purposes, or its approved alternatives. Methods 2, 2A, 2B, 2C, or 2D, as applicable are the RM's for the determination of volumetric flow rate.

6. Bibliography

1. Brooks, E.F., E.C. Beder, C.A. Flegal, D.J. Luciani, and R. Williams. Continuous Measurement of Total Gas Flow Rate from Stationary Sources. U.S. Envionmental Protection Agency. Research Triangle Park, North Carolina. Publication No. EPA–650/2–75–020. February 1975. 248 p.

[FR Doc. 88–5150 Filed 3–8–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 266

[SWH–FRL–3338–3]

Hazardous Waste Management System; Burning of Used Oil Fuel in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency.

ACTION: Notice of determination to deny petitions.

SUMMARY: On November 29, 1985, EPA issued final rules to control the burning of used oil and hazardous waste as fuel under Subtitle C of the Resource Conservation and Recovery Act (RCRA). One provision of those rules established a specification for used oil fuel. Fuel meeting the specification may be burned in any boiler or furnace, while fuel not meeting the specification may only be burned in industrial boilers or furnaces. EPA made this specification effective December 9, 1985, except for the lead limit (of 100 ppm) which became effective May 29, 1986. EPA received petitions from three parties requesting (among other things) that the lead limit be suspended. On January 26, 1987, EPA issued a notice to tentatively deny these petitions, and to solicit comments on the tentative determination. In response to the tentative determination, EPA received four public comments. In this notice, EPA is announcing its final determination to deny these petitions.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or (202) 382–3000. For technical information, contact David Tomten, Office of Solid Waste, (202) 382–7917. Single copies of this notice can be obtained by calling the RCRA Hotline (above).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
II. The Petitions and Comments
III. EPA Response to the Petitions and Comments
  A. Proposed Listing of Used Oil
  B. The Lead Specification
  C. Burner Notification
IV. Summary
V. Supporting Documents

Decision to Deny Petitions to Eliminate or Modify Used Fuel Oil Specifications

I. Background

On November 29, 1985 (50 FR 49164–49211) EPA established, among other provisions, a burning specification for used oil fuel (see 40 CFR 255.40(e)). See Table 1, below, for the fuel specification. Fuel meeting the specification may be burned in any boiler or furnace, while fuel exceeding any specification limit may only be burned in an *industrial* boiler or furnace (see 40 CFR 266.41). EPA has established that fuel not meeting the specification may pose a significant hazard when burned in non-industrial boilers and, therefore, that its use must be restricted (50 FR 49180–49187). For now, the principal restriction is the prohibition on burning in *non*-industrial boilers and furnaces. There are other regulations such as record-keeping requirements. Industrial burners may burn off-specification used oil fuel provided they comply with the notification, certification, and record-keeping provisions of 40 CFR 266.44 (50 FR 49195–49198). EPA may impose further restrictions to control emissions from burning off-specification used oil fuel in any type of combustion unit in a future rulemaking.

TABLE 1.—THE EPA USED OIL FUEL SPECIFICATION[a]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash Point	100 °F minimum.
Total Halogens	4,000 ppm maximum.[b]

[a] The specification does not apply to used oil fuel mixed with a hazardous waste other than hazardous waste from small quantity generators conditionally exempt under 40 CFR 261.5.

[b] Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under 40 CFR 266.40(c). Such used oil is subject to 40 CFR Part 266, Subpart D, rather than Part 266, Subpart E, when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

II. The Petitions and Comments

EPA received three petitions to amend the final used oil fuel rules, all of which dealt principally with eliminating or deferring the specification for the contaminant lead:

(1) Petition from the National Oil Recyclers Association (NORA), dated May 9, 1986. NORA is an association of firms in the business of processing used oil for use as fuel. NORA requested that EPA postpone the effective date of the 100 ppm lead limit until such time as at least 80% of used oil samples, on a nationwide basis, meet the limit.

(2) Petition from the Midwest Oil Refining Company, dated May 13, 1986. Midwest Oil processes used oil for use as fuel. Midwest Oil requested that first, EPA rescind the burner notification requirement or, as an alternative, delay the lead limit as NORA recommends; and second, that EPA withdraw its proposed listing of used oil as a hazardous waste (see 50 FR 49258, November 29, 1985).

(3) Petition from the the Association of Environmentally Regulated Connecticut Industries (AERCI), dated May 22, 1986. AERCI is an association of firms in the business of processing used oil for use as fuel. AERCI requested delay of the lead limit until September 30, 1986, or later.

In summary, the three petitioners are concerned that EPA's requirements, chiefly the lead specification, and also the requirement that used oil fuel burners notify the Agency of their activities, are having an adverse impact on the used oil fuel market, causing them economic hardship. Consequently, they assert that EPA's requirements are leading to improper disposal of used oil. The petitioners also assert that the Agency's rule rests on flawed assumptions. They cite EPA's projection that by May 1986, nearly 80% of used oil samples would be at or below 100 ppm lead (50 FR 49186). The petitioners, however, provided limited self-sampling data showing that as of March and April 1986, lead levels in used oil being processed for use as fuel were more typically 300–400 ppm and sometimes as high as 500–700 ppm. NORA and Midwest Oil also claim that they market used oil fuel to industrial burners; and that these burners are reluctant to notify EPA that they are burning off-specification used oil fuel. NORA and Midwest Oil claim that the reduced demand for used oil fuel will lead to the collapse of the used oil recycling system and to widespread uncontrolled disposal of used oil. The petitioners argue that temporarily suspending the lead limit would allow the continued sale of most used oil fuel as "specification" fuel, exempt from regulation, and would thus prevent such adverse impacts.

On January 26, 1987, we tentatively denied these petitions primarily for the following reason. The Agency has determined that the 100 ppm limit is necessary to protect human health and the environment. Our studies show that burning fuel oil exceeding the 100 ppm lead specification would result in violations of the national Ambient Air Quality Standard (NAAQS) of 1.5 micrograms per cubic meter ($\mu g/m^3$). We have concluded that, as a minimum, the NAAQS must be met to protect human health. See also 52 FR 2695 (January 26, 1987) for a more detailed discussion of the basis for EPA's tentative denial of the petitions.

EPA has received four comments on the tentative decision to deny the petitions. They are:

(001) Letter to U.S. Senator Strom Thurmond, from Statewide Service and Supply, Inc., dated November 21, 1986. From the content of the letter, it is difficult to tell in what area of the used oil business Statewide Service and Supply is involved (i.e., hauler, burner). The commenter wants the "lead credit" and National Ambient Air Quality Standard established by EPA to be considered when setting the lead specification.

(002) Comment from the Midwest Oil Refining Company, dated February 24, 1987. Midwest Oil processes used oil for use as fuel. In their comment, Midwest Oil reiterates their requests that first EPA rescind the burner notification requirement or, as an alternative, delay the lead limit as NORA recommends; and second, that EPA withdraw its proposed listing of used oil as a hazardous waste (see 50 FR 49258, November 29, 1985).

(003) Comment from Patchem, Inc., dated March 17, 1987. The company manages fuel blending programs at cement plants. The commenter claims that lead in oil burned for cement kilns would not be emitted to the atmosphere and that the 100 ppm specification is excessively stringent for this type of burning. The commenter agreed with EPA's level of 100 ppm lead to classify oil as off-specification for use in industrial boilers.

(004) Comment from the National Oil Recyclers Association (NORA), dated March 27, 1987. NORA is an association of firms in the business of processing used oil for use as fuel. NORA reiterates their request, in their comment, that EPA postpone the effective date of the 100 ppm lead limit until such time as at least 80% of used oil samples, on a nationwide basis, meet the limit.

In summary, the commenters objecting to the 100 ppm lead specification level for used oil repeated the petitioners' arguments that EPA's requirements ultimately lead to improper disposal of used oil by discouraging the burning of used oil as fuel in industrial boilers and furnaces. Commenters claim that the fuel brokers and industrial burners who are their customers refuse to register or notify and no longer buy used oil. In their comments, they stated that the stigma and potential liability associated with burning hazardous fuel coupled with the low market price of virgin fuel oil has deterred burners from using off-specification fuel.

Of the four parties commenting on the specification levels for used oil constituents, one, Patchem Inc., agreed that industrial boilers with capacity to generate 50 million Btus per hour should burn only oil with less than 100 ppm lead. The commenter states that a lime scrubber would be necessary for safe burning of oil containing greater than 100 ppm lead.

III. EPA Response to the Petitions and Comments

A. Proposed Listing of Used Oil

Midwest Oil petitioned and later commented to EPA that the Agency withdraw its proposed listing of used oil (when recycled) as a hazardous waste because fuel customers fear adverse publicity, increased liability, etc., perceived to be associated with handling hazardous waste. The Agency, as explained in a recent Federal Register notice, has determined that recycled used oil will *not* be listed as hazardous waste (51 FR 41900, November 19, 1986). This aspect of the petition, then, is no longer relevant and no specific response is provided here. Marketers of used oil fuel may cite the listing determination notice to those burners who were concerned because of the listing proposal. As explained further below, burners may also notify EPA using a form or letter without reference to "hazardous waste."

B. The Lead Specification

Lead is a very toxic pollutant with serious health effects even at very low levels. EPA promulgated the 100 ppm limit because levels higher than 100 ppm are expected to result in violations of the National Ambient Air Quality Standard (NAAQS) of 1.5 micrograms per cubic meter ($\mu g/m^3$) under certain conditions (50 FR 1697–1698, January 11, 1985, and 50 FR 49184–49185, November

29, 1985). EPA concluded that exceedances of the NAAQS could cause adverse health effects, especially in children and other sensitive populations and, as a *minimum*, the Agency must meet the NAAQS. As we discussed at 50 FR 49185 (November 29, 1985), EPA is considering establishing a used oil lead specification lower than 100 ppm.

A commenter stated that EPA's level of 100 ppm lead, when found in used oil, should classify it as an off-specification fuel even for use in industrial boilers. Unless controlled through the use of lime-scrubbing air pollution control devices, the commenter stated that emissions from such units could be detrimental to human health and the environment. No data were provided. Based on available data as summarized in the November 1985 final rule (50 FR 49184), EPA believes the 100 ppm level is protective because it protects against lead emissions from burning used oil exceeding the NAAQS, for a Most Exposed Individual in reasonable worst case conditions (multiple boilers burning 100 percent used oil fuel in an urban area with poor air dispersion). Since the Agency has been provided with no data disputing this analysis, the Agency's original conclusion still stands.

The petitioners and commenters argue that EPA cited projections of lead content in used oil showing that by May 1986 approximately 80% of used oil samples nationwide would meet the 100 ppm lead limit as-generated (i.e., without blending with virgin fuel oil). The petitioners provided, however, self-sampling data showing that by March or April of 1986, lead levels in used oil they processed were not near 100 ppm, but more typically 300–400 ppm. They argue that EPA should therefore delay imposition of the 100 ppm limit until such time as 80% of used oil samples, on a nationwide basis, meet the limit.

Petitioners' and commenters' reasoning here, however, starts with the incorrect premise that EPA only established a 100 ppm lead limit for used oil because we thought 80% of used oil, as generated, would meet such limit by May 29, 1986. As explained above, EPA established the limit to prevent adverse health effects; we never conditioned the limit on any set percentage of samples meeting the limit. In fact, EPA expected that even if lead levels dropped substantially, most unblended used oil would still be off-specification in May 1986 (see 50 FR 49186, Table 5, November 29, 1985). Data submitted by the petitioners (Table 2) confirms that this was a reasonably accurate prediction.

TABLE 2.—DATA SUBMITTED BY PETITIONERS

A. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Arsenic, Cadmium, or Chromium.	Number Samples Exceeding Specification Levels for either Arsenic, Cadmium, or Chromium
NORA	34	11	3
AERCI	18	2	1
B. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Total Halogens	Number Samples Exceeding 1000 ppm Halogen Level[a]
NORA	34	5	2
C. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Individual Chlorinated Solvents.	Number Samples Exceeding 100 ppm for Any Individual Chlorinated Solvent[b]
AERCI	18	18	11
D. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Lead	Number Samples Exceeding Lead Specification
NORA	34	34	34
AERCI	18	18	18

[a] Used oil containing greater than 1,000 ppm total halogens is rebuttably presumed to be hazardous waste. See 40 CFR 266.40(c), discussed at 50 FR 49176, November 29, 1985.

[b] Used oil containing greater than 100 ppm of a hazardous spent solvent has probably been mixed with that solvent. See 50 FR 49176, November 29, 1985.

Petitioners and commenters also cite the staggered effective date EPA promulgated as justification for suspension of the 100 ppm lead limit. EPA made the specification (and the ban on burning off-specification fuel in nonindustrial boilers) effective December 9, 1985, except that the 100 ppm lead limit did not become effective until May 29, 1986 (50 FR 49185–49186, November 29, 1985). The petitioners argue that EPA was "delaying" the imposition of the lead limit until 80% of used oil samples meet the 100 ppm limit. As discussed above, EPA did not condition imposition of the 100 ppm limit on any set percentage of samples meeting the limit; nor did we establish an effective date on this basis. Making the lead limit effective May 29, 1986, gave the regulated community six months to comply with the rules; this is the usual amount of time comtemplated for compliance with RCRA subtitle C regulations. See RCRA section 3010(b). The somewhat unusual action in this case was making the remainder of the specification effective within only 10 days. This action was taken to control the potentially toxic or carcinogenic effects of the other constituents as soon as practicable during the 1985–86 heating season (50 FR 49202).

Some of the petitioners (*after* submission of their original petitions) and commenters later raised the issue that EPA, in making its projections on lead levels in used oil, did not take into account the Agency's "lead credits" program, under which gasoline marketers can use "banked" lead to market leaded gas in exceedance of the national standard of 0.1 grams per gallon (see 40 CFR 80.20(e)). EPA agrees that when banked lead is taken into account, lead levels in used oil (nationwide) will fall more slowly than was predicted on November 29, 1985. As discussed above, however, imposition of the used oil rules was not conditioned on any set percentage of used oil meeting the specification. The effect of the phased reduction of lead in gasoline on lead content of used crankcase oil, therefore, is not a factor. In any case the credits expired in December 1987. The discussion at 50 FR 49185–49186 (November 29, 1985) concerned whether the lead limit should be imposed almost immediately (i.e., December 9, 1985) or 6 months later, both dates being within the normal scope of effective dates under RCRA section 3010(b). Neither in the January 11, 1985 proposal nor at any other time did EPA propose an extended phase-in of its used oil fuel specifications that would be similar to the Agency's leaded gasoline reduction program. The two situations are very different.

In the case of leaded gasoline, EPA is working toward reduction or elimination of the use of lead as a fuel additive (see § 80.20(a)(1)). Refiners must modify production processes to eventually eliminate the addition of lead or leave the gasoline production business. In contrast, EPA has not banned the marketing of off-specification used oil fuel, but limits marketing only to industrial burners. To implement this restriction, the Agency established minimal paperwork requirements (i.e., §§ 266.43(b) and 266.44). Industrial burners have historically comprised 80% of the used oil fuel market.

In summary, EPA finds no basis for suspending the used oil fuel lead limit. Petitioners' and commenters' arguments are based on misconceptions of the original basis for the specification. Most importantly, the specification is EPA's definition of contaminated fuel, and the rules in Part 266, Subpart E are designed to keep such fuel out of residential and other nonindustrial boilers. In making this determination, EPA has considered how easy or difficult it would be to meet the specifications. We expected most used oil, as-generated, would not meet the specification. By analogy with section 3010(b), we provided that the regulations would become effective six months after promulgation.

C. Burner Notification

EPA does not see a basis for rescinding the notification requirement for burners of off-specification fuel. First, the notification is a necessary part of EPA's efforts to control the burning of contaminated fuels. Second, the notification is by no means a burdensome requirement and, therefore, the Agency has concluded it does not adversely affect used oil recycling.

1. *Uses of the notification.* Congress, in amending RCRA sections 3004 and 3010 in 1984 to include the special waste-as-fuel provisions, was reacting to what they perceived as a "major deficiency in the * * * RCRA regulations * * *" (H.R. Rep. No. 98–198 at 39). RCRA section 3010(a), as amended, was self-implementing so that if EPA did not act, all burners of used oil (with certain exceptions specified in the statute) would have been required to notify by February 1986. EPA did act to require notification but, as authorized by Congress, we exempted from the statutory notification requirement (and all other requirements) burners of *specification* used oil fuel. EPA determined that since burning *specification* used oil fuel does not pose a serious hazard, no regulation is necessary (see 50 FR 49180, November 29, 1985).

EPA determined that a continuing notification requirement was needed for processors, marketers, and burners of off-specification used oil fuel. To the extent the requirement applies after February 1986, the requirement does not derive from section 3010, but rather serves, and is derived from, general information-gathering authority.

EPA does not agree with the petitioner who asserts that notification by burners of *off*-specification used oil fuel is also unnecessary. As stated on November 29, 1985 (50 FR 49195): "Notification is necessary because EPA must be able to identify those persons who engage in waste-as-fuel activities in order to ensure that waste fuels are managed properly and not routed to nonindustrial markets." It is not sufficient, as the petitioner suggests, for EPA to inspect sales records (logs, invoices, etc.) of used oil fuel marketers. We believe the burner notification requirement serves the important function of providing the Agency with an independent means of checking the assertions of marketers that they are in fact selling off-specification used oil fuel only to the industrial market. For example, as noted in our previous tentative denial of the petitions, if the Agency suspected a specific marketer off selling of-specification used oil fuel to non-industrial burners, one way to determine whether this was in fact occurring would be to compare fuel sales invoices at the marketer's facility with the Agency's own list of industrial burners who have notified as required.

The Agency does not agree with the commenter who stated that notification adds nothing to the enforcement process. The notification is used as a means for enforcement officials to identify the regulated community of marketers and legitimate off-specification used oil burners. Without this device, enforcement officials would have to monitor the regulated community in a piece-meal way (i.e., watching trucks, reviewing company history, etc.).

2. *Impacts on recycling.* When EPA issued its final used oil fuel burning regulations on November 29, 1985 (50 FR 49201–49202), we concluded that the regulations as a whole would have a minimal impact on used oil recycling. The notification requirement for burners of off-specification used oil fuel itself was estimated to be a one-time cost of $50 per burner (see 50 FR 1708, January 11, 1985). We cannot agree with the petitioners' and commenters' argument that the notification requirement is per se burdensome and therefore inhibits recycling. Although the petitioners and commenters argue that the notification requirement is causing reduced fuel sales, the Agency believes that burners' misunderstanding about the significance of the notification, and the unusually low price of virgin fuels, are the real causes of burners' reluctance to purchase used oil fuel (particularly now that the Agency has determined not to list recycled oil as a hazardous waste). For example, the petition by Midwest Oil cites, almost exclusively, burners' concerns over the listing of used oil as hazardous waste. EPA has been active in attempting to help burners understand current requirements, and is now working to publicize the November 19, 1986, decision that recycled oil is not listed as a hazardous waste, thereby reducing and eliminating the stigma that may be associated with using such fuel. We have also made it known that burners who are concerned that the RCRA notification form (EPA Form 8700–12) includes the term "hazardous waste" may notify on a form amended to remove that term, or may notify by letter, so long as all required information is provided. Finally, EPA has made available information bulletins that explain and reiterate current burner requirements. (Bulletins may be obtained by calling the RCRA Hotline at (800) 424–9346 or (202) 382–3000.) These steps, we believe, should allay burners' fears and clear up misconceptions.

EPA also notes that in written comments to the Agency and in oral testimony before the House Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business (May 19, 1986), the National Asphalt Pavement Association (NAPA) indicated that its membership remained interested in burning used oil fuel, provided that only limited requirements were imposed. (Asphalt concrete plants comprise a large segment of the industrial market for off-specification used oil fuel, and NAPA member firms produce about 75% of the total hot mix asphalt produced in the U.S.) The notification requirement was not cited by NAPA as being onerous. And, in fact, NAPA states that most of its members were required to notify the EPA under the small quantity generator rules made final March 24, 1986 (51 FR 10146).

The only conceivable impact a notification requirement could have is to stigmatize partially the recycled oil as being not completely safe to burn because it is called "off-specification." Although the off-specification designation has limited legal significance—it triggers notification and record-keeping requirements; and off-specification used oil fuel may not be burned in non-industrial boilers—the name connotes potential risks from burning; and the possibility of future regulation. EPA believes this potential stigma to be unavoidable. We have found that off-specification used oil fuel can pose significant risks when burned in non-industrial boilers. There may well be future regulation of such fuel, such as restricting circumstances when it may be burned in devices without air pollution control equipment. These possibilities exist no matter what the used oil fuel is called, and whether or not burners file a one-time notification. Any such possible stigma does not pose an adequate basis for rescinding the notification requirement.

Finally, the Agency cannot help but remark on the absence of comment from any burning facility. Surely if the existing regulatory framework was a substantial factor in their decisionmaking, there would have been more interest (as there was in the Agency's 1985 proposal). The Agency infers that this absence of comment supports its view that the minimal existing record-keeping requirements are not substantial factors in burners' decisionmaking. For instance, we believe that the price differential between used oil and virgin oil products influences the demand for used oil. When the price differential is great, used oil demand goes up.

IV. Summary

In summary, based on the information presented, EPA is rejecting petitioners' and commenters' arguments that it modify the 40 CFR Part 266, Subpart E regulations for used oil fuel.

V. Supporting Documents

Documents relevant to this rulemaking are listed below. They have been placed in the RCRA Docket at EPA (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket number for this rulemaking is F-86-LSP-FFFFF. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Michelle Lee at (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

Documents

1. Petition from the National Oil Recyclers Association, dated May 9, 1986.
2. Petition from Midwest Oil Refining Company, dated May 13, 1986.
3. Petition from the Association of Environmentally Regulated Connecticut Industries, dated May 22, 1986.
4. EPA *Information Bulletin* for used oil recyclers and burners, dated June 13, 1986.
5. Written comments of National Asphalt Pavement Association to EPA, dated April 9, 1986.
6. Testimony of National Asphalt Pavement Association, dated May 19, 1986.
7. Written comments of Statewide Service and Supply, Inc. to Senator Strom Thurmond, United States Senate, dated November 21, 1986, Transmitted to EPA on January 15, 1987.
8. Written comments of Midwest Oil Refining Company, dated February 24, 1987.
9. Written comments of Patchem, Inc. dated March 17, 1987.
10. Written comments of National Oil Recyclers Association, dated March 27, 1987.
11. Federal Register, Vol. 52, No. 13; Hazardous Waste Management System: Burning of Used Oil Fuel in Boilers and Industrial Furnaces: Notice of tentative determination to deny petitions, January 20, 1987.

List of Subjects in 40 CFR Part 266

Hazardous waste, Recycling.

Dated: March 2, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-5151 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6666

[OR-943-07-4220-10-GP-07-291; OR-36222]

Withdrawal of Public Land for Fields Administrative Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Fields Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management administrative site:

Willamette Meridian

T. 38 S., R. 34 E.,
Sec. 23, E½E½SW¼NE¼NE¼ and W½W½SE¼NE¼NE¼.

The area described contains 5 acres in Harney County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

February 26, 1988.

[FR Doc. 88-5170 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 86-16]

Conference Service Contract Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules governing agreements with regard to conference service contract authority. The Final Rule requires conferences to state in their agreements their generally applicable rules affecting or implementing conference service contract authority. The Final Rule further requires that conferences file an amendment to their agreements whenever these rules are changed. The Final Rule also requires that conference service contract authority provisions be located in a designated article of the conference agreement.

DATE: Effective June 7, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740

Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission instituted this proceeding by Notice of Proposed Rulemaking ("Notice" or "Proposed Rule") published in the **Federal Register**. The Proposed Rule would amend the Commission's regulations regarding agreements with respect to conference service contract authority. As proposed, the rule would require that a conference specify in its agreement the method for regulating or prohibiting the use of service contracts and file an amendment with the Commission before implementing any significant change in the method of regulating service contracts. The Proposed Rule further provided examples of what would be considered a significant change in the method of regulating service contracts. Finally, the Proposed Rule would require that conference service contract authority be located in a reserved numbered article of the agreement.

Interested persons were invited to comment on the Proposed Rule and twelve comments were filed. Comments were submitted by: (1) The U.S. Department of Justice ("DOJ"); (2) the U.S. Department of Transportation ("DOT"); (3) the Chemical Manufacturers Association ("CMA"); (4) IBP, Inc. ("IBP"); (5) Sea-Land Service, Inc. ("Sea-Land"); (6) a group of conferences serving the U.S.-Latin America trade ("Latin American Conferences"); [1] (7) a group of conferences serving the U.S.-North Europe Trade ("North Europe Conferences" or "NEC"); [2] (8) a group of conferences serving the U.S. trades with the Far East, Australia-New Zealand, and Mediterranean ("ANERA *et al.*"); [3] (9) a group of conferences serving the U.S.-Japan trade ("Trans-Pacific Conferences"); [4] (10) the Pacific/Australia-New Zealand Conference ("PANCON"); (11) the Trans-Pacific Westbound Rate Agreement ("TWRA"); and (12) the Council of European & Japanese National Shipowners' Associations ("CENSA").

The comments represented a broad spectrum of views on the Proposed Rule ranging from those that fully supported the proposal, to those who supported the rule with reservations, to those who urged that this rulemaking proceeding be discontinued. The Commission has carefully considered these comments and has determined to issue a Final Rule. The Final Rule retains the basic requirements of the Proposed Rule but makes a number of modifications in order to incorporate certain suggested improvements and to accommodate, to the extent possible, concerns expressed in the comments. A discussion of the comments and the specific changes in the Proposed Rule follows.[5]

II. Discussion

A. Pre-Implementation Review of Conference Agreements

The Notice initiating this proceeding discussed the Commission's responsibility and authority under the Shipping Act of 1984, 46 U.S.C. app. 1701-1720 (the "Act" or the "1984 Act"), to review agreements prior to their becoming effective. A number of comments contend that the Notice overstates the Commission's pre-implementation review authority. They generally argue that the Commission's role is limited and that the discussion in the Notice exaggerates the Commission's review authority as well as the function of the 1984 Act's public notice requirement.

Aside from general assertions that the Commission's review function has been overstated, these comments are not persuasive that then Proposed Rule exceeds the Commission's statutory authority. Briefly stated, the 1984 Act requires that every agreement within the scope of the Act, including conference agreements, be filed with the Commission prior to implementation. An agreement must observe a brief waiting period before it becomes effective, during which time the Commission reviews the agreement to determine whether it meets the filing requirements of section 5, is consistent with the general standard set forth in section 6(g), and does not violate the specific prohibitions of section 10. During this pre-implementation review period, the Commission may reject an agreement that fails to meet section 5 requirements, seek to enjoin the operation of an agreement, or request additional information and thereby suspend the running of the waiting period. In addition, the 1984 Act requires that notice of the filing of an agreement be published in the **Federal Register**, thereby affording the shipping public an opportunity to comment on an agreement before it becomes effective.

The Proposed Rule would require each conference agreement to set forth the basic rules established by the members regarding the use of service contracts by the conference or by individual members, and to file changes in those rules with the Commission prior to implementation. A major purpose of the Proposed Rule is to assure that each conference agreement reflects the complete understanding among the parties regarding a conference's control over the use of service contracts so that the Commission is able to conduct a meaningful review of the agreement and the shipping public is apprised of the rules which a conference has established regarding the use of service contracts. As the Notice indicated, meaningful review by the Commission and public notice of the agreement are thwarted where conference authority over service contracts is set forth only in the most general terms or where a conference can change the rules governing the use of service contracts without first filing an amendment with the Commission.

The Proposed Rule is based upon the Commission's regulatory need to know, at least in broad outline, how the members of a conference have agreed to regulate their competitive relationships, as well as the rules for dealing with shippers, and the need to know when those basic provisions have changed.

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[1] This group consists of: the Atlantic and Gulf/West Coast of South America Conference; the United States Colombia Conference; the United States Atlantic and Gulf/Ecuador Conference; the United States Atlantic and Gulf/Hispaniola Steamship Freight Association; the United States Atlantic and Gulf/Southeastern Caribbean Steamship Freight Association; and the United States Atlantic and Gulf/Venezuela Conference.

[2] This group consists of: the U.S. Atlantic-North Europe Conference; the North Europe-U.S. Atlantic Conference; the Gulf-European Freight Association; and the North Europe-U.S. Gulf Freight Association.

[3] This group consists of: the Asia North America Eastbound Rate Agreement ("ANERA"); the Greece/U.S. Atlantic & Gulf Conference; the Mediterranean North Pacific Coast Freight Conference; the Mediterranean/U.S.A. Freight Conference; and the U.S. Atlantic & Gulf/Australia-New Zealand Conference.

[4] This group consists of: the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference.

[5] In the following discussion, reference is made to the basis and purpose of the Proposed Rule. Those objectives which are discussed here and which were also set forth in the Notice apply equally to the Final Rule. Although a number of changes have been made in the language of the Final Rule, its basis and purpose remain the same as that set forth for the Proposed Rule.

Without this minimum essential information, meaningful pre-implementation review would be frustrated.

The Proposed Rule also ensures that the shipping public is adequately informed of the conference's general policies regarding the use of service contracts. The Proposed Rule thus fulfills the purpose that is inherent in the 1984 Act's requirement that notice of the filing of an agreement be published in the Federal Register. Without a sufficiently detailed statement of agreement authority, the shipping public would be disadvantaged in commenting on an agreement or providing relevant information to the Commission during the period prior to an agreement's becoming effective.

In addition, it should be noted that agreements are public documents that are intended to reflect the current conference policies with respect to the exercise of service contract authority. Thus, the shipping public should be able to determine a conference's general policies by consulting the agreement language.

Although some comments contended that the Proposed Rule is contrary to the 1984 Act's stated policy of establishing a regulatory process "with a minimum of government intervention," the Proposed Rule requires only that minimum level of specificity needed to ensure meaningful review and adequate public notice.

The Proposed Rule does not re-establish a prior approval type of review as existed under the Shipping Act, 1916 ("1916 Act"). Nor does it expand or overstate the role of non-parties under the 1984 Act. It merely ensures that the basic rules which a conference establishes for the use of service contracts be reflected in the terms of the agreement.[6]

B. Guidelines for Specificity in Conference Service Contract Authority

The Notice discussed, in the context of conference service contract authority, certain guidelines that may be applied in determining the degree of specificity that may be required in a conference agreement and in determining whether a specific activity is covered by existing agreement authority. In this discussion, a number of cases decided under the 1916 Act were mentioned. Some commenters object that the guidelines enunciated in these 1916 Act cases are not applicable in the regulatory scheme established by the 1984 Act. The Commission is not persuaded that reference to these guidelines is unsound under the 1984 Act.

The 1916 Act cases were cited in the Notice is connection with two concerns. The first concern is the degree of specificity that may be required in an agreement. In *Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific Westbound Conference*, 8 F.M.C. 553 (1965), *Aff'd in part, rev'd in part, Pacific Westbound Conference v. Federal Maritime Commission*, 440 F.2d 1303 (5th Cir.), *cert. denied*, 404 U.S. 881 (1971) ("*Joint Agreement*"), the Commission formulated the following test regarding the degree of detail required in an agreement:

> * * * the applicable test here is whether or not the agreement as filed with the Commission and as approved sets out in adequate detail the procedures and arrangements under which the concerted activity permitted by the agreement is to take place.

Joint Agreement, supra, 8 F.M.C. at 558. In *Agreement 9448—N. Atlantic Outbound/European Trade*, 10 F.M.C. 299, 307 (1967), the Commission stated that agreements which were so broadly worded that they failed to "* * * set forth clearly, and in sufficient detail to apprise the public just what activities will be undertaken * * *" would be subject to disapproval under section 15 of the 1916 Act.

The fact that this principle was enunciated in cases decided under the 1916 Act does not detract from its relevance to the question of the degree of specificity that may be required in an agreement filed pursuant to the 1984 Act. Adequate detail regarding concerted activity is as relevant to antitrust immunity under the 1984 Act as to antitrust immunity under the 1916 Act. Nor does the reliance upon these cases in any way resuscitate the *Svenska* Standard,[7] as some commenters fear. Clearly, the Commission no longer "approves" agreements under a "public interest" standard. It does, however, conduct a substantive review of an agreement to determine its conformity with the requirements of sections 5, 6 and 10 of the 1984 Act. The requirement that an agreement be filed and reviewed is more than a formality, as some comments seem to imply. That review function only has meaning if an agreement is clear and definite and reasonably specific.

Furthermore, agreements filed under the 1984 Act are not filed on a confidential basis. They are public documents and should provide sufficient detail to apprise the public of the scope and kind of activities that will be conducted under the agreement. With regard to service contract authority, this means more than a general statement that does not inform the shipping public of such basic matters as whether or not individual service contracts are permitted. Service contracts are one of the major elements of the legislative bargain that resulted in the 1984 Act. It is in keeping with the Act's scheme to assure that the shipping public has adequate knowledge of conference policies on the use of service contracts.

A second concern is when an agreed to change in operations may be made pursuant to existing authority and when an agreement is necessary. The Notice cited two cases which enunciated general principles for determining whether a further agreement is interstitial to existing authority: *Agreements 7770—Establishment of a Rate Structure*, 10 F.M.C. 61, 65 (1966), *aff'd sub nom, Persian Gulf Outward Freight Conference v. Federal Maritime Commission*, 375 F.2d 335 (D.C. Cir. 1967) ("*Agreement 7770*" or "*Persian Gulf*"); and *Tariff FMC 8, Rule 22 of the Continental North Atlantic Westbound Freight Conference*, 21 F.M.C. 594, 597 (1978), *Vacated and remanded, Interpool Ltd. v. Federal Maritime Commission*, 663 F. 2d 142 (D.C. Cir. 1980).

In *Agreement 7770*, the Commission stated that further agreements are not interstitial when they: (1) Introduce an entirely new scheme of rate combination and discrimination not embodied in the basic agreement; (2) represent a new course of conduct; (3) provide new means of regulating and controlling competition; (4) are not limited to the pure regulation of intraconference competition; or (5) constitute an activity the nature and manner of effectuation of which cannot be ascertained by a mere reading of the basic agreement.

Agreement 7770, supra, 10 F.M.C. at 65.

The changes wrought by the 1984 Act do not appear to make these principles obsolete or remove their statutory underpinnings. Rather they would appear to be relevant to the Commission's review of an agreement to determine conformity to sections 5, 6 and 10 of the Act. If these 1916 cases did not exist, we would be obliged to establish the principles embodied in them anew.

The Commission understands the concern which some conference commenters have expressed with regard to the question of antitrust immunity. The Commission recognizes that the 1984 Act was intended to remove uncertainty about antitrust immunity. The Commission's rule is not intended to intrude upon that policy. Nor would it appear to do so since section 7(a)(2) grants antitrust immunity for * * *

> any activity or agreement within the scope of this Act * * * undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place * * *.

46 U.S.C. app. 1706(a)(2). This would appear to be a sufficiently broad grant of antitrust immunity which is not jeopardized by the rule at issue here. Those who act on service contracts in a way arguably not covered by a conference provision would still be governed by the "reasonable basis to conclude" language of the Act. Finally, the Final Rule should provide adequate guidance as to when an agreement amendment should be filed.

C. Conference Authority To Control the Use of Service Contracts

The Proposed Rule would require that service contrast authority be stated in the conference agreement with a reasonable degree of specificity and that changes in that Commission prior to implementation. Some comments object theat the Proposed Rule is contrary to the 1984 Act because it unduly interferes with the authority of a conference to control the use of service contracts. According to one commenter, Congress did not intend any rule that limits a conference's ability to regulate service contracts or requires a conference to explain why or how it intends to do so. Another commenter argues that conferences have absolute authority over service contracts and are to be given wide latitude in the regulation of these contracts. Finally, some commenters object that the Proposed Rule interferes with a conference's commercial flexibility and disadvantages a conference competing with independent carriers. These comments suggest that a conference should have the same degree of flexibility and discretion with regard to service contracts as an individual independent carrier.

The basic authority of an individual ocan common carrier or conference of carriers to enter into service contracts is provided for by section 8(c), which states:

> An ocean common carrier of conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act.

Section 4(a)(7) authorizes a conference to "* * * regulate or prohibit their use of service contracts."

The Proposed Rule would not "interfere with" conference authority to control the use of service contracts. Conferences would be free to establish conditions for their use or to prohibit their use entirely. The Proposed Rule would not limit this authority. It merely states that once a conference has exercised its authority to establish conference rules regarding service contracts, that it file an amendment to its agreement with the Commission. The Proposed Rule does not require conferences to explain why they have chosen a particular course of action or to justify that choice.[8] Nor does the Proposed Rule interfere with the terms of a service contract negotiated with a shipper.[9] Rather, it would require that the general rules for use of service contracts, to the extent that they have been collectively determined, be reflected in the agreement.

The Proposed Rule was not intended to deal with the terms that may be negotiated with an individual shipper. Moreover, those matters that would be subject to filing with the Commission can be processed and become effective in as few as 14 days after notice in the Federal Register. Conferences will thus have considerable flexibility even in those matters that would require an amendment filing.

Nevertheless, some comments suggest that a conference should have the same degree of flexibility and discretion with a regard to service contracts as an individual independent carrier. Conference action, however, is different from action by a single independent carrier. When it acts on service contracts, a conference acts collectively under the protection of antitrust immunity. The *quid pro quo* for this immunity is that a conference's rules for governing its members' commercial relationships, at least in broad outline, must be included in its organic agreement. A conference does not have absolute authority to alter the terms of that relationship without filing an appropriate amendment with the Commission. Accordingly, the Commission is not persuaded that the basic requirements of the Proposed Rule unduly interfere with a conference's authority to control the use of service contracts.

D. Section-by-section Discussion of the Proposed Rule

The comments advance a number of concerns, objections and suggestions regarding particular aspects of the Proposed Rule. Most of these comments address three terms used in the Proposed Rule: "method," "significant change," and "terms and conditions." Some comments pointed out alleged ambiguities in the Proposed Rule. Others offered drafting suggestions to improve a Final Rule.

1. *Section 572.502(a)(5)(i)—Specification of the Method for Regulating Service Contracts.* Subparagraph (i) of the Proposed Rule would require that a conference agreement that contains service contract authority specify the method for regulating the use of service contracts. The Proposed Rule states:

> (i) Each conference agreement that contains service contract authority shall specify the method for regulating or prohibiting the use of service contracts by the conference or by individual members.

CMA suggests that the word "contains" be deleted and replaced by the words "regulates or prohibits" in order to clarify that a conference member may enter into a service contract on its own, unless explicitly prohibited or limited by the conference.

This suggested clarification has merit. A member of a conference does retain the authority under section 8(c) to enter into service contracts unless the conference takes some collective action to control that authority. This principle is implicit in the language of the Proposed Rule which states that a conference agreement that "contains" service contract authority must state the

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[6] A clear statement of conference service contract authority, which the Proposed Rule would require, is also necessary in order to fulfill the Commission's monitoring and enforcement responsibilities over agreements that are in effect. In order to assure that conference operations are conducted in accordance with the terms of the agreement, the Commission must have some idea of what the terms of the agreement are.

[7] The *Svenska* Doctrine is the proposition affirmed in *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968), whereby agreements filed pursuant to section 15 of the 1916 Act which interfere with the policies of the antitrust laws will be disapproved as "contrary to the public interest" unless justified by evidence establishing that the agreement, if approved, will meet a serious transportation need, secure an important public benefit or further a valid regulatory purpose of the Shipping Act, 1916. The burden is on the proponents of such agreements to come forward with the necessary evidence. The 1984 Act legislatively overruled *Svenska* with respect to agreements among carriers in the foreign commerce of the United States. The *Svenska* doctrine is now limited to agreements in the domestic commerce of the United States which are subject to section 15 of the 1916 Act.

[8] Although the Proposed Rule does not require this, this is not to say that the Commission could not, under certain circumstances, require a conference to expalin its policy for controlling the use of service contracts and to justify that policy.

[9] On this point, there is some uncertainty regarding the meaning of the reference to "terms and conditions" in the Proposed Rule. This reference was not intended to mean that the terms which would be bargained for in a service contract with a shipper must be included in the agreement. This is addressed below in the specific discussion of that aspect of the Proposed Rule.

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method by which it controls the use of service contracts. The change suggested by CMA removes any uncertainty and is adopted in the Final Rule.

The other suggested change to subparagraph (i) concerns the term "method." Sea-Land states that the term "method" "* * * could be read so broadly as to embrace literally everything the conference does with respect to service contracts, whether generically, as to a particular class of cargo, or as to a particular shipper's cargo." (Sea-Land Comment at p. 2). In place of the reference to "method," Sea-Land offers a revised rule which would require a conference to state whether it permits or prohibits: (1) Conference service contracts; (2) individual member service contracts; and (3) independent action on service contracts.

NEC points out that the term "method" is never defined in the Proposed Rule. NEC states that, undefined, the term is so general as to embrace everything from routine operational matters to "an entirely new scheme of combination and discrimination not embodied in an effective Agreement." (NEC Comment at p. 4).

IBP, on the other hand, fears that the Proposed Rule, by focusing on "method," creates an ambiguity as to when an agreement modification must be filed. This is because IBP believes that the Proposed Rule may be read as requiring a conference to inform the Commission of the procedure by which it makes decisions regarding the use of service contracts, *i.e.*, the "method," but not the "results" of such deliberations, *i.e.*, conference guidelines governing service contracts. IBP also suggests a revised rule that in some respects is similar to that suggested by Sea-Land and NEC.

The term "method" was not intended to embrace everything a conference does with regard to service contracts. Nor was it intended to include routine operational matters or the procedures by which a conference reached a decision on service contract matters.[16] The term "method" was intended to apply to the general scheme established by the conference for regulating the use of service contracts. Where the members of the conference agree upon certain rules which will govern the use of service contracts, those rules must be filed with the Commission. Inasmuch as the word "rules" is more precise than the vaguer term "method" which may be interpreted to apply to strictly operational details, it shall be substituted for the term "method" in the Final Rule.

As proposed, subparagraph (i) sets forth a requirement that conference rules governing service contracts be stated in the agreement. A number of comments suggest that this general requirement be replaced by a list of specific agreement provisions which must be stated in agreement if adopted by a conference. NEC, for example, offers the following alternative to the Proposed Rule:

> Conference agreements shall state whether the parties thereto have agreed to (i) permit all or any of them, collectively or individually, to enter into service contracts; (ii) prohibit all or any of them, collectively or individually, from entering into service contracts; and (iii) permit or prohibit independent action on service contracts by all or any of them and if and to the extent such independent action is so permitted, any notice or other procedural requirements upon which its exercise may be contained.

The virtue in drafting a rule as proposed by NEC is that its application is definite and requires little, if any, interpretation. It sets forth a specific list of possible conference rules, affecting the use of service contracts, that would be subject to filing. Such an approach, however, has two drawbacks. First, it would not cover a provision that might restrict or control service contract use in a significant way but not be specifically mentioned in the rule. Second, such a proposal would not address provisions which would allow a conference to change its rules for regulating service contracts by a vote of the parties and without filing an amendment with the Commission. Under the NEC proposal, for example, conference authority which determined whether to permit or prohibit individual service contracts by a conference vote would be acceptable. All the NEC proposal would mandate is that the procedural requirements be stated in the agreement. Thus, a conference could take virtually any action it wished without the filing of an amendment with the Commission. The 1984 Act does not authorize, nor can the Commission sanction, such unfettered discretion.

However, the rule, as proposed, is not intended to interfere with the flexibility of a conference to negotiate with shippers. A conference would be free, for example, to agree upon its negotiating position with a shipper. It would not be required to make its negotiating position a part of its agreement. However, where the conference decided to agree upon rules of general applicability to all shippers, then such a rule would be required to be filed as part of the conference agreement.

Therefore, subparagraph (i) shall be preserved basically as proposed with some language changes to make it more precise. The revised text of subparagraph (i) of the Final Rule shall read as follows:

> (i) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

As revised, subparagraph (i) states the requirement that collectively established rules governing the use of service contracts must be included in a conference agreement.

2. *Section 572.502(a)(5)(ii)—Filing of Significant Changes in the Method of Regulating Service Contracts.* Subparagraph (ii) of the Proposed Rule would require the filing of any significant change in the method of regulating service contracts. The text states:

> (ii) Any significant change in the method of regulating service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

The comments on this subparagraph focus on the meaning of the term "significant change." Sea-Land states that the term "significant change" defies precise definition. NEC also states that the meaning of "significant change" is ambiguous and uncertain. Moreover, NEC points out that the law requires the filing of every modification to an agreement whether or not it is significant whereas the Proposed Rule seems to require a filing only of significant changes.

The point raised by NEC, which has advanced some critical but constructive comments in this proceeding, is well taken. Conferences are required to file all changes in their agreements whether or not they are "significant." The qualifier "significant" therefore shall be deleted from the Final Rule. It should improve the clarity and predictability of the rule to simply refer to "any change" in place of any "significant change." In addition, the use of the term "method" shall be replaced by a reference to "conference provisions regulating or prohibiting the use of service contracts" for the reasons discussed above. Subparagraph (ii) as revised reads as follows:

> (ii) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change

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[16] Voting procedures would, however, be required to be stated in the conference agreement.

Revised in this manner, subparagraph (ii) should remove the ambiguity surrounding the term "significant", and at the same time retain the key feature of the rule, namely the filing requirement.

3. *Section 572.502(a)(5)(iii)—Illustrative Definition of Significant Change.* Subparagraph (iii) of the Proposed Rule provides a definition of "significant change." The text states:

> (iii) For the purpose of this section, a significant change includes one which: permits or prohibits conference service contracts; permits or prohibits individual service contracts, establishes terms or conditions under which conference or individual service contracts may be offered; or permits or prohibits independent action on service contracts.

The purpose of this subparagraph was to furnish to illustrative definition of the meaning of the term "significant change" used in subparagraph (ii) and thereby provide some guidance as to when an agreement modification must be filed. However, inasmuch as subparagraph (ii) is revised in the Final Rule to delete the reference to "significant" change and instead require that "any" change in conference service contract rules be filed, the reference to "significant change" shall also be deleted from subparagraph (iii).

One objection to subparagraph (iii), as proposed, was that the use of the term "includes" would create serious uncertainty because there is no way of knowing what other changes not listed might be regarded as significant. According to TWRA, the practical effect of this and other "catch-all" provisions of the Proposed Rule would be that virtually any change in conference regulation of service contracts would be required to be submitted to the Commission before implementation. "Otherwise the conference will risk being found, after the fact, in violation of its agreement." (TWRA Comment at 11). The catch-all provisions, in TWRA's view, "* * * revive the regulatory uncertainty and retroactive liability which the 1984 Act sought to abolish." (TWRA Comment at 11). TWRA objects to a rule which implies that "* * * every conference policy or practice with regard to service contracts must be spelled out in the agreement." (TWRA Comment at 11). TWRA goes on to state that: "If a proposed rule did no more than require a conference agreement to state the general authority of the conference with respect to service contacts, it would not be objectionable." (TWRA Comment at 11).

While TWRA does not indicate what it believes should be included in a statement of "general authority", it would appear that some of TWRA's concerns might be met by the language changes suggested above. Deletion of references to "significant change" and "method" improves the precision of the rule. The one additional language modification that would remove any ambiguity from the rule would be the deletion of the word "includes" from subparagraph (iii). This change would result in subparagraph (iii) consisting of a list of those service contract provisions which must be filed in an agreement. The deletion of the word "includes", however, would sacrifice the comprehensiveness of the rule. The rule would then merely list the kinds of service contract provisions that must be filed. If this approach were to be taken, the list could, of course, always be expanded in the future if the Commission found other types of provisions that should be added. There are, however, disadvantages to this approach. First, it would require additional time and resource-consuming rulemakings to add new provisions to the list. More importantly, the Commission might never become aware of significant restrictive service contract provisions that might be imposed. Especially once a rule is made final, the presumption would be that only those listed provisions need be filed. Other provisions might never come to the Commission's attention.

The other aspect of this subparagraph, which attracted considerable comment, is the reference to "terms or conditions." DOT suggests that the Commission either describe the pertinent "terms or conditions" that are viewed as agreement modifications or otherwise address the ambiguity created by the phase. Sea-Land objects that this phrase is too vague to permit members to know their legal obligations and could be read so expansively as to intrude on case-by-case contractual negotiations. NEC believes that it is an unnecessary and vague catch-all standard. The Trans-Pacific Conferences object that it could require inclusion of commercial contract terms in agreements. ANERA states that this requirement interferes with commercial flexibility. The Latin American Conferences argue that terms and conditions are negotiated by a conference and shipper on an *ad hoc* basis and cannot be reduced to a rule of general applicability.

The reference to "terms or conditions" in the Proposed Rule was not intended to include the terms or conditions that would be the subject of service contract negotiations with a shipper. Thus, the Proposed Rule was not intended to interfere with the commercial process of negotiating service contracts or to impede the flexibility of a conference or its members in such negotiations. As with the other items listed in subparagraph (iii), what is intended is that conference *rules* with regard to the use of service contracts by its members be included in the agreement.

Section 8(c) of the 1984 Act confers authority to enter into service contracts upon all ocean common carriers whether or not they are a member of a conference. A carrier retains that authority when it becomes a member of a conference, subject only to those restrictions and limitations which the members collectively agree upon pursuant to section 4(a)(7) of the Act. When the members reach agreement on whether to permit or prohibit conference service contracts, or whether to permit or prohibit individual members from entering into service contracts, or whether to permit or prohibit independent action on service contracts, they establish fundamental rules for dealing with the shipping public. Those rules should be reflected in the agreement.

The conference may also impose specific requirements on the members as a whole or on individual members. For example, the conference may determine to permit individual members to enter into service contracts subject to the condition that such contracts be for a minimum term of 12 months. In such a case, the members would as a group have imposed a significant restriction on an individual member's ability to exercise that member's service contract authority.

It is admittedly difficult to define "terms and conditions" in such a way that conference-agreed-to restrictions would be required to be stated in an agreement but conference flexibility to negotiate service contract terms would not be hampered. For example, a conference could adopt a rule that no conference service contract shall be entered into for a term of less than 12 months. The rule might apply to all commodities and all shippers. On the other hand, the conference could vote to adopt as the conference's negotiating position with a particular shipper that a service contract should be for at least 12 months duration. In the first instance, the rule should be stated in the conference agreement; in the second, it need not.

The difference between the two rules is that the first is a rule that is more or less permanent and has general applicability to all shippers or perhaps to a class of shippers. The second is simply a negotiating position for dealing with a particular shipper. Presumably, it would be subject to change in the negotiating process. What this proceeding is intended to address are those rules of general applicability which are of a more permanent nature and which would not be subject to change during contract negotiations. Conference negotiating positions, on the other hand, should not be affected by the Final Rule and conference flexibility should not be unduly hampered.

A second area of concern is where terms or conditions are imposed upon individual conference members. For example, a conference might adopt a rule that no individual service contract may be for less than a 12-month term. Or it might deny all service contract authority to individual members except upon the vote of the members and subject to such conditions as they may impose. A member should know in advance whether individual service contracts are permitted and what restrictions if any are attached. The Final Rule requires the statement in an agreement of any limitations placed upon individual members. All members will thus know in advance what rules govern individual service contracts, and all will be treated equally. Finally, subparagraph (iii) shall also be modified to add that opt-out rules should be stated in the agreement. This is discussed below in connection with the PANCON comment.

Finally, some comments suggest that subparagraph (iii) could be deleted entirely without substantive loss. Conferences would then simply be required to state in their agreements any rules collectively agreed upon regarding the use of service contracts and file modifications with the Commission whenever those rules were changed. However, subparagraph (iii) does appear to serve a useful function by providing guidance as to certain conference rules that must be stated in an agreement. Therefore, it shall be retained in the Final Rule with the above modifications. Based on all the foregoing, paragraph (iii) of the Proposed Rule shall be amended to read as follows:

> (iii) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

4. *Mandtory Placement of Service Contract Authority In A Designated Article 14.* The Proposed Rule adds a new paragraph (a)(5) to § 572.502 "Organization of conference and interconference agreements." The new paragraph (a)(5) would require conferences to reserve Article 14 of their agreements as the repository for the conference's statement of its service contract authority.[11]

Only one comment addressed the Article 14 requirement of the Proposed Rule. NEC opposes mandatory placement of service contract authority in Article 14 on the grounds that such placement is costly, cumbersome, and creates legal uncertainties. NEC argues that service contract provisions should be set forth in Article 5 (the basic authorities article) of conference agreements, if necessary in a separately numbered paragraph. NEC also argues that the rule should provide "that (i) except as may be otherwise provided in such article 5 service contract provisions, all of the other provisions of the Agreement shall be applicable thereto, *e.g.*, voting, delegation of authority, meetings, shippers' requests, etc.) and (ii) the parties may rely on the contents of the entire agreement as authority for their service contract activities." (NEC Comment at p. 43).

The Commission's authority to prescribe "the form and manner in which an agreement shall be filed" is clearly set forth in section 5(a) of the Act. The Commission has exercised that authority in its agreement regulations by requiring that certain numbered articles of conference agreements be reserved for specific subject matter. *See* 46 CFR 572.501–502. These existing format regulations, which provide for a clear and logical arrangement of agreement authority, have been of great assistance to the Commission in meeting the statutory deadlines for processing agreements established under the streamlined review procedures of the 1984 Act.

The placement of service contract authority in a reserved Article 14 appears to be of sufficient benefit to the Commission in its review, audit, and monitoring functions as to justify the slight burden that may be placed on conferences by requiring them to locate their service contract authority in Article 14.[12] Such placement, for example, would ease the Commission's administrative burden were it to audit service contract authority in all conferences.[13]

Finally, the question of whether members can rely on their entire agreement as authority for their activities has arisen before. It led to the modification of the agreements rules when they were issued as Final Rules. Section 572.501(b)(5), 46 CFR 572.501(b)(5), states that:

> Article 5 is not necessarily definitive of the authority that the parties may collectively exercise pursuant to the agreement and parties may rely on the contents of the entire agreements as authority for their activities.

Thus, the second concern of NEC appears to have been addressed. In addition, NEC is correct in assuming that the agreement provisions such as voting, delegations of authority, meetings, etc. are applicable to service contract matters.

5. *Effective Date of Final Rule.* The Proposed Rule did not specify a time period in which any Final Rule would become effective. NEC states that because of reformatting requirements, drafting complexities, and the conference approval process, no less than 90 days should be afforded to parties to file any agreement modifications that might be required by the Final Rule.

The Commission accepts NEC's position and will allow a period of 90 days before the Final Rule becomes effective. This liberal timetable for compliance should substantially alleviate my administrative burdens or costs that might be incurred. This period of time should afford ample time for review of agreements by the parties, for drafting any necessary changes, and for obtaining member approval of agreement modifications. In addition, in many cases, conferences may be able to reduce any costs associated with filing by submitting service contract modifications in connection with other agreement filings or even in connection with the periodic required republication of agreements.

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[11] At present, Subpart E of Part 572 reserves the first 13 articles of a conference agreement for specific subject matter.

[12] The Final Rule, however, does not preclude statements of, or references to, service contract authority in Article 5 or other articles of a conference agreement. Conferences would not be required to delete such references as may appear elsewhere in their agreements provided, of course, that the particular language otherwise conforms to statutory and regulatory requirements.

[13] Such an audit was conducted of conference agreement independent action authority to determine compliance with Docket No. 85-7, *Independent Action—Notice and Meeting Provisions in Conference Agreements*, 23 S.R.R. 1022 (1986).

E. Additional Issues

A number of comments raised other additional issues related to the Proposed Rule.

1. Information Form Requirement and Service Contract Authority

NEC contends that service contract provisions are not subject to section 6(g) as a matter of law and that the filing of such provisions and modifications thereto should never be subject to the requirement to file an Information Form. In the Notice the Commission, at least implicitly, rejected the notice that service contract authority is not subject to review under the general standard. The Proposed Rule did not, however, require the Information Form in connection with service contract authority filings and the Commission has not done so in the past. Generally, there does not seem to be any need for the Information Form in connection with service contract filings. Should a particular filing raise possible section 6(g) concerns, then relevant information could be obtained through a formal or informal request. Therefore, the Final Rule does not require that an Information Form be filed with the initial service contract filing or with subsequent modifications of service contract authority.

2. Notice and Waiting Period Requirements.

NEC also urges that service contract filings be exempted from the notice and waiting period requirements of the 1984 Act. In NEC's view, the purpose of the Proposed Rule should be simply to insure that appropriate provisions are filed. NEC says that third parties have little or no interest in such filings and have no standing to sue to block them. NEC says that the Commission could still act against improper filings after they become effective.

This proposed exemption from notice and waiting period requirements, whatever might be its merits, cannot be accommodated within the scope of this rulemaking.[14] The Proposed Rule did seek to accomplish the purpose cited by NEC, namely to ensure that appropriate provisions are filed. The Final Rule, however, cannot and does not alter the statutory notice and waiting period requirements with respect to service contract filings. Such an exemption is clearly beyond the scope of this rulemaking and would require a separate exemption proceeding pursuant to section 16 of the 1984 Act.

3. PANCON Comment

PANCON's comment focuses upon the particular service contract provisions in its agreement and offers a defense of those provisions. PANCON, however, does not consider its comment a "special-exemption application." Rather it believes that its agreement provisions raise issues which are of industry-wide concern.

The PANCON agreement contains a provision which allows one or more members to elect not to participate in a service contract entered into in the conference's name. It provides that such non-participation be expressly noted in the contract. PANCON is concerned that such a case-by-case "opt-out" provision would be prohibited by the Proposed Rule. PANCON apparently believes that the Proposed Rule might be read as precluding all such contemporaneous decisions not to participate in a conference-wide service contract, unless the agreement itself is first amended.

PANCON's concern is misplaced. The Proposed Rule does not prohibit "opt-out" provisions of the type contained in the PANCON agreement. Such provisions clearly state the right of an individual member line to elect not to participate in the contract. Such a right is conferred by existing effective language of the agreement and is not dependent upon the contemporaneous action of the conference. The case would be different if the provision were to state that a member's decision not to participate is subject to express permission granted by the conference. As stated, however, the PANCON provision establishes the member's right to "opt-out."

The PANCON agreement also contains a provision which prohibits a member from entering independently into a service contract, or from taking independent action on a service contract, unless the members expressly permit it by a contemporaneous vote. PANCON characterizes this provision as being merely the "flip-side" of the opt-out provision discussed above and believes that it should not be prohibited.

This provision, however, is quite different from the "opt-out" provision. Unlike the "opt-out" provision which establishes a member's right to elect not to participate, this provision conditions a member's right to offer service contracts on a vote of the membership. Individual service contracts would thus be decided on a case-by-case basis and a member would always require approval from the conference prior to entering into a contract with a shipper. This is precisely the kind of provision that is reached by the Final Rule.

The third PANCON provision provides as follows:

> The members may vote to "open" rates on a particular commodity or commodities, with or without authority thereby granted to individual members to enter separately into service contracts respecting such commodities, and/or setting the maximum, term, or successive terms, of any such individual-party service contract, during the period in which the rate is open.

This provision also controls a member's right to enter into service contracts on open rated items by a vote of the membership and would also appear to be prohibited under the Final Rule.

III. Conclusion

Upon review of the comments received, the Commission has determined that issuance of a Final Rule, modified somewhat from that as proposed, will enable the Commission to fulfill its agreement review responsibilities and is well within the Commission's authority under the 1984 Act. In addition, the Final Rule will assure that conference agreements are complete and that the shipping public is adequately informed of conference policies on service contracts. Moreover, the legal precedent established under the 1916 Act, which addresses issues of agreement authority that were not affected by the enactment of the 1984 Act, offers useful guidelines on these questions. Finally, the Final Rule does not appear to interfere in any way with the authority of a conference to control the use of service contracts and does not unduly restrict conference service contract activity.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this Rule will not have a significant economic impact on a substantial number of small entities.

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[14] To the extent the rationale of the Proposed Rule is based upon the public notice and pre-implementation review provisions of the 1984 Act, an exemption from notice and waiting period requirements might not be consistent with that rationale.

including small businesses, small organizational units, and small governmental jurisdictions.

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 3072-0044.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure, Antitrust, Contracts, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1709, 1716, Part 572 of Title 46, Code of Federal Regulations, is amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709, 1710, 1712, 1714–1717.

2. Paragraph (a) of § 572.502 is amended to add a new paragraph (a)(5) to read:

§ 572.502 Organization of conference and interconference agreements.

(a) * * *

(5) *Article 14—Service Contracts.* (i) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(ii) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(iii) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5174 Filed 3-8-88; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 71276-8031]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of Pacific halibut catch sharing plan.

SUMMARY: NOAA announces approval by the Secretary of Commerce of a Catch Sharing Plan (plan) developed and adopted by the Pacific Fishery Management Council (PFMC) to allocate the catch of Pacific halibut in International Pacific Halibut Commission (IPHC) statistical catch Area 2A. This allocation plan is for 1988 only, as it pertains to catch by treaty Indian fishermen, and 1988 and 1989 only, as it pertains to non-Indian commercial and recreational fishermen. The plan will be forwarded to the IPHC for implementation by regulations.

The plan establishes a distribution of harvest of the poundage of halibut determined by the IPHC to be available for harvest in Area 2A between treaty Indian and non-Indian commercial and recreational fishermen. The intended effect of this action is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to the level determined by the IPHC to be biologically acceptable while equitably distributing the allowable harvest among affected user groups.

DATE: The plan was approved on March 1, 1988.

ADDRESSES: Copies of the plan combined with the environmental assessment and the regulatory impact review are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center Suite 420, 2000 SW. First Ave., Portland, OR, 97201, or Rolland A. Schmitten Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA, 98115.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six at 503-221-6352 or William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (the Act), Pub. L. 97-176; 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to but not in conflict with regulations of the IPHC. The geographic area involved is all U.S. marine waters lying south of the United States-Canada border including Puget Sound, known as statistical Area 2A.

The Under Secretary of Commerce, in compliance with the Act, directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary. In compliance with this directive, the PFMC initiated development of a plan for Area 2A. The process for developing the allocation plan involved State, Federal, and treaty Indian fishery managers and technicians, user group representatives, and the general public.

The PFMC adopted a proposed catch sharing plan for public review at its November 18–19, 1987, meeting in Portland, Oregon. The proposed plan was subsequently submitted to the Secretary of Commerce (Secretary) for review and approval. The Secretary published the proposed plan in the Federal Register (53 FR 156, January 5, 1988), with a request for public comments. On January 14, 1988, the PFMC, following review of public comments and a public hearing, adopted a final catch sharing plan which is identical to the proposal plan except that the treaty Indian commercial fishing season will begin on March 1, 1988, instead of April 1, 1988.

Establishment of the total allowable catch (TAC) is the responsibility of the IPHC. This plan allocates TAC in area 2A among treaty Indian and non-Indian commercial and recreational fisheries as follows:

1. Treaty Indian commercial fishing will commence March 1, 1988, and terminate October 31, 1988, using hook-and-line gear only, with a 32-inch minimum size limit. Ceremonial and subsistence fishing may commence on February 1, 1988, or as soon afterward as regulations can be promulgated, and will terminate December 31, 1988, with no minimum size limit. A daily ceremonial and subsistence catch limit of two fish per fisherman will apply only from February 1 through March 31, 1988, and November 1 through December 31, 1988. Under the PFMC plan, a reserve will be established which is equal to the difference between the midpoint and the upper limit of the TAC range. This reserve may be taken by the treaty Indian fisheries, if necessary, to permit them to continue fishing throughout their reason.

2. Non-Indian fisheries will be allowed to harvest poundage equal to the midpoint of the IPHC TAC range minus the estimated treaty Indian catch. This amount will be divided 55 percent for the commercial catch and 45 percent for the recreational fishery. If the TAC midpoint minus the estimated treaty Indian catch equals more than 600,000 lbs., the amount in excess will be divided 60 percent for the commercial harvest and 40 percent for the recreational. The commercial quota will apply to all of Area 2A with no subarea quotas; however, the Oregon share of the recreational catch quota shall not be less than 60,000 lbs.

The PFMC forwarded the plan to the Secretary for review and approval and to the IPHC for implementation. The Secretary received 55 comments during the comment period, of which 50 were by form letters. Public comments received during the comment period are summarized and responded to below:

Comment 1: Many commercial longliners were not aware of the public meetings and negotiations and consequently weren't able to meaningfully participate or influence the outcome.

Response: The PFMC's process for developing the catch sharing plan spanned 6 months with numerous opportunities for public participation and comment. The process followed was initially proposed at the July, 1987, meeting of the PFMC. Subsequently, the treaty-Indian/non-Indian portion of the plan was developed at eight separate meetings of representatives of the treaty Indian tribes and State and Federal resource management agencies. The Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fisheries (WDF) led discussions between non-Indian commercial and recreational users which included at least four meetings as well as three public workshops held in Newport, Oregon, and Olympia and Port Angeles, Washington, during October. Announcement of the public workshops was widespread by means of newspaper and radio announcements. Formal opportunities for public comment at PFMC meetings were announced and provided at three meetings, September and November 1987 and January 1988.

Comment 2: The recreational fishery received too high a share of the total non-Indian quota based on historical catches.

Response: The PFMC's catch sharing plan represents a realistic compromise between the interests of commercial and recreational fishermen. Commercial fishermen, having been the sole harvester of Pacific halibut for over 100 years, are understandably reluctant to relinquish a large share of the commercial harvest to the recreational community. However, recreational fishermen and the businesses and communities that support recreational fishing in Washington and Oregon have turned to halibut fishing as a result of severe reductions in fishing opportunities for salmon brought on by depressed salmon stocks and various Federal Court decisions.

As a result, the recreational halibut catch in Area 2A has grown from less than 100,000 pounds in 1984 to over 460,000 pounds in 1987. The catch sharing plan, which allocates 55 percent of the total allowable catch to commercial and 45 percent to recreational fishermen, cuts off the uncontrolled growth of the recreational fishery and protects the traditional preeminence of the commercial fishery. In 1988, the recreational fishery will be reduced almost 40 percent from the 1987 catch level. Despite the desires for an even greater share of the catch by commercial fishermen, the catch sharing plan appears to strike a reasonable balance between the two harvesting groups.

Comment 3: The WDF estimate of the 1987 recreational catch of Pacific halibut was inaccurate and inflated and should not have been used as a basis for developing the 1988 catch sharing plan.

Response: At the beginning of the process, the WDF estimate of the recreational harvest of Pacific halibut was erroneous due to the inadvertent inclusion of other species of groundfish. That error was corrected before the non-Indian commercial and recreational representatives developed the 1988 and 1989 catch shares. Some discomfort was expressed by some of the participants in the process with the possible confidence levels and variability associated with the WDF estimate of the 1987 recreational harvest in Puget Sound. However, the data were the best available. WDF has received additional funding and manpower from the IPHC to improve monitoring of the recreational fishery in 1988.

Comment 4: Representatives of commercial fishermen were coerced into accepting the catch sharing formula by the ODFW and WDF negotiators.

Response: The subject of alleged coercion was discussed in detail at the January 14, 1988, PFMC meeting, at which time representatives of commercial fishing associations involved in development of the plan categorically denied such charges.

Comment 5: Because some commercial fishing groups felt they were not adequately informed and thus were unable to participate in the development of the catch sharing plan, the catch sharing formula between commercial and recreational fishermen should not be a 2-year plan but be only for the 1988 season. After the 1988 season, the plan should be renegotiated.

Response: This catch sharing plan being approved by the Secretary contains catch sharing provisions between non-Indian commercial and recreational fishermen for both the 1988 and 1989 seasons. NOAA has no objection, however, if all parties to the plan desire to modify certain provisions for the 1989 season.

Classification

This Pacific halibut catch sharing plan is a general statement of Agency policy which does not require notice and comment rulemaking under the Administrative Procedures Act at 5 U.S.C. 553(b)(A). As such, the Regulatory Flexibility Act does not apply.

Based on a regulatory impact review prepared to fulfill the requirements of E.O. 12291, the Assistant Secretary, NOAA, concludes that actions taken under the plan are not "major" and a regulatory impact analysis is not required. An environmental assessment was prepared by the Council in accordance with the National Environmental Policy Act regulations. The Assistant Administrator for Fisheries, NOAA, concluded that any action taken under the plan will not have any significant adverse impact on the human environment. The environmental assessment and regulatory impact review are available at the address above.

As required by section 307 of the Coastal Zone Management Act, it has been determined that this action is consistent to the maximum extent practicable with applicable state coastal zone management programs as required.

This notice of approval of a catch sharing plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule contains no collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: March 4, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-5159 Filed 3-4-88; 5:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

Mixed Nuts in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would revise the voluntary United States Standards for Grades of Mixed Nuts in the Shell. A large packer has requested that the standards be revised to relax the required minimum percentage in a mixture for each individual nut species. The Agricultural Marketing Service (AMS) has the responsibility, in cooperation with industry, to keep U.S. grade standards up-to-date with current marketing practices.

DATE: Comments must be received on or before April 8, 1988.

ADDRESS: All persons interested in commenting on this proposal should submit written comments, in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456, Phone: 202-447-2185.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revisions to the standards for mixed nuts in the shell will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large business. In addition, this action will result in a relaxation of current minimum requirements under the grade standards to the benefit of the industry.

The U.S. Standards for Grades of Mixed Nuts in the Shell were established in August 1965 and were last revised in August 1981. These standards provide that only the tree nut species Almonds, Brazils, Filberts, Pecans and Walnuts may be used in the mixture. The current standards for U.S. Extra Fancy and U.S. Fancy grades provide that for each species there be a minimum of 10 percent and a maximum of 40 percent by weight of the mixture. Mixed nuts are primarily marketed from early October through December, with majority of the demand occurring prior to Thanksgiving. Consequently, to insure adequate during this peak marketing period mixed nut packaging should begin in September.

A large packer and marketer of in-shell mixed nuts, has requested that the current grade standards be revised to reduce the minimum requirement for each species from 10 to 5 percent in the U.S. Extra Fancy and U.S. Fancy grade designations. The packer states that because of crop shortages in past years, the majority of packers in the industry would not have been able to meet the 10 percent minimum for each of the species of nuts in the final pack. In 1982 and 1983, there were not enough almonds during the major portion of the mixed nut marketing season to meet the minimum percentage requirement for the U.S. Fancy and U.S. Extra Fancy grades. During these production seasons there was less than adequate almond production as a result of growing conditions, as well as a sharp reduction in almonds that would meet grade requirements as a result of staining discoloration due to rain damage. As a result the Agricultural Marketing Service issued temporary rules during those seasons to lower the 10 percent minimum for almonds to 5 percent for the U.S. Extra Fancy and U.S. Fancy grades. In addition, it appears the current requirements do not meet the needs of the industry. In fact most of the larger packers have stopped requesting inspection under the U.S. grade standards.

Under the current U.S. grade standards, packages of in-shell mixed nuts must contain 5 separate species of nuts; almonds, Brazil nuts, filberts, pecans, and walnuts. When applying U.S. Extra Fancy and U.S. Fancy grade criteria, the 5 species of nuts must be mixed to a degree so that no single species consists of less than 10 percent or more than 40 percent of the mixture. Packages containing less than 10 percent or more than 40 percent of any single species would fail to meet either of these two grades, regardless of the quality or size of the nuts. Under the U.S. Commercial or U.S. Select grade, the minimum mixture requirement is 5 percent.

This action proposes to relax the minimum percent of mixture requirement for each species of nut in a mixture for U.S. Extra Fancy and U.S. Fancy from 10 to 5 percent. The proposed changes would, we believe, more closely reflect current marketing practices and better serve the needs of the industry. Although there would be a reduction in the minimum requirement for each species under this proposed rule, there would not be any changes in the current quality or size requirements of the U.S. Standards for Grades of Mixed Nuts.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624).

§ 51.3521 [Amended]

2. Section 51.3521, the chart designating the U.S. Extra Fancy grade

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requirements, would be amended by removing the 10 percent minimum percentage allowable in a mixture and inserting a 5 percent minimum allowable percentage for each of the nut species Almonds, Brazils, Filberts, Pecans, and Walnuts.

§ 51.3522 [Amended]

3. Section 51.3522, the chart designating the U.S. Fancy grade requirements would be amended by removing the 10 percent minimum percentage allowable in a mixture and inserting a 5 percent minimum allowable percentage for each of the nut species Almonds, Brazils, Filberts, Pecans, and Walnuts.

Done at Washington, DC on March 4, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-5186 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 52

United States Standards for Grades of Pickles

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On December 8, 1987 (52 FR 46486), the Agricultural Marketing Service proposed to revise the United States Standards for Grades of Pickles. A correction to the proposed rule was published on February 5, 1988 (53 FR 3403 and 53 FR 3490) to correct two table references and make minor editorial changes. In order to provide additional time for all interested persons to respond, the public comment period is reopened and extended to April 7, 1988.

DATES: Comments must be received on or before April 7, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 447-6247.

Dated: March 4, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-5184 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations dealing with planning and performing construction and other development. This action is intended to allow applicants to obtain the services necessary to plan projects, including analysis of project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contracts, from a wider range of individuals or organizations. A major effect of this action would be to increase FmHA's ability to provide decent, sanitary, and safe housing to eligible applicants in rural areas.

DATES: Written comments must be received on or before May 9, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Specialist, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5534, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410–Low Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the Final rule and related Notice(s) to 7 CFR Part 3015, Subpart V, this activity affects the following programs that are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.405–Farm Labor Housing Loans and Grants; 10.406–Farm Ownership Loans; 10.413–Recreation Facility Loans; 10.415–Rural Rental Housing Loans; and 10.416–Soil and Water Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it deals with the general administration of construction contracts and minimum certification requirements.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

Background

At the present time, FmHA requires that applicants have their drawings and specifications certified only by licensed architects, professional engineers, authorized building officials, or certified code authorities as meeting applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings. This requirement has caused approved loan applicants hardship in finding qualified certifiers at reasonable cost and has resulted in delays in assisting low-income and very low-income applicants in obtaining adequate

housing. The major purpose for revising the FmHA regulations at this time is to authorize individuals or organizations trained and experienced in the compliance, interpretation or enforcement of the applicable development standards to certify that drawings and specifications meet adopted codes and standards. By allowing the use of qualified persons such as builders, contractors, and community officials in addition to those previously mentioned, such delays would be eliminated.

1. Section 1924.5(f)(1)(iii) is partially revised as follows:

(a) Paragraph (A) is revised to list individuals or organizations who are authorized to certify plans and specification.

(b) Paragraph (B) is revised to state the certifier's license, certificate or authorization must be current at the time of certification and a building permit or professional stamp is not an acceptable substitute for the certification statement.

(c) Paragraph (C) is revised to list others authorized to certify drawings and specifications.

(d) Paragraph (D) is revised to contain the provisions of what was paragraph (B) in the current regulation, which required that the same individual or organization (if available) that certified the original drawing and specifications certify any modifications to the original drawings and specifications. If that person is not available, the drawings and specifications must be recertified by another authorized plan certifier.

(e) Paragraph (E) is revised to contain the provisions of what was paragraph (C) in the current regulation, which stated under what circumstance the certification of a modification of drawings and specifications may be waived.

(f) Paragraph (F) is added to contain and revise the provisions of what was paragraph (D) in the current regulation, which provide the suggested format for certification contain the minimum representation from the certifier that is acceptable to FmHA.

(g) Paragraph (G) is added to contain the statement a contractor must sign to receive final payment.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation Housing, Loan program-Agriculture, low and moderate income housing.

Accordingly, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—GENERAL

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by revising paragraphs (f)(1)(iii) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(f) * * *
(1) * * *
(iii) * * *

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

(*1*) Licensed architects,

(*2*) Licensed engineers,

(*3*) Registered Professional Building Designers certified by the American Institute of Building Design.

(*4*) Plan reviewers certified by a national model code organization listed in Exhibit E to this subpart.

(*5*) Local building officials authorized to review and approve building plans and specifications.

(*6*) National technical standards and codes organizations listed in Exhibit E to this subpart.

(*7*) Others with equivalent qualifications.

(B) The license, certificate, or authorization of the individual must be current at the time for the certification statement. A building permit (expect as noted in paragraph (f)(*1*)(iii) (C)(*1*) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For one to four family dwelling units, FmHA may also accept drawings and specifications that have been certified or approved by:

(*1*) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who review and inspect for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities upon request and publish, as a State supplement to this section, a list of those communities that qualify.

(*2*) A builder or contractor

(*i*) If the drawings and specifications meet the development standards adopted by the State Director and are accompanied by the signed certification contained in paragraph (f)(1)(iii)(F) of this section and:

(*ii*) The FmHA State Architect, Engineer, construction analyst, or construction inspector post reviews the first set of plans and specifications submitted by a builder and spot checks subsequent submittals to determine if the plans, specifications or construction complies with the code. All violations will be rendered in writing to the builder or contractor. If the builder or contractor fails to take corrective action within 30 days, the County Supervisor will recommend to the State Director that the advance of funds be halted and the contractor be suspended or debarred.

(D) The modifications of certified drawings or specifications must be certified by the same individual of organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) The following format is suggested for certification and contains the minimum representation acceptable to FmHA:

"I ___________ being a (licensed architect, engineer, builder, contractor, or authorized building official, etc.) hereby certify that I have reviewed:

___________ the drawings and specifications dated ___________ prepared by

____

(name of firm or individual)
and related to the development of the

____

(project/applicant name (if known) and location)

___________ modifications listed below, that have been clearly indicated on the drawings and specifications dated ___________ prepared by __________, certified by __________ and related to the development of the

____

(project/applicant name (if known) and location).

Based upon this review, to the best of my/our knowledge and belief, these documents conform to the (names and editions of applicable development standards) designated as the development standard for the project.

I further understand that if it is determined by FmHA that the drawings and/or specifications do not meet the applicable development standard that, within 30 days of being notified, the necessary corrections shall be made. It is also understood that false certification and failure to comply may result in suspension or debarment from participating in future government programs.

____

Date

____

Signature (Title)

(G) FmHA will obtain from the contractor, the following signed statement prior to final payment:

I, __________, have constructed this dwelling in accordance with the certified drawings and specifications and all modifications, if any, were approved by FmHA.

* * * * *

Dated: February 5, 1988.

LaVerne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 88–5167 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the December 1987 Regulatory Agenda. The Agenda, which is a quarterly compilation of all rules on which the NRC has proposed, or is considering action as well as those on which it has recently completed action, and all petitions for rulemaking which have been received and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 6, No. 4 is available for inspection and copying at a cost of six cents per page at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Single copies of the report may be purchased from the U.S. Government Printing Office (GPO). Customers may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086, toll free number (800) 368–5642.

Dated: at Bethesda, Maryland, this 4th day of March 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–5129 Filed 3–8–88; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 50 and 73

Nuclear Power Plant Access Authorization Program; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement.

SUMMARY: This proposed policy statement defines the policy of the Nuclear Regulatory Commission (NRC) regarding unescorted access to protected areas and vital areas at nuclear power plants. On August 1, 1984, the Nuclear Regulatory Commission published in the **Federal Register** for public comment a proposed rule to establish an access authorizing program. The nuclear industry responded to this request for comment by proposing industry guidelines for nuclear power plant access authorization programs. The Commission has reviewed these guidelines and is considering either the issuance of a policy statement which endorses the industry-developed guidelines or the promulgation of a rule codifying access authorization provisions. If the policy option is selected, commitments to adhere to these guidelines would be formalized through amendments to the physical security plans to licensed nuclear power plants and be subject to inspection and enforcement by the NRC. The Commission specifically invites public comment regarding the policy statement vs. rulemaking option.

DATE: Comment period expires May 9, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3773; or, for information of a legal nature, Robert L. Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1643.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1984, the NRC published in the **Federal Register** (49 FR 30726) proposed amendments to 10 CFR Parts 50 and 73 of its regulations which would establish an employee screening program for individuals requiring unescorted access to nuclear power plant protected and vital areas. Industry groups, including the Nuclear Utility Management and Resource Committee (NUMARC), the Edison Electric Institute, and later, the Atomic Industrial Forum and KMC, Inc., recommended the rule be withdrawn and proposed that it be replaced with an industry-proposed initiative to voluntarily commit to industry guidelines for an access authorization program. The Commission believes there may be merit in considering this approach and directed that a policy statement be developed endorsing the NUMARC Guidelines. This proposed policy statement and the NUMARC Guidelines are being published for public comment.

Proposed Statement of Policy

The Commission has concluded that it is appropriate for each licensee who operates a nuclear power plant to establish an access authorization program to ensure that individuals who require unescorted access to protected areas or vital areas of their facilities are trustworthy, reliable, emotionally stable and do not pose a threat to commit radiological sabotage. Accordingly, the NRC published a proposed rule on August 1, 1984, which would require an access authorization program at nuclear power plants (49 FR 30726).

An alternative proposal by the Nuclear Utility Management and Resources Committee (NUMARC) was submitted as a public comment on this proposed rule. The alternative proposed a voluntary industry commitment to implement an access authorization program at nuclear power plants based upon industry guidelines. The Commission endorses the program developed by NUMARC which is described in the document entitled, "Industry Guidelines for Nuclear Power Plant Access Authorization Program, Rev. 8" dated October 3, 1986 (hereafter referred to as the Guidelines). Major provisions of this program include background investigation, psychological evaluation, and behavioral observation. The Guidelines are also being published in the **Federal Register** and follow this statement of policy.

The Commission recognizes that the availability of a review procedure for use in the event the employment of a permanent utility employee is or will be terminated as a direct result of a denial or revocation of unescorted access authorization is an important element of this program. The Guidelines contain provision for such a review procedure.

Consistent with the requirements of 10 CFR 50.70(b)(3), the Commission expects that individuals certified by the NRC as having met the requirements of a program essentially equivalent to the Guidelines will be granted unescorted access to protected areas and vital areas without further investigation or screening. Further, under emergency conditions, the provisions of 10 CFR 50.54 (x) and (y) may be applied as needed by the licensee.

The Commission understands that all licensees who operate nuclear power plants are members of NUMARC and will incorporate the provisions of the Guidelines and of this policy statement into their NRC approved physical security plans. This expectation does not preclude the licensee from committing to or conducting more stringent screening of individuals, if so desired. The power reactor utilities will submit by 120 days from the effective date of this notice amendments to their physical security plans, including an implementation schedule. These amendments will include commitments to implement and maintain access authorization programs consistent with this policy and the Guidelines within 180 days of security plan amendment approval. The commitment will state, "All elements of the NUMARC guidelines, *Industry Guidelines for Nuclear Power Plant Access Authorization Programs (Revision 8)*, or any NRC-approved future revisions will be implemented in accordance with the NRC policy statement, Nuclear Power Plant Access Authorization Program, (licensee insert date of publication and citation in the **Federal Register**). "Amended plans submitted in accordance with this commitment will be accepted by the NRC without further review. The NRC will monitor compliance with this program through its normal inspection and enforcement activities.

This policy is based upon a Commission understanding that to implement the Guidelines and policy in this statement, nuclear power plant licensees are prepared to commit voluntarily to a program that is subject to NRC inspection and to enforcement action for noncompliance. Because this policy statement will replace a proposal for rulemaking that had previously received backfit approval and because the NRC staff considers the Guidelines to be equivalent in substance to the requirements, benefits, and costs of the proposed rulemaking, no additional backfit analysis for this policy statement has been prepared.

(Single copies of the backfit analysis may be obtained from Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3773.) It is further understood that the provisions of the Industry Guidelines will not supersede any requirements imposed by NRC regulations.

Dated at Washington, DC, this 4th day of March, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A.—Industry Guidelines for Nuclear Power Plant Access Authorization Programs

October 3, 1986.

[Rev. 8]

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Attachment A—Minimum Audit Criteria

1 Purpose

To support the safe operations of licensed nuclear power plants, utilities will implement an access authorization program in accordance with the following guidelines. These guidelines have been designed with the objective of achieving high assurance that personnel granted unescorted access authorization to the protected and vital areas of utility nuclear power plants are trustworthy and reliable and do not pose a threat to commit radiological sabotage. Individual utilities may have additional requirements.

2 Scope

These guidelines define the acceptable levels for conducting and evaluating the elements of the screening program. Major elements include background investigation, psychological evaluation, and behavioral observation. Additionally the guidelines (1) provide evaluation criteria for the determination of access authorization, (2) establish provisions for accepting unescorted access authorization from other utilities, (3) include a grandfathering of personnel who were previously screened and (4) discuss records maintenance, and evaluation and audits of the access authorization program is being met.

3 Responsibility

The final granting and controlling of unescorted access authorization is the responsibility of the utility. Each nuclear utility will inform contractors and vendors of the existence of these guidelines and of the necessity to follow these guidelines. The utilities are responsible to audit non-utilities who conduct their own screening and/or implement continual behavioral observation programs (CBOP) to assure these guidelines are followed. Each utility is responsible for having an independent evaluation conducted of its program in accordance with Section 13.1 of these guidelines.

4 Applicability

These guidelines apply to all nuclear utilities, and nuclear utilities shall require those contractors and vendors who provide services at the utility's nuclear power plants to also follow them.

One level of permanent unescorted access authorization will be granted to personnel who have been processed in accordance with these guidelines. Such unescorted access authorization will allow access to both protected and vital areas as needed.

5 General Requirements for Unescorted Access

A utility may grant unescorted access authorization to an individual following the satisfactory completion of a screening program (6.0) which consists of a background investigation (6.2) and a psychological evaluation (6.3). All of the foregoing may be waived if the individual satisfies any of the following: (1) Satisfies requirements for grandfathering (11.0); (2) has a transferable access authorization from another utility (8.1); (3) has a previously granted reinstateable access authorization from the utility (8.2); or (4) will be restricted to protected or devitalized areas during cold shutdown or refueling (10.1). Also, a utility may grant a temporary nontransferable unescorted access authorization valid for no more than 180 days based on a psychological evaluation and a limited background check (6.4).

6 Screening Program

6.1 *Initiation of a Screening Program*

No element of the screening program may be initiated without the knowledge and written consent of the person who is subject to such screening. The applicant for unescorted access authorization shall be informed of the types of records that may be produced and retained, where such records are normally maintained, the duration such records are usually retained, the applicant's rights concerning access to the information, and to whom and under what circumstances the information will be released.

Initial screening requirements are applicable to those individuals who have never been screened or granted unescorted access authorization except as defined in Section 11.0. The initial screening program has two components: a background investigation (Section 6.2) and a psychological evaluation (Section 6.3).

An applicant may withdraw consent to a psychological evaluation or background investigation at any time. When withdrawal of consent is made, all processing of work in connection with either the psychological evaluation or background investigation must cease as soon as practical. Withdrawal of consent must be deemed as withdrawal of the application for unescorted access authorization.

Information collected under these guidelines may be released only on a need-to-know basis.

6.2 *Background Investigation Elements*

The background investigation covers the time period specified in each element below or since the eighteenth birthday, whichever is shorter. The applicant's employment history, education history, credit history, criminal history, military service, and the applicant's character and reputation must be addressed in the following manner.

6.2.1 *Employment History*

Except as noted below, employment history must be obtained for the past five years through contacts with previous employers, by obtaining the following information:

a. Verification of claimed periods of employment of 30 days or more;

b. Disciplinary history;

c. Reasons for termination and eligibility for rehire;

d. Any other information that would adversely reflect upon the reliability and trustworthiness of the individual as it relates to the individual being permitted unescorted access; and

e. Activities during interruptions of employment in excess of 30 days must be verified.

Note.—Because of the multitude of employments many employees experience during a five-year period, especially craft and trade workers, verification of all such employments may not be possible. Consequently, utilities may consider these applicants for unescorted access based upon an inclusive three-year retrospective employment check if the entire five-year period cannot be covered. Under no circumstances may unescorted access be granted based on an employment check of less than three years, and attempts should be made to include the entire five-year period.

6.2.2 *Education History*

Verify any claimed enrollment at an educational institution during the previous five years. In addition, verify the highest claimed post high school attendance or degree regardless of time.

6.2.3 *Criminal History*

As required by Federal law (Pub. L. 99-399, "Omnibus Diplomatic Security and Anti-Terrorism Act of 1986"), the utility shall perform a criminal history record check through the Federal Bureau of Investigation in accordance with NRC regulations.

6.2.4 *Military Service*

If within the last five years, military period of service (claimed or developed) must be verified by receipt of a Form DD214 or other National Personnel Records Center (NPRC) records. This information must be obtained from the NPRC through acquisition and submittal of an applicant's authorization for release of military history information. The utility may grant unescorted access for 180 days or less to individuals prior to receipt of DD214 or other military records if all other applicable elements of the guidelines are met and a record is maintained which documents that the request for military history was submitted within 10 working days of granting unescorted access. If it becomes known that an individual's discharge is other than honorable based solely on receipt of a DD214, further investigation must be made.

6.2.5 *Character and Reputation*

The applicant's reputation for emotional stability, reliability and trustworthiness must be examined through contact with two references supplied by the applicant and at least two additional references (not related to the applicant) developed during the investigation. (It is not necessary that reference's (individually or collectively) association with or knowledge of the applicant for unescorted access cover the entire five-year retrospective period.) Emphasis must be placed on:

a. Identified psychological problems;

b. Criminal history;

c. Illegal use or possession of a controlled substance;

d. Abuse of alcohol;

e. Susceptibility to coercion; and

f. Any other conduct relating to an applicant's trustworthiness of reliability to discharge job duties within the environment of a nuclear power plant.

6.2.6 *Verification of Identity*

Identity must be verified through means such as photograph, social

security number, date of birth, or comparison of applicant's physical characteristics with employment, education, military and other records and/or employer and character references who have a personal acquaintance with the applicant.

6.2.7 *Credit check*

A check of the applicant's credit history must be performed through checks with credit bureaus and/or credit references.

6.3 *Psychological Evaluation*

Reliability and stability must be determined by the result of a reliable written personality test or by any other professionally accepted clinical evaluation procedure. The results of such test or procedures, must be evaluated by a qualified and, if applicable, licensed psychologist or psychiatrist. If the results of the written test or other procedure identify any psychological abnormalities which may indicate emotional instability, unreliability, or untrustworthiness, or the results need further clarification, a clinical interview must be conducted by a qualified and, if applicable, licensed psychologist or psychiatrist.

6.4 *Temporary Unescorted Access Authorization*

A utility may grant unescorted access authorization not exceeding a period of 180 continuous days based on a temporary authorization. This temporary authorization cannot be transferred from one licensee to another in accordance with Section 8.1 with the exception of the FBI criminal history check which may be transferred. The 180-day temporary authorization may be granted based upon satisfaction of the following conditions:

a. Passing a psychological evaluation within the past year;

b. Conduct of a credit check;

c. Recommendation of one developed character reference who has had frequent and direct association with the applicant; and

d. Evidence that a request for a criminal history check of the individual by the FBI has been submitted to the NRC.

7 Evaluation Criteria for Unescorted Access Authorization

7.1 *Criteria*

In its decision to grant an individual authorization for unescorted access, the utility shall consider information obtained during the background investigation any psychological evaluation. This information must be reviewed using the guidelines specified in this section. Each utility shall define the appropriate level of management to adjudicate matters covered by these criteria. In making a determination of trustworthiness or reliability, the following must be considered:

a. Willful omission or falsification of material information submitted in support of employment or request for unescorted access authorization to protected or vital areas;

b. Illegal use or possession of a controlled substance or abuse of alcohol without adequate evidence or rehabilitation;

c. A criminal history without adequate evidence of rehabilitation which establishes untrustworthiness or unreliability;

d. History of mental illness or emotional instability that may cause a significant defect in the individual's judgment or reliability;

e. Any evidence of coercion, influence or pressure that may be applied by outside sources to compel an individual to commit any act of sabotage or other act which would adversely reflect upon the individual's trustworthiness or reliability;

f. Evidence that the individual has committed or attempted to commit, or aided or abetted another who committed or attempted to commit, any act of sabotage or other act that would pose a threat or reflect adversely upon that individual's trustworthiness or reliability;

g. A psychological evaluation which indicates that the individual is a risk in terms of trustworthiness or reliability; and

h. Any other information that would adversely reflect upon the reliability and trustworthiness of the individual as it relates to the individuals being permitted unescorted access.

7.2 *Review Procss*

Each permanent employee [1] of a utility whose employment is or will be terminated as a direct result of a denial or revocation of access authorization will; (1) Be informed of the basis of denial or revocation of unescorted access; (2) have the opportunity to provide any additional information; and (3) have the decision, together with any additional information, reviewed by another designated manager of the utility who is equivalent or senior to and independent of the individual who made the initial decision to deny or revoke unescorted access. The determination from this review is final. An alternative review process which is independent and impartial is acceptable. If an alternative review process is used, the utility will include a description of its review process in its plan which meets this guideline.

8 Transfer and Reinstatement of Unescorted Access Authorization

Transfer or reinstatement of unescorted access authorization requires verification of the individual's identity by the utility.

8.1 *Transfer*

An individual's unescorted access authorization granted by one utility in accordance with these guidelines may be transferred to another utility via correspondence, computer data transfer, or telecopy if the gaining utility: (1) Verifies or receives confirmation that the individual currently holds a valid unescorted access authorization or had a valid unescorted access authorization which was terminated under favorable conditions within the previous 365 days, and (2) cross-checks information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

8.2 *Reinstatement*

The utility may reinstate the unescorted access authorization granted an individual if the individual returns to the same utility and unescorted access authorization has not been interrupted for a continuous period of more than 365 days and if the previous unescorted access authorization was terminated under favorable conditions.

8.3 *Update Requirements*

A utility shall not authorize unescorted access where the individual's unescorted access authorization has been interrupted for more than 365 calendar days unless the psychological evaluation and the background investigation is updated to cover the individual's activities from the date of the previous background investigation, not to exceed retrospective periods in 6.2, or to the period when unescorted access was last held, whichever is less. A temporary unescorted access authorization (6.4) may be issued while the background investigation update is occurring.

9 Continual Behavioral Observation Program (CBOP)

Each individual granted unescorted access shall be subject to a CBOP. This

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[1] The term "permanent employee" refers to a person who is employed by a utility for an undefined term. It does not include employees who were temporarily hired for a specific project or other temporary work or who were hired under an employement contract with a defined term.

CBOP applies to all personnel who are granted unescorted access. The following must be included in the overall program:

a. A program with the objective for assuring the detection of alcohol and drug abuse and other behavior that may evidence a threat to commit radiological sabotage;

b. A continual behavioral observation program that provides for management/supervisory personnel responsibility for observing personnel for behavioral traits and patterns that may reflect adversely on their trustworthiness or reliability and reporting those observations to appropriate utility management; and

c. A training program which reasonably assures that management/supervisory personnel have the awareness and sensitivity to detect and report changes in behavior, to include suspected alcohol and drug abuse, which adversely reflect upon the individual's trustworthiness or reliability, and to refer these persons to the utility's management for appropriate evaluation and action.

Individuals with unescorted access authorization must be notified of his/her responsibility to report any arrest that may impact upon his/her trustworthiness.

10 Screening During Cold Shutdown

10.1 Devitalization of Vital Areas

During refueling or maintenance outage in which all or a part of a nuclear power plant is in a cold shutdown, refueling, or devitalized status, the utility may grant unescorted access authorization to the protected and devitalized areas for personnel who have not been screened in accordance with Section 6.0 providing that:

a. The unescorted and unscreened person is restricted to the protected or devitalized areas;

b. Other requirements of the approved security plan remain in force, and the requirements of 10 CFR 73.55 are followed for unscreened personnel granted unescorted access;

c. Prior to start-up, a thorough visual inspection of the devitalized area is made by knowledgeable plant personnel to identify signs of tampering or attempted sabotage; and

d. Appropriate safety start-up procedures are followed to assure that all operating and safety systems are functioning normally.

11 Grandfathering

The utility may grant unescorted access authorization to individuals if they hold a valid unescorted access authorization on the date security plan amendments in response to these guidelines are approved or have been granted unescorted access authorization within the 365 days prior to the date of amended security plan approval.

12 Contractor and Vendor Requirements

The utility may accept the results of the entire screening program or any part thereof conducted by a contractor or vendor, provided that the contractor or vendor meets the requirements of these guidelines and that it makes its records available for auditing by the licensee or its designated representative in accordance with sections 13 and 14. The utility retains the ultimate responsibility for assuring that individuals granted unescorted access to the facility have been subjected to the screening elements of this program.

13 Evaluations and Audits

13.1 Utility Programs

An independent evaluation of the access authorization program and its conformance to these guidelines must be made within 12 months of the effective date of implementation of the amended security plan which commits to these guidelines. Thereafter, an independent evaluation must be conducted at least once every 24 months. The utility shall retain all reports of evaluation for a period of three years.

13.2 Contractor and Vendor Programs

The utility or its designated representative shall conduct annual audits of contractor and vendor access authorization programs to ensure compliance with these guidelines. Other utilities may accept the originating utility's audit and need not reaudit the same contractor or vendor for the same period of time providing the scope of the audit meets the minimum auditing criteria contained in Attachment A. A copy of the audit report, to include findings, recommendations and corrective action must be provided to the sharing utility.

14 Records

Utilities and contractors and vendors of utilities who conducted screening programs in accordance with these guidelines shall maintain actual data that:

a. A background investigation and psychological evaluation were conducted for each person who is screened under Section 6.0 of these guidelines;

b. Other persons were granted unescorted access authorization in accordance with Section 11; and

c. Satisfaction with the conditions of Section 6.4 which resulted in the granting of temporary unescorted access authorization.

The utility, contractor, or vendor shall retain records for each person who is granted unescorted access for a three-year period following termination of access authorization.

Each utility or utility's contractor or vendor who collects personal information for the purpose of processing access authorizations shall establish and maintain a system of files and procedures for the protection of the personal information. This information must not be disclosed to persons other than the subject or his/her representative, utility counsel and officers, auditors whose purpose for review would be to inspect program conformance, other utilities if an individual's access authorization is transferred, and those individuals who have a need to have access to the information in performing assigned duties in the process of granting or denying access authorization.

Attachment A—Minimum Audit Criteria

The following information must be reviewed during the conduct of an audit of a contractor/vendor screening program to meet the objective that the intent of these guidelines have been met.

A. Background Investigation

The auditor shall review screening activities by examining records and conducting interviews with appropriate personnel to determine that screening activities were accomplished in a correct and accurate manner.

In conducting an audit of the background information to reasonably assure contractor conformance with these guidelines, the auditor shall randomly verify the following:

1. Employment History

Date the verification was made, complete dates of employment, position, disciplinary history, reason for termination, eligibility for rehire, and any other information which would adversely reflect upon the reliability and trustworthiness of the individual. The retrospective period for employment history must be reasonably attempted for five years; however, due to the nature of employment histories of some transient craft workers, a minimum period of three years is required.

2. Education

Copies of transcripts, diplomas, etc., documentation which verifies all claimed attendance within the previous five years. In addition, the highest post-high school attendance or degree must be verified regardless of time. Records must include, as a minimum, dates of check, dates of attendance, highest level of attendance, and reason for leaving, i.e., graduation, transfer, expulsion, etc.

3. Criminal History

Date of check and results of FBI criminal history records check. If temporary unescorted access authorization was granted, evidence of submittal of request for FBI criminal history records prior to granting unescorted access.

4. Military History

Date of receipt and copy of Form DD214 or other military records from the National Personnel Records Center if military service was within previous five years. If unescorted access was granted prior to receipt of NPRC records, evidence of submission of request for military history within ten working days of granting unescorted access shall be contained in the access authorization file.

5. Character References

Dates of contact, names of references, association with applicant, period of association and any information related to identified psychological problems, criminal history, illegal use or possession of a controlled substance, abuse of alcohol, susceptibility to coercion and any other conduct relating to applicant's trustworthiness and reliability. Each file must contain two listed references and two developed references (not related to applicant) as a minimum.

6. Verification of Identity

How verification of identity was accomplished through such means as photograph, social security number, date of birth, and comparison of applicant's physical characteristics with records and/or references.

7. Credit History

Date of the credit check(s), name and location of credit bureau or other source, and results of initial check(s).

B. Psychological Evaluation

To reasonably assure contractor conformance concerning psychological evaluation, the auditor must be concerned with the date of the testing and that a psychologist/psychiatrist reviewed the evaluation. Contracter records must include a copy of the report signed by a licensed, if applicable psychologist/psychiatrist.

C. Continual Behavioral Observation Program (CBOP)

To reasonably assure contractor conformance concerning a CBOP, the auditor must review contractor's program to determine compliance with these guidelines, specifically to address that supervisors are sensitized to alcohol and drug abuse and other behavioral traits/patterns which may cause a threat to commit radiological sabotage, and to report/refer persons displaying such behavior to the utility's management for appropriate evaluation and action.

D. Temporary Unescorted Access Authorization

To reasonably assure contractor conformance concerning temporary unescorted access authorization, the auditor must be concerned with completion dates for credit check, reference check, psychological evaluation (within previous year from date unescorted access was granted) and date of submission to the NRC of FBI criminal history check. The auditor shall follow criteria set forth in Section A for credit history and character references and Section B for psychological evaluation. Evidence of submission of FBI criminal history request or receipt of results transferred from another utility or received directly from the NRC must be contained in access authorization file.

E. Update Requirements

To reasonably assure contractor conformance concerning updating access authorizations when access authorizations have been interrupted for more than 365 days, the auditor must be concerned with the dates of psychological evaluation and background investigation, and the retrospective period of the background investigation must cover activities from the date of the previous background investigation not to exceed the retrospective period of Section 6.2 or the period when unescorted access was last held, whichever is less. The criteria listed in Sections A and B must be met in updating unescorted access authorization.

F. Grandfathering

To reasonably assure contractor conformance concerning grandfathering, the auditor must be concerned with the date of the previous unescorted access authorization to determine that the individual held unescorted access authorization on the date security plan amendments in response to these guidelines were approved or was granted access authorization within the 365 days prior to the date of amended security plan approval. The auditor must be concerned that no individuals were grandfathered earlier than the 365 days prior to the date of amended security plan approval or subsequent to the date of amended security plan approval.

[FR Doc. 88-5166 Filed 3-8-88; 8:45 am]
BILLING CODE 7590-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3146/P443; FRL-3337-2]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3-PBA in or on the raw agricultural commodities avocados and papayas. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [P 4E3146/P443], must be received on or before April 8, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Informatin" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Inforamtion not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address

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given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716C, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3146 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California, Florida, and Puerto Rico.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethycyclopropane carboxylate] and the sum of its metabolites, 3-(2,2-dichloroethenyl)-2,2-dimethycyclopropane carboxylic acid (DCVA) and (3-phenoxybenzyl)-methanol (3-PBA), in or on the agricultural commodities avocados and papayas at 1.0 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances were discussed in a final rule document (PP 8F2099-R422), published in the **Federal Register** of October 13, 1982 (47 FR 45008). Tolerances for residues of the insecticide on various raw agricultural commodities have been previously established, ranging from 0.05 to 60.0 ppm.

The acceptable daily intake (ADI), based on the 2-year rat chronic feeding/oncogenicity study (no-observed-effect level (NOEL) of 5.0 mg/kg/day or 100 ppm) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.015461 mg/kg/day; the current action will increased the TMRC by 0.000020 mg/kg/day (0.1 percent) to 0.015481 mg/kg/day.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available in the Pesticide Analytical Method (PAM), Volume II, for enforcement pruposes. No secondary residues in meat, milk, poultry, or eggs are expected from use of permethrin on avocados and papayas; a label restriction precludes the grazing of livestock in treated fields or feeding of treated cover crops to livestock. There are currently no actions pending against the continued registration of this chemical.

Based on the above information and data considered by the Agency, the tolerance established by amending 40 CFR 180.378 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3146/P443]. All written comments filed in response to this petition will be available in the Information Service Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements to do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378(b) is amended by adding and alphabetically inserting entries for the commodities avocados and papayas, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Avocados	1.0
* * * * *	
Papayas	1.0
* * * * *	

[FR Doc. 88-4611 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300181; FRL-3339-2]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add an entry for green onions in the commodity definitions and to revise the established commodity definition for onions. This proposed amendment, which would define onions and green onions, was requested by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [OPP-300181], must be received on or before April 8, 1988.

ADDRESSES: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director, and the IR-4 Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "green onions" to the general category of commodities listed in column A and defining that commodity as "green onions, leeks, spring onions or scallions, Japanese bunching onions, and green shallots or green eschalots" by inserting these corresponding commodities in the specific commodities listing in column B.

The IR-4 supports this request by pointing out that the growth habits, cultural and production practices, pest complex and harvest techniques for these green onion commodities are all similar.

The IR-4 requested to more specifically define the commodity term "green onions" already listed in column B of 40 CFR 180.1(h) as a specific raw agricultural commodity for the general commodity "onions."

As a logical result of the green onion definition, the specific raw agricultural commodities listing corresponding to the general commodity onions would be amended by redefining the onion definition.

The Agency concurs with IR-4 on the proposed revision of 40 CFR 180.1(h) to add the general category "green onions" in Column A and a corresponding listing of the specific raw agricultural commodities in Column B. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "green onions" to include the specific raw agricultural commodities as listed. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 will protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP 300181]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 1, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition for onions and by adding a definition for green onions, to read as follows

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Onions	Dry bulb onions, green onions, and garlic.
* * * * *	
Onions, green	Green onions, leeks, spring onions or scallions, Japanese bunching onions, green shallots, or green eschalots.
* * * * *	

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[FR Doc. 88-[illegible] Filed 3-8-88; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 180

[OPP-300183; FRL 3338-9]

Ultramarine Blue; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that ultramarine blue (CAS Reg. No. 57455-37-5) be exempted from the requirement of a tolerance when used as an inert ingredient (pigment/colorant) in pesticide formulations applied to animals. This proposed regulation was requested by Y-Tex Corp.

DATE: Written comments, identified by the document control number [OPP-300183], must be received on or before March 24, 1988.

ADDRESSES: By mail, submit comments to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lynn M. Bradley, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

SUPPLEMENTARY INFORMATION: At the request of Y-Tex Corp., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for ultramarine blue when used as a component (pigment/colorant) of plastic animal tags in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Ultramarine blue (CAS Reg. No. 57455–37–5).

Name and address of requestor. Y-Tex Corporation, P.O. Box 1450, 1825 Big Horn Avenue, Cody, WY 82414

Bases for approval of ultramarine blue 1. Ultramarine blue is not expected to result in residues in meat and milk or to be bioavailable by reason of its solid form and insoluble nature.

2. Ultramarine blue is cleared under 21 CFR 73.50 for use in coloring salt used in feeding animals subject to the restriction that the quantity of ultramarine blue does not exceed 0.5 percent by weight of the salt.

3. Ultramarine blue is cleared under 21 CFR 73.2725 for use as a colorant in externally applied cosmetics, including cosmetics intended for use in the area of the eye.

4. Ultramarine blue is cleared under 21 CFR 177.1680 as a pigment in polyurethane resins used as the food-contact surface of articles intended for use in contact with bulk quantities of dry food of the type identified in 21 CFR 176.170(c).

5. Ultramarine blue is cleared under 21 CFR 177.2600 as a color (not to exceed 10 percent by weight of the rubber product) in rubber articles intended for repeated use in producing, packing, processing, preparing, treating, packaging, transporting, or holding food.

6. Ultramarine blue is cleared under 21 CFR 177.2800 as a substance used in the production of or as a component of textiles fibers used as articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

7. Ultramarine blue is cleared under 21 CFR 178.3970 as a colorant when used in the manufacture of flexible, semirigid, and rigid plastic materials, and textiles and textile fibers [as provided in 21 CFR 178.2800] intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearance, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert igredient may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP–300183]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 3, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	*	* *
Ultramarine blue (CAS Reg. No. 57455–37–5).	Not more than 1.5% of pesticide formulation.	Pigment/colorant in animal tag.
* *	*	* *

[FR Doc. 88–5130 Filed 3–8–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 7E3565, 7E3567, 7E3568/P446; FRL-3338–7]

Pesticide Tolerances for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodities asparagus, spinach, and endive. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 7E3565, 7E3567, 7E3568/P446], must be received on or before April 8, 1988.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide (R)–2–[4–[[5–(trifluoromethyl)–2–pyridinyl]oxy]phenoxy]–propanoic acid (resolved isomer of fluazifop-P-butyl), all expressed as fluazifop, in or on certain raw agricultural commodities as follows:

1. PP 7E3565 on behalf of the Agricultural Experiment Stations of New Jersey and Washington in or on asparagus at 3.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Maryland, New Jersey, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

2. PP 7E3567 on behalf of the Agricultural Experiment Stations of Arkansas, California, Connecticut, Maryland, North Carolina, Oklahoma, and Texas in or on spinach at 6.0 ppm.

3. PP 7E3568 on behalf of the Agricultural Experiment Station of Florida in or on endive at 6.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year chronic feeding/oncogenicity study in rats which was negative for oncogenic potential under the conditions of the study at all feeding levels of 0.1, 0.3, 1.0, and 3.0 milligrams (mg) per kilogram (kg) of body weight (bw) per day (equivalent to 2, 6, 20, and 60 ppm) and a systemic no-observed-effect level (NOEL) of 1 mg/kg/day.

2. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day (equivalent to 10 ppm).

3. A 90-day dog feeding study with a NOEL of 25 mg/kg/day (equivalent to 1,000 ppm).

4. A rat oral lethal dose LD_{50} of 3,300 mg/kg.

5. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (equivalent to 200 ppm) and a NOEL for fetotoxicity of 1 mg/kg/day.

6. A rabbit teratology study with no teratogenic effect at 90 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 10 mg/kg/day (equivalent to 330 ppm).

7. A two-generation rat reproduction study with a NOEL of 1 mg/kg/day.

8. A 1-year dog feeding study with a NOEL of 5 mg/kg/day.

9. An 18-month mouse chronic feeding/oncogenicity study with no observed oncogenic potential under conditions of the study at all feeding levels of 0.1, 0.3, 1.0, and 3.0 mg/kg/day and a NOEL for systemic toxicity of 1.0 mg/kg/day (equivalent to 7 ppm).

10. An Ames test (negative), a rat cytogenetic study (negative), and an in-vitro transformation assay (negative).

11. An acute delayed neurotoxicity study in hens (negative).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg/day of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5–kg daily diet is calculated to be 0.001766 mg/kg/day; the current action will increase the TMRC by 0.000308 mg/kg/day (17.4 percent). Published tolerances utilize 17.7 percent of the ADI; the

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current action will utilize an additional 3.1 percent.

The nature of the residues is adequately understood and adequate analytical methods, high-pressure liquid chromatography using an ultraviolet detector, are available in Pesticide Analytical Manual, Vol. II (PAM–II), for enforcement purposes.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.411 would protect the public health. No secondary residues in meat, milk, poultry, or eggs are expected since asparagus, endive, and spinach are not considered livestock feed commodities.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interest persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3565, 7E3567, 7E3568/P446]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 1, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411 is amended in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity spinach and in paragraph (d) by adding and alphabetically inserting the raw agricultural commodities asparagus and endive, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * *	*
Spinach	6.0
* * * *	*

(d) * * *

Commodity	Parts per million
* * * *	*
Asparagus	3.0
* * * *	*
Endive	5.0
* * * *	*

[FR Doc. 88–5152 Filed 3–8–88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 4, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
  Kiwifruit Grown in California under Marketing Order No. 920
  Recordkeeping; Monthly; Annually; Every four years
  Farms; Businesses or other for-profit; 921 responses; 697 hours; not applicable under 3504(h)
  Robert Matthews (202) 447–2431
- Farmers Home Administration
  Section 502 Rural Housing Demonstration Program
  On occasion
  State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 25 responses; 2,000 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736
- Foreign Agricultural Service
  Emergency Relief from Perishable Product Imports from Israel
  On occasion
  Farms; Businesses or other for-profit; 3 responses; 54 hours; not applicable under 3504(h)
  Abraham Avidor (202) 382–9060

Reinstatement

- Food and Nutrition Service
  Annual Report of State Revenue Matching
  FNS–13
  Annually
  State or local governments; 57 responses; 4,560 hours; not applicable under 3504(h)
  Alan Rich (703) 756–3100

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–5190 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

Advisory Committee on Cotton Marketing Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Cotton Marketing will meet on Wednesday, April 13, from 8:30 a.m. to 4:30 p.m. in room 104–A of the USDA Administration Building, Jefferson Drive, Washington, D.C. The purpose of the meeting, the first held by the committee, will be to establish a common understanding of committee objectives and to initiate a review of prominent marketing system issues.

Tentative agenda items include the establishment of spot quotations, the Universal Cotton Standards Agreement, and the utilization of high-volume-instrument quality factors in the Commodity Credit Corporation price-support loan structure. This meeting is open to the public, and written comments may be submitted in advance to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–3193.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cotton Marketing is being established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: March 4, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–5185 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Significant Amendment to the George Washington National Forest Land and Resource Management Plan; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final EIS on the George Washington National Forest Land and Resource Management Plan filed in September, 1986. The supplement will address the following main issues: (1) Whether and how much the Forest should increase or decrease the supply of timber to

industry; (2) to what extent the Forest's timber sale program and associated road construction provides benefits to the recreation and wildlife programs; (3) whether the efficiency of the Forest's timber sale program can be increased; (4) whether the mix of uneven-aged (group selection) or even-aged (shelterwood or clearcut) management is adequate to produce timber on the Forest; (5) how much land suited for timber production should be identified; and (6) how the Forest's timber sale program affects other resources such as local economies, nonmotorized recreation experiences, and sensitive wildlife.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received by April 15, 1988 to assure timely consideration.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to George W. Kelley, Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Steve Parsons, Planning Staff officer, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801, phone number 703–433–2491.

SUPPLEMENTARY INFORMATION: The George Washington Land and Resource Management Plan was approved September 9, 1986. Additional analysis of the Forest Plan was required by Regional Forester John Alcock's decision of August 1987 directing the Forest Supervisor to perform a supplemental analysis based on issues raised by interested and affected publics.

The Forest Plan will remain in effect and continue to be implemented during the supplemental analysis. However, in recognizing the concerns of the interested and affected publics, the Chief, USDA Forest Service set the following interim guidelines for the Forest: (1) Annual timber sales offered may not exceed thirty eight million board feet per year; (2) All parties to the appeals will be notified of proposed surface disturbing projects associated with timber harvest and road building; and (3) major conflict areas will be determined and timber harvest activities postponed or relocated where feasible. Conflict areas were identified and discussed with interested parties at a January 14, 1988 meeting. Some timber harvesting activities on the Forest have been postponed or relocated as a result of that meeting and other public comments.

The Forest has been communicating with interested and affected members of the public to determine the scope of the supplemental analysis since October 1987. A meeting with interested publics was held on January 14, 1988 to review the process to be used, and better identify the issues, including those issues surrounding major areas of conflict. Subsequent public participation activities have included presentations to various public groups, individual meetings and phone calls, and requests for written comments on timber sale programs. In continuation of this process, the Forest will periodically send interim analysis documents for public review and comment, culminating with a draft and final supplemental environmental impact statement.

In preparing the environmental impact statement, the Forest Service may develop additional alternatives that: (1) Increase and/or decrease timber harvest and road construction levels, analyze various mixes of timber harvest methods, and analyze various mixes of nontimber and timber activities for producing recreation and wildlife benefits; and (2) provide timber harvesting at levels where direct timber revenues exceed direct costs as well as alternatives where timber harvesting is economically efficient considering the contribution harvesting makes to providing other resource benefits; and (3) emphasize different mixes of recreation, wildlife, and timber resources which may or may not meet demand for those resources.

Some original alternatives described in the FEIS Chapter II will be redesigned to reflect any changes resulting from issues addressed in the SEIS. Submit requests for material describing the alternatives to the address noted below for the George Washington National Forest.

The draft supplemental environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by August, 1989. At that time EPA will publish a notice of availability of the DESEIS in the Federal Register. The comment period on the DSEIS will be 90 days from the date the EPA notice of availability appears in the Federal Register. It is very important that those interested in the management of the George Washington National Forest participate at that time. To be most helpful, comments on the DSEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviwers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553, (1978)*, and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc., v. Harris, 490 F. Supp. 1334, (E.D. Wis. 1980)*. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FSEIS.

After the comment period ends on the DSEIS, the comments will be analyzed and considered by the Forest Service in preparing the final supplemental environmental impact statement. The final SEIS is scheduled to be completed by April, 1990. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

The responsible official is John E. Alcock, Regional Forester, Southern Region 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: March 1, 1988.

John E. Alcock,

Regional Forester.

[FR Doc. 88–5108 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: March 24, 1988.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: Colonel William C. Golbitz, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451 (202) 647–5178.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review the impacts of treaty compliance and verification issues, and will hold executive sessions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88–4207 Filed 3–8–88; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Ohio Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:30 p.m., on March 11, 1988, at the Terrace Hilton Hotel, 15 West Sixth Street, Cincinnati, Ohio. The purpose of the meeting is to provide orientation for the rechartered SAC and discuss plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Prock, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–5062 Filed 3–8–88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 7685–01]

Actions Affecting Export Privileges; Andre A. Buccolier

Summary

Pursuant to the Decision and Order set out below, Andre Buccolier (Respondent), with an address in care of Marvin Margolis, Esq., 770 Lexington Avenue, New York, New York 10021, is denied all export privileges for a period of ten (10) years from the date of this Order; provided, however, that commencing five (5) years from the date hereof, the denial of export privileges shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten (10) year period provided that the Respondent has committed no further violations of the Act, the Regulations, or the final Order in this proceeding.

Decision and Order

Procedural and Factual Background

This proceeding against Respondent Andre A. Buccolier (Respondent) began with the issuance February 5, 1987 of a charging letter by the Office of Export Enforcement (Agency), Export Administration,[1] U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2410–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1987)) (Regulations). The letter charged generally that Respondent had violated § 387.5 of the Regulations in 1982, with a specific allegation that Respondent had represented that Italy was the ultimate destination of three exports of U.S.-origin equipment from the United States, when Respondent knew that the shipments were to be reexported from Italy to the Soviet Union.

Respondent filed a March 2, 1987 answer requesting a hearing. The hearing was held October 6–8 and December 1–5, 1987 together with the hearing of charges by the Agency, under the Act and the Regulations, against a company of which Respondent was president. At the hearing, Respondent was accompanied by counsel for addressing most procedural issues, but was unaccompanied by counsel for addressing the substantive issue involving the allegations of the charging letter. The due date for the last post-hearing filings was January 12, 1988.

Preceding this 1987–88 administrative proceeding were two judicial trials against Respondent and the company of which he was president. These trials involved essentially the same charges that were raised in this administrative proceeding against Respondent and in the administrative proceeding against the company of which he was president. The first judicial trial, in November 1985, ended in a mistrial when Respondent's counsel became ill and was unable to continue. (Respondent's counsel in that first trial was different from his counsel in the second trial, and both were different from his counsel in these administrative proceedings.) The second trial, in May 1986, was concluded when the company of which Respondent was president pled guilty to one charge, and the government dismissed all the remaining charges against both Respondent and the company of which he was president.

The Agency's specific charge is that Respondent, for two 1982 shipments of a laser system and for one 1982 shipment of a computer system from the United States to Italy, told the persons who filled out the shipper's export declarations (Ex.[2] 42; Ex. 44; Ex. 63) that the destination of each shipment was Italy. In fact, both the laser system and the computer system were reexported by the Italian consignee to the Soviet Union. The shipper's export declaration listing Italy as the destination had been presented to the U.S. government, and the Agency thus alleged that Respondent had caused a misrepresentation on these documents of the destination.

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[1] When the Office of Export Enforcement issued the charging letter February 5, 1987, it was part of an organization within the U.S. Department of Commerce titled the International Trade Administration. As of October 1, 1987, however, it became part of an organization within the Department titled the Export Administration.

The primary dispute between Respondent and the Agency during the hearing, and apparently the only focus of the Administrative Law Judge (ALJ), was whether Respondent knew in advance that the shipments to Italy were to be reexported to the Soviet Union. Much of the factual background was either stipulated or uncontested. The parties stipulated that the shipments to Italy were actually reexported to the Soviet Union (Oct. Tr.[3] 280–83). Respondent did not contest the Agency's showing that both the laser system and the computer system required a validated license for export to either Italy or the Soviet Union, that licenses were not obtained, and that a presumption existed to issue licenses for exports to approved Italian and users, but to deny licenses for exports to the Soviet Union (Ex. 19; Ex. 20). After a lengthy discussion of the evidence on whether or not the Respondent knew in advance that the shipments to Italy were to be reexported to the Soviet Union, the Administrative Law Judge, in his recommended Decision and Order of February 1, 1988, found that the Agency had not met its burden of proof to sustain the specific charge of misrepresenation of final destination by a preponderance of the evidence and dismissed all charges contained in the February 5, 1988 charging letter. Pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420) (1982 and Supp III 1985)), that Decision and Order has been referred to me for final action.

Issues

1. Was the ALJ correct in his finding that the evidence did not support the specific charge that Respondent knew of and falsely represented the ultimate destination of the three shipments?

2. If the ALJ was correct in his findings with respect to the charge of specific knowledge of the ultimate destination, was he correct in dismissing the charges altogether in the face of evidence establishing another violation of § 387.5 of the Regulations?

Discussion

With respect to the first issue, although there is substantial evidence to support the Agency's charge that the Respondent knew that the ultimate destination of the three shipments was the Soviet Union, it cannot be said that the ALJ was clearly in error in holding otherwise. The ALJ had the benefit of conducting the hearing, including the benefit of observing the demeanor of the Respondent. In essence, the destination issue revolved around the testimony of Carlo Laviani in the form of his 1983 grand jury testimony (Ex. K) and a June 1985 deposition in Italy (Ex. 9) for the Agency and the direct testimony of the Respondent supported by the deposition of Carlo Banfi (Ex. N), the president of the Italian consignee in all three shipments. While one might reasonably come to a different conclusion upon reading the record of the proceedings, unless there has been clear and convincing error, the ALJ's decision on the facts must be accepted. To do otherwise would require a *de novo* consideration of the issue, something certainly not contemplated by the Act or the regulations. With respect to the second issue, certain exhibits in this case and exhibits in and findings made by the ALJ in the companion case of Buel Electronic Connectors, Inc. (Docket No. 7696–01) (hereafter "Buel"), which case was affirmed by me on this date, document a separate violation of § 387.5 of the Regulations which must be recognized with appropriate penalty imposed. Section 387.5 provides in part that

> No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact * * * [i]n connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 370.2 * * *

Section 370–2 includes the Shipper's Export Declaration among those defined as export control documents.

In Buel the ALJ found that the corporate respondent was the exporter of the two laser shipments which are the subject of this case and that the exportation to Italy was made "without the validated export licenses that Respondent (Buel) knew or had reason to know were required by the Regulations." (Buel, p. 16). In making that finding, the ALJ had previously found that "it was the Respondent that made arrangements for the freight forwarder, and in that relationship Respondent approved a shipper's export declaration naming it as the exporter and the Italian company as the ultimate consignee." (Buel, p. 14). What is clear from the SEDs in question (Ex. 42, 44) is that Buel either misrepresented to or concealed from the SED preparer the facts concerning the requirement of an export license which the ALJ found that Buel knew or had reason to know. That being so, the only question to be addressed is whether Respondent Buccolier can be held personally accountable for the corporate misrepresentation or concealment already found by the ALJ to have occurred. I find that he can and must be held accountable.

Buccolier was the president and principal, perhaps only, stockholder of Buel Electronic Connectors, Inc. at all times relevant to these proceedings. (See, eg. Ex. 7). Mr. Buccolier had been made aware of the absolute necessity of complying with the Regulations as early as 1968. (Ex. 11). Finally, it was Buccolier, the Respondent in this action, who personally provided the information to the freight forwarder for the preparation of the SEDs in question. (Buel, p. 5 and exhibits cited). Since the evidence shows Respondent's personal knowledge of the regulatory requirements, and personal direction of preparation and final approval of the SEDs which either misrepresented or concealed the license requirement of the laser system for export to Italy, the Respondent is personally culpable within the language of § 387.5. The fact that he was acting on behalf of the corporation cannot shield the Respondent when he personally caused, with knowledge found by the ALJ, the violation in the name of the corporation. Thus, based on the findings in Buel and the evidence in the instant case, I find the Respondent has committed two violations of § 387.5 of the Regulations (the two laser shipments) which cannot be ignored notwithstanding the failure of the Agency to prevail on the greater offense: the misrepresentation of destination with express knowledge that the ultimate destination is a proscribed destination. This lesser offense (falling within the general charge by the Agency) was proved conclusively in the

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[2] References to hearing exhibits will be as follows: Ex. (plus a number for Agency Exhibits and plus a letter for Respondent Exhibits). This abbreviation corresponds to that used in the Agency's January 4, 1988 Post-Hearing Brief.

[3] For the two judicial trials and for the October and December 1987 administrative hearings, references to the respective transcripts will be abbreviated as follows: November 1985 trial—1985 Tr.; May 1986 trial—1986 Tr.; October 1987 hearing—Oct. Tr.; and December 1987 hearing—Dec. Tr. These abbreviations correspond to those used in the Agency's January 4, 1988 Post-Hearing Brief.

course of the two proceedings, which were conducted simultaneously. They should have been recognized by the ALJ on his own motion, with the record amended to reflect that fact.

With respect to the computer system export, the system was shipped pursuant to an SED indicating a Distribution License number. Although the number was not valid for the transaction and consignee involved, the evidence is unclear on Respondent's involvement, if any, with the listing of that number. Thus no finding is made against Respondent with respect to that shipment.

As to the penalty to be imposed on Respondent Buccolier, I find it reasonable to adopt that recommended by the ALJ and affirmed by me in the Buel case. Having been on warning since 1968 of the applicability of the Regulations to exports to Italy, at the very least Respondent showed a cavalier attitude regarding the legal particulars of exporting. He did so at his peril. In fact, there is much in the record that might suggest a harsher penalty.

Finally, Respondent, personally and through counsel, raised two additional issues. The claim is made that the ALJ errored in not granting a continuance with respect to the December 1, 1987 hearing date, and that the final denial order in Buel was overboard. With respect to the hearing date, the ALJ was merely following the schedule which had been directed by me in an interlocutory order of October 21, 1987. No error was committed. With respect to the denial order, denied parties are free to seek advisory opinions from the office of the Under Secretary for Export Administration with respect to activities which they feel justifiably fall outside the order but appear to be otherwise covered by it. I find no reason to revise the language of the denial order at this time.

Order

I. For a period of 10 years from the date of the final Agency action, as modified during the second half of such period by the suspension set forth in Paragraph VI below, Respondent Andre A. Buccolier, % Marvin Margolis, Esq., 770 Lexington Avenue, New York, New York 10020, is hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position or responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth in Paragraphs I–V above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the 10-year period set forth in Paragraph I above, and shall be terminated at the end of such 10-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceedings.

VII. This Order constitutes an affirmation in part, a vacation in part, and a modification in part of the recommended Decision and Order of the ALJ dated February 1, 1988.

VIII. This constitutes final Agency action in this matter.

Date: March 2, 1988.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

[FR Doc 88–5155 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 7696–01]

Actions Affecting Export Privileges; Buel Electronic Connectors, Inc.

Summary

Pursuant to the Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, Buel Electronic Connectors, Inc. (Respondent), with an address at 770 Lexington Avenue, New York, New York 10021, is denied all export privileges for a period of ten (10) years from the date of this Order; provided, however, that commencing five (5) years from the date hereof, the denial of export privileges shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten (10) year period provided that the Respondent has committed no further violations of the Act, the Regulations, or the final Order in this proceeding.

Order

On February 1, 1988 the Administrative Law Judge entered his recommended Decision and Order in the above reference matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420 (1982 and Supp III 1985)) for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: March 2, 1988.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

Decision and Order

Procedural Background

In the matter of Buel Electronic Connectors, Inc., Respondent. Docket No. 7686–01.

Appearance for Respondent: Joseph H. Sharlitt, Esq., P.C., Suite 300, 1300 19th St. NW., Washington, DC 20036–1609.

Appearance for Agency: Margo E. Jackson, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave. NW., Washington, DC 20230.

This proceeding against Respondent Buel Electronic Connectors, Inc. began with the issuance February 11, 1987 of a charging letter by the Office of Export Enforcement (Agency), Export Administration,[1] U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. app. sections 2410–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1987)) (Regulations). The letter charged that Respondent had violated §§ 387.3, 387.4, and 387.6 of the Regulations in 1982–83 exports and attempted exports from the United States to Italy of U.S.-origin laser systems and semiconductor manufacturing equipment.

Respondent filed a March 2, 1987 answer requesting a hearing. The hearing was held October 6–8 and December 1–5, 1987 together with the hearing of charges by the Agency, under the Act and the Regulations, against Respondent's president individually. At the hearing, Respondent was accompanied by counsel for addressing most procedural issues, but was unaccompanied by counsel for addressing the substantive issues involving the allegations of the charging letter. The due date for the last post-hearing filings was January 12, 1988.

Preceding this 1987–88 administrative proceeding were two judicial trials against Respondent and its president involving essentially the same charges that were raised in this administrative proceeding against Respondent and in the proceeding against its president. The first judicial trial, in November 1985, ended in a mistrial when Respondent's counsel became ill and was unable to continue. (Respondent's counsel in that first trial was different from its counsel in the second trial, and both were different from its counsel in this administrative proceeding.) The second trial, in May 1986, was concluded when Respondent pled guilty to the charge regarding the semiconductor manufacturing equipment, and the government dismissed all the remaining charges against both Respondent and its president.

Positions of the Parties

The Agency charged that Respondent, on or about February 13 and March 23, 1982, exported the components of a U.S.-origin laser system from the United States to Italy, in two separate shipments, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. Such exports, the Agency charged, violated §§ 387.4 and 387.6 of the Regulations.

The Agency charged also that Respondent, on or about January 21 and 24, 1983, attempted to export U.S.-origin semiconductor manufacturing equipment from the United States to Italy, in two separate shipments, without the validated export licenses that it knew or had reason to know were required by the Regulations. Such attempted exports, the Agency charged, violated §§ 387.3 and 387.4 of the Regulations. As a sanction for both the alleged 1982 and 1983 violations, the Agency proposed a 20-year denial of all U.S. export privileges.

Respondent denied the charge regarding the laser system (Dec. Tr[2] 45–92), and basically admitted the charge regarding the semiconductor manufacturing equipment, but cited mitigating circumstances (*id.* 412–744). As to both these 1982 and 1983 transactions, Respondent explained that it conducted them pursuant to a commercial relationship it then had with an Italian company. According to Respondent, it would investigate the American market for products that the Italian company was interested in obtaining and, if the Italian company so decided, would arrange for the Italian company to acquire them. For this function, Respondent said that it received a monthly payment from the Italian company, first of $500 and then of $800, plus a commission of about 5% or 10% of the price of items selected for purchase by the Italian company. (*Id.* 332–40.)

Laser Exports

Agency. To support its charges against Respondent regarding this equipment, the Agency argued chiefly that Respondent, and not the U.S. manufacturer, was the exporter. The Agency introduced Respondent's order form for the laser system that Respondent sent to the manufacturer, which listed only Respondent and not the Italian company (Ex. 25). The Agency also presented testimony from the manufacturer's official who handled the transaction stating that she dealt only with Respondent, not with the Italian company (1985 Tr. 70; see also *id.* 82–83; 1986 Tr. 106). She testified further that Respondent directed specifically that the two shipments include only Respondent's invoices and packing slips, and none of the manufacturer's (1985 Tr. 66, 73–74; 1986 Tr. 102–04, 109–11; Ex. 36).

The Agency introduced testimony that Respondent's president arranged for an American freight forwarder to handle transportation of the laser system from the United States to Italy (1985 Tr. 68, 86–90). An official of the freight forwarder testified that, for the first of the two shipments, his preparation of the air waybill (Ex. 50) and of the shipper's export declaration (Ex. 42) was based on information provided by Respondent's president (1985 Tr. 93–95). This shipper's export declaration listed Respondent as the exporter and the Italian company as the ultimate consignee (Ex. 42). The official of the freight forwarder stated that Respondent's president reviewed and approved this document (1985 Tr. 94–95). For the second and final shipment, this official testified that he, the official, completed the air waybill (Ex. 43) and the shipper's export declaration (Ex. 44) with essentially the same information as for the first (1985 Tr. 96–98; 1986 Tr. 193–94), the shipper's export declaration again listing Respondent as the exporter and the Italian company as the ultimate consignee (Ex. 44).

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[1] When the Office of Export Enforcement issued the charging letter February 11, 1987, it was part of an organization within the U.S. Department of Commerce titled the International Trade Administration. As of October 1, 1987, however, it became part of an organization within the Department titled the Export Administration.

[2] For the two judicial trials and for the October and December 1987 administrative hearings, references to the respective transcripts will be abbreviated as follows: November 1985 trial—1985 Tr.; May 1986 trial—1986 Tr.; October 1987 hearing—Oct. Tr.; and December 1987 hearing—Dec. Tr. References to exhibits will be as follows: Ex. (plus a number for Agency Exhibits and plus a letter for Respondent Exhibits). These abbreviations for the transcripts and exhibits correspond to those used in the Agency's January 4, 1988 Post-Hearing Brief.

As to licensing requirements for this laser system, the Agency showed that this export to Italy required a validated license for national security reasons, and that a presumption existed to issue such a license for an export to an approved Italian end user (Ex. 19). As for Respondent's awareness of U.S. licensing requirements, the Agency introduced copies of license applications that Respondent had submitted for previous exports (Ex. 12) and of a warning letter Respondent's president had received regarding previous violations (Ex. 11). The license applications and the warning letter concerned exports from Respondent's company to this Italian company during the 1968–71 period.

Respondent. In reply, Respondent argued that the export was actually handled by the manufacturer, or at least by an official of the manufacturer (Dec. Tr. 45–47, 53), citing, among other points, two invoices of the manufacturer to the Italian company (*id.* 47). In addition, Respondent contended that this official of the manufacturer had told Respondent's president that the laser system could be exported under a general license (*id.* 47, 410–11).

Agency. The Agency challenged both of these arguments. As to who really conducted the export, the Agency cited the evidence, described above, that it was Respondent (Agency's January 4, 1988 Post-Hearing Brief 6–8). Specifically as to the manufacturer's invoices, the Agency explained them as a special feature only of the letter of credit arrangements. As accounted for by this explanation, the Italian company had opened a letter of credit to pay for the laser system, and the beneficiary was Respondent (Ex. 30). The U.S. manufacturer, however, to ensure that it would be paid directly by the bank, required Respondent to have this letter revised to make the manufacturer the beneficiary (1985 Tr. 65–70; 1986 Tr. 99–108, 136–45; Ex. 31).

To comply with the terms of the revised letter of credit, the manufacturer had to provide the bank with its invoices reflecting direct billing to the Italian company for the laser system (1985 Tr. 69; Ex. 35; Ex. 39); and it was these invoices that Respondent cited as evidence that the manufacturer was the exporter. But, the Agency observed, these invoices were for purposes of the bank only, and Respondent specifically directed, as noted above, that only Respondent's invoices be sent with the shipments to the Italian company (Agency's January 4, 1988 Post-Hearing Brief 8).

As for Respondent's claim that it had been told by an official of the manufacturer that the laser system could be exported under a general license, the Agency replied with testimony by this official on two points. First, this official denied having discussed licensing with Respondent's president (1985 Tr. 71). Second, this official testified that, although the manufacturer's invoices for the bank incorrectly listed the export as going under a general license (*id.* 70–71), copies of these invoices were not sent to Respondent until after the shipments had been made (*id.* 76–76A). Thus, argued the Agency, this incorrect listing by the manufacturer could not have influenced Respondent's arrangements for the export (Agency's January 4, 1988 Post-Hearing Brief 8).

Semiconductor Equipment Exports

Collateral Estoppel. The Agency moved that Respondent be collaterally estopped from disputing that it attempted to export U.S.-origin semiconductor manufacturing equipment in January 1983 in violation of the Regulations, because it pled guilty to this charge at the end of the second judicial trial. Respondent showed no reason why this motion should not be granted, and it was granted (Oct. Tr. 185–98; Dec. Tr. 447). Consequently, the basic issue that remained—which Respondent did argue—was whether the circumstances of the violation should mitigate any sanction to be imposed.

Agency. The Agency introduced evidence that, on October 20, 1982, Respondent ordered some semiconductor manufacturing equipment from the company that made this equipment (Ex. 71). According to the Agency, this company subsequently notified the Agency about this order pursuant to a general request made by the Agency of companies that make equipment requiring a validated license for export. The purpose of this request is to alert the Agency to orders that have characteristics associated with orders that sometimes are for illegal exports.

An example are orders for equipment that omit a request for installation, when such a request normally accompanies such equipment orders. Testimony presented by the Agency was that a request for installation by the seller ordinarily accompanies orders for this semiconductor manufacturing equipment (Dec. Tr. 639–40), but that Respondent's order omitted it (*id.* 797–98, 801–02). Another example are orders for which the location of the ultimate consignee is changed. Respondent's order, according to the Agency, changed its ultimate consignee first among domestic addresses and then to the address of the Italian company (*id.* 806–07).

Consequently the Agency, after being notified about Respondent's order for the semiconductor manufacturing equipment, followed its progress. When Respondent attempted to export two shipments of this equipment (Ex. 103; Ex. 104) while the license application for its export was still pending, the Agency detained and seized the shipments (Dec. Tr. 843). The Agency presented testimony that export of this equipment to Italy required a validated license for national security reasons, and that a presumption existed to issue such a license for an export to an approved Italian end user (*id.* 630–31, 640).

Respondent. Respondent argued basically that its mistake as to the licensing requirement was simply an honest error, and also that it was unfairly induced by the Agency and the equipment's manufacturer to make, or possibly even entrapped into making, the attempted exports. As to the honesty of its error, Respondent's president sought to show the commercial legitimacy of those characteristics of Respondent's order that triggered the company's notification of the Agency.

With respect to Respondent's omission of a request for installation by the seller, Respondent's president testified that the Italian company had asked for just the equipment, not for installation, and it was Respondent's function simply to transmit the Italian company's order (*id.* 950–52). Respondent's president added that he understood that the Italian company was going to use a Swiss facility of the seller for the installation, not the seller's American company with which he was dealing (*id.* 951). As for listing the ultimate consignee initially as domestic, Respondent's president testified that this listing was a negotiating tactic to learn the seller's domestic price, on the theory that for many sellers it is less than the foreign price, and Respondent was seeking the lowest possible price (*id.* 900, 907–08).

Respondent sought also to show the reasonableness of its thinking on the export licensing requirements, albeit that it came to an erroneous conclusion regarding the two attempted shipments. Respondent's president emphasized that Respondent had applied for a license (Ex. I–1), showing that it was trying to comply with the licensing requirements and not seeking to export the equipment covertly (e.g., Dec. Tr. 542–45, 577–92, 710–13). When Respondent attempted the two January 1983 shipments of parts of the equipment that were seized, it honestly believed, according to its president, that no validated license was required for these parts.

Respondent's situation then, as described by its president, was that it was under pressure from the Italian company to ship all the semiconductor manufacturing equipment, for which the Italian company had already paid through a letter of credit (e.g., *id.* 591). But Respondent still had not received the export license for which it had applied. Respondent's solution was to ship parts of the equipment other than the computer (e.g., *id.* 591–92), on the theory that it was only the computer that required the license (e.g., *id.* 584–88). Respondent so concluded, its president testified, because an environmental chamber, thought by Respondent to be a part of the equipment (e.g., *id.* 455–61, 538–39, 644–49, 672–74), had already been exported without a validated license (*id.* 608–09). Therefore, as testified by an official of the freight forwarder, Respondent arranged for the other parts save the computer to be exported, specifically withholding the computer from the shipments (1985 Tr. 300–01).

Respondent argued also that its attempted exports of parts of the semiconductor manufacturing equipment were the result of an unfair inducement or entrapment by the Agency and by the company that made this equipment (e.g., Dec. Tr. 535). For this argument, Respondent cited several points. They include: notification of the Agency by the company of the placing of Respondent's order and periodic notifications about its processing (1985 Tr. 213–18; Dec. Tr. 601–09), a letter from the Agency to the company thanking it for its assistance after the seizure of Respondent's attempted shipments (Dec. Tr. 556–58; Ex. U–1), and alleged notice by the Agency to the company that Respondent's license application would be denied (*id.* 563–73).

Agency. The Agency's rebuttal focused on Respondent's claim of unfair inducement or entrapment by the Agency. Essentially the Agency argued that its close following of Respondent's order was simply a normal exercise of the Agency's enforcement function. As the Agency explained, it encourages companies to apprise it of orders having certain characteristics, and it then observes the progress of these orders (Dec. Tr. 796–806; Agency's January 4, 1987 Post-Hearing Brief 18).

The Agency specifically denied communicating to the company with which Respondent had placed its order any advance information regarding the outcome of Respondent's export license application (1985 Tr. 230–31; Dec. Tr. 892–94). In addition to denying such communication, the Agency contended that it could not have known the outcome "with any degree of certainty," because the application was then still pending in another unit of the Commerce Department (Agency's January 4, 1988 Post-Hearing Brief 20; Dec. Tr. 892–94).

Discussion

Laser Exports

For the export of the laser system, the Agency's evidence sufficiently establishes both that Respondent was the exporter and that Respondent reasonably knew or should have known of the pertinent licensing requirements. The major question was whether Respondent or the manufacturer was the exporter. The Agency's evidence showed that Respondent placed the order with the manufacturer, that Respondent directed that the shipments include packing slips and invoices only from it and not from the manufacturer, and that the manufacturer itself dealt only with Respondent, not with the Italian company. Similarly, it was Respondent that made arrangements for the freight forwarder, and in that relationship Respondent approved a shipper's export declaration naming it as the exporter and the Italian company as the ultimate consignee.

Respondent's argument in opposition fails to overcome this body of evidence. The two manufacturer's invoices cited by Respondent were adequately explained by the Agency as relating only to the letter of credit arrangement for payment, not as indicating the manufacturer to be the exporter. The large weight of the evidence clearly establishes Respondent as the exporter of the laser system.

As the exporter, Respondent was responsible for obtaining any needed licenses. That Respondent knew or reasonably should have known of the licensing requirements is established by its prior export license applications and its president's receipt of a warning letter. Although the applications and the letter concerned matters back in 1966–71, they all involved exports by Respondent from the United States to this same Italian company. Respondent claimed also that it was misled by the manufacturer as to the pertinent licensing requirements. But no persuasive evidence suggests that any such misleading advice was transmitted orally, and copies of the manufacturer's invoices with their incorrect general license entry were sent to Respondent only after each shipment.

Semiconductor Equipment Exports

As to Respondent's explanation of how it came to its erroneous conclusion regarding the licensing requirements for its January 1983 attempted exports, the explanation has plausibility and is consistent with the evidence. Respondent's specific withholding of the computer from the shipments, for example, showed an effort at compliance.

As for Respondent's claim of unfair inducement or entrapment by the Agency, the evidence fails to support this claim. As described in detailed logical testimony by the responsible Agency official (Dec. Tr. 795–897), the Agency appears to have been simply doing its enforcement job when it encouraged companies to notify it of orders such as Respondent placed, and when it then followed Respondent's order after it was so notified. With respect to any objections that Respondent lodged as to the conduct of the company with which it placed its order, that company was not a party to this proceeding. Accordingly, no judgment can be made on that conduct, other than to say that the evidence regarding it does not exonerate Respondent from the violation of the Regulations that occurred in January 1983.

Findings

The record of this proceeding warrants the following findings. Respondent exported the components of a U.S.-origin laser system from the United States to Italy, on or about February 13 and March 23, 1982, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. Respondent attempted to export parts of U.S.-origin semiconductor manufacturing equipment from the United States to Italy, on or about January 21 and 24, 1983, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. The commodities involved in both these

1982 and 1983 transactions were controlled for national security reasons.

Conclusions

The record requires the following conclusions. Respondent violated Sections 387.4 and 387.6 of the Regulations in February and March 1982 by exporting components of a U.S.-origin laser system from the United States to Italy without the required export licenses. Respondent violated §§ 387.3 and 387.4 of the Regulations in January 1983 by attempting to export parts of semiconductor manufacturing equipment from the United States to Italy without the required export license.

Such violations, involving commodities controlled for national security reasons, are a serious matter. That a presumption of approval existed for license applications for these exports to appropriate Italian end users does not negate the significance of the violations. It is important that the licensing process be given the opportunity to review the details of such proposed exports, in order to check on matters like the nature of the end user.

For these unlicensed exports from the United States to Italy, nevertheless, the Agency's request of a 20-year denial period seems unduly severe. But a significant denial period is warranted. The warning letter sent Respondent's president for violations, though now a decade and a half old, focused on exports from the United States to this same Italian company and admonished that the fact of these violations would be considered in the event of future compliance actions. In light of this letter, Respondent might reasonably have been expected to expend extra efforts to assure its compliance with the Regulations. Instead, Respondent has now been found to have violated the Regulations on not just one, but on several, occasions in 1982–83.

In view of these circumstances, a 10-year denial period would be just. Further, it would be fair to Respondent and would achieve effective enforcement of the Act and the Regulations if the last five years of the denial period are suspended, provided that Respondent has complied with the Act and the Regulations during the first five years.

Order

I. For a period of 10 years from the date of the final Agency action, as modified during the second half of such period by the suspension set forth in Paragraph VI below, Respondent Buel Electronic Connectors, Inc., 770 Lexington Avenue, New York, NY 10021, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportuity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specified authorization from the Office of Export Licensing, shall, with respect to U.S-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or on any association with Respondent or any related person, or whereby Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth in Paragraphs I–V above shall be suspended, in accordance with 388.16 of the Regulations, for the remainder of the 10-year period set forth in Paragraph I above, and shall be terminated at the end of such 10-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: February 1, 1988.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 88–5156 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

NBS/OSI Workshop for Implementators of OSI

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces four (4) workshop sessions to discuss the continued development of international computer network protocols.

DATES: The following constitutes the schedule for the workshops for the year 1989. The dates are firm:

March 13–17, 1989
June 12–16, 1989
September 11–15, 1989
December 11–15, 1989

The meetings will be hosted by NBS and will be held at the National Bureau of Standards, Gaithersburg, Maryland.

ADDRESS: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Lawrence Keys, National Bureau of Standards, Building 225, Room B–217, Gaithersburg, MD 20899. Telephone: (301) 975–3604.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT: Robert Rosenthal (301) 975–3603.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitations of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

Ernest Ambler,
Director.

Date: February 29, 1988.

[FR Doc. 88–5157 Filed 3–8–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Operational Guidelines for the Fishery Management Plan Process

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of fishery management guidelines.

SUMMARY: The recently updated version of Phases II and IV of *Operational Guidelines—the Fishery Management Plan Process* is available. The purpose of the guidelines is to expedite the development, review, approval, and implementation of fishery management plans (FMPs).

ADDRESSES: Copies of the two revised chapters may be obtained from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235 or from any of NMFS' Regional Offices as follows:

Director, Northeast Region, NMFS, NOAA, 14 Elm Street, Federal Bldg., Gloucester, MA 01930
Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702
Director, Southwest Region, NMFS, NOAA, 300 S. Ferry Street, Terminal Island, CA 90731-7415
Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070
Director, Alaska Region, NMFS, NOAA, P.O. Box 21668, Juneau, AK 99802

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, 202–673–5263.

SUPPLEMENTARY INFORMATION: NMFS announces that the final revised *Operational Guidelines—Fishery Management Plan Process:* Phase II—Development of Draft Documents, and Phase IV—Final FMP/Amendment Review and Approval, Proposed Regulations and Final Rulemaking, is available.

The Magnuson Fishery Conservation and Management Act, as amended (Pub. L. 99–659), establishes eight Regional Fishery Management Councils, whose primary function is to develop, monitor, evaluate, and amend FMPs for each fishery that requires conservation and management within its geographical area of authority. FMPs and amendments to FMPs must be submitted to the Secretary of Commerce for review, approval, and implementation. The *Operational Guidelines* are advisory, and are directed to the Councils and the NMFS offices servicing the Councils. They are designed to improve the quality of FMPs, to produce a clearer understanding of the laws affecting the FMP process, and to speed the Secretarial review, approval, and implementation process. They offer a basic reference checklist for the process, although the publication does not prescribe, in and of itself, legal or regulatory requirements except as provided for in the Magnuson Act and other applicable law.

Operational Guidelines was first issued in 1979, revised in 1983, and supplemented in 1985. On June 23, 1987, Phases II and IV were revised, pursuant to Pub. L. 99–659, and published for the interim use and comment of those using them. This revision now available reflects changes made as a result of experience gained during the six months of interim use and to accommodate comments received.

(16 U.S.C. 1801 *et seq.*)

Dated: March 3, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5161 Filed 3–8–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, March 22–24, 1988, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7600 Sand Point Way NE., Seattle, WA, to discuss 1988 commercial groundfish catch projections, research needs, data reporting standards, a proposed trawl codend restriction, and technical revisions to the fishery management plan. Other issues related to management of the west coast groundfish fisheries may be discussed also.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221–6352

Date: March 3, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5162 Filed 3–8–88; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting of its Law Enforcement Committee and Advisory Panel, March 24, 1988, at 1 p.m., at the Jacksonville Riverwalk Hotel, Jacksonville, FL, to review and make recommendations for modifications of snapper/grouper and mackerel regulations. The public meeting will adjourn March 25, 1988, at 3 p.m. A detailed agenda will be available to the public on or about March 11, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306,

Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 3, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5163 Filed 3–8–88; 8:45 am]

BILLING CODE 3510–22–M

Proprietary Research Program; Implementation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Announcement of implementation.

SUMMARY: This notice announces the implementation of the National Oceanic and Atmospheric Administration's (NOAA) Proprietary Research Program. The program offers designated NOAA facilities for proprietary research activities on a user fee basis. This notice prescribes the conditions for utilization and identifies the five initial facilities. It further lists the points of contact for each and for the overall program.

FOR FURTHER INFORMATION CONTACT: Julie Campbell, Constituent Affairs Staff, Room H5224, National Oceanic and Atmospheric Administration, 14th & Constitution Avenue, NW, Washington, DC 20230 (202) 377–4113.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the authority of Department of Commerce Administrative Order 217–19.

William Matuszeski,
Director, Office of Private Sector Initiatives.

March 1, 1988.

NOAA announces the implementation of its Proprietary Research Program. This program authorizes the use of designated NOAA facilities by State and local governments, educational institutions and the private sector. Proprietary research activities encompass research, surveys, laboratory analyses, measuring and testing of specific materials, chemicals, or devices conducted by non-federal parties using Federal Government facilities, where the resulting data or other products are treated as confidential by the non-federal parties.

Utilization of these facilities will be performed under Memoranda of Agreement issued by the Facility Directors. These agreements are subject to the following conditions: (1) Use must be compatible with the design and purpose of the facility and the user must be technically competent; (2) use must be beneficial to the Government; (3) use must not interfere with the activities or mission of NOAA; (4) use must not be likely to result in misuse or damage to the facilities or injury.

Users will be charged on a full cost basis for facility use and any additional technical assistance, incidental services, or supplies furnished.

The five NOAA facilities available for proprietary research are:

1. Command and Data Acquisition Station, 1 Eisele Road, Fairbanks, AK 99712.

Manager: Gregory White.

Telephone: (907) 452–1155.

Purpose: Provides support for operational and experimental satellite data gathering by a full array of communications equipment including four antenna systems and two 26 meter satellite dishes.

2. Charleston, SC Laboratory c/o, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Acting Regional Director: Joseph Angelovic.

Telephone: (813) 893–3141.

Purpose: Processes fish with a variety of experimental techniques including preservation, processing and vaccum packaging.

3. Gloucester, MA Laboratory c/o, National Marine Fisheries Service, Federal Building, 14th Elm Street, Gloucester, MA 01930.

Regional Director: Robert Learson.

Telephone: (617) 281–3600 ext 237.

Purpose: Processes fish with radiation (gamma emitting Cobalt–60) to enhance shelf life, facilitate component marking and purify fishery products.

4. NOAA Undersea Research Program, 6010 Executive Boulevard, Room 805, Rockville, MD 20852

Director: David Duane.

Telephone: (301) 443–8391.

Purpose: Provides three submersible vehicles located in Honolulu, HI for research in areas of fisheries, pollution, sea floor properties, process and resources; and ocean technology and services.

5. Office of Marine Operations, 6001 Executive Boulevard, Rockville, MD 20852.

Contact: CPT James Midgley.

Telephone: (301) 443–8321.

Purpose: Provides four Class I Research Vessels—OCEANOGRAPHER, DISCOVERER and MALCOLM BALDRIGE in Seattle, WA and SURVEYOR in Miami, FL to support worldwide scientific research in oceanography, hydrology, biology and atmospheric research.

Parties interested in applying for use of a facility should contact the appropriate Director. For further information concerning the program and for a prospectus of the facilities contact Julie Campbell, Constituent Affairs Staff, at the address indicated above.

[FR Doc. 88–5071–08 Filed 3–8–88; 8:45 am]

BILLING CODE 3510–12–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 17 March 1988 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006, to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of fine Arts, at the above address or call the above number.

Dated in Washington, DC 29 February 1988.

Charles H. Atherton,
Secretary.

[FR Doc. 88–5169 Filed 3–8–88; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project on Gills Creek in Richland County, SC

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The recommended plan would provide for an earth embankment detention structure across Gills Creek at Boyden Arbor Pond on Fort Jackson property. The spillway would be removed to elevation 912.00 so no excavation of a downstream channel would be needed for the tailwater depths required on the new dam. The low level outlet structure consists of a 6 foot diameter pipe quipped with a valve. The valve would be set to non-damaging flows for daily use and can be opened to drain the reservoir after high flood events have passed. The low level outlet will discharge into a preformed spilling

basin. The Gills Creek site would be cleared in the vicinity of the dam and spillway for construction access. Boyden Arbor road located on Fort Jackson above the proposed project would be flooded as a result of the construction of the dam; therefore, the road, as part of the selected plan, will be raised so that it will not be flooded as a result of the 100-year frequency storm.

In addition to the proposed action, the following alternatives have been identified:

1. No Action—The no action alternative represents no additional actions on the part of the Corps of Engineers.
2. Other dam sites were considered on each of the three main streams in the basin: Gills Creek, Jackson Creek, and Little Jackson Creek.
3. Three locations for the proposed Gills Creek Dam sites were analyzed.
4. Alternatives to supplement the reduction of flood flows by use of dams including levees, channelization, bridge removal or alteration and nonstructural solutions would be analyzed.

The DEIS will be distributed to all concerned Federal, State, and local agencies, plus private organizations and individuals. Anyone else who is interested in receiving this DEIS is invited to contact the Environmental Resources Section of the Charleston District, Corps of Engineers to assure that they are included on the mailing list.

Significant issues to be analyzed in the DEIS include:

1. An evaluation of the environmental impacts of the proposal plan.
2. A section 404(b) evaluation of the discharge into U.S. waters of dredged or fill material.
3. An assessment of the impacts on threatened or endangered species. This portion of the EIS supplement has been included to comply with section 7 of the Endangered Species Act.

Preparation of the DEIS will be conducted in accordance with the requirements set forth in the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations and applicable Corps of Engineers regulations and guidance.

A scoping meeting will not be held for the preparation of this DEIS due to prior coordination efforts which identified the significant issues involving Federal, State, and local agencies; interested citizen's groups, and individual citizens.

We estimate that the DEIS will be available to the public during the third quarter of fiscal year 88 (April 1988–June 1988).

Questions concerning the proposal action can be directed to Mr. Larry Casbeer, Planning Branch, U.S. Army Engineer District Charleston, P.O.Box 919, Charleston, South Carolina. Questions concerning the DEIS can be directed to Mr. Jim Woody, Environmental Resources Section, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, South Carolina.

Date: March 1, 1988.

Stewart H. Bornhoft,

LTC, Corps of Engineers, District Engineer.

[FR Doc 88-5072 Filed 3-8-88; 8:45am]

BILLING CODE 3710-CH-M

Prospective Exclusive License; Cor-A-Vent, Inc.

In accordance with 37 CFR 404.7(a)(1)(i) announcement is made of a prospective exclusive license of a Blister Pressure Relief Valve, invented by C.J. Korhonen and F.C. Gernhard (U.S. Patent Application Serial Number 014,574; Filing Date: February 13, 1987). Rights to this invention are owned by the United States Government as represented by the U.S. Army Cold Regions Research and Engineering Laboratory (USACRREL). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, U.S.C., the Department of the Army as represented by USACRREL intends to grant an exclusive license on the Blister Pressure Relief Valve to Cor-A-Vent, Inc., 16250 Petro Drive, Mishawaka, Indiana 46544.

Pursuant to 37 CFR 404.7(a)(1)(i) any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to: CPT Charles W. Calkins, Office of the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC–R, Washington, DC 20314-1000.

Written objections must be filed within 60 days from the date of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: CPT Charles W. Calkins, Office of the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC–R, Washington, DC 20314–1000 (202) 355–2160.

Kenneth L. Denton,

Certifying Officer for the Federal Register.

[FR Doc. 88–5073 Filed 3–8–88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Commercial Use of a Portion of Naval Supply Center, Oakland, CA

Pursuant to regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Department of the Navy and the Port of Oakland, Oakland, California will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed lease of Navy land to the Port of Oakland for commercial and maritime industrial development. The Navy will be the Lead Agency under NEPA and the Port of Oakland will be the Lead Agency under the California Environmental Quality Act (CEQA).

Public Law 100–180 of December 4, 1987 authorizes the Secretary of the Navy to lease, at fair market rental value, to the Port of Oakland not more than 195 acres of real property, together with improvements thereon, at the Naval Supply Center, Oakland (NSCO), Alameda County, California.

The project proposes the lease of approximately 130 acres of land and existing facilities at NSCO to the Port of Oakland for long-term commercial uses and redevelopment for maritime and transportation-related facilities. The Port of Oakland proposes to establish maritime and transportation activities and to redevelop the site for port operations support to the Oakland Harbor area.

Redevelopment projects may include intermodal rail facilities, marine facilities, container facilities, and other maritime and transportation support facilities. The facility would be used as a transfer and staging area for container cargo being transferred between the intermodal rail system and inner and outer Port of Oakland harbors.

The 130 acres under consideration have been divided into two parcels for planning purposes. Development of Area A (82 acres) would include demolition of some existing facilities and construction of new intermodal rail and maritime facilities. Subarea A–1 would contain an intermodal rail facility with tracks and container storage area where container cargo is transferred between rail and ships. Area A could include a U.S. Customs Service office, gatehouse, and administration, operation, and maintenance facilities. Subarea A–2 would consist of an existing marginal wharf, now in disrepair. It is contemplated that, at some future time, the wharf would be rehabilitated for use as a general cargo terminal with transit shed and transit storage area, and/or tug operating facilities. Rehabilitation of this wharf for use by vessels larger than tugs may require some dredging in this area.

Development of Area B (48 acres) would include demolition of existing facilities and construction of new container facilities and an intermodal rail facility. Container facilities would include container transfer and storage areas. The intermodal rail facility would also include tracks and a container staging area. Area B could also include a U.S. Customs Service office, gatehouse, and administration, operation, and maintenance facilities.

The project would also include demolition and construction of Navy facilities to be displaced by the lease agreement. This construction will include recreational, administration and storage facilities. These facilities will be sited at various locations on the NSCO outside of the proposed lease area.

The alternatives to be evaluated will include:

1. The proposed project as discussed above.
2. Alternative configurations, land usage, and amount of property to be leased.
3. The No Action alternative.

We wish to learn the views of affected agencies and individuals regarding the scope and content of the environmental documentation to be prepared for the proposed action. Please respond with written comment within 30 days of the published date of this notice to Ms. Loretta Meyer, Environmental Division, Port of Oakland, 77 Jack London Square, Oakland, California 94607. Questions or comments to be directed to the Navy should be mailed to Mr. Thorn Johnston, Head, Planning Implementation Branch, Western Division Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California, 94066.

Date: March 3, 1988.

William R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–5070 Filed 3–8–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031G]

Invitation for Applications for New Awards Under the Endowment Challenge Grant Program for Fiscal Year 1988

Purpose: Provide grants to eligible institutions of higher education so that they can establish or increase their endowment funds.

Eligibility: Potential applicants, including current grantees under any of the Institutional Aid Programs authorized by Title III of the Higher Education Act, are advised that a notice was published in the **Federal Register** on December 14, 1987, 52 FR 47446–47447, informing interested parties how to be designated as eligible to receive Endowment Challenge Grant funds.

Deadline for Transmittal of Applications: June 9, 1988.

Applications Available: April 11, 1988.

Available Funds: $19.148 million.

Estimated Range of Awards:

Regular grants: $50,000–$500,000.

Large grants: Over $1,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 30 to 50.

Project Period: 240 months.

Applicable Regulations: The Endowment Challenge Grant Program Regulations, 34 CFR Part 628.

For Applications or Information Contact: Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, 400 Maryland Avenue SW., Room 3042, ROB–3, Washington, DC 20202, Telephone: (202) 732–3335. Applications will be sent to those institutions designated as eligible under the Title III Programs.

Program Authority: 20 U.S.C. 1065a.

Dated: March 1, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–5180 Filed 3–8–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[DOE/EIS–0120]

Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, SC; Record of Decision

The Department of Energy (DOE) prepared this Record of Decision pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementing Procedures of the Department of Energy (52 FR 47662, December 15, 1987). This Record of Decision is based on DOE's *Draft and Final Environmental Impact Statements, Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina* (DOE/EIS–0120), the public scoping meetings and review hearings on the Draft EIS, and the distribution of approximately 850 copies to Congress, state and Federal agencies, and concerned groups and individuals. DOE considered all public and regulatory comments received on the EIS in the preparation of this Record of Decision.

Decision

DOE has decided to modify hazardous, low-level radioactive, and mixed waste management activities at the Savannah River Plant (SRP) by implementing the Combination strategy discussed in DOE/EIS–0120. Specific project-level actions to be implemented are discussed in the EIS and include:

1. The closure of six inactive low-level radioactive waste sites in the SRP R-Area and one "mixed" waste site in the F–Area where waste constituent concentrations demonstrate a need for removal (even though total waste removal is impossible under any strategy)

These sites were selected for waste removal as a part of the Combination strategy because waste removal now would significantly reduce the extent of or eliminate the need for groundwater remedial actions after site closure. Additional sites may be selected in the future, based on further site-specific investigations and regulatory interactions.

2. The construction of a new "vault-design" low-level radioactive waste disposal facility adjacent to the existing low-level waste burial ground near the center of SRP at site "G"

Currently, the Department of Energy also plans to construct and operate new storage/disposal facilities for hazardous and/or mixed waste in accordance with the Resource Conservation and Recovery Act (RCRA), the Hazardous and Solid Waste Amendments of 1984 (HSWA), and/or the South Carolina Hazardous Waste Management Act (SCHWMA), as amended. The prime candidate sites for the disposal facilities (either a RCRA landfill, an aboveground or below ground vault, or a cement/flyash matrix vault) are at sites "L" and "B" as discussed in the EIS. Storage facilities will be sited, designed, and constructed in these or other areas based on operating considerations and in compliance with regulatory requirements. The site-specific, project-specific actions will be addressed in future planning and in response to regulatory permitting and decisionmaking processes.

3. Reactor disassembly-basin purge water discharges to active seepage and containment basins in the C-, K-, and P-Areas at SRP will continue

DOE will continue to evaluate the general applicability of tritiated-water discharge mitigation measures at SRP.

DOE's decision is based on the assessments and analyses in the EIS. Based on these assessments and analyses, DOE has concluded that implementation of the Combination waste management strategy at SRP will provide adequate environmental and human health protection in accordance with existing requirements.

Background

The Savannah River Plant is a major DOE installation that produces nuclear materials for national defense and research purposes and its operations generate hazardous, radioactive, and mixed (radioactive and hazardous) wastes. Previous acceptable waste disposal practices have included the use of seepage basins for liquids, disposal pits and waste piles for solids, and a burial ground for solid low-level radioactive wastes.

Groundwater contamination of water-table aquifers has occurred at some sites as a result of waste management practices at SRP. Detected contaminants include volatile organic compounds (degreasing solvents), heavy metals (lead, chromium, mercury, and cadmium), radionuclides (tritium, uranium, fission producers, and plutonium), and other chemicals (e.g., nitrates); measured levels of waste constituents have exceeded maximum contaminant levels (MCLs) and other regulatory standards or guideline concentrations.

As a result of legislative actions [Pub. L. 98–181; RCRA; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and SCHWMA], their implementing regulations, and DOE Administrative Orders, as well as concerns to protect the environment, many remedial or corrective actions have been started at SRP. These actions include the removal and storage of buried wastes and contaminated soils; the design, construction, and operation of liquid effluent treatment facilities; the use of recovery wells and an air stripper to remove volatile organic compounds from groundwater; the design of a two-stage, rotary kiln incinerator to detoxify hazardous wastes; and waste disposal demonstration programs (e.g., the greater confinement disposal demonstration).

In addition, there are ongoing demonstration programs that affect waste management activities including a "beta-gamma" incinerator, and a box/drum compactor. DOE expects these and other programs to result in improved methods for treatment and disposal of mixed and low-level radioactive wastes or reduction in waste volumes to meet applicable regulations.

The terms "hazardous," "low-level radioactive," and "mixed" (i.e., hazardous and low-level radioactive) are used throughout the EIS as common use terms without specific regard to technical or regulatory definitions unless indicated. DOE does *not* intend this Record of Decision to be a permit application for existing SRP facilities or a vehicle to resolve the applicability of the requirements of RCRA, HSWA, CERCLA, the Superfund Amendments and Reauthorization Act (SARA), and counterpart State of South Caroline regulations to existing SRP facilities or waste sites. Ongoing regulatory interactions and the expanded SRP groundwater monitoring and characterization program will provide the bases for the application of specific regulations and/or permit requirements to existing facilities and waste sites following the publication of this Record of Decision.

Additional documentation in compliance with 40 CFR 1502.20 may be prepared if necessary to implement the project-specific actions discussed in and related to the modification of SRP waste management activities assessed in DOE/EIS-0120.

Description of Alternatives

DOE's proposed action is to modify waste management activities for hazardous, low-level radioactive, and mixed wastes at SRP to protect groundwater, human health, and the environment by implementation of a waste management strategy.

DOE considered Combination, Dedication, Elimination, and No Action waste management strategies for existing waste sites, new disposal facilities, and the discharge of disassembly-basin purge water. Table 1 illustrates the project-level actions which were combined to develop the overall strategies for analysis in the EIS.

As shown in Table 1, each strategy results in different combinations of project-specific actions. The number of waste sites from which waste is removed varies with each strategy. Waste removal subsequently determines the acreage which must be devoted to waste management purposes, affects monitoring costs, security concerns, etc. Similarly, selection of one of the alternative strategies will determine whether new disposal and/or storage facilities are constructed, whether discharges of disassembly-basin purge water to reactor area seepage basins will continue, and the costs and effects associated with the implementation of each strategy. The Combination strategy selected by DOE combines features of the Dedication and Elimination strategies in terms of project-specific actions.

No Action Strategy

No major onsite environmental benefits are expected from the No Action strategy; however, the offsite environment would be protected as a result of continuing waste management practices such as groundwater cleanup in the A/M-Areas. This strategy would result in the following:

Onsite groundwater impacts.

TABLE 1.—ALTERNATIVE WASTE MANAGEMENT STRATEGIES ANALYZED IN THE FEIS (DOE/EIS-0120)

Alternative strategy	Facility category		
	Existing waste sites	New disposal facilities	Disassembly-basin purge water discharge
No action; continue to ensure protection of offsite environment.	No waste removal and no remedial or closure actions.	No new disposal facilities	Continued discharge to seepage basins.
Compliance through Dedication of existing and new disposal areas.	No waste removal; remedial and closure actions as required.	Aboveground or belowground disposal	Continued discharge to seepage basins.
Compliance through Elimination of existing waste sites and storage of wastes.	Remove waste at all sites; remedial and closure actions as required.	Retrievable storage	Direct discharge to onsite streams or evaporation.
Compliance through a Combination of dedication and elimination of waste sites, and both storage and disposal of wastes.	Remove waste at selected sites; remedial and closure actions as required.	Aboveground or belowground disposal and retrievable storage.	Continued discharge to seepage basins and study of other mitigation measures.

Elevated concentrations of tritium, strontium–90, and nitrate in Four Mile Creek

Potential terrestrial impacts from open pits and basins

Accidental releases from stored wastes with possible impacts on aquatic and terrestrial ecology and socioeconomics

Continued minor habitat and wetlands impacts

Occupational exposures and risks of fires, spills, and leaks due to waste transportation and accidents

Dedication of 300 acres

Potential future exposures to persons occupying the Savannah River Plant

The estimated total capital cost to continue current practices is about $17 million. Total 20-year operating costs for the No Action strategy are estimated at about $86 million. Estimated lifetime maintenance and monitoring costs are about $51 million.

Dedication Strategy

The major environmental benefits predicted to occur from the implementation of the Dedication strategy include improvement of onsite groundwater quality from remedial and closure actions at existing waste sites; improvement of onsite surface water quality; reduction of potential public health effects; and reduction in atmospheric releases. A disadvantage would be the removal of some sites from public use through their dedication for waste management purposes; as much as 700 acres would be affected. Environmental impacts under this strategy could include the following:

Local and transitory onsite groundwater drawdown effects

Minor short-term terrestrial impacts due to the use of borrow pits for backfill

Impacts to wildlife habitat due to land clearing and development

The dedication of about 400 acres of land to new above and belowground disposal facilities

The dedication of about 300 acres at existing waste sites

Accidental and occupational risks

The total capital cost for implementation of this strategy ranges from about $281 million to $788 million. Total 20-year operating costs range from about $51 to $258 million. Estimated costs for closure range from about $19 to $31 million. Estimated post-closure maintenance and monitoring costs range from about $65 million to $119 million. The cost ranges are based on the types of facilities that would be selected.

Elimination Strategy

The environmental benefits expected from the implementation of the Elimination strategy include improvement to onsite groundwater and surface water quality from the removal and closure of all existing waste sites and remedial actions, as required; reduction of potential public health effects and atmospheric releases (except increased tritium air releases under the evaporation option); and no requirement for dedication of sites at the SRP. Disadvantages include higher occupational risks than with other strategies and the absence of assurance of the future availability of disposal sites in other areas. Environmental impacts that could occur under this strategy include:

Onsite groundwater drawdown effects (local and transitory)

Added tritium releases to surface streams from direct discharge or increased atmospheric (evaporation) releases

The highest occupational risks of all the strategies during waste removal, closure, and remedial actions

Terrestrial impacts at borrow pits that were greater than those for other strategies

Some loss of habitat (up to 400 acres) due to land clearing and development during the construction of the retrievable storage facilities

The greatest risk of spills, leaks, and fires, and the greatest worker exposures due to waste removal, transportation, treatment, and disposal.

The total capital cost for implementation of this strategy during the 20-year operational period would range between $2.0 billion and $4.8 billion. Total 20-year operating costs would range from about $370 million to $2.4 billion. Estimated post-closure maintenance and monitoring costs are about $37 million. The costs for the eventual treatment and disposal of stored waste are not included in these monitoring and maintenance estimates.

Combination Strategy

Major environmental benefits to be derived from implementation of the Combination strategy include secure, retrievable storage and disposal of wastes; improvement to onsite surface water and groundwater from removal of wastes at selected sites, closure of selected waste sites, and remedial actions, as required; reduction of potential public health effects; and reduction of atmospheric releases. The dedication of some sites for waste management purposes would be required. This strategy could cause the following impacts:

Local and transitory groundwater drawdown effects

Some habitat disruption on up to 400 acres of land required by new disposal facilities

Dedication of up to 400 acres of land for new storage/disposal facility(s)

The estimated total capital cost of implementation of the Combination strategy ranges from about $459 to $957 million. Total 20-year operating costs range from about $73 to $273 million. Closure costs range from about $37 to $48 million. Estimated post-closure maintenace and monitoring costs range from $90 to $105 million.

Environmentally Preferable Alternative

The Elimination strategy is the "environmentally preferable alternative" when long-term impacts are considered. In the short-term, however, implementation of the Elimination strategy results in increased occupational exposures. The Elimination strategy results in the removal of hazardous, low-level radioactive, and mixed wastes at existing waste sites; retrievable storage for wastes resulting from remedial actions and ongoing operations; and ultimately will result in the elimination of discharges of disassembly-basin purge water to reactor seepage and containment basins. Actual reductions in health effects associated with reduced environmental concentrations of waste constituents are, however, extremely limited. In some cases, health effects associated with the elimination strategy are actually higher than for other strategies, including the Combination strategy, because of occupational exposures resulting from waste removal actions and the re-suspension of waste particles during waste removal actions.

Basis for Decision

In compliance with the National Environmental Policy Act and its implementing regulations, DOE has analyzed the environmental impacts of the alternatives described in the EIS through extensive impact assessment, modeling, and human health and environmental risk assessment. Comments were received by DOE through the scoping process and as a result of distribution of the Draft EIS. DOE considered and responded to these comments as part of the preparation of the Final EIS. DOE's preferred alternative for modifying waste management activities at SRP is the Combination strategy. The Combination strategy was selected by DOE as the preferred alternative over the environmentally preferable alternative because it provides adequate human health and environmental protection, has lower occupational risk, the cost associated with closure actions and the construction of new retrievable storage facilities is significantly lower, and terrestrial ecological impacts are lower.

Considerations in the Implementation of the Decision

Implementation of the preferred waste management strategy will involve separate but related activities for regulatory compliance, Congressional funding authorization, and designs for new storage and disposal facilities.

Conclusion

DOE has considered all environmental factors, benefits and costs, institutional and programmatic needs, and schedules, and has concluded that it will implement the Combination strategy discussed in DOE/EIS-0120. DOE will continue its interactions with regulatory agencies to ensure that actions implemented in accordance with this Record of Decision comply with applicable regulatory requirements. DOE will proceed with implementation of this waste management strategy subject to the authorization and appropriation of funds by Congress.

Dated: March 2, 1988.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 88-5197 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Admnistration

[ERA Docket No. 87-43-NG]

Entrade Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting EnTrade Corporation (EnTrade) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 87-43-NG authorizes EnTrade to import up to 175 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1988.

Constance L. Buckley,

Director, Natural Gas Division Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5196 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC), Energy.

Date and Time: April 6, 1988, 9:00 a.m.-5:00 p.m.; April 7, 1988, 9:00 a.m.-4:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Room 5E-069.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301-353-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative agenda: Briefings and discussions of:

April 6, 1988

- BES FY 1988/FY 1989 Budget
- Status of BES Programs
- Review of BESAC Reports
- Public Comment (10 Minute Rule)

April 7, 1988

- Committee Agenda for 1988
- Committee Structure
- Geosciences, Engineering, Energy Biosciences
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-5198 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of December 21, 1987 Through January 29, 1988

During the period of December 21, 1987 through January 29, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of

objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

March 1, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Belcher Oil Co. Inc., Murray, Kentucky

KXE-0158; Reporting Req 'MTS

Belcher Oil Co., Inc. filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On January 29, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 5191 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-299-000, et al.]

Public Service Co. of New Mexico, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER88-269-000]

March 3, 1988.

Take notice that on February 26, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 6 to Contract for Electric Service (CES) between PNM and Texas-New Mexico Power Company (TNP). Amendment No. 6 allows TNP to reduce the amount of power for which TNP must pay and provides for a reduction in the energy rate charged for energy taken during offpeak periods. Amendment No. 6 is intended to be effective from January 1, 1988 through April 30, 1988, according to its terms; PNM accordingly requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon TNP and the New Mexico Public Service Commission.

Comment date: March 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. Montaup Electric Co.

[Docket No. EL88-14-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against Montaup Electric Company concerning CWIP-related Seabrook Unit 1 charges and return on equity pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. New England Power Co.

[Docket No. EL88-12-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against New England Power Company related to an asserted violation of fuel clause regulations pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. New England Power Co.

[Docket No. EL88-13-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against New England Power Company concerning CWIP-related Seabrook Unit 1 charges, return on equity, and the *Sunray* decision pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Co.

[Docket No. ER88-270-000]

March 3, 1988.

Take notice that on February 26, 1988, Puget Sound Power & Light Company (Puget) tendered for filing a revised Appendix 1 of Puget's Residential Purchase and Sale Agreement, Contract DE-MS79-81BP-90604. Puget states that this filing is made pursuant to the revised Average System Cost (ASC) methodology approved by the Federal Energy Regulatory Commission effective October 1, 1984. Puget also states that procedures under the revised methodology require that a utility file a revised Appendix 1 with the Bonneville Power Administration within twenty (20) days following the commencement date of the new exchange period.

Comment date: March 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5137 Filed 3-8-88; 8:45am]

BILLING CODE 6717-01-M

[Project Nos. 6802-003 and 8958-000]

D.J. Pitman International Corp; Hydroelectric Development Inc.; Availability of Environmental Assessment and Request for Comments

March 7, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the competing applications for minor license for the proposed Macallen Dam Hydroelectric Project on the Lamprey River in Rockingham and Strafford Counties, New Hampshire, and has prepared an Environmental Assessment (EA) for the propsed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding study results, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Macallen Dam Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, April 15, 1988, and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 6802-003 or Project No. 8958-000, as appropriate, to all comments.

For further information please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 376-9045.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5162 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued March 3, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 2, 1988, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 347 leases were issued as a result of OCS Sale 112 for the Western Gulf of Mexico on August 12, 1987. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8950	PS	1100	Oct. 1, 1987.
8951	PS	1115	Do.
8952	PS	1116	Do.
8953	PS	1120	Do.
8954	PN	947	Dec. 1, 1987
8955	PN	1010	Nov. 1, 1987
8956	PN	889	Do.
8957	PN	890	Do.
8958	PN	892	Do.
8959	PN	893	Do.
8960	PN	972	Do.
8961	PN	991	Do.
8962	PN	996	Do.
8963	PNA	10	Do.
8964	PNA	15	Oct. 1, 1987.
8965	PNA	30	Nov. 1, 1987.
8966	PNA	31	Do.
8967	PNA	40	Do.
8968	PNA	41	Do.
8969	PNA	47	Do.
8970	PNA	56	Do.
8971	MU	729	Do.
8972	MU	759	Oct. 1, 1987.
8973	MU	761	Do.
8975	MU	785	Do.
8976	MU	789	Nov. 1, 1987.
8977	MU	807	Dec. 1, 1987.
8978	MU	815	Nov. 1, 1987
8979	MU	855	Oct. 1, 1987.
8980	MUA	5	Dec. 1, 1987
8981	MUA	7	Do.
8982	MUA	28	Oct. 1, 1987
8983	MUA	35	Do.
8984	MUA	51	Do.
8985	MUA	52	Do.
8986	MUA	90	Nov. 1, 1987
8987	MUA	99	Do.
8988	MUA	100	Do.
8989	MUA	107	Do.
8990	MUA	108	Do.
8991	MUA	120	Do.
8993	MI	529	Dec. 1, 1987.
8994	MI	621	Oct. 1, 1987.
8995	MI	634	Do.
8996	MI	637	Do.
8997	MI	646	Do.
8998	MI	650	Nov. 1, 1987
9001	MI	705	Do.
9003	MI	714	Do.
9004	MIA	2	Oct. 1, 1987.
9005	MIA	3	Do.
9008	BA	365	Dec. 1, 1987
9009	BA	366	Nov. 1, 1987
9010	BA	375	Dec. 1, 1987
9011	BA	376	Do.
9012	BA	397	Do.
9013	BA	400	Do.
9014	BA	413	Do.
9015	BA	416	Do.
9016	BA	430	Do.
9017	BA	431	Do.
9018	BA	432	Do.
9020	BA	456	Do.
9021	BA	475	Oct. 1, 1987
9022	BA	513	Nov. 1, 1987
9023	BA	532	Do.
9024	BA	548	Do.
9025	BAA	2	Do.
9026	BAA	10	Oct. 1, 1987
9027	BAA	18	Do.
9028	BAA	73	Do.
9030	GA	227	Dec. 1, 1987
9031	GA	237	Do.
9032	GA	239	Oct. 1, 1987
9033	GA	242	Do.
9034	GA	254	Do.
9035	GA	267	Do.
9036	GA	268	Do.
9037	GA	273	Do.
9038	GA	275	Do.
9039	GA	283	Do.
9040	GA	288	Nov. 1, 1987.
9041	GA	289	Do.
9042	GA	302	Oct. 1, 1987.
9043	GA	315	Do.
9044	GA	316	Do.
9045	GA	317	Do.
9046	GA	327	Do.
9047	GA	351	Do.
9048	GA	352	Do.
9049	GA	353	Do.
9050	GA	382	Nov. 1, 1987.
9051	GA	420	Oct. 1, 1987.
9052	GA	421	Do.
9053	GA	427	Do.
9054	GA	429	Dec. 1, 1987.
9055	GAA	125	Do.
9056	GAA	176	Do.
9057	GAA	177	Do.
9058	GAA	200	Do.
9059	GAA	201	Do.
9060	GAA	205	Do.
9061	GAA	206	Do.
9062	GAA	207	Do.
9063	GAA	218	Do.
9064	GAA	230	Do.
9065	GAA	231	Do.
9066	GAA	236	Do.
9067	GAA	237	Do.
9068	GAA	245	Do.
9069	GAA	249	Do.
9070	GAA	250	Do.
9071	HI	19	Do.
9072	HI	37	Do.
9073	HI	48	Oct. 1, 1987.
9074	HI	50	Dec. 1, 1987
9075	HI	51	Nov. 1, 1987.
9076	HI	72	Oct. 1, 1987
9077	HI	131	Dec. 1, 1987
9078	HI	137	Do.
9079	HI	138	Do.
9080	HI	143	Nov. 1, 1987
9081	HI	154	Do.
9082	HI	162	Dec. 1, 1987.
9083	HI	163	Oct. 1, 1987
9084	HI	169	Dec. 1, 1987
9085	HI	192	Nov. 1, 1987.
9086	HI	200	Oct. 1, 1987
9087	HI	228	Nov. 1, 1987
9088	HI	236	Do.
9089	HIA	2	Dec. 1, 1987.
9090	HIA	4	Do.
9091	HIA	5	Nov. 1, 1987.
9093	HIA	9	Do.
9094	HIA	10	Dec. 1, 1987.
9095	HIA	11	Do.
9096	HIA	24	Nov. 1, 1987
9097	HIA	66	Dec. 1, 1987.
9098	HIA	71	Oct. 1, 1987.
9099	HIA	72	Do.
9100	HI	120	Do.
9101	HIA	168	Nov. 1, 1987.
9102	HIA	169	Oct. 1, 1987.
9103	HIA	170	Do.
9104	HIA	171	Nov. 1, 1987.
9105	HIA	187	Oct. 1, 1987.
9106	HIA	205	Nov. 1, 1987
9107	HIA	206	Do.
9108	HIA	207	Do.
9109	HIA	224	Dec. 1, 1987.
9110	HIA	250	Do.
9111	HIA	253	Do.
9112	HIA	254	Do.
9113	HIA	255	Do.
9114	HIA	417	Nov. 1, 1987
9115	HIA	418	Dec. 1, 1987
9116	HIA	419	Nov. 1, 1987
9117	HIA	426	Dec. 1, 1987.
9118	HIA	439	Nov. 1, 1987.
9119	HIA	440	Do.
9120	HIA	444	Do.
9121	HIA	445	Dec. 1, 1987.
9123	HIA	465	Nov. 1, 1987.
9124	HIA	481	Oct. 1, 1987.
9125	HIA	484	Nov. 1, 1987.
9126	HIA	505	Do.
9127	HIA	522	Dec. 1, 1987.
9128	HIA	525	Nov. 1, 1987.
9129	HIA	527	Do.
9130	HIA	529	Oct. 1, 1987.
9131	HIA	539	Nov. 1, 1987.
9132	HIA	540	Do.
9133	HIA	544	Dec. 1, 1987.
9134	HIA	560	Oct. 1, 1987.
9136	HIA	576	Dec. 1, 1987.
9139	HIA	584	Nov. 1, 1987.
9140	HIA	264	Dec. 1, 1987
9142	HIA	306	Nov. 1, 1987.
9143	HIA	307	Do.
9145	HIA	321	Oct. 1, 1987
9146	HIA	333	Nov. 1, 1987
9147	HIA	338	Oct. 1, 1987.
9148	HIA	344	Do.
9151	HIA	347	Dec. 1, 1987.
9152	HIA	348	Do.
9153	HIA	352	Do.
9154	HIA	354	Nov. 1, 1987.
9155	HIA	361	Oct. 1, 1987
9156	HIA	363	Dec. 1, 1987.
9157	HIA	371	Nov. 1, 1987.
9158	HIA	372	Do.
9159	HIA	386	Dec. 1, 1987.
9160	HIA	387	Do.
9161	HIA	390	Nov. 1, 1987
9162	HIA	391	Do.
9163	CC	521	Oct. 1, 1987
9164	CC	566	Do.
9165	CC	609	Do.
9166	CC	610	Do.
9167	EB	73	Do.
9168	EB	114	Dec. 1, 1987.
9170	EB	383	Oct. 1, 1987
9171	EB	384	Do.
9172	EB	426	Do.
9173	EB	577	Do.
9174	EB	578	Do.
9175	EB	590	Do.
9176	EB	621	Do.
9177	EB	622	Do.
9178	EB	637	Do.
9179	EB	638	Do.
9180	EB	639	Do.
9181	EB	640	Do.
9182	EB	641	Do.
9183	EB	642	Do.
9184	EB	643	Do.
9185	EB	644	Oct. 1, 1987.
9186	EB	645	Do.
9187	EB	646	Do.
9188	EB	684	Do.
9189	EB	685	Do.
9190	EB	686	Do.
9191	EB	688	Nov. 1, 1987.
9192	EB	689	Do.
9193	EB	728	Oct. 1, 1987.
9194	EB	732	Do.
9195	EB	843	Do.
9196	GB	22	Do.
9197	GB	26	Do.
9198	GB	68	Nov. 1, 1987.
9199	GB	69	Do.
9200	GB	70	Oct. 1, 1987
9201	GB	71	Do.
9203	GB	81	Do.
9204	GB	97	Nov. 1, 1987
9205	GB	112	Do.
9206	GB	115	Dec. 1, 1987
9207	GB	124	Nov. 1, 1987
9208	GB	125	Oct. 1, 1987
9209	GB	129	Nov. 1, 1987.
9210	GB	141	Do.
9211	GB	143	Oct. 1, 1987
9212	GB	154	Nov. 1, 1987
9213	GB	181	Do.
9214	GB	204	Oct. 1, 1987.
9215	GB	205	Do.
9216	GB	215	Do.
9217	GB	216	Do.
9218	GB	230	Nov. 1, 1987.
9219	GB	251	Oct. 1, 1987.
9220	GB	274	Do.
9221	GB	275	Nov. 1, 1987
9222	GB	295	Oct. 1, 1987
9223	GB	302	Do.
9224	GB	305	Do.
9225	GB	348	Do.
9226	GB	349	Do.
9227	GB	371	Do.
9228	GB	372	Do.
9229	GB	515	Do.
9230	GB	562	Do.
9231	GB	563	Oct. 1, 1987
9232	GB	588	Do.
9233	GB	633	Dec. 1, 1987.
9234	GB	634	Do.
9235	GB	653	Oct. 1, 1987
9236	GB	697	Do.
9237	GB	741	Do.
9238	GB	754	Do.
9239	GB	782	Do.
9240	GB	785	Do.
9241	GB	803	Nov. 1, 1987.
9242	GB	804	Do.
9243	GB	826	Oct. 1, 1987.
9244	PI	298	Do.
9245	PI	526	Do.
9246	PI	570	Do.
9247	PI	876	Do.
9248	AC	20	Do.
9249	AC	65	Do.
9250	AC	192	Do.
9251	AC	236	Do.
9252	AC	237	Do.
9253	AC	290	Do.
9254	AC	336	Do.
9255	AC	337	Do.
9256	AC	380	Do.
9257	AC	390	Do.
9258	AC	398	Do.
9259	AC	441	Do.
9260	AC	442	Do.
9261	AC	475	Do.
9262	AC	518	Do.
9263	AC	558	Do.
9264	AC	578	Do.
9265	AC	595	Do.
9266	AC	602	Do.
9267	AC	622	Do.
9268	AC	645	Do.
9269	AC	647	Do.
9270	AC	648	Do.
9271	AC	691	Do.
9272	AC	719	Do.
9273	AC	720	Do.
9274	AC	728	Do.
9275	AC	730	Do.
9276	AC	734	Do.
9277	AC	736	Do.
9278	AC	763	Do.
9279	AC	764	Do.
9280	AC	766	Do.
9281	AC	767	Do.
9282	AC	774	Do.
9283	AC	776	Do.
9284	AC	778	Do.
9285	AC	779	Do.
9286	AC	780	Do.
9287	AC	781	Do.
9288	AC	796	Do.
9289	AC	797	Do.
9290	AC	810	Do.
9291	AC	811	Do.

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Lease No. OCS-G	Area	Block	Effective date
9292	AC	814	Do.
9293	AC	818	Do.
9294	AC	822	Do.
9295	AC	827	Do.
9296	AC	854	Do.
9297	AC	856	Do.
9298	AC	865	Do.
9299	AC	900	Do.
9300	AC	901	Do.
9301	AC	903	Do.
9302	AC	904	Do.
9303	AC	908	Do.
9304	AC	947	Do.
9305	AC	951	Do.
9306	AC	954	Do.
9307	AC	955	Do.
9308	AC	998	Do.
9309	AC	999	Do.
9310	KC	156	Do.
9311	KC	157	Do.
9312	KC	191	Do.
9313	KC	192	Do.
9314	KC	236	Do.
9315	KC	583	Do.
9316	KC	584	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accodance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5138 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued March 3, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,506 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Notice of these determinations was issued by the Commission on September 12, 1986. On February 2, 1988, MMS notified the Commission that 25 additional leases have been granted under this same sale. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8308	PE	904	Mar. 1, 1987.
8309	PE	906	Do.
8310	PE	907	Do.
8317	PE	989	Do.
8318	PE	990	Do.
8319	PE	991	Do.
8323	DD	021	Do.
8324	DD	022	Do.
8325	DD	023	Do.
8326	DD	024	Do.
8327	DD	064	Do.
8328	DD	065	Do.
8329	DD	066	Do.
8330	DD	067	Do.
8331	DD	068	Do.
8332	DD	069	Do.
8337	DD	109	Do.
8338	DD	111	Do.
8339	DD	112	Do.
8340	DD	113	Do.
8341	DD	154	Do.
8342	DD	155	Do.
8343	DD	199	Do.
8344	DD	201	Do.
8345	DD	201	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol, St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5139 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-311-000 et al.]

Energy Development Corporation, et al.; Natural Gas Certificate Filings

March 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Energy Development Corporation

[Docket No. CI88-311-000]

Take notice that on February 19, 1988, Energy Development Corporation (Applicant), P.O. Box 570, Newark, New Jersey 07101, filed an application pursuant to section 7 of the Natural Gas Act for (1) blanket limited-term authorization to abandon certificated sales of natural gas released by interstate pipelines: and (2) blanket pregranted abandonment authority for subsequent sales of such released gas made under Applicant's small producer certificate for a period of one year, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 18, 1988, in accordance with Standard Paragraph J at the end of the notice.

2. Sun Exploration and Production Company

[Docket No. CI86-675-001]

Take notice that on February 22, 1988, Sun Exploration and Production Company (Sun), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act requesting that the Commission modify paragraph (B) of its May 1, 1987, Order Granting Limited-Term Blanket Certificate with Pregranted Abandonment by extending the term from one year to a three year term expiring May 1, 1981. Sun seeks authorization to continue to make sales for resale in interstate commerce of uncommitteed natural gas to be produced from its 15% working interest in High Island 310, Offshore Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 18, 1988, in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-581 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-252-000 et al.]

Riverhead Cogeneration Corp., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

DATE: *Comment date:* April 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Riverhead Cogeneration Corp.; Riverhead Energy Center

[Docket No. QF88-252-000]

March 1, 1988.

On February 10, 1988, Riverhead Cogeneration Corporation of 420 Lexington Avenue, Suite 440, New York, New York 10170, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Riverhead, Suffolk County, New York. The facility when completed will incorporate up to three separate generating modules. Each module will consist of combustion turbines in a combined cycle configuration with heat recovery steam generators and a steam turbine generator. Thermal energy recovered from the facility will be for space heating and cooling, and process uses. The net electric power production capacity of the facility will be approximately 79.9 MW with one module, 135 MW with two modules, and 190.1 MW with three modules. The primary energy source of the facility will be natural gas, backed up with No. 2 distillate fuel or propane.

2. Occidental Chemical Corp.

[Docket No. QF82-83-001]

March 3, 1988.

On February 22, 1988, Occidental Chemical Corporation (Applicant), of 5005 LBJ Freeway, Dallas, Texas 75244, submitted for filing an application for recertification of a facility as a qualifying cogneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Applicant's existing chemical manufacturing plant in Niagara Falls, New York. The facility consists of two incinerator boilers, two steam turbine generators, a combustion turbine generator and a waste heat recovery steam generator. Extraction steam from the steam turbines is used in Applicant's chemical plant for heating and a variety of process applications. The maximum power production capacity of the facility is 79 MW. The primary energy source is biomass in the form of municipal solid waste with natural gas as a secondary fuel source.

3. Ogden Martin Systems of Bushkill Township, Inc.

[Docket No. QF88-235-000]

March 3, 1988.

On February 3, 1988, Ogden Martin Systems of Bushkill Township, Inc. (Applicant), of 40 Lane Road, CN 2615, Fairfield, New Jersey 07007-2615 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Northampton County, Pennsylvania. The facility will consist of two (2) mass-burn steam generators and a single steam turbine generator. The net electric power production capacity will be 26.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up, and shut-down, however, such fossil fuel usage will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility is expected to begin on or about May 1989.

4. Waste Energy Recovery Systems of Alpena

[Docket No. QF88-226-000]

March 3, 1988.

On February 1, 1988, Waste Energy Recovery Systems of Alpena (Applicant), of 1000 John R. Rd., Suite 210, Troy, Michigan 48083 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Alpena, Michigan. The facility will consist of a fluidized bed boiler and a steam turbine generator. The electric power production capacity will be 16 megawatts. The primary energy source will be biomass in the form of wood-waste, sawdust, bark and wood chips. Fuel oil will be used for start-up purposes only.

5. Woodpower Corporation of Edwards

[Docket No. QF88-238-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Edwards, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York City, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lawrence County, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine coupled to an electric generator. The net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of waste-wood. Oil will be used for start-up and pilot light operations, however, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

6. Woodpower Corporation of Malone

[Docket No. QF88-237-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Malone, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Franklin County, Town of Malone, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine generator. The maximum net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of waste-wood. Fuel oil will be used for start-up and pilot light operations, however, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

7. Woodpower Corporation of Tupper Lake

[Docket No. QF88-236-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Tupper Lake, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Franklin County, in the Village of Tupper Lake, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine generator. The maximum net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of wood-waste. Oil will be used for start-up and pilot light operations, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5140 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6344-003]

Delta Canal Co. et al.; Surrender of Exemption

March 3, 1988.

Take notice that Delta Canal Company et al., exemptee for the proposed Leamington Canyon Project No. 6344, has requested that its exemption be terminated. The exemption was issued January 28, 1983. The project would have been located on the Central Utah Canal on the Sevier River, in Juab and Millard counties, Utah. The project would have consisted of a diversion structure, a penstock, a powerhouse with a total rated capacity of 1,800 kW, a tailrace, and a transmission line. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1988, and the exemption for Project No. 6344 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5141 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6345-003]

Delta Canal Company et al.; Surrender of Exemption

March 3, 1988.

Take notice that Delta Canal Company et al., exemptee for the proposed Sevier Bridge Reservoir Project No. 6345, has requested that its exemption be terminated. The exemption was issued November 17, 1982. The project would have been located on the Sevier River, in Juab County, Utah. The project would have consisted of an existing Bureau of Land Management dam, a penstock, a powerhouse with a total rated capacity of 1,800 kW, and a transmission line. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1988, and the exemption for Project No. 6345 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5142 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-62-000]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Proposed Change in FERC Gas Tariff

March 3, 1988.

Take notice that Equitable Gas Company (Equitable) on February 26, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Substitute Tenth Revised Sheet No. 6f and its Substitute Eleventh Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1, to become effective March 1, 1988 and September 1, 1987, respectively.

Substitute Tenth Revised Sheet No. 6f
Substitute Eleventh Revised Sheet No. 6f.

Equitable states the filing is made pursuant to Ordering Paragraph M of the Commissions Order dated January 20, 1988, in Docket No. CP86-676-00, in which Equitrans Inc. (Equitable) was instructed to file a restatement of the base tariff rate under Rate Schedule GS-1, as required by § 154.38 of the Commission's Regulations.

Equitable states that the cost-of-service study supports an increase in rates for Rate Schedule GS-1, but Equitable does not propose an increase in base rates at this time.

Equitable further states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5143 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-676-002 and RP88-64-000]

Equitrans, Inc.; Compliance

March 3, 1988.

Take notice that on February 26, 1988, Equitrans, Inc. ("Equitrans") tendered for filing the following FERC Gas Tariff in compliance with the Commission's Order issuing Certificate and Approving Abandonment, issued January 20, 1988, in this docket.

Docket Volume No. 1
Original Sheets 1 through 182.
Docket Volume No. 2
Original Sheets 1 through 147
Docket Volume No. 3
Original Sheets 1 through 39.

Equitrans, formerly Equitable Transmission Company, succeeded to the FERC jurisdictional interests of Equitable Gas Company, a division of Equitable Resources, Inc., as a result of the above-referenced Commission Order.

Equitrans states that copies of this filing have been served on all its jursidictional customers and affected state regulatory commissions. Equitrans requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective April 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5144 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 3, 1988

Take notice that North Penn Gas Company (North Penn) on February 26, 1988, tendered for filing 87th Revised Sheet No. PGA-1, 3rd Revised Sheet No. 156, and 3rd Revised Sheet No. 15G (1) to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause to be effective March 1, 1988. Specifically, North Penn states that it included in its semiannual PGA the following:

1. A change in rates (Appendix A) to reflect changes in Cost of Gas Purchased.

2. A surcharge credit of 48.809¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period July, 1987 through December 31, 1987; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the regulations of the Federal Energy Regulatory Commission (Commission); a carry-over balance from the surcharge credit effective for the period March 1, 1987 through August 31, 1987; and a credit to reflect the average pipeline commodity cost of gas for the period March, 1987 to August, 1987 pursuant to Article XIII of the Stipulation and Agreement in Docket No. RP85-193.

3. A TOP surcharge credit of 1.466¢ (Appendix C) to repay customers of North Penn for the overrecovery of Take-or-Pay payments made to Tennessee Gas Pipeline Company under the procedures approved by the Commission in Docket No. RP83-8 et al., issued April 16, 1985.

North Penn states that it eliminated § 15 of the General Terms and Conditions of its Tariff to remove all references to incremental pricing. FERC Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000 et al., requires the removal of all references to incremental pricing in the first PGA filing made in 1988. North Penn is therefore filing Third Revised Sheet No. 15G and Third Revised Sheet No. 15G(1) and has eliminated Sheet No. 15H of the General Terms and Conditions.

North Penn respectfully requests waiver of the Commission's Rules and Regulations pertaining to the thirty (30) day notice requirement, stating that a late notice of rate change from one of its pipeline suppliers for effectiveness March 1, 1988 and several other pressing regulatory matters before the FERC and its State Commission prevented the Company from making a timely filing.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective March 1, 1988, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1988, as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before March 10, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5145 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400012; FRL-3335-6]

Emergency Planning and Community Right-To-Know; Toxic Chemical Release Reporting; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting is scheduled to present the EPA planned approach for making a toxic chemical release inventory publicly available on a computer data base. The inventory and

public access to it on a computer are required under section 313(j) of the Emergency Planning and Community Right-to-Know Act of 1986.

DATE: The meeting will be held on Wednesday, March 30, 1988, from 1 p.m. to 4 p.m..

ADDRESS: The meeting will be held at: Environmental Protection Agency, North Conference Room 3, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janet Bearden, Emergency Planning and Community Right-to-Know Hotline (WH-562A), 401 M Street SW., Washington, DC 20460, Telephone: (800) 535-0202, in Washington, DC and Alaska: (202) 479-2449.

SUPPLEMENTARY INFORMATION: A public meeting is scheduled to present the EPA planned approach for making a toxic chemical release inventory publicly available on a computer data base as mandated under section 313(j) of the Emergency Planning and Community Right-to-Know Act.

The Emergency Planning and Community Right-to-Know Act contains chemical information-gathering provisions of widespread interest to the public, the industry, and to State and local governments. The EPA Office of Toxic Substances (OTS) is specifically responsible for implementing section 313. Under section 313, owners and operators of certain industrial facilities which manufacture, process, or otherwise use any of more than 300 listed toxic chemicals must report annually their releases of such chemicals to all environmental media. The first reports are due by July 1, 1988, for calendar year 1987 data, and annually thereafter on July 1, for the previous calendar year.

Under section 313(j) the public must have access to the toxic chemical release inventory information through computer telecommunications. EPA investigated, in detail, four possible options suggested and discussed at a public meeting on April 20, 1987.

The four options for making the section 313 toxic chemical release inventory available to the public are: (1) An EPA clearinghouse with direct access to an EPA data base; (2) a commercial computer data base vendor; (3) another government agency with an established computer data base network; and (4) a non-profit university data base information provider. The public would access the information using the search, retrieval and display features provided by the computer system of the selected option. Section 313 data on magnetic tape will also be available through the National Technical Information Service (NTIS).

The EPA planned approach for making section 313 toxic release inventory available to the public is option three (interagency agreement with another government agency). The selection of this approach is based on a comparison of (1) system features based on potential user requirements; (2) cost to the user; (3) cost to EPA; and (4) timeliness of implementation and long-term availability of all four options. EPA believes that option three best meets the criteria at the basic level of required system features, while offering the availability of extensive complementary health and environmental effects files. Potential data base users identified such files as a desirable system feature.

A public meeting is scheduled on March 30, 1988 to discuss the four options for making the section 313 toxic chemical inventory publicly available on a computer database, the EPA planned approach, and the process by which EPA arrived at the planned approach. A document entitled "Options for Making the Toxic Release Inventory (TRI) Data Base Accessible to the Public" is available to assist the public in providing written and/or oral comment. EPA encourages anyone interested in attending the public meeting to review the document. Persons wishing to attend this meeting and/or interested in obtaining a copy of the document should call the Emergency Planning and Community Right-to-Know Information Hotline at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments are invited in advance, by March 23, 1988, and should be submitted to: Linda A. Travers, Director, Information Management Division, Office of Toxic Substances (TS-793), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments are also welcome at the meeting.

Persons wishing to present oral comments at the meeting are urged to contact the telephone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible. Time slots of approximately 10 minutes each will be allocated on a first come, first served basis for oral comments.

Dated: March 3, 1988.

Linda Travers,

Director, Inventory Management Division, Office of Toxic Substances.

[FR Doc. 88-5153 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180761; FRL-3336-8]

Receipt of an Application for a Specific Exemption To Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide™) to control two-spotted spider mites (*Tetranychus urticae*); yellow spider mites (*Eotetranychus carpini*); and McDaniel spider mites (*Tetranychus mcdanieli*) on 18,000 acres of pears in Oregon. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and ≦20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl) avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 24, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180761 "should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as Agrimec 0.15 EC Miticide/Insecticide™, by MSD AGVET, a division of Merck & Co., Inc., on pears in Oregon. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made but no more than 20 ounces product may be applied per acre per crop season. Treatment would not be allowed 7 days prior to harvest. Applications would be made from April 20, 1988 through September 1, 1988.

The Applicant indicates that during the past three years there has been an increasing and alarming mite resistance to registered miticides. Growers have been making four and five applications (either individual or combinations of pesticides using cyhexation, hexakis, oxamyl, amitraz, dicofol, formetanate, chinomethionat, ethion and/or parathion.

The Applicant indicates that without adequate control of the mites economic losses expected would primarily come in the form of loss of fruit size, set, and quality. Losses in fruit size and lower fruit quality, without the requested acaricide this year, could total over $4.5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-4616 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-492; FRL-33369]

Pesticide Tolerance Petitions; Initial Filings and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities and one amended petition.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Production manager	Office location/ telephone number	Address
Richard Mountfort (PM 23).	Rm. 237, CM #2, 703-557-1830.	EPA, 1921 Jefferson Davis Highway, Arlington, VA 22202.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.
Jeff Kempter (PM 32).	Rm. 711, CM #2, 703-557-7471.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3599.* Hoechst Celanese Corp., Route 202-206, Somerville, NJ 08876, proposes amending 40 CFR 180.430 by establishing a regulation to permit the residues of the herbicide fenoxaprop-ethyl ((±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate) and its metabolites, 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydro-benzoxazol-2-one, in or on cottonseed, wheat grain, peanuts, and peanut hulls at 0.05 ppm. The proposed analytical method for determining residues in gas chromatograph. (PM 23).

2. *PP 8F3600.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3, 6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet roots and tops at 0.5 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23).

3. *FAP 8H5551.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes amending 21 CFR 561.439 by establishing a regulation to permit the residues of the herbicide clopyralid (3, 6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet molasses at 7.0 ppm. (PM 23).

4. *PP 8F3601.* Bionox Corp., 6890 E. Loma del Bribon, Tucson, AZ 85715, proposes amending 40 CFR Part 180 by establishing an exemption from the

requirement of a tolerance for the pesticide chemical sodium hypochlorite in or on soybean, alfalfa, clover, vetch, cabbage, lupine, barley, oats, wheat, rice, corn, rye, cotton, peanuts, pine, pea, sunflower, safflower, celery, asparagus, eggplant, cauliflower, cucumber, pepper, sugar beet, tomato, watermelon, popcorn, carrot, sorghum, and tobacco seed. (PM 32).

5. *PP 8F3603*. Gilmore, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38199–4367, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide pyridate [o-(6–choloro–3–phenyl–4–pyridazinyl)–S–octyl–carbonothioate], its main metabolite CL–9673 [6–chloro–3–phenyl–pyridazine–4–ol] and conjugates of CL–9673 in or on alfalfa (forage, seed, and hay), broccoli, cabbage (with or without wrapper leaves), corn (grain, forage, silage, and fodder), onion (bulb), peanut (nutmeat, vines, and hulls), sorghum (grain, forage, fodder, silage, and hay), and tomato fruit at 0.03 ppm and peanut hay at 0.10 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM–25)

6. *FAP 8H5552*. Dow Chemical U.S.A., Agricultural Products Department, P.O. Box 1706, Midland, MI 48640, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the herbicide methyl 2–(4–((3–chloro–5(trifluoro–methyl)–2–pyridinyl)oxy)phenoxy) propanoate (haloxyfop–methyl) and its metabolite, 2–(4–((3–chloro–5–(trifluoro–methyl) pyridingyl)oxy)phenoxy) propanoic acid (haloxyfop), free and conjugated, all expressed as haloxyfop, in or on soybean hulls at 2.0 ppm, soybean meal at 4.0 ppm, soybean oil at 8.0 ppm, and soybean soapstock at 2.0 ppm. (PM 23).

Amended Petition

PP 6F3431. In the **Federal Register** of October 8, 1986 (51 FR 36063), EPA issued a notice announcing that E.I. du Pont de Nemours & Co., Walkers Mill Bldg., Barley Mill Plaza, Wilmington, DE 19898, had filed pesticide petition 6F3431 proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 3–[[[[(4–methoxy–6–methyl–1,3,5–triazin–2–yl)–amino]carbonyl]amino]sulfonyl]–2–thiophenecarboxylate in or on the commodities barley grain and wheat grain at 0.05 ppm. The company is amending its petition to include wheat straw and barley straw at 0.1 ppm.

Authority: 21 U.S.C. 346a.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–4815 Filed 3–8–88; 8:45 am]

BILLING CODE 6560-50-M

[OPP–180762; FRL–3336–7]

Receipt of Application for an Emergency Exemption From Mississippi To Use Tricyclazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture (hereafter referred to as "Applicant") to use the fungicide tricyclazole (CAS 41814 78 2) to treat 60,000 acreas of rice for control of blast fungus, *Pyricularia oryzae*. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 24, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180762," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (7093–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of tricyclazole, 5-Methyl-1,2,4-triazolo (3,4-b) benzothiazole, for control of blast fungus on rice.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Tricyclazole is not currently registered in the United States. Tricyclazole is applied to rice in many areas of the world where rice blast is a commercial problem.

According to the Applicant, blast surfaced as a major problem in Mississippi over the last two years causing a loss of approximately 20 bushels per acre over 45 percent of the acres planted in rice in Mississippi. The problem with blast is a result of a build up of races IC 17 and IB 49 of *Pyricularia oryzae* and the widespread planting of susceptible varieties of rice. Mississippi states that due to its high yield potential of high quality rice, the Newbonnet variety has become one of the mostly commonly planted varieties in Arkansas and Mississippi since its introduction several years ago. The Newbonnet variety is somewhat resistant to sheath blight caused by the fungus *Rhizoctonia solani* but is susceptible to blast. Sheath blight has been the cause of a majority of the loss in rice yield in recent years according to the Applicant. Varieties of rice such as Lemont that have some resistance to blast are highly susceptible to sheath blight. Plant breeders indicate that by 1990 a rice variety with good agronomic characteristics will be available which has excellent resistance to blast; thus rice growers will need a fungicide to control rice blast probably through the 1988 and 1989 growing seasons. Mississippi indicates that without the availability of a more effective fungicide for blast control, rice producers may avoid the planting of Newbonnet which will force them into planting much of the rice acreage to Lemont leading to the potential for widespread damage from a varietal monoculture.

According to the Applicant, currently registered fungicides do not provide adequate control of blast. Tilt and Rovral which suppress the development of sheath blight have little or no activity on blast. Benlate only suppresses blast development and under optimum conditions for blast occurrence even with proper timing of Benelate applications, losses from blast can be as much as 25 percent. Whereas Benelate only suppresses blast development, Beam (tricyclazole) manufactured by Elanco Inc. provides as much as 90 percent control.

The Applicant proposes to make two split applications of tricyclazole at a maximum rate of 0.5 lb. a.i./acre (2/3 lb. of Beam 75W) followed by a second application, ten to fourteen days later, at a rate of a 0.5 lb. a.i./acre. Applications would be made in five to ten gallons of water by air and ten to twenty gallons of water by ground equipment.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–4617 Filed 3–8–88; 8:45 am]

BILLING CODE [illegible]

[OPP–50676; FRL–3337–4]

Issuance of Experimental Use Permits; E.I. du Pont de Nemours and Co., Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By Mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352–EUP–129. Extension E.I. du Pont deNemours & Company, Inc., Agricultural Chemicals Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 231.25 pounds of the herbicide methyl 2-[((((4,6-dimethoxy pyrmidin-2-yl)-amino)carbonyl)amino)sulfonyl)methyl]benzoate ona total of 3,700 acres of rice to evalute the control of various weeds. The program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from January 21, 1988 to February 1, 1989. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Richard Mountfort, PM 23, Rm. 237, CM #2, (703–557–1830))

8340–EUP–10. Extension. Hoechst Celanese Corporation, Route 202–206 North, Somerville, NJ 08876. This experimental use permit allows the use of 1,371 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate on a total 914 acres of citrus, pome fruit, stone fruit, soybeans, vine crops, and non-crop areas to evaluate the control of weeds. The program is authorized in the States of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, and West Virginia. The experimental use permit is effective from January 12, 1988 to January 12, 1989. A temporary tolerance for residues of the active ingredient in or on citrus, grapes, pome fruit, stone fruit, and soybean seed has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

50658-EUP-2. Renewal. Merck Sharp and Dohme Research Laboratory, Hillsborough Road, Three Bridges, NJ 08887. This experimental use permit allows the use of 161.25 pounds of the miticide avermectin and its delta 8,9-geometric isomer on a total of 4,700 acres of cotton to evaluate the control of various cotton insects. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit was previously effective from November 15, 1986 to November 15, 1987; the permit is not effective from January 21, 1988 to January 21, 1989. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703–557–2400))

53219-EUP-1. Renewal. Mycogen Corporation, c/o W.R. Landis Associates, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. This experimental use permit allows the use of 150 pounds of the fungicide *alternaria cassiae* on a total of 455 acres of cotton, peanuts, and soybeans to evaluate the control of coffee senna and sicklepod. The program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, and North Carolina. The experimental use permit was previously effective from May 10, 1985 to May 10, 1986; the permit is now effective from January 13, 1988 to January 12, 1989. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on cotton, peanuts, and soybeans has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 23, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–4737 Filed 3–8–88; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200092

Title: Port of New Orleans Lease Agreement.

Parties:

Board of Commissioners of the Port of New Orleans
H.N.V. Central River Front Corporation (H.N.V.)

Synopsis: The proposed agreement sets forth the terms and conditions for a public export warehouse (H.N.V.) to handle grain and rice for the U.S. Department of Agriculture and private exporters.

Agreement No: 224–200093

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans
Asland Cement Corporations (Asland)

Synopsis: The proposed agreement provides for the lease of a portion of the Perry Street Wharf on the Mississippi River to be used by Asland for the loading/unloading and storage of cement, cement products, ceramic products and other associated materials.

Agreement No: 224–200094

Title: Port of Tampa Lease Agreement.

Parties:

Tampa Port Authority
Louisville Scrap Material Co., Inc. (Louisville)

Synopsis: The proposed agreement provides for the lease of approximately 11.45 acres of land in Hillsborough County, Florida, by Louisville. The term of the lease is for three years, with two five-year options for renewal.

Agreement No: 224–200095

Title: Ponce Terminal Agreement.

Parties:

Administrative Board of the Municipal Piers of Ponce
Ponce Port Administrative Corporation (PPAC)

Synopsis: The proposed agreement provides for the 18 years lease of terminal facilities at Ponce Harbor, Puerto Rico, to be operated by PPAC to dock vessels and load/unload, marshal and warehouse cargo.

Agreement No: 224–200091

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority of Harris County, Texas
Port Houston Terminals, Inc.

Synopsis: The proposed agreement assigns the Port Houston Terminals, Inc. to perform or have performed public freight handling services at the Port's Wharves and Transit Sheds Number 16 through 18. The freight handling services include the loading of cargo onto, or unloading cargo from, land carriers at the facility subject to charges, rates and rules in the Port's Tariff No. 8.

By Order of the Federal Maritime Commission.

Dates: March 3, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–5146 Filed 3–8–88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011184–001

Title: U.S./Middle East Discussion Agreement.

Parties:

The "8900" Lines
Jugolinija

Synopsis: The proposed amendment would delete ports and points in Canada from the geographic scope of the agreement. The parties have requested a shortened review period.

Agreement No.: 207–011174

Title: Transnave-Navconsa Joint Service Agreement.

Parties:

Transportes Navieros Ecuatorianos
Naviera Consolidada, S.A.

Synopsis: The proposed agreement would establish a joint service between the parties in the trade between U.S. Gulf and Florida ports, and inland points via such ports, and ports and points in Mexico, Costa Rica, Panama and Ecuador. The service would operate under the trade name of Gran Golfo Express.

Agreement No.: 232–011175

Title: American Transport Line, Ltd.,/Senator Linie GmbH & Co., KG, (Senator) Space Charter Agreement.

Parties:

American Transport Line, Ltd.
Senator Linie GmbH & Co., KG, (Senator)

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels, to rationalize sailings and to interchange equipment in the trade between U.S. East Coast ports and ports in North Europe. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 4, 1988.

[FR Doc. 88–5147 Filed 3–8–88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88–4]

Delhi Petroleum Pty. Limited v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Delhi Petroleum Pty. Limited ("Complainant") against U.S. Atlantic and Gulf/Australia-New Zealand Conference and Columbus Line, Inc. ("Respondents") was served March 3, 1988.

Complainant alleges that Respondents have violated sections 10(b)(1), 10(b)(6)(A), 10(b)(6)(E) and 10(b)(12), Shipping Act of 1984, 46 U.S.C. app. § 1709(b)(1), (b)(6)(A), (b)(6)(E) and (b)(12), and sections 14 and 15, Shipping Act, 1916, 46 U.S.C. app. sections 812 and 814 through the assessment of freight charges in excess of those lawfully applicable on a shipment of oilwell equipment and supplies moving from the Port of Houston, Texas U.S.A. to the Port of Brisbane, Australia.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 3, 1989, and the final decision of the Commission shall be issued by July 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88–5148 Filed 3–8–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 2, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)
OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

Report title: Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB Docket Number: 7100–0150.

Frequency: Monthly if needed.

Reporters: Households and individuals.

Annual reporting hours: 156.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a, 263, 1828(c), 1842, 1843, 4008, and 15 U.S.C. 1693b(a)]. No issues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

The survey provides the Federal Reserve with considerable flexibility in obtaining household-based information specifically tailored to the Federal Reserve's policy and regulatory and operational responsibilities.

Board of Governors of the Federal Reserve System, March 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–5063 Filed 3–8–88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notification listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Bank's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 24, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael W. Cahoone* or Sharon L. Cahoone, Cottonwood Falls, Kansas; to acquire an additional 38.38 percent of the voting shares of Elmdale Bancshares, Inc., Elmdale, Kansas, and thereby indirectly acquire The Peoples Exchange Bank, Elmdale, Kansas.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–5064 Filed 3–8–88; 8:45 am]

BILLING CODE 6210-01-M

Columbia Bancorp; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–4325) published at page 6202 of the issue for Tuesday, March 1, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Columbia Bancorp is revised to include the following:

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Columbia Bancorp*, Columbia, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of the Columbia Bank, Columbia, Maryland, a *de novo* bank.

Comments on this application must be received by March 24, 1988.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–5065 Filed 3–8–88; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bancorp et al.; Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 255.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence on or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Farmers National Bancorp*, Annapolis, Maryland; to engage *de novo* through its subsidiary Farmers National Mortgage Corporation, Annapolis, Maryland, in making residential mortgages and packaging them for resale in the secondary mortgage market, while retaining service processing rights pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Mortgage Banking Company, Peoria, Illinois, in marketing and servicing loans secured by mortgages or real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Independence Financial Corporation*, Bellvue, Nebraska; to engage *de novo* in mortgage banking activities through a subsidiary to be known as Standard State Mortgage Company, Independence, Missouri, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAffee.

Associate Secretary of the Board.

[FR Doc. 88–5066 Filed 3–8–88; 8:45 am]

BILLING CODE 6210–01–M

Guaranty Bancshares Corp., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to acquire Brant Leasing, Inc., Trevosc, Pennsylvania, and thereby engage in the leasing of personal property to commercial enterprises pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–5068 Filed 3–8–88; 8:45 am]

BILLING CODE 6210–01–M

The Royal Bank of Canada Montreal, Canada; Application To Engage in Various Securities Activities

The Royal Bank of Canada, Montreal, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a) (2) and (3)), to acquire Dominion Securities Corporation, New York, New York, and thereby engage in:

(1) Providing brokerage and investment advisory services to institutional customers and Company's affiliates on a combined basis;

(2) Providing advice in connection with mergers and acquisitions, divestitures, loan syndications, interest rate swaps, interest rate caps and similar transactions to unaffiliated financial and nonfinancial institutions; and

(3) Providing financial advice to the Canadian federal, provincial and municipal governments, such as with respect to the issuance of their securities in the U.S.

Applicant has also applied to engage in providing discount brokerage services to non-institutional customers together with related securities credit services pursuant to the Board's Regulation T (12 CFR Part 221) and incidental activities such as securities borrowing and lending; furnishing general economic information and advice, general economic statistical forecasting services and industry studies to institutional customers and Company's affiliates; providing portfolio investment advice and research to institutional customers and Company's affiliates; and underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335. The Board has previously found these latter activities to be generally permissible for bank holding companies. 12 CFR 225.25(b)(15), (4)(iv), 4(iii) and (16) respectively.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987) ("*Manufacturers Hanover*"). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n v. Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 56 U.S.L.W 3451 (U.S. Jan. 11, 1988) (No. 87–562). Applicant has proposed to conduct its brokerage activity in accordance with the limitations approved by the Board in *Manufacturers Hanover* except that, in this case, Applicant does not propose to have any officer or director interlocks with Company.

Applicant has also proposed to engage in providing advice in connection with financing transactions for unaffiliated financial and nonfinancial institutions, as previously approved by the Board in *Signet Banking Corpration*, 73 Federal Reserve Bulletin 59 (1987).

With regard to Applicant's proposed activity of providing financial advice to Canadian federal, provincial and municipal governments, the Board has previously approved providing financial advice to the Canadian federal and provincial governments. *Bank of Nova Scotia*, 74 Federal Reserve Bulletin _____ (Order dated February 12, 1988). Applicant contends that the proposed activity is virtually indistinguisable from the activities that the Board has previously approved. Moreover, Applicant states that Company has long-standing relationships with Canadian federal, provincial and municipal governments and has developed special expertise in advising such entities.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 25, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–5069 Filed 3–8–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Address for Meeting; National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems; Correction

ACTION: Notice of correction.

SUMMARY: The address for a meeting of the NCVHS Subcommittee on Medical Classification Systems 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, to be held in Washington, DC on March 21–22, 1988, was inadvertently omitted from the notice published in the **Federal Register** February 29, 1988, (53 FR 6036). The address for the meeting is Room 703–A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The dates and times for the meeting remain unchanged: March 21—9:00 a.m.–5:00 p.m.; March 22—8:30 a.m.–noon.

Dated: March 3, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–5123 Filed 3–8–88; 8:45 am]

BILLING CODE 4160–18–M

Address for Meeting; National Committee on Vital and Health Statistics (NCVHS) Work Group on Data Dissemination Issues; Correction

ACTION: Notice of correction.

SUMMARY: The address for a meeting of the NCVHS Work Group on Data Dissemination Issues established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, to be held in Washington, DC on March 28–29, 1988, was inadvertently omitted from the notice published in the **Federal Register** March 3, 1988 (53 FR 6873). The address for the meeting is Room 337–A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The dates and times for the meeting remain unchanged: March 28—9:00 a.m.–5:00 p.m.; March 29—9:00 a.m.–noon.

Dated: March 3, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–5122 Filed 3–8–88; 8:45 am]

BILLING CODE BILLING CODE 4160–18–M

Food and Drug Administration

[Docket Nos. 87P–0214/CP through 87P–0214/CP0013]

Magnetic Resonance Diagnostic Device; Panel Recommendation and Report on Petitions for MR Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Radiologic Devices Panel (the Panel) that FDA reclassify the magnetic resonance diagnostic device from class III (premarket approval) into class II (performance standards). The Panel made this recommendation after review of reclassification petitions filed by 13 manufacturers. FDA is also issuing for public comment its tentative findings on the recommendation. After reviewing any public comment on the recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petitions by order in the form of a letter to each petitioner. FDA's decision on these reclassification petitions will be announced in the **Federal Register**

DATE: Comments by May 9, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On June 18, 1987, FDA filed reclassification petitions submitted by the 13 manufacturers below. Twelve manufacturers requested reclassification of the magnetic resonance diagnostic device from class III into class II and one requested reclassification into class I. The petitions were submitted under section 513(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f) and 21 CFR 860.120).

Petitioner	Model
Advanced NMR Systems, Inc.	Instascan.
Bruker Medical Instruments.	Tomikon BMT-1100.
Diasonics MRI Division	Diasonics MT/S.
Fonar Corp.	Beta-3000, Beta-3000M.
General Electric Co	Signa.
Instrumentarium	ULF MR Imaging System.
NMR Imaging, Inc	PermaScan.
Philips Medical Systems	Gyroscan R, Gyroscan S5, Gyroscan S15, Gyroscan S20.
Picker International, Inc.	Vista MR 1100, Vista MR 2055, Vista MR 2055 HP.
Resonex, Inc.	Rx–4000.
Siemens Medical Systems, Inc.	Magnetom M, Magnetom H.
Stuart Medical, Inc.	MD800–1A.
Thomson-CGR Medical Corp.	Magniscan 5000.

The versions of the generic type of device (magnetic resonance diagnostic device) listed above are automatically classified into class III under section 513(f)(1) of the act because they are not preamendments devices (i.e., devices which were in commercial distribution before May 28, 1976), and they are neither substantially equivalent to a preamendments device, nor substantially equivalent to any postamendments device (i.e., a device that has been placed in commercial distribution since May 28, 1976) which subsequently has been reclassified to class II or class I.

Section 513(f)(2) of the act provides that the manufacturer or importer of a device classified into class III under section 513(f)(1) of the act may file a petition for reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for filing and review of a petition for reclassification of such class III devices. For the purpose of reclassification of the magnetic resonance diagnostic device, it is necessary to show that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred the reclassification petitions to the Panel and on July 27, 1987, during an open public meeting, the Panel recommended that FDA reclassify the magnetic resonance diagnostic device from class III into class II, and that it be assigned a low priority for the establishment of a performance standard for the device. The Panel's recommendation appears as part II below.

I. Device History and Description

Laboratory magnetic resonance instruments have been routinely used since the early 1950's by chemists and physicists to study the molecular structure and dynamics of small homogeneous specimens (Ref. 1). The basic scientific principles of nuclear magnetic resonance were scientifically established well before devices using these same principles were developed for use on humans to obtain medical diagnostic information.

The fundamental scientific technology of magnetic resonance diagnostic devices is the phenomenom of magnetic resonance whereby certain nuclei when placed in a magnetic field experience a resonance condition and can absorb and emit energy at well-defined frequencies. In 1946, Felix Block and Edward Purcell first demonstrated the nuclear magnetic resonance principle, and they jointly received the Nobel Prize for Physics in 1952 for their discoveries. In 1971 Raymond Damadian of the State University of New York, Brooklyn, proposed use of measured magnetic relaxation times to discriminate between malignant tumors and normal tissue. In 1973, Paul Lauterbur of the State University of New York, Stony Brook, proposed using the basic principles of tomography to form a two- or three-dimensional magnetic resonance image. Since that time, a variety of other imaging and spectroscopic techniques have been used with the device.

As described by the Panel (part II, below), the magnetic resonance diagnostic device presents images or nuclear magnetic resonance parameters of the human body such as density or flow of resonant nuclei, relaxation times T1 and T2, and chemical shift. Electromagnetic signals are acquired from the body using nuclear magnetic resonance phenomena with a static magnetic field, gradient magnetic fields,and radiofrequency magnetic fields. Computers process this information and present an image, a spectrum, or localized nuclear magnetic resonance parameter data. Various imaging techniques and spectroscopy acquisition protocols are used.

The device consists of a main magnet system, magnetic gradient coil assemblies, radio frequency coil assemblies, associated power supplies, filters, amplifiers, signal analysis, display, recording, storage, and communication equipment, patient support and positioning equipment, as well as physiological motion gating and compensating devices and accessories. The main (static) magnetic field is generated by either a permanent magnet, a resistive magnet, or superconducting magnet. The systems subject to the petitions may include radiofrequency coils for use on the whole body, head, and various surfaces.

II. Recommendation of the Panel

At its meeting on July 27, 1987, the Panel considered petitions submitted by the following 13 manufacturers of magnetic resonance diagnostic devices: Advanced NMR Systems, Inc., Bruker Medical Instruments, Diasonics MRI Division, Fonar Corp., General Electric Co., Instrumentarium, NMR Imaging, Inc., Philips Medical Systems, Picker International, Inc., Resonex, Inc., Siemens Medical Systems, Inc., Stuart Medical, Inc., and Thomson-CGR Medical Corp.

Twelve of the petitioners requested reclassification of the magnetic resonance diagnostic device from class III into class II, and one requested reclassification into class I. The Panel was asked to: (1) Identify risks to health posed by the devices, (2) determine which class could reduce these risks, (3) decide whether or not to recommend reclassification, and (4) if reclassification to class II is recommended, recommend the priority for development of a performance standard. After considering the petitions and answering the questions posed to it, the Panel recommends that the magnetic resonance diagnostic device be reclassified from class III to class II and that FDA assign a low priority to development of a performance standard for the device.

III. Scope of the Panel's Recommendation

The reclassification covers the 20 petitioned models of the device and all devices substantially equivalent to them.

The magnetic resonance diagnostic device presents images which reflect the spatial distribution, and magnetic resonance spectra which reflect the frequency distribution, of nuclei exhibiting nuclear magnetic resonance. Other physical parameters derived from the images and spectra may also be produced. The functions of the device for which reclassification is requested include hydrogen-1 (proton) imaging, sodium-23 imaging, hydrogen-1 spectroscopy, phosphorus-31 spectroscopy, and chemical shift imaging (preserving simultaneous frequency and spatial information).

The magnetic resonance diagnostic devices for which reclassification is recommended meet the following exposure characteristics: (1) The head or trunk of a patient is exposed to static magnetic fields insufficient to produce significant adverse effect; (2) the patient is exposed to time-varying magnetic fields insufficient to produce peripheral nerve stimulation or other adverse effects; (3) the patient is exposed to radiofrequency magnetic fields insufficient to produce a core temperature increase in excess of 1°C and localized heating to greater than 38°C in the head, 39°C in the trunk, and 40°C in the extremities, or other adverse effect. A device which meets these characteristics and is accompanied by adequate labeling (Ref. 2) is expected to be safe and effective.

IV. Summary of the Panel's Reasons for the Recommendation

The panel recommends reclassification from class III into class II of the magnetic resonance diagnostic device for the following reasons:

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

2. There is sufficient publicly available information to demonstrate that the risks to health have been determined for the magnetic resonance diagnostic devices for which reclassification has been requested. The relationships between the device's safety and performance parameters and risks have been established by valid scientific evidence, and there is sufficient publicly available information to establish a performance standard to control the device's safety and effectiveness.

The Panel recommended that FDA assign a low priority to the establishment of a performance standard for the generic type of device under section 514 of the act (21 U.S.C. 360(d)). The Panel believes the quality of the data in the petitions was sufficiently strong in describing the safety and effectiveness of the devices subject to the petitions, so that assigning a low priority for standards development is appropriate. All currently marketed magnetic resonance diagnostic devices have undergone premarket approval, and as a result there is a reasonable assurance of the device's safety and effectiveness. Additionally, devices subject to the petitions but not currently marketed are supported by substantial amounts of valid scientific evidence describing device safety and effectiveness.

The Panel based its recommendation for reclassification of the generic type of device on data in the petitions (Refs. 3 to 15) and additional valid scientific data presented to the Panel during its open meeting held on July 27, 1987 (Refs. 16 and 17). In sum, the Panel believes that premarket approval of the generic type of device is unnecessary to provide reasonable assurance of the device's safety and effectiveness, and that lesser controls can be expected to assure safety and effectiveness of the device.

V. The Panel's View of Device Related Risks and Benefits

A. Risks to Health

Risks to health identified in the petitions include: (1) Adverse effects of whole or partial body exposure to the static magnetic field, (2) adverse effects of exposure to time-varying magnetic fields, (3) adverse effects of absorption of energy from radiofrequency magnetic fields, (4) hazards from high acoustic noise levels, (5) hazards from laser beams, (6) electrical and mechanical hazards, (7) insufficient image or spectral quality resulting in reduced clinical utility, and (8) other potential hazards addressed by labeling.

Sufficient publicly available information exists to write a performance standard for the magnetic resonance diagnostic device to obviate these concerns.

B. Benefits

In the past few years, magnetic resonance imaging of hydrogen protons has become a well-established diagnostic technique. Its clinical uses are particularly numerous for the diagnostic evaluation of disorders of the head, spine, and central nervous system (Ref. 18). Because of the abundance of hydrogen protons in water throughout the body, the technique is useful for imaging all major organ systems and tissues (Ref. 19). Since sodium is one of the more abundant elements in the body, it is used to image many different anatomical sites. Sodium imaging is of clinical relevance due to the correlation of relative sodium concentrations in extra- and intracellular space as a function of disease or trauma (Ref. 20). Hydrogen proton spectroscopy is used in detection of ischemia, investigating metabolic pathways and kinetics, and cancer detection (Ref. 21). Phosphorus-31 spectroscopy is used to study normal energy metabolism in tissue, to describe diseased tissue energy metabolism, and to better understand and diagnose diseases (Ref. 22). In sum, use of the magnetic reasonance diagnostic device allows, with minimal risk, access to diagnostic information not available by any imaging techniques.

VI. Summary of Data Upon Which the Panel Recommendation is Based

The Panel considered a number of potential concerns regarding the safe and effective operation of a magnetic resonance diagnostic device. The following identifies the Panel's concerns and its determination, based on data, that a standard and general controls can provide a reasonable assurance of safety and effectiveness:

1. The static magnetic field produced by the main magnet determines the resonant radiofrequency of the nuclei of interest. Available literature indicates a consensus that no adverse effects are expected from whole body exposure or exposure of the head to magnetic fields with strength of 2 tesla or less for a period of 1 hour or less (Ref. 16). Many thousands of patients have been exposed to 2 tesla or less static magnetic fields with no adverse effects. A standard could be written to limit the static field to a level less than that which would produce significant biological hazard.

2. Time-varying magnetic fields (dB/dt) occur during switching of the magnetic gradients used for spatial localization of the acquired NMR signal. Circulating currents in biological systems may be induced, causing peripheral nerve stimulation. This risk can be reduced by limiting patient exposure to time-varying magnetic fields with strengths significantly less than those required to produce peripheral nerve stimulation (Refs. 3–18). Many thousands of patients have been exposed to such limited strength time-varying magnetic fields without exhibiting deleterious effects attributable to these fields. A standard could be written to limit the time-varying magnetic fields to levels less than those that would produce significant biological hazard.

3. Radiofrequency magnetic fields occur at the resonant frequency of the nuclei of interest. Radiofrequency energy absorption in the patient may cause systemic thermal overload and local thermal injury. Limiting that thermal increase to a rise in a patient's core body temperature of less than 1 °C controls this risk (Ref. 16). Standards could be written to adequately address this risk. In addition, radiofrequency power deposition may cause heating around metallic implants, tattoos, or permanent eyeliner. These risks can be controlled by placing appropriate warnings in the labeling.

4. High acoustic noise levels may be generated upon pulsing of the electrical current energizing the gradient coils.

Acoustic noise may be annoying, cause discomfort, or beyond certain levels be hazardous (Ref. 23). These risks can be reduced by following a standard which limits acoustic noise to levels below the occupational limits recommended by the American Conference of Governmental Industrial Hygienists for exposures of up to 1 hour per day (Ref. 24), or below the permissible time-averaged and peak noise exposure given by the Occupational Safety and Health Association (Ref. 23).

5. A laser system may be used in patient positioning. A laser has the potential for causing permanent eye injury, although no such injury has been reported. The lasers, which are considered electronic products capable of producing a beam of low power visible light radiation, meet power output limits of the Federal performance standard for class II laser products under the Radiation Control for Health and Safety Act of 1968.

6. Potential electrical and mechanical hazards can be controlled by a standard that requires that devices have adequate design specifications and adherence to good design practices.

7. Reduced clinical utility may result from insufficient image or spectral quality. Sufficient information, included in the petitions (refs. 3–15), exists to write a performance standard for image quality and spectroscopy performance measures. Indeed, the petitions referenced draft standards developed by the National Electrical Manufacturers Association that specifically address image quality measures, including signal-to-noise ratio, geometric distortion, uniformity, and slice thickness and spacing (Ref. 25), and spectroscopy performance measures, including spectral resolution, spectral calibration and labeling, and localization (Ref. 26), which could be used in writing a performance standard.

8. Concerns addressed by labeling (Ref. 2):

a. The field near the magnet, that is, the fringe field, may be strong enough to attract ferromagnetic objects such as tools with great force, causing a collision. This potentially hazardous situation can be controlled by placing warning statements in the labeling, such as warnings to restrict access to only authorized personnel, and requiring in-place procedures for emergency services of patients in areas where the fringe field is weaker. The field in or near the magnet may fatally interfere with the operation of devices such as cardiac pacemakers. This risk can be controlled by placing contraindications in the labeling prohibiting use of the magnetic resonance diagnostic device on patients with these devices. The static magnetic field may move or dislodge ferromagnetic materials within the patient's body, such as interacranial aneurysm clips, shrapnel fragments, and prostheses constructed of ferromagnetic material, which could cause life-threatening situations. The risk can be controlled by placing contraindications in the labeling against scanning patients with intracranial aneurysm clips or warning of the risk of scanning patients with other implanted ferromagnetic material.

b. Special concerns arise when scanning fetuses or infants who are particularly susceptible to thermal overload and require careful monitoring for signs of cardiocirculatory and respiratory distress. The risk can be controlled by placing appropriate warnings in the labeling.

c. Liquid helium and nitrogen cryogens are used to cool the superconducting wire in a superconducting magnet. Some boiloff of the gases occurs during normal operation. If the magnet quenches, the boiloff rate of the cryogens will increase, and gas could suddenly be released into the room causing asphyxiation of site personnel or patients. Labeling can describe proper venting of the system to ensure safety should this problem occur.

d. Due to the configuration of the system and the length of the exam, some patients become claustrophobic. Labeling to include a precautions section addressing the scanning of patients who are likely to develop claustrophobic reactions controls this risk.

e. Operator quality assurance tests and routine preventive maintenance procedures are required in the device labeling. These routine checks and maintenance procedures assist in optimizing image or spectral quality.

References

The petitions, the transcript of the Panel meeting, and the following material are on public file in the Dockets Management Branch (address above), where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Andrew, E. R., *Nuclear Magnetic Resonance*, Cambridge University Press, Cambridge, 1955.

2. Draft of magnetic resonance diagnostic device labeling, September 1987.

3. Reclassification petition from General Electronic Company, 87P-0214/CP.

4. Reclassification petition from Bruker Medical Instruments, 87P-0214/CP0002.

5. Reclassification petition from Stuart Medical, Inc., 87P-0214/CP0003.

6. Reclassification Petition from Siemens Medical Systems, Inc., 87P-0214/CP0004.

7. Reclassification petition from Diasonics MRI Division, 87P-0214/CP0005.

8. Reclassification petition from Fonar Corp., 87P-0214/CP0006.

9. Reclassification petition from Philips Medical Systems, 87P-0214/CP0007.

10. Reclassification petition from NMR Imaging, Inc., 87P-0214/CP0008.

11. Reclassification petition from Thomson-CGR Medical Corp., 87P-0214/CP0009.

12. Reclassification petition from Instrumentarium, 87P-0214/CP00010.

13. Reclassification petition from Resonex, Inc., 87P-0214/CP0011.

14. Reclassification petition from Picker International, 87P-0214/CP0012.

15. Reclassification petition from Advanced NMR Systems, Inc., 87P-0214/CP0013.

16. Czerski, P., and T. W. Athey, "Safety of Magnetic Resonance In Vivo Diagnostic Examinations: Theoretical and Clinical Considerations," presented July 27, 1987.

17. Reilly, J. Patrick, "Peripheral Stimulation by Pulsatile Currents: Applications to Time-Varying Magnetic Field Exposure," Report MT 87–100, June 1987.

18. Kressel, Herbert Y., editor, *Magnetic Resonance Annual* 1987, Raven Press, New York, 1987.

19. ACR Commission on MRI, "Clinical Applications of Magnetic Resonance," November 1985.

20. Perman, William H.; Patrick A. Turski; Lanning W. Houston; Gary H. Glover; and Cecil E. Hayes, "Methodology of in Vivo Human Sodium MR Imaging at 1.5 T," Radiology, 160: 811–820, 1986.

21. Layten, P.R. and J.A. den Hollander, "1H–1 MR Observation of Metabolites in Human Tissues In Situ," presented at the Society of Magnetic Resonance in Medicine, fifth annual meeting, Montreal, August 18 to 22, 1986.

22. Radda, George K., "The Use of NMR Spectroscopy for the Understanding of Disease," *Science*, 233: 640–645, 1986.

23. Occupational Safety and Health (OSHA) 1910.95, "Occupational Noise Exposure."

24. American Conference of Governmental Industrial Hygienists, "TLVs, Threshold Limit Values for Chemical Substances in the Work Environment, Adopted by ACGIH for 1983–84, Noise and Impulsive or Impact Noise," pp. 80–82.

25. National Electrical Manufacturers Association (NEMA) draft of performance standards, "Determination of Signal-to-Noise Ratio in Diagnostic Magnetic Resonance Imaging," "Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Imaging," "Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging," and "Determination of Uniformity in Diagnostic Magnetic Resonance Imaging," 1987.

26. National Electrical Manufacturers Association, draft document of "Measurement Methods for MR Spectroscopy," 1987.

FDA's Tentative Findings

FDA tentatively agrees with the Panel's recommendation that the magnetic resonance diagnostic device described in the petitions be reclassified from class III into class II and that it be assigned a low priority for the establishment of a performance standard for the device.

Economic Considerations

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition would not have a significant economic impact on a substantial number of small entities. However, it may permit small potential competitors to enter the marketplace by lowering the barriers to entry. The petitioners and all future manufacturers of the reclassified magnetic resonance diagnostic devices would be relieved of the costs of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360(e)). There are no offsetting costs that the petitioners would incur from reclassification into class II other than those associated with meeting a standard once established. The actual cost of complying with a standard cannot be determined until the standard is developed. The magnitude of the economic savings from approval of this petition depends on the extent of the studies that the petitioners would have conducted in support of new premarket approval applications or supplements to existing premarket approval applications, and the number of future competitors satisfying the requirements of premarket approval. None of these parameters can be reliably calculated to permit quantification of the economic savings. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulations (21 CFR 860.134(b)(5), FDA is required to publish this notice in the **Federal Register** as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the **Federal Register** this notice without clearance of the Director, Office of Management and Budget. FDA will notify that office of the publication of this notice.

Interested persons may, on or before May 9, 1988, submit to the Dockets Management Branch (address above) written comments on this recommendation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated February 27, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–5116 Filed 3–8–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit; Texas A&M University et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT–725379]

Applicant: Texas A & M University, College Station, TX

The applicant requests a permit to import 150 blood samples collected from captive Kemp's (=Atlantic) Ridley sea turtles (*Lepidochelys kempii*) at the Cayman Turtle Farm Ltd., Grand Caymen Islands, British West Indies for the purpose of continuing ongoing reproductive physiology and behavior studies.

[PRT–725518]

Applicant: Ralph V. Smith, Calimesa, CA

The applicant requests a permit to import eight pairs of scarlet-chested (splendid) parakeets (*Neophema splendida*) and eight pairs of turquoise parakeets (*Neophema pulchella*) from Mr. L. Lemmens, Putte, Belgium, for the purpose of enhancement of propagation of the species.

[PRT–725432]

Applicant: Rare Feline Breeding Center, Center Hill, FL

The applicant request a permit to export one male and one female captive born clouded leopard (*Neofelis nebulosa*) to the Zurich Zoo, Zurich, Switzerland for the purposes of propagation of the species and exhibition.

[PRT–724393]

Applicant: Circo Tihany San Angel, Mexico

The applicant requests a permit to impurt and reexport one pair of tigers (*Panthera tigris*), one male leopard (*P. pardus*), two male and one female chimpanzees (*Pan troglodytes*) and one pair of orangutans (*Pong pygmaeus*) for exhibition in the United States. All of the animals were born in captivity in Mexico. Conservation education will be provided for each of the above-listed species when they are on display in the U.S.

[PRT–725825]

Applicant: Ringling Brothers-Barum Bailey Circus, Washington, DC

The applicant requests a permit to import three male tigers, one female tiger (*Panthera tigris*) and two female leopards (*Panthera pardus*) born in captivity in Switzerland for Switzerland for the purpose of exhibition in a manner designed to educate the public about the ecological role and conservation needs of the species.

Documents and other information submitted with these applications are availble to the public during normal business hours (7:45 am to 4:15 pm) Room 400, 1375 K Street, NW., Washington, DC 20005, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Mangement Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by sumbitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: March 4, 1988.

Larry LaRochelle,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–5175 Filed 3–8–88; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

March 1, 1988.

The plat of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. April 15, 1988.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North (south boundary, T. 41 N., R. 12 W.), the survey of Private Land Claims, and a Public Land Tract, and the independent resurvey of the east boundary, T. 40 N., R. 12 W., New Mexico Principal

Meridian, Colorado, Group No. 738, was accepted June 20, 1988.

These surveys were expected to meet certain administrative needs of the U.S. Forest Service.

The protraction diagram of the following described townships will be filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado effective 10:00 a.m. April 15, 1988.

Protraction Diagram No. 47, prepared to delineate the remaining unsurveyed public lands in T. 40 N., R. 11 W., T. 39 N., R. 12 W., and T. 40 N., R. 12 W., New Mexico Principal Meridian, Colorado was approved August 20, 1986.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-5171 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

Revision of Park Boundary; Allegheny Portage Railroad National Historic Site

AGENCY: National Park Service, Allegheny Portage Railroad National Historic Site.

ACTION: Notice of revision of park boundary.

Pursuant to section 307(a) of the Act of November 10, 1978 (92 Stat. 3467), the Park boundary was designated by publication of a Notice in the **Federal Register**, Vol. 45, No. 189, Friday, September 26, 1980 to include the lands depicted on boundary map numbered 423/80,008A dated July 1980.

Public Law 95-42 (91 Stat. 211) dated June 10, 1977 provides that the Secretary may make boundary changes to an area whenever he determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of such an area.

SUMMARY: Pursuant to Pub. L. 95-42, 16 U.S.C. section 460l-9(c), notice is given that the boundary of Allegheny Portage Railroad National Historic Site has been revised in the areas of Incline No. 8, Incline No. 9 and Incline No. 10 to include an addition of approximately 130 acres of abandoned railroad right-of-way. This area contains significant physical remains original to the Portage Railroad which were mentioned in the enabling legislation for the park.

SUPPLEMENTARY INFORMATION: Boundary Map numbered 423/80,008A dated July 1980, as above, attempted to portray the boundaries of all the separate units comprising Allegheny Portage Railroad National Historic Site. This map was too imprecise to correctly define these areas.

Therefore, notice is hereby given that the boundary of the Allegeny Portage Railroad National Historic Site has been revised in the areas as above, pursuant to Pub. L. 95-42, and to clarify the area of the Staple Bend Tunnel Area to contain the lands as depicted on boundary map numbered 423/80,010 dated September 1986.

The map is on file and available for inspection in the administrative office of the Allegheny Portage Railroad National Historic Site, P.O. Box 247, Cresson, Pennsylvania, 16630; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240.

Dated: December 31, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlcnic Region.

EDITORIAL NOTE: This document was received at the Office of the Federal Register March 4, 1988.

[FR Doc. 88-5149 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Potomac Greens Development; Intent To Prepare an Environmental Impact Statement

The National Park Service, by legislative mandate, intends to prepare and transmit to the Congress by March 5, 1989, an Environmental Impact Statement which shall review the traffic impact of only the proposed 38-acre Potomac Greens development opposite Daingerfield Island west of the George Washington Memorial Parkway, provided further that the National Park Service shall also review the impact of the development on the visual, recreational and historical integrity of the Parkway.

The Environmental Impact Statement shall also provide an evaluation of alternative acquisition strategies to include but not be limited to appraisal estimates for the access rights, the entire 38-acre parcel, that portion of the 38-acre parcel as defined approximately by the historic district boundary line, and any other recommendations by the National Park Service to mitigate the Parkway degradation effects of the proposed development so as to adequately protect and preserve the Parkway.

In order to provide the opportunity for public participation, a public meeting will be held on Wednesday, March 30, at the Potomac Landing Restaurant, Daingerfield Island, Alexandria, at 7:00 p.m., at which time public comments on the scope of the Environmental Impact Statement will be solicited.

Any questions on this matter may be addressed to Mr. Albert J. Benjamin, Office of Land Use Coordination, National Park Service, National Capital Region, 100 Ohio Drive SW., Washington, DC 20242, telephone: 202/426-6715.

Date: March 3, 1988.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 88-5135 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission of the Gates of the Arctic National Park; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The National Park Service announces an upcoming meeting of the Subsistence Resource Commission of the Gates of the Arctic National Park. The following items will be discussed:

(1) Review of minutes from last meeting.

(2) Review of status of subsistence hunting plan.

(3) Review of Anaktuvuk Pass/National Park Service land exchange proposal.

(4) Review of 1988 park plans and activities.

(5) Any new business.

DATES:

March 17, 1988 (Thursday) 9 a.m. to 5 p.m.

March 18, 1988 (Friday) 9 a.m. to 1 p.m. or until adjournment.

Public comment March 17, 4 p.m. to adjournment.

ADDRESS: Meetings will be held at the Polaris Hotel, 427 First Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger J. Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707, telephone (907) 456-0350 in Fairbanks or (907) 692-5494 in Bettles, Alaska.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized by § 808 of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), and operate in accordance with the provisions of the Federal Advisory Committee Act.

Richard J. Stenmark,

Acting Regional Director.

[FR Doc. 88-5177 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

3.5 Inch Microdisks and Media Therefor From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-389 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of unrecorded flexible magnetic disk recording media, with or without protective covering, for ultimate use in recording and storing data with a 3.5" floppy disk drive, provided for in item 724.45 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days or in this case by April 11, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 26, 1988.

FOR FURTHER INFORMATION CONTACT: Jennifer Hinshaw (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contract the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 26, 1988, by Verbatim Corp., Charlotte, North Carolina.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 21, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contract Jennifer Hinshaw (202-252-1179) not later than March 15, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before March 23, 1988, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of §201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason

Secretary.

Issued: March 2, 1988.

[FR Doc. 88-5176 Filed 3-8-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276]

Certain Programmable Digital Clock Thermostats; Commission Decision Not To Review Initial Determination Terminating Investigation as to One Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent Hunter-Melnor, Inc. on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 4) issued by the presiding administrative law judge (ALJ) terminating respondent Hunter-Melnor, Inc. from the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: George W. Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 252-1090.

SUPPLEMENTARY INFORMATION: On February 4, 1988, the presiding ALJ issued an ID terminating the investigation with respect to Hunter-Melnor, Inc. The ID granted the joint motion of complainant Emerson Electric Co. and Hunter-Melnor, Inc. to terminate the investigation with respect to Hunter-Melnor on the basis of a settlement agreement. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 2, 1988.

[FR Doc. 88–5178 Filed 3–8–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–274]

Certain Toggle Clamps for Clamping, Fixturing, Processing, and Original Equipment Manufacturing; Commission Decision Not To Review Initial Determination Terminating the Investigation as to all Respondents and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to all respondents; termination of investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting motions to terminate the investigation as to all respondents on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202–252–1087.

SUPPLEMENTARY INFORMATION: On August 10, 1987, the Commission instituted the instant investigation on the basis of a complaint filed by DE–STA–CO Division, Dover Corporation ("DE–STA–CO") alleging a violation of section 337(a) (19 U.S.C. 1337(a)) in the importation and sale of certain toggle clamps for clamping, fixturing, processing, and original equipment manufacturing by reason of (1) infringement of complainant's federally registered trademarks; (2) common law passing off; (3) infringement of common law trademark; (4) failure to design the country of origin; and (5) misappropriation of trade dress. 52 FR 31097 (Aug. 19, 1987). An investigation was instituted naming as respondents Tai-Wu Industry Co., Ltd. ("Tau-Wu"), Good Hand Enterprises Co. ("Good Hand"), All American Products Co. ("All American"), and Material Supply International, Inc. ("MSI").

On January 19, 1988, complainant filed a motion (Motion No. 274–11) to terminate the investigation as to Tai-Wu on the basis of a settlement agreement. On January 21, 1988, complainant and respondents Good Hand and MSI filed a joint motion (Motion No. 274–13) to terminate the investigation as to Good Hand and MSI on the basis of a settlement agreement. On January 25, 1988, complainant and All American filed a joint motion (Motion No. 274–14) to terminate the investigation as to All American on the basis of a settlement agreement. The Commission investigative attorney filed public interest statements supporting said motions to terminate the investigation.

On February 5, 1988, the presiding administrative law judge issue an initial determination (ID) (Order No. 6) granting the motions to terminate the investigation as to all respondents on the basis of the settlement agreements. No petitions for review or public or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.A. 1337) and Commission Rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 1, 1988.

[FR Doc. 88–5179 Filed 3–8–88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Air Products and Chemicals et al.

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on February 24, 1988, a proposed consent decree in *United States* v. *Air Products and Chemicals, et al.*, Civil Action No. JH–88–365 was lodged with the United States District Court for the District of Maryland.

The proposed consent decree requires the defendants to implement the first phase of remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at the Maryland Sand, Gravel and Stone Site, Cecil County, Maryland. The first phase of the remedy, to be conducted by the defendants, will focus on site security, drum removal, and shallow groundwater contamination. The decree also requires defendants to pay a small portion of the past costs incurred by EPA in connection with the site. The parties to the consent decree are the United States and all defendants named in *United States* v. *Air Products and Chemicals, Inc., et al.*, Civil Action No. JH–88–365, filed on February 24, 1988 in the United States District Court for the District of Maryland.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 2050, and should refer to *United States* v. *Air Products and Chemicals, et al.*, DJ Ref. 90–11–2–225.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, 8th Floor, U.S. Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–5074 Filed 3–8–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the third meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on March 24 and 25, 1988 at the Holiday Inn Westport, 1973 Craigshire, St. Louis, Missouri 63146; phone (314) 434–0100.

This nine-member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

The agenda for this meeting will include presentations by a group of health researchers. These presentations will examine the results of the studies on the chemical and physical nature of diesel emissions, health effects of diesel emissions in laboratory animals, and the potential risk from human exposure to diesel emissions. At this meeting, the Committee will begin to discuss the potential health effects of diesel emissions on underground coal miners, and how diesel emissions may be monitored and controlled in the underground coal mining environment.

Official records of the meeting will be available for public inspection at the Office of Technical Support, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 913A, Arlington, Virginia 22203; phone (703) 235–1570.

Signed at Arlington, Virginia this 4th day of March 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–5231 Filed 3–8–88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMUNICATIONS SYSTEM

High Frequency Radio Automatic Link Establishment Subcommittee; Meeting

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303 (303) 497–3723.

High Frequency (HF) Radio Automatic Link Establishment Committee, Federal Telecommunications Standards Committee; Open Meeting.

A meeting of the HF Radio Automatic Link Establishment (ALE) Subcommittee will be held April 15, 1988, 9:30 AM to 3:30 PM, Mitre Corp., Hayes Building, Conference Rooms A and B, 7525 Colshire Drive, McLean, VA. The HF Radio Automatic Link Establishment Subcommittee was formed to develop a proposed Federal Standard (pFS 1045) defining the technical requirements for design of adaptive high frequency (HF) radios which employ ALE techniques.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of the Statement of Requirements.
3. Presentation of comments by organizations represented.

This meeting will be for the benefit of those who are interested in the development of this standard. A statement of requirements (SOR), drafted by the SOR Working Group will be presented at this meeting. A copy of the SOR is available upon request. Those wishing to attend must call the Chairman, Robert T. Adair, by April 8, 1988, for authorization to attend. Each organization will be allowed 20 minutes to present pertinent information to the subcommittee. Attendance will be limited to two (2) representatives per organization. Written statements and comments may be submitted before or after the meeting.

For further information, or copies of the minutes of this meeting, please call: Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303 (303) 497–3723.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 88–5172 Filed 3–8–88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 16, 1988 through February 26, 1988. The last biweekly notice was published on February 24, 1988 (53 FR 5484).

BEST COPY AVAILABLE

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment requests is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Comission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions whch are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which statisfies these requirements with respect to a least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place before the issuance of any amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: January 21, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification 3.4.8.3, relating to the operability of the Overpressure Protection Systems. This Specification requires that the overpressure protection system for the reactor coolant system (RCS) be operable whenever the RCS is cooling down and is below 255°F, or is heating up and is below 295°F, to assure that the pressure-temperature (P–T) limits of the reactor vessel are not exceeded. The proposed change would add a footnote to the heatup portion of the specification which would allow a heatup rate of 10°F/hour or less without overpressure protection provided that the RCS temperature is between 255°F and 295°F.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed change, as it related to these standards is presented below.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Figure 3.4–2 in Technical Specification 3/4.4.8 provides pressure-temperature (P–T) limit curves for various heatup rates of the RCS. The proposed change to Technical Specification 3.4.8.3, to permit a heatup rate of 10°F/hour for RCS temperatures between 255°F and 295°F, is within the acceptable range of Figure 3.4–2. Therefore, the proposed change does not increase the probability or consequences of any accident previously considered.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change only affects the need to have the overpressure protection system operable during heatup of the RCS when the temperature is between 255°F and 295°F. The proposed change is in conformance with the acceptable P–T limits and allowable heatup rates currently in Figure 3.4–2 of the Technical Specifications. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety since the change is in conformance with the current P–T limits of Figure 3.4–2 in the Technical Specifications.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: February 2, 1988.

Description of amendment request: The proposed amendment would clarify the surveillance requirements for the waste gas holdup system in Technical Specification 3.11.2.5 to be consistent with the operability requirements specified for that system in Technical Specification 3.3.3.8. The proposed change would also make Specification 3.11.2.5 consistent with Technical Specification 3.11.2.5 previously approved by the staff for Palo Verde Units 2 and 3.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance for determining whether a proposed amendment to an operating license for a facility involves a significant hazards consideration and has provided examples of amendments that are not likely to involve a significant hazards consideration (51 FR 7751). Example (i) in 51 FR 7751 is as follows: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

The staff considers the proposed amendment to be similar to example (i) since it involves a clarification to achieve consistency in the Technical Specifications.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Description of amendment request: The proposed amendment would change Sections 2.1.2, 3.1.4.3 and 3.2.3.1 and Table 3.2.3.2–1 of the Brunswick Steam Electric Plant (BSEP), Unit 2 Technical Specifications (TS). The purpose of this amendment is to incorporate revised Minimum Critical Power Ratio (MCPR) fuel cladding integrity safety limit and associated operating limit MCPR values for the operation of BSEP, Unit 2 during Fuel Cycle 8.

Proposed Change 1:

Currently, BSEP, Unit 2 TS 2.1.2 and 3.1.4.3 reference the use of a safety limit MCPR value of 1.07. The proposed amendment would change the safety limit MCPR value from 1.07 to 1.04.

Proposed Change 2:

Currently, BSEP, Unit 2 TS 3/4.2.3 and TS Table 3.2.3.2–1 specify operating limit MCPR values based on the safety limit MCPR limit of 1.07. The proposed amendment would adjust the MCPR operating limits to be consistent with the revised MCPR value of 1.04.

Safety limits are established to protect the integrity of the fuel cladding during normal operations and anticipated plant transients. The fuel cladding integrity safety limit is defined as the critical power ratio in the limiting fuel assembly for which more than 99.9% of the fuel rods in the core are expected to avoid boiling transition, considering the power distribution within the core and all uncertainties. This limit is set such that no fuel damage is calculated to occur if the limit is not violated. The operating limit MCPR values are established for each cycle, based on the safety limit MCPR and the changes in critical power ratio projected to occur during anticipated transients, using approved methodologies. The transients which produce the largest reduction in the critical power ratio are considered to be the most limiting and therefore require the greatest margin between the safety limit MCPR and the operating limit MCPR values.

The current MCPR fuel cladding integrity safety limit of 1.07 for reload cores was established in 1978. This safety limit was designed to provide a level of conservatism for establishing operating limit MCPR values, based on fuel design characteristics typical of those utilized at that time. The level of conservatism built into the safety limit provides adequate margin to assure that more than 99.9% of the fuel rods in the core are expected to avoid boiling transition. Because of current fuel designs, this level of conservatism has been recognized to have shown a marked increase. This increase in conservatism was part of the rationale used in developing the upgraded MCPR safety limit of 1.04, specified in Amendment 14 to NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel" (GESTAR II). This document has been reviewed by the NRC and found to be acceptable for D-lattice plants, when applied to the second successive reload cores of P8X8R, BP8X8R, GE8X8E or GE8X8EB fuel types with high bundle R-factor fuel designs. The Brunswick Plant, Unit 2 is such a D-lattice plant, with Cycle 8 being the third successive reload core with high bundle R-factor fuel designs. The proposed change reflects the upgrade in the safety limit MCPR approved in Amendment 14 to NEDE–24011–P–A. The NRC-accepted methodology utilized by General Electric to derive the upgraded safety limit MCPR value of 1.04 was the same methodology used to derive the original safety limit MCPR value to 1.07. Because of the new fuel design characteristics of the reload cores, the safety limit MCPR value of 1.04 derived by this methodology meets the same criteria as the original safety limit MCPR value of 1.07. Since the safety limit MCPR is used to determine the operating limit MCPR values for applying the margin of protection to plant operations, the operating limit MCPR values are being adjusted to be consistent with the upgraded safety limit MCPR. These adjustments are being made in accordance with guidelines provided by General Electric. The guidelines simply reduce the original operating limit MCPR values, originally identified in the Supplemental Reload Licensing Report (submitted by the licensee's letter dated September 4, 1987), by 0.03. This approach results in a slightly greater and more conservative margin between the adjusted operating limit MCPR values and the safety limit MCPR of 1.04 than the margin which existed for previous cores.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company (the licensee, CP&L) has reviewed the proposed TS changes and has determined that their adoption would not involve a significant hazards consideration. The licensee's findings are summarized below:

Proposed Change 1:

The proposed amendment changes the MCPR safety limit, specified in the BSEP–2, TS, from 1.07 to 1.04.

The changes does not involve a significant hazards consideration for the following reasons:

1. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the change in the safety limit MCPR. The safety limit MCPR is designed to limit the consequences of operational transients previously evaluated, but has no effect on the probability of those transients. the NRC-accepted methodology, used to derive the original safety limit MCPR value of 1.04, applied the same acceptance criteria as that used to derive the original safety limit MCPR value of 1.07 and thus assures that equivalent fuel cladding protection is maintained. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adoption of an upgraded safety limit does not change or alter the function of any component or system, including the method of evaluating the MCPR for given operational conditions. As stated previously, the safety limit MCPR is designed to limit the consequences of those operational transients previously evaluated. The safety limit MCPR merely set the bounds for acceptable consequences of these operational transients. Therefore, CP&L has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated previously, the NRC-accepted methodology utilized to derive the upgraded safety limit MCPR value of 1.04 provides the equivalent protection of the fuel cladding as the original safety limit MCPR value of 1.07. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant reduction in the margin of safety.

Proposed Change 2:

The proposed amendment revises the operating limit MCPR values, specified in TS 3/4.2.3, to be consistent with the upgraded safety limit MCPR value of 1.04.

The change does not involve a significant hazards consideration for the following reasons:

1. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the change in the operating limit MCPR values. Operating limit MCPR values are designed to limit the consequences of operational transients previously evaluated, but have no effect on the probability of these transients. Equivalent protection is assured in the upgraded operating limit MCPR values since they were adjusted to be consistent with the upgraded safety limit MCPR. The guidance provided by General Electric to adjust the operating limit MCPR values (originally based on the safety limit MCPR value of 1.07) adds slightly to the conservatism established within these operating limits. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adjustment of the operating limit MCPR values to be consistent with the upgraded safety limit MCPR does not affect the function of any component or system. The adjusted operating limit MCPR values will continue to provide an adequate margin to assure that the safety limit MCPR is not exceeded for even the most limiting operational transient. Therefore, CP&L has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated previously, the NRC-accepted methodology utilized to derive the upgraded safety limit MCPR value of 1.04 provides the equivalent fuel cladding protection as the original safety limit MCPR value of 1.07. This equivalent protection has also been applied to the operating limit MCPR values since they were adjusted to be consistent with the upgraded safety limit MCPR in accordance with the guidance provided by General Electric. This guidance adds slightly to the conservatism established within the adjusted operating limits which were originally based on the safety limit MCPR value of 1.07. Based this reasoning, CP&L has determined that the proposed change does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards considerations. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50–400, Shearon Harris Nuclear Power Plant (SHNPP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 4, 1988.

Description of amendment request: The proposed change revises Technical Specification 6.2.2.e, which currently requires that the Manager-Operations hold a Senior Reactor Operator (SRO) license. The proposed TS revision is such that the Manager-Operations must: (1) Hold an SRO license; (2) have at one time held an SRO license; or (3) meet the qualifications for plant managers specified in Section 4.2.1 of the September 1979 draft of the American Nuclear Society Standard 3.1 (ANS 3.1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards in 10 CFR Part 50.92 and had determined:

1. The proposed change to the qualification requirements for the Manager-Operations does not involve a significant increase in the probability or consequences of any accident previously evaluated because the change does not physically alter the facility in any manner and, as such, does not affect the means in which any safety-related system performs its intended safety function.

2. The proposed change to the qualification requirements for the Manager Operations does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, there is no physical change to the plant resulting from the proposed amendment and, therefore, no possibility of creating a new accident.

3. The proposed change to the qualification requirements for the Manager-Operations does not involve a significant reduction in a margin of safety. Two major benefits are derived from the proposed change.

Alleviating the time which the Manager-Operations is currently required to spend in classroom and simulator requalification and preparation for NRC testing required to maintain an SRO license allows him to dedicate that time to the performance of his intended duties. Requiring the Manager-Operations to: (1) Hold an SRO license; (2) have at one time held an SRO license; or (3) meet the qualifications for plant managers specified in Section 4.2.1 of the September 1979 draft of ANS 3.1 ensures that candidates for the position have the background and knowledge of nuclear plant operations necessary to perform these duties.

Removing the requirement for the Manager-Operations to have a valid SRO license would allow CP&L Management additional flexibility when choosing an individual to fill the Manager-Operations position. This ensures that the best available candidate can be chosen for a vacant Manager-Operations position. A major factor in such a decision must currently be the status of the candidates' SRO licenses. Those individuals, whose SRO license is not current, require approximately 78 weeks of training to receive a valid SRO license. As such, it is conceivable that a more qualified person would be overlooked due to the need for filling a vacant Manager-Operations position.

The Operations Supervisor will continue to hold an SRO license. The combination of the Manager-Operations and the Operations Supervisor positions at SHNPP fulfill the guidance of the September 1979 draft of ANS 3.1 for the Operations Manager's position. The benefits derived from the proposed change, as discussed above, serve to enhance overall nuclear safety and, therefore, increase the margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Attorney for licensees: R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988.

Description of amendments request: The amendments would revise Technical Specifications to allow more accurate measurement of lower effluent discharge flow rates by installing a three-inch diameter bypass around the existing six-inch diameter line.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The physical changes to the plant involve the installation of a 3" diameter bypass around the existing 67" diameter liquid radwaste effluent discharge line flow rate element and flow control/isolation valves. The bypass includes a new flow rate element and flow control/isolation valves, and is fabricated of the same quality group materials as the original. The purpose of the new bypass is to provide the capability to measure lower flow rates (0 to 150 gpm) than is possible with the existing system (180 to 550 gpm). The existing radiation monitor will not be bypassed, and will have the capability to provide an isolation signal to the isolation valves in both loops. Controlled key (only one key issued at a time) locks on the valve operator switches will assure that only one loop may be used at a time.

The new bypass will perform the same function as the existing liquid radwaste the effluent discharge lines. The addition of the new flow rate element to the Technical Specifications will system operability and controlled keylocks will assure that only one loop may be used at a time. Therefore, this added bypass does not increase the probability of an accident previously evaluated.

The consequences of previously evaluated accident would not be significantly increased because the operability of the required radwaste system train will not be decreased.

The operability of the flow rate elements will continue to be verified by performing the related Technical Specification required surveillances. Because the added bypass loop performs the same function and is constructed of the same quality group materials as the existing loop, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The added bypass flow element performs the same function as the original monitor, but at a lower flow rate. The same radiation monitor provides isolation signal on high radiation levels on both the original and the new bypass line isolation valves. Therefore, there is not a significant reduction in the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988.

Description of amendments requests: The amendments would revise Technical Specifications to separate the Gaseous Waste Management System Oxygen Analyzer into two analyzers based on their application.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This change separates the Gaseous Waste Managment System oxygen analyzers into two analyzers based upon their application. One analyzer (OAT–GW8003) is capable of continuously analyzing oxygen concentration from the various source tanks and any one of the Gas Decay Tanks. The other analyzer (OAIT–GW004) requires the Waste Gas Compressor to be in operation for it to function. The proposed change clarifies the functional requirements and revises the Action Statement to reflect this change.

The changes to Table 3.3–13 made to separate the two oxygen analyzers into individual monitors, based on their separate application in the system, do not impact the Accident Analysis of the Byron/Braidwood FSAR. Rather it more cleraly defines the application and function of the two oxygen analyzers. As a result, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

No physical change or modification to the Gaseous Waste Management System is being made, and its intended operation as described in the FSAR will remain unchanged. The application of the two oxygen analyzers will be more clearly defined by these changes. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Since the Gaseous Waste Management System operation is not affected by this change, which is being made to more clearly define the application of the two oxygen analyzers, this change does not affect the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: January 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specifications to delete the upper tolerance bound requirements of the Reactor Low-Low Water Level setpoint, and correct certain typographical errors in the bases.

There are two types of changes accociated with this proposed amendment request: the first change deletes the +4/−0 inch tolerance for the Reactor Low Low Level Trip Setpoint while the second change corrects a wording error in the Limiting Condition for Operation basis of Section 3.2 of the Technical Specifications. A review of the Technical Specification Bases has shown that the upper limit has no safety significance. Deleting the upper tolerance will also help facilitate calibration of the Reactor Low Low Water Level instrumentation.

The second change interchanges the words "high" and "low" in a sentence that explains the setting of the Reactor Low Low Water Level Trip. This change is administrative in nature and is being sought to insure that the Bases are consistent with the information pertaining to the setpoint in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Pursuant to 10 CFR 50.91(a), the licensee provided the following analysis of their amendment request which addresses those three standards.

CECo has evaluated the proposed amendment in accordance with the criteria of 10 CFR 50.92(c) and determined it does not involve significant hazards consideration. Consequently, the licensee maintains that operation of Quad Cities Nuclear Power Station in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the actual setpoint for the Reactor Low Low Level is not being changed.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the upper bound of the tolerence range associated with the Reactor Low Low Water Level Trip Setpoint serves no safety function and the conservatism associated with the actual setpoint is not being reduced. The actual setpoint which would have been used in accident evaluation is unchanged. Hence, the proposed amendment does not create the possibility of a new or different kind of accident than which was previously evaluated.

(3) Involve a significant reduction in the margin of safety because the proposed amendment does not change the actual trip setpoint but merely reflects a change to the tolerence. As a result, the margin of safety has not been decreased as a result of this proposed amendment.

The NRC staff has reviewed the licensee's amendment request and concurs with the significant hazards consideration analysis detailed above. Furthermore, correcting typographical errors in the TS is considered an administrative change. The Commission's guidance (51 FR 7751) clearly establishes that a purely administrative change to technical specifications "is an example of an amendment not likely to involve significant hazards considerations." Therefore, the NRC staff proposes to determine that this application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Mr. Michael I. Miller of Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 14, 1987.

Description of amendment request: The proposed amendment would allow inclusion of all reloads of the "I" fuel design in the Big Rock Point Plant Technical Specifications. Past practice has been to identify each cycle reload individually and routinely change the Technical Specifications even though fuel design is not being altered. This change will permit future reloads of "I" fuel to be performed by the licensee under 10 CFR 50.59. Any future reloads containing fuel with a different design other than the "I" fuel would require a Technical Specification amendment.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.91, the licensee has provided an analysis on the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

> The mechanical, thermal hydraulic, and neutronic analysis for all Big Rock Point "I" fuel is the same as that for Reloads I–1 and I–2. The design report previously issued for Big Rock Point Reload I–1 (Exxon Nuclear Company (ENC) Report XN–NF–85–38(P), Rev. O) entitled, "Design Report for Big Rock Point I–1" is applicable for all Reloads of "I" fuel.
>
> This change does not involve a significant increase in the probability or consequence of an accident previously evaluated because the limits are derived in a manner identical to that described in Exxon Nuclear Corporation (ENC) Report XN–NF–79–21, Revision 1, Big Rock Point LOCA Analysis using the ENC WREM NJP–BWR ECCS Evaluation Model–MAPLHGR Analysis. This report has previously been reviewed and accepted by the NRC and has been used as a basis for issuing previous reload amendments.
>
> This change does not create the possibility of a new or different kind of accident from any previously evaluated because the XN–NF–79–21 report covers the required spectrum of break locations and configurations for the Big Rock Point Plant. This change does not involve a significant reduction in the margin of safety because, as stated in the XN–NF–79–21 report, reactor operation within the NRC approved limits assure conformance with 10 CFR 50.46 criteria for maximum cladding temperature, metal-water reaction and hydrogen release.

The Commission's staff concurs in the licensee's analysis. The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples (Example (iii)) of actions involving no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

As shown in the above discussion, the proposed amendent is similar to this example and is supported by the licensee's analysis. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: November 19, 1987 (Letter NRC–87–0201).

Description of amendment request: The proposed amendment would correct errors in Section 3/4.8.4.5, Standby Liquid Control System Associated Isolation Devices, by deleting from Table 3.8.4.5–1 the specification of Motor Control Center (MCC) 72B–4C, Position 1A circuit, breaker, and MCC 72E–5B, Position 1C circuit breaker, for required periodic testing. The circuit breakers have been found not to exist in the plant, and as such, the proposed amendment would correct the Technical Specification to be consistent with the as-built plant design. The breakers that perform the isolation function are still in the Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed change to Technical Specification Table 3.8.4.5–1:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change corrects errors in the Technical Specifications by deleting the specification of MCC circuit breakers which do not exist in the Standby Liquid Control System (SLCS) Associated Isolation Devices circuit, thereby revising Technical Specification Table 3.8.4.5–1 to be consistent with the as-built plant. The proposed change would not result in any modification to the plant or system operations, and no safety-related equipment or function would be altered.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. As is stated in (1) above, the proposed change would correct errors in the Technical Specifications making them consistent with the as-built plant, would not result in any modification to plant systems and equipment or the operations and functions, and thus would not create any new accident mode.

(3) Does not involve a significant reduction in a margin of safety. As is stated in (1) and (2) above, the proposed change would revise Table 3.8.4.5–1 of the Technical Specifications to be consistent with the as-built plant, and does not involve any modifications to the plant which would result in a significant reduction in a margin of safety.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 2, 1986, and October 6, 1987.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Catawba Nuclear Station to reflect recent changes to that regulation. The proposed amendments would modify paragraphs 2.E. of Facility Operating Licenses Nos. NPF–35 and NPF–52 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and October 6, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards consideration (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the amendment involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Darl Hood, Acting Director.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 5, 1988.

Description of amendment request: The proposed amendments would increase the minimum volumes of borated water required by McGuire Technical Specifications (TS) 3.1.2.5 and 3.1.2.6 to be maintained in the Boric Acid Storage System during shutdown and operating modes, respectively.

Basis for proposed no significant hazards consideration determination: The Boric Acid Storage system provides the borated water needed to ensure that negative reactivity control is available during each mode of facility operation. To ensure sufficient boration capability to provide shutdown margin from operating conditions through cooldown and shutdown, a certain minimum contained borated water volume is specified as a limiting condition for operation by TS 3.1.2.5 for Modes 5 and 6, and by TS 3.1.2.6 for Modes 1, 2, 3 and 4.

The licensee has reevaluated the System and finds that the unusable volume of borated water is greater than initially calculated because of piping configuration. Accordingly, the minimum volumes of borated water presently required by TS 3.1.2.5 and 3.1.2.6 are not sufficently conservative and should be increased. The proposed amendments would correct the non-conservative values by specifying more restrictive (i.e., increased) borated water volumes.

The Commission has provided certain examples (51 FR 7750) of actions likely to involve no sigificant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for amendments and has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or

consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. This conclusion is reached because the borated water sources are designed to mitigate the consequences of accidents and have no effect or causal mechanisms. The change is more restrictive and of a corrective nature because the sole effect is to restore the boration capability to that which will satsify the originally intended shutdown margins. Therefore, the change enhances safety by restoring the intended safety margins.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina, 28242.

NRC Project Director: Darl Hood, Acting.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: January 22, 1988.

Description of amendment request: The proposed amendment would make changes to the technical specifications associated with the boric acid makeup (BAMU) system. Specifically, the required boron concentration requirements would be reduced, the borated water volume would be increased, and the requirement to heat trace the BAMU system would be deleted. Commensurate with the boron concentration reduction, the sodium hydroxide concentration would be slightly lowered to maintain pH requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

> Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> Credit is not taken for boron addition to the reactor coolant system from the boric acid makeup tanks (BAMTs) for the purpose of reactivity control in the accidents analyzed in Chapter 15 of the St. Lucie Unit 1 Final Safety Analysis Report (FSAR). Response to events such as steam line break, overcooling, boron dilution, etc., will not be affected by a reduction in the BAMT boron concentration. The ACTION Statements from Technical Specification 3.1.1.2 require that boration be commenced at greater than 40 gallons per minute using a solution of at least 1720 ppm boron in the event that shutdown margin is lost. The BAMT boron concentration after the proposed reduction will remain greater than or equal to 1720 ppm. The reduction in boron concentration is accounted for by increasing the volume of boric acid solution that must be contained in the tanks (and by also crediting borated water from the Refueling Water Tank (RWT)).
>
> Since the components (or their function) necessary to perform a safe shutdown have not been changed or modified, this change does not significantly increase the probability or consequences of any accident previously evaluated. In addition, administrative controls on the BAMT temperature and boron concentration ensure that the lack of heat tracing does not result in precipitation of the boron.
>
> The proposed change also reduces the concentration of caustic available in the Chemical Storage Tank in order to maintain the containment sump and containment spray nozzle pH within the design limits of 8.5 to 11.0. No change is made to the design bases of the Iodine Removal System or its subsystems, the Chemical Storage Tank and the caustic addition system. The reduction in boric acid concentration in the BAMTs [would cause] a corresponding reduction in the post-LOCA containment sump minimum boron concentration. A reanalysis of the sump pH and containment spray system pH has been performed. An adjustment to the rate of sodium hydroxide addition has been made to maintain the original equipment Environmental Qualification pH band of 8.5 to 11.0.
>
> An evaluation of the general corrosion rate of metallic materials and the effects on non-metallic materials has been performed. It has been determined that there is no adverse [effect] on in-containment materials if the pH level is maintained in the original pH band. With the sodium hydroxide concentration reduction and reduction in the final boron concentration, the harsh environment Equipment Qualification of the in-containment equipment will be unaffected as will the post-LOCA containment sump pH. Therefore, there is no impact on the equipment in the post-LOCA scenario nor a reduction in the post-LOCA containment iodine removal capability.

In connection with the second standard, the licensee stated:

> Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The ACTION statements from Technical Specification 3.1.1.2 require that boration be commenced at greater than 40 gallons per minute using a solution of at least 1720 ppm boron in the event that shutdown margin is lost. The BAMT boron concentration after the proposed reduction will remain greater than or equal to 1720 ppm. The reduction in boron concentration is accounted for by increasing the volume of boric acid solution that must be contained in the tanks (and by also crediting borated water from the Refueling Water Tank (RWT). The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid remained in solution and available for injection into the RCS to adjust core reactivity throughout core life. By lowering the boron concentration to a maximum of 3.5 weight percent, chemical analyses have shown there is no possibility of the boron precipitating out of solution as long as the temperature of the boric acid remains above 50°F, thus, there is no longer a need for heat tracing. Since the boron will remain in solution when the BAMT flowpaths are credited for reactivity control during a safe shutdown scenario, heat tracing is no longer required to maintain the Boric Acid Makeup (BAMU) system operable. Therefore, this change does not create the possibility of a new or different kind of accident from those previously evaluated.
>
> The reduction in caustic concentration available in the chemical storage tank does not alter the design function of the Iodine Removal System. The Iodine Removal System will operate with slightly reduced NaOH [concentration] in response to reduced boric acid in the BAMTs.

With regard to the third standard, the licensee provided the following rationale:

> Use of the modified specification would not involve a significant reduction in a margin of safety.
>
> The intent of the Boration Systems and Borated Water Sources Technical Specifications is to ensure that there are two redundant flowpaths from the borated water sources to the RCS to allow control of core reactivity throughout core life. This requires that sufficient quantities of boron be stored in the BAMTs and that this borated water can be delivered to the RCS in the event of a single active failure of a system component or a seismic event. Reducing the maximum boric acid concentration to less than 3.5 weight percent has been compensated for by increasing the required minimum volumes of borated water. In addition, reducing the maximum boron concentration allows a deletion of the requirement to heat trace the BAMU system since chemical analyses have shown that a 3.5 weight percent solution of boric acid will remain in solution at temperatures above 50°F. Administrative controls on the boric acid makeup tank temperature and boron concentration ensure that a lack of heat tracing does not result in

> precipitation of the boron. Therefore, the reduction of boric acid concentration and the deletion of heat tracing in the BAMU system does not cause a significant reduction in the margin of safety.
>
> Also, the margin of safety as defined by the Technical Specifications has not been significantly reduced due to the reduction in NaOH [concentration] since the change does not alter the effectiveness of the caustic addition subsystem. That is, the NaOH reduction change is equally balanced by the reduction of boric acid in the boric acid makeup tanks.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. The licensee proposes increases to the borated water volume contained in the BAMTs to offset the boren concentration reduction. Since the boren concentration is significantly reduced, there appears to be no need for heat tracing. The NaOH slight concentration reduction is needed to maintain proper pH range.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: December 21, 1987.

Description of amendment request: This amendment would modify the Technical Specifications for Hatch Unit 1 as follows: Specification 4.7.D.1 would be modified to require full-stroke testing of the main steam isolation valves (MSIVs) in accordance with the ASME Code, Section XI.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR Part 50.29(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its December 21, 1987 submittal, provided the following evaluation of the proposed change with regard to these three standards:

> The proposed change is an administrative change and will make the Unite 1 specification regarding full-stroke testing of the MSIVs more similar to the specifications currently in the Unit 2 Technical Specifications and the Standard Technical Specification (STS). Incorporation of this change will not involve a significant hazards consideration, because:
>
> 1. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety are not increased above those previously evaluated, because the operation of the MSIVs will remain the same. The MSIVs will continue to isolate automatically upon raceipt of the current isolation signals, and the required isolation (stroke) time will remain unchanged. Surveillance requirements will remain unchanged.
>
> 2. The possibility of a different kind of accident from any analyzed previously is not created by this change, because the MSIVs will continue to operate and respond as they did prior to the change. No new modes of valve operation are introduced by this change.
>
> 3. Margins of safety are not significantly reduced by this charge, because it is an administrative change to revise the wording of the specification so that it is similar to the wording of the Unit 2 Technical Specifications and the STS.

The staff has considered the proposed amendment and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has concluded that the requested change meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Darl S. Hood, Acting Director.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 28, 1987.

Description of amendment request: The proposed amendment would change the title of the Manager-Nuclear Performance and Analysis to Manager-Nuclear Performance and Radiological Safety on Technical Specification (TS) Figure 6.2–I, "Off-Site Organization," and TS Figure 6.6. The proposed amendment would revise TS Figure 6.2.2, "Plant Organization" as follows.

On TS Figure 6.2.2 add the new position of Outages and Planning Manager reporting to the Plant Support Manager. Delete the Unit 1 Planning, Scheduling, and Work Control Methods Superintendent. Change the title for the Maintenance Superintendent III position to Manager Maintenance. Add the new position of Manager Health Physics and Chemistry, who has authority over the Health Physics Superintendent, the Chemistry Superintendent, and the new position of Technical Support Health Physics/Chemistry Superintendent.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previosuly evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes maintain program responsibility aligned to appropriate organizations, and is similar to another NRC approved plant organization.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Finally, the licensee's

proposed changes would not (3) involve a significant reduction in a margin of safety because no operating parameters or setpoints are changed.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: Darl Hood, Acting.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 29, 1988 (TSCR 163).

Description of amendment request: The proposed amendment would revise Technical Specifications 5.3 and the corresponding bases allowing fuel with higher enrichments to be stored in the fuel storage facilities onsite.

Basis for proposed no significant hazards consideration determinatoin:

The licensee proposed Technical Specification Change Request (TSCR) No. 163 to allow fuel with higher enrichments to be stored in the fuel storage facilities onsite. The licensee has evaluated TSCR 163 to determine if a significant hazards consideration exists. The results of this evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

The proposed change is based upon a re-evaluation of the High Density Poison Racks (HDPRs) summarized in the report, entitled "Criticality Safety Analysis Oyster Creek High Density Poison Racks With Increased Enrichment Fuel." The re-evaluation performed on the HDPR included several enrichment levels taking credit for gadolinium burnable poison. The HDPRs were analyzed for criticality safety with fuel of uniform average enrichments ranging up to 3.8% assuming 3 weight percent gadolinium oxide in seven (7) fuel rods of each assembly. The analysis confirms that the multiplication factors K_{eff} is within the limit of 0.95, in conformance with NRC Regulatory Guide 1.13.

The proposed change to the Technical Specification relates only to the new fuel storage vault and the HDPR. No other plant system or component is affected.

The licensee states:

> Based upon the preceding discussion, we [the licensee] have evaluated that this change request involves no significant hazards considerations. In summary, we have determined that the proposed amendment would not:
>
> A. Involve a significant increase in the probability or consequences of an accident previously evaluated;
>
> The original enrichment requirement of 3.01% U–235 was based upon the initial criticality analysis which did not take the allowed credit for burnable poisons. A re-evaluation of the criticality analysis was performed taking credit for burnable poisons as allowed in NRC Regulatory Guide 1.13. The results indicate that fuel with an average planar enrichment of 3.8% can safely be stored in the HDPR.
>
> The only type of accident potentially affected by this proposed Technical Specification amendment is an inadvertant criticality. Since the requirement to maintain K_{eff} less than or equal to 0.95, will be retained, and the potential effects of this change are already bounded by a previous analysis, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> B. Create the possibility of a new or different kind of accident from any accident previously evaluated:
>
> The criteria for K_{eff} to be less than or equal to 0.95 will be retained. However, the limitation on enrichment will be deleted and the requirement for K_{eff} less than or equal to 0.95 will be ensured using a newly established check list.
>
> The spent fuel storage pool is designed to withstand the design earthquake acceleration, to prevent inadvertent criticality, and to provide efficient shelding and cooling. The only aspect of the design to be considered for this proposed charge is the prevention of inadvertent criticality. Since the criterial for K_{eff} to be less than or equal to 0.95 will be retained under the proposed change, and the potential effects of this change are already bounded by a previous analysis, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> C. Involve a significant reduction in the margin of safety;
>
> The only type of accident potentially affected by this proposed Technical Specification amendment is an inadvertent criticality. Since the requirement to maintain K_{eff} less than or equal to 0.95, will be retained, and the potential effects of this change are already bounded by a previous analysis, this proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's evaluation. Therefore, the staff proposes to determine that the licensee's application does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. I, Dauphin County, Pennsylvania

Date of amendment request: January 29, 1988.

Description of amendment request: The January 29, 1988 request, identified as TSCR No. 177 by the licensee, would revise various sections in Chapter 6 of the Technical Specifications (Administrative Controls) for clarity and consistency with the Standard Technical Specifications. These sections deal with GPU procedural controls over the review process for procedures, modifications to structures, systems and components, and proposed tests and experiments. This change would also add a definition of substantive changes as related to these activities.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident form any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The change proposed by TSCR No. 177 is an administrative change to achieve terminology more consistent with the terminology of the Babcock and Wilcox Standard Technical Specifications, NUREG–0113 Rev. 4, and to provide clarification of previously existing requirements for technical and safety review. The proposed revised Technical Specifications would not involve significant hazards considerations for reasons as follows (see criteria in 10 CFR 50.92 above):

(1) The probability of occurrence or the consequences of previously evaluated accidents are not affected by this change since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in

the existing Technical Specifications are not changed.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created by this change, since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

(3) This change does not reduce the margin of saftey, since the change is administrative in nature, and is provided for clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

Based on the above discussion, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of application for amendment: November 24, 1986, and September 1, 1987.

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee has submitted a proposed amendment to the Physical Security Plan for the Grand Gulf Nuclear Station, Units 1 and 2, to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E. of Facility Operating License No. NPF-29 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 24, 1986, and September 1, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the supplementary materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is [sic] appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7750). One of the examples of actions not likely to involve significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 2, 1988.

Description of amendment request: The amendments would modify the Technical Specifications to: (1) change the instrument identification numbers (Tables 3.2.B ands 4.2.B) for reactor pressure switches which provide closing signals to the reactor recirculation system discharge valves and permissive input signals to the core spray and low pressure coolant injection systems, (2) change the instrument identification number (Table 3.2.B) for the residual heat removal system crosstie valve position indicator switch, (3) change the instrument identification numbers (Tables 3.2B and 4.2.B) for drywell pressure instruments associated with the high pressure coolant injection (HPCI) system, and (4) modify the "Reactor Water Level Indication Correlation" drawing (Figure 2.1.1) to reflect modifications extending the range of reactor vessel water level instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: (i) a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement.

Change (1) would reflect a plant modification in which two duplex pressure switches (NBI-PS-52A, and 52C) for which spares are no longer readily available, will be replaced by four single pressure switches (NBI-PS-52A1, A2, C1, and C2). The replacement switches will be seismically and environmentally qualified and will serve the same function as those being replaced.

Change (2) would correct an editorial error. The crosstie valve position indicator switch is identified as "RHR-LMS-2" in the Technical Specifications but as "RHR-LMS-8" in the facility design drawings. The proposed amendment would revise the Technical Specifications identification number to be consistent with the drawings. No change would be made to the actual instrument.

Charge (3) would revise the HPCI instrument identification numbers to be consistent with the identification numbers used for the same instruments elsewhere in the Technical Specifications. This change is thus being made for consistency only. No changes are being made to the actual instruments.

Change (4) would reflect modifications to be made to extend the range of water level instruments in accordance with the licensee's commitments to provide improved capability to monitor reactor vessel water level. The modifications extend the range of water level monitoring down to 6 inches below the bottom of active fuel and up to the top of the steam separator in accordance with Regulatory Guide 1.97 recommendations.

Changes (1), (2), and (3) are simple changes in nomenclature to either correct errors or inconsistencies, or reflect the replacement of existing components with new components with similar design and function. These changes will have no effect on safety, involve no changes to limiting conditions for operation or surveillance requirements, and are within the scope of example (i). Change (4) reflects new requirements imposed by the NRC and it is within the scope of example (ii).

Since the application for amendment involves proposed changes that are encompassed by the criteria or an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specifications 3.2.6 and 4.2.6 for Nine Mile Point Nuclear Station Unit 1. The revisions to Technical Specifications 3.2.6 and 4.2.6 would move the references concerning the Inservice Inspection (ISI) and Inservice Testing (IST) Programs in effect from the limiting condition for operation and surveillance requirement sections of the Technical Specifications to the Bases section.

The proposed amendment would also revise Technical Specification 4.2.6.a.2 to delete the list of systems containing non-conforming components. The systems containing non-conforming components are identified in the augmented ISI program.

The proposed amendment is in accordance with the licensee's application of January 29, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes will not (1) Involve a significant increase in the probability or consequences of an accident, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety for the following reasons:

> The first change concerns the reference regarding the ISI and IST programs in effect from the Technical Specifications to the Bases. This change is an administrative change. 10 CFR 50.55a requires the ISI and IST programs to be updated to the latest ASME Code approved by the Nuclear Regulatory Commission every ten years. This regulation further requires that relief from or alternative requirements to the ASME Code in effect must be authorized by the NRC. The revised Technical Specifications will also require the licensee to meet these requirements. The proposed amendment would allow the licensee to update the ISI and IST programs in accordance with these requirements without submitting an amendment request.
>
> The second change involves deleting the lsit of systems containing non-conforming components from section 4.2.6.a.2 of the Technical Specifications. This list will still be included in the ISI program. This change will also allow the ISI program to be updated in accordance with the regulations without requiring a Technical Specification amendment and is also administrative.
>
> As these changes are administrative and will not affect the ISI and IST programs, they will not (1) involve a significant increase in the probability or consequences of an accident, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based upon the above consideration, the staff proposes to determine that the proposed charges do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: February 3, 1988.

Description of amendment request: The proposed amendment would revise Technical specification 3/4.8.2.1.b.2, "D.C. Sources-Operating". The proposed change would allow an alternate method of determining battery operability when visible corrosion appears at either terminals or connectors. The proposed amendment is in accordance with the licensee's application of February 3, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

> The proposed amendment establishes an alternative method of verifying the integrity of battery connections. The amendment does not adversely affect the function or design of the safety-related DC power systems. Further, the proposed change does not adversely affect the environmental qualification of the batteries or their associated chargers. The performance and reliability of the DC power sources will not be affected, thus assuring there will still be power available to supply the safety-related equipment required for (1) the safe shutdown of the facility and (2) the mitigation and control of accident conditions within the facility. Therefore, the proposed amendment will not involve a significant increase in the probability of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the

possibility of a new of different kind of accident from any previously evaluated for the following reasons:

Verification of resistance is a positive method of establishing the reliability of station batteries. Reg. Guide 1.129, Rev. 1 endorses IEEE Standard 450–1975 with comments. IEEE Standard 450–1975 recognizes resistance values of 120% of initial installation values or less as acceptable. The licensee has reviewed the as-installed resistance values and has determined that a 20% increase in the measured resistance of the batteries will have no effect on the ability of the batteries to carry the rated load. This assures that the design capabilities of the IE AC and DC systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident from any previously assessed.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety for the following reasons:

The Technical Specification bases recognize that verifying connection resistance values, in conjunction with the other tests and inspections required by the surveillances, assures the effectiveness of the charging system and the ability of the batteries to handle high discharge rates. The resistance measurement will provide a positive indication of battery operability in the event visual inspection indicates corrosion. As discussed above, a 20% increase in the measured resistance of the batteries will have no effect or the ability of the batteries to carry their rated load. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: February 3, 1988.

Description of amendment request: The proposed amendment would revise the allowable value and isolation trip setpoint for the residual heat removal (RHR)/reactor core isolation cooling(RCIC) steam flow-high. As noted in the Technical Specifications, the existing values are preliminary with the actual values to be determined during the startup test program. The proposed changes are based on system testing during the startup test program. The proposed amendment is in accordance with the licensee's application of February 3, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident prevously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The RHR/RCIC Steam Line break analysis assumes system isolation when steam flow reaches 125% of rated steam flow. This is in accordance with the leadk detection and isolation reqirements of GDC 54. This proposed change to the Technical Specification would assure that the as-built plant is in agreement with the design basis. Revising the setpoint to the as-built conditions equivalent to the 125% rated flow value assures that a RHR/RCIC steam line break will be detected and isolated as designed without impacting the qualification or operation of other safety systems or safe shutdown of the plant. The new values are conservative relative to the old values. In summary, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident previously evaluated for the following reasons:

The reactor building response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

In addition, since the design basis for RHR/RCIC steam line system isolation has not changed, the environmental qualification of plant equipment is not adversely affected by this proposed amendment, further assuring that components are not challenged in a manner not previously assessed. In summary, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons:

The proposed change will not cause existing Technical specification operational limits or system performance criteria to be exceeded. The proposed change ensures that the design requirements are met. allowances for instrument drift, instrument accuracy, and calibration capability have been maintained in accordance with Bases Section B3/4.3.2. of the Technical Specifications. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

Based upon the above considerations, the staff proposed to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No., 3, New London County, Connecticut

Date of amendment request: February 5, 1988.

Description of amendment request: The amendment would revise Millstone Unit No. 3 Technical Specification Section 3/4.4.6 Reactor Coolant System Leakage to allow continued plant operation for 30 days with both the Containment Atmosphere Gaseous Radioactivity Monitoring System (CAGRMS) and the Containment Atmosphere Particulate Radioactivity Monitoring System (CAPRMS) inoperable. The existing Technical Specification requires plant shutdown within 6 hours for this condition. The compensatory measures would be improved by increasing the frequency of analyzing the containment atmosphere for radioactivity via grab samples from once per 24 hours to once per 12 hours.

Basis for proposed no significant hazards consideration determination: The license has reviewed the proposed charges in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The proposed changes do not affect the probability of occurrence or the consequences of the design basis accidents. Therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no changes in the way the plant is operated, and no new failure modes are introduced; therefore, the possibility of an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety. The proposed changes do not have any impact on the containment integrity and do not affect the consequences of any accident previously analyzed, therefore, there is no reduction in the margin of safety.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: January 22, 1988 (LAR 88–01)

Description of amendment request: The proposed amendments would change the Diablo Canyon Nuclear Power Plant (DCPP) combined Technical Specifications for Units 1 and 2 to allow reduced Residual Heat Removal (RHR) flow during Mode 6 operation. Specifically, the proposed change would amend Technical Specification (TS) 4.9.8.1, "Residual Heat Removal and Coolant Circulation High Water Level," and TS 4.9.8. 2, "Residual Heat Removal and Coolant Circulation Low Water Level," to revise the currently required minimum residual heat removal (RHR) system flowrate on 3000 gpm during Mode 6 (Refueling). TS 4.9.8.1 and 4.9.8.2 are proposed to require verification of an RHR flowrate of 3000 gpm once per 12 hours when the reactor has been subcritical less than 57 hours and to require verification of an RHR flowrate of 1300 gpm per 12 hours when the reactor has been subcritical greater than 57 hours. Bases 3/4.9.8 is proposed to be revised to indicate that a reduced RHR flow can provide adequate decay heat removal and also additional margin to vortexing in the RHR system. TS 3.4.1.4.2, "Cold Shutdown—Loops Not Filled," which is applicable to Mode 5 partial drain operating, allows the operation RHR pump to be deenergized for one hour. TS 3.4.1.4.2 is proposed to be amended to not allow deenergization of the RHR pump unless reactor vessel water level is above the vessel flange.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated: or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the Westinghouse evaluation provided in WCAP–11688 for DCPP Units 1 and 2 demonstrates that throttling of the RHR system flowrate to between 1300 and 3000 gpm depending on Reactor Coolant System (RCS) water level and time after shutdown does not increase the probability or consequences of the accidents analyzed in Chapter 15 of the FSAR. The boron dilution accident evaluation results concluded that there is a reduction in time to criticality during RCS partial drain operation; however, this reduction in time is independent of the RHR flowrate. The reduction in RHR system flowrate during RCS partial drain operation reduces the probability of a loss of decay heat removal due to vortexing and cavitation, while the probabilities of accidents analyze in the FSAR are unaffected. The added restriction to the TS 3.4.1.4.2 footnote will prohibit intentional deenergization of the RHR pump when vessel water is below the reactor vessel flange. This added restriction will not increase the probability or consequences of any accident previously evaluated. Therefore, this proposed license amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibilty of a new or different kind of accident from any accident previously evaluated because implementation of the proposed reduction in RHR system flowrate during RCS partial drain operation does not introduce significant changes to the plant design basis. Throttling RHR system flow in manually controlled from the main control board and does not involve hardware modifications or irreversible actions when in effect. The added restriction to the TS 3.4.1.4.2 footnote to not allow deenergization of the operating RHR pump will enhance safety during operation with the RCS water level below the reactor vessel flange. Therefore, the proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated; (3) Involve a significant reduction in the margin of safety because the Westinghouse evaluation provided in WCAP–11688 shows that an RHR flowrate reduced to 1300 gpm will meet the decay heat removal requirements when the reactor is subcritical for greater than 57 hours. An RHR flowrate of 1300 gpm during Modes 5 and 6 does not impact the FSAR analyses for the boron dilution accident and promotes sufficient reactor coolant mixing so that boron stratification is not a concern. The probability of a loss of RHR flow initiated by RHR system vortexing will be reduced, increasing the RHR system reliability. The added restriction to not allow deenergization of the operating RHR pump for one hour will enhance safety by requiring continuous RHR flow when reactor vessel water level is below the vessel flange. Therefore, the changes do not involve a significant reduction in the margin of safety.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and find them acceptable. Therefore, the staff proposes to determine that the amendment requests do not involve a significant hazard.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 28, 1986.

Description of amendment request: The amendment would revise Sections 2.2 and 3.3 of the Trojan Technical Specifications regarding setpoints and allowable values for the steam generator (SG) low-low water level reactor trip and pressurizer low-pressure safety injection. These values will be revised so that the initiation of reactor protection system operation will occur at a time sooner than that which corresponds to the current Technical Specification values.

The Trojan Updated Final Safety Analysis Report (UFSAR) and Technical Specifications (TS) reflect steam generator low-low level reactor trip and pressurizer low-pressure safety injection setpoints established by the original plant design. However, administrative interim setpoints conservatively higher than the TS allowables have been in use for several years to account for additional instrument inaccuracies that became known subsequent to plant startup. Reference leg heating effects and Barton transmitter defect notifications were major contributors to these increased inaccuracies.

Subsequent improvements to Barton Transmitters, plus installation of reference legs on the steam generator level instruments, have resulted in reduced inaccuracies. Thus, the proposed amendment would reduce the setpoints and allowable values from the "interim" setpoints used by the licensee, to lower values which would still be conservative as compared to the original TS setpoints and allowables. The proposed TS limits would ensure that the original allowables assumed in the UFSAR will not be exceeded when considering existing instrumentation inaccuracies.

The SG low-low level reactor trip setpoint and allowable as provided by the current TS are: greater than or equal to 5% and 4%, respectively. The interim value used by the licensee for both setpoint and allowable is: greater than or equal to 20%. The proposed setpoint and allowable are: greater than or equal to 11% and 10%, respectively.

The current pressurizer low pressure safety injection setpoint and allowable are: greater than or equal to 1765 psig and 1755 psig, respectively. The interim value used by the licensee for both setpoint and allowable is: greater than or equal to 1831 psig. The proposed setpoint and allowable are: greater than or equal to 1766 psig and 1759 psig, respectively.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of

The only change to the plant or its operation is in the setpoints themselves. The Barton transmitters were placed with functionally equivalent components with less susceptibility to environmental conditions. The adjustment of the setpoints to more restrictive limits results in the same level of protection that the TS provide and thus does not create the possibility of a new or different kind of accident, or significantly reduce a margin of safety.

The staff concurs with the conclusions of the licensee's no signficant hazards analysis, and as such, proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland.

General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 15, 1988, as revised February 15, 1988.

Description of amendment request: This amendment request would revise Trojan Technical Specifications (TS) Section 6.2, "Organization." More specifically, Figure 6.2–1, "Offsite Organization" would be revised by:

(a) deleting from the Figure, those positions which do not directly or indirectly, report to the President;

(b) Moving those positions which are part of the Facility Organization from Figure 6.2–1 to Figure 6.2–2, "Facility Organization;"

(c) Indicating that the General Manager of Corporate Security will report to the Vice President, Nuclear;

(d) Deleting the Position of Vice President, Operating Services, and Manager, Control Systems; and

(e) Implementing various changes to titles and reporting structure for those positions outside the responsibility of the Vice President, Nuclear.

Figure 6.2–2, "Facility Organization" would be revised by:

(a) Adding the positions of Vice President, Nuclear, and General Manager, Technical Functions to the Figure to illustrate the interface of the Offsite Organization with the Facility Organization;

(b) Deleting staff level positions (with the exception of Operations) from the Figure so that only the supervisory positions are shown;

(c) Illustrating the newly created positions of Manager, Personnel Protection, System Engineering Branch Manager, Surveillance and Test Engineering Branch Manager, Procurement Supervisor, Quality Assurance Operations Branch Manager, and Quality Control Supervisor;

(d) Illustrating the creation of the Performance Monitoring/Events Assessment group;

(e) Indicating title changes to numerous existing positions (eg., Branch Manager instead of Supervisor);

(f) Changing the line of reporting for the Manager, Plant Modifications from the Plant General Manger to General Manager, Technical Functions;

(g) Changing the line of reporting for the Shift Technical Advisor from the Reactor Engineer to the Manager, Technical Services;

(h) Changing the lines of reporting for the Chemistry Supervisor and Radiation Supervisor from the Manager, Technical Services to the newly created Manager, Personnel Protection; and

(i) Illustrating an existing position (Plant Safety Coordinatory) on the Figure, and indicating the line of reporting for that position.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previous evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involved a significant reduction in a margin of safety.

The proposed changes regarding the deletion of positions that do not report directly or indirectly to the President and the deletion of nonsupervisory positions under the responsibility of the Vice President, Nuclear eliminates extraneous information and clarifies the Figures.

The proposed changes to lines of reporting, and the creation of new positions and organizations are designed to enhance the efficiency and the effectiveness of the Nuclear Divsion to ensure safe plant operation.

The proposed changes to position titles are administrative changes which do not alter the basic duties, functions, and requirements of those positions.

No changes are being proposed to any of the approved programs, nor the physical configuration of the plant. All limiting conditions for operation and safety system settings will continue to be imposed.

Based on the above, the proposed organization changes do not (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 13, 1987.

Description of amendment request: The license provided, in part, the following description:

This application seeks to amend Tables 3.6–1 and 4.4–1 of the Technical Specification to reflect modifications to certian containment isolation valves.

Table 3.6–1 has been revised to reflect the following:

1. addition of containment isolation valves CH–MOV–441 thru 444.
2. deletion of valves 1890 A thru H, J.
3. deletion of valves 241 A thru D.
4. deletion of valves 580 A, B.

Table 4.4–1 has been revised to reflect the following:

1. addition of containment isolation valves SP–SOV–506 thru 516.
2. addition of containment isolation valves CH–MOV–441 thru 444.
3. deletion of valves 1890 A thru H, J.
4. deletion of valves 241 A thru D.
5. deletion of valves 580 A, B.

Additionally, the appropriate valve identification prefix and suffix have been added to those valves listed in Tables 3.6–1 and 4.4–1.

Sections 3.3 and 4.4 have been revised to reflect an increase in the calculated peak containment LOCA pressure. This increased calculated pressure has necessitated a revision to the minimum pressure at which the leakage rate tests are performed. The increased calculated peak containment pressure resulted from increasing the assumed ambient containment temperature from 120°F to 130°F. The change from 120°F to 130°F was previously noticed on April 22, 1987 (52 FR 13346).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee provided the following bases to meet the three standards:

The proposed amendment, in part, reflects the installation and removal of certain containment isolation valves. The completion of the modifications did not violate any design criteria for the containment isolation system.

The proposed amendment reflects the containment isolation system as described in the FSAR. The containment isolation criteria of at least two barriers for redundancy against leakage of readioactive fluids to the environment in the event of a Loss of Coolant Accident was not violated by the completion of the modifications. The addition of the appropriate prefix and suffix to the listed valves is a purely administrative change.

The proposed amendment, in part, revises the minimum lead-rate test pressures to reflect an increase in the calculated peak containment accident pressure. The increased calculated pressure of 41.2 psig is attributable to an increased containment ambient temperature of 130°F. The minimum test pressure, as provided in table 4.4–1, has been increased from 41 psig to 42 psig. Section 4.4 has been revised to require that the leak rate tests be performed at a minimum pressure of 41.2, the peak accident pressure. However, per procedure, the leak-rate tests have been performed at 50 psig. Therefore, the revision to table 4.4–1 will not change the manner in which the leak-rate tests are performed.

This proposed amendment, in part, revises the minimum pressurization of the weld channel and penetration pressurization system (WCPPS) to reflect an increase in the calculated peak containment accident pressure. Section 3.3 has been revised to require that the WCPPS be continuously pressurized above 42 psig before bringing the reactor above the cold shutdown condition. The WCPPS is supplied with a regulated supply of 100 psig compressed air from the instrument air system. Therefore, the revisions to Section 3.4 will not change the operations of the WCPPS.

The licensee concluded that the change does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident previously evaluated and (3) involve a significant reduction in a margin of safety.

Based on the above, we propose to determine that this proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 5, 1988.

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

A. Proposed Changes to Figure 6.2–1:

> As a result of a recent Authority reorganization, staff engineering and construction management functions will be merged into existing operations departments, and the number of management levels will be reduced. The proposed changes to Figure 6.2–1 of the Indian Point 3 Technical Specifications illustrate the following changes in responsibility and management reorganization.
>
> 1. The Engineering and Design Department has been eliminated and its personnel reassigned to the Nuclear Generation and System Operations Departments.

Accordingly, the position of Executive Vice President and Chief Engineer–Engineering and Design has been eliminated.

2. The position of First Executive Vice President Operations has been eliminated.

B. Proposed Changes to Figure 6.2–2:

The proposed change to Figure 6.2–2 reflects the title change of Security Supervisor to Security Manager. This is not related to the recent reorganization.

C. Proposed Changes to Section 6.5.2.2:

As a result of the elimination of the Engineering and Design Department, the position of Vice President–Design and Analysis has been eliminated. Consequently, the Vice President–Design and Analysis will no longer be a member of the Safety Review Committee (SRC).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed a amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis, in part, of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequence of an accident previously evaluated? The proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated. The chain of command has been streamlined, enhancing the organization's effectiveness and efficiency without compromising functions required for the continued operation of the plant. The reorganization of the Authority and the title change discussed above are purely administrative changes which do not involve hardware or procedural changes to the facility. The changes will not adversely impact previously evaluated accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since the reorganization and title change are designed to enhance the manegement and efficiency of the Authority. The changes do not involve hardware or procedural changes to the facility and cannot create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety? The responsibilities formerly associated with the positions eliminated have been assumed by others within the management hierarchy. The individuals in the existing management hierarchy who have assumed these responsibilities, satisfy the educational and experience levels described in the FSAR for the positions previously having these responsibilities. Hence, the proposed changes do not involve a reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 2, 1986 and September 4, 1987.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Salem Nuclear Generating Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating Licenses Nos. DPR–70 and DPR–75 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and September 4, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believed that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Rochester Gas and Electric Corporation, Docket No. 50–244 R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment requests: September 23, 1987 and September 24, 1987.

Description of amendment requests: (a) To Change Reporting Requirements and (b) Revise Accident Monitoring Instrument Tables. Rochester Gas and Electric Corporation proposes to (a) change the reporting requirements of iodine spiking and eliminate the 800 hour shutdown requirement and (b) incorporate the requirements of the reactor vessel level indicator system.

With respect to item (a) the proposed changes to reporting requirements would conform to the NRC Generic Letter 85–19 which permits the reporting of primary coolant iodine spikes in an annual report rather than on a more frequent basis. Also the NRC Generic Letter eliminated the requirement to shutdown if the coolant iodine activity limits are exceeded for 800 hours in a 12-month period.

For item (b) the proposed technical specification changes are related to the reactor vessel level indication system. The revision satisfies the requirement of NUREG–0737 and is identical to model specifications that are approved except for some changes to fit the Ginna technical specification format on the Accident Monitoring Instrumentation Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

For item (a) the reporting requirement is an administrative change to conform with an NRC Generic Letter. No physical plant changes are involved. The quality of the nuclear fuel has greatly improved with the result that normal iodine levels in the primary coolant are well below the limits and spiking need not be reported soon after an occurrence. Furthermore, the 800 hour shutdown requirement is unnecessary since appropriate actions would have been initiated long before accumulating 800 hours above the iodine activity limit. For item (b) the proposed revision is to modify the monitor instumentation tables in the technical specifications to show the total number of instrument channels and minimum channels operable for the reactor vessel level indicator system. This instrument system involves only small connections and no automatic actuation of control functions. This system increases the safety margins by providing additional information to plant operators for responding to transient incidents. The proposed changes for items (a) & (b) do not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously involved. As a consequence of the above, the staff has made a proposed determination that the applications for amendments involve no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman.

Rochester Gas and Electric Corporation, Docket No. 50–244 R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 12, 1987.

Description of Amendment: To remove Organization Charts From Technical Specifications. The proposed changes involve the deletion of the organization charts from the technical specifications. The specific organization charts will be incorporated in Chapter 13 of the Final Safety Analysis Report and in the Ginna Quality Assurance Manual. The NRC will be informed of changes through the annual updates as required by 10 CFR 50.71.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51ER7751). One of these examples (1) is a purely administrative change to technical specifications. The proposed changes consist of deleting the organization charts from the technical specifications and incorporating them in a more appropriate set of documents. These changes are administrative in nature because they do not change the physical aspect of the plant or equipment. These changes do not alter the licensee's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant.

The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from an accident previously evaluated. As a consequence of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library , 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman.

Southern California Edison Company, et al., Docket Nos., 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Date of amendment request: November 4, 1987 (Reference PCN–239).

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.2., "Engineered Safety Feature Actuation System Instrumentation" (ESFAS). TS 3/4.3.2 specifies the number of channels and type of instrumentation required to be operable, response times and periodic surveillance tests to verify operability, and actions to be taken when the minimum requirements are not met. The ESFAS instrumentation operability requirements include a response time for the Main Steam Line Isolation Valves (MSIV) which is specified in Table 3.3–5 "Engineered Safety Features Response Times". The MSIV response time is specified in two locations in Table 3.3–5, one associated with the Main Steam Isolation Signal (MSIS), the other associated with the Containment Isolation Actuation Signal (CIAS). When the San Onofre 2 & 3 Technical Specifications were originally issued, the MSIV response time was 5.0 seconds and was identified only with the MSIS entry on Table 3.3–5. Proposed Charge No. PCN–96 was submitted on November 30, 1984. PCN–96 increased the MSIV response time from 5.0 to 6.0 seconds and also added a response time of 6.0 seconds for the MSIV's under CIAS in Table 3.3–5. Prior to approval of PCN–96, SCE submitted PCN–207 which increased the MSIV response times to 8.0 seconds. Because PCN–96 had not yet been approved, PCN–207 did not request that the CIAS entry response time in Table 3.3–5 be increased to 8.0 seconds. PCN–96, which instituted a CIAS MSIV response time of 6.0 seconds, was approved by the Commission in Amendments 46 and 35 to Facility Operating Licenses NPF–10 and NPF–15 for San Onofre Units 2 & 3, respectively, on May 16, 1986. Subsequently when PCN–207 was approved by Amendments 60 and 49 on August 14, 1987, an editorial discrepancy between the MSIV response times listed in Table 3.3–5 under MSIS and CIAS was created. The proposed change would correct this editorial discrepancy by increasing the CIAS MSIV response time to 8.0 seconds. Note that Table 3.3–5 includes a 0.9 second allowance for instrumentation propagation delay; thus, the actual table entry is increased from 6.9 to 8.9 seconds.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) is a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

This proposed change would correct an editorial error to make the technical specifications internally consistent. Therefore, we propose to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys of licensee: Charles R. Kocher, Esq., Southern, California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 14, 1987 (Reference PCN–224).

Description of amendment request: Proposed Change No NPF–10/15–224 would replace in its entirety, Technical Specification (TS) 3/4.7.1.5, "Main Steam Line Isolation Valves (MSIV's)," with a new Technical Specification 3/4.7.1.5, "Main Steam and Feedwater Isolation Valves." The proposed change would also revise Technical Specification 3/4.7.1.2, "Auxiliary Feedwater System," to explicitly define operability requirements for the auxiliary feedwater isolation and control valves. Technical Specification 3/4.7.1.5 currently defines operability requirements for MSIV's and actions to be taken when one or both MSIV's are inoperable. The operability requirements for the MSIV's ensure that no more than one steam generator will blow down in the event of a main steam line rupture assuming a single failure. Ensuring that only one steam generator blows down prevents the containment design pressure from being exceeded and limits positive reactivity addition due to cooldown of the reactor coolant system. Equally important in mitigating the consequences of these events are the main feedwater isolation valves and other secondary system valves, such as those associated with the auxiliary feedwater system, which are actuated by a main steam isolation signal (MSIS) and/or a containment isolation actuation signal (CIAS).

Technical Specification 3/4.7.1.2 defines operability requirements for the auxiliary feedwater system to ensure that emergency feedwater would be delivered to the steam generators for events requiring the initiation of emergency feedwater for continued secondary heat removal. TS 3/4.7.1.2 currently does not address the function of certain auxiliary feedwater isolation and control valves to close on an MSIS to prevent feeding the affected steam generator during a postulated steam generator rupture, and thereby limiting containment peak pressure and RCS cooldown.

Response times for the above mentioned valves are included as part of overall engineered features actuation system response times in Table 3.3–5, "Engineered Safety Features (ESF) Response times," of Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System." However, the TS 3/4.3.2 actions address only instrumentation inoperability and provide no specific actions when actuated components are inoperable. In most cases other technical specifications limiting conditions for operation (LCO's) address actuated components and provide appropriate action statements. This is currently not the case for the above mentioned valves associated with the secondary system, with the exception of the MSIV's.

The proposed change would add LCO's, surveillance requirements to verify operability, and appropriate actions to be taken which are currently not included in technical specifications for these additional valves. Specifically, the proposed change would revise Technical Specification 3/4.7.1.5 to include operability requirements for the main feedwater isolation valves (MFIV), main feedwater backup isolation valves (MFBIV) (consisting of one main feedwater regulating valve block valve and one associated regulator valve bypass valve for each steam generator), steam generator sample isolation valve (SGSIV) and blowdown isolation valve (BIV) along with the main steam isolation valves, which are currently addressed by Technical Specification 3/4.7.1.5.

The TS 3/4.7.1.5 action statement would be revised to define specific actions to be taken to address various aspects of inoperability of these valves and recognize inherent redundancy incorporated in the design of the MSIV's and MFIV's.

Surveillance Requirement 4.7.1.5 currently requires that the MSIV's be verified operable in accordance with the In Service Inspection (ISI) program with closure times as specified. The proposed change would expand the applicability of the surveillance to all of the newly added valves. Response times for the valves are included in Table 3.3–5, "ESFAS Response Times," and will no longer be repeated in TS 3/4.7.1.5. Additionally, the proposed change would require that the closure of the MFIV's and MSIV's will be verified using one of the two independent dump circuits alternately. The proposed surveillance would also require that each valve is actuated to close on its appropriate actuation signal at least once per eighteen months.

Technical Specification 3/4.7.1.2, "Auxiliary Feedwater System," requires that two motor drive and one steam driven auxiliary feedwater pump be operable along with associated flow paths. The proposed change would more explicitly define the flow path requirements and recognize the dual function of some auxiliary feedwater system valves in either isolating or providing a flow path to a steam generator depending on the situation.

The proposed change would ensure the capability to isolate the auxiliary feedwater system on a MSIS test signal to prevent feeding of the affected steam generator during postulate secondary system rupture events and will continue to ensure the capability to provide emergency feedwater to the appropriate steam generator(s) for secondary heat removal during postulated events where a loss of main feedwater is assumed.

The proposed change would revise the TS 3/4.7.1.2 action statements to clarify that the action statement explicitly applies to flow paths as well as auxiliary feedwater pumps.

The proposed change would modify Surveillance Requirement 4.7.1.2.1.b.2 to clarify that only the motor driven AFW pumps start automatically upon receipt of an EFAS test signal. The steam driven turbine pump is routinely tested in accordance with Surveillance Requirement 4.7.1.2.1.a.1 and the inlet valve to this pump is verified to open upon receipt of an EFAS test signal per Surveillance Requirement 4.7.1.2.1.b.1. A new Surveillance Requirement 4.7.1.2.1.b(3) would be added to demonstrate operability by verifying that each automatic valve in the flow path must be in its isolation postion on a MSIS test signal except HV–8200 and HV–8201. In addition, operability of all of these valves will be required to be demonstrated at least once per 18 months.

The proposed change would also revise the Bases to Technical Specification 3/4.7.1.5 to cover both the MSIV's and the MFIV's instead of just MSIV's. Specifically, the Bases 3/4.7.1.5. would clarify the functions of the MSIV's and the MFIV's in the event of a main steam or feedwater line rupture. The term "actuation signals" would also be added along with main steam and feedwater isolation system value closure times specified by the Surveillance Requirements to achieve consistency with the assumptions used in the accident analysis.

Basis for proposed non significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change would define the required LCO's and action statements for the main steam and feedwater isolation valves which currently exist only for the MSIV's. The proposed change would also incorporate the required action statements for the auxiliary feedwater isolation and control valves in Technical Specification 3/4.7.1.2. Thus, these changes would more clearly define plant operation to be consistent with the assumptions of the accident analyses, thereby avoiding any potentially unacceptable consequences for design basis steam or feedwater line breaks. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter the configuration of the plant or its operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not reduce the effectiveness of the main steam and feedwater isolation valves or the auxiliary feedwater system. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles P. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attr: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 22, 1987 (Reference PCN–238).

Description of amendment request: the proposed change would revise the applicability of Limiting Conditions for Operation (LCO) and Surveillance Requirements, Technical Specification 3.0.4 and Surveillance Requirements 4.0.3 and 4.0.4, on the basis of Generic Letter 87–09 entitled "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The proposed change would incorporate a provision in Technical Specification 3.0.4 allowing entry into an operational mode or specified condition in accordance with Action requirements when conformance to them would permit continued operation for an unlimited period of time. It would add a provision in Surveillance Requirement 4.0.3 allowing a delay for up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of some applicable Action requirements are less than 24 hours. It would also revise Surveillance Requirement 4.0.4 to include a provison that would not prevent passage through or to Operational Modes as required to comply with Action requirements. The proposed revision to the Bases for all specifications in Sections 3.0 and 4.0 would provide a better justification supporting their applicability. The licensee expects to avoid inconsistent application of exceptions to Specification 3.0.4 affecting twenty-five (25) existing Technical Specifications with the proposed provision of Specification 3.0.4.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes proposed by this amendment have been reviewed by the staff and documented in Generic Letter 87–09. The change to Technical Specification 3.0.4 would clarify the requirements regarding mode changes when the plant has entered an action statement; it would not change those requirements. The change to Technical Specification 4.0.3 would allow time to complete a missed surveillance test prior to commencing a power reduction. Since the majority of surveillances are completed successfully, This would avoid a potentially unnecessary transient and would therefore reduce the potential for plant upset and challenges to safety systems. The change to Technical Specification 4.0.4 would resolve potential conflicts between Specifications 4.0.3 and 4.0.4 relating to mode changes; it would not change the intent of the specifications in any way. For these reasons, the staff proposes to determine that the requested amendments would not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 84111.

NRC Project Director: George W. Knighton.

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The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: October 2, 1987.

Description of amendment request: The proposed amendment would modify the Corbicula Monitoring Program required by Appendix B of the Perry Nuclear Power Plant license as defined in the licensees' October 2, 1987 letter.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Perry Nuclear Power Plant Final Safety Analysis Report (FSAR) Section 9.2.1.4 states that monitoring for possible flow blockage in the Emergency Service Water System resulting from sources such as Asiatic Clams, will be accomplished through a program of lake water sampling, surveillance testing, and maintenance inspections. The licensees have revised the Corbicula Monitoring Program to incorporate new technology in this area. On this basis, the licensees assert that the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensees also state that the monitoring program would not create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of the monitoring program is to detect the presence of Corbicula which, by virtue of the monitoring procedures, does not have the potential to introduce new or different kinds of accidents.

Further, the licensees have stated that the proposed monitoring program represents an improvement over that which exists and therefore, could not result in a reduction in a margin of safety. The staff has reviewed the licensee's determination and concurs that the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorneys for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, D.C. 20037.

NRC Project Director: Kenneth E. Perkins.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: April 1, 1987.

Description of amendment request: The proposed change would modify the North Anna Units 1 and 2 (NA–1&2) Technical Specification (TS) Section ¾.9.10 to be consistent with the Standard TS for Westinghouse Pressurized Water Reactors, NUREG–0452, Revision 3. The change would enhance operating flexibility while in Mode 6 (Refueling) and thereby reduce the time required for refueling operations.

The present NA–1&2 TS 3.9.10 requires that "At least 23 feet of water shall be maintained over the top of the reactor pressure vessel flange." The APPLICABILITY statement for the present NA–1&2 TS 3.9.10 states, "During core alterations while in Mode 6." The proposed change would modify the APPLICABILITY statement to specify "During movement of fuel assemblies or control rods within the reactor pressure vessel while in Mode 6," which is consistent with NUREG–0452, Revision 3.

This change would allow the removal of vessel internal assemblies with less than the specified water level, but would still require 23 feet of water above the vessel flange whenever fuel assemblies or control rods are to be moved. This is consistent with the Standard TS (NUREG–0452, Rev. 3) and the NA–1&2 Accident Analysis.

The bases for the North Anna TS and the Standard Technical Specification state, "The restrictions on minimum water level ensure that sufficient water depth is available to remove 99% of the assumed 10% iodine gap activity released from the rupture of an irradiated fuel assembly. The minimum water depth is consistent with the assumptions of the accident analysis."

The NA–1&2 Updated Final Safety Analysis Report (UFSAR) Accident Analysis lists the "Fuel-Handling Accident Inside Containment" as ". . . a fuel assembly is assumed to drop, underwater, and rupture the cladding of all rods in that bundle." The analysis shows that the postulated release of radioactivity to the environment to be well below 10 CFR Part 100 limits.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant TS in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of NA–1&2 in accordance with these changes would not:

1. involve a significant increase in the probability of consequences of an accident previously evaluated. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the accident analysis assumptions in the UFSAR concerning the minimum required water level. Therefore, the probability or consequence of the fuel handling accident are not increased.

2. create the possibility or a new or different kind of accident from any accident previously identified. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and therefore the fuel handling accident evaluated in the UFSAR remains bounding in terms of the type of accidents that may occur and a new and different kind of accident is not created.

3. involve a significant reduction in a margin of safety. This change does not alter the conditions or assumptions of the accident analysis or the bases of the current TS. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the assumptions of the accident analysis. Consequently, the margin to 10 CFR Part 100 dose limits is not reduced.

The NRC staff agrees that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR Part 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: October 13, 1987.

Description of Amendments request: Technical specifications (TS) Table 15.4.1–1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels," Item 25, "Steam Generator Pressure," identifies the surveillance requirements for the checking, calibrating and testing of steam generator pressure channels. Currently, TS Table 15.4.1–1, Item 25, requires in part;

(1) that all three steam generator pressure channels be checked on a shift basis, except during periods of refueling shutdown if the steam generator vessel temperature is greater than 70°F; and

(2) that a steam generator pressure channel test be performed on a monthly basis, except during periods of refueling shutdown if the steam generator vessel temperature is greater than 70°F.

In its October 13, 1987 letter, the licensee proposed revising these requirements, respectively, to require:

(1) that all three steam generator pressure channels be checked on a shift basis, except during cold shutdown or refueling shutdown, when a check of one pressure channel per steam generator is required when the steam generator could be pressurized, and

(2) that a steam generator pressure charrel test be performed on a monthly basis, except during periods of refueling shutdown; however, the test must be performed prior to startup if it has not been performed during the previous surveillance period.

The proposed TS change only affects channel checks and tests during refueling or cold shutdowns. The proposed TS does not change the current required "at-power" steam generator pressure channel checks or tests.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The net effect of the proposed changes is to modify the surveillance requirements of the steam generator pressure channels when the plant is in cold shutdown or refueling shutdown. The surveillance requirements are unchanged for power operations; therefore, the probability or consequences of an accident previously evaluated are unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The steam generator pressure channels cannot initiate accidents, but are installed to send a safety injection actuation signal in response to low steam generator pressure, which may be a result of abnormal primary-side conditions. The steam generator pressure channels themselves do not cause accidents; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not change the at-power steam generator pressure channel surveillance; therefore, the margin of safety is unchanged.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 5, 1988.

Description of amendment request: The proposed amendment would put into effect the following three administrative changes:

1. The Plant Operations Manager would not be required to maintain a Senior Reactor Operator's license.

2. The Security Organization would report to a Security Manager who in turn would report to the Administrative Services Manager.

3. The Reactor Engineering Manager would report to the Assistant Technical Director.

All of these changes would be reflected in the Facility Organization Chart, Figure 6.2.2 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the January 5, 1988, letter states the following:

> This proposed change is administrative in nature. It has been evaluated and determined to involve no significant hazards consideration. As such, this proposed change would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Create the possibility of a new or different kind of accident from any previously analyzed.
>
> 3. Involve a significant reduction in a margin of safety.
>
> Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This

proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agreed with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: R. Wessman, Director.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 10, 1988.

Brief description of amendment: The proposed amendment would reduce the required Reactor Coolant System total flow from 396,100 gpm to 387,600 gpm.

Date of publication of individual notice in **Federal Register**: February 17, 1988 (53FR4793).

Expiration date of individual notice: March 18, 1988.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County California

Date of amendment request: December 30, 1987.

Brief description of amendments: The proposed amendments would authorize each facility to possess byproduct and special nuclear materials produced by operation of San Onofre Nuclear Generating Station, Unit 1.

Date of publication of individual notice in **Federal Register**: February 12, 1988 (53 FR 4247).

Expiration date of individual notice: March 14, 1988.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: February 5, 1988.

Description of amendment request: The amendment would add a license condition to allow a plant modification to the steam generator upper lateral support snubbers by reducing the number of snubbers from four to one based or application of "leak-before-break" technology as permitted by revised General Design Criterion 4.

Date of publication of individual notice in **Federal Register**: February 16, 1988 (53 FR 4479).

Expiration date of individual notice: March 17, 1988.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No requested for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmetnal assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: November 20, 1987.

Brief description of amendments: The amendments revise Table 3.3-6 in Technical Specification 3.3.3.1, "Radiation Monitoring Instrumentation," by changing the detectable range of the main steam line effluent monitors from 10^{-3}-10^{4} per hour to 10^{0}-10^{5} mR per hour.

Date of Issuance: February 26, 1988.

Effective date: February 26, 1988.

Amendment Nos.: 26, 15 and 3.

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49220).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Friday 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 5, 1987.

Description of amendments: The amendments change the Technical Specification Surveillance Requirement 4.61.2 to allow use of the mass-point method for calculating containment leakage rate.

Date of issuance: February 17, 1988.

Effective data: February 17, 1988.

Amendments Nos.: 116 and 144.

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47776)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: November 23, 1987.

Brief description of amendment: The amendment deletes Surveillance Requirement 4.4.11.1, which requires quarterly testing of the reactor coolant system (RCS) vent path block valves and modifies Surveillance Requirement 4.4.11.2.b to include the testing of the above cited block valves at least once every 18 month interval.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 4.

Facility Operating License No. NPF-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47780).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Attorney for the Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Common Wealth Edison Company, Docket Nos. 50-237, 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: August 28, 1986.

Brief description of amendments: The proposed amendment deletes certain diesel generator testing requirements to eliminate unnecessary and excessive testing. In addition, a one and one-half hour maintenance period is allowed without requiring low pressure core cooling surveillance.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment Nos: 98 and 93.

Provisional Operating License No. DPR-19 and Facility Operating License. No. DPR-25. The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1987 (52 FR 9562).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 16, 1987.

Description of amendment requests: The range of Drywell Pressure specified in Technical Specifications Table 3.2-4, for Units 1 and 2, were expanded from "0 to 75 psig" to "-10 inches Hg to 70 psig". Additionally, a typographical error on Table 3.2-4, for Unit 2, was corrected where reference was made to Unit 1 instrumentation rather than Unit 2.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos: 105 and 101.

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 1987 (52 FR 42359). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennephin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al.; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: September 24, 1987 and November 2, 1987 (Millstone Unit 2 only).

Brief description of amendment: The change modifies the Technical Specifications as follows: (1) TS 6.5.3.9.b (TS 6.5.2.9.b for Haddam Neck), "Records" is modified to identify the Nuclear Review Board (NRB) minutes as an acceptable means to forward certain reports to the Senior Vice President, Nuclear Engineering and Operations, (2) a maximum of 12 hours of continuous, planned inoperability for liquid and gaseous effluent monitoring instrumentation is permitted (Millstone Unit 2 only), (3) inoperability of liquid and gaseous effluent monitoring instruments for the purpose of obtaining samples, is permitted (Millstone Unit 2 only), (4) a period of 12 hours within which auxiliary sampling of radioactive gaseous effluent must be initiated if the established minimum number of effluent monitoring channels become inoperable, is established (Millstone Unit 2 only).

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment Nos.: 100, 14, 125, 15.

Facility Operating License Nos. DPR-61, DPR-21, DPR-65 and NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1987 (52 FR 39298) for the September 24, 1987 application and December 16, 1987 (52 FR 47789) for the November 2, 1987 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 13, 1987, as supplemented December 11, 1987 and January 15 and 20, 1988.

Brief description of amendments: The amendments modified the Technical Specifications to ensure that plant operation is consistent with the design and safety evaluation conclusions of the Unit 2 cyle 2 reload safety evaluation, and to reflect the addition to the Boron Dilution Mitigation System for Unit 2.

Date of issuance: January 19, 1988.

Effective date: January 19, 1988.

Amendment Nos.: 38 and 30.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49225).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black.

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: December 4, 1987.

Brief description of amendment: The amendment revised license condition 2.C.(8)(b) to allow an extension of time for resolution of the Safety Parameter Display System issue.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 32.

Facility Operating License No. NPF-52. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49224).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 22, 1987, as supplemented May 26, August 31, October 1, October 30, November 19, and December 14, 1987.

Brief description of amendments: The amendments modified the Technical Specifications to accommodate removal of the resistance temperature detector (RTD) bypass manifold systems and the installation of in-line RTDs.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos.: 40 and 33.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45685).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 26, 1987, as supplemented October 29, November 16, November 20 and November 25, 1987, December 16, 1987, January 7 and February 1, 1988.

Brief description of amendment: This amendment changes the surveillance requirement for the emergency diesel generator loading to reflect the diesel generator ratings and the present total load they would be expected to carry. The requirement for verifying the auto-connected loads has also been updated to reflect the present loads.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment No.: 104.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1987 (52 FR 45413).

The initial notice was published under exigent circumstances allowing the public 15 days to comment and until December 14, 1987 to file a petition for leave to intervene. A correction to the initial notice was published in the **Federal Register** on December 14, 1987 (52 FR 47466) allowing the public until December 28, 1987 to file a petition for leave to intervene.

In response to the staff's request, the licensee's November 25 and December 16, 1987, and January 7 and February 1, 1988 letters provided additional information which did not change the initial determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated December 15, 1987 (52 FR 48357), an Exemption dated December 23, 1987 (52 FR 48537) and in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: July 13, 1987.

Brief description of amendments: The amendment modified the definition of surveillance frequency in Section 1.II of the Technical Specifications to provide for an 18-month operating cycle instead of the 15 months specified previously.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 152.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 827).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: September 22, 1987.

Brief description of amendment: The amendment revised the Technical Specifications related to the sodium pentaborate solution in the Standby Liquid Control System.

Date of issuance: February 3, 1988.

Effective date: February 3, 1988.

Amendment No.: 90.

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 18, 1987 (52 FR 44244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1987 as supplemented November 23, 1987.

Brief description of amendment: The amendment revised the total predicted structural settlement for Settlement Marker Nos. 28 and 34.

Date of issuance: February 11, 1988.

Effective date: February 11, 1988.

Amendment No.: 18.

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34009).

The licensee's November 23, 1987 submittal provided clarifying information on the differential settlement calculations and did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 31, 1987.

Brief description of amendment: This amendment revises the Duane Arnold Energy Center Technical Specifications to revise the requirement from one year to once per operating cycle for emergency diesel generator inspections. Other changes requested by the August 31, 1987, application are being handled separately.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 149.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE, Cedar Rapids, Iowa 52401.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 27, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by changing the inspection interval for low pressure turbine heavy disc rotors from 40 to 60 months.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988,

Amendment No.: 30.

Facility Operating License No. NPF-38. Amendment revised the Technical Specification.

Date of intitial notice in **Federal Register:** December 16, 1987 (52 FR 47788).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 1, 1987.

Brief description of amendment: The amendment changed the Technical Specifications to (1) revise the Source Range Monitor and Intermediate Range Monitor operability requirements to clarify that negative power supply voltage is required for operability, (2) delete operability and surveillance requirements for certain post-accident monitoring instrumentation during shutdown and refueling conditions, and (3) revise an incorrect statement regarding the main steam line high flow isolation instrumentation setpoint.

Date of issuance: February 11, 1988.

Effective date: The changes related to SRM/IRM power supply become effective 12 months from this date. The remaining changes are effective immediately.

Amendment No.: 115.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 20, 1987.

Brief description of amendment: The amendment changes the Technical Specifications to revise the interval for performing the diesel generator periodic inspection from annually to 18 months.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 116.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**November 18, 1987 (52 FR 44246).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 22, 1987.

Brief description of amendment: The amendment changed the Technical Specifications to modify the operability requirements for the Rod Sequence Control system and Rod Worth

Minimizer to allow the Banked Position Withdrawal System to be used for rod pattern control between 100% and 50% rod density.

Date of issuance: February 23, 1988.

Effective date; February 23, 1988.

Amendment No.: 117.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:**ecember 30, 1987 (52 FR 49229).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards considered comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: February 17, 1987 (corrected editorially by letter dated July 27, 1987) and July 31, 1987 (corrected editorially by letter dated September 11, 1987).

Brief description of amendment: Changes to the Radiological Effluent Technical Specifications that correct typographical errors, clarify some statements, delete inapplicable sections, and make these Technical Specifications consistent with those of Nine Mile Point Unit 2.

Date of issuance: February 8, 1988.

Effective date: February 8, 1988.

Amendment No.: 94.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35799) and September 9, 1987 (52 FR 34015).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, Town of Waterford Connecticut

Date of application for amendment: September 9, 1987 and supplemented September 9, 1987, September 30, 1987, November 10, 1987, November 25, 1987, December 23, 1987, and January 7, 1988.

Brief description of amendment: The amendment revised several Technical Specification Sections as required by the Cycle 2 reload. These changes will allow a positive moderator temperature coefficient (PMTC) at reactor power levels less than 100%. In addition, some changes are required as a result of the replacement of the resistance temperature detector (RTD) bypass system with thermowell-mounted RTDs in the reactor coolant system. The changes are:

A. Technical Specification Changes due to Cycle 2 Reload:

1. *Section 3.1.1.3*—The change would allow a +5 pcm/°F MTC below 70 percent of rated power, ramping down to 0 pcm/°F at 100 percent power.

2. *Section 3.1.2.5, 3.1.2.6 and 3.5.4*—The change will increase the range of acceptable boron concentration in the Refueling Water Storage Tank (RWST) to 2300–2600 ppm from the previous range of 2000–2200 ppm.

3. *Section 3.5.1*—The change will increase the range of acceptable boron concentration in the Accumulators to 2200–2600 ppm from the previous range of 1900–2200 ppm.

4. *Section 3.6.2.3*—The change will increase the range of acceptable sodium hydroxide concentrations in the chemical addition tank (CAT) to 2.41–3.10% from the previous range of 1.35–2.00%. The volume (level) in the CAT is reduced to a range of 18000–19000 from the previous range of 19100–20100 gallons.

5. *Section 3.9.1*—The change will increase the boron concentration in the filled portion of the reactor coolant system (RCS) and refueling canal during Mode 6 to correspond with the new minimum RWST boron concentration.

B. Techical Specification Changes due to the Elimination of the RTD Bypass System.

1. *Table 2.2-1*—The change will revise the values of 'Z' and Sensor Error(s) for the overtemperature delta–T and overpower delta–T trips. In addition, the change will revise the value of 'Z,' the sensor error(s) and the allowable value for the reactor coolant flow-low trip. In the Table notations for Table 2.2–1 changes are proposed to note #1 to specify how delta–T is to be measured, and to change the lead-lag compensator time constant tau–1. Notes #2 and #4 are to be revised to change the amount by which a channel maximum trip setpoint may exceed its computed trip setpoint.

2. *Sections 3.2.3.1 and 3.2.3.2*—The change will revise the minimum RCS flow rates for both four and three-loop operations. The uncertainty values for flow measurement specified in Sections 3.2.3.1 and 3.2.3.2 are also to be changed.

3. *Table 3.2–1*—The change will revise the values specified for RCS Tave and Pressurizer Pressure which are the limits assumed in the safety analysis.

4. *Table 3.2–2*—The change will revise the response time for the overtemperature delta-T and overpower delta-T trip functions.

5. *Table 4.3–1*—The change will delete the reference to footnote #12 in Table 4.3–1, since it is no longer relevant once the RDT bypass system is removed.

6. *Table 3.3–4*—The change will revise the allowable values for functional Unit 5.d.1 and 5.d.2, "Tave low coincident with reactor trip (P–4)" and Functional Unit 9.b, "ESFAS Interlocks—Low Low Tave (P–12)."

7. *Table 3.3–5*—The change will revise the response time for feedwater isolation on Tave low coincident with reactor trip (P–4).

C. Other Technical Specification Changes:

1. Section 3.4.1.6—The existing specification would require that the boron centration of an isolated loop be greater than 2300 ppm prior to bringing it back into service if necessary to match the boron concentrations of the operating loops. The change will require a boron concentration of at most 2300 ppm.

Date of issuance: January 20, 1988.

Effective date: January 20, 1988.

Amendment No.: 12.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42367).

The November 10 and 25, 1987, and December 23, 1987 and January 7, 1988 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: December 4, 1987.

Brief description of amendment: The amendment revised the Technical Specification Section 3/4.3.2 to delete the chlorine detection system.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 14.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 830).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 6, 1981 as supplemented on April 2, 1984, December 2, 1985, October 29, 1986 and July 7, 1987.

Brief description of amendment: The amendments changed the methods of verifying containment drywell-suppression chamber vacuum breaker closure and made several administrative changes to correct errors, to establish consistency and for editorial clarity.

Date of issuance: February 18, 1988.

Effective date: With 60 days of its date of issuance to accommodate the writing and approval of implementing procedures.

Amendment Nos.: 127 and 130.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25369) and January 29, 1986 (51 FR 3716).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 24, 1986, as supplemented on January 22, 1988.

Brief description of amendments: These amendments changed the range specified for the drywell temperature indicator and recorder, provided clarifications for Technical Specification Table 3.2.F and corrected an error in Table 3.2.F.

Date of issuance: February 22, 1988.

Effective date: On completion of modifications to each device and prior to initiation of fuel cycle nine for Unit 2 and fuel cycle eight for Unit 3.

Amendment Nos.: 128 and 131.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4416).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of the State of New York, Docket No. 50–333, James A. Fitzpatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 15, 1986.

Brief description of amendment: The amendment would add to the Technical Specifications a requirement that a capacity test for the main control room emergency ventilation air supply system be performed every 18 months.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 114.

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** June 18, 1986 (52 FR 2224).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College Of Oswego, Oswego, New York.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 27, 1987, as supplemented by letter dated January 11, 1988.

Brief Description of amendment: This amendment changes the requirements of the Technical Specifications related to steam generator tube plugging at 15 percent level.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 25.

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45889).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: Richard H. Wessman, Director.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: May 14, 1987, as supplemented September 25 and October 29, 1987.

Brief description of amendment: The amendment revised the Technical Specifications to reflect hardware modifications associated with reactor building combustible gas control. The hydrogen purge system was replaced with an inconsistent hydrogen recombiner system.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 95.

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32210).

The September 25 and October 29, 1987 submittals do not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 16, 1987, as supplemented November 2, and 25, 1987.

Brief description of amendment: The amendment revised Section 6 (and related pages of the Table of Contents) of the Technical Specifications to reflect changes in the plant management and organization.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment No.: 96.

Facility Operating License No. DPR–54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47792).

The November 25, 1987 submittal consists of changes to the nuclear security reporting requirements. The submittal does not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 4, 1987 (TS 233).

Brief description of amendments: The amendments impose a limit on reactor operation when nitrogen is not being used to supply the pneumatic control system inside containment. The amendment request is in response to Generic Letter 84–09, Hydrogen Recombiner Capability. The amendments also delete an obsolete reference to the fire-related startup retesting program.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendments Nos.: 142, 138, 113.

Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49232).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 11, 1987 (TS 227).

Brief description of amendments: The proposed amendment would revise the limiting conditions for operation for the Standby Gas Treatment System, the Control Room Ventilation System and the Primary Containment Purge System. In each case, the modification was to replace ANSI N510–1975, which was referred to for radioactive methyl iodine removal effectiveness test of the charcoal filter sample with ASTM D3803. ASTM D3803–79 is referred to in ANSI N510–1980 as the proper test to use for measuring methyl iodine removal effectiveness.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendments Nos.: 143, 139, 114.

Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1987 (52 FR 11372).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 28, 1985, as supplemented April 7, 1986 (TS 212).

Brief description of amendments: The amendments revise functional test frequencies listed in Table 4.2.B. The changes replace functional test frequencies for core spray logic, RCIC (Initiating and Isolation) logic, HPCI (Initiating and Isolation) logic, ADS logic, LPCI (Initiating and Isolation) logic, containment spray logic, core spray auto initiation inhibit, and HPCI auto initiation inhibit from once per 6 months to once per 18 months.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendment Nos.: 144, 140, 115.

Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 6, 1985 (50 FR 46218); July 2, 1986 (51 FR 24263).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 16, 1987 (TS 87–37).

Brief description of amendments: The amendments add requirements for the long-term containment cooling system lower compartment containment coolers to the Sequoyah Units 1 and 2 Technical Specifications.

Date of issuance: February 11, 1988.

Effective date: February 11, 1988,

Amendment Nos.: 67, 59.

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 11, 1988 (87–47).

Brief description of amendments: The amendments modify the Technical Specification surveillance requirement for the maximum allowable percentage of fresh air intake upon actuation of the control room emergency ventilation system. The proposed amendments were noticed in the Federal Register on Friday, January 15, 1988 (53 F.R. 1082). In this notice, the staff stated that the licensee requested that the amendment be acted on an emergency basis because it could potentially impact the heatup of Unit 2. The staff stated in the notice that there was sufficient justification for consideration of these amendments on an exigent basis in accordance with 10 CFR Part 50.91. Since the notice was published in the Federal Register, it has been determined that the proposed amendments would not impact the heatup of Unit 2 and, therefore, issuance of the amendments on the exigent basis was not justified. These amendments were not issued on an exigent or an emergency basis.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988,

Amendment Nos.: 68, 60.

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 15, 1988 (53 F.R. 1082).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 11, 1987.

Brief description of amendment: The amendment increased the maximum isolation time for the containment mini-purge isolation valves, given in Technical Specification Table 3.6–1, from 3 seconds to 5 seconds.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 33.

Facility Operating License No. NPF–30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 10, 1987.

Brief description of amendment: the amendment revised Technical Specification Table 4.3–1 surveillance requirements and included the addition of functional testing requirements for the reactor trip bypass breakers prior to placing them in service during monthly reactor trip breaker testing and during refueling outages.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 34.

Facility Operating License No. NPF–30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1987 (52 FR 45890).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of applications for amendments: October 31, 1985, as superseded September 25, 1986 and May 22, 1987; the application dated April 12, 1985, as revised September 9, 1985 and October 7, 1985, and superseded by September 25, 1986, and May 22, 1987 and as supplemented October 23, 1987.

Brief description of amendments: The amendments changed Section 3.7, "Instrumentation System," and Section 4.1, "Operational Safety Review," of the Technical Specifications (TS) for Surry Units 1 and 2, to bring the TS into closer agreement with the Westinghouse Standard Technical Specifications, as well as to conform with the guidance provided by the staff.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos. 117 and 117.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1987 (52 FR 35810).

The October 23, 1987 submittal contained clarified action statements and did not change the substance of the amendment request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 2, 1987, as supplemented April 17 and October 30, 1987 and January 8, 1988.

Brief description of amendment: The amendment revised the License and Technical Specifications in order to remove certain fire protection requirements from the Technical Specifications and place them in plant procedures under the control of the plant's on-site review committee, and place them in the Final Safety Analysis Report.

Date of issuance: February 24, 1988.

Effective date: Upon issuance and shall be implemented upon the licensee's completion of the necessary procedural changes.

Amendment No.: 15.

Facility Operating License No. NPF–42. Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: March 25, 1987 (52 FR 9583).

The April 17 and October 30, 1987 and January 8, 1988 submittals provided additional clarify information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka Kansas.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operating or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opporutnity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standard's of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 6, 1988.

Brief description of amendment: This amendment modifies the Maine Yankee Technical Specifications to update figures 5.2-1 and 5.2-2 in Technical Specifications 5.2-1 "Organization" depicting the Maine Yankee Atomic Power Company offsite and facility organization.

Date of issuance: February 17, 1988.

Effective date: Immediately.

Amendment No.: 103.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Public comments received regarding to proposed no significant hazards consideration: Yes. A Legal Notice requesting public comments by February 16, 1988 was published in the Portland Press Herald, Portland, Maine on February 13, 1988.

Comments received: No.

The Commission's related evaluation of the amendment and final no significant hazards consideration are contained in a Safety Evaluation, dated February 17, 1988.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

Local Public Document Room Location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

NRC Project Director: Richard H. Wessman, Acting Director.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, New London County, Connecticut

Date of application for amendment: February 9, 1988.

Brief description of amendment: The amendment revised the Technical Specification 4.7.6.13.e.3, which requires periodic verification of control room air inleakage and deletes the requirement that such leakage be measured at a pressure differential of 1/16" water guage.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 125.

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 12, 1988.

Local Public Document Room Location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Washington Public Power Supply System, Docket No. 50-397, Washington Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 18, 1988, as revised February 19, 22, and 23, 1988.

Brief description of amendment: The amendment revised Technical Specification 3.9.7, "Crane Travel-Spent Fuel Storage Pool," by waiving the weight limits in order to repair damage to the reactor building roof which occurred on February 14, 1988.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 50.

Facilities Operating License No. NPF-21.: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 23, 1988.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventh Street NW., Washington, DC 20036.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington, 99352.

NRC Project Director: George W. Knighton.

Dated at Rockville, Maryland, this 3rd day of March, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4964 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440 and 50-441]

Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, by a Petition pursuant to 10 CFR 2.206 dated January 22, 1988, Ohio Citizens for Responsible Energy, Inc. (Petitioner) requested a variety of relief including that the construction permit and operating license for the Perry Nuclear Power Plant, Units 1 and 2 of the Cleveland Electric Illuminating Company, et al. (licensees) be immediately suspended for alleged deficiencies in seismic design. The Petition's allegations are based largely upon an analysis of data and evaluations which had been performed in response to the January 31, 1986 earthquake which occurred near the Perry facility.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations, and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the local Public Document Room for the Perry facility located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 2nd day of March 1988.

[FR Doc. 88-5130 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Public Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting at the San Francisco Department of Public Health located at 101 Grove Street, Room 300, San Francisco, CA, from 9:00 a.m. to 5:30 p.m. on Thursday, March 24, and from 9:00 a.m. to 1:00 p.m. on Friday, March 25.

During this two-day hearing, the Commission will hear testimony from individuals representing States, cities, corporations and community-based organizations that have responded to the AIDS epidemic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655-15th street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88-5120 Filed 3-8-88; 8:45 am]

BILLING CODE 4100-15-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

New America High Income
  Common Stock, $.01 Par Value (File No. 7-3005)
Owens & Minor Inc.
  Common Stock, $2.00 Par Value (File No. 7-3006)
Symbol Technologies, Inc.
  Common Stock, $.01 Par Value (File No. 7-3007)
Crystal Oil Company
  Common Stock, $.01 Par Value (File No. 7-3009)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5183 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25415; File No. SR-OCC-87-20]

Self-Regulatory Organization; Proposed Rule Change By The Options Clearing Corp. Relating to Investment in a Wholly-Owned Subsidiary

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1987, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation ("OCC") proposes to invest its funds in a wholly-owned subsidiary to provide data-processing and other support services to clearing houses or banking entities organized to process, clear and settle transactions in foreign and United States currencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this proposed change is to permit The Options Clearing Corporation ("OCC") to invest excess funds in a wholly-owned subsidiary, currently named International Clearing Systems, Inc. ("ICSI"). Initially, ICSI will contract with consultants and system designers to develop data processing and communications systems adequate to process trade data, settlement data and related clearing information respecting foreign currency forward and spot exchange contracts among financial institutions. Once the systems are developed, ICSI intends to establish long-term contracts with foreign exchange clearing houses to process data and provide related support services respecting foreign currency exchange transactions and resulting collateral and settlement obligations.[1]

ICSI will provide ministerial support services—services in the nature of facilities management—only. It will play no discretionary role in policy formulation or governance decisions with or for any foreign exchange clearing house. In addition, to preserve its legal independence, ICSI will maintain all its books, records and funds separate from the records and funds of

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[1] A number of industry initiatives are under development both in the United States and abroad to create trade-match, trade netting and currency exchange settlement services. In connection with OCC's investment in ICSI, OCC is exploring alternative approaches to developing a series of foreign exchange clearing houses in which OCC may have ownership interests. OCC's preferred approach involves working with banks and bank regulatory authorities to establish foreign exchange clearing houses organized both in the United States and abroad, each of which would provide trade-matching, multilateral obligations netting, and settlement services to entities engaged in foreign currency exchange trading.

any contracting clearing house and OCC.

ICSI anticipates that its data processing and other required support services will provide benefits to foreign currency exchange markets and market participants by extending OCC's demonstrated expertise in clearance and settlement systems to the development of needed support services in markets not currently served by OCC. In particular, ICSI's development of new data processing and communication techniques will reduce unnecessary costs entailed in foreign currency exchange trade processing, and will extend efficient, effective and safe clearance methods to inter-bank foreign currency exchange operations. Moreover, given the multi-national elements of inter-bank foreign currency exchange activities, OCC anticipates that centralized servicing by ICSI will promote safety and efficiency in foreign currency exchange markets and banking markets generally, in harmony with the standards developed by the Securities and Exchange Commission and registered securities clearing agencies under section 17A of the Securities Exchange Act of 1934 ("the Act"). Accordingly, OCC believes that its investment in ICSI pursuant to this proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competion

OCC does not believe that the proposed rule change would impose any burden on competion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change and none was received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-OCC-87-20 and should be submitted by March 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 2, 1988.

Jonathan G. Katz

Secretary.

[FR Doc. 88-5133 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25416; File No. SR-Phlx-88-3]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendments to the Exchange's Margin Rule, Rule 722

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 28, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4, hereby proposes a rule change to revise its margin rule, Rule 722, to conform to Regulation T of the Board of Governors of the Federal Reserve System and to coordinate with the recently approved New York Stock Exchange ("NYSE") margin rule, NYSE Rule 431. A summary of the major changes to the rule is included in part IIA below.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a comprehensive revision to the Exchange's margin rule, Rule 722 so that it better reflects the credit/risk concerns of the marketplace. Also the revisions are designed to conform the rule to Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"). In light of the recent revision by the New York Stock Exchange of its margin requirements, the PHLX determined to update its own margin rules in a coordinated fashion. Specifically, the changes to the PHLX rule generally track those recently approved by the Commission with regard to NYSE Rule 431 (Release No. 34-22875).

The major changes to the rule are the following:

(a.) *U.S. Government Securities* [Section (b)2a]—Currently the maintenance margin required is 5% of the principal amount of the obligation. The proposed amendment would replace that requirement with a sliding scale of 1% to 6% of the current market value of the obligation based on maturity date. This new rule will set margin on the basis of length of time to maturity. The proposed change would lower margin requirements for shorter term U.S. Government securities while increasing

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the requirements for longer term U.S. Government Securities. This new scale recognizes that risk diminishes as securities near maturity and that securities with longer terms have greater risk.

Additionally, zero coupon bonds with 5 years or more to maturity would have a minimum requirement of 3% of the principal amount.

(b.) *Municipal Securities* [Section (b)2b]—The minimum margin required is currently the lower of 25% of the market value or 15% of the principal amount. The amendment would change the requirement to the greater of 15% of the current market value or 7% of the principal amount. Margin requirements generally would be unchanged for municipal securities purchased at par, but lower for those purchased below par and higher for those purchased above par. This change will recognize the greater risks associated with higher priced municipal securities which are most reactive to current market conditions.

(c.) *Non-Convertible Corporate Debt Securities* [Section (b)2c]—The amendment would reduce the requirements for non-convertible corporate debt securities eligible for "good faith" margin under Regulation T from 25% of market value to the greater of 7% of the principal amount or 20% of the current market value. This new minimum margin requirement will ensure margin sufficiency and also prevent over-speculation in lower priced non-convertible corporate debt securities.

(d.) **Guaranteed accounts** [Section (c)4]—A capital charge will now be imposed when one or more accounts is guaranteed by another account and the margin deficiencies guaranteed are in excess of 10% of a member organization's excess net capital.

(e.) **Maintenance Margin Time Period** [Section (c)6]—The time period in which the amount of maintenance margin must be obtained has been changed from "within a reasonable time" to within 15 business days of the date of deficiency. This new finite time period should eliminate any uncertainty over what length of time is reasonable.

(f.) **Definitions** [Section (d)]—The language of the rule has generally been revised to read more concisely with specific terms defined at the end of the rule rather than within the text itself.

(g.) Finally, the rule has been reworded where appropriate to conform to the current Regulation T (*See e.g.*, Section (c)7).

Because most of the significant changes relate to margin on debt securities, the amendments do not strongly impact products traded on the PHLX. The change should, therefore, not impose any significant effect on members at this time. Nevertheless, the Exchange will allow lead time after approval by the Commission to allow the members to adapt their practices to the new rules. Voluntary compliance will be permitted 3 months after Commission approval of the rule change and compliance will be mandatory 6 months after such approval.

The proposed rule change is consistent with the requirements of section 6(b)(5) of the Act in that it is designed to protect investors and the public interest by ensuring that the Exchange's margin requirements adequately reflect current regulatory and credit/risk concerns. In addition, the change is consistent with Section 7(a) of the Act and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this proposed rule change will be solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 8, 1988.

[FR Doc. 88-5134 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

SBA Form 1086; Secondary Participation Guaranty and Certification Agreement

AGENCY: Small Business Administration.

ACTION: Request for public comments.

SUMMARY: The Small Business Administration is publishing a proposed revision of SBA Form 1086, Secondary Participation Guaranty and Certification Agreement. The public is asked to provide comments and make suggestions on this proposed change.

DATE: Comments should be received by April 8, 1988. Send comments to: Associate Administrator for Finance and Investment, Small Business Administration, Room 800, 1441 L Street NW., Washington, DC 20416.

FOR ADDITIONAL INFORMATION CONTACT: James W. Hammersley (202-653-5954) or Allan S. Mandel (202-653-6696), Room 800, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The Small Business Administration has prepared a proposed revision of the document used to execute a sale of the guaranteed interest portion of a 7(a) loan into the secondary market. The revision reflects proposed changes based on the experience SBA has gathered in administering the secondary market since the President signed into law the Small Business Secondary

Market Improvements Act in 1984 (Pub. L. 98-352; 98 Stat. 329). It incorporates several changes that have been suggested by lenders, investors and broker/dealers.

The major changes are these:

1. A servicing fee of no less than 2.0 percent per annum will be required on any guaranteed interest sold at a price greater than par (paragraph 6(e)). Federal Reserve Board data show the average servicing cost of commercial loans to be about two percent of loan volume, depending upon the size of the bank (*Functional Cost Analysis: 1986 Average Banks*, page 40). In fiscal year 1987 the average servicing fee retained by lenders on Guaranteed Interests sold into the SBA secondary market was 1.2 percent. Twenty-eight percent of the loans carried a servicing fee of 0.5 percent or less. SBA and the bank regulatory agencies are concerned about the substitution of up-front premium income for on-going servicing fee income that continues over the life of a loan. SBA believes the secondary market should be structured so that lenders have both the income and the incentive to service loans properly and keep them on their books. Many lenders are already selling their guranteed interests with sufficient servicing fees and as such will be unaffected by this change.

2. The secondary market is a closely connected system that functions best if the interests of each of the major participants—the small business borrower, the lender, the broker/dealer and the investor—are properly balanced. In order to provide a better balance, a new authority for emergency repurchase by the lender is being proposed (paragraph 20). SBA is confronted with the need to establish a policy for the situation in which a borrower's business will probably fail unless a modification, such as a rate reduction, is granted. Every year a few such cases arise in which the lender is willing to grant a rate reduction or other modification but cannot do so because either the investor is not willing or the loan is in a pool, in which case it is infeasible to request investor approval because of multiple investors. SBA proposes to permit a lender to repurchase if the SBA field office, after careful analysis, concludes that an emergency exists in which the borrower's business will probably fail if the change is not approved and will probably survive if the change is approved. SBA intends that this authority be used only in carefully selected, applicable cases. This is not to be construed as general or wholesale authority for unilateral repurchase by lenders. Such an interpretation would be extremely damaging to the secondary market.

3. Timely action is essential to an efficient secondary market. SBA is providing a more precise definition of the time parameters of secondary market operations, particularly with regard to such time-sensitive activities as remittance by lender of borrower payment, the furnishing by lender of transcripts on loans that are in default and must be purchased, and the required advance notice from Lender to the fiscal and transfer agent (FTA) of Borrower's intent to prepay (paragraphs 6, 10, 11, 12, 13, 15, 16 and 19). Payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month.. SBA shall levy a late payment penalty of 5% of the amount remitted or $100, whichever is greater, (subject to a maximum of $5,000) on any payment and remittance not received by the fiscal and transfer agent by the fifth of the month. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable to the SBA. Lender's failure to provide to FTA the required ten days advance notice of Borrower's intent to prepay will result in a $100 penalty.

The vast majority of Lenders already act in a timely manner and will be unaffected by this proposal.

4. If the Borrower fails to make the first three payments due after the loan is sold into the secondary market, SBA proposes that the Lender be required to repurchase from the Registered Holder the Guaranteed Interest at a price equal to the sum of the outstanding balance, accrued interest and premium, if any, received by the Lender (paragraph 3). The Lender has always been required to certify that it has no knowledge of any likely default or prepayment by Borrower. However, some cases have occurred in which the loan defaults or prepays immediately upon sale. SBA is proposing this change in order to provide increased investor protection in such cases.

5. SBA is proposing to modify its procedures in order to encourage more timely action by SBA and Lender when a borrower encounters problems that threaten the repayment of the loan (paragraphs 10 and 11). The goal is to encourage proper servicing action as soon as possible. The FTA will provide to each SBA field office a monthly list of its loans that appear to be in default. The field office will contact the Lender to determine the status of the loan. The Lender will verify whether (1) the interest-paid-to date is more than sixty days in arrears or (2) default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note. If the loan is in either category, SBA, after consultation with the Lender, will within ten days determine whether SBA or the Lender is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action. Such servicing action may include one three month deferment of payments without obtaining prior permission from the Registered Holder, as is currently authorized. The Lender would continue to be responsible for notifying the FTA and SBA of any deferment.

James Abdnor,

Administrator.

OMB No.
Expiration Date:

SBA LOAN NUMBER————————

Secondary Participation Guaranty and Certification Agreement

Important Information

This form is to be used for the initial transfer only. All subsequent transfers must use the reverse of the certificate or detached assignment form. Loans sold using SBA form 1084 must be certificated prior to resale: Use SBA Form 1085.

A. *Lender Certifications*. By signing this document, *LENDER CERTIFIES*, among other items, that (see paragraph 3 of the Terms and Conditions herein):

(1) Lender, including its officers, directors, and employees, has no knowledge of a default by the Borrower and has no knowledge or information that would indicate the likehood of default. (2) Lender has paid the SBA guaranty fee. (3) The loan is fully disbursed. (4) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

B. *Borrower Payments. Lender shall send to the FTA the FTA share of all Borrower payments received after settlement of the loan sale. DO NOT SEND ANY PAYMENTS DIRECTLY TO THE INVESTOR OR THE BROKER/DEALER.* Retain a copy of this form. The wire transfer receipt from settlement through the FTA will be Lender's notification that the sale is complete. Lender will not receive a return copy of this form.

C. *Lender Payment and Late Payment Penalty*. Lender payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month or the next business day thereafter if the third is not a business day. SBA shall levy a late payment penalty of 5% of the amount remitted or $100, whichever is greater, (subject to a maximum of $5,000) on any payment and lender remittance statement (Form 1502) not received in the offices of the FTA by the fifth of the month or next business day thereater if the fifth is not a business day. This penalty will be paid through the FTA along with the late penalty identified in paragraph 6(c) due to the FTA (see paragraph 6 for specific details.)

D. *Payment Modification.* Lender may approve one deferral of payment for up to three monthly payments without obtaining prior permission from the Registered Holder. Lender shall immediately notify the FTA and SBA. Any other payment modification must receive prior approval by the Registered Holder. Requests for payment modification must be forwarded to the FTA who will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation (see paragraph 2 of the Terms and Conditions).

E. *Borrower Prepayments.* For loans approved by or on behalf of SBA after February 15, 1985, Lender must give 10 days advance notice to the FTA in order to give the FTA time to request that the Registered Holder return the certificate. On the date of prepayment, Lender will wire funds consisting of principal and accrued interest to the date of the wire plus any penalty or fees to the FTA (see paragraph 15 of the Terms and Conditions).

SBA FORM 1086 ( ) Previous editions are obsolete.

The Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the 750 Agreement of SBA's guarantee of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

Lender ______________________
Address ______________________
Zip ________
Borrower ______________________
Address ______________________
Zip ________
Contact Person ______________________
Telephone Number ______________________

Lender certifies the following as of the date of lender's signature:

Date of 750 Agreement ______________
Percent of SBA's Guarantee ______________ %
Date of Note ______________
Original Face Amount of Note $ ______________
SBA Loan Authorization Date ______________
(date of SBA form 529B) ______________
Outstanding principal amount of Loan $ ______
Outstanding principal amount of Guaranteed Interest $ ______________
Guaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Unguaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Interest is paid to but not including: (Date) —
Interest is calculated on:
(Check one): ______ 30/360 ______ Actual Days/365 (Other methods prohibited.)

This interest accrual method shall be maintained for the life of the loan.

Price paid for the Guaranteed Interest (Net of accrued interest. Otherwise include all money and other items of value exchanged.)

Part A. Use this part only for split wire settlement—when the FTA is directed to split the funds received from the purchaser between the selling institution and a broker/dealer.

Price paid by purchaser: $__________ of Par__________
Price received by seller: $__________ % of Par__________
Price received by broker: $__________ % of Par__________

Part B. Use this part for all other settlements

Price paid by purchaser: $__________ % of Par__________

Cash flow based upon constant prepayment rate. (Enter both mortgage and bond equivalent yield. For a variable rate loan, the yield should be based upon the current coupon rate and should be entered as a spread against prime. Example: Prime + 1.0% based upon 10% Prime)

Constant Annual Prepayment Rate assumption ____ % per year. (Printed each month in the Pool Factor Table produced by the FTA.)

Mortgage yield:
[Fixed rate loans] ______ %
[Var. rate loans] Prime (+/−:______) ______ % based upon ______ % prime

Bond equivalent yield:
[Fixed rate loans] ______ %
[Var. rate loans] Prime (+/−:______) ______ % based upon ______ % prime

Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be:______ % per annum, and shall remain at this rate for the life of the Loan. *See examples of principal, interest and service fee calculations attached to this document.*

Lender hereby assigns the guaranteed interest to purchaser/Registered Holder as follows:

Name ______________________
Address ______________________
Zip ______________________
Contact Person ______________________
Telephone Number ______________________

Registered Holder's Tax Identification Number__________

If a tax identification number is not provided, interest earned will be subject to withholding.

Registered Holder requests SBA to issue through the Fiscal and Transfer Agent (FTA) a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate, to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and each subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive from Lender loan repayments made by Borrower and to transmit such payments to Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through the FTA to:

SBA Servicing Office ______________________
Address ______________________
Zip ______________________

Terms and Conditions

1. *Lender's Sale of Guaranteed Interest.* Lender has sold the Guaranteed Interest and acknowledges that it has received value for the Guaranteed Interest. Lender has given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated: ______________________
— (Lender) ______________________

Lender has delivered or hereby delivers to the FTA, a photocopy of the Note and any modifications thereto with the legend, and such photocopy shall be incorporated into this Ageement. This legend shall also serve as notification for any future transfer of the Guaranteed Interest.

2. *Loan Servicing.* Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement.

Modifications in the 750 Agreement or to the Note not affecting repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and each subsequent Registered Holder). To aid the orderly repayment of Borrower's indebtedness, Lender, at the request of the Borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the relevant SBA field office in writing of any deferment approval, the GP number, the borrower's name, the term of such deferment, the date Borrower is to resume repayment of its obligation, and reconfirmation of the basis of the interest calculation (e.g. 30/360, etc.). Interest is not waived, but deferred. The first interest installment made by the borrower shall pay accrued interest from the date interest stopped accruing (paid-to date) before deferment was granted. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment or an extension of Loan maturity without the prior written consent of the Registered Holder. No change in the terms and conditions of repayment of the Note other than the deferment authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder.

3. *Representations and Acknowledgment of Lender.* Lender hereby certifies that the Loan has been made and fully disbursed and that the full amount of the guaranty fee has been paid to SBA. The outstanding principal amount of the Guarenteed Interest and date to which interest is paid as certified by Lender are accepted by SBA and have been warranted by SBA to the Registered Holder as of the SBA Warranty Date (date this Agreement is executed and settled by the FTA); provided, however, that Lender shall be liable to SBA for any damage to SBA resulting from any error in the certified principal amount, percentage of the Guaranteed Interest, or date to which interest is paid. Lender represents that as of the Warranty Date neither it nor any of its directors, officers, employees, or agents has or should have, through the exercise of reasonable diligence, any acutal or constructive knowledge of any default by Borrower or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan (by refinancing or otherwise). If the borrower fails to make the first three payments in full due after the Warranty Date, the Registered Holder may make written demand of Lender through the FTA that Lender purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. Lender agrees to honor this demand. In the event Lender does not purchase pursuant to such request, SBA shall purchase the Guaranteed Interest, without being liable, however, for any premium. Lender's failure to so purchase may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If Borrower subsequently makes installment payments in full for a period of six consecutive months, Lender may re-sell the Guaranteed Interest it has so re-purchased. Lender hereby acknowledges that it has no authority pursuant to this Agreement to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

4. *Obligations and Representations of Registered Holder.* Pursuant to this Agreement, SBA shall purchase the Guaranteed Interest from Registered Holder regardless of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by the Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation. Subject to the provisions of 18 U.S.C. § 1001 (relating, among other things, to false claims), Registered Holder and any person or entity having the beneficial interest therein hereby warrants that it was not the Borrower, Lender, or an "Associate" of the Lender (as defined in Title 13, Code of Federal Regulations, Part 120), and anyone standing in the same relationship to the Borrower, and had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the underlying Note or related Loan documentation. Neither execution hereof by SBA, or purchase by SBA from Registered Holder shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder or any other person or entity. Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date, in which case the Certificate will be called for redemption at par and will cease to accrue interest as of the date of such termination.

5. *Issuance of Guaranteed Interest Certificates.* SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate, either through its own facilities or by designating and authorizing such issuance by FTA.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by the Lender and the Registered Holder. Each Registered Holder shall receive the Certificate described herein. Upon request therefor and payment of a reproduction fee, a Registered Holder may obtain from FTA a copy of the executed SBA Form 1086 pertaining to the Guaranteed Interest represented by the Certificate.

Upon completion of execution of this Agreement, SBA, through FTA, shall issue to Registered Holder (or, if FTA is timely so notified in writing by Registered Holder, to Registered Holder's assignee) a Certificate evidencing the ownership of the Guaranteed Interest of the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder hereby represents that it has obtained from the person or entity having the benefiical interst in the Certificate, authorization appointing Registered Holder as the agent of such person or entity with respect to all transactions arising out of the performance of their respective obligations under SBA Form 1086. The Certificate shall identify the Loan and shall state, among other things: (i) the name of the Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the SBA Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date. Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee (i) obtaining from the transferor the execution of the assignment form and the sale information requested on the reverse of the Certificate or, alternatively, in a form of detached assignment approved by SBA, (ii) presenting the Certificate and assignment to FTA for registration of transfer and issuance of a new

Certificate to the transferee, (iii) paying to FTA a Certificate issuance fee to be set from time to time by SBA, and (iv) presenting the following information: Certificate number; original principal amount of the Certificate; exact spelling of the name in which the new Certificate is to be issued; complete address and tax identification number of the new Registered Holder; name and telephone number of the person handling the transfer; and complete instruction for the delivery of the new Certificate.

6. *Obligation of Lender.*

(a) FTA must receive from Lender by the third day of every month or the next business day thereafter if the third is not a business day, the FTA's share of all sums which Lender received from Borrower as regularly scheduled payments during the preceding month. By the same date, Lender shall provide the following information on SBA form 1502 (or an exact facsimile format) with respect to each Loan with the Lender has sold and which is registered with the FTA regardless of whether the borrower made a payment in the preceding month:

See Payment Calculation Example Attached to this Document

1. The SBA loan number.
2. The alpha abbreviation for the originating SBA field office.
3. The Note interest rate or rates if the interest rate on a variable rate loan changed during the payment period.
4. The interest amount due the FTA.
5. The principal amount due the FTA.
6. The total amount due the FTA for the particular loan.
7. The time period covered by the interest rate(s) listed in item 3.
8. The number of days in the interest period.
9. The calendar basis (30/60 or actual days/365 only).
10. The closing principal balance for the loan.
11. A grand total figure for items 4, 5, and 6.
12. A late payment penalty (if applicable).

(b) With the exception of borrower prepayments or payoffs (see paragraph 15), payments received other than as regularly scheduled in the previous month, must be remitted to the FTA within two business days of receipt of collected funds and shall include the information described in items 1–12 above.

(c) Lender remittance is due at the office of the FTA by the third of the month following a regularly scheduled payment. If Lender remittance, including complete payment information, is not received by the fifth of the month or the next business day thereafter if the fifth is not a business day, Lender shall pay to SBA a late penalty of the greater of $100.00 or 5% of the payment amount remitted (subject to a $5,000 maximum) plus a penalty to the FTA equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee), plus a late penalty charge calculated at a rate of 12% per annum on the unremitted amount. See example of late payment calculation attached to this document. The total amount, including any penalties, will be paid to the FTA when the late payment is remitted. If these penalties are not included in the remittance, FTA and SBA reserve the right to withhold these penalties from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

(d) Lender agrees to work with the SBA and/or the FTA to reconcile immediately any loan in which the paid to date on the Lender's books differs from the books of the FTA. Lender agrees to provide a transcript within 10 business days of receipt of a request from the SBA or the FTA. Failure to provide a transcript after a request from the FTA shall cause the Lender to be fined $100 by the SBA.

(e) Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be no less than 2.0 per cent per annum on any Guaranteed Interest sold at a price greater than par.

7. *Obligations of FTA.*

(a) FTA shall have the obligation, with respect to payments received from Lender pursuant to Paragraph 6 above, to remit to Registered Holder any such payment (less applicable fees, and any late payment charges due FTA or SBA if such charge has been collected from Lender) as follows:

(i) Any payment (other than a prepayment of principal) received by FTA before the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder on the fifteenth day of such following month. Any additional interest and late payment charge paid by Lender pursuant to paragraph 6 hereof shall be retained by and shall become the property of FTA.

(ii) Any payment (other than a prepayment of principal) received by FTA on or after the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. In such case, any interest received by FTA pursuant to paragraph 6 hereof and allocated to the period after the fifteenth day of such following month shall be remitted to Registered Holder along with any late payment charge received by FTA. The balance of any such additional interest received by FTA shall be retained by and shall become the property of FTA.

(iii) Other amounts received by FTA from Lender which are not prepayments subject to Paragraph 15, may be held by FTA and applied as required herein.

(b) Upon presentation by Registered Holder of the Certificate, amounts received by FTA from Lender or SBA which would constitute a full redemption of the Certificate, or a prepayment subject to Paragraph 15, shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA in accordance with Registered Holder's instructions. FTA shall retain a final transfer fee equal to a regular transfer fee.

(c) Each remittance by FTA to Registered Holder shall be accompanied by a statement of the amount allocable to interest, the amount allocable to principal, and the remaining principal balance as of the date on which such allocations were calculated.

(d) If FTA fails to make timely remittance to Registered Holder in accordance with the above provisions, FTA shall pay to Registered Holder (i) interest on the unremitted amount at the rate provided in the Note less the rate of Lender's servicing fee and any other applicable fees, plus (ii) a late payment penalty calculated at a rate of 12 percent per annum on the amount of such payment.

(e) FTA agrees to identify monthly to lenders any loan in which the paid to date on its books differs by three days or more from the paid to date on the books of the Lender, provided that this data is submitted to the FTA via SBA form 1502. Such identified differences will be reconciled on a timely basis.

(f) FTA agrees to issue certificates within two business days of settlement or acceptable written notification of transfer.

(g) FTA agrees to acknowledge any investor request for late payment claims within ten days of receipt.

(h) FTA agrees to forward to investor within five business days of receipt any servicing request requiring concurrence of the investor. Furthermore, FTA agrees to forward to Lender within five business days of receipt any investor response.

8. *Transferability of Guaranteed Interest.* Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that, to the best of its knowledge, it has, and so long as it is a Registered Holder it will have no interest in the Borrower, in the Note, or in the collateral hypothecated to the Loan, other than the Guranteed Interest held under this Agreement, and that it will not service or attempt to service the Loan or secure or attempt to secure additional collateral from Borrower. Registered Holder, without the prior consent of SBA, Lender or FTA, may transfer the ownership of the Guaranteed Interest to a subsequent transferee, (other than Borrower, or Lender, or an "Associate" of the Lender as defined in Title 13, Code of Federal Regulations, Part 120 or anyone standing in the same relationship to the Borrower). The effective date of any such transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. If Lender, FTA or SBA shall have made any payment to, or taken any action with respect to, the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest, such payment or action shall be final and fully effective. Neither SBA, FTA nor Lender shall have any further obligation to the transferee Registered Holder with respect to such payment or action; and any adjustment between the transferor and the transferee resulting from any such payment or action by Lender, SBA or FTA shall be the responsibility and obligation solely of the transferor and the transferee. On payment date, FTA will remit payments to the person or entity which, on the books of FTA, is the Registered Holder as of the close of business on the record date, which is the last day of the prior month. Any other adjustment by and between the transferor and transferee shall be solely their responsibility and obligation. At any given time there shall be only one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest, and each transferor, upon the transfer of the Guaranteed Interest, shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement, except as to any appropriate adjustment of funds between the transferor and the transferee. FTA shall serve as the central registry of Certificate ownership.

9. *Certificates Lost, Destroyed, Stolen, Mutilated or Defaced.* Procedures for claim on account of loss, theft, destruction, mutilation or defacement of a Certificate are found in Title 13, Code of Federal Regulations, Part 120. The FTA, upon written request, shall provide procedures.

10. *Repurchase by Lender.*

(a) As directed by the SBA, the FTA will provide to each SBA field office a monthly list of its loans that are in default or that are 60 days in arrears according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. If the Lender's records indicate that the interest-paid-to date is more than sixty days in arrears or default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note, SBA, after consultation with the Lender, will within ten business days determine which entity—SBA or the Lender—is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action. SBA field offices will transmit the decision in writting to the FTA within five days of the decision. Lender agrees to provide a transcript of account to the SBA or the FTA within 10 business days of the request for the transcript. Lender's failure to comply with a request for transcript shall result in a $100 penalty payable to the SBA. If Lender is to purchase, the FTA and the Lender will reconcile the transcripts. If Lender and FTA cannot agree on the balance and paid-to-date within twenty-five business days from SBA's notification to FTA, the FTA will send the Lender's and the FTA's transcripts to the appropriate SBA field office for reconciliation by SBA. Lender shall immediately (within 5 business days from the date the transcripts are reconciled) provide 10 days advance written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. On the purchase date, Lender will (without additional notification from FTA) forward by wire transfer a payment to the FTA which includes the principal balance outstanding plus interest through and including the date of the wire transfer of funds.

(b) Written demand by FTA upon SBA for the purchase of the Guaranteed Interest shall be made not later than one hundred fifty (150) calendar days after the first date of an uncured default by Borrower on any Guaranteed Interest which for any reason was not purchased under Sections 10(a) or 11. If FTA does not make such demand by such 150th day, FTA shall be responsible for the interest beginning on the 151st day and ending 30 days after the appropriate SBA field office receives the purchase documentation. For the purposes of this subparagraph, the written demand shall include a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA.

(c) Upon receipt of the purchase amount from Lender or SBA, FTA shall remit in accordance with paragraph 7 to Registered Holder such amount less applicable fees owed by the Registered Holder to the FTA or SBA on this Guaranteed Interest, and any additional interest or late payment charges due FTA pursuant to Paragraphs 6 or 7 hereof. FTA may also deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate, the amount of such final transfer charge not to exceed the normal transfer charge. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement (as applicable).

11. *Purchase by SBA.* If SBA is to purchase the Guaranteed Interest under the procedure described in paragraph 10(a) hereof, the Lender and the FTA will transmit to SBA a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA within five business days of the request, and SBA will reconcile the transcripts. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable by the party failing to comply to the SBA. SBA shall within five business days of reconciliation provide at least ten days written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the investor of the pending repurchase and request that the Registered Holder foward the certifcate to the FTA. The SBA field office will arrange to have funds wired to the FTA. The FTA shall forward such funds to the Registered Holder within two business days of receipt. The payment of accrued interest to the date of purchase on a fixed rate note shall be at the rate provided in the Note less the Lender's servicing fee. On those loans with a fluctuating interest rate, SBA's payment of accured interest shall be at that rate in effect on the date of the earliest uncured borrower default if the loan is in default or at that rate in effect at the

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time of purchase if the loan is not in default, less the Lender's servicing fee. If Lender fails to furnish a current transcript statement as required by paragraph 13(i)-(iii) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Under no circumstances shall SBA be liable for any amount attributable to any late payment charges which may be due FTA or Registered Holder. Upon written demand by SBA, Lender shall immediately repay to SBA the amount, if any, by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA (including accrued interest thereon), plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest from the date of said purchase by SBA to the date of repayment by Lender. Upon purchase of the Guaranteed Interest by SBA, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement, and SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. *Default by Lender.* In the event Lender shall fail for any reason to remit to FTA the pro rata share with respect to the Guaranteed Interest of any payment made by Borrower, pursuant to Paragraph 6 hereof, for a period of seventy-five (75) calendar days or more from the date such payment was due at the FTA, SBA, within thirty (30) business days or as soon thereafter as possible after receipt by SBA of written notice from FTA of Lender's failure to forward payments as provided in Paragraph 6, may purchase (through FTA) the Guaranteed Interest from Registered Holder pursuant to Paragraph 11 hereof, provided however, that under no circumstances shall SBA be liable for any amount attributable to any late payment charge. If SBA purchases from Registered Holder pursuant to this Paragraph, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option (i) to require Lender to purchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of Lender's repurchase plus a penalty equal to 20% of the amount paid by SBA; or (ii) to require Lender to pay to SBA a penalty equal to 20% of the amount paid by SBA to Registered Holder. If, on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, Borrower shall be in uncured default on any payment due on the Note for more than sixty (60)calendar days, then the provisions of Paragraph 11 hereof shall become applicable, including the obligation of Lender to repay to SBA (i) the amounts paid by SBA to Registered Holder in excess of the amount of SBA's obligation to Lender under the 750 Agreement, and (ii) any payments by Borrower which were not remitted by Lender to FTA, plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed. Interest plus the 20% penalty described above. If Lender fails to furnish a current transcript statement as required by Paragraph 13(i)–(iii) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment and settlement will be made as expeditiously as possible.

13. *Other Obligations of Lender.* Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 hereof, and shall, within ten business days of a request therefor and without charge, furnish to SBA and to FTA (i) a transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement. Failure to provide such information shall result in a $100 penalty payable to SBA. Lender agrees that purchase of the Guaranteed Interest by SBA does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan or the 750 Agreement, and that such purchase does not waive any of SBA's rights against Lender. Lender also agrees that SBA, as the final owner of the Guaranteed Interest under this Agreement, in addition to all its rights under the 750 Agreement with Lender, shall also have the right to set-off against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement. After any purchase of the Guaranteed Interest by SBA, Lender shall assign, transfer and deliver the Note and related loan documents to SBA upon the written request of SBA.

14. *Default by Fiscal and Transfer Agent.* In the event FTA receives any payment from Lender or SBA which FTA fails to remit to Registered Holder pursuant to this Agreement, Registered Holder shall have the right to make written demand upon FTA for any payment unremitted by FTA. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand upon SBA therefor. SBA shall make such payment to Registered Holder within thirty (30) business days or as soon thereafter as possible of receipt of such written demand, provided SBA can verify the non-payment by FTA. SBA shall make such payment directly to Registered Holder in the amount of the unremitted payment plus interest at the Certificate rate to the date of payment by SBA. FTA shall repay SBA for such payment by SBA to Registered Holder within ten (10) business days after receipt of written demand by SBA in an amount equal to the payment by SBA to Registered Holder plus interest (at the interest rate provided in the Certificate) computed on the unpaid balance of the Guaranteed Interest, from the date of SBA's payment to Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under paragraph 7(d).

15. *Prepayment or Refinancing by Borrower.* For loans approved by or on behalf of SBA on or after February 15, 1985, Lender shall transmit written notice to FTA of Borrower's intent to make (by refinancing or otherwise and pursuant to the terms of the Note) a partial prepayment of principal subject to this paragraph, or a total prepayment of principal. Such written notice shall be received by FTA at least ten (10) business days prior to prepayment date. The "prepayment date" is the date prior to maturity that Lender has established with the FTA on which immediately available funds shall be delivered to the FTA. Lender's notice to FTA shall contain the following: (a) the prepayment date, (b) the principal amount being prepaid, (c) the accrued interest due the FTA as of prepayment date, (interest shall accrue through and including the calendar day immediately prior to the date funds are wired to the FTA), and (d) a certification by Lender that to the best of its knowledge and belief the prepayment funds are either Borrower's own funds, or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction, and the prepayment is in accordance with the terms of this paragraph and the Note, and applicable law. This certification is intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written permission from SBA. Lender's failure to provide such timely certification shall result in a $100 penalty against lender payable to the SBA through the FTA. Lender is obligated to wire payment on the 10th day without notification from the FTA. If the FTA is not paid by the 10th day, interest continues to accrue to the date payment is received by the FTA.

A partial prepayment of principal subject to this Paragraph is any payment which is greater than 20% of the principal balance outstanding at the time of prepayment. FTA is not required to accept any prepayment except as described herein. FTA shall upon receipt of notice pursuant to this Paragraph advise Lender of the outstanding principal amount and the accrued interest due FTA as of prepayment date, plus any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On prepayment date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer. For loans approved prior to February 15, 1985, Lendre shall forward any prepayment to the FTA by wire transfer within three business days of receipt of the prepayment from the Borrower.

16. *Option to Purchase by SBA.* Pursuant to the 750 Agreement, SBA shall at any time have the option to purchase the outstanding balance of the Guaranteed Interest plus interest at the Note rate less the Lender's servicing fee. Failure by Registered Holder to submit the Certificate to FTA for redemption by the date specified by SBA or FTA will not entitle Registered Holder to accrued interest beyond such date.

17. *Separate or Side Agreements.* Separate or side agreements between Lender and Registered Holder, between a Registered Holder and a subsequent transferee, betweeen FTA and Lender, or between FTA and any Registered Holder, shall not in any way obligate SBA to make any payment except as provided herein, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement or of the 750 Agreement. Furthermore, any such side agreement which has the effect of distorting the information supplied to SBA is prohibited.

18. *Indemnity and Force Majeure.* Each party to this Agreement (including FTA), for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) against any liability or expense arising under this Agreement which is due to its negligence and/or breach of contractual obligation, except that no party hereto (including FTA) shall be liable to any other party or to Registered Holder for any action it takes, suffers or omits that is (i) authorized by this Agreement or (ii) pursuant to a communication received by such party (including FTA) from any other party or from Registered Holder which is not contrary to this Agreement and which a prudent person in like circumstances would reasonably believe to be genuine, lawful and duly authorized by the sender. If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communication. Under no circumstances, however, shall any party hereto (including FTA) be held liable to any person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement. If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control (including and without limitation, Act of God; postal malfunction or delay; interruption of power or other utility, transportation or communication services; act of civil or military authority; sabotage; national emergency; war; explosion, flood, accident, earthquake or other catastrophe; fire; strike or other labor problem; legal action; present or future law, governmental order, rule or regulation; or shortage of suitable parts, materials, labor or transportation) such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance.

19. *Fees and Penalties.* Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this agreement which are in effect on the date of this transaction and as published from time to time in the Federal Register. The FTA will forward any penalties due SBA at the end of each month.

20. *Emergency Repurchase Authority by Lender.* In a critical situation in which the Borrower's ability to remain in business is directly dependent upon a change in the provisions relating to Borrower's installment payments, SBA may permit Lender to repurchase the Guaranteed Interest from the Registered Holder if all the following conditions exist: (i) Lender has submitted a written request to the relevant SBA field office servicing the loan, which includes current financial statements from the Borrower, and either a written decline to a specific request for a change in the terms and conditions from the Registered Holder either directly or through the FTA, or a written statement from the FTA that the Registered Holder did not respond to a servicing request or that the loan is part of a pool; (ii) the proposed change in the terms and conditions is solely to the benefit of the Borrower; (iii) the Lender has certified that it will make the requested change in the terms and conditions if repurchase is approved by SBA; and (iv) the SBA field office has reviewed the financial statements of the Borrower and whatever additional information is necessary, and has concluded that an emergency exists in which the Borrower's business will probably fail if the change is not approved and that the business will probably survive if the change is approved.

If all conditions are met, the field office may approve the purchase by the Lender of the Guaranteed Interest. Guaranteed Interests purchased using this procedure may not be resold until the Borrower has made all payments as scheduled on the Note for a period of twelve consecutive months.

21. *Inconsistent Provisions and Caption Headings.* Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of Title 13. The provisions of the Secondary Market Regulations (Title 13, Code of Federal Regulations, Part 120) in effect on the date of this transaction and as may be amended from time to time in the

Federal Register, apply to this agreement unless explicitly stated to be inapplicable. The caption headings for the various paragraphs herein are for ease of reference only and are not to be deemed part of these Terms and Conditions.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement. In witness whereof, the parties have executed this multi-page Agreement this ——— day of ———, 19——, (SBA Warranty Date, supplied by SBA) in New York State.

(Registered Holder)
By: ____________
Title: ____________
Date: ____________

(Lender)
By: ____________
Title: ____________
Date: ____________
SMALL BUSINESS ADMINISTRATION
By: Administrator, Small Business Administration

Examined and accepted by Fiscal and Transfer Agent by:———
COLSON SERVICE CORP., P.O. Box 54, Bowling Green Station, New York, New York 10274.

Note: The guarantee of SBA relates to the unpaid principal balance of the guaranteed portion and the interest due thereon. Any premium paid by the registered holder for the guaranteed interest is not covered by SBA's guarantee and is subject to loss in the event of prepayment or default.

This form is required to obtain a benefit.

[FR Doc. 88–5193 Filed 3–8–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1053]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: No citizen of the United States shall depart from or enter into any part of the U.S. unless he/she possesses a valid passport. Exceptions are made in individual cases specifically authorized by the Secretary of State. The following summarizes the information collection proposal submitted to OMB.

Type of request—Existing collection.
Originating office—Bureau of Consular Affairs.
Title of information collection—Request by United States National for and Report of Exception to § 53.1, Title 22 of the Code of Federal Regulations.
Form number—DS–1423.
Frequency—On occasion.
Respondents—U.S. citizens.
Estimated number of responses—2,500.
Estimated total number of hours needed to respond—625.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Dated: February 5, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88–5075 Filed 3–8–88; 8:45 am]

BILLING CODE 4710-24-M

[CM–8/1173]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Tuesday, March 29, 1988, in room 6103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to report on the outcome of the 34th session of the Subcommittee on Safety of Navigation of the International Maritime Organization held in London, February 8–12, 1988 and to begin to prepare U.S. positions for the 35th session, tentatively scheduled for January 23–27, 1989. Items of principal interest on the agenda are:

Decisions of other IMO bodies
Routing of Ships
Problems related to deep-draft vessels
Removal of disused offshore platforms
Infringement of safety zones around offshore structures
Amendment of (SOLAS) regulations V/12(f)
World-wide navigation system
Electronic chart display systems
Navigational aids and related equipment
Ship reporting systems and reporting requirements
Work programme
Any other business

Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSS), Washington, DC 20593–0001, telephone: (202) 267–0416.

Date: February 25, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88–5076 Filed 3–8–88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Town of Garner, Wake County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Town of Garner, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856–4330.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed Timber Drive in the Town of Garner, Wake County. The proposed action would be the construction of a two lane roadway on multilane right of way part on new location from Grovemont Road to NC–50. The proposed action is a part of a circumferential route to serve developed areas in southwest Garner and is a major part of the Town's thoroughfare plan for a bypass.

Alternatives under consideration include (1) the "no-build," (2) improving the existing facilities, and (3) a multilane highway part on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and a meeting with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place on the public hearing will be provided in the local news media. The draft EIS will be available for public and agency

review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 29, 1988.

Roy C. Shelton,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88–5077 Filed 3–8–88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H–87–2]

Petition for Exemption or Waiver for Test Program; National Railroad Passenger Corp.

In accordance with 49 CFR 211.9 and 211.41 notice is hereby given that the National Railroad Passenger Corporation (AMTRAK) has submitted a request, dated February 23, 1988, for a temporary waiver of 49 CFR 213.57(b) in order to conduct a test program, the primary purpose of which will be the evaluation of curving performance of trainset equipment described below.

The petitioner recognizes a need to improve trip times for rail passenger service between Boston, Massachusetts and New York City. One way to reduce trip time between this city pair would be the negotiation of curved track by certain types of trains at speeds exceeding the values specified in § 213.57(b) of the Track Safety Standards. The restrictions contained in this section are based on a limiting unbalance of track superelevation, often called "cant deficiency", of three inches. It is the petitioner's objective to explore the ramifications of operating selected types of trainsets at up to nine inches of cant deficiency. FRA has the responsibility, should this petition be approved, to assure that the test program is carried out safely.

Note: The concept of cant deficiency was discussed in an earlier FRA Notice appearing on pages 38035 and following of the **Federal Register** Volume 52, Number 197, October 13, 1987.

Amtrak desires to investigate the response to elevated curving speeds of at least five trainset types within the period for which the waiver of § 213.54(b) was requested. These trainsets are identified as:

RTG Tuboliner train;
RTL Turboliner train;
Talgo passive tilt-coach train;
LRC active tilt-coach train;
Amfleet/F–40/AEM–7 conventional passenger train.

This list item is included to establish baseline performance data against which the performance of the other units can be compared. The first four each exhibit lower centers of gravity than does the conventional Amfleet equipment. All of this equipment has been operated in previous tests at nine or more inches of cant deficiency without incident. During the proposed test series, the equipment specified will be operated through a test zone which, in effect, comprises the tracks over which a future revenue service, based on one or more types, could be run.

If the petition is approved, Amtrak expects to schedule the Amfleet equipment test and that of the Talgo cars in late spring, 1988. No definite date has been set yet for the evaluation of the balance of the units. It should be noted that an RTG Tuboliner was approved by FRA for test operation between Boston and New Haven at curving speeds resulting in up to six inches of cant deficiency and that this test was, in fact, conducted successfully on October 9, 1987.

Amtrak's original petition to waive compliance with 49 CFR 213.57(b) for test purposes was conditionally approved by FRA on October 5, 1987, and this waiver expired on October 31, 1987. Now, the most recent Amtrak petition requests extension of the period of test from October 31, 1987 to October 31, 1988.

In the current petition, the test zone is defined as Boston, Massachusetts to New Haven, Connecticut and, in New York, from New Rochelle (milepost 18.7) to Market (milepost 10). The track segment, New Haven (milepost 22.8) to New Rochelle is owned by Metro North Commuter Railroad Company. This railroad may petition FRA for a waiver of 49 CFR 213.57(b) in order to permit Amtrak to carryout continuous testing, Boston to Market. If such a request is submitted, FRA will review it in accordance with the same criteria applied to the study of the Amtrak petition. If a Metro North petition of this sort is approved, Amtrak will be authorized by FRA to conduct tests subject to all of the appropriate conditions assigned to testing on Amtrak's own tracks and such other constraints as may be necessary because of features, if any, that are unique to the Metro North track. Should Metro North not elect to petition FRA in this matter, the test zone will be as described in the Amtrak petition.

FRA's role in these proceedings is to prescribe the conditions under which the test series will be carried out so that the risk of accident to the specimen equipment and hazard to the abutting community is minimal. In general, the approach to accomplishing this is to require that sufficient instrumentation be installed on each trainset to be able to relate test behavior to previously tested equipment known to be safe. FRA would require that attainment of maximum target curving speeds be in increments permitting a step-by-step analysis of applied forces and dynamic responses during and at the conclusion of each test run. The decision to proceed to the next level of cant deficiency would be based on this analysis process. In the cases of the Amfleet/F–40/AEM–7 and LRC trainsets, extensive instrumentation is not needed because this equipment was exhaustively examined in 1980 and its behavioral characteristics are known even to cant deficiencies well beyond eight inches. All that has to be generated now is sufficient data to establish correlation between the current and earlier versions. This is also true for the LRC trainset. The Talgo trainset resides in a different category; its design is unique and there is no other domestic rolling stock to which its performance can be compared.

If the Amtrak petition is approved, the solution to the Talgo train singularity problem will take the following form. Not considering vehicle structural failure, a relatively rare occurrence, there are three ways in which rolling stock can derail during curve negotiation. Excessive wheel loads can cause track failure, a wheel can climb over the rail or the equipment can overturn. Fortunately, there are measurement techniques and mathematical processes that allow calculation of wheel-rail forces while a vehicle is moving and the amount of force required to cause track failure can be predicted. Similarly, the buildup of forces leading to vehicle overturning can be observed during a test for comparison with a predetermined safe test cutoff criterion. One of the novel characteristics of the Talgo equipment is automatically steerable wheel sets, a factor that greatly diminishes the possibility of wheel climb. As a test condition, should FRA grant this waiver. Amtrak wil be required to instrument the Talgo trainset to the extent necessary to allow continuous monitoring of vehicle behavior in the derailment modes. Further, another test requirement would be cessation of testing at elevated cant deficiency speeds while traffic passes on adjacent tracks. Doubtless, the practical way to comply with this condition would be to operate test equipment during the early morning hours.

FRA is seeking information and comments on this proposed test program from interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speeds producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by April 8, 1988, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H-87-2" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by April 8, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar test programs. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on March 3, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-5167 Filed 3-8-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New.

Title: Physician Statement of Clearance for an Exercise Program.

Description: This consent form is necessary so that all IRS employees can be considered medically safe and cleared by their personal physician for the Health Improvement Program. The form will remain in each employees private fitness file, in locked file cabinets. Only physicians can fill it out and thereby be affected by this form.

Respondents: Small businesses or organizations.

Estimated Burden: 2,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 5121 Filed 3-8-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 21-03 section 8 (1-29-87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1987, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for copies, at $2.70 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20044 Telephone (202) 566-3770 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

For further information contact: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue NW., Room, 2575, Washington, DC 20224 Telephone (202) 566-9250 (Not a toll free telephone number).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-5128 Filed 3-8-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on February 29, 1988 (53 FR 6057) of the regular meeting of the Farm Credit Administration Board (Board) scheduled to be held on Tuesday, March 1, 1988. This notice is to revise the agenda for that meeting: (A) To include items of discussion, and (B) to postpone Board action on other items to no later than the May 3 regular meeting.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, March 1, is revised—

(A) To include the following items:

Open Session

1. Conditional approval for a lending limit exception in regard to a term loan for the Basin Electric Power Cooperative;
2. Amendments to the Farm Credit Banks of Texas pension and thrift plans; and
3. Cash patronage distribution for the St. Louis Bank for Cooperatives; Louisville Bank for Cooperatives; and the Jackson Bank for Cooperatives.

(B) To reflect postponement of the following items:

1. Summary Prior Approval;
6. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management;
7. Proposed Changes to Retirement and Severance Plans for the First District, Tenth District and the Farm Credit Corporation of America;
8. CEO Salary Proposals for the Central Bank for Cooperatives and the Federal Farm Credit Banks Funding Corporation; and
9. Salary Changes for the Springfield Districts.

Dated: March 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-5194 Filed 3-4-88; 5:05 pm]

BILLING CODE 6705-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 15, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Skywest Airlines Swearingen Metro II and Mooney M20, Midair Collision, Kearns, Utah, January 15, 1987.
2. Railroad Summary Reports: Southeastern Pennsylvania Transportation Authority (SEPTA) Accidents in Philadelphia (12/10/86) and Ardmore (1/28/87), Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 5, 1988.

[FR Doc. 88-5201 Filed 3-7-88; 9:26 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Invitation for Applications for New Awards Under the Rehabilitation Long-Term Training Program for Fiscal Year 1988

Correction

In notice document 88-3070 beginning on page 4201 in the issue of Friday, February 12, 1988, make the following correction:

On page 4202, in the first column, in the table, the entry opposite "Client assistance program training" should read "80,000 to 120,000".

BILLING CODE 1505-01-D

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

Correction

In notice document 88-4456 appearing on page 6718 in the issue of Wednesday, March 2, 1988, make the following correction:

In the first column, between DATE and SUPPLEMENTARY INFORMATION, insert "ADDRESS: The meeting will be held at the Archivists' Reception Room, National Archives Building, 8th St. and Pennsylvania Ave., NW., Washington, DC.".

BILLING CODE 1505-01-D

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federal register

Wednesday
March 9, 1988

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, 124, and 501

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements; Notice of Reproposal and Proposal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 501

[OW-FRL-3279-2]

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of reproposal and proposal.

SUMMARY: On February 4, 1986, the Environmental Protection Agency proposed rules at 51 FR 4458 that would have required States to develop sludge management programs to assure that the use and disposal of sludge complies with the Federal sludge use and disposal standards. The February 4, 1986 proposed rule provided requirements for approvable State sludge management programs, for their submission, and for their review and approval by EPA. The regulatory program was designed to ensure the environmentally sound use and disposal of sewage sludge and assure that the Federal standards for sludge use and disposal promulgated under section 405(d) would be met.

On February 4, 1987, Congress passed the Water Quality Act of 1987 amending the Clean Water Act, which included significant changes to the sludge management provisions of section 405. In today's action the Agency is reproposing State sludge program requirements to include the additional requirements and directions established in the amendments. Today's notice also contains proposed revisions to the National Pollutant Discharge Elimination System (NPDES) permit requirements and procedures (Parts 122, 123, and 124) to incorporate sludge permitting and State program requirements.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments should be addressed to Debora Clovis, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Martha Kirkpatrick, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9529.

SUPPLEMENTARY INFORMATION:

I. Background
II. February 4, 1986 Proposed Rule
III. Water Quality Act of 1987
  A. Implementation of Sludge Standards Through Permits
  B. Sludge Technical Standards (40 CFR Part 503)
IV. Discussion of Today's Proposed Rule
  A. General
  1. Minimum State Program Requirements
  2. Program Submission
  B. Part 501: State Sludge Management Program Regulations: Non-NPDES
  1. General
  2. Purpose, Scope, and General Program Requirements
  3. Development and Submission of State Programs
  4. Program Approval, Revision, and Withdrawal
  5. Indian Tribes
  C. Part 123: State Sludge Management Program Regulations: NPDES
  D. Revisions to Part 122
  1. General
  2. Specific Revisions to Part 122
  E. Revisions to Part 124
V. Request for Comments
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act

I. Background

Implementation of the Clean Water Act (CWA) has resulted in increased treatment of wastewater before discharge to surface waters and the generation of large quantities of residual sewage sludge as a by-product of wastewater treatment. Thus, the proper management of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater have become more effective. In the United States, the quantity of municipal sewage sludge has almost doubled since the enactment of the Clean Water Act in 1972. Municipalities currently generate over 7.6 million dry metric tons of wastewater sludge per year, or approximately 32 kilograms per person per year. In addition, greater focus on surface water toxics control, as well as Resource Conservation and Recovery Act (RCRA) provisions such as the ban on land disposal of certain hazardous wastes (section 3004(d)) and the exclusion of discharges into municipal sewers from RCRA requirements (section 1004(27)), may result in increased volumes of toxic and hazardous pollutants that reach publicly owned treatment works (POTWs) and may adversely affect sludge quality.

Improper sludge management could lead to significant environmental degradation of land and air, and failure to dispose of sludge properly could have serious impacts on groundwater and wetlands, as well as human health impacts. Sludge management and the many different sludge disposal practices are linked to air, solid waste, ocean dumping, wetlands protection and pretreatment programs. Poor landfill and land application practices, as well as failure to ensure appropriate sludge quality, could result in sludge contaminants reaching groundwater and vulnerable wetlands areas. Concern for air quality and oceans necessitates proper controls over sludge incineration and ocean disposal practices. The interrelationship among these media requires a tightly constructed, comprehensive approach that closes environmental loopholes and assures that solving problems in one media will not create problems for another. In addition, the beneficial use of sludge as a soil conditioner and fertilizer cannot continue to increase if sludge quality is poor.

Prior to the enactment of the Water Quality Act of 1987, the federal authorities and regulations related to the use and disposal of sewage sludge were fragmented and did not provide States and municipalities with comprehensive guidelines on which to base sludge management decisions. Section 405 of the Clean Water Act required the development of sludge standards by December 1978, but did not specify how the standards were to be implemented. Standards developed pursuant to section 405 have been promulgated for cadmium, PCBs, and pathogens only (40 CFR Part 257). In addition, sludge is regulated under a number of other programs, such as new source performance standards and national emissions standards for hazardous air pollutants under the Clean Air Act, requirements for solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act, (and Subtitle C if the sludge is hazardous) ocean dumping requirements under the Marine Protection, Research and Sanctuaries Act (MPRSA), and PCB controls under the Toxic Substances Control Act. These regulations often use different methodologies and approaches to sludge management.

Concerns about the potential environmental problems created by improper sewage sludge use and disposal and the lack of a comprehensive legislative framework governing sludge management led to the establishment of an intra-Agency Sludge Task Force (STF) by EPA in early 1982 to study and make recommendations for

Agency actions in the sludge management area. The STF, with representatives from EPA's Offices of Water, Air and Solid Waste, approached sludge management from a multi-media perspective. The STF developed the Agency "Policy on Municipal Sludge Management" (49 FR 24358, June 12, 1984). The purpose of the policy was to establish a consistent role in sludge management across all environmental media and all management practices and to establish the federal regulatory role in sludge management in the context of the role expected of both State and local governments.

The STF Policy established several important principles which continue to guide the Agency's approach to sludge management. It states, in part:

> The U.S. Environmental Protection Agency (EPA) will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health. To implement this policy, EPA will continue to issue regulations that protect public health and other environmental values. The Agency will use all available authorities to ensure that States establish and maintain programs to ensure that local governments utilize sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative programs, for planning, constructing and operating facilities to meet their needs, and for ensuring the continuing availability of adequate and acceptable disposal or use capacity.

49 FR 24056.

II. February 4, 1986 Proposed Rule

On February 4, 1986, EPA proposed State Sewage Sludge Management Program Regulations (51 FR 4458). These proposed rules would have required States to develop sludge management programs to assure that the use and disposal of sewage sludge complies with the federal sludge use and disposal standards (the Part 503 technical standards) promulgated under section 405 of the Clean Water Act. These regulations were proposed pursuant to recommendations of the Agency's Sludge Task Force, which concluded that the best approach for sludge management would be to require each State to prepare a program to implement the sludge standards, which would then be reviewed for sufficiency by EPA. The regulations were proposed under the legal authorities of the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

The principal requirements of the proposed regulations were that the States would submit to EPA for review and approval a description of their existing sludge management programs with plans and schedules for improving them as necessary to meet the added requirements of the proposal. The proposal set forth minimum requirements for approvable sludge management programs and provided the procedural requirements for submitting, approving, revising and withdrawing approval of such programs.

These regulations were proposed prior to the February 1987 amendments to the CWA. Prior to those amendments, the CWA required that sludge standards be promulgated but did not specify a mechanism, such as a permit program, for implementing the standards. As such, the proposed regulations did not require that the sludge standards be implemented through permits. As discussed in further detail below, the Water Quality Act of 1987, which amended section 405, specifies that the Part 503 technical standards are to be implemented either through an NPDES permit, or through a permit issued under one of the federal permit programs listed under amended section 405(f)(1), or through permits issued pursuant to an approved State sludge program. Thus today we are reproposing regulations for approval of State sludge programs in accordance with the direction established by the 1987 amendments.

III. Water Quality Act of 1987

A. Implementation of Sludge Standards Through Permits

Section 406 of the Water Quality Act (WQA) of 1987, which amends section 405 of the Clean Water Act, sets forth for the first time a comprehensive program for reducing the environmental risks and maximizing the beneficial use of sludge. The basis of the program to protect public health and the environment from any adverse effects from sewage sludge is the development of technical requirements for sludge use and disposal, and the implementation of these requirements through permits. The WQA requires promulgation of sludge standards establishing acceptable levels of toxic pollutants in sewage sludge and management practices in two stages.

Before the technical standards have been promulgated, the amendments provide that the "Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge" section 405(d)(4). (This and subsequent citations to the CWA are to the amended version which codifies the 1987 amendments.) In response to this directive to take immediate action, EPA and the States have begun to include sludge requirements in permits for POTWs as they are reissued.

After the technical standards have been promulgated, the amendments direct that any permit under section 402 of the Act (NPDES permits) issued to a POTW or any other treatment works treating domestic sewage shall include the sludge technical standards, unless such requirements have been included in a permit issued under Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act, or

> under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section [405].

Section 405(f)(1). The amendments further provide that the Administrator may issue separate permits that implement the sludge requirements to treatment works which are not subject to section 402 of the Act (NPDES) or to any of the other listed permit programs or approved State programs. Section 405(f)(2). Such permits are referred to as "sludge-only" permits.

The 1987 amendments give new direction for the regulation of sludge management activities on several fronts. First, section 405 now clearly mandates that NPDES permits, whether issued by EPA or by an approved NPDES State, must contain conditions implementing the sludge technical standards to be promulgated by the Agency, unless those standards have been included in a permit issued under one of the listed federal programs or under a State program approved for administering a section 405(f) sludge permitting program. Therefore, a State which seeks EPA approval to administer a sludge permitting program can choose to do so through its NPDES program or through another sludge permitting program (e.g., solid waste programs), so long as the permit implements the sludge technical standards promulgated under section 405. Second, the amendments establish that the sludge standards will apply to any treatment works that treats domestic sewage, not just publicly owned treatment works or treatment works that treat primarily domestic

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waste. These treatment works may be subject to sludge standards even if they are not otherwise required to obtain NPDES permits.

The 1987 amendments also strengthen the provisions for enforcing against violations of section 405 or permits implementing regulations promulgated under section 405. Section 405(e) provides that:

> it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

Congress also amended section 309(c) of the CWA to provide, for the first time, criminal penalties for negligent or knowing violations of section 405 or permits implementing the requirements of section 405. The Administrator's new authority to assess administrative penalties for violations of the CWA also covers violations of section 405 and implementing regulations and permits. Section 309(g).

In addition, section 308 of the CWA, which establishes the Administrator's authority to require monitoring, reporting and recordkeeping and to inspect and sample to determine compliance with the CWA has been amended to specifically reference section 405. *See* section 308(a)(4), as amended by section 406(d) of the WQA. Other provisions amended by section 406(d) of the WQA include section 505(f) (citizen suits for violations of regulations under section 405(d)) and section 509(b)(1)(E) (judicial review of regulations promulgated under section 405).

B. Sludge Technical Standards (40 CFR Part 503)

The major purpose of today's rulemaking is to develop a program to protect public health and the environment from improper sludge use and disposal and to implement the sludge technical standards established pursuant to section 405(d) of the CWA. The sludge technical standards for the use and disposal of non-hazardous sewage sludge will be proposed in a separate rulemaking and will be codified at 40 CFR Part 503. The Part 503 standards will address the land application, distribution and marketing; landfilling, incineration, and ocean disposal of sewage sludge. Generally, the standards will specify limits on pollutants of concern in sewage sludge that may interfere with its safe disposal and identify management practices that mitigate the migration of pollutants from a particular end use into and through the environment. In sum, today's proposed rule establishes the programmatic and procedural framework for implementing the sludge technical standards. Today's proposed rule does not change the status of existing federal technical requirements applicable to sludge use and disposal, such as 40 CFR Part 257. Those requirements will remain in effect until revised through separate rulemakings.

IV. Discussion of Today's Proposed Rule

A. General

The purpose of today's proposed rule is to establish a national program for sludge use and disposal by establishing State program requirements, conditions and procedures for sludge permitting. Today's proposed rule contains four principal sections. First, 40 CFR Part 122 is proposed to be revised to add permitting requirements to accommodate the regulation of sewage sludge use and disposal through NPDES permits. Second, 40 CFR Part 123 is proposed to be revised to include requirements for State sludge management programs for States that wish to implement the sludge requirements through their NPDES program. Third, today's proposal would add Part 501, which contains the requirements and submission procedures for State sludge management programs that are not part of a State NPDES program. Fourth, 40 CFR Part 124 is proposed to be revised to add procedural requirements for sludge permitting.

1. Minimum State Program Requirements

Today's proposal sets forth minimum requirements for approvable State sludge management programs, whether the State uses NPDES or another authority. Section 405(f) of the CWA gives EPA broad discretion to promulgate regulations which establish requirements for approvable State programs that assure compliance with any applicable requirements of section 405.

As proposed today, State section 405 sludge programs are not mandatory. All NPDES permits must contain the sludge standards mandated by CWA section 405(d) unless they are addressed under another federal permit or a permit issued pursuant to an approved State sludge program. However, a State is not required to submit a section 405 sludge program for approval. If the State does not have an approved program, EPA would issue the sludge permit. This is a significant departure from the February 4, 1986 proposal in which States would have been required to develop and submit sludge programs for approval. In the 1987 amendments to the Clean Water Act Congress authorized, but did not expressly mandate, that States develop section 405 sludge programs. (By contrast, when Congress amended the Clean Water Act in 1977 and added requirements to develop pretreatment programs, Congress expressly mandated that States with existing NPDES programs modify those programs to add pretreatment authority.) EPA interprets this failure to expressly mandate the development of State sludge programs to mean that Congress intended that they be optional. However, as stated in EPA's 1984 "Policy on Municipal Sludge Management," it is EPA's policy that sludge management is a local concern and thus should be handled at the State and local level, within the context of broadly-established national objectives. Therefore, EPA will encourage the States to develop approvable sludge programs, through such mechanisms as the continuing planning process and section 106 work program development. The Agency invites comment on whether State sludge programs implementing Section 405 should be required.

The most important requirement for an approvable State sludge program under section 405 is the authority to issue permits implementing the Part 503 technical standards, because the CWA requires State sludge programs to implement sludge standards through permits issued to POTWs and other treatment works treating domestic sewage.

A State program would include provisions for compliance monitoring, including the authority to: Conduct inspections of sludge management facilities; require the operator to maintain records; have access by the State agency to records and monitoring equipment; and require periodic monitoring and reports from the permittee to the State agency. In addition, the State would need the authority to take enforcement actions and impose civil and criminal penalties against violators of the Part 503 technical standards and permits implementing sludge requirements.

Today's proposal also sets forth requirements for citizen participation. A State would have to provide public access to operator information unless such information is protected as confidential (*see* 40 CFR Part 2). Public notice of and opportunity to comment on proposed permits must be provided. Today's proposal would also require that the State provide for public participation in enforcement.

2. Program Submission

Today's proposal sets forth the basic components of a program submission. The first of these is the program description of the scope, structure, coverage, and processes of the State program. This would include: An identification of the lead agency responsible for implementing the sludge program, including staffing and organization; a description of the resources and costs of the program; a description of applicable State procedures; copies of permit, application and report forms; a description of the State's compliance tracking and enforcement program, and an inventory of all facilities required to obtain a sludge permit (POTWs and other treatment works treating domestic sewage).

The State also would submit a statement from the State Attorney General setting forth the State's legal authority to carry out the required program. This would include citations to specific statutes, regulations, and where applicable, judicial decisions.

Finally, the program submission would contain a Memorandum of Agreement (MOA) between the State Director and the EPA Regional Administrator. This document would set forth the State's plans to administer the sludge program and EPA's program oversight, and would include provisions for the transfer of information, proposed permits, reports, etc., between the Regional Administrator and the State. State sludge programs would be submitted to the appropriate EPA Regional office for review and approval, subject to concurrence by EPA Headquarters.

B. Part 501: State Sludge Management Program Regulations: Non-NPDES

1. General

As discussed earlier in this preamble, EPA proposed Part 501 regulations on February 4, 1986, that would have required States to develop programs regulating sludge use and disposal. Today's notice reproposes State sludge management program requirements based on the authority and program direction provided in the Clean Water Act amendments of 1987. Thus, while much of the substance of the earlier proposal is retained, there are a number of significant changes due to both the changes mandated by the Act and in response to comments on the February 4, 1986 proposed rule. This portion of the preamble is a section-by-section analysis of proposed Part 501. Part 501 applies only to those States that will not be regulating sludge through their NPDES programs (i.e., States without NPDES programs and States with approved NPDES programs which choose to implement a sludge program separate from their NPDES program). NPDES States that wish to incorporate sludge permitting into their NPDES program would submit such program for approval as a program modification under 40 CFR 123.62. Similarly, States seeking initial approval of an NPDES program which includes sludge would be subject to Part 123, rather than Part 501.

In developing proposed Part 501, the NPDES program was used as a basis, while attempting to make program requirements as flexible as possible so that States with existing, effective permit programs with different procedures would be approvable. Some States may be using a program that has been approved by EPA under another authority as a mechanism to regulate sludge, such as a State Solid Waste Management Plan under Subtitle D of RCRA. Such programs would be reviewed under Part 501 for their ability to implement section 405 of the CWA. There may be minor procedural differences between Part 501 and the approved program; the Memorandum of Agreement between the Regional Administrator and the State Director may be one means of resolving these differences.

2. Purpose, Scope and General Program Requirements

Subpart A of part 501 sets forth the intent and general requirements for EPA to approve State sludge programs as adequate to implement section 405. In accord with Congressional intent in enacting the section 405 amendments, States that seek to administer a State sludge program in lieu of the federal program generally must have authority as broad as EPA's to regulate sludge use and disposal. This would include the legal authority and programmatic capability to implement a permit program for the use and disposal of sewage sludge, to implement and enforce the Part 503 technical standards and any other Federal sludge standards (e.g., 40 CFR Part 257), and generally to take action to protect the public health and environment from adverse effects of toxic pollutants in sewage sludge.

Today's rule proposes that the State must issue sludge permits to all POTWs and other treatment works that treat domestic sewage. The requirement potentially includes numerous small facilities (for example, non-discharging, privately-owned domestic sewage treatment works) not previously regulated under any existing State or federal program and thus raises concerns about the additional resources that would be needed to fulfill the permitting requirement. EPA solicits comments on alternative ways of regulating these types of facilities other than through individual permits. Some possibilities include rules of general applicability and general permits. EPA also encourages States to submit any data they have on the number of such facilities in their States and the amount and kind of sludge they produce.

It is important to note that, in addition to requiring permits for POTWs and other treatment works treating domestic sewage, the amendments to section 405 make it illegal for *any person* to use or dispose of sewage sludge except in accordance with the technical regulations. Thus a State program must, at a minimum, require permits that cover all applicable requirements of the technical standards, including any that pertain to the activities which occur at disposal sites for POTWs and other treatment works treating domestic sewage. In addition, because the technical standards will apply to all users and disposers, the State program must include some provisions for enforcing the technical standards against these users and disposers as well. Thus, today's proposal includes a general requirement that States have provisions for regulating all users and disposers of sewage sludge, whether or not such users or disposers are required to obtain a permit. In today's proposal such other users and disposers are not required to have permits, although some of them may be required to have permits in the final rule. For example, the final rule may require some type of permit mechanism for regulating contractors who purchase sludge from a POTW for distribution and marketing to the public and for sludge incinerators that don't generate sludge themselves. (This possibility is also discussed below in the discussion about expanding the scope of the Part 122 permitting program to include sludge regulation.)

A number of States currently provide some type of regulation of "other users," ranging from permits to directly enforceable rules of general applicability. Other possibilities for regulating users include general permits, certifications of compliance, written releases acknowledging liability for compliance with the technical standards, and requiring the POTWs to regulate the users and disposers of its sludge through approved local programs similar to local pretreatment programs for regulating industrial users of POTWs. The agency is soliciting comments on effective means of regulating other users and disposers of sewage sludge that are not "POTWs and other treatment works treating domestic sewage."

A State sludge program may be administered as part of an existing State program (e.g., the State solid waste management plan) or it may be a separate section 405 sludge program, so long as it meets the requirements of the Part 501 regulations. States are, of course, free to adopt more stringent or more extensive requirements under section 510 of the CWA. State programs will be reviewed for their ability to meet the requirements of the Act and to ensure that there are no State provisions which may undercut or hinder implementation of the program, such as unauthorized variances from technical standards.

Assignment of Program Responsibilities (§ 501.1(d))

In some States, local agencies such as local health departments and soil conservation or agricultural extension offices play a significant role in carrying out various sludge management activities. In most cases, today's proposed rule would allow decentralized administration of State sludge programs to continue undisturbed. Where the local agencies are part of a State agency, they would be considered "field offices" of the State agency and questions about the propriety of assigning program responsibilities to them normally would not arise. The State would, however, be expected to identify the roles of field offices in describing how it will carry out program responsibilities, and, if more than one State agency is involved, designate a lead agency.

Today's proposal (§ 501.1(d)) would also generally allow States seeking approval of their sludge programs to maintain existing decentralized administration of sludge programs even where the local agencies are not part of a State agency. This is in keeping with the Agency's general policy of minimizing disruption to existing State programs. Also, because proper sludge disposal may often depend on local conditions and disposal site characteristics, the knowledge and proximity of local agencies to regulated activities can enhance efficient and effective administration of program responsibilities. Accordingly, today's proposal would generally allow the State sludge management agency to assign program responsibilities to local agencies.

However, today's proposal would not allow separate approval of local programs (by the State or EPA) nor relieve the State agency of overall responsibility for program administration. It also would not allow a State to assign program responsibilities to a local agency under control of a political subdivision that also owns or operates a POTW or other facility that treats or disposes of sewage sludge. This restriction is intended to avoid a conflict of interest situation with the local agency playing dual roles of regulator and regulated party. Beyond these broad parameters, the proposed rule does not specify the extent to which a State agency may use local agencies to carry out program responsibilities. EPA solicits comments on whether limitations should be established to guard against potential problems such as inconsistent application of program requirements within the State.

EPA is particularly concerned about potential conflict of interest situations where local agencies executing sludge responsibilities are part of the same political subdivision or other governmental entity with authority over POTWs or other sludge treatment or disposal facilities. Therefore, EPA also solicits comments regarding the roles of local agencies in existing State sludge programs, including the various functions they perform (e.g., permitting, compliance monitoring, enforcement), the extent to which they are the final decision-makers, and their relationships to State agencies, POTWs, and other sludge treatment and disposal facilities.

Under today's proposal, any assignment to local agencies must be well documented and supported in the State's submission for program approval. States would also be expected, through provisions in the MOA, to assume oversight responsibilities to ensure that the assignment is carried out properly. In addition, to assure that EPA could effectively carry out its oversight responsibilities in local delegation situations, the lead State agency would remain responsible for all program reporting and other activities related to EPA oversight of the State's approved program (e.g., submission of proposed permits for EPA review). Finally, State agencies would be required to retain all necessary authority to carry out program responsibilities so that they could step in where local agencies are not adequately performing assigned functions.

Partial Programs

Prior to the passage of the Water Quality Act in February 1987, partial NPDES program approvals were prohibited. A State wishing to obtain NPDES approval was required to seek approval of the entire program: NPDES, pretreatment, and regulation of federal facilities. Section 403 of the WQA (codified at section 402(n) of the Clean Water Act) authorizes two types of partial program approvals. The first type, the "major category partial permit program" is a partial program in which all discharges under the jurisdiction of a department or agency of the State are covered by the program. In the case of section 405 sludge programs, this would allow a State to seek a partial program approval if one agency has responsibility for regulating a particular sludge use or disposal method, and the State only sought to administer this program. For example, where all the sludge incinerators in the State are regulated by the State agency responsible for air programs, partial program approval could be sought for the State's sludge incinerator program. That program would be evaluated and approved based on its adequacy to meet all of the requirements of CWA section 405 (i.e., the State program requirements in Part 501) and to implement the Part 503 technical standards for those facilities under the Agency's jurisdiction. The approved State would then issue permits that implement the standards to all sludge incinerators, and EPA would be responsible for permitting all other sludge facilities in the State.

It is important to note that there may be circumstances where approval of a partial program would *not* be consistent with Congressional intent. For example, if a State has reorganized its administrative agencies simply to avoid a controversial or resource-intensive activity, EPA may decline to approve the State's program.

With the "major category" type of partial program, the State would not be required to obtain approval of a complete section 405 sludge program to maintain approval of its partial program. It would also be possible for a State to have two partial programs. EPA solicits comments on whether it should allow "major category" partial programs under Part 501 or whether it should instead require States with jurisdiction over sludge disposal split among various agencies to designate a lead agency and operate an entire program under an intra-State agreement.

The second type of partial approval authorized is the "major component partial permit program." This type of partial program provides for phased assumption by the State of major NPDES program components. Under this approach, the statute requires the State to submit a plan for assumption of full

program administration within five years of the date that the first phase is approved. CWA section 402(n)(4). Thus, the State could seek and obtain approval for its NPDES program first, and phase in approval of the pretreatment and federal facilities program components over five years.

Like pretreatment and federal facilities programs, a sludge program is a "major component," and cannot be broken down into smaller "major components." However, as proposed today, sludge programs, unlike federal facilities and pretreatment programs, are optional with the State. Therefore, a State that wants to phase in its NPDES program over five years must assume federal facilities and pretreatment, and may (but is not required to) include a complete sludge program as a component.

Today's notice does not contain any proposed regulatory language addressing partial programs. EPA will be proposing regulations governing the general requirements for partial program approvals as part of its general NPDES revision package. While comments are invited on today's preamble discussion of partial sludge programs, there will be another opportunity to comment when the general revisions to the NPDES program regulations are proposed.

Section 501.2 Definitions. Section 501.2 provides definitions for terms as they are used in Part 501. The terms "distributor," "septage," "sewage sludge," "use" or "utilization practice," and "users" are intended to be consistent with definitions used in the forthcoming technical regulations (40 CFR Part 503). The definition of "treatment works" is taken from section 212 of the CWA.

Part 501 defines a "Class 1 Sludge Management Facility" to be any sludge facility classified as such by the Regional Administrator in conjunction with the State Director. Class 1 Sludge Management Facilities are analogous to NPDES "major facilities" (see 40 CFR 122.2). They are a permitting priority and generally are subject to more stringent reporting and monitoring requirements. As with NPDES majors, under today's proposal the actual classification of facilities as Class 1 would not be done through rulemaking, but rather would be determined through a negotiated process between the Region and the State administering an approved program. This would allow flexibility for targeting efforts on areas of specific concern to the State (e.g., disposal on or near ecologically sensitive areas such as estuaries) and on particular facilities with known or suspected problems with their sludge. Where information available to EPA suggests that particular classes of facilities or practices are of concern on a national basis, EPA may issue national guidance on Class I determinations. For example, it may be appropriate to focus attention on sludge incinerators (because available information suggests that these facilities may have greater potential to threaten the environment) and on major POTWs required to have pretreatment programs under 40 CFR 403.8 (because facilities are so classified on the basis of their size and industrial contribution). These and/or other classes of facilities may become part of initial or subsequent Class I identification.

EPA invites comment on the process for identifying Class I facilities contained in the definition of "Class I management facility" proposed today.

Section 501.3 Coordination with other programs. A facility's sludge operation is closely linked to its wastewater treatment processes and other treatment activities. This section would allow States to coordinate their sludge programs and jointly issue permits with other State or Federal environmental programs where appropriate to promote efficiency in the process and consistency among the various requirements regulating the facility's waste treatment operations. For example, POTW permit issuance could be coordinated where a State has separate NPDES and sludge management programs.

3. Development and Submission of State Programs

Section 501.11 Elements of a sludge management program submission. This section summarizes the basic components of a program submission, each of which are described in greater detail in subsequent sections. The essential components of a program submission are: a letter from the Governor requesting program approval, a description of the State's sludge management program, a statement of the State's legal authority to implement the program from the Attorney General, and a Memorandum of Agreement (MOA) between the Regional Administrator and the State Director. This section provides that EPA will determine whether the State program submission is complete within 30 days of receipt of the program submission. EPA then has 90 days from the date of the completeness determination to review and decide whether to grant or deny the State's request for program approval. EPA will approve programs which meet the requirements of this Part and section 405 of the CWA.

Section 501.12 Program description. This section provides a detailed discussion of the nature and contents of the program description. The program description is the primary mechanism by which the State explains how it intends to administer its sludge program. While the legal authorities define the State's intended implementation, the program description describes the State's processes and policies, such as how the State plans to structure its enforcement program. The program description should explain how the program is adequate to meet the essential requirements of CWA section 405: to implement the technical standards through permits and to protect public health and the environment from adverse effects from pollutants in sewage sludge.

The description must include an explanation of the organization and structure of the agency or agencies that will be administering the program, including the number and general responsibilities of the employees. The description must also contain a discussion of the estimated costs and available resources for administering the program. These resource requirements are more extensive than what was proposed on February 4, 1986, because a resource discussion is essential in order to evaluate the State's capacity to implement the program as envisioned by Congress. EPA is soliciting comments on whether cost and resource factors are an appropriate measure of the State's capacity to implement the program.

The program description includes a description of applicable State permitting, administrative, and judicial review procedures. This includes a description of any administrative review or appeal procedures and criteria, as well as procedures and criteria for any variances available under State law. The program description must also contain copies of application and reporting forms.

Another important requirement is the facility inventory. Today's proposal would require that the State include in the program description a complete list of all POTWs or other treatment works treating domestic sewage, i.e., all facilities that are required to obtain sludge permits. (Note: As discussed elsewhere in this preamble, the categories of facilities required to obtain permits may be expanded to include other regulated parties. In this case, the inventory requirement would be correspondingly expanded to include all facilities or parties required to obtain a permit.) This is considerably pared down from the February 4 proposal which would have required an inventory of all sewage sludge generators and sewage sludge disposal facilities in the State, including firms which pump and service septic tanks and portable toilets.

The States will be expected to complete an inventory of all generators and disposal facilities and sites. The program description should explain how and when the State's inventory will be completed and the State's plan for maintaining the inventory. However, under today's notice only those facilities required to obtain permits must be identified on the inventory as a *precondition* to program approval.

The States also are asked to identify whether they have a separate program to regulate septage disposal. The February 4 proposal would have required a more extensive description of the State's septage disposal program. Several commenters on this earlier proposal remarked that septage is different from sludge and that it was not necessary to include requirements for septage in a sewage sludge management program.

In today's proposal, how a State regulates septage is only significant for the purposes of its section 405(f) sludge program, in that its program must ensure that where septage is disposed of in the same manner as sludge (e.g., applied to land), it is subject to the same requirements as sewage sludge. Thus, today's rule will be consistent with the forthcoming proposed Part 503 regulations including "septage" within the definition of "sewage sludge," so that where septage is used or disposed of as sewage sludge it would be subject to the same standards as sewage sludge. Beyond this coverage, how the State does or does not regulate septage would not have to be addressed in its sludge program under today's proposal. For example, septage that is transported to a POTW for treatment need not be covered under the State's sludge management program, since the POTW's sludge would be regulated.

Section 501.13 Attorney General's Statement. The Attorney General's Statement is where the State demonstrates its legal authority to carry out the program implementation requirements set forth in this part. The Attorney General (AG) certifies that in his or her opinion, the laws of the State provide adequate authority to carry out the program. The Attorney General's Statement would include a discussion of the State's legal basis for conducting each aspect of the program and address any significant difference between State and federal law. It would cite to the specific statutory and regulatory provisions that give the legal authority for each program element, and explain how each citation provides the requisite authority. All referenced State statutes and regulations would have to be in full force and effect by the time the program is approved.

The Attorney General's Statement must be signed by the Attorney General or a representative of the AG who is authorized to sign and can bind the State by so doing. Alternatively, the Statement may be signed by an independent legal counsel. To qualify as an independent legal counsel, the signatory must have full authority to represent the State agency in court on all matters, including defending actions against the State and bringing actions to enforce against program violations. The February 4 proposal stated that the Statement would be signed by the AG "or appropriate legal counsel," which EPA now regards as not specific enough in requiring that the legal counsel must have full authority to represent the State agency.

Section 501.14 Memorandum of Agreement (MOA). The program description and the MOA, taken together, should explain program operation and clearly define the respective roles of EPA and the State, (and local agencies, if appropriate), so that by examining these two documents EPA or the public can fully understand how the program will be run. Some overlap between the content of the two documents is expected since both address areas such as compliance monitoring, enforcement, permit issuance, and transfer of information. However, the two documents have different long-term roles. The program description provides a narrative explanation of program administration. The MOA is designed to be a long-term outline of these programmatic duties in the form of a binding agreement between EPA and the State. It establishes the parameters for ongoing program administration.

The MOA establishes the basis for cooperation and coordination between the State and EPA and for ensuring that the program is administered in an effective manner consistent with the objectives of the Clean Water Act. The MOA defines the State/EPA relationship and denotes the responsibilities of each party. It charts the procedures EPA and the State will follow in carrying out these various responsibilities and generally defines the manner in which the sludge management program will be administered.

The MOA should begin with a statement of the basis and implications of the Agreement, and must affirm that the State program will be managed in accordance with State and Federal statutes. The main body of the MOA consists of a listing of the responsibilities and procedures which will be used to ensure coordination between the State and EPA.

In addition, the MOA is to include provisions for transferring from EPA to the State, permit applications and other program information. In the MOA, EPA and the State will specify the classes or categories of permits that will be sent to EPA for review and comment, and the classes of permits for which such review will be waived. EPA may waive review of any class of sludge permits except for Class 1 Sludge Management Facilities. This is significantly pared down from NPDES, which lists several classes of dischargers for which review cannot be waived. *See* 40 CFR 123.24(d). On the basis of EPA's experience with NPDES, the Agency today is proposing that the waiver of review be prohibited only for a narrow class of permits, those for Class 1 Sludge Management Facilities. The MOA must also provide for termination of the waiver, for individual permits or classes of permits, at the written direction of the Regional Administrator.

Today's rule proposes that the procedures and requirements in § 123.44 governing EPA review of State-issued NPDES permits, including EPA's authority to object to, and, where necessary, veto permits that are outside the guidelines and requirements of the CWA, generally apply as well to permits issued under State programs approved under Part 501. Although the CWA does not specifically address EPA veto of State-issued permits with inadequate sludge provisions, it does grant EPA broad authority to establish State program requirements as necessary to assure compliance with section 405 requirements. CWA, section 405(f)(1). Based on past experience in other programs, EPA believes that the ability to veto State-issued permits which do not adequately implement federal standards is an important tool for effectively assuring that State programs implement minimum federal requirements. This approach is also consistent with that in the NPDES program where EPA has authority to veto State-issued NPDES permits that are outside the guidelines and requirements of the Act (including those implementing sludge standards). EPA sees no reason why the availability of a veto authority should depend on whether a State sludge program is

approved under the NPDES program in Part 123 or separately under Part 501.

The MOA shall also set forth the frequency and content of reports the State will submit to EPA (§ 501.14(b)(5)). This provision is similar in breadth and scope to NPDES (40 CFR 123.24(b)(3)). It is not a separate requirement, but rather is to be read in conjunction with the specific requirements regarding information transmittal from the State to EPA. For example, the MOA would identify that the State will transmit to EPA a copy of permit applications for which review has not been waived within, for example, five days of receipt.

The MOA also will contain an agreement that the State will allow EPA to routinely review relevant State records, reports and files. Provisions on the State's compliance monitoring and enforcement program, such as coordination with EPA on inspections and on enforcement activities, must also be addressed in the MOA.

Section 501.15 Requirements for Permitting. This section sets forth the specific requirements for ensuring effective permitting programs. It is divided into four principal subsections. Subsection (a) specifies general requirements the State must be able to implement and standards for program implementation. Subsection (b) outlines boilerplate provisions which all permits must contain. Subsection (c) contains provisions for permit actions such as transfers, modification, revocation and reissuance, and termination. Subsection (d) contains the procedures for permit issuance, primarily public input into the issuance process.

Section 501.15(a)(1) deals with confidentiality of information, a very important provision balancing the public interest in access to information and the permittee's interest in confidentiality. The State may protect information claimed confidential, except that it must deny such claims for: (1) The name and address of the permittee, and (2) permits, permit applications and effluent data. This proposal is consistent with the confidentiality rules in the NPDES program (§ 122.7), which are mandated by sections 308 and 402(j) of the Clean Water Act.

Section 501.15(a)(2) proposes information the permit applicant would provide in applying for a sludge permit. General information requirements would include name, address, and location, and an identification of the activities which bring the facility under the jurisdiction of section 405. The applicant must also identify whether it is subject to any of the listed environmental permit programs. This is important in order to provide notice of the sludge permit to other affected programs and to determine whether some Part 503 requirements are already included in other permits.

More specific information requirements would include a topographic map of the treatment works property which depicts the location of any sludge management facilities, including on-site disposal sites. Applicants would also have to describe their sludge use and disposal practices as this will be the basis on which limits are established under Part 503. The description of sludge use and disposal practices would include a specific identification of the sites where the applicant proposes to transfer sludge for treatment and/or disposal as well as the names of applicators, distributors, or other contractors that will handle the disposal of the applicant's sludge. In the case of sludge or sludge products (e.g., compost) which are distributed and marketed to the general public, the permit applicant would identify the distributor, if different from the applicant. This information will be important for purposes of tracking the sludge to ensure that it is properly managed as provided for in applicable federal standards. Applicants must also state their annual sludge production volume.

The proposed rule also contains general requirements for applicants to submit available data on sludge quality and ground water monitoring. Additional information may also be necessary in order for the permit writer to ascertain compliance with the Part 503 standards. Accordingly, the proposed rule requires the applicant to submit any information required to determine the appropriate standards to be used for permitting under Part 503. States would also need the authority to require the applicant to submit any other information the Director may reasonably require to assess the sludge use and disposal practices, for example where permits are developed on a case-by-case basis.

The State must have the authority to require the applicant to keep records of relevant data and information submitted with the permit application for three years. This record retention time is consistent with that required in other Federal environmental programs, including NPDES. (Note: It also coincides with the Paperwork Reduction Act and implementing regulations (44 U.S.C. 3507; 5 CFR 1320.6(f)), which generally recommend a record retention time of three years.) The Agency solicits comments on whether record retention time should be increased, for example to five years to correlate with the typical permit term.

Paragraph (a)(4) proposes that permit applications be signed in accordance with the requirements set forth in 40 CFR 122.22. This is necessary to ensure that the person signing the forms has the authority to speak for and legally bind the permittee.

Paragraph (a)(5) proposes that sludge permits be for a term of up to five years. Because many of the requirements will be new, the Agency feels that a longer permit term would be inappropriate. The State may, of course, write permits for a shorter term.

Paragraph (a)(6) provides that schedules of compliance may be used (but are by no means mandatory) except that a State may not issue a permit with a compliance schedule which goes beyond the statutory deadline. CWA section 405 mandates that compliance with the Part 503 technical standards be achieved by one year from the date of their promulgation, except where the standards would require major construction, in which case the permittee has up to two years to achieve compliance. Because the statutory compliance deadlines are relatively tight, permit compliance schedules after promulgation of the Part 503 standards will most likely be used only for facilities requiring major construction (i.e., those which have a two-year statutory compliance deadline). Where a compliance schedule goes beyond one year, this section would require interim requirements and reporting, to ensure that the permittee is on schedule.

Paragraph (a)(7) discusses conflict of interest. It is taken directly from § 123.25(c) of the NPDES regulations and would require that no member of a board or body which approves a permit receives or has for the past two years received income from permit holders or applicants. Under the NPDES conflict-of-interest regulations (and the proposed rule in Part 501), State agencies or departments are not considered "permit holders or applicants for a permit." § 123.25(c)(iii). Without this exemption, many States could not administer an approved NPDES program because State agencies often hold NPDES permits. A similar exemption for Federal agencies or departments is being considered and may be addressed in the forthcoming proposed revisions to the NPDES regulations. Municipalities, on the other hand, are considered "permit holders or applicants for a permit." Therefore, employees of a municipality that owns or operates a facility required to obtain a permit could not sit on the board or body that approves all or portions of sludge permits issued in an approved State.

Although the NPDES standard for conflict-of-interest is dictated by the CWA and is considered relatively stringent, EPA believes that requirements to guard against conflicts-of-interest are also important for State sludge programs. The Agency solicits comments on whether another standard would be more appropriate. One approach the Agency is considering is allowing a State that will use a program approved under another Federal statute as the basis for its sludge program under Part 501 to comply with the conflict-of-interest provision applicable under the other Federal statute (e.g., section 128 of the Clean Air Act, 42 U.S.C 7248).

Section 501.15(b) is the second principal subsection, and sets forth the permit conditions all State permits would need to contain in order for the program to be approvable. These provisions are important because they put the permittee on notice as to the applicability of Clean Water Act provisions, and identify the effect of the permit with regard to compliance and noncompliance with the Clean Water Act for enforcement purposes.

The first paragraph of § 501.15(b) requires that the permit include requirements necessary to comply with the Part 503 sludge standards and generally the requirement in CWA section 405 to protect public health and the environment. This includes requirements as to sludge quality, monitoring frequency, management practices, etc. Requirements for sludge use and disposal may include management practices or other limitations that apply at the disposal site. When the POTW or other treatment works subject to a permitting requirement disposes of its sludge offsite, the permit must include conditions to meet all applicable requirements, including those that apply at the offsite disposal site, unless those requirements are included in a permit issued under one of the programs listed in section 405(f) of the Act.

The permit by specific language in the permit document would have to require that the permittee comply with all conditions, and that noncompliance with any of the permit conditions constitutes a violation of the Clean Water Act. The permit must require compliance with the Part 503 technical standards, even if the permit has not been modified to incorporate them. This implements the language of CWA section 405 which makes these regulations directly enforceable one year from their promulgation, or two years from promulgation when construction is required. The permit must inform the permittee of the civil and criminal penalties in the Clean Water Act for permit violations and noncompliance with section 405 (which includes penalties for noncompliance with the promulgated technical standards even if the standards have not been incorporated in the permit).

This section also contains several boilerplate permit conditions. The permittee must take all reasonable steps to prevent sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting health or the environment, and must at all times properly operate and maintain facilities and systems. It is not a defense in cases of noncompliance to claim that it would have been necessary to halt or reduce the permitted activity in order to comply.

Paragraph (7) states that the permit may be modified, revoked and reissued, or terminated for cause.

Paragraph (8) is the duty to provide information. This puts the permittee on notice that the Director may request information on compliance, or to determine whether cause exists to modify or terminate the permit, and that the permittee has an obligation to furnish such information within a reasonable time.

Paragraph (9) discusses inspection and entry. It is very important that this be set forth in the permit. It sets the parameters for the Director or an authorized representative to enter onto the premises, inspect the facility, have access to records and conduct sampling.

Paragraph (10) outlines the requirements for monitoring, recordkeeping and record submission. Paragraph (10)(i) would require that the permittee report monitoring data no less frequently than once a year. The permit will require that monitoring be conducted at the frequency specified by the Part 503 standards; however, the permit writer may require additional or more frequent monitoring as needed. Today's proposed rule would not specify a minimum frequency for sludge monitoring (except compliance with Part 503 technical standards), but would leave that determination to the permit writer using best professional judgment and guidance. This approach avoids establishing a minimum monitoring frequency in regulations that may not be appropriate for the broad variety of situations and facilities that would be involved. Frequent monitoring, however, enhances the effectiveness of compliance monitoring and enforcement, particularly for early detection, assessment, and correction of violations. For this purpose, quarterly or even monthly monitoring has been suggested as a minimum requirement for all facilities. On the other hand, the potential threat to public health and the environment from some facilities (e.g. small lagoons that treat only domestic sewage and dispose of sludge infrequently) may be so remote that monitoring less frequently or on an "as needed" basis (e.g., change in influent or disposal practices) is sufficient. Of course, in establishing requirements the Agency will balance the value of such requirements against the burden they would impose on the public. EPA is sensitive to this and will take both factors into account in determining the need for specifying a minimum monitoring frequency and the appropriate level of monitoring. EPA solicits comments on whether the regulations should establish a minimum monitoring frequency and, if so, what that frequency should be (e.g. annual, quarterly, monthly).

Paragraph (10) also requires that monitoring be representative of the monitored activity, and that parameters for monitored information be set forth in the permit. Monitoring must be conducted in accordance with procedures established under 40 CFR Part 503 unless others have been specified in the permit. The permit must inform the permittee that anyone who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method or makes a false statement or representation is subject to Clean Water Act criminal penalties.

Paragraph (11) contains signatory requirements. It incorporates by reference 40 CFR 122.22. This ensures that applications and reports are signed by an authorized individual.

Paragraph (12) would require the permittee to give advance notice to the Director of any planned changes in the sludge disposal practices or facilities that may justify the application of different permit conditions, or which may result in noncompliance with the permit. The permit must also require that the permittee report all instances of noncompliance.

Under Paragraph (12)(ii) the permit would have to provide that it was not transferable except after notice to the Director. Section 501.15(c) discusses procedures for permit transfer.

Today's proposal would require that the permit contain a reopener clause, so that the permit would have to be modified or revoked and reissued where more stringent technical standards than are currently in the permit are promulgated. (See Paragraph 13.) Under the CWA, compliance with the technical

standards is required regardless of existing permit conditions. Thus, permit modification would facilitate compliance by the statutory deadline of one year from promulgation (or two years where construction is required) found in CWA Section 405. This reopener provision would also apply if limits are promulgated for a pollutant not regulated in the permit.

Subsection (c) discusses procedures for permit actions. This covers permit transfers, permit modification, permit termination, and permit issuance.

Paragraph (1) addresses permit transfers, and sets out procedures for automatic transfer, so that permit modification or revocation and reissuance can be avoided in some instances.

Paragraph (2) discusses permit modification and revocation and reissuance. When permits are modified only the provisions subject to the modification are reopened. Permits may be modified only for cause as defined in (2)(ii). For example, the promulgation of new technical sludge standards by EPA would be cause for modifying the permit.

Permit revocation and reissuance is more severe; the entire permit is reopened and subject to revision and the permit reissued for a new term. Revocation and reissuance can only be done in three circumstances: (1) Cause exists for termination but the Director decides to revoke and reissue; (2) cause exists for modification only but the permittee agrees to revocation and reissuance; or (3) the Director has received notice of a proposed permit transfer under § 501.15(b)(15). (A permit may also be modified to reflect a transfer.)

The most severe permit action, termination of the permit, is described in paragraph (3). Permits can be terminated (or permit renewal applications denied) for four reasons: (1) Noncompliance; (2) permittee's failure to disclose all relevant facts; (3) the permitted activity endangers health or the environment and can be adequately regulated only by modifying or terminating the permit; and (4) a change in condition that requires either reduction or elimination of the permitted activity.

Subsection 501.15(d) describes the permit issuance procedures that the State would need the authority to administer. The most important element of this subsection involves the requirement to ensure public participation in the permit issuance process. This section sets forth minimum provisions to ensure adequate public participation. The State may, of course, provide for more extensive public involvement, e.g., by providing lengthier public comment periods, requiring more public hearings, having more extensive public notice, etc.

The State Agency must not commence processing a permit until the applicant has fully satisfied the application requirements discussed in § 501.15(a)(2).

Paragraph 501.15(d)(3) sets forth procedures for permit modification, revocation and reissuance, and termination. Interested persons may petition the Director to take such action by written request, or he may do so on his own initiative, providing that one of the reasons specified in § 501.15(c) exists.

Paragraph (4) discusses draft permits. A draft permit would be prepared where the Director tentatively decides to issue the permit, and whenever the permit is modified, revoked and reissued, or terminated. A draft permit must include all of the conditions required to be in the permit under the provisions of Part 501 (which includes conditions required for compliance with Part 503).

Paragraph (5) discusses fact sheets. Under today's proposal, State programs would have to require that a fact sheet be prepared for permits issued to "Class 1 Sludge Management Facilities." The purpose of the fact sheet is to explain the basis for any permit condition and thus allow meaningful public comments on the draft permit. Accordingly, the fact sheet would set out the significant factual, legal, methodological, and policy questions considered in preparing the draft permit, including a brief description of the facility and the use and disposal practices, and an explanation of how the limits and conditions for sludge use and disposal were derived.

Public notice and comment procedures are the subject of paragraph (6). Under today's proposal, the State program must require that the Director give public notice of the draft permit and if a public hearing has been scheduled. The public notice must identify the name and address of the processing office, the name and address of the applicant, a brief description of the activity described in the permit application (e.g., sludge incineration), and a description of the procedures for submitting comments. The notice must provide for no less than a 30-day comment period during which any interested person may submit written comments and request a public hearing. Where the notice is for a public hearing, the notice must designate the date, time and place of the hearing and specify its nature and purpose.

The State regulations must specify that public comments will be considered before making a final decision; that significant comments will be responded to in writing and made available to the public; and that any provisions in the final permit which differ from the proposed permit will be noted and explained in the written response to comments.

Subsection (e) sets forth optional program provisions. These provisions, which the State is not required to adopt, are currently in the NPDES program and generally make the program less stringent or easier to administer. If the State decides to adopt general permits, permit continuation, or minor modification of permits for sludge, its provisions must be no less stringent than the corresponding Federal provisions identified in subsection (e). Under today's proposal, State-issued general permits would not be subject to review by EPA's Office of Water Enforcement and Permits, as § 123.44(a)(2) provides for NPDES general permits, but would be reviewed by the EPA Region to the same extent as other State-issued sludge permits (i.e., minimally, all permits for Class 1 facilities must be reviewed by the Region). States considering the use of general permits for sludge should so indicate in their program description and Attorney General's Statement, and make sure that State law would allow issuance of general permits.

Section 501.16 Requirements for compliance evaluation programs. This section would require that States have requirements and procedures for compliance monitoring and evaluation; 40 CFR 123.26 is used as the basis for these requirements. Section 405 of the Clean Water Act makes it unlawful for *any person* to use or dispose of sewage sludge except in accordance with the Part 503 standards. Thus it is important that the State's compliance monitoring program cover non-permittees (e.g., disposal sites) as well as permittees.

Section 501.17 Requirements for enforcement authority. Enforcement remedies must be specified in State statutes (and, as noted earlier, enforcement remedies should also be referenced in each permit.) State law must provide for adequate enforcement authority, including the ability to enjoin violations and bring *both* civil and criminal actions for any violations of permits, the permit program, or the sludge use and disposal standards set forth in 40 CFR Part 503. Other sanctions, such as the ability to bring actions for damages, are allowed, but under today's proposal they would be additions to, and not substitutes for, these enforcement remedies.

Under today's proposal, the State would have to be able to seek injunctive relief in two instances. First, the State must be able to immediately restrain any unauthorized activity endangering the public health or the environment. Second, it must have authority to sue to enjoin any threatened or continuing violations without first revoking the permit. State penalty authority must allow the State to seek civil penalties in the amount of at least $5,000 per day of violation, seek criminal fines (for willful or negligent violations) in the amount of at least $10,000 per day of violation, and seek criminal fines for knowingly making false representations or certifications, or knowingly rendering monitoring devices inaccurate, in at least the amount of $5,000 for each instance of violation.

The minimum penalty ceilings in today's proposal are consistent with the current parallel requirements in Part 123 for approved NPDES programs. The Water Quality Act of 1987 significantly increased both civil and criminal penalties required for violations of the CWA. In keeping with past policy that, to be effective substitutes for the federal program, State programs must have penalties generally proportionate to those available under Federal law, EPA is considering raising the minimum penalty ceilings required for State program approval. Therefore, the final promulgation of today's proposal may require higher minimum penalty ceilings for approved State sludge programs under Part 501. EPA would seek parity between Part 501 and Part 123 in this regard.

States cannot provide additional defenses or rights to dischargers where not authorized by Federal law. Thus, a State could not allow a permittee to challenge its permit limits in an enforcement proceeding, and State law that provided such an option would be inconsistent with the Federal requirements. Similarly, a State could not restrict its enforcement by limiting the use of information in an enforcement action.

State programs must allow for public participation in the enforcement process. Section 501.16(d) would allow States to choose between two options. The first option is for State law to provide for intervention as of right in any enforcement action. States choosing this option may not place restrictions on this right. Alternatively, where State laws allow permissive intervention in State civil or administrative actions, the State could agree not to oppose such intervention in any enforcement proceeding. Under this option, the State would also have to agree to investigate and respond to citizen complaints and publish all settlement agreements for a public comment period of at least 30 days.

Section 501.19 Sharing of information. Section 501.19 incorporates 40 CFR 123.41, which requires that the State make available to EPA upon request, any information obtained or used in the administration of a State program.

Section 501.20 Receipt and use of Federal information. Section 501.20 incorporates § 123.42, which addresses the transfer of relevant information collected by EPA to the State agency upon program approval. Under that section, the MOA between the State and the Regional Administrator must provide for: (1) Transfer of all copies of pending permit applications and other relevant information to the State, and (2) procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator has identified as incomplete until the Director receives information sufficient to correct the deficiency.

Section 501.21 Program reporting to EPA. This section contains the requirements for quarterly and annual reports to be submitted to EPA. These reports are important for tracking the State program and evaluating compliance and enforcement.

Section 501.21(a) describes the annual report, which would include an update of the inventory of sludge facilities, and information of substantial non-compliance of Class 1 management facilities. The information on substantial noncompliance would include instances of significant failure to comply with Part 503 standards and permit conditions, failure to complete construction of essential elements of a sludge facility (as provided in a compliance schedule or as otherwise necessary to meet permit and/or Part 503 standards), and failure to provide adequate monitoring or other reports. This paragraph identifies what information shall be provided with regard to such instances of noncompliance, for Class 1 and non-Class 1 sludge facilities.

Section 501.21(b) contains the requirements for quarterly reports. In that report the State would provide a summary of the incidents of substantial non-compliance occurring in the previous quarter by Class 1 facilities.

4. Program Approval, Revision, and Withdrawal

Section 501.31 Review and approval procedures. This section outlines the procedure for State submission and EPA review and approval of a State program. As with NPDES, today's proposal would require that EPA make a determination as to the completeness of the application within 30 days. Today's proposal would require that EPA notify the State of any deficiencies in its submittal.

Once the program is determined to be complete, EPA would publish notice of the submission in the **Federal Register** and in enough of the largest newspapers in the State to attract State-wide attention. In addition, the notice must be mailed to all interested persons and government agencies, as well as to all permit holders and applicants subject to sludge use and disposal requirements. The notice must provide at least a 45-day comment period and provide that a public hearing within the State will be held no less than 30 days after the notice is published. The notice would indicate where and when the State's submission would be accessible to the public and indicate the cost of obtaining a copy. The notice would also delineate the fundamental aspects of the State's proposed program. Finally, the notice would indicate whom an interested person may contact for additional information.

EPA specifically solicits comments on two requirements of this Section: (1) Whether (as proposed) the rule should require that individual notice of the State's application for program approval should be sent to all permit holders and applicants subject to sludge use and disposal requirements, or whether other forms of notice (**Federal Register**, State newspapers, and mailing lists) would be sufficient; and (2) whether (as proposed) a public hearing on EPA's approval of the State program should be mandatory or whether it should be required only when public interest is demonstrated.

The Administrator has 90 days from the date of receipt of the complete program to approve or disapprove of the program. This period may be extended by mutual agreement between the State and EPA. The Regional office will prepare a responsiveness summary identifying the public participation activities conducted, summarizing significant comments and responding to these comments. Notice of approval will be published in the **Federal Register**. If the program is disapproved, the Administrator will notify the State of the reasons for disapproval and what revisions would be necessary to make the program approvable.

Section 501.22 Procedures for revision of State programs. Revision of State programs may be necessary any time the State or federal laws or

programs change. The procedures for program modification are very similar to the original program approval process.

Paragraph (b) would require that where State program revision is necessitated by changes or additions to the regulations governing sewage sludge use and disposal, including changes to this Part, the State would revise its program within one year from promulgation of the applicable regulations, or within two years if an amendment to a State statute is required.

Section 501.23 Criteria for withdrawal of State programs and Section 501.24 Procedures for withdrawal of State programs. These sections incorporate 40 CFR 123.63 and 123.64, the NPDES provisions for program withdrawal. Under these sections, withdrawal can occur voluntarily (where the State decides to transfer all program responsibilities back to EPA) or involuntarily (EPA decides to withdraw approval where the State program no longer complies with the Clean Water Act or regulations). Program withdrawal is considered an extreme remedy but will be invoked where the State is unable or fails to take corrective action to solve State program deficiencies. Grounds for initiating State program withdrawal proceedings include: (1) The State's legal authorities no longer meet CWA requirements; (2) the operation of the State program fails to comply with EPA regulations; (3) the State's enforcement program fails to comply with EPA regulations; or (4) the State program fails to comply with the terms of the Memorandum of Agreement.

5. Indian Tribes

The February 4, 1986 proposed rule provided that EPA and a tribal government could develop, on a case-by-case basis, an appropriate role for the tribal government in carrying out a sludge management program on Indian lands where a State is unable to demonstrate adequate legal authority to administer and enforce its program on the Indian lands. See proposed § 501.19, 51 FR 4463. Subsequently, Congress created a more prominent róle for Indian tribes in the management of environmental programs on Indian lands in section 506 of the WQA (codified as section 518 of the CWA). That section provides in part that:

> The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and Sections 104, 106, 303, 305, 308, 309, 314, 319, 401 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—
>
> (1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;
>
> (2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and
>
> (3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

CWA section 518(e). This section further directs the Administrator to promulgate regulations which specify how Indian tribes will be treated as States for purposes of the Act. Today, EPA proposes, consistent with the intent of section 518, to provide that Indian tribes may be treated as States for purposes of approved State sludge management programs.

Section 518 does not list section 405, EPA's primary authority for establishing approved State sludge management programs. The legislative history is also silent on this point. However, EPA believes that treating Indian tribes as States is nonetheless appropriate here. Indian tribes may be treated as States under Title II (construction grants) and section 303 (water quality standards and implementation plans). Both sections recognize that sludge management is an integral part of wastewater treatment. Section 303(e) in fact, requires States to have a continuing planning process which includes, inter alia, plans for "controls over the disposition of all residual waste from any water treatment processing." Section 303(e)(3)(H). Since Congress intended that Indian tribes be treated as States for purposes of sludge management activities under other provisions of the Act, it is reasonable to conclude that Congress similarly intended that Indian tribes be treated as States for purposes of approved sludge management programs authorized by Section 405.

Providing for the treatment of Indian tribes as States under section 402 of the Act further supports similar treatment under section 405. Section 402 authorizes approval of State NPDES programs. As discussed elsewhere, EPA proposes to allow NPDES States to use their NPDES programs to implement a section 405(f) sludge management program, consistent with Congressional designation of NPDES permits as a primary implementation mechanism for section 405(d) technical requirements. Thus, an Indian tribe that wishes to obtain separate approval of its NPDES program could also seek approval of its sludge management program as part of that NPDES program. It would be illogical and inconsistent not to allow Indian tribes to seek treatment as a State for purposes of an approved sludge management program that is separate from an NPDES program. EPA does not believe that Congress intended such a result. The Agency therefore proposes to provide for treatment of Indian tribes as States for purposes of sludge management programs approved under Part 501.

EPA intends that an Indian tribe which qualifies for treatment as a State would be subject to many of the same program requirements and approval procedures as are States under existing regulations. Accordingly, the definition of "State" in § 501.2 in today's proposed rule includes Indian tribes which are eligible for treatment as a State.

Today's proposal does not include provisions for determining an Indian tribe's eligibility for treatment as a State. EPA does not expect the requirements or procedures for this determination to vary significantly among the various programs under the Clean Water Act. Accordingly, EPA plans to propose a separate rule addressing Indian tribes' eligibility for treatment as States which would apply to various programs under the CWA, including sections 402, 404 and 405.

C. Part 123: State Sludge Management Program Regulations: NPDES

Part 123 establishes the program requirements and approval procedures for States which seek EPA approval to administer an NPDES permit program pursuant to Section 402 of the Act in lieu of the Federal NPDES permit program. All 39 States which currently have EPA-approved NPDES programs govern, at a minimum, the discharge of pollutants to waters of the United States, including the discharge of sewage sludge to waters of the United States (see sections 405 (a) and (c) of the CWA). None of these State programs, however, have been approved by EPA to administer a program which meets the requirements of sections 405 (d) and (f) of the CWA for the safe use and disposal of sewage sludge.

In the 1987 amendments to the Act, Congress authorized the Administrator of EPA to promulgate procedures for the approval of State programs that assure compliance with section 405(d) of the Act and also recognized permits issued pursuant to section 402 as appropriate vehicles for implementing section 405(d) requirements. Section 405(f). To accommodate both goals. EPA today is proposing to amend Part 123 to allow States to incorporate a sludge management program as part of their approved NPDES programs.

Today's proposed revisions to Part 123 would apply only to those States which choose NPDES as the vehicle for administering an EPA-approved sludge management program in lieu of the federal program. States which choose to implement an approved sludge program through existing solid waste or other programs would follow the procedures in Part 501 (described above), rather than those in Part 123. A proposed revision to § 123.1(c) reflects this intent. For the same reason, EPA is also proposing to revise the introductory paragraph in § 123.25(a), which lists permitting requirements in Parts 122 and 124 applicable to the federal NPDES program which a State must also be able to implement as part of an approved NPDES program. Today's proposed revision clarifies that a State which chooses not to seek approval of a sludge management program as part of its NPDES program does not have to be able to implement the sludge-related revisions to those provisions of Parts 122 and 124 listed in § 123.25(a) which are promulgated after enactment of the 1987 amendments to the CWA. However, States that use their NPDES programs to implement a sludge program would have to be able to implement these revisions.

Although a State may choose to seek approval of its sludge management program under Part 123 or Part 501, the basic requirements under either Part will be the same. Maintaining consistency among State program requirements will help ensure that minimum standards apply nationwide, regardless of which program a State chooses for its sludge management program. The purpose of the program requirements under both parts is to produce programs which adequately ensure compliance with section 405(d) requirements and meet the Congressional goal of approving State programs which are no less stringent than the federal program. See Cong. Rec. H10576 (October 15, 1986). Today's proposed revisions to Part 123 are designed to "fill in the gaps" of existing NPDES requirements by adding requirements which are unique to sludge management programs.

Program Description

To obtain NPDES approval, States must submit a comprehensive description of the program they propose to administer in lieu of the federal program. § 123.22. For States which seek approval of their sludge management program as part of an NPDES program, EPA is proposing to revise § 123.22 to include three additional requirements. First, States would be required to submit an inventory of all POTWs and other treatment works treating domestic sewage, together with a plan for completing and maintaining an inventory of all sewage sludge generators and disposal facilities. Second, a State would be required to identify any program for regulating the disposal of septage and portable toilet pumpings that is handled under a program that is separate from that for sewage sludge. Finally, the program description would be required to describe any bans or prohibitions imposed by State or local authorities on specific sludge management practices. The above discussion of Part 501 explains these provisions in more detail.

The program description also must describe the State's compliance evaluation program. § 123.22(e). Section 123.26 establishes the minimum requirements for State compliance monitoring programs. EPA proposes two revisions to § 123.26(e) for sludge management programs. First, paragraph (e)(1) is proposed to be revised to specify that the inventory of all sources covered by NPDES must include permits which implement section 405(f) of the CWA. In most cases, sludge treatment works which must obtain permits that implement § 405(d) requirements will already be required to obtain NPDES permits because they discharge wastewater to surface waters of the State. However, some sludge treatment works which are subject to the permitting requirement under section 405 may apply their effluent on land or otherwise dispose of their effluent. The proposed revision to paragraph (e)(1) clarifies that these nondischarging treatment works must also be included in the required inventory. The second proposed revision would require annual inspections of all Class 1 sludge management facilities in addition to inspection of all major dischargers. Again, these two categories may overlap in many cases, but not necessarily in all cases.

Memorandum of Agreement

The Memorandum of Agreement (MOA) between the State Director and the Regional Administrator (RA) must describe which classes and categories of permits the RA will review before issuance by the State and those for which the RA will waive review. Section 123.24(d) lists the classes and categories of permits for which review cannot be waived. Today, EPA proposes to add to this list the category of Class I sludge management facilities. As explained above, Class I sludge management facilities are those which require priority attention as determined by the RA and the State Director. Under this proposal, permits issued to these facilities must be submitted to EPA for review and comment, and, where appropriate, objection.

The MOA also must contain provisions specifying reports and information the State is expected to submit to EPA. Section 123.24(b)(3). Program reporting requirements are listed, in part, in § 123.45, which specifies requirements for noncompliance reporting. Today, EPA is proposing to amend § 123.45 by adding a new paragraph (e), which would require a State to submit reports on noncompliance with sludge requirements as specified in § 501.21, i.e., quarterly reports summarizing instances of significant non-compliance and annual reports. Today's proposal also specifies that the sludge noncompliance reports may be combined with the reports currently required under § 123.45.

Incorporating Sludge Management Into Existing NPDES Programs

States which are approved for NPDES already have in place many of the program requirements that will be required of States which seek approval under Part 501. Consequently, NPDES States need only seek modification of their existing programs under § 123.62 if they wish to implement the sludge program through their existing NPDES programs rather than submit entirely new programs. Typically, EPA expects that a program modification to incorporate sludge would require a State to submit an updated program description (including the information about sludge management activities discussed above), addenda to the Attorney General's Statement and, where necessary, revisions to the Memorandum of Agreement. NPDES States would need to demonstrate that legal authority exists to issue NPDES permits for sludge use and disposal where there is no discharge of the sludge to surface waters, and that they have the additional authority to implement the Part 503 technical regulations. Existing State regulatory and statutory provisions regarding inspection, monitoring, reporting and enforcement must be broad enough to include section 405 implementation. In addition, States would be expected to make any revisions to their legal authority necessary to implement "sludge revisions" to Parts 122 and 124 proposed today which are applicable to State programs (as specified in those parts).

D. Revisions to Part 122

1. General

Part 122 establishes the essential requirements for NPDES permits issued pursuant to section 402 of the Act by EPA or an approved State. It establishes the scope of the NPDES permit program, general requirements governing the administration of the program, application requirements, required permit conditions, and permissible causes for modifying or terminating NPDES permits. These regulations specifically address sludge requirements for NPDES permittees only to the extent of providing that sludge may not be discharged to waters of the United States. While the regulations more generally require that NPDES permits contain any conditions required by section 405 of the Act regarding the disposal of sewage sludge from POTWs (§ 122.44(o)), they neither accurately reflect the broadened scope of sludge requirements nor have explicit requirements designed to address the sewage sludge use and disposal practices that are proposed to be regulated in Part 503, e.g., application requirements.

The WQA of 1987 requires that the Part 503 regulations be implemented through permits and designates NPDES permits as the primary implementation mechanism, where the Part 503 regulations are not already implemented through permits issued under other federal programs (Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act) or State programs approved pursuant to section 405(f). *See* section 405(f)(1). Accordingly, EPA is proposing to amend Part 122 to establish requirements for including in NPDES permits any terms and conditions necessary to implement the sludge standards in Part 503 as well as any others which may be necessary to fulfill the general mandate in section 405 to protect human health and the environment. These proposed regulations would apply to all NPDES permits for treatment works treating domestic sewage which are issued by EPA and by States which choose to administer an approved sludge management program as part of their NPDES programs. (Note: The permit requirements that must be followed by States which choose to administer an approved sludge program independently from an NPDES program are listed separately in Part 501. These requirements are described above in the discussion about Part 501.)

The 1987 amendments also authorize the Administrator to establish procedures and issue permits for sludge use and disposal to any treatment works that treats domestic sewage where the treatment works is not otherwise subject to NPDES and is not subject to sludge requirements that implement section 405 contained in other federal permits or permits issued under an approved State program ("sludge-only" facilities). CWA, section 405(f)(2). A treatment works that land applies its effluent rather than discharging it to surface waters is an example of a treatment works that might fall into the category of "sludge-only" facilities. Here, although the treatment works would not need an NPDES permit for surface water discharges, it may generate sewage sludge subject to regulation under section 405 and thus would require an NPDES permit under today's proposal.

Today, EPA proposes to amend Part 122 to establish it as the mechanism through which EPA will issue "sludge-only" permits. The proposed revisions include expanding the scope of Part 122 to cover sludge-only permits (§ 122.1) and to indicate where the requirements for "sludge-only" permits differ from the requirements applicable to other NPDES permittees (e.g., proposed § 122.21(c)(3), specifying when a sludge-only facility would have to apply; proposed § 122.21(d)(3)(ii), specifying the information a "sludge-only" facility must submit with its application; proposed § 122.44(j), requirement for pretreatment programs when necessary to assure compliance with section 405 requirements). The general requirements applicable to NPDES permittees would also apply to "sludge-only" permittees except where the requirements, by their own terms, apply only to discharges to surface waters.

Permit conditions that implement technical requirements for the use and disposal of sewage sludge may include management practices and other limitations that apply at the disposal site. The technical sludge standards promulgated at 40 CFR Part 503 will contain both sludge pollutant concentration limits, and management practices and factors that apply at the disposal site. Under today's rule, these conditions must be included in the permit issued to the POTW or other treatment works treating domestic sewage (i.e., the generators), unless applicable requirements have been included in a permit issued under one of the federal programs listed in section 405(f) or in a permit or other approved control mechanism under an approved State program.

As noted above, parties who use and dispose of sewage sludge are also liable under the CWA for violations of any technical regulations promulgated pursuant to section 405(d) of the CWA even though they may not be required to obtain a permit because they have not been classified as a POTW or other treatment works treating domestic sewage. Examples of such parties might include regional sewage treatment facilities not connected to a POTW (e.g., regional incinerators and composting facilities), landfill operators, contractors who purchase sludge from the POTW and distribute it to the public, or farmers who land apply sewage sludge.

In some cases, the most effective way to assure compliance with the technical standards may be to issue separate permits to the users or disposers of sludge. Accordingly, EPA is considering adding a provision to the Part 122 permit regulations to specifically provide for issuing permits to users or disposers of sewage sludge to implement technical standards where the permitting authority (EPA or an approved State) determines (either on a case-by-case basis or for a particular class or category of users or disposers) that a permit is necessary to assure compliance with applicable standards. Such permits might be particularly appropriate for parties which contract with the POTW to dispose of the sludge (e.g., regional sludge incinerators, landfills, commercial applicators and composting facilities). In such cases, where the POTW is not the ultimate user/disposer, and where the requirements applying to the disposal site are implemented directly through a permit or other control mechanism issued to the user/disposer, the POTW permit would contain only the requirements applicable to sludge quality, e.g., pollutant concentration limits. EPA solicits comments on the appropriateness of such permitting authority for other users and disposers, and of limiting the POTW permit in such cases to requirements as to sludge quality.

2. Specific Revisions to Part 122

a. *Purpose and Scope.* EPA proposes several revisions to § 122.1 to reflect the expanded scope of the NPDES program to include requirements for sludge use and disposal pursuant to section 405 of the CWA. The new scope of the NPDES program is discussed above. An additional revision worth noting involves section 405(d)(4) of the CWA. That section provides that:

> Prior to promulgation of regulations required by [§ 405(a)(2)], the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

EPA reads this provision of the Act to authorize the development, on a case-by-case basis, of permit conditions to regulate sludge use and disposal practices whenever necessary to fulfill the purpose of the Act to protect public health and the environment from the adverse effects of sewage sludge. This authority is in addition to the authority to impose conditions in NPDES permits that implement the requirements of Part 503 (the technical standards) and applies whenever a technical standard in Part 503 does not address a particular pollutant or practice which EPA determines is of concern.

Similarly, EPA reads section 405(d)(4) to authorize imposition of sludge requirements in permits issued to non-POTWs (e.g., privately-owned treatment works treating domestic sewage, sludge incinerators unconnected to a facility treating domestic sewage) if necessary to protect public health and the environment prior to the promulgation of applicable Part 503 requirements. In sum, section 405(d)(4) grants EPA broad authority to include sludge requirements in NPDES permits whenever necessary to protect human health and the environment, whether before or after the promulgation of the technical standards in Part 503.

It has been suggested that EPA use the authority granted by section 405(d)(4) to write permit limits on a case-by-case, best professional judgment basis when an applicable Part 503 standard is outdated and therefore is no longer adequate to protect public health and the environment. This would allow EPA to use new information to write limits that implement the statutory standard without waiting until the completion of a new technical rulemaking, which can take several years to develop and finalize. The Agency solicits comments on whether writing case-by-case permit limits in this situation would be appropriate.

b. *Permit as a Shield.* Section 122.5 currently states that, except for standards or prohibitions under section 307(a) of the Act, "compliance with a permit during its term constitutes compliance * * * with sections 301, 302, 306, 307, 318, 403, and 405 of the CWA." This "permit as a shield" provision mirrors section 402(k) of the Act except that CWA section 402(k) does not include section 405 among those sections covered by the permit shield. Section 405 was included in the regulatory permit-as-shield provision because that section (section 405) merely clarified EPA's authority to require NPDES permits and establish effluent limitations for discharges of sewage sludge to surface waters to the same extent as for other pollutant discharges regulated through NPDES permits. See CWA section 405(a)–(b).

When Congress required permits for the implementation of section 405(d) requirements in the 1987 amendments, it did not make corresponding changes to section 402(k) to extend the permit shield to section 405(d) (i.e., the forthcoming Part 503 technical sludge standards). Moreover, Congress amended section 405(e) to provide, "It shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, *except in accordance with such regulations*" (emphasis added). This language strongly suggests that the section 405(d) regulations are independently enforceable and supports the conclusion that Congress did not intend that compliance with sludge permit conditions would operate as a shield against liability for violations of the regulations.

EPA is proposing to revise § 122.5 to clearly indicate that compliance with a permit does not constitute compliance with section 405(d). Similar revisions are being proposed to § 122.41(a) and § 122.44. This means that persons subject to Part 503 requirements (both permittees and nonpermittees) may be liable for violations of those requirements even if the permit does not address the requirements.

EPA does not read the CWA to prohibit limited protection for permittees in all situations. In particular, EPA believes that it would be unfair to subject a permittee to an enforcement action for a violation of section 405 when the permittee was in compliance with permit terms specifically designed to implement the Part 503 standard allegedly violated. Providing protection to the permittee in this case reinforces the integrity of the permitting system and acknowledges the permittee's good faith efforts to comply with the section 405(d) regulations by complying with its permit. Accordingly, EPA is considering ways to protect permittees in this situation against possible enforcement actions for violating section 405(d) regulations.

One approach would be to adopt a limited affirmative defense which a permittee could assert in an enforcement action if it were in compliance with a permit condition developed to implement the Part 503 standard allegedly violated. Consistent with legislative intent, the defense would not be available if the permit did not address the requirement allegedly violated. Similarly, compliance with interim limits developed on a case-by-case basis pursuant to section 405(d)(4) would not qualify for the defense if the parameter or practice in question were subject to a subsequently promulgated requirement in Part 503 that addressed that parameter or practice.

Another approach would be to promulgate a regulation that deems permit conditions which implement particular Part 503 standards to be Part 503 standards. Therefore, compliance with those permit conditions would be compliance with Part 503 and hence, compliance with section 405(d) requirements.

EPA solicits comments on whether it should provide a protection to permittees against enforcement actions for violating section 405(d) where the permittee complies with permit conditions designed to implement applicable Part 503 requirements, and what the most appropriate way to do this would be.

c. *Application requirements.* Section 122.21 establishes application requirements for NPDES permittees. EPA is proposing revisions to this section both for "traditional" NPDES permittees and "sludge-only" permittees.

Currently, § 122.21(a) states that "any person who discharges or proposes to discharge pollutants" has a duty to apply for an NPDES permit. Today's proposal would revise this section to clearly state that "sludge-only permittees" also have a duty to apply for a permit. Today's proposal would also specify when sludge-only permittees would be required to apply: existing facilities within 120 days after promulgation of 40 CFR Part 503 (or earlier if necessary to protect public health and the environment); new facilities that commence operation after promulgation of 40 CFR Part 503, at least 180 days prior to the date proposed for commencing operation.

Today's proposal would also specify the application requirements for both sludge-only permittees and NPDES permittees that are POTWs or other treatment works treating domestic sewage by revising § 122.21(d)(3). This revision would require that these permit applicants submit the information required under 40 CFR 501.15(a)(2) (also proposed today). These information requirements are described above in the discussion about Part 501. EPA also plans to evaluate whether additional application requirements would be appropriate (for example, to collect data to assess the need for additional Part 503 standards).

d. *General permits.* Under the existing rule (§ 122.28), general permits may be issued to cover a category of discharges within a specified geographic area when all sources: (1) Involve the same or substantially similar type of operations; (2) discharge the same types of wastes; (3) require the same effluent limitation or operating conditions; (4) require the same or similar monitoring; and (5) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits. Clearly, under the circumstances described in § 122.28, general permits have the potential to significantly reduce the administrative burden of issuing individual permits without sacrificing environmental quality.

EPA today is proposing to amend § 122.28 so that general permits may be written to cover sludge use or disposal practices under the same type of circumstances as permits for effluent discharges. Under the proposal, for example, a general permit might be written to cover all facilities that use the same disposal method and are subject to the same sludge quality requirements and management practices. It would not be necessary that all facilities covered by the sludge general permit also qualify for a general permit covering their effluent discharges. Thus, it would be possible for a facility to be covered by an individual NPDES permit which regulates its discharges and by a general permit which regulates its sludge practices.

e. *Permit conditions.* Section 122.41 establishes "boilerplate" conditions which must be included in all NPDES permits while § 122.44 establishes requirements for developing individual limits for each permit. Today's proposal includes revisions to both of these sections to accommodate the need to include sludge-related conditions in permits.

Three of the revisions relate to the "permit as a shield" issue discussed above. First, § 122.41(a)(1) would be revised to state that the permittee has a duty to comply with standards promulgated pursuant to section 405(d) (i.e., Part 503) whether or not the permit has been modified to incorporate the standard. As explained earlier, this provision follows the clear intent of Congress. Requiring inclusion of this provision in all permits clearly notifies permittees of their potential liabilities under the Act for violations of section 405. In addition, a proposed revision to § 122.44(b) would require the permitting authority to modify the permit when Part 503 standards are promulgated after permit issuance if the standards are more stringent than existing permit limits. Similarly, a proposed revision to § 122.44(c) would require the permitting authority to include in permits a "reopener" clause, stating that the permit will be reopened to incorporate new section 405 standards under the circumstances described in § 122.44(b). All these revisions parallel existing requirements that apply to section 307(a) toxic effluent standards or prohibitions.

Another group of revisions to § 122.41 and § 122.44 relate to permittee monitoring requirements. Current regulations generally require that all monitoring be conducted in accordance with Part 136. Part 136 methods do not comprehensively address sludge monitoring and analysis. To supplement Part 136, Part 503 may specify required monitoring methodologies where Part 136 methods are inappropriate. Accordingly, EPA proposes to revise § 122.41(j)(4) and (l)(4)(ii) and § 122.44(i)(1)(iii) to state that sludge monitoring methodologies shall be as specified in Part 503, as well as Part 136.

In addition, current regulations require that permits contain requirements for permittee reports on monitoring results at a "frequency dependent on the nature and effect of the discharge, but in no case less than once a year." § 122.44 (i)(2). EPA proposes to revise this section to include reporting for sludge monitoring. Thus, the frequency for reporting of sludge monitoring results which must be specified in the permit would be based on the nature and effect of the permittee's sludge use or disposal activity. How frequently reporting is appropriate would be determined by the permit writer's best professional judgment, but must be required no less than once a year. (Note: Part 503 may also specify recommended or required monitoring frequencies for various parameters and practices. The Agency expects that Part 503 be followed whenever applicable).

As explained in the discussion about proposed Part 501 permit requirements, the Agency is soliciting comments on whether the regulations should establish a minimum monitoring frequency (where there is no applicable Part 503 technical requirement) and what that frequency should be (e.g., annual, quarterly, monthly).

Today's proposed revisions also address how monitoring must be reported. Section 122.41(1)(4) states that monitoring results must be reported on a "DMR." A DMR ("Discharge Monitoring Report") is the EPA uniform national form for the reporting of self-monitoring results by permittees, which must be used by approved NPDES States as well as EPA. At this time, EPA has not yet developed a uniform reporting form for the results of permittee monitoring of sludge activities regulated by permit. Accordingly, EPA proposes to revise § 122.41(l)(4)(i) and (ii) to state that monitoring of sludge use and disposal practices should be reported on forms specified by the Director (rather than on the DMR). EPA intends that the Director (EPA or an approved State) will develop forms to elicit the relevant data from the permittee based on the monitoring and other conditions in the permit. Alternatively, the Director could specify other appropriate forms for reporting monitoring information, such as the forms used by the laboratory to report results of its analyses.

Minor wording revisions are also being proposed today to establish that the activity or requirement addressed by Part 122 regulations includes sludge use and disposal activities as well as effluent discharge activities (e.g., § 122.41(d), "duty to mitigate"; § 122.64(a)(4), termination of permit when permittee ceases regulated activity; see also proposed revisions to § 123.44, EPA review of and objection to State permits). EPA also intends that other general provisions governing permit conditions which are not affected by today's proposed revisions apply to a permittee's sludge activities as well as to discharge activities covered by the permit where the existing language is broad enough to cover both discharge and sludge disposal activities (e.g., "need to halt or reduce activity not a defense" under § 122.41(c); "duty to provide information" under § 122.41(h); "inspection and entry" under § 122.41(i)).

Conversely, existing provisions which, by their own terms, are limited to effluent discharges and are not proposed to be revised today will continue to apply exclusively to the permittee's discharge activities (e.g., bypass and upset defenses (§ 122.41(m), (n)); new sources and new discharges (§ 122.29)). Minor revisions have also been made to some provisions that are clearly intended to apply only to discharge activities, but which, by their language, could be interpreted more broadly (e.g., § 122.44(e)(1), reissued permits; § 122.45(b)(1), production-based limits) to clarify that these provisions apply to discharge activities only.

f. *Permit modifications.* Under NPDES, permits may be modified or revoked and reissued only for cause. Section 122.62 lists the causes for which permit modification or revocation and reissuance is deemed permissible. Today, EPA proposes two revisions to this section related to sludge. First, § 122.62 (a)(1) is proposed to be revised to clarify that a permit may be modified (or revoked and reissued if the permittee agrees) when there is change in the permittee's sludge use or disposal practice after permit issuance which would justify the application of different or additional limits. This proposed revision directly relates to a corresponding proposal to require a permittee to notify the Director of any significant change in sludge use or disposal practices under § 122.41(1)(1)(iii). Both proposed revisions are intended to cover situations where the permittee decides to switch to a different sludge use or disposal practice than the one(s) described in the permit application and covered by the permit. It would not cover situations where the permittee alternates sludge practices (e.g., depending on the season) and the permit addresses each alternative.

The second revision would allow permit modification whenever required by a reopener clause to incorporate limits based on new standards for sludge use and disposal promulgated in 40 CFR Part 503. (In related revisions proposed today, permits must be modified when the new standards are more stringent than existing permit limits (§ 122.44(b) and the permit must contain a "reopener" clause to this effect (§ 122.44(c)(4)). As noted in earlier discussions, a permittee would be expected to comply with any applicable Part 503 standard by the statutory deadline even if its permit had not been revised to incorporate the standard. However, the proposed revision would give the permittee a basis for requesting modification of the permit to eliminate uncertainty about how the standard applies to the permittee's particular situation, when this is not readily apparent on the face of the regulation. Obtaining specific limits implementing a Part 503 requirement would have added importance if EPA decides to adopt a provision protecting a permittee from enforcement actions for complying with such limits.

E. Revisions to Part 124

Part 124 establishes the procedural requirements for issuing, modifying, and terminating permits under several federal programs, including NPDES. In today's action, EPA proposes to have the procedural requirements in Part 124 that apply to NPDES permits apply as well to "sludge-only" permits which would be issued by EPA under the proposed revisions to Part 122. Thus, § 124.1 is proposed to be revised to state that Part 124 governs "sludge only" permits issued by EPA. Similarly, § 124.71 (applicability of Subpart E governing evidentiary hearings) and § 124.111 (applicability of Subpart F governing non-adversary panel proceedings) are proposed to be revised to indicate that those subparts govern permits issued pursuant to section 405(f)(2) ("sludge only" permits). EPA intends these proposed revisions, together with the proposed revisions to Part 122 described above, to fulfill its statutory responsibility to establish procedures for EPA issuance of permits with sludge use and disposal requirements to treatment works which are not regulated under one of the permit programs listed in section 405(f) of the CWA.

In addition, EPA is proposing to make minor revisions to Part 124 which reflect the expanded content of NPDES permits to include requirements for sludge use and disposal. These proposed changes include: (1) Revisions to the definitions of "applicable standards and limitations", "facility or activity" and "general permit", and a new definition for "Class I sludge management facility;" (2) revision to § 124.6(d)(4) to require that draft permits include conditions necessary to meet the requirements of standards for sludge use and disposal; (3) revisions to §§ 124.8 and 124.56 to require that fact sheets be prepared for "Class I sludge management facilities" (§ 124.8) and contain an explanation of how sludge limits were derived and where the regulated activities or facilities are located (§ 124.56); (4) revisions to the public notice requirements in § 124.10 to require the permit authority to mail the public notice of a permit action to any agency known to have or be required to issue a sludge management permit or ocean dumping permit (§ 124.10(c)(1)(ii)) and to describe in the public notice the location of each sludge management facility (including disposal sites) and disposal or use practice (§ 124.10(d)(1)(vii) and (5) a revision to § 124.5(d) which would allow EPA to terminate a permit in the course of transferring permit responsibility to an approved State under § 501.14(b)(1) without having to issue a notice of intent to terminate (and following the procedures applicable to draft permits).

V. Request for Comments

The proposed rule is intended to provide a comprehensive programmatic framework for implementing the national sludge program mandated by the 1987 amendments to the CWA. In addition to the issues specifically raised in the preamble discussion, EPA requests comments on all aspects of today's proposed rule.

In the State program portion of today's rule, EPA has attempted to develop requirements that could be applied nationwide to assure minimum consistency among State programs and effective implementation of sludge standards through permits as envisioned by Congress in the 1987 CWA amendments. EPA is aware that States have already developed a variety of ways to implement sludge management programs. Therefore, EPA is particularly interested in hearing from States about their experiences in administering sludge management programs and in what specific areas additional flexibility is needed in the final State program rule.

Over 60 persons submitted comments in response to the February 4, 1986, proposed rules for state sludge management programs. Where still relevant (e.g., not rendered moot by the 1987 amendments to section 405 of the CWA), EPA will consider and respond to these comments, together with those received in response to today's proposal, in promulgating the final rules. Therefore, persons who commented on the earlier proposal need not resubmit their comments unless, of course, they wish to change them.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in the costs or prices for consumer, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's proposed rule establishes the mechanism (permits) for implementing standards for sludge use and disposal which are being promulgated under a separate rulemaking (to be codified at 40 CFR Part 503). The potential impacts of

these Part 503 standards on regulated parties and the need for a Regulatory Impact Statement will be considered in conjunction with that rulemaking.

The proposed rule also establishes requirements for the submission and approval of State sludge management programs. States are not required to seek program approval under these rules. In any event, the proposed rules would not impose large costs upon State regulatory agencies. Therefore, the proposed rule does not satisfy any of the criteria for a major rule as specified in section 1(b) of the Executive Order and as such does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VII. Paperwork Reduction Act

The information collection requirements (ICRs) in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document (ICR #1237) has been prepared by EPA and a copy may be obtained from Eric Strassler, Information Management Branch, EPA, 401 M Street SW. (PM-223), Washington, DC 20460, or by calling (202) 382–2709. Submit comments on the information collection requirements to EPA and to Timothy Hunt, Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503. The ICR document discusses reporting requirements imposed by the proposed rule and estimates the annual burden to respondents (POTWs, other treatment works treating domestic sewage, and States seeking EPA approval of their sludge management programs) for complying with these requirements. The final rule will respond to any OMB or public comments on the information collection requirements.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of its rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed rule most directly affects State agencies. It also affects treatment works that generate and dispose of sewage sludge, by specifying that any applicable requirements promulgated under separate regulations be implemented through requirements in permits issued to the treatment works. In nearly all cases, these treatment works already are required to obtain the permits under existing federal or State programs. Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this amendment will not have a significant impact on a substantial number of small entities.

Lists of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Date: February 25, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 122, 123, 124, and Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is proposed to be amended by revising paragraphs (a)(1), (d)(2), by adding new paragraphs (b)(3), (g)(5) and (g)(6) and redesignating existing paragraph (g)(5) as (g)(7) and revising it, and by redesignating the remaining paragraphs accordingly, to read as follows:

§ 122.1 Purpose and scope.

(a) * * *

(1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 under The *Clean Water Act* (CWA) (Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483, Pub. L. 97–117, and Pub. L. 100–4; 33 U.S.C. 1251 *et seq.*)

* * * * *

(b) * * *

* * * * *

(3) The permit program established under this part also applies to the use and disposal of sewage sludge by owners or operators of any treatment works that treats domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of CWA applicable to the treatment works are included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

* * * * *

(d) * * *

* * * * *

(2) *Technical regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136, 40 CFR Subchapter N (Parts 400–460), and 40 CFR Part 503.

* * * * *

(g) * * *

* * * * *

(5) Section 405(d)(4) of the CWA requires the Administrator, prior to promulgation of standards for sewage sludge use and disposal, to "impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge."

(6) Section 405(f) provides that NPDES permits must include requirements implementing the standards for sludge use and disposal (40 CFR Part 503) "unless such requirements have been

included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator * * *." Section 405(f) also authorizes the Administrator to issue permits with requirements for sludge use or disposal that assure compliance with 40 CFR Part 503 to any treatment works not subject to NPDES (i.e., have no point source discharge) and not covered by the other listed permit programs.

(7) Sections 402 (b) and (c), and 405 (c) and (f) of CWA authorize EPA approval of State permit programs for discharge from point sources, discharges to aquaculture projects, and disposal and use of sewage sludge.

* * * * *

3. Section 122.2 is proposed to be amended by revising the definitions of "applicable standards and limitations", "sewage sludge," "toxic pollutant," by adding a sentence to the definition of "facility or activity" and by adding definitions for "class I sludge management facilities," "standards for sewage sludge use and disposal," "distributor," "generator," "sludge use or disposal practice," "treatment works," and "user," as follows:

§ 122.2 Definitions.

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

* * * * *

Class 1 sludge management facilities means any sludge facility classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

* * * * *

Distributor means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

* * * * *

Facility or activity * * *. "Facility" also means all land and structures, other appurtenances and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

* * * * *

Generator means the owner or operator of a treatment works that treats domestic sewage (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

* * * * *

Sewage Sludge means any solids, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet pumpings. "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

* * * * *

Sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

* * * * *

Sludge-only facility means any treatment works that treats domestic sewage and engages in "sludge use or disposal practices" subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this part.

Standards for sewage sludge use and disposal means the regulations promulgated at 40 CFR Part 503 pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage use and disposal practices by treatment works treating domestic sewage and also by the users of sewage sludge.

* * * * *

Toxic Pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant listed as toxic in regulations implementing section 405(d) of the CWA.

Treatment works means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of domestic sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

User means the person responsible for proper end use of sewage sludge or sludge products.

* * * * *

4. Section 122.5 is proposed to be amended by revising paragraph (a) to read as follows:

§ 122.5 Effect of a permit.

(a) *Applicable to State programs § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and standards for sludge use and disposal under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405(a)–(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

* * * * *

5. Section 122.21 is proposed to be amended by revising paragraph (a), by redesignating (c) as (c)(1) and adding a new paragraph (c)(2), by redesignating paragraph (d)(3) as (d)(3)(*i*), and revising it and adding a new paragraph (d)(3)(ii) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

* * * * *

(c) * * *

(2) Any existing "sludge-only facility" shall submit an application to the Director within 120 days after promulgation of 40 CFR Part 503 or upon request of the Director prior to the promulgation of 40 CFR Part 503 if the Director determines that a permit is necessary to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge. Any "sludge-only facility" that commences operations after promulgation of 40 CFR Part 503 shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

* * * * *

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and "sludge-only facilities," must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), and (h) of this section.

(ii) In addition to any other applicable requirements in this part, all POTWs and other treatment works treating domestic sewage, including "sludge-only facilities," must submit with their applications the information listed at 40 CFR 501.15(a)(2).

* * * * *

6. Section 122.28 is proposed to be amended by revising the introductory text of paragraphs (a)(1) and (a)(2)(ii) and by revising paragraphs (a)(2)(ii) (B), and (C) and paragraphs (b)(2)(i) (B), (C), and (F) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) *Area.* The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. * * *

* * * * *

(2) *Sources.* * * *

(ii) A category of point sources other than storm water point sources, or a category of sludge facilities, if the sources or facilities all:

(A) * * *

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices:

(C) Require the same effluent limitations, operating conditions, or standards for sludge use and disposal;

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(B) The discharge or sludge facility is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or sludge facility;

* * * * *

(F) Standards for sludge use and disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

* * * * *

7. Section 122.41 is proposed to be amended by revising paragraphs (a)(1), (d), (j)(4), by adding a new paragraph (l)(1)(iii), and by revising paragraphs (l)(4)(i) and (l)(4)(ii), to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sludge use and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

* * * * *

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

(j) * * *

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

* * * * *

(l) * * *

(1) * * *

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit;

* * * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

8. Section 122.44 is proposed to be amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2), by adding a new paragraph (c)(4), by revising paragraphs (i)(1)(iii) and (i)(2), by adding a new paragraph (j)(3), and by revising paragraph (l)(1) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Standards for sewage sludge use and disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit shall include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use and disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director shall initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use and disposal.

(c) * * *

(4) For any permit issued to a treatment works which treats domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sludge use or disposal promulgated under section 405(d) of the CWA. The Director shall promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

* * * * *

(i) * * *

(1) * * *

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring (e.g., air emissions, groundwater monitoring) as specified in 40 CFR Part 503;

* * * * *

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge or the sludge use or disposal practice, but in no case less than once a year.

* * * * *

(j) * * *

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is necessary to assure compliance with section 405(d) of the CWA.

* * * * *

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the provisions in the previous permit (unless the circumstances on which the previous permit were based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

* * * * *

9. Section 122.45 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) *Production-based limitations.* (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

* * * * *

10. Section 122.47 is proposed to be amended by revising paragraph (a)(3)(i) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(3) * * *

(i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

* * * * *

11. Section 122.62 is proposed to be amended by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

* * * * *

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sludge use and disposal, see also § 122.44 (c)) or 40 CFR 403.10 (e) (pretreatment program).

* * * * *

12. Section 122.64 is proposed to be amended by revising paragraph (a)(4) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) * * *

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

13. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 123.1 is proposed to be amended by revising paragraphs (b) and (c) as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 101(e), 304(i), and 405(f) of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program. (Permit programs under section 405(f) of CWA (sludge management programs) may be approved independently of a section 402 permit program under 40 CFR Part 501.)

* * * * *

15. Section 123.2 of proposed to be revised to read as follows:

§ 123.2 Definitions.

The definitions in Part 122 and Part 501 apply to all subparts of this part.

16. Section 123.22 is proposed to be amended by adding a new paragraph (f) to read as follows:

§ 123.22 Program description.

* * * * *

(f) A State seeking approval of a sludge management program under section 405(f) of the CWA as part of its NPDES program in addition to the above requirements of this section, shall include the following:

(1) An inventory of all POTWs and other treatment works treating domestic sewage and a plan for developing and maintaining in inventory of all sewage sludge generators and disposal facilities in the State;

(2) An identification of any State program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(3) If applicable, a description of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

17. Section 123.24 is proposed to be amended by revising the last sentence in the introductory text of paragraph (d), and by adding paragraph (d)(8) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(d) * * * While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following classes or categories:

* * * * *

(8) Facilities which are "Class I Sludge Management Facilities" as defined in 40 CFR 501.2.

* * * * *

18. Section 123.25 is proposed to be amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that a State which chooses not to administer a sludge management program pursuant to section 405(f) of the CWA as part of its NPDES program is not required to have legal authority to implement the portions of the following provisions which were promulgated after the enactment of the Water Quality Act of 1987 (Pub. L. 100-4) and which govern sewage sludge use and disposal. In all cases, States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR Parts 129, 133, Subchapter N and 40 CFR Part 503.

* * * * *

19. Section 123.26 is proposed to be amended by revising paragraphs (e) (1) and (5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits (including permits which implement section 405 of CWA where applicable) and a schedule of reports required to be submitted by permittees to the State agency.

* * * * *

(5) Inspecting the facilities of all major dischargers and all Class I sludge management facilities where applicable at least annually.

20. Section 123.44 is proposed to be amended by revising paragraphs (c)(5) and (c)(6) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations or standards for sewage sludge use and disposal required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations or standards for sewage sludge use and disposal under sections 301, 302, 306, 307, 318, 403, and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines, to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, and to sewage sludge use and disposal requirements developed on a case-by-case basis pursuasnt to section 405(d) of CWA, as the case may be;

* * * * *

21. Section 123.45 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

* * * * *

(e) *Sludge noncompliance program reports.* The Director shall prepare and submit quarterly noncompliance and annual program reports as required under 40 CFR 501.21. The Director may include this information in reports submitted in accordance with paragraphs (a)–(d) of this section.

PART 124—PROCEDURES FOR DECISIONMAKING

22. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

23. Section 124.1 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC "emergency permits" (see §§ 270.61 and 144.34) and RCRA "permits by rule" (§ 270.60).* * *

* * * * *

24. Section 124.2 is proposed to be amended by revising paragraph (a), and by revising the definitions of "applicable standards and limitations," "Facility or activity," and the first sentence of "General permit" to read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41.* * *

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge", a "sludge use or disposal practice" or a related activity is subject under the CWA, including "standards for sewage sludge use and disposal", effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

* * * * *

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source" or "treatment works" as defined in § 501.2, or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

General permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges or activities under the CWA within a geographic area.* * *

25. Section 124.3 is proposed to be amended by revising the third and sixth sentences in paragraph (c) to read as follows:

§ 124.3 Application for a permit.

* * * * *

(c) * * * Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only permittee should be reviewed for completeness within 60 days of receipt.* * * When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or sludge-only permittee the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information.* * *

* * * * *

26. Section 124.6 is proposed to be amended by revising paragraph (d)(4)(v) to read as follows:

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§ 124.6 Draft permits.

(d) * * *

(4) * * *

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sludge use and disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

* * * * *

27. Section 124.8 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.8 Factsheet.

* * * * *

(a) A factsheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (§§ 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. * * *

* * * * *

28. Section 124.10 is proposed to be amended by revising paragraphs (c)(1)(ii) and the first sentence in (d)(1)(vii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

(c) * * *

(1) * * *

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

* * * * *

(d) * * *

(1) * * *

(vii) For NPDES permits only (including "sludge-only permits"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the location of each sludge management facility and disposal or use practice. For draft general permits, this requirement will be satisfied by a map or description of the permit area. * * *

* * * * *

29. Section 124.56 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 124.56 Factsheets.

* * * * *

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitation and conditions or standards for sludge use and disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sludge use and disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

* * * * *

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

* * * * *

30. Section 124.71 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405 (f), except those conducted under Subpart F. * * *

* * * * *

31. Section 124.111 is proposed to be amended by revising the first sentence of paragraph (a)(1)(i) to read as follows:

§ 124.111 Applicability.

(a) * * *

(1) * * *

(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. * * *

* * * * *

31. Chapter I Of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new Subchapter O consisting of Part 501 to read as follows:

SUBCHAPTER O—SEWAGE SLUDGE

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

Subpart A—Purpose, Scope, and General Program Requirements

Sec.
501.1 Purpose and scope.
501.2 Definitions.
501.3 Coordination with other programs.

Subpart B—Development and Submission of State Programs

501.11 Elements of a sludge management program submission.
501.12 Program description.
501.13 Attorney General's statement.
501.14 Memorandum of Agreement with the Regional Administrator.
501.15 Requirements for permitting.
501.16 Requirements for compliance evaluation programs.
501.17 Requirements for enforcement authority.
501.18 Prohibition.
501.19 Sharing of information.
501.20 Receipt and use of Federal information.
501.21 Program reporting to EPA.

Subpart C—Program Approval, Revision and Withdrawal

501.31 Review and approval procedures.
501.32 Procedures for revisions of State programs.
501.33 Criteria for withdrawal of State programs.
501.34 Procedures for withdrawal of State programs.

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart A—Purpose, Scope and General Program Requirements

§ 501.1 Purpose and scope.

(a) These regulations are promulgated under the authority sections 101(e), 303(e), 304(i), 405(f) and 501(a) of the CWA, and implement the requirements of those Sections.

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under 405(f) that are not part of a State's NPDES program, and the requirements State programs must meet to be approved by the Administrator under section 405 of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part. (States seeking approval of their sludge program as part of their NPDES program are to follow the requirements and procedures for program modification set forth in Part 123.)

(c) Any complete State Sludge Management Program submitted for approval under this Part shall have the following as a minimum:

(1) The authority to require compliance with sludge use and disposal requirements issued under section 405(d) of the CWA, including compliance by federal facilities;

(2) A requirement to prohibit sludge use and disposal except in compliance with a permit issued to a POTW or other treatment works treating domestic sewage that applies and ensures compliance with applicable requirements of 40 CFR Part 503 and section 405 of the Clean Water Act, and procedures for issuance of such permits;

(3) Provisions for regulating the use or disposal of sewage sludge by non-permittees;

(4) The authority to take actions to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge; and

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement.

(d) In addition, any complete State Sludge Management Program submitted for approval under this part shall have authority to address:

(1) All sewage sludge management practices used in the State, including associated transport and storage, that are practiced or planned to be practiced in the State. Sludge management activities and practices shall include as applicable:

(A) Sludge treatment, processing, and short-term storage practices, including:

(i) Digestion, composting, heat treatment, and drying,

(ii) Lagoons, stockpiles, and other surface impoundments,

(iii) Sludge treatment, processing and transport activities, as may be covered by Federal regulations.

(B) Sludge use and ultimate disposal practices, including:

(i) Land application,

(ii) Landfill,

(iii) Distribution & marketing,

(iv) Incineration,

(v) Ocean disposal, and

(vi) Any other sludge use and disposal practices as may be covered by Federal regulations.

(e) A State may assign portions of its program responsibilities to local agencies, provided that

(1) No assignment is made to a local agency under the jurisdiction of a political subdivision which owns or operates a POTW or other facility that treats or disposes of sewage sludge;

(2) The program description required by § 501.12 of this part identifies any assignment of program responsibilities to the local agency(ies) and includes copies of any documents which affect the assignment and contain agreements between the State agency and the local agency(ies) defining their respective program responsibilities;

(3) The Attorney General's Statement required by § 501.13 of this part states that any assignment of program responsibilities to the local agency(ies) described in the program description is valid under State law and that State and local law do not otherwise prohibit the local agency(ies) from executing the program responsibilities assigned by the State agency;

(4) The Memorandum of Agreement (MOA) required by § 501.14 of this part includes adequate provisions for the State agency's oversight of the program responsibilities assigned to the local agency(ies);

(5) The State agency retains all responsibility for the program reporting required by § 501.21 of this part and for all other activities required by this part or by the MOA related to EPA oversight of the State's approved program; and

(6) The State agency retains full authority and ultimate responsibility for administering all aspects of the State's approved program in accordance with the requirements of this part and the MOA.

(f) The Administrator will approve State programs which conform to the applicable requirements of this part.

(g) Upon approval of a State program, the Administrator will suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA will retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction will include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request, or variance request is not finally resolved when the Federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(h) Notwithstanding approval of a State sludge program, EPA has the authority to take enforcement actions for any violations of this part or section 405 of the CWA.

(i) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(j) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other Federal statute or regulation.

(k) Nothing in this part precludes a State from operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

(l) Sections 106 (a) and (d) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1416, generally preclude States from regulating or issuing permits for ocean dumping. Nothing in this regulation is intended to confer on the States the authority to engage in the regulation or permitting of ocean dumping in contravention of the provisions of sections 106 (a) and (d) of the MPRSA.

§ 501.2 Definitions.

"Approved program" means a State program which has received EPA approval under this part.

"Class I sludge management facility" means any sludge facility classified as such by the Regional Administrator in conjunction with the State Program Director.

"Disposal practice" means the emitting, discharging, depositing, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land, air, or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Distributor" means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

"Facility" means all land and structures, other appurtenances, and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

"Generator" means the owner or operator of a treatment works (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

"Municipality," as defined in section 502(4) of the Clean Water Act, means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, (or an Indian tribe or an authorized Indian tribal organization,) having jurisdiction over sewage sludge management, or a designated and approved management agency under section 208 of the Clean Water Act. This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part.

"Publicly Owned Treatment Works" or "POTW" means a "treatment works" which is owned by a State or municipality.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

"Sewage sludge" means any solid, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet wastes.

"Sludge management practice" means the collection, storage, treatment, transportation, processing, monitoring, use or disposal of sewage sludge.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariane Islands. "State" also means an Indian tribe which is eligible for treatment as a State under regulations promulgated under section 518 of the CWA.

"State Program Director" or "Director" means the chief executive officer of the State sewage sludge management agency.

"State sewage sludge management agency" means the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved State program under this part.

"Treatment works" means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

"Use" or "utilization practice" means the treatment or final disposition of a waste material involving resource recovery, recycling, or beneficial use of all or part of the material for such purposes as energy recovery, and soil fertilization or conditioning.

"User(s)" means the person(s) responsible for proper end use of sewage sludge or sludge products.

§ 501.3 Coordination with other programs.

Issuance of State permits under this part may be coordinated with issuance of RCRA, UIC, NPDES, 404 and other permits whether they are controlled by the State, EPA, or the Corps of Engineers. (See for example 40 CFR 124.4 for procedures for coordinating permit issuance.)

Subpart B—Development and Submission of State Programs

§ 501.11 Elements of a sludge management program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 501.12 describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 501.13;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 501.14; and

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 90-day review period will be deemed to have begun on the date of the completeness determination. If EPA finds that a State's submission is incomplete, the review period will not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period will begin again upon receipt of the revised submission.

(d) The State and EPA may extend the review period by agreement.

§ 501.12 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under any interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The reponsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program. This description shall include:

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support; and

(3) An estimate of the available resources for implementing the program.

(c) A description of applicable State procedures, including permitting procedures, and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(e) A complete description of the State's compliance tracking and enforcement program (see 40 CFR 501.16 and 501.17).

(f) An inventory of all POTWs and other treatment works treating domestic sewage who generate, use or dispose of sewage sludge and procedures for developing an inventory of all sewage sludge generators and disposal facilities in the State;

(g) An identification of the State's program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(h) If applicable, a desciption of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

§ 501.13 Attorney General's statement.

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 501.12 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. If a State seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's authority.

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection. EPA shall follow the permit review procedures set forth in 40 CFR 123.44, except that where a State issues a general permit for sludge, the review by the Office of Water Enforcement and Permits provided in § 123.44(a)(2) for NPDES general permits will not apply.

(3) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under section 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for facilities which are "Class I Sludge Management Facilities" as defined in § 501.2.

(4) Whenever a waiver is granted under paragraph (3) of this section, the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination.

(5) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. The procedures shall implement the requirements of § 501.21.

(c) The Memorandum of Agreement shall also provide for the following:

(1) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under paragraph (b)(3) of this section. The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(2) Transmission to the Regional Administrator of a copy of every permit issued to a Class I Sludge Management Facility. Copies of final permits issued to other sludge management facilities shall be transmitted to the Regional Administrator upon request.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (See for example 40 CFR 124.4).

(5) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(d) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this Part shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* State programs shall deny claims of confidentiality for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(2) *Information requirements.* All applicants for permits shall provide the following information to the Director:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the facility for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the location of the sludge management facilities (including disposal sites).

(vii) Any sludge monitoring data the applicant may have which is representative of normal operating conditions at the facility, including available ground water monitoring data, with a description of the well locations, for landfills or land application sites (see Appendix 1 to 40 CFR Part 257).

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who land applies sludge if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant).

(ix) Annual sludge production volume.

(x) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503 and

(xi) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(3) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

(4) *Signatories to permit applications and reports* as provided in 40 CFR 122.22.

(5) *Duration of permits.* (i) 405(f) permits shall be effective for a fixed term not to exceed 5 years.

(ii) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(iii) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(6) *Schedules of compliance*—(i) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(6)(ii) of this section is applicable.

(7) *Conflict of interest.* State sludge management programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(i) For the purposes of this paragraph:

(A) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(E) Income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

(b) *Permit conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet all requirements of 40 CFR Part 503, section 405 of the CWA, and paragraph (a) (1)–(6) of this section, all permits shall contain the following:

(1) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(2) *Compliance with sludge standards.* The permittee shall comply with standards for sludge and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(3) *CWA penalties.* Section 309 of the Clean Water Act (CWA) sets out penalties applicable to persons who violate the Act's requirements. For example, section 309(d) provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Such violations also may be subject to administrative penalties assessed by the Administrator pursuant to section 309(g) of the CWA. Any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, or 405 of the Clean Water Act is subject to a fine not less than $2,500 nor more than $25,000 per day of violation or by imprisonment for not more than 1 year, or both. Any person who knowingly violates a permit condition implementing section 301, 302, 304, 307, 308, or 405 shall be punished by a fine not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years or both.

(4) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(5) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(6) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

(7) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(8) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(9) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances, parameters or practices at any location.

(10) *Monitoring and records.* (i) The permittee shall report monitoring results with a frequency dependent on the nature and effect of its sludge use or disposal practices, but in no case less than once a year.

(ii) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(iii) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(iv) Monitoring must be conducted according to test procedures specified in 40 CFR Part 136 or 503 unless other test procedures have been specified in this permit.

(v) The Clean Water Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions for the same offense are punishable by a fine of not more than $20,000 per day of violation, or imprisonment of not more than 4 years, or both.

(11) *Signatory requirements.* (i) All applications, reports, or information submitted to the Director shall be signed and certified according to the provisions of 40 CFR 122.22.

(ii) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions shall be punishable by a fine of not more than $20,000 per day of violation or by imprisonment of not more than 4 years, or by both.

(12) *Notice requirements*— (i) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility, or changes planned in the permittee's sludge disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional disposal sites not reported during the permit application process.

(ii) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

(iv) *Other noncompliance reporting.* The permittee shall report all instances of noncompliance.

(v) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(13) *Reopener.* If an applicable "acceptable management practice" or numerical standard for pollutants in sewage sludge promulgated under section 405(d)(2) of the Clean Water Act as amended by the Water Quality Act of 1987 is more stringent than the sludge pollutant limit or acceptable management practice in this permit, or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to

conform to the requirements promulgated under section 405 (d)(2). The permittee shall comply with the limitations by no later than the compliance deadline specified in the applicable regulations as required by section 405(d)(2)(D) of the Clean Water Act.

(c) *Permit actions.* All State programs under this Part shall have the legal authority to implement the following provisions as a minimum.

(1) *Transfer of permits*—(i) *Transfers by modification.* Except as provided in paragraph (ii) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(ii) *Automatic transfers.* As an alternative to transfers under paragraph (c)(1)(i) of this section, any sludge permit may be automatically transferred to a new permittee if:

(A) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (ii)(B) of this section.

(B) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(C) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (c)(1)(ii)(B) of this section.

(2) *Modification or revocation and reissuance of permits.* (i) When the Director receives any information (for example, where the Director inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under § 501.15(e)(3)(i), or conducts a review of the permit file), he or she may determine whether or not one or more of the causes listed in paragraphs (c)(2) (ii) and (iii) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit and may request an updated application if necessary. When a permit is modified, only the conditions subject to a modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. A draft permit must be prepared and other procedures in § 501.15(d) followed. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit.

(ii) *Causes for modification.* The following are causes of modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(A) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(B) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(C) *New regulations.* New regulations have been promulgated, or the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

(D) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an Act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

(iii) The following are causes to modify or alternatively, revoke and reissue a permit.

(A) Cause exists for termination under § 501.15(c)(3) and the Director determines that modification or revocation and reissuance is appropriate.

(B) The Director has received notification (as required in the permit, see § 501.15(b)(12)(iii)) of a proposed transfer of the permit.

(3) *Termination of permits.* The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(iv) A change in any condition that requires either a temporary or a permanent reduction or elimination of any activity controlled by the permit.

(d) *Permit procedures.* All State programs approved under this part shall have the legal authority to implement each of the following provisions and must be administered in accordance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) *Application for a permit.* (i) Any person who is required to obtain a permit for the use or disposal of sewage sludge under section 405 of the CWA shall complete, sign and submit to the Director an application for a permit.

(ii) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(2) *Modification, revocation and reissuance, or termination of permits.* (i) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 501.15(c). All requests shall be in writing and shall contain factors or reasons supporting the request.

(ii) If the Director tentatively decided to modify or revoke and reissue a permit he or she shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application. If the Director tentatively decides to terminate a permit he or she shall prepare a Notice of Intent to Terminate and follow the public notice and comment procedures outlined in § 501.15(d)(6).

(3) *Draft permits.* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the necessary conditions to implement this part, 40 CFR Part 503, and section 405 of the CWA.

(4) *Fact sheets.* A fact sheet shall be prepared for every draft permit for a Class I Sludge Management Facility, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(i) The fact sheet shall include, when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit;

(B) Any calculations or other necessary explanation of the derivation of limitations and conditions for sludge use and disposal, including a citation to the applicable standards under 40 CFR Part 503 and reasons why they are applicable.

(5) *Public notice of permit actions and public comment period.* (i) The Director shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. The public notice shall allow at least 30 days for public comment.

(B) A hearing has been scheduled. Public notice shall be given at least 30 days before the hearing.

(ii) *Methods.* Public notice of activities described in paragraph (d)(5)(i) of this section shall be given by the following methods:

(A) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(*1*) The applicant;

(*2*) Any other Agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, MPRSA, or 404 permit for the same facility or activity (including EPA);

(*3*) Any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e);

(*4*) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of such facility; and

(*5*) Any person who requests a copy.

(B) For Class I Sludge Management Facilities permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(C) In a manner constituting legal notice to the public under State law; and

(D) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(iii) *Contents*—(A) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(*3*) A brief description of the activity described in the permit application.

(*4*) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(*5*) A brief description of the comment procedures required by § 501.15(e)(8) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(6)(iii)(A) of this section, the public notice of a hearing shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) Date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(10) of this section.

(7) *Public hearings.* The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director shall issue a response to comments. The response to comments shall be available to the public, and shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

(e) *Optional program provisions.* The following provisions may be included in a State program at the State's option. If the State decides to adopt any of these provisions, they must be no less stringent than the corresponding Federal provisions:

(1) Continuation of expiring permits (40 CFR 122.6).

(2) General permits (40 CFR 122.28); and

(3) Minor modifications of permits (40 CFR 122.63).

§ 501.16 Requirements for compliance evaluation programs.

State Sludge management program shall have requirements and procedures for compliance monitoring and evaluation as set forth in § 123.26.

§ 501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

Note: This paragraph ((a)(1)) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. These penalties shall be assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

Note: States which provide the criminal remedies based on "criminal negligence," gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(ii) of this section.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

Note: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Program Director under paragraph (a)(3) of this section shall be appropriate to the violation.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen in any civil or administrative proceeding when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 501.18 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

§ 501.19 Sharing of information.

State sludge management programs shall comply with the requirements of § 123.41.

§ 501.20 Receipt and use of Federal information.

State sludge management programs shall comply with § 123.42.

§ 501.21 Program reporting to EPA.

The State Program Director shall prepare quarterly and annual reports as detailed below and shall submit any reports required under this section to the Regional Administrator. These reports shall serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on substantial incidents of noncompliance. The State Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The Quarterly Sludge Violation Reports and Annual Reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate.

(a) *Quarterly reports.* Quarterly Sludge Violation Reports (QSVRs) shall provide a tabular summary of the incidents of "substantial" noncompliance which occurred in the previous quarter by Class I facilities. The State Program Director and Regional Administrator may choose to include reporting of incidents of substantial noncompliance by additional non-Class I facilities at their discretion.

(1) At a minimum, the following occurrences shall be considered incidents of substantial noncompliance which must be reported under this section:

(i) Significant failure to comply with minimum Federal requirements for sludge use or disposal practices;

(ii) Significant failure to comply with permit conditions;

(iii) Failure to complete construction of essential elements of a sludge management facility or meet other key milestone dates specified in a permit;

(iv) Failure to provide required compliance monitoring reports or submission of reports that are so deficient as to cause misunderstanding and thus impede the review of the status of compliance;

(v) Significant noncompliance with other program requirements.

(2) The tabular summary will identify:

(i) The non-complying facilities by name and reference number,

(ii) The type of noncompliance, a brief description and date(s) of the event. (See list in paragraph (a)(1) of this section.) If records for a facility show noncompliance of more than one type under the sludge management program, the information should be combined into a single entry for each such facility.

(iii) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance.

(iv) Status of the incident(s) of noncompliance with the date of resolution, and

(v) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) *Annual report.* In addition to the information required by paragraph (a) of this section, the annual report shall include the following:

(1) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(i) Name and location,

(ii) NPDES, RCRA, Clean Air Act, and State permit number, if any,

(iii) Sludge management practice used,

(iv) Identification of non-complying facilities, and

(v) Sludge production volume.

(2) A summary of the number and type of violations by sludge use and disposal practice over the past year for Class I sludge management facilities.

(3) A list of Class I sludge management facilities brought into compliance since the last annual report;

(4) A summary of the results of periodic State compliance monitoring efforts to verify self-monitoring reports.

(5) Information on substantial noncompliance of Non-Class I Facilities which shall include:

(i) A tabular listing which identifies:

(A) The non-complying facility by name and reference number,

(B) The type of noncompliance (see list in paragraph (a)(1) of this section),

(C) How long the facility has been in noncompliance, and

(D) What steps are being taken to bring these facilities into compliance;

(ii) A summary of the number and type of violations by sludge use and disposal practice over the past year by non-Class I sludge management facilities;

(iii) A list of non-Class I facilities that have been brought into compliance since the last annual report; and

(iv) A separate list of all facilities (along with any applicable permit numbers) that are six or more months behind in their schedules for achieving compliance.

Subpart C—Program Approval, Revision and Withdrawal

§ 501.31 Review and approval procedures.

(a) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If it is incomplete, EPA will identify the needed information.

(b) After determining that a State program submission is complete, EPA will publish notice of the State's application in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention. EPA will mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State subject to sludge use and disposal requirements. The notice will:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register** and indicate when and where the hearing is to be held;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 90 days after determining that the State has submitted a complete program under § 501.11, the Administrator shall approve or disapprove the program based on the requirements of this part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) The State and EPA may extend the 90-day review period by mutual agreement.

(e) If the State's submission is materially changed during the 90-day review, either as a result of EPA's review or the State action, the official review period shall begin again upon receipt of the revised submission.

(f) Notice of program approval shall be published by EPA in the **Federal Register**.

(g) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 501.32 Procedures for revisions of State programs.

(a) Any approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall revise its program within one year after promulgation of applicable regulations, unless the State must amend or enact a statute in order to make the required revision, in which case such revision shall take place within 2 years.

(b) State sludge management programs shall follow the procedures for program revision set forth in 40 CFR 123.62.

§ 501.33 Criteria for withdrawal of State programs.

The criteria for withdrawal of sludge management programs shall be those set forth in § 123.63.

§ 501.34 Procedures for withdrawal of State programs.

The procedures for withdrawal of sludge management programs shall be those set forth in § 123.64.

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March 9, 1988

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–3304–1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing revisions to the motor vehicle and motor vehicle engine emission certification procedures for 1990 and later model year light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines. The revisions under consideration are primarily intended to address emission control durability demonstration requirements pertaining to vehicle and engine manufacturers covered under the small-volume manufacturer and small-volume engine family regulations. Several minor changes are proposed which will affect all manufacturers.

EPA proposes that only firms having total U.S. sales not exceeding 300 units per year remain exempt from any durability testing requirement. This proposal would continue a small-volume certification program for firms selling fewer than 10,000 units annually. Firms in this category using what this proposal defines as "proven" technology would not experience a significant change from the way the current program works. Such firms would continue to be allowed the use of assigned deterioration factors (d.f.'s), although the methodology for determining those d.f.'s would be changed somewhat. Firms using "unproven" technology would be required to run a limited number of durability test vehicles (e.g., 50,000 miles for light-duty vehicles, etc.) to verify emission durability. Firms selling over 10,000 units will continue to be able to certify up to 10,000 units each year under the "small-volume engine family" provisions, as amended by this proposal. Because of the potential for reduced durability demonstration burden, those manufacturers eligible for the 300 or less sales exemption are clearly distinguished. For these reasons, EPA is also proposing to clarify its sales aggregation rules for determining eligibility for treatment as a small-volume manufacturer.

In addition, this proposal includes several minor changes that apply to all manufacturers completing the certification process. These changes essentially reflect actions currently being accomplished voluntarily by nearly all manufacturers completing the certification process. They include changes to the vehicle emission control label, establishment of a minimum mileage for emission-data vehicle service accumulation, and potential measures to give greater assurance that small-volume firms take reasonable steps to provide for maintenance and repair of emission control systems. The revisions are being proposed to assure the continuation of these actions and compliance by any new manufacturers requesting vehicle certification.

DATES: EPA will hold a public hearing beginning at 9:00 a.m., EST, April 26, 1988, in Ann Arbor, Michigan.

Persons wishing to provide testimony at the hearing should notify Mr. Cole, as noted below, not later than April 19, 1988. Any written comments must be received on or before May 26, 1988.

ADDRESSES: Interested parties are encouraged to participate in this rulemaking procedure by submitting comments to: Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street SW., Washington, DC 20460; Attention: Docket No. A–85–30. Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–85–30 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE–131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for review during normal business hours (8:00 a.m.–3:00 p.m.). As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. The public hearing will be held at the Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Charles D. Cole, Certification Policy and Support Branch, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4444.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Clean Air Act

Section 203(a)(1) of the Clean Air Act (the Act) prohibits the sale, offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the importation (except by persons specified by regulation by the Administrator) of any new motor vehicle unless the vehicle is covered by a certificate of conformity issued by the Administrator under the authority of section 206 of the Act. Section 203(b) of the Act provides two exceptions to this requirement. The exceptions are: (1) The Administrator may exempt a vehicle for certain specified purposes (i.e., research, investigations, demonstration, training, or national security); and (2) a vehicle may be imported under regulations prescribed by the Administrator and the Secretary of the Treasury (U.S. Customs Service (Customs)) which ensure that the vehicle will be brought into conformity with applicable standards.

In addition, the Act places a limit on the maximum amount of durability mileage accumulation that EPA can require for certification purposes for those small-volume manufacturers whose projected total sales in the United States for any model year will not exceed 300 units. Section 206(a)(1) prohibits the Administrator from prescribing regulations requiring more than 5,000 miles or 160 hours to be accumulated on any test vehicle or engine for these manufacturers. Instead, the Administrator is directed to "apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life." The determination of appropriate adjustment factors, known as deterioration factors (d.f.'s), is a primary focus of this proposal.

B. Applicable EPA Regulations

Under authority of the Act, EPA has not only promulgated regulations governing the certification of vehicles [1] to emission standards ("certification regulations"), but in addition has promulgated regulations governing the importation of nonconforming motor vehicles and motor vehicle engines [2] ("imports regulations"). EPA recently promulgated substantial revisions to the imports regulations [52 FR 36136, September 25, 1987]. Under the revised regulations, independent commercial importers (ICI's) ultimately will be required to obtain a certificate of conformity prior to importing and modifying most nonconforming vehicles or engines. EPA anticipates that the majority of these manufacturers will be eligible to seek certification under the EPA's current small-volume manufacturers certification regulations as discussed below.

The certification regulations historically have included special provisions [for example, see 40 CFR 86.085–24 (e)] which allow small-volume manufacturers [3] to request a reduction in the number of required test vehicles and allow certification to be based on d.f.'s provided by EPA rather than actual durability test results. The d.f.'s provided by EPA are often referred to as "assigned d.f.'s." Beginning in 1975, EPA published applicable assigned d.f.'s for each vehicle or engine category through EPA's advisory circular manufacturer guidance system.

The assigned d.f.'s obviate the need for the manufacturer to spend the money necessary to build, accumulate mileage and emission test a durability-data vehicle to develop its own d.f.'s. No other specific durability tests are required of the manufacturer as part of the current small-volume manufacturer certification program. Nonetheless, as with other manufacturers, those manufacturers certifying under the small-volume manufacturer certification regulations are responsible under the Act and the regulations for compliance of their in-use vehicles for their statutory useful lives, so long as the vehicles are properly maintained and used.

Deterioration factors are used to predict useful life emission performance from the results of low mileage test vehicles. These low mileage test vehicles (known as emission-data test vehicles) currently are tested at a mileage (typically between 2,500 and 5,000 miles) which the manufacturer determines is at or beyond the point where new engine and emission control system emission performance has stabilized. The likelihood of compliance with the applicable emission standards is then projected by comparing the emission-data vehicle test results, adjusted by the d.f.'s, to the applicable standards. The d.f. adjustment is intended to account for expected useful life in-use emission performance deterioration. Absent other information which would indicate the significant potential for in-use emission noncompliance, if these predicted emission values are equal to or less than the emission standards, emission compliance is sufficiently demonstrated to permit issuance of a certificate of conformity. The use of assigned d.f.'s significantly reduces the amount of time and cost incurred by the manufacturer in obtaining d.f.'s by performing actual durability testing. However, since an emission-data test vehicle is not subject to actual durability testing, there is some risk that the assigned d.f.'s may understate actual production vehicle deterioration in some cases. If production vehicles actually deteriorate at a faster rate than represented by the assigned d.f.'s, there is an increased possibility of in-use noncompliance and excess in-use emissions.[4]

Significant revisions to the small-volume manufacturers certification procedure were promulgated (46 FR 16259) in March 1981 to lessen the administrative and cost burden of the certification regulations on small-volume manufacturers. The optional (assigned d.f.) certification procedures were extended to small-volume manufacturers whose total yearly projected sales were fewer than 10,000 units. Some additional, relatively small manufacturers then could qualify for the durability exemption. The number of emission-data test vehicles was also reduced and the reporting burden greatly simplified, all for the purpose of reducing small-volume manufacturers' compliance demonstration costs.[5]

EPA realized that, without vehicle demonstration of emission control durability, there was some risk that the vehicles certified under the small-volume procedures might fail emission standards in use. However, the Agency anticipated no significant air quality risk under the revised regulations for several reasons. First, only a small number of manufacturers were expected to certify under the expanded regulations. Second, most small-volume manufacturers certifying at that time were using original equipment manufacturer (OEM) engine, drive line and emission control components which had been fully developed and evaluated for in-use durability by the OEM. Third, those small-volume manufacturers using other manufacturers' components typically had cooperative agreements with the OEM. These small-volume manufacturers then knew what running changes (e.g., new calibrations, emission control designs, etc.) were implemented by the OEM in the production of engine, drive train, or emission control components that could affect the small-volume manufacturer's vehicles.

In October 1981, EPA promulgated cost reduction revisions to the general certification regulations applicable to manufacturers with sales of 10,000 or more units. Included in these revisions was a provision which allows these larger manufacturers to certify up to 10,000 units of sales using assigned d.f.'s. Since this provision is very similar to that included in the small-volume manufacturer regulations, EPA is proposing similar revisions to both programs to assure technical improvements in assessing the expected emission performance of engine families the manufacturers wish to certify.

C. The Impact of Additional New Small-Volume Manufacturers

In general, the recent revisions to the rules covering the importation of nonconforming vehicles ultimately will require ICI's to obtain certification to import such vehicles. Most manufacturer-importers [6] that previously imported under "modification and test" provisions, rather than under a certificate of conformity, will eventually have to come in under the certification process. (The modification and test alternative will be reduced during a phase-in period between 1988–1993 and eventually limited to vehicles over five production years old (40 CFR 85.1509).) The vast majority of these importers are expected to certify according to the small-volume manufacturers certification regulations.

In addition, EPA has noted an increase in inquiries from prospective domestic manufacturers which could qualify for small-volume certification. The expected number of ICI and new domestic manufacturers seeking certification could substantially increase usage of the small-volume manufacturers' certification regulations.

The current certification procedures should result in improved in-use emission performance of the imported nonconforming vehicles brought in under the certification option since, via the assigned d.f.'s, some anticipated emission performance deterioration is considered prior to certification. However, the large-scale use of the small-volume manufacturers certification procedures by numerous new manufacturers, including domestic manufacturers as well as ICI's, was not envisioned at the time the current regulations were promulgated in 1981. As previously discussed, although small-volume certified vehicles demonstrate compliance with emission standards at low mileage, the useful life emission compliance of some vehicles may be questionable. EPA has no formal program or procedure for evaluating each small-volume manufacturer's vehicle designs for physical signs that in-use emission deterioration may be excessively high. However, on occasion, EPA has noted potentially inadequate designs which, in EPA's opinion, presented a high risk of emission failure. For example, although passing emission standards at low mileage, a vehicle with an emission-related hose or electrical wire routed too close to a high temperature source such as an exhaust manifold or catalytic converter, could rapidly deteriorate under extended in-use operation. The hose or wire could fail causing an emission control system malfunction and vehicle emission failure potentially undetected by the vehicle operator. In the high-risk cases discovered by EPA, EPA has been successful in working with the vehicle manufacturer to improve its design. However, with the new potential for expanded use of the small-volume manufacturer regulations, it will be more difficult for EPA to detect each potentially inadequate design. EPA wants to limit to the extent possible the in-use noncompliance risk associated with certifying such potentially inadequate or unproven designs. Therefore, EPA is proposing revisions to the certification procedure to improve EPA's ability to screen out potentially inadequate designs and limit the number of unproven designs before these designs are certified.

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[1] Unless otherwise specified, references to vehicles also pertain to heavy-duty engines.

[2] An imported nonconforming motor vehicle or engine is defined as a motor vehicle or engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under 40 CFR 85.1505, 85.1509, or 85.1512 (if applicable).

[3] Prior to the 1982 model year, EPA regulations only allowed small-volume certification procedures to a manufacturer whose projected annual sales in the United States were less than 2,000 units in any vehicle or engine category

[4] Receipt of a certificate of conformity should not be interpreted as a license or approval to produce noncomplying vehicles. The certification program serves as a screen to prevent as many problem designs as possible from entering production. Vehicles which have been properly maintained and used, which later are determined to be failing emissions standards, are subject to recall by EPA under its authority in section 207(c) of the Act.

[5] The purpose of the small-volume certification regulations is to minimize the cost of running tests to demonstrate compliance with emissions standards prior to the sales of new vehicles. However, there is no relaxation in the manufacturer's responsibility under the Act to perform testing necessary to develop and build a product which will comply with emission standards over the regulated useful life. A key feature of the small-volume certification procedures is to draw upon information a responsible manufacturer should have available to assure itself that its product has been sufficiently developed and evaluated so that it and EPA can reasonably expect the product will comply with emission standards during in-use operation.

[6] Under section 216(1) of the Clean Air Act, any person engaged in importing new motor vehicles for resale is included in the definition of "manufacturer."

II. Summary of the Proposals

A. Durability Demonstration

EPA proposes to address durability requirements for three categories of manufacturers: (1) Small-volume manufacturers whose annual sales do not exceed 300 units, (2) small-volume manufacturers with annual sales between 300 and 10,000 units, and (3) large-volume manufacturers (with annual sales of 10,000 units or greater) wishing to certify small-volume engine families. The durability procedures which the manufacturer is required to comply with will vary depending on the manufacturer's annual sales.

The Act limits the amount of durability mileage accumulation EPA can require on vehicles built by manufacturers whose annual sales do not exceed 300 vehicles. It will continue to be EPA's responsibility to determine appropriate d.f.'s for these firms. Currently the guidelines for determining these d.f.'s are contained in Advisory Circular Number (A/C No.) 51C. A copy of A/C No. 51C has been placed in the public docket. As is current practice, the manufacturer has the responsibility for providing sufficient information and/or data on the manufacturer's vehicles and emission control systems to allow EPA to determine the appropriate assigned d.f.'s.

EPA is proposing revised durability requirements for manufacturers with total projected annual sales between 300 and 10,000 units. Changes to the existing regulation are minimized for manufacturers using proven emission control components or systems (and fuel metering systems) [7] because EPA believes that deterioration of these components or systems is adequately represented by assigned d.f.'s. This less stringent requirement is meant to encourage manufacturers to use proven components in their small-volume designs. EPA is proposing more extensive changes for manufacturers using unproven emission components (and fuel metering components) in their designs. These changes will increase EPA's confidence in the ability of a vehicle equipped with unproven emission control components and systems [8] to meet emission standards for the vehicle's useful life.

EPA proposes to allow manufacturers using proven emission components and systems (and fuel metering systems) to continue to certify using assigned d.f.'s. However, the assigned d.f.'s will no longer be supplied by EPA, but will be determined by the manufacturer based on good engineering judgment, subject to certain conditions as described in the following paragraph. Not allowing a manufacturer to simply assume the validity of EPA-supplied d.f.'s to its product is consistent with the intent of the existing regulations and the Act which presume that the manufacturer has determined that its vehicles are likely to comply in use prior to requesting a certificate. In addition, the manufacturer is likely to have development data and other relevant information available for the purpose of assuring itself of this expected in-use compliance. These data and other information should be directly useful in determining the appropriateness of potential assigned d.f.'s. Therefore, requiring the manufacturers to determine the appropriateness of the assigned d.f.'s used in certification should represent an insignificant additional burden on manufacturers that have been complying with the Act.

EPA proposes that the manufacturer-determined assigned d.f.'s not be less than the average of the d.f.'s. from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific average d.f.'s). In certain circumstances, the manufacturer-specific average d.f.'s may be greater than the 70th percentile of the d.f.'s from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific 70th percentile d.f.'s) due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s to offset the data from engine families with unusually high d.f.'s ("outlier data"). If the manufacturer does not have at least two data points to calculate manufacturer-specific average d.f.'s, the manufacturer-determined assigned d.f.'s may not be lower than the 70th percentile industrywide assigned d.f.'s as calculated by EPA.

For manufacturers using previously unproven emission control systems (and fuel metering systems) EPA is proposing to require durability mileage accumulation for emission control systems representing a percentage of the manufacturers' sales equipped with unproven emission control components or systems (and fuel metering systems). The manufacturer will be required to complete a durability demonstration

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[7] Proven emission control components or systems (and fuel metering systems) are components or systems that have completed full durability testing evaluation over a vehicle's useful life in some other certified engine family or are, as determined by EPA, of comparable functional quality and manufactured using comparable materials and production techniques as components or systems which have been durability demonstrated in some other certified engine family.

[8] Unproven emission control components or systems (and fuel metering systems) are components or systems that have not completed full durability testing evaluation over the useful life of a vehicle in some other certified engine family. In addition, unproven emission control components or systems (and fuel metering systems) are components or systems that are not of comparable functional quality, and manufactured using similar production materials and techniques, as components which have been demonstrated to be durable in some other certified engine family.

each year on remaining or new unproven engine/emission control system combinations representing a minimum of 25 percent of the manufacturer's "unproven" sales. The remainder of the manufacturer's annual unproven sales will be certified using assigned d.f.'s determined by the manufacturer, but no lower than those assigned d.f.'s used to certify its proven systems.

Manufacturers with annual sales greater than 10,000 units will be allowed to certify up to 10,000 units per year using assigned d.f.'s. These manufacturers must determine the appropriate d.f.'s in the same manner as described above for manufacturers in the 300 to 10,000 sales group.

B. Aggregation of Firms for the Purpose of Determining Applicability of Small-Volume Regulations

Presently when determining the applicability of small-volume certification procedures, EPA aggregates the sales of multiple importers who have contractual agreements or are subsidiaries of the same parent automobile manufacturer. EPA proposes to clarify the wording of the current aggregation criteria to assure appropriate implementation and intended effect.

C. Other Changes

EPA is also proposing the following changes to the certification procedures which will be applicable to both small-volume manufacturers and other manufacturers.

Vacuum hose routing—EPA proposes to require light-duty vehicle and light-duty truck manufacturers to include a vacuum hose routing diagram on the vehicle emission control information label. This information is currently required by the State of California for vehicles sold in that state and is voluntarily being included on other vehicles by most manufacturers.

Minimum EDV mileage—The current rules set no lower mileage limit for EDV's. EPA now proposes a 2,000 mile minimum (62 hours for catalyst equipped heavy-duty engines) requirement on all EDV's. In practice, no manufacturer has used an EDV with less than 2,000 miles to certify.

In-use vehicle maintenance—EPA is requesting public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act. In the event that EPA decides that service and parts availability may be a problem, EPA is proposing changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service. EPA is proposing that each small-volume manufacturer provide a statement to EPA at the time it requests certification stating that it has provided the vehicle purchaser a list of emission and emission-related parts and instructions for performing any maintenance which might be expected to affect emission performance. Additionally, EPA proposes that the manufacturer notify the owner, at the time of sale, of the nearest maintenance location if maintenance service is not available at the authorized point of sale for its vehicle, and assure the purchaser that emission-related service parts will be available at or through these service locations. Finally, EPA is proposing that all manufacturers already required to have an insurance policy guaranteeing warranty service [40 CFR 85.1510], provide evidence of the fully paid policy or proof of a contractual agreement to purchase insurance as a prerequisite to certification.

Reduction in the number of EDV's—EPA is proposing to reduce the number of EDV's required to one vehicle in those engine families certified by large-volume manufacturers under the small-volume engine family certification procedure.

Elimination of EPA-determined assigned d.f.'s in specific cases—EPA is proposing to eliminate EPA-assigned d.f.'s in those categories where the current certification regulations direct the manufacturer to determine the appropriate emissions deterioration. The applicable categories are light-duty trucks (LDT's) or heavy-duty engines (HDE's) for exhaust emissions and light-duty vehicles (LDV's) and LDT's for evaporative emissions.

III. Proposed Revisions to the Small-Volume Manufacturers and Small-Volume Engine Family Certification Durability Program

A. Durability Requirements

The current small-volume manufacturers certification procedure allows eligible small-volume manufacturers to certify up to 9,999 units (combined total sales of LDV's, LDT's and HDE's) per year using assigned d.f.'s. Under the current regulations no other durability demonstration is required. As a result, the small-volume manufacturer certifying its product line has the same durability demonstration responsibility whether it uses components with proven or unproven emission durability in its design. Only when EPA has information indicating that a system is likely to be non-durable will EPA not certify until EPA's concerns are resolved.

EPA is proposing to change the small-volume manufacturers' durability demonstration by: (1) Proposing to use manufacturer-specific d.f.'s when sufficient data is available; (2) proposing durability procedures for unproven emission control components and systems (and fuel metering systems); and (3) proposing to eliminate the availability of assigned d.f.'s in those applications where the current certification procedures direct the manufacturer to determine appropriate deterioration factors for the vehicles.

1. Manufacturers Certifying Systems With Proven Technology Using Manufacturer-Specific D.F.'s

The current regulations provide EPA with wide discretion on how to determine appropriate assigned d.f.'s. EPA is proposing to revise the certification regulations to change the method used in determining assigned d.f.'s. Under this proposal, the current EPA policy of industrywide assigned d.f.'s would be replaced by manufacturer-determined assigned d.f.'s in certain circumstances.

EPA is proposing that these assigned d.f.'s be determined by the manufacturer using its good engineering judgment subject to certain conditions as previously described.[9] EPA is also proposing that the manufacturer-determined d.f.'s be no lower than the manufacturer-specific average d.f.'s to preclude manufacturers from determining inappropriately low assigned d.f.'s. Using this method may result in specific cases where the manufacturer-specific average d.f.'s of a particular firm are higher than the manufacturer-specific 70th percentile d.f.'s for that same firm due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s for certification to reduce the impact of the outlier data.[10]

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[9] Note that, as discussed below, EPA is proposing to no longer provide assigned d.f.'s for LDT and LDV evaporative emissions and LDT and HDE exhaust emissions for manufacturers with annual sales of over 300 units. Therefore, for these manufacturers, assigned d.f.'s would only apply to the general engine and emission control system categories of gasoline-fueled and diesel-fueled LDV's.

[10] Of course, if the high d.f.-producing engine family is still in production it must continue to use its own specific d.f.'s for certification of that particular engine family unless the manufacturer completes a replacement durability vehicle which produces lower d.f.'s.

If the manufacturer does not have sufficient data points to derive manufacturer-specific d.f.'s (i.e., d.f.'s from less than two engine families), then the manufacturer-determined assigned d.f.'s must not be less than the industrywide d.f.'s as published by EPA.[11] For example, if a small-volume manufacturer has generated actual durability test results for a portion of its product line, assigned d.f.'s can be calculated on the basis of manufacturer-specific data. However, if a small-volume manufacturer has not previously generated sufficient durability test results, EPA will continue to publish industrywide assigned d.f.'s for proven systems. EPA is also proposing to specify in the certification regulation that the EPA-provided assigned d.f.'s will be periodically redetermined to estimate the 70th percentile industrywide d.f.'s.

Manufacturer-determined assigned d.f.'s would be more representative of a manufacturer's particular technological capability than the current practice of using industrywide data to determine assigned d.f.'s. Experience has shown that each unique emission system design is liable to perform differently in use, and therefore each system is likely to deteriorate at a different rate. Actual certification d.f.'s generated using durability-data vehicles often vary widely between manufacturers. Therefore, industrywide assigned d.f.'s are not in all cases accurate predictors of every manufacturer's designs. Manufacturer-determined d.f.'s benefit manufacturers with good designs because they get lower d.f.'s. By the same token, it is appropriate for manufacturers with a history of deterioration higher than the industry average to be assigned higher d.f.'s. Since these data are specific to a particular manufacturer and, therefore, represent a manufacturer's actual capability, it is more appropriate to use the manufacturer-determined assigned d.f.'s rather than industrywide d.f.'s.

Incorporating the basis for the assigned d.f.'s more specifically in the small-volume manufacturers certification regulations is intended to more clearly identify the method to be used to certify small-volume manufacturer and small-volume engine family sales. By putting more specific language in the regulations, the industry will be kept as aware as possible of procedures that will have an impact on them. Secondarily, putting the procedural details in the regulations should reduce the need for additional guidance and therefore reduce the administrative burden of the small-volume manufacturers' program.

EPA realizes that the majority of the small-volume manufacturers (manufacturers with total sales of less than 10,000 units) do not have current durability-data vehicle results to use to calculate their manufacturer-specific d.f.'s. Small-volume manufacturers were previously not required to test and evaluate durability-data vehicles. Thus, EPA will provide industrywide assigned d.f.'s for small-volume manufacturers (using proven emission systems) who have not run sufficient (i.e., two) durability vehicles to calculate manufacturer-specific assigned d.f's within an engine and emission control system category.[12] Since section 206(a)(1) of the Act does not permit EPA to require that manufacturers of fewer than 300 vehicles per year complete full durability testing, the industrywide d.f.'s will also be available to them.

2. Manufacturers Certifying Systems With Unproven Technology

EPA is proposing placing new durability vehicle requirements on small-volume manufacturers with sales over 300 units when certifying vehicles equipped with unproven technology emission systems. EPA will define unproven technology as emission control components or systems (and fuel metering systems) which have not been previously certified by EPA on engine families which have been certified with full (e.g., 50,000 mile) durability demonstration. For systems with unproven components, EPA often lacks information that would demonstrate that the emission system is sufficiently durable, and sometimes has insufficient data to determine which particular set of d.f.'s are the most technically appropriate for those system components. In the current program, if EPA has information suggesting that a system is *not* likely to be sufficiently durable, then the Agency will elect not to certify the vehicle design until the Agency's concerns are resolved. Otherwise, EPA has typically certified the unproven design on the basis of industrywide assigned d.f.'s. In such cases, EPA would prefer to rely on durability vehicle data to demonstrate compliance.

EPA considered two alternatives for durability demonstration when small-volume manufacturers use unproven emission control components or systems: (1) Require testing of durability vehicles representing all of the manufacturer's sales equipped with unproven emission control components or systems; or (2) require new durability vehicles representing some percentage of the manufacturer's sales each year in each compliance category that is equipped with unproven emission control components or systems.

The first alternative would provide durability testing representing all of the manufacturer's vehicles equipped with unproven emission control technology. This alternative provides the highest degree of confidence in the vehicles' abilities to comply with emission standards for the vehicles' useful lives. However, this alternative could also be the most costly for a small-volume manufacturer. EPA is not proposing this alternative.

To lessen the cost impact of durability demonstrations on the manufacturers, EPA is proposing the second alternative for manufacturers of more than 300 vehicles per year. The second alternative would require such manufacturers each year to first test and evaluate durability vehicles representing some percentage of the unproven technology sales in each engine and emission control system category equipped with unproven technology. Carryover data could not be used to satisfy this durability data requirement. Upon successful completion of the durability testing requirement and certification of those vehicles, the remainder of these small-volume manufacturers' unproven emission control technology sales for that year may be certified using manufacturer-determined assigned d.f.'s.

EPA is proposing to require durability data for engine/emission control system combinations representing a minimum of 25 percent of each manufacturer's unproven technology sales each year. Twenty-five percent durability demonstration would provide reasonable, short-term confidence that the manufacturer is capable of designing and building vehicles which will have useful life emissions compliance. In addition, requiring only 25 percent of the unproven systems to be represented by durability-data vehicles each year would minimize the yearly cost impact on the manufacturer and allow a phase-in period for the manufacturer to demonstrate the durability of its unproven technology and to generate the data necessary to calculate manufacturer-specific assigned d.f.'s.

Once a durability-data vehicle has been run successfully to represent an unproven technology system, that system and closely comparable system designs of that manufacturer would become proven technology.[13] The manufacturer could use the d.f.'s generated for those systems for certification of the sales represented by the durability vehicles during that year and for carryover purposes in subsequent years.

Of course, for manufacturers of less than 300 vehicles per year, EPA will continue to allow the use of industrywide assigned d.f.'s for certification of all vehicles, including those vehicles equipped with unproven technology, meeting the guidelines of A/C No. 51C.

3. Exhaust Emissions for LDT's and HDE's and Evaporative Emissions for LDV's and LDT's

EPA is proposing that EPA-derived assigned d.f.'s no longer be made available to small-volume manufacturers with sales over 300 units per year for the purpose of certifying LDT's or HDE's for exhaust emissions or for certifying LDV's and LDT's for evaporative emissions. This proposal also applies to large-volume manufacturers certifying according to the small-volume engine family certification regulations. In each of these cases, the current regulations (e.g., 40 CFR 86.085–24(c)) direct each manufacturer not covered by the small-volume procedures to determine its own d.f.'s. The manufacturers are to use good engineering judgment in selecting the engines, subsystems, or components used to determine the emission deterioration so that their emissions deterioration may be expected to represent that of in-use vehicles or engines. This proposal extends this provision (for determining their own d.f.'s) to small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

In adopting the existing regulations, EPA anticipated that a manufacturer might make use of development data, bench test data or other available sources of information to develop appropriate d.f.'s. Using this information would be less costly to the manufacturer compared to running a durability-data vehicle for its useful life. In this regard, allowing a manufacturer to determine its own d.f.'s can provide substantial cost savings similar to the savings afforded to manufacturers by assigned d.f.'s. In addition, by providing this flexibility and using these other data, manufacturers should be able to come up with d.f.'s which are more technically representative of emissions deterioration than EPA-derived assigned d.f.'s. Under this proposal, these benefits will also be realized by small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

Moreover, in these specific certification categories, there appears to be no technical benefit in using EPA-derived assigned d.f.'s rather than manufacturer-derived d.f.'s. Further, the current assigned d.f. program requires a manufacturer to demonstrate the appropriateness of the assigned d.f.'s to the manufacturer's vehicles. The manufacturer's responsibility under the assigned d.f. program is very similar to the manufacturer's responsibility when it is required to independently determine the appropriate d.f.'s under the current certification procedures. Finally, for large-volume manufacturers certifying small-volume engine families the manufacturer-specific d.f.'s for these categories of vehicles and engines would be based on manufacturer-determined d.f.'s for the rest of the product line.

For these reasons, EPA is proposing to delete the assigned d.f. option for all manufacturers with sales over 300 units for the specific applications of LDT exhaust and evaporative emission, and LDV evaporative emissions and HDE exhaust emissions. This proposal does not extend to manufacturers with annual sales of 300 units or less. Consistent with section 206(a)(1) of the Act, EPA will continue to provide assigned d.f.'s for these manufacturers. These very small manufacturers may not have as much development data and other sources of durability information to allow them to as easily determine appropriate design-specific d.f.'s as larger volume manufacturers would have.

4. Cost Impact of Durability Program Revisions

EPA analyzed the cost impact of the proposed revisions to the small-volume manufacturers durability program. Manufacturers using unproven emission control components or systems will be required to complete some durability vehicle testing which will increase the cost of certification for these manufacturers. However, the d.f.'s developed from the durability-data vehicles should be more representative of the vehicles' emission deterioration than assigned d.f.'s. This will provide greater assurance of useful life emission compliance. Also, EPA anticipates that manufacturers often will elect to use proven emission control hardware (which is usually readily available at a reasonable cost) rather than unproven systems due to (1) emission performance reliability and (2) lower compliance demonstration costs.

There should be no significant cost impact from the proposed changes to provide for manufacturer-determined assigned d.f.'s, and the proposed elimination of assigned d.f.'s for exhaust emission for LDT's and HDE's and evaporative emissions for LDV's and LDT's, for manufacturers with sales over 300 units per year.

EPA's analysis of the cost impact of the proposed revisions to the small-volume manufacturers and small-volume engine family durability program has been placed in Public Docket No. A–85–30.

B. Maintenance and Warranty Service

The current certification program presumes: (1) That emissions warranty coverage required by sections 207(a) and 207(b) of the Act will be supplied by the manufacturer to correct any covered emission and emission-related problems identified during a vehicle's useful life; and (2) that manufacturers will have qualified service facilities and maintenance parts available for use by their customers. In-use emission performance is likely to be worse than that predicted in the certification program if, due to lack of either of these services, vehicles are unable to obtain proper maintenance and warranty service.

EPA is concerned that some small-volume manufacturer vehicles might not be assured warranty service by the manufacturer. In the case of ICI's, the recent imports regulations amendments (52 FR 36136, September 25, 1987) address this issue by requiring the certificate holder who modifies imported nonconforming vehicles to obtain an insurance policy to assure payment of in-use emission warranty repairs if the manufacturer defaults on its obligation. While EPA expects that in most cases the existing regulations (including the recent imports regulation amendments) will assure the availability of warranty service, in some cases (e.g., due to inexperience of some small-volume manufacturers), they may not.

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[11] Industrywide assigned d.f.'s currently are calculated using the 70th percentile of the industrywide durability data base. The 70th percentile d.f.'s provide a larger safety margin than, say, the 50th percentile or average d.f.'s and were chosen in part to reflect that the data is not specific to one manufacturer.

[12] These manufacturers will determine their own most appropriate d.f.'s. However, the d.f.'s used cannot be lower than the industrywide d.f.'s provided.

[13] A closely comparable design is a design that would qualify under EPA's guidelines for durability data carryover from a system that has completed durability testing to another system. The carryover guidelines are contained in A/C No. 17F. A copy of A/C No. 17F has been placed in the public docket.

Therefore, EPA is proposing that proof of this insurance be provided to EPA at the time of the manufacturer's application for certification. This makes the availability of the insurance a condition of receiving certification and will help ensure that small-volume manufacturers fulfill their warranty responsibility. Requiring the manufacturer to provide proof that the insurance policy has been purchased or proof of a contractual agreement to purchase insurance prior to receiving certification should pose no additional burden to the manufacturer except that the manufacturer may have to obtain the insurance policy a month or two earlier than if proof of purchase were not a condition of certification.

Second, without adequate service facilities and maintenance parts the vehicle owners cannot properly maintain their vehicles. EPA is somewhat concerned that under the existing regulations some vehicles might be certified as capable of complying with emission standards for the vehicles' useful lives (if properly maintained and used) when in fact some emission and emission-related parts might not be available to properly maintain the vehicles. Without proper maintenance, the in-use emission deterioration is likely to be significantly greater than predicted in the certification program.

Although the small-volume manufacturer is subject to the same sanctions as the large-volume manufacturer under the Act, other considerations may make the large-volume manufacturer more likely to make service facilities available for maintenance and warranty service for the emission systems of vehicles they sell. The large-volume manufacturer's future vehicle sales are in part based on current customer satisfaction which can be influenced by the vehicle manufacturer's maintenance services. Further, most dealerships for large-volume manufacturers view their service facilities as a major source of revenue. These incentives are substantial, as evidenced by the fact that it is most common for large-volume manufacturers to combine their sales dealerships with full service facilities. Therefore, EPA sees no need for further assurance that large-volume manufacturers will make service available.

By contrast, the small-volume manufacturers' future sales may not be as closely influenced by the manufacturers' maintenance services. Small-volume manufacturers' vehicles are, in most cases, exotic, expensive, "one of a kind" limited production, or, as in the case of ICI's, modified versions of OEM vehicles. Some small-volume manufacturer sales are probably substantially influenced by brand familiarity. Other small-volume manufacturer sales may be influenced by the consumer's desire to purchase an exotic vehicle. In either case, the consumer may travel considerable distances to purchase the vehicle, thereby making it difficult to return to the dealer for maintenance. As a result, the purchaser may not be as influenced by the dealer's maintenance services, or the lack of maintenance services. In addition, some small-volume manufacturer vehicles, especially the more exotic vehicles, may be once-in-a-lifetime purchases. Again, since the consumer may never purchase another exotic vehicle or at least not the same make, the consumer may not be influenced by the availability of maintenance services.

In the case of ICI's, some vehicle purchasers may think that service is available from the OEM maintenance shop. The vehicle purchaser may not care (at the time of purchase) about such issues and the ICI may not have a marketing incentive to identify available service locations. Moreover, that same consumer may not be aware of, or may not be willing to make any significant effort to have repaired an emission system malfunction that does not otherwise affect the normal operation (i.e., driveability) of the vehicle. Therefore, although EPA currently believes that small-volume manufacturer warranty service generally should be available, EPA is concerned that, under the current program, some small-volume manufacturers may not have sufficient incentives to provide adequate service availability. Without additional incentive to these manufacturers to provide maintenance and warranty service, EPA would be somewhat concerned that the emission systems of some of these vehicles might not be properly maintained. EPA invites public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act.

In the event that EPA decides that service and parts availability may be a problem, EPA is proposing two changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service from small-volume manufacturers. For the reasons just discussed, these changes will only apply to small-volume manufacturers. The first proposal addresses the availability of emission and emission-related parts and service. The second proposal addresses alternatives to ensure that warranty service will be performed.

First, EPA is proposing that as a condition of certification, the small-volume manufacturer provide a written statement prior to certification affirming that it will have qualified service facilities [14] and repair parts conveniently available [15] in the field for its customers. Specifically, prior to certification the manufacturer must state that it will provide each vehicle purchaser a list of emission and emission-related service parts, including part number designations and sources of parts, for all engine and emission control system parts which might affect vehicle emission performance throughout the full useful life of the vehicle. It must also state that the manufacturer will have qualified service facilities and emission and emission-related spare parts available to service its vehicles. In addition, the small-volume manufacturer must agree to provide the vehicle purchaser at the time of sale with information identifying the closest service facility to the point of sale authorized to perform emission-related warranty service if this service is not available at the point of sale. The manufacturer must also state in its application for certification that vehicle purchasers will be informed of the closest service facility if service is not available at the point of sale.

Second, in addition to the above statement, EPA proposes to require that the small-volume manufacturer provide EPA, upon request, evidence or other information demonstrating that: (1) Qualified service facilities are available at the point of sale of the manufacturer's vehicles, or the vehicle purchaser will be notified of the closest service facilities at the time of sale; and (2) that necessary emission and emission-related parts are readily available at or through these repair facilities. Failure to fulfill this requirement could result in the certificate of conformity being suspended or revoked. Examples of the evidence or other information EPA currently considers acceptable as

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[14] Qualified service facilities are service facilities which have: Vehicle maintenance instructions; trained service personnel; applicable tools and equipment, including special tools if required; and spare parts for the manufacturer's vehicles.

[15] Conveniently Available—For small-volume manufacturers "conveniently available" means that the vehicle manufacturer maintains an inventory of all spare parts or has made arrangements for the parts manufacturers to supply the parts by expedited shipment (e.g., UPS, overnight express, etc.).

demonstrating service facilities and spare parts availability include: Photographs of service facilities; personnel rosters with personnel qualifications; inventory list of spare parts available at the service facility and/or the manufacturers; copy of nearest service facility location notice the manufacturer issued to the vehicle purchaser, if applicable.

EPA analyzed the potential impact of the provisions in the event EPA determines that they are necessary. Providing the information proposed in this section should represent an insignificant administrative burden for the manufacturers, since the responsible manufacturer should already be obtaining the required insurance and providing these services and parts in order to meet its obligations under the Act and the existing regulations.

C. Vacuum Hose Routing Diagram

EPA is proposing that a vacuum hose routing diagram be included on the vehicle emission control information label. This will aid in-use vehicle inspection by making it easier for vehicle inspectors to verify that the emission control hardware is properly installed. Further, it should assist mechanics in checking their work for proper installation. Such a vacuum hose routing diagram is currently required by State of California motor vehicle regulations and is voluntarily included on the vast majority of vehicles sold in the rest of the U.S. Although most manufacturers are already voluntarily installing a vacuum hose routing diagram on all their vehicles, EPA wants to be sure that all manufacturers, including new manufacturers, also include a routing diagram on their vehicles. Therefore, EPA proposes that all manufacturers be required to include a vacuum hose routing diagram on their vehicles. Since this is a standard industry practice voluntarily being implemented by most manufacturers, EPA believes this amendment will represent an insignificant burden to manufacturers.

EPA analyzed the impact of the proposed revision to the vehicle emission control information label. EPA estimates that the cost for including the proposed additional information on the label should not result in a significant increase in the manufacturer's costs. The additional cost is estimated to be only a few cents per label. EPA believes that the additional information on the label will significantly improve maintenance of the vehicles. EPA anticipates that the improved maintenance benefits will far outweigh the additional cost of the label. (See cost analysis in Public Docket A-85-30.)

D. Aggregation

EPA put in place several constraints to stop a large manufacturer from attempting to certify as several small-volume subdivisions when it adopted its 1981 regulations (46 FR 16259, March 12, 1981). In the existing regulations and in their implementation, EPA has aggregated the projected sales of all firms having any significant financial or managerial link, including common ownership. Section 86.085-1(e) of the regulations specifies that "vehicles produced at facilities leased, operated, controlled, supervised, or in ten percent or greater part owned by the manufacturer shall be counted in calculating the total sales of the manufacturer." Also, according to § 86.084-14(b)(2), where there is more than one importer or distributor of vehicles manufactured by the same person, the sales of all these importers and distributors shall be aggregated. EPA generally has not applied this provision to aggregate sales of genuinely independent ICI's who import nonconforming vehicles for resale, modify these vehicles to allow them to meet emission standards, and thus become manufacturers of the vehicle.

EPA proposes to add three provisions to the current regulations. First, EPA proposes to change the wording of 40 CFR 86.085-1(e) in order to preclude possible misunderstanding and to clarify its interpretation. EPA is proposing to make clear that if one firm leases, operates, controls, supervises or in ten percent or greater part owns production facilities used by another manufacturer, then the combined sales of both manufacturers (or multiple manufacturers in the case of three or more) is used to determine the eligibility of each manufacturer to certify under the small-volume manufacturer rules. EPA has always interpreted the reference to "manufacturer" in this provision as applying to all manufacturers in the relationship. Thus, EPA has always used the combined sales of both manufacturers in determining small-volume manufacturer eligibility for each and every manufacturer involved in the arrangement.

Second, in order to clarify the interpretation of "controlled" as used in 40 CFR 86.085-1(e), EPA proposes to add the wording that where two or more firms have common corporate officers who are responsible for the overall direction of the companies, the sales should be grouped together. The interrelationship resulting from such common corporate officers is consistent with the other financial and managerial links which result in sales aggregation.

Third, EPA proposes to amend the regulations to clarify mutual equity ownership, (i.e., to specify aggregating the sales of two or more firms if a third party has equity ownership of ten percent or more in each of the firms). This is a natural extension of current language which specifies that one firm will be aggregated with another if one of them owns ten percent or more of the other.

E. Changes to Emission-Data Vehicle (EDV) Mileage Requirements

EPA is proposing to establish a minimum mileage requirement for EDV's for all manufacturers. Prior to the certification procedure revisions of March 12, 1981 and October 13, 1981, manufacturers were required to accumulate 4,000 miles on each EDV to assure that its emission performance had stabilized prior to being emission tested. The 1981 certification procedure revisions allowed manufacturers to determine the minimum amount of mileage accumulation required to stabilize the vehicle's emission performance. A review of the certification data base indicates that manufacturers have typically accumulated a minimum of around 2,500 miles on EDV's to assure the vehicles emission performance had stabilized. No manufacturer accumulated less than 2,000 miles on an EDV.

EPA is somewhat concerned that in the future some manufacturers may use this flexibility in mileage accumulation to determine, whether intentionally or inadvertently, inappropriately low EDV test results. Specifically, when new, a catalyst has exceptionally high performance and is very effective at converting most hydrocarbon, carbon monoxide and oxides of nitrogen emissions coming out of the engine, thus keeping the regulated emissions atypically low. This exceptional catalyst performance quickly drops off as mileage accumulates until the catalyst conversion efficiency stabilizes and then deteriorates much more gradually with additional mileage. If a manufacturer chooses to test its EDV's prior to the stabilized emission mileage, the manufacturer could take advantage of this exceptional catalyst performance and obtain emission test results uncharacteristically low compared to a stabilized vehicle. Application of the d.f.'s to such results would predict an inappropriately low useful life emission. Allowing EDV testing before the vehicle has stabilized could mean that a vehicle

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design is inappropriately certified (i.e., the certification test data predicted useful life compliance but in reality this prediction was too low). Therefore, EPA proposes to establish a minimum mileage requirement of 2,000 miles for EDV's (62 hours for catalyst equipped heavy-duty engines) regardless of manufacturer size. EPA expects that these low mileage EDV concerns would be eliminated by this minimum mileage requirement.

The impact of the proposed 2,000-mile minimum for EDV mileage accumulation on the cost of the manufacturers' certification program was analyzed. Since all current manufacturers have accumulated at least 2,000 miles on EDV's, the 2,000-mile minimum mileage requirement will not cause an impact on them. For those manufacturers using unproven emission control systems, EPA also believes that the proposed change would have little or no impact on them given that virtually all such manufacturers who have certified new designs in the past have accumulated at least 2,000 miles prior to emission data testing. In such a case, the proposed regulation change would have no impact on these manufacturers.

F. Reduction in the Number of Required Emission-Data Vehicles

The current regulations applicable to manufacturers with sales of 10,000 units or more require the testing of two EDV's in those small-volume engine families certified with assigned d.f.'s. For manufacturers with sales of less than 10,000 units, the regulations require only one EDV per engine family. EPA proposes to also require only one emission-data test vehicle for small-volume engine families certified using assigned d.f.'s by manufacturers with sales of 10,000 units or more. This proposal will reduce the regulatory burden in these manufacturers. However, given the limited diversity of designs typical of these small-volume engine families, the increased risk of inappropriately certifying an engine due to less emission test data is insignificant. This proposal will make the small-volume manufacturer's and small-volume engine family certification requirements consistent for all engine families certified with assigned d.f.'s.

G. Other Changes

The Agency proposes to standardize the worst-case EDV (engine) selection criteria contained in the certification procedures. Currently, the small-volume manufacturer worst-case EDV selection criteria differs slightly from the EDV selection criteria applicable to manufacturers whose projected sales exceed 10,000 units per year. The differences (e.g., heaviest (including options) vehicle versus heaviest equivalent test weight (including options) and largest frontal area vs. highest road load horsepower, etc.) resulted when the Agency promulgated changes to the EDV selection criteria (46 FR 50464, October 13, 1981) for large-volume manufacturers. The larger manufacturers have a more diverse product line; therefore, the Agency was more definitive than in the small-volume manufacturer certification procedure.

Changing the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should not impact the small-volume manufacturer worst-case vehicle selections. The majority of the small-volume manufacturer engine families have only one vehicle with few, if any, options. Therefore, the same EDV would be selected under the revised selection criteria as under the original small-volume manufacturer EDV selection criteria. In addition, the Agency is proposing that larger volume manufacturers utilize the small-volume manufacturer EDV selection criteria when certifying engine families under the optional certification procedures (§ 86.090–24(e)(2)) available to larger manufacturers for small-volume engine families. Therefore, revising the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should reduce potential confusion resulting from differing EDV selection criteria for these larger manufacturers.

IV. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of proposed Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a preliminary Regulatory Flexibility Analysis (RFA). EPA has determined that the certification revisions proposed herein will not have a significant impact on a substantial number of small-volume manufacturers.

The actual impact of the proposed revisions on each manufacturer is affected by the emission control system chosen by the manufacturer. Under the proposed revisions, the previous certification history of the emission control system (and fuel metering system) the manufacturer chooses to use on its vehicles or engines will determine the durability demonstration requirements the manufacturer must complete. Manufacturers using proven emission control systems (and fuel metering systems) will not incur significant additional costs. Therefore, there will be no significant impact on these manufacturers.

If a manufacturer chooses on its own volition to use unproven emission control or fuel metering systems, EPA is proposing to require additional durability demonstration. In most cases it is unlikely that the manufacturer would choose to use unproven emission control or fuel metering systems. Proven emission control systems and fuel metering systems are readily available from OEM's (or the suppliers of OEM equipment), generally at less cost to the small-volume manufacturer than developing a new, unique system. However, if the small-volume manufacturer is projecting a large number of vehicle sales in an engine family the cost of system development and durability demonstration could be less, on a per-vehicle basis, than purchasing previously proven emission control systems. The manufacturer will likely make the decision to use either previously proven or unproven emission control or fuel metering systems based on economic considerations.

EPA analyzed the potential impact of the durability requirements associated with the use of unproven emission control or fuel metering systems on the small-volume manufacturer. A copy of the economic impact analysis has been placed in the public docket. Those manufacturers choosing to use unproven emission control or fuel metering systems will incur additional time and cost to complete the certification process. The amount of time required to complete a durability-data vehicle considerably lengthens the certification process. Approximately four months are required to accumulate the necessary durability mileage (e.g., 50,000 miles for light-duty vehicles) versus less than one month for EDV mileage accumulation (i.e., typically between 2,500 and 5,000 miles). EPA estimates that, for the initial year these regulations are in effect, less than 15 percent of the small-volume manufacturers may choose to use unproven emission control systems. Once these unproven systems are initially evaluated, subsequent model years should see significantly less unproven systems certified. This low incidence should not represent a significant number of small entities. Furthermore, even for those designs certified with unproven systems, the additional costs due to durability demonstration should not exceed three percent of the purchase price of an

average vehicle for that initial model year. The estimated increase in the purchase price of an average vehicle varies significantly with the number of vehicles represented by the durability demonstration. The estimated price increase for sixty typically imported vehicles is less than three percent, whereas the price increase decreases to about one-half (0.5) percent per vehicle for sales of 300 vehicles. Therefore, there is not a significant impact on these specific manufacturers.

Therefore, based on the above, the certification revisions proposed herein should not have a significant impact on a substantial number of small entities.

V. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare a Regulatory Impact Analysis (RIA) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in overall industry costs or prices. Finally, this action will not have a significant adverse effect overall on industry, competition, employment, investment, productivity, innovation, or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, a preliminary RIA has not been prepared. Potential economic effects of the proposed small-volume certification rules, however, have been addressed in an economic impact analysis which was prepared in accord with the RIA requirements. The Agency's economic impact analysis for the recent rule on the importation of nonconforming motor vehicles and motor vehicle engines also is incorporated by reference herein and has been placed in the public docket for this rulemaking. The estimated first year cost for the proposed revision to the certification procedure is less than $500,000 for the industry. The estimated cost for the second and subsequent years would likely be reduced substantially by the use of data carryover. The use of maximum carryover of emission data could reduce costs to less than $6,000 for the industry. This analysis has been placed in the Public Docket for this rulemaking. The combined rules will not have an annual effect on the economy of $100 million or more.

VI. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection at Public Docket A–85–30 located in EPA's Central Docket Section (LE–131), 401 M Street SW., Washington, DC 20460.

VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783) and a copy may be obtained from IPB Desk Officer Carla Levesque, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2740. Comments on these requirements may be submitted to EPA and the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

Date: February 26, 1988.

Lee M. Thomas,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 86, Authority	None.	
2. Add new § 86.090–1:		To implement the following changes for the 1990 model year
(a)	Revise language to specify year of applicability	First year regulations are applicable.
(d)	do	Do.
(e)	Revise language to include heavy-duty vehicles and vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicle or engine categories in manufacturer's combined total sales.
3. Add new § 86.090–2	Revise to include new definitions	To include definitions of proven and unproven emission control systems.
4. Amend § 86.091–2	Incorporated definitions contained in § 86.090–2	To continue definitions.
5. Add new § 86.090–14:		
(b)(1)	Revise language to include heavy-duty vehicles and all vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicles or engines in manufacturer's combined total sales.
(b)(2)	Revise language to specify aggregated relationships	To define all relationships which cause manufacturer's sales to be combined with another manufacturers.
(b)(2)(i)	Added language specifying relationships which will result in aggregation.	Do.
(b)(2)(ii)	do	Do.
(b)(2)(iii)	do	Do.
(b)(2)(iv)	do	Do.
(c)(7)(i)(A)	Revised language to specify one emission-data test vehicle (engine) per engine family.	Clarification.
(c)(7)(i)(A)(*1*)	Revised language defining worst-case vehicle selection criteria	To be consistent with criteria contained in § 86.090–24(b).
(c)(7)(i)(A)(*2*)	Revised language defining worst-case engine selection criteria	Do.
(c)(7)(i)(B)	Revised language to include minimum service accumulation distance or time.	To include new requirement of minimum service accumulation.
(c)(7)(i)(C)	Revised language to identify new requirements	To include new durability requirements.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES—Continued

Section	Change	Reason
(c)(7)(i)(C)(*1*)	Add language to define durability requirements for manufacturers with aggregated total sales less than 300 units per year and to define assigned deterioration factors provided by the Administrator.	To include new durability requirements and define assigned deterioration factors.
(c)(7)(i)(C)(*2*)	Add language to define durability requirements for manufacturers with aggregated total sales of 300 through 9,999 units per year.	To include new durability requirements.
(c)(7)(i)(C)(*2*)(*i*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with proven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*ii*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with unproven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*iii*)	Add language to define durability requirements for light-duty vehicles, light-duty trucks, and heavy-duty vehicle evaporative emission and light-duty truck and heavy-duty engine exhaust emissions.	Do.
(c)(8)	Revise language to clarify maintenance requirements for durability-data vehicles or engines and maintenance instructions provided to vehicle or engine purchaser.	Clarification to make consistent § 86.088–25.
(c)(9)(i)	Redesignation of (c)(9) and added language to make section 26 of this subpart applicable.	To incorporate mileage and service accumulation requirements.
(c)(9)(ii)	Added to continue nonapplicability of section 27 of this subpart.	Added due to redesignation of (c)(9).
(c)(11)(ii)(B)(*1*)	Added evaporative emission family name	Clarification.
(c)(11)(ii)(B)(*2*)	Added the word "carline"	Clarification.
(c)(11)(ii)(B)(*10*)	Added the words "surface area" and "total precious metal loading".	Clarification.
(c)(11)(ii)(B)(*18*)	Added language requiring submission of proof of insurance coverage required by 40 CFR 85.1510(b), if applicable.	New Requirement.
(c)(11)(iii)(D)(*7*)	Added language requiring statement concerning maintenance facilities and emission and emission-related service parts.	To include new requirement.
(c)(11)(iii)(E)	Added language requiring submission of information on manufacturer-determined deterioration factors.	To include new requirement.
6. Add New § 86.090–24:		To implement the following changes for 1990 model year.
(e)(1)	Deleted contents and reserve subparagraph	No longer required, requirements included in subparagraph (e)(2).
(e)(2)	Revised language to reference § 86.090–14	To include new durability and emission-data test vehicle requirements consistent with § 86.090–14.
7. Add New § 86.090–26:		To implement the following changes for the 1990 model year.
(a)(3)(i)(A)	Added language to include minimum mileage requirements, and recording and reporting of vehicle mileage.	New requirement.
(a)(3)(ii)(A)	do	Do.
(b)(4)(i)(A)	do	Do.
(b)(4)(ii)(A)	do	Do.
(c)(4)	Added language specifying minimum service accumulation time for engines equipped with catalyst.	Do.
8. Add New § 86.090–35:		To implement the following changes in the 1990 model year.
(a)(1)(iii)(C)	Added language to identify new requirement	To include requirement for vacuum hose routing diagram.
(a)(1)(iii)(J)		To include labeling requirement specified in 40 CFR 85.1510.
(a)(2)(iii)(L)	do	To include requirement for vacuum hose routing diagram.
(a)(2)(iii)(M)	do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(3)(iii)(L)	do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(4)(iii)(F)	do	Do.
9. Amended § 86.091–35	Added language to incorporate labeling requirement implemented in the 1990 model year as defined in No. 8 above.	To implement labeling requirements as specified in No. 8 above for the 1991 model year.

For reasons set forth in the preamble, 40 CFR Part 86 is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a)(1) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)(1).

2. A new § 86.090–1, which is identical to § 86.085–1, except for revisions to paragraphs (a), (d), and (e), is added to read as follows:

§ 86.090–1 General applicability.

(a) The provisions of this subpart apply to 1990 and later model year new gasoline-fueled and diesel light-duty vehicles, 1990 and later model year new gasoline-fueled and diesel light-duty trucks, and 1990 and later model year new gasoline-fueled and diesel heavy-duty engines.

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less in accordance with the light-duty truck provisions. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

(c) [Reserved]

(d) *Alternative Durability Program.* For 1990 and later model year light-duty vehicles and light-duty trucks, a manufacturer may elect to participate in the Alternative Durability Program. This optional program provides an alternative method of determining exhaust emission control system durability. The general procedures and a description of the programs are contained in § 86.085–13 and specific provisions on test vehicles and compliance procedures are contained in § 86.090–24 and § 86.088 28 respectively.

(e) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509) are fewer than 10,000 units for the model year in which the manufacturer seeks certification. In order to certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. The manufacturer must meet the eligibility criteria specified in § 86.090–14(b) before the Administrator's approval will be granted. The small-volume manufacturer's certification procedures are described in § 86.090–14.

(f) *Optional Procedures for Determining Exhaust Opacity.* (1) The provisions of Subpart I apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than that described in Subpart I, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.088–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in Subpart I. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements for Subpart I.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with Subpart I data, EPA may require that all certificates of conformity not already issued be based on data from Subpart I procedures.

3. A new § 86.090–2 is added, to read as follows:

§ 86.090–2 Definitions.

The definitions of § 86.088–2 remain effective. The definitions listed in this section apply beginning with the 1990 model year.

Proven emission control systems are emission control systems (and fuel metering systems) that have completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are, as determined by the Administrator, of comparable functional quality and manufactured using comparable material and production techniques as systems which have been durability demonstrated in some other certified engine family.

Unproven emission control systems are emission control systems (and fuel metering systems) that have not completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are not of comparable functional quality and manufactured using comparable materials and production techniques as systems which have been durability demonstrated in some other certified engine family.

4. The introductory text in § 86.091–2 is revised to read as follow:

§ 86.091–2 Definitions.

The definitions of § 86.090–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

* * * * *

5. A new § 86.090–14 is added to read as follows:

§ 86.090–14 Small-volume manufacturers certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b)(1) The optional small-volume manufacturers certification procedures apply to light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines produced by manufacturers with U.S. sales including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509 (for the model year in which certification is sought) of fewer than 10,000 units (LDV, LDT, HDV and HDE combined).

(2) For the purpose of determining the applicability of paragraph (b)(1) of this section, the sales the Administrator shall use shall be the aggregate of the projected or actual sales of those vehicles and/or engines in any of the groupings identified below in this subparagraph. If the aggregate sales is equal to or greater than 10,000 units, then each firm involved will be denied use of the small-volume manufacturers certification procedures, even if they operate as independent firms.

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part-owned by another.

(ii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines were manufactured by the same person and the importer or distributer is an authorized agent of the person.

(c) Small-volume manufacturers shall demonstrate compliance with the applicable sections of this subpart as follows:

(1) Sections 1 through 11 of this subpart are applicable.

(2) Section 12 of this subpart is not applicable.

(3) Sections 13 through 20 of this subpart are applicable.

(4) Small-volume manufacturers shall include in their records all of the information that EPA requires in section 21 of this subpart. This information will be considered part of the manufacturer's application for certification. However, the manufacturer is not required to submit the information to the Administrator unless the Administrator requests it.

(5) Section 22 of this subpart is applicable except as noted below.

(i) Small-volume light-duty vehicle and light-duty truck manufacturers may satisfy the requirements of paragraph (e) of section 22 by including a statement of compliance on adjustable parameters in the application for certification. In the statement of compliance the manufacturer shall state that the limits, stops, seals, or other means used to inhibit adjustment have been designed to accomplish their intended purpose based on good engineering practice and past experience. If the vehicle parameter is adjustable the vehicle must meet emission standards with the parameter set any place within the adjustable range (Reference section 21 of this subpart).

(ii) Paragraphs (a), (b), (c), and (d) of section 22 of this subpart are not applicable.

(6) Section 23 of this subpart is applicable.

(7) Section 24 of this subpart is applicable except as noted below.

(i) Small-volume manufacturers may satisfy the requirements of paragraphs

(b) and (c) of section 24 of this subpart by:

(A) *Emission-data*—Selecting one emission-data test vehicle (engine) per engine family by the worst-case emissions criteria as follows:

(*1*) *Light-duty vehicles and light-duty trucks.* The manufacturer shall select the vehicle with the heaviest equivalent test weight (including options) within the engine family. Then within that vehicle the manufacturer shall select, in the order listed, the highest road load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in the engine family, and the maximum fuel flow calibration.

(*2*) *Heavy-duty gasoline-fueled engines.* The manufacturer shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the manufacturer shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advance spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(*3*) *Heavy-duty diesel engines.* The manufacturer shall select one emission data engine based on the highest fuel feed per stroke, primarily at the speed of maximum-rated torque and secondarily at rated speed.

(B) Testing light-duty vehicles or light-duty truck emission-data vehicles at any service accumulation distance of at least 2,000 miles (3,219 kilometers) or, catalyst—equipped heavy-duty emission-data engines at any service accumulation time of at least 62 hours, or non-catalyst-equipped heavy-duty engine emission-data engines at any service accumulation time determined by the manufacturer to result in stabilized emissions. The emission performance of the emission-data vehicle or engine must be stabilized prior to emission testing.

(C) *Durability data*—Satisfying the durability-data requirements by complying with the applicable procedures below:

(*1*) Manufacturers with aggregated sales which would not exceed 300 motor vehicles and motor vehicle engines per year may use assigned deterioration factors that the Administrator determines and prescribes. The factors will be the Administrator's estimate, periodically updated and published in an advisory letter or advisory circular, of the 70th percentile deterioration factors calculated using the industrywide data base of previously completed durability-data vehicles or engines used for certification. However, the manufacturer may, at its option, accumulate miles (hours) on a durability-data vehicle (engine) and complete emission tests for the purpose of establishing its own deterioration factor(s).

(*2*) Manufacturers with aggregated sales from and including 301 through 9,999 motor vehicles and motor vehicle engines per year shall use:

(*i*) For light-duty vehicle exhaust emissions from vehicles equipped with proven emission control systems, assigned deterioration factors that the manufacturer determines based on its good engineering judgment. However, the manufacturer may not determine deterioration factors less than either the manufacturer's specific average or 70th percentile deterioration factors, whichever is less (or the EPA supplied industrywide deterioration factors if the manufacturer does not have at least two data points to calculate manufacturer specific average deterioration factors.) The manufacturer specific average deterioration factors are the average of the deterioration factors from all engine families, within the same vehicle/engine-fuel usage category (e.g., gasoline-fueled light-duty vehicle, etc.), previously certified to the same emission standards by the manufacturer. The manufacturer's specific 70th percentile deterioration factors are calculated using the same data base. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors.

(*ii*) For light-duty vehicle exhaust emissions from vehicles equipped with unproven emission control systems, deterioration factors that the manufacturer determines from official certification durability data generated on vehicles run on engine families representing a minimum of 25 percent of the manufacturer's sales equipped with unproven emission control systems. The sales projections are to be based on total sales projected for each engine/system combination. The durability-data vehicle (engine) mileage accumulation and emission tests are to be conducted according to section 26. The manufacturer must develop deterioration factors by generating durability data in accordance with section 26 of this subpart on a minimum of 25 percent of the manufacturer's projected sales (by engine/system combination) that is equipped with unproven emission control systems. The manufacturer must complete the 25 percent durability requirement before the remainder of the manufacturer's sales equipped with unproven emission control systems is certified using manufacturer-determined deterioration factors. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors on the remaining sales.

(*iii*) For light-duty vehicle, light-duty truck, and heavy-duty vehicle evaporative emissions and light-duty truck, and heavy-duty engine exhaust emissions, deterioration factors determined in accordance with section 24 of this subpart.

(ii) Paragraphs (d) and (e) of section 24 of this subpart are not applicable.

(8) Section 25 of this subpart is applicable to maintenance performed on durability-data light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines when the manufacturer completes durability-data vehicles or engines; section 38 of this subpart is applicable to the recommended maintenance the manufacturer includes in the maintenance instructions furnished the purchasers of new motor vehicles and new motor vehicle engines under section 38 of this subpart.

(9)(i) Section 26 of this subpart is applicable if the manufacturer completes durability-data vehicles or engines.

(ii) Section 27 of this subpart is not applicable.

(10) Sections 28 and 29 of this subpart are applicable.

(11)(i) Section 30 of this subpart is applicable, except for paragraph (a) (2) and (b) of that section. In the place of these paragraphs, small-volume manufacturers shall comply with paragraphs (c)(11) (ii) through (11)(v) of this section, as shown below.

(ii) Small-volume manufacturers shall submit an application for certification containing the following:

(A) The names, addresses, and telephone numbers of the persons the manufacturer authorizes to communicate with us.

(B) A brief description of the vehicles (or engines) covered by the certificate (the manufacturers' sales data book or advertising, including specifications, may satisfy this requirement for most manufacturers). The description shall include, as a minimum, the following items as applicable:

(*1*) Engine evaporative family names and vehicle (or engine) configurations.

(*2*) Vehicle carlines or engine models to be listed on the certificate of conformity.

(*3*) The test weight and horsepower setting for each vehicle or engine configuration.

(*4*) Projected sales.

(*5*) Combustion cycle.

(*6*) Cooling mechanism.

(*7*) Number of cylinders.

(*8*) Displacement.

(*9*) Fuel system type.

(*10*) Number of catalytic converters, volume, composition, surface area, and total precious metal loading.

(*11*) Method of air aspiration.

(*12*) Thermal reactor characteristics.

(*13*) Suppliers' and/or manufacturer's name and model number of any emission-related items of the above, if purchased from a supplier who uses the items in its own certified vehicles(s) or engine(s).

(*14*) A list of emission component part numbers.

(*15*) Drawings, calibration curves, and descriptions of emission-related components, including those components regulated under paragraph (e) of section 22 of this subpart, and schematics of hoses and other devices connecting these components.

(*16*) Vehicle adjustments or modifications necessary for light-duty trucks, to assure that they conform to high-altitude standards.

(*17*) A description of the light-duty vehicles and light-duty trucks which are exempted from the high-altitude emission standards.

(*18*) Proof that the manufacturer has obtained or entered an agreement to purchase, when applicable, the insurance policy, required by § 85.1510(b). The manufacturer may submit a copy of the insurance policy or purchase agreement as proof that the manufacturer has obtained or entered an agreement to purchase the insurance policy.

(C) The results of all emission tests the manufacturer performs to demonstrate compliance with the applicable standards.

(D)(*1*) The following statement signed by the authorized representative of the manufacturer: "The vehicles (or engines) described herein have been tested in accordance with [list the applicable Subparts A, B, D, I, N, or P] of Part 86, Title 40, United States Code of Federal Regulations, and on the basis of those tests are in conformance with that subpart. All of the data and records required by that subpart are on file and are available for inspection by the EPA Administrator. We project the total U.S. sales of vehicles (engines) subject to this subpart to be fewer than 10,000 units."

(*2*) A statement as required by and contained in paragraph (c)(5) of this section signed by the authorized representative of the manufacturer.

(*3*) A statement that the vehicles or engines described in the manufacturer's application for certification are not equipped with auxiliary emission control devices which can be classified as a defeat device as defined in section 2 of this subpart.

(*4*) A statement of compliance with section 206(a)(3) of the Clean Air Act.

(*5*) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty vehicles comply with emission standards at high altitude unless exempt under paragraph (h) of section 8 of this subpart.

(*6*) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all other light-duty trucks are at least capable of being modified to meet high-altitude standards unless exempt under paragraph (g)(2) of section 9 of this subpart.

(*7*) A statement affirming that the manufacturer will provide a list of emission and emission-related service parts, including part number designations and sources of parts, to the vehicle purchaser for all emission and emission-related parts which might affect vehicle emission performance throughout the useful life of the vehicle. Secondly, it must state that qualified service facilities will be available to service its vehicles. In addition, the manufacturer must indicate that the vehicle purchaser will be provided information identifying the closest authorized service facility to the point of sale if service facilities are not available at the point of sale. Such information should also be made available to the Administrator upon request.

(E) Manufacturers utilizing deterioration factors determined by the manufacturer based on its good engineering judgment (regarding paragraph (e)(7)(i)(C) of this section) shall provide a description of the method(s) used by the manufacturer to determine the deterioration factors.

(iii) If the manufacturer meets requirements of this subpart, the Administrator will issue a certificate of conformity for the vehicles or engines described in the application for certification.

(iv) The certificate will be issued for such a period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any vehicle or engine covered by the certificate will meet the requirements of the Act and of this subpart.

(v)(A) If, after a review of the statements and descriptions submitted by the manufacturer, the Administrator determines that the manufacturer has not met the applicable requirements, the Administrator shall notify the manufacturer in writing of his intention to deny certification, setting forth the basis for his determination. The manufacturer may request a hearing on the Administrator's determination.

(B) If the manufacturer does not request a hearing or present the required information the Administrator will deny certification.

(12) Sections 31 and 32 of this subpart are not applicable.

(13) Under section 33 of this subpart, small-volume manufacturers are covered by the following.

(i) Small-volume manufacturers may make production changes (running changes) without receiving the Administrator's prior approval. The manufacturer shall assure (by conducting emission tests as it deems necessary) that the affected vehicles (engines) remain in compliance with the requirements of this part.

(ii) The manufacturer shall notify the Administrator within seven days after implementing any production-related change (running change) that would affect vehicle emissions. This notification shall include any changes to the information required under paragraph (c)(11)(ii) of this section. The manufacturer shall also amend as necessary its records required under paragraph (c)(4) of this section to conform with the production design change.

(14) Section 34 of this subpart is not applicable.

(15) Sections 35 through 39 of this subpart are applicable.

6. A new § 86.090–24, which is identical to § 86.085–24, except for revisions to paragraphs (e)(1) and (e)(2), is added as follows.

§ 86.090–24 Test vehicles and engines.

(a) (1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)—(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraphs (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1) (ii), (iii), and (iv) of this section or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude; and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section.

(vii) (A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system, then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii) (B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude or

(B) In lieu of testing vehicles according to paragraph (b)(1)(viii)(A) of this section, a manufacturer may provide a statement in its application of certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude, and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low-altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of paragraph (b)(1)(viii)(A) of this section.

(x) (Light-Duty Trucks Only) (A) The manufacturer may reconfigure any of the low-altitude emission-data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i)—(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar, the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family,

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the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(d) For purposes of testing under § 86.090–26 (a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.090–14 of this subpart for emission-data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.088–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2) (i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment of an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional

equipment required by paragraph (g)(3)(i) of this section does not effect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) Alternative Durability Program durability-data vehicles. This section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

7. A new § 86.090–26, which is identical to § 86.084–26, except for revisions to paragraphs (a)(3)(i)(A), (a)(3)(ii)(A), (b)(4)(i)(A), and (b)(4)(ii)(A), is added as follows:

§ 86.090–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.080–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust and evaporative (if required) emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (v) or (viii) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i), (ii), (iii), (iv), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i) through (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.088–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.090–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.090–24(c) at test point mileage intervals that the manufacturer determines. At a minimum, complete exhaust emission tests shall be made at 5,000 miles, and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10). The Administrator may determine under § 86.090–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at test point mileage intervals that the manufacturer determines. At a mininum complete exhaust emission tests shall be made at 5,000 miles and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10).

(iii) The manufacturer may, at its option, alter the durability-data vehicle at the selected test point to represent emission-data vehicle(s) within the same engine/system combination and perform emission tests on the altered vehicle. Upon completion of emission testing, the manufacturer may return the test vehicle to the durability-data vehicle configuration and continue mileage accumulation.

(5) (i) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (a)(3) of this section.

(ii) All tests required by this subpart on durability-data vehicles shall be conducted within 250 miles of each of the test points.

(6)(i) (A) The manufacturer may conduct multiple tests at any test point at which the data are intended to be used in the deterioration factor. At each test point where multiple tests are conducted, the test results from all valid tests shall be averaged to determine the data point to be used in the deterioration factor calculation, except under paragraph (a)(6)(i)(B) of this section. The test results from emission tests performed before maintenance affecting emissions shall not be averaged with test results after the maintenance.

(B) The manufacturer is not required to average multiple tests if the manufacturer conducts no more than three tests at each test point and if the number of tests at each test point is equal. All test points must be treated the same for all exhaust pollutants.

(ii) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator, but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(iii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(7) Whenever a manufacturer intends to operate and test a vehicle which may be used for emission or durability data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle alterations to represent other vehicle selections. For emission-data vehicles, this information shall be submitted, including the vehicle description and specification information required by the Administrator, to the Administrator following the emission-data test. For durability-data vehicles, this information shall be submitted following the 50,000-mile test.

(8) Once a manufacturer submits the information required in paragraph (a)(7) of this section for a durability-data vehicle, the manufacturer shall continue to run the vehicle to 50,000 miles, and the data from the vehicle will be used in the calculations under § 86.088–28. Discontinuation of a durability-data vehicle shall be allowed only with the consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.088–23(b)(2).

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) There are three types of mileage or service accumulation applicable to light-duty trucks:

(i) Mileage or service accumulation on vehicles, engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(2)(i). The manufacturer determines the form and extent of this mileage or service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Mileage accumulation of the duration selected by the manufacturer on emission-data vehicles selected under § 86.090–24(b)(1). The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(iii) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative emission deterioration factors.

(3) Exhaust emission deterioration factors will be determined on the basis of the mileage or service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data vehicle shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24 (b)(1)(v) or (b)(1)(viii) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), (iv)(A), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine system combination is stabilized for emission testing or at 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each new engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), and (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high-altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(iii) [Reserved]

(iv) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (b)(4) of this section.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) There are two types of service accumulation applicable to heavy-duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.090–24(b)(2) or § 86.090–24(b)(3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) The manufacturer shall determine, for each engine family, the number of hours at which the engine system combination is stabilized (no less than 62 hours for catalyst equipped) for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested a record of the rationale used in making this determination. The manufacturer may elect to accumulate 125 hours on each test engine within an engine family without making a determination. Any engine used to represent emission-data engine under selections § 86.090–24(b)(2) shall be equipped with an engine system combination that has accumulated at least the number of hours determined under this paragraph. Complete exhaust emission tests shall be conducted for each emission-data engine selection under § 86.090–24(b)(2). Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system. The Administrator may determine under § 86.090–24(f) that no testing is required.

(d)(1) Paragraph (d) of this section applies to both light-duty trucks and heavy-duty engines.

(2)(i) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator. These test results shall be rounded, in accordance with ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(3) Whenever a manufacturer intends to operate and test a vehicle (or engine) which may be used for emission data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle (or engine) alterations to represent other vehicle (or engine) selections. This information shall be submitted, including the vehicle (or engine) description and specification information required by the Administrator, to the Administrator following the emission-data test.

(4)—(5) [Reserved]

(6) Emission testing of any type with respect to any certification vehicle or engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

8. A new § 86.090–35, which is identical to § 86.088–35, except for the addition of paragraphs (a)(1)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(L), and (a)(4)(iii)(F) to read as follows:

§ 86.090–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards and family particulate emission limits and family NO_x emission limits, as appropriate of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.088–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.087–8(h):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.087–8(i):

(*1*) A highlighted statement (e.g., underscore or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate limit, as appropriate, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, or family NO_x emission limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude, or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of ______ years or ____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified.

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser.

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.089–9(g)(2).

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only.

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude:

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x— emission limit to which the vehicle is certified.

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information.

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request.

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm3/stroke, valve lash, initial injection timing, and idle speed.

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19 __ Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period _____ of miles or _____ hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only).

(J) *For diesel* engines. The prominent statement: "This engine has a primary intended service application as a _____ heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2.)

(K) For gasoline-fueled engines one of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.088–10 (a)(1)(i), the statement: "This engine is certified for use in all heavyduty vehicles."

(*2*) For engines certified under the provisions of § 86.088–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.088–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.088–10 (a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) Engines granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(iv) The label may be made up of one or more pieces; *Provided*, that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) (i) *Gasoline-fueled heavy-duty vehicles.* A permanent legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer ohas been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and,

(E) An unconditioned statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline/fueled heavy-duty vehicles.

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrast with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii) (A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19__ Model Year New Motor Vehicles."

(B) *For light-duty trucks: (1)* The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19 __ Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate-useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of _____ years or _____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks when completed at a maximum curb weight of _____ pounds or at a maximum gross vehicle weight rating of _____ pounds or with a maximum frontal area of _____ square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19 __ Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck sha11 notify the purchaser of suclr vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19 __ Model Year New Gasoline-Fueled Heevy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed _____ gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.090–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$\text{Cap}_f=\text{Cap}_i\left(\frac{\text{T. Vol.}}{\text{Max. Vol.}}\right)$$

Where:
Cap_f = final amount of fuel tank vapor storage material, grams.
Cap_i = initial amount of fuel tank vapor storage material, grams.
T. Vol. = total fuel tank volume of completed vehicle, gallons.
Max. Vol. = maximums fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

9. Section 86.091–35 is amended by adding paragraph (a)(l)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(N), and (a)(4)(iii)(F) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(1) * * *

(iii) * * *

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(2) * * *

(iii) * * *

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(3) * * *

(iii) * * *

(N) Engines granted final admission under § 85.1509 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(4) * * *

(iii) * * *

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

[FR Doc. 88–4734 Filed 3–8–88; 8:45 am]

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Wednesday
March 9, 1988

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary); Proposed Rulemaking

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1988–89. The Service annually prescribes migratory game bird hunting regulations. These regulations provide hunting opportunities, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulations frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 22, 1988; for other early-season proposals (seasons opening before October 1) on July 18, 1988; and for late-season proposals (seasons opening on or about October 1 or later) on August 29, 1988. Public Hearings: Early-Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 22, 1988, at 9 a.m.; Late-Season Regulations—August 3, 1988, at 9 a.m.

ADDRESS: Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1988–89 under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1988–89 hunting season, regulations will be proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and moorhens and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under *Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)* in this document.

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1988–89 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed shooting hours and season frameworks, including daily bag and possession limits, are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United States opening prior to October 1 (early seasons); (3) seasons opening in the remainder of the United States about October 1 and later (late seasons) and (4) regulations for migratory game birds on certain Indian reservations and ceded lands. Regulations development for each of the four categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register.** Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late-July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory game bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemaking—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

2. Final rulemakings—frameworks. Final regulatory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

Final rulemakings—season selections. Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1988–89 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

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1988 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*

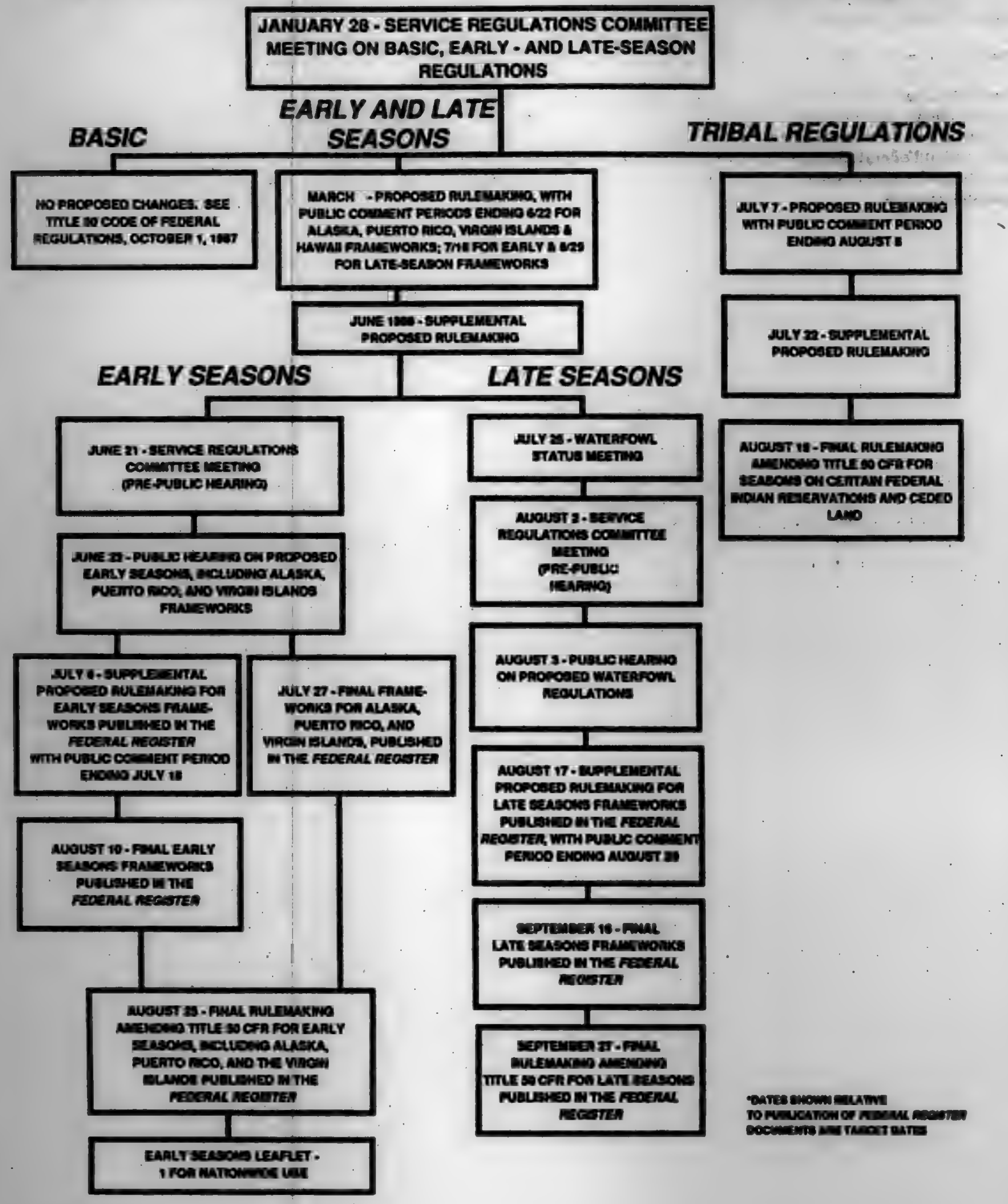
JANUARY 28 - SERVICE REGULATIONS COMMITTEE MEETING ON BASIC, EARLY - AND LATE-SEASON REGULATIONS
BASIC
EARLY AND LATE SEASONS
TRIBAL REGULATIONS
NO PROPOSED CHANGES. SEE TITLE 50 CODE OF FEDERAL REGULATIONS, OCTOBER 1, 1987
MARCH - PROPOSED RULEMAKING, WITH PUBLIC COMMENT PERIODS ENDING 6/22 FOR ALASKA, PUERTO RICO, VIRGIN ISLANDS & HAWAII FRAMEWORKS; 7/18 FOR EARLY & 8/29 FOR LATE-SEASON FRAMEWORKS
JULY 7 - PROPOSED RULEMAKING WITH PUBLIC COMMENT PERIOD ENDING AUGUST 8
JUNE 1988 - SUPPLEMENTAL PROPOSED RULEMAKING
JULY 22 - SUPPLEMENTAL PROPOSED RULEMAKING
EARLY SEASONS
LATE SEASONS
JUNE 21 - SERVICE REGULATIONS COMMITTEE MEETING (PRE-PUBLIC HEARING)
JULY 25 - WATERFOWL STATUS MEETING
AUGUST 19 - FINAL RULEMAKING AMENDING TITLE 50 CFR FOR SEASONS ON CERTAIN FEDERAL INDIAN RESERVATIONS AND CEDED LAND
AUGUST 2 - SERVICE REGULATIONS COMMITTEE MEETING (PRE-PUBLIC HEARING)
JUNE 22 - PUBLIC HEARING ON PROPOSED EARLY SEASONS, INCLUDING ALASKA, PUERTO RICO, AND VIRGIN ISLANDS FRAMEWORKS
AUGUST 3 - PUBLIC HEARING ON PROPOSED WATERFOWL REGULATIONS
JULY 6 - SUPPLEMENTAL PROPOSED RULEMAKING FOR EARLY SEASONS FRAMEWORKS PUBLISHED IN THE *FEDERAL REGISTER* WITH PUBLIC COMMENT PERIOD ENDING JULY 18
JULY 27 - FINAL FRAMEWORKS FOR ALASKA, PUERTO RICO, AND VIRGIN ISLANDS, PUBLISHED IN THE *FEDERAL REGISTER*
AUGUST 17 - SUPPLEMENTAL PROPOSED RULEMAKING FOR LATE SEASONS FRAMEWORKS PUBLISHED IN THE *FEDERAL REGISTER*, WITH PUBLIC COMMENT PERIOD ENDING AUGUST 29
AUGUST 10 - FINAL EARLY SEASONS FRAMEWORKS PUBLISHED IN THE *FEDERAL REGISTER*
SEPTEMBER 16 - FINAL LATE SEASONS FRAMEWORKS PUBLISHED IN THE *FEDERAL REGISTER*
AUGUST 25 - FINAL RULEMAKING AMENDING TITLE 50 CFR FOR EARLY SEASONS, INCLUDING ALASKA, PUERTO RICO, AND THE VIRGIN ISLANDS PUBLISHED IN THE *FEDERAL REGISTER*
SEPTEMBER 27 - FINAL RULEMAKING AMENDING TITLE 50 CFR FOR LATE SEASONS PUBLISHED IN THE *FEDERAL REGISTER*
EARLY SEASONS LEAFLET - 1 FOR NATIONWIDE USE

*DATES SHOWN RELATIVE TO PUBLICATION OF *FEDERAL REGISTER* DOCUMENTS ARE TARGET DATES

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All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of Subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.
2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.
3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.
4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.
5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.
6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1988–89 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data are operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General Conservation Ecologica de los Recursos Naturales of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provided information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska. The Service also solicits information on these and other species from knowledgeable individuals.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. They are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascase, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding. migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented interim guidelines for establishing special migratory bird hunting regulations on Federal Indian reservations and ceded lands, and amended § 20.110 of 50 CFR Part 20 by prescribing final hunting regulations for certain tribes in the 1985–86 and 1986–87 hunting seasons. The guidelines provide appropriate flexibility for tribal members to exercise their reserved hunting rights while ensuring that the migratory bird resource receives necessary protection. On January 21, 1988 (at 53 FR 1645), the Service gave notice of its intent to continue to employ the interim guidelines and establish special migratory bird hunting regulations for interested Indian tribes in the 1988–89 hunting season. The Service recognizes that some changes in the guidelines may be necessary and has kept the comment period on them open indefinitely. Use of the guidelines is not necessary of a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located.

Hearings

Two public hearings pertaining to 1988–89 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 22 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules and moorhens, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 3 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules and moorhens, woodcock, common snipe, coots, cranes, and waterfowl in the contiguous United States; coots, cranes, common snipe and watefowl in Alaska; certain migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption ADDRESS.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service will consider but may not respond in detail to each comment. Specific comment periods will be established for each of the four series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory game bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department of Interior officials will be in attendance. In this regard, Departmental representatives will be present at the following winter meetings of the various flyway councils:

Date: March 20, 1988:

—Atlantic Flyway Council, 8:30 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 12:00 noon
—National Waterfowl Council, 3:00 p.m.

The Council meetings will be held at The Galt House, Louisville, Kentucky.

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement (FES). These have addressed regulations for various species of migratory game birds and hunting strategies. In 1986 the Service initiated preparation of a supplemental environmental impact statement (SEIS) on the FES. A draft SEIS was released on September 1, 1987, and public hearings were held in several locations across the country in mid-November. Preparation of the final SEIS in early 1988 is anticipated.

Endangered Species Act Consideration

Prior to issuance of the 1988–89 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**, March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980.

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on January 29, 1988 concluded that the hunting frameworks being proposed for 1988–89 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1988–89 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter and harvest information from the 1986–87 season. The summary of the 1988 update of the 1981 FRIA follows:

> New information which can be compared to that appearing in the 1987 update of the 1981 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1986 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1986–87 hunting season. The data indicate that the total 1986 fall flight of ducks and the fall flights in each flyway were predicted to be more than those of 1985. Because of the continued poor status of ducks, restrictive hunting regulations that were initiated in 1985 were continued in 1986. Hunter numbers decreased slightly from the previous year while hunter days and seasonal trips per hunter both shared modest increases. Continuation of the restrictive regulations that were established in 1985 was no doubt partly responsible for the reduced number of hunters. The fact that hunter days and seasonal trips per hunter increased even though the hunting regulations remained the same in 1986 as in 1985 reinforces conclusions of the 1981 FRIA that many nonregulatory factors also influence hunter participation and effort.

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, 18th and C Streets NW., Washington, DC 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails, coots, common snipe, and woodcock during the 1988–89 season are proposed. Changes or possible changes, when noted, are in relation to 1986–87 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. Where applicable information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. These and the Service's responses or comments follow the frameworks being proposed. Service views on the items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

The proposed frameworks and guidelines, as compared to the 1987–88 final frameworks, are described below:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* In 1987, survey information indicated little change compared to 1986 in duck breeding populations and breeding habitat, although the latter was highly variable in quality and availability. The Service forecasted a 1987 fall flight of ducks similar to that of 1986. As a result, the Service esablished regulatory frameworks that continued the conservative harvest posture of the previous 2 years. Pending the availability of current duck population, habitat an harvest information, and the receipt of recommendations from the four flyway councils, specific duck framework proposals for opening and closing dates, season lengths and bag limits are deferred. Exceptions to the regular duck-season frameworks are

given in various numbered items that follow.

3. *American black ducks.* (Possible change.) Winter survey data indicate that black ducks have declined steadily in abundance since the 1950s. Restrictive regulations have been employed periodically since the 1960s to reduce harvest of black ducks and to determine whether such a reduced harvest would be associated with an increase in black duck numbers. The most recent effort to reduce black duck harvest in the Atlantic and Mississippi Flyways was a 5-year program beginning with the 1983–84 season. Winter population information is now available for each year of the program; however, the harvest information from the 1987–88 season will not be available until July 1988. Therefore, an evaluation of this 5-year harvest reduction effort is not yet available but, will be included in a report to be distributed prior to the 1988 late-season regulations meetings.

There exists the need to consider regulatory alternatives for the 1988–89 season. An Environmental Assessment (EA) on Porposed Hunting Regulations on Black Ducks, 1988, will be distributed prior to the late-season meetings. The EA will consider 4 regulatory options for harvest management of black ducks. These are:

1. *Continue with current regulations.* Bag limits would remain 1 per day with additional State restrictions to achieve a 25 percent reduction from 1977–81 levels. Restrictive regulations during the 1983–84 through 1986–87 seasons reduced black duck harvests in the Atlantic Flyway by 41 percent in the Mississippi Flyway by 35 percent compared to the average harvest during the 1977–81 period.

2. *Further restrict harvest regulations.* Bag limits would be 1 black duck per day (100 points) and the season length for hunting black ducks would be shorter (opening later and closing earlier) then the regular duck season permitted in 1987–88. This alternative would simplify the complex regulations used in recent years.

3. *Closed season on black ducks.* Under this alternative, no hunting season for black ducks would be permitted in the Atlantic or Mississippi Flyways. Although there would be some illegal kill, the harvest of black ducks should be at a minimum under this option.

4. *Experimental harvest program to determine the influence of different rates of harvest on black duck survival.* This alternative is an attempt to resolve questions about the effect of harvest on the black duck. This action would evaluate the effects of hunting on annual survival of black ducks during open and closed seasons. The program would require an 8 to 10 year commitment and include 2 to 3 non-consecutive years of periodic closed seasons.

The Service recognizes that the cooperation of the eastern Provinces of Canada and the Canadian Wildlife Service is desired in any black duck management effort. Their review and consideration of these four harvest options will be solicited.

4. *Wood ducks:* (Possible change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early-October hunting season which no special wood duck bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26969), and are summarized and updated for informational purposes:

The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

A. In 1988 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15.

B. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1988 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.

D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

Additional information. The question of special wood duck seasons and bag limits is currently under review. The Service now assembling available information and will be proposing an overall strategy for wood duck management during the 1988 regulatory cycle.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1988, and January 20, 1989, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season, the States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than August 10, 1988. Those States desiring their sea duck season to open after September may make their selection at the time they select their regular waterfowl seasons.

6. *September teal season.* (Possible change.) An open season on all species of teal may be selected by Alabama,

Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The reason may not exceed 9 consecutive days between September 1 and September 30, 1988, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by August 10, 1988.

Additional information. The Service notes that the breeding population of blue-winged teal has been generally depressed during the 1980s. In light of this, the Service believes liberalizations of the current regulations specific to bluewings are not appropriate and that current harvest management strategies (i.e., September teal seasons and extra teal option) should be examined for blue-winged teal. If populations decline further special seasons such as this may not be advisable.

7. *Extra teal option.* (Possible change.)

A. States in the Atlantic Flyway selecting neither an early duck season in September nor the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consective days designated during the regular duck season.

These extra teal limits are in addition to the regular duck season bag and possession limits.

Additonal information. See the additional information given under item 6.

8. *Experimental September Duck Seasons.* Kentucky, Tennessee and Florida have conducted experimental 5-day September duck hunting seasons since 1981. In 1987 the Mississippi Flyway Council's Lower Region Regulations Committee recommended continuation of the experimental duck hunting seasons in Kentucky and Tennessee, and the Atlantic Flyway Council reiterated its 1986 recommendation that the experimental duck hunting season in Florida be granted operational status. In response to similar recommendations in 1986, the Service noted its concern about the decrease in the survival rate of wood ducks measured by the studies in Kentucky and Tennessee, and the lack of adequate banding information needed to appraise the impacts stemming from the increased harvest of wood ducks measured by Florida's study. Several problems with regard to September duck hunting seasons were identified by the Service in the July 3, 1986, **Federal Register** (51 FR 24420). The Service stated that while September duck hunting seasons are in principle a feasible harvest management strategy, the current situation with regard to their evaluation, including the flyway-wide aspects of the management of target species, and their suitability for widespread application is under review. These concerns were repeated by the Service in 1987 (52 FR 7907, March 13, 1987). In the intervening period the Service continued the experimental seasons in Kentucky, Tennessee and Florida under the same regulatory provisions as provided during the study periods with the exception that in Kentucky and Tennessee the daily bag limit was restricted such that no more than 2 wood ducks could be included in the 4-duck daily bag. In addition, the Service is cooperating with Florida to provide an adquate sample of banded wood ducks

The Service reaffirms the need for cooperative studies that are flyway oriented in scope to better understood and manage wood ducks. The Service will propose a harvest management strategy to the Councils, with guidelines for banding and other data requirements prior to any final decisions on operational status of existing experimental seasons or initiation of new studies.

Iowa has conducted an experimental 5-day September duck hunting season since 1979.

In light of the Service's concerns regarding September duck hunting seasons, as noted above, the Service continued the experimental season in Iowa in 1986–87 and 1987–88 under the same regulatory provisions as provided during the study period.

The Service's review of September duck hunting seasons continues. In the interim, barring further declines in duck populations, the Service proposes to continue the experimental September duck hunting season in Kentucky, Tennessee, Florida and Iowa in 1988 under the regulatory provisions provided each in 1987.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The season must occur between October 1, 1988, and January 31, 1989, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1988, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions C and D listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change) Proposed seasons and bag limits for canvasbacks and redheads are unchanged from those in effect in 1987–88. The 1987–88 hunting season was the second consecutive season that the Atlantic, Mississippi and Central Flyways were closed to canvasback hunting. In both years the Eastern Population of canvasbacks was below the 3-year average breeding population level identified in the environmental assessment *Proposed Hunting Regulations on Canvasback Duck, 1983* at which closure of the hunting season on the population should be considered. The 1988 breeding population survey

data and harvest information from 1987–88 will be available in July. At that time the Service, in coordination with the four flyway councils, will review the data and consider the hunting frameworks for canvasbacks and redheads.

13. *Duck Zones.* In the March 21, 1986, **Federal Register** (51 FR 9862) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made.

States in all Flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing that option for ducks.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* The Canadian Wildlife Service, the four waterfowl flyway councils, State conservation agencies, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1988 will provide additional information.

Atlantic Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Mississippi Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Pacific Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

15. *Tundra Swan.* (No change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, Montana (Central and Pacific Flyways), North Dakota and South Dakota, an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. Except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season.

B. In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan.

C. In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties.

D. In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

E. In Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan.

F. In North Dakota, no more than 1000 permits may be issued authorizing each permittee to take 1 tundra swan.

G. In South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan.

H. In North Carolina an experimental season for taking a limited number of tundra swans may be selected subject to the following conditions:

i. The season may be 90 days and must run concurrently with the snow goose season.

ii. The State must issue permits and obtain harvest and hunter participation data.

iii. No more than 6000 permits may be issued authorizing each permittee to take 1 tundra swan.

Additional information. A tundra swan hunt plan that addresses allowable harvest and allocation of harvest of Eastern Population tundra swans will be available prior to the late-season regulations meetings.

16. *Sandhill cranes.*

Central Flyway—Regular seasons (No change). Pending evaluation of harvest data from the 1987–88 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas with no substantial changes in dates from the 1987–88 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1987–88 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1–November 30, 1988.

B. Season(s) in any State may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

E. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

17. *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

Additional information. In the **Federal Register** dated June 3, 1987 (at 52 FR 20762), the Service noted the Central Flyway Council recommendation that the hunting season for coots coincide with all duck seasons. The Service observed the frameworks for coots were of longstanding but solicited additional comments. Subsequently information was received that none of the other flyway councils were interested in a change in the frameworks to permit the taking of coots in all duck seasons. The Service has limited coot hunting to the regular duck season and has traditionally limited special seasons to selected or similar appearing species. These have been "single species" seasons, e.g., teal or scaup, and other migratory birds have been deliberately excluded. The Service intends to continue to limit the taking of coots to only the regular duck seasons.

18. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1988, and January 20, 1989, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1988, and January 22, 1989, of not more than 70 days. Any state may split its moorhen/gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1988, and January 20, 1989, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails.

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails.

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1988, and February 28, 1989, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1988, and February 28, 1989, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock.*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1988 and February 28, 1989. States may split their woodcock season without penalty.

B. Atlantic Flyway. (No Change.)

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current population status. No changes in seasons and bag limits from those in effect in 1987–88 are anticipated at this time pending an evaluation of the changes implemented. For the 1988–89 hunting season in the Atlantic Flyway the Service proposes the following:

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1988 and January 31, 1989. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States California, Oregon, and Washington and the *Nevada* counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 16 consecutive days between September 7, 1988, and the Sunday closest to January 1, 1989. The daily bag and possession limits may not exceed 4 band-tailed pigeons. These frameworks are to continue through the 1989–90 season (3 years).

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity: and

B. The remainder of the State.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1988. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1988, in the North Zone, and Ocotber 1 and November 30, 1988, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) Outside framework dates—September 1, 1988 and January 15, 1989, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units were offered an option of a season length of 70 half or full days with daily bag and possession limits of 12 and 24, respectively, *or* a season length of 60 half or full days with daily bag and possession limits of 15 and 30, respectively. EMU and CMU States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods. In the Western Management Unit (WMU), States were offered an option of a split season of 45 half or full days, with the first segment between September 1–15 and the remaining days after October 31, *or* a 30-consecutive-day season between September 1 and January 15; bag and possession limits were 10 and 20, respectively, for either option. Frameworks in the WMU are to continue through the 1989–90 season (3 years).

The Service proposes to offer these options again during the 1988–89 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

24. *White-winged and white-tipped doves.* (No change.) Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1988, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with either the first period of a split mourning dove season or the full period of a consecutive-day mourning dove season (see mourning dove frameworks-WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, singly or in the aggregate, and the season length must conform to the mourning dove season (either a 45-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks-WMU above).

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1988 (September 20, 1988, in South Zone), and January 25, 1989, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1988, and January 15, 1989, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

Additional information. In a letter to the Service dated January 22, 1988, Texas Parks and Wildlife Department requested a change in the frameworks that would permit an aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves to include no more than 2 white-tipped doves during the Special 4-day white-winged dove season in Texas. This proposal would liberalize the aggregate bag limit from 10 to 12 and allow up to 12 mourning doves (whereas the current limit restricts the number of mourning doves to 2). The Service will take this request under advisement and make a decision in June after further information is available and the Central Flyway Council has reviewed and considered the proposal through the regulatory process.

25. *Migratory bird hunting seasons in Alaska.* (No change.) The Service proposes to allow Alaska to continue their stabilized duck hunting frameworks during the 1987–88 season.

Proposed Frameworks for Selecting Open Season Dates

Outside Dates: Between September 1, 1988, and January 26, 1989, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days for ducks and geese but only 50 consecutive days for brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. Throughout the State there is no open hunting season for Aleutian and Cackling Canada geese and emperor geese.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1988–89.

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1988, and February 28, 1989, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica carabaea*).

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1988–89

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1988, and January 31, 1989, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary, dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: Total season length for all hunting methods combined may not exceed 107 days for any species (or group of species) in a geographical area.

Additional information. As indicated above, current frameworks for special falconry seasons provide for seasons that must fall within the outside dates of regular season frameworks and, if offered and accepted, special season outside-dates frameworks. The North American Falconers Association has requested that the special falcontry frameworks be expanded such that States could select special falconry seasons within the outside dates of September 1 and March 10 (between August 15 and February 1 for woodcock and snipe in Atlantic Coast States wholly or in part north of Chesapeake Bay). Seven States have expressed support or no objection to the Association's request.

Response. The Service defers action pending receipt of additional information or comments on this request.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be

taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1988, and January 15, 1989, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

28. *Migratory Bird Hunting on Indian Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations and ceded lands, and has annually established special hunting regulations for certain tribes since the 1985–86 hunting seasons. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1988–89; however, the comment period on the guidelines remains open. In the January 21, 1988, **Federal Register** (53 FR 1645), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1988–89 migratory game bird hunting regulations be submitted no later than June 10, 1988. In a later **Federal Register** document for the Service will publish for public review the pertinent details of proposals received from tribes.

Dated: February 23, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

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March 9, 1988

Part V

Environmental Protection Agency

Endangered Species Protection; Notice of Proposed Program

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36154; FRL-3338-8]

Endangered Species Protection Program

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Notice of proposed program.

SUMMARY: This notice invites public comment on an Endangered Species Protection Program which is intended to ensure that pesticide use is not likely to jeopardize endangered species. EPA had envisioned a program which depended upon pesticide product labeling and endangered species habitat maps to achieve the goal of protecting jeopardized endangered species. That concept is described in this notice. However, EPA is willing to entertain comments on other approaches which could achieve the goal, as well as comments on the original conceptual design. Initially, EPA proposed that the program would apply to certain pesticide products registered for use on rangeland and/or pastureland; on crops of corn, cotton, soybeans, sorghum, wheat, oats, barley, or rye; in forests; or as mosquito larvicides. However, enforceable labeling to protect endangered species will not be in effect for the 1988 growing season. Until the program takes effect, the Agency encourages voluntary actions by pesticide users and the states to protect endangered species.

The Agency is requesting public comment on the program described in this notice, and on alternative approaches to protecting endangered species from jeopardy that may be presented by the use of pesticides. Comments will be used in revising the program.

DATES: Written comments in response to this notice should be submitted by June 7, 1988.

ADDRESS: Written comments identified with the document control number "OPP-36154", should be submitted in triplicate, by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to:

Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Requests for lists of the counties, products and pesticide active ingredients potentially affected by the Endangered Species Protection Program, should be addressed to the Information Services Section at the address above.

FOR FURTHER INFORMATION CONTACT:

By mail: Larry Turner, Ecological Effects Branch, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 815, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–1007).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Need to Preserve Endangered Species

An endangered species is a plant or animal which is in danger of extinction throughout all or a significant portion of its range. In addition to their value as unique forms of life, endangered species can provide esthetic, ecological, educational, historical, recreational and scientific benefits to society. Preserving biological diversity by protecting endangered species also may contribute to preserving the overall quality of life.

Certain pesticides may pose a threat to the survival of America's endangered species if used in their remaining habitat. For example, pesticides may directly kill endangered plants or animals, or harm their habitat. It also is possible that pesticide drift, runoff, or leachate may contaminate water, soil or vegetation use by endangered species.

EPA's responsibility is to preclude the potential jeopardy to endangered species from pesticide use. At the same time, EPA wants to avoid placing any unnecessary limitations on the use of many important pesticides. Balancing these responsibilities has led to the development of the Endangered Species Protection Program.

B. The Role of the U.S. Fish and Wildlife Service (FWS)

The purpose of the Endangered Species Act (ESA) is to conserve endangered species. The ESA is administered by the FWS, of the Department of the Interior, which determines whether any species is endangered after reviewing the following factors:

(a) The present or potential harm to its habitat.

(b) Overutilization for commercial, recreational, scientific, or educational purposes.

(c) Disease or predation.

(d) The inadequacy of existing regulatory mechanisms.

(e) Other natural or manmade factors affecting its continued existence.

Within the United States, about 300 animals and 160 plants have been listed as endangered or threatened. Once a species is listed as endangered, the FWS also may designate its critical habitat to be protected from destruction or adverse modification. Petitions to add or to remove a species from the list are reviewed and decided upon by the FWS. The ESA makes it unlawful to kill, harm or collect endangered fish or wildlife, or to remove endangered plants from areas under Federal jurisdiction. The ESA also requires that other Federal agencies ensure that any action they carry out or authorize is not likely to jeopardize the continued existence of any endangered species, or to destroy or adversely modify its critical habitat.

C. The Role of the EPA

EPA registers pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is considered "authorization" under the ESA and, therefore, requires that EPA ensure that registered pesticide use is not likely to jeopardize endangered species.

To carry out this responsibility, the Agency reviews both new pesticides and existing registered pesticides, and estimates the maximum environmental concentration of each pesticide which could be expected under proper use. If this estimated concentration may affect an endangered species, then the pesticide is referred to the FWS for a consultation to determine whether specific pesticide uses are likely to jeopardize the continued existence of the endangered species.

If the FWS finds that the uses may cause jeopardy, then their findings will identify those reasonable and prudent alternatives which will preclude the jeopardy to endangered species. The alternatives recommended by the FWS usually prohibit or restrict use of the pesticide within the currently occupied habitat of the affected species. While risk-benefit analysis is not employed by the FWS in listing endangered species, EPA and other parties will use risk-benefit and other economic analysis techniques to help identify alternative measures to the FWS. Such alternatives would both preclude jeopardy to endangered species, and pose minimal economic impact on pesticide users.

Even if the FWS does not find jeopardy, it is required to establish an anticipated level of "incidental take" of the species from the permitted uses. It also may provide the Agency with reasonable and prudent measures to

ensure that the established level of incidental take is not exceeded. To date, the FWS has not prescribed such measures for EPA's program.

The Endangered Species Protection Program described here includes only those federally listed endangered species and pesticide uses for which biological opinions of jeopardy have been issued to EPA by the FWS. These opinions are available from the Information Services Section at the address listed above.

D. Development of the Endangered Species Protection Program

In the past, EPA consulted with the FWS on a case-by-case basis for specific registration actions on individual pesticides. Using this case-by-case approach, the Agency received over 50 biological opinions of jeopardy. A number of individual product labels then were modified to include specific limitations to protect endangered species. Unfortunately, this case-by-case review was very slow. Many older pesticides were not reviewed in a timely manner. On the other hand, new pesticides were being reviewed routinely as part of the registration process. Therefore, newer pesticides were more likely to receive biological opinions of jeopardy. The case-by-case approach created market inequities by requiring additional limitations only on a few pesticides, disproportionately restricting the newer ones. In addition, by not placing use limitations on many older pesticides that may pose a risk to endangered species, the case-by-case approach did not appear to provide adequate protection.

In response to these concerns the Agency adopted a new approach to managing the potential risks to endangered species from uses of pesticides. This was the "cluster approach," which entailed grouping together all pesticides registered for similar uses, and asking the FWS to review the clusters. The purpose of the cluster approach was to improve protection of endangered species by accelerating the review of a larger number of pesticides, and to eliminate market inequities by reviewing pesticides with similar uses as one group.

To date, four cluster reviews have been completed. They were selected on the basis of which pesticide uses present the greatest potential for exposure to endangered species. They include pesticides registered for use on forests, as mosquito larvicides, on rangeland or pastureland, or on the crops of barley, corn, cotton, oats, rye, sorghum, soybeans, or wheat. Subsequent clusters will include alfalfa, aquatic herbicides, non-cropland uses (such as rights-of-way, mosquito adulticides and vertebrate control), orchards, rice, and row crops.

E. Products Exempt From the Program

There are certain categories of pesticide use which will not be covered by the Endangered Species Protection Program. These categories have the concurrence of the FWS, and are:

1. Home and Garden Uses

These include products used directly on humans or pets; in, on, or around any structure, article, surface, or area associated with the household, including but not limited to areas such as outbuildings or noncommercial greenhouses; or in any preschool or day care facility, and which are labeled only for such uses.

2. Forest Uses

These include only those products which bear labeling specifying application only by the following methods or only on the following sites.

a. *Methods*. Direct individual plant spray and/or individual plant injection.

b. *Sites*. Seedbed orchards, nursery plantings, ornamental trees, and ornamental shrubs.

3. Uses on insect pests

Under the ESA, an insect determined by the Department of the Interior to constitute a pest, whose protection under the ESA would present an overwhelming and overriding risk to man, is not an endangered species.

II. Approaches to Implementation of the Endangered Species Protection Program

A. Labeling Approach

In 1986, EPA designed a program which responded to the jeopardy opinions which had been received from the FWS, and which attempted to minimize the impact on agricultural production. The program design relied on labeling of the affected pesticides to direct pesticide users to bulletins designating those specific areas within counties where the affected pesticides could not be used, in order to protect the endangered species. Approximately 110 active ingredients covering 250–300 species in 910 counties were affected in the initial four clusters named in Unit I.D. above. The following describes EPA's original concept of how the labeling approach would have worked.

In May of 1987, the Agency directed that registrants modify the labeling of their products to provide pesticide users with the information necessary to protect endangered species. The labeling would have listed the counties where pesticide use limitations applied, and would have required users to obtain additional information on where and what use limitations existed within those counties.

The Agency had intended that the labeling approach would take effect in the 1988 growing season. However, due to the difficulties in developing accurate bulletins, and in response to comments from other Federal agencies, the states and users, it is clear that this approach will not be ready for the 1988 growing season. Therefore, if EPA decides to pursue the labeling approach as originally envisioned, the earliest that bulletins containing pesticide use limitations would be available to users would be in the 1989 growing season.

Under this approach, labels would refer users to the Pesticide Use Bulletin for Protection of Endangered Species (county bulletin) for the county in which the product is to be used. It had been intended that users of products in the forest and mosquito larvicide clusters would be referred to a FWS field office for instructions, but the FWS has indicated that it would prefer for all information to be provided in some other manner. Any existing labeling for these two clusters would have to be amended accordingly.

The county bulletins would contain maps and/or habitat descriptions of the currently occupied habitat of the endangered species, and limitations on pesticide use to protect the species.

The FWS would determine the geographic areas where pesticide use limitations apply. Generally, limitations would apply only within the habitat that is currently occupied by the endangered species. EPA, the states, the FWS, and users would work together to make the maps and habitat descriptions clear and understandable for the user community.

County bulletins would be revised annually if acceptable information were provided to the FWS to indicate any inaccuracies in the maps, or if the FWS determined that changes had occurred in the habitat of a species. The bulletins also would be updated annually as endangered species were removed from or added to the Federal endangered species list, as changes were documented in the boundaries of currently occupied habitats, as any changes in the jeopardy opinions occurred for specific pesticides, or as additional pesticides were determined to jeopardize endangered species.

Under this labeling approach, future bulletins issued to add new pesticides or to address new use clusters would be published by EPA in draft form, for public comment, prior to their final approval.

County bulletins would be readily available to pesticide users through a number of public and private sources, including the U.S. Department of Agriculture, the U.S. Fish and Wildlife Service, EPA regional offices, State pesticide agencies, county extension offices, pesticide dealers, and others as appropriate.

B. Public Involvement Procedures for the Program

1. Public comment is requested on any aspect of the program described in this notice, as well as on any of the specific issues mentioned. The comments received will be considered in revising the program.

2. Informal public meetings around the country may be held to discuss and to receive comments on the program. The locations and times of any such meetings will be announced separately.

3. Within 90 days of the close of the public comment period, EPA intends to publish a summary of the comments received, and a description of the amended program.

4. Should EPA determine, after comments are received on this notice, to continue to pursue the labeling/bulletin approach, the Agency would establish the following procedures to facilitate public involvement in the implementation of the Endangered Species Protection Program:

(a) The public at any time could suggest to EPA that a pesticide either may or may not affect an endangered species, and recommend that EPA formally consult with the FWS for a jeopardy opinion. Such recommendations would have to be accompanied by a statement of the basis for the recommendation, including a citation of relevant scientific information. After review, EPA might refer the pesticide to the FWS for a biological opinion.

(b) At least once each year EPA would publish a public notice of its schedule for reviewing new use clusters, including re-initiation of review of previously completed clusters, if any.

(c) EPA would publish a public notice of the referral of a pesticide or group of pesticides to FWS for a biological opinion.

(d) EPA would publish a public notice of the availability of every draft and final FWS biological opinion. Comments on the draft opinions would have to be submitted to the EPA within the response dates given in the drafts.

C. Factors Critical to Success of the Program

Development of a national program as described above to protect endangered species from the potential adverse effects of pesticide use depends upon several factors for its success.

First, the assessment that a pesticide may affect an endangered species has to be based upon the best available scientific information.

Second, the biological opinions which link the use of specific pesticides with jeopardy to specific endangered species need to be based upon the best available scientific information.

Third, the maps and habitat descriptions also have to be based upon the best available scientific information.

Fourth, bulletins and other program information have to be available to users in a timely manner, well in advance of program implementation.

Fifth, pesticide manufacturers need adequate time to change the labeling of their products. While a transition period from old to new labeling is inevitable, a high percentage of products with amended labeling when the program begins would minimize any user confusion.

Finally, EPA, USDA and other cooperating Federal and State agencies need to conduct a broad program of user education and training. The program should include technical assistance in identifying and using efficacious pest control alternatives. Such a program would promote the understanding and cooperation needed to ensure a high level of voluntary compliance. This is an important goal: while endangered species labeling would be enforceable, the effectiveness of the program will depend upon voluntary compliance by the user community.

D. Recent History of the Labeling/Bulletin Approach

As stated earlier, it was intended that limitations on four use clusters would be implemented beginning in February 1988, followed by additional clusters in February 1989 and thereafter, until all major clusters had been implemented. The four initial clusters were forestry, mosquito larvicides, rangeland and pastureland, and eight crops (barley, corn, cotton, oats, rye, sorghum, soybeans, and wheat).

In the Fall of 1986, a meeting was held to describe the program to a broad range of interested groups. Following this meeting, plans were established for an outreach effort to inform, educate and train users and groups in the program requirements.

In May 1987, all registrants of pesticide products affected by the initial four clusters were notified by Pesticide Registration (PR) Notices 87–4 and 87–5 of the necessary labeling amendments. These registrants were directed not to release any affected product for shipment after February 1, 1988, unless the product bore the amended labeling described in the notices. Similarly, any persons holding products subject to the notices were not to distribute, sell, offer for sale, hold for sale, ship, deliver, or receive any such product after February 1, 1989, unless the product bore the amended labeling.

Finally, by the Fall of 1987, the draft maps to be included in county bulletins were sent out for review and comment.

E. Public Response to the Recent Activities

In the Fall of 1987, public response to the draft maps, and to the overall program, indicated a number of significant concerns:

(1) Many maps were inaccurate or misleading.

(2) A greater opportunity for public review and comment on the program was necessary.

(3) More time was needed to inform, educate and train both users and Federal and State agency personnel.

(4) Local species conditions and pesticide use patterns often were complex, or not well-known, and required a more tailored approach than just prohibition-of-use.

(5) Objections were raised concerning the findings of some biological opinions, indicating the need for additional communication to establish greater credibility for the opinions.

(6) Alternatives to the prohibition-of-use approach were possible, and might protect endangered species while allowing some uses of affected pesticides to continue.

(7) State and local agencies had much to offer the Agency and/or the FWS in terms of local knowledge of user practices, and of species locations and behavior.

(8) Many people believed that the program would drastically curtail pesticide use without corresponding benefits.

F. State-Initiated Plans to Protect Endangered Species

As a result of these concerns, in October 1987 the Agency invited the states to develop alternative plans to protect endangered species. These state-initiated plans would provide EPA with recommendations to achieve compliance with the ESA, while also reducing the

potential adverse impact on the user community.

The initial round of state-initiated plan development is scheduled to begin during the winter of 1988. Work plans, describing how each state proposes to develop its plan, and approximate schedules of activities through implementation, were due to be submitted to the Agency in February 1988. The work plans would describe the general process the state will employ to design its recommendations. Such elements as the different agencies, public groups and organizations that will help design the plan, the time estimated to resolve specific problems, provisions and tentative schedules for public meetings, and the agency responsible for the overall development of the plan would be included in the work plans.

State plans may recommend any alternative measures which will result in protection of the endangered species. Such alternatives, for example, could include changes in pesticide application rates, methods, and timing, or the use of non-pesticidal alternatives. Any such state-initiated plans that are approved by both the Agency and the FWS will be used to modify the Agency's Endangered Species Protection Program for such states. It should be noted that some approved alternatives, such as changes in maximum application rates, may affect pesticide registrants by requiring amended registrations and labeling for implementation.

While the state develops a plan, EPA would allow the state a reasonable period of time, and would defer implementation of the labeling use limitations described here, for those pesticides, uses, and locations being reviewed by the state. For other states, however, labeling use limitations for those pesticides, uses, and locations in the four clusters (crop, rangeland/pastureland, forest and mosquito larvicides), which were not subject to state-initiated planning would be implemented according to the EPA program described here, when implementation of the entire program began. However, as new clusters were added to the program, the states again would be given the opportunity to develop state-initiated plans, prior to EPA implementation.

Approved state plan recommendations would be implemented by EPA through the labeling approach. Any changes in the programs would be implemented not more often than once each year. In addition, the effectiveness of the approved alternatives would be subject to periodic review by the Agency and the FWS after the plans are in place. During such reviews, it would be determined if the approved alternatives have adequately protected endangered species. It also would be determined if the alternatives created any unnecessary limitations on the use of important pesticides. Therefore, the state-initiated recommendations may be periodically reapproved or modified, with participation and comment by the states, as appropriate.

III. Deferral of Program Implementation

It has become clear that implementing the Endangered Species Protection Program will be far more complex and time-consuming than anticipated.

Developing the Agency's responses to the concerns described in Unit II.E. of this document, and supporting the effort to develop state-initiated plans, will require a high degree of participation, coordination and cooperation among all the involved parties.

Therefore, it no longer is possible for the Agency to meet its original implementation goals for 1988 (labeling for products released for distribution and sale) and 1989 (labeling for products in all channels of trade). Accordingly, on January 7, 1988, EPA announced that it was deferring implementation of the Endangered Species Protection Program for the 1988 growing season.

For users, enforceable labeling requirements to protect endangered species will not be in effect during the 1988 growing season. Other provisions of the label continue to be enforceable.

For registrants, PR Notices 87–4 and 87–5 were rescinded on January 26, 1988, in PR Notice 88–1. It is anticipated that no new labeling requirements to protect endangered species will be issued until September 1988 at the earliest. Future notice(s) will detail the requirements and schedules applicable to registrants.

It is important to note that deferring implementation of EPA's Endangered Species Protection Program does not affect the user's responsibilities under the ESA. The ESA still makes it unlawful to kill, harm, or collect endangered fish or wildlife, or to remove endangered plants from areas under Federal jurisdiction. The FWS will continue to enforce these provisions of the ESA.

This deferral is in keeping with recent Congressional action which effectively deferred enforcement of the program's requirements on users through September 15, 1988. If the labeling approach remains a key element of the program after the public comments have been considered, then after September 15, 1988, the Agency would be able to issue new labeling requirements to pesticide registrants. However, it has been the Agency's experience that registrants have needed up to a year's lead time to place amended labeling on products to be released for sale to the public. From a practical standpoint, therefore, it is not likely that enforceable labeling could begin to be implemented for most, if not all, of the 1989 growing season. During this time, the Agency encourages voluntary actions by pesticide users and the states to protect endangered species.

EPA remains committed to the effective implementation of a comprehensive program to protect endangered species from the potential adverse effects of pesticide use. At the same time, EPA intends to implement a program that is reasonable, achieves its goals, as stated earlier, and has the participation and support of the user community, and other interested groups. For the program to be effective, it is important that the impacts on users be carefully considered, while still protecting endangered species. If parts of the program need more time to achieve effective implementation, EPA intends to take the necessary time.

In the meantime, EPA will devote significant effort to the coordination and planning necessary to make the program work effectively. In particular, EPA will:

(1) Consider all comments on the proposed label/bulletin and state plan approach, and develop a definitive plan for the future of the program.

(2) Work with individual states involved in state-initiated planning.

(3) Work with the FWS, other Federal agencies, and State and local agencies to refine the accuracy of maps; of currently occupied habitats; and of habitat descriptions.

(4) Improve coordination with the U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (USDI) to promote effective cooperation in the program by these agencies; for example, a recent meeting of the senior managers of these agencies resulted in an agreement to form a joint staff work group to coordinate endangered species protection activities.

(5) Work with pesticide registrants as they amend their product labeling.

(6) Develop education and training materials for use by Federal, State and local agencies.

(7) Conduct a broad outreach effort to solicit public input into program improvement.

IV. Major Issues for Public Comment

Comments are invited on every aspect of EPA's implementation of its responsibilities under the ESA.

Comments should be submitted within 90 days from the date of publication of this notice.

In addition to responding to this notice, comments are invited at the public meetings which may be held, as noted in Unit II.B. of this document, through the state-initiated plan development process, and by any other informal means. The Agency intends to consider the comments received in revising the program.

The Agency hopes that providing for extensive public involvement in this manner will serve both to strengthen the program and to resolve a number of major issues. To this end, EPA is particularly interested in receiving comments on the following major issues:

1. Alternatives To Use Prohibition As The Principal Method To Preclude Jeopardy To Endangered Species

At present, the principal method for prevention of jeopardy to endangered species, as proposed in this notice, is to prohibit use of the pesticide in the areas occupied by the species. Concerns have been expressed to EPA that any number of methods of regulating pesticides may be effective in precluding jeopardy to endangered species. It may be that other methods, such as limiting acceptable application techniques (e.g., ground application and/or chemigation versus aerial application), reduction of maximum application rates, and limiting the types of formulations (e.g., liquids versus granules), may be effective.

Comments are requested on which alternatives to the use prohibitions, as a means to preclude jeopardy to endangered species, would be effective and implementable. A related question is whether any adverse impacts from pesticide use could be allowed to occur without causing jeopardy. Finally, information is requested on the potential economic impacts of the alternatives on users and other affected people.

2. Appropriateness of the Mapping Approach

Mapping the currently occupied habitats of endangered species is the principal method used in the currently proposed EPA program to identify where pesticide use should be limited to protect endangered species. This mapping approach has been criticized because of a lack of up-to-date information on the current habitats of all the listed endangered species, and a lack of information to determine the size of buffer zones needed to protect the endangered species. A concern also has been expressed that since EPA has extended the currently mapped areas to the nearest recognizable boundaries (such as a road or a river), the affected areas have been increased unnecessarily. In some of the states, where the nearest recognizable boundary might be miles from occupied habitat, EPA will use alternatives to limit the affected areas to reasonable sizes.

One suggested alternative or supplement to mapping endangered species habitats would be to give a detailed description of the characteristics of the habitat in which the endangered species is found, to guide pesticide users as to which areas should be avoided. For example, habitats might be described within mapped areas, to assist users in determining where limitations might apply. EPA already intends to implement this "habitat description" approach for a number of species, in the proposed program.

In either case, mapping or habitat description, concern has been expressed that describing the actual location of endangered species might place them in jeopardy from vandals and collectors.

It is EPA's view that mapping probably is the most effective and appropriate approach for the accurate location of many endangered species. The Agency recognizes that some species are not amenable to mapping, and that alternatives and combinations of maps, habitat descriptions and other methods may be desirable.

Comments are requested on the feasibility of alternatives to the mapping approach.

3. Appropriateness of the Labeling Approach

Concerns have been expressed to EPA regarding the appropriateness of using enforceable labeling as the principal method of implementing an Endangered Species Protection Program. It has been asserted that the program needs a very high degree of voluntary compliance to achieve its goals, and that the emphasis upon enforceable labeling could serve the undermine users' willingness to comply.

Alternatives to labeling could include a focus exclusively upon education and training, which already is a major intended component of the proposed program. On the other hand, eliminating the ability for EPA and the states to enforce the program also could serve to undermine compliance, since there would be no means to take action against violations of use limitations. It should be noted that the FWS has enforcement authority, under the ESA, against killing or harming fish and wildlife. Nevertheless, achieving the proper balance of enforcement and education in EPA's program activities remains an open question.

It is EPA's view that labeling probably is the most effective method to alert pesticide users to endangered species issues. In some cases, alternative methods or combinations of methods may be desirable. As noted earlier, new labeling requirements may not be issued to pesticide registrants prior to September 15, 1988. The practical implication is that new labeling probably could not begin to appear in stores until late in the 1989 growing season, at the earliest.

Comments are requested on what would be the best mix of enforceable and educational approaches, and their feasibility, timing, and desirability for implementation.

4. Appropriateness of the Cluster Approach

EPA has chosen to evaluate pesticides on the basis of "clusters" of their uses, such as all the pesticides used on corn. This provides equity by evaluating all pesticides with similar uses for their effects on endangered species at the same time. In this way, older and potentially more toxic pesticides would not have the advantage of escaping review for effects on endangered species, while newer and potentially less toxic pesticides were reviewed and limitations applied on a case-by-case basis. Different use clusters would be evaluated each year, until all major uses of all pesticides had been reviewed.

This cluster approach has been criticized, however, because it could result in limitations on one use of a specific pesticide for one crop in a state, but no limitations on another use in the same area, simply because EPA had not yet evaluated the second use. This situation could confuse the end-user, and fail to protect fully the endangered species until the entire cluster review process was complete.

As an alternative to the use cluster approach, it has been suggested that EPA consider a "species" approach, reviewing all the pesticides which could significantly affect a given endangered species at one time. By focusing on the species, a complete set of reasonable and prudent alternatives could be developed at one time to ensure protection of the species. In this approach, and after consultation with the FWS, EPA would schedule which species would be reviewed each year, until all endangered species had been covered. This approach could require significantly increased resources and time for both EPA and the FWS, in that every relevant pesticide and use would

have to be reviewed at the same time, for each species. If more time were needed, protection for the species involved could be delayed.

A second alternative to the use cluster approach would be to review one chemical at a time, as data allowed.

Comments are requested on the feasibility of alternatives to the cluster approach.

5. Assuring Consistency Between Chemical-specific Jeopardy Opinions and Use Cluster Jeopardy Opinions

During the past several years, and as a result of the registration, reregistration, and special review procedures used by EPA to evaluate pesticides, a number of pesticides were referred to the FWS for pesticide-specific jeopardy opinions. The result was a number of findings of jeopardy to endangered species, and the adoption of specific limitations on the use of some individual pesticides. These limitations already appear on the labeling of these products.

It has been noted that, as the Endangered Species Protection Program proceeds, these individual pesticides might be treated differently from others registered for the same uses. For example, the label restriction may differ from those arising from the cluster approach. In another example, the full cluster might not be scheduled for review for several years, thus putting a reviewed pesticide at a competitive disadvantage. To promote consistency among comparable products, registrants might request changes in pesticide-specific labeling. It should be noted that any such requests would require both EPA and FWS approval.

Comments are requested on the feasibility and means of assuring that similar pesticides are subject to comparable restrictions at the same time to achieve marketplace equity.

6. Assuring Consistency With Other Federal Programs Which Establish Requirements for Pesticide Use

It has been observed that a number of other Federal and state programs encourage or require the use of pesticides to accomplish public goals. These other programs include, but are not limited to: Noxious weed control; soil conservation; mosquito abatement; research and demonstration; and boll-weevil control. EPA's Endangered Species Protection Program could result in pesticide use limitations which may conflict with these other programs.

Comments are requested to further identify on-going programs which encourage or require the use of pesticides, and on the feasibility of alternatives for reconciling the potential conflicts among these programs, FIFRA, and the ESA.

7. Providing Education, Training, and Technical Assistance to Non-traditional User Groups in Endangered Species Protection Measures

State/EPA training programs currently are designed principally for certified pesticide applicators only. Given the broader group of users potentially subject to limitations to protect endangered species, there is a need to provide education, training, and technical assistance to this larger audience.

Comments are requested on options and their feasibility for implementation (including the resources needed) for providing such endangered species information to those affected by the program.

8. Guidelines or Minimum Requirements For State Plans Recommending Alternative Measures To Protect Endangered Species

As noted earlier, EPA is providing the opportunity for the states to develop plans recommending alternative protective measures to those which might be used by EPA.

One concern which has been expressed is that the state plans might be inconsistent, both in approach and in quality. It has been suggested that EPA issue guidelines or minimum requirements for state planning efforts, to ensure some consistency in review and approval. On the other hand, it has been suggested that EPA guidelines or minimum requirements would stifle state innovation and reduce most states to the minimum effort.

Comments are requested on the need for appropriateness of guidelines. If deemed appropriate, comments also are requested on options and their feasibility for implementation for providing guidelines or minimum Federal requirements for state planning efforts. Suggestions for the criteria for such guidelines or requirements also are requested.

V. Conclusion

EPA began to implement its approach to protecting endangered species from the potential adverse effects of pesticide use a number of years ago. As the program has evolved, however, it has become increasingly complex. EPA has recognized the desirability of state involvement and leadership, the need for a high level of coordination among several Federal agencies, the need for broad public involvement, and a requirement for user education and training efforts.

The currently proposed Endangered Species Protection Program has aroused substantial public interest, and many suggestions for improvement. Given this constructive participation, the program will achieve its goals in the coming years.

EPA remains committed to implementing a program based upon accurate and credible information, developed by cooperative efforts, and supported by the understanding and willingness to comply of those involved.

Deferral of program implementation for the 1988 growing season provides the time to develop a stronger program. The ESA requires that EPA's registration of pesticides will not lead to jeopardy for endangered species. While enforcement is both possible and necessary to curb abuses, a truly effective Endangered Species Protection Program will depend upon user cooperation and voluntary compliance. The user community is closest to the environment and to endangered species. The health of both depends upon the wise use of pesticides.

Dated: February 29, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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H.R. 3923/Pub. L. 100-255

To make a technical correction to section 8103 of title 46, United States Code. (Mar. 4, 1988; 102 Stat. 23; 1 page) Price: $1.00

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WHERE: Thomas P. O'Neill Federal Building
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Presidential Documents

Title 3—

The President

Proclamation 5775 of March 7, 1988

Women's History Month, 1988

By the President of the United States of America

A Proclamation

Women's History Month is a time for us to recognize and salute women's contributions to the American family and to society. Women have been making these contributions since this continent was explored and settled and America won its independence.

Women continue to strengthen the family and enrich our lives with intellectual gifts, creative talents, and an indomitable spirit—in business, government, volunteer activities, religious life, education, health, the military, sports, the arts, and many other areas. Historians will record the accomplishments of women at home as well, chronicling the tremendous contributions countless women have made by helping to raise children who adhere to the moral, ethical, civic, and patriotic principles that have made us, and kept us, a great country. We should be proud and grateful as we celebrate Women's History Month.

The Congress, by Senate Joint Resolution 262, has designated the month of March 1988 as "Women's History Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 1988 as Women's History Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-5411
Filed 3-8-88 4:17 pm]
Billing code 3195-01-M

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Executive Order 12628 of March 8, 1988

United Nations Industrial Development Organization

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to facilitate United States participation in the United Nations Industrial Development Organization, it is hereby ordered as follows:

Section 1. The United Nations Industrial Development Organization, whose Constitution was ratified by the United States on August 2, 1983, and entered into force on June 21, 1985, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization has acquired or may acquire by international agreements or by Act of Congress.

Sec. 2. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
March 8, 1988.

[FR Doc. 88-5436
Filed 3-9-88; 10:27 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 292

[A.G. Order No. 1257-88]

Representation and Appearances

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: The revisions bar foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), from representing persons before the Immigration and Naturalization Service, the Board of Appeals, and immigration judges in any matter conducted within the geographical confines of the United States.

The revisions also limit representation of persons by such foreign-licensed attorneys to proceedings conducted outside the geographical confines of the United States and only in those situations where the Service, in its discretion, allows such representation. These revisions are necessary to improve representation in immigration proceedings by providing additional assurances that those attorneys who appear before immigration judges, the Board, and Service adjudicators are competent to do so.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703)756-6470.

SUPPLEMENTARY INFORMATION: The revisions eliminate the representation of persons by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), in all matters before the Service, the immigration judges, and the Board of Immigration Appeals (which are conducted within the United States) and limit representation by such foreign-licensed attorneys to matters before the Service outside the United States and to those instances where the Service, in its discretion, allows such representation.

These revisions are necessary because of the lack of control and oversight that the Service, the immigration judges, and the Board have of such foreign-licensed attorneys appearing before them.

Unlike United States licensed attorneys who, in the main, must graduate from a U.S. accredited law school and, in most cases, pass a bar examination, foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), are licensed in countries which may or may not have rigorous standards for bar membership. It would be difficult for the Service, immigration judges, or Board to know if such a person is properly or even minimally qualified to practice law before them. Therefore, for the protection of the persons appearing in various immigration proceedings and to assure the proper conduct of the proceedings, it is beneficial to eliminate the difficulties attached to representation by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), by eliminating their appearances in proceedings in the United States.

In addition, since such foreign-licensed attorneys are not subject to standards of conduct and discipline as are attorneys who are members of various state bars, regulation of these attorneys by the Board or other U.S.-based authority is highly difficult. It is unlikely that the Board, for instance, would even be aware of a foreign disbarment or suspension. In contrast, U.S. disciplinary proceedings are general publicized in bar journals or state court proceedings and are usually known to the Service or other attorneys who practice immigration law.

Moreover, those foreign-licensing bodies which do supervise attorneys in their courts, have little reason to be interested in any activity relating to the Board, the immigration judges, or the Service. It is also unlikely that the immigration judges, the Board, or the Service would be able to effectively communicate with a foreign-licensing authority if the need should arise.

The revisions allow practice before the Service by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), on a limited basis outside the United States. This privilege is preserved so that in foreign countries, where U.S. licensed attorneys are not readily available, representation will exist. Also, since each Service office affected is located in a particular foreign country, it is probable that Service officers will be familiar with and have better access to information regarding competency of foreign-licensed attorneys in that country. The provision that Service officers may allow such foreign-licensed attorneys the opportunity to appear as a matter of discretion should give the Service sufficient authority to remove such an attorney from representation if problems develop.

A notice of proposed rulemaking regarding this matter was published on January 29, 1987, at 52 FR 2951. A 30-day comment period was provided. There were serveral comments received regarding this proposal. All comments were considered. After careful consideration, the rule in final form was not changed.

One commenter strongly supported the proposal. This commenter basically agreed with the position that there are no assurances that foreign-licensed attorneys are competent to practice in an area of U.S. law and that disciplinary action by the foreign bar would be difficult at best.

Two commenters were critical of the proposal for several reasons. It was stated that this proposal would unduly limit representation for aliens to U.S. licensed attorneys. It was also stated that it was not proper as a matter of policy for the United States Government to bar representation by certain groups of attorneys. It was also pointed out that limiting appearances outside the U.S. to the discretion of Service officials would create undesirable difficulties.

A major purpose of this revision is to help assure that aliens are competently represented. This is an important and legitimate goal. The revision is designed to further that goal by creating additional assurances that aliens will be represented by competent counsel. It is also consistent with the Immigration and Nationality Act and basic tenants of administrative law that an agency may regulate those representatives who

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appear before them. It is our view that limiting attorney practice to those who have exhibited a basic competency in U.S. law by being licensed in a U.S. jurisdiction is a reasonable step to assuring competent representation in immigration proceedings. Further, with regard to discretion, Service officials exercise discretion in many areas on a routine basis. They are quite capable of fairly deciding under what circumstances it would be appropriate to allow foreign-licensed attorneys to appear. It should be noted that under current procedures, Service officials may allow certain representatives to practice on a case-by-case basis and must exercise a discretion in doing so (see 8 CFR 292.1).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will not be a major rule within the meaning of paragraph 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 292

Administrative practice and procedures, Aliens.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

PART 292—REPRESENTATION AND APPEARANCES

2. In § 292.1, paragraph (a)(6) is revised to read as follows:

§ 292.1 Representation of others.

(a) * * *

(6) Attorneys outside the United States. An attorney other than one described in § 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

* * * * *

Dated: March 3, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–5228 Filed 3–9–88; 8:45 am]

BILLING CODE 1531-26-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 24929; Amendment Nos. 21–61 and 36–14]

Noise Standards for Helicopters in the Normal, Transport and Restricted Categories; Correction

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; Correction.

SUMMARY: In the February 5, 1988, issue of the **Federal Register** (53 FR 3534), the FAA published a final rule revising 14 CFR Parts 21 and 36. The final rule contains errors that require correction. In a document published on March 3, 1988 (53 FR 6793), FAA published some corrections. This document reprints those corrections and makes further corrections. The errors include omission of punctuation and words. There were also spelling errors. The "§" symbol should be spelled out when preceding an appendix section. Some sections were incorrectly referenced, one of the reference points and an angle for Figure 1 was cited incorrectly; one equation had a lower case letter when an upper case letter should have been used. This document serves to correct these errors.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim (202) 267–3560.

Corrections to the Preamble

1. Page 3534, first column; title of the final rule—delete the words "Final Rule for".
2. Page 3534, third column, under 1. General, first paragraph, sixth line—"work" should read "word". Second paragraph, 19th line—"accoustical" should read "acoustical".
3. Page 3535, second column, sixth line, "§ A36.7" should read "Section A36.7"
4. Page 3536, third column, first full paragraph, 20th line—"techological" should read "technological".
5. Page 3537, first column, ninth line—"State" should read "Stage". Page 3537, first column, under "Rule Structure", third line, "recognized" should read "reorganized". Same column, under "Regulatory Impact Evaluation" second paragraph, seventh line—delete the word "their".
6. Page 3538, first column, second paragraph, sixth line, "occuring" should read "occurring". Under 2. *No-Correction Window*, first paragraph, ninth line, hyphenate "no correction".
7. Page 3538, third column, first full paragraph, second line, add the word "of" after the word "all". In same paragraph, sixth line, remove the word "for" before the word "requiring" and add the word "by".
8. Page 3538, third column, last paragraph, eighth line, add a period after the word "service".
9. Page 3539, first column, under 6. *Test Costs*, first paragraph, fifth line—hyphenate "no correction".
10. Page 3539, second column, first line, place a hyphen after the word "per". In second column, first full paragraph, ninth line, hyphenate "no correction".
11. Page 3539, third column, under *List of Subjects*, third line, "Accoustical" should read "Acoustical".

Corrections to the Rule

1. Page 3540, first column, under § 36.1 b.(2), fourth line—add additional "§" symbol. In first and second columns, under (g) (1), (3), and (4), "§ H36.305" should read "Section H36.305". Second column, eighth line from the bottom, "§ H36.305(b)" should read "Section H36.305(b)".
2. Page 3540, third column, under § 36.1581(e), seventh line—add additional "§" symbol.
3. Page 3540, third column, under § 36.801, seventh line—"FAA-FAA-approved" should read "FAA-approved".
4. Page 3541, first column, first line, "FAA-FAA-approved" should read "FAA-approved".
5. Page 3541, first column, under § 36.805(b), last line of paragraph, "§" should read "Section". Under § 36.805(c), fifteenth line, "§" should read "Section".
6. Page 3541, second column, under Section H36.3(a), change "(i), (ii), (iii), and (iv)" to read "(1), (2), (3), and (4)" respectively.
7. Page 3541, second column, under Section H36.3(d), tenth line, "stablized" should read "stabilized".
8. Page 3541, third column, fifth line, "(e)" should read "(f)".
9. Page 3542, second column, under Part B, Section H36.101(b), sixth line, "station" should read "stations".
10. Page 3542, third column, under Section H36.101(b)(7), fourth line, "§ H36.107 of this Part." should read "Section H36.107 of this part."
11. Page 3542, third column paragraph (9), third line—"§ H36.205" should read "Section H36.205". Fourth line, same paragraph, "a" should read "an". Under (9)(c) *Weather restrictions*—"test" should read "tests".

12. Page 3542, third column, under Section H36.101(c)(2), in the first and second lines, change "36 F and 95 F (2.2 C and 35 C)" to read "36 ° F and 95° F (2.2 °C and 35 °C)".
13. Page 3543, first column, under (6), sixth line, change "meterological" to "meteorological". Same column, under (7)(d), last word of paragraph, "Part" should not be capitalized.
14. Page 3543, third column, under Section H36.109(b)(3), first line, insert a comma after the word "equipment".
15. Page 3544, first column, under Section H36.109(6)(c)(2)(iii), sixth line, "Pecision" should read "Precision". Last word of the same paragraph, "Part" should not be capitalized.
16. Page 3544, second column, under Section H36.109(6)(d)(1), last word of the paragraph, "Part" should not be capitalized.
17. Page 3545, first column, forty-fifth line, second word, "Part" should not be capitalized.
18. Page 3545, second column, twenty-fifth line, "§ H36.111(c)(4)" should read "Section H36.111(c)(3)".
19. Page 3545, second column, under Section H36.111(b), fifth line, "§ H36.109" should read "Section H36.106". Under same section, (b)(5)(i), insert a period at the end of the sentence.
20. Page 3545, third column, third line, "§ H36.3" should read "Section H36.3". Same column, fortieth line, change "§ H36.205" to read "Section H36.205". Same column, forty-fourth line, change "§ A36.3(f)(3)" to read "Section A36.3(f)(3)".
21. Page 3546, first column, under Section H36.113(b), last word of paragraph, "Part" should not be capitalized.
22. Page 3546, first column, under Section H36.113(c)(2), change (2) to (iii) and (iii) to (2).
23. Page 3546, second column, under Section H36.205(a), fourth line, "§ H36.305"; should read "Section H36.305".
24. Page 3546, third column, seventh line, "subtracted" is misspelled. Same column, under Section H36.205(b)(i), second line, "§ H36.3" should read "Section H36.3". Same column, fifth line from bottom, "required" is misspelled.
25. Page 3547, first column, eighth line, insert a comma after the words "station A". Same column, ninth line, insert a period after the word "path". Same line, change "angle*" to "angle Φ".
26. Page 3547, third column, first line, insert the word "Section" before "H36.3(d)".
27. Page 3549, second column, first line, insert comma after "A" and change "M" to read "M_r".
28. Page 3549, third column, sixth line, insert a comma after the Greek letter eta.
29. Page 3551, first column, first line, insert a comma after the letter "A". Same column, seventh line, insert a comma after the letter "A".
30. Page 3551, first column, "f. *PNLT corrections.*" should read "(f) *PNLT corrections.*".
31. Page 3551, first column, under (f)(1)(i), "SPlic" should read "SPLic".
32. Page 3551, second column, under (3) *Sideline microphones.*, fifth equation, last word, "fly-over" should read "flyover".
33. Page 3551, second column, first line, change "L_rA_c" to read "L_rA". Same column, under (3) *Sideline microphones*, third equation, "take off" should be one word. Same column, under (4) *Level flyover flight path*, second line, "(f)(i)" should read "(f)(1)".
34. Page 3551, second column, under (g)(1), fourth line change "§ A36.5(d)(2)" to read "Section A36.5(d)(2)".
35. Page 3551, under § 36.205(g)(i), second column, change (a) to (i) and in the third column, change (b) to (ii), (c) to (iii), and (d) to (iv). Third column, eigthteenth line, "(iv) Level flyover flight paths" should not be italicized.
36. Page 3551, third column, fourth line, "Δ2" should read "Δ_s". Same column, under (iii), third line, "using formula" should read "using the formula".
37. Page 3551, third column, Section H36.305(a), fifth line, § H36.101" should read" "Section H36.305(a)".
38. Page 3552, second column, third line, "§ H36.203" should read "Section H36.203".

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division, Office of the Chief Counsel.

[FR Doc. 88–5207 Filed 3–9–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87–NM–145–AD; Amdt. 39–5872]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires the installation of a door in the vertical fin access opening in the section 48 fuselage section, and the installation of covers in the four front spar access holes of the horizontal stabilizers. This action is needed because the vertical fin and horizontal stabilizers could be overpressurized to the point of structural failure in the event of a failure of the aft pressure bulkhead.

EFFECTIVE DATE: April 22, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM–120S, telephone (206) 431–1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would require the installation of a vertical fin access door and horizontal stabilizer covers on Boeing Model 757 series airplanes, was published in the **Federal Register** on November 16, 1987 (52 FR 43769).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

One commenter requested the rule be withdrawn because of the fact that no cracks occurred during the fatigue test and because the risk of massive bulkhead rupture is extremely remote. The FAA does not agree. While the likelihood of a massive fatigue failure of the bulkhead is considered to be highly unlikely, service experience on other aircraft models has shown that other failure modes, such as extensive corrosion or accidental damage, are possible and, in fact, have resulted in catastrophic consequences. Therefore, the FAA considers this AD action to be appropriate.

Another commenter requested the rule be withdrawn since it is one of general applicability to all aircraft types and, thus, should be the subject of a Part 121 rule change. The FAA has, in fact, initiated a rulemaking project, the intent of which will be to address all areas of the structure, not just the area behind the aft pressure bulkhead. However, the

FAA has determined that this AD is necessary to eliminate the identified unsafe condition by requiring modification of Model 757 airplanes in a timely manner.

Another commenter suggested that the requirement of the AD be subject to a 10,000 cycle threshold. The FAA does not agree, since some damage modes are not related to the length of time the airplane has been in service or to cycles.

The final commenter requested more time be allotted for compliance due to delays in scheduled kit deliveries. A review of the delivery schedule of kits with the manufacturer has revealed that sufficient kits will not be available for airplanes undergoing major maintenance during the next few months. Accordingly, the FAA agrees with the commenter and has extended the compliance time from 15 months to 18 months. This change will ensure timely availability fo the required modification kits and will allow airplanes to be modified during scheduled maintenance rather than being removed from service.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of the kit is approximately $4,043. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $695,417.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Service Bulletin 757–53–0038, dated August 27, 1987, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent structure failure of the vertical fin and horizontal stabilizers in the event of a failure of the aft pressure bulkhead, accomplish the following:

A. Install a vertical fin access door and horizontal stabilizer covers in accordance with Boeing Service Bulletin 757–53–0038, dated August 27, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–5203 Filed 3–9–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87–NM–105–AD; Amdt. 39–5871]

Airworthiness Directives; Airbus Industrie A310–203, –221, and –222 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 series airplanes, which requires inspection, modification, and repair, if necessary, of the rear pressure bulkhead. This amendment is prompted by reports of cracks detected in the attachment angles during fatigue testing of the rear pressure bulkhead. This condition, if not corrected, could eventually lead to failure of the bulkhead.

EFFECTIVE DATE: April 22, 1988.

ADDRESS: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection, modification, and repair if necessary, of the rear pressure bulkhead on certain Airbus Industries Model A310 series airplanes was published in the **Federal Register** on September 28, 1987 (52 FR 36274).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The first commenter stated that the Airbus service bulletin reflected in the proposed rule, which contains instructions for the x-ray inspections, modifications, and repairs, has been superseded by later revisions. These later revisions of the service bulletins correct certain errors which appeared in previous versions, and introduce eddy current inspection procedures which reduce the inspection time from 330 to 7.5 manhours. The commenter suggested that the AD be revised to reflect the latest revision to the service bulletin. The FAA has considered this information and concurs with the commenter. The final rule has been changed to reflect the latest revision of the service bulletin as an alternate means to accomplish the requirements of the AD. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

The second commenter stated that the proposed initial inspection and modification would be required sooner than the time specified in the related French airworthiness directive (AD), and requested that the compliance time in the final rule be consistent with that of the French AD. In considering this request for a change in the originally proposed compliance time, the FAA has taken into account several items:

a. This AD action was prompted by cracks in certain aft pressure bulkhead attachment angles, discovered during fatigue testing, which appeared after approximately 32,000 to 37,500 simulated flights.

b. The French AD specifies that the initial inspection and modification be accomplished prior to the accumulation of 12,000 landings, whereas, the manufacturer, in its service bulletin, recommends this action be accomplished prior to the accumulation of 6,000 landings. Further investigation by FAA as to the reason for this difference revealed that the French AD specifies 12,000 landings as the *maximum* number of landings permissible before inspection and modification action must be accomplished to eliminate the potential for additional fatigue damage to aft pressure bulkhead attachment structure, while the service bulletin considers 6,000 landings as the *minimum* number.

c. The only U.S. operator affected by this AD, indicated that its high cycle Airbus Model A310–200 airplane had accumulated only 2,700 landings, as of October 20, 1987.

In consideration of the foregoing, the FAA has revised the final rule to require accomplishment of the initial inspection and modification prior to accumulating 9,000 landings, or within the next 3,000 landings after the effective date of the final rule, whichever occurs later. The FAA has determined that this revision of the number of landings permissible prior to the initial compliance time is both prudent and appropriate in maintaining an acceptable level of safety.

The final commenter stated that the Airbus service bulletin and the French AD specify that only those airplanes modified between 6,000 and 12,000 landings would be subject to the initial and subsequent repetitive inspections; these inspections would not be required for planes modified prior to 6,000 landings. Since the proposed rule would require the initial inspection and modification prior to 6,000 landings, it appears to be more restrictive than the service bulletin and French AD. In response to this commenter, the FAA notes that, as discussed above, the final rule has been revised to require the initial inspection and modification to be accomplished prior to the accumulation of 9,000 landings, rather than 6,000 landings, as proposed. However, due to the critical nature of the bulkhead area, the FAA considers it imperative that, prior to incorporating the modification, an inspection be performed to detect and repair, if necessary, any fatigue damage present in the area.

The FAA has reconsidered paragraph B. of the rule, which describes the repetitive inspection requirements, and has determined that, as worded in the proposal, its intent could be misinterpreted. Therefore, paragraph B. of the final rule has been revised to clarify that only those airplanes which have incorporated the modification after the accumulation of 6,000 landings are subject to the repetitive inspection requirements.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes noted above.

It is estimated that 3 airplanes of U.S. registry will be affective by this AD. It will take approximately 330 manhours per airplane to accomplish the X ray inspection or 7.5 manhours per airplane to accomplish the eddy current inspection; it will take approximately 280 manhours per airplane to accomplish the required modification. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $70,800 or $32,100, depending upon which inspection procedure is accomplished.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model A310 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to certain Model A310 series airplanes, as listed in Service Bulletin A310–53–2025, Revision 3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the rear pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 9,000 landings or within the next 3,000 landings after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the rear pressure bulkhead for cracks, using X-ray procedures, in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310–53–2024, Revision, 1, dated June 20, 1986; or using eddy current procedures, in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310–53–2024, Revision 3, dated February 17, 1987. If any cracks are detected, repair prior to further flight in accordance with paragraph 2.C., Repair, of the applicable service bulletin.

2. Modify the attachment of the rear pressure bulkhead to FR 80/82 in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industries Service Bulletin A310–53–2025, dated April 21, 1986, or Airbus Industrie Service Bulletin A310–53–2025, Revision 3, undated.

B. For airplanes that were modified in accordance with paragraph A.2., above, after the accumulation of 6,000 landings: Within 6,000 landings after the modification, and thereafter at intervals not to exceed 12,000 landings, repeat the X-ray or eddy current inspection, as applicable, of the rear pressure bulkhead required by paragraph A.1., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region

[FR Doc. 88–5204 Filed 3–9–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–147–AD; Amdt. 39–5873]

Airworthiness Directives; Sud Aviation Model Caravelle SE 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Sud Aviation Caravelle series airplanes, which requires inspections for cracking and repair, if necessary, of the wing lower skin panels adjacent to wing rib No. 31. This amendment is prompted by reports of cracking detected in the area around the ends of stiffeners K 8.5 and C 8.5. This condition, if not corrected, could lead to failure of the wing.

EFFECTIVE DATE: April 22, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection for cracking, and repair, if necessary, of the wing lower skin panels adjacent to wing rib No. 31 on certain Sud Aviation Model Caravelle SE 210 series airplanes, was published in the **Federal Register** on December 17, 1987 (52 FR 47946).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $10,240 for the initial inspection.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sud Aviation: Applies to Sud Aviation Caravelle series airplanes, listed in Sud Aviation Caravelle Service Bulletin No. 57–56, Revision 2, dated February 28, 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the wing, accomplish the following:

A. Within 100 landings after the effective date of this AD or prior to the accumulation of the number of landings specified in the schedule, below, whichever occurs later, accomplish the requirements of subparagraphs A.1. or A.2, below, as applicable.

Schedule I

(1) 30,000 landings on airplanes whose maximum take-off weight [1] is 48 tons or less;

(2) 20,000 landings on airplanes whose maximum take-off weight [1] exceeds 48 tons but is no more than 52 tons;

(3) 10,000 landings on airplanes whose maximum take-off weight [1] exceeds 52 tons.

1. For airplanes without external doubler, perform visual and nondestructive testing inspections (NDI) for cracking adjacent to wing rib No. 31 in accordance with Sud Aviation Caravelle Service Bulletin No. 57–56, Revision 2, dated February 28, 1985.

2. For airplanes with external doublers, perform visual and radiographic inspections for cracking adjacent to wing rib No. 31 in accordance with Sud Aviation Caravelle Service Bulletin No. 57–56, Revision 2, dated February 28, 1985.

B. If no cracks are detected, repeat the inspections required by paragraph A., above, at the intervals specified in Sud Aviation Caravelle Service Bulletin No. 57–56, Revision 2, dated February 28, 1985, Figure 1, Wing Lower Surface Inspection Frequencies.

C. Any cracks detected during the inspections required by paragraph A. or B., above, must be repaired, prior to further flight, in accordance with Sud Aviation Caravelle Service Bulletin No. 57–56, Revision 2, dated February 28, 1985.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

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[1] Maximum take-off weight as defined in the FAA-approved airplane flight manual.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–5202 Filed 3–9–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80215–8015]

Removal of Validated License Controls on Jig Grinders Exported to Country Groups QWY

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which specifies those items subject to Department of Commerce export controls. This rule amends the validated export license controls on certain jig grinders described in Export Control Commodity Number (ECCN) 1091A on the CCL according to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies greater (coarser) than ±0.005 mm (0.00020 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.) or ±(0.005 + (0.002 × ((L–300)/300))) mm (with L expressed in mm) [or 0.0002 + (0.000080 × ((L–12)/12)) in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.) no longer require a validated export license except to Country Groups S and Z.

Although technical control parameters were relaxed for certain jig grinders, this rule continues to maintain nuclear non-proliferation controls on these jig grinders and does not relax current nuclear controls to Western destinations. The Commodity Control List is amended to indicate that favorable consideration will be given to licenses to export jig grinders controlled solely for nuclear non-proliferation reasons to Country Groups Q, W, and Y, and the People's Republic of China. These jig grinders continue to be exported under General License G–DEST to countries listed in Supplement Nos. 2 and 3 to 15 CFR Part 373.

Notice of the foreign availability determination on this equipment was published on December 9, 1987 (52 FR 46634). Regulations that eliminated the validated license requirements for exports of this commodity to free world destinations were published on December 14, 1987 (52 FR 47388).

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTRACT: Larry Hall, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–8550.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published as a proposed rule because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1—Commodity Control List [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group (Metal-Working Machinery), ECCN 1091A is amended by revising the *Validated License Required* and *Reason for Control* paragraphs to read as set forth below; by redesignating paragraph (b)(ii) as (b)(iii); by adding a new paragraph (b)(ii); and by revising the newly redesignated paragraph (b)(iii) introductory text to read as set forth below; and by adding a new Advisory Note 3 to the end of the entry to read as follows:

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1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 376.11 for special information to include on the validated license application and reexport request.)

Controls for ECCN 1091A

* * * * *

Validated License Required: Country Groups QSTVWYZ. Jig grinders that meet the parameters of Advisory Note 3 can be exported under General License G-DEST to countries listed in Supplement No. 2 or 3 to 15 CFR Part 373.

* * * * *

Reason for Control: National security; nuclear non-proliferation, except exports to those countries listed in Supplement No. 2 or 3 to Part 373. Jig grinders that meet the parameters of Advisory Note 3 are controlled only for nuclear non-proliferation reasons.

* * * * *

List of Commodities Controlled by ECCN 1091A

* * * * *

(b) * * *

(ii) Jig grinders having all of the following characteristics:

(1) Overall positioning accuracy in any axis greater (coarser) than:

(A) ± 0.005 mm (0.0002 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.), *or*

(B) ± (0.005 + (0.002 x ((L–300)/300))) mm (with L expressed in mm) [or 0.0002 + (0.000080 x ((L–12)/12)) in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.); and

(2) Not more than 2 simultaneously coordinated axes.

(iii) Machines tools (other than boring mills, milling machines, machining centers, and jig grinders, described in paragraphs (b)(i) and (ii) above) and dimensional inspection machines, having all of the following characteristics:

* * * * *

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China for jig grinders covered under paragraph (b) above provided that the following conditions are met:

(a) Overall positioning accuracy in any axis equal to or greater (coarser) than:

(1) ± 0.002 mm (0.000080 in.) for jig grinders with a total length of axis travel equal to or less than 300 mm (12 in.); or

(2) ± (0.002 + (0.001/300) (L–300) mm for jig grinders with a total length of axis travel, L, greater than 300 mm (12 in.).

(b) Not more than 2 axes capable of simultaneously coordinated contouring motion.

Dated: March 2, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88–5158 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R–88–1205; FR-1829]

Shared Housing in the Section 8 Existing Housing Certificate Program; Amendment to Final Rule; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: The Shared Housing final rule published in the **Federal Register** on February 16, 1988 (53 FR 4388) contained an erroneous date in the effective date section of the rule. The purpose of this rule is to correct that date.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Loritz, Existing Housing Division, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 755–6887. (This is not a toll-free number.)

Accordingly, the effective date for the final rule on Shared Housing in the Section 8 Existing Housing Certificate Program that appeared in FR Doc. 88–3206, published in the **Federal Register** issue dated February 16, 1988 (53 FR 4388), the effective date section, third column, last sentence, is corrected to read as follows:

EFFECTIVE DATE: * * * Therefore the June 1986 rule as amended by this rule will become effective on March 28, 1988, a date by which the required waiting period for this rule will have expired.)

Dated: March 7, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–5317 Filed 3–9–88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 10–88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (d) of the Privacy Act, 5 U.S.C. 552a. This system is the "Central Index File and Associated Records, JUSTICE/OSC–001." Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on December 21, 1987 (52 FR 48279). The public was given 30 days to comment. No comments were received.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that this order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy and Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, the Department amends 28 CFR Part 16 by adding § 16.78 as set forth below.

Dated: February 25, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR Part 16 is amended by adding § 16.78 to read as follows:

§ 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC–001.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries.

(2) From subsection (d) because access to the records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

[FR Doc. 88–5224 Filed 3–9–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of an Amendment to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing the approval of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Kentucky blaster certification regulations.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior effective upon publication in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register**. Other actions concerning the approval, the subsequent program amendments, and required amendments are identified at 30 CFR 917.13, 917.15, 917.16, and 917.17.

II. Submission of Proposed Amendment

On December 10, 1985, OSMRE published in the **Federal Register** (50 FR 50293) the approval of the Kentucky Administrative Regulations (KAR) at 405 KAR 7:070 concerning the blaster certification program. By letter dated June 17, 1987 (Administrative Record KY–739), Kentucky submitted to OSMRE an amendment to the Kentucky program that modified the existing procedures for certification of persons responsible for blasting operations incident to coal exploration and surface coal mining.

On July 13, 1987, OSMRE published a notice in the **Federal Register** (52 FR 26159–26160) announcing receipt of the proposed amendment and inviting comment on its adequacy. The public comment period ended August 12, 1987. The public hearing scheduled for August 7, 1987, was not held because no one requested an opportunity to testify.

On September 11, 1987 (Administrative Record KY–761), Kentucky submitted additional proposed modifications to 405 KAR 7:070. This new submittal supersedes the proposed amendment submitted on June 17, 1987.

The September 11, 1987 submittal is substantively the same as the June 17, 1987 submittal, with the following exceptions: The term "surface blasting operations" is now defined in section 1 of the regulations; the provisions that apply when information in certification applications is falsified or misrepresented have been revised in section 2(7)(b); the grace period for certification renewal has been extended in section 3(2)(b); the time period during which a blaster may contest a cited violation has been revised in section 4(2)(c)2; the provisions requiring that revoked, suspended, and invalid certificates be delivered by hand to the Department for Surface Mining Reclamation and Enforcement have been removed from sections 4(6)(d)2 and (7)(a); and several minor changes have been made to improve clarity of the regulations without altering the original intent.

On October 22, 1987, OSMRE published a notice in the **Federal Register** (52 FR 39540–39541) announcing receipt of the resubmitted amendment and soliciting public comment on its adequacy. The public comment period ended November 6, 1987.

III. Director's Findings

As submitted on June 17, 1987, and revised on September 11, 1987, the amendment to Kentucky's blaster certification regulations at 405 KAR 7:070 generally expands upon the provisions originally approved on December 10, 1985 (50 FR 50293). Kentucky noted that its experience in implementing those regulations revealed a need for revisions to clarify requirements, resolve implementation problems and remove obsolete, redundant or inefficient provisions.

The amendment reorganizes 405 KAR 7:070; elminates obsolete language pertaining to the original effective date of the regulations; and adds various specific administrative, procedural and application content requirements clarifying the vaguer general provisions originally approved. It includes numerous additional minor changes of an editional nature to improve clarity without altering the original intent of the regulations. As revised, the rules also apply to coal exploration operations, not just surface coal mining operations. Other new provisions include language explicitly granting the Natural Resources and Environmental Protection Cabinet ("the Cabinet") the authority to verify any information submitted in the application and to deny the application if the applicant cannot be expected to conduct himself or herself in a responsible manner. New section 7 requires blasters to notify the Cabinet of any changes in name, address, telephone number, or place of employment within 30 days of the change.

While the revisions discussed in the preceding paragraph lack direct Federal counterparts, none conflict with the Federal requirements for State blaster certification programs, as contained in

30 CFR Part 850. Nor do any of the revisions adversely affect the basis on which the Director approved Kentucky's blaster training, examination and certification program (50 FR 50293, December 10, 1985). Therefore, the Director finds that these revisions to 405 KAR 7:070 are not inconsistent with the requirements of SMCRA or the Federal regulations at 30 CFR Part 850.

In addition to the revisions discussed above, Kentucky has revised the definition of "blaster" at 405 KAR 7:070 Section 1(1)(a) to mean, in part, "a person who is directly responsible for surface blasting operations", rather than a person "directly responsible for the use of explosives" as in the previous rule and the corresponding Federal regulation at 30 CFR 850.5. However, at 405 KAR 7:070 Section 1(1)(b), Kentucky has added a definition of the term "surface blasting operations", which, among other things, includes the use of explosives. Therefore, the Director finds the Kentucky definitions of "blaster" and "surface blasting operations" to be no less effective than the Federal definition of "blaster".

IV. Public and Agency Comment

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. Only one set of substantive comments, from the Forest Supervisor of the Daniel Boone National Forest, was received. A summary of the comments and their disposition appears below:

1. The Supervisor stated that 405 KAR 7:070 section 2(6) should require that an applicant failing the examination complete an approved training course prior to retaking the examination. In response, the Director notes that this provision, which requires an applicant failing the examination once to wait 30 days before retaking it and an applicant failing the examination twice to repeat the entire training and application process, remains substantively unchanged from the previous rule, which was found to be consistent with all Federal requirements.

2. The Supervisor commented that a blaster should be able to appeal or request a formal hearing when his or her application for certification is denied. Although 405 KAR 7:070 section 2 (applications), unlike sections 3 (renewals) and 4 (suspension and revocation), does not expressly provide for appeal of a decision denying certification, the general administrative review provisions of 405 KAR 7:090 section 5 allow appeals of all Cabinet determinations. Denial of an application would be one such determination.

3. Finally, the Supervisor stated that the Cabinet should not have a delay issuance of an order to suspend certification under 405 KAR 7:070 section 4(2)(b) until an investigation determines whether a violation seems likely to occur or has occurred. The Director does not agree. The proposed rule at 405 KAR 7:070 section 4(2)(b) requires the Cabinet to immediately suspend the blaster's certification if further operations conducted by or under the direction of the blaster may reasonably be expected to constitute an imminent danger to the health and safety of the public or cause significant, imminent environmental harm. Although the rule does require the Cabinet to determine that the blaster is or has been in violation before suspending the certification, the Director finds this provision to be reasonable and in accordance with the corresponding Federal regulations at 30 CFR 850.15(b), which establish specific grounds on which the regulatory authority may, after making an appropriate finding, suspend or revoke a blaster's certificate. The grounds enumerated in the Federal rule are similar to the violations listed in the State rule. With respect to public protection, as noted, the State and Federal rules provide for expedited suspension procedures under certain circumstances. Where these would be insufficient to abate an imminent danger or threat of harm, the inspector has the authority, under other provisions of the Kentucky program, to order cessation of operations on specific sites as necessary.

Public Comments

OSMRE solicited public comment on the proposed amendment in the July 13, 1987 **Federal Register** (51 FR 26159–26160) with the comment period closing on August 12, 1987. Since no one requested an opportunity to testify, the public hearing scheduled for August 7, 1987, was canceled. Upon receipt of a revised version of the amendment (September 11, 1987), OSMRE reopened the comment period until November 6, 1987 (52 FR 39540–39541, October 22, 1987).

One set of comments was received, from Thomas J. FitzGerald on behalf of the Kentucky Resources Council. Mr. FitzGerald stated that the amendment fails to provide for imposition of civil penalties for violations of the certification requirements or substantive violations of performance standards, and thus is less effective than the Federal rule at 30 CFR 955.17. The Director does not agree. Section 5 of 405 KAR 12:010 states that any person who violates any provision of Title 405, Chapters 7 through 24, or who fails to perform the duties imposed by such provisions, or who fails to comply with an order or determination of the Cabinet pursuant to such provisions shall be subject to civil and criminal penalties. The amendment under consideration is a part of Chapter 7 and thus would be covered by these provisions.

Furthermore, the Federal standards for State blaster certification programs, as set forth at 30 CFR Part 850, contain no specific civil penalty provisions. The Federal rule referenced by the commenter, 30 CFR 955.17, applies only to Federal programs. Therefore, the Kentucky rule as amended is no less effective than the applicable Federal rules.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment to 405 KAR 7:070, as submitted on June 17, 1987, and modified on September 11, 1987. The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

3. Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 3, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 917—KENTUCKY

1. The authority citation for Part 917 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, the heading is revised, paragraph (y) is redesignated as paragraph (x), and a new paragraph (y) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(y) The following amendment to the Kentucky Administrative Regulations (KAR) as submitted to OSMRE on June 17, 1987, and modified on September 11, 1987, is approved effective March 10, 1988: Revisions to 405 KAR 7:070 concerning blaster certification requirements and procedures.

[FR Doc. 88–5235 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Removal of Requirement To Amend the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of a requirement that the State of Ohio amend its permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment as formerly required by 30 CFR 935.16(c) pertained to performance bond replacement following the incapacity of a bank or surety company.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program took effect on August 16, 1982, following the conditional approval of the Secretary of the Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Background on the Required Amendment

By letter dated December 1, 1986 (Administrative Record Number OH–0799), the Ohio Department of Natural Resources, Division of Reclamation, proposed to amend several provisions of Ohio Administrative Code (OAC) section 1501:13–7–03. On June 19, 1987 (52 FR 23265), the Director approved these portions of the proposed revisions to OAC 1501:13–7–03(B)(5)(g) and 1501:13–7–03(B)(7)(h) which extend from sixty to ninety days the period an operator losing surety or collateral bond coverage has to obtain replacement coverage. However, the Director disapproved that portion of proposed OAC 1501:13–7–03(B)(5)(g) which would have allowed operators to continue to mine an additional ninety days beyond the initial ninety days without replacing the bond in full. The Director also added a new paragraph (c) to 30 CFR 935.16 requiring Ohio to amend its program to reflect the disapproval by disallowing continued mining without adequate bond coverage.

On January 16, 1987 (Administrative Record Number OH–0887), Ohio submitted an amendment revising numerous State regulations, including OAC 1501:13–7–03(B)(5)(g). As revised, the State rule requires that operators who lose their bond coverage cease coal extraction and begin permanent reclamation operations immediately upon expiration of the time allowed for bond replacement, which is not to exceed ninety days.

As stated in the **Federal Register** notice approving this amendment (52 FR 216959, July 17, 1987), the Director found this provision to be similar to and therefore no less effective than the corresponding Federal regulations at 30 CFR 800.16(e)(2). Therefore, on December 7, 1987, the Director announced his intention to remove the requirement that Ohio amend its program in accordance with the provisions of 30 CFR 935.16(c). In the same notice, he requested public comment on the appropriateness of this action (52 FR 46379, December 7, 1987).

III. Public Comment

The public comment period announced in the December 7, 1987 **Federal Register** ended January 6, 1988. No comments were received. The public hearing scheduled for January 4, 1988, was not held since no person requested an opportunity to testify at the hearing.

Pursuant to 30 CFR 732.17(h)(1)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies. No comments were received.

IV. Director's Findings and Decision

Imposition of the required program amendment at 30 CFR 935.16(c) and the partial disapproval of OAC 1501:13–7–03(B)(5)(g) at 30 CFR 935.12(b) were both based on the failure of the December 1, 1986 version of this State rule to require bond coverage in a manner no less effective than that specified in 30 CFR 800.16(e)(2). As discussed in the portion of this notice entitled "Background on the Required Amendment", on July 17, 1987, the Director found OAC 1501:13–7–03(B)(5)(g), as submitted in revised form on January 16, 1987, to be no less effective than the corresponding Federal regulations at 30 CFR 800.16(e)(2).

Therefore, the Director finds that Ohio has met the requirements of 30 CFR 935.16(c). Based on this finding, the Director is amending 30 CFR Part 935 to remove paragraph (c) of § 935.16 and paragraph (b) of § 935.12.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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V. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance with Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 3, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 935.12 [Amended]

2. In § 935.12, paragraph (b) is removed and reserved.

§ 935.16 [Amended]

3. In § 935.16, paragraph (c) is removed and reserved.

[FR Doc. 88-5234 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 86-082a]

Identification of the Horizontal Datum Referenced in the Coast Guard Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to inform the public that due to the ability to establish global reference systems that provide more accurate geographic positions (latitude and longitude), the horizontal datums referenced on maps and charts are being revised and during the interim, various horizontal datums may be encountered. The geographic positions listed in the regulations in Title 33 Part 161 are referenced to various horizontal datums such as the North American Datum of 1927, U.S. Standard Datum, and others; however, the datum is not identified in the regulation. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various horizontal datums currently in use. This rulemaking inserts cautionary reminders that during the conversion there may be discrepancies between the positions described in the existing regulations and the charted positions.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, (202) 267-0357.

SUPPLEMENTARY INFORMATION: A final rule was previously published for this regulation (33 FR 33809; September 8, 1987); however, one section was inadvertently omitted. This rulemaking is being made effective in less than 30 days. This rulemaking does not substantively change the existing regulations. It merely provides a means of identifying when geographic positions are referenced to NAD 83. Therefore, the Coast Guard finds that an opportunity for notice and comment is unnecessary under 5 U.S.C. 553(b)(B). Because of the different datums referenced on the many maps and charts that are produced, and in view of the necessity for individuals to be able to identify the horizontal datum referenced in the published geographic positions, it has been determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days.

Drafting Information

The principle persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, and Mrs. Christena Green, Project Attorney, Office of the Chief Counsel.

Discussion of the Regulation

Through the use of satellites and other modern surveying techniques, it is now possible to establish global reference systems which provide more accurate geographic positions. Currently, several datums such as the North American Datum of 1927, U.S. Standard Datum, and others are in use. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various datums used in the past on maps and charts. NOAA has begun converting geographic positions to NAD 83. Over time, all maps and charts will reference NAD 83, except for nautical charts of the Pacific Territory Islands, which will be compiled on World Geodetic System 1984 (WGS 84). For the accuracy required for charting purposes, geographic positions referenced to WGS 84 are essentially equivalent to the geographic positions referenced to NAD 83. The entire conversion is expected to be accomplished over a ten-year period.

During the period of conversion, some maps and charts will be referenced to the new NAD 83, while others will still be referenced to the former datums, such as the North American Datum of 1927, U.S. Standard Datum, and others. Corrections must be made to the geographic positions from the previous referenced datum to NAD 83. As a result of applying these corrections the geographic position descriptions will change; however, the location of objects in relation to surrounding land does not change.

The regulations in Title 33, Part 161 are being amended to include a notice that indicates when the datums of the geographic positions in these regulations are referenced to NAD 83.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is

unnecessary. This rule is merely adding information to clarify the existing regulations. This final rule will not have a quantifiable cost impact. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 161

Vessel traffic management.

For reasons set out in the preamble, Title 33, Chapter I, Part 161 of the Code of Federal Regulations, is amended as set forth below.

PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.301(d) is added to read as follows:

§ 161.301 Purpose and applicability.

* * * * *

(d) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

* * * * *

Dated: March 7, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 88-5282 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3579/R942; FRL-3339-2]

Pseudomonas fluorescens EG-1053; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This exemption was requested by Ecogen, Inc., Langhorne, PA 19047-1810. This rule will expire on March 2, 1990.

DATE: Effective on March 2, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Product Manager 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 16, 1987 (52 FR 47754), which announced that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047-1810, had submitted pesticide petition (PP) 8F3579 to EPA, proposing to amend 40 CFR Part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biolfungicide *Pseudomonas fluorescens* EG-1053 in or on the raw agricultural commodity cotton. In the **Federal Register** of February 24, 1988 (53 FR 5458), it was announced that Ecogen, Inc., had amended PP 8F3579 to replace cotton specifically with cottonseed and cotton forage for exemption from the requirement of a tolerance. Ecogen's strain of the bacterium *Pseudomonas fluorescens* was isolated from soil in Mississippi and has not been genetically altered. This microorganism is a natural soil isolate and has not been altered or improved. Microorganisms known as *Pseudomonas fluorescens* constitute a rather diverse complement of bacteria that occur in both soil and aquatic habitats. They can be isolated from these sources using enrichment with appropriate media. The proposed use of the biofungicide is for control of the *Pythium/Rhizoctonia* seedling disease complex of cotton.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, acute intravenous toxicity/pathogenicity study in the mouse, primary eye irritation study in the rabbit, and hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Dagger™. A review of these studies indicates that the biofungicide was not toxic to test animals when administered via the oral, dermal, or pulmonary routes. The active ingredient, *P. fluorescens* EG-1053, was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product Dagger™ G biofungicide did not elicit a delayed type of hypersensitivity reaction in guinea pigs. The end-use product was mildly irritating to the eye. All the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from use of the biofungicide on cotton.

As a condition of registration, the Agency is requiring Ecogen, Inc., to perform further taxonomic characterization of its *P. fluorescens* strain, so that placement to the level of biovar can be made. As part of the characterization, a growth curve that establishes the upper temperature limits for growth of the *P. fluorescens* strain also must be done. It is reported by Ecogen, Inc., that *Pseudomonas fluorescens* is a ubiquitous soil bacterium, and it is reasonable to assume that most people are exposed daily to this organism.

P. fluorescens has been associated with disease in fish. In most cases, identification was confidently established at the genus level, but identification to the species level was accomplished in only about half of the cases. The Agency is not aware of disease occurrence with *Pseudomonas* in aquatic invertebrates.

Avian testing on the active ingredient, *P. fluorescens* EG-1053, by both the oral and injection route showed no adverse effects at levels of 6.9×10^6 and 4.8×10^6 colony-forming units per bird. The Agency believes that there will not be any adverse effects to avian species through the use of *P. fluorescens* EG-1053 on cotton. Also, intravenous injection studies using mice show no pathogenic or toxic signs attributable to *P. fluorescens* EG-1053. Therefore, the Agency believes that the use of this product will not cause adverse effects to feral mammals. Since the use is an in-furrow treatment to be applied at planting time, no insects are expected to be exposed to the active ingredient. Therefore, the Agency does not expect any adverse effects on beneficial insects. Testing in nontarget plants showed that, in most cases, the active ingredient caused an increase in growth after germination. The exceptions were cabbage, which showed a significant decrease in seedling height, and lettuce, which showed a significant decrease in fresh weight at the end of 4 weeks. No phytotoxic effects were seen in any of the species tested. The submitted ecological effects data indicate that, in general, *P. fluorescens* EG–1053 should not pose a threat to most plants. There is a possibility that some crop species may be affected. The Agency does not feel that there will be a "may effect" situation for endangered terrestrial wildlife, insects, or plants thorugh the use of *P. fluorescens* EG–1053 on cotton. No "may effect" determination can be made for endangered fish until an acceptable fish study is submitted.

Because of the inability to predict with some measure of confidence the number of bacteria reaching aquatic ecosystems from terrestrial applications and what will occur once they reach the ecosystem, the effect on aquatic organisms that may be affected by *P. fluorescens* EG–1053 must be tested. The Agency is requiring the registrant to submit within 9–12 months of conditional registration, the following studies:

1. Freshwater fish testing (154–19).
2. Freshwater aquatic invertebrate testing (154–20).
3. Target area phytotoxicity tests (2) (121–1). The previously submitted tests may be upgraded to core if the percent of active ingredient is reported and the test microorganism is confirmed as the same one being proposed for registration.
4. Seedling germination/vegetative vigor (Tier I) (122–1).
5. Seedling germination/vegetative vigor (Tier II).

Until these studies are completed, the granting of an exemption from the requirement of a tolerance would be in the public interest because of the beneficial role of this biofungicide in or on cotton. This rule will expire on March 2, 1990. Based on the review of the new data, the Agency will consider extending the rule.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Pseudomonas fluorescens EG–1053 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1088 is added to read as follows:

§ 180.1088 *Pseudomonas fluorescens* EG-1053; exemption from the requirement of tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Pseudomonas fluorescens* EG–1053 in or on cottonseed and cotton forage. This rule will expire on March 2, 1990.

Dated: March 2, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–5265 Filed 3–9–88; 8:45am]

BILLING CODE 6560-50-M

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40 CFR Parts 264, 265 and 270

[FRL-3339-]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects errors in the preamble discussion of a final rule for hazardous waste management facility closure requirements that appeared in the **Federal Register** on Friday, May 2, 1986 (51 FR 16422). Certain provisions of the May 2 rule were erroneously described as less stringent than the previous Federal program. The correct characterization of these provisions is now being provided.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC or Marty Madison, Office of Solid Waste (WH-563B), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2229.

SUPPLEMENTARY INFORMATION: On March 19, 1985, the Environmental Protection Agency (EPA) proposed to amend portions of the closure and post-closure care and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities (TSDFs) under the Resource Conservation and Recovery Act (RCRA). See 50 FR 11068. On May 2, 1986, EPA promulgated these amendments in final form. See 51 FR 16422.

In the preamble accompanying the May 2 rule, the section entitled "Effect Upon State Authorization", 51 FR 16442, indicated that certain of the newly promulgated requirements were considered to be less stringent than or to reduce the scope of the previous Federal requirements. Authorized States must revise their programs to adopt provisions equivalent to or more stringent then Federal requirements. Authorized States are not required to revise their programs to be equivalent to less stringent provisions.

Upon subsequent review of the May 2 requirements, however, EPA has recognized that certain sections or subsections of the rule were mischaracterized in the premable as less stringent than the previous Federal closure and post-closure standards in Parts 264 and 265. These sections are, in fact, more stringent standards. Thus,

they should not have been included on the list of less stringent sections provided in the preamble at 51 FR 16442.

If a section was characterized as less stringent, but was divided into subsections, some more and some less stringent, only the subsections that should have been identified as more stringent will be recharacterized. However, if a section was not divided into subsections, but contained both more and less stringent parts, the entire section will be recharacterized as more stringent.

The following sections and subsections previously and erroneously characterized as less stringent should have been classified as more stringent: 264.115, 264.118(a), 264.143(a)(10), 264.143(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.143(e)(5), 264.145(a)(11), 264.145(b)(4)(ii), 264.145(c)(5), 264.145(d)(9), 264.145(e)(5), 265.112(d)(1), 265.115, 265.118(a), 265.118(e), 265.118(f), 265.143(a)(10), 265.143(b)(4)(ii), 265.143(c)(8), 265.143(d)(5), 265.145(a)(11), 265.145(b)(4)(ii), 265.145(c)(9) and 265.145(d)(5).

States which have not yet modified their regulations for this May 2, 1986 final rule must do so on the basis of today's correction. States which have already modified their regulations to conform to the May 2, 1986 final rule but have chosen to omit the sections erroneously characterized as less stringent, will have to make further program modifications. This correction notice does not alter the time provided for States to revise their programs to reflect the Federal program, including the sections identified today as more stringent. 40 CFR 271.21(e) (51 FR 33722, September 22, 1986) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to changes in the Federal program.

Application of these extensions to the May 2, 1986 final rule would allow the States until January 1, 1989 to make the appropriate modifications to their program envisioned by this correction notice. In regard to States that have already modified their regulations but have chosen to omit the erroneously characterized sections, the Regional Administrator may grant these extensions where appropriate. In addition, if these recharacterized sections are unable to be adopted by January 1, 1989, the Regional Administrator may further extend the deadlines, taking into account the State's regulatory and/or legislative procedures.

Dated: March 4, 1988.

J.W. McGraw,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following correction is made in the preamble for [SWH–FRL2891–9] (FR Doc. 86–6368), Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements published in the **Federal Register** issue of May 2, 1986 (51 FR 16422).

On page 16442, column three, the third full paragraph, the list of sections containing provisions that are considered less stringent than or a reduction in the scope of the previous Federal requirements is corrected to read as follows: "Those provisions appear in Sections: 264.112(a)(2), 264.112(b)(7), 264.112(d)(1), 264.112(e), 264.113(a), 265.112(a), 265.112(b)(7), 265.112(e), and 265.113(a)."

[FR Doc. 88–5286 Filed 3–9–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contract Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is revising the regulatory provisions regarding the involvement of the Small Business Administration (SBA) in the administrative procedures for determining whether a small business concern qualifies for award of Government supply contracts as either a "manufacturer" or "regular dealer," to whom the award of covered contracts is restricted by the Walsh-Healey Public Contracts Act (PCA). SBA requested revisions to the regulations which would eliminate the provision for SBA to render PCA eligibility determinations in protest cases in which the contracting officer has found a small business bidder to be eligible under the PCA. Additional revisions will streamline the processing of eligibility determination cases between the contracting agencies, SBA, and the DOL and help speed up procurement activities in certain instances.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8305. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 13, 1987, the Department of Labor (DOL) published in the **Federal Register** (52 FR 7892) proposed changes to 41 CFR 50–201.101(b), containing the administrative procedures to be followed by contracting agencies, SBA, and DOL in determining the eligibility status of business concerns as either "manufacturers" or "regular dealers," as required for award of Government contracts subject to the PCA. Persons interested in the rulemaking were allowed 60 days to submit comments. Four comments were received from Federal agencies. This document provides the text of the final rule and explains any changes from the proposal that were made in response to the comments received.

Background

The PCA provides labor standards for employee working on Federal contracts in excess of $10,000 calling for the manufacturer or furnishing of materials, supplies, articles or equipment. Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Contracting agencies must determine in the first instance whether a bidder in line for contract award qualified for award according to criteria in DOL regulations (41 CFR Parts 50–201 and 50–206). Such agency determinations are subject to review by DOL. In cases involving small businesses, the Small Business Act, as amended, however, empowers the SBA to overturn, on review, a contracting agency's finding of ineligibility and to certify a small business to be eligible to perform a particular government contract.

As set forth in 41 CFR 50–201.101(b), the present procedures for small businesses require SBA review of all contracting agency findings of ineligibility, as well as all protests which challenge an agency's finding of eligibility. SBA requested revisions to the existing regulations which would eliminate SBA review under the following circumstances: (1) Competitor protest cases which challenge the contracting officer's determination, after review of the protest, that a small business firm is eligible under PCA; (2) Cases involving contracts awarded by agencies which are not subject to the Small Business Act because they are outside the Executive Branch (e.g., contracts with the U.S. Postal Service and District of Columbia Government); and (3) Cases where either the contracting officer or SBA has found that the firm is to be denied award for procurement reasons other than a finding of ineligibility under PCA (e.g., determination of "non-responsibility" where SBA has declined to issue a Certificate of Competency).

SBA also requested revisions to provide that if a firm did not contest the initial finding of ineligibility and submitted no information on its own behalf to SBA, such ineligibility determination would become final and would not be referred by SBA to DOL. However, it was determined upon review that since the language of section 8(b)(7)(B) of the Small Business Act mandates that SBA forward such cases to the Secretary of Labor for final disposition, this part of SBA's request was precluded by law and could not, therefore, be adopted by regulation.

Summary of Comments

SBA suggested that the reference in the proposal to "Administrator of the Small Business Administration" be changed to reflect SBA's current regional operating structure, under which questions as to a small business concern's eligibility are currently referred to the appropriate regional office of SBA for the location of the affected business concern. The regulation will be revised in appropriate places to add "authorized representative," to address SBA's suggestion.

The Defense Logistics Agency (DLA) recommended changes to proposed § 50–201.101(b)(6), pertaining to the award of contracts under emergency conditions prior to receiving an eligibility determination. The proposed section provided that contract awards would be held in abeyance until a final determination is rendered in those cases subject to SBA review. DLA suggested that, in order to be consistent with a pending change in the governmentwide Federal Acquisition Regulation (48 CFR 22.608–4; FAR Case 84–53), award should be held in abeyance in such cases until the contracting officer receives a determination of eligibility from SBA, or notification that SBA has forwarded the case to DOL for review. This would allow SBA the appropriate opportunity for review as provided in the Small Business Act (15 U.S.C. 637(b)(7)(B)), yet not indefinitely delay the award unnecessarily in cases of exigency, where the items are urgently required or a failure to make the award promptly would create substantial hardship for the Government. DLA's suggestion is a constructive one, and it will be adopted.

The General Services Administration (GSA) recommended that the effective date of the final rule be delayed sufficiently to allow the Federal Acquisition Regulation to be modified to conform to this rule, and thus avoid confusion that might be created from conflicting rules. For this reason, the effective date of this rule will be delayed for sixty days following the date of publication in the **Federal Register**, until May 9, 1988.

Although no change was proposed in the regulation concerning the circumstances in which agencies must investigate and affirmatively determine the Walsh-Healey eligibility status of a bidder, GSA recommended that more weight be placed on the self-certification of the offeror in determining eligibility. GSA suggested deleting subparagraph (b)(2)(i), which precludes reliance on the representation of a bidder if that bidder is in line for award and has not previously been awarded a contract subject to the Act by the individual procuring office, and/or if a pre-award investigation or survey of the bidder's operations is otherwise being made to determine the bidder's technical and production capability, plant facilities and equipment, and subcontracting and labor resources.

The language of the Act and its legislative history makes clear Congress' intent that covered contracts are to be awarded only to contractors who are currently capable of qualifying for award under the Act as a bona fide manufacturer or a bona fide regular dealer. If the legislative purposes are to be effectively achieved, the contracting agency must obtain and consider evidence which affirmatively shows that the eligibility standards are, in fact, presently met prior to any award of a contract subject to the Act. To permit otherwise would serve to encourage the very abuses which Congress sought to eliminate. Moreover, there is no adequate remedy available to correct the error after the fact, other than disrupting the procurement, if a firm that is not eligible under PCA is incorrectly awarded a contract subject to the Act. The only possible recourse is for the Government to exercise its right to terminate the contract and enter into other contracts or make open market purchases, as provided in 41 CFR 50–201.101(a)(3)(i)(B), when a bidder does not act in good faith and misrepresents its PCA eligibility status.

For these reasons, the existing regulations have long provided that a bidder's mere representation or affirmation that it qualifies under the Act is insufficient (*see* 41 CFR 50–206.51(d)), and, further, that a bidder's eligibility status on a previous PCA contract or its performance as a subcontactor on PCA contracts are not determinative of the bidder's present eligibility status (*see* 41 CFR 50–206.51(g)). On balance, when viewed in the context of the Act's legislative intent, the Department does not believe that sufficient justification has been presented to warrant deleting, as GSA proposes, the longstanding criteria in 41 CFR 50–201.101(b)(2)(i) for when to conduct preaward investigations of a bidder's PCA qualifications. Accordingly, the current policies will be maintained.

Classification—Executive Order 12291

This rule is procedural in character. It is not classified as a "major rule" under Executive Order 12291 on Federal Regulation because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department included an Initial Regulatory Flexibility Analysis in its Notice of Proposed Rulemaking published on March 13, 1987 (52 FR 7893). That analysis concluded that the revised rule would not, if adopted, have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act. No comments were received on any aspect of this analysis. Accordingly, the Initial Analysis is being adopted as the Final Regulatory Flexibility Analysis, without change. Members of the public may obtain copies of the analysis from the **Federal Register** of March 13, 1987 (52 FR 7893–94), or by contacting the Wage and Hour Division at the address and telephone

number listed above under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedure, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, for the reasons set out in the preamble, 41 CFR 50–201.101(b) is revised as set forth below.

Signed at Washington, DC, this 4th day of March 1988.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

41 CFR Part 50–201 is amended as follows:

PART 50–201—GENERAL REGULATIONS

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2036, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (b) is revised to read as follows:

§ 50–201.101 Manufacturer or regular dealer.

* * * * *

(b) *Determination of eligibility.* (1) The responsibility for applying the stated eligibility requirements to determine before award whether a bidder qualifies as a manufacturer or regular dealer rests in the first instance with the contracting agency pursuant to authority delegated by the Secretary of Labor in accordance with section 4 of the Act. (Circular Letter 8–61.) Contracting agencies shall obtain and consider all available factual evidence essential to eligibility determinations for all bidders in line for award of contracts subject to the Act. Any decision of the contracting agency is subject to review by the Department of Labor according to the procedures outlined below. The Department of Labor shall give great weight to the technical knowledge and expertise of the contracting agencies and shall uphold the contracting agencies' initial determinations unless the determinations are found to be arbitrary, capricious or otherwise not in accordance with the evidence presented or with the law. The decision of the Department of Labor shall be final with respect to the procurement or procurements at issue. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting agency.

(2) The contracting agency shall investigate and determine the Walsh Healey eligibility status of a bidder and shall not merely rely on the representation or affirmation of a bidder in at least the following circumstances:

(i) Where the bidder (or bidders) in line for contract award has not previously been awarded a contract subject to the Act by the individual procuring office and/or where a preaward investigation or survey of such bidder's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, subcontracting and labor resources of such bidder (or bidders).

(ii) Where there is a protest of a bidder's eligibility; and

(iii) Where a contracting officer has reason to question a bidder's eligibility, such as where the proposed place of contract performance and shipment is other than the location of the bidder's place of business.

(3) If the contracting officer determines that an apparently successful bidder or offeror that is *not* a small business concern is ineligible, the contracting officer shall (i) promptly notify the bidder or offeror in writing that:

(A) It does not meet the eligibility requirements, and the specific reason therefor; and

(B) It may protest such determination by submitting any evidence concerning its eligibility to the contracting officer within a reasonable time as set by the contracting officer.

(ii) If, after review of the evidence submitted by the bidder or offeror, the contracting officer does not reverse the decision, the contracting officer shall notify the bidder or offeror of the determination and the reasons therefor.

(iii) If the bidder or offeror still disagrees with the finding, the bidder's or offeror's protest, together with all pertinent evidence, will be forwarded to the Administrator of the Wage and Hour Division of the Department of Labor for a final determination, and the bidder or offeror will be so notified.

(iv) If a bidder has been conclusively denied award for procurement reasons other than a finding of ineligibility under the Walsh-Healey Act (e.g., a finding of nonresponsibility), the Walsh-Healey eligibility status becomes moot and the case need not be processed further, regardless of whether the contracting officer rendered an initial finding of ineligibility under Walsh-Healey.

(4) In the case of a small business concern, the notification and protest procedures in paragraph (b)(3) of this section, shall be followed except that any finding of ineligibility rendered by an agency of the executive branch subject to the requirements of the Small Business Act (15 U.S.C. 637c.) shall be forwarded with all pertinent evidence to the Administrator of the Small Business Administration, or authorized representative, whether or not the small business concern protests the determination, and the bidder or offeror shall be so notified. The Administrator of the Small Business Administration, or authorized representative, shall review the finding of the contracting officer and shall either dismiss it and certify the small business concern to be eligible for the contract award in question, or if it concurs in the finding, forward the matter to the Administrator of the Wage and Hour Division for a final determination, in which case the Small Business Administration may certify the small business concern only if the Wage and Hour Division finds the small business concern to be eligible. The Small Business Administration is bound by the regulations and interpretations of the Department of Labor in making its determinations of eligibility under the Walsh-Healey Act.

(5) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award, the contracting officer shall promptly notify the protestor and the apparently successful bidder or offeror in writing that:

(i) They may submit evidence concerning the matter to the contracting officer within a reasonable time as set by the contracting officer; and

(ii) After review of such evidence the contracting officer will direct a preaward survey, if necessary, and reach a decision on all the evidence and notify the protestor and successful bidder of his/her finding. If either party disagrees with the finding, the contracting officer shall notify the parties and then forward the decision and entire record to the Administrator of the Wage and Hour Division for a final determination. However, if the apparently successful bidder or offeror is a small business concern and the contracting officer has found the small business concern to be ineligible, the protest and all pertinent evidence will be forwarded to the authorized representative of the Administrator of the Small Business Administration, and the procedures set forth in § 50-201.101(b)(4) shall be followed.

(6)(i) If the contracting officer forwards the case to the Small Business Administration for review of eligibility under the Act pursuant to § 50-201.101(b) (4) or (5), award will be held in abeyance until the contracting officer receives a determination of eligibility from the Small Business Administration or notification that the Small Business Administration has forwarded the case to the Department of Labor. (ii) If the contracting officer or the Small Business Administration forwards a case to the Department of Labor for review of eligibility under the Act, award will be held in abeyance until the contracting officer receives a final determination from the Department of Labor, unless the contracting officer finds that award should be made immediately because:

(A) The items to be procured are ungently required; or

(B) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(iii) If the contracting officer decides to proceed with the award, the contracting officer shall give written notice of the decision to proceed to the protester, the Department of Labor and to other concerned parties.

(iv) If an award is made under paragraph (b)(6)(ii) of this section, the contracting officer shall submit to the Department of Labor documentation explaining the need for making an award prior to the receipt of a final determination from the Administrator of the Wage and Hour Division.

(7) A protest received after award, but before final completion of the contract, shall be investigated and processed under the provisions outlined in paragraph (b)(5) of this section and forwarded to the Department of Labor, and the protestor shall be so notified.

(8) If the contract has been completed before receipt of the protest, the protester shall be notified that no action will be taken on the protest.

[FR Doc. 88-5230 Filed 3-9-88; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12

Surplus Real Property—Use for Facilities To Assist the Homeless

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services amends its regulations at 45 CFR Part 12, "Disposal and Utilization of Surplus Real Property for Public Health Services," to permit the lease of surplus Federal real property to assist the homeless. These amendments allow the implementation of Title V of the Stewart B. McKinney Homeless Assistance Act.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Wyman Williams (202) 245-7426.

SUPPLEMENTARY INFORMATION: On July 22, 1987, the President signed Pub. L. 100-77, the "Stewart B. McKinney Homeless Assistance Act." Title V of that Act provides for the identification and use of surplus Federal property for facilities to assist the homeless. Section 501(d)(2) of that Act directs the Secretary of Health and Human Services to issue regulations permitting leases of surplus Federal buildings and other real property for use for facilities to assist the homeless. That section further provides that the use of such property is to be included as a permissible use in the protection of public health within the meaning of section 203(k) of the Federal Property and Administrative Services Act of 1949.

This Department's regulations under the Federal Property and Administrative Services Act of 1949 are found at 45 CFR Part 12. Based on the requirements of the Act referred to above, we are amending these regulations to permit the lease of surplus Federal real property for facilities to assist the homeless. Section 12.3(e) is amended to identify the provision of assistance to the homeless as one of the purposes for which property may be provided under the Federal Property and Administrative Services Act of 1949. In addition, the table set forth as Exhibit A to 45 CFR Part 12 is amended to permit a public benefit allowance of 100 percent for leases of property to assist the homeless. This amendment permits the leases to be executed without a requirement of payment to the Federal government by the organization providing assistance to the homeless.

The regulation is further amended to permit, for purposes of leases within the scope of Title V of Pub. L. 100-77, the lease of surplus Federal real property to nonprofit organizations, whether or not they are tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code. While the tax-exempt requirement normally applies to entities seeking the use of surplus property under Part 12, because section 501(c) of Pub. L. 100-77 identifies eligible applicants as "private nonprofit organizations, units of local government, and States," the Department has concluded that Congress intended that any nonprofit organization be eligible to obtain a lease for purposes of assisting the homeless. Accordingly, we are amending section 12.1(j) and section 12.3(b) to permit leases for purposes of assisting the homeless to any nonprofit organization.

Waiver of Proposed Rulemaking and of Delayed Effective Date

Because the amendments set forth below simply incorporate into existing regulations the statutory provisions of Pub. L. 100-77, and because the speedy implementation of this program of assistance to the homeless will benefit the intended beneficiaries of this legislation, the Secretary has determined that proposed rulemaking is unnecessary and not in the public interest and that there is good cause for waiving such requirement. On the same basis, the Secretary has determined that there is good cause for making these regulations effective upon publication.

The Department will monitor the implementation of this program and, should matters arise where further amendment to these regulations with respect to the homeless assistance program is needed, we will undertake further rulemaking as appropriate.

E.O. 12291

This rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. It is unlikely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that this rule will not have a significant economic

impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under control number 0990-0148.

List of Subjects in 45 CFR Part 12

Public health, reporting and recordkeeping requirements, surplus government property.

Dated: February 10, 1988.

Otis R. Bowen,

Secretary.

PART 12—[AMENDED]

Accordingly, 45 CFR Part 12 is amended as follows:

1. The Authority citation for 45 CFR Part 12 is amended by removing the period and adding:

Authority: * * *; sec. 501 of Pub. L. 100-77, 101 Stat. 509-10, 42 USC 11411.

§ 12.1 [Amended]

2. 45 CFR 12.1(j) is revised to read as follows:

* * * * *

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

* * * * *

§ 12.3 [Amended]

3. 45 CFR 12.3(b) is revised to read as follows:

* * * * *

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

* * * * *

4. 45 CFR 12.3(e) is revised to read as follows:

* * * * *

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to the homeless may be eligible for leases under Title V of Pub. L. 100-77. Except for services to the homeless, services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

* * * * *

Exhibit A—Public Benefit Allowance for Transfer of Real Property for Health Purposes [Amended]

5. Exhibit A to 45 CFR Part 12 is amended by adding at the bottom of the "Classification" column "Assistance to the Homeless" and in the corresponding locations at the bottom of the "Basic public benefit allowance" and "maximum public benefit allowance" columns " ²100".

[FR Doc. 88-5297 Filed 3-9-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193

[CGD 84-044]

Hazardous Materials Used as Ships' Stores On Board Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the rules for hazardous materials used as ships' stores on board vessels. Except for minor amendments, the present rules have remained unchanged since January 18, 1941. Many of the citations, terms, and definitions have become outdated. This revision updates the text and replaces lengthy tables by cross referencing existing Department of Transportation Hazardous Materials regulations and Consumer Product Safety Commission labeling regulations. It also eliminates the requirement for hazardous materials to be certified for use as ships' stores on board vessels to reduce the paperwork burden for industry and the Coast Guard, while maintaining the current level of safety. Materials presently listed which are no longer used as ships' stores are removed.

DATES: This rule is effective on April 11, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Rivkin, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

SUPPLEMENTARY INFORMATION: On July 7, 1987, a notice of proposed rulemaking, entitled "Hazardous Materials Used as Ships' Stores Aboard Vessels", was published in the **Federal Register** (52 FR 25409). The Coast Guard received two written comments on this proposed rulemaking. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this rule are Mr. Carl Rivkin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Projects

On March 22, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, entitled "Carriage and Use of Liquefied and Non-liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire" (57 FR 10685), which would allow the use of liquefied petroleum gas (LPG) and compressed natural gas (CNG) as fuel for cooking on passenger vessels (CGD 83-013). The requirements in this rule (CGD 84-044) relating to cooking fuels (§ 147.50) restate the previous regulations. This section will be amended, if necessary, to conform to CGD 83-013, above, when that rulemaking is published as a final rule.

Under a separate rulemaking project, entitled "Revision of the Regulations on Outer Continental Shelf Activities" (CGD 84-098), the Coast Guard plans to propose that the hazardous ships' stores regulations be made applicable to OCS facilities. The hazards associated with the use of these materials on OCS facilities is comparable to those on vessels. Comments on this project should reference docket number CGD 84-098.

Discussion of Comments Received

One comment requested that cylinders manufactured in foreign countries that are not Department of Transportation (DOT) approved be permitted for use in containing compressed gases for use as ships' stores on U.S. vessels when cylinders that meet DOT specifications are not available. Because there are no international standards for the manufacture of cylinders, the Coast Guard cannot give an alternate requirement for foreign cylinders. The use of foreign cylinders will be considered under the general waiver provision (§ 147.9). Therefore, the requirement in § 147.60(a)(2) that DOT specification cylinders be used was not changed.

One comment questioned the need for volume limitations for the carriage of acetylene and oxygen in the previous and proposed rules. It stated that those limitations are impracticable for vessels involved in industrial operations (e.g. pipe laying, diving, and offshore drilling) and should be removed for those vessels. Sections 147.70 and 147.85 in the final rule do not have acetylene and oxygen volume limitations for vessels engaged in industrial operations. This lifting of the volume limitation for vessels engaged in industrial operations is made with the qualification that they meet the safety requirements for acetylene and oxygen carried as packaged cargo. Though this qualification will allow vessels engaged in industrial activities to carry more acetylene and oxygen than the previous or proposed rules provide, it will ensure that an acceptable level of safety can be maintained without hindering industrial operations.

Discussion of Changes to the Notice

1. The limits in the proposed §§ 147.70 and 147.85 for acetylene and oxygen on board vessels for use as ships' stores were dropped for vessels engaged in industrial operations, as discussed in the "Discussion of Comments Received" section.

2. Under the notice of proposed rulemaking, hazardous materials not listed by name in proposed § 147.27 would have to be certified by the Coast Guard under proposed § 147.22 before they could be carried on board vessels as ships' stores. Under proposed § 147.30, both materials listed by name and materials certified for carriage would have to meet basically the same labeling requirements. The only exception was for "consumer commodities", as defined in § 147.3. Consumer commodities would not have to be listed by name or be certified but would be permitted on board if they were labeled under § 147.30 or under the Federal Hazardous Substance Act regulations in 16 CFR Part 1500.

After reconsidering this process, the Coast Guard has determined that it can ensure the same level of safety without certifying hazardous materials as ships' stores and has therefore, eliminated the certification requirements in the final rule. The end result would be that a "hazardous material" (as defined in § 147.3 and 49 CFR 171.8) may be carried on board a vessel for use as ships' stores if it meets the labeling requirements of § 147.30 and the stowage and special requirements, listed in Subpart B. With the elimination of certification, all existing certificates are null and void (§ 147.1(c)).

In addition to reducing the administrative and paperwork burden on industry and the Coast Guard, deletion of the certification process will also eliminate the confusion surrounding the certification program. Frequently, purchasers of certified products are led to believe by vendors that "certified by the Coast Guard" meant that the Coast Guard had approved the product as being effective for its intended purpose, as well as eligible to be carried on board a vessel as ships' stores. Approval of the product's effectiveness was never intended by the Coast Guard.

3. New § 147.40 is added to require Coast Guard approval before Class A Explosives, Class A poisons, forbidden materials listed in 49 CFR 172.101, and flammable gases not specifically named in Subpart B of Part 147 are permitted on board vessels as ships' stores. These materials are unusually dangerous and will likely require that special precautions be followed to be permitted on board vessels as ships' stores. Coast Guard approval of these materials as ships' stores is effectively the same as certification under the previous and proposed rules. Therefore, no new burdens are imposed by this provision.

4. The final rule contains a new requirement (§ 147.60(a)(1)) that compressed gas cylinders be used only for the materials for which the cylinders are authorized. The absence of this requirement in the notice was an oversight. The intent and common understanding of these regulations, as well as the previous regulations, has always been that compressed gases must be put in cylinders for which they are authorized. The correction of this oversight is a clerical change and not an extension of the requirements stated in the notice.

5. In § 147.100 on radioactive materials, the phrase "used as radioactive tracers or sealed sources" was inserted in the proposal to give examples of the radioactive materials being addressed. Because it can be misconstrued as limiting the materials addressed to those used as tracers or sealed sources, the phrase is deleted in the final rule. It is intended that all radioactive materials on board meet the Nuclear Regulatory Commission's regulations.

6. In proposed § 147.65(c) on carbon dioxide and halon fire extinguishing systems, the cross reference to § 147.60(a)(2) for re-marking and retesting requirements was incorrect. The final rule substitutes the correct references (§ 147.60 (a)(3) and (a)(4)). Paragraph (a)(2) concerns construction, not re-marking and testing.

7. In § 147.95(c), the container requirements for ships' signals and emergency equipment were overly stringent and were changed to give more latitude in the choice of containers.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51:

American Boat and Yacht Council, Inc. (ABYC)
  ABYC H-25-81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.
American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE)
  ANSI/ASHRAE 34-78—Number Designation of Refrigerants, approved 1978.
Public Health Service, Department of Health and Human Services (DHHS)
  DHHS Publication No. (PHS) 84-2024—The Ships' Medicine Chest and Medical Aid at Sea, revised 1984.
Underwriters Laboratories, Inc. (UL):
  UL 30—Standard for Metal Safety Cans, 7th Ed, March 11, 1985, revised March 12, 1985 and March 3, 1987.
  UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.
  UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.
  UL 1314—Standard for Special-Purpose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

The material incorporated by reference is on file at the Library of the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC 20408 and is available for inspection or copying at Coast Guard Headquarters, Hazardous Materials Branch, Room 1214, 2100 Second Street SW., Washington, DC 20593-0001. Copies of the material may be purchased at the addresses listed in § 147.7(c).

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary.

The principal objectives of this rule are to simplify previous requirements and to update the regulations to take into account changes in laws and related regulations. This rule does not increase costs already imposed by the previous regulations but reduces overall costs for both industry and the Coast Guard.

Under the previous regulations, manufacturers of hazardous products intended for use as ships' stores had to apply first to the Coast Guard in writing to obtain a ships' stores certificate for their product. This rule eliminates the need for Coast Guard certification of hazardous ships' stores and saves the applicants approximately $347.00 per application. For the approximately 40 new applications received each year, the industry wide savings will be approximately $13,880.00. In addition, the Coast Guard will save the approximately 120 manhours ($1744.00) required annually to process these applications. This reduction in paperwork costs to industry and the Coast Guard is twice the amount stated in the notice. The reason for this increase in savings is due to the fact that, of the approximately 40 applications received each year, the proposal would have eliminated only about 20; whereas, with the complete removal of certification, all 40 applications would be eliminated.

Also, this rule eliminates the need to have certificates renewed every three years (existing 46 CFR 147.03-9). This change will save industry approximately $28.00 per renewal for the approximately 48 certificates due for renewal each year and save the Coast Guard approximately 72 manhours per year or $946.40.

In the notice of proposed rulemaking, certain classes of hazardous materials, i.e., flammable gases not named in the regulations, Class A Explosives, Class A Poisons, and forbidden materials listed in 49 CFR Part 172.101, would require certification to be used as ships' stores. In the final rule, these classes of materials require Commandant (G-MTH) approval to be used as ships' stores aboard vessels and a list of approved materials will be maintained by Commandant (G-MTH). There have been no requests for certification of any material that falls into these classes for use as ships' stores. Therefore, there probably will be few, if any, requests for Commandant (G-MTH) approval and little, if any, resulting paperwork burden.

Coast Guard inspections of vessels to determine compliance with Part 147 are conducted at the same time as other planned or routine inspections. This rule does not require added manpower.

In conclusion, this rule creates no new costs, but reduces applicant and Coast Guard costs and simplifies the regulations for the maritime industry.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this rule is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As described in the Regulatory Evaluation section above, the effect of this rule is to reduce Coast Guard and industry costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements in the following sections: §§ 147.9, 147.30, 147.40, and 147.60(c)(2). These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. Part 147 has been assigned OMB Control Number 2115-0139.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule revises existing regulations to improve formatting and readability and to remove materials no longer used as ships' stores.

List of Subjects

46 CFR Part 2

Fire protection, Law enforcement, Marine safety, Penalties, Vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 34

Barges, Fire prevention, Marine safety, Tank vessels.

46 CFR Part 58

Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 78

Marine safety, Passenger vessels.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 107

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 109

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Reporting requirements, Vessels.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting requirements.

46 CFR Part 147

Arms and munitions, Explosives, Hazardous materials transportation,

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Incorporation by reference, Marine safety, Radioactive materials, Reporting requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting requirements.

46 CFR Part 176

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193 of the Code of Federal Regulations are amended as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for Part 2 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

2. By revising § 2.75-60 to read as follows:

§ 2.75-60 Hazardous ships' stores.

Hazardous ships' stores, as defined in § 147.3 of this chapter, must not be brought on board or used on any vessel unless they meet the requirements of Part 147 of this chapter.

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

4. In § 31.10-18, by revising Table 31.10-18(b), footnote 1, and Table 31.10-18(c), footnote 1, to read as follows:

§ 31.10-18 Fire fighting equipment: General — TB/ALL.

* * * * *

(b) * * *

TABLE 31.10-18(b)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(c) * * *

TABLE 31.10-18(c)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 34—FIRE FIGHTING EQUIPMENT

5. The authority citation for Part 34 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

6. In § 34.15-20, by revising paragraph (i) to read as follows:

§ 34.15-20 Carbon dioxide storage—T/ALL.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

7. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

8. In § 58.20-5, by revising paragraph (b) to read as follows:

§ 58.20-5 Design.

* * * * *

(b) For refrigeration systems other than those for reliquefaction of cargo, only those refrigerants under § 147.90 of this chapter are allowed.

PART 71—INSPECTION AND CERTIFICATION

9. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

10. In § 71.25-20, by revising Table 71.25-20(a)(1), footnote 1, and Table 71.25-20(a)(2), footnote 1, to read as follows:

§ 71.25-20 Fire detecting and extinguishing equipment.

(a) * * *

(1) * * *

TABLE 71.25-20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 71.25-20(a)(2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 76—FIRE PROTECTION EQUIPMENT

11. The authority citation for Part 76 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

12. In § 76.15-20, by revising paragraph (i) to read as follows:

§ 76.15-20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 91—INSPECTION AND CERTIFICATION

13. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

14. In § 91.25-20, by revising Table 91.25-20(a)(1), footnote 1, and Table 95.25-20(a)(2), footnote 1, to read as follows:

§ 91.25-20 Fire extinguishing equipment.

(a) * * *

(1) * * *

TABLE 91.25-20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 91.25-20(a)(2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 95—FIRE PROTECTION EQUIPMENT

15. The authority citation for Part 95 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

16. In § 95.15-20, by revising paragraph (i) to read as follows:

§ 95.15-20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 107—INSPECTION AND CERTIFICATION

17. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46 Section 107.05 also issued under 44 U.S.C. 3507; 49 CFR 1.45.

18. In § 107.235, by revising the note following paragraph (b)(3) to read as follows:

§ 107.235 Servicing of hand portable fire extinguishers, semi-portable fire extinguishers and fixed fire-extinguishing systems.

* * * * *

(b) * * *

(3) * * *

* * * * *

Note.—All carbon dioxide cylinders and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 108—DESIGN AND EQUIPMENT

19. The authority citation for Part 108 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46.

20. In § 108.431, by revising the section heading and adding a new paragraph (c) to read as follows:

§ 108.431 Carbon dioxide systems: General.

* * * * *

(c) Each carbon dioxide system cylinder must be fabricated, tested, and marked in accordance with § 147.60 and 147.65 of this chapter.

§ 108.451 [Amended]

21. In § 108.451, by removing paragraph (h).

PART 109—OPERATIONS

22. The authority citation for Part 109 is revised to read as follows and all other authority citations are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46. Sections 109.411 and 109.413 also issued under 46 U.S.C. 6101. Section 109.431 also issued under 46 U.S.C. 10104.

23. By revising § 109.558 to read as follows:

§ 109.558 Hazardous ships' stores.

The master or person in charge shall ensure that hazardous ships' stores, as the term is defined in § 147.3 of this chapter, which are on board a unit are labeled, stowed, and used only in accordance with Part 147 of this chapter.

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

24. The authority citation for Part 146 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

25. In § 146.01-5, by revising paragraph (b) to read as follows:

§ 146.01-5 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Subchapter N part or section where identified or described	Current OMB Control No.
§ 146.02-20	2115-0054
§ 146.29-13	2115-0013
Part 147	2115-0139

26. By revising Part 147 to read as follows:

PART 147—HAZARDOUS SHIPS' STORES

Subpart A—General Provisions

Sec.
147.1 Purpose and applicability.
147.3 Definitions.
147.5 Commandant (G-MTH); address.
147.7 Incorporation by reference.
147.9 Waivers.
147.15 Hazardous ships' stores permitted on board vessels.
147.30 Labeling.

Subpart B—Stowage and Other Special Requirements for Particular Materials

147.35 Purpose of subpart.
147.40 Materials requiring Commandant (G-MTH) approval.
147.45 Flammable and combustible liquids.
147.50 Fuel for cooking, heating, and lighting.
147.60 Compressed gases.
147.65 Carbon dioxide and halon fire extinguishing systems.
147.70 Acetylene.
147.85 Oxygen.
147.90 Refrigerants.
147.95 Explosives.
147.100 Radioactive materials.
147.105 Anesthetics, drugs, and medicines.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 147.1 Purpose and applicability.

(a) This part prescribes regulations designating what hazardous materials may be on board vessels as ships' stores and prescribes requirements for the labeling, stowage, and use of those materials.

(b) This part applies to all vessels listed in 46 U.S.C. 3301 as subject to inspection under Part B of 46 U.S.C. Subtitle II. On foreign vessels in the navigable waters of the United States, the Captain of the Port or District Commander may prohibit the unsafe use or stowage of hazardous ships' stores under 33 CFR 160.109.

(c) All certifications previously issued by the Coast Guard under this part permitting the use of particular materials or products as ships' stores are null and void.

§ 147.3 Definitions.

As used in this part:

"Accommodation, control, or service spaces" means living quarters, including walkways, dining rooms, galleys, pantries, lounges, lavatories, cabins, staterooms, offices, hospitals, cinemas, and game and hobby rooms; areas containing controls for equipment and navigation; workshops, other than those forming part of machinery spaces; and store rooms adjacent to these spaces.

"Combustible liquid" means "combustible liquid" as the term is defined in 49 CFR 173.115(b).

"Compressed gas" means "compressed gas" as the term is defined in 49 CFR 173.300.

"Consumer commodity" means a commodity, such as a polish, insecticide, cleaning compound, or distillate, that is packaged and distributed in a form and quantity intended for sale through retail sales establishments.

"Flammable liquid" means "flammable liquid" as the term is defined in 49 CFR 173.115(a).

"Hazardous material" means "hazardous material" as the term is defined in 49 CFR 171.8.

"Hazardous ships' stores" means ships' stores that are hazardous materials.

"Proper shipping name" means the name of the hazardous ships' stores shown in Roman print (not in italics) in 49 CFR 172.101.

"Ships' stores" means materials which are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel (except for fumigants under Part 147A of this chapter, for fuel and compressed air used for the vessel's primary propulsion machinery, or for fixed auxiliary equipment) or for the safety or comfort of the vessel's passengers or crew.

"Technical name" means the recognized chemical name used in scientific or technical publications.

§ 147.5 Commandant (G-MTH); address.

Commandant (G–MTH) is the Marine Technical and Hazardous Materials Division of the Coast Guard Office of Marine Safety, Security and Environmental Protection. The address is Commandant (G–MTH–1), U.S. Coast Guard Headquarters, Washington, DC 20593–0001, and the telephone number is (202) 267–1577.

§147.7 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408 and at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701
  ABYC H–25–81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.
American Society of Heating, Referigerating, and Air-Conditioning Engineers, Inc. (ASHRAE),
  Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329
  ANSI/ASHRAE 34–78—Number Designation of Refrigerants, approved 1978.
Public Health Service, Department of Health and Human Services (DHHS),
  Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
  DHHS Publication No. (PHS) 84–2024—The Ship's Medicine Chest and Medical Aid at Sea, revised 1984.
Underwriters Laboratories, Inc. (UL), Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062
  UL 30—Standard for Metal Safety Cans, 7th Ed., March 11, 1985, revised March 12, 1985 and March 3, 1987.
  UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.
  UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.
  UL 1314—Standard for Special-Propose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

§ 147.9 Waivers.

(a) Any requirement in this part may be waived on a case by case basis if it is determined by Commandant (G–MTH) that the requirement is impracticable under the circumstances and that an acceptable level of safety can be maintained.

(b) Requests for issuance of a waiver must be in writing and contain a detailed explanation of—

(1) Why the requirement is impracticable; and

(2) What measures will be taken to maintain an acceptable or equivalent level of safety.

§ 147.15 Hazardous ships' stores permitted on board vessels.

Unless prohibited under Subpart B of this part, any hazardous material may be on board a vessel as ships' stores if the material—

(a) Is labeled according to § 147.30; and

(b) Meets the requirements, if any, in Subpart B of this part applicable to the material.

§ 147.30 Labeling.

(a) Except as provided in paragraph (b) of this section, all immediate receptacles, containers, or packages containing hazardous ships' stores must be labeled in English with the following information concerning the contents:

(1) Technical name or proper shipping name.

(2) For hazardous ships' stores other than liquid fuels, manufacturer's or supplier's name and address.

(3) Hazard classification under 49 CFR 172.101 and 173.2.

(4) For hazardous ships' stores other than liquid fuels, step by step procedures for proper use.

(5) First aid instructions in the event of personnel contact, including antidotes in the event of ingestion.

(6) Stowage and segregation requirements.

(b) Hazardous ships' stores that are consumer commodities labeled in accordance with the Federal Hazardous Substances Act Regulations in 16 CFR Part 1500 need not be labeled as specified in paragraph (a) of this section.

Subpart B—Stowage and Other Special Requirements for Particular Materials

§147.35 Purpose of subpart.

This subpart prescribes special requirements applicable to particular, named materials. These requirements are in addition to the general requirements in Subpart A applicable to those materials.

§ 147.40 Materials requiring Commandant (G-MTH) approval.

(a) Commandant (G–MTH) approval is required before the following hazardous materials may be on board a vessel as ships' stores:

(1) Class A poisons.

(2) Class A explosives.

(3) Flammable gases, other than those addressed specifically in this subpart.

(4) Forbidden materials listed in 49 CFR 172.101.

(b) Request for approval must be submitted to the Commandant (G–MTH), identify the material, and explain the need for its use.

(c) Upon approval, the material is added to the list of materials approved under this section. A copy of this list is available from the Commandant (G–MTH) at the address in § 147.5.

§ 147.45 Flammable and combustible liquids.

(a) This section applies to the stowage and transfer of flammable and combustible liquids (including gasoline and diesel oil), other than liquids used as fuel for cooking, heating, and lighting under § 147.50.

(b) No flammable or combustible liquids may be stowed in any accommodation, control, or service space (other than a paint locker).

(c) No more than 19 liters (five gallons) of flammable liquids may be stowed in any machinery space. The flammable liquids must be in containers of 3.8 liters (one gallon) or less.

(d) No more than 208 liters (55 gallons) of combustible liquids may be stowed in any machinery space.

(e) An aggregate of more than 7.6 liters (two gallons) of flammable or combustible liquids stowed outside of an accommodation, control, or service, space (other than a paint locker) or outside of a machinery space must be stowed in a paint locker that is marked with a warning sign indicating flammable or combustible liquid storage.

(f) Flammable and combustible liquids used as fuel for portable auxiliary equipment must be stored in—

(1) Integral tanks that form part of the vessel's structure;

(2) An independent tank meeting the requirements of Subpart 58.50 of Part 58 of this chapter;

(3) A container meeting the requirements of Subpart D of 49 CFR 173.119 for the storage of flammable or combustible liquids;

(4) A protable outboard fuel tank meeting the specifications of ABYC H–25-81 or one identified by Underwriters Laboratories as meeting the specifications of UL 1185;

(5) A portable safety container identified by Underwriters Laboratories as meeting the specifications of UL 30 or UL 1313; or

(6) A portable safety container identified by Underwriters Laboratories as meeting the requirements of UL 1314.

(g) Each portable container of flammable or combustible liquid used for portable auxiliary equipment must be stowed in a paint locker or an open location designated by the master.

(h) Fuel tanks for portable auxiliary equipment using flammable or combustible liquids may only be refilled on a vessel—

(1) By using a container described in paragraphs (f)(2), (f)(4), or (f)(5) of this section which has a capacity not exceeding 23 liters (6 gallons); or

(2) In the case of portable outboard fuel tanks described in paragraph (f)(3) of this section, in accordance with paragraph (i) of this section.

(i) Portable containers or portable outboard fuel tanks may be refilled from a larger container of flammable or combustible liquid on the weather deck of a vessel, other than a small passenger vessel subject to Subchapter T of this chapter, provided that—

(1) A drip pan of adequate size is used to collect any drippings; and

(2) At least one Coast Guard approved Type B, Size I, fire extinguisher is within three meters (9.75 feet) of the refilling location.

§ 147.50 Fuel for cooking, heating, and lighting.

(a) Flammable and combustible liquids and gases not listed in this section are prohibited for cooking, heating, or lighting on any vessel, with the exception of combustible liquids on cargo vessels.

(b) Fluid alcohol is prohibited for cooking, heating, or lighting on ferry vessels. Fluid alcohol burners, where wet primed, must have a catch pan not less than ¾ of an inch deep secured inside of the frame of the stove or have the metal protection under the stove flanged up ¾ of an inch to form a pan.

(c) Containers of solidified alcohol must be secured on a fixed base.

(d) Liquefied or non-liquefied gas is prohibited for cooking, heating, or lighting on ferry and passenger vessels but may be used on other inspected vessels, if the system in which it is used meets the requirements of Subpart 58.16 of Part 58 of this Chapter or is approved by the Commandant (G–MTH).

(e) Kerosene and commercial standard fuel oil No. 1, No. 2, and No. 3 are prohibited for cooking, heating, or lighting on ferry or passenger vessels, unless the following conditions are met:

(1) Pressure or gravity feed must be used.

(2) Where wet priming is used in a cooking device, the device must have a catch pan not less than three fourths of an inch deep secured inside the frame of the device or a metal protector under the device with a least a three fourths inch flange to form a pan.

(3) Where wet priming is used, a non-flammable priming liquid must be used.

(4) Fuel tanks for fixed stoves must be separated from the stove and mounted in a location open to the atmosphere or mounted inside a compartment with an outside fill and vent.

(5) Fuel lines must have an easily accessible shut-off valve at the tank.

(6) If the fuel tank is outside of a stove compartment, a shut-off valve must be fitted at the stove.

§ 147.60 Compressed gases.

(a) *Cylinder requirements.* Cylinders used for containing hazardous ships' stores that are compressed gases must be—

(1) Authorized for the proper shipping name of the gas in accordance with 49 CFR 172.101 and 49 CFR Part 173;

(2) Constructed in accordance with Subpart C of 49 CFR Part 178 or exempted under 49 CFR Part 107;

(3) Filled, marked, and inspected in accordance with 49 CFR 173.301 through 173.308; and

(4) Except as provided in § 147.65, maintained and retested in accordance with 49 CFR 173.34

(b) *Stowage and care of cylinders.* (1) Cylinders must always be secured and, when not in use, they must be stowed in a rack in an upright position, with the valve protection cap in place.

(2) Lockers or housings must be vented to the open air near the top and bottom for positive circulation of vapors.

(3) Cylinders must be protected from all sources of heat which may cause the cylinders to be heated to a temperature higher than 130°F.

(c) *Pressure vessels other than cylinders.* Pressure vessels, other than cylinders subject to paragraph (a) of this section, used for containing ships' stores that are compressed gases must—

(1) Be constructed and inspected in acordance with Part 54 of this chapter; and

(2) Carry only nitrogen or air, unless permission is granted by Commandant (G-MTH) to do otherwise.

§ 147.65 Carbon dioxide and halon fire extinguishing systems.

(a) Carbon dioxide or halon cylinders forming part of a fixed fire extinguishing system must be retested, at least, every 12 years. If a cylinder is discharged and more than five years have elapsed since the last test, it must be retested before recharging.

(b) Carbon dioxide or halon cylinders must be rejected for further service when they—

(1) Leak;

(2) Are dented, bulging, severely corroded, or otherwise in a weakened condition;

(3) Have lost more than five percent of their tare weight; or

(4) Have been involved in a fire.

(c) Cylinders which have contained carbon dioxide or halon and have not been tested within five years must not be used to contain another compressed gas on board a vessel, unless the cylinder is retested and re-marked in accordance with § 147.60 (a)(3) and (a)(4).

(d) Flexible connections between cylinders and distribution piping of semi-portable or fixed carbon dioxide fire extinguishing systems and discharge hoses in semi-portable carbon dioxide fire extinguishing systems must be renewed or tested at a pressure of 6.9 MPa (1000 psig). At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

(e) Flexible connections between cylinders and distribution piping of fixed halon fire extinguishing systems must be tested at a pressure of one and one-half times the cylinder service pressure as marked on the cylinder. At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

§ 147.70 Acetylene.

(a) Seventeen cubic meters (600 standard cubic feet) or less of acetylene may be stowed on or below decks on any vessel.

(b) More than 17 m³ (600 standard cubic feet) of acetylene may be on board a vessel engaged in industrial operations, if it is stowed on deck.

§ 147.85 Oxygen.

(a) Eighty five cubic meters (3000 standard cubic feet) or less of oxygen may be on board any vessel.

(b) More than 85 m³ (3000 standard cubic feet) of oxygen may be on board a vessel engaged in industrial operations, if it is stowed on deck or in a well ventilated space.

§ 147.90 Refrigerants.

(a) Only refrigerants listed in ANSI/ASHRAE 34–78 may be carried as ships' stores.

(b) Refrigerants contained in a vessel's operating system are not considered as being carried as ship's stores.

§ 147.95 Explosives.

(a) *Explosives—general.* Except as provided for elsewhere in this subchapter, explosives, as defined in 49 CFR 173.50, which are hazardous ships' stores must be stowed in a magazine which is constructed and located in accordance with 49 CFR 176.135 through 176.150.

(b) *Small arms ammunition.* (1) No person shall bring, have in their possession, or use on board a vessel any small arms ammunition, except by express permission of the matter of the vessel.

(2) All small arms ammunition must be stowed in a locked metal magazine or locker. The key to the locker must be kept in the possession of the master or a person designated by the master.

(c) *Ships' signals and emergency equipment.* (1) Explosive ships' signals and emergency equipment, including pyrotechnic distress signals and line throwing equipment, must be stowed in watertight containers or wood lined magazine chests.

(2) All pyrotechnic distress signals, rockets, and line throwing guns must be stowed in accordance with the requirements of 49 CFR 176.83.

§ 147.100 Radioactive materials.

(a) Radioactive materials must not be brought on board, used in any manner, or stored on the vessel, unless the use of the materials is authorized by a current license issued by the Nuclear Regulatory Commission (NRC) under 10 CFR Parts 30 and 34.

(b) Stowage of radioactive materials must conform to the requirements of the NRC license.

§ 147.105 Anesthetics, drugs, and medicines.

Anesthetics, drugs, and medicines must be stowed and dispensed in accordance with the DHHS Publication No. (PHS) 84–2024.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

27. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

28. In § 167.45–1, by revising the section heading and paragraph (a)(8) to read as follows:

§ 167.45–1 Steam, carbon dioxide, and halon fire extinguishing systems.

(a) * * *

(8) Carbon dioxide and halon cylinders carried on board nautical school ships must be tested and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

29. The authority citation for Part 176 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

30. In § 176.25–25, by revising the introductory text of paragraph (c) and the introductory text of the note following paragraph (c)(3) to read as follows:

§ 176.25–25 Fire extinguishing equipment.

* * * * *

(c) In addition to the other requirements of this section, §§ 147.60 and 147.65 of this chapter requires that—

* * * * *

(3) * * *

Note: Section 147.65 of this chapter includes a requirement that the cylinder must be retested and re-marked under the following conditions:

* * * * *

PART 181—FIRE PROTECTION EQUIPMENT

31. The authority citation for Part 181 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

32. In § 181.20–30, by revising paragraph (c) to read as follows:

§ 181.20–30 Cylinders.

* * * * *

(c) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 189—INSPECTION AND CERTIFICATION

33. The authority citation for Part 189 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

34. In § 189.25–20, by revising footnote 1 to Table 189.25–20(a)(1) and footnote 1 to Table 189.25–20(a)(2) and removing the Note after footnote 1 to Table 189.25–20(a)(2) as follows:

§ 189.25–20 Fire extinguishing equipment.

(a) * * *

(1) * * *

TABLE 189.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections and discharge hoses of semiportable carbon dioxide and halon extinguishers must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 189.25–20(a)(2)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections on fixed carbon dioxide and halon systems must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 193—FIRE PROTECTION EQUIPMENT

35. The authority citation for Part 193 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

36. In § 193.15–20, by revising paragraph (i) to read as follows:

§ 193.15–20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

Dated: March 7, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88–5283 Filed 3–9–88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 81–893; FCC 88–3]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services; Second Computer Inquiry

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action determines the regulatory classification of the Bell Operating Companies embedded customer premises equipment (CPE) remaining under regulated and tariffed service. Embedded digital network channel terminating equipment (NCTE) is detariffed, while other types of embedded CPE owned by the BOC's remains under tariffed service. The BOCs are required to follow the detariffing procedures for digital NCTE set forth in the *AT&T CPE Detariffing Order* (48 FR 57168, Dec. 28, 1983) as modified in the *Fourth Notice* (50 FR 43735, Oct. 29, 1985) and in this Order.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Common Carrier Bureau, (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Eighth Report and Order in CC Docket 81–893 adopted January 6, 1988 and released January 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. In the *Fourth Notice,* in this proceeding, the Commission sought to address the regulatory treatment of the narrow classes of embedded CPE that remained with the BOCs at divestiture. The Commission was persuaded by the record in this proceeding, consistent with the earlier recommendation of AT&T and the decision of the Divestiture Court in approving the Plan of Reorganization for AT&T, that the majority of this CPE should remain with the BOCs. In response to the *Fourth Notice* in this proceeding, the BOCs identified a multitude of problems regarding detariffing of this embedded CPE. These problems derive from the fact that the equipment is now largely obsolete, of minimal value, no competitive market exists for this CPE, and it is difficult and expensive to transfer to the customer. Thus, the Commission was persuaded that the interests of the users of this equipment would be better protected if it remained subject to regulation. Accordingly, in this Order, the Commission concluded that embedded CPE owned by the BOCs, except digital NCTE CPE, should remain in the regulated equipment category and may be tariffed in the appropriate jurisdiction. The Commission concluded that many of the problems identified with respect to detariffing the CPE it proposed to detariff in the *Fourth Notice* do not exist with respect to embedded digital NCTE. Because these factors do not apply, and a competitive market does exist that can provide choice to customers, the Commission concluded that embedded digital NCTE CPE should be deregulated and must be detariffed.

2. Thus, the Commission concluded that the final treatment of the subject BOC embedded CPE generally includes: (1) Permitting relevant state commissions to decide the appropriate treatment of CPE located at Public Service Answering Points used in connection with 911 emergency service; (2) continuing the current treatment, *i.e.*, retaining pay telephone, official services equipment, extensions to pay telephone, 101 electronic switching system (ESS) switches, identifiers, Centrex CPE and other remaining embedded BOC CPE in the regulated equipment category; and (3) requiring the BOCs to detariff embedded digital NCTE.

3. The Commission requires the BOCs to follow the detariffing procedures set forth in the *AT&T CPE Detariffing Order* as modified in the *Fourth Notice* and this Order for detariffing digital NCTE. In the *Fourth Notice,* the Commission proposed to require the BOCs to follow generally the procedures described in the *AT&T CPE Detariffing Order* for the deregulation of multi-line CPE owned by AT&T with some modifications. The Commission proposed to require the BOCs to offer embedded CPE for sale to subscribers during a two-year transition period after detariffing. The detariffing process described in the *Fourth Notice* provided for detariffing on a national basis since there are few BOCs, their operations are familiar and they tend to own standard types of equipment which were acquired when they were part of the Bell System. Although we proposed in the *Fourth Notice* to retain the bulk of the detariffing procedures of the *AT&T CPE Detariffing Order,* we presented modifications to those procedures that would require the BOCs to: (1) Offer the embedded CPE for sale at prices that do not exceed net book value plus reasonable transaction costs in the aggregate for each category of equipment; (2) maintain fixed sale prices throughout the transition period; (3) adjust month-to-month lease rates, if applicable, only at eight-month intervals to reflect increases in the Consumer Price Index (CPI). The Commission also proposed to incorporate additional requirements specified in the *AT&T CPE Detariffing Order.* Those requirements included: (1) A 90 day warranty for the equipment sold to customers; (2) a one year notification to the customer prior to a CPE phase-out; (3) the use of net book value in the aggregate by type of CPE as the valuation standard for transfer of the embedded CPE to the unregulated category; (4) nationwide lease rates set at 70% of the highest state tariff in a category of equipment, or the statistical median of such state tariffs; (5) filing a monthly report of number of sales, net book value and revenues with this Commission, during the price predictability period; (6) providing a detailed statement of the items included in transaction costs to this Commission; and (7) establishing a regional sales program.

4. In the *Fourth Notice,* the Commission also proposed to require the BOCs to follow the procedures in the *AT&T CPE Detariffing Order* that pertain to restrictions on the transfer and reformating of customer proprietary information, the continuation of maintenance and support of the embedded CPE during the transition period, and the transfer to CPE subsidiaries of deferred tax reserve accounts and investment tax credits. Moreover, the Commission observed that in addition to the CPE to be transferred, the BOCs may have supporting assets that must also be

transferred to unregulated accounts. The Commission proposed to require the BOCs to follow the procedures outlined in our *AT&T CPE Detariffing Order* with respect to these assets. Specifically, the Commission proposed to require the BOCs to transfer land and buildings to their CPE subsidiaries at appraised value. All other supporting assets, however, would be transferred at new book value. Under the proposals of the *Fourth Notice*, the BOCs would also be required to follow the accounting requirements of the *AT&T CPE Detariffing Order*, as well as subsequent accounting orders in the sale of embedded CPE and the transfer of unsold CPE. The BOCs must either include the same items in transactions costs as we required for AT&T in the *CPE Detariffing* or provide a detailed statement of the items to be included in transaction costs for review within 90 days of the release of this Order. The benefit of this requirement is that a consistent set of items will define transactions costs during the sales program.

5. The Order requires that the BOCs file a quarterly report with this Commission during the price predictability period from July 1, 1988 through June 30, 1990. The quarterly report must indicate total net book value, sales revenues and transactions cost of sales in the aggregate of embedded digital NCTE, and must also indicate the percentage of equipment sold. Moreover, because of the small amount of equipment involved, the Commission does not require the BOCs to establish regional sales programs. The Order does require that each customer receive notification of the opportunity to purchase its embedded NCTE by July 1, 1988. Moreover, the Order requires that customers be notified of sales prices and transactions costs within 30 days of a request by a customer to a BOC.

6. The price predictability period shall begin July 1, 1988 and shall end June 30, 1990. The BOCs should continue to use existing lease rates in the customer's state as the basis for monthly lease rates. The use of existing rates with increases no greater than the increases in the CPI, in eight month intervals that begin with the first increase no sooner than eight months after detariffing, will provide customers with time to determine whether to continue to lease or purchase the CPE without price pressures.

7. In the *Third Order* in CC Docket 81–893 (49 FR 43667, Oct. 31, 1984), the Commission provided a framework for states to detariff embedded CPE owned by Independent Telephone Companies (ITCs). In this Order, the Commission determined that certain types of CPE owned by the BOCs should remain under tariff. Since ITC's may own the same types of embedded CPE and central office equipment, we conclude that states may allow such CPE owned by the ITCs to remain under tariff. Those states that have already complied with the requirements of the *Third Order* may revise their plans for detariffing, if desired. Such states need not file their plan revisions with this Commission. Those states required to follow the Commission plan must treat the subject embedded CPE owned by ITCs in the same manner as the BOC embedded CPE has been treated in this Order.

8. In the *Fourth Notice*, the Commission postponed a decision on Southwestern's two petitions seeking permission to detariff and transfer Automatic Call Distribution (ACD) equipment to its CPE subsidiary, Southwestern Bell Telecommunications, Inc. By letter dated September 20, 1984, to William C. Sullivan, Southwestern, the Chief, Common Carrier Bureau, requested more specific information regarding the CPE involved. In its response, Southwestern agreed to charge customers lease rates equal to tariffed leased rates for two years after the transfer, but did not commit to offering the equipment for sale. The Commission views the sale requirement as essential to the satisfaction of the equitable principles of the *Democratic Central Committee*. The Order requires that all ACD equipment owned by the BOCs remain under tariff as required herein. Therefore, the petitions are dismissed.

9. *It is ordered* that, pursuant to sections 1, 4(i), 4(j), and 201–205, 213, 218, 220 and 403 of the Communications Act of 1934, 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 213, 218, 220 and 403, the policies, rules, and requirements set forth in this Order *are adopted*.

10. *It is further ordered*, that the motion to defer or consolidate proceeding filed by Bell Atlantic *is denied*.

11. *It is further ordered*, that the petitions filed by Southwestern Bell Telephone Company to detariff and transfer ACD equipment to Southwestern Telecommunications, Inc. *are denied*.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–4817 Filed 3–9–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–14; RM–4631, RM–4720, RM–4828, RM–5180, RM–5181, & RM–5182]

Radio Broadcasting Services; Cookeville, Donelson, Livingston, Lebanon, Celina, South Pittsburg, Goodlettsville and Smyrna, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments and denies petitions for reconsideration filed by William O. Barry and Bart Walker directed against actions in the *Report and Order* in this proceeding. William O. Barry asserts that the *Report and Order* failed to consider his proposal for Channel 234A at Lebanon, Tennessee and did not allot available Channel 294A to Donelson, Tennessee. This document states that it was not necessary to consider a proposal for Channel 234A at Lebanon because no party expressed an interest in applying for this allotment. In addition, failure to allot Channel 294A to Donelson was not error because this proposal was not advanced in any timely comments in this proceeding. In response to a separate petition, it is now appropriate to consider this Donelson proposal in a separate proceeding.

Bart Walker argues that the proposal for Channel 231A at Woodbury, Tennessee should not have been dismissed for lack of expression of interest in applying for this allotment because he expressed such an interest, albeit untimely, in reply comments. This document states that a defective proposal is not cured by a subsequent untimely expression of interest. However, an alternate channel (285A) proposal for Woodbury, with a site restriction, will now be considered in a separate proceeding.

This document also grants a petition for reconsideration by Smyrna Broadcasting Corporation to the extent of allotting Channel 231A to Smyrna, Tennessee, as its first FM Channel.

DATES: Effective April 11, 1988. The window period for filing will open on April 12, 1988, and close on May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 84–14, adopted January 27, 1988, and released February 24, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PARTS 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b) the Table of FM Allotments, is amended under Tennessee, by adding Smyrna, Channel 231A.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–4816 Filed 3–9–88; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Parts 810, 836 and 852

Acquisition Regulations; Specifications

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulations (VAAR) to provide agency guidance on the use of specifications, standards, and other purchase descriptions in the acquisition process. The regulation is being published as a final rule in order to supplement Federal Acquisition Regulations (FAR) 10.004(b) (2) and (3) to provide required detailed agency procedures, guidance and necessary clauses for VA contracting officers' use.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Policy and Interagency Service (91A), Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3784.

SUPPLEMENTARY INFORMATION: On January 5, 1987, there was published on page 280 of the **Federal Register** a notice of interim final rulemaking. After the interim rule was issued, five additional internal changes were made to provide guidance to contracting officers in the use of descriptive literature, bid samples, contract architect-engineer specifications, the brand name or equal clause, and the restriction on submission and use of equal products clause.

Section 810.004–70(b) was revised to require contracting officers, when issuing solicitations that include "brand name or equal" purchase descriptions, to include the FAR provision at 52.214–21, Descriptive Literature, and to review the requirements of FAR 14.202–5(d) when utilizing the descriptive literature provision.

Section 810.004–70(e) was revised to inform contracting officers, when requiring bid samples, to include the provision set forth at FAR 52.214–20, Bid Samples.

In § 836.202, paragraph (c) was renumbered and a new paragraph (b) was added to prohibit the use of "brand name or equal" or other restrictive specifications by contract architect-engineers without the prior written approval of the contracting officer during the design stage. Contracting officers were also notified to inform prospective architect-engineers of this requirement prior to award of a contract for design.

The prescription of the "Brand Name or Equal" clause found at 852.210–77 was revised to change an obsolete citation.

I. Background

When the FAR was issued, it contained a new Part 10 dedicated to the use of specifications. Part 10 does not, however, provide guidance in the use of "brand name or equal" purchase descriptions and other restrictive specfications. On January 5, 1987, the VA published a VAAR interim final rule to supplement the FAR coverage by providing guidance to VA contracting officers.

One comment was received from the Office of Federal Procurement Policy, Office of Management and Budget. They noted the published VAAR change, recognized the relevance to all Federal agencies, and recommended that VA pursue a FAR revision. VA was advised by the Civilian Agency Acquisition Council to publish a final rule while FAR coverage is being developed.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from section 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the Competition in Contracting Act (CICA) as required by the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Parts 810, 836 and 852

Government procurement.

Approved: March 1, 1988.

Thomas K. Turnage,

Administrator.

In 48 CFR Chapter 8, Parts 810, 836 and 852 are amended as follows:

1. The authority citation for Parts 810, 836 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. In section 810.004–70, paragraphs (b) and (e) are revised to read as follows:

810.004–70 Sealed bidding.

* * * * *

(b) Solicitations using "brand name or equal" purchase descriptions will contain the "brand name or equal" provision in 852.210–77, and the provision set forth at FAR 52.214–21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202–5(d) when utilizing the descriptive literature provision.

* * * * *

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214–20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name of Equal" clause, 852.210–77(c)(1) and (2), even though bid samples may not be required.

3. In section 836.202, paragraph (b) is redesignated paragraph (c), a new paragraph (b) is added, and the first sentence in newly redesignated paragraph (c) is revised, to read as follows:

836.202 Specifications.

* * * * *

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer shall inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and the VA will not allow the submission of "equal" products, the bidders must be placed on notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236.5 and any other provision which may authorize the submission of an "equal" product, will not apply.* * *

852.210–77 [Amended]

4. In 852.210–77, in the introductory paragraph, remove "810.005" and add, in its place, "810.004."

852.236–90 [Amended]

5.a. In 852.236–90, in the introductory paragraph remove "836.202(b)" and add, in its place, "836.202(c)".

b. In the clause in 852.236–90 titled Restriction on Submission and Use of Equal Products (November 1986), an introductory paragraph is added immediately below the heading to the clause to read as follows:

852.236–90 Restriction on submission and use of equal products.

* * * * *

This clause applies to the following items:

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* * * * *

[FR Doc. 88–5276 Filed 3–9–88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 71267–8024]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendments 16 and 11a to the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs), respectively. These amendments accomplish the following: (1) Catcher/processor and mothership processor vessels operating in the Gulf of Alaska and Bering Sea and Aleutian Islands area are required to maintain onboard a transfer log and to report information weekly about transfers of groundfish products; (2) prohibited species in the Gulf of Alaska domestic and foreign fisheries are redefined, and three other categories of species are respecified; (3) the reserve category for some species of groundfish in the Gulf of Alaska is removed; (4) the term "target quotas" is changed to "total allowable catches" for groundfish in the Gulf of Alaska; (5) the starting date for the public comment period for proposed annual specifications is changed; (6) the Gulf of Alaska groundfish FMP is reorganized and edited; and (7) a section on vessel safety is added to the Gulf of Alaska FMP.

Items 1 through 5, above, are implemented by regulations, which are contained in the attached final rulemaking. Items 6 and 7, above, are not implemented by regulations. An additional regulatory change, not part of the amendment, expressly authorizes inseason reapportionments of domestic annual processing (DAP) groundfish amounts to joint venture processing (JVP) in the Gulf of Alaska. These regulations are intended to promote full accounting of groundfish catches in both management areas and to make clear the species in the Gulf of Alaska that are considered to be prohibited species. The reasons for these changes are given in the preamble for the proposed rule. They are necessary to adjust to the changing nature of the Alaska groundfish fisheries that are being increasingly dominated by U.S. fishermen. This action provides conservation and management measures to further the goals and objectives of the FMPs.

EFFECTIVE DATE: April 7, 1988.

ADDRESS: Copies of the amendments, environmental assessment (EA), and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained by contracting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zones (EEZ) of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are managed in accordance with the FMPs, which were developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented by regulations appearing at 50 CFR 611.92 and 611.93 and Parts 672 and 675.

The Council approved for submission to the Secretary of Commerce (Secretary) the parts of Amendment 16 to the FMP for Groundfish of the Gulf of Alaska that are listed in the above summary. The Council adopted the same changes to reporting requirements as Amendment 11a to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

The Secretary received these amendments on November 18, 1987, for review. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove FMPs and FMP amendments before the close of the 95th day following receipt. Following receipt of Amendments 16 and 11a, the Director of NMFS, Alaska Region (Regional Director), immediately commenced a review of the amendments to determine whether they were consistent with the provisions of the Magnuson Act and any other applicable law. A Notice of Availability of the amendments was published in the **Federal Register** on November 25, 1987 (52 FR 45215). A proposed rule was filed with the Office of the Federal Register on December 16, 1987 and published on December 21, 1987 (52 FR 48303). The Notice of Availability invited review and comment on the amendments until Janaury 16, 1988. The proposed rule invited public review and comment on the regulations until January 30, 1988. This final rule implementing Amendments 16 and 11a takes comments received into account.

Comments received are summarized and responded to below.

The preamble to the proposed rule described and presented the reasons for each part of the amendments. The Secretary has reviewed each part of the proposed rule and the reasons for it. During this review, the Secretary has considered comments received from the public, fishing associations, and interested agencies. He has determined that each part of the amendment is consistent with the Magnuson Act and other applicable law. He has therefore approved each of the proposals as authorized by section 304 of the Magnuson Act within the time it requires. The following is a summary from the proposed rule of what each part requires or accomplishes:

1. New Reporting Requirements for Catcher/Processor and Mothership Processor Vessels

A. Maintain Onboard a Cargo Transfer/Off Loading Log

Operators of catcher/processor and mothership processor vessels, i.e., those vessels which process groundfish catch onboard as specified under § 672.2, will be required to maintain onboard their vessels a Cargo Transfer/Offloading Log. For each transfer of offloading of any fishery product from a regulated vessel in the EEZ, outside the EEZ, within any States' territorial waters, or within the internal waters of any State, this log will contain the following information: (a) The time, date, and location of the transfer or offloading; (b) the product weight and product type, by species or species group; (c) the name and permit number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product; and (d) the intended port or destination of the receiving vessel in transferred to another vessel.

B. Submit Reports of Transferred Product Weight

Operators of catcher/processor and mothership processor vessels will be required to submit a Product Transfer Report. This report will be required for each Sunday through Saturday period, including even a zero report if no transfer is made. If a transfer is made, the report must include the product weight and the number of cartons transferred or offloaded, by product type, by species or species group.

C. Changes to the Currently Required Weekly Catch/Receipt Report

The currently required weekly catch report by catcher/processor and mothership processor vessels is renamed "Weekly Catch/Receipt and Production Report." In addition to other currently required information, information on the number of cartons and unit net weight of a carton of processed fish by species or species group is required.

2. Definition of Prohibited Species—FMP for Groundfish of the Gulf of Alaska

Four categories of species or species groups in the Gulf of Alaska are subject to management under the FMP. One of these is prohibited species. The category prohibited species includes: Any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp., and *Lithodes* spp.) and Tanner crab (*Chionoecetes* spp.).

The other three categories are: Target species, other species, and non-specified species. The category, target species, includes pollock, Pacific cod, flounders, rockfish, and sablefish. The category, other species, includes Atka mackerel, squid, sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The category, non-specified species, are those taken incidentally in the groundfish fisheries but are not managed by the FMP. Catch records for non-specified species need not be kept.

3. Other FMP Amendments Which Require Regulatory Changes.

Regulatory changes are made to paragraphs (c) and (f) in § 672.20 to implement FMP changes in sections 4.2.1.1 and 4.2.3.1. These changes will require public comments to be invited on proposed annual specifications and prohibited species catch limits for 30 days following the date of filing of the notice for public inspection with the Office of the Federal Register. The Secretary has determined that this is a technical change to current regulations and finds that no further analysis under other Federal law is required.

4. Regulatory Changes in Addition to Those Implementing FMP Amendments

A regulatory change is made to § 672.20(d)(2) that explicitly authorizes reapportionments of surplus DAP to JVP. The Secretary has determined that this is a technical change to current regulations and finds that no further analysis under other Federal law is required.

Changes From the Proposed Rule in the Final Rule

In responses to Comment 6 (see Public Comments Received), § 672.20(c)(1) is reworded to make clear the priority of DAP over JVP in the allocation process.

Amendatory language in Items 5 and 7 for §§ 672.5 and 675.5 in the proposed rule inadvertently gave the impression that the Council intended to eliminate the current paragraphs (a)(3)(iv)(E) from each section. The FMP amendment package made available to the public by notice of availability on November 25, 1987 (52 FR 45215) clearly states that the Council intended to retain the requirement currently listed in § 672.5(a)(3)(iv)(E) and § 675.5(a)(3)(iv)(E). Therefore, in the final rule, current paragraphs (a)(3)(iv)(E) and (F) are redesignated as (F) and (G), respectively, the new paragraph (E) from the proposed rule is retained in the final rule, and the new paragraph (G) in the proposed rule is renamed paragraph (H) in the final rule.

Public Comments Received

Letters of comments were received from certain Federal agencies and from representatives of fishing associations. These comments are summarized and responded to below.

Comment 1: The new reporting requirements of catcher/processor and mothership processor vessels do not provide sufficient information that is needed to address identified fishery management problems and, therefore, the requirements will not accomplish the FMPs' conservation goals and will create enforcement inefficiencies. Therefore, National Standards 1 and 7 are violated.

Response: National Standard 1 requires that conservation and management measures shall prevent overfishing. "Overfishing" is a complex term, but NOAA has defined it as that level of fishing mortality that jeopardizes the capacity of a stock or stocks to recover to a level at which it can produce maximum biological yield or economic value on a long term basis. The new requirements for a transfer/offloading log and weekly reports of transfers and offloads will allow fisheries enforcement officials to quickly compare catch and offload information with the amount of groundfish product actually observed onboard the vessel. Thus, the new reporting requirements will provide a check against gross underlogging or misspecifying of products transferred at sea, which

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otherwise might never be accounted for should they not go through a U.S. port where they could be subject to on-site inspections to determine compliance with the requirement to submit fish ticket reports. NMFS will use the new reporting requirements to better account for total fishing mortality, leading to a better understanding of the size and well-being of groundfish stocks, and the effectiveness of measures to conserve them. Thus, the new reporting requirements are entirely consistent with National Standard 1.

National Standard 7 requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Since NMFS will provide reproducible forms for the Cargo Transfer/Offloading Log and the Product Transfer Log to vessel operators, standardization of recordkeeping by the operators will be fostered. Thus, inspection officers will be able to conduct inspections more efficiently and more easily identify instances of gross underlogging, which is entirely consistent with National Standard 7.

Comment 2: Up-to-date entries in the logs at least every 24 hours should be required in the regulations and in the FMPs.

Response: The Secretary has determined that the twelve hours already provided for updating entries is sufficient time and does not constitute a burden on vessel operators.

Comment 3: The information contained in the Product Transfer Report is of little use, because it adds nothing that is not already contained in fish tickets and the new Cargo Transfer/Offloading Log and in the production part of the new Weekly Catch/Receipt and Production Report.

Response: The Product Transfer Report is necessary for operators of catcher/processor and mothership processor vessels to commit to writing and report the amount of product transferred during the week. Otherwise, operators of such vessels could transfer large quantities of groundfish products at sea and then change any entries previously made in the Cargo Transfer/Offloading Log to reflect lower than actual amounts transferred. NMFS will use the Product Transfer Report as a check against products transferred but not logged. This would be evidence of any underlogging. Such information cannot be obtained from fish tickets, which are only required when catcher/processor and mothership processor vessels return to port, and cannot be used to document product transfers made covertly at sea. Evidence of underlogging cannot be obtained from the weekly production report, since that document yields only numbers of cartons and representative weights of product that NMFS will use to compile a database to determine conversion rates and variability thereof.

Comment 4: The need to submit a fish ticket is questionable when the weekly production report and the transfer log system are used.

Response: The weekly production report and transfer log system serve different purposes from those of the fish ticket. Any discrepancies are rectified. The Weekly Catch/Receipt and Production Report is intended as a hail weight report for purposes of inseason management by NMFS. Weekly production information from the Weekly Catch/Receipt and Production Report is intended only to provide NMFS information on numbers of cartons of production and representative weights of a carton. NMFS will use this information to compile a database for determining conversion rates and variability thereof. It has nothing to do with information from fish tickets. The transfer log system, i.e., the Cargo Transfer/Offloading Log is intended to document amounts of product transferred at sea. Thus, it has a different purpose from that of a fish ticket.

The fish ticket, on the other hand, represents an edited catch report. It is edited by the Alaska Department of Fish and Game (ADF&G) when it is received. ADF&G checks the accuracy of the information submitted, including the amount of the catch, the species caught, and the statistical area where the catch came from. It contains certain information that is in addition to the Weekly Catch/Receipt and Production Report. Because it is checked, it serves as the confirmation report and supersedes the hail weight information submitted earlier in the Weekly Catch/Receipt and Production Report. Fish tickets from catcher/processors commonly are received too late for inseason management purposes.

Comment 5: Inviting comments on a proposed notice of preliminary specifications and apportionments for 30 days from date of filing, instead of date of publication, with the Office of the Federal Register would reduce the public's opportunity to perform any meaningful analysis of the notice material, and, therefore, the regulation should not be changed.

Response: As a practical matter, the interested public receives information on preliminary specifications and apportionments through the Council process, either during the meeting when recommendations are made, or from Council mailings. Because the amount of time between the December Council meetings and the first day of a new fishing year is so short, the Secretary finds that concluding the review process within a shorter time but still within standards set forth by the Administrative Procedure Act is in the public interest.

Comment 6: Regulatory text at § 672.20(c)(1), which sets a new year's DAP and JVP as the amounts harvested during the previous year plus amounts the Secretary determines will be harvested by the U.S. industry, gives the impression that the JVP specifications will actually be set without regard to DAP specifications. This section should be revised to accurately detail the workings of the domestic processor preference.

Response: The Secretary assures the respondent that domestic processor preference will continue to be upheld during the allocation process. The existing regulation has been reworded accordingly.

Classification

The Regional Director determined that the FMP amendments are necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator, Fisheries, found that no significant impact on the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Assistant Secretary, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council. A copy of the RIR/FRFA may be obtained from the Council at the address above.

The RIR/FRFA also describes the effects this rule will have on small entities. The analysis contained in the RIR/FRFA is substantially the same as that contained in the RIR/IRFA. A copy of the FRFA may be obtained from the Council at the above address. The Assistant Secretary, NOAA, determined the action could have a significant economic impact on a substantial number of small entities.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under Control Number 0648-0016.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State did not respond; therefore, consistency is automatically implied.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 7, 1988.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Parts 611, 672, and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.92, paragraph (b), paragraph (c)(1) heading, and (c)(1)(i) are revised to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(b) *Categories of species.* Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

TABLE 1.—CATEGORIES OF SPECIES INVOLVED IN THE GULF OF ALASKA GROUNDFISH FISHERY

Target species [1]	"Other Species" [2]	Prohibited species [3]	Nonspecified [4]
Pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish.	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Atka mackerel, and squid.	Pacific herring (Clupea harengus pallasi); salmonids (Salmonidae); Pacific halibut (Hippoglossus stenolepis); king crab (Paralithodes spp. and Lithodes spp.); Tanner crab (Chionoecetes spp).	All species not included in these categories.

[1] Commercially important; specific TAC applies to each species or species group; records must be maintained.

[2] The target quota for these species as a category is set at five percent of the combined target quotas of the target species. Records of the catch or receipt of "other species" must be kept.

[3] Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this Part. Records must be maintained as required by these §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained for any catches or receipts of these species, except for non-specified species.

[4] The term "non-specified species" means for purposes of this section those species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery management plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(1) The term "target species" means, for purposes of this section, species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish. Records of the catch or receipt of each target species or species group must be kept.

(2) The term "other species" means, for purposes of this section, species that currently have only slight economic value and are not generally targeted upon, but which are significant components of the ecosystem or have economic potential. They include sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Akta mackerel, and squid. The total allowable catch (TAC) for those species as a category is set at five percent of the combined quotas of the TACs of the target species. Records of the catch or receipt of "other species" must be kept.

(3) The term "prohibited species" means for purposes of this section: Pacific herring (*Clupea harengus pallas*); salmonids (Salmonidae); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp. and *Lithodes* spp.); Tanner crab (Chionoecetes spp.) Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this Part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species, except for "non-specified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species", but records are not required of catches or receipts of these species.

(4) The term "non-specified species" means, for purposes of this section, species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery managment plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(c) (1) *TAC's, TALFF's, Reserves, and PSC limits.* (i) See 50 CFR Part 672, Subpart B, for procedures to determine total allowable catches (TACs), domestic annual processing (DAP), joint venture processing (JVP), reserves, total allowable level of foreign fishing (TALFF), and prohibited species catch limits. Species listed in paragraph (b)(3) and Table 1 of this section as "prohibited species," species listed in paragraph (b)(4) of this section as "non-specified species," and species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under § 611.11.

* * * * *

PARTS 672 AND 675—[AMENDED]

3. The authority citation for 50 CFR Parts 672 and 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 672.3, paragraph (a) is revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Federal law.* For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92; for those governing foreign fishing for

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groundfish in the Bering Sea and Aleutian Islands, see 50 CFR 611.93. For regulations governing fishing for groundfish in the Bering Sea and Aleutian Islands by vessels of the United States, see 50 CFR 675; for those governing salmon fishing off Alaska, see 50 CFR Part 674; for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR 216.24. For regulations governing fishing for Pacific halibut by vessels of the United States, see the regulations of the International Pacific Halibut Commission at 50 CFR Part 301.

* * * * *

5. In § 672.5, paragraph (a)(3)(iv) introductory text is revised, paragraphs (a)(3)(iv)(E) and (F) are redesignated as (F) and (G), respectively, and new paragraphs (a)(3)(iv)(E), (a)(3)(iv)(H), and (a)(3)(v) are added to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(3) * * *

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. This report must contain the following information:

* * * * *

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

* * * * *

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEX, outside the EEZ, within any State's territorial waters, or within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group of all fish products transferred or offloaded to the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if offloaded to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port or destination of the receiving vessel if transferred to another vessel.

* * * * *

6. In § 672.20, paragraph (a)(2)(i) is redesignated as (a)(2)(ii), paragraph (a)(2) introductory text is revised, a new paragraph (a)(2)(i) is added, and paragraphs (c)(1), (d)(2) and (d)(5)(i), (e)(1), and the third sentence of (f)(2)(i) are revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) Total Allowable Catch (TAC). The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, reserves, and total allowable level of foreign fishing (TALFF).

(i) The sum of the TACs specified must be within the OY range of 116,000 to 800,000 mt for target species and the "other species" category. Initial reserves are established for pollock, Pacific cod, flounder, and "other species" which are equal to twenty percent of the TACs for these species or species groups.

TABLE 1.—INITIAL (AS OF JANUARY 1, EACH YEAR) TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. TAC=DAH+RESERVE+TALFF; DAH=DAP+JVP.

Species	Area [1]	Code	TAC	DAH	DAP	JVP	Reserve	TALFF
Pollock	W/C	701						
	Outside Shelikof							
	E							
	(Total)							
Pacific cod	W	702						
	C							
	E							
	(Total)							
Flounders	W	129						
	C							
	E							
	(Total)							
Sablefish	W	703					NA [2]	
	C							
	W. Yakutat							
	SE/Eastern Yakutat							
	(Total)							
Other Rockfish [3]	W	849					NA [2]	
	C							
	E							
	(Total)							
Shelf demersal Rockfish [4]	SEO						NA [2]	
Thornyheads	G–W	749					NA [2]	
Other sp. [5]	G–W							

[1] See Figure 1 of § 672.20 for description of regulatory area and districts. W=Western, C=Central, E=Eastern, G–W=Gulf-Wide, SE=Southeast.

[2] NA not applicable. Reserves are not established.

[3] The category "other rockfish" includes all fish of the genus (Sebastes) except the category shelf demersal rockfish as defined in footnote 3 below and *Sebastolobus* (thornyhead rockfish).

[4] Shelf demersal rockfish include *Sebastes paucispinis* (bocaccio), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. proriger* (redstripe rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. brevispinis* (silvergrey rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish).

[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, octopus, Atka mackerel, and squid. The TAC is equal to 5 percent of the TACs of the target species.

* * * * *

(c) * * *

(1) *Notices of harvest limits and PSC limits.* As soon as practiable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying preliminary annual TAC, DAP, JVP, TALFF, reserves, and applicable PSC amounts for each target species, "other species" category, any species determined to be fully utilized by the DAP fisheries. The preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors. The preliminary specifications of JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP. These additional amounts will reflect as accurately as possible to projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC limits and annual TAC for each target species, the "other species" category, and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the **Federal Register** on or about January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

* * * * *

(d) * * *

(2) *Apportionment of surplus DAP to JVP and surplus DAH to TALFF.* In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary will apportion to JVP any part of the DAP amounts that he determines will not be processed by U.S. processors, and may apportion to TALFF any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

* * * * *

(5) * * *

(i) *General.* The Secretary, under paragraphs (d)(1) and (d)(2) of this section, may apportion to TALFF only those amounts that he determines will not be harvested by vessels of the United States during the remainder of the fishing year, and shall apportion to JVP only those amounts he determines will be harvested by vessels of the United States during the remainder of the fishing year but will not be processed by United States processors. The amount of reserve that the Regional Director determines will be harvested by vessels of the United States may, at the discretion of the Secretary, either be apportioned to DAP or JVP, or retained in the reserves as eligible for later apportionment under paragraph (d) of this section.

* * * * *

(e) * * *

(1) Prohibited species, for the purpose of this Part, are any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp., and *Lithodes* spp.) and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this Part while fishing for groundfish in the Gulf of Alaska, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

* * * * *

(f) * * *

(2) * * *

(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the **Federal Register** as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

* * * * *

PART 675—[AMENDED]

7. In § 675.5, paragraph (a)(3)(iv) introductory text is revised, current paragraphs (a)(3)(iv) (E) and (F) are redesignated as (F) and (G), respectively, and new paragraphs (a)(3)(iv)(E), (a)(3)(iv)(H), and (a)(3)(v) are added to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(3) * * *

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this Part. This report must contain the following information:

* * * * *

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

* * * * *

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEZ, outside the EEZ, within any State's territorial waters, or

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within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group, of all fish products transferred or offloaded to the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port of destination of the receiving vessel if transferred to another vessel.

§§ 611.92, 672.20, 672.22, and 672.24 [Amended]

8. In addition to the amendments set forth above, remove the initials "TQ" and add, in their place, the initials "TAC" in the following places:
§ 611.92(c)(2)(ii)(A); Newly redesignated § 672.20(a)(2)(ii) introductory text and (ii) (A) and (B), (b)(1), and (c)(2) (i) and (ii) and (iii) (A) and (B);
§ 672.22(a)(1)(iii), (2)(i)(B) and (iii), and (3)(vi); § 672.24(b)(1), (2), and (3) (i) and (ii).

[FR Doc. 88-5298 Filed 3-8-88; 9:28 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 47
Thursday, March 10, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program: Continuation of Coverage During Military Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its Federal Employees Health Benefits (FEHB) Program regulations to permit an employee or annuitant who enters the military on active duty or active duty for training to continue his or her FEHB enrollment for up to 12 months. OPM is taking this action to make the FEHB Program consistent with the Federal Employees' Group Life Insurance (FEGLI) Program.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob MacKinnon, (202) 632-4634.

SUPPLEMENTARY INFORMATION: A provision of Pub. L. 99-335, the Federal Employees Retirement System Act of 1986, amended the Federal Employees' Group Life Insurance (FEGLI) law to allow the FEGLI coverage of an employee who enters the military on active duty or active duty for training to continue for up to 12 months in the same way coverage is continued for employees in other types of nonpay status.

Most individuals who need to maintain life insurance coverage would also need to maintain health insurance coverage while on military leave. Therefore, we are changing the FEHB Program to make it consistent with the FEGLI Program.

While the FEHB law permits an employee to continue his or her enrollment while in a leave-without-pay status not to exceed 1 year, it delegates the authority to OPM to prescribe regulations in this area. The current regulations require an agency to terminate the FEHB enrollment of an employee placed in leave without pay to enter the military on active duty or active duty for training in excess of 30 days. The regulations also apply to annuitants who enter active duty military service for more than 30 days. The enrollment is automatically reinstated on the day the employee is restored to a civilian position, or in the case of annuitants, on the date of separation from the military. This policy was established to protect the individual from the liability of health benefits premiums while health care is available from the military and FEHB coverage is not needed.

However, we have found that this policy may create a hardship for families when the self and family coverage of the employee or annuitant is terminated, and the individual's dependents do not accompany him or her to the military duty station. Under the existing policy, dependents of the employee or annuitants who enters on active duty in the military would be without FEHB coverage for the entire period of active duty military service. Even though the dependents would be *eligible* for benefits under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), they might not find it convenient from the standpoint of distance to use the CHAMPUS facilities or providers, or they might be reluctant to interrupt longstanding patient/provider relationships in their home locale. Therefore, in some circumstances, they would feel forced to pay out-of-pocket for their health care expenses due to their involuntary loss of FEHB coverage. Our proposed regulations would permit an employee to continue his or her FEHB coverage while in leave without pay for active duty military service for up to 12 months, unless he/she elects to have the enrollment terminated as of the day before entering active duty. Of course, those who continue enrollment would be responsible for paying the employee share of the premium, just like any other employee in nonpay status. A similar choice would be permitted for an annuitant in the same situation, provided the annuity does not terminate. For an annuitant, however, a continued enrollment would not terminate after 12 months, if the annuity continues while he or she is on active duty.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,
Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.304, paragraphs (a)(5) and (b)(2)(iii) are amended by adding the text set forth below to the end of the respective paragraphs:

§ 890.304 Termination of enrollment.

(a) * * *

(5) * * *, provided the employee elects, in writing, to have the enrollment so terminated.

* * * * *

(b) * * *

(2) * * *

(iii) * * *, provided the annuitant elects, in writing, to terminate the enrollment.

* * * * *

[FR Doc. 88-5216 Filed 3-9-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-10-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require modification to the aft lavatories to reduce the risk of fire. This notice proposes to require installation of a shroud behind the towel and cup dispensers in the aft lavatories to prevent accumulation of combustible materials behind the aircraft sidewall. Accumulation of combustible materials in this inaccessible location constitutes a fire hazard.

DATES: Comments must be received no later than May 9, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information, when available, may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Airworthiness Rules Docket No. 88-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On certain Boeing Model 737 aft lavatories, the towel and cup dispensers are open on the back side, which allows materials to fall behind the airplane sidewall. Further, when the dispenser is empty, there is direct access between the airplane cabin and the area behind the sidewall. Since any material which might accumulate behind the sidewall would be undetectable to a person in the cabin, a considerable amount of material could build up before it is noticed. In addition, materials in this location are not easily removable even if they are discovered. Since the dispenser is for the express purpose of storing paper products, it is reasonable to expect some of these paper products to fall behind the sidewall in the current installation. The area behind the sidewall contains wiring and electrical connections and, thus, the presence of combustibles constitutes a fire hazard.

Since this condition is likely to exist or develop in other airplanes of this model, the FAA is proposing an AD that would require installation of a shroud on the aft lavatory towel and cup dispenser to prevent the accumulation of flammable material behind the sidewall. (This directive would not apply to modular lavatories installed on certain Model 737 airplanes.) Boeing has made a desing change to the production airplanes and is the process of developing a service bulletin with instructions to correct this problem. The FAA may consider referencing the service bulletin in the final rule as an approved method of compliance.

It is estimated that 550 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts would not exceed $100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $231,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 30

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, equipped with non-modular aft lavatories, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent accumulation of combustible materials behind the airplane sidewall, accomplish the following:

A. Within 3 months after the effective date of this amendment, and thereafter at intervals not to exceed 3 months, until the requirements of paragraph B., below, are accomplished, inspect the area behind the towel and cup dispenser in the aft lavatories and remove all foreign material.

B. Within 15 months after the effective date of this amendment, install a shroud behind the towel and cup dispenser in the aft lavatories, which encloses the dispenser back and prevents material from falling behind the sidewall, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on March 2, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-5205 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-08-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires visual inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints. This action would require the accomplishment for certain eddy current inspections, which are currently optional procedures in the existing AD. This action is necessary to ensure that cracks in the skin are detected and repaired, in order to pervent rapid depressurization.

DATES: Comments must be received no later May 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On October 2, 1987, FAA issued AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987), to require visual inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints on Boeing Model 737 series airplanes. Failure to detect and repair cracks could lead to rapid depressurization.

AD 87-21-08 was issued without public notice, due to its emergency status. Accordingly, long term inspection requirements were not included in the AD since public notice must be provided for such action.

The FAA has determined that, in order to maintain an adequate level of safety, it is necessary now to revise the existing AD to add a requirement for eddy current inspections to be accomplished prior to the accumulation of 30,000 landings, or within 10,000 landings after the effective date of AD 87-21-08, whichever occurs later, and repeated thereafter at certain intervals.

It is estimated that 165 airplanes of U.S. registry would be affected by this AD, that it would take approximately 188 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,240,800.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987, paragraph B., to read as follows:

B. Prior to the accumulation of 30,000 landings, or within 10,000 landings after November 2, 1987, whichever occurs later, perform inspections for cracks and/or tearstrap delamination using one of the following three options in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions. This constitutes terminating action for the repetitive inspections required by paragraph A., above.

1. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of the fuselage, from stations 360 to 1016. Repeat thereafter at intervals not to exceed 20,000 landings. If no cracks are found, prior to the accumulation of 6,000 landings after the completion of the above eddy current inspection, and thereafter at intervals not to exceed 3,000 landings until the next eddy current inspection, perform a detailed visual inspection of these same areas.

2. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right sides of the fuselage, from stations 360 to 1016. Repeat thereafter at intervals not to exceed 20,000 landings. In addition, perform a tearstrap inspection for delamination. If no cracks are found and tearstrap bond is intact, prior to the accumulation of 6,000 landings after the completion of the above inspections, and thereafter at intervals not to exceed 6,000 landings, perform a detailed visual inspection for skin cracks of the areas previously inspected by eddy current.

3. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of fuselage, from stations 360 to 1016. In addition, perform a tearstrap inspection for delamination. Repeat the eddy current inspections at intervals not to exceed 10,000 landings, and the delamination inspections at intervals not to exceed 20,000 landings.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–5206 Filed 3–9–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendment Designating Tamiami Airport, Miami, FL, for Private Aircraft Reporting

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document announces a proposal to amend the Customs Regulations by adding Tamiami Airport, Miami, Florida, to the list of designated airports at which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via the U.S./Mexican border, or via the Atlantic, Pacific or Gulf of Mexico coasts, must land for Customs inspection. This proposal is made to help relieve congestion at the seven other designated airports in south Florida, a condition which makes it difficult to effectively conduct Customs private airport enforcement program. Public comments are invited on the proposal for consideration before a final decision is reached on this matter.

DATES: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control (202–566–5707).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S./Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201; 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S./Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs has amended § 6.14, Customs Regulations, several times since 1975. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41381); expanding coverage by modifying the definition of private aircraft (T.D. 84–236; 49 FR 46885); extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 11004); and removing San Diego International Airport (Lindbergh Field) from the list of designated airports in § 6.14 because Lindbergh Field's distance from the U.S./Mexican border was permitting smugglers to operate in the area (T.D. 86–146; 51 FR 27836).

Customs is now proposing to amend § 6.14(g), which lists designated airports at which subject aircraft must land for Customs inspection, by adding Tamiami Airport, Miami, Florida, to that list.

This proposal is in response to the congested conditions at the other seven airports in southern Florida which are already designated for private aircraft reporting. Those other airports are: Fort Lauderdale Executive Airport and Fort Lauderdale-Hollywood International Airport, in Fort Lauderdale; St. Lucie County Airport, in Fort Pierce; Key West International Airport, in Key West; Miami International Airport and Opa-Locka Airport, in Miami; and Palm Beach International Airport, in West Palm Beach. By increasing the number of airports available at which arriving private aircraft may report, the burden on existing airports should be reduced, and overall enforcement should be enhanced. The proposed designation is a continuation of Customs recent efforts to improve our private aircraft enforcement program.

Comments

Before making a determination on this matter, consideration will be given to any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

Because this proposal relates to the organization of Customs it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act ("Act") relating to an initial and final regulatory

flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities. Customs routinely makes adjustments to its field organization to accommodate the volume of Customs related activity throughout the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because adjusting the Customs field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 6

Customs duties and inspection, Imports, Air carriers, Aircraft, Airports.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 would continue to read as follows:

Authority; 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624; 49 U.S.C. 1474, 1509.

§ 6.14 [Amended]

2. It is proposed to amend § 6.14(g) by inserting, in appropriate alphabetical order, "Miami, Fl." in the column headed "Location", and on the same line, "Tamiami Airport" in the column headed "Name".

William Meglen,

Acting Commissioner of Customs.

Approved: March 1, 1988.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88–5316 Filed 3–9–88; 8:45 am]

BILLING CODE 4820-02-M

Notices

Federal Register
Vol. 53, No. 47
Thursday, March 10, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 88-003N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday and Wednesday, April 5 and 6, 1988, in Washington, DC, from 9:00 a.m. to 5:00 p.m., at the Holiday Inn, Columbia South, 550 C Street, SW., Washington, DC. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

The Agenda for this meeting follows:

(1) Welcome and Introduction of Members
(2) Historical Background of "An Evaluation of the Role of Microbiological Criteria for Foods"
(3) Agency Prospectus for the Committee
(4) Epidemiological Considerations
(5) Refrigerated Ready-to-Eat Product (Pull By Dates)
(6) Committee Operating Procedures
(7) Working Group Assignments
(8) Working Group Comments to the Full Committee
(9) Future Activities

The members of the National Advisory Committee on Microbiological Criteria for Foods are:

Dr. Howard Bauman, Vice President, Science & Regulatory Affairs, Pillsbury Company, 311 Second Street, SE., Minneapolis, MN 55414
Dr. William L. Brown, President, ABC Research Corporation, 3437 24th Avenue, SW., Gainesville, FL 32607
Dr. Robert L. Buchanan, Agricultural Research Service, Eastern Regional Research Center, 600 E. Mermaid Lane, Philadelphia, PA 19118
Mr. Jerry Carosella, Deputy Director, Microbiology Division, Food Safety & Inspection Service, 14th & Independence Avenue, SW., Washington, DC 2050
Dr. Mitchell Cohen, Deputy Director, Division of Bacterial Diseases, Center for Infectious Diseases, 1600 Clifton Road, Atlanta, GA 30333
Dr. Don Corlett, Director, Microbiology and Information Resources, 205 N. Wiget Lane, Walnut Creek, CA 94598
Mr. Cleve Denny, Director, Research Services, National Food Processors Association, 1401 New York Avenue, NW., Washington, DC 20005
Dr. Michael Doyle, Associate Professor, Food Research Institute, University of Wisconsin, 1925 Willow Drive, Madison, WI 53706.
Dr. Damien Gabis, President, Silliker Laboratories, Inc., 1304 Halsted Street, Chicago Heights, IL 60411
Mr. Spencer Garrett, Director, National Seafood Inspection Laboratory, National Marine Fisheries, 3209 Frederick, Pascagoulla, MS 39568–1207
Dr. Phil Hudspeth, Vice President, Research and Quality Assurance, Holly Farms Poultry, 1203 School Street, Wilkesboro, NC 28697
Mr. Kenneth Iwamoto, Director, Research Development and Quality Assurance, FRIONOR—USA, New Bedford, MA 02741
Dr. James Jay, Professor, Department of Biological Sciences, Wayne State University, 328 Old Main, Detroit, MI 48201
Dr. John Kvenberg, Food and Drug Administration, 200 C Street, SW., Room 3832, HFF–232, Washington, DC 20204
Dr. Martha Rhodes, Assistant Commissioner, Florida Department of Agriculture and Consumer Services, The Capitol, Tallahassee, FL 32399–0610
Dr. Durwood B. Rowley, U.S. Army-Natick Research Development and Engineering Center, Attn: STRNC–YM, Kansas Street, Natick, MA 01760–5020
Dr. R. B. Sleeth, Vice President, Research and Technical Services, Armour Foods, 15101 North Scottsdale, Scottsdale, AZ 85254
Dr. Bruce Tompkin, Chief Microbiologist, Director of Basic Science, Swift and Company, 1919 Swift Drive, Oak Brook, IL 60522
Dr. Michael Wehr, Administrator, Laboratory Services Division, Oregon Department of Agriculture, 635 Capitol, NE., Salem, OR 98310–0110

The Committee and working group meetings are open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–3002.

Done at Washington, DC on: March 4, 1988.

Kenneth A. Gillies,
Chairman.

[FR Doc. 88–5252 Filed 3–9–88; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Appalachian Integrated Pest Management Gypsy Moth Demonstration Project; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) on an Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project to manage gypsy moth populations. The project area will cover approximately 13 million acres in Virginia and West Virginia, including the George Washington, Jefferson, and Monongahela National Forests, and Shenandoah National Park, as well as State and private and other Federal lands. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal, so that interested and affected people are aware of how they may participate and contribute to the final decision.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis and requests to be included on the EIS mailing list to David P. Smith, Environmental Impact Team Leader, Southern Region, 1720 Peachtree Road NW., Atlanta, Georgia 30367, Phone (404) 347–4338.

FOR FURTHER INFORMATION CONTACT: Questions concerning the project on National Forest lands should be directed to: Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801, Phone (703) 433–2491; Forest Supervisor, Monongahela National Forest, USDA Building., Sycamore Street., Box 1548, Elkins, WV 26241–1548, Phone (304) 636–1800; and Forest Supervisor, Jefferson National Forest, 210 Franklin Road, SW., Roanoke, VA 24001, Phone (703) 982–6270. Questions concerning the project on the Shenandoah National Park should be directed to the Park Superintendent, Shenandoah National Park, Route 4, Box 292, Luray, VA 22835–9051, Phone (703) 999–2243.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement on an Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project to manage the gypsy moth. This 5 year Project will be designed to demonstrate the effectiveness of new and existing technology in an integrated pest management approach to minimize the natural spread and adverse effect of the gypsy moth.

The project area will cover approximately 13 million acres in Virginia and West Virginia, including the Monongahela, Jefferson, and George Washington National Forests, Shenandoah National Park, as well as State and private and other Federal lands. This demonstration project is in addition to normal County, State, or State/Forest Service suppression activities and normal State/APHIS eradication activities that may occur outside the AIPM Project boundary.

The EIS will include sufficient analysis to disclose the environmental effects of non-intervention and intervention activities used to manage gypsy moth populations. Gypsy Moth Suppression and Eradication Projects: Final Environmental Impact Statement as Supplemented—1985 and Final Addendum to the Final Environmental Impact Statement as Supplemented—1985, will be incorporated by reference into this EIS. The effects of implementing all alternatives in environmentally sensitive areas such as designated wildernesses will be discussed.

Public involvement will be encouraged throughout the process. Interested groups, organizations, and individuals, as well as other Federal, State and local government agencies are invited to participate in determining the major issues and sub-issues addressed in the EIS. To accomplish this, the Forest Service will mail a scoping letter to the public explaining the proposed project and requesting identification of issues pertaining to the project that should be addressed in the EIS. Public participation is especially important during the scoping process. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives.
6. Determining potential cooperating agencies and task assignments.

A mailing list of individuals and organizations who have expressed past interest in management of the National Forests in or near the Project area will be used. In addition, the Forest Service will issue a press release providing additional information on the EIS and scoping for anyone not on the mailing lists used. Written requests to be included on the mailing list can be sent to David P. Smith, Environmental Impact Team Leader, at the address listed above.

A reasonable range of alternatives will be formulated by an interdisciplinary EIS team. One alternative will be a no action alternative. Other alternatives will be developed using public input from scoping and various combinations of all or part of the integrated pest management techniques used to manage the gypsy moth.

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October 1988. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**.

It is important that those interested in the Appalachian Integrated Pest Management Gypsy Moth Demonstration Project provide comments at that time. Comments on the DEIS should be as specific as possible and may address the adequacy of the statement, or the merits of the alternatives (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviews of draft EIS's must structure their participation in the environmental review of that proposal, so that it is meaningful and alert the agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 553 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by March 1989. In the EIS, the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the draft EIS, and applicable laws, regulations and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18. The responsible official is Thomas N. Schenarts, Area Director, Northeastern Area, State and Private Forestry.

Dated: March 3, 1988.

Thomas N. Schenarts,
Area Director.

[FR Doc. 88–5209 Filed 3–9–88; 8:45 am]

BILLING CODE 3410-11-M

Intent to Prepare An Environmental Impact Statement; Humboldt National Forest, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a proposal to analyze the cumulative impacts of several uses of a portion of the Mountain City Ranger District, Humboldt National Forest. The project area is the Independence Mountain Range approximately 50 miles north of Elko, Nevada. The area has experienced a succession of gold mining projects since 1980. In addition, it is grazed by livestock, is habitat for a threatened species, the Lahontan cutthroat trout, and provides important watersheds to downstream irrigation users.

The analysis will identify potential conflict areas between the various uses of the National Forest, develop thresholds of concern for the effect of various uses and activities on National Forest resources, and consider a range of alternatives to best manage and mitigate the various resources of the Humboldt National Forest. An alternative will be proposed which best meets resource needs and public issues.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which will be initiated March 21, 1988. All persons and organizations on the current Humboldt N.F. mailing list of those interested in NEPA projects will be notified and invited to participate in the scoping process. Public meetings will be scheduled and advertised if issues and concerns indicate a need for further comment on April 1, 1989, and the FEIS released on June 15, 1989.

DATE: March 1, 1988.

ADDRESS: Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Jerry A. Davis, Forest Planner, Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801 Phone (801) 738–5171.

B.J. Graves,

Forest Supervisor.

[FR Doc. 88–5269 Filed 3–9–88; 8:45 am]

BILLING CODE 3416-11-M

South Fork Mountain Fire Timber Salvage and Resource Recovery; Shasta-Trinity National Forests, Trinity County, CA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the salvage of fire damaged timber and resource recovery work within the former South Fork Mountain roadless area released for multiple-use purposes by the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be "no action". Other alternatives will consider various methods for timber harvest and access and resource recovery measures.

Federal, State, and local agencies, potential timber purchasers, and other individuals or organizations who may be interested or affected by the decision will be invited to participate in the scoping process between now and April 1, 1988. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues; those which have been covered by a previous environmental analysis; and those issues not within the scope of this decision.

Basic resource data collection has been occurring since December, 1987, and its analysis is expected to take about two months. The draft environmental impact statement is scheduled to be available for public review and comment in May, 1988. The final environmental impact statement should be completed by July, 1988.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, is the responsible official. Written comments and suggestions concerning the analysis should be sent to: Forest Supervisor Robert R. Tyrrel, Shasta-Trinity National Forests, Attn: South Fork Mtn. Timber Salvage EIS, 2400 Washington Avenue, Redding, California 96001, by April 1, 1988.

Questions about the proposed action and environmental impact statement should be directed to District Ranger David Wickwire, Hayfork Ranger District, P.O. Box 159, Hayfork, CA 96041. Telephone (916) 628–5227.

Dated: March 4, 1988.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 88–5259 Filed 3–9–88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

City Creek Debris Basin, Warner Draw Watershed (Work Plan October 1968), Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the City Creek Debris Basin, Warner Draw Watershed (Work Plan October 1968), Washington County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, P.O. Box 11350, Salt Lake City, UT 84147, telephone 801 524–5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the construction of an uninstalled debris basin planned for flood control in the 1968 work plan. The planned work of improvement includes the construction of one debris basin (flood water retarding) dam. The dam will be approximately 70 feet in elevation from its lowest point and have a top width of 28 feet. The embankment will contain approximately 115,500 cubic yards.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt.

No administrative action on implementation of the proposal will be taken until April 11, 1988.

Date: March 2, 1988.

Norman W. Priest,

Deputy State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 88–5208 Filed 3–9–88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 16, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers seven manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1985 through October 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from one respondent, Tsuyama Manufacturing Co., Ltd. Based on our analysis of the one comment received, we have changed the margins from those presented in the preliminary results. The final margins are now zero percent.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 43780) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of bicycle speedometers currently classifiable under TSUSA item numbers 711.9300, 711.9820, and 732.4200 and HS item numbers 9029.20, 9029.90, and 9029.10.80.

The review covers seven manufacturesr and/or exporters of Japanese bicycle speedometers to the United States and the period November 1, 1985 through October 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received a written comment from one respondent, Tsuyama Manufacturing Co., Ltd.

Comment

Tsuyama contends that the Department erred in its foreign market value calculation by not considering rebates given to promote certain home market sales.

Department's Position

We agree and have allowed the rebates in our final calculations.

Final Results of the Review

As a result of the comment received, we have revised our preliminary results and we determine that no margins exist for the period November 1, 1985 through October 31, 1986.

Manufacturer/Exporter	Margin (percent)
Tsuyama Mfg. Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Asia Machinery Trading Co	0
Tsuyama Mfg. Co., Ltd./Himino & Co	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Kozaki Trading Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Kuwahara Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Yagami Corporation	0

As provided for in section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for these firms.

For any shipments from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 24428, June 13, 1984, 52 HR 1170, April 10, 1987, and 52 FR 42330, November 4, 1987). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of Japanese bicycle speedometers occurred after October 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–5303 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–421–701]

Brass Sheet and Strip From The Netherlands; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation, Metallverken Nederland, B.V. (MN), to postpone the final determination to June 15, 1988, as permitted in section 735(a) (2) (A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673(a) (2) (A)).

Based on this request, we are postponing our final determination as to whether sales of brass sheet and strip from The Netherlands have occurred at less than fair value until not later than June 15, 1988. We are also postponing our public hearing from March 28, 1988, until May 4, 1988.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION: On February 8, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 3612). This notice stated that if the investigation proceeded normally, we would make our final determination by April 18, 1988.

On February 12, 1988, MN requested a postponement of the final determination until not later than June 15, 1988, pursuant to section 735(a) (2) (A) of the Act. This respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than June 15, 1988.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on May 4, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Acting Assistant Secretary for Import Administration by April 27, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.

March 4, 1988.

[FR Doc. 88-5304 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-003]

Fireplace Mesh Panels From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one respondent and one importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on fireplace mesh panels from Taiwan. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987. The review indicates the existence of dumping margins during the period.

Where company-supplied information was inadequate, we used the best information available for assessment purposes. As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the rate found as best information available.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5289/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 28592) the final results of the last administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982). One respondent and one importer requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we conduct an administrative review for the period June 1, 1986 through May 31, 1987. We published a notice of initiation on July 17, 1987 (52 FR 27036). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Yeh Sheng did not provide an adequate response to our antidumping questionnaire. For this firm we used the best information available which was the highest rate in the last administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue NW. Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are fireplace mesh panels. Such panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of the kind used in the manufacture of safety screening for fireplaces. This product is currently classifiable under TSUSA numbers 642.7800 and 654.0045 and HS item numbers 7314.49.00 and 7323.99.00.

The review covers one exporter of this merchandise to the United States and the period from June 1, 1986 through May 31, 1987.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the margin for Yeh Sheng is 6.40 percent.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments for hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the last administrative review (49 FR 28592, July 13, 1984). For any future entries of this merchandise from a new exporter not covered in this or in prior administrative reviews, whose first shipment occurred after May 31, 1987, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 6.4 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1674(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: March 2, 1988.

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5305 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-009]

Industrial Nitrocellulose From France; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke

AGENCY: International Trade Adminstration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke.

SUMMARY: In response to a request by the petitioner and Societe Nationale des Poudres et Explosifs ("SNPE"), the Department of Commerce ("the Department") has conducted an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the periods August 1, 1984 through July 31, 1985 and August 1, 1985 through July 31, 1986. The review indicates no dumping margins for the period August 1, 1984 through July 31, 1985 and *de minimis* dumping margins for the period August 1, 1985 through July 31, 1986.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1986, the Department published in the **Federal Register** (51 FR 43227) the final results of its last administrative review of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). We began the first review under our old regulations. After the promulgation of our interim final regulations, SNPE requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notices of initiation on July 9, 1986 (51 FR 24883) and September 16, 1986 (51 FR 32817). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item numbers(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. These imports are currently classifiable under TSUSA item 445.2500 and under HS item numbers 3012.20.00 and 3912.90.00.

The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1 1984 through July 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the c.i.f., packed price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, foreign inland insurance, ocean freight, marine insurance, and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, inland insurance, brokerage and handling, rebates, discounts, quantity adjustments, and differences in the physical characteristics of the merchandise, credit, and packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for Societe Nationale des Poudres et Explosifs:

Period	Margin (percent)
8/1/84 to 7/31/85	0
8/1/85 to 7/31/86	0.07

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication.

Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in these comments, may be filed not later than 32 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for SNPE is 0.07 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for SNPE. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1986 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of French industrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

SNPE has requested revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement. SNPE has had zero or *de minimis* antidumping duty margins for three years and is the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States. Therefore, we tentatively determine to revoke the order on industrial nitrocellulose from France. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C 1675(a)(1), (c)) and sections 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistance Secretary for Import Administration.

[FR Doc. 88-5306 Filed 3-9-88, 8:45 am]

BILLING CODE 3510-DS-M

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from one manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period August 2, 1985 through November 30, 1986. The review indicates the existence of dumping margins for the firm during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 49740) an antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. One manufacturer/exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tarif Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and

Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this review are low-fuming brazing copper rod and wire (LFB), principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classifiable under TSUSA numbers 612.6205, 612.7220, and 653.1500, and HS item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00.

The review covers one manufacturer/exporter of low-fuming brazing copper rod and wire from New Zealand, McKechnie Metal Products, Ltd. ("McKechnie"), to the U.S. and the period August 2, 1985 through November 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based upon the packed, free on railhead price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, rebates, quantity discounts, differences in credit expenses, and differences in packing. We denied McKechnie's claim for a level-of-trade adjustment because McKechnie was unable to show what additional expenses were incurred due to sales at a different level of trade. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists during the period:

Manufacturer/exporter	Time period	Margin (percent)
McKechnie	8/2/85–11/30/86	2.16

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margin shall be required for McKechnie.

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipment occurred after November 30, 1986, and who is unrelated to McKechnie, a cash deposit of 2.61 percent shall be required. These deposit requirements are effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: March 2, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5307 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Synthetic Methionine From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Noticed of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period July 1, 1986 through June 30, 1987. The review indicates there are no known shipments of this merchandise by Nippon Soda/Mitsui and Central Soya (Canada) to the United States during the period of review, and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 38953) the final results of its last administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18382, July 10, 1973). One manufacturer/exporter and one third-country reseller requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the review on July 7, 1987 (52 FR 25445). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers in all new petitions filed with the Department.

A reference copy of the proposed Harmonized System Schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of synthetic methionine currently classifiable under TSUSA item 425.0430 and HS item number 2922.42.50.

The review covers one manufacturer/exporter and one third-country reseller of Japanese synthetic methionine to the United States and the period July 1, 1986 through June 30, 1987. There were no known shipments of this merchandise to the United States by Nippon Soda/Mitsui or Central Soya (Canada) during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1986 through June 30, 1987:

Manufacturer/exporter/third country reseller (country)	Margin (percent)
Nippon Soda/Mitsui	[1] 3.35
Nippon Soda/Mitsui/Central Soya (Canada)	[1] 79.0

[1] No shipments during the period; margins based on last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication.

As provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all firms listed above. For any shipments from the remaining known manufacturers, exporters, or third-country resellers not covered by this review, the cash deposit will contiue to be at the rates published in the final results of the last administrative review for each of those firms (52 FR 38953, October 20, 1987, 52 FR 10600 April 2, 1987, and 48 FR 55153, December 9, 1983).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1987 and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance with our practice of not using the most recently reviewed rate as a basis for cash deposit for new shippers when we have based the recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Transportation.

[FR Doc. 88–5306 Filed 3–9–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–427–016]

Industrial Nitrocellulose From France; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on industrial nitrocellulose from France. We preliminarily determine the net subsidy to be 0.26 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.10 percent *ad valorem* for the period January 1, 1985 through December 31, 1985, rates we consider *de minimis*. We also tentatively determine to revoke the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTAL INFORMATION:

Background

On January 9, 1987, the Department of Commmerce ("the Department") published in the **Federal Register** (52 FR 833) the final results of its last administrative review of the countervailing duty order on industrial nitrocellulose from France (48 FR 28521, June 22, 1983). On June 27, 1986, a foreign exporter, Societe Nationale des Poudres et Explosifs ("SNPE"), requested an administrative review of the order in accordance with 19 CFR 355.10. We published the initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedule of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for

consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the import specialists at their local Customs office to consult the schedule.

Imports covered by the review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous, synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. Such merchandise is currently classifiable as, cellulosic plastic materials, other than cellulose acetate, under TSUSA item 445.2500. This product is currently classifiable under HS item 3912.2000. We invite comments from all interested parties on this HS classification.

The review covers the period January 1, 1984 through December 31, 1985, and nine programs: (1) A grant from the Ministry of Defense; (2) a grant from DATAR; (3) the assumption of labor costs for civil servants; (4) a government equity infusion; (5) research and development assistance; (6) financing from the Fonds de Development Economique et Social; (7) loans from Credit National; (8) financing from the Caisse des Depots et Consignations; and (9) loans from the Ministry of Research and Industry. SNPE is the only known French producer and exporter of this merchandise to the United States.

Analysis of Programs

(1) Grant from the Ministry of Defense

The Ministry of Defense provided a grant to SNPE in 1975 to modernize the company's Bergerac plant, where industrial nitrocellulose (among other products) is produced. Because this grant was limited to a specific industry, we preliminary determine that it constitutes a subsidy.

To calculate the benefit, we applied the grant methodology outlined in the Subsidies Appendix to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (40 FR 18006, April 26, 1984). We allocated the grant over 10 years, the average useful life of assets in the nitrocellulose industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the 1975 national average corporate bond rate in France (as reported in Morgan Guaranty Trust Company's *World Financial Markets*) because we have no information on SNPE's weighted cost of capital for that year. On this basis, we preliminary determine the benefit from this program to be 0.17 percent *ad valorem* for the period January 1, 1984 through December 31, 1984. For 1985, there is no benefit from this program because the stream of benefits from the 1975 grant ended in 1984.

(2) DATAR Grant

The Delegation a l'Amenagement du Territoire et a l'Action Regionale ("DATAR") coordinates the programs of various government agencies that provide incentives to establish or expand businesses in certain regions of France. SNPE received a grant from DATAR in 1979 to improve the production facilities and general infrastructure of the Bergerac plant. Because grants received from DATAR provide benefits to specific regions, we preliminarily determine that this program constitutes a subsidy.

Using the same methodology as described for the Ministry of Defense grant, we allocated the grant over 10 years and used as the discount rate the 1979 national average corporate bond rate in France. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.03 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

(3) Assumption of Labor Costs for Civil Servants

Some employees of SNPE retain government civil service status ("status employees") as a result of the company's change from a government agency to a government-owned private corporation in 1971. SNPE is responsible for paying the wages and benefits of all its employees. In general, SNPE's contribution for certain nonwage benefits, such as health insurance, pensions, and unemployment insurance, is lower for its status employees than for other employees. Because the French government assumes part of SNPE's contributions for status employees, we preliminarily determine that this program constitutes a subsidy.

To calculate the benefit, we took the average annual difference between SNPE's nonwage benefits for status employees and those for other employees and multiplied that amount by the number of status employees involved in industrial nitrocellulose production. We allocated the result over total sales of industrial nitrocellulose during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.07 percent for the period January 1, 1985 through December 31, 1985.

(4) Government Equity Infusion in SNPE

In 1984, the Government of France increased its equity holdings in SNPE by a small amount. In the final determination (48 FR 11971, March 22, 1983) and the final results of our last administrative review in this case, we found that the creation of SNPE in 1971 and the government's equity infusion between 1972 and 1983 were consistent with commercial considerations. To determine whether the purchase of additional shares by the French government was made in accordance with commercial considerations, we examined SNPE's financial statements for 1983, the most recent information available at the time of the 1984 infusion.

As in previous years, SNPE had a positive cash flow and earned a profit in 1983. The company's profitability ratios (return on equity, return on sales), leverage ratios (equity as a percentage of debt, capitalization ratio), and liquidity ratios (current ratio, quick ratio, times interest earned) all remained healthy in 1983. Given SNPE's favorable financial data at the time of the French government's equity infusion, we preliminarily determine that the government's 1984 equity infusion in SNPE does not constitute a subsidy. Since the French government made no new equity investments in SNPE in 1985, we preliminarily determine that there were no benefits received from this program in 1985.

(5) Other Programs

We also examined the following programs and preliminarily determine that SNPE did not use them during the period of review:

(a) Research and development assistance;

(b) Financing from the Fonds de Developpement Economique et Social;

(c) Preferential loans from Credit National;

(d) Financing from the Caisse des Depots et Consignations; and,

(e) Loans from the Ministry of Research and Industry.

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Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine the net subsidy to be 0.28 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.10 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis.*

The Department therefore intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1984 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

SNPE has requested that the Department revoke the countervailing duty order based on the absence of a net subsidy for at least two years, as provided in 19 CFR 355.42(b). Furthermore, in accordance with 19 CFR 355.42(e), SNPE has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that the merchandise thereafter imported into the United States is benefiting from a net subsidy on its manufacture, production, or exportation. We have found *de minimis* benefits for reviews covering the period March 1, 1983 through December 31, 1985. In addition, the benefits declined in each year during this period and, based on our grant methodology, would continue to decline if we conducted further administrative reviews. We therefore tentatively determine to revoke the countervailing duty order.

If the revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The revocation will not become final until the completion of an administrative review establishing no net subsidy for the period January 1, 1986 through the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication, or the first workday afterwards. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)) and (c) and §§ 355.10 and 355.42 of the Commerce Regulations (9 CFR 355.10 and 355.42).

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: March 4, 1988

[FR Doc. 88–5309 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DS-M

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period January 1, 1985 through December 31, 1985 and three programs.

As a result of the review, the Department preliminarily determines that Matsushita Refrigeration Industries (Singapore) Pte. Ltd., Matsushita Electric Trading (Singapore) Pte. Ltd., and the Government of the Republic of Singapore, the signatories to the suspension agremeent, have complied with the terms of the agreement. The Department also preliminarily determines that the net bounty or grant to be offset by the export charge is 4.95 percent of the f.o.b. value of the merchandise. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51167) a notice of suspension of countervailing duty investigation regarding certain refrigeration compressors from the Republic of Singapore. On November 26, 1986, the petitioner, Tecumseh Products Company, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the suspension agreement. We publihsed the initiation of the administrative review on December 18, 1986 (51 FR 45364). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies,and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under TSUSA item number 661.0900. These products are currently classifiable under HS item number 8414.30.00—0.

We invite comments from all interested parties on this HS classification.

The review covers one producer, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and its exporter, Matsushita Electric Trading (Singapore) Pte. Ltd (METOS). These two companies, along with the Government of the Republic of Singapore, are the signatories to the suspension agreement. The review covers the period January 1, 1985 through December 31, 1985, and three programs.

Tecumseh alleged that a significant increase in exports of compressors from Japan to the United States and a decrease in exports to the United States from Singapore may be the result of transshipment of Singapore-produced compressors through Japan, which is a violation of the suspension agreement.

At verification, we examined company and government figures for exports of the subject compressors as well as invoices and bills of lading for country of destination and shipping routes. We found that: (1) the value of exports from Singapore to the United States during the review period compared very closely to statistics for U.S. imports of the subject compressors from Singapore during the same period; (2) that METOS' few shipments of the subject compressors to Japan were to its parent company and that the total value of these shipments was far too small to account for the increase in the quantity of Japanese compressor exports to the United States; and (3) that exports from Singapore were often routed on ships that had stopovers in Japan but that these exports were included in the reported value of exports from Singapore that we verified. In short, we found no evidence to indicate that METOS was transshipping compressors to the United States through its parent in Japan.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part IV

Part IV of the Economic Expansion incentives Act allows a 90 percent tax exemption on a company's profits if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the period of review.

MARIS exports only refrigeration compressors, all of them through METOS. To calculate the benefit, we divided MARIS' tax savings from the program by the f.o.b. value of METOS' total exports of MARIS' refrigeration compressors. On this basis, we preliminarily determine the benefit from this program to be 4.95 percent of the f.o.b. value of the merchandise.

(2) Financing through the Monetary Authority of Singapore

The suspension agreement prohibits MARIS and METOS from applying for and receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject refrigeration compressors to the United States. During verificaton, we found that neither MARIS nor METOS received any financing through the Monetary Authority on the subject compressors exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

(3) Technical Assistance Fee Payments

Tecumseh claims that the technical assistance fees paid by MARIS to its Japanese parent company, Matsushita Electric Industrial Co., continue to remain extremely high and excessively reduce MARIS' tax liability.

The Economic Development Board ("EDB") and the Inland Revenue Department review technical assistance fees to ensure that they are not excessive. We found at verification that the EDB not only approved the amount of royalty payments made by MARIS for technical assistance but also, after extensive review and revision of the technical assistance agreement, approved an increase in technical assistance fees. Therefore, we preliminarily determine that these payments are not excessive and do not confer a countervailable benefit on MARIS.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charge of 5.86 percent for the period January 1, 1985 through July 25, 1985 and 4.92 percent for the period July 26, 1985 through December 31, 1985. We also preliminarily determine the net bounty or grant to be 4.95 percent of the f.o.b. value of the merchandise for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period January 1, 1985 through July 25, 1985, a negative adjustment may be made to the provisional export charge of 5.86 percent established in the notice of suspension of countervailing duty investigation and that, for the period July 26, 1985 through December 31, 1985, a positive adjustment must be made to the provisional export charge of 4.92 percent established in the notice of the final results of the first administrative review of suspension agreement (50 FR 30493, July 26, 1985). For the period January 1, 1985 through July 25, 1985, the Government of Singapore may refund the difference to the companies. For the period July 26, 1985 through December 31, 1985, the Government of Singapore shall collect, in accordance with section B.4.c. of the agreement, the difference plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department intends to notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 4.95 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of imports of the subject Singaporean refrigeration compressors into the United States. Our information indicates that the two companies accounted for 100 percent of imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and § 355.10 of the Commerce

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Regulations (50 FR 32558, August 13, 1985).

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: March 4, 1988.

[FR Doc. 88-5310 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Hot-Rolled Steel Sheet; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain hot-rolled steel sheet used in the production of pipe and tubing.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Australia, U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for four types of hot-rolled steel sheet, 29.5 to 66.0 inches in width, 0.143 to 0.335 inch in thickness, with coil weights of 20,000–55,000 pounds. The products are:

(A) 0.28–0.34 percent carbon, 1.30–1.60 percent manganese, 0.10–0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of American Petroleum Institute (API) grade J–55 oil country tubular goods (OCTG).

(B) 0.35–0.39 percent carbon, 1.30–1.60 percent manganese, 0.10–0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of API grade K–55 OCTG.

(C) 0.35–0.39 percent carbon, 1.30–1.60 percent manganese, 0.10–0.25 percent silicon, a minimum of 0.025 percent aluminum, 0.15–0.25 percent molybdenum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of API grade N–80 OCTG.

(D) 0.22–0.28 percent carbon, 0.90–1.15 percent manganese, 0.10–0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.005 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of : American Society of Testing Materials specification A–53 pipe, grades A and B; API 5L pipe, grades A, B, and X; and API grades N–80 and L–80 OCTG, or proprietary grade S–95 OCTG.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than (March 21, 1988). Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5311 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-supply Review on Certain Wire Rod; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products, with respect to certain low carbon steel wire rod.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Adminsitration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant (factors) an additional tonnage shall be allowed for such product or products. . . ."

We have received a short-supply request for AISI grade 1008 wire rod 5.5mm in diameter, and AISI grade 1010 wire rod in diameters ranging from 5.5mm through 12mm.

Any party interested in commenting of this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors

involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5312 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Semi-Finished Steel Billets; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, the U.S.-Australia Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Trinidad Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel billets.

DATE: Comments must be submitted no later than March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Brazil, U.S.-Australia, and U.S.-Trinidad steel arrangements, and the U.S.-Finland Understanding, provides that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for ingot/bloom cast and continously cast carbon and alloy steel billets, including cold-heading and cold-finishing quality, high carbon quality, welding quality, and special quality billets. The requested billets are of a square cross section measuring 4 inches on each side, and in lengths of 30–34 feet and 39–41 feet.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 4, 1988.

[FR Doc. 88–5313 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review of Certain Wide Tinplate; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to certain wide tinplate, in coils, for use in the production of beverage and soup cans.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377–0159 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain tinplate, in coils, in widths of 43 to 47 inches, thicknesses of 0.0099 to 0.01298 inch, with tin-coating weights of 0.20 to 0.35 pounds of tin per base box, temper designation T4–CA, and shot-blast finish, for use in the manufacture of beverage and soup cans.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 3, 1988.

[FR Doc. 88–5314 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00002." A summary of the application follows.

Applicant: Olde South Traders, Inc., 101 N. Monroe Street, Suite 1000, Tallahassee, Florida 32301, Contact: James A. Edson, President. Telephone: (904) 496-2944.

Application number: 88-00002.

Date Deemed Submitted: February 26, 1988.

Members (in addition to applicant): Daniels Lumber, Inc.; Metcalf Lumber Company, Inc.; T.R. Miller Mill Company, Inc. (Controlling Entity: Longlead Limited); Nekoosa Packaging Corporation (Controlling Entity: Great Northern Nekoosa Corporation); Rex Lumber Company; and Varn Wood Products Company.

Summary of the Application

Export Trade

Products

Processed and semi-processed forest products ("forest products") including but not limited to semi-finished lumber, finished lumber, treated wood products, wood chips, shavings, and veneer.

Export Trade Facilitation Services (as they relate to the export of products)

Marketing, selling, brokering, shipping, handling, common marking and identification, consulting, international market research, advertising and sales promotion, insurance, product research and design, legal assistance, trade documentation, communication and processing of foreign orders, warehousing, foreign exchange, financing and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Olde South Traders, Inc. (OSTI) seeks certification to:

(1) Enter into exclusive agreements with its Members to act as their exclusive Export Intermediary for forest products.

(2) Meet with its Members to negotiate and agree on the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its forest products and related services for export, and the quantity of products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged:

a. Information that is already generally available to the trade or public.

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies and product specifications by geographical area, and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentations and service and export sales financing).

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market.

e. Information on OSTI's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in Export Markets, and reports by foreign sales representatives.

f. Information on supply and demand for forest products in export trade including the quantities of particular products desired by export customers, the supply of such products, based on domestic supply and demand, available for export trade, anticipated export prices, quality standards, packaging standards and primary production schedules.

g. Information on specific prices and quantities involved in specific domestic transactions furnished by each Member individually, and on a confidential basis, to OSTI's manager who will use such information to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in an aggregated form. The manager shall not disclose to any Member the specific information furnished by any other Member.

(3) Enter into exclusive agreements with other Export Intermediaries for the sale of forest products in the Export Markets, whereby:

a. The Export Intermediary agrees not to represent competitors of OSTI in the sale of forest products and related services in any Export Market.

b. The Export Intermediary agrees not to buy forest products and related services from OSTI's competitors.

(4) Enter into exclusive agreements with foreign customers of forest products and related services offered by OSTI whereby the customer agrees not to purchase the forest products and related services from OSTI's competitors.

(5) Discuss and agree with its Members on the export prices to be

charged by OSTI or its Members for the sale of forest products or related services direct to an Export Market or to a domestic or foreign exporter for ultimate sale in an Export Market.

(6) Limit membership in OSTI.

(7) Publish and distribute a list of the export prices to be charged by OSTI or its Members.

(8) Allocate orders for export sales, and divide profits from such sales, among its Members as provided in the membership agreement between OSTI and its Members.

(9) Purchase forest products from its Members and non-members for direct export to an Export Market or for sale to a domestic or foreign exporter for ultimate sale in an Export Market.

Date: March 3, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-5237 Filed 3-8-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF FINE ARTS

The 1988 National Capital Arts and Cultural Affairs Program; Grant Applications

Notice is hereby given that the administration of Pub. L. 99-190, as amended, authorizing the National Capital Arts and Cultural Affairs Program has been transferred from the National Endowment of Humanities to the Commission of Fine Arts. Accordingly all requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006, Phone: 202-566-1066.

Deadlines for receipt of submission of grants applications is 15 April 1988.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 88-5208 Filed 3-9-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool and Man-Made Fiber Textiles and Textile Products from the Socialist Republic of Romania

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of wool and man-made fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated limits.

Background

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania has been translated to establish a specific limit for man-made fiber yarn in Category 604; a consultation level for wool and man-made fiber non-apparel products in Categories 410, 414, 464-469, 611-629, 665-670, as a group, (Group II), within the group individual levels for Categories 410, 465, 618, and 666; a specific limit for wool and man-made fiber apparel products in Categories 431-459, 630-659, as a group (Group III), within the group specific limits for Categories 433/434, 435, 443, 444, 635, 638/639, 643/644, (not knit), and 645/646; designated consultation levels for Categories 442, 448, 459, 633, 634, 640, 641, 643/644 (knit), 647, 648 and 659; and a minimum consultation level for Category 642, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988.

Charges will be made to the limits established for the foregoing categories as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-mo. restraint limit
604	3,484,601 pounds.
Group II	
410, 414, 464-469, 611-629, 665-670, as a group.	12,000,000 square yards equivalent.
Sublevels within the Group II	
410	200,000 square yards.
465	1,550,000 square feet.
618	2,000,000 square yards.
666	256,410 pounds.

Category	12-mo. restraint limit
Group III	
431–459, 630–659, as a group.	44,961,880 square yards equivalent.
Sublevels within Group III	
433/434	6,674 dozen.
435	3,451 dozen.
442	6,500 dozen.
443	97,236 numbers.
444	50,028 numbers.
448	6,500 dozen.
459	75,000 pounds.
633	44,199 dozen.
634	53,687 dozen of which not more than 17,063 dozen shall be in non-knit coats in Category 634pt.[1] and not more than 36,604 dozen shall be in knit coats in Category 634pt.[2]
635	59,891 dozen.
638/639	329,492 dozen.
640	70,150 dozen.
641	44,850 dozen.
642	39,325 dozen.
643pt./644pt. (not knit) [3].	472,812 numbers.
643pt./644pt. (knit) [4]	24,996 numbers.
645/646	233,944 dozen.
647	80,737 dozen.
648	57,746 dozen.
659	224,359 pounds.

[1] In Category 634pt. (non-knit), only TSUSA numbers 376.5609, 376.5635, 381.3120, 381.3323, 381.3331, 381.3341, 381.6966, 381.8664, 381.9505, 381.9520, 381.9525, 381.9530, 381.9536, 381.9839, 381.9842, 381.9962, 384.2321, 384.9132 and 791.7471.

[2] In Category 643pt. (knit), only TSUSA numbers 381.2315, 381.2325, 381.2835, 381.2857, 381.3551, 381.3554, 381.6671, 381.6673, 381.8523, 381.8706, 381.8808, 381.8811, 381.9222, 381.9223, 381.9232, 384.1902, 384.1906, 384.1911, 384.8217 and 791.7460.

[3] In Category 643pt./644pt. (non-knit), only TSUSA numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166 and 384.9674.

[4] In Category 634pt./644pt. (knit), all TSUSA numbers except those listed in footnote [3].

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 between the governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specified limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

The conversion factor for Categories 638/639 is 15.5 and for Categories 433/434 is 42.1 square yards equivalent per dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5283 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Sweaters of Silk Blend and Other Vegetable Fibers in Categories 845/846 Produced or Manufactured in Thailand

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the commissioner of Customs to be effective on March 11, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota reopenings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish a restraint limit for sweaters of silk blend and other vegetable fibers in Categories 845/846 for the period January 29, 1988 through December 31, 1988.

Background

On February 17, 1988 a notice was published in the **Federal Register** (53 FR 4699) which announced that the Government of the United States had requested consultations with the Government of Thailand with respect to sweaters of silk blend and other vegetable fibers in Categories 845/846.

During consultations held February 17–19, 1988, between the Governments of the United States and Thailand, no solution was reached on a mutually satisfactory limit for these categories. Therefore, the United States Government has decided to control imports of Categories 845/846, exported during the prorated period which began on January 29, 1988 and extends through December 31, 1988, at a level of 199,106 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Silk Apparel and Vegetable fiber Apparel Agreements of December 2 and 3, 1985 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber apparel in Categories 845/846, produced or manufactured in Thailand and exported during the prorated period which began on January 29, 1988 and extends through December 31, 1988, in excess of 199,106 dozen[1]

Textile products in Categories 845/846 which have been exported to the United States prior to January 29, 1988 shall not be subject to the limit established in this directive.

Textile products in Categories 845/846 which have been released from the custody

of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5264 Filed 3–9–88; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The limit has not been adjusted to account for any imports exported after January 28, 1988.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota reopenings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current restraint limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340–Y/640–Y (sublimit), 350 and 361, produced or manufactured in Turkey and exported to the United States.

Background

A CITA directive dated December 31, 1987 (53 FR 165) established import restraint limits for certain cotton and man-made fiber textile products, including Categories 335, 340/640, 340–Y/640–Y (sublimit), 350 and 361, produced or manufactured in Turkey and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, and at the request of the Government of Turkey, the limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340–Y/640–Y (sublimit), 350 and 361 are being increased for carryover for the current six-month period which began on January 1, 1988 and extends through June 30, 1988.

In addition, the limit published in the directive of December 31, 1987 (53 FR 166) for Category 347 for the period July 1, 1987 through December 31, 1987 was incorrect. It should be 300,000 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 31, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Effective on March 11, 1988, the directive of December 31, 1987 is amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340–Y/640–Y (sublimit), 350 and 361, as provided under the terms of the bilateral agreement of October 18, 1985, as amended[1]

Category	Adjusted 6-mo. limit [1]
335	47,298 dozen.
340/640	280,536 dozen of which not more than 142,740 dozen shall be in Categories 340–Y/640–Y.[2]
350	49,447 dozen.
361	245,708 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Categories 340–Y/640–Y, only TSUSA numbers 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

Also effective on March 11, 1988, the December 31, 1987 directive concerning exports during the period July 1, 1987 through December 31, 1987 is amended to correct the restraint limit for Category 347 to 300,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)

Sincerely,

Donald R. Foote

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5265 Filed 3–9–88; 8:45 am]

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[1] The provisions of the bilateral agreement provide, in part, that: (1) specific limits may be increased by 7 percent swing durings an agreement period and (2) specific limits may be increased by carryover and carryforward up to 11 percent of which carryforward shall not constitute more than 6 percent of the applicable category limit.

Amendment to the Export Visa Requirements Concerning Textile and Apparel Products from Malaysia

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the bilateral agreement of July 1 and 11, 1985, as amended and extended, between the Governments of the United States and Malaysia, agreement was reached to amend the visa requirements to reflect that, effective on March 11, 1988, shipments of textile and apparel prodcuts exported from Malaysia on and after March 11, 1988, which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 20, 1987, concerning export visa and exempt certification requirements for certain textile and apparel products, produced or manufactured in Malaysia.

Effective on March 11, 1988, entry of all textile and apparel products exported from Malaysia on or after March 11, 1988, which are imported for the personal use of the importer and not for resale, regardless of value, and all properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exeception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5266 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Federative Republic of Brazil Concerning Cotton and Man-Made Fiber Textile Products in Categories 342/642 and 607pt.

March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

Background

The purpose of this notice is to announce that on December 30, 1987 and January 29, 1988, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil, the Government of the United States requested consultations concerning imports of cotton and man-made fiber skirts in Categories 342/642 and man-made fiber staple yarn with cotton in Category 607pt., respectively, produced or manufactured in Brazil and exported to the United States. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

According to the terms of the bilateral agreement, which expires on March 31, 1988, the United States Government reserves the right to establish limits of 38,640 dozen for the ninety-day consultation period which began on December 30, 1987 and extends through March 28, 1988 for Categories 342/642 and 802,252 pounds for the prorated consultation period which began on January 29, 1988 and extends through March 31, 1988 for Category 607pt.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice, 52 FR 47745, dated December 11, 1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642 and 607pt., under the agreement with the Federative Republic of Brazil, or in any other aspect thereof, or to comment on domestic production or availability of apparel products included in the categories, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Brazil—Market Statement

Cotton and Man-Made Fiber Skirts (Category 342/642)

December 1987.

Summary and Conclusions

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from Brazil were 143,494 dozen during year ending October 1987, more than two times the 65,263 dozen imported a year earlier. During the first ten months of 1987, imports of cotton and man-made fiber skirts (Category 342/642) from Brazil reached 140,710 dozen, two and a half times the 56,375 dozen imported during the same period of 1986, more than two times the total imported in calendar year 1986, and more than four times the 32,798 dozen shipped in calendar year 1985.

The level of imports of cotton and man-made fiber skirts from Brazil is causing a real risk of disruption to the U.S. market.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts has been on the decline, dropping from 9,101 thousand dozen in 1982 to a depressed 7,940 thousand dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 recovered slightly, reaching 8,126 thousand dozen, but remained below the 1983 level and was 11 percent below the 1982 level. U.S. production data for cotton and man-made fiber skirts is available only through the first half of 1987. If U.S. production in the second half of 1987 is the same as production in the first half of 1987, 1987 production of cotton and man-made fiber skirts will be equal to the 1983 level, but still 9 percent below the 1982 level. The domestic manufacturers' share of the market dropped 25 percentage points in just four years, falling from 83 percent in 1982 to 58 percent in 1986. The U.S. market share is expected to continue its decline into 1987, falling another 9 percentage points, to less than 50 percent. U.S. imports are expected to have a greater share of the U.S. market than domestic manufacturers in 1987.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber skirts (Category 342/642) at 5,995 thousand dozen in 1986 were more than three times the amount imported in 1982. The sharp and substantial increase in imports continued into 1987. Cotton and man-made fiber skirt imports (Category 342/642) during the first ten months of 1987 were 7,094 thousand dozen, 39 percent above the 5,112 thousand dozen imported during the same period in 1986. The ratio of imports to domestic production nearly quadrupled, increasing from 20 percent in 1982 to 74 percent in 1986. The ratio is expected to increase above 100 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

The majority of Brazil's cotton and man-made fiber skirt imports enter under the

following TSUSA numbers: 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5120—women's cotton woven, denim skirts, not ornamented; 384.2552—women's and girls' man-made fiber woven skirts, ornamented; and 384.8660—women's man-made fiber knit skirts and culottes, not ornamented. These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

Brazil—Market Statement

Category 607 Part—Polyester Yarn Containing Cotton

January 1988

Summary and Conclusions

U.S. imports of polyester/cotton sales yarn—Category 607 part—from Brazil were 3.3 million pounds during the year ending October 1987, 61 percent above the 2.1 million pounds imported a year earlier. Brazil is the second largest supplier of these yarns, accounting for 17 percent of the total imports.

The sharp and substantial increase of low-valued fine count yarn imports from Brazil is severely disrupting the U.S. fine count polyester and cotton blended sales yarn market.

U.S. Production and Market Share

U.S. production of fine count blended yarns of polyester and cotton dropped from 107.7 million pounds in 1983 to 86.7 million in 1985, a 19 percent decline. Production in 1986 partially recovered from 1985, however the improvement was short-lived. During the first three quarters of 1987, production dropped 21 percent below the level in the comparable period of 1986.

The U.S. producers' share of the market for domestically produced and imported fine count blended sales yarns of polyester and cotton declined from 96 percent in 1983 to 78 percent in 1986. The U.S. producers' share continued its decline during the first ten months of 1987, dropping to 69 percent.

Imports and Import Penetration

U.S. imports of Category 607 part from all sources reached 17.3 million pounds during the first ten months of 1987, three times the 5.6 million imported a year earlier and double the amount imported during calender year 1986. This surge made a major contribution to the overall rise in imports of fine count blended yarns of polyester and cotton—Categories 300 part/301 part/ 607 part. Total imports of combined category parts reached a record level 32.3 million pounds during the first ten months of 1987, 33 percent above the comparable period in 1986. Category 607 part imports accounted for all of this increase.

The ratio of imports to domestic production of fine count blended yarns of polyester and cotton doubled in 1986, reaching 28.7 percent. The ratio increased another 70 percent, reaching 45.6 percent during the first ten months of 1987.

Duty-Paid Import Values and U.S. Producers' Price

Category 607 part imports from Brazil entered under TSUSA No. 310.6034, polyester yarns containing cotton, not textured. The duty-paid landed values of these imports are below U.S. producers' prices for comparable yarn.

[FR Doc. 88-5267 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 31 March and 1 April 1988.

Times of Meeting: 0830-1630 Hours, each day.

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board's Ad Hoc Subgroup on U.S. Army Aeromedical Research Laboratory; Fort Rucker, Alabama, will meet for follow-on briefings and discussions on the research being carried out by the Laboratory. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-5290 Filed 3-9-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Withdrawal of Intention To Prepare a Draft Environmental Impact Statement; Trinity River Project

AGENCY: U.S. Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of Intent to withdraw a Notice of Intent to prepare a draft Environmental Impact Statement.

SUMMARY: 1. Notice of Intent to prepare a Supplemental Environmental Impact Statement on the Channel to Liberty feature of the Trinity River Project (Liberty, Texas) was published in the **Federal Register** on April 30, 1987. Studies conducted since that date have surfaced a number of uncertainties which must be resolved prior to continuing feasibility studies. Among those uncertainties are the status of potential flood control and navigation beneficiaries and Federal interest in a project that complies with current Federal guidelines for navigation. Because of these uncertainties, further studies have been deferred. The Channel to Liberty feature of the Trinity River Project has been reclassified from the "Active" to "Inactive" category of Civil Work projects; and a Supplemental Environmental Impact Statement will not be prepared at this time.

2. Reasonable Alternatives. The decision to defer further studies represents selection of the "No Action" alternative at this time. If at some future date the issues leading to this decision are resolved, studies may be resumed consistent with authorization and funding. In that event, and at the appropriate time, Notice of Intent to prepare an appropriate document under the National Environmental Policy Act would again be issued.

3. Scoping Process and Schedule. Since the Notice of Intent to prepare a Supplemental Environmental Impact Statement is being withdrawn, no further scoping will be conducted at this time. No public meetings are scheduled and there is no schedule for release of an EIS.

ADDRESS: For additional information, contact Mr. Paul Hathorn, Environmental Project Manager, Environmental Resources Branch, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102-0300. Telephone (817) 334-2095.

Dated: February 25, 1988.

John G. Rigby,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 88-5213 Filed 3-9-88; 8:45 am]

BILLING CODE 3710-FR-M

Defense Logistics Agency

Cooperative Agreements Revised Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Cooperative agreements; proposed revised procedures.

SUMMARY: This proposed revised procedure implements Chapter 142, Title 10, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this

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issuance establishes the administrative procedures proposed to be implemented by the DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until April 12, 1988. Proposed effective date: April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Sim Mitchell, Program Officer, Office of Small and Disadvantaged, Business Utilization (DLA-UM), Defense Logistics Agency, Alexandria, VA 22304–6100, Telephone (202) 274–6471.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand the industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities where their interest in improving the business climate and economic development in their communites is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs being conducted by state and local governments and private non-profit entities and encourage the establishment of similar programs in their communities.

The Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98–525, amended Title 10, United States Code, by adding a Chapter 142 which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cooperative agreements with state and local governments, and other non-profit entities (hereinafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct procurement technical assistance programs during FY 85. The program continues under Title 10, United States Code, as amended.

The Congress has authorized a total of $7 million to support the program during FY 88. Of this total, $500,000 is available for Indian programs only and such programs will be executed centrally by HQ DLA. Accordingly, each of the nine Defense Contract Administration Regions (DCASRs) within DLA will be authorized to award approximately $700,000 of the remaining $6.5 million authorized for FY 88 as its share of program costs to applicants within the geographical area under its cognizance.

In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their proposals to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director of Small Businnss who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager, is at Encl 1.

Additional Limitations placed on these funds follow:

(a) DoD cost sharing shall not exceed 50% of the net cost of a single program, excluding any Federal funds and other income, except that the DoD share may be increased up to 75% for an existing program or new start that qualifies solely as a distressed area. In no event, shall the DoD share of the net program cost exceed $150,000.

(b) Eligible entities are not to subcontract more than 10% of their total program costs for private consulting services to support the program.

(c) These limitations may be modified by the Headquarters DLA Policy Council as necessary to comply with legislative or other requirements applicable to any restricted funds.

The DoD presently provides procurement and technical assistance to business firms through its network of Small Business Specialists lcoated in industrial centers around the country. The Associate Directors of Small Business located in these industrial centers at the DCASRs will be available to provide eligible entities such assistance as necessary to explain and interpret the solicitation requirements when issued, to provide general guidance in preparing proposals, and to provide training and other technical assistance to recipients of cooperative agreements.

Procurement technical assistance given to clients for marketing their goods and services to other Federal Agencies and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include those marketing opportunities for business firms located in the area being or to be serviced.

The purpose of this proposed revised procedure is to make available to all eligible entities the prerequisite requirements and policies which govern the award of cooperative agreements by the DLA. This procedure is necessary to establish a procedure procedure which governs the award and administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a cooperative agreement with the DLA, the DLA has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Procedure implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts.

II. Other Information

The language contained in the current Cooperative Agreement Procedure limited the period of coverage to the FY 87 Program in that it addressed the FY 87 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 88 programs.

The DLA has determined that the proposed procedure does not involve substantial issues of fact or law and the procedure is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

Since this is the DLA's permanent procedure covering cooperative agreements pursuant to 31 U.S.C. 6301 et seq., using Procurement Contracts and Grant and Cooperative Agreements, additional comments are invited on the procedures and are to be submitted to the Defense Logistics Agency, ATTN: DLA–UM, Cameron Station, Alexandria, VA 22304–6100. All comments received by 12 April 1988 will be evaluated to determine if any revisions should be made to Subpart III.

Issued in Alexandria, VA on 8 March 1988.

For the Defense Logistics Agency.

Ray W. Dellas,

Staff Director, Office of Small and Disadvantaged Business Utilization.

COOPERATIVE AGREEMENT REGULATION GENERAL PROGRAM

III. Proposed Revision to DLA Procedure—Cooperative Agreements

1. Scope

(a) This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between the Defense Logistics Agency (DLA) and eligible entities. Under these agreements Department of Defense (DoD) financial assistance will be provided to recipients. Such assistance will cover the DoD share.of the cost of establishing new and/or maintaining existing Procurement Technical Assistance (PTA) Programs for furnishing PTA to business entities.

(b) A cooperative agreement is a binding legal instrument which reflects a relationship between the DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient for the accomplishment of the requirements described therein. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between the DLA and the recipient during performance of the agreement.

(c) When proposals for cooperative agreements are obtained through the issuance of a DLA Solicitation for Cooperative Agreement Proposals, hereinafter referred to as a SCAP, the contents of this procedure shall be incorporated, in part or in whole, into the program solications for the purpose of establishing administrative provisions for the execution and administration of DLA Cooperative Agreements. Program solicitations may include additional administrative provisions when such provisions are required by program legislation or are not included in this procedure.

(d) The DoD share of an eligible entity's proposal and award recipient's net program cost (NPC) shall not exceed 50%, except in the case of a distressed area (as defined in paragraph 3(d) below) the DoD share may be increased to an amount not to exceed 75%. However, in no event is the DoD share of any single net program cost to exceed $150,000.

(e) In order to qualify for the DoD share of 75% of net program costs, an eligible entity is required to service clients exclusively in a distressed area. In the event an eligible entity plans to service both a distsressed and a non-distressed area, if may segregate its NPC between the distressed area and non-distressed area (as detailed in paragraph 8 of this procedure) when submitting its application for a Cooperative Agreement with maximums of 75% and 50% being requested respectively. Absent such segregation, and if any part of the geographic area being or to be serviced includes a non-distressed area, the applicant will be entitled to a maximum of 50% as the DoD share.

(f) During each fiscal year (FY) for which funding is authorized for the PTA program at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographic cognizance of each of the nine Defense Contract Administration Services Regions (DCASRs) within the DLA. In cases where the area being or to be serviced by an eligible entity encompasses more than one DSCSR's area of geographic cognizance, the eligible entity should submit its applications to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application will be accepted from a single eligible entity.

2. Policy

(a) It is the DLA policy to encourage and maximize open and fair competition when awarding cooperative agreements for establishing or maintaining existing PTA programs. Cooperative agreements will be awarded on a competitive basis as a result of the issuance of the (SCAP). However, the DoD, through the DLA, reserves the right to make an award to an applicant whose application is competitive based on other factors detailed in paragraph 5(d) below that would enhance competition for DoD goods and services. For example, an award may be denied to reduce or eliminate overlapping or duplicate coverage in selected geographic areas or where the best interest of the government will not be served.

(b) SCAPs inviting the submission of proposals shall be given the widest practical dissemination to all known eligible entities and to those that request copies subsequent to its issuance. All eligible entities that have advised the DCASR of their interest in submitting a proposal under the SCAP will be invited to participate in a presolicitation conference to be held at a location to be designated by the DCASR approximately 30 calendar days prior to the SCAP closing date.

(c) Any solicitation issued in accordance with this procedure shall not be considered to be an offer made by the DoD and will not obligate the DLA to make any awards under this program. The DoD is also not responsible for any monies expended or expense incurred by applicants prior to the award of any cost sharing cooperative agreement.

(d) The award of a cooperative agreement under this program shall cover a twelve month performance period.

(e) The award of a cooperative agreement shall not in any way obligate the DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of the award recipient.

(f) To assist the DoD in achieving its socio-economic goals, applicants and cooperative agreement recipients are to give special emphasis to assisting small disadvantaged business firms in participating in DoD contracting opportunities by making a concerted effort to identify such firms and by providing marketing and technical assistance to such firms, particularly where such firms are referred to a recipient for assistance by any DoD component.

(g) The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and spell out the rights and obligations of parties in Federal Procurement transactions. Although the regulation is not applicable per se to cooperative agreements, some of the provisions contained in the Regulation may be suitable for inclusion in cooperative agreements. Therefore, the clauses and provisions contained therein may be made a part of all cooperative agreement solicitations and awards if not otherwise covered under Office of Management and Budget (OMB) Circulars A–102 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments) and A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations). Where appropriate, the language of the clauses may be changed and will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary. Clauses and provisions specified as mandatory will not be subject to negotiations. Such clauses and provisions will only be used if the applicable FAR dollar threshold(s) are met. For example, if there is a $100,000 threshold for applying the clause, that particular clause will only be used in the cooperative agreement if the total program cost of the project (including both the proposer's and DoD's share of total program costs) exceeds that threshold. However, the addition of any clauses and provisions not identified in the solicitation or the modification of clauses and provisions which are not designated as being mandatory may be negotiated.

(h) Award recipients are not required to obtain or retain private consulting services for any extended period of time. Accordingly, any costs being proposed for such services are not to exceed 10% of the total program cost. Costs in excess of 10% included in the eligible entity's proposal will cause the proposal to be rejected.

(i) Reasonable quantities of government publications, such as "Selling to the Military" may be furnished to award recipients at no cost, subject to availability.

(j) For the purpose of executing cooperative agreements, the DCASR Associate Director of Small Business who has been delegated the authority to execute cooperative agreements shall not require appointment as a contracting officer.

(k) Beginning with FY 88, participation in the cooperative agreement program will be limited to 60 calendar months and/or five cooperative agreement awards with each containing a twelve month performance period. Each applicant will be required to identify in its proposal the number of months of program participation subsequent to FY 87.

(l) The DoD share of the net program cost shall be reduced by 20 percent for each year the recipient participates in the program. For the 60 month participation period, regardless of whether they are consecutive, the percent of DoD funds requested will be reduced as follows:

Year	Annual Reduction in Percent of DoD Share of Funding
1	0
2	20
3	40
4	60
5	80
6	100

(m) Each cooperative agreement recipients area of performance will be limited to the geographical area specified in its proposal.

(n) To the extent that the annual DoD Authorization and Appropriation Acts provided for restricting some part of the total funds authorized to accommodate special socio-economic requirements, any specific requirements related to the restricted funds which differ from the requirements of this regulation will be identified in the solicitation for cooperative agreement proposals.

3. Definitions

The following definitions apply for the purpose of this procedure.

(a) *Client*—A recognized business entity, including corporations, partnerships, or sole proprietorships organized for profit, which are small and other than small, that have the potential or are seeking to market their goods or services to the DoD.

(b) *Cooperative Agreement Offer/Application/Proposal*—An eligible being operated or being planned. The offer binds the eligible entity to perform the services described therein if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

(c) *DoD Cooperative Agreement Program*—Provides assistance to state and local governments and other nonprofit entities in establishing or maintaining procurement technical assistance activities to help business firms market their goods and services to the DoD and other government activities.

(d) *Distressed Area*—The geographic area being or to be serviced by an eligible entity in providing procurement technical assistance to business firms physically located within that area that:

(1) Has a per capita income of 80% or less of that State's average, or

(2) Has an unemployment rate of at least 1% above the national average for the most recent 24-month period in which statistics are available from the U.S. Department of Labor in all of the geographic areas being or to be serviced. A distressed area cannot include any areas that do not meet this criteria.

(3) Is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(e) *Eligible Entities*—include:

(1) *State Government*—a State of the United States, the District of Columbia, a territory or possession of the United States, an agency on instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local Government*—a unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(3) *Private, Non-profit Organization*—any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(f) *Eligible Entities, Special Programs*—Those organizations authorized by legislation to participate in programs set-aside for specifically designated groups. Such entities will be identified in the solicitation specifically issued therefore.

(g) *Direct Cost*—Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any costs, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

(h) *Existing Program*—Includes any PTA type program that has been established and operated by an eligible entity for at least 12 months prior to the closing date for submission of proposals to the DLA, as well as all prior recipients of cooperative agreements with the DLA, regardless of the length of time their PTA program has been in operation.

(i) *Indian*—A person who is a member of an Indian tribe.

(j) *Indian Economic Enterprise*—Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(k) *Indian Tribe*—Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. section 1601 et seq.) which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(l) *Indirect Cost*—Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost.

(m) *In-kind Contributions*—Represent the value of noncash contributions provided by the eligible entity and non-

Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(n) *New Starts*—Includes all eligible entities that have not had an established and operating PTA program for a full 12-month period prior to the closing date for submission of proposals under a SCAP. It also includes any eligible entities' program that otherwise meets the definition of an existing program, but whose proposal anticipates expanded geographical coverage or a significant increase in the scope of operations. With this exception, a recipient of any cooperative agreement with the DLA will not be eligible for consideration as a new start, regardless of how long its program has been in operation.

(o) *Net Program Cost*—Total program cost (including all authorized sources) less any program income and/or other federal funds not authorized to be shared.

(p) *Private Consultant Services*—Services offered by private profit seeking individuals, organizations or otherwise qualified business entities to provide marketing and technical assistance to cooperative agreement recipients or business firms seeking contracts with Federal, State and local government organizations.

(q) *Procurement Technical Assistance*—Program organized to generate employment in and improve the general economy of a locality by assisting business firms in obtaining defense and other government contracts. It's purpose is to provide detailed counseling assisistance, information and personal instructions to business firms in increasing their opportunities to sell their products or services to the Defense Department either directly as prime contractors or indirectly as subcontractors under DoD contracts, other government agencies and the private sector.

(r) *Reservation*—Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. Section 1601 et seq.).

(s) *Solicitation for Cooperative Agreement Proposals (SCAP)*—A document issued by DLA containing provisions and evaluation criteria applicable to all applicants that apply for a PTA cooperative agreement.

(t) *Special Program*—A program by which funds are targeted by legislation for the purpose of sharing the cost of providing procurement technical assistance to specifically designated groups.

(u) *Total Program Cost*—Includes all funds from all sources to include in-kind contributions and all income received from all sources as a result of operating the program. Any federal funds proposed for use in establishing or conducting the program must have prior approval for such use.

4. Program Description

The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to businesses, hereinafter referred to as clients, in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary depending on locations, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the following minimum features that a comprehensive PTA Program should generally include:

(a) *Personnel*—Professional personnel qualified to counsel and advise clients regarding DoD procurement policies and procedures. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition requirements for such things as construction, research and development, and data processing.

(b) *Marketing Tools*—Should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards and other Federal Government publications.

(c) *Networking*—Techniques for providing assistance throughout the area being or to be serviced by locating assistance offices in areas of industrial concentration, arrangements with other entities or organizations, establishing data links, and through other appropriate means.

(d) *Fees and Service Charges*—In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for the amount of the fee to be charged must be described. Any fees earned under the program are to be included as part of the total program cost.

(e) *Performance Measurement*—Should include a means of periodically measuring program effectiveness in achieving the objective described above. Factors to consider in establishing time phased goals and techniques for measuring progress in its achievement should include the number and types of assistance rendered, such as marketing and accounting; the number of clients added to the DoD and other Federal Agency bidders mailing lists, the Minority Vendor Profile System of the Minority Business Development Agency, the Procurement Automated Source System (PASS) of the Small Business Administration and the value of prime and subcontract awards received by clients resulting from the program.

5. Procedures for processing SCAPs and Award of Cooperative Agreements

(a) The SCAP will be developed and prepared by the HQ DLA Cooperative Agreement Policy Council and will be issued by HQ DLA or through each DCASR. The Policy Council will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged Business Utilization shall serve as the Policy Council Chairman and final appeal authority for disagreement between the DCASR Associate Director of Small Business and the eligible entity and/or Cooperative Agreement recipient. The Council will be responsible for reviewing the results of the DCASR's evaluations and recommendations, for assuring that adequate funds are made available to the DCASR and for considering other factors in the selection process necessary to fully protect the interests of the government.

(b) For special programs, HQ DLA will appoint an evaluation panel which will perform the functions specified herein for the DCASR evaluation panel. The review and approval authority for special program award selections will be the HQ DLA Cooperative Agreement Policy Council.

(c) The evaluation of proposals submitted in repsonse to the SCAP and the selection of award recipients will be conducted as detailed below:

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(1) Proposals will be evaluated by a specially constituted evaluation panel established at each DCASR. The panel will be comprised of representatives from the DCASR offices of small business, contract management, comptroller, and other offices deemed appropriate by the DCASR Commander. However, the DCASR Associate Director of Small Business, who has been delegated the authority to execute the cooperative agreements, shall not serve as a panel member. A member of the Office of Counsel will be appointed to the panel, but will serve in an advisory capacity only.

(2) Prior to making a comprehensive evaluation of a proposal, the evaluation panel will make an initial evaluation to determine if the proposal contains sufficient technical, cost, and other information, has been signed by a responsible official authorized to bind the eligible entity and generally meets all requirements of the SCAP. If the proposal does not meet those requirements, it will be rejected and a comprehensive evaluation will not be made. In such case, a prompt reply will be sent to the proposer indicating the reason for its proposal not being accepted. Revised proposals will not be accepted from applicants whose proposals are rejected after the initial evaluation unless the revised proposal is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal received which is unsigned or otherwise rejected will not be given additional review consideration and will be retained with other unsuccessful applications by the DCASR Associate Director of Small Business.

(3) The initial evaluation of an otherwise acceptable proposal will include a review to verify the accuracy of the classification of the proposal concerning the entity's stated program status as existing or a new start. In the event the evaluation panel considers the proposal status misclassified, it will review the matter with the applicant. If there is disagreement, the panel's determination of the application's classification will be final and not subject to further review.

(4) Proposals which pass the initial evaluation will be subjected to a comprehensive evaluation. The basic purpose of the comprehensive evaluation is to assess the relative merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives, considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. Each proposal will be evaluated by the panel in accordance with stated criteria and ranked in order of excellence to determine which will best further specific program goals. All findings and recipient selections will be documented, signed by panel members, and retained to provide an adequate record to support the panel's decisions. Upon completion of its review, the evaluation panel will submit the panel results and its recommendations to the Associate Director of Small Business.

(5) The Associate Director of Small Business will determine whether sufficient funds have been allocated to the DCASR to cover the DoD share of costs and will review the panel recommendations and results for completeness. Upon completion of the fund analysis and review of the panel results, the Associate Director of Small Business shall forward the panel results and recommendations and comemnts (if any) to the HQ DLA Policy Council for review.

(d) The HQ DLA Policy Council will review the DCASR evaluation panel's recommendations. The results of its review and its recommendations will be submitted to the DCASR Commander for approval. In developing its recommendations the Council may consider additional factors necessary to fully protect the interest of the Government. These factors may include, but are not limited to, economic downturns that effect national security in selected geographic areas; terminations of major DoD contracts; availability of funds; the potential for increasing competition for selected goods and services required by the DoD; the existence of other procurement technical assistance programs in the area; and compliance with any legislative requirement imposed on program funds.

(e) After approval by the DCASR Commander, the cooperative agreement will be executed by the DCASR Associate Director of Small Business.

6. Evaluation Criteria

(a) The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

(b) The following evaluation factors (which may be subject to change) will be considered as the evaluation criteria for new starts:

(1) The types and qualifications of personnel assigned or to be assigned to the program.

(2) The quality of the PTA Program in existence or being planned for:

a. Developing new clients.

b. Assisting existing clients.

c. Any program established or to be established to identify and provide extraordinary assistance to small disadvantaged business firms.

(3) The number of clients in the geographic area being or to be serviced. This includes carrying out the DoD policy described in paragraph 2(f) above for which the socio-economic status of clients should be estimated.

(4) The amount and percentage of net program costs to be shared by DoD.

(5) The level of unemployment in the area being or to be serviced.

(c) The evaluation criteria for existing programs (which may be subject to change) will include all of the above factors, as well as the following:

(1) The eligible entity's development, performance and effectiveness in conducting its PTA Program, including achievements against established goals and any special achievements relative to small disadvantaged business firms.

(2) The amount of subcontracting to private consultants.

(d) As this program applies both to existing PTA Programs and to those being planned, certain of these evaluation factors will be evaluated based upon stated implementation policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel.

(e) The amount of subcontracting to private consultants is limited to no more than 10% of total program costs for both existing programs and new starts. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts, equal weight will be given to all offers, subject only to the 10% limitation.

7. DoD Funding

(a) Any funds authorized for the PTA program will be allocated equitably among the nine DCASRs to cover the DoD share of the PTA program cost for existing programs and for new starts. The SCAP will identify the total amount of funds authorized for the related fiscal year.

(b) If there is an insufficient number of satisfactory proposals in a DCASR to allow effective use of the funds allocated, the Headquarters DLA Cooperative Agreement Policy Council will reallocate the funds among the DCASRs as appropriate.

8. Cost Sharing Criteria and Limitations

(a) Cost sharing is a generic term denoting any situation wherein the

Government does not fully fund the participant's total allowable costs required to accomplish the defined porject or effort. The term encompasses concepts such as cost participation, cost matching, cost limitations (direct or indirect), and participation in kind.

(b) The DoD share of net program costs shall not exceed 50%, except in a case where an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

(c) In no event shall the DoD share of net program costs exceed $150,000 for any single proposal.

(d) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(e) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program. The type and value of any in-kind contribution will be limited to no more than 25% of the total annual budget. However, any fees, service charges or Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calulating cost contributions of the eligible entity. Although the fees, services charges and other authorized federal funds must be included in the annualized estimated budget, they cannot be included for cost sharing purposes. Inclusion of other Federal funds in the program is subject to the terms of the award instrument containing such funds or written advice being obtained from the awarding Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

(f) In submitting its budget, an eligible entity that services, or plans to service clients exclusively in areas that qualify as distressed areas may submit a single budget and request a maximum of 75% DoD share of net program costs (NPC), subject to 8(e) above. An entity that services or plan to service clients exclusively in non-distressed areas or in areas that include both distressed and non-distressed areas may submit a single budget and request a maximum of 50%. In those cases where the geographic area being or to be serviced includes both distressed areas and non-distressed areas, the budget may be divided based on a reasonable and logical distribution of TPC between these two discrete areas, and submitted as a single proposal. In such case, costs must also be divided between these two budget items as costs are incurred.

(g) Recipients of cooperative agreements will be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(h) The SCAP will also provide that indirect costs are not to exceed 100% of direct costs.

(i) In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly indentified in the proposed budget and shall be included as part of the total budgeted costs.

(j) The Federal cost principles as stated in the OMB Circulars listed below will be used as guidelines to determine allowable costs in performance of the program:

(1) OMB Circular No. A–21, Cost Principles for Educational Institutions.

(2) OMB Circular No. A–87 (FMC 74–4), Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(3) OMB Circular No. A–122, Cost Principles for Non-profit Organizations.

9. Administration

(a) Cooperative Agreements will be assigned to the cognizant DCASR for payment and for postaward administration by the Associate Director of Small Business.

(b) The Asssociate Director of Small Business at the cognizant DCASR will be responsible for reviewing recipients performance at least twice during the effective period of each cooperative agreement, to include a review of budgeted versus actual expenditures, and other performance factors. The results of the periodic reviews will be furnished to the recipient and a copy will be provided to the Headquarters DLA Cooperative Agreement Policy Council no later than 30 calendar days after completion of each review.

(c) For eligible entities covered by OMB Circular No. A–102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, or OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

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PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM MANAGERS

(Addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director for Small Business who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager follow:)

State or area	DCASR	Associate Director for small business
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.	DCASR Atlanta, 805 Walker Street, Marietta, GA 30060-2789.	Mr. Harold O. Watson, Telephone (404) 429-6195, Toll Free: 1-800-331-6415 (GA Only): 1-800-551-7801, Room Number 104.
Connecticut (Except Fairfield County), Maine, New Hampshire, Massachusetts, New York (All Counties except Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island, Vermont.	DCASR Boston, 495 Summer Street, Boston, MA 02210-2184.	Mr. Edward J. Fitzgerald, Telephone (617) 451-4318, Toll Free: 1-800-321-1861, Located on 8th Floor
Illinois, Indiana	DCASR Chicago	Mr. James L. Kleckner
Wisconsin	O'Hare Int'l Airport P.O. Box 66475 Chicago, IL 60666-0475.	Telephone (312) 694-6020, Toll Free: 1-800-637-3848 (IL Only): 1-800-826-1046, Room Number 107
Kentucky, Michigan, Ohio, Pennsylvania (Crawford, Erie, and Mercer Counties only).	DCASR Cleveland Federal Office Building, 1240 East 9th Street Cleveland, OH 44199-2063.	Ms. Wilma R. Combs, Telephone (216) 522-5122, Toll Free: 1-800-551-2785, Room Number 1849.
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	DCASR Dallas 1200 Main Street Dallas, TX 75202-4399.	Mr. Kenneth E. Strack, Telephone (214) 670-9205, Room Number 640.
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	DCASR Los Angeles 222 N. Sepulveda Boulevard El Segundo, CA 90245-4320.	Ms. Shirley B. Johnson, Telephone (213) 355-3260, Toll Free: 1-800-624-7372 (Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) (CA Only): 1-800-251-5285.
Connecticut (Fairfield County Only), New Jersey (Northern 12 Counties), New York, (Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester Counties Only).	DCASR New York 201 Varick Street, New York, NY 10014-4811.	Mr. John E. Mulreany, Telephone (212) 807-3050, Toll Free: 1-800-251-6969, Room Number 1061.
Delaware, District of Columbia, Maryland, New Jersey (Except for Northern 12 Counties), Pennsylvania, (All Counties except Crawford, Erie and Mercer), Virginia, West Virginia.	DCASR Philadelphia, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA 19101-7478.	Mr. Roger C. Rhyner, Telephone (215) 952-4006, Toll Free: 800-258-9503, (New Jersey, Delaware, Maryland, Virginia, West Virginia, and District of Columbia) (PA Only) 800-843-7694, Room Number 129.
Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	DCASR St. Louis 1136 Washington Ave., St. Louis, MO 63101-1194.	Mr. Thomas Moore, Telephone (314) 263-6617, Toll Free: 800-325-3419, Third Floor.

[FR Doc. 88-5262 Filed 3-9-88; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

National Coal Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and 41 CFR Part 101-6, Final Rule on Federal Advisory Committee Management, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed until December 31, 1989.

The renewal of the National Coal Council has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Department of Energy Organization Act) Pub. L. 95-91), and the Final Rule.

Further information regarding this advisory committee may be obtained from Gloria Decker (202) 586-8990.

Issued in Washington, DC, on March 8, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88-5287 Filed 3-9-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA88-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988 Florida Gas Transmission Company

(FGT), P.O. Box 1188, Houston, Texas 77251-1188 tendered for filing the following tariff sheets to its FERC Gas Tariff.

FERC Gas Tariff, First Revised Volume No. 1

24th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

46th Revised Sheet No. 128

FGT states that 24th Revised Sheet No. 8 and 46th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 to (i) adjust the Primary Adjustment to reflect a decrease in FGT's average cost of gas purchased for sale and company use; and (ii) to adjust the Balancing Adjustment to amortize over the six-month adjustment period beginning April 1, 1988 the balance in the current period Unrecovered Purchased Gas Cost Account as of December 31, 1987.

The proposed effective date of the above referenced tariff sheets is April 1, 1988.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, Original Volume No. 3, and interested State Commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5241 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-035]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 26, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern) tendered for filing proposed changes to its F.E.R.C. Gas Tariff.

Northern states that the purposes of this filing is to implement the terms of its Stipulation and Agreement (Settlement) filed in the above-proceeding.

Northern states that the compliance filing is composed of three major segments: 1) final settlement sales and transportation rates, 2) changes to implement new services and modifications to existing tariffs as ordered by the Commission, and 3) CD turnbacks/conversions along with a related D-1 rate adjustment.

Copies of the filing were served upon Northern's jurisdictional customers, state regulatory commissions and parties of record to the proceddings in the above docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington. DC 20426, in accordance with §§385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5242 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-65-000]

Pacific Interstate Offshore Co.; Change in Rate

March 4, 1988

Take notuce that on February 29, 1988, Pacific Interstate Offshore Company ("PIOC") tendered for filing a Cost and Revenue Study and Rate Redetermination for natural gas service rendered to its sole jurisdictional customer, Southern California Gas Company, pursuant to Rate Schedule G-10, FERC Gas Tariff Original Volume No. 1. To implement this notice of change, PIOC tendered for filing and acceptance Seventh Revised Tariff Sheet No. 4 superseding Sixth Revised Tariff Sheet No. 4.

PIOC states that based upon the test period cost of service, PIOC projects a decrease of 10.6% amounting to $382,176 in annual revenue rcquirements. PIOC states that the change is due to a decline in an imbedded cost of debt, a requested decrease in rate of return on equity and a change in gas deliverability due to a decline in reserves. PIOC does not propose any other change in its rates.

PIOC has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective April 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5249 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-38-000]

Ringwood Gathering Co.; Filing of Revised Tariff Sheets

March 4, 1988.

Take notice that on February 29, 1988, Ringwood Gathering Company tendered for filing Forty-Third Revised Sheet PGA-1 as part of its FERC Gas Tariff, Original Volume No. 1. Ringwood Gathering Company states that Forty-Third Revised Sheet PGA-1 with a proposed effective date of April 1, 1988, is being filed to revise its Base Tariff Rate to reflect a change in the system cost of purchased gas and the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood Gathering Company states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 214 and 211 of the Commission's Rules of Practice, on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5250 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing a proposed change to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective April 1, 1988. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff. Southern states that the proposed change reflects a net decrease in Southern's commodity rates of 65.817¢ per Mcf, including a decrease in the Current Adjustment of 53.504¢ per Mcf, a decrease in the Surcharge Adjustment of 12.307¢ per Mcf based on a three-year amortization of Southern's deferred gas costs projected through March 31, 1988, and a decrease of .006¢ per Mcf in the DCC Surcharge Adjustment.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest on or before March 11, 1988 with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5243 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-004]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing First Revised Sheet Nos. 4C, 4D, 4E, 4F, 4G and 4H to its FERC Gas Tariff, Sixth Revised Volume No. 1, with proposed effective dates of April 1, 1988. Southern states that the proposed tariff sheets reflects reduced transportation rates applicable on an interim basis to services performed by Southern pursuant to Section 311 of the NGPA pending final Commisson decision in Docket Nos. RP86-63-000, RP86-114-000 and RP88-17-000. The reduced rates track a reduction in Southern's underlying cost of service which is being made by Southern effective April 1, 1988, pursuant to a proposed Stipulation and Agreement in Docket Nos. RP86-63-000 and RP86-114-000. Southern has specifically requested authorization to implement the reduced rates in advance of Commission action on the Stipulation and Agreement.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions, all shippers on behalf of whom Southern is transporting gas under Section 311 of the NGPA and upon all parties to Docket Nos. RP86-63-000, RP86-114-000 and RP88-17-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before March 11, 1988, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 88-5244 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-63-009 and RP86-114-004]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing certain revised sheets to its FERC Gas Tariff with proposed effective dates of April 1, 1988. Southern states that the revised tariff sheets, which are being filed pursuant to a Stipulation and Agreement of the same date in Docket Nos. RP86-63-000 and RP86-114-000, reflect interim rate reductions of approximately $115 million annually in those proceedings pending the Commission's final decision in such proceedings. Southern has specifically requested authorization to implement the settlement rates in advance of the approval of the proposed Stipulation and Agreement by the Commission.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions, all shippers on behalf of whom Southern is transporting under Section 311 of the NGPA and upon all parties to Nos. RP86-63-000, RP86-114-000 and RP88-17-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest on or before March 11, 1988 with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5245 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-41-000]

Southwest Gas Corp., Change in Rates Pursuant to Purchased Gas Cost Adjustment Provision and Elimination of Incremental Pricing Provision

(March 4, 1988).

Take notice that Southwest Gas Corporation (Southwest) on February 29, 1988, tendered for filing Thirty-eighth Revised Sheet No. 10 pursuant to Section 9. Purchased Gas Adjustment Provision (PGA), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect an increase in rates occasioned by an increase in rates from Northwest Pipeline Corporation (Northwest), Southwest's sole supplier of gas in northern Nevada, proposed to become effective April 1, 1988. Southwest has requested that its filing become effective April 1, 1988, concurrent with Northwest's proposed rate increase.

Southwest also tendered for filing, as a part of its PGA filing, the following tariff sheets to eliminate the incremental pricing provision from Southwest's tariff pursuant to FERC Order No. 478 issued July 27, 1987, in Docket No. RM79-21-000:

Sixth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Third Revised Sheet No. 29
Fourth Revised Sheet No. 30
First Revised Sheet No. 30A
Second Revised Sheet No. 30B
Eighth Revised Sheet No. 31
Fifth Revised Sheet No. 32
Third Revised Sheet No. 33

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5246 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-131-001 and CP87-132-001]

Tennessee Gas Pipeline Co.; Ocean State Power Project Availability of Draft Environmental Impact Statement and Announcement of a Public Meeting to Receive Comments

March 4, 1988.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC), in cooperation with the State of Rhode Island Office of Intergovernmental Relations (OIR), has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and a related proposal to construct a 500 megawatt power plant in northwestern Rhode Island.

The DEIS was prepared under the direction of the FERC and OIR staffs to satisfy the requirements of the National Environmental Policy Act and the Rhode Island Energy Facility Siting Act. The staff has determined that approval of the proposed project, with appropriate mitigating measures including receipt of all necessary permits and approvals, would have limited adverse environmental impact. The DEIS evaluates alternatives to the proposals.

The proposed action involves construction and operation of a new natural gas-fired, combined-cycle power plant which would be located on a 40.6-acre parcel in the town of Burrillville, Rhode Island. The proposal includes construction of a 10-mile pipeline to transport process and cooling water to the plant from the Blackstone River, and a 7.5-mile pipeline to deliver No. 2 fuel oil to the site for emergency use when natural gas may not be available.

The natural gas pipeline facilities covered in the DEIS include a total of 25.5 miles of 30-inch diameter looping in 5 separate segments located adjacent to existing gas transmission pipelines in New York and Massachusetts and approximately 11 miles of new 20-inch-diameter pipeline in Massachusetts and Rhode Island. The DEIS includes analysis of an additional 7,700 horsepower of compression at 3 existing compressor stations in New York and Massachusetts and a new 4,500 horsepower compressor station in New York.

A public meeting will be held on April 14, 1988, at 7:30 p.m. in the Council Chambers, Woonsocket City Hall, 169 Main Street, Woonsocket, Rhode Island. The purpose of this meeting is to receive comments for the record on the staff's analysis. Anyone who would like to make an oral presentation at this meeting should promptly contact the project manager identified below to have their names placed on the speakers list. A second speakers list will be made available for sign-up at the public meeting. A transcript will be made of the meeting and oral comments.

Written comments are also welcome. All written comments on specific environmental issues should contain supporting documentation and rationale, and must be filed on or before April 25, 1988, reference Docket No. CP87-132-001, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the written comments should also be sent to the project manager identified below.

The DEIS has been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period is being provided for review and receipt of comments on the DEIS. Any person may file a motion to intervene on the basis of the staff's DEIS [18 CFR 380.10(a)(1)]. After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and the OIR, and is available for public inspection in the FERC's Division of Public Information Room 1000, 825 North Capitol Street NE., Washington, DC 20426, and at the OIR, 275 Westminster Mall, Providence, Rhode Island 02903.

Additional copies of the DEIS, in limited quantities, are available from the FERC's Division of Public Information or from Mr. Lonnie Lister, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, telephone (202) 357-8874 or FTS 357-8874.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5248 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-115-003]

Williston Basin Interstate Pipeline Co.; Tariff Change

March 4, 1988.

Take notice that on February 29, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200,

BEST COPY AVAILABLE

304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted the following tariff sheets for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1–A and Original Volume No. 2, to be effective as proposed.

First Revised Volume No. 1

Substitute First Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 2
Second Revised Sheet No. 5
Second Substitute Fifth Revised Sheet No. 10
Substitute First Revised Sheet No. 25
Substitute First Revised Sheet No. 26
Second Substitute Second Revised Sheet No. 27
Substitute First Revised Sheet No. 28
Substitute Original Sheet No. 28A
Substitute Original Sheet No. 28B
Substitute First Revised Sheet No. 29
Second Substitute Second Revised Sheet No. 36
Second Substitute Original Sheet No. 36A
Substitute Original Sheet No. 36B
Substitute First Revised Sheet No. 37
Second Substitute First Revised Sheet No. 45
Second Substitute Second Revised Sheet No. 46
Second Substitute First Revised Sheet No. 47
Substitute First Revised Sheet No. 55
Second Substitute First Revised Sheet No. 56
Substitute First Revised Sheet No. 90
Substitute First Revised Sheet No. 91
Substitute First Revised Sheet No. 97
Substitute First Revised Sheet No. 111
Substitute First Revised Sheet No. 113
First Revised Sheet No. 156
First Revised Sheet No. 157
First Revised Sheet No. 158
First Revised Sheet No. 159
Original Sheet No. 159A
Second Substitute First Revised Sheet Nos. 160–164

Original Volume No. 1–A

Substitute First Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 2
Second Revised Sheet No. 5
Second Substitute Third Revised Sheet No. 11
Second Substitute Fifth Revised Sheet No. 12
Substitute First Revised Sheet No. 97A
Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 144

Original Volume No. 2

Substitute Second Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 1A
Third Revised Sheet No. 2
Second Substitute Eighth Revised Sheet No. 10
Second Substitute Ninth Revised Sheet No. 11
Second Substitute First Revised Sheet No. 11A
Second Substitute Second Revised Sheet No. 11B
First Revised Sheet No. 75
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 83
First Revised Sheet No. 84
First Revised Sheet No. 85
First Revised Sheet No. 86
First Revised Sheet No. 87
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet Nos. 93–99
First Revised Sheet Nos. 115–136
First Revised Sheet Nos. 244–252

Williston Basin states that the revised sheets reflect receipt of authority in Docket Nos. CP86–430–000, *et al.* to abandon sales services to Colorado Interstate Gas Company and MIGC, Inc. under Rate Schedules X–5 and X–6, respectively. These revisions are to be effective May 2, 1986.

Williston Basin has also revised the tariff sheets filed in Docket No. RP87–115–000 as necessary to cancel Rate Schedule X–10 covering grandfathered transportation service for Wyoming Gas Company under section 311 of the Natural Gas Policy Act of 1978 pursuant to the Commission's Regulations at 18 CFR 284.105(a). This cancellation is to be effective October 9, 1987.

Williston Basin states that it has not reflected reinstatement of Rate Schedule I–1 in accordance with its understanding that abandonment authority has been granted in Docket No. CP88–1–000 pursuant to Commission action at its February 24, 1988 Agenda Session. Williston Basin requested any necessary waivers necessary for acceptance of the revised tariff sheets pending receipt of a final Commission Order in Docket No. CP88–1–000.

Williston Basin states that subsequent to the filing of the general rate case, on January 15, 1988, Williston Basin's tariff sheets implementing Annual Charge Adjustment Provisions were accepted as being in satisfactory compliance with the Office of Pipeline and Producer Regulation blanket order issued September 29, 1987 in Docket Nos. RP87–109, *et al.* and the Commission's December 10, 1987 order in Docket Nos. RP87–92–001 and RM87–3–000, *et al.* By order issued December 30, 1987, in Docket No. RP87–71–000, *et al.*, Williston Basin's tariffs implementing the Commission-approved revision to the Gas Research Institute funding unit were accepted for filing. The Company states that these changes have been incorporated into the revised gas tariff sheets.

Williston Basin states that the substitute tariff sheets reflect the changes in cost of gas accepted by Commission Orders dated February 3, 1988 in Docket No. TA87–4–49–004 and October 29, 1987 in Docket No. TA88–1–49–000, pursuant to Williston Basin's Purchased Gas Cost Adjustment Provision.

Pursuant to § 375.307(j) of the Commission's Regulations, Williston Basin requests waiver pursuant to section 4(d) of the Natural Gas Act and Commission's Regulations thereunder, so that the attached tariff sheets may become effective on May 2, 1986, as proposed herein.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before March 11, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rule 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell
Acting Secretary.

[FR Doc. 88–5247 Filed 3–9–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88–245–000, et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Company et al.,

March 3, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket Nos. CP88–245–000]

Take notice that on February 19, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas

77251–1188, filed in Docket No. CP88–245–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport gas for Exxon Company, U.S.A., a Division of Exxon Corporation (Exxon), all as more fully described in the application.

Specifically, FGT states that Exxon and FGT have entered into an Interruptible Transportation Agreement dated December 4, 1987, which provides for the receipt of gas by FGT for the account of Exxon of up to 50,000 MMBtu per day, and for the redelivery of equivalent volumes for Exxon's account, less Exxon's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for Exxon at the time of such loss, and less Exxon's pro rata share of the total compressor fuel utilized by FGT in rendering all transportation services. FGT states that the gas will be received at the following existing points of interconnection between FGT and other entities:

(1) Existing point of interconnection between FGT and United Gas Pipe Line Company (United) in St. Helena Parish, Louisiana.

(2) Existing point of interconnection between FGT and United in St. Landry Parish, Louisiana.

(3) Existing point of interconnection between FGT and Southern Natural Gas Company in Washington Parish, Louisiana.

(4) Existing point of interconnection between FGT and the facilities of the Matagorda Offshore Pipeline System in Refugio County, Texas.

(5) Existing point of interconnection between FGT and Exxon's plant in Pearl River County, Mississippi.

(6) Existing point of interconnection between FGT and Prosper Energy Corporation's facilities in Pearl River County, Mississippi.

(7) Existing point of interconnection between FGT and the facilities of the Big Escambia Creek Plant operated by Exxon in Escambia County, Alabama.

(8) Existing point of interconnection between FGT and the facilities of the Jay Gas Processing Plant operated by Exxon in Santa Rosa County, Florida.

FGT proposes to deliver the gas to or for the account of Exxon, less Exxon's pro rata share of compressor fuel and vented and lost gas, at the following locations:

(1) Existing point of interconnection between FGT and Five Flags Pipeline Company in Santa Rosa County, Florida.

(2) Existing point of interconnection between FGT and Columbia Gulf Transmission Company in St. Landry Parish Florida.

Inasmuch as all the above-described points of receipt and delivery are in existence, FGT states that it is not requesting authorization to construct any new facilities.

FGT proposes to charge Exxon the Maximum Rate applicable to this service. The Maximum Rate currently consists of a Facility Charge of 7.3 cents per MMBtu delivered and a Service Charge of 3.9 cents per MMBtu per 100 miles of forward haul. These charges are in addition to FGT's currently effective Gas Research Institute surcharge of 1.47 cents per MMBtu and FGT's ACA surcharge of 0.21 cent per MMBtu which became effective on October 1, 1987.

FGT states that the term of the transportation agreement is for a primary term of fifteen years from the date of initial deliveries under the contract, and from year to year thereafter.

FGT states that Exxon requires this transportation service in order to sell gas to markets served directly or indirectly by Five Flags Pipeline Company and Columbia Gulf Transmission Company.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact on FGT's existing customers.

Comment date: March 24, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Mountain Fuel Resources, Inc.

[Docket No. CP88–239–000]

Take notice that on February 18, 1988, Mountain Fuel Resources, Inc. (MFR) 79 South State Street, Salt Lake City, Utah, 84111, filed in Docket No. CP88–239–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate approximately 77 miles of 20-inch pipeline and appurtenant facilities to connect MFR's Storage Main Line No. 58 (S.M.L. No. 58), located on its northern transmission system, with its southern transmission system near MFR's Fidler Compressor Station (Fidler Station), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MFR requests authority to construct and operate the proposed 77-mile, 20-inch diameter pipeline, which would extend from an interconnection with MFR's S.M.L. No. 58 in Daggett County, Utah, to MFR's Fidler Station located in Uintah County, Utah, in order to connect its northern and southern transmission systems. MFR estimates that the cost to construct and oprate its proposed north/south pipeline is $18,962,000.

It is explained that historically, MFR has depended upon Northwest Pipeline Corporation (Northwest) to (1) transport gas from an interconnection with MFR's southern system at the Red Wash exchange point in Uintah County, Utah to its northern system and (2) deliver purchased gas to the southern system at Red Wash. MFR asserts that the proposed pipeline would eliminate the dependence on and the cost of third-party transportation, thus improving MFR's ability to (1) dependably meet the contractual commitments to its producer-suppliers as well as to its sales and transportation customers in a manner that will maximize quality of service and minimize costs, (2) reliably respond to both gas supply shortfalls and excess deliverability conditions on its southern system, (3) improve systemwide operational flexibility and control in order to withstand dramatic changes in the mix of sales and transportation gas being moved throughout its system and, therefore, more successfully balance systemwide receipts and deliveries, and (4) accommodate requests for transportation service under MFR's open-access program which was conditionally authorized in Docket No. RP86–87–000, pursuant to Section 311 of the Natural Gas Policy Act of 1978.

Comment date: March 24, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public covenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5300 Filed 3-9-88; 8:45 am]

BILLING CODE 4717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Procedures for Monitoring Bank Protection Act Compliance.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for the review and approval of the information collection system identified above.

Address: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John R. Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before April 11, 1988.

For Further Information Contact: Requests for a copy of the submission should be sent to John R. Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

Summary: The FDIC is requesting OMB approval to continue the collection of information proposed on insured nonmember banks as a result of subpart A to regulation 12 CFR 326. *Minimum Security Devices and Procedures for Insured Nonmember Banks.* The information collected by and retained at banks is used by FDIC bank examiners to assure that banks comply with 12 CFR Part 326, which implements the provisions of the Bank Protection Act of 1968, and to review bank security programs. The collection of information currently does not have an OMB control number assigned to it as required by the Paperwork Reduction Act.

The aggregate annual paperwork burden on insured nonmember banks as a result of subpart A to 12 CFR Part 326 is 4,350 hours.

Dated: March 4, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-5261 Filed 3-9-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-811-DR]

Commonwealth of the Northern Mariana Islands; Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA-811-DR), dated January 20, 1988, and related determinations.

DATED: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Robert J. Adamcik as Federal Coordinating Officer for this disaster.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 88-5240 Filed 3-9-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-149]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements

Date: March 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing Board Resolution No. 84-572 to clarify its position concerning the protections afforded to those dealing with insured savings and loan associations in "repos" of government and mortgage backed securities. With particular reference to American Savings and Loan Association, Stockton, California ("American") which has engaged in a substantial volume of such "repo" transactions, the Board wishes to make it clear that the protections given to securities dealers and others in the "repo" market by amendments to the Bankruptcy Code would also be afforded to securities dealers and others engaged in repo transactions with American.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; JoAnne Morris, Attorney, (202) 377-7396; or Michael Phillips, Attorney, Office of General Counsel, (202) 377-6755; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, the Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for American Savings and Loan Association, a California chartered institution ("American"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar

proceeding with respect to American, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, The Board as operating head of the FSLIC has decided, pursuant to its powers under Section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and Section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows

1. The Board commits that is shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to American shall be conducted solely by the FSLIC (and not the California Commissioner of Savings and Loans) as receiver, conservator or similar official (the "Receiver") under federal law and regulations, Board Resolution No. 84-572, and these resolutions.

2. The Receiver will perform all of American's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Board and the Receiver shall use their best efforts to cause the Federal Home Loan Mortgage Corporation and/or the Federal Home Loan Banks to make necessary purchases from, or loans, to, the Receiver, so as to enable the Receiver to perform the obligations assumed or incurred under Repos and New Repos to the extent necessary to maintain an orderly market in Repo Assets.

4. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

5. In any termination of the receivership of American or disposition of American's liabilities under any Repo or.New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84-572 and these resolutions.

6. Notwithstanding any other provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

7. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

8. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

9. In connection with a Repo or New Repo counterparty's exercise of remedies upon a failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

10. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; provided, however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

11. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by American, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to American in exchange for such transfer; and provided, further, that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

12. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of American's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; provided, however, that a liquidation of Repo Assets at any point during such period or after a longer period of time shall not in and of itself constitute a commercially unreasonable time.

13. In connection with any Repos or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right of notice and purchase (12 CFR 563.8-2) and the contractual language required thereby, if applicable to any Repo Assets.

14. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84-572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 3, 5, 6, 7, 8, 9, 11, and 13, the proviso to paragraph 10, and the second sentence of paragraph 12 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on the appointment of the Receiver for American.

15. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolution No. 84-572 and these resolutions in continuing to renew and enter into Repos with American, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84-572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days, and any such amendment or rescission shall operate only prospectively.

"Cross-Default" means, as to any counterparty to a Repo or New Repo, (a) the failure by American or the Receiver to make any payment of funds or delivery of additional Repo Assets to any other Repo or New Repo counterparty when due, (b) the failure by American or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity, "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), whole loan mortgages, and interests therein.

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by American (or the Receiver, in the case of New Repos) pursuant to which American or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (to the extent that Repo Assets are securities that are direct obligations of or that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to American or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 5358 Filed 3-9-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-049.

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference.

Parties:

Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed amendment would permit the parties to establish and publish rates on excepted commodities. It would prohibit independent action ("IA") with respect to rates on excepted commodities and would provide for IA with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker. It would also permit the parties to enter into service contracts on excepted commodities on a group basis only (individual service contracts are prohibited), and would restate the agreement.

Agreement No.: 232-010885-001.

Title: The EAC Lines Transpacific Service, Ltd., Mitsui O.S.K. Lines, Ltd. and Kawasaki Kisen Kaisha Space Charter and Sailing Agreement in the Far East-U.S. Pacific Coast Trades.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment would permit any party to withdraw from the agreement with immediate effectiveness by giving appropriate written notice.

Agreement No.: 217-011176.

Title: Ozean-Linie GmbH/n.v. CMB s.a. dba Deppe Line Space Charter Agreement

Parties:

Ozean Linie GmbH ("Ozean")
n.v. CMB s.a. ("CMB")

Synopsis: The proposed agreement would permit Ozean to charter space to CMB in the trade between ports in Northern Europe and U.S. Gulf and Florida ports and San Juan, Puerto Rico.

Agreement No.: 217-011177.

Title: Euro-Gulf International, Inc./Ozean Linie GmbH Space Charter Agreement.

Parties:

Euro-Gulf International, Inc.
Ozean Linie GmbH

Synopsis: The proposed agreement would permit the parties to charter space from one another in the trade between U.S. Gulf and Florida ports and Northern European ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 7, 1988.

[FR Doc. 88-5294 Filed 3-9-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting of Tuberculosis Elimination Advisory Committee

ACTION: Notice of Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date: 8:00 a.m.–4:30 p.m.—April 7, 1988, 8:00 a.m.–12:30 p.m.—April 8, 1988.

Place: The Emory Room, Stafford-Emory Inn, 1644 Clifton Road, NE., Atlanta, Georgia 30329.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: The Committee will finalize the Strategic Plan for Elimination of Tuberculosis in the United States. The committee will also review the statement on TB Control in Correctional Institutions and the statement on Tuberculosis and HIV Infection. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: March 4, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-5236 Filed 3-9-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87N-0270]

Studies for Developing Procedures to Evaluate the Safety of Bound Drug Residues; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the availability of approximately $300,000 for Fiscal Year 1988 for cooperative agreements to support studies for developing procedures to evaluate the safety of drug residues that are bound to tissues of food-producing animals. This notice amends a prior request for applications that was published in the **Federal Register** of October 21, 1987 (52 FR 39281), to allow additional time for submission of applications. All interested parties are advised to consult the notice of October 21, 1987, for additional information on the proposed research program.

DATES: Applications must be received by 5 p.m., May 31, 1988. The earliest date for award is September 30, 1988.

ADDRESSES: Applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Note: Applications hand carried or commercially delivered should be addressed to the Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857. The outside of the mailing package and the top of the application face page should be labeled "Response to RFA-FDA-CVM-88-2."

FOR FURTHER INFORMATION CONTACT: *For further information regarding requests for application (RFA) forms or the administrative and financial management aspects of this notice contact:* Barbara Moy, State Contracts and Assistance Agreement Branch (HFA-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

For further information regarding the programmatic aspects of this notice contact: David B. Batson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

The purpose of the cooperative agreements is to provide financial assistance to support research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. FDA anticipates making up to three awards. Support for this program may be for a period of up to 3 years.

Dated: March 4, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-5238 Filed 3-9-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981) is amended to reflect a reorganziation of the Provider Reimbursement Review Board.

The specific changes to Part F. are described below:

- Section F.20.A. Provider Reimbursement Review Board (FA-1) is amended to reflect the establishment of an organizational substructure within the Board. The functions and responsibilities remain the same. The section now reads as follows:

A. Provider Reimbursement Review Board (FA-1).

The Provider Reimbursement Review Board (Board), after determining that it has jurisdiction, conducts hearings to resolve disputes on cost reimbursement and prospective payment submitted by Medicare providers under section 1878 of the Social Securtiy Act. Upon the completion of these hearings, the Board renders impartial decisions on these appeals. This is the initial step in the judicial review process.

1. Hearings and Decisions Staff (FA-11).

The Hearings and Decisions Staff is responsible for facilitating and supporting hearings and for preparing the final Provider Reimbursement Review Board decisions after the conclusion of hearings.

2. Jurisdiction and Case Management Staff is responsible for determining if the Provider Reimbursement Review Board (Board) has jurisdiction for appeals filed under section 1878 of the Social Security Act. Upon determining that the Board has jurisdiction, this Staff will be responsible for the management of the case until it is ready for hearing or the case is withdrawn or dismissed prior to hearing.

William L. Roper,

Administrator.

Date: February 22, 1988.

[FR Doc. 88-5258 Filed 3-9-88;8:45am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1988:

Name: National Advisory Council on Nurse Training.

Date and Time: May 10–11, 1988, 9:00 a.m.

Place: The Potomac Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on May 10, 9:00 a.m.–12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arrising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting with announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on May 10, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–8193.

Agenda Items are subject to change as priorities dictate.

Date: March 4, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–5233 Filed 3–9–88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–08–4220–11; I–18106]

Partial Termination of Recreation and Public Purpose Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification Termination.

SUMMARY: This order partially terminates a Bureau of Land Management classification affecting 5 acres of public land near Bliss, Idaho. After termination of the classification, the underlying lands will immediately become available for disposal through a pending public sale action.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Idaho State Office, 3380 Americana Terrace, Boise Idaho 83706, 208–334–1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869–4; it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7–1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (48 F.R. 85), the classification decision of February 25, 1982, which classified 200 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869–4, under serial number I–18106, is hereby revoked insofar as it affects the following-described lands:

Boise Meridian, Idaho

T. 6 S., R. 12 E.,
  Sec. 1, N½NE¼NE¼SW¼.

The area described contains 5.00 acres in Gooding County.

2. Upon termination of the classification, the underlying lands will immediately become available for disposal through a pending public sale action under section 203 of the Federal Land Policy and Management Act of 1976.

Dated: March 1, 1988.

Martin J. Zimmer,

Acting State Director.

[FR Doc. 88–5217 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-GG-M

[NV–03–08–4830–02–24–10]

Meeting of Carson City District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Carson City District Advisory Council.

DATE: May 4, 1988.

ADDRESS: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9:30 a.m. The agenda will include minutes of the last meeting, an overview of the District's involvement with the Steamboat Geothermal and Geyser Area and comments from the public (11:00 a.m.). A field trip of the Steamboat area will follow in the afternoon. Anyone may attend the meeting and field trip, but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Brian Hatoff, BLM Public Affairs Officer, 1535 Hot Springs Road, Suite 300, Carson City, NV, (702) 882–1631.

James W. Elliott,

District Manager.

[FR Doc. 88–5232 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-HC-M

[CO–010–08–4322–02]

Craig, CO; Advisory Council Meeting

Time and Date: June 8, 1988, at 8:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Matters To Be Considered

1. PRLAs and how BLM determines wildlife potential and other impacts.
2. CITF.
3. More effective use of the Council.
4. Wilderness Study Areas.
5. Field trip to Sand Wash to observe race reclamation.

CONTACT PERSON FOR MORE INFORMATION: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

William J. Pulford,

District Manager.

[FR Doc. 88–5289 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-JB-M

[MT–020–08–4410–02]

Montana; Miles District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Miles City District Advisory Council will be held Thursday, April 14, 1988, at 8 a.m. in the conference room at the Miles City District Office, Garryowen Road, West of Miles City, Montana. The agenda is as follows:

1. Approve minutes of last meeting
2. Election of Chairperson and Vice Chairperson for 1988
3. Long term goals and objectives for Miles City District—DAC input
4. Selected program updates
5. New Business
6. Opportunity for public comment
7. Adjourn

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written

statements for the Council's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: March 4, 1988.

Mat Millenbach,

District Manager.

[FR Doc. 88–5279 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-DN-M

Susanville District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on April 21, 1988.

The meeting will begin at 10:00 a.m. at the Surprise Resource Area Office, of the Bureau of Land Management, 602 Cressler Street, Cedarville, California.

The agenda on April 21, will include a discussion and recommendation on the use of 8100 funds, for fiscal year 1989, a report on the progress of range improvement work for fiscal year 1988, an update on the Wild Horse and Burro Program, an update on the Buffalo Hills Deer Winter Range TRT, an update on the Alturas Integrated Resource Management Plan, an update on the High Rock situation, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:00 p.m. and 4:30 p.m. on April 21, 1988, or file a written statement for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130, by April 15, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 88–5277 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-40-M

[WY–010–08–4333–12]

Limited Motor Vehicle Use Designation; Washakie Resource Area, WY

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Change in off-road vehicle designation WY–010–8105.

SUMMARY: On January 1, 1982, the "Pits Motorcycle Use Area" east of Worland, Wyoming, was formally designated and motor vehicle use at the area was limited to motorcycles and snowmobiles. The Wyoming BLM ORV designation identified for the area is WY–010–8105. It has since been determined that it is necessary to discourage public use of the area because of the increasing concentrations of hydrogen sulfide gas (H_2S) nearby. As secondary oil recovery methods (water flooding) have become more prevalent near "The Pits", hydrogen sulfide gas accumulations have been increasing. In addition, flowlines carrying H_2S gas are present near the site. Inhalation of this gas could be fatal and is especially hazardous to uninformed casual users. As part of the process to reduce public contact with this hazard, the special designation on the "Pits Motorcycle Use Area" is rescinded and the area is redesignated "limited to existing roads and trails", as of the date of this notice. All motorized vehicle use on public lands administered by the Bureau of Land Management in "The Pits Motorcycle Use Area" is restricted to existing roads and trails. Information on the availability of other public lands suitable for motorcycle use is available by contacting the Bureau of Land Management, Worland District Office.

DATE: This designation becomes effective upon publication in the Federal Register and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of this designation is available for inspection at the Worland District Office.

ADDRESSES: Bureau of Land Management, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Darrell C. Barnes, District Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347–9871

SUPPLEMENTARY INFORMATION: The limited use designation applies to the following public lands:

Sixth Principal Meridian, Wyoming

Washakie County

Generally, public rangelands located approximately 5 miles east of Worland, Wyoming, along the old alignment of U.S. Highway 16, known locally as the Pits, totalling about 125 acres.

Specifically the following:

T. 47 N., R. 92 W.,
  Sec. 25: Portions of N½SE¼NW¼NW¼, W½SE¼NE¼NW¼, S½SW¼NE¼NW¼, SE¼NW¼, SW¼NW¼, S½NW¼NW¼.
  Sec. 26: Portions of SE¼NE¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼.

The limited use designation applies to all motorized vehicles, including but not limited to: automobiles, trucks, four-wheel drive or low-pressure-tire vehicles, tracked or amphibious machines, ground-effect or air-cushion vehicles, recreation campers, motorcycles, snowmobiles and any other means of transportation deriving motive power from any source other than muscle. Under the limitation, exeptions are made for (1) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, or any combat or combat support vehicle when used for national defense purposes, (2) any vehicle whose use is expressly authorized by the Bureau of Land Management under permit, lease, license, or contract, and (3) any government vehicle on official business.

A map showing the new limited use area, and additional information about the designation are available for review at the Bureau of Land Management, Worland District Office.

Darrell C. Barnes,

District Manager.

[FR Doc. 88–5203 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-22-M

[OR–943–08–4220–11; GP–08–065; OR–26358]

Conveyance of Public Land; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 653.24 acres of public land out of Federal ownership. This action will also open 640 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 653.24 acres of land in Lake County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 28 S., R. 24 E.,
  sec. 22, SE¼NW¼, NE¼SW¼, and S½SW¼;
  sec. 27, S½NE¼, NW¼, N½SW¼, and SE¼.

The area described contains 640 acres in Harney County.

3. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on April 18, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: March 3, 1988.

[FR Doc. 88–5274 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–33–M

[AZ–020–08–4212–13; A–23221]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

The following described federal lands are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 W.,
  Sec. 25, Lots 4, 6, 8 and 10;
  Sec. 26, Lot 2.
  Comprising 97.44 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Date: March 3, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88–5219 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–08–4212–13; CA 20755]

Realty Action; Termination of Proposed Exchange of Public Lands in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Proposed Exchange of Public Lands (CA 20755).

SUMMARY: This Notice is to advise the public that the proposed exchange of public lands (CA 20755) is terminated. The lands proposed for exchange are described as follows:

Mount Diablo Meridian, CA

T. 17N., R. 9E.,
  Sec. 20, S½SW¼, SW¼SE¼;
  Sec. 29, Lots 3, 4, 5, 6 and 7, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼.
  Containing 487.99 acres, more or less.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the **Federal Register** on April 16, 1987, Vol. 52, No. 73 pages 12469–12470, proposed the exchange of public lands in Nevada County, California. The Notice segregated the public lands from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose.

At 10:00 A.M., April 11, 1988, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 A.M. on April 11, 1988 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10:00 A.M., April 11, 1988, the land will be open to mineral location under the United States mining laws. The land has been and continues to be open to application and offers under the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985–4474.

Date: March 1, 1988.

Nancy Cotner,
Associate District Manager.

[FR Doc. 88–5292 Filed 3–9–88;8:45am]

BILLING CODE 4310–40–M

[CA–010–08–4212–13; CA 20180]

Realty Action; Termination of Proposed Exchange of Public Lands in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Proposed Exchange of Public Lands (CA 20180).

SUMMARY: This Notice is to advise the public that the proposed exchange of

public lands (CA 20180) is terminated. The lands proposed for exchange are described as follows:

Mount Diablo Meridian, CA

T. 6S., R. 5E.,
  Sec. 7, Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18, E1/2SE¼.
  Containing 498.05 acres, more or less.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the **Federal Register** on July 15, 1987, Vol. 52, No. 135, page 26574, proposed the exchange of public lands in Stanislaus and Santa Clara Counties, California. The Notice segregated the public lands from settlement, location and entry under the public land laws and the mining laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose. Upon publication of this Notice the segregation imposed by this proposed exchange (CA 20180) will be terminated. The land is currently segregated by another exchange (CA 20645) and the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985–4474.

Date: March 1, 1988.

Nancy Cotner,
Associate District Manager.

[FR Doc. 88–5291 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–40–M

[CO–010–08–4212–13: C–44263]

Exchange of Lands in Jackson County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to sectien 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Kremmling Resource Area has identified the following described lands in Jackson County as suitable for disposal by exchange.

Disposal Parcel:

6th Principal Meridian, Jackson County, Colorado

T. 8N., R. 80W.
  Sec. 6, Lot 3;
  Sec. 7, Lots 2, 3, NE¼NW¼.
T. 8N., R. 81W.,
  Sec. 2, SE¼SE¼;
  Sec. 12, SE¼NE¼, NE¼SE¼.
T. 9N., R. 80W.,
  Sec. 28, SW¼SW¼;
  Sec. 31, S½SE¼;
  Sec. 32, W½W½NE¼, SW¼NW¼, SW¼SW¼.
  Containing 511.42 acres more or less.

In exchange for these lands, the United States will acquire the following described lands in Jackson County from David W. Farrand, owner of Double "R" Ranch.

Offered Land:

6th Principal Meridian, Jackson County, Colorado

T. 8N., R.80W.,
  Sec. 2, Lots 1–4, S½N½, S½.
  Containing 638.72 acres of non-federal lands, more or less.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resources Area Office at 1116 Park Avenue, Kremmling, Colorado.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig Colorado 81625. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The values of lands to be exchanged are approximately equal: full equalization of value will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the land being transferred out of federal ownership.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All mineral resources and related rights shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. All valid existing rights and reservations of record including the following: Powerline and telephone rights-of-way C–9596, C–8482, C–12349, C–22720. Access road rights-of-way C–36379 and C–45787. Oil and Gas leases C–38030, C–31050, C–31051 and C–42941.

4. A reservation for Jackson County roads numbered 12W and 18 pursuant to section 8 of the Act of July 26, 1866, 14 Stat. 253 and Rev. Stat. 2477, codified at 43 U.S.C. 932 (1970 and 1979).

5. Grazing Permits 1727, 1736 and 1777—unless waived.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

William Pulford,
District Manager.

[FR Doc. 88–5253 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–JB–M

[(NM–030–08–4212–12; NM NM 67560)]

Exchange of Public Land for State Land in Dona Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Surface and Mineral Estates

T. 22 S., R. 3 E., NMPM
  Sec. 20, SE¼, NE¼SW¼, S½SW¼;
  Sec. 29, All;
  Sec. 32, All.
T. 23 S., R. 3 E., NMPM
  Sec. 5, All.
  Containing 2,200 acres, more or less

Mineral Estate

T. 22 S., R. 2 E., NMPM
  Sec. 23, S½NE¼, SE¼NW¼, E½SW¼, S½N½NW¼SW¼, S½NW¼SW¼, SW¼SW¼, SE¼;
  Sec. 24, S½;
  Sec. 25, NE¼, S½;
  Sec. 26, W½NE¼, NW¼, S½;
  Sec. 27, E½;
  Sec. 34, E½;
  Sec. 35, All.
T. 22 S., R. 3 E., NMPM
  Sec. 17, SW¼, SW¼NE¼SE¼, W½SE¼, SE¼SE¼;
  Sec. 18, Lots 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, E½SW¼, SE¼;
  Sec. 20, N½, NW¼SW¼;
  Sec. 30, Lots 1, 2, 3, 4, E½, E½W½;
  Sec. 31, Lots 1, 2, 3, 4, E½, E½W½.
T. 23 S., R. 2 E., NMPM
  Sec. 1, Lots 1, 2, 3, 4, S½N½, S½.
T. 23 S., R. 3 E., NMPM
  Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

Containing 6,059.50 acres, more or less.

In exchange for the above lands, the United States proposes to acquire the following lands from the State of New Mexico:

Surface and Mineral Estates

T. 20 S., R. 3 W., NMPM
  Sec. 16, All;
  Sec. 20, SE¼SE¼;
  Sec. 29, NE¼NE¼;
  Sec. 30, Lot 4;
  Sec. 32, All;
  Sec. 34, SW¼SW¼.
T. 20 S., R. 4 W., NMPM
  Sec. 1, Lot 1, SE¼NE¼, NE¼SE¼;
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 10, NE¼NE¼, S½NE¼, W½ SW¼, SE¼SW¼, SE¼;
  Sec. 11, NW¼NW¼, SW¼NW¼, N½SW¼, W½SE¼, SE¼SE¼;
  Sec. 12, SW¼, SW¼SE¼;
  Sec. 13, NE¼NW¼;
  Sec. 14, NW¼SW¼;
  Sec. 15, NW¼NW¼, SW¼, NE¼SE¼, S½SE¼;
  Sec. 22, E½NE¼, SW¼NE¼, SW¼SE¼;
  Sec. 23, NW¼, NW¼SW¼;
  Sec. 25, SW¼, S½SE¼;
  Sec. 26, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SE¼;
  Sec. 27, N½NE¼, SE¼NE¼, SE¼;
  Sec. 36, All.
T. 21 S., R. 1 W., NMPM
  Sec. 36, Lots 1, 2, 3, NE¼NE¼, W½NE¼, W½, W½SE¼.
T. 21 S., R. 3 W., NMPM
  Sec. 25, S½.
T. 22 S., R. 1 W., NMPM
  Sec. 2, Tract 42 (Lots 1, 2, 3, 4, S½N½, S½).
T. 22 S., R. 3 E., NMPM
  Sec. 23, W½W½, NE¼NW¼, SE¼SW¼.
T. 23 S., R. 1 W., NMPM
  Sec. 2, Tract 37 (Lots 1, 2, 3, 4, 5, 6, S½NW¼, SW¼).
T. 24 S., R. 4 W., NMPM
  Sec. 32, All.
T. 25 S., R. 2 W., NMPM
  Sec. 26, W½.
T. 25 S., R. 3 W., NMPM
  Sec. 32, All.
T. 25 S., R. 4 W., NMPM
  Sec. 36, All.
T. 25 S., R. 3 E., NMPM
  Sec. 36, All.
T. 26 S., R. 1 W., NMPM
  Sec. 16, All.
T. 26 S., R. 2 W., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, All;
  Sec. 27, W½SW¼;
  Sec. 28, E½SE¼;
  Sec. 30, NE¼;
  Sec. 32, All.
T. 26 S., R. 3 W., NMPM
  Sec. 15, NE¼;
  Sec. 16, All;
  Sec. 26, NW¼;
  Sec. 32, All;
  Sec. 36, All.
T. 26 S., R. 4 W., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, All;
  Sec. 32, All;
  Sec. 36, All.
T. 26 S., R. 4 E., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, All;
  Sec. 32, All;
  Sec. 36, All.
T. 27 S., R. 4 W., NMPM
  Sec. 1, S½NE¼;
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, All;
  Sec. 32, All;
  Sec. 36, All.
T. 28 S., R. 3 W., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, NW¼, S½;
  Sec. 32, All;
  Sec. 36, All.
T. 28 S., R. 4 W., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 16, All;
  Sec. 32, All;
  Sec. 36, All.
T. 29 S., R. 4 W., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½.

Containing 29,256.53 acres, more or less

Mineral Estate

T. 20 S., R. 4 W., NMPM
  Sec. 34, NW¼NW¼.
T. 22 S., R. 3 E., NMPM
  Sec. 14, W½;
  Sec. 36, N½NE¼, SW¼NE¼, W½, W½SE¼.
T. 23 S., R. 3 E., NMPM
  Sec. 2, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, S½N½;
  Sec. 13, SE¼SW¼, SW¼SE¼;
  Sec. 24, N½NE¼,SE¼NE¼, E½SE¼;
  Sec. 25, N½, SW¼,N½SE¼,SW¼SE¼;
  Sec. 26, Lots 7, 8, SE¼NE¼;
  Sec. 36, All.
T. 24 S., R. 3 E., NMPM
  Sec. 2 Lots 1, 2, 3, 4, S½N½, S½;
  Sec. 11, E½E½;
  Sec. 12, N½S½;
  Sec. 14, N½N½;
  Sec. 34, NW¼SE¼;
  Sec. 36, All.
T. 25 S., R. 3 E., NMPM
  Sec. 2, Lots 1, 2, 3, 4, S½N½, S½.
T. 25 S., R. 2 W., NMPM
  Sec. 36, All.
T. 26 S., R. 1 W., NMPM
  Sec. 32, All.
T. 26 S., R. 2 W., NMPM
  Sec. 36, All.
T. 27 S., R. 2 W., NMPM
  Sec. 16, All;
  Sec. 32, All.
T. 28 S., R. 3 W., NMPM
  Sec. 16, NE¼.
T. 29 S., R. 3 W., NMPM
  Sec. 2, All.

Containing 9,555.01 acres, more or less.

DATES: Comments must be submitted on or before April 30, 1988.

ADDRESSES: Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at 505–525–8228, (FTS 571–8350).

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. Reservations to the United States for ditches and canals, constructed by the authority of the United States. Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. The New Mexico State Land Office shall honor the present grazing use and improvements authorized by BLM on the selected land until the grazing permits expire, then the State Land Office will negotiate with the BLM permittee utilizing their rules and regulations for determining rental rates, term and type of lease, and authorization of improvements.

3. The BLM shall honor the present grazing use and improvements authorized by the State Land Office on the offered land until the grazing leases expire, then the BLM will allocate the grazing use and authorize the improvements under 43 CFR 4100.

The purpose of this exchange is to implement the following decisions in the Southern Rio Grande Plan Amendment (1986): (1) To consolidate and reunite the Federal surface and subsurface estates in and adjacent to the BLM's Wilderness Study Areas, Organ Mountains Recreation Lands, and areas that have high riparian wildlife habitat and cultural values; and (2) consolidate and reunite the State's surface and subsurface estates. Publication of this Notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Robert R. Calkins,

Associate District Manager.

March 1, 1988.

[FR Doc. 88–5220 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-FB-M

[OR-120-08-4212-13: GP 8-060 or 41529]

Exchange of Public Lands in Douglas County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described public domain lands located in Douglas County, Oregon, have been examined and through the development of land use planning decisions based on public input and resource considerations, regulation, and Bureau policies, it has been determined that this public land is suitable for disposal by exchange under the authority of Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

Township 21 South, Range 09 West,
  Lots 1, 2, 8, 16 Section 2
  Lots 21, 22, 23, 24, 25, 26, 27 Section 4
  NE¼NW¼ Section 10

Containing 387.12 acres.

If additional acreage is needed to equalize exchange values the following lands will be included:

Township 21 South, Range 11 West,
  SE¼NW¼ Section 30, containing 40 acres
Township 23 South, Range 08 West,
  NW¼SW¼ Section 22, containing 40 acres

All mineral rights will be transferred with the surface estate. The patent, if issued, will be subject to a reservation of right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), and a reservation of existing roads constructed by the United States (OR 6956, OR 13336 and OR 2918)

In exchange for these lands the United States will acquire the following described lands from International Paper Company:

Willamette Meridian, Oregon

Township 19 South, Range 09 West,
  Lots 5, 6, 7, 8, 10, 11, 12 Section 24, containing 280.82 acres
Township 21 South, Range 07 West,
  Lots 1, 2, NW¼NE¼, NE¼NW¼ Section 30, containing 147.75 acres

The purpose of this exchange is to facilitate the resource management programs of the Bureau of Land Management and to improve the timber management program of the Company. The Company intends to manage the acquired federal lands with its existing timber lands for timber production. The Company lands that will be exchanged will be managed by the Bureau under the principles of multiple use management along with the surrounding public lands.

The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making the exchange.

The lands described above will be exchanged in conjunction with a larger exchange between the U.S. Department of Agriculture, Forest Service and International Paper Company. The fair market value of the lands involved in the combined exchange is being determined by an appraisal. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the combined public lands to be transferred out of Federal ownership, or acreages will be adjusted accordingly.

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effective of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 333 South 4th Street, Coos Bay, OR 97420.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Coos Bay District Manager at the above address (Reference exchange number OR 41529). Objections will be evaluated by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Thom Green, Coos Bay District Office (503) 269–5880.

Dated: February 22, 1988.

Melvin E. Chase,

District Manager.

[FR Doc. 88–5221 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-07-4520-12; C-1-88]

Filing of Plat of Survey; California

March 3, 1988.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 7 S., R. 7 E.

2. This supplemental plat of the SW ¼ of section 2, Township 7 South, Range 7 East, San Bernardino Meridian, California, was accepted February 25, 1988.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Indian Affairs, Sacramento Area Office.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Dated: March 4, 1988.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–5222 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Colorado: Filing of Plats of Survey

March 2, 1988.

The plats of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., March 2, 1988.

The plat representing the dependent resurvey of the east bounday, T. 38 N., R. 2 E., New Mexico Principal Meridian, Colorado, Group No. 812, was accepted February 24, 1988.

The plat representing the corrective survey of the north ½ mile of the north and south center line of section 28, T. 36 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 871, was accepted February 24, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88–5273 Filed 3–9–88; 8:45 am]

BILLING CODE 4310-JB-M

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[CO-940-08-4220-10; C-47115]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

March 2, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 30 acres of public land near Granby, Colorado, to protect an administrative site. This notice closes the land to operation of the public land laws including location and entry under the mining laws for 2 years. The land will remain open to mineral leasing. The withdrawal is requested for 20 years.

DATE: Comments and requests for meeting should be received on or before June 8, 1988.

ADDRESS: Comments and meeting requests should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–236–1768.

SUPPLEMENTARY INFORMATION: The Department of Agriculture filed application on February 22, 1988, to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Sixth Principal Meridian

T. 1 N., R. 76 W.,
  Sec. 8, NW¼NW¼NW¼ and E½NW¼NW¼.

The area described aggregates 30 acres in Grand County.

The purpose of the proposed withdrawal is for protection of a planned administrative site to support management of National Forest System land in the nearby Arapaho National Forest.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Agriculture.

Richard D. Tate,

Acting Chief, Branch of Adjudication.

[FR Doc. 88–5278 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–JB–M

[CO-940-80-4220-11; C-2486]

Continuation of Withdrawal; Colorado

March 1, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew National Forest System lands for an indefinite period of time for various recreation areas and campgrounds be modified and definite time periods established. This notice proposes that the withdrawal order be modified and the 69.6 acres of recreation areas and campgrounds be continued for 20 years and the 2,720 acres in the Mount Werner Sports Area be continued for 50 years. The lands will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before June 8, 1988.

ADDRESS: Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, (303) 236–1768.

1. The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 5107, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Sixth Principal Meridian

Routt National Forest

Hidden Lakes Campground
T. 6 N., R. 82 W.,
  Sec. 9, S½SW¼SE¼NW¼ and N½NW¼NE¼SW¼.
Hahn's Peak Reservoir Recreation Area Addition
T. 10 N., R. 82 W.,
  Sec. 11, S½NE¼NW¼SE¼ and N½SE¼NW¼SE¼.
Freeman Reservoir Recreation Area
T. 9 N., R. 89 W.,
  Sec. 6, lot 18, and north 5 chains of lot 21.

The areas described aggregate approximately 69.6 acres in Jackson, Moffat, and Routt Counties.

2. The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 5107, as amended, for an indefinite period of time, be modified to expire in 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Mount Werner Winter Sports Area

T. 6 N., R. 83 W.,
  unsurveyed—in approximately secs. 29 and 32, beginning at the northeast section corner of sec. 36, T. 6 N., R. 84 W., thence east 10 chains, north 40 chains, east 20 chains, north 20 chains, east 20 chains, north 30 chains, west 30 chains, north 30 chains, west 20 chains at which point is the east ¼ corner of sec. 24, T. 6 N., R. 84 W., thence south 120 chains along the range line to the point of beginning.
T. 6 N., R. 84 W.,
  Sec. 23, 24, and 25;
  Sec. 26, N½N½, SE¼NE¼, N½SW¼NE¼, N½SE¼NW¼, and NE¼NE¼SE¼;
  Sec. 36, NE¼, NE¼NW¼, N½NW¼NW¼, and N½SE¼NW¼.

The area described aggregates approximately 2,720 acres in Routt County.

The purpose of this withdrawal is for the administration and protection of various recreation areas and campgrounds. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of puiblication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88–5218 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Development Operations Coordination Document; Marathon Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Marathon Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1449, Blocks 57 (portion), 79 (portion), and 80 (portion), Lease OCS-G 1874, Blocks 79 (portion) and 80 (portion), and Lease OCS-G 1989, Block 80, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 4, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–5270 Filed 3–9–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Micro Enterprise; Establishment

AGENCY: Agency for International Development, IDCA.

ACTION: Notice of Establishment—Advisory Committee on Micro Enterprise.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Agency for International Development (A.I.D.) announces the establishment of the Advisory Committee on Micro Enterprise.

The purpose of the committee is to advise A.I.D. on guidelines and related matters for A.I.D.'s micro-enterprise development programs. A.I.D. has determined that establishment of the committee is necessary and in the public interest.

Jan W. Miller,

Assistant General Counsel for Employee and Public Affairs.

Date: March 4, 1988.

[FR Doc. 88–5215 Filed 3–9–88; 8:45 am]

BILLING CODE 6116–01–M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on March 31–April 1, 1988 at the Department of State, 2201 C Street NW., Washington, DC, Room 1107. The Committee will discuss A.I.D.'s future linkages and relationships in science and technology with advanced developing countries that no longer receive development assistance from the United States.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:30 p.m. on March 31 and 1:00 p.m. on April 1. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Tehnology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Dated: February 29, 1988.

[FR Doc. 88–5214 Filed 3–9–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information colection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Request for Revocation of Authority Granted
OMB Form No.: 3120–0104
Agency Form No.: OCCA–46
Frequency; On Occasion
Respondents: Transportation entities voluntarily applying for revocation of their operating rights.
No. of Respondents: 550
Total Burdens Hrs.: 275
Brief Description of the need and proposed use: The Purpose of the form is to allow regulated transportation

entities to apply voluntarily for revocation of their operating rights, or any part thereof. It is needed to support a recommendation to revoke such authority.

Noreta R. McGee,

Secretary.

FR Doc. 88-5199 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

Motor, Water, Broker, and Freight Forwarder Proceedings; Public Inquiries; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of contacts for public inquiries on the status of motor, water, broker, and freight forwarder proceedings: Correction of Telephone Number.

SUMMARY: A new Case Tracking Unit has been established within the Office of Proceedings' Motor Section. This Unit will handle all telephone inquiries concerning the status of Motor Section proceedings pending before the Commission, including those inquiries previously handled by the Section's paralegal support units ("Teams"). Notice of this change appeared in the Federal Register at 53 FR 7056 (March 4, 1988).

Inadvertently, the wrong telephone numbers were published. Effective immediately, all inquiries concerning pending licensing, finance, complaint, petition, and miscellaneous procedural and appellate matters involving motor or water carriers, property brokers, and household goods freight forwarders should be directed to the Case Tracking Unit at (202) 275-7022 or 275-7023. Assistance for the hearing impaired will continue to be available through TDD services (202) 275-1721.

EFFECTIVE DATE: March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691, or Suzanne Higgins O'Malley, (202) 275-7292. [TDD for hearing impaired: (202) 275-1721].

Noreta R. McGee,

Secretary.

[FR Doc. 88-5315 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31236]

Chicago South Shore and South Bend Railroad; Trackage Rights; Illinois Central Gulf Railroad Co.; Exemption

The Illinois Central Gulf Railroad Company has agreed to grant overhead trackage rights to the Chicago South Shore and South Bend Railroad between South Joliet, IL (milepost (AO)39.0) and Kensington Station in Chicago, IL (near milepost 14), a distance of approximately 53 miles, for freight traffic only. The trackage rights became effective on February 26, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 88-4839 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Charleston Properties, et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Charleston Properties and WSJ Properties* v. *United States of America* and *United States of America* v. *Charleston Properties and WSJ Properties*, No. C-87-20502 WAI (N.D. Cal.), and *United States of America* v. *Juana Salado*, No. C-87-20503 (N.D. Cal.), was lodged with the United States District Court for the Northern District of California, San Jose Division, on March 5, 1988.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as well as the Rivers and Harbors Act, 33 U.S.C. 403, as a result of the discharge of fill material onto portions of property located in Mountain View, California, which are alleged to constitute "waters of the United States." The consent decree requires Charleston Properties and/or WSJ Properties to pay $65,000 to an entity selected by the United States, which entity shall spend the funds for wetlands acquisition, creation, restoration, and/or enhancement. The consent decree allows Charleston Properties and/or WSJ Properties to proceed to complete the development that was halted by a cease-and-desist order issued by the Corps of Engineers on October 9, 1985.

The Department of Justice will receive until March 18, 1988, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Attention: Letitia Grishaw, 450 Mission Street, Suite 408, San Francisco, California 94105 and should refer to *Charleston Properties v. United States, DJ Reference No. 90-5-1-6-413.*

The consent decree may be examined at the Clerk's Office, United States District Court, 4050 U.S. Courthouse, 280 S. First Street, San Jose, CA 95113.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5227 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action to Enjoin Discharge of Water Pollutants; Salem, NJ

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Salem*, Civil Action No. 87-1601, was lodged with the United States District Court for the District of New Jersey on February 29, 1988. The consent decree establishes a compliance schedule for the New Jersey wastewater treatment plant owned and operated by the City of Salem to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable regulations relating to the discharge of pollutants and requires payment of a civil penalty of $10,000. The Decree also establishes a sewer ban until termination of the Decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. City of Salem*, D.J. Ref. No. 90-5-1-1-2759.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 502 Federal Building, 970 Broad Street, Newark, NJ 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5225 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree; Stanley Plating Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 1, 1988, a proposed Consent Decree in *United States* v. *Stanley Plating Company, Inc.*, Civil Action Number H-88-343 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendant Stanley Plating Company owns and operates an electroplating facility in Forestville, Connecticut which generated and disposed of hazardous wastes. Defendant violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without a final permit to treat, store or dispose of hazardous wastes, failing to close its land disposal units in accordance with an appropriate closure plan, failing to establish a financial mechanism to assure proper closure, and failing to demonstrate financial responsibility for sudden and non-sudden accidental occurrences resulting in environmental impairment.

The Consent Decree provides that the defendant shall pay a civil penalty of $230,000.00 and be subject to continuing obligations with respect to compliance with various hazardous waste regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stanley Plating Company, Inc.*, D.J. No. 90-7-1-331.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Stanley Plating Company, Inc.*, D.J. No. 90-7-1-331, and include a check for $2.00 (10 cents per page reproduction charge) payable to the United States Treasury.

Thomas E. Hookano,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5226 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 9-88]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice, United States Parole Commission, proposes to modify its system of records entitled "Inmate and Supervision Files, Justice/PRC-003" which was last published on December 11, 1987 (52 FR 47283) by adding new routine uses identified as "(m)," "(n)," "(o)," "(p)," and "(q)."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. You may submit any comments in writing to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601, D Street NW., Washington, DC 20530. All comments must be received by April 11, 1988.

The modified system description is reprinted below.

Dated: February 25, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/PRC 003

SYSTEM NAME:

Inmate and Supervision Files.

SYSTEM LOCATION:

Records are maintained at each of the U.S. Parole Commission's (USPC) Regional Offices for inmates incarcerated in and persons under supervision in each region. Records are housed temporarily at the Commission's Headquarters Office located at 5550 Friendship Blvd., Chevy Chase, Md. 20815 when used by the National Appeals Board or other Headquarters personnel. A duplicate records of certain data elements from files is maintained on microfiche for Headquarters use. Prior to the first parole hearing, the inmate's file is maintained at the *institution* at which he is incarcerated. Certain records on parolees and mandatory releases are maintained at probation offices. All requests for records should be made to the appropriate regional office at the following addresses: U.S. Parole Commission, Customs House Seventh Floor, Second and Chestnut Streets, Philadelphia, Pa. 19106. U.S. Parole Commission, 1718 Peachtree St. NW. Suite 250, Atlanta, GA 30309. U.S. Parole Commission, Air World Center, Suite 220, 10920 Ambassador Drive, Kansas City, Mo. 64153. U.S. Parole Commission, *525 Griffin St.*, Suite 820, Dallas, Tex. 75202, U.S. Parole Commission, *1301 Shoreway Road, 4th Floor, Belmont, CA 94002.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates under the custody of the Attorney General. Former inmates include those presently under supervision as parolees or mandatory releasees.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Compulation of sentence and supportive documentation.
2. Correspondence concerning pending charges, and wanted status, including warrants.
3. Requests from other Federal and non-Federal law enforcement agencies for notification prior to release.
4. Records of the allowance forfeiture, withholding and restoration of good time.
5. Information concerning present offense, prior criminal background sentence, and parole from the U.S. Attorneys, the Federal Courts, and Federal prosecuting agencies.
6. Identification data.
7. Order of designation of institution or original commitment.
8. Records and reports of work and housing assignments.
9. Program selection assignments and performance adjustments/progress reports.
10. Conduct records.
11. Social background.
12. Educational data.
13. Physical and mental health data.
14. Parole Commission applications, appeal documentation, orders actions, examiner's summaries, transcripts or

tapes of hearings, guideline evaluation documents, parole or mandatory release certificates, statements or third parties for or against parole, special reports on youthful offenders and adults required by statute and related documents.

15. Correspondence regarding release planning, adjustment and violations.

16. Transfer orders.

17. Mail and visit records.

18. Personal property records.

19. Safety reports and rules.

20. Release processing forms and certificates.

21. Interviews requests forms from inmates.

22. General correspondence.

23. Copies of inmate court petitions and other court documents.

24. Report of probation officers. Commission correspondence with former inmates and others, and Commission order and memoranda dealing with supervision and conditions of parole or mandatory release.

25. If an alleged parole violation exists, correspondence requesting a revocation warrant, warrant application, warrant, instructions as to service, detainers and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 4201–4218; 5005–5041, 28 CFR Part 0, Subpart V, and 28 CFR Part 2.

PURPOSE(S):

The system constitutes the agency's records upon which it bases all its decisions with respect to every stage of parole consideration from initial hearing to termination of parole supervision. For example, it is used by USPC hearing examiners to perform a *prehearing* review and to conduct the inmate's initial parole hearing. After that hearing, it is maintained in the appropriate regional office where it provides the principal information source for all decisions leading to parole or denial of parole, and all decisions following release to supervision. It is used at USPC headquarters when appeals come before the National Appeals Board or when needed by legal counsel and others on the headquarters staff. It is used by employees at all levels, including USPC members, to provide information for decisionmaking in every area of USPC responsibility. Files of released inmates are used to make statistical studies of subjects related to parole and revocation. Finally, the file is maintained to provide the rationale of USPC actions when an agency determination is questioned by members of the public or challenged in judicial proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(a) The system may be used as a source for disclosure of information which is solely a matter of public record and which is traditionally released by the agency to further public understanding of its criminal justice system, including but not limited to offense, sentence data, and prospective release date.

(b) The system may be used to provide an informational source for responding to inquiries from Federal inmates, their families, representatives, and Congressional offices.

(c) Record from the system of records may be routinely disclosed to U.S. Probation Officers for the performance of their offical duties.

(d) In the event that the USPC is informed of a violation or suspected violation of law whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

(e) Records from this system may be disclosed to a Federal, State or local agency or court if that agency or court requests information for an official purpose to which the documents appear to be relevant.

(f) A record from this system may be disclosed to a person or to persons who may be exposed to harm through contact contact with a particular parolee or mandatory releasee (or to persons in a position to prevent or minimize such harm), if it is deemed to be necessary to give notice that such danger exists.

(g) Lists of names of parolees and mandatory releasees entering a jurisdiction and related information may be disclosed to law enforcement agencies upon request as may be required for the protection of the public for the enforcement of parole conditions.

(h) Disclosure of USPC notices of action may be made (1) by the Office of Public Affairs of the U.S. Department of Justice to the public generally, and (2) by USPC to specific crime victims and witnesses (as those terms are used in the Victim and Witness Protection Act of 1982), fróm the files of prisoners whose applications for parole have been decided by USPC. The purpose of such disclosure is to further understanding of the criminal justice system by the public and by crime victims and witnesses.

(i) Incidental disclosure of file material may be made during the course of a parole or parole revocation hearing to victims and witnesses of crime and other legitimately interested persons authorized by USPC to attend such hearing, so as to further their understanding of the case to permit their intelligent comment with respect to USPC's decision.

(j) Records which are arguably relevant to litigation in which the Parole Commission has an interest, or to the litigation defense of its present or former employees (if the Department of Justice has agreed to provide representation) may be disclosed from a current or former inmates's or parolee's file by disseminating in proceeding before a court or tribunal at any time deemed appropriate by the Government's attorney.

(k) A record from this system of records may be disclosed to a current *or* former criminal justice official who is a defendant in a lawsuit brought by, or which involves, an individual who is the subject of a file maintained in this system of records, provided that such litigation arises from allegations of misconduct on the part of the defendant while a criminal justice official, and that the records are arguably relevant to the matter in litigation. Such records may be disclosed to the defendant to facilitate the preparation of his or her defense.

(l) Records from this system may be disclosed to any person performing any service for the USPC pursuant to authority exercised by the Chairman under 18 U.S.C. 4204(b) (1) through (8), and for the purposes contemplated by that statute.

(m) A record relating to the identification and location of Human Immunodeficiency Virus (HIV)-positive parolees (those who test positive for the Acquired Immune Deficiency Syndrome virus) may be disseminated to State or local health departments where permitted by State law.

(n) Where the Commission or supervising probation office believes that a specific person is or has been exposed to a medically recognized risk from an HIV-positive parolee and has not been advised of such risk, a record relating to the identification of that parolee may be released to the parolee's physician or State or local health authorities for the purpose of determining if the physician or health authorities are willing to provide a warning to the third-party at risk and, if willing, for the purpose of providing such a warning.

(o) A record relating to the identification of an HIV-positive parolee may be made to a third party where it is believed that such third party is or has been exposed to medically recognized type of risk from an HIV-positive parolee and has not been advised of such risk. Such disclosures under this routine use would be made only where the parolee's physician or State or local health authorities are unable or unwilling to make such a warning to the third party; such disclosures will be made discreeting and as a confidential communication.

(p) To the extent not prohibited by State law, a record relating to the identification and location of an HIV-positive parolee may be disseminated to those medical facilities, State or local health departments, community organizations or similar groups capable of providing medical help or counseling to HIV-positive parolees.

(q) A record relating to the identification of an HIV-positive parolee may be released to the United States Marshal when the Commission issues a parole violator warrant for the arrest of an HIV-positive parolee.

(r) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(s) Information nor otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(t) A record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Manual requests records are stored in locked safes. Automated requests records are stored on disks.

RETRIEVABILITY:

Requests reports are filed and retrieved under the names of those persons and individuals identified under the caption "Categories of individuals covered by the system." These records are retrieved by Department personnel to perform their duties, e.g., when subsequent requests are made by the public for copies of their previous requests and responses thereto, or when the requester submits a supplemental request to information clarifying a previous request.

SAFEGUARDS:

Access to requests records is limited to Department of Justice personnel who have need for the records to perform their duties. Request files (manual records) are stored in locked safes. All records are stored in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are held at the regional office until termination of sentence then transferred to the Washington National Records Center. Records are destroyed ten years after the case becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Officer, United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

NOTIFICATION PROCEDURE:

Address inquiries to Regional Commissioner at appropriate location. For general inquiries, address system Manager. The Attorney General has exempted this system from compliance with the provisions of Subsection (d) under the provisions of Subsection (j).

RECORD SOURCE CATEGORIES:

1. Individual inmate: 2. Federal law enforcement agencies and personnel: 3. State and Federal probation services; 4. Non-Federal law enforcement agencies; 5. Educational institutions; 6. Hospital or medical sources; 7. Relatives, friends and other interested individuals or groups in the community; 8. former or future employers; 9. Evaluations, observations, reports and findings of institution supervisors, counselors, boards and committees, Parole Commission examiners, Parole Commission Members; 10. Federal court records; 11. U.S. Bureau of Prisons personnel and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d)(e) (2) and (3), (e)(4) (G) and (H), (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 88–5223 Filed 3–9–88; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute approximately twenty-two (22) one-time, non-recurring grants to geographically dispersed laws schools of varying sizes. Each grant will be for a term up to 12 months. Applicants may request funding of up to $50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section (a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that a substantial portion of the funds required shall come from non-federal sources and that federally funded assets and projects will not be included in inkind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Law schools serving (or enrolling) primarily minorities are encouraged to apply. Each applicant must submit appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before April 18, 1988. Grant awards will be announced by May 1988.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, Legal Services Corporaiton, Office of Field Services, Program Development and substantive Support Division, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: In 1984, LSC initiated a nationwide research project by providing fourteen (14) law school clinics with one-time, non-recurring grants. In return for these funds, the clinics employed clinical legal education as a means of rendering legal assistance to eligible clients. In 1985, this effort was supplemented as a result of a special Congressional appropriation that enabled LSC to fund twenty (20) law school clinics. In 1986, fifteen (15) law school clinics joined in the effort, and in 1987 twenty-six (26) law school clinics participated. To date, LSC has granted a total of seven-five (75) law school clinic grants.

Congress has recognized this necessary support of clinical education. Consequently, the Corporation is pleased to announce the fifth year of its cooperative effort with the law school clinics by continuing its annual grant competition.

In 1987, LSC completed a formal assessment of the research project and found that law school clinics offer a unique opportunity for augmenting the services provided by existing legal services programs. Competent, efficient services can be provided by involving supervised law students in the direct delivery of legal services to low-income clients. Furthermore, the students' clinical experience acquaints them with the unique needs of LSC's eligible clients in an environment that is intended to increase further reduced fee or *pro bono* involvement. Consequently, the law school clinic project meets the immediate needs of indigent person and also promotes the expansion of future delivery of legal services to eligible clients by lawyers in public service and private practice.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent, university-sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school clinic concentrating totally on one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes responsible for both the law education and the clinical supervision of law students.

Selection Criteria

All proposals submitted to LSC/OFS will be reviewed to insure that each is responsive to the minimum requirments set forth in this solicitation. Final section of grantees will be made by the President of LSC in consultation with the Director of the Office of Field Services (OFS), following submission of nonbinding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

1. Effective Management/Ability to Meet Project Needs (25–35%)

(a) The provision of a clear description of clinic educational and service delivery activities intended to increase legal services to the local LSC client-eligible population, and an effective plan for management of the clinic.

(b) The provision of a budget which is adequate to support clinic educational and service delivery activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic.

2. Quality Supervision and Training (20–30%)

(a) Evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic. This is especially so with regard to the provision of appropriate levels of student supervision by faculty members, clinic staff attorneys, LSC attorneys or private *pro bono* practitioners.

(b) Evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law and is equipped to deliver high quality legal services in a cost effective manner.

3. Community Cooperation (15–25%)

(a) The extent to which a cooperative effort is shown between a local legal services provider and the corresponding area's law school clinics. Letters or other evidence of support by this provider for the proposed clinic may be attached where appropriate. Law school clinic proposals which are coordinated with and supported by the local legal services provider(s) are encouraged.

In addition, it is highly recommended that the law school clinic applicants explain how proposed activities and services complement the local legal services providers' service priorities.

(b) Support and participation from the private bar which result in increased attorney participation is also encouraged by LSC and should be specifically encouraged by each applicant.

4. University Commitment (15–25%)

(a) The degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Evidence that such budgetary support levels will be *maintained* during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed.

(b) Demonstration that the applicant plans to make an adequate in-kind contribution. In order to maximize service delivery, indirect administrative costs will not be allowed to be deducted from LSC grant funds. **Note:** Federally funded assets and projects cannot be counted as in-kind contribution.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OFS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

Region #1:

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island
Vermont

Region #2:

Delaware
District of Columbia
Kentucky
Maryland
Puerto Rico
U.S. Virgin Islands
Virginia
West Virginia

Region #3:

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee

Region #4:

Illinois
Indiana
Michigan
Ohio
Pennsylvania

Region #5:

Colorado
Kansas
Missouri
New Mexico
Oklahoma
Texas

Region #6:

Alaska
Idaho
Iowa
Minnesota
Montana
Nebraska
North Dakota
Oregon
South Dakota
Washington
Wisconsin
Wyoming

Region #7:

Arizona
California
Guam
Hawaii
Micronesia
Ufah

John H. BAyly, Jr.,
President, Legal Services Corporation.
[FR Doc. 88–5198 Filed 3–9–88; 8:45 am]
BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88–23)]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATE AND TIME: March 21, 1988, 9 a.m. to 5 p.m., and March 22, 1988, 9 a.m. to 4 p.m.

ADDRESS: Greenbelt Hilton Hotel, Salon D, 6400 Ivy Lane, Greenbelt, MD 20770.

FOR FURTHER INFORMATION CONTACT: Mr. A. V. Diaz, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1430).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee reports to the Space and Earth Science Advisory Committee (SESAC), Space Applications Advisory Committee (SAAC) and Life Sciences Advisory Committee (LSAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Office of Space Station (OSS) on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the OSSA strategic planning, Space Station Utilization planning and the Subcommittee's future activities. The group is chaired by Dr. Franklin Lemkey and is composed of 15 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

March 21, 1988
9 a.m.—Welcome, Introduction and Committee Procedures.
9:30 a.m.—Space Station Program Status.
10:30 a.m.—Office of Space Science and Applications (OSSA) Strategic Plan and Space Station Utilization.
12:30 p.m.—OSSA Integrated Requirements and Candidate Payload List for the Phase I Station.
2 p.m.—OSSA Announcements of Opportunity and Payload Selection Plans.
2:30 p.m.—OSSA Space Station Utilization Studies Status.
3:30 p.m.—Space Station Science Operations Management Concept and Science Utilization Plan.
5 p.m.—Adjourn.

March 22, 1988
9 a.m.—Small Attached Payload Working Group Status.
10 a.m.—"Quick is Beautiful" Study.
11 a.m.—Task Force on Scientific Uses of the Space Station and Overview of the International Forum on Scientific Uses of the Space Station.
1 p.m.—Development of Subcommittee Action Plan for the Year.
4 p.m.—Adjourn.

Ann Bradley,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
March 1, 1988.
[FR Doc. 88–5210 Filed 3–9–88; 8:45 am]
BILLING CODE 7510-01-M

[Notice (88–24)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: March 23, 1988, 8:30 a.m. to 4 p.m.

ADDRESS: McDonnell Douglas Corporation, Crystal Gateway, Suite 800, 1225 Jefferson Davis Highway Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten numbers. The meeting will be open to the public up to the seating capacity of the room (approximately 10 persons including the team members and other participants).

Type of Meeting: Open.

BEST COPY AVAILABLE

Agenda

March 23, 1988

8:30 a.m.—Review Status and Discuss Team Actions.

4 p.m.—Adjourn.

March 3, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-5211 Filed 3-9-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-25)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

DATE AND TIME: March 30, 1988, 8:30 a.m. to 4:30 p.m.; and March 31, 1988, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph A. Graves, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

March 30, 1988

8:30 a.m.—Briefings and Discussion on Requirements and Capabilities.

4:30 p.m.—Adjourn.

March 31, 1988

8:30 a.m.—Drafting of Report Recommendations for NASA Wind Tunnel Usage and Modification.

3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 3, 1988.

[FR Doc. 88-5212 Filed 3-9-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee on the Arts and the Humanities; Meeting

Thursday, March 31, 1988 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XVII. This meeting has been scheduled in the Indian Treaty Room, Old Executive Office Building, adjacent to the White House, Pennsylvania Avenue, NW at 17th Street, in Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported. Because of security, reservations must be made by calling 202-682-5409 or writing the President's Committee and must be received not later than March 28 with appropriate security information (full name, social security number and date of birth).

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds to augment its operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on March 31 will include:

Briefings by the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.

Reaching Rural Audiences
  Joan Kent Dillon

Fund for New American Plays
  Roger Stevens
  Dr. Carol Rocamora, Artistic and Producing Director, Philadelphia Festival Theatre for New Plays

500 Years of American Clothing
  Bill Blass

Liberal Arts and the Corporate Workplace Survey Summary
  Dr. Frank Stanton
  Dr. Michael Useem, Associate Dean, College of Liberal Arts Boston University

The Practical Value of Humanistic Study
  Dr. Franklin Murphy, Retired Chairman, Times Mirror Company, Chancellor Emeritus, U.C.L.A. Dr. Murphy is currently Chairman of the National Gallery of Art and the Samuel Kress Foundation. He began his distinguished career as a physician and became chancellor of the University of Kansas.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 4, 1988.

[FR Doc. 88-5271 Filed 3-9-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolvering Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated November 30, 1987, the amendment would revise Technical Specification 3/4.3.7.5, Table 3.3.7.5-1, Accident Monitoring Instrumentation, to require that a minimum of two (2) channels, instead of one (1) channel, be operable for the Standby Gas Treatment System (SGTS) Radiation Monitors (i.e., requiring one channel per flow path to be operable) to ensure that appropriate compensatory actions are taken to preclude conditions which have the potential for allowing unmonitored release of noble gases. In addition, the proposed amendment would revise: (1) The associated Action Statement 81 in Table 3.3.7.5-1 for the SGTS Radiation Monitors and Containment High Range Radiation Monitor to extend the time period before the licensees are required to submit a Special Report to the Commission (pursuant to Section 6.9.2 of the Technical Specifications) as recommended in NRC Generic Letter 83-36; and (2) make appropriate changes in

the Technical Specification Bases for Accident Monitoring Instrumentation as a result of the change.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 11, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filled in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 S. Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of March, 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Management, Project Directorate III-1, Division of Reactor Projects–III, IV, V & Special Projects.

[FR Doc. 88-5254 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-369, License No. NPF-9 and EA 87-163]

Duke Power Co. McGuire Nuclear Station Unit 1; Order Imposing Civil Monetary Penalty

I

Duke Power Company (licensee) is the holder of Operating License No. NPF-9 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 8, 1981. The license authorizes the licensee to operate McGuire Nuclear Station, Unit 1 in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on August 3-7, 1987. The results of that inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 28, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 25, 1987 admitting the violations, but disputing the proposed escalation of the base civil penalty.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the escalation of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act

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of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby order that: The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars ($100,000) within 30 days of the date of this order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector, McGuire Nuclear Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the portion of the proposed penalty above the base civil penalty should be imposed, in whole or in part.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland this 3rd day of March 1988.

Appendix—Evaluations and Conclusions

On October 28, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a routine NRC inspection. Duke Power Company responded to the Notice of November 25, 1987. In its response, the licensee admitted that the subject violations occurred and did not contest the base civil penalty or the proposed Severity Level of the violations; however, the licensee did contest escalation of the base civil penalty. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

A. General Arguments

Summary of Licensee's Response

The licensee contends that the NRC escalated the base civil penalty because of past poor performance and inadequate corrective action related to independent verification and failure to follow procedures in the area of plant operations. The licensee believes that reasons given by the NRC for escalation are either inconsistent with the factors set forth in the Enforcement Policy or are otherwise improper.

NRC Evaluation of Licensee's Response

The NRC letter of October 28, 1987, included the following statement: The base civil penalty amount was increased by 100 percent because of: (1) Past poor performance in the area of concern as documented generally by Systematic Assessment of Licensee Performance (SALP) in the operations area and specifically by the similar occurrences discussed earlier [see page 2 of the October 28, 1987 letter paragraphs 2 and 3 regarding IVP], (2) the corrective actions taken on July 29, 1987, were not only inadequate and non-conservative, in that it was assumed the problem was in the control panel indicators and not in the diesel generator itself, but untimely in that it was not recognized promptly that the indicator light was out. Specifically, multiple shift turnovers occurred during the time the diesel generator was inoperable yet, none of the licensed operators involved recognized the significance of the multiple indicators of the problem available to them.

The NRC staff's evaluation of the licensee's arguments concerning the details associated with the above summary statement will be addressed in specific below.

B. Arguments Regarding Past Performance

1. Effectiveness of Previous Corrective Action

a. Independent Verification Program (IVP)

Licensee Assertion: The licensee cites a number of efforts to improve their IVP subsequent to a March 1983 incident at Oconee in an effort to demonstrate how these previous corrective actions have been successful in minimizing future problems. In the licensee's view, this justifies removal of the escalation for prior poor performance.

NRC Evaluation. Five changes were made to the McGuire IVP prior to 1984. No subsequent changes are relied upon in the licensee's argument prior to the current incident. The licensee then cites statistics to show a declining trend in the number of related incidents over four years from three per year to one per year.

The reason for escalation was poor performance. The NRC staff made no contention that there had been no progress in improving the IVP. Using the licensee's statistics, we note that all eight problems cited by the licensee in the IVP have occurred since full implementation of the five changes to the program. No subsequent changes were made to the IVP over a four year period preceding the current incident even though additional violations have occurred. Thus, it cannot be found that earlier changes in the IVP constituted adequate corrective action insofar as the subject violations are concerned. Therefore, escalation based on continued poor performance in IVP is appropriate.

b. Personnel Failure to Follow Procedures

Licensee Assertion. The licensee cites corrective actions and a decreasing number of Reportable Events which are argued to be indicative of a declining number of personnel errors. It is the licensee's view that such trends support removal of escalation for prior poor performance.

NRC Evaluation. It is the staff's position that the licensee's statistical trends alone are not sufficient to weigh against escalation. First, the relationship between the corrective actions cited by the licensee and the trends is not readily apparent given the dates of implementation of the corrective actions and the intervening unfavorable SALP findings. Second, statistics indicating an overall declining trend in personnel errors do not provide assurance that progress has been made in a specific area such as IVP or that recurring problems are being prevented. Finally, the occurrence of a significant problem such as the inoperability of DG–1A, which involved a number of procedural as well as cognitive personnel errors, calls into question the effectiveness of past corrective actions regardless of statistical trends. This incident underscores the need to make the determination of whether escalation is appropriate on a qualitative as well as quantitative basis.

2. Overall Performance (prior SALP reports)

Licensee Assertion. The licensee contends that recent events weigh against the NRC's reliance upon the SALPs for the purpose of escalation, specifically the recently awarded category 2 SALP rating in Operations.

NRC Evaluation. The licensee relies heavily on the most recent SALP as evidence of improvement. The licensee assumes that the most recent category 2 SALP rating should be considered as the primary indication of previous performance for escalated enforcement.

There are several points that must be noted in this regard: (a) previous performance, for purposes of escalated enforcement, includes more than consideration of numerical SALP ratings or the fact that the previous SALP rating shows improvement, (b) despite the recent improvement in the SALP rating, the licensee's past performance in specific areas has not been good, (c) a SALP rating of 2 does not necessarily mean that a penalty may not be escalated.

3. Prior Enforcement History

Licensee Assertion. The licensee asserts that the two events discussed should not be used as a basis for escalating a civil penalty for prior enforcement history because one of the events was not cited in a Notice of Violation and bcause the events occurred more than two years ago (January 3 and October 22, 1985).

NRC Evaluation. The NRC is not required by the Enforcement Policy to limit in its consideration of the basis for escalation for "Past Performance" (10 CFR Part 2, Appendix C, Section V.c.3) to the licensee's prior enforcement history. (See also "Prior Notice of Similar Events" *id* V.c.4.) Information in inspection reports, whether or not used to support a violation, is relevant for past performance and provides notice for the need for corrective action. Accordingly, the NRC's reference, in the October 28, 1987 letter, to the two events, which were noted as similar to the incident for which the instant notice was issued, was appropriate. It is further noted that the emphasis of the NRC's reference to the two events was that the corrective action for those events was not successful in preventing the current incident.

The NRC typically reviews events over an approximate two year period in evaluating past performance. In this case the Notice of Violation was issued on October 28, 1987, the inspection took place on August 3–7 1987; and the violations occurred between July 26 and 30, 1987. Therefore, consideration of the two events that occurred in 1985 is appropriate especially given the distinct similarities that exist between the recent incident and those events.

C. Arguments Regarding Corrective Actions

Licensee Assertion. The licensee contends that there are two separate reasons for objecting to the NRC's assetion that improper corrective action should serve as the basis for escalating the base civil penalty. The licensee's reasons for objecting are listed below:

1. Such use constitutes improper double counting (i.e., improper corrective action cannot serve as basis for both the violation and the escalation), and
2. Conflict with the Enforcement Policy (i.e., the licensee asserts that the policy prohibits considering actions taken before discovery of the problem as "corrective.")

NRC Evaluation. The violation for failure to take corrective actions (Violation C of the Notice of Violation) was cited because of the operator's failure to recognize the significance of the multiple indications of the problem available to him. Further, when the problem was identified, it was improperly diagnosed as a faulty switch. The basis for escalation rests on the fact that multiple shift turnovers occurred, with the diesel generator 1A (DG-1A) in fact inoperable for approximately 90 hours. Each turnover provided an opportunity to identify and correct the violation. The Enforcement Policy (10 CFR 2, Appendix C) allows for escalation based on duration of the violation. Paragraph B.V.5(3) of the Policy states that whether or not a licensee is aware or should have been aware of a violation that continues for more than a day, the civil penalty imposed for the violation may be increased to reflect the added significance resulting from the duration of the violation. The reference to corrective action in the October 28, 1987 cover letter's discussion of escalation was not intended to address the factor of inadequate corrective action but rather the duration caused by inadequate action on July 29,1987.

In summary, the violation (Violation C of the Notice of Violation) is based on the failure of the operator to recognize the significance of the multiple indications of DG-1A inoperability, as well as the improper diagnosis of the problem, while the escalation is based on the duration of the event. It is not impermissible to issue a citation for failure to take corrective action and at the same time escalate a penalty based on the significance of that failure.

D. NRC Conclusion

The purpose of this penalty is remedial. It is designed to emphasize (1) the need to maintain lasting corrective action and (2) that performance of the type underlying this civil penalty action cannot be accepted. The staff recognizes efforts Duke is making to improve its performance. But for those actions the penalty might have been higher.

An adequate basis for reduction of the 100 percent escalation of the base civil penalty has not been presented by the licensee. Consequently, the proposed civil penalty in the amount of One Hundred Thousand Dollars ($100,000) should be imposed.

[FR Doc. 88–5256 Filed 3–9–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-01391, License No. 12-01087-07 and EA 88-42]

Edward Hines, Jr. Medical Center; Order to Show Cause Why License Should Not be Modified, Effective Immediately

I

Edward Hines, Jr. Medical Center (Veterans Administration), Hines, Illinois, (licensee/VA Hines) is the holder of specific byproduct material license of broad scope No. 12–01087–07 (the license) issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Parts 30, 33 and 35. The license authorizes the licensee to use: (1) Byproduct material listed in Groups I through VI of Schedule A, 10 CFR 35.100 (under the new revised 10 CFR Part 35 this material is identified in Subparts D, E, F, and G) for diagnostic and therapeutic procedures; (2) any byproduct material between Atomic Nos. 1 and 83, inclusive, and (3) xeron–133 for blood flow and pulmonary function studies. The license was originally issued on October 15, 1958, was most recently renewed on September 24, 1985, and expires on September 30, 1990.

II

From December 16, 1986 through January 22, 1987, and February 10 through November 4, 1987, NRC inspections and investigations were conducted at VA Hines. As a result of those inspections and investigations, it appears that the following occurred:

A. On August 14, 1986, Region III received an anonymous allegation that three diagnostic misadministrations occurred at VA Hines during the week of August 4–8, 1986, and those misadministrations were not reported to the NRC as required by 10 CFR 35.43.[1] It was further alleged that Dr. Maynard L. Freeman, Assistant Chief, Nuclear Medicine Service, VA Hines, was notified of the three misadministrations by the Acting Chief Technologist for that week (the Assistant Chief Technologist), but took no action to ensure that those events were reported. The NRC subsequently verified that these misadministrations did occur. On August 24, 1987, an order to show cause why license should not be modified, effective immediately was issued which, among other actions, removed Dr. Freeman's authority to use or supervise the use of licensed materials at VA Hines due to his involvement in those events. A hearing is pending on the removal of Dr. Freeman.

B. On October 29, 1986, the Director, VA Hines, ordered an investigation into the three alleged unreported misadministrations. Regarding the first alleged misadministration, the V.A. Investigatory Board concluded on December 1, 1986, that the event did not involve a misadministration. That conclusion was based, in part, on statements of Mr. Niemiro, the nuclear medicine technologist involved in the alleged misadministration. Regarding the first alleged misadministration, Mr. Niemiro informed the Board that Dr. Freeman gave him verbal instructions to perform a brain scan instead of a bone scan as indicated on the written order for that patient. Mr. Niemiro further advised the Board that the properly administered the brain scan as directed and nothing unusual, including a misadministration, occurred during the test.

C. From December 16, 1986, through January 22, 1987, NRC Region III conducted an inspection into the circumstances surrounding the three alleged unreported misadministrations. Regarding the first alleged misadministration, the NRC inspectors concluded that a misadministration could not be substantiated due to conflicting statements provided by the involved individuals. Mr. Niemiro stated to the NRC inspectors that: (1) Dr. Freeman verbally instructed him to perform a brain scan on the patient; (2) he performed a brain scan on the patient; and (3) he did not give two injections of any type of materials to the patient.

D. From February 10 through November 4, 1987, the NRC Office of Investigations conducted an investigation into the circumstances surrounding the three alleged unreported misadministrations. Regarding the first misadministration, the NRC investigation concluded that, on August 4, 1986, Mr. Niemiro was directly involved in the injection of a patient who was scheduled for a bone scan but received a brain scanning agent. Without further consultation with an authorized user, Mr. Niemiro subsequently injected the patient with a bone scanning agent.

E. Mr. Niemiro testified under oath that he injected a brain scanning agent by mistake and, when he realized that a mistake had been made, he panicked and injected a bone scanning agent to cover up the mistake. In addition, Mr. Niemiro testified that he had never been instructed by Dr. Freeman to perform a brain scan rather than a bone scan. The brain scanning material dose calibration ticket is missing, and Mr. Niemiro testified that he may have discarded that dose calibration ticket because he knew that a mistake had been made and he did not want the ticket in the file. Further, Mr. Niemiro testified that he falsely stated to the V.A. Investigatory Board and to NRC inspectors that he remembered Dr. Freeman telling him to inject a brain scanning agent because Dr. Freeman stated to the Chief of the Nuclear Medicine Department in Mr. Niemiro's presence that he had given such an instruction, and Mr. Niemiro feared contradicting Dr. Freeman. Thus, regarding the first misadministration, it appears that Mr. Niemiro, the involved nuclear medicine technologist: (1) in an effort to mask the prior injection of an NRC licensed nuclear scanning agent, injected a second NRC licensed nuclear scanning agent without consulting an authorized user contrary to VA Hines License Conditions Nos. 12A and 20; (2) discarded records reflecting injection of one of the scanning agents; and (3) falsely represented the facts surrounding the misadministration to the NRC inspectors and a VA Hines Investigatory Board.

III

Although the actions that are described in Section II occurred some time ago, upon further review, the actions of Mr. Niemiro demonstrate there is no longer reasonable assurance that without additional oversight he can be relied on to comply with Commission requirements concerning the use of licensed materials and to be candid with the Commission.

Licensees must adhere strictly to radiation safety requirements so that the medical use of NRC-licensed material does not create a radiation hazard to workers and members of the public. The proper and competent performance of licensee employees is essential to ensuring the safe conduct of licensed activities. The NRC in its investigation and inspection process must be able to obtain complete and accurate information from licensee employees in order to carry out NRC's statutory mission.

Therefore, the public health, safety, and interest require that License No. 12-01087-07 be modified to prohibit the involvement of Mr. Niemiro in licensed activities without further control. Furthermore, I have determined pursuant to 10 CFR 2.201(c) that no prior notice is required and pursuant to 10 CFR 2.202(f) that the public health, safety and interest require that this Order should be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 35, it is hereby ordered, effective immediately that:

License No. 12-01087-07 is modified by adding the following conditions:

A. Mr. Mark Niemiro may only engage in activities involving the administration of NRC licensed material to humans so long as, prior to the administration, another nuclear medicine technologist or authorized user verifies in writing:

1. That the patient is the individual for whom the dosage is prescribed;
2. That it is the prescribed pharmaceutical; and
3. That the dosage of the pharmaceutical is properly measured and complies with the prescription within hospital measurement error limits.

The documentation of the verification shall include the date of each item that was verified and the signature of the person making the verification. If the verification is not contained on the standard hospital forms associated with the administration, the documentation of the verifications shall be retained as long as this requirement remains in effect.

B. VA Hines shall provide a written report to the NRC Regional Administrator, Region III, certifying that the verifications have been performed and describing Mr. Niemiro's performance as it involves administration of radiopharmaceuticals and other radiological safety activities. The first report is to be provided within 30 days of the date of this Order and bimonthly thereafter.

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[1] The Commission's regulations have since been revised. The requirements for reporting misadministrations are presently set forth in 10 CFR 35.33.

C. Following the submission of the sixth report required by condition B, above, the licensee may request in writing, including reasons therefore, removal of conditions A and B above.

D. The Regional Administrator, Region III, may relax or terminate the above conditions in writing for good cause.

V

The licensee or Mr. Niemiro may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee or Mr. Niemiro relies. The licensee or Mr. Niemiro may answer as provided in 10 CFR 2.202(d) by consenting to this Order. If the licensee fails to answer within the specified time or consents to this Order, this Order shall be final unless Mr. Niemiro shows cause why the Order should not have been issued or requests a hearing.

VI

The licensee, Mr. Niemiro, or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee or Mr. Niemiro requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee, Mr. Niemiro or any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 25th day of February 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-5257 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224]

University of California, Berkeley; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders to authorize the University of California, Berkeley (the licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the licensee's application dated January 8, 1988 and terminating the Facility Operating License No. R-101.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 11, 1988, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioners' interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfty the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number); (date petition was mailed); University of California, Berkeley; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee, Mr. Milton Gordon, Office of the General Counsel, University of California, 590 University Hall, Berkeley, California 94720.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) amd 2.714(d)

For further details with respect to this action, see the licensee's application dated January 8, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC.

Dated at Rockville, Maryland this 4th day of March, 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5255 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

March 4, 1988

The Midwest Stock Exchange, Inc. ("MSE") on March 1, 198[illegible] submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3108	COMS	3 Com Corp. Common No Par Value.
7-3109	LINB	Lin Broadcasting Corp. Common $2.00 Par Value.
7-3110	NIKE	NIKE Inc. Class B Common No Par Value.
7-3111	PGULF	Pegasus Gold, Inc. Common No Par Value.
7-3112	STRA	Stratus Computer Common $0.01 Par Value.
7-3113	WYSE	Wyse Technology Common No Par Value.

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3114	AGREA	American Greetings Corp. Class A Common $1.00 Par Value.
7-3115	CAVN	CVN Cos. Common No Par Value.
7-3116	GVGT	Convergent Technologies Common No Par Value.
7-3117	GENE	Genentech, Inc. Common $0.02 Par Value.
7-3118	LMED	Lymphomed, Inc. Common $0.01 Par Value.
7-3119	MAXI	Maxicare Health Plans, Inc. Common No Par Value.

With the exception of Genentech, the MSE applied to withdraw UTP on these securities because of low transaction volume. The MSE applied to withdraw UTP in Genentech, Inc. because Genentech has applied to be listed on an exchange and thus the MSE no longer can trade the security on an OTC/UTP basis.

Comments

Interested persons are invited to submit on or before March 25, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Commentators are requested to address whether they believe the requested withdrawal of UTP would be consistent with Section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading, the activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between under such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5301 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24593]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 3, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as

amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70-7204)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility subsidiary of The Southern Company, a registered holding company, has filed with the Commission a post-effective amendment to its declaration pursuant to sections 6(a), 7 and 12(c) of the Act and Rules 42 and 50 thereunder.

By order dated May 21, 1986 (HCAR No. 24100) ("May 21st Order), Mississippi was authorized, through March 31, 1988, to issue and sell up to $35 million of the $75 million of first mortgage bonds ("Bonds") it had requested. Jurisdiction was reserved with regard to the issuance and sale through March 31, 1988 of the remaining $40 million of Bonds and of $10 million of new preferred stock ("Preferred Stock") pending completion of the record. By order dated April 10, 1987 (HCAR No. 23470), Mississippi was further authorized to issue and sell up to an additional $10 million of Preferred Stock through March 31, 1988, for a total of up to $20 million of Preferred Stock. Jurisdiction was released over the issuance and sale of the initial $10 million of Preferred Stock. Jurisdiction continued to be reserved over the issuance and sale of the remaining $40 million of Bonds.

Mississippi has issued and sold $35 million of Bonds as authorized by the May 21st Order. Mississippi now seeks authority to issue and sell the remaining $40 million of Bonds and the $20 million of New Preferred Stock through March 31, 1989.

Alabama Power Company (70-7205)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration with this Commission pursuant to sections 6(b), 9(a) and 10 of the Act and Rules 50 and 50(a)(5) thereunder.

By orders dated May 7, 1987, October 20, 1987, October 23, 1987, November 2, 1987 and February 5, 1988 (HCAR Nos. 24088, 24479, 24483, 24487 and 24574, respectively), jurisdiction had been reserved, in pertinent part, through March 31, 1988, over: (1) The financing of pollution control facilities in an amount of up to $125 million; (2) the issuance and sale of $325 million of first mortgage bonds ("Bonds") by competitive bidding; (3) the issuance and sale of $10 million of Class A Preferred Stock ("Preferred Stock") by competitive bidding; and (4) the terms, conditions, fees and expenses associated with the issuance and sale of $50 million of Preferred Stock under an exception from competitive bidding.

Alabama now seeks authorization, through March 31, 1989, to: (1) Finance its pollution control facilities in an amount of up to $125 million; (2) issue and sell $325 million of Bonds by competitive bidding; (3) issue and sell $10 million of Preferred Stock by competitive bidding; and (4) issue and sell $50 million of Preferred Stock under an exception from competitive bidding, each as previously authorized by the Commission (HCAR Nos. 24088, 24479, 24483, 24487 and 24574).

Georgia Power Company (70-7504)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6, 6(b), 7, 9(a), and 10 of the Act and Rules 50 and 50(a)(5) thereunder.

Georgia proposes on or before December 31, 1989, to issue and sell first mortgage bonds, preferred stock, pollution control revenue bonds and effect borrowings in the form of term loans, in an aggregate amount of up to $1,050,000,000 in any combination of issuance but with sub-limits imposed on each security. The sub-limits are as follows: $600 million of first mortgage bonds, $175 million of preferred stock, $150 million of pollution control revenue bonds and $125 million of term loans. However, it is also proposed that, in the event that Georgia decides to exceed any of the sub-limits, the Commission reserve jurisdiction to review issuances of each security in excess of such sub-limit. In no event will the total amount exceed $1,050,000,000. It is further proposed that the Commission reserve jurisdiction over any issuance and sale of preferred stock until such time as Georgia has the required coverage ratio pursuant to its charter. Georgia also proposes to issue and sell from time to time, on or prior to December 31, 1989, short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up $1 billion. Georgia proposes to enter into interest rate swap agreements having terms of up to seven years covering an underlying principal amount of debt not to exceed $1 billion.

Georgia requests an exception from the dividend limitation provisions of the Commission's 1956 Statement of Policy Regarding First Mortgage Bonds so that its new first mortgage bond issues, including any first mortgage bonds issued as collateral for pollution control obligations, would be subject to the common stock dividend restrictions of Georgia's June 1, 1984 Supplemental Indenture. Georgia proposes to use March 31, 1984, rather than the respective dates of issuance of the series of new bonds, as the starting date for accumulation of earned surplus, and to use $302 million as the annual dividend allowance.

If pollution control revenue bonds ("Revenue Bonds") are issued, Georgia will enter into a Loan Agreement with the Development Authority ("Authority") of each county where Georgia has pollution control facilities, relating to each issue of the Revenue Bonds. In order to obtain a favorable rating on the Revenue Bonds, Georgia may issue and sell collateral bonds, cause an irrevocable Letter of Credit of a bank to be delivered to the Trustee, convey to the Authority a subordinated security interest in property of Georgia, cause an insurance company to issue a policy of insurance guaranteeing the payment when due of principal of and interest on such series of the Revenue Bonds, or guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

The short-term borrowings would have a maximum maturity of 270 days, be renewable at maturity and may be converted to term loans at any time at Georgia's option. Under each agreement, Georgia is obligated to pay a commitment fee based upon the unused portion of the bank's commitment. The commitment fees vary from bank to bank from ¼ to 7/16 of 1 percent per annum based on the unused portion. Assuming no usage, the annual commitment fees payable by Georgia would aggregate $5,884,400. In addition, in connection with a facility, Georgia has agreed to pay fees to the agent banks aggregating ¼ and ⅛ of 1 percent, respectively, of the amount of such facility during the first and second years. The current effective annual interest rates on individual borrowings would range from 7.64 to 9.188 percent for short-term borrowings, and from 7.604 to 9.25 percent for term-loan borrowings.

For the first mortgage bonds and preferred stock, Georgia will comply with the competitive bidding requirements of Rule 50 of the Act, as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). Georgia may amend this application to seek an exception from the competitive bidding requirements under Rule 50 so that it may offer the Bonds and Stock through a negotiated public offering or private placement. Georgia has asked for an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the pollution control revenue bonds, collateral bonds, the guarantee, commercial paper, and the interest rate swaps.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5280 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Washinton County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301. Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, and the Washington County Department of Land Use and Transportation will prepare an environmental impact statement (EIS) on a proposal to improve Tualatin/Sherwood-Edy Road in Washington County, Oregon. The proposed improvement would involve the reconstruction of the existing Tualatin/Sherwood-Edy Roads between the towns of Sherwood and Tualatin for a distance of about 4 miles.

Improvements to the roads are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the improvement of the Six Corners Intersection on Highway 99W. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; and (3) widening the existing two-lane highway to three or five lanes while also improving both vertical and horizontal curvatures.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to provide organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings have been held in Tualatin and Sherwood between February and November 1987. In addition, a public hearing will be held. Public notices of the time and place of the meetings and the hearing will also be publicized. The Draft EIS will be available for public and agency review and comment prior to the public hearing. The initial Technical Advisory Committee meeting on December 16, 1986, served as the scoping meeting for the project.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on March 1, 1988.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-5272 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes April 12, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW. Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9926-N	Implementos Agricolas, LaLa, N.A., Kerpen, West Germany.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(a)(2), 175.3, 178.65-2, 178.65-5.	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT specification 39 for shipment of those nonflammable gases presently authorized for shipment in DOT specification 39 cylinders. (Modes 1, 2, 3, 4, 5.)
9933-N	Mobay Corporation, Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corrosive liquid, poisonous, n.o.s., classed as Corrosive material, in a non-DOT specification packaging consisting of a 25 liter, plastic coated, glass bottle enclosed in a polystyrene overpack. (Mode 1.)
9934-N	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.274	To authorize shipment of Fluorosulfonic (or Fluosulfonic) acid, classed as corrosive material, in a non-DOT specification composite packaging. (Modes 1, 4.)
9935-N	Atlas Powder Company, Dallas, TX	49 CFR 173.66(e), 178.209	To authorize shipment of detonators, classed as Class A or Class C explosive, in non-DOT Specification fiberboard boxes made of 275 pound test board and meeting the test requirements for DOT specification 12H fiberboard boxes. (Modes 1, 2, 3, 4.)
9936-N	Siepe GmbH, Durango, Mexico	49 CFR 173.154, 173.191, 173.217, 173.245b, 178.16.	To authorize the manufacture, mark and sell of non-DOT 30 gallon capacity open head polyethylene container comparable to DOT-35 for shipment of phosphorous pentachloride, classed as corrosive material and other corrosive materials and oxidizers presently authorized in DOT-35 containers. (Modes 1, 2, 3.)
9937-N	Van Leer Verpackungen GmbH, Koln, West Germany.	49 CFR 173, 178.224	To authorize the manufacture, marking and sale of non-DOT specification fiber drums that generally comply with DOT specification 21C fiber drums with the exception of wall thickness, for shipment of materials authorized for shipment in DOT-21C drums. (Modes 1, 2, 3.)
9938-N	Explosive Technology, Fairfield, CA	49 CFR 173.65(a)(4)	To authorize shipment of materials classed as Class A explosive, Type 8, in a package that exceeds the weight limit prescribed by 49 CFR. (Mode 1.)
9939-N	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101, table column (6)(b), 173.92.	To authorize shipment of a rocket motor, class B explosive, in a specially designed packaging not to exceed 1,500 pounds as a completed package. (Modes 1, 4.)

NEW EXEMPTIONS—Continued

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportations Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 7, 1988.

J. Suzanne Hodgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-5320 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-60-M

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88–5323 Filed 3–8–88; 10:26 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 5, 1988.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88–5324 Filed 3–8–88; 10:26 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 6, 1988.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88–5325 Filed 3–8–88; 10:26 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 8, 1988.

PLACE: On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88–5326 Filed 3–8–88; 10:26 am]

BILLING CODE 3710–GX–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, March 16, 1988.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Amendment to § 701.20, NCUA Rules and Regulations, Fidelity Bond and Insurance Coverage for Federal Credit Unions.
6. Request by Michigan Federal Credit Union to Expand its Community Field of Membership.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, March 16, 1988.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Termination of Conservatorship. Closed pursuant to exemptions (7) and (8).
5. Apportionment of Regional Staff. Closed pursuant to exemption (2).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–5364 Filed 3–8–88; 2:42 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange commission will hold the following meeting during the week of March 14, 1988:

A closed meeting will be held on Thursday, March 17, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, March 17, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Formal orders of investigation.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brad Belt at (202) 272–2467.

Jonathan G. Katz,

Secretary.

March 9, 1988.

[FR Doc. 88–5381 Filed 3–8–88; 3:51 pm]

BILLING CODE 8010–01–M

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federal register

Thursday
March 10, 1988

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Parts 16 and 402

State Legalization Impact Assistance Grants; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 16 and 402

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This rule implements section 204 of Pub. L. 99–603, the Immigration Reform and Control Act (IRCA) of 1986 (the Act). Section 204 of the Act establishes State Legalization Impact Assistance Grants (SLIAG) which are available to States. These grants may be used for reimbursement of or payments for the costs incurred by State and local governments in providing public assistance, public health assistance, and educational services to eligible legalized aliens as defined in the Act and this regulation.

DATE: The rule is effective March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Director, State Legalization Assistance Division, Office of Refugee Resettlement, Family Support Administration, 330 Independence Avenue, SW., Room 5627, Washington, DC 20201 Telephone: 202–245-0562.

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603), enacted on November 6, 1986, establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to alleviate the financial impact on State and local governments that may result from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

The legislative history of the Act indicates that Congress intended SLIAG funds to be used only for those additional State costs resulting from the passage of the Act, not for every cost related to meeting the needs of this eligible alien population. The legislative history also indicates that Congress did not expect the SLIAG appropriation to reimburse 100 percent of these additional costs.

Within the Department of Health and Human Services (HHS), SLIAG will be administered by the Office of Refugee Resettlement (ORR) in the Family Support Administration (FSA). FSA has established a new State Legalization Assistance Division within the Office of Refugee Resettlement to administer SLIAG. Similar to some of the other grant programs administered by FSA, SLIAG will be administered directly from the FSA central office in Washington, DC. The State Legalization Assistance Division may be reached at the address and phone number listed above.

The Department published a notice of proposed rulemaking on August 13, 1987. We received more than 80 comments on the proposed rule. The commenters suggested a number of changes to the proposed rule which we have incorporated into this final rule. The major changes made in the rule concern the allocation of funds among the States (Subpart D), the provision of educational services (Subparts A, B and C), State applications (Subpart E), and reporting requirements (Subpart F). The provisions of the final rule and our responses to the comments on the proposed rule are discussed below.

Subpart A—Introduction

Section 402.1—General

Section 201 of the Act, which adds new section 245A to the Immigration and Nationality Act (INA), creates a program of legalization under which the status of certain aliens who have resided unlawfully in the United States since prior to January 1, 1982, may be adjusted to that of lawful temporary resident, and eventually to that of lawful permanent resident. New INA section 245A(h) provides that for five years from the date of adjustment to lawful temporary resident status, an alien is barred from participation in: (1) Need-based Federal programs of financial assistance to be identified by the Attorney General by regulation, including Aid to Families with Dependent Children (AFDC); (2) Medicaid (with exceptions noted below); and, (3) Food Stamps. Aged, blind or disabled individuals and certain Cuban-Haitian entrants are excepted from the bar to eligibility (although these individuals must still meet the eligibility requirements of the various programs to which they might apply). Also, the law affords limited Medicaid benefits to otherwise eligible aliens needing emergency services or services for pregnant women and full Medicaid benefits to children under 18. Finally, section 201 of the Act specifies certain programs, including Supplemental Security Income (SSI), which the Attorney General may not designate as "programs of financial assistance," i.e., programs from which aliens legalized under this section are not barred by virtue of their adjustment of status under sections 245A or 210A of the INA.

Section 302 of the Act adds new section 210 to the INA to provide for granting lawful temporary resident status, and eventually lawful permanent resident status, to certain aliens who performed seasonal agricultural work in the United States during a specified period of time ("Special Agricultural Workers," or "SAWs"). Aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration, and therefore will be eligible to participate in many Federal programs. They are, however, barred from receiving AFDC for five years from the date they are granted temporary resident status. Those barred from AFDC by this section, but who would otherwise have been eligible, will be provided access to the Medicaid program within the same limits as apply to lawful temporary residents under section 245A of the INA.

Section 303 of the Act adds new section 210A to the INA to provide for the admission as lawful temporary residents of additional aliens to the United States to meet a shortage of agricultural workers, beginning in fiscal year 1990 ("Replenishment Agricultural Workers," or "RAWs"). Aliens granted lawful temporary resident status under this section generally will be barred from participation in need-based Federal assistance programs, other than Food Stamps, for five years from the date they obtain temporary resident status, except that the bar does not apply to aliens who are aged, blind, or disabled, and the same exceptions which permit access to Medicaid under section 245A(h) of the INA are applicable to this group of aliens. Notwithstanding the aforementioned bar to program participation, aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration.

The Department issued interim final regulations regarding aliens, eligibility for Aid to Families with Dependent Children and the adult assistance programs for the aged, blind and disabled in Guam, Puerto Rico, and the Virgin Islands on December 24, 1987 (52 FR 48687). The Department will issue in the near future regulations incorporating the changes made by the Act in aliens, eligibility for Medicaid.

Comment (Public Charge)

Several commenters asked for clarification of the "public charge" provision in the INA as it relates to the allowability of expenditures under SLIAG. Other commenters requested that we define or clarify what is meant by public charge.

Response

In order to adjust status, an alien must be "admissible as an immigrant" under the INA. An alien who is likely to become a "public charge" may be inadmissible as an immigrant, and therefore denied status adjustment under the Act. INS regulations at 8 CFR 245a.2(k)(4) (52 FR 16212, May 1, 1987) provide that the receipt of "public cash assistance" is a factor INS may take into account in determining, on a prospective basis, whether an individual is likely to become a "public charge." Authority to define "public charge" and to make determinations of an alien's admissibility rest, by law, with the Attorney General. Therefore, we have declined to define the term in either the proposed or final regulation for SLIAG.

Several commenters believed that the public charge provisions in the INA and IRCA bar eligible legalized aliens from State-funded assistance programs. Section 245A(h)(1) of the INA allows States to bar eligible legalized aliens from State-funded assistance programs. However, the public charge provisions in INA and IRCA are not a bar to receipt of assistance. Our regulation allows for reimbursement of allowable SLIAG-related costs. It does not override State decisions as to whether to provide assistance to eligible legalized aliens or the Attorney General's prerogative to determine whether an alien is admissible as an immigrant. If a State elects to provide assistance and an alien receives allowable benefits or services, costs associated with providing those benefits or services are allowable as SLIAG-related costs independent of INS' determination of whether receipt of that assistance renders the alien likely to become a public charge.

Program Authorized. Section 204 of the Act appropriates funds for each of fiscal years 1988 through 1991 for State Legalization Impact Assistance Grants to provide funds to State and local governments for part of the costs of programs of public assistance, programs of public health assistance, and educational services provided to "eligible legalized aliens." The term "eligible legalized alien," as defined in sections 204(j) and 303(c) of the Act, means an alien who has been granted lawful temporary resident status under section 245A, 210, or 210A of the INA, but only until the end of the five-year period beginning on the effective date of such adjustment. (See "Definitions," below.)

Federal Offset. The amount of SLIAG funds available to States in each year is, generally stated, $1 billion minus an amount termed the "offset." The offset is defined in section 204(a) of the Act as the total of estimated Federal expenditures for programs of financial assistance, for Food Stamps, and for Medicaid for which aliens legalized under new section 245A of the INA are eligible because of an exception to the general provisions at 245A(h) making them ineligible for such benefits. Federal expenditures under the SSI program and under the other programs listed at section 245A(h)(4) are not included in the offset. In addition, the Department interprets section 210A(d) of the INA to provide that Federal expenditures for programs of financial assistance and Medicaid to eligible aliens legalized under section 210A of the INA, pertaining to RAWs, are also to be included in the offset. However, expenditures for Federal programs providing assistance and services to SAWs are not included in the offset amount.

For fiscal year 1988, the amount of the offset is set at $70 million by the Act. The Act requires that Federal costs in excess of this amount for fiscal year 1988 must be recovered by adding them to the estimated offset amount applicable to fiscal year 1989. Before allotment to the States, the appropriation is further reduced by amounts reserved for the Federal costs of administering section 204. The Department currently estimates that approximately $928.5 million will be available for grants to States in FY 1988 and $643 million in FY 1989.

Comments

Several commenters requested that we include in the final rule the definitions and procedures that the Federal government will use to compute the offset and to subject those regulations to notice and comment.

Response

The Act is clear as to the costs that must be offset against the $1 billion authorized by the Act. The Act also requires that our estimates of the offset be included in the budget submitted to the Congress by the President. Thus, our offset estimates will be available for public review. We therefore believe it is unnecessary to regulate the process of deriving these estimates.

At this time, it is the Department's intention to include in the Federal offset only the program costs associated with providing assistance to eligible legalized aliens under the Medicaid and Food Stamp programs. These programs comprise the bulk of the costs associated with providing assistance to eligible legalized aliens. We have determined that, at the present time, it is not administratively feasible to develop estimates of the costs of providing services to eligible legalized aliens (principally ELAs who are aged, blind, or disabled) in the 43 programs which the Attorney General has proposed be designated as "programs of financial assistance" and thereby unavailable to aliens who legalize under section 245A or 210A of the INA.

Although Cuban/Haitian entrants who adjust status under section 245A of the INA are exempted from the general bar to the receipt of AFDC, we anticipate that few costs which may be included in the offset will be incurred with respect to this group. We expect that Cuban/Haitian entrants who adjust status will do so under section 202 of the Act, which allows for direct adjustment to permanent resident status. Costs associated with providing assistance to aliens who adjust under section 202 of the Act are not included in the offset. (Likewise, State and local costs associated with providing assistance to this category of aliens are not reimbursable under SLIAG.)

Section 402.2—Definitions

We received a number of comments concerning the definitions included in the proposed rule. In general, these comments requested that we broaden the definition of public assistance and educational services and clarify that certain specific activities meet the proposed definitions. We have adopted these suggestions whenever consistent with the Act and Departmental policy. (These changes and the comments that prompted them may be found in Subpart B, Use of Funds, of this Preamble.)

Educational Services

In addition to other changes, we have modified the definition of educational services to clarify that SLIAG funds may be used for the full range of services allowed by the Emergency Immigrant Education Act (20 U.S.C. 4101, et seq.) and to provide services to adult eligible legalized aliens that are authorized under the Adult Education Act (20 U.S.C. 1201, et seq.). (See comments under Subpart B, Use of Funds.) Because the terms "local educational agency," "state educational agency " and "public" and "non-public" schools now are used in this regulation, we have incorporated by reference the definitions of these terms as promulgated by the U.S. Department of Education in 34 CFR Part 77, or, if applicable, for the term "state educational agency," in 34 CFR Part 425.

Eligible Legalized Alien

We have not changed the definition of eligible legalized alien in the final rule. The definition closely tracks the statutory definition in section 204(j) of the Act.

Comment (Cuban/Haitian entrants and pre-'72's). One commenter asked whether SLIAG funds can be used for costs associated with Cuban/Haitian entrants or aliens who obtain legal status by virtue of the change in the registry date in section 249 of the INA (section 203 of the Act).

Response. Costs associated with providing public assistance, public health assistance, or educational services to Cuban/Haitian entrants who adjust status under section 245A or 210 of the INA are reimbursable under SLIAG. However, we anticipate that most Cuban/Haitian entrants will choose to adjust status under section 202 of the Act, which provides for direct adjustment to permanent resident status. Costs associated with aliens who adjust under section 202 are *not* reimbursable under SLIAG. Likewise, costs associated with aliens who adjust status under section 249 of the INA which changes the registry date to January 1, 1972 are *not* reimbursable under SLIAG.

In addition, the U.S.-born children of aliens who adjust status under sections 245A, 210, or 210A of the INA are U.S. citizens, *not* eligible legalized aliens. Costs associated with providing services to these citizen children are not reimbursable under SLIAG.

Public Assistance Definition. We have amended the definition of public assistance to include services for which a State or local government charges fees based upon the financial circumstances of the participant. For clarity, we have included the description of other assistance within the definition of public assistance. (See discussion of comments under Subpart B.)

Recipient Definition. After analyzing the comments, we realized that there was some misunderstanding as to the meaning of the word "recipient" as used in the regulation. The final rule clarifies that "recipient" has the same meaning as it does in 45 CFR Part 74, that is, grantees and subgrantees.

SLIAG-Related Cost Definition. In response to comments on other sections of the proposed regulation, we have made several clarifications to the definition of SLIAG-related costs. First, we have made clear that SLIAG-related costs means the expenditure of funds to provide allowable services or benefits to eligible legalized aliens under programs of public assistance, public health assistance, and educational services. Second, SLIAG-related costs for public assistance, public health assistance, educational services, and SLIAG administrative costs are limited to the actual amount expended for an allowable purpose. The final rule further clarifies that SLIAG-related costs for education are subject to limits under the Emergency Immigrant Education Act, as incorporated by the Act and specified in section 402.11 of this regulation. (These provisions specify the maximum amount of SLIAG funds that may be paid for educational services. A fuller explanation of these provisions is provided in the preamble fo Subpart B.)

This clarification ensures that SLIAG-related costs reported by States are comparable and meet the requirements of the Act for the allocation of funds. Section 204(b)(1)(C) provides for the allocation of funds based, in part, on "the amount of expenditures the State is likely to incur . . . *for which reimbursement or payment may be made* under [SLIAG]" (emphasis added). The Act does not place a dollar limit on reimbursement for public assistance and public health assistance. However, payments for educational services are limited by the Act's incorporation of the definitions and provisions of the Emergency Immigrant Education Act, as specified in section 402.11 of this regulation. If we did not include the limitation on SLIAG-related costs for educational services, States conceivably could include in their SLIAG-related cost estimates costs above the limits for which payment could allowably be made under the Act. This would result in the allocation of funds based on costs for which SLIAG funds could not be used and would be contrary to the language of the Act. (See also the preamble to Subpart D.)

Third, the final rule clarifies that SLIAG-related costs must be net of reimbursement or payment from other Federal programs and net of program income, as defined in 45 CFR 74.42, e.g., fees, tuition, or other charges paid by eligible legalized aliens receiving a service. Program income is to be treated using the deductive alternative provided for in 45 CFR 74.42.

Subpart B—Use of Funds

Allowable Use of Funds

General

The Act allows States to use SLIAG funds to reimburse the costs of providing public assistance and public health assistance and to make payments to State educational agencies for educational services provided to eligible legalized aliens, i.e., aliens who *have been granted* legal status under section 245A, 210, or 210A of the INA ("legalization program").

In addition, section 204(c) of the Act allows States to use SLIAG funds to reimburse State or local government costs of public health assistance provided to aliens who are *applying* in a timely manner for adjustment of status under section 245A of the INA. For this purpose, an alien is considered to be applying for adjustment to lawful temporary resident status if he/she has filed an application and paid the application fee at an INS facility or a qualified designated entity pursuant to 8 CFR 245a.2 (e) and (f) (FR 16211, May 1, 1987) with respect to filing and 8 CFR 245a.2(i) (FR 16212, May 1, 1987) with respect to the medical examination. The medical examination (form I–693) must be presented to INS at the time of the interview, and shall be incorporated into the applicant's record. This interpretation is in keeping with the House Energy and Commerce Committee report, which states that such reimbursement can be made for the cost of services to those who "have filed . . . bona fide applications for legalization and are awaiting a determination." (H.Rpt. 99–682)

In the proposed rule, we stated that SLIAG funds may *not* be used to reimburse the costs of public health assistance provided to those applying for adjustment under section 210 (SAWs) or 210A (RAWs).

Comment (Applicant Issue)

Many commenters suggested that we reimburse State and local costs incurred in providing public health assistance to those applying for adjustment under section 210 or 210A of the INA, as well as those applying for adjustment under section 245A. Several commenters contended that Congress did not intend to exclude costs associated with providing public health assistance to those applying for status adjustment under sections 210 and 210A of the INA. Others commented that the INA as amended by IRCA does not call for disparate treatment in other areas of public health; therefore, they conclude

that it is not intended in this case. Several commenters indicated that differentiating applicants under section 245A from applicants under other sections would be difficult.

Response

The Act specifically limits the reimbursement of public health costs associated with applicants for status adjustment to those applying for adjustment under section 245A. We have no legal basis for extending reimbursement of public health assistance costs to those applying under sections of the INA other than the one enumerated in IRCA.

In practice, there will be little difference in the treatment of public health costs for those applying for adjustment under section 210 of the INA and those applying for adjustment under section 245A. The effective date of legal status will be the date that the alien filed his or her application with INS and paid the required fee. Public health costs incurred by State and local governments would be reimbursable from such date. Only public health costs for services delivered to an individual adjusting under section 210 or 210A whose application was denied would be non-reimbursable.

We do not believe that States will have difficulty in identifying applicants under section 245A. When an alien files a nonfrivolous application with the INS, he/she is given a form I–688A (Temporary Work Authorization). This card indicates the section of the Act under which the alien is seeking to adjust status. We have clarified in the preamble to this regulation that "applying in a timely manner" means that the alien has filed an application with INS or with a qualified designated entity, provided the alien has consented to having the designated entity forward the application to INS. This was unclear in the preamble to the proposed rule.

Comment (Educational Services to Applicants)

Several commenters advocated allowing payment for educational services provided to those applying for adjustment of status because they feared that delays in access to service of up to several months while ELAs wait for applications to be approved will create administrative burdens and ultimately will mean some ELAs are not served. Two commenters raised the possibility that reimbursement could be claimed only for those applicants whose status eventually is adjusted.

Response

The Act is explicit in allowing educational services for eligible legalized aliens, who by definition are individuals who *have been granted* status adjustment. However, once status has been adjusted, the effective date for that adjustment is the date of application with INS. If a State provides educational services to applicants in anticipation of their applications being approved by INS, the costs of such services would be allowable, retroactive to the date of status adjustment, provided that the alien's application is in fact approved by INS and that the costs are consistent with the Act, this regulation, and the State's application for funds under this Part. Costs associated with individuals whose applications are disapproved by INS may *not* be paid with SLIAG funds, and only services provided after October 1, 1987 may be covered with SLIAG funds.

Comment (Outreach)

Another commenter advocated allowing SLIAG funds to be used for State outreach costs including costs incurred in consulting with INS officials, QDE representatives and community groups, and costs associated with notices and posters publicizing IRCA.

Response

Outreach costs associated with the legalization process itself cannot be considered to be allowable costs under SLIAG. (See the discussion of the first comment under "Uses of SLIAG Funds, below.) To the extent that outreach efforts are an integral and normal part of an allowable SLIAG activity, e.g., public health assistance, such costs would be allowable under SLIAG, provided that such activities otherwise meet the definitions in this part and are allocable to SLIAG.

Uses of SLIAG Funds

The Act specifies the types of assistance for which SLIAG funds may be used: Public assistance, public health assistance, and educational services. Section 402.1 of the regulation defines these uses. As noted in the preamble section covering that section, we have made several changes to the definitions.

Comments (use of SLIAG Funds for Other Purposes)

Several commenters specified other activities for which they would like use of SLIAG funds to be allowed. These included helping aliens apply for status adjustment (e.g., pay their application fees), providing assistance to entities which assist aliens in applying for status adjustment under the Act (qualified designated entities), and paying costs associated with a discrimination complaint program.

Response

We see no basis in the Act which would permit such uses. The Act restricts the use of SLIAG funds to providing public assistance, public health assistance, and educational services, as defined by the Act and this regulation, to eligible legalized aliens.

Providing "assistance" to an alien applying for status adjustment or to qualified designated entities to assist aliens in applying for status adjustment generally would not fall under any of the three permissible uses of SLIAG funds. Further, with the exception of educational services, SLIAG funds may be used only for programs or activities which are generally available to the citizens of a State. The use of funds to assist aliens applying under the Act would be inconsistent with this condition.

Additionally, with the exception of public health assistance, SLIAG funds can be used to provide reimbursement or payments for services or assistance only to aliens who *have received* adjusted status under the Act. (Reimbursement for assistance or services may be made retroactive to the date the alien was granted legal status by INS.) By definition, assistance provided to aliens applying for status adjustment (except for public health assistance) is not an allowable use of SLIAG funds. Similarly, there is no provision in the Act which allows reimbursement for costs associated with discrimination complaints.

Public Assistance

Section 204(j) of the Act provides that the term "programs of public assistance" means programs within a State which: Provide cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals; are generally available to needy individuals; and receive funding from units of State or local government. In our notice of proposed rulemaking, we clarified the definition of public assistance by requiring that individuals applying for such assistance meet specified income and resource requirements to be eligible. Based on comments we received, we have modified this provision in the final rule. The definition in the final rule includes services for which a State or local government charges fees based upon the financial circumstances of the ELA receiving such services.

In determining whether expenses are allowable under SLIAG, States should review the specific program in question to determine that it meets all the requirements of the Act and this regulation, including a requirement that applicants under the program meet specified income and resource requirements, or that payment for services be based on an income or resources. Reimbursement is limited to SLIAG-related costs as defined in this regulation. Several commenters appeared to be under the impression that our regulation would affect the eligibility of eligible legalized aliens for assistance under State or local programs. This regulation does not affect eligibility. It specifies those programs for which we believe the Act provides for Federal reimbursement of costs of public assistance and public health assistance or payments for educational services. We also note that the legislative history is quite clear that Congress did not intend SLIAG to provide reimbursement for all State and local government costs.

Comment (Definition of Public Assistance)

We received several comments suggesting that the proposed definition of public assistance was too restrictive in that it required programs to have a means test, i.e., income and resource requirements, as a condition of eligibility in order for costs to be reimbursed with SLIAG funds. Arguing that the proposed definition would not allow States the leeway necessary to serve the eligible legalized alien population, most commenters recommended that the means test be dropped.

Several other commenters requested that we clarify and specify what we mean by "other assistance." Still others contended that our definition of "other assistance" was too narrow and recommended that we include employment training, housing assistance, and maternity services, as well as protective services, adoption services, foster care, and other social service activities.

Response

We believe that the scope of what is allowed under public assistance, as clarified, is consistent with the Act.

First, the legislative history closely associates programs of public assistance (section 204(j) of the Act) and the programs included in section 245A(h)(1)(A) of the INA. The programs named in section 245A(h)(1) of the INA—AFDC, Food Stamps, and Medicaid—require a means test as a condition of eligibility. The Act generally bars most eligible legalized aliens from these Federal programs. On the other hand, section 204 of the Act provides for reimbursement of State and local costs associated with providing public assistance under State and local programs to eligible legalized aliens. In fact, the Conference Report (H.Rpt. 99–1000) addresses the two provisions in the same paragraph, when it states: "The funds were authorized to be used for state programs of public assistance, programs of public health assistance, and local education agency services. All legalized aliens were disqualified for five years from all federal programs of public assistance, except for SSI and Medicaid in certain circumstances." (See also H.Rpt. 99–682, p. 77.)

We note that Congress is well acquainted with the term "social services." For example, under the Refugee Act of 1980, 8 U.S.C. 1522 (Pub. L. 96–212), cash and medical assistance is distinct from social services. Similarly, if Congress had intended that SLIAG funds be used for social services, it clearly knew how to make its intent known. We see no indication in the legislative history that Congress intended SLIAG funds to be used to reimburse the costs of social services. We note that eligible legalized aliens are not barred from most Federal social service programs, e.g., those listed in section 245A(h)(4) of the INA.

Second, the definition is consistent with the definitions of public assistance found in social science literature. The *Encyclopedia of Social Work* (under the section on public assistance and supplemental security income) defines public assistance as "those income maintenance programs administered by welfare departments, based on need and the imposition of a means test rather than on right" (National Association of Social Workers (NASW), 1976). The *Dictionary of Social Work*, (NASW, 1987), defines public assistance as "a government's provision of minimum financial aid to persons who have no other means of supporting themselves."

Third, the definition provides leeway to States by encompassing types of public assistance other than cash or medical assistance. "Other assistance" is not a fourth category of allowable costs; rather, it is a subset of public assistance. It includes (1) assistance, other than cash or medical, which meets the definition of "public assistance" and provides for the basic subsistence needs (e.g., food, clothing, or shelter) of needy individuals; or (2) activities which are required as a condition of participation in a cash or medical assistance program, such as employment services or job training. Generally, we believe that State and local costs incurred under programs providing housing assistance directly to eligible legalized aliens are allowable under the definition of public assistance. However, programs providing assistance or subsidies to landlords or other providers of housing would generally not be considered public assistance unless (1) the benefits of the assistance/subsidy were directly traced to an eligible legalized alien, and (2) the benefits were provided under a program which otherwise met the criteria for a program of public assistance.

We have included in the definition of public assistance those employment services that are required as a condition of participation in a public assistance program. We believe this is appropriate because such services are an inextricable cost of the public assistance program. It is on this basis that we concluded that they should be allowed under the category of public assistance. On the other hand, employment services that are not required as a condition of participation in a public assistance program do not provide for subsistence needs and therefore cannot be considered to be public assistance. Consequently, we are unable to find any statutory basis on which to allow reimbursement for employment services per se.

State and local costs incurred in providing maternity care to eligible legalized aliens would be allowable as long as the program meets the requirements listed in the Act and this regulation for a program of public assistance or public health assistance.

Comment (Fee for Service)

A number of commenters asked that county or state run hospitals and clinics which utilize sliding scale payment programs be eligible to receive reimbursement under the provisions of SLIAG.

Response

As long as such programs or services meet either the definition of public health assistance or public assistance, expenditures by State or local governments would be reimbursable. We have modified the definition of public assistance to include programs which use a sliding scale payment based on income and otherwise meet the criteria for public assistance. We believe that receipt of services at reduced fees determined on an individual basis for each eligible legalized alien based on his/her income and resources is sufficient indication

that the service is provided to "needy individuals," as specified in the Act.

Public Health Assistance

Section 204(j) of the Act provides that the term "programs of public health assistance" means programs which receive funding from units of State or local government, are generally available to needy individuals residing within the State, and provide public health services. An illustrative list of public health services is provided in section 204(j)(3) of the Act—immunizations, testing and treatment for tuberculosis and sexually transmitted diseases, and family planning services. This list is incorporated in the definition of public health assistance in § 402.2.

Given the specificity in the Act, we do not believe further regulatory clarification is necessary. Consequently, we have not changed the portion of the regulation governing public health assistance, which closely parallels the Act.

Comment (Define Scope of Public Health Services)

Several commenters requested that we define the scope of services that are allowable under the public health assistance category. Comments included questions about supportive services such as social services, translation services, transportation, health monitoring, etc. Some commenters requested that a specific list of allowable services be provided. Others wanted to assure that drug and alcohol programs and mental health programs are included.

Response

We have chosen not to be specific in naming programs that are allowable under the public health provisions of the Act. Those programs which meet the definition of public health assistance in section 204(j)(3) of the Act and Subpart A of the regulation are allowable. To the extent that mental health and drug and alcohol programs are part of the State's public health program, we believe that they would be allowable. However, public health services provided solely to eligible legalized aliens, i.e., services that are not generally available, would not be allowable.

Comment (AIDS Confidentiality)

We received several comments concerning the issue of confidentiality in the testing for AIDS. Many indicated that local programs do not currently request name identification in testing the general population. Some commenters expressed concern that mandatory testing requirements would conflict with state regulations requiring strict handling and disclosure of positive test results.

We also received comments which expressed concern that State systems would incur substantial costs which would not be reimbursable under SLIAG. Believing that many aliens would go to testing sites prior to application for status adjustment to assure that they are not HIV-positive, several commenters noted that this would increase demand on these public clinics and requested that funds be made available for increasing the capacity of these clinics. Noting the possibly devastating consequences of a positive test and highly developed State systems for dealing with HIV-positive clients, many commenters feared that the influx of aliens being tested would tax these systems and deteriorate the quality of services being provided, absent additional funding.

Response

Beginning December 1, 1987, screening for AIDS antibodies is a mandatory part of the medical examination required by INS for legalization. The imposition of this requirement is outside the scope of this regulation. (See amended requirements for the medical examination of aliens, 52 FR 32540, August 28, 1987.)

While we are sympathetic to the concern expressed by commenters, the Act, as noted above, specifies the categories of activities and services for which SLIAG funds can be used. We note that the Federal (non-SLIAG) funds available for screening and counseling will more than double this year relative to last year.

The Act provides that the medical examination required of aliens seeking to adjust status under the legalization program will be at the alien's expense, which INS and the Department have interpreted by regulation to mean at no cost to the Federal government. Therefore, this regulation provides that any State or local costs associated with the medical examination required for legalization are not reimbursable under SLIAG. Because States will not be claiming costs incurred as part of the medical examination, there is no requirement under the Act or this regulation to identify ELA status. We therefore conclude that there is no confidentiality problem associated with the mandatory screening of legalization applicants that need be addressed by this regulation. The regulation provides States with flexibility in establishing SLIAG-related costs associated with follow-up and treatment associated with AIDS provided to eligible legalized aliens.

The cost of AIDS testing for eligible legalized aliens (or aliens applying for adjustment of status under section 245A of the INA) outside the context of the medical examination is reimbursable provided that the program under which testing is conducted meets the definition of public assistance or public health assistance.

Comment (Medical Examination Providers)

A number of comments suggested that we name community and migrant health centers and county and public hospitals as certified providers of the INS-required medical examination. Other comments suggested that these same centers be allowed to receive cost reimbursement from SLIAG.

Response

It is not within our jurisdiction or authority to designate civil surgeons or to certify health care facilities for the purpose of the INS examination. This authority rests with the INS.

To the extent that services provided by these centers fall within the scope of public assistance or public health assistance, as defined in the Act and this regulation, reimbursement of State and local government expenditures is allowed for costs associated with providing such assistance to eligible legalized aliens.

Comment (Limitation on Funds Used for Abortion)

We received some comments concerning the exclusion of reimbursement for abortion. Some commenters requested our basis of authority for imposition of such a restriction. Others stated that they found no basis for the exclusion in the Act.

Response

We have retained this restriction in the regulation. Evidencing its intent to limit Federal funding of abortions, Congress imposed this restriction on overall HHS appropriations, including the funding bill for FY 1988 (section 1(h) of Public Law 100–202).

Although the Hyde Amendment is not applicable by its terms to SLIAG funds, this rule conforms to rules governing other programs administered by HHS and carries out Congress' intent to limit Federal funding of abortions.

Educational Services. Section 204(c) of the Act provides that States may use SLIAG funds to make payments to State educational agencies for the purpose of assisting local educational agencies in

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providing educational services for eligible legalized aliens. The Act provides that the definitions and provisions of the Emergency Immigrant Education Act of 1984 (EIEA) (20 U.S.C. 4101), with several modifications to encompass assistance to adults, apply to States' use of SLIAG funds for educational services.

In response to the many comments received concerning the provision of educational services to eligible legalized aliens with SLIAG funds, we have made a number of changes and clarifications to the proposed rule. We believe that these changes better implement Congressional intent to use existing administrative mechanisms and to establish a limit on the amount of SLIAG funds that may be paid for educational services.

The final rule clarifies that the EIEA applies to the provision of all educational services receiving SLIAG funds, including services to adults.

Our regulation allows SLIAG funds to be used for the following activities with respect to students enrolled in elementary or secondary school:

—supplementary educational services, including: English language instruction, bilingual services, and special materials and supplies necessary to enable eligible legalized aliens to achieve a satisfactory level of performance in school;
—additional basic instructional services and attendant costs directly attributable to the presence of eligible legalized aliens in the school district, including classroom supplies, overhead costs, costs of construction, acquisition or rental of space, and transportation costs.
—essential in-service training for personnel who will be providing supplementary educational services or additional basic instructional services.

(This list of activities is taken directly from section 607 of the EIEA (20 U.S.C. 4101 et seq.) and U.S. Department of Education regulations implementing the EIEA (34 CFR 581.50).)

After review of the comments received in response to the proposed rule, we concluded that the intent of the incorporation of EIEA into SLIAG was, among other things, to provide funds to offset part of the costs of providing to adults the same types of services available to children under EIEA. It was also clearly the intent of Congress to avoid establishing new administrative mechanisms under SLIAG. The Adult Education Act, as amended in 1984 (20 U.S.C. 1201 et seq.), provides for educational services for adults comparable to those provided for children under EIEA.

Accordingly, for adults not enrolled in elementary or secondary school, the regulation permits the use of SLIAG funds for activities authorized under the Adult Education Act (20 U.S.C. 1201 et seq.) as in effect on November 6, 1986. These activities include the following:

—instruction in basic skills to enable adults to function effectively in society (including the ability to speak, read and write the English language);
—instruction leading to the equivalent of a certificate of graduation from a school providing secondary education;
—instruction for adults with limited English proficiency;
—instruction in citizenship skills; and
—ancillary services.

Vocational education services are not authorized under the Adult Education Act and may not be paid for with SLIAG funds.

The regulation also incorporates the provision of the Act that allows SLIAG funds to be used to provide the English language and citizenship skills instruction necessary for an ELA who is required to meet the conditions imposed by section 245A(b)(1)(D)(i) of the INA for adjustment to permanent resident status.

Section 204(c)(1)(C) of the Act specifies that payments for educational services are to be made "to State educational agencies for the purpose of assisting local educational agencies . . . in providing educational services for eligible legalized aliens." Further, EIEA provides for the allocation of funds from the State educational agency (SEA) to local education agencies (LEAs). We believe that Congress clearly intended to apply this administrative mechanism to State and local governments' use of SLIAG funds for educational purposes. The report on the bill by the House Education and Labor Committee cites Congressional intent to use EIEA to provide "an already existing administrative structure for the provision of this assistance" (H.Rpt. 99–682, p. 17).

Additionally, section 204(c)(3)(C) permits State educational agencies to provide educational services for adults, as defined in this regulation, through local educational agencies and public and private non-profit organizations, including community-based organizations of demonstrated effectiveness. We have adopted the same administrative mechanism for payments to provide educational services to adults as is used in the EIEA to provide for payments for educational services for students enrolled in elementary and secondary school.

The following is a summary of major comments and our responses to them:

Comment (Applicability of EIEA Provisions)

One commenter contended that the provisions of EIEA should apply only to educational services delivered within the elementary and secondary school system; these provisions, including the $500-per-person cap limit (see § 402.11), should not apply to educational services delivered outside that system. Another commenter requested that the Department study the definitions and provisions of EIEA to determine their adequacy for SLIAG.

Response

Based on the specific nature of the exceptions made to EIEA by the Act, the Department concludes that it is appropriate and consistent with the intent of Congress to apply all definitions and provisions of the EIEA pertaining to States' use of funds for educational services to other expenditures for educational services which the State claims as SLIAG-related costs, including services provided for adults. The Act replaces the phrase "immigrant children" in the EIEA with " 'eligible legalized aliens' (including such aliens who are over 16 years of age). . .," thereby encompassing adults. Also, section 204(c)(3)(B) of the Act makes a specific exception for adults in applying the threshold for payment under section 606(b) of the EIEA. The Act requires the application of the EIEA provisions when the State uses SLIAG funds "for the purpose described in paragraph (1)(C). . . ." This paragraph provides for the provision of educational services to eligible legalized aliens generally, not just to eligible legalized aliens enrolled in elementary or secondary school.

We therefore concluded that the clear intent of the Act is to apply to adults as well as children the provisions and definitions of the EIEA.

Comment (Need for Language Instruction)

Several commenters objected to the assertion in the proposed rule that, "Many aliens will speak English when they enter the country or will have acquired English when they enter the country or will have acquired English language skills during the time they were here." The commenters generally expressed concern that the Department is overestimating the level of English language ability among ELAs and underestimating the need for English language training. One commenter also said that even those ELAs who know English are likely to need history and government classes in order to qualify for permanent residency.

Response

The statement in question appears in the preamble in a general discussion of factors which may affect the need for SLIAG funding for educational services. The limitations the rule places on use of SLIAG funding for this purpose are based entirely on the Act, not on any projections of need made by the Department.

Comment (SAWs)

A number of commenters expressed concern over preamble language that indicated special agricultural workers (SAWs) would have less need for English language instruction, since they do not have to meet English proficiency requirements to qualify for permanent resident status. (Those granted status adjustment under section 245A and 210A do have to meet these requirements.) All of the commenters who addressed this section of the proposed rule advocated giving SAWs equal access to English language training. Some also mentioned specifically history and government instruction designed to help ELAs meet the citizenship skills requirement. Most of the comments focused on the need for English language training to obtain better employment and assure self-sufficiency. Some commenters contended that the need for English language instruction actually is greater for SAWs than for those granted adjustment of status under section 245A. Other commenters pointed out that SAWs will have to meet English language proficiency and citizenship skill requirements to obtain citizenship and, therefore, should be allowed access to that training now. One contended that all ELAs must be afforded access to educational services needed to meet the requirements of permanent resident status and naturalization and that these services must be sufficient to enable them to progress toward citizenship.

Response

The fact that SAWs are not required to meet the conditions in section 245A(b)(1)(B)(i) of the INA does not mean that they are ineligible for English language training or citizenship skills training paid for with SLIAG funds. The final regulation allows States to use SLIAG funds for any services authorized under the Adult Education Act, which includes English language instruction and citizenship skills training to all ELAs not enrolled in elementary or secondary school.

Comment (Providers of Educational Services)

Several commenters sought more specificity concerning acceptable providers of educational services or to assure the involvement of specific groups in the planning process. One commenter requested that the Department specify public libraries and academic institutions as allowed providers for educational services. Two commenters asked that qualified designated entities (QDEs) be specified as allowed service providers. One commenter requested that on-site, work-related English-as-a-second-language classes provided by agricultural organizations be allowed. Still another advocated limiting funds for educational services to "recognized courses of study" and requiring involvement of professional language instructors in developing curricula and providing English language instruction.

Response

By incorporating the provisions of the EIEA, the Act allows local educational agencies to receive payment for services provided to ELAs enrolled in both public and non-public schools, subject to the same limitations included in the EIEA. Additionally, the Act allows State educational agencies to provide educational services for adults through "local education agencies and other public and private non-profit organizations, including community-based organizations of demonstrated effectiveness." The Act also specifies categories of educational services for which payment can be made under SLIAG, and the final rule provides further definition of those services. Within these parameters, the Department believes that it is appropriate for States to decide which educational services should be provided and which agencies or organizations should be utilized in providing them. Further, it seems clear that by specifying a broad range of allowed service providers Congress intended to allow States a considerable amount of leeway in making determinations about appropriate service providers. We do not believe it is appropriate to specify other criteria in regulation.

Comment (Educational Materials)

One commenter asked that educational materials be specified as allowable educational services expenses under SLIAG.

Response

The cost of educational materials may be allowable to the extent that they are necessary to provide educational services to eligible legalized aliens. The EIEA, which is incorporated into SLIAG, authorizes "special materials and supplies" for supplementary education services. Further, EIEA regulations specify "classroom supplies" as an allowable item under the cost of "basic instruction." Under the Adult Education Act, States may provide instructional materials.

Comment (Literacy Training)

Another commenter sought to include literacy as well as spoken English as an English language skill allowable under SLIAG as an educational service. The commenter contended that being able to read and write basic English is essential to fulfill basic citizenship responsibilities.

Response

We agree that English language skills include literacy. This interpretation is supported by the legislative history. The House Education and Labor Committee Report (H.Rpt. 99–682) refers to "English language instruction and other literacy programs." Literacy training is authorized under the Adult Education Act and is therefore an activity for which payment may be made with SLIAG funds, subject to the restrictions noted in § 402.11 of this regulation.

Comment (Level of Language Proficiency)

A number of commenters asked the Department to establish or clarify the level of English language ability required for ELAs granted status adjustment under section 245A to attain permanent resident status. One commenter suggested that the required level of proficiency should be set at a relatively low level, with funding to be available for more extensive training. Some commenters also asked about standards for knowledge of history and government to meet the citizenship skills requirement. Three advocated that States be allowed to approve courses through which an ELA "satisfactorily pursuing a course of study" could meet the language and citizenship skills requirements, and one asked why approval by the Attorney General is required for courses of study.

Response

The English language and citizenship skills requirements for permanent resident status under section 245A are entirely within the purview of the

Immigration and Naturalization Service. The Department has no authority to set standards or approve service providers. We have, however, forwarded comments relevant to these issues to the INS for its consideration.

Additionally, we note that INS regulations at 8 CFR 245a.3(b)(5) do specify that a course of study satisfies the requirement "if (i) it is sponsored or conducted by an established public or private institution of learning recognized as such by a qualified State certifying agency or by an institution of learning approved to issue Forms I–20 . . . or by a qualified designated entity within the meaning of section 245A(c)(2) of the Act, and (ii) the course materials for such instructions include textbooks published under the authority of section 346 of the Act."

SLIAG funding is not limited to courses approved by the Attorney General, and such approval does not affect chances for permanent residency *if* the individual ELA meets the INS standard for English language proficiency and citizenship skills. However, for individuals who plan to meet these requirements by being enrolled, and making satisfactory progress, in a course, States should be aware that only enrollment in a course approved by the Attorney General will suffice. For further information, States are encouraged to contact their local INS office.

We do not believe that it is necessary for us to set further standards for English proficiency for defining the allowable use of SLIAG funds. The provisions of the Act (including incorporation of the EIEA) sufficiently define Congressional intent in this area. As noted in the section of this preamble relating to § 402.11, "Limitations on Use of SLIAG Funds," the Act already imposes practical limits on the provision of educational services to eligible legalized aliens.

Comment (Basic Instruction)

Several commenters objected to the statement, included in the preamble of the proposed rule, that SLIAG funds are not available for the costs of basic instruction other than the costs of teaching the English-language and citizenship skills required for adjustment to permanent resident status. The commenters refer to another statement in the preamble that lists "additional basic instructional services and attendant costs . . ." as an allowable expense. A related comment asks that the scope of allowable costs be expanded to allow training for a more-than-minimal level of English proficiency and adequate literacy skills. Additionally, many of the comments concerning the adequacy of the $500 limit refer to levels of English proficiency needed for employment. (See discussion of $500 limit under "Limitations on Use of SLIAG Funds," below.) One commenter specifically asked that employment training be allowed as an educational expense.

Response

The scope of services for which SLIAG funds may be paid is limited to those provided for in the Act and this Part. However, in response to the comments, we have clarified that services to eligible legalized aliens enrolled in elementary and secondary school include basic instructional services. This is specifically provided for in the EIEA. We have also included in the definition of educational services for adults those activities authorized under the Adult Education Act, including basic instructional services.

The Adult Education Act does not cover employment training, nor does the final rule allow such activities to be funded under SLIAG as an educational service. We believe employment training falls outside the scope of activities that can be inferred from EIEA or from the exceptions to the provisions of EIEA that are included in the Act. We found no evidence in the legislative history of the Act evidencing any intent on the part of Congress to allow SLIAG funds to be used for employment or vocational training.

Comment (Recipient of Funds)

One commenter asked that no State or Federal public school agency or agencies be given the responsibility for overseeing or receiving funds for educational services. Another commenter asked whether it was possible to circumvent the State's department of education and give educational service funds to other groups.

Response

Section 204(c)(1)(C) of the Act authorizes the State "to make payments to State educational agencies for the purpose of assisting local educational agencies . . . in providing educational services to eligible legalized aliens." The Act further provides that "the State educational agency may provide such services through local educational agencies and other public and private non-profit organizations. . . ." We interpret this to mean that all payments for educational services must go through the State educational agency. However, we have defined "State educational agency" to include, when applicable, the State agency responsible for administering adult education programs under the Adult Education Act. State law and budget procedures would determine who has decision-making power over the use of such funds.

Comment (Application Explanation of Education Allocation)

One commenter sought to have the Department specify English language and citizenship skills training as "an additional State cost resulting from the passage of the Act" and require States to explain in their applications how their proposed use of SLIAG funds shows cognizance of this need. Another commenter asked that States be required to consult with non-profit agencies already providing ESL and citizenship courses.

Response

We do not agree that the cost of providing English language and citizenship skills training is necessarily a cost resulting from the passage of IRCA. We understand from our consultation with State and local education officials that, in many States, English language and basic education services historically have been provided to undocumented aliens. Thus, these costs in all likelihood will be at least in part on-going costs. This regulation does not require a State to report in its application how it plans to spend SLIAG funds. (The estimates to be provided in the application are SLIAG-related costs, not the anticipated level of SLIAG reimbursement or payment.) However, the Act does establish minimum funding for education through the requirement that at least 10 percent of SLIAG funds be spent on each of the three program categories—public assistance, public health assistance, and educational services—if sufficient need exists in these areas. Beyond this requirement, States have discretion as to how funds are allotted among the three categories of allowable uses. We believe it is inappropriate to add further procedural requirements.

Comment (Curriculum Development)

One commenter asked that curriculum development be added to the regulation as a reimbursable educational service.

Response

The EIEA, which is incorporated into SLIAG, allows expenditure for "basic instructional costs" attributable to the student's presence in the area of jurisdiction of the local educational agency. The Adult Education Act permits funding for curriculum

development. Therefore, we agree with the commenter that curriculum development allocable to eligible legalized aliens receiving educational services under SLIAG may be an allowable cost. However, the cost of curriculum development must be apportioned to ELA and non-ELA students and is subject to the requirements in § 402.12.

Comment (Tutoring and Independent Study)

One commenter advocated allowing payment for tutorial educational programs or independent study in addition to formal courses of instruction.

Response

The EIEA, as incorporated into SLIAG, allows expenditures for supplementary services and basic instruction attributable to the student's presence in the school district. These activities could include tutorial or independent study courses offered by the LEA. Additionally, the final rule establishes as allowable educational activities for adults all activities and courses allowed under the Adult Education Act. Therefore, to the extent that tutorial and independent study courses for adults are allowed under that authority, payment for those services could be made under SLIAG.

State Matching Funds

The regulation provides that States may use SLIAG funds for the non-Federal share of Federal matching programs requiring a State and/or local match. We received no comments on this provision.

Limitations on Use of SLIAG Funds

Section 204(f) of the Act provides that payment under SLIAG shall not be made for costs to the extent those costs are otherwise reimbursed or paid for under other Federal programs. We have incorporated that provision in § 402.11 of this regulation as well as in the definition of SLIAG-related costs in § 402.2. We believe that the intent of this provision is to prohibit States from using SLIAG funds for costs associated with public assistance, public health assistance, or educational services to the extent such costs are already being reimbursed or paid with Federal funds.

Implementing section 204(c)(2)(C) of the Act, we have included a prohibition on reimbursement of more than 100 percent of SLIAG-related costs for public assistance, public health assistance, and educational services. The statute does not specify this prohibition for educational services, but we believe that the Department's rules on administration of grants at 45 CFR Part 74 would not permit reimbursement of more than 100 percent of allowable costs of any type. Further, we believe that the legislative history makes clear that Congress did not intend to set up an entitlement of $500 for each ELA, but rather intended to provide for actual costs up to the $500 limit.

We also have prohibited the use of SLIAG funds for reimbursing costs associated with the medical examinations required of aliens who apply for adjustment to lawful temporary resident status. Section 245(d)(2)(C) of the INA states that an applicant must undergo a medical examination ". . . at the alien's expense." Legislative history indicates clear Congressional intent that the fee for the medical examination be paid by the applicant: "This medical exam offers an ideal opportunity, at no cost to the Federal government, to achieve some basic health objectives" (H.Rpt. 99–682). In this regard, we are interpreting this provision consistent with INS regulations published at 8 CFR 245a.2(i) (52 FR 16212, May 1, 1987), which state that the medical exam must be ". . . at no expense to the government."

Comment (Testing vs. Treatment)

We received a number of comments requesting clarification on the line of demarcation between testing as part of the examination required for status adjustment (which is not allowable) and follow-up treatment (which is allowable).

Commenters suggested that the skin test in TB screening is part of testing, but the X-ray required subsequent to a positive skin test should be considered part of treatment. Other commenters questioned whether the cost of laboratory work required after blood or body fluids are drawn during the examination could be considered allowable under SLIAG. With regard to AIDS screening, several commenters asked us to clarify the terms testing, treatment, and follow-up. Commenters requested clarification as to when testing stops and follow-up begins in the monitoring and treatment of sexually transmitted diseases.

Response

The Centers for Disease Control (CDC) has determined that an X-ray following a positive skin test is diagnostic and is considered part of the examination, rather than treatment. In its *Guidelines for Medical Examinations of Aliens in the U.S.*—June 1985 (Feb. 1987), guidelines are provided for the physical examination for aliens seeking legalization. The option is provided for diagnostic testing for tuberculosis utilizing either radiograph (X-ray) or skin test. When *any* reaction to the skin test is noted, the individual must receive an X-ray. Only individuals with "no reaction to the tuberculin skin test can be cleared without a chest X-ray examination."

Likewise, laboratory expenses incurred in running tests required to determine the presence or absence of a disease or condition are part of the cost of the examination. If the examination is being undergone for purposes of adjustment of status under the Act, the costs of that examination are not allowable under SLIAG.

In general, the line between testing for the presence of a disease or condition stops when the disease or condition is confirmed or ruled out. Steps taken to ameliorate or eliminate the disease or condition are considered treatment.

Educational Services

The Act, particularly as it incorporates the provisions of EIEA, establishes a number of limitations on spending for educational services. The procedures and structure adopted for State administration of education funds by incorporating the EIEA into the Act serves both to allocate SLIAG funds among LEAs and other providers of educational services to adults and to limit the amount of SLIAG funds that may be used for educational services. Under SLIAG, SEAs may allocate to LEAs and other providers of educational services in any fiscal year an amount not to exceed $500 multiplied by the number of ELAs meeting the conditions noted below. (For LEAs which receive funding under EIEA, the amount that may be paid is subject to further restrictions, as noted below.)

The EIEA provides payment on behalf of "immigrant children" born outside the United States who have been enrolled in school for less than three full academic years. The Act instructs us that any reference to the term "immigrant children" shall be deemed a reference to "eligible legalized alien." Therefore, the rule provides that, in calculating the amount that may be provided to LEAs, States may count only ELAs who have been enrolled in elementary and secondary school or other educational services, as defined in this regulation, in the United States for less than three complete academic years.

Furthermore, an LEA may receive SLIAG funds in a fiscal year for costs associated with ELAs enrolled in elementary or secondary school only if at least 500 such eligible legalized aliens are enrolled in the school district or if such ELAs represent at least 3 percent of enrollment for that fiscal year. This provision derives directly from section 606(b)(2) of the EIEA. The Act specifically provides that this threshold does not apply to adults. Therefore, the regulation provides that all ELAs over the age of 16 not enrolled in elementary or secondary school in that school district but who are receiving educational services may be counted in determining the amount of SLIAG funds that may be paid to a local educational agency or other provider of educational services for adults, as described in section 204(c)(3)(C) of the Act, i.e., public or private non-profit organizations, including community-based organizations of demonstrated effectiveness.

SEAs may distribute money to LEAs or directly to public or private non-profit agencies, including community-based organizations of demonstrated effectiveness, for the purpose of providing educational services to adults. (LEAs also may provide services through such groups.) The SEA may allocate annually to each LEA or other organization providing educational services to adult eligible legalized aliens an amount of SLIAG funds not to exceed $500 multiplied by the number of ELAs being served by that LEA or other organization, or the actual unreimbursed non-Federal cost of providing the educational services to ELAs, whichever is less. LEAs or other organizations may count only those ELAs to whom they provide services.

In counting the number of ELA children and adults, States and LEAs should remember that only individuals whose immigration status has been adjusted under sections 245A, 210 or 210A of the INA are countable. In particular, U.S.-born children of ELAs are citizens, not ELAs, and may not be counted for purposes of computing SLIAG allocations to LEAs.

Section 606(b)(3) of EIEA requires the Department of Education to reduce the amount of a State's EIEA grant for a fiscal year by amounts made available under other Federal programs for the same fiscal year for the same purpose. However, EIEA provides one exception to this general rule. If "the amount available for expenditure" in a State's grant under another Federal grant program, e.g., SLIAG, takes into account the amount of a State's EIEA grant, no reduction will be made by the Department of Education in the EIEA grant.

Because States, rather than the Federal government, control the timing of payments for educational services under SLIAG, we concluded that it would be unduly burdensome for States to have their EIEA grants reduced based on their payment of SLIAG funds to local educational agencies. Further, the reduction in EIEA funding would have made State and local planning difficult. Consequently, in considering the amount of SLIAG funds that may be paid to a local educational agency on behalf of eligible legalized aliens enrolled in elementary and secondary school, the State must consider the amount of the EIEA grant to such agency that is attributable to eligible legalized aliens in the school district.

Comment ($500 Cap)

A number of commenters expressed concern that the $500 per ELA limit on the payment of SLIAG funds for educational services was too low. Several commenters provided calculations to demonstrate that the cost of providing English language instruction will be considerably higher than the $500 maximum. Many of these comments included the recommendation that the $500 cap not be applied. One commenter recommended that the $500 cap be applied only to services provided within the elementary and secondary school system, not to those provided to adults. Still another simply stated that more funding is needed for education.

However, one commenter stated that the $500 cap probably would suffice.

Response

Section 204(c)(3) of the Act incorporates "the definitions and provisions" of EIEA. The legislative history clearly indicates that Congress specifically intended the $500-per-person allocation amount in EIEA to apply as a cap on the use of SLIAG funds for educational services for both children and adults. The House Education and Labor Committee Report states, "The effect of this provision [incorporating EIEA into SLIAG] is to place a $500 cap on the Federal contribution for each eligible child or adult" (House Report 99–682). Concluding that the $500 limit was clearly the intent of Congress, we have included that limit in the final regulation.

Comment (Application of $500 Cap)

Several commenters recommended applying the $500-per-person limit on expenditures for education services as an aggregate figure for all persons receiving these services, rather than as a limit for each individual's services. This would allow States the flexibility to use SLIAG funds to meet different levels of need. Other commenters suggested that the limit on educational expenses be determined by multiplying the $500-per-person limit by the total number of ELAs, whether or not they receive services. Another commenter recommended applying the $500 cap on an individual basis, but separately for each kind of service, e.g., $500 for English language instruction, $500 for history and government instruction, etc. Still another commenter recommended a spending limit for educational services based on a cumulative aggregate enrollment multiplied by $500 so that "unused" allowable funds could be carried over to the next year. Finally, two commenters sought clarification on whether the $500 limit is annual, and one asked how a year will be defined for purposes of applying the cap.

Response

After examining the comments and the provisions of the EIEA that are incorporated into SLIAG, we have concluded that the $500 amount serves both as an allocation-mechanism and a limitation on Federal expenditures. The State educational agency may, generally speaking, allocate to an LEA or other organization providing services an amount up to $500 multiplied by the number of countable ELAs enrolled in allowable educational services or the actual, unreimbursed non-Federal cost of providing such services, whichever is less. Within this allocation, LEA's or other providers of educational services may vary the amount of SLIAG funds applied to individual eligible legalized aliens, provided that the aggregate payment to that LEA or other provider does not exceed the amount described in the regulation.

The Department agrees that the $500 limit is an annual one. However, as noted in response to other comments, SLIAG payments must be associated with those ELAs, both children and adults, who have attended U.S. schools for less than three full academic years.

We have not adopted the suggestion that States be allowed to determine the amount of SLIAG funds that may be paid for educational services by multiplying $500 by the total number of eligible legalized aliens residing in the State, regardless of whether those aliens were receiving educational services. The EIEA provides funds on behalf of "immigrant children" *enrolled* in school. We believe that the same provision would apply to adults.

We have not adopted the recommendation that we allow a separate ceiling for various types of educational services. To do so would defeat the clear intent of Congress to impose a ceiling of $500 on SLIAG payments for each eligible legalized alien receiving services.

Comment (Subtracting Other Federal Funds Under EIEA)

Several comments related to the provision in section 606(b)(3) of the EIEA, incorporated into the Act, that requires funds from other Federal programs for the same purpose and relating to immigration status to be deducted from the $500-per-person spending ceiling. One commenter advocated not counting Adult Education Act funding in the calculation of maximum SLIAG funding amounts for educational services, if a State already is spending all of its Adult Education Act funds on individuals who are not ELAs. Another commenter simply advocated not reducing the level of available funding through such an offset. Still another objected to offsetting any expenditures from other programs because no other program is "for the same purpose" as SLIAG, but requested that any programs that are to be offset be published in the **Federal Register** for comment before the list becomes final. Finally, one commenter contended that Congress intended to offset only assistance provided because of immigration status.

Response

As noted above, irrespective of whether the offset provision of EIEA is incorporated into SLIAG, funds from SLIAG and EIEA must "offset" each other by virtue of the EIEA provisions regarding EIEA funds. If States were not required to consider EIEA funds in determining their SLIAG allocations for educational services, the Department of Education would have to reduce their EIEA allocations to compensate for SLIAG payments. As discussed above, we believe that requiring States to consider EIEA payments in determining SLIAG allocations is administratively the simplest approach to carrying out the "offset" requirement of the EIEA.

For example, had we not required that the EIEA grant be taken into account, a State that provided $500 per eligible legalized alien in SLIAG funds to a local educational agency would have lost that portion of its EIEA grant that was based on the enrollment of ELA children for whom SLIAG payments were made (about $75 per child). Under this regulation, the maximum SLIAG payment to the local educational agency for an ELA enrolled in elementary or secondary school would be roughly $425 (the $500 statutory maximum minus the amount of EIEA funds the LEA receives because of the enrollment of an ELA child who also is counted as an "immigrant child" in the EIEA program). In either case, the amount of Federal funds available to the local educational agency for the purposes of EIEA is the same—$500.

The amount of EIEA funds to be subtracted from an LEA's allocation of SLIAG funds to determine the maximum SLIAG payment would be determined by multiplying the number of ELAs enrolled in elementary and secondary school who also are covered under EIEA by the EIEA allocation for non-refugee children. We will supply the EIEA allocations per non-refugee child to States based on information supplied by the U.S. Department of Education.

Because Department of Education funds under EIEA are distributed based only on students in elementary and secondary school, no offset would be required against spending for adult educational services. However, the SLIAG prohibition against claiming reimbursement for costs already reimbursed under another Federal program does apply.

Comment (3 Year Limitation)

A number of commenters recommended that the provision of the EIEA that limits assistance to those children who have attended school for less than three full academic years not apply to SLIAG. Several commenters maintained that this restriction, in effect, will prohibit assistance to almost all children above the second or third grade because they will have been in this country for more than three years. Several commenters contended that Congress intended for all ELA children to be eligible for assistance. One commenter maintained that Congress did not intend for the three-year limit to apply to SLIAG. However, another commenter pointed out that we were being inconsistent in applying the three-year limitation to children and not to adults, and advocated that we establish a consistent standard. Some commenters contend that the provision establishes onerous reporting and tracking requirements. On the other hand, one commenter advocated specifying in the regulation that the three-year limit on school attendance does apply to ELAs receiving educational services.

Response

Section 204(c)(3) of the INA applies the *definitions* and provisions of the EIEA to payments made for educational services. The Act instructs us to substitute the term " 'eligible legalized aliens' (including such aliens who are over 16 years of age)" for the term "immigrant children." We concluded that the most appropriate reading of this provision is to retain the applicability of the remainder of the definition of the term "immigrant children," viz., that they be born outside the United States and have been enrolled in school in the U.S. for less than three full academic years. This reading is consistent with the Act's reference to the "definitions" of the EIEA. This reading also provides consistent treatment in the provision of Federal funds to State educational agencies with respect to aliens. Finally, this reading facilitates the clear Congressional intent that the administrative mechanism of the EIEA be used for SLIAG funds used for educational services. If we were to adopt a different time period for the counting of eligible legalized aliens, it would be more difficult for States to use the EIEA mechanism, which is geared to immigrant children's first three years in school.

It is important to alleviate the apparent confusion on the part of some commenters between the questions of whether an ELA is eligible for services and whether those services can be funded through SLIAG. Nothing in the Act or this regulation restricts access by ELAs to any educational service for which they otherwise qualify. At issue only is the extent for which SLIAG funds can be used to make payments to LEAs or other service providers.

Congress provides time-limited transitional assistance to LEAs with respect to immigrants in the school district through several programs. For example both the EIEA itself and the refugee education assistance programs provide assistance for the first several years alien children covered by these programs are enrolled in U.S. schools. In addition to limiting the duration of time for which payment can be made with respect to an alien child, neither EIEA nor the refugee education programs were designed to cover the entire cost of providing education to immigrant children. We see no indication in the legislative history that Congress intended to provide considerably more extensive assistance to State and local governments with respect to eligible legalized aliens than for other aliens. Thus, we have provided by regulation that, for purposes of calculating the maximum SLIAG payment to an LEA or other service provider, only eligible legalized aliens who have been enrolled in school in the United States for less than three full academic years may be counted. (This is the same time limit as is applied by EIEA.)

One commenter pointed out that it is inconsistent to apply the limitation to

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children and not to adults. We agree, and have applied the three-year limitation to adults as well as to children. We believe this interpretation is inescapable when viewed in the context of the Act's application of EIEA's provisions to adults and children. Further, we note that Congress clearly intended to use the existing EIEA structure to avoid the need to establish new administrative mechanisms. Adopting a different time frame for ELAs than for "immigrant children" would thwart that intent.

The three-year period refers to enrollment in a course of instruction. Thus, the final rule addresses the concerns raised by a number of commenters who pointed out that even ELAs who have been in the U.S. for five or more years may not speak English. These ELAs can be served unless they already have accessed instructional programs in the United States for a period equal to three complete academic years. Any previous enrollment by an ELA in an instructional program in the United States must be counted against the three-year maximum to establish the amount of time the student is eligible for educational services under SLIAG.

Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987

Section 204(a)(1) of the Act appropriates funds for SLIAG for fiscal year 1988 and for each of the three succeeding fiscal years. We interpret the Act as providing funds to meet costs incurred by State and local governments beginning in FY 1988, notwithstanding the fact that the INS began taking applications for legalization in FY 1987. However, we believe that two exceptions to the general rule that SLIAG funds may be used only for costs incurred in FY 1988 and succeeding fiscal years are warranted.

First, the regulation permits States to use SLIAG funds to reimburse costs closely associated with the implementation of the SLIAG program, e.g., administrative start-up costs, incurred between November 6, 1986 and September 30, 1987. We believe that it was Congress, intent that State procedures and fund accounting mechanisms be in place early in FY 1988. We expect that some States incurred planning and administrative costs in FY 1987.

Second, the regulation allows States to use SLIAG funds to reimburse otherwise allowable costs incurred in fiscal year 1987 (but after November 6, 1986) for providing public health assistance (1) to individuals whose status has been adjusted under section 245A or 210 of the INA and (2) to individuals applying to become eligible legalized aliens under section 245A, but not under section 210, of the INA. Section 204(c) of the Act extends reimbursement of public health costs to aliens applying for status adjustment under section 245A of the INA. Recognizing that aliens would be applying for status adjustment beginning on May 5, 1987, we believe the Act contemplates the reimbursement of State and local costs associated with providing public health assistance to those applying, and to those whose status is subsequently adjusted, under section 245A. Since the Act limits the extension of public health assistance to those who are adjusting under section 245A, we do not believe costs associated with those applying under section 210 are permissible uses of SLIAG funds.

Comment (Start-Up Costs)

One commenter sought clarification as to whether planning and administrative costs incurred by departments of public welfare, public health, and education before October 1, 1987, are allowable. Another sought assurance that local school districts will be reimbursed for developmental and administrative start-up costs, and that such reimbursement would be allowed retroactively for expenses incurred in FY 1987.

Response

We interpret the Act to allow administrative costs closely associated with the implementation of SLIAG, i.e. administrative start-up costs, incurred after November 6, 1987. This would include administrative costs incurred not only by the agency administering and dispensing SLIAG funds but also by agencies and local governments involved in providing SLIAG-related services.

The regulation permits reimbursement for allowable SLIAG administrative costs incurred subsequent to November 6, 1986, the date of enactment. However, reimbursement for *program* administrative costs incurred prior to October 1, 1987 are limited to those incurred for public health services. Program administrative costs for public assistance and educational services incurred before that date are not allowable because, by definition, no program services subject to SLIAG payment or reimbursement could have been made prior to October 1, 1987 for those activities.

We do not believe it is appropriate for us to interject ourselves into State decisions concerning distribution of resources among allowable activities by mandating that certain expenses be reimbursed, e.g., developmental and administrative start-up costs of local school districts.

Comment

A number of comments were received regarding the allowability of reimbursement for administrative expenses incurred in FY 1987 from FY 1988 funds. A number of commenters supported the Department's decision to allow such costs to be reimbursed. One commenter requested clarification as to whether reimbursement would be allowed for planning and administrative costs by State departments of health, welfare, and education, or whether these reimbursements were allowed only for planning and administration by the State agency. One commenter requested that funds be available for developing tracking systems to identify eligible aliens within public assistance programs prior to October 1, 1987.

Response

Planning and administrative costs which are incurred by States prior to October 1, 1987 for the implementation of SLIAG are allowable under the regulation. This includes SLIAG administrative costs incurred by State and local program agencies, e.g., departments of health, education, and welfare. The costs of developing tracking systems in FY 1987 to identify ELAs receiving assistance generally would qualify as SLIAG administrative costs.

Subpart C—Administration of Grants

General Provisions

The final regulation applies the HHS regulations governing the administration of grants, 45 CFR Part 74, to SLIAG funds. These regulations apply to all grant awards issued by the Department, except those statutorily designated as block grants. We received no comments on this provision.

On March 11, 1988, twenty-four Federal agencies will publish a Presidentially-directed, government-wide "common rule," which will supersede and replace agency regulations such as 45 CFR Part 74, which implements OMB Circular A–102. HHS' adoption of the "common rule" will cause all references to Part 74 to change to 45 CFR Part 92, and necessitate a subsequent amendment to this regulation, conforming any redundant or inconsistent grants administration provisions in Subpart C to the new government-wide "common rule."

Fiscal Control

States must have fund accounting procedures in place which allow SLIAG funds to be traced from drawdown to allowable expenditures under this Part. We are not requiring that a State or recipient trace SLIAG funds from drawdown to an expenditure to or on behalf of individual, identifiable eligible legalized aliens. Rather, we are requiring that States trace SLIAG funds from drawdown to disbursement to a program or activity in which allowable SLIAG-related costs in a fiscal year at least equal the amount of SLIAG funds provided to the program or activity in that fiscal year.

Additionally, regulations at 45 CFR Part 74 require that costs charged to a program be reasonable, allowable, and allocable. For example, the cost of a Spanish-English translator would have to be prorated over the entire Spanish-speaking clientele of a public health office. These costs could not be charged solely to SLIAG. Costs charged to SLIAG also would have to meet the other criteria of "SLIAG-related costs."

We developed the fiscal control procedures after extensive consultation with State officials and representatives from other levels of government. These individuals raised concerns about (1) the establishment of onerous reporting and tracking requirements, a problem that Congress clearly sought to avoid, and, (2) in some public health situations, the difficulty of tracking expenditures to a specific individual and the possible deterrent effect such tracking might have on those seeking services.

The regulation allows for cost determinations based on statistically valid sampling procedures to address these concerns. States may use any of the fiscal control procedures described in Subpart C of the regulation to track costs. States may, but need not, use the same procedure for each recipient of SLIAG funds or for each program or activity that receives SLIAG funds. We recognize appropriate methods for tracking costs may differ among recipients, programs and activities. For example, the appropriate method for fiscal control chosen by the State may be affected by such factors as whether a particular recipient serves a large alien population, current established methods of accounting, etc. For costs associated with public assistance, States are permitted to demonstrate the amount of their SLIAG-related costs: (1) By determining the amount of funds actually provided to specifically identifiable eligible legalized aliens (as is currently done for refugees under the cash and medical assistance portion of the Refugee Resettlement Program), or (2) by determining the amount associated with eligible legalized alien participation through the use of a statistically valid sample of an assistance program's caseload. We have not included the use of population ratios (see next paragraph) for determining SLIAG-related costs for public assistance programs. We believe that the public charge provision of the INA and the deterrent effect of that provision on ELAs' participation in such programs, makes use of such a methodology for public assistance programs inherently suspect.

For costs associated with public health assistance, States are permitted to demonstrate the amount of their allowable SLIAG-related costs (1) by using either of the above two methods or (2) by multiplying the ratio of the number of eligible legalized aliens in a service population to the total service population by the costs associated with public health activities that are reimbursable under SLIAG. For example, if 5 percent of the State's population were eligible legalized aliens, we would accept that 5 percent of the costs of public health assistance were associated with eligible legalized aliens.

States may also demonstrate SLIAG-related costs by using other reliable methods of estimation, subject to Federal review. We recommend that States consult with the Department before implementing an alternative method.

The proposed rule did not prescribe detailed methods for calculating SLIAG-related costs for educational services. The preamble to the proposed rule indicated that States must be able to demonstrate that educational services provided are predominantly associated with eligible legalized aliens. In response to comments received on the proposed rule, we have made several modifications in the final rule to provide greater guidance regarding the establishment of SLIAG-related costs for education.

The final regulation requires that States be able to demonstrate that the amount of SLIAG funds paid to local educational agencies and other providers of educational services for adults in a fiscal year does not exceed the limits described in § 402.11(e) of this regulation and that the services provided to eligible legalized aliens were allowable under the Act and this regulation.

Comment (Actual Costs)

Several commenters advocated two changes in fiscal control procedures to ensure that counties receive reimbursement adequate to cover actual expenses. First, commenters recommended that public assistance and public health cost determinations be based only on actual expenditure data or on the actual number of ELAs multiplied by the average cost per ELA. Statistical sampling of caseload would not be permitted.

Second, the commenters sought to add a requirement that States must reimburse counties based on actual data if the counties maintain such records. Some commenters advocated requiring States to track actual costs, rather than estimating costs based on statistical samples or, for public health, population ratios. Yet, another commenter supported having the option to use actual or statistically derived cost figures.

Response

Consistent with the proposed rule, the final rule requires States to determine the allowability of expenditures for each recipient of SLIAG funds. States may use any of the fiscal control procedures described in Subpart C of the regulation to determine costs.

As discussed above, we allow determination of SLIAG-related costs based on statistically valid sampling to address concerns raised during consultation with State officials and representatives from other levels of government.

Certainly, States have the option to establish actual costs by associating costs with specific, identified eligible legalized aliens. We expect that most State and local governments will select this option for the programs in which it is feasible and appropriate. We would expect States to use the best available data to determine SLIAG-related costs. However, because the State is the grantee in the SLIAG program and is responsible for administration of the grant funds, we have sought to avoid interjecting the Department into State decisions regarding how to administer SLIAG. Consequently, we have not revised the final rule to accommodate these suggestions.

Comment (Allowable Costs)

One commenter advocated establishing specific parameters and definitions for allowable costs.

Response

The final rule does provide specific guidance on establishing SLIAG-related costs. We have attempted to provide such guidance in a way that provides States with flexibility and that doesn't add restrictions unintended by

Congress. We also have tried to answer in this preamble specific questions raised by States and by others. States that have specific questions concerning allowable costs should consult us.

Comment (Cost Calculation)

Several commenters advocated various methods for calculating costs under SLIAG. One of the commenters, who advocated allowing reimbursement for programs of public assistance which do not require applicants to meet specified income or resource requirements, recommended an alternative method of cost calculation for these programs involving "a valid statistical ratio based on demographic data." Contending that eligible legalized aliens will need more health services than other groups, one commenter suggested that States be allowed to calculate public health costs by doubling the ratio of eligible legalized aliens to State population.

Response

The final rule includes procedures which will determine SLIAG-related costs in a manner acceptable to us without requiring States to institute burdensome tracking and reporting procedures. The proposed rule outlined three methods of calculating public health assistance costs, involving varying degrees of specificity in tracking procedures. A State may use any of these methods which it believes most accurately reflect its actual costs or may develop an alternative method.

The rule allows States to use alternative methods for cost calculation *if* the alternative method provides a valid measure of SLIAG-related costs. These alternative methods are subject to Federal review. Although we are not requiring prior Federal approval before use of an alternative method, we suggest that States consult with us before employing such a method.

Comment (Subgroup Calculation)

Another commenter recommended allowing public health costs to be calculated for population subgroups, such as children of a specific age group. SLIAG-related costs would be calculated using the population ratio method based on the cost and usage for that age group. For example, costs associated with child immunizations would be apportioned on the basis of the ratio of eligible legalized alien children to all children in a State, county, or city. Other commenters advocated allowing States to use different cost accounting methodologies for different kinds of public health services. For example, actual costs could be calculated for diagnosis and treatments and a population ratio could be employed for activities more directed to the general public.

Response

We agree and have amended the regulation to include the term "service population." To calculate SLIAG-related costs related to public health, a State may use the ratio of ELAs in a "service population" to the total number of individuals in the service population. The service population will vary according to the area served by a program or activity and the nature of the program or activity. Examples of service populations include the State, a county, the number of school-age children in a county, the number of individuals over the age of 65 in a city, etc.

Comment (Education Costs)

One commenter requested that we define minimum expectations for fiscal control and accounting involving educational services. Another commenter made three suggestions related to a fiscal procedure for educational services. First, States should be required to use fiscal and accounting procedures for elementary and secondary education similar to those required under EIEA. Second, funding from other Federal programs, which is offset against the spending limitations for educational services, should be identified. Third, allowable expenditures for English language and citizenship skills instruction should be determined by calculating actual expenditures or by multiplying the actual number of ELAs receiving such instruction by the average cost for the ELA student population.

Response

We agree and have incorporated these comments in the final rule. Section 402.11(e) specifies the maximum amount of SLIAG funds that may be paid to—local educational agencies and to other providers of educational services to adults. Subpart C of the final rule requires States to be able to establish that the amounts of SLIAG funds paid to these organizations did not exceed the amounts specified in § 402.11(e) and were used for purposes allowable under the Act and this Part. Funds used under this Part are subject to 45 CFR Part 74, which is substantially similar to Department of Education grant administration regulations (34 CFR Part 74).

Comment (Offset Disallowance)

One commenter requested that we clearly indicate that a State may offset a disallowance against allowable, unreimbursed SLIAG-related costs.

Response

As a general rule, this procedure is permissible, provided that it is consistent with 45 CFR Part 74, the Act, this regulation, the terms and conditions of the grant, and the State's accounting practices.

SLIAG and Program Administrative Costs

The sections of the final rule governing SLIAG and program administrative costs are substantially the same as the proposed rule, except for minor wording changes made for clarity.

The regulation provides that States may use SLIAG funds for costs associated with administering SLIAG funds ("SLIAG administrative costs") and for administrative costs in programs of public assistance, public health assistance, and educational services associated with providing those services to eligible legalized aliens, irrespective of the availability of SLIAG funds ("program administrative costs"). SLIAG administrative costs include: Planning (including consulting with local public officials); preparing the application; auditing SLIAG funds; and allocating, tracking, monitoring, and reporting funds among programs and jurisdictions.

We have not specified a methodology for States to determine SLIAG administrative costs. Believing that SLIAG administration is generally a separate activity, we have allowed States to determine such costs using normal cost allocation and accounting procedures, subject to 45 CFR Part 74.

Neither the Act nor this regulation imposes a limit on administrative costs for public assistance or public health assistance. However, by incorporating the definitions and provisions of the EIEA, we believe the Act imposes the EIEA's 1.5 percent limit on administrative costs chargeable to SLIAG by State educational agencies for SLIAG administrative costs. In response to comments asking for guidance on the application of EIEA provisions to SLIAG funds, we have made this limitation explicit in the final rule.

We expect that State and local governments will not need to establish substantial new bureaucratic mechanisms to administer SLIAG funds, which is a temporary funding source. We intend to assess carefully State and local SLIAG administrative costs as part of our program reviews.

In addition to SLIAG administrative costs, State and local governments may use SLIAG funds for administrative costs associated with those programs and activities which receive SLIAG funds under the State's approved application. In calculating the amount of administrative costs for a particular program or activity, we will accept the use of the percentage of participation by eligible legalized aliens in the program (or the percentage of program costs incurred on behalf of eligible legalized aliens) multiplied by the program's total administrative cost (less any amount related to general SLIAG administrative costs, above). For example, if 10 percent of a program's benefits were associated with eligible legalized aliens, the State may claim 10 percent of the program's administrative costs (less general SLIAG administrative costs) under SLIAG.

Desiring to maximize State flexibility, we have provided that States may use alternative methods of determining program administrative costs chargeable to SLIAG. However, we will carefully assess as part of our program reviews any administrative costs determined by an alternative method.

Comment (Limit on Administrative Costs)

Two commenters advocated limiting administrative costs, one to 10 percent, the other to 20 percent.

Response

The Act clearly intends reimbursement of administrative costs and does not set a limit on such use, except for State educational agencies. We have not imposed by regulation a limit on administrative cost.

Comment (Federal Administrative Cost Carryover)

One commenter asked whether the Federal government would be able to carry over its own administrative costs to future years.

Response

Federal costs for administering SLIAG may not be carried over to future years. However, the Act *requires* the offset, i.e., Federal *program* expenses, to be based on an estimate of costs that is included in the President's budget. To the extent the estimate is above or below actual costs, the Act requires that the next year's offset level be adjusted. The offset includes only Federal benefit expenditures for Medicaid, Food Stamps, and programs of financial assistance. It does not include Federal administrative costs for those programs.

Repayment

Section 204(e)(2)(B) of the Act requires that each State repay to the United States any amounts found not to have been expended in accordance with the provisions of section 204. Expenditures not subject to SLIAG reimbursement include such things as: expenditures on behalf of individuals who do not meet the criteria for an eligible legalized alien or whose status has been terminated by the INS; administrative costs which do not meet the applicable requirements governing the State or local program; and any expenditure which is not in accordance with the provisions of section 204 of the Act, this regulation, or the State's approved application.

The allowability of SLIAG expenditures is subject to the determination of the ultimate allowability of expenditures under the program in question.

Comment (Tolerance for Error)

One commenter advocated establishing an error tolerance level, but did not indicate how or to what figure it would be applied.

A comparison was made with error tolerance rates for "entitlement" programs.

Response

We do not see the need or a legal basis for an error tolerance level. Any funds found to have been expended in a manner contrary to the Act, these and other relevant regulations, a State's approved application, or the terms and conditions of the grant award are subject to repayment to the Federal government.

Comment (Revoked Legal Resident Status)

A number of commenters sought clarification that repayment is not required for services given to an ELA if that status is later revoked.

Response

SLIAG funds may be used for allowable services provided to an ELA so long as that ELA status is in effect, but not longer than five years from the date the ELA initially was granted lawful temporary resident status. If ELA status is revoked, reimbursement is allowed for services provided before revocation, but not for those services provided after the ELA's legal status is terminated or changed to a status outside the statutory definition of "eligible legalized alien."

We recognize the difficulty of tracking ELA status and will work with States to develop satisfactory means for fulfilling this need. We assume that States will be prudent in checking ELA status. For example, if a State is seeking reimbursement on the basis of an alien's I–688A (Employment Authorization) card, it is prudent to verify that lawful temporary resident status was granted before reimbursement is claimed for services provided beyond the expiration date on the card. (In this instance, if the alien never received legal temporary resident status, no costs associated with providing benefits or services to that alien would be allowable, except for the costs of public health services if the alien had applied under section 245A of the INA.) Likewise, if an ELA is in lawful temporary resident status, a service provider would be prudent to check to see if permanent resident status was granted before seeking reimbursement for services provided after the expiration date on the I–688 (Temporary Resident Card).

Comment (Identifying ELAs)

One commenter expressed concern that providers of services covered by SLIAG must be able to tell who meets the definition of an ELA.

Response

The I–688 Temporary Resident Card identifies an individual as a lawful temporary resident under section 245A or 210 and shows the effective date of the status.

We are working with INS to ensure that the section of the INA under which an alien has adjusted status and the date of adjustment to temporary resident status are shown on the I–551 (Resident Alien Card) provided to the alien when he/she adjusts to permanent resident status.

In addition, States will be able to access INS records through the Systematic Alien Verification for Entitlement (SAVE) program. This program provides for telephonic and other means of accessing certain INS records by authorized users. States interested in using SAVE for this purpose should contact the INS District Director in their areas.

Appeals

All appeals will be handled by the Department's Grant Appeals Board and will be governed by the rules set forth at 45 CFR Part 16. We received no comments on this section.

Time Period for Obligation and Expenditure of Grant Funds

The final regulation provides that funds allotted to a State for a particular fiscal year and remaining unobligated by the State at the close of the fiscal year shall remain available to the State in subsequent years subject to two conditions. First, a State must inform the

Secretary as part of the report required under Subpart F that it is carrying funds forward for obligation in a subsequent fiscal year. Second, the Act provides that SLIAG funds may not be used after September 30, 1994. We interpret this to mean that the State must obligate SLIAG funds by this date.

The regulation provides that *States* must liquidate obligations within 12 months of the end of the fiscal year in which the obligation is made. This represents a change from the proposed rule, which required *recipients* to liquidate obligations within that time period. However, we recognize that situations may exist where this is not possible (e.g., obligated funds are the subject of litigation and may not be expended). In such a case, the State should notify the Department of the circumstances involved and request that the time period for liquidation be extended.

Comment (12 Month Liquidation Rule)

Several commenters recommended rescinding the requirement that obligations must be liquidated within 12 months of the end of the fiscal year in which the obligation is made. One commenter asked that the time period be extended if the requirement cannot be rescinded altogether. Some commenters suggested that a 12-month liquidation requirement would limit their ability to enter multi-year contracts (presumably for education).

Response

We have not adopted the suggestion to extend the time period to expend funds. We believe that one year after the close of the fiscal year *in which the funds are obligated* by the State allows sufficient time for the expenditure of funds. For public assistance and public health assistance, SLIAG funds are provided to *reimburse* State and local funds. Thus, we do not believe a 12-month liquidation requirement should pose a problem for these activities. In the event that a State cannot liquidate an obligation within the prescribed time, we have allowed for an extension upon request by the State. The elimination of the requirement, which was contained in the proposed rule, that *recipients* liquidate obligations within 12 months of the fiscal year should serve to alleviate some of the concerns raised by the commenters.

Comment (Rollover)

A number of commenters asked that States be allowed to roll over funds from year to year without reducing the next year's allocation or forfeiting funds to be reallocated to other States. One commenter asked specifically for a three-year period, at least for the first year's grant, in which to expend funds. Advocating a uniform procedure among States, another commenter suggested that the procedure be a relatively simple part of the application.

Response

As noted above, the regulation allows States to carry unobligated funds forward to subsequent fiscal years. There is no "procedure" involved in carrying funds forward for obligation in subsequent fiscal years, except for the report required by § 402.51.

The amount of SLIAG funds actually expended in a given fiscal year does *not* affect future years' allocations. Only a State's SLIAG-related costs, not its expenditure of SLIAG funds, are a factor in determining a State's allocation. (See Subpart D, State Allocations, and the preamble to that Subpart.)

Comment (Retroactive Reimbursement)

One commenter suggested that States be allowed to use funds allocated in one fiscal year to reimburse expenses incurred in a prior fiscal year.

Response

Section 204(a) of the Act appropriates SLIAG funds *"for FY 1988 and each of the three succeeding fiscal years"* (emphasis added). Section 204(b)(4) provides that "any amount paid to a State *for any of the following fiscal years* and remaining unobligated at the end of such years shall remain available to such State for the purposes for which it was made *in subsequent fiscal years . . .*" (emphasis added).

Relying on the fact that SLIAG funds are appropriated *for* a fiscal year, the regulation provides that SLIAG funds shall be used by States for costs incurred in that fiscal year, except as provided in § 402.12 of the regulation. Consequently, States may use SLIAG funds for SLIAG-related costs incurred during and subsequent to the fiscal year in which funds were made available, but not to reimburse costs incurred in a *prior fiscal year.* (The Act explicitly allows States to carry SLIAG funds over for use in succeeding fiscal years, through September 30, 1994.)

Subpart D—State Allocations

In response to the comments received on the proposed rule, we have made a number of changes to the method by which we will allocate funds. We have also made changes elsewhere in the regulation to allow us to implement the changes to the allocation method. We did not change the formula weights. In summary, we have:

(1) Adopted the alternative allocation methodology described in the preamble to the proposed rule with several modifications in response to comments received. We will allocate funds twice in FY 1988, as described in the proposed rule, once in each of FYs 1989 and 1990 and twice in FY 1991. Each time we allocate funds, we will allocate on the basis of the total amount of funds that have been made available for grants to States to date, the best data available on the number of ELAs in each State, and cumulative SLIAG-related costs based on the most recent actual and projected cost data; and

(2) Modified the application requirements to include updated cost estimates for the current fiscal year, as well as projected costs for the year for which application is being made.

(Following are descriptions of how we have addressed the specific comments received regarding the allocation and allotment of SLIAG funds.)

Basis of Awards

The regulation provides that grants will be made based on the apportionment of funds from the Office of Management and Budget and that the grant award made by us is the State's authority to draw and expend SLIAG funds.

Comment (Annual Awards)

Two commenters advocated annual, rather than quarterly, grant awards, asserting that quarterly awards create unnecessary complications in planning and contracting for services. One asked that States be given annual award estimates, if annual awards are not possible.

Response

Annual determination of allocations with quarterly award of funds is the general approach taken by the Department for its formula and block grants. With the exception of FY 1988, States will be notified of the total amount of their allocations at the beginning of the fiscal year. For FY 1988, initial allocations will be made at the beginning of the year based on one-half of the funds available for grants to States. Appendix A shows the amount of SLIAG funds which States with approved applications will receive for this initial FY 1988 allocation. Final FY 1988 allocations will be determined in the fourth quarter of FY 1988 using updated counts of eligible legalized aliens and information provided by States on SLIAG-related costs. We will notify States as soon as possible of their full-year FY 1988 allocations.

Allocation Formula

We received many comments regarding the allocation formula recommending disparate changes in the weight given to the various factors and suggesting other ways to measure cost. Most of the suggested approaches involved changing the relative weights given in the formula to ELA population and SLIAG-related costs. This is not surprising, since persuasive arguments can be made for using either ELA population or SLIAG-related costs as the primary determinant in the allocation formula. Realizing the advantages and the disadvantages of relying on either measure, we proposed a formula that gave equal weight to both. After carefully considering all the public comments on the NPRM, we continue to believe that this balance provides the most equitable approach to allocating SLIAG funds among States.

We share the concerns expressed by a number of commenters regarding the difficulty of obtaining accurate estimates of SLIAG-related costs that are comparable across States. However, we believe that changes in the application and reporting requirements, discussed elsewhere in this preamble, will improve the accuracy and comparability of SLIAG-related cost data. Also, the alternative allocation methodology we have adopted in the final rule will correct for any discrepancies between projected and actual SLIAG-related costs. A discussion of specific comments received regarding the allocation formula follows.

Comment (Factors/Weights)

We received numerous comments which addressed the factors and weights used in the formula for determining State allocations. A number of commenters expressed concern that the weight given to SLIAG-related costs in the proposed formula would result in States "being drawn into a spending competition" and would disproportionately alter the distribution of funds in favor of states with high-cost discretionary service programs.

A number of commenters suggested that the weight given to SLIAG-related costs be reduced and that the weight given to States. shares of the ELA population be correspondingly increased.

Several commenters asserted that States with decentralized delivery systems would be disadvantaged in developing accurate cost estimates relative to States that operated service programs at the State level.

One commenter argued that service costs to undocumented aliens cannot be documented and therefore should not be used as a factor in distributing funds.

One commenter supported the weighting of the ELA and SLIAG-related cost factors as proposed.

Response

We share commenters' concerns about the difficulty States will have in developing accurate and comparable measures of SLIAG-related costs. We also agree that the discretionary nature of some cost components might result in some States being unfairly disadvantaged by a formula that gives excessive weight to costs that are subject to State action. That is why we have retained ELA population as a major factor in the formula. However, we continue to believe that the primary purpose of SLIAG is to offset part of State and local government costs resulting from the Act. Congress could have based the allocation of SLIAG funds exclusively on either costs or States' ELA populations. Instead, Congress specified that both factors be considered, clearly indicating that it sought a balance. We therefore have retained the allocation formula contained in the proposed rule, giving equal weight to the numbers of ELAs and to SLIAG-related costs. (See the response to other comments for additional discussion of our reasoning in retaining the proposed allocation formula.)

We have made changes elsewhere in the regulation to help us better ensure the validity and comparability of States' cost estimates. For example, we have clarified the definition of SLIAG-related costs and have clarified the allowability of various benefits and services so as to provide a more specific basis for States' development of cost estimates. We have also required that the cost estimates provided in States' applications and the actual cost data supplied in the report required by Subpart F be accompanied by information sufficient to enable us to evaluate whether the costs are allowable and determined using reasonable methodologies.

Comment (Cost-Based Formula)

One commenter suggested an alternative method for making adjustments that would provide funding to each State based on the same relative share of costs. This formula would use only the cost factor to allocate funds. Total actual expenditures would be compared to previous allotments, and adjustments would then be made to provide a proportionate share of the difference between prior actual costs and prior allotments in the allocation. The commenter noted that the alternative methodology discussed in the proposal "appears to accomplish a similar objective" and "closely approximates the results that would be obtained using our suggested approach."

Response

We agree that ongoing adjustment of a State's allocation based on updated estimates of its SLIAG-related costs and its actual SLIAG-related costs is preferable to the adjustment method in the proposed rule and have adopted a modified version of the alternative methodology which accomplishes this objective. We have not revised the factor weights to eliminate all factors except cost, as the commenter suggests, because, had Congress desired a strict proportionate allocation based on cost, it would have prescribed that rather than providing a range of factors that must be taken into account by the Secretary. (See our response to other comments in this Subpart.)

Comment (Education Costs)

A number of commenters supported the weights proposed in the NPRM but suggested that we not include education costs as part of States' SLIAG-related costs.

Several commenters suggested that we reduce the weight given to SLIAG-related costs and increase the weight given to States' share of the ELA population to recognize education costs.

Citing the legislative history of the Act, one commenter noted that the allocation formula in SLIAG derived from the Senate version of the immigration reform legislation, which did not include education costs. (Education costs were added by the House.)

Doubting that an accurate measure of education costs can be developed, one commenter expressed concern that States would increase discretionary education spending in order to receive higher SLIAG allocations.

One commenter suggested not including education costs in calculating State allocations after FY 1988.

Response

We see no basis in the Act to exclude allowable SLIAG-related education costs from the allocation formula. However, in response to the numerous comments concerning education, we have made several changes to the section of the regulation relating to educational services. These changes better define those costs that are allowable under SLIAG and that may be counted as SLIAG-related costs.

Comment (Inclusion of General Assistance Costs)

One commenter objected to the inclusion of general assistance costs in the allocation formula. The commenter asserted that the Act prohibits aliens who receive cash payments under general assistance from obtaining citizenship. Consequently, assistance which is "denied in the general provisions of the new Immigration (sic) law should not be awarded indirectly through other promulgated regulations."

Response

We see no basis in the Act for excluding the costs of general assistance to ELAs, provided such assistance meets the requirements of the Act and these regulations. Although States may elect to exclude ELAs from assistance programs, including general assistance, if States do provide such assistance, such expenditures would normally be allowable SLIAG-related costs. Aliens are not barred by IRCA or the INA from receiving general assistance.

Comment (Weight Given to ELA/State Population Ratio)

Several commenters recommended increasing the weight given to the ratio of ELAs to States' population. (The proposed formula gives this factor a weight of 1 percent.) Several commenters recommended increasing the weight given to this factor to 10 percent. One commenter cited studies which link the concentration of undocumented aliens with costs. Two commenters recommended reconsidering the weight given to this factor after reviewing the costs data submitted pursuant to section 402.52 of the proposed rule.

Response

We agree that costs incurred by a State will increase as the number of ELAs increases. This is reflected in the allocation formula by including each State's share of the total number of eligible legalized aliens in the U.S. as well as the SLIAG-related costs.

We also acknowledge the possibility that per capita costs may be higher in States where ELAs make up a higher percentage of the State's population than in other States, although none of the studies cited by the commenters supports this conclusion. But even if this were to be the case, the allocation formula accounts for this directly by including SLIAG-related costs. If a State has higher costs per ELA (due to a high concentration of ELAs in the State or because it has higher costs generally), that State will get a higher allocation per ELA.

We see no evidence in the Act or its legislative history indicating an intent to offset a significantly higher percentage of a States' SLIAG-related costs simply because ELAs represent a higher percentage of that State's population than in other States.

Comment (ELA Data)

We received a number of comments regarding data on the number of ELAs which we will use in the allocation formula. A number of commenters objected to the use of Census-based estimates. Several commenters recommended that we use actual counts of aliens who have applied for legalization under sections 245A and 210 of the INA. Some commenters suggested using projections of applicants to account for the longer application period available to special agricultural workers.

Response

As we indicated in the preamble to the proposed rule, our intent was, and is, to use actual data from the INS legalization program in determining State allocations. The initial FY 1988 State allocations shown in Appendix A of this rule reflect aliens who have applied for legalization through January 8, 1988. We will update this information each time we calculate State allocations.

We have decided not to allocate funds based on projections of the number of aliens that will receive assistance. We prefer instead to allocate based on actual data current as of the time we make allocations. The alternative allocation methodology we have adopted will correct for any discrepancies between the data we use for allocation at any given time and the number of eligible legalized aliens that ultimately gain legal status.

Comment (Secondary Migration)

One commenter recommended that, for fiscal years 1990 and 1991, the Department adjust INS data to account for secondary migration.

Response

We agree in principle. We will explore ways in which to account for secondary migration. We note that aliens who legalize under section 245A of the INA will have to apply to INS for lawful permanent resident status. We will explore with INS whether the data from that application process, which would reflect secondary migration, will be available for use in allocating SLIAG funds.

Comment (Federal Estimates of SLIAG-Related Costs)

We received several comments on the Federal estimates of SLIAG-related costs which we proposed to use in calculating FY 1988 allocations. One commenter agreed with the use of Federal estimates and our rationale for doing so. Another commenter requested that we include more description of how the Federal estimates of SLIAG-related costs are derived. Several commenters recommended using more recent data, in some cases citing increased costs since the 1984–85 Census of Governments data were collected. None of these commenters provided suggestions as to what other data sources we should use. Several commenters objected to the use of the Census data because it includes extraneous costs unrelated to the costs of service and varies widely by State and because the Census data misses some SLIAG-related costs.

Response

The rule provides for the use of Federal estimates of relative SLIAG-related costs in computing initial FY 1988 SLIAG allocations. The following is an explanation of how these estimates are computed:

The basic data source is the 1984–85 Census of Governments ("Government Finances in 1984–85," U.S. Department of Commerce, Bureau of the Census, Publication Number GF85 No. 5, Table 22, "Expenditure of State and Local Governments by Function and States: 1984–85"). The basic methodology involves adjusting the State-level expenditure data from this source for certain expenditures that would not be relevant to or reimbursable under SLIAG and then computing per capita expenditures. These per capita expenditures are then multiplied by the number of eligible legalized aliens in the State.

For public health, we used the column titled "Health" on page 28. The major categories included in this measure—public health administration, categorical health programs, and treatment and immunization clinics—are likely to be claimed as SLIAG-related costs by States.

For public assistance, we took the "Total" column for public welfare expenditures on page 27 and made several adjustments. First, we subtracted the column entitled "Categorical Assistance Programs," which is primarily AFDC. Because virtually all eligible legalized aliens are barred from AFDC, this cost is not relevant to SLIAG. We also subtracted the Federal share of Medicaid program and administrative expenditures, using data from the HHS Health Care Financing Administration for FY 1985.

Population data for States (used for computing per capita expenditures) were taken from the *State and Metropolitan Area Data Book* for 1986. (U.S. Department of Commerce, Bureau of the Census, *State and Metropolitan Area Data Book—1986*, Table C, Column 5, page 504.) Data for the territories were taken from Census Current Population Reports. (U.S. Department of Commerce, Bureau of the Census, *Current Population Reports*, "Population Estimates and Projections," Series P–25, No. 997, November, 1986, Table 2.)

The Census of Governments did not include information on Puerto Rico and the territories. We used a variety of sources for this information, including unpublished Census data and data from national organizations.

Uncertainty regarding the level of SLIAG-related costs at this point in time prompted us to propose using Federal estimates for initial FY 1988 allocations. However, the allocation process that we have developed provides for States' submitting information in July, 1988, when much of this uncertainty will have been resolved. We will use that information for the final allocation of FY 1988 funds. In addition, the allocation methodology adopted in the final rule involves a continuous adjustment of State allocations based on more recent data (i.e., updated estimates and actual cost reports) throughout SLIAG's four-year life. This methodology will adjust for any initial over- or under-allocation of funds resulting from use of the Federal estimates of relative SLIAG-related costs.

Comment (Adjustment)

One commenter objected to the way in which we proposed to account for the difference between actual SLIAG-related costs and previous years' State allotments. The commenter believed that our proposed method was inconsistent with Congressional intent because it failed to adjust for cases where allotments in previous years exceeded costs and failed to adjust for differences between actual costs and allotments in all fiscal years.

Response

We agree that the proposed method did not adjust for differences between allotments for FY 1990 and FY 1991 and SLIAG-related costs in those years. In response to this and other comments, we have made several changes in the allocation methodology.

First, the alternative allocation methodology, which we have adopted for the final rule, makes a direct correction for any over- or under-allocation of funds by computing allocations based on cumulative funding and cumulative SLIAG-related costs.

Second, we are requiring updated cost estimates for the current fiscal year to be submitted at the time of application. While these estimates may not be "actual" cost data (States may base these estimates on partial-year actual costs), we expect that they will be more accurate than cost estimates submitted with States, applications prior to the beginning of the fiscal year. As actual costs, as reported pursuant to section 402.51, become available, they will be factored into the allocation formula.

Finally, we have provided for a reserve of 25 percent of FY 1991 funds to be allocated in the second half of that fiscal year. The purpose of this reserve is to make final adjustments to State allocations based on the actual cost data for FY 1990 provided by States pursuant to Subpart F of this regulation.

Comment (Base Level Allocation)

One commenter recommended that the initial allocation of funds provide for a minimum allocation (0.25 percent of the funds available) for each State to recognize that States will incur a fixed level of administrative and start-up costs regardless of their ELA populations. The funding for this minimum allocation would come out of the 50 percent of the funds we had proposed be allocated on the basis of each State's share of SLIAG-related costs. After the initial FY 1988 allocation, allocations would be based on the formula, with no minimum grant amount.

Response

We have not adopted the recommendation. The amount suggested equals more than $1 million, which far exceeds that estimated annual allocation for a number of States. In addition, implementing this recommendation would encourage the development of elaborate administrative structures, which we seek to avoid.

Determination of Allocations

Comment (Alternative Allocation, Additional Report, 2 Awards)

Three commenters preferred the alternative allocation methodology to the one proposed, believing the alternative method would result in more accurate allocation. One commenter expressed concern about the additional reporting burden involved with the alternative allocation methodology and suggested that we study ways to get the necessary information without additional burden. Another commenter noted that allocating funds more than once a year would be problematic for State planning.

Response

In response to these comments, we have adopted a variation of the alternative allocation methodology discussed in the preamble to the proposed rule. We agree that this approach will result in a more accurate allocation of funds.

We will allocate funds only once a year in fiscal years 1989 and 1990. (We have concluded that allocating funds twice in FY 1988, as we proposed, is warranted by the uncertainty surrounding both the distribution of ELAs by State and the SLIAG-related costs States will incur. We believe that holding back 25 percent of FY 1991 funding for allocation after we receive States' actual cost reports for FY 1990—due December 31, 1990—will ensure a more equitable allocation of SLIAG funds.) By reducing the number of times we allocate funds from what was described for the alternative allocation methodology in the preamble to the proposed rule, we will mitigate the problems associated with allocating more than once in a fiscal year.

While we have not been able to eliminate additional reporting burden, the methodology we have adopted should minimize that additional burden. The allocation methodology we have adopted will not require the submission of additional reports. (The proposed rule provided for the submission of additional reports on a voluntary basis.) Although we are requiring the submission of additional information as part of States' applications, we expect that States will have developed the necessary updated cost data on the current fiscal year in order to prepare cost estimates for the year for which they are making application.

Providing that information to us as part of their applications should impose little additional burden on States, but should significantly improve the accuracy and equity of SLIAG allocations. For final allocations in FY 1991 (using the reserved 25 percent), we will rely on final FY 1990 cost reports.

In the preamble to the proposed rule, we also noted that the version of the alternative allocation methodology described therein would require more Federal administrative effort and oversight than was warranted. Many of the comments to the proposed rule

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reflected concern that the allocation of funds be fair and based upon reasonable and comparable data on SLIAG-related costs. We have concluded that the additional expenditure of Federal effort to provide for evaluation of more detailed reporting of SLIAG-related costs (see Subpart E) is necessary to achieve an equitable allocation of funds and is therefore warranted.

Comment (Obligation vs Expenditure)

One commenter requested clarification regarding how obligated funds will be treated for purposes of making the adjustment for the difference between actual costs and allotments.

Response

Although we have adopted the alternative allocation methodology, which obviates the need for a separate adjustment for the difference between actual costs and allotments, this question is still relevant. We have clarified the definition of SLIAG-related costs in § 402.2 of the final rule. SLIAG-related costs are incurred when funds—SLIAG or State/local—are *expended.*

Determination of State Allotments

A State's allotment generally is the difference between the amount determined by the allocation formula in § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State. For example, if the amount of a State's allocation determined by the formula is $700,000 and the cumulative amount previously allotted to the State is $500,000, then the amount of the State's allotment for the current period is the difference, $200,000.

In the event that a State's allocation determined under the cited paragraphs is less that the amount previously allotted to the State, (e.g., the allocation is $700,000 and the cumulative amount previously allotted is $800,000), that State's allotment for the current period will be zero. (In this case, the State would have received more funds than indicated by the allocation formula. It would receive no additional funds until its allocation in a later fiscal year exceeded the amount previously allotted to the State.) In such an event, the total amount of the remaining States' allotments, calculated according to the previous paragraph, would exceed the funds available for grants to States. Consequently, the allotments of the remaining States would be calculated by multiplying the amount the State otherwise would have received (the difference between the amount determined by the allocation formula in § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State) by the ratio of the funds available for grants to States to the sum of the differences between the amounts determined under paragraphs 402.31(b) (2) through (6) and the amounts previously awarded to those States.

Comment (FY 1988)

One commenter expressed confusion regarding the explanation of how final FY 1988 allotments would be computed.

Response

We have rewritten the section of the regulation that describes how allotments will be determined. We believe the revised language is clear.

Allotment of Excess Funds

The regulation provides for the allotment of excess funds. Excess funds would be available if a State failed to qualify for an allotment in a fiscal year or indicated in its application that it did not intend to use its allotment in the year for which application was made or in the succeeding fiscal year.

Comment (Reallotment)

One commenter requested clarification that the allotment of excess funds applies only to those amounts explicitly identified in the State's application as funds which the State does not intend to use in the current or subsequent fiscal year.

One commenter suggested that excess funds should be applied to cover costs from prior fiscal years which were not reimbursed.

One commenter requested clarification on the process for allotting excess funds. Specific questions included: How would States know of excess funds; how would a State apply for excess funds; what information should be included in the State's application; and, how would receipt of funds affect the State's allocation request in the subsequent fiscal year?

Response

We would make funds available for reallotment under § 402.33 only if a State's application explicitly indicated that it did not intend to use its allotment in the year for which application was being made or the succeeding fiscal year, or if a State failed to qualify for an allotment. The allocation of excess funds is essentially automatic and would occur at the beginning of a fiscal year. No additional application is necessary in order for a State to receive funds made available under this section. Receipt of funds made available under § 402.33 will not affect a State's subsequent year's allocation. The amount of SLIAG funds which a State receives, obligates, or expends in a fiscal year, including funds received by operation of § 402.33, does not affect its allocation for subsequent fiscal years. The allocation of funds is based solely on the number of ELAs and SLIAG-related costs.

Subpart E—State Applications

General

The Act requires that a State submit an annual application, which must be approved by the Secretary, in order for the State to be allotted SLIAG funds. A State's application consists of the information required by the Act and this regulation.

If a State fails to qualify for an allotment in a fiscal year, no SLIAG-related costs for that fiscal year will be counted in determining its allocation in subsequent fiscal years for which it makes application.

Application Content

The final rule provides that State applications must contain the following information:

Statement of Assurances

Section 204(d) of the Act requires that States submit, as part of their applications for SLIAG funds, a certification to three assurances. A State must certify that: (1) Funds allotted to the State under SLIAG will only be used to carry out the purposes described in section 204(c)(1) of the Act; (2) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies taking into account the number of eligible legalized aliens and the costs which the State and each locality (which we interpret to mean local government) are likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens; and (3) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of subsections (e) and (f) of section 204 of the Act, relating to reports and audits, and to limitations on payments, respectively.

In addition to the three statutory assurances, we proposed to add an additional assurance, namely, that the State will comply with the anti-discrimination provisions set forth in section 204(h) of the Act. We received no comments on this proposal and have incorporated this requirement into the final rule.

Certification by the Chief Executive Officer

Because the assurances required by the Act will normally involve a number of State agencies and jurisdictions, we require that the certification required by the Act must be made by a State's chief executive officer or an individual authorized to do so by the chief executive officer. Such authorization must specifically include power to make all the required assurances; a delegation of authority simply to administer the program is not sufficient to enable the designee to certify to the assurances. In this regard, we have followed the procedures adopted for the HHS-administered block grant programs.

Estimated Number of Eligible Legalized Aliens

As required by section 204(d)(2)(A) of the Act, States must submit, as part of their annual applications for SLIAG funds, "the number of eligible legalized aliens residing in the State." Recognizing that such data is not readily available to States, we have provided in § 402.41(b) that States may adopt the estimate provided by the Department of the number of eligible legalized aliens in the State. The Department will make such estimates available to States periodically. They will be based on data from the Immigration and Naturalization Service.

While we have left open the option for a State to develop and submit its own estimates of the number of eligible legalized aliens, along with supporting documentation, we expect that most States will elect to use the estimates we provide. We suggest that any questions concerning the data developed by the INS be directed to them and that States work with us and the INS to correct any problems States may see with these estimates.

SLIAG-Related Costs

Closely tracking section 204(d)(2)(B) of the Act, § 402.41(c) requires that States' applications contain detailed information on the SLIAG-related costs which State and local governments are likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens and in administering SLIAG in the fiscal year for which application is being made. These estimates may include only costs that meet the definition of SLIAG-related costs contained in § 402.2 of this regulation.

Section 402.41(c) now also requires States to include in their applications updated estimates of SLIAG-related costs for the fiscal year in which the application is submitted, as well as estimates of the SLIAG-related costs the State is likely to incur in the fiscal year for which application is being made. For example, States' applications for FY 1990 (due by July 15, 1989) would include estimates of both FY 1990 SLIAG-related costs and updated estimates of FY 1989 SLIAG-related costs. We have adopted this change in order to implement the alternative allocation methodology discussed under Subpart D, with a minimum of additional reporting burden on States. Based on consultations with State and local government officials, we understand that most States will be collecting this type of information for their own use in preparing their applications. Reporting such information to us should involve minimal burden and will significantly enhance our ability to fairly and accurately allocate funds.

Applications must contain estimates of SLIAG-related costs for each program or activity in which such costs have been or will be incurred. These costs must be identified as public assistance, public health assistance, educational services, or SLIAG administrative costs. (Program-specific administrative costs should be included under the appropriate program or activity.) We are not requiring any specific breakdown by agency or local government. States' estimates of SLIAG-related costs for FY 1988 should include SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this regulation.

The regulation specifies that the estimates must be supported by descriptions of the programs and activities for which costs have been or will be incurred in sufficient level of detail to permit us to evaluate whether the costs are consistent with statutory and regulatory provisions. The estimates of SLIAG-related costs for each program or activity must also be supported by descriptions of the methodologies and assumptions employed to derive the cost estimates, e.g., number of eligible legalized aliens, participation rates, and unit costs or other measure of costs (along with a description of the method used to derive cost factors).

We encourage the State's chief executive officer or other appropriate State officials to consult with appropriate local public officials or their representatives concerning the data which the Act requires the State to submit as part of its application, namely the estimated number of eligible legalized aliens and estimated SLIAG-related costs incurred by State and local governments. The Act provides that the method of allocating funds among State and local agencies must be "fair" in accordance with these data and other factors. Although we are not requiring such consultation as a condition of our approval of a State's application, we believe local government input into the development of these data is essential.

Criteria for and Administrative Methods of Disbursing Funds

Section 204 of the Act requires that applications for SLIAG funds contain criteria for and administrative methods of disbursing funds.

Single Point of Contact

For administrative efficiency, we have required that a State designate a single point of contact (SPOC) between the State and Federal government. This SPOC may, but need not be, the administering agency. The SPOC is responsible for securing and submitting information required by the Act (e.g., the application including any necessary amendments, and the State's annual report).

The proposed regulation also provided that the State include in its application information on the SPOC and grantee agency, if different from the SPOC. We have noted in the final rule that this information need be included only if the information had not previously been given to the Department or if the information has changed.

We received several comments which addressed the proposed application content. We have described below the various comments and our responses to them.

Comment (Amend Number of ELAs)

One commenter recommended that we allow States to amend their applications to change the number of eligible legalized aliens, if warranted.

Response

The issue concerns whether a State may revise its estimate of eligible legalized aliens population after the application process has been completed. Nothing in the regulation precludes States from amending their SLIAG applications, including revising the estimated number of eligible legalized aliens in the State. However, for the purposes of the allocation formula, described in Subpart D, the Secretary will use INS data on the number of eligible legalized aliens in each State and will not update this information during a fiscal year (except for FY 1988 and FY 1991, as provided for in Subpart D).

We note that a State's estimate of eligible legalized aliens made at the beginning of a fiscal year does not establish a ceiling on the number of individuals that may receive assistance in a fiscal year.

Comment (Other Grantees)

One commenter suggested that, in the event a State does not apply or fails to qualify for funding, individual associations and nonprofit organizations be given the opportunity to apply.

Response

The Act is explicit. States are the recipients of State Legalization Impact Assistance Grants. Unlike some other HHS program statutes, the Act makes no provision for a "bypass" to other potential grantees in the event that a State fails to qualify for an allotment.

Comment (Required Consultation)

Several commenters suggested that the Department, by regulation, require States to consult with or give defined roles to various entities, including units of local government, the State legislature, and appropriate non-profit service providers, in the development of the State application for funding.

Response

Section 204(d) of the Act sets forth the State's obligations in applying for SLIAG funds. We believe that State consultation with local government officials in the development of data for the State application is essential. However, we believe that the extent of such consultation should be left to the discretion of the State and is not a matter appropriate to Federal regulation.

The Act, unlike some other HHS program statutes, does not explicitly define a role for the State legislature or other entities in the development of State applications. We decline to regulate normal governmental processes within the State.

Comment (SAW Data)

One commenter suggested that we require States to provide data in their applications and reports which break down the number of SAWs, and the types and cost of services provided to SAWs.

Response

The Act requires only that States submit information on eligible legalized aliens in their applications. Imposition of such a requirement would require State and local governments to track separately the various categories of eligible legalized aliens, adding to administrative burden and expense. Therefore, we have not imposed any additional Federal reporting requirements on States with respect to SAWs. We also note that the Act requires that, in order to be reimbursable under SLIAG, programs of public assistance and public health assistance be generally available to the citizens of a State. Thus, these services would have to be available to SAWs as well as to aliens who adjust under section 245A.

Comment (Local Costs)

Several commenters noted that, in response to section 204(d)(2)(b), applications should include information on costs each locality is likely to incur.

Response

We do not believe that the Act clearly requires that States show separately the costs each unit of government is likely to incur; nor is this information necessary for Federal administration of SLIAG. Therefore, we have declined to adopt this comment. However, the fact that we are not requiring cost data to be broken down by units of local government does not preclude a State from including such information in its application.

Comment (Certifying Agent)

One commenter recommended that we allow each State to determine its own certifying agent and process, as long as the State meets the requirements of the Act.

Response

While the Act does not specify who the certifying agency should be, it does require certification to assurances by the States in order to receive SLIAG funds. For the reasons noted in the introduction to this section, we believe it is appropriate to require that a State's chief executive officer or his/her designee certify to the assurances.

Comment (Local Right of Appeal)

One commenter suggested that we give municipalities the right to appeal the State's funding, if they can demonstrate that the allocation process within the State is unfair.

Response

There is nothing in the Act or regulations which prohibits a city or any unit of local government from addressing the allocation process within a State. Any such process would be an internal State administrative or judicial matter. Therefore, we have declined to regulate in this area.

Comment (Administrative Costs)

One commenter suggested that we specify whether program-specific administrative costs should be disaggregated from other administrative costs in the application.

Response

We have revised the final rule by requiring States to provide estimates of SLIAG administrative costs in their applications. Program-specific administrative costs should be included under the relevant category, i.e., public assistance, public health assistance, or educational services.

Application Format

Desiring to provide States with flexibility, the Secretary is not prescribing any particular format for the application. Each State should insure that its submission satisfies the requirements of the Act and this regulation.

Comment (Model Application)

Two commenters recommended that we send States a "model" application.

Response

Desiring to provide States with flexibility, we have not prescribed the format for SLIAG applications. However, we will work with interested States to develop a model State application. Use of this model application would be voluntary.

Application Deadline

Section 204(d) of the Act requires the Secretary to allot SLIAG funds to States with approved applications. A State's allotment is affected by the number of States with approved applications and by SLIAG-related costs. Consequently, prior to determining allocations, we need to know (1) the number of States with approved applications and (2) the SLIAG-related costs associated with those States applying for funds.

In response to public comments, we have changed the due date for FY 1988 applications from December 31, 1987, as originally proposed, to May 16, 1988. This change is appropriate because this regulation was not available to States prior to the beginning of FY 1988. In addition, as noted by several commenters, the Department does not need to know the actual number of States applying for assistance and their SLIAG-related costs until late in FY 1988. We have adjusted the due date accordingly to allow States additional time to prepare and submit applications.

Additionally, we have revised the application deadlines for FY 1989 through FY 1991. We believe that these deadlines allow States a reasonable amount of time to develop applications for funds and provide a reasonable amount of time for the Secretary to review applications and allocate funds at the beginning of the fiscal year to those States with approved applications. (This change was prompted in large part by comments concerning the time allowed a State to revise its application after HHS's disapproval, as discussed below.)

The final rule provides the following application deadlines.

Fiscal year	Deadline
FY 1988	May 16, 1988.
FY 1989	July 15, 1988.
FY 1990	July 15, 1989.
FY 1991	July 15, 1990.

If a State fails to submit an application by the application deadlines established in this regulation, it will not receive an allotment for that fiscal year.

It is the State's responsibility to ensure that its application is approvable by July 1, 1988 (for FY 1988) in order for the Department to issue final FY 1988 grant awards and by October 1 for subsequent fiscal years in order for the department to issue fiscal year grant awards. A State which submits its application on July 15 should assume it will have no more than 30 to 45 days to revise a deficient application. If a State anticipates that it would need more time, it should submit its application earlier.

Public comments received concerning the application deadline are discussed below.

Comment (Time Frame for Approval)

Several commenters expressed concern about the time frames and process involving approval and disapproval of applications. One commenter suggested that the Department send notices to States regarding approaching deadlines for State applications.

Response

Most of the concern revolves around the short time between the publication of the final regulations for SLIAG and the proposed application deadline for FY 1988 of December 31, 1987. In response to this concern, we have revised the final rule providing an application deadline of May 16, 1988 for FY 1988 SLIAG applications.

We have also revised the application deadlines for FY 1989 through FY 1991 as indicated above to allow States a reasonable amount of time to develop applications, to provide an opportunity for the Department to review them prior to the beginning of the fiscal year, and to provide significant time subsequent to Federal review for States to submit any information necessary in order to have their applications approved.

We do not think it is necessary to send State agencies notice of approaching deadlines, as suggested by one commenter.

Generally, States should allow 30 days for the Department's review of their application, depending on the complexity of the State's activities and the amount of information provided within the application.

Basis for Approval

The Department will review each State's application to ensure that it contains all of the required assurances and information and is consistent with the Act and this Part. We will evaluate the programs and activities included in the State's application to determine if costs associated with them would be allowable under the Act and this Part. We will also assess the reasonableness of the cost estimates provided in the State's application according to the criteria enumerated in this Part. The Department's approval of State applications will be predicated on that review.

Our evaluation of the reasonableness of States' SLIAG-related cost estimates will be based on the following criteria:

—Are the activities for which estimates are included in the application allowable under the Act and this Part?

—Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?

—To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this Part or other methodologies likely to result in valid measures of SLIAG-related costs?

—Do current estimates appear to be consistent with past estimates, known actual costs pursuant to paragraph 402.41(c)(2), and current INS eligible legalized alien population data?

—Are revised estimates a result (all or in part) of changes in program activities?

We will work with States to correct any deficiencies or problems that we find with the programs or activities for which they claim SLIAG-related costs or with the methodology or assumptions used to provide data on SLIAG-related costs. If we are unable to resolve our concerns and conclude that the magnitude of the problem is sufficient that, if uncorrected, we would be unable to provide for an equitable allocation of funds based on the information provided in the State's application, we will deny that State's application.

Subsequent to its review, the Department will notify the State that the State's application is either approved or disapproved, together with the reasons for disapproval.

Approval of a State's FY 1988 application prior to the State's obligation of its own funds for allowable costs, to be subsequently reimbursed or paid for under SLIAG, is not mandated. A State may use SLIAG funds to reimburse itself for expenditures made in FY 1988 prior to approval of its application as long as such obligations are consistent with the State's subsequently approved application, the Act, this regulation, and the terms and conditions of the grant. (Applications for FY 1989 through FY 1991 must be approved prior to the beginning of the fiscal year. Therefore, the issue of reimbursement for costs incurred prior to our approval of a State's application is not relevant for those years.)

Public Availability

The Act contains no public participation or public hearing requirement related to public availability of a State's application or the manner in which it intends to expend SLIAG funds. We have not included such a requirement by regulation. However, believing public disclosure is appropriate, we encourage States to make their applications for SLIAG funds available for public inspection.

Comment (Public Participation)

One commenter suggested that public participation in the formulation of State plans should be mandatory.

Response

Since the Act does not specifically require public participation in the formulating of State plans, we have declined to make such a requirement by regulation. As noted, however, we do consider the availability of public inspection and comment on State applications to be both appropriate and important.

Amendments to Applications

As a result of other changes made in the application content and allocation procedures, we have added a paragraph (402.45) providing for amendments to applications. A State must amend its application when the State adds an activity or programs for which it intends to make payment or claim reimbursement in that fiscal year.

Subpart F—Recordkeeping and Reporting

Recordkeeping

The regulation provides that States must maintain records that are necessary to demonstrate that their expenditures of SLIAG funds meet the requirements of the Act and applicable Departmental regulations, to permit the State to prepare the annual report on its activities required by the Act and this Part, and to permit the State to comply with fund accounting requirements by tracking funds to allowable expenditures.

Comment

Comments received on recordkeeping focused on identifying eligible legalized aliens for purposes of documenting the allowability of expenditures. One commenter noted that if States were required to identify and track eligible legalized aliens who use the public health system, it would be a deterrent and might be discriminatory.

Response

States are responsible for ensuring that SLIAG funds are expended only for allowable purposes. Subpart C of the regulation establishes procedures to ensure that SLIAG funds are expended consistent with the requirements of the Act and this regulation.

In addition, each recipient must establish the allowability of costs. This will most likely require some accounting of eligible legalized aliens receiving benefits or services. Because SLIAG funds are appropriated for a specific purpose, we believe a connection between eligible legalized aliens and the use of SLIAG funds is unavoidable.

We share the commenter's concern that if the regulation requires States to identify and track eligible legalized aliens who use the public health system, then it may become a deterrent. Consequently, the final rule, as well as the proposed rule, contains a method for establishing SLIAG-related costs associated with public health which does not require identification of eligible legalized aliens. The use of this method is optional. (See Subpart C.)

Comment (Track Fiscal Years Separately)

Two commenters objected to the requirement that each year's appropriation be tracked separately.

Response

It is the State's responsibility to maintain adequate fiscal records to support the costs claimed under SLIAG. Since SLIAG funds may not be used for costs incurred in a prior fiscal year, we believe each State must track each year's appropriation separately to demonstrate that SLIAG funds were used for costs incurred in that fiscal year. The separate tracking of grant funds by fiscal year is standard in most HHS programs. We see no basis for an exception for SLIAG.

Reporting

Section 204(e)(1)(A) of the Act requires States to submit to the Secretary annual reports containing such information as will allow the Secretary: (1) To secure an accurate description of activities funded under SLIAG; (2) to secure a complete record of the purposes for which SLIAG funds were spent, including the recipients of such funds; and, (3) to determine the extent to which funds were expended consistent with the Act and this Part. In addition, section 204(e)(1)(B) of the Act requires the Secretary to report annually to Congress on activities funded under SLIAG and to provide copies of his report to the States.

The final regulation requires States to submit annual fiscal reports to the Department. These reports must report the status of SLIAG funds, including: (1) Identification of the amount obligated and the amount expended by the grantee agency; (2) the amount remaining unobligated which the State intends to carry forward to the succeeding fiscal year; and, (3) any amount unobligated which the State does not desire to carry forward States' fiscal reports must be submitted on SF–269.

We have deleted the requirement that States' fiscal reports contain status of funds (expenditure) information for recipients other than the administering agency. We concluded that this information was unnecessary for Federal administration of the program and its reporting would have been unduly burdensome for States.

We have eliminated the proposed requirement for a separate program report. We have amended the requirement for States' reporting of actual SLIAG-related costs under § 402.51(e) to include amounts of SLIAG grant funds obligated in each program or activity in which SLIAG-related costs were incurred. This approach provides us with the minimum information necessary to provide program oversight and to fulfill our requirement to report to Congress on the use of SLIAG funds and reduces considerably the amount of information that States are required to report to us.

We have amended the proposed rule to require that State reports on actual SLIAG-related costs pursuant to § 402.51(e) must contain the same information and level of detail as State applications.

We have added the requirement that the report must contain a description of the methodology used to determine actual costs, if the methodology is different from the description provided in the State,s application. We have also added a requirement that this report contain information on the State and Federal costs of providing assistance under Medicaid to eligible legalized aliens who adjusted status under section 245A or 210A (but not section 210), as explained below.

These reports must be submitted within 90 days from the end of the Federal fiscal year.

If a State fails to submit a final report or if the State,s final report does not contain data on actual SLIAG-related costs, we will not count any costs for that year in the calculation of future years' allocations.

Comments received on our proposed rules concerning reporting are addressed below:

Comment (Level of Detail for Required Information)

We are required by law to consult with the General Accounting Office, as well as States, on reporting requirements for SLIAG. The General Accounting Office recommended that we require States to report considerably more information than is included in the final rule.

Response

We believe that the information sought by the General Accounting Office can be obtained in other ways, including a survey which the INS has commissioned, voluntary reports from States with large numbers of ELAs, and program reviews.

Comment (Involvement of Non-Profit Agencies)

One commenter requested that State annual reports identify efforts made by the State to involve non-profit agencies in the provision of services under SLIAG.

Response

This information is not necessary either for Federal administration of SLIAG or for the report which the Secretary is required to submit to Congress. Therefore, we have not incorporated this suggestion into the final regulation.

Comment (Reporting on SAWs)

A few commenters urged that State reporting and voluntary cost estimates include the number of SAWs, and the types and services provided to them.

Response

We recognize that subgroups of eligible legalized aliens may place different demands on State and local government programs. However, information on these subgroups is neither required by the Act nor necessary for Federal administration. Therefore, we are not requiring by regulation the reporting of this information or information on other subgroups of the eligible legalized alien population (e.g., nationalities or ethnic groups).

Comment (90 days)

Several commenters suggested that the requirement that the annual report be submitted within 90 days after the close of the fiscal year is too stringent.

Response

We proposed a due date of 90 days after the end of the fiscal year because that is the standard requirement under 45 CFR Part 74, Administration of Grants, which governs SLIAG. However, in response to public comments, we have modified the final rule. As noted above, we have deleted from the State financial status report and report on activities information on recipients' status of funds. The requirement in the final regulation now corresponds to the fiscal information normally required of State grantees. Consequently, we see no need to extend the due date of this report beyond 90 days after the end of the fiscal year.

Comment (Data for Federal Offset)

Two commenters recommended requiring States to report information necessary to determine the Federal offset. One commenter suggested recomputing the Federal offset on a quarterly basis.

Response

We have changed the final rule to require States' actual SLIAG-related cost reports to show Federal and State/local costs associated with providing Medicaid assistance to aliens who have adjusted status under section 245A or 210A. We are not requiring the separate reporting of such data for aliens who have adjusted under section 210 (special agricultural workers). Costs associated with this latter group are not part of the offset.

We concluded that this is the most efficient method to obtain information on what we expect will be the largest single component of the Federal offset to SLIAG. We do not expect that this requirement will impose a significant burden on States. Based on consultations with State officials and public comment on the proposed rule, we believe that most States will be tracking Medicaid costs associated with eligible legalized aliens in order to claim SLIAG reimbursement for the State/local share of those costs.

We have concluded that requiring similar data on other programs included in the offset would be impractical. Most programs of financial assistance (as defined in section 245A(h)(1) of the Act and Department of Justice regulations) will involve very small amounts that could be included in the Federal offset. Further, these programs are funded primarily with Federal monies. Therefore, we do not expect that States will be tracking costs associated with eligible legalized aliens in these programs.

Recomputing the offset on a quarterly basis would involve more frequent reporting by States. We concluded that this would be unduly burdensome and have not adopted this suggestion.

Comment (Caseload Data)

One commenter recommended that the annual report include caseload data for public assistance and enrollment data for educational services, as well as information on the amount of funding each unit of government received, by program type.

Response

If a State chooses to include caseload and enrollment data in its annual report, we will incorporate such information in our report to Congress. However, because this information is not necessary for Federal program administration, in an effort to keep recordkeeping and reporting requirements to a minimum, we have not required submission of this information.

Comment (Data for Each Unit of Government)

Two commenters suggest that the annual report contain, in addition to the amount of actual SLIAG-related costs incurred for each unit of government, information on the amount of funding each unit of government received.

Response

The final regulation requires States to show the amount of SLIAG funds obligated to each program or activity in which SLIAG-related costs were incurred in the fiscal year. This corresponds to the level of detail required in States' applications. A further breakdown by units of government is not necessary for Federal administration or reporting purposes. We are therefore not requiring this information to be reported to us.

Comment (Information on Unobligated Balances)

One commenter requested clarification concerning the Department's use of information on amounts remaining unobligated at the end of the fiscal year, and recommended that States should not be penalized for exercising their option to carry over funds within the allowable expenditure time periods.

Response

There is no intent to penalize States for exercising their option to carry over funds. The Act provides that funds allotted by us to a State are available for use (which we interpret to mean obligation) by a State until September 30, 1994. Only those amounts remaining unobligated at the end of the fiscal year which the State specifically indicates in its fiscal report that it does not desire to carry over to the succeeding fiscal year will be deobligated.

Comment (Uniform Format)

One commenter suggested that there should be a uniform format for the reporting of costs.

Response

We require the use of SF–269 for reporting of status of funds information at the State level. This form is required in most HHS grant programs.

We will work with States to develop a model reporting format to promote the efficient and consistent reporting of data. Use of this model format would be optional.

We are also interested in working with States to develop compatible formats for the end-of-year reports and the cost data in State applications. We wish to avoid the need for States to resubmit information previously submitted to us. For example, if the State's application contained a description of activities, those descriptions need not be repeated in its end-of-year report. We recommend that States adopt a cross-referencing system to avoid the submission of duplicative information.

Comment (Provider Information)

One commenter expressed the belief that States should be able to provide a short narrative description of program service components, including an

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estimate of the number of providers of specific services, to satisfy the report needs.

Response

We have deleted the requirement that States report to us the providers of services. Instead, States must report on programs and activities, as is required in State applications, which provide for a short narrative description.

As noted above, we intend to work with States to develop a voluntary model reporting format to further clarify the type of information to be reported.

FY 1988 Voluntary SLIAG-Related Cost Estimate Submissions

We have deleted the voluntary SLIAG-related cost report from the regulation. Such information is now required as part of States' applications under Subpart E.

Comment (Make Voluntary Report Mandatory)

One commenter recommended making the voluntary cost report mandatory, noting that only States who received too little funds would have an incentive to submit this report. States that had received a higher allocation than they should have would have no incentive to submit the report. Two other commenters recommended incorporating the "common sense data standards" included in the preamble to the proposed rule into the regulation. Still another notes that the cost reports required under the proposed rule do not provide sufficient detail to permit Federal evaluation of whether the costs are consistent with statutory and regulatory provisions. This commenter advocated requiring for each fiscal year the same level of detail as would have been contained in the voluntary cost estimates.

Response

As noted above, the final rule requires that States provide updated cost estimates for the current fiscal year as part of their applications. This accomplishes what the commenters suggested. In addition, it provides the data necessary to ensure accurate and equitable allocations of SLIAG funds.

Executive Order

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules, defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that the regulation implementing this grant program does not constitute a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

We have determined that executive order 12372 does not apply. Similarly, form 424 does not apply to these regulations.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on States, which are not "small entities" within the meaning of the Act. Actual delivery of services will be performed primarily by State and local government agencies. Because this regulation provides States with great authority to prescribe management, organization, funding, and eligibility practices for service delivery, they do not directly impact small entities, either favorably or adversely. Instead, their impacts will depend on future State decisions.

We are not required to perform a regulatory impact analysis where the effect of the proposed regulation is speculative, and will be caused by decisions made independently of the Federal government. Therefore, the Secretary hereby certifies that a regulatory flexibility analysis is not required.

Effective Date

Because this regulation is necessary for States to apply for funds for Fiscal Year 1988 and to implement the SLIAG program, we are not using the customary 30-day effective date, but are making these rules effective upon publication.

Paperwork Reduction Act

Sections 402.41, 402.45, 402.50 and 402.51 of this final rule contain information collection requirements. The application requirement contained in this final rule is effective upon publication of the final rule, and has been approved under OMB No. 0970-0079. As required by the Paperwork Reduction Act of 1980, the Department will submit other information collection requirements to the Office of Management and Budget for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Executive Office of the President, New Executive Office Building (Room 3002), Washington, DC 20503, ATTN: Desk Office for Family Support Administration. After OMB approval is obtained, we will publish the OMB Control number in the **Federal Register**.

List of Subjects

45 CFR Part 16

Administrative practice and procedure, Grant programs—health, Grant programs—social programs.

45 CFR Part 402

Administrative Cost, Allocation Formula, Aliens, Allotment, Education, Grant Programs, Immigration, Immigration Reform and Control Act, Public Assistance, Public Health Assistance, Reporting and Recordkeeping Requirements, State Legalization Impact Assistance Grants.

Dated: January 28, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: February 4, 1988.

Otis R. Bowen,

Secretary.

Title 45 of the CFR, Subtitle A and Chapter IV, are amended as follows:

1. Part 402 is added to 45 CFR Chapter IV to read:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

Subpart A—Introduction

402.1 General.
402.2 Definitions.

Subpart B—Use of Funds

402.10 Allowable use of funds.
402.11 Limitations on Use of SLIAG funds.
402.12 Use of SLIAG Funds for costs incurred prior to October 1, 1987.

Subpart C—Administration of Grants

402.20 General provisions.
402.21 Fiscal control.
402.22 SLIAG and program administrative costs.
402.23 Repayment.
402.24 Withholding.
402.25 Appeals.
402.26 Time period for obligation and expenditure of grant funds.

Subpart D—State Allocations

402.30 Basis of awards.
402.31 Determination of allocations.
402.32 Determination of state allotments.

402.33 Allotment of excess funds.

Subpart E—State Applications

402.40 General.
402.41 Application content.
402.42 Application format.
402.43 Application deadline.
402.44 Basis for approval.
402.45 Amendments to applications.

Subpart F—Recordkeeping and Reporting

402.50 Recordkeeping.
402.51 Reporting.

Authority: Sec. 204, Pub. L. 99-603.

Subpart A—Introduction

§ 402.1 General.

These regulations implement section 204 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), which establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. Funds appropriated by this section may be applied by States with approved applications to certain State and local government costs incurred in providing public assistance and public health assistance to eligible legalized aliens and for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens.

§ 402.2 Definitions.

As used in this Part—

"The Act" means the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

"Allocation" means an amount designated for a State for a fiscal year, as determined under § 402.31.

"Allotment" means the total amount awarded to a State for a fiscal year, as determined under § 402.32 or, if applicable, § 402.33.

"Department" means the U.S. Department of Health and Human Services.

"Educational Services" means:

(1) For eligible legalized aliens regardless of age enrolled in elementary or secondary school, services allowable under section 607 of the Emergency Immigrant Education Act, 20 U.S.C. 4101, et seq. (Pub. L. 98-511), as in effect on November 6, 1986.

(2) For adult eligible legalized aliens:

(i) Services authorized under the Adult Education Act, 20 U.S.C. 1201 et seq. (Pub. L. 89-750, as amended), as in effect November 6, 1986, and

(ii) English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills required by section 245A(b)(1)(D)(i) of the INA.

"Eligible legalized alien" means an alien whose status has been adjusted to lawful temporary resident under section 245A, 210, or 210A of the Immigration and Nationality Act, beginning on the effective date of such adjustment as established by the Immigration and Naturalization Service, and continuing until the end of the five-year period beginning on the effective date of such adjustment, provided that during that time the alien remains in lawful temporary or permanent resident status granted under the Act.

"INA" means the Immigration and Nationality Act, 8 U.S.C. 1101, et seq.

"*Local educational agency*" means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

"Local government" has the same meaning as in 45 CFR Part 74.

"*Nonpublic,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"*Public,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"Public assistance" means cash, medical, or other assistance provided to meet the basic subsistence needs or health needs of individuals

(1) That is generally available to needy individuals residing in a State and

(2) That is provided with funds from units of State or local government. As used in this definition, basic subsistence needs are minimal living requirements, including food, shelter and clothing. For purposes of this definition, assistance is considered to have been provided to needy individuals if specified income or resource requirements are used to determine eligibility or the amount of a fee or other charges to be paid for services. "Other assistance" means assistance and services, other than cash or medical assistance, that are directed at meeting basic subsistence needs, and that meet all of the criteria in this definition. "Other assistance" also means assistance and services in which participation is required as a condition of receipt of cash or medical assistance.

"Public health assistance" means health services (1) that are generally available to needy individuals residing in a State; (2) that receive funding from units of State or local government; and, (3) that are provided for the primary purpose of protecting the health of the general public, including, but not limited to, immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

"Recipient" has the same meaning as in 45 CFR Part 74.

"Secretary" means the Secretary of the Department of Health and Human Services.

"SLIAG-related costs" means expenditures made to provide public assistance, public health assistance, or educational services, as defined in this Part, to eligible legalized aliens, as defined in this Part, regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this Part. SLIAG-related costs for education are limited to the amount of payment that can be made under the Act for educational services, as described in § 402.11(e). SLIAG-related costs exclude: (1) expenditures by a State or local government for costs which are reimbursed or paid for by Federal programs other than SLIAG; and (2) program income (as defined in 45 CFR 74.42) received from or on behalf of eligible legalized aliens receiving services or benefits for which payment or reimbursement may be made under this Part.

"State" means the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

"*State educational agency*" means—

(1) The State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law; or

(2) The State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency or officer designated for the purpose of the Act by the Governor.

Subpart B—Use of Funds

§ 402.10 Allowable use of funds.

(a) Funds provided under this Part for a fiscal year may be used only with respect to allowable SLIAG-related costs incurred in that fiscal year or succeeding fiscal years in providing assistance with services to eligible legalized aliens subject to § 402.26(a). States may use funds for:

(1) Public assistance, public health assistance, and educational services provided to eligible legalized aliens;

(2) Public health assistance provided to an alien applying on a timely basis to become an eligible legalized alien under section 245A of the INA, but not to those applying under section 210 or 210A of the INA.

(3) SLIAG and program administrative costs, as described in § 402.22 (a) and (b).

(b) Unless specifically prohibited by a statute enacted subsequent to November 6, 1986, a State may use SLIAG funds to pay the non-Federal share of costs allowable under (a) of this section incurred in providing assistance or services to eligible legalized aliens under Federal programs that have a matching or cost-sharing requirement, subject to the provisions of § 402.11(f) of this Part.

(c) To the extent consistent with 45 CFR Part 74 and § 402.22 of this Part, funds provided under this Part may be used for State and local costs associated with meeting the administrative requirements established by the Act and this Part and the administrative costs associated with providing assistance or services to eligible legalized aliens under a program or activity that receives funds under this Part.

(d) Funds under this Part may be used to reimburse or pay costs of providing assistance or services to eligible legalized aliens that are incurred prior to the approval of a State's FY 1988 application and, for all fiscal years, prior to the approval of a State's amendment to its application, pursuant to Subpart E of this Part, provided that such reimbursement or payment is consistent with the Act and this Part.

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this Part that are used for public assistance, public health assistance, and educational services may only be used only with respect to programs in a State or local jurisdiction that (1) meet the definitions of § 402.2, above, and (2) are otherwise consistent with the rules and procedures governing such programs.

(b) Funds provided under this Part may not be used for costs to the extent that those costs are otherwise reimbursed or paid for under other Federal programs.

(c) Funds provided under this Part may be used to reimburse State and/or local expenditures associated with providing public assistance and public health assistance to eligible legalized aliens and to make payments to State educational agencies for the purpose of providing educational services to eligible legalized aliens. However, the amount of reimbursement or payment may not exceed 100 percent of SLIAG-related costs, as defined in this Part, associated with providing public assistance, public health assistance, and educational services.

(d) A State must use a minimum of 10 percent of its allotment under this Part in any fiscal year for costs associated with each of the following program categories: public assistance, public health assistance, and educational services. In the event that a States does not require use of a full 10 percent in one of the above categories, it must allocate the unused portion equally among the remaining categories.

(e) Payments for educational services in any fiscal year may not exceed the amounts described in (e) (3), (4) and (5) of this section, and are subject to the limitations in (e) (1), (2), and (6) of this section.

(1) Payments may be made to a local educational agency in a fiscal year for the purpose of providing educational services to eligible legalized aliens enrolled in elementary or secondary school only if 500 eligible legalized aliens meeting the conditions in (e)(2) of this section, are enrolled in elementary or secondary public or non-public schools in that local educational agency's jurisdiction in that fiscal year or if such eligible legalized aliens represent at least 3 percent of the total number of students enrolled in elementary or secondary public or non-public schools within that local educational agency's jurisdiction in that fiscal year.

(2) In computing payments to local education agencies or to providers of educational services described in section 204(c)(3)(C) of the Act, State educational agencies may take into account only eligible legalized aliens who have been enrolled in elementary or secondary school, public or non-public school or in educational activities for adults described in § 402.2 in the United States for fewer than three complete academic years.

(3) The amount that may be paid in any fiscal year to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary public or non-public school may not exceed an amount equal to $500 (less, in States receiving Emergency Immigrant Education Act (EIEA) funds, the amount described in (e)(6) of this section) multiplied by the number of eligible legalized aliens meeting the criteria specified in (e)(2) of this section, who are enrolled in public or private non-profit elementary and secondary schools in the jurisdiction of that local educational agency in that fiscal year.

(4) The amount that may be paid in any fiscal year to a local educational agency or other provider of educational services for adults (who are not enrolled in elementary or secondary school), as described in section 204(c)(3)(C) of the Act, may not exceed an amount equal to $500 multiplied by the number of eligible legalized aliens meeting the criteria in paragraph (e)(2) of this section who receive educational services from that provider in that fiscal year.

(5) In no event may the amount paid to a local education agency or other provider of educational services exceed the actual cost of providing those services to eligible legalized aliens, as determined in accordance with this Part and 45 CFR Part 74.

(6) The maximum amount of payment to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary school will be reduced from the amount described in (e)(3) of this section, by an amount equal to the amount of funds received by the local educational agency with respect to such eligible legalized aliens pursuant to section 606 of the Emergency Immigrant Education Act.

(f) Funds provided under this Part may not be used to provide assistance under the programs of financial assistance from which eligible legalized aliens are barred by section 245A(h)(1), 210(f), or 210A(d)(6) of the INA. However, such funds may be used for the State and local share of the costs of providing such assistance to eligible legalized aliens who are excepted from the bar by section 245A(h) (2) or (3), 210(f), or 210A(d)(6) of the INA, provided that such individuals are otherwise eligible for benefits under such programs, and that the costs of providing those benefits are otherwise allowable under the Act, this regulation, and the State's approved application.

(g) Funds provided under this Part shall not be used to perform abortions except where the life of the mother would be endangered if the fetus were carrier to term.

(h) Funds provided under this Part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i) (52 FR 16212, May 1, 1987) or 8 CFR 210.2(d) (52 FR 16201, May 1, 1987).

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

(a) Except as indicated in (b) and (c) of this section, States may not use funds provided under this Part of costs incurred prior to October 1, 1987.

(b) A State may use funds provided under this Part for administrative costs incurred prior to October 1, 1987, but after November 6, 1986, that are directly associated with implementation of this Part. Such costs may include planning, preparing the application, establishing fund accounting and reporting systems, data development associated with the application, and other costs directly resulting from planning for implementation of this Part.

(c) A State may use funds provided under this Part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health services to eligible legalized aliens and to applicants for lawful temporary residence under section 245A of the INA, in conformity with the provisions of § 402.10(a).

Subpart C—Administration of Grants

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department's rules located at 45 CFR Part 74, relating to the administration of grants, apply to funds provided under this Part.

§ 402.21 Fiscal control.

(a) Fiscal control and accounting procedures must be sufficient to permit preparation of reports required by the Act, this regulation, and other applicable statutes and regulations.

(b) States must have accounting procedures in place which allow funds provided under this Part to be traced from drawdown to allowable SLIAG-related costs. Allowability of the amount and purpose of expenditures must be established for each recipient of SLIAG funds. States must demonstrate that SLIAG-related costs, as defined in this Part, incurred in providing assistance or services to eligible legalized aliens equal or exceed the amount of SLIAG funds provided for those particular assistance and service activities. Documentation of the method of accounting and appropriate supporting information must be available for audit purposes and for Federal program reviews. To establish allowability of expenditures, States may use methods prescribed in (c) of this section. Alternatively, the State may use any other reliable method of cost calculation, subject to Federal review.

(c)(1) For public assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive assistance and/or services from the recipient, or by use of a statistically valid sampling of a recipient's public assistance caseload.

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

(3) For educational services, States must be able to demonstrate that:

(i) Funds provided under this Part were used to provide educational services, as defined in this Part, to eligible legalized aliens, as defined in this Part; and,

(ii) Payments to local educational agencies or other providers of educational services, as described in section 204(c)(3)(C) of the Act, did not exceed the amounts described in § 402.11(e) of this Part.

§ 402.22 SLIAG and program administrative costs.

(a) SLIAG administrative costs allowable under this Part include the direct and indirect costs related to administration of this Part, including: planning and consultation with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

(b) Program administrative costs are those costs associated with administering allowable assistance or services provided to eligible legalized aliens. Such costs may be based: On the proportion of eligible legalized aliens provided assistance and/or services allowable under this Part by a recipient, relative to all persons provided such assistance and/or services; on the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this Part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this Part by the recipient; or, on such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this Part are allowable, allocable to SLIAG, and reasonable.

(c) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this Part.

§ 402.23 Repayment.

The Department will order a State to repay amounts found not to have been expended in accordance with Federal law, regulations, the State's approved application, or terms of the State's grant. If a State refuses to repay such amounts, the Department may offset the amount against any other amount to which the State is or may become entitled under this Part.

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR Part 74, and terms of the grant award.

§ 402.25 Appeals.

Appeals under this Subpart will be subject to 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board.

§ 402.26 Time Period for Obligation and Expenditure of Grant Funds.

(a) Any amount awarded to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to the State for obligation in subsequent fiscal years, but not after September 30, 1994.

(b) Obligations by the State must be liquidated within 12 months of the end of the Federal fiscal year in which the obligation was made. However, where a State can demonstrate extenuating circumstances that prohibit compliance with this requirement, the Secretary may extend such date upon request by the State.

Subpart D—State Allocations

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The grant award constitutes the authority to draw and expend funds for the purposes set forth in the Act and this regulation.

§ 402.31 Determination of allocations.

(a) *Allocation formula.* Allocations will be computed according to a formula using the following factors and weights:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher-than-average ratios of eligible legalized aliens to total population relative to the average for all States, based on the proportional number of such aliens; and

(2) 50 percent based on the ratio of SLIAG-related costs in a State to the total of all such costs in all States.

(b) *Calculation of allocations.* Each time the Department calculates State allocations, we will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. Allocations will be calculated as follows:

(1) *Initial FY 1988 allocations.* In FY 1988, initial State allocations will be calculated by applying the formula described in (a) of this section to 50 percent of the SLIAG funds available for grants to States in FY 1988. SLIAG-related costs will be based on Federal estimates of such costs.

(2) *Final FY 1988 allocations.* Final allocations for FY 1988 will be calculated by applying the formula described in (a) of this section to 100 percent of the SLIAG funds available for grants to States for FY 1988. SLIAG-related costs for FY 1987 and FY 1988 will be obtained from States' FY 1989 applications, as required by § 402.41(c). (If a State does not submit an application for FY 1989, it still must submit the information described in paragraph 402.41(c) in order to receive its final allocation for FY 1988.)

(3) *FY 1989 allocations.* Allocations for FY 1989 will be determined by applying the allocation formula described in (a) of this section to the total amount of funds available for grants to States in FY 1988 and FY 1989. For purposes of calculating State allocations, the Department will use the SLIAG-related costs for FY 1987, FY 1988, and FY 1989 reported in each State's application submitted pursuant to § 402.41(c) of this Part, as approved by the Secretary.

(4) *FY 1990 allocations.* Allocations for FY 1990 will be determined by applying the allocation formula described in paragraph (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, and FY 1990. For purposes of calculating FY 1990 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987 and FY 1988, the report required by § 402.51(e). In the event that a State has not submitted this report, the Department will include no costs for FY 1987 or FY 1988 for that State in its calculation of FY 1990 allocations.

(ii) for FY 1989 and FY 1990, the estimates of SLIAG-related costs contained in States' applications submitted pursuant to § 402.41(c) of this Part, as approved by the Secretary.

(5) *Initial FY 1991 Allocations.* Initial FY 1991 allocations will be calculated by applying the formula described in (a) of this section to the total amount of funds made available for grants to States for FY 1988, FY 1989, and FY 1990, plus 75 percent of funds available for grants to States for FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, and FY 1989, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for that fiscal year for that State in its calculation of initial FY 1991 allocations.

(ii) For FY 1990 and FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

(6) *Final FY 1991 Allocations.* Final allocations for FY 1991 will be determined by applying the allocation formula described in (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, FY 1990, and FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, FY 1989, and FY 1990, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for that fiscal year for that State in its calculation of final FY 1991 allocations.

(ii) For FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

§ 402.32 Determination of state allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) (2) through (6) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) (2) through (6) and the amounts previously awarded to those States. For purposes of determining final FY 1988 State allotments, the amount previously allotted to a State will be the amount allocated and awarded to the State pursuant to § 402.31(b)(1).

§ 402.33 Allotment of excess funds.

If a State fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this Part, or is not allotted its designated allocation amount because it indicated in its application that it does not intend to use, in the fiscal year for which the application is made or in the succeeding fiscal year, the full amount of its allocation, funds which would otherwise have been allotted to the State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such States in that fiscal year.

Subpart E—State Applications

§ 402.40 General.

In order to be eligible for funds available under this Part in a fiscal year, a State must submit an annual application. A State's application must be approved by the Secretary prior to the award of funds to that State.

§ 402.41 Application content.

A State application must:

(a) Contain certifications by the chief executive officer or an individual specifically designated to make such certifications on behalf of the chief executive officer that, notwithstanding other contents of the application, the State assures that:

(1) Funds allotted to the State will be used only to carry out the purposes described in the Act and this Part.

(2) The State will provide a fair method for the allocation of funds among State and local agencies (as determined by the State) in accordance with the information in the application as required under (b) and (c) of this section and in accordance with the provisions of § 402.11(d) of this Part, which sets forth minimum funding levels for program categories.

(3) Fiscal control and accounting procedures used in the administration of SLIAG funds will be established that are adequate to meet the requirements established by the Act and this regulation.

(4) The State will comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, and on the basis of sex or religion under section 204(h)(1)(B) of the Immigration Reform and Control Act of 1986.

(b) Contain information on the number of eligible legalized aliens residing in the State. A State may either (1) adopt as its official State-level estimate the estimate of the State's number of eligible legalized aliens provided by the Department, or (2) provide its own estimate, including detailed information on the method and data used in deriving the estimate.

(c)(1) Contain an estimate of likely SLIAG-related costs for the fiscal year for which application is being made for each program or activity in which SLIAG-related costs will be incurred. Programs and activities must be identified by purposes described in § 402.10(a), that is, public assistance, public health assistance, and educational services, and SLIAG administrative costs as defined in § 402.22 (a) and (c). Such estimates for FY 1988 should include, as a discrete subset, costs incurred in FY 1987, pursuant to § 402.12.

(2) For applications for FY 1989, FY 1990, and FY 1991, in addition to the information in (c)(1) of this section contain updated estimates of SLIAG-related costs for each program or activity in which SLIAG-related costs have been or will be incurred in the fiscal year in which the application is being submitted. Programs and activities must be identified by the purposes described in § 402.10(a), that is, public assistance, public health assistance, educational services, and SLIAG administrative costs as defined in § 402.22(a). (SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this Part are to be included, as a discrete subset, in the updated estimate of FY 1988 costs.)

(d) Contain the following information pertaining to the estimates required by (c) (1) and (2) of this section (the application must include sufficient detail to permit assessment by the Department of the reasonableness of such estimates and the allowability of such costs under the Act and this Part):

(1) Descriptions of the programs and activities for which SLIAG-related costs have been or will be incurred.

(2) Descriptions of the methodologies used to determine SLIAG-related cost. This description is to include (i) the methodology used in determining the proportion (or actual number) of eligible legalized aliens who are likely to participate in or benefit from the program or service, and (ii) a description of how a unit or other measure of the cost of providing services or benefits was calculated, or, if the estimate is based on actual cost data, a description of how the data were obtained.

(e) Contain information on the criteria for and administrative methods of disbursing funds received under this Part.

(f) Designate a single point of contact (SPOC) in the State responsible for securing and submitting information required by the Act and this regulation and provide the name, title, mailing address, and telephone number of such official. If the grantee agency is different from the SPOC, also provide the name, title, mailing address, and telephone number of the official in that agency responsible for State administration of funds available under this Part. In either case, provide the employer identification number of the grantee agency.

If a State has previously provided this information to the Department, it need not be included in the application unless the information has changed.

§ 402.42 Application format.

A State may determine the format of its application as long as it contains all the information required by § 402.41.

§ 402.43 Application deadline.

(a) An application from a State for SLIAG funds for Federal fiscal year 1988 must be received by the Department by May 16, 1988. Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, July 15, 1989, and July 15, 1990, respectively. If a State fails to submit an application by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this Part.

(b) In order to receive funds under this Part for FY 1988, a State's application must be approvable by the Secretary by July 1, 1988. In order to receive funds under this Part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by Ocotober 1, 1988, October 1, 1989, and October 1, 1990, respectively. This may necessitate a State's providing clarification, revision, or additional material, as required, to render its application approvable by the Secretary. If a State fails to render its application approvable by the Secretary by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States which have submitted approvable applications in accordance with § 402.32 of this Part.

§ 402.44 Basis for approval.

(a) The Department will review each State's application to ensure that it contains all of the required assurances and information and otherwise is consistent with the Act and this Part.

(b) The Department will assess the reasonableness of each State's estimates of SLIAG-related costs, as required by § 402.41(c) (1) and (2), based on the following:

(1) Are the activities for which estimates are included in the application allowable under the Act and this Part?

(2) Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?

(3) To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this Part or other methodologies likely to result in valid measures of SLIAG-related costs?

(4) Do current estimates appear to be consistent with past estimates, known actual costs pursuant to § 402.41(c)(2), and current INS eligible legalized alien population data?

(5) Are revised estimates a result (all or in part) of changes in program activities?

(c) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved, together with the reasons for disapproval.

§ 402.45 Amendments to applications.

(a) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year.

(b) A State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG-related costs for programs or activities described in (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). Costs incurred prior to October 1, 1987, are allowable only to the extent described in § 402.12.

Subpart F—Recordkeeping and Reporting

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records.

(b) To allow the State to provide to the Department (1) an accurate description of its activities undertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a) After the end of a Federal fiscal year for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information indentified in (c) and (e) of this section. The reports are due no later than 90 days after the end of a Federal fiscal year.

(b)(1) Failure to submit the annual report required in (a) of this section by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(2) Failure by a State to submit the required information prior to the calculation of allocations pursuant to Subpart D will result in the Secretary's including no SLIAG-related costs for the fiscal year for that State in the calculation of State allocations.

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year, including:

(1) Identification of the amount obligated and the amount expended by the State grantee agency;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to succeeding fiscal years; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

(d) A State must use SF-269 in its reporting under paragraph (c) of this section, but it may determine the format of its annual report content under paragraph (e) of this section.

(e) A State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide for each program or activity identified in the State's application, the amount of the actual SLIAG-related costs incurred in that program or activity, identified as public assistance, public health assistance, educational services and SLIAG administrative costs, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2). Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A(h) (2) and (3) of the INA) must be shown separately in States' reports.

PART 16—PROCEDURES OF THE DEPARTMENT GRANT APPEALS BOARD

2. The authority citation for Part 16 continues to read as follows:

Authority: U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

3. Appendix A to Part 16 is amended by adding paragraph B(a)(6) to read as follows:

Appendix A—What Disputes the Board Reviews

B * * *

(a) * * *

(6) Decisions relating to repayment and withholding under State Legalization Impact Assistance Grants as provided in 45 CFR 402.24 and 402.25.

[Editorial Note: The following appendix will not appear in the Code of Federal Regulations]

APPENDIX A—INITIAL FISCAL YEAR 1988 STATE ALLOCATIONS [1]

State	Initial fiscal year 1988 allotments	Percent of total
Alabama	5166,699	0.04
Alaska	81,654	0.02
Arizona	9,049,692	1.95
Arkansas	223,124	0.05
California	265,474,263	57.18
Colorado	3,490,505	0.75
Connecticut	605,758	0.13
Delaware	113,208	0.02
District of Columbia	1,213,785	0.26
Florida	30,165,210	6.50
Georgia	1,540,491	0.33
Guam	68,954	0.01
Hawaii	320,837	0.07
Idaho	2,140,670	0.46
Illinois	25,466,533	5.49
Indiana	399,338	0.09
Iowa	166,951	0.04
Kansas	911,540	0.20
Kentucky	99,131	0.02
Louisiana	542,382	0.12
Maine	16,153	0.00
Maryland	1,668,084	0.36
Massachusetts	1,864,367	0.40
Michigan	845,998	0.18
Minnesota	230,185	0.05
Mississippi	93,147	0.02
Missouri	314,232	0.07
Montana	31,919	0.01
Nebraska	313,480	0.07
Nevada	2,402,191	0.52
New Hampshire	50,406	0.01
New Jersey	4,960,772	1.07
New Mexico	4,680,790	1.01
New York	25,352,775	5.46
North Carolina	2,173,803	0.47
North Dakota	6,822	0.00
Ohio	451,151	0.10
Oklahoma	3,104,006	0.67
Oregon	3,862,975	0.84
Pennsylvania	1,236,964	0.27
Puerto Rico	755,788	0.16
Rhode Island	406,571	0.09
South Carolina	432,200	0.09
South Dakota	18,811	0.00
Tennessee	269,203	0.06
Texas	55,089,079	11.87
Utah	1,069,246	0.23
Vermont	23,474	0.01
Virgin Islands	66,283	0.01
Virginia	2,056,791	0.44
Washington	6,955,042	1.50
West Virginia	69,990	0.02
Wisconsin	796,136	0.17
Wyoming	272,436	0.06
Total	464,250,000	100.00

[1] Based on one-half of fiscal year 1988 appropriation.

[FR Doc. 88-5017 Filed 3-9-88; 8:45 am]

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federal register

Thursday
March 10, 1988

Part III

Securities and Exchange Commission

17 CFR Part 230

Regulation D Revisions, and Agency Information Collection Activities Under OMB Review; Rule, Proposed Rule and Notice

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6758; File No S7-1-87]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of several amendments to the rules comprising Regulation D which provides for certain exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act"). The revisions expand the "accredited investor" definition, eliminate the $150,000 purchaser of securities from that definition, increase the total offering amount permitted for certain Rule 504 offerings, and revise general solicitation restrictions under Rule 504 for certain state registered offerings. Disclosure standards for offerings of less than $2 million also have been simplified to parallel more closely requirements applicable to Regulation A offerings. Certain technical revisions have been made to the regulation, as proposed.

EFFECTIVE DATE: April 11, 1988. For offerings commenced but not completed prior to this date, issuers may opt to follow the rules in effect at the date of commencement.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment [1] certain revisions to Regulation D,[2] the limited offering exemptive provisions from the registration requirements of the Securities Act.[3] The proposals have been adopted substantially as proposed.

The revisions change the definition of accredited investor [4] by including additional institutional investors such as savings and loan associations, credit unions and broker-dealers, certain trusts, partnerships and corporations, permitting a joint as well as an individual income test for accrediting natural persons, and eliminating the $150,000 purchaser of securities. The total offering price for Rule 504 transactions has been increased from $500,000 to $1 million, if at least $500,000 is registered at the state level, and general solicitation now will be permitted under certain circumstances for offerings pursuant to Rule 504 in states which provide no qualifying registration procedure. A new level of disclosure, keyed to Regulation A,[5] but requiring that a certified balance sheet of the issuer be prepared, has been adopted for offerings of less than $2 million. The other technical revisions proposed for comment have been adopted. In a companion release issued today,[6] the Commission is soliciting comment on a number of additional revisions to Regulation D, many of which address issues raised for comment in the Reg. D Release. These new proposals primarily respond to the comments received about adding a substantial or good-faith compliance provision to the regulation, and solicit comment on further changes to the accredited investor category.

I. Amendments to Regulation D

Regulation D provides for three different exemptions from the regulation requirements of the Securities Act. Rule 504 is available for offerings of $500,000 or less by companies not subject to the reporting provisions of the Securities Exchange Act of 1934 ("Exchange Act") [7], but not investment companies as defined in the Investment Company Act of 1940.[8] This rule imposes no limitation on the number of purchasers and in certain cases permits general solicitations of potential purchasers. Rule 505 may be used by any company, except investment companies, for offerings that do not exceed $5 million. Subject to a prohibition of general solicitations, the number of accredited investors that may participate in a Rule 505 offering is unlimited; an additional 35 non-accredited investors, who need not be sophisticated, also may purchase. Rules 504 and 505 are promulgated under section 3(b) of the Securities Act. Rule 506 is the Commission's safe-harbor rule for the "non-public offering" exemption, established by section 4(2) of the Securities Act. This rule is available to any issuer and there is no dollar limit as to the amount of funds which can be raised. However, there may be no general solicitation or advertising and sales can only be made to accredited investors and an additional 35 sophisticated investors.

A. Accredited Investors

The "accredited investor" is a central concept to all of the exemptions provided by Regulation D.[9] The Commission proposed to expand the definition to include virtually all classes of institutional investors. The institutional investor category has been expanded to include savings and loan associations and similar institutions such as credit unions,[10] whether acting for their own accounts or as fiduciaries, and broker-dealers if registered under the Exchange Act and purchasing for their own accounts. As the Commission indicated in the Reg. D Release, there does not appear to be a compelling reason to distinguish these institutions from banks, insurance companies or registered investment companies which are already defined to be accredited. Most of the states in their institutional investor exemptions already exempt securities offerings to these categories of investors.[11]

One of the commenters noted that employee benefit plans within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") which have savings and loan associations as plan fiduciaries were not proposed to be treated the same as

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[1] Release No. 33-6683 (January 16, 1987) [52 FR 3015] ("Reg. D Release"). The comment letters received and a summary of the comments (File No. S7-1-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[2] 17 CFR 230.501-230.506.

[3] 15 U.S.C. 77a *et seq*

[4] 15 U.S.C. 77b(15); 17 CFR 230.15; 17 CFR 230.501.

[5] 17 CFR 230.251-230.264.

[6] Release No. 33-6759.

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 80a-1 *et seq.*

[9] A uniform definition of "accredited investor" is used for both section 4(6) and Regulation D. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215 together provide the same listing of investors as Rule 501(a). Amendments to Rule 215 are made today in order to maintain the consistency.

[10] The Commission's staff interprets the "similar institution" language in section 3(a)(5)(A) of the Securities Act to encompass credit unions whose accounts are insured by the National Credit Union Administration. *See, e.g., In re* Idaho Central Credit Union (January 14, 1977) ("no action" letter from the Division of Corporation Finance). Rather than provide a complete listing in the definition, the Commission has determined to maintain interpretative flexibility through the use of the "similar institution" language.

[11] *See* Uniform Securities Act, Section 402(b)(8). This section exempts any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. Forty-five or more of the states either use these terms as included in the Uniform Securities Act or specifically include savings and loan associations, credit unions and broker-dealers as institutional investors.

ERISA plans with, for example, banks as such fiduciaries. This omission was not intentional. Consequently, the language of both Rules 215 and 501(a) has been amended to indicate that ERISA plans which have savings and loan associations as plan fiduciaries are accredited investors. The Staff's interpretation [12] that a self-directed employee benefit plan, where investment decisions are solely within the control of an accredited investor, is itself an accredited investor, has been codified.

The proposal to accredit corporations, partnerships and business trusts with total assets in excess of $5 million was generally approved by the commenters. The formation of the entity may not be for the purpose of making the particular investment in question.[13] Since the adoption of the regulation, certain non-profit organizations with total assets in excess of $5 million have been accredited investors; for-profit organizations will now be treated in the same way.

The Commission asked for comments as to the desirability of including officers who, while sophisticated, served no policy-making role for a company within the ranks of accredited investors. A number of commenters felt that the expansion would be desirable. Nonetheless, the Commission has decided not to accredit these officers at this time, since it has not been persuaded that, absent a policy-making function characterizing an executive officer position, employees regardless of their titles meet the standards of access to information and ability to bear the risk which are necessary to achieve the status of accredited investor.

A joint-income test for purposes of accrediting natural persons was proposed at the $300,000 level. Many commenters suggested a lower level for the joint income test along with lowering the existing individual income and net worth tests. Others have expressed their concerns about the appropriateness of the current levels in the income and net worth tests and that such levels may not represent a level of financial wherewithal which equates with an ability to get information about an issuer. In the absence of compelling empirical data establishing the financial sophistication of natural persons with lower incomes and net worth, the Commission has determined to make no further revisions to the natural persons accreditation standards. The joint-income test of $300,000 has been adopted.

Under the new provisions, trusts may be accredited if they have $5 million in total assets and have investment decisions made by a sophisticated person. The proposal to limit the trust's purchase to 10 percent of its total assets has not been adopted because general fiduciary principles and legal investment laws appear to be sufficient safeguards against concentration abuses which might arise. In addition, as proposed, a trust formed solely to make the investment would not be accredited under this provision.

The Commission in the proposing release advised that consideration was being given to eliminating the $150,000 purchaser item set forth in Rule 501(a)(5), given anomalies with the net worth test, and concerns that size of purchase alone, particularly at the $150,000 level, does not assure sophistication or access to information. While some persons previously accredited would no longer be accredited (i.e., individuals with net worths of $750,000 but less than $1 million, and corporations, partnerships, and trusts which do not meet the new standards but have $750,000 in net worth), many of the persons who used the $150,000 purchaser item will now become accredited investors by virtue of the revisions to Rule 501 made today. Therefore, the $150,000 purchaser accreditation standard is rescinded.

B. Rule 504

Both of the proposals relating to Rule 504 have been adopted without change. Thus, the $500,000 ceiling is now increased to $1 million as long as no more than $500,000 worth of securities are offered and sold without registration under states' securities laws.

The modification which broadens the scope of permissible general solicitations in Rule 504 offerings to states which have no registration procedure or one which does not provide for registration and delivery of a disclosure document prior to sale has been adopted. The rule has been modified to make clear that the offering must be made in the state of registration in addition to the state which has no registration procedure, so as to minimize forum shopping. As adopted the rule also is intended to accommodate offerings in large metropolitan areas where the central jurisdiction has no registration process but the surrounding jurisdictions do, *e.g.*, New York and the District of Columbia. Sales in non-qualifying states could not exceed the $500,000 ceiling for purposes of Rule 504.

C. Disqualification Provisions

The Commission solicited comments about imposing disqualifiers in Rule 506 offerings which would be similar to those currently applicable to Rule 505 offerings. The request for comments was in response to a suggestion by representatives of the North American Securities Administration Association, Inc. ("NASAA") [14] who believed that such a provision might assist in getting the uniform limited offering exemption ("ULOE"), an official NASAA policy guideline,[15] adopted by more of the states. The commenters were almost unanimously opposed to the suggestion. No state commented on this issue. While NASAA has not withdrawn its support for this proposal, it is not clear to the Commission that the adoption of this proposal would encourage a significant number of additional states to adopt ULOE.[16] Thus, no change to the current system is being made at this time.

D. Disclosure for Offerings Not in Excess of $2 Million

The Commission asked for and received some comments about the value of a reduced level of disclosure for non-reporting company offerings of a relatively small dollar amount. As stated in the Reg. D Release, when the Commission initially proposed the regulation in 1981 [17] a reduced level of disclosure was set for offerings under $1.5 million, tied to Regulation A disclosure standards but requiring certified financial statements. Because the need for an additional level of disclosure standards was not compelling, measured by the public comments at the time, the Commission did not adopt the proposal. Now, however, it appears that there would be some benefit to another level of disclosure under the regulation as long as investor protection is not being compromised. The comments in response to the Reg. D Release support

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[12] *In re* Diane P Weiss (December 21, 1983) (interpretative letter from the Division of Corporation Finance.)

[13] This amendment, as well as the revision to accredited trusts *infra*, makes no change in the availability of Rule 215(h) or Rule 501(a)(8) which accredit entities, all of whose equity owners are otherwise accredited.

[14] NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[15] CCH NASAA Rep. § 6201 at 6101. Such a guideline represents endorsement of a principle which NASAA believes has general application. NASAA does not have the power to enact legislation, promulgate regulations or otherwise bind legislatures or administrative agencies.

[16] The Commission understands that a majority of states now apply disqualification provisions to Rule 506 offerings.

[17] Release No. 33-6339 (August 7, 1981) [46 FR 41791].

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this position. Therefore, for offerings not in excess of $2 million, the information required in Regulation A offerings will satisfy the requirements of Rule 502(b)(2) if the issuer provides investors with a certified balance sheet, dated within 120 days of the commencement of the offering.

E. Other Revisions

All of the proposed technical revisions have been adopted. These changes included the clarification of the "aggregate offering price" definition in Rule 501(c), the single counting of non-contributory employee benefit plans in Rule 501(e), and keying the disclosure requirements to a $7.5 million level in Rule 502(b). Further, more Commission registration statement forms now are specified as being appropriate to satisfy the disclosure obligations of reporting companies under the regulation. For business combinations, the Commission's specific registration statement form is specified as the appropriate guideline.

II. NASAA Cooperation

In the proposing release, the Commission acknowledged NASAA's cooperation. Because Regulation D provides the framework for ULOE, such cooperation is invaluable to the goal of uniform application of the exemption at both the state and federal levels. The Commission understands that NASAA's State-Federal Coordination Committee and Disclosure Standards Committee will consider the Commission's final adoption today, with a view to recommending parallel changes to ULOE. The cooperation of NASAA in these efforts is appreciated and greater uniformity between the state and federal systems of securities regulation will ultimately be achieved, promoting ever increasingly efficient capital formation processes consistent with the protection of investors.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the revisions to Regulation D has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549.

IV. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals; yet, it appears that the revisions will work some savings by increasing the classes of accredited investors, raising the Rule 504 ceiling and reducing the level of disclosure requirements for offerings that do not exceed $2 million.

V. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being adopted pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. Section 230.215 is amended by revising paragraphs (a), (c) and (h), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), revising newly redesignated paragraph (f), and adding a new paragraph (g), as follows:

§ 230.215 Accredited investor.

* * * * *

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker of dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

* * * * *

(f) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

3. Section 230.501 is amended by revising paragraphs (a)(1), (a)(3), (a)(8), and the first sentence of paragraph (c), removing paragraph (a)(5), redesignating paragraphs (a)(6) and (a)(7) as (a)(5) and (a)(6), revising newly redesignated paragraph (a)(6), and adding new paragraphs (a)(7) and (e)(3) before the Note as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

* * * * *

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

* * * * *

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. * * *

* * * * *

(e) *Calculation of number of purchasers.* * * *

(3) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

* * * * *

4. Section 230.502 is amended by redesignating paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) as paragraphs (b)(2)(i)(B), (b)(2)(i)(C), and (b)(2)(i)(D) respectively, adding a new paragraph (b)(2)(i)(A), revising the paragraph headings of newly redesignated (b)(2)(i) (B) and (C), amending newly redesignated (b)(2)(i)(D) by changing the reference "(b)(2)(i) (A) or (B)" to read "(b)(2)(i) (B) or (C)", and revising paragraphs (b)(2)(ii)(B) and (b)(2)(vi) as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) *Information requirements.*

(2) *Type of information to be furnished.*

(i) * * *

(A) *Offerings up to $2,000,000.* The same kind of information as would be required in Part II of Form 1–A [17 CFR 239.90], except that the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(B) *Offerings up to $7,500,000.*

* * * * *

(C) *Offerings over $7,500,000.*

* * * * *

(ii) * * *

(B) The information contained in an annual report on Form 10–K under the Exchange Act or in a registration statement on Form S–1 [17 CFR 239.11], Form S–11 [17 CFR 239.18], or Form S–18 [17 CFR 239.28] under the Act or on Form 10 [17 CFR 249.210] under the Exchange Act, whichever filing is the most recent required to be filed.

* * * * *

(vi) For business combinations or exchange offers, in addition to information required by Form S–4 [17 CFR 239.25], the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may satisfy the requirements of Part I.B. or C. of Form S–4 by compliance with paragraph (b)(2)(i) of this § 230.502.

* * * * *

5. Section 230.504 is amended by revising the section heading, paragraph (b), and Notes 1 and 2, and adding a new Note 3 as follows:

§ 230.504 Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 through 230.503 except that the provisions of §§ 230.503 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made.

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

(2) *Specific condition*—(i) *Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504 in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act, provided that no more than $500,000 of such aggregate offering price is attributable to offers and sales of securities without registration under a state's securities laws.

Note 1.— The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sells $500,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504, it would be able to sell an additional $500,000 worth of securities either pursuant to state registration or without state registration during the ensuing twelve-month period, pursuant to this § 230.504.

Example 2. If an issuer sold $900,000 pursuant to state registration on June 1, 1987 under this § 230.504 and an additional $4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the $1,000,000 limit within the preceding twelve months.

Note 2.— If a transaction under this § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $1,000,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504 and an additional $500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

Note 3.— In addition to the aggregation principles, issuers should be aware of the applicability of the integration principles set forth in § 230.502(a).

By the Commission.

Jonathan G. Katz,
Secretary.
March 3, 1988.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6759; File No. S7-4-88]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to Regulation D. The regulation provides for three different exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") for certain limited offerings of securities. The revisions proposed here involve additions to the "accredited investor" definition, a change in the requirements which are designed to reflect the "restricted" character of securities issued in a Regulation D transaction, and the deletion of the filing of a Form D as a condition to the Regulation D exemption. A new Rule 507 is proposed which would disqualify an issuer from the use of any of the Regulation D exemptions if it has been found to have violated Rule 503 which will still require the filing of a Form D no later than fifteen days after the first sale of securities. A new rule 508 is also proposed which would provide that minor and isolated failures to comply with the requirements of Regulation D will not necessarily cause the loss of an exemption. In a companion action today, a number of revisions to the regulation have been finalized.

DATE: Comments must be received on or before May 13, 1988.

ADDRESS: Comment letters should refer to File No. S7-4-88 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments will be available for public inspection and copying in the Commission's Public Reference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing several revisions to Regulation D,[1] which exempts certain transactions from the registration requirements of the Securities Act.[2] The revisions would add to the list of accredited investors certain plans established and maintained by the governments of the states or their political subdivisions as well as their agencies and instrumentalities, for the benefit of their employees. The list of steps previously required to be followed to assure the "restricted" status or nontransferable nature of securities issued in Regulation D is proposed to be no longer mandatory, although they would still demonstrate satisfactorily that reasonable care has been taken to assure that purchasers are not underwriters. The filing of Form D[3] as a condition to the Regulation D exemption is proposed to be eliminated. In lieu thereof, disqualifying provisions would be added which would prohibit an issuer, found to have violated the filing requirement, from using Regulation D in the future. Pursuant to another proposed provision, isolated and minor deviations from the requirements in Regulation D that occur despite a good faith and reasonable attempt to comply would not cause an issuer to lose an otherwise appropriate exemption from the registration provisions of the Securities Act.

I. Proposed Revisions to Regulation D

Regulation D is the series of rules, Rules 501–506, which establish three separate exemptions from the registration requirements of the Securities Act. Last January, a number of proposals to amend the regulation were published for comment.[4] Today, the Commission adopted most of these proposals.[5] Several matters were raised in the public comments, especially in the area of whether or not a substantial or good faith compliance standard should apply to the regulation, which the Commission had asked about in the original notice of proposed rulemaking.

A. Accredited Investors

A number of commenters in the initial rulemaking from last January noted that states, municipalities, their instrumentalities and agencies, public universities and pension plans for their employees do not qualify for accreditation under section 4(6) of the Securities Act or Regulation D.[6] The Commission is proposing to amend Rules 215 and 501 to specifically include in the accredited lists, plans established and maintained by the governments of the states, their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, when two conditions are met. The plan must have either a bank, savings and loan association, insurance company or registered investment adviser as its plan fiduciary. In addition, the plan must impose requirements governing fiduciary responsibility similar to those established by the Employee Retirement Income Security Act of 1974 ("ERISA").[7] If such plans have the same kind of fiduciaries, plus the same standards governing investments as ERISA plans, there does not appear to be any reason to prohibit them from being accredited. Because such plans are exempt from coverage under ERISA, they do not presently qualify for accreditation under Rule 501(a)(1), Rule 215(a) or section 2(15)(i) of the Securities Act. The Commission understands, however, that many of the states institutional investor exemptions include pension and profit-sharing plans, without regard to employer identification.[8] Although the present rule provides that an ERISA plan also may be accredited if it has more than $5 million in assets, this alternative test is not proposed for the non-ERISA public plans, because unlike ERISA plans, they are not subject to specific regulations and governmental oversight.

Comment also is requested on the issue of including states, their political subdivisions, and agencies and instrumentalities in their own right, and state universities and colleges as accredited investors. Several of the states exempt sales to these kinds of investors.[9] After considering the comments, the Commission may decide to include one or more of these entities as accredited investors. Alternatively, it may be desirable to include provisions to assure that those included would have the requisite knowledge or sophistication to qualify as accredited investors. Commenters are specifically requested to address the need for

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[1] 17 CFR 230.501–230.506. A number of revisions to the regulation also have been adopted today. Release No. 33-6758.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 239.500.

[4] Release No. 33-6683 (January 16, 1987) [52 FR 3015].

[5] Release No. 33-6758.

[6] The Commission uses a uniform definition applicable to section 4(6) and Regulation D. Thus, Rule 501(a) is the same as section 2(15) of the Securities Act combined with Rule 215. 17 CFR 230.215. The proposals today would continue this uniformity by revising Rule 215.

[7] 29 U.S.C. 1104–1107.

[8] Uniform Securities Act, section 402(b)(8).

[9] *E.g.*, California Administrative Code, Rule 260.104.14 [1 CCH Blue Sky L. Rep. ¶ 11,806]; Release No. 85-2, Michigan Corporation and Securities Bureau [1A CCH Blue Sky L. Rep. ¶ 32,602]; South Dakota Codified Laws § 47-31-88 [3 CCH Blue Sky L. Rep ¶ 52,229]; Wisconsin Uniform Securities Law § 551.23(8) ([3 CCH Blue Sky L. Rep. ¶ 64,113]).

conditions to such accreditation and the appropriate conditions, e.g., the presence of some specifically named fiduciary; or size of the fund. Comments with regard to other suitability-for-investment standards covering states and these other entities also are invited.

B. Substantial or Good-Faith Compliance

Many comments were received in response to the Commission's solicitation of comments about a standard of good faith compliance with Regulation D. Two revisions are being proposed to be made with what appear to be the principal areas of concern about technical noncompliance. In addition, a new rule is proposed which would provide that the Regulation D exemption for all sales is not lost by minor, isolated failures to comply with requirements in the regulation, where those deviations occur despite a good faith and reasonable attempt to comply. However, the exemption may be lost for a particular sale, if the deviation is significant with respect to that sale.

Comments are requested on each of the proposed revisions. In addition, commenters are requested to address whether a general substantial compliance standard is needed if the proposed revisions regarding the requirements designed to reflect the restricted character of the securities and the deletion of the filing of a Form D as a condition to the Regulation D exemption are adopted. Conversely, commenters should address the need for the latter two proposals if a general, substantial good faith standard is adopted.

(1) Demonstrating the "Restricted" Nature of the Securities

Rule 502(d) indicates that generally securities acquired in a Regulation D transaction have the same restricted status as securities acquired in a transaction under section 4(2) of the Securities Act and cannot be resold without registration or an exemption. In this connection, the issuer is reminded of its obligation to ensure that no distribution of these securities occurs without registration or appropriate exemption and that it take reasonable care to assure that purchasers are not underwriters under the Securities Act. Rule 502(d) lists certain actions which must be taken to reflect such reasonable care, including purchaser inquiries, written notifications to purchasers and legending securities. Inasmuch as compliance with Rule 502 is a condition to a Regulation D exemption, failure to take any of these steps makes the exception unavailable. Commenters have frequently characterized this feature of the regulation as one particularly well-suited to be the subject of a substantial or good faith compliance standard.

Under the proposed amendment, the listing in Rule 502(d) would not be mandatory. Taking such actions, however, would be a satisfactory demonstration of the desired reasonable care. In this regard the burden would continue to be on the issuer to demonstrate that reasonable care had been taken to guard against an inappropriate distribution of "restricted" securities and to make certain that investors appreciate the restricted nature of the securities.[10]

(2) Removing the Conditions to File Form D and New Rule 507

Rule 503 requires the filing of a notification on Form D within 15 days after the first sale of securities offered in reliance upon an exemption under Regulation D. Rules 504, 505 and 506 each condition the exemption upon compliance with Rule 503. Failure to make the filing in a timely manner makes the exemption unavailable. Commenters have frequently criticized this provision.

As proposed, the filing obligation under Rule 503 would continue but would no longer be a condition to the exemption. In order to provide an incentive for filing the Form D in a timely manner, the Commission is proposing new Rule 507, which would disqualify an issuer from the use of the Regulation D exemptions if it had been found to have violated Rule 503. Proposed Rule 507 has been patterned on Rule 252.[11] The Commission would have the authority to waive disqualifications under proposed Rule 507 upon a showing of good cause by the issuer that the Regulation D exemption should not be denied.[12]

(3) Isolated and Minor Deviations From Requirements in Regulation D

Proposed new Rule 508 is designed to provide additional flexibility in Regulation D so that minor, isolated failures in reasonable and good faith compliance efforts would not cause loss of the exemption from the registration requirements of the Securities Act for the entire offering. The exemption would be lost as to a specific sale affected by the violation, unless the violation is insignificant with respect to that sale. The rule sets forth several examples of violations that could fall within this provision. These examples are intended to highlight the minor nature of these deviations and the necessity for a good faith and reasonable effort to comply with the regulation in its entirety. Moreover, there are critical elements to a Regulation D exemption under the Securities Act, which establish the essence of the exemption; there cannot be any deviation from these requirements. Thus, for example, under Regulation D, limited offerings are contemplated and no general solicitation or advertising would be consistent with the exemptions provided.[13] The dollar limitations are critical elements of both the Rule 504 and Rule 505 exemptions. Use of either of these provisions by an investment company would be unacceptable; as would the use of Rule 504 by a reporting company. While neither this recitation nor the listing in Rule 508 is exhaustive, they do reflect the kinds of items which are encompassed and not encompassed by the rule.

Comments are requested as to whether the rule should provide, as proposed, that the exemption may be lost for certain offers and sales, if such offers and sales have been directly affected by the violation, even if the exemption is not lost for the offering as a whole. Comments also are requested as to whether defining insignificant to mean isolated and minor is a reasonable approach or whether any definition of the term is needed. Any other comments with respect to the scope of the proposed rule are also invited.

II. NASAA Cooperation

Regulation D serves as the basis for the uniform limited offering exemption ("ULOE"),[14] an official policy guideline of the North American Securities Administrators Association, Inc. ("NASAA").[15] More than half of the states have adopted ULOE or an exemption substantially similar to it. The Commission and NASAA continue to encourage the remaining states to adopt ULOE.

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[10] The obligation to advise purchasers that they have restricted securities comes from Rule 10b-5. 17 CFR 240.10b-5. *See* Release No. 33-5226 (January 10, 1972) [37 FR 600].

[11] 17 CFR 230.252.

[12] A similar rule, Rule 702, was proposed in Release No. 33-6728 (July 30, 1987) in connection with a proposed exemption for certain employee compensation arrangements.

[13] There is an exception for certain Rule 504 offerings.

[14] CCH NASAA Rep. ¶6201 at 6101

[15] NASAA is an association of the securities commissioners of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces. An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

The proposals made today by the Commission have been provided to representatives of the NASAA State-Federal Coordination Committee. The Commission appreciates the cooperation of NASAA and its Committee in considering these proposals as an addition to the ULOE policy statement.

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding these Regulation D proposals.

The analysis notes that the revisions to the "accredited investor" definition, and the elimination of the filing and certain other conditions to the exemptions are proposed as a result of public comment and the Commission's experience. The proposal of Rule 507 is designed as a complement to the elimination of the filing condition to encourage continued compliance with Rule 503. The proposal of Rule 508 is intended to provide that the exemption will not be lost if there are inadvertent minor and isolated failures to comply with the requirements. The objective of unifying exemptive schemes at the states and federal levels such as through a coordinated ULOE policy guideline and Regulation D is noted, since it can aid smaller issuers in the capital formation process. The proposals add no new reporting, recordkeeping or other compliance requirements and in fact may eliminate the need to provide certain information.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549.

IV. Cost—Benefit Analysis

To assist in a full evaluation of the costs and benefits of these proposed revisions to Regulation D, the Commission seeks views and other data about these issues. The Commission believes the proposals if adopted would provide additional cost savings to issuers without compromising investor protection. The proposed revisions liberalizing certain conditions to the exemptions may produce savings through a reduction in the number of inadvertent late filings of Forms D causing a loss of the Regulation D exemption.

V. Statutory Basis and Text of the Proposed Amendments

The amendments to the Commission's rules are being proposed pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

(Arrows > < indicate proposed additions, bracket [ ] indicate proposed deletions)

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continue to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. Section 230.215 is amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; > any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404–407 of Title I of the Employee retirement Income Security Act of 1974; < an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

3. Section 230.501 is amended by revising the introductory text and paragraph (a)(1) as follows:

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501– >230.508<), the following terms shall have the meaning indicated:

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; > any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404–407 of Title I of the Employee Retirement Income Security Act of 1974, < employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

4. Section 230.502 is amended by revising the introductory paragraph and paragraph (d) introductory text and added a concluding paragraph as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§ 230.501— >230.508<):

* * * * *

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of the Act, which reasonable care > may be demonstrated by < [shall include, but not be limited to,] the following:

(1) * * *

(2) * * *

(3) * * *

> While taking these actions will establish the requisite reasonable care, they are not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision.<

5. Section 230.504 is amended by revising paragraph (b)(1) as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 > and 230.502, < [through 230.503,] except that the provisions of §§ 230.502 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

* * * * *

6. Section 230.505 is amended by revising paragraph (b)(1) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.505, offers and sales must satisfy all the terms and conditions of § 230.505, offers and sales must satisfy all the terms and conditions of §§ 230.501 > and 230.502. < [through 230.503.]

* * * * *

7. Section 230.506 is amended by revising paragraph (b)(1) as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.501 > and 230.502. < [through 230.503.]

* * * * *

8. By adding a new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under §§ 230.504, 230.505 or 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

9. By adding a new § 230.508 to read as follows:

§ 230.508 Isolated and minor deviations from requirements in Regulation D.

(a) A failure to comply with a condition or requirement of this Regulation D that is insignificant with respect to the offering as a whole will not result in the loss of the exemption under §§ 230.504, 230.505 or 230.506 if the issuer can show a good faith and reasonable attempt to comply with all provisions of the Regulation. No exemption would be available with respect to an offer or sale to a particular person unless the failure to comply was insignificant with respect to that offer or sale, as well as to the offering as a whole.

(b) For purposes of this rule, insigificant means an isolated and minor deviation from requirements.

Note. —A failure to comply with a condition or requirement of Regulation D that is insignificant with respect to the offering as a whole may be illustrated as follows:

Example 1. Immaterial written information provided to an accredited investor is omitted from the description required to be delivered to non-accredited investors.

Example 2. A purchaser representative fails to disclose a relationship with the issuer prior to a purchaser's acknowledgement of the representative but does so before the purchaser subscribes for an investment.

Example 3. One purchaser, as a result of a clerical error, fails to receive the information package prior to the completion of the sale.

By the Commission.

Jonathan G. Katz,

Secretary.

March 3, 1988.

[FR Doc. 88–5132 Filed 3–9–88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission Office of Consumer Affairs, Washington, DC 20549.

Revision

Form D and Regulation D

File No. 270–72

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance proposed revisions to Regulation D (17 CFR 230.501–506) which would increase the numbers of accredited investors and the number of offerings eligible for exemption, thus increasing the numbers of Forms D required to be filed. The respondents are issuers who elect to offer and sell securities pursuant to section 4(6) of the Securities Act of 1933 ("the 1933 Act") or pursuant to Regulation D under the 1933 Act. Currently there are 22,225 Forms D filed at 16 burden hours per form for a total of 355,600 burden hours.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Commerce and Lands Branch, Room 3228 NEOB Washington, DC 20530.

March 3, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5281 Filed 3–9–88; 8:45 am]

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WHERE: Thomas P. O'Neill Federal Building
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Presidential Documents

Title 3—

The President

Executive Order 12629 of March 9, 1988

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, and 12587, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of U.S. non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1989. Executive Order No. 12587 shall be superseded on the effective date of this Executive Order.

Ronald Reagan

THE WHITE HOUSE,
March 9, 1988.

[FR Doc. 88-5565
Filed 3-10-88; 10:40 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the assignment of responsibility for the State Agricultural Mediation Programs under the Agriculture Credit Act of 1987 to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Assistant Administrator Farmer Programs, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-4671.

SUPPLEMENTARY INFORMATION: Department responsibility for certification and policy development on State Agricultural Mediation Program issues has heretofore been located in the Office of the Secretary. Authority to administer the State Agricultural Mediation Programs is being delegated to the Under Secretary for Small Community and Rural Development, and then further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegation (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301; Section 4(a) of Reorganization Plan No. 2 of 1953; 7 CFR 2.23; 7 CFR 2.70.

2. Section 2.23 is amended by adding a new paragraph (a)(17) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(17) Administer the State Agricultural Mediation Programs under Title 5 of the Agriculture Credit Act of 1987 (Pub. L. 100-233).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding new paragraph (a)(32) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(32) Administer the State Agricultural Mediation Programs under Title 5 of the Agriculture Credit Act of 1987 (Pub. L. 100-233).

* * * * *

Dated: March 4, 1988.

For Subparts C and I.

Richard E. Lyng,
Secretary of Agriculture.

[FR Doc. 88-5352 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-017]

Oriental Fruit Fly; Removal of Portions of Los Angeles County and Orange County From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Oriental fruit fly regulations by removing portions of Los Angeles County and portions of Orange County in California from the list of quarantined areas.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register December 1, 1987 (52 FR 45597-45598, Docket Number 87-161) and effective November 24, 1987, we amended the Oriental fruit fly regulations by removing portions of Los Angeles and Orange Counties in California from the list of quarantined areas.

Comments on the interim rule were required to be postmarked or received on or before February 1, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the portions of Los Angeles and Orange Counties that were removed from the quarantined area, there are fewer than 60 small entities that may be affected, including commercial growers of tomatoes and cucumbers, 38 nurseries, no more than 9 outdoor or mobile fruit stands, and 2 community gardens. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate, and were not affected by the regulatory provisions that were removed; those sales that were affected were generally articles that could be moved after compliance with treatment or inspection provisions of the regulations.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 52 FR 45597–45598 on December 1, 1987.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5410 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 8; Docket No. 5447S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Wednesday, March 2, 1988, at 53 FR 6559, amending the General Crop Insurance Regulations (7 CFR Part 401) to add a new section § 401.118, the Canning and Processing Bean Endorsement. In that publication, the State of Idaho was inadvertently omitted from the section listing those states where canning and processing bean crop insurance is otherwise authorized to be offered, and where bean acreage by type may be divided into more than one unit under certain conditions. This notice is published to correct that error.

EFFECTIVE DATE: March 10, 1988.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Document 88-4529, appearing at pages 6559 through 6561, is corrected as follows:

§ 401.118 [Corrected]

On page 6560, in Column 2, Section 5 of 7 CFR § 401.118, the Canning and Processing Bean Endorsement, is corrected to read as follows:

* * * * *

5. *Unit division.*

For Idaho, Michigan, Minnesota, Oregon, Tennessee, Washington, and Wisconsin bean acreage by type (snap or lima) that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

Done in Washington, DC on March 7, 1988.

Glen V. Bjorklund,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-5366 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 676]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 676 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 11 through March 17, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 676 (§ 907.976) is effective for the period March 11 through March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 8, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is good.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.976 is added to read as follows:

Note: [This section will not appear in the Code of Federal Regulations.]

§ 907.976 Navel Orange Regulation 676.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 11, 1988, through March 17, 1988, are established as follows:

(a) District 1: 1,700,000 cartons;
(b) District 2: 300,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: March 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5506 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 604]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 604 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period March 13 through March 19, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 604 (§ 910.904) is effective for the period March 13 through March 19, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on March 8, 1988, in Ventura, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.904 is revised to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 910.904 Lemon Regulation 604.

The quantity of lemons grown in California and Arizona which may be handled during the period March 13, 1988, through March 19, 1988, is established at 350,000 cartons.

Dated: March 9, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5505 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 927

Winter Pears Grown in Oregon, Washington, and California; Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the Winter Pear Control Committee established under Marketing Order 927 for the 1987–88 fiscal year. The expenses are increased from $3,396,563 to $3,816,563. The designated increase reflects higher than estimated costs for market development and promotion activities undertaken by the committee in marketing the record large 1987 crop.

EFFECTIVE DATES: July 1, 1987, through June 30, 1988 [§ 927.227].

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

A final rule establishing expenses in the amount of $3,396,563 for the Winter Pear Control Committee for the fiscal period ending June 30, 1988, was published in the **Federal Register** on October 30, 1987 [52 FR 41697]. That action also fixed assessment rates to be levied on winter pear handlers during the 1987–88 fiscal period. In a mail ballot completed in January, the Winter Pear Control Committee voted unanimously to increase its budget of expenses from $3,396,563 to $3,816,563.

A proposed rule inviting comments on this $420,000 increase was issued on February 10, 1988, and published in the Federal Register on February 17, 1988 [53 FR 4642]. The comment period ended February 29, 1988. No comments were received.

The increase is needed to expand market development and promotion activities deemed necessary by the committee to market the record large 1987 crop. The committee has adequate funds to cover the increased expenses. Hence, no changes in assessment rates are necessary because of this increase.

On the basis of the foregoing, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the increased expenses are reasonable and likely to be incurred, and that such expenses will tend to effectuate the declared policy of the Act.

Approval of the increased expenses must be expedited because the committee needs to have authority to pay its expenses which are incurred on a daily basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Winter pears, Oregon, Washington California.

For the reasons set forth in the preamble, § 927.227 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 927.227 is amended as follows: (Note: This section will not be published in the Code of Federal Regulations).

§ 927.227 [Amended]

Section 917.227 is amended by changing "$3,396,563" to "$3,816,563."

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5403 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 88-016]

Animals Destroyed Because of Brucellosis; Indemnity Payments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding the Simbrah Association to the list of registered breed associations. This action is necessary to include all registered breed associations in the regulations.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. R.D. Hobbs, Senior Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5861.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 51 (referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis.

On December 29, 1987, we published in the **Federal Register** (52 FR 49029–49030, Docket Number 87–139), a document proposing to amend § 51.1 of the regulations by adding the Simbrah Association to the list of registered associations. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before January 28, 1988. We received one comment, which supports our proposed rule. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The economic impact of this rule is that it will allow approximately 2,200 small cattle producers owning registered Simbrah to receive a higher indemnity rate if these cattle must be destroyed because of brucellosis. There are many thousands of small cattle producers who do not own this registered breed of cattle and would therefore not be affected by this rule.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, 9 CFR Part 51 is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.1 [Amended]

2. In § 51.1, the definition of "Registered breed association" is amended by inserting "Simbrah Association," immediately after "Santa Gertrudis Breeders International,".

Done in Washington, DC, this 8th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5409 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 88-6]

Reports of Crimes and Suspected Crimes

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is revising 12 CFR 21.11 regarding reports by a national bank in the event of known or suspected crimes. These revisions are intended to clarify the filing requirement for these reports and will tend to reduce the overall number of criminal referral reports to be filed by national banks.

This interim rule references revisions to the two criminal referral forms, raises the threshold for filing criminal referrals where no suspect has been identified, and clarifies the filing requirement as far as reporting financial crimes where no loss is incurred by the bank, such as money laundering, bank bribery, and Bank Secrecy Act violations. The interim rule is intended to make report filing more efficient for the banks and

more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks.

DATES: This interim rule is effective April 11, 1988. Comments due on or before May 10, 1988.

ADDRESSES: Public comments should be submitted to: Office of Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Joel Miller, Attorney, Enforcement and Compliance Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447-1818.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and pursuant to that authority is responsible for ensuring that national banks apprise other Federal law enforcement authorities of any actual or potential violations of criminal statutes. Employee fraud, abusive insider transactions, check kiting schemes, money laundering and the like can be serious threats to a bank's security and may undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC is primarily concerned with criminal transactions sufficient in size or number to impact the safety and soundness of the bank, patterns of criminal offenses, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community needs to receive reports, shortly after a crime or suspected crime has been discovered, which contain sufficient information to determine whether the matter warrants investigation and prosecution.

A Working Group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The Working Group is composed of senior officials of the federal financial institution regulatory agencies and the Justice Department. The Working Group monitors the criminal referral process and has recommended further improving and coordinating the criminal referral system now in use by all federally-insured financial institutions and the regulatory agencies.

On July 17, 1985, the OCC published its final rule in the Federal Register (50 FR 34857) pertaining to 12 CFR Part 21—Minimum Security Devices and Procedures and Reports of Crimes and Suspected Crimes. That final rule imposed the criminal referral reporting requirement upon all national banks. Based upon the OCC's experience over the past year, certain needed revisions and clarifications have been incorporated into this interim rule.

The goals of this interim rule are to improve the information quality of criminal referrals, thereby making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the threshold reporting requirements for national banks, thereby making the reporting process more efficient and economical for the banks. These changes are designed to facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Reasons for Issuing Interim Rule With Notice

The policy of the OCC is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule, to the location identified in the ADDRESSES section of this preamble. Comments must be received on or before 60 days after publication of this interim rule in the Federal Register.

This rule is being issued on an expedited basis in order to ensure consistency with analogous rules and interpretive rulings being issued by the other federal financial regulatory agencies. In addition, the federal law enforcement agencies that use the information contained in the criminal referrals need the information required by this rule in order to pursue those individuals known or suspected to have engaged in bank fraud, money laundering, and related criminal transactions. Concurrent with the issuance of this interim rule, OCC is issuing revised criminal referral forms incorporating the revisions to this reporting requirement.

Criminal Referral Forms (Short and Long)

Section 21.11 requires a bank to file a Criminal Referral Form to report known or suspected crimes to the OCC. The OCC Criminal Referral Form has two formats—a short form (CC-8010-08) and a long form (CC-8010-09). It is estimated that the short form will be used for 75% of the reports submitted. This estimated percentage on the use of short forms has declined from the 95% figure cited in the final regulation in July 1985, due to the OCC's decision to raise the threshold reporting requirement (from $2,500 to $5,000) for the reporting of mysterious disappearances, unexplained shortages, and known or suspected crimes where no suspect has been identified.

The "short form" requires a bank to report the basic facts of the known or suspected criminal transaction: The approximate date and dollar amount of the known or suspected criminal transaction, the type of crime (embezzlement, check kiting, money laundering etc.), a brief summary of the violation, and where known, the identity of any person suspected. The "long form," an expanded and more detailed report, is required only in those situations where the transaction or suspected violation exceeds $10,000, or for any transaction involving a bank insider (i.e., an executive officer, director, or principal shareholder) as defined at 12 CFR 215.2.

Submission of Criminal Referral Forms

Threshold Amounts

Revised rule § 21.11 requires that a national bank submit a Criminal Referral Form upon the discovery of any known or suspected criminal violation committed against the bank or involving a financial transaction conducted through the bank involving bank personnel. A report must be filed where bank personnel are believed to be involved regardless of the dollar amount of bank funds involved.

Revised rule § 21.11 also sets forth more general guidelines for the reporting of known or suspected criminal violations of the U. S. Code, or regulations promulgated thereunder, where a violation is committed against the bank or where a criminal transaction is undertaken using the bank to facilitate that transaction. The bank must report all such criminal transactions involving $1,000 or more where it has a substantial basis for identifying a possible suspect or group of suspects.

For a criminal violation not involving bank personnel and involving a transaction of $1,000 or less, a bank must file a report only when that transaction appears to be part of a pattern of criminal activity committed by one or more identifiable individuals and the aggregate value of the transactions totals $1,000 or more. For example, a series of forged signatures appearing on credit card purchase receipts must be reported if the bank has reason to believe one identifiable individual, or a group of identifiable individuals acting in concert, has perpetrated the forgeries, and the aggregate dollar loss is $1,000 or more. For those situations (such as money laundering or false statements on credit applications) where the bank does not incur a "loss" *per se,* the $1,000 test applies in that the bank must evaluate whether the transaction either involved, or had the potential to involve, $1,000 or more.

In those situations where there is no substantial basis for the bank to identify a possible suspect or group of suspects, a bank must report a known or suspected criminal violation only when it involves $5,000 or more. For example, where a bank is unable to identify a suspect as a perpetrator of a credit card fraud, the bank need not file a referral until the loss on any given account exceeds $5,000. In addition, revised rule § 21.11 provides that a bank must report mysterious disappearances or unexplained shortages of bank funds or other assets only when they amount to $5,000 or more.

What Triggers The Reporting Requirement

In order to clarify what constitutes a reportable "known or suspected criminal violation," the OCC will continue to incorporate into its Criminal Referral Forms (CC-8010-08 and 8010-09) a listing and description of the most common federal crimes involving financial institutions, their personnel, or their customers' accounts. Using this list as a base, bank personnel should, in most instances, be able to determine whether a particular situation gives rise to the reporting requirement. Of note, the revised criminal referral forms being issued concurrent with this interim regulation include reference to three additional federal criminal statutes: (1) 18 U.S.C. 1956; (2) 18 U.S.C. 1957; and (3) 31 U.S.C. 5324. Banks are encouraged to file referrals whenever they suspect criminal transactions in violation of any of the cited statutes were committed.

Suspected Violations

The reporting requirement imposes an obligation to report all "known or suspected criminal violations" that meet specified criteria. By "suspected violation" the OCC is referring to a transaction or series of transactions for which there is reasonable cause to believe that a criminal violation has occurred. The OCC cannot quantify the precise amount of evidence needed to trigger the reporting requirement any more than it can delineate all the relevant factors that a bank must consider in deciding whether or not to report a suspicious or otherwise irregular transaction.

In many instances the suspicious nature of the transaction is a function not only of the transaction itself and its context but also of the bank's experience with the individuals associated with the transactions, either as employees or customers of the bank. In many situations, the bank will be able to discern the "intent" of those involved in a suspicious transaction. Invariably, however, the pivotal question of criminal intent will be left for the determination of law enforcement authorities. All that a bank can do in those situations is make a practical assessment of the suspicious transaction based upon a good faith examination of all the relevant factors. Clearly, the more serious the irregularity, particularly if it involves a bank insider, the greater the obligation upon the bank to fully investigate the matter.

Revised Threshold Amounts for Filing Reports

The OCC has no desire to place unnecessary reporting burdens on national banks; however, it is interested in furthering the goal of crime detection and prevention in cooperation with other federal law enforcement agencies. The OCC has determined, based upon its experience with the criminal referrals made over the past year, that where a bank has no apparent basis for identifying a possible suspect or group of suspects involved with a known or suspected criminal violation, a minimum reporting amount of $5,000 is appropriate.

The OCC has further determined, based upon its experience with these referral forms, that where the bank has a reasonable basis for identifying a possible suspect or group of suspects, it is important that every crime of $1,000 or more be reported. In addition, crimes of less than $1,000 are to be reported where a bank has reason to believe that one or more identifiable individuals have committed a series of crimes which, when aggregated, total $1,000 or more. Where a bank employee, officer, director, or shareholder is suspected of criminal activity, all bank related crimes must be reported, regardless of the dollar amount involved.

The OCC continues to be reluctant to set an arbitrary threshold dollar amount for criminal referrals, below which banks would not be required to file reports, as such a floor amount could tend to lead to multiple non-reportable criminal violations. In order to avoid nonreporting of criminal violations, in this interim rule the OCC has established threshold amounts that require the filing of Criminal Referral Forms whenever significant criminal activity, or a pattern of criminal activity, is detected. The rule sets a threshold of $5,000 when no suspect is identified.

Reporting Deadline

Revised rule § 21.11 continues to impose a 30-calendar day reporting period, commencing from the date of detection, during which a bank must report a reportable transaction. In those situations where the transaction requires immediate attention or where the violation is ongoing, a bank is strongly encouraged to notify the appropriate law enforcement agencies and the appropriate OCC District Office by telephone. The bank's oral notification should be followed by a timely written report.

In those situations where a bank is not obligated to file a report (e.g. an unexplained shortage of less than $5,000), but facts subsequently come to light revealing information identifying the individual(s) known or suspected of having committed or attempting to commit a criminal act, the 30-calendar day reporting period commences from the date reportable information, such as the identity of a suspect, is first identified.

Penalty for Failure to Report

Revised § 21.11 identifies when a civil money penalty may be assessed against a bank, its officers or its directors for failure to file a report. Penalties may also be assessed where the violation is willful or demonstrates a careless disregard for compliance with § 21.11. Assessments are likely to be made where it is established that a bank officer, director or other employee has intentionally attempted to cover up a defalcation, significant loss, pattern of criminal transactions, or has intentionally failed to file reports.

If a question exists as to whether to report an incident, the OCC recommends that a report be submitted providing at least the nature of the transaction, relevant account numbers and the identities of those suspected. For example, where a bank has a substantial basis to suspect that an individual has engaged in a pattern of criminal conduct, such as engaging in monetary transactions that appear to violate the money laundering statutes, the bank should file a criminal referral describing that pattern of criminal conduct. Additionally, banks are encouraged to report suspected violations, regardless of amount, to either state or local law enforcement authorities, whenever a violation of state or local law is suspected.

Exceptions to Reporting Requirements

Revised rule § 21.11(f) continues to provide two exceptions to the reporting requirements: one for robberies and burglaries and the other for lost or missing securities. These exceptions are provided because of the OCC's recordkeeping requirement in § 21.5(c) which requires a bank to keep a record of all crimes of violence on file, and because of the Securities and Exchange Commission's reporting requirements set forth at 17 CFR 240.17f–l which requires the reporting of all lost and missing securities.

Notice and Comment and Regulatory Flexibility Act

The Office has found that good cause exists under 5 U.S.C. 553(b)(B), for not providing notice and public procedure for this rule. Those procedures are unnecessary and contrary to the public interest. This rule eases a reporting of information requirement used by the government, thereby benefitting national banks.

The goals of this interim rule are to improve the information quality of criminal referrals, thereby making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the threshold reporting requirements for national banks, thereby making the reporting process more efficient and economical for the banks. This rule is being issued on an expedited basis in order to ensure consistency with analogous rules and interpretive rulings being issued by the other federal financial regulatory agencies. Although implementation delay attributable to usual public procedure is not desirable since this rule benefits national banks, the Office believes that public comment is beneficial. Therefore, opportunity for public comment regarding this interim rule is provided.

Since the Office has found that notice and public procedure concerning this rulemaking are unnecessary, the provisions of the Regulatory Flexibility Act are not applicable.

Executive Order 12291

The OCC has determined that this interim rule is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980, the reporting and recordkeeping requirements of 12 CFR Part 21 were submitted to and approved by the Office of Management and Budget under OMB control number 1557–0069.

List of Subjects in 12 CFR Part 21

National Banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations, Money laundering, Criminal transactions.

Authority and Issuance

For the reasons set out in the preamble, Part 21 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1818, as amended, and 1881–1884.

2. In § 21.11, paragraphs (b)(5), (c) (2), (3), (e) through (h) are republished and paragraphs (a), (b) (1), (2), (3) and (4), (c)(1), and (d) are revised to read as follows:

§ 21.11 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving national banks. This section ensures that the appropriate federal regulatory and law enforcement agencies are notified when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the OCC maintains a data base for monitoring the types and extent of crimes against banks.

(b) *Reports Required.* A national bank shall file OCC Criminal Referral Form (CC–8010–08 or CC–8010–09) in accordance with the instructions on the form, in case of:

(1) Any mysterious disappearance or unexplained shortage of bank funds or other assets of $5,000 or more.

(2) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank, where the bank has a substantial basis for identifying responsible bank personnel.

(3) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank and involving or aggregating $1,000 or more in bank funds or other assets, where the bank believes, in good faith, that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects.

(4) Any known or suspected criminal violation of any section of the United States Code, or regulation promulgated thereunder, committed against the bank and involving or aggregating $5,000 or more in bank funds or other assets, where the bank believes, in good faith, that it is either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(5) As used in paragraphs (b) (2), (3), and (4), of this section, the term "suspected" refers to all matters, including unexplained losses, for which there is a known factual basis for a belief that a crime has been or may have been committed.

(c) *Time for reporting.* (1) A national bank shall file, no later than 30 calendar days after the date of detection of the loss or known or suspected criminal violation, any report required pursuant to paragraph (b) of this section. Where a report becomes necessary because a possible suspect or group of suspects is finally identified, the 30-calendar day reporting period commences with the identification of the suspect or group of suspects.

(2) Where a pattern of crimes committed by an identifiable individual is detected by a bank, a report shall be filed no later than 30 calendar days after the aggregate amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the bank should immediately notify, by telephone, the Offices set forth on the forms. Banks shall timely file, after telephone notification, the required written reports.

(d) *Reporting to Federal, State and local authorities.* Banks are strongly encouraged to file criminal referrals or otherwise report crimes or suspected criminal activity to federal, state and local law enforcement authorities in those situations where the facts reflect a significant likelihood that a violation of law has occurred.

(e) *Manner of reporting.* A bank may elect to file its reports on the appropriate OCC Criminal Referral Form, a legible photocopy thereof, or a facsimile of the appropriate OCC form.

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for those robberies and burglaries explicitly covered by the recordkeeping requirements of § 21.5(c), committed or attempted at a banking office of a bank.

(2) Banks need not file Criminal Referral Forms for lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Notification of Board of Directors.* The Bank shall have effective procedures ensuring that the board of directors of the bank is notified, not later than at their next meeting, of the filing of any report hereunder.

(h) *Penalty.* Willful failure to file or careless disregard in filing reports may subject the bank, its officers, and/or its directors to civil money penalties.

(Approved by the Office of Management and Budget under Control Number 1557–0069.)

Date: December 23, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–5295 Filed 3–10–88; 8:45 am]

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12 CFR Parts 29, 30, and 34

[Docket No. 88–7]

Real Estate Lending Activities of National Banks; Adjustable-Rate Mortgages, Due-on-Sale Clauses, Etc.

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (the "Office") is amending its regulations governing the real estate lending activities of national banks. These amendments implement recommendations of the Federal Financial Institutions Examination Council, and are designed to achieve greater uniformity among the regulations of the several depository institution regulatory agencies. In general, these amendments consolidate and simplify various real estate lending rules of this Office, presently codified at 12 CFR Parts 29, 30, and 34.

Important revisions are being made to the Office's adjustable-rate mortgage ("ARM") regulation. Specifically, the amendments now being adopted change the types of loans for which national banks must give consumer-oriented disclosures, and rescind the Office's current ARM disclosure provision. National banks continue to be subject to the disclosure requirements contained in the Federal Reserve Board's Truth in Lending regulation (Regulation Z). In addition, to ease the regulatory burden of lenders and eliminate regulatory impediments to the secondary market for ARMs, these amendments facilitate the ability of national banks to deal in ARMs. Certain revisions are also made for greater clarity, and obsolete or unnecessary provisions are eliminated. Finally, obsolete portions of 12 CFR Part 30, dealing with due-on-sale clauses, are rescinded and the remaining sections of Part 30 as well as the revised ARM regulation are transferred to Part 34. This brings all of the Office's substantive real estate regulations together in one place.

EFFECTIVE DATE: March 11, 1988, except the removal of Part 29 which is effective October 1, 1988. Compliance with the amendments to Part 34 is optional until October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Roland G. Ullrich, Deputy Director, Consumer Activities Division, (202) 287–4265, or Ellen C. Starr, Attorney, Legal Advisory Services Division, (202) 447–1880.

SUPPLEMENTARY INFORMATION:

Revisions to 12 CFR Part 29

An adjustable-rate mortgage is a mortgage loan in which the interest rate is subject to change. Changes in the interest rate on ARM loans may result in changes in monthly payment amounts or changes in the rate of amortization of principal (changes in the maturity of the loan or the amount of the final payment).

Designed in response to the inflation and high interest rates which prevailed in the late 1970s and early 1980s, ARMs came into widespread use after the various federal depository institution regulatory agencies issued regulations authorizing and governing them. The Office's ARM rules, contained in 12 CFR Part 29, were adopted on March 27, 1981. 46 FR 18932. The Federal Home Loan Bank Board followed on May 23, 1983. 48 FR 23058. Because of the disclosure requirements contained in 12 CFR 29.7, national banks were exempted from compliance with certain disclosure provisions of the Federal Reserve Board's Truth-in-Lending regulation (Regulation Z) dealing with variable-rate, closed-end credit. 12 CFR 226.18(f) n.43 (1987).

Some concerns regarding ARMs have developed in recent years. For instance, there has been considerable congressional and industry interest in developing uniform disclosures for ARM consumers. In particular, members of Congress have urged that such disclosures contain a "worst-case" payment scenario, *i.e.*, a provision which spells out the maximum payment for which the borrower may become liable under the adjustable-rate loan to which he or she is agreeing. This is to prevent "payment shock," which can occur when the consumer finds that, following a payment adjustment, the payments are much larger than anticipated.

Another concern has been the secondary market, in which lenders buy and sell ARM contracts. Such a market has arisen, but its development has been hampered in part by the fact that the different agencies' regulations have dissimilar requirements, especially in the content and timing of disclosures that must be made to consumers. National banks that desire to purchase ARMs in the secondary market have been limited to buying loans that conform to the Office's rules. This is undesirable, since limiting the marketability of ARMs limits the incentive to provide residential mortgage loans, restricting the availability of consumer credit. ARM originators who wished to have full access to the secondary market had to make multiple disclosures to their borrowers to comply with all of the agencies' requirements. Providing multiple disclosures is both burdensome for lenders and potentially confusing for consumers.

To address these problems, the Federal Financial Institutions Examination Council (FFIEC), composed of representatives of the Office, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration, recommended uniform initial disclosure requirements for ARMs.

In a statement issued August 12, 1986, the FFIEC recommended that the following initial disclosures be given to prospective ARM borrowers: (1) "The Consumer Handbook on Adjustable-Rate Mortgages" (published jointly by the Federal Reserve Board and the Federal Home Loan Bank Board), or a suitable substitute; and (2) disclosures that demonstrate how any particular ARM loan program offered by a creditor may affect borrowers when interest rates change. The latter includes up to 14 specific elements, depending upon the specific loan program involved. The FFIEC's recommendations are similar to

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the initial disclosures required by the Office's current ARM regulation.

The Federal Reserve Board ("FRB") has already acted to implement the FFIEC's recommendations. On November 24, 1986, the FRB issued a Notice of Proposed Rulemaking (51 FR 42241) proposing to amend 12 CFR Part 226 (Regulation Z) to incorporate the FFIEC's proposals. The FRB also proposed to amend Regulation Z to add most of the subsequent disclosure requirements presently contained in the Office's ARM regulation at 12 CFR 29.7. The FRB issued a Final Rule amending Regulation Z on December 24, 1987. 52 FR 48665.

Rather than duplicate the rules that the FRB now has in place, on October 2, 1987, the Office issued a Notice of Proposed Rulemaking proposing to rescind the present disclosure requirements in 12 CFR 29.7. 52 FR 36953. The Office stated, however, that to the extent they are incorporated into Regulation Z, the Office will continue to enforce these requirements with respect to national banks. 52 FR 36954.

Beyond the FFIEC's recommendations, the Office has concluded that certain portions of its ARM regulation are no longer necessary and should be rescinded. The amendments now being adopted change the types of loans for which national banks must make consumer-oriented disclosures, and rescind the Office's current ARM disclosure provision. The revised regulations, with certain portions of 12 CFR Part 30, are added to Part 34 so that all of the Office's substantive real estate regulations are located in one place under the general heading of "Real Estate Lending."

Revisions to 12 CFR Part 30

Another area of concern in the early 1980's was "due-on-sale" clauses in real estate loans. These clauses give a lender the right to declare the entire debt payable at once if title to the property securing the loan is transferred. In the early 1980's, many states restricted or prohibited due-on-sale clauses either by statute or judicial decision. These states reasoned that such provisions discouraged homeowners from selling their property and therefore constituted an unreasonable restraint on the sale of housing. The Office, on the other hand, believed that in the volatile interest rate climate of the time, a rule ensuring the enforceability of due-on-sale clauses could encourage banks to offer fixed-rate, long term mortgage loans with relatively lower interest rates, due to the reduced level of market risk. 46 FR 46964 (1981).

The debate was resolved with the passage of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469 ("the Garn-St Germain Act" or "the Act"). Section 341 of the Act, codified at 12 U.S.C. 1701j–3, provided generally that, notwithstanding state law, due-on-sale clauses in real estate loans, regardless of when originated, would be enforceable as to transfers occurring after the date the Act become effective (October 15, 1982). However, this general rule was not applicable during the "window period," *i.e.*, the period beginning with the date of a state rule of law restricting the enforceability of due-on-sale clauses and ending with the effective date of the Act. Due-on-sale clauses in window-period loans were to be enforceable only after the passage of three years from the effective date of the Act, unless a different rule was established by the appropriate regulatory authority. (The Office did, in fact, establish an earlier cutoff date of April 15, 1984. 12 CFR 30.1(b)(1).) In addition, due-on-sale clauses in certain types of transactions were prohibited.

The Office implemented the Garn-St Germain Act by the publishing its due-on-sale regulation, 12 CFR Part 30, on November 8, 1983. 48 FR 51283. Major portions of the regulation are concerned with the so-called window period which, as noted above, ended on April 15, 1984. Since that time, national banks have been free to enforce due-on-sale provisions without restriction, except in the transactions exempted by the Garn-St Germain Act.

The Office believes that it would be beneficial to simplify this regulation by rescinding obsolete portions dealing with the window period, paragraphs (b) and (d) of § 30.1. Since these paragraphs constitute the bulk of the regulation, the Office proposed to transfer the remaining valid portions, paragraphs (a) and (c) of § 30.1, to Part 34, "Real Estate Lending," where they would become new section 34.4. The present text would remain unchanged except for minor, nonsubstantive revisions.

Summary of Comments; Office Action

To implement the uniform disclosures recommended by the FFIEC, and address the other concerns outlined above, the Office issued a Notice of Proposed Rulemaking (the "NPRM") to amend 12 CFR Parts 29, 30 and 34. 52 FR 36953. The comment period on the NPRM ended November 2, 1987.

Twenty of the 21 comments received generally supported the Office's proposal to adopt the FFIEC's recommendation of uniform disclosure requirements for adjustable-rate mortgages. The only commenter opposing adoption suggested the retention of the Office's present disclosure requirement, contained in 12 CFR 29.7. Generally, commenters favored the proposed changes as beneficial to consumers, and asserted that compliance with the amendments would not be costly or difficult. One commenter stated that any additional burden would be outweighed by the convenience of a uniform disclosure requirement. Another commenter noted that national banks have operated at a competitive disadvantage to state banks, and stated that a level playing field and simplified regulation would be welcome. Few commenters specifically addressed the Office's proposal to consolidate existing real estate lending regulations, but those that did address consolidation supported it.

Most commenters made specific, technical recommendations as to ways in which the uniform ARM disclosures proposed could be improved. These technical recommendations are discussed by proposed section number and title, below.

After considering all of the comments, the Office has made changes to the final rule, designed to alleviate the burden of compliance with the regulation without compromising the goal of uniform disclosures for adjustable-rate mortgage loans extended for consumer credit purposes. In addition, other changes have been made to clarify the intentions of the proposed amendments to the regulation. For example, in response to comments received, the Office has revised the definition of an adjustable-rate mortage loan and has clarified the effect of the transition period. All changes to the proposed rule are discussed below. The Office has not adopted changes suggested by commenters which would alter the uniform disclosure provisions recommended by the FFIEC.

Section-by-Section Analysis

Section 34.4 Due-on-sale clauses

As proposed in the NPRM, this section is drawn from the present paragraphs (a) and (c) of § 30.1, which remain unchanged except for minor, technical revisions.

Section 34.5 Definition

In the NPRM, the Office proposed to revise the definition of an adjustable-rate mortgage loan, to cover only extensions of consumer credit to natural persons. 42 FR 36955. The phrase "consumer credit" was drawn from Regulation Z, (12 CFR Part 226) and is

intended to have the same meaning as it has in that regulation. The purpose of this revision was to clarify that the Office's ARM regulation, with its requirement of consumer-oriented disclosures, was not intended to apply to purchase-money mortgage loans for investment, commercial, business or agricultural purposes.

The original ARM regulation was intended, in part, to promote the availability of mortgage funds for residential purposes and to provide protections for home purchasers. 46 FR 18932, 18935 (1981). The regulation was not intended to regulate adjustable-rate mortgage loans made for other purposes. The broad language of the definition of an adjustable-rate mortgage loan, 12 CFR 29.1, coupled with the preemption provision of 12 CFR 29.2, has enabled some banks to extend variable rate loans for investment, business, commercial, or other non-consumer credit purposes, where these loans finance or refinance the purchase of and are secured by a one-to-four family dwelling. To comply fully with the Office's ARM regulation, these banks have made the consumer-oriented disclosures that the current ARM regulation requires in investment, commercial, business, or other non-consumer credit ARM transactions.

Approximately half of the commenters responded to the proposed change in the definition of an ARM. Most commenters supported the exclusion of loans for business, commercial, and agricultural purposes, stating that commercial borrowers neither wanted nor required the ARM disclosures. Some supporting the exclusion stated that it would allow banks to compete more effectively. However, one commenter objected to "the narrower definition proposed," on the basis that a "borrower who wishes to use loan proceeds for agricultural and industrial purposes should also be fully informed as to all possible changes in loan terms in order to make an informed choice before borrowing."

One commenter asserted that a narrower definition of the ARMs to which the regulation applies may ultimately reduce the types of ARM loans that a bank could make, stating that a large number of existing ARM loans which relied on the federal preemption provision of 12 CFR 29.9 would be excluded under the proposal. This commenter suggested that consistency with Regulation Z may be outweighed by a disadvantageous narrowing of the definition.

Some commenters stated that they preferred the Office's proposed definition of ARMs to that of the FFIEC. As noted at 52 FR 36956, the FFIEC's proposal covers only loans secured by the borrower's principal dwelling, and includes non-purchase money closed-end credit secured by the borrower's principal dwelling.

Other commenters opposed the Office's proposed definition, endorsing that recommended by the FFIEC. One commenter asserted that the Office's proposed definition left unclear the issue of whether a loan for the purpose of purchasing or refinancing a one-to-four family dwelling but secured by a different dwelling (*e.g.*, a vacation home) is covered by the regulation. This commentr advocated the approach taken by the FFIEC and the FRB, that an ARM is only covered by the regulation if the collateral used is the borrower's principal dwelling.

Two commenters maintained that, even as amended, the Office's proposed definition of a covered ARM was inconsistent with the FRB's definition. They noted that the Office's proposed definition reaches both closed- and open-ended loans; the latter are not covered by the FRB proposal. Another commenter stated that the FRB's proposed amendment to Regulation Z did not distinguish between first and second mortgage borrowings, in contrast to this Office's proposed definition, which does not include second mortgage loans that are silent with regard to whether the borrower will apply loan proceeds toward the payment of a purchase-money mortgage. This commenter advocated the FRB definition, suggesting that the FRB approach would enhance the opportunity for national banks to participate in an expanded secondary market for ARM loans.

By amending the definition of an adjustable-rate mortgage loan, the Office intended to clarify that the consumer-oriented disclosures were required only in consumer-credit transactions. The Office did not intend to prevent extensions of variable rate credit for investment, business, commercial or agricultural purposes. Therefore, this Office is revising the proposed definition. This change is accompanied by changes to the disclosure section, designed to make clear that the consumer-oriented ARM disclosures stated at Regulation Z must be given only in consumer credit transactions. As a result, ARM loans may continue to be made for investment, business, commercial or agricultural purposes, but such loans will not require the consumer credit disclosures of Regulation Z.

The NPRM also proposed to exclude short-term and demand loans from the coverage of the definition of an adjustable-rate mortgage. 52 FR 36955. This revision is intended to make the Office's adjustable-rate mortgage definition consistent with the FRB's amended Regulation Z, which applies only to variable rate loans with a term of greater than one year. 52 FR 48761. This revision does not affect the authority of national banks to make short term or demand loans secured by real estate, as that authority is derived from 12 U.S.C. 371 and 12 CFR Part 34. 12 U.S.C. 371; 12 CFR 34.2.

Section 34.6 General Rule

The NPRM proposed to eliminate the current restriction that national banks may make, sell, purchase, participate or deal in ARM loans "only if they conform to the conditions and limitations of this part." This change was intended to enhance the ability of national banks to participate in the nationwide secondary market in ARM loans by permitting them to purchase or participate in loans made in accordance with another regulatory agency's requirements.

The commenters favored the elimination of this restriction, agreeing that this amendment would enhance the establishment of a thriving secondary market in ARMs. One commenter, however, requested that this Office clarify the effect of the amendment on existing ARM loans, *i.e.*, whether a national bank could purchase or participate in ARM loans that complied with the requirements of another regulatory agency when made, but which were made prior to the effective date of this regulation.

In response to this comment, the Office has determined that the purposes of the amendment are best furthered if national banks may purchase or participate in adjustable-rate mortgage loans made in accordance with the regulatory requirements of another regulatory agency, regardless of when the ARM loans were originated.

Although the substantive requirements of the Office's ARM regulation, and those incorporated from the FRB's Regulation Z, apply to ARM loans made by national banks, the Office expressed some concern in its NPRM regarding the evasion of these requirements through the use of affiliates. The Office requested specific comment on whether to require that ARM loans a national bank purchased from an affiliate also comply with the amended ARM regulation.

Only one commenter requested the Office not to impose such a restriction on affiliates of national banks that originate loans. Therefore, the Office has decided to adopt a requirement that

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the ARM loans which a national bank purchases from its affiliates must comply with the requirements of this Office's adjustable-rate mortgage regulation.

Section 34.7 Index

In the interest of greater clarity, the NPRM proposed to re-word this section. No substantive changes were intended. One commenter suggested that this provision be deleted, as the section offered "little or no protection to the consumer."

The Office intended that the specific requirements of this section apply only to consumer credit adjustable-rate mortgage loans. The NPRM would have achieved this result through an amended, narrower definition of an adjustable-rate mortgage loan. However, the Office is now retaining a broad definition of an adjustable-rate mortgage loan. In view of the broader definition of an adjustable-rate mortgage, the Office is now amending the index section. This amendment is intended as a clarification that the stated index requirements apply only in consumer credit transactions. This amendment will allow a bank to tie a variable interest rate to the bank's prime rate where the variable rate loan is made for investment, commercial, business, or agricultural purposes.

Section 34.8 Rate Changes

The NPRM proposed to delete the present section on rate changes, 12 CFR 29.4, believing that the information presented was superfluous. All comments that addressed the proposed deletion of 12 CFR 29.4 supported this change. One commenter stated that the note and related documents evidencing the loan contract typically established the basis for determining the index value to be used to adjust interest rates.

In place of the previous section on rate changes, the Office is adding a provision requiring that consumer credit ARM loans originated on or after December 9, 1987, include a limitation on the maximum interest rate that may apply during the term of the loan. This interest rate cap is mandated by section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 100 Stat. 552.

Section 34.9 Pre-payment Fees

The NPRM proposed no changes to the current Pre-payment Fees section, 12 CFR 29.6, other than renumbering the section.

Section 34.10 Disclosure

In the NPRM, this Office proposed to adopt the recommendations of the FFIEC, and to amend its ARM disclosure requirements accordingly. Specific FFIEC recommendations were discussed by this Office in the NPRM. 52 FR 36953. The FRB has thoroughly addressed each of these recommendations and the specific items which the FFIEC listed. 52 FR 48665. Almost every comment the Office received made some specific suggestions about the actual disclosures proposed. These comments are addressed in the order that the pertinent disclosure items appeared listed. The FRB received similar comments to those received by this Office; the FRB responded to those comments in the final rule amending Regulation Z. 52 FR 48665.

As initial disclosures, the FFIEC recommended that ARM consumers be given (1) "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the FRB and the Federal Home Loan Bank Board, or a suitable substitute; and (2) a "loan program" disclosure, covering up to fourteen items, to be prepared for each adjustable-rate loan program. Commenters generally favored the requirement that the "Consumer Handbook for Adjustable-Rate Mortgages" or a suitable substitute be provided to potential customers. One commenter suggested that a process be developed and implemented whereby those lenders that chose to develop a substitute could obtain expedient approval of that substitute's suitability. Another commenter requested that the FFIEC develop and adopt a uniform disclosure booklet to discuss adjustable-rate mortgages generally, and provide definitions and examples of the specific disclosure items required.

As to the "loan program" disclosure which the FFIEC recommended be prepared for each adjustable-rate loan program, one commenter suggested that the FFIEC develop a uniform disclosure format. This commenter stated that a uniform booklet and disclosure format would allow a consumer to read about and understand a "generic ARM," and them compare detailed data from any lender, utilizing the same format. This commenter argued that without a common format, although lenders may provide the same types of information in compliance with the regulation, differences in presentation, format, and narrative would make it difficult for a consumer to compare programs from lender to lender.

The Office has decided not to implement a process whereby lenders would obtain agency approval prior to providing potential ARM consumers a "suitable substitute" for the "Consumer Handbook for Adjustable-Rate Mortgages." Instead, national banks should make a good faith determination whether the information they intend to provide is, in fact, a "suitable substitute." The Office considers that a "suitable substitute" should be, at a minimum, comparable to the "Consumer Handbook" in substance, comprehensiveness, and clarity. Many commenters specifically addressed the FFIEC's proposed disclosure item (j). 52 FR 36956. This item would require a lender to develop an example, based on a $10,000 loan amount, of how payments and the loan balance would be affected by changes implemented according to the terms of the loan program. The example must be based on index values beginning in 1977, and must be updated annually until a 15-year history is shown. Thereafter, the example should reflect the most recent 15 years of index values. Finally, the proposed example should reflect "all significant loan program terms, such as caps, a discounted interest rate, and negative amortization" triggered by index movements during the years shown.

All commenters addressing item (j) opposed it. They agreed that this item would increase the disclosure burden on lenders and would be of minimal benefit to ARM borrowers. They asserted that (1) considering all variables, such as interest rate caps, discounted rates, and negative amortization may prove confusing and misleading to customers; (2) historical fluctuation does not predict future interest rate activity; (3) the 15-year example would be difficult to develop, because many banks change their rates on their accounts monthly, and only change the customer's payment annually; (4) a 15-year example showing the index value and the amount of change on a semi-annual basis will demonstrate to the consumer how the index has performed, and the additional disclosure of payments and loan balance over that term is unnecessary; and (5) the added disclosure item would provide little information to the consumer which was not already more adequately provided under this Office's existing regulations.

One commenter contrasted the requirement of present § 29.7(a)(11) to that proposed at item (j), stating that in practical effect, item (j) may require an "unrealistic disclosure." Another commenter, however, endorsed item (j) "in that it modifies the existing requirement that national banks are presently required to give a hypothetical (and usually unrealistic) example of the payment amount and loan balance using an assumed one-percentage point increase in the index every six months."

Some commenters offered suggestions for improving the proposed disclosures. One commenter advocated an example which showed the historical performance of an index, and a "worst-case" scenario, showing the maximum interest rate, payment amount, and resulting loan balance. Another commenter suggested a prospective, rather than an historical, depiction of maximum interest rate, showing each year's loan cap over the life of the loan.

Although the FRB also received comments rejecting to disclosure item (j), the FRB has retained that item unchanged. 52 FR 48671. In addition, the FRB has included examples of the interpretation of these requirements. One item which the FFIEC recommended be disclosed, that a loan program contains no limitation on the amount of payment or interest rate increases, has been omitted as no longer necessary. *See* § 34.8, discussed above.

Other commenters addressed other aspects of the proposed disclosure. One warned that the FFIEC's recommended disclosure items (k), (m) and (n) may confuse borrowers by presenting them with too much information that they would not understand. 52 FR 36958. Another commenter asked that lenders not be required to give specific disclosures until the borrower had paid a nonrefundable fee and submitted an ARM loan application.

As proposed in the NPRM, the Office now rescinds the disclosure provision previously stated at 12 CFR 29.7, and defers to the disclosure requirements in Regulation Z, as amended. Generally, the initial disclosure requirements recommended by the FFIEC are patterned after the requirements of § 29.7(a). The FRB has amended Regulation Z to implement the recommendations of the FFIEC. 52 FR 48665. In amending Regulation Z, the FRB noted that it did not adopt changes suggested by commenters which would alter the uniform disclosure provisions recommended by the FFIEC. 52 FR 48666. Thus, by deferring to Regulation Z, the Office is adopting the FFIEC's recommendations.

As recommended by the FFIEC, and implemented by the FRB, the "loan program" disclosure must contain:

(i) The fact that the interest rate, payment, or term can change;

(ii) the index or formula to be used and a source of information about the index;

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin;

(iv) A statement that the consumer should ask about the current margin value and current interest rate;

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount;

(vi) The frequency of interest rate and payment changes;

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance, including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest carryover;

(viii) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by changes implemented according to the terms of the loan program. The example shall be based on index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that are triggered by index movements during the period;

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example;

(x) The maximum interest rate and payment amount for a $10,000 loan originated at the most recent interest rate shown in the hypothetical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan;

(xi) The fact that the loan program contains a demand feature;

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices; and

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

52 FR 48665. As recommended by the FFIEC, these disclosures must be provided to a prospective borrower when an application form is furnished or before the payment of a nonrefundable fee, whichever is earlier.

The FRB has also amended Regulation Z to impose new subsequent disclosure requirements on ARM lenders. The new subsequent disclosure provision is found at 12 CFR 226.20(c). 52 FR 48671. As with the initial disclosure requirements, the Office will enforce these provisions with respect to national banks.

These subsequent disclosure provisions resemble the subsequent disclosure requirements of § 29.7(b), with minor differences. Unlike § 29.7(b), Regulation Z as amended does not require a prompt subsequent disclosure of interest rate changes unless they are coupled with payment changes. Under the amended Regulation Z, notice of interest rate changes that do not result in payment changes must be given only once a year, instead of at the time of each change.

The FRB had originally proposed that a notice of interest rate changes, accompanied by payment changes, should be given to a consumer 30 days before a payment at the new level was due. Current § 29.7(b) requires this notice be given 25 days before a payment at the new level is due. In its Final Rule, the FRB adopted the timing of the notice provision in § 29.7, requiring notice 25 days before a payment at the new level is due.

The FRB does not incorporate in amended § 226.20 a statement, if appropriate, "that a prepayment fee will be charged if the borrower chooses to prepay the loan." The Office required this disclosure at § 29.7 (b)(6) and (c)(4). However, Regulation Z generally requires a disclosure about the existence of any prepayment penalty, which makes it unnecessary to specifically require that disclosure for adjustable-rate mortgage loans. *See* 12 CFR 226.18(k).

The balance of the subsequent disclosures in Regulation Z as amended are identical to this Office's requirements in § 29.7 (b) and (c). Therefore, the Office believes that it can promote regulatory simplification by rescinding present § 29.7 (b) and (c) without compromising consumer protection.

Short term and demand loans, which are defined respectively as mortgage loans which are not fully amortized by the end of the loan term and mortgage loans which are payable on demand, were addressed in § 29.7(d). That section previously required a standard, bold-faced warning of the possibility that such loans may be called or not renewed at maturity of the note. This requirement was in addition to the existing provisions applicable to these loans contained in Regulation Z, which require that a demand feature contained in a loan be disclosed, and that a payment schedule show a balloon payment when the loan matures prior to the end of the amortization schedule. *See* 12 CFR 226.18 (g) and (i).

Three of the four commenters who addressed the proposed elimination of a

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disclosure notice for short-term and demand loans supported that proposal. Two commenters stated that the Regulation Z disclosure requirements, which will still apply to these loans, are sufficient notice to consumers. However, one commenter asserted that the bold-faced notice that this Office required for short-term or demand loans should be incorporated in the FRB's Regulation Z, thus preserving the requirement that this notice be given. As the Office is not aware of any problems with the present requirements of Regulation Z, the notice required by § 29.7(d) has been eliminated.

Finally, the Office determined § 29.7(e) to be unnecessary, since that information can be derived from the initial disclosure of the margin or other adjustment mechanism mandated by the amendments to Regulation Z and the initial interest rate. One commenter supported this proposed deletion, while another recommended that his disclosure continue. The Office still feels the requirement to be superfluous, and therefore is eliminating it.

As noted in the discussion of the amended definition of an adjustable-rate mortgage loan, the Office does not intend to require that the consumer-oriented disclosures generally outlined above and incorporated in Regulation Z at 12 CFR 226.19(b) and 229.20(c) be given in investiment, business, commercial or agricultural credit transactions with a variable interest rate. This intent is expressed by the addition of a sentence to § 34.10, stating that the disclosures required by Regulation Z need only be made where application of the terms of Regulation Z would require that the disclosures be given.

In summary, by applying the definition of an adjustable-rate mortgage loan and the general rule, national banks may make, sell, purchase, participate or deal in extensions of variable rate credit made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling. Although a national bank may make an adjustable-rate mortgage loan for business, investment, commercial or agricultural purposes, Regulation Z disclosures must only be given in consumer credit transactions, as required by that regulation. For example, where a bank extends a closed-end variable rate loan to a natural person, for the purchase of and secured by his or her single family principal dwelling, and the term of the loan is for greater than one year, the initial and subsequent disclosures of 12 CFR 226.19(b) and 226.20(c) must be given.

Section 34.11 Non-federally chartered commercial banks

The Office proposed no substantive changes to this section, which merely repeats authority conferred by § 804(a) of the Garn-St Germain Act upon state commercial banks to make ARM loans in accordance with federal regulations in lieu of state law. *See* 12 U.S.C. 3803(a). The section has been retained for the convenient reference of banks seeking that authority.

Previously, this section listed by number the specific provisions of the ARM regulation with which a state commercial bank must comply. One commenter suggested that the disclosure section, proposed § 34.10, should be added to the sections referenced in § 34.11 as being applicable to non-federally chartered commercial banks. As amended, § 34.11 omits any specific list of sections, and states that nonfederally chartered commercial banks relying on this provision must comply with the requirements of Subpart B of Part 34.

Section 34.12 Transition Rule

The NPRM proposed a six-month phase-in period, during which a national bank may comply with either the disclosure requirements as presently stated at 12 CFR 29.7, or with the amended disclosure requirements, § 34.10. At the end of that period, compliance with the new Part 34 will be required.

While some commenters favored the proposed six-month phase in, other commenters objected to the apparent retroactive effect of the proposed transition rule. One commenter suggested that lenders be permitted to comply with existing § 29.7(a) requirements for initial disclosures until the date on which lenders must comply with the new Regulation Z disclosure for adjustable-rate mortgages, October 1, 1988. This commenter also suggested that lenders be permitted to continue "renegotiable rate loans" in accordance with original loan commitments.

One commenter stated generally that the application of the disclosure requirement to ARM loans already being serviced may present severe compliance difficulties for some lenders. Another commenter protested its inability to comply with the subsequent disclosures of amended Regulation Z, and the terms of its own ARM loan documents.

The Office does not intend the amended disclosure provisions of the ARM regulation to have a retroactive effect. As noted above under "Effective Date," national banks have until October 1, 1988, as a transition period, during which the banks may choose to follow either the provisions of Part 29 or the amended requirements of Part 34 and Regulation Z. For adjustable-rate mortgage loans originated on or after October 1, 1988, compliance with the new Part 34 will be mandatory. However, national banks may continue to apply the provisions of Part 29 to adjustable-rate mortgage loans originated, or as to which a binding commitment was made, prior to October 1, 1988.

Effective Date of this Rule

As indicated above, this final rule is effective immediately upon publication in the **Federal Register**. The 30 days delayed effective date otherwise required under the Administrative Procedure Act has been waived pursuant to 12 U.S.C. 553(d)(3) of that Act, which provides for waiver "by the agency for good cause found and published with the rule."

The Office has noted that the initial disclosures the FFIEC recommended and the FRB adopted in amending Regulation Z largely track those previously required by the Office at 12 CFR Part 29. Further, the FRB amendment to its Regulation Z incorporates subsequent disclosure requirements that the Office had required of national banks. Finally, compliance with the requirements of Part 34 is optional until October 1, 1988, providing national banks ample time to develop and implement new adjustable-rate mortgage loan disclosure documents. For these reasons, the Office is waiving the 30 days delayed effective date for this rule.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small banks. All banks should benefit from regulatory simplification and the greater secondary market opportunities that will result from this final rule.

Executive Order 12291

The Office has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this final rule: (1) Would not have an annual effect on the economy of $100 million or more; (2) would not result in a major increase in the cost of bank operations or government supervision, nor would it be likely to generate substantially higher payments for borrowers, and (3) would not have a significant adverse impact on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1557–0183).

List of Subjects

12 CFR Part 29

Mortgages, National banks.

12 CFR Part 30

Due-on-sale clauses, National banks, Real estate loans.

12 CFR Part 34

Credit, Due-on-sale clauses, Mortgages, National banks, Real estate loans.

For the reasons set forth in the preamble, Title 12, Chapter I, Parts 29, 30 and 34 of the Code of Federal Regulations are amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; and 12 U.S.C. 371.

2. Part 29 is amended by adding the following:

Note.—Subpart B of Part 34 of this chapter is effective on March 11, 1988, but under § 34.12 national banks have the option of continuing to comply with this Part 29 (in lieu of Part 34) until October 1, 1988.

PART 29—[REMOVED]

3. Part 29 is removed effective October 1, 1988.

PART 30—[REMOVED]

4. Part 30 is removed.

PART 34—[AMENDED]

1. The authority citation for Part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j–3.

2. Part 34 is amended by adding the heading "Subpart A—General" immediately before § 34.1.

3. Part 34 is amended by adding a new § 34.4 to read as follows:

§ 34.4 Due-on-sale clauses.

(a) *General rule.* A national bank may make or acquire through purchase, assignment, pledge or otherwise, a loan, secured by a lien on real property, that includes a clause, known as a due-on-sale clause, giving the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise. Except as set forth in paragraph (b) of this section, such clauses in loans, whenever originated, shall be valid and enforceable as to transfers of the secured property occurring after December 8, 1983, notwithstanding any contrary law or judicial decision of any state, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Guam, which laws and judicial decisions are hereby expressly preempted. For the purposes of this part, (1) real property shall also include such residential dwellings as condominium units, cooperative housing units, and residential manufactured homes and (2) the term "lender" means a government agency or person, including corporations, partnerships, trusts or associations making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency.

(b) *Exceptions.* Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320), 12 U.S.C. 1701j-3(d), as interpreted by the Federal Home Loan Bank Board pursuant to the powers granted to it in paragraph (e) of that section, 12 U.S.C. 1701j-3(e).

4. Part 34 is amended by adding a new Subpart B to read as follows:

Subpart B—Adjustable-Rate Mortgages

Sec.
34.5 Definitions.
34.6 General rule.
34.7 Index.
34.8 Rate changes.
34.9 Prepayment fees.
34.10 Disclosure.
34.11 Nonfederally chartered commercial banks.
34.12 Transition rule.

Subpart B—Adjustable-Rate Mortgages

Note.—Subpart B is effective March 11, 1988, but under § 34.12 national banks have the option of continuing to comply with Part 29 until October 1, 1988.

§ 34.5 Definitions.

(a) *Adjustable-rate mortgage loans.* (1) An adjustable-rate mortgage loan is any extension of credit made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling, including a condominium unit, cooperative housing unit or residential manufactured home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time.

(2) Adjustable-rate mortgage loans do not include (i) fixed rate extensions of credit that are payable on demand; or (ii) fixed rate extensions of credit that are payable either without any interim amortization of the loan, or at the end of a term that, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule.

(b) *Consumer credit.* The phrase "consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

§ 34.6 General rule.

(a) National banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in adjustable-rate mortgage loans without regard to any limitations imposed on adjustable-rate mortgage lending by the laws of any state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam, which limitations are hereby expressly preempted.

(b) National banks may purchase or participate in adjustable-rate mortgage loans which were not made in accordance with the regulations in this part, except that any such loans purchased, in whole or in part, from an affiliate or subsidiary shall comply with the regulations in this part. For purposes of this paragraph, the terms "affiliate" and "subsidiary" shall have the same meaning that they have in 12 U.S.C. 371c.

§ 34.7 Index.

If the adjustable-rate mortgage loan is one to which 12 CFR 226.19(b) applies, loan documents shall specify an index to which changes in the interest rate charged on an adjustable-rate mortgage loan shall be linked. This index shall be readily available to and verifiable by the borrower, and beyond the control of the bank. A bank may use as an interest rate index any measure of market rates of interest which meets these requirements. The index for an adjustable-rate mortgage loan shall be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period.

§ 34.8 Rate changes.

All consumer credit adjustable-rate mortgage loans originated on or after December 9, 1987, shall include a limitation on the maximum interest rate that may apply during the term of the loan.

§ 34.9 Prepayment fees.

Banks offering or purchasing adjustable-rate mortgage loans may impose fees for prepayments regardless of any state law prohibitions of, or limitations on, such fees, which prohibitions or limitations are hereby expressly preempted. For the purpose of this part, prepayments shall not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments in excess of those necessary to retire the outstanding debt over the remaining loan term at the then current interest rate that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.10 Disclosure.

In consumer credit transactions, a national bank offering adjustable-rate mortgage loans shall make the disclosures required by regulations implementing the Truth in Lending Act as amended, Pub. L. 90–321, 82 Stat. 146 (1968), prescribed by the Board of Governors of the Federal Reserve System and commonly known as "Regulation Z." These disclosures shall be made in accordance with Regulation Z, in the instances in which Regulation Z would require that the disclosures be made.

§ 34.11 Nonfederally chartered commercial banks.

Under authority granted by section 804(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, codified at 12 U.S.C. 3803(a), nonfederally chartered commercial banks may make adjustable-rate mortgage loans in accordance with the provisions of this subpart.

§ 34.12 Transition rule.

If on March 11, 1988 a national bank has already made, or during the transition period a national bank makes, a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which complied with the requirements of Part 29 of this chapter, but which would violate any of the provisions of this subpart, the national bank may continue to administer those loans or binding commitments to lend in accordance with that loan program. All adjustable-rate mortgage loans or binding commitments to make adjustable-rate mortgage loans which a national bank enters into after October 1, 1988, must comply with all provisions of this subpart.

Dated: February 19, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–5296 Filed 3–10–88; 8:45 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB–77]

Staff Accounting Bulletin No. 77; Allocation of Debt Issue Costs in a Business Combination Accounted for as a Purchase

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding the allocation of debt issue costs in a business combination accounted for as a purchase.

FOR FURTHER INFORMATION CONTACT: John A. Heyman or John M. Riley, Office of the Chief Accountant (202–272–2130), or Howard P. Hodges, Jr., Dvision of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

March 4, 1988.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 77 to the table found in Subpart B.

The staff hereby adds Sub-Section 6 to Topic 2.A of the Staff accounting bulletin series. Topic 2.A.6 discusses the staff's views regarding the allocation of debt issue costs in a business combination accounted for as a purchase.

Topic 2: Business Combinations

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A. Purchase Method

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6. Debt Issue Costs

Facts: Company A is to acquire the net assets of Company B in a transaction to be accounted for as a business combination using the purchase method. In connection with the transaction, Company A has retained an investment banker to provide advisory services in structuring the acquisition and to provide the necessary financing. It is expected that the acquisition will be financed on an interim basis using "bridge financing" provided by the investment banker. Permanent financing will be arranged at a later date through a debt offering, which will be underwritten by the investment banker. Fees will be paid to the investment banker for the advisory services, the bridge financing and the underwriting of the permanent financing. These services may be billed separately or as a single amount.

Question 1: Are all fees paid to the investment banker a direct cost of the acquisition and, as such, accounted for as an element of the purchase price of the business acquired?

Interpretive Response: No. Fees paid to an investment banker in connection with a business combination accounted for as a purchase, when the investment banker is also providing interim financing or underwriting services, must be allocated between direct costs of the acquisition and debt issue costs.

Paragraph 76 of Accounting Principles Board Opinion No. 16[1] and the related Interpretation No. 33 provide that direct costs such as finder's fees and fees paid to outside consultants should be treated as components of the cost of the acquisition, while the costs of registering and issuing any equity securities are treated as a reduction of the otherwise determined fair value of the equity securities. However, debt issue costs are an element of the effective interest cost of the debt, and neither the source of the debt financing nor the use of the debt proceeds changes the nature of such costs. Accordingly, they should not be considered a direct cost of the acquisition.

The portions of the fees allocated to direct costs and to debt issue costs should be representative of the actual services provided. Thus, in making a reasonable allocation (or in determining that an allocation made by the investment banker is reasonable[2]) factors such as (i) the fees

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[1] Accounting Principles Board Opinion No. 16 establishes standards for the reporting of business combinations.

[2] This would apply irrespective of whether the fees for the services were billed as a single amount or separately, since the separate billing of the services implicitly involves an allocation by the investment banker.

charged by investment bankers in connection with other recent bridge financings and (ii) fees charged for advisory services when obtained separately, should normally be considered to determine the relative fair values of the two services. Whether these or other factors are considered, the allocation should normally result in an effective debt service cost (interest and amortization of debt issue cost[3]) which is comparable to the effective cost of other recent debt issues of similar investment risk and maturity. The amount accounted for as debt issue costs should be separately disclosed, if material.[4]

Question 2: May the debt issue costs of the interim "bridge financing" be amortized over the anticipated combined life of the bridge and permanent financings?

Interpretive Response: No. Debt issue costs should be amortized by the interest method over the life of the debt to which they relate. Debt issue costs related to the bridge financing should be recognized as interest cost during the estimated interim period preceding the placement of the permanent financing with any unamortized amounts charged to expense if the bridge loan is repaid prior to the expiration of the estimated period. Where the bridge financing consists of increasing rate debt, the consensus reached by the Financial Accounting Standards Board's Emerging Issues Task Force ("EITF") on this issue[5] Should be followed.

[FR Doc. 88–5302 Filed 3–10–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87–34–000 et al., Order No. 500]

Regulation of Natural Gas Pipelines After Partial Decontrol; Public Hearing

March 8, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued an interim rule and statement of policy, Order No. 500, on August 7, 1987, addressing concerns raised by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD)*. Order No. 500 responded to the Court's concerns about take-or-pay problems in Order No. 436. Order No. 500 readopted the regulations originally promulgated by Order No. 436 with modifications designed to meet the concerns of the Court in *AGD*. Additionally, the Commission requested data from industry participants in order to make an accurate and reliable assessment of take-or-pay problems in the context of current market conditions before issuing a final rule in this docket.

Pursuant to requests from interested persons, a public hearing will be held.

DATES: A public hearing will be held on Monday, April 11, 1988 at 10:30 a.m. If necessary, the hearing will continue on April 12, 1988. Requests to participate and the amount of time requested should be directed to the Secretary no later than March 25, 1988.

ADDRESSES: The hearing will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) issued an interim rule and statement of policy in Order No. 500 [1] on August 7, 1987. The order addressed concerns about take-or-pay problems in Order No. 436 [2] raised by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD)*.[3] Order No. 500 readopted the regulations originally promulgated by Order No. 436 with modifications designed to meet the concerns of the Court in *AGD*. Additionally, the Commission requested data from industry participants in order to make an accurate and reliable assessment of take-or-pay problems in the context of current market conditions.

The Commission has received requests for a public hearing to provide interested persons an opportunity to make oral presentations of their views on Order No. 500, under section 502(b) of the Natural Gas Policy Act of 1978 (NGPA). In response to these requests, the Commission is scheduling a public hearing. The purpose of this hearing is to provide interested persons an opportunity to make an oral presentation to the Commission on Order No. 500. The Commission will also accept written comments of a length not in excess of 15 pages, double spaced, summarizing the position of the parties making an oral presentation.

The hearing will be held on Monday, April 11, 1988, at 10:30 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Hearing Room A. If necessary, the hearing will continue on April 12, 1988.

The hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the Commission may question such persons.

Requests to participate in the hearing should be submitted by March 25, 1988, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Requests to participate should request the amount of time required for the oral presentation. A list of participants in the hearing will be available in the Commission's Office of Public Information and at Hearing Room A on the morning the hearing is convened.

A stenographer will prepare a transcript of the hearing which will be available in the public file for this proceeding, Docket No. RM87–34–000 *et al.*, in the Commission's Public Reference Room and may be ordered from that office. Any further procedural rules will be addressed by the Commission at the hearing.

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[3] See Question 2 regarding the period over which the debt issue costs related to bridge financings should be amortized.

[4] *See* Rule 5–02(17) of Regulation S–X (17 CFR 210.5–02(17)).

[5] The EITF in Issue 86–15 (May 1, 1986) addressed the accounting for interest expense and debt issue costs for a debt instrument which matures at a stated date, but which may be consecutively extended for specific periods at the option of the borrower until a set, final, maturity date. The interest rate on the debt increased by a specific amount at each renewal/extension ("increasing rate debt"). The EITF reached a consensus that (i) periodic interest cost should be determined using the interest method, based on the estimated outstanding term of the debt taking into consideration the borrower's plans, ability and intent to service the debt, and (ii) debt issue costs should be amortized over the same period used in determining interest cost.

[1] 52 FR 30,334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶30,761 (Aug. 7, 1987), 52 FR 35,539 (Sept. 22, 1987), III FERC Stats. & Regs. ¶ 30,764 (Sept. 18, 1987); Order No. 500–A, 52 FR 39,507 (Oct. 22, 1987), III FERC Stats. & Regs. ¶ 30,770 (Oct. 14, 1987); Order No. 500–B, 52 FR 39,630 (Oct. 23, 1987), III FERC Stats. & Regs. ¶ 30,772 (Oct. 16, 1987); Order No. 500–C, 52 FR 48,986 (Dec. 29, 1987), FERC Stats. & Regs. ¶ 30,786 (Dec. 23, 1987).

[2] 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulation Preambles 1982–1985] ¶30,665 (Oct. 9, 1985); Order No. 436–A, 50 FR 52,217 (Dec. 23, 1985), FERC Stats. & Regs. [Regulation Preambles 1982–1985] ¶30,675 (Dec. 12, 1985); Order No. 436–B, 51 FR 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688 (Feb. 14, 1986).

[3] 824 F.2d 981 (D.C. Cir. 1987).

By direction of the Commission.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5382 Filed 3-10-88; 8:45 am]

BILLING CODE 4717-01-M

PANAMA CANAL COMMISSION

35 CFR Part 60

Classified Information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This final rule revises 35 CFR Part 60, which governs the Panama Canal Commission's information security program. The purpose of this document is to implement the provisions of Executive Order 12356. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and to implement its provisions within the Panama Canal Commission. Executive Order 12356 sets forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Washington DC 20036-4996 (Telephone: 202-634-6441) or Mr. Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000 (Telephone: 011-507-52-7757).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is revising its regulations dealing with programs for safeguarding and handling of classified information in order to implement Executive Order 12356. In addition to incorporating the provisions of the Executive Order and its implementing directives, the regulations also reflect organizational changes created by the disestablishment of the agency's Internal Security Office on December 1, 1981, and the subsequent realignment of duties and responsibilities between the Offices of Executive Administration and Personnel Administration, Panama Canal Commission. As part of this realignment, the Director, Office of Executive Administration has been designated the senior agency official to direct and administer the information security program for the Commission: his duties include an active oversight and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office. Also as a result this realignment, the Personnel Director has been designated the official responsible for directing the conduct of investigations of individuals for the purpose of security clearances, in accordance with the standards and criteria of E.O. 10450.

This is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 60

Classified Information, Information Security, Panama Canal Commission.

For the reasons set forth in the preamble, the Panama Canal Commission proposes to revise in its entirety 35 CFR Part 60 to read as follows:

PART 60—CLASSIFIED INFORMATION

Sec.
60.1 Authority, scope and definitions.
60.2 Compliance with Executive Order 12356 and implementing directives.
60.3 Classification levels, categories, and limitations.
60.4 Limitations on original classification authority.
60.5 Use of derivative classification.
60.6 Requirements for classification guides.
60.7 Duration of classification.
60.8 Identification and markings.
60.9 Declassification and downgrading.
60.10 Access to classified information.
60.11 Top Secret, Secret, and Confidential Control Officer.
60.12 Mandatory review for declassification.
60.13 Custody and storage.
60.14 Security investigations; training and orientation of employees.
60.15 Debriefing upon termination of employment.
60.16 Responsibility of individual employees.
60.17 Loss or compromise; destruction of nonrecord classified information.
60.18 Procedures for receiving and transmitting classified documents.
60.19 Reproduction of classified documents.

Authority: E.O. 12356, 47 FR 14874; 32 CFR Part 2001 (Directive No.1, Information Security Oversight Office), 47 FR 27836; E.O. 10450, 18 FR 2489; 22 U.S.C. 3611.

§ 60.1 Authority, scope, and definitions.

(a) Executive Order 12356, dated April 2, 1982 (47 FR 14874, April 6, 1982) and 32 CFR Part 2001 (Directive No. 1 of the Information Security Oversight Office, approved by the National Security Council on June 22, 1982, 47 FR 27836, June 25, 1982), set forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and implement its provisions within the Panama Canal Commission.

(b) Definitions:

(1) "Commission" refers to the Panama Canal Commission.

(2) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(3) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(4) "Foreign government information" means:

(i) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, be held in confidence; or

(ii) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, be held in confidence.

(5) "National security" means the national defense or foreign relations of the United States.

(6) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship or both be held in confidence.

(7) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(8) "ODUSD(P)" refers to the Office of the Deputy Under Secretary of Defense (Policy).

§ 60.2 Compliance with Executive Order 12356 and implementing directives.

(a) The Director, Office of Executive Administration is designated the senior agency official to direct and administer the information security program for the Commission, including an active oversight and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office.

(b) The Director, Office of Executive Administration will establish procedures to prevent unnecessary access to classified information, including procedures that (1) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures and (2) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs.

(c) The Personnel Director will direct the conduct of investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450.

§ 60.3 Classification levels, categories, and limitations.

(a) Classification levels. Official information which requires protection against unauthorized disclosure in the interest of the national security shall be classified "Top Secret," "Secret," or "Confidential" depending upon the degree of its significance to national security. No other terms or phrases of classification shall be used to identify such information except as otherwise expressly provided by statute. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by one of the original classification authorities listed in § 60.4(a), who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by one of the original classification authorities, who shall make this determination within thirty (30) days.

(1) *"Top Secret"* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. The Commission does not have the authority to classify information originally as "Top Secret."

(2) *"Secret"* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) *"Confidential"* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Classification categories. Information shall be considered for classification if it concerns:

(1) Military plans, weapons, or operations;

(2) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) Foreign government information;

(4) Intelligence activities (including special activities), or intelligence sources or methods;

(5) Foreign relations or foreign activities of the United States;

(6) Scientific, technological, or economic matters relating to the national security;

(7) United States Government programs for safeguarding nuclear materials or facilities;

(8) Cryptology;

(9) A confidential source; or

(10) Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of Information Security, Office of the Deputy Under Secretary of Defense (Policy).

(c) Information that is determined to concern one or more of the categories in § 60.3(b) shall be classified when one of the original classification authorities listed in § 60.4(a) also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Classification on the basis of combination or association with other (classified or unclassified) information shall be supported by a written explanation which shall be maintained with the record copy of such information.

(d) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) Information classified in accordance with § 60.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information, see § 60.11(e).

(f) Limitations on classification.

(1) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, an organization, or the Panama Canal Commission or other agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(2) Basic scientific research information not clearly related to the national security may not be classified.

(3) The President or the officials designated by the President in the **Federal Register** may reclassify information previously declassified and disclosed if it is determined in writing that (i) the information requires protection in the interest of national security; and (ii) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the DUSD(P) for subsequent reporting to the Director of the Information Security Oversight Office.

(4) Information in the custody of the Panama Canal Commission may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of Executive Order 12356 if such classification meets the requirements of that Executive Order and is accomplished personally and on a document-by-document basis by the officials identified in § 60.4(a) or an official with original Top Secret classification authority.

§ 60.4 Limitations on original classification authority.

(a) The authority to classify information originally under this part shall be limited to the categories of Secret and Confidential. Only the following officials of the Panama Canal Commission are authorized to classify information or material originally:

(1) The Administrator; and

(2) The Director, Office of Executive Administration.

(b) Other officials and employees of the Panama Canal Commission originating documents which, in their opinion, should be classified as Secret or Confidential prior to dispatch, shall forward these documents to the Director, Office of Executive Administration with recommendation for appropriate classification. Such documents shall be protected by a cover sheet (such as Panama Canal

Commission Forms 165-Conf or 165–B Secret) of the classification recommended by the originator, and shall be handled and safeguarded as if classified, see § 60.8(a).

(c) All information originated within the Commission which is believed to require classification as Top Secret (within the meaning of this part and Executive Order 12356) shall be hand carried by the originator to the Director, Office of Executive Administration who will determine the appropriate level of classification. If the information warrants Top Secret classification, that official shall transmit the information promptly under appropriate safeguards to the agency which has appropriate subject matter interest and classification authority in accordance with the procedures established by § 60.18 of this part. If it is not clear which agency should get the information, it shall be sent to the Director of the Information Security Oversight Office for a determination.

(d) Intra-office documents, such as longhand notes or draft papers, that contain information affecting the national security shall be distinctly marked with the proper classification at top and bottom, by hand, by the originator, and shall be protected and destroyed in the same manner as an inter-office or inter-agency classified documents. Such intra-office documents shall be forwarded to the Office of Executive Administration for destruction as soon as the content has been included in a formal classified paper or as soon as the note or draft is no longer required.

(e) A holder of classified information or material shall observe and respect the classification assigned by the originator.

(f) Exceptional Cases. When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with Executive Order 12356 and its implementing directives. The information shall be transmitted promptly as provided under the Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

§ 60.5 Use of derivative classification.

(a) Derivative classification is: (1) the determination that information is in substance the same as information currently classified; and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) If a person who applies derivative classification markings believes that the process of reproducing, extracting, paraphrasing, restating or summarizing may have changed the level of or removed the basis for classification, an appropriate official of the originating agency or the office of origin who has the authority to upgrade, downgrade or declassify the information must be consulted.

(d) Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(1) Classification authority. (i) The authority for classification shall be shown as follows:

CLASSIFIED BY (description of source document on classification guide).

(ii) If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown as follows:

CLASSIFIED BY MULTIPLE SOURCES

In these cases the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "CLASSIFIED BY MULTIPLE SOURCES" shall cite the source document in its "CLASSIFIED BY" line rather than the term "MULTIPLE SOURCES."

(2) Declassification and downgrading instructions. Dates or events for automatic declassification or downgrading, or the notation "ORIGINATING AGENCY'S DETERMINATION REQUIRED" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on a "DECLASSIFY ON" line as follows:

DECLASSIFY ON (date; description of event) or ORIGINATING AGENCY'S DETERMINATION REQUIRED (OADR)

(3) Any additional markings or abbreviations described in paragraphs (b) through (m) of § 60.8 of this part appearing on the source material shall be carried forward to the new material when appropriate.

§ 60.6 Requirements for classification guides.

(a) Classification guides used to direct derivative classification and issued pursuant to Section 2.2 of Executive Order 12356 and § 60.5 of this part shall, at a minimum:

(1) Identify or categorize the elements of information to be protected;

(2) State which of the classification designations (i.e., Top Secret, Secret, or Confidential) applies to each element or category of the information;

(3) Prescribe declassification instructions for each element or category of information in terms of (i) a period of time, (ii) the occurrence of an event, or (iii) a notation that the information shall not be declassified automatically without the approval of the originating agency; and

(4) Indicate how the designation, time limits, markings, and other requirements of Executive Order 12356 and this part are to be applied.

(b) Each classification guide shall be kept current and shall be reviewed at least once every two years and updated as necessary. The Office of Executive Administration shall compile and maintain a list of classification guides in current use.

(c) Each guide shall be approved personally and in writing by the Director, Office of Executive Administration.

(d) The Administrator may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. A decision to waive the requirement should be based, at minimum, on an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information;

(3) The anticipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner. The Director of the Information Security Oversight Office shall be notified of any waivers.

§ 60.7 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The originating agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of Executive Order 12356.

§ 60.8 Identification and markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) One of the three classification levels defined in § 60.3;

(2) If the original classification authority is other than the approving or signing official, the identity shall be shown as follows:

CLASSIFIED BY (identification of original classification authority)

(3) Agency and office of origin. If the identity of the originating agency and office is not apparent on the face of a document, it shall be placed below the "CLASSIFIED BY" line.

(4) Declassification and downgrading instructions. Declassification and, as applicable, downgrading instructions shall be shown as follows:

(i) For information to be declassified automatically on a specific date:

DECLASSIFY ON: (date)

(ii) For information to be declassified automatically upon occurrence of a specific event:

DECLASSIFY ON: (description of event)

(iii) For information not to be declassified automatically:

DECLASSIFY ON: ORIGINATING AGENCY'S DETERMINATION REQUIRED or "OADR"

(iv) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:

DOWNGRADE TO (classification level) ON (date or description of event)

(b) Each classified document shall by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Administrator may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of Executive Order 12356, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials listed in § 60.4(a) of this part.

(f) The overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked or stamped at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, on the back page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest classification of the document. In any case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification.

(g) Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipt and reference.

(h) Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified, shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. The officials listed in § 60.4(a) may for good cause, request from the DUSD(P) a waiver of the portion marking requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified by the DUSD(P) of any waivers.

(i) The classification and associated markings prescribed by this part for documents shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means.

(j) A transmittal document shall indicate on its face the highest classification of any information transmitted by it. It shall also include the following or similar instruction:

(1) For an unclassified transmittal document:

UNCLASSIFIED WHEN CLASSIFIED ENCLOSURE IS REMOVED

(2) For a classified transmittal document:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS (classification level of the transmittal document standing alone)

(k) Documents that contain foreign government information shall include either the marking "FOREIGN GOVERNMENT INFORMATION," or a marking that otherwise indicates that the information is foreign government information. If the fact that information is foreign government information must be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent United States classification. Foreign government information not classified by a foreign government or an international organization of governments but provided to the United States in confidence by a foreign government or by an international organization of governments, shall be classified at an appropriate level and shall be marked with the United States classification accordingly.

(l) In addition to the marking requirement in paragraphs (a) through (k) of this section, the additional markings provided in paragraphs (l)(1)–(3) of this section shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification.

(1) For classified information containing Restricted Data or Formerly Restricted Data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued under the Act shall be applied.

(2) For classified information involving intelligence sources or methods:

WARNING NOTICE—INTELLIGENCE SOURCES AND METHODS INVOLVED.

(3) For classified information that, pursuant to Executive Order 12356, the originator has determined should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by the Director, Office of Executive Administration."

(m) National security information that is transmitted electrically shall be marked as follows:

(1) The highest level of classification shall appear before the first line of text;

(2) A "CLASSIFIED BY" line is not required;

(3) The duration of classification shall appear as follows:

(i) For information to be declassified automatically on a specific date:

DECL:(date)

(ii) For information to be declassified upon occurrence of a specific event:

DECL:(description of event)

(iii) For information not to be automatically declassified which requires the originating agency's determination, see § 60.7(a):

DECL: OADR

(iv) For information to be automatically downgraded:

DNG (abbreviation of classification level to which the information is to be downgraded and date or description of event on which downgrading is to occur).

§ 60.9 Declassification and downgrading.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Review of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by § 60.3 of this part, despite the passage of time, will continue to be protected in accordance with Executive Order 12356 and this part.

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; by the originator's successor; by a supervisory official of either; or by officials delegated such authority, in writing, by an official listed in § 60.4(a).

(c) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part.

(d) In the case of classified information that is not officially transferred as described in § 60.9(c), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(e) The Commission shall maintain a current listing of officials delegated declassification or downgrading authority by name or position.

(f) Classified information accessioned into the National Archives of the United States from the Commission shall be declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12356, the directives of the Information Security Oversight Office, and guidelines established by the Director, Office of Executive Administration of the Panama Canal Commission. Such guidelines shall be reviewed and updated if necessary at least every five years, unless earlier review is requested by the Archivist.

§ 60.10 Access to classified information.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made and that such access is essential to the accomplishment of lawful and authorized Government purposes. The determinations of eligibility and trustworthiness, referred to in this part as a security clearance, shall be based on such investigations as the Panama Canal Commission may require. The Personnel Director shall be responsible for conducting investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450, and will maintain a list showing the level of security clearances granted to each person. Security clearances will be granted by the Director, Office of Executive Administration, as provided in § 60.14 of this part.

(b) In addition to a security clearance, a person must have a need for access to the particular classified information or material sought in connection with the performance of that person's official duties or contractual obligations, except in those instances provided for in paragraph (d) of this section. The determination of that need shall be made by the Director, Office of Executive Administration in coordination with officials having responsibility for the classified information or material.

(c) When a person no longer requires access to classified information or material in connection with the performance of that person's official duties or contractual obligations, the security clearance shall be withdrawn. Likewise, when a person no longer needs access to a particular security classification category, that person's security clearance shall be adjusted to the classification category still required for the performance of that person's duties and obligations. In both instances, such action shall be without prejudice to the person's eligibility for a security clearance should the need again arise.

(d) Persons engaged in historical research projects and former Presidential appointees who occupied

policy-making positions may be authorized access to classified information or material originating within the Panama Canal Commission. In such cases, the requirement in section 60.10(a) that access to classified information may be granted only as is essential to the accomplishment of lawful and authorized Government purposes, may be waived, but only if the Commission has jurisdiction over the information and:

(1) The Commission makes a written determination that access is consistent with the interests of national security;

(2) The Commission takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356;

(3) The Commission limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee; and

(4) In addition, the Director, Office of Executive Administration obtains:

(i) Written agreements from the requesters to safeguard the information to which they are given access as permitted by Executive Order 12356 and this part; and

(ii) Written consent from the requester for the Director, Office of Executive Administration to review all of their notes and manuscripts for the purpose of assuring that no classified information is contained in them.

(e) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and the fees may be imposed.

(f) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.

§ 60.11 Top Secret, Secret, and Confidential Control Officer.

(a) The Director, Office of Executive Administration, Panama Canal Commission, is the Agency's designated Top Secret Control Officer and is responsible for the receipt, current accountability, and transmission of all Top Secret information. The Deputy Director, Office of Executive Administration is the Alternate Top Secret Control Officer. A physical inventory of all Top Secret material shall be made at least annually.

(b) The Director and the Deputy Director, Office of Executive Administration are also the Agency's designated Control Officer and Alternate Control Officer, respectively, for all classified information up to and including Secret.

(c) The Director, Office of Executive Administration shall act on all suggestions and complaints received by the Commission with respect to the administration of Executive Order 12356 and this part, and may also recommend to the Administrator appropriate administrative actions or sanctions to correct abuse or violation of any provision of that Order or directives under it. The Director of the Information Security Oversight Office shall be promptly informed by the agency when such violations occur.

(d) To the extent required by applicable laws and agency regulations, the Administrator shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

(e) When the Commission is the agency of primary interest, following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Executive Order 12356 or predecessor orders, the Director, Office of Executive Administration shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences, see § 60.17.

§ 60.12 Mandatory review for declassification.

(a) Any United States citizen, permanent resident alien, federal agency, or the government of a U.S. state or municipality may request that classified information be reviewed for declassification by the originating agency and released. Such requests must be submitted in writing to the Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011–5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama). In accordance with § 9701 of title 31, United States Code, fees may be applied to any requests for declassification and release. A request need not identify the information requested by date or title, but must describe the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. Whenever a request is deficient in its description of the information sought, the Chief, Administrative Services Division shall notify the requester that, unless additional identifying information is provided or the scope of the request is narrowed, the Commission will take no further action on the request.

(b) When the Commission receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response is required, it is the responsibility of the referring agency to respond to the requester.

(c) When another agency refers a request to the Commission for review because the Commission originally classified the information requested, the Commission shall treat the request as though it were submitted directly to it under paragraph (a) of this section. The Commission shall send its decision directly to the requester and shall, if so requested, notify the referring agency of its decision on the request and on the appeal, if any.

(d) Requests for classification review made under paragraph (a) of this section shall be promptly acknowledged by the Chief, Administrative Services Division and then forwarded to the official who originally classified the document, or that official's successor, or when appropriate to an official designated by an official listed in § 60.4(a), who, in coordination with the Chief, Administrative Services Division, shall decide whether the requested information may be declassified, see § 60.7 and § 60.9.

(1) Unless withholding is otherwise warranted under applicable law, any information which may be declassified shall normally be forwarded to the requester within sixty (60) days after receipt of a proper request. If additional time is needed to locate or review the requested information, the Chief, Administrative Services Division will notify the requester accordingly. Except in unusual circumstances, a decision will be made within one year of receipt of the request.

(2) When information cannot be declassified in its entirety, a reasonable

effort will be made, consistent with other applicable law, to release those portions of the requested information that constitute a coherent segment.

(3) Upon the denial or a partial denial of a request, the Chief, Administrative Services Division shall reply to the requester and provide a brief statement of the reasons for the denial, a notice of the right to appeal the decision to the Director, Office of Executive Administration, and a notice that the appeal must be in writing and must be received by the Commission within sixty (60) days of receipt of the decision letter by the requester. Appeals should be addressed to: Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011-5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama).

(e) Within thirty (30) days after its receipt of a proper appeal against an initial decision not to declassify information, the Director, Office of Executive Administration shall make and dispatch h the decision whether the information should be declassified. If the Director, Office of Executive Administration is the original classification authority of the information under appeal, the Administrator shall determine whether the information may be declassified. The Director, Office of Executive Administration shall, after the decision, promptly make available to the requester any information that is declassified and which is otherwise releasable. If continued classification of the requested information is necessary, the requester shall be notified of that decision and the reasons therefor. If requested, the appeal determination shall also be communicated to any referring agency.

(f) The classification reviews made in response to requests and appeals under this section are in addition to the systematic review of classified information prescribed by Executive Order 12356 and 32 CFR Part 2001.

(g) Requests for access to classified material submitted under the Freedom of Information Act or the Privacy Act of 1974 (5 U.S.C. 552 and 552a) shall be processed in accordance with Parts 9 and 10 of 35 CFR, and shall be subject to the same review criteria for declassification as requests submitted under paragraphs (a) through (d) of this section. In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12356 or 32 CFR Part 2001.

§ 60.13 Custody and storage.

(a) Classified information shall be protected in accordance with applicable National Security Council directives or directives promulgated by the Information Security Oversight Office and approved by the National Security Council.

(b) Each bureau director and chief of an independent unit (or classified security control officer as designated by the Director, Office of Executive Administration) shall be responsible for assuring that all classified information within that official's organization is used, processed, stored, reproduced, and transmitted only under conditions which will provide adequate protection and prevent access by, or dissemination to, unauthorized persons. Containers, vaults, alarm systems, and associated security devices procured after the effective date of this part for the storage and protection of classified information shall be in conformance with the standards and specifications published by the General Services Administration and, to the maximum extent practicable, be of the type designated on its Federal Supply Schedule.

(c)(1) Top secret information shall be stored in a GSA-approved security container with an approved built-in, three-position, dial-type combination lock; in a vault protected by an alarm system and response force; or in other storage facility that meets the standards for top secret established under the provisions of paragraph (b) of this section.

(2) Secret and confidential information shall be stored in a manner and under the conditions prescribed for top secret information, or in a container, vault, or alarmed area that meets the standards for secret or confidential information established pursuant to the provisions of paragraph (c)(1) of this section, and/or paragraph (c)(3) of this section.

(3) Secret and confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable combination padlock approved by GSA for the purpose. The Director, Office of Executive Administration shall prescribe any necessary supplementary controls for storage of secret information in cabinets equipped with a steel lock bar.

(d) Each bureau director and chief of an independent unit is responsible for assuring that all personnel within that official's organization, having access to classified information, have a security clearance issued by the Director, Office of Executive Administration, see §§ 60.14 and 60.16.

(e)(1) Combinations of all repositories containing classified information shall be changed at least annually and forwarded in double-sealed envelopes to the Office of Executive Administration. The double-sealed envelopes shall be classified no lower than the highest category of information contained in the repositories. Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. Bureau directors and heads of independent units shall ensure that combinations of dial-type locks shall be changed whenever there is reason to suspect possible compromise of the current combination.

(2) When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30.

(3) The Commission shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container.

(f) Custodians of classified matter are responsible for registering with the Office of Executive Administration the names of all persons having knowledge of combinations to repositories containing classified information.

(1) Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever

it is not in use or under the direct supervision of authorized persons. Custodians shall follow procedures which will ensure that unauthorized persons do not gain access to classified information.

(2) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to ensure adherence to procedural safeguards prescribed to protect classified information. The Director, Office of Executive Administration shall ensure that periodic inspections are made to determine whether procedural safeguards prescribed by agency regulations are in effect at all times.

§ 60.14 Security investigations; training and orientation of employees.

(a) Requests for security clearances, including changes in the level of clearances, will be forwarded to the Office of Personnel Administration for background investigations and security checks. The Personnel Director shall ensure that all necessary investigations are completed, and will provide a recommendation on the issuance of a security clearance to the Office of Executive Administration. The Director, Office of Executive Administration, in consideration of all available information, will determine if a security clearance may be issued, or if the level may be changed, and establish the expiration date of the clearance.

(b) The Director, Office of Executive Administration is also responsible for establishing and maintaining a training and orientation program for employees concerned with classified information or material.

§ 60.15 Debriefing upon termination of employment.

(a) Bureau directors and heads of independent units shall be responsible for notifying the Office of Executive Administration whenever it is necessary that an employee be briefed or debriefed. Such notification should be in writing and be at least sixty (60) days, or as long as possible, in advance.

(b) Bureau directors and heads of independent units shall ensure that debriefings are accomplished for any employee whose employment is terminated, or scheduled to be terminated, or when a temporary separation from employment (not to include leave) for sixty (60) days or more has occurred or is scheduled, whenever the employee has had access to classified information within the last twelve calendar months of his employment.

§ 60.16 Responsibility of individual employees.

(a) The responsibility for the safeguarding of classified information shall rest on each individual employee having possession or knowledge of it, regardless of how such information or knowledge was obtained. In addition, each individual employee is directly responsible for acquiring familiarity with and complying with these and subsequently published security regulations.

(b) Any officer or employee, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by Executive Order 12356 or under this part, is subject to prompt and stringent administrative action, and, where a violation of criminal statute may be involved, is subject to prosecution under applicable law.

§ 60.17 Loss or compromise; destruction of nonrecord classified information.

(a) Any person who has knowledge of the loss or possible compromise of classified information in the custody of the Commission shall immediately report the circumstances to the Office of Executive Administration. The Director, Office of Executive Administration shall initiate an inquiry to (1) determine cause, (2) place responsibility, and (3) take corrective measures and appropriate administrative, disciplinary, or legal action. If it is determined that classified information has been compromised, the agency that originated the information shall be notified of the loss or possible compromise so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise.

(b) The Administrator (or Director, Office of Executive Administration) shall initiate a damage assessment whenever there has been a compromise of classified information originated by the Commission that, in his judgment, can reasonably be expected to cause damage to the national security. Damage assessments shall be in writing and shall conform to the guidelines established by the Information Security Oversight Office, as provided in 32 CFR 2001.47(b).

(c) Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the Administrator. The method of destruction selected must preclude recognition or reconstruction of the classified information or material.

§ 60.18 Procedures for receiving and transmitting classified documents.

(a) The procedures for handling classified documents received by any person or unit of the Panama Canal Commission shall be as follows:

(1) All classified documents received by any person or unit of the Commission shall be immediately delivered to the Office of Executive Administration. Personnel of the Office of Executive Administration shall receipt for and record all classified documents received from outside agencies (except that those officials listed in § 60.4(a) of this part may receipt for classified documents from outside agencies, and then forward them to the Office of Executive Administration, in person or by an authorized representative).

(2) The receipted documents shall be permanently recorded by the Office of Executive Administration, at which time accountability for these documents shall be assumed by that office.

(3) When classified documents addressed to an individual in the Panama Canal Commission are received by the Office of Executive Administration, the addressee shall be notified by telephone that such classified matter is awaiting him; or the classified documents may be transmitted as provided in paragraph (c) and (d) of this section. When the addressee picks up the classified documents, all items shall be recorded on an individual classified documents register furnished by the Office of Executive Administration; one copy is to be permanently retained in the library, and one is to be furnished to the addressee, or his authorized representative, who shall sign for the documents opposite each item on the register. This method of transfer may be utilized in lieu of a receipt.

(b) When any unit of the Panama Canal Commission prepares a document which is to be classified Secret or Confidential for transmission to other offices of the Commission, the procedure shall be as follows:

(1) Prepare sufficient copies of the document for whatever distribution is required, and one additional copy for file in the Office of Executive Administration.

(2) Forward draft copies, handwritten copies, and carbons to the Office of Executive Administration for retention or destruction under established procedures.

(i) In addition, all portions of electric typewriter ribbons used in the preparation of classified material must be destroyed in the same manner. Reusable cloth typewriter ribbons must be protected if used for preparation of classified material on the first pass through typewriter.

(ii) Classified material may not be entered into electronic equipment with memory capability, such as word processors, computers, personal computers, memory typewriters and other similar equipment, *unless* specific, written permission is obtained in advance, for each specific piece of equipment or system, from the Office of Executive Administration.

(3) Bring all copies of the document to the Office of Executive Administration. Copies shall be securely fastened underneath a cover sheet of the classification recommended by the originator.

(4) At the direction of the Director, Office of Executive Administration, the proper classification, short title, and serial number shall be assigned to each document, and an accountability stamp shall be placed on each copy.

(5) All classified documents shall be appropriately and conspicuously marked to put all persons on clear notice of their classified content. In addition, all classified documents shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with § 60.9.

(6) The documents shall be recorded in the permanent documents log. The accountability for the documents passes from the originator to the Office of Executive Administration at this point.

(7) Distribution of the remaining copies shall be made according to the procedures covered in paragraphs (a)(3), (c) and (d) of this section. The number of copies of documents containing classified information shall be kept to a minimum to decrease the risk of compromise and reduce storage costs.

(c) When any unit of the Panama Canal Commission transmits documents or information classified Top Secret to other offices of the Commission, or any classified documents or information to any agencies or units other than the Commission, the procedure for handling such information shall be as follows:

(1) The documents or information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents.

(2) A receipt shall be attached to or enclosed in the inner cover. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender.

(d) When the Commission transmits classified documents or information to any agency other than the Commission, or documents or information classified Top Secret to other offices of the Commission, one or more of the following methods shall be used:

(1) By specifically designated personnel having the appropriate security clearance;

(2) By State Department diplomatic pouch;

(3) By messenger-courier system specifically created for that purpose;

(4) Over authorized secure communication circuits.

(e) Secret and confidential documents or information may also be transmitted by the following methods:

(1) As provided in paragraph (c) of this section, if transmittal is to be within the Commission;

(2) By U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system; or

(3) Under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government-contract vehicles or aircraft, ships of the United States Navy, civil-service-manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts.

§ 60.19 Reproduction of classified documents.

(a) Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office. The reproduction of Secret and Confidential documents may be restricted by the originating agency. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(b) The Office of Executive Administration is the only office within the Panama Canal Commission authorized to reproduce documents which have been classified. Other offices within the Panama Canal Commission which require the reproduction of classified documents shall take them to the Office of Executive Administration, where the documents will be reproduced, properly marked, controlled and then returned to the user.

Dated: February 9, 1988.

D.P. McAuliffe,
Administrator.

[FR Doc. 88-5192 Filed 3-10-88; 8:45 am]

BILLING CODE [illegible]

VETERANS ADMINISTRATION

38 CFR Part 3

Frequency of Payment of Improved Pension

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations pertaining to the frequency of payment of improved pension. The amendment is necessary to insure that other Federal benefits are not denied to VA beneficiaries solely because of the payment of improved pension less frequently than monthly. The effect of this amendment will be to provide VA beneficiaries with the ability to elect monthly pension payments if to do so would be to their advantage.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been brought to our attention that in some instances payment of improved pension less frequently than monthly has resulted in the denial of other Federal benefits, such as Supplemental Security Income and Medicaid, because of the amount of the payment. By amending 38 CFR 3.30 to provide an option for VA beneficiaries who receive improved pension payments less frequently than monthly to elect to receive monthly payments, other Federal benefits will not be denied solely on the basis of the frequency of payment of improved pension. An editorial change is also being made to delete the last sentence of both paragraphs (b) and (c) of § 3.30 as redundant.

The VA finds good cause for dispensing with prior publication for public comments, such comments being unnecessary and contrary to the public interest. Denial of other Federal benefits is an unintended result for those VA improved pension beneficiaries who receive their payments quarterly, semi-annually, or annually under the current provisions of § 3.30. The beneficiaries

affected by this amendment may, therefore, choose to receive their improved pension benefits in the same manner, monthly, as do the vast majority of improved pension beneficiaries.

The Administrator has determined that denial of their Federal benefits because of the current provisions of § 3.30 is an unintended result and is contrary to the best interests of our improved pension beneficiaries. Any delay in effectuating this amendment could result in further denials of other Federal benefits with resulting hardship to our beneficiaries. Public participation is unnecessary and an effective date as of publication of this amendment is warranted.

Because a notice of proposed rulemaking is unnecessary and is not being published, this change does not come within the term "rule" as defined in, and made subject to, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, the Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. The reason for this certification is that this regulatory amendment imposes no regulatory burden on small entities, and only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulation is nonmajor for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 61.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 12, 1988.

Thomas K. Turnage,
Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, ADJUDICATION, § 3.30 is amended by adding introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 3.30 Frequency of payment of improved pension.

Payment shall be made as shown in paragraphs (a), (b), (c), (d), and (e) of this section; however, beneficiaries receiving payment less frequently than monthly may elect to receive payment monthly in cases in which other Federal benefits would otherwise be denied.

(Authority: 38 U.S.C. 210(c))

* * * * *

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $144 but less the $228.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least $72 but less than $144.

* * * * *

[FR Doc. 88-5379 Filed 3-10-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3340-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to the Releases Control Branch (RCB) of EPA, for certain solid wastes generated at the Denney Farm site in McDowell, Missouri by the EPA Mobile Incineration System. This action responds to a delisting petition received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 11, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-MIEF-FFFFF." The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information concerning this notice, contact Mr. Bob Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

The Releases Control Branch (RCB) of EPA, located in Edison, New Jersey, petitioned the Agency to exclude from hazardous waste control certain waste it intends to generate. After evaluating the petition, on January 4, 1988, EPA proposed to exclude RCB's waste from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32, conditional upon RCB meeting certain monitoring and sampling and analysis requirements (see 53 FR 31). RCB's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. An upfront delisting petition (when treatment is planned) allows an exclusion to be granted based on untreated waste characteristics, pilot-scale treatment data if available, process descriptions and batch testing requirements. The batch testing requirements may include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may specify verification testing limitations (i.e., the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion; when the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

A. EPA Releases Control Branch

1. Proposed Exclusion

The EPA Releases Control Branch (RCB) petitioned the Agency for an upfront exclusion from EPA Hazardous Waste No. F027 of incineration residues from the treatment of certain cancelled pesticides in the EPA Mobile Incineration System (MIS). RCB based its petition on the expected low concentrations of the listed constituents in the incineration residues. In the proposed rule, the Agency concluded that data submitted by RCB, in conjunction with the verification testing conditions which the Agency proposed to require as part of a final exclusion, substantiated RCB's claim that the listed constituents of concern would not be present in the incineration residues above levels of regulatory concern. Furthermore, RCB submitted data on other non-listed hazardous constituents expected to be present in the untreated pesticides and potentially present in the incineration residues as products of incomplete combustion. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the incineration residues at or above levels of regulatory concern. See 53 FR 31, January 4, 1988, for a more detailed explanation of why EPA proposed to grant RCB's petition for these incineration residues.

2. Agency Response to Public Comments

General. The Agency received public comments on the proposed rule from four different interested parties. All commenters were generally in favor of the Agency's proposed decision to exclude the incineration residues from the treatment of the cancelled pesticides. Several commenters specifically supported the Agency's efforts to meet the Agency's statutory duties under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As will be discussed in more detail below, several commenters submitted detailed comments arguing that the proposed testing requirements and accompanying delisting levels were too conservative.

One commenter stated that the conditions of the exclusion are so conservative that the impact of the exclusion will be to discourage future incineration of similar dioxin-contaminated materials, despite clear Congressional preference for permanent treatment of hazardous waste. The Agency strongly disagrees. EPA believes that the successful incineration of the cancelled pesticides and upfront exclusion of the resultant incineration residues will encourage an otherwise reluctant commercial hazardous waste management industry to step into the dioxin management business. EPA also believes that the conservative approach to the exclusion of these materials demonstrates a commitment to meeting statutory requirements to ensure protection of human health and environmental safety while encouraging permanent treatment solutions.

One commenter stated that the Agency failed to provide an adequate opportunity to comment on the proposal. The commenter believed that the administrative record for the proposal was inadequate. Although EPA believes that the record was and is fully adequate to support the proposal and final action, the Agency has provided in today's rulemaking preamble additional information to address specific concerns raised by this and other commenters. This information includes historical background on the 1985 exclusion for the MIS and on the evolution of the Delisting Program's rulemaking activities and criteria over the past three years. Because many of the health-based levels used to set delisting levels have been published in previous delisting decisions and because the Delisting Program's analytical approach and the MIS technology have been subject to extensive public notice and comment and were fully referenced in the notice of proposed rulemaking, the Agency believes that the administrative record was replete with necessary and sufficient information upon which the interested parties could comment. (The Agency notes that no commenter requested an extension of the comment period.)

The remainder of this section addresses specific aspects of the proposal on which the Agency received comment, including differences from previous related exclusions, the concept of upfront delistings, EPA's modeling approach in general, the appropriateness of the modeling approach for dioxin, and specific comments on the proposed conditions. In responding to comments and in considering approaches to and criteria for the proposed and final exclusions, the Agency has kept an open mind and has applied its best, current technical judgment.

a. *Differences from Related Exclusions.* One commenter characterized the proposal as "a startling and largely unexplained departure" from the approach used in the original exclusion for the MIS in 1985 (see 50 FR 30272, July 25, 1985). This commenter also stated that the proposal is inconsistent with the second proposal related to the MIS, for certain lagoon sludge from Syntex Agribusiness, published on September 3, 1987 (See 52 FR 33439).

The Agency's approach to the evaluation of petitions has evolved since the 1985 exclusion. Since that time, for example, the Agency has adopted the organic leachate model (OLM) as an analytical tool in reviewing delisting petitions (see 51 FR 41084, November 13, 1986). The OLM allows the Agency to evaluate the potential mobility of hazardous organic constituents. In addition, the Agency has implemented the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that the delisting process consider all factors (including additional constituents) which could cause a waste to be hazardous rather than only those factors for which a waste was listed. EPA has also published a guidance manual (see "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–003), April 1985) which outlines the information needed in a delisting petition. Further, the recent Syntex proposal and today's final rule are examples of the Agency's current ability to evaluate and grant "upfront" exclusions.

One of the major differences between the 1985 exclusion and the 1987 and 1988 proposals is that the two recent proposals were for "upfront" exclusions; that is, the treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not yet been generated and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues for the EP toxic metals and hazardous organic compounds (identified in the petition as potential constituents of concern), including dioxin. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. Because similar data for the Syntex and cancelled pesticides treatment residues do not yet exist, the Agency is requiring as part of this final exclusion for the cancelled pesticides (and intends to require as part of any final exclusion for the Syntex residues) extensive verification sampling and analysis of the incineration residues when generated.

A second difference is that the materials to be incinerated in these three cases vary from contaminated soils to wastewater treatment sludge to commercial pesticide products. As a result of the inherent differences among these incinerator feeds, the constituents of concern vary.

The levels of regulatory concern for the metals vary among the three petitions due to application of the vertical and horizontal spread (VHS) model (see 50 FR 48896, November 27, 1985). As discussed in the preambles to the 1987 and 1988 proposals, the VHS model results in a scale which suggests that a large volume of waste exhibiting a particular extract level could be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous (see 52 FR 33441 and 53 FR 32). Because the waste volumes of the three petitions vary, levels of concern for metals in these wastes also vary.

Further discussion of specific differences among the 1985 exclusion and the two recent proposals is provided later in today's notice in Section II.A.2.e. ii, iii, and iv.

Thus, differences between these actions properly reflect differences in the petitioned wastes and the Agency's evolving technical expertise in assessing the hazards of wastes proposed for exclusions. The mere fact that differences exist reveals nothing more or less than this. These differences have been publicly noticed in numerous post-1985 actions that appeared in the **Federal Register** and were fully referenced in the proposal. The Agency believes strongly that it should be able to apply superior methods of analysis or more accurate information when they become available to ensure protection of human health and the environment. Of course, commenters are encouraged to assess the Agency's evolving methodologies and to comment on specific criteria where proposed. Specific challenges to the analysis for the proposed exclusion of cancelled pesticides are described below.

b. *Upfront Delisting as a Concept.* Several commenters expressed their support of the concept of upfront delistings. One commenter stated that the ability to determine upfront delisting levels will encourage waste minimization and treatment activities that reduce constituent concentrations below delisting levels. One commenter also noted that the availability of upfront delisting levels will discourage petitions which are likely to be unsuccessful, thereby saving industry and Agency resources. The Agency agrees with this commenter and is planning to amend the delisting criteria contained in 40 CFR 260.22 to include specific criteria for upfront delisting petitions.

One commenter suggested that EPA should use upfront delisting levels as a "floor" in other RCRA programs so that management requirements could cease or be reduced based upon the concentrations present in a particular waste stream. Although the Agency is interested in evaluating the commenter's noval approach, this approach has ramifications beyond the scope of this rulemaking. EPA encourages the commenter to provide in another forum more specific examples of such reduced management requirements, and a more thorough analysis of how such a program could be implemented.

c. *General Comments on the OLM and VHS Models.* Several commenters expressed concern regarding the Agency's use of the OLM and VHS models as factors in setting the delisting levels. The commenters referred the Agency to comments on the Agency's models that they had made on earlier proposals, and reiterated their major concerns that (1) the models use extremely conservative assumptions and do not include all critical parameters, resulting in unrealistic conclusions, and (2) the models do not allow for the consideration of site-specific factors.

EPA believes that the models used in the Delisting Program generally represent a reasonable worst case waste disposal scenario, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, *i.e.*, generators may dispose of wastes on their property or at any facility that will accept the waste. EPA currently believes that it can be inappropriate for the Delisting Program to consider extensive site-specific factors. The Agency currently is unable to predict how a waste will be managed after delisting. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The decision not to consider site-specific criteria is particularly appropriate in this exclusion, because the petitioner has not requested that EPA give any consideration to site-specific factors. Therefore, the Agency has not examined these factors in making a decision in this case.

For the purposes of this particular rule, EPA has considered the appropriateness of the OLM/VHS model approach and of the model's parameters. First, the Agency decided that a landfill exposure scenario would be appropriate. EPA assessed the nature of the solid residues which will be generated by the MIS and concluded that landfilling is the most reasonable disposal scenario. (Due to the lack of organic content in the residues following incineration, land treatment would probably not be used. Similarly, mangement in an impoundment is not expected.) In terms of the liquid residues, EPA determined that the groundwater dilution of constituents afforded by application of the VHS model was appropriate, given past management practices for the MIS's scrubber water (i.e., land application). The Agency further considered whether the OLM/VHS model was the landfill model of choice. The primary criteria in this evaluation were (1) the need to apply a generic model (i.e., non-site specific), and (2) the need to apply an environmentally conservative model. As discussed above, the Agency believes that a generic modelling approach is needed because of the potential for delisted wastes to be subject to numerous management options. Further, the Agency believes that a conservative approach is particularly warranted in regard to upfront exclusions, because the petitioner has not generated any residues yet and therefore has not provided any waste characterization.

d. *Specific Comments on the Use of the OLM/VHS Model for Dioxin Migration.* One commenter submitted comments regarding the appropriateness of the VHS model for setting delisting levels for dioxin. Specifically, the commenter noted that the VHS model does not include consideration of actual migration potential of a compound because the model does not account for attenuative mechanisms (such as sorption) which would retard the flow of hydrophobic compounds (such as dioxin) in ground water. The commenter noted that the original version of the model adopted by the Delisting Program (see Domenico and Palciauskas, "Alternative Boundaries in Solid Waste Management", *Groundwater,* v. 20, 301–311, 1982) included a term to account for retardation due to sorption, and that other models used by EPA (e.g., the Liner Location Model) consider sorption effects. The commenter believes that the omission of a migration factor in the VHS model will result in an overestimation of receptor concentrations of dioxin, other organic constituents, and metals.

The Agency acknowledges that sorption effects can play an important part in the migration of contaminants through ground water. Sorption effects, however, are highly variable from site to site and are dependent on many factors, such as soil characteristics. In keeping with the reasonable worst case approach, the Agency has determined not to consider site-specific sorption variables in applying the VHS model to these wastes. An important aspect of this reasonable worst-case scenario is that soil and aquifer conditions would not favor the attenuation of contaminants. Thus, sorption effects, in fact all attenuative effects, are assumed to have no effect on the receptor concentrations of ground-water contaminants. For very hydrophobic compounds, this assumption is a very conservative, worst-case assumption. The Agency notes, however, that this assumption becomes significantly less conservative when the hydrophobic compounds are codisposed or leached with solvents which tend to mobilize hydrophobic constituents.

The commenter also stated that the organic leachate model (OLM) is inappropriate for predicting the leaching capacity of highly insoluble compounds because (1) highly insoluble compounds are not well represented in the OLM leaching data base, (2) the insoluble compounds that are represented show a poor correlation with the adopted model, and (3) actual leaching data from municipal incinerator ash show that the OLM overpredicts dioxin leaching levels by a factor of 100.

In response to these comments, some background information on the OLM is appropriate. The OLM was constructed using 353 data pairs representing 53 wastes bearing 73 different constituents. A number of the wastes sampled were bound in hydrophobic matrices (e.g., lumpy oil refinery sludge, viscous chemical manufacturing sludge, and tar/dirt mixtures from production of methyl ethyl ketone), other wastes were bound in inorganic matrices, and one waste type represented incinerator ash (API sludge/incinerator ash). The commenter is correct that the correlation coefficient determined solely for the low solubility constituents in the leaching data base is low. However, the correlation coefficient for any general subset of data studied in a regression analysis will be lower than the correlation coefficient for the overall data set. Part of what the commenter noticed is due to the fact that the low correlation coefficient was generated from a small data set.

The Agency agrees, however, that the variability of leaching data in general is partly responsible for the low correlation. In keeping with the reasonable worst-case approach, the Agency is taking a conservative stance in regard to the high variability in the leaching data on mobility of hydrophobic compounds. For this reason, the municipal incinerator ash data cannot be considered by itself. Even if the municipal incinerator ash data were added to the leaching data base, the paucity of these data would result in little or no effect on the general correlation coefficient.

The commenter also stated that the time frame for dioxin to reach the compliance point in the VHS model scenario is on the order of tens of thousands of years and that the dioxin is likely to degrade before actually reaching the receptor. However, the length of time required for contaminants in an aquifer to reach a potential receptor may be highly variable; full analysis of dioxin mobility would necessarily require a substantial amount of site-specific information. As discussed above, the Delisting Program does not currently believe it appropriate to consider site-specific information in its analysis. In fact, because the Agency cannot know with certainty how the wastes will be disposed after exclusion, the Agency cannot discount the possibility that the wastes may be exposed to solubilizing agents which will tend to mobilize any dioxin remaining in the residues. For these reasons, the Agency has assumed in using the VHS model that (1) attenuation is insignificant, and (2) soil and aquifer conditions do not favor the degradation of contaminants en route to the receptor point.

The commenter disagreed with the application of the VHS model for dioxin because it does not, in general, conserve mass. That is, due to the simplifying assumptions used in the VHS model, the initial velocity of a contaminant entering the aquifer is determined only by the velocity of the ground water, the vertical dispersivity of the aquifer, and the width of the disposal unit. The commenter claimed that this initial velocity is also affected by the properties of the waste materials and net infiltration into the ground water. The commenter stated that, by not considering these factors, the VHS model can overestimate or, more likely, underestimate the dilution that may occur in an aquifer.

EPA acknowledges that the VHS model is more likely to overpredict (rather than underpredict) the receptor concentration of contaminants in any given waste due to the conservative nature of the assumptions underlying the model. EPA also recognizes that all models do not always predict factual values accurately. Notwithstanding, EPA believes that the VHS model provides a useful analytical tool for the evaluation of the hazards posed by these wastes. EPA has considered and rejected the use of alternative models and approaches for this specific petition, as described below. Unless the Agency is able to assure protection of human health and the environment without generic, conservative assumptions, the Agency will employ these assumptions. Commenters should, however, feel free to demonstrate that more specific alternatives are scientifically valid and adequate to replace such assumptions.

Other Models. One commenter objected to the proposed dioxin delisting levels as being unreasonably low in light of the Center for Disease Control (CDC) level of 1 ppb for residential soils (See Kimbrough, R.D., H. Falk, P. Stehr, 1984. Health Implications of 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) Contimaination of Residential Soil, *J. Tox. Env. Health,* 14:47–93). The delisting level for solid residues is

different from the CDC number for the following reasons:

- The CDC used a significantly different unit cancer risk (a factor used to compute a regulatory dose) from that used by EPA to set the health-based level. Because the CDC unit risk factor is lower, a higher concentration could be set for the same degree of overall risk than if EPA's factor were used.
- The CDC approach considers exposures to dioxin contaminated soil via ingestion, dermal absorption, and inhalation, while the VHS model considers ingestion of ground water.
- The CDC analysis was originally meant tospecify acceptable levels of contamination which have become fixed to residential soils. The delisting levels represent raw waste concentrations.

The 1 ppb action level for residential soils recommended by CDC corresponds to an acceptable dose level of 636 ficagram/kg/day. CDC calculated that the Virtually Safe Dose (equivalent to a cancer risk of 10^{-6} for dioxin falls within the range of 28 fg/kg/day to 1,428 fg/kg/day, but justified the chosen value of 636 fg/kg/day as acceptable in the context of their specific analysis. If the unit cancer risk of 6.4 fg/kg/day calculated by EPA (Health Assessment Document for Polychlorinated Dibenzo-p-dioxins, U.S. EPA, 1985) is used in the methodology presented by CDC, the resultant "action level" would be about 100-fold less than the 1 ppb level, i.e., on the order of 10 ppt (see the docket to this notice for the calculations supporting this estimation). Despite the numerous differences in the exposure scenarios and modeling approaches, this level is comparable to the levels of concern predicted by the OLM/VHS model analysis for solids.

One commenter challenged the Agency's unit cancer risk value used to derive health-based levels for the VHS model groundwater exposure scenario. The Agency acknowledges that the value used is conservative, but continues to believe that this conservative unit cancer risk value is appropriate for the purposes of this delisting evaluation. The Agency's full response to these comments is available in the docket to this rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988).

The Agency considered the appropriateness of other exposure assessment models for dioxin as alternatives to the OLM/VHS model approach. As a result of comment on the 1987 and 1988 MIS delisting proposals, the CDC approach was considered as one alternative. The CDC approach considers very different exposure routes than the VHS model. In general, the exposure scenarios considered in the CDC approach are appropriate for dioxin; although as demonstrated briefly above, the use of EPA's unit risk number with the CDC assumptions results in a similar, conservative level of concern as the use of the OLM/VHS model. The CDC analysis did not, however, take into account other routes of exposure, including ground water and food chain bioaccumulation. Under certain circumstances, the Agency believes that bioaccumulation may be an equally significant exposure route as those addressed in the CDC approach.[1] The Agency also notes that a number of assumptions used in the CDC approach, including estimated soil ingestion rates, have been revised or have been the subject of serious scientific debate since the development of the CDC action level. Based on the uncertainty associated with the underlying assumptions of the CDC approach and the difference in unit cancer risk levels, the Agency decided that the CDC approach is not a preferable alternative to the VHS model for evaluating this petition at this time.

The Agency also considered application of developmental work by EPA's Office of Research and Development (ORD) for the evaluation of dioxin-related delisting petitions. ORD is currently preparing a detailed exposure assessment document for dioxin. One portion of this work evaluates a variety of potential exposure routes for dioxin-contaminated soils and assigns estimated risk levels to these exposure routes for a given scenario. The Delisting Program has evaluated the merits of this approach and believes that, when finalized, this approach will be a valuable tool. ORD's work, however, has not been released for use at this time and is undergoing extensive peer and Science Advisory Board (SAB) review. Given the uncertainities associated with the technical merits of this approach, the Agency has determined that the ORD approach should not be used at this time. However, application of ORD's draft document to the facts of this case supports the low levels of concern predicted by the OLM/VHS model approach (i.e., low ppt level). (This information has also been placed in the docket.)

One commenter pointed out that the Agency has re-examined its unit cancer risk number and has prepared a draft document (which the commenter submitted as part of the comment package) revising the number upwards by a factor of 16. The Agency is continuously considering new toxicological data and re-evaluating many of its health-based numbers. Petitioners who have either withdrawn their petitions or received denial decisions in the past are free to re-petition if final revisions to these numbers would potentially improve their chances of obtaining an exclusion. The report that the commenter has referred to, however, is a preliminary draft which has not been formerly released by the Agency, is not available for use as Agency policy, and is being circulated for review within the Agency for comments on its technical accuracy. As such, it cannot at this time be adopted by the Delisting Program and should not be considered in discussions of the applicability of the existing, Agency-sanctioned risk specific dose (RSD) for dioxin.

e. *Specific Comments on Proposed Verification Conditions—i. Condition 1—Compliance with Permit Conditions.* Two commenters agreed that all incinerators should operate in compliance with their permit conditions, but objected to the requirement in the proposed exclusion that residues be retreated if the incinerator is operating out of compliance with its permit conditions (see 53 FR 36, January 4, 1988). The commenters suggested that the results of the analyses of the residues be used to determine whether the residue be considered non-hazardous.

The Agency agrees with the commenters that the petitioner should analyze any residues generated whenever the MIS is operating outside of the limits specified in its permit. The Agency is specifically concerned with a hypothetical situation where the MIS experiences a mechanical system failure (i.e., failure of the secondary combustion chamber (SCC) or the air pollution control system, failure of the kiln to fire, etc.) after RCB has made a successful demonstration under Condition 6 of the exclusion and has terminated the daily analytical testing specified in Conditions 2 through 5. Although the Agency does not expect these failures to occur, we are modifying Condition 1 in response to comments to require RCB to conduct verification testing on the

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[1] Rappe, C., H.R. Buser, D.L. Stalling, L.M. Smith, and R C. Dougherty. 1981. Identification of Polychlorinated Dibenzofurans in Environmental Samples. *Nature,* 292:524–526.

Kuehl, D W., P.M. Cook, A.R. Batterman, D.B. Lothenbach, B.C. Butterworth and D.L. Johnson. 1985. Bioavailability of 2,3,7,8-Tetrachlorodibenzo-p-dioxin from Municipal Incinerator Fly Ash to Freshwater Fish. *Chemosphere,* 14:427–437.

Jensen, D.J., R A. Hummel, N.H. Mahle, C W. Kocher and H.S. Higgins. 1981 A Residue Study on Beef Cattle Consuming 2,3,7,8-tetrachlorodibenzo-p-dioxin. *J.Agric. Food Chem.,* 29:265–268.

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incinerator residues should such a scenario occur:

> Condition (1): The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made.

ii. *Conditions 2 and 3—Metals Analyses.* One commenters questioned why the 1988 and 1987 proposals imposed more stringent maximum allowable leachate and treatment residue concentrations for mercury, chromium, and selenium than the 1985 rule, as well as limitations for the remainder of the EP toxic metals, nickel, and cyanide that have no counterpart in the 1985 rule. As discussed earlier, the Agency is requiring in this exclusion (and intends to require in any exclusion for the Syntex residues) that the residues be tested for all of the EP toxic metals, nickel and cyanide, because the 1987 and 1988 proposals were for upfront exclusions. The treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not been generated yet and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. No such data exist for the Syntex or cancelled pesticides treatment residues since they have not been generated yet.

The commenter also questioned why the delisting levels for chromium, mercury, and selenium are different than the levels listed in the conditions for the 1985 exclusion. As discussed earlier, the delisting levels have been determined by back-calculating from the regulatory standards through the VHS model and are a function of the waste volume. Since the waste volume covered by the 1985 exclusion differs from the volume covered by the cancelled pesticides proposal (as well as Syntex's waste volume), the dilution factors differ and the resultant delisting levels also differ.

The commenter also requested an explanation of why the proposed delisting levels are lower than the EP Toxicity characteristic limits. The general purpose of the hazardous waste characteristics, such as the EP Toxicity characteristic, is to regulate the worst, rather than all, of the hazardous wastes exhibiting a given characteristic. Wastes leaching concentrations of the EP toxic metals at less than 100 times the National Primary Drinking Water Standards (the EP Characteristic) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous if, pursuant to the criteria for listing contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threats to human health and the environment. Similarly, the Delisting Program currently believes that wastes which exhibit levels slightly less than the levels established through the hazardous waste characteristics may still be identified as hazardous. Thus, levels established by application of the VHS model that are below the EP Toxicity characteristic levels may properly be considered to be hazardous.

One commenter submitted specific comments on the Maximum Concentration Limits (MCLs) which the Agency used in this exclusion for the EP toxic metals. The commenter argued that the drinking water standards (or MCLs) should not be used by EPA in establishing the delisting levels for metals. The commenter claimed that the MCLs are based on chronic exposure scenarios, and would necessarily overestimate the adverse health impact under a scenario where "the MCL is reached only transiently."

The Agency believes that the steady-state VHS model generally provides a reasonable worst case value for constituents of concern at a receptor well. In most cases, the concentration of a constituent in the leachate represents only a small fraction of the total mass of the constituent in the waste. Sustained leaching of the constituent is possible, which would lead to chronic exposure to the chemical over long time periods. Therefore, the Agency believes that use of health-based standards (such as MCLs) derived for chronic exposures is valid.

The commenter also raised a variety of questions concerning the bases of the MCLs for a number of the metals. The Agency's response to these comments is available in the docket to today's rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988). The Agency is in the process of revising the MCLs, and all of the points raised by the commenter were acknowledged by EPA in a proposed rule (50 FR 46936, November 13, 1985). As discussed in the docket, EPA does not believe that the questions raised warrant the use of different health-based levels for these constituents in this rulemaking.

The same commenter also challenged the health-based levels used to establish delisting levels for nickel and cyanide. The commenter further questioned why these two chemicals should be monitored because neither chemical was detected in the waste. The bases for these health-based levels were described in detail in a proposed rule establishing prohibition levels for the land disposal of "California List" metals and cyanide (see 52 FR 29994, August 12, 1987). These proposed health-based levels were established for the same exposure route as the MCLs (i.e., drinking water), and the Agency believes these levels are adequate for setting delisting levels. For both chemicals, the commenter noted the uncertainty in the bioavailability of these chemicals when ingested in food or water. The Agency agrees that some uncertainty exists in this area, but believes that the safety factors incorporated into the health-based levels appropriately address these (as well as other) uncertainties.

In response to the commenter's statement regarding the absence of nickel and cyanide in the untreated pesticides, the Agency notes that the petitioner submitted data only for an aqueous extract of the solid cancelled pesticides. While the analyses of the extract indicate that these two chemicals do not leach from the solid pesticide material, these results do not confirm the absence of these chemicals in the pesticide wastes. If these constituents are actually present in the untreated pesticides, they may potentially be more mobile after incineration due to the removal and destruction of the organic materials which can, under certain circumstances, retard leaching. Furthermore, cyanide is a possible product of incomplete combustion and may be formed during the incineration process. For these reasons, EPA believes that the analyses of nickel and cyanide in the final waste residues are justified.

iii. *Condition 4—Organics Analyses.* One commenter expressed support of the Agency's proposed approach to allow residuals to be disposed as non-hazardous when the constituents of concern are not detected using the appropriate SW–846 methods correctly and the practical quantitation limits exceed the delisting levels.

One commenter believed that the maximum waste residue concentrations proposed for organics are excessively low and are not necessary to protect human health and the environment. The commenter questioned why any testing for organics is necessary, because the 1985 exclusion did not require batch testing for organics. The Agency refers the commenter to the discussions earlier in this notice regarding the differences between the 1985 exclusion and the upfront exclusions proposed in 1987 and 1988.

One commenter stated that the low delisting levels for certain organics will require the MIS to operate with extended residence times to ensure destruction of these constituents to the delisting levels. The commenter believed that this is unnecessary and will (1) effectively reduce the capacity of the MIS, (2) significantly increase operating costs, and (3) deter future thermal treatment of hazardous wastes.

The Agency acknowledges that effective hazardous waste treatment and detoxification can be quite expensive and time consuming. The Agency also recognizes that its conservative approach to protecting human health and the environment may cause increased treatment costs compared with less protective approaches. Notwithstanding, the Agency believes that the availability of upfont exclusions, even with conservative conditions, will encourage such treatment.

Two commenters supported the Agency's proposed approach to eliminate certain constituents from the verification testing requirements when the delisting levels exceed 1,000 ppm. The commenters agreed with the Agency that it is highly unlikely that these constituents will be present in the residues at these levels after incineration.

One commenter noted that the maximum allowable treatment residue concentrations for a number of constituents are substantially higher than the levels for the same constituents in the 1987 proposal. The commenter correctly attributes some of these differences to updates to the Agency's health-based levels. The constituents affected by these updates include chloroform, 1,2-dichloroethane, and 2,3,4,6-tetrachlorophenol. The commenter stated that for the sake of fairness and completeness, all of the exclusions should be comparable (except where the Agency has specifically demonstrated a health-based rationale for different requirements). The commenter assumed that the Syntex exclusion, when finalized, would incorporate the updated values.

The Agency notes that part of the difference in delisting levels is due to the different volumes of waste petitioned for exclusion by the two petitioners (see earlier discussion of the effect of volume changes in setting delisting levels). The Agency agrees that the basis for exclusions should be similar unless appropriate reasons for differences exist, and is considering several options to bring the Syntex proposal and today's rule into closer agreement.

The commenter also questioned why the delisting level for chloroform in the solid residues differs between the 1987 and 1988 proposals by 540 fold, yet the difference in the health-based level and in waste volume is about 120 fold (12 fold in the health-based regulatory level and 10 fold in the waste volume). The Agency notes that differences in health-based levels for a given constituent are not directly proportional to the resulting differences in delisting levels because of the exponential form of the OLM, which essentially amplifies the differences in health-based levels. The public is referred to the docket for the mathematical derivation of this explanation.

One commenter stated that it was unable to comment on the acceptability of the proposed delisting levels because the health-based levels were not published in the proposal. These health-based levels were, however, placed in the docket to the notice and were thus available for review to substantiate any comment. Although the Agency believes that availability of such information in the docket fully complies with applicable requirements for notice, the Agency intends to publish such numbers in future proposals for upfront exclusions.

One commenter objected to the Agency's intention to add constituents to the list of constituents in Condition 4 if health-based levels became available after the publication of the proposal and before promulgation. The commenter argued that such values must be subject to notice and comment prior to inclusion in a final rule. The Agency agrees and has not added any additional constituents to the list in Condition 4.

One commenter suggested that the list of constituents to be tested for under Condition 4 be reduced by 50 percent. The commenter believes that the reduced list would allow for a conservative, more cost-effective verification that the incineration residues are not hazardous. The Agency considered but has rejected the commenter's suggestions because justification for specific deletions from the verification lists was not provided. In addition, HSWA requires that petitioners demonstrate that any potential constituents of concern do not cause the wastes to be hazardous; the concept of verifying only 50 percent of the constituents of concern is not consistent with this mandate. The constituents listed in Condition 4 represent compounds which are known to be present in the untreated pesticides and compounds which potentially may be present in the incineration residues as products of incomplete combustion. The verification testing list presented in the proposal (and finalized today) was abbreviated by eliminating hazardous constituents which could not possibly be present at levels of regulatory concern (i.e., the level of regulatory concern was greater than 1,000 ppm). The Agency believes this reduction was appropriate because of (1) the low or non-existent levels of the "eliminated" constituents in the untreated pesticides, (2) analytical test results on residues generated in the past by the MIS, and (3) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency. Without further information sufficent to indicate that the other specific constituents will not be present at or above levels of regulatory concern in the residues, verification testing for such constituents is appropriate.

One commenter noted that the proposal did not specify precise analytical methodologies for analysis of the solid residues and that there are no approved methods for measuring volatiles in solids. Condition 4 of the proposal (and final rule) states that "analyses must be performed according to SW–846 methodologies", and the commenter is referred to that manual for the appropriate analytical method for the chemicals of concern. SW–846 does include methods for analyzing volatile organics in solid waste. For example, Method 8240 contains procedures for purging and analyzing volatile compounds from soil/sediment samples.

The commenter suggested that SW–846 methods be applied to an aqueous extract of the solid residues because this would be appropriate for a groundwater exposure scenario. The Agency believes that an aqueous extraction is appropriate for groundwater exposure scenarios, and for this reason, used the OLM (which was derived from an aqueous leaching data base, see 51 *FR* 41082, November 13, 1986) to predict aqueous leachate concentrations of organics from total concentrations of constituents in waste. Because the delisting levels were back-calculated (by using the VHS/OLM models to predict leachate from total constituent levels in the residue), double-counting would result if leachate levels of the residues were compared to the delisting levels.

iv. *Condition 5—Dioxin Analyses—General.* One commenter objected to the inclusion of testing for dioxin because it is inconsistent with the 1985 exclusion. As stated earlier, the conditional testing requirements have been added to verify that the MIS can treat the cancelled pesticides as successfully as the petitioner claims it can. If the petition were a conventional petition instead of an upfront petition, the conditional testing requirements may not have been needed.

One commenter referenced the 1985 exclusion, pointing out that limits were not set for dioxin at that time, and that the Agency should be consistent and apply the same criteria to the recent proposals. As stated earlier in the Agency's response to general comments, the Agency's general approach to dioxin and that of the delisting program have developed considerably since the 1985 exclusion was promulgated, and the 1985 exclusion was not an upfront exclusion.

One commenter noted that the dioxin levels in the proposal are significantly more conservative than the levels promulgated in the 1985 exclusion. The commenter further noted that the Agency indicated in 1985 that the 1985 detection limit levels for dioxin in solids and aqueous media were not of regulatory concern, even though lower levels were achievable. In 1985, the Agency viewed the determination of dioxins by HRGC/HRMS as an experimental method. The Agency now believes that the better detection limits that are available (see discussion below on Method 8290), and the more conservative levels proposed for this exclusion, are more consistent with the delisting programs' unit cancer risk values and with the evolution of its reasonable worst case modeling approach. The Agency also believes that the development of a more conservative approach is a reasonable means of ensuring protection of human health and the environment.

The same commenter stated that if verification testing is required, the Agency should only require analysis for those dioxin isomers and homologs present in the untreated residues. The Agency disagrees. HSWA clearly states that the Agency must evaluate wastes for all factors which may cause a waste to be hazardous (see 42 U.S.C. 6921(f)). Dioxins and furans are known to be products of incomplete combustion. Therefore, the Agency believes it is appropriate to analyze these incineration residues for all possible dioxin isomers and homologs.

This commenter also submitted a catalog of other thermal treatment units which have treated dioxin-contaminated materials in the U.S. and claimed that few of these units have achieved the dioxin delisting levels specified in the cancelled pesticides exclusion. The Agency has examined the commenter's catalog and has concluded that the referenced thermal treatment units may indeed have actually achieved the delisting levels of concern, as each unit achieved non-detectable levels of dioxin in their ash. Without more information, there is no means to know whether the units did or did not achieve the delisting levels. Notwithstanding, the Agency notes that in some cases the detection limits achieved were equivalent to or below the PQLs proposed for this exclusion. The Agency therefore questions why the commenter claimed that few thermal units may be able to meet the conditions of today's rule.

The commenter also questioned why the Agency is requiring such rigorous treatment when data from municipal incinerators indicates that ash from such incinerators can exceed the MIS's delisting levels. Whether dioxins are found in municipal incinerator ash is not relevant to RCB's delisting petition. Issues related to the presence of dioxin in municipal incinerator ash will be considered in the Agency's overall decision on appropriate management standards for such ash.

Method 8290. One commenter protested the Agency's proposed requirement that Method 8290 be used to analyze the residues for dioxin. The commenter objected to the use of a method which has not been subject to general notice and comment through rule-making and is not in final form. As stated in the proposal, Method 8290 has been subjected to single laboratory validation. (See: ORD Publication EPA 600/4–86–004, "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High Resolution Gas Chromatography/High Resolution Mass Spectrometry", January, 1986.) According to Agency experts who were consulted in the choice of a HRGC/HRMS method, Method 8290 is the method of choice (see memorandum to Suzanne Rudzinski from Robert L. Booth dated December 3, 1987 which was and is available in the docket to the proposal). The Agency also notes that HRGC/HRMS analysis has been available for several years, and although it is a sophisticated method, it is certainly not an untried, experimental procedure. In addition, although methods which are added to SW–846 are traditionally noticed in the **Federal Register** for public information and comment, SW–846 is currently used as a guidance manual by the Delisting Program rather than as a regulatory requirement. In proposed rulemakings such as the proposed cancelled pesticides exclusion, EPA proposes the use of specific SW–846 methods and the regulated community is given the opportunity to comment on the methods. Comment on the proposed use of Method 8290 was received in this case.

One commenter objected to the use of Method 8290 on the grounds that it is not widely available, has not been used extensively, is twice as expensive as the less sensitive method for dioxins which is currently in SW–846 (Method 8280), is too complicated, will be burdensome for laboratories to avoid false positives due to laboratory cross-contamination of samples and equipment, and has a long turnaround time which will be burdensome during the incineration process due to the limited storage capacity at the Denney Farm site. The Agency agrees with the commenter that there are complications associated with the use of Method 8290. Nevertheless, the Agency is responsible for choosing an analytical method which is best suited for measuring the potential hazardousness of the cancelled pesticides incineration residues, not the method which is most convenient and inexpensive. Given the need for high analytical sensitivity to assure careful analyses of residue constituents, the Agency remains convinced that Method 8290 is the method of choice. Additionally, the Agency notes that there are a number of laboratories which are familiar with and experienced in the conduct of Method 8290. Many of these laboratories participated in the development of the method and should be able to provide analytical services with a minimal turn-around and adequate quality control.

Practical Quantitation Limits (PQLs). Two commenters objected to the Agency specifying PQLs in delistings. One commenter stated that setting an absolute limit for an analytical method as a delisting requirement is precedent-setting and in many cases would be inappropriate. The commenter expressed concern that the Agency intends to specify PQLs routinely in all future upfront exclusions. However, the commenter also stated that the logic which the Agency used in estimating a PQL for dioxin may be reasonable for the specific application of the cancelled pesticides exclusion, since the laboratories used to conduct the analysis will be limited to the few qualified laboratories in the country. The same commenter went on to state that for future delistings, the Agency should not estimate a PQL, but should allow a laboratory to establish a matrix-specific, laboratory-specific minimum detection limit (MDL) for the constituent of concern. The PQL should be a set multiple of this MDL. Finally, the commenter agreed that the multiplier for setting a PQL from an MDL is almost certainly in the range of three to ten, as stated by the Agency in the proposal. Another commenter stated that the low PQLs are unjustified given the lack of rigorous interlaboratory studies for Method 8290.

The Agency believes that setting specific PQLs for upfront delisting petitions is appropriate. For upfront delistings, the data submittal requirements must be described in detail to minimize situations where the petitioner submits verification data that the Agency subsequently might reject as inadequate. One of the critical elements of verification testing is the analytical detection limits. The adequacy of the detection limits is judged by comparing the achieved detection limits with the suggested detection limits in SW–846. The Agency frequently requests that the petitioner reanalyze the waste using lower detection limits or provide a detailed discussion of why lower detection limits cannot be achieved. To avoid such situations, the Agency believes that specification of reasonable but conservative MDLs and PQLs that labs must meet is approprite. RCB's petition was for an upfront delisting and no analytical data on the treatment residues were available for EPA's review. As was discussed in detail in the proposal, the Agency considered data from a number of laboratories that have analyzed wastes for dioxin using Method 8290 in order to establish a reasonable yet conservative PQL. (The Agency notes that PQLs were only specified in the dioxin testing condition. Dioxin is the primary listed constituent of concern in the petitioned waste (EPA Hazardous Waste No. F027).)

Several commenters stated that many factors (i.e., waste matrix interferences, background levels, operator and instrument variability) can affect a method's analytical sensitivity. Method 8290 has been designed with extensive cleanup procedures and instrumentation calibration requirements. These features were added to the method to maximize the method's sensitivity and minimize potential interferences. EPA consulted with experts regarding the feasibility of the proposed PQLs and determined that, given the quality and expertise of the laboratories which may be used to conduct the dioxin analyses, the proposed PQLs are reasonable. Future determinations of PQLs will be made on a matrix- and constituent-specific basis.

One commenter argued that the procedure used to determine minimum detection limits (MDLs) and PQLs is meant to be applied by specific laboratories for a specific chemical and specific matrix, rather than as specified in the proposal. The commenter also stated that if the Agency is concerned about laboratories having abnormally high MDLs or PQLs because of poor practices, this concern should be addressed through existing QA/QC programs instead of through the specification of PQLs. The Agency notes that the levels presented in the proposal are not specific targets for the petitioner to achieve, but rather maximum acceptable PQLs, or the upper bound of acceptable detection limits. These values were determined by evaluating the levels which have been achieved by a number of laboratories which are familiar with the method. The Agency also notes that Method 8290 is a very detailed and specific method with extensive QA/QC requirements. Agency experts believe that laboratories which follow the method procedure correctly should be able to achieve the PQLs. The Agency is not indicating that these PQLs for this dioxin waste are necessarily appropriate for all petitions. PQLs depend on the waste matrix and thus will be determined, as needed, on a case-by-case basis.

One commenter complained that the Agency has set the maximum PQLs arbitrarily. Specifically, the commenter stated that it was unclear why the Agency set the PQLs to be less than three times the minimum detection limits (MDL) after the Agency indicated that PQLs are normally set at three to ten times the MDL. One commenter, having recommended that the Agency not specify PQLs, providdd an alternative recommendation that if PQLs are to be used, the Agency should use a factor of 10 to determine the PQL. The commenter did not provide specific justification as to why the factor of 10 is more appropriate than a factor of three.

Although the Agency defended its earlier choice of PQLs as reasonable because (1) the residues to be analyzed will be relatively free of interferences, (2) the petitioner will be using highly qualified and experienced operators and laboratories to conduct the analyses, and (3) the values chosen are extremely conservative, the Agency acknowledges that standard scientific protocol used to establish PQLs specifies three to ten times the MDL, rather than two or two-and-one-half times the MDL. EPA is therefore revising the condition to raise the PQLs to three times the MDL (the most conservative value in this range), i.e., to 15 ppt and 0.120 ppt for the solid residues and wastewaters, respectively.

The Agency received comments which pointed out that the Agency had specified maximum PQLs for Method 8290 but did not specify whether they applied only to 2,3,7,8–TCDD or to all of the polychlorinated dioxins and furans. The commenter referenced the ad hoc Agency work group which had originally recommended Method 8290 and the PQLs, and stated, that (1) the PQLs specified in the proposal were meant to apply to 2,3,7,8–TCDD, (2) a laboratory achieving these PQLs would achieve "reasonable" detection limits for the other cogeners and homologs, (3) equivalent PQLs should be achievable for all tetra- and penta- homologs, and (4), for the hexa- homologs, PQLs should be 2.5 times the 2,3,7,8–TCDD PQLs. The sensitivity of the 8290 method decreases somewhat for the more highly chlorinated homologs, and the method specifies that method calibration limits for the hexachlorinated compounds are 2.5-fold higher than the limits for the tetrachlorinated homologs. The Agency agrees that these levels should have been specified in the proposal. The Agency also agrees with the commenter's suggested PQLs and is modifying the condition accordingly:

> Condition (5): RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 0.120 ppt for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wasterwaters.

One commenter objected to the requirement that residues be retreated or managed in accordance with Subtitle C if no dioxin is detected in the residues but the laboratory cannot meet the required PQLs. One commenter suggested that the Agency validate an analytical method's ability to achieve any future MDL that is set as a condition of an upfront delisting. The Agency has used its best technical judgment in setting MDLs at realistic values, and will continue to do so in the future. The Agency believes that this condition is necessary to protect human health and the environment, and it is appropriate because the exclusion is in response to an upfront delisting petition. The Agency notes that in such instances, the petitioner has a number of options: (1) the petitioner can retreat the residue; (2) the petitioner can also dispose of the residue as hazardous; (3) the petitioner can request that the laboratory reanalyze the residues to achieve the PQLs specified in the exclusion, or the petitioner can retain the services of a different laboratory that is capable of achieving the PQLs; or (4) the petitioner can submit the high analytical detection limits with documentation certifying the laboratory's inability to achieve lower detection limits due to specific matrix interferences which the method cannot address.

Several commenters pointed out confusing printing errors in the proposals regarding the PQLs. As a point of clarification, the final sentence in the second column on 53 FR 38 of the proposal should have read as follows: "Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs of 15 ppt for solids and 120 ppq for wastewaters."

v. Condition (6)—Termination Provision and Data Submittal Requirements. Three commenters expressed support of the termination of verification testing after four consecutive clean batches of residues are generated.

One commenter objected to the requirement that the petitioner continue testing until the Assistant Administrator of the Office of Solid Waste and Emergency Response notifies the petitioner that the testing requirement has been terminated. The commenter believes that this is an unworkable approach given the constraints of the storage capacity at the Denney Farm site, the lengthy analytical turnaround times, and the potential administrative delays at the Agency. The commenter suggests that either the Agency commit to an expedited review of the verification data or allow the petitioner to evaluate the samples independently to ensure compliance with the exclusion conditions.

The Agency believes at this time that Agency review of verification data is needed to maintain the integrity of the upfront delisting process, and the Agency will strive to review this data expeditiously.

The two commenters objected to the requirement that all data be submitted to EPA. The commenters believe that on-site summaries should be acceptable and would save EPA the cost of handling and storing unneeded data. The Agency disagrees with the commenters' characterization of the data as unneeded. These data will serve as validation of the petitioner's claim that the residues will be non-hazardous, and must be available for public review in the docket.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the incineration residues from the treatment of the cancelled pesticides, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Releases Control Branch for the incineration residues generated from the treatment of cancelled pesticides in the EPA Mobile Incineration System. These wastes are listed as EPA Hazardous Waste No. F027 and will be generated at the Denney Farm site in McDowell, Missouri. The exclusion remains in effect unless the wastes vary from those originally described in the petition (i.e., the wastes are altered as a result of changes in the treatment process). The current exclusion applies only to the processes covered by the original demonstration. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat such wastes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste may either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any State which had delisting programs prior to the Amendments must become reauthorized under the new provisions (See RCRA Regulation Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.) To date, only one State (Georgia) has received reauthorization for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. A state, however, can still decide whether to exclude these wastes under the State program as a matter of state law. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001, RCRA, 42 U.S.C. 6921.

Date: March 7, 1988.

Jeffery Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PARTS 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6912, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
EPA's Mobile Incineration System (MIS).	McDowell, MO	Kiln ash, cyclone ash, seperator sludge, and filtered wastewater (except spent activated carbon) (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5-T and Silvex and related materials by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after [insert date of final rule publication in the Federal Register], so long as: (1) the incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevent to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made; (2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.44 ppm; barium levels exceed 8.8 ppm; cadmium and selenium levels exceed 0.09 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 4.4 ppm; or cyanide levels exceed 1.8 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies. (3) One grab sample must be taken from each drum of kiln ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. One grab sample must be taken from each drum of cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the seperator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium and selenium levels exceed 0.3 ppm; mercury levels exceed 0.7 ppm; nickel levels exceed 16 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies. (4) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln ash, cyclone ash, seperator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in conditions (2) and (3). Analyses must be performed according to SW–846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed as hazardous. Solid and sludge concentrations must not exceed the following levels: Aldrin—0.015 ppm Benzene—8.7 ppm Benzo(a)pyrene—0.43 ppm Benzo(b)fluoranthene—1.8 ppm Chlordane—0.37 ppm Chloroform—5.4 ppm Chrysene—170 ppm Dibenz(a,h)anthracene—0.083 ppm 1,2-Dichloroethane—4.1 ppm Dichloromethane—2.4 ppm 2,4-Dichlorophenol—480 ppm Dichlorvos—260 ppm Disulfoton—23 ppm

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Endosulfan I—210 ppm Fluorene—120 ppm Indeno(1,2,3-cd)pyrene—330 ppm Methyl parathion—210 ppm Nitrosodiphenylamine—130 ppm Phenanthrene—150 ppm Polychlorinated biphenyls—0.31 ppm Tetrachloroethylene—59 ppm 2,4,5-TP (silvex)—110 ppm 2,4,6-Trichlorophenol—3.9 ppm. And detected wastewater concentrations do not exceed the following levels: Acetone—35 ppm Aldrin—0.000016 ppm Benzene—0.044 ppm Benzo(a)pyrene—0.000027 ppm Benzo(b)fluoranthene—0.00018 ppm Biphenyl—15 ppm Bis-2-ethylhexyl phthalate—5.2 ppm Chlordane—0.00024 ppm Chlorobenzene—8.8 ppm Chloroform—0.052 ppm Chrysene—0.0018 ppm 2,4-D—3.5 ppm Dibenz(a,h)anthracene—0.000006 ppm Dichloromethane—0.042 ppm 1,3-Dichlorobenzene—34 ppm 1,4-Dichlorobenzene—0.66 ppm 1,2-Dichlorobenzene—26 ppm 1,2-Dichloroethane—0.044 ppm 2,4-Dichlorophenol—0.88 ppm Dichlorvos—0.78 ppm Diethyl phthalate—4,400 ppm Disulfoton—0.016 ppm Endosulfan I—0.020 ppm Ethyl benzene—35 ppm Fluoranthene—1.8 ppm Fluorene—0.018 ppm Indeno(1,2,3-cd)pyrene—0.0018 ppm Isophorone—62 ppm Methyl chloride—35 ppm Methyl parathion—0.099 ppm Naphthalene—80 ppm Nitrosodiphenylamine—0.063 ppm Pentachlorophenol—8.8 ppm Phenanthrene—0.018 ppm Phenol—8.8 ppm Polychlorinated biphenyls—0.000072 ppm Pyrene—35 ppm Tetrachloroethylene—0.059 ppm 2,3,4,6-Tetrachlorophenol—8.8 ppm Toluene—88 ppm 2,4,5-TP (silvex)—0.088 ppm 1,2,4-Trichlorobenzene—6.2 ppm 2,4,6-Trichlorophenol—0.018 ppm 2,4,5-Trichlorophenol—35 ppm 2,4,5-Trichlorophenoxyacetic acid—0.88 ppm Xylene—619 ppm; (5) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wastewaters; (6) The test data from conditions (1), (2), (3), (4) and (5) must be kept on file by RCB for inspection purposes and must be compiled, summarized, and submitted to the Assistant Administrator for Solid Waste and Emergency Response by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for conditions (2), (3), (4), and (5) will continue until RCB provides the Assistant Administrator with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Assistant Administrator notifies RCB that the conditions have been lifted. All data submitted will be placed in the RCRA docket.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) RCB must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) accuracy, I certify as the Agency official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 88-5467 Filed 3-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Chambers County (Unincorporated Areas) (FEMA Docket No. 6817)	
Chattahoochee River:	
About 4.2 miles downstream of Riverview Dam	*527
Just downstream of Langdale Dam	*552
Just upstream of Langdale Dam	*556
About 2000 feet downstream of West Point Dam	*580
Osanippa Creek:	
About 800 feet downstream of U.S. Highway 29	*577
About 1,500 feet downstream of Interstate	*596
Tributary No. 2:	
At mouth	*579
About 1.2 miles upstream of County Road 55	*597
Moores Creek:	
About 600 feet downstream of State Highway 29	*553
Just upstream of Fob James Boulevard	*556
Ginnie Creek:	
At mouth	*653
About 500 feet upstream of Fob James Boulevard	*587
Maps available for inspection at the County Commissioner's Office, Valley, Alabama.	
Lanett (city), Chambers County (FEMA Docket No. 6817)	
Chattahoochee River:	
About 1.6 miles downstream of U.S. Highway 29	*571
About 1,100 feet upstream of U.S. Highway 29	*575
Maps available for inspection at the City Hall, Lanett, Alabama.	
ARIZONA	
Colorado City (town), Mohave County (FEMA Docket No. 6535)	
Short Creek:	
Approximately 15 feet upstream of State Highway 389	*4,930
Approximately 30 feet downstream of North Central Road	*4,977
At Usona Avenue	*5,010
Maps are available for review at Town Hall, 15 N. Central Street, Suite A, Colorado City, Arizona.	
ARKANSAS	
Lepanto (city), Poinsett County (FEMA Docket No. 6817)	
Left Hand Chute of Little River:	
Approximately 1.1 miles downstream of most downstream crossing of State Route 140	*220
Approximately .81 mile upstream of Old State Route 140	*223
Maps available for inspection at 117 South Greenwood, Lepanto, Arkansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Coronado (city), San Diego County (FEMA Docket No. 6817)	
Pacific Ocean:	
Center of Strand Way, 200 feet along the street from its intersection with Pomona Avenue	*9
A point 100 feet due south of the southwest end of Avenida del Sol	*7
Maps are available for review at City Hall, 1825 Strand Way, Coronado, California.	
Encinitas (city), San Diego County (FEMA Docket No. 6817)	
Pacific Ocean:	
Approximately 200 feet west of Tattenham Street	*15
Approximately 200 feet west of intersection of Neptune Avenue and Jason Street	*9
Approximately 300 feet west of intersection of Neptune Avenue and Europa Street	*10
Approximately 330 feet west of intersection of Neptune Avenue and Athena Street	*13
Approximately 600 feet west of intersection of La Mesa Avenue and Orpheus Avenue	*12
Approximately 325 feet west of intersection of Neptune Avenue and La Mesa Avenue	*11
Approximately 300 feet west of intersection of 5th Street and 'A' Street	*10
Approximately 150 feet west of intersection of 5th Street and 'B' Street	*8
Approximately 360 feet west of intersection of 4th Street and 'D' Street	*10
Approximately 330 feet west of intersection of 4th Street and 'E' Street	*11
Approximately 250 feet west of intersection of 4th Street and 'G' Street	*12
Approximately 450 feet west of intersection of 3rd Street and 'J' Street	*11
Approximately 850 feet west of intersection of 1st Street and 2nd Street	*10
Approximately 1,100 feet west of intersection of Summit Avenue and Westminster Drive	*9
Approximately 750 feet west of intersection of Hayden Drive and Montgomery Avenue	*10
Approximately 700 feet west of intersection of San Elijo Avenue and Birmingham Drive	*11
Approximately 500 feet west of intersection of Camino Del Mar and Chesterfield Drive	*10
Approximately 200 feet west of intersection of San Elijo Avenue and Kilkenny Drive	*7
At southern corporate limits	*13
Escondido Creek:	
Approximately 1,850 feet south of intersection of Manchester Avenue and El Camino Real	*13
Approximately 50 feet upstream of Encinitas Boulevard	*33
At El Camino Del Norte	*54
Approximately 300 feet north of intersection of Via De Caballo and Val Sereno Drive	*85
San Elijo Creek:	
At confluence with San Elijo Lagoon	*13
Approximately 1,100 feet above confluence with San Elijo Lagoon	*16
Maps are available for review at City Hall, 535 Encinitas Avenue, Encinitas, California.	
National City (city), San Diego County (FEMA Docket No. 6820)	
Sweetwater River:	
1,500 feet downstream of intersection of Plaza Bonita Road	*37
Approximately 150 feet downstream of Plaza Bonita Road	*30
Las Palmas Creek:	
At Highland Avenue	#1
San Diego Bay:	
At mouth of Sweetwater River	*8
Maps are available for review at City Hall, 1243 National City Boulevard, National City, California.	
San Marcos (city), San Diego County (FEMA Docket No. 6817)	
San Marcos Creek:	
Just upstream of Discovery Road	*514
At the intersection of Mission Road and Twin Oaks Road	*581
Approximately 20 feet downstream of Olive Drive	*598
East Branch San Marcos Creek:	
At confluence with San Marcos Creek	*585
At the intersection of Mission Road and Richland Road	*634
Approximately 10 feet downstream of Rock Springs Road	*651
Maps are available for review at City Hall, 105 West Richmar Avenue, San Marcos, California.	
Santa Maria (city), Santa Barbara County (FEMA Docket No. 6817)	
Bradley Ditch:	
At downstream corporate limits	*197
Approximately 200 feet upstream of Railroad Avenue	*205
Approximately 100 feet upstream of U.S. Highway 101 and State Highway 166	*220
Just downstream of Jones Street and the Santa Maria Valley Railroad	*240
Maps are available for inspection at City of Santa Maria Department of Public Works, 810 West Church Street, Santa Maria, California.	
Solana Beach (city), San Diego County (FEMA Docket No. 6817)	
Pacific Ocean:	
Approximately 700 feet southwest of the intersection of Sierra Avenue and Del Mar Shores Terrace	*12
Approximately 550 feet west of the intersection of Sierra Avenue and Palm Drive	*13
Approximately 500 feet west of the intersection of Sierra Avenue and Linda-Mar Drive	*12
Approximately 450 feet west of the intersection of Sierra Avenue and Plaza Street	*10
Approximately 300 feet west of the southern intersection of Heux Avenue and Hill Street	*12
Approximately 500 feet west of the intersections of Clark Street, Hill Street and Sierra Avenue	*14
Approximately 300 feet west of the intersection with Solana Vista Drive and Pacific Avenue	*13
San Dieguito River:	
Between Del Mar Downs Road and Valley Avenue	*17
Maps are available for review at the City Manager's Office, City Hall, 380 Stevens Avenue, Solana Beach, California.	
Trinity County (unincorporated areas) (FEMA Docket No. 6817)	
Trinity River:	
Approximately 2,600 feet downstream of confluence with Canyon Creek	*1448
Approximately 1,450 feet downstream of confluence with Feltzer Gulch	*1475
Approximately 1,300 feet downstream of confluence with Carr Creek	*1520
Approximately 300 feet downstream of confluence with Browns Creek	*1545
Approximately 230 feet downstream of State Highway 299	*1625
Approximately 920 feet downstream of confluence with McIntyre Gulch	*1665
Approximately 150 feet downstream of confluence with Snipe Gulch	*1741
Approximately 400 feet downstream of confluence with Rush Creek	*1760
Approximately 420 feet downstream of Trinity Dam Boulevard	*1812
Maps are available for review at the Trinity County Planning Department, 303 Trinity Lakes Boulevard, Weaverville, California.	
COLORADO	
Boulder County (Unincorporated Areas), (FEMA Docket No. 6803)	
Boulder Creek:	
At the intersection with Northeast County Line Street	*4,948
At confluence with Barker Reservoir	*8,025
South Boulder Creek:	
At confluence with Boulder Creek	*5,175
500 feet upstream of Eldorado Springs Road	*5,781
Coal Creek:	
At confluence with Boulder Creek	*4,960
3,400 feet upstream of Third Avenue	5,536
Dry Creek No. 1:	
At confluence with St. Vrain Creek	*4,940
5,950 feet upstream of North 75th Street	*5,111
Clover Basin Tributary:	
At confluence with Dry Creek No. 1	*5,037
80 feet upstream of North 75th Street	*5,057
Steel Lakes Tributary:	
At confluence with Dry Creek No. 1	*5,050
At upstream face of North 75th Street	*5,059
Dry Creek No. 2:	
At downstream face of Northeast County Line Street	*4,901
50 Feet downstream of State Highway 119	*5,135
Dry Creek No. 3:	
At confluence with Boulder Creek	*5,067
1,450 feet upstream of Baseline Road	*5,277
Elmers Twomile Creek:	
230 feet upstream of Glenwood Drive	*5,315
At the intersection with Iris Avenue	*5,326
Fourmile Creek:	
At confluence with Boulder Creek	*5,731
860 feet upstream of Pennsylvania Gulch Road	*7,760
Fourmile Canyon Creek:	
At confluence with Boulder Creek	*5,163
80 feet south of line between sections 10 and 15 in Range 7/W Township 1N	*6,092
James Creek:	
At confluence with Lefthand Creek	*6,338
720 feet upstream of confluence with Jenks Gulch	*6,802
Lefthand Creek:	
At confluence with St. Vrain Creek	*4,929
At downstream face of Peak to Peak Drive	*9,220
Little James Creek:	
450 feet upstream of Ward Street	*7,003
1,920 feet upstream of Ward Street	*7,098
Little Thompson River:	
At intersection with the Larimer County-Boulder County line in Section 6 Range 69W Township 3N	*5,091
At line between Sections 2 and 3 in Range 70W Township 3N	*5,232
Middle Boulder Creek:	
At confluence with North Beaver Creek	*8,185
2,900 feet upstream of State Highway 119	*8,320
North Beaver Creek:	
At confluence with Middle Boulder Creek	*8,185
1,080 feet upstream of State Highway 72	*8,302
Rock Creek:	
At confluence with Coal Creek	*5,129
At downstream face of Brainard Drive	*5,307
St. Vrain Creek:	
At downstream face of 119th Street	*4,916
At downstream face of Airport Road	*5,022
St. Vrain Creek: (Vicinity of Lyons)	
3,450 feet downstream of Second Avenue	*5,299
590 feet downstream of Second Avenue	*5,314
South St. Vrain Creek:	
1,020 feet upstream of confluence with North St. Vrain Creek	*5,334
At confluence with Middle St. Vrain Creek	*7,006
Middle St. Vrain Creek:	
At confluence with South St. Vrain Creek	*7,006
360 feet upstream of State Highway 72	*8,510
Spring Gulch:	
At confluence with St. Vrain Creek	*4,929
80 feet downstream of 12th Avenue	*4,980
Wonderland Creek:	
At confluence with North Goose	*5,220
1,080 feet upstream of Broadway	
At confluence with 5	*5,506
Dry Creek:	
At confluence with Flatirons Lake	*5,191
At Burlington Northern Railroad	*5,221
Goose Creek:	
At confluence with Boulder Creek	*5,255
Approximately 140 feet upstream of 9th Street	*5,380
Highway 93 Split Flow:	
At South Boulder Road	*5,338
At confluence with South Boulder Creek	*5,487
North Goose Creek:	
At confluence with Goose Creek	*5,212
Approximately 2,600 feet upstream of Wonderland Creek	*5,242
Maps are available for review at the Floodplain Administrator's Office, Public Works Department, Engineering Division, Boulder County Courthouse Annex, 13th and Spruce Streets, Boulder, Colorado 80306.	
CONNECTICUT	
Cornwall (town), Litchfield County (FEMA Docket No. 6820)	
Housatonic River:	
Downstream corporate limits	*402
Approximately 50 feet downstream of U.S. Route 7	*440
Upstream side of State Route 128	*509
Upstream corporate limits	*541
Hollenbeck River:	
Approximately 420 feet downstream of corporate limits	*838
Downstream side of State Route 43	*894
Approximately 1.2 miles upstream of Lake Road	*925
Maps available for inspection at the Town Clerk's Vault, Town Office, Cornwall, Connecticut.	
Lebanon (town), New London County (FEMA Docket No. 6814)	
Susquetonscut Brook:	
At downstream corporate limits	*241
Upstream side of Chappell Road	*274
Approximately 0.6 mile upstream of confluence of Hayward Pond	*340
Approximately 0.5 mile downstream of Bender Road	*360
At Bender Road	*453
Tenmile River:	
At downstream corporate limits	*251
At Cook Hill Road	*298
At confluence of Gifford Brook	*346
At confluence of Palmer Pond	*367
Yantic River:	
Approximately 150 feet downstream of Gilman Dam	*218
At Sisson Road	*294
Maps available for inspection at the Town Office, Lebanon, Connecticut.	
Sharon (town), Litchfield County (FEMA Docket No. 6820)	
Housatonic River:	
Approximately 3.1 miles downstream of U.S. Route 7, at downstream corporate limits	*409
Approximately 0.8 mile downstream of the confluence of Carse Brook	*480
Approximately 3.6 miles upstream of State Route 128, at upstream corporate limits	*541
Webatuck Creek:	
Approximately 0.2 mile upstream of the downstream corporate limits	*545
Approximately 0.3 mile upstream of the downstream corporate limits	*551
Maps available for inspection at the Town Clerk's Vault, Sharon, Connecticut.	
Voluntown (town), New London County (FEMA Docket No. 6814)	
Denison Brook:	
At State Route 138	*258
Approximately 0.9 mile upstream of State Route 138	*274
Approximately 2.2 miles upstream of State Route 138	*318
Great Meadow Brook:	
At confluence with Pachaug River	*271
Upstream side of Campbell Road	*291
Approximately 0.9 mile upstream of Wylie Road	*322
Pachaug River:	
At downstream corporate limits	*225
Downstream side of Sawmill Pond Dam	*249
Downstream side of Shetucket Turnpike	*271
At upstream corporate limits	*297
Maps available for inspection at the Town Office, Voluntown, Connecticut.	
Washington (town), Litchfield County (FEMA Docket No. 6817)	
Bantam River:	
At confluence with Shepaug River	*625
At upstream corporate limits	*714
East Aspetuck River:	
At downstream corporate limits	*487
Approximately .5 mile downstream of U.S. Route 202	*556
Downstream side of Church Street	*640
Approximately .4 mile upstream of West Shore Road	*667
Shepaug River:	
At downstream corporate limits	*373
Downstream side of West Church Hill Road	*445
At most upstream crossing of State Route 47	*519
Approximately 1.1 miles downstream of Whittlesey Road	*590
Approximately .7 mile upstream of Whittlesey Road	*680
At upstream corporate limits	*732
Maps available for inspection at the Town Clerk's, Vault, Washington Depot, Connecticut 06794.	
FLORIDA	
Arcadia (city), DeSoto County (FEMA Docket No. 6814)	
Peace River:	
At intersection of Lincoln Avenue and Boneparte Street	*25
Upstream side of Old Bradenton Road	*27
Maps available for inspection at the City Hall, Arcadia, Florida.	
DeSoto County (unincorporated areas) (FEMA Docket No. 6814)	
Peace River:	
At downstream County boundary	*8
Approximately 1,000 feet downstream of confluence of Horse Creek	*15
Approximately 0.8 mile upstream of Old Bradenton Road	*27
At upstream County boundary	*30
Horse Creek:	
At confluence with Peace River	*15
Approximately 400 feet downstream of State Route 761	*20
Downstream side of State Route 72	*29
Joshua Creek:	
At confluence with Peace River	*22
Approximately 1,000 feet upstream of Hillsborough Avenue	*30
Approximately 400 feet upstream of State Route 31	*40
Downstream side of State Route 70	*64
Durrance Branch:	
At confluence with Joshua Creek	*39
Approximately 750 feet downstream of Durrance Street	*40
Downstream side of Durrance Street	*46
Approximately .41 mile upstream of Durrance Street	*51
Whidden Branch:	
At confluence with Joshua Creek	*44
Approximately 280 feet downstream of Brown Street	*51
Approximately 500 feet upstream of State Route 70	*59
McBride Branch:	
At confluence with Peace River	*30
Downstream side of Masters Road	*51
Approximately 150 feet downstream of State Route 660	*60
Prairie Creek:	
Approximately 5.5 miles downstream of State Route 31	*33
Approximately 1,000 feet upstream of State Route 31	*40
Maps available for inspection at the County Engineer's Office, Arcadia, Florida.	
Fanning Springs (city), Gilchrist County (FEMA Docket No. 6820)	
Suwannee Creek:	
About 1.3 miles downstream of State Road 55	*20
About 2.0 miles upstream of State Road 55	*22
Maps available for inspection at the Mayor's Office, City Hall, Fanning Springs, Florida.	
Gilchrist County (unincorporated areas) (FEMA Docket No. 6820)	
Suwannee River:	
Just upstream of U.S. Route 19	*21
At confluence of Santa Fe River	*32
Santa Fe River:	
At mouth	*32
Just upstream of county boundary	*60
Maps available for inspection at the Building Inspection Department, County Courthouse, Trenton, Florida.	
Ormond Beach (city), Volusia County (FEMA Docket No. 6820)	
Tomoka River:	
Just downstream of U.S. Route 1	*8
Just upstream of confluence of Shooting Range Canal	*11
Shooting Range Canal:	
At mouth	*11
Just downstream of Interstate 95	*15
Just upstream of Interstate 95	*23
About 2175 feet upstream of Williamson Road	*26
Eleventh Street Canal Tributary No. 2: Within community	*26
Eleventh Street Canal Tributary No. 2A:	
At mouth	*26
About 2500 feet upstream of mouth	*29
Maps available for inspection at the City Hall, Ormond Beach, Florida.	
Union County (unincorporated areas) (FEMA Docket No. 6820)	
Santa Fe River:	
About 1.8 miles downstream of State Road 241	*58
About 0.6 mile upstream of State road 121	*74
Maps available for inspection at the Building Inspection Department, County Courthouse, Lake Butler, Florida.	
Worthington Springs (town), Union County (FEMA Docket No. 6820)	
Santa Fe River:	
About 1600 feet downstream of State Road 121	*72
About 900 feet upstream of State Road 121	*73
Maps available for inspection at the Mayor's Home, Worthington Springs, Florida.	
GEORGIA	
Canton (city), Cherokee County (FEMA Docket No. 6817)	
Canton Creek:	
At mouth	*873
About 0.9 mile upstream of CSX railroad	*886
Etowah River:	
About 1000 feet downstream of confluence of Puckett Creek	*869
Just upstream of Interstate 575	*879
Maps available for inspection at the City Manager's Office, City Hall, 190 West Main Street, Canton, Georgia.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cherokee County (unincorporated areas) (FEMA Docket No. 6917)	
Rubes Creek:	
At mouth	*861
About 1.0 mile upstream of State Route 92	*898
Noonday Creek:	
At mouth	*861
About 300 feet downstream of confluence of Tate Creek	*894
Little River:	
Just downstream of Interstate 575	*861
About 1.15 upstream of confluence of Rocky Creek	*891
Tributary L:	
At mouth	*880
Just downstream of State Route 92	*925
Just downstream of State Route 92	*932
About 3000 feet upstream of State Route 92	*955
Rocky Creek:	
At mouth	*884
About 3250 feet upstream of Cox Road	*901
Tributary M:	
At mouth	*861
Just downstream of Blalock Road	*913
About 400 feet upstream of Blalock Road	*918
Avery Creek:	
At mouth	*890
Just downstream of Hickory Drive	*911
Just upstream of Hickory Drive	*917
Just downstream of SCS Dam No. 1	*918
Just downstream of SCS Dam No. 1	*941
Just downstream of SCS Dam No. 2	*942
Mill Creek:	
At mouth	*861
About 1100 feet upstream of State Route 140	*930
Dell Creek:	
About 1.15 miles downstream of Kellogg Creek Road	*861
Just downstream of Victory Drive	*938
Just upstream of Victory Drive	*943
About 0.80 mile upstream of Victory Drive	*1001
Kellogg Drive:	
At mouth	*861
About 2300 upstream of Victory Drive	*985
Clark Creek:	
About 1450 feet downstream of State Route 92	*861
Just downstream of Interstate 75	*903
Just upstream of Interstate 75	*906
Just downstream of Dunnwood Drive	*954
Just upstream of Dunnwood Drive	*959
About 2350 feet upstream of Dunnwood Drive	*978
Tate Creek:	
About 450 feet upstream of mouth	*894
About 500 feet downstream of SCS Dam 17	*907
Just upstream of SCS Dam 17	*940
About 0.95 mile upstream of SCS Dam 17	*941
Toonigh Creek:	
At mouth	*861
About 1100 feet downstream of Transart Parkway	*886
Just downstream of Sixes Road	*903
Just upstream of Sixes Road	*906
Just downstream of Palm Road	*948
Just upstream of Palm Road	*954
Just downstream of Hickory Road	*1041
Just upstream of Hickory Road	*1048
About 1600 feet upstream of Hickory Road	*1061
Etowah River:	
About 4500 feet downstream of State Road 20	*861
About 7.6 miles upstream of CSX railroad	*901
Maps available for inspection at the Cherokee County Planning Commission, 140 North Street, Canton, Georgia.	
Fayetteville (city), Fayette County (FEMA Docket No. 6920)	
Ginger Cake Creek:	
Just upstream of Lanier Avenue West	*812
About 2,150 feet upstream of Lanier Avenue West	*817
Maps available for inspection at the Building Inspection Department, City Hall, Fayetteville, Georgia.	
Gordon (city), Wilkinson County (FEMA Docket No. 6912)	
Little Commissioner Creek:	
Just upstream of State Route 18	*332
About 2,660 feet upstream of pipe bridge	*333
Little Commissioner Creek Tributary:	
Just downstream of Norfolk-Southern Railway	*332
Just downstream of Engleheard Dam	*358
Just upstream of Engleheard Dam	*372
About 3,800 feet upstream of Engleheard Dam	*386
Maps available for inspection at the City Hall, Gordon, Georgia.	
Holly Springs (city), Cherokee County (FEMA Docket No. 6917)	
Toonigh Creek:	
Just downstream of Interstate 575	*930
About 1,600 feet upstream of Morgan Road	*1,016
Maps available for inspection at the City Hall, Holly Springs, Georgia.	
Woodstock (city), Cherokee County (FEMA Docket No. 6917)	
Rubes Creek:	
About 1,200 feet upstream of Arnold Mill Road	*872
Just downstream of State Route 92	*887
Noonday Creek:	
Just downstream of Interstate 575	*887
At county boundary	*894
Little River:	
Just upstream of Interstate 575	*861
About 1,500 feet downstream of Trickum Road	*870
Maps available for inspection at the City Hall, 103 Church Street, Woodstock, Georgia.	
IDAHO	
Teton County (FEMA Docket No. 6912)	
Teton River:	
At confluence with Fox Creek	*5,996
Just upstream of White Bridge (6,600 feet above Fox Creek)	*6,002
At confluence of Trail Creek	*6,006
Trail Creek:	
At County Road Bridge (south of Victor)	*6,227
At upstream side of State Highway 33	*6,301
At confluence of Game Creek	*6,393
At upstream side of State Highway 33	*6,464
700 feet above State Highway 33	*6,470
Teton Creek:	
Just upstream of State Highway 33 (south of Driggs)	*6,077
Upstream of Cemetary Road (east of Driggs)	*6,161
At Idaho/Wyoming State boundary	*6,369
Badger Creek:	
Approximately 2,560 feet downstream of Badger Creek Road	*6,164
At upstream side of Badger Creek Road Bridge	*6,186
At upstream side of Rammel Mountain Road	*6,265
At County Road	*6,293
175 feet downstream of Badger Creek Road Bridge	*6,352
Maps available for review at the Teton County Courthouse, 89 Main Street, Driggs, Idaho.	
ILLINOIS	
Greenup (village), Cumberland County (FEMA Docket No. 6920)	
Embarras River:	
About 1,100 feet downstream of Conrail	*526
About 1.1 miles upstream of Interstate 70	*537
Maps available for inspection at the Village Clerk's Office, Municipal Building, Greenup, Illinois.	
Lemont (village), Cook and DuPage Counties (FEMA Docket No. 6917)	
Tributary A:	
At mouth	*595
About 1.22 miles upstream of New Avenue	*712
Maps available for inspection at the Building Department, Village Hall, 418 Main Street, 2nd Floor, Lemont, Illinois.	
IOWA	
Hamburg (city), Fremont County (FEMA Docket No. 6920)	
Nishnabotna River:	
About 750 feet downstream of U.S. Highway 275	*925
About 4,360 feet upstream of U.S. Highway 275	*926
Nishnabotna River Levee overflow:	
About 4,700 feet downstream of U.S. Highway 275	*914
Just downstream of "O" Street	*919
Nishnabotna River Overflow (West of Railroad):	
About 825 feet downstream of Washington Street	*913
Just downstream of U.S. Highway 275	*917
Shallow flooding (overflow from Nishnabotna River): Intersection of "O" Street and Monroe Street	#3
Maps available for inspection at the City Hall, 1201 Main Street, Hamburg, Iowa.	
Hills (city), Johnson County (FEMA Docket No. 6917)	
Iowa River:	
About 1,500 feet downstream of Main Street bridge over Iowa River	*628
About 2.8 miles upstream of Main Street bridge over Iowa River	*634
Old Mans Bypass:	
At mouth at Iowa River	*631
About 5,550 feet upstream of mouth	*635
Maps available for inspection at the City Hall, Hills, Iowa.	
Oelwein (city), Fayette County (FEMA Docket No. 6917)	
Otter Creek:	
About 1,300 feet downstream of 10th Street Southwest	*1,004
About 450 feet upstream of Charles Street West	*1,019
Dry Run Creek:	
About 450 feet downstream of 6th Avenue Southwest	*1,014
Just downstream of East Line Road	*1,071
North Branch Dry Run Creek:	
At mouth	*1,070
Just downstream of East Line Road	*1,072
Maps available for inspection at the City Hall, 20 Second Avenue, SE., Oelwein, Iowa.	
KANSAS	
Atwood (city), Rawlins County (FEMA Docket No. 6920)	
North Beaver Creek:	
About 0.63 mile upstream of mouth	*2,834
Just upstream from State Highway 25	*2,838
South Beaver Creek:	
About 0.5 mile upstream of mouth	*2,834
About 0.2 mile upstream of State Street	*2,849
Maps available for inspection at the City Hall, Atwood, Kansas.	
Barton County (unincorporation areas) (FEMA Docket No. 6920)	
Wet Walnut Creek:	
Just upstream of Atchison Topeka and Santa Fe Railroad	*1,830
Just downstream of county boundary	*1,922
Shop Creek:	
About 1.1 miles upstream of State Highway 281	*1,849
At mouth	*1,935
Blood Creek:	
Just downstream of Hoisington Avenue	*1,916
About 0.9 mile upstream of Park Avenue	*1,925
Arkansas River:	
About 1.1 miles downstream of downstream county boundary	*1,741
About 0.1 miles upstream of upstream county boundary	*1,828
Dry Walnut Creek:	
At mouth	*1,843
About 2.5 miles upstream of State Highway 96	*1,875
Ash Creek Tributary A:	
About 650 feet downstream of county boundary	*1,952
About 0.8 mile upstream of county boundary	*1,968
Ash Creek Tributary B:	
About 1,800 feet downstream of Bergtal Church Road	*1,942
About 0.8 mile upstream of Bergtal Church Road	*1,[illegible]
Ash Creek: Within unincorporated areas	*1,939
Dry Creek:	
At mouth	*1,920
About 2,900 feet upstream of Atchison Topeka and Santa Fe Railway	*1,925
Wet Walnut Creek (right bank overflow):	
About 2.4 miles downstream of Center Street	*1,914
Just upstream of Center Street	*1,919
Shallow flooding (overflow from Blood Creek):	
About 1,000 feet southeast of the intersection of Hoisington Avenue and Gould Street	#1.0
About 0.9 mile southeast of U.S. Highway 281 and unnamed county highway	#1.0
About 2.3 miles upstream of the Union Pacific Railroad along southern overbank at Wet Walnut Creek	#1.0
Maps available for inspection at the County Courthouse, Great Bend, Kansas.	
Herington (city), Morris and Dickinson Counties (FEMA Docket No. 6920)	
Lime Creek:	
Just upstream of old railroad grade	*1,308
About 0.92 mile upstream of Trapp Street	*1,309
Lime Creek Tributary No. 2:	
At mouth	*1,315
Just downstream of U.S. Highway 77	*1,344
Lime Creek Tributary No. 4:	
At mouth	*1,325
About 400 feet upstream of 9th and Trapp Streets	*1,331
Maps available for inspection at the City Hall, Herington, Kansas.	
LOUISIANA	
Jefferson Davis Parish (unincorporated areas) (FEMA Docket No. 6917)	
Keystone Ditch:	
1.6 miles upstream of confluence with Mermentau River	*7
Downstream of State Route 380	*11
West Bayou Grand Marais:	
Downstream side of Parish Road	*18
At confluence with West Bayou Grand Marais Tributary No. 2	*25
West Bayou Grand Marais Tributary No. 1: Approximately 1 mile upstream of confluence with West Bayou Grand Marais	*18
West Bayou Grand Marais Tributary No. 2: Approximately 1.5 miles upstream of confluence with West Bayou Grand Marais	*25
Keystone Ditch Tributary: Approximately 1.1 miles upstream of confluence with Keystone Ditch	*6
Mermentau River Tributary:	
Approximately .95 mile upstream of confluence with Mermentau River	*7
Approximately 1.4 miles upstream of confluence with Mermentau River	*8
Mermentau River:	
800 feet upstream of confluence of Keystone Ditch	*9
Approximately 3.7 miles upstream of New U.S. Route 90	*15
Bayou Lacassine:	
At State Route 14	*6
At Lorrain Road	*6
Unnamed Tributary to Bayou Blue:	
At confluence with Bayou Blue	*39
Upstream to Parish boundary	*46
East Bayou Lacassine:	
Approximately .36 mile downstream of Parish boundary	*17
At upstream Parish boundary	*19
Lateral L-1C: At the Southern Pacific Railroad	*18
East Grand Marais Bayou Ditch:	
Approximately 0.5 mile downstream of Parish boundary	*13
Approximately 1.6 miles upstream of Parish boundary	*15
Northeast Outfall Ditch: Approximately 0.35 mile upstream of Parish boundary	*17
Gulf of Mexico:	
Tidal flooding east of Bell City Drainage Ditch	*5
Tidal flooding affecting entire shoreline of Lake Arthur	*6
Maps available for inspection at the Parish Courthouse, 426 Davis Street, Jennings, Louisiana.	
Mansfield (city), DeSoto Parish (FEMA Docket No. 6917)	
Bayou San Patricio:	
At approximately 500 feet upstream of southeast corporate limits	*304
At approximately 300 feet downstream of Jacobs Street	*313
Approximately .4 mile upstream of Johnson Street	*324
Maps available for inspection at the City Hall, 705 Polk, Mansfield, Louisiana.	
Many (town), Sabine Parish (FEMA Docket No. 6917)	
San Jose Creek Tributary:	
At downstream corporate limits	*234
Upstream side of Georgia Avenue	*240
Upstream side of Springbrook Avenue	*247
Approximately 900 feet upstream of Springbrook Avenue	*252
Maps available for inspection at the Town Hall, 955 A San Antonio, Many, Louisiana.	
Port Vincent (village), Livingston Parish (FEMA Docket No. 6920)	
Amite River:	
At confluence of Colyell Bay	*12
Approximately 300 feet southeast of State Route 16 over Willis Bayou	*16
Colyell Bay:	
Approximately 800 feet downstream of State Route 16 & 42	*12
Approximately 175 feet upstream of State Route 16 & 42	*13
Grays Creek: Entire length within community	*16
Maps available for inspection at the Port Vincent Community Center, Port Vincent, Louisiana, and the Livingston Parish Permit Department, Courthouse, Livingston, Louisiana.	
Sulphur (city), Calcasieu Parish (FEMA Docket No. 6920)	
Bayou d' Inde:	
Downstream corporate limits	*11
Approximately 600 feet upstream of Arizona Street	*14
Approximately 1,840 feet upstream of Lewis Street	*15
Gilbert Lateral:	
Confluence with Bayou d' Inde	*11
Upstream side of Logan Street	*12
Downstream side of West Lyons Street	*13
Upstream corporate limits	*16
Maple Fork Bayou:	
Downstream corporate limits	*9
Upstream corporate limits	*10
Dick Arkel Bayou:	
Confluence with Gilbert Lateral	*12
Upstream corporate limits	*14
Sumpter Bayou:	
Confluence with Gilbert Lateral	*11
Upstream corporate limits	*15
Lateral A of Maple Fork Bayou:	
Confluence with Maple Fork Bayou	*9
Approximately 50 feet downstream of Center Avenue	*13
Lateral B of Maple Fork Bayou:	
Confluence with Maple Fork Bayou	*9
Approximately 2,575 feet above confluence with Maple Fork Bayou	*14
Bayou d' Inde Lateral:	
Confluence with Bayou d' Inde	*13
Upstream corporate limits	*13
Maps available for inspection at the City Hall, 500 N. Huntington, Sulphur, Louisiana.	
Webster Parish (unincorporated areas) (FEMA Docket No. 6917)	
Bayou Dorcheat:	
USGS Gaging Station 07348000 at Access Road	*159
At landing field	*160
Approximately .8 miles above landing field	*162
Maps available for inspection at the Parish Court, 410 Main Street, Room 302, Minden, Louisiana.	
MAINE	
Anson (town), Somerset County (FEMA Docket No. 6917)	
Kennebec River:	
Downstream corporate limits	*196
Upstream side of Maine Central Railroad	*257
Upstream corporate limits	*272
Carrabassett River:	
Confluence with Kennebec river	*287
At Maine Central Railroad	*308
Upstream corporate limits	*344
Getchell Brook:	
Confluence with Kennebec River	*255
Approximately 2,885 feet upstream of Bridge Street	*282
Maps available for inspection at the Town Clerk's Office, Anson, Maine.	
Madison (town), Somerset County (FEMA Docket No. 6920)	
Kennebec River:	
Downstream corporate limits	*184
Upstream side of Anson Dam	*254
At confluence of Pooler Brook	*265
At Old Patterson Bridge site	*269
Upstream corporate limits	*272
West Branch Wesserunsett Stream:	
Downstream corporate limits	*281
Upstream side of Lower West Branch Wesserunsett Dam	*333
At confluence with Hayden (Wesserunsett) Lake	*337
Jones Brook:	
At confluence with Kennebec River	*230
Upstream side of U.S. Route 201 A/State Route 8	*263
Approximately 750 feet upstream of Shusta Road	*300
Maps available for inspection at the Selectment's Office Vault, Madison, Maine.	
Norridgewock (town), Somerset County (FEMA Docket No. 6917)	
Kennebec River:	
Downstream corporate limits	*165
Upstream side of Bridge Street	*171
Confluence of Bombazee Brook	*179
Upstream corporate limits	*184
Sandy River:	
Confluence with Kennebec River	*183
Approximately 40 feet downstream of Sand River Dam	*187
Approximately 1.11 miles upstream of Sandy River Dam	*192
Upstream corporate limits	*197
Mill Stream:	
Confluence with Kennebec River	*170
Upstream of West Branch Station Dam	*189
Approximately 1.20 miles upstream of State Route 8	*193
Maps available for inspection at the Town Clerk's Vault, Norridgewock, Maine.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oakland (town), Kennebec County (FEMA Docket No. 6886)	
Messalonskee Lake: Entire shoreline within community	*238
Salmon Lake: Entire shoreline within community	*279
Maps available for inspection at the Town Offices, Oakland, Maine.	
West Paris (town), Oxford County (FEMA Docket No. 6917)	
Little Androscoggin River:	
At downstream corporate limits	*387
At confluence of Moose Pond Brook	*460
At upstream corporate limits	*469
Maps available for inspection at the Town Vault, West Paris, Maine.	
MASSACHUSETTS	
Bedford (town), Middlesex County (FEMA Docket No. 6886)	
Shawsheen River:	
Downstream side of Middlesex Turnpike	*99
Upstream of U.S. Route 3 (southbound)	*101
Upstream side of Burlington Road (State Route 62)	*108
Vine Brook:	
At confluence with Shawsheen River	*101
Approximately 50 feet downstream of Burlington Road (State Route 62)	*103
Upstream side of Old Burlington Road	*122
At upstream corporate limits	*124
Maps available for inspection at the Town Planner's Office, Bedford, Massachusetts.	
Holbrook (town), Norfolk County (FEMA Docket No. 6826)	
Cochato River/Lake Holbrook/Trout Brook:	
Approximately 300 feet upstream of confluence of Tributary R3	*135
Downstream side of Spring Street	*138
Tributary C25:	
Approximately 180 feet downstream of Massachusetts Bay Transportation Authority Railroad Culvert 32	*131
Approximately 250 feet upstream of Woodlawn Road (extended)	*139
Tributary R2:	
Downstream side of South Franklin Street	*156
Approximately 100 feet upstream of Dean Street	*168
Tributary R3: Approximately 70 feet upstream of South Franklin Street	*154
Tributary R4: Downstream side of Spring Street	*140
Beaver Brook:	
Downstream corporate limits	*162
Approximately 0.4 mile upstream of Plymouth Street	*181
Approximately 1,600 feet upstream of Weymouth Street	*207
Maps available for inspection at the Office of the Planning Board, Holbrook, Massachusetts.	
Huntington (town), Hampshire County (FEMA Docket No. 6826)	
Westfield River:	
At downstream corporate limits	*349
At confluence of Middle Branch	*402
At upstream corporate limits	*474
Middle Branch:	
At confluence with Westfield River	*402
Approximately 0.7 mile upstream of Goss Hill Road	*445
West Branch Westfield River:	
At confluence with Westfield River	*354
At upstream corporate limits	*429
Pond Brook:	
At confluence with Westfield River	*451
Approximately .36 mile downstream of Bean Hill Road	*525
Approximately 1,660 feet downstream of Bean Hill Road	*600
Approximately 500 feet downstream of Bean Hill Road	*675
Approximately 625 feet upstream of Bean Hill Road	*750
Approximately 1,525 feet upstream of Bean Hill Road	*825
Approximately .46 mile upstream of Bean Hill Road	*900
Approximately 1,575 feet downstream of Cullen Road	*975
At upstream side of Cullen Road	*1,052
Approximately 1.02 miles upstream of Searles South Road	*1,107
Tributary to Westfield River:	
At confluence with Westfield River	*384
Approximately 1,400 feet upstream of State Route 112	*415
At upstream side of Basket Road	*453
Maps available for inspection at the Town Clerk's Vault, Town Hall, Huntington, Massachusetts.	
MINNESOTA	
Austin (city), Mower County (FEMA Docket No. 6820)	
Cedar River:	
Downstream corporate limits	*1,188
Upstream side of 4th Street S.E.	*1,192
Approximately 1,100 feet upstream of Interstate Route 90	*1,200
Upstream corporate limits	*1,204
Dobbins Creek:	
Upstream side of Interstate Route 90 Bridge (westbound)	*1,203
At confluence with South Branch Dobbins Creek	*1,204
North Branch Dobbins Creek:	
Confluence with South Branch Dobbins Creek	*1,204
Upstream corporate limits	*1,205
South Branch Dobbins Creek:	
At confluence with North Branch Dobbins Creek	*1,204
Approximately 1,300 feet upstream of County road	*1,211
Wolf Creek:	
Downstream side of the Chicago, Milwaukee, St. Paul and Pacific Railroad at the downstream corporate limits	*1,204
Upstream corporate limits	*1,207
Turtle Creek:	
Downstream corporate limits	*1,180
Upstream corporate limits	*1,189
Maps available for inspection at the City Hall, 500 4th Avenue Northeast, Austin, Minnesota.	
Wright County (unincorporated areas) (FEMA Docket No. 6820)	
Mississippi River:	
Approximately 23.4 miles above confluence of Main Stem Crow River	*935
Approximately 29.6 miles above confluence of Main Stem Crow River	*942
At upstream County boundary	*947
Main Stem Crow River:	
At confluence with Mississippi River	*858
Upstream side of State Route 116	*873
At upstream corporate limits of City of Hanover	*891
Downstream corporate limits of City of Rockford	*910
At confluence of North and South Forks Crow River	*914
South Fork Crow River:	
At confluence with Main Stem Crow River	*914
Upstream side of Township Road 278	*926
Approximately 0.15 mile upstream of upstream County boundary	*931
Clearwater River:	
At downstream County boundary	*966
Upstream side of County Route 40	*979
Upstream side of County Route 128	*986
Upstream side of State Route 55	*1,008
Confluence with Scott Lake	*1,020
Maps available for inspection at the Wright County Courthouse, Buffalo, Minnesota.	
MISSISSIPPI	
Beaumont (town), Perry County (FEMA Docket No. 6820)	
Carter Creek:	
At mouth	*89
About 0.85 mile upstream of Railroad Street	*97
Leaf River:	
About 3,300 feet downstream of State Highway 15	*89
About 2,400 feet upstream of State Highway 15	*91
Maps available for inspection at the City Hall, Beaumont, Mississippi.	
Clarke County (unincorporated areas) (FEMA Docket No. 6826)	
Souinlovey Creek:	
About 2,500 feet downstream of U.S. Highway 512	*249
About 2,800 feet upstream of U.S. Highway 512	*251
Chickasawhay River:	
About 4,200 feet downstream of DeSoto-Brewer Road	*215
At confluence of Chunky River	*255
Chunky River:	
At mouth	*255
At county boundary	*266
Maps available for inspection at the County Courthouse, Quitman, Mississippi.	
Copiah County (unincorporated areas) (FEMA Docket No. 6820)	
Pearl River:	
About 1.1 miles downstream of State Highway 28	*225
About 1.0 miles upstream of State Highway 28	*233
Maps available for inspection at the County Courthouse, Hazelhurst, Mississippi.	
George County (Unincorporated areas) (FEMA Docket No. 6826)	
Pascagoula River:	
About 3.7 miles downstream of Abandoned Bridge	*34
About 500 feet upstream of Abandoned Bridge	*39
Escatawpa River:	
About 0.94 mile downstream of confluence of Rocky Creek	*81
About 0.82 miles upstream of confluence of Brushy Creek	*90
Maps available for inspection at the County Courthouse, Lucedale, Mississippi.	
Georgetown (town), Copiah County (FEMA Docket No. 6826)	
Pearl River:	
About 0.9 mile downstream of State Highway 28	*229
Just upstream of State Highway 28	*231
Maps available for inspection at the City Hall, Georgetown, Mississippi.	
Gulfport (city), Harrison County (FEMA Docket No. 6917)	
Turkey Creek:	
About 4.6 miles upstream of mouth	*19
About 5.7 miles upstream of mouth	*22
Canal No. 1: Within community	*22
Maps available for inspection at the City Hall, Gulfport, Mississippi.	
Harrison County (unincorporated areas (FEMA Docket No. 6917)	
Wolf River:	
At mouth	*12
About 1.8 miles upstream of State Highway 53	*32
Tchoutacabouffa River:	
About 0.3 mile upstream of D'Iberville Road	*11
About 1.8 miles upstream of CC road	*37
Tuxachanie Creek:	
At mouth	*13
Howard Creek:	
At mouth	*11
About 2.8 miles upstream of State Route 67	*70
Parker Creek:	
At mouth	*11
About 1.5 miles upstream of State Route 67	*74
Big Creek:	
At mouth	*26
About 3.1 miles upstream of Wolf River Road	*55
Turkey Creek:	
At mouth	*11
About 1.6 miles upstream of Landon Road	*50
Fritz Creek Tributary:	
At mouth	*15
About 2.2 miles upstream of mouth	*52
Pole Branch:	
At mouth	*26
Just downstream of Cable Bridge Road	61*
Canal No. 1:	
At mouth	*12
Just downstream of 28th Street	*22
Canal No. 2:	
At mouth	*12
Just downstream of 28th Street	*22
Maps available for inspection at the County Courthouse, Gulfport, Mississippi.	
Stonewall (town), Clarke County (FEMA Docket 6826)	
Chickasawhay River:	
About 1,200 feet downstream of River Road	*236
About 1.5 miles upstream of River Road	*243
Maps available for inspection at the City Hall, Stonewall, Mississippi.	
Waynesboro (city), Wayne County (FEMA Docket No. 6826)	
Chickasawhay River:	
About 1.9 miles downstream of State Highway 63	*165
About 0.7 mile upstream of U.S. Highway 84	*172
Maps available for inspection at the City Hall, Waynesboro, Mississippi.	
Wayne County (unincorporated areas) (FEMA Docket No. 6826)	
Chickasawhay River:	
About 3.3 miles downstream of State Highway 63	*151
Just downstream of Spring Street	*175
Maps available for inspection at the County Courthouse, Waynesboro, Mississippi.	
MISSOURI	
Andrew County (unincorporated areas) (FEMA Docket No. 6917)	
Missouri River:	
At downstream corporate limits	*821
At confluence of Nodaway River	*832
At upstream corporate limits	*834
Maps available for inspection at the County Clerk's Office, Andrew County Courthouse, Savannah, Missouri.	
Arbyrd (city), Dunklin County (FEMA Docket No. 6917)	
Ponding Area: Entire community	*248
Maps available for inspection at the City Hall, Douglas Street, Arbyrd, Missouri.	
Ava (city), Douglas County (FEMA Docket No. 6826)	
Prairie Creek:	
About 2,300 feet downstream of SW 4th Avenue	*1,172
Just downstream of State Highway 5	*1,197
Just upstream of State Highway 5	*1,214
About 1,600 feet upstream of NW 3rd Avenue	*1,231
Prairie Creek Tributary A:	
At mouth	*1,217
Just downstream of State Highway 5	*1,222
Prairie Creek Tributary:	
About 800 feet downstream of county road	*1,172
Just downstream of State Highway 5	*1,222
Maps available for inspection at the City Hall, Ava, Missouri.	
Bolivar (city), Polk County (FEMA Docket No. 6917)	
Town Branch:	
About 600 feet downstream of East Broadway Street	*981
Just downstream of East Broadway Street	*986
Just upstream of East Broadway Street	*991
Just downstream of South Springfield Avenue	*1,026
Just upstream of South Springfield Avenue	*1,031
Just downstream of South Clark Avenue	*1,036
Just upstream of South Clark Avenue	*1,044
About 1,250 feet upstream of Burlington Northern railroad	*1,070
South Tributary:	
About 0.5 mile downstream of South Springfield Avenue	*1,024
Just downstream of South Springfield Avenue	*1,048
Maps available for inspection at the City Hall, 116 East Jefferson Street, Bolivar, Missouri.	
Clinton (city), Henry County (FEMA Docket No. 6917)	
Town Creek:	
Downstream corporate limits	*741
Upstream corporate limits	*753
Left Bank Tributary to Town Creek:	
At confluence with Town Creek	*751
Approximately 840 feet upstream of Antioch Road	*758
Coal Creek:	
At downstream corporate limits	*741
At upstream side of Franklin Street	*750
At Sedalia Street	*767
Maps available for inspection at the City Hall, 105 E. Ohio Street, Clinton, Missouri.	
Keytesville (city), Chariton County (FEMA Docket No. 6917)	
Missouri River: Within community	*641
Maps available for inspection at the City Hall, 404 West Bridge Street, Keytesville, Missouri.	
Malden (city), Dunklin County (FEMA Docket No. 6917)	
Ditch No. 1: At Broadwater Road	*283
Ditch No. 14: Approximately 1,250 feet west of the intersection of Broadwater Road and Charlotte Street	*287
Ditch No. 1, Tributary A:	
At downstream corporate limits	*288
Approximately 0.9 mile upstream of State Route 25	*291
Ditch No. 1, Tributary B:	
At St. Louis and Southwestern Railroad	*290
Approximately 0.8 mile upstream of State Route 25	*292
Maps available for inspection at the City Clerk's Office, City Hall, 115 E. Main Street, Malden, Missouri.	
Milan (city), Sullivan County (FEMA Docket No. 6917)	
East Locust Creek:	
About 3,800 feet downstream of State Highway O	*825
About 3,800 feet upstream of Third Street	*834
Maps available for inspection at the City Hall, 201 North Market, Milan, Missouri.	
MONTANA	
Baker (city), Fallon County (FEMA Docket No. 6826)	
Sandstone Creek:	
Approximately 470 feet downstream of Chicago, Milwaukee, Saint Paul, and Pacific Railroad	*2920
Approximately 4,200 feet upstream from Main Street, State Highway 7	*2932
Baker Lake Tributary:	
At Sixth Street West	*2919
Approximately 50 feet downstream of Lake Street, State Highway 7	*2925
Maps are available for review at the Fallon County Courthouse, Office of Clerk and Recorder, 10 West Fallon Street, Baker, Montana.	
Bozeman (city) Gallatin County (FEMA Docket No. 6917)	
Mathew-Bird Creek (Restudy Area):	
Approximately 340 feet downstream of Mason Street	*4877
At confluence with Figgins Creek	*4892
Approximately 800 feet upstream of Kagy Boulevard	*4903
At confluence with Bozeman Creek	*4839
Mathew-Bird Creek (Extended):	
Approximately 275 feet downstream of Graf Street 4236	*4936
Approximately 1900 feet upstream of Graf Street	*4960
Approximately 30 feet downstream of Goldenstein Lane	*5021
Approximately 2340 feet upstream of farm access road	*5071
Figgins Creek:	
At confluence with Mathew-Bird Creek	*4892
Approximately 400 feet downstream of S. 3rd Avenue	*4901
Approximately 150 feet upstream of railroad grade	*4905
Approximately 100 feet upstream of farm access road	*4870
Approximately 2750 feet upstream of farm access road	*5011
At confluence with Bozeman Creek	*4909
Nash-Spring Creek:	
Approximately 530 feet downstream of golf course access road	*4835
Approximately 25 feet upstream of farm access road	*4960
Approximately 275 feet upstream of Goldenstein Lane	*5014
Approximately 3270 feet upstream of Goldenstein Lane	*5050
Maps are available for review at the City Engineer's Office, City Hall, 35 North Bozeman Avenue, Bozeman, Montana.	
Fallon County (unincorporated areas) (FEMA Docket No. 6826)	
Sandstone Creek:	
Approximately 9,400 feet downstream of Sewage Lagoon Road	*2891
At County Road 673	*2904
Approximately 50 feet upstream of County Road 639 (Oil Field Road)	*2940
Approximately 4,100 feet upstream of a service road	*2990
Baker Lake Tributary:	
At confluence with Sandstone Creek	*2916
Approximately 1,230 feet upstream of confluence with Sandstone Creek	*2919
Northern Tributary:	
Approximately 920 feet upstream of the confluence with Sandstone Creek	*2928
Approximately 1,200 feet upstream of County Road 493	*2942
Northeastern Tributary:	
Approximately 1,000 feet upstream of the confluence with Sandstone Creek	*2925
Approximately 1,575 feet upstream of a service road	*2972
Unnamed Tributary to Northeastern Tributary:	
At confluence with Northeastern Tributary	*2940
Approximately 120 feet upstream of County Road 639 (Oil Field Road)	*2944

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Unnamed Tributary to Sandstone Creek:	
Approximately 100 feet upstream of County Road 638	*2947
Approximately 2,280 feet upstream of County Road 638	*2949
Maps are available for review at the Fallon County Courthouse, Office of Clerk and Recorder, 10 West Fallon Street, Baker, Montana.	
Flathead County (unincorporated areas), (FEMA Docket No. 6813)	
Flathead River:	
Approximately 7,000 feet downstream of State Route 209, Somers Big Fork Highway	*2883
At Church Slough	*2890
Approximately 500 feet upstream of the confluence of Ashley Creek	*2901
Approximately 2,050 feet upstream of the confluence with Stillwater River	*2903
Middle Fork Flathead River at West Glacier:	
Approximately 4,300 feet downstream of McDonald Creek	*3149
At confluence with McDonald Creek	*3155
Approximately 3,590 feet upstream of McDonald Creek	*3162
Approximately 1,890 feet downstream of Glacier Route 1	*3166
Swan River:	
Approximately 6,350 feet upstream of Big Fork Dam	*3012
Approximately 1,900 feet upstream of the confluence of Mud Creek	*3016
Approximately 100 feet downstream of the confluence of Peterson Creek	*3024
At the Lake County line	*3034
Maps are available for review at the Flathead County Regional Development Office, Planning Division, 723 Fifth Avenue East, Kalispell, Montana.	
Missoula (city), Missoula County (FEMA Docket No. 6829)	
Clark Fork River: Approximately 1,000 feet downstream of Reserve Street	*3150
Rattlesnake Creek:	
North and south of U.S. Highway 90 and east of Rattlesnake Creek	*3204
Approximately 1,900 feet downstream from Lolo Street	*3206
Pattee Creek:	
At intersection with Pattee Canyon Road and Hill Crest	#1
Approximately 600 feet west of intersection between Crestline and Pine Ridge	#1
At intersection of Benton and Bancroft Streets	#1
Approximately 300 feet southeast of the intersection between Cohosset and Seranac	#1
At the intersection between 28th Street and Normans Lane	#1
Approximately 300 feet south of McDonald and approximately 300 feet east of Russell Street	#2
Approximately 1,100 feet south of Pattee Creek Road and approximately 300 feet east of Stephens	#3
Approximately 400 feet south of 39th Street and approximately 250 feet east of Reserve Street	#3
Maps are available for review at the City of Missoula Office of Community Development, 201 West Spruce Street, Missoula, Montana.	
NEBRASKA	
Aurora (city), Hamilton County (FEMA Docket No. 6829)	
Lincoln Creek:	
About 2,350 feet downstream of O Street	*1,750
About 400 feet upstream of Burlington Northern railroad	*1,774
Maps available for inspection at the City Hall, Aurora, Nebraska.	
Dodge County (unincorporated areas) (FEMA Docket No. 6817)	
Elkhorn River:	
Just upstream of State Highway 91	*1,195
At upstream county boundary	*1,281
Maps available for inspection at the Building Inspector's Office, County Courthouse, 435 North Park, Fremont, Nebraska.	
Randolph (city), Cedar County (FEMA Docket No. 6817)	
Middle Logan Creek:	
Approximately .21 mile downstream of most downstream County Road	*1,625
Approximately 1,440 feet upstream of Douglas Street	*1,663
Approximately .21 mile downstream of U.S. Route 20	*1,695
North Branch Middle Logan Creek:	
Confluence with Middle Logan Creek	*1,631
Approximately 0.7 mile upstream of Sholes Road	*1,664
North Branch Middle Logan Creek Diversion:	
Confluence with East Tributary North Branch Middle Logan Creek	*1,644
Divergence from North Branch Middle Logan Creek	*1,653
East Tributary North Branch Middle Logan Creek:	
Confluence with North Branch Middle Logan Creek	*1,643
Approximately 90 feet upstream of Bridge Street	*1,659
South Branch Middle Logan Creek:	
Confluence with Middle Logan Creek	*1,650
Approximately 0.4 miles upstream of corporate limits and Bridge Street	*1,666
West Tributary South Branch Middle Logan Creek:	
Confluence with South Branch Middle Logan Creek	*1,666
Approximately 0.65 miles upstream of corporate limits	*1,678
Maps available for inspection at the City Hall, Randolph, Nebraska.	
NEVADA	
Lander County (unincorporated areas) (FEMA Docket No. 6817)	
Reese River:	
Just downstream of Interstate Highway 80	*4,514
Approximately 100 feet upstream of County Road 111A	*4,535
Approximately 4,500 feet upstream of County Road 111A	*4,540
Humboldt River and Reese River:	
Approximately 12,700 feet downstream of State Highway 18A (new State Highway 806)	*4,491
Just downstream of State Highway 18A	*4,501
Approximately 800 feet upstream of State Highway 18A	*4,505
Approximately 650 feet upstream of Wagon Road	*4,506
Humboldt River: Approximately 24,000 feet upstream of Wagon Road	*4,521
Kingston Creek Canyon: At the intersection of Toyabee Street and the U.S. Forest Service Road	#1
Kingston Creek:	
Approximately 700 feet upstream of the intersection of Toyabee Street and the U.S. Forest Service Road	*5,977
Just upstream of Toquima Way crossing	*6,040
Approximately 1,200 feet upstream of Toquima Way	*6,296
Kingston Creek Tributary:	
At confluence with Kingston Creek	*6,137
Just upstream of County Road 211	*6,176
Approximately 420 feet upstream of County Road 211	*6,204
Kingston Creek Alluvial Fan:	
1,200 feet downstream of Jefferson Drive	#4
2,000 feet downstream of Jefferson Drive	#3
3,000 feet downstream of Jefferson Drive	#2
3,200 feet downstream of Jefferson Drive	#1
Maps are available for review at the Lander County Courthouse, County Commissioners' Office, 315 S. Humboldt, Battle Mountain, Nevada 89820.	
NEW HAMPSHIRE	
Meredith (town), Belknap County (FEMA Docket No. 6812)	
Lake Winnipesaukee: Entire shoreline within community	*505
Winnisquam Lake: Entire shoreline within community	*480
Lake Waukewan: Entire shoreline within community	*544
Meredith Bay: Entire shoreline within community	*506
Maps available for inspection at the Town Clerk's Vault, Meredith, New Hampshire.	
Milton (town), Strafford County (FEMA Docket No. 6802)	
Salmon Falls River:	
At downstream corporate limits	*247
Approximately 0.6 mile downstream of Crib Dam	*265
Upstream side of Crib Dam	*352
Upstream side of Milton Three Ponds Dam	*420
At confluence of Branch River	*421
Upstream side of School Street	*422
Upstream side of Hopper Street	*501
At upstream corporate limits	*512
Branch River:	
At confluence with Salmond Falls River	*421
Upstream side of State Route 16	*423
At upstream corporate limits	*444
Miller Brook:	
At confluence with Salmon Falls River	*426
Approximately 90 feet upstream of Willey Road	*445
Maps available for inspection at the Planning Board, Milton, New Hampshire.	
NEW JERSEY	
Bound Brook (borough), Somerset County (FEMA Docket Nos. 6803 and 6817)	
Middle Brook:	
Upstream side of CONRAIL bridge (3rd upstream crossing)	*40
Approximately 600 feet upstream of State Route 28	*53
Approximately 1,750 feet upstream of State Route 28	*61
Green Brook:	
At downstream corporate limits	*34
Approximately 300 feet upstream of the upstream corporate limits	*36
Raritan River:	
At Romney Road	*36
At East High Street	*36
Maps available for inspection at the Municipal Building, 230 Hamilton Street, Bound Brook, New Jersey.	
NEW MEXICO	
Aztec (City), San Juan County (FEMA Docket No. 6829)	
Animas River:	
Approximately 150 feet downstream of the downstream corporate limits	*5,570
Approximately 300 feet upstream of U.S. Route 550	*5,597
Hampton Arroyo:	
Approximately 750 feet upstream of confluence with Animas River	*5,611
Maddox Avenue extended	*5,644
At the upstream corporate limits	*5,666
Maps available for inspection at the City Hall, 201 West Chaco, Aztec, New Mexico.	
San Juan County (unincorporated areas) (FEMA Docket No. 6829)	
Animas River:	
Approximately 5,500 feet upstream of Farmington Corporate limits	*5,415

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Confluence of Bestine Reservoir Tributary	*5,448
Confluence of Flora Vista Arroyo	*5,485
Approximately 2.0 miles downstream of Aztec corporate limits	*5,531
At City of Aztec downstream corporate limits	*5,571
Approximately 500 feet downstream of confluence with Williams Arroyo	*5,583
San Juan River:	
Approximately 3.5 miles downstream of confluence with Shumway Arroyo	*5,007
At confluence with Shumway Arroyo	*5,037
At confluence with Stevens Arroyo	*5,096
At confluence with Coolidge Arroyo	*5,149
Approximately 2,500 feet upstream of confluence with Locke Arroyo	*5,191
Approximately 1,000 feet upstream of confluence with Head Canyon	*5,256
At confluence with Stewart Canyon	*5,303
Approximately 1.5 miles upstream of confluence with Gallegos Canyon	*5,330
At Confluence with Horn Canyon	*5,363
Approximately 1.4 miles downstream of State Route 44	*5,398
Maps available for inspection at the county Courthouse, Aztec, New Mexico.	
New York	
Camden (village), Oneida County (FEMA Docket No. 6829)	
West Branch Fish Creek:	
Approximately 820 feet downstream of corporate limits	*472
At upstream corporate limits	*520
Mad River:	
At the confluence with the West Branch Fish Creek	*474
At upstream corporate limits	*520
Maps available for inspection at the Village Office, Camden, New York.	
Dering Harbor (village), Suffolk County (FEMA Docket No. 6817)	
North Shelter Island Sound:	
The shoreline at Dering Lane (extended)	*10
Intersection of Shore Road and Locust Point Road	*8
Maps available for inspection at the Village Hall, Dering Harbor, New York.	
Spring Valley (village), Rockland County (FEMA Docket No. 6814)	
Pascack Brook:	
At downstream corporate limits	*349
At confluence of North Branch Pascack Brook	*390
Approximately 80 feet downstream of State Route 59	*410
Downstream side of State Route 45	*442
Downstream side of Union Road	*470
At upstream corporate limits	*477
North Branch Pascack Brook:	
At confluence with Pascack Brook	*390
At upstream corporate limits	*399
Maps available for inspection at the Spring Valley Village Hall, Building Department, 8 Maple Avenue, Spring Valley, New York.	
Vernon (town), Oneida County (FEMA Docket No. 6829)	
Sconondoa Creek:	
At downstream corporate limits	*439
Approximately 900 feet downstream of Elmwood Place	*484
Downstream side of Filley Road	*516
At the downstream corporate limits of the Village of Vernon	*560
Downstream side of second upstream crossing of State Route 31	*653
Upstream side of Norton Road	*735
At upstream corporate limits	*799
Maps available for inspection at the Town Office, North Sconondoa and Front Street, Vernon, New York.	
NORTH CAROLINA	
Ashe County (unincorporated areas) (FEMA Docket No. 6829)	
North Fork New River:	
About 900 feet downstream of SR 1549	*2,493
Just downstream of Weir Dam	*2,715
Just upstream of Weir Dam	*2,727
Just downstream of SR 1119	*3,020
Just upstream of SR 1119	*3,025
About 3,700 feet upstream of SR 1118 (most upstream crossing)	*3,307
Helton Creek: Within unincorporated areas	*2,550
Buffalo Creek:	
At mouth	*2,673
Just downstream of SR 1506 (upstream crossing)	*2,687
Little Buffalo Creek:	
About 2,800 feet upstream of mouth	*2,806
About 1.2 miles upstream of mouth	*2,840
Three Top Creek:	
At mouth	*2,857
About 1.1 miles upstream of mouth	*2,909
Hoskins Fork:	
At mouth	*3,077
About 2.0 miles upstream of mouth	*3,166
South Fork New River:	
About 4,000 feet downstream of SR 1308	*2,505
About 2.4 miles upstream of SR 1351	*2,949
Naked Creek:	
At mouth	*2,665
Just downstream of Old Gambill Convent Road	*2,774
Just upstream of Old Gambill Convent Road	*2,780
About 1,700 feet upstream of State Road 88 (downstream crossing)	*2,848
Little Naked Creek:	
At mouth	*2,685
About 1,460 feet upstream of mouth	*2,807
Bower Walter's Creek:	
At mouth	*2,708
About 2,000 feet upstream of mouth	*2,749
Ezra Fork Creek:	
At mouth	*2,793
About 2,800 feet upstream of mouth	*2,818
Beaver Creek:	
At mouth	*2,786
Just downstream of Ashe Lake Road	*2,827
Just upstream of Ashe Lake Road	*2,833
Just downstream of Private Road (about 1,800 feet upstream of confluence of Tributary A)	*3,035
Just upstream of Private Road (about 1,800 feet upstream of confluence of Tributary A)	*3,043
Just upstream of SR 1144	*3,116
Tributary A:	
At mouth	*3,014
Just upstream of U.S. Route 221	*3,020
Just upstream of SR 1137	*3,026
Just downstream of SR 1136	*3,029
Just upstream of SR 1136	*3,036
Just downstream of SR 1169	*3,082
Just upstream of SR 1169	*3,087
About 1,000 feet upstream of SR 1169	*3,099
Tributary B:	
At mouth	*3,093
About 1,400 feet upstream of mouth	*3,129
Cole Branch:	
At mouth	*2,949
Just downstream of SR 1151	*3,011
Just upstream of SR 1151	*3,018
About 1,800 feet upstream of SR 1151	*3,046
Maps available for inspection at the County Manager's Office, Jefferson, North Carolina.	
Cajah Mountain (town), Caldwell County (FEMA Docket No. 6829)	
Little Gunpowder Creek:	
At Walt Arney Road	*1,213
About 700 feet upstream of Walt Arney Road	*1,218
Maps available for inspection at the Town Hall, Cajah Mountain, North Carolina.	
Caldwell County (unincorporated areas) (FEMA Docket No. 6829)	
Blairs Fork Creek: Within Unincorporated Areas	*1,178
Lower Creek:	
About 0.81 mile downstream of SR 1142	*1,029
About 0.57 mile upstream of SR 1705 (upstream crossing)	*1,192
Zacks Fork Creek:	
About 200 feet upstream of Cottrell Hill Road	*1,087
About 1.34 miles upstream of Cottrell Hill Road	*1,202
Abingdon Creek:	
About 250 feet upstream of Kincaid Hill Road	*1,067
About 600 feet upstream of Kincaid Road	*1,089
Smoky Creek:	
Just upstream of county boundary	*1,094
About 1,500 feet upstream of SR 1134	*1,141
Yadkin River:	
About 1,800 feet downstream of State Road 268 (downstream crossing)	*1,157
About 1.0 mile upstream of State Road 268 (upstream crossing)	*1,256
Wilson Creek:	
At mouth	*1,056
About 1.04 miles upstream of SR 1337	*1,106
Johns River:	
About 0.60 mile downstream of SR 1328	*1,054
About 1.61 miles upstream of SR 1356 (the most upstream crossing)	*1,209
Little Mulberry Creek:	
At mouth	*1,131
About 0.88 mile downstream of SR 1340	*1,143
About 0.64 mile downstream of SR 1340	*1,149
Just downstream of SR 1340	*1,169
Just upstream of SR 1340	*1,173
About 1.27 miles upstream of SR 1340	*1,216
Mulberry Creek:	
At mouth	*1,096
Just upstream of confluence of Little Mulberry Creek	*1,131
Gunpowder Creek:	
About 1.38 miles downstream of SR 1809	*1,115
About 0.98 mile upstream of SR 1809	*1,153
Maps available for inspection at the County Courthouse, Lenoir, North Carolina.	
Gamewell (town), Caldwell County (FEMA Docket No. 6829)	
Lower Creek:	
About 2,900 feet downstream of SR 1142	*1,030
About 1.4 miles upstream of SR 1143	*1,056
Abingdon Creek:	
At mouth	*1,052
About 750 feet upstream of Morganton Boulevard	*1,062
Maps available for inspection at the Town Hall, Gamewell, North Carolina.	
Hudson (town), Caldwell County (FEMA Docket No. 6829)	
Gunpowder Creek:	
About 1,700 feet downstream of Hickory Boulevard	*1,146
At the confluence of Little Gunpowder Creek	*1,182
Little Gunpowder Creek:	
At mouth	*1,182
Just downstream of Norwood Street	*1,189
Maps available for inspection at the Town Hall, Hudson, North Carolina.	
Jefferson (town), Ashe County (FEMA Docket No. 6829)	
Naked Creek:	
About 2,150 feet downstream of Tyson Lane	*2,849
About 580 feet downstream of Tyson Lane	*2,855
Maps available for inspection at the City Hall, Jefferson, North Carolina.	
Jones County (unincorporated areas) (FEMA Docket No. 6829)	
Neuse River:	
Along the Trent River from the confluence of the Reedy Branch to about 1.5 miles upstream from Main Street in Pollocksville	*9
Southwest Creek: Within county	*33
Maps available for inspection at the County Courthouse, Trenton, North Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lenoir (city), Caldwell County (FEMA Docket No. 6820)	
Little Gunpowder Creek:	
At mouth	*1,182
About 300 feet upstream of Walt Arney Road	*1,217
Gunpowder Creek:	
At the confluence of Angley Creek	*1,178
Just downstream of Hickory Boulevard	*1,261
Just upstream of Hickory Boulevard	*1,274
About 750 feet upstream of Mt. Herman Road	*1,290
Zacks Fork Creek:	
At mouth	*1,092
Just downstream of Powell Road	*1,121
Just upstream of Powell Road	*1,128
About 200 feet upstream of Cottrell Hill Road	*1,167
Zacks Fork Branch:	
At mouth	*1,106
Just upstream of Sharles Street	*1,126
Abingdon Creek:	
About 750 feet upstream of Morganton Boulevard	*1,062
About 250 feet upstream of Kincaid Hill Road	*1,067
Lower Creek:	
About 2,800 feet upstream of confluence of Abingdon Creek	*1,056
Just downstream of Complex Street	*1,066
Just upstream of Complex Street	*1,074
About 700 feet upstream of Cedar Rock Road (downstream crossing)	*1,128
Greasy Creek:	
At mouth	*1,066
About 1,700 feet upstream of Harper Avenue (State Road 18A)	*1,075
Spainhour Creek:	
At mouth	*1,122
About 500 feet upstream of Blowing Rock Boulevard	*1,163
Blairs Fork Creek:	
At mouth	*1,075
About 650 feet upstream of Callu Products Access Road	*1,177
Maps available for inspection at the City Hall, Lenoir, North Carolina.	
McDowell County (unincorporated areas) (FEMA Docket No. 6820)	
North Fork Catawba River:	
About 1.4 miles above mouth	*1,225
Just downstream of CSX railroad (downstream crossing)	*1,165
Just upstream of CSX railroad (downstream crossing)	*1,297
Just upstream of SR 1560	*1,400
About 1,100 feet upstrem of S.R. 1560	*1,502
About 2.21 miles upstream of S.R. 1560	*1,601
Just downstream of U.S. Route 221	*1,729
Just upstream of U.S. Route 221	*1,737
About 3,000 feet upstream of CSX railroad (upstream crossing)	*1,900
About 1.40 miles upstream of CSX railroad (upstream crossing)	*1,958
Just downstream of S.R. 1571	*1,968
Just upstream of S.R. 1571	*1,974
About 250 feet upstream of S.R. 1571	*1,979
Mill Creek:	
At mouth	*1,416
About 1,200 feet upstream of S.R. 1401	*1,467
Catawba River:	
About 250 feet upstream of S.R. 1501	*1,210
Just downstream of U.S. Route 221	*1,226
Just upstream of U.S. Route 221	*1,231
Just downstream of Norfolk Southern Railway	*1,292
Just upstream of Norfolk Southern Railway	*1,297
Just downstream of Interstate 40	*1,340
Just upstream of Interstate 40	*1,346
Just downstream of S.R. 1234	*1,358
Just upstream of S.R. 1234	*1,364
About 3,850 feet upstream of S.R. 1273	*1,450
About 2.4 miles upstream of S.R. 1273	*1,522
Armstrong Creek:	
At mouth	*1,385
Just upstream of farm access road	*1,455
About 0.76 miles upstream of farm road	1,531
Maps available for inspection at the County Courthouse, Marion, North Carolina.	
Old Fort (town), McDowell County (FEMA Docket No. 6820)	
Catawba River:	
At confluence of Mill Creek	*1,416
Just downstream of S.R. 1103	*1,424
Mill Creek:	
At mouth	*1,416
Just downstream of Mill Creek Dam	*1,437
Just upstream of Mill Creek Dam	*1,445
About 650 feet downstream of S.R. 1119	*1,455
Maps available for inspection at the Town Hall, Old Fort, North Carolina.	
Pollocksville (town), Jones County (FEMA Docket No. 6820)	
Trent River: Within community	*9
Maps available for inspection at the Town Hall, Pollocksville, North Carolina.	
Vanceboro (town), Craven County (FEMA Docket No. 6820)	
Swift Creek:	
At confluence of Maule Swamp	*15
About 1.5 miles upstream of Streets Ferry Road	*15
Maule Swamp:	
At confluence with Swift Creek	*13
Just downstream of Mill Pond Road	*16
Maps available for inspection at the Town Hall, Vanceboro, North Carolina.	
West Jefferson (town), Ashe County (FEMA Docket No. 6820)	
Beaver Creek:	
Just upstream of U.S. Route 221	*2,975
Just downstream of SR 1147	*2,985
Maps available for inspection at the City Hall, West Jefferson, North Carolina.	
NORTH DAKOTA	
Hamilton (city), Pembina County (FEMA Docket No. 6817)	
Tongue River Tributary:	
Area approximately surrounded by Cavalier Avenue, 5th Street, Burlington Northern Railroad, and 4th Street	*823
Several ponding areas approximately surrounded by Hudson Avenue, 4th Street, Page Avenue, and 2nd Street	*824
Area located just south of North Street, east of Western Avenue and north of 2nd Street	*824
Southeast of the intersection of Page Avenue, and 2nd Street	*824
Near southwest corner of the intersection of Hudson Avenue and 3rd Street	*825
Along eastern side of Burlington Northern Railroad within the corporate limits of Hamilton	#1
Just west of the Burlington Northern Railroad and north of 4th Street	#1
Maps are available for review at the home of the City Auditor, Ms. Gloria Briese, Hamilton, North Dakota 58238.	
OHIO	
Darbyville (village), Pickaway County (FEMA Docket No. 6820)	
Big Darby Creek:	
About 1.0 mile downstream of State Route 316	*725
Just downstream of State Route 316	*731
Maps available for inspection at the Village Hall, 16671 Main Street-Darbyville, Williamsport, Ohio.	
Jewett (village), Harrison County (FEMA Docket No. 6817)	
Conotton Creek:	
About 2450 feet downstream of Center Street	*1004
About 2850 feet upstream of Cadiz Street	*1014
Conotton Creek Overflow Channel:	
About 2450 feet downstream of Center Street	*1004
At confluence with Conotton Creek	*1012
Maps available for inspection at the Mayor's Home, Jewett, Ohio.	
Muskingum County (unincorporation areas) (FEMA Docket No. 6812)	
Muskingum River:	
At downstream County boundary	*677
At CONRAIL	*706
Approximately 0.6 mile upstream of upstream County boundary	*733
Licking River:	
Approximately 1,000 feet downstream of Interstate 70	*694
At County Road 409	*696
At Dillon Dam (at toe)	*711
Maps available for inspection at the County Coordinator's Office, Muskingum County, Ohio.	
OKLAHOMA	
Watonga (city), Blaine County (FEMA Docket No. 6817)	
North Canadian River Tributary:	
At State Routes 3 and 33, U.S. Routes 270 and 281	*1,492
At downstream corporate limits	*1,495
At upstream corporate limits	*1,528
Approximately .3 mile upstream of upstream corporate limits	*1,535
Maps available for inspection at the City Hall, 119 N. Weigle, Watonga, Oklahoma 73772.	
Waynoka (city), Woods County (FEMA Docket No. 6812)	
Dog Creek:	
Approximately 800 feet upstream of Ash Street	*1,473
At upstream corporate limits	*1,482
Maps available for inspection at the City Hall, 201 East Cecil Street, Waynoka, Oklahoma.	
OREGON	
Baker (city) Baker County (FEMA Docket No. 6817)	
Powder River:	
Approximately 30 feet upstream of Hughes Lane (corporate limits)	*3,412
Diversion Weir near "C" Street	*3,425
At Auburn Avenue	*3,439
Approximately 50 feet upstream of Union Pacific Railroad	*3,453
City of Baker southern corporate limits	*3,476
Powder River Overflow A:	
At Hughes Lane	*3,410
Approximately 910 feet south of Hughes Lane	*3,410
Old Settler's Slough:	
At western corporate limits	*3,411
Approximately 200 feet above Campbell Street	*3,425
Approximately 50 feet below Auburn Avenue	*3,436
At divergence from Powder River	*3,486
Maps are available for inspection at the City Planner's Office, City Hall, 1665 First Street, Baker, Oregon 97814.	
Baker County (FEMA Docket No. 6812)	
Powder River (at Baker):	
Approximately 5,300 feet downstream of Hughes Lane Road	*3,394
Approximately 30 feet upstream of Hughes Lane (City of Baker corporate limits)	*3,412
Approximately 20 feet upstream of Madison Street Bridge	*3,433
Upstream of the Union Pacific Railroad Bridge	*3,453
City of Baker southern corporate limits	*3,476
At the confluence of Griffin Gulch	*3,483
Powder River Overflow A:	
Approximately 5,000 feet downstream of Hughes Lane Road along profile baseline	*3,385
South of Hughes Lane	*3,410
Powder River Overflow B:	
Approximately 5,000 feet downstream of confluence with Powder River along profile baseline	*3,394
Approximately 2,000 feet north of northern corporate limits of City of Baker	*3,403
Powder River (at Sumpter):	
At upstream side of Whitney Tippen Highway Bridge	*4,242
Approximately 190 feet above West Dredge Road	*4,272
At City of Sumpter corporate limits	*4,325
At Sawmill Gulch Road	*4,356
At confluence of Cracker Creek	*4,383
North Powder River (at North Powder):	
Approximately 4,200 feet above mouth	*3,222
At an unnamed road located approximately 5,200 feet above mouth	*3,228
At Thief Valley Road	*3,244
Just above Interstate 84 South	*3,258
Approximately 800 feet above State Highway 30	*3,261
Old Settler's Slough:	
At R 39/40 E	*3,388
Just above Pocahontas Road	*3,408
At City of Baker corporate limits	*3,411
Approximately 50 feet below Auburn Avenue	*3,425
At divergence from Powder River	*3,458
Pine Creek (at Halfway):	
At downstream side of Pine Creek Highway	*2,632
Approximately 60 feet above Slaughterhouse Road	*2,636
At East Pine Creek Road	*2,708
Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.	
Bend (city), Deschutes County (FEMA Docket No. 6820)	
Deschutes River:	
At upstream of Pacific Power and Light Dam	*3,594
100 feet above logboom	*3,607
4,700 feet below upstream corporate limits	*3,610
3,200 feet below upstream corporate limits	*3,617
Maps are available for review at City Hall, Planning Department, 710 Northwest Wall, Bend, Oregon.	
Columbia City (city), Columbia County (FEMA Docket No. 6820)	
Columbia River:	
At downstream corporate limits	*22
At upstream corporate limits approximately 1,100 feet above "L" Street extended	*22
Maps are available for review at City Hall, Columbia City, Oregon 97018.	
Columbia County (unincorporated areas) (FEMA Docket No. 6820)	
Clatskanie River:	
At confluence with Beaver Slough	*12
Just upstream of Olson Road	*18
Conyers Creek:	
At Kelly Road	*22
Approximately 750 feet above confluence of Roaring Creek	*74
Columbia River:	
At Clatsop-Columbia County boundary	*11
At Crims Island	*14
At confluence of Goble Creek	*19
At confluence of Multnomah Channel	*23
At Columbia-Multnomah County boundary	*26
McNulty Creek:	
At confluence with Columbia River	*23
Upstream of Columbia River Highway	*79
Downstream of Ross Road	*100
Milton Creek:	
Approximately 280 feet above Pittsburg Road and City of St. Helens corporate limit	*137
At intersection of Pittsburg Road, approximately 300 feet below intersection of Robinson and Pittsburg Road	*203
At Pittsburg Road crossing of T 4/5 North	*221
Nehalem River:	
Approximately 825 feet upstream of Knickerson Creek	*600
Approximately 1,300 feet upstream of the intersection of Pebble Creek Road and Alder Street extended	*608
Just downstream of sewage disposal ponds	*613
Approximately 3,100 feet above confluence of Rock Creek	*616
Scappoose Creek:	
Approximately 2,860 feet downstream of West Lane Road	*24
Just below State Highway 30	*43
Just upstream of Dutch Canyon Road	*63
Just upstream of Branch Road	*75
At upstream of Raymond Creek Road	*98
Rock Creek:	
At confluence with Nehalem River	*614
North Scappoose Creek:	
At confluence with Scappoose Creek	*37
At upstream of State Highway 30	*46
Approximately 150 feet below confluence with North Scappoose Creek overflow	*54
Approximately 250 feet above Apple Valley Road	*75
North Scappoose Creek Overflow:	
Approximately 100 feet below confluence with North Scappoose Creek	*54
At confluence with Scappoose Creek	*43
Maps are available for review at Columbia County Courthouse, First Street, St. Helens, Oregon.	
Deschutes County (unincorporated areas) (FEMA Docket No. 6820)	
Deschutes River at Tumalo:	
300 feet below River Mile 159	*3,137
At Tumalo Deschutes Highway Bridge	*3,167
Deschutes River at Sunriver:	
At Cardinal Landing Bridge	*4,153
1,200 feet below Harper Bridge	*4,158
Little Deschutes River:	
At confluence with Deschutes River	*4,159
1,800 feet above South Center Drive Bridge	*4,166
At confluence of Paulina Creek	*4,182
At upstream side of Stearns Bridge	*4,201
At County boundary between Deschutes and Klamath	*4,256
Squaw Creek:	
100 feet above County boundary between Deschutes and Jefferson County	*2,587
At River Mile 10.00	*2,877
At River Mile 14.00	*2,953
120 feet above Camp Polk Bridge	*2,992
At Section line 29/32 in T 15S, R 10E	*3,506
Maps are available for review at the Deschutes County Courthouse Annex, 1164 N.W. Bond, Bend, Oregon.	
Pilot Rock (city), Umatilla County (FEMA Docket No. 6820)	
Birch Creek:	
At confluence of West and East Fork Birch Creek	*1,624
At downstream corporate limit	*1,619
West Fork Birch Creek:	
At upstream corporate limit	*1,661
Approximately 940 feet upstream of 2nd Street	*1,650
At 2nd Street	*1,636
Just upstream of Birch Street	*1,632
At confluence with East Fork	*1,624
East Fork Birch Creek:	
At upstream limit of flooding affecting the city	*1,662
Approximately 800 feet upstream of 3rd Street	*1,647
At SW. 2nd Street	*1,639
Just upstream of 2nd Street	*1,632
At confluence with West Fork	*1,624
Maps are available for review at the Umatilla County Courthouse, 216 SE. Fourth Street, Pendleton, Oregon.	
Prescott (city), Columbia County (FEMA Docket No. 6820)	
Columbia River: At Riverview Avenue	*19
Maps are available for review at Prescott City Hall, 72742 Blakely Street, Rainier, Oregon.	
Rainier (city), Columbia County (FEMA Docket No. 6820)	
Columbia River:	
At downstream corporate limit, approximately 3,300 feet below Longview Bridge	*16
At upstream corporate limit	*17
Maps are available for review at City Hall, Rainier, Oregon.	
Scappoose (city), Columbia County (FEMA Docket No. 6820)	
Scappoose Creek:	
At downstream corporate limits, just above Columbia River Highway	*43
Upstream of Scappoose Vernonia Road	*46
At centerline of J.P. West Road	*48
At centerline of E.M. Watts Road	*53
At upstream corporate limit, centerline of Dutch Canyon Road	*62
Maps are available for review at City Hall, Scappoose, Oregon.	
St. Helens (city), Columbia County (FEMA Docket No. 6820)	
Columbia River:	
At upstream corporate limits	*23
At downstream corporate limits confluence of Multnomah Channel	*25
Milton Creek:	
At upstream corporate limits, 1,840 feet upstream of Pittsburg Road	*150
At intersection with Columbia River Highway (State Highway 30)	*100
At centerline of Old Portland Road	*67
At confluence with Columbia River	*23
Maps are available for review at City Hall, St. Helens, Oregon.	
Sumpter (city), Baker County (FEMA Docket No. 6812)	
Powder River:	
At southern corporate limit (approximately 1,000 feet east of the river channel)	*4,321
At southern corporate limit	*4,326
At Sawmill Gulch Road	*4,356
At confluence of Cracker Creek	*4,383
Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.	
Vernonia (city), Columbia County (FEMA Docket No. 6820)	
Rock Creek:	
Approximately 1,050 feet downstream of Bridge Street, at downstream corporate limit	*614
At Bridge Street (State Highway 47)	*615
At upstream corporate limit, T 4/5 north line	*619
Nehalem River:	
At downstream corporate limit, approximately 1,000 feet above confluence of Knickerson Creek	*600
At intersection of Elm Street and Mist Drive	*606
At eastern end of Vernonia Lake	*608
Just upstream of the confluence of Rock Creek, at southern corporate limit	*615
Maps are available for review at City Hall, 919 Bridge Street, Vernonia, Oregon.	
PENNSYLVANIA	
Berlin (township), Wayne County (FEMA Docket No. 6817)	
Delaware River:	
At downstream corporate limits	*684
At upstream corporate limits	*687
Indian Orchard Brook:	
At downstream corporate limits	*961
Upstream side of downstream crossing of Camp Navajo Road	*1,011
Upstream side of upstream crossing of Camp Navajo Road	*1,051

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the Township Secretary's Home, Vera E. Shields, R.D. 4, Box 885, Honesdale, Pennsylvania 18431.	
Bethel (township), Berks County (FEMA Docket No. 6820)	
Little Swatara Creek:	
At downstream corporate limits	*454
At Township Route 492	*510
Crosskill Creek:	
At confluence with Little Swatara Creek	*454
Approximately .4 mile upstream of LR 06003	*459
Unnamed tributary #1 to Little Swatara Creek:	
At confluence with Little Swatara Creek	*459
Approximately 1,550 feet upstream of LR 06003	*466
Unnamed Tributary #2 to Little Swatara Creek:	
Approximately 1,400 feet downstream of State Route 501	*481
Approximately .5 mile upstream of State Route 501	*490
Mill Creek:	
At confluence with Little Swatara Creek	*495
Approximately 100 feet downstream of Interstate Route 78	*524
Maps available for inspection at the Township Building, Bethel, Pennsylvania.	
Bethel (township), Armstrong County (FEMA Docket No. 6817)	
Allegheny River:	
At downstream corporate limits	*780
At upstream corporate limits	*787
Crooked Creek:	
Upstream side of CONRAIL bridge	*787
Approximately 1,600 feet upstream of State Route 66	*796
Maps available for inspection at the Township Building, Vandergrift, Pennsylvania.	
Clay (township), Huntingdon County (FEMA Docket No. 6820)	
Three Springs Creek:	
At downstream abandoned railroad crossing	*680
Upstream side of State Route 994	*706
Approximately 700 feet upstream of L.R. 31010	*714
Maps available for inspection at the Clay Township Election House, Route 655, Three Springs, Pennsylvania.	
Delaware Water Gap (borough), Monroe County (FEMA Docket No. 6820)	
Cherry Creek:	
At confluence with Delaware River	*322
At upstream corporate limits	*325
Delaware River:	
Approximately 580 feet downstream of the downstream corporate limits	*314
At the upstream corporate limits	*322
Maps available for inspection at the Municipal Building, Main & Sheppard Streets, Delaware Water Gap, Pennsylvania.	
Dunbar (township), Fayette County (FEMA Docket No. 6817)	
Youghiogheny River:	
Downstream corporate limits	*848
Approximately 2.75 miles upstream of State Route 711	*906
Maps available for inspection at the Municipal Building, Bell Drive, Dunbar, Pennsylvania.	
Germany (township), Adams County (FEMA Docket No. 6817)	
Piney Creek:	
Approximately 3,000 feet upstream of Mill Road	*560
Approximately 1,650 feet downstream of State Route 97	*570
At State Route 97	*576
Maps available for inspection at the residence of the Township Secretary, David Krebs, 121 Littlestown, Littlestown, Pennsylvania.	
Glasgow (borough), Beaver County (FEMA Docket No. 6820)	
Ohio River:	
At downstream corporate limits	*690
At upstream corporate limits	*691
Maps available for inspection at the Residence of Ms. Joyce Camp, Borough's Secretary, Midland, Pennsylvania.	
Hamiltonban (township), Adams County (FEMA Docket No. 6817)	
Little Marsh Creek:	
At downstream corporate limits	*644
Approximately 700 feet downstream side of T-315	*675
Approximately 650 feet upstream side of T-315	*703
Toms Creek:	
At downstream corporate limits	*580
Approximately 525 feet of upstream corporate limits	*631
Maps available for inspection at the Residence of the Township Secretary, Philis Beeche, P.O. Box 494, Fairfield, Pennsylvania.	
Highland (township), Adams County (FEMA Docket No. 6817)	
Marsh Creek:	
At downstream corporate limits	*476
200 feet upstream of upstream corporate limits	*522
Maps available for inspection at the residence of the Township Secretary, Laura Neibert, 2640 Fairfield Road, Gettysburg, Pennsylvania.	
Huntington (township), Adams County (FEMA Docket No. 6820)	
Bermudian Creek:	
At downstream corporate limits	*518
At T-819	*535
Upstream side of L.R. 01042	*551
Upstream side of U.S. Business Route 15	*569
At T-810 extended	*606
Downstream side of L.R. 01004	*625
Upstream side of L.R. 01011	*641
Maps available for inspection at the Township Building, Trolley Road, York Springs, Pennsylvania.	
Lackawaxen (township), Pike County (FEMA Docket No. 6820)	
Lackawaxen River:	
At confluence with Delaware River	*622
At approximately 2 miles above confluence with Delaware River	*647
At Rowland Road	*656
At Kimbles Road	*660
At upstream corporate limits	*664
Delaware River:	
At downstream corporate limits	*611
Approximately .5 mile upstream from confluence of Lackawaxen River	*624
Confluence of Tenmile River	*672
Approximately 2.8 miles upstream from confluence of Tenmile River	*685
At upstream corporate limits	*694
Maps available for inspection at the Township Building, Lackawaxen, Pennsylvania.	
Liberty (township), Adams County (FEMA Docket No. 6817)	
Toms Creek:	
At downstream corporate limits	*444
At upstream corporate limits	*475
Friends Creek:	
Approximately 1,000 feet upstream of Ranch Trail	*476
Approximately 2,150 feet upstream side of Ranch Trail	*491
Middle Creek:	
At downstream corporate limits	*498
Approximately 600 feet upstream of TR-318	*509
Unnamed Tributary to Middle Creek:	
Confluence with Middle Creek	*509
Approximately 2,500 feet upstream side of LR 01072	*522
Maps available for inspection at the Chairman's Residence, 125 Brent Road, Fairfield, Pennsylvania.	
Menallen (township), Adams County (FEMA Docket No. 6817)	
Opossum Creek:	
Approximately .4 mile downstream of Aspers-Bendersville Road	*598
Approximately .4 mile upstream of State Route 34	*644
Unnamed Tributary to Opossum Creek:	
Confluence with Opossum Creek	*619
At L.R. 01006	*644
Maps available for inspection at the Township Building, Aspers, Pennsylvania.	
Mount Joy (Township), Adams County (FEMA Docket No. 6817)	
White Run:	
Approximately .70 mile downstream of State Route 97 Bridge	*415
Approximately 950 feet downstream of State Route 97 Bridge	*423
Approximately 100 feet downstream of State Route 97 Bridge	*426
Upstream side of State Route 97 Bridge	*431
Approximately 0.41 mile upstream of State Route 97 Bridge	*436
Plum Run:	
At confluence with White Run	*431
Approximately 0.21 mile upstream of confluence with White Run	*432
Rock Creek:	
Upstream side of U.S. Route 15 Bridge	*425
Approximately 0.47 mile upstream of U.S. Route 15 Bridge	*427
Downstream Side of State Route 97 Bridge	*432
Approximately 0.16 mile upstream of State Route 97 Bridge	*433
Approximately 0.27 mile upstream of State Route 97 Bridge	*443
Approximately 0.44 mile upstream of State Route 97 Bridge	*456
Approximately 0.6 mile upstream of State Route 97 Bridge	*459
At upstream corporate limits	*461
Maps available for inspection at the Township Building, 902 Hoffman Home Road, Gettysburg, Pennsylvania.	
New Florence (borough), Westmoreland County (FEMA Docket No. 6814)	
Conemaugh River:	
Approximately 840 feet downstream of Ligonier Street	*1,071
Approximately 1,200 feet upstream of Ligonier Street	*1,075
Maps available for inspection at the Borough Building, Franklin, Pennsylvania.	
Penn (township), Berks County (FEMA Docket No. 6820)	
Plum Creek:	
At downstream corporate limits	*311
At upstream corporate limits	*356
Maps available for inspection at the Township Building, North Garfield Road, Bernville, Pennsylvania.	
Point Marion (borough), Fayette County (FEMA Docket No. 6817)	
Monongahela River: For entire length affecting community	*806
Cheat River:	
Approximately 600 feet downstream of U.S. Route 119	*808
Approximately 0.6 mile upstream from U.S. Route 119	*806

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Borough Building, 425 Morgantown Street, Point Marion, Pennsylvania.	
Porter (township), Clinton County (FEMA Docket No. 6820)	
Fishing Creek:	
At downstream corporate limits	*692
Upstream side of 2nd crossing of LR 18007	*714
The upstream side of the downstream crossing of State Route 64	*782
The upstream side of LR 18041	*826
Approximately 50 feet downstream of LR 18006	*855
Fishing Creek Diversion Channel:	
At confluence with Fishing Creek	*803
Approximately 130 feet upstream of State Route 64	*809
At divergence from Fishing Creek	*824
Little Fishing Creek:	
At confluence with Fishing Creek	*810
At corporate limits	*841
Maps available for inspection at the Township Building, R.D. 2, Mill Hall, Pennsylvania.	
Salem (township), Wayne County (FEMA Docket No. 6820)	
West Branch Wallenpaupack Creek:	
Approximately .29 mile downstream from confluence of Moss Hollow Creek	*1,290
At upstream side of S.R. 3004	*1,296
Approximately .6 mile upstream from S.R. 3004	*1,299
At confluence of Jones Creek	*1,331
Jones Creek:	
At confluence with West Branch Wallenpaupack Creek	*1,331
Approximately .15 mile upstream from S.R. 246	*1,358
Ariel Creek:	
Approximately .10 mile downstream from 1st crossing of Five Mile Creek Road	*1,195
At L.R. 951	*1,252
Moss Hollow Creek:	
At confluence with West Branch Wallenpaupack Creek	*1,290
Approximately 1.8 miles upstream from confluence with West Branch Wallenpaupack Creek	*1,326
Maps available for inspection at the Township Building, Salem, Pennsylvania.	
Shohola (township), Pike County (FEMA Docket No. 6820)	
Bellard Creek:	
At confluence with Shohola Creek	*921
At Shohola Falls Road	*996
Grassy Brook:	
At confluence with Shohola Creek	*909
At approximately 1.8 miles upstream from State Route 434	*965
Panther Creek:	
At confluence with Delaware River	*585
At approximately .4 mile upstream from CONRAIL crossing	*658
At Panther Brook Road	*699
Shohola Creek:	
At approximately 1.8 miles above confluence with Delaware River	*687
At approximately .5 mile above Knealing Road	*725
At approximately 1.5 miles above Knealing Road	*797
At approximately 3 miles above Knealing Road	*852
At approximately 280 feet above confluence of Bellard Creek	*983
Twin Lakes Creek:	
At Twin Lakes Road	*1,277
At approximately .25 mile above Twin Lakes Road	*1,300
At access road crossing	*1,354
Walker Lake Creek:	
At Seneca Road	*1,173
At approximately .3 mile above Seneca Road	*1,214
Delaware River:	
Approximately 1.02 miles downstream from confluence of Shohola Creek	*578
At upstream corporate limits	*611
Maps available for inspection at the Township Building, Shohola, Pennsylvania.	
Snake Spring (township), Bedford County (FEMA Docket No. 6817)	
Raystown Branch Juniata River:	
Approximately .35 mile downstream for Lutzville Road	*1,031
Approximately .5 mile upstream from Pennsylvania Turnpike	*1,052
Snake Spring Valley Run:	
Approximately 85 feet downstream from U.S. Route 30	*1,021
Approximately .23 mile upstream from third upstream crossing of State Route 286	*1,070
Approximately .24 mile upstream from T-439	*1,126
Maps available for inspection at the Township Building, R.D. 1, Everett, Pennsylvania.	
Southampton (township), Cumberland County (FEMA Docket No. 6820)	
Middle Spring Creek:	
At the downstream corporate limits	*547
Upstream side of T-312	*578
Approximately 1,750 feet above the confluence of Burd Run	*608
Burd Run:	
At the confluence with Middle Spring Creek	*605
Approximately 0.5 mile upstream of T-307	*621
Approximately 0.7 mile downstream of Interstate 81	*667
At the confluence of Long Pine Run	*697
Long Pine Run:	
Confluence with Burd Run	*607
Upstream side of CONRAIL	*718
Downstream side of Broad Street	*768
Approximately 400 feet upstream of L.R. 21046	*802
Gum Run:	
At the downstream corporate limits	*676
Approximately 0.5 mile downstream of Interstate 81	*691
Downstream side of Interstate 81	*711
Maps available for inspection at the Southampton Township Building, Intersection of Airport and Hershey Road, Southampton, Pennsylvania.	
South Newton (township), Cumberland County (FEMA Docket No. 6820)	
Yellow Breeches Creek:	
Approximately 570 feet downstream of LR 21089	*713
Approximately 1,700 feet downstream of State Route 174	*726
Approximately 280 feet upstream of CONRAIL	*749
Maps available for inspection at the Township Building, High Mountain Road, South Newton, Pennsylvania.	
Tulpehocken (township), Berks County (FEMA Docket No. 6820)	
Little Swatara Creek:	
At downstream corporate limits	*454
At Township Route 492	*510
Maps available for inspection at the Home of Jacob Tryon, Township Secretary/Treasurer, Godfrey Street, Rehrersburg, Pennsylvania.	
Tunkhannock (township), Wyoming County (FEMA Docket No. 6820)	
Susquehanna River:	
At downstream corporate limits	*595
Approximately 0.5 mile downstream of State Routes 29 and 309	*609
At upstream corporate limits	*615
Tunkhannock Creek:	
Approximately 50 feet downstream of most downstream crossing of U.S. Route 6	*610
Approximately 750 feet upstream of confluence of Billings Mill Brook	*618
Upstream face of most upstream crossing of State Route 6	*629
Approximately 1.9 miles upstream of the most upstream crossing of State Route 6	*641
Swale Brook:	
Approximately 575 feet downstream of corporate limits	*641
At corporate limits	*649
Approximately 780 feet upstream of corporate limits	*665
Maps available for inspection at the Township Building, Tunkhannock, Pennsylvania.	
West Carroll (township), Cambria County (FEMA Docket No. 6820)	
West Branch Susquehanna River:	
Approximately 125 feet downstream of the downstream corporate limits	*1,538
Downstream side of T-602	*1,563
Upstream side of T-614	*1,565
At upstream side of first upstream crossing of LR 11045	*1,707
Approximately 600 feet upstream of the confluence of Bakerton Reservoir Tributary	*1,748
Maps available for inspection at the Township Building, Elmora, Pennsylvania.	
TENNESSEE	
Huntingdon (town), Carroll County (FEMA Docket No. 6817)	
Beaver Creek:	
About 1,900 feet downstream of West Main Street	*375
At confluence of Poison Branch	*381
Brier Creek:	
At mouth	*381
About 1,580 feet upstream of State Route 22 Bypass	*393
Lateral No. 1:	
At mouth	*381
Just downstream of Northwood Drive	*394
Lateral No. 2:	
At mouth	*382
Just downstream of Northwood Drive	*392
Poison Branch:	
About 1,200 feet downstream of Buena Drive	*387
Just downstream of Buena Drive	*390
Unnamed Creek:	
At mouth	*379
About 120 feet upstream of Hawkins Lane	*405
Maps available for inspection at the City Hall, Huntingdon, Tennessee.	
TEXAS	
Snook (city), Burleson County (FEMA Docket No. 6817)	
Old River Tributary 1:	
At downstream corporate limits	*229
Upstream side County Route 289	*234
At upstream corporate limits	*239
Old River Tributary 2:	
At confluence with Old River Tributary 1	*228
Approximately 0.6 mile upstream of FM 2155	*244
Old River Tributary 3:	
At confluence with Old River Tributary 1	*233
Approximately 0.6 mile upstream of County Route 289	*241
Maps available for inspection at the City Hall—FM 2155, Snook, Texas.	
Waller County (FEMA Docket No. 6808)	
Bessies Creek:	
At County boundary	*115
Upstream side of Missouri-Kansas-Texas Railroad	*122
Upstream side of FM 1458	*131
Maps available for inspection at the Floodplain Administration Office, 2036 Ninth Street, Hempstead, Texas.	
VERMONT	
Grand Isle (town), Grand Isle County (FEMA Docket No. 6813)	
Lake Champlain: Entire shoreline affecting community	*102
Maps available for inspection at the Town Office Vault, Grand Isle, Vermont.	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Hartland (town), Windsor County (FEMA Docket No. 6912)	
Connecticut River:	
At downstream corporate limits	*331
Approximately 2.4 miles upstream of confluence of Lulls Brook	*335
Approximately 400 feet upstream of confluence of Ottauquechee River	*343
At upstream corporate limits	*346
Ottauquechee River Lower Reach:	
At confluence with Connecticut River	*342
At upstream side of White Current Corporation dam	*353
At downstream side of U.S. Route 5	*357
Ottauquechee River Upper Reach:	
At downstream corporate limits	*626
At upstream corporate limits	*635
Lulls Brook:	
At upstream side of Old Mill Dam	*421
At downstream side of U.S. Route 5	*557
Approximately 120 feet upstream of first crossing of State Route 12	*601
At upstream side of first crossing of Brownsville Road	*650
Approximately 0.5 mile upstream of second crossing of Brownsville Road	*665
Maps available for inspection at the Town Clerk's Vault, Town Office Building, Hartland, Vermont.	
Norwich (town), Windsor County (FEMA Docket No. 6869)	
Connecticut River:	
At downstream corporate limits	*388
At upstream corporate limits	*389
Ompompanoosuc River:	
Approximately 200 feet downstream of State Route 132	*398
Approximately 40 feet upstream of the upstream corporate limits	*412
Bloody Brook:	
Approximately 80 feet downstream of Elm Street	*485
Approximately 1.1 miles upstream of Turnpike Road (5th upstream crossing)	*631
New Boston Brook:	
Approximately 3,450 feet upstream of confluence with Bloody Brook	*728
Approximately 1.2 miles upstream of confluence with Bloody Brook	*737
Maps available for inspection at the Town Clerk's Office, Tracy Hall, Norwich, Vermont.	
Pittsford (town), Rutland County (FEMA Docket No. 6912)	
Otter Creek:	
Downstream corporate limits	*380
Upstream corporate limits	*389
Maps available for inspection at the Town Clerk's Vault, Planes Row, Vermont.	
St. Albans (town), Franklin County (FEMA Docket No. 6912)	
Lake Champlain: Entire shoreline within the community	*102
Maps available for inspection at the Town Clerk's Vault, St. Albans, Vermont.	
Underhill (town), Chittenden County (FEMA Docket No. 6917)	
Browns River:	
At downstream corporate limits	*665
Approximately 1.0 mile upstream of downstream corporate limits	*720
Upstream side of River Road	*781
Upstream of Pleasant Valley Road	*802
Approximately 150 feet upstream of Stevensville Road	*822
The Creek:	
Approximately 0.2 mile downstream of downstream corporate limits	*687
At the confluence of Roaring Brook	*694
Downstream of State Route 15	*701
Maps available for inspection at the Selectman's Vault, Underhill Center, Vermont.	
Weathersfield (town), Windsor County (FEMA Docket No. 6869)	
Connecticut River:	
At downstream corporate limits	*312
Approximately 1,600 feet upstream of Downer Hill Road (extended)	*315
At upstream side of State Route 103 bridge	*319
At upstream corporate limits	*320
Black River:	
Approximately 480 feet downstream of State Route 106 Bridge	*532
Approximately 4,980 feet downstream of Covered Bridge	*552
Approximately 1,860 feet upstream of Covered Bridge	*580
At upstream corporate limits	*625
North Branch Black River:	
Approximately 1,025 feet downstream of State Route 131	*581
Downstream side of Little Ascutney Road bridge	*590
Upstream side of Ascutney Basin Road bridge	*626
Approximately 100 feet upstream of upstream corporate limits	*654
Maps available for inspection at the Town Offices, Ascutney, Vermont.	
Wells (town), Rutland County (FEMA Docket No. 6917)	
Wells Brook:	
Downstream corporate limits	*429
Confluence of Mill Brook	*430
Approximately 1,940 feet upstream of South Street	*515
Approximately 1.1 miles above South Street	*589
Approximately 3.0 miles above South Street	*605
Mill Brook:	
At confluence with Wells Brook	*430
Approximately 150 feet upstream of T.R. 8	*446
Approximately 690 feet downstream of State Route 2	*485
At Little Lake Dam	*486
Lake St. Catherine: At Little Lake Dam	*486
Lake Lucidien: At Little Lake Dam	*486
Maps available for inspection at the Hogeen's County Store, Wells, Vermont.	
Windsor (town), Windsor County (FEMA Docket No. 6912)	
Connecticut River: At upstream side of Bridge Street	*327
Mill Brook:	
At confluence with Connecticut River	*328
Approximately 400 feet downstream of Mill Pond Dam	*351
At upstream side of Mill Pond Dam	*369
Maps available for inspection at the Town Clerk's Office, Town Offices, Windsor, Vermont.	
VIRGINIA	
Front Royal (town), Warren County (FEMA Docket No. 6826)	
South Fork Shenandoah River:	
Downstream corporate limits	*486
Approximately 130 feet upstream of upstream corporate limits	*487
North Fork Shenandoah River:	
At downstream corporate limits	*489
At upstream corporate limits	*489
Happy Creek:	
At downstream corporate limits	*489
At Eighth Street	*512
Approximately 50 feet upstream of Prospect Street	*574
At upstream of Criser Road	*622
Approximately 140 feet upstream of upstream corporate limits	*667
Leach Run:	
At confluence with Happy Creek	*489
At State Route 647	*536
Approximately 5,000 feet upstream of confluence of Tributary to Leach Run	*616
At upstream corporate limits	*720
Tributary to Leach Run:	
Downstream corporate limits	*540
At confluence of Upper Leach Run Tributary	*595
Maps available for inspection at the Town Hall, 16 North Royal Avenue, Front Royal, Virginia.	
WASHINGTON	
Ritzville (city), Adams County (FEMA Docket No. 6869)	
Paha Creek:	
Approximately 730 feet downstream from center of Whittlesey Street Bridge	*1,787
Just upstream of Division Bridge	*1,796
Approximately 580 feet upstream from center of Harrison Street Bridge	*1,800
Approximately 2,050 feet upstream from center of Harrison Street Bridge (at Northeast corporate limits)	*1,804
Maps are available for review at City Hall, 206 N. Adams, Ritzville, Washington.	
Wilson Creek (town), Grant County (FEMA Docket No. 6917)	
Crab Creek:	
At downstream corporate limits	*1,278
At the confluence of Wilson and Crab Creeks	*1,280
Wilson Creek:	
Just upstream of Sixth Street	*1,295
At upstream corporate limits	*1,300
Maps are available for review at Town Hall, Fourth and Railroad Streets, Wilson Creek, Washington.	
WEST VIRGINIA	
Barboursville (village), Cabell County (FEMA Docket No. 6917)	
Mud River: Entire shoreline within community	*555
Guyandotte River: Entire shoreline within community	*555
Maps available for inspection at the City Hall, 721 Central Avenue, Barboursville, West Virginia.	
Berkeley County (unincorporated areas) (FEMA Docket No. 6912)	
Potomac River:	
At downstream county boundary	*345
At CONRAIL	*371
At confluence of Cherry Run	*407
Tributary 1 of the Potomac River:	
At confluence with Potomac River	*363
Approximately 200 feet downstream of Interstate Route 81	*365
Opequon Creek:	
At confluence with Potomac River	*355
Approximately 200 feet upstream of State Route 45	*368
At State Route 9	*370
At County Route 19	*401
At County Route 51	*441
Approximately 800 feet upstream of County Route 26-5	*463
Dry Run:	
Approximately 0.4 mile downstream of downstream county boundary	*462
Downstream side of County Route 9-11	*480
Upstream side of County Route 4	*503
Approximately 182 feet upstream of County Route 13	*575
Tuscarora Creek:	
Approximately 1,370 feet downstream of CSX Transport	*395
Downstream side of Interstate Route 81	*453
At County Route 15 (1st upstream crossing)	*521
At County Route 15 (2nd upstream crossing)	*565
Approximately 1.6 miles upstream of County Route 15 (3rd upstream crossing)	*604

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mill Creek:	
Approximately 0.4 mile downstream of County Route 26	*476
At County Route 24-3	*585
At County Route 24	*630
Approximately 1.7 miles upstream of County Route 24	*661
Middle Creek:	
Approximately 1.3 miles downstream of U.S. Route 11	*486
Downstream side of County Route 30	*559
Approximately 1,500 feet downstream of County Route 30-5	*606
Approximately 100 feet upstream of County Route 37	*625
Evans Run:	
Approximately 1.4 miles downstream of U.S. Route 11	*454
At U.S. Route 11	*490
At Interstate Route 81	*521
Approximately 1 mile upstream of Interstate Route 81	*556
Maps available for inspection at the Berkeley County Planning Office, 212 South College Street, Martinsburg, West Virginia.	
Harrison County (unincorporated areas) (FEMA Docket No. 6917)	
West Fork River:	
At downstream County boundary	*902
At upstream corporate limits of City of Clarksburg	*948
At upstream County boundary	*994
Bingamon Creek:	
At confluence with West Fork River	*902
Downstream side of first County Route 8 Bridge crossing	*940
Approximately 1,200 feet upstream of County Route 3-1 Bridge	*995
Tenmile Creek:	
At confluence with West Fork River	*920
Downstream side of Indian Run Road Bridge	*962
Upstream side of Access Road approximately 1.1 miles upstream of confluence of Rush Run	*1,005
Simpson Creek:	
At confluence with West Fork River	*927
At upstream County boundary	*996
Little Tenmile Creek:	
At confluence with Tenmile Creek	*932
Approximately 200 feet upstream of confluence of Caldwell Run	*976
Approximately 1.1 miles upstream of confluence of Middle Run	*1,022
Limestone Run:	
At City of Clarksburg corporate limits, downstream side of CSX Transport (B&O) Bridge	*942
Approximately 50 feet downstream of Wilsonburg Road	*991
Downstream side of County Route 50-10 Bridge	*1,036
Approximately .77 mile upstream of County Route 50-10	*1,073
Elk Creek:	
Approximately 2.6 miles downstream of Cost Avenue Bridge	*984
Approximately 250 feet upstream of County Route 20-19	*1,010
At County boundary	*1,025
Gnatty Creek:	
At confluence with Elk Creek	*1,015
At County boundary	*1,042
Maps available for inspection at the Harrison County Planning Commission, 5th Floor, County Courthouse, Clarksburg, West Virginia.	
Marion County (unincorporated areas) (FEMA Docket No. 6917)	
Booths Creek:	
At County Route 56	*913
At County Route 27-1	*930
Buffalo Creek:	
At downstream County boundary	*874
At confluence of Johnson Run	*919
At CSX Transportation (2nd upstream crossing)	*952
Approximately .3 mile upstream of confluence of Dents Run	*961
Paw Paw Creek:	
At downstream County boundary	*858
At County Route 17-18	*904
At confluence of Robinson Run	*951
Approximately 1,960 feet upstream of County Route 15	*992
Prickett Creek:	
Approximately .3 mile downstream of County Route 73	*904
At confluence of Reuben Run	*970
Approximately .6 mile upstream of County Route 66-1	*1,002
Monongahela River:	
Approximately .7 mile downstream of the confluence of Paw Paw Creek	*866
Approximately .3 mile upstream of confluence of Paw Paw Creek	*868
Approximately 695 feet downstream of the confluence of Tygart Valley and West Fork Rivers	*875
At confluence of Tygart Valley and West Fork Rivers	*875
West Fork River:	
Approximately .34 mile downstream of first upstream crossing of CSX Transportation	*878
Approximately 507 feet upstream of first upstream crossing of CSX Transportation	*880
At downstream County boundary	*896
Approximately 50 feet upstream of most upstream crossing of CSX Transportation	*896
Bingamon Creek:	
Approximately 146 feet downstream of U.S. Route 19	*902
Approximately .5 mile upstream of U.S. Route 19	*902
Tygart Valley River:	
At confluence with Monongahela River	*875
Approximately 1.5 miles upstream of confluence with Monongahela River	*875
Pyles Fork:	
At downstream County boundary	*976
At County Route 250-5	*990
Approximately .3 mile upstream of confluence of Campbell Run	*1,010
Maps available for inspection at the County Commission Office, Room 403, G. Harper Meredith Building, Fairmont, West Virginia.	
WISCONSIN	
Almena (village), Barron County (FEMA Docket No. 6930)	
Lightning Creek:	
Just upstream of County Highway P	*1,162
Just downstream of Alma Street	*1,171
Maps available for inspection at the Village Hall, Almena, Wisconsin.	
Cassville (village), Grant County (FEMA Docket No. 6930)	
Mississippi River:	
About 2.7 miles downstream of confluence of Furnace Creek	*618
About 1.0 mile upstream of confluence of Furnace Creek	*620
Maps available for inspection at the Village Hall, 100 West Amelia, Cassville, Wisconsin.	
Colfax (village), Dunn County (FEMA Docket No. 6820)	
Red Cedar River:	
About 0.5 mile downstream of Wheeler University Street	*918
About 1,500 feet upstream of Wheeler University Street	*921
Eighteen Mile Creek:	
Just downstream of Colfax Dam	*920
Just upstream of Colfax Dam	*927
About 1,900 feet upstream of Foot Bridge	*930
Maps available for inspection at the Village Clerk's Office, Village Hall, 613 Main Street, Colfax, Wisconsin.	
Hawkins (village), Rusk County (FEMA Docket No. 6820)	
Main Creek:	
About 2,450 feet downstream of the Soo Line Railroad	*1,347
Just upstream of Ellingson Avenue	*1,356
Maps available for inspection at the Village Hall, Hawkins, Wisconsin.	
Neosho (village), Dodge County (FEMA Docket No. 6917)	
Rubicon River:	
About 3,300 feet downstream of Schuyler Street	*867
Just downstream of Schuyler Street	*869
Mill Pond: Along entire shoreline	*878
Maps available for inspection at the Village Hall, 115 South Schuyler Street, Neosho, Wisconsin.	
Oxford (village), Marquette County (FEMA Docket No. 6820)	
Neenah Creek:	
About 2,500 feet downstream of Chauncey Street	*838
Just downstream of Oxford Dam	*839
Neenah Lake: Along shoreline	*853
Maps available for inspection at the Village Hall, Oxford, Wisconsin.	
Princeton (city), Green Lake County (FEMA Docket No. 6917)	
Fox River:	
About 1.1 miles downstream of Main Street	*766
About 1.0 mile upstream of Main Street	*768
Maps available for inspection at the City Hall, Clerk's Office, 436 West Main, Princeton, Wisconsin.	
WYOMING	
Baggs (town), Carbon County (FEMA Docket No. 6826)	
Little Snake River:	
Approximately 1,150 feet downstream of State Highway 789	*6,243
Approximately 2,200 feet upstream of State Highway 789	*6,248
Ledford Slough:	
Approximately 330 feet downstream of County Road	*6,240
Approximately 100 feet downstream of State Highway 789	*6,246
Approximately 3,000 feet upstream of State Highway 789	*6,252
Maps available for review at the Town Hall, 129 Penland Street, Baggs, Wyoming.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Kings County (unincorporated areas) (FEMA Docket No. 6903)	
East Branch Cross Creek:	
Immediately downstream of Orange Avenue	*193
Approximately 100 feet upstream of the Atchison, Topeka and Santa Fe Railroad	*209
Approximately 300 feet downstream of Kansas Avenue	*224
Tule River:	
Approximately 2,300 feet downstream of Kings County/Tulare County boundary	*192
Approximately 300 feet downstream of Kings County/Tulare County boundary	*193
Maps available for review at the Kings County Planning Agency, Engineering Building, Government Center, Hanford, California.	
San Joaquin County (unincorporated areas) (FEMA Docket No. 6914)	
Mokelumne River:	
50 feet upstream of New Hope Road (Walnut Grove Road)	*24
Approximately 500 feet upstream of Peltier Road	*34
Approximately 750 feet upstream of State Highway 99	*51
Approximately 1,250 feet downstream of State Highway 88	*99
Approximately 450 feet downstream of Camanche Dam	*102
North Fork Mokelumne River:	
At confluence with South Fork Mokelumne River	*7
Approximately 50 feet upstream of Walnut Grove Road	*12
At divergence from South Fork Mokelumne River	*15
Middle River:	
Approximately 3,000 feet upstream of State Highway 4	*8
At the confluence with Old River	*16
Middle River (Delta Area): At the confluence with Empire Cut	*7
Old River:	
2,000 feet upstream of Fabian and Bell Canal	*8
At the confluence with Salmon Slough	*10
3,000 feet downstream of the confluence with San Joaquin River	*22
Old River (Delta Area):	
At the confluence with Woodward Canal and Old River	*7
Approximately 1,000 feet easterly along State Highway 4 from the bridge crossing at Old River	*8
Paradise Cut:	
At the confluence with Sugar Cut	*12
Approximately 500 feet upstream of Paradise Road	*17
Approximately 1,000 feet downstream of Paradise Dam	*25
South Fork Mokelumne River:	
At the confluence of Hog Slough	*8
Approximately 100 feet upstream of Walnut Grove Road	*15
South Fork Mokelumne River (Delta Area):	
Approximately 1,000 feet west along State Highway 12 from the bridge crossing of Little Potato Slough	*7
At confluence of Little Potato Slough	*8
San Joaquin River (Delta Area):	
Intersection of Jacobs Road and McDonald Road	*7
Intersection of Mathews Road and Wolfe Road	*17
Approximately 3,000 feet north of the intersection of Kasson Road and Durham Ferry Road (Airport Way)	*32
Beaver Slough: Approximately 100 feet downstream of Blossom Road	*8
Bishop Cut (Delta Area): At confluence of Telephone Cut	*8
Columbia Cut (Delta Area): At the confluence of San Joaquin River and Columbia Cut	*7
Connection Slough (Delta Area): Approximately 100 feet upstream of the confluence with Old River	*7
Disappointment Slough (Delta Area): At the confluence of Ward Cut	*7
Empire Cut (Delta Area): At the confluence of Middle River	*7
Hog Slough (Delta Area): At the confluence of South Fork Mokelumne River	*8
Honker Cut (Delta Area): At the confluence of White Slough	*8
Latham Slough (Delta Area): At the confluence of Empire Cut	*7
Little Connection Slough (Delta Area): At confluence with San Joaquin River	*7
Little Potato Slough:	
At the confluence with Potato Slough	*7
At State Highway 12	*8
Potato Slough (Delta Area): At the confluence with San Joaquin River	*7
Sycamore Slough (Delta Area): At the confluence of South Fork Mokelumne River	*8
Telephone Cut (Delta Area): At the confluence of Bishop Cut	*8
Turner Cut (Delta Area): At the confluence of Empire Cut, Whiskey Slough and Turner Cut	*7
Whiskey Slough (Delta Area): At the confluence of Empire Cut, Turner Cut and Whiskey Slough	*7
White Slough (Delta Area):	
At the confluence with San Joaquin River	*7
At the confluence of Potato Slough	*8
Woodward Canal (Delta Area): At the confluence of Middle River	*7
Victoria and North Canals (Delta Areas): At the confluence of Middle River and Victoria and North Canals	*7
Maps are available for review at the San Joaquin County Planning and Inspection Department, 1810 East Hazelton, Stockton, California.	
COLORADO	
Boulder (CITY), Boulder County (FEMA Docket No. 6903)	
Boulder Creek:	
At intersection with Burlington Northern Railroad	*5,294
50 feet upstream of Broadway	*5,346
480 feet downstream of Arapahoe Ave.	*5,406
South Boulder Creek:	
20 feet upstream of Burlington Northern Railroad	*5,225
500 feet downstream of Arapahoe Avenue	*5,257
At downstream face of Arapahoe Avenue	*5,291
Dry Creek:	
Approximately 1,250 feet downstream of Central Avenue	*5,167
At downstream face of Central Avenue	*5,205
At downstream face of Burlington Northern Railroad	*5,221
Elmers Twomile Creek:	
At confluence with Goose Creek	*5,294
50 feet downstream of Iris Avenue	*5,320
At downstream face of Kalmia Avenue	*5,334
Fourmile Canyon Creek:	
Just downstream of 28th Street	*5,303
1,000 feet upstream of 26th Street	*5,379
Just downstream of 26th Street	*5,391
Approximately 2,700 feet upstream of confluence with Silverlake Ditch	*5,605
Approximately 3,680 feet upstream of confluence with Silverlake Ditch	*5,666
Approximately 4,200 feet upstream of confluence with Silverlake Ditch	*5,689
Goose Creek:	
Approximately 1,200 feet upstream of confluence with Boulder Creek	*5,211
At upstream face of 30th Street	*5,275
140 feet upstream of 9th Street	*5,380
Skunk Creek:	
At confluence with Bear Canyon Creek	*5,343
80 feet upstream of Aurora Avenue	*5,396
370 feet upstream of Bluebell Avenue	*5,417
Wonderland Creek:	
At Confluence with North Goose Creek	*5,290
At downstream face of 47th Street	*5,275
At downstream face of 34th Street	*5,292
At upstream face of 19th Street	*5,437
At downstream face of Broadway	*5,486
Arapahoe Avenue Overflow:	
At confluence with Boulder Creek	*5,247
At intersection with 30th Street	*5,272
480 feet upstream of 25th Street	*5,299
Bear Canyon Creek:	
At confluence with Boulder Creek	*5,231
150 feet downstream of Martin Drive	*5,360
At downstream face of Vale Road	*5,476
North Goose Creek:	
At confluence with Goose Creek	*5,212
At confluence of Wonderland Creek	*5,220
Approximately 215 feet downstream of Foothills Parkway	*5,242
Maps available for review at the Utilities Development Service, City of Boulder, Box 791, Boulder, Colorado 80306.	
Broomfield (city), Boulder, Adams and Jefferson Counties (FEMA Docket No. 6902)	
Airport Creek:	
At intersection of Airport Drive and Pierce Street	*5,300
At confluence with North Branch Airport Creek	*5,401
1,500 feet upstream of State Highway 121	*5,496
North Branch Airport Creek:	
At confluence with Airport Creek	*5,401
100 feet upstream of State Highway 121	*5,512
840 feet upstream of State Highway 121	*5,540
Rock Creek:	
At intersection with Brainard Drive	*5,307
Just downstream of Burlington Northern Railroad	*5,336
Approximately 100 feet upstream of Denver-Boulder Turnpike	*5,367
Big Dry Creek:	
At eastern corporate limits	*5,164
3,800 feet east of the intersection of Lowell Boulevard, and West 124th Avenue, along West 124th Avenue extended	*5,109
1,900 feet north of a point on West 120th Avenue, 3,400 feet east of the intersection of Lowell Boulevard and West 120th Avenue	*5,202
Gay Reservoir Channel:	
2,000 feet downstream of Lowell Boulevard	*5,216
60 feet upstream of Lowell Boulevard	*5,250
1,600 feet upstream of confluence with Gay Reservoir Channel North Tributary	*5,315
Gay Reservoir Channel North Tributary:	
At confluence with Gay Reservoir Channel	*5,284
1,080 feet upstream of confluence with Gay Reservoir Channel	*5,296
2,280 feet upstream of confluence with Gay Reservoir Channel	*5,323
City Park Channel:	
760 feet downstream of West 120th Avenue	*5,339
At downstream face of Emerald Street	*5,347
1,930 feet upstream of Burbank Street	*5,415
Nissen Reservoir Channel:	
At confluence with City Park Channel	*5,236
At intersection with Main Street	*5,362
660 feet upstream of Daphin Street	*5,366
West Lake Channel North Tributary:	
At confluence with West Lake	*5,265
380 feet upstream of confluence with West Lake	*5,273
500 feet upstream of confluence with West Lake	*5,276
West Lake Channel:	
30 feet downstream of West 120th Avenue	*5,218
At intersection with Lowell Boulevard	*5,257
2,280 feet upstream of Lowell Boulevard	*5,290
City Park Channel South Tributary:	
At confluence with City Park Channel	*5,349
At intersection with Kohl Street	*5,371
800 feet upstream of Nickel Street	*5,402
Brandywine Creek:	
Approximately 70 feet upstream of West 121st Place	*5,239
At intersection with West 121st Place	*5,240
1,550 feet upstream of West 121st Place	*5,240
Maps available for review at The City Engineers Office, 6 Garden Office Center, Broomfield, Colorado.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
MASSACHUSETTS	
Concord (town), Middlesex County (FEMA Docket No. 6686)	
Mill Brook:	
Upstream side of Main Street	*126
Upstream side of Cambridge Turnpike Dam	*132
Tributary No. 1: Approximately 100 feet downstream of Main Street	*125
Maps available for inspection at the Town Planner's Office, Concord, Massachusetts.	
MONTANA	
Hill County (unincorporated areas), (FEMA Docket No. 6912)	
Milk River:	
Approximately 2.1 miles upstream of Little Boxelder Creek along U.S. Highway 2	*2,464
Approximately 3.0 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,469
Approximately 1.6 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,474
Approximately 200 feet upstream of FAS Highway 232	*2,481
Approximately 4,000 feet downstream of Beaver Creek	*2,466
Big Sandy Creek:	
Approximately 100 feet downstream of U.S. Highway 2	*2,503
Approximately 1,100 feet downstream of Duncan Coulee Creek	*2,509
Approximately 2,000 feet upstream of Duncan Coulee Creek	*2,514
Beaver Creek:	
Approximately 200 feet upstream of U.S. Highway 2	*2,530
Approximately 100 feet upstream of Burlington Northern Railroad (BNRR) crossing, located approximately 1.4 miles south of U.S. Highway 2 along the BNRR	2,536
Approximately 100 feet downstream of BNRR crossing approximately 4,300 feet downstream of U.S. Highway 87 crossing	*2,596
Approximately 2,500 feet upstream of U.S. Highway 87	*2,610
Maps are available for inspection at the County Health and Planning Office, 309 Fourth Street, Havre, Montana.	
NORTH DAKOTA	
Bowman (city), Bowman County (FEMA Docket No. 6903)	
Left Bank Tributary of Spring Creek:	
At southern extraterritorial limit of City of Bowman	*2,904
At downstream side of Highway 85 Bridge south of Bowman	*2,936
West Drainage System of City of Bowman:	
At southern extraterritorial limit of City of Bowman	*2,934
At Eleventh Street Bridge	*2,945
One-half mile west of Eleventh Street Bridge	*2,949
East Drainage System of City of Bowman:	
At confluence with West Drainage near sewage ponds	*2,935
At upstream side of Third Avenue	*2,945
At upstream side of Highway 12	*2,961
At upstream side of Highway 85	*2,973
Maps are available for inspection at the Zoning Administrator's Office, Bowman County Courthouse, 104 West First Street, Bowman, North Dakota.	

Issued: March 4, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-5239 Filed 3-10-88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 3]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements. The amendments require actuation of a mechanical means for holding the parking brakes, within three seconds after operation of the parking brake control. (For trailers, such actuation is required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles are required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective April 11, 1988. The amendments require mandatory compliance effective September 7, 1988, while permitting manufacturers to comply with the new requirements as an option to complying with requirements being superseded effective April 11, 1988. Petitions for reconsideration must be received on or before April 11, 1988.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1987, NHTSA published in the Federal Register (52 FR 8317) a notice of proposed rulemaking (NPRM) to clarify the parking brake requirements of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The notice was issued as part of a rulemaking action which had been initiated in response to a petition submitted by the California Highway Patrol (CHP).

The CHP petition largely focused on the "Mini-Max" parking brake, produced by International Transquip Industries, Inc. In some versions, this parking brake was applied with air pressure (usually about 100 psi) and held by air until the air pressure dropped, in some cases to as low as 40 psi, to a point at which the brake became held mechanically. The drop in air pressure could occur over a period of many hours, during which time the braking force significantly decreased. CHP expressed concern that such a system could result in "false parking," i.e., a situation in which subsequent to application of a vehicle's parking brake by the driver, the parking force decreases to the point that the vehicle could roll away if parked on a hill.

CHP noted that section S5.6.3 of Standard No. 121 requires that "once applied, the parking brake shall be held in the applied position solely by mechanical means," and argued that this wording had for years made it illegal for a parking brake system to be held in the applied position by air pressure. The petitioner expressed concern that a 1984 interpretation seemed to say that the parking brake can be held in the applied position by air pressure, as long as there is a possibility of a mechanical system locking itself by the time 60 percent of the pressure leaks off or is suddenly lost. CHP requested that NHTSA either amend Standard No. 121 to prohibit systems that have the probability of resulting in false parking or issue an interpretation of section S5.6.3 with sufficient limits to accomplish the same result. Subsequent to the CHP petition, NHTSA received comments on the petition and other information from International Transquip, as well additional information from CHP.

In evaluating the issues raised by CHP's petition, NHTSA considered whether it would be appropriate to resolve them by issuing an interpretation of section S5.6.3. As discussed in the NPRM, the wording of that section (quoted above) does raise certain issues relating to whether parking brake systems with delayed mechanical application force comply with Standard No. 121. As noted by the CHP and International Transquip submissions, NHTSA has made a number of past interpretations concerning that section. The NPRM noted, however, that while NHTSA has never concluded that brake systems resulting in false parking are safe or provided an interpretation that the particular parking brake system cited by CHP complies with section S5.6.3, some of the past interpretations could contribute to ambiguity concerning whether some of the features incorporated in that parking brake system are permitted by the standard. For this reason, and in light of a safety concern about false parking, NHTSA granted the CHP petition to initiate rulemaking on the false park issue rather than issuing an intepretation whether or not such systems comply with section S5.6.3.

The NPRM

In the March 1987 NPRM, NHTSA explained its concern about braking systems which result in false parking. The agency stated the following:

> If a vehicle is parked on a grade and the parking brake can be set so that it just holds the vehicle on the grade with the force applied when the driver actuates the parking brake control, the vehicle could roll away if that parking force later drops. Thus, a driver could be misled into parking on a grade which is only initially within the holding capability of the parking brake. The driver might park the vehicle and walk away thinking it was secure, only to have it later roll away. The safety hazards connected with large, heavy trucks rolling away could be particularly serious. 52 FR 8318.

Based on this safety concern, NHTSA proposed to require that, within five seconds of the time parking brakes are actuated, they must be held in the applied position solely by mechnical means and the retardation force of the parking brake system cannot decrease in the event of a decrease in the air or brake fluid pressure of any of the vehicle's service or parking brake systems. For trucks and buses, the brake actuation was defined as when the driver actuates the parking brake control. For trailers, the brake actuation was defined as when venting to the atmosphere of the front supply line connection is initiated. The five second period was intended to be short enough to ensure that vehicles would be stably parked at the time drivers leave them, while long enough to permit the use of air applied-mechanically held parking systems. The agency believed that several seconds could be required for the air pressure in such systems to be evacuated, which would be necessary to achieve a mechanically held condition.

NHTSA also proposed to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. The agency stated that it believed that retardation force should be generated in as short a time as is practicable, since the parking brake system is sometimes also used as an emergency braking system. NHTSA also stated that there is a definite need for fast parking brake apply times on some trailers, because there are tractors which modulate the parking brakes through the supply line to provide for trailer braking in the event of a control line failure. A trailer with slow parking brake times would degrade the emergency braking performance of combinations having such tractors.

The agency indicated in the NPRM that the number of parking brake systems that might be affected by the proposal was very small. The only current system other than the Mini-Max which the agency believed might be affected was the DD3 parking brake system produced by Bendix. The agency indicated that it believed it might be possible for International Transquip to redesign all of its braking system configurations to comply with the proposed requirements.

Comments

NHTSA received numerous comments on both the proposed five second requirement related to false parking and the proposed two second requirement related to parking brake retardation force.

A number of commenters supported the proposed requirement related to false parking. The Heavy Duty Brake Manufacturers Council (HDBMC), an activity of the Heavy Duty Manufacturers Association/Motor and Equipment Manufacturers Association, stated that it strongly supports the proposal and agency rationale. Individual brake manufacturers supporting the proposal include Midland Brake, Rockwell and Bendix. Bendix, which manufactures the DD3 brake, stated that it has always been aware of the rollaway possibilities of vehicles that are parked on air. That commenter stated that it now offers the DD3 in a "demonstrated-park" version, which meets the proposed requirement. That company also submitted data showing that it is possible for a driver to actuate the parking control and exit a vehicle in about four seconds, and suggested that the five second time period be reduced to three seconds. The Truck Trailer Manufacturers Association (TTMA) stated that it supports the proposed requirement, which would assure that false parking does not become a problem in the future. Corpac Industries, a trailer manufacturer, also supported adoption of the proposed requirement. General Motors and Ford supported the proposed requirement related to false parking. Flxible, a bus manufacturer, submitted comments indicating that it had experienced various problems, including vehicle rollaway, using test systems constructed by Mini-Max specifically for Flxible. That commenter stated that, from an opinion point of view, anything that results in, or allows a delay in setting the parking brakes to a mechanically held condition, and with its experienced conditions, could result in an operator going away from the vehicle and a runaway condition developing. The Insurance Institute for Highway Safety also supported the proposal.

While Rockwell generally supported the proposal, it stated that it believes that there may be certain unique vehicle configurations where "parking-with-air may be desirable and perhaps necessary to achieve required performance and durability goals. According to that commenter, such configurations include one-man operation refuse packers and transit buses. Rockwell stated that allowance for configurations such as these should be considered in an amendment.

Some commenters suggested alternative means for dealing with the false park issue. Navistar stated that it believes the agency can solve the problem of false parking by defining when the parking brakes are fully applied by mechanical means, and that it is unnecessary to add a five second timing requirement. Volvo White stated that the current Standard No. 121 requirements are sufficiently clear and that a change in the rule is unnecessary. Freightliner stated that it does not believe that the false park issue is applicable to spring brake systems and that Standard No. 121's current language is sufficient to ensure that parking brakes are held solely by mechanical means.

CHP stated that while it remains concerned about the possibility of false parking, the requirement proposed by NHTSA would have the effect of eliminating some systems using the Bendix DD3 as well as Mini-Max. That commenter stated that, in its view, both devices offer beneficial characteristics and a unique small size for special applications. CHP stated that its concern remains that any system which allows movement of the pushrod before locking invites the possibility of a false park situation. That organization stated that, in response to its original concerns, International Transquip had redesigned the Mini-Max brake chamber to have the locking piston dropped on brake

application, thereby holding the brake at a much higher force. (In the Mini-Max parking brake, the locking piston is a pawl which drops to engage teeth cut in the brake pushrod.) CHP recommended that the proposed requirement be modified into a two-step test procedure, requiring actuation of the mechanical locking device within five seconds after initial brake application, and separately requiring that the slope holding test be met with only the mechanical locking device in operation, after the brakes have bled down to a zero pressure reading. CHP argued that the obvious advantages of pressure on the diaphragm at the time of the brake application should not be discarded, and that its recommended wording would ensure that the system had no false park by requiring zero pressure on the diaphragm during the slope holding test.

A number of commenters strongly opposed the proposed requirement related to false parking. International Transquip argued that the proposal had been made in response to theoretical concerns which are unjustified based on operational experience in Canada with thousands of vehicles whose braking systems employ air-applied delayed mechanical parking. That commenter asserted that the current 20 percent grade holding requirement is more than adequate since heavy vehicles do not park on grades as steep as 20 percent and a margin of additional holding force and safety is already factored into this requirement. International Transquip also argued that the proposed requirement would, in practice, prohibit use of an air back-up to any mechanical lock, and deny the industry several safety benefits such as shorter emergency stopping distances, better pneumatic balance between chambers, earlier detection of air leaks, and effective emergency modulation on trailers. That company stated that technical or economic problems may preclude compliance by air-applied mechanically held brakes with the proposed amendment, thereby denying the industry a safer shop alternative, as well as a unit suitable for lowbed trailers and other space constrained applications. That commenter also stated that air-applied mechanically held brakes can provide substantial economic benefits to the industry, which would be lost if the proposed requirement is adopted.

International Transquip argued that the current regulations as worded in a final rule published in 1979 are more than adequate to protect against the minimal hazards of parked heavy vehicles. That commenter asserted that the 1979 rule does not have the phrase "solely by mechanical means." (The agency notes that the phrase "solely by mechanical means" was included in Standard No. 121 prior to the 1979 rule and not deleted by that rule.) International Transquip stated that if the agency is determined to amend its regulations, the agency should adopt language requiring that, within the proposed five second time period, "the parking brakes shall be held in the applied position by mechanical means or a mechanical means of holding the application in the event of loss of fluid or air pressure must be in position and must be capable of achieving the minimum performance specified in either S5.6.1 or S5.6.2."

Additional comments were submitted on behalf of International Transquip by the law firm of Crowell & Moring. That firm argued that the problem of false parking does not exist and the proposed requirement is misfocused. According to that commenter, it is not change in parking force that is unsafe but insufficient force. Crowell & Moring argued that the mechanical park of the Mini-Max comes into play at a level of parking force sufficient to prevent rollaway under any relevant circumstances. That firm also argued that adoption of the proposed requirement would eliminate a proven, safe technology and deprive the public of the safety and economic advantages of the Mini-Max brake.

Several members of Congress submitted comments opposing the proposed amendment, citing materials prepared by International Transquip. The Private Truck Council of America argued that the proposed requirement was issued without any documented evidence of rollaway. That commenter stated that restrictive regulations may stifle creative improvements in truck design and urged that the proposal be rescinded unless some clear and convincing evidence of necessity is available. John L. Schandelmeier, a private consultant on brake systems, argued that Mini-Max and DD3 brake chambers, when piped as air applied, air held, and mechanically locked brakes, offer superior emergency brake stopping and grade holding capability to spring brakes. That commenter asserted that the version of the DD3 brake in which air is immediately released is less desirable than the earlier one because emergency stopping distances are increased. Several other commenters also opposed the proposed amendment, generally making similar arguments to those of International Transquip.

Echlin commented that the air brakes it manufactures for use by vehicle manufacturers in the United States are compatible with the proposed requirements. That company expressed concern, however, that Transport Canada has in the past followed the lead of NHTSA with respect to Canadian regulations. Echlin stated that it produces a valve in Canada, used in trailer brake systems, that applies a pneumatic emergency application which is backed up by spring applied brake application. That company indicated that these vehicles differ in several respects from United States vehicles, but expressed concern that if the proposal were adopted in Canada, there could be a serious reduction in the emergency stopping capability of the Canadian trailers. TBG Warehousing Limited, a Canadian company, stated that vehicles with air park systems have been manufactured in Canada for many years and expressed concern that adoption of the proposal would be detrimental to both the United States and Canada.

As with the proposed requirement related to false parking, NHTSA received comments both supporting and opposing the proposed two second requirement concerning parking brake retardation force. HDBMC supported the proposed requirement, stating that it agrees that vehicles should be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. Midland Brake stated that it has data regarding parking brake application time for trucks and trailers which show that the two second apply time should be acceptable for these vehicles. TTMA stated that the two seconds proposed as the time for meeting the parking brake retardation force appears to be reasonable from both operational and safety aspects. Corpac stated that, based on limited tests, the proposed time of two seconds for meeting the parking brake retardation force is correct and has an ample margin of reserve to allow for variations in the manufacturing process.

Bendix commented that the stated purpose of the two second timing is to assure the parking brakes have adequate response timing when they are used to provide modulated emergency braking. That company argued that a time requirement for emergency brake systems should not be incorporated within the scope of this proposed rulemaking. Bendix stated that since its data show that current parking brake systems are capable of achieving demonstrated park in less than two seconds, there is no need for the proposed two and five second requirements. That company suggested that the proposed response time requirement of "at any time after two seconds" to achieve the required parking force be changed to "within three seconds" the parking brake system shall achieve and thereafter maintain the required mechanically held parking force.

Volvo White opposed the two second timing requirement, stating that it would result in an unsafe "whiplash" condition during compliance testing and would require it to review all its certifications and conduct new certification tests. That commenter also argued that it and other truck manufacturers should not be required to expend resources for a potential problem it contends is limited to towed vehicles. Volvo White also stated that it disagrees that the proposal is not "major" or "significant."

Navistar stated that it believes that proposed "two second to hold" requirement would seriously jeopardize the ability of many of its current vehicles to comply with Standard No. 121, although there are no available test data. That company asserted that it would need a minimum of two years lead time to investigate all production vehicles for compliance and to develop new designs where required. Navistar also argued that to impose a timing requirement on parking brake application because the parking brake is often also used as an emergency brake system is inappropriate in a proposal to prohibit false park systems. That company stated that its emergency brake systems never employ only the parking brakes to satisfy Standard No. 121's emergency brake system performance requirements, and argued that it is not appropriate for the agency to propose changes to the emergency brake systems without a compelling need to do so and without data which indicate a problem or need for change.

Freightliner argued that timing requirements would impose a general restriction on all parking brake systems; that the metal spring system was designed for overall performance, not speed of application; and that developing additional procedures to determine compliance would use resources to document timing, not improve the braking performance of a reliable mechanical design. Ford expressed corcern about imposing additional recertification burdens on truck manufacturers. MVMA stated that it assumes that the agency did not intend to impose a new requirement for spring brake parking systems.

False Parking

After reviewing the comments, NHTSA remains concerned about false parking. As the agency stated in the NPRM, if a vehicle can be set so that it just holds the vehicle on the grade with the force applied when the driver operates the parking brake control, the vehicle could roll away if that parking force later drops. Thus, a driver could be misled into parking on a grade which is only initially within the holding capability of the parking brake. The driver might park the vehicle and walk away thinking it was secure, only to have it later roll away. NHTSA notes that since the National Traffic and Motor Vehicle Safety Act is directed toward unreasonable risks, it is unnecessary for the agency to wait for actual accidents in order to issue safety standards.

While NHTSA continues to be concerned about false parking, it is also concerned that its safety standards not constrain the development and use of new designs which have the potential to offer a level of safety equivalent to that offered by existing designs. After reviewing the comments, the agency is persuaded that a requirement prohibiting any decrease in parking retardation force after five seconds from the time the parking brakes are actuated would inappropriately constrain the development and use of air-applied mechanically held parking brake systems.

The agency notes first that while the proposed requirement would effectively prohibit brake systems which result in false parking, it would also have the effect of prohibiting systems unlikely to result in false parking under reasonably foreseeable conditions. For example, brake systems with delayed mechanical parking occurring more than five seconds after actuation would be prohibited even if the final parking retardation force was sufficient to hold on any existing grade.

Second, NHTSA is persuaded by the comments that it may not be possible to design air-applied mechanically held parking brake systems acceptable for general use which can meet a requirement necessitating almost immediate evacuation of air from the brake chambers. In issuing the NPRM, the agency believed that the proposed five second time period would permit continued use of air-applied mechanically held parking systems, which could require several seconds for the air pressure to be applied to the brake chamber, a mechanical latch or lock to be activated, and the air pressure to be evacuated to result in the mechanically held condition.

As indicated above, Bendix has designed a version of the DD3 which meets the proposed requirement. While this indicates that it is technically feasible to produce an air-applied mechanically held parking brake system that can meet the proposed requirement, it does not indicate that such systems are necessarily acceptable for the full range of air-braked vehicles. The agency notes that the DD3 is a specialized brake which is used primarily on buses. The agency also notes that the comment by John Schandelmeier indicates that some operators and drivers find the complicated "cluster valve" arrangement of that design to be unacceptable and are re-piping it to attain the performance of the earlier version.

International Transquip commented that there are no guarantees that its brake could be plumbed to meet the proposed requirement and that many of the problems experienced by Flxible with a prototype Mini-Max system were related to Flxible requiring the immediate exhausting of the application air pressure upon each parking brake application. International Transquip stated that Flxible's experience underscores the fact that problems remain to be solved. NHTSA accepts International Transquip's assertion, particularly given the problems that company experienced in attempting to develop a system in which application air pressure would be immediately exhausted. International Transquip also expressed concern that some of the potential advantages of an air-applied mechanically held parking brake would be lost as a result of immediate evacuation of air from the brake chambers.

Third, the agency believes that the basic concept of air-applied mechanically held parking brakes offers theoretical benefits. The CHP petition, for example, discussed a number of potential advantages that air applied parking brakes have compared to conventional spring brakes. In addition to savings in space, weight, initial cost, maintenance cost, and disassembly precautions, CHP cited the following advantages: (1) The fact that, the service brake hoses and diaphragms receive full reservoir pressure each time the parking brake is pulled, thereby providing a frequent check for service brake system integrity; (2) the brakes are solidly locked for special vehicle operations where a stable platform is needed, and the vehicle can be held stationary on much steeper grades than with spring

brakes as long as full air pressure is retained; (3) the increase in pushrod travel from maladjusted brakes does not decrease the parking brake torque as badly as with spring brakes, and (4) loss in application force at the air parking brake of one wheel can be detected audibly by an air leak or visually by nonoperation of the pushrod.

NHTSA cautions that in citing potential advantages of air applied parking brakes, the agency is not taking the position that the concept of air applied parking brakes is superior to spring brakes. Moreover, the agency is not taking any position about the overall safety of the Mini-Max or DD3 parking brakes as compared to each other or to spring brakes. However, given that the concept of air applied parking brakes offers potential advantages, the agency believes that care should be taken to ensure that Standard No. 121 does not unnecessarily constrain the development and use of designs incorporating this concept.

NHTSA also cautions that while it has necessarily considered whether various parking brake systems appear to meet the specific requirements being adopted by this notice, it has not conducted compliance or other tests for those parking brakes or attempted to evaluate whether, or under what circumstances, vehicles equipped with those parking brakes would meet the overall requirements of Standard No. 121. The agency notes that Standard No. 121 applies to vehicles. Under the National Traffic and Motor Vehicle Safety Act, it is the responsibility of the vehicle manufacturer to ensure that its vehicles comply with Standard No. 121. The discussion in this notice of whether various parking brake systems appear to meet particular requirements is based on the agency's understanding of those systems as presented in this notice and is limited to the specific issues and requirements being addressed. This notice should in no way be read as either an approval of any particular parking brake systems or a determination that vehicles equipped with particular parking brake systems will comply with Standard No. 121.

The agency also notes that the comparisons made by some commenters of the emergency stopping distances of vehicles equipped with Mini-Max brakes and conventional spring brakes may be not be appropriate. The tests in question indicated that under certain circumstances if a vehicle is stopped solely by using the parking brake, a Mini-Max parking brake would stop the vehicle in a shorter distance than a spring brake, due to a higher application force. This comparison may not be appropriate, however, because trucks, buses and tractor-trailer combinations are not typically stopped by solely using a parking brake. Standard No. 121 requires trucks and buses to have an emergency brake system. The emergency brake systems provided on trucks, buses and tractor-trailer combinations built in compliance with Standard No. 121 are similar to the split brake systems used on passenger cars in that when a brake failure occurs, part of the service brake system remains operable (as the emergency brake system) to permit driving in a controlled manner to a safe parking place. Emergency brake systems are required to be capable of modulation by drivers to provide for good vehicle control during braking; they are also required to be controlled by the regular service brake control valves so that drivers are not confused in crisis situations about how to operate the emergency brake system. Since parking brakes are controlled by a separate valve, they can serve as backup brake systems when something unusual causes both the service and emergency brake systems to fail, e.g., complete loss of air pressure or failure of the service brake control valve. The agency has stated in the past, however, that it is generally not desirable to have brakes used in a backup system develop overly high brake forces, given the potential for wheel lockup and loss of vehicle control.

NHTSA also notes that, unlike spring brakes, air applied parking brakes may not provide a backup braking capability in the event of a complete loss of service/emergency braking air pressure *unless* they are applied by an energy source which is completely separate from the service/emergency brake systems. When a failure occurs in the service brake systems of current vehicles equipped with spring brakes, the emergency brake system takes over and a driver can continue to modulate the brakes down to low pressures knowing that the spring brakes can be applied in the event a faster stop is required. However, air applied parking brakes will only apply with the pressure remaining in the emergency reservoir unless they are applied by an energy source which is completely separate from the service/emergency brakes.

In developing a final rule, NHTSA believes that weight should be given to both the potential problem of false parking and ensuring that Standard No. 121 does not unnecessarily constrain the development and use of air-applied mechanically held parking brake systems. After carefully considering the comments, the agency believes that the amendment suggested by CHP gives appropriate weight to both concerns. As indicated above, CHP recommended that the proposed requirement be modified into a two-step test procedure, requiring actuation of the mechanical locking device within five seconds after initial brake application, and separately requiring that the slope holding test be met with only the mechanical locking device in operation, after the brakes have bled down to a zero pressure reading.

NHTSA is adopting amendments along the lines suggested by CHP in its comments. For trucks and buses, the amendments require actuation of a mechanical means for holding the parking brakes, within three seconds after operation of the parking brake control. For trailers, such actuation is required within three seconds after venting to the atmosphere of the front supply line connection is initiated. The amendments also require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. In light of comments from Bendix and Midland Brake, the agency is specifying more detailed test conditions in order to ensure objectivity.

CHP's comment indicated that, in response to its original concerns, International Transquip had redesigned the Mini-Max brake chamber to have the locking piston dropped on brake application, thereby holding the brake at a much higher force. A requirement for actuation of the mechanical locking device within a three second period has the effect of requiring the locking piston to drop on brake application, thus alleviating much of the safety concern which led CHP to submit its petition. In addition to holding the brake at a much higher force (a result which is dependent on that company not reducing the brake application pressure below a certain level), the dropping of the locking piston on each parking brake application ensures that the locking piston will not stick as a result of non-use. Since International Transquip has already made this design change, the amendment will have no adverse impacts on that company.

As indicated above, the five second time period proposed in the NPRM was intended to be sufficiently long to permit air pressure to be applied to the brake chamber, a mechanical latch or lock to be activated, and the air pressure to be evacuated to result in the mechanically held condition. Since the amendment being adopted does not require the air pressure to be evacuated, it is unnecessary to provide a time period as long as five seconds. NHTSA has concluded that the requirement that parking brakes be actuated within three seconds can easily be met by both air-applied mechanically held parking brake systems and by spring brakes. For the Mini-Max parking brake, actuation occurs when the air pressure on the lock port is sufficiently vented to allow the pawl to drop and physically contact the toothed sector of the pushrod shaft. For the DD3 parking brake, actuation occurs when the air pressure on the lock port is sufficiently vented to allow locking rollers to physically contact the pushrod shaft. For spring brakes, actuation occurs when the air pressure in the spring brake chamber is sufficiently vented to allow the spring to physically contact the push rod pushplate. NHTSA believes that the redesigned Mini-Max parking brake, both versions of the DD3 parking brake, and current spring brake systems already meet the three second actuation requirement.

NHTSA notes that while the locking piston of the new Mini-Max design drops immediately on brake application, there may still be a reduction in parking retardation force over time, as there may be with other air-applied mechanically held parking brake designs. As noted earlier, in the Mini-Max parking brake, the locking piston is a pawl which drops to engage teeth cut in the brake pushrod. Under the old design, the locking piston was held off by the same air pressure used to make and temporarily hold the parking brake application until the air pressure dropped to a predetermined level, in some cases as low as 45 psi. Under the new design, the locking piston drops almost immediately. In both of these designs, the parking application is not actually held by mechanical means until the pushrod moves enough to engage one of the teeth on the pushrod. Since the locking piston of the new design drops on brake application, however, the pushrod can move no further than $\frac{7}{32}$ of an inch, the distance between the teeth on the pushrod.

The amount of parking brake force reduction associated with $\frac{7}{32}$ inch movement of the pushrod would vary depending on the application pressure and overall design of the brake system. Available data indicate that the additional air pressure necessary to move the pushrod on various types of truck, tractor and trailer brake systems 0.2 inches ($\frac{7}{32}=0.21875$) from a starting pressure of 40 psi could range from 19 to 28 psi. By way of example, if an application pressure of 70 psi were assumed, a 28 psi reduction would mean a reduction in pushrod force of about 40 percent. Data provided by Bendix indicate that the DD3 brake system without the "demonstrated park" feature can have a reduction of the force acting on the brake chamber pushrod of about 25 percent. However, due to the significant hysteresis in the foundation brakes of air braked vehicles, a reduction in pushrod force would result in a lesser percentage reduction in actual braking force output. (In this context, the term "hysteresis" means that the change in brake force output at the wheel due to a change in pushrod force will be different for a given change in pushrod force, depending on whether the pushrod force is increasing or decreasing.)

As indicated above, International Transquip suggested an amendment requiring that, within five seconds after operation of the parking brake control, the parking brakes "shall be held in the applied position by mechanical means or a mechanical means of holding the application in the event of loss of fluid or air pressure must be in position and must be capable of achieving the minimum performance specified in either S5.6.1 or S5.6.2." The agency considered an amendment along these lines but believes that the meaning of "in position" is unclear. In the Mini-Max design, for example, if the pawl should immediately drop onto the top of a tooth, it might not be considered "in position" to hold the vehicle until the pushrod moves enough to let the pawl drop between the teeth.

There has not been any dispute about the existing Standard No. 121 requirement that the 20 percent grade holding test (or alternative drawbar test) be met with only the mechanical locking device in operation, i.e., after any reduction in parking brake retardation force occurs. (The alternative drawbar test is of similar stringency to the 20 percent grade holding test.) NHTSA believes that new and reasonably maintained vehicles meeting this requirement and the requirement discussed above concerning actuation of the mechanical means for holding the vehicle would not experience false park problems when parked under reasonably foreseeable conditions. Twenty percent grades are rare, and it would be uncommon for air-braked vehicles to be parked on grades even approaching that steepness. The agency also notes that, after a review of available data, it is unaware of any air-applied mechanically held parking brakes which have experienced false park problems. Transport Canada has also indicated that it is unaware of any such problems.

The agency recognizes, however, that unlike the specific amendment set forth in the regulatory text of the NPRM, the amendment being adopted does not address all theoretical false park situations. For example, the initial CHP petition noted that if brakes are at or beyond the recommended limit of pushrod travel, or the owner replaces the lining with a type having a lower coefficient of friction than the original equipment, the mechanical parking lock will not hold the vehicle on a grade even considerably less than the specified 20 percent, and also cited the possibility that a driver might park a vehicle on a steep city hill with a 22 percent grade. NHTSA does not believe that there is any way to address these theoretical situations by a new vehicle regulation short of a requirement that would unnecessarily constrain the development and use of air-applied mechanically held parking brake systems. However, NHTSA notes that manufacturers have an obligation under the National Traffic and Motor Vehicle Safety Act to produce vehicles without safety related defects. NHTSA expects that manufacturers will design vehicles in such a manner to ensure that air-braked vehicles will not experience false park problems when parked under reasonably foreseeable conditions.

NHTSA notes that General Motors commented that the condition that parking brakes be held in the applied position "solely by mechanical means" is design restrictive and excludes adoption of advanced technology parking brake systems which employ other mechanizations. That company recommended deletion of the words "solely by mechanical means" but did not elaborate on the possible technologies it had in mind. While the amendment being adopted does not include the specific term "solely by mechanical means," it does, as indicated above, require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. The purpose of this requirement is to ensure that the parking brake can maintain the specified minimum parking brake retardation force level even if there are slow leaks in the air or fluid systems of the vehicle or electrical failure.

Parking Retardation Force Timing

After reviewing the comments, NHTSA continues to believe that parking retardation force should be generated quickly, since the parking brake system is sometimes also used as an emergency system. Moreover, as part of ensuring objectivity, the agency believes that a standard specifying minimum retardation force requirements for parking brakes should specify the time when those requirements must be met.

NHTSA is adopting amendments along the lines of the proposal, although a time period of three seconds instead of two seconds is specified. Data provided by Bendix indicated that the compliance of some current parking brake systems might be marginal for the proposed two second requirement. Therefore, in light of the fact that NHTSA did not contemplate changes in current parking brake systems, the agency is adopting a three second requirement. NHTSA believes that all current parking brake systems easily meet this requirement. Since certification can be accomplished by engineering analysis and simple tests, certification costs will be minimal.

For trucks and buses, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time of actuation of the parking brake control. For trailers, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated. As with the timing requirement for actuation of the mechanical means for holding the parking brakes, the agency is specifying more detailed test conditions in order to ensure objectivity.

NHTSA does not agree with the argument raised in the comments that the potential safety problem addressed by this requirement is limited to towed vehicles. While the agency stated in the NPRM that there is a definite need for fast parking brake apply times on some trailers, because there are tractors which modulate the parking brakes through the supply line to provide for trailer braking in the event of a control line failure, the parking brake systems of power units may also be used for backup emergency braking. Thus, the need for quick generation of parking retardation force is relevant to power units as well as towed vehicles.

NHTSA has carefully considered the comments arguing that the proposed requirements would cause testing and certification difficulties. The agency does not believe that manufacturers must, as a practical matter, determine their compliance with the timing requirement during their grade holding or draw bar testing. Instead, certification can easily be accomplished by using an engineering analysis of the vehicle's parking brake system or, if necessary, a test measuring the air pressure in the parking brake system to determine when the pressure reaches zero.

NHTSA has also considered the comments arguing that the agency has not demonstrated a need to change current brake systems and that the proposed requirement would result in additional certification burdens without any safety benefit. As indicated above, the requirement being adopted is not expected to require changes in current brake systems. Spring brakes as well as the DD3 and Mini-Max parking brakes already achieve quick generation of parking retardation force. However, as new concepts in parking brake systems develop, the agency believes it is appropriate to ensure that such systems do not have significant delays in parking brake application and holding.

Effective Date

The amendments adopted by this notice require mandatory compliance effective September 7, 1988, while permitting manufacturers, effective April 11, 1988, to comply with the new requirements as an option to complying with requirements being superseded. Permitting optional compliance with amendments that become effective at a later date promotes manufacturer flexibility without creating any adverse impacts.

It is believed that all parking brakes currently being sold comply with the amendments being adopted. Since any necessary certification can be accomplished by engineering analysis and simple tests, 180 days provides a sufficient time for that purpose.

Regulatory Impacts

NHTSA has evaluated the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. It is believed that all parking brakes currently being sold comply with the amendments being adopted. The agency has also concluded that the impacts are so minor as not to require a full regulatory evaluation.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As indicated above, no parking brakes currently being sold are believed to be affected by these amendments. One small manufacturer, International Transquip, previously produced a parking brake which would not comply with the amendments. However, during the course of this rulemaking, that company redesigned its parking brake design in a manner believed to comply with the amendments being adopted. Therefore, that company and any of its distributors which may be classified as small businesses will not be significantly affected by the amendments. Other small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles. The amendments will not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that the rule will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The primary impact of the rule is to clarify the meaning of existing Federal requirements.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.6.3 of § 571.121 is revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, vehicles manufactured before September 7, 1988 may meet the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing).

S5.6.3.2 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time of actuation of the parking brake control, the parking brake system shall achieve the minimum parking retardation performance specified in S5.6.3.1. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum retardation performance specified in S5.6.3.1.

S5.6.3.3 A mechanical means shall be provided which is capable, with zero air pressure and zero fluid pressure in the vehicle and without electrical power, of holding the parking brake application at a level meeting the minimum parking retardation performance specified in S5.6.3.1.

S5.6.3.4 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of operation of the parking brake control, the mechanical means referred to in S5.6.3.3 shall be actuated. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the mechanical means referred to in S5.6.3.3 shall be actuated.

S5.6.3.5 *(Optional requirement for vehicles manufactured before September 7, 1988.* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Issued on: March 8, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-5355 Filed 3-8-88; 12:29 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80333-8033]

Groundfish of the Gulf of Alaska; Emergency Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the Gulf of Alaska groundfish fishery, due to unanticipated problems enforcing the prohibition on directed fishing for sablefish with hook-and-line gear prior to the scheduled April 1, 1988 fishing season. The Secretary issues this emergency rule to redefine directed fishing for sablefish. This action will restrict the amount of sablefish that a fisherman may retain and land as incidental catch while fishing for other groundfish species with hook-and-line gear in the Gulf of Alaska. This regulation is necessary to discourage illegal fishing and prevent substantial early harvests of sablefish before the beginning of the directed hook-and-line fishery on April 1, 1988. It is intended to facilitate an orderly fishery while carrying out the North Pacific Fishery Management Council's recommended allocation objectives in the sablefish fishery.

DATE: Effective March 9, 1988 until June 7, 1988. Comments are invited until March 25, 1988.

ADDRESS: Copies of the environmental assessment may be obtained from Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

One of the groundfish species that is important to U.S. fishermen is sablefish. The annual harvest quota, or total allowable catch (TAC), for this species is further allocated among trawl, pot, and hook-and-line gear, which are the only legal gear types in the Gulf of Alaska groundfish fishery. Most of the sablefish TAC is allocated to hook-and-line fishermen. Prices that they will likely receive in 1988 will be at least $1.00 per pound. The only other groundfish species that hook-and-line fishermen will catch in large numbers is Pacific cod, but this species is currently worth only about $0.20 per pound. An economic incentive clearly exists to favor catching sablefish.

The 1988 directed hook-and-line fishery for sablefish will start on April 1. Until that time, hook-and-line fishermen may conduct a directed fishery for other groundfish species, including Pacific cod. Existing regulations define directed fishing to mean fishing that is intended or can be reasonably expected to result in the catching, taking, or harvesting of quantities of such groundfish that amount to twenty percent or more of the catch, take, or harvest, or to twenty percent or more of the total amount of fish or fish products on board at any time. The Council and the Secretary usually refer to catches in a non-directed fishery as bycatch.

The Regional Director, National Marine Fisheries Service, Alaska Region (Regional Director), the Alaska Department of Fish and Game, and the North Pacific Fishery Management Council have received many inquiries from fishermen and processors about whether hook-and-line sablefish bycatch is retainable for a sale prior to the April 1 season starting date. The inquiries started for the first time in January 1988 as a result of the developing hook-and-line fishery for Pacific cod in the Kodiak area. Since hook-and-line fishermen were expending significant effort for Pacific cod, they questioned the legality of retaining and landing sablefish prior to the April 1 starting date. Thus, retention of sablefish up to 20 percent of the total amount of groundfish became known.

Regulations at 50 CFR 672.23(b) state, "Directed fishing for sablefish with hook-and-line gear and pot gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31 . . .". Based on the definition of "directed fishing", the Agency concluded that retention of the sablefish bycatch prior to the April season starting date is clearly permissible as long as the directed fishing rule is not violated. This means that hook-and-line fishermen are allowed to catch and retain an amount of sablefish that is less than twenty percent of the total amount of the groundfish catch over any period of time or total amount of groundfish on board.

Due to the increased fishing effort being applied in the Pacific cod fishery this year, this retainable bycatch "allowance" has caused problems for the first time. As more fishermen have directed fishing effort at Pacific cod, it has become apparent that a sablefish bycatch rate of 19 percent is much more than what is needed to support a directed Pacific cod fishery. A lower bycatch is to be expected, because sablefish are targeted with hook-and-line gear at water depths of 200 fathoms and deeper, whereas Pacific cod are targeted at depths of 150 fathoms and less.

A more realistic bycatch rate has been determined by NMFS following a review of recent fishing data. In 1986, for example, the bycatch rate experienced by Japanese hook-and-line vessels while harvesting nearly all of a 15,000 metric-ton (mt) allocation of Pacific cod was about 1 percent; this fishery occurred in the same area and during the same time of year as the current domestic fishery. The foreign Pacific cod fishery was constrained by a prohibited species catch limit for sablefish, which encouraged avoidance of sablefish to prevent premature closure of the Pacific cod fishery. Another example of bycatch rates is from a limited number of actual 1988 hook-and-line landings of Pacific cod, which showed some sablefish catches can be as low as 3 percent of the Pacific cod landings.

Because a bycatch rate that could be as much as 19 percent is more than necessary to allow a directed fishery for Pacific cod, hook-and-line fishermen are able to use the bycatch allowance to circumvent the prohibition on directed fishing for sablefish by targeting on sablefish and then catching enough Pacific cod to result in a total harvest that would appear to not violate the directed fishing rule. It's clear under the current regulation that targeting a bycatch is illegal, but the actual catching would have to be observed for enforcement action to occur. That is, enforcement agents would have to be present to observe the ratio of the sablefish catch for a given haul or the ratio of sablefish on board to determine whether a violation had occurred.

Under current regulations, bycatch amounts of sablefish in a directed Pacific cod fishery can easily exceed 1 mt in a single day. Fish tickets that were obtained from fishermen who have already made landings in 1988 have been examined. Some tickets showed a metric ton or more of sablefish having been landed with a sufficient amount of other groundfish so that the total amount of sablefish was less than 20 percent, which would make the sablefish landing appear to be legal. NMFS asserts that to catch that much sablefish, a fisherman would have to fish directly on sablefish. In one instance, a fisherman admitted to having caught 1 mt of sablefish in a single day.

Despite the current prohibition on directed fishing for sablefish, a fisherman can manipulate his catch composition by topping off his catch with other groundfish species, especially Pacific cod, and so land his sablefish as apparent bycatch. Since at-sea enforcement is not available to detect such directed fishing for sablefish, NMFS estimates that about 20 percent of the sablefish quota assigned to hook-and-line gear could be taken before April 1.

The potential thus exists for some of the hook-and-line fishermen to harvest and land large amounts of the sablefish quota prior to April 1. NMFS has heard from fishermen's representatives that many of the hook-and-line vessels in the Seattle fleet who had not planned to fish until the directed sablefish fishery opens, perceive the situation as one that provides an unfair advantage to those fishermen who are illegally targeting on sablefish. It is likely these vessels will depart for Alaska waters earlier than planned in order to compete in this early fishery. This, in turn, will increase the number of sablefish landed early as bycatch, aggravating the situation.

These vessels, and vessels in Kodiak, which are fishing the nearby Pacific cod grounds, could make many trips per vessel prior to April 1. For example, between March 1 and April 1, each vessel could make five trips before the sablefish season actually started. To illustrate the effect of this much effort, NMFS examined its 1987 permit database to estimate the numbers of hook-and-line vessels in the Kodiak and Seattle fleets as an example of vessel numbers that potentially could fish early. If about 190 Kodiak and 209 Seattle hook-and-line vessels were to make landings, and each delivered 1 mt of sablefish per trip, 1,995 mt could be landed. This amount represents about 20 percent of the 10,030 mt sablefish quota assigned to hook-and-line gear in the Central Regulatory Area where much of the Pacific cod fishing will be conducted.

Since a specified share of the total allowable catch for sablefish is allocated to hook-and-line gear, NMFS will manage the total harvest by hook-and-line gear so that the share is not exceeded. Therefore, NMFS will subtract any amounts of sablefish taken as bycatch before the April 1 starting date from the directed fishing quota. Consequently, full amounts of the quotas will not be available as expected when the season starts. NMFS's inability to enforce the prohibition on directed fishing for sablefish prior to April 1 is having the unanticipated effect of encouraging illegal fishing. Violators of the prohibition will gain an economic advantage over those fishermen who elect to honor the regulations, because they will be able to harvest sablefish stocks that have not been exploited for almost a year, and thus experience high catch rates. Fishing plans are being disrupted in that many fishermen who otherwise expected an April starting date are now changing their schedules to fish early. Some of those might have aborted their plans for vessel maintenance or might forego fishing opportunities elsewhere. Business opportunities being financed by banks on the basis of full quotas being available in April could be jeopardized. Planning by processors in terms of purchasing ice and bait for an April 1 opening could be upset.

The Council reviewed this issue at its January 20-22, 1988, meeting. It reflected on whether it had intended that sablefish should be retained as bycatch by hook-and-line gear prior to a directed fishing season when it adopted the April 1 starting date and made assignments of sablefish to gear types in Amendment 14 to the FMP. Although the Council determined that it had not specifically addressed whether sablefish should be retained as bycatch in other hook-and-line fisheries, it did affirm, after receiving recommendations from NMFS, that a bycatch between 1 and 5 percent was more realistic, and that it did not intend that the bycatch should be as high as is now permissible. It recognized that an adequate enforcement presence is not available to prevent illegal targetting on sablefish during the time this species is intended to be caught incidentally in other target fisheries. To take no action would condone illegal fishing by some fishermen, while other fishermen would be honoring the regulations. Also, to take no action would undermine NMFS's intended 1988 management of the hook-and-line sablefish fishery. Under 50 CFR 672.24(3)(i), NMFS intends to limit the directed hook-and-line sablefish harvest to an amount that would leave an appropriate amount as bycatch to support other hook-and-line fisheries when the directed sablefish season in each of the management areas close. If fishermen are allowed to continue to harvest up to 20 percent of sablefish as a bycatch when the directed fishing is closed, they might reach the bycatch amount that was set aside much sooner. Then, under 50 CFR 672.24(3)(ii), any additional amounts of sablefish would have to be treated as a prohibited species and discarded at sea for the remainder of the year. Such treatment is a waste of a valuable resource, which otherwise could be landed in a future year's fishery to the benefit of the industry.

This waste is unacceptable to the Council, which then voted to recommend that the Secretary implement an emergency rule to redefine the directed fishing definition with respect to sablefish caught in hook-and-line fisheries. The Council recommended that a catch of sablefish or an amount of sablefish on board that is higher than a number, to be determined by NMFS, lying within the range of 1 to 5 percent or more of the catch of groundfish or amount of groundfish on board constitutes directed fishing. The Council also recommended that a regulatory amendment be prepared for its review to remedy this problem in future seasons.

The Secretary has reviewed this issue and concurs with the Council's recommendations. The Secretary finds that failure to correct an identified loophole in a fishing regulation, which could be exploited illegally is contrary to purposes of the Magnuson Act and the public interest. He is, therefore, implementing an emergency rule under Section 305(e) of the Magnuson Act that redefines directed fishing for sablefish with hook-and-line gear in such a way that a catch of sablefish, or an amount of sablefish on board, that is 4 percent or more of the catch of groundfish constitutes directed fishing for sablefish. Percentages less than 4 percent will constitute bycatch.

In arriving at this percentage, the Secretary considered the 1986 landings by the Japanese hook-and-line fishery, which experienced a bycatch rate of 1 percent, and limited 1988 landings by U.S. hook-and-line fishermen to date that demonstrated bycatch rates of 3 to 7 percent when sablefish were not being illegally targeted. While the Secretary believes that a 1 percent bycatch rate would be too restrictive, given the increased numbers of sablefish and the fact that the 1986 Japanese fishery was actively avoiding sablefish to avoid premature closures if prohibited species catch limits were reached, he believes that a bycatch percentage that was too high would negate the purposes of this emergency rule. He has determined, therefore, that a bycatch rate that is less than 4 percent is a reasonable amount of sablefish that would inadvertently be caught as bycatch in a hook-and-line fishery.

Classification

The Assistant Secretary, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Secretary, NOAA, also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented as soon as possible if it is to accomplish its intended effect.

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment for this action and concluded that no significant impact on the human environment would result from this rule. A copy of this document may be obtained from the address above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Regulatory Flexibility Act does not apply to this rulemaking, because the Agency is not required to publish a general notice of proposed rulemaking under the Administrative Procedure Act or any other law.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator of Fisheries, NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency interim rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subject in 50 CFR Part 672

Fisheries.

Dated: March 8, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C 1801 *et seq.*

2. In § 672.2, the definition of *Directed Fishing for the period March 9, 1988* to *June 7, 1988* is added to read, until June 7, 1988 as follows:

§ 672.2 Definitions.

* * * * *

Directed Fishing for the period March 9, 1988 to June 7, 1988, means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish, or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent, or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish; or

(2) With respect to sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of sablefish or sablefish products on board at any time. It will be a rebuttable presumption that, when sablefish comprises 4 percent, or more of the catch, take, or harvest, or 4 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for sablefish.

* * * * *

[FR Doc. 88–5427 Filed 3–10–88; 9:09 am]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that vessels of the United States have caught the prohibited species catch (PSC) limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00′ N. latitude and east of 165°00′ W. longitude (Zone 1). Therefore, further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States is prohibited in Zone 1 for the remainder of the year, as required by regulations governing the groundfish fishery of the Bering Sea and Aleutian Islands area.

DATES: This notice is effective at 3:00 p.m., March 8, 1988, Alaska Standard Time (a.s.t.), until midnight, a.s.t., December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council). On March 19, 1987, the Secretary of Commerce (Secretary) published a final rule implementing Amendment 10 to the FMP (52 FR 8592). The rule at 50 CFR 675.21(a)(1) states that if, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1, the Secretary will publish a notice in the **Federal Register** prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" in Zone 1 for the remainder of the year.

The 1988 Bering Sea joint venture processing (JVP) fishery for yellowfin sole and "other flatfish" began in mid-January. NMFS has monitored the daily JVP catches of prohibited species, including *C. bairdi* Tanner crabs, in each subarea of the Bering Sea. Under guidelines developed by an industry steering committee with the approval of the Council, and implemented by conditions on permits of the foreign processors receiving fish, JVP companies whose bycatch rates of *C. bairdi* exceeded permitted rates at certain checkpoints during the fishery were excluded from fishing in Zone 1. The first checkpoint (when 20 percent of the quota, or 16,000 *C. bairdi* crabs had been taken) was reached on January 25, and the second checkpoint (32,000 crabs) was reached on February 15. Despite exclusion of those companies with the highest crab bycatches, the third checkpoint (48,000 crabs) was reached on February 28, and the fourth (64,000 crabs) on March 3. Given recent daily catch rates of *C. bairdi* and current effort levels, the remaining crabs in the 80,000 crab quota will be taken on March 8.

The Regional Director finds, therefore, that the PSC limit of 80,000 *C. bairdi* Tanner crabs in Zone 1 has been taken and that further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States in Zone 1 is prohibited for the remainder of the year.

In accordance with § 675.21(a)(1), the Secretary issues this closure prohibiting further directed fishing for yellowfin sole and "other flatfish" in Zone 1 by vessels of the United States from 3:00 p.m. Alaska Standard Time (2400 g.m.t.), March 8, 1988, until midnight, December 31, 1988. Fishing in Zone 1 for other target species for which quotas remain open, such as Pacific cod and turbot, may continue.

Classification

This action is required by 50 CFR 675.21(a)(1) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that providing prior notice and comment is impractical and contrary to the public interest. Immediate effectiveness of the notice is necessary to prevent the risk of overfishing local crab stocks. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5423 Filed 3–8–88; 4:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 48
Friday, March 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

Milk in the Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on proposals that would suspend, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Associated Milk Producers, Inc., a cooperative association that represents a substantial portion of the producers who supply milk to the market, has proposed that the 60 percent delivery standard for pooling a cooperative association plant and the limitation on the types of pool plants at which milk receipts are used to determine the amount of milk that a cooperative may divert to nonpool plants be suspended for March–July. The Southland Corporation, which operates distributing plants that are fully regulated under the order, has requested that the limits on the amount of milk that a pool plant operator may divert to nonpool plants be suspended for March–June. Proponents contend that this action is necessary to give handlers the necessary flexibility to dispose of the market's increasing milk supplies without engaging in uneconomic movements of milk solely for the purpose of retaining pool status for dairy farmers who regularly supply the market's fluid requirements.

DATE: Comments are due on or before March 18, 1988.

ADDRESSES: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers supplying the fluid needs of the market would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March through July 1988:

1. In § 1126.7(e), the words, "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraph (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

2. In § 1126.13(e)(2), the paragraph references, "(a), (b), (c), and (d)".

Notice also is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March through June 1988:

3. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposals would suspend, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Specifically, a proposal for the months of March–July would suspend the 60 percent delivery standard for pool plants operated by cooperative associations and the restriction on the types of pool plants at which milk must be received to count in the base which establishes the maximum amount of milk that a cooperative may divert to nonpool plants. Also, a proposal for the months of March–June would suspend the limits on the amount of milk a pool plant operator may divert to nonpool plants.

The order provides for pooling a cooperative association plant that is located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool

distributing plants during the month. Also, cooperative associations may divert to nonpool plants up to one-third of the amount that the cooperative causes to be physically received at pool distributing and supply plants. The suspension would make inoperative for the months of March–July the 60 percent delivery standard for plants operated by a cooperative association and allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed.

Also, the order provides that the operator of a pool plant may divert not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposal would suspend the one-third limit for the months of March–June 1988.

Suspension of the provisions involving cooperative associations was requested by Associated Milk Producers, Inc., a cooperative association that operates supply-balancing plants that are pooled under the order and represents a substantial number of producers who supply milk for the Texas market. Suspension of the provisions that relate to pool plants was proposed by The Southland Corporation, which operates distributing plants that are fully regulated under the Texas order. Proponents contend that the increasing volume of producer milk marketed by handlers under the Texas order cannot be qualified for pooling under current order provisions. If the suspension is not granted, proponents claim that uneconomic movements of milk would have to be made solely for the purpose of qualifying the increasing production of dairy farmers who supply the fluid milk needs of the market.

In view of the foregoing, it may be appropriate to suspend the aforementioned provisions of the Texas order.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: March 4, 1988.

Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-5407 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 659

[FHWA Docket No. 88-5]

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Department of Transportation/ Federal Highway Administration/ National Highway Traffic Safety Administration.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The NPRM proposes to simplify the existing procedural regulation which provides a lengthy and complicated set of procedures that are not required by statute and have proven to be unnecessary in their current format. In addition, the NPRM Proposes to update the current regulation governing the 55 MPH speed limit since it does not reflect statutory changes. Finally, provisions addressing the effect of future compliance on a State found not to be in compliance in a given fiscal year (FY) pertaining to withheld funds, are being reworded to clarify the intent.

DATES: Comments must be submitted on or before April 11, 1988.

ADDRESS: Submit written, signed comments to FHWA Docket No. 88-5, HCC-10, Room 4232, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except for legal holidays. Those desiring notification of receipt for comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: In OST: Samuel E. Whitehorn, Office of the Assistant General Counsel for Regulations and Enforcement at (202) 366-9307; in FHWA: Mr. Sheldon G. Strickland, HTO-30, (202) 366-1993, or Mr. David C. Oliver, Safety Law Division (202) 366-1356; and in NHTSA: Mr. Clayton Hall, NTS-40, (202) 366-4913, or Ms. Kathy DeMeter, General Law Division, (202) 366-1834, all at the Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (Department or DOT) is responsible for ensuring that each State enforce a national maximum 55 miles per hour (MPH) speed limit on those roads posted at 55 MPH. The Surface Transportation and Relocation Assistance Act of 1987 (Pub. L. 100-17), enacted April 2, 1987, allows states to increase the maximum allowable speed limit to 65 MPH on certain portions of the Interstate System. The Act, however, did not change the requirement that states submit information and continue to enforce the 55 MPH limit on roads posted at that speed.

Generally, States are required to certify (and submit supporting data) to the Department that they are enforcing the speed limits on their public highways (23 U.S.C. 141 and 154). The certification must include the percentage of motor vehicles exceeding the 55 MPH speed limit. Section 154 also provides that the Department shall withhold up to 10 percent of a State's Federal-aid apportionment for the Primary, Secondary, and Urban highway programs, 23 U.S.C. 104(b) (1), (2), and (6), for the fiscal year following the submission of a certification showing that more than 50 percent of the motor vehicles traveling on that State's highways which are posted a 55 MPH exceed that limit. Further, section 154 gives the Secretary discretion to delay imposition of sanctions in hardship cases and directs that any funds withheld shall be apportioned if the State complies with the law. These statutory provisions do not require that the Department hold a hearing before taking steps to withhold funds.

Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA) implementing regulations, 23 CFR Part 659, provide procedures concerning how each State must certify its compliance. (FHWA and NHTSA are operating administrations within DOT). Generally, each State develops a plan to monitor speeds which is subject to FHWA review and approval. By January 1 of each year, each State must certify its compliance for the preceding fiscal year and submit information to support that certification.

If the State-submitted data indicates that the State is not in compliance, the State is accorded a number of opportunities, which are described below, to convince the Department that its Federal-aid apportionment should not be reduced.

Current Procedures—Section 659.21—Procedure for the Reduction of Funds

The current procedural regulation, 23 CFR 659.21, provides:

1. *Administrators' Proposed Noncompliance Determination.* If, based on State-submitted data, a State cannot

certify its compliance, NHTSA and FHWA must notify the State of a proposed noncompliance determination.

2. *Administrators' Final Decision on Noncompliance.* The State may request an informal hearing to show cause why it should not be found in noncompliance or attempt to resolve the matter informally. If the matter is not resolved informally the State retains the right to request a formal hearing conducted according to the provisions of the Adminstrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The right to an APA hearing is provided only by regulation and is not required under the applicable statutory provisions governing the 55 MPH national maximum speed limit. If no request for a hearing is made the Administrators then forward the proposed determination to the Secretary for acceptance.

3. *ALJ's Recommended Compliance Decision.* If a State does request an APA hearing, the Secretary is required to convene one expeditiously to determine whether a State is in compliance with the 55 MPH law. The Department generally uses administrative law judges (ALJ) to conduct such proceedings. The ALJ then issues a recommended decision on compliance.

4. *Secretary's Final Noncompliance and Proposed Sanction Decision.* If the Secretary finds that a State is not in compliance, the regulation provides that "the Administrators shall jointly notify * * * the State * * * of the determination of nonconformity and of the proposed reduction in apportioned funds."

5. *Final Decision on Sanctions and Hardship Deferral.* The State then may request an informal meeting with the Administrators to discuss the sanction and a hardship deferral. After that, a final decision on sanctions and hardship deferral is issued.

In addition, as required under 23 U.S.C. 141, the regulation provides that if a State fails to certify, or if the Secretary determines that a State is not adequately enforcing the 55 MPH maximum speed limit on all public highways (other than those now posted at 65 MPH), no Federal-aid highway project shall be approved under 23 U.S.C. 106. 23 CFR 659.19(a).

Proposed Change to Section 659.21

Based on our past experiences with the above procedures, the Department proposes to adopt a less formal and more streamlined process which would afford each State an ample opportunity to present its position to the Department. The major difference between the proposed and the current rule involves the elimination of the formal hearing process, as outlined more fully below.

The problem which the new regulation seeks to address concerns those steps that have simply proven to be non-productive. For example, states now receive four decisions from the Department concerning compliance. Generally, the issue of compliance is a matter of reviewing data compiled by the State (and adjusted in accordance with FHWA procedures), which as a matter of mathematics, indicates whether or not the State is over or under the 50 percent threshold for compliance. In addition, the first three of the four decisions do not even address sanctions and hardship deferrals. Even when the Secretary makes the fourth and final compliance decision, only a proposed penalty decision is made.

Not only does the procedure involve unnecessary steps, it also bifurcates the process and thereby inhibits States from addressing the crux of the issue, sanctions, at the same time that the compliance decision is made, On the surface, this bifurcated process will appear to make sense—first determine if a state is not in compliance and then determine the sanction. In practice, the question of compliance is straight forward and the matter of sanctions and mitigating circumstances should, and could, be addressed at that same point.

In the Arizona, Maryland and Vermont cases instituted and concluded for FY 1984 under 23 CFR 659.21(d), (instituting orders, 50 FR 51959, December 20, 1985), each of the proceedings adhered to the regulatory regime described above. The issue of compliance was put before an ALJ, and other issues reserved for the Secretary and Administrators. At the prehearing conferences held in two of the three cases in January 1986, the ALJ's ruled that there was no question of fact to resolve concerning compliance, and thus a formal hearing on that issue was not necessary. The States were frustrated in their attempts to have the judges look at other factors, such as mitigating circumstances. The ALJs correctly determined that it was not within their authority to look at such factors since those circumstances concerned sanctions, rather than compliance. These determinations were completely consistent with the instituting order setting up the proceeding, which in turn followed the regulatory scheme. (The third case had been stayed pending a review of that State's subsequent certification.)

In each of the FY 1984 cases, where the Administrators issued proposed noncompliance determinations, the States requested and received informal meetings to show cause why they should not be found in noncompliance. At these meetings the States fully discussed both the compliance issue and any mitigating factors. These meetings easily could have been expanded to include hardship issues, thus allowing the Department to obtain sufficient information upon which to make a determination of compliance or noncompliance and to address, or defer based on hardship, any sanctions.

Even if the hearing process were expanded to include all issues, the resulting process would still be inefficient—it would still require multiple steps and continue to be cumbersome. For instance, the Department would still have to institute formal hearings and provide ample time to conduct the hearing. In the formal cases, the Department believed that 60 days would be needed to complete the hearings, even though they involved only one issue, compliance. While the ALJs were able to issue decisions prior to the 60 day time period, the very nature of the process required that sufficient time be provided for the parties to submit briefs, etc. Adding other and more complicated issues, such as sanctions, to the hearing process probably would have required additional time without providing a corresponding benefit.

Because the right to a hearing is not provided by statute, there is no requirement that a full APA hearing be held in these cases. Thus, the Department has the flexibility to fashion other more appropriate procedures to comply with the statutes governing the national maximum speed limit.

The Department proposes the following process:

Preliminary Decision

(a)(1) *Preliminary Proposed Noncompliance Determination.*

The NHTSA and FHWA Administrators would send a proposed noncompliance decision to the Governor, along with the basis for the decision. This decision would be based on data submitted by the State.

(2) *Decision on Compliance, Hardship and Sanctions.*

A State would have 30 days from the date of receipt of the letter to request an opportunity to show cause why it should not be found in noncompliance or to discuss a possible sanction or a hardship deferral. If a State makes such a show cause request an informal conference would be held. The State could offer any relevant information concerning compliance, hardship deferrals and sanctions levels. (If the

State agrees that it is not in compliance, the conference would focus on the hardship deferrals and any proposed sanction.) In lieu of requesting a conference within the 30 day period, the State could present written information concerning compliance, sanctions and deferrals.

If the Secretary (or designee) then concluded that a State is not in compliance, a written final decision on compliance, hardship, and sanctions would be issued.

(b) If the Secretary (or designee) concluded that a State was in compliance, a final decision would be issued.

The procedural change proposed should afford all States an adequate opportunity to demonstrate to the Department that the numbers submitted on compliance do not tell the entire picture, and to show any other relevant facts that a State wishes the Department to consider. The procedure should be adequate to permit the Department to gather information to determine whether a State is in compliance, what the sanction should be and whether any sanction should be deferred.

Commenters are free to suggest alternatives and address why a particular option should not be adopted. If a commenter wishes to suggest an alternative, a specific proposal should also be included and explained. Comments are also requested on whether a separate provision specifically authorizing the Administrators at their option to utilize administrative law judges to determine questions of fact is desirable.

Other Changes

The changes discussed below reflect the Department's current interpretation and application of the statute and regulation. Therefore, they are included in this document for notice purposes, and comments, while helpful, are not requested.

Section 659.19 Effect of Failure to Certify or To Meet Compliance Standards

Much of this section now implements the earlier statutory scheme which included a phased-in compliance process. The 1981 amendment to 23 U.S.C. 154 (§ 1106(a) of Pub. L. 97–35, 95 stat. 626) replaced the phased-in compliance requirement (which set different standards for each succeeding year) with a straightforward compliance standard of 50 percent. Thus, States now must demonstrate that the percentage of motor vehicles exceeding 55 MPH on roads posted at that speed is not greater than 50 percent. The proposed regulation would conform this section to reflect the statutory amendment. In addition, the withheld funds provision would be revised and a reserved funds provision would be added.

Withheld Funds: The crurrent regulation states: first, that funds withheld shall be apportioned if a State demonstrates that the percentage of motor vehicles exceeding 55 MPH has dropped to the "level specified for the fiscal year" in which funds were withheld; and second, that funds withheld shall be released if the State comes into compliance based on the following year's monitoring results.

The first provision is generally consistent with the current law. However, the "level specified for the fiscal year" language is based on the Federal-Aid Highway amendments of 1974 (Pub. L. 93–643) and section 205 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599), and thus, refers to the former phased-in compliance process. The Department, therefore, will amend this language to state that the level specified constitutes the 50 percent threshold established in the 1981 amendment to 23 U.S.C. 154 for roads posted at 55 MPH.

The second provision provides that a State whose funds are withheld because it is found in noncompliance in one year, could reacquire the use of the funds if it comes into compliance based on one full year's monitoring results.

The applicable statutory provision, which the regulation intended to implement, provides that the Secretary must—

> promptly apportion to a State any funds which have been withheld pursuant to subsection (f) * * * if he [she] determines that the percentage of motor vehicles in such State exceeding fifty-five miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld.

23 U.S.C. 154(h).

Consistent with an interpretation of this provision issued by the Department, a copy of which is available in the docket, the Department will make clearer that funds withheld for a fiscal year will be reinstated if the State comes into compliance within three fiscal years following the year in which the funds were withheld. This clarification ensures that withheld funds are subject to the same limitations that are applicable to other apportioned funds. Thus, funds withheld will continue to be available for expenditure "for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period lapse." 23 U.S.C. 118(b). A full fiscal year of speed monitoring data will be required to determine if withheld funds should be reinstated.

Reservation of Funds: In the event that a final decision in a particular case has not been made before October 1, the beginning of a fiscal year, or before the date funds are apportioned, States subject to such proceedings are notified that the Department will apportion Federal-aid funds for that State, but reserve from obligation 10 percent of the primary, secondary and urban funds. This process, used in FY 86 for the three ongoing cases concerning FY 84, and in FY 87 for possible cases in FY 85, preserves the Department's ability to impose sanctions if they are deemed appropriate.

Speedometer Variability

Section 205 of the Surface Transportation Assistance Act of 1978 (STTA), Pub. L. 95–599, Stat. 2689, amended 23 U.S.C. 154 by establishing maximum allowable 55 MPH noncompliance levels, against which each State's 55 MPH enforcement effort would be judged. This amendment changed State collection of vehicular speed data and required each State to report annually a figure representing statewide driver noncompliance with the 55 MPH speed limit. The STAA also required that, in developing the criteria to measure States' speed limit enforcement effort, the Secretary include "* * * criteria which takes into account the variability of speedometer readings * * *".

When a final rule implementing the STAA was published (45 FR 64486) September 29, 1980, speedometer variability was acknowledged, but no specific procedures were put in regulatory form. Discussion of speedometer variability was confined to the rule's supplementary information section. That narrative indicated that methodologies available to implement the concept would be published and distributed at a later date. Until now, however, further information on this topic has not appeared in the **Federal Register**.

Instead, the speedometer variability adjustment process has been handled via memorandum from FHWA Headquarters to the FHWA field offices, with the appropriate information then passed on to the States. The first memorandum was sent in December, 1980 and similar information has been provided, through the same channel, each year since. This line of communication has proven to be quite adequate. The States have received each year's memorandum far enough in advance to incorporate the information in the preparation of the annual certification of speed limit enforcement required by 23 U.S.C. 141.

Incorporation of the speedometer variability adjustment procedures into 23 CFR Part 659 at this time is not needed in response to any controversy, and no changes are being made.

Use of the adjustment process always has been, and remains, voluntary on the part of a State. However, without at least partial application, few States would be able to demonstrate compliance with the 50 percent maximum allowable 55 mph noncompliance level spelled out in 23 U.S.C. 154. To illustrate the importance of the ajustment process the following table lists, by year since FY 1982, the number of States that would have certified more than 50 percent exceeding 55 mph if the adjustment procedures were not available.

Fiscal year:	*Number of States*
1982	30
1983	39
1984	39
1985	44
1986	44

The alternate adjustment procedures incorporated are the same two procedures that have been made available to the States for use in preparing the annual enforcement certification each year since 1982.

Miscellaneous

Because of the passage of the Federal-Aid Highway Act of 1987 (Pub. L. 100–17) and specifically section 174 which amended 23 U.S.C. 154 by giving the States authority to increase, without loss of Federal-Aid funds, the maximum speed limits to 65 MPH on Interstate highways located outside of an urbanized area of 50,000 or more, certain technical changes are necessary. These too, therefore, have been included in this notice. In addition, other technical amendments were adopted and published in the **Federal Register** on August 3, 1987 (52 FR 28691).

Regulatory Evaluation/Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291. However, because of the public's interest in the 55/65 MPH speed limit, it is considered a significant regulation under the Department's regulatory policies and procedures. A regulatory evaluation has not been prepared because the changes to the current regulation proposed in this document are procedural in nature or are merely technical to reflect statutory changes. In accordance with Section 553(b) of the Administrative Procedure Act, comments are not requested with respect to the latter changes.

Since this rule prescribes procedural requirements for implementation of the statute, and since any economic impact will result from the operation of the statute and not this rule, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of Title 23, Code of Federal Regulations as set forth below:

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 659

Grant programs—transportation, Highways and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

Issued on March 2, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

Diane Steed,

Administrator, National Highway Traffic Safety Administration.

The FHWA and the NHTSA propose to amend 23 CFR Part 659 as follows:

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

1. The authority citation for 23 CFR Part 659 is revised as follows:

Authority: 23 U.S.C. §§ 118, 141, 154, and 315, 49 CFR 1.48(b) and 1.50.

§ 659.7 [Amended]

2. Section 659.7 is amended by revising paragraph (a) to read as follows:

§ 659.7 Adoption of a national maximum speed limit.

* * * * *

(a) The maximum speed limit on any highway in the State, except for a highway on the Interstate System located outside of an area of 50,000 population or more, shall be 55 MPH or less. The maximum speed limit on a highway on the Interstate System located outside of an urbanized area of 50,000 population or more shall be 65 MPH or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health or safety.

* * * * *

§ 659.9 [Amended]

3. In § 659.9, paragraphs (b)(5)(ii), (b)(7)(i), and (c)(2) are revised to read as follows:

§ 659.9 Formulation of a plan for monitoring speeds.

* * * * *

(b) * * *

(5) * * *

(ii) A 24-hour monitoring period shall be minimum duration of any individual sampling session.

* * * * *

(b) * * *

(7) * * *

(i) Schedule—a detailed schedule shall take into account day of the week and calendar quarter of the year.

* * * * *

(c) * * *

* * * * *

(2) Adjustments to the number of sampling locations in a state.

§ 659.13 [Amended]

* * * * *

4. Section 659.13 is revised to read as follows:

§ 659.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

§ 659.15 [Amended]

5. In § 659.15 the introductory text, paragraph (a), and paragraph (d) are revised to read as follows:

§ 659.15 Certification content.

The certification shall consist of the following elements:

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limit on public highways in the State is being enforced. The certifying statement shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of ———, do hereby certify that the (State or Commonwealth) of ———, is enforcing the National Maximum Speed Limit.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

* * * * *

(d) The statewide percentage of vehicles exceed the 55 MPH speed limit as derived from the speed sampling plan discussed in § 659.9, and adjusted to take into account variability of speedometer readings. The allowable adjustment to account for variability of speedometer readings shall be calculated using either of the two following procedures.

(1) This procedure includes separate adjustments for each of three potential error sources. First, Speedometer Variability.

Let:

A = the percent exceeding 55 MPH derived from the speed sampling plan for § 659.9.

B = the present exceeding 60 MPH from the speed sampling plan.

C = (A-B)

D = .7(C) + B

Second Statistical Error.

Let:

E = the percent exceed 55 MPH adjusted for the first and second part of speedometer variability.

$({}^{t}.95^{n})$ and $s({}^{p}{}_{st})$ are as defined in the SMPPM.

$E = D - ({}^{t}{}_{.95,n})\, s(Pst)$

Third, Speed Monitoring Equipment Error.

Let:

F = a correction for speed measuring equipment error. Derivation and use of an equipment error correction is subject to approval by the FHWA.

G = the percent exceeding 55 MPH, fully adjusted to account for variability of speedometer readings.

G = E–F

(2) This procedure is intended to account for all three error sources discussed in (d)(1) with a single adjustment. A, B and G are as defined in (d)(1).

$$G = \frac{A+B}{2}$$

§ 659.17 [Amended]

6. In § 659.17, paragraph (c) is revised to read as follows:

§ 659.17 Certification and statistical submittal.

* * * * *

(c) As described in § 659.15(d), the statewide percentage of vehicles exceeding 55 MPH is the only direct result of the speed monitoring program that is required for inclusion in the annual certification. However, additional summary statistics from the speed monitoring program are necessary to provide a complete review. A report of the average speed, median speed, 85th percentile speed, and percent of vehicles exceeding 55, 60, and 65 miles per hour shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30, and September 30 of each year. The submittal for the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data starting from the previous October 1.

§ 659.19 [Amended]

7. Section 659.19 is amended by revising paragraphs (a), (b), and (d), and adding paragraph (e), to read as follows:

§ 659.19 Effect of failure to certify, enforce or to meet the compliance standards.

(a) If a State fails to certify as required by § 659.13, or if the Secretary determines that a State is not adequately enforcing the National Maximum Speed Limit on all public highways notwithstanding the certification, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Notwithstanding the proper submission of a certification, or information supporting the enforcement activities of any State, if a certification shows a percentage of motorists exceeding 55 MPH greater than 50 percent on roads posted at 55 MPH, funds apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), and 104(b)(6) shall be reduced an aggregate amount of up to 10 percent, and reserved from obligation as provided in subsection (e), for the fiscal year subsequent to the fiscal year in which the certification is submitted.

* * * * *

(d) Funds withheld pursuant to this Part shall be apportioned to a State, subject to availability of such funds under 23 U.S.C. 118(b), upon a determination that the pecentage of motor vehicles exceeding 55 MPH in such State has dropped to 50 percent or lower on roads posted at 55 MPH. One fiscal year's speed monitoring results will be required to make such a determination.

(e) If a final decision for a State subject to §§ 659.19 and 659.21 has not been made before the beginning of the fiscal year in which funds would otherwise be withheld, the Secretary may apportion 100 percent of the funds for the fiscal year. However, up to ten percent of the apportioned funds under 23 U.S.C. 104(b)(1), 104(b)(2) and 104(b)(6) may be reserved from obligation, pending a final decision.

§ 659.21 [Amended]

8. Section 659.21 is revised to read as follows:

§ 659.21 Procedures for the reduction of funds.

(a) *Noncompliance Finding.* (1) In the event that information concerning the enforcement by any State shows that a percentage of motorists exceeding 55 MPH is greater than 50 percent, the Administrators of the FHWA and NHTSA shall make, in writing, a proposed determination of noncompliance, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination.

(2) If the reason for the proposed determination is the failure to meet the compliance standards set forth in § 659.19, the State may within 30 days from the date of receipt of the letter request an informal hearing before the Department to show cause why it should not be found in compliance. If the state does not request an informal hearing, it may submit any pertinent written documents, including any relating to matters specified in § 659.21(a)(3), for consideration by the Department. Such written documents also may be submitted prior to, or at, the informal hearing, if one is requested.

(3) The State may offer any information which it considers helpful to the resolution of the matter, and the scope of review will include but is not limited to, legislative actions, budgetary considerations, judicial actions, and proposals for specific program actions which will be implemented to bring the State into compliance.

(4) If a State wishes to claim a hardship deferral and/or address the potential amount of withholding of funds in the event of a determination of noncompliance, information concerning these matters shall be conveyed to the Department.

(5) If the Department concludes that the State is in noncompliance, a final decision shall be issued. If a State makes a claim under (a)(4), the final decision will address these issues. The decision will be served on the Governor and/or his or her designee.

(b) Compliance finding. If, on the basis of (a)(3), the Department concludes that the State is in

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compliance, a final decision shall be issued. The decision will be served on the Governor and/or his or her designee.

[FR Doc. 88–5275 Filed 3–10–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to Bank Secrecy Act Regulations Providing for Notice to Customers of Anti-Structuring Provision by Financial Institutions

AGENCY: Departmental Officers, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Treasury is considering issuing a Notice of proposed Rulemaking under the Bank Secrecy Act by which Treasury would require financial institutions subject to the Bank Secrecy Act to give notice to customers of the prohibition on structuring transactions for the purpose of evading the currency reporting requirements of 31 U.S.C. 5313. This prohibition is contained in 31 U.S.C. 5324. Treasury is issuing this Advance Notice to solicit the views of the affected financial institutions and other interested parties on how most effectively and efficiently to give such notice.

DATES: Comments must be received no later than April 11, 1988.

ADDRESS: Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, at the address listed above, or at (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508 (codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311–5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions subject to the Bank Secrecy Act are required to file Currency Transaction Reports (CTRs) with Treasury on transactions in currency in excess of $10,000 "by, through or to such financial institutions." 31 CFR 103.22.

As part of the Money Laundering Control Act of 1986, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (Oct. 27, 1986), Congress enacted 31 U.S.C. 5324, the so-called anti-structuring provision of the Bank Secrecy Act. Section 5324 prohibits any person from structuring transactions "for the purpose of evading" the Currency Transaction Report requirement. It also prohibits a person, for the same purpose, from causing a financial institution 1) not to file a Currency Transaction Report or 2) to file a report that contains a material omission or misstatement of fact. The "anti-structuring" requirement was aimed at drug and other money launderers who routinely conduct transactions under the $10,000 reporting threshold of section 103.22 in order to have their currency transactions go undetected by Federal law enforcement authorities. *See* H.R. Rep. No. 746, 99th Cong., 2d Sess. 18–20 (1986); Sen. Rep. No. 433, 99th Cong., 2d Sess. 21–22 (1986).

In order to prosecute a person (or to assess a civil penalty against a person) for structuring to evade the currency reporting requirement or causing a financial institution not to file a Currency Transaction Report, the Government must be able to establish that the person had knowledge of the reporting requirement and specific intent to commit the crime. In addition, some defendants recently have asserted, although Treasury does not agree, that in order to sustain a prosecution of section 5324, the government must be able to establish not only that the person knew that the financial institution at which he is structuring transactions had a reporting obligation, but that the person had knowledge that structuring transactions to avoid reporting by the financial institution was prohibited by law. This problem of establishing knowledge is presenting difficulties for investigators and prosecutors and is threatening to undermine Treasury's ability to assure compliance with section 5324.

Therefore, in order to assure compliance with Section 5324, Treasury is considering is considering requiring financial institutions subject to the Bank Secrecy Act to establish procedures to notify customers of the provisions to Section 5324, especially customers conducting currency transactions. Treasury would require such procedures pursuant to Treasury's authority in 31 U.S.C. 5318(a)(2) "to require a class of domestic financial institutions to maintain appropriate" procedures to ensure compliance with this subchapter and regulation prescribed under this subchapter." If prosecutions cannot be brought successfully under Section 5324, Treasury clearly will be unable to assure compliance with this provision.

Treasury is issuing this Advanced Notice of Proposed Rulemaking to solicit the views of the affected financial institutions, law enforcement agencies and other interested parties on how best to formulate procedures for communicating the provisions of Section 5324 to customers at the least expense and with the least operational burden to the financial institutions.

Treasury seeks views on the following proposals under consideration. We also welcome other suggestions on how best to give notice of Section 5324 to customers. The proposals are not meant to be considered as alternatives to each other, but may be proposed in conjunction with one another. Comments should be made on each individual proposal and also should address special concerns should any of the proposals be issued together:

1. Require that a short notice prescribed by Treasury of the provisions of Section 5324 be posted conspicuously at every location where customers may conduct cash transactions, *e.g.*, bank teller's windows, casino gaming tables and cages.

2. Require that a short Treasury form notice of the provisions of section 5324 be handed to any person conducting currency transactions over a specified amount, *e.g.*, $1000 or $3000. Currency transactions would include deposits to accounts and purchases of monetary instruments such as cashier's checks, official bank checks, money orders or traveller's checks.

3. Require that all deposit tickets be imprinted with a short notice prescribed by Treasury of the provisions of Section 5324 and that a person making a currency deposit over a certain amount, *i.e.*, $1000 or $3000, sign the back of the deposit slip in acknowledgment of reading such notice.

4. Require that a short Treasury form notice of the provisions of Section 5324 be sent to all customers by a certain date and to all new customers upon the opening of an account. This requirement would apply to customers with "transactional accounts" as defined in 31 CFR 103.11(n).

5. Require that a short Treasury form notice of the provisions of Section 5324 be included periodically, *e.g.*, quarterly, in all customers' monthly statements of accounts, and upon opening a new account. This requirement would apply to statements of "transactional accounts," as defined in 31 CFR 103.11(n).

In the event that financial institutions receive inquiries from customers as the

result of any of the above proposals, Treasury could make available a form to give to customers giving a more detailed explanation of the provisions of Section 5324 and a toll free Treasury number for the customer to call for further information.

Treasury is committed to the judicious exercise of its rulemaking authority under the Bank Secrecy Act. At the same time, we must maximize the effectiveness of this authority in the fight against money laundering and the pernicious activities it sustains, especially drug trafficking. We are depending on the wholehearted cooperation of the financial community in this effort. As always, in any rulemaking under the Bank Secrecy Act, Treasury is seeking to strike an appropriate balance between law enforcement utility and cost to financial institutions.

Date: March 4, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88–5348 Filed 3–10–88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 86–079]

Anchorage Regulations; Regulated Navigation Areas and Limited Access Areas

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations by placing a general statement at the beginning of Part 110 advising mariners that state and/or local ordinances may apply in these anchorages; by removing other notes and textual references to state and/or local ordinances which may apply to the anchorages in this part; by removing non-regulatory, obsolete or duplicative language; and by relocating sections to Part 165 which regulate navigation outside of the anchorages established in this part. These changes are primarily editorial in nature and are intended to clarify and update the regulations in this part.

DATE: Comments must be received on or before May 10, 1988.

ADDRESS: Comments should be submitted to Commandant (G-CMC/21) (CGD 86–079), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2110, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Office of Navigation (G-NSS/2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, telephone (202) 267–0415, between 8:00 a.m. and 3:30 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 86–079, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Margie G. Hegy, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Discussion of Proposed Regulations

Responsibility for the administration and enforcement of anchorage regulations was transferred from the U.S. Army Corps of Engineers (COE) to the U.S. Coast Guard in 1967. Many of these regulations have remained basically unchanged since that time. In 1979, the authority to issue rules and regulations pertaining to anchorage grounds and special anchorage areas was delegated to Coast Guard district commanders who have made necessary changes to specific areas under their authority. State and/or local governments have also promulgated ordinances which apply in some federal anchorages. Inclusion of references to state and/or local ordinances in Part 110 is not desirable as it appears that the Coast Guard has incorporated these ordinances into the federal regulations. The Coast Guard has reviewed the federal anchorage regulations and proposes to eliminate specific references to state and/or local ordinances and to place a general statement, as a caveat, at the beginning of Part 110 advising of the possible existence of state/or local ordinances.

The federal anchorage statute, 33 U.S.C. 471, authorizes the establishment of federal anchorage grounds in the navigable waters of the United States when required by maritime or commercial interests for safe navigation. The statute also allows for the issuance of regulations concerning anchoring therein. However, it does not specifically provide for the designation of non-anchorage areas or the regulation of navigation outside the anchorage grounds.

The Coast Guard proposes to redesignate or remove those sections containing regulations establishing "non-anchorage" grounds or regulating navigation outside the boundaries of established anchorages. These regulations are more appropriately contained in Part 165 as "regulated navigation areas".

The Coast Guard also proposes to update the regulations in Part 110 by removing obsolete regulations, by making editorial changes, and by removing non-regulatory language and informational material from the regulatory text. in the Final Rule, the Coast Guard also proposes to renumber the sections in Part 110 to eliminate non-standard section designations and facilitate future amendments.

Regulatory Evaluation

These regulatory changes are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this amendment has been found to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 110

Special anchorage areas, Anchorage grounds.

33 CFR Part 165

Regulated navigation areas.

In consideration of the foregoing, Parts 110 and 165 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471 and 2071; 49 CFR 1.46, 33 CFR 1.05–1(g). The regulations in § 110.155 are also promulgated under the authority of 33 U.S.C. 1231.

2. Section 110.1 (a) are (b) and (e) revised to read as follows:

§ 110.1 General.

(a) The areas described in Subpart A of this part are designated as special anchorage areas for the purposes of 33 U.S.C. 2030 and 2035. Vessels less than 20 meters in length (65.6 feet), when at anchor in any special anchorage area, are not required to exhibit anchor lights and shapes or to sound signals as prescribed in those sections.

(b) The anchorage grounds described in Subpart B of this part are established, and the rules and regulations in relation thereto are adopted, under the authority of 33 U.S.C. 471.

* * * * *

(e) Vessel owners and operators are advised that state and/or local ordinances may apply to the anchorages established in Subparts A and B.

§ 110.1a [Removal]

3. The text of § 110.1a is redesignated as § 110.155(k) and is revised to read as follows:

§ 110.155 Port of New York.

* * * * *

(k) *Anchorages under Ports and Waterways Safety Act.* (1) The anchorages listed in this section are regulated under the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.).

(2) Any person who violates a regulation issued under the Ports and Waterways Safety Act:

(i) Is liable for a civil penalty, not to exceed $25,000 for each violation;

(ii) If the violation is willful and knowing, is liable to be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both.

* * * * *

§ 110.5 [Amended]

4. Section 110.5 is amended by removing the notes immediately following paragraphs (a–1) and (e).

§ 110.6 [Amended]

5. Section 110.6 is amended by removing the note at the end of the section.

§ 110.6a [Redesignated as § 110.7]

6. Section 110.6a is redesignated as § 110.7 and is revised to read as follows:

§ 110.7 Fore River, Portland Harbor, Portland, ME.

The waters beginning at a point on the shoreline near the Coast Guard Base at latitude 43°38′43″N, longitude 070°14′49″W; thence 319° to latitude 43°38′55″N, longitude 070°15′03″W; thence 050° to latitude 43°39′06″N, longitude 070°14′43″W; thence 161° to mainland; and thence southwesterly along the shore to the point of beginning.

§ 110.8 [Amended]

7. Section 110.8 is amended by removing the note immediately following paragraph (c–2).

§ 110.25 [Amended]

8. Section 110.25 is amended by removing the last three sentences of paragraph (c).

§ 110.26 [Amended]

9. Section 110.26 is amended by removing the note at the end of the section.

§ 110.30 [Amended]

10. Section 110.30 is amended by removing the note at the end of the section.

§ 110.31 [Amended]

11. Section 110.31 is amended by removing the note at the end of the section.

§ 110.32 [Amended]

12. Section 110.32 is amended by removing the note at the end of the section.

§ 110.37 [Amended]

13. Section 110.37 is amended by removing the note at the end of the section.

§ 110.38 [Amended]

14. Section 110.38 is amended by removing the note at the end of the section.

§ 110.45 [Redesignated as § 110.44]

15. Section 110.45 is redesignated as § 110.44.

§ 110.45a [Redesignated as § 110.45 and amended]

16. Section 110.45a is redesignated as § 110.45 and amended by removing the note at the end of the section.

§ 110.50 [Amended]

17. Section 110.50 is amended by removing the note at the end of the section.

§ 110.50a [Amended]

18. Section 110.50a is amended by removing the note at the end of the section.

§ 110.50b [Amended]

19. Section 110.50b is amended by removing the note at the end of the section.

§ 110.50c [Amended]

20. Section 110.50c is amended by removing the note at the end of the section.

§ 110.50d [Amended]

21. Section 110.50d is amended by removing paragraphs (b), (b)(1), (b)(2), and (b)(3).

§ 110.51 [Amended]

22. Section 110.51 is amended by removing the note at the end of the section.

§ 110.52 [Amended]

23. Section 110.52 is amended by removing the note at the end of the section.

§ 110.53 [Amended]

24. Section 110.53 is amended by removing the note at the end of the section.

§ 110.55 [Amended]

25. Section 110.55 is amended by removing the notes immediately following paragraphs (b), (c), (e) (e−1), (e−2), and (g).

§ 110.55a [Amended]

26. Section 110.55a is amended by removing the note at the end of the section.

§ 110.56 [Amended]

27. Section 110.56 is amended by removing the note at the end of the section.

§ 110.58 [Amended]

28. Section 110.58 is amended by removing the note at the end of the section.

29. Section 110.60 is amended by removing the notes immediately following paragraphs (a−2), (b−1), (j−1), (m−2), (o−2), (s−1), and (u−3), and by removing paragraph (x)(4), Table 110.60(x)(4) and Figure 110.60(x)(4). Paragraph (r−1) is revised to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(r−1) *Great Kills Harbor.* Beginning at a point on the shoreline at latitude 40°32′05.6″N, longitude 74°08′24.2″W; thence to latitude 40°32′06.7″N, longitude 74°08′27.6″W; thence to latitude 40°32′19″N, longitude 74°08′23.1″W; thence to latitude 40°32′27.8″N, longitude 74°08′25.9″W; thence to latitude 40°32′40.2″N, longitude 74°08′10.5″W; thence to latitude 40°32′44.2″N; longitude 74°08′12.9″W; thence along the northern and eastern shoreline to the point of beginning.

Note: This special anchorage area is within the limits of General Anchorage No. 28 described in section 110.155(f)(3).

* * * * *

§ 110.73a [Amended]

30. Section 110.73a is amended by removing the note at the end of the section.

31. Section 110.73b is amended by revising paragraph (a) and removing paragraph (c). Section 110.73b, as amended, reads as follows:

§ 110.73b Indian River at Vero Beach, FL.

(a) Area A. Beginning at a point located on the eastern shore of Fritz Is. at latitude 27°39′32.5″ N, longitude 80°22′20.6″ W following the shoreline northward to the northwest point at latitude 27°39′46″ N, longitude 80°22′25.9″ W, thence due east to a point on Orchid Is. at approximate latitude 27°39′46″ N, longitude 80°22′16.2″ W, thence southerly along the shoreline of Orchid Is. to latitude 27°39′32.5″ N, longitude 80°22′13.4″ W, thence due west to the point of beginning.

§ 110.74 [Amended]

32. Section 110.74 is amended by removing the note at the end of the section.

§ 110.77 [Amended]

33. Section 110.77 is amended by removing the note at the end of the section.

§ 110.79a [Amended]

34. Section 110.79a is amended by removing the note at the end of the section.

§ 110.80 [Amended]

35. Section 110.80 is amended by removing the note at the end of the section.

§ 110.80b [Amended]

36. Section 110.80b is amended by removing the note at the end of the section.

§ 110.81 [Amended]

37. Section 110.81 is amended by removing the note at the end of the section.

§ 110.83 [Amended]

38. Section 110.83 is amended by removing the note at the end of the section.

§ 110.84a [Amended]

39. Section 110.84a is amended by removing the note at the end of the section.

§ 110.85 [Amended]

40. Section 110.85 is amended by removing the note at the end of the section.

§ 110.86 [Amended]

41. Section 110.86 is amended by removing the note at the end of the section.

§ 110.87 [Amended]

42. Section 110.87 is amended by removing the note at the end of the section.

§ 110.90 [Amended]

43. Section 110.90 is amended by removing the note at the end of the section.

§ 110.91 [Amended]

44. Section 110.91 is amended by removing the notes immediately following paragraphs (a), (b), (c), and (d).

§ 110.95 [Amended]

45. Section 110.95 is amended by removing the notes immediately following paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (n).

§ 110.111 [Amended]

46. Section 110.111 is amended by removing the note at the end of the section.

§ 110.115 [Amended]

47. Section 110.115 is amended by removing the note at the end of the section.

§ 110.120 [Amended]

48. Section 110.120 is amended by removing the note at the end of the section.

§ 110.125 [Amended]

49. Section 110.125 is amended by removing the note at the end of the section.

§ 110.126a [Amended]

50. Section 110.126a is amended by removing the note at the end of the section.

§ 110.127 [Amended]

51. Section 110.127 is amended by removing the note at the end of the section.

§ 110.127a [Amended]

52. Section 110.127a is amended by removing the note immediately following paragraph (e).

§ 110.127b [Amended]

53. Section 110.127b is amended by removing the note at the end of the section.

§ 110.127c [Amended]

54. Section 110.127c is amended by removing the note at the end of the section.

§ 110.130 [Amended]

55. Section 110.130 is amended by removing paragraph (b)(3).

56. The introductory text of § 110.131(a) is revised to read as follows:

§ 110.131 Kennebec River in vicinity of Bath, ME

(a) *The anchorage grounds.* * * *

§ 110.140 [Amended]

57. Section 110.140 is amended by removing paragraphs (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7), and by redesignating paragraph (d)(3) as (d)(2).

58. Section 110.142(b) is revised to read as follows:

§ 110.142 Nantucket Harbor, MA.

* * * * *

(b) *The regulations.* The anchorage is for the use of commercial and pleasure craft. Temporary floats or buoys for marking anchors or moorings in place will be allowed. Fixed mooring piles or stakes are prohibited.

§ 110.145 [Amended]

59. Section 110.145 is amended by removing paragraphs (a)(2)(ii)(*e*), (d)(5) and (d)(6) and by removing and reserving paragraphs (d)(1) and (d)(3).

§ 110.147 [Amended]

60. Section 110.147 is amended by removing paragraph (b)(3).

61. Section 110.148(b) is revised to read as follows:

§ 110.148 Johnsons River at Bridgeport, CT.

* * * * *

(b) *The regulations.* The anchorage is for use by commercial and pleasure craft. Temporary floats or buoys for marking anchors or moorings will be allowed. Fixed mooring piles or stakes will not be allowed.

§ 110.155 [Amended]

62. Section 110.155 is amended by removing the note at the end of the section.

§ 110.157 [Amended]

63. Section 110.157 is amended by removing and reserving paragraphs (b)(1) and (b)(7), and by removing paragraphs (b)(10) and (c)(7).

§ 110.158 [Amended]

64. Section 110.158 is amended by removing and reserving paragraph (b)(1), and by removing paragraph (b)(8).

§ 110.159 [Amended]

65. Section 110.159 is amended by removing the last sentence of paragraph (a)(1) and the last two sentences of paragraph (a)(4), by removing the note immediately following paragraph (a)(6), and by removing paragraphs (b)(1) through (b)(6).

§ 110.168 [Amended]

66. Section 110.168 is amended by removing paragraphs (a)(7)(x), (d)(4)(iv), by removing and reserving paragraphs (h)(1), (h)(6), (h)(8), (h)(9), and by removing paragraph (h)(11).

§ 110.170 [Amended]

67. Section 110.170 is amended by removing paragraph (b)(4).

§ 110.173 [Amended]

68. Section 110.173 is amended by removing and reserving paragraph (b)(1) and by removing paragraph (b)(13).

§ 110.179 [Amended]

69. Section 110.179 is amended by removing and reserving paragraphs (b)(1) and (b)(3).

§ 110.182 [Amended]

70. Section 110.182 is amended by removing and reserving paragraph (b)(2) and by removing paragraph (d).

§ 110.185 [Amended]

71. Section 110.185 is amended by removing paragraphs (b)(1) and (b)(2).

§ 110.188 [Amended]

72. Section 110.188 is amended by removing and reserving paragraphs (b)(1), (b)(2), and (b)(5), and by removing paragraph (b)(8).

§ 110.189a [Redesignated as § 110.189 and amended]

73. Section 110.189a is redesignated as § 110.189 and is amended by removing paragraph (b)(4).

§ 110.190 [Amended]

74. Section 110.190 is amended by removing paragraph (b).

§ 110.195 [Amended]

75. Section 110.195 is amended by removing the note following the paragraph (c)(6), and removing and reserving paragraphs (c)(1), (c)(2), (c)(5), and (c)(7).

§ 110.196 [Amended]

76. Section 110.196 is amended by removing paragraph (b)(7).

§ 110.197 [Amended]

77. Section 110.197 is amended by removing paragraph (b)(7).

§ 110.205 [Amended]

78. Section 110.205 is amended by removing and reserving paragraphs (b)(1), (b)(3), and (b)(6).

§ 110.210 [Amended]

79. Section 110.210 is amended by removing paragraph (b)(3) and by removing the note at the end of the section.

§ 110.212 [Amended]

80. Section 110.212 is amended by removing paragraphs (a)(3)(ii) and (a)(3)(iii), and by removing and reserving paragraphs (a)(2)(ii) and (b)(2).

§§ 110.214 and 165.1109 [Amended]

81. Section 110.214 is amended by removing paragraphs (a)(10)(ii), (a)(11)(ii), (a)(12)(ii), (a)(18), and (b)(15), by removing and reserving paragraph (b)(7), and by redesignating paragraphs (a)(14), (a)(15) and (a)(16) as § 165.1109(a)(2), (a)(3), and (a)(4) respectively.

§ 110.215 [Amended]

82. Section 110.215 is amended by removing and reserving paragraph (b)(3).

§ 110.216 [Amended]

83. Section 110.216 is amended by removing paragraph (b)(5).

84. Section 110.218(b)(1) is revised to read as follows:

§ 110.218 Pacific Ocean at San Clemente Island, CA; in vicinity of Wilson Cove.

* * * * *

(b) *The regulations.* (1) This area is reserved exclusively for anchorage of United States Government vessels or vessels temporarily operating under Government direction, and no vessel, except in an emergency, shall anchor in the area without obtaining permission from the Commander, Naval Base, San Diego, CA or his designated representative.

* * * * *

85. Section 110.220(b) is revised to read as follows:

§ 110.220 Pacific Ocean at San Nicolas Island, CA; restricted anchorage areas.

* * * * *

(b) *The regulations.* Except in an emergency, no vessel shall anchor in these restricted areas without authority of the Commander, Naval Base, San Diego, CA or his designated representative.

§ 110.224 [Amended]

86. Section 110.224 is amended by removing paragraphs (a)(1), (a)(9), (a)(14), (a)(16), and (a)(17), by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), (a)(8), and (a)(15) as § 165.1113 (a) through (g) respectively, and by redesignating paragraph (a)(6) as (a)(1) and by redesignating paragraphs (a)(10) through (a)(13) as (a)(2) through (a)(5), respectively. Section 110.224(a), (b)(1) and (2) are revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

(a) *General Regulations.* (1) No vessel in an unseaworthy condition which may become a menace or obstruction to navigation or anchorage of other vessels may occupy an anchorage, except when circumstances create conditions of imminent peril to personnel or when authorized by the Captain of the Port.

(2) Each vessel that does not have sufficient personnel on board to weigh anchor at any time, must anchor with two anchors and mooring swivel, unless authorized by the Captain of the Port.

(3) Deep-draft vessels shall take precedence over vessels of less draft in the deeper portions of all anchorages. Light-draft barges and vessels shall anchor away from the deeper portions of the anchorage so as not to interfere with the anchoring of deep-draft vessels. Should circumstances warrant, the Captain of the Port may require lighter draft vessels to move to provide safe anchorage, particularly in Anchorages 7 and 9, for deep-draft vessels.

(4) Barges towed in tandem to any anchorage shall nest together when anchoring.

(5) Each vessel that is notified by the Captain of the Port or his authorized representative to shift location shall do so promptly as directed.

(b) Naval/Army Anchorages. In addition to the General Regulations in paragraph (a) of this section, the following regulations apply to each naval/army anchorage described in this section.

(1) Naval/Army anchorages are intended for public vessels of the United States. They may be used by other vessels when not required for use by public vessels.

(2) Non-public vessels using a naval/army anchorage shall promptly notify the Captain of the Port upon anchoring and upon departure and shall be prepared to move within one hour after notice that the anchorage is required for public vessels.

* * * * *

§ 110.229 [Removed and reserved]

87. Section 110.229 is removed and reserved.

§ 110.235 [Amended]

88. Section 110.235 is amended by removing paragraph (b)(8).

§ 110.236 [Amended]

89. Section 110.236 is amended by removing and reserving paragraph (b)(6) and by redesignating paragraphs (a)(2), (a)(4), (a)(6) and (b)(5) as § 165.1405(a)(1), (a)(2), (a)(3), and (b), respectively.

§ 110.238 [Amended]

90. Section 110.238 is amended by removing paragraph (b)(5)(ii).

§ 110.250 [Amended]

91. Section 110.250 is amended by removing the last two sentences of paragraph (b)(3), by removing and reserving paragraph (b)(4), and by removing paragraphs (b)(7), (b)(8), and (b)(9).

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

92. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

93. Newly designated § 165.1109(a)(2)–(a)(4) are revised to read as follows:

§ 165.1109 San Pedro Bay, CA.

(a) The following are Regulated Navigation Areas—(1) The waters of San Pedro Bay enclosed by a line beginning at Los Angeles Light, latitude 33°42'30.6"N, longitude 118°15'02.5"W; thence easterly along the Los Angeles-Long Beach Middle Breakwater to Long Beach Channel Entrance Light 2, latitude 33°43'23.5"N, longitude 118°10'46.9"W; thence southerly to latitude 33°42'09.9"N; longitude 118°10'23.0"W; thence westerly to latitude 33°42'09.0"N, longitude 118°11'33.3"W; thence southwesterly to latitude 33°41'40.5"N, longitude 118°13'02.2"W; thence westerly to latitude 33°41'36.1"N, longitude 118°13'43.0"W; thence southwesterly to latitude 33°41'13.8"N, longitude 118°14'52.5"W; thence northerly to the beginning point at Los Angeles Light.

(2) Non-anchorage U (Los Angeles Harbor). An area enclosed by a line beginning at latitude 33°44'00.0"N, longitude 118°15'12.2"W; thence southerly to latitude 33°43'48.7"N, longitude 118°15'06.4"W; thence easterly to latitude 33°43'49.7"N, longitude 118°15'03.9"W; thence northerly to latitude 33°44'01.1"N, longitude 118°15'09.2"W; thence along the south containment dike to the beginning point.

(i) No vessel may anchor or moor in this non-anchorage.

(ii) Dragging, seining, trawling or other fishing operations, and activities which might foul submerged installations within this non-anchorage are prohibited.

Note: This non-anchorage is established for protection of a submerged sewer outfall pipeline.

(3) Non-anchorage V (Long Beach Harbor). An area enclosed by a line beginning at Long Beach Breakwater East End Light 1, latitude 33°43'23.5"N, longitude 118°08'10.1"W; thence northerly to latitude 33°43'38.4"N, longitude 118°08'10.1"W; thence easterly to latitude 33°43'38.4"N, longitude 118°07'45.5"W; thence southeasterly to latitude 33°43'27.3"N, longitude 118°07'36.8"W; thence to the beginning point.

(i) No vessel may anchor or moor in this non-anchorage.

(ii) Dragging, seining, trawling, or other fishing operations, and activities which might foul submerged installations within this non-anchorage area are prohibited.

Note: This non-anchorage is established for protection of a submerged pipeline.

(4) Non-anchorage W (Mouth of Entrance Channel to Alamitos Bay) Non-anchorage Area W is a semicircle with a 460m (approximately 1,509 ft.) radius that is centered at midchannel on a line between Alamitos Bay West Jetty Light 1 and Alamitos Bay East Jetty Light 2 and which extends seaward from that line.

(i) No vessel may anchor or moor in this non-anchorage.

* * * * *

94. Newly designated § 165.1113 is revised to read as follows:

§ 165.1113 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

(a) No vessel may permanently moor in areas adjacent to the San Joaquin River Deep Water Channel except with the written permission of the Captain of the Port.

(b) Each vessel anchoring for safety reasons in the San Joaquin River Deep Water Channel, the Sacramento River Deep Water Ship Channel, or the Stockton or West Sacramento Turning Basins shall be positioned as near to the edge of the channel or turning basin as possible. Such vessels shall not interfere with navigation, or obstruct the approach to any pier, wharf, slip, or boat harbor and shall move as soon as possible or when notified to move by the Captain of the Port.

(c) No vessel may anchor within a tunnel, cable, or pipeline area indicated on a U.S. Government chart.

(d) No vessel may moor, anchor, or tie up to any pier, wharf, or other vessel in such a manner as to extend into an adjacent channel or fairway.

(e) Each vessel carrying explosives shall only anchor in an explosives anchorage.

(f) No vessel other than a vessel under Federal supervision may go alongside or moor to any Government-owned vessel, mooring buoy, pontoon boom, including their anchor cables, or any of their appendages. No vessel may obstruct or interfere in any manner with the mooring, unmooring, or servicing of vessels owned by the United States.

(g) Where these regulations require that a vessel notify the Captain of the Port, the operator of the vessel shall call the San Francisco Vessel Traffic Service.

Note: Vessel Traffic Service guards VHF-FM Channel 13 (156.65 MHz) and Channel 16 (156.8 MHz); call sign "SAN FRANCISCO VESSEL TRAFFIC SERVICE".

Dated: February 2, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88-5204 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 696

Special Treatment of Institutions of Higher Education Located in Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands

AGENCY: Department of Education.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 23, 1987, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) related to the implementation of waivers and priorities for institutions of higher education located in Guam, American Samoa, the Virgin Islands, the Trust

Terriroty of the Pacific Islands, and the Northern Mariana Islands (52 FR 39896–39897). The comment period for this proposed rule ended on November 23, 1987.

In response to requests by representatives of institutions most affected by this proposed rule, the Secretary extends the comment period for all provisions of the NPRM of October 23, 1987.

DATE: The comment period for all provisions of the October 23, 1987, NPRM (52 FR 39896–39897) is extended until April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Leo Paszkiewicz, Office of Postsecondary Education, U.S. Department of Education (Room 4060, ROB–3) 400 Maryland Avenue SW., Washington DC 20202. Telephone (202) 732–3551.

Dated: March 8, 1988

William J. Bennett,

Secretary of Education.

[FR Doc. 88–5363 Filed 3–10–88; 8:45 am]

BILLING CODE 4000–01–M

Notices

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: March 29, 1988.

Time: 1 p.m.

Place: Tobacco Division, Agricultural marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss recommendations from the industry for improving the marketing of flue-cured tobacco during the 1988 season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: March 8, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–5408 Filed 3–10–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 374]

Resolution and Order Approving the Application of the City of Mobile, AL, for a Special-Purpose Subzone for ADDSCO Industries, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, filed with the Foreign-Trade Zones Board (the Board) on June 20, 1986, requesting special-purpose subzone status for the shipyard of ADDSCO Industries, Inc., within the Mobile Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, ADDSCO Industries, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81c) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Mobile, Alabama, grantee of Foreign-Trade Zone No. 82, has made application (filed June 20, 1986, FTZ Docket 22–86, 51 FR 25075) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of ADDSCO Industries, Inc., in Mobile, Alabama;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed June 20, 1986, the Board hereby authorizes the establishment of a subzone at the shipyard of ADDSCO Industries, designated on the records of the Board as Foreign-Trade Subzone No. 82A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basic steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 4th day of March 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration; Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–5414 Filedd 3–10–88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 373]

Resolution and Order Approving the Application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc. for a Special-Purpose Subzone for Moss Point Marine, Inc. in Escatawpa, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, filed with the Foreign-Trade Zones Board (the Board) on December 4, 1985, requesting special-purpose subzone status for the shipyard of Moss Point Marine, Inc., within the Pascagoula Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Moss Point Marine, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81c) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 92, has made application (filed December 4, 1985, FTZ Docket 42–85, 50 FR 51442) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of Moss Point Marine, Inc., in Escatawpa, Mississippi;

Whereas, notice of said application has been given and published, an full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed December 4, 1985, the Board hereby authorizes the establishment of a subzone at the shipyard of Moss Point Marine, designated on the records of the Board as Foreign-Trade Subzone, No. 92A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basis steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, and necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness, whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 4th day of March 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce For Import Administration Chairman, Committe of Alternates.

Attest:

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–5415 Filed 3–10–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held April 6, 1988, 9:00 a.m. to 3:00 p.m., Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00–11:45 a.m. Introduction of new members; objectives of Subcommittee; briefing on Export Administration developments; working group status reports.

Executive Session: 1:30–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Sharon Gongwer, (202) 377–4275.

Date: March 7, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–5367 Filed 3–10–88; 8:45 am]

BILLING CODE 3510-DT-M

Princeton University, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 87–211R. Applicant: Princeton University, Princeton, NJ 08544. Instrument: Surface Science Facility and Accessories. Manufacturer: University of Waterloo, Canada. Intended Use: See notice at 52 FR 27039, July 17, 1987. Reasons for this Decision: The foreign apparatus provides a pressure of 10^{-11} torr, a low temperature (30–80K) He source and allows for both cluster and crystal experiments and detection of power oscillation (under He cooled conditions) of $\approx 10^{-13}$ watt.

Docket Number: 88–038. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Streak Camera, Model Imacon 500. Manufacturer: Hadland Photonics, United Kingdom. Intended Use: See notice at 52 FR 48557, December 23, 1987. Reasons for this Decision; The foreign article provides a guaranteed temporal resolution of <10 picosecond.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–5416 Filed 3–10–88; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision on Application for Duty-free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88–028. Applicant: University of Wisconsin, Madison, WI 53706. Instrument: Mass Spectrometer, Model VG 354/S. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 52 FR 46813, December 10, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered, June 30, 1987.

Reasons: The foreign instrument provides precise automated variable multicollector thermal ionization of isotopic ratios on small samples (10^{-9} to 10^{-6} grams). The capabilities of the foreign instrument described above are pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the rquest, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no bid response to a formal request for quotation sent to the only known domestic manufacturer, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–5417 Filed 3–10–88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 80109-8009]

Federal Information Processing Standard (FIPS) for Programmer's Hierarchical Interactive Graphics System (PHIGS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal Information Processing Standard (FIPS).

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Programmer's Hierarchical Interactive Graphics System (PHIGS) is proposed for Federal agency use. This proposed FIPS adopts the forthcoming American National Standard X3.144–198X. This standard specifies the control and data interchange between an application program and its graphic support system. This standard will improve the portability of graphics application programs among different manufacturers' computer systems.

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, imlementation, and maintenance of the standard; and (2) a specifications section, ANIS X3.144–198X, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the technical specifications from the Global Engineering Documents, 1990 M Street NW., Suite 400, Washington, DC 20036, (800) 854–7179.

DATE: Comments on this proposed FIPS must be received on or before June 9, 1988.

ADDRESS: Written comments concerning the adoption of PHIGS as a FIPS should be sent to: Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for PHIGS, Technology Building, Room B–154, National Bureau of Standards, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Benigni, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–3266.

Ernest Ambler,

Director.

Date: March 7, 1988.

Federal Information Processing Standards Publication (date)________

Announcing the Standard for Programmer's Hierarchical Interactive Graphics System (PHIGS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. Name of Standard

Programmer's Herarchical Interactive Graphics System (PHIGS) (FIPS PUB ________).

2. Category of Standard

Software Standard, Graphics.

3. Explanation

This publication announces the adoption of the American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI X3.144–198X, as a Federal Information Processing Standard (FIPS). This standard specifies the control and data interchange between an application program and its graphic support system. It provides a set of functions and programming language bindings (or toolbox package) for the definition, display and modification of two-dimensional (2D) or three-dimensional (3D) graphical data. In addition, this standard supports highly interactive processing and geometric articulation, multi-level or hierarchical graphics data, and rapid modification of both the graphics data and the relationships between the graphical data. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority

Secretary of Commerce.

5. Maintenance Agency

Department of Commerce, National Bureau of Standards (Institute of Computer Sciences and Technology).

6. Cross Index

American National Standard (ANSI, X3.144–198X) Programmer's Hierarchical Interactive Graphics System (PHIGS).

7. Related Documents

a. Federal Information Processing Standards Publication (FIPS PUB) 120, Graphical Kernel System (GKS).

b. Federal Information Processing Standards Publication (FIPS PUB) 128, Computer Graphics Metafile (CGM).

c. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

d. American National Standard Graphical Kernel System, GKS, ANSI/ASC X3.124–1985.

e. American National Computer Graphics Metafile, CGM, ANSI/ASC X3.122–1986.

f. ISO 646–1983, Information Processing—7-Bit Coded Character Set for Information Interchange.

g. ISO 2022–1982, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.

h. ISO 2382/13, Data Processing—Vocabulary—Part 13: Computer Graphics.

i. ISO 6093, Information Processing—Representation of numeric values in character strings for information interchange (in course of preparation).

j. ISO 7942–1985, Information Processing Systems—Computer Graphics—Functional Specification of the Graphical Kernel System (GKS).

k. ISO 8632–1986, Information Processing Systems—Computer Graphics Metafile for the Storage and Transfer of Picture Description Information (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).

1. ISO 8805, Information Processing—Computer Graphics—Graphical Kernel System (GKS) 3D Extensions Functional Description (in course of preparation).

8. Objectives

The primary objectives of this standard are:

—to allow very highly interactive graphics application programs using 2D or 3D hierarchically structured graphics data to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.

—to aid the understanding and use of dynamic hierarchical graphics methods by application programmers.

—to aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

—to encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.

—to aid graphics application programmers in understanding and using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. Applicability

a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use. It is specifically designed to meet the performance requirements of such demanding applications as Computer Aided Design/Computer Aided Engineering/Computer Aided Manufacturing, command and control, molecular modelling, simulation and process control. It emphasizes the support of applications needing a highly dynamic, highly interactive operator interface and expecting rapid screen update of complex images to be performed by the display system.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—The graphics application is very highly interactive, or contains hierarchically structured graphics data, or requires rapid modification of 2D or 3D graphics data and the relationships among the data.

—It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.

—The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.

—The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.

—The graphics program will or might be run on equipment other than that for which the program is initially written.

—The graphics program is to be understood and maintained by programmers other than the original ones.

—The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Nonstandard features of implementations of PHIGS should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of graphics programs and future conversion more difficult and costly.

10. Specifications

American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI X3.144–198X, defines the scope of the specifications, the syntax and semantics of the PHIGS elements and requirements for conforming implementations. All of these specifications apply to Federal Government implementations of this standard.

ANSI X3.144–198X defines a language independent nucleus of a graphics system for integration into a programming language. Thus, it is embedded in a language layer obeying the particular conventions of the language. This means that the standard is separated into two parts. Part 1 represents the functional aspects of PHIGS. Part 2 contains bindings of PHIGS functions to actual programming languages. These bindings are developed in cooperation with the voluntary industry standards committees of the various languages. A binding of the PHIGS functionality to the Programming Language FORTRAN (ANSI X3.9–1978), known as FORTRAN '77, appears in the first version of this standard. Subsequent language bindings for C, Ada, PASCAL, etc., will be added periodically as they become available.

As these bindings are approved by ANSI, each language binding will become part of this standard.

11. Implementation

The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretations of this standard.

11.1 Acquisition of Implementations

This standard becomes effective six months after the date of publication of final document in the **Federal Register**. Implementations which meet the requirements of the applicability section and acquired after this date should comply with this standard. Conformance to this standard should be considered whether toolbox packages are developed internally, acquired as part of an ADP system procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce toolbox packages conforming to the standard. The transition period begins on the effective date and continues for twelve (12) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, a toolbox package not conforming to this standard may be acquired for interim use during the transition period.

11.2 Interpretation of this FIPS

Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: PHIGS Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

12. Waivers

Under certain exceptional circumstances the head of the agency is authorized to waive the application of the provisions of this FIPS PUB. Exceptional circumstances which would warrant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 88-5418 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-CH-M

National Oceanic and Atmospheric Administration

Marine Mammals; Human/Dolphin Swim Programs; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS) is reviewing its authorization of human/dolphin swim programs issued pursuant to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407). NMFS is convening two (2) meetings to ensure that all interested parties have an opportunity to comment on the issuance of authorizations for the conduct of human/dolphin swim programs. Those persons wishing to comment on the swim programs will be required to sign in at the meeting location and will be allowed ten (10) minutes to address the issue. If more than ten (10) minutes is needed, prior notification to NMFS is required.

DATES: The meetings will be held on April 1, 1988, in Washington, DC, 9:00 a.m.–noon; and April 5, 1988, in Islamorada, Florida; 7:00 p.m.–10:00 p.m.

ADDRESSES: Universal Building South, Room 928, 1825 Connecticut Avenue NW., Washington, DC; and Islamorada Fire House, US 1 at Mile Marker 80, Islamorada, Florida.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235 (202/673–5348).

SUPPLEMENTARY INFORMATION: MNFS began issuing authorization to conduct human/dolphin swim programs in 1985 under public display permits issued pursuant to the Marine Mammal Protection Act of 1972. Three (3) authorizations have been issued and three (3) additional requests for authorizations have been submitted to NMFS. NMFS has considered the programs experimental in nature until sufficient information could be obtained to assess the effects of the programs on the health and well-being of the animals involved. In the interim questions have also arisen focused on whether or not such programs constitute public display as envisioned by the Act. Concern for human safety and liability are also matters for discussion. These meetings are being held to ensure full opportunity for interested members of the public and government agencies to provide NMPS with comments on the continued issuance of authorizations to conduct human/dolphin swim programs.

Dated: March 8, 1988.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-5424 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled a working meeting of its Bering Sea/Aleutian Islands Groundfish Plan Team, March 28, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, N.E., Room 2079, Building 4, Seattle, WA, to review a working draft of the Amendment 12 package which includes a proposal to change the upper limit of the optimum yield range, and five other amendment topics. On March 29 the public meeting will convene in Room 2143, Building 4 of the Center, and will adjourn the same day.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: March 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-5425 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene separate public meetings of its Summer Flounder Advisory Panel, and its Summer Flounder Committee, at the Ramada Inn, Essington, PA. On March 14, 1988, from 2 p.m. to 4 p.m., the Summer Flounder Advisory Panel will review public hearing comments regarding the Mid-Atlantic Fishery Management Council's proposed summer flounder fishery management plan. Also on March 14 from 4 p.m. to 6 p.m., the Summer Flounder Committee will conduct the same review as stated for the Summer Flounder Advisory Panel, as well as reassess its position regarding the summer flounder plan. A detailed agenda will be available to the public on or about March 4, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-5426 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

COUNCIL ON ENVIRONMENTAL QUALITY

Availability of Annual Report on Endangered Species Act Exemption

March 3, 1988.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only: Notice of Availability of Annual Report on Endangered Species Act Exemption.

SUMMARY: This notice announces the availability of the Annual Report submitted by Basin Electric Power Cooperative, as Project Manager for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead Federal agency in the project is the Rural Electrification Administration.

DATES: The Report was submitted to the Council on January 19, 1988.

SUPPLEMENTARY INFORMATION: Subsection (L)(2) of the Endangerd Species Act Amendments of 1978 (16 U.S.C. 1536) requires that any agency granted an exemption under subsection (h) of the Endangered Species Act must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by the law. Subsection (L)(2) further requires that the Council publish availability of the report in the **Federal Register.**

On February 7, 1979 the Endangered Species Committee granted an exemption from the requirements of the Endangered Species Act to Grayrocks Dam. In granting the Exemption Order, the Committee, as required by the Act, established requirements for reasonable mitigation and enhancement measures. These requirements are set out in an "Agreement of Settlement and Compromise" and is part of the Annual Report announced herein.

ADDRESS: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58501–0564; Telephone: (701) 223–0441.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa S. Defensor, Staff Attorney, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503. (202) 395–5754.

A. Alan Hill,

Chairman.

[FR Doc. 88-5357 Filed 3-10-88; 8:45 am]

BILLING CODE 3125-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Closed Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, P.L. 92–463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Monday, March 21, 1988, beginning 9:00 a.m.; Tuesday, March 22, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302–0268.

Type of Meeting: Closed.

CONTACT PERSON: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-5331 Filed 3-10-88; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 16, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during 1988, in excess of the designated levels.

Background

During negotiations held December 14–31, 1987 between the Governments of the United States and the United Mexican States, agreement was reached to establish a new bilateral agreement concerning cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1988 and extends through December 31, 1991.

The agreement establishes, among other things, a specific limit for cotton and man-made fiber broadwoven fabric in Categories 218–220, 225–227, 313–326, 611–617 and 625–629, as a group, and sublimits within the group for Categories 218, 219, 313, 314, 315, 317, 326 and 611; Categories 201pt./669pt. (cotton and man-made fiber cordage), 300/301/607pt. (with a sublimit for cotton carded yarn in Category 300), 334, 336/636, 341/641 (with a sublimit for cotton and man-made non-knit blouses made with two or more colors in the warp and/or the filling), 435, 604–A (staple synthetic yarn), 604–O/607–O, 635 and 669–P (man-made fiber bags); designated consultation levels for cotton, wool and man-made fiber textile products in Categories 222, 223, 229, 337/637, 359–O, 363, 369–D (cotton dishtowels), 369–O (excluding cotton webs, wadding and batting), 410, 433, 443, 447, 621, 632, 659–H (man-made fiber headwar), 659–O, 669–O and 670, and minimum consultation levels for cotton, wool and man-made fiber products in Categories 345, 350, 442, 459, 646 and 650, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

The agreement establishes a special regime for certain categories of apparel products made of American formed and cut fabric parts. Listed below are the designated percentages of the specific limit for these categories which are not subject to the special regime:

Category	Percentage
335	25
338/339/638/639	50
340/640	25
342/642	20
347/348	13.5
349/649	20
351/651	15
352/652	45
359–C (coveralls & overalls).	10
369–B (bags)	15
369–U (shoe uppers)	15
633	10
634	15
647/648	10
659–C (coveralls & overalls).	10
659–S (swimwear)	10
666	50

Information on procedures required to paticipate in the Special Regime will be published in a separate directive.

Charges will be made to the limits established for the foregoing categories as data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice dated December 11, 1987 (52 FR 47745).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral

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agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

COMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 16, 1988, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12 mo. limit [1]
218–220, 225–227, 313–326, 611–617 and 625–629, as a group.	44,000,000 square yards equivalent.
Sublevels within the group	
218	1,600,000 square yards.
219	11,000,000 square yards.
313	22,000,000 square yards.
314	11,000,000 square yards.
315	11,000,000 square yards.
317	11,000,000 square yards.
326	1,600,000 square yards.
611	2,600,000 square yards.
Individual limits not in the group	
201pt./669pt. [2]	2,500,00 pounds.
222	900,000 pounds.
223	1,480,000 pounds.
229	2,200,000 pounds.
300/301/607pt. [3]	13,500,000 pounds of which not more than 7,500,000 pounds shall be in Category 300.
334	70,000 dozen.
335	120,000 dozen.
336/636	180,000 dozen.
337/637	60,000 dozen.
338/339/638/639	1,100,000 dozen.
340/640	360,000 dozen.
341/641	775,000 dozen of which not more than 280,000 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341–Y/641–Y. [4]
342/642	290,000 dozen.
345	19,022 dozen.
347/348	2,150,000 dozen.
349/649	2,500,000 dozen.
350	13,725 dozen.
351/651	290,000 dozen.
352/652	2,500,000 dozen.
359–C [5]	1,600,000 pounds.
359–0 [6]	300,000 pounds.
363	5,500,000 numbers.
369–B [7]	2,500,000 pounds.
369–D [8]	400,000 pounds.
369–U [9]	3,350,000 pounds.
369–0 [10]	400,000 pounds.
410	475,000 square yards.
433	11,000 dozen.
435	10,000 dozen.
442	5,556 dozen.
443	84,000 numbers.
447	12,000 dozen.
459	50,000 pounds.
604–A [11]	1,300,000 pounds.
604–0/607–O [12]	4,000,000 pounds.
621	200,000 pounds.
632	750,000 dozen pairs.
633	65,000 dozen.
634	65,000 dozen.
635	115,000 dozen.
646	19,022 dozen.
647/648	1,600,000 dozen.
650	13,725 dozen.
659–C [13]	1,700,000 pounds.
659–H [14]	350,000 pounds.
659–S [15]	500,000 pounds.
659–0 [16]	1,500,000 pounds.
666	7,200,000 pounds.
669–P [17]	1,300,000 pounds.
669–0 [18]	650,000 pounds.
670	10,000,000 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 201pt., only TSUSA numbers 315.0500, 315.1000, 315.1500, 316.5500 and 316.5800; in Category 669pt., TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[3] Categories 300/301, and in 607pt. only TSUSA number 310.0034.

[4] In Categories 341–Y/641–Y, only TSUSA number 384.4608, 384.4610, 384.4612, 384.0505, 384.0511, 384.0512, 384.2302, 384.2304, 384.2307, 384.9110, 384.9120 and 384.4708.

[5] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0828 and 384.5222.

[6] In Category 359–0, all TSUSA numbers except 381.0822, 381.6510, 384.0828 and 384.5222.

[7] In Category 369–B, only TSUSA numbers 706.3210, 706.3260, 706.3640, 706.3650, 706.4106 and 706.4111.

[8] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2660.

[9] In Category 369–U, only TSUSA numbers 366.0410 and 366.5210.

[10] In Category 369–0, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2660 in Category 369–D; 366.0410, 366.5210 in Category 369–U; 706.3210, 706.3260, 706.3640, 706.3650, 706.4106 and 706.4111 in Category 369–B; and 365.0260 (cotton waste and wadding).

[11] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

[12] In Category 604–O/607–O, all TSUSA numbers except 310.5049 and 310.6045 in Category 604–O and all TSUSA numbers except 310.6034 in Category 607–O.

[13] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[14] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[15] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

[16] In Category 659–0, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, 384.9310 in Category 659–C; 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659–H; and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659–S.

[17] In Category 669–P, only TSUSA numbers 385.5300.

[18] In Category 669–O, all TSUSA numbers except 348.0065, 384.0075, 348.0565, 348.0575 in Category 669pt.; and 385.5300 in Category 669–P.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during the period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 88–5366 Filed 3–10–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 24, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 27842) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Two letters were received from the current contractor for this belt commenting on the proposed addition. That firm indicated that the belt is a DOD industrial preparedness program item, a safety critical life support item, and must be manufactured under stringent specification reauirements. The commentor indicated further that his firm has been a consistent supplier to the Government for the item and its addition to the Procurement List would have a serious negative economic impact on his firm and that the Department of Navy had indicated that there had not been a facility survey of the workshop to determine its capability to produce the belt.

The workshop proposing to produce this belt was inspected by the procuring activity and was determined to be capable of producing the belt in compliance with Government's requirements. In addition, the workshop has produced a similar belt satisfactorily for the Government. The fact that the belt is a DOD industrial preparedness program item does not preclude its being added to the Procurement List. There are a number of items on the Procurement List for which the producing workshops have been identified as DOD industrial preparedness producers.

The value of the contract of the current contractor for this belt represents approximately 3.4 percent of the firm's total sales. This is not considered to be severe impact.

This belt meets the definition of suitability contained in 41 CFR 51–2.6.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988:

Commodity

Belt, Aircraft Safety; 1680–00–407–5335.

C.W. Fletcher,

Executive Director.

[FR Doc. 88–5373 Filed 3–10–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions and Deletions to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 military resale commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments Must be Received on or Before April 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1775 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the military resales commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following military resale commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926):

Military Resale Item Nos. and Names

No. 620	Vest, Safety, Joggers, Small
No. 621	Vest, Safety, Joggers, Medium
No. 622	Vest, Safety, Joggers, Large
No. 820	Opener, Can & Bottle
No. 824	Slicer, Cheese
No. 826	Peeler, Vegetable
No. 828	Cutter, Pizza
No. 832	Spatula, Plate & Bowl
No. 850	Bib, Baby, Cotton
No. 860	Hooks, Laundry, Plastic
No. 862	Brush, Lint, Plastic

Services

Cleaning of Magnetic Tapes,
Robins Air Force Base, Georgia

Janitorial Service, Fort Gillem, Georgia

Litter Pick-Up, Tinker Air Force Base, Oklahoma

Preservation and Packaging, New Cumberland Army Depot, Pennsylvania

Repair of Strap, Air Cargo (1670–00–725–1437), Robins Air Force Base, Georgia

Deletions

It is proposed to delete the following military resale commodities, commodity, and service from Procurement List 1988, December 10, 1987 (52 FR 46926):

Military Resale Item Nos. and Name

No. 940	Towel, Heritage design
No. 942	Dish Cloth, Heritage design

Refill, List Finder, Automatic, 7510–00–285–2800

Administrative Services, Environmental Protection Agency, at the following locations:
  Beltsville Research Laboratory, Beltsville, Maryland
  6100 Executive Boulevard, Rockville, Maryland
  9100 Brookville Road, Silver Spring, Maryland

C. W. Fletcher,

Executive Director.

[FR Doc. 88–5374 Filed 3–10–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statement; Malmstrom AFB, MT

The United States Air Force, Department of Defense, will prepare an Environmental Impact Statement (EIS) for use in decision making regarding the proposed basing of a second KC–135R squadron at Malmstrom AFB, Montana.

The aircraft would begin arriving during the fourth quarter of Fiscal Year 1991. The 13 additional aircraft would result in an increase of about 250 personnel. The aircraft would fly about 900 missions per year.

The proposed KC–135R basing action will be incorporated in the EIS for the Peacekeeper Rail Garrison System, previously announced. The US Air Force is planning to conduct a public scoping meeting to determine the nature, extent, and scope of the environmental issues and concerns to be addressed in the EIS. The KC–135R proposal will be included in the scoping meeting for the

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Peacekeeper Rail Garrison Sysem to be held on 23 March 1988 at 7:00 p.m. in the Great Falls High School, Great Falls, Montana.

For further information concerning the proposed basing of a second KC–135R squadron at Malmstrom AFB, MT, contact Mr. William Taylor, HQ SAC/DEVE, Offutt AFB, NE 68113–5001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–5345 Filed 3–10–88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Tuesday, March 29, 1988, 9:00 a.m. to 6:00 p.m. Wednesday, March 30, 1988, 9:00 a.m. to 1:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Wallace R. Kornack Executive Director, ACNFS, S–3, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586–1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda: March 29, 1988—Technical Session

- Presentation of DOE's Safety Philosophy, Approach and Program
- Noon to 1:00 p.m.—Lunch
- National Academy of Sciences (NAS) Presentation of NAS/NAE Report on Production Reactors
- Status of NAS/NAE Study on other Class A Reactors
- DOE Response to NAS/NAE Report
- New Production Reactor: Status Report
- Public Comment

March 30, 1988—Planning Session

- Committee Administrative Matters
- Committee Discussion of Scope and Priorities
- Discussion of Possible Subcommittees
- Agenda for Next Meeting
- Public Comment

Public Participation. The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on March 7, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88–5395 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Uranium Mill Tailings; Naturita, CO

AGENCY: Department of Energy.

ACTION: Program Information Notice: Advance notice of decision on proposed inclusion of a private property near Naturita, Colorado as a vicinity property for remedial action under section 101 of Pub. L. 95–604, the "Uranium Mill Tailings Radiation Control Act of 1978", enacted on November 8, 1978.

SUMMARY: The "Uranium Mill Tailings Radiation Control Act of 1978" authorized the Department of Energy (DOE) to conduct in cooperation with interested states, Indian Tribes, and persons who own or control certain inactive mill tailings sites, a program of assessment and remedial action to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards at these sites and at nearby vicinity properties.

The DOE has been requested by the Hecla Mining Company to include its "Durita" property as a vicinity property for the purposes of remedial action under the Act.

This advance notice is to alert interested parties that DOE will be soliciting the views of interested parties on its proposed decision regarding the inclusion of the "Durita" property. In a subsequent notice, which we expect to issue within 30 days, DOE will provide more details on the request and seek comments on its decision.

FOR FURTHER INFORMATION CONTACT: Mr. W. John Arthur III, Acting Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico, 87108, telephone: (505) 844–3941, or Mr. James A. Turi, Director, Division of Uranium Mill Tailings Projects, Office of Nuclear Energy, U.S. Department of Energy, Mail Stop NE–22, Washington, DC 20545, telephone: (301) 353–2585.

Issued in Washington, DC, March 3, 1988.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 88–5391 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM and Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SD(EU)–50, for the retransfer of 8 irradiated fuel rods containing 3,420 grams of uranium enriched to 1.46 percent in the isotope uranium-235 and 30 grams of plutonium from Belgium to Switzerland for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5387 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; Norway and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(SW)–18, for the transfer of 10 kilograms of uranium samples enriched to approximately 4.5 percent in the isotope uranium-235 from Sweden to the Institutt for Energiteknikk, Kjeller, Norway, for use in safeguards control analysis. After examination, the samples will be disposed of as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: March 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5389 Filed 3–10–88, 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Ageement; Proposed Subsequent Arrangement; Sweden and Euratom

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU (SW)–78, for the transfer from Sweden to the Federal Republic of Germany of 28,302 kilograms of uranium oxide, enriched to approximately 4 percent in the isotope uranium-235, for fabrication of fuel for use in light water power reactors in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: March 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5390 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the post-irradiation examination of 8 irradiated rods at the Swiss Institute for Reactor Research (EIR), Wuerlingen, Switzerland. This subsequent arrangement records the joint determination of the Government of the United States of America and the Government of Switzerland that safeguards may be effectively applied to the post-irradiation examination at the EIR facility in Switzerland for the said irradiated rods.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 8, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5388 Filed 3–10–88; 8:45am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88–05–LNG]

Distrigas Corp.; Order Granting Amended Authorization To Import Algerian Liquefied Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting amended authorization to import Algerian liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order amending Distrigas Corporation's (Distrigas) current authorization, issued in ERA Docket No. 77–011–LNG On December 31, 1977, under which Distrigas imports liquefied natural gas (LNG) from Algeria. The order, issued in ERA Docket No. 88–05–LNG, authorized Distrigas to import up to five cargoes of LNG prior to May 15, 1988, at prices lower than are currently authorized.

A copy of this order is available in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20505, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on March 4, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–5396 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 88–07; Certification Notice—12]

Coal Capability of New Electric Powerplants; Filing of Certification of Compliance by Thermo Michigan, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Filing.

In the matter of a notice of filing of certification of compliance; coal capability of new electric powerplants pursuant to provisions of the Powerplant and Industrial Fuel Use Act, as amended (42 U.S.C. 8311 section 201(d)).

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Thermo Michigan, Inc, Detroit, Michigan.	2-23-88	Cogeneration Combined Cycle.	90	Big Rapids, MI.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on March 7, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–5397 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 11, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–544
3. N.A.
4. Gas Pipeline Rates: Rate Change (Formal)
5. New Collection
6. On Occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 86.25 responses
11. 413,443 hours
12. Pursuant to sections 4, 5, and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdictional natural gas is just and reasonable. (Formal)

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–545
3. N.A.
4. Gas Pipeline Rates: Rate Change (Non-Formal)
5. New Collection
6. On Occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 183.75 responses
11. 14,700 hours
12. Pursuant to sections 4, 5, and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdicational natural gas is just and reasonable. (Non-Formal)

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–546
3. N.A.
4. Gas Pipeline Rate: Certificated Rate Filings
5. New Collection
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 583.75 responses
11. 23,350 hours
12. Pursuant to sections 4, 5 and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdictional natural gas is just and reasonable.

The fourth energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–547
3. 1902–0084
4. Gas Pipeline Rates: Refund Obligations
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 325 responses
11. 26,000 hours
12. The filing of refund reports is necessary to ensure compliance with the Natural Gas Act and the Natural Gas Policy Act, and the correct refunding of amounts which were overcharged.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, March 7, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–5398 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, March 24, 1988, 1:00 p.m.

Place: National Petroleum Council, 1625 K Street NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC. 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss the pipeline survey.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC., between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–5392 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, April 6, 1988, 8:30 a.m.

Place: National Petroleum Council, 1625 K Street NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss gas pipeline survey and review progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss the gas pipeline survey.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Indpendence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–5393 Filed 3–10–88; 8:45 am]

BILLING CODE 6450-01-M

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories and Storage Task Group of the Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Tuesday, April 19, 1988, 1:00 p.m.

Place: Doubletree Intercontinental Hotel, Seattle II Room, 15747 JFK Boulevard, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss surveys and progress on assignments.

Tentative Agenda:

BEST COPY AVAILABLE

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Inventories and Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-5384 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3339-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared February 22 Through 26, 1988

Availability of EPA comments prepared February 22, 1988 through February 26, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-K61068-CA, Rating EC2, California Section 202 Wilderness Study Areas Recommendation, Wilderness Designation or Nondesignation, Implementation, Bakersfield, Susanville and Ukiah Districts, San Luis Obispo, Tulare, Kern, Modoc, Tehama, Mendocino and Trinity Counties, CA and Carson City District, Alpine County, NV.

Summary: EPA supports the proposed wilderness recommendation for best protesting air and water quality. However, EPA is concerned that the individual and cumulative effect of activities allowed under non-wilderness designation have the potential to degrade water quality and riparian habitats.

ERP No. DS-COE-H32009-00, Rating E02, Mississippi River Locks and Dam 26 Replacement Construction, Second Lock, Updated Information, Implementation, Upper Mississippi and Illinois Rivers, Alton, Madison County, IL and St. Louis, MO.

Summary: EPA continues to have concerns about the lack of information necessary to adequately assess impacts and identify mitigation. EPA is also concerned that alternatives are not thoroughly discussed. EPA requests that the deficiencies be addressed in the final EIS and that the ROD include: (1) A draft plan of study for determining impacts; (2) a detailed schedule for implementation; (3) a determination of need for mitigation; and (4) a commitment to implement mitigation. Further, EPA plans on entering into a MOU with the Corps to insure EPA involvement in the development and implementation of the study.

ERP No. D-FRC-L05196-ID, Rating E02, Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797) and Star Falls (FERC No. 5797) Hydroelectric Projects on the Mainstream of the Snake River, Construction, Operation, and Maintenance Licenses, Upper Snake River Basin, Twin Falls and Jerome Counties, ID.

Summary: EPA has environmental objections to the FERC staff-preferred alternative due to anticipated water quality and wetland impacts from the Auger Falls project. Additional information is needed to fully assess environmental impacts. Mitigation also needs to be proposed for wetland impacts.

Final EISs

ERP No. F-BLM-J61055-WY, Adobe Town and Ferris Mountain Wilderness Study Areas, Wilderness Recommendations, Designation or Nondesignation, Rawlins District, Carbon and Sweetwater Counties, WY.

Summary: EPA supports the proposed action (all wilderness) for the Ferris Mountain Wilderness Study Area. Further, EPA is pleased that BLM has chosen to recommend the partial wilderness/conflict resolution alternative for Adobe Town WSA.

ERP No. F-BOP-D81015-PA, Schuylkill Federal Correctional Institution Complex, Construction and Operation, Schuylkill County, PA.

Summary: EPA feels this document adequately addresses all previous concerns regarding the project.

ERP No. FB-COE-K35012-CA, Sacramento River Bank Protection Project, Butte Basin Reach (River Miles 176 to 194) Stabilization, Updated Information, Butte and Glenn Counties, CA.

Summary: EPA expressed concerns that mitigation measures committed to by the Army Corps in an earlier EIS for this project was not included in this document.

ERP No. F-FHW-G40115-AR, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant Street Intersection to US 65/US 65B Interchange, Funding and 404 Permit, Pine Bluff, Jefferson County, AR.

Summary: EPA feels this document adequately satisfies the requirements of NEPA and those areas within EPA's jurisdiction and expertise.

ERP No. F-MMS-L02016-AK, 1988 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale No. 109, Leasing, AK.

Summary: EPA continues to have environmental concerns about the proposed full-lease alternative. EPA's major concern is the effects of oil and gas activities on endangered bowhead whales. The biological opinion indicated long-term development and production activities in the bowhead whale spring migration corridor would likely jeopardize the population. Since leasing decisions will determine where future development and production facilities are located, then leasing should not be allowed in the sensitive spring migration corridor. EPA supports the Coastal Deferral alternative.

Dated: March 8, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-5437 Filed 3-10-88; 8:45am]

BILLING CODE 6560-50-M

[ER-FRL-3338-3]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed February 29 Through March 4, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 880059, Final, IBR, ND, Dunn-Nokota Methanol Project, Water Supply Contract Approval, Section 10 and 404 Permits, Lake Sakakawea, Dunn County, ND, Due: April 11, 1988, Contact: Eley P. Denson, Jr. (406) 657-6558.

EIS No. 880060, Action, COE, MD, VA, Baltimore Harbor and Channels 50 Foot Deepening Project, Cape Henry Channel and the southern portion of the York Spit Channel, Dredged Material Placement Modifications in the Virginia portion of the project, VA, MD, Contact: Larry Lower (301) 962-4710.

EIS No. 880061, Draft, AFS, AK, North Sea Otter Sound Area Resources Management Plan, Implementation, Tongass National Forest, AK, Due: April 25, 1988, Contact: Pete Johnson (907) 828-3304.

EIS No. 880062, Draft, NPS, AK, Bering Land Bridge National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880063, DSuppl, IBR, CO, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Dolores and Montezuma Counties, CO, Due: May 2, 1988, Contact: Harold Sersland (801) 524-5580.

EIS No. 880064, Draft, NPS, AK, Yukon-Charley Rivers National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880065, Draft, NPS, AK, Kenai Fjords National Park, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880066, Draft, BOP, TX, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX, Due: April 25, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880067, Draft, AFS, CA, Mt. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forests, Mt. Shasta Ranger District, Siskiyou County, CA, Due: April 25, 1988, Contact: Douglas P. Schleusner (916) 275-1587.

EIS No. 880068, Draft, FRC, RI, NY, MA, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and Section 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara and Wyoming Cos, NY and Hampden and Worcester Counties, MA, Due: April 25, 1988, Contact: Lonnie Lister (202) 357-8874.

EIS No. 880069, Final, COE, NY, Saw Mill River Basin Flood Control Plan, Old Nepperan Avenue Bridge to near the former Tompkins Avenue Bridge, Nepara Park, City of Yonkers, Westchester County, NY, Due: April 11, 1988, Contact: Peter Doukas (212) 264-4662.

EIS No. 880070, FSuppl, COE, Al, Mallard-Fox Creek Area, Morgan County Port Access Channel and Dredged Material Disposal, Development and Use, Morgan County, AL, Due: April 11, 1988, Contact: Patricia Coffey (615) 736-5028.

EIS No. 880071, Final, FHW, KY, US 127 Improvements, Anderson County Line to I-64, Funding, Franklin County, KY, Due: April 15, 1988, Contact: Robert E. Johnson (502) 227-7321.

Amended Notices

EIS No. 870106, Draft, COE, Shorelands Commercial/Industrial Park Development and Construction, Section 10 and 404 Permits, Hayward City, Alameda County, CA, Due: May 18, 1987, Contact: Scott Miner (415) 974-0446. Published FR 2-5-88—The status of this draft EIS is still ACTIVE—Inadvertently withdrawn.

EIS No. 880047, Draft, MMS, 1989 North Atlantic Planning Area Outer Continental Shelf (OCS) Oil and Gas Sale No. 96, Lease Offerings, MA, NH, ME, RI, CT, NY and NJ, Due: April 19, 1988, Contact: Barry R. Clark (703) 285-2165.

Published FR 02-26-88—Review period extended.

Dated: March 8, 1988.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 88-5438 Filed 3-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0024
Title: General Admission Application and Class Attendance Roster
Abstract: Information collected in connection with stipend reimbursement programs and enrollment at the National Emergency Training Center.
Type of Respondents: Individuals or households, State or Local Governments, Federal agencies or employees, Non-profit institutions
Number of Respondents: 15,000
Burden Houses: 3,000
Frequency of Recordkeeping or Reporting: Weekly and Other

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: February 19, 1988.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 88-5343 Filed 3-10-88; 8:45 am]

BILLING CODE 6718-21-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0113
Title: Request for a Major Disaster or an Emergency Declaration by the President-Declaration of Emergency or Major Disaster
Abstract: Requests for a Presidential declaration of a major disaster or an emergency must be made by the Governor. The request must contain certain information to comply with statutory requirements. Affected public includes families, individuals, and public facilities of State and local governments.
Type of Respondents: Individuals or households, State or Local Governments, Non-profit institutions
Number of Respondents: 59
Burden Hours: 400
Frequency of Recordkeeping or Reporting: Other—as required

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 19, 1988.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 88-5344 Filed 3-10-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011117-002

Title: North American/Australasia Interconference and Carrier Discussion Agreement

Parties: Pacific Coast/Australia-New Zealand tariff; Bureau; U.S. Atlantic & Gulf/Australia-New Zealand Conference; Blue Star Line, Ltd.; Pacific Australia Direct Line; Columbus Line; Associated Container Transportation (Australia) Ltd.; Ocean Star Container Line A.G.; Australia-New Zealand Direct Line

Synopsis: The proposed amendment would add Scancarriers as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: March 8, 1988.

[FR Doc. 88-5398 Filed 3-10-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 7, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202-395-7340).

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. *Report Title:* Criminal Referral Form
Agency Form Number: FR 2230
OMB Docket Number: 7100-0212
Frequency: On occasion
Reporters: State member banks, bank holding companies, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks
Annual Reporting Hours: 1955
Small businesses are affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 248(a)(1), 625, and 1844(c)) and is given confidential treatment (5 U.S.C. 552(b)(7) and 552a(k)(2)).

This form has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and U.S. Department of Treasury. The purpose of the form is to detect and track suspected criminal misconduct involving financial institutions and persons associated with them. The revisions address issues raised by recently enacted legislation as well as suggestions made by representatives of supervisory agencies, the federal law enforcement community, and financial institutions in light of experience gained with use of the form since its inception in 1985.

2. *Report Title:* Report of Changes in Foreign Investments
Agency Form Number: FR 2064
OMB Docket Number: 7100-0109
Frequency: On occasion
Reporters: Member banks, bank holdings companies and Edge and Agreement corporations making or changing a foreign investment
Annual reporting hours: 180
Small businesses are not affected.

General Description of Report

This report is required by law (12 U.S.C. 602 and 1844). Certain portions are given confidential treatment (5 U.S.C. 552(b)(4)).

This report provides information needed to enable the Federal Reserve to monitor foreign investments by U.S. banking organizations. The report is used to notify the Federal Reserve of foreign investment changes as required under Regulation K, and to provide a basis for updating the System's information on foreign investments.

Board of Governors of the Federal Reserve System, March 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-5334 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Bank of Boston Corporation, Boston, Massachusetts ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3), of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The First National Bank of Boston, with a firm that is "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary.

Applicant has applied to underwrite and deal in ineligible securities in accordance with most of the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) (*"Citicorp/Morgan/Bankers Trust"*); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing in consumer-receivable-related securities) (*"Chemical"*). Applicant's proposal differs from the Board's *Citicorp/Morgan/Bankers Trust* and *Chemical* Orders in the following respects:

1. Company would underwrite and deal in ineligible securities up to 10 percent of Company's gross revenue and 5 percent of the market;

2. Company would underwrite and deal in ineligible securities which, in accordance with *Citicorp/Morgan/Bankers Trust,* are rated in the top four categories by a national rating agency, but Company would also underwrite and deal in ineligible securities that it determines, based on its own credit analysis and evaluation, meet the standards used by such rating organizations to identify bonds of the four highest investment grades;

3. Company would have a limited number of management interlocks with The First National Bank of Boston (specifically, four officers of the bank would also be officers of Company and four directors of Company would also be directors or officers of the bank, but two of Company's directors would have no positions with either the bank or with Applicant);

4. Applicant would *not* commit to exclude its investment in Company and Company's assets in determining the holding company's consolidated primary capital under the Board's capital adequacy guidelines;

5. Company would place its affiliates' commercial paper and debt obligations as agent as an incidental activity;

6. Company would underwrite and deal in "public ownership" industrial development bonds which are *not* tax-exempt; and

7. Applicant would establish Company on the premises of The First National Bank of Boston (Applicant has committed that Company would be clearly identified as separate from the bank by physical separation of staff and appropriate signs).

In publishing Applicant's proposal for comment, the Board does not take any position on the differences between Applicant's proposal and the Board's prior ineligible securities underwriting orders. Notice of the proposal is published solely in order to seek the views of interested persons and does not represent a determination by the Board that the proposal is consistent with the Board's prior orders.

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 30, 1988.

Board of Governors of the Federal Reserve System, March 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5335 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

The Boston Bancorp et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Boston Bancorp,* South Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of South Boston Savings Bank, South Boston, Massachusetts.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.,* Des Moines, Iowa; to acquire 100 percent of the voting shares of United Bank & Trust, Ames, Iowa.

2. *First of America Bank Corporation,* Kalamazoo, Michigan, and *First of America Bancorporation-Illinois, Inc.,* Libertyville, Illinois; to acquire 100 percent of the voting shares of Sheridan Bank of Peoria, Peoria, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *HRH Bancorp, Inc.,* Grant City, Missouri; to become a bank holding company by acquiring 99.4 percent of the voting shares of Farmers Bank of Grant City/Sheridan, Grant City, Missouri.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ford Bank Group, Inc.,* Lubbock, Texas; to acquire 100 percent of the voting shares of Lubbock Bancorporation, Inc., Lubbock, Texas, thereby indirectly acquire Bank of the West, Lubbock, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Napa Valley Bancorp, Napa, California; to acquire 100 percent of the voting shares of Bank of Lake County, National Association, Lakeport, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5336 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Equimark Managing Partners et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Managing Partners*, Pittsburgh, Pennsylvania; through Alan S. Fellheimer and Judith E. Fellheimer, general partners of the partnership, Sewickley Heights, Pennsylvania; and Claire W. Gargalli, Henry Posner, James H. McLaughlin, George F. Eichleay, David J. East, S. Raymond Rackoff, Howard W. Hanna, III, Patricia A. Muldoon, Dennis Pitocco, all of Pittsburgh, Pennsylvania; David A. Gardner, New York, New York; Charles G. Cheleden, Horsham, Pennsylvania; Judith E. Yankovic, Robinson Township, Pennsylvania; James M. Murphy, Bethel Park, Pennsylvania; J. Bruce Johnston, McMurray, Pennsylvania; William F. Jones, Jr. and Nicholas J. Zennario, both of Wexford, Pennsylvania; Dennis F. Kennedy and Emerson Wickwire, both of Sewickley, Pennsylvania; and Robert C. Payment, Butler, Pennsylvania; to acquire 21.41 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lawrence O. Hauge*, Henderson, Minnesota; to acquire an additional 92.2 percent of the voting shares of Henderson Bancorporation, Inc., Henderson, Minnesota; thereby indirectly acquire Sibley County Bank, Henderson, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Edward L. Birckhead*, Dubois, Wyoming; to acquire an additional 1.2 percent of the voting shares of Riverton State Bank Holding Company, Riverton, Wyoming; thereby indirectly acquire Dubois National Bank, Dubois, Wyoming, and Riverton State Bank, Riverton, Wyoming.

2. *Donald A. Sloan*, Richardson, Texas; to acquire an additional 28.12 percent of the voting shares of Rawlins Bancshares, Inc., Atwood, Kansas; thereby indirectly acquire Farmers Bank and Trust, Atwood, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Donald E. Reily*, Lufkin, Texas; to acquire 29.2 percent of the voting shares of Citizens State Financial Corporation, Corrigan, Texas.

2. *Ray H. Reily*, Livingston, Texas; to acquire 27.56 percent of the voting shares of Citizens State Financial Corporation, Corrigan, Texas.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5337 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Florida National Banks of Florida, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 1, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to acquire Florida National Insurance Services, Inc., Jacksonville, Florida, and thereby engage in underwriting, as a reinsurer, of credit-related life and credit-related accident, health and disability insurance in connection with extensions of credit, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Prairieland Bancorp, Inc.*, Bushnell, Illinois; to acquire Prairieland Accounting and Tax Services, Bushnell, Illinois, and thereby engage in tax preparation and planning pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5338 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 26, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Request for Correction of Earnings Record—0960-0029—When an individual questions the accuracy of his or her earnings record, SSA uses the information obtained by this form to check against their record and, if necessary, to develop for evidence of earnings. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 16,666 hours.

2. Supplement to Claim of Person Outside the United States—0960-0051—The information collected by this form is used by SSA to determine the continuing entitlement to benefits and the proper benefit amounts of aliens living outside the U.S. It is also used to determine if those benefits are subject to withholding tax. Respondents: Individuals or households. Number of Respondents: 35,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,917 hours.

3. Request to be Selected as Payee—0960-0014—This form is used by SSA to help determine the proper representative for a person who cannot receive his or her own social security benefits. Respondents: Individuals or households. Number of Respondents: 605,000; Frequency of Response: Occasionally; Estimated Annual Burden: 100,833 hours.

4. You Can Make Your Payment By Credit Card—NEW—The information collected by use of the forms SSA-4588 and SSA-4589 is needed for the Social Security Administration and certain banks in order that title II debtors may repay overpayments via credit cards. The affected public is comprised of title II beneficiaries who have been overpaid. Respondents: Individuals or households. Number of Respondents: 160,000; Frequency of Response: Occasionally; Estimated Annual Burden: 13,333 hours.

OMB Desk Officer: Elaina Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Information Collection Requirements Contained in 42 CFR 447.253—NEW—These regulatory provisions will require the Medicaid agency to submit along with their States plan, assurances and related information whenever the State makes any changes to its methods and standards for determining payment rates. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: One-time; Estimated Annual Burden: 54 hours.

OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. National Study of Child Care Supply, Demand and Economic Information—NEW—A national sample survey of supply and demand of licensed child care providers in both centerbased care and family based care settings. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,500; Frequency of Response: One-time; Estimated Annual Burden: 1,750 hours.

OMB Desk Officer: Shannah Koss-McCallum

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. Preterm and Small for Gestational Age Delivery Across Generations—NEW—Previous studies have shown a correlation between maternal and infant birth weight. It is not known if this is caused by differences in duration of pregnancy or rate of growth. The proposed study will help resolve this issue. The results of this project will be used for research studies aimed at the prevention of low birth weight deliveries. Respondents: Individuals or households, State or local governments, Businesses or other for-profit. Number of Respondents: 1,577; Frequency of Response: One-time; Estimated Annual Burden: 611 hours.

2. Drug Accountability Record—0925-0240—These forms will be used by investigational new drugs under NCI clinical protocols. These forms will serve as a link between the NCI drug distribution data and the protocol patient data to ensure that investigational drugs are being used properly, in accordance with the "Notice(s) of Claimed Investigational Exemption for a New Drug" filed by the National Cancer Institute with the Food and Drug Administration. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,020 hours.

Food and Drug Administration

1. Premarket Notification Submission (510(k))—Subpart E-21 CFR 807—0910-0120—Manufacturers wishing to distribute new or changed medical devices must submit a premarket notification to FDA, 90 days before marketing. FDA reviews the notification and determines whether the product is substantially equivalent to a preamendments device. Those which are equivalent may be marketed immediately, and those which are not may not be marketed without further evaluation. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 5,000; Frequency of Response: Occasionally; Estimated

Annual Burden: 78,000 hours.

2. Tamper-resistant Packaging Requirements for Contact Lens Solution and Tablets—0910-0150—The regulation requires that containers for contact lens solutions and/or tablets be tamper-resistant, and appropriately labeled as such. Firms may request an exemption from the regulation's requirements. Respondents: Individuals or households, Small businesses or organizations. Number of Respondents: 35; Frequency of Response: Occasionally; Estimated Annual Burden: 350 hours.

Indian Health Service

1. Pub. L. 93-638—Initial and Renewal Contract: Application, Tribal Clearance and Contract Law Waiver—0915-0040—Pursuant to P.L. 93-638 an American Indian Tribal organization may apply to IHS for a contract to carry out certain functions of IHS and may request a contract law to be waived. Specific information is to be collected for initial contracts, Tribal clearances and contract law waivers. Respondents:

State or local governments. Number of Respondents: 280; Frequency of Response: Occasionally; Estimated Annual Burden: 1,100 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HDS: 202–472–4415
SSA: 301–965–4149
HCFA: 301–594–1238

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (Name of OMB Desk Officer)

Date: March 7, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–5376 Filed 3–10–88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Workshop on the Application of Biosafety Principles in Blood Establishments; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the application of biosafety principles in the prevention of infectious disease transmission in blood establishments such as blood banks and source plasma centers.

DATE: The workshop will be held on Friday, April 8, 1988, 8 a.m.–5:00 p.m.

ADDRESS: The workshop will be held at the National Institutes of Health, Warren Grant Magnuson Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research, Food and Drug Administration (HFB–830), 8800 Rockville Pike, Bethesda, MD 20892, 301–496–0393.

SUPPLEMENTARY INFORMATION: The FDA, the Centers for Disease Control, the Occupational Safety and Health Administration, the Environmental Protection Agency, and the Health Care Financing Administration have planned a public workshop to discuss the application of biosafety principles in the prevention of infectious disease transmission in blood establishments such as blood banks and source plasma centers. Among the major topics to be discussed are: (1) Scientific background, (2) employee protection programs, (3) operational issues, and (4) transportation issues.

Dated: March 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–5370 Filed 3–11–88; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225–87–2001]

Memorandum of Understanding With the Department of Agriculture and Food of Ireland

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Department of Agriculture and Food of Ireland and FDA, U.S. Department of Health and Human Services. This MOU describes the mutual goals of the Department of Agriculture and Food of Ireland and FDA to establish certification requirements for the caseins, caseinates, and mixtures thereof exported from Ireland to the United States and to minimize the need for extensive FDA audit sampling of these certified products from Ireland.

DATE: This agreement became effective January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: March 7, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration Department of Health and Human Services of the United States of America and the Department of Agriculture and Food of Ireland Covering Caseins, Caseinates, and Mixtures Thereof Exported to the United States

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) and of the Department of Agriculture and Food (DOAF) of Ireland in entering into this Memorandum of Understanding are to:

1. Establish certification requirements for the caseins, caseinates, and mixtures thereof exported from Ireland to the United States to assure that contaminated caseins, caseinates, and mixtures thereof will not be imported into the United States.

2. Minimize the need for extensive FDA audit sampling of these certified products from Ireland.

II. Definitions

For the purposes of this agreement, both parties agree to the following definitions:

Lot: A lot is a quantity of casein, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding one (1) day. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins, caseinates, or mixtures thereof intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

Salmonella-negative: The absence of *Salmonella* in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the procedures contained in the current edition of the "Bacteriological Analytical Manual (See Section V. ANALYTICAL METHODOLOGY.)

Phosphatase-Negative: The absence of phosphatase activity in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the method contained in the current edition of the "Official Methods of Analysis" (See Section V. ANALYTICAL METHODOLOGY).

III. Substance of Agreement

A. The Department of Agriculture and Food of Ireland

The Department of Agriculture and Food (DOAF) of Ireland is the agency of the Irish government responsible for inspecting those caseins, caseinates, and mixtures thereof that are intended for export. Such inspection is necessary for consumer protection. To fulfill its responsibilities under this Memorandum of Understanding, DOAF will direct its activities to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Food, Drug, and Cosmetic Act of the United States, of the Public Health Service Act of the United States, and of this Memorandum of Understanding. DOAF will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill its commitment under this agreement, DOAF will:

1. Inspect and analyze each lot of caseins, caseinates, and mixtures thereof produced in Ireland for export to the United States to assure that it is *Salmonella*-negative and phosphatase-negative, based on the testing of thirty (30) subsamples of twenty-five (25) gram units taken from bags in a lot of caseins, caseinates, and mixtures thereof immediately before closing, as determined by the methods cited in Section V. ANALYTICAL METHODOLOGY.

2. Issue an export certificate only for those lots that are *Salmonella*-negative and phosphatase-negative.

3. Require that all containers of a lot of caseins, caseinates, and mixtures thereof that are to be exported to the United States be certified as complying with the provisions of this Memorandum of Understanding, and identified by a lot number, and all other information required by the Federal Food, Drug, and Cosmetic Act of the United States.

4. Require that all of the information that is required by the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act of the United States be included on the label and labeling of individual products.

5. Include the following information on the export certificate for each lot of caseins, caseinates, and mixtures thereof exported to the United States:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results for *Salmonella* and phosphatase activity;

d. Date of the certificate; and,

e. Name and stamp or seal of authorizing official.

6. Provide the exporter of caseins, caseinates, and mixtures thereof with the validated export certificate. This certificate and the packing list, which indicates those lots that are physically present in each containerized cargo unit, are to be attached to the shipping manifest.

7. Furnish FDA with a copy of the current Irish regulations and the procedures used to ensure that the caseins, caseinates, and mixtures thereof are in compliance with those regulations and with the Food, Drug, and Cosmetic Act and the Public Health Service Act of the United States.

8. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption, as discussed in III. A. SUBSTANCE OF AGREEMENT of this Memorandum of Understanding.

9. Furnish FDA with a list of the names of those officials who will sign the certificates issued in accordance with this Memorandum of Understanding.

B. The Food and Drug Administration of the United States of America

FDA is charged with the enforcement of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that food entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill this Memorandum of Understanding, FDA will:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by DOAF under this Memorandum of Understanding to ensure that the products exported from Ireland and offered for import into the United States comply with the requirements of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with DOAF and the First Secretary of the Embassy of Ireland.

3. Promptly notify DOAF and the First Secretary of the Embassy of Ireland of the detention of any caseins, caseinates, and mixtures thereof covered by this Memorandum of Understanding.

4. Share expertise and provide consultative assistance to DOAF when necessary to assure the safety of the caseins, caseinates, and mixtures thereof exported to the United States.

IV. Sample Collection

The same samples will be used to determine both the presence, if any, of *Salmonella* and the level of phosphatase activity.

Each sample will consist of thirty (30) subsamples of caseins, caseinates, or mixtures thereof. Each subsample will consist of approximately twenty-five (25) grams that will be collected in accordance with the applicable portions of the current edition of the "Bacteriological Analytical Manual" (See Section V. ANALYTICAL METHODOLOGY).

V. Analytical Methodology

Compliance with the established criteria for *Salmonella* and phosphatase will be determined according to the methods contained in the current editions of "Bacteriological Analytical Manual" for *Salmonella* and "Official Methods of Analysis" for phosphatase.

These publications are available from: Association of Official Analytical Chemists, 1111 North 19th Street, Department 55, Arlington, VA 22209.

VI. Participating Parties

A. The Department of Agriculture and Food, Agriculture House, Kildare Street, Dublin 2, Ireland

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, USA

VII. Liaison Officers

A. For DOAF—Principal Officer, Dairying Trade Division (Currently Mr. John Malone), Agriculture House, Kildare Street, Dublin 2, Ireland, Telephone: (353–1) 789011, extension 3055; Telex: 93607 AGRI EI

B. For FDA—Director, Division of Regulatory Guidance (Currently Mr. Howard Pippin), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Telephone: (202) 485–0187; Telex: 197623 PHS PKLN 898488 PHS PKLN ROVE

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VIII. Administrative Procedures

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this Memorandum of Understanding.

IX. Period of Agreement

This Memorandum of Understanding will become effective upon acceptance by both parties and will continue for a period of five (5) years. It may be extended or revised by mutual consent or terminated by either party upon a thirty (3) day advance written notice to the other.

Approved and Accepted for the Food and Drug Administration of the United States of America

By: ________________

Frank E. Young

Title: Commissioner of Food and Drugs.

Date: November 23, 1987.

Place: Washington, DC

Approved and Accepted for the Department of Agriculture and Food of Ireland

By: ________________

Donald Denham,

Title: First Secretary, Embassy of Ireland

Date: January 22, 1988.

Place: Washington, DC

[FR Doc. 88-5371 Filed 3-10-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ-155-N]

Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest From In-State Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice, in accordance with section 4092 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, gives six months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also gives the period of time in which in-State organizations may submit statements of interest so that they may receive Requests for Proposals (RFPs) and compete for those contracts. The States currently affected are Delaware, Kentucky, South Carolina, and Wyoming.

DATE: Statements of interest must be received at the appropriate address as provided below no later than 5:00 p.m. EST on March 31, 1988.

ADDRESS: Statements of interest must be submitted to: William J. Tate, Health Care Financing Administration, OMB, Room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION CONTACT: Paul Mendelsohn, (301) 966-7209.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs review health care services funded under Title XVIII of the Act (Medicare) to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enhance the cost-effectiveness and efficiency of the peer review of services reimbursed by Medicare.

In June of 1984, HCFA began awarding contracts to PROs. We currently maintain 54 PRO contracts with organizations that provide medical review activities for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa and Guam. In accordance with section 1153 of the Act, the organizations that are eligible to contract as PROs have satisfactoritly demonstrated either: that they are: (1) Physician-sponsored organizations that are composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the area; or, (2) physician access organizations that have available, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer (a Medicare beneficiary) on its governing board.

Under our current contracts, the PROs for 11 of the review areas are organizations from outside the review areas. Those areas are: Alaska, American Samoa and Guam, the District of Columbia, Delaware, Idaho, Kentucky, Maine, Nebraska, South Carolina, Vermont, and Wyoming.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) includes provisions that impose new requirements on the Secretary with respect to contracts with PROs. Section 4092 of OBRA amends section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than six months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, HCFA may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. We note that the conference agreement accompanying the legislaton specifically removed the Senate amendment requirement that the Secretary give *additional* consideration to any qualified in-State organization in the contract competition process.

These requirements are effective with contracts eligible for renewal on or after August 1, 1988, and, for the purposes of these contract requirements, the statute defines an in-State organization as one which has its primary place of business in the State in which review will be conducted; or one that is owned by a parent corporation which has its headquarters in such State.

We intend to implement these changes in the most equitable manner, and will therefore apply this new procedure in any State where doubt exists with respect to the "in-State" status of the incumbent PRO. In addition, rather than requiring an in-State organization to submit a fully developed contract proposal at the time of this notice, we will ask only that the organization demonstrate that it meets the definition of an in-State organization and that it is otherwise an eligible organization in accordance with section 1153 of the Act. If we receive one or more qualified statements of interest, we will conduct a full and open competition in the acquisition of medical review services for that PRO area. All eligible in-State organizations and other potential sources will be furnished with a Request for Proposal (RFP) as part of

the competitive contracting process. We are following this two-step procedure to assure the integrity of the competitive bidding process.

Additionally, section 4091 of OBRA Permits the Secretary to provide for extensions of existing PRO contracts to provide for a staggered period of contract expiration dates and to permit adequate time to complete contract renewal negotiations. We will extend PRO contracts under the authority of this section to provide an opportunity for an orderly transition. Specifically, we intend to extend the PRO contracts in Delaware, Kentucky, South Carolina, and Wyoming, which were originally scheduled to expire on June 30, 1988, through September 30, 1988.

II. Provisions of the Notice

This notice announces that current contracts (including intended extensions) between HCFA and out-of-State PROs responsible for review in the States of Delaware, Kentucky, South Carolina, and Wyoming will expire on October 1, 1988. Interested organizations in these States may submit statements of interest in those contracts. The statements must be received by HCFA no later than March 31, 1988, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or it must be owned by a parent corporation the headquarters of which is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be either a physician sponsored or a physician access organization

1. Physician sponsored organization.

(i) The organization must be composed of a substantial number of licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

(ii) The organization must not be a health care facility, health care facility association, or health care facility affiliate.

(iii) In order to meet the requirements of A.1.i. and A.1.ii., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to demonstrate that it meets this criterion, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization.

(i) The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

(ii) The organization must not be a health care facility, health care facility association, or health care facility affiliate.

(iii) An organization meets the requirements of A.2.i. and A.2.ii. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have a consumer (that is, a Medicare beneficiary) on its governing board

If one or more organizations meet the above requirements, and submit statements of interest in accordance with this notice, HCFA will consider those organizations to be potential sources for the contracts (identified above) that are expiring on October 1, 1988. These organizations will be furnished with an RFP and will be considered in full and open competition for the PRO contract to provide medical review services for that State.

III. Regulatory Impact Statement

This notice merely announces the dates when contracts with various out-of-State Peer Review Organizations expire, and the period of time in which in-State organizations may file statements of interest. This notice is not a proposed rule of a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

IV. Information Collection Requirements

This notice contains information collection requirements that will be forwarded to the Executive Office of Management and Budget for review and approval under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c-2)) (Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: February 26, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5433 Filed 3-10-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement and Proposed Study Areas Under Fellowship Eligibility Criteria for Nursing Post-baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Post-baccalaureate Faculty Fellowship grants will be accepted under the authority of section 830(b) of the Public Health Service Act, as amended by Pub. L. 99-92. Comments are invited on the additional areas of practice proposed for study under the fellowship eligibility criteria.

Approximately $901,000 is being made available by the Department of Health and Human Services Appropriations Act, 1988. Of this amount, it is expected that 137 awards averaging $6,552 will be made.

Purpose

Section 830(b) of the Public Health Service Act, as amended by the Nurse Education Amendments of 1985, Pub. L. 99-92, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees and, in some instances, stipends for currently employed faculty who would qualify for a post-baccalaureate faculty fellowship. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a combined request. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship faculty must:

(1) Hold a baccalaureate degree.

(2) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

(3) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1989 or sooner.

(4) Undertake a reported study, thesis or dissertation focusing on:

a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

b. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV).

The subject areas (a) and (b) are specified by the legislation. The subject areas (c) and (d) have been proposed for this grant cycle because they represent national health problems considered by the Secretary to require investigation.

(5) Be licensed to practice as a registered nurse in a State.

Funding Preference

A funding preference will be given to those schools that have been successful in recruiting or retaining minority faculty. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Proposed Study Areas Under Fellowship Eligibility Criteria

The Secretary has proposed designation of two additional study areas, thus expanding the fellowship eligibility criteria. These study areas include:

- An examination of factors within the practice setting associated with retention of nursing personnel; and
- Investigations dealing with acute and long term care of patients with infectious diseases, particularly illness caused by human immunodeficiency virus (HIV).

Interested persons are invited to comment on these additional study areas for fellowship eligibility. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 11, 1988, will be considered before the final designated study areas of nursing practice are established. No funds will be allocated or final selections made until a final notice is published stating whether the designated study areas of nursing practice will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Service Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Deadline

One review cycle will be held annually for Post-baccalaureate Faculty Fellowship grant applications. To receive consideration applications must meet the deadline of April 29, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form and general instructions, Form PHS 6025–1, HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget.

The OMB clearance number is 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6915.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6333.

This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 9, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–5372 Filed 3–10–88; 8:45 am]

BILLING CODE 4160-15-M

Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year 1988 funds are available for grants to fund projects demonstrating strategies and innovative models for intervention in pediatric AIDS and coordination of services for children and women of child-bearing age with HIV infection, AIDS or other related conditions, or those at risk for developing HIV infection ad its consequences. Funds were appropriated for this purpose by Pub. L. 100–202.

DATE: The deadline for receipt of grant applications is May 5, 1988. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Office at the address below on or before the deadline date, or (2) postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private

metered postmarks shall not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from John J. Hutchings, M.D., Division of Services for Children with Special Health Needs, BMCHRD, Parklawn Building, Room 6–40, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2170.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 9–21, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6745.

The original and two (2) copies of the applications must be submited to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through December 28, 1987, 49,600 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 737 have been infants and children 0–12 years of age and 203 are adolescents 13–19 years of age.

Approximately one half of the total of 940 cases in this pediatric population have died. The PHS predicts a nearly 350% increase in pediatric AIDS by 1991 to 3,000 cases.

The cost of providing a full range of services for the pediatric population with AIDS is expected to be high. These expected high costs largely reflect higher daily inpatient hospital rates for children and the long periods of hospitalization these children often experience. Comprehensive ambulatory care and community-based services, which these demonstration programs will encourage, are expected to reduce these high costs.

The pediatric AIDS projects are designed to further coordinate services for children and women of child-bearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. Other PHS AIDS activities, the funding of which totals $931 million in FY 1988, are expected to be enhanced through the funding of these projects.

Purpose

It is generally recognized that there is a need for development of strategies and innovative models for the care of pediatric AIDS patients through a case management approach, which emphasizes service delivery in outpatient and community settings. The Pediatric AIDS Health Care Demonstration program is expected to initiate solutions to a broad range of critical problems arising from the AIDS crisis. The projects are intended to (1) demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family centered, coordinated services for infected infants and children; and (3) develop programs to reduce the spread of the HIV infection to vulnerable populations of young people.

The demonstration projects to be carried out with these grants are intended to serve as models for other communities, and to identify the range of resources needed to provide appropriate, humane, and effective care to pediatric AIDS patients. These grants will be awarded to support demonstration projects which are designed to build on existing resources or networks to reach and provide health care and supportive services to women and children most at-risk. These projects will be developed in communities with varying degrees of impact from pediatric AIDS, and will focus on local capacity-building, making maximum use of all available public and private resources.

Availability of Funds

A total of $4.435 million is available to be expended by grantees during project periods lasting from one to three years to support Pediatric AIDS Health Care Demonstration projects. It is anticipated that 10 to 20 demonstration grants will be made, depending on demonstrated need.

Collaboration/Coordination with Other AIDS Programs

Grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS, including, but not limited to: (1) CDC AIDS activities; (2) Community Health Centers and Migrant Health Centers; (3) Medicaid; (4) Title V Programs: Maternal and Child Health Services Block Grants, Maternal and Child Health Hemophilia Services Projects, and other relevant SPRANS grants under Title V; (5) HRSA AIDS Service Demonstration Grants: Grants have been made in 13 metropolitan areas and are designed to support the organization of systems of care for people with HIV-related conditions which will identify unmet service needs and take measures to meet those needs; provide optimal integration of community resources through effective coordination; ensure a continuity of services through effective case management, and reduce the overall cost of providing medical services for people with AIDS by providing alternatives to hospital care; (6) the education and outreach programs of the National Institute on Drug Abuse, especially those concerned with IV drug users, their sexual partners, and prostitutes; (7) HRSA Education and Training Centers Grants; (8) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development; (9) the clinical drug trials or other relevant research conducted by other institutes of the National Institutes of Health; and, (10) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, the Pediatric AIDS Health Care Demonstration program grantees also will be expected to work closely with community-based AIDS service organizations and with the activities supported by the Robert Wood Johnson Foundation Service Demonstration Grants, the National Hemophilia Foundation, or other foundations and organizations.

Eligible Applicants

Public and private entities, nonprofit and for-profit, are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, or consortia of health care and community organizations which can develop Pediatric AIDS Health Care Demonstration projects.

Review and Evaluation Criteria

Grant applications will be reviewed and rated by an objective review committee according to each applicant's ability to demonstrate the most effective ways of organizing services and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions or those at-risk for developing infection and its consequences. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, subpart Q. The five separate sets of cost principles prescribed for grant recipients are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A–122 for nonprofit organizations; and 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, subpart J—Monitoring and Reporting of Program Performance.

Executive Order 12372

The Pediatric AIDS Health Care Demonstration program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised facesheet HHS Form 424 approved under OMB 0348–0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration program is 13.153.

Date: February 9, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88–5434 Filed 3–10–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Open Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, May 31, 1988, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public on May 31 from 8:30 a.m. to adjournment for concept review of proposed NCI research projects. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–3251) will provide substantive program information.

Dated: March 2, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–5361 Filed 3–10–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Meetings to Review Draft NTP Technical Reports

I. Meeting of April 18 and 19, 1988

Pursuant to Pub. L. 92–463, notice is given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts *(Peer Review Panel)* on April 18 and 19, 1988, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m. on both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on April 18 and 19 are draft technical reports of studies on the following chemicals, listed alphabetically, along with Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers, uses, routes of administration, exposure levels used in the chronic studies, and tentative levels of evidence of carcinogenic activity (see table below). All studies were done using Fischer 344 rats and B6C3F$_1$ mice unless noted. For the first time, levels of evidence of carcinogenic activity proposed by NTP staff are included to provide more information in advance of the meeting. The order of presentation will be made available at a later date.

Chemical name/CAS No.	Staff scientist	TR No.	Use/Route	Exposure levels	Levels of evidence*
p-Chloroaniline, Hydrochloride, 106–47–8.	R. Chhabra, 919–541–3386	351	DYE/GAV	R:0,2,6,18; M:0,3,10,30 MG/KG	MR:CE (spleen), FR:EE (spleen, adrenal gland), MM:SE (liver, spleen), FM:NE.
2,4-Dichlorophenol, 120–83–2	R. Melnick, 919–541–4142	353	INTR/FEED	FR:0,2500,5000; MR and M:0,5000,10,000 PPM.	MR:NE, FR:NE, MM:NE, FM:NE.
Furosemide, 54–31–9	J. Bucher, 919–541–4532	356	PHAR/FEED	R:0,350,700; M:0,700,1400 PPM	MR:EE (kidney, brain), FR:EE (thyroid gland), MM:NE, FM:SE (mammary gland).
Hydrochlorothiazide, 58–93–5	J. Bucher, 919–541–4532	357	PHAR/FEED	R:0,250,500, 2000; M:0, 2500, 5000 PPM.	MR:EE (zymbal gland), FR:NE, MM:SE (liver), FM:NE.
d-Limonene, 5989–27–5	W. Jameson, 919–541–4096	347	FOOD/GAV	FR:0,300,600;MR: 0, 75, 150; FM: 0, 500, 1000; MM: 0,250,500 MG/KG.	MR:CE (kidney), FR:NE, MM:NE, FM:NE.
8-Methoxypsoralen, 298–81–7	J. Dunnick, 919–541–4811	359	PHAR/GAV	R:0,37.5, 75 MG/KG	MR:CE (kidney, zymbal gland), FR:NE.
Ochratoxin A, 303–47–9	G. Boorman, 919–541–3440	358	NATL/GAV	R:0,21,70, 210 MG/KG	MR:CE (kidney), FR:CE (kidney, mammary gland).
Pentachlorophenol, Technical, 87–86–5.	E. McConnell, 919–541–3267	349	PEST/FEED	M:0,100,200 PPM	MM:CE (adrenal gland, liver), FM:SE (liver).
Pentachlorophenol, Dowicide, EC–7, 87–86–5.	E. McConnell, 919–541–3267	349	PEST/FEED	M:0,100,200,600 PPM	MM:CE (adrenal gland, liver), FM:CE (adrenal gland, liver).
Tribromomethane (Bromoform), 75–25–2.	R. Melnick, 919–541–4142	350	INTR/GAV	R and FM: 0,100,200; MM:0,50, 100 MG/KG.	MR:SE (large intestine), FR:CE (large intestine), MM:NE, FM:NE.

*NOTE: The proposed results indicated are to be considered tentative until reviewed, discussed, and approved at the Peer Review Panel meeting, April 18–19, 1988.

Abbreviations Used:

Categories of Evidence of Carcinogenic Activity: CE=clear evidence; SE=some evidence; EE=equivocal evidences; NE=no evidence.

Species: MR=male rats, FR=female rats, MM=male mice, FM=female mice.

Use: Primary Use Category: DYE Used as or in the Manufacture of Dyes, Inks and Pigments; FOOD Food and Food Additives; INTR Chemical Intermediate or Catalyst; NATL Naturally Occurring Substances; PEST Pesticides; PHAR Pharmaceuticals.

Route: Route of Administration: FEED Available in Diet; GAV Gavage.

Further, we plan to present to the Peer Review Panel additional data from the toxicology and carcinogenesis studies on two chemicals, dichlorvos and nitrofurantoin, for which draft Technical Reports were reviewed and approved by the Panel on July 14, 1987. Additional data on dichlorvos (CAS No. 62–73–7, TR No. 342) will include: (1) Erythrocyte and plasma cholinesterase activities following short-term gavage administration over a range of doses to F344 rats and B6C3F$_1$ mice of both sexes; (2) incidences of pancreatic acinar cell adenomas after additional sectioning of pancreata from F344 rats on the two-year studies; and (3) effects of dichlorvos administration on growth of transplantable rat mononuclear cell leukemias in male F344 rats. Additional data on nitrofurantoin (CAS No. 67–20–9, TR No. 341) pertain to incidences of renal tubular cell neoplasms after additional sectioning of kidneys from control and treated male F344 rats on the two-year studies.

Also, there will be a brief presentation on the NTP's proposed plans for the toxicological evaluation of ozone.

Persons wanting to make a formal presentation regarding a particular Technical Report should notify the Executive Secretary and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members, staff, and attendees.

II. Meeting of August 1 and 2, 1988

The meeting of the Peer Review Panel scheduled for August 1 and 2, 1988, has been cancelled.

III. Announcement of NTP Draft Technical Reports Projected for Public Peer Review From October 1988 Through October 1989

To earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the NTP again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their four meetings after April 18–19, 1988, from October 1988 through October 1989. The listing will be updated with announcements in the **Federal Register** approximately twice a year.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or estimated month of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers (if assigned), uses, species, routes of administration, and exposure levels used in the chronic studies.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: March 4, 1988.

David P. Rall,

Director, National Toxicology Program.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES ON CHEMICALS PROJECTED FOR PEER REVIEW

Chemical name/CAS No.	Staff scientist	NTP TR No.	Use	Spec	Route	Exposure levels
Chemicals tentatively scheduled for peer review, 10/03/88						
Dimethoxane/828-00-2	Dr. K. Abdo, 919–541–7819	354	PNT	RM	GAV	MR: 0, 62.5, 125, FR: 0, 125, 250, M: 0, 250, 500 MG/KG.
N,N-dimethylaniline/121-69-7	do	360	SOLV	RM	GAV	R: 0, 3, 30, M: 0, 15, 30 MG/KG.
Diphenhydramine hydrochloride/147–24–0.	Dr. R. Melnick, 919–541–4142	355	PHAR	RM	FEED	MR: 0, 313, 625, FR&M: 0, 156, 313 PPM.
Ethyl bromide/74–96–4	Dr. J. Roycroft, 919–541–3627	363	INTR	RM	INHAL	R&M: 0, 100, 200, 400 PPM.
Ethyl chloride/75–00–3	do	346	INTR	RM	INHAL	R&M: 0, 15000 PPM.
Hexachloroethane/67–72–1	Dr. W. Eastin, 919–541–7941	361	SOLV	R	GAV	MR: 0, 10, 20, FR: 0, 80, 160 MG/KG.
Hydroquinone/123–31–9	Dr. F. Kari, 919–541–2926		REAG	RM	GAV	R: 0, 25, 50, M: 0, 50, 100 MG/KG.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES ON CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical name/CAS No.	Staff scientist	NTP TR No.	Use	Spec	Route	Exposure levels
Iodinated glycerol/5634-39-9	Dr. J. French, 919-541-7790	340	PHAR	RM	GAV	FR&FM: 0, 62, 125, MR&MM: 0, 125, 250 MG/KG.
N-methylolacrylamide/924-42-5	Dr. J. Bucher, 919-541-4532	352	COSM	RM	GAV	R: 0, 6, 12, M: 0, 25, 50 MG/KG.
Pentaerythritol tetranitrate/78-11-5	do	—	PHAR	RM	FEED	FR: 0, 6200, 12500, MR&M: 0, 25000, 50000 PPM.
Rhodamine 6G/989-38-8	Dr. J. French, 919-541-7790		DYE	RM	FEED	R: 0, 120, 250, FM: 0, 500, 1000, MM: 0, 1000, 2000 PPM.
Vinyl cyclohexene diepoxide/106-87-5	Dr. R. Chhabra, 919-541-3386	362	INTR	RM	SP	R: 0, 50, 100, M: 0, 25, 50, 100 MG/ML.
Chemicals tentatively scheduled for peer review, 2/89						
Allyl glycidyl ether/106-92-3	Dr. G. Boorman, 919-541-3440		SOLV	RM	INHAL	R&M: 0, 5, 10 PPM.
Benzofuran/271-89-6	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	FR&MM: 0, 60, 120, MR: 0, 30, 60, FM: 0, 120, 240 MG/KG.
Chloroacetophenone (CN)/532-27-4	Dr. R. Melnick, 919-541-4142		MLTR	RM	INHAL	R: 0, 1, 2, M: 0, 2, 4, MG/M3.
Epinephrine hydrochloride/55-31-2	Dr. D. Dietz, 919-541-2272		PHAR	RM	INHAL	R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 MG/M3.
Alpha-methylbenzyl alcohol/98-85-1	Dr. M. Dieter, 919-541-3368		COSM	RM	GAV	R&M: 0, 375, 750 MG/KG.
Nalidixic acid/389-08-2	Dr. J. French, 919-541-7790		PHAR	RM	FEED	R&M: 0, 2000, 4000 PPM.
Phenylbutazone/50-33-9	Dr. F. Kari, 919-541-2926		PHAR	RM	GAV	R: 0, 50, 100, M: 0, 150, 300 MG/KG.
Toluene (nitration grade)/108-88-3	Dr. J. Huff, 919-541-3780		INTR	RM	INHAL	R: 0, 600, 1200, M: 0, 120, 600, 1200 PPM.
Chemicals tentatively scheduled for peer review, 6/89						
Benzaldehyde/100-52-7	Dr. J. Bishop, 919-541-1876		INTR	RM	GAV	R&MM: 0, 200, 400, FM: 0, 300, 600 MG/KG.
D-carvone/2244-16-8	Dr. J. Roycroft, 919-541-3627		COSM	RM	GAV	R: 0, 175, 375, M: 0, 375, 750 MG/KG.
O-chlorobenzalmalononitrile (CS)/2698-41-1	Dr. K. Abdo, 919-541-7819		MLTR	RM	INHAL	R: 0, .075, .25, .75, M: 0, .75, 1.5 MG/M3.
3,3'-dimethoxybenzidine/119-90-4	Unassigned		DYE	R	WATER	R: 0, 80, 170, 330 PPM.
Ethylene thiourea/96-45-7	Dr. R. Chhabra, 919-541-3386		PEST	RM	FEED	R: 0, 25, 83, 250, M: 0, 100, 333, 1000 PPM.
Hexamethyl-p-rosaniline chloride/548-62-9	Dr. N. Littlefield (NCTR), 501-541-4551		PHAR	RM	FEED	0, 100, 300, 600 PPM.
Succinic anhydride/108-30-5	Dr. R. Melnick, 919-541-4142		INTR	RM	GAV	R: 0, 50, 100 MG/KG, MM: 0, 50, 100, FM: 0, 5, 10 MG/KG.
Tetranitromethane/509-14-8	Dr. J. Bucher, 919-541-4532		ENVH	RM	INHAL	R: 0, 2, 5, M: 0, 0.5, 2 PPM.
Chemicals tentatively scheduled for peer review 10/89						
Amphetamine sulfate/60-13-9	Dr. J. Dunnick, 919-541-4811		PHAR	RM	FEED	0, 20, 100 PPM.
3,3'-dimethylbenzidine/119-93-7	Unassigned		DYE	R	WATER	0, 30, 70, 150 PPM.
Diphenylhydantoin (phenytoin)/57-41-0	Dr. R. Chhabra, 919-541-3386		PHAR	RM	FEED	R: 0, 240, 800, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 PPM.
Glycidol/556-52-5	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	R: 0, 38, 75, M: 0, 25, 50 MG/KG.
Probenecid/57-66-9	Dr. S. Stefanski, 919-541-5739		PHAR	RM	GAV	0, 100, 400 MG/KG.
Resorcinol/108-46-3	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	MR&M: 0, 112, 225, FR: 0, 50, 100, 150 MG/KG.
Sodium azide/26628-22-8	Dr. K. Abdo, 919-541-7819		PHAR	R	GAV	0, 5, 10 MG/KG.
Tris (2-chloroethyl) phosphate/115-96-8	Dr. H. Matthews, 919-541-3252		FLAM	RM	GAV	R: 0, 44, 88, M: 0, 175, 350 MG/KG.
Vinyl toluene/25013-15-4	Dr. G. Boorman, 919-541-3440		SOLV	RM	INHAL	R: 0, 100, 300, M: 0, 10, 25 PPM.

Abbreviations used:

USE Primary Use Category: COSM Cosmetics, DYE Used as or in the Manufacture of Dyes, Inks and Pigments, ENVH Environmental (Air/Water) Pollutants, FLAM Flame Retardants, FOOD Food and Food Additives, INTR Chemical Intermediate or Catalyst, MLTR Used for Military or Policing Purposes, NATL Naturally Occurring Substances, PEST Pesticides, General or Unclassified, PHAR Pharmaceuticals, PNT Paint Ingredient, REAG Laboratory Reagent, SOLV Vehicles and Solvents.

ROUTE Route of Administration: FEED Oral in Feed, GAV Oral, Gavage, INHAL Inhalation, SP Skin Paint, WATER Oral with Water.

SPEC Species: R=Rats, M=Mice.

[FR Doc. 88-5362 Filed 3-10-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1785]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbrs of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 7, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Cost Certification Forms
Office: Housing
Description of the Need for the Information and Its Proposed Use: The associated forms are necessary to allow HUD to make an analysis of the cost certifications required by HUD regulations. These requirements were instituted in the Housing Act of 1954 and require that the mortgagor certify to "actual cost."
Form Number: FHA-2205, FHA-2328, and HUD-92330A
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 13,280
Status: Reinstatement
Contact:

Felix Coward, HUD, (202) 755-5743
John Allison, OMB, (202) 395-6880

Date: March 7, 1988.

Proposal: Application for Coinsurance Benefits (Multifamily)—State Agencies
Office: Administration
Description of the Need for the Information and Its Proposed Use: The information is needed for the state agencies to claim insurance benefits on defaulted loans. HUD uses the information to compute the claim settlement due the state agency.
Form Number: HUD-426, 426A, 426.1, and 427
Respondents: State of Local Governments
Frequency of Respondents: On Occasion
Estimated Burden Hours: 30
Status: Extension
Contact:

Alice P. Thomas, HUD, (202) 755-7523
John Allison, OMB, (202) 395-6880

Date: March 7, 1988.

Proposal: Application for Mortgage Insurance
Office: Housing
Description of the Need for the Information and Its Proposed Use: This information is needed by HUD to analyze appraisals, costs, architecture, and mortgage credit to determine if a project mortgage should be insured. The information is used by HUD to try to deter substantial losses to the HUD insurance fund.
Form Number: HUD-93201.
Respondents: Businesses or Other For-Profit
Frequency of Respondents: On Occasion
Estimated Burden Hours: 91
Status: Reinstatement
Contact:

William H. Bornscheuer, HUD, (202) 755-6223
John Allison, OMB, (202) 395-6880

Date: March 3, 1988.

Proposal: Indian Housing Program: Revised Consolidated Program Regulations (FR-2208)
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: Under 24 CFR 905.485, Indian Housing Authorities (IHAs) may request conversion of rental units into homeownership by submitting an application to HUD for approval. Under 24 CFR 905.465, IHAs attempting to evict/terminate mutual-help homebuyers leases for noncompliance with lease-purchase contracts are instructed to document all meetings with the evictee. This information is needed and used to avoid legal repercussions.
Form Number: None
Respondents: Non-Profit Institutions
Frequency of Respondents: On Occasion
Estimated Burden Hours: 1.040
Status: New
Contact:

Patricia S. Arnaudo, HUD, (202) 755-1015
John Allison, OMB, (202) 395-6880

Dated: March 3, 1988.

Proposal: Financial Assistance Program of the Solar Energy and Energy Conservation Bank
Office: Community Planning and Development
Description of the Need for the Information and Its Proposed Use: Under the Solar Energy Conservation Bank Act, States are required to submit semi-annual reports providing program information to the Internal Revenue Service and to Congress. The information is used to determine the eligibility and the amount of assistance an applicant may receive by State agencies administering the program. The information is also used to detect fraud and mismanagement.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions
Frequency of Respondents: Semi-Annually and Annually
Estimated Burden Hours: 3,000
Status: Reinstatement
Contact:

Walter R. Preysnar, HUD, (202) 755-

6300

John Allison, OMB, (202) 395-6880

Date: February 11, 1988.

[FR Doc 88-5413 Filed 3-10-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-08-4333-11]

Environmental Assessment; San Rafael Swell, UT

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Notice of 30-day comment period on two draft programmatic environmental assessments analyzing proposed and anticipated commercial recreation guide service within wilderness study areas.

SUMMARY: The first draft environmental assessment has been prepared in response to applications for commercial special recreation permits to conduct guided horseback trips in the San Rafael Swell within Emery County. Trips would extend into the Devil's Canyon (UT-060-025), Sid's Mountain Complex (UT-060-023 & 023A), Muddy Creek (UT-060-007), Crack Canyon (UT-060-028A), and Mexican Mountain (UT-060-054) wilderness study areas. This environmental assessment also considers proposed commercial tours by vehicle in the San Rafael Swell outside of wilderness study areas.

The second draft environmental assessment has been prepared in anticipation of receiving additional applications for commercial special recreation permits to conduct commercial hunting guide service in the portion of the Book Cliffs administered by Price River Resource Area within Carbon and Emery counties. Trips would extend into the Turtle Canyon (UT-060-067), Desolation Canyon (UT-060-068A), and Jack Canyon (UT-060-068C) wilderness study areas. All hunter base camp facilities would be located on private land. This document is being released a second time to provide an additional opportunity for public comment.

Interested parties may comment upon these environmental assessments for a period of 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 900 N. 700 E., Price, Utah 84501 (Phone 801-637-4584).

Date: March 3, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88-5327 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-DQ-M

[OR110-6310-10 OR 910-GP8-088]

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 99-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held April 5, 1988.

On April 5, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include: discussion of the 1987 fire season and the outlook for 1988. Other items include an assessment of the Medford District's public involvement activities, blocking up land ownerships, discussion of the District's protest and appeal procedure, use of herbicides, status reports on District reorganization, planning for the 1990s and areas of critical environmental concern and court actions brought against the District.

Persons interested in making oral statements during the Council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business April 4, 1988. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: March 4, 1988.

David A Jones,

District Manager.

Date Signed: March 4, 1988.

[FR Doc. 88-5329 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-33-M

[UT-080-08-4212-13]

Realty Action; Private Exchange of Public Lands in Uintah County, UT

The following described lands have been determined to be suitable for a surface only private exchange under section 206 of the Federal Land Policy and Management Act to 1976, 43 U.S.C. 1716. The federal lands that have been identified as suitable for disposal by exchange are:

Salt Lake Meridian, Utah

T. 1 S., R. 23 E.,
 Section 19: Lot 5.
 Comprising 43.16 acres.

In exchange for these federal lands, the United States will acquire the surface estate of the following non-federal lands belonging to George Searle and Miles Searle:

Salt Lake Meridian, Utah

T. 3 S., R. 23 E.,
 Section 1: SW¼NW¼.
 Comprising 40 acres.

Upon publication of this notice, the federal lands are hereby segregated from appropriation under the public land laws, including the mining laws.

Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All minerals with the right to prospect for, mine and remove the same under applicable laws and such regulations as the Secretary may prescribe.

For a period of 45 days from the date of the notice, interested parties may submit comments to the District manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

Dean L. Evans,

Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 88-5330 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-030-08-5101-YBKA; ES-00157-012; ES-37985]

Right-of-Way Grant; Hoosier National Forest and Camp Atterbury Military Reservation, IN

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Application for Right-of-Way Grant.

SUMMARY: As the lead agency for National Environmental Policy Act (NEPA) compliance, the Federal Energy Regulatory Commission, Department of Energy, in cooperation with Bureau of Land Management (BLM), Department of the Interior, Forest Service (FS), Department of Agriculture, and U.S. Army Corps of Engineers (ACOE), Department of the Army; is preparing an environmental assessment (EA) of a proposed natural gas 16- and 20-inch diameter pipeline and related facilities in northern Kentucky and southern Indiana. The EA, when completed, will be the basis for BLM's right-of-way grant issuance decision relative to Federal land.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Archeologist/Realty Specialist, Milwaukee District (BLM), P.O. Box 631, Milwaukee, Wisconsin, 53201-0631, or telephone (414) 291-4429.

SUPPLEMENTARY INFORMATION: Texas Gas Transmission Corporation (Texas Gas) has applied for a right-of-way grant across 10.3 miles of Hoosier National Forest and 11.3 miles of Camp Atterbury Military Reservation. The former area is located in Perry, Crawford, Orange, Jackson, and Brown Counties; while the latter area is located in Bartholomew and Johnson Counties. Texas Gas filed its application with BLM on February 29, 1988.

On February 13, 1987, Texas Gas applied to the Federal Energy Regulatory Commission (FERC) for a certificate of public convenience and necessity for the entire proposed pipeline. Shortly thereafter, Texas Gas initiated an environmental analysis of the proposed route. As a result of public involvement, Texas Gas later amended its application on September 4, 1987, to adopt a significant route modification affecting a portion of the final 45 miles of its original route.

Whereas the original route only crossed Federal lands administered by the Hoosier National Forest, (FS), the amended route also crossed Federal land administered by the Camp Atterbury Military Reservation, which is leased from the Department of Defense by the State of Indiana. When a proposed oil or natural gas pipeline crosses Federal lands administered by two or more Federal agencies, it becomes the responsibility of BLM to issue a right-of-way grant across the Federal lands pursuant to 43 CFR 2882.2-2. In this case, the proposed right-of-way will cross portions of the Hoosier National Forest and Camp Atterbury Military Reservation.

FERC has agreed to continue to be the lead agency for NEPA compliance on the proposed natural gas pipeline, including the proposed right-of-way. As the lead agency, FERC is preparing an EA of the proposed pipeline. BLM, FS, and ACOE (for Camp Atterbury) are participating in the preparation of the EA as cooperating agencies.

The EA, when completed, will be the basis for BLM's decisions. Those decisions include: (1) Whether a Finding of No Significant Impacts is appropriate for the right-of-way grant, (2) If so, whether the right-of-way grant should be issued, and (3) If so, under what terms and conditions will the grant be issued.

Comments: Until April 15, 1988, interested parties may submit written comments on the proposed right-of-way grant to: District Manager, Milwaukee District, BLM, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

Bert Rodgers,

District Manager.

[FR Doc. 88-5342 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Intent to Prepare a Supplemental Environmental Impact Statement for the Wilderness Review of the Kenai National Wildlife Refuge

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare a Supplemental Environmental Impact Statement for the Wilderness Review of the Kenai National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review. The Kenai National Wildlife Refuge is located in southcentral Alaska. This notice is being furnished as required by the National Environmental Policy Act regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the environmental impact statement. A public hearing on the supplemental impact statement will be held following release of the draft impact statement.

DATE: Written comments should be received by April 8, 1988.

A public hearing will be held during the public review and comment period on the Draft Supplemental Environmental Impact Statement on the Wilderness Review. The date and location of this hearing will be announced later.

ADDRESS: Comments should be addressed to: Regional Director; Attention: Bill Knauer; U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, Resource Support; U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: This Supplemental Environmental Impact Statement on the Wilderness Review for the Kenai National Wildlife Refuge is being prepared to fulfill requirements of the Wilderness Act of 1964 and the Alaska National Interest Lands Conservation Act. The environmental review of the wilderness proposal will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4371 et seq.], Council of Environmental Quality Regulations [40 CFR Parts 1500 through 1508], other appropriate federal regulations, and Fish and Wildlife Service procedures for compliance with those regulations. The five wilderness alternatives to be analyzed are the same as those in the Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kenai National Wildlife Refuge.

We estimate that the draft supplemental environmental impact statement will be made available to the public in May 1988.

Dated: March 1, 1988.

John P. Rogers,

Acting Regional Director.

[FR Doc. 88-5377 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-278]

Certain Programmable Digital Clock Thermostats; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Jameson Home Products, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of

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the initial determination. The initial determination in this matter was served upon the parties on March 3, 1988.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on, 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 3, 1988.

[FR Doc. 88-5340 Filed 3-10-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 1052(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(A) 1. Parent Corporation and address of principal office. Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, Pennsylvania 15219.

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

Advanced Closures, Inc., Delaware
Alcoal Defense Systems, Inc., Delaware
Alcoa Inter-America, Inc., Delaware
Alcoa Packaging Machinery, Inc., Delaware
Aloca Recycling Company, Delaware
Alcoa Specialty Chemicals, Inc., Delaware
Alcoa Steamship Company, Inc., New York
American Powdered Metals Company, Delaware
Dalton Aluminum and Chemicals Company, Georgia
GR Holdings, Inc., Delaware
H-C Products Company, Delaware
Illinois Water Treatment Company, Delaware
Lancy International, Inc., Pennsylvania
Northwest Alloys, Inc., Delaware
Penn Way Transportation, Inc., Delaware
Permatech, Inc., Delaware
T.H.E. Tool Co., Inc., Colorado
The Stolle Corporation, Ohio
Tre Financial Corporation, California
Tifton Aluminum Company, Inc., Delaware

(B) 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive; Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland Chemical, Inc	Delaware.
Ashland Development, Inc	Delaware.
Ashland Ethanol, Inc	Delaware.
Ashland Oil and Transportation Company.	Kentucky.
Ashland Petroleum, Inc	Delaware.
Ashland Pipe Line Company	Ohio.
Inland Towing Company	Delaware.
Mid-Valley Supply Co	Kentucky.
Southern Oil Company of New York, Inc	New York.
Tri-State Marketing Services, Inc	Delaware.
APAC—Alabama, Inc	Delaware.
APAC—Arizona, Inc	Delaware.
APAC—Arkansas, Inc	Delaware.
APAC—Carolina, Inc	Delaware.
APAC—Florida, Inc	Delaware.
APAC—Georgia, Inc	Delaware.
APAC, Inc	Delaware.
APAC—Kansas, Inc	Delaware.
APAC—Mississippi, Inc	Delaware.
APAC—Oklahoma, Inc	Delaware.
APAC—Tennessee, Inc	Delaware.
APAC—Texas, Inc	Delaware.
APAC—Virginia, Inc	Delaware.
Reg X Condor, Inc	Delaware.
Scurlock Oil Company	Kentucky.
TAP-CO, Inc	North Carolina.
Algonquin Pipe Line Co	Illinois.
Ohio River Pipe Line Company	Delaware.
Owensboro-Ashland Company	Delaware.
SOCO Pipeline Company	Texas.
Transport Supply Company, Inc	Texas.
Blanton Marine Corp	Texas.
Rich Oil, Inc	Delaware.
Drew Chemical Corporation	Delaware.
Warren Brothers Hauling, Inc	Delaware.
Ig-Lo Transportation, Inc	Delaware.
Tanner Southwest, inc	Arizona.
The Tanner Companies	Arizona.
RCT Company, Inc	Arizona.
Western Equipment Company	Arizona.

(C) The parent corporation, and address of its principal office: Coleman Oil Co., Inc., P.O. Box 2009, Pikeville, KY 41501.

The wholly owned subsidiary which will participate in the operation is Coleman Trucking, Inc., which was incorporated in the Commonwealth of Kentucky.

(D) 1. Parent Corporation: Inland Container Corporation I, 151 N. Delaware Street, Indianapolis, IN 46206.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation.

A. Anderson Box Company, Inc., Indiana
B. El Morro Corrugated Box Corporation, Delaware
C. El Morro Corrugated Box Corporation, de Puerto Rico
D. Indisc, Inc., Indiana
E. Inland Paper Company, Inc., Indiana
F. Inland Real Estate Investment, Inc., Indiana
G. Inland Rome, Inc., Delaware
H. Inland Orange, Inc., Delaware
I. Sabine River & Northern Railroad, Inc., Texas
J. Inland Container Corporation, Indiana

(E) Parent: International Paper, 6400 Poplar Avenue, Memphis, TN 38197

Wholly-Owned Subsidiaries

Name	State
1. American Central Corp	MI
2. Anitec Image Technology	DE
3. Arvey Business Forms, Inc	DE
4. Arvey Lamcote, Inc	DE
5. Arvey Metals Fabrication, Inc	DE
6. Bay Harbor Warehouse Corp	FL
7. Bodcaw Co	DE
8. Chisolm Development Corp	ME
9. Crystal Products Corp	DE
10. Crystal Valley Corp	AR
11. Fiber Technology Corp	DE
12. GCO Minerals Co	TX
13. Hammermill Paper Co	DE
14. Hastings Brook Improvement Co	ME
15. International Box Co	DE
16. International Logging Corp	NV
17. International Mills, Inc	DE
18. International Paper Australia Limited	DE
19. International Paper Canada, Inc	CN
20. International Paper Capital Formation, Inc	DE
21. International Paper Environment Protection, Inc	DE
22. International Paper Gas Supply, Inc	AR
23. International Paper Investment Corp	DE
24. International Paper Laminates, Inc	DE
25. International Paper Pipeline Co	MS
26. International Paper Professional Services Corp	DE
27. International Paper Realty Corp	DE
28. International Paper USA Ltd	DE
29. International Pulp Sales Co	DE
30. International Records Corp	DE
31. IP Forest Resources Corp	DE
32. IP Holdings Industries, Inc	DE
33. IP Investment Holdings, Inc. Ltd	DE
34. IP Petroleum Co., Inc	DE
35. IP Southern Timberlands, Inc	DE
36. IP Western Timberlands, Inc	DE
37. Little Madawaska Improvement Co	ME
38. Long-Bell Petroleum Co., Inc	LA
39. Longview, Portland & Northern Railway Co	WA
40. Magalloway River Improvement Co	ME
41. Mattaseunk Stream Dam & Improvement Co	ME
42. Musquacook Stream Dam & Improvement Co	ME
43. Omiword Corp	DE
44. Pacific Bleached Board Sales Corp	DE
45. PAPCO Inc	AL
46. Phillips Brook Improvement Co	NH
47. Pineville Kraft Sales Co., Ltd	DE
48. Pulp and Paper Sales Co., Ltd	DE
49. Richmond Gravure, Inc	VA
50. Samco, Inc	NY
51. Saratoga Development Corp	NY
52. Slaughter Industries Inc	TX
53. Stecher-Traung-Schmidt Corp	NY
54. Van Buren Lumbering and Manufacturing Co	ME

(F) 1. *Parent corporation and address of principal office:* Bennett-Rogers Pipe Coating, Inc., 900 Kindelberger, Kansas City, Kansas 66115.

2. *Wholly subsidiaries which will participate in the operations and the state of incorporation:* Rota-Carrus Corporation, a Missouri corporation, 900 Kindelberger, Kansas City, Kansas 66115.

(G) 1. Parent Corporation: Texaco Inc., 2000 Westchester Avenue, White Plains, NY 10650 (Delaware)

2. Wholly-owned subsidiaries as follows:

I. Texaco Refining and Marketing Inc., 1111 Rusk Avenue, Houston, TX 77052 (Delaware)
II. Arbuckle Pipe Line Company, 1670 Broadway, Denver, CO 80202 (Delaware)
III. Texaco Chemical Company, 4800 Fournace Place, Bellaire, TX 77401 (Delaware)
IV. Texaco Trading and Transportation Inc., 1670 Broadway, Denver, CO 80202 (Delaware)
V. Texaco Producing Inc., 1111 Rusk Avenue, Houston, TX 77052 (Delaware)
VI. Texaco Trucking Inc., 1670 Broadway, Denver, CO 80202 (Michigan)
VII. Texaco Pipeline Inc., 9700 Richmond Avenue, Houston, TX 77042 (Texas)

(H) 1. The parent corporation and address of its principal office: Universal Foods Corporation, a Wisconsin corporation, located at 433 East Michigan Street, Milwaukee, Wisconsin 53202.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

i. Universal Frozen Foods Co., an Oregon corporation
ii. Universal Flavor Corporation, a Delaware corporation
(a) Universal Flavors—U.S.A., Incorporated, a wholly owned subsidiary of Universal Flavor Corporation, an Indiana corporation
(1) Blanke Baer/Bowey Krimko Corporation, a wholly owned subsidiary of Universal Flavors—U.S.A., Incorporated, a Missouri corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5419 Filed 3-10-88, 8:45 am]

BILLING CODE 7035-01-M

Acceptance of Credit Cards for Payment Due the Federal Government

AGENCY: Interstate Commerce Commission.

ACTION: Notice to the public regarding acceptance of Visa or Master Card as an alternate method of payment due the Federal Government.

SUMMARY: The Department of the Treasury, Financial Management Services, has authorized the Interstate Commerce Commission to accept credit cards (Visa and Master Card only) from the public for receipts due the Federal Government.

The Commission will begin accepting credit cards for all services rendered by the Commission (headquarters and Regional Offices). These services include, but are not limited to: application filing fees; tariff filing fees; fines; and established ICC monthly billing accounts.

Individuals or companies who wish to use their credit card for payment should include on a separate sheet of paper their credit card number, expiration date, type of credit card (Visa or Master Card only) and their signature authorizing the credit card use. All credit card information will be maintained in a confidential manner as required by law.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Noreta R. McGee, (202) 275-7428. [TDD for hearing impaired: 202-275-1721]

Noreta R. McGee,

Secretary.

[FR Doc. 88-5200 Filed 3-10-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 218X)]

CSX Transportation, Inc.; Abandonment Exemption in Lake and Osceola Counties, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirement of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 30.64 miles of rail line extending between Baldwin and Evart, in Lake and Osceola Counties, MI, subject to standard labor protective conditions and environmental protective conditions.

DATES: This exemption will be effective on April 10, 1988. Petitions to stay must be filed by March 28, 1988. Petitions for reconsideration must be filed by April 5, 1988. Any formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 21, 1988.[1]

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub.-No. 218X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: February 23, 1988.

By the Commission, Chairman Gardison, Vice Chairman Andre, Commissioners

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[1] *See Exemption or Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published December 22, 1987 (52 FR 48,440-48,446).

BEST COPY AVAILABLE

Sterrett, Simmons, and Lamboley Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5420 Filed 3-10-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

March 9, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry *AND* to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer *AND* the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse and can be reached on (202) 633-4312.

Revision of a Previously Approved Collection

(1) Larry E. Miesse, (202) 633-4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) Employment Eligibility Verification.
(4) I-9.
(5) On occasion.
(6) Individuals and households, State and local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. Developed to facilitate compliance with section 101 of the Immigration Reform and Control Act of 1986. Revision allows for microfilm/fiche storage by employers.
(7) 135,000,000 annual responses, .166 hours burden per response. 30,000,000 recordkeepers at .083 hours per.
(8) 24,960,000 estimated public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395-7340.

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 88-5341 Filed 3-10-88; 8:45 am]

BILLING CODE 4410-19-M

Drug Enforcement Administration

Modern Drug Co.; Revocation of Registration

On November 20, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order To Show Cause to Modern Drug Company (Respondent), of 350 Main Street, Windsor Locks, Connecticut 06096, proposing to revoke DEA Certificate of Registration AM1519668, and deny any pending applications for renewal of that registration as a retail pharmacy under 21 U.S.C. 823(f). Additionally, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AM1519668 during the pendency of these proceedings. 21 U.S.C. 824(d).

Since the president of Modern Drug Company was not available to accept service of the Order to Show Cause/Immediate Suspension, service was accepted by the firm's attorney on November 23, 1987. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Modern Drug Company is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on ten occasions during the course of an undercover investigation conducted by Special Agents of the Drug Enforcement Administration and the State of Connecticut Drug Control Division, Sidney Portnoy, the pharmacist and president of Modern Drug Company, unlawfully delivered controlled substances to undercover agents outside the course of his professional practice as a pharmacist. The undercover agents never presented prescriptions for the controlled substances.

As a result of the investigation, on Octobe 27, 1987, Mr. Portnoy was indicted and charged with ten counts of unlawful distribution or dispensing of controlled substances in violation of 21 U.S.C. 841(a)(1).

On October 30, 1987, the Connecticut Board of Pharmacy suspended Modern Drug Company's license to operate a pharmacy. The Board also suspended Mr. Portnoy's license to practice pharmacy. As justification for both suspensions, the Board cited the imminent danger to the public health and safety posed by the continued operation of the pharmacy and the continued practice by Mr. Portnoy.

Additionally, the Administrator finds that on October 30, 1987, the Connecticut State Drug Control Agents who were conducting an invetory of the pharmacy's controlled substances pursuant to the emergency suspension of its pharmacy's license, found a bottle which was labeled as containing 25 grams of cocaine hydrochloride. Subsequent field testing and laboratory anaylsis revealed that the bottle contained a substance other than cocaine. The totality of the circumstances in this case support a reasonable conclusion that the cocaine hydrochloride had been diverted.

The Administrator further finds that Modern Drug Company had reported a highly unusual and suspicious series of thefts of controlled substances. On October 3, 1987, Modern Drug Company reported the theft of 26,606 dosage units of controlled substances to the Windsor Locks Police Department. Investigators have stated that they consider the purported circumstances of the theft to be of a highly suspicious nature and are continuing their investigation. Additionally, in 1986, Modern Drug Company reported a theft of controlled substances to its insurance carrier but not to the Drug Enforcement Administration. The insurance carrier denied Modern Drug Company's claim based upon the suspicious nature of the incident.

Based upon the foregoing, the Administrator concludes that the registration of Modern Drug Company would be inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registraion AM1519668, previously issued to Modern Drug Company be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Modern Drug Company all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until April 11, 1988 or until any appeal of this order has been concluded. At this time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: March 7, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-5339 Filed 3-10-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Bureau of Labor Statistics
Consumer Expenditure Surveys
CE-201 Vehicle Leasing Supplement
One time
Individuals or households
1920 responses; 128 hours; one form

The Vehicle Leasing Supplement will be used to test a more comprehensive set of leasing questions than currently appears on the Quarterly Interview Survey. The data will be analyzed to determine the suitability of a conceptual change in the treatment of new vehicles in the Consumer Price Index.

Signed at Washington, DC, this 8th day of March, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-5400 Filed 3-10-88; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Job Training Partnership Act; Policy Considerations in Administering JTPA Regulations on Fixed Unit Price Performance Based Contracts

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice publishes for 30-day comment a paper describing issues the Department of Labor is presently considering in administering JTPA regulations at 20 CFR 629.38(e)(2), which set forth conditions whereby fixed unit price, performance based contracts may be charged 100 percent to the training cost category. The paper lists a number of optional positions the Department might take in addressing policy issues in an upcoming official policy interpretation. The paper also identifies several issues which in the longer run could be treated in proposed regulatory change or in statutory amendments. The Department intends for a thorough discussion to take place involving all the partners in the JTPA system, to respond to the issues and options presented in the paper and provide the opportunity for commenters to suggest additional options or pose questions that the Department has not considered.

Following the completion of the comments period and of public discussions, the Department will analyze the information received and prepare an official policy interpretation, to be published proposed in the **Federal Register**, which will in the short run clarify selected questions under the current JTPA regulations at 20 CFR 629.38(e)(2).

DATE: Comments must be submitted on or before April 11, 1988.

ADDRESS: Submit comments to: Administrator, Office of Job Training Programs, Employment and Training Administration, Room N-4469, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Hugh S. Davies, Telephone (202) 535-0580.

Policy Considerations in Administering JTPA Regulations on Fixed Unit Price Performance-Based Contracts

Overview

In the paper which follows, the Department of Labor reviews the three principal areas of concern regarding the use of fixed unit price, performance-based agreements written under 20 CFR

629.38(e)(2), a section of the Federal regulations for the Job Training Partnership Act (JTPA) program.

These areas are:

—The nature of training activities properly chargeable under 20 CFR 629.38(e)(2);

—Issues surrounding current practices in the JTPA system for making payments to contractors; and

—The question of "profits" for public and private non-profit agencies, realized through agreements written under 20 CFR 629.38(e)(2).

This paper is in followup to Training and Employment Guidance Letter (TEGL) 3–87, dated November 18, 1987, in which the Department described a series of problems with fixed unit price, performance-based contracts that had come to light, and requested the cooperation of States and Service Delivery Areas (SDAs) to examine local practices and policies involved in entering into this type of contract and, in particular, to study procurement requirements.

In presenting an analysis of issues and options which respond to perceived problems, the Department of Labor intends to engage in a dialog with States, SDAs, and interested service providers on those questions open to interpretation rather than make immediate policy determinations. Following consultations, the Department will assess what the best course of action is for the short run, and will publish a proposed formal policy interpretation in the **Federal Register** to deal with selected issues. It is anticipated that these steps will be completed during Spring 1988.

The ideas and options presented in this paper are included for the purposes of discussion, and do not represent final DOL interpretation of the statute and regulations.

Policy Considerations in Administering JTPA Regulations on Fixed Unit Price, Performance-Based Contracts

Background

In Training and Employment Guidance Letter (TEGL) 3–87, the Department of Labor described numerous concerns with respect to fixed unit price, performance-based contracts written for training under the Job Training Partnership Act (JTPA). At the heart of the Department's concerns have been questions of compliance with the requirements of 20 CFR 629.38(e)(2), which establishes conditions whereby all contract costs can be charged to the training cost category, and flawed contracting practices that have been used to enter into agreements for training services, sometimes in violation of State and local procurement codes.

The TEGL requested that States and SDAs institute a review of relevant aspects of procurement systems, assessing both the adequacy of provisions and the thoroughness of implementation by JTPA programs. Since the TEGL was issued on November 18, the Department has heard from a number of States and SDAs and discussions have been held at several national and regional meetings.

It is evident that an examination of procurement practices is taking place in many locations. The purpose of this paper is to focus on questions of interpretation of the Federal requirements at § 629.38(e)(2), and to focus on short and longer-term options that could be considered for clarifying or further defining the conditions whereby all contract costs can be charged to training rather than allocated among the administration, participant support and training cost categories.

Training Activities Chargeable Under 20 CFR 629.38(e)(2)

The first group of interpretation issues involves the definition of the term "training" for the purposes of § 629.38(e)(2) of the JTPA Regulations. Questions have been raised whether it is consistent or fair for the Department to hold "training" here strictly to the definition "occupational training", when at § 629.38(e)(1) "training" is defined for the purposes of the training cost category to include a range of training, remedial education, counseling and job search assistance services. The primary intention of DOL in transferring the language of § 629.38(e)(2) from the regulations of the former CETA program was to allow for simplification of contractor cost billing and accounting in exchange for guaranteed placement of participants. Also, during the JTPA implementation period, it was recognized that this regulation would provide strong incentives for higher quality training agreements which would lead to higher wage, and better quality placements for participants. The contractor would have greater flexibility in charging costs, but would only be paid for performance. Occupational specificity for placement outcomes would help tie training activities to the Private Industry Council's (PIC's) guidelines, developed per section 107(d) of the Act.

Other than DOL responses to specific inquiries received during the 1983 JTPA implementation, there was no clear Federal statements as to what constituted acceptable training for the purposes of charging contracts under § 629.38(e)(2). One set of options, both longer-range, would be for the Department to propose a PY 1988 regulatory amendment, or seek clarifying statutory language which would define "training," during any congressional revision to JTPA. Another option is to conclude that it is not ultimately useful to tie the meaning down at the Federal level.

There are, however, two sub-issues related to what constitutes "training" for the purposes of § 639.38(e)(2) that can be addressed in the short run through either general policy guidance or official interpretation:

—The contents of acceptable training "packages", chargeable under 20 CFR 629.38(e)(2); and

—Arrangements for charging of "umbrella contracts" 100 percent to the training cost category, under Section 629.38(e)(2).

A level of concern surrounds the allowability of training packages under § 629.38(e)(2), since the package approach is most common in fixed unit price agreements designed for the hard to serve, including at-risk youth and adults needing basic skills remediation: literacy training, adult basic education, English-as-a-second language (ESL), or GED preparation. Packages may include up front intake and assessment, and job search assistance (JSA) for placement at the end of the program. A core curriculum of occupational skills training is a variable element in such packages, as are provisions for participant support costs.

One approach is for the Department to provide general policy guidance indicating that training packages are permissible written in fixed unit price, performance-based agreements under § 629.38(e)(2). This would be consistent with DOL's emphasis on literacy skills and enriched, longer-term training interventions which will better prepare youth and adult participants facing serious barriers to productive employment.

Another option is for DOL to more formally issue an official interpretation that training packages are permissible under § 629.38(e)(2), and enumerate acceptable elements. In providing a definition of acceptable contents, DOL need not prescribe a universally acceptable package. It is understood all packages may contain a placement phase.

"Umbrella contracts" or "blanket contracts" written under § 629.38(e)(2) have generated unease as well as specific audit challenges, both because of the scale of the contracts and the range of possible participant sequences.

In some of these large, omnibus contracts, the service provider may be able to enroll and directly place some participants, without ever enrolling these individuals in *any* training activity, whether occupationally specific or not. Because in some locations the entire contract amount can be charged to the training cost category without allocating the cost of those participants directly placed, these contracts could be considered a ruse of statutory administrative cost limitations. There are a limited number of SDAs where virtually the entire JTPA allocation has been obligated into a few "umbrella contracts," usually with public agencies or large community-based organization (CBO's).

DOL's options in responding to problems with umbrella contracts appear to be three:

(1) Issue no general policy guidance or official interpretation, and continue to deal with problems on a case-by-case basis. For example, DOL can utilize 20 CFR 629.38(e)(3): "Training costs shall not include direct or indirect costs associated with the supervision and management of the program."

(2) In an official policy interpretation, indicate that these contracts may be written under § 629.38(e)(2) only if there is a method developed to ensure that the costs of participants who do not participate in any training activity are allocated among the cost categories.

(3) In an official policy interpretation, clarify that umbrella contracts are inconsistent with DOL's regulation at 20 CFR 629.38(e)(2).

Specific technical questions arise in training packages for youth. Section 629.38(e)(2), paragraph (iii)(B), allows for youth training packages purchased competitively if the training results in employment, or attainment of an outcome specified in section 106(b)(2) of the Act. The list of outcomes includes:

—Attainment of employment competencies recognized by the PIC;

—Completion of elementary, secondary or postsecondary school or equivalent;

—Enrollment in other training or enlistment in the Armed Forces.

Effective in Program Year 1989, the Department will be using a new stronger definition for attainment of youth employment competencies, which will require completion of two out of three skill areas for performance standards and related DOL reporting requirements. Does the DOL focus on the deliverables in performance-based contracts written under § 629.38(e)(2) limit the latitude of local JTPA programs to write training agreements where the outcome is to be a PIC-established youth employment competency? Can performance-based contracts be structured to:

—Enable providers to meet their performance standards for youth programs?

—Mesh with reporting requirements for SDAs?

—Assign credit for outcomes among multiple service providers?

—Encourage service to at-risk youth?

If DOL elects the option to issue guidance on acceptable training packages, the policy guidance could clarify that, in the case of training packages for youth, contracts may be written under § 629.38(e)(2) for the attainment of one or more PIC-recognized youth competency (pre-employment/work maturity, basic education, or job specific skills), according to the preference of the SDA. This guidance would show that achievement of performance standards and reporting of outcomes to DOL do not limit local flexibility in choosing program designs or ligitimate sequences of training and competency attainment for at-risk youth.

Payments to Contractors

The second major area for policy consideration concerns requirements for payments made to contractors under § 629.38(e)(2). The March 1983 JTPA Regulations do not prevent incremental payments to a contractor. DOL has previously indicated that incremental payments are acceptable, provided that contracts treat these payments as a form of advance against full performance, which is defined in § 629.38(e)(2)(iii) to include:

Completion of training by a participant;

Placement of the participant in the occupation trained for;

At not less than the wage specified in the agreement; or,

For youth programs, attainment of outcomes specified in section 106(b)(2) of the Act.

Contract goals for full performance may be defined under a State/SDA system on the basis of each participant served, or on the basis of a percentage of participants served. In circumstances where full performance is not achieved by the contractor, any incremental payments made must be either reimbursed to the local JTPA program or prorated among the three cost categories.

If costs are to be charged to training in accordance with § 629.39(e)(2), in DOL's judgment, there are no legal grounds for making incremental payments that are not contingent on the full performance phase. Therefore, the current practice of non-contingent payment for interim performance benchmarks—often enrollment, training midpoint, and training completion—is inconsistent with JTPA regulations. Payments should be recalculated against the final placement, full performance record of contractors, and necessary reimbursements or prorations arranged.

Because payments to contractors under the present § 629.38(e)(2) regulation "ride" on full performance, a related question is how much of an advance should properly be made to contractors prior to the full performance, placement phase. Current practices in the JTPA system vary widely, with some programs advancing up to and over 90 percent of the contract total to service providers through interim payments. JTPA programs whose contractors do not perform per performance goals may experience delays or difficulties in obtaining reimbursement or cost proration reports. Also, interim payment practices may cause contractors to have excess cash on hand in violation of Federal cash management requirements.

DOL's options in responding to the advance payments issued under § 629.38(e)(2) stem from the level of detail determined appropriate for a general policy guidance issuance or an official interpretation notice. One approach is to provide policy guidance that all interim payments to contractors under § 629.38(e)(2) should be advances which bear a reasonable relationship to the costs incurred by the contractor prior to the placement phase. Another option would be to issue this guidance, but further state a guideline that a range of 25 to 30 percent of the "full unit price" amount be withheld prior to full performance. This guideline would be described as a range, to allow adjustments in cases of very long or very short training periods.

A related "payment to contractors" question is whether DOL should address the meaning of "at not less than the wage specified in the agreement" in § 629.38(e)(2), in light of current practices in the JTPA system. Some SDAs specify a range of acceptable placement wages, or an average wage for placements under the agreement. Also, SDAs have been identified that set no requirement other than the Federal minimum wage. The first option would be for DOL to clarify in general policy guidance or an official interpretation notice that States and SDAs may specify the placement wage as an average wage for the placements obtained by a training contractor, or as a range of acceptable placement wage rates The second option would be for DOL to make an additional statement concerning what constituted an acceptable floor level or lowest-value for placement wage rates in fixed unit price, performance-based contracts. For example, a system-wide general guideline on a floor level could be based on each SDA's Performance Standard model departure number for the placement wage. A third option, opposite to the second option just described, would find the question of the lowest acceptable placement wage rate to be adequately addressed by the overall JTPA Performance Standards mechanism, and not an issue to be specially treated under § 629.38(e)(2) of the regulations.

The Question of "Profits" for Public and Private Non-Profit Agencies

The final area for policy consideration regarding fixed unit price, performance-based contracts written in accordance with 20 CFR 629.38(e)(2) involves contracting between JTPA programs and public and private non-profit agencies on a fixed price basis. When revenues to the contractor exceed the contractor's actual costs in operating a training activity, how are these revenues to be considered? The most prevalent practice in the JTPA system has been to consider these revenues to be profits fairly earned by the public or private non-profit agency by accepting the risk associated with a performance-based contract, and by meeting or exceeding specified JTPA performance goals. Some States and SDAs place restrictions on the use of revenue generated, however. Organizations classified as tax-exempt under section 501(c)(3) of the Federal Internal Revenue Service code are required under the laws of some States to restrict the use of excess JTPA revenue to activities consistent with the general charitable or educational purpose of the organization, which may or may not be job training activities. State and local laws may place other restrictions on the use of any excess revenue or earnings by public agencies, for example, requiring that such funds be formally appropriated prior to any use. Few locations are known to define such excess revenue as JTPA "program income", to be retained by the program generating the revenue and used to further program objectives consistent with JTPA's overall program income regulation found at 20 CFR 629.32.

This final issue presents a real challenge to DOL in its role to provide national policy leadership and oversight of the JTPA system. On the one hand, Federal regulatory history militates against unrestricted use of excess revenues accrued through operation of a job training program. Office of Management and Budget (OMB) Circulars A–87 (cost principles applicable to grants with State and local governments) and A–122 (cost principles applicable to grants with non-profit organizations) state that "No provision for profit or other increment above cost is intended" (A–87), and "Provision for profit or other increment above cost is outside the scope of this circular" (A–122). These Federal management circulars were not referenced in JTPA regulations as requirements as they had been for previous training and employment programs. States have been given a choice as to the cost principles they wish to adopt for JTPA programs, although a number of States did choose the option of formally adopting A–87. Implementation of the Federal cost principles in those States has been unclear with respect to the allowability of "profit"-generating contractual arrangements with public and private non-profit agencies.

Federal grant administrative requirements historically have been determined under OMB Circulars A–102 (State and local governments) and A–110 (non-profit organizations). In July 1979, DOL codified these circulars for its grant programs at 41 CFR 29.70. These DOL regulations do make provision for program income from various sources, such as service fees, with the requirement that program income can be used to expand the DOL-grant assisted program, reduce the total Federal cost, or be applied towards any matching cost. Therefore, 20 CFR 629.32 treats JTPA program income in a way consistent with other DOL grant regulations.

In seeking to understand the background of the OMB circulars, the Department has been advised by OMB officials involved in the initial drafting of the Federal cost principles that the circulars simply did not anticipate or address the question of profits by State, local governments, and private non-profit agencies. Similarly, while DOL officials recognized after JTPA implementation that contracts with governmental or private-non-profit agencies might generate excess revenues in the normal course of operation, it was assumed that these revenues would be modest in scale as the result of sound procurement and price negotiation, and would be expended for program purposes, rather than be identified as no-strings "profits."

At State, SDA, and service provider levels, however, there is a strongly held view that JTPA represented an important departure from past Federal training and employment programs. The Act mandated that the program would be run through a partnership with the private sector, and that the program would be performance-driven, focusing on placement results, with operations influenced by incentives for successful programs and sanctions against poor programs. In this environment, the argument is frequently made to DOL that public and private non-profit agencies which succeed should not be treated differently from private for-profit training providers. If these agencies succeed in meeting or exceeding their goals specified in fixed unit price, performance-based contracts written per § 626.38(e)(2), then these agencies should have free use of revenues in excess of costs as profits.

TEGL 3–87, in discussing the "profits" issue, enumerated a series of excessive profit situations that have been flagged as program abuse problems by DOL during specific investigations. Most "excessive profit" situations can be traced to flaws in actual procurement practices, and in fewer cases, to the procurement system legally in place for a State or SDA program. There have been instances where an administrative decision was made not to hold a competitive selection, although a number of public, private non-profit, and private for-profit potential service providers existed in the local area who would have submitted bids under a request for proposal. Some jurisdictions, in seeking to stream-line contracts, reduced agreement provisions to the point where contracts do not specify clearly the services to be provided or detail deliverables, i.e., the terms of placement or youth competencies to be attained.

Relatedly, agreements in which a variety of services and training activities are authorized without contractual commitments for the minimum number of participants to be provided each service or training course have resulted in agreements that are difficult or impossible to price. One "fixed unit price" may be offered by the bidder, based on participant sequence assumptions that are not guaranteed by the contract. Simply by reducing the number of participants assigned to longer-term or more intensive sequences, a contractor could eliminate risk and assure any desired level of profit from placements.

To control against excessive profits, JTPA contracting officials should penetrate "behind" each proposal and understand the prospective costs associated with what is offered, particularly when a "fixed unit price" is

proposed for a complicated aggregate. Most but not all procurement systems in use do require cost and price analysis. Shortcomings in the application of procurement system requirements and any shortcomings in those systems themselves should be uncovered as States and SDAs complete review of procurement practices and policies.

Improved compliance with applicable procurement requirements, greater attention paid to questions of contract negotiation, and prudent public administration can be expected to minimize cases of excessively high contractor profits in the future. The basic issue remains of the appropriateness of any public/private non-profit agency gaining "profit", and the uses made of such "profit", versus restricted-use program income. Questions remain whether the "profit" concept is consistent with the proper use of public funds, and whether a public perception of the potential for abuse through self-serving contractual arrangements poses a threat to the integrity of the JTPA program nationwide.

The options to address the controversial "profits" issue appear to be three:

(1) In the short run, issue policy guidance or an official interpretation notice, to clarify that revenues in excess of costs incurred by public and private non-profit agencies through JTPA contracts written under 20 CFR 629.38(e)(2) are subject to all constraints on use under State and local law, and limitation under IRS requirements for organizations designated as tax exempt under 501(c)(3). At a later date, propose this clarification for inclusion as an amendment to JTPA regulations, to be effective for PY 1989.

(2) Add to option (1) above, by indicating that it is DOL's official interpretation that profits earned by public and private non-profit agencies through contracts written under 20 CFR 629.38(e)(2) are in fact "program income", and programs are accountable for use of this income per the JTPA regulations at 20 CFR 629.32. As with option (1), at a later date DOL would propose this official interpretation for inclusion as an amendment to JTPA regulations.

(3) Take no Federal-level action in the short run to clarify use of profits earned by agencies through contracts written under 20 CFR 629.38(e)(2). DOL would continue to deal with situations where excessive profits appear to have been earned by public and private non-profits on a case-by-case basis. In the longer run, DOL would consider suggesting legislative amendment to address the allowability of such profits, and any "program income" restrictions on use.

Conclusion

In the long run, the problems with the requirements of 20 CFR 629.38(e)(2) and current practices in the JTPA system are amenable to solution through either regulatory revision to address technical issues, or statutory amendment. The performance-based contracting mode preferred by an increasing body of JTPA administrators and private sector representatives on the PICs can be maintained, as well as fixed unit price agreements, while at the same time the JTPA system responds with adjustments. Potential long-range options include those which address particular issues in each area—the nature of training, payments to contractors, and profits—as well as those that call for replacing or simplifying the present regulatory framework so as to deal with all three main areas of concern. It is important to outline and to study these longer-range answers, at the same time more immediate options are identified.

The Department anticipates that a great deal of discussion will ensue in the JTPA system regarding each of the three areas outlined in this paper. The Department trusts that contributors to this process will consider the overall welfare and future health of the JTPA system as each advances their views and suggestions. DOL will finalize no plan until there has been opportunity for thorough discussion, and as previously agreed, will provide ample notice to the JTPA system prior to the effective date of any new policy interpretations on the use of fixed unit price, performance-based contracts.

Signed at Washington, DC, March 4, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88–5401 Filed 3–10–88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therin.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:	
DC88-1 (Jan. 8, 1988)	pp. 78,82.
Florida:	
FL88-35 (Jan. 8, 1988)	p. 184.
FL88-36 (Jan. 8, 1988)	pp. 186–187.
FL88-37 (Jan. 8, 1988)	pp. 190–191.
FL88-38 (Jan. 8, 1988)	pp.194–195.
FL88-39 (Jan. 8, 1988)	pp. 198–199.
FL88-40 (Jan. 8, 1988)	p. 202.
FL88-42 (Jan. 8, 1988)	p. 206.
FL88-43 (Jan. 8, 1988)	p. 208.
FL88-44 (Jan. 8, 1988)	p. 210.
Maryland:	
MD88-12 (Jan. 8, 1988)	p. 448.
New York:	
NY88-7 (Jan. 8, 1988)	pp. 738–754.
Pennsylvania:	
PA88-15 (Jan. 8, 1988)	pp. 954–955.
PA88-16 (Jan. 8, 1988)	p. 958.
PA88-17 (Jan. 8, 1988)	p. 960.
PA88-18 (Jan. 8, 1988)	pp. 966–969, 971.
PA88-19 (Jan. 8, 1988)	pp. 974–976.
PA88-21 (Jan. 8, 1988)	pp. 986–987.
PA88-22 (Jan. 8, 1988)	pp. 990–998b.
PA88-23 (Jan. 8, 1988)	pp. 1000–1002.
PA88-24 (Jan. 8, 1988)	pp. 1006–1007.

Volume II

Indiana:	
IN88-2 (Jan. 8, 1988)	p. 257.
Missouri:	
MO88-2 (Jan. 8, 1988)	p. 602.
MO88-5 (Jan. 8, 1988)	p. 624.
Texas:	
TX88-40 (Jan. 8, 1988)	pp. 1048–1049.
TX88-41 (Jan. 8, 1988)	pp. 1052–1053.
TX88-42 (Jan. 8, 1988)	pp. 1056–1057.
TX88-43 (Jan. 8, 1988)	pp. 1060–1061.
TX88-44 (Jan. 8, 1988)	pp. 1064–1065.
TX88-45 (Jan. 8, 1988)	pp. 1066b–1066c.
TX88-46 (Jan. 8, 1988)	pp. 1068–1069.
TX88-47 (Jan. 8, 1988)	pp. 1072–1073.
TX88-48 (Jan. 8, 1988)	pp. 1076–1077.
TX88-49 (Jan. 8, 1988)	pp. 1080–1081.

Volume III

California:	
CA88-4 (Jan. 8, 1988)	p. 76.
Utah:	
UT88-3 (Jan. 8, 1988)	pp. 349–357.
Washington:	
WA88-1 (Jan. 8, 1988)	pp. 361,371–384.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of March 1988.

Alan L. Moss

Director, Division of Wage Determinations.

[FR Doc. 88-5000 Filed 3-10-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Environmental Assessment and Finding of No Significant Impact; Dairyland Power Cooperative

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 550.54(o) and Part 50, Appendix J to Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR).

Environmental Assessment

Identification of Proposed Action

The exemption will delete the requirements for Type A testing of the containment building.

LACBWR was permanently shutdown on April 30, 1987 and reactor defueling completed on June 11, 1987. The LACBWR operating License No. DPR-45 was modified to possess-but-not-operate status on August 4, 1987.

Need for Proposed Action

The exemption is needed to eliminate requirements that were appropriate for an operating plant but are not needed at the permanently shutdown LACBWR facility.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because all fuel has been removed from the reactor vessel and the worst case accident would not require containment integrity.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The licensee initiated this exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's application dated August 21, 1987 as revised August 28, 1987, which are available in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5359 Filed 3-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-388]

Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-22 issued to Pennsylvania Power & Light Company and (the licensee) for operation of the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would revise the Technical Specifications (TS) Table 3.6.3-1 by replacing existing containment isolation valves with new isolation valves which will be installed as a result of modifications proposed for Residual Heat Removal (RHR) system. The proposed RHR modifications are intended to reduce the potential of waterhammer and consequent damage to the RHR system during the operation of the RHR system in Suppression Pool Cooling (SPC) mode of operation. The proposed modification is needed because the SPC mode of RHR system operation is being utilized more frequently than anticipated at the time of plant licensing. The increased use of the SPC mode of RHR system operation increases the likelihood of an event which could cause a switchover of the RHR system from SPC mode to Low Pressure Coolant Injection (LPCI) mode of operation. In the present plant configuration, the switchover can cause a waterhammer and damage to the piping and valves of safety systems. The proposed modification is intended to reduce the waterhammer potential and will consist of installation of a new section of piping from RHR system pump discharge header to the SPC system return line in each RHR loop to be used for normal SPC mode of operation. The modified configuration is intended to assure that the LPCI mode piping remains filled and minimizes the potential of waterhammer. As a result of the proposed modifications existing valves which are classified as containment isolation valves are being replaced by a new set of containment isolation valves. The licensee proposed to change the Technical Specifications showing the revised containment isolation valves.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 11, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a subsequent notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 23, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ousterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–5360 Filed 3–10–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–25419; File No. SR–OCC–88–01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On February 26, 1988, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to provide for the continued effectiveness of OCC Rule 609A, which by its terms expires of February 28, 1988.[1] The Commission is publishing this notice to solicit comments on the proposal.

The proposal continues the effectiveness, through May 1988, of OCC Rule 609A which enables OCC to waive clearing member margin requirements in certain circumstances. Specifically, Rule 609A authorizes the Chairman or President of OCC to waive, in whole or in part, conditionally or unconditionally, any deposit or margin that would otherwise be required to be made by any clearing member in any account at any time during any business day. Such a waiver must be based upon a determination that it (1) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest or for the protection of investors, and (2) is consistent with maintaining the financial integrity of OCC.

Additionally, Rule 609A subjects OCC to certain obligations. The rule requires OCC to consult with the Commission before exercising its authority to waive margin requirements. The rule also requires that record of any such waiver be prepared and maintained with the corporate records of OCC.

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act. OCC believes that continued effectivèness of Rule 609A serves the public interest and the protection of investors by giving OCC needed flexibility in dealing with unusual market conditions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549.

Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR–OCC–88–01 and should be submitted by April 1, 1988.

For The Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5350 Filed 3–10–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] To enable OCC to respond to extraordinary market conditions in October 1987, the Commission approved Rule 609A on a temporary, accelerated basis. *See* Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645. On December 31, 1987 OCC filed, and the Commission currently is reviewing, a rule change that would make Rule 609A permanent *See* SR–OCC–87–24.

[Release No. 34–25420; File No. SR–OCC–87–24]

Self-Regulatory Organizations; Options Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19 of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal would make permanent a temporary rule that enables OCC to waive clearing member margin requirements in certain circumstances.[1] The Commission is publishing this notice to solicit comment.

I. Description of the Proposal

The proposal would make permanent OCC Rule 609A dealing with clearing member margin requirements, which, by its terms, expires on February 28, 1988.[2] Rule 609A authorizes the Chairman or the President of OCC to waive, in whole or in part, conditionally or unconditionally, any deposit of margin that would otherwise be required to be made by any clearing member in any account at any time during any business day.[3] Such a waiver must be based upon a determination that it (1) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest or for the protection of investors, and (2) is consistent with maintaining the financial integrity of OCC.

Currently, Rule 609A subjects OCC to certain obligations. Specifically, the rule requires OCC staff to consult with SEC staff before granting a waiver and, after granting a waiver, to make and keep a record of action taken under the rule. The proposal replaces the prior consultation requirement with the requirement that OCC's Chairman or President use his best efforts to consult with the Commission prior to taking action under the rule. In the event the Chairman or President is unable to accomplish prior consultation, he would advise the Commission, as soon as practicable, after any waiver was granted. Additionally, the proposal retains the requirements in Rule 609A that OCC maintain with its corporate records a record of any action taken under the rule.

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act. OCC states in its filing that the proposed rule change serves the public interest and the protection of investors by providing OCC needed flexibility in dealing with extraordinary market conditions.

OCC also believes there is good cause for modifying the prior consultation requirement. OCC states that this requirement could undermine the effectiveness of the rule, which is intended to enable OCC to apply its margin requirements flexibly in extraordinary market conditions. OCC believes that ability may be impaired if the Chairman or President has to consult with the Commission before OCC can take any ameliorative action under the rule.

III. Request for Comments

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) as to which OCC consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office. All comments should refer to file number SR–OCC–87–24 and should be submitted by April 1, 1988.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority. 17 CFR 200–30–3.

Dated: March 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5351 Filed 3–10–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] To enable OCC to respond to extraordinary market conditions in October 1987 the Commission approved, on a temporary accelerated basis, a rule change substantially in the form of the proposed rule change. *See* Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645.

[2] On February 26, 1988, OCC filed a rule change pursuant to § 19(b)(3)(A) of the Act that continues temporary approval of the rule through May 1988. *See* Securities Exchange Act Release No. 34–25419 (3–4–88).

[3] The term "waive" includes, but is not limited to, adjustments or modifications to OCC's formula for calculating margin requirements.

[Release No. IC–16301; (812–6627)]

MetLife-State Street Equity Trust et al.; Notice of Application

March 7, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: MetLife-State Street Equity Trust; MetLife-State Street Fixed Income Trust; MetLife-State Street Income Trust; MetLife-State Street Money Market Trust; MetLife-State Street Tax-Exempt Trust (collectively, "Trusts"); and MetLife-State Street Investment Services, Inc (the "Adviser").

Relevant 1940 Act Sections: Exemption requested pursuant to Section 6(c) from sections 13(a)(2), 17(d), 18(f)(1) and 22 (f) and (g) and approval pursuant to Section 17(d) and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an order (i) to permit the Trusts and all subsequent or similar registered investment companies organized or sponsored by the Adviser or its affiliates to enter into deferred fee arrangements with their Board of Trustees or Directors ("Trustees") and (ii) to permit the Trust and participating Trustees to effect transactions incident to such arrangements.

Filing Date: The application was filed on February 12, 1987 and letters from counsel were submitted on April 22, and December 30, 1987. An amendment incorporating the representations contained in the letters was filed on March 1, 1988. A second amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnaly or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney (202) 272–3026 or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (8000 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. The Trusts are diversified open-end management investment companies organized as business trusts under the laws of the Commonwealth of Massachusetts and currently consist, in the aggregate, of ten separate funds, eight of which currently either offer their shares to the public. The Adviser, a wholly-owned subsidiary of State Street Research & Management Company ("State Street"), serves as the investment adviser and distributor for the Trusts. State Street is, in turn, an indirect wholly-owned subsidiary of Metropolitan Life Insurance Company (New York).

2. The Trustees of MetLife-State Street Fixed Income Trust consists of seven persons, five of whom are not "interested persons" of that Trust within the meaning of section 2(a)(19) of the 1940 Act. The Trustees of each of the other Trusts consists of nine persons, seven of whom are not "interested persons" of such Trusts within the meaning of section 2(a)(19) of the 1940 Act. Each of the Trustees who is not an interested person of the Adviser or State Street are compensated on the basis of $500 for each regular or special meeting of the Trustees or Audit Committee of a

Trust attended and reimbursement for reasonable expenses incurred in connection therewith, plus an annual retainer of $2,500 from each Trust. No Trustee who is an "interested person" of the Adviser or State Street will receive any remuneration from the Trusts.

3. The proposed deferred fee arrangements would be implemented by means of a Deferred Fee Agreement (the "Agreement") entered into between a Trustee and each participating Trust. The effect of such Agreement would be to permit individual Trustees to elect to defer receipt of their Trustees' fees, to enable them to defer payment of income taxes on such fees, or for other reasons. The Agreement will allow each individual Trustee to defer receipt of all Trustee's fees which otherwise would become payable by a Trust to him for services performed after the date of such Agreement. A Trustee will be able to enter into agreements with any number of the Trusts. Each Trust believes that the availability of deferred fee arrangements will enhance its ability to attract and retain Trustees of the same high caliber as those who now serve on its Board of Trustees.

4. Under the Agreement, deferred Trustee fees will be credited to a book reserve account established by the participating Trust (the "Deferred Fee Account"), as of the date such fees would have been paid to such Trustee. The value of the Deferred Fee Account shall be equal to the value such account would have had as if the amounts credited had been invested and reinvested in certain designated securities ("Underlying Securities"). The Underlying Securities for a Deferred Fee Account will consist of shares of the MetLife-State Street Money Market Fund of the MetLife-State Street Money Market Trust provided, however, that in the discretion of the Board of Trustees of the Trust entering into such Agreement (subject to the restriction described below) such account shall be deemed to have been invested in such other Underlying Securities as the Board of Trustees and the participating Trustee shall have agreed upon in writing from time to time. In such event the account shall be credited or charged with all interest, dividends and other earnings and all gains and losses which would have been realized had such account been invested in the Underlying Securities.

5. Under the Agreement, such other Underlying Securities will be restricted to securities which could then be purchased by the Trust entering into the Agreement without violating section 13(a)(3) of the 1940 Act. As a matter of prudent risk management, each Trust intends in all cases to purchase Underlying Securities in an amounts equal to the deemed investment of the Deferred Fee Accounts of its Trustees. No Trust will enter into an Agreement specifying shares of a registered investment company as Underlying Securities for any Deferred Fee Account if there is a material risk that the purchase of such shares would result in a violation of section 12(d)(1) of the 1940 Act.

6. The Agreement provides that the participating Trust's obligation to make payments of the Deferred Fee Account will be a general obligation of such Trust, and payments made pursuant to the Agreement will be made from the Trust's general assets and property. With respect to the obligations created under the Agreement, the relationship of the Trustee to the Trust will only be that of a general unsecured creditor. The Agreement also provides that the Trust will be under no obligation to purchase, hold or dispose of any investments under the Agreement, but, if the Trust choses to purchase investments to cover obligations, any and all such investments will continue to be a part of the general assets and property of the Trust.

Applicants' Legal Analysis

1. Applicants believe that the deferral of Trustee fees in accordance with the Agreement will have a negligible effect on each Trust's assets, liabilities, net assets and net income per shares. The effect of the Agreement would merely be to defer the payment of fees that the Trusts would otherwise be obligated to pay on a current basis. Liabilities created by the credits to the Deferred Fee Account under the Agreement would be held by the equal amount of assets, which assets would not be held by the Trust if fees were paid on a current basis. In addition, when all payments under the Agreement have been made to a Trustee, such Trustee would be in a position no better than if any deferred fees had been paid on a current basis. Further, the Agreement will not obligate any Trust to retain a Trustee in such capacity, nor will it obligate any Trust to pay any (or any particular level of) Trustee fees to any Trustee.

2. Applicants contend that the Agreement possesses none of the characteristics of "senior securities" that led to the adoption of restrictions pertaining to such securities, that the restriction on transferability or negotiability of the deferred fees will have no adverse affects on the Trusts' shareholders, and that the deferral of fees under the Agreement should be viewed as being issued not for services, but in return for the Trusts not being required to pay such fees on a current basis. Thus, Applicants request exemptions from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the 1940 Act, to the extent necessary, to permit implementation of the Agreement.

3. Applicants assert that the Agreement does not involve joint transactions between the Trusts and their Trustees within the meaning of section 17(d) of the 1940 Act and Rule 17d–1 thereunder. In this respect, Applicants submit that the Agreement does not possess the profit-sharing characteristics required for a joint transaction as contemplated by the 1940 Act. To the extent that the Agreement may be deemed to involve joint transactions between the Trusts and their Trustees, Applicants submit that the participation in the Agreement by the Trusts will not be on a basis that is less advantageous than that of any other participant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–5349 Filed 3–10–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1055]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1987

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1987 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: March 4, 1988.

Ronald I. Spiers,
Under Secretary for Management.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Executive Office of the President			
President and First Lady	Artwork: Set of original steel plate engravings of the first 21 Presidents of the United States with facsimiles of their signatures, dated 1880; housed in a leather-covered case; each card is 5×7 inches; gold imprinted presentation text on case cover. Archives. Recd—June 12, 1987. Est. Value—$150.	The Honorable Eberhard Diepgen, Governing Mayor of Berlin.	Nonacceptance would have caused embarrassment to donor and U.S. Government
Do	Photograph: An album of twenty-three 8×10 inch color photographs of the President and First Lady's visit to Canada, April 5–6, 1987. Archives. Recd—April 5, 1987. Est. Value—$145.	The Right Honorable Brian Mulroney, P.C., M.P. Prime Minister of Canada.	Do.
Do	Photograph: An autographed color photograph of Governor General Sauve by Karsh, who also signed the print; displayed in a sterling silver frame with engraved royal crest at top, by Garrard & Co., Ltd; 4½" x 6½" image; 9½" x 13" overall ($450); Archives. Consumables: A small bottle of maple syrup made from sap of trees at Rideau Hall ($10). Perishable. Recd—April 6, 1987. Est. Value—$460.	The Right Honorable Jeanne Sauve, P.C., C.C. Governor General of Canada.	Do.
Do	Household: A pair of brass camels with riders, measuring 22" long, 10" wide, & 25" tall and 13" long, 6½" long, & 13½" tall respectively ($500); Archives. Assortment: A circular woven basket with removable lid and brown leather designs, 13" in diameter, 13" tall; a leather purse or shoulder bag, 11" square; two framed pictures made of butterflies, 9¼" x 12¼" and 7" x 12¼"; a handheld fan made of colored yarns; and an inscribed color photograph of President Habre, 8½" x 11½" ($175). Archives. Recd—June 19, 1987. Est. value—$675.	His Excellency Hissein Habre, President of the Republic of Chad.	Do.
Do	Artwork: Calligraphic sculpture, featuring the two Hebrew letters, resh and nun, which spell the word "Ron" phonetically and stand for the Hebrew characters for "Ronald" and "Nancy" as well; polished metal on black base, by Michel Schwartz, signed; engraved brass presentation plaque attached; 27" tall. Archives. Recd—February 18, 1987 Est. value—$750.	His Excellency and Mrs. Yitzhak Shamir, Prime Minister of Israel.	Do.
Do	Household: Two sterling silver paperweights; one is rectangular with an antique floral mosaic, "Flowers and the Colloseum," and bearing a facsimile signature of President Cossiga underneath, 3½" x 5¾" overall; the second is oval with an antique miniature mosaic, "The Arch of Tito," mounted in 18 kt. gold, bearing a facsimile signature of President Cossiga on top, 3¾" length. Archives. Recd—August 7, 1987. Est. Value—$750.	His Excellency Francesco Cossiga, President of the Italian Republic.	Do.
Do	Photograph: A black and white photograph of the Crown Prince and Princess of Japan, inscribed in Japanese calligraphy; displayed in a sterling silver frame with the imperial gold crest at top; 8½" x 11" image; 10½" x 13¾" overall. West Wing—For Official Use/Display. Recd—October 6, 1987. Est. Value—$250.	Their Imperial Highnesses, the Crown Prince and Princess of Japan.	Do.
Do	Flowers: A large floral arrangement depicting birds in a nest, surrounded by anthurium, azaleas, fruit, & greens; mounted on a moss-covered base. Residence—For Official Use/Display. Recd—December 17, 1987. Est. Value—$250.	His Excellency and Mrs. Ahmed Abdulla Zaid Al-Mahmoud, Ambassador of the State of Qatar.	Do.
Do	Book: "Lincoln and His America 1809–1865" arranged by David Plowden and autographed; navy-blue leather binding with gold-tooled motif, gilt-edged pages, moire-covered end-papers; number 4 of a limited edition of 265 copies; published by the Arcadia Press, London, 1971; hand-bound by Zaehnsdorf of London ($600): Archives.. Household: A 1988 calendar appointment book with a donor's name and title printed inside ($10). Archives. Recd—December 15, 1987. Est. Value—$610.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia.	Do.
Do	Historic Artifacts: Facsimiles of documents from Christopher Columbus, reproduced on parchment and attached to a skippet (seal); contained in a tan sheep skin leather folio, together with a softcover copy of book, "Tratado de Tordesillas" (Treaty); 10½" x 14" overall ($800); Archives. Photograph: Color photograph of Prince Felipe of Asturias, in formal naval attire, inscribed "To Nancy and Ronald Reagan, with all my affection and best wishes, Felipe, Prince of Asturias;" in silver frame; 12" x 16" overall ($300). Archives. Recd—May 26, 1987. Est. Value—$1,100.	His Royal Highness Don Felipe de Borbon, Prince of Asturias Spain.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Crystal bowl and matching platter, depicting a rhododendron motif; by Kosta Boda; handblown by Lisa Bauer and J. Neikter, 1984; bowl is numbered 108845004 and measures 15" in diameter; platter is numbered 108847004 and measures 16¾" in diameter ($12,600); Archives. Photograph: Color photograph of Prime Minister and Mrs. Carlsson, inscribed; in maroon leather frame with brass corners; 7½" x 9½" image, 10½" x 12½" overall ($60). Archives. Recd—September 9, 1987. Est. Value—$12,660.	His Excellency Ingvar Carlsson, Prime Minister of Sweden.	Do.
Do	Clothing and Accessories: Two walking sticks, "The Devrek Walking Sticks," handcrafted from the cornel tree and embellished with silver-colored metal motifs; one dog head handle design, one rabbit's foot handle design; the President and First Lady's picture is on each; 35" x 37½" long respectively. Archives. Recd—January 5, 1987. Est. Value—$120.	His Excellency Turgut Ozal, Prime Minister of Turkey.	Do.
Do	Household: A black lacquered box depicting a medieval scene on hinged lid; crafted in the Soviet Union, 1985; 5⅝" x 4" x 1½" deep. Archives. Recd—December 22, 1987. Est. Value—$400.	His Excellency and Mrs. Yuri V. Dubinin, Ambassador of the Union of Soviet Socialist Republics.	Do.
President	Artwork: Oil painting of the Brandenburg Gate by Reinhold Timm, signed; matted under glass in gold-painted wood frame; 20" x 27½" image; 31" x 38" overall. Archives. Recd—June 12, 1987. Est. Value—$575.	The Honorable Eberhard Diepgen, Governing Mayor of Berlin.	Do.
Do	Consumables: Twenty-four bottles of red Algerian wine and five boxes of dates on vine. Perishable. Recd—December 29, 1987. Est. Value—$197.	His Excellency Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria.	Do.
Do	Gun: A .38 Special revolver, serial No. J 041700, gold-electroplated with wood handle; engraved "Ronald Reagan" and made by Amadeo Rossi in Brazil; two screwdrivers also included. Archives. Recd—June 1, 1987. Est. Value—$1,500.	His Excellency Jose Sarney, President of the Federative Republic of Brazil.	Do.
Do	Jewelry: An 18 kt. gold tie clasp with large pearl in center, engraved on reverse: "To President R. Reagan FR: Ne Win 1987." Archives. Recd—April 10, 1987. Est. Value: $2,000.	His Excellency U Ne Win, Chairman of the Burma Socialist Program Party, Burma.	Do.
Do	Artwork: Stone sculpture of a polar bear from the Frobisher Bay Region, handcrafted by Inuk artist Moss Kelly, signed and numbered (25046) on underside; 5½" high x 4" deep x 9" long. Achives. Recd—April 5, 1987. Est. Value—$400.	The Right Honorable Brian Mulroney, P.C., M.P. Prime Minister of Canada.	Do.
Do	Photograph: Album of color photographs of the President and Mrs. Reagan with Prime Minister and Mrs. Mulroney et al., on the occasion of the Ottawa Summit; leather-bound with embossed cover. Archives. Recd—July 8, 1987. Est. Value—$450.	....do	Do.
Do	Household: A sterling silver letter opener with circular handle bearing royal crest, engraved on blade; by Garrard & Co., Ltd.; 8" long; contained in a navy blue box bearing the royal crest on lid. Archives. Recd—April 6, 1987. Est. Value—$90.	The Right Honorable Jeanne Sauve, P.C., C.C. Governor General of Canada.	Do.
Do	Artwork: A multi-colored jadite floral arrangement in a cloisonne bowl; 19" tall. Archives. Recd—May 20, 1987. Est. Value—$250.	His Excellency Shangkun Yang, Vice-Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	Artwork: A 13" x 19½" modernistic painting, and two modernistic style 10" square ceramic plaques; all by Fernando Llort, signed; and all in gold-colored wood frames. Archives. Recd—October 14, 1987. Est. Value—$900.	His Excellency Jose Napoleon Duarte, President of the Republic of El Salvador.	Do.
Do	Artwork: Bronze sculpture, "Horse at the Barrier," by Pierre Jules Mene, signed, 1848; 17½" long x 12" high x 6½" deep. Archives. Recd—March 31, 1987. Est. Value—$4,500.	His Excellency Jacques Chirac, Prime Minister of the French Republic.	Do.
Do	Coins: Proof set of four 100 franc coins (gold, silver, platinum, & palladium) with image of General Lafayette, 1987; marking the 70th anniversary of the entry of the United States into World War I and the Bicentennial of the French Revolution; contained in a navy blue leather case. Archives. Recd—September 23, 1987. Est. Value—$1,457.	....do	Do.
Do	Sculptures: A Kota reliquary guardian form wood and copper figure, 26" tall; a pair of contemporary carvings of a male and female, approximately 21" tall; an ivory contemporary carving of two giraffes, 6" tall; and an ivory carving of a cup in the style of drums, 7" tall ($940); Archives. Artwork: Three sets of color prints, each set contained in a colored faux leather bound case titled "Cuites," "Homes," and "Privinces" with accompanying French text; each set measures 13" x 20" and is printed in France ($1,350). Archives. Recd—July 31, 1987. Est. Value—$2,290.	His Excellency El Hadj Omar Bongo, President of the Gabonese Republic.	Do.
Do	Book: A folio containing a copy of a 1987 reproduction of an original volume, "Das Reichstags-Gebaude in Berlin," by Paul Wallot and a set of the individual plates depicting interior and exterior views of the Reichstate Building in Berlin. Archives. Recd—June 9, 1987. Est. Value—$750.	Dr. Philipp Jenninger, President of the German Bundestat, Federal Republic of Germany.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Consumables: One case of German wine: Two bottles of Rheinhessen 1976 Riesling Auslese, two bottles of Riesling Beerenauslese, 1981 Rheinpfalz, and 1976 Rheingau, and eight bottles of Riesling Spatlese, 1979–1984. Perishable. Recd—December 22, 1987 Est. Value—$300.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany.	Do.
Do	Household: A white Nymphenburg porcelain figure of the royal Bavarian lion holding a blue and white shield; 6½" tall. Archives. Recd—October 22, 1987. Est. Value—$1,000.	Dr. Theo Waigel, Member of the German Bundestat Federal Republic of Germany.	Do.
Do	Artwork: Cotton wallhanging of the Great Seal of the United States, on white background, lettered "To President Ronald Reagan from President Vinicio Cerezo, Guatemala, May 1987," 72" long x 58" wide ($750); Archives. Artwork: Tapestry, by "R," of seven men in native dress from the town of Solola; in golden wood frame with mirrored border; 33" x 35" ($600). Archives. Recd—May 13, 1987. Est. Value—$1,350.	His Excellency Vinicio Cerezo, President of the Republic of Guatemala.	Do.
Do	Household: Crystal pedestal style bowl with scalloped edge by Cavan Crystal, etched Irish inscription and shamrock motif; 10" in diameter, 8" tall. Archives. Recd—March 17, 1987. Est. Value—$190.	His Excellency Charles J. Haughey, Prime Minister of Ireland.	Do.
Do	Historic Artifacts: A ballistic stone fired by the Romans in the First Century siege of Masada; mounted on block of black marble with engraved presentation plaque and displayed in lucite case; case measures 7½" x 5" x 5". Archives. Recd—November 10, 1987. Est. Value—Indeterminable.	His Excellency Chaim Herzog, President of Israel.	Do.
Do	Artwork: A ceramic figure of the Statue of Liberty by G. Visentin, 18 kt. gold and silver overlay with black face, arms, and feet; No. 41 of 281; displayed on a black and clear lucite base with plaque bearing artist's name; 24" tall figure, 32" tall overall. Archives. Recd—June 8, 1987. Est. Value—$1,200.	His Excellency Giulio Andreotti, Minister of Foreign Affairs of the Italian Republic..	Do.
Do	Household: A pedestal bowl of handblown cobalt blue Venetian glass depicting maidens bathing and on horseback, by M. Dalton, signed on underside; 8" tall and 8" in diameter ($1,200); Archives. Photograph: Ten color photographs of scenes in Italy, the President; Mrs. Reagan, and others; attached to white paper titled "Immagini" ($250). Archives. Recd—June 8, 1987. Est. Value—$1,450.	Dr. Carlo Bernini, President of the Veneto Region Italy.	Do.
Do	Coins: Set of five silver (AG 986) coins, reproducing originals of the Republic of Venice, 1848; Republic of Rome, 1849; Republic of Napolitana (undated); Liberta Ecuaglianza, 1804; and Governo Provisorio di Lombardia, 1848; all contained in a navy blue leather case. Archives. Recd—May 27, 1987. Est. Value—$250.	His Excellency Amintore Fanfani, Prime Minister of the Italian Republic.	Do.
Do	Artwork: An oil on canvas entitled "Piazzetta San Marco" by Amintore Fanfani, signed; inscribed to President Reagan on reverse of antique goldleaf frame; 18¾" x 26½" image, 25" x 33" overall ($150); Archives. Household: Silver cigarette box, etched with "Vertice Economic di Venezia, 8-10 Giugno 1987" (Venice Economic Summit, June 8-10, 1987) on hinged lid with small floral motif on underside of lid; by Federico Buccellati, Orafo, Italy; 7¼" x 5⅜" x 1¼" ($500). Archives. Recd—June 8, 1987 Est. Value—$650.	....do	Do.
Do	Household: A silver cigarette box etched with a scene in Rome on its hinged lid, small floral design on the underside of the lid: Federico Buccellati, Orafo, Italy; 7¼" x 5⅜" x 1¼". Archives. Recd—December 16, 1987. Est. Value—$750.	His Excellency Giovanni Goria, President of the Council of Ministers of the Italian Republic.	Do.
Do	Household: A pedestal style candelabra with removable curved arms and decorative leaf attachments, swag chains, and a finial (four extra arm pieces included); by Murano Glass; signed "Barovier & Torso;" 28" tall ($850); Archives. Book: "Murano, Il Vetro La Sua Gente" (Murano, Its Glass and Its People), published by Consorzio Venezia Vetro, 1986 ($40). Archives. Recd—June 8, 1987. Est. Value—$890.	The Honorable Nereo Laroni, Mayor of Venice Italy.	Do.
Do	Photograph: An album of 107 black and white photographic prints reproduced from the original negatives of pictures featuring the Italian Cavalry, taken from the 1890s to the early 1900s of riders jumping hurdles, etc., in various European horse shows. Ranch—For Official Use/Display. Recd—November 6, 1987. Est. Value—$217.	His Excellency Valerio Zanone, Minister of Defense of the Italian Republic.	Do.
Do	Household: A cloisonne tray depicting two white cranes in flight; approximately 9½" square. Archives. Recd—April 21, 1987. Est. Value—$200.	His Excellency Shintaro Abe Chairman, General Council, Liberal Democratic Party Japan.	Do.
Do	Household: A black wooden lacquerware vase (new) with gold handpainted fans and ocean wave motifs; silver-colored metal removable liner; 8½" tall. Archives. Recd—April 30, 1987. Est. Value—$600.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan.	Do.
Do	Book: "The Imperial Palace," published by Imperial Household Agency, 1969, Japan; bound in navy blue buckram; included is an accompanying softcover publication of the same title. Archives. Recd—October 6, 1987 Est. Value—$225.	Their Imperial Highnesses The Crown Prince and Princess of Japan.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Coins: A 24 kt. gold coin (½ ounce in weight) bearing a depiction of King Hussein I. Archives. Recd—September 11, 1987. Est. Value—$275.	Her Majesty Queen Noor, Queen of the Hashemite, Kingdom of Jordan.	Do.
Do	Artwork: A figure of a rhinoceros, "The Running Rhino," carved by a Kenyan artist from the kisii stone; 37" long, 10" wide, and 15" tall ($2,500); Archives. Artwork: a figure of an African man, "The Sculpture of Happiness," carved in an openwork design by a Kenyan artist from ebony wood; 37" high, 8" wide, x 5" deep ($2,500). Archives. Recd—March 12, 1987. Est. Value—$5,000.	His Excellency Daniel T. Arap Moi, President of the Republic of Kenya.	Do.
Do	Coins: Set of 8 gold and 20 silver coins—"Games of the XXIVth Olympiad Seoul 1988 Commemorative Coins"—under glass in aluminum frame; 18½" x 24¼" overall. Archives. Reced—July 22, 1987. Est. Value—$5,700.	His Excellency Chun Doo Hwan, President of the Republic of Korea.	Do.
Do	Coins: A proof set of seven silver and gold coins, commemorating the XXIVth Olympiad, Seoul, 1988; displayed in blue suede box. Archives. Recd—September 14, 1987. Est. Value—$1,375.	Mr. Tae-Woo Roh, President, Democratic Justice Party Republic of Korea.	Do.
Do	Household: A wool wallhanging woven with composite scenes of Lesotho; 4½ feet x 3 feet, 3 inches; and, a set of six placements depicting color photographs of the country, 8" x 10½" each. Archives. Recd—October 27, 1987.	His Majesty Moshoeshoe II, King of Lesotho.	Do.
Do	Artwork: A statuette, "Mujer Chamula de la Busan Suerte" (Chamula Woman of Good Fortune), from Chiapas, Mexico; gold-electroplated sterling silver; gold-electroplated sterling silver; 8¾" tall. Archives. Recd—January 13, 1987. Est. Value—$500.	His Excellency and Mrs. Miguel de la Madrid Hurtado President of the United Mexican States.	Do.
Do	Book: "Palacio Nacional" texts by Carlos Fuentes and Guillermo Tovar Y de Teresa; general coordination and artistic direction by Nicolas H. Sanchez-Osorio; edited by President de la Madrid; published in Mexico, 1986; No. 0005 of 2001 copies of an edition of 5000; leather bound in green, white and red, simulating the Mexican flag with the Mexican crest on front cover; marblized endpapers. Archives. Recd—February 10, 1987. Est. Value—$850.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States.	Do.
Do	Flowers: A large floral arrangement mostly orchids, in a basket ($150); Residence—For Official Use/Display. Consumables: A large basket of delicacies and foodstuffs ($100). Perishable. Recd—January 4, 1987. Est. Value—$250).	His Majesty Hassan II, King of Morocco.	Do.
Do	Florwers: A large arrangement of anthurium, tulips, bird of paradise, etc., in a porcelain container with overall floral motif ($250); Residence—For Official Use/Displany. Household: A basket containing a Waterford crystal decanter; crystal handled razor and letter opener; and Baccarat elephant; and food delicacies ($575). Archives. Recd—February 6, 1987. Est. Value—$825.	His Majesty Hassan II, King of Morocco.	Do.
Do	Artwork: A gold-plated figure of a falcon perched atop a pedestal base of malachite; the sculpture stands approximately 9" tall, the base is 5½" in diameter at its widest point and stands 6¾" tall. Residence—For Official Use/Display. Recd—October 19, 1987. Est. Value—$2,000.	His Royal Highness Abdallah Ibn Abd Al-Aziz Al Saud, Crown Prince and Deputy Prime Minister of Saudi Arabia.	Do.
Do	Book: "Libro de la Primera Navegacion" (softcover) and "Diario de la Primera Navegacion, 1492," published by Fray Bartolome de las Casas; leather-bound with embossed shield on front cover, in a composition leather-cover case. Archives. Recd—May 26, 1987. Est. Value—$550.	His Royal Highness Don Felipe de Borbon, Prince of Asturias, Spain.	Do.
Do	Household: A silk, hand-knotted carpet depicting floral motifs in predominate shades of blue within bordered design, fringed on two ends; 29½" x 45". Archives. Recd—January 5, 1987. Est. Value—$1,200.	His Excellency Turgut Ozal, Prime Minister of Turkey.	Do.
Do	Athletic Equipment: A leather saddle and accessories, embellished with niello work and affixed with steel and brass hardware; housed in a blond-colored wood chest with black metals bands ($350); Archives. Consumables: A crate of Russian black caviar, consisting of five 4-ounce jars, 2-ounce jars, and five 1-ounce jars ($875); Perishable. Artwork: Sculpture entitled "Power of Life," a composition crafted of Urals semi-precious stones of jasper, jade, lapis lazuli, malachite and others; created by Evgueny E. Vasiliev, signed and dated 1987 on underside; 18¼" tall, 10½" wide, and 3½" deep ($800). Archives. Recd—December 9, 1987. Est. Value—$2,025.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.
Do	Household: a porcelain coffee pot and a tea pot, blue and white design; 10" tall and 7½" tall respectively. Archives. Recd—September 15, 1987. Est. Value—$283.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Do	Household: A crystal decanter with etched floral motif and a diamond faceted stopper and four crystal glasses by Stuart crystal, England ($332); Archives. Household: A framed message of greetings from Chairman Gough, 10½" x 2½" overall ($7). Archives. Recd—July 17, 1987. Est. Value—$339.	Mr. Howard J. Gough, Chairman, South Glamorgan County Council Wales.	Do.

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Do	Artwork: A copper picture of an African native woman, 1986; in a wood frame; measuring 22½" x 39½" overall ($300); Archives. Artwork: An ivory figure of an African man, mounted on a circular wood base; 20½" tall ($650). Archives. Recd—February 24, 1987. Est. Value—$950.	His Excellency Marshal Mobutu Sese Seko, President of the Republic of Zaire.	Do.
First Lady	Jewelry: An 18 kt. gold bracelet with 68 rubies; engraved on clasp: "FR: NW." Archives. Recd—April 10, 1987. Est. Value—$3,000.	His Excellency U Ne Win, Chairman of the Burma Socialist Program Party, Burma.	Do.
Do	Household: An egg-shaped blown glass perfume bottle with red swirled design and glass stopper, handcrafted in Canada and signed "Eberhart;" 6½" tall. Archives. Recd—April 5, 1987. Est. Value—$130.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada.	Do.
Do	Household: A 55" x 80" red silk tablecloth with Oriental motif and green silk fabric with blue floral design, 6 yards long, 46 inches wide. Archives. Recd—May 20, 1987. Est. Value—$245.	His Excellency Shangkun Yang, Vice-Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	Household: A handmade jewelry box with handpainted floral design on a fitted wood stand; 12¾" x 9¼" x 8" box, 14¼" x 10¾" x 14" stand; and a wood photograph frame with floral motifs in opposite corners, 9" x 11" ($415); Archives. Household: A white woven fishnet style hammock ($250). Archives. Recd—October 14, 1987. Est. Value—$665.	Mrs. Ines Duran de Duarte, Wife of the President of El Salvador.	Do.
Do	Household: A porcelain jelly jar with matching lid and saucer in an overall floral design with applied silver rims and finial by Puiforcat Lefevre of Reynaud; bowl is 5" tall, 5" in diameter; saucer is 7" in diameter ($1,740); Archives. Photograph: Two photographs taken by French satellite: One is of the Santa Ynez area highlighing the President's ranch; the other is an enlargement of the northwest quadrant of the first photograph; in black frames; 38" square each ($1,500). Archives. Recd—March 31, 1987. Est. Value—$3,240.	His Excellency Jacques Chirac, Prime Minister of the French Republic.	Do.
Do	Household: A crystal vase on pedestal base by Baccarat, 13¾" tall ($590); Archives. Flowers: Two potted "Nancy Reagan Rose" bushes ($60). Residence—For Official Use/Display. Recd—February 26, 1987. Est. Value—$650.	The Honorable and Mrs. Andre Rossinot, Mayor of Nancy, France.	Do.
Do	Jewelry: A set of gold jewelry, consisting of a bracelet, necklace ring, and earrings; all of a filigree design. Archives. Recd—July 31, 1987. Est. Value—$3,032.	His Excellency El Hadj Omar Bongo, President of the Gabonese Republic.	Do.
Do	Jewelry: A set of pale jade, consisting of a necklace, earrings, and ring; all in 14 kt. gold settings; displayed in wood case with engraved plaques. Archives. Recd—May 13, 1987. Est. Value—$535.	Mrs. Raquel Blandon de Cerezo, Wife of the President of Guatemala.	Do.
Do	Jewelry: A palm and pomegranate necklace, sterling silver, specially designed by Yaacov and Boaz Yemini; displayed in an olivewood case with parchment descriptive card and an engraved presentation plaque attached. Archives. Recd—November 10, 1987. Est. Value—$1,000.	Mrs. Aura Herzog, Wife of the President of Israel.	Do.
Do	Household: An ancient glass vessel with modern silvered ornamental top and legs, designed by Miriam Hirszowicz; 2½" tall, 2½" in diameter. Archives. Recd—February 18, 1987.	Mrs. Yitzhak Shamir, Wife of the Prime Minister of Israel.	Do.
Do	Household: Two ceremonial dolls on stands; "Okina" (Old Man) and "Ouna" (Old Lady) dressed in elaborate brocade costumes, each holding a fan, and, a rake and a broom respectively; approximately 9" tall; displayed on a black lacquered platform inside a glass case with hinged door: case measures 16¾" tall, 25¼" long, and 15" deep. Archives. Recd—April 30, 1987. Est. Value—$350.	His Excellency Yashuhiro Nakasone, Prime Minister of Japan.	Do.
Do	Household: An all-purpose container molded ruby glass with fluted sides and raised leaf design on removable lid, 3" square. Archives. Recd—October 6, 1987. Est. Value—$250.	Their Imperial Majesties, The Crown Prince and Princess of Japan.	Do.
Do	Jewelry: A malachite with coral and goldplate set of necklace, earrings, bracelet, and ring ($200); Archives. Clothing and Accessories: A tote bag, "Chondo," woven by hand by Kenyan women from sisal fibre; 14" in diameter ($40); Archives. Consumables: Four small packets of Kenyan coffees ($6). Perishable. Recd—March 12, 1987. Est. Value—$246.	His Excellency Daniel T. Arap Moi, President of the Republic of Kenya.	Do.
Do	Household: A porcelain cachepot depicting a "Reproduction of the tobacco leaf pattern commonly found on China trade porcelain in the second half of the XVIII Century" by Mottahedeh for the Metropolitan Museum of Art in New York; 6½" tall. Archives. Recd—May 18, 1987. Est. Value—$275.	Mrs. Maria Barroso Soares, Wife of the President of Portugal.	Do.
Do	Household: A silver tray, engraved with facsimile signature of Prince Felipe and the royal crown; 16½" square. Archives. Recd—May 26, 1987. Est. Value—$200.	His Royal Highness Don Felipe de Borbon, Prince of Asturias, Spain.	Do.
Do	Household: A gold-plated sterling silver trinket box etched with landscape scenes and facsimile signatures of Juan Carlos I and Queen Sofia on inside of hinged lid; 3½" x 2¾" x 1½" deep; enclosed in navy blue box depicting gold crown on lid. Archives. Recd—September 25, 1987. Est. Value—$400.	Their Majesties Juan Carlos I and Sofia, The King and Queen of Spain.	Do.

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Do	Garments: A brown leather one-piece dress with 3/4-length sleeves and black velvet floral motifs with gold-colored bugle beaded design at top; a brown leather jacket with white fur collar by "Modello;" and a two-piece evening suit, consisting of a black leather skirt and a black leather top with "gold-mesh" design and black fur around hem. Archives. Recd—February 5, 1987. Est. Value—$700.	Mrs. Semra Ozal, Wife of the Prime Minister of Turkey, Foundation for Advancement and Recognition of Turkish Women.	Do.
Do	Household: A lacquered box depicting handpainted medieval scene on hinged lid, signed 1966; 6½" x 4" x 1½" deep. Archieves. Recd—September 15, 1987. Est. Value—$450.	Mrs. Rnanuli Razhdenovna Shevardnadze, Wife of the Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Frank C. Carlucci, Assistant to the President for National Security Affairs.	Consumables: Two 4-ounce jars of Russian black caviar and six bottles of liquor. General Services Administration. Recd—November 2, 1987. Est. Value—$275.	His Excellency Eduard Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Anne N. Foreman, Associate Director Office of Presidential Personnel.	Jewelry: An 18 kt. gold brooch with five turquoise stones and eight diamonds from Michalis of Athens, Geneva, and Kuwait. General Services Administration. Recd—June 22, 1987. Est. Value—$1,200.	Her Royal Highness Princess Shaika Hessa, Bahrain.	Do.
Colin L. Powell, Assistant to the President for National Security Affairs.	Historic Artifacts: A pottery juglet with horizontal ribbing decoration dating from the Early Middle Roman Period; 3" in diameter, 4½" tall; in a clear lucite display case. Presidential Staff—Official Use/Display. Recd—December 14, 1987. Est. Value—Indeterminable.	His Excellency Yitzhak Rabin, Defense Minister of Israel.	Do.

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	Agency: Office of Vice President		
Mrs. Barbara Bush, wife of the Vice President.	Gold & Diamond Pin with 18 pearls Recd.—January 7, 1987. Est. Value—$750. Delivered to GSA for disposition. June 19, 1987.	Toshio Yamaguchi, Member of Japanese Diet, Japan.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Vice President George Bush.	Hand held, Gyro-stabilized binoculars British Aerospace Stadyscope type, GS-907 (x7 magnification). Recd.—January 7, 1987. Est. Value—$4,475. Reported to GSA, January 15, 1987.	General Zeid Bin Shaker, Jordan	Do.
Do	Set of coins commemorating 188 Olympic Games, goal and silver. Recd.—July 21, 1987. Est. Value—$5,700. Reported to GSA, September 9, 1987.	President Chun Doo Hawan, Korea	Do.
Do	18" Herend Urn with Handpainted floral motif. Recd.—April 9, 1987. Est. Value—$965..	Matyas Szuros, Secretary of the Central Committee Hungarian Socialist Workers' Party, Hungary.	Do.
Do	Two panels, black with bird design, 4' High. Recd.—May 1987. Est. Value—$400. Accepted for display at Vice President's Residence.	Yang Shangkun, Central Military Commission, Peoples Republic of China.	Do.
Vice President and Mrs. George Bush.	35 ounces of Malofiol caviar. Recd.—December 8, 1987. Est. Value—$875.00. Accepted for official use.	Mikhail Gorbachev, Secretary General of the Union of Soviet Socialist Republic.	Do.

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	Agency: U.S. Senate		
Robert C. Byrd, U.S. Senator.	Ornamental Plate. Recd—April 30, 1987. Est. Value—$200. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Prime Minister Nakasone, Japan	Refusal would likely cause offense or embarrassment.
Do	Crystal pike vase. Recd—October 8, 1987. Est. Value $400—$1,000. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Viktor P. Nikonov, Member of Politbureau, Soviet Union.	Do.
Do	Lacquered painting. Recd—December 9, 1987. Est. Value $300—$500. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate..	General Secretary Gorbachev, Soviet Union.	Do.
Gregory B. Craig, Foreign Policy Advisor to Senator Kennedy.	Gold watch and cufflinks. Recd—December 22, 1987. Est. Value—watch $2,000, cufflinks $800. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Amir of Bahrain, Bahrain	Do.
Bob Dole, U.S. Senator	Black lacquer box with picture of Moscow. Recd—December 9, 1987. Est. Value $300—$500. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	General Secretary Gorbachev, Soviet Union.	Do.

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Do	Russian lacquer set of bowls and spoons. Recd—October 8, 1987. Est. Value $400—$500. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	Viktor P. Nikonov, Soviet Union	Do.
Robert W. Kasten, Jr., U.S. Senator.	Pair of elephant tusks. Recd—April 17, 1987. Est. Value—no market value available. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	President Hissein Habre, Chad	Do.
Edward M. Kennedy, U.S. Senator.	Gold watch and cufflinks. Recd—December 22, 1987. Est. Value—watch $4,500, cufflinks $1,000.	Amir of Bahrain, Bahrain	Do.
William Lynn, Legislative Assistant to Senator Kennedy.	Watch. Recd—December 22, 1987. Est. Value $400. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Amir of Bahrain, Bahrain	Do.

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
	Agency: U.S. Senate		
William A. Reinsch, Chief Legislative Assistant to Senator John Heinz.	Food, lodging and ground transporation in Cracow, Poland over $180.	Polish Ministry of Foreign Trade, Polish Chamber of Commerce.	Refusal would likely cause offense or embarrassment.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition of location	Identity of foreign donor and government	Circumstances justifying acceptance
	Agency: U.S. House of Representatives		
Tony Coelho, Member of Congress.	Silver Plate. Recd September 1986/reported May 1987. Est. Value—$200. Approved for official display.	Antonio Megalhaes Pacheco (Lisbon City Council).	Nonacceptance would have caused embarrassement to donor.
Louis Stokes, Member of Congress.	3×5 rug. Recd August 1987. Est. Value—$450. Approved for official display.	President General Mohammed Zia-Ul-Haq, Pakistan.	Do.

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	Agency: Department of the Air Force		
Edward C. Aldridge, Secretary of the Air Force.	Pakistanian Rug, approx 5' × 7', brown background, w/Pakistan Air Force insignia in center, with fringed border. Recd—November 5, 1986 (Report not filed until 1987). Est. Value—$350. Being held in the Office of the Secretary of the Air Force for official display.	Air Chief Marshal Jamal Ahmed Kahan, Commander, Pakistan Air Force..	Nonacceptance would have caused embarrassement to donor and U.S. Government.
Do	Moroccan Rug, approx 6' × 8', red background, w/woven pattern through it, with fringed border. Recd—November 16, 1986 (Report not filed until 1987). Est. Value—$320. Being held in the Office of the Secretary pending transfer to GSA for disposition.	Moroccan Air Force	Do
Brigadier General Richard S. Beyea, Commander, Air Force Office of Special Investigations.	Two Spanish Dueling Pistols, wooden handles, in a wooden display case. Recd—October 18, 1987. Est. Value—$822. Being held in the Protocol Room at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, Washington DC.	Lieutenant General Emilio Alonso Manglano, Director General, Superior Center for Defense Intelligence, Spain.	Do.
Colonel Timothy D. Gill, Wing Commander, 18th Combat Support Wing.	Kabuto (replica of a helmet worn by historic Japanese military leaders). Recd—April 13, 1987. Est. Value—$814. Being held in the Skoshi Koom, Kadena Air Base, Japan, for official display.	Seichoku Arasaki, Representative of Okinawa City Tourist Association, Japan.	Do.

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Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Department of the Air Force			
Major General Richard A. Pierson, Chief, Joint United States Military Aid Group, Greece.	Provided air transportation from Marakesh to Rabat, Morocco; provided some motor transportation between Moroccan cities; and paid for hotels and some meals while in Morocco. Est. Value—$500.	General M. Kabbaj, Chief of Staff, Moroccan Air Force.	Gifts were extended to recipient after arrival in Morocco. Attempts to decline acceptance were unsuccessful; further efforts would have caused embarrassment to donor.

AGENCY: UNITED STATES ARMY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
GEN Arthur E. Brown Jr., Chief of Staff, US Army Washington.	Oil Painting with frame and blue cape with yellow and red trim. Recd—September 22, 1987. Est. Value—$200. US Total Army Personnel Agency, Alexandria, VA.	General Acosta, Ecquadorian Army...	Non-acceptance would have caused embarrassment to donor & US Government
MG Gary E. Luck, Commanding General, 2d Infantry Division, Republic of Korea.	Sam Jung Do Saber. Recd—December 9, 1986. Est. Value—$300. US Army 2d Infantry Division Museum, Camp Casey, Korea, for official display.	Chun Doo Hwan, President, Republic of Korea.	Do.
HON John O. Marsh, Jr., Secretary of the Army Washington.	Swarovski, Crystal Pineapple. Recd—January 5, 1987. Est. Value—$250. Office of the Secretary of the Army, Washington, for official display.	Mr. & Mrs. Gernot, Langes Swarovski, Tirol, Austria.	Do.
Do.	Rossi Model 68 Piston, 3" barrel engraved & gold chrome plated with case. Serial #D652079. Recd—April 28, 1987. Est. Value—$250. Office of the Secretary of the Army, Washington, for official display.	General Pamplona, Chief of Staff, Brazilian Army.	Do.
LTG James E. Moore, Jr., Commanding General, Combined Field Army, Republic of Korea.	Sam Jung Do Saber. Recd—May 25, 1987. Est. Value—$300. US Army 7th Infantry Division Museum, Fort Ord, CA, for official display.	Chun Doo Hwan, President, Republic of Korea.	Do.
GEN Maxwell R. Thurman, Commanding General, Training and Doctrine Command, Fort Monroe, VA.	Oil Painting with wood frame. Recd—August 18, 1987. Est. Value—$350. Fort Monroe, VA, for official display.	LTG Carlot Jarrin, Head of Ecuadorian delegation to US/Ecuador, Staff Talks.	Do.
GEN John A. Wickham, Jr., Chief of Staff, US Army Washington.	Two (2) blue topaz stones. Recd—January 28, 1987. Est. Value—$245. US Total Army Personnel Agency, Alexandria, VA.	General Pamplona Chief of Staff, Brazilian Army.	Do.
Headquarters, US Army South, Fort Clayton, Panama.	Twelve (12) bottles of Moat e Chandon-Brut Imperial Champagne. Recd—July 4, 1987. Est. Value—$285. US Army South, Fort Clayton, Panama, for use in appropriate official social functions hosted by US Army South.	General Manuel Noriega, Commander in Chief, Panama Defense Force.	Do.
US Central Command, MacDill Air Force Base.	Four (4) gold coins, total weight 16.966 grams, 91.67% 22 carat gold. Recd—November 21, 1987. Est. Value—$948. US Total Army Personnel Agency, Alexandria, VA.	Ali Khalifa Al-Sabah, Kuwaiti Oil Minister.	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William H. Webster Director, CIA.	Sindhi Khes shawl, green and gold on black ground. Recd September 1987. Est. Value—$200.00 To be reported to GSA for disposition.	Public Law 95-105, A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Do	Stone sculpture of otter, probably Alaskan. Signed with copyright, numbered 5-A-22435. H:9. Recd June 1987. Est. Value—$250.00. Retained for official display..	do	Do.
Do	Ancient redware handled jar, probably first Century A.D. (chips on lip and hole in body). H:6. Recd September 1987. Est. Value—$250.00. Retained for official display.	do	Do.
Do	Indo-Persian silk rug (mounts for wall hanging). Square, approximately 24. Recd September 1987. Est. Value—$350.00. Retained for official display.	do	Do.
Do	Middle Eastern glazed pottery temple vase. Brown ground with gilt and grisaille decoration with script medallions. (base repaired) H: 38. Recd September 1987. Est. Value—$500.00. To be reported to GSA for disposition.	do	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Egyptian yellow gold and bone ceremonial sword by Ahmad Bader, in fitted case. Chrome blade with engraved gold scabbard with Egyptian great seal and two chain-hung coin medallions. L: overall 412-1/2. Recd September 1987. Est. Value—$1,000.00. Retained for official display.	do	Do
Do	Indo-Keshan tree-of-life prayer rug. 5.7 Ivory ground with flowering tree field, palmette and trellising vine guard border on wine-red ground, Mounted as wall hanging. Recd September 1987. Est. Value—$700.00. Retained for official display.	do	Do.
Do	Indo-Keshan rug 5x7. Ivory ground, floral trellising field, and centering a pulled star medallion, trellising vine guard border on mauve ground. Recd September 1987. Est. Value—$300.00. Retained for official display.	do	Do.
Do	Moroccan rug 8x10. Wine-red ground with ivory medallion, blue spandrels, and four guard borders. Recd September 1987. Est. Value—$650.00. Retained for official display.	do	Do.
Do	Moroccan rug 8x10. Chinese red ground with multicolored medallion, complementary spandrels, palmette guard border on black ground. Recd September 1987. Est. Value—$550.00. Retained for official display.	do	Do.
Do	Pair diamond and opal earring studs. 14 karat yellow gold mounts. Each centering an oval cabochon opal surrounded by 12 round melee diamonds (one diamond missing). Recd April 1987. Est. Value—$275.00. To be reported to GSA for disposition.	do	Do.
Do	African filigree gold bracelet with hairpin catch. Weight approximately 2 oz. Recd September 1985. Est. Value—$700.00. To be reported to GSA for disposition..	do	Do.
Do	African yellow gold necklace with gold nugget pendant (chain in two pieces). L: approximately 15. Recd September 1985. Est. Value—$450.00. To be reported to GSA for disposition..	do	Do.
Do	African yellow gold necklace with fish pendant. L of chain: 14-1/2. Recd September 1985. Est. Value—$375.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace, twisted and plain loop design with coiled spacers. L: 23. Recd September 1985. Est. Value—$250.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace with two English sovereigns: (a) Victoria, dated 1882; and (b) George V, dated 1927. L of necklace 16. Each sovereign with soldered link. Recd September 1985. Est. Value—$450.00. To be reported to GSA for disposition.	do	Do.
Do	Middle Eastern yellow gold necklace hung with 16 gold beads. L: 15. Recd May 1985. Est. Value—$350.00. To be reported to GSA for disposition.	do	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency employee	Hotel lodging—$250	Public Law 95-105 A(F)(4)	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs)P.	Two ivory elephant tusks. Recd—April 1987. Est. value—$1,000. Approved for official display in office of donee.	President Hissein Habre, Chad	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Frank C. Carlucci, Secretary of Defense.	Four (4) bottles of French red wine. Recd—November 1987. Est. value—$240. Approved for official use at an official function hosted by the donee.	Field Marshal Zeid bin, Shaker, Commander-in-Chief, Jordanian Armed Forces.	Do.
Do	Box of Caspian Brand Caviar, one dozen 2 oz. jars, produced and packed by the Soviet Fisheries of the Caspian Sea for V/O "Prodintorg". Recd—Dec. 9, 1987. Est. value—$600. Approved for official use at an official function hosted by the donee.	Mikhail S. Gorbachev, The General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.

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AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Do	Large black lacquer box, decorated with Russian scenic view on top and gold design around the sides, red interior, footed, 13"x 9", in light blue box. Recd—Dec. 9, 1987. Est. value—$1,000. Approved for official display in office of donee.	......do	Do.
Do	Moroccan rug (orange tones, cream, blue and gray), approx. 3'4½x6'2". Recd—Dec. 22, 1987. Est. value—$365. Approved for official display in office donee.	M'Hamed and Mrs. Bargach, The Ambassador of Morocco.	Do.
Do	Book, "Royal Illuminated Manuscripts of Morocco" (Al-Hassanie library), by Mohamed Sijelmessi, with red velour cover and case. Recd—Dec. 22, 1987. Est. value—$75. Approved for official official display in office of donee.	......do	Do.
Adm. William J. Crowe, Jr., USN, Chairman, Joint Chiefs of Staff.	Silver-plated jewelry, including a belt, bracelet, and danling earrings, hand-made, decorated with artificial stones. Recd—March 1987. Est. value—$750. Delivered to GSA for disposition Nov. 6, 1987.	Mrs. Mohammed Saleh Hammad, Saudi Arabi.	Do.
Do	22K gold bracelet. Recd—March 1987. Est. value—$1,200. Delivered to GSA for disposition Nov. 6, 1987.	The Amir of Bahrain	Do.
Do	Ceremonial sword with gold-plated sheath decorated with clusters of rhinestones. Recd—March 1987. Est. value—$750. Delivered to GSA for disposition Nov. 1987.	His Royal Highness Major General Khaled Bin Sultan Bin Abdulaziz, Commander-in-Chief of the Royal Saudi Air Defence Forces, Saudi Arabia.	Do.
Do	Wooden model ship, Bahraini "Pearler" sailing ship, approx. 57" long by 39" high, mounted on pedestal with multiple wooden figurines performing pearl harvesting duties. Recd—March 12, 1987. Est. value—$200. Delivered to GSA for disposition Nov. 6, 1987.	Major General Khalifa, Chief of Defense, Bahrain.	Do.
Do	Multicolored carpet, 74"x49¼", with Pakistani Air Force Seal. Recd—March 1987. Est. value—$700. Approved for official display in office of the Under Secretary of Defense (acquisition).	Commander, Pakistan Air Force, Pakistan.	Do.
Do	Set of three gold-plated khunjars (small swords), with mother-of-pearl handles, in large case. Recd—Nov. 5, 1987. Est. value—$500. Approved for official display in office of donee.	R. Bisognierro, Italian Defense Chief of Staff.	Do
Lt. Gen. Phillip C. Gast, USAF, Director, Defense Security Assistance Agency.	Rug, 3'4½"7'8", multicolored. Recd—Apr. 25, 1987. Est. value—$200. Delivered to GSA for disposition Aug 5, 1987.	President Habre of Chad	Do.
Do	Candelabrum, onyx and brass, three-light holder, approx. 12" high. Recd—Apr. 27, 1987. Est. value—$250. Delivered to GSA for disposition Nov. 6, 1987.	Field Marshal Abu Ghazala, Minister of Defense of Egypt.	Do.
Do	Staiger quartz clock, onyx and brass, approx. 5⅛"x5½". Recd—May 20, 1987. Est. value—$350. Delivered to GSA for disposition Nov. 6, 1987.	Secretary of Defense Zaidi of Pakistan.	Do.
Do	Polished pewter tray commemorating 6th Pak-UK CG meeting May 1987, 12" diameter. Recd—May 20, 1987. Est. value—$75. Delivered to GSA for disposition Nov. 6, 1987.	......do	Do.
Mrs. Ann Kerr, Program Manager, Nuclear Monitoring Research, Defense Advanced Research Projects Agency.	Sterling silver pearl pin/pendant, with chain (5 pearls). Recd—November 1987. Est. value—$350. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Dr. Shegegi Suyehiro, Ministry of Foreign Affairs, Japan.	Do.
Lt. Cdr. Robert M. Meissner, USN, Action Officer, Office of Assistant Secretary of Defense (Legislative Affairs).	Baume, & Mercier watch, with matching cuff links, 18K gold and stainless steel. Recd—Dec. 24, 1987. Est. value—$1,908. Reported to GSA and stored in Office of the Deputy Assistant Secretary (Administration) pending disposition by GSA.	Isa bin Salman Al Khalifa, The Amir of the State of Bahrain.	Do.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Ceremonial dagger, gold-plated with white handle, 14½" long, in small wooden box. Recd—Sept. 21, 1987. Est. value—$90. Approved for official display in office of donee.	General Mustapha Cheloufi, Secretary General and Ministry of Defense, Algerian Armed Forces.	Do.
Do	Ceremonial dagger, silver-plated, 13½" long, in wooden box. Recd—Sept. 21, 1987. Est. value—$175. Approved for official display in office of donee.	......do	Do.
William H. Taft, IV, Deputy Secretary of Defense.	Ceremonial dagger, silver-plated, 13½" long, in wooden box. Recd—Sept. 21, 1987. Est. value—$175. Approved for official display in office of donee.	General Mustapha Cheoufi, Member of the Central Committee and Secretary General of the Ministry of National Defense of Algeria.	Do.
Do	Plaque with emblem in plastic case, with brass trim, in green box. Recd—Sept. 21, 1987. Est. value—$75. Approved for official display in office of donee.	......do	Do.
Caspar W. Weinberger, Secretary of Defense.	Bronze spear head (8th-6th Century B.C.E.), Kingdom of Judah, in wooden box. Recd—February 1987. Est. value—$900. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Prime Minister Yitzhak, Shamir of Israel.	Do.
Mrs. Caspar W. Weinberger, Wife of the Secretary of Defense.	Turkish rug, 41"x65" Recd—Mar. 19, 1987. Est. value—$880. Approved for official display in office of the Assistant Secretary of Defense (Comptroller).	Rahmi M. Koc, Turkey	Do.

AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Caspar W. Weinburger, Secretary of Defense.	Pakistani rug, 4'x6', old Persian pattern, beige, brown, and gold with animal figures in design. Recd—May 20, 1987. Est. value—$1,850. Approved for official display in office of donee.	Syed Ijlal Haider Zaidi, Secretary of Defense Pakistan.	Do.
Do	Onyx plate with mother-of-pearl design, approx. 12¼" diameter, in large green velour box. Recd—May 20, 1987. Est. value—$150. Delivered to GSA for disposition Nov. 6, 1987.	......do	Do.
Do	Onyx plate with mother-of-pearl design, approx. 12¼" diameter, in large green velour box. Recd—May 20, 1987. Est. value—$150. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	......do	Do.
Do	AK-47 semi-automatic rifle in wooden box, with separate box of ammunition. Recd—May 20, 1987. Est. value—$1,575. Transferred to DIA.	General Yang Shangkun, Vice Chairman of the Central Military Commission, People's Republic of China.	Do.
Do	An original 41-Colt, single-action Army revolver, which was known as "The Peacemaker," with ivory handle and ivory-handled tools and accessories. It is in a custom-made case made in Rio rosewood with ebony inlay. Recd—Date unknown. Est. value—$1,230. Delivered to GSA for disposition Nov. 6, 1987.	Sheik Hamed, Minister of Defense, Bahrain.	Do.
Do	Rug, approx. 6'x10½'. Recd—Sept. 15, 1987. Est. value—$850. Approved for official display in office of donee.	Minister of Defense Baly, Tunisia	Do.
Do	18K gold dagger in blue and brown, velour box. Recd—Date unknown. Est. value—$1,000. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Prince Sultan Bin Abdulaziz, Second Deputy Premier and Minister of Defense and Aviation and Inspector General, Saudi Arabia.	Do.

AGENCY: U.S. DEPARTMENT OF ENERGY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Lois H. Herrington, Spouse of the Secretary of Energy.	Diamond and Gold—Necklace, Earrings, Ring and Bracelet Set. Recd October 1987. Est. Value $2,200. Being held in the Office of Administrative Services pending transfer to GSA.	Wife of Minister of Petroleum and Minerals Al Otaiba, Abu Dhabi, Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mr. John S. Herrington, Secretary of Energy.	Morrocan (Handcrafted) Rug 10' × 6". Recd Oct 1987. Est. Value $200. Being held in the Office of Administrative Services pending transfer to GSA.	Minister of Interior and Information, Driss Basri, Morocco.	Do.

AGENCY: EXPORT-IMPORT BANK OF THE U.S., REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition of location	Identity of foreign donor and government	Circumstances justifying acceptance
William M. Arnold, Senior Vice President—Insurance and Banking.	Animal skin rug, approx. 6' diam., starburst pattern, Recd October 29, 1987. Est. value—$700.00. On display in Room 919.	State Company for Food Stuff Trading, Bhagdad, Iraq.	Gift delivered following U.S. departure of donor. Non-acceptance would have caused embarrassment to donor and U.S. Government.
John A. Bohn, Jr., President and Chairman.	Minolta Camera, model number A-5000 and lens, model number AF-35-70 mmF4. Recd October 6, 1987. Est. value $500.00. To be used by Eximbank for official photographs.	Osaka Chamber of Commerce, Osaka, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John A. Bohn, Jr., President and Chairman.	Animal skin rug, approx. 6' diam., starburst pattern, Recd August 27, 1987. Est. value—$700.00. Being held in Office of Administration pending transfer to GSA for disposition..	Ministry of Trade, Bhagdad, Iraq	Do.
Richard W. Heldridge, Director.	Animal skin rug, approx. 6' diam., starburst pattern, Recd November 9, 1987. Est. value—$700.00. Being held in Office of Administration pending transfer to GSA for disposition..	Ministry of Trade, Bhagdad, Iraq	Do.

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AGENCY: FEDERAL COMMUNICATIONS COMMISSION, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition of location	Identity of foreign donor and government	Circumstances justifying acceptance
Mark S. Fowler, Chairman	Seiko TFT Pocket Color TV—Model LVD-302. Recd January 14, 1987. Est. Value: $300. Gift held by Internal Review and Security Division, FCC pending final disposition.	Shunjiro Karasawa MP, Minister of Posts and Telecommunications, Japanese Government.	Gift presented at the conclusion of a meeting at FCC headquarters, non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interest of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
David L. Donovan, legal assistant to FCG Commissioner Quello and his spouse, Jacqueline Donovan.	The expenses consisted of: (1) hotel accommodations in Vicenza, Italy, from September 20–23, 1987. (2) several meals during the course of the Prix Italia Conference (3) Est. Value: $500	Mr. Alvise Zorzi, Secretariat of the Prix Italia. Radio-Television Italiana (RAI), an arm of the Italian Government.	These expenses were provided to allow Mr. Donovan's participation in the Prix Italia Conference on politics and the media, at the request of RAI.
Albert Halprin, chief, Common Carrier Bureau.	In-country expenses (lodging and meals) for trip to Vancouver, Canada, to participate in meeting of senior communications decisionmakers from countries participating at the World Exposition (Expo '86):. (a) hotel accommodations from June 8–11, 1986 (b) meals during period of meeting participation, June 8–11, 1986; and. (c) Estimated Value: $600	Honorable Marcel Masse, Minister of Communications, Canadian Government.	This gift of expenses of travel was accepted to avoid international embarrassment while in a foreign country.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Marshall Brown, Mission Director.	Two tickets to opera "AIDA". Recd—September 1987. Est. Value—$109–440. Value depended on location of seats and nationality of buyer. Location: Given to senior Egyptian employee.	GOVT of Egypt Min of Tourism	Do.
Peter McPherson, Administrator, A.I.D.	24" × 60" inlaid coffee table donated to USAID/Pakistan in name of Mr. McPherson. Recd—February 1987. Est. Value—$200. Location—Official Use Only at U.S. Mission.	Mr. Mian Mohamed Yasin Khan Wattoo, Minister of Finance of Pakistan.	Do.
Daniel Chaij, Mission Director.	Painting. Recd—December 1984 (late reporting). Est. Value—$484. Location—Official Use Only at U.S. Mission.	GOVT of Costa Rica	Do.
Do.	Silverplate. Recd—September 1986 (late reporting). Est. Value—$210 Location—Official Use Only at U.S. Mission.	Govt of Costa Rica	Do.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph Wheeler, Chairman, Development Assistance Committee, Paris.	Hotel room, 2 nights + one meal, Ottawa, Canada. March 15–18, 1987. Est. $250.	GOVT of Canada	Invited to testify before Canadian Parliamentary Committee.
Do	Hotel room, 5 nights + meals, Abuja, Nigeria. June 18–21, 1987. Est. $350.	UN Economic Commission on Africa.	Received invitation to speak at a conference on African Development.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TRAVEL OR EXPENSES OF TRAVEL—Continued

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Hotel room, 4 nights + meals, Bellagio, Italy. June 29–July 3, 1987. Est. $350.	Rockefeller Foundation	Invited to attend meeting on tropical forests.
Do	Hotel room, 2 nights + meals, Leeds Castle, UK. July 10–12, 1987. Est. $100.	GOVT of United Kingdom	Annual Tidewater Meeting.
Do	Hotel room, 3 nights + meals, September 6–9, 1987. Est. $300	UNDP	North/South Roundtable sponsored by UNDP where all participants provided room and board by UNDP.
Do	Hotel room, 1 night + air fare RT Paris/London, September 23–24, 1987. Cost $514.90.	Business International	Attended conference on Africa.

AGENCY: DEPARTMENT OF THE NAVY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Major George M. Brown, USMC Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Datejust Watch. Recd—March 18, 1987. Est. Value—$2,800. Held in CCJ3 Building, U.S. Central Command for official use.	Colonel Mohamed Bin Zayed, Commander, Uae Air Force and son of the President of Uae.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General George B. Crist, USMC Commander in Chief, U.S. Central Command.	One 6 ft. X 4 ft. Oriental rug, macroon, blue and tan with fringe around border. Recd—June 16, 1987. Est. Value—$297. Held in Headquarters, U.S. Central Command for official use.	General Mohammed Zia Al Haq, President of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do.	One 3 ft. 6 in. X 5 ft. Oriental rug, blue and tan with fringe around the border. Recd—June 17, 1987. Est. Value—$521. Held in Headquarters, U.S. Central Command for official use.	Sheikh Khalifa Al Thani, Amir of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Charles F. Horne, III, USN, Commander, U.S. Naval Forces, Korea.	Ceremonial Sword in presentation case. Recd—October 15, 1986. Est. Value—$1,000. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Minister of Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Allegrone, Post Management Officer, NEA/EX.	Man's Baume & Mercier wristwatch, time/date w/stainless steel band, gold face. Recd—July 1, 1987. Est. Value—$800. Reported to GSA 10/19/87.	Chief of the Diwan, Amiri Court of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jerald H. Barnes, Department of State (DS).	Man's Omega 14K wristwach with black strap (8349-2). Recd—April 16, 1987. Est. Value—$700. Delivered to GSA 6/30/87.	H.E. Hisham Nazer, Minister of Saudi Arabic.	Do.
Lawrence S. Blackburn, Administrative Officer, American Embassy, Manama, Bahrain.	Man's Baume & Mercier wristwatch, time/date w/stainless steel band, gold face. Recd—July 1, 1987. Est. Value—$800. Reported to GSA 10/19/87.	Chief or the Diwan, Amiri Cours of the State of Bahrain.	Do.
Wat T. Cluverius IV, Senior Advisor on Middle East Peace.	Rolex man's gold watch "oyster day/date"—serial 8952330 in brown leather presentation box; and brown leather portfolio with pen; and tan linen hankerchief. Recd—November 20, 1986. Est. Value—$2,000 Delivered to GAS 6/30/87.	H.E. Sheikh Isa Bin Salman al-Khalifa, Emir of the State of Bahrain.	Do.
Mrs. Isabel K. Cutler, Spouse of the U.S. ambassador to Saudi Arabia.	Gold bracelet with medium dark sapphire in center, three small light emeralds, two small rubies, and approx. 23 tiny diamonds (two small stones missing). Recd—April 1987. Est. Value—$300 Delivered to GSA 6/30/87.	A member of the Saudi royal family	Do.
Mrs. Walter L. Cutler, Spouse of the U.S. Ambassador to Saudi Arabia.	Two 21K gold bracelets each with a total of 26 small rubies and sapphires; in black velvet box. Recd—June 1987. Est. Value—$1,500 Reported to GSA 10/19/87.	Mohammed Al-Shaikh, Director of Royal Protocol, Saudi Arabia.	Do.
Do	18K gold chain (approx. 22" long) with pendant with one large and one medium turquoise stone; and 45 large chip diamonds—shaped in a tear-drop. Recd—June 1987. Est. Value—$6,000 Reported of GSA 10/19/87.	Faiz Badar, Director of Ports, Saudi Arabia.	Do.
Walter L. Cutler, U.S. Ambassador to Saudi Arabia.	Silk Persian carpet in colors or red, brown, and cream, in traditional design; approx. 4' x 6' Recd—August 1, 1987. Est. Value—$3,000. Approved for official use by the Office of Protocol.	H.R.H. Sultan bin Salman of Saudi Arabia.	Do.

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Agency: Department of State, Report of Tangible Gifts—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Georgia DeBell, Administrative Officer, American Embassy, Yemen Arab Republic.	(a) Jambiyya silver dagger with scabbard 13" from top of scabbard to tip of blade; attached to Yemeni style embroidered cotton/wool belt with leather buckle. (b) Red wool carpet 9½' x 3¼' with fringe. Recd—June 30, 1987. Est. Value—(a) $450; (b) $800. Approved for official use at American Embassy, Yemen Arab Republic.	Mohsen al Yousifi, Governor of Province of Taiz, Yemen Arab Republic.	Do.
Samuel F. Hart, Former U.S. Ambassador to Ecuador.	Oil painting of village scene by Viaquez 84 in colors of brown and golds; framed in light wood 26"x26". Recd—April 1985. Est. Value—$170. Reported to GSA 10/19/87.	H.E. the Foreign Minister of Ecuador.	Do.
W. Nathaniel Howell, U.S. Ambassador to Kuwait.	S.T. Dupont 18K man's watch with leather band; No. 66383D. Recd—August 31, 1987. Est. Value—$3,000. Reported to GSA 10/19/87.	Abdul Fattah Al Bader, Director of Kuwait Oil Tanker Co., Kuwait.	Do.
Barrington King, U.S. Ambassador to Brunei.	Gold cuff links with square blue stone with Brunei insignia. Recd—April 23, 1987. Est. Value—$950. Delivered to GSA 6/30/87.	H.E. Hassanal Bolkiah, Sultan of Brunei.	Do.
Sarah King, Spouse of the U.S. Ambassador to Brunei.	Gold pendant with 40 diamond chips surrounding oval pendant and 3 diamond chips on clasp for chain; pendant has Brunei insignia in center. Recd—April 29, 1987. Est. Value—$1,600. Delivered to GSA 6/30/87.	Saleha, First Wife of the Sultan of Brunei.	Do.
Barrington King, Former U.S. Ambassador to Brunei.	Sterling silver cigarette box. 6"x3½" x2¼". Recd—July 16, 1987. Est. Value—$450. Reported to GSA 10/19/87.	H.E. Mohamed Bolkiah, Minister of Foreign Affairs.	Do.
David Mack, U.S. Ambassador to United Arab Emirates.	Set of 22K gold electroplated implements: a coffee pot, a sandalwood stand and a rose water holder in traditional, Arab design. Recd—August 1987. Est. Value—$815. Approved for official use at American Embassy, Ambassador's Residence, United States Arab Emirates.	Sheikh Hamdan bin Zayed, Under Secretary, Ministry of Foreign Affairs.	Do.
Richard W. Murphy, Assistant Secretary of State.	Sterling silver small round dish 3" in diameter; circular handle with crown design and Arabic inscription. Recd—October 1987. Est. Value—$300. Reported to GSA 12/31/87.	HRH Hassan, Crown Prince of Jordan.	Do.
Laurence E. Pope, Deputy Chief of Mission, Manama, Bahrain.	Man's Chopard wristwatch Monte-Carlo model w/stainless steel and gold band, white face. Recd—July 1, 1987. Est. Value—$2,500. Reported to GSA 10/19/87.	The Amir of the State of Bahrain	Do.
Mrs. Laurence E. Pope, Spouse of the Deputy Chief of Mission, Manama, Bahrain.	Woman's Chopard wristwatch Monte-Carlo model w/stainless steel and gold band, gray face. Recd—July 1, 1987. Est. Value—$2,000. Reported to GSA 10/19/87.	do	Do.
Amb. A.C.E. Quainton, U.S. Ambassador to Kuwait.	Omega men's wristwatch, Swiss made, quartz w/date. Watch face, rim, and band are all gold tone—"Seamaster" model in red box, Omega trademark inside. Recd—July 17, 1987. Est. Value—$385. Reported to GSA 10/19/87.	Mr. Mohammed Hassan Rajah, formerly in Ministry of Commerce in Kuwait.	Do.
Rozanne L. Ridgway, Assistant Secretary of State.	Miniature porcelain samovar in colors of pink and green pattern with gold decoration (6 pieces). Recd—September 18, 1987. Est. Value—$200. Reported to GSA 11/17/87.	HE Eduard Shevardnadze, Foreign Minister of the Union of Soviet Socialist Republics.	Do.
Selwa Roosevelt, Chief of Protocol of the United States.	Baume and Mercier ladies watch with blue shaded face and Saudi insigna small blue saphire on stem; 18K gold; black leather band. Recd—October 19, 1987. Est. Value—$1,200. Reported to GSA 11/17/87.	HRH Abdullah Bin Abdulaziz Al-Saud, Crown Prince of Saudi Arabia.	Do.
Do	Oval black enamel plaque of eight women in colorful costume; approx. 16⅛" x 11½". Recd—December 1987. Est. Value—$350. Being held in the Office of Protocol pending delivery to GSA.	H.E. Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.
Mrs. George P. Shultz, Spouse of the Secretary of State.	(a) Beaded round footstool, approx. 17" high with figures of two men holding up the top; beads of yellow, blue maroon, white, green and red. Douala, Cameroon. (b) Beaded lamp base approx. 33" high with removable bird ornament on top; beads of red, white, black, green and yellow. (c) Fringed off-white tablecloth, hand-woven, approx. 62" x 120"; design of circles and fleur de lis in blue; with twelve matching napkins, approx. 16" x 16". (d) Three footed round beaded table, approx. 21¾" high; star design on in yellow, green, red, white, and black; wood underneath all the beads. (e) Curven beaded cane, approx. 37" high in beads of yellow, green, red, white and black. (f) Horse tail fly whisk with beaded handle; beads of red, white, and black. Recd—January 9, 1987. Est. Value—(a) $50; (b) $25; (c) $100; (d) $80; (e) $15, (f) $20. Delivered to GSA 2/25/87.	Officials and members of Woman's Wing of Cameroon People's Democratic Movement.	Do.
Do	Ebony carving, approx. 42" high of female figures intertwined. Recd—January 10, 1987. Est. Value—$200. Delivered to GSA 2/25/87.	Mrs. Janet Mwengale, Spouse of the Minister of Foreign Affairs of the Republic of Kenya.	Do.
The Secretary of State and Mrs. George P. Shultz.	Portrait of the Secretary of State and Mrs. George P. Shultz done by Leslie Van Orgle—approx. 32" x 36" in frame. Recd—January 12, 1987. Est. Value—$50. Delivered to GSA 2/25/87.	H.E. Air Vice Marshall Alfa, Chief of Air Staff of the Nigerian Air Force, and Mrs. Alfa.	Do.
Do	(a) Two ivory bracelets, approx. 1¼" wide; each has carved bust of women—one facing right on a bracelet and one facing left on a bracelet.	do	Do.

Agency: Department of State, Report of Tangible Gifts—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	(b) Ivory necklace, approx. 22" long, small round ivory beads at end, five elongated ivory beads in center divided equally by ten flat ivory beads. (c) Carved ivory bust of woman wearing necklace; approx. 9⅝" overall; (1⅝" wooden pedestal, 8" ivory bust). Recd—January 12, 1987. Est. Value—(a) $70; (b) $25; (c) $100. Delivered to GSA 2/25/87		
George P. Shultz, The Secretary of State.	(a) Bronze bust of Oba (traditional ruler), approx. 23½" high (b) Ebony carving approx. 2' high of mermaid with arms and hands raised over head and forming circle; tail curled to form circle under mermaid. (c) Gold-tone metal tie bar with Presidential seal on ⅝" circle at end of bar and President's signature on actual bar; gold-tone metal matching cuff links. (d) Three leather unstuffed footstools: one 18" x 28" green and beige w/black trim; Presidential seal with inscription: Presented by Major General Ibrahim Babangida, CFR; President, Commander in Chief of the Nigerian Armed Forces. Two 2" round leather unstuffed footstools with colors, decorations and inscription as described above. Recd—January 12, 1987. Est. Value—(a) $200; (b) $50; (c) $20; (d) $90. Delivered to GSA 2/25/87.	H.E. Ibrahim Babangida, President of the Federal Republic of Nigeria.	Do.
The Secretary of State and Mrs. George P. Shultz.	(a) 18 karat gold filigree necklace and matching bracelet in modified diamond design. (Bracelet: 8⅛ " long, 2" wide. Necklace: 31" long, approx. 1" x 1⅛" wide at points. (b) Ivory carving of hunter with antelope over shoulder and standing dog at feet; approx. 17¼" high with 1⅝" ebony base. (c) Ivory slice approx. 3½" at highest point; sloping to 1¼" in front, with 18 karat gold head mounted on top; approx. 3" x 4¼"; in black suede case. Recd—January 13, 1987. Est. Value—(a) $500. Est. Value—(b) $250. Est. Value—(c) $300. Delivered to GSA 2/25/87.	H.E. Felix Houphouet-Boigny, President of the Republic of Cote d'Ivoire.	Do.
Do	(a) Ancient Roman glass brooch mounted in silver, approx. 2⅛" x 1⅝" in olive wood box ⅝" x 2⅝" x 1½". (b) Small-necked pottery jug, approx. 8½" high; genuine antique from Iron Age I-1200 B.C.E.-930 B.C.E.; with certificate of antiquity from Arieh Klein Ltd. Antiquities; in case with olive wood base and lucite cover. Recd—February 17, 1987. Est. Value—(a) $100. Est. Value—(b) $300. Delivered to GSA 2/25/87.	H.E. Yitzhak Shamir, Prime Minister of Israel and Mrs. Shamir.	Do.
Do.	Sterling silver handmade bowl, 15⅛" x 10" with applied filigree engraved design border, with thirty 6 x 4 mm oval amethyst stones and four 6x4 mm oval garnet stones set around the border in four prong settings. Engraved design in center of bowl. Recd-February 16, 1987. Est. Value—$3,500. Delivered to GSA 6/30/87.	H.E. A.C. Shahul Hameed, Minister of Foreign Affairs of the Democratic Republic of Sri Lanka.	Do.
Do	Silver and enamel equestrian statue, numbered No. 15—copy of Sardinian soldier on horseback—approx. 4½". Recd—February 23, 1987. Est. Value—$530. Delivered to GSA 6/30/87.	HE Giovanni Spadolini, Minister of Defense, Italy.	Do.
The Secretary of State and Mrs. George P. Shultz.	(a) Two-handled copper pot, approx. 17" at widest point—approx. 13". (b) Two (2) Kutahya ceramic plates, handmade and signed on reverse; same type of floral & bird design on each in colors of navy, orange, blue, green & beige—birds on one are orange, blue, green, navy and yellow; birds on other are brown, orange and blue. (c) Three (3) costumed dolls, each approx. 15" high: (i) Kirsehir Gunluk Giysi in gold, purple & green; (ii) Daily dress ORDU—multi-color dress (iii) Malatya Sivarli, purple dress. (d) Kilim rug, approx. 5'4" x 11'9½", in colors of red, green, brown, beige, blue and black. Est. Value—(a) $40; (b) $100; (c) $30; (d) $1,000. Delivered to GSA 6/30/87.	HE Vahit Halefoglu, Minister of Foreign Affairs, Turkey, and Mrs. Halefoglu.	Do.
George P. Shultz, Secretary of State.	Lidded urn—Hungarian hand-painted Herend china with two handles, approximately 19" tall x 12" at widest part; Rothschild birds pattern (birds in tree with jewelry, butterflies and insects sprinkled around); handles in shape of leaf, embellished with gold. In burgundy simulated leather presentation case. Recd—April 1, 1987. Est. Value—$500. Approved for official use by the Office of Protocol.	Dr. Matyas Szuros, Secretary of the Central Committee of the Hungarian Socialist Workers' Party.	Do.
Do	Framed mosaic of Abraham Lincoln by Ben Tara Mahmoud done in 1980 using antique tiles; 2' diameter; wooden, rope-style brown frame. Recd—April 20, 1987. Est. Value—$300. Delivered to GSA 6/30/87.	H.E. Hedi Mabrouk, Minister of Foreign Affairs, Tunisia.	Do.
The Secretary of State and Mrs. George P. Shultz.	(a) Framed Tapestry depicting the Kanda Festival; approx. 19¼" x 24"; orange background shot through with gold; burgundy silk border. (b) Two traditional Japanese dolls, each approx. 8" high with glass display case and separate lacquer piece for floor. Recd—April 30, 1987. Est. Value—(a) $250; (b) $100. Delivered to GSA 6/30/87.	H.E. Yasuhiro Nakasone, Prime Minister of Japan, and Mrs. Nakasone.	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George P. Shultz, Secretary of State.	Imari porcelain hand-painted bowl, approx. 12" diameter; red, navy, white and gold coloring, pot of flowers in the center. Recd—April 30, 1987. Est. Value—$250. Delivered to GSA 6/30/87.	H.E. Tadashi Kuranari, Foreign Minister of Japan.	Do.
The Secretary of State and Mrs. George P. Schultz.	(a) Double-sided Chinese embroidery of a white cat with red ribbon around its neck approx. 8¼" diameter, in reversible wooden frame which fits into carved wooden stand approx. 6" high x 7¼" wide. (b) Silk brocade material, approx. 6 yards, 29¼" wide; floral/swirl design in shades of blue with silver. Recd—May 19, 1987. Est. Value—(a) $200; (b) $75. Delivered to GSA 6/30/87.	H.E. Yang Shangkun, Vice Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	(a) Two antique-finish Murano glass ducks, one is approx. 12¼" high, one approx. 10" high; both are opaque, with shades of red and black with a hint of orange. (b) Brushed silver cigarette box, approx. 4"x3"x3/4"; engraved picture of Cini Foundation on front, also the words "Vertice Economico di Venezia 6–10 Giugno 1987"; on back the words "Federico Bucellati Grafo". (c) Murano glass decanter and stand; Decanter 10" high with glass stopper; stand is cone shaped diameter 10½"; 8½" highest point; blue presentation case. (d) Proof of copper-plate lithograph, approx. 26"x32½"; entitled "Angle of Peace" and executed by Amintore Fanfani; arrived with glass shattered, but metal frame intact. Rec'd—June 9, 1987. Est. Value—(a) $1,000; (b) $100; (c) $500; (d) $100. (a) Approved for official use at Department of State, Diplomatic Reception Area. (b, c, d) Reported to GSA 10/19/87.	H.E. Amintore Fanfani, President of Council of Ministers of Italian Rep. and Mrs. Fanfani.	Do.
George P. Schultz, Secretary of State.	Complete set of Games of XXIVth Olympiad Seoul 1988. Set of 29 coins, 8—gold, 21—silver. Rec'd—July 8, 1987. Est. Value—$3,900. Reported to GSA 10/19/87.	H.E. Chun Doo Hwan, President of the Republic of Korea.	Do.
Do	Stone sculpture; head of a woman with 18k gold in braids of hair and on eyelids; approx. 20" x 7" at widest part. Rec'd—July 31, 1987. Est. Value—$500. Reported to GSA 10/19/87.	H.E. El Hadj Omar Bongo, President of Gabonese Republic.	Do.
Do	Set of five Olympic silver coins: 10,000 won; 5,000 won; 5,000 won; 2,000 won; 1,000 won. Rec'd—September 17, 1987. Est. Value—$185. Reported to GSA 10/19/87.	TH Roh Tae Woo, President of Democratic Justice Party of Korea.	Do.
Do	Two identical cloisonne vases, approx. 13" high and 8" at widest point, black background w/floral design in green, yellow, pink, blue, brown, and white; each has carved wooden stand, approx. 6" wide. In presentation box of gold and blue silk material. Rec'd—October 2, 1987. Est. Value—$200. Approved for official use by the Office of Protocol.	HRH Prince Samdech Norodom Sihanouk, President of the Coalition Government of Democratic Kampuchea.	Do.
Do	Ceremonial dagger, approx. 10¾" long decorated in 18K gold with 46 small diamonds; intricate design of leaves and flowers with Saudi Arabian national symbol; silver blade. Recd—October 28, 1987. Est. Value—$1,000. Reported to GSA 11/18/87.	HRH Abdullah ibn Abd al-Aziz Al Saud, Crown Prince and Prime Minister of Saudi Arabia.	Do.
Do	Antique print of Trevi Fountain in Rome; approx. 25½" x 19½" unframed; written in pencil on reverse: "Stampe all acquaforte disegnate de Barbault pitbre e meisore (1718–1762)". Recd—November 6, 1987. Est. Value—$500. Reported to GSA 11/18/87.	H.E. Valerio Zanone, Minister of Defense Italian Republic.	Do.
Do	Framed, signed and numbered lithography entitled "Entebbe"; metal plaque on print inscribed "Mordecai Ardon (B.1896), Entebbe Lithography presented by Chaim Herzog, President of Israel, November 1987". Recd—November 10, 1987. Est. Value—$300. Reported to GSA 11/18/87.	H.E. Chaim Herzog, President of Israel.	Do.
Do	Herend hand-painted china vase with lid; Rothschild Birds pattern; approx. 10" high; "loving cup" handles embellished with gold. Recd—November 20, 1987. Est. Value—$200. Approved for official use by the Office of Protocol..	H.E. Jozsef Marjai, Deputy Chairman of the Council of Ministers of Hungarian People's Repubic.	Do.
Do	(a) Silver letter knife, approx. 7½" long; in brown suede case and white box with German seal. Recd—Decemeber 15, 1987. Est. Value—$200. Held in the Office of Protocol pending delivery to GSA. (b) KPM porcelain oval dish, approx. 11" x 8"; latticed sides, gold edge, floral bouquet with butterfly on inside bottom. Recd—Decmeber 15, 1987. Est. Value—$140. Approved for official use by the Office of Protocol.	H.E. Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, and Mrs. Kohl.	Do.
The Secretary of State and Mrs. Shultz.	Three-volume, leatherbound set of *Quadrupeds of North America* by John James Audubon, F.R.S., &c. &c. and The Rev. John Bachman, D.D., &c. &c.; published by V.G. Audubon, 1856, New York. Each book approx. 7½" x 11". Recd—December 15, 1987. Est. Value—$10,580. Approved for official use in the office of the donee.	HRH Bandar bin Sultan bin Abdulaziz, Ambassador of Saudi Arabia, and HRH Princess Haifa bint Faisal.	Do.
Do	Hand-painted Herend china vase, approx. 6" tall, with fluted top, 6" across at top; coral flowers painted at random around outside of vase; with gold trim and gold and floral design around rim. Recd—December 17, 1987. Est. Value—$250. Approved for official use by the Office of Protocol.	HE Dr. Vencel Hazi, Ambassador of the Hungarian People's Republic, and Madame Judit Hazi.	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George P. Shultz, Secretary of State.	Five Italian coins (reproductions): five lire 1848; 8 lire 1804; 3 baiocchi 1849; 5 lire 1848; 12 cartini 1799. Recd—December 17, 1987. Est. Value—$500. Held in the Office of Protocol pending delivery to GSA.	H.E. Giovanni Goria, President of the Council of Ministers of the Italian Republic.	Do.
Ellie Vandenburg, Acting Branch Chief FBO.	Man's Baume & Mercier wristwatch time/date w/stainless steel band and gold face. Recd—July 1, 1987. Est. Value—$600. Reported to GSA 10/19/87.	Chief of the Diwan Amiri Court of the State of Bahrain.	Do.
Allen Wallis, Under Secretary of State.	Oval coffee table with white and blue design; approx. 60" x 28". Recd—March 5, 1987. Est. Value—$200. Approved for official use in the office of donee.	H.E. Finance Minister Attoo of Pakistan.	Do.
Frank Wisner, U.S. Ambassador to Egypt.	Binoculars. Recd—October 5, 1987. Est. Value: $300. Approved for official use at American Embassy, Egypt.	Arab International Optronics Factory, El Salaam City, Cario, Egypt.	Do.
John C. Whitehead, Deputy Secretary of State.	Framed Indian print of rider on elephant and rider on horse in battle; 15½" x 17½". Recd—October 26, 1987. Est. Value—$250. Approved for official use in office of the donee.	H.E. Rajiv Gandhi, Prime Minister of India.	Do.
John C. Whitehead, Deputy Secretary of State.	Dagger with gold handle and sheath with 44 small diamonds and silver blade; approx. 11" long. Recd—October 22, 1987. Est. Value—$1,000. Reported to GSA 11/17/87.	HRH Abdullah ibn Abd al-Aziz Al Saud, Crown Prince and Prime Minister of Saudi Arabia.	Do.

AGENCY: SUPREME COURT OF THE UNITED STATES, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sandra Day O'Connor, Associate Justice.	Small lacquer screen. Recd—August 1987. Est. Value—$200. Delivered to GSA, Forrestal Vault, December 3, 1987.	H.E. Chung Haechang, Minister of Justice Korea.	Non-acceptance would have caused embarrassment to donor, and I did not believe object was more than of minimal value.

AGENCY: DEPARTMENT OF TRANSPORTATION, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Adm. Thomas King, Superintendent, U.S. Merchant Marine Academy.	Carpet, 4' by 6'. Est. value—$500. Rcvd—February, 1987. Displayed in offices of the Superintendent.	Maritime Academy of the Government of Morocco.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: DEPARTMENT OF TRANSPORTATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
LCDR Thomas A. Nies, USCG Fisheries Regulations and Procedures Officer.	Banquet held for U.S. and Korean delegations. Est. Value—$200	Korean Deep Sea Fisheries Association, Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
CAPT J.R. Sproat, Commander, USCG Far East Section.	Round trip rail ticket from Yokota, Japan to Maizuru, Japan, lodging and meals to attend the graduation ceremony at the Maritime Safety School. Est. Value—$400.	Akio Tanial, Director, International Affairs Division, Maritime Safety Agency, Japan.	Do.

AGENCY: DEPARTMENT OF THE TREASURY—DEPARTMENTAL OFFICES REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, Jr., Secretary of the Treasury.	Ceramic birds, February 1987, $300.00, Retain at Treasury	Kasuga Ikko, former chairman, Democratic Socialist Party.	Embarrassment to return.
Do	2 1987 Belgium coins, April 1987, $250.00, Retain at Treasury	Eyskens Mark, Minister of Finance, Belgium.	Do.
Do	Korean Olympics Commemorative Coin Set, April 1987, $1,475.00, Retain at Treasury.	Chung In Young, Minister of Finance, South Korea.	Do.
Do	Silver box, June 1987, $400.00, Retain at Treasury	Amintore Fanfani, Prime Minister, Italy.	Do.

AGENCY: DEPARTMENT OF THE TREASURY—DEPARTMENTAL OFFICES REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Korean legal tender issued by the Bank of Korea in Commemoration of the Games of the XXIVth Olympiad in Seoul, Korea—5 coins in case, September 1987, $1,250.00, Retain at Treasury.	Il Yakong, Minister of Finance, South Korea.	Do.
David C. Mulford, Assistant Secretary of the Treasury for International Affairs.	Korean legal tender issued by the Bank of Korea in Commemoration of the Games of the XXIVth Olympiad in Seoul, Korea—5 coins in case, April 1987, $1,250.00, Retain at Treasury.	do	Do.

AGENCY: UNITED STATES MINT REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donna Pope, Director, U.S. Mint.	Two series of 6-coin sets with two (2) Gold and four (4) Silver coins in each series. (Equaling 4-Gold coins and 8 Silver coins) Estimated Value: $1465—Set 1, $1365—Set 2. August 28, 1987. San Francisco Old Mint.	Kang, Shin Joe President, Korea Security Printing and Minting Corp., Republic of Korea.	Presentation of Korea Olympic Coin to Mrs. Pope at the ANA Convention.
Eugene H. Essner, Deputy Director, U.S. Mint.	Brown leather case containing one Gold Belgian ECU Proof coin and one (1) Silver Belgian ECU Proof Coin. $360—Set. September 26, 1987. Office of the Director.	Eyskens, Mark Minister of Finance Belgium.	Press Conference introducing the new Belgian ECU Coins in the United States.

AGENCY: U.S. INFORMATION AGENCY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Z. Wick, Director	Bronze Vase, globular body cylindrical neck, ring handle, signed by artist-Eiji Tauda. H: 7⅛". Rec'd—Jan. 1987. Est. value—$300. Approved for official display in the office of donee.	Toshio Ohata, Foreign Editor, Yomiur Shimbun, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: VETERANS ADMINISTRATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
W. Ross Adey, M.D., Chief, Research Service.	Recd—August 1987. Est. Value—$450. Expended for travel expenses.	School of Medicine and University of Lubeck, Berlin, West Germany.	To participate in the International Conference on the "Dynamics of Sensory and Cognitive Processing by the Brain."
Herbert L. Baker, M.D., Chief, ENT Section.	Recd—February 1987. Est. Value—$2,600. Expended for airfare and other travel expenses.	Israel	To attend and participate in training in the use of CO_2 Laser.
William Banks, M.D., Staff Physician, Medicine Service.	Recd—May 1987. Est. Value—$500. Expended for travel expenses	Serbian Academy of Science and Art, Belgrade, Yugoslavia.	To attend national conventions of scientific organizations, and present a paper concerning his research at the International Symposium on Peptide and Amino Acid Transport Mechanisms in the Central Nervous System.
Michael Bonnet, Ph.D., Clinical Psychologist, Pulmonary Section.	Recd—June 1987. Est. Value—$1,300. Expended for airfare and other travel expenses.	Denmark	To speak at the Fifth International Congress of Sleep Research.
Javier I. Escobar, M.D., Associate Chief of Staff for Education.	Recd—January 1987. Est. Value—$1,580. Expended for airfare and other travel expenses.	Swedish Society of Medicine, Stockholm, Sweden.	To attend and present a paper at the International Symposium on Transcultural Psychiatry.
Gerald W. Friedland, M.D., Chief, Radiology Service.	Recd—(1) April 1987. Recd—(2) September 1987. Est. Value—(1) $780, (2) $1,720. Expended for airfare and other travel expenses.	(1) Royal Alexandra Hospitals and University Hospital, Alberta, Canada. (2) University of Verona, Verona, Italy.	(1) Visiting Professor of Radiology. (2) To participate in a meeting on Functional Abnormalities of the Pelvis.
Leslie Rendell-Baker, M.D., Staff Anesthesiologist, Anesthesiology Service.	Recd—July 1987. Est. Value—$410. Expended for travel expenses	The Association of Anesthetists of Great Britain and Ireland, London, England.	To attend the Second Symposium on the History of Anesthesia.

AGENCY: VETERANS ADMINISTRATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL—Continued

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Andrew V. Schally, Ph.D., Senior Medical Investigator and Chief, Endocrine, Polypeptide and Cancer Institute.	Recd—May 1987. Est. Value—$2,525. Expended for airfare and other travel expenses.	Ministry of Health and Social Security, Madrid, Spain.	Nobel Laureate; invited to give plenary lecture at the opening of the Special Congress in celebration of the 100th anniversary of the birth of Professor Gregorio Maranon, father of Spanish endocrinology.

AGENCY: OFFICE OF THE MAYOR, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Marion Barry, Jr., Mayor of the District of Columbia.	AMC Jeep Cherokee, May 1987. $14,000. Use for Official Purposes Only.	People's Republic of China, Mayor Chen Xitong, Beijing.	Sister Cities—would cause embarrassment if returned.

[FR Doc. 88-5260 Filed 3-10-88; 8:45 am]

BILLING CODE 4710-20-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending March 4, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45475

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: No. Atlantic—Mid East Fares
Proposed Effective Date: April 1, 1988

Docket No. 45476

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: 1988–89 Mid East—TC3 Fare Structure
Proposed Effective Date: April 1, 1988

Docket No. 45477

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: Europe-Africa Fares
Proposed Effective Date: April 1, 1988

Docket No. 45478

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: TC1 Passengers Fares
Proposed Effective Date: April 1, 1988

Docket No. 45479

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: Mileage Manual Changes
Proposed Effective Date: April 1, 1988

Docket No. 45484

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: Japan-Korea Resolutions
Proposed Effective Date: April 1, 1988

Docket No. 45486

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: North Atlantic-Africa Fares
Proposed Effective Date: April 1, 1988

Docket No. 45487

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: Cargo Services Conference
Proposed Effective Date: April 1, 1988

Docket No. 45490

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Rate Levels ex Poland
Proposed Effective Date: April 1, 1988

Docket No. 45491

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Standard Condition Resolution
Proposed Effective Date: April 1, 1988

Docket No. 45492

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Cargo Rates Ex Poland
Proposed Effective Date: April 1, 1988

Docket No. 45493

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: TC3 Cargo Rates
Proposed Effective Date: April 1, 1988

Docket No. 45497

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Lusaka-Mexico/Montreal/MYC first class fares
Proposed Effective Date: April 15, 1988

Docket No. 45498

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Fares to/from Libya
Proposed Effective Date: April 1, 1988

Docket No. 45499

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Convert Hong Kong-TC1 rates from USD to HKD
Proposed Effective Date: March 15, 1988

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-5364 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 4, 1988.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45481

Date Filed: February 29, 1988
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1988
Description: Application of The Air-Shuttle, L.P., pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket No. 45482

Date Filed: February 29, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 28, 1988
Description: Application of Hawaiian Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests amendment to its certificate of public convenience and necessity issued authorizing scheduled non-stop service for passengers, property and mail between Honolulu, Hawaii and three cities in Japan including Fukuoka, Tokyo, and Nagoya.

Docket No. 45483

Date Filed: March 1, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 29, 1988
Description: Application of Aero-Chago, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests amendment to its foreign air carrier permit to authorize scheduled services over its presently authorized routes to add Mayaguez, P.R.

Docket No. 45485

Date Filed: March 1, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 29, 1988
Description: Application of Federal Express Corporation pursuant to section 401 of the Act and Subpart Q of the Regulations requests issuance of a new or amended certificate of public convenience and necessity authorizing it to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and Rio de Janeiro, Sao Paulo and Manaus, Brazil, on the other hand.

Docket No 45488

Date Filed: March 2, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 30, 1988
Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between the United States and Mexico over U.S. Routes B.14, B.17, C.12, D.4, D.16, and D.21, as authorized by the U.S. Mexico Memorandum of Consultations signed on January 29, 1988.

Docket No. 45489

Date Filed: March 3, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 31, 1988
Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 57 in order to authorize United to provide round-trip foreign air transportation of passengers, property, and mail between San Francisco, Los Angeles, and San Diego, California, on the one hand, and Acapulco, Guadalajara, Hautulco, Manzanillo, Mexico City/Toluca, and Zihuatanejo, Mexico, on the other hand.

Docket No. 45495

Date Filed: March 3, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 17, 1988
Description: Conforming Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing service between Los Angeles, California, and Mexico City, Mexico.

Docket No. 45433

Date Filed: March 3, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 31, 1988
Description: Amendment No. 1 to the Application of Federal Express Corporation pursuant to section 401 of the Act and Subpart Q of the Regulations, amends Paragraph 4 and Appendix A, page 3 of its U.S.-Mexico all-cargo certificate application so as to delete its request for authority to serve McAllen, Texas.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 88-5385 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Privacy Act of 1974; System of Records

The Department of Transportation (DOT) herewith publishes a proposal to alter a system of records.

Any person or agency may submit written comments on the proposed altered system to the U.S. Coast Guard (G–KOM), ATTN: LT R.S. Condron, 400 7th St., SW., Washington, DC 20590-0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, March 4, 1988.

Jon H. Seymour,
Assistant Secretary for Administration.

Narrative Statement Department of Transportation Office of the Secretary On Behalf of the United States Coast Guard For Alteration of the USCG Military Personnel Health Record System

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the USCB Military Personnel Health Record System, DOT/CG 572, to cover all medical records maintained on Coast Guard personnel and all records maintained on other uniformed services active duty, reserve and retired personnel and dependents provided care at a Coast Guard health care facility.

The purposes of this notice is to revise the system to incude all medical files at Coast Guard treatment facilities, and at Coast Guard administrative offices, and to more accurately reflect current

agency practices. These files contain treatment records and computerized medical record data used for the purposes described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register**.

The changes include amendments to: System location, Categories of records in the system, Routine uses of records maintained in the system, Storage, Retrievability, Retention and disposal, Record access procedures, Contesting record procedures and Record source categories.

Since this proposal is an amendment of an existing record system, the probable effects of this proposal on the privacy interests of the general public is minimal.

A description of the steps taken to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular, A-130, Appendix I, dated December 12, 1985.

Amendment—DOT/CG 572

System location: Amended to reflect inclusion of records retained at the service member's unit or the Coast Guard health care facility at which the members or dependents receive treatment.

Categories of records in the system: Amended to reflect inclusion of x-rays; physical examinations; ADP records containing due dates for physical/dental and eye examinations, innoculations, screening tests and results of actions required by Coast Guard or other federal, state or local government or agency, including body weight/measurements, HIV, PPD, etc.; records concerning line of duty determination and eligibility for disability benefits.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Amended to reflect that:

a. Records are provided to Department of Defense to determine suitability of members for overseas assignments and to develop automated information relating to medical readiness in wartime and contingency operations.

b. Records are provided to federal, state or local governments and agencies to compile statistical data for research and auditing; to provide quality assurance; to report medical conditions and other data required by law; to aid in preventive health and communicable disease control programs.

c. Records are provided to the Joint Commission on Accreditation of Healthcare Organizations to evaluate health care provided, personnel and facilities for professional certification and hospital accreditation; to provide quality assurance.

d. Records of communicable disease are provided to the Department of Defense to analyze the results, to ensure uniformity of record keeping, and to centralize production of reports for all uniformed services.

e. Records are provided to Department of Defense or other federal, state or local governments and agencies for casualty identification purposes.

f. Records are provided to the Social Security Administration and Veterans Administration for use in determining entitlement to benefits administered by those agencies.

g. Records are provided to the Public Health Service, Department of Defense, or Veterans Administration medical personnel or to personnel or facilities providing care to eligible beneficiaries under contract in connection with medical treatment of individuals.

Storage: Amended to indicate that portions of records are automated at some units.

Retrievability: Amended to reflect that a member's or dependent's social security number may be used as a method of retrieving records.

Retention and disposal: Amended to reflect inclusion of retention and disposal actions of medical files for retired personnel, dependents, and reservists. Records for retired personnel and dependents are retained at the health care facility for a period of 4 years from the date of the last activity. They are forwarded to the National Personnel Records Center 4 years after last activity. Records for reserve personnel are retained in custody of the reserve group or unit or district commander(s) so long as the reservist is assigned to the particular area. Records are transferred to new reserve unit or district commander(s) upon reassignment of reservist. They are incorporated into the Official Coast Guard Reserve Service Record System upon separation or retirement.

Record access procedures: Amended to indicate that active duty personnel may write or visit the health care facility where the record is located in addition to writing Commandant (G–CMA) to gain access to records; that retired personnel and dependents should write or visit the health care facility where the record is/was located, and to write National Personnel Records Center if otherwise unable to locate the records; that reserve personnel should write or visit the reserve group or unit or district commander(s) of the district where command is located or write Commandant (G–CMA).

Contesting record procedures: Amended to indicate that Commandant (G–CMA) should be contacted in all cases.

Record source categories: Amended to reflect inclusion of records obtained from investigations resulting from illness or injury, and from the individual to whom the record pertains.

SYSTEM NAME:

USCG Military Personnel Health Record System.

SYSTEM LOCATION:

At the member's unit or the Coast Guard health care facilities at which the member or dependents receive treatment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Active duty, reserve, and retired members of the uniformed services and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records of medical and dental treatment, including x-rays.

b. Physical Examinations.

c. ADP Records containing due dates for physical/dental and eye examinations, innoculations, screening tests and results of actions required by Coast Guard or other federal, state or local government or agency.

d. Records concerning line of duty determination and eligibility for disability benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Provided to the Department of Defense to determine suitability of members for overseas assignments and to develop automated information relating to medical readiness in wartime and contingency operations.

b. Provided to federal, state, or local governments and agencies to compile statistical data for research and auditing; to provide quality assurance; to report medical conditions and other data required by law; to aid in preventive health and communicable disease control programs.

c. Provided to the Joint Commission on Accreditation of Healthcare Organizations to evaluate health care provided, personnel and facilities for professional certification and hospital accreditation; to provide quality assurance.

d. Records of communicable disease are provided to the Department of Defense to analyze the results, to ensure uniformity of record keeping, and to centralize production of reports for all uniformed services.

e. Provided to Department of Defense or other federal, state or local governments and agencies for casualty identification purposes.

f. Provided to the Social Security Administration and Veterans Administration for use in determining an individual's entitlement to benefits administered by those agencies.

g. Provided to the Public Health Service, Department of Defense, or Veterans Administration medical personnel or to personnel or facilities providing care to eligible beneficiaries under contract in connection with medical treatment of individuals.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files are in folders. Portions of records are automated at some units

RETRIEVABILITY:

Name or social security number of member or dependent.

SAFEGUARDS:

Rooms or cabinets in which records are located are locked when unattended. Access limited to these records at all times by personnel screening.

RETENTION AND DISPOSAL:

a. Active Duty Personnel: Individual medical files are retained at the members' unit or medical administration office for so long as the member is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new duty station upon reassignment of member. Upon separation or retirement, the individual medical file is incorporated into the Official Officer Service Records System (DOT/CG 626) or Enlisted Personnel Record System (DOT/CG 629), as appropriate.

b. Retired Personnel: Individual medical files are retained at the medical facility for a period of 4 years from date of last activity. Transferred to National Personnel Records Center (Military Personnel Records) 9700 Page Blvd., St. Louis, MO 63132, 4 years after last activity.

c. Dependents: Individual medical files are retained at the medical treatment facility for period of 4 years from date of last activity. Transferred to new duty station of sponsor upon written request of dependent. Records not transferred are forwarded to National Personnel Records Center (CPR) 111 Winnebago St., St. Louis, MO 63118, 4 years after last activity.

d. Reserve Personnel: Individual medical files are retained in custody of the reserve group or unit, or district commander(r) for so long as the reservist is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new reserve group or unit or district commander(r), as appropriate. Upon separation or retirement, the individual medical file is incorporated into Official Coast Guard Reserve Service Record System (DOT/CG 676).

SYSTEM MANAGER(S) AND ADDRESS:

System Manager: Chief, Office of Health Services, Department of Transportation, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, United States Coast Guard, Commandant (G–CMA), 2100 2nd Street, SW., Washington, DC 20593–0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

a. Active Duty Personnel: Write or visit the health care facility where the record is located, or write Commandant (G–CMA) at the address in "Notification Procedure."

b. Retired Personnel and all Departments: Write or visit the health care facility where the record is/was located. If unable to locate records, write:

(Retired) National Personnel Records Center, (Military Personnel Records), 9700 Page Blvd, St. Louis, MO 63132
(Dependents) National Personnel Records Center (CPR), 111 Winnebago Street, St. Louis, MO 63118

c. Reserve Personnel: Write or visit reserve group or unit or district commander(r) of the district where command is located, or write: U.S. Coast Guard (G–CMA), 2100 2nd Street, SW., Washington, DC 20593–0001.

The decision to release medical records directly to the individual shall be made by a medical practitioner per 49 CFR 10.35(c).

CONTESTING RECORD PROCEDURES:

Contact Commandant (G–CMA) at the address in "Notification Procedure."

RECORD SOURCE CATEGORIES:

a. Medical facilities where beneficiaries treated or examined.

b. Investigations resulting from illness or injury.

c. From the individual.

[FR Doc. 88–5383 Filed 3–10–88; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of the Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes March 29, 1988.

Comment:

Address comments to: Docket Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Docket Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application number	Applicant	Renewal of exemption
970–X	U.S. Department of Defense, Falls Church, VA.	970
3004–X	Union Carbide Corporation, Danbury, CT.	3004
3004–X	Airco Industrial Gases, Murray Hill, NJ.	3004
3004–X	Big Three Industries, Inc., Houston, TX.	3004
3121–X	U.S. Department of Defense, Falls Church, VA.	3121
3549–X	U.S. Department of Energy Washington, DC.	3549
3941–X	Aerojet Solid Propulsion Company, Sacramento, CA.	3941
4039–X	Airco Industrial Gases, Murray Hill, NJ.	4039
4453–X	Kentucky Powder Company, Lexington, KY.	4453
5405–X	Vann Systems, Division of Halliburton Company, Houston, TX.	5405
5701–X	Mallinckrodt, Inc., Paris, KY.	5701
6016–X	Acety Arc, Inc., Paducah, KY.	6016
6016–X	Magnolia Welding Supply Company, Houston, TX.	6016
6016–X	Strate Welding Supply Company, Inc., Buffalo, NY	6016
6080–X	U.S. Department of Energy, Washington, DC.	6080
6309–X	Foam Supplies, Inc., Olivette, MO.	6309
6309–X	Freeman Chemical Corporation, Port Washington, WI.	6309
6309–X	General Latex and Chemical Corporation of Georgia, Dalton, GA.	6309
6349–X	Union Carbide Corporation, Danbury, CT (See Footnote 1).	6349
6416–X	The Dow Chemical Company, Midland, MI.	6416
6418–X	Great Lakes Chemical Corporation, El Dorado, AR.	6418
6484–X	W.R. Grace & Company, Lexington, MA.	6484
6611–X	Teisan Kabushiki Kaisha, Tokyo, 105 Japan.	6611
6651–X	Enthone, Incorporated, West Haven, CT.	6651
6704–X	The Dow Chemical Company, Midland, MI.	6704
6765–X	Bureau of Mines, Amarillo, TX.	6765
6890–X	U.S. Department of Defense, Falls Church, VA.	6890
6885–X	GTE Products Corporation, Danvers, MA.	6885
6929–X	U.S. Department of Energy, Washington, DC.	6929
6962–X	U.S. Department of Energy, Washington, DC.	6962
6971–X	Chem Service, Inc., West Chester, PA.	6971
7024–X	S.I. Transportation, Inc., Burlington, NC.	7024
7052–X	Crompton Parkinson, Limited, Tyne & Wear, England.	7052
7052–X	Allen-Bradley Company, Milwaukee, WI.	7052
7052–X	Eveready Battery Company, Inc., Rocky River, OH.	7052
7052–X	Terra Tek Systems, Salt Lake City, UT.	7052
7052–X	Technical Oil Tool Corporation, Norman, OK.	7052
7052–X	Painter Inc., Tempe, AZ	7052
7218–X	Structural Composites Industries, Inc., Pomona, CA.	7218
7625–X	Hydrite Chemical Company, Milwaukee, WI (See Footnote 2).	7625
7694–X	Applied Companies, San Fernando, CA.	7694
7708–X	HTL Division, Pacific Scientific Company, Duarte, CA.	7708
7876–X	General Chemical Corporation, Parsippany, NJ.	7876
7945–X	HTL Division, Pacific Scientific Company, Duarte, CA (See Footnote 3).	7945
7946–X	Erickson Inc., Richmond, CA.	7946
7967–X	Stauffer Chemical Company, Westport, CT.	7967
8091–X	AT&T Technologies, Inc., Greensboro, NC.	8091
8369–X	Degussa Corporation, Teterboro, NJ.	8369
8390–X	Mallinckrodt, Inc., Paris, KY.	8390
8390–X	Jones-Hamilton Company, Newark, CA.	8390
8394–X	Whirlpool Corporation, La Porte, IN.	8394
8414–X	SLEMI, Paris 75116, France.	8414
8445–X	Eveready Battery Company, Inc., Rocky River, OH.	8445
8451–X	ICI Americas, Incorporated, Byron, GA.	8451
8451–X	ICI Americas, Incorporated, Bryon, GA (See Footnote 4).	8451
8597–X	McDonnell Douglas Corporation, Saint Louis, MO.	8597
8627–X	Chemlink Petroleum, Inc., Sand Springs, OK.	8627
8733–X	ICI Americas, Incorporated, Wilmington, DE (See Footnote 5).	8733
8761–X	The Hall Company, Athens, TN.	8761
8780–X	Container Corporation of America, Wilmington, DE.	8780
8781–X	Mauser Packaging, Limited, Litchfield, CT.	8781
8791–X	Stauffer Chemical Company, Westport, CT.	8791
8826–X	Phoenix Air, Marietta, GA (See Footnote 6).	8826
8840–X	Walter Kidde Company, Mebane, NC.	8840
8842–X	HTL Division, Pacific Scientific Company, Duarte, CA.	8842
8844–X	Beall Trailers of Montana, Inc., Billings, MT.	8844
8845–X	Western Atlas International, Houston, TX.	8845
[illegible]	Petrolane Gas Service Limited Partnership, Anchorage, AL.	[illegible]
8915–X	Ethyl Corporation, Baton Rouge, LA.	8915
8915–X	Union Carbide Corporation, Danbury, CT.	8915
9015–X	Monsanto Company, Saint Louis, MO (See Footnote 7).	9015
9086–X	BMW of North America, Inc., Montvale, NJ.	9086
9232–X	U.S. Department of Defense, Falls Church, VA (See Footnote 8).	9232
9248–X	Kross, Inc., Valencia, CA.	9248
9279–X	Keystone Steel & Wire Company, Peoria, IL.	9279
9491–X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9491
9549–X	Pesco, Inc., Mills, WY.	9549
9549–X	Schlumberger Well Services, Rosharon, TX.	9549
9549–X	Western Atlas International, Houston, TX.	9549
9571–X	National Institutes of Health, Bethesda, MD.	9571
9571–X	Environmental Health Research & Testing, Inc., Lexington, KY.	9571
9571–X	U.S. Department of Justice, Washington, DC.	9571
9571–X	U.S. Department of State, Washington, DC.	9571
9606–X	Ensign-Bickford Company, Simsbury, CT.	9606
9617–X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9617
9780–X	Majestic Lubricating Company Tulsa, OK (See Footnote 9).	9780
9788–X	Certified Cylinder, Inc., Crossville, TN.	9788

(1) To amend exemption to change proper shipping name, to eliminate the requirement for weighing the tank, to revise the retest period from 2-5 years and to delete the OWTT requirement for liquid helium.

(2) To authorize shipment of two additional materials classed as Corrosive material.

(3) To amend exemption to increase the maximum allowable service pressure to 1500 psig from 900 psig and to change the wording in certain sections to make more correct.

(4) To amend exemption to include a provision for Competent Authority Approval for air shipments.

(5) To authorize the reporting of shipments, incidents and accidents in the renewal application instead of every six months.

(6) To authorize renewal and an alternative notification procedure to provide the FAA with advance notice of an operation.

(7) To amend exemption to include any manufacturer's non-DOT specification packaging, to increase the weight limit to 3000 lbs., and to allow shipments in full container loads in stack trains.

(8) To authorize renewal and to amend the exemption to provide for alternative air carriers and to reword certain provisions for accuracy.

(9) To authorize shipment of four additional materials classed as flammable liquid in the approved packaging.

Application number	Applicant	Parties to exemption
8039–P	Industrial Polymer Corporation, Orange, CA.	6399
6626–P	National Welders Supply Company, Inc., Charlotte, NC.	6626
6610–P	U.S. Department of the Interior, Amarillo, TX.	6610
7052–P	Acme Aerospace Products Group, Salt Lake City, UT.	7052
7052–P	Hoppecke Battery Company, Hoppecke, West Germany.	7052
7549–P	ICI Americas Inc., Wilmington, DE.	7549
7607–P	Radian Corporation, Hampton, VA.	7607
7616–P	Burlington Northern Railroad Company, Overland Parks, KS.	7616
7753–P	Albright & Wilson Americas, Richmond, VA.	7753
7835–P	U.S. Airgas, Inc., Randnor, PA.	7835
7963–P	ICI Americas Inc., Wilmington, DE.	7963
7967–P	ICI Americas Inc., Wilmington, DE.	7967
8230–P	Fisher Scientific Company, Fair Lawn, NJ.	8230
8445–P	Keegan Technology & Testing Associates, Inc., South Plainfield, NJ.	8445
8451–P	Rocket Research Company, Redmond, WA.	8451
8518–P	Central Pumping Company, Inc., La Habra, CA.	8518
8791–P	ICI Americas Inc., Wilmington, DE.	8791
8978–P	GTE Products Corporation, Waltham, WA.	8978
9259–P	ICI Americas Inc., Wilmington, DE.	9259

Application number	Applicant	Parties to exemption
9617-P	Explo-Tech, Inc., Norristown, PA.	9617
9723-P	Bishop & Associates, Inc., Brooklandville, MD	9723
9723-P	Emergency Technical Services Corp. of Illinois, Schaumburg, IL.	9723
9781-P	Jones Chemicals, Caledonia, NY.	9781
9781-P	Aldrich Chemical Company, Inc., Milwaukee, WI.	9781
9785-P	Polish Ocean Lines, 81-364 Gdynia, Poland	9785
9785-P	Trans Freight Lines, Wayne, NJ.	9785
9896-P	ICI Americas Inc., Wilmington, DE.	9896

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-5386 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Pittsburgh, Pennsylvania Region

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: This notice announces that the Urban Mass Transportation Administration (UMTA) and Port Authority of Allegheny County are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Northside, Downtown, Oakland, and Squirrel Hill corridor of the Pittsburgh, Pennsylvania area. This area is locally referred to as the Spine Line Corridor. The EIS is being prepared in conformance with 40 CFR Parts 1500–1508, Council on Environmental Quality (CEQ), Relations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 23 CFR Part 771, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Elaine Burick, Transportation Representative, UMTA Region III, 841 Chestnut Street, Suite 714, Philadelphia, Pennsylvania 19107 (215) 597–8098.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Two public scoping meetings will be held on April 6, 1988 at 11:30 a.m., and again at 6:30 p.m., in the Young Women's Christian Association Building, First Floor (Fourth Avenue and Wood Street, Pittsburgh, Pennsylvania 15222). The meetings will be held to help establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, a presentation will be made which will provide a description of the proposed scope of the study using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on alternatives to be assessed, the environmental, social and economic impacts to be analyzed, and the evaluation approach to be used to arrive at a decision. Comments may be made either orally at the meetings or in writing, to Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, Beaver and Island Avenues, Pittsburgh PA 15233. Written comments must be postmarked no later than April 11, 1988.

Corridor Description

The Spine Line Corridor, linking the Northside, Downtown Pittsburgh, Oakland, and Squirel Hill, is one of the most heavily traveled corridors in the Pittsburgh Metropolitan area. The natural attraction of the compact Central Business District (CBD) of Pittsburgh, located in close proximity to the unique community of Oakland with its technical, cultural and educational facilities, and the highly developed Northside create dense travel patterns which strain the roadway network serving them. The corridor area generally encompasses an area of the lower Northside across the Allegheny River to the Central Business District of Pittsburgh, and through the Hill District, Midtown, Soho, and Oakland areas to Squirrel Hill. The lower Northside is bordered by Pennsylvania Avenue on the north, Allegheny Avenue on the west, and a line just east of the Sixteenth Street Bridge on the east. The eastern portion of the corridor is bordered generally by Bigelow Boulevard, Craig Street, Centre Avenue and Wilkins Avenue. The easternmost border is a north-south line just east of Shadow Avenue to the northern edge of the Parkway East Corridor. The Monongahela River is the southern corridor border.

Alternatives

Transportation alternatives proposed for consideration in the corridor are the following:

1. Null Alternatives—Existing transit service with level of service expanded as appropriate to meet projected year 2005 travel demand.

2. Transportation Systems Management (TSM) Alternative—Low cost transit improvements that include actions such as one-way streets, exclusive bus lines and intersection channelization.

3. Light Rail Transit (LRT) Northside to Oakland via Centre Avenue Alternative—The construction and operation of a LRT line which begins at a below grade station at Allegheny Community College and goes east underground to Allegheny Center Mall at South Commons Avenue. The alignment then turns south at Federal Street and surfaces at General Robinson Street. The alignment is at-grade on Federal Street and onto the Sixth Street Bridge. Turning west in the median of the Fort Duquesne Boulevard for two blocks, the alignment then traverses south under Stanwix Street to connect with the existing subway at the Gateway Station. Outbound movement from the subway toward Oakland is effected through a grade separated loop at the Manor Building under the existing LRT tracks. Heading east the alignment is a tunnel under Centre Avenue to approximately Kirkpatrick Street then proceeds diagonally southeast to the intersection of Fifth and Craft Avenues. Continuing as tunnel, the alignment follows Fifth Avenue east to Bigelow Boulevard, traverses south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland.

4. LRT Northside to Oakland via Colwell Street Alternative—The construction and operation of a LRT line which follows the same alignment through the Northside then connects to the existing subway in the CBD as Alternative 3. Outbound movement from the subway toward Oakland is effected through a grade separated loop at the Manor Building under the existing LRT tracks, then north to Crosstown Boulevard where tunneling begins. The tunnel continues northeast under Diamond Street to Fifth Avenue and continues east on Fifth to just east of Washington Place. Here the alignment becomes at-grade in a northeast direction to the intersection of Colwell and Magee Streets. The alignment continues east on Colwell as elevated structure (parallel to Fifth Avenue) to just past Kirkpatrick Street, then tunnels southeast to Fifth Avenue at approximately Halket Street. Continuing as tunnel, the alignment follows Fifth Avenue east to Bigelow Boulevard, traverses south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland.

5. LRT Northside to Oakland Via Fifth Avenue Alternative—The construction and operation of a LRT line which follows the same alignment through the Northside and connects to the existing subway in the CBD as Alternative 3. Outbound movement from the subway toward Oakland is similar to Alternative 4. The alignment proceeds east under Fifth Avenue to Bigelow Boulevard where it turns south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland. With the exception of the at-grade connection to the Manor Building, this alignment east of the CBD is tunnel construction.

6. LRT Northside to Squirrel Hill via Centre Avenue Alternative—Following the same alignment through the Northside and Oakland as Alternative 3, the alignment then proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

7. LRT Northside to Squirrel Hill via Colwell Street Alternative—Following the same alignment through the Northside and Oakland Alternative 4, the alignment proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

8. LRT Northside to Squirrel Hill via Fifth Avenue Alternative—Following the same alignment through the Northside and Oakland as Alternative 5, the alignment proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

9. LRT Downtown to Pittsburgh Technology Center Alternative—Following the B&O Railroad east at-grade from the CBD to just past the Birmingham Bridge, the alignment then tunnels northeast to Fifth Avenue at approximately Craft Avenue and follows the same alignment to Oakland as Alternative 5.

Comments on the alternatives should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis are potential changes in the natural environment (air quality, noise, water quality, aesthetics . . .), changes in the social environment (land use, development patterns, neighborhoods . . .), impacts on parkland and historic sites, changes in transit service and ridership, associated changes in highway congestion, impacts on capital, operating and maintenance costs, and impacts on Port Authority's financial condition. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal laws and current CEQ and UMTA regulations. Mitigating measures will be explored for any adverse impacts that are identified.

Comments on the environmental, social and economic impacts should focus on the completeness of the proposed sets of impacts and the evaluation approach. Other impacts or criteria judged relevant to local decision-making should be identified.

Herman C Shipman,

Acting Deputy Regional Manager.

[FR Doc. 88-5322 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 4, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearnace Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0063
Form Number: CF–5129
Type of Review: Reinstatement
Title: Crew Members Declaration
Description: The document is used to accept and record importations of merchandise by crew members, enforce agricultural quarantines, the currency reporting laws, and enforce revenue collection laws.
Respondents: Individuals or households
Estimated Burden: 27,978 hours
Clearance Officer: Dennis Dore, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5347 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Conducting 1988 Focus Group Interviews on Federal Tax Forms.
Description: The group interviews are necessary to obtain public input on some of the major tax forms that have been revised for 1988. The results will be used to further simplify and improve the forms so that they will be more easily understood by taxpayers.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Burden: 1,080 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5348 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-25-M

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VETERANS ADMINISTRATION

Special Medical Advisory Group; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration's Special Medical Advisory Group for calendar year 1987 has been issued.

The report summarizes activities of the Group on matters relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. It is available for public inspection at two locations.

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Veterans Administration, Office of the Chief Medical Director, Room 800, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: March 3, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–5380 Filed 3–10–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 48
Friday, March 11, 1988.

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

March 8, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, March 18, 1988. 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Briefing Panel #1: Reauthorization of the U.S. Commission on Civil Rights
IV. Report of Commissioner Subcommittee Regarding Proposed Projects
V. SAC Report: "Collecting Data on Bias-Related Incidents in Connecticut"
VI. SAC Recharters
VII. Presentations by SAC Chairs
VIII. Briefing Panel #2: Reauthorization of the U.S. Commission on Civil Rights

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8105.

William H. Gillers,

Solicitor.

[FR Doc. 88–5428 Filed 3–9–88; 10:02 am]

BILLING CODE 6335-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, March 11, 1988, 2:00 p.m..

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759–8405.

MATTERS TO BE CONSIDERED:

Minutes of February 8, 1988 Board of Directors, Meeting
President's Report
Dividend Policy
SOTP and Development Projects Briefing
Review of Financials for 1987

Date sent to **Federal Register:** March 8, 1988.

Maud Mater,

Secretary.

[FR Doc. 88–5432 Filed 3–9–88; 10:08 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. March 16, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Assessment of the Adequacy of the Commission's Requirements of (a) Casualty Coverage, (b) Civil Penalties, and (c) Administrative Proceedings in Relation to the Passenger Cruise Industry.

2. Baton Rouge Marine Contractors, Inc.—Proposed Investigation of Unfiled Agreement.

3. Docket No. 86–17-Mobil Oil Corporation v. Barber Blue Sea Lines—Review of Order of Dismissal.

4. Docket No. 88–30—Investigation of Unfiled Agreements-Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Lines, Inc.—Review of Initial Decision.

5. Docket No. 87–4—California Shipping Line, Inc. v. Korea shipping Corporation-Review of Order of Dismissal.

CONTACT PERSON FOR MORE INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523–5725.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–5536 Filed 3–9–88; 8:45 am]

BILLING CODE 6730-01-M

federal register

Friday
March 11, 1988

Part II

Office of Management and Budget

Grants and Cooperative Agreements With State and Local Governments; Revision of Circular A-102; Notice

BEST COPY AVAILABLE

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements with State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Revision of Circular A–102.

SUMMARY: This notice sets forth the final revision of Office of Management and Budget Circular A–102, "Grants and Cooperative Agreements with State and Local Governments".

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, Financial Management Division, Office of Management and Budget, Washington, DC 20503. (202) 395–3050.

SUPPLEMENTARY INFORMATION: An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958) announcing the review and seeking public comment on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments.

Five agency-chaired teams studied the comments, Circular A–102, and the existing Federal agency regulations implementing it to develop and draft two products: a revised OMB Circular—addressed solely to Federal agencies, and a "common" government-wide regulation—addressed to State and local grantees. The proposed government-wide "common rule" stated the fiscal and administrative conditions governing grants to State and local governments and subgrantees which are State and local governments.

On March 12, 1987, the President directed OMB to revise Circular A–102 and all affected Federal agencies to simultaneously propose a common rule to adopt verbatim government-wide grants management terms and conditions. The revised Circular and common rule were to be proposed within 90 days, and issued final within one year.

OMB published a proposed revision to Circular A–102 as a Notice in the June 9, 1987 issue of the **Federal Register** (52 FR 21816–21818). Simultaneously in the same issue (52 FR 21820–21852), Federal grant-making agencies proposed a common rule

Comments and Changes to the Proposed Revision

While OMB and the agencies received nearly 100 comments on the proposed common rule, only a handful addressed the revision to Circular A–102 itself.

Advance Public Notice and Priority Setting (paragraph 6b.) A number of Federal agencies questioned the need for, and type of official responsible for, advance public notice and priority setting in discretionary grant and cooperative agreement programs. Consistent with recent recommendations by the U.S. General Accounting Office (GAO) ("Discretionary Grants: Opportunities to Improve Federal Discretionary Award Practices"), this section aims to improve managerial accountability for the discretionary award process by emphasizing the need for upfront priority setting and policy-level sign-off on grant and cooperative agreement awards. "Policy-level official" was deliberately not defined in order for agency heads to determine the appropriate placement of such responsibilities. Such officials include program heads or political appointees located sufficiently high in an organization to ensure that funding priorities and actual awards are consistent with the agency's overall priorities. OMB is willing to work with agencies to identify appropriate officials where there is question.

Standard Forms for Applying for Federal Assistance (paragraph 6c). Several Federal agencies, particularly those with programs which fund both governmental (State and local) and nonprofit grantees, requested *not* to use the standard application facesheet (SF–424) as well as the project approval checklist, budget sheet, and standard assurances in Attachment "M" to Circular A–102. They pointed out that unlike 1971, when Circular A–102 and the forms were originally developed, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal assistance programs, the types of recipients receiving funding and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the **Federal Register** (52 20178–20179).

The great majority of the over 80 public comments to the May 1987 Notice were concerned about the proposed financial reporting formats for the open ended entitlement programs, rather than either the need for, or design of, the standard application forms. We attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs, few programs use the forms display in Circular A–102 "as is". In fact, aside from the SF–424 Facesheet, nearly every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements.

In recognition of current practice and approved forms, the proposed circular has been revised to require use of either (1) three types of pre-approved standard forms: facesheet, standard budget information (construction or non-construction) and standard assurances (construction or non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980. Two forms previously displayed in Circular A–102, the Part II, "Project Approval Checklist," and Part IV, "Narrative," are eliminated. The contents of the latter are reflected as guidance to agencies in paragraph 6c. of the circular. Agencies are free to use the standard forms without further OMB clearance. Use of any other forms and application packages requires OMB approval and clearance under the Paperwork Reduction Act of 1980.

Exception to the common rule (paragraph 6g). A number of grantees expressed concern that paragraph 6g, "Special Conditions or Restrictions," coupled with the corresponding "Exceptions" (§—.6) and "High-Risk" (§—.12) provisions of the common rule are loopholes which permit Federal agencies to circumvent the rule and impose additional or unwarranted requirements. In recognition of this concern and to permit oversight, the circular is revised to make it clear that agencies will document the use of these provisions.

Financial Status Reports (paragraph 7c). A new section was added to require use of the SF–269, Financial Status Report-Long Form, or SF–269a, Financial Status Report-Short Form. These forms are a revision of the SF–269 previously required under Circular A–102, with changes based on a May 29, 1987 **Federal Register** Notice (discussed above under "Standard Forms for Applying for Federal Assistance"). Both the short and long forms are simplified to require a single column rather than 6-column breakout of the status of funds. The long form responds to recommendations from the GAO for a form which permits reporting matching as well as the various uses of program income. The new paragraph 7c expresses a longstanding, but unstated, prohibition against agencies using the form to collect object class expenditure data (e.g., expenditures broken down by personnel, travel, equipment, etc.). Further, it limits collection of expenditure detail by programs, functions or activities within the program or project, unless required by statute or regulation.

Contracting with small and minority firms, women's business enterprise and labor surplus area firms (paragraph 7d). A number of commenters expressed concern that the proposed circular did not contain policy language from the old Circular A–102 which encouraged use of small, minority, women's and labor surplus area firms. This was true because all of the substantive requirements from Attachment "O" in the old A–102 for grantees to use such firms when possible were proposed to be codified in the June 9, 1988, 24-agency, common rule. Unfortunately, in the interest of streamlining the rule, the prefatory sentence explaining that this is national policy was dropped. To remove any doubt that grantees are encouraged to contract with such firms, the opening sentence concerning small and minority business, as well as those concerning women's enterprises and labor surplus area firms have been restored to the circular.

Program Income (paragraph 7e). A number of State and local grantees were concerned that agencies will only sparingly permit the use of the addition or matching share alternatives for use of program income. On the other hand, others such as the GAO supported the circular, stating that there should be a preference for deducting program income from program costs since this alternative will result in financial savings to the Federal Government and grantees. No change is made to the proposed circular. In the event this provision serves as a disincentive to earning such income, §—.25(g) of the common rule permits agencies to specify another alternative (or combination of alternatives) in program regulations or a specific grant agreement.

Site visits and technical assistance (paragraph 7f). Federal agencies expressed concern that the proposal would unduly restrict their ability to travel to grantee project sites or offer technical assistance. OMB proposed site visits "only as warranted by program or project needs" and restricted technical assistance visits "only (1) in response to requests from recipients, or (2) when recipients are designated 'high risk.' " The proposed approach represented a departure from the original Circular A–102 which "encouraged" agencies to travel and offer technical assistance. Frequent travel and gratuitous technical assistance are no longer realistic given the Federal budget deficit and they are inconsistent with Federal deference to States' authority and competence under Federalism. However, to enable Federal agencies to address genuine program needs, an additional justification for technical assistance visits has been added based on "demonstrated program need."

Property Management (paragraph 8a). A number of commenters misinterpreted the provisions of the closeout provisions of the circular (as well as the property sections of the common rule) dealing with "federally owned property". They mistakenly concluded these provisions covered all grant-acquired property and equipment, not just that which is Federally owned and provided. This is not so because title to grant-acquired property vests with the grantee, not the Federal Government. The circular and common rule have been changed to make this distinction clear.

Another commenter suggested that closeout review cover all non-expendable personal property purchased with grant funds where title rests with the recipient. We do not believe such a mandatory Federal review of grant-acquired property is warranted. The common rule contains explicit instructions as to the grantee's property records and calls for the grantee to perform a physical inventory at least once every two years.

Closeout (paragraph 8a.) One agency expressed the opinion that Section 8a requiring written notification to grantees of required closeout documents may be too staff intensive. The agency recommended that published program regulations detailing this requirement should be sufficient. We agree. Since closeout reports do not generally vary significantly, a published program regulation or standard notice can satisfy the requirement.

[Circular No. A–102 (Revised)]

March 3, 1988.

To the Heads of Executive Departments and Establishments

Subject: Grants and Cooperative Agreements with State and Local Governments

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A–102, dated January 1981.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order 11541. Also included in the Circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301–08, title 31, United States Code.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments. This revised Circular provides guidance to Federal agencies on business-like management of grant programs and other matters not covered in the common rule. The revision replaces and rescinds Circular A–102, dated January 1981, including Attachments A–P.

4. *Coverage.* Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular and issue a common grants management rule (common rule). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *Deviations.* The Office of Management and Budget may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. *Pre-Award Policies.*

a. *Use of grants and cooperative agreements.* Sections 6301–08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b. *Advance Public Notice and Priority Setting.*

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of $25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. *Standard Forms for Applying for Grants and Cooperative Agreements.*

(1) Agencies shall use the following standard application forms unless they obtain OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

- SF–424 Facesheet
- SF–424a Budget Information (Non-Construction)
- SF–424b Budget Information (Construction)
- SF–424c Standard Assurances (Non-Construction)
- SF–424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(2) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.

(4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or Benefits Expected. Identify results and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic Location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.

d. *Debarment and Suspension.* Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the Consolidated List of Debarred, Suspended, Voluntarily Excluded and Ineligible Assistance Participants to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of implementing regulations.

e. *Awards and Adjustments.*

(1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated

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adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. *Carryover Balances.* Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. *Special Conditions or Restrictions.* Agencies may impose special conditions or restrictions on awards to "high risk"applicants/grantees in accordance with § ___.12 of the common rule. Agencies shall document use of the "Exception" provisions of § ___.6 and "High-risk" provisions of §___ .12 of the common rule.

h. *Waiver of Single State Agency Requirements.*

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 6504, title 31, United States Code, shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204, the Federal grantor agency shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i. *Patent Rights.* Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

7. *Post-award Policies.*

a. *Cash Management.* Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations at 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. *Grantee Financial Management Systems.* In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. *Financial Status Reports.*

(1) Federal agencies shall require grantees to use the SF–269, Financial Status Report-Long Form, or SF–269a, Financial Status Report-Short Form, to report the status of funds for all nonconstruction projects or programs. Federal agencies need not require the Financial Status Report when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category or expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF–269 or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. *Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.* It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. *Program Income.*

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired equipment to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the common rule at § _____.25(g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in § _____.25(g)(2) and (3) shall be granted sparingly.

f. *Site Visits and Technical Assistance.* Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under § _____.12 of the common rule.

8. After-the-grant Policies.

a. *Closeout.* Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

(1) Receipt of all required reports,

(2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and

(3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

(b) *Annual Reconciliation of Continuing Assistance Awards.* Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

(1) A comparison of the recipient's work plan to its progress reports and project outputs,

(2) the Financial Status Report (SF–269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effect or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

9. *Entitlements (Reserved)*

10. *Policy Review (Sunset).* The Circular will have a policy review three years from the date of issuance.

11. *Effective Date.* The Circular is effective on publication.

12. *Inquiries.* Further information concerning this Circular may be obtained from: Financial Management Division, New Executive Office Building, Room 10215, Office of Management and Budget, Washington, DC 20503, (202) 395-3050.

James C. Miller III,
Director.

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federal register

Friday
March 11, 1988

Part III

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule

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Department of Energy
Small Business Administration
Department of Commerce
Department of State
Department of Housing and Urban Development
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
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Federal Emergency Management Agency
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National Foundation on the Arts and the Humanities
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Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; ACTION; Commission on the Bicentennial of the United States Constitution; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; Institute of Museum Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Science Foundation; Small Business Administration; Veterans Administration.

ACTION: Final rule.

SUMMARY: This action finalizes a common rule establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to State, local and federally recognized Indian tribal governments.

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the Department of Transportation. See the Department of Transportation agency specific preamble below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

In November 1983, a 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by the Office of Management and Budget (OMB), was established to explore streamlining grants management and review OMB Circular A–102, "Uniform Administrative Requirements for Grants to State and Local Governments."

On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958–24959) seeking comments on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress, submitted several hundred comments.

Five agency-chaired teams studied the comments, existing Federal agency grants administration regulations, and noncodified manuals and handbooks implementing OMB Circular A–102 to draft a government-wide "common" rule. The proposed common rule contained fiscal and administrative requirements for grants to State and local governments (grantees) and subrecipients which are State and local governments (subgrantees). At the same time, OMB and the agencies prepared a revised Circular A–102—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

On March 12, 1987, the President directed all affected agencies to simultaneously propose and subsequently adopt a common rule verbatim, except where inconsistent with statutory requirements. The President explained that at the time it was issued "Circular A–102 was a significant step toward simplification of grants management." He went on to say, however, that "after 16 years, some of the provisions are out of date, there are gaps where the standards do not cover important areas, and agencies have interpreted the circular in numerous different ways in their regulations. It is now time for the circular to be revised to reflect developments consistent with our Federalism policies and State and local regulatory relief objectives and the President's Management Improvement Program." The President directed the affected agencies to propose a common rule within 90 days and adopt a final common rule within one year. To meet

this schedule, 23 agencies proposed a governmentwide "common rule" in the June 9, 1987 **Federal Register** (52 FR 21820–21862). In the same issue, OMB proposed a revised Circular A–102 (52 FR 21816–21818).

The final common rule will be codified in each agency's portion of the Code of Federal Regulations, as indicated in the information provided for individual agencies below. Several agencies' rules reflect differences required in statute (e.g., the five-year record retention requirement for the Department of Education programs under the General Education Provisions Act (GEPA)). Such differences are indicated in the text.

All grants administration provisions in program regulations which are inconsistent with the common rule are rescinded, except to the extent they are required by legislation or approved as a deviation by OMB. Each agency will specify in the agency-specific preamble and amendments additional to the common rule those agency regulations that are rescinded. Likewise, all grants administration provisions of noncodified program manuals, handbooks, and other materials which are inconsistent with the rule are superseded, except to the extent they are required by legislation or approved by OMB.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year. As noted in the agency-specific preambles, some Federal agencies may authorize earlier effective dates. For example, some Federal agencies may allow grantees to use the new definition of equipment and the increase in the threshold for small purchase procedures as of the issuance of the final rule.

Comments on the Proposed Common Rule

OMB and the Federal agencies received over 85 comments on the proposed common rule from States, local governments, counties, Indian tribes, councils of governments, interest groups, business organizations, universities and nonprofit organizations. All comments received by any agency were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Commenters supported the codification of common governmentwide policies in federal agency regulations. As the General Accounting Office (GAO) explained, this approach "should go a long ways towards providing a more standardized and efficient approach to administering federal assistance" and "create a more certain environment for State and local governments."

The proposed rule invited comments on three issues in particular: Federalism, "Flow-down," and Open-Ended Entitlements.

Federalism

As explained in E.O. 12612, Federalism, States possess unique constitutional authority, resources and competence. Under Federalism, States should be given the maximum administrative discretion possible with respect to national programs they administer. Intrusive, Federal oversight is neither necessary nor desirable. Federal agencies should refrain from establishing uniform, national standards, and, where possible, defer to the States to establish them.

Consistent with the President's Federalism Executive Order, the proposed common rule provided that in three important areas (financial management systems, § ____.20, equipment, § ____.32, and procurement, § ____.36), States will expend and account for grant funds according to their own laws and procedures. This flexibility for States in these three areas applies only to funds expended by the State itself.

Most commenters reacted favorably to granting States increased flexibility. A number of States as well as the National Association of State Budget Officers, who were commenting on behalf of the Governors and the National Governors' Association, enthusiastically endorsed these changes. The GAO as well was supportive, pointing out that "This policy would provide greater flexibility to States to standardize the management of related State and Federal programs. The policy also recognizes the improvements made by many States in recent years to upgrade their management systems and personnel."

"Flow-down"

In the past, OMB Circular A–102 required that its provisions be applied to State and local governments when they were subgrantees under Federal grants as well as when they were primary grantees. The purpose of this "flow-down" of requirements was to ensure that subgrantees had the same rights and protections as grantees. To maintain this uniformity for subgrantees, the requirements in the proposed rule applied not only to direct Federal grantees, but also when funds "flow-down" to governmental subgrantees. Grantees, in their dealings with subgrantees, were subject to the same rules as Federal awarding agencies in dealing with them. The proposal did not address the administrative requirements applicable to nongovernmental grantees and subgrantees, because they are covered by Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." A June 24, 1987 Notice in the **Federal Register** (52 FR 23729) announced that OMB and the Department of Health and Human Services (HHS) are co-chairing a follow-on effort to similarly review and issue a common rule and revised Circular for nongovernmental grantees covered by Circular A–110. Grants to non-governmental grantees and subgrantees will be addressed at that time. The proposed rule, however, did address which cost principles apply or "flow-down" to grantees, subgrantees, or contractors. Section ____.22, Allowable Costs, stipulated that depending on the organization, Circular A–21 (educational institutions), A–87 (governments), or A–122 (nonprofits), or 48 CFR Part 31 (for-profits) will apply.

From the outset of the review of Circular A–102, OMB and the agencies recognized the importance of the policy requiring the "flow-down" of administrative requirements to subgrantees. The June 18, 1984 **Federal Register** Notice which announced the review specifically asked for public comment on a number of issues and provided options for each. The "flow-down" issue asked: "To what extent should States or other applicants be required to apply Federal administrative requirements to subrecipients (subgrantees)?" It offered three options which included: (1) Letting States manage and condition subgrants (except for requirements which fulfill a Federal need), (2) letting all grantees (besides States) do so, and (3) maintaining the status quo. The policy issue made reference to a full discussion and illustration of the first or "Federalism" option (giving States flexibility to condition and manage subgrants) in the Department of Health and Human Services (HHS) proposed rule published in the **Federal Register**, February 24, 1984 on pages 6933–5.

There was considerable public comment on the June 1984 Notice. The several interest groups representing local governments indicated they "do not want major policy modifications to the Circular." Many local governments and nonprofits alleged that States' administration and conditioning of subgrants is uneven at best and typically heavy-handed, i.e., has more "strings." States and the National

Association of State Budget Officers (NASBO), writing in conjunction with the National Governors' Association (NGA), strongly supported the review of the Circular. NASBO further indicated a preference for continued application of the uniform administrative requirements to subgrantees. Thus, continued "flow-down" of the rules to subgrantees appeared to satisfy both the States as well as the local governments.

On March 12, 1987, the President directed all affected grant-making agencies to adopt a government-wide common rule reflecting Federalism and regulatory relief. The resulting June 9, 1987 proposed common rule maintained the "flow-down" policy. The status quo approach for subgrantees was taken in spite of Federalism and regulatory relief because of the comments made earlier by State and local governments.

A number of commenters on the June 1987 proposal were concerned about the clarity of the flow-down policy. Several recommended that rather than incorporating the policy throughout the text (e.g., by repeating the applicability to grantees and subgrantees), that the rule contain a separate section entitled "Subgranting" or "Subgrants" to explain "flow-down" and distinguish such funding from contracting in § ____.36, Procurement.

A greater number of commenters addressed the substance of the "flow-down" policy. States in particular pointed out that the proposal constituted undue regulation of State administration of Federal funds and is inconsistent with Federalism. NASBO and several Governors said that the flexibility in the June 1987 proposal was not enough—that States should be able to condition and manage subgrants according to State law and procedures without any required "flow-down" of the Federal administrative standards.

On the other hand, a number of subgrantees wrote urging maintenance of "flow-down" to ensure that the rules they follow under State subgrants would be the same as those for direct Federal grants. One regional grantee argued that they have "a vital interest in simplicity and consistency in regulations governing the administration of grants which are received both directly from the Federal Government and, indirectly, as passed through various State agencies" and thus "applaud and strongly support the retention and clarification of the flow-down policy requiring grantees to follow A–102 with subrecipients."

In reconsidering this important matter, it is our view that most restrictions and requirements on States in administering subgrants are no longer necessary. As explained in E.O. 12612, Federalism, States have unique Constitutional authority, resources, and competence. "Flow-down" provisions cannot be reconciled with the goal of this common rule to place maximum reliance on a State's own management systems, including a State's system for administering grants from its non-Federal funds. In response to clear and strong recommendations from NASBO, the NGA and Governors themselves, the rule is modified to permit States to more freely manage subgrants. A new § ____.37, Subgrants, has been added to clarify the policy, distinguish subgrants from the award and administration of procurement contracts, and, with regard to States, to rely on a State's own laws and procedures.

This will mean that local governments and Indian tribal governments will administer *direct* Federal grants according to the standards in the common rule and Federal "pass-through" funds *subgranted* from the State according to State laws and procedures. This change represents a shift in the basis upon which uniformity is established. When Circular A–102 was first issued in 1971, uniformity for local governments was based on Federal standards. This made sense because at that time there were many more Federal programs directly funding local governments and State aid to local governments was proportionally lower. Now, according to the Bureau of the Census, this is no longer the case. Local governments receive 5 times as much aid from States as they do from the Federal Government. Further, due to the ten block grants authorized in 1981 and 1982, States occupy a much more pivotal position in the administration of the remaining Federal grant programs. The common rule shifts the basis for uniformity to one which recognizes States' increased role in financing and administering intergovernmental programs.

Open-Ended Entitlements

The regulatory requirements in the June 9, 1987 proposal did not apply to open-ended entitlement grants. These are the grants for public assistance programs, such as Medicaid and Aid to Families with Dependent Children, the child nutrition programs and the administrative costs of the Food Stamps program, for which the Federal Government pays a statutorily-required share of costs without dollar limit. Because of this open-ended feature and because of special statutory requirements, these grants are administered differently from other grants in important aspects. Subpart E of the proposed rule was reserved to subsequently and separately address these programs.

Commenters agreed with the proposal to address entitlement programs separately from the closed-ended grants The GAO, for example, explained that "Since the Federal role varies among the types of assistance programs, we agree that the accountability rules should also vary to reflect the differential Federal roles."

The Departments of Agriculture (USDA) and Health and Human Services (HHS) which administer these programs will collaborate in the drafting of the common Subpart E for these programs.

Other Public Comments

Subpart A—General

Section ____.3 Definitions.

"Subgrant"—There were four comments regarding the definitions of subgrants and contracts between governmental entities. The primary comments came from local governments that were concerned that States would bypass the flow-down requirements of § ____.4(a) by using a procurement contract to pass Federal assistance funds to substate units of government. The definition of subgrant is worded to include contracts used to provide financial assistance to an eligible subgrantee; however, a section on subgrants, § ____.37, has been added to help clarify when requirements flow through to subgrantees.

"Share"—There was one comment concerning the definition of the term "share." The commenter was concerned that this definition excluded donated equipment and supplies for subrecipients. This definition is used for determining the proportionate share when disposing of property, equipment or supplies acquired with Federal grant funds and has no effect on the eligibility of in-kind contributions.

Section ____.4 Applicability.

Two commenters recommended that the coverage of the common rule be extended to block grant programs to obtain uniformity. The commenters said that, although block grant programs had been exempt from the requirements of Office of the Management and Budget (OMB) Circular A–102, many States used the procedures of OMB Circular A–102. The common rule does not prohibit States from using these requirements when dealing with subgrantees; however, to subject these programs to the requirements of the common rule would be contrary to the broad discretion granted to States to run block grant programs.

Several comments were received regarding the applicability of other Federal regulations. Section ____.4 implies that Federal regulations that are inconsistent with this common rule, whether or not they had been approved by OMB or required by statute, would apply to grants and subgrants. In § ____.5, regulations that are inconsistent with the common rule are superseded except those required by statute or approved by OMB as an exception. Section ____.4(a) has been rewritten to match the wording of § ____.5.

Section ____.6 Exceptions.

Three comments were received objecting to the provisions of § ____.6(c) that allows Federal agencies to authorize exceptions on a case-by-case basis or for subgrantees. The commenters believed that OMB should be the only organization allowed to grant exceptions. This provision was included to provide Federal agencies the flexibility to respond to individual situations for grantees and to provide Federal agencies the same oversight over subgrantee requirements that OMB has over requirements on grantees. There should be limited use of this provision by Federal agencies just as OMB has authorized few exceptions to the common rule. No substantive change was made to the common rule.

Subpart B—Pre-Award Requirements

Section ____.10 Forms for applying for grants.

The existing application forms are a five-part package including: the SF–424 Facesheet; Part II, Project Approval Information checklist; Part III, Budget Information; Part IV, Narrative; and Part V, Assurances. Unlike 1971 when Circular A–102 was first issued, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal grant and cooperative agreement programs, the types of recipients receiving funding, and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the **Federal Register** (52 FR 20178–20179). The great majority of the over 80 public comments concerned the proposed financial reporting formats for the open-ended entitlement programs, rather than either the need for, or design of, the standard application forms. We attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs (OIRA), few programs use the forms displayed in Circular A–102 "as is." In fact, aside from the SF–424 Facesheet, every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements. In recognition of this, § ____.10 has been revised to require use of either (1) three types of pre-approved standard forms: Facesheet, standard budget information (construction or non-construction) and standard assurances (construction and non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980.

Section ____.11 State Plans.

To further implement E.O. 12372, this section offered States three additional means to simplify, consolidate or substitute State plans for Federally required plans. All three commenters supported the language and intent, particularly in response to some Federal agencies which had indicated in their agency-specific preambles that this section was not applicable to their programs. Since the public comment was supportive, there was no need to make any change.

Section ____.12 Special grant or subgrant conditions for "high-risk" grantees.

This section clearly identified the controls or conditions which awarding agencies may use when making grants to high risk grantees. These conditions were not mandatory, nor were they exclusive to this section. For example, some conditions such as payment on a reimbursement basis are available in other circumstances, in §§ ____.21 and ____.43. Further, under § ____.6, agencies are permitted to depart from the common rule on a case-by-case basis or with the approval of OMB. Three commenters addressed this section: one supported the section as is; another requested more detailed due process procedures; the third wanted more clearly described controls over Federal agency use of the conditions. No change is made to this section, but the revised OMB Circular A–102 issued elsewhere in this issue has been changed to require Federal agencies to document the use of high risk conditions to permit oversight.

Subpart C—Post-Award Requirements

Section ____.20 Standards for financial management systems.

A number of Inspectors General were concerned that in State-administered programs the effect of § ____.20 is that subgrantees and cost-type contractors are not subject to any requirements to account for funds. This is not the case. Section ____.20 requires a State to follow its own laws and procedures regarding financial management systems. Section ____.20 does not require States to meet specific Federal financial management standards because such requirements are an unwarranted intrusion into State affairs and could effect a State's ability to administer subgrants effectively. However, the rule has been revised to clarify that States, *as well as* their subgrantees and cost-type contractors, must have sufficient control and accounting procedures to show that Federal funds have not been used for unauthorized purposes.

One comment was received regarding the provision of § ____.20(b)(7) that requires grantees to establish procedures with subgrantees to ensure timely receipt of cash management reports. The commenter wanted the rule to include a concept of "reasonableness" for grantee imposed requirements on subgrantees. One purpose of this rule is to provide uniform and "reasonable" requirements on grantees, and we do not expect grantees to impose unreasonable requirements on subgrantees based on the requirements of this common rule. However, the rule has been revised to include the reasonable concept for grantee procedures imposed on subgrantees to prepare cash management reports.

Section ____.21 Payment.

In anticipation of legislation amending the Intergovernmental Cooperation Act of 1968, the proposed rule merely cross-referenced the Department of the Treasury rules governing payment. Many commenters therefore noted the absence of any provisions addressing the disposition of interest earned on advances or use of receivables from audit disallowances, credits and other adjustments. In order to address these concerns, the section has been expanded to address interest earned on advances, payments to subgrantees and contractors, and use of refunds, credits and other receivables. In addition, provisions for payments to grantees through the method of electronic transfer of funds have been added.

Section ____.22 Allowable costs.

A comment was received that the complete reference to cost principles for for-profit organizations was too broad and should be 41 CFR Subpart 31.2; however, other portions of Part 31, such as definitions and applicability, also apply to commercial organizations. Another commenter objected to the provision that allows Federal agencies to prescribe cost principles, such as railroads that use the Uniform System of Accounts established by the Interstate Commerce Commission. To require these organizations to adopt a second set of Federal cost principles would be counter productive. No changes were made to the common rule.

Section ____.23 Period of availability of funds.

Several comments were received regarding the requirement in § ____.23(b) for grantees to liquidate all obligations within 90 days after the end of the funding period (or as specified in program regulations). Two commenters only wanted exceptions to the 90-day period if specified in law, and one commenter recommended an extension to 9 months. The 90-day period was established as standard for programs that have a funding period, but a provision is contained in the common rule that allows Federal agencies to establish a different time limit in program regulations to provide for different program requirements. Because the common rule contains a provision that permits the flexibility needed to meet differing program needs, the common rule was not changed.

Section ____.24 Matching or cost sharing.

A comment was received that indicated an inconsistency in the use of Federal cash for satisfying matching requirements in § ____.24, and the definition of "cash contributions" in § ____.3. The definition allows Federal funds received from other assistance agreements to be considered as a recipient's cash contribution if authorized by Federal statute. The exception in § ____.24(b)(1) allows costs borne by another Federal grant if authorized by Federal statute. The term "cost borne by another Federal grant" includes grant funds used to pay the recipient's cash contribution. Therefore, no change was made to the common rule.

Two comments were received regarding the provision of § ____.24(e)(2) on the valuation of building and land donated to the grantee. The common rule provides that unless approval is received from the awarding agency, no amount can be allowed for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The commenters recommended that the fair rental rate be used for such property. The common rule values such property in the same manner as grantee-owned property is valued in OMB Circular A-87, Cost Principles for State and Local Governments, which is the government-wide directive on such matters. Consequently, no change was made to the common rule.

Section ____.25 Program income.

One commenter did not believe that the definition of program income in § ____.25(b) covered the proceeds derived by grantees from the products of the land, such as oil, gas, and other minerals. The definition of program income includes income "earned only as a result of the grant agreement during the grant period." This definition includes items, such as oil and gas revenues, that a grantee would earn from land acquired with Federal grant funds. Earnings on items such as oil or gas revenues are not considered or contemplated when making awards. No change was made to the common rule.

Several commenters objected to what they interpreted were the provisions of § ____.25(g). They believed that this paragraph required the use of the deductive method in handling program income. The common rule encourages the use of the deductive method for using program income; however, the common rule does not require Federal agencies to use only this method. The common rule does require specific Federal action before other uses can be made of program income. No change was made to the rule.

Two commenters objected to the provision in § ____.25(g) that allows Federal agencies to distinguish between the treatment of grantee and subgrantee program income. This provision is included because different functions are often performed by grantees and subgrantees. In some situations the purpose of the program may be better served if a subgrantee uses the additive method, while the grantee uses the deductive method because there is no need for the grantee to enlarge its efforts. This provision allows for such a situation. Therefore, no change was made to the common rule.

Section ____.26 Non-Federal Audit.

Since all of the agencies participating in the common rule have regulations implementing the Single Audit Act of 1986, this section merely cross-referenced the Act. Nonetheless, a number of commenters asked for a fuller explanation of grantee audit responsibilities. We agree there should be a fuller explanation. The section has been expanded to address grantee audit responsibilities. However, for a complete discussion of the Single Audit Act, audit standards, requirements, and reporting, grantees should look to the agency regulations implementing the Act and OMB Circular A-128.

Section ____.30 Changes.

Three significant revisions have been made to the "Changes" provisions based on the recommendations of Federal agencies. First, the prior approval requirement for budget transfers exceeding 10 percent has been made waivable by Federal agencies. (§ ____.30(c)(1)(ii)). Second, the prior approval requirement for changes in key persons has been elaborated to require approval for any change in the project director or principal investigator of a research project, unless this requirement is waived by the Federal grantor agency. In most research programs, the qualifications of this person are a major factor in the approval of the project. Consequently, this requirement is needed for almost all research grants. (§ ____.30(d)(3)). Third, the prohibition on approval requirements for grant administration project revisions other than those listed in paragraph (d) has been deleted because it was found to be unnecessary. A number of other changes have been made for editorial or clarifying purposes. Several public commenters suggested allowing even more latitude, in various ways, for changes that do not require approval. Because the proposed regulation represents a significant loosening of prior approval requirements, we have decided not to go further before experience is gained on the effect of these changes.

Section ____.32 Equipment.

Several comments were received related to the increase in the accountability thresholds to $5,000. Most commenters applauded the Federal Government's move to relieve the administrative burden placed on State and local governments by current requirements. One commenter expressed concern that raising the thresholds would virtually eliminate inventory records maintained by grantees of general office furniture and equipment. The commenter went on to say, however, that without doubt all grantees would follow their own definition of equipment and continue to maintain records regardless of Federal agency guidelines. The very purpose of raising the thresholds was to alleviate the recordkeeping burden placed on State and local government's assistance recipients. Consequently, no change was made to the proposed common rule.

Two commenters expressed concern over § ____.32(c)(3), which prohibits grantees or subgrantees from using equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute. The commenters believed that the provision is vague and could lead to inconsistent implementation by the various Federal agencies. One commenter also expressed concern that this provision will prohibit use of equipment acquired with a Federal grant for legitimate charitable purposes. However, several business organizations strongly endorsed the provision. They applauded the restriction, saying it would be extremely helpful in controlling abuses in use of grant-acquired equipment. No change was made to the rule.

One commenter stated that the provision of § ____.32(e)(3) that allows an awarding agency to make a unilateral excess property and disposition decision, is unduly vague and may invite arbitrary implementation. This provision has been revised to state that in cases where a grantee or subgrantee fails to take appropriate disposition action, the awarding agency may direct the grantee to take appropriate excess and disposition actions.

Finally, paragraph 6(g) of Attachment N, Property Management Standards, in Circular A-102 reserves to the Federal Government the right to direct the transfer of equipment acquired with grant funds to the Federal Government or a third party. This provision was rarely, if ever, used in the case of grants to State and local governments and consequently not included in the June 9 proposal. One Federal agency expressed concern about the deletion of this provision, citing instances where a principal investigator under a research grant leaves one entity and continues the research at a successor entity. That agency believed it was in the best interest of the Government to maintain the right to direct the transfer of title to equipment in these instances. The common rule has been revised to add such a provision based on the language in the current Circular A-102.

Section ____.33 Supplies.

Two commenters recommended that the provision of § ____.33(b) on disposition of supplies should be deleted because grantees should not be required to calculate the cumulative Federal share of their supplies to compensate the grantor. During the development stages of the proposed regulation, this provision was considered necessary to protect the Federal interest and requesting grantees to keep records of their supplies (which the majority do anyway) did not seem reasonable. This provision merely continues existing policy (Attachment N to OMB Circular A-102) except for raising the threshold from $1,000 to $5,000 to be consistent with the revised threshold established throughout the proposed common regulation.

Section ____.35 Subawards to debarred and suspended parties.

One commenter opposed the Federal Government's system of nonprocurement suspension and debarment with government-wide effect. This system, which is in the final stages of development, was directed by the President in E.O. 12549. Because Federal agencies' regulations implementing the Executive Order will be issued later this year, the rule was revised to delete detailed procedural requirements.

Section ____.36 Procurement.

Section ____.36(b)(12). One commenter suggested that grantee protest procedures should be modified to set up a Federal agency review process to provide a forum for appeal to the grantor agency of any adverse grantee protest determination. Under § ____.36(b)(12) (i) and (ii), the Federal agencies are involved in the review of protests where there have been violations of Federal law or regulations and standards of § ____.36, or violations of the grantee's protest procedures. This provides Federal agencies the avenue to review and rectify adverse grantee actions. The same provisions are contained in the current procurement standards of Attachment O to A-102. Several Federal agencies have instituted review procedures of complaints against the award of contracts under grants. However, other agencies have determined a formal review process or board of appeals is unnecessary due to the low incidence of appeals. On January 23, 1985, the General Accounting Office decided to discontinue reviewing protests against grantee contracting activities largely because of the diminishing number of complaints filed by disappointed contractors over the nine years that protests were reviewed. We know of no major problems that grantees or Federal agencies are experiencing under the current procedures. Further, Federal agencies are permitted to set up a formal agency review when they deem it necessary. Therefore, we do not believe the provisions should be changed to require Federal agencies to set up formal agency review process.

Section ____.36(c)(1)(vi). Two commenters suggested a modification to the provision specifying a "brand name" product as being restrictive of competition. They believed that there are special instances, such as nonavailability of a product, quality needs or unique requirements, where only a "brand name" product should be purchased. Section ____.36(c) *Competition* requires all procurement transactions to be conducted in a manner providing full and open competition. Section ____.36(c)(1)(iv) identifies as being restrictive to competition the situation of specifying only a "brand name" product instead of allowing "an equal" product in the specifications. It does not prohibit the award to the "brand name" manufacturer when an award is justified on a basis such as nonavailability of a product. Therefore, to promote competition to its fullest as required by § ____.36(c), the suggestion was not adopted.

Section ____.36(c)(2). Several comments were made regarding the prohibition against using statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. The provision was strongly supported by several commenters, although one commenter believed it should not be imposed without a study detailing the results of the prohibition. One commenter was concerned that the section would preempt State licensing laws. Also, one commenter had concern because in contracting for architectural and engineering (A/E) services geographic location is used as a selection criterion provided its application leaves an appropriate number of qualified firms to compete for a given project. The application of unreasonably restrictive qualifications and any percentage factors that give bidding advantages to in-State or local firms are barriers to open and free competition which are not in the public interest. Section ____.36(c)(2) was included in the proposed regulation to foster competition, fairness, and economy in the award of contracts. The provision is viewed as being federally appropriate for a regulation covering a wide range of procurement actions, and consequently the prohibition was retained. However, two provisos have been added to handle the special situations that the commenters noted which make it clear that State licensing laws are not preempted and that geographic location may be used when appropriate as a selection factor when contracting for A/E services.

Section ____36(d)(1). Procurement by small purchase procedures. Several commenters were complimentary of the increase in the dollar threshold for use of small purchase procedures from $10,000 to $25,000. However, there was an equal number of commenters that suggested raising the threshold even higher because of the cost of work in today's dollars. We believe that $25,000 is the proper level of threshold at this time, and it is consistent with the policy that is followed for Government direct procurements.

Section ____36(d)(2) Procurement by sealed bids (formal advertising). Two comments were received suggesting that a statement be included emphasizing that the use of competitive sealed bidding is the preferred procurement method of construction. Federal procurement policy for direct procurement is to acquire construction using sealed bid procedures if certain conditions exist. Those conditions are essentially the same as described under § ____36(d)(2)(i) (A), (B), and (C) of the proposed rules concerning procurement by sealed bids. We believe this to be sound procurement policy when acquiring construction for direct Federal and for assistance programs. In view of this, we have adopted the suggestion by adding a provision to the subsection which expresses a preference for the sealed bid method when purchasing construction.

Section ____36(d)(3). Several comments were submitted concerning procurement by competitive proposals. A few commenters believed the proposed regulation should more clearly identify the qualifications-based selection process for the procurement of A/E services. One commenter believed that the qualifications-based selection process for A/E services should be required. The proposed regulation more clearly identifies and describes the requirements for procuring A/E services than was done under the procurement standards of Attachment O to A–102. In the proposed regulation, a separate paragraph to the provisions on competitive procurements clearly identifies at § ____36(d)(3)(v) a distinctive qualifications-based selection process that may be used for A/E services. However, this process is not mandated because to do so would override many State and local procurement rules which provide for the consideration of price in the selection of firms for certain A/E services. Consequently, no change was made to the proposed common regulation.

Section ____36(e). Contracting with small and minority firms, women's business enterprises, and labor surplus area firms. One commenter recommended that this section should be amended to include the preamble that is in Section 9 of Attachment O to A–102. The current statement is: "It is national policy to award a fair share of contracts to small and minority business firms." The commenter believed that the elimination of this statement would stop all Federal agencies from complying with Executive Order 12432, Minority Business Enterprise Development. Two commenters supported the proposed rule which requires grantees to take all necessary affirmative steps (six steps are detailed) to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. They believe the requirements are appropriate to ensure that grantees and contractors extend best faith efforts to use these firms while still allowing the open competitive bidding system to operate. While the proposed regulation is more concise, the total requirements that were in Section 9 of Attachment O remain intact. Also, the mere elimination of the preamble in the standards on grantee procurements does not in any way reduce or change the requirements listed in the Executive Order on Minority Business Enterprise Development. Consequently, the proposed common rule was not modified.

Section ____36(f). Contract cost and price. One commenter requested that legal services be singled out as being subject only to price analysis, but not to cost analysis because legal firms do not maintain their financial systems in a manner to permit cost analysis. The cost and price provision as circulated is intended to provide general guidance, and to set forth the requirement for cost or price analysis. Under a certain type of procurement, such as legal services, where there are an adequate number of sources available and the price or unit price can be determined as being reasonable through price analysis, a cost analysis would not be required. The standard appears to adequately provide for situations where price analysis would be used and, therefore, the commenter's request was not adopted.

Section ____36(g)(3)(ii). One comment was received supporting the provision which allows grantees to self-certify their procurement systems as complying with the regulation's requirements. However, another commenter objected to the provision because it does not allow sufficient time to take corrective action when a bidder protests. In cases of a protest, whether or not a grantee's procurement system has been self-certified should not affect the time required for any needed corrective action. A protest is lodged against a single procurement action and only one action needs to be addressed. System deficiencies do not need to be corrected to respond to a protest. Consequently, no change was made in the common rule.

Section ____36(h) Bonding requirements. One commenter requested that this section be modified to apply only to construction projects as is currently the case under the provisions of Attachment B to OMB Circular A–102. The bonding provisions are applicable to construction and the section has been modified to make this clear.

Section ____36(i). Contract provisions. One commenter recommended that Federal agencies be permitted to require standard contract clauses in grantee contracts. Two other commenters believed that standard or "model" clauses would be beneficial and should be allowed. Such clauses make it easier for grantees to manage their projects, and for contractors to understand the contractual requirements that will consistently be applied on federally assisted contracts. The proposed regulation and the current procurement standards in Attachment O require a grantee's contracts to contain certain provisions. In addition, Attachment O permits grantor agencies to require clauses approved by the Office of Federal Procurement Policy. Pursuant to the authority provided in Attachment O, Federal agencies have promulgated model clauses to be used by grantees. Clauses for changes, differing site conditions, suspension of work, termination, and remedies have been issued using the same type of language that has been recommended by the American Bar Association's Model Procurement Code and is required in direct Federal acquisition by virtue of FAR 43.205, FAR 36.502, FAR 12.505, and FAR 49.504. Under many of the Federal assistance programs the use of model clauses appears to be appropriate. Consequently, the authority that is included under current Attachment O was added to the common rule.

Section ____40 Monitoring and reporting program performance.

One commenter questioned whether the language in § ____40(a) requires the grantee to monitor its own activities as it administers the subgranting of funds or instead to monitor the activities of its subgrantees. The commenter believed there was an overlap between

§ ____40(a) and OMB Circular A–128. OMB Circular A–128, which implements the Single Audit Act of 1984, concerns auditing of State and local governments. There is no overlap between the requirements of that Circular and this § ____40, which concerns monitoring, not auditing. In response to the commenter's specific concern, the grantee is responsible for monitoring both its own activities and the activities of its subgrantees.

Another commenter recommended the regulation clarify the explicit responsibility of a grantee to monitor contract performance. The proposed common regulation only imposes minimal requirements regarding contracts entered into by grantees under § ____36. The grantee is ultimately responsible for administering the grant and for monitoring the contractor's activities to ensure compliance with applicable Federal requirements and achievement of performance goals. Because the factors involved in the monitoring will vary depending upon the nature of the work being performed under the contract, we do not believe specific detailed monitoring requirements should be imposed at the Federal level.

Section ____41 Financial reporting.

One commenter noted a conflict between the proposed common regulation at § ____41(b)(2) and the Circular at 7(b)(2), setting forth procedures for financial reporting on either a cash or accrual basis. The Circular requires Federal agencies to prescribe whether reporting shall be on a cash or accrual basis and the proposed common regulation requires grantees to report on the same accounting basis it uses in its own accounting system. In addition, several commenters objected to the option of allowing financial reporting on either a cash or accrual basis and thought a standard format should be established. The conflict noted between the proposed common regulation and the Circular has been corrected. The proposed common regulation has been changed to authorize each Federal agency to determine whether financial reporting shall be required on a cash or accrual basis. It is essential for Federal agencies to be given discretion to determine the appropriate type of information necessary to administer the programs for which they are responsible. The option of allowing financial reporting on a cash or accrual basis was determined to be the most feasible and the least burdensome to accommodate the accounting systems in place at Federal and grantee levels. The proposed common regulation has been modified at § ____41(b)(2) to authorize Federal agencies to determine whether financial reporting shall be required on a cash or accrual basis.

One commenter requested that the language permitting OMB to authorize supplementary financial reporting forms "from time-to-time" be deleted. In the alternative, if this could not be done, the commenter requested that respondents be given an opportunity to review the forms prior to OMB approval. If after original clearance, forms could not be supplemented to meet the needs of particular Federal agencies, the basic form would have to contain all financial reporting requirements for every agency of the Federal Government. Such a requirement is not feasible given the complexities of the various programs administered by the Federal Government. Therefore, the language permitting agencies to request supplementation of forms has not been deleted. The requirements for OMB clearance of forms is contained in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. OMB implements the Act in regulations appearing at 5 CFR Part 1320. These regulations require an agency that wishes to collect information to submit a request for approval to OMB. The agency must also publish a notice in the **Federal Register** informing the public of the request. If anyone wishes to comment on agency-specific financial reporting forms prior to OMB approval, the forms clearance regulations contained in 5 CFR Part 1320 offer the appropriate vehicle.

Several commenters were very supportive of requiring, at the maximum, quarterly Financial Status Reports (SF–269). However, one commenter was concerned that quarterly financial reporting is not adequate to monitor large awards. This commenter suggested awarding agencies be given the option to require more frequent reporting for large awards. A significant emphasis of the proposed common regulation and Circular is to reduce unnecessary paperwork and reporting burdens at both the Federal Government and grantee levels. We believe that financial reporting on a quarterly basis, regardless of the size of the award, is adequate to monitor grantees. If reporting is insufficient, Federal agencies may impose additional financial reporting requirements through the "high-risk" provisions of § ____12.

A commenter believed the authority to allow awarding agencies to require financial reports more frequently or in more detail if a grantee's accounting system does not meet the standards for financial management systems may invite arbitrary implementation and should require due process procedures. The authority to review the adequacy of the financial management system of grantee is established in the proposed common regulation at § ____20(b)(7). The standards for financial management systems established in the proposed common regulation in § ____20(a)–(c) are such basic fiscal management principles that failure to meet these standards would have to involve egregious errors. Therefore, we do not believe this requirement to be arbitrary. In addition, a grantee has no due process rights to report information a certain number of times or a specific level of detail. This requirement, when imposed, would only require more detailed or frequent financial reporting. We believe that these requirements are essential to ensure the proper stewardship of Federal funds.

One commenter suggested that unliquidated obligations reported on an interim or final Financial Status Report (SF–269) be required to be liquidated within a reasonable time after the required 90-day reporting period. The proposed common regulation, at § ____23(b), requires that obligations incurred under an award be liquidated within 90 days after the end of the funding period, unless an extension has been granted by the awarding agency. We believe that the authorization to extend the liquidation date offers sufficient flexibility to handle any unique liquidation problems.

Another commenter suggested that the requirement to file Federal Cash Transactions Reports (SF–272) 15 days following the end of a quarter or month be increased to 30 days. The 15-day requirement is necessary for Federal Cash Transactions Reports (SF–272) in order for awarding agencies to complete cash requirement forecasts for the Treasury Department on a timely basis. Since grantees are required to establish methods and procedures for minimizing the time between transfer of funds and disbursement in accordance with Treasury regulations at 31 CFR 205, this timely reporting should not be burdensome.

A commenter believed the authority to allow awarding agencies to require reporting on the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors, when considered necessary and feasible, may invite arbitrary implementation. Another commenter was concerned because many subgrantees get funds from the State on a monthly basis and therefore, the three days needs test would be impossible to meet, except at the very end of the month. In addition, other commenters believed a dollar threshold for requiring such reporting by subgrantees or contractors should be established. As required by Treasury regulation at 31 CFR Part 205, grantees must establish methods and procedures for payment that minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursements by grantees and subgrantees. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. Therefore, grantees should readily have information available related to subgrantee cash advances and be prepared to report on such advances if requested. Also, payment systems that meet the requirement to minimize time elapsed between transfer of funds and subgrantee disbursements will provide funds at a rate sufficient to meet the three-days needs test. To ensure prudent management of Federal funds, awarding agencies need to know whether grantees have excess cash regardless of the amount of the award. Therefore, establishing a dollar threshold is inappropriate.

Section ____.43 Enforcement.

One commenter requested clarification on whether grantees can use the enforcement process described in § ____.43 to require subgrantees to resolve any audit findings, recommendations or exceptions cited in a previous year's audit. Yes, a grantee, as an awarding agency, is authorized under this section to resolve audits through the audit process.

Section ____.44 Termination for convenience.

One commenter was concerned that termination for convenience may only be carried out with the consent of the grantee and that the awarding agency may wish to terminate an award unilaterally without involving remedies for noncompliance. The commenter misunderstands the nature of a termination action. A termination involves a Federal grantor agency terminating a grantee's authority to obligate funds before the authority would otherwise expire. Incidental to that function, a grantee may be required, as the result of an audit, to return funds that were improperly expended. A grantee has a constitutionally protected property right to obligate funds until the end of its normal grant period. Therefore, a grantor agency, before it may cut short that period of obligation through a termination action, must either offer the grantee due process of law or obtain the grantee's consent to the termination. As a result, it is impossible to terminate a grant unilaterally even though a Federal agency may be willing to forego recovery of improperly expended funds.

Subpart D—After-the-Grant Requirements

Four comments were received on After-the-Grant requirements. Two State agencies commented that the 90-day timeframe in § ____.50(b) for grantees to submit all reports associated with the grant was not sufficient. One of the commenters suggested that 120 days or longer would be more appropriate, since they experienced difficulty with some grants in meeting the 90-day deadline. We agree that in some rare cases, 90 days may not be sufficient time for grantees to submit all required reports, particularly when there are unliquidated obligations or delays in receiving reports from subgrantees. In recognition of this, the section has been amended to provide the opportunity for the Federal agency to grant an extension upon the request of the grantee.

One Federal agency commented that the 60-day deadline for cost adjustments in § ____.50(c) was unrealistic, given large formula grants and the administrative burden of closing them out. Recognizing the problems such a short deadline will cause, the rule has been changed to a 90-day deadline. We believe all agencies should be able to make a cost adjustment based on the reports on hand within that timeframe. Section ____.51, Later disallowances and Adjustments provides the opportunity to make further adjustments if Single Audit reports or other findings question costs.

Another commenter stated that use of § ____.52(a)(2) authorizing withholding advance payments to a grantee to satisfy a debt owed to the Government could impede program implementation and not necessarily result in the actual collection of the amounts due. While we agree that use of this provision to satisfy delinquent debts to the Government may at times raise difficult issues, it is nevertheless necessary to insure that the Government has the tools to collect funds that are due. We are certain Federal agencies will continue, as in the past, to use good judgment in the exercise of this authority.

Subpart E—Entitlements [Reserved]

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. We intend the rule to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the rule will have an annual economic effect of $100 million or more or the other effects listed in the order. For this reason, we have determined that this rule is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

Sections ____.10(c); ____.20(b)(2); ____.24(b)(6); ____.30 (f)(1) and (f)(3); ____.32 (d)(1) and (f)(2); ____.36 (b)(9), (c)(3), and (i); ____.40 (b)(2), (c) and (d); ____.41 (b), (c), (d) and (e); ____.42(b); and, ____.50(b) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, each agency will submit a copy of this rule to the Office of Management and Budget (OIRA) for its review of these reporting and recordkeeping requirements. No recipient may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number.

BILLING CODES 3410-KS-M, 8450-01-M, 6025-01-M, 3510-FE-M, 4710-24-M, 4210-32-M, 6610-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 5320-01-M, [illegible], 4310-RF-M, 6716-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 4000-20-M, 6340-01-M, 4610-02-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015 and 3016

FOR FURTHER INFORMATION CONTACT: Gerald Miske (Branch Chief), (202)382-1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: USDA has Uniform Federal Assistance Regulations found at 7 CFR Part 3015 which establish Departmentwide policies and standards for the administration of grants and cooperative agreements. The rules primarily implement OMB Circular A-102, "Uniform Requirements for Grants to State and Local Governments," Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Circular A-128, "Audits for State and Local Governments," and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department's policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A-21 for universities, A-87 for State and local governments, A-122 for nonprofit organizations, and 41 CFR 1-15.2 for for-profit organizations.

Presidential Memorandum, "Uniform Requirements for Grants to State and Local Governments," dated March 12, 1987, directed that Executive departments and agencies simultaneously propose common regulations that adopt the Governmentwide terms and conditions of the proposed revisions to Circular A-102 verbatim.

The Circular A-102 common rule, Subparts A-D, does not apply to open-ended entitlement programs. Coverage for those programs will be provided in a future Subpart E. Pending the issuance of Subpart E, open-ended entitlements remain subject to the requirements of Part 3015.

USDA is adopting the A-102 common regulation by adding a new Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Part 3016 applies only to assistance relationships documented by grants and cooperative agreements, and subawards to State and local governments. Thus, this part does not apply to transactions entered into under sections 1472(b), 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c). Part 3016 also does not apply to the following open-ended entitlement grant programs administered by the Food and Nutrition Service:

(a) State Administrative Matching Grants for Food Stamp Program.
(b) National School Lunch Program.
(c) School Breakfast Program.
(d) Summer Food Service Program.
(e) Child Care Food Program.
(f) Special Milk Program for Children.

Part 3015 no longer governs assistance relationships with State and local governments, except as provided below. However, the above listed open-ended entitlement grant programs, as well as grants and cooperative agreements documenting assistance transactions with institutions of higher education, hospitals, other nonprofit organizations, and for-profit organizations continue to be subject to Part 3015.

The following subparts of Part 3015 remain in effect for State and local governments that receive assistance from USDA.

(a) Subpart I on audits of State, local, and Indian Tribal governments.
(b) Subpart Q, § 3015.158 on competition.
(c) Subpart T on cost principles.
(d) Subpart V on the intergovernmental review of Federal programs.
(e) Subpart W on nonprocurement debarment and suspension (to be issued at a later date).

Comments

In the June 9, 1987 **Federal Register** (FR) (52 FR 21822-21824), USDA requested comments on the proposal to amend 7 CFR 3015.1 and 3015.2 in order to redefine the recipients to which this rule applies. Since no comments were received on this and the policy in Part 3015 is not being revised for those recipients which it still covers, §§ 3015.1 and 3015.2 are amended as proposed.

The Department received no agency specific comments from the public on 7 CFR Part 3016. However, an internal comment was made concerning a statutory deviation.

The comment was that section 17(f)(4) of the Child Nutrition Act (CNA) of 1966, as amended, specifically requires State submission of monthly financial reports and participation data for the Food and Nutrition Service's (FNS) Women, Infants and Children (WIC) Program. Additionally, paragraph 17(i) of the authorizing legislation requires FNS to reallocate funds periodically if it is determined that a State agency is unable to spend its allocation. In order to fulfill this obligation, FNS must consistently make funding determinations that involve the continuous forecasting and reevaluation of State agencies' funding needs which necessitates compliance with the legislatively mandated monthly financial reporting requirement. Sections 3016.40 and 3016.41 of the common rule limit grantor agencies to quarterly requirements for submission of financial and program performance reports by grantees. Since monthly reporting is a statutory requirement for the WIC program, FNS must ask WIC grantees for financial and program performance reports on a monthly basis.

List of Subjects

7 CFR Part 3015

Grant programs (Agriculture), Intergovernmental relations.

7 CFR Part 3016

Grant programs (Agriculture).

Issued at Washington, DC.

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below.

John J. Franke, Jr.,
Assistant Secretary for Administration.

Approved: February 19, 1988.

Richard E. Lyng,
Secretary of Agriculture.

PART 3015—[AMENDED]

1. USDA is amending Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

Subpart A—General

b. Section 3015.1(a) is revised to read as follows:

§ 3015.1 Purpose and scope of this part.

(a) (1) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by such USDA awards. This part contains rules that apply to USDA grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations, as well as those that apply to open-ended entitlement grants, and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A-87, A-21, A-122, and 41 CFR 1-15.2, respectively.

(2) Additionally, this part establishes uniform audit requirements for State, local, and Indian Tribal governments pursuant to the Single Audit Act of 1984 and OMB Circular A-128, intergovernmental review provisions required by Executive Order 12372 for any programs listed in the **Federal Register** as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

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(3) Rules for nonentitlement grants and cooperative agreements to State and local governments are found in Part 3016.

* * * * *

c. Section 3015.2(d) introductory text is republished and paragraph (d)(5) is added to read as follows:

§ 3015.2 Applicability.

* * * * *

(d) Recipients to which this part does not automatically apply. This part does not automatically apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

* * * * *

(5) State and local governments, except open-ended entitlements to State and local governments.

* * * * *

2. Title 7 of the Code of Federal Regulations is being amended by adding Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
3016.1 Purpose and scope of this part.
3016.2 Scope of subpart.
3016.3 Definitions.
3016.4 Applicability.
3016.5 Effect on other issuances.
3016.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

3016.10 Forms for applying for grants.
3016.11 State plans.
3016.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

3016.20 Standards for financial management systems.
3016.21 Payment.
3016.22 Allowable costs.
3016.23 Period of availability of funds.
3016.24 Matching and cost sharing.
3016.25 Program income.
3016.26 Non-Federal audit.

Changes, Property, and Subawards

3016.30 Changes.
3016.31 Real property.
3016.32 Equipment.
3016.33 Supplies.
3016.34 Copyrights.
3016.35 Subawards to debarred and suspended parties.
3016.36 Procurement.
3016.37 Subgrants.

Reports, Records Retention, and Enforcement

3016.40 Monitoring and reporting program performance.
3016.41 Financial reporting.
3016.42 Retention and access requirements for records.
3016.43 Enforcement.
3016.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

3016.50 Closeout.
3016.51 Later disallowances and adjustments.
3016.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

BILLING CODE 3410-KS-M

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT: Cherlyn Seckinger, Business and Financial Policy, Division (MA–422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586–9737.

ADDITIONAL SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed common rule was published in the **Federal Register** (52 FR 21820–21862) on June 9, 1987. In the DOE preamble to the proposed rule, we stated that amendments conforming Subparts A, B, and C of 10 CFR Part 600 to Subpart E would be issued with the final rule.

Since that time, DOE has promulgated a comprehensive revision of Subpart C, Cooperative Agreements (52 FR 5260, February 22, 1988). Among other things, this revision made, with a few exceptions, the administrative requirements for grants applicable to cooperative agreements in § 600.205. The common rule (Subpart E) similarly makes the administrative requirements for grants applicable to cooperative agreements except that it covers only State, local, and Indian tribal governments.

Subpart E is more limited in scope than the existing Subparts A, B, and C because it covers primarily external (applicant/recipient) requirements rather than both internal (Federal agency) and external requirements.

In order to integrate Subpart E into Part 600 and, consistent with the recent changes DOE has made to Subpart C, we believe it is necessary to restructure Part 600, to the extent possible, into Subparts which (1) group requirements according to recipient type (governmental vs non-governmental), (2) segregate internal from external requirements and (3) consolidate the common administrative requirements applicable to both grants and cooperative agreements. This restructuring does not change any of the existing requirements, it merely conforms the provisions of Part 600 as necessary to accommodate Subpart E and reorganizes the rule into a more comprehensible format.

Consequently, Part 600 is amended into the following Subparts: Subpart A—General, Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements to Other than State and Local Governments, Subpart C—Cooperative Agreements, Subpart D—Audits of State and Local Governments, and Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Regulation).

While Subparts A and C focus primarily on DOE policy and *internal* procedural requirements which we believe applicants/recipients also need to know, Subparts B and E establish the *external* requirements or general terms ahd conditions applicable to recipients. Subpart B applies to non-governmental entities; Subpart E applies to State and local governments. Subpart D contains the Audit requirements for State and local governments. To effect this realignment in Part 600, certain sections which are discussed below, are being relocated.

In addition to these structural and conforming changes within Subparts A, B, and C, Subpart E is being changed in a few sections also described below to establish DOE policy in areas not covered by the common rule (e.g. cost principles for hospitals) and for purposes of clarification.

Please note in the Table of Contents of Subpart E, we have inserted in parenthesis the section numbers as they appear in the common rule following the Subpart E section numbers to show the relationship between the two.

II. Amendments to Subparts A, B, and C

Sections 600.3, 600.4, 600.10, 600.14, 600.19, 600.20, 600.25, 600.26 of Subpart A are amended to remove the obsolete cross-references to OMB Circular A–102, to provide the appropriate cross-references to Subpart E and to change references resulting from restructuring Part 600.

The scope and applicability of Subpart B as stated in § 600.100 is being amended. The amended Subpart B provides the common administrative requirements for grants *and* cooperative agreements for recipients who are *not* State, local, and Indian tribal governments. The term "grant" as used in Subpart B is redefined in § 600.101 to also include "cooperative agreement". The amended scope and applicability of Subpart B parallels that of Subpart E which establishes the common administrative requirements for grants and cooperative agreements to State and local governments.

Sections 600.102, 600.103, 600.109, and 600.112 are amended to change references due to restructuring.

Sections 600.104, 600.106, 600.108, 600.121 (a) and (c), and 600.122 of Subpart B are transferred to Subpart A because they primarily cover DOE policy and internal procedural requirements applicable to both grants and cooperative agreements rather than external requirements for recipients. Section 600.118 which establishes DOE patents, data, and copyrights policy and procedures is also moved to Subpart A. Paragraphs (a) and (c) of § 600.121 are reiterated in a new § 600.28 to continue the applicability of these procedures when DOE takes enforcement actions against recipients regardless of the type of recipient involved.

Sections 600.105, 600.107, 600.110, 600.111, 600.116, 600.117, and 600.119 of Subpart B are amended to remove the references to OMB Circular A–102 and to State, local, and Indian Tribal Governments.

Section 600.200 of Subpart C is amended to revise the scope and applicability of this subpart to cover DOE policies and procedures specific to cooperative agreements, but not the general administrative requirements for recipients which, as a result of this rulemaking, are covered in Subparts B and E.

Sections 600.203, 600.204, 600.205, 600.206 are amended to provide the appropriate cross-references to Subpart E.

III. Requirements for State and Local Governments—Subpart E

Section 600.403 of Subpart E of the common rule is amended to define "prior approval" as documentation signed by a *Contracting Officer*. We believe this information is necessary to let the recipient know the DOE official authorized to approve such requests.

Section 600.405 of the common rule is amended to include a cross-reference to the DOE process for obtaining a deviation to Part 600. Because this process is applicable to applicants and recipients as well as DOE staff, the common rule will provide this cross-reference to Subpart A.

Section 600.422 of the common rule is amended to include the cost principles to be used for hospitals (45 CFR Part 74, Appendix E) and to specify the cost principles applicable to commercial organizations receiving DOE financial assistance (48 CFR 31.2 as modified by 48 CFR 931.2).

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting and recordkeeping requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

1. The Authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256; Pub. L. 97–258, 96 Stat 1003–1005 (31 U.S.C. 6301–6308).

2. Part 600 is amended by adding Subpart E to read as set forth at the end of this document:

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

600.400 (__.1) Purpose and scope of this subpart.
600.401 (__.2) Scope of §§ 600.400 through 600.405.
600.402 (__.3) Definitions.
600.403 (__.4) Applicability.
600.404 (__.5) Effect on other issuances.
600.405 (__.6) Additions and Exceptions.

Pre-Award Requirements

600.410 (__.10) Forms for applying for grants.
600.411 (__.11) State plans.
600.412 (__.12) Special grant or subgrant conditions for "high risk" recipients.

Post-Award Requirements

Financial Administration

600.420 (__.20) Standards for financial management systems.
600.421 (__.21) Payment.
600.422 (__.22) Allowable costs.
600.423 (__.23) Period of availability of funds.
600.424 (__.24) Matching or Cost sharing.
600.425 (__.25) Program income.
600.426 (__.26) Non-Federal audit.

Changes, Property, and Subawards

600.430 (__.30) Changes.
600.431 (__.31) Real property.
600.432 (__.32) Equipment.
600.433 (__.33) Supplies.
600.434 (__.34) Copyrights.
600.435 (__.35) Subawards to debarred and suspended parties.
600.436 (__.36) Procurement.
600.437 (__.37) Subgrants.

Reports, Records Retention, and Enforcement

600.440 (__.40) Monitoring and reporting program performance.
600.441 (__.41) Financial reporting.
600.442 (__.42) Retention and access requirements for records.
600.443 (__.43) Enforcement.
600.444 (__.44) Termination for convenience.

After-the-Grant Requirements

600.450 (__.50) Closeout.
600.451 (__.51) Later disallowances and adjustments.
600.452 (__.52) Collection of amounts due.

Entitlements [Reserved]

3. Part 600 is further amended as set forth below:

§ 600.3 [Amended]

a. Section 600.3 is amended by changing the reference in the definition for "non-profit organization" and "Small business" from "600.118(b)(1)" to "600.33(b)(1)".

§ 600.4 [Amended]

b. Section 600.4 is amended as follows:

(1) In paragraph (a), after "§ 600.105" add "and § 600.412" and revise "§ 600.118" to read "§ 600.33".

(2) In paragraph (c)(2)(i) and (c)(3) revise "§ 600.118" to read "§ 600.33".

c. Section 600.10 is amended by revising paragraph (a) to read as follows:

§ 600.10 Form and content of applications.

(a) Forms. Application or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed in § 600.410. Such applicant shall not be required to submit more than the original and the two copies of the application or preapplication.

(Approved by OMB under OMB control number 1910-0400.)

* * * * *

d. Section 600.14 is amended by revising paragraph (c)(1) to read as follows:

§ 600.14 Unsolicited applications.

* * * * *

(c) * * *

(1) Unsolicited applications shall be in the format set forth in "The Guide for Submission of Unsolicited Proposals," except that a State government, local government, or Indian tribal government shall use one of the applications forms prescribed in § 600.410, as appropriate.

* * * * *

§ 600.19 [Amended]

e. Section 600.19(d) is amended by revising the reference "§ 600.106" to read § 600.31".

§ 600.20 [Amended]

f. Section 600.20(c) is amended by revising "§ 600.103(g) or § 600.108 of this part" to read "§ 600.103(g), § 600.108 or § 600.422(b)".

g. Section 600.25 is amended by revising paragraph (d) to read as follows:

§ 600.25 Access to records.

* * * * *

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 and § 600.442 for record retention requirements for grants and cooperative agreements based on recipient type.)

h. Section 600.26 is amended by revising paragraphs (d)(1) introductory text, (d)(1) (i), (ii), (iii), (iv), and (v) to read as follows:

§ 600.26 Disputes and appeals.

* * * * *

(d) *Review on appeal.* (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (d)(2)(ii) of this section), including use of any special restrictive condition pursuant to § 600.105 or § 600.412;

(ii) DOE denial of a request for a deviation under § 600.4 or § 600.406 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103, 600.114, 600.422, or 600.430 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600 121(b) (1), (2), (3) or (5); or § 600.443 (a)(1), (a)(3) for suspensions only; or § 600.443(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under §§ 600.112(g), 600.119, or 600.436 of this part or under another term or condition of the award;

* * * * *

i. Section 600.28 is added to Subpart A to read as follows:

§ 600.28 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR Part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under § 600.121(b) or § 600.443(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.121(b) or § 600.443(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award;

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action; or

(4) An immediate debarment in accordance with § 600.27(g) is warranted.

j. In § 600.100, paragraph (a) is revised and paragraph (b) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.100 Scope and applicability.

* * * * *

(a) This subpart establishes administrative rules for grants and cooperative agreements and subawards to other than State, local, and Indian tribal governments. This subpart implements OMB Circular A-110 and the Federal cost principles. Administrative rules for grants and cooperative agreements and subawards to State, local and Indian tribal governments are prescribed in Subpart E.

* * * * *

k. Section 600.101 is amended by adding the term "grant" to read as follows:

§ 600.101 Definitions.

* * * * *

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money or property in lieu of money, by the Federal Government to an eligible recipient.

* * * * *

§ 600.102 [Amended]

l. Section 600.102 is amended by changing the reference in paragraph (c) from "§ 600.106" to "§ 600.31".

§ 600.103 [Amended]

m. Section 600.103 is amended by changing the reference in paragraph (g) from "§ 600.108" to "§ 600.32".

§ 600.104 [Redesignated as § 600.30]

n. Section 600.104 of Subpart B is redesignated as § 600.30 in Subpart A. In the newly redesignated § 600.30, "grant", "grantee", and "subgrant" are revised to read "award", "awardee", and "subaward" respectively wherever they appear.

§ 600.105 [Amended]

o. Section 600.105(b)(3) is amended by removing "A-102 or".

§ 600.106 [Redesignated as § 600.31]

p. Section 600.106 is redesignated as § 600.31 in Subpart A. In newly redesignated § 600.31 "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, the reference to "§ 600.108(c)" in paragraph (b)(3) is revised to read "§ 600.32(c)".

q. Section 600.107 is amended by revising paragraph (e) to read as follows:

§ 600.107 Cost sharing.

* * * * *

(e) Valuation of in-kind contributions. Any grantee or subgrantee shall determine the value of services or property donated by non-Federal third parties in accordance with OMB Circular A-110, Attachment E, Paragraph 5.

§ 600.108 [Redesignated as § 600.32]

r. Section 600.108 is redesignated as § 600.32 in Subpart A. In newly redesignated § 600.32, "grant", "grants", "grantee", and "subgrantee" are revised to read "award", "awards", "awardee", and "subawardee", respectively wherever they appear. Also, the reference to "§ 600.108(c)(2)" in paragraph (d) is revised to read "paragraph (c)(2) of this section".

§ 600.109 [Amended]

s. Section 600.109 is amended by changing the reference in paragraph (d) from "§ 600.104" to "§ 600.30".

§ 600.110 [Amended]

t. Section 600.110 is amended by revising "Attachments A of OMB Circulars A-102 and A-110," to read "Attachment A of OMB Circular A-110".

§ 600.111 [Amended]

u. Section 600.111(a)(1) is amended by revising "Attachments B of OMB Circulars A-102 and A-110" to read "Attachment B of OMB Circular A-110".

§ 600.112 [Amended]

v. Section 600.112(f)(1) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.116 [Amended]

w. Section 600.116(g) is amended by removing "in OMB Circular A-102, Attachment H and".

x. In § 600.117, paragraph (d)(1) introductory text is amended by removing "OMB Circular A-102, Attachment N, Paragraph 6.d. or" and paragraph (d)(3) is revised to read as follows:

§ 600.117 Property management.

* * * * *

(d) * * *

(3) Grantees and subgrantees shall comply with OMB Circular A-110, Attachment N, Paragraphs 6. b, c, and d for use, disposition, and management of such equipment.

* * * * *

§ 600.118 [Redesignated as § 600.33]

y. Section 600.118 of Subpart B is redesignated as § 600.33 in Subpart A.

z. In § 600.119, paragraph (b) is revised, paragraph (c)(1)(ii) is removed and reserved, paragraph (c)(2)(ii) is amended by revising "OMB Circulars A-102 or A-110" to read "OMB Circular A-110", paragraph (d) is amended by revising "OMB Circulars A-102 and A-110" to read "OMB Circular A-110", to read as follows:

§ 600.119 Procurement under grants and subgrants.

* * * * *

(b) *Grantee and subgrantee responsibilities.* Grantees and subgrantees shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A-110, Attachment O, Paragraphs 2, 3, and 4.

* * * * *

§ 600.122 [Redesignated as § 600.29]

aa. Section 600.122 of Subpart B is redesignated as § 600.29 in Subpart A. In newly redesignated § 600.29, "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, citations need to be added in the following places:

(a) In paragraph (a)(1) add "or § 600.28" after "§ 600.121".

(b) In paragraph (b) add "or § 600.28(b)" after § 600.121(c)" and add "or § 600.28(a)" after "§ 600.121(a)".

(c) In paragraph (d) add "or § 600.28" after "§ 600.121".

(d) In paragraph (f) add "or § 600.28" after "§ 600.121".

bb. Section 600.200 is amended by revising paragraph (a) and by revising the reference "§ 600.122" in paragraph (b) to read "§ 600.29."

§ 600.200 Scope and applicability.

(a) This subpart establishes policies and procedures for the award and administration of cooperative agreements.

* * * * *

§ 600.203 [Amended]

cc. Section 600.203 is amended by revising "and 600.205" to read ", 600.102 and 600.410" wherever it appears.

§ 600.204 [Amended]

dd. Section 600.204(b)(4) is amended by revising "§ 600.122(d)" to read "§ 600.29."

ee. Section 600.205 is revised to read as follows:

§ 600.205 Application, funding, and administrative requirements.

Unless otherwise specified in this subpart or Subpart A of this part, the application, funding, and administrative requirements for cooperative agreements are specified in Subpart B of this part for recipients who are other than State, local, or Indian tribal governments and Subpart E of this part for State, local and Indian tribal governments. Furthermore, the audit requirements set forth in Subpart D of this part shall apply to cooperative agreements with State and local governments.

§ 600.206 [Amended]

ff. The introductory paragraph and paragraph (c) in § 600.206 are amended by adding "or § 600.424" after "§ 600.107" wherever it appears.

Subpart E—[Amended]

gg.-1 In newly added Subpart E, remove the terms "Part", "part", "Subpart" and "subpart" and insert "Subpart, "subpart", "Section", "section" respectively, wherever they appear.

§ 600.401 Scope of §§ 600.400 through 600.405.

gg-2 The heading for § 600.401 is revised to read as set forth above.

hh. In § 600.402, the definition of "prior approval" amended by adding paragraph (1) to read as follows:

500.402 Definitions.

* * * * *

"Prior approval" * * *

* * * * *

(1) For the Department of Energy this must be signed by a Contracting Officer.

ii. § 600.406 of Subpart E is amended by adding paragarph (d) to read as follows:

§ 600.406 Additions and Exceptions.

* * * * *

(d) The DOE procedural requirements for requesting additions and exceptions are specified in § 600.4.

jj. The cost principles chart in § 600.422 of Subpart E is amended by adding a second paragraph to "For-profit organization" in the "Use in principles in-" column and by adding a new entry for "Hospitals" to read as follows:

For the cost of—	Use the principles in—
* * *	* * *
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR 931.2
Hospitals	45 CFR Part 74, Appendix E

BILLING CODE 6450-1-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 143

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, (202) 653-6573.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration is authorized to make

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grants to State and local governments only in its 7(j) program, and is authorized to enter into cooperative agreements with State and local governments only in its Small Business Development Center (SBDC) program. At present there are no outstanding 7(j) grants to State governments and only one outstanding grant to a local government, with the city of Tuskegee, Alabama.

The SBA currently has SBDC cooperative agreements with five States, Illinois, Indiana, Ohio, North Dakota and West Virginia. However, SBA may not apply this regulation to those State SBDCs at this time. The Continuing Resolution on Appropriations for Fiscal Year 1988, Pub. L. No. 100–202, which passed on December 22, 1987, prohibits SBA from using appropriated funds to publish or implement regulations with respect to the SBDC program. Consequently, during Federal Fiscal Year (FY) 1988, all States which have entered into cooperative agreements with SBA to administer an SBDC are exempted from this regulation for purposes of the SBDC cooperative agreement. Also during FY 1988, any State or local government with which SBA might enter into an SBDC cooperative agreement is exempt from this regulation for purposes of the SBDC cooperative agreement.

List of Subjects in 13 CFR Part 143

Accounting, Administrative practice and procedure, Grant programs, Business Grants Administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

Title 13 of the Code of Federal Regulations is amended by adding Part 143 as set forth at the end of this document.

Date: March 3, 1988.

James Abdnor,
Administrator.

PART 143–UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
143.1 Purpose and scope of this part.
143.2 Scope of subpart.
143.3 Definitions.
143.4 Applicability.
143.5 Effect on other issuances.
143.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

143.10 Forms for applying for grants.
143.11 State plans.
143.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

143.20 Standards for financial management systems.
143.21 Payment.
143.22 Allowable costs.
143.23 Period of availability of funds.
143.24 Matching or cost sharing.
143.25 Program income.
143.26 Non-Federal audit.

Changes, Property, and Subawards

143.30 Changes.
143.31 Real property.
143.32 Equipment.
143.33 Supplies.
143.34 Copyrights.
143.35 Subawards to debarred and suspended parties.
143.36 Procurement.
143.37 Subgrants.

Reports, Records Retention, and Enforcement

143.40 Monitoring and reporting program performance.
143.41 Financial reporting.
143.42 Retention and access requirements for records.
143.43 Enforcement.
143.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

143.50 Closeout.
143.51 Later disallowances and adjustments.
143.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 15 U.S.C. 634(b)(6).

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 24

[Docket No. 70502-8030]

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, 202–377–5617.

ADDITIONAL SUPPLEMENTARY INFORMATION: After publication of the proposed rule in Part IV, No. 110, Vol. 52 in the Federal Register, June 9, 1987, 52 FR 21825, 21848–21862, the Department of Commerce further reviewed the effects of the rule upon program activities under existing regulations and administrative practices. The amendments below reflect the Department's determination to clarify the intended impact of Part 24 upon such current activities.

Section 24.31(b) is amended by adding paragraph (b)(1), stating that Federal awarding agencies may require the recording of notices concerning real property acquired or improved with Federal grant assistance. The added paragraph is in support of the existing Department of Commerce practice, based upon existing regulations, of requiring the recording of notices of conditions applicable to grant acquired or improved property, for the benefit of persons who may not have actual knowledge of Federal use and disposition requirements applicable to the property.

Section 24.34 is revised by retitling and adding a paragraph to confirm that certain property assets which may be acquired with Department of Commerce grant program assistance are intended to be covered under the rule. For instance, the Economic Development Administration awards grants, under Title IX of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3241–3245), to aid in the establishment of revolving loan funds. Loan notes given by borrowers to grantees in exchange for grant funds are held by the grantees as project assets. There may be uncertainty, under the law of some jurisdictions, as to whether such notes are considered tangible or intangible property, and § 24.34 is revised to eliminate any ambiguity as to that result.

The Department of Commerce interprets § 24.6(a) as authorizing the continued application of administrative requirements under pre-existing codified regulations published in the Federal Register (e.g., the requirement, at 15 CFR 2301.28, that national Telecommunications and Information Administration grantees execute and record a priority lien document on facilities purchased with the funds under the Public Telecommunications Facilities Program of the Communications Act of 1934, as amended).

List of Subjects in 15 CFR Part 24

Accounting, Grant programs, Grant administration, Insurance Reporting and recordkeeping requirements.

Sonya G. Stewart,
Director for Finance and Federal Assistance.

1. Title 15 of the Code of Federal Regulations is amended by adding part 24 as set forth at the end of this document.

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
24.1 Purpose and scope of this part.
24.2 Scope of subpart.
24.3 Definitions.
24.4 Applicability.

Sec.
24.5 Effect on other issuances.
24.6 Additions and exceptions.

Subpart B—Pre-award Requirements

24.10 Form for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post Award Requirements

Financial Administration

24.20 Standards for financial management systems.
24.21 Payment.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

24.30 Changes.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Other property.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.
24.37 Subgrants.

Reports, Records Retention, and Enforcement

24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. Part 24 is further amended as follows:

(a) Section 24.31(b) is amended by adding paragraph (b)(1) as follows:

§ 24.31 Real property.

* * * * *

(b) * * *

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

* * * * *

(b) Section 24.34 is revised to read as follows:

§ 24.34 Other property.

(a) *Copyrights.* The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(2) Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

(b) *Intangible property.* Title to such property as loans, notes, and other debt instruments (whether considered tangible or intangible) acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively. Such property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests. When no longer needed for the originally authorized purpose, disposition of such property will be made as provided in § 24.32(e).

BILLING CODE 3510-FE-M

DEPARTMENT OF STATE

22 CFR Part 135

[108.869]

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520. Tel. (703) 875–7044.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State establishes this final rule as Part 135 of Title 22 of the Code of Federal Regulations.

The Department's notice of proposed rulemaking for this regulation (52 FR 21825, June 9, 1987) included the following statement.

> The Department has one program that uses cooperative agreements, but these agreements are outside the meaning of "grants," which includes "cooperative agreements," as defined in the common rule.
>
> The Department's Bureau for Refugee Programs may effect grants or cooperative agreements with state or local governments for the initial reception and placement of refugees under the authority of section 412(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1522(b)). Reception and placement cooperative agreements under this program are not subject to the proposed regulations because they are lump sum awards. The funds are not awarded to reimburse specific costs for which the recipient is required to account. Rather, subject to certain restrictions, the recipient has wide latitude in spending its money, provided that it provides the required services or ensures that those services are provided.

The Department did not receive any comments relative to this statement.

List of Subjects in 22 CFR Part 135

Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended by adding Part 135 as set forth at the end of this document.

John J. Conway,
Procurement Executive.

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
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Subpart B—Pre-Award Requirements

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Changes, Property, and Subawards

135.30 Changes.
135.31 Real property.
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135.36 Procurement.
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Reports, Records Retention, and Enforcement

135.40 Monitoring and reporting program performance.
135.41 Financial reporting.
135.42 Retention and access requirements for records.
135.43 Enforcement.
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Subpart D—After-the-Grant Requirements

135.50 Closeout.
135.51 Later disallowances and adjustments.
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Subpart E—Entitlements [Reserved]

Authority: 22 U.S.C. 2858.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990

[Docket No. R-88-1338; FR-2178]

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department has determined that the following HUD programs with codified regulations are affected by the adoption of this rule implementing OMB Circular A-102 as a new Part 85:

1. Fair Housing Assistance Program (24 CFR Part 111);
2. Rental Rehabilitation Grant Program (24 CFR Part 511);
3. Programs Authorized under Title I of the Housing and Community Development Act of 1974 and codified at 24 CFR Part 570 (Entitlement Grants, the Secretary's Fund, the HUD-Administered Small Cities Program, Urban Development Action Grants, and Loan Guarantees) but not including the State's Program;
4. Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages (24 CFR Part 571);
5. Emergency Shelter Grant Program (24 CFR Part 575);
6. Housing Development Grant Program (24 CFR Part 850);
7. Indian Housing (24 CFR Part 905);
8. Public Housing Development Program (24 CFR 941);
9. Comprehensive Improvement Assistance Program (24 CFR Part 968); and
10. Annual Contributions for Operating Subsidies for Public Housing Projects (24 CFR Part 990).

These HUD program regulations are being revised by this final rule to cross reference to the requirements for State, local, and federally recognized Indian tribal governments under OMB Circular A-102, as set out in the new Part 85. These revisions serve two purposes: First, they afford grantees a ready reference to the existence and applicability of A-102 requirements set out in Part 85, and the relevance of those requirement to the particular grant program in which the cross reference appears. Second, where the requirements of A-102 (as set out in Part 85) are wholly or partially inapplicable, the cross reference in the program regulation specifies the effect of the new rulemaking on the existing grant program.

Note: Section 85.43, Enforcement, permits HUD to use any other remedies allowed by law and, therefore would not conflict with HUD's right, for example, to declare a substantial breach or default under an Annual Contributions Contract.

Exemptions and Substantive Revisions

Urban Homesteading Program

The Urban Homesteading Program (24 CFR Part 590) is not subject to Part 85. The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership. HUD transfers federally owned properties without payment to local urban homesteading agencies and the local agencies administer a program to provide the properties to "homesteaders" at nominal cost. The properties passed through local agencies to homesteaders are not provided as "grants" to local government. The local government agency serves merely as the facilitator of a program aimed at benefitting qualified candidates for homeownership. A technical change is being made to Part 590 to remove an existing reference to OMB Circular A-102, even though Standard Form 424 is used in the program.

Section 8 Program

The several Section 8 housing assistance payments programs also remain outside the scope of A-102 and Part 85 and HUD will continue separately regulating financial management associated with the Section 8 program as part of 24 CFR Chapter VIII.

The Section 8 Existing, Moderate Rehabilitation, and Housing Voucher programs are exempted from Part 85. Under these programs, housing assistance payments are made to private owners for the purpose of subsidizing rental charges for lower income families occupying privately owned housing units. Public Housing Agencies administer these funds and assist lower income families in locating suitable housing under these programs, but the public agency essentially acts as a conduit for Federal financial assistance to the private owners.

Similarly, Section 8 assistance under the New Construction and Substantial Rehabilitation Programs is made available to owners of dwelling units that have been constructed or rehabilitated for lease to lower income families. Among the owners are profit-motivated and non-profit owners, including PHAs, the majority of which are the so-called "agency or instrumentality PHA's established under State not-for-profit laws for the purpose of owning and leasing the projects to their "parent entity PHAs" for subleasing to eligible lower income families. Less than 10 percent of Section 8 New Construction and Substantial Rehabilitation projects are owned outright by housing authorities. The great majority of the projects are privately owned. The duties and responsibilities of PHA Owners receiving housing assistance payments for eligible lower income families under the Section 8 New Construction and Substantial Rehabilitation programs do not differ from those of a private owner participating in this same program. In all cases, the assistance is being provided to lower income families; the owner is merely the conduit for the Federal financial assistance.

Accordingly, these programs are not appropriate for management under the uniform requirements of Part 85, and HUD will to continue its existing administrative requirements with reference to 24 CFR Parts 880 through 886 (HUD's program regulations governing the Section 8 program) and Part 887 (HUD's pending final regulations to govern the Housing Voucher program). This rule, nonetheless, makes a technical correction to Part 882 to remove reference to audit requirements under OMB Circular A-102 and to instead refer to the audit requirements of Part 44.

Grant Programs in General

Subpart B—Pre-award Requirements—does not apply to the Community Development Block Grant Entitlement program (24 CFR Part 570, Subpart D) or to the Rental Rehabilitation program (24 CFR Part 511) because § 85.10 (Forms for applying for grants) does not apply to formula grant programs, and § 85.11 (State plans) is inapplicable when the program statute does not require State plans. In this connection, § 85.10 does not apply to the Emergency Shelter Grant program (24 CFR Part 575) because it also is a formula grant program. Additional revisions to Parts 511, 570, and 575 are discussed below.

Rental Rehabilitation Program

Section 85.40(b)(1), regarding the submission of annual performance reports, does not apply to the Rental Rehabilitation Program (24 CFR Part 511). Section 17(m) of the Rental Rehabilitation Program statute (42 U.S.C. 1437o) requires that the annual report be submitted prior to the end of the fiscal year and provides for specific information to be included. The regulations at 24 CFR Part 511 already sufficiently implement Section 17(m).

Since the Rental Rehabilitation Program currently involves no property acquisition, § 85.31 (Real property) is inapplicable by its own terms. However, for clarity, we are specifying the inapplicability of § 85.31 to the Rental Rehabilitation Program.

With respect to program income under § 85.25, we have elected to draft a new § 511.76 *Program income* to provide specific regulatory direction consistent with the basic thrust of the common rule, but in the special context of the Rental Rehabilitation Program.

We note that although § 85.43 is applicable to the Rental Rehabilitation Program, the program regulation at § 511.82, which is statutorily based, would not be superseded but rather would provide "other remedies that may be legally available" as indicated in § 85.43(a)(5).

Community Development Block Grant (CDBG) Entitlement Program

Grant administration requirements for the CDBG Entitlement Program are described in 24 CFR Part 570 at Subpart J, "Grant Administration." The subpart has been substantially revised for clarity and for consistency with Parts 85. The sections in existing Subpart J set forth the requirements of the various attachments to A-102, as well as other grant administration requirements. Subpart J, as revised, generally consolidates the applicable sections of Part 85 into one section (§ 570.502), execises some of the options provided to the Federal agencies in Part 85, and sets forth CDBG statutory requirements.

The requirements of Part 85 have been made applicable, except to the extent differences are required by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) ("the HCD Act of '74") or have been authorized by the Office of Management and Budget (OMB). These differences are explained below, as are the reasons why certain provisions in Part 85 are not identified as been applicable to the CDBG program.

—The payment provisions in § 85.21 (Payment requirements) apply to the program except with respect to payments made for financing property rehabilitation activities. Section 104(g) of the HCD Act of '74 permits lump sum draws from the grantee's letter of credit to finance property rehabilitation activities. Section 570.513 of Subpart J implements this statutory requirement.

—Section 104(i) of the HCD Act of '74 permits grantees to retain any program income realized from the CDBG grant, if such income is used for eligible community development activities in accordance with program requirements. Therefore, the CDBG rules on program income reflect the "Addition" alternative for the use of program income described at § 85.25(g)(2).

—Sections 105(a) (1) and (7) of the HCD Act of '74 make the provisions at § 85.25(f) and § 85.31 on disposition of real property inapplicable to the CDBG program. These sections of the HCD Act of '74 make eligible for CDBG assistance both the acquisition and disposition "through sale, lease donation or otherwise" of real property for community development. Consequently, the sale of real property is itself an authorized use of property acquired with grant funds, rather than a disposition of property no longer needed for the grant purpose. Such properties are commonly sold by the grantee for redevelopment and the sale proceeds are appropriately treated as program income subject to the statutory provisions of the program that income may be retained by the grantee, in which case it must be used in accordance with the same requirements applicable to the use of grant funds. Accordingly, proceeds from the disposition of real property are included in the examples of program income listed in the definition of that term at § 570.500(a), and the treatment of real property acquired with CDBG funds is governed by the requirements at § 570.505.

—Section 104(d) of the HCD Act of '74 requires that each grantee submit a performance and evaluation report and describes the content of the report. This report, which is submitted annually, substitutes for the performance reports described at §§ 85.40 (b), (c), (d), and (f) and 85.41 (a), (b), and (c). The contents and timing of the statutorily required report are discussed at § 570.507.

—Section 105(a)(2)(D) of the HCD Act of '74 requires grantees to provide citizens with reasonable access to records regarding the past use of CDBG funds received by the grantee. This section provides the basis for the requirement at § 570.508 on public access to program records, and affects the implementation of § 85.42(f), "Restrictions on public access."

—Sections 104(d) and 111 of the HCD Act of '74 set forth sanction mechanisms for handling performance and compliance problems. These sections are implemented by §§ 570.910-570.913 of the CDBG regulations. It is the Department's position that the enforcement mechanisms in those regulatory sections are not superseded by the enforcement provisions in § 85.43 (Enforcement).

The applicability to the CDBG program of the various sections of Part 85 is described in § 570.502. The provisions not shown as being applicable fall into one or another of several categories:

—Four sections are inapplicable because they do not contain requirements applicable to grantees or subgrantees. These are §§ 85.1 (Purpose and scope of this part), 85.2 (Scope of subpart), 85.4 (Applicability), and 85.5 (Effect on other issuances).

—Five sections are inapplicable because, by their own terms, they do not apply to the CDBG entitlement program. Section 85.10 (Forms for applying for grants) does not apply "to formula grant programs which do not require applicants to apply for funds on a project basis." Section 85.11 (State plans) applies to programs that "require States to submit plans before receiving grants." Section 85.23 (Period of availability of funds) applies "where a funding period is specified." Section 85.24 (Matching or cost sharing) applies only where a program has matching or cost-sharing requirements. Section 85.30 (Changes under discretionary (project) awards) does not apply to formula award programs. None of the conditions which would trigger these requirements is present in the CDBG entitlement program.

—Certain provisions in Part 85 are inapplicable because they apply only to State grantees. States are not eligible applicants for CDBG Entitlement Program grants. These provisions are at §§ 85.20(a), 85.32(b), and 85.36(a).

—Certain other provisions in Part 85 are inapplicable because, as explained above, they are inconsistent with statutory requirements. These provisions are § 85.31 (Real Property) and the performance report provisions in §§ 85.40 (b), (c), (d), and (f) and in 85.41 (a), (b), and (e).

—Two sections of Part 85 are inapplicable because their provisions are covered in sections of the CDBG rule specifically tailored to the nature of the CDBG entitlement program. Rather than cross-referencing § 85.25 (Program income) and § 85.50 (Closeouts), program income provisions are covered in §§ 570.500(a) and 570.504 and closeout provisions are covered in § 570.509. Covering program income in Subpart J allows the Department to indicate which options permitted under § 85.25 it has chosen for the CDBG program. For example, the Department has chosen to permit costs incident to the generation of income to be deducted from gross income to determine program income. (This choice is permitted under § 85.25(c).) Covering program income in Subpart J also provides a forum for stating that proceeds from the disposition of real property and equipment are treated as program income in the CDBG program (for the reasons explained elsewhere in this preamble) and for providing additional examples of the types of income received under the CDBG program that fall within the definition of program income. Similarly, covering the subject of closeouts in Subpart J allows the Department to adjust the closeout provisions in Part 85 to fit the nature of the CDBG entitlement program. For example, § 85.50(a) states, "The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed." However, this description of when closeout shall occur does not fit the entitilement program because there is no process by which "required work" is specified. Also, the closeout provisions in Part 85 do not cover two items of major importance to the CDBG program—the future use of real property acquired with grant funds and the future use of program income.

—One provision of Part 85, § 85.32(e) on disposition of equipment, is not shown as applicable based on an exception authorized by the Office of Management and Budget. This provision reuires the proceeds from the sale of equipment with a fair market value in excess of $5,000 to be returned to the awarding agency. Sales proceeds remitted to HUD by a CDBG recipient whose program is still active would be treated as a return of grant funds and made available for disbursement (e.g., under the recipient's letter of credit). Since the amount of proceeds from the sale of equipment purchased with CDBG funds is relatively small in most cases, requiring such proceeds to returned would be burdensome both to HUD and to the recipient. Further, the typical CDBG entitlement recipient retains its entitlement status so long as funding for the CDBG program is continued and, thus, its program remains active. Consequently, proceeds from the sale of equipment are handled as program income.

The Office of Management and Budget has also authorized the addition of two grant administration requirements for the CDBG program which are not contained in Part 85:

—Section 570.503, "Agreements with subrecipients", has been added because of the need for improved control by grantees over the thousands of subrecipients receiving CDBG funds, as evidenced by reports issued by the Department's Office of the Inspector General. This area has been identified as one of high vulnerability to fraud, waste and mismanagement.

—Section 570.509(c), "Closeout agreement", has been added to facilitate the closeout process and to cover grantee responsibilities after closeout for items such as the future use of real property and program income and continued enforcement of flood insurance coverage.

Urban Development Action Grants

Urban Development Action Grants (UDAGs) are authorized under section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318). Regulations governing the UDAG program are provided in 24 CFR Part 570, Subpart G, and Subparts A, C, J, K, and O except to the extent that they are modified or augmented by Subpart G. As noted above, Subpart J, "Grant Administration", is being amended to implement the requirements of Part 85. The UDAG program follows the provisions of Part 85 as set forth in Subpart J.

The reasons for nonapplicability of some provisions of Part 85 to the Community Development Block Grant program (which is the primary program to which Subpart J is geared) hold true for the nonapplicability to the UDAG program, with a few exceptions:

—Section 85.10 (Forms for applying for grants) has not been made applicable to the UDAG program. Instead, OMB has approved the requirements for application forms and instructions set forth in § 570.458. Section 85.10 specifically permits the Federal agency to prescribe application forms and instructions approved by OMB.

—Section 85.25 (Program income) has not been made applicable because the definition and use of program income is specified by the UDAG grant agreement and program regulations. The definition used for the UDAG program is tailored to the program and is consistent with the definition in § 85.25.

—Section 85.30 (Changes under discretionary (project) awards) has not been made applicable. OMB has approved the requirements for amendments set forth in the UDAG regulations at § 570.463. This regulation is tailored to the UDAG program (consistent with § 85.30) and is needed to assure that the changes to the UDAG project are not such that the project would not have been funded if the changes had been part of the original project.

The provisions of § 85.43 are applicable to the UDAG program. However, that section's applicability does not affect the program regulations at §§ 570.910–570.913, which implement statutory remedies for performance and compliance problems.

CDBG Indian Program

Section 571.502(e) is being revised to cross reference the procurement requirements of § 85.36. This provision is also being amended to provide alternative requirements in the event that compliance with the bonding requirements set forth in § 85.36(h) is infeasible or incompatible with the Indian preference requirements set forth in § 571.503. The Department has found alternative arrangements to be necessary because Indian contractors whose businesses are located on tribal land may be unable to secure performance and other bonds. These Indian contractors may be unable to satisfy the security arrangements to sureties because of the trust status of Indian land. This situation may make adequate competition impracticable and makes it difficult for grantees to comply with statutory Indian preference requirements.

Emergency Shelter Grant Program

Program requirements for the Emergency Shelter Grants (ESG) Program are described in 24 CFR Part 575 at Subpart E and grant administration requirements at Subpart F. Both Subparts have been revised to be consistent with the common regulations, as codified at 24 CFR Part 85, except to the extent differences are

authorized by statute or by the Office Management and Budget. These provisions are explained below:

—Section 85.10 (Forms for applying for grants) does not apply because the ESG program is a formula grant program.

—The payment provisions described in § 85.21 provide for working capital if: (1) The grantee or subgrantee cannot establish procedures required under the advance payment method that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the grantee or subgrantee and (2) the awarding agency determines that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital. The ESG program requirements in § 575.63 allow for "a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater", without any such conditions. This provision was included because of the presumption that most of the shelter grant funds would be flowing through grantees to small non-profit recipients which would not be able to meet either of the above-cited conditions in § 85.21, thereby avoiding the unnecessary step of determining this to be the case in every situation. This presumption has been borne out during the first year of the program's operation.

—The matching or cost sharing provisions in § 85.24(a)(1) refer to satisfying the matching requirement through "allowance costs". The ESG statute (Pub. L. 99–500, section 101(g)), however, contains broader language:

> **Responsibilities of Grantees**
>
> (a) Matching Amounts.—
>
> (1) Each grantee under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each grantee shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.
>
> (2) In calculating the amount of supplemental funds provided by a grantee under this part, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, and the value of the time and service contributed by volunteers to carry out the program of the grantee at a rate determined by the Secretary.

Program regulations (§ 575.51) therefore allow any funds spent as part of the grantee's homeless program, whether or not such expenditures are allowable costs under ESG, to be counted as satisfying the matching requirements.

—The valuation of volunteer services described in § 85.24(c)(1) is set "at rates consistent with those ordinarily paid for similar work in the grantee's organization." However, the legislative history of ESG established the rate at $5 per hour and it is this rate which is reflected in the program regulations (§ 575.51(b)).

—Requirements for the contents and the timing of the submission of performance reports described in § 85.40(b)–(d) and (f) have not been made applicable. The ESG program regulations (§ 575.65(b)(2)) specify report contents and require the submission of annual reports for the period through December 31 "no later than 30 days after December 31." Given the emergency nature of the program, the streamlined program requirements,, the modest size of the grants, the intense Congressional and public interest in the way program funds are being used, and the vital role such reports will play in HUD's monitoring of grantee performance, the simplicity and brevity of the reporting format and a 30- rather than 90-day deadline seem to be not only justified but also necessary to the effective and expeditious operation of the program.

The remedies in § 85.43 have been made applicable to the ESG program. However, the remedies set forth in § 575.69 are not superseded, but are "other remedies that may be legally available" in accordance with § 85.43(a)(5).

Housing Development Grant Program

Housing Development Grants (HDG) are authorized under section 17 of the U.S. Housing Act of 1937, 42 U.S.C. 1437o ("1937 Act"). Regulations regarding the HDG program are provided at 24 CFR Part 850. Certain provisions of Part 85 are inconsistent with Federal statutory and regulatory requirements governing the HDG program. The following sections are not applicable to the HDG program for the reasons stated:

—Section 85.23 (Period of availability of funds) is not applicable because a funding period is not specified for the HDG program.

—Section 85.24 (Matching) does not apply because no matching is required for the HDG program.

—Section 85.25 (Program income) has not been made applicable to the program. Instead, HUD has exercised the options afforded to the Federal agency in § 85.25 and has tailored program income requirements to the HDG program. These requirements (including the definition and use) are specified in the HDG regulations and grant agreement. These program requirements are based in part on section 17(d)(7) of the 1937 Act and in part on the requirement of § 85.25 to the extent not inconsistent with statutory requirements.

—Section 85.30 has not been made applicable because the requirements for amendments are set forth in the HDG regulations at § 850.31(e). HDG regulations do not permit any increase in the grant amount and require HUD prior approval of any changes in costs in excess of ten percent of those orginally approved. This is in keeping with section 17(d)(5)(E) of the 1937 Act which requires that project selections be made which will bring the least cost to the Federal Government.

—Section 85.31(c) (Real Property) covering real property disposition is not applicable. HUD retains no interest after the project term (as defined in the grant agreement) in property acquired with HDG funds, and HUD would receive no payment upon disposition. The disposition during the project term of HDG acquired property is governed by the grant agreement, consistent with the 1937 Act.

—Sections 85.40 (b)–(d) and (f) (Monitoring and reporting program performance) covering reports, do not apply. These provisions of § 85.40 are inconsistent with HDG reporting requirements that are specified in section 17(m) of the 1937 Act and program regulation at § 850.75.

—Section 85.50 (Closeout) has not been made applicable to the HDG program. Instead, the HDG regulation at § 850.79, which is consistent with § 85.50 and which is written to fit more closely the HDG program, sets forth the closeout requirements and procedures.

We note that although § 85.43 (Enforcement) has been made applicable to the HDG program, the sanctions in that section are in addition to the enforcement provisions in section 17(d)(7) of the 1937 Act and in implementing regulations in §§ 850.63, 850.103, 850.105, 850.107, 850.151, and 850.155.

In addition, the Department wishes to clarify the coverage of § 85.36 (Procurement) as it relates to the HDG program. The grantee's selection of the project owner is not subject to the requirements of § 85.36 because it is not a procurement of property or services.

The project owner is not required to follow the requirements of § 85.36 because § 85.4 indicates that Part 85 applies only to State, local, and Indian tribal governments.

Public Housing

HUD previously took the position that annual contributions for public housing development and modernization were not subject to Circular A–102 requirements because the Federal assistance to public housing agencies (PHAs) was in the form of loans and loan guarantee commitments made by HUD. The Department's current method of funding public housing development and modernization by means of capital grants (as opposed to loans, as in the past) has the effect of subjecting public housing development and modernization funding to A–102 requirements. Public housing operating subsidies are administered as grants and therefore are also appropriate for A–102 grant management treatment.

In order to avoid the problem of maintaining a separate set of procedures for those few PHAs which are state agencies, the definition of "state" in § 85.3 has been revised to except PHAs from the definition, and the definition of "local government" has been revised to include specifically any PHA—State or local—under the U.S. Housing Act of 1937. These changes are necessary so that there is a consistency of treatment for all PHAs.

The standards for financial management systems contained in § 85.20, and for monitoring and reporting in § 85.41 are currently encompassed within the requirements of the Annual Contributions Contracts (ACCs) executed between HUD and each local public agency and further defined in the *Low-Rent Accounting Handbook*, HM 7510.1, and *Audits of Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) by Independent Public Accountants (IPAs)*, 7476.1, CHG–5. These requirements are applicable to the development, operation, and modernization phases of the public housing program. Section 85.6 precludes Federal agencies from imposing additional administrative requirements except in codified regulations published in the **Federal Register**. While the principles and standards prescribed in Handbook 7510.1, which is not codified, are basically compatible with the requirements in §§ 85.20, 85.40 and 85.41, certain requirements for detailed information necessary for proper program management exceed the limited information which would be provided by completing the forms included in Circular A–102. Departmental financial management and record requirements, however, do not exceed the statutory standard established by HUD as directed by Congress in Section 814 of the Housing Act of 1954, which required local agencies to adhere to accounting and record keeping requirements prescribed by HUD. Also, because of the financial magnitude of the development, operation, and modernization phases of the public housing program, it is necessary that the Department retain a number of provisions in addition to Part 85 and that the three phases be able to utilize and rely upon the same accounting data. HUD's financial management monitoring and reporting regulations for PHA-owned rental units are added by this rule as a new paragraph (c) to 24 CFR 990.103, and as a new Subpart B for those public housing programs other than PHA-owned.

While HUD's financial reporting requirements are compatible with those in § 85.41, the Financial Management Handbook, 7475.1, was recently revised to increase the submission time for year-end financial statements from 30 to 45 days. Section 85.41(b)(4) states that annual reports will be due 90 days after year end. However, because of § 85.41(a)(3), which directs grantees to follow all applicable Federal agency instructions approved by OMB under the Paperwork Reduction Act of 1980, we have determined that HUD is not bound by § 85.41(b)(4), and the revised handbook should be followed regarding the year-end submission time.

There is one determination regarding public housing management that we wish to emphasize. Section 85.25 (Program income) provides that program income does not include interest on grant funds and, thus, might be interpreted to mean that the Department can no longer offset interest income against subsidy amounts. However, under the public housing program management phase (including modernization), interest income is treated the same as other program income in the determination of operating subsidy eligibility. Because the calculation of operating subsidy is part of the operating budget that is set from the beginning, the public housing program management phase will not be affected by the stated provisions in § 85.25 of this rule, and 24 CFR 990.109(e)(3) is being revised by this rule to reflect this variation from A–102 requirements.

In further connection with the treatment of A–102 as it impacts on public housing development and modernization, the Department has made another determination. In HUD's public housing development and modernization regulations (24 CFR Parts 941 and 968, respectively and including Part 905), alternative means are provided for the provision of bonding or other security for the performance of construction or equipment contractors beyond the single bonding procedure set out in § 85.36(h)(2). Section 85.36(h) (Procurement—Bonding requirements) requires a 100% performance or payment bond for contracts exceeding $100,000. In contrast, HUD's rules (e.g., 24 CFR 968.12(c)) provide for a variety of alternatives. While 100% bonds are among these, in 24 CFR 968.12(c) HUD allows for separate performance and payment bonds, each for 50 percent or more of the contract price, or for a 20 percent cash escrow, or for a 25 percent letter of credit. These HUD rules are intended to promote greater opportunity for participation in construction and equipment contracting by small or minority or women-owned firms, and the Department's experience with these requirements has been a successful one. Accordingly, 24 CFR 968.12(c) is being revised by this rule to continue HUD's existing rules on bonding, notwithstanding the general applicability of 24 CFR Part 85 to these programs. Also, 24 CFR 905.203 (b)(c) and (d)(2) require a 100 percent performance and payment bond or other security as may be acceptable, and 24 CFR 941.102(a) requires a 100 percent performance and payment bond or other assurances approved by the field office. These sections also are being revised to continue HUD's existing rules on bonding, notwithstanding Part 85.

Currently, the Comprehensive Improvement Assistance Program (CIAP) allows PHAs to execute architect/engineer contracts, invite bids, and issue change orders (contract modifications) without prior Field Office approval where the PHA certifies in writing that all HUD requirements have been met. However, based on an assessment of PHA past performance in modernization and PHA technical capability, Field Offices may establish dollar thresholds for PHAs in these three areas, over which the PHA is required to submit documents for prior HUD review and approval. (Recognized performers, as defined under the Decontrol Handbook, are allowed to certify in all cases.) To retain this incentive for PHAs to improve their performance and to ensure that the "scope or objective of the project" is not revised without prior HUD approval (see

§ 85.30(d)), changes are being made to §§ 968.12 (d), (e), and (g).

In this connection, changes are also being made to §§ 905.211(b) and 968.12(f), and a new paragraph (g) is added to § 941.208, to preserve the authority under these programs for prior HUD approval of the grantee's decision to award a contract. Under the public housing program, the Federal involvement is a long-term financial commitment—not a single purpose activity. HUD provides funds to pay the capital costs of developing new projects and later provides additional funds for the modernization and operation of these same projects. The quality of design and construction has a direct impact on funding for modernization and operations.

Another specific area of Part 85 that requires further discussion is the treatment of "high-risk" recipients under § 85.12 (Special grant or subgrant conditions for "high-risk" grantees). Section 85.12 sets forth special grant or subgrant conditions for "high-risk" recipients. The Department wishes to stress that this section is not being interpreted by HUD as allowing the setting of special conditions *only* for high-risk recipients. Other recipients who are not high-risk may have special conditions or restrictions imposed on them by HUD in appropriate cases. In response to public concern that agency discretion to set special conditions on grants or subgrants be limited to restrictions intended by Congress, § 85.12 is governed by paragraph 6g of the revised OMB Circular A–102, which requires agencies to keep records of all situations in which the high-risk provision of § 85.12 is used.

Part 85 makes cross-references to OMB Circular A–87 at § 85.22(b) to identify applicable cost principles. However, below are listed two of the provisions of OMB Circular A–87 which we believe require specific discussion.

1. Attachment B, Part B—Allowable Costs

—Provision (11) permits PHAs to depreciate the cost of buildings and equipment. However, the Department's accounting system does not provide for depreciation of capital assets. For the most part, PHA's capital assets are funded separately from operations through development and CIAP grants. It would be inaccurate to distort the results of the operations phase of the public housing program by including depreciation expenses for assets for which there is separate funding mechanism.

2. Attachment B, Part D—Unallowable Costs

We construe this provision as not affecting the write-off of uncollected rental charges. The very purpose of the public housing programs is to provide assistance to those who cannot pay their rent. For this reason, after PHAs/IHAs have made reasonable efforts to collect unpaid rental charges from former tenants, a resolution of the Board of Commissioners is passed to write off the receivables. In order to accomplish the write-off, a charge is made against the grant, in that an expense is reflected in the PHA/IHA accounting records. In the Public Housing Program and the Indian Housing Program, rents *charged* to tenants are accounted as income and to the extent they are not collected, as "receivables," and are a positive amount in the PHA/IHA operating reserve. Such receivables must be "written-off" in accordance with the existing financial management system in order to avoid creating a false picture of the PHA/IHA financial situation.

Additional Technical Corrections and Accommodations

Technical corrections and accommodations are being made throughout Parts 44, 111, 570, 571, 850, 905, and 968 to cross-reference to the new Part 85 and to make necessary technical changes in compliance with the new Part 85. Technical corrections are also being made in Parts 882, 905, and 968 to cross-reference to Part 44, which treats requirements under the Single Audit Act. An exception clause is added to Part 970, Demolition and Disposition of Public Housing Projects, because that part is statutorily based and, therefore, overrides inconsistent part 85 requirements (e.g., § 85.31(c)).

Responses to HUD-Specific Public Comments

Public comments focused on HUD concerns were received from four commenters: a local housing development agency, a minority contractors' association, a community and economic development agency, and the National Association of Housing and Redevelopment Officials. Most of the comments pertained to technical understanding of the application of the rule and have been addressed in the preamble to the common rule and elsewhere in this HUD-specific preamble.

A concern was raised that grantees and subgrantees may have to comply with the new requirement, *as well as* with old policies. In compliance with the common rule, all grant administration provisions in HUD program regulations which are inconsistent with this final rule are rescinded, except to the extent they are required by statute or have been approved as deviations by OMB as discussed in this preamble. All grant administration provisions of uncodified program manuals, handbooks, and other materials which are inconsistent with this final rule are superseded.

The Department received two comments concerning the prohibition in the procurement provision (§ 85.36(c)(2)) against the use of statutorily imposed in-state on local geographic preferences in the evaluation of bids or proposals. The regulation provides an exception in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences.

One commenter opposed the prohibition on the basis that it would have an adverse impact on the planning process for State and local governments in regard to grantee selection. The Department believes that this prohibition will have no effect on grantee selection, because grantees are not required to be selected in accordance with § 85.36.

The other commenter strongly objected to the geographic preference prohibition, characterizing it as a sweeping change which should be studied first and which could prove damaging to a city's economic development efforts. The commenter was particularly concerned about the effects on participation of local firms, contractors, and employees in projects funded under the Urban Development Action Grant (UDAG) and Community Development Block Grant (CDBG) programs. The commenter pointed out that the so-called "Section 3 Clause" (i.e., section 3 of the Housing and Urban Development Act of 1968) would provide a basis for geographic preference, but that the geographic area would be the metropolitan area, not the city.

The Department believes that the prohibition in §85.36(c)(2) does not constitute a change from the procurement requirements that are in OMB Circular A–102, Attachment O. Although Attachment O does not specifically prohibit geographic preferences, such preferences are inconsistent with the requirement, stated in Attachement O, of maximum open and free competition.

Even though the prohibition applies to procurement by grantees and subgrantees, the prohibition will not have the consequences envisioned by the commenter. The prohibition will not affect community development activities (i.e., providing assistance to for-profits to carry out economic development projects) under the UDAG and CDBG programs. This is because the procurement requirements do not apply to the selection of the UDAG developer, and the developer does not have to follow the requirements of Part 85, because it is not a subgrantee. In addition, a private for-profit entity receiving CDBG assistance (permitted in 24 CFR 570.203) is not required to be selected in accordance with § 85.36, and such an entity does not have to follow the requirements of Part 85 because it is not a subgrantee.

The Department agrees with the commenter that section 3 of the Housing and Urban Development Act of 1968 is a Federal statute expressly encouraging geographic preference and that the geographic preference is for the metropolitan area. Section 3, implemented for the CDBG and UDAG programs in 24 CFR 570.607, requires that to the greatest extent feasible opportunities for contracts for work in connection with CDBG or UDAG projects be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area as the project.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item number 1052 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Agenda.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.174, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.231, 14.401, 14.850, and 14.852.

List of Subjects

24 CFR Part 44

Audit requirements: Non-federal governmental entities, Reporting and recordkeeping requirements.

24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

24 CFR Part 511

Rental Rehabilitation grants, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

24 CFR Part 575

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: housing and community development.

24 CFR Part 850

Grant programs: Housing and commmunity development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 905

Grant programs: Housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 968

Loan programs: Housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs: Housing and community development, Indians.

24 CFR Part 970

Public housing.

24 CFR Part 990

Grant programs: Housing and community development, Low and moderate income housing, Public housing.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations, by adding a new Part 85—Administrative Requirements for State, Local, and Federally Recognized Indian Tribal Governments under OMB Circular A–102, as set forth at the end of this document and by amending Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990 as follows:

PART 44—NON-FEDERAL GOVERNMENT AUDIT REQUIREMENTS

1. The authority citation for Part 44 continues to read as follows:

Authority: Single Audit Act of 1984 (31 U.S.C. 7501–7507); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 44.1, paragraph (d) is revised to read as follows:

§ 44.1 Purpose.

* * * * *

(d) The Act does not exempt State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided in Federal law or in 24 CFR Part 85.

* * * * *

3. Section 44.15 is revised to read as follows:

§ 44.15 Auditor selection.

In arranging for audit services, State and local governments shall follow the procurement standards prescribed in 24 CFR 85.36. The standards provide that, while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by a State statute (e.g., audit services) the State statute will take precedence.

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

4. The authority citation for Part 111 continues to read as follows:

Authority: Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 111.108, a new paragraph (e) is added, to read as follows:

§ 111.108 Program administration.

* * * * *

(e) Agencies receiving support (financial assistance in the form of grants or cooperative agreements) under this program shall comply with requirements and standards contained in 24 CFR Part 85.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

6. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. In § 511.11, paragraph (c) is revised to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(c) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except for §§ 85.10, 85.11, 85.25, 85.31, and 85.40(b)(i). In lieu of § 85.25, HUD has adopted § 511.76 of this part.

* * * * *

8. A new §511.76 is added, to read as follows:

§ 511.76 Program income.

(a) *General.* Grantees are neither encouraged to earn nor discouraged from earning program income in using rental rehabilitation grant amounts under this part.

(b) *Definition of program income.* "Program income" means gross income received by the grantee or State recipient (or by another party at the direction of the grantee or State recipient) which is directly generated from the use of rental rehabilitation grant amounts. Primarily, it includes repayments of the principal amount of a rental rehabilition grant or loan, whether in installments or a lump-sum, and any interest or penalties in connection with the grant or loan, under the terms of the commitment or project assistance agreement between the owner and the grantee or State recipient. Program income also includes interest earned on program income. Grantees or State recipients are not authorized to deduct costs incident to the generation or management of income from gross income for purposes of determining program income. Governmental fees and taxes, including income taxes, property taxes, special assessments, transfer taxes, recording fees and other normal governmental revenues, do not constitute program income if they are imposed by generally applicable law, regulation, or ordinance and are not imposed in consideration of the project's receipt of assistance under this part. Program income also does not include grant amounts returned to HUD as a result of cancellation of a project before completion, or interest on those grant amounts, or any interest earned by the grantee or State recipient on grant funds after drawdown and before disbursement for a project. (For disposition of such interest, see 24 CFR 85.21(i)).

(c) *Eligible uses.* (1) Program income may be used for any activity which is eligible under this part, including § 511.11. In particular, the total of rental rehabilitation grant amounts and rental rehabilitation program income used for any project (except under § 511.76(c)(2)) may not exceed the amount per unit allowed under § 511.10(e)(2) or 50 percent of the total project costs (except as noted in § 511.10(e)(1)).

(2) Program income may also be used to provide rental assistance to lower income tenants in properties rehabilitated through the Rental Rehabilitation Program. This includes the use of program income to pay for administrative costs associated with the provision of rental assistance but not to exceed the amount allowed for administrative fees in the Housing Voucher Program authorized under Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. 1437f. In order to use program income for rental assistance, the grantee must—

(i) Use the funds to assist lower income tenants who initially occupy properties rehabilitated with rental rehabilitation grant amounts or rental rehabilitation program income;

(ii) Have a written policy which is available to the public stating that program income will be so used and specifying who is eligible to receive such assistance; and

(iii) Have an agreement with the public housing authority stating that the PHA will utilize the program income to provide rental assistance in accordance with the written policy.

(d) *Timing the use of program income.* Grantees and State recipients shall not commit available rental rehabilitation grant amounts to specific local projects if sufficient program income is on hand and available to fund the project, or a substantial portion of the project. However, in order to avoid possible overcommitment of funds, grantees shall not anticipate the receipt of program income and enter into binding commitments with owners cumulatively exceeding the total amount of program income on hand plus uncommitted rental rehabilitation grant amounts.

(e) *Accounting for and reporting program income.* Program income shall be accounted for and reported in the grantee's Annual Performance Report under § 511.81(b) and in the Cash Management Information System under § 511.74, in the manner prescribed by HUD.

(f) *Authority of State grantees.* States administering rental rehabilitation grants have discretion to choose whether program income is to be earned at all or is to be paid to or retained by the State or paid to or retained by the State recipient. The State's determination should be contained in a written agreement between the State and its State recipients. However, once earned, program income must be used and accounted for in accordance with this section by the State or by the State recipient, as applicable.

(g) *Authority of urban counties.* Because the configuration of an urban county may change from time to time, particularly at the time of requalification of an urban county in the Community Development Block Grant program, special provisions must be made for urban county program income. The urban county may determine whether program income generated by a project located in a unit of general local government which, for whatever reason, no longer participates in the urban county shall be retained by the urban county for its rental rehabilitation program or by the unit of general local government. However, the program income must otherwise be used and accounted for by the urban county and the unit of general local government in accordance with this section.

(h) *Closeout and disposition of program income.* Program income must be accounted for by the grantee when a rental rehabilitation program is closed out. "Closeout" will occur when the following conditions have been met: all grant funds from all program years (excluding program income) have been expended; the grantee does not expect (or has elected not) to receive any

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additional rental rehabilitation grant amounts and the annual performance report covering the last program year has been submitted to HUD. Program income shall be treated in the following manner before and after a closeout:

(1) Program income received before closeout or on hand at the time of closeout shall be used for activities eligible under this section; and

(2) Program income received *after* closeout is not subject to the provisions of this section.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

9. The authority citation for Part 570 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. In § 570.4, paragraph (e) is revised to read as follows:

§ 570.4 Allocation of funds.

* * * * *

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeouts, shall be considered as funds available for reallocation.

11. In § 570.200, paragraphs (d)(2) and (f)(1)(ii) are revised to read as follows:

§ 570.200 General policies.

* * * * *

(d) * * *

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the GS–18 limitation.

* * * * *

(f) * * *

(1) * * *

(ii) Procurement contracts governed by the requirements of 24 CFR 85.36; or

* * * * *

12. In § 570.201, paragraph (b) is revised to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or the property's retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.

* * * * *

13. In § 570.402, paragraph (f)(4)(ii) is revised to read as follows:

§ 570.402 Technical assistance grants and contacts.

* * * * *

(f) * * *

(4) * * *

(ii) Standard Form 424;

* * * * *

14. In § 570.403, paragraph (i)(1) is revised to read as follows:

§ 570.403 New communities.

* * * * *

(i) *Exceptions to regulations.* (1) The provisions of Subpart J, Grant Administration, shall be applicable to recipients, except that a community association or private developer recipient eligible under § 570.403(b)(2) is not required to comply with competitive bidding requirements of 24 CFR 85.36(d)(2), (3), or (4).

* * * * *

15. In § 570.458, paragraphs (c)(1), (c)(14)(ix)(L), and (c)(14)(ix)(M) are revised to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(1) Standard Form 424 and the urban development action grant application.

* * * * *

(14) * * *

(ix) * * *

(L) OMB Circular A–87 and the provisions of 24 CFR Part 85, as made applicable in § 570.502(a);

(M) All requirements imposed by HUD concerning special requirements of law, program requirements and other administrative requirements;

* * * * *

16. Section 570.464 is revised to read as follows:

§ 570.464 Project closeout

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are not impediments to closeout. Closeout shall be carried out in accordance with § 570.509 and applicable HUD guidelines.

17. Subpart J of Part 570 is revised to read as follows:

Subpart J—Grant Administration

Sec.
570.500 Definitions.
570.501 Responsibility for grant administration.
570.502 Applicability of uniform administrative requirements.
570.503 Agreements with subrecipients.
570.504 Program income.
570.505 Use of real property.
570.506 (Reserved.)
570.507 Performance and evaluation report.
570.508 Public access to program records.
570.509 Grant closeout procedures.
570.510 Transferring projects from urban counties to metropolitan cities.
570.511 (Reserved).
570.512 (Reserved).
570.513 Lump sum drawdowns for financing of property rehabilitation activities.

Subpart J—Grant Administration

§ 570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

(a) "Program income" means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include interest earned (except for interest described in § 570.513) on grant advances from the U.S. Treasury. Such interest shall be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated under section 106 (c) or (d) of the Act. Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving CDBG assistance; funds collected through special assessments used to recover the non-CDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in §.570.503(b)(7) for subrecipient-controlled property, or in § 570.505 for recipient-controlled property.

(b) "Revolving fund" means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities.

(c) "Subrecipient" means a public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for assistance under Subpart C. The term includes a public agency designated by a metropolitan city or urban county to receive a loan guarantee under Subpart M, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36, or in Attachment O of OMB Circular A–110, as applicable.

§ 570.501 Responsibility for grant administration.

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients.

§ 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A–128, "Audits of State and Local Governments" (implemented at 24 CFR Part 44) and with the following sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":

(1) Section 85.3, "Definitions";

(2) Section 85.6, "Exceptions";

(3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees";

(4) Section 85.20, "Standards for financial management systems," except paragraph (a);

(5) Section 85.21, "Payment," except as modified by § 570.513;

(6) Section 85.22, "Allowable costs";

(7) Section 85.26, "Non-federal audits";

(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;

(9) Section 85.33, "Supplies";

(10) Section 85.34, "Copyrights";

(11) Section 85.35, "Subawards to debarred and suspended parties";

(12) Section 85.36, "Procurement," except paragraph (a);

(13) Section 85.37, "Subgrants";

(14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);

(15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);

(16) Section 85.42, "Retention and access requirements for records";

(17) Section 85.43, "Enforcement";

(18) Section 85.44, "Termination for convenience";

(19) Section 85.51 "Later disallowances and adjustments" and

(20) Section 85.52, "Collection of amounts due."

(b) Subrecipient except subrecipients which are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, "Cost Principles for Non Profit Organizations" or OMB Circular No. A–21, "Cost Principles for Educational Institutions," as applicable, and with the following Attachments to OMB Circular No. A–110:

(1) Attachment A, "Cash Depositories", except for paragraph 4 concerning deposit insurance;

(2) Attachment B, "Bonding and Insurance";

(3) Attachment C, "Retention and Custodial Requirements for Records", except that in lieu of the provisions in paragraph 4 , the retention period for records pertaining to individual CDBG activities starts from the date of submission of the annual performance and evaluation report, as prescribed in § 570.507, in which the specific activity is reported on for the final time;

(4) Attachment F, "Standards for Financial Management Systems";

(5) Attachment H, "Monitoring and Reporting Program Performance", Paragraph 2;

(6) Attachment N, "Property Management Standards", except for paragraph 3 concerning the standards for real property, and except that paragraphs 6 and 7 are modified so that—

(i) In all cases in which personal property is sold, the proceeds shall be program income, and

(ii) Personal property not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient; and

(7) Attachment O, "Procurement Standards."

§ 570.503 Agreements with subrecipients.

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

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(2) *Records and reports.* The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 570.504(c).

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in § 570.502.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 is either:

(i) Used to meet one of the national objectives in § 570.901 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Disposed of in a manner that results in the recipient's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. (Reimbursement is not required after the period of time specified in paragraph (b)(8)(i) of this section.)

§ 570.504 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in § 570.500(a) shall be recorded as part of the financial transactions of the grant program.

(b) *Disposition of program income received by recipients.* (1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that income shall affect withdrawals of grant funds from the U.S. Treasury as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in § 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in § 570.513.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in Subpart C and all other applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in § 570.901 and the eligibility requirements described in section 105 of the Act.

(c) *Disposition of program income received by subrecipients.* The written agreement between the recipient and the subrecipient, as required by § 570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2) (i) and (ii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by § 570.503(b)(8).

(d) *Disposition of certain program income received by urban counties.* Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

§ 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of $25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting one of the national objectives in § 570.901 and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in § 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

§ 570.506 [Reserved].

§ 570.507 Performance and evaluation report.

(a) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary and approved by the Office of Management and Budget, including a summary of the citizen comments received on the report, as prescribed in paragraph (c) of this section.

(b) *Timing.*

(1) *Entitlement grants.* Each entitlement grant recipient shall submit a performance and evaluation report:

(i) No later than 90 days after the completion of the most recent program year, showing the status of all activities as of the end of the program year;

(ii) No later than November 30 of each year, showing housing assistance performance as of the end of the Federal fiscal year; and

(iii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a).

(2) *HUD-administered small cities grants.* Each small cities recipient shall submit a performance and evaluation report on each grant:

(i) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(ii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a). If HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

(c) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and time the report will be made available to citizens, consistent with the preceding sentence.

(Approved by the Office of Management and Budget under control No. 2506-0077)

§ 570.508 Public access to program records.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

§ 570.509 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

(1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.

(3) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in § 570.507. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

(2) Based on the information provided in the performance report and other relevant information, HUD, in consultation with the recipient, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR Part 44. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in § 570.505;

(iii) Compliance with requirements governing program income received subsequent to grant closeout, as described in § 570.504(b) (4) and (5); and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into

account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.

(d) *Status of housing assistance plan after closeout.* Unless otherwise provided in a closeout agreement, the housing assistance plan (HAP) will remain in effect after closeout until the expiration of the fiscal year covered by the last approved HAP. The HAP will be used for allocations of HUD-assisted housing and local review and comment under 24 CFR Part 791 for purposes of achieving the housing goals under the performance criteria of § 570.903.

(e) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR Part 50 or 24 CFR Part 58, as applicable, shall be determined as part of the closeout process.

(f) *Termination for cause.* In cases in which the Secretary terminates the recipient's grant under the authority of Subpart O of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is cancelled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental assessment or finding of inapplicability is required, and if such review is required, HUD shall perform it in accordance with 24 CFR Part 50.

§ 570.510 Transferring projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city, provided: the city was an included unit of general local government in the urban county immediately before its qualification as a metropolitan city; the funds to be transferred were received by the county before the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

(a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:

(1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;

(2) The activities to be carried out by the city with the funds being transferred;

(3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall remain with the county;

(4) The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to effect the requested transfer of funds.

(c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

§§ 570.511 and 570.512 [Reserved]

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section, recipients may draw funds from the letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitaton of the same property.

(a) *Limitation on drawdown of grant funds.* (1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum distribution.

(b) *Standards to be met.* The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in § 570.200 and the specific provisions of either § 570.202, including the acquisition of properties for rehabilitation, or § 570.203.

(2) *Requirements for agreement.* The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other

benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.

(3) *Period to undertake activities.* The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.

(4) *Time limit on use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

(5) *Progam activity.* Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.

(6) *Termination of agreement.* In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(7) *Return of unused deposits.* At the end of the period specified in the agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under §§ 570.910(b), 570.911, 570.912 or 570.913.

(8) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.

(9) *Provision of consideration.* In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

(i) Grantees shall require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.

(B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is excuted.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

(A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.* Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) *Prior notification.* The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

(f) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

18. Section 570.610 is revised to read as follows:

§ 570.610 Uniform administrative requirements.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A–87, A–110, A–122, and A–128 (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Part 85 and OMB Circular A–110 are set forth at § 570.502.

19. In § 570.611, paragraphs (a) (1) and (2) are revised to read as follows:

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply.

Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

* * * * *

20. In § 570.801, paragraph (c)(2) is revised to read as follows:

§ 570.801 Payment of the cost of completing a project.

* * * * *

(c) * * *

(2) In the subsequent disposition of project land acquired by the unit of general local government pursuant to paragraph (c)(l) of this section, the provisions of section 110(c)(4) of Title I of the Housing Act of 1949, regarding fair use value shall not apply. Any proceeds received by the unit of general local government in the event of such disposition shall be treated as program income in accordance with § 570.504;

* * * * *

21. In § 570.804, paragraph (b)(7)(i) is revised to read as follows:

§ 570.804 Application for approval of financial settlement.

* * * * *

(b) * * *

(7) * * *

(i) All remaining project property owned by the local public agency shall be identified and the proceeds from the sale or lease of such property after financial settlement shall be treated as program income of the unit of general local government under the provisions § 570.504; provided, however, that such proceeds may be applied to the reimbursement of any funds of the unit of general local government, other than funds made available under this part for cash local grants-in-aid required on the basis of incurred net project costs, which were used for the payment of temporary loans for the project. Any remaining project land may be retained for disposition by the local public agency, or transferred to the unit of general local government for use or disposition subject to the covenants specified in § 570.801(c)(l)(i), (ii), (iii) and (iv). In the disposition of such land, the provisions of section 110(c)(4) of title I of the Housing Act of 1949, as amended, regarding fair use value shall not apply.

* * * * *

22. In § 570.905, paragraph (b) is revised to read as follows:

§ 570.905 Reports to be submitted by recipients.

* * * * *

(b) *Financial management.* Each recipient shall submit such financial reports as are determined to be necessary by the Secretary, consistent with the requirements of 24 CFR Part 85.

§ 570.906 [Removed and Reserved].

23. § 570.906 is removed and reserved.

24. In § 570.907, paragraph (a) is revised to read as follows:

§ 570.907 Records to be maintained by recipients.

(a) *Financial Management.* Recipients are to maintain records, in accordance with 24 CFR 85.20, which identify adequately the source and application of funds for grant supported activities. The records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

* * * * *

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

25. The authority citation for Part 571 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42) U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. In § 571.502, paragraph (e) is revised to read as follows:

§ 571.502 Force account construction.

* * * * *

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurements from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in § 85.36(h) is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

27. In § 571.503, paragraphs (d)(2)(iii) and (d)(3) are revised to read as follows:

§ 571.503 Indian preference requirements.

* * * * *

(d) * * *

(2) * * *

(iii) If one approvable bid is received, request Field Office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

* * * * *

28. § 571.607, paragraphs (a)(1) and (2) are revised to read as follows:

§ 571.607 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to individuals, business, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals and other private entities under § 570.203 or § 570.204)

* * * * *

PART 575—EMERGENCY SHELTER GRANTS

29. The authority citation for Part 575 continues to read as follows:

Authority: Sec. 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a) of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong. 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. In § 575.59, paragraphs (b) and (e) are revised to read as follows:

§ 575.59 Other Federal requirements

* * * * *

(b) *Grant Administration.* The policies, guidelines, and requirements of OMB Circulars Nos. A–110 and A–112, as they relate to the acceptance and use of emergency shelter grant amounts by

private nonprofit organizations, and OMB Circular A–87 and OMB Circular A–102 (as set forth in 24 CFR Part 85), as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, except that 24 CFR 85.10, 85.24(a)(1) and (c)(1), 85.40(b)–(d) and (f) do not apply. Program income is authorized to be used in accordance with § 85.25(g)(2).

* * * * *

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circular A–110 and 24 CFR Part 85, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect to the activity, or the proceeds of any contract, subcontract, agreement related to the activity, either for his or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. (HUD may grant an exception to this exclusion as provided in § 570.611(d) and (e) of this chapter.)

31. Section 575.63 is revised to read as follows:

§ 575.63 Method of payment

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30–day period in payment of eligible activity costs. Payments with respect to grants of $120,000 or more will be made by letter of credit if the grantee meets the requirements of 24 CFR Part 85.

PART 590—URBAN HOMESTEADING

32. The authority citation for Part 590 continues to read as follows:

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

33. In § 590.11, paragraph (a)(1) is revised to read as follows:

§ 590.11 Applications.

(a) * * *

(1) Standard Form–424;

* * * * *

PART 850—HOUSING DEVELOPMENT GRANTS

34. The authority citation for Part 850 continues to read as follows:

Authority: Sec. 17 of the U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C: 3535(d)).

35. In § 850.33, paragraph (a) is revised to read as follows:

§ 850.33 Submission requirements.

* * * * *

(a) *Standard form.* Standard Form 424.

* * * * *

36. In § 850.35, paragraph (g) is revised to read as follows:

§ 850.35 Other program requirements.

* * * * *

(g) *Grant administration.* The policies, guidelines, and requirements of 24 CFR Part 85 (except fo §§ 85.23, 85.24, 85.25, 85.30, 85.31(c) 85.40(b)–(d) and (f), and 85.50) and OMB Circular A–122, as they relate to the acceptance and use of housing development grant amounts under this part. (24 CFR 85.36 does not apply to a grantee's selection of a project owner, because that selection is not a procurement of property or services. A project owner is not required to follow the requirements of 24 CFR 85.36 because Part 85 applies only to State, local, and Indian tribal governments.)

* * * * *

37. Section 850.69 is revised to read as follows:

§ 850.69 Financial management systems.

Each grantee is required to maintain a financial management system that complies with 24 CFR 85.20.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

38. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. In § 882.516, paragraph (e) is revised to read as follows:

§ 882.516 Maintenance, operation and inspections.

* * * * *

(e) Periodic PHA audits must be conducted as required by HUD, in accordance with guidelines prescribed by 24 CFR Part 44.

PART 905—INDIAN HOUSING

40. The authority citation for Part 905 continues to read as follows:

Authority: Sec. 3, 4, 5, 6, 9, 11, 12, and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437d, 1437g, 1437j; and 1437n); sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

41. In § 905.107, new paragraphs (g) and (h) are added to read as follows:

§ 905.107 Compliance with other Federal requirements.

* * * * *

(g) *Audits.* IHAs that receive financial assistance under this part shall comply with audit requirements in 24 CFR Part 44.

(h) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and in 24 CFR Part 990, Subpart B.

42. In § 905.203, paragraph (d)(1) is republished and paragraphs (b), (c), and (d)(2) are revised to read as follows:

§ 905.203 Production methods and requirements.

* * * * *

(b) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a Project described in the IHA's invitation for proposals. The Invitation for Proposals may, when approved by HUD, prescribe the sites to be used. The IHA selects, subject to HUD approval, the best of the proposals received, taking into consideration price, design, the developer's experience and other evidence of the developer's ability to complete the Project. After HUD approval of the proposal selected by the IHA, the working drawings and specifications are agreed to by the developer, the IHA, and HUD, and the developer and the IHA enter into a Contract of Sale. Upon completion of the project in accordance with the contract of sale, the IHA purchases the Project from the developer. The IHA may employ an architect to assist in evaluating proposals and negotiating the working drawings and specifications. The IHA provides inspection services by an architect, engineer or other qualified person. Notwithstanding 24 CFR 85.36(h), the IHA may require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(c) *Conventional method.* Under the Conventional Method, the IHA, after HUD approval of the plans and specifications, shall advertise for contractors to build the project, and the award shall be made to the lowest, responsible bidder. The contractor shall be required to provide assurance in the form of 100 percent performance and payment bonds or, notwithstanding 24 CFR 85.36(h), a lesser percentage or other security approved by HUD. The contractor receives progress payments during construction, and a final HUD-approved payment upon completion in accordance with the contract.

(d) *Modified Turnkey (or Modified Conventional) Method.* Under this modified method the procedure is the same as under the Conventional Method, except that:

(1) The developer will receive no progress payments from the IHA and will be responsible for acceptable completion before receiving any payment from the IHA; and

(2) Notwithstanding 24 CFR 85.36(h), the IHA may, but need not, require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

* * * * *

43. In § 905.211, paragraph (b) is revised to read as follows:

§ 905.211 Contracts in connection with development

* * * * *

(b) Notwithstanding 24 CFR 85.36(g), the IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project, including contracts for work, materials or equipment, or for architectural, engineering, consultant, legal, or other professional services. This requirement does not apply to MHO Agreements in the form prescribed by HUD, or to such other types of contracts as HUD may specify.

* * * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

44. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. In § 941.102, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 941.102 Development methods.

A PHA may use one of three different methods to develop a project. The following are brief summaries of these development methods.

(a) Conventional. The conventional method may be used for either new construction or rehabilitation. The PHA is responsible for selecting a site or property and designing the project. After field office approval of a PHA proposal which identifies a site or property, the ACC is executed, site engineering studies or property inspections are performed, and the PHA acquires the sites or property. The PHA contracts with an architect to prepare the project design and construction documents. Following field office approval of these documents, the PHA advertises for competitive bids to build or rehabilitate the project on the PHA-owned site and, after field office approval, awards a construction contract to the lowest responsible bidder. The contractor is required to furnish a 100 percent performance and payment bond or, notwithstanding 24 CFR 85.36(h), other assurances approved by the field office. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract.

* * * * *

46. In § 941.208, a new paragraph (g) is added to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(g) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants made under this part on or after October 1, 1986, except that § 941.502 is not subject to § 85.36(g), and as otherwise specified in this part.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

47. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d and 1437l); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

48. In § 968.9, paragraph (j) is revised to read as follows:

§ 968.9 Other program requirements.

* * * * *

(j) *Applicability 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and 24 CFR 990.201.

49. In § 968.12, paragraphs (b), (c), (d), (e), (f), and (g) are revised to read as follows:

§ 968.12 Contracting requirements.

* * * * *

(b) *Formal advertising requirements.* For each construction or equipment contract over $25,000, the PHA shall conduct formal advertising as discussed in 24 CFR 85.36(d)(2), except for procurement under the HUD Consolidated Supply Program.

(c) *Bonding requirements.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow, or a 25 percent letter of credit.

(d) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process, except where FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract. Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to submit the contract for prior HUD approval before execution or to certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to—

(1) Submit for prior HUD approval complete construction and bid documents before inviting bids or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2) (i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the PHA has certified that—

(1) The bidding procedures and award were conducted in compliance with State, tribal or local laws and Federal requirements,

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval, and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to submit for prior HUD approval the proposed contract modifications or to certify that such modifications are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

* * * * *

50. Section 968.13 is revised to read as follows:

§ 968.13 Fund requisitions.

To request modernization funds against the total approved modernization budget, the PHA shall:

(a) Submit, in a form prescribed by HUD, a request to the HUD office for only the amount of modernization funds needed for actual cash disbursements, identifying the amounts by account and date due; and

(b) Submit the latest required progress reports under § 968.14, unless the first required report is not yet due.

51. Section 968.17 is revised to read as follows:

§ 968.17 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the guidelines prescribed by 24 CFR Part 44. If the audited modernization cost certificate indicates that excess funds have been approved, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under control number 2577–0040)

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

52. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 18, of the United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

53. Section 970.1 is revised to read as follows:

§ 970.1 Purpose.

This part sets forth requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing projects assisted under the U.S. Housing Act of 1937 (the "Act"). The rules and procedures contained in 24 CFR Part 85 are inapplicable.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

54. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. In § 990.103, a new paragraph (c) is added to read as follows:

§ 990.103 Applicability of PFS.

* * * * *

(c) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

56. Section 990.109, paragraph (e)(3) is revised to read as follows:

§ 990.109 Projected income level.

* * * * *

(e) * * *

(3) *Total.* The estimated total amount of income for investments and Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. This amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

57. A new Subpart B—Financial Management systems, Monitoring and reporting—is added to Part 990, to read as follows:

Subpart B—Financial Management Systems, Monitoring and Reporting

§ 990.201 Purpose—General policy on financial management, monitoring and reporting.

The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937.

§ 990.202 Applicability.

The provisions of this Subpart B are applicable to the development, modernization (CIAP), and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS UNDER OMB CIRCULAR A–102

58. A new Part 85 is added, to read as set forth at the end of this document.

The part heading is revised to read as set forth below.

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PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Subpart A—General

Sec.
85.1 Purpose and scope of this part.
85.2 Scope of subpart.
85.3 Definitions.
85.4 Applicability.
85.5 Effect on other issuances.
85.6 Additions and Exceptions.

Subpart B—Pre-Award Requirements

85.10 Forms for applying for grants.
85.11 State plans.
85.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

85.20 Standards for financial management systems.
85.21 Payment requirements.
85.22 Allowable costs.
85.23 Period of availability of funds.
85.24 Matching or cost sharing.
85.25 Program income.
85.26 Non-Federal audits.

Changes; Property, and Subawards

85.30 Changes under discretionary (project) awards.
85.31 Real property.
85.32 Equipment.
85.33 Supplies.
85.34 Copyrights.
85.35 Subawards to debarred and suspended parties.
85.36 Procurement.
85.37 Subgrants.

Reports, Records Retention, and Enforcement

85.40 Monitoring and reporting program performance.
85.41 Financial reporting.
85.42 Retention and access requirements for records.
85.43 Enforcement.
85.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

85.50 Closeout.
85.51 Later disallowances and adjustments.
85.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1988.

Carl D. Covitz,
Acting Secretary.

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

28 CFR Part 66

[Atty. Gen. Order No. 1252-88]

FOR FURTHER INFORMATION CONTACT: Jack A. Nadol, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW., Room 942, Washington, DC 20531, (202) 724-7611.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments which will be applicable to nonprocurement assistance activities of components of the Department of Justice which have grant-making authority. These include: The Office of Justice Programs, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statitics, the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Drug Enforcement Administration.

Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to state and local agencies in the future, DEA would be subject to the common grants management regulation.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendix 3 of OJP Guideline Manual 7100.1C, Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Administrative practice and procedures, Grant programs—Law Grant administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Edwin Meese III,
Attorney General.
February 25, 1988.

1. Part 66 is added to read as set forth at the end of this document.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
66.1 Purpose and scope of the part.
66.2 Scope of subpart.
66.3 Definitions.
66.4 Applicability.
66.5 Effect on other issuances.
66.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

66.10 Forms for applying for grants.
66.11 State plans.
66.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

66.20 Standards for financial management systems.
66.21 Payment requirements.
66.22 Allowable costs.
66.23 Period of availability of funds.
66.24 Marching or cost sharing.
66.25 Program Income.
66.26 Non-Federal audits.

Changes, Property, and Subawards

66.30 Changes.
66.31 Real Property.
66.32 Equipment.
66.33 Supplies.
66.34 Copyrights.
66.35 Subawards to debarred and suspended parties.
66.36 Procurement.
66.37 Subgrants.

Reports, Records Retention, and Enforcement

66.40 Monitoring and reporting program performance.
66.41 Financial reporting.
66.42 Retention and access requirements for records.
66.43 Enforcement.
66.44 Termination for convenience.

Subpart D—After the Grant Requirements

66.50 Closeout.
66.51 Later disallowances and adjustments.
66.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and U.S.C. 4351-4353.

2. Newly added Part 66 is further amended by revising §§ 66.32(a) and 66.33(a) to read as follows:

§ 66.32 Equipment.

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

§56.33 Supplies

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

* * * * *

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

29 CFR Part 97

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Telephone: 202-523-9174.

ADDITIONAL SUPPLEMENTARY INFORMATION: As indicated in the previously-published Department of Labor specific NPRM preamble to these rules, (52 FR 21830, June 9, 1987), the Department of Labor had previously published regulations implementing both OMB Circulars A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, and A-110, Uniform Administrative Requirements for Grants and Cooperative Agreements to Non-profit Institutions, at 41 CFR Part 29-70. With the adoption of this common rulemaking, notice is given that 41 CFR Part 29-70 is no longer applicable to grants to State and local governments (including federally recognized Indian Tribal governments) and Indian and Native American entities.

List of Subjects in 29 CFR Part 97

Accounting, Administrative practice and procedure, Grant programs—grants and administration, Insurance, Reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 97 as set forth at the end of this document.

Ann McLaughlin,
Secretary of Labor.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
97.1 Purpose and scope of this part.
97.2 Scope of subpart.
97.3 Definitions.
97.4 Applicability.
97.5 Effect on other issuances.
97.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

97.10 Forms for applying for grants.
97.11 State plans.
97.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

97.20 Standards for financial management systems.
97.21 Payment.
97.22 Allowable costs.
97.23 Period of availability of funds.
97.24 Matching or cost sharing.
97.25 Program income.
97.26 Non-Federal audit.

Changes, Property, and Subawards

97.30 Changes.
97.31 Real property.
97.32 Equipment.
97.33 Supplies.
97.34 Copyrights.
97.35 Subawards to debarred and suspended parties.
97.36 Procurement.
97.37 Subgrants.

Reports, Records Retention, and Enforcement

97.40 Monitoring and reporting program performance.
97.41 Financial reporting.
97.42 Retention and access requirements for records.
97.43 Enforcement.
97.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

97.50 Closeout.
97.51 Later disallowances and adjustments.
97.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; OMB Circular A-102.

BILLING CODE 4510-23-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1470

FOR FURTHER INFORMATION CONTACT: Lee Buddendeck—202-653-5320.

ADDITIONAL SUPPLEMENTARY INFORMATION: Due to the nature of the grantees of the Federal Mediation and Conciliation Service and/or their representatives as tax supported or dues paying entities, the Service does not consider in kind contributions to be an acceptable grantee match. Because the grants program has a very small annual appropriation, grantee changes to their grant projects for indirect costs are discouraged.

List of Subjects in 29 CFR Part 1470

Grant programs, Grants Administration, reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 1470 as set forth at the end of this document.

Kay McMurray,
Director.

PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1470.1 Purpose and scope of this part.
1470.2 Scope of subpart.
1470.3 Definitions.
1470.4 Applicability.
1470.5 Effect on other issuances.
1470.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1470.10 Forms for applying for grants.
1470.11 State plans.
1470.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1470.20 Standards for financial management systems.
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1470.23 Period of availability of funds.
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1470.25 Program income.
1470.26 Non-Federal audit.

Changes, Property, and Subawards

1470.30 Changes.
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1470.35 Subawards to debarred and suspended parties.

1470.36 Procurement.
1470.37 Subgrants.

Reports, Records Retention, and Enforcement

1470.40 Monitoring and reporting program performance.
1470.41 Financial reporting.
1470.42 Retention and access requirements for records.
1470.43 Enforcement.
1470.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1470.50 Closeout.
1470.51 Later disallowances and adjustments.
1470.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 29 U.S.C. 175a.

BILLING CODE 6732-01-M

DEPARTMENT OF DEFENSE

32 CFR Part 278

FOR FURTHER INFORMATION CONTACT: Mr. Ronald D. Good, or Mr. William L. Blumberg. Telephone (202) 697-8282.

ADDITIONAL SUPPLEMENTARY INFORMATION: With this rule, the Department of Defense will adopt rules and regulations governing the administration and use of grants and cooperative agreements with state and local government. This "common" rule establishes consistency and uniformity among the Office of the Secretary of Defense, Military Departments and Defense Agencies in the employment and management of grants and cooperative agreements with state, local, and federally recognized indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the "common" rule, and the Department of Defense regulation governing the same.

List of Subjects in 32 CFR Part 278

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and Recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended by adding Part 278 as set forth at the end of this document.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

PART 278—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
278.1 Purpose and scope of this part.
278.2 Scope of subpart.
278.3 Definitions.
278.4 Applicability
278.5 Effect on other issuances.
278.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

278.10 Forms for applying for grants.
278.11 State plans.
278.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

278.20 Standards for financial management systems.
278.21 Payment.
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278.23 Period of availability of funds.
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278.26 Non-Federal audit.

Changes, Property, and Subawards

278.30 Changes.
278.31 Real property.
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278.35 Subawards to debarred and suspended parties.
278.36 Procurement.
278.37 Subgrants.

Reports, Records Retention, and Enforcement

278.40 Monitoring and reporting program performance.
278.41 Financial reporting.
278.42 Retention and access requirements for records.
278.43 Enforcement.
278.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

278.50 Closeout.
278.51 Later disallowances and adjustments.
278.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; 10 U.S.C. 113.

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

FOR FURTHER INFORMATION CONTACT: Mary Hughes, Telephone (202) 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Secretary establishes a new Part 80 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circular A-102. The Secretary simultaneously makes technical amendments to the existing Part 74 to limit its application to the institutions covered by OMB Circular A-110. The changes to Part 74 are contained in a separate final rulemaking document published elsewhere in this issue of the **Federal Register.**

The Department of Education currently implements both OMB Circulars A-102 and A-110 in Part 74 of the Department's regulations (34 CFR Part 74). Circular A-110 applies to institutions of higher education, hospitals, and other nonprofit organizations and contains provisions similar to those contained in Circular A-102 for State and local governments and Indian tribal organizations. However, due to the significant changes contained in the common regulations implementing revised Circular A-102, the common regulations and current Circular A-110 can no longer conveniently be implemented together.

As a result, State and local governments and Indian tribal organizations are now subject to the less burdensome requirements in Part 80 and and other grantees are subject to the requirements of Part 74. However, the Department is aware that the President's Council on Management Improvement has initiated a task force to review Circular A-110. If, as a result of that review, the differences between A-110 and A-102 are reduced sufficiently, the Department may again implement the two Circulars in a single set of regulations.

The Secretary published in the **Federal Register** of June 9, 1987 (52 FR 21864) proposed technical amendments to 34 CFR Part 74. These proposed amendments were designed to limit the applicability of Part 74 to institutions of higher education, hospitals, and other nonprofit organizations. The Secretary is publishing those amendments as final regulations elsewhere in this issue of the **Federal Register.**

Section ____.5 of the common regulations provides—

> All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § ____.6.

As stated in the general preamble to this rulemaking document, each agency must specify those regulations that are revoked under this section. The Department is in the process of identifying those program regulations that must be revoked and in the near future will publish a notice of propsoed rulemaking to take appropriate action. The Secretary plans to publish the final rulemaking document regarding revocations before the effective date for Part 80, October 1, 1988.

There are hundreds of cross references to the current Part 74 throughout the Department's program regulations. These cross references are being reviewed to determine which of them should be amended to refer only to Part 80, to Part 74, or only to Part 74. The technical amendments necessary to make these changes will be published in the document addressing inconsistent program regulations.

In the notice of proposed rulemaking for the common regulations the Secretary proposed three changes to the common regulations. The Secretary did not receive any comments on these proposed changes. They are discussed below.

The first change is necessary under section 412 of the Department of Education Organization Act (DEOA). 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § ____.6(b) of the common regulations has the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary revises § ____.6(b) so that the Secretary may authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to ensure that disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program (20 U.S.C. 631-647) are administered consistently with their statutory purpose. Under the disaster assistance program the Department provides assistance to local educational agencies (LEAs) that have been affected by certain major disasters. Under the construction program the Department provides assistance to LEAs to build educational facilities. Under the statute an LEA must use the facility to educate eligible children. However, if there are no longer any eligible children to educate at the facility, the facility may be used for any purpose subject only to the requirement that the LEA maintain accessibility to the facility for 20 years after its construction. The application of § ____.31(c) is inappropriate in the context of these statutory programs. A similar analysis applies to the equipment provisions of § ____.32 (c), (d), (e), and (g). Therefore the Secretary excepts the disaster assistance program and the Impact Aid construction program from the requirements of §§ 80.31(c) and 80.32 (c), (d), (e), and (g).

The third change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232f). Section ____.42(b) of the common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary adds a paragraph (b)(4) to § ____.42 of the common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This amendment has the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, we note that certain programs such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, still are subject to the 3-year record retention rule contained in the common regulations.

Finally, the Secretary adds authority citations after every substantive provision of the common regulations. These authority citations are required under section 431 of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 80

Accounting, Administrative practice and procedures, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: February 16, 1988.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new 34 CFR Part 80 as set forth below.

1. Part 80 is added as set forth at the end of this document:

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
80.1 Purpose and scope of this part.
80.2 Scope of subpart.
80.3 Definitions.
80.4 Applicability.
80.5 Effect on other issuances.
80.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

80.10 Forms of applying for grants.
80.11 State plans.
80.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

80.20 Standards for financial management systems.
80.21 Payment.
80.22 Allowable costs.
80.23 Period of availability of funds.
80.24 Matching or cost sharing.
80.25 Program income.
80.26 Non-Federal audit.

Changes, Property, and Subawards

80.30 Changes.
80.31 Real property.
80.32 Equipment.
80.33 Supplies.
80.34 Copyrights.
80.35 Subawards to debarred and suspended parties.
80.36 Procurement.
80.37 Subgrants.

Reports, Records Retention, and Enforcement

80.40 Monitoring and reporting program performance.
80.41 Financial reporting.
80.42 Retention and access requirements for records.
80.43 Enforcement.
80.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

80.50 Closeout.
80.51 Later disallowances and adjustments.
80.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Appendix to Part 80—Audit Requirements for State and Local Governments

Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.

2. Part 80 is further amended, as follows.

a. Section 80.3 is amended by adding paragraph (1) following the definition of "State" to read as follows:

§ 80.3 Definitions

* * * * *

(1) The definition of "State" in this section is used for the purpose of determining the scope of Part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

b. Section 80.6, paragraph (b), is revised to read as follows:

§ 80.6 Additions and exceptions.

* * * * *

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

* * * * *

c. Section 80.22 is amended by revising paragraph (b) to read as follows:

§ 80.22 Allowable costs.

* * * * *

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A–87, as amended on June 9, 1987.

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

d. A note is added following § 80.26, to read as follows:

§ 80.26 Non-Federal audit.

* * * * *

Note: The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

e. Section 80.31 is amended by adding a new paragraph (d) to read as follows:

§ 80.31 Real property.

* * * * *

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241–1(b)–(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631–647.

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

f. Section 80.32 is amended by adding a new paragraph (h) to read as follows:

§ 80.32 Equipment.

* * * * *

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241–1(b)–(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631–647.

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

g. Section 80.42(b) is amended by adding a new paragraph (b)(4) to read as follows:

§ 80.42 Retention and access requirements for records.

* * * * *

(b) *Length of retention period.* * * *

(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

* * * * *

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

h. An authority citation is added after each section in Part 80 to read as follows:

(Authority: 20 U.S.C. 3474; OMB Circular A–102.)

PART 74—[AMENDED]

Appendix G to Part 74—[Redesignated as Appendix to Part 80]

i. Appendix G—Audit Requirements for State and Local Governments at the end of 34 CFR Part 74 is redesignated as "Appendix to Part 80—Audit Requirements for State and Local Governments" and added to the end of Part 80.

BILLING CODE 4000-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1207

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3214 (FTS 523–3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—Archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended by adding Part 1207 as set forth at the end of this document.

Dated: February 17, 1988.

Don W. Wilson,
Archivist of the United States.

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1207.1 Purpose and scope of this part.
1207.2 Scope of subpart.
1207.3 Definitions.
1207.4 Applicability.
1207.5 Effect on other issuances.
1207.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1207.10 Forms for applying for grants.
1207.11 State plans.
1207.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1207.20 Standards for financial management systems.
1207.21 Payment.
1207.22 Allowable costs.
1207.23 Period of availability of funds.
1207.24 Matching and cost sharing.
1207.25 Program income.
1207.26 Non-Federal audit.

Changes, Property, and Subawards

1207.30 Changes.
1207.31 Real property.
1207.32 Equipment.
1207.33 Supplies.
1207.34 Copyrights.
1207.35 Subawards to debarred and suspended parties.
1207.36 Procurement.
1207.37 Subgrants.

Reports, Records Retention, and Enforcement

1207.40 Monitoring and reporting program performance.
1207.41 Financial reporting.
1207.42 Retention and access requirements for records.
1207.43 Enforcement.
1207.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1207.50 Closeout.
1207.51 Later disallowances and adjustments.
1207.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 44 U.S.C. 2104.

BILLING CODE 7515-01-M

VETERANS ADMINISTRATION

38 CFR Part 43

FOR FURTHER INFORMATION CONTACT: Gail A. Gompf, Director, Office of Intergovernmental Affairs (00A1), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3116.

ADDITIONAL SUPPLEMENTARY INFORMATION: This new authority codifies the long-standing OMB Circular A–102 used in whole or in part by all Federal agencies in their grant programs. The effect upon the Veterans Administration (VA) will be felt in its State home acquisition or construction grants and its State cemetery grants. Specifically, the regulations will affect applicants for Federal assistance from the VA for acquisition or construction of State extended care facilities and State cemeteries.

Applicants shall follow all applicable standard instructions promulgated by these final regulations. All other grant administration provisions of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with these final regulations are superseded, except to the extent that they are required by statute, or authorized in accordance with certain exceptions (see § 43.6).

These regulations will not apply to payments to States at statutorily required per diem rates for each eligible veteran who receives care in a recognized State home (38 U.S.C. 641(a)). These payments are excepted from these regulations because the payments are computed on a per diem basis (38 CFR 43.4(a)).

List of Subjects in 38 CFR Part 43

Accounting, Administrative practice and procedure, Grant programs—State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 38 of the Code of Federal Regulations is amended by adding Part 43 as set forth at the end of this document.

Thomas K. Turnage,
Administrator.

Approved: February 3, 1988.

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
43.1 Purpose and scope of this part.
43.2 Scope of subpart.
43.3 Definitions.
43.4 Applicability.
43.5 Effect on other issuances.
43.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

43.10 Forms for applying for grants.
43.11 State plans.
43.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

43.20 Standards for financial management systems.
43.21 Payment.
43.22 Allowable costs.
43.23 Period of availability of funds.
43.24 Matching or cost sharing.
43.25 Program income.
43.26 Non-Federal audit.

Changes, Property, and Subawards

43.30 Changes.
43.31 Real property.
43.32 Equipment.
43.33 Supplies.
43.34 Copyrights.
43.35 Subawards to debarred and suspended parties.
43.36 Procurement.
43.37 Subgrants.

Reports, Records Retention, and Enforcement

43.40 Monitoring and reporting program performance.
43.41 Financial reporting.
43.42 Retention and access requirements for records.
43.43 Enforcement.
43.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

43.50 Closeout.
43.51 Later disallowances and adjustments.
43.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

Newly added Part 43 is further amended by adding paragraph § 43.4(a)(10) to read as follows:

§ 43.4 Applicability.

(a) * * *

(10) Payments to States at per diem rates for veterans receiving care in recognized State homes.

(Authority: 38 U.S.C. 641–643)

* * * * *

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, and 33

[FRL 3320–9]

FOR FURTHER INFORMATION CONTACT: Richard Mitchell, Grants Policy and Procedures Branch (PM–216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5297 (This is not a toll free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: On March 12, 1987, President Reagan directed all Federal assistance awarding agencies to publish for State and local government grantees "common regulations that adopt the government-wide terms and conditions *verbatim* (emphasis added), except where there are inconsistent statutory requirements." The President's directive calls for promulgation of the final rule on March 11, 1988. To that end, Federal Agencies are jointly publishing a common rule to establish consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) grantees. When effective (on October 1, 1988), this rule will become 40 CFR Part 31 and will supersede certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

In the **Federal Register** of June 9, 1987, EPA, along with other agencies, published its proposed agency-specific preamble to the common rule. EPA's preamble discussed certain proposed additiions to the rule and changes to the current 40 CFR Parts 30 and 33. These additions/changes will be applicable only to grants and cooperative agreements awarded by EPA. EPA requested that its readers comment on the proposed additons/changes. EPA received no comments specifically addressing our proposed additions/changes. The Office of Management and Budget (OMB), however, received a number of comments on the common rule itself. Those comments and their reconciliation are discussed in detail in the common preamble to the rule,

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published in conjunction with this notice.

In the June 9, 1987, **Federal Register** EPA indicated that, after the effective date of the common rule, our general assistance regulation at 40 CFR Part 30 would consist of two Subparts: Subpart A, the common rule with EPA's additions; and Subpart B, the current Part 30 paragraphs applicable to grantees other than State and local governments. Subsequent to that publication, it was determined that such a format might be confusing. Therefore, EPA has decided to publish the common rule with EPA's additions at 40 CFR Part 31. Part 31 will be applicable to State, local and federally recognized Indian tribal governments. Part 30 will be revised so as to consist of those paragraphs which are applicable to grantees other than State and local governments.

Inasmuch as no negative comments were received on EPA's other proposed additions/changes as discussed in the June 9, 1987, **Federal Register**, they are being adopted.

Following is a summary of EPA's additions/changes:

The common rule with EPA's additions will become 40 CFR Part 31 and will be applicable to State, local and federally recognized Indian tribal governments. 40 CFR Part 30 will consist of those paragraphs of the current Part 30 which are applicable to grantees other than State and local governments.

The additions which are part of the common rule at Part 31 include:

(1) A list of the principal environmental statutory provisions applicable to EPA assistance programs. This list is at § 31.13.

(2) Buy American, 40 CFR 33.710 (required by section 215 of the Clean Water Act) is part of § 31.36 at subparagraph (c)(5) and applies only to the wastewater treatment construction grants program.

(3) Payments to Consultants, 40 CFR 33.280 (required by Pub. L. 99–591) is part of § 31.36 at subparagraph (j).

(4) Quality Assurance, 40 CFR 30.503. Many of EPA's grant awards involve the development and use of scientific and technical data. Reports, findings, data, etc., developed under such grants are used for a variety of purposes, each having a potential for wide-ranging environmental impacts. Beause of the sensitive nature of these impacts, it is imperative that EPA's grantees develop a quality assurance program designed to ensure that the project will result in the highest quality scientific and technical data possible. This will be § 31.45.

(5) 40 CFR Part 30, Subpart L, "How are Disputes Between EPA Officials and Me Resolved?" is 40 CFR Part 31, Subpart F: Disputes.

(6) 40 CFR Part 30, Appendix E—Part 30 Audit Requirements for State and Local Government Recipients, will become 40 CFR Part 31, Appendix A—Audit Requirements for State and Local Government Grantees.

EPA's Part 30 contains those sections of current 40 CFR Part 30 which will be applicable to grantees other than State and local governments (i.e., institutions of higher education, hospitals, or other nonprofit organizations). Listed below are those sections of the current 40 CFR Part 30 which are deleted. Those sections *not* listed will remain at 40 CFR Part 30 (for grantees other than State and local governments) and are renumbered as appropriate.

40 CFR	*Reason for deletion/revision*
§ 30.302(d) (2) and (3).	Application requirements for State and local governments only.
§ 30.501(a)(2)	State and local requirement for submitting Financial Status Report (SF269).
§ 30.503 (e), (g), and (h).	State and local requirement for submitting a quality assurance plan.
§ 30.505(b)(2)	Report submittal required only for construction grant projects.
§ 30.540(b) and Appendix E.	Requirements for audits of State and local governments only.

Publication of the common rule requires changes in our current regulation at 40 CFR Part 33, Procurement Under Assistance Agreements, to delete or revise certain sections which are applicable only to State and local governments and, therefore, are superseded by the common rule. Those remaining are applicable only to institutions of higher education, hospitals, and other nonprofit organizations. Listed below are those sections which EPA is deleting or revising:

40 CFR	*Reason for Deletion*
§ 33.110(a)(5)	Delete this section because it is a procurement requirement related only to Superfund remedial action construction awards.
§ 30.210(f)	Delete this section as it relates to formal advertising only for remedial action awards under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
§ 33, Subpart C	Delete this Subpart because it is applicable only to the wastewater treatment construction grant program.
§ 33, Subpart E	Delete this Subpart because it is applicable only to remedial action awards under CERCLA and are not required for grantees other than State and local governments.
§ 33, Subpart F, § 33.1021 and § 33.1030, paragraphs 3, 4, 8, and 12.	Delete these provisions in Subpart F because they do not apply to institutions of higher education, hospitals, and other nonprofit organizations.

In the June 9, 1987, Notice of Proposed Rulemaking, EPA specifically requested its readers to comment on two additional matters being considered for inclusion in the common rule. These were:

(1) The current 40 CFR Part 30, Subpart I includes a provision for annulling assistance agreements if the grantee, without good cause, inordinately delayed or made no substantial progress on the project, obtained the award by fraud or misrepresentation, or practices corrupt administrative procedures. Annulment can result in recovery of all funds received for the project including those already expended.

(2) In the conduct of EPA's wastewater treatment construction grants program, grantees may be allowed to retain the services of the same architect or engineer during subsequent work on the project. This provision has been invaluable in this program as it helps ensure continuity through the life of a project since the architect or engineer is familiar with the project and it minimizes procurement actions for the grantee.

Since no negative comments were received, EPA is adding these provisions to EPA's version of the common rule. The information collection requirements for the application procedures in this rule were approved by OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* (OMB control number 2030–0020).

List of Subjects in 40 CFR Parts 30, 31, and 33

Accounting, Administrative practice and procedures, Grant programs, Grants Administration, Reporting and recordkeeping requirements

Title 40 of the Code of Federal Regulations is amended as set forth below.

Lee M. Thomas,
Administrator.
March 3, 1988.

1. Part 31 is added as set forth at the end of this document.

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
31.1 Purpose and scope of this part.
31.2 Scope of subpart.
31.3 Definitions.
31.4 Applicability.
31.5 Effect on other issuances.
31.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

31.10 Forms for applying for grants.
31.11 State plans.
31.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

31.20 Standards for financial management systems.
31.21 Payment.
31.22 Allowable costs.
31.23 Period of availability of funds.
31.24 Matching or cost sharing.
31.25 Program income.
31.26 Non-Federal audit.

Changes, Property, and Subawards

31.30 Changes.
31.31 Real Property.
31.32 Equipment.
31.33 Supplies.
31.34 Copyrights.
31.35 Subawards to debarred and suspended parties.
31.36 Procurement.
31.37 Subgrants.

Reports, Record Retention, and Enforcement

31.40 Monitoring and reporting program performance.
31.41 Financial reporting.
31.42 Retention and access requirements for records.
31.43 Enforcement.
31.44 Termination for convenience.

Subpart D—After-The-Grant Requirements

31.50 Closeout.
31.51 Later disallowances and adjustments.
31.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

Subpart F—Disputes

31.70 Disputes.

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

2. Further amend Part 31 as follows:

a. Amend § 31.6 by adding new paragraphs (c)(1) and (d) to read follows:

§ 31.6 Additions and exceptions.

* * * * *

(c) * * *

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

b. Add a new § 31.13 to Subpart B to read as follows:

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h–3(e)).

c. Amend § 31.36 by adding new paragraphs (c)(5), (j), and (k) to read as follows:

§ 31.36 Procurement.

* * * * *

(c) * * *

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5)(i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commerical quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

* * * * *

(j) *Payment to consultants.*

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Public Law 99–591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.*

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

d. Section 31.43 is amended by adding paragraph (a)(3)(i) to read as follows:

§ 31.43 Enforcement.

(a) * * *

(3) * * * (i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

(e) Add a new § 31.45 to Subpart C to read as follows:

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

f. Add a new 40 CFR Part 31, Subpart F, consisting of § 31.70 to read as follows:

Subpart F—Disputes

§ 31.70 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decisions under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS FOR OTHER THAN STATE AND LOCAL GOVERNMENTS

3. Amend Part 30 by revising the title to read as set forth above; the authority citation continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

4. Further amend Part 30 as follows:

§ 30.302 [Amended]

a. Amend § 30.302 by removing paragraphs (d) (2) and (3).

§ 30.501 [Amended]

b. Amend § 30.501 by removing paragraph (a)(2) and redesignating (a)(3) as (a)(2).

§ 30.503 [Amended]

c. Amend § 30.503 by removing paragraphs (e), (g) and (h) and redesignating (f) as (e).

§ 30.505 [Amended]

d. Amend § 30.505 by removing paragraph (b)(2) and redesignating (b)(3) as (b)(2).

§ 30.540 [Amended]

e. Amend § 30.540 by removing paragraph (b) and redesignating (c) as (b).

Appendix E—Redesignated as Appendix A to Part 31

f. Appendix E is redesignated as Appendix A to Part 31.

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

5. Amend Part 33 as follows:

a. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j–1, 300j–2, 300j–3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.110 [Amended]

b. Amend § 33.110 by removing paragraph (e)(5) and redesignating (e)(6) as (e)(5).

§ 33.210 [Amended]

c. Amend § 33.210 by removing paragraph (f) and redesignating (g) and (h) as (f) and (g) respectively.

Subparts C and E—[Removed and Reserved]

d. Subparts C and E are removed and reserved.

§ 33.1021 [Removed and Reserved]

e. § 33.1021 is removed and reserved.

§ 33.1030 [Amended]

f. Amend § 33.1030 by removing clauses 3, 4, 8, and 12 and redesignating 5 as 3, 6 as 4, 7 as 5, 9 as 6, 10 as 7, 11 as 8, 13 as 9, and 14 as 10.

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Colonel C. Armstrong, Deputy Director, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: 202–343–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rescissions

Provisions of Department of the Interior regulations listed at 43 CFR 12.2(b) which are inconsistent with the common rule are hereby rescinded. 43 CFR 12.3(b) has been revised accordingly.

Comments on the Proposed Rule

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

One commentor suggested that all statutes applicable to Indian tribal governments be listed as exceptions to the common rule because of the unique status of tribal governments. Since § 12.44 (§ ____.4) provides a preference for Federal statutes which are inconsistent with the provisions of the common rule, no change has been made.

Another comment recommended that § 12.72(b) (§ ____.32(b)) be changed to allow equipment acquired by tribal governments under grants to be used, managed and disposed of in accordance with tribal laws and procedures. This recommendation cannot be adopted since local governments and Indian tribal governments will administer direct grants according to the requirements of the common rule (i.e., paragraphs (c) through (e) of § 12.45 (§ ____.32)). "Pass-through" funds subgranted by a State to an Indian tribal government are administered according to State laws and procedures.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program, Indians.'

Title 43, Part 12, of the Code of Federal Regulations is amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: February 1, 1988.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128.

Subpart A—Administrative Requirements and Cost Principles

2. Subpart A is amended as set forth below.

a. Section 12.2 (b)(1) is amended by adding an additional sentence to the end of the paragraph to read as follows:

§ 12.2 Policy.

* * * * *

(b)(1) * * * Departmental regulations implementing Circular A–102 are contained in Subpart C, 43 CFR Part 12.

* * * * *

b. Section 12.3 (b) is amended by revising "All" to read "all" and inserting the following words at the beginning of the sentence to read as follows:

§ 12.3 Effect on prior issuances.

* * * * *

(b) Except to the extent inconsistent with the regulations in 43 CFR Part 12, Subpart C, * * *

3. Subpart C is added to read as set forth at the end of this document.

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.
12.41 (____.1) Purpose and scope of this part.
12.42 (____.2) Scope of subpart.
12.43 (____.3) Definitions.
12.44 (____.4) Applicability.
12.45 (____.5) Effect on other issuances.
12.46 (____.6) Additions and exceptions

Pre-Award Requirements

12.50 (____.10) Forms for applying for grants.
12.51 (____.11) State plans.
12.52 (____.12) Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

12.60 (____.20) Standards for financial management systems.
12.61 (____.21) Payment.
12.62 (____.22) Allowable costs.
12.63 (____.23) Period of availability of funds.
12.64 (____.24) Matching or cost sharing.
12.65 (____.25) Program income.
12.66 (____.26) Non-Federal audit.

Changes, Property, and Subawards

12.70 (____.30) Changes.
12.71 (____.31) Real Property
12.72 (____.32) Equipment
12.73 (____.33) Supplies.
12.74 (____.34) Copyrights
12.75 (____.35) Subawards to debarred and suspended parties.
12.76 (____.36) Procurement.
12.77 (____.37) Subgrants.

Reports, Records Retention, and Enforcement

12.80 (____.40) Monitoring and reporting program performance.
12.81 (____.41) Financial reporting.
12.82 (____.42) Retention and access requirements for records.
12.83 (____.43) Enforcement.
12.84 (____.44) Termination for convenience

After the Grant Requirements

12.90 (____.50) Closeout.
12.91 (____.51) Later disallowances and adjustments.
12.92 (____.52) Collection of amounts due.

Entitlements [Reserved]

BILLING CODE 4310-RF-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the

Comptroller Policy Division (202) 646–3717.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency intends to incorporate the proposed rule as Part 13 of Title 44 of the Code of Federal Regulations.

Though the agency has never issued formal Assistance Standards in the Code of Federal Regulations, it did issue guidance for its recipients in FEMA's issuance of Financial Assistance Guidelines, CPG 1–32. These guidelines were issued to all of our assistance programs with the exception of the Disaster Assistance Program for the reasons cited:

As a general comment, the proposed revision to OMB Circular A–102 may work well for most Federal assistance grant programs under which predetermined amounts of Federal funds from annual appropriations are made available to grantees with expenditures governed by OMB's applicable administrative standards and cost-principles. By contrast, FEMA's Disaster Relief Assistance Program immediately follows unanticipated major disasters and consists of open-ended reimbursement-type grants made from no-year appropriations to large numbers of disasters affected communities, many of which are very small and do not have approved indirect cost agreements.

It is difficult to assess the full impact of the final common rule on FEMA's administration of the disaster relief program, and the public assistance program in particular, without further indepth review. Some of the significant impacts contained in the draft final rule include:

—An effective date of October 1, 1988, (or earlier) for grants awarded after that date or an earlier date. This could result in major disasters declared prior to October 1, 1988, with some grants awarded before and some awarded after the effective date.

—The supersession of program regulations and handbooks not in compliance (Subpart A, Section 5, page 8). Presumably, grants awarded prior to October 1, 1988, would be governed by the existing regulations and handbooks.

—The possible requirement for State plans for major disasters declared after October 1, 1988 (Subpart B, Section 1), page 10). This would also imply that a State Plan would be required for grants awarded subsequent to October 1, 1988, on previously declared major disasters.

—The application of Allowable Costs in OMB Circular A–87 to State and local governments for grants awarded subsequent to October 1, 1988 (Subpart C, Section 22, page 13). Also, it would require the use of OMB Circular A–21 and A–122 for grants made to private nonprofit organizations and educational institutions after October 1, 1988.

—The application of the value of third-party in-kind contributions to meet FEMA cost sharing requirements on grants awarded subsequently to October 1, 1988 (Subpart C, Section 24, page 14). Although such records must be verifiable, this provision will weaken the existing cost-sharing requirement for disaster relief assistance.

—The requirement that State grantees and subgrantees develop and utilize comprehensive procurement policies and procedures, including a contract administration system (Subpart C, Section 36, page 24).

FEMA will submit a formal request to exempt the Disaster Assistance Program prior to October 1, 1988.

In the future, we may amend Part 13 of Title 44 as future needs dictate.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended by adding Part 13 as set forth at the end of this document.

Arthur E. Curry,
Chief, Policy Division.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
13.1 Purpose and scope of this part.
13.2 Scope of subpart.
13.3 Definitions.
13.4 Applicability.
13.5 Effect on other issuances.
13.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

13.10 Forms for applying for grants.
13.11 State plans.
13.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

13.20 Standards for financial management systems.
13.21 Payment.
13.22 Allowable costs.
13.23 Period of availability of funds.
13.24 Matching or cost sharing.
13.25 Program income.
13.26 Non-Federal audit.

Changes, Property, and Subawards

13.30 Changes.
13.31 Real property.
13.32 Equipment.
13.33 Supplies.
13.34 Copyrights.
13.35 Subawards to debarred and suspended parties.
13.36 Procurement.
13.37 Subgrants.

Reports, Records Retention, and Enforcement

13.40 Monitoring and reporting program performance.
13.41 Financial reporting.
13.42 Retention and access requirements for records.
13.43 Enforcement.
13.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

13.50 Closeout.
13.51 Later Disallowances and adjustments.
13.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

FOR FURTHER INFORMATION CONTACT: Mr. Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513–D, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: Currently, the administration of most HHS grants, including grants to State and local governments, is governed by 45 CFR Part 74, which contains the HHS implementation of OMB Circulars A–102 and A–110, plus HHS grant rules which do not derive from OMB circulars.

With the adoption of 45 CFR Part 92, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as a final rule, (effective on October 1, 1988), 45 CFR Part 74 for the most part will no longer be applicable to the grants covered by Part 92. However, Part 74 will continue to apply to grants to nongovernmental recipients—institutions of higher education,

hospitals, other nonprofit organizations and for-profit concerns. Also, Part 74, in its entirety, would continue to govern HHS's grants to States under open-ended entitlement programs under the Social Security Act, as set forth in § 92.4(a)(3).

In addition, there are a number of provisions affecting governmental grantees that are now in 45 CFR Part 74, but not in 45 CFR Part 92, which we believe should remain in effect for grants to governments even after Part 92 is in effect. Therefore with the adoption of 45 CFR Part 92 (effective October 1, 1988) it is necessary to preserve the applicability of certain longstanding HHS Rules to grants which will be subject to Part 92. We described this plan in the Part 92 Notice of Proposed Rulemaking, on June 9, 1987 (52 FR 21820 and 21839), and gave examples of the rules which would be preserved. At that time we planned to issue a separate Notice of Proposed Rulemaking on the subject. However that step has proved unnecessary because no new rules are being adopted.

The Part 74 provisions which will continue to apply to grants under Part 92 are:

1. Section 74.62(a) which simplifies submission of audit reports;
2. Section 74.173 which specifies cost principles for hospitals;
3. Section 74.174(b) which establishes certain special cost rules for nonprofit organizations;
4. Section 74.304 which describes grantee responsibilities regarding final decisions in disputes; and
5. Sections 74.710 and 74.715 which apply special conditions to grants and subgrants to for-profit organizations.

Additionally, § 74.62(a) is being amended to update its internal reference to the previsous version of OMB Circular A–102, which continues to apply to prior periods.

Finally, two other Part 74 policies are being retained, and incorporated in Part 92 itself. We are adding the following provisions to Part 92 to reflect these two policies:

1. Section 92.30(a) which specifies the HHS officials who may approve project changes. (See § 74.102(a).); and
2. Section 92.30(d)(5) which requires prior approval for research patient care. (See § 74.103(d)(3).)

Grantees should also note that 45 CFR Part 92 will not apply to block grant programs covered by 45 CFR Part 96.

List of Subjects in 45 CFR Parts 74 and 92

Accounting, Administrative practice and procedures, Grant programs—health; Grant programs—social programs, Grant administration, Reporting and recordkeeping requirements.

Accordingly Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: February 1, 1988.

Otis R. Bowen,
Secretary of Health and Human Services.

1. Part 92 is added as set forth at the end of this document.

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
92.1 Purpose and scope of this part.
92.2 Scope of subpart.
92.3 Definitions.
92.4 Applicability.
92.5 Effect on other issuances.
92.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

92.10 Forms for applying for grants.
92.11 State plans.
92.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

92.20 Standards for financial management systems.
92.21 Payment.
92.22 Allowable costs.
92.23 Period of availability of funds.
92.24 Matching or cost sharing.
92.25 Program income.
92.26 Non-Federal audit.

Changes, Property, and Subawards

92.30 Changes.
92.31 Real property.
92.32 Equipment.
92.33 Supplies.
92.34 Copyrights.
92.35 Subawards to debarred and suspended parties.
92.36 Procurement.
92.37 Subgrants.

Reports, Records Retention, and Enforcement

92.40 Monitoring and reporting program performance.
92.41 Financial reporting.
92.42 Retention and access requirements for records.
92.43 Enforcement.
92.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

92.50 Closeout.
92.51 Later disallowances and adjustments.
92.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. New Part 92 is amended as follows:

a. Section 92.30 is amended by adding paragraphs (a)(1) and (d)(5) to read as follows:

§ 92.30 Changes.

(a) * * * (1) Approvals shall not be valid unless they are in writing, and signed by at least one of the following officials of the Department of Health and Human Services (HHS):

(i) The responsible Grants Officer or his or her designee;

(ii) The head of the HHS Operating or Staff Division that awarded the grant; or

(iii) The head of the Regional Office of the HHS Operating or Staff Division that awarded the grant.

* * * * *

(d) *Programmatic changes* * * *

(5) Providing medical care to individuals under research grants.

* * * * *

PART 74—ADMINISTRATION OF GRANTS

3. Part 74 is amended as follows:

a. The authority citation for Part 74 continues to read:

Authority: 5 U.S.C. 301; § 74.62(a) and Appendix J also issued under sec. 7505 Pub. L. 98–502, 98 Stat. 2333 (31 U.S.C. 7505).

b. Section 74.4 is amended by designating the text following "*General.*" in paragraph (a) as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* * * *

(2) For grants which are subject to 45 CFR Part 92, only the following provisions of this part apply:

(i) Section 74.62(a);
(ii) Section 74.173;
(iii) Section 74.174(b);
(iv) Section 74.304;
(v) Section 74.710; and
(vi) Section 74.715.

* * * * *

c. Section 74.62 is amended by revising paragraph (a)(1) to read as follows:

§ 74.62 Non-Federal audits.

(a) *Governmental recipients*—(1) *Fiscal periods of recipients beginning before January 1, 1985.* Recipients that are governments shall comply with the requirements concerning non-Federal audits in Attachment P to OMB Circular A–102 (October 1979).[1]

* * * * *

BILLING CODE 5150-04-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 602

FOR FURTHER INFORMATION CONTACT: Sharon Graham, Policy Office, Division of Grants and Contracts, telephone (202) 357–7880.

ADDITIONAL SUPPLEMENTARY INFORMATION: Because the National Science Foundation (NSF) does not differentiate in its administrative practices among types of organizations, and because State and local governments make up less than 30 of its 1500 grantees, NSF expects all prospective and existing grantees to continue following the policies and procedures found in NSF's publications and forms which have received OMB clearance. These policies and procedures, which are consistent with or less restrictive than the common rule, are found in: "Grants for Research and Education in Science and Engineering" which outlines the procedures for applying for NSF grants, and contains the necessary cover page, forms and format for submitting a proposal; NSF F.L. 200, "Grant General Conditions," which contains the terms and conditions which are usually applicable to NSF grants; and "NSF Grant Policy Manual" which outlines NSF's grant administration provisions. Where existing requirements appear inconsistent with the common rule, grantees should consult with NSF.

List of Subjects in 45 CFR Part 602

Accounting, Administration practice and procedures, Grant administration, Grant programs—education, Grant programs—science and technology, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 602 as set forth at the end of this document.

Jeff Fenstermacher,

Assistant Director for Administration.

PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
602.1 Purpose and scope of this part.
602.2 Scope of subpart.
602.3 Definitions.
602.4 Applicability.
602.5 Effect of other issuances.
602.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

602.10 Forms for applying for grants.
602.11 State plans.
602.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

602.20 Standard for financial management systems.
602.21 Payment.
602.22 Allowable costs.
602.23 Period of availability of funds.
602.24 Matching or cost sharing.
602.25 Program income.
602.26 Non-Federal audit.

Changes, Property, and Subawards

602.30 Changes.
602.31 Real property.
602.32 Equipment.
602.33 Supplies.
602.34 Copyrights.
602.35 Subawards to debarred and suspended parties.
602.36 Procurements.
602.37 Subgrants.

Reports, Records Retention, and Enforcement

602.40 Monitoring and reporting program performance.
602.41 Financial reporting.
602.42 Retention and access requirements for records.
602.43 Enforcement.
602.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

602.50 Closeout.
602.51 Later disallowances and adjustments.
602.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 42 U.S.C. 1870(a).

BILLING CODE 7555-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1157

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, or Laurence Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5403.

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Endowment for the Arts (hereinafter "Arts Endowment") received three comments concerning the notice of proposed rulemaking regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments published in the **Federal Register** on June 9, 1987. Two comments addressed state plans requirements; one of these specifically noted the legislative override of § ___.11 discussed in the Arts Endowment's agency specific preamble. The third comment was unrelated to matters addressed in the Arts Endowment's agency specific preamble. These comments were shared with all agencies participating in the common rulemaking and considered in preparing the final rule. The exceptions described by the National Endowment for the Arts in its preamble in the June 9, 1987, **Federal Register** publication of the notice of proposed rulemaking remain.

Legislative Overrides

1. Section ___.4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the Challenge Program of the National Endowment for the Arts [20 U.S.C. 954(1)]. In creating the Challenge Program, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for arts institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The Challenge Program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. In meeting its mandate, the Challenge Program is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, §§ ___.10, ___.41 and certain portions of § ___.22 of the common rule are not applicable to grant funds awarded pursuant to subsection 5(l) of the National Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 954(l)] unless otherwise provided in the grant agreement. Congress intended Challenge grants to assist arts organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grant applications must supply specifically tailored financial and programmatic data to the agency to allow the agency to review applications in a manner consistent with the statutory purpose of the program. Challenge grantees are subject to the applicable cost principles except where provided otherwise by the NFAH Act (e.g., endowment, cash reserve, fundraising, notes payable, deficit elimination, and capital funds).

Finally, grantees must maintain and report financial data beyond that required by standard forms to demonstrate achievement of matching and other program requirements.

2. Section ___.11 of the final common rule allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. Pursuant to subsection 5(g)(2) of the NFAH Act [20 U.S.C. 954(g)(2)], state applicants are required to submit a specifically described state plan in order to receive basic state operating grant assistance. Because this Agency's authorizing legislation specifies certain information and assurances which must be included in this state plan, it would not be legally permissible to substitute a different state plan for this purpose, or to simplify the state plan requirements. Given timing requirements, it would be impractical to consolidate these plans with other state plans. Also, Congress has directed, at 20 U.S.C. 954(m), that information gathered through these plans be used to provide biennial reports to Congress on the state of the arts. These legal mandates were not considered by the comment received on this.

In addition, it should be noted that for the purposes of section ___.10 of the final common rule, the Arts Endowment considers the basic state grant program to be a "formula grant program" not subject to the application froms provision of § ___.10 of the OMB common regulation. However, as a matter of policy, the Agency has determined to adopt the "Changes" provisions at § ___.30 of the common regulation for these grants. Adoption of this provision would be consistent with the intent of Congress for the administration of this program as reflected in the statutory state plan requirements and in the statutory requirement [20 U.S.C. 954(g)(1)] that these funds be used only for projects and productions in the arts which meet certain statutory standards or goals.

3. Sections ___.40(e) and ___.41(a)(7) of the final common rule provide that grantor agencies may waive any performance or financial reports required by the common rule if they are needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Arts Endowment's authorizing legislation [20 U.S.C. 959(d)] require specific performance and financial reports. Because of the statutory requirements, the Arts Endowment is unable to waive the various provisions of the common rule regarding the performance and financial reports.

Application Form

Also concerning section .10 of the final common rule, the agency specific preamble to the June 9, 1987 **Federal Register** publication requested public comment as to the impact of the use of the standard application forms with the Arts Endowment's existing application forms as supplements would have for state and local government applicants.

No comments were received as a result of the notice in the June 9 **Federal Register** and the Arts Endowment thus concluded that potential applicants concurred with the Endowment's existing practice. However, the Arts Endowment published an additional notice in the **Federal Register** (52 FR 42687–42688) on November 6, 1987 to provide the public with an additional opportunity to comment.

In response to this notice, the Endowment received two comments. The National Assembly of State Arts Agencies (NASAA), which represents the 56 states and jurisdictional arts agencies, concurred strongly with the Endowment's position: "We submit this public comment in support of the recommendation of the National Endowment for the Arts that applicants to a program use the application forms specifically developed for each program. It appears that the new OMB proposal to require a standard form for state and local governments would place an undue burden on state arts agency applicants." NASAA's comment also discussed the problems of comparability of information. It should be noted that NASAA represents organizations that receive state appropriations of over $200 million annually in support of the arts.

The Endowment also received a comment from a public school district. It advised that units of state and local government should not be required to use forms developed for nonprofits, but those published in OMB Circular A–102. The comment did not address how to achieve comparability of information for application review if different forms were required. It should be noted that a public school system would be eligible for few categories of support within the programs designed for nonprofits. It should also be recognized that, according to our records, this commenter has not made an application to the Endowment during the past five years.

Upon consideration of these comments and based on the experience of the Agency, the Arts Endowment intends to continue its use of forms approved under the Paperwork Reduction Act of 1980 for all applicants to programs oriented to nonprofits. This practice is consistent with § ___.10(b) of the final common rule.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1157 as set forth at the end of this document.

Peter J. Basso,

Deputy Chairman for Management.

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1157.1 Purpose and scope of this part.
1157.2 Scope of subpart.
1157.3 Definitions.
1157.4 Applicability.
1157.5 Effect on other issuances.
1157.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1157.10 Forms for applying for grants.
1157.11 State plans.
1157.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1157.20 Standards for financial management systems.
1157.21 Payment.
1157.22 Allowable costs.
1157.23 Period of availability of funds.
1157.24 Matching or cost sharing.
1157.25 Program income.
1157.26 Non-Federal audit.

Changes, Property, and Subawards

1157.30 Changes.
1157.31 Real property.
1157.32 Equipment.
1157.33 Supplies.
1157.34 Copyrights.
1157.35 Subawards to debarred and suspended parties.
1157.36 Procurement.
1157.37 Subgrants.

Reports, Records Retention, and Enforcement

1157.40 Monitoring and reporting program performance.
1157.41 Financial reporting.
1157.42 Retention and access requirements for records.
1157.43 Enforcement.
1157.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1157.50 Closeout.
1157.51 Later disallowances and adjustments.

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1157.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7537-01-M

National Endowment for the Humanities

45 CFR Part 1174

FOR FURTHER INFORMATION CONTACT: David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0494.

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities received two comments during the comment period concerning the notice of proposed rulemaking published in the **Federal Register** on June 9, 1987, regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These comments were shared with all of the agencies and considered in preparing the final rule. The exceptions described by the National Endowment for the Humanities in its preamble in the June 9, 1987, publication in the **Federal Register** of the notice of proposed rulemaking remain.

Section ____.4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the challenge grant program of the National Endowment for the Humanities [20 U.S.C. 956(h)]. In creating challenge grants as a unique program of grants, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for cultural institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The challenge grant program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. Thus the challenge grant program in meeting its mandate is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, certain portins of § __.22, "Allowable Costs," of the common rule are not applicable to challenge grant funds awarded pursuant to subsection 7(h) of the National Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 956(h)] unless otherwise provided in the grant agreement. Congress intended challenge grants to assist humanities organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grantees are subject to the applicable cost principles except when provided otherwise by the NFAH Act. For example, under the challenge grant program grantees may expend funds for endowments, cash reserves, reduction or deferral of debts, notes or mortgages, or fundraising.

Section ____.11 allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. However, subsection 7(f) of the NFAH Act, [20 U.S.C. 956(f)], provides that an applicant may apply for grant assistance either as a state humanities agency or, in the absence of a state agency application, as a private group within the state. Applicants, whether a state humanities agency or a private group, are required to submit a specific, statutorily described, state plan in order to receive basic grant assistance. Although thus far no state has chosen to create a state humanities agency to apply under this provision, were a state agency to apply, because the Humanities Endowment's authorizing legislation specifies certain information and assurances that must be included in the state plan, it would not be legally permissible for a state to substitute a different state plan for this purpose, or to simplify the state plan requirements. One comment stated that under Executive Order 12372 and the common rule states would still be required to meet federal statutory requirements in simplified and consolidated plans. The National Endowment for the Humanities agrees that were a state humanities agency formed and applied for funding it would be required to meet federal statutory requirements, but because of timing requirements, it would be impracticable to consolidate these plans with other state plans.

In the event a state chose to apply for a grant under the provisions under 20 U.S.C. 956(f), the Humanities Endowment would consider that application to be a "formula grant program" not subject to the application forms provision of section .10 of the common rule.

Sections ____.40(e) and ____.41(a)(7) provide that grantor agencies may waive any performance or financial reports required by the common rule if they are not needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)] require performance and financial reports. Because of the statutory requirements, the Humanities Endowment would be unable to waive the various provisions of the common rule regarding the performance and financial reports.

In its preamble to the notice of proposed rulemaking, the National Endowment for the Humanities explained the reasons why it requests applicants to submit multiple copies of applications. The reasons are as follows. Applications are evaluated by the staff of the Humanities Endowment, its panels, its reviewers, and members of the National Council on the Humanities. To be able to insure that applications receive a thorough and objective review in the Endowment's comprehensive peer review process, the Endowment has traditionally requested applicants to submit multiple copies of an application. The Endowment administers purely voluntary, non-entitlement, grant programs, rather than legally mandated entitlement grant programs. Once any applicant voluntarily elects to apply to the Endowment for discretionary public funds, the applicant should properly bear the costs of applying, not the American taxpayer. No negative comments were received with respect to this matter. Therefore, the Endowment intends to continue to request multiple copies of applications.

Lists of Subjects in 45 CFR Part 1174

Accounting, Administration practice and procedures, Grant programs—National Endowment for the Humanities, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1174 as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1174.1 Purpose and scope of this part.
1174.2 Scope of subpart.
1174.3 Definitions.
1174.4 Applicability.

Sec.
1174.5 Effect on other issuances.
1174.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1174.10 Forms for applying for grants.
1174.11 State plans.
1174.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1174.20 Standards for financial management systems.
1174.21 Payment.
1174.22 Allowable costs.
1174.23 Period of availability of funds.
1174.24 Matching or cost sharing.
1174.25 Program income.
1174.26 Non-Federal audit.

Changes, Property and Subawards

1174.30 Changes.
1174.31 Real property.
1174.32 Equipment.
1174.33 Supplies.
1174.34 Copyrights.
1174.35 Subawards to debarred and suspended parties.
1174.36 Procurement.
1174.37 Subgrants.

Reports, Records Retention, and Enforcement

1174.40 Monitoring and reporting program performance.
1174.41 Financial reporting.
1174.42 Retention and access requirements for records.
1174.43 Enforcement.
1174.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1174.50 Closeout.
1174.51 Later disallowances and adjustments.
1174.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7536-01-M

Institute of Museum Services

45 CFR Part 1183

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, (202) 786-0539.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Institute of Museum Services, by notice in the **Federal Register** published on June 9, 1987, 52 FR 21842, proposed the inclusion in its regulations of a new Part 1183 that would incorporate the revised OMB Circular A-102 containing government-wide application and other requirements applicable to grants to State, Local and federally recognized Indian tribal-governments. Public comments on the proposed common regulations were received and changes have been made in response to those comments. This document incorporates the common, uniform regulatory provisions reflecting the revised circular, as changed in response to public comment. As revised, the uniform regulations will become a new Part 1183 of the IMS regulations. Except as otherwise provided by regulation, Part 1183 as set forth below will apply generally to applications by those applicants to the Institute of Museum Services for grants under general operating support and conservation project support programs, as well as to other forms of federal financial assistance provided by IMS.

For the most part these regulations should involve little change in the administration of IMS programs. The previous regulations indicated the applicability of A-102 principles to record keeping requirements and fiscal control and fund accounting precedures. However, inclusion of the text of the circular in comprehensive regulations may result in greater focus on those provisions in the administration and monitoring of IMS grants. Moreover, in a few areas, significant change may be encountered. IMS staff will seek to work will applicants and grantees in adjusting to this change. IMS believes that the changes made to § 1183.10, as explained in the explanation of the general purpose to public comments under "Subpart B—Pre-Award Requirements," adequately addresses concerns expressed by commenters regarding the effect of the new Part 1183 on application procedures. With respect to the use of application forms, IMS expects to proceed under the alternative procedures set forth in § 1183.10.

List of Subject in 45 CFR Part 1183

Accounting, Administrative practice and procedure, Grant programs—Museums, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations be amended by adding Part 1183 as set forth at the end of this document.

Lois Burke Shepard,

Director.

PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1183.1 Purpose and scope of this part.
1183.2 Scope of subpart.
1183.3 Definitions.
1183.4 Applicability.
1183.5 Effect on other issuances.
1183.6 Additions and exceptions.

SubpartB—Pre-Award Requirements

1183.10 Forms for applying for grants.
1183.11 State Plans.
1183.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1183.20 Standards for financial management systems.
1183.21 Payment.
1183.22 Allowable costs.
1183.23 Period of availability of funds.
1183.24 Matching or cost sharing.
1183.25 Program income.
1183.26 Non-Federal audits.

Changes, Property, and Subawards

1183.30 Changes.
1183.31 Real property.
1183.32 Equipment.
1183.33 Supplies.
1183.34 Copyrights.
1183.35 Subawards to debarred and suspended parties.
1183.36 Procurement.
1183.37 Subgrants.

Reports, Records Retention, and Enforcement

1183.40 Monitoring and reporting program performance.
1183.41 Financial reporting.
1183.42 Retention and access requirements for records.
1183.43 Enforcement.
1183.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1183.50 Closeout.
1183.51 Later disallowances and adjustments.
1183.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 961066.

BILLING CODE 7036-01-M

ACTION

45 CFR Part 1234

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch. on (202) 634-9150.

ADDITIONAL SUPPLEMENTARY INFORMATION: None.

List of Subjects in 45 CFR Part 1234

Accounting, Administrative practice and procedures, Grant programs—Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part

1234 as set forth at the end of this document.

Donna M. Alvarado,

Director.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1234.1 Purpose and scope of this part.
1234.2 Scope of subpart.
1234.3 Definitions.
1234.4 Applicability.
1234.5 Effect on other issuances.
1234.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

1234.10 Forms for applying for grants.
1234.11 State plans.
1234.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1234.20 Standards for financial management systems.
1234.21 Payment.
1234.22 Allowable costs.
1234.23 Period of availability of funds.
1234.24 Matching or cost sharing.
1234.25 Program income.
1234.26 Non-Federal audit.

Changes, Property, and Subawards

1234.30 Changes.
1234.31 Real property.
1234.32 Equipment.
1234.33 Supplies.
1234.34 Copyrights.
1234.35 Subawards to debarred and suspended parties.
1234.36 Procurement.
1234.37 Subgrants.

Reports, Records Retention, and Enforcement

1234.40 Monitoring and reporting program performance.
1234.41 Financial reporting.
1234.42 Retention and access requirements for records.
1234.43 Enforcement.
1234.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1234.50 Closeout.
1234.51 Later disallowances and adjustments.
1234.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 93–113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

BILLING CODE 6050-28-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

FOR FURTHER INFORMATION CONTACT: Kemp Harshman, Associate General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place NW., Washington, DC 20503, (202) 653–7451.

List of Subjects in 45 CFR Part 2015

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding a new Part 2015 as set forth at the end of this document.

Mark W. Cannon,

Staff Director.

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
2015.1 Purpose and scope of this part.
2015.2 Scope of subpart.
2015.3 Definitions.
2015.4 Applicability.
2015.5 Effect on other issuances.
2015.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

2015.10 Forms for applying for grants.
2015.11 State plans.
2015.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

2015.20 Standards for financial management systems.
2015.21 Payment.
2015.22 Allowable costs.
2015.23 Period of availability of funds.
2015.24 Matching or cost sharing.
2015.25 Program income.
2015.26 Non-Federal audit.

Changes, Property, and Subawards

2015.30 Changes.
2015.31 Real property.
2015.32 Equipment.
2015.33 Supplies.
2015.34 Copyrights.
2015.35 Subawards to debarred and suspended parties.
2015.36 Procurement.
2015.37 Subgrants.

Reports, Records Retention, and Enforcement

2015.40 Monitoring and reporting program performance.
2015.41 Financial reporting.
2015.42 Retention and access requirements for records.
2015.43 Enforcement.
2015.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

2015.50 Closeout.
2015.51 Later disallowances and adjustments.
2015.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 98–101 as amended and Pub. L. 99–194 as amended.

BILLING CODE 6340-01-M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

49 CFR Part 18

[Docket 44910]

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the $5,000 threshold for the definition of "equipment" in § 18.3, the $5,000 threshold for desposition of equipment in § 18.32(e), and the $25,000 threshold for the use of small purchase procedures in § 18.36(d)(1), which are effective March 12, 1988. For a discussion of implementation, see the additional supplementary information below.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Acquisition and Grant Management—M–63, 400 Seventh Street SW., Room 9100, Washington, DC 20590, (202) 366–4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. The Department of Transportation has chosen to implement the higher thresholds for the definition and disposition of equipment, and for the use of small purchase procedures, on the date the regulation is issued. The revised threshold for equipment also applies to equipment owned by grantees that had been acquired with grants that are currently active or have been closed. The Department views these changes as beneficial to the efficient operation of our grant programs and a signficant step in reducing the red tape associated with grant administrative requirements.

The "Federalism" provisions of §§ 18.20(a), 18.32(b), 18.36(a), and 18.37(a) that allow States to use their own procedures for financial management, equipment, procurement management, and managing subgrants are extended to all grants active on October 1, 1988. Because many of our programs fund projects that will cross over the October 1, 1988 implementation date, the Department has chosen to extend the Federalism provisions to grants active as of October 1, 1988. This will allow our State grantees to use the same provisions for current grants as they will use for new grants. This authority does not apply if the awarding agency specifically withholds the authority from a grantee.

The payment requirements of § 18.21(g)(3) do not allow payments to grantees for amounts withheld from payments to contractors to assure satisfactory completion of work. We define payments to contractors to include amounts paid to escrow accounts which can be withdrawn by the contractor upon satisfactory completion of work. The rule has been changed to note that payments to escrow accounts are allowable costs.

The disposition requirements for equipment in § 18.32(e)(3) allow the awarding agency to direct a grantee or subgrantee to take appropriate excess and disposition actions if the grantee or subgrantee fails to take such actions. Section 18.31(c) does not contain an identical provisions for real property; however, the policy of the Department of Transportation is that grantees or subgrantees who do not take appropriate disposition actions for real property can be directed by the awarding agency to take such actions.

Section 18.36(b)(7) encourages grantees to use value engineering clauses in contracts for construction projects. The intent of this subsection is to ensure that the essential function is provided at the lowest life-cycle cost. In this regard, design contracts, as well as, construction contracts are possible candidates for value engineering clauses.

The Federal Highway Administration (FHWA) had proposed requiring its own application forms and procedures. The FHWA had been exempted from the application requirements of OMB Circular A–102, and FHWA application forms and procedures have been approved by OMB. The common rule has been revised to allow Federal agencies to use their own forms and procedures provided they have been approved by OMB. This change eliminates the need for a deviation. However, the rule has been amended to highlight the payment procedures that are used for FHWA programs.

Deviations

Because of existing statutory requirements which do not conform with the provisions of the common regulation, or due to special efforts to reduce Federal red tape, the Department will not comply with some of the sections of the common rule. The deviations not required by statute received no negative comments, and these deviations have been approved by the Office of Management and Budget (OMB). A new airport State Block Grant Pilot Program was authorized in section 534 of the Airport and Airway Improvement Act of 1982, as amended. The Federal Aviation Administration has requested an exemption from the requirements of this rule for this program, although no specific program regulations have been developed. A formal request for exemption will be made when regulations for the program are developed.

Additional statutory deviations, such as one required by the recently passed aviation legislation, and the non-statutory deviations approved by OMB are listed below.

Section____.21, Payment. Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

Section____.36, Procurement. 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

Section____.36, Procurement. 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded. One comment was received that this provision does not apply for projects approved under certification acceptance or the Secondary Road Plan. Subsection 18.36(q) has been revised to note this exception.

Section____.36, Procurement. The requirement for the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures in § 18.36(t) has been revised to highlight that subgrantees as well as grantees are covered by this requirement. Grantees or subgrantees must either use qualifications-based procedures, use equivalent State procedures, or choose to establish a formal procurement procedure by State statute. A similar provision has also been added for the Airport Improvement Program in section 511 of the Airport and Airway Improvement Act of 1982, as amended. The Subsection has also been revised to note that this procedure can only be used in certain areas, specific areas will be noted in highway, mass tranportation, and airport directives.

Section____.41, Financial Reporting. FHWA will require State recipients to use FHWA or State financial reports as opposed to the standard forms referenced in the common rule.

Section____.41, Financial Reporting. The National Highway Traffic Safety Administration (NHTSA) will use existing State forms for financial reporting.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the regulations to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This common rule restates, in regulatory form, most of the provisions of OMB Circular A-102 that had been implemented in our program regulations and directives. In addition, some of provisions of the regulation that were not in Circular A-102, or are different from Circular A-102, will reduce the red tape burden on our grantees. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The recordkeeping and information collection requirements included in these regulations were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h), and were approved August 11, 1987. The OMB approval number is 2105–0520.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 49 of the Code of Federal Regulations, is amended as set forth below:

Issued this 3rd day of March, 1988 at Washington, D.C.

Jim Burnley,

Secretary of Transportation.

1. Part 18 is added as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

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18.2 Scope of subpart.
18.3 Definitions.
18.4 Applicability.
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Subpart B—Pre-Award Requirements

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18.11 State plans.
18.12 Special grant or subgrant conditions for "high risk" recipients.

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18.20 Standards for financial management systems.
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18.22 Allowable costs.
18.23 Period of availability of funds.
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Changes, Property, and Subawards

18.30 Changes.
18.31 Real property.
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18.36 Procurement.
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Reports, Records Retention, and Enforcement

18.40 Monitoring and reporting program performance.
Sec.
18.41 Financial reporting.
18.42 Retention and access requirements for records.
18.43 Enforcememt.
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Subpart D—After-the-Grant Requirements

18.50 Closeout.
18.51 Later disallowances and adjustments.
18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 49 U.S.C. 322(a).

2. New Part 18 is further amended as follows:

a. Section 18.10 is amended by adding paragraph (a)(3) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR Part 630, Subpart B, 23 CFR Part 420, Subpart A, and 49 CFR Part 450.

* * * * *

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for financial management systems.

* * * * *

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding paragraphs (j) and (k) to read as follows:

§ 18.21 Payment.

* * * * *

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(c) The overhead cost principles of OMB Circular A–87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in Sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b)(8), (9), and (10) and (c)(3) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

f. Section 18.25 is amended by adding paragraphs (g)(4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

* * * * *

(g) * * *

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under Section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

* * * * *

g. Section 18.31 is amended by adding paragraph (d) to read as follows:

§ 18.31 Real property.

* * * * *

(d) If the conditions in 23 U.S.C. 103(e)(5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

* * * * *

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(g) 23 U.S.C. 112 requires concurrence by the Secrectary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

i. Section 18.40 is amended by adding paragraph (c)(1) to read as follows:

§ 18.40 Monitoring and reporting program performance.

* * * * *

(c) * * *

(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

* * * * *

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

* * * * *

(f) Notwithstanding the provisions of paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

BILLING CODE 4910-62-M

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART ____—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
____.1 Purpose and scope of this part.
____.2 Scope of subpart.
____.3 Definitions.
____.4 Applicability.
____.5 Effect on other issuances.
____.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants.
____.11 State plans.
____.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

____.20 Standards for financial management systems.
____.21 Payment.
____.22 Allowable costs.
____.23 Period of availability of funds.
____.24 Matching or cost sharing.
____.25 Program income.
____.26 Non-Federal audit.

Changes, Property, and Subawards

____.30 Changes.
____.31 Real property.
____.32 Equipment.
____.33 Supplies.
____.34 Copyrights.
____.35 Subawards to debarred and suspended parties.
____.36 Procurement.
____.37 Subgrants.

Reports, Records, Retention, and Enforcement

____.40 Monitoring and reporting program performance.
____.41 Financial reporting.
____.42 Retention and access requirements for records.
____.43 Enforcement.
____.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

____.50 Closeout.
____.51 Later disallowances and adjustments.
____.52. Collection of amounts due.

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Subpart E—Entitlements [Reserved]

Subpart A—General

§ ___.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ ___.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ___.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ___.4 Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § ___.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § ____.4(a) (3)-(8) are subject to Subpart E.

§ ____.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § ____.6.

§ ____.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ ____.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ ____.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ ____.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ ____.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ ____.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § ____.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the

Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ ____.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ ____.23 Period fo availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ ____.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § ____.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § ____.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § ____.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ ____.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § ____.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ ____.31 and ____.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

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(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ ____.26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § ____.36 shall be followed.

Changes, Property, and Subawards

§ ____.30 Changes

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § ____.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § ____.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § ____.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ ____.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ ____.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § ____.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow ____.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ ___.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ ___.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ ___.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ ___.36 Procurement

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency.

Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §___.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § ____.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § ____.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete ","] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this Section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ ____.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with Section ____.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section ____.10;

(2) Section ____.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ____.21; and

(4) Section ____.50.

Reports, Records, Retention, and Enforcement

§ ____.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being

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achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ ___.41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § ___.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as

appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § ___.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § ___.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § ___.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § ___.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § ___.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § ___.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § ___.41(b)(2).

§ ___.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § ___.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ ____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § ____.35).

§ ____.44 Termination for convenience.

Except as provided in § ____.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § ____.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ ____.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)*

(3) *Final request for payment (SF–270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § ____.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ ____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § ____.42;

(d) Property management requirements in §§ ____.31 and § ____.32; and

(e) Audit requirements in § ____.26.

§ ____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal

Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

[FR Doc. 88–5251 Filed 3–10–88; 8:45 am]

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federal register

Friday
March 11, 1988

Part IV

Department of Education

34 CFR Part 74

Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 74

Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR Part 74 of the Education Department General Administrative Regulations (EDGAR) to limit the applicability of that Part to institutions of higher education, hospitals, and other nonprofit organizations. Part 74 establishes grant management requirements and currently applies to institutions of higher education, hospitals, and other nonprofit organizations under Office of Management and Budget (OMB) Circular A–110 and to State and local governments and Indian tribal organizations under OMB Circular A–102. This amendment is necessary because, in a separate document published in this issue of the **Federal Register**, the Secretary establishes a new Part 80 to implement proposed revisions to OMB Circular A–102, which applies only to State and local governments and Indian tribal organizations.

EFFECTIVE DATE: These regulations take effect on October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3122, GSA Regional Office Building No. 3), Washington, DC 20202. Telephone (202) 732–7400.

SUPPLEMENTARY INFORMATION: In a separate document published in this issue of the **Federal Register**, the Secretary has joined with the heads of 22 other Federal agencies to promulgate common regulations implementing revisions to OMB Circular A–102. In that document the Secretary implements the common regulations in a new Part 80. The Director of OMB also publishes in this issue of the **Federal Register** a notice containing the revisions to the Circular upon which the common regulations are based.

The Department of Education is one of six agencies that uses departmentwide regulations to implement the current Circulars A–102 and A–110. The Secretary now implements Circular A–102 in a new Part 80. The Secretary, therefore, limits the applicability of Part 74 to those institutions covered only by OMB Circular A–110—institutions of higher education, hospitals, and other nonprofit organizations.

For a discussion of the background of the common regulations and a statement about the general issues raised by the common regulations see the general preamble to the final rulemaking document for the common regulations. As discussed earlier, that document is published elsewhere in this issue of the **Federal Register**. The Secretary has also included in that document an ED-specific preamble discussing certain issues raised by the Department's implementation of the proposed common regulations. Please see that other rulemaking document for the agency-specific preamble discusses the specific changes necessary to Part 74 in order to limit its applicability to institutions subject to Circular A–110—institutions of higher education, hospitals, and other nonprofit organizations.

A majority of programs administered by the Secretary that apply to institutions of higher education, hospitals, or other nonprofit organizations are direct grant programs. The Secretary does not permit subgrants under direct grant programs (34 CFR 75.708(a)). Thus, the Secretary removes the provisions in Part 74 that tell a grantee what is permissible for inclusion in a subgrant issued by the grantee. However, for example, nonprofit organizations are eligible to receive subgrants under Title III, Part A, of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351, 2352). Thus, those provisions of Part 74 that apply directly to subgrantees have not been removed by the Secretary.

The Secretary removes Appendix C from Part 74. Appendix C establishes cost principles for State and local governments and Indian tribal organizations. The new Part 80 requires these entities to comply with the cost principles in OMB Circular A–87. Thus, there is no need for Appendix C in Part 74. In the rule adopting the new Part 80, the Secretary removed Appendix G from Part 74 and added that Appendix to the new Part 80. The Secretary made this move because Part 80 applies to State and local governments and the appendix implements the Single Audit Act of 1984 which applies only to State and local governments.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 74

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: February 16, 1988.

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations, Part 74, as follows:

1. In Part 74 the table of contents and §§ 74.1 through 74.176 are revised and Appendix C is removed and reserved, to read as follows:

PART 74—ADMINISTRATION OF GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND NONPROFIT ORGANIZATIONS

Subpart A—General

Sec.
74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.6 Deviations.
74.7 Special grant conditions.

Subpart B—Cash Depositories

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74.12 Minority-owned banks.

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Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program income.
74.42 General program income.
74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.
74.44 Program income—royalties and other income earned from a copyrighted work.
74.45 Program income—royalties or equivalent income earned from patents or from inventions.
74.46 Program income—income after grant or subgrant support not otherwise treated.
74.47 Interest earned on advance of grant funds.

Subpart G—Cost Sharing or Matching

74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Valuation of donated services.
74.55 Valuation of donated supplies and loaned equipment or space.
74.56 Valuation of donated equipment, buildings, and land.
74.57 Appraisal of real property.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

74.60 Scope of subpart.
74.61 Financial management standards.

Subpart I—Financial Reporting Requirements

74.70 Scope and applicability of subpart.
74.71 Definitions.
74.72 General.
74.73 Financial Status Report.
74.74 Federal Cash Transactions Report.
74.75 Request for Advance or Reimbursement.
74.76 Outlay report and request for reimbursement for construction programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of subpart.
74.81 Monitoring by recipients.
74.82 Performance reports under nonconstruction grants.
74.83 Performance reports under construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant and Subgrant Payment Requirements

74.90 Scope of subpart.
74.91 Definitions.
74.92 Basic standard.
74.93 Payment methods under nonconstruction grants.
74.94 Payment methods under construction grants.
74.95 Withholding of payments.
74.96 Requesting advances or reimbursements.

Subpart L—Programmatic Changes and Budget Revisions

74.100 Scope and applicability of this subpart.
74.101 Relationship to cost principles.
74.102 Prior approval procedures.
74.103 Programmatic changes.
74.104 Budgets generally.
74.105 Budget revisions-nonconstruction projects.
74.106 Budget revisions-construction projects.
74.107 Construction and nonconstruction work under the same grant.
74.108 Authorized funds exceeding needs.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Amounts payable to the Federal Government.
74.113 Violation of terms.
74.114 Suspension.
74.115 Termination.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 [Reserved].
74.122 Preapplications for Federal assistance.
74.123 Notice of preapplication review action.
74.124 [Reserved]
74.125 [Reserved]
74.126 [Reserved]
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Subpart O—Property

General

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74.131 Prohibition against additional requirements.
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74.133 Title to real property, equipment, and supplies.

Real Property

74.134 Real property.

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74.136 Rights to require transfer of equipment.
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74.140 Equipment management requirements.
74.141 Supplies.

Federal Share of Real Property, Equipment, and Supplies

74.142 Federal share of property.
74.143 Subgrantee's share of market value or sales proceeds.

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74.144 Inventions and patents.
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74.160 Scope of subpart; terminology.
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74.166 Contract provisions.

Subpart Q—Cost Principles

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74.171 [Reserved]
74.172 Institutions of higher education.
74.173 Hospitals.
74.174 Other nonprofit organizations.
74.175 Subgrants and cost-type contracts.
74.176 Costs allowable with approval.
Appendix A—[Reserved]
Appendix B—[Reserved]
Appendix C—[Reserved]
Appendix D—Part 1—Principles for determining costs applicable to research and development under grants and contracts with educational institutions
  Part II—Principles for determining costs applicable to training and other educational services under grants and contracts with educational institutions
Appendix E—Principles for determining costs applicable to research and development under grants and contracts with hospitals.

Authority: 20 U.S.C. 3474; OMB Circular A–110, unless otherwise noted.

Subpart A—General

§ 74.1 Purpose and scope of this part.

(a) This part establishes uniform requirements for the administration of ED grants and principles for determining costs applicable to activities assisted by ED grants for all grantees other than State and local governments and Indian tribal organizations.

(b) Uniform requirements for State and local governments and Indian tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(c) Recipients subject to this part are also subject to 34 CFR Parts 75, 76, 77, 78, and 79, to the extent applicable.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, ED, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" in this section and except where qualified by "Federal") a procurement contract under a grant and "subcontract" means a

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procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"ED" means the U.S. Department of Education.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See Subpart I of this part.)

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include any Federal procurements subject to the procurement regulations in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the nonprofit corporation or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (3) of this section or where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants.

(2) With the exception of 34 CFR 74.62, which applies to Chapter 1, this part does not apply to the programs authorized under Chapter 1 and Subchapters A through C of Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(3) Unless expressly made applicable by ED, this part does not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for profit organization, or individual.

(b) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject to provisions of this subpart.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of ED may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) A deviation from this part may be made only when authorized by the Secretary.

§ 74.7 Special grant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this Part 74 may be imposed as needed when ED has determined that the grantee:

(1) Is financially unstable.

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed. Furthermore, in accordance with OMB Circular A–110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, ED will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvements.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payment bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the Secretary has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) ED may require a grantee to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under § 74.16(d)(1) through (3) or § 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an ED grant, or

(2) Otherwise reasonably considered as pertinent to an ED grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3 year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

Cross-reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where ED grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to ED its single or last expenditure report for that period. However, if ED grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to ED its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to ED. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an ED requirement concerning the disposition of program income, as defined in Subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an ED requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See Subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plant, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Any similar accounting computations of the rate at which a particular group of costs is chargeable

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(such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Cross-Reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* The Secretary and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* The Secretary, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), the Secretary, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant terms which limit public access to records covered by this subpart except after a determination by ED that the records must be kept confidential and would have been excepted from disclosure under ED's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to ED. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E [Reserved]

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part of all or the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between ED and a grantee covering all of ED's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) [Reserved]

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) of this section may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that percentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional cost alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made, Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds. Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Suporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to ED grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition.

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under ED's patent regulations. (See Parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipients' own policies.

§ 74.46 Program income—income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory or merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute grantees shall remit to the Federal Government any interest or other investment income earned on advances of ED grant funds. This includes any interest or investment income earned by cost-type contractors on advances to them that are attributable to advances of ED grant funds to the grantee. Unless the grantee receives other instructions from the responsible ED official, the grantee shall remit the amount due by check or money order payable to the Department of Education.

(b) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) ED and a grantee may enter into an institutional cost-sharing argeement covering all of ED's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

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(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an ED grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the ED grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in-kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, ED may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

§ 74.60 Scope of subpart.

(a) This subpart contains standards for financial management systems and non-Federal audits of recipients.

(b) Awarding parties may not impose on recipients additional financial management standards or requirements concerning non-Federal audits. The awarding parties may, however, provide recipients with suggestions and assistance on these subjects.

§ 74.61 Financial management standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by Subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See Subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audit—(1) General.* (i) This paragraph applies to each recipient that is not subject to the audit requirements in the appendix to 34 CFR Part 80.

(ii) Public hospitals and public colleges and universities are subject to this paragraph if excluded under paragraph 4 of the appendix to 34 CFR Part 80.

(iii) A financial and compliance audit shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." [1] The auditors engaged by a recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to ED.

Subpart I—Financial Reporting Requirements

§74.70 Scope and applicability of subpart.

This subpart prescribes requirements and forms for grantees to report financial information to ED, and to request grant payments when a letter of credit is not used.

§74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third party in-kind contributions" as defined in Subpart G of this part.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in Subpart F of this part.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

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[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by ED, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. ED may issue substantive supplementary instructions. ED may shade out or instruct the grantee to disregard any line item that ED finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) ED may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. ED may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When ED has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) ED may waive any report required by this subpart if not needed.

(g) ED may extend the due date for any financial report upon receiving a justfied request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* ED may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If ED does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any ED payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the ED payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the ED payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the ED payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to ED using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73 (c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) ED may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where ED determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, ED will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by ED. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless ED requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. ED may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, ED may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of ED to:

(a) Review program accómplishments and management control systems.

(b) Provided such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which ED will make grant payments to grantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay ED grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the ED payment office for at least a year and the total amount of advances to be received from the ED payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to ED the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any ED construction grant unless ED has entered into an agreement with the grantee to use a letter of credit for all ED grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) ED will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, ED's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, ED may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in Subpart I of this part.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices D and E to this part contain requirements for prior approval of certain types of cost (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if § § 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible ED grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized ED official.

(b) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Transferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(2) Providing medical care to individuals under research grants.

Cross-Reference: See 34 CFR 75.708—Prohibition of subgrants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant.

When a grant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definitions.

"Grant closeout" means the process by which ED determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and ED.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by ED to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out ED grants, the following shall be observed:

(1) Upon request, ED shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from ED, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. ED may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) ED shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See Subpart D of this part.

(2) If a grant is closed out without audit, ED retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under Subpart O of this part, or with respect to any program income for which the grantee is still accountable under Subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see Subpart F of this part);

(d) Any amounts due the Federal Government under Subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering ED's responsibilities to protect the

Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to ED or given evidence satisfactory to ED that such corrective action will be taken, or until ED terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless ED expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of ED, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* ED may terminate any grant in whole, or in part, at any time before the date of expiration, whenever ED determines that the grantee has materially failed to comply with the terms of the grant. ED shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By ED with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to ED, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, ED determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, ED may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ED will allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart is not applicable to mandatory or formula grant programs which do not require applicants to apply to ED for funds on a project basis.

(b) ED may prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), and may use a standard facesheet for these applications.

§ 74.121 [Reserved]

§ 74.122 Preapplications for Federal assistance.

The purposes of preapplications shall be to:

(a) Establish communications between the applicant and ED;

(b) Determine the applicant's eligibility;

(c) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

§ 74.123 Notice of preapplication review action.

(a) ED will inform applicants of the results of the review of the preapplications submitted to them.

(b) ED will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form.

(c) If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124–74.126 [Reserved]

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by ED, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by Executive Order 12372.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by Federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the Secretary may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from ED to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of ED shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by ED. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *ED right.* For items of equipment having a unit acquisition cost of $1,000 or more, ED shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by ED. This right will normally be exercised by ED only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for ED to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of ED grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for

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which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137. Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by ED.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by ED.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless ED provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from ED the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if ED approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent

loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions.

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to ED grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirements applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

ED's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *ED rights.* If any copyrightable material is developed in the course of or under an ED grant or subgrant, ED shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes.

(d) *Exemption of student-developed works.* ED awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall be subject to the ED right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another ED grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

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(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided*, That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to ED, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, ED waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance of other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.[1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of ED if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Non governmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 [Reserved]

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *Executive Order 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to Part 6 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 [Reserved]

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in Part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in Part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

A nonprofit organization, other than an institution of higher education or a hospital, shall comply with the cost principles stated in OMB Circular A–122, as published in the **Federal Register** of July 8, 1980 at 45 FR 46022 and revised in the **Federal Register** on April 27, 1984 at 49 FR 18260, with corrections published on May 8, 1984 at 49 FR 19588.

(Approved by the Office of Management and Budget under control number 1860–0509)

(Authority: 20 U.S.C. 3474)

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an ED grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though OMB Circular A–87 would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations under cost-type contracts awarded to them under ED grants are in 48 CFR Chapter 34.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the awarding party. Other costs do not require approval. The following procedures govern approval of these costs.

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[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.

2. The Office of Minority Business Enterprise, Department of Commerce.

3. The Office for Civil Rights, ED.

(a) When costs are treated as indirect costs, acceptance of the costs as part of the indirect cost rate shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, ED's written approval may be signed by any authorized ED official.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix C—[Reserved]

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2. Part 74 is amended by adding the authority citation "(Authority: 20 U.S.C. 3474; OMB Circular A-110)" after each section to the regulations.

[FR Doc. 88-4672 Filed 3-10-88; 8:45 am]

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federal register

Friday
March 11, 1988

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of March 1, 1988 of 22 deferrals contained in the three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987 and February 19, 1988.

Rescissions (Table A and Attachment A)

As of March 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1988, $7,644.6 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,

Director.

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TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President...............	0
Accepted by the Congress...........................	0
Rejected by the Congress........................	0
Pending before the Congress........................	0

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TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President...............	9,310.0
Routine Executive releases through March 1, 1988.. (OMB/Agency releases of $1,672.2 million and cumulative adjustments of $6.8 million)	-1,665.4
Overturned by the Congress.......................	0
Currently before the Congress.....................	7,644.6

Attachments

BEST COPY AVAILABLE

Attachment A - Status of Rescissions - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit..............	D88-20	2,949,000		2-19-88					2,949,000
Economic support fund......................	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	2-19-88	177,700				1,823,027
Military assistance.........................	D88-21	608,186		2-19-88					608,186
International disaster assistance..........	D88-22	13,479		2-19-88	6,200				7,279
Special Assistance for Central America									
Promotion of stability and security in Central America..........................	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal....................	D88-3	120,425		10-1-87					
	D88-3A		10,529	2-19-88					130,954
Timber salvage sales........................	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work............................	D88-5	628,025		10-1-87					628,025
Gifts, donations, and bequests for forest and rangeland research....................	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.............	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense.....................	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	157,940				29,015
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.............	D88-9	636		10-1-87					
	D88-9A		149	2-19-88					785

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance..................................	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance..................	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance..................	D88-16	6,000		10-29-87					
	D88-16A		7,200	2-19-88	13,200				0
Western Area Power Administration, Construction, rehabilitation, operation and maintenance...........................	D88-17	774		10-29-87					
	D88-17A		2,426	2-19-88					3,200
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).......	D88-18	2,391		10-29-87					
	D88-18A		569	2-19-88					2,960
Social Security Administration									
Limitation on administrative expenses (construction)............................	D88-10	6,171		10-1-87					
	D88-10A		36	2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.........................	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive......	D88-11	11,638		10-1-87					11,638

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-88
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)........................	D88-12	879,049		10-1-87					
	D88-12A		450,858	2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund....................................	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS..............................		5,443,688	3,866,281		1,672,204	0		6,800	7,644,565

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Part VI

Department of the Interior

Minerals Management Service

Outer Continental Shelf (OCS) Mining Program; Request for Comments and Nominations for a Lease Sale in Norton Sound and Notice of Intent to Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf (OCS) Mining Program Request for Comments and Nominations for a Lease Sale in Norton Sound and Notice of Intent to Prepare an Environmental Impact Statement

REQUEST FOR COMMENTS AND NOMINATIONS

Purpose of the Request

The purpose of the Request is to gather information for a proposed OCS minerals lease sale in Norton Sound, tentatively scheduled for December 1988. This request covers all minerals other than oil, gas and sulphur. This information-gathering step is important to ensure that all interests and concerns are considered and evaluated in preparing an Environmental Impact Statement (EIS) and making leasing decisions.

Nominations will be used to determine which blocks will be selected for environmental analysis and potential leasing. Other responses to the Request will be considered in preparing the EIS and may be used in identifying alternatives to the proposed action and in assessing possible environmental effects and use conflicts which could occur from mining in the area selected for potential leasing. Comments may also be useful in developing terms and conditions designed to ensure environmentally acceptable mining activities. Comments regarding length of lease term, size of lease units, royalty rates, and rentals may be used in developing economic terms and conditions.

Description of the Area

The area of the Request is in Norton Sound in the vicinity of Nome, Alaska, as shown on the attached map. The area includes about 80 whole and partial blocks totaling approximately 350,000 acres. Nominations and comments should be confined to the Request area. A large-scale Request map showing boundaries is available from the Records Manager, Alaska OCS Region, Minerals Management Service (MMS), 949 East 36th Avenue, Anchorage, Alaska 99508-4302, telephone (907) 261-4621.

Background Information

Section 8(k) of the OCS Lands Act (43 U.S.C. 1337(k)), authorizes the Secretary of the Interior to grant leases on the OCS to qualified persons offering the highest cash bonuses for minerals other than oil, gas, and sulphur. The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) establishes that it is the policy of the Federal Government to foster and

encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, and metals and minerals reclamation industries; and (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help ensure satisfaction of industrial, security, and environmental needs. The proposed leasing action is consistent with the aforementioned laws and with the Secretary's announced program of January 19, 1982, for OCS mineral leasing activities on the Federal OCS.

U.S. Bureau of Mines Open-File Report 4-87, "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," notes several reported placers offshore Alaska. The gold placers near Nome are the best known and appear to have the highest potential for near-term development. Onshore placers at Nome have yielded over 5 million ounces of gold. Recently, a large bucket-line dredge has mined marine placers within Alaska's area of jurisdiction.

At least three beach deposits related to low sea level stands during intervals of Pleistocene glaciation have been identified off Nome in water depths of 35 to 42, 65 to 72, and 80 feet at approximately 1, 3, and 5 miles from shore, respectively. These relict beaches, and perhaps additional uncharted relict offshore features such as buried stream deposits, may contain economically attractive concentrations of OCS minerals in Federal waters.

Instructions on the Request

Respondents are requested to nominate areas by block numbers within the Request area that they would like to see included in a proposed Norton Sound lease sale. Although the identities of those submitting nominations become a matter of public record, individual nominations are proprietary information.

Respondents should rank the blocks which they nominate according to the priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Blanket nominations of the entire Request area are not useful in providing information pertinent to industry interests and for selecting specific blocks to be considered for leasing. Nominated blocks without priorities will be considered priority 3.

Respondents nominating are required to outline areas on the Request map along block lines. Respondents may also submit a list of whole or partial blocks nominated, by Official Protraction Diagram block designations, to ensure the correct interpretation of their nominations. The name, title, and telephone number of the person in the respondent's organization to contact for additional information should be included. Official Protraction Diagrams can be purchased for $2.00 each from the Records Manager at the address stated in the "Description of the Area."

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Comments are requested on the following specific items:

1. In the Request area, are there any OCS minerals other than gold which might have economic value which should be evaluated for mining potential?

2. Standard OCS blocks shown on Official Protraction Diagrams total about 2,304 hectares. Lease units could be individual blocks, combinations of blocks, or portions of blocks. Respondents are asked to discuss the optimal size of lease units including the basis for determining their size. If respondents have suggestions regarding the boundaries of lease units, other than individual blocks, they should be shown on a copy of the Request map.

3. Suggested rental amounts, minimum bids, and royalty rates, including possible advance royalties or delayed royalties or credits.

4. Suggested primary term of lease (years).

5. Current and projected gold or other mineral resources market data and information that would be pertinent to evaluating the quantity and value of OCS minerals in the Request area.

6. The technology presently available or anticipated for mining OCS mineral resources in this area.

7. Particular geological, environmental, biological, archaeological, socioeconomic conditions, and other information that might bear upon the potential leasing of and mining in particular areas.

8. Possible conflicts between OCS mining activities that may result from the proposed sale and the Alaska Coastal Management Program, as supplemented by approved local coastal management plans (CMP's) such as that of the City of Nome. If possible, these comments should identify specific CMP policies and concerns, the nature of the foreseen issues, and possible steps that could be taken to avoid or mitigate any potential problems.

9. Possible areas outside of the Request area that should be considered in this or future sales. If commenting on this, please identify on the Request map.

10. The need for additional geological and geophysical data collection in the area.

Comments may be either in terms of broad areas or restricted to particular blocks. Those submitting block-related comments are requested to list block numbers or outline the subject area on the Request map.

Nominations and comments must be received no later than 30 days following the publication of this document in the Federal Register, in an envelope labeled "Nominations for Proposed Norton Sound Lease Sale," or "Comments on the Proposed Norton Sound Lease Sale," as appropriate. The Request map with nominations and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above under "Description of the Area."

Existing Environmental Information

Although potential environmental effects from exploration, mining, and recovery of gold and other OCS mineral resources differ from oil and gas operations, substantial environmental data have been collected through numerous environmental studies for oil and gas leasing activities in the Norton Basin Planning Area since 1976.

Data from the Environmental Studies Program have provided information regarding Norton Sound. The emphasis was on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, distribution and abundance of marine biota, and ecological effects of OCS activities. These studies will provide useful information for environmental analysis. A complete listing of available study reports and information for ordering copies can be obtained from the Alaska OCS Region, Environmental Studies Section, at the address stated under "Description of the Area" or by telephone at (907) 261-4620. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Tentative Schedule

Final selection of the area for possible leasing, and lease terms and conditions, will be decided at a later date only after compliance with established Departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.).

The following is a list of tentative milestones that will precede this sale proposed for December 1988.

Comments due on Request	April 1988
Scoping Comments Due	April 1988
Draft EIS Published	May 1988
Hearings on Draft EIS Held	June 1988
Final EIS Published	September 1988
Proposed Notice of Sale Published	September 1988
Proposed Notice Comment Period Closes	October 1988
Final Notice of Sale Published	November 1988
Sale	December 1988

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT (EIS)

Purpose of the Notice of the Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding an OCS minerals lease sale proposal in Norton Sound in the vicinity of Nome, Alaska. The Notice of Intent serves to announce the scoping process that will be followed in this EIS. Throughout the scoping process, Federal, State, and local governmental units and other interested parties assist MMS in its determination of significant issues and alternatives to be analyzed in the EIS. The EIS analysis will focus on lease sale proposals, modified sale proposals, if any, and leasing alternatives and the potential environmental effects from alternative scenarios for the mining of gold, and other OCS mineral resources if appropriate.

Instructions on the Notice of Intent

Federal, State, or local governmental units and other interested parties are requested to send their written comments on (1) the scope of the EIS, (2) significant issues that should be addressed, and (3) alternatives that should be considered, to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of the Area," above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Norton Sound Lease Sale." Comments are due no later than 30 days from the publication of this Notice. A scoping meeting will be held in Nome, Alaska, on March 31, 1988, at the Nome City Hall, City Council Chambers, at 7:30 p.m., for the purpose of obtaining additional comments and information regarding the scope of the EIS.

Technical Task Force

On February 5, 1988, Secretary of the Interior Donald P. Hodel and Alaska Governor Steve Cowper announced an agreement to form a Federal/State Technical Task Force to consider the economic feasibility, potential use conflicts, and environmental effects related to OCS mining for the recovery of gold and other OCS minerals on the Federal OCS. The goal of the Task Force will be to establish a close working relationship between State and Federal authorities that would permit the potential mining activities to be carried out under terms that meet the socioeconomic and environmental requirements of both the Federal Government and the State of Alaska.

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management

MAR 8 1988 J. Steven Griles

Date

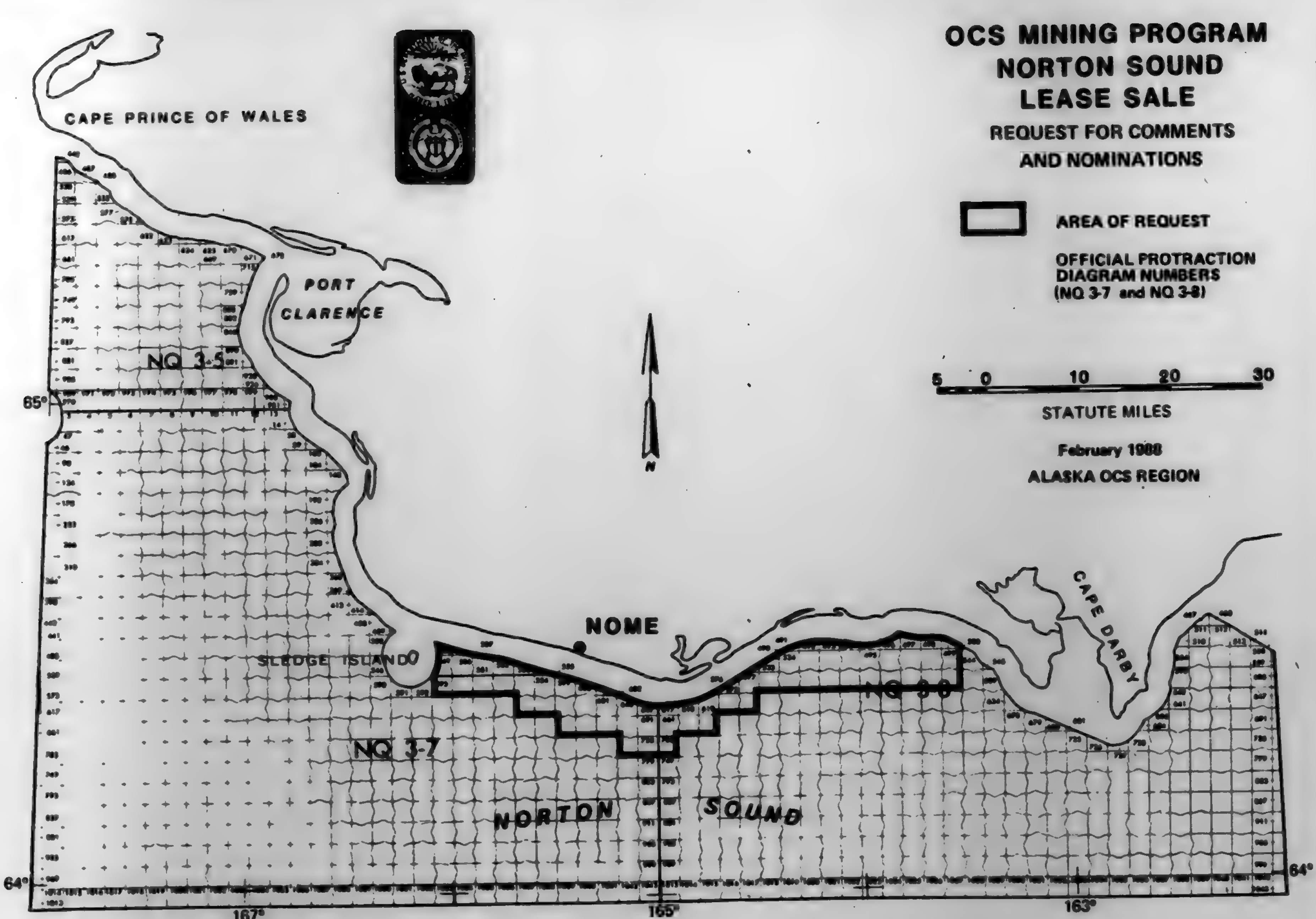
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REQUEST FOR COMMENTS
AND NOMINATIONS
AREA OF REQUEST
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(NQ 3-7 and NQ 3-8)
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S.J. Res. 251/Pub. L. 100-256

Designating March 4, 1988, as "Department of Commerce Day." (Mar. 8, 1988; 102 Stat. 24; 2 pages) Price: $1.00

S.J. Res. 262/Pub. L. 100-257

To designate the month of March 1988, as "Women's History Month." (Mar. 8, 1988; 102 Stat. 26; 1 page) Price: $1.00

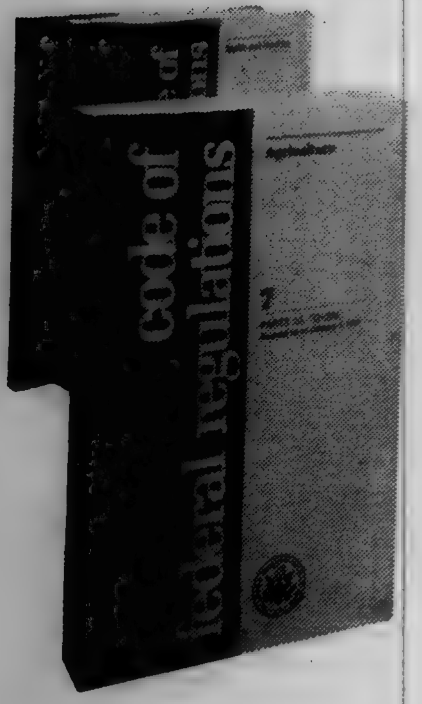

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St. Petersburg	813-893-3495
Tampa	813-229-7911
Orlando	305-422-1800

FORT LAUDERDALE, FL

WHEN: March 25; at 10:00 a.m.
WHERE: Room 8 A and B
Broward County Main Library
100 S. Andrews Avenue, Fort Lauderdale, FL.
RESERVATIONS: Call the St. Petersburg Federal Information Center on the following local numbers:

Fort Lauderdale	305-522-8531
Miami	305-536-4155
West Palm Beach	305-833-7566

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202-523-3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill Federal Building
Auditorium,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8123

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Rules and Regulations

Federal Register
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Monday, March 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 595

Physicians Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is amending the regulations for the Physicians Comparability Allowances (PCA) to comply with the revisions in the Federal Physicians Comparability Allowances Amendments of 1987 (Pub. L. 100-140). The law extends the PCA authority for three years, to September 30, 1990. Physicians Comparability Allowances are paid to physicians in certain situations where an agency is experiencing recruitment and retention problems. The revised regulations increase the maximum allowances and extend the criteria used to determine a physician's allowance category to include certain service as a physician in the Veterans Administration or as a medical officer in the Commissioned Corps of the Public Health Service. In addition, the revised regulations increase the time period for review of agency PCA program plans from 15 calendar days to 45 calendar days.

DATES: Interim rules effective March 14, 1988. Comments must be received on or before May 13, 1988.

ADDRESSES: Send or deliver written comments to: U.S. Office of Personnel Management, Personnel Systems and Oversight Group, Office of Pay Programs, Room 3353, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: JoAnn Perrini, (202) 632-7184.

SUPPLEMENTARY INFORMATION: Current regulations in 5 CFR Part 595 authorize the payment of Physicians Comparability Allowances (PCA) to eligible Federal physicians who enter into service agreements with their agencies. The allowances are paid only for certain categories of physicians for which the agency is experiencing recruitment and retention problems. The revised regulations increase the maximum allowance from $7,000 to $14,000 for a physician who has served as a Government physician for 24 months or less, and from $10,000 to $20,000 for one who has served as a Government physician for more than 24 months.

The revised regulations allow that for the purpose of determining the amount of the comparability allowance in relation to the length of service as a Government physician, certain other service will be creditable. Service as a physician in the Veterans Administration, under sections 4104 or 4114 of Title 38, or as a medical officer in the Commissioned Corps of the Public Health Service, under Title II of the Public Health Service Act (42 U.S.C Ch. 6A), would be deemed service as a Government physician. However, physicians currently employed under Title 38 and Title 42 are not eligible for the allowances provided in 5 U.S.C. 5948.

The revised regulations increase the time period for review of agency PCA program plans by the Office of Management and Budget from 15 calendar days to 45 calendar days.

Public Law 100-140 was not enacted until October 28, 1987, and agencies were not authorized to enter into PCA service agreements between October 1 and October 25, 1987. In addition, agencies may not apply the amended provisions of Pub. L. 100-140 any earlier than October 28, 1987.

Waiver of Notice of Proposed Rulemaking

Pursuant to sections 553(b)(3)(B) and (d)(3) of Title 5 of the United States Code, I find the good cause exists for waiving the general notice of proposed rulemaking and making this amendment effective immediately upon publication. The legislation requiring the revisions to the PCA regulations was enacted on October 28, 1987. It is critical that the agencies are permitted to immediately implement the revised regulations which are designed to improve the agencies' ability to recruit and retain physicians.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 595

Government employees, Health Professions, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 595 as follows:

PART 595—PHYSICIANS COMPARABILITY ALLOWANCES

1. The authority citation for Part 595 continues to read as follows:

Authority: 5 U.S.C. 5948.

2. Section 595.105 is amended by revising paragraph (b), redesignating paragraph (d) as paragraph (e) and paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 595.105 Determination of amount of comparability allowance.

* * * * *

(b) Under the subsection (a) of 5 U.S.C. 5948, the comparability allowance payable to any Government physician may not exceed $14,000 per annum for a physician who has served as a Government physician for 24 months or less, or $20,000 per annum for a physician who has served as a Government physician for more than 24 months. For the purpose of determining a physician's length of service for this requirement, prior service as a Government physician need not have been continuous, but any periods of leave without pay may not be counted as service.

(c) Subsection (a) of 5 U.S.C. 5948 allows that for the purpose of determining length of service as a Government physician, service as a physician in the Veterans Administration, under sections 4104 or 4114 of Title 38, or active service as a medical officer in the Commissioned Corps of the Public Health Service, under Title II of the Public Health Service Act (42 U.S.C. ch. 6A), would be deemed service as a Government physician. Physicians currently employed under title 38 in the Veterans Administration or under title 42 as Commissioned Corps officers of the Public Health Service are not eligible for the allowances provided in 5 U.S.C. 5948.

* * * * *

§ 595.107 [Amended]

3. Section 595.107, paragraph (c), is amended by revising the phrase "15 calendar days" to read as "45 calendar days."

[FR Doc. 88–5435 Filed 3–11–88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Relaxation of Inspection Requirements for Shipments of Potatoes to District 5 and Spokane County in District 1 in Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which relaxed inspection requirements for certain shipments of potatoes grown in Washington. This action will facilitate the movement of potatoes from growers to packing facilities and reduce inspection costs. This final rule also includes all of the other handling requirements currently in effect under the marketing order. The inclusion of these requirements will make them easier for interested persons to locate and use, because they will be published in the Code of Federal Regulations. The inclusion of these requirements does not result in a change in regulatory effect.

EFFECTIVE DATE: April 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946 (7 CFR Part 946), as amended, regulating the handling of Irish potatoes grown in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been assigned OMB No. 0581–0070.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of Washington potatoes subject to regulation under the Washington potato marketing order and approximately 361 producers in Washington. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Washington potatoes may be classified as small entities.

The interim final rule was issued on October 27, 1987, and was published in the **Federal Register** on November 2, 1987 (52 FR 41946). That rule amended, effective November 2, 1987, the handling regulation for Washington potatoes set forth in § 946.336 (46 FR 39117, July 31, 1981; 47 FR 33245, August 2, 1982; 47 FR 38493, September 1, 1982; 48 FR 31851, July 12, 1983; 49 FR 32539, August 15, 1984; 52 FR 15490, April 29, 1987). That rule provided that interested persons could file written comments through December 2, 1987. No comments were received.

Section 946.54 of the order provides authority to modify, suspend, or terminate regulations in order to facilitate shipments of potatoes for grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon. Section 946.55 authorizes regulations to prevent the transportation of such potatoes to points outside the production area. Prior to the issuance of the interim final rule, potatoes which were shipped for grading and storing purposes to District 5 for the period July 15 through August 31 each year and to Morrow and Umatilla Counties in Oregon throughout the year were exempted from inspection (§ 966.336 of the regulations). If they were subsequently reshipped for other than exempted purposes, the potatoes had to be inspected and meet the requirements of the regulations. The interim final rule expanded the inspection exemption by allowing uninspected potatoes to be shipped for grading or storing purposes to District 5 the entire year and by also allowing such shipments to Spokane County in District 1 the entire year.

Many growers outside of District 5 and Spokane County in District 1 prefer to deliver their potatoes to packing facilities in these areas because the facilities are closer to their farming operations. However, the handling requirements in § 946.336 required such potatoes to be inspected and certified as meeting minimum grade, size, maturity, and packing requirements before they were moved within the production area. From the 1978–79 through the 1981–82 seasons potatoes were allowed to be moved into District 5 and Spokane County in District 1 throughout the year for grading and storing without first having the potatoes inspected. Several years ago, when potatoes started to appear on the fresh market without the required inspection, this procedure was discontinued in order to improve compliance and prevent the marketing problems associated with such uninspected shipments.

However, the need to facilitate the movement of potatoes from growers to packing facilities without added cost persisted. In addition, handlers in District 5 and Spokane County in District 1 are near urban areas with sizable wholesale/retail markets, and many handlers repack bulk potatoes into consumer size containers. The regulation requires potatoes which are regraded, resorted, repacked, or in any other way further prepared for market to be reinspected. As a result, with the exception of those shipments which were exempted, potatoes shipped from other districts within the area of production had to be inspected twice, first within the district grown, and second after repacking.

To make it more convenient for producers to deliver their potatoes, and reduce inspection costs, the committee recommended that shipments of uninspected potatoes into District 5 throughout the year, and into Spokane County in District 1 for grading and storing purposes should again be allowed. The committee plans to monitor these shipments more closely than it did previously to prevent shipments of uninspected potatoes into the fresh market.

This action adopts the provisions of the interim rule with a modification for clarity. The impact of this action is expected to be positive and to benefit the Washington potato industry as a whole. By not having to obtain inspection twice on potatoes shipped to certain areas for grading, storing, or repacking, handlers' inspection costs will be lessened.

Also, under this action, the entire handling regulation (§ 946.336) will be published in the **Federal Register**. The purpose for taking this action is to consolidate the handling regulation, and the various amendments to it, into one document and have the entire regulation published in the Code of Federal Regulations. This will make the requirements easier to locate and use. In addition, this action deletes as unnecessary an earlier effective date in the introductory text and changes citations to the United States Standards for Grades of Potatoes and for Grades of Peeled Potatoes to reflect their current codification in the Code of Federal Regulations. A conforming change is made in subparagraph (d)(8) to reflect the changes made by this final rule concerning District 5. Pursuant to subparagraph (d)(8), potatoes which were shipped for grading and storing purposes to District 5 for the period of July 15 through August 31 each year were exempt from inspection. Since this final rule allows uninspected potatoes to be shipped for grading and storing purposes to District 5 the entire year, the exemption in subparagraph (d)(8) is unnecessary and therefore is deleted. Further, paragraph (j) *Forms* is deleted as unnecessary because the applicable provisions concerning OMB control numbers assigned pursuant to the Paperwork Reduction Act currently appear in 7 CFR 900.601.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For reasons set forth in the preamble, the interim rule amending § 946.336 which was published at 52 FR 41946 on November 2, 1987, is adopted as a final rule as changed, and the entire text of § 946.336 is republished as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat., 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is revised to read as follows. This section will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e) or (f) of this section, except that shipments of the non-white fleshed varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a) *Minimum quality requirements*—(1) *Grade: All varieties*—U.S. No. 2 or better grade.

(2) *Size:* (i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except round red varieties may be Size "B" (1½ inches minimum diameter), if U.S. No. 1.

(ii) *Long varieties*—All long varieties must be 2⅛ inches (54.0 mm) minimum diameter or 5 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during remainder of each season, except White Rose variety from District 5 must be 1⅞ inches in diameter through each season.

(iii) *Tolerances*—The tolerances for size contained in the United States Standards for Grades of Potatoes shall apply except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size of 5 ounces, a 3 percent tolerance for undersize shall apply.

(3) *Cleanness:* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements*—(1) *Round and White Rose varieties:* Not more than "moderately skinned."

(2) *Other long varieties (including but not limited to Russet Burbank and Norgold):* Not more than "slightly skinned."

(c) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(d) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Seed;

(4) Prepeeling;

(5) Canning, freezing, and "other processing" as hereinafter defined;

(6) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon, in District 5, or in Spokane County in District 1; or

(7) Export, except to Alaska or Hawaii.

Shipments of potatoes for the purpose specified in paragraphs (d) (1) through (7) of this section shall be exempt from inspection requirements specified in paragraph (g) of this section except shipments pursuant to paragraph (d)(6) of this section shall comply with inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d) (1), (2), (3), and (5) of this section shall be exempt from assessment requirements specified in § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment, a copy of which must also accompany each shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon, to District No. 5, or to Spokane County in District No. 1 shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment unless other arrangements are made;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for export shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Such information shall include the quantity of potatoes to be shipped and the name and address of the exporter;

(ii) After the certificate is approved and the shipment is made, furnish the committee with a copy of the on-board bill of lading applicable to such shipment unless other arrangements are made;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 20 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 20 hundredweight of potatoes.

(g) *Inspection.* Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment. Further, any bulk load shipments of potatoes not relieved in paragraphs (d) or (f) of this section must also be accompanied by a Shipping Clearance Report issued by the Federal-State Inspection Service and valid at the time of shipment.

(h) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "not seriously damaged by dirt," "fairly clean," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), including the tolerances set forth in it. The term "prepeeling" means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433). The term "other processing" has the same meaning as the term appearing in the Act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

(i) *Applicability to imports.* Pursuant to section 8e of the Act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the red skinned round type imported during the months of July and

August each year shall meet the minimum grade, size, quality, and maturity requirements for round varieties specified in paragraphs (a) and (b) of this section.

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5405 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

Irish Potatoes Grown in Colorado—Area 2; Change in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (except Russet Burbank) grading U.S. No. 2 from 1⅞ inches to 2 inches minimum diameter or four ounces minimum weight. This action also changes the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. The size change will also apply to imported red skinned, round type potatoes. This action is intended to prevent potatoes of undesirable size and quality from being distributed in fresh market channels.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 948 (7 CFR Part 948), as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 25 potato importers subject to the requirements of the potato import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The Colorado Agricultural Statistics Service estimated planted acreage for the 1987–88 crop in the San Luis Valley (Area 2) at 59,000 acres, an increase of 4,000 acres over the 55,000 acres harvested in 1986–87. Shipments during the 1986–87 season totaled 29,745 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,814,866 cwt., entered the fresh market, and the remaining three percent (462,103 cwt.) was shipped to processors. Culls approximated 1.4 million cwt, which were utilized for starch.

The breakdown of fresh shipments by variety was 70.4 percent Centennial Russets (9,725,665 cwt.), 23.5 percent Russet Burbanks (3,246,494 cwt.), 5.9 percent reds (815,077 cwt.), and 0.2 percent other varieties (27,630 cwt.).

Two percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 60 percent U.S. No. 1, 22 percent U.S. Commercial, 17 percent U.S. No. 2, and one percent U.S. No. 1/Size B.

The handling requirements for fresh Colorado Area No. 2 potatoes are specified in § 948.386 (46 FR 52324, October 27, 1981) and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must grade at least U.S. Commercial and be at least 2 inches in diameter or at least 4 ounces in weight, or grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All varieties of potatoes may be Size B if graded at U.S. No. 1. Size B potatoes have a minimum diameter of 1⅛ inches and a maximum diameter of 2¼ inches and no minimum or maximum weight requirement. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period September 1 through October 31, specify that all potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This final rule will increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (other than Russet Burbank) grading U.S. No. 2, from 1⅞ inches to 2 inches or a 4 ounce minimum weight. This action will also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year.

Changes will be made in the introductory text of § 948.386 in paragraphs (a)(1), (a)(3), (b), and (h) to help maintain the quality of Colorado Area 2 potatoes. This final rule is being issued pursuant to § 948.22 of the order.

Notice of this change was published in the February 3, 1988, issue of the **Federal Register** (53 FR 3039) affording interested persons 15 days in which to submit written comments. None were received.

The changes in the size requirements will eliminate the less desirable sizes of potatoes from the marketplace without shorting the market. Requiring handlers to ship larger sized potatoes, which are preferred in the marketplace, is expected to foster increased consumption and have a positive impact on the industry.

The change in the starting date of the maturity requirements recognizes the industry's switch to earlier maturing varieties and the need to ensure the maturity of early season shipments in the interest of the Colorado potato industry and potato consumers. The maturity requirements are based on the degree of skinning on a shipment of potatoes, and are effective during the period September 1 through October 31 each season. Maturity requirements relate to the amount of skin on the potato, which is a factor in the storability of potatoes. All varieties of potatoes that grade U.S. No. 2 cannot be more than "moderately skinned" which means that not more than 10 percent of the potatoes in a lot have more than one-half of the skin missing or "feathered." For all other grades, potatoes cannot be more than "slightly skinned" which means that not more than 10 percent of the potatoes in the lot have more than one-fourth of the skin missing or "feathered." These requirements prevent badly skinned potatoes from being distributed to fresh market outlets.

In recent years the producers in this area have switched to earlier maturing varieties, and season shipments now begin in late August rather than September. To reflect these changes in production and marketing practices, the starting date for maturity requirements will be changed to August 25 each season. The earlier starting date is in the interest of producers, handlers, and consumers and will have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 2. The earlier starting date enables the Colorado Area No. 2 potato industry to better compete with other potato producing areas in the United States by ensuring the shipment of qualities acceptable to buyers early in its season. The shipment of unacceptable quality potatoes early in the season can have a negative impact on market demand and grower returns throughout the entire season.

While this regulation will increase the minimum diameter for round variety potatoes and all long varieties (except Russet Burbank) grading U.S. No. 2 and also establishes an earlier starting date for maturity requirements for the 1988–89 crop year, exemptions to the handling regulation will continue to be available. For example, each person may handle up to but not more than 1,000 pounds of potatoes without regard to the requirements of the handling regulation. This exception does not apply to any shipment which exceeds 1,000 pounds of potatoes. Furthermore, grade, size, maturity, and inspection requirements are not applicable to shipments of potatoes for seed, livestock feed, relief or charity, or canning, freezing, and "other processing."

Quality assurance is very important to the Colorado (Area 2) potato industry both within and outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action will increase the quality of potatoes in the marketplace, it will also be of benefit to both Colorado (Area 2) potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports, then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (§ 980.1, 34 FR 8043) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon potatoes grown in Colorado Area 2 are applied only to imports of red-skinned, round type potatoes and only during the months of September through June. During July and August, the import requirements are based upon those in effect for potatoes grown in Washington.

While the maturity requirements for Colorado Area 2 potatoes are being made effective at an earlier date, it has been determined that shipments from this area in late August are minimal, and that those from Washington continue to dominate throughout the month. Imports of red- skinned, round type potatoes during July and August are in most direct competition with the same type as produced in Washington State, the area covered by Order No. 946. Therefore, the import requirements for round red varieties will continue to be based upon those established for Colorado Area 2 only from September 1 through June 30. Accordingly, the language of the determinations made in § 980.1(a)(2) concerning direct competition does not have to be changed.

While no change is made in the import requirement pertaining to maturity, imports of round red-skinned potatoes will have to meet the increased minimum size requirement (from 2 to 2⅛ inches) during the September 1 to June 30 period. No change is required in the language of § 980.1 or § 948.386(h) *Applicability to imports*. However, a conforming change to § 948.386(h) is made to delete obsolete language. A change to the introductory paragraph of § 948.386 is made to delete language concerning a prior effective date.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that increasing the minimum diameter for round and long variety (except Russet Burbank) potatoes and imported round, red potatoes, and establishing an earlier effective date for maturity requirements beginning with the 1988–89 season, will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the harvesting and shipping of Colorado Area 2 potatoes has begun and it is desirable to make the rule changes effective for as much of the current season as possible. However, it is also found that delaying the effective date of this action until 10 days after publication in the **Federal Register** would provide the committee adequate time to notify the affected handlers of this action prior to its effective date.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 (46 FR 52324, October 27, 1981) is amended by revising the introductory text, paragraphs (a)(1), (a)(3), (b), and (h) to read as follows. This regulation will appear in the Code of Federal Regulations.

§ 948.386 Handling regulation.

On or after March 24, 1988, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Minimum grade and size requirements.* (1) Round varieties, U.S. No. 2, or better grade, 2⅛ inches minimum diameter.

* * * * *

(3) *All other long varieties except Russet Burbank.* U.S. Commercial, or better grade, 2 inches minimum diameter or 4 ounces minimum weight, or U.S. No. 2 grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

(b) *Maturity (skinning) requirements.* From August 25 through October 31 minimum maturity requirements shall be: * * *

* * * * *

(h) *Applicability to imports.* Pursuant to section 8e of the Act and § 980.1 *Import regulations* (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 1 through June 30 each year shall meet the minimum grade, size, and quality requirements prescribed in paragraph (a), and during the period September 1 through October 31 shall meet the maturity requirements as specified in paragraph (b) of this section.

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5404 Filed 3–11–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1240

Honey Research, Promotion and Consumer Information Order; Change of Refund Application Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will change the dates by which applications for assessment refunds from honey producers, producer-packers and importers must be filed with the National Honey Board hereinafter referred to as the Board. The change is designed to allow sufficient time to process applications for refunds of assessments paid under the program. The Honey Research, Promotion, and Consumer Information Order and Act require refund applications to be processed by June and December of each year. To meet this requirement, the application deadlines will be April 30 (previously May 31) and October 31 (previously November 30).

EFFECTIVE DATE: April 13, 1988.

FOR FURTHER INFORMATION CONTACT: Perry R. Letson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: 202–447–4140.

SUPPLEMENTARY INFORMATION: The rule is issued under the Honey Research, Promotion and Consumer Information Order (7 CFR Part 1240) (order). The order is effective under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 *et seq.*) (Act).

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The order issued pursuant to this Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The honey industry is made up of many small entities, and several larger entities, which are engaged in the production, importation, and marketing of honey. There are generally three categories of honey producers in the United States: The hobbyist; the part-time beekeeper; and commercial beekeepers. There are about 190,000 hobbyist beekeepers; about 10,000 part-time beekeepers; and about 1,600 commercial beekeepers. Because the Act and the order exempt persons who annually produce or import less than 6,000 pounds of honey, hobbyist beekeepers and a significant number of part-time beekeepers are not required to pay assessments and thus are not affected by this action.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of producers, producer-packers and importers of honey may be classified as small entities.

This rule changes the dates by which honey producers, producer-packers and importers must submit applications for assessment refunds and does not affect their eligibility for refunds. Accordingly, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in Part 1240, including § 1240.117, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0153 under the provisions of the Paperwork Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*). This rule will not increase the information collection requirements under the Paperwork Reduction Act. The Act and the order provide that honey producers, producer-packers, and honey importers importing 6,000 pounds of honey or more per year pay an assessment on honey entering channels of commerce in the United States. Honey handlers are required to act as collection agents for honey producers subject to the provisions of the order. The U.S. Customs Service collects the assessments on imported honey. Assessments are paid to the Board, which administers the promotion program.

The order provides that a refund of assessments may be obtained by submitting to the Board documentation of assessments paid and that any demand for a refund is to be made within the time and in the manner prescribed by the Board and approved by the Secretary. The Act and the order stipulate that refunds will be made in June and December.

Section 1240.117(b) of the regulations provides that any producers, producer-packers only for their own production, or importers requesting a refund must mail an application on a prescribed form to the Board within 90 days from the date the assessment becomes payable under the regulations. Pursuant to § 1240.117(d), refund applications may be received until May 31 for refunds payable in June and until November 30 for refunds payable in December. The

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May and November assessment reports are not due from collection agents until June 15 and December 15, respectively. The Board's refund processing time, therefore, may be limited to 15 days, a period which is insufficient in light of the processing steps required and the number of refund requests submitted.

This action changes the refund application deadlines from May 31 to April 30, and from November 30 to October 31. It will allow more time for the National Honey Board to verify refund applications by correlating them with monthly assessment reports received from collection agents, and to process the refund payments.

Notice of this change was published in the November 4, 1987, issue of the **Federal Register** (52 FR 42300) affording interested persons 30 days in which to submit written comments. None were received.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and record keeping requirements, Market development, Consumer information.

For the reasons set forth in the preamble, 7 CFR Part 1240 is amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: Honey Research, Promotion, and Consumer Information Act, Secs. 1–13, 98 Stat. 3115; 7 U.S.C. 4601–4612.

2. Section 1240.117 is amended by revising paragraph (d) to read as follows:

Subpart: General Rules and Regulations

§ 1240.117 Refunds.

* * * * *

(d) *Payment of refund.* Refunds will be made in June and December only; applications for refunds payable in June must be received by April 30 and applications for refunds payable in December by October 31. For joint application the remittance shall be payable to all eligible producers, producer-packers or importers signing the refund application form.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5539 Filed 3–11–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide that lenders participating in the guaranteed farm loan program must enter into an agreement with FmHA that if liquidation of a farm loan account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of this part, and request a determination of eligibility by FmHA. The lender may not initiate any foreclosure action on the loan until 60 days after a determination has been made by FmHA with respect to the borrower's eligibility to participate in the program. This legislation requires these conditions be placed in every contract of guarantee on a farm loan entered into under the consolidated Farm and Rural Development Act after the date of enactment. President Reagan signed the Agricultural Credit Act of 1987 into law on January 6, 1988. The intended effect of this action is to immediately comply with this provision of the Agricultural Credit Act of 1987.

DATES: March 14, 1988.

Comments must be submitted on or before April 13, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farmer Programs Loan Making Division, USDA, Room 5440–S, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291; and it has been determined to be non-major because there is no substantial change from practices under existing rules, and no annual effect on the econmy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable because of the requirement of section 613(b) of the Agricultural Credit Act of 1987, and for the same reason good cause is found for making this final rule effective upon publication.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, No. 10.416 Soil and Water Loans, 10.422 Business and Industrial Loans, and 10.410 Very Low Income and Low Income Housing Loans. For the reasons set forth in the Interim rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and record keeping requirements contained in this regulation have been approved by the Office of Management and Budget under control numbers 0575–0024 and 0575–0079.

The 1987 Agricultural Credit Act signed into law by President Reagan on January 6, 1988, requires that the Agency take immediate action on certain provisions of the Act upon enactment of the law. Specifically, Title VI, section 613(b) requires that the Agency immediately stipulate in all contracts of guarantee entered into with guaranteed lenders that the lender of a guaranteed farm loan may not initiate foreclosure action on the loan until 60 days after a determination is made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Need for Governmental Action

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed loans, Operating (OL) guaranteed loans, and Soil and Water (SW) guaranteed loans. FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land Banks, Production Credit Association, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

FmHA is implementing these changes immediately because of the requirement to immediately comply with Title VI, section 613(b) of the Agricultural Credit Act of 1987.

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

Appendix A—[Amended]

2. Appendix A—Form FmHA 449–34 is revised to read as follows:

BILLING CODE 3410-07-M

APPENDIX A

USDA-FmHA
Form FmHA 449 34
(Rev 2-88)
Type of Loan. ______________
Applicable 7 C.F.R. Part 1980
Subpart ______________

LOAN NOTE GUARANTEE

	State
	County
	Date of Note
Borrower	FmHA Loan Identification Number
Lender	Lender's IRS ID Tax Number
Lender's Address	Principal Amount of Loan $

The guaranteed portion of the loan is $ ______________ which is ______________ (______________ %) percent of loan principal. The principal amount of loan is evidenced by ______________ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note ______________ in the face amount of $ ______________ and is number ______________ of ______________.

LENDER'S IDENTIFYING NUMBER	*FACE AMOUNT*	*PERCENT OF TOTAL FACE AMOUNT*	*AMOUNT GUARANTEED*
	$	%	$
TOTAL	$ ______________	100%	$ ______________

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, P.L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, P.L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et. seq.) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
   - a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and
   - b. Any loan subsidy due and owing, and
   - c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 449-36, "Assignment Guarantee Agreement," is used.

Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

CONDITIONS OF GUARANTEE

1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments.

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

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The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. Loan Subsidy.

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of ______________ percent per year. Payments will be made annually.

15. Notices.

All notice and actions will be initiated through the FmHA ______________________________

for ______________________________ (State) with mailing address at the date of this instrument:

____

____

UNITED STATES OF AMERICA
Farmers Home Administration

By: ______________________________

Title: ______________________________

____
(Date)

Assumption Agreement by ______________________ dated ______________________, 19___

Assumption Agreement by ______________________ dated ______________________, 19___

**If not applicable delete paragraph prior to execution of this instrument.*

Position 2

FmHA 449-34 (Rev. 2-88)

BILLING CODE 3410-07-C

Appendix B—[Amended]

3. Appendix B—Form FmHA 449-35 is revised to read as follows:

USDA-FmHA
Form FmHA 449-35
(Rev. 2-88)

Position 5

FORM APPROVED
OMB NO. 0575-0024

APPENDIX B

LENDER'S AGREEMENT

Type of Loan: ______________

Applicable 7 CFR Part 1980 Subpart ______________

FmHA Loan Ident. No.

____ (Lender) of

____ has made a loan(s) to

____ (Borrower)

____ in the principal

amount of $ ______________ as evidenced by ______________ note(s)

(include Bond as appropriate) described as follows: ______________________________

____

____

____

____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a

percentage of any loss on the loan not to exceed ______________ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed ______________ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud of misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511

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1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $ ______________ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

____

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980—44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

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C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accured interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans(s) accuring after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to faciliate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accuring from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder'(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the bolder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through FmHA for ______________________

(State) with mailing address at the date of this instrument ______________________

____

Dated this ____________________ day of ____________________, 19____

LENDER:

ATTEST: ______________ (SEAL)

By ______________________________

Title ______________________________

UNITED STATES OF AMERICA
Farmers Home Administration

By ______________________________

Title ______________________________

Appendix D—[Amended]

4. Appendix D—Form FmHA 1980–27 is revised to read as follows:

APPENDIX D

USDA-FmHA
Form FmHA 1980-27
(Rev 2-88)

CONTRACT OF GUARANTEE
(Line of Credit)

Type of Loan ☐OL ☐EL or ☐EE	
Case No	
State	
County	

Lender	Lender's IRS Tax No	Date of Line of Credit Agreement
Lender's Address		Line of Credit Ceiling $
Borrower's Name and Address		

The guaranteed portion of this line of credit is ______________ % of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1 or 2 below

1 Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and

b Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2 The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1 Line of Credit Servicing

Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.

3 Full Faith and Credit

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

Position 2 FmHA 1980-27 (Rev. 2-88)

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4 . Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.

5 Custody of Unguaranteed Portion

The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.

6 When Guarantee Terminates

This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit; or (b) upon full payment of any loss obligation under this Contract: or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7 . Settlement

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

8 Notices

All notices and actions will be initiated through the FmHA County Supervisor for ______________________________(County)

______________________________________ (State) with mailing address at the date of this instrument

____

____

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

______________________ By: ______________________________
(Date)

Title: ______________________________

Assumption Agreement by ______________________________ dated ______________________________ , 19 ___

Assumption Agreement by ______________________________ dated ______________________________ , 19 ___

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Appendix E—[Amended]

5. Appendix E—Form FmHA 1980-38 is revised to read as follows:

APPENDIX E

USDA-FmHA
Form FmHA 1980-38
(Rev 2-88)

FORM APPORVED
OMB NO. 0575-0079

Type of Loan
☐ OL ☐ EL or ☐ EE
FmHA Loan ID No.

LENDER'S AGREEMENT
(Line of Credit)

Applicable 7 CFR Part 1980. Subpart ____________________

____________________ (Lender) of ____________________

has established a line of credit to ____________________ (Borrower) for the fiscal period ending

____________________, 19___, for the purpose of ____________________

____

in the maximum sum of $____________ as evidenced by a "Line of Credit Agreement" dated ____________, 19___

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed ____________ % of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed ________ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II Full Faith and Credit.

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

This form is used by lenders to meet certain conditions precedent to issuance of a Contract of Guarantee in Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan cases. This report contains information that is required to provide future reports and information which must be agreed to by the lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee

IX. Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner
2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.
3 Inspecting the collateral as often as necessary to properly service the line of credit.
4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $ ____________ without written concurrence of FmHA, the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch
6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.
8. Assuring that the Borrower obtains marketable title to the collateral.
9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.
10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".
11. Obtaining from the Borrower periodic financial statements under the following schedule ____________

____

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

2. Monitoring the use of loan funds to assure that they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

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X. Defaults.

A. The Lender will notify FmHA when a Borrower is thrity (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR. Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

XI. Liquidation.

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.
3. A proposed method making the maximum collection possible on the indebtedness.
4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation proposal. FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.
2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

   After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

   After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.
4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved.
   a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.
   b If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.
5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.
6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liqiuidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII. Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVII. Notices.

All notices and actions will be initiated through the FmHA County Supervisor for ____________________ (County)

________________________________(State with mailing address at the date of this instrument):

____

Dated this ________________ day of ____________________, 19__

LENDER:

ATTEST. ____________________ SEAL

By ______________________________

Title ______________________________

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By ______________________________

Title ______________________________

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

6. Section 1980.115 is revised by amending Administrative paragraph B.2 to read as follows:

§ 1980.115 County Committee Review.

* * * * *

Administrative

* * * * *

B. * * *

2. Set forth in the space provided on Form FmHA 449–14 (A.1., above) or Form FmHA 1980–15 (A.1., above) any special conditions of approval, including requirements for security, improved management practices, relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart G of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender. The loan approval official will also include the following requirement as condition of approval in the Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit if Form FmHA 1980–15 is used) until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program."

An attachment to the form may be used, if necessary. Return Forms FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution.

* * * * *

7. Exhibit A of Subpart B is amended by revising paragraph IV B to read as follows:

Exhibit A—Approved Lender Programs—Farm Ownership and Operating Loans

* * * * *

IV. * * *

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first loan or line of credit developed by an ALP lender. FmHA will examine the lender file on each guaranteed OL at least quarterly and each guaranteed FO at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County Office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of Part 1980 of this chapter.

Each Approved Lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement (Attachment 1 or 2 to this Exhibit) so that the Lender recognizes that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under this Exhibit and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated __________." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated __________." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County Office file maintaned for each Loan Note Guarantee and Contract of Guarantee issued.

Exhibit A of Subpart B—[Amended]

8. Exhibit A of Subpart B, Attachment 1 is amended by revising paragraph VIII B to read as follows:

Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

* * * * *

VIII. * * *

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

* * * * *

9. Exhibit A of Subpart B, Attachment 2 is amended by revising paragraph VIII B to read as follows:

Attachment 2—Farmers Home Administration Approved Lender Program (ALP)

* * * * *

VIII. * * *

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

* * * * *

Date: January 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–5412 Filed 3–11–88; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 88–147]

Settlement of Insurance

Date: March 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is amending its regulations pertaining to the settlement of insurance by deleting the requirement that each co-owner of a joint account must personally execute a signature card for that account if that account is to be insured separately. The amendments also consolidate provisions of the regulations governing joint accounts, clarify the provisions affecting joint accounts established by intermediaries, and revise the Appendix and examples illustrating joint account insurance coverage.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director for Insurance, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445; or Michelle Kosse, Acting Chief, Legal Review Section, Insurance Division, Federal Savings and Loan Insurance Corporation, (202) 254–2292; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 564.9 of the Board's Settlement of Insurance Regulations ("Insurance Regulations") sets forth the requirements for separate insurance coverage of a joint account. Currently, each holder of a joint account not evidenced by a negotiable certificate of deposit must personally execute a signature card for it and must possess equal withdrawal rights, in order to obtain separate insurance coverage. On June 30, 1987, the Board proposed to delete the signature card requirement and to consolidate and clarify the treatment of joint accounts. *See* Board Resolution No. 87–738, 52 FR 26017 (July 10, 1987).

Nine comments were received in response to this proposal. Eight commenters supported the proposal to eliminate the signature card requirement. One commenter opposed the proposal. The commenters favoring the revision agreed that it should alleviate the difficulties the prior rule had caused some depositors and lighten the recordkeeping requirements of insured institutions. The commenter opposing the amendment argued that deleting the signature card requirement would encourage fraud and deceit on the part of depositors seeking separate joint account coverage of what are, in fact, individual funds.

Two commenters requested elimination of the requirement that joint account holders possess equal withdrawal rights, while two commenters favored retaining the equal withdrawal rights requirement. Commenters opposing the equal withdrawal rights requirement expressed the concern that the requirement of equal withdrawal rights would prejudice some holders of joint accounts established as tenancies in common, because tenants in common contributing unequal amounts would have unequal withdrawal rights and thus might not qualify for separate joint account insurance coverage. Those opposing the requirement, however, did not offer an alternative to minimize the heightened risk of fraudulently created "joint accounts" where only one named holder had the right to withdraw funds from the account of knowledge or the account's existence. One commenter urged the Board to clarify when state law will be relevant in insurance determinations on joint accounts. One commenter urged the Board to clarify the two-step process used in determining the insurance coverage of joint accounts.

After reviewing the comments received and taking into account the FSLIC's experiences in liquidating institutions in default, the Board has determined to adopt the proposal in substantially the form proposed, with certain modifications discussed below. The Board is also revising the Appendix to 12 CFR Part 564 and the illustrative examples contained therein to reflect today's amendment and to clarify the regulation's application in common fact situations. The Board believes that these revisions will assist both accountholders and institutions in determining the insurance coverage afforded joint accounts.

Under the regulation as adopted, all named holders of a joint account no longer must personally execute a signature card for that account if the account is to qualify for separate insurance coverage. As discussed in the proposal, the Board believes that the requirement's utility as a deterrent to fraud is outweighed by the hardship that may be caused by the loss or destruction of a single account record, the signature card, through no fault of the accountholder. The Board wishes to make several points in this regard, however. First, institutions should still make every effort to obtain the signatures of all named holders of a joint account for their own recordkeeping purposes. *See* 12 CFR 563.17–1(c)(8) (1987). Second, signature cards will continue to be important account records evidencing knowledge of the existence of a joint account and the capacity in which it is held. Finally, if available evidence indicates that an ostensible joint account is merely an attempt to increase insurance coverage fraudulently on individual funds, the FSLIC may pay claims for insurance on the basis of actual rather than ostensible ownership. *See* 12 CFR Part 564, Appendix (1987).

Under the revised regulation, accounts held jointly on the books and records of an insured institution where all named holders have equal withdrawal rights shall be treated as joint accounts for purposes of insurance coverage. The Board has determined to retain the equal withdrawal rights requirement for joint accounts. It serves a useful purpose in deterring the fraudulent use of joint accounts to increase FSLIC insurance coverage, without the potential for inadvertent hardship resulting from reliance on a single account record that has existed with the signature card requirement. The final regulation follows the proposed regulation in providing that the withdrawal rights to an account will be deemed equal for purposes of insurance coverage unless the books and records of the insured institution indicate that the accountholders affirmatively created the account with unequal withdrawal rights between them. In this regard, it should be noted that boilerplate language on a signature card indicating that only those signing the card may withdraw funds, standing alone, is not enough to overcome this regulatory presumption.

The existing withdrawal rights requirement has consistently been interpreted by the Board as the right of each holder of a joint account to withdraw funds from the account on the same basis as any other holder of the account. This characteristic distinguishes a joint account from other capacities in which accounts are held. As discussed in the proposal, the Board believes that the addition of the word "equal," codifying this longstanding Board interpretation, makes the regulation easier for accountholders and insured institutions to understand and apply. If none of the accountholders may withdraw funds from the account, each would still be considered to have equal withdrawal rights for purposes of determining insurance coverage. Thus, jointly owned negotiable certificates of deposit would be considered as joint accounts for insurance purposes even though no owner had withdrawal rights before maturity of the certificate.

Several commenters expressed the concern that this requirement might result in some tenancies in common failing to qualify for joint account insurance coverage. Tenants in common may hold a joint account to which they have contributed unequal amounts, and each may only have the right to withdraw the funds he or she contributed. The Board is amending the provisions of the Appendix discussing joint accounts to clarify the Board's interpretation of "equal" withdrawal rights in this context. The Board deems a joint account shown on the institution's records as a tenancy in common to meet the equal withdrawal rights requirement if the tenants in common possess withdrawal rights commensurate with their ownership interests. The institution's records must reflect both the account's status as a tenancy in common and the different levels of contributions of funds.

In the FSLIC's experience, an insured institution's records are often silent as to the treatment of funds in a joint account upon the death of a named accountholder. In such cases the FSLIC has found that most joint accountholders intend for the funds in the joint account to pass to the surviving accountholder or accountholders on the death of any named joint accountholder. Therefore, the Board is amending the regulation to incorporate this experience into a presumption that, unless otherwise stated in the records of the institution, a joint account will be treated as a joint tenancy with a right of survivorship for insurance purposes, as illustrated in example 9, which has been added to the Appendix following 12 CFR Part 564.

In response to a comment requesting an explanation of the relevance of state law in determining joint account coverage, the Board is also taking this opportunity to reiterate its longstanding position that insurance coverage depends on how the books and records of an insured institution show accounts as held. The National Housing Act mandates security for depositors investing funds in federally insured savings and loan institutions through uniform nationwide deposit insurance coverage. Evidencing this congressional intent, the statute provides for uniform joint account insurance coverage, regardless of state community property laws. *See* 12 U.S.C. 1724 (b) (1982). The FSLIC's experience has demonstrated the importance of uniform nationwide standards for joint accounts, as depositors hold joint accounts in institutions of different states with little, if any, knowledge of particular state laws that might be read to affect their insurance coverage. The Appendix to 12 CFR Part 564 is therefore hereby amended by deleting reference in the examples to joint ownership that is "valid under state law." The purpose in deleting such sections is to clarify that depositors may rely on the provisions set forth in the Insurance Regulations in determining the amount of their joint account insurance coverage and that state law not affect the amount of federal deposit insurance coverage available for joint accounts. The FSLIC will continue to look to the institution's books and records, including signature cards, savings instruments, and computer records, to determine whether an account is held jointly and is insured accordingly. Thus, the FSLIC will not consider state law as determinative of which accounts qualify for joint account insurance coverage upon the default of an insured institution. State law will continue to govern the relationship between the thrift institution and its accountholders on issues such as passage of funds upon the death of a named acccountholder. This regulation is not intended to affect such relationships.

Finally, the Board is taking this opportunity to set forth the circumstances under which accounts held through intermediaries may qualify for separate joint account coverage. Questions have arisen about the interaction of the joint account regulation and other regulations such as the agency account regulation (12 CFR 564.3(b)) and the trust account regulation (12 CFR 564.10). Additional questions have arisen as to the aggregation and the recordkeeping requirements applicable to such accounts as well as the treatment of funds commingled for investment purposes by an accountholding intermediary.

In response to these questions, the Board is clarifying in the Appendix on joint account coverage that accounts held jointly by individuals but established at an insured institution through an agent, nominee, guardian, custodian, conservator, or loan servicer are insured as joint accounts under the same conditions as if the accounts had been established directly by those holding the funds jointly if all applicable recordkeeping requirements are met. This requires, first, that the records of the insured institution disclose the relationship pursuant to which the funds are on deposit (*e.g.*, as agent or nominee for others). The accountholding intermediary is then required to provide records showing that the funds were in fact held jointly. Such accounts are aggregated for insurance purposes with other joint accounts held by or for the same individuals, in the same manner as accounts held directly at an insured institution. Examples 10 and 11 are being added to the Appendix to illustrate these requirements for insurance coverage for joint accounts established by intermediaries.

Finally, the Board is amending the Appendix on joint account coverage to include a statement regarding its longstanding position that separate joint account insurance coverage is not available to accounts held in trust for two or more beneficaries. Trust accounts complying with the requirements of the Insurance Regulations are already afforded insurance coverage separate from the individual accounts of their settlors, trustees, and beneficiaries. Similarly, joint account coverage separate from individual account coverage is also already available. Nothing in the statute or regulations contemplates compounding these two distinct types of separate insurance coverage to proliferate insurance coverage further.

Pursuant to 12 CFR 508.14, the Board finds that a 30-day delay of the effective date of the amendments is unnecessary as they relieve restrictions on accountholders and insured institutions. Therefore, in order to facilitate implementation of today's amendments and to decrease confusion on the part of accountholders, the Board has decided that this rule will be effective immediately upon publication in the **Federal Register.** In this regard, it is the Board's intention that today's amendments may be applied to all requests for reconsideration of initial insurance determinations that have been timely filed with the Director of the FSLIC pursuant to 12 CFR 564.1(d).

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated elsewhere in the **SUPPLEMENTARY INFORMATION** regarding this rule.

2. *Issues raised by comments and agency assessment and response.* The comments have been summarized and addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The rule will not have a negative impact on small institutions.

List of Subjects in 12 CFR Part 564

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 564, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority citation for Part 564 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 564.2 [Amended]

2. Amend § 564.2 by removing paragraph (b)(3) and by reserving the paragraph designation for future use.

3. Revise § 564.9 to read as follows:

§ 564.9 Joint accounts.

(a) *Separate insurance coverage.* Funds held in an account in the names of two or more persons, each possessing equal withdrawal rights, shall be insured as a joint account, unless the account records of the insured institution disclose that the named

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persons are holding funds in a different capacity (for example, as agents, nominees, custodians, or trustees). Such joint account insurance coverage shall be separate from the insurance of funds invested in individual accounts of the named persons.

(b) *Determination of withdrawal rights.* The withdrawal rights of each named holder of a joint account shall be deemed equal unless the records of the insured institution state otherwise.

(c) *Failure to qualify.* An account that does not qualify as a joint account because of a lack of equal withdrawal rights shall be deemed to be held by each of the named persons as an individual account, and the interests of each person in the account shall be added ot any other individual accounts of such person and insured up to $100,000 in the aggregate.

(d) *Determination of interests.* The interests of each named holder of a qualifying joint account shall be deemed equal unless the insured institution's records state otherwise in the case of a tenancy in common. For purposes of insurance coverage, a joint account will be deemed to be held as a joint tenancy with rights of survivorship unless the records of the insured institution state otherwise.

(e) *Determination of coverage on joint accounts.* (1) All qualifying joint accounts held by the same combination of persons shall be added together and insured up to $100,000 in the aggregate.

(2) The interests of each person in all qualifying joint accounts held by different combinations of persons shall then be added together and insured up to $100,000 in the aggregate.

(f) *Accounts held by intermediaries.* An account held by an agent, nominee, guardian, custodian, conservator, or loan servicer, disclosed as such in accordance with § 564.2(b), where records maintained in good faith and in the ordinary course of business demonstrate that two or more persons hold the funds in the account jointly, shall be insured as a joint account of those persons in accordance with paragraph (e) of this section.

4. Revise Section F of the Appendix to Part 504 to read as follows:

Appendix—Examples of Insurance Coverage Afforded Accounts in Institutions Insured by the Federal Savings and Loan Insurance Corporation

* * * * * *

F. Joint Accounts

Funds held in an account in the names of two or more persons, each possessing equal withdrawal rights, are insured up to $100,000. This insurance is separate from that afforded individual accounts held by any of the joint accountholders. Any person, including a minor, may be a holder of a joint account for purposes of insurance coverage, provided that he or she may withdraw funds from the account on the same basis as the other holders.

An account held in the names of two or more persons is insured as a joint account unless, pursuant to § 564.2(b), the account records of the insured institution disclose that the named persons are acting pursuant to a different relationship, such as agents for a principal, custodians for a ward, or trustees for a beneficiary.

An account held jointly that does not qualify as a joint account for insurance purposes because the holders do not possess equal withdrawal rights is insured as if held by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually held by such person and insured up to $100,000 in the aggregate. Absent affirmative evidence in the institution's records showing the accountholders' actions establishing unequal withdrawal rights, the equal withdrawal rights requirement will be deemed satisfied for purposes of insurance coverage.

For insurance purposes, the holders of any joint account are deemed to have equal interests in the account, unless the institution's records show the form of joint ownership as a tenancy in common. With a tenancy in common, equal interests are presumed unless otherwise specifically stated on the records of the institution. A tenancy in common will meet the equal withdrawal rights requirement and qualify for joint account insurance coverage, if the tenants in common possess withdrawal rights commensurate with their ownership interests. For purposes of insurance coverage, a joint account is presumed to be held as a joint tenancy with a right of survivorship unless otherwise stated on the records of the institution.

All funds invested in joint accounts held by the same combination of individuals, regardless of the form of joint account (*e.g.*, joint tenancy with right of survivorship, community property, or tenancy in common), are first added together and insured up to the $100,000 maximum. The accompanying examples refer to this as "step one" of § 564.9(e). Where an individual has an interest in more than one joint account and different joint accountholders are involved, his interests in all such joint accounts are then added together and insured up to $100,000 in the aggregate. The accompanying examples refer to this as "step two" of § 564.9(e).

State law is not determinative of the amount of joint account insurance coverage. Rather, to determine which accounts are held jointly for purposes of insurance coverage, the FSLIC looks to the books and records of an insured institution.

Accounts held jointly by individuals but established at an insured institution through an agent, nominee, guardian, custodian, conservator, or loan servicer are insured as joint accounts under the same conditions as if the accounts had been established directly by those holding the funds jointly if the recordkeeping requirements set forth in § 564.2(b) are met. An account held in trust for two or more beneficiaries, however, is not eligible for joint account insurance coverage, since such trust accounts are considered to be held for beneficiaries as individuals, not jointly, for purposes of determining insurance coverage.

Example 1

Question: A and B maintain a joint account and, in addition, each holds an individual account. Is each account separately insured?

Answer: If both A and B possess equal withdrawal rights with respect to the joint account, each of these accounts is separately insured up to the $100,000 limit. (§ 564.9(a) and (b)).

Example 2

Question: H and W, husband and wife, reside in a community property state. Each holds an individual account and, in addition, they hold a qualifying joint account. The funds in all three accounts consist of community property. Is each account separately insured?

Answer: Yes. An account in the individual name of a spouse will be insured up to $100,000 whether the funds consist of community property or separate property of the spouse. Qualifying joint accounts containing community property are also insured up to $100,000. For purposes of insurance coverage such accounts are considered to be held in separately insurable capacities, regardless of the underlying state law. (§§ 564.3(a) and 564.9(a)).

Example 3

Question: Three accounts of $100,000 each are held by a husband and his wife under the following names:

1. John Doe and Mary Doe, husband and wife, as joint tenants with right of survivorship.
2. Mary and John Doe (community property).
3. Mrs. John Doe or John Q. Doe.

The first two accounts carry John's social security number for taxpayer identification purposes. The third account carries Mary's social security number.

Are the accounts separately insured?

Answer: No. All three accounts are considered to be joint accounts held by the same combination of individuals, regardless of the form of joint ownership. Reversal of names or use of different styles does not change the result, as long as the accountholders are in fact the same in both cases. Additionally, the use of different taxpayer identification numbers on the accounts does not affect the insurance coverage. For insurance purposes, the three account balances would be aggregated and insured up to $100,000. (§ 564.9(e)).

Example 4

Question: The following accounts are held by A, B, and C, each of whom has equal withdrawal rights in the accounts in which he has an interest.

1. A—$100,000
2. B—$100,000

3. C—$100,000
4. A and B, as joint tenants w/r/o survivorship-$90,000
5. A and C—$90,000
6. B and C, joint tenants—$90,000
7. A, B, and C—$90,000

What is the insurance coverage?

Answer: Accounts numbered 1, 2, and 3 are each separately insured up to $100,000 as individual accounts held by A, B, and C, respectively. (§ 564.3(a)). The joint accounts are analyzed pursuant to a two-step process. With regard to accounts numbered 4, 5, 6, and 7, each is held by a different combination of individuals. Under step one of § 564.9(e), each is separately insured. The analysis does not stop here, however. Under step two of § 564.9(e), the respective interests of A, B, and C in each of the accounts are added together for purposes of determining insurance coverage. (§ 564.9(e)). The interests of the holders of each joint account are deemed equal for insurance purposes. (§ 564.9(d)). Thus, A has an interest of $45,000 in account No. 4, $45,000 in account No. 5, and $30,000 in account No. 7, for a total joint account interest of $120,000, of which $100,000 is insured and $20,000 is uninsured. The interests of B and C are similarly calculated and insured. (§ 564.9(e)).

Example 5

Question: H, W, and C hold accounts as follows:

1. H—$100,000
2. W—$100,000
3. H and C, joint tenants—$90,000
4. W and C, joint tenants—$90,000

H and W are husband and wife. C, their minor child, cannot make a withdrawal from account No. 3 without A's written consent. In account No. 4, the signature of both B and C are required for withdrawal. A has provided all of the funds for account No. 3. What is the insurance coverage?

Answer: If any of the holders of a joint account does not have equal withdrawal rights, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the accountholders in accordance with his or her actual contribution of the funds. (§ 564.9(c)). Account No. 3 is not insured as a joint account because C does not possess the right to withdraw the funds in accordance with his purported interest in the account. (§ 564.9(a)). However, account No. 4 does qualify as a joint account for insurance purposes since each accountholder possesses the right to withdraw funds on the same basis. Since H contributed all of the funds in account No. 3, the funds in this account would be treated for insurance purposes as individual funds of H. (§ 564.9(c)). Thus, the $90,000 in this account is added to the $100,000 in account No. 1, H's individual account, and insured up to $100,000 in the aggregate, leaving $90,000 uninsured. Account No. 4, the remaining joint account, is insured to $100,000 as a qualifying joint account, separate from the individual accounts of the accountholders.

Example 6

Question: A, B, and C hold the following three joint accounts:

1. A and B—$100,000
2. A and B—100,000
3. A, B, and C—75,000

What is the insurance coverage?

Answer: Since accounts numbered one and two are owned by the same combination of individuals, step one of § 564.9(e) requires that those two accounts be added together and insured up to $100,000 in the aggregate, leaving $100,000 uninsured. Proration of the insurance coverage, as required by § 564.1(c), results in $50,000 of insurance coverage for the funds invested in each of accounts 1 and 2. Under step one of § 564.9(e), the $75,000 balance of account number 3 is fully insured because it is held by a different combination of individuals and its balance is less than $100,000.

All three accounts are next analyzed under step two of § 564.9(e), which provides that the interests of a single person with interests in multiple joint accounts can only be insured up to $100,000 in the aggregate. For insurance purposes, A has a one-half interest in the insured balances ($50,000 each) of accounts numbered 1 and 2, as well as a one-third interest in the insured balance ($75,000) of account number 3. Thus, A has a $25,000 interest in each of the three accounts. A's $75,000 total interest in multiple joint accounts is within the step two insurance limitation, resulting in no further uninsured funds. B's and C's interests are similarly analyzed.

Example 7

Question: The following accounts are held by A, B, and C.

Each holder possesses equal withdrawal rights.

1. A—$100,000
2. B—$100,000
3. A, B, and C, as joint tenants—$100,000
4. A, B, and C, as tenants in common—$200,000
5. A and B, as joint tenants w/r/o survivorship—$100,000

What is the insurance coverage?

Answer. Accounts numbered 1 and 2 are each separately insured for $100,000 as individual accounts held by A and B, respectively (§ 564.3(a)). With respect to the joint accounts, accounts numbered 3 and 4 are held by the same combination of individuals and are added together and insured up to $100,000 in the aggregate pursuant to step one of § 564.9(e). The different types of joint ownership are irrelevant for purpose of insurance coverage. Because these two accounts totaled $300,000, $200,000 would be uninsured. A, B, and C each has a one-third interest in the insured balance ($100,000) of accounts 3 and 4 because the institution's records do not show different ownership interests for the tenancy in common.

A and B also maintain another joint account, account number 5. Under the step two insurance limitation of § 564.9(e), A's $50,000 interest in account number 5 is added to his $33,334 insured interest in accounts 3 and 4. A's $83,334 total of interests in multiple joint accounts is within step two insurance limitation, resulting in no further uninsured funds. B's interests in accounts 3, 4 and 5 are identical to A's and are insured in a like manner.

Example 8

Question: A, B, and C hold a joint account as tenants in common to which A and B have each contributed $25,000 and C has contributed $50,000. They have executed a signature card that indicates that A and B each may withdraw a quarter of the account and C may withdraw half of the funds. In addition, A, B, and C each hold individual accounts. Is each account separately insured?

Answer: Since each of the accountholders has withdrawal rights commensurate with his interest in the joint account held as a tenancy in common and this is indicated in the institution's records, the joint funds are separately insured up to $100,000. The joint account is separately insured from funds in the individual accounts of A, B, and C. (§§ 564.9(a) and 564.3(a)).

Example 9

Question: A, B, and C deposit $60,000 in an account as joint tenants with right of survivorship. In addition, A and C deposit $50,000 in an account as tenants in common. B dies. What is the insurance coverage of these accounts?

Answer: Before B's death, the two accounts are considered joint accounts held by a different combination of individuals and entitled to separate insurance coverage. Upon B's death, however, the two accounts are held and owned by the same combination of individuals, A and C. Although the books and records of the institution indicate that the first account is held by A, B, and C, the FSLIC may, in its discretion, look to actual ownership as of B's death rather than ostensible ownership in determining insurance coverage. Therefore, the two accounts are aggregated for insurance purposes and insured up to $100,000. The different types of joint ownership are irrelevant for insurance purposes. Since there is $110,000 in the aggregated accounts, $100,000 is insured and $10,000 is uninsured. (§ 564.9(e)).

Example 10

Question: B and C each maintain individual accounts with an insured institution in the amount of $100,000. In addition, they each contribute $50,000 of their individual funds to an account titled, "A, as agent for others." The institution's records indicate that these funds are not jointly held, but rather are commingled individual funds of B and C, as well as others. What is the insurance coverage of these accounts?

Answer: Funds held by an individual and deposited in the name of an agent are added to any individual accounts of the principal and insured up to $100,000 in the aggregate. (§ 564.3(b)). Because the funds deposited by A were commingled individual funds of B and C and were not held jointly, separate joint account insurance coverage is not afforded this account. The funds of B and C held through A are aggregated with their individual accounts at the institution, resulting in each having uninsured funds of $50,000. (§ 564.9(f)).

Example 11

Question: B and C each have on deposit $100,000 in an insured institution in individual accounts. In addition, A deposits $100,000 as agent for B and C in the same institution. The account records of the institution indicate that these funds are deposited by A acting as agent for B and C. Also, A's business records, maintained in good faith and in the ordinary course of business, indicate that B and C jointly hold the funds deposited by A. What is the insurance coverage of these accounts?

Answer: The funds deposited by B and C in their individual accounts are each insured up to $100,000. (§ 564.3(a)). The funds deposited by A as agent for B and C are insured separately as a joint account from the funds held individually by B and C. The account records of the institution indicate that A deposited the funds as an agent, and A's business records indicate that the funds are jointly held by B and C. Therefore, the FSLIC deems the funds to be jointly held by B and C for insurance purposes and insures such funds as a joint account separately from the individual accounts of B and C up to $100,000. (§ 564.9(f)).

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretory.

[FR Doc. 88-5499 Filed 3-11-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-25]

Alteration of VOR Federal Airways; Bloomington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of the Bloomington, IN, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Hoosier, IN. This change is to eliminate the confusion that currently exist between Bloomington, IN, VORTAC and Bloomington, IL, VORTAC. This action improves flight planning and increases safety.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the descriptions of V-221 and V-305 located in the vicinity of Bloomington, IN, by changing the name Bloomington to Hoosier. This name change does not require changes to controlled airspace. Because this action only involves a name change, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-221 [Amended]

Wherever the word "Bloomington" appears substitute the word "Hoosier."

V-305 [Amended]

Wherever the world "Bloomington" appears substitute the word "Hoosier."

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-5456 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ACE-10]

Alteration of VOR Federal Airway V-138; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the description of Federal Airway V-138, located in the vicinity of Omaha, NE, by extending V-138 from Lincoln, NE, to Omaha. This action eliminates a break in the airway structure between Lincoln and Omaha. This extension simplifies flight planning, reduces controller workload and saves fuel.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 4, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-138, located in the vicinity of Omaha, NE, by extending it from Lincoln, NE, VORTAC to Omaha VORTAC (52 FR 42309). This extension has been made possible through negotiations with Offutt Air Force Base RAPCON and Minneapolis, MN, ARTCC. This action simplifies flight planning by eliminating a break in the airway structure between Lincoln and Omaha and reduces controller workload and saves fuel by eliminating a circuitous routing between these points. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of Federal Airway V-138, located in the vicinity of Omaha, NE, by extending V-138 from Lincoln, NE, to Omaha. This action eliminates a break in the airway structure between Lincoln and Omaha. This extension simplifies flight planning, reduces controller workload and saves fuel.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-138 [Amended]

By removing the words "Lincoln. From" and substituting the word "Lincoln:"

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-5454 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 85-ASO-20]

Alteration of Restricted Areas R-2903; Stevens Lake, FL and R-2904 Starke, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters Restricted Areas R-2903B Stevens Lake, FL, and R-2904 Starke, FL. R-2903B is segmented into four separate areas, the time of designation is reduced from continuous use, and the vertical limits of the area are increased. The proposed expansion of the lateral limits of R-2903A and R-2903B is withdrawn. In addition, R-2904 is segmented into two separate areas, and the vertical limits are also increased.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 28, 1986, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the lateral and vertical limits of Restricted Area R-2903B Stevens Lake, FL, and the vertical limits of R-2904 Starke, FL (51 FR 15780). The original comment period closed on June 10, 1986. On June 27; 1986, the FAA reopened the comment period to provide an additional 30 days for interested parties to comment on the proposal (51 FR 23430). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Twenty-five objections to the proposal were received.

Most commenters objected to the proposed southwestward expansion of Restricted Areas R-2903A and R-2903B toward the Keystone Airpark, Keystone Heights, FL. The commenters stated that the proposed expansion would severely impact the operation of Keystone Airpark by limiting access to the airport from business and general aviation users and hampering the future growth of the facility. The commenters stated that the adverse effects on the Keystone Airpark would result in substantial economic impact on the community due to the loss of revenue and employment generated by the airport. After a thorough analysis of these comments, the FAA has determined that the proposed lateral expansion of R-2903A and R-2903B would, in effect, close Runway 04/22 and Runway 10/28 operations at Keystone Airpark. In addition, the proposed lateral expansion would prevent use of the airport as an established landmark along a VFR flyway during those periods of restricted area activation. In consideration of these impacts, the Department of the Army has withdrawn that portion of the proposal. Therefore, the southwest boundary of R-2903A and R-2903B will remain aligned with the existing R-2903B boundary. The FAA concludes that this amendment enables the continued operation of Keystone Airpark and mitigates the expressed economic concerns.

One commenter questioned the need for the vertical expansion of R-2904B to Flight Level (FL) 320 in light of the request to expand R-2903B to the same altitude. The commenter stated that activation of R-2904B in conjunction with R-2903A or R-2903B would require large deviations by pilots to avoid the areas. The Department of the Army stated that the proposed vertical expansions are necessary in order to support Army training requirements for units to maintain proficiency in high angle artillery fire operations. Actual utilization of R-2903B and R-2904B would be limited to a maximum of 24 days per year and only during specific times as advertised by a Notice to Airmen at least 24 hours in advance. Sections 71.151 and 73.29 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter Restricted Area R-2903B Stevens Lake, FL, by reducing the published time of designation for the area, segmenting the area into four separate restricted areas and raising the upper limit of R-2903B from FL 230 to FL 320. In addition, Restricted Area R-2904 Starke, FL, is segmented into two separate restricted areas and the upper limit of the area is raised from 1,800 feet above mean sea

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level to 32,000 feet MSL. The Continental Control Area is amended to incorporate R-2903A and R-2904B. These actions enhance efficient airspace utilization by designating more accurate times of use and by segmenting the areas to enable the release of restricted airspace when not required for hazardous military training activities.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted Areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2903A Stevens Lake, FL [New]

R-2904B Starke, FL [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

4. Section 73.29 is amended as follows:

R-2903A Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°58'05" N., long. 81°59'10" W.; to lat. 29°58'55" N., long. 81°59'33" W.; to lat. 29°58'55" N., long. 81°56'05" W.; to lat. 29°56'45" N., long. 81°53'15" W.; to lat. 29°55'31" N., long. 81°54'08" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to lat. 29°48'26" N., long. 81°56'58" W.; to lat. 29°52'35" N., long. 82°01'40" W.; to lat. 29°53'45" N., long. 82°04'51" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. Surface to but not including 23,000 feet MSL.

Time of designation. Intermittent, 0700–1900 local time, Tuesday-Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA., Jacksonville ARTCC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903B Stevens Lake, FL [Revised]

Boundaries. Beginning at lat. 29°58'05" N., long. 81°59'10" W.; to lat. 29°58'55" N., long. 81°59'33" W.; to lat. 29°58'55" N., long. 81°56'05" W.; to lat. 29°56'45" N., long. 81°53'15" W.; to lat. 29°55'31" N., long. 81°54'08" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to lat. 29°48'26" N., long. 81°56'58" W.; to lat. 29°52'35" N., long. 82°01'40" W.; to lat. 29°53'45" N., long. 82°04'51" W.; thence clockwise along an arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. 23,000 feet MSL to 32,000 feet MSL.

Time of designation. Intermittent, 2000–0500 local time, Saturday-Sunday, activated by NOTAM at least 24 hours in advance; not to exceed 24 days per year.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903C Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°52'30" N., long. 81°53'26" W.; to lat. 29°51'13" N., long. 81°50'57" W.; to lat. 29°47'00" N., long. 81°53'55" W. to lat. 29°48'26" N., long. 81°56'58" W.; thence counterclockwise along the arc of a circle 5 NM in radius centered at lat. 29°53'04" N., long. 81°59'09" W.; to the point of beginning.

Designated altitudes. Surface to 7,000 feet MSL.

Time of designation. Intermittent, 0700–1900 local time, Tuesday-Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRACON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2903D Stevens Lake, FL [New]

Boundaries. Beginning at lat. 29°51'13" N., long. 81°50'57" W.; to lat. 29°49'00" N., long. 81°46'20" W.; to lat. 29°44'50" N., long. 81°49'05" W.; to lat. 29°47'00" N., long. 81°53'55" W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. Intermittent, 0700.1900 local time, Tuesday–Sunday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRACON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2904 Starke, FL [Remove]

R-2904A Starke, FL [New]

Boundaries. Beginning at lat. 30°03'30" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 82°02'46" W.; to lat. 30°03'30" N., long. 82°02'46" W.; to the point of beginning.

Designated altitudes. Surface to but not including 1,800 feet MSL.

Time of designation. April–August, daily 0800.1700 local time; Septembe–March, Saturday–Sunday 0800–1700 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville TRACON.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

R-2904B Starke, FL [New]

Boundaries. Beginning at lat. 30°03'30" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 81°55'40" W.; to lat. 29°58'55" N., long. 82°02'46" W.; to lat. 30°03'30" N., long. 82°02'46" W.; to the point of beginning.

Designated altitudes. 1,800 feet MSL to 32,000 feet MSL.

Time of designation. Intermittent, 2000.0500 local time, Saturday-Sunday, activated by NOTAM at least 24 hours in advance; not to exceed 24 days per year.

Controlling agency. FAA, Jacksonville ART CC.

Using agency. U.S. Army, Department of Military Affairs, State Arsenal, St. Augustine, FL.

Issued in Washington, DC, on March 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-5452 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 88-AAL-1]

Alteration of Restricted Areas R-2203A/B/C; Eagle River, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Areas R-2203A/B/C located near Eagle River, AK, indicating more accurately when the areas are being utilized. This action will reduce the time the restricted areas are in effect.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9250.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Areas R-2203A/B/C located near Eagle River, AK. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.22 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.22 [Amended]

2. Section 73.22 is amended as follows:

R-2203A Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500–2400 Monday–Friday; other times by NOTAM at least 24 hours in advance.

R-2203B Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500–2400 Monday–Friday; other times by NOTAM at least 24 hours in advance.

R-2203C Eagle River, AK

Remove the present Time of designation and substitute the following: Time of designation. 0500–2400 Monday–Friday; other times by NOTAM at least 24 hours in advance.

Issued in Washington, DC, on February 29, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-5455 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 88-AEA-1]

Change of Controlling Agency to Restricted Area R-5201; Fort Drum, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency for Restricted Area R-5201 Fort Drum, NY, from Watertown Flight Service Station (FSS) to Boston Air Route Traffic Control Center (ARTCC). This action is required due to the closure of Watertown FSS.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 73 of the Federal Aviation Regulations assigns Boston ARTCC as the controlling agency for Restricted Area R-5201. Because this action only involves changing the controlling agency, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.52 [Amended]

2. Section 73.52 is amended as follows:

R-5201 Fort Drum, NY [Amended]

By removing the present Controlling agency and substituting the following:

Controlling agency. FAA, Boston ARTCC.

Issued in Washington, DC, on March 2, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–5453 Filed 3–11–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM87–16–000]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts; Correction

Issued March 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction notice.

SUMMARY: On February 5, 1988, the Commission issued a final rule regarding abandonment of sales and purchases of natural gas under expired, terminated, or modified contracts. (53 FR 4121, Feb. 12, 1988.) This notice makes technical corrections to §§ 157.30 and 157.301 to accurately cross reference paragraphs (c) and (d).

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8315.

SUPPLEMENTARY INFORMATION:

§ 157.30 [Corrected]

1. In § 157.30, paragraph (e) after "paragraph (c)" add "or (d)".

§ 157.301 [Corrected]

2. In § 157.301, paragraph (a) after "§ 157.30(c)" add "or (d),".

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5508 Filed 3–11–88; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 380

[Docket Nos. RM87–15–001 et al.]

Order Granting in Part and Denying in Part Applications for Rehearing and Making Technical Correction

Issued March 9, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting in part and denying in part rehearing and making technical correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part rehearing of its final rule (Order No. 486, 52 FR 47897 (Dec. 17, 1987)) that adopted and supplemented the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370a (1982). The Commission is also correcting a technical error in the final rule.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Regulations Implementing the National Environmental Policy Act of 1969; Order No. 486–A

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part rehearing of its final rule [1] that adopted and supplemented the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (NEPA).[2] The Commission is also correcting a technical error in the final rule.

II. Background and Discussion

The Commission has received three timely requests [3] for rehearing of its final rule issued in this proceeding. The final rule stated that the Commission would comply with the CEQ's regulations implementing NEPA and supplemented the CEQ's regulations to address the particular actions of the Commission that require environmental review. The rule established three categories of Commission actions for environmental review purposes: (1) Actions that do not require an environmental assessment (EA) or an environmental impact statement (EIS) since they have no significant impact on the human environment (categorical exclusions); (2) actions that require an EA to determine their environmental effects; and (3) actions that have a significant environmental impact and therefore require an EIS. In addition, the rule established procedures for preparing environmental documents.

1. Environmental Review of Nonjurisdictional Facilities

All three petitioners for rehearing raise issues regarding the Commission's examination of the environmental effects of nonjurisdictional facilities in its evaluation of proposed jurisdictional projects. Both INGAA and the AGA request that the Commission grant rehearing to define and limit the Commission's environmental review of nonjurisdictional facilities. In contrast, the IPAA argues that the final rule should have specifically stated in the regulations that both jurisdictional and nonjurisdictional facilities would be considered in evaluating the environmental impact of major pipeline construction projects.

The Commission believes that the final rule adequately addressed the question of the Commission's environmental responsibilities as they relate to nonjurisdictional facilities. The final rule codified Commission precedent, case law and CEQ provisions to the extent they require the Commission to consider the environmental impact of nonjurisdictional facilities when these are an integral part of an entire project that includes jurisdictional facilities subject to Commission approval.[4] As the final rule pointed out, however, the Commission does not intend to use the environmental review process to exercise jurisdiction over nonjurisdictional facilities. Moreover, the general regulations promulgated in the final rule cannot address the specific circumstances under which the environmental impact of nonjurisdictional facilities may be taken into account. The extent to which the Commission will examine the environmental effects of nonjurisdictional facilities will vary with each proposed project. Therefore, the Commission believes that these issues are more appropriately addressed on a case-by-case basis.

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[1] Order No. 486, 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30783 (1988).

[2] 42 U.S.C. 4321–4370a (1982). The CEQ regulations implementing NEPA are codified at 40 CFR Parts 1500–1508 (1987).

[3] American Gas Association (AGA), Independent Petroleum Association of America (IPAA), and Interstate Natural Gas Association of America (INGAA).

[4] *See* Henry v. FPC, 513 F.2d 395 (D.C. Cir. 1975). 40 CFR 1508.7 (1987).

2. Reliance on Other Environmental Reviews

AGA states that the Commission should not duplicate the efforts of state agencies in its own environmental reviews. The Commission agrees that duplication of efforts should be avoided. In fact, the CEQ regulations adopted by the Commission direct Federal agencies to "cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements." [5]

The CEQ regulations also encourage Federal agencies to incorporate the environmental reviews of other Federal agencies in their environmental analyses.[6] This eliminates repetitive discussion of issues already examined and allows the agency to focus on the issues ripe for decision. However, while the Commission will consider the comments and studies of state agencies and will incorporate the environmental analyses of other Federal agencies where possible, the Commission remains ultimately responsible for the environmental review mandated by NEPA for actions under its jurisdiction.[7]

3. Natural Gas Import/Export Sites.

Under delegation authority from the Department of Energy,[8] the Commission has the authority to approve the point of entry of imported gas and the point of exit of exported gas. The IPAA points out that the Commission in the final rule did not address the issue of the type of environmental review that should be done for the approval of natural gas import sites. IPAA suggests that these approvals should require an EA.

The Commission notes that if imported or exported gas is to be transported through existing sites and no new construction is required, then the approval of the import/export site will have no significant environmental impact. Therefore, the Commission is categorically excluding this type of action from requiring an EA or an EIS. However, the Commission agrees that if the site requires the construction of additional facilities, an EA is necessary. Therefore, the Commission is amending the regulations to include approval of these actions in the category of actions requiring an EA. Additionally, the Commission notes that because liquified natural gas import/export facilities are major industrial facilities, the siting of these facilities will probably have a significant environmental effect. It is therefore including the review for approval of these sites in the category of actions requiring an EIS.

4. Technical Correction

The Commission is also making a technical correction to the final rule. Although, in the final rule electric rate filings submitted by the Federal power marketing agencies were properly categorically excluded, the Commission incorrectly referenced the legal authority under which these rate filings are submitted. These filings are not submitted under the Federal Power Act as indicated in the final rule, but rather are submitted under the Pacific Northwest Electric Power Planning and Conservation Act,[9] the Department of Energy Organization Act,[10] and DOE Delegation Order No. 0204–108.[11] The final rule has been revised to correct this error.

III. Paperwork Reduction Act Statement and Effective Date

This order will not be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act,[12] and OMB's regulations [13] since the order does not change the information collection requirements in Order No. 486 and does not impose any additional information collection requirements that require OMB's approval. Therefore, the changes to the Commission's regulations contained in this order are effective March 14, 1988.

List of Subjects in 18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for Part 380 is revised to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 380.4, paragraph (a)(15) is revised and a new paragraph (a)(31) is added to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) * * *

(15) Electric rate filings submitted by public utilities under sections 205 and 206 of the Federal Power Act, the establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under the Pacific Northwest Electric Power Planning and Conservation Act, the Department of Energy Organization Act, and DOE Delegation Order No. 0204–108.

* * * * *

(31) Approval of natural gas import/export sites under DOE Delegation Order Nos. 0204–26 and 0204–112, if the site does not involve the construction of any facilities.

* * * * *

3. In § 380.5, paragraph (b)(1) is revised to read as follows:

§ 380.5 Actions that require an environmental assessment.

* * * * *

(b) * * *

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation Order Nos. 0204–26 and 0204–112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

* * * * *

4. In § 380.6, paragraph (a)(1) is revised to read as follows:

§ 380.6 Actions that require an environmental impact statement.

(a) * * *

(1) Authorization under section 3 or 7 of the Natural Gas Act and DOE Delegation Order Nos. 0204–26 and 0204–112 for the siting, construction, and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or

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[5] 40 CFR 1506.2 (1987).

[6] 40 CFR 1502.20 (1987).

[7] *See* Steamboaters v. FERC, 759 F.2d 1383 (9th Cir. 1985).

[8] DOE Delegation Order No. 0204–26, 43 FR 47769 (Oct. 17, 1978), I FERC Stats. & Regs. ¶ 9906 (1988), and DOE Delegation Order No. 0204–112, 49 FR 6684 (Feb. 22, 1984), I FERC Stats. & Regs. ¶ 9913 (1988).

[9] 16 U.S.C. 839 (1982).

[10] 42 U.S.C. 7107 (1982).

[11] 48 FR 55664 (Dec. 14, 1983), I FERC Stats. & Regs. ¶ 9010 (1988).

[12] 44 U.S.C. 3501–20 (1982).

[13] 5 CFR 1320.12 (1987).

regasify liquified natural gas transported by water;

* * * * *

[FR Doc. 88–5446 Filed 3–11–88; 8:45 am]

BILLING CODE 6717-01-M

PEACE CORPS

22 CFR Part 303

Inspection and Copying of Records; Rules for Compliance with the Freedom of Information Act

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: This rule implements certain provisions of the Freedom of Information Reform Act of 1986 which requires Federal Agencies to establish a uniform schedule of FOIA fees.

EFFECTIVE DATE: April 13, 1988.

ADDRESS: Paperwork and Records Management Branch, Peace Corps, 806 Connecticut Avenue NW., Room P–314, Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: John von Reyn, Chief, Paperwork and Records Management Branch, Office of Administrative Services, (202) 254–6020.

SUPPLEMENTARY INFORMATION: A proposed rule was published on November 16, 1987. Peace Corps received comments from an association of journalists.

Executive Order 12291

The Peace Corps has determined that this rule is not a major rule because it is not likely to result in an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section by Section Analysis of Comments

Section 303.10(b)(8).

The commentator urged Peace Corps not to use the definition of "representative of the news media," as contained in the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines." Peace Corps has left the definition as it is set forth in the OMB guidance. The Agency believes it is required by the Freedom of Information Reform Act of 1986 to conform its regulations to OMB's guidelines. Further, the Agency does not foresee difficulty, as is suggested by the comment, in applying the definition in an equitable manner.

Section 303.10(f)(2)(i).

The commentator urged Peace Corps to adopt an appeal procedure with regard to denial of fee waivers. The Agency has incorporated a new appeal procedure as § 303.10(f)(2)(iii).

Section 303.10(f)(2)(ii).

The commentator urged Peace Corps not to use the fee waiver guidance developed by the Department of Justice to determine whether granting a fee waiver would be in the public interest. Peace Corps has incorporated the Department of Justice's guidance. The Agency has an obligation to inform the public as to the criteria that will be used to determine the public interest. It believes that the criteria developed by the Justice Department provides a fair method of determination which can easily be applied by requesters and the Agency.

Section 303.10(g)(4).

The commentator urged the Peace Corps not to require advance payment of fees because this would delay release of information. The Peace Corps has retained the advance payment requirement if estimated fees exceed $250.00. This requirement will not affect many requesters. However, where requests may involve substantial amounts of search time or extensive copying, the advance payment provision is not, in the Peace Corps' opinion, unreasonable.

List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of information, Records.

For reasons set out in the preamble, 22 CFR Part 303 is amended to read as follows:

PART 303—INSPECTION AND COPYING OF RECORDS; RULES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 303 is revised to read as follows:

Authority: 5 U.S.C. 552; Pub. L. 87–293 as amended (22 U.S.C. 2501 et seq.); Pub. L. 97–113, sec. 601; Pub. L. 99–570; E.O. 12137, May 16, 1979.

2. Section 303.10 is revised to read as follows:

§ 303.10 Schedule of fees.

(a) *General.* It is the policy of the Peace Corps to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. Search and reproduction charges will be made in accordance with paragraph (c) of this section. On a case-by-case basis, the Peace Corps will conduct a thorough review of all fee waiver requests and will grant waivers of reductions in fees only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public. The Agency shall charge fees that recoup the full direct costs incurred. The most efficient and least costly methods to comply with requests for documents made under the FOIA shall be used. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, the Agency shall inform requesters of the steps necessary to obtain records from those sources.

(b) *Definitions.* The Agency adopts the following definitions contained in OMB's "Uniform Freedom of Information Act Fee Schedule and Guidelines," that relate to this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(5) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who made their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency will also look to the past publication record of a requester in making a determination.

(c) *Fees to be charged*—(1) *Manual searches for records.* Whenever feasible, the Agency will charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), the Agency may establish an average rate for the range of grades typically involved.

(2) *Computer searches for records.* The Agency will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to an FOIA request and operator/programmer salary apportionable to the search. When the Agency can establish a reasonable Agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, it may do so and charge accordingly.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges shall be assessed only for the initial review; i.e., the review undertaken the first time the Agency analyzes the applicability of a specific exemption to a particular record or portion of a record. The Agency will not charge for review at the administrative appeal level of an exemption already applied. However, if records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, the cost for such a subsequent review is properly assessable. Where a single class of reviewers is typically involved in the review process, the Agency may establish a reasonable Agency-wide average and charge accordingly.

(4) *Duplication of records.* The charge for paper copy reproduction of documents as of the date of publication is three cents per page. This charge represents the average Agency-wide direct cost of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. The rate shall be adjusted annually. Current rates may be requested from the Director, Office of Administrative Services. For copies prepared by computer, such as tapes or printouts, the Agency will charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Agency will charge the actual direct costs of producing the document or documents.

(5) *Other charges.* (i) The Agency shall recover the full cost of certifying that records are true copies. The Agency will charge the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) certifying the records. (ii) The Agency shall recover the full cost of sending records by special methods such as express mail, etc. The Agency shall not furnish the records until payment for such service has been received by the Agency. The Agency is not required to comply with requests for special mailing services.

(6) *Restrictions on assessing fees.* (i) With the exception of requesters seeking documents for a commercial use, the Agency will provide the first 100 pages of duplication and the first two hours of search time without charge. The Agency will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. Except for commercial use requesters, the Agency will not begin to assess fees until after the free search and reproduction services have been provided.

(ii) The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittance will not be considered in the Agency's determination.

(iii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14."

(iv) The term "search time" in this context means manual search. To apply this term to searches made by computer, the Agency will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, the Agency will begin assessing charges for computer search.

(d) *Payment of Cost.* (1) A request for documents must state that the requester will pay any or all reasonably necessary costs, or costs up to an amount specified in such request. If the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of $25, or in excess of the limit specified in the request, the Director of Administrative Services shall advise the requester promptly after receipt of the initial request. Such notification shall specify

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the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his or her request to specify fewer documents or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the receipt date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(2) *Method of Payment.* Payment shall be sent or delivered to the Collections Officer, Accounting Division. Such payment must be by check or money order payable to Peace Corps—FOIA. A receipt for fees shall be provided upon request.

(e) *Fees to be Charged—Categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* The Agency will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* The Agency will provide documents to requesters in this category for the cost of reproduction alone excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the definition described in paragraph (b)(8) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Requesters who do not fit into any of the categories above will be charged fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Requests from individuals for records about themselves filed in the Agency's systems of records will continue to be treated under the fee provisions published in the Agency's Privacy Act regulations (22 CFR Part 308).

(f) *Waiving or Reducing Fees*—(1) *General.* The Agency will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A requester may, in his or her original request, or subsequently, ask for a fee waiver or that documents be furnished at a reduced charge. A request for documents shall not be deemed to have been received until a determination of the question of fee waiver or reduction has been made, provided however, that such determination shall be made within five working days from the receipt of a fee waiver request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the criteria for waiver or reduction of fees have been met.

(2) *Procedures.* (i) Upon receipt of a fee waiver or fee reduction request the Director of Administrative Services will promptly determine whether such request should be granted in whole or in part. The request shall be reviewed in accordance with the following Statutory Freedom of Information Act fee waiver criteria:

(A) Whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government"; and

(B) That disclosure of the information "is not primarily in the commercial interest of the requester."

(ii) There are six general factors which are considered in determining whether the statutory criteria for fee waiver have been met:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) The decision to refuse to waive or reduce fees as requested under paragraph (f)(1) of this section may be appealed to the Director of the Peace Corps or such official as he or she may designate. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees. The requester will be notified within ten working days from the date of which the Agency received the appeal.

(g) *Administrative Actions to Improve Assessment and Collection of Fees.* The Agency shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly.

(1) *Charging interest.* The Agency will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by the Agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31, United States Code, will accrue from the date of the billing.

(2) *Charges for unsuccessful search.* The Agency will assess charges for time spent searching, even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency may aggregate any such requests and charge accordingly. The Agencies will not aggregate multiple requests on unrelated subjects from one requester:

(4) *Advance payments.* (i) Advance payment, i.e., payment before work is commenced or continued on a request are not required unless:

(A) The Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the date of the billing), the Agency may require the requester to pay the full amount owed plus any applicable interest as provided above, or to demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from that requester.

(ii) When the Agency acts under paragraph (g)(4)(i) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Agency has received fee payments described above.

(5) Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). The Agency will follow those debt collection procedures published in 22 CFR Part 309 where appropriate, to encourage repayment.

Dated: February 29, 1988.

Loret Miller Ruppe,

Director.

[FR Doc. 88–5443 Filed 3–11–88; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

Oil and Gas Product Valuation Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Announcement of training sessions.

SUMMARY: The Minerals Management Service (MMS) published a Notice in the **Federal Register** on February 11, 1988 (53 FR 4011), providing notification that it will conduct seven training seminars at different geographic locations on the new oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and 53 FR 1230, respectively). The seminars will also include a discussion of Pub. L. 100–234, "Notice to Lessees Numbered 5 Gas Royalty Act of 1987," which was signed by the President of the United States on January 6, 1988. The MMS hereby gives notice that it will conduct two additional seminars at the locations and on the dates identified below.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: John L. Price, Chief, Oil and Gas Valuation Branch, Royalty Valuation and Standards Division (303) 231–3392, FTS 326–3392, or Dennis C. Whitcomb, Chief, Rules and Procedures Branch (303) 231–3432, FTS 326–3432.

SUPPLEMENTARY INFORMATION: The new oil and gas valuation regulations that were published in the **Federal Register** on January 15, 1988, amended and clarified existing regulations governing the valuation of oil and gas for royalty computation purposes. The regulations govern the methods by which value is determined when computing oil or gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). Public Law 100–234, "Notice to Lessees Numbered 5 Gas Royalty Act of 1987" (the Act) applies to the valuation of natural gas produced from onshore Federal and Indian oil and gas leases during the period January 1, 1982, through July 31, 1986, which was, prior to the Act, required to be valued under Section I.A.2, II.A.2, and VI of "Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases Number 5" (NTL–5).

The training seminars will include discussions on the following topics:

- Impact of Public Law 100–234 on gas valuation.
- Impact of the new regulations on oil and gas valuation.
- Impact of the new regulations on oil and gas transportation and processing allowances.
- Information collection requirements and reporting forms (MMS–4109, "Gas Processing Allowance Summary Report"; MMS–4110, "Oil Transportation Allowance Report"; and MMS–4295, "Gas Transportation Allowance Report") required to support oil and gas transportation and processing allowance deductions from royalties due. On the second day of each seminar, the forms will be reviewed in a "how to complete," step-by-step process.

Location and Dates

See the prior **Federal Register** Notice published on February 11, 1988 (53 FR 4011), for the location and the dates of the seven initially scheduled training seminars. The two additional seminars will be held from 9:00 a.m. to 4:30 p.m. each day on the dates and at the locations shown below:

Dates	Locations
April 5–6, 1988	Marathon Oil Company, 5555 San Felipe, Houston, Texas 77253.
April 7–8, 1988	Union Texas Petroleum Corp., Auditorium, Room 1638, 1330 Post Oak Boulevard, Houston, Texas 77252.

Reservations

The training seminars are open to the public. Persons interested in attending one of these seminars should make a reservation by telephone on or before March 28, 1988, to Ms. Julie White (303) 231–3155, FTS 326–3155.

Telephone reservations should be confirmed in writing to Ms. Julie White, Minerals Management Service, Royalty Valuation and Standards Division, P.O. Box 25165, MS 653, Denver, Colorado 80225.

Persons requesting reservations should specify the seminar location that they are interested in attending and the number of attendees. Due to space limitations, the number of attendees may be limited at each seminar location. (Likewise, if insufficient interest is shown in attending any of the individual training sessions, such sessions may be canceled and alternate arrangements will be made for those who expressed

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interest.) Reservations will be provided on a first-come-first-served basis.

Date: March 4, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 88–5442 Filed 3–11–88; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3340–1]

Standards of Performance for New Stationary Sources; National Emissions Standards for Hazardous Air Pollutants; North Carolina; Delegation of Additional Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 15, 1987, the North Carolina Division of Environmental Management requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) and 40 CFR Part 61 (National Emission Standards for Hazardous Pollutants) that had been promulgated or revised as of June 15, 1987. On January 27, 1988, these standards were delegated to North Carolina.

DATE: The effective date of the delegations is January 27, 1988.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation of authority may be examined during normal business hours at the Agency's regional office, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (listed below) should be submitted to Mr. N. Ogden Gerald, Chief, Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Sections 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On December 15, 1987, the North Carolina Division of Environmental Management (NCDEM) requested delegation of authority of NSPS for Subpart Kb (Standards of Performance for Storage Vessels (Including Petroleum Liquid Storage Vessels) for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after July 23, 1984). NCDEM also requested redelegation of authority of NSPS for Subpart Ka (Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984), Subpart HH (Lime Manufacturing Plants), and NESHAP Subpart E (Mercury).

After thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 24, 1976.

I certify, pursuant to 5 U.S.C. 605(b), that these delegations will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412)

Date: March 3, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88–5468 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[Region II Docket No. 68; FRL–3340–3]

Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designation for the State of New Jersey; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the Clean Air Act Section 107(d) attainment status designations for sulfur dioxide (SO_2) in New Jersey which appeared in the preamble of a **Federal Register** rulemaking notice on December 31, 1987 (52 FR 49408). This correction will insert a phase into the text of the document which describes the extent of the SO_2 nonattainment area in Warren County, New Jersey.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

On December 31, 1987, EPA announced final action on a request from the State of New Jersey to revise its air quality designations with respect to sulfur dioxide (SO_2) of a part of Warren County (52 FR 49408). Such designations are required by section 107(d) of the Clean Air Act and may be revised from time to time at the request of a State. This notice is being submitted to correct a typographical error in the preamble of the December 31, 1987 rulemaking notice.

A phase in the preamble of the December 31, 1987 notice which describes the extent of the SO^2 nonattainment area in Warren County was inadvertently omitted. The extent of the area in question is the same as originally proposed on October 29, 1986 (51 FR 39550).

The following correction is made in FRL–3307–9, "Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for the State of New Jersey", published in the **Federal Register** on December 31, 1987 (52 FR 49408). The second full paragraph under the Section III, the "Conclusion" section on page 49410 is revised to read as follows:

The areas being redesignated from "better than national standards" to "does not meet national standards" for sulfur dioxide are the Town of Belvidere, the entire Townships of Harmony, White, and Oxford, and that portion of Liberty Township south of the Universal Transverse Mercator Grid System (UTM) coordinate N4522 and west of UTM coordinate E505, and that portion of Mansfield Township west of UTM coordinate E505. Warren County is located in the northwestern part of New Jersey in the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

Authority: 42 U.S.C. 7401–7642.

Dated: March 3, 1988.

William J. Muszynski

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 88–5469 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL–3340–6]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates three existing dredged material disposal sites ("the Calcasieu River and Pass sites") located in the Gulf of Mexico off the mouth of the Calcasieu River and adjacent to the Calcasieu Bar Channel for the continued disposal of dredged material removed from the Calcasieu River and Pass Project. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. This Final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse impacts do not occur.

DATE: This designation shall become effective April 13, 1988.

ADDRESSES: The file supporting this designation is available for public inspection at the following locations:

EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202.
Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 298, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Ch. I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established seven sites for the disposal of dredged material from the Calcasieu Bar and Entrance Channel. Because some of the seven sites either shared a common boundary or overlapped another site, they were subsequently combined to form three sites of similar total area. In January 1980, the interim status of the Calcasieu sites was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Draft and Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Calcasieu River and Pass Ocean Dredged Material Disposal Site Designation." On September 7, 1984, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register** (49 FR 35413). The public comment period of this Draft EIS closed on October 22, 1984. The Agency received nine comment letters on the Draft EIS and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On December 4, 1987, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS closed on January 4, 1988. Two letters were received on the Final EIS. One letter identified an editorial correction and the other letter provided "no comments". The EIS is available for review at the addresses given above.

The action discussed in the EIS is designation for continuing use of ocean disposal sites for dredged material. The purpose of the designation is to provide environmentally acceptable locations for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in EPA's Final EIS based on information from the Corps of Engineers. Inland disposal sites are currently used for the inland reaches of the Calcasieu River and Pass project. In 1983, approximately 590,000 cubic yards of dredged material were pumped into inland shallow water disposal areas creating 80 acres of marsh. In 1985, 650,000 cubic yards were pumped into two additional inland shallow water areas to create 125 acres of marsh. These inland sites, however, cannot accommodate the dredged material from the bar and entrance channels. Use of these inland sites for material which has traditionally been dumped at sea would quickly decrease the lifetime of the sites. Additionally, the only available inland sites are miles upstream from the bar channel making the use of these sites economically impractical.

Three ocean disposal alternatives—a shallow water area (including the proposed sites), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve increased transportation costs without any corresponding environmental benefits. In addition, the removal of sediments from the nearshore environment would make them unavailable for movement and deposition by longshore currents. Lastly, mounding of dredged material in the deeper waters could occur due to slow erosion and transport. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration.

The EIS evaluates the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

In accordance with the requirements of the Endangered Species Act, EPA has completed its biological assessment and determined that no adverse effects to endangered/threatened species will result from site designation. The National Marine Fisheries Service has concurred with this determination.

Although a consistency determination from the State of Louisiana, Department of Natural Resources has not been received, EPA will continue coordination with this agency regarding their coastal zone program.

This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On December 28, 1987, EPA proposed designation of these sites for the continuing disposal of dredged materials from the Calcasieu River and Pass Project. The public comment period on this proposed action closed on February 11, 1988. No comments were received on the proposed rule.

Site 1 is located on the east side of the Calcasieu River Entrance Channel while sites 2 and 3 are located on the west side of the channel. Site 1 and the upper portion of site 2 are only used during jetty maintenance. The remainder of site 2 and site 3 receive dredged material from the channel.

Site 1 is located approximately 0.5 nautical miles (nmi) from shore and extends out approximately 3 nmi. Water depths within the site range from 2 to 8 meters. The boundry coordinates are as follows: 29d 45′ 39″N, 93d 19′ 36″W; 29d 42′ 42″N, 93d 19′ 06″W; 29d 42′ 36″N, 93d 19′ 48″W; 29d 44′ 42″N, 93d 20′ 12″W; 29d 44′ 42″N, 93d 20′ 24″W; 29d 45′ 27″N, 93d 20′ 33″W.

Site 2 is located approximately 0.5 nmi from shore and extends out approximately 6 nmi. Water depths within the site range from 2 to 11 meters. The boundary coordinates are as follows: 29d 44′ 31″N, 93d 20′ 43″W; 29d 39′ 45″N, 93d 19′ 56″W; 29d 39′ 34″N, 93d 20′ 46″W; 29d 44′ 25″N, 93d 21′ 33″W.

Site 3 is located approximately 8 nmi from shore and extends out approximately 17.5 nmi. Water depths within the site range from 11 to 14 meters. The boundary coordinates are as follows: 29d 37′ 50″N, 93d 19′ 37″W; 29d 37′ 25″N, 93d 19′ 33″W; 29d 33′ 55″N, 93d 16′ 23″W; 29d 33′ 49″N, 93d 16′ 25″W; 29d 30′ 59″N, 93d 13′ 51″W; 29d 29′ 10″N, 93d 13′ 49″W; 29d 29′ 05″N, 93d 14′ 23″W; 29d 30′ 49″N, 93d 14′ 25″W; 29d 37′ 26″N, 93d 20′ 24″W; 29d 37′ 44″N, 93d 20′ 27″W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Final EIS, that the three existing sites are acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing three sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed sites are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast. (40 CFR 228.6(a)(1).)*

Geographical positions, average water depths, and distance from the coast for each existing site are given above. Bottom topography within each existing site is essentially flat with little relief. Each site varies in size, in distance from shore and depth.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. (40 CFR 228.6(a)(2).)*

The northwestern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and other bottomfish. Seasonal migration between the estuaries and the Gulf is most intensive in the spring and fall. The Calcasieu disposal sites represent a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas. (40 CFR 228.6(a)(3).)*

Beaches are located between Calcasieu Pass and Holly Beach (4.5 nmi west). Activities in the vicinity of the sites include fishing and boating. There will be some interferences with recreational activities during and in the immediate vicinity of the dredged material disposal operation. This interference will be restricted to the area of the sites being utilized for disposal. Previous dredging and disposal operations have not significantly affected these activities.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any. (40 CFR 228.6(a)(4).)*

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping regulations (40 CFR Part 227). The dredged material to be disposed of consists of varying amounts of sand, silt and clay. Surficial sediments within the existing disposal sites consist of silt and clay sands and silty clays. Higher percentages of fines are present in the nearshore areas off Calcasieu; whereas sediments in areas further offshore (depths greater than 10m) consist primarily of sand.

The annual volume of material dredged from the Calcasieu Channel averages about 14 million cubic yards. Material discharged at sites 1, 2, and 3 is accomplished by agitation dredging, bottom dumping and side casting. Agitation dredging involves filling a hopper dredge to capacity and allowing it to overflow. With bottom dumping sediments transported to the site are discharged through subsurface doors in the bottom of the hopper dredge. Side casting is accomplished by pumping dredged material through a boom-supported pipeline extending laterally from the dredge.

5. *Feasibility of surveillance and monitoring. (40 CFR 228.6(a)(5).)*

Surveillance and monitoring at the existing sites appears feasible considering transportation costs to and from the sites as well as costs associated with acquiring samples from the shallow water-depths. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA in coordination with the Corps of Engineers will develop a monitoring plan.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. (40 CFR 228.6(a)(6).)*

Current patterns in the vicinity of the existing sites are predominately influenced by winds, particularly in late autumn through early spring. The water column is generally well mixed in the winter with stratification occurring in late spring and summer.

Surface current speeds average 0.8 to 1.0 knots and flow primarily to the west. Bottom currents are generally less than 0.8 knots and also flow predominantly to the west.

The agitation method utilized involves the release of fine sediments into surface waters which are swept away by riverine and littoral currents. The sediments settle out slowly as they are carried off. The distance over which the sediments are transported depends upon the existing current velocity at the time of dredging and the settling rate of sediments. Although no studies have been conducted to determine the extent to which the material is transported, it is felt that most agitated material settles within site 2.

In the absence of strong currents, the bulk of the dredged material released by bottom dumping or side casting settles to the bottom almost immediately after dumping and only a small portion is lost from the main surge. This small portion dispenses as individual particles. Bottom currents slowly resuspend the disposed dredged material. This resuspension will result in the disappearance of the mound through dispersal and horizontal transport.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). (40 CFR 228.6(a)(7).)*

Over 30 years of dredged material disposal at the sites have caused no major adverse impacts. No major changes in the benthic community of the existing sites and areas outside the sites have occurred based on 1980 and 1981 field surveys. The accumulation of contaminants in the sediments of the Calcasieu sites were also investigated during the surveys. Trace metal concentrations in the Calcasieu sediments were generally comparable to values reported for sediments in an area located five miles to the west. Relatively low levels of chlorinated hydrocarbons were observed in surficial sediments during the surveys.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. (40 CFR 228.6(a)(8).)*

All the sites extend into the navigational safety fairway; however, any temporary interferences with shipping can be mitigated through close coordination between the dredging operators and the shipping interests.

Recreational and commercial fishing and recreational boating occurs throughout the year in the area of the existing sites. Although there will be some interference with fishing and boating activities during the disposal operations, it should be of short duration.

There is active oil and gas development in the area of the existing sites. However, past use of the disposal sites has not interfered with the oil and gas exploratory or production operations. Other types of mineral extraction do not occur within the sites.

No desalination facilities occur within the sites. The nearest aquaculture activities take place in Calcasieu Lake where oyster seed beds are located. Disposal activities pose no threat to this activity. Naturally occuring fish and shellfish within the site, particularly bottom dwelling types, will be affected by the dredged material disposal. Some of these may be trapped and destroyed. Dispersion and transport of the dredged material outside the site should not significantly affect the fish and shellfish. The material dispersed from the site will settle in very thin layers and be mixed with the naturally occurring sediments of the region.

The sites do not contain or overlap any areas of special scientific interest. Periodically, scientific studies are carried out in the offshore region and the bays of the area. Use of the sites should not interfere with these studies. It is not expected that use of the sites for disposal of dredged material will interfere with any other legitimate use of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. (40 CFR 228.6(a)(9).)*

The water quality and ecology of the existing disposal sites are generally reflective of that of the nearshore region off the Louisiana coast affected by discharges from the Atchafalaya River. There are variations in the water quality depending on the mixture of fresh water runoff occurring at the time. Data developed during the 1980 and 1981 surveys were generally comparable to historic data for the area.

10. *Potentiality for the development of recruitment of nuisance species in the disposal site. (40 CFR 228.6(a)(10).)*

Past disposal of dredged material at the existing sites has not resulted in the development of recruitment or nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. (40 CFR 228.6(a)(11).)*

Based on coordination with the Louisiana State Historic Preservation Office, there are no known features of historical importance that occur within the existing sites.

E. Action

Based on the completed EIS process and available data, EPA concludes that the three Calcasieu sites may appropriately be designated for continuing use for the ocean disposal of dredged material. The existing sites are compatible with the general criteria and specific factors used for site evaluation. The designation of the three Calcasieu sites as EPA Approved Ocean Dumping Sites is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 2, 1988.

Robert E. Layton Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entries for Calcasieu River and Pass, LA and by adding paragraphs (b)(48), (49), and (50)

for three ocean dumping sites to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(48) Calcasieu Dredged Material Site 1—Region VI.

Location: 29d 45′ 39″ N, 93d 19′ 36″ W; 29d 42′ 42″ N, 93d 19′ 06″ W; 29d 42′ 36″ N, 93d 19″ 48″ W; 29d 44′ 42″ N, 93d 20′ 12″ W; 29d 44′ 42″ N, 93d 20′ 24″ W; 29d 45′ 27″ N, 93d 20′ 33″ W.
Size: 1.76 square nautical miles
Depth: Ranges from 2–8 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

(49) Calcasieu Dredged Material Site 2—Region VI.

Location: 29d 44′ 31″ N, 93d 20′ 43″ W; 29d 39′ 45″ N, 93d 19′ 56″ W; 29d 39′ 34″ N, 93d 20′ 46″ W; 29d 44′ 25″ N, 93d 21′ 33″ W.
Size: 3.53 square nautical miles.
Depth: Ranges from 2–11 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

(50) Calcasieu Dredged Material Site 3—Region VI.

Location: 29d 37′ 50″ N, 93d 19′ 37″ W; 29d 37′ 25″ N, 93d 19′ 33″ W; 29d 33′ 55″ N, 93d 16″ 23″ W; 29d 33′ 49″ N, 93d 16″ 25″ W; 29d 30′ 59″ N, 93d 13′ 51″ W; 29d 29′ 10″ N, 93d 13′ 49″ W; 29d 29′ 05″ N, 93d 14′ 23″ W; 29d 30′ 49″ N, 93d 14′ 25″ W; 29d 37′ 26″ N, 93d 20′ 24″ W; 29d 37′ 44″ N, 93d 20′ 27″ W.
Size: 5.88 square nautical miles.
Depth: Ranges from 11–14 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of the Calcasieu River and Pass Project.

[FR Doc. 88–5470 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: United States Department of the Interior.

ACTION: Notice of availability of Appendix C.

SUMMARY: This notice announces the availability of Appendix C to 43 CFR Part 20. This Appendix list positions within the Department of the Interior for which Confidential Statements of Employment and Financial Interestes (DI–212) are required to be filed. This Appendix has been updated as of December 1, 1987 and has been printed as an agency document. This Appendix will not be published in the **Federal Register** but will be available to the public upon request.

EFFECTIVE DATE: December 1, 1987.

ADDRESS: Copies of Appendix C may be obtained from the Deputy Ethics Counselor for each bureau or office within the Department of the Interior. You may address your requests to the Deputy Ethics Counselor, (insert the name of the specific bureau or office), 18th & C Streets NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai, Departmental Ethics and Audit Coordination Staff, U.S. Department of the Interior, Washington, DC 20240, (202) 343–5916 or 343–3932.

SUPPLEMENTARY INFORMATION: The Department of the Interior has received approval from the Office of Government Ethics, Office of Personnel Management, to publish Appendix C to 43 CFR Part 20 as an agency document. The availability of this document is hereby announced in the **Federal Register**. The initial notice of this annual process was provided with the publication of 43 CFR Part 20 as proposed rule on October 6, 1980 (45 FR 66370). This arrangement meets administrative requirements which affect only Department of the Interior employees and at the same time defrays the cost of publishing the Appendix C listing in the **Federal Register**.

Appendix C lists Department of the Interior positions, in addition to GS (or GM)–15's for which a Confidential Statement of Employment and Financial Interests (Form DI–212) is required to be filed by Executive Order 11222 (as amended). Positions identified in Appendix C are effective for the February 1, 1988 filing deadline. Appendix C has been approved by the Office of Personnel Management.

List of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

Authorities: Appendix C to Part 20 of Title 43 of the Code of Federal Regulations is published under Executive Order 11222 (as amended). 30 FR 6469, 3 CFR, 1964–65 Comp., as amended (18 U.S.C. 201 Note); 5 CFR 735.104; and 5 U.S.C. 301.

Appendix C was compiled by Bureau and Office Ethics Counselors and consolidated by Deborah Williams of the Departmental Ethics and Audit Coordination Staff.

Date: March 7, 1988.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88–5365 Filed 3–11–88; 8:45 am]

BILLING CODE 4310-RK-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 308

[Docket No. R–116]

War Risk Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending the war risk insurance regulation (46 CFR Part 308) to allow certain vessels registered in the commonwealth of the Bahamas (Bahamas) to become eligible to apply for war risk insurance. MARAD administers these regulations as a standby emergency program, which now allows only vessels registered under the laws of the United States, as well as certain vessels that are owned or controlled by U.S. citizens and registered under the laws of Panama, Honduras, and Liberia, to apply for available war risk insurance interim binders. These interim binders insure vessels against liabilities resulting from war or warlike actions when commercial war risk insurance is unavailable on reasonable terms and conditions. The final rule will make certain vessels registered in the Bahamas eligible for war risk insurance and subject to the same considerations now applicable to vessels registered under the laws of Panama, Honduras or Liberia. This final rule will also make editorial amendments, including those that reflect MARAD organizational changes.

EFFECTIVE DATE: April 13, 1988.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

SUPPLEMENTARY INFORMATION: The authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under Title XII, Merchant Marine Act, 1936, as amended, 46 U.S.C. 1281–1293 (Act), was reinstated by Pub. L. No. 99–59, which was enacted on July 3, 1985, and which will expire on June 30, 1990. The

implementing war risk insurance regulations were reissued on December 9, 1985 (50 FR 50165) to provide the terms and conditions under which war risk insurance interim binders are issued for U.S.-flag vessels and certain foreign-flag vessels owned or controlled by U.S. citizens.

As authorized by section 1203, of the Act, as amended (46 U.S.C. 1283), the Secretary of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States, if such insurance cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a state of the United States. The U.S. government's war risk insurance program is a standby emergency program. It becomes effective simultaneously with the automatic termination of commercial ocean marine war risk insurance policies. (Those commercial policies are automatically terminated upon the outbreak of war, whether declared or not, between any of the five great powers (United States, United Kingdom, France, People's Republic of China, or the Union of Soviet Socialist Republics) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission). Thus, the program allows the continued flow of essential U.S. trade by protecting the shipowner from loss due to risks of war.

A war risk insurance interim binder is a contract under which the U.S. government agrees to provide the applicant with war risk insurance coverage in the interim period, after termination of commercial insurance coverage, for a fee and upon the conditions set forth in 46 App. U.S.C. 1282. An agent of MARAD issues the interim binders.

In 1976, Pub. L. No. 94–523 amended the prior war risk authority (46 App. U.S.C. 1283) by requiring that the Secretary shall determine whether to grant war risk insurance or reinsurance to foreign-flag vessels based upon consideration of "the characteristics, the employment, and the general management of the vessel by the owner or charterer" (46 U.S.C. 1203). That authority was reinstated in 1979 and 1985, and has been implemented by regulations published in the **Federal Register** on April 3, 1980 (45 FR 22041) and December 9, 1985 (50 FR 50165).

Included in these implementing regulations are special provisions restricting foreign-flag vessels eligibility for war risk insurance interim binders. MARAD's regulations provide for a case-by-case review of foreign-flag vessels applying for war risk insurance binders to assure the continued delivery of important U.S. cargoes when commercial war risk insurance is unavailable, and to make it possible for the U.S. government to obtain the use of certain foreign-flag vessels under a Voluntary Contract of Commitment (VCC). A VCC between the U.S. government (MARAD) and a vessel's U.S. citizen applicant makes that vessel available to the U.S. during any period in which vessels may be requisitioned under section 902 of the Act (46 App. U.S.C. 1242), i.e., whenever the President proclaims that there is a national emergency or that security or the national defense make it advisable.

Vessels now eligible to apply under MARAD regulations are those that are documented under the laws of the United States (except sport fishing vessels), as well as vessels not more than 20 years old that are registered under the laws of Panama, Honduras, and Liberia. Under this final rule, vessels registered under the laws of the Bahamas are now eligible for war risk insurance. Owners of vessels registered in these four countries must be U.S. citizens, or U.S. citizen-owned corporations, or the vessels must be under the operational control of U.S. citizens. These vessels cannot be subject to requisition for title or use by any national government, other than the U.S. government. Further, the foreign country in which the vessel is registered may not have a statutory restraint preventing the U.S. government from requisitioning a U.S. citizen-owned or controlled vessel registered in that foreign country.

Eligible foreign-flag vessels that qualify for war risk insurance interim binders are those that are: (1) Substantially engaged in the foreign commerce of the U.S. (considered to be so if they carry thirty (30) percent of net cargo tonnage on a semiannual basis in the U.S. foreign commerce); (2) product tankers up to 90,000 deadweight tons; (3) dry cargo vessels; (4) heavy lift vessels; (5) refrigerated vessels; (6) and other classes of vessels in short supply in the U.S.-flag fleet, with special capabilities.

If a vessel meets any of these criteria, the owner must affirm that it will: (1) Make the vessel available during a U.S. national emergency or to serve the U.S. economy or cooperate with U.S. military authorities under section 902 of the Act (46 App. U.S.C. 1242); (2) maintain it in its eligible category; and (3) report its location to the U.S. Coast Guard.

Vessels owned or controlled by U.S. citizens and registered under the laws of a foreign government are subject to the laws of the country of registry. Such laws may prevent U.S. citizens or U.S. operators of a foreign-flag vessel from making that vessel available to the U.S. government during periods of U.S. national emergency. MARAD's regulations require that applicants for war risk insurance on a foreign-flag vessel submit, with their application, a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a VCC with the U.S. government (46 CFR 308.3(d)(4)).

In 1983, the Bahamian government enacted amendments to the Bahamian Merchant Shipping Act, 1976, (MSA). These amendments allow certain U.S. citizen-owned or controlled Bahamian-flag vessels to comply with the foregoing MARAD criteria, approved by the U.S. Navy, and to become eligible for war risk insurance. Section 286 of the MSA provides that the Bahamian registrar may grant written permission to the vessel's owner to transfer operating control of that vessel to another country's government during a state of emergency or time of war in the country where the owner resides or is a citizen. Thus, the Bahamian government would allow a U.S. citizen-owner or controlled vessel registered in the Bahamas to be made available to serve the U.S. national economy or U.S. national defense in times of U.S. national emergency under applicable U.S. laws.

This change in Bahamian law has removed the basis for objection by the U.S. Department of the Navy, Office of the Chief of Naval Operations (Navy), which previously objected to approving U.S. citizen-owned or operated vessels registered in the Bahamas as transport vessels to complement U.S. strategic sealift capability. Primarily, the Navy objected to certain provisions in the prior Bahamian law, e.g., the requirement that all equity owners and mortgagees consent to the requisitioning of the vessel, and the provision that the country requesting title or use of the vessel declare that a state of emergency exists before the Bahamian government would allow the vessel's operational control to be transferred to another country's government where the owner resides or is a citizen. Thus, the Bahamian government will now allow a U.S. citizen-owned or controlled vessel registered in the Bahamas to be made available to serve the U.S. national economy or U.S. national defense in times of U.S. national emergency under applicable U.S. laws.

Moreover, Bahamian law now requires that vessels registered under its MSA must comply with numerous safety standards. For example, foreign-owned vessels are eligible for registration in the Bahamas, if they are less than 12 years old at the time of first registry, and if they are oceangoing vessels of 1,600 or more net registered tons engaged in "foreign-going trade." Foreign-going trade is defined as not trading exclusively within the Bahamian Islands or between the Bahamas and the East Coast of Florida. Under the MSA, a foreign owner can hold direct title to a Bahamian-flag vessel and such vessel is considered "foreignowned" unless its ownership is entirely in the hands of citizens of the Bahamas.

The MSA provides that six international classification societies can survey Bahamian-registered vessels, including The American Bureau of Shipping. In addition, the Bahamian Maritime Division of the Ministry of Transport, located in Nassau, London, and New York makes its inspection service available to shipowners. Four of the approved classification societies are members of the International Association of Classification Societies (IACS), based in London.

The willingness of The Bahamian government to include members of the IACS to survey Bahamian-flag vessels shows a desire to impose strict safety inspection standards on vessels under its registry. Further, all Bahamian-registered vessels must be inspected before the vessel is put into service, on an annual basis, whenever an accident occurs which affects the safety of the ship, or whenever either important repairs are made or registration renewals are requested. The Bahamian MSA adjures to worldwide shipping concerns and has modeled its regulations after United Kingdom shipping legislation. The Bahamian government has also joined the International Maritime Organization (IMO) and has been a party to conventions sponsored by the IMO.

As a result of the changes in Bahamian law, the U.S. Navy now regards U.S. citizen-owned or controlled vessels registered in the Bahamas as providing available cargo capacity to be relied upon to contribute to the cargo sealift capability support complementing U.S. strategic defense requirements. Accordingly, the Navy has requested that MARAD provide war risk insurance for certain Bahamian vessels, as appropriate.

An additional reason for allowing Bahamian-flag vessels to qualify for war risk insurance is that U.S. citizens are presently registering their vessels under the Bahamian flag. MARAD statistics which were compiled for publication in the document entitled *Foreign Flag Merchant Ships Owned by U.S. Parent Companies*, published effective January 1, 1987, indicate that there are 26 U.S. citizens-owned vessels registered in the Bahamas. Seventeen of these 26 vessels will be eligible to apply for an interim binder. Approximately 58 percent of these 17 vessels were formerly registered under the Liberian or Panamanian flags.

In view of the foregoing events, on October 6, 1987, MARAD issued a notice of proposed rulemaking (52 FR 38486) that would amend the existing regulations to allow certain vessels registered in the Bahamas to become eligible to apply for war risk insurance.

Comments on the Proposed Rule

All three comments that were received (Chevron, Federation of American Controlled Shipping (FACS) and Republic of Vanuatu) supported expansion of war risk coverage to U.S.-controlled Bahamian-registered vessels. FACS generally supported MARAD's proposal as "appropriate and meritorious." However, it suggested that the proposed regulation "Does not go far enough. * * *" It argued that war risk insurance should be extended to all Effective U. S.-Controlled (EUSC) ships, *i.e.* ships registered under Panamanian, Honduran, Liberian and Bahamian flags not subject to requisitioning by the country of registry in certain emergencies, not just those in the presently eligible categories (e.g. product tankers up to 90,000 dwt.), since it believes that, as with U.S.-flag fleet vessels, all vessels of any value to the national security or defense should be covered. FACS also criticized the existing regulations' vessel classifications, i.e. that the distinctions made between vessels for eligibility lack an underlying rationale, e.g., a 150,000 dwt. gearless bulker is eligible for war risk insurance but a 150,000 dwt. product or crude tanker is not.

The FACS comment also states that the war risk regulations need to be updated as far as militarily useful vessels are concerned. It claims that the current criteria in 46 CFR 308.2(b) (1)–(6)—special regulatory eligibility restrictions for foreign flag vessels—needs to be broadened.

In this connection, it cites a 1987 COMMAD (The Commission on Merchant Marine and Defense) report and a 1987 study prepared for MARAD by Stanley Associates to support its contention that the definition of militarily useful vessels has changed over the years, has been "relaxed", and that all tankers under the 100,000 dwt. should be designated regulatorily as militarily useful.

The FACS comment would also support use of additional vessels as tankers in war: to "replace Jones Act tankers in the Alaskan trade, to maintain the flow of oil imported from abroad and to serve as floating storage to assure U.S. refineries have adequate oil supplies." The FACS comments would also include passenger vessels as eligible vessels in the regulations.

FACS recommends that the final regulation should include language defining eligible vessels that is in accord with section 1203(a) of the 1976 amendment to the Merchant Marine Act, 1936:

> The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest: (a) American vessels, including vessels under construction, foreign flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged * * *" In determining whether to grant such insurance or reinsurance to foreign flag vessels, the Secretary shall further consider the characteristics, the employment and the general management of the vessel by owner or charterer.

One comment, from the Republic of Vanuatu, stated that country's desire to be added to the list of countries whose registry of U.S. controlled vessels would be approved for war risk coverage. It, too, supported the proposed rule.

Responses

First, MARAD notes the Republic of Vanuatu's request to become one of the foreign countries that could register U.S. controlled vessels. However, no determination about Vanuatu's status can be made in this rulemaking as any such decision would be outside its scope.

In regard to the eligibility of vessels under the language of section 1203, the 1976 amendment language resulted from a Congressional investigation of MARAD practices in issuing war risk insurance binders on all Panamanian, Honduran, and Liberian registered vessels regardless of their value in national defense efforts. As a consequence of the Congressional investigation and hearing on this matter, a compromise was reached that would make war risk insurance binders available to a limited number of vessels registered in Panama, Honduras, and Liberia. This compromise resulted in an amendment to the statute, as mentioned before, and the subsequent issuance of implementing regulations (43 FR 54092, Nov. 20, 1978). These regulations have established the present eligibility criteria which permit the compromised allotment of about one-fourth of the previously registered and eligible vessels to be considered by the Secretary as eligible recipients of war risk insurance binders.

MARAD's present belief is that it is unnecessary to broaden these regulatory criteria to include more vessel types (e.g. passenger vessels or tankers) or provide for more circumstances under which more vessel types will qualify. This belief is based, in part, on the findings of the 1970's Congressional investigation as to which vessels are most optimally to be used for national defense and to be eligible for war risk coverage. Moreover, these determinations of eligibility are made after the shipowner's application, for insurance, primarily on the basis of advice from U.S. military authorities on their expected needs in the event of national emergency. Further, section 1203 of the statute and 46 CFR Part 308, in its entirety, allow the Secretary flexibility in issuing war risk insurance and policies and in determining which vessels are militarily useful and, therefore, should be eligible for interim war risk insurance coverage. Therefore, the suggested FACS amendments are not needed to provide legal authority to issue coverage for vessels of various types. Accordingly, MARAD is amending regulations at 46 CFR Part 308 to provide that certain vessels registered in the Bahamas be eligible to apply for war risk insurance interim binders. Such vessels, MARAD believes, could serve the national economy and defense needs of the United States.

E.O. 12291 Statutory and DOT Requirements

The Maritime Administration has determined that this final rule is not major, as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Bahamian law now allows entities registering their vessels in the Bahamas to qualify for U.S. government issued war risk insurance binders, subject to enabling amendments to MARAD regulations. Available data indicates that, if all eligible U.S. citizen-owned or controlled vessels registered in the Bahamas applied for war risk insurance binder coverage, a total of 17 vessels under the control of three companies would be involved. More than half of these 17 vessels were previously eligible for an interim binder while registered under either the Liberian or Panamanian flags. Accordingly, the economic impact has been found to be minimal. Since the rule affects principally the owners and operators of large commercial ships, the Maritime Administrator certifies that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

This rule would amend the regulations at 46 CFR Part 308, which contain information collection requirements in §§ 308.3 and 308.6. The information collection for vessels that are registered in the Bahamas will be identical to that which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). In March 1986 (under OMB Control No. 2133–0011), these new forms were approved for use and are now entitled: War Risk Insurance Application (Form MA–528); War Risk Insurance Binder, Form MA–942; Vessel data, Form MA–828; and Underwriting Agency Agreement, Form MA–355.

List of Subjects in 46 CFR Part 308

Maritime carriers, War risk insurance.

Accordingly, 46 CFR Part 308 is amended as follows:

PART 308—[AMENDED]

1. The authority citation for Part 308 is revised to read as follows:

Authority: Sections 204, 1203, 1209, Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289; 49 U.S.C. 1.66).

§ 308.2 [Amended]

2. Section 308.2(a) is amended by inserting between the word "Honduran," and the word "or," the word "Bahamian."

§§ 308.3, 308.6, 308.304, 308.404 and 308.410 [Amended]

3. Sections 308.3 (c) and (g), 308.6(d), 308.304, 308.404, and 308.410 are amended by replacing the title of Director, Office of Marine Insurance with the title of Director, Office of Trade Analysis and Insurance.

§ 308.5 [Amended]

4. Section 308.5 is amended by deleting the phrase "and General Order 75, as revised" and deleting the phrase "(General Order)."

§ 308.205 [Amended]

5. Section 308.205 is amended by replacing the title of Office of Marine Insurance with the title of Office of Trade Analysis and Insurance.

§ 308.404 [Amended]

6. Section 308.404 is amended by replacing the title, Chief, Division of Insurance with the title, Director, Office of Trade Analysis and Insurance.

(Catalog of Federal Domestic Assistance Program No. 20.803 (War Risk Insurance))

By Order of the Maritime Administrator.

Date: March 8, 1988.

James E. Saari,
Secretary.

[FR Doc. 88–5375 Filed 3–11–88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–116; RM–5541]

Radio Broadcasting Services; Trussville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 290A to Trussville, Alabama, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Trussville Broadcasting, Inc. With this action, the proceeding is terminated.

DATES: Effective April 18, 1988; The window period for filing applications on Channel 290A at Trussville, Alabama, will open on April 19, 1988, and close on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Allocations Branch, Mass Media Bureau, (202) 634–6530, concerning the allotment. Questions related to the application process should be addressed to Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–116, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Trussville, Channel 290A, under Alabama.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5481 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–318; RM–5825]

Radio Broadcasting Services; Tri-City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert W. Larson d/b/a Gee Jay Broadcasting, Inc., allocates Channel 282C2 to Tri-City, Oregon, as the community's first local FM service. Channel 282C2 can be allocated to Tri-City in compliance with the Commission's minimum distance separation requirements without a site restriction. With this action, this proceeding is terminated.

DATES: Effective April 18, 1988. The window period for filing applications will open on April 19, 1988, and close on May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–318, adopted January 29, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Tri-City, Channel 282C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5482 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–320; RM–5906]

Television Broadcasting Services; Albuquerque, NM

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document, at the request of Exponential Broadcasting Association, allocates Channel 50 to Albuquerque, New Mexico, as the community's ninth local television service. Channel 50 can be allocated to Albuquerque in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–320, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Albuquerque, New Mexico, is amended by adding Channel 50.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5483 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket Nos. 70–27; Notice 29, and 83–07; Notice 4]

Federal Motor Vehicle Safety Standards; Burnish Procedures for Heavy Duty Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Before a vehicle is tested for compliance with most of the requirements of this agency's braking standards, the vehicle's brakes are broken-in by a series of brake applications. This break-in is called a burnish, and is intended to simulate the break-in that vehicle's brakes would get when they are initially used on the public roads. With respect to heavy vehicles (those with a gross vehicle weight rating greater than 10,000 pounds), the burnish procedure now requires that the brakes be heated to not more than a specified maximum temperature by means of a series of brake applications.

The agency initiated rulemaking regarding this temperature limit because the limit is more favorable to drum brake designs than to disc brake designs. This situation arises because the limit was based on drum brake systems whose normal safe operating temperatures are significantly lower than those of disc brake systems. As a result, disc brake systems may not be adequately broken-in under the current burnish procedure.

To address this problem, this rule establishes a new burnish procedure for vehicles with a gross vehicle weight rating greater than 10,000 pounds. Under this new procedure, the vehicle will make 500 brake applications to slow the vehicle from 40 to 20 miles per hour (mph), without regard to the resulting temperature. This procedure will break-in brakes in a manner that is more realistic and representative of the break-in the vehicle brakes actually get when in service on the roads, without favoring any particular braking system design.

Since this new burnish procedure may affect the design and certification of new and existing braking systems, the agency believes it is appropriate to allow a transition period for implementing this new burnish procedure. Therefore, this rule allows manufacturers to base the certification of their heavy vehicle brakes on either the new or the old burnish procedures until September 1, 1993. In testing a vehicle for compliance, the agency will use the same procedures on which the manufacturer's certification of compliance was premised. All vehicles manufactured on or after September 1, 1993 will be burnished under the new burnish procedures set forth in this rule.

DATES: This rule is effective September 12, 1988.

Any petitions for reconsideration of this rule must be received by NHTSA not later than April 13, 1988.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Crash Avoidance Division, NHTSA, 400 Seventh Street, SW., Washington DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

Background and Notice of Proposed Rulemaking

NHTSA has established two standards applicable to the braking systems on vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These two standards are Standard No. 105, *Hydraulic Brake Systems* (49 CFR 571.105) and Standard No. 121, *Air Brake Systems* (49 CFR 571.121). Standards No. 105 and 121 both specify road tests to measure the brake systems' compliance with the performance requirements. Both standards specify also that the brake systems on these heavy vehicles shall be "burnished" before undergoing road testing to determine if the brake systems satisfy the performance requirements of the applicable standard. The burnish is a series of brake applications that serve to "break-in" the brakes on a new vehicle.

Before the initiation of this rulemaking, the burnish procedure was as follows. The burnish consisted of a series of 500 brake applications at specified speeds. During the burnish procedure, the maximum temperature of the hottest brake on the vehicle was not permitted to exceed 550 °F. The first 175 brake applications (hereinafter referred to as "snubs") were made so as to slow the vehicle from 40 miles per hour (mph) to 20 mph. Subsequent snubs were conducted at initial speeds that increase in increments of 5 mph until the final series of snubs brake the vehicle from 60 mph to 20 mph. However, if the maximum allowable brake temperature were reached at some speed less than 60 mph, the speed was not increased for the following snubs. The snub speed could even be reduced if such a reduction were needed to maintain the brake temperature below the specified maximum level.

Standard No. 121 also specifies a dynamometer test. The burnish for brake systems to be tested on the dynamometer specifies a series of 400 brake applications from 40 mph, at a specified rate of deceleration. For these brake applications, Standard No. 121 specifies that the initial brake temperature shall be within a stated range. The initial brake temperature is defined in section S4 of Standard No. 121 as "the average temperature of the service brakes on the hottest axle of the vehicle 0.2 miles before any brake application."

The maximum brake temperatures during the road test burnish, which apply to both disc and drum brake systems, were based on SAE Recommended Practice J880, "Brake System Rating Test Code—Commercial Vehicles." This recommended practice was established in 1963, based solely on test data for drum brakes. One problem that became apparent with respect to the maximum burnish temperatures specified in the standards was that the specified maximum temperature may not have been appropriate for disc brake systems. Disc brake systems are generally designed to operate at appreciably higher temperatures than are drum brake systems. It has been difficult to avoid exceeding the specified 550 °F maximum temperature during the burnish of vehicles with disc brake systems, even at the lowest of the burnish speeds set forth in the standards, i.e., 40 mph.

In response to this situation, International Harvester (IH) filed a petition for rulemaking with NHTSA. In its petition, IH asked the agency to amend the burnish procedures to take account of the differing characteristics of disc and drum brake systems. International Harvester has subsequently changed its corporate name to Navistar. However, all of the material in the public docket for this rulemaking action identify the company as International Harvester. To avoid potential confusion, this preamble refers to the company as International Harvester.

Notice of Proposed Rulemaking

After granting this petition, the agency published a notice of proposed rulemaking (NPRM) at 48 FR 29560; June 27, 1983. The NPRM proposed to amend the sections of Standards No. 105 and 121 applicable to burnish before road testing as follows. If the temperature of the hottest brake exceeded 550 °F at a snub condition of 40 to 20 mph, the remaining snubs would be run from 40 to 20 mph without regard to the brake temperature. NHTSA anticipated that this proposed change would not create any compliance problems for existing drum brake systems, which do not typically exceed the specified temperature during burnish, while resolving the burnish problems that could occur for disc brake systems.

No change was proposed for the dynamometer burnish temperature in Standard No. 121 because the temperature problems which had arisen during the road test burnish had not occurred with respect to the dynamometer burnish. Accordingly, NHTSA saw no reason to propose changing that burnish procedure.

The NPRM also proposed some more minor revisions to the standards. One proposed change was intended to clarify the procedure for loading tractors and trailers during burnish testing. Another proposed change would have specified brake adjustments at equal intervals during the burnish. This change was proposed to ensure uniformity and repeatability of test results. The final proposed change involved automatic slack adjusters and automatic brake adjusters. Under the NPRM, both standards would have been amended to specify that brake systems equipped with such devices could not deactivate the devices during the testing for compliance with Standards No. 105 and 121.

The agency received seven comments on the NPRM. Motion Control Industries (Motion Control) suggested in its comments that NHTSA delete entirely the temperature restrictions during the burnish. In support of this position, Motion Control asserted that the existing burnish procedures do not sufficiently condition rear drum brakes on vehicles equipped with disc brakes on the front axle. This assertion was based on the fact that the temperature of the front disc brakes will exceed 550 °F during the 40 to 20 mph snubs, and so the vehicle would not run any snubs at speeds in excess of 40 mph. The failure to condition the rear drum brakes at the higher snub speeds meant, according to Motion Control, that those drum brakes would not perform as well as they are designed to do during the compliance testing. Motion Control contended that if the friction materials in the brake systems are designed to stop vehicles from 60 mph while in service and are subjected to 60 mph stops during testing, it is desirable for the friction materials to experience whatever temperatures result from 60 mph stops during the burnish.

In a related vein, Ford Motor Company (Ford) stated that the amendment set forth in the NPRM would relieve the problems encountered by vehicles with disc brakes on all axles, but would not achieve its purpose for vehicles equipped with a combination of disc and drum brakes. According to Ford's comment, "the procedure which would burnish the brakes most effectively on a vehicle equipped with a combination of disc and drum brake systems would be one which maintained the drum brake temperatures within the window of 450–550 °F, while allowing the disc brake temperatures to find their own level, unrestricted." This suggestion was similar to Motion Control's, in that no temperature restrictions would apply to disc brake systems. If the Ford suggestion were adopted, vehicles with disc brake systems on all axles would not be subject to any temperature limitations during the burnish procedure. However, the Ford suggestion would have retained the temperature limitations for drum brake systems.

After publication of the NPRM, NHTSA had conducted some testing to determine what burnish procedures would expose heavy duty vehicle brakes to sufficiently high temperatures to simulate a break-in of the brakes under normal driving conditions without favoring any particular design. That testing indicated that heavy duty vehicle brakes should be burnished by 500 snubs slowing the vehicle from 40 to 20 mph, without regard to the brake temperatures generated during the burnish. Such a burnish procedure exposes all types of brake systems to the temperatures they are likely to experience in city driving, without penalizing or favoring any particular type of brake design. Such a procedure would also be consistent with the burnish procedures specified by the Society of Automotive Engineers (SAE) for heavy duty vehicle brake performance testing; see SAE Recommended Practice J786a. (The burnish procedure in SAE Recommended Practice J880a, allowing snubs from 60 to 20 mph, is for a brake *energy absorption* test, not a brake *performance* test).

Supplementary Notice of Proposed Rulemaking

The agency wanted to give the public an opportunity to comment on the approaches suggested by Ford and Motion Control and the agency research, before proceeding to establish a final rule. Accordingly, NHTSA published a supplementary notice of proposed rulemaking (SNPRM) at 50 FR 21313; May 23, 1985. The SNPRM proposed four alternative methods for amending the burnish procedures. These were the Ford approach, the Motion Control approach, the approach suggested by the agency research, and the approach originally proposed in the NPRM with some minor changes.

Further, the SNPRM asked for additional comments on the minor amendments proposed in the NPRM. First, the NPRM had erroneously proposed the following conditions for burnishing the brakes of a truck tractor. As proposed, the truck tractor would be loaded to its gross vehicle weight rating and a trailer attached to the tractor would be loaded to its gross axle weight rating. However, the NPRM would have required that the control trailer be *unbraked*. Such loading would overtax the tractor's brakes during the burnish, since those brakes would be stopping far more weight than they were designed to stop. To correct this error, the SNPRM proposed to require that the combination of the tractor and the unbraked trailer be loaded only to the gross vehicle weight rating of the tractor.

Second, the NPRM had proposed that brake adjustments be made at specified intervals during the burnish procedure. Past interpretations and preambles had repeatedly stated that brake adjustments were permitted during burnish. To establish uniformity for both manufacturer and agency testing as to when such adjustments would be made, the NPRM proposed that the brakes be manually adjusted at specified intervals. In the case of the road test burnishes, the adjustments would be made manually after 125, 250, and 375 snubs, in accordance with the manufacturer's recommendations. For the dynamometer test burnishes specified in Standard No. 121, the brakes would be adjusted manually after 100, 200, and 300 snubs.

General Motors (GM) objected to the proposed brake adjustment procedures in its comments on the NPRM. While acknowledging that manual adjustment might provide the most accurate adjustment, GM did not believe that manual adjustments would always be necessary. GM stated that, in most instances, use of the automatic brake adjustment feature in accordance with the manufacturer's recommendations would provide adequate adjustment.

NHTSA was persuaded by this comment. Accordingly, the SNPRM proposed that brakes shall be adjusted in accordance with the manufacturer's recommendations. If a vehicle manufacturer recommended manual adjustment for its brakes, the brakes would be so adjusted. Alternatively, if the manufacturer recommended that the brakes be inspected and adjusted only if necessary, that recommendation would be followed. If the inspection showed that no adjustment to the brakes were necessary, none would be performed.

Third, several commenters to the NPRM objected to the proposed requirement to prohibit deactivation of automatic brake adjusters during testing for heavy vehicle's brake performance. These commenters argued that there was no valid reason to treat these heavy duty vehicles any differently than vehicles with GVWR's of 10,000 pounds or less. Since the lighter vehicles are allowed to deactivate automatic brake adjusters during testing, heavier vehicles should be offered the same option, according to these commenters.

NHTSA agreed with the implicit point of these comments that the reasons for and against permitting deactivation of automatic brake adjusters apply equally to all vehicles equipped with such devices, regardless of vehicle weight, size, or type. Since this rulemaking addresses only the question or heavy duty vehicles and the agency did not think it appropriate to address the deactivation of automatic brake adjusters in a piecemeal fashion, the SNPRM announced that the issue would be addressed in a separate rulemaking. Hence, this rulemaking no longer addresses the issue of deactivation of automatic brake adjusters.

In response to the SNPRM, 16 comments were submitted by 13 different commenters. All these comments were considered in connection with this final rule, and the most significant are discussed below.

Final Rule

Burnish Procedures

The SNPRM asked for comments on four alternative burnish procedures. In the SNPRM, the agency explained that

its desired goal was to establish burnish procedures which represent driving conditions that would be encountered in normal use and which are fair for both types of brake systems (i.e., disc and drum brakes) while favoring neither. 50 FR 21315. Each of the four alternative procedures set forth in the SNPRM were evaluated to see how well they achieved this goal.

The approach suggested by Motion Control in its comments on the NPRM was to eliminate the maximum temperature requirements during burnish, and simply run the snubs as specified in Table IV of Standards No. 105 and 121. None of the commenters to the SNPRM supported this approach. Lucas Industries Inc. (Lucas) stated that this approach would cause drum brakes to exceed 550 °F in some circumstances during the burnish. Such temperatures would, according to Lucas, degrade the brakes' performance in subsequent tests. Chrysler agreed with Lucas, stating that an overly severe burnish can create excessive brake temperatures that substantially degrade or destroy the friction characteristics of the brake lining material. Accordingly, Chrysler urged that this approach not be adopted. The Bendix Division of Allied Automotive (Bendix) comment was substantially similar to Chrysler's on this alternative. Ford, IH, and General Motors commented that this alternative should not be adopted because it would not be representative of normal conditioning.

Motion Control itself stated that its suggested alternative would not be representative of normal brake conditioning and should not be adopted. However, Motion Control commented that the alternative would be acceptable if modified to require four 40–20 mph snubs followed by one 60–20 mph snub, repeated one hundred times for a total of 500 snubs. In support of this position, Motion Control tested a vehicle with front disc brakes and rear drum brakes according to this proposed modification. The testing showed that the front disc brakes would experience temperatures of 820 °F during such burnish, while the rear drum brakes would be heated to 560 °F at the end of this testing.

The agency agrees with the commenters that stated that the Motion Control approach as set forth in the SNPRM could potentially damage drum brakes. Accordingly, such an approach would not satisfy the goal of establishing burnish procedures that are fair for both disc and drum brakes, nor would it be representative of the conditions encountered in normal driving. Therefore, this approach was not adopted in this final rule.

The Ford approach received some support in the comments. As noted above, the Ford approach set forth in the SNPRM would retain the 550 °F temperature limitation for drum brakes during the burnish, but would eliminate temperature restrictions for disc brakes. Lucas supported this alternative, contending that it would burnish drum brakes on disc-drum combination vehicles under the same conditions as drum brakes would be burnished on vehicles using only drum brakes. Motion Control also stated that this alternative was the best for vehicles that used disc and drum brakes. Abex Corporation (Abex) stated that they supported the Ford approach, if the agency were going to amend the burnish procedures. Flxible Corporation (Flxible) stated that brake temperatures in excess of 500 °F cooks the lining resin in drum brakes and reduces their performance. Because of this, Flxible stated that any alternative that retained such a limit for drum brake burnish was acceptable, including the Ford approach.

On the other hand, Chrysler, IH, Bendix, GM, and the Motor Vehicle Manufacturers Association (MVMA) opposed the Ford approach. These commenters believed that no temperature limits during the burnish of vehicles using only disc brake systems would potentially damage the disc brakes. Additionally, these commenters did not believe that this burnish procedure would be representative of normal driving. Ford itself agreed that some temperature limits should be added for disc bakes during the burnish, and suggested that its approach be adopted with an upper limit of 800 °F for disc brakes. Both Bendix and MVMA commented that they would support the Ford approach, if a temperature limitation for disc brakes were added.

The approach suggested in the NPRM also received some support in the comments. Under this approach, vehicles would be burnished according to the schedule specified in Table IV, with a temperature limitation of 550 °F for the hottest brake. However, if this temperature limitation were exceeded during the 40 to 20 mph snubs, all the remaining snubs would be run from 40 to 20 mph without regard to temperature. Chrysler stated that there was no need to change the burnish procedures, but if they were to be changed, the approach suggested in the NPRM was the best of the four alternatives listed in the SNPRM. IH commented that the NPRM's approach was the only acceptable alternative offered in the SNPRM. This belief was based on that approach giving the higher temperatures necessary to properly condition truck brakes and preserving the data history from compliance testing for the past 12 years.

However, Lucas opposed this approach, because rear drum brakes on a disc/drum vehicle would not be sufficiently conditioned when the front disc brakes reached a temperature of 550 °F. Motion Control raised the same objection, and also stated that this approach would not be representative of normal conditioning, since it would not allow 60–20 mph snubs on disc/drum vehicles. Bendix opposed this approach, arguing that it would not adequately condition the front disc brakes on a vehicle using only disc brakes.

This final rule does not adopt either the Ford approach (limiting drum brake temperatures to 550 °F) or the NPRM approach (limiting the hottest brake temperature to 550 °F), because the agency has concluded that the brake temperatures that would be generated under either of these approaches would not be representative of the brake temperatures generated during normal driving conditions in the case of drum brake systems.

NHTSA has conducted a series of brake temperature tests for both hydraulically braked vehicles (DOT HS 806 860) and air braked vehicles (DOT HS 806 738) with gross vehicle weight ratings in excess of 10,000 pounds. These vehicles were driven in downtown traffic through Columbus, Ohio, and on the highways around that city. During this testing, the maximum temperatures measured for drum brakes were 410 °F for one hydraulically braked vehicle and 350 °F for the other hydraulically braked vehicle. The maximum temperature measured for drum brakes on air braked vehicles was 418 °F. It should be noted that these maxima were measured for the rear axle of the tractor, and that the maximum temperatures measured for the other axles were significantly lower. Additionally, all of these maxima were recorded during the urban driving part of the testing. The brake temperatures measured on the highways were generally about 100 °F less than the brake temperatures measured on the streets and roads of Columbus. These findings indicate that a burnish procedure that allows drum brakes to be heated to 550 °F cannot be said to be representative of normal driving conditions.

Moreover, the findings in the NHTSA testing confirmed past research about brake temperatures. The University of

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Michigan Transportation Research Institute prepared a 1982 report entitled "Retarders for Heavy Vehicles: Phase II Field Evaluations." This report measured the average brake temperature for the drive axle of the tractor on five axle tractor-semitrailer combinations. This axle experienced the highest brake temperatures in the aforementioned NHTSA testing in Columbus, Ohio. These brake temperatures were measured after the vehicles had made a descent of the fairly long grades on US 40 and US 48 in the western part of Maryland. Under these demanding conditions, the average brake temperature on the tractor drive axles was less than 350 °F.

Another 1982 report was prepared by Systems Technology Incorporated, entitled "The Development and Evaluation of a Prototype Grade Severity Rating System" (Report No. FHWA/RD–81/185). This report also measured brake temperatures for five axle tractor-semitrailer combinations descending a grade. In this case, the grade was "the Grapevine" south of Brakersfield, California on US 5. This is a well-known grade that features an average grade of 5.35 percent for 5.1 miles and presents heavy vehicle brakes with extremely demanding conditions. The brake temperatures of 25 vehicles were measured at the bottom of this grade. Even including the one vehicle that was a "runaway" because its brakes overheated, the average brake temperature for these vehicles was about 400 °F.

Given these consistent research findings about the temperatures to which drum brakes are subjected during normal driving, the agency concludes that a burnish that subjects drum brakes to significantly higher temperatures cannot be said to be representative of normal driving conditions. By allowing the drum brakes to be heated to temperatures well in excess of those encountered during normal driving, the burnish procedures would ideally condition the drum brakes. However, the agency is more interested in the braking capability of vehicles when the brakes are in the condition they are most likely to be when used on the roads than in the maximum braking capability of a braking system if the brakes are ideally conditioned. Since neither the Ford approach nor the approach set forth in the NPRM would be representative of normal brake conditioning, neither approach has been adopted in this rule.

In the comments, only Ford submitted data to support its contention that drum brakes would experience temperatures near 550 °F under normal driving conditions. Ford tested a fully loaded vehicle through the traffic of downtown Detroit, Michigan. This vehicle was hydraulically braked with a disc system on the front axle and drum brakes on the rear. Ford stated that the maximum temperature measured for the drum brakes was 495 °F. Ford also submitted data measuring the brake temperatures for air braked vehicles driving through the mountainous part of Arizona. The maximum temperature measured for the drum brakes over this road was 507 °F. However, Ford did not provide measurements of the initial brake temperatures or average brake temperatures or any other information that would allow the agency to further analyze the Arizona test data.

After considering the data submitted by Ford, NHTSA concludes that those data support the agency's conclusion that burnish procedures that allow drum brakes to be heated to 550 °F do *not* represent conditions that will normally be encountered by vehicles in use. The Detroit testing showed what the prior research and the agency research had shown; i.e., drum brakes do not experience temperatures of 550 °F under normal driving. With respect to the temperatures measured in the Arizona mountains, NHTSA does not doubt that it is possible to find grades long enough and severe enough to heat drum brakes to 500 °F. However, the point of the burnish procedure is not to simulate every conceivable condition that the vehicle might experience while in use. Instead, the burnish procedure is intended to simulate a normal break-in for the vehicle's brakes. While such conditioning would improve the performance of the vehicle's brakes, the agency has no evidence that most, or even a significant number of, new vehicles are broken in by driving through rugged mountainous terrain. Accordingly, a burnish procedure that is intended to be representative of normal driving conditions should not be based on these abnormally high temperatures.

The approach suggested by the NHTSA research, i.e., making 500 snubs from 40–20 mph, is the final approach about which the SNPRM sought comments. After considering the intended function of the burnish procedures and all the comments received during this rulemaking action, NHTSA has selected this approach as the burnish procedure to be used for vehicles with a GVWR greater than 10,000 pounds. By making a series of braking applications from speeds encountered by every vehicle, this procedure will be most representative of normal driving conditions. Further, this procedure allows the brakes to reach whatever temperatures they are designed to reach when driven in typical stop-and-go driving. Thus, any braking system design will be conditioned fairly under this approach.

Among the commenters to the SNPRM, only Rockwell International (Rockwell) completely endorsed this approach. Rockwell cited three factors that favored this approach. These were:

1. It would give a constant rate of energy input to the brakes throughout the burnish, thus reducing variability associated with the original burnish procedure;

2. The schedule of energy input to the brakes would be in the center of most vehicle application duty cycles, as desired, thus producing a typical, real world vehicle brake burnish and a correspondingly realistic brake performance test; and

3. It would give all brakes the same burnish schedule, regardless of brake design or type, and should give an adequate burnish to each type of brake. Thus, all brakes would be on an equal footing before starting the performance testing.

Renault USA Inc. (Renault) stated that it was "not sure" if this approach would give a sufficient burnish to brakes, especially when considering all of the vehicles to which this burnish procedure would apply. However, Renault asserted that the available data not exhaustive, and recommended that the final rule give manfacturers the option of burnishing their brakes either under this approach or the approach set forth in the NPRM.

Bendix stated that its air braked disc system reach the 550 °F temperature limitations under the current procedures, so all 500 snubs are run from 40 to 20 mph for these vehicles. Flexible made a similar comment for its air braked drum brake systems on buses. These comments suggest that, at least for these manufacturers' braking systems, the new burnish procedures would not change the burnish from that which is specified under the current procedures.

NHTSA believes that another advantage of this approach is that it would not favor or disfavor any type of brake design. Whenever the burnish procedures include a maximum temperature limitation, brakes that are designed to operate nearest that temperature get a more extensive burnish than do brakes that are designed to operate at either a higher or lower temperature. For example, this rulemaking proceeding was initiated because the 550 °F temperature limitation results in an unrealistic burnish for vehicles with disc brakes or both disc and drum brakes. That is because disc brakes are designed to operate safely at significantly higher temperature than are drum brakes. Thus, it is necessary to amend this temperature limitation to account for the higher temperatures generated by disc brakes.

Additionally, Eaton Corporation (Eaton) noted in its comments that the air brake industry is in the process of converting from asbestos based brake linings to non-asbestos brake linings on drum brake systems. These non-asbestos linings will generate different normal and safe maximum temperatures during brake applications than the asbestos-based linings currently offered. If a temperature limitation for the burnish procedure were specified in this rule, that limitation might need to be adjusted for various new brake linings and new brake system, to account for changing characteristics.

Such repetitive rulemaking should be avoided. It continually diverts agency time and resources from more productive use. More importantly, it denies the public the early introduction of new technology, not because of any safety-related issues, but because it takes significant periods of time to amend the Federal motor vehicle safety standards.

For example, it is possible that a new design for braking systems would not be adequately or representatively conditioned by burnish at some specified maximum temperature, as a result of which the braking system would not satisfy the performance requirements of Standard Nos. 105 or 121. However, such braking system would fully comply with those requirements if it were burnished in a manner that represented the break-in it would get during normal driving. Until the burnish procedures were amended, this braking system could not be installed on these heavy vehicles. Its introduction would be delayed solely because the temperature-restricted burnish procedures did not allow for the development of newer designs. NHTSA wants to avoid imposing such unnecessary impediments to the introduction of innovative systems.

A burnish procedure that requires 500 snubs from 40–20 mph avoids this pitfall. Under such a procedure, any new design will be burnished to whatever temperatures it is designed to experience during normal city driving. No additional rulemaking is required to ensure that the new design receives as effective and representative a burnish as do existing designs. Such a burnish procedure allows manufacturers to test and introduce innovative technologies without unnecessary and unintended delays.

However, the vast majority of commenters to the SNPRM objected to this approach. NHTSA stated in the SNPRM that preliminary examination of the results of 500 snubs from 40 to 20 mph indicated that such a burnish would expose all types of brake designs to the temperatures they would encounter in normal service without favoring any type of brake design. A number of commenters at least indirectly questioned this statement.

Lucas commented that this burnish procedure would not adequately burnish drum brakes on some vehicles with low gross axle weight ratings. However, Lucas did not submit any data to substantiate this claim. Motion Control stated that when it burnished a vehicle with disc/drum brakes under this approach, the rear drum brake temperature was only 400 °F. Motion Control asserted that this did not approach the necessary 500–550 °F for adequate burnish of these brakes. GM likewise stated that a vehicle with disc/drum brakes would not experience sufficiently high temperatures to adequately burnish either the front dics brakes or the rear drum brakes. GM also commented that this procedure would not adequately burnish certain all drum brake systems. Ford stated that its testing showed that burnish under this approach does not expose the brake linings of vehicles with disc/drum brakes to temperatures they would encounter in normal service.

NHTSA is not persuaded by these comments. Contrary to the implicit assertions of these comments, the purpose of the burnish procedure is not to guarantee that the vehicle's brakes will be exposed to a certain temperature. The agency concedes that this new burnish procedure may not expose current designs of drum brakes to temperatures of 500 °F. The fact that drum brakes will not be exposed to temperatures as high as they were under the old burnish procedure does not, however, show that this burnish procedure is not an adequate burnish. As noted above, the burnish procedure is only intended to simulate the break-in of the brakes under normal driving conditions. The burnish is not intended to ensure that brakes will be ideally conditioned as a result of being exposed to unusually high temperatures they will rarely encounter while in service on the roads. The agency's testing indicated that a burnish consisting of 500 snubs from 40 to 20 mph will in fact expose the vehicle brakes to the temperatures those brakes would experience during stop and go urban driving. This finding leads the agency to conclude that such a burnish procedure would fairly represent the condition of brakes on vehicles that are in use on the nation's roads.

Only Ford submitted data to substantiate its assertion that this burnish procedure would not expose the brakes on vehicles with front disc brake systems and rear drum brake systems to the temperatures such brakes would experience in normal driving. These data were obtained from the aforementioned driving around the Detroit area. However, the agency does not agree with Ford's comment that its Detroit test shows that brakes would not be exposed to normal driving temperatures, and therefore would not be properly conditioned, during this burnish procedure. For the single vehicle that was used in the Detroit test, the rear drum brakes experienced average temperature while driving around Detroit that were slightly less than the average temperatures measured during the burnish procedure. This fact supports the agency's conclusion that the burnish procedures set forth in this rule will expose the vehicle brakes to temperatures that are representative of the temperatures those brakes will experience in normal driving.

The front disc brakes on this vehicle did experience somewhat higher temperatures in the test than during the burnish procedure. However, disc brakes are often not as sensitive to burnish temperature as drum brakes. This is because the burnish temperature for disc brakes appears to have little effect on the torque output of the brakes after burnish, provided that the burnish temperature reaches at least 500 °F. In Appendices B, C, and F to NHTSA's research on hydraulically braked vehicles (DOT HS 806 860–864), disc brakes on three different vehicles reached temperatures of 500, 600, and 700 °F during burnish, but all showed comparable performance improvements after the burnish. Hence, even if the front disc brakes did not experience quite as high an average temperature during burnish as they did during urban driving, they did experience sufficiently high temperatures during burnish to simulate the "break-in" process.

Other commenters asserted a position which was somewhat contradictory to the above comments. Chrysler and Bendix were opposed to this burnish procedure, because it did not specify any maximum temperature to which the brakes could be exposed during burnish. These commenters stated that the burnish procedure had to specify some reasonable maximum temperature requirement to avoid damaging the brakes. The agency would like to note that any brakes that are designed so that they will be damaged while making 40 to 20 mph snubs probably should not be installed on new vehicles regardless of any applicable regulatory provisions. Regardless of the brake type, this burnish procedure will ensure that all brakes are exposed to whatever temperatures they will be exposed during normal break-in when operated on the public roads.

Ford, IH, and MVMA all stated in their comments that NHTSA's testing of a limited sample of vehicles over a single route does not adequately duplicate the range of brake lining temperatures experienced by the large variety of vehicles with GVWR's over 10,000 pounds operating over all possible driving cycles. The agency disagrees with the suggestion that the sample of vehicles for the Columbus, Ohio tests was not representative. This sample included vehicles with widely varying GWR's and with all current combinations of brake systems. None of these commenters pointed to a particular vehicle weight class or braking system that was not included in this sample, and the agency believes that its sample was broad enough to adequately represent these vehicles.

NHTSA agrees that there are driving cycles such as frequent driving on grades that would generate higher brake temperatures than city driving. However, the agency was not seeking to establish a burnish procedure to simulate the most demanding conditions these vehicles would face in the real world or a burnish procedure that ideally conditions all brake designs. Instead, the agency wants to establish a burnish procedure that simulates normal "break-in" for vehicle brakes. Stop and go city driving generates significantly higher brake temperatures than highway driving, primarily because of more frequent brake applications. This type of driving was chosen as the one the burnish should simulate, becuse it is a demanding type of driving for all braking systems, and it is likely to be generally and frequently experienced by the braking systems on heavy vehicles. NHTSA concluded that a burnish procedure based on city driving would expose vehicle brakes to temperatures they will encounter in the real world and represent the break-in for those brakes in the real world. A more demanding driving cycle would not be representative of normal break-in for the vast majority of vehicles on the road. A less demanding driving cycle would not expose the vehicle brakes to the conditions those brakes will encounter when in service. Therefore, the urban driving cycle was selected as the one the burnish should represent.

Abex commented that this burnish procedure would pose an additional problem. According to this commenter, without brake temperature data, it will be difficult to ensure any consistency of burnish conditioning from one test to another. First, nothing about the new burnish procedure prevents manufacturers from recording brake temperature data if they wish to do so. Second, this procedure will yield a constant rate of energy input to the brakes throughout the test, because all of the braking applications will be from 40 to 20 mph. That will ensure greater consistency of burnish conditioning from one test to another than the old burnish procedure. This is because the old burnish procedure was based on brake temperature. As noted in the comments of GM, IH, MVMA, and others, the brake termperature fluctuates greatly during the burnish, rising as much as 300 °F during a brake application. This sharp temperature rises make it very difficult to ensure consistent conditioning from one burnish to another, if maximum temperature is the controlling factor.

Abex also commented that Standard No. 105 includes 60 mph stopping distance requirements. Since the brakes will be tested for performance from 60 mph, Abex urged that the brakes should also be burnished from this speed. Motion Control made a similar comment. These comments are not persuasive. In both the perburnish and postburnish tests, Standard No. 105 specifies that vehicles with a GVWR greater than 10,000 pounds must stop from 60 mph in 388 feet. NHTSA notes that the service brake stopping distance requirements of Standard No. 105, to which both these commenters referred, are not currently in effect for vehicles with a GVWR greater than 10,000 pounds. Even if the service brake stopping distance requirements were in effect for these vehicles, the braking performance is *not* required to improve after burnish. Since Standard No. 105 only requires that the brakes on these vehicles retain the effectiveness they had before burnish, there is no reason to subject the vehicles to repeated 60 mph snubs during the burnish. Given the current requirements of the standard, the result of permitting 60 mph snubs would appear to be to raise the brake temperatures to unrealistically high levels.

Ford, GM, MVMA, and IH all commented to the effect that this new burnish procedure would lower the brake temperatures experienced by drum brakes during the burnish. According to these commenters, the lower temperatures would affect the static and dynamic performance of the brakes on the vehicles, which, in turn, would require a redesign of the brake systems on certain vehicles.

Since this new burnish procedure more effectively simulates normal break-in of these vehicles' brakes while in service on the roads, the braking performance measured for those vehicles in the performance tests for Standards No. 105 and 121 should now more accurately reflect the vehicles' braking performance while in service. The agency has no reason to believe that any vehicles currently being produced will not comply with Standards No. 105 or 121 after being burnished in accordance with these new procedures. Moreover, none of these commenters submitted data that supports their assertions.

MVMA simply stated that certain vehicles' braking systems would have to be redesigned as a result of this new burnish procedure. Without some data and examples of specific vehicles, NHTSA was unable to analyze this comment further. GM stated that its analysis of Standard No. 121 compliance data for some of its air brake transit buses with drum brake systems would be insufficiently burnished under this new procedure. As a result, GM stated that the buses' postburnish stopping distance would be increased to a level unacceptable to GM. It should first be noted that the stopping distance requirements of Standard No. 121 applicable to air braked buses have been suspended. Hence, there are *no* stopping distance requirements currently in effect for air braked buses. Even if there were stopping distance requirements in effect for air braked buses, GM did not asset that its transit buses would not comply with those requirements of Standard No. 121. Presumably GM meant to say that the performance of its buses would exceed the minimum performance requirements by a margin that was too small to be acceptable to GM. If a more representative burnish procedure results in GM's products not meeting GM's own product standards for the amount by which the product's performance should exceed the requirements of Standard No. 121, any redesign of the buses' braking system would be a result of the GM product standards, not Standard No. 121. To the extent that this new burnish

procedure more accurately represents the break-in those buses' brakes actually receive while in service, it would also give GM a more accurate representation of how well those will perform while in service. If vehicle manufacturers are not getting an accurate representation of how their vehicle braking systems perform when used by the public from the current burnish procedure, that is yet another reason to adopt the new burnish procedure.

Ford submitted data purporting to show that one of its vehicles with hydraulic disc and drum brakes would no longer comply with the requirements of section § 7.9 of Standard No. 105, if it were burnished according to this new procedure. That section of Standard No. 105 requires the vehicle to stop from 60 mph in a specified distance even if the vehicle experiences a partial service brake failure. With respect to vehicles with a GVWR greater than 10,000 pounds. Table II of Standard No. 105 specifies that such vehicles must stop in 613 feet from 60 mph with a partial service brake failure. Ford submitted data showing that the longest stopping distance for its vehicle was 737.5 feet and the average stopping distance was 626.3 feet.

However, Ford did not note that § 7.9 requires only that the vehicle stop in 613 feet in one of four required stops with a partial service brake failure. Since Ford's longest stopping distance for this condition was 737.5 feet and the average stopping distance for the four stops was 626.3 feet, the average of the other three stopping distances was 589.23 feet. This average is well within the required 613 feet maximum distance. Therefore, NHTSA does not believe that Ford's data support its asserted compliance problems.

To the extent that Ford's data were intended to show a reduction in the after burnish performance capabilities of the truck to a level unacceptable to Ford, the agency responds in the same way as it did to GM's comment on this point. That is, the data show that the vehicle complies with Standard No. 105. If the amount by which the vehicle exceeds that minimum performance requirement is unacceptable to Ford, any redesign of the braking system is a result of Ford's product standards, not Standard No. 105. Further, if the new burnish procedure gives Ford a more accurate representation of how well its baking system performs when in service on the public roads, that fact supports the agency's decision to implement the new burnish procedures.

IH commented that the changed burnish procedure would cause it to have compliance problems with section § 5.6.1 of Standard No. 121. That section requires that the static retardation force produced by the parking brake alone shall be such that the quotient of the static retardation force-GVWR is not less than 0.14. According to IH, under the current burnish procedure, this requirement means that it can use parking brakes on just one axle of a truck tractor unless the GVWR of the tractor is greater than 56,000 pounds. For tractors with a GVWR over 56,000 pounds, International Harvester must use parking brakes on two axles. However, International Harvester stated that under the new burnish procedure, it would have to install parking brakes on two axles of tractors with a GVWR over 46,000 pounds. According to the commenter, this will add costs and system complexity to tractors with GVWR's between 46,000 and 56,000 pounds.

International Harvester did not provide enough information for the agency to fully evaluate this comment. Most notably, the comment does not indicate whether the entire Standard No. 121 test sequence was run prior to the parking brake force measurements. Agency compliance testing of the parking brakes is conducted only after conducting service brake testing. If the 60 mph loaded vehicle service brake tests, which help condition the brakes, were not run to the parking brake force measurements, the parking brake force measurements are probably lower than they would have been had the complete Standard No. 121 compliance testing been conducted.

Assuming that International Harvester did conduct the full Standard No. 121 testing for this vehicle, the agency has no reason to believe that parking brakes should not be required on two axles of tractors with a GVWR of more than 46,000 pounds. If the International Harvester data are correct, the parking brakes on one axle of such tractors cannot provide a retarding force of 0.14 even when properly adjusted, if the brake linings are conditioned as they most likely would be when in service. A retarding force of 0.14 is roughly the equivalent of a 14 percent grade. If NHTSA accepts the commenter's conclusion that the new burnish procedure results in a 17 percent reduction in parking brake force, and the new burnish procedure more accurately represents the normal condition of brake linings in use on the roads, the parking brakes of some tractors with a GVWR of 55,000 pounds now being used on the public roads are only capable of holding on an 11.7 percent grade. If true, this comment raises concerns as to how well the parking brakes perform for vehicles currently in service. It also lends support to the agency's decision to implement burnish procedures that are more representative of the conditioning brakes get while in service.

Eaton, IH, and MVMA commented that a change to the burnish procedures should be be adopted, because any change would make obsolete 12 years of accumulated test data. These comments do not directly challenge the agency's conclusion that the new burnish procedures will be far more representative of the break-in that most brakes get while in service on the highways. Neither does this reasoning challenge the agency's conclusion that this new burnish procedure will not favor any new or future brake system designs. Instead, these comments urge the agency to retain a temperature-restricted burnish procedure because that is what the agency has used in the past. NHTSA does not agree that it should continue to require a burnish procedure that favors older brake designs and is not representative of real-world conditioning of brakes, simply because it has done so in the past. Indeed, it appears to be a far more responsible course of action to acknowledge the problems of the old burnish procedure and try to correct those problems in a new burnish procedure at a time when there are *no* service brake stopping distance requirements in effect for hydraulically braked heavy trucks subject to Standard No. 105, and when there are *no* service or emergency brake stopping distance requirements in effect for air braked vehicles subject to Standard No. 121.

Notwithstanding the agency's disagreement with the direct point of these comments, NHTSA believes that the implicit point of these comments is convincing. The agency reads these comments to imply that NHTSA ought to allow the manufacturers sufficient time to develop a new data bank using the new burnish procedures before mandating that vehicles be certified as complying with braking standards that incorporate these new burnish procedures. NHTSA believes that this is a legitimate concern that must be addressed in this rulemaking. The same point was indirectly raised in the International Harvester and MVMA comments that these new burnish procedures will require retesting of some vehicles's braking capabilities to ensure continuing compliance with the applicable standard.

The agency agrees that it must fully consider the economic impacts of a new burnish procedure, and should minimize those impacts when that is possible. This is particularly true in this rulemaking. This new burnish procedure is not intended to impose additional performance requirements for heavy vehicles in response to a demonstrated safety problem. Rather, the new burnish procedure is intended to ensure that vehicles are tested for compliance with the existing performance requirements when the brakes are conditioned to the same extent that brakes are typically conditioned when used by the public on our nation's roads, and to eliminate the current disfavoring of new brake designs from the burnish procedures. Given these purposes, the agency can and should minimize the economic impacts associated with the transition to a new burnish procedure.

Accordingly, this rule includes a transition period until September 1, 1993. During this period, heavy vehicles may be burnished under the old or new burnish procedures, at the manufacturer's option, before compliance testing. For this transition period, the old burnish procedures have been modified in accordance with the approach taken in the NPRM for this rulemaking. That is, vehicles will be subjected to 500 snubs for the burnish according to the schedule set forth in Table IV. However, if the temperature of the hottest brake exceeds 550 °F, the snubs shall be adjusted to a lower speed as necessary to maintain a hottest brake temperature of 550 °F. If the hottest brake temperature exceeds 550 °F at the lowest snub condition set forth in Table IV (40 to 20 mph), the remainder of the snubs shall be run from 40 to 20 mph without regard to brake temperature. This change has been made to accommodate disc brake systems, which are designed to operate safely at temperatures in excess of 550 °F. Since this problem was the issue this rulemaking was initiated to address, it is appropriate for the agency to address this problem now instead of waiting for the end of the transition period.

The agency believes that this transition period will effectively minimize any adverse economic impacts associated with the change to a new burnish procedure. It will allow manufacturers to specifically identify any vehicle whose braking system would not comply with the performance requirements of Standard Nos. 105 and 121 using the new burnish procedures. If only a few isolated vehicles are affected, the transition period will give the manufacturers sufficient time to make appropriate design changes to those vehicles. If, on the other hand, the new burnish procedures will necessitate major design changes to almost all vehicles now in production, or result in some other adverse economic consequences of which the agency is now unaware, the transition period would allow the agency time to make appropriate regulatory changes to avert such unintended economic impacts. Further, this transition period would enable the manufacturers to gather a data bank of testing under the new burnish procedures before those procedures are mandated, as urged in the Eaton, IH, and MVMA comments.

Tractor-Trailer Loading During Burnish

As noted above, the SNPRM proposed that the unbraked trailer used to test the braking performance of truck tractors would be loaded so that the combined weight of the tractor-trailer combination is equal to the GVWR of the tractor. Abex supported this proposal.

However, Ford, IH, Bendix, and MVMA opposed this proposal in their comments. They explained that their objection was based on the fact that the proposed change appears to *require* the use of a trailer during the testing of a truck tractor's brakes. These commenters stated that most tractor manufacturers use load racks, instead of trailers, during such testing. These load racks simulate the weight that a trailer would place on the tractor. The commenters stated that a new requirement that tractor manufacturers use actual trailers during testing was unnecessary. Since the commenters believed that the agency's intent was to prevent overloading of trailers *if* trailers were used for testing, they suggested that the language of the rule be amended to more accurately reflect such intent.

NHTSA believes that these comments reflect a misunderstanding of the compliance test procedures set forth in the Federal motor vehicle safety standards. The use of the word "shall" in the compliance test procedures means that the agency, *and no other party*, is required to use an unbraked flatbed semitrailer during its compliance testing for truck tractors. When specifying its compliance testing procedures in any of the safety standards, the agency is required by the National Traffic and Motor Vehicle Safety Act ("the Safety Act"; U.S.C. *1381 et seq.*) to specify those procedures in "objective terms." 15 U.S.C. 1392(a). One aspect of the requirement that a compliance test procedure be stated in objective terms is that the procedures must, to the maximum extent possible, eliminate potential sources of variability in test results.

In this particular case, the agency has no reason to believe that load racks do not provide an accurate simulation of the loading imposed on a truck tractor by a trailer during the burnish procedures, because it is the total load that affects the burnish and not the load distribution (provided that each axle is loaded sufficiently to protect against wheel lock and the vehicle is not equipped with a load proportioning valve). However, the agency also has no data to support its belief that load racks would yield burnish results identical to those that are obtained with an unloaded trailer. Hence, a provision that the agency could use load racks in its compliance testing *might* introduce variability into these standards. The only way to learn whether the use of load racks during the burnish procedures *would* introduce variability into the standards would be for the agency to spend a substantial amount of its research time and dollars investigating this subject. NHTSA believes that such an expenditure of its research efforts for a project that would have no obvious safety benefits would be unjustified. Therefore, the agency has chosen to draft this final rule so that it does not introduce any potential source of variability, by simply specifying that an unbraked flatbed semitrailer will be used by NHTSA in its compliance testing.

This decision need *not* increase testing costs for the manufacturers. It is worth noting that manufacturers are not even required to conduct testing before certifying that their vehicles comply with these standards, provided that they exercise "due care" in making such certifications, as provided in section 108(a)(1)(C) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(a)(1)(C)). If manufacturers choose to conduct testing in accordance with the compliance test procedures, they are free to simulate any or all parts of the test procedures. If the agency tests reveal a noncompliance, the agency's consideration of the appropriateness of a civil penalty will necessarily include the issue of whether such simulations are reasonable enough to satisfy the "due care" standard.

In this particular case, let us assume that a truck tractor manufacturer has chosen to conduct testing prior to certifying compliance and has employed a load rack during the burnish procedure. Let us also assume that the manufacturer's testing showed that the tractor complied with the standard and the manufacturer so certified. If NHTSA should subsequently conduct compliance testing for the tractor, the agency would burnish the tractor using a trailer. Finally, let us assume that the

testing showed that the individual tractor being tested did *not* comply with the braking standards.

In these circumstances, NHTSA would follow its longstanding and well known enforcement policy of notifying the manufacturer of the agency's test results and asking the manufacturer for further information. In response, the manufacturer would provide the results of its compliance testing to the agency, together with its reasons for concluding that a load rack is a reasonable simulation for a trailer during burnish. To support an argument that its own tests actually demonstrate compliance or to show that it exercised due care in its substitution of a load rack for a trailer during burnish, the manufacturer would also submit the bases for its conclusion that a load rack is a reasonable simulation of a trailer for the purposes of the burnish.

At this point, the agency would carefully analyze the manufacturer's response. If the agency concludes that the difference in test results can be explained to the agency's satisfaction, that the agency's results do not indicate an unreasonable risk to safety, and that the manufacturer's tests were reasonably conducted and were in general conformity with the standard, the agency would consider whether its own test results would support a determination of noncompliance. These enforcement practices have long been a matter of public record.

Of course, a manufacturer that can show that it exercised due care in making its certification would still be subject to the statutory obligation to recall and remedy its vehicles that do not conform to the requirements of Standard Nos. 105 or 121, assuming that the agency or the manufacturer makes a determination that the vehicles did not comply with the applicable standard. However, this same obligation would apply even if the manufacturer had conducted full compliance testing, and used a flatbed semitrailer to burnish its tractors.

Thus, the agency does not believe that the amendment requiring NHTSA to burnish tractors using flatbed semitrailers necessarily puts manufacturers at risk of a civil penalty solely because they chose to use load racks during tractor burnish, *unless* the manufacturer had no reason to believe that a load rack was an adequate simulation of a trailer. If this were the case, the manufacturers' comments that they should be allowed to continue using load racks during burnish would have no merit. However, NHTSA does not understand the commenters to be making such an assertion, and has no reason to question the representativeness of load racks during the burnish procedures. Therefore, this rule adopts the tractor loading requirements during burnish that were proposed in the SNPRM.

In this same vein, the agency would like to point out that this final rule does not adopt a proposed change to section S6 of Standard No. 121. That proposed change would have allowed final stage manufacturers to "demonstrate compliance" with Standard No. 121, if the final stage manufacturer adhered to the instructions provided with the vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturer of the vehicle. The proposed language erroneously conveys the impression that the statutory and regulatory requirements for notification and remedy of noncomplying vehicles would not be applicable if a final stage manufacturer could show that it had adhered to the instructions provided with the incomplete vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturers.

What the proposed language was intended to do was to make clear that a final stage manufacturer can demonstrate compliance with the statutory requirement that it exercise due care in making certifications of compliance with Standard No. 121, if the final stage manufacturer can show that it adhered to the instructions provided with the incomplete vehicle by the incomplete vehicle manufacturer and any intermediate stage manufacturers. However, such a provision is redundant. 49 CFR 567.5 and 49 CFR 568.6 already permit the final stage manufacturer that has adhered to the instructions provided with the incomplete vehicle to so state, and rely on its adherence to the instructions provided with the incomplete vehicle as the basis for its certification of the vehicle. Since these regulatory requirements make clear that any final stage manufacturers satisfy their "due care" responsibilities for certification when they adhere to the instructions furnished with the incomplete vehicle, it is unnecessary to add a similar requirement to Standard No. 121. Therefore, this proposed change is not incorporated in this final rule.

Brake Adjustments During Burnish

The SNPRM proposed that the brakes shall be adjusted in accordance with the manufacturer's recommendations at specified intervals during the burnish procedure. As explained in the SNPRM, if a manufacturer recommends that brakes be inspected first and adjusted only if necessary, that recommendation would be followed. If the inspection were to show that no adjustment was necessary, none would be performed.

This change was proposed because past interpretations and preambles have repeatedly stated that brake adjustments are permitted during burnish. Since these adjustments are permitted, it is necessary that the compliance test procedures specify how often and when the adjustments will be made. Otherwise, the standards would incorporate a potential source of variability, and would give rise to the problems described above in the *Tractor-Trailer Loading During Burnish* section.

Ford commented that it had no objections to the brake adjustment provisions proposed in the SNPRM. MVMA commented that it agreed with the proposed brake adjustment provisions.

However, Lucas disagreed with the proposal. It commented that brake adjustments should only be required during burnish if such adjustments are necessary to obtain the specified rate of deceleration during the burnish. The agency did not propose or intend to *require* brake adjustments unless the manufacturer recommends them at that time. If the vehicle manufacturer recommends that the brakes be inspected and adjusted only if certain conditions exist, the brakes will *not* be adjusted unless those conditions exist. Therefore, it Lucas desires that its brakes not be adjusted unless certain conditions exist, it should recommend that the brakes be inspected and adjusted only if those conditions exist. Such a recommendation would accomplish Lucas's goal without making any change to the proposed requirement. Hence, no change to the proposed language has been made in response to this comment.

Abex also objected to this proposed requirement in its comments. Abex stated that regulating adjustments during burnish was, in its opinion, "unwarranted." The comment went on to state that, "We are not aware of any problems that have been encountered with the current procedure which does not control either the number of adjustments that can be made or the specific points during burnish where they can be made." As explained above and in the SNPRM, the reason for proposing this requirement was to establish uniformity and specificity for the agency's compliance test procedures. The need for uniformity and specificity are sufficiently compelling in the agency's judgment to warrant these provisions.

Abex continued by stating that many dynamometers have automatic controls, which means the manufacturers can conduct the burnish procedures "essentially unattended." The commenter stated that this feature allows manufacturers to frequently conduct the dynamometer burnish through the night or during weekends. According to Abex, if the agency requires manufacturers to make adjustments at specified times and intervals, the requirement will slow up the burnish, increase labor costs, or both.

As discussed above in the section on tractor-trailer loading during burnish, NHTSA is *not* requiring the manufacturers to follow these procedures for any testing they choose to conduct. These are the procedures the agency will follow during its compliance testing. As long as the manufacturer exercises due care in connection with the testing it conducts, it would satisfy its statutory obligations in connection with certifications. Abex apparently has reason to believe that brake adjustments are not necessary during dynamometer burnish, since it does not make such adjustments at present. Assuming that Abex's reasons are sufficient to establish that it exercised due care before certifying that its brakes complied with this requirement, *or* if Abex recommends no brake adjustments during burnish, Abex will not have to change its current testing practices under this new regulatory provision. If, on the other hand, Abex has an insufficient reasons for concluding that no brake adjustment is necessary during dynamometer testing, Abex should change its practice irrespective of any changes to the compliance test procedures. Therefore, the agency has concluded that the establishment of timing and frequency requirements for brake adjustment during burnish in the agency's compliance tests need not increase the costs or time required for any testing manufacturers choose to conduct. These requirements adopted as proposed.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The main impact of this rule will be to provide burnish procedures that are more representative of the actual "break-in" that vehicles' brakes typically receive while in use on the nation's roads, without favoring any particular braking system design. As noted above, there are no stopping distance requirements currently in effect for service brakes on hydraulically braked vehicles, and no stopping distance requirements in effect for either service brakes or emergency brakes on air braked vehicles. Hence, these new burnish procedures will not affect certifications of compliance by manufacturers of those brake systems.

It is possible that the new burnish procedures could affect certifications of compliance with applicable stopping distance requirements for parking brake systems. The extent to which the changed burnish procedures will affect those certifications is uncertain. No commenter submitted evidence that any complying parking brake systems will no longer comply as a result of the change in burnish procedures. To address this possibility, however, this rule provides for a five year transition period to the new burnish procedures. During this transition period, manufacturers may continue to certify vehicles using the old burnish procedures. At the same time, the manufacturers can gain experience with the effects of the new burnish procedure's effect on the performance of their braking systems. The transition period will allow time for the manufacturers to make appropriate changes to their braking systems in an orderly fashion, and at minimal cost. Because the agency anticipates that this rule will have only minimal economic impacts, it has not prepared a full regulatory evaluation.

B. Small Business Impacts

The agency has also considered the impacts of this rule as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few of the truck tractor manufacturers affected by this burnish procedure are small entities. Many of the trailer manufacturers may qualify as small entities. However, this rule will not significantly increase the production or certification costs for those manufacturers that do qualify as small entities. There are currently no stopping distance requirements applicable to trailers. Thus, these new burnish procedures will not make it more difficult for small manufacturers of trailers to certify compliance with service brake stopping distance requirements. Standard 121 specifies parking brake requirements for air braked trailers, but trailer manufacturers, except possibly the largest trailer manufacturer who also makes brakes, usually depend on their brake manufacturer to provide the information necessary for certification to the parking brake requirements. Accordingly, any increased certification burden for parking brake systems that might be associated with this new burnish procedure would be borne by brake manufacturers (which generally do not qualify as small entities) and the large trailer manufacturers. Small organizations and governmental jurisdictions will be affected as purchasers of these vehicles. However, the cost impacts of this rule will be minimal, as described above. Accordingly, a regulatory flexibility analysis has not been performed.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly an environmental impact statement has not been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR 571.105, *Hydraulic Brake Systems*, and 49 CFR 571.121, *Air Brake Systems*, are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 Standard No. 105; Hydraulic brake systems.

1. S7.4.2 of § 571.105 is amended by revising S7.4.2.1 and S7.4.2.2 to read as follows:

* * * * *

S7.4.2 *Vehicles with GVWR greater than 10,000 pounds.*

S7.4.2.1 *Burnish.* Vehicles manufactured before September 1, 1993 may be burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of this section, at the manufacturers option. Vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S7.4.2.1(b) of this section.

(a) Burnish the brakes by making 500 snubs at 10 fsps in the sequence specified in Table IV and within the speed ranges indicated. Except where an adjustment is specified, after each brake application accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV the hottest brake reaches 550 °F ± 50 °F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be followed (up to the 60 mph initial speed) as necessary to maintain a hottest brake temperature of 500 °F ± 50 °F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 500 °F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs.

TABLE IV

Series	Snubs	Snub conditions (highest speed indicated, miles per hour)
1	175	40-20
2	25	45-20
3	25	50-20
4	25	55-20
5	250	60-20

(b) Burnish the brakes by making 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 fsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs.

S7.4.2.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's recommendations.

* * * * *

2. S7.6 of § 571.105 is revised to read as follows:

S7.6 *First reburnish.* Repeat S7.4, except make 35 burnish stops or snubs. In the case of vehicles burnished in accordance with S7.4.2.1(a) of this section, reburnish the vehicle by making 35 snubs from 60 to 20 mph, but if the hottest brake temperature reaches 500 °F ± 50 °F, make the remainder of the brake applications from the highest snub condition listed in Table IV that will maintain the hottest brake temperature at 500 °F ± 50 °F. If at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550 °F, make the remainder of the 35 brake applications from that snub condition without regard to brake temparture.

§ 571.121 Standard No. 121; Air brake systems.

3. S6 of § 571.121 is revised to read as follows:

S6 *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Except as otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

4. S6.1 of § 571.121 is amended by revising S6.1.1 and S6.1.8.1 to read as follows:

S6.1 *Road test conditions.*

S6.1.1. Except as otherwise specified, the vehicle is loaded to its gross vehicle weight rating, distributed proportionally to its gross axle weight ratings. During the burnish procedure specified in S6.1.8, truck tractors shall be loaded to their GVWR, by coupling them to an unbraked flatbed semitrailer, which semitrailer shall be loaded so that the weight of the tractor-trailer combination equals the GVWR of the truck tractor. The load on the unbraked flatbed semitrailer shall be located so that the truck tractor's wheels do not lock during burnish.

* * * * *

S6.1.8 * * *

S6.1.8.1 Vehicles manufactured before September 1, 1993 may be burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturers option. Vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S6.1.8.1(b) of this section.

(a) With the transmission in the highest gear appropriate for the series given in Table IV, make 500 brake applications at a decleration rate of 10 fsps, or at the vehicles maximum deceleration rate if less than 10 fsps, in the sequence specified. Except where an adjustment is specified, after each brake application accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV the hottest brake reaches 550° F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be used as necessary to maintain an after-stop temperature of 500° F ± 50° F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550° F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes shall be adjusted three times during the burnish procedure, after 125, 250, and 375 snubs and after completing this burnish, with each adjustment made in accordance with the manufacturer's recommendations. Any automatic pressure limiting valve is in use to limit pressure as designed, except that any automatic front axle pressure limiting valve is bypassed if the temperature of the hottest brake on a rear axle exceeds the temperature of the hottest brake on a front axle by more than 125° F. A bypassed valve is reconnected if the temperature of the hottest brake on a front axle exceeds the temperature of the hottest brake on a rear axle by 100° F or more.

OL
53
ISS
49
MR
14
988
MI

TABLE IV

Series	Snubs	Snub conditions (highest speed indicated, miles per hour)
1	175	40–20
2	25	45–20
3	25	50–20
4	25	55–20
5	250	60–20

(b) With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 fsps, or at the vehicle's maximum deceleration rate if less than 10 fsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes shall be adjusted three times during the burnish procedure, in accordance with the manufacturer's recommendations, after 125, 250, and 375 snubs, and shall be adjusted after burnish in accordance with the manufacturer's recommendations.

* * * * *

5. S6.2.6 of § 571.121 is revised to read as follows:

S6.2 *Dynamometer test conditions.*

* * * * *

S6.2.6. Brakes are burnished before testing as follows: Place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the brake manufacturer. Make 200 stops from 40 m.p.h. at a deceleration of 10 f.s.p.s., with an initial brake temperature on each stop of not less than 315° F and not more than 385° F. Make 200 additional stops from 40 m.p.h. at a deceleration of 10 f.s.p.s. with an initial brake temperature on each stop of not less than 450° F and not more than 550° F. The brakes shall be adjusted three times during the burnish procedure, after 100, 200, and 300 stops, and at the conclusion of the burnishing, in accordance with the manufacturer's recommendations.

* * * * *

Issued on March 9, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–5537 Filed 3–9–88; 4:34 pm]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 88–01, Notice 01]

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment; final rule.

SUMMARY: This notice makes a technical amendment to Figure 2 of Standard No. 301 to correct the ground clearance dimension specified in the figure for the moving contoured barrier used in testing the fuel system integrity of school buses. Currently, Figure 2 specifies the ground clearance to the lower edge of the contoured impact surface as 12.25 inches (311 mm.). The text of the standard refers to the same dimension as 5.25 ± 0.5 inches. This amendment corrects Figure 2 to reflect the agency's intent that the ground clearance to the lower edge of the contoured impact surface is 5.25 inches (133 mm.).

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone (202) 366–4915.

EFFECTIVE DATE: April 13, 1988.

SUPPLEMENTARY INFORMATION: The Blue Bird Body Company (Blue Bird), a school bus manufacturer, has brought to the agency's attention that corrective action should be taken to remedy a discrepancy in the moving contoured barrier specifications in Standard No. 301. Blue Bird informed the agency that there appeared to be a conflict in the standard about the correct ground clearance of the contoured impact surface used in the school bus impact test of the standard. Paragraph S7.5.1 of the standard refers to the dimension between the ground to the lower edge of the impact surface as 5.25 ± 0.5 inches, while Figure 2 of the standard shows the ground clearance to be 12.25.

This amendment corrects Figure 2 to reflect the agency's intent that the ground clearance to the lower edge of the contoured impact surface is 5.25 inches (133 mm.). NHTSA adopted the use of the contoured barrier in a final rule issued on October 15, 1975 (40 FR 48352). In the April 16, 1975 proposal to the rule (40 FR 17036), NHTSA stated that:

> The contoured barrier would incorporate the moving barrier specifications of SAE Recommended Practice J972a (March 1973). However, the impact surface of the barrier would be at a height 30 inches above the ground level, rather than 37 inches as specified in the SAE provision. Studies have shown that a 30-inch test height is more representative of actual collisions. This would be a typical engine height of vehicles that might impact a school bus.

Thus, in S7.5.1 of the standard, the agency adopted the ground clearance as 5.25 inches ± 0.5 inches to ensure that the top of the barrier would be 30 inches from the ground. In Figure 2, the agency apparently inadvertently incorporated the barrier dimensions directly from the SAE Recommended Practice J972a, without making the necessary 7 inch adjustment in the ground clearance dimension.

The agency has therefore concluded that a technical correction to Figure 2 is required to reflect NHTSA's true intent. The agency is amending the table marked "Dimensions" in the figure by changing the "12.25" inch and "311" mm. dimensions for letter "D" (referring to the distance between the ground to the lower edge of the impact surface) to "5.25" inches, and "133" mm., respectively.

Because the amendment is corrective in nature and imposes no additional burden upon any person, it is hereby found that notice and comment thereon are not necessary, and that for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest. The amendment is effective upon 30 days after publication in the **Federal Register**.

NHTSA has considered this amendment and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. The amendment imposes no additional requirements nor alters the cost impacts of requirements already adopted.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will have no effect on the human environment since it clarifies an existing requirement.

The agency has also considered the impact of this amendment under the Regulatory Flexibility Act. I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by the amendment, generally are not small businesses within the meaning of the Regulatory Flexibility Act. Any manufacturer who is a small business within the meaning of the Act will not be significantly affected since this corrective amendment only clarifies a previously adopted requirement and imposes no additional requirements. Finally, small organizations and governmental jurisdictions will not be affected by this amendment since prices will not be impacted.

In consideration of the foregoing, Part 571 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 571.301 [AMENDED]

2. In § 571.301, Figure 2 is revised as follows:

Issued on March 8, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

BILLING CODE 4910–59–M

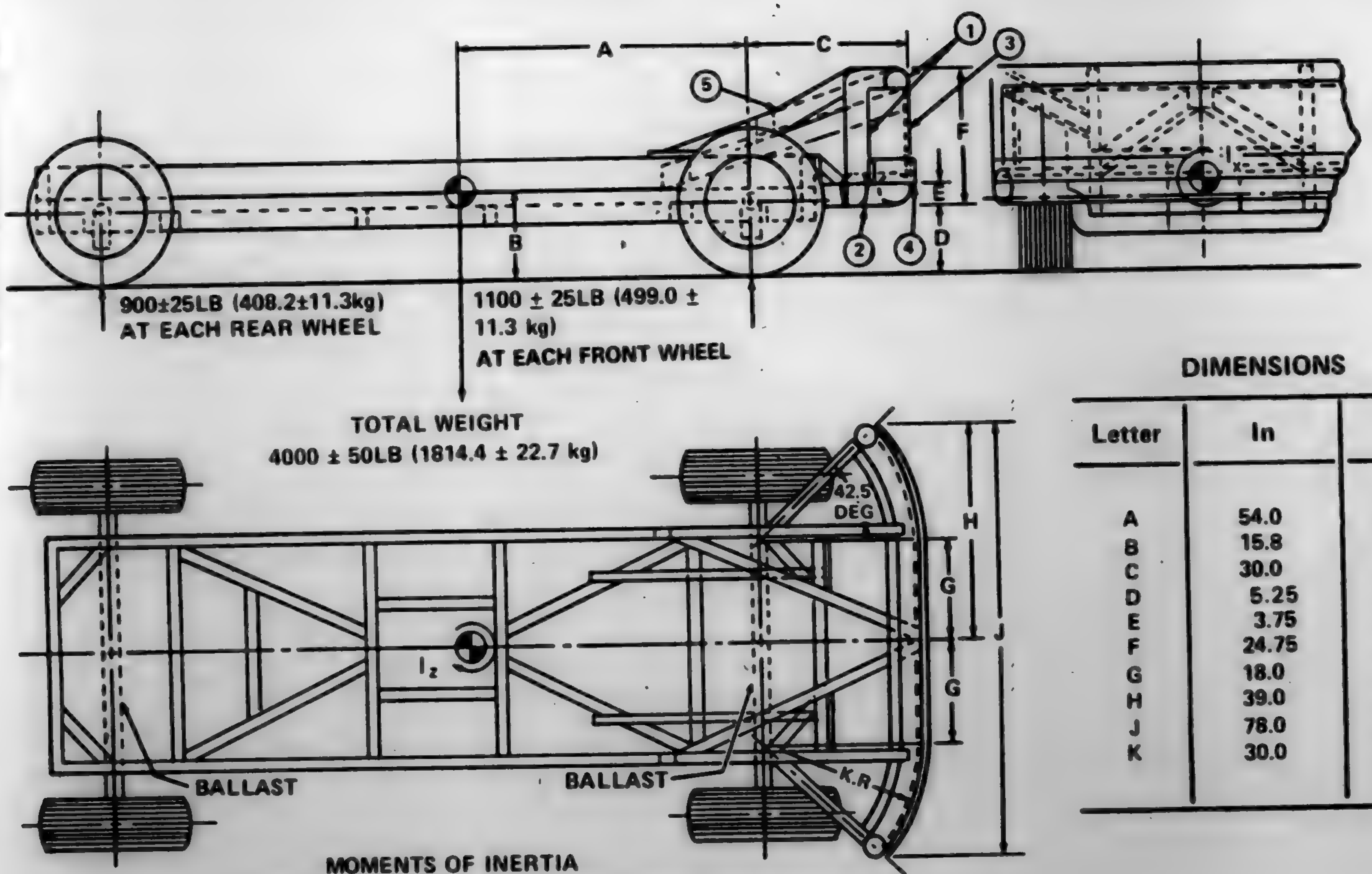
A
C
①
③
⑤
F
E
D
B
②
④
900±25LB (408.2±11.3kg)
AT EACH REAR WHEEL
1100 ± 25LB (499.0 ± 11.3 kg)
AT EACH FRONT WHEEL
TOTAL WEIGHT
4000 ± 50LB (1814.4 ± 22.7 kg)
42.5 DEG
H
G
J
G
I_z
BALLAST
BALLAST
K.R.

DIMENSIONS

Letter	In	mm
A	54.0	1372
B	15.8	401
C	30.0	762
D	5.25	133
E	3.75	95
F	24.75	629
G	18.0	457
H	39.0	991
J	78.0	1981
K	30.0	762

MOMENTS OF INERTIA

$I_x = 271 \pm 13.6$ SLUG • FT² (367 ± 18.4 kg • m²)

$I_z = 3475 \pm 174$ SLUG • FT² (4711 ± 236 kg • m²)

NOTES:

1. UPPER FRAME 4.0 IN DIA X 0.25 IN WALL (102 mm DIA X 6 mm WALL) STEEL TUBING (THREE SIDES).
2. LOWER FRAME 6.0 IN DIA X 0.50 IN WALL (152 mm DIA X 13 mm WALL) STEEL TUBING.
3. FACE PLATE 0.75 IN (19 mm) THICK COLD ROLLED STEEL.
4. LEADING EDGE 1.0 X 4.0 IN (25 X 102 mm) STEEL BAND, SHARP EDGES BROKEN.
5. ALL INNER REINFORCEMENTS 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.

FIG. 2—COMMON CARRIAGE WITH CONTOURED IMPACT SURFACE ATTACHED

[FR Doc. 88-5440 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-59-C

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that provisions of the Chicago order authorizing the market administrator to require reserve supply plants to ship milk to bottling plants, when called upon to do so, be eliminated. Such provisions would be replaced with minimal supply plant shipping requirements of three percent for the months of August and January, and five percent for each month of September through December. If these requirements are met, the supply plants generally would be pool plants during February through July without making any shipments. Handlers would be permitted to form units of their own plants, or to form units with other handlers, in order to meet the shipping requirements by shipping milk from the plant or plants best situated to make the shipments. However, units would have to ship twice the percentage of milk required to be shipped from individual plants. Both the market administrator and the Director of the Dairy Division would have limited authority to temporarily change the shipping requirements, if necessary.

Other changes would reduce the touch-base requirements, eliminate percentage limits on diversions, eliminate storage requirements for supply plants, and add two location adjustment zones for adjusting Class I and uniform prices to reflect distance from Chicago.

The recommended actions are based on a record developed at a public hearing held in Madison, Wisconsin, on June 2-4, 1987, to consider industry proposals to amend the marketing order. The hearing was requested by a group of 11 dairy farmer cooperatives and by four proprietary handlers.

DATE: Comments are due on or before April 4, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Much of the economic impact of certain recommendations incorporated in this decision will fall on smaller milk manufacturing operations or supply plants that would have to ship a small portion of their supplies to the market for fluid use. However, other provisions recommended would mitigate the effects by allowing handlers to combine their operations into units so that the required shipments could be made in an efficient manner from plants better situated. Also, the shipping requirements adopted are smaller than proposed by proponents of the amendments. Additionally, other actions would lessen, in minor ways, the burden of regulation for all pool handlers. As a result, the actions taken here are not expected to have a significant economic impact on a substantial number of small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Order Amending Order: Issued October 20, 1987; published October 23, 1987 (52 FR 39611).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 21st day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Madison, Wisconsin, on June 2-4, pursuant to a notice of hearing issued May 15, 1987 (52 FR 18894).

The material issues on the record of hearing relate to:

1. Marketwide service payments.
2. Performance standards for pool plants.
3. Definition of supply plant and reserve supply plant.
4. Definition of producer milk.
5. Location adjustments.
6. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 1.

This decision considers issues 2 through 5. A prior decision dealt with issues 1 and 6.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Performance standards for pool plants.* The order should be amended to require that supply plants must ship 3 percent of their receipts of milk in August and January, and 5 percent in each month of September through December, subject to temporary revision by the Director of the Dairy Division. Also, the market administrator should have limited authority to increase or decrease the shipping requirements for up to three months, and to require minimal shipments in other months. Handlers could form shipping "units" to make shipments at twice the level required for individual plants, once a monthly minimum shipping requirement from each plant has been satisfied. However, each plant in a unit would have to ship at least 47,000 pounds of milk, or 3 percent of its receipts of milk from producers, whichever is less, to a distributing plant(s) in each of five months during the six-month period of August through January.

a. *Minimum shipping requirements for supply plants.* The order currently defines two types of milk-supplying plants. One is a supply plant, from which must be shipped each month to distributing plants a percentage of milk receipts at least equal to the marketwide Class I utilization percentage for the same month the previous year. In December 1986 only five out of 107 supply-type plants fit into this category. The other 102 plants were reserve supply plants. Such plants are required to ship only one 47,000-pound load of milk each year, unless included in a call for shipments issued by the market administrator.

The current performance provisions for supply plants and reserve supply plants were adopted in 1984 in order to provide a mechanism to assure adequate shipments for the market's fluid (Class I) needs, while at the same time not requiring unneeded (and therefore inefficient and costly) shipments. Under this system about 40 percent of the market's supply-type plants have been associated with the market without shipping any more than a fraction of their milk supplies during the last two years. At the same time, some handlers complain that they are unable to get all the milk they want for fluid milk uses, while cooperatives maintain that the present system for pooling supply plants results in inequities.

Four proprietary handlers; namely, Dean Foods Company, Cedarburg Dairy, Inc., Certified grocers Midwest, Inc., and Hawthorn-Mellody, Inc. (Dean et al.), proposed monthly shipping percentages for all supply plants during the months of August through January. The required minimum shipment during August and January would be five percent of Grade A milk received at the plants from producers, and during September through December it would be 10 percent. Qualifying shipments would not include those made to distributing plants fully regulated under other Federal orders.

In addition, the proposal would provide the Director of the Dairy Division the authority to increase or decrease the shipping percentages by up to the full shipping percentage applicable that month. Also, the proposal would eliminate the reserve supply plant and call provisions.

Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, also offered a proposal to establish shipping requirements for all supply plants during the August-January period. CMPC's proposal, however, is basically a modification of Dean et al.'s proposal for supply plant shipping requirements. As such, CMPC proposed that two or more cooperatives may form a unit of their plants for the purpose of meeting the shipping percentages of the order and that these plants must be located within the State of Wisconsin or within the portion of the State of Illinois which lies in the marketing area. CMPC further proposed that the shipping percentages for units of cooperatives be double that for single plants in all months. However, the Director of Dairy Division should only be given the authority to increase or decrease shipping percentages up to the maximum percentage for a single plant during a certain month. For example, during the month of August, the director would be able to increase the shipping percentage for a single plant or a unit a maximum of 5 percentage points, making the effective shipping obligation 10 percent for single plants and 15 percent for units; the maximum decrease allowable would yield effective shipping percentages for single plants and units of zero percent and 5 percent, respectively.

Under CMPC's proposal, the director's authority would be effective during the months of August through January. For the remaining months of February through July, the call provision, already in the order, would apply. However, CMPC's proposal would eliminate the reserve supply plant provision, leaving each supply plant subject to a call. Any plant that fails to meet a call would lose its eligibility to pool for one year.

CMPC would include as qualifying shipments those made to other order plants for Class I use. If a plant does not earn the "free-ride" for the months of February through July or if a plant is new on the market, then CMPC proposed that it should ship a minimum of 5 percent during those months.

At the hearing, Kraft, Inc. (Kraft); the Trade Association of Proprietary Plants (TAPP); Wisconsin Cheesemakers Association (WCMA); and two farmer organizations, namely, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC) opposed proposals to restore minimum shipping requirements. However, should the shipping requirements be adopted, then Kraft, NFO, and FUMMC would support the unit pooling concept.

Dean et al. collectively operate six distributing plants, three supply plants, and three reserve supply plants regulated under the Chicago Regional order. In support of the proposal for reinsertion of specific supply plant shipping percentages for certain months of the year, the spokesman for Dean et al. claimed that presently only more money moves milk for fluid uses when supplies become tight. The Chicago order, he said, has not been effective in moving milk to bottlers since the "call" and reserve supply plant provisions, which virtually eliminated shipping requirements, became effective. His belief is that without the CMPC over-order pricing program, the bottlers could not have received enough milk without going out into the open market for it, causing disruptive action.

Proponent introduced exhibits into the record to show the increase in over-order charges administered by CMPC starting in the fall of 1984. He attributed the 79 cents per hundredweight increase between August and December 1984 to a combination of short supplies and high demand for manufacturing milk. He further pointed out that similar circumstances in the fall of 1986 contributed to over-order charges ranging from $1.20 to $2.50 per hundredweight. Although they did not relish the idea of high over-order premiums, Dean et al. were glad to be assured of a steady supply of milk. However, the spokesman added that there were times when even the high over-order charges could not guarantee a full supply of milk. As a result, he said, plant schedules were disrupted and in extreme cases bottling lines were temporarily shut down. He claimed that

milk could not be pried loose from cheese plants; therefore, CMPC had to go to other markets such as Upper Midwest, Southern Michigan, and Eastern Ohio-Western Pennsylvania, for milk supplies. His belief is that such circumstances should not arise in a market that has an average Class I utilization of 20 percent.

It is Dean, et al.'s belief that the manufacturers should share the milk with the fluid handlers who under the order share the Class I differential with them. Because manufacturers will not voluntarily ship milk even when high over-order charges are paid, he said, then the order, for equity's sake, should stipulate that for any supply plant to share in the market's pooled funds, such plant must perform. He contends that although in 1984 it may have been thought that efficiency would be served if shipping standards were eliminated, it is apparent now (1987) that equity among handlers has suffered and the market cannot function in an orderly fashion. The spokesman added that the shipping requirements of 5 percent in August and January and 10 percent in September through December, which amounts to 17 percent of the monthly Class I needs, is a step in the right direction toward equity.

Proponent claimed that the "call" provision cannot be effectively used in the Chicago Regional market because most distributing plants use significant amounts of milk in Class II and Class III uses and thus do not qualify to petition the market administrator to implement a call for shipments from reserve supply plants to distributing plants for Class I use. He added that other markets have shipping requirements which simply state that supply plants must ship a specified percentage of their supplies to distributing plants. Such provisions do not specify how the distributing plants must use the milk but simply require supply plants to perform in order to participate in the pool.

Although proponent did not espouse the idea of allowing "units" to meet the requirements of the order, Dean et al. implied it would not object to units if they were legitimate ones. He further explained that each plant in a unit would have to be operated by the owner. He firmly stated that he did not want a return to the days of "sham" leasing whereby a plant became part of a unit by virtue of a lessee paying one dollar to the lessor who in turn would pay the lessee a qualifying fee in order for the plant to be part of the lessee's unit. Under such a scheme, the lessor's plant would not have to ship any milk, but would have the benefit of the uniform price to help pay producers a competitive price for their milk.

A spokesman for Hawthorn-Mellody, Inc., testified in support of the positions taken by the Dean et al. witness at the hearing.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Incorporated-Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. CMPC member plants (29 reserve supply plants and two supply plants) receive approximately 46 percent of Order 30 producerr milk and ship approximately 38 percent of such receipts to Order 30 distributing plants.

CMPC's spokesman claimed that shipping standards are needed because the CMPC membership alone cannot supply all the needs of the fluid plants and still operate their own plants in a stable and economic manner. Although CMPC originally stated that they would make sure that the fluid needs of the market were satisfied when the call and reserve supply plant provisions were first made part of the order, CMPC now, after a few years' experience, states that they cannot guarantee a full supply by themselves. The spokesman pointed out that the CMPC program of over-order charges, in general, assures that fluid orders are filled with CMPC and other handler milk. However, when milk supplies are tight, such as was the case in the fall of 1986 and early 1987, no matter what the over-order charges are, the requested milk cannot be obtained from pool plants outside of CMPC. Furthermore, he stated that when such circumstances occurred in the past, CMPC was forced to look outside the order to get the necessary milk supplies. The spokesman concluded that if a handler is willing to draw from the pool the proceeds generated by Class I, then such handler should also be willing to assist in supplying the needs of the Class I handlers.

CMPC proposed adoption of unit pooling because the market as well as CMPC would not benefit if each plant were forced to ship. In fact, CMPC's spokesman stated that they would not be interested in shipping standards if unit pooling for cooperatives is not permitted.

CMPC's spokesman claimed that the formation of units would prevent uneconomic movements of milk from distant supply plants and would promote the supply of close-in milk. However CMPC would only permit plants of cooperatives to form such units. CMPC's spokesman did point out that one handler with two or more plants should be permitted to form a unit of such plants for shipping purposes.

CMPC supported giving the director discretionary authority to increase or decrease the shipping standards, stating that it lends flexibility to the shipping requirements which in turn leads to a stability of supply for Class I handlers. The spokesman cited how useful such a provision was in the past under the Chicago Regional order, being utilized 39 months (37 decreases and two increases) from 1968 to September 1984. And, for similar reasons, CMPC wishes to keep the call provision in place for the months when the shipping requirements and director's authority would not apply. Furthermore, the spokesman pointed out that all supply plants or units of such would be subject to a call since the reserve supply plant provisions would be eliminated.

Kraft, a proprietary handler, operates five reserve supply plants regulated under Order 30. Kraft's witness revealed that during the fall-winter period of 1986, Kraft pooled approximately 45 million pounds of milk per month and shipped between 8 and 10 percent of this to Order 30 distributing plants.

Kraft's witness put forth several arguments against monthly minimum shipping requirements for supply plants. One was that marketing conditions have not changed to a degree necessary to warrant a change in the pool plant requirements since 1984, when a prior hearing was held to consider shipping requirements. To bolster his argument, he referred to an exhibit which could be used to compare statistics for the first four months of 1985 with corresponding months of 1987 to show that Class I producer milk increased to a lesser extent than the total amount of milk in the pool increased (i.e., increases of 2.3 percent and 3.7 percent, respectively).

Kraft's witness also claimed that since a call has not been invoked since its inception, one can assume that the Class I needs of the market have been satisfied. Furthermore, he said the real issue does not concern the fluid needs of the market, but rather it concerns the Class II needs of the distributing plants.

Kraft's witness also pointed out that the disruptive situation which proponents fear would come about if fluid handlers should have to go out into the marketplace and bid up the price of milk, is anything but disruptive to the producers themselves who would be the beneficiaries of the increased competion. Rather, it is Kraft's belief that mandatory shipping requirements could have a negative impact on producers' returns because the increase in the amount of milk searching for a fluid recipient would most likely weaken the over-order pricing system.

However, Kraft's witness stated that should the Secretary adopt shipping standards, then these must include unit pooling provisions which would be extended to both proprietaries and cooperatives. Kraft suggested that such provision should be modeled after that of the Southern Michigan order. The witness said that the Southern Michigan unit provision allows for two or more proprietary handlers to join into a marketing agreement, which is certified by the market administrator, for the purpose of meeting pool plant shipping requirements. Kraft believes that because these agreements have the market administrator's approval there should be no concern about so-called "sham" lease arrangements.

Kraft's witness further stipulated that a unit's shipping requirement should be the same as an individual plant's shipping requirement. He also suggested that plants in a unit should be located within the marketing area or in the State of Wisconsin.

In addition, the witness suggested that qualifying shipments include those made to other order distributing plants. Kraft believes that such inclusion maintains the efficiency of the order, as demonstrated by an incident whereby Associated Milk Producers Incorporated (AMPI), asked Kraft to ship milk to distributing plants regulated under the Central Illinois order because of Kraft's closer location to those plants, in order to free-up AMPI milk for a Chicago customer.

A spokesman for WCMA voiced the association's opposition to mandatory monthly shipping requirements saying that the present order's call and reserve supply plant provisions are sufficient for assuring that the fluid needs of the market are satisfied. He pointed out that since the call provision was made part of the Chicago order, only on two occasions did the market administrator have reason to investigate whether conditions warranted its use. He added that, in both cases, the initial investigation was all that was needed to cause some plants to make milk available to distributing plants.

He further stated that proponents are only interested in fulfilling their Class I needs at favorable prices. However, he said, there are several reasons why manufacturers should not have to ship for Class II uses, one being that it is not the Federal order's responsibility to make milk available for Class II uses. This opinion, he said, is backed by a 1985 decision in which the Secretary turned down a similar request for shipping requirements. That decision stated that the Department would not force shipments for Class II uses. Furthermore, the spokesman said that Class II adds virtually nothing to the blend price.

The spokesman noted that the levels of proposed shipping percentage are not sufficient to bring about enough milk to cover the market's Class I needs. He expressed WCMA's views that if those who presently ship greater amounts of milk than that which would be required of them, adjust such shipments down to the required levels, then the market's Class I needs would be short. Nonetheless, WCMA's major concern involves unnecessary and uneconomic shipments that could ensue because of the shipping requirements.

TAPP held a view similar to that of WCMA, stating that the present order's call and reserve supply plant provisions assure the availability of adequate supplies of milk for fluid uses. TAPP's representative further stated that the real problem is that fluid handlers may not have enough milk available, at a favorable price, to fill their Class II needs. TAPP's witness claimed that unfavorable prices, or high over-order charges, are the result of heavy out-of-state shipments to the Southeast due to the "whole-herd-buyout" program. However, it is TAPP's belief that shortly after the supply-reduction program ends, then the excessive out-of-state shipments will also end, and the Chicago market will once again have abundant supplies of milk.

TAPP's witness presented the group's belief that it is not the responsibility of the Federal order to assure a full supply of milk for Class II uses. In addition, he stated TAPP's view that shipping requirements would depress handling charges which, he claimed, would be better set by the cooperatives outside of the Federal order program, following the dictates of supply and demand, and other competitive factors. It is adequate over-order charges, he said, that insure sufficient milk supplies and solve equity problems that exist between supply plants that ship to distributing plants and those that do not ship.

Both NFO and FUMMC opposed the reinstitution of shipping requirements in Order 30 because, their spokesmen claimed, to do so would have a negative impact on producer returns. FUMMC's representative added that comparative marketing facts for March-April 1983 and 1987 show that in 1987 there was more producer milk available, but less of it used in Class I. Thus, the FUMMC representative stated that if the market changes reveal anything, they show that the market needs the call and reserve supply plant provisions more today than it did back in 1983. However, both agree that should the Department put in shipping requirements, then, for reasons of efficient milk movement, handlers should be able to form units to meet such requirements.

The issue of shipping standards for supply plants involves two key questions: (1) Are fluid milk plants receiving adequate supplies of milk for Class I use? and (2) Would shipping requirements improve equity among market participants?

The question of adequate supplies of milk for Class I use has different answers, depending on who answers the question. The proponents of shipping standards (Dean, et al.) did not claim that in the last three years they were unable at any time to supply the packaged fluid milk products that their customers wanted. On the other hand, representatives for two handlers, Hawthorn-Mellody and Dean Foods both testified that they experienced some problems with specific plant operations because they were unable to get all the milk they wanted when they wanted it. Accordingly, bottling schedules sometimes had to be changed, and, in some cases, specific plant operations or even the entire plant was shut down for a few hours. However, both handler spokesman knew of no cases in the fall of 1986 when consumers were unable to obtain Class I or Class II products when and where they wanted them. These handlers maintain, nevertheless, that supplies were not adequate for their needs and that the order is not serving fully the purpose of assuring adequate Class I milk for bottling plants.

Another point of testimony was that in rather isolated instances in the fall of 1986 milk was obtained from sources outside the usual Chicago milkshed. Two examples noted were milk obtained from a plant in Pennsylvania and from plants in the Wisconsin portion of the Upper Midwest order. Milk also was obtained from other non-

Order 30 sources. The total non-Order 30 milk obtained by CMPC for its customers during August 1986 through January 1987 was about 4.3 million pounds. However, it must be noted that, according to one CMPC witness, this represented a very unusual situation and involved the largest amount of milk so obtained since 1968.

Opponents of the proposals to increase shipping requirements for supply plants maintained that the order does not need to be changed, pointing to the fact that the market administrator had not issued any calls for milk shipments since the call provisions were adopted in 1984.

The evidence leads to the conclusion that in the August 1986 through January 1987 period, the market's Class I milk needs were met, but just barely; and, that if more milk is needed from supply plants, it would represent only a small increase.

The question of equity is more difficult to quantify. Nevertheless, the fact is that since 1984 many reserve supply plants have maintained pool status and thus the benefit of the blend price, but have shipped very little milk to distributing plants. This is not surprising because the order has not required any more than this. Moreover, the location adjustment provisions have not facilitated movements of milk from more distant supply plants.

The decision to adopt the call provisions pointed out that it is difficult to achieve a balance between efficiency and equity. Based on the record of that proceeding, widespread support was indicated for the efficiencies of allowing milk supplies to be held in reserve, and thus pooled with shipments to be required only if the market administrator found it necessary to issue a call. Now, CMPC has concluded that such provisions lead to inequities in the marketplace. We find that the record supports this conclusion.

One of the exhibits introduced at the hearing shows that in September 1986 through January 1987 there were 102 plants that qualified as reserve supply plants. Fifty-six of those plants, which pooled milk equal to 41 percent of all milk pooled by reserve supply plants, shipped to distributing plants an average of only 1.1 percent of their producer milk receipts during the same months in which bulk milk was being imported from other order plants. At the same time, CMPC member cooperatives that operated supply plants shipped 38 percent of their milk supplies to distributing plants, and even then could not supply all the milk requested by their customers.

It is recognized that CMPC's definition of "distributing plants" includes some cottage cheese operations. However, it was estimated that about 85 percent of the CMPC shipments were Class I milk. Thus it is clear that CMPC members have shipped to bottling plants about one-third of their supply plant milk while more than 50 percent of reserve supply plants shipped an average of slightly more than one percent. In fact, 40 of those plants averaged shipments of only 0.2 percent of their receipts.

The proponent cooperatives now take the view, based on experience, that the reserve supply plant and call provisions have resulted in an inequitable situation for CMPC members. This occurs because the cooperatives cannot provide the level of supplies needed by the fluid market and at the same time operate their own facilities in a stable, economic manner. On the other hand, some manufacturing plant operators have been able to keep virtually all of their milk, as demonstrated by the low level of shipments for the group of 40 plants. Clearly, there is a lack of equity in performance between CMPC members and many other supply plant operators. Accordingly, equity among the market's supplying handlers will be improved if increased shipments are required. The next question, then, is how much should shipping requirements be increased?

Both proponents of shipping requirements proposed 5 percent in August and January, and 10 percent in September-December. Based on an exhibit prepared by the market administrator, adoption of this proposal would have brought forth additional shipments of milk averaging about 35 million pounds per month during the August-January periods beginning in August 1985 and ending in January 1987. This estimate assumes that other handlers would have maintained their same level of shipments. There is no way to evaluate the correctness of such an assumption based on information contained in the record. On the other hand, since the evidence indicates adequate supplies for Class I use during those periods, there is no justification for requiring supply plants to ship an additional 35 million pounds per month. Instead, the order should specify shipping requirements at 3 percent of receipts for August and January, and 5 percent for September through December.

It is not possible, given the data contained in the record, to estimate how much additional milk will be shipped as a result of adopting the lower requirements. All that can be said is that the lower requirements would be expected to bring forth less milk than the proposed requirements. This will improve somewhat the equity among supply plant operators, yet minimize any shipments above the level needed to assure adequate supplies for Class I use. Moreover, if the supply plant operators in CMPC were to cut back on their shipments to bottling plants, it is possible that there would not be adequate supplies for Class I use, absent a mechanism to require additional shipments.

Both Dean et al. and CMPC proposed eliminating the call provision in the fall months, and Dean et al. proposed eliminating the call provision entirely. Both proponents argued that the call provision would not function as they had expected it would when adopted. In its place, both proponents advocating providing the Director of the Dairy Division the authority to increase or decrease shipments in the fall months as a corollary provision to requiring all supply plants to ship more milk. The Director could increase or decrease the shipping requirments as necessary to either obtain additional supplies for Class I use or to prevent unneeded and therefore uneconomic shipments. A similar provision was in the order prior to adoption of the reserve supply plant and call provisions.

The proposal should be adopted in order to provide continued flexibility in attempting to balance shipments with Class I needs. However, the authority to temporarily increase or decrease shipping requirements should reside with both the market administrator and the Director. Thus, the market administrator could revise the shipping percentages by up to two percentage points for a maximum of three months. This provision will allow fine-tuning the shipping requirements on a timely basis. If a greater adjustment appeared to be necessary, the Director could, either on his own initiative or at the request of industry, temporarily increase or decrease the shipping requirements by up to 5 percentage points from those specified in the order for a long as the entire August-January performance period. In another discussion, it is concluded that handlers should be allowed to form units so that the shipping requirements might be met in the most economic fashion. Any increase or decrease specified under authority of either the market administrator or the Director of the Dairy Division would be applicable also to units in the same manner and in the same amount as for individual supply plants. Moreover, the authorities to increase or decrease shipping requirements should remain in effect throughout the year. Thus, even in months when there is no shipping requirement, if an analysis of market conditions convinced either the market administrator or the Director of the Dairy Division that shipments were needed, requirements could be imposed up to the limits authorized. This dual authority to make temporary adjustments should help the market operate in an orderly fashion.

Any supply plant that meets the shipping standards specified (or as otherwise temporarily revised) in each month of August through January should have automatic pool plant status in each of the following months of February through July, unless shipping requirements are imposed by either the market administrator or the Director of the Dairy Division. Any supply plant that fails to meet the August-January performance standards would be required to ship each month of February through July at least 3 percent of its receipts, unless otherwise increased by either the market administrator or the Director. The same requirement would apply to a new plant or a plant that had closed and later was reopened. The provisions just described will essentially replace the call provisions adopted in 1984, and will remove the need for defining a "reserve supply plant."

Opponents of shipping requirements argued that the call provision had functioned properly as demonstrated by the fact that no call has been implemented. They were also concerned that the imposition of shipping requirements would reduce producer returns, lower the level of over-order charges, and cause milk to move inefficiently and unnecessarily.

The lower level of shipments adopted in conjunction with the provisions for forming shipping units will tend to minimize the impact of providing greater equity through increased performance standards. The critical need, however, is to achieve better equity. Thus, manufacturing plant operators who use the pool monies contributed by bottling plant operators to help attract and maintain Grade A milk supplies will be required, in turn, to make available to bottling plants a small portion of those supplies.

CMPC's proposal to leave the call provisions in place during February through July, and to make all supply plants subject to a call for shipments should not be adopted. Rather, the provisions for temporary revisions by the market administrator and the Director of the Dairy Division should function to serve essentially the same purpose without the added complexity of order language necessary to leave the call provisions in the order, but applicable to only half of the year.

Similarly, if a plant that qualified for automatic pool status during February through July should fail to meet any shipping requirement imposed during that period by either party having authority to do so, such plant would then lose its "free ride" status for the remainder of the six-month period. Again, this differs from CMPC's proposal to deny pool status for one year to any supply plant that failed to make shipments required under a call. However, since all supply plants will be pooled on the basis of performance, and not merely a promise to perform if a call is issued, such a provision would be inconsistent with the other provisions adopted in this decision. If a pool supply plant failed to meet a temporarily imposed shipping requirement in only one month, but had shipped throughout the fall months, producers regularly associated with the market would be denied pool status for their milk for one year. Such a provision would not be acceptable.

Currently, supply plant and reserve supply plant shipments (other than agreed Class II or Class III) to distributing plants regulated under other Federal orders are considered to be qualifying shipments up to an amount equal to shipments to pool distributing plants during the month. Dean et al. proposed that this provision not apply under new shipping standards, while CMPC and others urged its continuance.

We conclude that this provision should continue, but with one modification, as follows: If a temporary revision is imposed (by either the market administrator or the Director of the Dairy Division), the additional shipments required under the temporary revision should go only to pool distributing plants. Put another way, if a determination is made that additional supplies are needed for Class I use at Order 30 distributing plants, then the additional shipments resulting from increased shipping requirements should be addressed to those needs.

Also, it should be noted that determination of the need for temporarily revising shipping standards will be based only on the Class I needs of the market. To reiterate what has been said in previous decisions, given the level of difference between Class II and Class III prices, the order will not force milk to be delivered to the market for a Class II use. However, it also should be pointed out that none of the proposals submitted for this hearing involved any exploration of how much milk must be received at a distributing plant in order to be able to package and distribute 100 pounds of fluid milk products. Although it was intimated throughout testimony that the 10 percent long provided in the order to cover such things as shrinkage, and cream separation is inadequate, this record cannot evaluate that number.

In any event, and contrary to the contention of opponents of adopting revised shipping percentages, it can be presumed that supplemental milk supplies needed by distributing plants in the low production months are for Class I use rather than Class II use. The volume of Class II use in the Chicago Regional market tends to vary seasonally in the same direction and essentially the same magnitude as the seasonal variation in the producer receipts. For example, during August 1986 through January 1987 the volume of Class II use was 6.9 percent lower than in the prior six-month period of February through July 1986, compared to a decline of 8.7 percent for receipts. By comparison, class I use was up 9.6 percent. Similarly, for the six-month period August 1985 through January 1986 compared to the prior February through July 1985 period, Class II use was down 3.1 percent and producer receipts were down 3.6 percent, while Class I use was up 6.2 percent.

b. *Formation of supply plant units.* Handlers should be allowed to make required supply plant shipments from any plant or plants that they operate, and which are located in the State of Wisconsin or in the portion of the State of Illinois that is included in the Chicago Regional order market area. Also, handlers should be allowed to jointly form shipping units. Such a provision will complement the shipping requirements being adopted so that the required shipments may be made in an efficient manner. However, each supply plant in a unit should be required to ship to distributing plants at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. The shipping requirement for units should be double the requirement for individual plants; i.e., 6 percent in August and January, and 10 percent in September through December.

CMPC stated that units were an essential component of shipping requirements for supply plants. In fact, CMPC (a proponent of shipping requirements for supply plants) also stated that shipping requirements should not be adopted unless a unit provision also is adopted. Others, including several who opposed shipping

requirements, said that if shipping requirements nevertheless were adopted, then provisions for units should also be adopted. CMPC urged that only cooperatives be allowed to jointly form units. The spokesman did indicate that a proprietary handler with a multi-plant operation should be allowed to form a unit of its own plants.

CMPC's basis for allowing only two or more cooperatives to jointly form a unit is the reblending privilege granted cooperatives by the Agricultural Marketing Agreement Act of 1937. CMPC also believes that the abuses of selling pool qualification will return if multi-handler units are allowed. This later concern was often expressed at the hearing by others as well, including, Dean et al., who would support units only if they are legitimate units.

The basic reason for requiring shipments by supply plants, as stated earlier, is to achieve an improvement in equity by pool handlers through increased responsibility for supplying milk to meet the market's Class I needs. Equity is achieved at the handler level; it is not primarily a matter of equity among plants. Thus, beyond establishing basic criteria for plants to be pool plants, there is no clear cut need to require that a handler make the required shipments from each supply plant that the handler operates. The Class I needs of the market would appear to be as well served if the required amount of milk is shipped without regard to which particular plant or plants make the shipments.

Nevertheless, it is feasible to require each plant in a unit to ship at least 3 percent of its receipts of milk from producers or 47,000 pounds of milk, whichever is less, in each of five months during the period of August through January. This will demonstrate that the plant actually can make shipments. However, in order to allow smaller operations maximum flexibility, the monthly standard is not expressed as one load. Also, to avoid requiring a small plant to ship a disproportionately large percentage of its supplies in meeting the 47,000 pound requirement, a 3 percent of receipts alternative shipping requirement is provided.

The order will require, as CMPC proposed, that the shipping requirement for any unit, whether operated by a cooperative or proprietary organization(s), be double that required for the operator of an individual supply plant. Temporary revisions to increase shipping requirements would apply to units at the same rate specified for individual supply plants, not at twice the rate. The double-shipping requirement for units is one way to discourage abuse of the unit pooling privilege through leased plants or other arrangements that tend to accommodate the selling of pool qualification standards. Since the shipping requirements adopted are at low levels (3–5 percent), a unit would still be required to give up a relatively small portion of its milk supply in return for the privilege of pool participation.

It is necessary, as proposed, to specify that all plants included in a unit must be located in the State of Wisconsin or in that portion of the State of Illinois that is within the marketing area of the Chicago Regional order. Absent this restriction, plants in distant areas could become pool supply plants under the Chicago order by shipping just one load per month. Such is not the intent of the unit pooling provision. The geographic restriction is appropriate.

A major concern expressed at the hearing centered around the practice of handlers leasing plants to be included in a unit. Strong sentiments were expressed that any leased plants included in a unit must be controlled and operated by the handler. Various lease criteria were suggested as necessary to prevent a "sham" lease, such as where the pooling handlers pay one dollar per year and then receive a fee from the plant operator for pooling the milk. It was suggested for example, that the pooling handler must be held responsible for paying producers who deliver milk to the leased plant. Another suggestion was that the pooling handler must control the leased operation in order for it to be considered a bona-fide lease. Finally, there was a question about whether the operation of the leased plant should be accounted for in the books and records of the pool handler. The response was affirmative.

Because of the concern about sham leases and selling pool qualification, measures to prevent or at least minimize such practices should be adopted. Accordingly, it will be necessary to demonstrate that a leased plant meets the following conditions in order to be a pool plant in a unit:

1. The unit operator is responsible for paying producers who ship to the leased plant.

2. The unit operator controls and manages (either directly or indirectly) the leased plant;

3. The books and records of the unit operator reflect the on-going activities of the leased plant by including at least employee payroll records and the gross value of all producer milk pooled by the handler that operates the leased plant.

These requirements should serve to prevent, or at least inhibit the pooling of sham leases, especially when coupled with the doubled shipping requirements for units, and should satisfy the market administrator that the handlers involved have established a bona fide lease. These measures are adopted in direct response to industry concerns over past abuses of a unit pooling provision.

Any handler, or any two or more handlers should be allowed to form a unit of plants. The unit could include, for example, supply plants of two cooperatives, a cooperative and a proprietary handler, or two proprietary handlers. An agreement certified to the market administrator by all parties to the agreement will notify the market administrator as to which plants will be in a unit and which handler is responsible under the agreement for meeting the performance requirements. The market administrator should receive such certification and list of plants to be included in each unit by July 15 for the following August-July period. Changes in unit makeup may be made after advance notice in writing to the market administrator. If a unit does not meet its shipping requirement, the handler responsible under the order for the unit shall inform the market administrator which plant or plants shall be depooled. If the handler fails to do so, the market administrator shall determine which plant(s) will lose pool status by first eliminating the last plant on the list, then the next, and so on until deliveries are adequate to qualify the remaining plants in the unit. Inclusion of this provision will remove any uncertainty as to how the order will apply in the event a unit fails to meet the performance requirements. Each plant included in a unit during the months of February through July must have been qualified as a pool plant, either individually or as a member of a unit, during the previous August through January.

The order also should recognize that a handler in a unit may sell the business or close down because of failure of the business. In such an event, language is provided in the order to allow the unit to reorganize to reflect the changed status of unit participants. Failure to include such a provision would leave the order unclear as to the status of a unit if such a change occurs.

Under a unit pooling provision, all supply plant handlers have an opportunity to fulfill their responsibilities to the fluid sector. At the same time, the order will allow flexibility so that efficiencies and economies may be realized in meeting those responsibilities.

If these provisions were not adopted, then it would be expected that milk would often move in an inefficient and costly manner, which would be contrary to the intent of the Act to foster stable and orderly marketing conditions.

3. *Definition of supply plant and reserve supply plant.* The definition of a supply plant should no longer include a minimum storage capacity. Also, this order should no longer define a reserve supply plant.

CMPC proposed eliminating the storage capacity requirement for supply plants under the Chicago Regional order. In support of its proposal, the spokesman claimed that constant improvments in dairy technology have made it difficult for handlers to know the precise sizes of milk trucks and tankers that go in and out of their milk plants. He state that without such knowledge, a handler's plant might not qualify as a supply plant simply because its storage capacity did not equal or exceed the largest shipment in or out.

Currently, a supply plant (other than a reload) regulated under Order 30 must maintain storage capacity sufficient to hold the largest single quantity of milk, either received at or shipped from the plant as a single load. Such provision was found to be necessary to demonstrate that the supply function (i.e., assembling milk from farms at a location near such farms for efficient shipment to distant distributing plants) is performed with respect to milk received at or shipped from the plant. (Official Notice is taken of the Assistant Secretary's decision of August 6, 1971 (36 FR 14745).) The issue at that time concerned the pooling of milk that never was intended for Class I purposes. It was decided that if a supply plant at least had storage capacity equal to the largest shipment of milk in or out of the plant, then it would be able to hold reserve milk and thus give the appearance of Class I readiness.

Proponent pointed out that the order's reserve supply plant definition does not set specific requirements in regard to storage capacity. This double standard in storage capacity, he asserted, should not continue. The fact that the lack of storage capacity at ten reserve supply plants has not caused the market administrator any problem speaks in favor of its demise, he added.

At the hearing, only WCMA spoke out against the proposal. WCMA's witness questioned whether the order's supply plant definition should be so liberal.

Thirteen years after the storage capacity requirement became effective, reserve supply plant provisions were installed and most of the then supply plants chose to be regulated as reserve supply plants. Reserve supply plants were not required to maintain storage capacity because at the time of that hearing, the industry did not make a case for such a requirement.

Presently, there are 102 reserve supply plants and only five supply plants regulated under Order 30. However, as a result of this proceeding there will no longer be reserve supply plants; instead, the 107 plants will all be supply plants if they choose to meet the supply plant standards of the order which would include, if not changed herein, the minimum storage capacity requirement. However, as stated previously, the reload plants do not have to maintain storage capacity. Out of all 107 plants, 97 have some storage capacity, yet only 75 have storage capacity in excess of 55,000 pounds.

As stated, the 102 reserve supply plants have been exempt from any storage capacity requirement since September 1, 1984. Although these plants would now be supply plants, they should continue to be exempt from the storage capacity requirement, as should all supply plants. Otherwise, a plant which for three years has not had to consider such matters, could lose its spool status if a tank load in or out of the plant turned out to be larger than the supply plant's storage capacity. The supply plant would not be a pool plant because its storage capacity was inadequate. However, as proponent pointed out, this inadequacy may be due to technological improvements in the size of tank trucks. Plants should not be depooled simply because they cannot keep pace with such improvements. Accordingly, the supply plant storage capacity requirement should be removed. Furthermore, in establishing a plant's association with the fluid market, the pool supply plant shipping requirement will have to be met. Such performance should be enough to demonstrate that a plant is fulfilling its supply function.

To accommodate the removal of storage requirements, conforming changes must be made in the definition of a "plant" under the Chicago order. Since the supply plant definition will no longer make any distinction between a supply plant with storage capacity and one without it, (i.e. reloads) then the plant definition should likewise make no distinction between such plants. Accordingly, the plant definition has been revised to broadly include milk plants that may qualify as pool plants. However, a reference to unloading milk into a tank truck in a plant is included to make it clear that producer milk so handled will be considered as physically received at a supply plant.

In light of other changes made herein concerning pool plant requirements, there is no longer a need to define reserve supply plants. Accordingly, such definition and any references to such throughout the order should be removed.

4. *Definition of producer milk*—(a) *Producer delivery requirement.* The producer delivery requirement (i.e., the "touch-base" requirement) of Order 30 should be relaxed. In this regard, only during the six months of August through January should one day's milk production of an individual producer be physically received at a pool plant to qualify such producer's milk for diversion to nonpool plants. However, throughout the year, the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the month. The order now provides that the touch-base requirement apply for each month and requires a dairy farmer who was not a producer during the previous month to touch-base before any of such producer's milk can be eligible for diversion.

CMPC proposed replacing the monthly touch-base requirement with a requirement whereby the milk of a dairy farmer who was not a producer during the previous month would not be eligible for diversion unless one day's production is received at the pool plant reporting the milk during the succeeding two calendar months. There was no opposition to this proposal at the hearing or in post-hearing briefs.

Proponent's witness claimed that requiring one day's milk production of each producer to be delivered to a pool plant each month causes under pumping and hauling of milk. This, he said, is done solely to insure that the milk of these producers is eligible to be shipped directly to nonpool manufacturing outlets and remain pooled.

The purpose of requiring individual producers to touch-base is to insure that they are genuinely associated with the fluid market. Thus, it is known that the producers with milk pooled on this market are capable of delivering approved Grade A milk to pool plants. It is desirable that this practice be carried out without interfering with efficient marketing while maintaining the integrity of the order. It is unnecessary to require the milk of each producer to touch-base each month to achieve this goal.

Accordingly, the order should require that at least one day's production of a producer be physically received at a pool plant during each of the months of August through January in order for any of that producer's milk to be eligible to be diverted to nonpool plants and

remain pool milk. One day's production during each of the milk-short months is sufficient to demonstrate an association between producers and the market.

Nonetheless, throughout the year, at least one day's production of a dairy farmer who was not a producer during the previous month should be physically delivered to a pool plant during the month in order for any of that milk to be eligible for diversion. Although this means that initial deliveries would be made during the flush as well as the milk-short months, an association of the milk of new producers with the Chicago market must be established, even if such shipments interfere with efficient marketing. However, the change made herein to the initial touch-base requirement should provide handlers a greater flexibility in making these deliveries.

(b) *Limitation on diversions to nonpool plants.* there should not be a limit on the amount of a handler's producer milk that may be delivered to nonpool plants and still be pool milk. Currently, the percentage limitation is equal to the market's combined Class II and III utilization percentage in the same month of the preceding year.

CMPC proposed eliminating the diversion limit. This proposal also was unopposed. Proponent said that the limit on the amount of milk that a pool plant can divert, like the touch-base requirement, causes unnecessary and uneconomic shipments of milk simply for pooling purposes. CMPC believes that handlers should not be subject to such costly obstacles when they are carrying out a basic precept of the order program in Chicago, that being to pool all the Grade A milk of producers. CMPC also believes that the elimination of both the touch-base requirement and the diversion limit provision, in conjunction with the implementation of unit pooling (i.e., per CMPC's proposal No. 6, issue No. 2 herein), should enable handlers to serve the market from the closest plants, thereby reducing hauling and associated costs.

In the Chicago market, the amount of milk that has been allowed to be delivered directly to nonpool manufacturing plants and still remain pool milk has been the reciprocal of the market's Class I use during that month of the previous year. This has been complementary to the order's supply plant shipping requirement. However, as adopted herein, pool supply plants will be required to deliver only 3 or 5 percent of their producer milk supplies, and this may be decreased to zero or increased to 10 percent. With such low shipping requirements, it is not reasonable to keep a diversion limitation that on the average in 1986 would have limited diversions to nonpool plants to 60 percent of a handler's milk supply. This limit couple with the new shipping requirements would most likely result in unnecessary and costly movements of milk. In addition, the accompanying unnecessary pumping of milk would result in reduced milk quality.

Proponent did not suggest a limit that corresponds with the new shipping requirements. Rather, CMPC proposed the complete removal of diversion limits. Given the "smallness" of the shipping requirements adopted herein, and the fact that this requirement may be decreased all the way to zero if conditions warrant such, we concur with proponent that the diversion limit should be removed. Such a change promotes the efficient handling of milk and better milk quality.

It should be noted that the removal of the diversion limits should not cause milk to be "loaded" into the Chicago market. Virtualy all of the Grade A milk supply in the Order 30 procurement area is pooled under Federal orders. Accordingly, Grade A producers in the area are presently sharing in the proceeds of the fluid market that generally affords them the most favorable returns. Therefore, there is little likelihood of reserve supplies of other markets being shifted to the Chicago market pool.

In light of the foregoing, corresponding provisions which deal with over-diverted milk should also be removed from the order.

5. *Location adjustments.* The plant location adjustments for handlers and for producers should be computed by the market administrator based on a revised location adjustment schedule which extends out to the 18th zone. Zone extension involves adjusting the present Zone 16 adjustment and adding two new Zones 17 and 18. The rate of adjustment from Zone 16 to Zone 18 would be minus 2.3 cents per hundredweight per 15 miles, the rate presently used in all adjustments for Zone 5 to Zone 15. Therefore, the revised Zone 16 location adjustment would be minus 37.3 cents per hundredweight and the new Zone 17 and Zone 18 adjustments would be minus 39.6 cents and minus 41.9 cents, respectively. The new Zone 18 would be the outermost zone and would include all plants located 281 miles or more from the city hall in Chicago. No adjustment should result in a price less than the Class III price for the month.

As modified at the hearing, Dean et al. proposed expanding the minus location adjustment schedule for locations beyond 250 miles from the Chicago city hall at a rate of 2.3 cents per 15 miles. However, the Minnesota-Wisconsin (M–W) price would be the lower bound of any such adjustment. This change would apply to plant location adjustments for both handlers and producers. As originally published in the Notice of Hearing (52 FR 18894), Dean et al. proposed eliminating the "snubber" that prevents the Class I price from being reduced below the Class III price.

In support of its modified proposal, Dean et al.'s spokesman claimed that such change is needed in order to more nearly reflect the value of milk 250 miles beyond the city hall of Chicago. He stated that it is unrealistic to draw a line and assume a constant cost of hauling beyond such point.

Proponent utilized an exhibit already in the record to show that the average hauling cost to Chicago from plants in the present Zone 16 was $1.27 per hundredweight. This, he stated, far exceeds the order's 36-cent adjustment for that zone. Although the Dean et al. proposal would not fully cover the hauling cost, proponent believed that it would be a step in the right direction to aid in the transportation of milk from the distant locations.

Dean et al.'s spokesman also stated that the present order's treatment of zone pricing beyond 250 miles from the city hall in Chicago is inequitable. He pointed out that because the order draws a line beyond which all milk is subject to the same adjustment, a significant amount of producer milk is being priced differently than most of the producer milk on the market. Proponent holds that greater equity could be achieved if the order would price each handler's milk on an identical basis, which can only come about if the price is adjusted beyond Zone 15 at the constant rate of minus 2.3 cents per 15 miles.

CMPC supported the Dean et al. modified proposal for zone extension in spite of the fact that CMPC members operate five plants located in the present Zone 16 that would be affected by such a change. CMPC's spokesman stated that the order must recognize that it costs money to move milk. Establishing Zone 16 as an endless zone for the Chicago Regional order, he said, has caused an overvaluation of milk in that zone. He added that such a change in the order should cause present Zone 16 plant operators to re-evaluate their economic situations. He speculated that those plant handlers who would be able to receive more money for their producers from another order's pooled funds would choose to become regulated under that other order. However, he did

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not foresee milk being depooled as a result of zone extension.

Kraft, which operates two plants in present Zone 16, did not favor the proposed changes. Moreover, Kraft believes that the ruling of the Administrative Law Judge which allowed a revision or substitution of Dean et al.'s location adjustment proposal (proposal No. 10 in the Notice of Hearing) should be reversed. At the hearing and in its post-hearing brief, Kraft argued that proponent's modification of the original proposal went beyond the scope of the hearing. Because, in general, Dean et al.'s original proposal would not have affected Zone 16 producers due to the fact that the Zone 1 blend price usually exceeds the Class III price by more than 36 cents, Kraft holds the view that many producers and handlers would be affected by the modified proposal (lost monies estimated to exceed one million dollars annually) did not attend the hearing and those that did attend were unable to adequately prepare their cases.

Notwithstanding the legality of the modification, Kraft believes that there should be no further adjustment to the Class I and producer prices at locations more than 250 miles beyond the Chicago city hall because within Zone 16 milk at various locations is of relatively uniform value. In fact, Kraft's spokesman revealed that identical premiums are paid at both of Kraft's plants even though the proposal would place one plant in Zone 18 whle the other would remain in Zone 16. Therefore, it is Kraft's view that the order should not create distinctions in the price of Class I and producer milk where no differences can be justified by the marketplace.

A brief filed on behalf of both NFO and FUMMC also contended that the modification of proposal No. 10 was not within the scope of the Notice of Hearing. In the brief, it was pointed out that the present "snubber" only comes into play when the M–W price increases substantially, causing the difference between the Class III price and the Zone 1 blend price to be less than 36 cents; an infrequent occurrence. Consequently, very few persons in the industry would likely have considered the published proposal to have been of great and immediate concern. However, the modified proposal No. 10, it was asserted, would have a distinct and immediate impact on the 28 pool plants located in present Zone 16 and on certain Order 68 handlers as well. The brief added that several experienced witnesses who did attend the hearing were not able at that time to adequately prepare testimony on the modified proposal; most notable, the witnesses for Kraft and TAPP.

Nevertheless, should the Secretary decide this issue on its merits, both producer groups believe that the proposal should be denied because of the hardship such would cause on their membership and on the Zone 16 plants, many of whom would be at the Class III price most of the time. Furthermore, they questioned the purpose behind a provision which could cause handlers to become regulated under another order and added that such would lead to market disorder.

In this particular situation, Dean et al.'s proposal as published was to remove the Class III snubber as the lower limit of the adjusted Class I price. Dean et al. modified its proposal by retailing the Class III snubber, and instead, eliminating the Zone 16 snubber on adjustments. In the first case, the minus zone adjustments on Class I milk, which extend out to a minus 36 cents in Zone 16, could have applied even if at some point the Class I price would have had a lesser value than the Class III price. In the second case, the minus zone adjustments on Class I and producer milk would continue on beyond the present Zone 16 snubber at a rate of minus 2.3 cents per 15 miles, but not to drop below the Class III price. As described, the original and modified proposals both involve amending the same order provision by removing one of the "snubbers".

Although Dean et al. did modify its proposal at the hearing, doing so is not unusual. Provided a provision is open for discussion, there is no reason why an interested party cannot modify a proposal by altering the particular order provision in some manner. Also, most interested parties were at the hearing to discuss the other major issues of the hearing regardless if they did or did not believe that a change in the location adjustment provision would have serious implications for them. In fact, the representative of over 80 percent of the market's producers, CMPC, was at the hearing and gave testimony on the modified proposal. FUMMC, who represents another 14 percent of producers, also was there and had three days to prepare some kind of response to the modification. Handlers were well represented by TAPP and WCMA. Kraft, one of the objectors, not only was at the hearing but presumably had some idea that proponent was going to modify its proposal because prior to the start of the hearing it was privy to two key exhibits which clearly showed the effects of zone expansion. Finally, all interested parties, whether or not they attended the hearing, could have filed post-hearing briefs. We note that the briefs received concerning the zone extension proposal came only from some of those present at the hearing.

For all the foregoing reasons, we concur with the ruling of the presiding Administrative Law Judge.

Both WCMA and TAPP in their briefs opposed the modified zone extension proposal on the basis that such would send producers and plants into disarrary, not knowing which market, if any, to be pooled under from month to month. They contended that stablitiy in the marketplace is a higher priority item than equity. Furthermore, they stressed that the modified proposal, if adopted, would significantly cost the present Zone 16 producers while it would benefit the rest a mere penny a hundredweight.

Presently, the Class I price at plants located in what is known as Zone 16 is the Zone 1 Class I price with the $1.40 differential reduced by 36 cents. Producers who deliver milk to the Zone 16 plants receive the Zone 1 blend price less 36 cents. Zone 16 encompasses all plants located more than 250 miles from the city hall in Chicago.

The flat pricing in present Zone 16 fails to reflect the true value of milk as it is received at plants further and further from the market's center. It also introduces an element of inequity in that up to Zone 16 the value of milk declines and from thereon it takes on a false, steady value. Consequently, it is concluded that the minus location adjustment schedule should be expanded. However, this can only be done out to the 18th zone due to Class I price alignment with Order 68, the Upper Midwest marketing area.

Although Dean et al. proposed a continous expansion of the location adjustment schedule, which to include the present 28 plants in Zone 16 would have to go out 23 zones (minus 53.4 cents), expansion should only go as far as that zone which would restore an alignment which existed earlier. The zone limit which most nearly accomplishes this is Zone 18. Where Class I price is concerned, handlers will not be in much different position than they were in prior to the mandated changes which took effect May 1, 1986. (Official Notice is taken of the Deputy Assistant Secretary's decision of April 10, 1986 (51 FR 12830).)

Prior to the mandated differential increases, the alignment of Order 30's Class I price with Order 68's Class I price was satisfactory. The mandated increases brought these prices even

more in line. The changes adopted herein will increase the spread between the Class I prices not quite to the point where pre-mandated differences are restored. This can be done due to the mandated six-cents greater increase in the Chicago Regional differential relative to the increase in the Class I differential of the Upper Midwest order. Changing the Zone 16 location adjustment and adding two new zones accomplishes this. To go beyond that point could disrupt orderly marketing between handlers regulated under Order 30 and handlers regulated under Order 68. Since pool supply plants and pool distributing plants under each order are located in close proximity to each other in this area of Wisconsin, it is necessary that Class I prices be kept in alignment to assure an orderly and competitive market situation.

Especially of interest is the alignment of Class I prices at three distributing plants located in present Zone 16; namely, Alto-Golden Guernsey Dairy Cooperative (AGG), Kwik Trip Dairy (KT), and Seeger's Dairy, Inc. (Seeger's). Presently, AGG is located in Order 30's Zone 16 and Order 68's Zone 4, as is Seeger's. Also at this time, KT is located in Order 30's Zone 16 and Order 68's Zone 3. As shown on Table 1, before the mandated changes the Class I price at AGG and Seeger's under Order 30 was 6 cents less than that location's price under Order 68, while KT's price under Order 30 was 12 cents less. Presently there is no difference between the Order 30 and Order 68 Class I prices at AGG and Seeger's (i.e., the Zone 16-Zone 4 location). There is a 6 cent less Class I price at KT (i.e., the Zone 16-Zone 3 location). The changes adopted herein, which would place AGG and KT in Order 30's Zone 17 and Seeger's into Zone 18, would once again spread the difference between the Class I prices at these locations; however, the spread would not be greater than that which existed previously. Accordingly, the Class I price at AGG under Order 30 would be 3.6 cents less and that at Seeger's and KT would be 5.9 cents and 9.6 cents less respectively.

TABLE 1. CLASS I PRICE UNDER ORDER 30 RELATIVE TO UNDER ORDER 68 AT THREE ZONE 16 DISTRIBUTING PLANTS

Plant	Before May 1, 1986 (¢/cwt)	Presently (¢/cwt)	Change adopted herein (¢/cwt)
AGG	−6	0	−3.6
KT	−12	−6	−9.6
Seeger's	−6	0	−5.9

The changes adopted would reduce the blend price received by producers who ship milk to the 28 plants located in present Zone 16 relative to the blend price they would receive if such changes were not made. However, because the blend price is readily changed by placing producers on and off the market, an analysis of the blend price does not necessarily reveal future events. Navertheless, utilizing September through December 1986 data, it is found that the Zone 1 blend price would have increased in two of the four months, and would have stayed the same in the other two months as a result of the proposed zone extension, irrespective of any pricing impacts that result from other changes made during the course of this proceeding. Because the handler adjustment for present Zone 16 handlers on Class I milk would have been greater, pool funds would have been reduced. Simultaneously, the adjustment on all producer milk also would have been greater, adding money to the Zone 1 blend price computation. Collectively the addition would have outweighed the subtraction, thus increasing the Zone 1 blend price. However, such increase in two of the four months would have only been a penny. The bottom line is that money would have been taken from the Zone 16 producers, to be spread out rather thinly to all Order 30 producers.

Expansion of the location adjustment schedule out to Zone 18 would affect all 28 plants which are in the current Zone 16. As Table 2 shows, four plants will be in the new Zone 16, 11 will be in Zone 17, and the remaining 13 plants will be in Zone 18. It must be noted that the increase in the minus adjustments in Zone 16 and beyond will not necessarily decrease the blend price by that full extent due to the possibility that the Zone 1 blend price during a month may increase slightly due to these changes. However, one can assume that as the adjustment gets larger, producers get less.

TABLE 2. ADDITIONS OF THE LOCATION ADJUSTMENT SCHEDULE

Zone	Distance in miles from city hall in Chicago	No. of plants within zone	Present loc. adj. (¢/cwt.)	New loc. adj. (¢/cwt.)	Difference (¢/cwt.)
16	251–265	4	−36	−37.3	−1.3
17	266–280	11	−36	−39.6	−3.6
18	Beyond 280	13	−36	−41.9	−5.9

The value of milk at any location in a marketing area is determined by its location in relation to the market's center. Usually as the milk is received at locations further from the center, its value decreases. However, in the Chicago marketing area milk's value decreases to a point (Zones 2 through 15), then it continues at a lower but steady value (Zone 16). This has two implications, one being that the milk in present Zone 16 is overvalued. The second, that inequitable pricing of milk is taking place due to the fact that from Zone 2 to Zone 5 and then from Zone 5 to Zone 15 the price of milk is reduced at rates of 3.0 and 2.3 cents per 15 miles and beyond such point the reduction is one cent for unlimited miles. The question posed by proponents is why should some producers get more than the location value for their milk.

Excluding producer milk received at plants in Zone 1 (i.e., within 40 miles of the Chicago city hall), about 87 percent of the market's milk is priced at a decreasing rate of 3.0 or 2.3 cents per hundredweight per 15 miles. The remaining 13 percent is priced at the steady Zone 16 rate of minus 36 cents without regard to a plant's location, be it 251 miles or 351 miles from the city hall in Chicago. Proponents are correct in saying that the price of milk in present Zone 16 should be reduced at the same rate used from Zone 5 to Zone 15. However, as pointed out, reflecting the proper location value of milk to producers cannot be achieved at the expense of Class I price alignment. The limit of a 41.9-cent location adjustment is necessary to maintain proper alignment of Chicago Regional order Class I prices with Class I prices at nearby plant locations under the Upper

Midwest order. If no limit were provided and the 2.3-cent rate per 15-mile zone were extended, it would reduce the Class I price differential at Conrath, for example, from 98.1 cents (as adopted herein) to 88.9 cents. Such price would then be 21.1 cents lower than the Upper Midwest order Class I price at Hayward which is only 50 miles north of Conrath. This could provide a substantial incentive for the distributing plant located at Hayward that is now regulated under the Upper Midwest order to purchase supplies of milk from nearby Chicago Regional order supply plants. (Official notice is taken of the List of Handlers, Plants and Cooperative Associations, December 1986, for the Upper Midwest marketing area, published by the market administrator). Such practice could result in the buying handler realizing an undue competitive advantage in competition with other Upper Midwest order distributing plants. Thus, what is adopted herein should improve the economic reality of adjusting producer's prices for plant location while not disrupting an inter-order Class I price alignment situation that existed prior to May 1, 1986, when mandated differential increases became effective.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Chicago Regional marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

PART 1030—[AMENDED]

1. The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1030.4 is revised to read as follows:

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and-or shipped to another plant.

3. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant.

"Supply plant" means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and-or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

4. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8)(i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route dispositon or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distribution plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants discribed in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dariy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individuals plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro-rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversion on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified in paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements by up to two percentage points;

(ii) The Director of the Dairy Division may increase or decrease the shipping requirements by up to five percentage points;

(iii) The maximum revision under this paragraph shall be five percentage points. Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, employee payroll records, and the gross value of the payrolls for all producer milk pooled by the handler opeating the leased plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a writtten request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July. Written requests to the market administrator to either delete a plant from the unit or to add a plant to the unit shall be submitted to the market administrator on or before the 15th day of the month preceding the month that such change will be effective. In the event of an ownership change or business failure of a handler that is a participant in a unit, the unit may be reorganized to reflect such changes by submitting a writtten request to file a new marketing agreement with the market administrator.

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

5. Section 1030.13 is amended by removing in paragraph (a) the words ", in the case of a reload facility,", by removing paragraphs (d)(3) and (d)(6), redesignating (d)(4), (d)(5), and (d)(7) as (d)(3), (d)(4), and (d)(5), and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

* * * * *

6. Section 1030.30 is amended by removing in the indroductory text of paragraph (a) the words "and/or reserve supply plants", and revising paragraph (a)(3) to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable, including a separate statement of the net receipts from each supply plant, computed pursuant to § 1030.7(b)(4);

* * * * *

7. In § 1030.52, in the table of location adjustments of paragraph (a), Zone 16 and footnote 3 are revised and Zones 17 and 18 are added at the end of the table to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

Zone	Distance in miles from city hall in Chicago	Location adjustment rate (cents per hundred-weight)
* * *	*	*
16	251–265	−37.3
17	266–280	−39.6
18	[3]	−41.9
* * *	*	*

[3] Beyond 280.

* * * * *

Signed at Washington, DC, on March 8, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-5406 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345-186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing a new Bulletin 345-186, REA Design Specifications for Digital Lighwave Transmission Systems, REA Form 397h. The new specification applies to the design of lightwave transmission systems which employ optical fibers as the transmission medium. This includes opto-electronic terminal equipment, such as transmitters and receivers, and electronic terminal equipment, such as digital multiplexers. The specification may be used in purchasing a complete, installed system, a major component of a system or for incremental additions of equipment to already existing systems. This action permits REA telephone borrowers to utilize lightwave technology in bringing modern, cost-effective telecommunications to rural America. All REA telephone borrowers lightwave equipment, their consulting firms and manufacturers of lightwave transmission equipment would be impacted by the action.

DATE: Public comments must be received by REA no later than May 13, 1988.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500.

FOR FURTHER INFORMATION CONTACT: T. Lamar Moore, Chief, Transmission Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250-1500, telephone (202) 382-8665. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq*), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a new Bulletin 345-186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h, REA will request approval for Incorporation by Reference from the Director of the Federal Register. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect of the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State of local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment of productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an evironmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons to set in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be available for public inspection during regular business hours at the above address.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to issue a new Bulletin 345-186, REA Design Specifications for Digital Lightwave Transmission Systems, REA Form 397h.

There is a steadily increasing demand for digital lightwave tranmission by REA telephone borrowers to expand and upgrade telecommunications service in rural America. This borrower demand has resulted in the need to provide a uniform and systematic means of specifying lightwave transmission needs and equipment purchases. Form 397h (Bulletin 345-186) is being proposed as the means to accomplish this purpose. REA borrower would use the REA Form 397h with REA Special Equipment Contracts, Forms 397 and 398, to purchase lightwave transmission systems for their individual telecommunications system needs. Form 397h provides a uniform generic specification format with the flexibility to specify the particular needs of a borrower.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1772 by issuing a new Bulletin 345-186.

PART 1772—[AMENDED]

1. The authority citation for Part 1772 is revised to read as follows, and all authorities following the sections are removed:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 would be amended by adding the entry 345-186 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * *

345-186 . . . Form 397h . . . . REA Design Specifications for Digital Lightwave Transmission Systems.

* * * * *

Dated: March 8, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-5448 Filed 3-11-88; 8:45 am]

BILLING CODE 3410-15-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ASW–61]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BK–117A–1, BK–117A–3, and BK–117A–4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require a change to the flight manual procedures on Messerschmitt-Bolkow-Blohm (MBB) Model BK–117A–1, BK–117A–3, and BK–117A–4 helicopters. The proposed AD is needed to provide new procedures to the flightcrew for an emergency engine shutdown and/or a landing upon indication of an impending engine rotor burst which could be hazardous.

DATE: Comments must be received on or before April 13, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attention: Rules Docket, Fort Worth, Texas 76193–0007, or delivered in duplicate to Office of the Regional Counsel, FAA, 4400 Blue Mound Rd., Room 158, Bldg. 3B, Fort Worth, TX 76193–0007. Comments must be marked with Docket No. 87–ASW–61. Comments may be inspected at the above location between 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable flight manual changes may be obtained from MBB Helicopter Corporation, 900 Airport Road, Post Office Box 2349, West Chester, Pennsylvania 19380, or may be examined in the Office of the Regional Counsel, Southwest Region.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Southwest Region, Aircraft Certification Division, Fort Worth, Texas 76193–0111, telephone (817) 624–5123.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87–ASW–61." The postcard will be date/time stamped and returned to the commenter.

The FAA has received reports that failure of certain bearings in the engines installed in MBB BK–117A–1, BK–117A–3 and BK–117A–4 helicopters may result in a sequential pattern of turbine wheel aft movement and contact with engine afterbody components resulting in a hazardous turbine wheel burst. It has been established that this event will be preceded by simultaneous illumination of the engine metal chip detector light and fluctuation or loss of engine power turbine speed (N_2) indication. MBB has issued a flight manual revision which instructs the flightcrew to immediately shut down the engine and land the helicopter when these events are observed, thus enabling the flightcrew to avoid this hazardous rotor burst condition.

Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require these safety related flight manual revisions to be properly adopted in the applicable flight manual on MBB Model BK–117A–1, BK–117A–3, and BK–117A–4 helicopters.

The FAA has determined that this proposed regulation only involves 92 aircraft at an approximate cost to each aircraft of $32. The total economic impact to any one operator would not exceed $960. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB): Applies to model BK–117A–1, BK–117A–3, and BK–117A–4 helicopters, all serial numbers, certificated in all categories, equipped with Lycoming Model LTS–101 series engines.

Compliance required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To provide the flight crew with emergency engine shut down instructions to be followed in event of an impending engine turbine burst, insert the following updates (or the forthcoming permanent equivalent revisions) into the applicable Flight Manual.

(a) For the Model BK–117A–1 and BK–117A–3 helicopters insert into the applicable Rotorcraft Flight Manual MBB Temporary Revision 5, dated July 27, 1987.

(b) For the Model BK–117A–4 helicopter, insert into the applicable Rotorcraft Flight Manual: MBB Temporary Revision 1, dated July 27, 1987.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the manager, FAA, Southwest Region, Aircraft Certification Division, ASW–100, Fort Worth, Texas 76193–0100.

Issued in Fort Worth, Texas, on March 3, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88–5450 Filed 3–11–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 71283–7283]

Export Control Policy Forum on Technical Data Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Report on Technical Data Public Forum.

SUMMARY: On February 11, 1988, the Department of Commerce hosted a public forum on Technical Data Export Controls. The purpose of the forum was to obtain industry's comments regarding Part 379 ("Technical Data") of the Export Administration Regulations (EAR), concerning the export of technical data controlled by the Department of Commerce. Over 300 representatives from the private sector and government attended. Twenty-eight participants presented statements before a panel of Commerce officials, and several written comments were submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Cutshaw, Office of the Deputy Assistant Secretary for Export Administration, Room 3888, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20230; (Telephone: (202) 377–5711).

SUPPLEMENTARY INFORMATION: The Department of Commerce is currently reviewing its regulations governing exports of technical data. The comments obtained as a result of the public forum provide a wide range of perspectives on revising EAR Part 379. They will help us clarify the regulatory provisions, further U.S. export control objectives, and better serve the needs of the business community.

Comment papers and the forum transcript are available for public inspection and copying in the Bureau of Export Administration Freedom of Information Office, Room 4886, Herbert C. Hoover Building, 14th Street and Pennsylvania Avenue, NW. For information on how to obtain copies, contact Margaret Cornejo at 377–2593.

The Bureau of Export Administration has analyzed the comments received in response to the public forum. The following summarizes the predominant issues addressed:

A. The MITAC Proposal

The forum began with a presentation of the proposal by the Militarily Critical Technologies List Implementation Technical Advisory Committee (MITAC) to revise the technical data controls. This proposal was mentioned in the January 7, 1988 **Federal Register** notice (53 FR 418) of the Technical Data Forum. Copies of the proposal were made available prior to the forum, and comments were invited.

The MITAC proposal attempts to establish a framework of standards for applying control measures to national security controlled technical data in three ways. First the proposal recommends a new definition of technical data to exclude data that is not necessary to achieving critical performance thresholds. Second, the proposal recommends that controls be imposed only on technical data identified as militarily critical. Third, the MITAC proposal establishes three data classes to distinguish between levels of national security risk and controllability of the technical data.

Several participants agreed with the MITAC's proposal to improve the definition of controlled technical data. Other comments applauded the intent of the proposal to decontrol technical data that are not related to national security controlled items, or that are not strategic. While many speakers expressed concern that the proposed definitions for supercritical and critical technology categories would rely on subjective judgments and would be difficult to implement, there was general acknowledgment that applied policy standards for determining military criticality and for establishing licensing requirements are needed.

A number of speakers commenting on the MITAC proposal urged that it not be adopted unless accompanied by a "comprehensive operations license." Such a license would authorize exports and reexports of technology and related goods, including items from the militarily critical technologies list, from a domestic concern to and among affiliated enterprises that have long-term contractual relations with the exporter.

B. Other Issues Addressed by the Participants

Some of the presenters were of the opinion that, while clarification of several aspects of the regulations would be desirable, major revisions to Part 379 were unnecessary. Comments expressed concern about cross-references in the regulations that were often inconsistent. One of the most repeated concerns was the need to clarify the definition of, and requirements for the export of, operation and sales technical data. Several speakers proposed adjustments to General License GTDR, particularly in clarifying when written assurance is required, and in providing guidance on how such assurances should be prepared. Some participants stressed the importance of making Export Administration and International Traffic in Arms technical data regulations as consistent as possible in form and substance. Others recommended the creation of a technical data control list or integration of technical data into the current Commodity Control List.

Many of the presenters felt that only multilateral controls can be effective, and that unilateral controls should be avoided. A few participants supported the elimination of reexport requirements and controls on foreign direct products of U.S. origin data. We were urged by several speakers to explore the reduction of validated license requirements for West-West exports.

Two participants discussed the "commingling rule" contained in Supplement 1 to Part 379 ("Technical Data Interpretations"), which states that U.S.-origin technical data do not lose their U.S.-origin when commingled abroad with other technical data of any other origin. These participants felt that this interpretation was overreaching and largely unenforceable, but acknowledged the difficulty of defining what degree of U.S. data involvement would warrant U.S. control of commingled data.

Many comments centered on export controls for software. There was significant support for the decontrol of low-level software. The speakers advocated the inclusion of more software under General License GTDA, GLV, GCOM, or other general licenses. Some of the areas specifically addressed were the eligibility of mass marketed software for personal computers under General License GTDA, the eligibility of 1355A system software for General License GTDR, and the refinement of characteristics for software controlled under Supplement 3 to Part 379 ("Computer Software").

C. Technical Data Information Service

Several forum participants expressed concern regarding the difficulty of obtaining quick answers to questions about technical data export controls. This is due to the fact that a large percentage of the questions received must be referred for technical or policy review. Therefore, in response to suggestions made at the forum, and in conjunction with the Commerce Department's efforts to provide better service to the exporting community, we are considering methods to improve the provision of technical data information to the exporting community and to enhance our responsiveness to inquiries.

D. Continuation of Technical Data Review

The Department of Commerce is continuing its review of the technical data export controls contained in Part 379 of the EAR, and will consider the comments made by the forum participants as well as other written comments submitted. We will keep the public informed of the progress of this review through periodic notices in the **Federal Register.** The Department of Commerce appreciates the enthusiastic participation received thus far and invites industry's continuing input.

Dated: March 9, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-5498 Filed 3-11-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Louisiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a proposed amendment submitted by the State of Louisiana as a modification to its permanent regulatory program (hereinafter referred to as the Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revised regulations that would partially replace those now implementing the Louisiana program.

This notice sets forth the times and locations that the Louisiana program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and information pertinent to the public hearing.

DATES: Written comments from the public not received by 4:00 p.m., c.s.t. on April 13, 1988, will not necessarily be considered in the decision process.

If requested, a public hearing on the proposed amendment will be held at 10:00 a.m on April 8, 1988, at the location shown below under "ADDRESSES".

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James Moncrief, Director, Tulsa Field office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430.

Copies of the Louisiana program, the proposed modifications to the program, and the administrative record of the Louisiana program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581-6430

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492

Department of Natural Resources, Office of Conservation, 625 N. 4th Street, Baton Rouge, Louisiana 70804; Telephone: (504) 342-5515

If a public hearing is held, its location will be: State Land and Natural Resources Building, Office of Conservation, Public Hearing Auditorium, 625 N. 4th Street, Baton Rouge, Louisiana 70804.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Public Hearing

Any person interested in making an oral or written presentation at the hearing should contact Mr. James Moncrief at the OSMRE Tulsa Field office by 4:00 p.m. on March 29, 1988. If no one expresses an interest in participating in the hearing by this date, a hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing may be held; the results of the meeting will be included in the Louisiana Administrative Record.

II. Background

The Secretary of the Interior conditionally approved the Louisiana program effective October 10, 1980. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Louisiana program can be found in the October 10, 1980 **Federal Register** (45 FR 67340). Subsequent actions concerning the approval and program amendments are identified at 30 CFR 918.10, 918.16, and 918.20.

III. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on July 9, 1985 [Administrative Record No. LA-265], OSMRE notified Louisiana of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since October 10, 1980, when the program was originally approved. To comply with this letter, the Louisiana Department of Natural Resources completed a partial rewrite of the Louisiana Surface Mining Regulations governing its permanent regulatory program.

By letter of January 25, 1988, Louisiana submitted these regulations to OSMRE as a program amendment [Administrative Record No. LA-263]. The proposed regulations, in Subchapter A, General, parts 100, 101, 105, and 107; Subchapter F, Areas Unsuitable for Mining, Parts 160, 161, 162, and 164; Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems, Parts 170, 171, 176, 178, 179, 180, 185, 186, 187, 188, and 195; Subchapter J, Bond and Insurance Requirements For Surface Coal Mining and Reclamation Operations, Parts 200, 205, 206, 207, and 208; Subchapter K, Permanent Program Performance Standards, Parts 210, 215, 216, 223, 226, 227, 228, 242, 243, 244, 245, and 246 would replace the currently approved regulations.

In accordance with the provision of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If the amendments are found to be as stringent as SMCRA and no less effective than the Federal regulations, they will be approved and the

amendment will become part of the Louisiana permanent regulatory program.

List of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: March 3, 1988.

[FR Doc. 88-5439 Filed 3-11-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3340-2]

National Oil and Hazardous Substances Contingency Plan; The National Priorities Lists; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete two sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATE: Comments concerning the sites may be submitted until April 13, 1988.

ADDRESSES: Comments may be mailed to J, Sam Vance, Site Project Manager, Waste Division, Superfund Branch, South Site Management Section, South Florida Unit, Environmental Protection Agency, 345 Courtland Street, Atlanta, GA 30365. The Comprehensive information on each site is available through the EPA Regional Docket clerks.

Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is:

For background information on both Tri-City Oil Conservationist Corporation site and the Varsol Spill site: J. Sam Vance, Region IV, US. EPA, 345 Courtland St., NE., Atlanta, Georgia 30365, 404/347-2643.

FOR FURTHER INFORMATION CONTACT: J. Sam Vance, Site Project Manager Waste Division, Superfund Branch, Southern Site Management Section, Environmental Protection Agency, 345 Courtland Street, Atlanta, GA 30365. Phone (404) 347-2643.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete two sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The two sites EPA intends to delete from the NPL are:

1. Tri-City Oil Conservationist Corporation, Temple Terrace, Florida.
2. The Varsol Spill Site, Miami, Florida.

The EPA will accept comments on these two sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912). § 300.66(c)(7) on the NCP provides that sites:

> * * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:
>
> (i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;
>
> (ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
>
> (iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of two sites, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of these two sites. The Agency is considering using similar procedures in the future with the exception that the notice and comment period would be conducted concurrently at the local level and through the **Federal Register**.

The procedures used were:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Office provided a 30-day public comment period on the deletion package. The notification was provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period would be evaluated before the tentative decision to delete was made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Varsol Spill Site, Miami, Florida

The Varsol Spill site is located in the northeast section of the Miami International Airport (MIA). The airport is located less than one-half mile south of the lower Miami Springs municipal well field. The Miami Canal runs adjacent to the northeast corner of the airport, the Tamiami Canal runs immediately south of the airport, and two other canals are located near the western edge of the airport.

Industrial operations associated with the miami International Airport have resulted in hydrocarbon contamination of the surface and groundwater in this vicinity. Since 1966, approximately 15 hydrocarbon spills and leaks have been recorded totalling nearly 2 million gallons. In 1970 Eastern Airlines maintenance base recorded a loss of approximately 1.5 million gallons of varsol in the northeast section of the airport. During 1970 a jet fuel spill of approximately 66,000 gallons was discovered near the west central area of Eastern Airline properties. In 1970, National Airlines accidentally spilled an unknown amount of jet fuels into drainage canals which discharged into the Tamiami Canal. At this time they were ordered to stop discharging cleaning solvents and degreasers into an airport drainage canal. In 1981, Braniff Airlines was discovered using the same practice and was ordered to stop. Several other small spills and discharges of jet oil, aviation fuel, cleaning solvents, and degreasers have also occurred at the airport. Several areas within MIA had heavy accumulations of oil lying on the ground. This was the result of airline maintenance personnel discharging oily wastes onto the ground and into storm sewers. In 1983, another major jet fuel spill was discovered near Concourse E during construction in the area. In 1971 Hydrocarbon Decontamination Separator Trenches were installed by Eastern Airlines to remove the 1.5 million gallons of varsol which had spilled underground. In August 1973 this operation was ceased due to slime build-up in the trenches and extremely slow natural migration of hydrocarbons into the trenches. Actual recovered volumes of hydrocarbons were less than 10% of the estimated spill. Other recovery procedures at the airport were conducted during dewatering operations at construction sites within the airport and were unsuccessful in removing substantial quantities of hydrocarbons. In April 1981, construction at the Eastern Airlines maintenance base revealed a thick hydrocarbon layer floating on the water table in the excavated trench. During the early 1970's Eastern Airlines installed 54 shallow observation wells at their maintenance base near the Varsol spill area. Measurements of water-table depth and hydrocarbon thickness on the upper layer of the water table were taken twice a year during both the wet and dry seasons from 1975 to 1981. According to these data, hydrocarbon layer thickness shows a declining trend with time. In some wells, the hydrocarbon layer could not be detected in the second year. In the Concourse E area, Dade County installed 43 monitoring wells to determine the extent and magnitude of jet fuel spilled. In 1983, Dade County also installed three recovery wells in the Concourse E area and began recovery operations. Through May 1984, over 102,000 gallons of jet fuel had been recovered from this area.

While no varsol was found in and around the airport, the spill did occur. Several factors could contribute to the fact that no varsol is detectable at this time; some of the solvent was recovered. Biodegradation is believe to have destroyed some more, but the hydrology of the aquifer system strongly suggests some of the solvent contributed to and has become a part of the "background" contamination in the aquifer.

EPA, with the concurrence of the Florida Department of Environmental Regulations, has determined all appropriate Fund-financed response under CERCLA at the Varsol Spill site has been completed. The decision is detailed in the Record of Decision for this site.

Tri-City Oil Conservationist Site, Temple Terrace, Florida

The Tri-City Oil Conservationist site is approximately one-fourth acre in a light industrial commercial area of Temple Terrace, Florida. The TriCity property was used for a heating oil service business from the early 1960's to 1975. From 1978 to 1983 Tri-City Oil Conservationist Corporation was a waste oil collection and distribution center. In 1982, a waste oil spill occurred during transfer operations. Failure to clean up this spill, in combination with poor surface drainage, caused accumulation of liquid wastes at the site. In response to the problem, the Hillsborough County Environmental Protection Commission and the Florida Department of Environmental Regulation investigated the site. This November 1982 investigation included the analysis of spoils and sludges for priority pollutant metals and hydrocarbons. In September 1983, the Tri-City site was proposed for inclusion on the National Priorities List (NPL) and appeared as final on the NPL in September 1984. In January 1984 additional sampling by FDER revealed metals contamination in surface soils and in soils 1 to 2 feet beneath the surface. Analysis of these samples indicated the presence of heavy metals, benzene, toulene, xylene, and chlorinated hydrocarbons. Analysis of the groundwater samples collected both on-site and adjacent to it showed no detectable contamination. In February 1984, the EPA issued an Administrative order to the responsible parties ordering them to clean up the site. They did not take any cleanup actions. The EPA conducted an immediate removal at the Tri-City site removing liquids and sludges from below ground tanks and the top six inches of soils from the site. These materials were then disposed of at an EPA approved hazardous waste landfill. DER followed this removal with a contamination assessment which revealed VOC's and heavy metals were present in the top one to three feet of soil on the site. In April 1985 DER began source removal of contaminated soils to protect groundwater supplies on and off site. Organic liquids and sludges were removed. When the work was completed the soils were sampled. Two areas of the site contained low levels of contamination. Further soil removal was conducted by FDER to remove remaining contaminants. The site was then resampled to verify removal was complete. Upon completion, clean fill was used to bring the site back to its original grade in May 1985. In August 1985, the Tri-City monitor wells and nearby drinking water wells were sampled by DER personnel. Analysis indicated metals concentrations for cadmium, chromium, and led to be slightly above drinking water standards in two of the monitor wells. In January 1986 the Tri-City wells were again sampled; analysis revealed all samples to be within drinking water standards. A June 1986 sampling of all monitoring wells indicated these wells were below state and federal drinking water standards. A local public comment period was held from August 30, 1987 through September 10, 1987. No public comments were received.

EPA, with the concurrence of the Florida Department of Environmental Regulations, has determined all appropriate Fund-financed response under CERCLA at the Tri-City site has been completed. This decision is detailed in the Record of Decision for this site.

Date: February 23, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-5471 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-7

Public Availability of Agency Materials; Extension of Comment Period

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period on the proposed rule appearing on pages 1379—1383 of FR Doc. 88-778 in the issue of Tuesday, January 19, 1988 until March 21, 1988, to provide a period of 60 days to submit comments.

DATES: Comments due on or before March 21, 1988.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

C.W. Fletcher,

Executive Director.

[FR Doc. 88-5495 Filed 3-11-88; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 87-14]

Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Order accepting late-filed comments.

SUMMARY: This action accepts late-filed comments filed by the United Parcel Service of America, Inc. (UPS) to the *Notice of Proposed Rulemaking* concerning allocation of the 216-225 MHz. Further it provides for reply comments to the UPS comments to be filed until March 31, 1988. This action is in response to a Motion for Acceptance of Late-Filed Comments filed by UPS. UPS requested the comments be accepted as they provide knowledge of network and equipment plans that will assist the Commission in reaching its decision in this proceeding.

DATE: Reply comments due March 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 632-8112.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on February 27, 1987, 52 FR 6024.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88-5484 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-185; Rm-5606]

Radio Broadcasting Services; Pine, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Thomas Renteria seeking the allotment of FM Channel 291A to Pine, Arizona, for failure to express a continuing interest in the proposal, as required by Commission policy. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-185, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5486 Filed 3-11-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-73, RM-6244]

Radio Broadcasting Services; Ouray, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ouray Broadcasting Co., Inc., proposing the substitution of FM Channel 289C2 for Channel 285A at Ouray, Colorado, and modification of its license for Station KURA(FM), accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's consultant, as follows: Timothy C. Cutforth, PE, Vir James P.C., 3137 W. Kentucky Ave., Denver, CO 80219.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–73, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5487 Filed 3–11–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–66, RM–6143; RM–6183]

Radio Broadcasting Services; Malone and Owls Head, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by North Country Broadcast Co., Inc. proposing the allocation of Channel 243A to Malone, New York, as the community's first local FM service. Channel 243A can be allocated to Malone in compliance with the Commission's minimum distance separation requirements to all domestic allotments without the imposition of a site restriction. The allotment would be approximately 6 kilometers short-spaced to Station CKOI–FM, Channel 245C1, Verdun, Quebec, and approximately 24 kilometers short-spaced to unused and unapplied for Channel 243C1 at Trois Rivieres, Quebec, Canada. However, our review of the proposal shows that the use of Channel 243A at Malone will comply with the interference criteria to the two Canadian allotments as set forth in the U.S.-Canada Working Agreement. We are, therefore, requesting Canadian concurrence in the allotment of Channel 243A to Malone as a specially negotiated short-spaced allocation. The Commission also requests comments on a mutually exclusive petition filed by Timothy D. Martz to allocate Channel 242A to Owls Head, New York, as the community's first local FM service. Petitioner is requested to furnish information demonstrating that Owls Head is a community for allotment purposes since it is not listed in the U.S. Census. Channel 242A can be allocated to Owls Head in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometer (0.6 mile) southwest to avoid a short-spacing to Station CJFM–FM, Channel 240C1, Montreal, Quebec, Canada. While this site restriction does not negate the short-spacing to Station CFMK–FM, Channel 242B, Kingston, Ontario, Canada, a staff study shows that there would be no prohibited signal overlap within the 60 dBu service contour of Channel 242A at Owls Head. Therefore, we shall also request Canadian concurrence in this allotment as a specially negotiated short-spaced allotment.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mitchell C. Tackley, President and General Manager, North County Broadcast Co., Inc., Porter Road, Malone, New York 12953 (Petitioner for Malone) and James R. Bayes, Esq., Jerry V. Haines, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to Martz).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–66, adopted January 29, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5488 Filed 3–11–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–67, RM–6178]

Radio Broadcasting Services; Ogdensburg, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Timothy D. Martz to allocate Channel 254A to Ogdensburg, New York, as the community's second local FM service. Channel 254A can be allocated to Ogdensburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) northeast. Canadian concurrence in the allotment is required since Ogdensburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Esq.; Jerry V. Haines, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of proposed Rule Making, MM Docket No. 88–67, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5489 Filed 3–4–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–71, RM–6165]

Radio Broadcasting Services; Manchester, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ohio Kentucky Radio Company proposing the allocation Channel 267A to Manchester, Ohio, as the community's first local FM services. Channel 267A can be allocated to Manchester in compliance with the Commission's minimum distance separation requirements without a site restriction.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James Wagner, President, Ohio Kentucky Radio Company, P.O. Box 14083, Covington, Kentucky 41014 (Petitioner.)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–71, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5490 Filed 3–11–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–70, RM–6163]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Matrix Media, Inc. requesting the substitution of Channel 244C2 for Channel 244A at Lincoln City, Oregon, and the modification of its license for Station KCRF to specify operation on the higher powered channel. Channel 244C2 can be allocated to Lincoln City in compliance with the Commission's minimum distance separation requirements and can be used at Station KCRF's present transmitter site. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in Channel 244C2 at Lincoln City will not be accepted.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roger J. Metzler, Farrand, Cooper, Metzler & Bruiniers, P.O. Box 7329, San Francisco, California 94120 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–70, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in

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Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5491 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–68, RM–6187]

Radio Broadcasting Services; Riverside, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Victor A. Michael, Jr. proposing the allocation of Channel 222A to Riverside, Pennsyvania, as the community's first local FM service. Channel 222A can be allocated to Riverside in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.5 miles) west to avoid a short-spacing to Station WMGS, Channel 225B, Wilkes-Barre, Pennsylvania. Canadian concurrence in the allotment is required since Riverside is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., R.D. 1 Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–68, adopted January 27, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5492 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–72, RM–6157]

Radio Broadcasting Services; Brookings, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dakota Broadcasting Inc. to substitute Channel 229C2 for channel 232A at Brookings, South Dakota, and the modification of its license for Station KGKG to specify operation on the higher powered channel. Channel 229C2 can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.9 kilometers (13.6 miles) northwest to avoid a short-spacing to Station KKRC–FM, Channel 228A, Sioux Falls, South Dakota. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 229C2 at Brookings will not be accepted.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ross A. Johnson, Vice President, Dakota Broadcasting, Inc., 51 Broadway, P.O. Box 8310, Fargo, North Dakota 58109–8310 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–72, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5493 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[FHWA Docket No. MC–130]

Driver's Record of Duty Status; Automatic On-Board Recording Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the driver's record of duty status requirements contained in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSR). The FHWA has denied the petition for reconsideration filed by the Insurance Institute for Highway Safety (IIHS) on February 25, 1987, to require the installation and use of on-board automatic recordkeeping systems to record vehicle operation. However, the FHWA believes that automatic on-board recording devices may be an effective alternative to the current recordkeeping requirement. Accordingly, this rulemaking proposes to allow, at the motor carrier's option, the use of automatic on-board recording devices in lieu of the handwritten driver's record of duty status. The proposal would replace the current case-by-case review of petitions to permit such devices in lieu of the handwritten record.

DATE: Written comments must be received on or before April 13, 1988.

ADDRESS: All written comments must be signed and should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:40 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 395.8, Driver's record of duty status, currently requires drivers to record their duty status and over vital information in duplicate, in their own handwriting, on a graph grid. An exception is provided for drivers operating within a 100 air-mile radius of the normal work reporting location (49 CFR 395.8(k)).

Since 1982, the FHWA has also allowed drivers to use a grid to record duty status (49 CFR 395.8(g)). The grid may be incorporated into any motor carrier form, provided all information required by § 395.8(d) is also contained on that form. Drivers must record their duty status as follows:

1. "Off duty" or "OFF";
2. "Sleeper berth" or "SB" (only if sleeper berth used);
3. "Driving" or "D"; and
4. "On-duty not driving" or "ND".

The IIHS submitted a petition to the FHWA on October 1, 1986, requesting regulations, "* * * to require the installation and use of on-board automatic recordkeeping systems to record vehicle operations." Research conducted by the FHWA in 1978 showed the automatic record, principally the recording tachograph, while very accurate, was unable to provide a driver's record of duty status sufficient to enforce the FMCSR in team-driver operations, and automatically producing duplicate copies of the charts (i.e., logs). Research conducted about the same time by the American Trucking Associations, Inc. (ATA), to evaluate the accident experience of motor carriers using recording tachographs versus motor carriers not using the devices, indicated that the good safety performance of carriers using the devices may have been due to other factors than the use of on-board recording devices. Accordingly, the FHWA denied the petition on December 22, 1986.

The IIHS submitted a petition to reconsider on February 25, 1987. The FHWA, in response to this petition, published an Advance Notice of Proposed Rulemaking (ANPRM) on July 13, 1987 (52 FR 26289). IIHS requested in this petition, as in the earlier one, for FHWA to commence rulemaking to require the use of automatic on-board recording devices for recording the driver's hours of service in lieu of the handwritten record.

The FHWA published a notice in the **Federal Register** on April 17, 1985 (50 FR 15269), that it granted an exemption from the record of duty status recordkeeping requirement to permit Frito-Lay, Inc., to use an on-board computer in lieu of the hand completed record of duty status. On April 2 (52 FR 10664), July 13 (52 FR 26292), July 31 (52 FR 28633), and October 27, 1987 (52 FR 41380), the FHWA published notices in the **Federal Register** either providing notice of and opportunity to comment on similar requests for exemptions, or providing notice that such exemptions had been granted.

The FHWA has granted exemptions to ten motor carriers to permit their drivers to operate their vehicles with on-board computers for recording drivers' record of duty status in lieu of the handwritten record. The FHWA is also considering three additional requests from motor carriers for exemptions.

The FHWA is currently monitoring field tests of two different on-board computer systems being used by ten different fleets. Field testing is necessary to continue to document the reliability and accuracy of the on-board recorder systems, the driver's adaptability ot these devices, and the effectiveness of such systems in assisting in the enforcement of the hours-of-service regulations.

The FHWA's July 1987 compliance/safety reviews of 460 Frito-Lay, Inc., drivers operating with automatic on-board recorders revealed no degradation in the areas of interest to enforcement personnel, i.e., monitoring hours of service and safety. The failure rate for the automatic on-board recorders experienced at that time by Frito-Lay, Inc., was one percent. The field testing process has permitted the discovery of a number of problems with the computer software controlling the recording of sleeper-berth time and the production of records. All of these have been corrected.

Information available to the FHWA at this time indicates that there are at least nine manufacturers currently marketing on-board recorders for fleet operation. The FHWA requests documentation of the operation and features of the devices from the manufacturers.

The FHWA believes that hours of service of drivers is an important element to safety and that monitoring the hours of service of drivers should be a high priority for motor carriers, and that enforcement of the hours of service should be and is a high priority for Federal, State, and local agencies concerned with commercial motor vehicle safety.

Docket Comments

The FHWA received a total of 22 comments to the ANPRM docket, Docket No. MC–130, which closed on October 13, 1987. The commenters included:

8 from motor carrier industry associations;

3 from manufacturers of on-board computers;

2 from tachograph manufacturers;

2 from insurance industry members;

4 from commercial companies, all of which operate private motor carrier fleets;

1 each from a labor union, a State highway patrol, and a State public service commission.

Only three comments contained detailed responses to the questions asked in the ANPRM. Also, commenters, with the exception of two tachograph manufacturers, commented only on the on-board computer systems. However, analysis of the 22 comments submitted to the docket established five major issues of concern to the companies and individuals who responded to the ANPRM. The five issues will be discussed in detail in the following sections.

Issue No. 1: Should regulations be issued that would mandate the use of on-board recorders in commercial motor vehicles used in interstate commerce?

Fourteen of the 22 commenters opposed a mandatory requirement, while five favored such a requirement. Two others recommended that tachographs be given serious consideration for recording drivers' hours-of-service information. One commenter did not take a position on the issue.

Four commenters (including the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (IBT), the American Trucking Associations, Inc. (ATA), and the Owner-Operators Independent Drivers Association of America, Inc. (Owner-Operators)) contend that there is no meaningful evidence at this time as to the effectiveness of onboard recorders in improving highway safety. CECOS International, Inc. (CECOS), a private motor carrier from Williamsburg, Ohio, submitted accident data for property damage frequency rates that ranged from 0.24 to 0.41 per million miles for recent periods. CECOS stated, "The data show that safe driving records can be maintained with a good transportation/drive management program without the use of on-board recording systems."

The National Private Trucking Association summarized its views on the safety issue, stating, "* * * the on-board computer does not, in and of itself, result in greater safety. Management must make a daily commitment to analyze the data and accept the responsibility to act to correct safety problems." Cadec Systems, Inc. (Cadec), a manufacturer of on-board computers, Frito-Lay, and the IBT made similar comments on the impact of on-board computers on safety.

IIHS, the American Automobile Association (AAA), and Argo Instruments, Inc. (Argo), a tachograph manufacturer, support a mandatory on-board recorder regulation. The AAA stated, "AAA supports the development of a performance standard under which motor carriers would be required to install such devices to monitor driver and equipment performance." The AAA cited a recent 2-year study of large truck accidents in Washington State, "Effects of Driver Hours of Service on Tractor-Trailer Crash Involvement" (IIHS, Sept., 1987, Ian S. Jones and Howard S. Stein), which found a substantial correlation between crashes and fatigue due to long driving hours as a basis for their position. IIHS determined that driving excessive hours was the probable cause in 41 percent of the accidents studied and a contributing factor in 18 percent of the other accidents.

Argo provided accident statistics from the Federal Republic of Germany and claimed that accidents are reduced where automatic on-board recorders are required in commercial motor vehicles. Tachographs have been required on most commercial motor vehicles operated in the Federal Republic of Germany since 1953. Argo stated, "On the basis of the transport volume, the accident involvement of goods vehicles was cut down by almost 75% during the last 20 years."

The AAA stated that fatigue would be reduced by controlling hours of driving and thereby lead to fewer accidents. The IBT, the Petroleum Marketers Association of America (PMAA), and CECOS comments indicated, however, that it would not be realistic to require on-board recorders for certain segments of the motor carrier industry. They indicated that those motor cariers that do not practice good safety programs would likely circumvent any automatic recording system.

After consideration of the information now available to the FHWA, public comments, and the possible purchasing, financing, and servicing disruption resulting from a mandate to use on-board recorders, the FHWA denies the IIHS petition for reconsideration to require motor carriers to install and use automatic on-board recording devices in lieu of the handwritten record. The FHWA believes, however, that the devices have merit, and as discussed in Issue No. 3, should be allowed for use by the motor carrier industry as an alternative to handwritten driver records.

Issue No. 2: The expense of automatic on-board recorders.

Twelve commenters indicated that they were concerned about the expense related to mandating on-board recorders in interstate motor vehicles. The PMAA stated, on behalf of the petroleum distributors, "The expense of on-board computer systems would be prohibitive for most of their marketers." Other commenters stated that the costs were not justified and a mandatory requirement for on-board computers would cost the industry billions of dollars plus millions of dollars annually in maintenance costs. Cadec indicated that the current onboard computer systems are not designed for, and are not cost effective for most small carriers. The FHWA estimates that the cost of the on-board computer, at current unit prices ($1,750), for every truck tractor operating in interstate commerce would amount to over $1.5 billion.

Information provided by Cadec indicates that a complete on-board computer system, for a 10 vehicle fleet, could have a first-year cost to a motor carrier of nearly $35,000 as follows:

Components	Costs
On-board computers (at $1,750 each)	$17,500
Installation	1,000
Computer and printer	4,500
Data link	2,970
Office computer software	3,960
Training/start up costs	3,000
Maintenance for 1 year	2,000
Total	34,930

The FHWA estimates that the vast majority of interstate motor carriers (current estimate is 180,000 of 220,000 fleets) have less than a ten vehicle fleet. Based on the manufacturer's assessment, there is reason to question the cost effectiveness of on-board recorders versus the handwritten record for this group of motor carriers.

Training for drivers, clerks and management, in the operation of the devices and computer system, start up costs encountered in debugging the overall system, plus nonproductive vehicle time needed for installation of the devices would add to the overall cost of an on-board computer system. These costs could realistically be estimated at 10 percent of the total equipment cost or $3,000 for a ten truck fleet.

The FHWA believes that the cost of the on-board computer systems will gradually fall as more companies enter the electronic recorder market and sale volume increases. At this time, however, the cost of an on-board computer system may militate against requiring automatic on-board recorders.

Issue No. 3: Should the FHWA allow motor carriers to voluntarily use the on-board recorder for recording drivers' records of duty status in lieu of the handwritten record?

Nine responses favored allowing the use of the on-board computer. Of these nine, four further stated that they were opposed to any plan in which the FHWA would approve the use of on-board recorders in lieu of the handwritten record on a case-by-case basis. They indicated that this type of approval system has proven to take too much time. Only one respondent, the

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American Bus Association (ABA), recommended that the case-by-case approval system continue to be used. The IBT stated, "* * * further exemptions should not be granted until the extent is determined to which on-board computers lend themselves to enforcement of hours-of-service regulations at roadside inspections."

The FHWA proposes to allow the use of on-board computers to record drivers' records of duty status in lieu of the handwritten record as long as they meet the performance requirements contained in § 395.15. This decision is based on the information available to the FHWA, public comments, and the need to identify new means of promoting motor carrier safety. The FHWA's exemption programs currently being conducted in ten motor carrier fleets will help to develop additional data regarding the use of automatic on-board recorders. The information gathered to date, however, indicates that such systems can improve driver control, aside from the issue of maintaining hours of service compliance records. Furthermore, the automatic on-board recording devices appear no less effective than handwritten driver logs. Use of such equipment will also promote increased management control of fleet operations. The FHWA believes that greater management control relates, in a positive way, to increased productivity, better maintenance, and improved safety.

Technological advances in the designs of tachograph records have made these devices capable of driver-interactive hours-of-service recordkeeping. They are also highly accurate, easily read by enforcement personnel, and considerably less expensive than the current on-board computer systems. For these reasons, the FHWA has determined that these devices should also be allowed in lieu of the handwritten record, provided they meet the proposed performance requirements for using such devices as contained in § 395.15.

Issue No. 4: To what extent are on-board recorder systems tamperproof?

Eight comments to the docket specifically mentioned a concern about possible tampering to alter data. The IBT indicated considerable concern that the on-board recorder would lead to driver harassment and increased work related stress, both of which might lead to tampering. Cadec stated that up to 5 percent of the devices returned to their factory for the first-time for repairs had failed due to tampering. However, Cadec noted that the level of this type of repair quickly fell to one percent or less once the motor carrier management was notified of the problem.

The FHWA believes that the level of compliance, while unacceptable, is better than the current practices using the handwritten record. Manufacturers may also react to tampering with improved devices which will further curtail tampering attempts.

In considering information available to the FHWA at this time, plus the positive reports received from the FHWA's Office of Motor Carriers' Safety Specialists investigating on-board computer users who have been granted waivers, there does not appear to be a serious problem with tampering of on-board computers.

Issue No. 5: Standardization.

Two on-board computer manufacturers and one motor carrier that uses such a device recommend standardization of the printed data and visual communications format. Standardization was cited as a means of reducing the burden for enforcement officials as the number of different on-board computer systems grows.

Section 395.8 of the FMCSR, Driver's record of duty status, specifies the items of hours-of-service information to be recorded. Currently, § 395.8 also specifies the use of a grid to depict the driver's status. The manufacturers of on-board computers currently being tested under FHWA exemptions have designed their software to provide all of the information required in § 395.8(d). In addition, drivers may activate the instrument's electronic display by striking coded keys to show the duty status information sequentially. In this way, drivers may meet the duty status record requirements for the current day. Reports from the Office of Motor Carriers' Safety Specialists indicate that enforcement personnel find this method of checking drivers' hours-of-service easy and fast, thereby minimizing the time a vehicle and driver are detained for inspection. For these reasons, the FHWA does not propose to require additional or special information formats beyond that currently required in § 395.8.

The current software is able to reconstruct the mandated grid when used with office computer equipment. The grid is needed for compliance/safety reviews of motor carriers and motor carriers would be required to generate such a grid upon demand. The FHWA is interested in the use of computer stored information files, including hours-of-service records, as an alternative method to store and retrieve this data.

Information Requested

The FHWA requests comment on the proposed rule. The FHWA is especially interested in receiving comments and information on the following questions:

1. Are techniques available that permit drivers to certify the authenticity of the hours-of-service records stored in the memory of the motor carrier terminal or home office computer?
2. Would a personal driver-record identifier guarantee the evidentiary value of the driver's computer stored record of duty status?
3. What software and hardware security measures or other protection are available to reduce the possibility of tampering by drivers or motor carriers to an acceptable level and to verify a driver's acknowledgment of the record of duty status with an acceptable level of confidence that the verifying person was the driver?
4. What are the acceptable levels of confidence for tamperproofing and verification of identity?
5. Is technology available that will permit drivers' hours-of-service records to be stored by a computer, following verification by the driver, and thereafter be unalterable?
6. Under what circumstances should hard copies be required?
7. What type and method of training should State enforcement agents receive in order to become familiar with the workings of automatic on-board recorders?
8. Should motor carriers be required to notify FHWA of their intention to use on-board recording devices?
9. Should the design of the on-board recording device by required to warn the driver when it is malfunctioning?
10. Should the final rule require a uniform format (i.e., type of data and order in which it is presented) for the visual displays on the on-board recording devices? Is this or other uniformity needed for enforcement purposes? Would any specific design requirements, such as uniformity of data presentation, unnecessarily restrict device design and associated costs of the devices?
11. Should the final rule contain maximum failure rates for the devices which would make the devices unacceptable for use? If so, what should these rates be?

Discussion and Regulatory Impact

The FHWA has determined that the technology available at this time has reached a level of development that permits the FHWA to accept driver-interactive, automatic on-board recorders for recording drivers' hours of service. The promulgation of rules to allow the use of these devices in lieu of the handwritten record will not diminish safety and will likely have positive benefits for the industry, enforcement agencies, and safety. The FHWA expects the introduction and acceptance of automatic on-board recorders to greatly reduce the paperwork burdens for motor carriers as a result of savings of the time and expense in handling, evaluating, filing, and storing records.

Motor carriers could also gain considerably from increased information of their operations. Increased productivity is reported by certain motor carriers using automatic on-board recorders. This increase is due to the more accurate calculation of mileage driven and the time available for actual driving. Enforcement personnel have also found that time can be saved in roadside inspections where automatic display of driver hours of service records are possible. As a result, vehicles are detained for shorter periods during inspections.

The FHWA believes that the benefits gained from permitting the use of automatic on-board recorders will outweigh any negative societal or operating costs that might exist. The extensive operational experience by carriers already provided an exemption to use the recorders, particularly Frito-Lay, Inc., appears to support this claim. If future compliance/safety reviews reveal, however, that drivers and/or motor carriers are abusing the intent of the automatic systems, the FHWA is prepared to initiate rulemaking to strengthen the regulations associated with the use of automatic on-board recorders.

The FHWA is proposing to amend 49 CFR 395.8 to permit motor carriers to use automatic on-board recording devices an an alternative to the handwritten record of duty status. The FHWA is proposing to issue a new § 395.15 specifying the requirements which an automatic on-board recording device must meet in order to be acceptable as an alternative to the handwritten record of duty status.

The proposed rule would add a definition of automatic on-board recording device to § 395.2. The definition would be broad enough to include a variety of devices, including computers and tachographs, provided the devices meet the requirements specified in the proposed rule. The device must also be able to record the time and synchronized vehicle operations which are related to vehicle motion (i.e., speed, axle revolutions). Section 395.8 of the FMCSR would also be revised to allow automatic on-board devices in lieu of the handwritten records of a driver's duty status.

The proposed § 395.15 would contain a number of paragraphs. Section 395.15(a) would contain the authority for the motor carrier to use the devices, at its discretion, and the requirement that the driver use the device if the motor carrier so decides. Section 395.15(b) would contain the requirements for use of the on-board devices and support systems. These include the requirement for the device to immediately generate information needed by enforcement personnel and for home terminal support systems to generate summaries of the hours of service information. This paragraph also requires that the driver have available, either in the device or hard copy, a record of the full 6 or 7 days of previous driver status required in Part 395.

While this NPRM does not propose to require that "hard copies", i.e., paper copies, be created, if such copies are made, it is proposed that they be signed by the driver. The driver's signature certifies that all entries on these documents, required by this section, are true and correct.

Section 395.15 would require that instruction information on how the device operates be carried on board the vehicle. If the device fails, the rule would require that the driver immediately reconstruct his or her duty status for the previous 7 days, less whatever time for which the driver has a hard copy of the duty status. The rule would require that the driver carry sufficient blank duty status grids to reconstruct, in case of a device failure, past days and future days to complete the trip.

The proposal would also establish minimum performance standards for the devices. These standards are considered important to ensure that the devices have low failure rates and drivers are not faced with major reconstruction of past travel. The standards are also needed to ensure that the devices provide information in a uniform and adequate manner for Federal, State, and local enforcement personnel. The FHWA proposes that the motor carrier obtain a certification from the device manufacturer that the device meets certain standards. The FHWA also proposes that the device permits update of duty status only when the vehicle is at rest. This requirement is necessary in recognition of the importance of the driver maintaining eye contact with the other vehicles in the traffic stream while driving. The FHWA is interested in comment on the appropriateness and adequacy of these requirements.

The proposed alternative method of recording drivers' hours of service is intended to provide relief to motor carriers and drivers from the burdensome requirements of completing these records by hand and of handling, processing, and retaining numerous pieces of paper. The FHWA believes, however, that its hours of service recordkeeping requirements are needed to effectively monitor drivers' hours of service and to enforce the hours of service regulations so as to minimize the problem of driver fatigue. The FHWA is reluctant to take any step which would reduce compliance with the hours of service requirements of Part 395. The FHWA intends to closely monitor the use of on-board recording devices for recording and monitoring drivers' hours of service. In this proposal (§ 395.15(k)), the FHWA would reserve the right to order motor carriers to require drivers to prepare driver's records of duty status by hand if the FHWA assigns a motor carrier a conditional or unsatisfactory safety rating, or if the FHWA determines that drivers are exceeding the hours of service limitations of Part 395, failing to accurately and completely record their hours, or tampering with the devices. The alternative provided by § 395.15 would no longer be available to this motor carrier.

The FHWA believes the proposed rule has the potential to substantially reduce the paperwork burden now imposed on the motor carrier industry. It is conservatively estimated that the driver who begins to use an on-board electronic recording device in lieu of the currently required driver's record of duty status would have the paperwork burden reduced by at least 80 per cent. A motor carrier must now review each driver's record of duty status, which is prepared daily. Again, it is conservatively estimated that a motor carrier who makes use of on-board electronic recording devices and the computers used in conjunction with such devices would realize a burden reduction of at least 80 per cent. The FHWA seeks comments concerning paperwork burdens. It is particularly interested in receiving:

1. Information indicating how many motor carriers could be expected to use the on-board electronic recording devices.

2. Estimates on the amount of time drivers and motor carriers expend on the "driver's records of duty status."

3. Estimates on the percentage of reduction drivers and motor carriers could expect if on-board electronic recording devices were used.

4. Information or suggestions for modifications of this proposal that could result in further reductions.

It is further anticipated that any economic impact upon the motor carrier industry will be outweighed by the economic benefits derived in the utilization of better operational data produced by the automatic on-board recorder. The motor carrier will have a choice whether to use the recorder, so any increase in costs is at the carrier's discretion. Furthermore, there are safety benefits expected as a result of increasing numbers of companies using these devices. State enforcement officials will experience increasing productivity in roadside inspection programs as the total number of vehicles equipped with on-board recorders grows. For these reasons and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

Information collection requirements contained in this regulation are being submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, because of the public interest in commercial motor vehicle safety, this proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impact anticipated as a result of this rulemaking action will be minimal, since this proposal merely affords motor carriers an alternative method of complying with an existing safety requirement.

Due to the number of occasions the public has had an opportunity to comment on this specific issue, the FHWA has determined that a 30-day public comment period is adequate for this proposal. In addition, because this proposal is not mandatory, and no degradation in safety will result, the FHWA believes that good cause exists for expedited action and in this case such action will serve the public interest.

List of Subjects in 49 CFR Part 395

Highway and roads, Highway safety, Motor Carriers, Driver's hours of service, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on March 8, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

1. The authority citation for 49 CFR Part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48 and 301.60.

2. Section 395.2 is amended by adding a definition of "automatic on-board recording device" as new paragraph (k) to read as follows:

§ 395.2 Definitions.

* * * * *

(k) *Automatic on-board recording device.* An electric, electronic, or electro/mechanical device capable of recording driver's duty status information accurately and automatically as required in § 395.15. The device must be connected with the vehicle to record vehicle operations.

3. In § 395.8, paragraph (e) is amended by adding, "of this section or § 395.15" between "activities," and "failure" and by removing, "as prescribed herein".

4. In § 395.8, paragraph (l) is amended by adding paragraph (4) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(l) * * *

(4) The requirements of this section, except paragraph (e) and paragraphs (k) (1) and (2) of this section, shall not apply to a motor carrier and its drivers who use automatic on-board recording devices and who comply with all of the requirements of § 395.15 of this part.

§ 395.13 [Amended]

5. In § 395.13, paragraph (b)(2) is amended by adding, "or 395.15" between "395.8" and "shall".

6. Part 395 is amended by adding a new § 395.15 to read as follows:

§ 395.15 Automatic on-board recording devices.

(a) *Authority to use automatic on-board recording device.* (1) A motor carrier may require a driver used by the motor carrier to use an automatic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part.

(2) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(b) *Information requirements.* (1) Automatic on-board recording devices shall produce, upon demand, a driver's record of duty status grid, chart, electronic display, or printout showing the time and sequence of duty status changes.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service, when used in conjunction with handwritten or printed records of duty status, for the previous 7 days.

(3) Support systems used on conjunction with on-board recorders at the home terminals or principal places of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours of service records, including the information specified in paragraph 395.8(d). Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSCII) (EIARS–232/CCITT V.24 port (National Bureau of Standards "Code for Information Interchange," FIPS PUB 1–1)).

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwritten or computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained therein is true and correct.

(c) The duty status shall be recorded as follows:

(1) "Off duty" or "OFF", or by identifiable code or character;

(2) "Sleeper berth" or "SB", or by identifiable code or character (only if the sleeper berth is used);

(3) "Driving" or "D", or by identifiable code or character; and

(4) "On-duty not driving" or "ON", or by identifiable code or character.

(d) *Additional information.* The following information shall also be included:

(1) Date;

(2) Truck or tractor and trailer number;

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(3) Name of carrier;
(4) Main office address;
(5) Name of co-driver; and
(6) Shipping document number(s), or name of shipper and commodity

(e) *Location of duty status change.* (1) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

(2) Motor carriers are permitted to use location codes in lieu of the requirements of subparagraph (e)(1). A list of such codes showing all possible location identifiers shall be carried in the vehicle cab and motor carrier's principal place of business and made available to an enforcement official on request.

(f) *Entries made by driver only.* If a driver is required to make written entries relating to the driver's duty status, such entries must be legible and in the driver's own handwriting.

(g) *Reconstruction of records of duty status.* Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct immediately the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers has records, and to continue to prepare a handwritten record of all further duty status until the device is operational.

(h) *On-board information.* Each vehicle must have on-board an information packet containing the following items:

(1) An instruction sheet describing in detail how data may be stored and retrieved from an automatic on-board recording system; and

(2) A supply of blank driver's record of duty status grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(i) *Filing driver's record of duty status.* The driver shall submit or forward, electronically or by mail to the regular employing motor carrier the record of the driver's duty status for a day within 13 days following the completion of that day.

(j) *Performance of recorders.* Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status in lieu of the handwritten record shall ensure:

(1) That the automatic device design has been sufficiently tested to meet the requirements of this section and under the conditions it will be used;

(2) That the automatic on-board recording device permits duty status to be updated only when the vehicle is at rest;

(3) That the automatic on-board recording device and associated support systems are, to the maximum extent practicable, tamperproof and do not alter the information collected on the driver's hours of service;

(4) That automatic on-board recording devices with electronic displays shall have the capability of displaying the following:

(i) Driver's total hours of driving today;
(ii) The total hours on duty today;
(iii) Total miles driving today;
(iv) Total hours on duty for the 7 consecutive day period, including today;
(v) Total hours on duty for 8 consecutive day period, including today; and
(vi) The device shall have the capabiilty of displaying the sequential changes in duty status and the times the changes occurred, for the number of days which the driver would be recording his/her duty status;

(5) That the on-board recorder is capable of recording separately each driver's duty status when there is a two-driver operation;

(6) That the on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications; and

(7) That the motor carrier's drivers are adequately trained regarding the proper operation of the device.

(k) *Rescission of authority.* (1) The FHWA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements § 395.8 of this part, so that an automatic on-board recording device is not the sole method to record a driver's hours of service for purposes of this part.

(2) The FHWA may issue such an order if the FHWA has determined that—

(i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FHWA;

(ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours of service limitations of section 395.3 of this part;

(iii) The motor carrier has required or permitted a driver to fail, or the driver has failed, to accurately and completely record the driver's hours of service as required in this section; or

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any vehicle.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80334-8034]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule with request for a short-term comment period.

SUMMARY: In response to a request by the Pacific Fishery Management Council (Council) NOAA proposes regulations (1) to alter the schedule in the framework 1984 amendment to the Fishery Management Plan for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) which allocates coho and chinook salmon between non-Indian commercial and recreational ocean fisheries north of Cape Falcon, Oregon, and (2) to increase in-season management flexibility in 1988 to allow the total ocean quotas to be harvested. The regulations are necessary to utilize more fully the allowable ocean salmon harvest and to lessen depressed economic conditions in the salmon fishing industry and in businesses associated with it. The regulations are intended to provide management flexibility to maximize the opportunity for ocean harvest of salmon that are surplus to inside fishery and spawning needs.

DATE: Comments will be received until March 23, 1988.

ADDRESS: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115. Copies of the environmental assessment and the draft regulatory impact review/initial regulatory flexibility analysis (RIR/RFA) prepared for this rule are available upon request from the Council.

Additional assessments of regulatory impacts of this action will be available from the Council as follows. A document entitled "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries" will be available March 22. A second publication entitled "Preseason Report III: Analysis of Council Adopted Measures for 1988 Ocean Salmon Fisheries" will analyze the impacts of this rule and final management measures adopted by the Council and will be available on or about April 25, 1988. The Council's office address is as follows: Lawrence D. Six, Executive Director, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations implementing the framework amendment to the FMP were published on October 31, 1984 (49 FR 43679), and are codified at 50 CFR Part 661. The framework regulations include a sliding scale for allocating coho and chinook salmon between non-Indian ocean recreational and commercial fisheries north of Cape Falcon, Oregon, based on predicted abundance of coho salmon (Appendix II.B.2.a). At the request of the Council, and emergency rule was implemented in 1986 to increase the recreational share of the ocean coho salmon harvest (51 FR 18451, May 20, 1986). The emergency rule lapsed prior to the 1987 season.

This proposed rule, during a limited period of time, would:

(1) Alter the framework sliding scale by allocating (a) an increased share of the ocean coho and chinook salmon harvest to the recreational fishery during periods of low stock abundance, (b) an increased share of the ocean coho salmon harvest to the recreational fishery during periods of high coho abundance, and (c) an increased share of the ocean chinook salmon harvest to the commercial fishery during periods of high chinook abundance; and

(2) Increase in-season management flexibility to achieve the total ocean harvest quotas for the 1988 season.

The proposed action would be taken under emergency authority of the Magnuson Fishery Conservation and Management Act, section 305(e), 16 U.S.C. 1855(e). Thus, it will be effective for 90 days, and may be extended for one additional period not exceeding 90 days. An FMP amendment is being prepared to consider a similar allocation issues for 1989 and beyond.

The Allocation Review Process

In April 1987, the Council asked the States of Oregon and Washington to conduct a review of the harvest allocation schedule north of Cape Falcon, Oregon. The review was precipitated by dissatisfaction of both commercial and recreational ocean fishermen over the reduced harvests and short ocean salmon seasons of recent years. In addition, fishermen expressed concern that some coho and/or chinook salmon allocated to ocean fisheries always remained unharvested at the end of the season. Each ocean user group had initiated action in hope of increasing its share of ocean harvests.

Commercial interests pursued legal remedies. Two associations representing commercial trollers filed a suit against the Secretary of Commerce (Secretary), challenging the exclusion from the FMP's ocean allocation plan of an escalating recreational fishery just inside the Columbia River mouth (the so-called "Buoy 10" fishery). The plaintiffs in *Pacific Trollers et al. v. Baldrige et al.* requested that harvests from the fishery be treated as if caught in the ocean. This would result in larger ocean quotas for the troll fishery. The Court ordered the parties to resolve the issues in the case through the Council process by the 1988 fishing season.

Recreational advocates pursued legislative remedies. A bill (HB 223) was introduced in the Washington legislature directing the Department of Fisheries, among other things, to "represent sport fishing interests to regional fish allocation bodies as the highest priority." The legislature tabled action on the bill and funded a study to evaluate the economic value and impact of Washington non-Indian salmon and sturgeon fisheries. The economic study will be completed in early March 1988.

The Council adopted a schedule for review of its non-Indian allocation plan north of Cape Falcon, which involved numerous meetings and extensive discussions among fishery representatives and managers during the summer and fall of 1987. Participants in the process became known as the North of Cape Falcon Allocation Work Group (Work Group).

Allocation Alternatives

Allocation alternatives drafted by the Work Group were presented to the Council during its November 1987 meeting. The alternatives addressed three separate aspects of allocation: (A) Objectives and flexibility of the allocation plan; (B) a sliding scale to allocate coho and chinook salmon between non-Indian commercial and recreational ocean fisheries at various levels of stock abundance; and (C) accounting of salmon harvests in the Buoy 10 fishery. The alternatives are described below.

A. Allocation Objectives and Management Flexibility

Work Group participants unanimously agreed that additional management flexibility was needed in the allocation plan to allow trades of chinook and coho between non-Indian ocean fisheries and transfers of salmon from one fishery to the other which could not otherwise be harvested in the ocean. The Work Group also agreed on an allocation objective for each fishery. These recommendations were adopted by the Council for public comment purposes as an alternative to the status quo.

B. Allocation Schedule

Three alternative allocation schedules were proposed for public review: The status quo, an option developed by troll representatives, and an option developed by recreational representatives. The three options are described in the following table:

COMPARISON OF ALTERNATIVE ALLOCATION SCHEDULES FOR NORTH OF CAPE FALCON NON-INDIAN OCEAN CATCHES (DEVELOPED NOVEMBER 1987)

Coho			Chinook		
Percentage	Harvest (thousands of fish)		Percentage	Harvest (thousands of fish)	
	Troll	Recreational		Troll	Recreational
Alternative 1—Status quo (current framework fmp) [1]					
0–600 600–1,300 >1,300	31–49 49–69 69	69–51 51–31 31	0–600 600–1,300 >1,300	63–54 54 54	37–46 46 46
Alternative 2—(Developed by commercial advisors) [2]					
0–100 200 300	25 30 35	75 70 65	0–80 100 120	50 54 58	50 46 42

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COMPARISON OF ALTERNATIVE ALLOCATION SCHEDULES FOR NORTH OF CAPE FALCON NON-INDIAN OCEAN CATCHES (DEVELOPED NOVEMBER 1987)—Continued

Coho			Chinook		
Percentage	Harvest (thousands of fish)		Percentage	Harvest (thousands of fish)	
	Troll	Recreational		Troll	Recreational
400	40	60	140	58.5	41.5
500	45	55	160	59	41
600	50	50	180	59.9	40.5
700	55	45	200	60	40
800	60	40	220	60.5	39.5
900	63	37	240	61	39
1,000	66	34	260	61.5	38.5
>1,100	69	31	280	62	38
			300	62.5	37.5
Alternative 3—(Developed by recreational advisors)[3]					
0-300	25	75	0-100	50	50
>300	60	40	100-150	60	40
			>150	70	30

[1] This is a shortened version of the existing framework table in the FMP. In the existing framework allocation schedule, the chinook percentages are tied to total allowable coho harvest.

[2] For allowable chinook harvests between the numbers shown, the allocation would be interpolated linearly. If the ocean recreational chinook quota determined from this allocation schedule exceeds 25 percent of the ocean recreational coho quota, the recreational chinook allocation would be 25 percent of the recreational coho quota with the balance of the chinook being allocated to the troll fishery.

[3] In this schedule, the percentage allocation is additive depending on stock abundance. For example, for a total coho harvest of 350,000, the recreational allocation would be equal to 75 percent of 300,000 coho plus 40 percent of 50,000 coho or 225,000+20,000=245,000.

C. Buoy 10 Accounting

In the suit filed by commercial trollers questioning the exclusion of the Buoy 10 recreational fishery from the ocean allocation schedule, the Court ordered the parties to schedule resolution of the issues presented in the case through the Council process by the 1988 fishing season. Pursuant to the Court's directive, four alternatives proposed by the Work Group were approved by the Council at its November meeting for public review:

1. Status Quo

The impacts of the Buoy 10 fishery upon stocks of concern are considered pre-season in the determination of the allowable ocean harvest. None of the Buoy 10 harvest, nor impact on stocks of concern, count toward achievement of ocean quotas.

2A. Impact on Stocks of Concern

Impacts of the Buoy 10 recreational fishery on the weakest stocks of ocean management concern would be calculated as if the harvest were in the ocean. Any resulting change in allowable ocean harvest of all stocks would be divided between ocean fisheries according to an allocation schedule.

2B. Impact on Stocks of Concern, Including Any Inside Commercial Impacts

This alternative is similar to Alternative 2A except that any impacts on critical stocks from the non-Indian gillnet fishery inside the Columbia River mouth also would be calculated as if harvested in the ocean. As in Alterntive 2A, the resulting change in allowable ocean harvest of all stocks would be divided between ocean fisheries according to an allocation schedule.

3. Entire Buoy 10 Catch

Ocean salmon quotas would reflect consideration of the entire Buoy 10 catch as if it were taken in the ocean.

Council Solicits Public Review

Public comment periods were held at the July, September, and November meetings in 1987, and the January 1988 meeting. In addition, public comments were invited on the allocation alternatives adopted by the Council from December 17, 1987 until the January 1988 Council meeting. The Work Group continued to meet to discuss compromise positions. Public hearings were held in Seattle, Washington, on January 6, and in Astoria, Oregon, on January 7. A large volume of letters was received and reviewed by Council members and staff. The majority of comments received supported refining allocation goals, increasing management flexibility, allocating more salmon to the ocean recreational fishery during periods of low stock abundance, and excluding Buoy 10 catches from the ocean allocation schedule.

Proposed Allocation Plan for 1988

The allocation alternatives were reviewed by Council advisors prior to the January 13–14, 1988, meeting of the Council. Following extensive comment at that meeting, the Council, by majority vote, recommended implementation of an interim allocation plan in 1988 for non-Indian commercial and recreational salmon fisheries north of Cape Falcon, Oregon. It also recommended increasing the in-season management flexibility in 1988 to facilitate attainment of the total ocean quota.

A. Allocation objectives and Management Flexibility

The following allocation ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:

> The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:
>
> 1. Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily closures, gear, bag, and particularly area restrictions.
> 2. Maximize the value of the commercial harvest, while providing fisheries of reasonable duration.
>
> Allocation will be expressed in terms of quotas based on the following schedule, which is presumed to best achieve the allocation goal. However, these quotas are neither guaranteed catches nor inflexible ceilings. Only the total ocean harvest quota is a maximum allowable catch. Additional flexibility in-season may be utilized to adjust individual quotas if the in-season adjustment will increase the degree to which the allocation goal is achieved, e.g., if it is apparent that the harvest of an individual quota by one fishery will not be achieved and that the other fishery can pursue the harvestable fish.

B. Allocation Schedule

The following allocation schedule would replace the current framework allocation schedule:

PERCENTAGE OF TOTAL OCEAN HARVEST TO BE ALLOCATED TO NORTH OF CAPE FALCON NON-INDIAN OCEAN FISHERIES IN 1988[1]

Coho salmon			Chinook salmon		
Ocean harvest (numbers of fish)	Commercial	Recreational	Ocean harvest (numbers of fish)	Commercial	Recreational
>300,000	25	75	<100,000	50	50
>150,000	60	40	100–150,000	60	40
			>150,000	70	30

[1] In this schedule, the percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, the recreational allocation for a total allowable ocean harvest of 350,000 coho would be composed of two parts. The first part would be calculated by multiplying 300,000 coho by 75 percent. The result of this calculation would be added to the product of multiplying 50,000 coho by 40 percent, i.e. 225,000 + 20,000 = 245,000 coho or 70 percent of the total allowable ocean harvest.

C. Buoy 10 Accounting

The Council proposes no change from the status quo. The impacts of the Buoy 10 fishery upon the weakest stocks of ocean management concern will be taken into consideration in calculating preseason allowable ocean harvests, but Buoy 10 catches do not count toward achievement of ocean quotas as if those catches occur in the ocean.

Rationale for Proposed 1988 Allocation Plan

The Council's adoption of the proposed 1988 allocation plan and continued exclusion of the Buoy 10 fishery from the ocean allocation schedule is based on consideration of comments, testimony and analyses in the administrative record which is summarized as follows:

1. Representatives of both commercial and recreational ocean fisheries support the Council-adopted allocation objectives and increased management flexibility.
2. Increased management flexibility will help ensure that the total allowable non-Indian ocean salmon harvest is taken in the ocean.
3. The current framework schedule allocates chinook based on coho abundance. At the low coho abundance of recent years, it causes severe instability in both commercial and recreational fisheries.
4. The proposed allocation schedule will bring stability and economic benefits to the recreational fishery and related businesses, which outweigh any loss to the commercial industry.
5. A commercial all-species-except-coho fishery in May is maintained under the Council's proposal, which contributes to meeting the objective of the Council to maximize the value of the catch for the commercial fishery.
6. Management of ocean fisheries under the current framework schedule has required an excessive number of in-season management adjustments, which cause an unacceptable level of instability, particularly in the recreational fishery. During the 1987 season, nine adjustments to recreational management measures north of Cape Falcon were implemented, including modification of area closures and bag limits. The proposed allocation schedule should reduce the need for inseason changes to recreational management measures.
7. There is currently potential for a Memorial Day to Labor Day recreational fishery in all ocean areas south of Cape Falcon. The proposed allocation schedule increases the possibility of a similar recreational season off Washington and northern Oregon.
8. There is no precedent that would justify managing Buoy 10 as an ocean fishery and there is no historic evidence that Buoy 10 was ever managed as an ocean fishery. The historic insignificance of the fishery led managers to aggregate the landing data from Buoy 10 and the ocean for convenience. When Buoy 10 catches became significant, data were segregated to account separately for the ocean and in-river recreational fisheries.
9. Buoy 10 has a different stock composition than the adjacent ocean waters, so there is no biological reason to treat Buoy 10 as an ocean fishery.
10. There is no distinction between Buoy 10 and any other fishery in internal waters for ocean allocation purposes. Modification of ocean allocations to account for one internal water fishery would establish management inconsistency between that fishery and other fisheries in internal waters.
11. The Buoy 10 fishery is an historic fishery whose growth has been caused by the same factors which benefitted inside commercial fisheries. If Buoy 10 recreational catches were to count toward ocean quotas, it would be necessary to count the in-river commercial catch in the ocean quota to preserve equity between the two user groups.
12. It is considered technically impractical to transfer impacts on weak stocks from Buoy 10 to the ocean fisheries e.g., to treat Buoy 10 harvests as if taken in the ocean. One alternative considered by the Council was counting, as if caught in the ocean, only those Buoy 10 fish identified as being from the weakest stocks of ocean management concern. The additional allowable harvest of all stocks would be divided between ocean fisheries according to the allocation schedule, with the Buoy 10 fishery counted against the ocean recreational share. During the January Council meeting, the Chairman of the Council's Salmon Plan Development Team expressed concern over the technical difficulty of determining how many Buoy 10 fish to count as if caught in the ocean, because the number of fish from the weakest stock caught in the ocean varies with the geographical area of the fishery, type of gear, and origin of the fish from the weakest stock.

Timing of Implementation

The Court's order of July 22, 1987, in the *Pacific Trollers et al. v. Baldrige et al.* mandated the resolution of issues in the case by the 1988 season. The schedule submitted to the Court for review of issues raised by the troller plaintiffs culminated in the Council's decision at its January meeting. Because the Council considered the Buoy 10 accounting issue as not separable from

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the broader issue of allocating salmon between ocean fisheries, the decision on the allocation schedule also was made at the January Council meeting.

There is insufficient time to amend the FMP between the January 1988 Council meeting and the beginning of the 1988 fishing season. Under the existing FMP framework regulations, the Council must adopt recommendations to the Secretary for 1988 management measures no later than its April 1988 meeting. If the allocation plan is to be useful for the 1988 season, it is necessary for it to be implemented under the Magnuson Act emergency provisions of section 305(e), 16 U.S.C. 1855(e), for two consecutive 90-day periods, beginning in early May 1988. Therefore, comments are solicited on whether the rule should be promulgated under the emergency authority of the Magnuson Act to apply during the 1988 fishing season or whether the full fishery management plan amendment process should be followed, thereby delaying implementation of the measures at least until the 1989 season.

Classification

This rule as proposed would be implemented under the emergency authority of section 305(e) of the Magnuson Act, 16 U.S.C. 1855(e), as amended, because there is insufficient time between now and the beginning of the 1988 season to amend the FMP. However, there is sufficient time between now and the proposed implementation date of April 29, 1988, to meet the requirements of the Administrative Procedure Act (APA). Thus, this rule is being proposed with a short-term comment period and, if approved, will be implemented by an interim final rule with a shortened cooling-off period.

A draft environmental assessment (EA) has been prepared by the Council and is available at the address above. The proposed rule is not expected to alter the total allowable harvest of salmon in the ocean. Thus, the draft EA indicates that this action is not expected to alter the nature nor the intensity of environmental impacts that were addressed in the supplemental environmental impact statement (SEIS) prepared by the Council for the 1984 framework amendment to the FMP. A notice of availability of the SEIS was published on September 23, 1984; 49 FR 38355. A final EA will be prepared by the Council as a basis for consideration of environmental impacts by the Assistant Administrator for Fisheries before implementation of any interim final rule.

The Acting Under Secretary, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This determination is based on a draft regulatory impact review/initial regulatory flexibility analysis (RIR/RFA) prepared by the Council which indicates total increases in net economic value (NEV) arising from changes in recreational activities in the salmon fishery at between $850,000 and $1,100,000. Similarly, total decreases in NEV arising from changes in the commercial fishery are expected to be between $500,000 and $700,000. The draft RIR/RFA is available at the address listed above. A final assessment by the Council will be prepared and published in a document entitled, "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries." Copies of this document will be available on or about March 22, 1988. Another Council publication, "Preseason Report III: Analysis of Council Adopted Management Measures for 1988 Ocean Salmon Fisheries," will analyze the impacts of this rule and final management measures adopted by the Council. It will be available on or about April 25, 1988. Both documents can be obtained from the Council office at the address listed above.

The draft RIR/RFA also concludes that this proposed rule, if adopted, would have significant effects on small entities. The results of the analysis indicated adverse impacts for the commercial sector consisting of a maximum average decrease of between 12 and 25 percent for gross receipts for firms fully reliant on salmon catching and processing activities north of Cape Falcon. For firms similarly reliant on the recreational salmon fishery, the gains might be between 8 and 13 percent. A copy of this analysis may be obtained from the Council office at the address listed above.

This rule contains no collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council has determined that this rule is consistent to the maximum extent practicable with the coastal zone programs of Washington and Oregon. This determination has been submitted for review by the responsible agencies of Washington and Oregon under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be amended as follows:

PART 661—[AMENDED]

1. The authority citation for 50 CFR Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Appendix—[Amended]

2. Appendix II.B.2 is amended for 90 days by suspending paragraphs (a) (i), (ii), (iii), and (iv) and adding paragraphs (a) (v), (vi), and (vii) to read as follows:

II. * * *

B. * * *

* * * * *

2. * * *

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

* * * * *

(v) *Allocation goal.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the objectives for the commercial and recreational fisheries, as follows:

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily closures, gear, bag, and particularly area restrictions, and

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(vi) *Allocation flexibility.* Allocation will be expressed in terms of quotas based on the schedule in paragraph (vii), which is presumed to best achieve the allocation goal. However, these quotas are neither guaranteed catches nor inflexible ceilings. Only the total ocean harvest quota is a maximum allowable catch. Additional flexibility in-season may be utilized to adjust individual quotas if the in-season adjustment will increase the degree to which the allocation goal is achieved, e.g., if it is apparent that the harvest of an individual quota by one fishery will not be achieved and that the other fishery can pursue the harvestable fish.

(vii) *Allocation schedule.*

(A) Allocation of coho and chinook salmon north of Cape Falcon, Oregon will be based on the following schedule:

Coho slamon			Chinook salmon		
Ocean harvest (numbers of fish)	Commercial [1]	Recreational [1]	Ocean harvest (numbers of fish)	Commercial [1]	Recreational [1]
<300,000	25	75	<100,000	50	50
>300,000	60	40	100-150,000	60	40
			>150,000	70	30

[1] Percentage.

(B) In the allocation schedule, the percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, the recreational allocation for a total allowable ocean harvest of 350,000 coho would be composed of two parts. The first part would be calculated by multiplying 300,000 coho by 75 percent. The result of this calculation would be added to the product of multiplying 50,000 coho by 40 percent, i.e., 225,000+20,000=245,000 coho or 70 percent of the total allowable ocean harvest.

* * * * *

[FR Doc. 88-5457 Filed 3-9-88; 1:16 pm]

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Notices

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: May 12–13–1988.

Time:

8:30 a.m.-5 p.m., May 12
8:30 a.m.-Noon, May 13

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 29th day of February 1988.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 88–5538 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–03–M

Office of International Cooperation and Development

Cooperative Agreements; University of Arizona

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Arizona for the Identification of Results of Farming Systems Research and Extension Activities.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Arizona. The objective of this agreement is to review, analyze and document the results of a number of farming systems research and extension (FSR/E) projects which have been implemented worldwide.

Assistance will be provided only to the University which will utilize funds to produce an FSR/E inventory report, providing detailed information on 20–25 projects to document the performance of past and on-going projects; identify the key factors influencing performance with emphasis on lessons learned; identify potential for incorporating these lessons learned into future applications; specify desirable indicators for assessing FSR/E performance; and assess the overall contribution of FSR/E to technology generation and transfer, and to economic development.

Based on the above, this is not a formal request for application. An estimated $88,000 will be available in FY1988 as partial support this work. It is anticipated that the agreement will be funded over a budget period of one year. Information on proposed Agreement #58–319R–8–014 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 8, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5445 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–DP–M

Forest Service

Loon Mountain Ski Area Expansion; White Mountain National Forest; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The forest Service will prepare an environmental impact statement for Loon Mountain's proposed expansion of their winter sports site on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, Hew Hampshire. The Fish and Wildlife Service, Department of Interior, will participate as a cooperating agency. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by May 30, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, New Hampshire 03247.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Geoffrey Chandler, Loon Mountain EIS Coordinator, White Mountain National Forest, Laconia, New Hampshire 03247, phone 603–524–6450.

SUPPLEMENTARY INFORMATION: The White Mountain National Forest Land and Resource Management Plan was completed in April 1986. The management direction in the Plan called for further study of whether to expand an alpine winter sports site on Loon Mountain.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no development of the site. Other alternatives will consider development designs with varying capacities.

Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, Hew Hampshire, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, and the United States Environmental Protection Agency will be invited to participate as a cooperating agency to evaluate potential impacts on aquatic resources. In addition, the State of New Hampshire, the North Country Council, and the Town of Lincoln will participate with the Forest Service in a joint review process to assess the impacts of the proposed project.

Public scoping meetings were held in 1987. Additional meetings will be held in May or June of 1988. Meeting dates will be advertised in the local media.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1988. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Loon Mountain participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by March 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Michael B. Hathaway,

Forest Supervisor.

Date: March 7, 1988.

[FR Doc. 88–5464 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Catfish and Trout Survey

Notice is hereby given that the National Agricultural Statistics Service (NASS) will conduct a survey of commercial catfish and trout producers in July 1988. The survey will be similar to those surveys discontinued in 1982. Data will be collected on number of operations, water area, production sales, and inventory. Results will be published by the Agricultural Statistics Board on August 31, 1988. States to be included in the survey are:

Catfish—Alabama, Arkansas, California, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

Trout—California, Colorado, Georgia, Idaho, Michigan, Missouri, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, and Wisconsin.

In surveys conducted in 1989, data may be collected on additional aquacultural commodities and additional items for catfish and trout.

Comments from interested persons regarding this action should be addressed to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, NASS/USDA, Room 5906–S, Washington, DC 20250–2000.

Dated: March 9, 1988.

Charles E. Caudill,

Administrator.

[FR Doc. 88–5449 Filed 3–11–88; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Transmittal No. 06–10–88017–01; Project I.D. No. 06–10–88017–01]

Shreveport Minority Business Development Center (MBDC); Solicitation of Competitive Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of September 1, 1988 to August 31, 1989. The MBDC will operate in the Shreveport Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-federal	Total
Shreveport SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is April 22, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on March 25, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designed above.

Addtional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: *11.800 Minority Business Development.*

Project Name: *Shreveport MBDC* (Geographic Area or SMSA).

Project Identification Number: *06–10–88017–01.*

Project Start and End Dates: *09/01/88 to 08/31/89.*

Project Duration: *12 months.*

Total *Federal Funding* (85%): *$165,000.*

Minimum *Non-Federal Share* (15%): *$29,118.*

Total Project Cost (100%): *$194,118.*

Closing Date for Submission of this Application: *April 22, 1988.*

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Shreveport, Louisiana.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:

Financial packages *$2,747,000.*
Billable M&TA *$84,000.*
Number of Professional Staff *3.*
Procurements *$5,493,000.*
M&TA Hours *1,680.*
Number of Clients *76.*

[FR Doc. 88–5441 Filed 3–11–88; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

March 9, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 15, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current import restraint limit for cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic.

Background

On January 29, 1988 a notice was published in the **Federal Register** (53 FR 2619), which announced, among other things, an import restraint limit for cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic and exported during the period which began on January 1, 1988 and extends through May 31, 1988. The Bilateral Textile Agreement of December 18, 1986, as amended, between the Governments of the United States and the Dominican Republic, under the terms of which this limit was established, also includes provisions for the carryover of shortfalls from the previous agreement period in certain categories (carryover).

Under the foregoing provisions of the bilateral agreement and at the request of the Government of the Dominican Republic, the limit established for Categories 347/348 is being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 9, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 26, 1988 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in the Dominican Republic and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 15, 1988, the directive of January 26, 1988 is hereby amended to adjust the previously established limit for cotton textile products in Categories 347/348 to a level of 277,500 dozen,[1] as provided under the terms of the bilateral agreement of December 18, 1986.[2]

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5496 Filed 3–11–88; 8:45 am]

BILLING CODE 3510-DR-M

Increasing an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

March 9, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 15, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Texiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse of cotton and man-made fiber textile products in Categories 226/613/614/615 during the designated period in excess of the new agreed limit.

Background

A CITA directive published in the **Federal Register** on January 4, 1988 (53 FR 60) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 226/613/614/615, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

During consultations held on February 19, 1988 between the Governments of the United States and Thailand, agreement was reached to increase the specific limit for Categories 226/613/614/615.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commission of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 9, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, *Department of Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cooton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on March 15, 1988, the directive of December 29, 1987 is amended to include a new limit of 19,169,063 square yards [1] for Categories 226/613/614/615.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5497 Filed 3–11–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 10, 1988.

The USAF Scientific Advisory Board Airlift Panel will meet on 29–30 March 1988, from 8:00 a.m. to 5:00 p.m., at Scott, AFB, IL.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to the Air Force Military Airlift Command efforts to upgrade their command and control systems. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4948.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–5580 Filed 3–11–88; 8:45 am]

BILLING CODE 3910-01-M

Department of The Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 30 March 1988.

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[2] The provisions of the agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits also may be increased for carryover and carryforward.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

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Time of Meeting: 1500–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. The objective of this meeting is to work with SARD personnel and help them identify costs of systems and technologies that have been identified in the panel's efforts on Competitive Strategies.

Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–5429 Filed 3–11–88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet March 16–17, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to discuss key issues related to the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

The unexpected availability of recently acquired new information critical to the Weapon Effectiveness Task Force's study does not accord an opportunity to provide 15 days prior notice of the meeting. Exceptional circumstances require that this information be discussed prior to the Task Force's targeted final report date in April 1988. The only opportunity during March to discuss this information is during March 16–17, 1988.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: March 10, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–5606 Filed 3–11–88; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet March 23–24, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552)c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: May 10, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–5606 Filed 3–11–88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting; Correction

In **Federal Register** Doc. 88–4959, page 7388, Tuesday, March 8, 1988, appeared a notice of Closed Meeting to be held on March 16, 1988.

The following justification for not meeting the requirement of a 15 day notice in the **Federal Register** did not appear in the above mentioned document: "This Notice is being published late because of administrative problems."

Dated: March 9, 1988.

W.R. Babington, Jr.,

Commander, U.S. Navy, Federal Register Liaison.

[FR Doc. 88–5607 Filed 3–11–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.199A]

Notice Inviting Applications for New Awards under the Cooperative Demonstration Program for Fiscal Year 1988

Purpose: To provide financial assistance through cooperative agreements to project that demonstrate collaborative vocational educational programs between State educational agencies, local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: June 20, 1988.

Deadline for Intergovernmental Review Comments: August 20, 1988.

Applications Available: April 1, 1988.

Available Funds Anticipated: $9,574,000.

Estimated Range of Awards: $125,000–$475,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 38.

Project Period: Up to 18 months.

Applicable Regulations: (a) The regulations in 34 CFR Parts 400 and 412 and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Criteria for Evaluating Applications: The Secretary assigns the 15 points, reserved in 34 CFR 412.30(b), as follows:

10 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 412.31(b) for a total of 30 points for that criterion; and five points to the Selection Criterion (g)—Private Sector Involvement— in 34 CFR 412.31(g) for a total of 10 points for that criterion.

Absolute and Invitational Priorities: (a) In accordance with 34 CFR 75.105(b)(2)(ii) and 75.105(c)(3), the Secretary will give absolute preference in this competition only to applications proposing projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, and building trade councils) and public agencies in vocational education, including State boards and eligible recipients, as described in 34 CFR 412.10(a)(2).

(b) Under 34 CFR 75.105(c)(1), the Secretary also invites applications for projects that are designed to train skilled workers and technicians in high-technology occupations (including programs providing related instruction to apprentices), or to train skilled workers needed to produce, install, operate, and maintain high technology equipment, systems, and processes. Applications that meet this invitational priority will not receive a competitive or absolute preference over other applications that do not meet this priority.

(c) To be eligible for funding in this competition, an application must meet the absolute priority stated in paragraph (a). Applicants, however, should note that the Secretary intends to announce in a subsequent **Federal Register** notice, a separate competition under this program for projects related to dropout prevention. Applications under both competitions will be carefully reviewed to ensure that no grantee receives duplicate Federal funding.

Other Information: (a) Potential applicants are reminded that 34 CFR 412.10(b) requires that all projects must be (1) of direct service to the individuals enrolled and (2) capable of wide replication by service providers.

(b) Potential applicants are reminded that 34 CFR 412.40(a) requires that 25 percent of the cost of a project be provided by the recipient in accordance with 34 CFR Part 74, Subpart G.

(c) Due to the limited funds available, the Secretary strongly urges applicants not to propose purchasing equipment with Federal grant funds. The Secretary suggests that any equipment necessary be provided as part of the recipient's share of the project costs, as described in paragraph (b) above.

(d) Information on the evaluation processes the Department uses in determining whether projects are worthy of replication may be secured by requesting a copy of the Department's "Guidelines for Program Effectiveness" from Dr. James Avea, Recognition Division, 555 New Jersey Avenue, NW., U.S. Department of Education, Washington, DC 20202–5516. Dr. Avea can also identify the appropriate State Facilitator working with this program for a potential applicant. While applications will not be evaluated against this higher standard of worthiness, applicants may find this information useful in planning projects that are capable of replication.

For Applications or Information Contact: Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 519, Reporters Building), Washington, DC 20202–5516. Telephone (202) 732–2362.

Program Authority: 20 U.S.C. 2411.

Dated: March 2, 1988.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 88–5548 Filed 3–11–88; 8:45 am]

BILLING CODE 4000-01-M

Office of Education Research and Improvement

Research and Development Center on the Study of the Education of Disadvantaged Children; Solicitation of Public Comments

ACTION: Notice to Solicit Public Comments on a Planning Paper for a Research and Development Center on the Study of the Education of Disadvantaged Students.

Purpose: The Secretary invites public comments on a planning paper for a research and development center on the study of the education of disadvantaged students. The Office of Educational Research and Improvement intends to establish this center in fiscal year 1989.

Deadline for Transmittal of Comments: All comments should be received on or before April 4, 1988.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs, 34 CFR Parts 706 and 708. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625).

Description of Planning Paper: The Office of Educational Research and Improvement (OERI) has prepared and will make available upon request a planning paper that focuses on developing recommendations for a research and development center which addresses the research priority on the improvement of educational outcomes for students-at-risk. This priority involves the identification of educational strategies successful in lowering dropout rates and raising achievement levels of those students having the greatest difficulty in terms of learning and motivation.

Requests for Planning Paper or Information: To receive a copy of the planning paper or for additional information call or write Dr. John Ralph, U.S. Department of Education, OERI, Office of Research, Room 617, 555 New Jersey Avenue, NW., Washington, DC 20208–1606, 202/357–6223.

Invitation To Comment: All interested parties are invited to review and comment on the planning paper. Written comments received on or before the date specified above will be considered in preparing a final statement which describes the Department's recommendations for the research and related activities and objectives of a center on the study of disadvantaged students.

Program Authority: 20 U.S.C. 1221e.

Dated: March 8, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–5546 Filed 3–11–88; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Intent to Repay to the Hawaii State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Hawaii State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before April 13, 1988.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, MS–6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4692.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1986, the Department recovered $1,829,781.30 from the Hawaii SEA in satisfaction of claims arising from two audits covering fiscal years (FY) 1973 through 1977. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the SEA used Title I funds during FY 1973 through 1976 to supplant State and local funds in violation of 20 U.S.C. 241e(a)(3)(B)(1976) and 45 CFR 116.17(h). The statute and regulations required that Title I funds supplement, not supplant State or local funds and be expended to meet needs left unmet by funds available from those sources.

In the second audit, the auditors concluded that during FY 1974 through 1977, the SEA did not satisfy the Title I comparability requirements in 20 U.S.C. 241e(a)(3)(C)(1976) and 45 CFR 116.26(a). Those requirements provided that a local education agency (LEA) could receive Title I funds only if it used its State and local funds in each Title I area to provide services that taken as a whole, were at least comparable to services being provided in non-Title I areas.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement, which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $1,372,336 and has submitted a plan for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the grantback funds will be used in the four administrative school districts in which the audit exceptions occurred. These are the Leeward, Windward, Honolulu, and Hawaii Districts.

The Leeward District proposes to use $888,185 in grantback funds to expand the math component provided with Chapter 1 funds to allow nine elementary schools to service children in grades 5 and 6. The district will also develop a pilot reading project for first graders. This project will be an early childhood computer-based reading component to enhance the concept of developmental services along with the remedial concept. Grantback funds will be used for salaries and fringe benefits for 15 teachers, 16 part-time teachers, substitute teachers, and educational supplies.

In the Windward District, $230,435 in grantback funds will be used to expand the services provided by regular Chapter 1 funds to additional eligible children. Children in the ninth and tenth grades in Kailu High School will participate in a diagnostic/prescriptive learning mathematics program that is designed as a supplement to the basal text. Six part-time teachers will be hired and supplies will be purchased for this program. A computer and software will be purchased for this program for use by Chapter 1 students.

Grantback funds in the amount of $234,805 will be used by the Honolulu District to augment the regular Chapter 1 Comprehensive Language Improvement Project. Nineteen part-time teachers will be hired. These funds will make it possible to raise the cutoff percentile scores for eligibility and thus serve more educationally disadvantaged children. Four elementary schools will also implement a pilot project to teach children to read better, write better, and reason better. For program evaluation, the Honolulu District will use grantback funds to make a transition to a new achievement test. This test was developed to provide reliable and verifiable information and to eliminate the penalizing effect other standardized tests have on traditionally low-scoring students. To supplement this test, reading diagnostic tests will be purchased to provide data that will result in more effective teaching.

Computers will be purchased with grantback funds by the Hawaii District. Computer-assisted instruction will be provided at 13 Chapter 1 schools to students most in need of remediating instruction. These computers will also provide technological aid for efficiency in meeting the operational and managerial requirements of Chapter 1. The cost of the computers and software will be $18,911.

Eligible children in private schools will receive services equitable to those provided to eligible children in public schools.

According to the proposed plan, the grantback funds will be used during school years 1987–88 and 1988–89. Any changes to this plan, including activities to be funded or the project period during which the school districts propose to use these funds, will be submitted to the Secretary for advance approval.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA and has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Hawaii SEA under a grantback arrangement. The grantback award would be in the amount of $1,372,336, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audits.

F. Terms and Conditions Under Which Payments Under A Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA will, not later than January 1, 1989 and January 1, 1990, submit reports to the Secretary which—

(a) Indicate that the funds awarded under the grantback were spent during the previous school year in accordance with the proposed plan and approved budget, and

(b) Describe the results and effectiveness of the projects for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88–5544 Filed 3–11–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to Intercontinental Oil Co., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Intercontinental Oil Company, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the United States Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Intercontinental Oil Company, Inc. (IOC), 6363 Woodway, Suite 1100, Houston, Texas 77057 This Proposed Remedial Order alleges overcharges in the resale of crude oil in violation of 10 CFR 212.131, 212.183, 212.186, 120.62(c) and 205.202 of the petroleum price regulations during the period November 1975 through September 1978 in the amount of $1,576,305. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, 500 Dallas Street, Houston, Texas 77002

and upon:

Diana D. Clark, Administrative Litigation Division, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–055, RG–43, 1000 Independence Avenue SW., Washington, DC 20585

Issued in Washington, DC, on March 3, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–5532 Filed 3–11–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL88-16-000 et al.]

Bridgeport Resco Co., L.P. et al.; Electric Rate and Corporate Regulation Filings

March 8, 1988.

Take notice that the following filings have been made with the Commission:

1. Bridgeport Resco Company, L.P.)

[Docket No. EL88–16–000]

Take notice that on March 2, 1988, Bridgeport Resco Company, L.P. (Bridgeport Resco) tendered for filing pursuant tc 18 CFR 385.207(a) (2) a petition for Declaratory Order as follows:

(1) Authorizing a sale and leaseback financing of Bridgeport Resco's Bridgeport, Connecticut solid waste-fueled qualifying facility;

(2) Disclaiming Commission jurisdiction under the Federal Power Act over the beneficial owner of the facility (Owner Participant) and the trustee for such beneficial owner (Owner Trustee) as a consequence of their participation in the sale and leaseback financing;

(3) Determining that if the Owner Participant, the Owner Trustee or the trustee for the long-term lenders take over the operation of the Facility in the exercise of remedies against Bridgeport Resco following a Bridgeport Resco default, it will not solely as a conseqence thereof become an "electric utility" subject to the Commission's jurisdiction under the FPA if the Facility continues to satisfy all the requirements, including the ownership requirements, required for a "qualifying facility" under PURPA.

(4) Confirming the continued applicability of Bridgeport Resco Company, L.P./Rate Schedule FERC No. 1 to sales by Bridgeport Resco to United Illuminating Company of electricity generated by the facility after the

proposed financing transaction is consummated; and

(5) Determining that change in ownership of the facility effected by the sale/leasback financing will not result in a loss of QF status for the facility.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER88-188-000]

Take notice that on March 2, 1988, New England Power Company (NEP) tendered for filing an amendment filing to its original filing of January 12, 1988, in the above-referenced docket. That filing concerned an amendment to the Service Agreeement of the Town of Norwood, Massachusetts (Norwood) to facilitate Norwood's receipt of the benefits of its allocation of power from the New York Power Authority (NYPA).

NEP states that the amended filing responds to Staff inquiries regarding cost support and explanation of the proposed five percent monthly administrative charge and billing data for the period July 1, 1985 through May 1, 1987.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Electric Power Company

[Docket No. ER88-279-000]

Take notice that on March 2, 1988, Potomac Electric Power Company (Pepco) tendered for filing under § 35.15 of the Commission's Regulations its notice of termination of services provided pursuant to paragraph 2 of Pepco FERC Rate Schedule No. 18, consisting of Pepco's providing, operating and maintaining a 60 Hertz to 25 Hertz frequency changer for Baltimore Gas and Electric Company located at Pepco's Benning Station in Washington, D.C. Termination effective May 1, 1988 is requested.

Comment date: March 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5509 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC88-13-000 et al.]

CP National Corp. et al.; Electric Rate and Corporate Regulation Filings

March 7, 1988.

Take notice that the following filings have been made with the Commission:

1. CP National Corporation

[Docket No. EC88-13-000]

Take notice that on February 29, 1988, CP National Corporation (CP National) tendered for filing an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1982), for Commission authorization to sell to the Lassen Municipal Utility District (LMU District) CP National's Lassen Electric System in the State of California.

CP National incorporated in the State of California, provides electric, telephone and natural gas distribution services in Arizona, California, Nevada, New Mexico, Oregon, Texas and Utah.

The LMU District is a municipal utility district duly organized and existing under the Laws of the State of California.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Arizona Public Service Company

[Docket No. ER88-272-000]

Take notice that on February 29, 1988, Arizona Public Service Company (APS) tendered for filing a Transmission Service Agreement (Transmission Agreement), and a Supplement and Agreement No. 1 to the Wholesale Power Supply Agreement (Supplement) between APS and the Papago Tribal Utility Authority (PTUA).

The tendered Agreements provide for the transmission of PTUA's recently acquired allotments of power from the Parker-Davis and Hoover Dams through the Arizona Power Authority and Western Area Power Administration and attendant changes in PTUA's Wholesale Power Supply Agreement as provided for in the Supplement. No new facilities or modifications to existing facilities are required to provide service hereunder.

The proposed transmission rates are the same as rates for similar service previously accepted for filing with the Federal Energy Regulatory Commission (FERC). No change in the Wholesale Power rate level is proposed herein.

APS, with the concurrence of PTUA, requests a waiver of the Commission's Notice Requirements, 18 CFR 35.11 so that service to PTUA may begin on March 1, 1988, as provided in the supplement and the Transmission Agreement.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power & Light Company.

[Docket No. ER88-271-000]

Take notice that on February 29, 1988, Mississippi Power & Light Company (MP&L) tendered for filing an extension of a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of March 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER88-273-000]

Take notice that on March 1, 1988, New England Power Pool (NEPOOL) Executive Committee tendered for filing an Amendment to NEPOOL Agreement, dated as of March 1, 1988 (*Amendment*), which modifies the provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, as previously amended by twenty-three (23) amendments, the most recent of which was dated as of April 30, 1987.

The NEPOOL Executive Committee states that the *Amendment* has been submitted pursuant to the provisions of a settlement agreement filed with the Commission on June 1, 1987 in Commission Docket No. ER86-694-001 and the *Amendment* changes provisions of the NEPOOL Agreement to assign the effects on the pool's required reserves of certain new generating units to electric utilities with ownership or contractual interests in such new units. The NEPOOL Executive Committee has requested that the *Amendment* be permitted to become effective on the date specified therein, May 1, 1988.

Copies of the filing were served on all electric systems rendering or receiving service under the NEPOOL Agreement and on each of the parties to Docket No.

ER86-694-001, including the public utility regulatory commissions for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER88-275-000]

Take notice that on March 1, 1988, Public Service Company of New Mexico (PNM) tendered for filing a 100 MW System Power Agreement (Agreement) between PNM and San Diego Gas & Electric Company (SDG&E). Under the Agreement PNM will provide SDG&E up to 100 MW of system power from PNM's base load resources, deliverable at PNM and SDG&E's point of interconnection at the Arizona Nuclear Power Project (ANPP) High Voltage Switchyard. PNM will also provide interruptible transmission service to SDG&E. The date of initial service for deliveries of all power and energy, as well as provision of interruptible transmission service, is May 1, 1988.

Copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER88-101-000]

Take notice that on March 1, 1988, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to its November 13, 1987 filing that proposed rate reductions to its wholesale firm power and firm wheeling customers pursuant to Order No. 475 in Docket No. RM87-4-000, Rate Changes Relating to Corporate Income Tax Rates for Public Utilities. The amendment—which is filed pursuant to a deficiency letter issued by the Commission—revises the rate reduction proposed for wholesale firm power service. Sierra requests July 1, 1987 as the effective date for all rate reductions proposed in this docket.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5510 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6602-003 and 8958-000]

D.J. Pitman International Corp., Hydroelectric Development Inc.; Availability of Environmental Assessment and Request for Comments

March 7, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the competing applications for minor license for the proposed Macallen Dam Hydroelectric Project on the Lamprey River in Rockingham and Strafford Counties, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding study results, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Macallen Dam Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, April 15, 1988, and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 6602-003 or Project No. 8958-000, as appropriate, to all comments.

For further information please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 376-9045.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5511 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-164-000 et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings; Republication

[**Editorial Note:** The following document was originally published at page 3626 in the issue of Monday, February 8, 1988. In that publication, some paragraphs were printed out of order. The corrected document is republished below in its entirety.]

February 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP88-164-000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-164-000 an application for authorization to construct certain replacement facilities and to operate such facilities at a higher maximum allowable operating pressure (MAOP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of approximately 27.6 miles of 20-inch pipeline in two segments, replacing a like amount of 20-inch pipeline, located in Lancaster and Chester Counties, Pennsylvania. The proposed replacement project has an estimated cost of $15,120,000, which would be financed with funds on hand. Applicant also proposes to increase the MAOP from 375 to 1,000 psig for this section of its pipeline system. Applicant asserts that the proposals herein are due to age and the deteriorated condition of the existing facilities. Applicant states that the existing pipeline proposed herein to be replaced will remain in service until the proposed replacement sections are constructed.

It is noted that the proposed increased in the MAOP is necessary in order for the Applicant to perform the firm sales and firm transportation services for Providence Gas Company as proposed in its Docket No. CP88–164–000, also filed on January 14, 1988. It is further noted that Applicant filed this application within the timeframe of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP88–163–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88–163–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a firm sales service to a new wholesale customer and the construction and operation of facilities necessary to implement that service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to Providence Gas Company (Providence) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant further states that Providence has also requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 40,000 dth per day. Applicant asserts that the transportation would be self-implemented pursuant to Part 284 of the Commission's Regulations. In order to provide these services, Applicant proposes to construct 19.1 miles of 16-inch lateral and one interconnecting measuring facility for a total estimated cost of $14,870,000. This proposed lateral would be an extension of Applicant's proposed lateral currently pending in Docket No. CP88–129–000 [1] and would extend from Flanders, Morris County, New Jersey to its eastern terminus which would interconnect with Algonquin Gas Transmission Company's (Algonquin) pipeline system, just north of Algonquin's Hanover Compressor Station in Morris County, New Jersey. Applicant explains that Algonquin would redeliver the subject volumes to Providence on its behalf.

Applicant notes that its ability to provide the proposed services is contingent upon an increase in the maximum allowable operating pressure on a certain part of its upstream system which is part of replacement project proposed in Docket No. CP88–164–000.[2]

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP88–129–000]

Take notice that on January 14, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP88–129–001 an amendment to its pending application filed on December 15, 1987, in Docket No. CP88–129–000 pursuant to Section 7(c) of the Natural Gas Act to construct and operate natural gas facilities and to provide firm service to a new resale customer, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dth) per day under Applicant's Rate Schedule CDS. Applicant states that Elizabethtown Gas Company (Elizabethtown) has requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dth per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdth annually. Applicant further states that in order to provide the requested service, it proposes to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. It is further stated that the proposed extension would consist of the construction of approximately 38.1 miles of 16-inch pipeline and three interconnecting measuring facilities at a total estimated cost of $23,723,000.

Applicant notes that the amended application supersedes the request of Applicant filed in Docket No. CP88–129–000 on December 15, 1987, in that it now proposes the construction and operation of a 16-inch pipeline instead of a 12-inch pipeline to provide additional throughput capacity. In addition a minor change from the initial route has been proposed in order to avoid three wetland areas and two stream crossings and would result in an increase in the total length of the facility from 37.9 miles to 38.1 miles, it is further explained.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88–171–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252 filed an application pursuant to Section 7(c) of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing the transportation of the dekatherm equivalent of 200,000 Mcf per day of natural gas on a firm basis for National Fuel Gas Supply Corporation (National Fuel) and the construction and operation of new measurement facilities.

Tennessee would receive such quantities of gas at a point of receipt located at the existing interconnection between the facilities of Tennessee and TransCanada PipeLines Limited (TransCanada) on the international border between the United States and Canada near Niagara Falls, New York.

Tennessee would transport and deliver to National Fuel a thermally equivalent quantity of gas at a point to be located at the interconnection of a new pipeline to be constructed by National Fuel and new measurement facilities to be constructed by Tennessee at a mutually agreeable location on Tennessee's existing Niagara Spur Line near Lewistown, New York.

Tennessee seeks authority to construct and operate measurement facilities for approximately 302,100 dth per day of natural gas at the proposed delivery point near Lewistown, New York. It is stated that this represents the need for measurement of the quantities proposed in this application as well as 93,148 dth per day of "Boundary" quantities which Tennessee proposes to deliver to Natural Fuel at Lewistown. It is further stated that of the 93,148 dth per day of "Boundary" quantities, 90,630 dth per day represents quantities to be transported by National Fuel for Tennessee and 2,518 dth per day represents quantities to be delivered to National Fuel by Tennessee. Tennessee states that Tennessee and National Fuel would individually file for the appropriate authorization for transportation of the "Boundary" quantities. The cost of these measurement facilities is estimated to be $1,497,000 of which one-third will be paid by Tennessee and the remainder by National Fuel.

Tennessee states that in consideration of certain transportation services to be performed by National Fuel for Tennessee at no cost to Tennessee, Tennessee would provide the transportation proposed in this application at no cost to National Fuel, with the exception that National Fuel would provide to Tennessee, at no cost to Tennessee, a daily quantity in dekatherms of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to one-half of one percent (0.5%) of the quantities received from National Fuel on any day.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: Feberary 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–176–000]

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee) a Division of Tenneco Inc., P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee (1) to provide firm natural gas transportation to six shippers in Massachusetts, Rhode Island and New Hampshire in an aggregate daily maximum quantity of 31,721 Dth; and (2) to construct and operate the facilities necessary to transport and deliver these quantities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The specific shippers, quantities, receipt and delivery points for which Tennessee seeks firm transportation authority are:

	Transportation quantity (Dth/Day)	Receipt point	Delivery point
(1) Colonial Gas Co	7,049	Niagara	Tewksbury and Mendon, MA.
(2) Essex County Gas Co	2,014	Niagara	Haverhill-Essex, MA.
(3) Boston Gas Co	17,119	Niagara	Beverly-Salem and Mendon, MA.
(4) Energy North, Inc	4,026	Niagara	Laconia, NH.
(5) Fitchburg Gas and Electric Light Company	504	Niagara	Fitchburg, MA.
(6) Valley Resources Incorporated	1,007	Niagara	Pawtucket, RI.

To provide the firm transportation service, Tennessee proposes to construct 40.79 miles of mainline loop, 14 miles of lateral line, and 1550 horsepower of compression. It is stated that all pipeline and compression facilities affected are located in Erie, Wyoming, Livingston, Ontario, Herriner, Otsego, Onardoga, and Columbia Counties, New York, Massachusetts; and Merrimack County, New Hampshire. The total project cost of Tennessee facilities is estimated to be $61,247,000.

Tennessee proposes to render the firm transportation service pursuant to proposed new Rate Schedule NET–LD, which provides for incremental rates to recover a portion of the transportation projects (NORTRAN ANE and NEP).

It is noted that Tennessee filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation

[Docket No. CP88–179–000]

Take notice that on January 15, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88–179–000 an application pursuant to section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing Texas Eastern to transport natural gas for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport on a firm basis for CNG a Maximum Daily Transportation Quantity (MDTQ) of 80,000 dekatherms of natural gas per day and such additional quantities on an interruptible basis as Texas Eastern and CNG may mutually agree upon.

Specifically, Texas Eastern would receive from CNG the above stated quantities of natural gas at the existing point of interconnection with CNG located at the Oakford Storage Field in Westmoreland County, Pennsylvania and would transport and redeliver equivalent quantities of gas, less applicable shrinkage, to CNG at the existing interconnection between CNG's pipeline PL–1 and Texas Eastern's compressor station located at Chambersburg, Pennsylvania. The agreement stipulates a primary term beginning upon commencement of service and would continue for twenty years.

The facilities required for the proposed transportation are found in an amended application in Docket No. CP87–92–002 (Capacity Restoration Program) filed by Texas Eastern on January 15, 1988. This amended application seeks authorization for the construction, replacement, and operation of a significant portion of its major pipeline facilities. Texas Eastern alleges that consolidation of the proposed transportation facilities with the major construction proposed in Docket No. CP87–92–002 would result in economies of scale and cost savings for both projects.

Based upon the annual cost of service of the required facilities included in Texas Eastern's amended application in Docket No. CP87–92–002, Texas Eastern estimates an initial monthly demand charge of $3.348 per dekatherm and an excess charge of $0.1101 per dekatherm.

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[1] In Docket No. CP88–129–001 filed on January 14, 1988, Applicant proposes to construct 38.1 miles of a 16-inch lateral from Hellertown, Northampton County, Pennsylvania, to the vicinity of Flanders, Morris County, New Jersey. Applicant would utilize this facility to initiate a firm sales service to New Jersey Natural Gas Company and a firm transportation service to Elizabethtown Gas Company.

[2] Applicant filed Docket No. CP88–164–000 on January 14, 1988 requesting to replace 27.8 miles of 20-inch mainline pipe which would be located in Lancaster and Chester Counties, Pennsylvania.

It is noted that Texas Eastern filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88–177–000]

Take notice that on January 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77252, filed in Docket No. CP88–177–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of natural gas pipeline and related facilities and authorizing the transportation and storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco would provide firm transportation of up to the dekatherm equivalent of 125 MMcf of natural gas per day on behalf of potential customers from the United States/Canadian border to a point of delivery for injection into storage or to points of delivery for transportation on Transco's system. Transco states that it has already received nominations for transportation service substantially in excess of the 125 MMcf dekatherms per day which would be offered. Transco further states that it would transport the gas in accordance with the individual transportation agreements in substantially the same form as Transco's *pro forma* Gas Transportation Agreement, a copy of which is included in the complete application. Transco states that it would charge the modified fixed variable rate D–1, D–2 reservation rate and commodity rate.

Transco would also provide storage service for potential customers of up to 11 Bcf storage capacity with a maximum daily delivery capability of 100 MMcf at the facilities of Penn-York Energy Corporation in Wharton County, Pennsylvania. Transco states that it has already received nominations for storage demand that would require storage capacity in excess of the 11 Bcf that is being offered. Transco further states that although the proposed storage and transportation services are being offered as a joint project Transco would offer the storage and/or transportation service in an unbundled fashion. Transco would offer its potential customers the storage service under the proposed Rate Schedule SS–2.

Transco further states that it would construct 25.52 miles of pipeline loop in Monroe and Clinton Counties PA. and in Middlesex and Gloucester Counties NJ. Transco would also add 12,500 horse power of compression at its existing Compressor Station No. 520 in Lycoming County PA.

In addition, Transco would construct, install, and operate additional transportation facilities incremental ranging from 60 to 460 MMcf per day in excess of the above proposed 225 MMcf per day. The incremental service would supply the Northeast markets which are capable of receiving service through Transco's facilities to the extent that the Commission determined that the market need exists and that the public convenience and necessity would be served. Transco states that it has the capability to develop incremental transportation capacity to deliver a significant volume of natural gas from the Leidy Hub area to Northeast U.S. markets in a cost-effective manner. Transco submits therefore that, as an applicant and active participant in the Commission's "open season" proceeding, by its instant application Transco is proposing to expand its Leidy Line and market area facilities to provide additional transportation capacity to serve such markets.

It is noted that Transco filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2545 Filed 2–5–88; 8:45 am]

BILLING CODE 1505–01–D

[Docket Nos. CP88–242–000 et al.]

Florida Gas Transmission Co. et al.; Natural Gas Certificate Filings

March 8, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP88–242–000]

Take notice that on February 18, 1988, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–242–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Florida Gas to transport natural gas for Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that gas would be delivered to Florida Gas for the account of Air Products at the following existing points of interconnection between Florida Gas and the indicated entity:

(1) Acadian Gas Pipeline System in West Baton Rouge Parish, Louisiana.

(2) Matagorda Offshore Pipeline System in Refugio County, Texas.

(3) Exxon Company, U.S.A. in Pearl River County, Mississippi.

(4) Prosper Energy Corporation in Pearl River County, Mississippi.

Florida Gas proposes to transport on an interruptible basis up to 35 billion Btu equivalent of gas per day for Air Products to an existing point of interconnection between Florida Gas and Five Flags Pipeline Company (Five Flags) in Santa Rose County, Florida for ultimate delivery by Five Flags to Air Products' plant in Santa Rosa County.

Southern requests that the proposed transportation be authorized for a primary term of five years from the date of initial deliveries, and from year-to-year thereafter until terminated by either Florida Gas or Air Products.

Florida Gas states that its agreement with Air Products provides that Air Products shall pay Florida Gas each month a Facility Charge of 7.3 cents per million Btu equivalent delivered to Air Products, plus a Service Charge of 3.9 cents per million Btu equivalent per 100 miles of forward haul.

Additionally, Florida Gas indicates that it would collect from Air Products the GRI surcharge of 1.47 cents per million Btu equivalent and Florida Gas' ACA surcharge of 0.21 cents per million Btu equivalent.

Florida Gas states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for Florida Gas to perform the proposed services without detriment or disadvantage to Florida Gas' existing customers.

Comment date: March 29, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88–249–000]

Take notice that on February 22, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–249–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to establish new delivery points to an existing firm sales customer, Midwestern Gas Transmission Company (Midwestern), under its blanket certificate issued in Docket No. CP82–413–000 on September 1, 1982, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

.Tennessee states that it seeks to establish the new delivery points to Midwestern at the following existing points of interconnections on Midwestern's system.

Location	Delivery volume	Interconnecting pipeline
Downstream of Station 2116 in Vermilion County near Potomac, Illinois.	150,000 Mcf/d.	Trunkline Gas Co.
Upstream of Station 2112 in Knox County near Bicknell, Indiana.	50,600 Mcf/d.	Texas Gas Transmission Co.
Downstream of Station 2108 in Spencer County near Chrisney, Indiana.	154,600 Mcf/d.	ANR Pipeline Co.
Upstream of Station 2106 in Daviess County near Whitesville, Kentucky.	113,700 Mcf/d.	Texas Gas Transmission Co.
Upstream of Station 2110 in Pike County near Winslow, Indiana.	20,600 Mcf/d.	Texas Eastern.

It is stated that Tennessee currently provides natural gas service to Midwestern under Tennessee's CD–1 Rate Schedule pursuant to a gas sales contract between Tennessee and Midwestern dated February 24, 1982. According to Tennessee, the new delivery points are necesary to provide increased supply flexibility to Midwestern. Tennessee states that it does not propose to increase or decrease the total daily or annual quantities it is authorized to deliver to Midwestern which is currently 616,400 Dth and 224,986,000 Dth, respectively. Tennessee asserts that the establishment of the proposed new delivery points is not prohibited by its currently effective tariff and that it has sufficient capacity to accoomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: April 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion 'o intevene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by selections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time alowed for filing a portest. If a protest is filed and not withdrawn within 30 days after the time alowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 88–5513 Filed 3–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–247–000 et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

March 7, 1988.

Take notice that the following filings have been made with the Commission:

BEST COPY AVAILABLE

1. Williams Natural Gas Company

[Docket No. CP88-247-000]

Take notice that on February 19, 1988, Williams Natural Gas Company (WNG) (1) applied, in abbreviated form, for temporary and permanent certificate authorization under section 7(c) of the Natural Gas Act (NGA) for WNG to place in effect a Gas Inventory Charge (GIC) mechanism to permit customers under WNG's partial requirements rate schedules to nominate sales gas volumes, and for WNG to charge for the carrying cost of holding gas supply to serve such nominated volumes, and pre-granted authorization under section 7(b) of the NGA for WNG to abandon sales service to partial requirements customers as to service above related contract demand reductions; and (2) submitted a related sections 4 and 5 tariff change to place in effect prospectively the tariff provisions and charges necessary to effectuate the GIC.

WNG requests that the Commission issue a temporary and permanent certificate, to be effective in conjunction with WNG's partial requirements Rate Schedules PR(A), PR(B), and P, to be implemented through a revised stipulation in Docket Nos. RP86-32, *et al.* and Rate Schedules GS and SGS to be implemented prospectively in Docket No. RP87-33, granting certificate authority for WNG to place in effect a mechanism to permit customers under WNG's partial requirements rate schedules to nominate sales gas volumes and for WNG to charge for the carrying costs of holding gas supply to serve such nominated volumes. WNG also requests that the Commission issue an order granting WNG pre-granted authority to abandon sales service to partial requirements customers in accord with their related reductions in contract demand.

WNG requests that the Commission take such other action, or issue any waivers, as may be appropriate and required to promptly grant the requested authorizations.

Comment date: April 1, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP87-458-001]

Take notice that on February 23, 1988, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-458-001 an amendment to the application filed in Docket No CP87-458-000 pursuant to section 7 of the Natural Gas Act requesting authorization for certain changes in the facilities and services involved in Docket No. CP87-458-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP87-458-000 AER requested authority granting authorization necessary for the continued operation and provision of certain facilities and services that are or may be jurisdictional under the Natural Gas Act. AER indicated in the initial application that the potential need for such additional authorization had come to light following new management's separation of Arkla's pipeline and distribution and operation into separate divisions. AER further asserted that this new management group has instituted stringent procedures to assure that in the future such regulatory oversight, do not occur and that appropriate authorizations are obtained in a timely manner.

AER, in Docket No. CP87-458-000, requested jurisdictional authority covering two exchanges involving reserved gas, two other exchanges, various facilities and other services in the northwest Arkansas area of its system, and certain other facilities and services at various locations throughout its system. Upon further review of its system and operations, AER finds it necessary to propose changes to the filing made in Docket No. CP87-458-000. AER proposes to make changes in the existing facilities and services for which authorization was sought initially in order to reflect the sale of certain production-area facilities, the revision of an existing exchange arrangement, the termination of certain services, and the proposed downsizing of a compressor station. AER further states that it has discovered relatively minor error in two previously submitted exhibits and is filing appropriate corrections with the amendment.

Comment date: March 28, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Sabine Pipe Line Company

[Docket No. CP88-253-000]

Take notice that on February 24, 1988, Sabine Pipe Line Company (Sabine), Post Office Box 52332, Houston, Texas 77052, filed in Docket No. CP88-253-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its gas measurement facilities and platform riser located on the West Cameron Block 547 production platform in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Sabine states that by Commission order issued on July 26, 1984, in Docket No. CP84-96-000 (28 FERC ¶62,124) it was authorized to construct a 4.9 mile 12-inch pipeline from the platform at West Cameron Block 547 to an interconnect with a Stringray Pipeline Comapny 30-inch pipeline in West Cameron Block 565. Sabine alleges that production and transportation on the subject line began in October, 1984 and ended in November, 1986.

It is asserted that Texaco, as owner of the platform at West Carmeron Block 547, has informed Sabine that it will remove the production platform. As a result of Texaco's removal of the production platform, Sabine is requesting authority to abandon its gas measurement facility and platform riser on the subject platform so that Texaco can remove its platform. Sabine asserts that it does not wish to abandon the remainder of the line. Sabine further asserts that for accounting purposes, the line, in accordance with Part 201 of the Commission's regulations, would be placed in Account 105, gas plant held for future use. It is anticipated that an increase in gas and oil prices would cause an increase in drilling activities in adjacent underline blocks and thus make the line usable at some future time.

Comment date: March 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regualtory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, as hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5514 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5177-001 et al.]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

March 8, 1988.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 22, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5177-001, D, Feb. 22, 1988.	Sun Exploration & Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Jal Field, Lea County, New Mexico.	([illegible])
G-6841-000, E, Feb. 18, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	K N Energy, Inc., Hugoton Field, Kearny County, Kansas.	([illegible])
G-12548-002, D, Feb. 16, 1988.	Sun Exploration & Production Company	Northern Natural Gas Company, Division of Enron Corp., W. Perryton Field, Ochiltree County, Texas.	([illegible])
G-12902-001, D, Feb. 22, 1988.	......do	El Paso Natural Gas Company, Blinebry Field, Lea County, New Mexico.	([illegible])
G-15199-001, D, Feb. 22, 1988.	......do	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	(1)
CI88-309-000, B, Feb. 16, 1988.	Arlington Exploration Company, 137 Newbury Street Boston, MA 02116.	National Fuel Gas Supply Corporation, Adrian Field, Steuben County, New York.	([illegible])
CI88-312-000, F, Feb. 19, 1988.	Mobile Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston TX 77046-0957.	Transcontinental Gas Pipe Line Corporation, Pointe Au Fer Field, Terrebonne Parish, Louisiana.	([illegible])
CI88-315-000 (G-16020), B, Feb. 16, 1988.	ARCO Oil and Gas Company, Division of Atlantic, Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Company, Division of Enron Corp., Spearmen Field, Hansford County, Texas.	([illegible])
CI88-316-000 (CI65-329), B, Feb. 16, 1988.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Company, Division of Enron Corp., Linscott North Field, Ellis County, Oklahoma.	(17)
CI88-317-000 (CI61-996), B, Feb. 16, 1988.	Sun Exploration & Production Company	ANR Pipeline Company, Cederdale Field, Woodward County, Oklahoma.	([illegible])
CI88-319-000 (CI62-965), B, Feb. 217, 1988.	Mesa Operating, Limited Partnership	United Gas Pipe Line Company, Block 273, High Island, Offshore Texas.	([illegible])
CI88-320-000 (CI69-592), B, Feb. 17, 1988.	......do	Sec. 2-23N-24W, Ellis County, Oklahoma	([illegible])
CI88-321-000 (G-6211), B, Feb. 17, 1988.	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Natural Gas Pipeline Company of America, South La Gloria Unit, La Gloria Field, Brooks County, Texas.	([illegible])
CI88-322-000 (G-5880), B, Feb. 17, 1988.	......do	Transcontinental Gas Pipe Line Corporation, South La Gloria Unit, La Gloria Field, Brooks County, Texas.	([illegible])
CI88-323-000 (CI67-118), B, Feb. 17, 1988.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189-2009.	Panhandle Eastern Pipe Line Company, Peek South Field, Ellis County, Oklahoma.	(11)
CI88-324-000, B, Feb. 19, 1988.	Raw Hide Oil & Gas, Inc., P.O. Box 977, Pampa, TX 79065.	William Natural Gas Company, West Panhandle Field, Gray County, Texas.	([illegible])
CI88-325-000 (CI77-384), B, Feb. 19, 1988.	Amerada Hess Corporation, P.O. Box 2040, Tulsa, OK 74102.	Texas Eastern Transmission Corporation, West Cameron Block 522, Offshore Louisiana.	([illegible])
CI88-326-000 (CI84-474-000), B, Feb. 22, 1988.	Plains Petroleum Operating Company, P.O. Box 15278, Lakewood, CO 80215.	K N Energy, Inc., Sec. 10-T9S-R40W, Sherman County, Kansas.	([illegible])
CI88-327-000 (CI61-1425), B, Feb. 22, 1988.	Sun Exploration & Production Company	El Paso Natural Gas Company, Langlie-Mattix Field, Lea County, New Mexico.	([illegible])

FOOTNOTES

[1] Effective 1-2-86, Sun assigned partial interest and retained a partial interest in Property No. 760242, Wimberly, to Doyle Hartman, James A. Davidson, Michael L. Klein and John H. Hendrix Corporation.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[2] Effective 1-2-86, Sun assigned partial interest an retained partial interest in each well in Property No. 595020, Langley Boren #1, Property No. 595023, Langley Griffin Comm., Property No. 595026 Langley Getty Com. #1, and Property No. 595027, Langley Green, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[3] Effective 1-2-86, Sun conveyed a partial interest and retained partial interest in Property No. 780420, Wimberly, to Doyle Hartman, James A. Davidson,. Michael L. Klein, and John H. Hendrix Corporation.

[4] Effective 1-2-86, Sun assigned its interest in Property No. 750532, W. Perryton Unit, to Doyle Hartman, James A. Davison, Michael L. Klein, and John H. Hendrix Corporation.

[5] Not used.

[6] On 8-2-85, Chevron U.S.A. Inc. filed an application to amend certificates held by Gulf Oil Corporation as successor in interest, to substitute Chevron as the certificate holder and to redesignate the related rate schedules in the name of Chevron. Chevron states this filing was inadvertently left off the prior application and Chevron requests that Docket No. G-6841 be redesignated in the namne of Chevron and that Gulf's FERC Gas Rate Schedule No. 145 be redesignated as a Chevron rate schedule and assigned a new rate schedule number.

[7] Effective 6-1-86, Maynard Oil Company assigned to MOEPSI a portion of its interest in the Pointe Au Fer Field, Terroborne Parish, Louisiana.

[8] Effective 1-2-86, Sun assgined its interest in Property No. 456685, Farnsworth 4, to Doylel Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[9] Effective 1-2-86, Sun assigned its interest in Property No. 475707, Gingrich Unit, and Property No. 513284, Garvie 2-23 Unit, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[10] Conoco Inc. assigned its interest in South La Gloria Unit to Mobil Producing Texas & New Mexico Inc. effective 8-1-87

[11] Applicant requests permanent abandonment of a sale of gas to Panhandle. Applicant states that by agreement dated 12-1-87, the Gas Purchase Contract dated 7-1-66, between Mesa and Panhandle, will terminate by mutual consent. The termination agreement is conditioned ot a permanet abandonment being granted.

[12] Applicant states production ceased and the well was plugged and abandoned.

[13] Applicant states production ceased and the leases expired.

[14] AHC has sold its interest in the property to Huffco Petroleum Corporation effective 8-31-87. AHC's gas purchaser has terminated the related gas purchase contract.

[15] Applicant states that this well has not produced since 1963, due to the wellhead pressure being less than the line pressure maintained by the gas gatherer Applicant states that Williams will not allow compression equipment to be placed on the well to overcome the line pressure.

[16] Applicant requests permanent abandonment of a sale of gas to KN Energy. Applicant states that the production is noncommercial. Applicant states that no sales were ever made to KN Energy. The lease is to be released to the landowner.

[17] By Assignment effective 12-1-86, Tenneco assigned certain acreage to Bell and Kinley Company.

[18] By Assignment effective 1-1-87, ARCO assigned certain acreage to Hondo Oil and Gas Company.

[19] Applicant requests permanent abandonment to National Fuel of 6.25% of production from the Raish No. 1 well. Applicant states that the monthly volume is approximately 350 Mcf, which is too small to justify even the costs of accounting related to the National Fuel sale. Consolidated purchases the remainder of the gas. Applicant states it gave National Fuel a one-year notice of termination of the contract. Upon securing abandonment authorization Applicant states it intends to sell the entire production to Consolidated.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-5512 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-262-000, et al.]

Everett Energy Corp. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard paragraph E at the end of this notice.

March 8, 1988.

Take notice that the following filings have been made with the Commission.

1. Everett Energy Corp.

[Docket No. QF88-262-000]

On February 18, 1988, Everett Energy Corporation (Applicant) of 236 North Falmouth Highway, North Falmouth, Massachusetts 02556, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Everett, Middlesex County, Massachusetts. The facility will consist of a circulating fluidized bed combustion boiler, a three-section (HP, IP, LP) extraction/condensing steam turbine generator with reheat cycle, and related auxiliary equipment. The primary energy source of the facility will be bituminous coal. The useful thermal energy output of the facility, which will be in the form of process steam, will be sold to the Boston Edison Company, an electric utility, for various thermal uses at its Mystic Station and for use by its steam customers. The net electric power production capacity of the facility will be 80 megawatts.

2. Hopewell Cogeneration Limited Partnership

[Docket No. QF87-217-002]

On February 17, 1988, Hopewell Congeneration Limited Partnership (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hopewell, Virginia. The facility as orginally proposed was to consist of two combustion turbine generators, two heat recovery steam generators, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used by the Aqualon Company in its manufacturing operations and for space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility as originally proposed was to be 298.6 MW.

By orders issued on May 30, and December 9, 1987, the Commission granted certification and recertification of the facility as a qualifying cogeneration facility (38 FERC ¶62,326 and 41 FERC ¶62,221 respectively).

The current recertification is requested due to change of ownership from Hopewell Cogeneration, Inc., to Hopewell Cogeneration Limited Partnership. In addition the configuration of the facility changed from two combustion turbine generators with two heat recovery steam generators to three combustion turbine generators with three heat recovery steam generator. The net electric power production capacity of the facility will increase to 356.5 MW. Installation of the facility will begin in July 1988. All other facility's characteristics remain unchanged.

3. Kamine Natural Dam Cogen Co. Inc.

[Docket No. QF88-268-000]

On February 23, 1988, Kamine Natural Dam Cogen Co. Inc. of 1620 Route 22 East, Union, New Jersey 07083 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at the James River Corporation's Natural Dam Division in Governeur, New York 13642. The facility will consist of a combustion turbine

generator, a supplementary fired heat recovery steam generator and an extraction/condensing steam turbine generator. The steam recovered from the facility will be used for hot water and for process applications at the host company's paper production facility. The net electric power production capacity of the facility will be 52,512 kW. The primary energy source will be natural gas. The installation of the facility is expected to commence in June 1989.

4. Oxbow Geothermal Corporation

[Docket No. QF84-256-002]

On February 23, 1988, Oxbow Geothermal Corporation (Applicant), of 333 Elm Street, Dedham, Massachusetts 02026, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The application for recertification requests that approximately 214 miles of 230 kV transmission line, to be constructed by Applicant, be determined to be part of the qualifying small power production facility. The proposed transmission line will interconnect the facility with the transmission system of Southern California Edison (SCE). The transmission line will only be utilized to transmit the qualifying facility's electric power output to SCE. The facility was previously recertified as a qualifying small power production facility on August 4, 1986, Oxbow Geothermal Corp., Docket No. QF84-256-001, 36 FERC ¶62,152 (1986). All other facility's characteristics remain unchanged.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5515 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-70-000]

Blue Dolphin Pipe Line Co.; Tariff Change

March 8, 1988.

Take notice that on March 1, 1988, Blue Dolphin Pipe Line Company (Blue Dolphin), tendered for filing with the Commission, to be effective in thirty days, the following tariff sheets to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

Second Revised Sheet No. 11
  Original Sheet No. 11a
First Revised Sheet No. 22
  Original Sheet No. 22a
First Revised Sheet No. 34
  Original Sheet No. 34a
First Revised Sheet No. 40
First Revised Sheet No. 43
Second Revised Sheet No. 58
First Revised Sheet No. 71

Blue Dolphin states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas transportation rates to include the Annual Charges Adjustment (ACA) unit charge, authorized by the Commission in Order No. 472, *et seq.* An ACA charge of $0.00198 per MMBtu will be added to each MMBtu of gas transported by Blue Dolphin. This rate is based on a conversion factor of 1060, derived from the average Btus per Mcf of gas transported by Blue Dolphin.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the proposed tariff sheets, and for the tariff sheets to go into effect in thirty days on April 1, 1988.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before March 15, 1988, file with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5516 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-4-000]

Cavallo Pipeline Co.; Petition for Adjustment

March 8, 1988.

On January 11, 1988, Cavallo Pipeline Company (Cavallo) filed with the Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Cavallo seeks an amendment to the adjustment granted its predecessor, Seagull Energy Corp. (Seagull Energy), from § 284.123(b)(i)(B) of the Commission's regulations so that Cavallo can use an existing intrastate transportation rate as the applicable rate for transportation under section 311 of the NGPA. Cavallo states that the rate is a cost-based intrastate tariff on file with the Railroad Commission of Texas (RRC).

Cavallo, a general partnership comprised of Seagull Industrial Pipeline Company and Amoco Cavallo Investment Company, is an intrastate pipeline system in the Matagorda Island Area, offshore Texas. According to Cavallo, the original portion of the system was completed in October 1979 by Seagull Energy for the purpose of transporting gas intrastate, pursuant to section 311, on behalf of Valley Pipe Lines, Inc. (Valley). On March 23, 1984, Seagull Energy received an adjustment from the Commission allowing it to use an existing intrastate tariff rate as the transportation component for service to Valley under section 311.

On October 23, 1987, Seagull Energy transferred all of the system's assets to Cavallo, which recently expanded the intrastate system. According to Cavallo, the extension will allow it to provide section 311 transportation service to Amoco Gas Company (Amoco Gas) and other parties who desire to transport gas through the system. Cavallo states that it currently has a tariff for intrastate service on behalf of Amoco Gas on file with the RRC and a transportation agreement with Amoco Gas for service under section 311 on the extension. Cavallo requests the Commission to grant an amendment to the March 1984 adjustment so that Cavallo can use the existing cost-based intrastate transportation rate on the new portion of the system for service under section 311 of the NGPA. Cavallo states such an amendment is warranted as the transportation service for Amoco Gas will be substantially the same as that provided for shippers on the original system.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. (18 CFR 385.1101 *et seq.* (1987)) Any person desiring to participate in this proceeding must file a motion to intervene in accordance with this provision of Subpart K within 15 days after publication of this notice in the **Federal Register**. Cavallo's petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secertary.

[FR Doc. 88–5517 Filed 3–11–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88–294–000]

Colorado Interstate Gas Co., Application To Abandon Purchases and Sales of Gas

March 9, 1988.

Take notice that on February 1, 1988, as supplemented on February 26, 1988, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of purchases of natural gas from Ronald D. Thomas and Odis H. McClellan, Jr. (Thomas/McClellan), and on behalf of Thomas/McClellan, to abandon sales of such gas by Thomas/McClellan to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to abandon its purchases from Thomas/McClellan made pursuant to a gas purchase agreement dated May 11, 1954, as amended (Agreement), through the reliance upon a provision of the Agreement which allows for the termination of sales and purchases if the parties are unable to agree upon a price for the gas.

Applicant states that the term of the initial Agreement was 20 years from the date of initial delivery of gas and so long thereafter as gas was capable of being produced in commercial quantities from leases and rights dedicated or committeed under the Agreement. Accordingly, Applicant states that although the initial term of the Agreement expired in 1974, Applicant has continued to purchase gas produced under the Agreement.

Applicant states that on September 25, 1985, Applicant and Thomas/McClellan amended the Agreement to include new provisions dealing, *inter alia*, with the price Applicant paid for the gas. Pursuant to that amendment Applicant states that it paid Thomas/McClellan, effective October 1, 1985, a price of $2.50 per MMBtu, such price being effective until October 1, 1987, at which time either party was eligible to seek a redetermination of the price.

Applicant further states it notified Thomas/McClellan of its request for a price redetermination by letter dated August 10, 1987, but after numerous meetings and discussions, agreement on a new price has not occurred. As a result, Applicant states that the last price in effect of $2.50 per MMBtu has continued to be the price under the contract. Applicant states that because the gas is not marketable in Applicant's market area at this price, or at any price offered by Thomas/McClellan, it notified Thomas/McClellan by letter dated November 17, 1987, of its intentions to discontinue purchasing gas under the Agreement. In its latter notification to Thomas/McClellan, Applicant states it has relied upon the provisions contained in section 5.2(b) of the Agreement, as amended September 25, 1985, which states in part that:

> "(b) In the event representatives of Buyer and Seller are unable to agree upon a redetermined Full Price and the latest effective Full Price continues to be the price at which gas is sold pursuant to the Agreement, Buyer and Seller shall each have the right to discontinue sale or purchase of all or a portion of gas hereunder provided Buyer or Seller in its sole discretion and in good faith determines that such price is unacceptable. * * *

Applicant also states that the abandonment as proposed herein will not have any significant impact on its total reserves, as Applicant's present owned and contracted reserves are estimated to be 2.8 trillion cubic feet as of December 31, 1986, resulting in a reserve life index of approximately 19 years. Applicant states that the remaining recoverable reserves attributed to the Agreement are approximately 2.5 Bcf, which constitute less than one-tenth of one percent of Applicant's total reserves, and the loss of such reserves will therefore have no significant impact on Applicant's ability to serve its present and projected annual sales requirement. Applicant states that the deliverability is approximately 170 Mcf/d of NGPA section 108 gas. Applicant states that of the total reserves of 2.5 Bcf, a maximum of 340 MMcf are attributable to the NGA gas for which abandonment is sought.

Applicant states that the instant abandonment authority as requested herein is similiar to the authority to abandon purchases which the Commission has previously granted in *Mississippi River Transmission Corporation, et al.* (MRT), 39 FERC ¶ 61,113 (1987). Further, similar to the conditions prescribed in Paragraph (C) of the Commission's order issued in *MRT*. Applicant states that has expressed to Thomas/McClellan a willingness to provide compression, sweetening and transportation service, subject only to the terms of a mutually acceptable to the terms of a mutually acceptable agreement. Applicant states that an important aspect of acceptability to Applicant of such an agrement would be that it would not subject Applicant to a change of status under proceedings currently pending relative to the Commission's Order Nos. 436 and 500.

Finally, Applicant states that no facilities are to be abandoned as a result of the proposed abandonment of the purchases described hereinbefore, and no rate adjustments or tariff changes are proposed by Applicant in the instant application.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1988, file with the Federal Energy Regulation Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5518 Filed 3–11–88; 8:45 am]

BILLING CODE 6717-01-M

El Paso Natural Gas Co.; Petition for Issuance of Commission Order

[Docket No. CI88–313–000]

March 9, 1988

Take notice that on February 11, 1988, El Paso Natural Gas Company (El Paso) filed a petition requesting issuance of a Commission order requiring the assignees of certain leasehold properties to seek and obtain certificates of public

convenience and necessity under section 7(c) of the Natural Gas Act (NGA) authorizing their sales of gas produced from the leasehold properties to the extent such sales are subject to the Commission's jurisdiction under section 1(b) of the NGA.

El Paso states that it is a party to certain gas lease-sale agreements pursuant to which natural gas producers transferred to it their interests in various properties and reserved a special overriding royalty or production payment interest. El Paso further states that two court decisions in connection with the lease-sale agreements and the pricing of pipeline production rendered El Paso's continued operation of the properties uneconomic. Accordingly, El Paso reassigned the properties in accordance with certain provisions in the lease-sale agreements and filed a lawsuit in state court seeking a declaration that it had properly exercised its right of reassignment. According to El Paso, the decision by the Texas Court of Appeals confirmed the assignment of the properties effective as of October 1, 1983.

El Paso asks that the Commission require the producers to comply with the Natural Gas Act since the producers are now jurisdictional sellers of gas.

Any person desiring to be heard or to make protest with reference to the petition should on or before 15 days after the date of publication of this notice in the **Federal Register** file petitions to intervene or protests with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 or 385.214 (1987)). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5519 Filed 3–11–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88–3–33–000]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 7, 1988.

Take notice that on March 1, 1988, El Paso Natural Gas Company ("El Paso") filed a notice of change in rates for jurisdictional gas service rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that by Order No. 483 issued November 10, 1987 at Docket No. RM86–14–000, the Federal Energy Regulatory Commission (Commission) amended its PGA Regulations to require companies to file comprehensive annual filings providing for 12-month surcharge deferral and amortization periods, with quarterly adjustments in projected gas costs, instead of semiannual filings. Included in Order No. 483 are interim procedures intended to provide an orderly transition from the existing 6-month deferral and amortization periods to the 12-month cycle under the amended Regulations. El Paso states that under the interim procedures, it would not be fully phased-in to the amended Regulations until July, 1990, and that during the transition period its customers will experience five surcharge rate adjustments. To provide for an earlier implementation of the 12-month cycle, El Paso requested waiver of the applicable provisions of its Tariff and the Commission's Regulations as necessary to permit effectuation of a surcharge rate for the period April, 1988 through June, 1989, to recover deferred gas costs accumulated during the period July, 1987 through February, 1988. El Paso submits that use of such a procedure will not only facilitate a more rapid transition to the amended Regulations (El Paso would be fully phased-in by July, 1989, one year earlier than under the transition rules), but would also provide more rate stability during the transition period by requiring only two, scheduled surcharge adjustments. Utilizing such procedure, the filing reflects an increase of $0.5918 per dth in the base purchased gas cost rate and an increase of $0.2160 per dth in the surcharge rate for a net increase in El Paso's currently effective rates of $0.8078 per dth attributable to the PGA.

El Paso states that to implement the notice of change in rates, El Paso tendered for filing and acceptance the following revised sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1.	Substitute Sixteenth Revised Sheet No. 100 Substitute Fourth Revised Sheet No. 100–A.
Original Volume No. 1–A...	Substitute Eighth Revised Sheet No. 24.
Third Revised Volume No. 2.	Substitute Fortieth Revised Sheet No. 1–D.
Original Volume No. 2A.....	Substitute Forty-second Revised Sheet No. 1–C.

El Paso states that in the event the Commission does not grant the requested waivers, El Paso tendered alternate sheets, reflecting calculation of the surcharge adjustment in accordance with the applicable provisions of its FERC Gas Tariff, proposed to be made effective in lieu of their above-designated counterparts, as appropriate. The alternate sheets provide for a net increase in El Paso's currently effective rates of $1.0833 per dth.

El Paso states that in compliance with the commission's Order No. 478 issued July 27, 1987 at Docket No. RM87–28–000, *et al.*, requiring pipelines, in their first PGA filing in calendar year 1988, to remove from their tariff all incremental pricing provisions and references, El Paso also tendered the following sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet Nos. 352 through 354
Third Revised Sheet Nos. 355 and 356
First Revised Sheet Nos. 357 through 359
First Revised Sheet No. 500
Tenth Revised Sheet No. 540

In addition to the specific waivers requested above, El Paso requested that the Commission grant such other waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on April 1, 1988.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5520 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2327]

M. Dorothy Lyons; Filing

March 7, 1988.

Take notice that on February 8, 1988, M. Dorothy Lyons filed an application pursuant to § 45.9, Part 45 of the Commission's Regulations authorization to hold concurrently the following positions:

Position	Name of corporation
Assistant Secretary	Philadelphia Electric Co.
Assistant Secretary	Philadelphia Electric Power Co.
Assistant Secretary	Susquehanna Power Co.
Assistant Secretary	Susquehanna Electric Co.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5521 Filed 3-11-88; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TA 88-6-5-000]

Midwestern Gas Transmission Co.; Tariff Filing and Rate Filing Pursuant To Tariff Rate Adjustment Provisions

March 8, 1988.

Take notice that on March 1, 1988, Midwestern Gas Transmission Company (Midwestern), tendered for filing ten copies of the following tariff sheets to its FERC Gas Tariff to be effective as proposed:

Original Volume No. 1:

Twenty-Ninth Revised Sheet No. 6
Fifth Revised Sheet No. 21
Third Revised Sheet No. 23
Second Revised Sheet No. 27
Third Revised Sheet No. 86A
Third Revised Sheet No. 88
Third Revised Sheet No. 90
Third Revised Sheet No. 92
Third Revised Sheet No. 94

Midwestern states that the purpose of this filing is to implement a Purchased Gas Adjustment (PGA) rate adjustment applicable to Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 to be effective April 1, 1988. The remaining tariff sheets are being filed to correct inconsistent pagination on previously accepted tariff sheets.

Midwestern states that the Current Adjustments reflected on Twenty-Ninth Revised Sheet No. 6 consist of a positive adjustment of $.54 to the Demand Rate (D-1) for Rate Schedules CR-2 and CRL-2, a positive adjustment of $.0444 to the Commodity Rate for Rate Schedule SR-2, a positive adjustment of $.0178 to the Commodity Rate for Rate Schedule I-2, and a negative adjustment of $.07220 to the Gas Rate. Twenty-Ninth Revised Sheet No. 6 also reflects a Surcharge for Amortizing the Unrecovered Gas Cost Account for the Northern System, consisting of a demand surcharge of $.06 per Dkt and a gas surcharge of negative $.4628 per Dkt.

Midwestern states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5522 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-220-000]

John A. Newman and Foy Tomlinson; Application for Permanent Abandonment

March 9, 1988.

Take notice that on December 31, 1987, as supplemented on February 17 and 22, 1988, John A. Newman and Foy Tomlinson (Applicants), P.O. Box 405, Raywood, Texas, filed an application in Docket No. CI88-220-000 pursuant to Section 7(b) of the Natural Gas Act and § 2.77 [1] of the Commission's Regulations for permanent abandonment of a residue gas sale to El Paso Natural Gas Company (El Paso), from the John A. Newman Morris "30" No. 3-A Well in Zeno Field, Coleman County, Texas. John A. Newman is a small producer certificate holder in Docket No. CS74-270, and Foy Tomlinson is a small producer certificate holder in Docket No. CS74-175.

Applicants state in support of their application that marketing conditions have restricted the sale of this gas; that an alternative intrastate market is available, thus making this gas available to the public, as well as preserving the life of the well; that the subject well is presently shut in; and the that the new market is connected, and awaits only FERC approval of abandonment.

By letter agreement dated August 3, 1987, effective August 1, 1987, El Paso agreed to release the subject residue gas conditioned upon correction of any errors or discrepancies in charts or statements and conditioned upon correction of any liability on the part of Seller (Applicants) to make refunds for any overcollections of applicable governmental price ceilings.

Applicants state that the subject well was spudded on September 15, 1955. Applicants state that subsequently, a residue gas sales contract dated December 1, 1973, was entered into with El Paso for interstate sales, and a concurrent gas processing agreement was entered into with Union Texas Petroleum Corporation which processed the gas at its Perkins Plant for delivery to El Paso at the tailgate of the plant. Applicants state that on June 15, 1981, the subject well received an NGPA section 108 determination but was disqualified on September 30, 1984, due to lowering of the line pressure. Applicants state that the well requalified as a stripper well on January 1, 1985, and finally was disqualified on February 28, 1985. Applicants state the deliverability of the subject well is 200 Mcf/day at 40 psig line pressure.

Since Applicants have requested that their application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirments of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5523 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Dockect No. RP88-65-000]

Panhandle Eastern Pipe Line Co.; Petition For Declaratory Order Regarding Minimum Bill Liability and Motion For Summary Disposition

March 8, 1988.

Take notice that on February 29, 1988, Michigan Gas Storage Company (MGS) filed a petition for declaratory order regarding minimum bill liability and motion for summary disposition. MGS requests the Commission to resolve a controversy between it and Panhandle Eastern Pipe Line Company (Panhandle) over MGS's liability to Panhandle under Panhandle's Rate Schedule CS-1 annual minimum bill provision for commodity-related fixed costs during the 1987 calendar year. MGS also seeks summary disposition of this matter stating that the instant dispute involves only legal and policy considerations regarding the interpretation of the tariff provision and applicable Commission precedent.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5524 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-66-000]

Stingray Pipeline Co.; Change in Tariff

March 8, 1988.

Take notice that on March 1, 1988 Stingray Pipeline Company (Stingray) tendered for filing Fifteenth Revised Sheet No. 4, Second Revised Sheet No. 8, Third Revised Sheet No. 10, Second Revised Sheet No. 16, Second Revised Sheet No. 18, Second Revised Sheet No. 19, Second Revised Sheet No. 21, Second Revised Sheet No. 22, Second Revised Sheet No. 23, Second Revised Sheet No. 24, Second Revised Sheet No. 39, Second Revised Sheet No. 39.1, First Revised Sheet No. 49, First Revised Sheet No. 51, First Revised Sheet No. 52, First Revised Sheet No. 55, First Revised Sheet No. 56 and First Revised Sheet No. 57 to its FERC Gas Tariff Original Volume No. 1. An effective date of April 1, 1988 was proposed.

Stingray submits that these revised tariff sheets are being filed pursuant to Article VII of the Stipulation and Agreement dated April 16, 1985 in Docket No. RP85-16-000, and also reflect minor changes to its billing and measurement procedures. Stingray also states that it has proposed procedures in this filing to flowback to its customers excess deferred Federal income tax resulting from the Tax Reform Act of 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5525 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-6-000]

The Tekas Corp.; Petition for Adjustment

March 8, 1988.

On February 24, 1988, The Tekas Corporation (Tekas) filed with the Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Tekas seeks an adjustment from § 284.123(b)(1)(i)(B) of the Commission's regulations [1] so that the company can use an existing intrastate transportation rate as the applicable rate for transportation under section 311 of the NGPA. Tekas states that the rate was established using a cost-of-service methodology and is part of a tariff filed with the Kansas Corporation Commission (KCC).

Tekas is curently leasing and operating a fifty-four mile intrastate pipeline and compression facility owned by Sunflower Electric Cooperative, Inc. (Sunflower). Prior to leasing the pipeline to Tekas, Sunflower used the line to transport gas within Kansas for its own use and for transportation under NGPA section 311(a). Tekas has no cost-based sales rate that satisfies the requirements of § 284.123(b)(i)(B) of the Commission's regulations, and thus seeks an adjustment in order to use its existing intrastate transportation rate currently on file with the KCC. According to Tekas, the rate currently on file is calculated using a cost-of-service methodology. Tekas has requested the KCC to issue a determination that the rates are in fact cost based. Tekas states that the adjustment from the Commission's regulations is necessary to prevent special hardships and inequities resulting from duplicat unnecessary filings.

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applictions for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61, 172 (1987)). These interim regulations became effective on September 15, 1987

[1] 18 CFR 284.123(b)(1)(i)(B) (1987).

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. (18 CFR 385.1101 *et seq.* (1987)) Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the **Federal Register**. Tekas' petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5526 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-67-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1988.

Take notice that Texas Eastern Transmission Corporation ("Texas Eastern") on March 1, 1988, tendered for filing as part of its FERC Gas Tariff revised tariff sheets reflecting a rate change from currently effective rates and other changes in its tariff. This rate filing will increase the level of Texas Eastern's jurisdictional rates to provide an overall annual increase in revenues of approximately $127 million or approximately 14.30 cents per dekatherm based on 100% load factor of the Zone D DCQ rate. The rates reflected in the revised tariff sheets are designed to bring Texas Eastern's revenues to a level of its jurisdictional cost of service and reflect changes in the areas of rate of return, labor costs, operating and maintenance expenses, and plant facilities cost.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure set forth in Part 385 of 18 Code of Federal Regulations. All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5527 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-68-000 and RP88-68-001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

March 8, 1988

Take notice that on March 1, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed certain revised tariff sheets to be effective April 1, 1988.[1] Transco states that the purpose of the filing is to resolve buyout and buydown cost apportionment and recovery on its system as expeditiously as possible. Transco's filing, pursuant to Order No. 500, proposes a billing mechanism to recover 75 percent of (a) the amounts actually paid or contracted to be paid by Transco under producer settlements entered into through February 29, 1988 to buy out Transco's take-or-pay exposure under its contracts with those producers and/or to buy down contractual price or take levels; (b) the buyout and buydown costs which Transco expects to pay or obligate itself to pay under settlement agreements which it anticipates it will execute during the period March 1, 1988 through November 30, 1988; and (c) the carrying costs on such amounts (the sum of which are referred to as "the Producer Settlement Costs"). Pursuant to Order No. 500, Transco proposes to absorb 25 percent of such Producer Settlement Costs. Transco further states that no producer settlement payments to affiliates are included in the filing. In addition, Transco avers that the filing is without prejudice to a similar filing or filings which Transco may make under the current provisions of the Commission's regulations on or before December 31, 1988 for the purposes of recovering any additional producer settlement costs.

Transco states that the proposed tariff sheets establish a fixed charge (Fixed Monthly PSP Charge) designed to recover 25 percent of Transco's "Producer Settlement Costs" through a fixed monthly charge to be collected over a 5-year period and to be billed in addition to Transco's currently effective rates. In addition, the proposed tariff sheets establish charges designed to recover 50 percent of Transco's "Producer Settlement Costs" through a commodity surcharge (Commodity PSP Charge) to rates Transco will charge for all sales and transportation services during the 5-year collection period. Transco also proposes annual adjustments to the fixed and commodity charges to reflect actual interest rates and actual balances for the amounts to be recovered, as more fully explained in the filing.

Transco states that the amounts to be billed to customers and to be absorbed by Transco (inclusive of interest carrying charges to April 1, 1988) are: $232.9 million in the Fixed Monthly PSP Charge, $465.8 million in the Commodity PSP Charge, and $232.9 million to be absorbed by Transco.

Transco states that copies of the filing have been mailed, *inter alia*, to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5528 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] On March 4, 1988, Transco filed Eighth Revised Sheet No. 404-A, Original Volume No. 2, which was not included in the March 1, 1988 filing.

[Docket No. TA88-4-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 8, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on March 1, 1988 tendered for filing 43rd Revised Sheet No. 5 as part of its FERC Gas Tariff, Second Revised Volume No 1, to be effective April 1, 1988.

43rd Revised Sheet No. 5

Transwestern states that the tariff

sheet listed above is being filed pursuant to its Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected herein represents an increase of $0.2915/dth as measured against Transwestern's Out-of-Cycle PGA filing in Docket No. TA88-3-42-000 (PGA88-3), which became effective on February 1, 1988.

Transwestern states that the rate change herein consists of:

1. An increase in the Cost of Gas Adjustment of $0.0042/dth as measured against Transwestern's Out-of-Cycle PGA filing, Docket No. TA88-3-42-000, which became effective on February 1, 1988;

2. An increase in the currently effective Surcharge Adjustment of $0.2873/dth due to an increase in the balance in the Gas Cost Adjustment Account as of December 31, 1987;

The proposed effective date for the tariff sheet listed above is April 1, 1988.

Transwestern has requested the Federal Energy Regulatory Commission to waive the Regulations set forth in Order No. 483, §§ 154.308 and 154.310, requiring the submission of a Quarterly PGA filing, to be effective June 1, 1988 and to allow Transwestern's semi-annual PGA filing of April 1, 1988 to remain in effect through June 30, 1988.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. In accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1988. Protests will be considered by the Commission in determining the approriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5529 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

Docket No. CI85-673-004, et al.

UER Marketing Co., et al; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment[1]

March 9, 1988.

Take notice that each Applicant listed herein has filed an application prsuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI85-673-004, 3-1-88.	UER Marketing Company, P.O. Box 1478, Houston, Texas 77251-1478.	3 years.
CI86-26-006, 2-25-88.	Access Energy Corporation (formerly Yankee Resources, Inc.), 655 Metro Place South, Suite 300, Dublin, Ohio 43017	Do.
CI87-568-001, 2-25-88.	The Resource Group, 601 Poydras Street, 27th Floor, New Orleans, Louisiana 77130.	Do.
CI87-786-001, 2-29-88.	Val Gas, L.P., c/o Val Gas Company, P.O. Box 1569, San Antonio, Texas 78296.	1 year

[FR Doc. 88-5530 Filed 3-11-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. TA88-1-2-001]

Western Gas Interstate Co.; Compliance Filing

March 7, 1988.

Take notice that on March 1, 1988, Western Gas Interstate Company (Western), in compliance with the Commission's Letter Order issued January 28, 1988, tendered for filing Substitute Eleventh Revised Sheet No. 10 and Substitute Third Revised Sheet No. 212 as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1988.

Western states that Substitutes Eleventh Revised Sheet No. 10 reflects a change to the Purchase Gas Surcharge under its Rate Schedule G-N and reflects a change in the Base Tariff Rate under its Rate Schedule G-S and Average Cost of Purchased Gas. Western states that Substitute Third Revised Sheet No. 212 is being tendered because of typographical deletions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5531 Filed 3-11-88; 8:45 am]

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Western Area Power Administration

Withdrawal of Proposed Allocation Criteria, Allocations, and Rates for Interim Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of withdrawal of proposed allocation criteria, allocations, and rates for interim power from the Navajo Generating Station.

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) initiated a public process on the interim allocations and rates for power from the Navajo Generating Station (Navajo) in the **Federal Register** (51 FR 30116, 30120) on August 22, 1986, and followed-up with additional notices in the **Federal Register** (52 FR 23764, 23770) on June 24, 1987. The power to be offered from Navajo was specified in the Interim Navajo Power Marketing Plan (Interim Plan) developed by the Bureau of Reclamation (Reclamation) pursuant to the Hoover Power Plant Act of 1984 (98 Stat. 1333). The Hoover Power Plant Act provides that Navajo power surplus to the needs of the Central Arizona Project and certain salinity control facilities (Navajo Surplus) would be offered for sale under a plan adopted by the Secretary of the Interior.

Interested parties were requested to submit applications for the interim Navajo Surplus identified in the Interim Plan and to submit comments on proposed interim allocation criteria and rates. Based on Western's analysis of the comments received on the proposed interim allocation criteria and the rates, Western has determined to withdraw the allocation criteria and the rates for the interim Navajo Surplus proposed in the June 24, 1987, **Federal Register** notice. Furthermore, based on Western's analysis of the applications received, Western has determined that no allocations will be made under the terms and conditions specified in the June 24, 1987, **Federal Register** notice. After consultation with Reclamation and the Central Arizona Water Conservation District (CAWCD), it has been decided that interim Navajo Surplus will be sold under the provisions provided for in section III.B.3 of the Interim Plan. Section III.B.3 provides that any Navajo Surplus not sold or exchanged under sections III.B.1 or 2 will be marketed by Western under short-term arrangements. Each applicant for interim Navajo Surplus will be contacted regarding the resource being offered under section III.B.3. Interim Navajo Surplus sold under section III.B.3 will be at rates, terms, and conditions agreed to by Western, Reclamation, CAWCD, and each contractor. The "Supplementary Information" section of this notice contains the discussion of Western's course of action, comments received on the proposed interim Navajo Surplus allocation criteria and rates, and Western's rationale for its determinations.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

SUPPLEMENTARY INFORMATION:

Contents

A. Background
B. Course of Action
C. Discussion of Comments on Proposed Ratemaking Methodology and Rates
D. Discussion of Comments on Proposed Rescurce and Allocation Criteria
E. Allocations
F. Regulatory Procedural Requirements
G. Additional Information

A. Background

The power to be marketed from Navajo was specified in the Interim Plan developed pursuant to the Hoover Power Plant Act. Section 107 of the Hoover Power Plant Act provides that capacity and energy associated with the United States interest in Navajo, which is in excess of the pumping requirements of the Central Arizona Project (CAP), and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, shall be marketed and exchanged by the Secretary of Energy, pursuant to a plan adopted by the Secretary of the Interior.

While work was ongoing on a long-term Navajo Power Marketing Plan, the Interim Plan was developed and adopted by the Commissioner of Reclamation on March 17, 1986, after consultation with Western, CAWCD, and the Arizona Governor's Office. The Interim Plan provides for marketing of the Navajo Surplus by Western during the initial delivery and pump testing period of the CAP and may continue through the pre-New Waddell period. New Waddell is a regulatory storage feature of CAP that will provide operational flexibility to increase winter season pumping and reduce summer season pumping, thereby providing an enhanced power resource during peakload periods. The Interim Plan will terminate upon termination of all contracts entered into under the Interim Plan. Interim Navajo Surplus contracts will terminate upon a 1-year notice given subsequent to September 30, 1989.

Section III of the Interim Plan provides the quantities and classes of service that are available under the Interim Plan. Applications were requested for the quantities and classes of service provided in section III.B of the Interim Plan.

Following the adoption of the Interim Plan, Western initiated the public process of a proposed ratemaking methodology and rates and requested applications in the August 22, 1986, **Federal Register** notice. The proposed ratemaking methodology for energy was based on a 3-year average of fuel replacement sale prices. The proposed energy rates using this methodology were 26.59 mills per kilowatthour in the summer season and 24.51 mills per kilowatthour in the winter season. A capacity rate of $10 per kilowatt-month was proposed for the summer season only.

Western analyzed the applications and comments on the proposed rates received pursuant to the August 22, 1986, notice, and elected to publish the revised proposed rates and reopen the period to submit comments and applications. A "Notice of Revised Proposed Rates and Reopening of Comment Period" and a "Notice of Proposed Allocation Criteria and Extension of Time for Submitting Applications for Power from the Navajo Generating Station" were published in the June 24, 1987, **Federal Register**. The June 24, 1987, notices provided that the proposed ratemaking methodology for energy would continue to be based on a 3-year average of fuel replacement sale prices; however, such sales were proposed to be limited to Arizona. Because Western had a third year of fuel replacement sales data available and had refined certain fuel replacement data and the rate calculation, the revised proposed energy rates were 24.09 mills per kilowatthour in the summer season and 23.69 mills per kilowatthour in the winter season. Based on the comments that the capacity charge was too high, the proposed capacity charge was changed to $5 per kilowatt-month for the summer season only.

In the June 24, 1987, notice, new and existing applicants were requested to provide a statement on the amount of desired interim Navajo Surplus by season, expressed as a percentage of the maximum capacity estimated to be available at the revised proposed rates.

The exhibit 1 Summary provided only an estimate of the monthly capacity and energy amounts expected to be available for marketing by Western under the Interim Plan. Western indicated that the actual power available may be more or less than estimated. If the power available from Navajo was more than estimated in the exhibit 1 Summary, each contractor would be obligated to take up to a 10-percent increase in the power that was estimated to the available to such contractor. Energy deliveries were subject to CAP pumping requirements.

The June 24th notices also stated that a public information forum on the proposed allocation criteria was to be held on July 7, 1987, and that public comment forums on the proposed allocation criteria and revised proposed rates would be held on July 14, 1987. At the public information forum, Western provided information and answered questions on the interim Navajo resource and the proposed allocation criteria. Oral comments on the proposed allocation criteria, ratemaking methodology, and rates were received at the public comment forums. Written comments were received through the end of the comment period on July 24, 1987.

Western received 25 applications for the interim Navajo Surplus and several oral and written comments regarding the proposed allocation criteria and rates in response to the June 24, 1987, notices. After review and analysis of the applications and the comments, Western, in accordance with the Hoover Power Plant Act, consulted with representatives from Reclamation, CAWCD, and the Arizona Governor's Office. The conclusion derived from this process is that no allocations will be made under the terms and conditions described in the June 24, 1987, **Federal Register** notice. A discussion of the applications and the rationale for making no allocations is presented in section E of this notice. A decision was also made, based on the comments received, that no further action would be taken on the proposed rates and allocation criteria. Discussions of the comments received are presented in sections C and D of this notice. Consistent with the terms of the Interim Plan, interim Navajo Surplus will be made available under the provisions of section III.B.3 of the Interim Plan. A discussion of this course of action follows in section B.

B. Course of Action

A review of the interim Navajo Surplus applications and comments on the proposed allocation criteria and rates indicated that the interim Navajo resource, as it was presented in the June 24, 1987, **Federal Register** notice, could not be sold to eligible entities under terms that would satisfactorily meet all the provisions of the Hoover Power Plant Act. Western's analysis of the interim Navajo Surplus applications, as amended, indicated that none of the applications fully meet the requirements set out in the June 24th notice. The comments received implied that the nature of the Navajo resource was not clearly defined, particularly the amount of power that would be available, and the revised proposed rates were too high. A group of Arizona entities indicated that Western's proposed ratemaking methodology did not satisfy the "appropriate saving" requirement of the Hoover Power Plant Act. This group proposed an interim Navajo Surplus ratemaking methodology based on 85 percent of a contractor's avoided cost. Applications received from the Arizona entities were subject to satisfactory settlement of the rate issue.

The alternative interim Navajo Surplus ratemaking methodology proposed by the Arizona entities was reviewed, and Western concluded that the methodology was not appropriate for the interim Navajo Surplus rates. A discussion of the reasons for not adopting this methodology is presented in section C of this notice. Subsequently, after review of the comments received relative to the interim Navajo Surplus, Western has concluded that no satisfactory sales could be made pursuant to the terms specified in the June 24th notices. Therefore, Western will sell interim Navajo Surplus under section III.B.3 of the Interim Plan. Interim Navajo Surplus not sold under the terms and conditions specified for the resource under section III.B.1 or 2 will be sold on a short-term basis pursuant to negotiated terms, conditions, and rates. Western has been asked to work with the interim Navajo applicants to determine if a sale could be negotiated pursuant to the provisions of section III.B.3.

It is Western's intent to market the interim Navajo Surplus in a manner that will optimize revenues to provide financial assistance in the timely construction of authorized features of CAP and to make repayment or establish reserves for the repayment of such construction costs. Consequently, Western will enter into interim Navajo Surplus contracts with eligible entities as necessary to optimize the revenues from interim Navajo Surplus sales. Each of these contracts may be under different terms, conditions, and rates. Preference Arizona entities will be given the first opportunity to purchase interim Navajo Surplus under the same terms, conditions, and rates as offered to non-Arizona or nonpreference entities.

C. Discussion of Comments on Proposed Ratemaking Methodology and Rates

The comments received on the ratemaking methodology and rates were primarily that the rates were too high and the ratemaking methodology did not satisfy the provisions of the Hoover Power Plant Act requiring an "appropriate saving for the contractor." The Arizona commentors supported an alternative ratemaking methodology submitted by the Salt River Project, the Arizona Power Authority, the Arizona Power Pooling Association, and the Arizona Irrigation and Electrical Districts Association, which will be referred to as the Arizona rate proposal.

Commentors indicated that fuel replacement sales during the period of October 1983 to September 1986 are not representative of the current energy market. One commentor indicated that Navajo short-term energy sales by Western and Western Systems Power Pool sales made during the 1987 summer season are representative of the market. Using average fuel replacement settlement prices during this period mitigates the effect of the sharp change in natural gas prices which occurred in 1986. The market shows that scheduled energy sales are presently in the 22 to 23 mills per kilowatthour range during onpeak hours. According to the commentor, this illustrates that Western is not only pricing above a level of appropriate saving, but above the prevailing market. Furthermore, the commentor stated that the alternative resources available at the lower price range offer scheduling flexibility. Navajo has no flexibility and has other characteristics which reduce the value of the resource.

The comments on the characteristics of the resource are addressed in section D of this notice. Western respond to the Arizona rate proposal in the June 24, 1987, **Federal Register** notice on page 23771, under the "Discussion" section. Western does not believe that a ratemaking method based on each contractor paying 85 percent of its projected avoided costs for the upcoming season is appropriate for the interim Navajo Surplus presented in the June 24, 1987, **Federal Register**. Western agrees that this method would provide a contractor with an "appropriate saving;" however, the method submitted would not assure that the rates from interim Navajo Surplus would yield sufficient revenues to provide the financial assistance necessary for the timely construction and repayment of construction costs of authorized features of CAP. The Hoover Power Plant Act entrusts the United States with the responsibility to optimize revenues to provide financial assistance in the timely construction of authorized features of CAP and to make repayment or establish reserves for the repayment of such construction costs; provided, however, that rates shall not exceed levels that allow for an appropriate saving for the contractor. Western does not believe that a ratemaking methodology that does not fulfill all the requirements of section 107 of the Hoover Power Plan Act is appropriate; therefore Western is not adopting the Arizona rate proposal.

Western's explanation for its decision to use fuel replacement sales to provide an appropriate saving to the contractor is addressed on page 23772 of the June 24th **Federal Register.** The commentor indicated that a 3-year average of fuel replacement sale prices does not reflect sharp declines in market prices. Western agrees that using a 3-year average would temper any sharp declines or increases; that is the purpose of using a 3-year average. As explained in the June 24th notice, the 3-year average was selected to provide revenue stability to CAP, thereby providing the necessary financial assistance to CAP. Furthermore, Western proposed to limit any changes in the Navajo energy rates not to exceed a 3-mill increase or decrease from the prior year. The limitation was proposed to provide financial stability as well as rate stability. Using a 3-year average with a limitation on the amount of change mitigates any sharp increases or decreases in fuel prices.

One commentor pointed out that the Navajo rates should be in the range of 22 to 23 mills. Western's revised proposed energy rates were only slightly over this range; however, when the proposed capacity rate is added to the energy rate, the composite rate is somewhat higher in the summer. Western's rationale for including a capacity charge was explained in the June 24th notice on page 23772. Western believes that the large amount of assured capacity available with the energy in the summer season makes the Navajo resource more available than fuel replacement sales and other nonfirm energy sales.

After review of the above-noted comments received on Western's revised proposed ratemaking methodology and rates, and the decision not to make an allocation, Western has determined to withdraw its rate proposal. The Navajo interim rates under section III.B.3 will be established by the Administrator of Western and will be appropriate for the type of resource, terms, and conditions of the sale. The method, terms, and conditions for marketing of any power under the Interim Plan shall not set a precedent for any other sales and exchanges of Navajo Surplus, including the sales and exchanges to be made pursuant to the Navajo Power Marketing Plan, adopted by the Commissioner of Reclamation, on behalf of the Secretary of the Interior, on December 1, 1987.

D. Discussion of Comments on Proposed Resource and Allocation Criteria

The major comments on the resource offer were primarily concerning the offered price. One commentor indicated that the offered price was too high, and several applicants indicated that their applications were conditioned on the settlement of the rate issue.

An additional comment regarding the rate was that the capacity charge for a summer month should be based on the highest hourly, integrated rate of delivery during an onpeak period and that no capacity charge should be assessed if interim Navajo Surplus is not made available during onpeak hours, at least during the lesser of 25 percent of the hours during the month or the total number of hours in that month multiplied by the monthly capacity factor as calculated from the then current exhibit 1. As discussed in section C of this notice, Western has elected to market and develop rates under section III.B.3 of the Interim Plan. No rate will be set for the resources marketed under section III.B.1. of the Interim Plan.

Comments on the nature of the Navajo resource were also received. One commentor indicated that a definition of the product was needed since the **Federal Register** notice identified the product in different locations, in table 1 and in exhibit 1. The same commentor noted that Western indicated that exhibit 1 was subject to modification and the commentor recommended that the exhibit 1 in the **Federal Register** notice be the measure of the resource if the June 24th criteria were adopted. Western agrees with the commentor that exhibit 1 in the **Federal Register** notice should be the measure of the resource. For the short-term interim contracts, Western, Reclamation, and CAWCD are working together to revise exhibit 1.

Another commentor suggested that the obligation to take up to 10 percent additional available capacity and energy be deleted. The commentor indicated that applying this requirement on a monthly basis may force a contractor to take the additional energy in the last 2 or 3 days of the month if the additional energy is not made available until late in the month. Western does not agree with the commentor. Under the terms provided in the June 24th notice, the contractors were being allocated a percentage of the available output from Navajo. In order to alleviate the possibility of requiring a contractor to take an unusually large delivery, Western proposed a 10-percent limitation. We believe this was a reasonable approach considering the nature of the allocation. Under any short-term sales, the 10-percent limitation provision will be subject to negotiation and will be dependent on how a contractor's power is scheduled.

Commentors also questioned the exhibit 1 capacity and energy estimates. One commentor noted that in some instances the estimated energy reflected a load factor in excess of 100 percent. The commentor recommended that any excess energy be made available to the Navajo contractor in the same percentage as its percentage allocation. Western agrees with the recommendation. Another commentor stated that in the years 1989 and 1990, the exhibit 1 summer season monthly quantities reflected little diversity, which is contrary to Western's statements that efforts would be made to maximize the value of the resource by load shaping. The exhibit 1 quantities were developed from estimated CAP pumping requirements. As stated earlier, Western is working with Reclamation and CAWCD to develop a resource that will maximize the value of the resource by load shaping and still meet CAP pumping requirements.

The comments regarding the proposed allocation criteria were concerned with the requirement for utility status and the requirement to have the ability to receive the power by dynamic signal at a Navajo designated point of delivery. Several commentors questioned what factors would be considered in the determination of utility status. One commentor recommended that cities without utility status should be considered as a lower priority preference entity since section 9(c) of the Reclamation Project Act of 1939 does not require that a city be a utility in order to be a preference entity. The commentor requested that the allocation criteria be clarified to indicate that cities buying power for municipal purposes are preference entities. Another commentor stated that the interests of the United States and the Arizona preference entities are better protected by adherence to the preference provisions stated in the Hoover Power Plant Act. This commentor stated that the creation of a separate, superior class of nonpreference cities for Navajo involved legal ramifications and potential impacts on Plan 6 and the successful completion of the Central Arizona Project. This same commentor also stated that any entity in Arizona that currently has a contract with Western for the purchase of any Federal preference resource should be classified as an entity having "utility status."

In the June 24th notice, on page 23765, the reader is referred to 48 FR 20878 for a discussion of "utility status." The primary consideration of "utility status" is that an entity must control and operate its own distribution system. Since Western has not taken action on the proposed allocation criteria, and the interim Navajo Surplus will be sold under the provisions of section III.B.3 of the Interim Plan, this factor will only be considered if a conflict arises over contracting with a utility or a nonutility. Western will first contract with the entity considered to have "utility status."

Several comments regarding the requirement to receive the Navajo power by dynamic signal at a Navajo point of delivery were also made. One commentor stated that the nature of the resource being marketed by Western does not lend itself to use of a dynamic signal. The commentor recommends that Western take the signal and parcel the resource out to CAWCD and the other purchasers on a prescheduled basis. Other commentors questioned the nature of the dynamic signal and what was required of a contractor to meet this requirement. A commentor also requested that the Navajo Switchyard be added as a designated point of delivery. Western believes that the issue of the use of a dynamic signal and the delivery point will depend on the terms and conditions of delivery worked out with a contractor for sales under section III.B.3 of the Interim Plan.

Additional comments were received regarding the contract period and short-term sales and exchanges. One commentor stated that inconsistencies exist between the Interim Plan and the application notice regarding the termination of the power sales contract subsequent to September 30, 1990. Western agrees with this statement. Subsequent to the publication of the application notice, Western published the proposed long-term Navajo Power Marketing Plan. The long-term plan provides that the Interim Plan contracts shall expire upon a 1-year notice given by Western subsequent to September 30, 1989, but in any event after such notice as Western deems appropriate upon the date of initial operation of New Waddell. The Interim Plan shall terminate upon expiration of all contracts entered into pursuant to the Interim Plan. Western believes that the provision in the long-term plan eliminates the inconsistency regarding the contract terms and will adhere to the provision of the long-term plan.

Comments were received recommending that Western consider the use of exchanges as provided in the Interim Plan and short-term sales in the event that all the available Navajo power is not sold pursuant to the application notice. Western agrees with this comment. Interim Navajo Surplus will be made available under section III.B.3 of the Interim Plan. Western also will explore the options of using exchanges under section III.B.2 of the Interim Plan.

E. Allocations

Twenty-five applications for interim Navajo Surplus were received and reviewed. After consultation with representatives from Reclamation, CAWCD, and the Arizona Governor's Office, Western concluded that only one of the applications submitted fully met the requirements in the June 24, 1987, **Federal Register** notice. As a result of Western's analysis of the applications received, no allocations will be made pursuant to the June 24, 1987, **Federal Register** notice. A discussion of the reasons for not selecting any entity follows.

The Colorado River Commission (CRC) applied for the interim Navajo Surplus at the revised proposed rates and fully met the requirements stated in the June 24, 1987, **Federal Register** notice. Subsequently, CRC withdrew their original application.

The following entities were not selected because they did not apply for the interim Navajo Surplus at the offered rates specified in the June 24, 1987, notice:

Aguila Irrigation District, Arizona
Arizona Power Authority, Arizona
Arizona Public Service Company, Arizona
Electrical District No. 1, Arizona
Electrical District No. 3, Arizona
Electrical District No. 4, Arizona
Electrical District No. 5, (Pinal County), Arizona
Electrical District No. 6, Arizona
Electrical District No. 7, Arizona
Electrical District No. 8, Arizona
Harquahala Valley Power District, Arizona
Maricopa County Municipal Water Conservation District No. 1, Arizona
McMullen Valley Water Conservation and Drainage District, Arizona
Papago Tribal Utility Authority, Arizona
Roosevelt Irrigation District, Arizona
Roosevelt Water Conservation District, Arizona
San Diego Gas and Electric, California
Tonopah Irrigation District, Arizona
Salt River Project, Arizona

The following applicants were not selected because they did not provide information to support eligibility under the allocation criteria set forth in the June 24, 1987, **Federal Register** notice. The entities did not provide information that they had utility status as of the date of the June 24, 1987, **Federal Register** notice and have the ability to receive the power by dynamic signal at a Navajo designated point of delivery.

Kern County Water Agency, California
Town of Paradise Valley, Arizona
City of Phoenix, Arizona

The following applicants were not selected because they did not apply for the interim Navajo Surplus as offered in the June 24, 1987, **Federal Register** notice, but desired the resource only under different terms and conditions:

Nevada Power Company, Nevada.
United States Army, Yuma Proving Ground, Arizona

F. Regulatory Procedural Requirements

Executive Order 12291: The Department of Energy has determined that an allocation is not a major rule because an allocation does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291. Moreover, Western has decided not to allocate power on a long-term basis.

Regulatory Flexibility Act: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a notice of public rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the proposed allocation criteria and proposed rates relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act: Pursuant to the National Policy Act of 1969 and the Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western prepared an environmental assessment of the

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potential impacts of the marketing of interim Navajo Surplus and has determined that Western's actions pursuant to this **Federal Register** notice will not lead to any significant environmental impacts.

Paperwork Reduction Act of 1980: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666), dated March 31, 1983. Ample opportunity was provided for the interested public to participate in the development of the allocation criteria and rates for power from Navajo. Nevertheless, this was at their sole election. There is no requirement that members of the public participating in the development of the allocation criteria and rates for power from Navajo supply information about themselves to the Government. It follows that the proposed allocation criteria and rates for power from Navajo are exempt from the Paperwork Reduction Act.

G. Additional Information

The following materials relative to the proposed allocation of Interim Navajo Surplus are available for inspection at the Boulder City Area Office:

1. Applications received requesting Navajo Power pursuant to the June 24, 1987, **Federal Register** notice (52 FR 23764).
2. **Federal Register** notice (52 FR 23764) dated June 24, 1987, publishing the "Proposed Allocation Criteria and Extension of Time for Submitting Applications for Power from the Navajo Generating Station."
3. **Federal Register** notice (52 FR 23770) dated June 24, 1987, publishing the "Proposed Interim Navajo Power Rate; Navajo Generating Station, Arizona."
4. **Federal Register** notice (51 FR 30120) dated August 22, 1986, publishing "Proposed Interim Navajo Power Rate; Navajo Generating Station, Arizona."
5. **Federal Register** notice (51 FR 30116) dated August 22, 1986, publishing the "Request for Applications for Power from the Navajo Generating Station."
6. **Federal Register** notice (51 FR 35557) dated October 6, 1986, publishing "Notice of Public Comment Forum on Proposed Navajo Interim Power Rate."
7. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."
8. **Federal Register** notice (49 FR 11673) dated March 28, 1984, publishing the "Request for Appliations for Short-Term Power from the Navajo Generating Station."
9. Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, Western Area Power Administration, April 1983.
10. Environmental Assessment.

Issued at Golden, Colorado, February 29, 1988.

William H. Clagett,
Administrator.

[FR Doc. 88–5534 Filed 3–11–88; 8:45am]

BILLING CODE 6450-01-M

Central Valley Project, CA; Power and Transmission Rates

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of a rate order; Central Valley Project power and transmission rates.

SUMMARY: Notice is hereby given of the confirmation and approval, by the Under Secretary of the Department of Energy, of Rate Order No. WAPA–38 for placing power and transmission rates in effect, on an interim basis, for the marketing of firm power from the Central Valley Project (CVP) and the transmission of power over the transmission system of the CVP.

The schedule of rates for firm power service to CVP commercial power customers (Rate Schedule CV–F6) will consist of three step adjustments:

	Capacity charge ($/kW = month)	Energy charge (mills/kWh)
May 1, 1988, through Sept. 30, 1989	6.86	14.43
Oct. 1, 1989, through Sept. 30, 1991	7.49	15.76
Oct. 1, 1991, through Apr. 30, 1993	7.74	16.30

The initial power rate step effectively represents approximately a 17.5 percent composite rate decrease for CVP customers at average system load factor from the current CVP power rate.

In addition to the CVP power rates, a firm transmission rate of $0.481/kW-month (Rate Schedule CV–FT1) and a nonfirm transmission rate of 1.022 mills/kWh (Rate Schedule CV–NFT1) for the transmission of non-CVP resources over the CVP transmission systems have been developed. In addition, a transmission rate schedule (Rate Schedule CV–TPT2) that directly passes through all third-party transmission costs incurred by the Western Area Power Administration (Western) in delivery of CVP power to the CVP commercial power customers has been developed.

The rate order contains further explanation of the development of various rates, discussion of the principal factors supporting the decisions concerning the rates, and responses to the major comments and criticisms offered during the consultation and comment period.

EFFECTIVE DATE: The power and transmission rates will become effective on an interim basis on May 1, 1988, the first day of the May 1988 billing period. This effective date is approximately 1 month in advance of the expiration of the existing rates. Implementing the proposed rates in advance is considered appropriate because the rate proposal represents a rate reduction on an average system basis, and would meet the financial requirements of the CVP.

FOR FURTHER INFORMATION CONTACT:

Mr. David G. Coleman, Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 978–4418.

or

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

or

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated:

1. To the Administrator of Western on a non-exclusive basis the authority to develop power and transmission rates;
2. To the Under Secretary of the Department of Energy on a non-exclusive basis the authority to confirm, approve, and place such rates in effect on an interim basis; and
3. To the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates.

Two informal customer briefings were held, on March 24, 1987, and May 26, 1987, to solicit CVP customer input to the Sacramento Area Office staff's early development of the 1988 CVP rates. A formal 113-day public comment and consultation period was initiated on August 4, 1987, with a notice in the **Federal Register** at 52 FR 28864, and terminated November 25, 1987. The August 4, 1987, notice announced a public information forum on August 25, 1987, and a public comment forum on September 22, 1987. On August 25, 1987, a brochure with technical appendices was distributed to all CVP customers and interested parties. The brochure describes CVP operations, the rate development process, the proposed 1988 rates, and data supporting all the major assumptions behind the rate proposal. In addition to the public information and comment forums, Western held an evidentiary hearing on the merits of an automatic revenue adjustment clause proposed as part of the 1988 CVP power rates. The notice of the evidentiary hearing was published on October 7, 1987, in the **Federal Register** at 52 FR 37509. The hearing convened on November 10, 1987. This hearing was conducted in accordance with the requirements of the Public Utility Regulatory Policies Act, 16 U.S.C. 2612, *et seq.* Written comments on all aspects of the proposed power and transmission rate adjustments were accepted through November 25, 1987. Public comments received have been considered in the preparation of the rate order.

Rate Order No. WAPA–38 confirming and approving the power and transmission rates on an interim basis is hereby issued, and the rates will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, March 2, 1988.

Joseph F. Salgado,
Under Secretary.

[Rate Order No. WAPA–38]

Order Confirming, Approving, and Placing Power and Transmission Rates in Effect on an Interim Basis

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Central Valley Project (CVP), were transferred to and vested in the Secretary of Energy. By Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) the authority on a non-exclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration (Administrator); (2) the authority on a non-exclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy (Under Secretary); and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to such delegations to the Administrator and the Under Secretary, and the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration (Western) at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

Background

Project History

Located in northern and central California, the CVP consists of eight powerplants, two pump-generation plants, and approximately 1,300 miles of transmission lines integrated with the Pacific Gas and Electric Company's (PGandE) electric power system.

The initial features of the CVP, authorized in 1935 for construction by Reclamation, included:

1. Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River;
2. Tracy Pumping Plant and the Delta-Mendota Canal;
3. Powerplants at Shasta Dam and at Keswick Dam below Shasta Dam with powerlines to bring the power generated to the Tracy pumps and to integrate that power into other electric systems;
4. The Contra Costa Canal, the Friant-Kern Canal, and the Madera Canal;
5. The Delta Cross Channel.

Shasta Dam began storing water in January 1944; by 1951 the project had become fully operational. To help meet the expanding needs in the Central Valley, in 1944 Congress authorized the American River Division to be constructed by the Corps of Engineers and in 1949 reauthorized it to be integrated with the Central Valley Project. This division included Folsom Dam and Powerplant, Nimbus Dam and Powerplant, and the Sly Park Unit. The Sacramento Canals Unit was authorized in 1950. The Grasslands Waterfowl Management Area in the San Joaquin Valley was authorized in 1954. The Trinity River Division, including Trinity Dam and Powerplant, Lewiston Dam and Powerplant, Lewiston Fish Facilities, Whiskeytown Dam, Judge Francis Carr Powerhouse, and Spring Creek Powerplant, was authorized in 1955. The San Luis Unit, including San Luis Dam and Reservoir, San Luis Canal, Pleasant Valley Canal, and the O'Neill and San Luis pump-generators, was authorized in 1960. The Auburn-Folsom South Unit was authorized in 1965. The only portions of this unit which have been constructed are the Foresthill Dam and Reservoir and the first reaches of the Folsom South Canal. The San Felipe Division was authorized in 1967.

Another significant addition was the authorization, in 1964, of the 500-kV Pacific Northwest-Pacific Southwest Intertie (Intertie) of which the CVP has the right to use 400 MW of transmission capacity to import power from the Pacific Northwest.

The Corps of Engineers constructed the New Melones Dam, Reservoir, and Powerplant, completing the construction in 1980. In compliance with the 1962 authorization act, New Melones is now operationally and financially integrated into the CVP. Three additional projects, Hidden, Buchanan, and Black Butte, have been constructed by the Corps, then integrated in the CVP. These three projects serve mainly the water supply and flood control functions and have no Federally owned power facilities.

Power generated from the CVP system is dedicated first to meeting the power requirements of the project pumping facilities. The remaining capability of the project's power facilities is used to provide commercial power to various preference customers in northern California. These customers consist of military and Federal installations, irrigation and reclamation districts, cooperatives, utility districts, municipalities, and educational and penal institutions of the State of California.

The existing powerplants and two pump-generation plants, with a total maximum operating capability of about 2,025 MW, are integrated operationally with PGandE's power system.

The amount of commercial firm load which can be supplied at present by CVP generation alone is significantly less than the current customer load level. In 1951, Reclamation entered into a support contract with PGandE which greatly increased the commercial load serving ability of the project. In 1967, that contract was amended and consolidated with a transmission contract into the present Contract No. 14-06-200-2948A (Contract 2948A). This contract provides that energy and capacity generated by the CVP, along with power imported from the Pacific Northwest over the Intertie, in excess of CVP obligations to preference customers, may be sold to PGandE. The contract also provides Western the right to purchase an equivalent amount of capacity and energy from PGandE at times and in amounts required when the CVP's power supply is insufficient to meet the CVP obligations to the preference customers. The energy and capacity available under this "banking arrangement" permit the CVP to supply a much greater amount of customer load than would be possible without benefits of such coordination.

The contract provides that PGandE, with the Intertie arrangements, will provide support to enable the CVP to supply a simultaneous customer peak demand up to a maximum level of 1,152 MW through CY 2004.

Public Notice, Forums, and Hearings

The procedures for public participation for rate adjustments as set forth in 10 CFR Part 902 have been followed in the development of these rates. The following discussion summarizes the steps Western has taken to assure the involvement of interested parties in the rate process:

1. On January 30, 1987, Western issued an "Announcement of Central Valley Project Rate Adjustment" to all CVP customers. This announcement notified CVP customers of Western's desire to initiate informal customer meetings to discuss a proposed rate adjustment.

2. Western issued an "Announcement of the First Informal Customer Meeting Regarding the Central Valley Project Rate Adjustment" on February 26, 1987. This first informal customer meeting was held on March 24, 1987. The status of CVP repayment, general rate design, options, and CVP load and expense forecasts were discussed.

3. On May 6, 1987, Western issued a notice of its second informal customer meeting. At this meeting, held on May 26, 1987, the focus was onforecasted CVP revenue requirements, proposed alternative power rate designs, and proposed revenue and power factor adjustment clauses.

4. On June 30, 1987, a schedule of major events for the rate proceedings and Western's preliminary proposal for the transmission rate adjustments were issued.

5. A **Federal Register** notice (52 FR 28864, August 4, 1987) initinted the formal public proceedings, officially anounced the proposed power and transmission rate adjustments, and began the 113-day consultation and comment period.

6. On August 7, 1987, all parties were issued a notice containing the August 4, 1987, **Federal Register** notice and the schedule for the public comment and information forums.

7. A public information forum was held on August 25, 1987. Western representatives presented an overview of the proposed rates and the supporting assumptions, methods, forecasts, and potential impacts associated with the rate proposal. In addition, Western distributed a "Central Valley Project 1988 Proposed Power and Transmission Rate Adjustments" brochure that contained nine technical appendices including supporting demand forecasts, the revised power repayment study, and explanations of various rate design methodologies and calculations.

8. On September 8, 1987, a notice was issued informing all CVP and interested parties of the time, procedures, and agenda for the public comment forum.

9. The public comment forum was held on September 22, 1987. Only two participants commented at this forum. Responses to these comments, as well as those received in writing during the consultation and comment period, are presented in the "Discussion" section of this document.

10. On October 7, 1987, a **Federal Register** was issued (52 FR 37509) noticing the schedule and procedures for a pre-hearing conference and evidentiary hearing regarding the Revenue Adjustment Clause (RAC) proposed as part of the 1988 CVP power rates. This evidentiary hearing was scheduled in accordance with the Public Utility Regulatory Policies Act.

11. A copy of the October 7, 1987, **Federal Register** notice and the procedures for intervention or other participation in the RAC hearing were distributed (without cover letter) on October 9, 1987.

12. As an attachment to a notice issued by Western on October 14, 1987, Western distributed direct testimony regarding the design, application, and merits of the proposed RAC.

13. On November 4, 1987, a pre-hearing conference was held as noticed by the October 7, 1987 **Federal Register** notice.

14. On November 10, 1987, the RAC evidentiary hearing was held. Western staff issued supplemental testimony regarding the RAC at this hearing based on questions raised at the pre-hearing conference.

15. On November 25, 1987, Western issued a proposed schedule for completion of the 1988 CVP Rate Adjustment process as well as copies of the supplemental RAC testimony.

Certification of Rates

Western markets capacity and energy from the CVP and provides transmission services over the CVP transmission system at the lowest possible rates consistent with sound business principles. The Administrator has certified that the proposed CVP power and transmission rates are the lowest possible consistent with sound business principles and applicable law.

Discussion

This section addresses the issues presented by commentors and Western's responses to those comments. The issues are arranged by topic as follows:

A. Revenue Adjustment Clause Design and Application.

B. Power Factor Adjustment Clause (PFAC) Design and Application.

C. Power Rate Design.

D. Transmission Rate Design.

E. Treatment of Losses in Power Rate "Unbundling."

F. Timing of Rate Implementation and Step Increases.

G. Purchased Power Expense Assumptions.

A. Revenue Adjustment Clause Design and Application

Issue: Several comments were received on the RAC's design and application throughout the public consultation and comment period. However, at the evidentiary hearing regarding the merit of the proposed RAC that was held on November 10, 1987, only one comment was received. Western's direct testimony addressed previous comments and is contained as part of the Record of Decision. The one comment received requested that the RAC consider revenue from surplus power sales as part of its basic RAC formula.

Response: Western's response to the one comment raised in the RAC hearing is contained in the supplemental testimony question and response number 31, issued to all interested parties on November 25, 1987, which is

also part of the Record of Decision. As a result of Western's response to this issue in the supplemental testimony, the commentors (the Northern California Power Agency and the Sacramento Municipal Utility District) issued a letter to David G. Coleman dated December 16, 1987, stating:

> We are willing to accommodate the suggested rates using the RAC formula proposed by Western. However, it is our intention to monitor the working results of the RAC closely during the upcoming rate period.

B. Power Factor Adjustment Clause (PFAC) Design and Application

1. *Issue:* Western's PFAC originally proposed that a combination of two types of power factor measurements be used to measure a customer's monthly power factor performance. One of these measurements was the power factor at the time of the customer's system peak demand and the other was the customer's average monthly power factor. The measurement that has been used typically for power factor adjustment clauses has been the measurement at the time of the system peak. Certain customers commented that it would be burdensome to maintain a high average system power factor.

Response: Western has modified its original proposal to eliminate the requirement to consider the average monthly power factor measurement. However, Western recognizes that low power factors at times other then peak periods can contribute to system inefficiency and losses, and therefore may reconsider this decision based on future experience.

2. *Issue:* Some parties expressed concern that their points of delivery for CVP power are contractually defined and are not actual physically metered points, and therefore, it is not possible to measure power factor at those points.

Response: Western's power factor proposal, as defined to customers at the August 25, 1987, customer information forum, stated that the PFAC will not apply to points of measurement without continuous volt-amperes reactive metering.

3. *Issue:* Several commentors stated that either the 95-percent power factor standard was too high; or that revenue credits ought to be provided to CVP customers for power factors maintained above 95 percent.

Response: Western is required by Article 26 of its "Sale, Interchange, and Transmission Agreement" (Contract 2948A) with PGandE to maintain, and to require its customers to maintain, a 95-percent factor. Western based its power factor penalty on a study it performed on the average expense for power factor correction for CVP commercial power customers. The intent of the proposed PFAC is for Western to meet its contractual obligation to PGandE to improve the system efficiency and performance, and to reduce losses by encouraging its customers' compliance, using a penalty that represents a slightly higher cost to customers than if they were to install the actual corrective equipment. Western's intent is not to provide any economic advantage to customers that may make the decision to improve power factor above 95 percent. Western expects that such decision would be made based on each customer's internal cost-benefit analysis. In addition, because of the 1-year grace period proposed by Western prior to the implementation of the PFAC Penalty, Western has assumed no revenue from this program for ratemaking purposes. If revenue is realized (and all other assumptions remain the same), then such revenue would repay CVP investment beyond required levels in that year. Therefore, CVP customers that are in compliance could realize a future rate benefit (although it is likely to be small) if a customer is burdening the system with a poor power factor.

C. Power Rate Design

1. *Issue:* Western proposed two power rate designs for review and comment by CVP customers. Both of the proposed options differed from the current rate design. One rate design was developed to have all fixed annual costs recovered by the capacity rate component and variable annual costs recovered by the energy rate component. This rate design was referred to as the "fixed/variable" rate design option. The second rate design was established to recover 50 percent of the annual CVP costs by both the capacity and the energy rate components (referred to as the "50/50" design option). Ten comments were received on the power design option, five supported the fixed/variable design, four supported the 50/50 design, and one supported the current rate design. The comment in support of the current rate design was that Western had not met its "burden of proof" of demonstrating that the current rate design was inappropriate, and therefore should not change its present power rate design.

Response: The two rate design options were developed to consider conventional utility rate design (i.e., the fixed/variable option) and the typical design of Western power rates (i.e., the 50/50 option). In support of these rate design options, Western's staff produced an analysis that examined the fixed and variable expenses that are required to be recovered by the CVP commercial power rate. This study (see appendix F of the August 25, 1987, customer brochure) did not support the current rate design in that it indicated that the current capacity rate was not sufficient to cover projected CVP fixed annual costs. As a result, Western considered it inappropriate to consider the current rate design as an option.

Western has selected the 50/50 design option as its final rate design for confirmation and approval. This decision was made based upon the fact that the customer comments received on the rate design options did not offer a clear direction as to the preferred option. Only 10 customers commented on the rate design options. There were five customers that preferred the fixed/variable option, four preferred the 50/50 option, and one preferred the current rate design. The fixed/variable option requires the classification of costs as either fixed or variable. The decision on such classifications may be arbitrary and subject to debate. How these costs are classified can lead to very different allocations between energy and capacity rates. The 50/50 option is consistent with Western's historical practice and promotes equity.

2. *Issue:* An additional comment on power rate design was that it is discriminatory to require low-load factor customers to subsidize the purchase of higher cost purchased power for high-load factor customers.

Response: Western does not offer rates on a time-of-use basis. All resources necessary to supply the total commercial power obligation are considered in each kilowatthour and kilowatt of power sale. This results in a homogenous and nondiscriminatory rate structure. Secondly, the generalization that high-load factor customers cause the purchase of energy in excess of CVP generation, while low-load factor customers do not, is inaccurate. CVP generation follows a pattern of high generation in the spring and summer, and low generation in the fall and winter. If a low-load factor customer were to peak significantly and have high loads in a fall or winter month, then a substantial portion of the energy serving such load would likely be from purchased energy.

3. *Issue:* In Western's assessment of the fixed and variable expenses used as the basis for the fixed/variable power rate design proposal, Western considered operation and maintenance expense as a 100 percent variable expense. One commentor objected to this allocation.

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Response: Since Western has determined to finalize the CVP power rates based on the 50/50 design option, the issue of the appropriate allocation of operation and maintenance (O&M) expenses between fixed and variable components does not exist. However, this issue was one factor that contributed to the adoption of the 50/50 design option in that Western did not have a clear basis for allocating O&M costs to either the fixed or variable rate components.

D. Transmission Rate Design

Issue: As part of the 1988 rate adjustment announced in the August 4, 1987, **Federal Register** notice, Western proposed two transmission rates for parties desiring to move non-CVP power over the CVP transmission system. These rates were: The CVP firm transmission rate of $0.597/kW-month per kilowatt of transmission capacity specified in the contract at the point of receipt, and the CVP nonfirm transmission rate of 1.27 mills/kWh for each kilowatthour delivered from the CVP transmission system.

One party made the following comments regarding the proposed CVP transmission rate methodology:

a. The amortized annual expense used to calculate the rate was based on a 50-year amortization of the total capital investment in the facilities considered, at a 3-percent interest rate. However, the repayment of the basic (3 percent) CVP investment is ahead of schedule and therefore, the amortized expense under this methodology ought to be reduced accordingly.

b. Some portion of the operation, maintenance, replacement, and capital investment is annually allocated to the project use power customers power and/or water rates and, as such, ought to be removed from the transmission rate culculation.

c. The energy and capacity amounts used to divide into the annual expenses in order to establish the proposed transmission rates should be the CVP commercial power load forecast, the same as are used to set the power rate.

Response: Western performed additional analyses assessing these comments. The point regarding the advance status of the repayment of the CVP basic investment is accurate, and Western has modified its proposed transmission rate design to proportionally reduce the amortized expenses for repayment of investment by considering only the remaining unpaid Federal investment at 3-percent interest through the mandatory repayment date of 2014. The adoption of this comment reduces the proposed CVP nonfirm and firm transmission rates to 1.022 mills/kWh and $0.481/kW-month, respectively.

No other modifications were made to the proposed transmission rate because: (1) The allocation of operation, maintenance, replacement, and investment to project use power customers and/or water rates would not have an impact on the proposed rates if the project use loads were also removed from the energy values used as the divisor to calculate the rates, and (2) the concept of using the CVP preference customer loads as the billing determinants to calculate the rates does not make sense from Western's perspective, since most of the power delivered to customers is not delivered over the CVP transmission system.

E. Treatment of Losses in Power Rate "Unbundling"

Issue: One party commented that although they strongly supported the unbundling of wheeling expenses from the CVP power rates, they felt that Western had failed to properly consider the unbundling of high voltage transmission losses from the capacity and energy rates. This comment is contrasted with another party's comment that all wheeling expenses should be melded with the CVP power rate, and no differentiation should be made for low or high voltage wheeling expenses.

Response: All forecasts of CVP power sales, which are the basis for determining the rates, were made at the points of delivery. Therefore, losses applicable to each customer are taken into consideration in establishing the projected amounts of generation and purchases which are required to serve the customer load. The 1.035 multiplier billing adjustment for low-voltage wheeled customers is consistent with the present practice of surcharging such customers, for the additional power required to meet their demand, due to the fact that low voltage wheeling contractually incurs 8.0-percent losses versus the 4.5-percent losses incurred by high voltage wheeling.

Western has unbundled the proposed rates and developed a separate passthrough of wheeling charges to ensure that no wheeling expenses for the delivery of CVP power are charged to direct-service customers. However, as one commentor has accurately pointed out, no credit has been provided to the direct-service customers for the difference in losses that Western may experience due to the fact that they are directly interconnected to the CVP transmission system. Western notes that not all directly interconnected customers cause lower system losses, and considers it more practical and equitable to meld or blend, in developing the basic power rate, the losses for all high voltage deliveries, whether direct service or not. Western believes that its position is more equitable because the opportunity to directly interconnect is largely a matter of geographic proximity to the CVP transmission system. Conversely, however, the low voltage surcharge is reasonable since the decision to take power at high or low voltage is available to each customer.

If Western were to give direct-service customers a credit for losses assessed by third parties, it would have to adjust that credit by the losses Western incurred for delivery to the direct-service customers over Western's system. This is presently difficult to determine and varies with the mix of resources which Western uses at a given time to supply Western's loads. Western's ratesetting method is more practicable, although it is less precise because it does not identify or allocate the losses which Western incurs to a customer or customer class except to the classes of high- or low-voltage wheeled customers.

F. Timing of Rate Implementation and Step Increases

Issue: Various customers commented on the timing of the power rate implementation and proposed step increases:

- The reduced CVP power rates should be implemented in January 1988.
- The rate step adjustments should be set to periodically change on July 1 rather than October 1 as proposed.
- It was requested that Western seek authority from FERC to delay the proposed rate step increases as Western's discretion in the event that surplus revenues were projected.

Response: Although it will not be possible to state the exact timing of the repayment of the existing CVP deficit in FY 1988 until the final FY 1988 financial statements are available and audited, Western's best estimate is that CVP power rates should not be reduced (as suggested by the proposed rates) until May 1, 1988, to ensure repayment of such deficit.

The issue of the initiation of the CVP power-rate steps on July 1 versus October 1 is a non-substantive issue since it would not significantly alter the proposed level of revenue recovery. Since Western is aware that CVP customers maintain various fiscal year definitions, it seems prudent to maintain

the proposed rate-step timing that is most logical to the Federal fiscal year.

Finally, Western has approached the issue of maintaining accurate revenue levels by proposing the RAC rather than requesting the discretion to shift the proposed rate steps. Also, in the previous CVP rate adjustment Western proposed to, under certain circumstances, either advance or delay the effective dates for one or both of the last two stages of that rate adjustment. The FERC denied that proposal.

G. Purchased Power Expense Assumptions

Issue: One entity stated that they felt that the forecast of revenue requirements "indicate(d) a strong bias toward inflated estimates of purchased power costs which had led to setting the rates at a higher level than necessary." Specifically, the entity questioned Western's use of the California Energy Commission's (CEC) oil and gas price forecast in estimating thermal power repurchase rates from PGandE and the fact that capacity credits for firm Pacific Northwest power purchases were not reflected in the cost estimates for capacity.

Response: The establishment of the RAC materially resolves the essence of this issue because it provides revenue credits to CVP customers if Western's projected purchased power expenses are higher than actual incurred expenses. In addition, Western concurred with the opinion that capacity credit ought to be considered in the CVP rate design by adding the second component of the RAC that will automatically adjust the capacity rate component for each megawatt of capacity credit received by Western.

Western considers the use of the CEC's oil and gas price forecast to represent the best available, albeit conservative, forecast for thermal fuel prices in northern California. The forecast is used for thermal-electric power planning evaluations by the CEC and represents a noninvested-interest forecast. The comment did not support the validity of any other forecast, but merely indicates the desire for Western to apply an alternative lower projection.

November 30, 1983, FERC Comments Contained in Order Confirming and Approving Rates

On November 30, 1983, FERC approved and confirmed the current CVP power rates for the period of May 25, 1983, through midnight of May 25, 1988. In that order, FERC raised two issues regarding Western's development of the supporting power repayment study. In the first issue, FERC states that Western failed to properly reflect all Interest During Construction (IDC) expenses prior to 1968, and in the second issue, FERC stated that Western had overstated its revenue from projected CVP capacity sales to PGandE based on Western assuming the most favorable outcome of a Project Dependable Capacity (PDC) dispute with PGandE. Even though FERC identified those issues as areas that FERC staff disagreed with Western, FERC confirmed and approved the CVP rates based on our determination that repayment of the CVP investment is currently ahead of schedule and could remain roughly on schedule during a 5-year rate approval period.

With the exception of the months of May through September of 1982, Western has resolved all PDC disputes with PGandE through CY 1987. The PDC levels assumed in the revised PRS supporting this CVP rate proposal are 912 MW in 1988 diminishing to 884 MW in 1992 due principally to increasing CVP project use loads over that same period. These assumed PDC levels are consistent with the actual agreed to PDC level in CY 1987 of 916 MW. Western has adopted these assumptions consistent with FERC's November 30, 1983, comments, even though Western anticipates higher PDC levels in the 1988 to 1993 time period, which will likely be disputed with PGandE.

With regard to the IDC issue, Western has included a letter dated June 17, 1955, from the Acting Assistant Commissioner of Reclamation to the Regional Director of Reclamation in Sacramento, California, in the Record of Decision. This letter requires Reclamation to exclude consideration of IDC for the payout studies of the present Central Valley Project, including Trinity and San Luis. The Trinity Division and San Luis Unit were placed in service in 1964 and 1967/68, respectively. The repayment of CV investment occurs from both power and water use revenues and, as such, the basis for calculation of the CVP investment should be consistent. Reclamation is responsible for providing the basic investment cost allocation data on an annual basis to Western. Since Reclamation has remained consistent with the policy stated in the aforementioned document, IDC will not be included for the period prior to 1968 under the revised power repayment study.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council of Environmental Quality (CEQ) Regulations, and the DOE guidelines, Western issued a Determination Memorandum on December 22, 1987. This memorandum determined that neither an environmental assessment nor an environmental impact statement was required to document the promulgation of the proposed 1988 CVP transmission and power rates. This determination was based on the conclusion that the potential effects resulting from the implementation of the proposed action are limited to small beneficial economic effects from the reduction of the power rates, and the fact that the physical environment would not be impacted by the proposed action. Given the findings, Western determined that the proposed rate adjustments were not a major Federal action significantly effecting the quality of the human environment as defined by the NEPA and CEQ.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exception from section 3, 4, and 7 of that order, and therefore, will not prepare a regulatory impact statement.

Availability of Information

All studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the power rates are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, California 95825, (916) 978–4418.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective May 1, 1988, that being the first day of the May 1988 billing period, Rate Schedules CV–F6, CV–FT1, CV–NFT1, and CV–TPT2. These rates shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis, or until they are superseded.

BEST COPY AVAILABLE

OL 53 SS 49 MR 14 988 MI

Issued at Washington, DC, March 2, 1988.

Joseph F. Salgado,

Under Secretary.

[Schedule CV–F6 (Supersedes Schedule CV–F5)]

Schedule for Rates for Commercial Firm Power Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To commerical firm power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and point established by contract.

Monthly Rate: Demand Charge: The rates listed below shall be the charge per kilowatt of billing demand. The billing demand is the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Effective dates	Demand rate (per kilowatt-month)
May 1, 1988, through September 30, 1989	$6.85
October 1, 1989, through September 30, 1991	7.49
October 1, 1991, through April 30, 1993	7.74

Energy Charge: For all energy use up to, but not in excess of, the maximum kilowatthour obligation of the United States during the month as established under the power sales contract, the rates shall be:

Effective dates	Energy rate (mills per/hour)
May 1, 1988, through September 30, 1989	14.43
October 1, 1989, through September 30, 1991	15.76
October 1, 1991, through April 30, 1993	16.30

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractural obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above.

Transformer Loss Adjustment: If delivery is made at transmission voltage but metered on the low voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses, unless otherwise provided for by contract.

Power Factor Adjustment Clause: (a) A surcharge of 0.25 percent (0.0025) will be assessed against the total monthly capacity and energy charges at each Point of Delivery (POD), for each percent or major portion thereof (0.5 percent or greater), that a customer's power factor at such POD is below 95 percent lagging or 95 percent leading.

(b) Power factor will be measured on the average power factor recorded over the 30-minute interval in which the customer's maximum monthly peak demand at such POD occurs. In the event of multiple occurrences of the same maximum monthly peaks, the individual peak period with the worst power factor will be used for billing purposes.

(c) This provision will not apply to points of measurement without continuous volt-amperes reactive metering.

(d) The Contracting Officer may waive the power factor adjustment for good cause in whole or in part.

(e) No power factor surcharges will be assessed prior to the billing month of June 1989 to allow CVP customers time to implement power factor improvement programs.

Revenue Adjustment Clause: There are two components to the Revenue Adjustment Clause (RAC): the basic RAC provision and the Contract Dependable Capacity (CDC) charge adjustment provision.

(a) *Basic RAC Provision.* (i) By each November 1 and May 1, Western shall calculate net differences for the previous 6-month period (April 1 through September 30, and October 1 through March 31, respectively), between the estimated CVP power sales revenues and CVP purchased power expenses used to establish the CVP power rates, as compared to the actually incurred CVP power sales revenues and purchased power expenses. The net differences for each 6-month period shall be calculated based on the formula in subparagraph (a)(v). If the net difference is a positive value, then it shall be credited to CVP commercial power customers. If the net difference is a negative value, then it shall be surcharged to the CVP commercial power customers.

(ii) All credits or surcharges under this provision (a) shall occur over the 6-month period beginning 1 month after the period for which the net difference was calculated. The credit or surcharge shall be equally distributed over the 6 monthly billing periods and be specifically noted on each power billing statement.

(iii) The net difference used as the basis for any surcharge or credit for a 6-month adjustment period shall not exceed the absolute value of $15,000,000.

(iv) The net surcharge or credit shall be allocated to each CVP commercial power customer based on the proportion that such customer's billed obligation to Western for CVP capacity and energy represented, compared to the total billed obligation for all CVP commercial power customers for CVP capacity and energy, in the period in which the net surcharge or credit was incurred.

(v) The basic RAC adjustment provision formula is as follows:

(R act − R est) − (E est) = net surplus or deficit.

Where:

R act = Actual Revenue received from sale of capacity and energy to CVP commercial power customers. This figure will be based on actual CVP preference customer invoices to the extent available and estimated bills otherwise.

R est = Estimated Revenue expected to be realized from capacity and energy sales to CVP preference customers. This figure is recorded in table I.

E act = Actual purchased power obligations incurred by Western in support of CVP loan level and surplus sales to the Pacific Gas and Electric Company (PGandE) bank accounts. This figure will be based on actual invoices to the extent available.

E est = Estimated purchased power expenses. This figure is recorded in table I.

(b) *CDC Capacity Charge Adjustment Provision.* (i) For each megawatt of CDC credit received by Western pursuant to Western's "Sale, Interchange, and Transmission Contract No. 14–06–200–2948A" with PGandE, and CVP capacity charge component shall be reduced by the applicable incremental value shown on table II.

(ii) Similarly, for each megawatt of CDC credit rescinded or otherwise lost by Western, the CVP capacity charge shall be increased by the applicable incremental value shown on table II.

(c) *RAC Tables—(Attached).*

TABLE I.—REVENUE AND EXPENSE TARGET LEVELS FOR THE REVENUE ADJUSTMENT CLAUSE [1]

Fiscal year	Months	Estimated revenue [2] (dollars)	Estimated expense [3] (dollars)
1988	May 88 to Sep 88	84,301,400	73,714,400
1989	Oct 88 to Mar 89	105,824,600	88,690,200
1989	Apr 89 to Sep 89	104,969,200	89,408,800
1990	Oct 89 to Mar 90	115,852,500	104,323,000
1990	Apr 90 to Sep 90	114,920,600	95,886,000
1991	Oct 90 to Mar 91	116,570,500	107,571,000
1991	Apr 91 to Sep 91	115,634,100	91,255,000
1992	Oct 91 to Mar 92	120,795,100	112,843,900
1992	Apr 92 to Sep 92	119,827,300	98,298,100
1993	Oct 92 to Mar 93	121,034,000	112,968,100
1993	Apr 93 to May 93	40,476,000	33,820,000

[1] Please note that these figures will be adjusted to recognize any capacity rate adjustment implemented in response to Western's receipt or loss of CDC credits.

[2] Projected revenues are the estimated revenues Western will receive from the sale of capacity and energy to CVP preference customers.

[3] Projected expenses consist of the following purchased power costs: The delivered costs of capacity and energy purchased from PGandE, Pacific Northwest, power imports, and in-State power purchases.

TABLE II.—VALUE OF ONE MEGAWATT OF CAPACITY CREDIT TO CUSTOMERS

Fiscal year	Time period	Value of capacity credit ($/KW-Mo)	Months of period	MW credit for period dollars	Capacity sales during period (kw-mo)	Incremental [1] adjustments to CVP capacity charge (dollar/kW-Mo)
1988	May 88 to Sep 88	14.960	5	74,800	6,631,286	0.011280
1989	Oct 88 to Mar 89	15.335	6	92,010	7,508,602	.012254
1989	Apr 89 to Sep 89	15.710	6	94,260	7,973,052	.011822
1990	Oct 89 to Mar 90	15.846	6	95,076	7,533,586	.012620
1990	Apr 90 to Sep 90	16.500	6	99,000	7,999,584	.012376
1991	Oct 90 to Mar 91	16.814	6	100,884	7,590,270	.013291
1991	Apr 91 to Sep 91	17.330	6	103,980	8,059,771	.012901
1992	Oct 91 to Mar 92	17.733	6	106,398	7,608,737	.013984
1992	Apr 92 to Sep 92	18.190	6	109,140	8,079,360	.013508
1993	Oct 92 to Mar 93	18.616	6	111,696	7,629,042	.014641
1993	Apr 93 to May 93	19.100	2	38,200	2,658,367	.014370
			61	1,025,444	79,271,679	.012936

[1] Please note that once capacity credit is received, the capacity charge component must be adjusted at each time period indicated above to be consistent with the changing "Incremental Adjustment" values shown in the last column.

[Schedule CV–FT1 (Supersedes Schedule CV–T1)]

Schedule of Rates for Firm Transmission Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To firm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current a 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Monthly Rate: Transmission Service Charge: $0.481 per kilowatt of transmission capacity at the point of receipt into the CVP system, as specified in the applicable service contract, whether utilized or not.

Adjustments

For reactive power: None. There shall be no entitlement to the transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their authorized representatives.

For losses: Power and energy losses incurred in conneciton with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[Schedule CV–NFT1 (Supersedes Schedule CV–T2)]

Schedule of Rates for Nonfirm Transmission Service

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To nonfirm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, subject to the availability of transmission capacity, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Montly Rate: Transmission Service Charge: 1.022 mills per kilowatthour delivered from the CVP system.

Adjustments

For reactive power: None. There shall be no entitlement to the transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their authorized representatives.

For losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

(Schedule CV–TPT2) (Supersedes Schedule CV–TPT1)

Rate Schedule for Third Party Transmission

Effective: May 1, 1988.

Available: In the area served by the Central Valley Project (CVP).

Applicable: To customers of the CVP who require transmission service to receive power and energy sold by Western.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points specified in the service contract.

Monthly Rate: When the United States utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by the United States for the use of such facilities, the customer shall pay all costs, including transmission losses, incurred in the delivery of such power (including secondary and dump energy).

The transmission losses chargeable to the customer shall be those losses which are in excess of the "at or above 44/kV" transmission losses specified by Contract No. 14–06–200–2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the customer under the customer's power sales contract with the United States.

[FR Doc. 88–5533 Filed 3–11–88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3339–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB, for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Health and Safety Data Reporting; Submissions of Lists and Copies of Health and Safety Studies. (EPA ICR # 0575).

Abstract: Under this collection, chemical manufacturers and processors must submit health and safety studies pertaining to specified chemicals, accompanied by a list of those studies and the studies in progress. EPA will use the studies to assess the need for testing the chemicals under section 4(a) of TSCA or to weigh their health and environmental effects.

Respondents: Chemical manufacturers and processors.

Estimated Burden: 11,343 hours.

Frequency of Collection: On occasion.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084)

Dated: March 4, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–5472 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3339–8]

Management Advisory Group to the Construction Grant Program; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Management Advisory Group to the Construction Grant Program (MAG) will be held at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in the Washington Information Center (WIC) conference room #2. The meeting will begin at 9:00 a.m., on April 13 and end at about 1:00 p.m. on April 14, 1988.

The agenda will include a review and discussion of the Sector Study on Minicipal Financing, Implementation of the State Revolving Loan Fund program and Sludge Regulations. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any members of the public wishing to make comments are invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. Additional information on the meeting may be obtained from Ms. Vicki Gillispie at the Environmental Protection Agency, WH–547, 401 M Street SW., Washington, DC 20460, telephone number: (202) 382–5859.

Date: March 7, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88–5473 Filed 3–11–88; 8:45am]

BILLING CODE 6560-50-M

[OPP–180763; FRL–3339–7]

Receipt of an Application for a Specific Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide ™) to control leafminers (*Liriomyza trifolii* and *L. sativae*) on 53,550 acres of tomatoes in Florida. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and < 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180763" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Libby Pemberton, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as Agrimec 0.15 EC Miticide/Insecticide™, by MSD AGVET, a division of Merck & Co., Inc., on tomatoes in Florida. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 8 to 16 ounces of product per acre per application. A maximum of ten applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest. Applications would be made from March 1, 1988 through December 31, 1988.

The Applicant indicates that many factors have contributerd to the frequency and severity of this pest problem. Among these factors are the intensity of plantings within the producing areas, the climatic conditions during the growing season, the large number of alternate hosts surrounding the production areas, the complex pest management requirements of other pests of tomato and most importantly the increasing difficulty of control due to resistance of the pest to existing compounds. Leafminer control has been accomplished in the past by a variety of pesticides including: monocrotophos, diazinon, naled, methamidophos, dimethoate, azinphos-methyl, oxamyl, and permethrin. Even though some of these compounds are still being used, once populations exceed threshold level the effectiveness of any of these compounds is lost, according to the Applicant.

The Applicant indicates that without adequate control of the leafminers a potential loss of $25 to $50 million of income to Florida tomato producers could occur from this pest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–5474 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

[OPP–180765; FRL–3339–6

Receipt of Application for an Emergency Exemption From Wisconsin to Use Metolachlor; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the herbicide metolachlor (CAS 51218 45 2) to treat 5,000 acres of cabbage, a majority of which is grown for processing into sauerkraut, for pre-emergent control of certain broadleaf weeds and yellow nutsedge.

EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180765," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be desclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of metolachlor for preemergent control of certain broadleaf weeds and yellow nutsedge in transplanted cabbage.

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Information in accordance with 40 CFR Part 166 was submitted as part of this request. According to the Applicant, metolachlor is used for control of annual grasses, yellow nutsedge, and certain broadleaf weeds in corn, peanuts, pod crops, potatoes, safflower, grain or forage sorghum, soybeans, tree nuts, stone fruits, and woody ornamentals.

The Applicant states that during the 1970's cabbage growers used nitrofen (TOK herbicide) applied postemergent for broadleaf weed control in cabbage. Tok was withdrawn from the market in 1980. CDAA (Randox) was previously registered for preemergence application to cabbage in several states including Wisconsin. This product is no longer manufactured and all registrations have been cancelled. Previously, Vegadex was the primary preemergence herbicide used on cole crops on organic soils. The registrations for CDEC (Vegadex) were voluntarily cancelled in 1980. Cabbage requires relatively weed free conditions to reach marketable size and to produce a clean harvest for processing. Mechanical control is always used in cabbage production, however, "in row" weeds escape as do late season weeds. For this reason, mechanical control alone is insufficient.

The Applicant states the herbicides currently registered on cabbage are unsatisfactory for the following reasons: Dacthal is registered for preemergent application at the time of seeding or immediately after transplanting but before weed emergence. Field research indicated that plots treated only with DCPA showed poor weed control and reduced yields. Roundup (glyphosate) is registered for application before crop emergence. Although glyphosate could be used as a "clean up" herbicide prior to planting, it does not continue to control weeds, during the growing season. Treflan (trifluralin) is registered for preplant incorporated application to transplanted cabbage. Treflan controls annual grasses but provides only partial control of annual broadleaf weeds. Devrinol (napropamide) is registered for preplant incorporated application to cabbage. Devrinol will control some annual grasses and broadleaf weeds, but in years with late flushes of weeds, it will not provide economic weed control for transplanted cabbage. Devrinol does not control yellow nutsedge. Goal (oxyflurofen) received supplemental labeling in 1988 for pretransplant application to cabbage. Goal will provide control of carpet weed, redroot pigweed, common purslane, and Pennsylvania smartweed. Goal will not control yellow nutsledge.

The economic benefit of allowing this use of metolachlor, according to the Applicant, could most readily be attributed to reduce costs for mechanical cultivation and increased yields attributed to better weed control. The present system of Treflan application and mechanical cultivation requires the hand hoeing of 30% of the 550 acres at cost of $150 acre. The Applicant states that because of weather, availability of labor, and worker reliability it is extremely difficult to weed all the infested acres before weed competition reduces yields. The Applicant estimates that $884,000 is lost in yield in Wisconsin annually.

The Applicant proposes to make a single application of the product Dual 8E, EPA Reg. No. 100-597, with ground application equipment at a maximum rate of 2 pounds active ingredient per acre at the beginning of the growing season.

A specific exemption was granted for this use of metolachlor on cabbage to the Applicant in 1987 and to other states in at least two previous years. According to the Applicant, the registration of metolachlor on cole crops is an ongoing IR-4 project but several years of work remain before all data gaps are filled and a national registration is sought.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a chemical for which an emergency exemption has been requested or granted for the use in any previous three years, and a complete application for registration of that use and or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-5475 Filed 3-11-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180764; FRL-33395]

Minnesota Department of Agriculture; Receipt of Application for Emergency Exemption To Use (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit ™) to control Jerusalem artichoke on 25,000 acres of soybeans in Minnesota. Pursuit ™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this exemption.

DATE: Comments must be received on or before March 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP- 180764 ," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted concrning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a state agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1methylethyl)-5-oxo-1*H*-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit ™, by American Cyanamid Company, on soybeans in Minnesota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicated that Jerusalem artichoke poses a serious threat to the Minnesota soybean industry due to resultant reductions in yields. This weed, if not controlled produces numerous tubers which lie dormant over winter and produce plants the following spring. Only two herbicides (Paraquat and Roundup) are labelled for control of Jerusalem artichokes in Minnesota soybeans, according to the Applicant. Neither of these herbicides are satisfactory, according to the Applicant, due to required delays in planting or ineffective application techniques.

The Applicant indicates that without adequate control a 30 percent yield loss for soybeans due to this weed will result. This would amount to approximately 1.4 million dollars. Producers are reporting that infestations are increasing, and weed scientists are concerned that the week will become more widespread in the absence of effective control measures.

Pursuit ™ will be applied by ground postemergence to the crop at a rate of 0.06 pound active ingredient per acre.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 29, 1988 and should bear the identifying notation "OPP- 180764 ." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

Dated: February 29, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-5476 Filed 3-11-88; 8:45 am]

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[FRL-3338-5]

Superfund Program; Mixed Funding Settlements

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing the guidance on "Evaluating Mixed Funding Settlements under CERCLA" today to inform the public and to solicit comment on these types of settlements. Mixed funding, as described, in part, under section 122(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (hereinafter referred to a "CERCLA") refers to three types of arrangements in which money from potentially responsible parties (PRPs) and the Hazardous Substances Superfund ("the Fund") is used to conduct a response action. This guidance first describes a process for determining whether a settlement involving mixed funding in any form is appropriate. It then describes issues related to each of the three types of mixed funding individually, as well as the procedure required for approval of mixed funding settlements.

DATE: Comments must be provided on or before May 13, 1988.

ADDRESS: Comments should be addressed to Kathy MacKinnon, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Oversight Branch (WH-527), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathy MacKinnon, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Oversight Branch, WH-527, 401 M Street SW., Washington, DC 20460, (202) 475-6770.

SUPPLEMENTARY INFORMATION: The term "mixed funding", as used in this document, refers to three types of arrangements in which the Government, at its discretion, agrees to conduct and/or pay for a portion of a response action. In one arrangement, as described in section 122(b)(1) of CERCLA, the PRPs agree to conduct the response action, and the Government agrees to allow these parties to bring a claim against the Fund for a portion of their costs. The process by which the Government agrees to allow a claim against the Fund is known as "preauthorization."

In a second type of mixed funding known as a "cash-out," the PRPs pay the Agency for a portion of the costs in lieu of conducting the response action. A third type of mixed funding, known as "mixed work," involves an agreement which addresses the entire response action, but the PRPs and the Agency agree to conduct and pay for discrete portions or segments of the response action.

The Agency supports the use of mixed funding to promote settlements and hazardous site cleanups. These settlements also may simplify the Government's litigation of cost recovery cases under section 107 by reducing the number of PRPs to be sued.

The process for evaluating mixed funding settlements is based, in part, on the Interim CERCLA Settlement Policy (50 FR 5034), which provides ten criteria to evaluate a PRP settlement offer for less than 100% of the cost of a cleanup at a site. For mixed funding settlements, criteria of particular importance include the strength of the liability case against settlors and any non-settlors, the size of the portion for which the Fund will be responsible, and other mitigating and equitable factors.

The use of mixed funding does not change EPA's established criteria for evaluating settlement offers. As stated in the Interim CERCLA Settlement Policy, liability under CERCLA is strict, joint and several unless the PRPs can clearly demonstrate that the harm at the site is divisible. Thus, approval of a mixed funding settlement will be a policy decision, made in the Government's discretion, based on an evaluation of the totality of the circumstances in each case.

Mixed funding settlements represent one portion of a comprehensive effort to facilitate settlements of enforcement actions under CERCLA. In particular, *de minimis* settlements (sections 122(g)), covenants not to sue (sections 122(f)), and non-binding allocations of responsibility (NBARs) (sections 122(e)(3)) may be used in conjunction with mixed funding as a means of increasing the flexibility with which CERCLA cases may be settled in order to expedite cleanups.

The Agency encourages public comment on this guidance, especially related to particular types of mixed funding arrangements. The Agency will reevaluate this interim guidance in response to public comments.

The interim guidance follows.

Date: February 29, 1988.

J. W. McKerow,

Acting Assistant Administrator for Solid Waste and Emergency Response.

Date: February 12, 1988.

Thomas L. Adams, Jr.,

Assistant Administrator for Enforcement and Compliance Monitoring.

October 20, 1987.

Memorandum

Subject: Evaluating Mixed Funding Settlements Under CERCLA
From: J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response
Thomas L. Adams, Jr., Assistant Administrator, Office of Enforcement and Compliance Monitoring
To: Regional Administrators, Regions I–X

I. Introduction

This document provides guidance for use when a party proposes, as part of a settlement negotiation, that both private and Fund resources be used at a site. This type of arrangement is generally referred to as a "mixed funding" settlement. Section 122(b) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereinafter cited as "CERCLA") provides explicit authority for the Government to enter into these types of arrangements.

The primary goals of this guidance are to:

(1) Encourage the Regions to consider mixed funding settlements, based on the statutory approval of these settlements in section 122(b) of CERCLA;

(2) Present a method for Regional enforcement personnel to analyze mixed funding in the context of a settlement offer, and

(3) Indicate broad Agency preferences by specifying acceptable and poor candidates for mixed funding in general.

Historically, the term "mixed funding" has been used to describe three types of arrangements. Section 122(b)(1) of CERCLA describes one mixed funding arrangement, in which one or more of the potentially responsible parties (PRPs) agree to perform a response activity and the Agency agrees to reimburse those PRPs for a portion of their response costs. In such cases, the statute provides that the cost incurred by the Fund be recovered from non-settlors when possible.

Settlement agreements involving cleanups by PRPs and reimbursement of their response costs require the Agency to "preauthorize" the claim against the Fund prior to the initiation of the response action. The term "preauthorization" refers to the approval that must be granted by the Agency prior to cleanup actions if a claim for response costs is to be considered against the Fund. If preauthorization is granted, it serves as an Agency commitment that, if response costs are conducted pursuant to the settlement agreement and the costs are reasonable and necessary, reimbursement will be available from the Fund as dictated by the agreement, subject to the availability of appropriated monies.

Two other kinds of settlement agreements also constitute forms of mixed funding, but do not require preauthorization. Section 122(b)(3) describes one type of arrangement, in which the Agency conducts the response action and the PRPs pay the Agency for a portion of the costs. This type of settlement is known as a settlement for cash, or "cash-out." A third type of mixed funding, known as "mixed work," involves an agreement which addresses the entire response action, but the PRPs and the Agency agree to conduct and pay for discrete portions or segments of the response action. The term "mixed funding", as used in this document, applies to any of the aforementioned types of settlements. It should be noted, however, that section 122(b)(4), concerning future obligation of the Fund for remedy failure, only applies to mixed funding in the form of preauthorization, as described in section 122(b)(1).

As noted above, the 1986 Amendments to CERCLA included an explicit statutory authorization of mixed funding settlements. Prior to these Amendments, the primary document which made reference to mixed funding was the Interim CERCLA Settlement Policy (50 FR 5034). This policy set out ten criteria to use when evaluating a settlement offer for less than 100% of the cost or cleanup at a site. In mixed funding settlements, the PRPs agree to pay for a portion of the response cost, and may conduct some or all of the response action.

A major portion of this guidance addresses the application of the Interim Settlement Policy to mixed funding settlements. Section II outlines the key principles underlying the Agency's Interim Settlement Policy, and the role of mixed funding within these general principles. Section III then provides an approach for applying the ten settlement criteria to mixed funding settlement offers in general (e.g., without regard to any specific funding arrangement.) This section first highlights factors of key importance to mixed funding settlements, and then suggests the Agency's preferences among various combinations of these factors.

Section IV identifies criteria to be used to determine if a particular type of mixed funding is appropriate for a site, and then lists secondary considerations related to all mixed funding settlements. Section V outlines the general procedure for review and approval of mixed funding.

II. The Role of Mixed Funding in the CERCLA Cleanup Program

The Interim CERCLA Settlement Policy identified negotiated private response actions as an essential component of the Agency's overall program for obtaining cleanup of the nation's hazardous waste sites. This program, to be effective, depends upon a balanced approach, which includes a mix of Fund-financed cleanups, enforceable settlement agreements reached through negotiations, and litigation. Expeditious cleanups reached through negotiated settlements are preferable to protracted litigation.

Section 122 of the 1986 Amemdments, which is devoted entirely to settlement issues, indicates Congressional affirmation of the emphasis in the Interim Settlement Policy toward increased flexibility in settling CERCLA cases in order to expedite cleanups. Like the Interim Settlement Policy, section 122 covers a wide range of mechanisms designed to promote settlements. In particular, in section 122(b), Congress acknowledged the need to consider settlements for less than 100% of the costs of cleanups" * * * by using monies from the Fund on behalf of parties who are unknown, insolvent, similarly unavailable, or refuse to settle." (See the Conference Report on Superfund Amendments and Reauthorization Act of 1986, 99 Cong., 2d Sess. Report 99–962 pp. 183, 252 (1986)).

The Agency encourages the use of mixed funding to promote settlement and hazardous site cleanup. For example, preauthorization offers the advantage of PRP performance of the response activity and funding of a substantial portion of the response costs, thus conserving Agency resources for use at other sites. In addition, section 122(b)(1) requires the Agency to make all reasonable efforts to recover these costs. The Agency will therefore pursue nonsettlors to make the Fund whole, unless it would be unwarranted to undertake such efforts. To the extent that mixed funding reduces the number of PRPs to be sued in such cost recovery cases, it will also reduce the Agency's costs for litigation.

Support of mixed funding as a settlement tool, however, does not imply that the standard and scope of liability under CERCLA has changed. As established by court decisions prior to the 1986 Amendments, PRP liability under CERCLA remains strict, joint and several, unless the PRPs can clearly demonstrate that the harm at the site is divisible. Thus, the Agency will assess mixed funding settlements in a manner consistent with the Interim Settlement Policy, where complete cleanup or collection of 100% of costs remains a primary goal.

For example, the Agency will not approve mixed funding simply on the basis that a share of wastes at a site may be attributable to an unknown or financially non-viable party. The Agency may conduct an allocation of liability among PRPs at a site, or may evaluate the PRP's allocation and allow volume to be considered as one factor used to assess the reasonableness of the PRPs' offer. However, the availability or the amount of any Fund-financing for a particular site will not be dependent solely on consistency with any volumetric or "fair-share" allocation. The Agency may, as a policy decision, determine that mixed funding is the best method to promote cleanup at a particular site, based on the totality of the circumstances. Mixed funding should be viewed as one tool, approved by Congress, to be used to promote settlements in the context of the existing Interim Settlement Policy.

Section 122 also contains settlement provisions related to: (a) *de minimis* settlements (section 122(g)), in which parties who are liable for only a minor portion of the hazard or cost of cleanup at a site may resolve their liability to the Government in an expedited process; (b) non-binding allocations of responsibility (NBARs), (section 122(e)(3)), which involve a discretionary EPA allocation of the total response costs among PRPs at a site; and (c) covenants not to sue, (section 122(f)), in which the Government agrees to certain releases from liability at a site.

These settlement mechanisms may influence the decision as to whether a settlement should include mixed funding. Thus, the use of mixed funding at a site should be evaluated both in the context of section 122 as a whole, which encourages settlement in general, as well as individual section 122 settlement provisions and their relevance to the proposed mixed funding settlement.

For further guidance on these settlement provisions, see "Interim Guidelines for Preparing Non-Binding Preliminary Allocations of Responsibility (NBAR)," 52 FR 19919; "Interim Guidelines on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA," Adams/Porter, June 19, 1987; "Covenants Not to Sue Under SARA," Adams/Porter July 10, 1987.

III. Assessment of Mixed Funding Settlement Proposals Using the Interim Settlement Policy Criteria

In the evaluation of a proposed mixed funding settlement, Agency enforcement personnel should first focus on the quality of the overall settlement offer. Thus, the initial determination in each case will not be whether a particular type of mixed funding should be used, but whether the underlying offer for a mixed funding settlement is a good one. This determination should be made by applying the ten settlement criteria set out in the Interim Settlement Policy.

The factors and hypothetical examples set forth below provide guidance as to how to apply the ten settlement criteria to settlement offers in which PRPs have requested some form of mixed funding. The Agency does not intend to limit the availability of mixed funding to the fact patterns described below, but recommends the following approach as a means of focusing the analysis of the settlement. Regions must continue to consider the totality of the circumstances for each mixed funding settlement offer.

In settlement offers in which any form of mixed funding is proposed, factors of primary importance include:

- Strength of the liability case against settlors and any non-settlors. This factor includes:
  - —Litigative risks in proceeding to trial against settlors, and
  - —The nature of the case remaining against non-settlors after the settlement;
- Government's options in the event settlement negotiations fail (e.g., if a state cost-share will be available for a Fund-lead action);
- Size of the portion or operable unit for which the Fund will be responsible (or the amount of the PRP's offer);
- Good-faith negotiations and cooperation of settlors and other mitigating and equitable factors.

The following examples indicate the combinations of the above factors which may be considered acceptable candidates for any type of mixed funding, and those cases considered poor candidates for mixed funding:

Acceptable Candidates for Mixed Funding

The best candidates for mixed funding are cases in which the following features are present:

- The potential portion or operable unit to be covered by the Fund is small, or the settling PRPs offer a substantial portion of the total cost or cleanup. In this context, substantial portion may be defined as a commitment by the PRPs to undertake or finance a predominant portion of the total remedial action.[1]
- The Government has a strong case against financially viable non-settling PRPs, from which the Fund portion may be recovered.

While this combination of factors represents the optimum conditions under which mixed funding may be approved, cases will more typically involve one or more variations of this scenario. Thus, the Agency anticipates that a range of cases will be considered acceptable candidates for mixed funding. The following examples indicate the circumstances under which a mixed funding settlement may represent the Government's preferred alternative:

Example one: A strong case against potential settlors may initially weigh in favor of litigation, especially if the case against non-settlors is weak. However, a mixed funding settlement may still be acceptable upon evaluation of additional factors, such as:

- The settling PRPs offer to conduct or pay for a substantial portion of the response;
- Public interest considerations (e.g., if settlement would expedite cleanup and/or a section 104 Fund-financed action is not feasible);
- Whether settlors have negotiated in good-faith;
- The Government's time and resources saved by simplification or avoidance of litigation.

Example two: If a substantial portion of the waste at a site cannot be

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[1] As noted later, the Agency's preference is for the PRPs to perform the response action, rather than finance a Governmental response action.

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attributed to known and financially-viable parties, *as* determined, for example, by a preliminary nonbinding allocation of responsibility by the Government), the Agency may initially consider pursuing the recovery of all costs under joint and several liability. However, if the litigative risks appear substantial, a mixed funding settlement may represent more than the Government would recover in litigation, especially when the cost and time required for litigation is considered. Litigative risks which may weigh in favor of settlement include:

- Weak evidence against financially viable potential settlors;
- Equitable considerations which weigh against the imposition of joint and several liability.

In addition, if the hazard at the site is serious and no Fund-financed response is possible, a delay in the response action pending the conclusion of litigation might represent an unacceptable risk to the public and the environment.

Poor Candidates for Mixed Funding

Cases considered poor candidates for mixed funding have the following features:

- The case against settling parties is strong, and thus the potential for successful litigation is high;
- The potential Fund portion is large (e.g., the potentially settlors' offer is insufficient.)

These factors do not *automatically* preclude mixed funding for a case. However, for mixed funding to be seriously considered in such instances, other compensating factors must be present, such as the ability of the settlors to initiate the response action more quickly than the Government in a Fund-financed action.

IV. Selection of the Mixed Funding Technique

As noted in the above Introduction, the term mixed funding has been used to refer to three different types of settlement arrangements:

(1) Preauthorization, in which the PRPs conduct a response action and the Agency agrees to allow a claim against the Fund for a portion of the response costs;

(2) Cash-outs, in which the PRPS pay for a portion of the response costs up front, and the Agency conducts the response action;

(3) Mixed work, in which the PRPs and the Agency each agree to conduct discrete portions of the response activity.

Once Regional enforcement personnel have determined that a mixed funding settlement is appropriate, based on the settlement criteria as described in Section III and the Interim Settlement Policy, then the Agency must decide which type of mixed funding best suits the situation at hand. Among the three major types of mixed funding, the Agency generally prefers preauthorization, since the PRPs conduct the response action. However, as noted below, cashouts and mixed work may be appropriate under certain circumstances.

Preauthorization

The assessment and approval of preauthorization, once a mixed funding settlement is approved, is a two-part process. The first stage, as described below, is the determination by the Agency enforcement personnel that preauthorization is appropriate in the context of the settlement as a whole. The second stage represents the actual process of preauthorization of the claim against the Fund by the Office of Emergency and Remedial Response (OERR) (see Section V.) The Response Claims regulations, which are presently in draft form, will provide guidance on the preauthorization process itself.

(a) Technical and timing concerns related to preauthorization.

For the first stage of the review, the nature of the proposed remedy and the PRPs' ability to perform it in a timely manner are major factors to consider when assessing a settlement offer which contemplates preauthorization. In addition, the size of the PRPs' portion is important. When PRPs are responsible for a sufficiently high percentage, they will have a strong economic incentive to keep the actual response costs within or close to estimates. The nature and the severity of the threat posed by the site may also weigh in favor of settlement, if preauthorization would increase the speed at which the hazard could be addressed. For example, prompt initiation of the remedial action would be of particular importance for sites which are not currently scheduled for full Fund-financing.

On the other hand, Regional negotiators must also consider the time required for the preauthorization process itself when determining if preauthorization is appropriate for particular types of response actions. While the Agency has set a goal of completing review of individual preauthorization applications within a 45-day period, this timing limitation will vary on a case-by-case basis. The Agency is unlikely to have time to consider preauthorization requests when action is required to avert an immediate threat to the public health or the environment, therefore, no reimbursement would be possible. Regions should anticipate the processing time in managing negotiations.

(b) Availability of preauthorization for various response actions.

For agreements involving activities such as an RI/FS or a removal, preauthorization in general will not be warranted, because the process of preauthorization will prove too burdensome for the small amounts or short time-frames often encountered in these cases. Limited exceptions may be considered in unusual circumstances, as where preauthorization will facilitate a broader agreement (e.g., an area-wide RI/FS) which will be less resource intensive than several agreements of smaller scope. A large, extensive removal (e.g., greater then $2 million) may also qualify as an extraordinary circumstance justifying preauthorization. However, Headquarters approval must be obtained before preauthorization may be offered during negotiations for such activities.

(c) Covenants not to sue for preauthorization settlements.

For preauthorization of remedial design and remedial action (RD/RA) activities, the statute contains a specific provision related to remedy failure. Section 122(b)(4) of CERCLA states that for cases involving preauthorization, as described in section 122(b)(1), the Fund will be responsible for costs of remedy failure, up to a proportion equal to that contributed for the original remedial action. This section also states that the Fund portion may be met either through Fund expenditures or by recovering such costs from parties who were not signatories to the original agreement. However, it should be noted that remedy failure due to negligence of the PRP will not trigger any Fund obligation. In any case, a covenant not to sue granted in preauthorize settlements must comport with Agency guidance on covenants not to sue, as cited above.

(d) Settlement provisions needed to process claims.

Settlement agreements involving preauthorization should contain the following restrictions to facilitate the processing of claims:

- Settlement agreements should specify a percentage of the total estimated cost to be included in the preauthorization claim for PRP reimbursement, subject to a maximum dollar limit.
- Claims against the Fund are *not* subject to the section 104(c)(3) requirement that States contribute 10 percent of the cost of the remedial action. However, prospective claimants are encouraged to file a letter of cooperation from the State along with their request for preauthorization. This letter should describe any agreements resulting from the claimants' consultation with the State, including any State assurance of cooperation with the remedial action. Further, all actions conducted pursuant to a preauthorized claim must be consistent with the NCP and the proposed draft Response Claim regulations, when promulgated.
- Claims may be filed only for costs incurred after the date of preauthorization. Parties will not be eligible to make a claim against the Fund until the entire cleanup or agreed-upon preauthorized phase (e.g., an operable unit) is completed according to specifications set out in the settlement agreement and the Preauthorization Decision Document.
- Applicants must demonstrate that their proposed response costs are reasonable. The applicant should justify any proposal to perform an activity in-house, or to contract it out. Applicants may look to Federal and State procurement practices for guidance on how to meet EPA's objectives in the area of contracting and subcontracting.
- PRPs must be financially and technically capable of implementing all of the agreed upon response action. Parties may be required to submit financial assurances or performance bonds to substantiate their financial capability for completing the response action.

Cash-outs

For settlement proposals involving a cash-out by some of the PRPs, the nature of the remedy and the public interest factors are generally not decisive, since the Government will be conducting the response action. Thus, of the criteria in the Interim Settlement Policy noted in Section III, the key issues in these agreements include:

- The percentage of the total costs to be paid by settlors (i.e., a substantial portion should be offered);
- The Agency's level of confidence in information related to liability and cost estimates at the time of settlement;
- Equitable considerations for both the settling and non-settling parties, including the nature of any covenants not to sue in the cash-out settlement.

In general, cash-out settlements may occur at any stage of the remedial process. Such offers should generally be assessed in light of the criteria in Part IV of the Interim CERCLA Settlement Policy. It is important to note that, once a Fund-lead response action is ongoing, the potential benefit of mixed funding as a means of expediting cleanup is largely eliminated. In addition, a cash-out of some of the PRPs during the response action may serve to fragment the Government's enforcement proceedings, since cost recovery will generally be pursued once the remedial action is completed. Other issues related to cash-outs include:

(a) Information needs related to cash-out settlements.

One example of the use of cash-out settlements could involve PRPs which have contributed a low percentage of the waste to a site, and are not technically or financially capable of conducting the entire response action (e.g., preauthorization is not an option.) In order for this type of settlement to be appropriate for both settling and non-settling responsible parties, the Agency should have sufficient information to determine a settlement amount for the settlors as a group. This amount should be based on the Settlement Policy, and should include their waste contribution and other relevant information. Thus, the Agency should have a fairly high level of confidence in the information concerning the liability at the site and the expected cost of the remedy in order to determine an appropriate cash-out settlement.

The settlement may include a risk premium which may partially offset the Government's risk due to uncertainties such as remedy failure or cost overruns, as well as uncertainties which may be present if the necessary information is less than complete.

(b) Covenants not to sue in cash-out settlements.

The sufficiency of the Agency's information related to PRP liability and the nature, stage of development and the cost of the potential remedy has particular bearing on the scope of any covenant not to sue in cash-out settlements. In general, if the Agency has only limited information in these areas (e.g., if the cash-out settlement entered into early in the remedial process), then covenants not to sue should contain appropriate reopeners to reflect this uncertainty. In reference to these reopeners, it is important to note that the obligation of the Fund to pay for a portion of any costs incurred due to remedy failure, under section 122(b)(4), is limited to mixed funding in the form of preauthorization under section 122(b)(1). Thus, for cash-outs, the statute does not limit the potential PRP liability for costs resulting from remedy failure. Any future obligations will be specified in the cash-out agreement, including the covenants not to sue. Further guidance concerning covenants not to sue is provided in the Agency guidance "Covenants Not to Sue Under SARA" cited above.

In addition, although cash-out settlements need not involve *de minimis* parties, as defined by section 122(g), similar analytical factors are important in both instances. Thus, Agency guidance entitled "Interim Guidelines on Settlements with *De Minimis* Waste Contributors under Section 122(g) of SARA", cited above, may also be helpful for cash-out settlements.

(c) State cost-Share requirements for cash-out settlements.

When the Federal government uses its response authority to conduct a remedial action, section 104(c)(3) of CERCLA requires that the State "pay(s) or will assure payment" of 10% of the remedial action, including all future maintenance, or 50% or greater for sites involving a state operated facility. Since cash-out settlements involve PRP payment toward a federally-conducted remedial action, the applicable cost share is required for these settlements. The cost-share will be calculated using the total remedial costs, rather than the percentage of the Fund share alone.

There are a variety of ways that the State can "pay or assure payment" of the appropriate cost-share. For example, the State, the Federal government and PRPs may enter into an agreement under State law and CERCLA in which the PRPs pay 10% to the State, and the State obligates the money for use at the site in question. The State may also use its own funds to pay for any portion of its share that cannot be paid for by PRPs. In general, cash-out settlements should only be considered when the litigation team is reasonably certain that the State is willing and able to pay for its 10% share, although the cost-share need not be part of the consent decree between the Federal government and the PRPs.

Mixed Work

Mixed funding in the form of mixed work may be appropriate for cases in which the Agency can identify discrete phases or operable units of the response action. One common example involves a settlement with the PRPs to conduct the RD/RA once the Agency has conducted the RI/FS.

A second, more complicated mixed work arrangement could involve an agreement in which the Agency and the PRPs agree to conduct separate portions of an area-wide RI. In this example, the Agency might agree to conduct soil testing if the PRPS conduct ground-water monitoring. Regional enforcement personnel should be reasonably assured of PRP cooperation and the ability to identify in detail the individual activities for which each party will be responsible before entering into any mixed work settlement. In addition, any covenants not to sue in mixed work settlements should be clearly limited to the operable units addressed in the agreement. Mixed work should be avoided where there is a significant potential for delays in response actions as a result of inadequate coordination or potential conflicts. Thus, due to the high potential for technical and legal complications, mixed work in the form of mixed construction should generally not be considered.

Additional Considerations Regarding Mixed Funding

Operation and Maintenance: For preauthorized settlements, full responsibility for payment of operations and maintenance (O & M) activities remains with the PRPs. In some circumstances, a State may agree, as a party to the settlement, to manage O & M activities which are financed by PRPs. The Agency will generally resort to enforcement actions rather than committing Fund money for cleanup at the site when both the PRPs and the State refuse to be responsible for O & M.

Actions Against Non-settlors: It is the policy of the Department of Justice that the Federal government will not commit in a consent decree or other agreement to sue other non-settling parties. Consistent with this policy, mixed funding settlement agreements should not contain provisions which commit the Federal government to sue non-settling parties at a particular site. At most, the agreement may indicate that the Government has a "present intention" to sue non-settlors, subject to the exercise of the Government's enforcement discretion. Such provisions, however, must be approved by Headquarters and the Department of Justice (DOJ) on a case-by-case basis, and may not be offered in negotiations until such approval is obtained.

Reservation of Rights: Potential settlors occasionally will agree to allow the Government to reserve the right to bring an enforcement action against them, contingent upon a certain event, such as an unsuccessful enforcement action against non-settlors. Such an arrangement is not desirable, although it may be acceptable in limited circumstances. Such an offer should not be used by settlors as a means of reducing the amount offered up front. In addition, the negotiation team should consider the practical problems that might arise in implementing such an arrangement, including statute of limitation issues and fragmented enforcement actions involving successive suits covering similar issues. The Government generally prefers to settle for a substantial portion up front, rather than being required to bring a second enforcement action against settlors for an additional amount.

Documentation: For preauthorization and mixed workcases in which the Agency will take enforcement actions against non-settling parties, the Agency must assure that the settling PRPs agree to provide the necessary documentation and any other assistance required for support of the cost recovery cases. This assistance may include an agreement to provide witnesses to substantiate response costs. Government oversight will also be required, not only to assure that reimbursement by the Government is appropriate, but also that PRP documentation constitutes sufficient and admissible evidence for the cost recovery cases.

V. Procedural Considerations for Review of Settlements Involving Mixed Funding

As noted in Section I, consideration of a site for any type of mixed funding involves a two-stage process. The site first should be evaluated to determine if an offer for a mixed funding settlement in general (e.g., without regard to the particular funding arrangement) should be accepted. This analysis includes the settlement criteria, with the hypothetical examples in Section III indicating the Agency's preferences among various combinations of factors. Once the Regional enforcement personnel determines that a mixed funding settlement will be acceptable, then the factors noted in Section IV should be used to evaluate whether a particular type of mixed funding is appropriate.

The Agency has developed guidance on streamlining and improving the CERCLA settlement decision process, which, in part, highlights the need for improved preparation for negotiations and for a more systematic management review process. (See "Interim Guidance: Streamlining the CERCLA Settlement Decision Process", Porter/Adams, Feb. 12, 1987.) In keeping with the goals of this improved process, Regions should conduct both stages of the mixed funding analysis as early as possible (e.g., prior to the appropriate special notice.)

Timely Headquarters and DOJ notification is particularly important for cases involving preauthorization, since the use of preauthorization in settlements requires both the approval of the settlement for preauthorization, as described above, and the review by OERR of the request for preauthorization itself. Early DOJ involvement is necessary in mixed funding negotiations, as it is for other types of negotiations. While the preauthorization process need not be completed at the time of settlement, the settlement document must describe the major parameters of the proposed preauthorization agreement. Therefore, OERR should be contacted once the mixed funding analysis has been completed and the Region supports further consideration of preauthorization. For further information on the draft Response Claims regulations and the procedure for preauthorization with OERR, contact William O. Ross, Office of Emergency and Remedial Response (WH-548), (FTS) 382–4645.

Issues which cannot be resolved at the staff level may be raised to the Settlement Decision Committee (SDC), a Headquarters-based review panel. Like all consent decrees, mixed funding settlements will require final approval by the Assistant Administrator (AA) for the Office of Solid Waste and Emergency Response (OSWER), the AA-OECM, and the Assistant Attorney General for Lands and Natural Resources. If the amount to be paid by the Fund exceeds $750,000 or 10% of the total response cost (whichever is greater), approval by the Deputy Attorney General at DOJ will also be required. Regional enforcement personnel may, of course, decline to consider mixed funding at a particular site without prior Headquarters consultation.

VI. Conclusion

Settlement agreements incorporating mixed funding provisions, as described in part under section 122(b) of CERCLA, offer an alternative to either up front Fund financing of the total costs of response actions at a site, or possible delays in cleanup resulting from litigation required to force PRP action. Mixed funding represents one component of the Agency's comprehensive approach toward increased flexibility in settling CERCLA cases. This approach originates from the CERCLA Interim Settlement Policy as well as the codification of much of this Policy Section 122 of the 1986 Amendments.

The assessment of mixed funding for a particular site must always begin with the determination as to whether any type of mixed funding settlement is appropriate, based on the ten settlement criteria. At the broadest level, this evaluation will involve a determination as to the most effective means of promoting cleanup at a site while

insuring the most efficient use of the Agency's resources, including the Fund itself. Regions are encouraged to consider a mixed funding settlement when an assessment of the settlement criteria, including the strength of the evidence, the equities of the settlement, and the public interest, indicate that mixed funding is in the best interest of the Government, the public and the environment.

For further information or questions concerning this guidance, contact Kathy MacKinnon, OWPE (WH-527) at FTS: 475–6770.

Disclaimer

The policies and procedures established in this document are intended solely for the guidance of Government personnel. They are not intended and can not be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

[FR Doc. 88–5477 Filed 3–11–88; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export-Import Bank of the United States; Open Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, March 29, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Summary of Hearings, Medium-Term Report to Congress and Competitiveness Report, Review of 1988 Issues for Advisory Committee, Briefing on FCIA Strategic Plan, State/City Update, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than March 28, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to March 22, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Hart Fessenden,

General Counsel.

[FR Doc. 88–5557 Filed 3–11–88; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

856/860.1125 MHz
Rockford, IL
42–16–50 North
89–02–16 West

856/860.0375 MHz
Front Royal, VA
38–58–29 North
78–12–00 West

861/865.4875 MHz
Swanton, OH
41–35–00 North
83–50–59 West

856/860.5375 MHz
Morrison, CO
39–40–23 North
105–13–04 West

857/860.0625 MHz
Phoenix, AZ
33–33–33 North
112–33–30 West

856/860.5125 MHz
Baton Rouge, LA
30–25–56 North
91–11–06 West

856/860.5625 MHz
Woburn, MA
42–21–30 North
70–57–00 West

863.9875, 864.4375,
864.8875, 865.3375,
865.7875 MHz
Syracuse, NY
43–02–38 North
76–09–09 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on March 31, 1988. All applications received before March 31, 1988 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in order to be considered for these frequencies.*

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 AM and 3:00 PM at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–5494 Filed 3–11–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Cheshire Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

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Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 30, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cheshire Financial Corporation*, Keene, New Hampshire; to acquire 100 percent of the voting shares of The Monadnock Bank, Jaffrey, New Hampshire. Comments on this application must be received by March 31, 1988.

2. *Eastland Financial Corp.*, Woonsocket, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Eastland Savings Bank, Woonsocket, Rhode Island, and thereby indirectly acquire Woonsocket Institution Corporation, Woonsocket, Rhode Island, a bank holding company, and Eastland Bank, Woonsocket, Rhode Island. Comments on this application must be received by March 29, 1988.

3. *Eastland Savings Bank*, Woonsocket, Rhode Island; to become a bank holding company by converting from a mutual savings bank to a stock savings bank. Eastland Savings Bank owns 100 percent of Eastland Bank. Comments on this application must be received by March 29, 1988.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire Security Bank, Inc., Covington, Kentucky. Comments on this application must be received by March 31, 1988.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens National Bancorp, Inc.*, Athens, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Athens, Athens, Tennessee.

2. *First American Corporation*, to merge with Northern of Tennessee Corp., Clarksville, Tennessee, and thereby indirectly acquire Northern Bank of Tennessee, Clarksville, Tennessee; Central Bancorp, Inc., Murfreesboro, Tennessee; First Southern Bank of Rutherford County, Murfreesboro, Tennessee, formerly Citizens Central Bank; First Southern Bank, Mount Juliet, Tennessee; and Bedford County Bank, Shelbyville, Tennessee. Comments on this application must be received by March 31, 1988.

3. *FirstBancorp, Inc.*, Marathon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of the Florida Keys, Marathon, Florida.

4. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of Latta Bank & Trust Co., Latta, South Carolina.

5. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of Metroplex Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Bent Tree National Bank, Dallas, Texas; Bank of Las Colinas, N.A., Irving, Texas; Gleneagles National Bank, Plano, Texas; and Stemmons Northwest Bank, N.A., Dallas, Texas. Comments on this application must be received by March 31, 1988.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Phelps County Bank Employee Stock Ownership Plan*, Rolla, Missouri; to become a bank holding company by acquiring 35 percent of the voting shares of Phelps County Bancshares, Inc., Rolla, Missouri, and thereby indirectly acquire Phelps County Bank, Rolla, Missouri. Comments on this application must be received by March 31, 1988.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dominion Bancshares, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Dominion National Bank, Denver, Colorado.

2. *John Herbin, Inc.*, Jamestown, Kansas; to acquire 17 percent of the voting shares of The Jamestown State Bank, Jamestown, Kansas.

Board of Governors of the Federal Reserve System, March 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5430 Filed 3-11-88; 8:45 am]

BILLING CODE 6210-01-M

Landmark Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) (1) of the Board's Regulation Y (12 CFR 225.23(a) (1)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21 (a) of Regulation Y (12 CFR 225.21 (a)) to commence or to engage *de novo*, either directly or through a subsidiary, i a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "resonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the aplication must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Landmark Bancorp*, La Habra, California; to engage *de novo* through its subsidiary, Excelmark Mortgage Services, Inc., La Habra, California, in making, acquiring, and servicing real estate loans pursuant to § 225.25(b) (1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5431 Filed 3-11-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022288 AND 030488

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
1. BICC plc, Telefonaktiebolaget LM Ericsson, Continental Wire & Cable Division	88-0892	02/22/88
2. Legend Capital Group, L.P., Tele-Communications, Inc., Heritage Creative Outdoor Services, Inc	88-0955	02/22/88
3. J.H. Whitney & Co., Trust under the Will of Albert Orenstein, deceased, Home Curtain Corp	88-0864	02/22/88
4. Warner-Lambert Company, RJR Nabisco, Inc., Nabisco, Inc	88-0822	02/23/88
5. Burlington Northern Inc., David A. Sabey, Chemical Processors, Inc	88-0855	02/23/88
6. Granada Group PLC, Nicholas and Sally Wallner, Napcom Associates, Inc	88-0859	02/23/88
7. Metropolitan Life Insurance Company, Texas Life Insurance Company, Texas Life Insurance Company	88-0861	02/23/88
8. Granada Group PLC, Peter S. Redfield and Alice Daukas Redfield, Napcom Associates, Inc	88-0897	02/23/88
9. H Group Holding, Inc., Pacer Corporation, Pacer Corporation	88-0904	02/23/88
10. Mr. Summer M. Redstone, Orion Pictures Corporation, Orion Pictures Corporation	88-0916	02/23/88
11. Bunzl plc, Stanline, Inc., Stanline, Inc	88-0936	02/23/88
12. NACCO Industries, Inc., WearEver-ProctorSilex, Inc., WearEver-ProctorSilex, Inc	88-0953	02/23/88
13. The Horn & Hardart Company, International King's Table, Inc., International King's Table, Inc	88-0954	02/23/88
14. Chevron Corporation, PPG Industries, Inc., PPG Industries, Inc	88-0913	02/24/88
15. The Rochester Community Savings Bank, Investors Savings Bank, Investors Home Mortgage	88-0935	02/24/88
16. Takemoto Oil & Fat Co., Ltd., Benjamin Goulston, George A. Goulston Company & George A. Goulston Co., Inc	88-0874	02/25/88
17. Sentara Health System, Hampton Training School for Nurses, Inc., Hampton Gen. Hampton Training School for Nurses, Inc., Hampton Gen	88-0879	02/25/88
18. American Family Corporation, Guaranty Corporation, Guaranty Broadcasting Corporation	88-0911	02/25/88
19. Cencom Cable Associates, Inc., Cencom of Missouri, Cencom of Missouri	88-0977	02/25/88
20. Cencom Cable Associates, Inc., Cencom of Missouri II, Cencom of Missouri II	88-0978	02/25/88
21. Cencom Cable Associates, Inc., Cencom of Missouri III, Cencom of Missouri III	88-0979	02/25/88
22. Garden State Newspapers, Inc., c/o MediaNews Group, Inc., Kenneth R. Thomson, The Dispatch Publishing Co	88-0986	02/25/88
23. Kenneth R. Thomson, Garden State Newspapers, Inc., Sotex Newspapers, Inc., Del Rio Publishing Co., Inc	88-0987	02/25/88
24. Methodist Hospital of Indiana, Inc., Maxicare Health Plans, Inc., Maxicare Health Plans of the Midwest, Inc	88-0989	02/25/88
25. Kenneth R. Thomson, The John F. Young Trust & The John F. Young Test. Trust, The Dispatch Publishing Co	88-0992	02/25/88
26. Kenneth R. Thomson, c/o The Thomson Corporation Limited, The John F. Young Testament Trust, The Dispatch Publishing Co	88-0993	02/25/88
27. John W. Kluge, Orion Pictures Corporation, Orion Pictures Corporation	88-1004	02/25/88
28. Dominion Resources, Inc., Enron Corp., Enron Cogeneration Company	88-0890	02/26/88
29. Wilfred Uytengsu, American Brands, Inc., Sunshine Biscuits, Inc	88-0940	02/29/88
30. George F. Young, American Brands, Inc., Sunshine Biscuits, Inc	88-0942	02/29/88
31. The Rank Organisation PLC, Robert M. Ahnert, Fernwood, Inc	88-0969	02/29/88
32. The Rank Organisation Plc, Henry A. Ahnert, Fernwood, Inc	88-0970	02/29/88
33. The Rank Organisation Plc, Outdoor World Corporation, Outdoor World Corporation	88-0971	02/29/88
34. Pearson plc, Addison-Wesley Publishing Company, Inc., Addison-Wesley Publishing Company, Inc	88-0960	02/29/88
35. Pearson plc, Addison-Wesley Publishing Company, Inc., Addison-Wesley Publishing Company, Inc	88-0983	02/29/88
36. Amerada Hess Corporation, SB Special Investments Holding Company, SB Special Investments Holding Company	88-0990	02/29/88
37. Ralph J. Roberts, American Cellular Network Corp	88-1000	03/02/88
38. Ralph J. Roberts, American Cellular Network Corp	88-1001	03/02/88
39. Pacific Enterprises, Anne Burnett Windfohr, Burnett Ranches, Inc	88-1008	03/02/88
40. Stephen Adams, John P. McGoff, S E M Newspapers, Inc	88-0820	03/03/88
41. Mitsubishi Mining & Cement Co., Ltd., Hanson PLC, Kaiser Cement Corporation	88-0949	03/03/88
42. Sophus Berendsen A/S, Paul-Munroe Hydraulics, Inc., Paul-Munroe Hydraulics, Inc	88-0976	03/03/88
43. Mitsubishi Corporation, Mitsubishi Mining & Cement Co., Ltd., Mitsubishi Mining & Cement Co., Ltd	88-1036	03/03/88
44. Mitsubishi Corporation, Mitsubishi Mining & Cement Co., Ltd., Mitsubishi Mining & Cement Co., Ltd	88-1039	03/03/88
45. Oil Associates, Limited Partnership, Southmark Corporation, Southmark Corporation	88-1043	03/03/88
46. Staley Continental, Inc., Bessemer Securities Corporation, American Foodservice Supply, Inc	88-0906	03/04/88
47. Marriott Corporation, Sun Company, Inc., Radnor Corporation	88-0961	03/04/88
48. Donald J. Trump, MCA Inc., MCA Inc	88-0967	03/04/88
49. Donald J. Trump, The Gillette Company, The Gillette Company	88-0968	03/04/88
50. Kizo Matsumoto, Russell J. Osterman, San Jose Plaza, Ltd. and San Jose Plaza, II, Ltd	88-0973	03/04/88
51. K mart Corporation, Stichting Administratiekantoor Lauwerecht, Makro, Inc	88-0964	03/04/88
52. Takata Corporation, Morgan Stanley Group, Inc., Burlington, Industries, Inc	88-1014	03/04/88
53. Charles H. and Margaret M. Dyson, Pentek Corporation, Pentek Corporation	88-1027	03/04/88
54. Rochester Telephone Corporation, C,C&S Systems, Inc., C,C&S Systems, Inc	88-1045	03/04/88
55. Kizo Matsumoto, Charles J. Pankow, San Jose Plaza, Ltd. and San Jose Plaza II, Ltd	88-1053	03/04/88

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FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88–5444 Filed 3–11–88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(ID–010–08–4333–12)

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management, Boise District Office, Interior.

ACTION: Closure of Hull's Gulch Interpretive Trail to bicycle use.

SUMMARY: Pursuant to 43 CFR 8364.1, notice is hereby given closing Hull's Gulch Interpretive Trail to bicycle use. Recent significant increases in mountain bicycle use on this trail have necessitated this action.

FOR FURTHER INFORMATION CONTACT: Geroge Farrow, Recreation Planner at BLM, Boise District, 3948 Development Avenue, Boise, Idaho 83705 or at (208) 334–1582.

Dated: March 7, 1988.

J. David Brunner,

District Manager.

[FR Doc. 88–5465 Filed 3–11–88; 8:45 am]

BILLING CODE 4310-GG-M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579, Title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Tuesday, April 19, 1988 from 10:00 a.m. to 12:00 p.m. in the Jade Room, Lake Shore Inn, 21330 Lake Shore Drive, California City, California 93505.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—Rangeland Monitoring
—Rangeland Management Issues
—Desert Tortoise Populations

The meeting is open to the public, with time allocated for public comment after each subject has been presented. A field trip is planned for the afternoon of April 19 and for all day April 20. While visiting several allotments, resource concerns will be discussed and the District Manager will solicit recommendations from the Board.

Summary minutes of the meeting will be maintained in the California Desert District and will be available for public inspection during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District Office, Larry Morgan, 1695 Spruce Street, Riverside, California 92507, (714) 351–6402.

Dated: March 8, 1988.

James L. Williams,

Acting District Manager.

[FR Doc. 88–5478 Filed 3–11–88; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Micro Enterprise Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Micro Enterprise Advisory Committee meeting on March 28, 1988 at the Decatur Carriage House, 1610 H Street, NW., Washington, DC. The Committee will discuss guidelines for the implementation of the Agency for International Development's Micro-Enterprise Program.

The meeting will begin at 9:00 am and adjourn at 5:00 pm on March 28. The meeting is open to the public. Any interested persons may attend, file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and the extent the time available for the meeting permits.

Dr. Michael Farbman, Chief, Employment and Enterprise Development Division, Office of Rural and Institutional Development, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Dr. Ross E. Bigelow, of the same Division, may be deputized to act for Dr. Farbman during part or all of this meeting. It is suggested that those who wish more specific information concerning this meeting contact Dr. Bigelow, 1601 N. Kent Street, Arlington, Virginia 22209, or call 703–235–8904.

Dated: March 9, 1988.

Michael Farbman,

A.I.D. Representative, Micro-Enterprise Advisory Committee.

[FR Doc. 88–5549 Filed 3–11–88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 234X)]

CSX Transportation, Inc.; Abandonment Exemption; Cobb, Paulding, and Polk Counties, GA

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 24.68-mile line of railroad between milepost SG–593.72 near Power Springs and milepost SG–618.40 at Rockmart, located in Cobb, Paulding, and Polk Counties, GA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. district Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 24, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 3, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 19, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–5459 Filed 3–11–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–33 (Sub-No. 49X)]

Union Pacific Railroad Co.; Abandonment Exemption; Weld County, CO

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 20.6-mile line of railroad between milepost 22.2 near St. Vrains, and milepost 42.8 near Dent, in Weld County, CO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 24, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 3, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Room, 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad Initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 19, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–5458 Filed 3–11–88; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company and Atlantic City Electric Company, (the licensees), for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would:

(1) Increase the Minimum Critical Power Ratio (MCPR) safety limit in Technical Specifications (TS) 2.1.2 and 3/4.4.1 and in the Bases sections related to these TSs.

(2) Replace the curves in Figures 3.2.1–1 and 3.2.1–2 to provide Maximum Average Planar Heat Generation limit curves for two new fuel types that will replace two existing fuel types during the next operating cycle (Cycle 2).

(3) Change TS 3/4.2.3 to provide new MCPR limits for Cycle 2 operation providing limits for two exposure ranges rather than a single exposure range as in the existing TS. The two ranges are a) from Beginning-of-Cycle (BOC) to End-of-Cycle (EOC) minus 2000 MWD/ST and b) from EOC minus 2000 MWD/ST to EOC. The *Action* and *Surveillance Requirements* for TS 3/4.2.3 would also be revised to reflect this new option of using either of the two new exposure ranges and to delete the existing option of operating at 400°F or less.

(4) Revise existing Figure 3.2.3–1, MCPR vs Tau, by providing the MCPR vs Tau curves for the first exposure range discussed above and revise existing Figure 3.2.3–2, K_f Factor by deleting the K_f Factor curve and replacing it with the MCPR vs Tau curves for the second exposure range discussed above.

(5) Add a new Figure 3.2.3–3 with a new K_f Factor curve for Cycle 2 operation.

(6) Delete Table 3.2.3–1 which currently provides MCPR Feedwater Heating Capacity Adjustments for operation below 400°F.

(7) Revise the TSs to allow operation above the 100% Load Line and up to 105% Rated Core Flow by:

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[1] *See* Ex Parte No. 274 (Sub-No. 10), *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* ——— I.C.C. 2d ———, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

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[1] See Ex Parte No. 274 (Sub-No. 10) *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance.* ——— I.C.C. 2d ———, serviced December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440—48446).

(a) Extending the K, Factor curve up to 110% of Rated Core Flow (instead of the current 100%).

(b) Clamping the Upscale Setpoints for the Rod Block Monitor in TS Table 3.3.6–2 at the 100% recirculation flow value.

(c) Increasing the Motor Generator Set mechanical and electrical stops in TS 4.4.1.1.3 to physically allow for increased core flow.

The proposed action is in accordance with the licensee's application for amendment dated December 14, 1987.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the license with appropriate safety limits for operation with the Cycle 2 reload core, greater operational flexibility during the initial portions of the operating cycle, improved power ascension capability to full power and additional ability to compensate for reactivity reduction due to fuel exposure during the operating cycle.

Environmental Impacts of the Proposed Action

The proposed revisions to the Technical Specification limits adequately compensate for the proposed changes in the fuel load and for operation with increased core flow and extended load line limits. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in Connection with this action was published in the **Federal Register** on January 14, 1988 (53 FR 972). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Hope Creek Generating Station, dated December, 1984.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 14, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5479 Filed 3-11-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on March 28, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, March 28, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will be briefed and review: (1) The Human Factors Research Program plan, (2) the Fitness for Duty Rule, and (3) Policy Statement on Training and Qualification (tentative).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–3297) between 7:30 a.m. and 4:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 7, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-5540 Filed 3-11-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on March 30, 1988, at the Pacifica Hotel, 6161 Centinela Avenue, Culver City, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 30, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the Piping and Fitting Reliability Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 9, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-5541 Filed 3-11-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated January 5, 1988 (Reference GOL-88-002).

The proposed amendment would allow the operation of WNP-2 with control of valve RHR-V-8 transferred to the Alternate Remote Shutdown Panel during normal operation. This action if approved would result in resolution of concern over potential consequences of a postulated control room fire.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George

Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a subsequent notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 5.092.

For further details with respect to this action, see the application for amendment dated January 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 7th day of March, 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-5480 Filed 3-11-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-014]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; 5 U.S.C. App I) notice is hereby given a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, April 12, 1988, in the 29th Floor Boardroom of the World Trade Center, 2 Canel Street, New Orleans, LA., at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the 12 January 1988, meeting.
3. Request for recommendations of safety measures to offset closure of VTS New Orleans.
4. Barge lighting enforcement program by Coast Guard.
5. Announcement of transfer of committee directorate to Eighth District Aids to Navigation Branch. Introduction of new Executive Director, Executive Secretary, and Recording Secretary.
6. Update on recommendation concerning bridge safety made at meeting of 12 January 1988.
7. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander V. O. Eschenbureg, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard (md) Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: March 3, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-5500 Filed 3-11-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-88-9]

Petition for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 1, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ______, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 7, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23907	Bolivar Aviation	14 CFR 141.65	To allow petitioner to recommend graduates of its approved certification courses for flight instructor and airline transport certificates and ratings without taking the FAA's written tests.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
24605	World Jet Corporation	14 CFR 91.191(a) and 135.165(b)	To extend and amend Exemption No. 4703, which allows operation of certain aircraft in extended overwater operations using one long-range navigation system and one high-frequency communications system. The amendment to the exemption would add an additional type of aircraft to operate under the exemption.
25345	National Business Aircraft Association, Inc.	14 CFR 91.191(a)(4) and 135.165(b)	To allow petitioner's members to conduct overwater operations with one long-range navigation receiver.
25442	Interturbine	14 CFR 145.71 and 145.73	To inspect, repair, modify, and overhaul, in accordance with the original equipment manufacturer, components used on U.S.-registered aircraft operated by Eastern and Continental Airlines.
25499	National Business Aircraft Association, Inc.	14 CFR 43.3(g)	To allow pilots employed by petitioner's member air carrier companies to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft operating under Part 135.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
20314	Flight Training Devices	14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Part 61, Appendix A.	To extend Exemption No. 3022, as amended, which allows students of petitioner to complete a portion of the practical test for the issuance of an airline transport pilot certificate or of a type rating to be added to any grade of pilot certificate, by substituting the flight test requirements of § 61.157 for those of § 61.63(d) (2) and (3). *Grant, February 29, 1988.*
25275	Northern Pacific Transport, Inc	14 CFR 91.39(b) and 125.1(b)(2)	To allow petitioner to use restricted category aircraft under Part 125 for the carriage of outsize cargo between points in Alaska not served by any suitable form of surface transportation. *Denial, February 29, 1988.*
25516	Westair Commuter Airlines, Inc., dba United Express.	14 CFR 121.411(b)(2) and 121.413(b)	To allow petitioner to use British Aerospace (BAe) pilot simulator instructions for the purpose of training petitioner's initial cadre of pilots in the BAe 146 type airplane in Hatfield, United Kingdom, without those instructors meeting all of the applicable training requirements of Subpart N of Part 121. *Grant, March 2, 1988.*
25506	Capt. W.R. Alcorn, U.S. Navy	91.24	Petitioner seeks exemption from FAR § 91.24 in order to operate aircraft above 12,500 feet mean sea level without operating the aircraft's transponder and altitude reporting equipment. Such operations would be conducted within designated special use aircraft.
25550	Department of the Army, Col. John A. Geurin.	91.83(c)	Petitioner seeks exemption from FAR § 91.83(c) to allow selection of an alternate airport, under flight plan filing provisions, when weather conditions at the alternate airport are less than these prescribed under this section.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25302	Flight International, Incorporated	14 CFR 135.169 and 25.853	To allow petitioner to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections that became effective November 26, 1987.
25464	Alyeska Air Service	14 CFR 43.3(a)	To allow pilots employed by petitioner to perform the preventive maintenance functions of removing and/or replacing the passenger seats and seat belts of aircraft used in Part 135 operations.
25501	Tridair Helicopters	14 CFR 21.19	To allow petitioner to convert a Bell Long Ranger Model 206 helicopter from a single-engine to a twin-engine configuration without the required new type certificate.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25478	Trans Continental Airlines	14 CFR 25.853(c) and 121.312(b)	To extend Exemption No. 4870 that allows airplanes to operate without compliance with seat cushion flammability requirements after November 26, 1987. *Denial, February 25, 1988.*

[FR Doc. 88-5451 Filed 3-11-88; 8:45 am]

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Federal Highway Administration

Environmental Impact Statement; Hennepin County and Dakota County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of their intent to prepare an environmental impact statement for proposed highway improvement on I–35W in Hennepin County and Dakota County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen Bahler, Area Engineer, Federal Highway Administration, Suite 490, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101 (612) 290–3259
or
Mr. Craig Robinson, PreDesign Engineer, Minnesota Department of Transportation, District 5 Office, 2055 North Lilac Drive, Golden Valley, Minnesota 55422 (612) 593–8522.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, and the Twin Cities Metropolitan Council is planning to prepare an environmental impact statement (EIS) on a proposal to improve Interstate highway I–35W between Washington Avenue in the City of Minneapolis to Interstate highway I–35E in the City of Burnsville. The propsed improvement would involve reconstruction of about 17 miles of I–35W. The proposed project would also involve Interstate highway I–94 in Minneapolis, County Road 62 in Minneapolis and Burnsville and Interstate highway I–494 in Burnsville and Bloomington as necessary to facilitate interchange reconstruction.

The project is being considered in order to mitigate the accident and congestion problems caused by the existing and rising future travel demands and deficient roadway design on I–35W. Also the proposed project would replace or reconstruct the old and deteriorating existing roadway surface.

Alternatives being considered during the scoping process include the no build alternate, an alternate to upgrade pavement and major safety deficiencies (called minimum safe operation), and capacity improvements. The capacity improvements include new lanes for all vehicles, reserved high occupancy vehicle lanes and Light Rail Transit in conjunction with a range of roadway and capacity improvements. A variety of access alternatives are also being considered. In the vicinity of County Road 62, alignment alternatives are also being evaluated. All alternatives include Transportation System Management (TSM) elements, including the no build. Existing 1–35W includes TSM features such as ramp metering, ramp meter by-passes for carpools and buses, and camera surveillance to detect accidents and incidents.

A scoping document will be prepared and circulated for agency and public comment in accordance with state and federal requirements. A formal public scoping meeting will be held to receive comments on the issues addressed in the scoping document and on the proposed alternatives. That meeting will be held in the summer of 1988. Public notice of the time and place of the hearing will be given. In addition, several public information meetings have been held at various locations along the corridor to obtain public imput on potential alternates and impacts.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Mn/DOT at the address provided above.

(Calalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

The provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: March 4, 1988.

Alan Friesen,

District Engineer, St. Paul, Minnesota.

[FR Doc. 88–5466 Filed 3–11–88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-825]

Falcon Carriers, Inc. et al.; Application for Operating-Differential Subsidy for the Falcon Leader and Falcon Champion

By letter of February 12, 1988, Falcon Carriers, Inc.; Equity Carriers, Inc.; Equity Carriers I, Inc.; Equity Carriers III, Inc.; and Asco-Falcon II Shipping Company (applicants) applied for operating-differential subsidy (ODS) for the operation of the FALCON LEADER and FALCON CHAMPION. These ships are U.S.-flag product tankers built in 1983 and 1984 with construction-differential subsidy (CDS) and title XI financing quarantees. The applicants state that approximately $60 million of Title XI debt is outstanding on these two vessels. The vessels are long-term bareboat chartered to Falcon Carriers, Inc., and have been time chartered to the Military Sealift Command (MSC) since their delivery from the shipyard, for an initial term of five years, with additional renewals at MSC's option.

The FALCON LEADER's initial five year charter will expire in August 1988, and the FALCON CHAMPION's charter will expire in January 1989. The applicants further state that they had preliminary discussions with MSC concerning charter renewal and have submitted a formal written proposal. However, the applicants state that MSC has advised that they will probably not wish to enter into renewal negotiations. Therefore, the applicants believe that alternate employment will have to be sought for the two ships. The CDS-built FALCON LEADER and FALCON CHAMPION are not eligible to engage in domestic trade and the applicants believe that ODS is needed to enable the ships to compete effectively in world market trades.

Recognizing that current Administration policy prevents the award of new ODS contracts, the applicants offer the following proposal: the FALCON LEADER and FALCON CHAMPION would be included under already existing ODS contracts of affiliated companies in a manner which will ensure that the Government's overall ODS exposure is not increased. Equity Carriers I, Inc., Equity Carriers III, Inc.; and Asco-Falcon II Shipping Company operate three subsidized Texas-class dry bulk carriers—STAR OF TEXAS, PRIDE OF TEXAS, and SPIRIT OF TEXAS—under ODS Agreement, Contract MA/MSB–439. The applicants request a sharing system in which the existing ODS contract would be expanded to include the FALCON LEADER and FALCON CHAMPION on a basis where in any year only three ship-years worth of CDS would be payable. Under the existing ODS contract there is a maximum of 1,095 days (365 days X 3 vessels = 1,095) of ODS potentially payable each year. The revised and expanded ODS contracts would simply provide that no more than 1,095 days of ODS could ever be paid in any year for the five-ship group.

The applicants aver that this proposal does not increase the total obligation of the Government with respect to ODS and has the advantages of protecting the

Maritime Administration's collateral and augmenting the U.S.-flag participation in the world market commercial trades, which is a basic policy goal of the Merchant Marine Act.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street NW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on March 31, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Date: March 9, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–5535 Filed 3–11–88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1987

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1987 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. section 29(d)(2)(A)) (formerly section 44D, renumbered by the Deficit Reduction Act of 1984).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATE: The 1987 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1987.

Inflation Factor: The inflation adjustment factor for calendar year 1987 is 1.4949.

Price: The reference price for all qualified fuels is $15.41 per equivalent barrel for the 1987 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor: Frederick A. Judd IV, PM:PFR:R, Internal Revenue Service, 1201 E Street, NW., Room 1109, Washington, DC 20224, Telephone Number (202) 376–0720 (not a toll-free number).

For the reference price: Noel J. Sheehan, CC:C:2:6, Internal Revenue Service, 1111 Constitution Ave., NW., Room 5238, Washington, DC 20224 Telephone Number (202) 566–3928 (not a toll-free number).

D. Kevin Dolan,

Associate Chief Counsel (Technical and International).

[FR Doc. 88–5503 Filed 3–11–88; 8:45 am]

BILLING CODE 4830-01-M

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue NW., Room 2575, Washington, DC, 20224, Telephone No. (202) 566–9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on April 14 in Room 3313 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–5504 Filed 3–11–88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Photographs of Josef Sudek

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October, 1965 (Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, Photographs of Josef Sudek (see list), [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the San Francisco State Museum of Modern Art, San Francisco, CA, beginning on or about April 15, 1988, to on or about May 29, 1988, and the Art Institute of Chicago, Chicago, IL, beginning on or about June 25, 1988, to on or about September 5, 1988, the University of Pittsburgh Gallery, Pittsburgh, PA, beginning on or about October 9, 1988, to on or about November 6, 1988, and at the Cleveland Museum of Art, Cleveland, OH, beginning on or about December 7, 1988, to on or about February 5, 1989, is in the national interest.

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[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301–4th Street SW., Washington, DC 20547

Public notice of this determination is ordered to be published in the Federal Register.

C. Normand Poirier,

Acting General Counsel.

Date: March 11, 1988.

[FR Doc. 88-5688 Filed 3-11-88; 11:03 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; Prints and Paintings of Albin Brunovsky

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October, 1965 (Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, Prints and Paintings of Albin Brunovsky, (see list)[1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the San Francisco State University Gallery, San Francisco, CA, beginning on or about April 25, 1988, to on or about May 15, 1988, the Elvehjem Museum of Art, Madison, WI, beginning on or about June 4, 1988, to on or about July 31, 1988, the University of Pittsburgh Gallery, Pittsburgh, PA, beginning on or about October 9, 1988, to on or about November 6, 1988, and at the Cleveland Museum of Art, Cleveland, OH, beginning on or about December 7, 1988, to on or about February 5, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

C. Normand Poirier,

Acting General Counsel.

Date: March 11, 1988.

[FR Doc. 88-5689 Filed 3-11-88; 11:03]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street SW., Washington, DC 20547

Sunshine Act Meetings

Federal Register

Vol. 53, No. 49

Monday, March 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME, PLACE: Tuesday, March 29, 1988; 10:00 a.m. Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. As part of its review of the problems of stratospheric ozone depletion and global warming, the Council will be briefed by Dr. Alan D. Hecht, Director of the National Climate Program Office at the National Oceanic and Atmospheric Administration. Dr. Hecht will discuss the Five Year Plan developed by the National Climate Program for research related to climate change.
2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395-5754.

A. Alan Hill,

Chairman.

[FR Doc. 88-5581 Filed 3-10-88; 12:29 pm]

BILLING CODE 3125-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:27 p.m. on Tuesday, March 8, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider:

(1) The application of Commercial Bank of New York, a proposed new bank to be located at 301 Park Avenue, New York City, New York, for Federal deposit insurance; and

(2) Matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 9, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-5542 Filed 3-9-88; 4:50 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 9, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: March 16, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda—873rd Meeting, March 16, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
  Project No. 8287-007, Western Power, Inc.
CAP-2.
  Project No. 8863-002, Northeast Hydrodevelopment Corporation
CAP-3.
  Project No. 9894-003, Power Resources Development Corporation
CAP-4.
  Project No. 6186-003, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson and Dale E. Grenoble
  Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins
CAP-5.
  Project No. 1744-003, Utah Power & Light Company
CAP-6.
  Project No. 2142-008, Central Maine Power Company
CAP-7.
  Omitted
CAP-8.
  Project No. 2934-013, New York State Electric and Gas Corporation
  Project No. 4684-007, Long Lake Energy Corporation
CAP-9.
  Project No. 9883-002, Weyerhaeuser Company
CAP-10.
  Project No. 9391-002, Pan Pacific Hydro, Inc.
CAP-11.
  Project No. 9625-001, Frontier Land and Power
CAP-12.
  Project No. 8747-002, Power Resources Development Corporation
CAP-13.
  Project Nos. 4682-001 and 4685-001, Long Lake Energy Corporation
CAP-14.
  Project No. 9660-001, St. Maries Naturalists, Ltd.
CAP-15.
  Project No. 5251-001, City of Fort Smith, Arkansas
CAP-16.
  Docket No. EL85-38-000, Idaho Power Company
CAP-17.
  Docket No. ER88-119-000, Utah Power & Light Company
CAP-18.
  Docket Nos. ER87-455-000 and ER87-606-000, Idaho Power Company
CAP-19.
  Docket No. ER88-177-001, Southwestern Electric Power Company
CAP-20.
  Docket No. ER88-109-001, Commonwealth Edison Company
CAP-21.
  Docket No. ER86-558-015, Gulf States Utilities Company
CAP-22.
  Docket No. ER87-573-000, Mississippi Power Company
CAP-23.
  Omitted
CAP-24.
  Docket No. EL87-49-000, San Diego Gas & Electric Company v. Alamito Company
  Docket No. EL87-54-000, Alamito Company and Tucson Electric Power Company v. San Diego Gas & Electric Company
CAP-25.
  Docket No. QF82-169-001, QF82-171-001 and QF87-580-000, Applied Energy, Inc.
CAP-26.
  Project No. 4069-004, John L. Symons

Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins

Consent Miscellaneous Agenda

CAM-1.

Docket No. FA87-03-000, Virginia Electric Power Company

CAM-2.

Docket No. FA85-8-002, Public Service Company of New Hampshire

Docket No. FA86-23-003, Montaup Electric Company

CAM-3.

Omitted

CAM-4.

Docket No. RM87-29-000, State Corporation Commission of the State of Kansas

CAM-5.

Docket No. GP87-59-000, Department of Interior, Bureau of Indian Affairs, Osage Agency

CAM-6.

Docket No. GP86-45-001, Placid Oil Company

CAM-7.

Docket No. SA87-2-002, Pogo Producing Company

Docket No. SA87-3-002, Mobil Exploration and Producing, North America Inc. and Mobil Producing Texas & New Mexico Inc.

Docket No. SA87-6-002, Shell Offshore Inc. and Shell Oil Company

Docket No. SA87-11-002, Phillips Petroleum Company

Docket No. SA87-16-002, Columbia Gas Development Corporation

Docket No. SA87-28-002, Samedan Oil Corporation

Docket No. SA87-30-002, Sun Exploration and Production Company

CAM-8.

Docket No. RO85-9-001, Placid Oil Company

CAM-9.

(A) Docket No. IN86-5-003 (Phase I), Mobil Exploration and Producing North America, Inc.

(B) Docket No. IN86-5-005, (Phase II), Mobil Exploration and Producing North America, Inc.

Consent Gas Agenda

CAG-1.

Docket No. CP86-578-000, Northwest Pipeline Corporation

CAG-2.

Docket No. RP88-50-000, Williams Natural Gas Company.

CAG-3.

Docket No. RP88-63-000, Northwest Pipeline Corporation

CAG-4.

Docket No. TA88-4-5-002, Midwestern Gas Transmission Company

CAG-5.

Docket No. RP85-125-007 and TA88-1-12-001, Distrigas Corporation and Distrigas of Massachusetts Corporation

CAG-6.

Docket Nos. TA81-1-21-026 and RP87-55-002, Columbia Gas Transmission Corporation

CAG-7.

Docket No. RP85-169-032, Consolidated Gas Transmission Corporation

CAG-8.

Docket Nos. RP88-45-002 and RP88-46-001, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-9.

Docket Nos. RP88-44-001 and CP88-203-001, El Paso Natural Gas Company

CAG-10.

Docket Nos. RP88-41-001, RP85-13-017 and RP87-27-002, Northwest Pipeline Corporation

CAG-11.

Docket No. RP87-16-003, El Paso Natural Gas Company

CAG-12.

Docket No. RP86-51-002, Northwest Pipeline Corporation

Docket No. RP88-164-001, Mountain Fuel Resources, Inc. v. Northwest Pipeline Corporation

CAG-13.

Docket No. RP82-55-035, Transcontinental Gas Pipe Line Corporation

CAG-14.

Docket No. CP86-578-014, Northwest Pipeline Corporation

CAG-15.

Docket No. RP88-40-001, Mountain Fuel Resources, Inc.

CAG-16.

Docket No. RP85-193-005, North Penn Gas Company

CAG-17.

Docket NO. RP87-26-024, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-18.

Docket Nos. RP86-14-034, 036 and RP86-108-017, Columbia Gulf Transmission Company

Docket Nos. RP86-15-034, 036 and RP86-112-018, Columbia Gas Transmission Corporation

CAG-19.

Docket Nos. RP88-35-001, CP88-99-000, CP88-100-000 and CP86-143-001, Transwestern Pipeline Company

CAG-20.

Docket No. RP85-177-049, Texas Eastern Transmission Corporation

CAG-21.

Docket No. CP86-582-017, Natural Gas Pipeline Company of America

CAG-22.

Docket No. TA88-1-48-002, ANR Pipeline Company

CAG-23.

Omitted

CAG-24.

Docket Nos. TA88-1-9-000 and 002, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-25.

Docket No. IS88-13-000, Point Arguello Pipeline Company

CAG-26.

Docket Nos. TA85-1-33-004, TA84-1-33-001 and TA84-2-33-015, El Paso Natural Gas Company

CAG-27.

Omitted

CAG-28.

Docket No. TA87-3-55-003, Mountain Fuel Resources, Inc.

CAG-29.

Docket No. TA88-2-8-000, South Georgia Natural Gas Company

CAG-30.

Docket No. TA88-1-4-000, Granite State Gas Transmission, Inc.

CAG-31.

Docket No. TA88-1-37-000, Northwest Pipeline Corporation

CAG-32.

Docket Nos. CP86-589-002, RP86-104-003 and RP85-30-012, Colorado Interstate Gas Company

CAG-33.

Docket Nos. RP86-33-000 and RP86-91-000, Midwestern Gas Transmission Company

CAG-34.

Docket No. RP86-109-005, ANR Pipeline Company

CAG-35.

Docket No. ST88-1213-000, Mississippi Fuel Company

CAG-36.

Docket No. ST88-354-000, Stauffer-Wyoming Pipeline Company

CAG-37.

Omitted

CAG-38.

Docket No. CP83-336-206, Williston Basin Interstate Pipeline Company

CAG-39.

Docket No. CP85-834-006, Colorado Interstate Gas Company

CAG-40.

Docket No. CP86-676-001, Equitable Gas Company, a Division of Equitable Resources, Inc. and Equitable Transmission Company

CAG-41.

Docket No. CP88-229-001, Williams Natural Gas Company

CAG-42.

Docket No. CP88-6-001, United Gas Pipe Line Company

CAG-43.

Docket Nos. CP87-196-001 through CP87-196-003 and CP87-196-005, Transcontinental Gas Pipe Line Corporation

Docket No. CP87-203-001 through CP87-203-004, Consolidated Gas Transmission Corporation and North Penn Gas Company

CAG-44.

Docket No. CP87-210-001, Natural Gas Pipeline Company of America

Docket No. CP87-190-001, Lone Star Gas Company, a Division of Ensearch Corporation

CAG-45.

Docket No. CP85-186-004, Valero Interstate Transmission Company

Docket Nos. CI85-206-002, CI85-207-002 and CI85-213-002, Shell Western E&P, Inc.

CAG-46.

Docket No. CP85-631-002, Williams Natural Gas Company

CAG-47.

Docket No. CP81-84-000, Transcontinental Gas Pipe Line Corporation

Docket No. CP81-297-000, Eastern Shore Natural Gas Company

CAG-48.

Docket No. CP87-398-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG-49.

Docket No. CP87-281-000, Northwest Alabama Gas District

CAG-50.

Docket No. CP88-80-000, National Steel Corporation

CAG-51.

Docket No. CI86-22-003, Fina Oil and Chemical Company, Petrofina Delaware Incorporated, Fina Oil & Gas, Inc. and Fina Exploration, Inc.

Docket No. CI87-240-001, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership

Docket No. CI87-385-002, Phillips 66 Natural Gas Company

Docket No. CI87-686-001, Texaco, Inc., Texaco Producing, Inc. and Getty Oil Company

Docket No. CI88-229-000, Phillips Petroleum Company

Docket No. CP85-710-008, Northern Natural Gas Company, Division of Enron Corporation

Docket No. CI86-33-003, Sun Exploration and Production Company

Docket No. CI87-308-002, ARCO Oil and Gas Company, Division of Atlantic Richfield Company

Docket No. CI87-360-001, Coastal Oil & Gas Corporation

Docket No. CI87-361-001, ANR Production Company

Docket No. CI85-685-003, Northwest Pipeline Corporation

Docket No. CI86-22-003, Northwest Pipeline Corporation

Docket No. CI87-686-001, Northwest Pipeline Corporation and Transcontinental Gas Pipe Line Corporation

Docket No. CI88-229-000, Northwest Pipeline Corporation

CAG-52.

Docket No. CP83-452-052, Columbia Gas Transmission Corporation

Docket No. CP85-710-008, Northern Natural Gas Company, Division of Enron Corporation

Docket Nos. CI86-373-003 and CI86-370-003, Texas Gas Transmission Corporation

Docket Nos. CI86-278-003 and CI86-86-003, Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company

CAG-53.

Docket No. CP87-106-001, Midwestern Gas Transmission Company

I. Licensed Project Matters

P-1.

Reserved

II. Electric Rate Matters

ER-1.

Docket No. ER84-705-000, Boston Edison Company. Opinion and order determining just and reasonable rates, including prudence of Pilgrim II cancellation costs.

ER-2.

Docket No. EL86-53-001, Southern Company Services, Inc.

Docket No. EL86-57-001, Gulf States Utilities Company v. Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Company Services, Inc. Opinion and order concerning unit power sales agreement and an interchange contract.

Miscellaneous

M-1.

Docket No. RM88-6-000, Administrative Determination of Full Avoided Costs, Rates for Sales of Power to Qualifying Facilities and Interconnection Facilities. Notice of Proposed Rulemaking.

M-2.

Docket No. RM88-5-000, Regulations Governing Bidding Programs. Notice of Proposed Rulemaking.

M-3.

Docket No. RM88-4-000, Independent Power Producers. Notice of Proposed Rulemaking.

I. Pipeline Rate Matters

RP-1.

Docket Nos. RP84-42-001, RP72-133-024, TA80-1-11-002, TA80-2-11-002, TA81-1-11-002, TA81-2-11-005, TA82-1-11-005, TA82-2-11-008, TA83-1-11-004, TA83-2-11-004, TA84-1-11-003, TA84-2-11-003, and TA84-2-11-002 (Phase III), United Gas Pipe Line Company. Opinion on initial decision concerning upaid accruals.

RP-2.

Docket Nos. ST84-773-000, ST86-1599-000, ST86-1601-000, ST86-1603-000, ST86-1643-000, ST86-1933-000, ST86-1937-000, ST86-1965-000, ST86-2265-000, ST86-2317-000, ST86-2323-000, ST86-2687-000, ST86-2688-000, ST86-2690-000, ST86-2699-000, ST86-2701-000, ST86-2706-000, ST86-2707-000, ST87-1518-000 and ST87-3269-000, Delhi Gas Pipeline Corporation. Order on NGPA Section 311 intrastate rates.

II. Producer Matters

CI-1.

Reserved

III. Pipeline Certificate Matters

CP-1.

Docket No. CP87-451-004, Northeast U.S. Pipeline Projects

Docket Nos. CP87-380-000, CP87-492-000, CP87-554-000, CP88-167-000, CP88-185-000, CP88-186-000, CP88-187-000, CP88-188-000, CP88-189-000, CP88-192-000, Algonquin Gas Transmission Company

Docket Nos. CP88-168-000 and CP88-169-000, Champlain Pipeline Company

Docket Nos. CP86-334-000, CP87-5-000, CP87-313-000, CP87-314-000, CP87-447-000, CP88-128-000, CP88-183-000, CP88-195-000, CNG Transmission Corporation

Docket Nos. CP87-339-000, CP88-129-001, CP88-163-000 and CP88-164-000, Columbia Gas Transmission Corporation

Docket No. CP87-428-000, Consolidated Gas Transmission Corporation

Docket Nos. CP88-160-000 and CP88-161-000, Distrigas of Massachusetts Corporation

Docket No. CP88-193-000, Eastern American States Transmission Company

Docket Nos. CP86-329-001 and CP86-330-001, Erie Pipeline Company

Docket Nos. CP88-190-000 and CP88-191-000, Greater Northeast Pipeline Corporation

Docket No. CP88-178-000, Indiana-Ohio Pipeline Company

Docket Nos. CP86-523-000, 001, 002, 003, CP86-524-000 and CP88-196-000, Iroquois Gas Transmission System

Docket Nos. CP88-47-000 and CP88-94-000, National Fuel Gas Supply Corporation

Docket No. CP88-194-000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation

Docket No. CP88-175-000, Northeastern Gas Transmission Company

Docket No. CP88-77-000, Northern Border Pipeline Company

Docket Nos. CP87-4-000, CP88-181-000 and CP88-197-000, PennEast Gas Services Company

Docket No. CP88-183-000, PennEast Gas Services Company and CNG Transmission Corporation

Docket Nos. CP88-182-000 and CP88-195-000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation

Docket Nos. CP87-75-000, CP87-85-000, CP87-131-000, 001, CP87-132-000, 001, CP87-358-000, 001, CP88-171-000, CP88-172-000, CP88-173-000, CP88-174-000 and CP88-176-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Docket Nos. CP86-43-001, CP87-28-000, CP88-179-000 and CP88-180-000, Texas Eastern Transmission Corporation

Docket No. CP87-380-000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company

Docket Nos. CP87-92-000, 001, 002 and CP87-312-000, Texas Eastern Transmission Corporation and PennEast Gas Services Company

Docket Nos. CP85-294-000, CP88-92-000 and CP88-177-000, Transcontinental Gas Pipe Line Corporation. Procedural order on applications to provide new gas service to the Northeast U.S.

CP-2.

Docket No. CP85-437-006, Mojave Pipeline Company

Docket Nos. CP87-479-001 and CP87-480-000, Wyoming-California Pipeline Company. Order on rehearing on applications to provide new gas service for the enhanced oil recovery market in California.

CP-3.

Docket No. RP86-13-000, James River Corporation of Nevada v. Northwest Pipeline Corporation. Order on complaint

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of failure to provide transportation and on request to abandon transportation.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5572 Filed 3-10-88; 11:35 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1400)

TIME AND DATE: 10:00 a.m. (e.s.t.), Wednesday, March 16, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Action Items

A–Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1988 Series A Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1988 Series A Power Bonds.

A3. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1988, Pursuant to section 26 of the TVA Act.

A4. Modification of the Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(4.1) Upgrade Sewage Treatment Service Capabilities at Sequoyah Nuclear Plant (4.2) Complete Modifications to the Makeup Water Treatment Plant at Sequoyah Nuclear Plant.

A5. Modification of the Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Control Rod Drives Changeout at Browns Ferry Nuclear Plant.

B—Purchase Awards

[1] B1. Negotiation GL-38017B—Low Pressure Turbine Blades for Cumberland Fossil Plant.

B2. Invitation GL-31074B—Tractor-Scrapers for Colbert, Kingston, John Sevier, and Widows Creek fossil plants.

B3. Negotiation GB-06281A—Electrostatic Precipitator Modifications on Johnsville Fossil Plant Units 7 Through 10.

B4. Requisition 64—Long-Term Spot Coal for Shawnee and Widows Creek Steam Plants.

C—Power Items

C1. Letter Agreement Between TVA and Kentucky Utilities Covering Arrangements for Delay in Establishment of the Pineville 500-kV Interconnection Point Provided for Under a 1979 Agreement Between the Parties.

C2. Supplement to Agreement No. TV-70477A with the Nuclear Management and Resources Council, Inc. (NUMARC), Covering Arrangements for Participation in NUMARC, the Chief Speaking Body for the Nuclear Industry on Regulatory Matters before NRC and other Federal Agencies.

C3. Supplement to Agreement No. TV-62776A with the Electric Power Research Institute (EPRI) Covering Arrangements for Participation with other Nuclear Utilities in the Seismicity Owners Group, an Organization Formed to Sponsor and Fund Work toward Investigating Seismic Hazards for Nuclear Electric Generating Plants in the Eastern United States.

D—Personnel Items

D1. Personal Services Contract No. TV-74326A with EG&G Intertech, Inc., Falls Church, Virginia, for Completion of Watts Bar Nuclear Plant Weld Reinspection Program.

E—Real Property Transactions

E1. Modification of Deed to Lakeshore Investors Limited III Affecting 13.3 Acres of Chickamauga Reservoir Land Located in Hamilton County, Tennessee, to Allow the Conversion of 121 Apartment Units to Condominiums—Tract No. XCR-444.

E2. Grant of Permanent Easement to Reed Crushed Stone Company, Inc., Affecting Approximately 0.9 Acre of Kentucky Reservoir Land Located in Livingston County, Kentucky to Provide Suitable Access for an Office Complex—Tract No. XGIR-913H.

E3. Sale of Noncommercial, Nonexclusive Permanent Recreation Easement to Bob E. Oxendine, Affecting a Total of 0.06 Acre of Tellico Reservoir Shoreline Located in Monroe County, Tennessee, for the Construction of Private Water Use Facilities—Tract No. XTELR-67RE.

E4. Filing of Condemnation Cases

F—Unclassified

F1. Supplement No. 7 to Agreement No. TV-61962A with Tennessee State University, Nashville State Technical Institute, and the State of Tennessee Board of Regents for Coordination and Administration of the Craft/Skill Upgrade Training Program at the Industrial Training Center at Cockrill Bend in Nashville, Tennessee.

F2. Supplement No. 4 to Contract No. TV-67766A with Tennessee State University for TVA to Assist the University in Administering the Craft/Skill Upgrade Training Program at the Industrial Training Center of the Nashville Project.

F3. Supplement No. 1 to Subagreement No. 21 to Memorandum of Agreement No. TV-23928A between TVA and the U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Improvements to Navigation Facilities on the Tennessee River.

F4. Contract No. TV-73494A with the Swedish Society for Ethanol Development Covering Arrangements for TVA to Make its Specialized Services Available to Conduct Tests Related to Production of Ethanol and Other Chemicals from Biomass.

F5. New Investment Management Agreements Between the Tennessee Valley Authority Retirement System and Seven Investment Managers (Disciplined Investment Advisors, Inc.; Sun Bank, N.A.; Geewax, Terker & Company; Morgan Grenfell Capital Management, Inc.; Pacific Investment Management Company; Duff & Phelps Investment Management Company; and W.R. Huff Asset Management Company).

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: March 9, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-5584 Filed 3-10-88; 11:01 am]

BILLING CODE 8120-01-M

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[1] This item approved by individual Board members. This would give formal ratification to the Board's action.

Corrections

Federal Register
Vol. 53, No. 49
Monday, March 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 88-009]

Importation of Sheep

Correction

In proposed rule document 88-4395 beginning on page 6656 in the issue of Wednesday, March 2, 1988, make the following corrections:

1. On page 6659, in the second column, in the fourth complete paragraph, in the second line, after "States", insert "unless".

§ 92.44 [Corrected]

2. On page 6663, in the first column, in § 92.44(a)(5), before the first "The", insert "If".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Proposal To Revoke GRAS Status for Use on "Fresh" Potatoes Served or Sold Unpackaged and Unlabeled to Consumers; Extension of Comment Period

Correction

In proposed rule document 88-3181 appearing on page 4184 in the issue of Friday, February 12, 1988, make the following correction:

In the subject heading, in the third line, "Unpackaged" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N-0434]

Mattox & Moore, Inc., Esmopal; Opportunity for Hearing

Correction

In notice document 88-2997 beginning on page 4214 in the issue of Friday, February 12, 1988, make the following corrections:

1. On page 4216, in the second column, in the first complete paragraph, in the third line, after "that", insert "it".

2. On page 4217, in the first column, in the first complete paragraph, in the 10th line, "dose" should read "does".

3. On the same page, in the second column, in the 30th line, "505" should read "512".

4. On page 4218, in the first column, in the first complete paragraph, in the third line from the bottom, "level" should read "levels".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 88-3327 beginning on page 4724 in the issue of Wednesday, February 17, 1988, make the following correction:

On page 4724, in the second column, under *Type of meeting and contact person*, in the last line, the phone number should read "419-259-6211".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-12; A-19416-D and A-20242-D]

Reconveyed Land Opened to Entry; Apache County, Arizona

Correction

In notice document 87-28305 appearing on page 46847 in the issue of Thursday, December 10, 1987, make the following correction:

In the first column, in the DATE line, "March 9, 1987" should read "March 9, 1988".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

Correction

In rule document 88-5118 beginning on page 7325 in the issue of Tuesday, March 8, 1988, make the following correction:

On page 7326, in the first column, under "Authority", in the fourth line, "12228" should read "11228".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-26]

Alteration to Control Zone and Transition Area, Monroe County Airport, Bloomington, IN

Correction

In rule document 88-2968 beginning on page 4118 in the issue of Friday, February 12, 1988, make the following correction:

§ 71.171 [Corrected]

In § 71.171, on page 4119, in the second line, "VORTAC; 236" should read "VORTAC 236".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8186]

Income Tax, Taxable Years Beginning After December 31, 1953; Election To Be Taxed as a Real Estate Mortgage Investment Conduit and Other Administrative Matters; and OMB Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 88-5127 beginning on page 7504 in the issue of Wednesday, March 9, 1988, make the following correction:

PART 1—[CORRECTED]

On page 7507, in the second column, under Authority, in the fifth line, "27 U.S.C." should read "26 U.S.C.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8179]

Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group

Correction

In rule document 88-4238 beginning on page 6603 in the issue of Wednesday, March 2, 1988, make the following corrections:

§ 1.52-1 [Corrected]

1. On page 6605, in the second column, in § 1.52-1(h)(2)(i), in the third line, "is" should read "it".

§ 1.414(c)-3 [Corrected]

2. On page 6608, in the third column, in § 1.414(c)-3(d)(6)(i), in the seventh line, "with" should read "which".

3. On page 6609, in the first column, in § 1.414(c)-3(e), Example (1), in the 11th line, "and ABC" should read "of ABC".

§ 1.414(c)-4 [Corrected]

4. On page 6610, in the second column, in § 1.414(c)-4(b)(3)(ii)(A), in the 12th line, "decedent's" was misspelled.

5. On page 6611, in the first column, in § 1.414(c)-4(b)(6)(ii), in the second line, the first "In" should read "If".

§ 1.1563-1 [Corrected]

6. On page 6612, in the second column, in § 1.1563-1(a)(3)(ii), Example (3), in the first complete paragraph, in the seventh line, insert "of" after "stock".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8181]

Manufacturers and Retailers Excise Taxes; Election to Have Certain Diesel Fuel Taxes Imposed on Sales to Retailers; and OMB Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 88-4373 beginning on page 6518 in the issue of Tuesday, March 1, 1988, make the following correction:

§ 48.4041-21T [Corrected]

On page 6521, in the second column, in § 48.4041-21T(h)(2), under "SELLER'S CONSENT TO LIABILITY", in the second paragraph, in the last line, "thereof" should read "therefor".

BILLING CODE 1505-01-D

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federal register

Monday
March 14, 1988

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends the test procedures for central air conditioners, including heat pumps. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA). Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

The purpose of today's notice is to improve and refine the test procedure for central air conditions, including heat pumps. Specifically, DOE is expanding the coverage of the test procedures to address innovative designs, including split-type ductless systems and variable-speed central air conditioners.

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

a. Background

The energy conservation program for consumer products was established pursuant to Title II, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619), and the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12). Among other program elements, section 323 of the EPCA, as amended, requires that standard methods of testing be prescribed for covered products, including central air conditioners and heat pumps. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for evaluating the cooling performance of air-source central air conditioners were issued initially by DOE on November 21, 1977. 42 FR 60150, November 27, 1977. Test procedures for evaluating the heating performance of air-source heat pumps as well as amendments to the test procedures for central air conditioners were issued by DOE on December 10, 1979. 44 FR 76700, December 27, 1979. On March 15, 1985, DOE issued a Notice of Inquiry to solicit comments concerning a rating method for determining efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing of such units. 50 FR 13042, April 2, 1985. DOE published a proposed rule on October 3, 1986, 51 FR 35736, and held a public hearing November 12, 1986. To encourage broad participation in the rulemaking proceeding, DOE extended the comment period to January 30, 1987. 51 FR 40442, November 7, 1986.

Today's rulemaking expands the coverage of the test procedures to address innovative designs, including split-type ductless systems and variable-speed central air conditioners. It also prescribes additional requirements for alternative rating methods for estimating efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing, by defining the meaning of a coil family and establishing a requirement for test data to support the results.

In 1981, DOE's Office of Hearings and Appeals (OHA) granted an exception authorizing a change in the test procedure to York Division Unitary Products (York) for its variable-speed heat pump. Federal Energy Guidelines, 7 DOE No. 81,209. In 1983, OHA extended the exception to Borg-Warner Central Environmental Systems (Borg-Warner), formerly York. Federal Energy Guidelines, 10 DOE No. 81,026. The two exceptions specify an alternative test procedure for evaluating variable-speed heat pumps. In 1986, the Carrier Corporation (Carrier) petitioned the Department for a test procedure waiver for its variable-speed heat pump. 51 FR 5587, February 14, 1986. DOE granted Carrier's petition on September 19, 1986, approving an alternative test procedure different from the Borg-Warner approach. 51 FR 35403, October 3, 1986. The Department also granted a waiver to the Trane Company for variable-speed heat pumps on March 26, 1987. 52 FR 11855, April 13, 1987. Today's rule establishes a test procedure for variable-speed heat pumps reflecting the methods used in the waivers granted to Carrier and Trane. The exceptions to Borg-Warner and York and waivers granted to Carrier and Trane by DOE will terminate on the effective date of today's rule.

b. Discussion of Comments

In response to the October 1986 proposal, DOE received comments from manufacturers, utility companies, a trade association, and interested individuals. The major issues raised by the comments are discussed below:

1. Continuous Air Test Method

The continuous air test method was proposed by DOE to replace the current damper test method. The continuous air test method eliminates the need for dampers and measures the efficiency of equipment while the fan moves air continuously across the indoor coils. The continuous air test method is based on American National Standards Institute/American Society of Heating Refrigerating and Air Conditioning Engineers (ANSI/ASHRAE) Standard 116-1983 and Air Conditioning and Refrigeration Institute (ARI) Standard 210/240-84.

Eleven manufacturers and an industry trade association, the Air Conditioning and Refrigeration Institute (ARI), addressed the issue of the continuous air test method.

Manufacturers agreed that the continuous air method would be a benefit, provided that DOE address certain concerns or problems. The manufacturers' primary concern was that the values for Seasonal Energy Efficiency Ratio (SEER) or Heating Seasonal Performance Factor (HSPF) rating for existing models of central air conditioners should remain unchanged. This would eliminate the requirement to retest and rerate all equipment. (York, No. 28, at 1; Bard, No. 31, at 1; IEC, No. 32, at 1; ARI, No. 39, at 2; Snyder General, No. 41, at 2; Carrier, No. 40, at 4) [1]. DOE's proposal would have established the continuous air test method with a six-minute compressor "on" time and a six-minute capacity integration time. (Hereafter referred to as the six- and six-method). The capacity integration time is the interval during which the cooling or heating capability of the air conditioner or heat pump is measured. However, the ARI Standard 210/240-84 requires a six-minute compressor "on" time with an eight-minute capacity integration time (Hereafter referred to as the six- and eight-method). Nine manufacturers protested the use of a continuous air method with the DOE six- and six-method, recommending the ARI six- and eight-method. (Addision, No. 43, at 2; Lennox, No. 35, at 2; Rheem, No. 29, at 2; ARI, No. 39, at 2; Synder General, No. 41, at 2; IEC, No. 32, at 2; Heil Quaker, No. 34, at 2). York commented that the continuous air method with a six- and six-method showed an average 3.8 percent lower SEER rating than the rating achieved with the current damper method. When using a six- and eight-method the SEER value is 1.85 percent higher than the damper method. (York, No. 28, at 3).

Two commenters considered the additional expense of retrofitting test facilities to conform to the continuous air test method and testing models in accordance with the proposed test procedure to be excessive and burdensome. (Trane, No. 26, at 5; Addison, No. 43, at 2). These commenters also argued that the need or requirement to retest old models would add expense and impact negatively on manufacturer research and development.

Also bearing on this issue are the provisions of the National Appliance Energy Conservation Act (NAECA) of 1987, which require DOE to revise appropriately the energy conservation standard of a product when an amended test procedure would alter the measure of efficiency on energy use for that product. *See* Section 323(e).

DOE has examined three possible actions: To adopt the continuous air method with the six- and six-method, to adopt the continuous air method with the six- and eight-method, or to retain the current damper method. The Department has evaluated the impacts each action would have on the industry and consumers, as well as the energy implications of each approach.

DOE believes the adoption of the ARI Standard 210/240-84 and ANSI/ASHRAE Standard 116-1983 continuous air test method (with either six-and six-method or six- and eight-method) would cause disruption of test facilities, increase manufacturer costs, delay research and development, and require DOE to revise the energy conservation standards in order not to have an impact on the stringency of the legislated minimum efficiency levels. Use of the current DOE test procedure will allow manufacturers to utilize their test facilities for research and development of new products meeting NAECA's minimum efficiency requirements. It also eliminates the various problems of retesting, rerating and redefining the SEER and the HSPF values. The Department believes that although the continuous air method is an adequate method of testing, the current method has achieved a level of familiarity, confidence, dependability, and reliability over the years. The transition to the new procedure would surface all the concerns that existed when the current test procedure was first introduced. For these reasons, DOE has decided not to incorporate ANSI/ASHRAE Standard 116-83 and ARI Standard 210/240-84, and the proposed cyclic test in today's rule, leaving the damper method in place.

2. Degradation Coefficient

Several commenters objected to the proposed change in the assigned value of the heating degradation coefficient (C_D) from .25 to .35. The York Company (York, No. 28, at 3-4) stated that the change to a .35 value for C_D would reduce the HSPF rating in Region IV by five percent, requiring manufacturers to retest. The test burden was seen as excessive by Addison (Addison, No. 43, at 5 and 8). Four additional commenters objected to changing the value of C_D. (Synder General, No. 41, at 3; ARI, No. 29, at 10; IEC, No. 32, at 2; Bard, No. 31, at 4). Information provided by the National Bureau of Standards (NBS) indicated a tendency for C_D to differ between heating and cooling by approximately 0.1. This information indicates the average value of the heating C_D to be between .20 and .30. DOE has reviewed the comments and the NBS analysis and agrees that raising the CD value will result in additional testing with little increase in the accuracy of the ratings and may, in some cases, result in less accurate efficiency ratings.

As a result of the comments and the review of the previous data collected, DOE has decided not to amend the heating degradation coefficient. The value will remain at its designed value of 0.25.

3. Part Load Factor

As part of the calculation for determining the SEER or HSPF, DOE proposed to change the current part load factor linear method to an exponential method. The Department received four comments on the issue of part load factor. These commenters agreed that DOE should not change the method of determination. Based on the analysis of 40 basic unit models of heat pumps and air conditioners, Carrier determined that the impact of an exponential versus linear part load factor was smaller than one percent for both SEER and HSPF. (Carrier, No. 40, at 6). Lennox agreed that this small change in the values was negligible. (Lennox, No. 35, at 4). York concerned that the increase in effort to calculate the part load factor for SEER or HSPF seemed pointless and unnecessary. (York, No. 28, at 4). ARI agreed with these comments (ARI, No. 39, at 10).

DOE has reviewed these comments and finds that the variance between the present straight line and the proposed exponential method will, in most cases, be absorbed in the rounding of the values, making the procedure change unnecessary. Therefore, DOE is not adopting the exponential method in today's final rule.

4. Rating Procedure for Untested Combinations of Split-System Central Air Conditioners.

The existing regulation for central air conditioners, including heat pumps, allows manufacturers of untested combinations of split-systems to rate such systems by engineering analysis methods or computer models developed by the individual manufacturer or a consulting engineering firm. DOE decided to address the issue of rating untested combinations since each such rating method is unique and there is debate concerning the accuracy of any particular rating method.

DOE proposed the adoption of a standard rating procedure for equipment combinations that are not laboratory tested in accordance with Appendix M. Most commenters addressed the standard rating procedure for untested combinations of split-system central air conditioners. The majority of commenters favored the use of a standard method or a privately developed method (alternative method) when it can be verified to be more accurate than the standard method, as the desired procedure for rating equipment in lieu of laboratory testing.

Six commenters favored a standard rating procedure. York, ARI, BARD and Carrier supported the use of the standard procedure for manufacturers not in a certification program similar to ARI's. (York, No. 28, at 4; ARI, No. 39, at 4; Bard, No. 31, at 4; and Carrier, No. 40, at 7). While commenters held various opinions concerning implementation, the concept of utilizing a standard rating procedure was acceptable. Trante (Trane, No. 26, at 7) was concerned with the release or acquisition by other

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[1] Comments on the proposal were given docket numbers and are numbered consecutively, beginning with No. 24. Comments presented at the November 12, 1986, public hearing are identified as Testimony.

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manufacturers of proprietary information if a manufacturer's alternative procedure was submitted to DOE because it was more accurate.

Further comment was received concerning many of the components in a combination and the credit which manufacturers should receive in the calculations of the standard rating method proposed by DOE. These components include fan delay, thermostatic expansion valves, solenoid valves, coil circuitry, and coil configuration. While the comments provided a diversity of opinion on these subjects, they did not present uniform solutions. Moreover, NBS' evaluation of these comments identified many areas of research required to resolve these issues. In view of the lack of consensus in the comments and NBS's need for further research, DOE has decided to omit a standard rating procedure from today's rule. However, DOE has requested NBS to resolve the problems expressed by the commenters. NBS will develop a standard rating procedure to be submitted to DOE for review. After review by DOE, it will be published as an National Bureau of Standards Interagency Report (NBSIR), placing it in the public domain, available to any manufacturer or consultant to use in rating untested combinations.

Commenters preferring their own alternative procedure to the standard rating procedure for untested combinations disagreed with the need to submit proprietary information, computer codes, and other historical data that had been very costly to acquire and were concerned about release of possible proprietary information to competitors. (Addison, No. 43, at 4; Synder General, No. 41, at 5; Magic Aire, No. 30, at 3). Two commenters stated that the alternative methods used by them are supplied by a consulting firm and that the ability to divulge the consultant's proprietary information to DOE is impractical since these manufacturers do not have access to the programs. (Addison, No. 43, at 4; and Bard, No. 31, at 4). DOE believes that in these circumstances the consultant can submit the necessary documentation, with the proprietary information properly identified, directly to DOE.

Rheem, an ARI member, commented that it wanted the ability to use any rating procedure without approval from DOE as long as the rating was certified under a program similar to ARI's. (Rheem, No. 29, at 4).

One commenter, not a member of ARI, was opposed to DOE providing a blanket exemption to ARI members. (First Co., No. 37, at 6).

The alternative method should be verified by test data and a complete, detailed description of the alternative method with calculated result. (Carrier, No. 40, at 8; Trane, No. 28, at 7; Addison, No. 43, at 4; Synder General, No. 41, at 5).

All manufacturer comments opposed submission of computer codes to DOE for evaluation. Several comments were concerned with the time it would take to review the alternative method and raised the concern that computer codes and other proprietary data might be made available to competitors.

One commenter recommended that, for purposes of verification of the alternative method, results and test data should be provided for two condenser units, each with two different coils. This would require four sets of tests to verify the accuracy of the alternative rating method. (Carrier, No. 40, at 8).

NBS identified the need for manufacturers to submit sufficient information to enable DOE to determine the accuracy of the alternative rating method. NBS believes that, at a minimum, this would require that the rating procedure be traceable to actual and complete test data, that complete documentation of the alternative method be provided, including the computer code when a computer model is used, and that all product-related information be included to allow for DOE verification of ratings submitted by the manufacturer.

DOE agrees that the use of an alternative rating method is appropriate, if the alternative rating method is more accurate than a standardized rating method. The provision to allow the use of an alternative method of rating was included as part of DOE's 1979 central air conditioner final rule. Manufacturers are required to conduct tests of samples of the high sales volume combination, condenser and coil, while the alternative rating method is used on other combinations. The alternative rating method represents values determined by computer simulation or engineering analysis as defined by a mechanical vapor compression refrigeration cycle. The 1979 rule required the alternative rating procedure be submitted to DOE.

Synder General suggested at the public hearing that most manufacturers that submitted alternative rating methods to DOE in 1980 have since amended these methods without resubmitting them for DOE approval. (Testimony, No. 1, Synder General, at 12).

This situation prompts DOE to require that all manufacturers that amend alternative rating methods resubmit such methods to DOE in a timely manner for DOE review and approval. The Department also believes that all alternative methods should be resubmitted for DOE review and approval in order to maintain integrity in the ratings. Consequently, manufacturers who previously submitted for use of an alternative method must resubmit such method to DOE and receive approval before continuing use of the alternative method for rating central air conditioners. The approval process is the same in structure to the current process. The purpose of DOE's review and approval process is to ensure that use of alternative rating methods results in accurate ratings.

The Department rejects the concerns regarding possible release of proprietary information. Under Title 10 CFR 1004.11, the sensitivity of proprietary information is protected from release provided the manufacturer identifies properly those sections containing such information. Rating procedures have been submitted to DOE since 1979. Pursuant to the provisions in DOE's regulations, there have been no instances of information, identified as proprietary, being released by DOE. Therefore, DOE does not share commenters' concerns that proprietary information explaining a manufacturers alternative method will be divulged to third parties. Accordingly, DOE is maintaining the requirement that manufacturers provide full documentation of alternate rating methods, including that which is considered proprietary, e.g., computer codes, etc., to DOE for approval prior to the use of the ratings in today's rule.

Several commenters stressed the need for accurate data on the various components of the system, inaccurate data or inappropriate assumptions could result in large errors. Carrier recommended the ability to determine coil capacities by a computer computation/simulation approved by DOE or a test standard such as ASHRAE Standard 33–78. (Carrier, No. 40, at 7). The First Company wanted information for the components to be made available by the manufacturer, whereas Trane opposed the divulging of information even to DOE, of what it considers proprietary information, as long as the components are not sold to other manufacturers. (First Co., No. 37, at 3; Trane, No. 28 at 7).

York suggested that a standard rating method include a coil scaling factor, coil circuitry and heating cycle (York, No. 28, at 4).

Many commenters felt that the two percent tolerance was unrealistic. Trane wanted to maintain the five percent tolerance identified in § 430.23(m)(1) as providing for a 90 percent confidence, with a true mean divided by 95 percent. (Trane, No. 28 at 7). Rheem sought the adoption of a five percent tolerance for test versus calculation method results. (Rheem, No. 29, at 5). Three coil manufacturers, IEC, Magic Aire, and First Company commented that the proposed rating procedure would force the manufacturer to purchase various condensing units and matched coils for testing prior to making determinations of comparative coils, creating an added expense. (IEC, No. 32, at 3; Magic Aire, No. 30, at 2; First Company, No. 37, at 4).

It is anticipated that publication of the standard rating method as an NBSIR, will enable manufacturers to use it as an alternative to testing or as the basis for an alternative rating method. DOE believes that development and publication of a standard method of rating combinations of condensers and coils will improve design, replacement selection and make DOE approval of alternative rating methods quick and easy.

Several commenters addressed the definition of a coil family in discussing the requirement that test data supporting a manufacturer's alternative method include data for two complete lines of coil families for two condensing units. One commenter stated that a complete coil line (family) included all coils in the same coil configuration (up flow, down flow, or horizontal) with the same basic model number and designed for a certain evaporating temperature at a given capacity (Lennox, No. 35, at 3). York's definition included coils of a given design (A-coils, air handlers, horizontal, counter flow or flat top coils) equipped with the same expansion device. Each family could cover a range of capacity from one to five tons. (York, No. 28, at 4). ARI provided a similar definition. Addison defined a coil family as all coils used with any specific outdoor condenser unit. (Addison, No. 43, at 2).

DOE has defined a coil family in today's notice. DOE considers a coil family to be a group of coils with the same basic design features that affect the heat exchanger performance. Those features which identify a coil family are:

(i) Basic configuration (A-shape, V-shape, slanted or flat top coils, etc.)

(ii) Heat transfer surfaces on refrigerant side and air side (flat tubes vs. grooved tubes, different fin shapes on air side).

(iii) Tube and fin materials.

(iv) Coil circuitry.

The family will cover different coil sizes. When a group of coils has all these factors in common it is a family. DOE has in today's final rulemaking defined a "coil family" and identified the procedures for acquiring DOE approval of alternative rating methods for untested combinations of split-type systems. The standard rating method is not presented in today's notice, however, it will be published as a NBSIR.

5. Ground Water Source Heat Pump and Earth Coupled Heat Pumps

Several commenters maintained that there is no need for a test procedure for ground water-source or earth-coupled heat pumps (ARI, No. 39, at 2; Bard, No. 31, at 4; Friedrich, No. 36, at 1). DOE proposed to incorporate ARI Standard 325–85 which was already in use by ARI and several manufacturers. The acceptance of this test procedure, with limited changes, would have allowed consumers to compare the ground water-source, earth-coupled, and air source central air conditioners or heat pumps.

However, NAECA, enacted on March 17, 1987, defines "central air conditioner" as an "air-cooled product." This requirement eliminates ground water-source and earth-coupled heat pumps from the category of central air conditioner and the ratings required of covered products. Therefore, DOE is not including a test procedure for ground water-source and earth-coupled heat pumps in today's final rule.

6. Split Type Ductless Systems

Two commenters stated that the test procedure for the split-type, ductless systems with multiple coils providing for multiple zones should give credit for energy savings due to multizoning. (Daikin, No. 27, at 1 and Toshiba, No. 38, at 2).

DOE does not believe a credit is appropriate since other heating systems having similar capabilities, e.g., hydronic and electric resistance heating, receive no credit for this utility feature.

Toshiba discussed the possible combination of a variable-speed condensing unit with multiple ductless coils. (Toshiba, No. 38, at 2). The test procedure for this system, although not specifically designated, would, in fact, be a combination of the split-type ductless system and variable-speed procedures provided in this final rule.

Three commenters stated that the proposed test procedure for the split-type ductless system would be too burdensome. To reduce the testing burden these commenters requested that the definition of "combinations" as proposed be clarified. (IEC, 32 at 5; Toshiba, No. 38, at 14; ARI, No. 39, at 11). DOE agrees that the number of possible combinations would create a burdensome test procedure. For this reason the test procedure considers the ability to zone as a utility similar to air conditioners with setback thermostats. Zoning is a consumer preference, not an efficiency improvement. Therefore, the efficiency of the system is analyzed as a single zone. The requirements of rating by test or alternative method of various combinations of indoor coils with a single outdoor unit are covered under section 430.23, units to be tested, paragraph (m) (1) and (2).

Two-speed outdoor units for split-type ductless systems will use the two-speed rating procedure with all indoor coils connected as in the single speed rating procedure.

Variable-speed outdoor units shall be rated according to the variable-speed test procedure mentioned in today's rule with all indoor coil units connected for all required tests.

The retention of the damper method for testing requires that changes be made to the proposed test procedure to allow coverage of split-type ductless systems. These changes are required due to the deletion of the incorporation of ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84. These two standards contain information and procedures identifying the basis for the proposed test procedure for split-type ductless system. The cyclic test of ductless units will be performed without dampers. The indoor fan will be turned on three minutes before compressor "cut-on" and remain on for three minutes after compressor "cut-off." For calculating the cyclic coefficient of performance (COP) the integration time for capacity shall be from compressor "cut-on" time to indoor fan "cut-off" and the integration time for power will be the compressor "cut-on" to indoor fan "cut-off" time. The fan power for the three minutes after compressor "cut-off" shall be added to the integrated cooling capacity and subtracted from the integrated heating capacity. The indoor coils of the ductless system will require the addition of plenums on the outlets to allow for the measurement of air flow and the capacity of the system.

7. Demand Defrost

The present procedure provides an enchancement credit factor equal to 1.07 which is used as a multiplier on capacity at T_{out} equal 35°F. This multiplier results in an HSPF improvement of approximately four percent according to data submitted to DOE during the 1979 rulemaking.

The proposed rule introduced an enhancement factor to be applied as a multiplier directly to HSPF. The multiplier has a maximum value of 1.04 which is varied between 1.04 and 1.00 for single-speed, two-speed and variable-speed systems based on the length of time between defrost.

ARI and Snyder General expressed support for the existing credit (1.07 ×Q(35)). (ARI, No. 39, at 12; Snyder General No. 41, at 3).

Lennox questioned the 90-minute time used in the proposed correlation as the shortest defrost time used in prorating the demand defrost credit but did not give any alternative suggestion. (Lennox, No. 35, at 5).

York commented that the proposed procedure fails to recognize the use of auxiliary head during the defrost cycle. Taking into account that outdoor air relative humidity during the defrost test is much higher than the average relative humidity in region IV, a heat pump will run a much longer time in the field between defrosts than during the frost accumulations test. Correcting for the reduced frequency of defrosts with drier weather increased the span of time between defrosts by a factor of 2.8 (a typical demand system would defrost at 3.63 hour intervals at the actual average weather conditions.) A system equipped with a time-temperature defrost control which goes into defrost every 90 minutes would require 19.6 percent more power than a demand defrost system at this condition. York concluded by proposing that the seven percent enhancement value for demand control systems be retained. If any changes are made, York supports the enhancement that would have a increased value with increased span time between defrosts. (York, No. 28, at 3).

Carrier pointed out that the enhancement credit for variable-speed systems is inconsistent with that prescribed for single-speed systems. (Carrier, No. 40, at 11). Carrier stated that the amount of credit given for a demand defrost control should be based on the ratio of the time between defrosts during the frost accumulation test to the maximum time between defrost allowed by the demand defrost control. Carrier proposed the formula:

$$FD=1+0.04\times(1-Ttest-90.0)/Tmax-90.0))$$

where:

FD=demand defrost credit (used as a multiplier to HSPF)
Ttest=test time between defrosts (in minutes)
Tmax=lesser of 720 or the maximum time between defrosts allowed by the unit control (in minutes)

Trane supported the concept of proportioning the demand defrost with the measured time between defrost terminations. (Trane, No. 28, at 4). However, Trane pointed out a lack of consistency in the time between defrost terminations for different units of the same model, and commented that the proposed correlation, being very sensitive to this time, may provide significantly different values of the damand defrost credit during the rating verification process. In connection with this observation, Trane suggested another form of the equation for the demand defrost credit:

$$Fd=1.00+0.09\times[(90-T_{test})/630]$$

DOE recognizes that frosting/defrosting of a heat pump is a very complex phenomenon governed by system design and controls, operating conditions and sizing. System performance degradation in the frosting region is related to three basic penalties:

1. Degradation of performance due to frosting itself; formation of frost on the outdoor coil reduces system instantaneous capacity, and reduces system instantaneous COP.

2. Decrease of average capacity due to the need to perform defrosting of the outdoor coil. The time used by a system to defrost is subtracting from the time that would be used for heating, thus reducing system ability to supply heat. In addition, negative capacity (additional load) is introduced to the house.

3. Use of tempering heat above the balance point. Since delivery of cold air to the conditioned space would not be acceptable, an electric heater is used to temper heat pump negative capacity. If defrost occurs above the balance point, use of the electric heat degrades system seasonal efficiency.

DOE agrees that different heat pumps will exhibit different performance degradation due to frosting/defrosting. The three penalties identified above may have differing shares in performance degradation for different systems.

DOE recognizes that the present rating procedure contains the following simplifications affecting the HSPF rating:

- The procedure does not include frosting/defrosting below 17°F outdoor temperature even for time defrost controlled systems, (penalty no. 1 and 2.) Consequently, system capacity prescribed in the procedure is optimistically high (approx. 3–5 percent) for time-defrost heat pumps.
- The procedure does not take into account heat tempering above the balance point (penalty no. 3.)

A review of the comments on demand defrost credit show that manufacturers do not have a clear understanding of the objective of the demand defrost credit. DOE believes that demand defrost credit should be applied as compensation for improved performance not measured during the defrost test because of high humidity specification, and that frosting/defrosting is too complex for attempts to describe all three penalties by one correlation. The present procedure takes into account performance degradation due to frosting of the outdoor coil (penalty no. 1) through a test at 35 °F outdoor temperature. In order to shorten the defrost test, high outdoor humidity conditions, more severe than average in the field, were prescribed. During this test a system with demand defrost may not show its full performance potentital.

If the time between defrosts is the same for this unit as if equipped with a time controlled defrost, a credit is in order for the system because full sustem performance ability in field conditions was not measured during the test. On the other hand, if a system with a demand defrost control does not go into defrost at all during the 35 °F test, no extra credit should be given to the unit because the test accounted (on a relative basis) for the full performance potential of the tested unit. Systems equipped with demand defrost, that defrost during testing but after the period allotted to time controlled defrost systems, should receive a credit based on a prorated value of the actual defrost time versus the duration of the defrost test.

As a result of the review of the industry comments and performance data collected for ten various models with demand defrost, NBS recommended a revised formula for crediting demand defrost.

$$Fs=1+0.03\times(1-(Ttest-90)/(Tmax-90))$$

where:

Fd=demand defrost credit (used as a multiplier to HSPF)
Ttest=time between defrost terminations in minutes
or
90, whichever is greater
Tmax=maximum time between defrosts allowed by controls in minutes
or
720, whichever is smaller

The correlation provides three percent credit for a system with demand defrost which has 90 minutes or less time between defrost terminations during the frost accumulation test. The amount of credit is linearly prorated to zero for longer time spans between defrosts. A value of zero is attained if the test time reaches the maximum compressor time allowed by its controls or maximum time prescribed by the procedure (720

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minutes). The value of the maximum credit (three percent) was chosen based on review of the HSPF values of ten heat pumps with a demand defrost credit calculated using the existing procedure and applying a seven precent correction for capacity at the 35 °F test and comparing to the HSPF for the same units calculated without a seven percent capacity correction at the DHRmin in region IV. The seven percent capacity correction resulted in an HSPS improvement between 2.81 and 2.98 percent.

Based on the information and data provided, DOE has selected the maximum demand defrost credit of 1.03. DOE adopted the revised equation recommended by NBS to determine the value of the credit in today's final rule.

8. Variable Speed Units

One commenter, KeepRite, proposed adding a test to measure the difference in load matching ability of variable-speed units, and outlined the basis for such a test. (KeepRite, No. 33, at 1). KeepRite also recommended that systems with automatic controls and manual controls be differentiated. At this time, DOE does not believe there is a need for a procedure to test variable-speed systems for load matching ability. The test, as outlined by KeepRite, appears difficult to prescribe and burdensome to conduct. Regarding differentiation between manual and automatic controls, DOE does not think that systems with manual controls (in which a homeowner can set speed manually) will be offered in the market place. Therefore, DOE believes the effort to develop and present a procedure for manual variable-speed is not justified.

KeepRite commented that additional test points are needed at different intermediate speeds to more accurately represent the performance of variable-speed units. (KeepRite, No. 33, at 2). Trane showed that increasing the number of intermediate test points improves SEER of the tested unit. According to Trane, the impact of the number of test points is most significant for the unit of the highest maximum speed to minimum speed ratio. For this ratio having the value of 3.5, the addition of the first intermediate speed test (to the single-speed procedure) improved the SEER by 11 percent. The next additional point improved the SEER by one percent over the previous value (calculated with one intermediate test point). An additional third point provided an improvement of approximately 0.8 percent. (Trane, No. 28, at 16).

Since additional improvement to the SEER rated value decreases significantly with additional intermediate test points, adding such points does not seem to be the best solution. Instead, NBS suggested modifications to the proposed method to better account for variable-speed system performance during operation in the intermediate speed region. The DOE proposal used linear interpolation of the power input between the intermediate speed point and the maximum and minimum balance points for evaluation of the input power to the unit. NBS suggested using the same points for interpolation but with the following changes:

—Perform interpolation using EER or COP values and then derive the energy input by dividing capacity by EER or COP;
—Perform parabolic interpolation.

The advantage of this approach allows for the interpolation of EER (COP) versus interpolation of energy input.

The procedure relies on three performance points for evaluation of the unit performance in the intermediate speed operation range. The three points are:

—Maximum speed balance point (the intersection point between the building load line and the heat pump capacity line at the maximum speed);
—Minimum speed balance point (the intersection point between the building load line and the heat pump capacity line at the minimum speed); and
—Intermediate speed point (the intersection point between the building load line and the heat pump capacity line at the intermediate speed at which the unit was tested at 87°F temperature).

At these three points the unit capacity and power are known. To evaluate power NBS recommended obtaining power in the intermediate speed region through evaluating EER (COP) at the three points, interpolating EER (COP) at required temperature bins, and using the building loads at these temperatures and EERs (COPs).

NBS explained that since the capacity line, i.e., the building load line, is straight, the power line could also be a straight line if EER were independent of temperature. If EER was prescribed by a linear equation, the power line equation will be of a higher order. Thus the complexity of the power line is affected by the complexity of the EER line, with the power line always more complex.

NBS recommends the parabolic interpolation for two reasons:

—Unlike the power line, the EER (COP) line in the intermediate speed region may be either convex or concave. A straight line interpolation would unduly benefit systems with intermediate EERs following a concave line.
—From the comments received it appears that the EER line is of the second or higher order. Although different systems may have different characteristics, a parabolic fit should give the best estimation of the EER line with three data points as input.

Trane commented that the intermediate speed test should be run at a speed one-third of the way between the maximum speed and the minimum speed. (Trane, No. 28, at 17.) Trane's recommendation calls for the same speed in the cooling mode and the heating mode based on the maximum speed and minimum speed in the cooling mode.

Carrier commented that the intermediate speed test should not be fixed, but rather be specified in terms of minimum and maximum compressor speeds and respective capacities. (Carrier, No. 40, at 11.)

Lennox commented that the compressor speed at the intermediate speed test should be "tied down" better, perhaps in terms of inverter frequency. (Lennox, No. 35, at 4.) Carrier supported the proposed intermediate speed tolerance of plus or minus 10 percent. Trane considered this tolerance to be wide and suggested narrowing it to plus or minus 5 percent. York commented that system capacity at Tout=47°F used for calculation of the minimum and maximum DHR should be obtained at the compressor speed corresponding to maximum speed in the cooling mode.

DOE found that the speed for the intermediate speed test proposed in the proposed rule (average between the maximum and minimum compressor speeds) results in a capacity significantly greater than the building load at 87°F. Two commenters stated that description of the speed being one-third between the maximum speed and the minimum speed provides a reasonable estimate of the proper speed for the intermediate speed test. DOE also concurred with the need to identify the intermediate speed precisely to create repeatable tests. For this reason the intermediate speed is identified in terms of inverter frequency with a tolerance of plus 5 percent or the next higher step above the calculated speed. The maximum and minimum speeds to be used are those for the cooling mode:

Intermediate speed=min. speed+⅓ (max. speed—min. speed)

It was suggested that 12 minutes on-time should be allowed only if the minimum speed is half the maximum speed. The off-time should be 18 minutes to reflect the decrease off-time variable-speed systems should provide. (Lennox, No. 35, at 4.) York commented that compressor on-time should be increased for variable-speed units but this increase should not be set arbitrarily to 12 minutes; the amount of increase should depend on the maximum to minimum capacity ratio. (York, No. 28, at 6.)

NBS pointed out that the amount of time prescribed as on-time and off-time for the cyclic test, following basic thermostat relationships, could be evaluated by the equations:

$Ton = 6\ min \times Qmax/Qmin$
$Toff = 4 \times Ton$

Following these equations, the time of the cycle would depend on the capacity modulation ration allowing longer on-time (and off-time) for systems with greater capacity modulation capability. NBS presented data for which a system with capacity modulation ratio of two, the penalty is less that five percent, while for a system with capacity modulation ratio of three, the penalty is less than 2.5 percent. Consequently, DOE believes that it is not practical to prescribe tests longer than one hour (12 minutes on, and 48 minutes off). Today's rule includes DOE's determination of the following cycle times for variable-speed units for both cooling and heating T_{on} is 12 minutes and T_{off} 48 minutes in order to retain the 20 percent on-time used in the single speed system procedure.

Trane suggested adding an optional nominal capacity test to allow the ratings to reflect energy savings of systems in which the maximum speed in the heating mode is greater than the maximum speed in the cooling mode. Trane suggested defining this nominal capacity as the capacity obtained at the compressor speed which is the lesser of the maximum speed allowed by controls in the cooling mode and the heating mode. (Trane, No. 26, at 17). DOE has adopted this test in today's rule as an optional test to be included for manufacturers with units which have the necessary characteristics to implement this test.

Carrier commented that the procedure should have provision for fan delay. The capacity integration period should include 12 minutes on-time plus the period of the fan delay. Similarly, the fan power should be integrated for 12 minutes plus the fan period. (Carrier, No. 4, at 11). NBS agreed with this comment if DOE decided to retain the damper test method.

DOE, in its decision to retain the damper method, has concluded that fan delay for variable-speed systems should be treated the same as for the current single-speed and two-speed units. This will provide a common perspection for units with fan delay verses those without fan delay.

NBS commented that if HSPF calculations are performed for the maximum design heating requirement, the procedure will underestimate energy input to the electric heater, overestimating the efficiency descriptor because the intersection point between the building load line and the maximum speed capacity line would fall around 35°F temperature. NBS recommended using the maximum speed capacity line with degradation due to frost accumulation as is done in the procedure for the single-speed systems by applying system capacity, Q(35), and power, E(35), at 35 °F outdoor temperature.

The NBS recommendations include correction factors of ten percent for capacity and 1.5 percent for power. These factors were selected after a review of test data of heat pumps equipped with demand defrost controls. NBS further recommended the tolerance for power measurement of 0.5 percent be maintained for variable-speed systems.

DOE evaluated the NBS comments on the capacity and energy input lines for determining HSPF and agrees that the method is sound. Therefore, the variable-speed procedure includes degradation due to frost accumulation at the maximum speed. The capacity and power of a variable-speed system at the maximum speed will be evaluated based on performance at 17 °F, 47 °F and 35 °F outdoor temperatures. The NBS equations are included in today's rulemaking.

9. Transition Period

Several commenters expressed concern with the impact of the effective date of the new procedures and any transition period. Since these comments addressed the implementation of a new test procedure for single speed and two-speed units other than the damper method, DOE has decided that these concerns have been resolved with DOE's decision to retain the damper method.

Since this amendment to the central air conditioner test procedure is concerned only with the demand defrost credit and additional procedures for split-type ductless systems, variable-speed systems, and untested combinations, DOE believes that a transition period is not necessary.

The amendments for new models will be effective 180 days after publication in the **Federal Register**.

During the period between publication and effective date, all manufacturers using an alternative method to rate untested combinations of central air conditioners or heat pumps must submit the necessary data to DOE for review and approval. Failure to receive approval for the alternative rating method will require manufacturers to amend the method or use testing to rate the equipment. Submittals of alternative rating methods should be made within three months of publication of today's rulemaking in order for review and approval to be assured by the effective date of this amendment. Those manufacturers not receiving approval prior to the effective date, must submit a written request to DOE for an extension.

c. Procedural Matters

1. *Test Procedures.* The test procedures for central air conditioners prescribed today are included in Subpart B of Part 430 and are substantially the same as those established in the existing procedures with the exception of the changes discussed above. Appendix M of Subpart B provides test procedures for those models of central air conditioners currently requiring waivers. The changes to appendix M of Subpart B do not incorporate the ASHRAE and ARI commercial standards contained in the proposed rulemaking, thus the requirements of the Federal Energy Administration Act do not apply.

2. *General Provisions.* Today's rulemaking contains the definitions of "central air conditioner," and "heat pump" as identified in NAECA and DOE's definition of a "coil family."

3. *Application of Test Procedures.* The test procedures prescribed today address variable-speed systems and split-type ductless systems. The revision of the demand defrost credit in today's notice applies to all system types. The new procedures will provide ratings comparable to those ratings already received pursuant to granted waiver test procedures. The compatibility of the new rating procedures with those established in prior rulemakings creates no conflict with the conservation standards established by NAECA.

d. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, DOE submitted a copy of this notice to the Administrator of the Environmental Protection Agency on January 29, 1987, for his comments concerning the impact of this proposal on the quality of the environment. A response, dated April 6, 1987, was received expressing support of the rulemaking.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer projects clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the final rule.

e. Review Under Executive Order 12291

This final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule"as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule only amends existing test procedures for central air conditioners and heat pumps, adding procedures for innovative designs such as variable-speed heat pumps and split type ductless systems. These procedures only serve to relieve the burden of requesting waivers. Therefore, DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of existent procedures, is not sufficient to bring the final rule within the definition of "major rule."

f. Regulatory Flexibility

The Regulatory Flexibility Act, Pub. L. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the final rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The final rule affects manufacturers of central air conditioners and heat pumps. As previously discussed, the changes will not have significant economic impacts, but rather will simply improve the test procedures. Furthermore, DOE is not aware of any central air conditioner manufacturers that would be considered small entities under the Act. Therefore, DOE certifies that the final rule will not have a "signficant economic impact on a substantial number of small entities."

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 95-619; and Pub. L. 100-12, Department of Energy Organization Act, Pub. L. 95-91).

List of Subjects in 10 CFR Part 430

Administrative practice and procedures, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective September 12, 1988.

Issued in Washington, DC, March 2, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, and National Appliance Energy Conservation Act (42 U.S.C. 6291-6309).

2. Section 430.2 is amended by deleting the definitions of "Air-source heat pump", "Cooling only unit", and "Water-source heat pump" and by revising the definition of "Central air conditioner" and "Heat pump" and adding the definition of a "Coil family" to read as follows:

§ 430.2 Definitions.

* * * * *

"Cental air conditioner" means a product, other than a packaged terminal air conditioner powered by single phase electric current, which is air-cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit.

* * * * *

"Heat pump" means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

* * * * *

"Coil family" means a group of coils with the same basic design features that affect the heat exchanger performance. These features are the basic configuration, i.e., A-shape, V-shape, slanted or flat top, the heat transfer surfaces on refrigerant and air sides (flat tubes vs. grooved tubes, fin shapes), the tube and fin materials, and the coil circuitry. When a group of coils has all these features in common, it constitutes a "coil family."

3. Section 430.22 is amended by revising paragraph (m) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(m) *Cental Air Conditioners.* (1) The estimated annual operating cost for cooling-only units and air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M to this subpart; (B) the representative average use cycle for cooling of 1,000 hours per year; (C) a conversion factor of 0.001 kilowatt per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the

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standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test, determined in sections 5.2 and 6.2.6 of Appendix M to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for heating region IV corresponding to the above mentioned standardized design heating requirement determined from section 5.2 of Appendix M to this subpart; (B) the representative average use cycle for heating of 2,080 hours per year; (C) the adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatt per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated annual operating cost is the sum of the quantity determined in paragraph (m)(1)(i) of this section added to the quantity determined in paragraph (m)(1)(ii) of this section.

(2) The estimated regional annual operating cost for cooling-only units and for air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M to this subpart; (B) the estimated number of regional cooling load hours per year determined from section 6.1.3 of Appendix M to this subpart; (C) a conversion factor of 0.001 kilowatts per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test (Test A), determined in sections 5.2 and 6.2.6 of Appendix M to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for the appropriate region of interest and corresponding to the above mentioned standardized design heating requirement determined from section 5.2 of Appendix M to this subpart; (B) the estimated number of regional heating load hours per year determined from section 6.2.5 of Appendix M to this subpart; (C) the adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatts per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated regional annual operating cost is the sum of the quantity determined in paragraph (m)(3)(i) of this section added to the quantity determined in paragraph (m)(3)(ii) of this section.

(3) The measure(s) of efficiency for cooling-only units and air-source heat pumps shall be one or more of the following:

(i) The seasonal energy efficiency ratio for cooling-only units and air-source heat pumps which provide cooling shall be the seasonal energy efficiency ratio, in Btu's per watt-hour, determined according to section 5.1 of Appendix M to this subpart, rounded off to the nearest 0.05.

(ii) The heating seasonal performance factors for air-source heat pumps shall be the heating seasonal performance factors, in Btu's per watt-hour, determined according to section 5.2 of Appendix M to this subpart for each applicable standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(iii) The annual performance factors for air-source heat pumps which provide heating and cooling, shall be the annual performance factors, in Btu's per watt-hour, determined according to section 5.3 of Appendix M to this subpart for each standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(4) Other useful measures of energy consumption for central air conditioners shall be those measures of energy consumption which the Secretary of Energy determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix M to this subpart.

(5) After September 12, 1988, all measures of energy consumption shall be determined by the test method as set forth in Appendix M to this subpart; or by an alternate rating method set forth in § 430.23(m)(4) as approved by the Assistant Secretary for Conservation and Renewable Energy in accordance with § 430.23(m)(5).

* * * * *

4. Section 430.23 is amended by revising paragraphs (m) (2) through (7) to read as follows:

§ 430.23 Units to be tested.

* * * * *

(m) * * *

(2) The condenser-evaporator coil combination selected for tests pursuant to paragraph (m)(1) of this section shall be that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provisions of paragraphs (m)(1)(i) and (m)(1)(ii) of this section. For every other condenser-evaporator coil combination manufactured by the same manufacturer or in part by a component manufacturer using that same condensing unit, either—

(i) A sample of sufficient size, comprised of production units or representing production units, shall be tested to ensure that the requirements of paragraphs (m)(1)(i) and (m)(1)(ii) of this section are met for such other condenser-evaporator coil combinations; or

(ii) The representative values of the measures of energy consumption shall be based on an alternative rating method that has been approved by DOE in accordance with the provisions of paragraphs (m)(4) and (m)(5) of this section.

(3) Whenever the representative values of the measures of energy consumption, as determined by the provisions of paragraph (m)(2)(ii) of this section, do not agree within five percent of the representative values of the measures of energy consumption as determined by actual testing, the representative values determined by actual testing shall be used to comply with section 323(c) of the Act, or to comply with rules prescribed under section 324 of the Act.

(4) The basis of the alternative rating method referred to in paragraph (m)(2)(ii) of this section shall be a representation of the test data and calculations of a mechanical vapor compression refrigeration cycle. The major components in the refrigeration cycle shall be modeled as "fits" to manufacturer performance data or by graphic or tabular performance data. Heat transfer characteristics of coils may be modeled as a function of face area, number of rows, fins per inch, refrigerant circuitry, air flow rate and entering air enthalpy. Additional performance-related characteristics to be considered may include type of expansion device, refrigerant flow rate through the expansion device, power of the indoor fan and degradation coefficient.

(5) Manufacturers who elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(ii) and (m)(4) of this section must submit a request to DOE for reviewing the alternative rating method to the Assistant Secretary of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585, and receive approval to use the alternative method by the Assistant Secretary before the alternative method may be used for rating central air conditioners.

(6) Each request to DOE for reviewing an alternative rating method shall include:

(i) The name, address and telephone number of the official representing the manufacturer.

(ii) Complete documentation of the alternative rating procedure, including the computer code when a computer model is used.

(iii) Test data for two coils from two different coil families for two different condensing units. The tested capacities for the matched systems for the two condensing units shall differ by at least a factor of two. Rating information for the mixed systems shall include the ratings from testing, and from the alternative rating method.

(iv) Complete test data, product information, and related information to allow DOE to verify the rating information submitted by the manufacturer.

(7) Manufacturers that elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(ii) and (m)(4) of this section must either subject a sample of their units to independent testing on a regular basis, e.g., voluntary certification program, or have the representations reviewed and certified by an independent state-registered professional engineer who is not an employee of the manufacturer. The registered professional engineer is to certify that the results of the alternative rating procedure accurately represent the energy consumption of the unit(s). The manufacturer is to keep the registered professional engineer's certifications on file for review by DOE for as long as said combination is made available for sale by the manufacturer. Any change to be made to the alternative rating method, must be approved by DOE prior to its use for rating.

* * * * *

Appendix M to Subpart B—[Amended]

5. Appendix M to Subpart B of Part 430 is amended by deleting sections 2.4, 3.4, 4.4, 5.4, 5.5, 5.6 and deleting from the seventh paragraph, section 5.2, the sentence "For units with demand defrost control system * * *," revising the headings for sections 2.1, 2.2., 3.1, 3.2, 4.1, and 4.2, adding five sentences at the end of section 4.1.1.2, adding one sentence at the end of 4.2.1.2 and 4.2.1.3, adding a paragraph to the end of section 5.2 and adding sections 2.1.5 through 2.1.7, 2.2.3 through 2.2.5, 3.1.5 through 3.1.7, 3.2.3 through 3.2.5, 4.1.1.3 through 4.1.1.5, and 5.1.5, 5.1.6, 5.1.7, 5.2.3, 5.2.4 and 5.2.5.

* * * * *

2.1 *Testing required for air source cooling only units.*

* * * * *

2.1.5 *Testing required for units with triple-capacity compressors.* (Reserved)

2.1.6 *Testing required for units with variable-speed compressors.* The tests for variable-speed equipment consist of five (5) wet coil tests and two (2) dry coil tests. Two of the wet coil tests, A and B, are conducted at the maximum speed. Two wet coil tests, B_2 and low temperature test, are conducted at the minimum speed. The fifth wet coil test is conducted at an intermediate speed. Dry coil tests, C and D, are conducted at the minimum speed if the coefficient of degradation (C_D) value of 0.25 is not adopted. The test conditions and procedures for the above are outlined in sections 3.1 and 4.1 of this Appendix.

2.1.7 *Testing required for split-type ductless systems.* The tests for split-type ductless systems are determined by the type of compressor installed in the outdoor unit. For the appropriate tests refer to sections 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, or 2.1.6 of this Appendix.

2.2 *Testing required for air source heating only units.*

* * * * *

2.2.3 *Testing required for units with triple-capacity compressors.* (Reserved)

2.2.4 *Testing required for units with variable-speed compressors.* There are seven basic tests and one optional test for variable-speed units. Three tests (high temperature test, low temperature test, and frost accumulation test) are performed at the maximum speed. Three tests (two high temperature and one cyclic test) are performed with the unit operating at minimum speed. A second frost accumulation test is performed at an intermediate speed. The intermediate speed is the same as in the cooling mode.

In lieu of the maximum speed frost accumulation test, two equations are provided in section 4.2 of this Appendix. In lieu of the cyclic test an assigned value of 0.25 may be used for the coefficient of degradation C_D. The optional test is a nominal capacity test applicable to units which have a heating mode maximum speed greater than the cooling mode maximum speed. The conditions and procedures for the above tests are described in sections 3.2 and 4.2 respectively, of this Appendix.

2.2.5 *Testing required for split-type ductless system.* The type of compressor installed in the outdoor unit determines the testing required, refer to previous sections 2.2.1, 2.2.2, 2.2.3, or 2.2.4. The conditions and procedures will be modified as indicated for the various types as stated in sections 3.2 and 4.2 respectively.

* * * * *

3.1 *Testing conditions for air source cooling only units.*

* * * * *

3.1.5 *Testing conditions for units with triple-capacity compressors.* (Reserved)

3.1.6 *Additional testing conditions for cooling-only units with variable-speed compressors.* For cooling-only units and air-source heat pumps with varaible-speed compressors, the air flow rate at fan speeds less than the maximum fan speed shall be determined by using the fan law for a fixed resistance system. The air flow rate is given by the ratio of the actual fan speed to the maximum fan speed multiplied by the air flow rate at the maximum fan speed. Minimum static pressure requirements only apply when the fan is running at the maximum speed.

3.1.6.1 *Testing conditions for steady-state wet coil tests.* Tests A and B shall be performed at the maximum speed at conditions specified in section 3.1.1 of this Appendix. Test B_2 and the low temperature test are performed at the minimum speed with outdoor dry bulb temperatures of 82°F and 67°F respectively. The intermediate speed wet coil test is performed at the outdoor dry bulb temperature of 87°F. For units which reject condensate the outdoor wet bulb temperature shall be maintained at 75°F for Test A, 65°F for Tests B and B_2, 53.5°F for the low temperature test and 69°F for the intermediate test. The indoor conditions for all wet coil tests are the same as those given in section 3.1.1 of this Appendix.

3.1.6.2 *Test conditions for dry coil tests.* Dry coil Tests C and D are conducted at an outdoor dry bulb temperature of 67°F. For units which reject condensate the outdoor wet bulb temperature shall be maintained at 53.5°F. The indoor dry bulb temperature shall be 80°F and the wet bulb temperature shall be sufficiently low so no condensation occurs on the evaporator (It is recommended that an indoor wet bulb temperature of 57°F or less be used).

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3.1.7 *Split-type ductless systems.* Test conditions shall be the same as those specified for the same single outdoor unit compressor type, assuming it was matched with a single indoor coil.

3.1.7.1 *Interconnection.* For split-type ductless systems, all standard rating tests shall be performed with a minimum length of 25 feet of interconnecting tubing between each indoor fan-coil unit and the common outdoor unit. Such equipment in which the interconnection tubing is furnished as an integral part of the machine not recommended for cutting to length shall be tested with complete length of tubing furnished, or with 25 feet of tubing, whichever is greater. At least 10 feet of the interconnection tubing shall be exposed to the outside conditions. The line sizes, insulation and details of installation shall be in accordance with the manufacturer's published recommendation.

3.1.7.2 *Control testing conditions for split-type ductless systems.* For split-type ductless systems, a single control circuit shall be substituted for any multiple thermostats in order to maintain a uniform cycling rate during test D and the high temperature heating cyclic test. During the steady-state tests, all thermostats shall be shunted resulting in all indoor fan-coil units being in operation.

3.1.7.3 *Split-type ductless systems with multiple coils or multiple discharge outlets shall have short plenums attached to each outlet.* Each plenum shall discharge into a single common duct section, the duct section in turn discharging into the air measuring device (or a suitable dampering device when direct air measurement is not employed). Each plenum shall have an adjustable restrictor located in the plane where the plenums enter the common duct section for the purpose of equalizing the static pressures in each plenum. The length of the plenum is a minimum of $2.5\times(A\times B)^{.5}$. A=width and B=height of duct or outlet. Static pressure readings are taken at a distance of $2\times(A\times B)^{.5}$ from the outlet.

3.2 *Testing conditions for air source heating only units.*

* * * * *

3.2.3 *Testing conditions for units with triple-capacity compressors.* (Reserved)

3.2.4 *Testing conditions for units with variable-speed compressors.* The testing condition for variable-speed compressors shall be the same as those for single speed units as described in section 3.2.1 of this Appendix with the following exceptions; the cyclic test is performed with an outdoor dry bulb temperature of 62°F and a wet bulb temperature of 56.5°F. The optional, nominal capacity test shall be performed at the conditions specified for the 47°F high temperature test.

3.2.5 *Testing conditions for split-type ductless system.* The testing conditions for split-type ductless systems shall be based on the type of compressor installed in the single outdoor unit. The heating mode shall have the same piping and control requirements as in 3.1.7.

* * * * *

4.1 *Test procedures for air source cooling-only units.*

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4.1.1.2 * * *

Cooling cyclic tests for variable-speed units shall be conducted by cycling the compressor 12 minutes "on" and 48 minutes "off". The capacity shall be measured for the integration time (θ), which is the compressor "on" time of 12 minutes or the "on" time as extended by fan delay, if so equipped. The electrical energy shall be measured for the total integration time (θ_{cyc}) of 60 minutes. In lieu of conducting C and D tests, an assigned value of 0.25 shall be used for the degradation coefficient for cooling, C_D.

4.1.1.3 *Testing procedures for triple-capacity compressors.* (Reserved)

4.1.1.4 *Intermediate cooling steady-state test for units with variable-speed compressors.* For units with variable-speed compressors, an intermediate cooling steady-state test shall be conducted in which the unit shall be operated at a constant, intermediate compressor speed (k=i) in which the dry/bulb and wet-bulb temperatures of the air entering the indoor coil are 80°F_{DB} and 67°F_{WB} and the outdoor coil are 87°$_{DB}$ and 69°F_{WB}. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be the test operating tolerance and test condition tolerance specified in Table 6.1.1 of this Appendix. The intermediate compressor speed shall be the minimum compressor speed plus one-third the difference between the maximum and minimum speeds of the cooling mode. (Inter. speed=min. speed+⅓ (max. speed−min. speed.) A tolerance of plus five percent or the next higher inverter frequency step from that calculated is allowed.

4.1.1.5 *Testing procedures for split-type ductless systems.* Cyclic tests of ductless units will be conducted without dampers. The data cycle shall be preceded by a minimum of two cycles in which the indoor fan cycles on and off with the compressor. For the data cycle the indoor fan will operate three minutes prior to compressor cut-on and remain on for three minutes after compressor cut-off. The integration time for capacity and power shall be from compressor cut-on time to indoor fan cut-off time. The fan power for three minutes after compressor cut-off shall be added to the integrated cooling capacity.

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4.2 *Testing procedures for air source heating only units.*

* * * * *

4.2.1.2 * * *

The cycle times for variable-speed units is the same as the cyclic time in the cooling mode as specified in section 4.1.1.2 of this Appendix. Cyclic tests of split-type ductless units will be conducted without dampers, and the data cycle shall be preceded by a minimum of two cycles in which the indoor fan cycles on and off with the compressor. During the data cycle for the split type ductless units, the indoor fan will operate three minutes prior to compressor "cut-on" and remain on for three minutes after compressor "cut-off". The integration time for capacity and power will be from compressor "cut-on" time to indoor fan "cut-off" time. The fan power for the three minutes after compressor "cut-off" shall be subtracted from the integrated heating capacity. For split-type ductless systems which turn the indoor fan off during defrost, the indoor supply duct shall not be blocked.

4.2.1.3 * * *

For units with variable-speed compressors, the frost accumulation test at the intermediate speed shall be conducted such that the unit will operate at a constant, intermediate compressor speed (k=i) as determined in section 4.1.1.4 of this Appendix. The following two equations may be used in lieu of the frost accumulation test for variable-speed.

$$(a)\quad Q^{k=2}_{def}(35) = 0.90 \times [Q^{k=2}_{ss}(17)+(Q^{k=2}_{ss}(47)-Q^{k=2}_{ss}(17))] \times (35-17)/(47-17)$$

$$(b)\quad E^{k=2}_{def}(35) = 0.985 \times [E^{k=2}_{ss}(17)+(E^{k=2}_{ss}(47)-E^{k=2}_{ss}(17))] \times (35-17)/(47-17)$$

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* * * * *

5.1.5 *Seasonal energy efficiency ratio for air-source units with triple-capacity compressors.* (Reserved)

5.1.6 *Seasonal energy efficiency ratio for air-source units with variable-speed compressors.* For air-source units with variable-speed compressors, the sasonal energy efficiency ratio (SEER), shall be defined as follows:

$$\text{SEER} = \frac{\displaystyle\sum_{j=1}^{8} \frac{Q(T_j)}{N}}{\displaystyle\sum_{j=1}^{8} \frac{E(T_j)}{N}}$$

where the number of hours in the j^{th} temperature bin $(n_j)/N$ is defined in Table 6.1.2 of this Appendix.

The SEER shall be determined by evaluating three cases of the compressor operation. Case I is the same as specified in 5.1.3.1 with the exception that the quantities $Q_{ss}^{k=1}(T_j)$ and $E_{ss}^{k=1}(T_j)$ shall be calculated by the following equations:

$$Q^{k=1}_{ss}(T_j) = Q^{k=1}_{ss}(82\ F) + \frac{Q^{k=1}_{ss}(67\ F) - Q^{k=1}_{ss}(82\ F)}{82 - 67} \times (82 - T_j)$$

$$E^{k=1}_{ss}(T_j) = E^{k=1}_{ss}(82\ F) + \frac{E^{k=1}_{ss}(67\ F) - E^{k=1}_{ss}(82\ F)}{82 - 67} \times (82 - T_j)$$

Case II is when the compressor operates at any intermediate (k=v) speed between the maximum (k=2) and minimum (k=1) speeds to satisfy the building cooling load. Evaluate the following equations:

$$Q^{k=v}_{ss}(T_j) = BL\ (T_j)$$

$$E^{k=v}_{ss}(T_j) = \frac{Q^{k=v}_{ss}(T_j)}{EER^{k=v}_{ss}(T_j)}$$

$$\frac{Q(T_j)}{N} = Q^{k=v}_{ss}(T_j) \times \frac{n_j}{N}$$

$$\frac{E(T_j)}{N} = E^{k=v}_{ss}(T_j) \times \frac{n_j}{N}$$

where $E_{ss}^{k=v}(T_j)$ the electrical power input required by the unit to deliver capacity matching the building load at temperature T_j.

where $Q_{ss}^{k=v}(T_j)$=the capacity delivered by the unit matching the building load at temperature T_j.

$EER_{ss}^{k=v}(T_j)$=the steady-state energy efficiency ratio at temperature T_j and an intermediate speed at which the unit capacity matches the building load.

Before the steady-state intermediate speed energy efficiency ratio, $EER_{ss}^{k=v}(T_j)$, can be calculated, the unit performance has to be evaluated at the compressor speed (k=i) at which the intermediate speed test was conducted. The capacity of the unit at any temperature T_j when the compressor operates at the intermediate speed (k=i) may be determined by:

$$Q^{k=i}_{ss}(T_j) = Q^{k=i}_{ss}(87) + M_Q\ (T_j - 87)$$

Where:

$Q_{ss}^{k=i}(87)$=the capacity of the unit at 87°F determined by the intermediate cooling steady-state test.

M_Q=slope of the capacity curve for the intermediate compressor speed (k=i)

$$M_Q = \frac{Q^{k=1}_{ss}(82) - Q^{k=1}_{ss}(67)}{82 - 67} \times (1 - N_Q) + N_Q \times \frac{Q^{k=2}_{ss}(95) - Q^{k=2}_{ss}(82)}{95 - 82}$$

$$N_Q = \frac{Q^{k=i}_{ss}(87) - Q^{k=1}_{ss}(87)}{Q^{k=2}_{ss}(87) - Q^{k=1}_{ss}(87)}$$

Once the equation for $Q_{ss}^{k=i}(T_j)$ has been determined, the temperature where $Q_{ss}^{k=i}(T_j)$ =$BL(T_j)$ can be found. This temperature is designated as (T_{vc}). The electrical power input for the unit operating at the intermediate compressor speed (k=i) and the temperature (T_{vc}) is determined by:

$$E^{k=i}_{ss}(T_{vc}) = E^{k=i}_{ss}(87) + M_E\ (T_{vc} - 87)$$

where:

$E_{ss}^{k=i}(87)$ = the electrical power input of the unit at 87°F determined by the intermediate cooling steady-state test

M_E = scope of the electrical power input curve for the intermediate compressor speed (k=i)

$$M_E = \frac{E_{ss}^{k=1}(82) - E_{ss}^{k=1}(67)}{82 - 67} \times (1 - N_k) + N_E \frac{E_{ss}^{k=2}(95) - E_{ss}^{k=2}(82)}{95 - 82}$$

$$N_E = \frac{E_{ss}^{k=i}(87) - E_{ss}^{k=1}(87)}{E_{ss}^{k=2}(87) - E_{ss}^{k=1}(87)}$$

The energy efficiency ratio of the unit, $EER_{ss}(T_{vc})$, at the intermediate speed (k=i) and temperature T_{vc} can be calculated by the equation:

$$EER_{ss}^{k=i}(T_{vc}) = \frac{Q_{ss}^{k=i}(T_{vc})}{E_{ss}^{k=i}(T_{vc})}$$

Similarly, energy efficiency ratios at temperatures T_1 and T_2 can be calculated by the equations:

$$EER_{ss}^{k=1}(T_1) = \frac{Q_{ss}^{k=1}(T_1)}{E_{ss}^{k=1}(T_1)}$$

$$EER_{ss}^{k=2}(T_2) = \frac{Q_{ss}^{k=2}(T_2)}{E_{ss}^{k=2}(T_2)}$$

where:

T_1 = temperature at which the unit, operating at the minimum compressor speed, delivers capacity equal to the building load ($Q_{ss}^{k=1}(T_1) = BL(T_2)$), found by equating the capacity equation $[(Q_{ss}^{k=1}(T_j)]$ and building load equation $[BL(T_j)]$ in section 5.1.3 and solving for temperature.

T_2 = temperature at which the unit, operating at the maximum compressor speed, delivers capacity equal to the building load ($Q_{ss}^{k=2}(T_2) = BL(T_2)$), found by equating the capacity equation $[(Q_{ss}^{k=2}(T_j)]$ and the building equation $[BL(T_j)]$ in section 5.1.3 and solving for temperature.

$EER_{ss}^{k=1}(T_1)$ = the steady state energy efficiency ratio at the minimum compressor speed at temperature T_1.

$EER_{ss}^{k=2}(T_2)$ = the steady state energy efficiency ratio at the maximum compressor speed at temperature T_2.

$E_{ss}^{k=1}(T_1)$ = the electrical power input at the minimum compressor speed at temperature T_1, calculated by the equation in section 5.1.3.

$E_{ss}^{k=2}(T_2)$ = the electrical power input at the maximum compressor speed at temperature T_2, calculated by the equation in section 5.1.3.

The energy efficiency ratio, $EER_{ss}^{k=v}(T_j)$, shall be calculated by the following equation:

$$EER_{ss}^{k=v}(T_j) = A + B \times T_j + C \times T_j^2$$

where coefficients A, B, and C shall be evaluated using the following calculation steps:

$$D = \frac{T_2^2 - T_1^2}{T_{vc}^2 - T_1^2}$$

$$B = \frac{EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=2}(T_2) - D\,(EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=i}(T_{vc}))}{T_1 - T_2 - D \times (T_1 - T_{vc})}$$

$$C = \frac{EER_{ss}^{k=1}(T_1) - EER_{ss}^{k=2}(T_2) - B \times (T_1 - T_2)}{T_1^2 - T_2^2}$$

$$A = EER_{ss}^{k=2}(T_2) - B \times T_2 - C \times T_2^2$$

Case III is the same as specified in 5.1.3.4. The quantities $Q_{ss}^{k=2}(T_j)$ and $E_{ss}^{k=2}(T_j)$ and $E_{ss}^{k=2}(T_j)$ shall be calculated by the equations prescribed in 5.1.3.

5.1.7 *Seasonal energy efficiency ration for split-type ductless systems.* For split-type ductless systems, SEER shall be defined as specified in section 5.1.1 of this Appendix for each combination set of indoor coils to be used with a common outdoor unit.

5.2 * * *

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor F_{def} to compensate for improved performance not measured in the Frost Accumulation Test. The factor, F_{def} depends on the number of defrost cycles in a 12-hour period and should be calculated as follows:

$F_{def} = 1 + 0.03 \times (1 - (T_{test} - 90)/(T_{max} - 90))$

where:

F_{def} = demand defrost credit (used as a multiplier to HSPF)

T_{test} = time between defrost terminations in minutes or 90, (whichever is greater)

T_{max} = maximum time between defrosts allowed by controls, (in minutes or 720 (whichever is less)

* * * * *

5.2.3 *Heating seasonal performance factor for air-source units with triple-capacity compressors.* (Reserved)

5.2.4 *Heating seasonal performance factor for units with variable-speed compressors.* For units with variable-speed compressors, the heating seasonal performance factor (HSPF) is defined by the following equation:

$$HSPF = \frac{\sum_j \frac{n_j}{N} \quad BL(T_j)}{\left(\sum_j \frac{E(T_j)}{N} + \sum_j \frac{RH\ (T_j)}{N}\right)}$$

where: all symbols in the above equations are as defined in 5.2.2.

The minimum and maximum heating design requirements, DHR_{min} and DHR_{max}, which a variable-speed heat pump is likely to encounter, shall be evaluated as described for two-speed units in 5.2.2. with the option of using the nominal capacity, $Q_{ss}^{k=n}(47°\ F)$, in lieu of the maximum speed capacity, $Q_{ss}^{k=2}(47)$, in the prescribed equations if the manufacturer performed the nominal capacity test.

In evaluation of HSPF, three cases are considered, the quantities E (T/N_j) and $RH(T/N_j)$ shall be calculated depending on compressor mode of operation.

Case I

The compressor operates at the minimum speed (k=1) for which the building heating load, $BL(T_j)$, is less than or equal to the heating capacity, $Q_{ss}^{k=1}(T_j)$.

Calculations shall be performed as prescribed for two-speed systems in Case I of 5.2.2. with the exception that system capacity $Q_{ss}^{k=1}(T_j)$, and power, $E_{ss}^{k=1}(T_j)$, shall be calculated by the following equations:

$$Q_{ss}^{k=1}(T_j) = Q_{ss}^{k=1}(47) + \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{15} \times (T_j - 47)$$

$$E_{ss}^{k=1}(T_j) = E_{ss}^{k=1}(47) + \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{15} \times (T_j - 47)$$

Case II

The compressor operates at any intermediate (k=v) speed between the maximum speed (k=2) and minimum (k=1) speed to satisfy the building load.

Evaluate the following equations:

$$Q^{k=v}(T_j) = BL(T_j)$$

$$\frac{Q(T_j)}{N} = Q^{k=v}(T_j) \times \frac{n_j}{N}$$

$$E^{k=v}(T_j) = \frac{Q^{k=v}(T_j)}{3.413 \times COP^{k=v}(T_j)}$$

$$\frac{E(T_j)}{N} = E^{k=v}(T_j) \times \frac{n_j}{N}$$

where:

$Q^{k=v}(T_j)$ = capacity delivered by the unit at any intermediate speed between the minimum and maximum compressor speed matching the building load at temperature T_j

$E^{k=v}(T_j)$ = the electrical power input required by the unit at temperature T_j to deliver capacity matching the building load

$COP^{k=v}(T_j)$ = the coefficient of performance at which the unit delivers capacity matching the building load at temperature T_j

Before the coefficient of performance, $COP^{k=v}(T_j)$, can be calculated, the unit performance has to be evaluated at the compressor speed (k=i) at which the intermediate speed test was conducted. The capacity of the unit at any temperature T when compressor operates at the intermediate speed (k=i) may be determined by:

$Q_{def}^{k=i}(T_j) = Q_{def}^{k=i}(35) + M_Q(T_j - 35)$

where:

$Q_{def}^{k=i}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=i) in the frost accumulation test

M_Q = slope of the capacity curve for the intermediate compressor speed (k=i)

$$M_Q = \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{62 - 47} \times (1 - N_Q) + N_Q \frac{Q_{def}^{k=2}(35) - Q_{ss}^{k=2}(17)}{35 - 17}$$

$$N_Q = \frac{Q_{def}^{k=i}(35) - Q_{ss}^{k=1}(35)}{Q_{def}^{k=2}(35) - Q_{ss}^{k=1}(35)}$$

Once the equation for $Q^{k=i}(T_j)$ has been determined, the temperature where $Q_{def}^{k=i}(T_j) = BL(T_j)$ can be found. This temperature is designated at T_{vh}. A separate T_{vh} shall be determined for each design heating requirement.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and at the temperature (T_{vh}) is determined by:

$E_{def}^{k=i}(T_{vh}) = E_{def}^{k=i}(35) + M_E(T_{vh} - 35)$

where:

$E_{def}^{k=i}(35)$ = the electrical power input of the unit at 35 °F determined at the intermediate compressor speed (k=i) in the frost accumulation test M_E = slope of the electrical power input curve for the intermediate compressor speed (k=i)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} \times (1 - N_E) + N_E \frac{E_{def}^{k=2}(35) - E_{ss}^{k=2}(17)}{35 - 17}$$

$$N_E = \frac{E_{def}^{k=i}(35) - E_{ss}^{k=1}(35)}{E_{def}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

The coefficient of performance, $COP^{k=i}(T_{vh})$, at the intermediate speed (k=i) and temperature T_{vh} can be calculated by the equation:

$$COP^{k=i}(T_{vh}) = \frac{Q_{def}^{k=i}(T_{vh})}{3.413 \times E_{def}^{k=i}(T_{vh})}$$

Similarly, coefficients of performance at temperature T_3 and T_4 can be calculated by the equations:

$$COP^{k=1}(T_3) = \frac{Q^{k=1}(T_3)}{3.413 \times E^{k=1}(T_3)}$$

$$COP^{k=2}(T_4) = \frac{Q^{k=2}(T_4)}{3.413 \times E^{k=2}(T_4)}$$

where:

T_3 = temperature at which the unit, operating at the minimum compressor speed, delivers capacity equal to the building load ($Q^{k=1}(T_3) = BL(T_3)$), found by equating the capacity equation $Q^{k=1}(T_j)$ (at T_j 40°F) equal to the building load equation $BL(T_j)$ as identified in section 5.2.2 of this Appendix and solving for temperature

T_4 = temperature at which the unit, operating at the maximum, delivers capacity equal to the building load ($Q^{k=2}(T_4) = BL(T_4)$), found by setting the equation for capacity $Q^{k=2}(T_j)$ equal to the equation for building load $BL(T_j)$ from the two-speed procedure in section 5.2.2 and solving for temperature

$COP^{k=1}(T_3)$ = the coefficient of performance at the minimum compressor speed at temperature T_3

$COP^{k=2}(T_4)$ = the coefficient of performance at the minimum compressor speed at temperature T_4

$Q^{k=1}(T_3)$ = steady-state capacity at the minimum compressor speed at temperature T_3, using equations for $Q^{k=1}(T_j)$ from the two-speed procedure

$Q^{k=2}(T_4)$ = steady-state capacity at the maximum compressor speed at temperature T_4, calculated using the equations $Q^{k=2}(T_j)$ of the two-speed procedure

$E^{k=1}(T_3)$ = the electrical power input at the minimum compressor speed at temperature T_3, calculated by using the equation for $E^{k=1}(T_j)$ (where $T_j > 40$ °F) from the two-speed procedure in section 5.2.2 of this Appendix

$E^{k=2}(T_4)$ = the electrical power input at the maximum compressor speed at temperature T_4, calculated by using the equation for $E^{k=2}(T_j)$ from the two-speed procedure in section 5.2.2 of this Appendix

The coefficient of performance, $COP^{k=v}(T_j)$, shall be calculated by the following equation:

$COP^{k=v}(T_j) = A + B \times T_j + C \times T_j^2$

where coefficients A, B and C shall be evaluated using the following calculations step:

$$D = \frac{T_3^2 - T_4^2}{T_{vh}^2 - T_4^2}$$

$$B = \frac{COP^{k=2}(T_4) = COP^{k=1}(T_3 - D \times [COP^{k=2}(T_4) - COP^{k=i}(T_{vh})]}{T_4 - T_3 - D \times (T_4 - T_{vh})}$$

$$C = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - B \times (T_4 - T_3)}{T_4^2 - T_3^2}$$

$$A = COP^{k=2}(T_4) - B * T_4 - C \times T_4^2$$

Case III

The compressor operates at the maximum speed (k=2) for which the building heating load, $BL(T_j)$, is greater than or equal to the heating capacity, $Q_{ss}^{k=2}(T_j)$.

Calculations shall be performed as prescribed for two-speed systems in Case IV of 5.2.2

5.2.5. *Heating seasonal performance factor for split-type ductless systems.* For split-type ductless systems, HSPF shall be defined as specified in section 5.2.1 of this Appendix. Separate values of HSPF shall be determined for each corresponding combination set of indoor coils used in the development of SEER as specified in section 5.1.7. The calculations used shall be the same as those used for unit with the same type of compressor.

* * * * *

[FR Doc. 88–5288 Filed 3–11–88; 8:45 am]

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March 14, 1988

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Presence Sensing Device Initiation of Mechanical Power Presses; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Presence Sensing Device Initiation of Mechanical Power Presses

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its standard for mechanical power presses, 29 CFR 1910.217, Subpart O, to allow (but not require) presence sensing device initiation (PSDI) on certain types of power presses. The amended standard addresses the use of presence sensing devices as well as the entire mechanical power press safety system involved in operating in the PSDI mode. OSHA is also amending the related standard on definitions, 29 CFR 1910.211, as appropriate, to support the revision to the mechanical power press standard.

Until this rulemaking, OHSA did not permit PSDI, but rather required that a mechanical power press operator physically initiate the stroke of the press by using hand controls or a foot pedal. The specific prohibition against PSDI was contained in 29 CFR 1910.217(c)(3)(iii)(*b*).

Because presence sensing device initiation has been used safely in other countries, in one case for over 30 years, and on an experimental basis in the United States since 1976, OSHA believes this prohibition is technically outdated and that PSDI, overall, enhances employee safety. This revision allows a presence sensing device to initiate the stroke of the press automatically when the operator's body is out of the danger zone.

DATE: Appendix C of this final rule will become effective on April 13, 1988 and the balance of this final rule will become effective June 13, 1988. See also "Effective Date" section in **SUPPLEMENTARY INFORMATION.**

ADDRESS: For additional copies of this standard contact: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Publications, Room N–3101, Washington, DC 20210, (202) 523–9667.

FOR FURTHER INFORMATION CONTACT: James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N–3637, Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION: This notice of final rulemaking has been prepared by Carrol Burtner and Judy Goodrich of the Office of Mechanical Engineering Safety Standards.

I. Background

A mechanical power press is a mechanically powered machine that shears, punches, forms or assembles metal or other material by means of cutting, shaping, or combination dies attached to slides. While PSDI will likely have wider application for presses that perform metal stamping operations, any mechanical power press use for materials other than metal may also be considered for PSDI.

A press consists of a stationary bed or anvil, and a slide having a controlled reciprocating motion. The slide, called the ram, is equipped with special punches and moves downward into a die block which is attached to the rigid bed. The punches and the die block assembly are generally referred to as a "die set." The main function of a stamping press is to provide sufficient power to close and open the die set, thus shaping or cutting the metal part set on the die block. The metal part is fed into the die block and the ram descends to perform the desired stamping operation. The danger zone for the operator is between the punches and the die block. This area is referred to as the "point of operation."

Other major components of a mechanical power press, apart from the frame, are the driving motor, the flywheel, the clutch and brake. The flywheel, a large rotating mass powered by the driving motor, transmits energy to the working elements by means of an eccentric (a mechanism which converts circular motion to linear motion), a crankshaft, or other means. The function of the clutch is to connect the rotating flywheel with the crankshaft causing the press to stroke.

The clutch on mechanical power presses is usually either a full-revolution clutch or part-revolution clutch. A full-revolution clutch transfers motion from the flywheel to the ram through a mechanical connector. The connection cannot be broken until one full revolution has been completed. A part-revolution clutch is also referred to as a friction clutch. Motion is transmitted by two pieces of material being pushed against one another. This type of clutch can be disengaged at any time.

The function of the brake is to stop the motion of the ram. The brake may be a constant drag-type (typical on a full-revolution clutch machine), or it may be engaged only while the clutch is disengaged (typical with part-revolution clutch machines). A brake may be a separate unit, or it may be incorporated in a combination unit with the clutch (applies only to friction clutches).

The feeding of the press is the process of placing material in or removing material from the point of operation. It is done by one of the following methods:

Automatic Feeding—the material or part being processed is placed within and removed from the point of operation by mechanical or machine-operated means. An operator is not required to initiate each stroke of the press.

Semiautomatic Feeding—the material or part being processed is placed within or removed from the point of operation by an auxiliary means *controlled* by the operator on each stroke of the press.

Manual Feeding—the material or part being processed is handled by the operator (with or without use of a grasping hand tool) on each stroke of the press.

In manually-fed operations, tools can be used to place the part in the die bed such that the operator's hands need never be in the point of operation. This is known as "no-hands-in-die" (NHID). Parts can also be fed without using tools. This latter method is referred to as "hands-in-die" (HID) because the operator's hands actually reach into the point of operation. *PSDI is mainly considered for manually-fed operations.*

Until this rulemaking, OSHA standards have required that a mehanical power press operator *physically initiate* the stroke of a power press by making bodily contact with the operating control (normally a hand or foot control) to "tell" the press to stroke. A special and *overt* action of the operator was necessary for the press to stroke.

The total population of mechanical power presses in the United States is estimated to be 230,000, about equally divided between full revolution and part revolution presses. Approximately 69,000 of the 115,000 part revolution presses are manually fed, the balance being machine fed. It is estimated that 40 percent of the manually fed presses are operated by hand controls and the remaining 60 percent are operated by foot controls.

Figure 1 illustrates a common type of mechanical power press. Note the dual palm buttons and the foot pedal that require direct bodily contact in order to initiate the stroke of the press.

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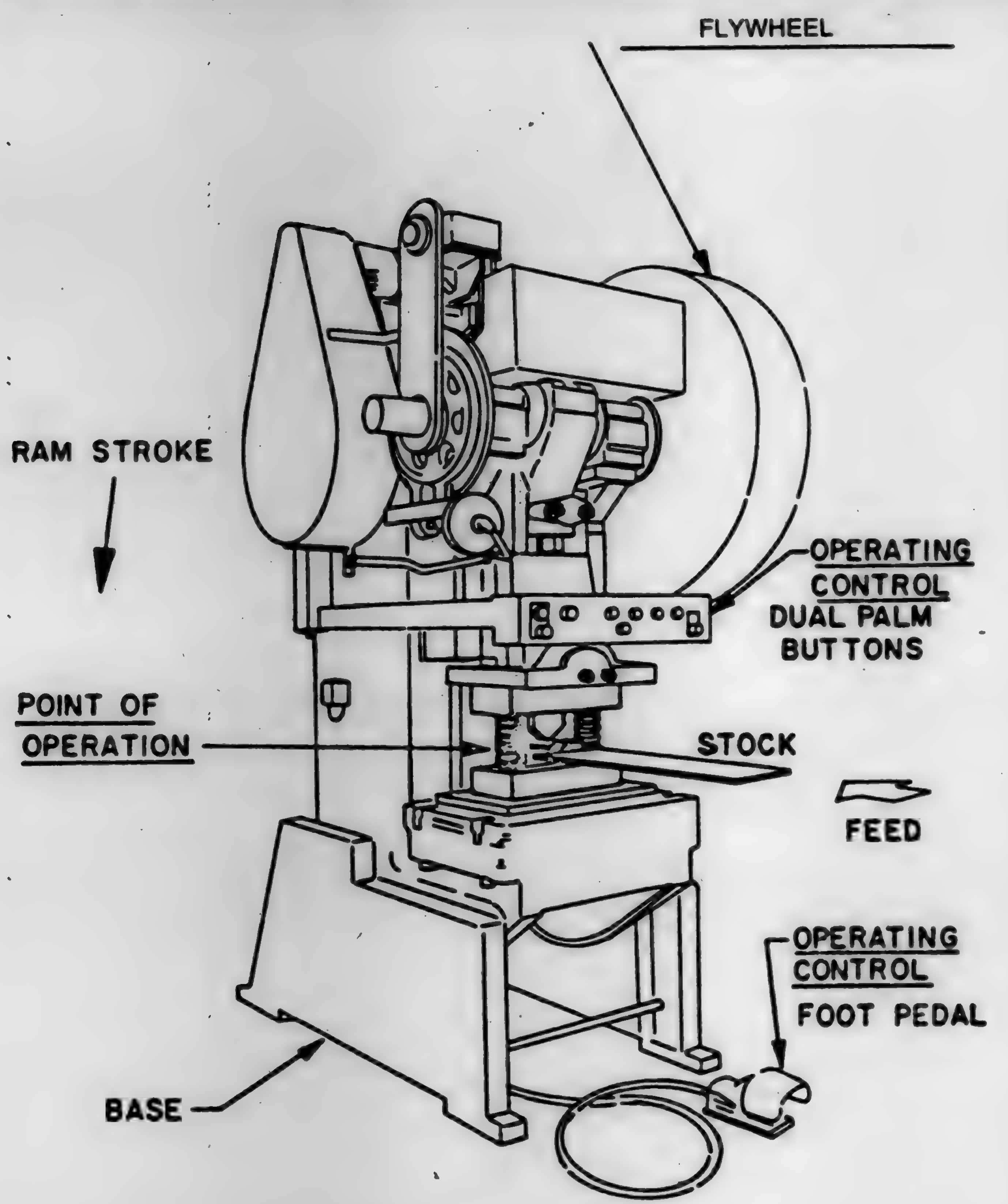

MECHANICAL POWER PRESS
(OBI)

FIGURE 1

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Figures 2 and 3 offer different views of the two-hand palm buttons.

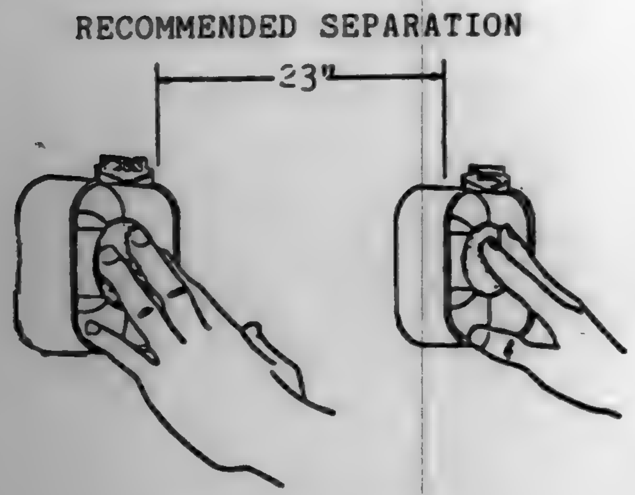

TWO-HAND CONTROL
Figure 2

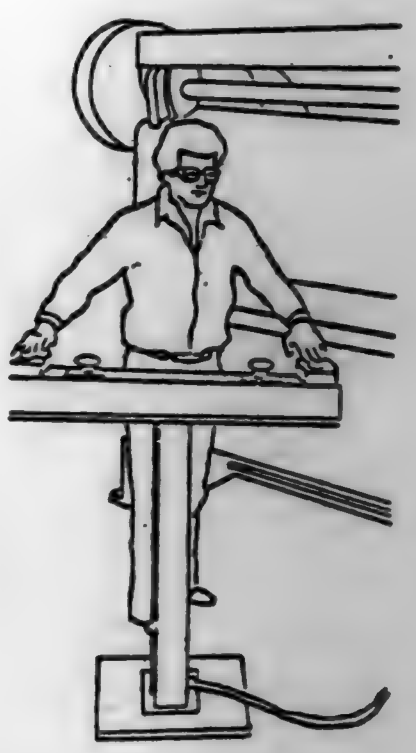

TWO-HAND CONTROL ON PEDESTAL

Figure 3

The purpose of having a two-hand control, spaced far enough apart so that one hand cannot operate both palm buttons, is to prevent the employee from having his or her hands in the point of operation when the stroke is initiated.

Presence sensing devices are electronic units that sense the presence of an object, such as an operator's hands, that enters the point of operation area of the machine (see Figure 4). When an object enters the field of the presence sensing device, the system will prevent or stop the press from completing its cycle, in order to eliminate the hazard at the point of operation (see Figures 4 and 5).

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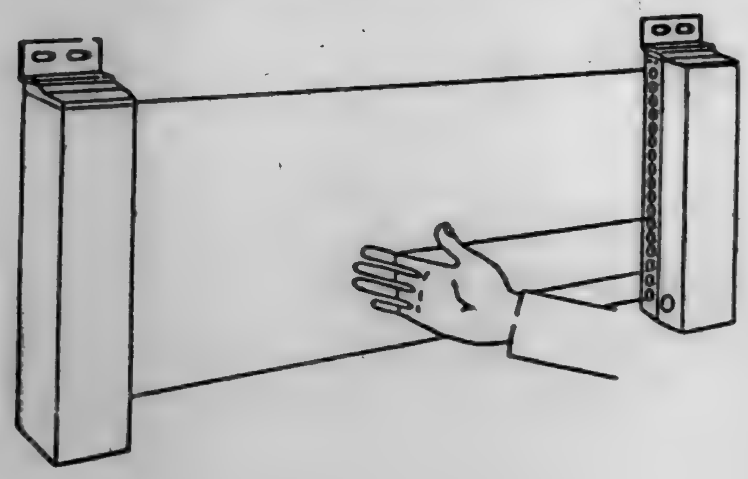

LIGHT CURTAIN PRESENCE SENSING DEVICE

FIGURE 4

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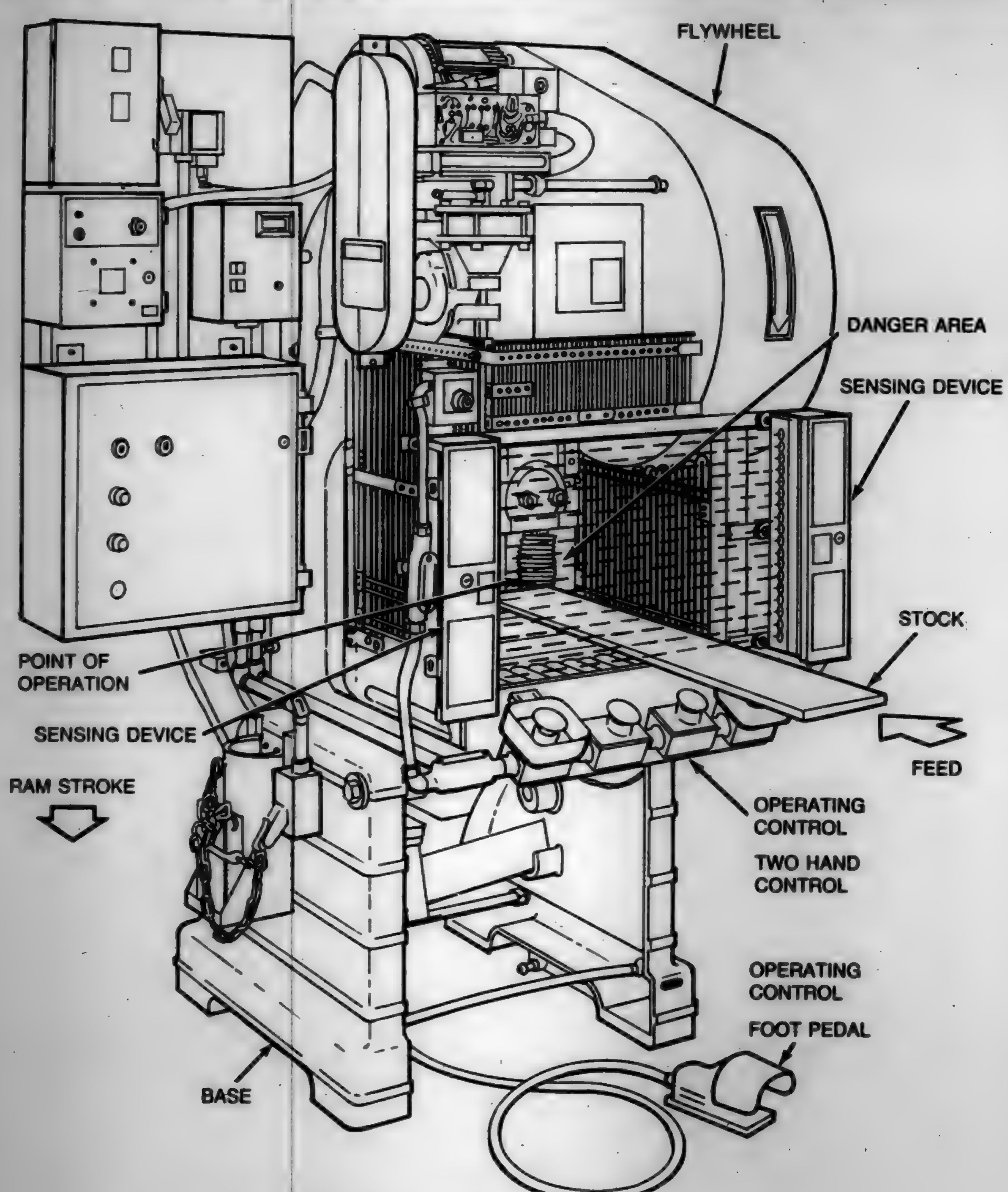

MECHANICAL POWER PRESS WITH PRESENCE SENSING DEVICE

FIGURE 5

BILLING CODE 4510-26-C

Presence sensing devices have long been permitted as a safeguard to prevent operation of the press when the employee's hands or other part of the body are at the point of operation. However, until this rulemaking, OSHA regulations did not permit the presence sensing device to initiate a stroke of the press when it senses that no part of the body is obstructing the presence sensing field. This final rule permits presence sensing device initiation—a system which uses the presence sensing device to initiate the stroke of the press upon sensing that all parts of the body are clear of the point of operation. The device also must sense that all parts of the body are sufficiently far away so that accidental action of the employee cannot expose parts of the body to the point of operation during the stroke, or alternatively that the stroke of the press can be stopped if a part of the employee's body reenters the point of operation. Initiation of the stroke by the presence sensing device makes it unnecessary for the employee to initiate manually the stroke of the press.

A. History of Regulation

PSDI was introduced in West Germany in 1953. In 1971, the Federal Republic of Germany developed the "German Basic Rules for Presence Sensing Devices on Power Operated Presses in the Metalwork Industry" and in 1973, the National Board of Occupational Safety and Health in Sweden developed standards which apply to oversee safety and health in Sweden, Denmark, Finland, Iceland and Norway. Both of these regulations permit the use of PSDI. In the United States, the 1971 revision of the American National Standards Institute voluntary consensus standard, ANSI B11.1, "Safety Requirements for Construction, Care and Use of Mechanical Power Presses," permitted the use of presence sensing devices as safeguards to stop the press if the employee placed part of his or her body in the point of operation during the stroke. However, the standard prohibited their use as a tripping means to initiate the press cycle. OSHA adopted the ANSI standard in its entirety as a Federal regulation (29 CFR 1910.217) in 1971. This action changed the prohibition against using PSDI from a voluntary consensus standard provision to a rule with which the employer was *required* to comply, regardless of preferences, capabilities or changes in technology.

The prohibition was continued to subsequent issues of the ANSI standard. Although not a factor in the OSHA decisional process, in working drafts of revisions to the ANSI standard subsequent to OSHA's published proposal, the prohibition has been deleted. In the comments on the proposal which were received from the ANSI B11.1 subcommittee (Ex. 18-14), it is stated that PSDI will be considered in the forthcoming revision of the standard for mechanical power presses. This exhibit and the other exhibit numbers mentioned may be found in Docket No. S-225 in the OSHA Docket Office, Room N-3670, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523-7894.

The ANSI standard adopted by OSHA in 1971 also contained a requirement of "no-hands-in-die." In 1974, through rulemaking under section 6(b) of the Act, OSHA revoked the no-hands-in-die requirement because evidence indicated it did not lead to greater safety and because of feasibility difficulties. OSHA added protective provisions when hands-in-die feeding is used, in order to increase safety (39 FR 41844) (Ex. 14). Further discussion on this subject can be found in Section II, "Public Response."

At that time, OSHA considered but rejected the possibility of deleting the prohibition against using presence sensing devices as a tripping mechanism on mechanical power presses. The rejection was based on the evidence available at the time and in part on the fact that while European countries which authorize this method have procedures and facilities for approval of the presence sensing devices, OSHA did not have the capability for such approval. However, OSHA further stated that the requirement might be reconsidered if a satisfactory means of approval and a regulation could be implemented, and that new evidence indicating the safety of PSDI would of course lead to reconsideration of the earlier decision.

OSHA granted a variance permitting the use of PSDI on an experimental basis to the Interlake Stamping Corporation of Willoughby, Ohio, on August 31, 1976 (41 FR 36703, August 31, 1976) (Ex. 15). It was the opinion of OSHA that the PSDI system might well prove to be an improved safety technique, based on a document submitted by the Swedish National Board of Industrial Safety. OSHA stated, "Their [the National Board] experience has shown no accidents related to the functioning of the light curtain in this mode. It further appears that the simplicity of the system would reduce worker fatigue, a recognized cause of industrial accidents, by eliminating the need for the press operator to manually operate a two-hand control, foot pedal, or other permissible tripping device. In addition, minimizing the operator's task would appear to eliminate an inclination to bypass or inactivate the safeguard. Thus, accidents from these causes could be reduced or eliminated" (41 FR 36703; August 31, 1976) (Ex. 15).

The Interlake Stamping Company variance was the subject of a study done by the Purdue Research Foundation in 1982 under a contract for the National Institute for Occupational Safety and Health (NIOSH) (Exs. 6, 7, 8, 9, 10).

In 1982, OSHA contracted with Mr. Trygve Hauge of Technology 80, Inc., to examine 29 CFR 1910.217 and to recommend appropriate revisions to the standards to allow PSDI. Hauge's report, "Self-Tripping of Mechanical Power Presses" (Ex. 1), contains supporting information and recommended revisions and additions to existing regulations.

Approximately 350 copies of the report were distributed in June 1983 to individuals and organizations that are members of pertinent voluntary consensus standards organizations; that have participated in a previous rulemaking relating to 29 CFR 1910.217; or that otherwise have demonstrated interest in the subject. Critical comments and suggestions were invited on the draft of changes to the standard. There were 55 public comments on the report. They were entered into the record of the proposed rulemaking as Exhibits 4-1 through 4-55.

Based on these studies, the experience under the variance and in Europe, the preproposal comments and other information, OSHA proposed to delete the prohibition on PSDI and incorporate regulatory provisions so that PSDI would be used in a safe manner. The proposal appeared in the **Federal Register** on March 29, 1985, at 50 FR 12700 (Ex. 20). The proposal requested public comments which were due within 90 days, by June 27, 1985. OSHA received 83 comments in response to the proposal (Exs. 18-1 to 18-83).

OSHA also notified the public of its right to request an informal public hearing. Two parties tentatively indicated an interest in holding a hearing. However, after discussions and agreement that there was sufficient information in the record, the hearing requests were withdrawn. No other requests for hearings were received.

B. Basis for Proposal

The principal basis of OSHA's proposal was the growing body of evidence indicating that PSDI could be used safely. Since the 1974 decision to retain the prohibition against using presence sensing devices as tripping mechanisms on mechanical power presses, the experimental variance and several studies added much to the background information and understanding of operating presses with presence sensing devices. These studies and the variance operating results indicated the use of properly designed light curtain type presence sensing devices used in the PSDI mode to be extremely safe, and to have the added benefits of lessening operator fatigue, thus further enhancing safety. The studies suggested that the OSHA requirements for manual tripping may be an unnecessary prohibition which imposes a burden on business and provides no increased safety to employees.

As mentioned, OSHA granted a variance permitting the use of PSDI on an experimental basis to the Interlake Stamping Corporation (now Interlake Stamping of Ohio, Inc.) on August 31, 1976. The Interlake variance was designed to demonstrate a total safety system employing a light curtain type presence sensing device as a tripping mechanism, as it is used in other countries, and to validate the accident-free experience with this system. Detailed requirements were developed by Interlake to assure that the equipment would meet safety requirements equal to those contained in Swedish standards as well as pertinent OSHA standards. A light curtain type presence sensing device was used to function as a combined safeguard and tripping mechanism on five open back inclinable (OBI) mechanical power presses.

This light curtain device is part of a sophisticated control system which automatically checks all press systems between strokes. If any of the electronic or mechanical systems do not operate properly, the press will shut down without stroking. In addition, the press will automatically shut down if the brake does not stop the press within a pre-determined period, or if the operating rhythm is interrupted so that the press does not cycle within a pre-set time. Before the press can be operated again, necessary repairs or adjustments must be made, and special operating means must be actuated to restart the press.

The 1976 experimental variance has been renewed several times and is a very useful method for comparing the performance of PSDI to two-hand control or foot control initiation. In nearly a decade of continuous, carefully monitored use at Interlake, there have been no injuries in PSDI equipped presses.

The Interlake Stamping Corporation variance was also the subject of a study done by the Purdue Research Foundation under a contract for the National Institute for Occupational Safety and Health (NIOSH) (Exs. 6, 7, 8, 9, 10). As a result of this study, the researchers at Purdue recommended to OSHA that the prohibition be lifted against the use of fail-safe cycle initiation using presence sensing light curtain devices. The rationale for this recommendation was based on the finding that the two-hand palm button actuator system was no more safe than the tested light curtain device at Interlake Stamping. Although the two devices are equally safe to the operator, the PSDI system also protects all other personnel such as maintenance or servicing personnel who may be exposed at the point of operation (danger zone). The two-hand palm button device protects only the operator. The recommendation to remove the prohibition was qualified by additional recommendations related to certification of the safety of light curtains, installation, operation, maintenance, inspection, and operator training.

The previously mentioned OSHA contract with Mr. Trygve Hauge of Technology 80, Inc., was to examine 29 CFR 1910.217 and to recommend appropriate revisions to the standards to allow PSDI (then called "self-tripping"). Hauge's report, "Self Tripping of Mechanical Power Presses" (Ex. 1) concluded that the previous studies done on the European experience with PSDI and the operating variance in the United States were documented evidence that "the use of these devices in a self-tripping mode has been found to be equally safe plus have the added benefit of less operator fatigue and greater productivity."

OSHA preliminarily concluded that the studies and experimental variance had shown that PSDI overall enhances safety at the point of operation of part revolution mechanical power presses when compared with currently permitted actuation means and safeguarding methods. There were several reasons for this conclusion.

1. The press opeator is protected just as well with PSDI as with present stroke initiation methods.

2. In addition to the operator, presence sensing devices protect all others who intrude into the point of operation, as opposed to pull-outs, two-hand controls, and restraints, which protect only the operator.

3. Personnel who violate § 1910.217(d)(1)(ii) by attempting to remove scrap or stuck parts with their hands rather than with tools are also protected by PSDI.

4. The overall press and control system safety are enhanced by certification and related requirements to ensure a higher degree of equipment capability and reliability than was provided for in the former standard.

5. With PSDI, there is less operator fatigue than there is with manual controls because the repetitious reaching motions will be eliminated.

6. The previous requirements for training and maintenance have been enhanced to assure the safe use of PSDI.

7. The integral nature of the actuation and guarding device reduces human factors risk because the press cannot be operated without the presence sensing device in the PSDI mode. Presence sensing devices do not have to be removed at the completion of the stroke in order to gain access to the point of operation. Also, the devices do not physicially obstruct or interact directly with operators, so there is less tendency for operators to void this safeguarding device than there is with other types of guards, such as gate devices which can be removed; pull-out devices that are strapped to the hands in order to pull them out with the movement of the ram, but which can get out of adjustment with no notice to the operator; or restraint devices that restrict the movement of the hands.

For these reasons, OSHA published a proposed rule in order that the state-of-the-art in technological advancements may be recognized and be permitted to be utilized in a manner consistent with, and protective of, worker safety and health.

II. Public Response

A. General Issues on Whether OSHA Standards Should Permit Use of PSDI

OSHA received 83 comments to the proposed rule of March 29, 1985 (50 FR 12700) (Ex. 20). The comments addressed the issues on three levels. First, the general issue of whether OSHA regulations should permit the use of PSDI, second, specific questions relevant to the general issue, and third, if it is permitted, what specific technical provisions are appropriate to assure that PSDI is used safely. The immediately following discussion addresses the first issue: Should OSHA permit PSDI? Then follows a discussion of the specific questions about the general issue of the safety of PSDI. The third issue of specific technical provisions is

discussed later in this document under III. *Summary and Explanation of the Final Rule.*

The majority of the comments received stated general support for permitting the use of PSDI. For example, the Spiral Shim Company (Ex. 18–62) stated:

> Our experience of 40 years in the metal stamping production has kept us on the search for improved safety, and we believe that a properly designed, installed, and maintained PSDI is a stepping stone to ever improved safety conditions.

That comment and the following comments generally represent the industries who will use PSDI. From the American Metal Stamping Association (EX. 18–64) came this request:

> Please move quickly in implementing the PSDI regulation so employers can begin to implement this proven, accepted technology for improving operator safety and productivity.

From Alofs Manufacturing Company (Ex. 18–27) came this statement:

> For the past few years we have been watching with interest the P.S.D.I. operation at a metal stamping plant in Ohio. While this device is new for our industry in the United States it has been in operation in Europe for many years. We support the P.S.D.I. concept and feel it will be one of the best improvements for our industry in some time.

Anchor Fabrication (Ex. 18–7) stated:

> We favor adoption of the PSDI regulation for several reasons:
>
> 1. First, it is a proven system for increasing productivity. The system as you know has been used successfully in Europe for over twenty years.
> 2. Second, it promotes safety through increased reliability of controls and other machine components.
> 3. Finally, the certification programs help to insure that these technological improvements do not deteriorate through abuse nor neglect.
>
> In summation, we feel that the opportunity to increase productivity, upgrade the quality of our national manufacturing capacity, while at the same time increasing the level of operator safety is too good a proposal not to try. Surely we can show ourselves to be as creative and responsible as our European trading partners and should be given an opportunity to implement this proposal.

Another commenter, the Olin Brass Corporation (Ex. 18–21), expressed support by stating:

> In the case of PSDI, we have an opportunity to achieve efficiency and to improve the safety of the work place. This proposed standard should be implemented as soon as possible.

Another commenter, the Torrington Company (Ex. 18–15) supported the use of PSDI by stating:

> Over the past few years we have had various strain injuries including tendonitis caused by repetitive contact with palm buttons. One case was severe enough to cause the operator to be permanently removed from the job. This proposed rule would eliminate this type of injury.

From Trans-Matic (Ex. 18–31), this comment was received:

> The proposed PSDI legislation is long past due in the United States. This is not new technology, but firmly established, widely used and adequately tested technology implemented in other countries. The time has come for change. While I do not agree with every provision of this proposed legislation, I want to lend my personal and corporate support to his proposal. As presently drafted, the implementation of this legislation will assist U.S. manufacturers increase safety and productivity at the same time. Rarely do we have an opportunity to accomplish both goals concurrently.

and, the American Metalcraft Company (Ex. 18–47) stated:

> Recently the metal stamping industry has perfected a technology which will greatly enhance press operator safety, presence sensing device initiation of power presses.
>
> I totally support the efforts of my fellow manufacturers to work with the regulatory agencies to formulate a set of regulations to insure proper utilization of this technology by all manufacturers.

In contrast to the numerous favorable comments, there were some who expressed opposition to the use of PSDI. From the press manufacturers' comments, the following viewpoints were received:

> It is because of our deep concern for operator safety that we object to this revision. We cannot sanction a proposal that transfers safety conditions from the operator to the press system—thereby placing the operator completely at the mercy of that system. (Niagara Machine and Tool Works (Ex. 18–50)).
>
> It is true that PSDI has been used in Europe for many years. The history and statistics of the safe use of PSDI operated equipment are really unknown. The governmental regulations of European countries and their methods of enforcement of these regulations are considerably different from ours. It is also my understanding that the present use of PSDI on mechanical power presses is very limited. The majority of PSDI in Europe is involving hydraulic power presses, not mechanical power presses. (Minster Machine Company (Ex. 18–18)).
>
> I fail to see any increase in operator safety when the press, not the operator, controls the cycling of the press. (Verson Press Manufacturing (Ex. 18–2)).

OSHA has considered all of the comments which were received and agrees with the supportive comments from those who will use PSDI on their presses that it can increase safety by protecting more than just the operator; eliminating strain injuries and fatigue; adding certification requirements; and enhancing the training and maintenance requirements for more protection than the current requirements for manual controls. These reasons are discussed at length both above and below in this document.

In specific response to the opposing comments, OSHA believes that safe use in Europe for over 30 years provides support for the safety of PSDI. Speculation on possible differences between Europe and American systems does not negate that history of safe use. OSHA regulations are enforceable and incorporation of a certification system in this regulation conforms to European practice. The European practice, variance and studies demonstrated that PSDI is as safe as manual actuation for the operator and safer for others in the work area.

The specific safe experience of Interlake Stamping (Ex. 18–63) also indicates that the general concerns of those opposing PSDI have not in practice caused problems. The comment from Interlake stated:

> As you already know, our company is the only company allowed to permit this PSDI at the present time. Officially we have been using this PSDI since 1976 with a 100% safety record. All other good points of this PSDI are part of a record you already have. I am not only writing this for myself and my company but also for the many employees that have been involved in this operation over the past 9 years. They have endorsed the operation not only as a safety system but also from a productivity and from an ergonomic perspective.

The safe experience of those who have used PSDI is valuable in evaluating the comments from those who object to allowing the use of this new technology.

Based on the history of the safe use of PSDI in Europe, the experimental variance studies done by NIOSH which concluded that PSDI was equally as safe as manual controls, the added protection which it gives to others in the work area, the reasons previously stated and the ergonomics factors discussed, OSHA concludes that if the provisions of paragraph (h) and the certification requirements in the appendices are complied with, PSDI should be permitted. It is as least as safe for the operator and overall safer because of the protection it gives others.

This conclusion has been reinforced by the consultants with experience in this area of technology: Trygve Hauge of Technology 80, Inc. (Ex. 1), James Barrett, Jr., of Link Systems (Ex. 12), and Sergio Concha, Paser Associates (Ex. 11), who were contracted by OSHA to give expert advice on the subject of PSDI and recommended its adoption, and Purdue University (Exs. 6, 7, 8, 9 and

10) which was contracted by NIOSH to study OSHA's experimental variance. In addition, the substantial number of reasoned comments recommending permitting PSDI is a further basis for OSHA's conclusion that it should be allowed.

B. Specific Questions and Analysis for Safety of PSDI

The following section discusses comments addressing some specific issues on the general question of the safety of PSDI.

1. The major reason for the OSHA proposal to remove the prohibition against the use of PSDI is the history of its safe use in Europe for over 30 years. As an example expressed in a comment from Trans-Matic Manufacturing Company (Ex. 18–54):

> I would like to take this opportunity to support Presence Sensing Device Initiation (PSDI) of mechanical power presses. It is my firm belief that this technology, when properly administered, can be as safe or safer than the current hand methods for loading mechnical power presses
>
> Metal stampers in Europe have used this technology for sometime and have experienced high productivity with impressive safety records. The metal stamping industry in the United States is anxious to take advantage of the technology to make us more competitive on a global basis.

Another commenter, F.F.R. Associates (Ex. 18–33), stated:

> I wholeheartedly endorse the PSDI safety systems and have since I first inspected them in Europe many year ago and saw the safety records they produced.

A few of the comments were critical of the use of the experience wth PSDI in Europe as a base for its use in the United States. The National Machine Tool Builders (Ex. 18–70), stated:

> We do not deny that there has been some success in Europe by using PSDI, however we strongly object to the manner in which such comparisons have been used to support the reasons for accepting PSDI on a broad basis in U.S.

Another commenter, Peter N. Bosch (Ex. 18–25), noted that:

> In my direct experience and knowledge, other countries operate safely in large measure due to harsh penalties imposed on employers for unsafe conditions and not because of technological excellence.

OSHA agrees with the supportive comments that the safe use of PSDI in Europe is a testimony to the fact that the advanced technology available to other countries should also be available in the United States.

To the commenters who object to the use of the experience in Europe as proof of its success, OSHA is aware that there are differences in the procedures between the United States and the European countries to enforce the regulation of PSDI use. However, there are also many similarities. OSHA regulations are enforceable. This standard incorporates a certification requirement. Consequently, U.S. requirements have now become as effective, if not more effective than European requirements in this regard.

The variance provisions were based on Swedish requirements for safety and the provisions of paragraph (h) have incorporated these and other requirements to improve safety measures. In the comment from Interlake Stamping (Ex. 18–63), the following statement was made:

> The PSDI used at Interlake is, in my estimation, even better than the systems used in Germany and Sweden. I also feel that the effort in the new proposed regulation will certainly enhance and help keep PSDI systems a safe means of operating power presses.

OSHA believes that the PSDI system with the safety provisions of paragraph (h) will be more safe than the current regulation provides for.

2. The second major reason for the proposal was the safe experience of the variance at Interlake Stamping Corporation. In support of this reason was the comment from F.F.R. Associates (Ex. 18–33) who stated:

> After the no accident performance since 1976, and the Purdue University Study, I urge OSHA to certify PSDI as soon as possible to make it available to the entire industry.

Another supportive comment was received from Rockford Systems Incorporated (Ex. 18–38), which stated that:

> Representatives from our company participated in AMSA's June 4th seminar on PSDI. Information presented there regarding the use of PSDI in Sweden and Germany was very positive and encouraging as were the test results from the NIOSH/Purdue study. However, the most encouraging evidence that PSDI can be effective in a "real world" U.S. manufacturing plant was presented by Mr. Wayne Groenstein of the Interlake Stamping Company, Willoughby, Ohio. His situation seems by far the most tangible example that the system can provide both safety and increased productivity over an extended period of time.

One critical comment to the use of the variance as a valid base was that of Niagara Tool Works (Ex. 18–50), which stated:

> This proposed revision stems from the results of a variance granted to one member of the AMSA. How can any of us believe that such a limited application conducted under laboratory conditions proves anything either as to operator safety or productivity? This experiment was conducted under conditions not even faintly resembling those existing in the real world.

It is OSHA's opinion, after reviewing the studies done on the variance and conducting a number of OSHA staff visits to the Interlake Stamping Corporation to view the actual function of the PSDI system in action, that the environment was, in fact, sufficiently representative of anticipated workplace conditions to present a good indication of PSDI use. The excellent safety record still exists after 10 years at Interlake Stamping. OSHA believes this demonstrates an example of the ability for PSDI to increase safety.

The National Machine Tool Builders (Ex. 18–70) suggested that "Interlake Stamping Corporation be extended a permanent variance and that OSHA advertise again for additional companies who would like to apply for such a variance."

Based on the many comments received in favor of PSDI and its safety record, OSHA believes that a prolonged delay for PSDI is unnecessary. To require applications for variances would impose a time-consuming burden both to OSHA and the employer, which would further delay the availability of the improved safety capability presented by PSDI. In addition, 10 years of experience under the experimental variance is sufficient to test the safety of PSDI.

3. The third major reason for removing the prohibition on the use of PSDI was the conclusion of the Purdue University study of the Interlake Stamping Corporation experience.

As previously stated, the findings of this study recommended that "the prohibition be lifted against the use of safe-fail self-tripping light curtain devices" (Ex. 8). None of the comments received were critical of the Purdue study other than the previously mentioned comment (Ex. 18–50) regarding the limited number of presses used in the variance at Interlake Stamping Corporation.

It is OSHA's determination that the Purdue study of the Interlake Stamping Corporation variance is technically sound and provides good validation of the successful implementation of the experimental variance. It further supports OSHA's contention that PSDI may be accomplished safely.

4. The fourth reason for removing the PSDI prohibition is the safety advantage of less operator fatigue. In a report from Wayne Groenstein, President of Interlake Stamping Corporation, it is stated that in his experience with the Swedish government, they were "much concerned with ergonomics * * * which relates roughly to what we call human engineering. For this reason they do not use restraints, which they consider a source of fatigue." The human factors of fatigue can cause errors in judgment and alertness which can result in accidents. Of the 10 operators that worked on the Interlake Stamping Corporation presses, all stated that they preferred the use of PSDI as opposed to two hand tripping restraint devices (Metal Stamping, May 1977).

As previously mentioned, the Torrington Company (Ex. 18–15) expressed the need for PSDI by stating "Over the past few years we have had various strain injuries including tendonitis caused by repetitive contact with palm buttons. One case was severe enough to cause the operator to be permanently removed from the job. This proposed rule would eliminate this type of injury."

There were no comments that dissented from the conclusion that PSDI reduces fatigue factor.

OSHA believes that reduction of fatigue is a positive safety benefit. Fatigue can cause errors in operator's judgment and alertness which can lead to accidents. In addition, reduction in operator fatigue is a benefit in itself for the health and welfare of the operator.

5. A fifth reason for revising the provisions of this standard is the provision of greater safety for those other than the operator who may be working in or around the area of the press. With the current method of manual control (unless supplemented by a light curtain as an auxiliary guard which is not required), only the hands of the operator are protected.

This opinion was reflected in a comment submitted by the Air Transport Association (Ex. 18–43) from Federal Express, which is one of its members that use mechanical power presses:

> We believe the Presence Sensing Device is a better method of guarding because it not only protects the operator but also anyone standing near the equipment.

The sensing device will immediately stop the downward stroke of the ram whenever anything or anyone interrupts the curtain of light, thus providing added protection for all employees who may be in the area in addition to the operator. Examples of this type of accident where a person who was not the operator was injured or the operator was injured because of the actions of a second person who actuated the manual controls were included in an attachment to a comment from the National Safety Council (Ex. 18–72). Three injuries were cited that involved more than one person in press operations while using two-hand control.

> Employee was not injured on own press. A second employee, operating a different press, was working on the same part but performing a different operation (double beading the part). The parts were being double beaded first and then going to the first employee for the expansion process. First employee ran out of parts to expand. Went over to the second employee and was reaching behind the machine to take out parts while the second employee was still running the press. Injury sustained: amputation, tip of right thumb.
>
> Press has a part revolution air clutch with two-hand controls on side of press and point of operation guarding. Cause of accident: Injured party was removing stamped parts from die and second party inadvertently inched press down causing amputation of part of left thumb. Press is equipped with automatic roll feed and two-hand control to actuate press.
>
> Adjusting mandril cylinder manually, operator energized air cylinder without notifying toolmaker. Toolmaker reached into die to clean off anvil, mandril came in pinched thumb and finger between mandril and anvil.

The use of PSDI could prevent these types of injuries by protecting the operator and others at the point of operation.

6. A sixth advantage of PSDI safety over the use of manual controls is that the operator will be less likely to disengage or by-pass the safeguarding methods, as is sometimes done to increase production when using manual controls.

The comment from Federal Express (Ex. 18–43) reinforced this statement by commenting that "If designed properly, the electrical devices cannot be over-ridden as in the case of two hand controls. Also, an adjustable field of coverage allows precise guarding of the hazard area."

The safety provisions of two hand or foot control can be over-ridden by purposely removing or manipulating other types of guarding to increase the operator's speed in feeding the material to the press and retrieving the product from the press. With PSDI this unsafe practice will be eliminated because any interruption of the presence sensing device will stop the movement of the ram, thereby safeguarding the point of operation.

C. Hands-in-Die Operations

On December 3, 1974 (39 FR 41844; [Ex. 14]), after extensive hearings, OSHA removed a prohibition on hands-in-die (HID) operations. In HID operation, the operator's hands may be placed at the point of operation as long as certain safeguards exist. In no-hands-in-die (NHID) operations, only hand tools or other devices are supposed to be at the point of operation, and not the operator's hands. The reasoning justifying the change was generally upheld by the Court of Appeals with a remand for a further supplemental statement of reasons on one issue, *AFL–CIO v. Brennan,* 530 F.2d 109 (3rd Cir. 1975). The further statement of reasons was published at 41 FR 40103 (September 17, 1976).

Prior to the proposal, a number of comments which OSHA had received, nominally on PSDI, were actually arguments that HID should be banned and only NHID operations should be permitted. OSHA did not reopen the issue of HID in the proposal on PSDI. The proposal (50 FR 12704–5; March 29, 1985 [Ex. 20]) did discuss the issue. It pointed out that 59 percent of point of operation accidents occur in NHID operations. Accidents occur because of fatigue, carelessness, and defeat of safeguards as well as hand location. Although the statistics are not definitive because data are not kept on the number of press cycles using HID and NHID operations, the statistics do not indicate that NHID is overall safer, as discussed in the proposal.

Although OSHA did not reopen the issue of HID compared to NHID in its proposal, a number of comments did address the issue. The Stamp Matic Corporation (Ex. 18–61) submitted a comment similar to OSHA's analysis which states:

> The OSHA studies and experimental variance have shown that when PSDI is properly used, the operator is as safe or safer when compared with currently permitted actuation means and safeguarding methods for HID operations.

Some other comments were principally directed toward the issues of HID and argued that it should not be allowed. From some press manufacturers, trade associations, and unions, OSHA has received opinions that are generally similar to this comment by the Niagara Machine and Tool Works (Ex. 18–50):

> Instead of sanctioning a system that encourages "hands in the die" we should all be working toward a system of keeping "hands out of the die" or as a minimum keeping them out as much as possible if not completely.

All the reasons and evidence given above for the safety of PSDI, are equally applicable for HID as for NHID. When the light curtain field is interrupted by a hand in HID or a tool in NHID, the ram will stop, thus eliminating the chance of injury at the point of operation.

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For the reason discussed in the proposal preamble (50 FR 12704–5), OSHA continues to believe that its 1974 decision to permit HID operation was correct and that the available facts and data do not provide evidence indicating a need to reopen the issue. None of the comments which recommended disallowing HID operations submitted facts or data which would indicate the need to reconsider the issue, rather they were limited to expressing opinions.

The evidence of safety of PSDI was generated in HID operations. The presses used in the Interlake variance were operated in the HID mode. There were no accidents. The Purdue Research Foundation and the Hauge studies of PSDI operation were of it used in the HID mode and their recommendations of its safety were based on using it in HID modes. The European evidence of safe use of PSDI is based principally on using it in the HID mode. The additional safety benefits of PSDI through reduction in fatigue and protection of other persons in addition to the operators applies equally to HID and NHID operations.

The new provisions for the safety of the entire system, which are provided in paragraph (h) and new appendices of the final rule, are applicable of course both to HID and NHID operations, and are intended to assure that the use of PSDI will be done safely with a very high degree of reliability. No factual or statistical evidence has been presented that PSDI will not present the same degree of safety for HID as for NHID. Indeed, no comments have been presented on this specific point rather than on the broader point of the relative merits of HID and NHID. Based on all the evidence just discussed, OSHA concludes that PSDI is appropriate for HID and NHID operations.

D. Range of Interests Reflected in Comments

The comments that were received on the proposed rule represented the broad range of interests that are involved with mechanical power presses.

Included in this group were 3 insurance companies, 32 press users, 6 trade associations, 2 labor organizations, 15 press manufacturers, 20 presence sensing device manufacturers, 5 safety consultants and 4 government agencies. The largest group of the responses were from those who will use PSDI on their presses.

Within these groups, the breakdown of those for and against the revision for PSDI was as follows:

	For	Against
Press Users	32	0
Device Manufacturers	20	0
Press Manufacturers	11	4
Trade Associations	3	3
Consultants	3	2
Government Agencies	4	0
Insurance Companies	2	1
Unions	0	2
Other	2	0

In the comments from those who will use PSDI on their presses, the general opinion was that it is a necessary step forward that will not only enhance safety but will increase productivity and international competitiveness as well. OSHA's decision to approve PSDI was based on evidence of its safety.

The comments from the presence sensing device manufacturers were similar to the ones from those who will use PSDI. They requested prompt action and suggested as few changes in the language for clarification and feasibility in the requirements. Where those suggestions assisted in clarifying or improving the feasibility of the rule without reducing safety, OSHA has incorporated them in the final standard.

The comments from press manufacturers generally favored the proposal, but many had concerns about the product liability they would have as designers and builders who would have no assurance that the press would be used in a manner that would meet the requirements of the standard. OSHA has no statutory authority on matters of workers' compensation or liability. In addition, section 4(b)(4) of the Occupational Safety and Health Act states:

> Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

However, OSHA believes the specific requirements of the PSDI standard will lead to safer operation and more reliable operation of safety systems. OSHA of course has authority to enforce these requirements. The resulting improvement in safety may reduce liability concerns through fewer accidents.

Several other comments, including insurance companies, government agencies, consultants, and a safety council, also generally endorsed the regulation for PSDI, with some qualifications. Many stressed the importance of certification to assure the reliability of the entire system.

The labor union comments were opposed to PSDI based on their policy of NHID and their belief that such a program cannot feasibly be implemented in a normal industrial setting. OSHA has evaluated these comments as well as other comments received, and believes that the previously mentioned facts and analyses are evidence that PSDI can be used safely.

Among the other comments received were requests for minor changes in the language used for the purpose of clarfication and enforceability of the requirements. Other requests were to delete paragraphs that are covered in other standards or were too restrictive.

OSHA has carefully considered at of the comments that were received and appreciates the interest and concerns of all of the respondents. Where changes were suggested that would not adversely affect the health and safety of the employee, and had a reasonable basis, revisions to the proposed rule generally were incorporated.

The public comments on the proposal frequently suggested specific technical considerations for enhancing the safety of PSDI. OSHA has attempted to incorporate these suggestions by including a number of technical provisions in the standard. OSHA believes the specificity of the provisions is appropriate for the highly technical nature of PSDI operation, and is necessary—in conjunction with the certification requirement—to assure worker safety.

III. Summary and Explanation of the Final Rule

The following section discusses the individual requirements of the standard permitting presence sensing device initiation of mechanical power presses. It includes an analysis of the comments and record evidence on those specific requirements and changes made in response to the comments. The language of the standard essentially follows that of the proposal except for revisions based on OSHA's review of the entire rulemaking record, including the written comments and data submitted during the comment period.

There were some provisions that received no comments. Where there has been no change from the proposed rule, these provisions have been referenced to the specific page in the Notice of Proposed Rulemaking of March 29, 1985 (50 FR 12700) where a discussion of the provision can be found and, in general, the discussion has not been repeated in this final preamble.

A. Definitions

Section 1910.211(d)(11), "Device," was proposed for revision to make it more appropriate for PSDI by detecting any part of an operator's body or by detecting any other objects such as hand tools. Guardimark International and the Motor Vehicle Manufacturers Association (MVMA) (Exs. 18–1 and ×45) pointed out that the revision is limiting and would not be pertinent to all devices. MVMA (Ex. 18–45) suggested retaining the language presently in § 1910.211(d)(11)(ii) and adding the proposed definition in a new subparagraph (iv). OSHA has adopted this suggestion in the wording of the final rule.

Section 1910.211(d)(12), "Presence sensing device," was proposed for revision to better define the control of the press and to include activation by other objects such as hand tools. Two commenters (Exs. 18–1 and –45) raised objections to the term "any other object." The point was made that the phrase could be misconstrued to mean an employer could not have a semiautomatic system using a contact switch to sense the presence of a part. Accordingly, the provision is revised in the final rule to substitute "a hand tool" for "any other object."

Section 1910.211(d)(61), "Presence sensing device initiation." A discussion of this term can be found in the proposal at 50 FR 12707. There were no comments received on the definition.

Section 1910.211(d)(62), "Safety system," was proposed as a new concept for a functionally complete, certifiable, total system for PSDI. The definition enlarges upon the control reliability concept in the current standard, for applicability to the PSDI mode of operation, such that a single failure or single human error will not cause injury due to point of operation hazards. The general concept was not criticized. However, several commenters, including the American Metal Stamping Association (AMSA) (Exs. 18–38, –39, –40, –45, and –64) expressed concern regarding the overly broad term "human error," suggesting instead that the error be related to operation of the press. OSHA agrees that it is the intention of the definition to address operating errors, and the definition is so revised in the final rule.

Section 1910.211(d)(63), "Authorized person." This new definition was proposed to clarify the term "authorized person" as one to whom the authority and responsibility to perform a specific assignment has been given by the employer. No substantive comments were made on this definition, and it is included in the final rule without revision.

Section 1910.211(d)(64), "Certification" or "certify." This new definition is added to clarify the distinction, for PSDI safety systems, between the certification of the safety systems by manufacturers, employers, or their representatives, and the validation (by an OSHA-recognized third-party validation organization) of the certification.

Section 1910.211(d)(65), "Validation" or "validate." This new definition is added to clarify the distinction, for PSDI safety systems, between the validation (by the OSHA-recognized third-party validation organization) of the certifications of the safety systems by manufacturers, employers, or their representatives, and the certification itself.

Section 1910.211(d)(66), "Certification/validation" or "certify/validate." This new definition means the combined process of certification and validation.

B. Revisions

Section 1910.217(c)(3)(iii)(b). This revision was proposed to modify the current prohibition on slide motion initiation to permit PSDI if it is used in total conformance with the proposed new paragraph (h) of this section. No comments were received, and it is included in the final rule as proposed.

Section 1910.217(h)(1), "General." In paragraph (h) of § 1910.217, OSHA states the additional requirements which must be fulfilled in order to use PSDI on a mechanical power press which is in conformance with the other applicable requirements of § 1910.217. In addition, to increase convenience, some of the paragraphs of the current standard (those which OSHA believes will be most helpful) which specifically are applicable for PSDI are referenced in appropriate portions of § 1910.217(h). OSHA believes this will facilitate the understanding of the requirements for PSDI, and will aid in identification of the total system concept required for PSDI use. While such references are intended to enhance emphasis, convenience and understanding in relating the new provisions to the existing standard, it should be noted that other portions of the existing standard continue to be applicable, and it is not OSHA's intent to exclude the applicability of those other provisions.

Paragraph (h)(1)(ii) states that the paragraph (h) requirements apply in addition to other portions of § 1910.217.

Not all requirements of paragraphs (a) through (g) of § 1910.217 apply to all mechanical power presses. Some of the requirements are general, but others are directed at specific types (full or part revolution) of mechanical power presses and some requirements are directed at specific operator controls and guarding methods for a particular type of press. For example, paragraph (c)(5) is clearly invoked for presence sensing device initiation modes that use hands-in-die feeding, because the presence sensing device is the guarding method on such operations. It would not be invoked by presence sensing initiation if parts are fed manually with tools. Since the intent of the new provision is to supplement the requirements of paragraphs (a) through (g), paragraph (h)(1)(ii) includes the relevant requirements of § 1910.217 (a) through (g) for all presses used in the PSDI mode of operation.

In § 1910.217(h)(1)(iii), OSHA continues the prohibition on PSDI on full revolution mechanical power presses. OSHA believes that full revolution presses are not suitable for PSDI use. By definition, a full revolution clutch, when tripped, cannot be disengaged until the crankshaft has completed a full revolution and the press slide has completed a full stroke. The capability of a press to be stopped at any point in the down stroke of the slide is considered essential for the safe operation of a press in the PSDI mode.

The American Metal Stamping Association and others (Exs. 18–25, –39 and –64) expressed concern regarding the language proposed in (h)(1)(iv) which prohibits the PSDI mode of operation for presses with a configuration which enables a person to insert his or her body completely into the bed area. The intention of the provision is that some part of an operator's body must remain in the presence sensing device field or be protected by supplemental safeguarding when any part of the same person's body is in the point of operation. This is necessary for safety so that PSDI would not be defeated. If an operator can totally pass through the presence sensing device field into the bed or bolster area of the press, any accidental intrusion into the field could cause the press to trip while the operator is exposed. This hazard potential is described in the comments by Link Systems (Ex. 4–45) on the preproposal draft standard which OSHA circulated for public comment in June 1983.

The commenters to the proposal agreed to the overall necessity of the provision but suggested more specific wording in order to clarify the intent that some part of the operator's body remain in the sensing field. The provision is so revised in the final rule.

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One commenter (Ex. 18–64) suggested that it should be made clear that the provision does not apply to die-setting or maintenance procedures where other appropriate safeguards are in use. OSHA agrees that the wording should be clarified, and the final rule is therefore revised accordingly. With regard to the exception for die-setting and maintenance, die-setting is excluded from being done in the PSDI mode by paragraph (h)(6)(xv) of the proposal. However, to prevent possible confusion, an additional provision, (h)(1)(v), is contained in the final rule to emphasize that the PSDI mode only applies for normal production operations.

Section 1910.217(h)(2), "Brake and clutch requirements." There are a number of factors which indicate the need for more stringent provisions for brake and clutch systems in the PSDI mode. Among these are the greater operator speed and smaller margin for operator error. For these reasons, the standard includes limits on types of brakes, a requirement for demonstrating high torque capability, and a requirement for assuring non-interleaving of brake springs.

In § 1910.217(h)(2)(i), OSHA prohibits flexible steel band brakes and mechanical linkage actuated brakes or clutches on presses used in the PSDI mode. OSHA believes that fast and consistent stopping are critical to safety in the PSDI mode. The prohibited types of brakes and clutches have been shown by experience not to possess a long-term reliability against structural failure, as compared to other types, and therefore, are not considered acceptable. This provision was not criticized and is retained in the final rule.

Several commenters (Exs. 18–26, –39, –57, –60, –64 and –76) addressed the provisions in (h)(2)(ii) which would require high torque capability for press brakes so that the ram will stop quickly if the operator's hand reentered the light curtain. OSHA believes such a capability is necessary for PSDI because of the greater operator speed and the smaller margin for operator error. One commenter (Ex. 18–64) views the requirement as a "benchmark" by which an employer could check an existing press to determine whether or not it is potentially suitable for PSDI operation. That commenter, however, as well as others, expressed reservations regarding certain aspects of the provisions, as follows.

The definition of "full stop" which is cited in Appendix A for the determination of the stopping times measurements was discussed by several commenters (Exs. 18–15, –24, –23, –64 and –76). It was generally recommended that full stop be defined by crankshaft rotation, rather than by deceleration of the slide as OSHA proposed, with one or two revolutions per minute most often suggested as the full stop. OSHA accepts this recommendation because it will be more practical and will better define and aid in monitoring the measurement of stopping time, and Appendix A is so revised in the final rule.

Sick-Optick-Electronik, Incorporated (Exs. 18–57, –58 and –79) suggested that the brake torque tests be conducted at full speed if there is a speed selection. OSHA concurs that the measurement should reflect maximum speed conditions, and the final rule includes this requirement.

ELKAY Manufacturing Company (Ex. 18–39) suggested that in paragraph (h)(2)(ii) the *longest* stopping time be used, rather than the *average* stopping time. This commenter was concerned about the possibility of injury under an emergency stop condition, and pointed out that stopping times at other than 125 percent of the time at the top crankshaft position would not represent the worst stopping conditions. OSHA agrees that there may be considerable variation in stopping time depending on crankshaft position. However, the purpose of the tests defined in paragraph (h)(2)(ii) is to ensure that the brake systems on presses used in the PSDI mode be of a high torque design for fast and consistent stopping time capability. The specific stopping time elements used in calculating safety distance as defined in a different provision, paragraph (h)(9)(v), are the longest of averages, with additional built-in safety factors. No additional changes were made in the final rule, therefore, because OSHA believes the safety factors already built in are sufficient for the purpose of the provision.

In § 1910.217(h)(2)(iii), OSHA prohibits brake springs of interleaving design. In the event of a break in a spring, OSHA believes this and other provisions of the paragraph will reduce the possibility of significantly increasing the stopping time beyond the normal brake stopping capability. There were no objections to this provision.

Section 1910.217(h)(3), "Pneumatic systems." OSHA considers fast and consistent stopping capability to be critical to PSDI safety. Variations in stopping time may be caused by such factors as air value failure, and mechanical variations due to air cleanliness, pressure, moisture, and lubrication. Section 1910.217(h)(3) addresses such pneumatic system failures and other conditions which could affect the stopping time of a press in the PSDI mode. It also highlights some of the provisions of the current standard which are applicable to pneumatic systems in PSDI operations. Finally, it prescribes the correct adjustment of air counterbalance systems for the die weight used in order to maintain the stopping time. There were several comments on technical matters, but the overall objectives were not criticized.

The American Metal Stamping Association (Ex. 18–64) pointed out that paragraph (h)(3)(ii)(B) was not clearly written, and suggested shortening the provision to clarify it. OSHA agrees that the intent of the provision is to ensure the correct counterbalancing of the slide attachment (upper die) weight, and the wording is so revised in the final rule.

The ELKAY Manufacturing Company and Data Instruments (Exs. 18–39 and 40) commented on the correlation between adjustment of the pneumatic systems and the stopping time measurements. In order to clarify the intent of the provisions and ensure accurate time measurements, the final rule includes a requirement that the counterbalance adjustments be made before performing the stopping time measurements required in paragraphs (h)(2)(ii), (h)(5)(iii), and (h)(9)(v).

Section 1910.217(h)(4), "Flywheels and bearings." This provision is intended to prevent unintended and uncontrolled press strokes caused by bearing seizure. One commenter (Ex. 18–12) included this provision in a list of several provisions in the proposed standard with the recommendation that, if they are imposed on PSDI operations, they should also apply to other methods of press cycle initiation. The list also included paragraphs (h)(2) (i) and (iii), (h)(3), (h)(5), (h)(6) (i), (ix), (xiii) and (xv), (h)(7), (h)(8)(i), and (h)(10). The commenter stated that the proposed regulations for PSDI impose limitations which are not imposed on operating modes which are less safe, and that these might militate against the adoption of PSDI in some applications, with a resulting loss in the potential for improved safety and efficiency.

PSDI requires enhanced reliability of systems because back-up safeguards are not used. The additional provisions are designed to give the necessary enhanced reliability and are therefore necessary for PSDI operation. It was not an issue in the rulemaking whether such provisions would enhance non-PSDI operations. This was generally the only comment received to this issue and the issue has not been studied in depth. Therefore, it is not possible to state

whether the referenced provision would improve non-PSDI operations.

Section 1910.217(h)(5), "Brake monitoring." OSHA considers fast and consistent stopping capability to be critical to PSDI safety. The provisions on brake monitoring are intended to ensure that increases in press stopping time over a period of use do not exceed the time used to develop the safety distance established for the press set-up. A detailed discussion of the technical provisions is included in the proposal at 50 FR 12708. The aims of the provision were not objected to.

Some comments, including two from the State of Maryland, Division of Labor and Industry (Exs. 18–19, –22, –39 and –66), were received regarding paragraph (h)(5)(ii). One commenter (Ex. 18–66) suggested that the provision be revised to require that the adjustment of the brake monitor not be done without the supervision of an authorized person, and to delete the requirement for prior approval by the third-party certification program. Two commenters from the State of Maryland (Exs. 18–19 and –22) questioned an apparent conflict between this provision and (h)(12)(iii) which requires, following a die change, that the safety distance be checked and maintained by authorized persons with certain qualifications. These commenters asked why prior approval by the third-party certification program is required in (h)(5)(ii) but not in (h)(12)(iii). The ELKAY Manufacturing Company (Ex. 18–39) suggests that the brake monitor unit be sealed with a seal that would have to be broken in order to adjust it to aid in policing the requirement.

OSHA agrees with the suggestion that (h)(5)(ii) be extended to require that brake monitor adjustment be done under the supervision of an authorized person. Such a provision would strengthen the requirement. The provision is so revised in the final rule.

OSHA believes, however, that the adjustment of the brake monitor has the potential of such impact on the safety distance that prior approval of the validation organization (previously called "certification program" in the proposal) is essential. The degree of importance is based on the fact that the calculation of the impact of the brake monitor adjustment on the safety distance is extremely critical and complex, but is much less frequent than checking the safety distance after a die change. The minimum safety distance for a press with a certified/validated safety is required by paragraph (h)(11)(vi) to be indicated on a label affixed to the press, and the process of checking and maintaining the safety distance would not require review by the validation organization. The validating organization must decide in what circumstances general advance approval can be given and in which circumstances specific authorization is needed.

Sealing of the brake monitor unit to prevent unauthorized adjustment would seem to be an unnecessary burden on the employer. OSHA has not adopted this suggestion.

A large number of commenters (Exs. 18–2, –15, –17, –24, –28, –37, –40 –52, –58, –63, –64, –71, –77, –79, –80 and –83) representing 10 users, five device manufacturer, and one press manufacturer, expressed concern regarding the provision in paragraph (h)(5)(iii) that the brake monitor setting allow no more than a 10 percent increase in the longest stopping time for the press. It was the general concern of the commenters that the 10 percent limit would result in too limited a range of operation for fast stopping brakes (i.e., only five milliseconds for 50 millisecond brakes) and would, in fact, penalize the faster stopping machines. It was suggested that the provision be revised to call for a maximum of 10 milliseconds or 10 percent, whichever is longer, as the allowable variation. OSHA agrees, for those reasons, and the final rule is revised accordingly.

Section 1910.217(h)(6), "Cycle control and control systems." The PSDI reliance upon the control system to initiate safe press operation places a particular burden on the controls to function properly and to be arranged in a manner to be understood and properly used by the operator. The provisions on cycle control and the control system are intended to ensure that the controls will enable safe operation in the PSDI mode. The technical details and explanation of the specific reasons for the various provisions are discussed at length in the proposal at 50 FR 12709. There were a large number of public comments on these several provisions. The provisions not discussed below were generally not criticized by commenters.

Paragraph (h)(6)(ii) in the proposal called for dynamically monitoring the crankshaft rotary position indicating device in order to prevent successive strokes if the device were to become decoupled. The provision was mentioned in several comments by press users or their representatives and the ANSI Bill Committee (Exs. 18–37, –39, –40, –51 and –64). Some of the commenters (Exs. 18–37, –40 and –64) suggested that the word "dynamically" be deleted. The reasons stated were that it is misleading, could be confusing, and implies immediate sensing of the lack of motion. One commenter (Ex. 18–39), however, reported on an experience with a broken crankshaft which was not detected. The word "dynamically" was used by OSHA in the wording of the provision in order to prevent the use of a static switch-type monitor which could be subject to an undetected failure. Dynamic monitoring entails use of a motion sensor, such as an inductive sensor or a photoelectric sensor that senses gaps or teeth in a wheel or gear that is directly coupled to the rotary position indicator. This type of motion sensing cycles with each cycle of the press, with the result that the sensing of the lack of motion is immediate, and the press will be stopped immediately. In veiw of the need to immediately sense any lack of motion, the word "dynamically" is being retained in the final rule.

Mr. Robert D. Jordan (Ex. 18–51), a consultant, questioned the use of the word "device" in the term "rotary position indicating device," pointing out that the use is inconsistent with definitions in § 1910.211. OSHA agrees, and in the final rule, the word "mechanism" is used in place of the word "device" in the provision.

Paragraph (h)(6)(vi) called for a timer to deactivate the PSDI mode when the press does not stroke within a period of time set by the timer. The purpose is to prevent the operator from inadvertently operating the press in the PSDI mode, after being distracted or leaving the work station, by making the operator reset the press after a longer than normal gap in time for insertion of stock.

The provision in the proposal set a limit of 15 seconds for a manually adjustable timer, with a special tool for the adjustments. This requirement was mentioned by a number of commenters (Exs. 18–19, –22, –37, –40, –44, –52, –56, –58, –64, –77, –78, –79, –80 and –83). It was the general opinion that if the setting for the manually adjustable timer is limited to a maximum of 15 seconds, there should be no need for a special tool because it is unlikely that the operator could change or forget the operating mode in such a short interval. Sick-Optik-Electronik (Exs. 18–56 and –78) noted that a longer time, up to 30 seconds, is used in other countries. The ELKAY Manufacturing Company (Ex. 18–39) stated that the 15-second time limit is impractical on larger, higher tonnage, slower presses where many operations may be required before loading the press, and suggested that the limit be made more flexible in order to avoid preventing PSDI use on many presses. OSHA agree with the comments and the provision is revised in the final rule to permit greater flexibility in the maximum time setting, where required by the nature of the operation, and to delete the need for a special tool for short time interval settings of the timer.

The State of Maryland, Division of Labor and Industry (Exs. 18–19 and –22), suggested that an indicator be required in paragraphs (h)(6)(vi) and (h)(6)(xi) which will present the number of intrusions that have been programmed for tripping, and the number of insertions that have been made toward tripping the press. OSHA believes that the need and utility of such an indicator would not be such as to warrant its inclusion as a mandatory element of the control system.

Paragraph (h)(6)(xi) requires that, where there is more than one operator of a press in the PSDI mode, each operator must be protected by a separate, independently functioning presence sensing device. The ELKAY Manufacturing Company (Ex. 18–39) stated that the requirement is acceptable if multiple operators are positioned so that only one operator is on any one side of a press, but that where there is more than one operator on one side of a press, a single presence sensing device would be usable. OSHA believes having more than one operator protected by a single presence sensing device could be hazardous because of the need for exceptional coordination between the operators, and the provisions, therefore, is unchanged in the final rule.

Paragraph (h)(6)(xii) in the proposal required that when a press is equipped for PSDI operation, the presence sensing devices must provide effective safeguarding in all other production modes as well as PSDI. The purpose of this provision was to enhance the reliability of the presence sensing device by ensuring that it remains operable. Several commenters, including a consultant, metal stampers and device manufacturers (Exs. 18–25, –37, –56, –57, –78, –79 and –83), objected to this requirement. It was pointed out that, although the requirement is well-intended, there are other modes of operation, such as two hand control, which are safe and meet the current standard without the use of an additional presence sensing device as a safeguard. By allowing the alternative mode, the press can be utilized safely in the event a presence sensing device is removed for servicing. If the device were required for the other mode, there would be an incentive for jumpering or bypassing the device, which could create a potential hazard if it is not done properly or is not later removed. OSHA agrees with the commenters. If the final rule, the provision is deleted from the standard and is included as an advisory suggestion for consideration in Appendix D.

Paragraph (h)(6)(xiii) requires that the control system incorporate interlocks for supplemental guards, if used, which will prevent stroke initiation or stop a stroke in process if any supplemental guard fails or is deactivated. The purpose of the requirement is to ensure that no part of an operator's body is in the point of operation during a stroke if a supplemental guard is not in operation. Supplemental safeguards are required by the standard in order to protect all areas of access to the point of operation which are unprotected by the PSDI presence sensing devices. Two comments (Exs. 18–45 and –64) were received on this provision. The Motor Vehicle Manufacturers Association saw no need for the interlock and believed it would not materially enhance the safe operation of presses. The American Metal Stamping Association supported the requirement, and suggested a method of interlocking which requires no extra microswitches or interlocking sensors. This method has been used successfully at the Interlake Stamping Corporation in connection with the experimental variance. OSHA believes it is essential for the safety of the operator that any deactivation of a necessary supplemental safeguard prevent a subsequent stroke initiation or stop a stroke in progress. Otherwise, an operator could inadvertently cause stroke initation while exposed at the point of operation. With PSDI, if there were no interlock of supplemental safeguards, the safeguards could be removed and a second employee could get his or her hand into the point of operation while the operator activated the press. The interlock, of course, prevents this. The provision is continued in the final rule as proposed. In addition, the method suggested by the commenter is described in Appendix D to the final rule as an acceptable method of complying with the requirement. Other methods of preventing stroke initiation that are as effective are also permitted.

Paragraph (h)(6)(xiv) addresses requirements for automatic self-checking of the control system at least once each cycle and before the initial PSDI stroke. The intent of this provision is to ensure proper functioning of the control system for each PSDI cycle. A number of commenters, representing the metal stamping industry and presence sensing device manufacturers (Exs. 18–39, –40, –56, –57, –58, –64, –66, –78, –80 and –83), expressed concern that the wording is unclear and could be construed to include all switches and contacts. It was suggested that the requirement be revised to call for checks for correct status of control elements after power-on and before the initial PSDI stroke, and for operation of all cycling control logic element switches and contacts at least one each cycle. OSHA agrees, and the provision is so revised in the final rule.

Paragraph (h)(6)(xv) contains provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section, and prohibits die-setting in the PSDI mode. Consultant Peter N. Bosch (Ex. 18–25) correctly noted that the sensing device would be by-passed in the "inch" mode, and expressed an observation that press owners are increasingly using the "inch" mode as a production mode in the erroneous belief that it is the safest operator control means. He pointed out the need to reinforce prohibiting production in the "inch" mode. OSHA agrees the "inch" mode is not designed for production (see § 1910.211(39)). Specifically, the safeguards are disconnected and an employee could have his or her hand at the point of operation. Should the inch mode be activated, the ram of the press would move downward, even though at slow speed, and cause harm. The final rule has been revised from the proposal to include such a prohibition in this paragraph, as well as to include discussion and guidance on the subject in Appendix D.

Paragraph (h)(6)(xvii) of the proposal required that controls with internally stored programs meet the control reliability requirements of the standard, and default to a predetermined safe condition in the event of any failure within the system. The proposal also prohibited the use of programmable controllers. The intent of the paragraph is to permit controls with internally stored programs which will fail safe, but to prohibit programmable controllers in order to prevent their manipulation to an unsafe condition.

There were a number of comments on this paragraph (Exs. 18–2, –12, –16, –18, –25, –32, –39, –40, –42, –64, –66, –73 and –81). A consultant for Travelers Insurance Company (Ex. 18–16) pointed out that the term "internally stored program" could be misunderstood to apply only to electronic type controls since the term is colloquially applied to solid state equipment. On the correct assumption that the paragraph is intended to apply to all types of controls—including mechanically operated rotary cam switches—the

commenter suggested adding wording to include mechanical, electro-mechanical or electronic types of controls. OSHA agrees that the clarification is useful and has made the recommended changes.

Data Instruments and AMSA (Exs. 18–40 and –64) suggested the provision be modified to use the term "single failure" rather than "failure," in order to be consistent with other control reliability requirements. The Wiremold Company (Ex. 18–32) agreed with the prohibition to prohibit programmable controllers because of the unpredictable failure of input/output modules, and the inability to inspect them. Nearly all of the other commenters, however, objected to the prohibition against *all* programmable controllers. It was pointed out that programmable controllers increasingly are being supplied with new presses and are safely arranged by "burning-in" the logic to control those safety parameters which the press user does not want to be tampered with, while permitting the adjustment of other control items not related to safety. Such systems are said to meet the control reliability requirements of the standard, and are considered less user-accessible than relays or some other types of solid state controls. It was suggested that the paragraph be revised to permit the use of programmable controllers provided that all elements affecting the safety system and point of operation safety are internally stored and protected in such a manner that they cannot be altered or manipulated by the user to an unsafe condition. OSHA agrees with these suggestions for the reasons stated, and the paragraph is revised in the final rule in order to incorporate them.

Section 1910.217(h)(7), "Environmental requirements." This paragraph addresses, in performance language, the operational and environmental stresses (such as temperature, vibration, humidity, etc.) which could impair the capability of the control system to perform as intended. Since PSDI places great reliance on the control system for safe press operation, it is necessary that the control system not be deleteriously affected by such stresses. Two comments were received on this paragraph. As mentioned in the discussion on paragraph (h)(4), Alcona Associates (Ex. 18–12) included this provision in a list of several provisions in the standard, with the recommendation that they also apply to other methods of press cycle initiation. As stated in the earlier discussion, this rulemaking can only address PSDI requirements, but OSHA shall continue to monitor the efficacy of the § 1910.217 requirements. The Motor Vehicle Manufacturers Association (Ex. 18–45) suggested that the paragraph be deleted because it presents a burden on the employer to anticipate the unknown. OSHA believes the requirement is essential for the safe accomplishment of PSDI. The stresses involved are not totally unknown; Appendix A outlines the major likely stresses. The burden is principally placed on the manufacturer, not the employer, to design the PSDI safety system to meet the stresses likely on the shop floor, such as heat and vibration. This type of consideration is present in the design of most machines. It is not an unusual requirement nor a requirement to anticipate the unknown, but the likely or possible. Therefore, the paragraph in the final rule is unchanged from the proposal.

Section 1910.217(h)(8), "Safety system." This paragraph expands upon the control reliability requirements of the existing standard to assure safety both when the PSDI safety system is working properly and when there is a malfunction. Specifically, a single malfunction, either by the operator or the PSDI safety system, is not to permit a point-of-operation accident. It also requires, through the certification/validation provisions, that the manufacturer and the employer will design and operate the PSDI safety system as an integrated group of components designed to operate together compatibly. The required safety system includes all elements which operate together to prevent the worker from receiving injury at the point of operation. Supplementary safeguards, if required, are considered a component of the safety system. *The safety system concept emphasizes the fact that PSDI shall not be attempted merely by the addition of a presence sensing device to an existing press.*

The paragraph in the proposal included a provision that a single failure or single human error shall not cause injury to personnel from point of operation hazards. Nearly all of the comments received on this paragraph were from press users and device manufacturers (Exs. 18–18, –32, –40, –44, –52, –56, –58, –64, –77, –78, –79, –80 and –83) and contained objections to the term "human error." It was pointed out the term is too broad, as it might be construed to include human error in any facet of PSDI implementation. OSHA agrees. The intent of the provision is to address operating errors. The provision is so revised in the final rule. Otherwise, there were not substantial objections to the provision.

Section 1910.217(h)(9), "Safeguarding the point of operation." This portion of the standard contains a number of provisions intended to safeguard the point of operation.

Paragraph (h)(9)(i) cross references the applicability of the requirements in the current standards relating to safeguarding the point of operation.

Paragraph (h)(9)(ii)(A) states that implementation of PSDI shall be with the light curtain (photo-electric) type. The only current presence sensing devices suitable for stroke initiation are the light curtain type. However, to allow for advancements in technology (h)(9)(ii)(B) provides the procedure for obtaining approval for alternatives to light curtains if they are demonstrated to be as safe and reliable.

The ELKAY Manufacturing Company (Ex. 18–39) suggested additional wording to require that the device cannot be sensitive to ambient light or other external light source or signal. The apparent intention of the suggestion is to prevent inadvertent sensing of any external light or signal sources by the device. This is recognized as a basic design requirement for any functionally effective presence sensing device. The suggested change is not considered necessary in the paragraph.

Guardimark International, Inc. (Ex. 18–66) suggested additional wording to avoid implication that supplemental safeguarding is limited to light curtain devices. Since paragraphs (h)(9)(viii) clearly permits the use of other types of guards—which meet the requirements of paragraphs (c) and (h) of this section—to be used as supplemental safeguards, the suggested change is not considered necessary in (h)(9)(ii).

Paragraph (h)(9)(iii) limits the individual sensing field of a presence sensing device used to initiate strokes in the PSDI mode to cover only one side of a press. Three comments from device manufacturers (Ex. 18–11, –56 and –78) objected to the limitation. It was stated that if the light curtain systems are independent and mutually exclusive, there would be no erroneous signals, and that single light curtains have been used safely for PSDI on multiple side installation. OSHA believes that the use of mirrors or other techniques to "bend" the field of a light curtain reduces the reliability of the device for stroke initiation. The paragraph (h)(6)(xi) requirement for a separate device and control for each operator of a press dictates that no more than one side of a press be covered with any one sensing field. No change is made in this paragraph in the final rule.

Paragraph (h)(9)(iv) in the proposal called for a minimum object sensitivity of one and one-fourth inches (31.75 mm) for light curtains used for PSDI operation, and limited blanking to one blanked area with a maximum size of two inches (50.8 mm). "Object sensitivity" describes the capability of a presence sensing device to detect an object in the sensing field. The intention of the paragraph was to ensure fast and reliable detection of parts of the body and hand tools entering the light curtain as well as reliable and consistent stroke initiation.

ELKAY Manufacturing Company (Ex. 18–39) stated the opinion that the one and one-fourth inch (31.75 mm) minimum is needed because if it were larger, persons with small arms and hands could penetrate the presence sensing field so as to prevent or delay the detection of their hands. Two commenters (Exs. 18–65 and –75) suggested that the one and one-fourth inch (31.75 mm) minimum could be increased because the average thickness of the back of the hand is greater. One of these commenters suggested one and three-fourths inches (44.45 mm) as minimum.

OSHA believes the one and one-fourth inch (31.75 mm) minimum is necessary to prevent small hands from penetration too close to the press before the device senses the intrusion and prevents the ram from operating or stops it. Retaining this minimum will also enhance safety by lowering the penetration depth factor—from about five inches (127.0 mm) for one and three-fourths inches (44.45 mm) to about 3.3 inches (83.8 mm) for one and one-fourth inches (31.75 mm)—which would affect the safety distance calculations called for by paragraph (h)(9)(v). Consequently, no change is made in this provision in the final rule.

A number of commenters (Exs. 18–6, –19, –22, –37, –39, –40 and –60) objected to the provision for blanking. "Blanking" is a form of blocking of the sensing device pattern to allow the feeding of stock or parts. It removes a portion of the sensing field from operation, creating a blind spot which does not sense the presence of any object or any part of the operator's body. Many commenters suggested not only that the two inch (50.8 mm) size is unsafe, but that blanking should not be permitted because in combination with minimum object sensitivity, it could result in too great a gap in the sensing field. OSHA agrees that the provision for blanking is potentially unsafe for the reason stated, and the final rule is revised from the proposal to prohibit blanking.

Paragraph (h)(9)(v) in the proposal sets forth the formula for calculating the required safety distance—the distance from the sensing field to the point of operation. The purpose of the safety distance is to prevent the operator's hand from being caught in the point of operation if the hand reenters the space between the light curtain and the point of operation after the stroke has been initiated. The safety distance allows sufficient time for the ram of the press to be stopped before the hand reaches the point of operation. It does this making sure that the time from when the presence sensing device senses that the hand has reentered the light curtain field, until the brake stops the ram is less than the time it will take the hand to move from the sensing device field to the point of operation.

The current regulation utilizes a formula based on a hand speed of 63 inches per second (1.6 m/s) and the total press stopping time. In the proposal, OSHA increased the safety distance for any given press by changing the safety distance formulas in two manners.

First, the hand speed was increased from 63 in/sec to 100 in/sec. (The faster the assumed hand speed, the longer the necessary safety distance, because the hand is assumed to travel further in a given stopping time of the press ram.) OSHA questioned whether there was a greater possibility with PSDI than with dual palm buttons initiation that a hand could reenter the sensing field moving rapidly and consequently overall faster hand speed would result. In addition, OSHA discussed several studies of hand speeds (see 50 FR 12701–1) with divergent conclusions. Some indicated slower maximum hand speeds and others higher maximum hand speeds. OSHA also pointed out that Germany used 63 in/sec and Sweden used 100 in/sec.

Secondly, OSHA proposed to increase the safety distance by defining additional time elements and adding a factor for hand penetration through the sensing field. The four stopping time elements represented an extension of the previously established stopping time of the press into the four distinct increments of the total stopping time from initial presence sensing to full stop: (1) The presence sensing device response time; (2) the response time of interposing elements between the presence sensing device and the clutch/brake operating mechanism; (3) the increase in stopping time allowed by the brake monitor for brake wear (multiplied by a safety factor of two); and (4) the press stopping time (defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism). The penetration depth factor incorporated into the calculation the distance an operator's fingers or hand could penetrate through the presence sensing field before detection, based on the minimum object sensitivity or blanking size.

The proposal particularly invited public comment on the hand speed constant because of the wide range of available data on the subject. Approximately one-half of the commenters who responded to OSHA on the proposal included comments on the constant (Exs. 18–6, –11, –15, –17, –19, –22, –23, –24, –25, –26, –32, –37, –38, –39, –40, –44, –46, –48, –49, –51, –52, –56, –57, –58, –60, –61, –63, –64, –65, –67, –68, –69, –71, –73, –75, –76, –77, –78, –79, –80 and –83). The preponderant position—in all but six of the 41 comments which addressed the subject—was in opposition to the increase in hand speed.

Frequently expressed, in 13 comments, was the fact that the commenters had never had knowledge of any accidents in which the hand speed of 63 inches/second (1.6 m/s) had been a factor. These commenters spoke of many years of experience as metal stampers or otherwise associated with mechanical power press operations, with lengths of experience stated as 13 years, 28 years, 3 years, 12 years, 13 years, 11 years, 2 years, 9 years, and 4 years. Typical of these comments was one from Service Stamping Inc. (Ex. 18–17) which stated:

> In our 28 years of experience in the metal stamping business, we never had an accident that was caused by the proximity of the hand initiated mechanism to the point of operation. Obviously, some of these years came under OSHA regulations requiring other safety devices, but a portion of this period covers operations not subject to the 63 inch/second hand speed, and still providing 100% safety for our employees.

Two commenters, however, did speak of knowledge of one or more accidents in which safe distance or hand speed was a factor. Consultant Peter N. Bosch (Ex. 18–25) mentioned investigating at least six light curtain related injuries in which the safety distance was a *disputed factor.* This commenter suggested that the hand-speed constant of 100 inches/second (2.54 m/s) be used in two hand trip calculations also. The other commenter, Sick-Optick-Electroniks (Ex. 18–57), stated that the hand speed of 63 inches/second (1.6 m/s) has only been a factor in one accident in their knowledge.

Six comments were received in support of the higher hand speed constant (Exs. 18–19, –22, –25, –51, –60 and –73). Two comments (Exs. 18–19 and –22) from the State of Maryland were based on the experience of the Swedish, and the documentation and recommendation by NIOSH. Consultant Peter N. Bosch (Ex. 18–25) suggested that with complete hand freedom using PSDI, distance seems more critical than where other controls are used in conjunction with a conventional presence sensing device. Another consultant, Robert D. Jordan (Ex. 18–51), stated that the use of 100 inches per second (2.54 m/s) for hand speed is a move in the right direction and that evaluation of this hand speed constant should be continued. Mr. Jordan also stated that the greater "distance" should be used, based on other studies demonstrating hand speeds of 161 to 177 inches per second.

The comments from the National Institute for Occupational Safety and Health (NIOSH) (Ex. 18–73) discussed hand speed at length. In reviewing the hand speed research described in the OSHA proposal, it was mentioned that some of the studies had the subjects begin with their hands at zero velocity, but that the researcher (van Ballegooijen) later acknowledged that the early studies were based on procedures which obtained reach velocities which are not likely to be encountered in real press operations. In the Dutch study mentioned in the proposal, there are problems resulting from ambiguity as to the mean, median, mode, and range of average reach speed values obtained at various conditions, but the data suggests that at a 40 cm distance between the light curtain and the point of operation, the speeds obtained had a mean of 2.01 m/s (80 in/sec) and a mode of 2.0 m/s (79 in/sec) with a range of 0.05 m/s (1.9 in/sec) to 3.4 m/s (134 in/sec). The resulting frequency distribution indicates that out of 71 test values, 63 (89 percent) would be less than a speed of 2.54 m/s (100 in/sec), but the remaining eight (11 percent) would be faster. The suggestion is made to set the safety distance for the largest die, in order that smaller dies would provide some extra distance.

NIOSH further suggested that the safety distance formula be revised to show the numerical value of the hand speed constant separately, in order that the metric equivalent expression is not misinterpreted as a multiplier of the constant in inches per second. OSHA concurs with this suggestion, and the formula is so revised in the final rule.

Further, the suggestion was made that a recent NIOSH study on press operator hand movement also be included in consideration. This study simulated a power press operation for the measurement of normal hand reach speed as well as after-reach speed. A finding of the study suggests that a hand speed constant of 63 inches per second (1.6 m/s) would protect 50 percent of the power press workforce, but that a constant of 121 inches per second (3.07 m/s) would be required to protect 95 percent of the power press workforce.

Three commenters (Exs. 18–37, –39 and –76) pointed out that in PSDI operation, at the instant of press initiation, the operator's hand is moving out of the press. It would have to come to a full stop after moving some extra distance out of the sensing field and then start again in the opposite direction, toward the press, in order to approach the point of operation. These commenters believe, therefore, that the current hand speed constant of 63 inches per second (1.6 m/s) is adequate for PSDI; in fact, one of the commenters (Ex. 18–39) suggested that it should require a figure less than 63 inches per second (1.6 m/s), as they have had no accident experience resulting from the present use of 63 inches per second (1.6 m/s) in establishing safety distance for their press operations—involving operators' hand motion toward the point of operation rather than away from it.

From one consultant, Paul J. Glascow and several comments from the metal stamping industry (Exs. 18–6, –64, –71 and –76), concern was expressed that if the higher hand speed constant is used, the resulting increase in required safety distance could in fact create safety concerns. In Ex. 18–6, it was stated that a typical scenario with the higher hand speed could result in a safety distance of 26 inches (66 cm) which would not be considered safe and effective. The commenter described another scenario involving a mechanical clutch with eight engaging points which would develop a safety distance of 43.5 inches (1.1 m) with the higher hand speed; a distance described as neither workable nor safe. In Ex. 18–64 from AMSA, it was calculated that the higher hand speed constant, on a press with a total stopping time of 100 milli-seconds and a penetration depth factor of 3.5 inches (8.9 cm), would increase the safety distance from 13.6 inches (34.5 cm) to 19.5 inches (49.5 cm), with the result that the reach is prohibitive, and the potential for increased safety due to the PSDI benefits would be lost.

The Standard-Thompson Corporation (Ex. 18–71) stated that the higher hand speed constant would not only make operation of the press inefficient; it would result in operator fatigue and a lack of willingness to run the press. Mercury Minnesota (Ex. 18–76) expressed concern that if distances are increased, an operator may inadvertently be able to pass through the field, initiating a cycle.

The reason that lengthening the safety distances too much may decrease safety is that it increases operator fatigue, may make the operator's work operation awkward and may affect the operator's balance. These factors may lead to accidents.

A sizable number of commenters, including three metal stampers, two press manufacturers, one device manufacturer and a consultant (Exs. 18–6, –24, –38, –40, –49, –64, –71 and –80), were concerned that the increased safety distance resulting from the higher hand speed constant would render PSDI unworkable and infeasible.

Further, a significant number of commenters of similar affiliations (Exs. 18–24, –38, –40, –46, –56, –57, –58, –61, –63, –64, –80 and –83) discussed the fact that the new safety distance formula not only increased the hand speed constant but also listed additional time elements and added a totally new concept—the penetration depth factor—the combination of which results in unnecessarily long safety distances. Interlake Stamping (Ex. 18–63) pointed out that the safety distance formula which was used at the time of approval of the initial variance request for PSDI utilized a hand speed constant of 100 inches per second (2.54 m/s) but had only a single time element, Ts (stopping time). It was calculated that if 63 inches per second (1.6 m/s) were substituted for 100 inches per second (2.54 m/s) in the proposed new formula, the safety distance would be approximately the same as would be developed using the 100 inches per second (2.54 m/s) in the initial variance request formula. The point was made that the lower hand speed constant is sufficient when used with the new formula, the rationale being the zero-accidents safety record demonstrated during the nine-year period of PSDI operation at the firm.

Another commenter, the American Metal Stamping Association (Ex. 18–64), discussed the establishment of its Project Committee on PSDI, which was composed of representatives of a broad range of interests, and the endorsement by the Committee of a safety distance formula incorporating the additional elements contained in the proposed formula but with a 63 inches per second (1.6 m/s) hand speed factor. This commenter stated that the combination of the higher hand speed factor with the additional elements is unwarranted, and that there is no evidence to suggest, based on actual reports of injuries in metal stamping operations, that 63 inches per second (1.6 m/s) is insufficient.

Earlier, it was stated that some commenters referred to the fact that the Swedish National Board of Industrial Security uses a hand speed constant of 100 inches per second (2.54 m/s). As stated in the proposal, it was the Swedish experience which was the basis for the design of the PSDI operation for the Interlake Stamping Corporation variance. Although 100 inches per second (2.54 m/s) is used as the Swedish mechanical power press hand speed constant, the Swedish safety distance formula is less stringent than the OSHA proposed formula because it does not include all of the elements of the OSHA formula.

Several commenters (Ex. 18–50, –76, –77 and –83) discussed the German experience. They pointed out that 63 inches per second (1.6 m/s) has been used safely and successfully for many years in similar applications there.

OSHA has reviewed and carefully evaluated the comments and evidence in the record concerning hand speed and safety distance. The extensive research which has been documented demonstrates a broad range of hand speed capabilities. Although there is some question concerning the real world applicability of some of the test results, with some researchers indicating that certain reach velocities are not likely to be encountered in real press operations, OSHA agrees that there is a sufficient body of findings to demonstrate a broad range of hand speed capabilities, the upper limits of which may exceed both the current and proposed hand speed constants.

Even though such high hand speed capabilities have been demonstrated by the research, a practical question is raised by the fact that an overwhelming majority of the commenters can cite no accident experiences in which hand speed was a factor. In evaluating the importance of hand speed, it is recognized that the practical objective of considering hand speed capability is only for the determination of a hand speed constant to calculate the necessary safety distance between the sensing field and the point of operation. The hand speed constant is only one element in the formula used to calculate the safety distance. The current safety distance formula specified in 29 CFR 1910.217(c)(3)(iii)(*e*) includes only two factors; the hand speed constant of 63 inches per second (1.6 m/s), and the stopping time of the press. The new safety distance formula is more stringent, in that it defines four stopping time elements—the presence sensing device response time, the response time of interposing elements between the presence sensing device and the clutch/brake operation mechanism, the increase in stopping time allowed by the brake monitor for brake wear (multiplied by a safety factor of two), and the press stopping time—and adds an additional element, the penetration depth factor, representing the distance an operator's fingers or hand could penetrate through the sensing field before detection.

A significant point in comparing the current formula with the proposed new formula was made in the comments from Interlake Stamping (Ex. 18–63) which were discussed above. The safety distance formula which was used for the approval of the initial variance request for PSDI was based on the Swedish experience, using a hand speed constant of 100 inches per second (2.54 m/s) with only the single stopping time element. Thus, the safety distance used for the variance request was based on the formula and hand speed constant used successfully in Sweden since the 1950's. It is noted that the formula used was the same as the current formula specified in 29 CFR 1910.217(c)(3)(iii)(*e*), with the exception that the higher hand speed constant was used for the PSDI operations under the experimental variance.

However, in the proposal, OSHA not only increased the hand speed but added four additional factors to be considered in calculating the safety distance each of which would increase the safety distance. Consequently, the OSHA proposal would have lengthened the safety distance substantially more than the Swedish requirement and the requirement for the variance.

Interlake has calculated that the use of a hand speed constant of 63 inches per second (1.6 m/s)—instead of 100 inches per second (2.54 m/s)—in the proposed new formula with the additional elements would result in approximately the same safety distance as that which was derived from the formula which was used to establish the safety distance for the variance and used in Sweden; that is, the higher hand speed and only the single time element.

OSHA has calculated the differences in safety distances derived from the experimental variance formula versus safety distances which would be derived from the proposed new formula using 63 inches per second (1.6 m/s) instead of 100 inches per second (2.54 m/s). Over a broad range of time elements, including various combinations of times considered reasonably likely to be acceptable for PSDI, the safety distance derived from the proposed new formula using 63 inches per second (1.6 m/s) was somewhat greater than that derived from the experimental variance formula in each case. In the lower end of the range—representing the faster stopping times—the greater safety distance was as much as half again the length of the shorter one. In the upper end of the range—representing the slower qualifying stopping times, the greater safety distance was approximately five to six inches greater.

After reviewing the substantial body of evidence and opinions, OSHA concludes that the 63 inch per second hand speed constant with the five-element formula will result in a safe safety distance. It leads to a slightly larger safety distance than the formula that is used in Sweden and in the experimental variance which will be somewhat safer for the employees. This increase is appropriate because presses will be used more widely than the more controlled condition of the variance. The final result reflects the view of most of the comments received.

As an alternative, OSHA considered the option of using a safety distance formula which would retain the hand speed factor of 100 inches per second (2.54 m/s) but would delete the added time elements and penetration depth factor—comparable to the time element in the current formula specified in 29 CFR 1910.217(c)(3)(ii)(*e*). While this would be the same formula used in the experimental variance at Interlake, and has been demonstrated to be effective, OSHA has opted not to use such a formula. OSHA has determined that it is preferable to identify in the formula the individual components of the stopping time of a press. Not only will this present the capability for more precise evaluations in the certification/validation of the safety system; OSHA believes it will help identify critical components and provide incentive for design improvements where appropriate.

Based on the comments which have been received on hand speed, OSHA has determined that the use of a hand speed constant of 63 inches per second (1.6 m/s)—rather than 100 inches per second (2.54 m/s)—in the new safety distance formula will provide a level of safety at least equal to or greater than that which has been provided in any of the successful PSDI operations known to OSHA. In addition, it will provide for a realistic and usable safety distance, with the result of a further potential for increased safety due to the other benefits of this rulemaking, including safety system certification, enhanced control reliability, and improved training requirements.

OSHA concludes that the evidence indicates that the additional increase in the safety distance of the proposal through increasing hand speed as well as adding elements would not further increase safety. By increasing operator reach, it will increase fatigue and awkwardness of use which would cancel the benefits of the increase in distance. OSHA further concludes that its final decision properly balances all factors, based on the evidence in the record.

The American Metal Stamping Association (Ex. 18–64) suggested that minor improvements be made in the definitions for two of the time elements in the safety distance formula. It was suggested that the definition for Ts be modified by adding the word "the" in the first sentence so that the phrase reads, "* * * the longest of *the* three averages is the stopping time to use." It was also suggested that the definition for Tm be modified to add the word "press" in two locations where "stopping time" is discussed. OSHA agrees that these suggestions will enhance clarification and understanding of these definitions, and the definitions are so revised in the final rule. In addition, the definition for Tm is to be further revised to reflect the alternative of permitting an increase of 10 milliseconds or 10 percent of the longest stopping time of the press, whichever is longer, in accordance with the comments discussed earlier regarding paragraph (h)(5)(iii).

In paragraph (h)(9)(vi), the presence sensing device location is required either to be set at each tool change, or to be fixed in location to provide the required safety distance for all tooling set-ups. OSHA believes either method will ensure the necessary safety distance. Where the adjustable set-up is used, paragraph (h)(9)(vii) requires the use of a special tool available only to authorized persons. OSHA believes this is necessary in order to prevent unauthorized changes in the presence sensing device location which might place the sensing field too close to the point of operation and, thus, result in exposure of the operator to injury at the point of operation. These paragraphs received no comments.

Paragraph (h)(9)(viii) requires supplemental safeguarding to protect all areas of access to the point of operation not protected by the PSDI presence sensing device. Such supplemental safeguarding is considered a component of the safety system because of its importance for worker safety during PSDI. It is limited to either additional presence sensing devices or to other types of guards meeting the standard, and is required to be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position. If a presence sensing device is used as a supplemental safeguard, it can not be used to initiate a press stroke but is required to meet the requirements of the standard.

Guardimark International, Inc. (Ex. 18–66) expressed concern that this provision would impose an additional restriction on PSDI, and questioned the need for it. OSHA is retaining this requirement in order to ensure that all areas of access to the point of operation are protected during PSDI operation. Because the backup safety of dual palm buttons or other safeguards are not used, the increased reliability of the system is needed.

Paragraph (h)(9)(viii)(B) requires interlocking of supplemental safeguards to prevent PSDI operation if the supplemental safeguard fails, is removed or is out of position. Three comments were received on this paragraph. The Minster Machine Company (Ex. 18–18) suggested that the supplemental safeguards be certified because simple interlocking may not be adequate for PSDI. The Motor Vehicle Manufacturers Association (Ex. 18–45) requested deletion of this paragraph because there is no demonstrated need for interlocking supplemental guards on presses.

OSHA has considered these two comments, and concludes that supplemental safeguards are of sufficient importance to be included in the certification requirement. As just stated, the backup safety that dual palm buttons or other safeguards provides does not exist and therefore the increased system reliability of certification is appropriate.

It had been OSHA's intention in the proposal to consider supplemental safeguarding as a part of the safety system. In order to prevent misunderstanding, the final rule is revised to so state, and thus to include it in the certification requirement. AMSA (Ex. 18–64) suggested that the word "fail" be removed from this paragraph because it relates more to electrical or electronic devices rather than guards or barriers. Since the standard does permit the use of presence sensing devices as supplemental safeguards, the word "fail" is considered appropriate, and no change is made.

Paragraph (h)(9)(ix) originally required the installation of barriers or supplemental light curtain presence sensing device safeguards to prevent the situation where personnel could pass completely through the PSDI presence sensing device sensing field. OSHA believes that, without such safeguards, there is a potential for triggering a stroke initiation by inadvertent interruption of the field while the operator is still on the point-of-operation side of the presence sensing device. One comment from Guardimark International, Inc. (Ex. 18–66) was received that requested the words "light curtain" be removed from this paragraph to allow other types of presence sensing device use. Although OSHA believes that the only current presence sensing device suitable for PSDI use—either for stroke initiation or for protecting other areas of access to the point-of-operation—is the light curtain inasmuch as it is the only device currently in use for which there is experimential evidence of safety, considering its successful integration into the entire safety system. The requested deletion is, however, being made to permit other types of supplemental presence sensing device safeguards provided equivalent safety and reliability are maintained. In addition, OSHA has added a new subparagraph to § 1910.217(h) to encourage the development of new technology and to assure that regulatory approval of such technological advancement will be done efficiently.

To allow for advancements in technology, (h)(9)(ii)(B) provides the procedure for obtaining approval for alternatives if they are demonstrated to be as safe and reliable as light curtains.

Paragraph (h)(9)(x) requires that hand tools be designed, either by tool handle thickness or tool length, to ensure that the intrusion of the hand tool or an operator's hands into the sensing field of the PSDI presence sensing device will be detected during the entire period of hand tool use. This is required to be suitable for any safety distance determined by the press set-ups. Stroke initiation while a hand tool is in the point of operation could seriously injure the operator by fly-back of the tool or its parts, or by forcing the operator's hand against the press or another object. Two comments (Exs. 19–19, –22) were received to this paragraph which suggested adding the words "and larger than any blanked out (fixed or floating) band width." As mentioned above, OSHA has deleted the proposed provision in (h)(9)(iv) which would have allowed blanking, so there now is no need for the suggested revision to (h)(9)(x).

Section 1910.217(h)(10), "Inspection and maintenance." Paragraph (h)(10)(i) requires that a test rod, with accompanying instructions for its use, be provided to ensure the object sensitivity capability of the presence sensing device and to facilitate appropriate inspection and maintenance.

Three comments were received to this paragraph. From the Alcona Associates, Inc. (Ex. 18–12), a suggestion was received regarding this and several other provisions that if this is required for PSDI, it should be required in other methods of initiation as well. As mentioned earlier, this rulemaking can only address PSDI-related changes to the standard. The Minster Machine Company (Ex. 18–18) stated that there is a need for "highly qualified" maintenance personnel. To attempt to set qualification requirements for maintenance personnel is considered beyond the scope of this rulemaking. OSHA believes the mandatory provisions of the standard require the employer to have an effective maintenance program. The certification/validation provisions of the standard enhance the reliability of the program. Guardimark International, Inc. (Ex. 18–66) objected to the restriction to light curtain use. This aspect has been commented on above, for paragraph (h)(9)(ix).

Paragraph (h)(10)(ii) in the proposal listed the specific checks at the beginning of each shift or whenever a die change is made which OSHA believes are necessary to ensure that the designed safety features are fully operational. It was the intention in the proposal that the checks be made at least at the beginning of each shift and more often if die changes are made more often. In view of the fact that there will be operations in which dies are changed less frequently than once each shift, the provision is revised in the final rule to clarify the intent to require the checks at the beginning of each shift *and* whenever a die change is made. The checks will include: Tests of the PSDI and supplemental safeguarding; checks of the safety distance; and verification of the correct counterbalance adjustment. As with paragraph (h)(10)(i), one objection from Guardimark International, Inc. (Ex. 18–66) was received to this paragraph because of the restriction to light curtain safeguarding. As discussed earlier, the use of other presence sensing devices may be used where safety and reliability equivalent to that obtained with the light curtain can be demonstrated. Another commenter suggests that subparagraph (E) be revised to require a "system or visual" check, apparently to prevent any misunderstanding which might result in a more rigorous check. OSHA agrees, and the final rule is revised to reflect this change.

Paragraph (h)(10)(iii) reflects OSHA's belief in the necessity to inspect, lubricate, and maintain flywheels and bearings in order to preclude bearing seizures and possible uncontrolled press strokes. There were no comments to this paragraph. Therefore, it remains unchanged from the proposal (50 FR 12712).

Paragraph (h)(10)(iv) requires periodic inspections of clutch and brake mechanisms in accordance with the press manufacturer's recommendations. OSHA believes that compliance with the manufacturer's recommendations should ensure continued full operational capability of the clutch and brake mechanisms. The Motor Vehicle Manufacturers Association (Ex. 18–45) recommended that this paragraph be deleted. The commenter objected to the requirement that the manufacturer's recommendations be followed, on the basis that the inspection requirements in paragraph (e) of the standard are adequate. Because of the importance of the clutch and brake mechanisms for safe operation in the PSDI mode, and the fact that the clutch/brake inspection requirements in paragraph (e) do not apply to presses which comply with the standard's requirements for control reliability and brake monitoring, OSHA believes it important that the manufacturer's recommendations also be followed.

Paragraph (h)(10)(v) provides that any condition of failure, non-compliance, or improper adjustment which may be revealed by the checks specified in paragraphs (h)(10) (ii), (iii), or (iv) must be corrected before any further operation of the press is attempted. No comments were received on this paragraph, therefore, it remains unchanged from the proposal (50 FR 12712).

Paragraph (h)(10)(vi) requires that the employer ensure the competence of personnel who would care for, inspect, or maintain presses equipped for PSDI operation, through initial and periodic training. OSHA believes the continuing inspection, care, and maintenance of the presses is critical to the continuing safety of the operator. No comments were received on this paragraph, therefore, it remains unchanged from the proposal (50 FR 12712).

Section 1910.217(h)(11), "Safety system certification/validation." This paragraph requires three specified certifications of the PSDI safety system by the manufacturer or employer and validations by an OSHA-recognized third-party validation organization. The PSDI safety system, as explained above, includes not only the presence sensing device but pertinent elements of the press, brake, clutch, controls, safeguarding, etc., integrated together.

Specifically, the "certification/validation" term refers to an organized system under which the manufacturer/fabricator, employer, and/or their representatives certify that a PSDI safety system meets all requirements of this standard, and a testing/validation organization, which is independent of employers or manufacturers and which is recognized by OSHA as having a reasonable level of expertise related to the PSDI standard, validates the certifications. The third-party validation concept is also described in ANSI Z–34.1–1987, the American National Standard for Certification—Third Party Certification Program.

The three specified certifications/validations in this PSDI standard are (1) design, (2) installation, and (3) annual. The design and installation certifications/validations would be required before the initial use of the press, and the certification/validation on an annual basis thereafter. The specific requirements for arriving at necessary certifications/validations are detailed in Appendix A to § 1910.217. This entire process is referred to as "certification/validation" in this preamble section. See the definitions of certification and validation in § 1910.211(d) (64) and (65), and the defintion of certification/validation in § 1910.211(d)(66).

The design certification/validation would operate in the following manner. A manufacturer or fabricator (which conceivably could be an employer) would design, manufacture and/or assemble, analyze and test the system. The manufacturer/fabricator would certify, based on the tests and analyses performed, that its PSDI safety system meets the requirements of the PSDI standard. The OSHA-recognized validation organization validates, through its own examination, that the design certification is correct and that the PSDI safety system meets the requirements of the standard. It does this through review and validation of the analyses and tests of the manufacturer and other analyses and tests of the PSDI safety system which may be required by the standard or deemed necessary by the recognized validation organization itself.

Subsequently, the employer would install and maintain the PSDI safety system pursuant to the requirements of

the PSDI standard, and would so certify to the validation organization. The recognized validation organization validates the employer certification, upon installation and at least annually thereafter, that the PSDI safety system as installed is meeting the PSDI standard and is in accord with any special conditions established under the design certification/validation. (Recertification/revalidation may occasionally be required on a more frequent than annual basis under certain special conditions.)

OSHA proposed that third-party certification be required for use of PSDI (50 FR 12703, 12707, 12712–13). At the time of the proposal, OSHA used the term "certification" to apply both to what is called "certification" and "validation" in the final standard. The comments reflect the earlier terminology. The reasons were that when OSHA initially rejected the use of PSDI in 1974 (39 FR 41844), it felt that a certification system was necessary for proper use to protect employees. The European countries which permitted PSDI, and used it safely, had procedures for prior government approval of the equipment and components used in PSDI systems.

OSHA believed that it was important for safe operation that PSDI safety systems are designed, installed and maintained pursuant to the requirements of the standard. OSHA also pointed out the technical nature of the standard and consequently the usefulness of third-party certification to verify compliance.

OSHA stated that it believed that an OSHA-recognized third-party certification program would present a feasible administrative mechanism for assuring that the PSDI safety systems are designed, installed and maintained in accordance with all requirements of this section. OSHA referred to a separate rulemaking action (49 FR 8326, March 6, 1984) (Ex. 17), where OSHA proposed revisions to 29 CFR Parts 1907 and 1910 for new regulations covering OSHA recognition of testing-related agencies and certification programs. OSHA made the rulemaking record of that proceeding part of this proceeding and requested comment on that view or whether an alternate approach to third-party certification would be more appropriate.

OSHA also stated that the general rulemaking on third-party certification, which includes an OSHA procedure for recognition, might not be completed by the time OSHA was ready to issue a final PSDI standard. Consequently, it requested comment on an appropriate interim approach to certification just for PSDI until such time as there was a general framework in effect (50 FR 12707). OSHA also stated it would prefer a less detailed certification system if it would fulfill the requirements of the standard (50 FR 12713).

There were 22 general comments in response to certification. Over one-half of the responses supported third-party certification without qualification because they believed it would improve employee safety and is necessary for safe use of PSDI. Another one-third supported third-party certification but raised questions such as what organizations would do it, what protection from the liability standpoint would be available, and what controls would be available. Less than one-quarter of the 22 responses did not support third-party certification for various reasons, including a preference for self-certification, doubt that such a program would be feasible, and belief that it would be beyond OSHA's authority.

There were a number of reasons given in the comments supporting certification. For example, Anchor Fabricating (Ex. 18–7) stated it supported certification because:

> * * * the certification programs help to insure that these technological improvements do not deteriorate through abuse nor neglect.

The Travelers Insurance Companies (Ex. 18–16) stated:

> We recognize that OSHA is relying upon 3rd party certification to assure the safe use of PSDI and we concur that this is a significant and necessary measure.

The Wiremold Company (Ex. 18–32) commented on third-party certification that:

> Again, we feel that proper integration of the safety system is essential, and that a responsible certifying authority *must be* utilized.

See the comments along similar lines in Exs. 18–17, –24, –48, –75, –76 and –83. Many of these comments are by press users. Interlake Stamping (Ex. 18–63), the company which has been using PSDI under the variance, also supported the need for certification.

There were also more detailed comments supporting certification. The Forging Industry Association (Ex. 18–30) stated that third-party certification "is a critical requirement if we are to establish and maintain the desired level of power press safety." They gave several reasons for this conclusion including the need to assure an appropriate level of maintenance and the need to assure that the electrical and mechanical systems are accurately interfaced with the press.

The National Safety Council (Ex. 18–55) stated:

> * * * we are convinced that the third party certification requirements that are part of the proposed rule are not only essential, but critical if the desired level of power press safety is to be achieved.

The Council generally was opposed to PSDI and preferred NHID to HID but felt if OSHA were to adopt PSDI that third-party certification was crucial for safety.

The American Metal Stamping Association (Ex. 18–64) which represents companies which use power presses as well as companies which supply them with equipment, strongly supported an OSHA recognized third-party certification program. It felt that certification, along with OSHA's reasonably detailed safety requirements, was needed to assure that a suitable control system was used and that the press was properly maintained. It pointed out that in view of the large number of types of presses, light curtains, clutch brakes, etc., available, there was a need to make sure that "the entire system is carefully designed, constructed, installed and maintained to assure proper and safe operation." (p. 2)

AMSA stated:

> The type of certification that is needed for PSDI is relatively straightforward. Technically competent people—who are scrupulously unbiased—must review diagrams, tests, failure mode analyses, performance benchmarks, etc., to determine that elements of the safety system are designed, manufunctured, integrated, installed and maintained in conformance with requirements of the proposed new paragraph (h). Conflicts of interest must be avoided. And the benefits of "third-party" certification, as opposed to self-certification, are obvious.

AMSA believed that manufacturers of the various elements of the PSDI safety system, and employers who wish to use the PSDI mode, should be required to submit tests, diagrams, performance benchmarks, etc., to the third-party organization which would need to be reviewed and verified. It also believed that extensive additional tests performed by the recognized certification program should be avoided, where feasible, with the emphasis on review and verification. (p. 4)

AMSA made a number of technical recommendations on certification which are discussed below. It also stressed the importance of not delaying PSDI until a general procedure of OSHA recognizing third-party certification programs was in operation if there was to be a substantial delay. It supported an interim procedure if that were the case and stated their Board of Directors had authorized "an AMSA sponsored" private sector initiative for third-party certification of PSDI safety systems.

Danley Machine Corporation (Ex. 18–72) is a manufacturer of presses. It stated:

> In our opinion the proposed rules reflect the culmination or a very careful extensive program of investigations regarding PSDI. Further we would have to believe that operation under the proposed rules would result in a higher degree of safety than exists today in many applications. If, in fact, the requirements for Certification of a Safety System and the Safety System itself can be implemented, it would be a giant step in a safe direction.

A number of other comments supported some type of third-party certification, but with qualifications or recommended substantially different approaches than the one OSHA proposed. One presence-sensing device manufacturer supported third-party certification but recommended that OSHA directly appoint Underwriters Laboratories because of their experience and capabilities (Ex. 18–37, ISB Products). Data Instruments (Ex. 18–40) stated that "Generally, we agree with the need for certification," but believed a substantially simpler PSDI safety system was more appropriate. They felt the electronic, electro-mechanical, and pneumatic control systems should be certified, but not the press and clutch/brake because there were too many variations of the latter to make it practical except for new machines. They felt fewer tests were needed for design certification but supported installation certification and annual checks.

Robert D. Jordan (Ex. 18–51), a professional engineer, felt that no technical reasons to prohibit PSDI existed now, but felt human factors still existed. However, he supported certification if the certifier had financial responsibility. Several commenters (Exs. 18–, –12, –60) felt certification was a good idea but would not be practical from a products liability aspect either, because it would not relieve the manufacturer from liability or the liability of the certifier. Sick-Optik-Electronik (Exs. 18–56, –57, –78), a manufacturer of light curtains and PSDI systems, supported third-party certification but felt OSHA should not set specifications for tests and analyses. It stated that those details should be left to the certifier because it believed this would be more practical and stated that many organizations have the capability to certify PSDI and indeed guidelines already existed.

Guardimark International (Ex. 18–66), a manufacturer of electronic safety devices, was in favor of certification but not third-party certification. They believe that manufacturers do proper testing of their equipment to make them safe especially because of the need to minimize product liability. They felt that the qualification of the third-party certifier "cannot be predicted." They stated that a respectable certifier did a skilled analysis of one of their products but made serious errors in the analysis of another device. They recommended that the certification be limited to confirmation of the manufacturers' analyses by government employees.

There were several comments generally critical of certification. The Computer and Business Equipment Manufacturer's Association (Ex. 18–34) stated:

> CBEMA opposes the requirement for third-party certification. This is, in our view, an unwarranted prohibition of a manufacturer's self-certification program. This requirement would add an unnecessary cost, without any increase in safety to a system that is already functioning safely and successfully.

Verson Allsteel Press Company (Ex. 18–2) did not object to the concept of certification, but believed an effective certification program could not be devised.

Two trade associations strongly objected to third-party certification. The Motor Vehicle Manufacturers Association (Ex. 18–45) proposed the use of a "qualified person" instead. They stated:

> The certification process which requires the utilization of the independent third party certification program recognized by OSHA in accordance with the final procedure specified in the **Federal Register**. 29 CFR 1936 does not add materially to the safety of the operations of the PSDI operating mode. The requirement of Appendices A and B are really beyond the state of the art in safeguarding employees and really beyond the scope of this rule. A better approach to insure the proper operation of a press is to use a qualified person as defined in ANSI/ASME B30.2–1983:
>
> "A qualified person is defined as a person who by possession of a recognized degree or a certificate of professional standing, or who by extensive knowledge, training and experience has successfully demonstrated the ability to solve or resolve problems relating to the subject matter and work."
>
> Using this definition, the cost and time involved with certifying the proper operation of a press will be materially reduced without increasing the risk.

The National Electrical Manufacturers Association (Ex. 18–43) was critical of both PSDI generally and the certification concept. They stated that electrical mechanical interference (EMI) in the workplace might interfere with the safe use of PSDI and that "EMI from all sources cannot possibly be anticipated through the proposed third-party certification system."

They further stated that they did not believe annual recertification was sufficient to keep the PSDI press in "non-degraded" condition. "Practical experience in the workplace indicates that controls, even those necessary for safety, will be changed by operators and others. These inevitable changes will result in a control system which is inconsistent with the certification * * *."

NEMA also stated:

> This proposed rule is particularly undesirable because NEMA members who manufacture a component or subassembly of a punch press are not likely to have control over how it is ultimately used in the workplace. Nevertheless, the rule could expose such manufacturers to liability under the present product liability law. The employer, upon whom the proposed rule is dependent and over whem OSHA has sole jurisdiction, is in most states free from liability exposure because of the workers' compensation laws. This shield minimizes the employer's motive to maintain the extremely high degree of safety demanded by this proposed control. Regardless of whether OSHA is convinced that injuries will occur or not, adoption of this proposed rule should include provisions which eliminate liability exposure by the manufacturers whose products become a part of the system.

Further, NEMA makes the following two arguments:

> By this rulemaking, OSHA attempts to delegate its regulatory decision to the design process by manufacturers. Even if one grants the proposition for the sake of argument that OSHA has jurisdiction over product design, it is questionable as a matter of administrative law whether the proposed delegation in this rulemaking without sufficient criteria for oversight can withstand judicial scrutiny * * *
>
> The design certification requirements on manufacturers are particularly onerous because of the degree ot which OSH intrudes into the product development process. The Appendix describes all of the information that must be submitted to the certification program for approval.

Finally, NEMA points out that completing the third-party certification rule may take OSHA a long time and it might be challenged in court. Therefore, it would not be ready for use for PSDI. Also NEMA believes the PSDI rule will require more data to be submitted to the government than the government really needs.

OSHA has carefully reviewed all the comments on this requirement for design, installation and recurrent certification by an OSHA-recognized third-party certification program to assure that the PSDI safety system meets the requirements of the PSDI standard. Based on its review of the comments, evidence in the record and analysis, OSHA concludes that such a requirement is needed for safe use of PSDI.

One major reason OSHA has concluded that certified PSDI can be safely used is the European experience of safe use. The European experience includes strict control of specific manufacturers' products used in PSDI operations—an arrangement which is neither practicable nor desirable in this country. Certification/validation of the safety system is recognized as an alternative method to ensure that the design, installation, and ongoing use of the safety system will meet the standard. While it cannot be stated with certainty that certification/validation will provide the equivalent degree of control as the European system, the most logical conclusion from the European experience and the experiential evidence is that a certification/validation program is necessary for safe use of PSDI.

Secondly, a safe PSDI system requires the proper integration or interfacing of a number of sophisticated mechanical and electrical systems such as the press, clutch/brake, sensing device and controls. Review and validation of the manufacturer's design and tests on whether the PSDI press meets the requirement of the OSHA standard will lead to substantially greater certainty that there has been proper integration and interfacing of the various systems and components. This conclusion of OSHA's has been strongly supported by a number of commenters quoted above, including the Wiremold Company, the Forging Industry Association (FIA) and the American Metal Stamping Association (AMSA).

Thirdly, there is no dispute that systems such as PSDI presses need to be installed and maintained properly to keep them operating properly. Installation certification and recertification at least annually will clearly lead to a higher standard of operation because there will be regular checks by a competent independent party that the safety systems are properly maintained and operated. Many commenters, such as Anchor Fabricating, FIA and AMSA quoted above, strongly believe installation and recurrent certification is necessary to maintain safe operation of PSDI systems, and OSHA concurs in this view for the reasons stated.

Finally, OSHA has the authority to set up mechanisms such as third-party certification which will lead to more protective and reliable safety systems.

One of the commenters which disagreed with third-party certification, the National Electrical Manufacturers Association (NEMA), argued, as quoted above, that annual recertification was not sufficient to prevent "degradation" or changes in the controls by operators or others. But the annual revalidation by an independent third-party will certainly do more to encourage employers to maintain and prevent changes in controls and more likely catch and correct improper maintenance and control changes, than if no such third-party recertification/revalidation requirement existed. Currently, accidents occur on non-PSDI power presses for a number of reasons, including poor maintenance or operators or employers changing or interfering with safety devices. It is clear to OSHA that third-party recertification/revalidation will not only maintain a high level of safety for PSDI presses but will add a safety factor for PSDI presses which does not currently exist for non-PSDI presses. The selection of at least an annual frequency for the recertification provision in the standard was endorsed by the commenters as a reasonable means of encouraging and controlling proper maintenance of the safety system, without being so restrictive that PSDI might be rendered impractical to implement. (See the comments of Danley Machine above which also make this point.)

OSHA believes the "qualified person" concept, as recommended by the Motor Vehicle Manufacturers Association, is not the most effective method of accomplishing the purpose of certification. Rather, the scope and complexity of PSDI warrant more than one individual's view or professional experience. The requirements and qualifications listed for a third-party certification program (now called "validation organization" in the final rule) bring to the process an organization approach which is considered more appropriate.

A wide variety of different interests supported OSHA's proposal that there be an OSHA-recognized third-party certification program. This included several major trade associations, many press users, several equipment suppliers, the National Safety Council and a major insurance company. This wide range of support from parties with expertise in the area is additional support for the value of third-party certification in maintaining safety.

OSHA believes the views expressed by those who objected to third-party certification are not convincing. The Computer and Business Equipment Manufacturers' Association argued that the program would be "an unwarranted prohibition of a manufacturer's self-certification program." But the OSHA standard does not prohibit manufacturer certification at all. Rather, it provides that an outside party validate (that is verify) the employer's or manufacturer's certification and tests.

The Motor Vehicle Manufacturers Association argued that third-party certification and the requirements of Appendix A were not necessary and could be replaced by review by a qualified individual. The requirements of Appendix A are the result of the recommendations of many experts and essentially this entire preamble explains their necessity. It is clear to OSHA that a qualified validation organization, guided by requirements which are the result of recommendations of experts in the field, will be in a better position to assist in maintaining the safe use of PSDI than review by a vaguely defined qualified individual without any particular guidance as to the type of review.

The lengthiest discussion disagreeing with the need for third-party certification came from the National Electrical Manufacturers Association (NEMA). Their arguments are quoted at length above and the one on possible degradation in operation is responded to above. A second contention they make is that manufacturers of PSDI safety systems will not have adequate control over how they are used in workplaces. In fact the opposite is true. The requirements of the standard which the employer is required to meet and the existence of the installation certification/validation and at least annual recertification/revalidation will give a reasonable degree of assurance that PSDI presses are used and maintained properly. Indeed the existence of this standard and certification/validation will give manufacturers greater assurance that their equipment will be used properly than is normally the case. Normally, there is less control and no regular independent review of how equipment is used and maintained in the workplace.

A further set of arguments made by NEMA is that on the one hand OSHA is improperly "attempt(ing) to delegate its regulatory decision to the design process by manufacturers," but on the other hand the requirements of the standard and certification process "are particularly onerous because of the degree to which OSHA intrudes into the product development process." These two arguments appear mutually contradictory. The PSDI standard does set some reasonably concrete safety requirements to be met. Those responsibilities have not been delegated. The responsibility on how to design the PSDI press to meet those requirements is left with the manufacturer. The certification/validation program validates that the press does indeed meet the standard's requirements. OSHA is setting forth necessary safety requirements but it leaves to the manufacturer responsibility for designing the press to meet safety requirements.

NEMA raises questions about possible electromagnetic interference (EMI) with safe use of PSDI and whether third-party certification could anticipate all possible sources. There are specific requirements to test for and control EMI and the existence of a certification/validation program is more likely to detect and avoid EMI than without such a program. Safe use of PSDI in Europe and use of light curtains as guards in the U.S. indicates that EMI has been safely controlled.

As quoted above, several commenters made more limited criticisms of OSHA's proposal. One suggested that OSHA appoint Underwriters Laboratories, Inc., as the third-party certification program. However, OSHA does not want to prevent other qualified providers from supplying the services.

Several commenters argued that certification would not end manufacturers' product liability or raised other product liability issues. Section 4(b)(4) of the OSH Act states:

> Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of or in the course of, employment.

Consequently, termination of common law causes of action would not generally be within OSHA's authority. However, OSHA believes that the PSDI standard will improve press safety and consequently fewer accidents will arise to occasion liability questions.

Several commenters felt the areas covered by the certification requirement should be narrowed and one questioned the competence of certification organizations. As discussed throughout this document, the PSDI standard is based on the recommendations of many experts, the European and OSHA variance experiences, the need for proper integration of components, the need for proper periodic maintenance, and the general support of most commenters. OSHA believes, therefore, that the final regulations are the best approach to PSDI safety and that the scope of certification/validation properly balances an appropriate level of review of equipment and operations without excessive interference in design or employer responsibilities. If experience with PSDI in the workplace indicates a lesser or greater role for certification/validation is needed, OSHA will consider that based on the shopfloor experience.

The Agency currently believes that its approach to OSHA recognition of third-party validation organizations under the PSDI standard attains the proper balance of utilizing a competent and effective third-party validator to improve safety without excessive interference into the details of the program for PSDI safety systems. (OSHA intends to study the long term effectiveness of its certification/validation program resources permitting.) OSHA is reaching no conclusions on the appropriateness of the PSDI approach for other areas. As mentioned above, OSHA has an ongoing rulemaking on third-party certification programs generally and it will reach its final conclusions on the general issue in that rulemaking. OSHA may later change PSDI's approach to recognition to be equivalent to its final decisions on the general issue depending on the evidence and views presented in the general rulemaking. However, OSHA agrees with many of the commenters that an OSHA certification/validation program is needed now for PSDI safety systems so that implementation of PSDI, a safe and productive technology, is not further delayed.

In the comments from States with their own OSHA-approved occupational safety and health programs, or State plans, it was suggested that the Secretary of Labor or the responsible official of a State plan State be notified when a PSDI capability has been added to a press. The reason stated for this was that there would be need for action on the part of the compliance organization to review the installation. Rather than impose a reporting burden on the employer, the procedures for the certification/validation program include provisions for making available, listings of certification/validation actions.

Regarding application of the certification/validation requirements in State plan States, OSHA would consider any State standards which do not provide for the full scope of certification/validation, either is required by this standard or by an equivalent certification/validation program, to be less effective than this standard. A state may alternately accept Federal OSHA approved rather than initiate its own program. OSHA also would anticipate that all State plan States would accept OSHA-recognized third-party validation organizations for the validation of the certification of PSDI safety systems. OSHA will recognize state certification/validation if it is based on a system at least as effective as OSHA's.

For the reasons discussed, OSHA concludes that certification/validation as set forth in this standard is necessary for the safe use of PSDI. OSHA's views are reinforced by the wise range of support from press users, manufacturers, trade associations, insurance companies and a safety association.

Paragraphs (h)(11) (i), (ii), and (iii), respectively, contain the general requirements for the three levels of certification/validation. Because of the technical nature of the standard, and the dependence on the certification/validation process to ensure compliance with the standard, the certification/validation requirements are supplemented by three appendices. Appendix A provides the mandatory requirements pertinent to each provision in the section, and identifies the responsibilities of the employer, the manufacturer, and the validation organization. Appendix B provides nonmandatory guidelines which assist employers, manufacturers and others in understanding and implementing the requirements. Appendix C provides mandatory requirements for OSHA recognition of third-party validation organizations; this appendix lists the procedures for application, review, experience, terms and conditions, and provisions for OSHA recognition. OSHA believes these three appendices provide clearer delineation and understanding of the requirements.

There were no comments received to paragraph (h)(11)(ii), therefore, it remains unchanged from the proposal (50 FR 12179).

Paragraph (h)(11)(iii) received one comment from the Motor Vehicle Manufacturers Association (Ex. 18-45) that suggested a revision to read "any press whose safety system has not been certified or recertified annually should be removed from service until the safety system is recertified." This change, it was said, would help to better implement a plant safety program. OSHA has considered this suggestion and believes the wording of the provisions as published in the proposal is more effective.

Paragraphs (h)(11) (iv) and (v) received no comments.

Paragraph (h)(11)(vi) received two comments. One suggested that OSHA add language to make it plain that this is not a substitute for notification of the Secretary of Labor or the State Plan agency (Exs. 18–19 and 22). OSHA agrees, and the provision is so revised in the final rule. The other commenter requested adding the requirement to notify the manufacturer of any injury as well as the certifier so that they may be "in consultation to determine cause if one can be found" (Ex. 18–25). OSHA is including such notification to the manufacturer in the procedures to be followed by the validation organization, rather than increasing the burden on the employer to do so. The validation organization should be better able to determine which manufacturer(s) of safety system components would be involved in the event of an injury.

Section 1910.217(h)(12), "Die Setting and Work Set-Up." This paragraph addresses the requirements for die setting the work set-up on presses used in the PSDI mode. Paragraph (h)(12)(i) requires conformance with current requirements as well as with the new requirements for PSDI. Paragraph (h)(12)(ii) prohibits the use of PSDI for the actual die setting or set-up. Paragraph (h)(12)(iii) requires checks of the safety distance, supplemental safeguarding, and slide counterbalance adjustment following each die change. It also requires a special tool, available only to authorized personnel, for adjustment of the PSDI presence sensing device.

OSHA concludes these requirements are necessary in order to assure that die setting and work set-up are accomplished safely and without degrading the safety of the PSDI operations. There were no comments on this paragraph. However, in the final rule, paragraph (h)(12)(iii) is revised to refer to adjustments of the *location* of the presence sensing device. This change is necessary in order to prevent confusion with the provisions in paragraph (h)(9)(iv) which address adjustments of the *sensitivity* of the presence sensing device.

Section 1910.217(h)(13), "Operator training." This paragraph supplements the training required by the present standard by requiring additional training for the operator of a press used in the PSDI mode. OSHA recognizes the importance of operator training, and believes that the additional specific training for PSDI operation is necessary in order to ensure operator understanding and capability to perform PSDI safely. The Minster Machine Company (Ex. 18–18) commented on this requirement, pointing out the need for increased training as well as supervision because of the new PSDI requirements, and stating concern that even the present training requirements are not being regularly met or enforced. OSHA agrees that there are more rigorous training requirements needed for PSDI and has incorporated them in the standard. The provisions are enforceable.

The provisions of this final rule give emphasis to this need for more training by specifying in paragraph (h)(13) the specific additional areas where extra training is required. In addition, the certification/validation requirement, in particular, defines a mechanism for the employer to demonstrate conformance with the training requirements as well as with the broad requirements for PSDI. If an employer elects to use PSDI in conformance with this standard, the standard is explicit in defining the continuing training and various methods, practices and responsibilities to do so safely.

Further, in response to the above-mentioned public comment (Ex. 18–18) and several others (Exs. 18–2, –8 and –35) that present training requirements are not being regularly met or enforced, although OSHA does not agree that this is so, a provision is added in the final rule to require certification that employees have been trained. The minimum information required for this certification record is the identity of the trainee, the signature of the employer or the person who conducted the training, and the date the training was completed. This certification is not considered an Information Collection Burden under the terms of the Paperwork Reduction Act.

Appendix A—"Requirements for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses." This Appendix provides the mandatory requirements for certification/validation of the safety system. The requirements attempt to provide a degree of specificity which can be utilized as a basis for demonstrating and evaluating the capability of a safety system to satisfy the requirements of the standard for safe PSDI.

The requirements from the proposal are more explicitly stated in the final rule in order to better define the relationships between the OSHA-recognized third-party validation organization and the manufacturer and employer or their representatives, for the three categories of certification/validation—design, installation, and recertification/revalidation.

For each category of certification/validation, there is a two-stage process. In simple terms, for design certification/validation, the manufacturer (which can be an employer) certifies that the PSDI safety system meets the requirements of the PSDI standard, and then the OSHA-recognized validation organization validates that certification. For installation certification/validation and recertification/revalidation, the employer certifies that the PSDI safety system meets the requirements of the PSDI standard, and then the OSHA-recognized validation organization validates that certification.

The proposal did not perhaps make the language as clear as was intended between certification by the manufacturer and employer and validation by the validation organization (called the "third-party certification program" in the proposal). The two stages together are referred to as "certification/validation." Moreover, this is the standardized nomenclature in the field. (See ANSI Z34.1–1987, American National Standard for Certification—Third Party Certification Program; Department of Housing and Urban Development (HUD) Administrator Qualifications and Procedures for HUD Building Products Certification Programs; Final Rule, September 20, 1979 (44 FR 54656); and Department of Labor, Occupational Safety and Health Administration (OSHA), 29 CFR Part 1926, Safety Testing or Certification of Certain Workplace Equipment and Materials, Proposed Rulemaking of March 6, 1984 (49 FR 8343).)

This clarification may answer some of the criticism such as by NEMA that OSHA was not fully indicating the design responsibility of the manufacturer. This clarification of language appropriately affirms the primary design and certification responsibility of the manufacturer.

As part of the simplification process, the final version of Appendix A eliminates several paragraphs which cross reference several requirements in other subparagraphs of 29 CFR 1910.217 (a)–(h). Since the cross references were basically to the whole standard, there was essentially no assistance by the cross references to the public and the lists were confusing. However, the elimination of the cross references is not intended to eliminate any existing requirements of 29 CFR 1910.217 (a)–(h).

Many of the comments on Appendix A were the same as those stated on paragraph (h)(11). There were 12 general comments on the Purpose, Scope, and Summary of Appendix A (Exs. 18–66,

–25, –26, –45, –40, –51, –56, –57, –64, –71, –79 and –83). Four of these comments stated that the language should be written more simply (Exs. 18–40, –51, –57, and –83). As an example of these, one commenter stated "I am in favor of the certification and annual recertification. Specifications shuld be written in performance-based language, making use of standards such as those already established in European countries that have years of demonstrated safe history" (Ex. 18–83). Three comments from Sick-Optik-Electroniks (Ex. 18–56, –57, and –78) suggested that all specifications be deleted and left to the third-party certification/validation agency for development. OSHA recognizes and endorses the benefits of using performance language wherever possible in workplace safety standards. A number of revisions are being made in the final rule Appendix in order to better organize the certification/validation requirements and to make them shorter, simpler and more performance-oriented. Some specificity is necessarily retained, however, in order to ensure understanding and effective implementation of the certification/validation function.

AMSA (Ex. 18–64) suggested that the language of the Summary be changed to eliminate the words "* * * shall be performed in a sequential manner and * * *" in order to simplify the certification process and allow flexibility in meeting the requirements. OSHA agrees, and the change is incorporated into the final rule.

In the Summary, paragraph C, reference is made to recertification/revalidation requirements when operational conditions are changed. The American Metal Stamping Association (Ex. 18–64) suggested that "It should be made clear that this does not apply to die changes (application), location of the press where disassembly of the safety system isn't required to move the press (facility changes), or other changes of this nature." OSHA agrees that recertification/revalidation should not be necessary under such conditions, and an appropriate exception is added in the final rule.

Other paragraphs in Appendix A address more specific details of certification/validation. For example, where reference is made to "single human error" in new paragraph A.2., Certification/Validation Program Level of Risk Evaluation Requirements, it was noted by two commenters (Exs. 18–31 and –64) that it should be changed to read "single operator error." As was previously mentioned for §§ 1910.211(d)(62) and 1910.217(h)(8)(i), OSHA agrees, and the change is included in the final rule.

ISB Products Incorporated (Ex. 18–37) stated, regarding this same paragraph, "Redundancy is not enough for a safety system. It should be fail-safe for any single component failure. If the system is safe for a single component failure, then component life specifications are not needed." OSHA agrees that redundancy, per se, is not necessarily an acceptable alternative to the requirement that no single failure point may cause injury. However, the provision considers redundancy as an acceptable, although less preferable, alternative when comparison and/or diagnostic checking is combined in order to ensure continued operating capability of both the primary and the redundant items.

The American Metal Stamping Association (Ex. 18–64) pointed out the desirability for a power press builder or other agent to offer a fully equipped press package that is "design certified" for PSDI operations, which would encourage development of a product line of new PSDI presses and would reduce the cost of design certification by spreading it over a large base of machines. OSHA agrees, and the manufacturer's design certification provisions have been so revised in paragraph A.3., New Design Certification/Validation, in the final rule.

That same commenter also suggested that manufacturers of subsystems should be able to obtain design certification/validation for their subsystems independent of the rest of the subsystems needed in a PSDI system. OSHA agrees that this could enhance flexibility in integrating different subsystems into the safety system, but it would not provide employers with the assurances which certification/validation of the *total* safety system would provide. At this time, OSHA is retaining in the final rule the certification/validation requirements for the safety system in its entirety, with provisions for acceptance of subsystems which are determined by the certification/validation program to be equivalent through similarity analysis. If and when future developments permit equipment sophistication or standardization sufficient for interchangeability, this requirement will be re-evaluated.

There were nine responses to the Manufacturer's Certification Requirements, paragraph D(1)(a)(1) in the proposal, which refer to the definition of "full stop" (Exs. 18–39, –40, –44, –57, –58, –64, –68, –77, –80). All of the comments criticized the wording of the paragraph.

ELKAY Manufacturing Company (Ex. 18–39) was opposed on the basis that the definition of full stop should not be based on deceleration, and it would be difficult to measure the indicated criteria in the average shop. Although that commenter was opposed to a definition based on some low crank speed, other commenters (Exs. 18–40, –44, –57, –64, –77) suggested that the measurement be taken from the crankshaft and not the slide. It was recommended that the rotation of the crankshaft at a low number of revolutions per minute (RPM), such as one or two RPM, be used for the definition of "full stop." As previously stated in comments on paragraph (h)(2) of the standard, OSHA agrees that a more feasible definition of "full stop" is when the crankshaft rotation has slowed to two revolutions per minute, just before stopping completely. Appendix A is so revised in the final rule (new paragraph B.2., Definitions).

The test instrument accuracy requirement for measurement of reaction times to be accurate within 0.0001 seconds was viewed as being too strict by one commenter (Ex. 18–51) who stated that "* * * an instrument accuracy within 0.0001 seconds (Appendix A) seems to be overly restrictive by a whole order of magnitude, with no stated justification for such accuracy." OSHA has considered the comment, noting that an error in a time measurement of 1.0 milliseconds at a hand speed of 63 inches per second (1.6 m/s) equates to a distance of only 0.063 inches in the safety distance calculation, and concurs that the accuracy requirement may be relaxed to 0.001 seconds. In the final rule (new paragraph B.2.), the requirement is so revised.

The majority of the comments received on Appendix A were in reference to paragraph D(2) of the proposal, which involves brake tests. There were 16 comments received, most of which suggested that this paragraph should be deleted (Exs. 18–32, –37, –44, –52, –61, –62 and –79) or changed (Exs. 18–15, –17, –24, –25, –26 and –39). The objections to this paragraph expressed the concern that the requirements was not realistic or meaningful to simulate brake wear by grinding the brake lining. It was suggested instead that visual inspections be required of the brakes.

OSHA believes that considerations of brake wear are valid concerns in the tests defined in paragraph (h)(2)(ii) to determine if the brake system qualifies for high torque capability. Since grinding

of the brake lining to simulate wear may not be realistic and may present other disadvantages, OSHA will accept the manufacturer's recommendations for estimating or simulating brake wear in the stopping time tests to determine torque sufficiency and to meet design certification/validation requirements.

With regard to installation certification/validation and annual recertification/revalidation, however, OSHA believes the stopping time tests should reflect the brake system conditions as they exist at that time. Brakes which are the adjustable type would need to be adjusted properly before the test, and brake wear would not be a factor, other than to evaluate the expectation that the manufacturer's minimum lining depth would not be exceeded before the next annual recertification. Stopping time tests in compliance with paragraph (h)(5)(iii) and (h)(9)(v) would be in this category. Accordingly, Appendix A is so revised in the final rule (new paragraphs B.3. and B.4.).

There were four comments received on proposed paragraph D(4) of the Appendix, which contains the requirements for spring testing. These responses were similar to those received for brake tests, recommending deletion of the test and promoting the use of visual tests and reliance on the brake monitor to ensure stopping time integrity (Exs. 18–39, –46, –58, –64 and –80). One of these commenters, AMSA (Ex. 18–64), stated:

> Simulated tests with one broken spring should be deleted. The standard requires non-interlocking springs and mounting on a rod or in a tube, etc. AMSA has recommended a visual check be conducted of springs prior to the stopping tests in paragraphs (h)(2)(ii) and (h)(5)(iii). Further, a brake monitor is required for PSDI. Its function is to shut down the system if brake performance degrades regardless of cause. A single broken spring is unlikely to cause a catastrophic failure of a brake. Therefore, the brake monitor is capable of addressing this concern.

OSHA agrees. Since the impact of a broken spring on safety is the increase of stopping time, the requirement in the proposal to simulate a broken spring and to evaluate the test on the basis of the torque developed is deleted in the final rule. In its place, Appendix A (new paragraph B.5.) includes provisions for visual checks of the springs prior to stopping time tests, with investigation of the springs as a possible cause of excessive stopping times beyond the brake monitor setting limits defined in paragraph (h)(5)(iii).

One comment was received in reference to paragraph D(1)(a)(7) in the proposal which details the requirements for a hand tool device and object sensitivity. AMSA stated that: "This paragraph should be deleted. The requirement of paragraph (h)(9)(x) is straightforward and not in need of further tests or specifications." OSHA believes that the tests are necessary to determine that the proper hand tool diameters have allowed for variations in minimum object sensitivity response. There is no change in this provision (new paragraph B.8.) in the final rule.

AMSA also addressed proposed paragraph D(1)(b) on Integrated Tests Certification which stated: "Determination that requirements of paragraph (h)(6) are met can be based on analysis, such as failure mode analysis, and/on tests. There should be no absolute requirements for integrated tests if less expensive analysis can provide necessary assurances" (Ex. 18–64). OSHA has carefully reviewed this comment and believes these tests are necessary to assure that the requirements of paragraph (h)(6) have been met. This provision remains unchanged in the final rule (new paragraph B.9.).

Proposed paragraph D(1)(c), Analysis, received one comment referencing failure mode and effect analysis. Peter N. Bosch (Ex. 18–25) stated that "much of the data required for certification, such as failure mode effect analysis, is not available for current press designs, much less for older presses that may be candidates for retrofit." OSHA believes that the data required for these tests can be made available by the manufacturer by using the development tests and the design engineer's experience and knowledge of press components and integrated systems. This provision is retained as new paragraph B.10. in the final rule.

Section E of the proposed Appendix A was concerned with the types of tests acceptable for certification. One response was received to this section which stated "The description of the types of test acceptable for certification seems overly specific. A simple statement that the manufacturer and certification agency shall agree on appropriate tests could be just as effective" (Ex. 18–64). OSHA is of the opinion that guidelines for testing are important to assure that the test methods will be appropriate for providing maximum safety of the components and the entire system. The provision is retained as new paragraph B.11. in the final rule.

Appendix B—"Guidelines for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses." This Appendix provides nonmandatory guidelines to assist employers, manufacturers, and their representatives in accomplishing the certification process. It supplements the provisions of the standard and the mandatory requirements in Appendix A.

Three comments were received on Appendix B. Exhibit 18–64 stated that "* * * the certification process should be kept as simple and cost-effective as possible." OSHA has attempted to do this and has reviewed and incorporated as many comments that suggested methods to accomplish this goal without sacrificing the safety of the operator while using PSDI.

Two comments from the State of Maryland (Exs. 18–19 and –22) were received on Section F that support deletion of this guideline because: "There is no way that a 'data base' of any kind can be accumulated during a certification program." OSHA believes that the experience with the testing procedures of the certification/validation program will enable those participants to accumulate data based on the results of the various test methods. However, the purpose of Appendix B is not to create a data base, but to give nonmandatory guidance for an effective certification/validation program.

Appendix C—"OSHA Recognition of Third-Party Validation Organizations for the PSDI Standard." This Appendix provides mandatory requirements for OSHA recognition of PSDI-related third-party validation organizations. The proposal discussed OSHA recognition of third-party certification programs (50 FR 12703, 12707, 12712–3). It referred to and incorporated into the PSDI record an earlier OSHA proposal covering OSHA recognition of third-party certification programs generally (Ex. 17, 49 FR 8326, March 6, 1984). OSHA specifically referenced in the PSDI proposal Subparts A, C, D, and I of the proposed Part 1936.

However, the proposal stated that the general approach to OSHA recognition (proposed Part 1936) may not be finalized by the time OSHA had completed work on a final PSDI standard. Therefore, OSHA requested comment on whether an interim approach to OSHA recognition should be incorporated into the PSDI standard to prevent delay in issuing a final PSDI standard. OSHA also expressed an interest in receiving comments on possibly simplifying the process.

Many comments supported OSHA's suggestion that an interim procedure for OSHA recognition of third-party organizations be adopted for PSDI if a final general procedure had not been adopted by that time. (See the AMSA comment above Ex. 18–64 and Exs. 18–15, –17, –24, etc.)

There was also some general support for simplification from Stampmatic (Ex. 18–46) and Sick-Optik-Electronik (Ex. 18–56). AMSA (Ex. 18–64) commented:

> As an advocate of certification, AMSA is concerned that rulemaking not establish a certification process that is so cumbersome it cannot function. Nothing could destroy incentive to utilize proven, productive, safety-improving technology faster than an inordinately cumbersome series of administrative procedures and/or certification processes.
>
> The type of certification that is needed for PSDI is relatively straightforward. Technically competent people—who are scrupulously unbiased—must review diagrams, tests, failure mode analyses, performance benchmarks, etc., to determine that elements of the safety system are designed, manufactured, integrated, installed and maintained in conformance with requirements of the proposed new paragraph (h). Conflicts of interest must be avoided. And the benefits of "third-party" certification, as opposed to self-certification, are obvious.

There was little or no opposition to simplification. However, there were few specific suggestions on how to simplify the OSHA recognition process. Several suggested that OSHA directly appoint a specific third-party organization. But as discussed above, that does not appear to be appropriate. However, in one significant change in this final rule, the term "validation organization" is used, rather than "certification program," in order to enhance clarity and understanding.

OSHA, to prevent delay, has incorporated a recognition process for PSDI validation organizations because a general recognition process (proposed Part 1936) has not yet been adopted by OSHA. The PSDI certification/validation process is now based only on the proposed Subparts C and D of proposed Part 1936. However, OSHA has substantially simplified the recognition process as set forth in section I of Appendix C from that which was originally proposed for Part 1936.

The reason OSHA has simplified its Part 1936 proposal is that OSHA recognition of third-party validation organizations for PSDI is obviously a much more limited universe than OSHA recognition of programs for a wide variety of different equipment. Secondly, the simplification should make the recognition process take less time. Thirdly, in light of the fairly explicit requirements oif the PSDI standard and Appendix A, it does not appear necessary for OSHA to get involved in the detailed operation of the validation organization. Therefore, for example, provisions have not been included on the validation organization's records management operation, its employee training practices and its security arrangements. A competent third-party validation organization is capable of handling questions like those itself.

Nevertheless, this action is not intended to set any precedents; final decisions on the 1984 proposal will be based on the record of that proposal.

As mentioned, section I of Appendix C of this final rule states procedures for OSHA recognition. An application must be filed and after investigation a preliminary decision is made. Notification of the preliminary decision is published in the **Federal Register**. Public comment is provided for and, if appropriate, a hearing. The final decision on recognition is based on the evidence in the record. Procedures are provided for renewal or expansion of recognition if the program is performing in a satisfactory manner. There is also a provision for withdrawal of recognition if performance is unsatisfactory.

The OSHA recognition provisions are directed towards having third-party validation organization demonstrate to OSHA that they are competent to handle PSDI certification/validation. Accordingly, section II of Appendix C states reasonable qualifications for experience in relevant areas such as press design, test selection and testing. It sets requirements for qualifications of the senior employees of the program and availability of adequate testing equipment. Certain requirements of independence from possible pressure from equipment manufacturers and press users are stated. In addition, the program must be legally authorized to validate certifications, and have a certification/validation mark which can be protected from improper use.

Section III of Appendix C sets certain reasonable requirements for the certification/validation program's procedures. These cover certification and validation procedures, test and certification/validation reports, making available a list of certified/validated systems, follow-up activities and a disputes resolution procedure.

OSHA concludes that the procedures for recognition meet the requirements of law, are fair and are reasonable for determining the competency of the validation organization without excessive delay. OSHA concludes that the provisions for validation organization competency and certification/validation procedures are reasonable for certifying/validating PSDI safety systems. The provisions are based on proposed Part 1936, but with changes to appropriately simplify them and make them responsive to certifying/validating PSDI safety systems. The changes meet the general tenor of comments in the PSDI record and no comments in the PSDI record gave specific comments contradicting this approach to OSHA recognition. (As discussed above, there were criticisms of third-party certification.) As stated before, OSHA does not intend that this approach for PSDI set precedents for other areas.

It should be stated that OSHA's approach to certification/validation of PSDI safety system and recognition of third-party validation organizations is similar to a system which has been utilized successfully by the Department of Housing and Urban Development (HUD) for over six years in its program for certification of building products. Under the program, organizations acceptable to HUD validate manufacturers' certifications that certain building materials or products meet applicable standards. It has been demonstrated that the system works effectively to ensure satisfactory building materials or products, and it is also claimed that liability exposures on the part of both the manufacturer and the validator have been greatly reduced.

Appendix D—"Supplementary Information." This Appendix provides supplementary nonmandatory information to assist in the understanding of paragraph (h) of this section.

One comment was received to Appendix D. ELKAY Manufacturing Association (Ex. 18–39) included comments regarding brake torque tests, which are discussed above in the portion regarding paragraph (h)(2)(ii). As stated there, no changes are made in the discussion of this provision in Appendix D. However, there are other changes in this Appendix. There is additional discussion under 6. *Cycle control and control systems* on the following topics: Extending the PSDI deactivation timer adjustable limit from 15 to 30 seconds; recommending that the presence sensing device on a press equipped for PSDI operation be used as a guarding device in other than the PSDI mode; describing an acceptable method for interlocking supplemental guards; and explaining the prohibition against die-setting in the PSDI mode and against production in the "inch" mode. In addition, a typographical correction is made in 9. *Safeguarding the point of operation.* These changes have all been discussed in their respective portions of this

Summary and Explanation of the Final Rule..

IV. Termination of Experimental Variance

As a result of the implementation of this final rule, OSHA will terminate the experimental variance which was granted to the Interlake Stamping Company (now Interlake Stamping of Ohio, Inc.), to permit presence sensing device initiation on selected mechanical power presses. The effective date of the termination will be left open in order to allow a reasonable time for certification of the PSDI safety systems at Interlake after the establishment of a certification/validation program. This will be the only formal announcement of the termination of the variance.

OSHA wishes to recognize and express appreciation for the contribution which has been made by Mr. Wayne E. Groenstein, President, and the employees of Interlake in initiating and carrying out the experimental variance. Their successful safe implementation of presence sensing device initiation was a significant factor in OSHA's evaluation and decision to enter into a rulemaking action to permit its use.

V. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Assessment

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a Regulatory Impact Analysis (RIA) be performed for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact Analysis and Regulatory Flexibility Assessment for the revisions to the OSHA standard governing mechanical power presses. These revisions amend the present standard for mechanical power presses (29 CFR 1910.217) to allow employers to voluntarily adopt presence sensing device initiation (PSDI) on mechanical power presses. OSHA's present standard does not permit presence sensing device initiation. Rather, it requires that a mechanical power press operator physically initiate the stroke of a power press by using hand controls or a foot pedal. This revision will allow, but not require, a presence sensing device to initiate the mechanical stroke automatically when the operator's body is out of the danger zone. The amended standard's provisions cover not only the use of presence sensing devices, but also the entire safety system of the presses that will use these devices.

This RIA describes the industries and workers affected by the standard, the current use of and productivity gains associated with PSDI technology, the costs of compliance with the standard, the expected level of use of PSDI by U.S. industry, and the net savings to the United States from PSDI technology. The primary data source used to prepare this RIA is "A Study of the Proposed Revisions to the OSHA Standard Governing Mechanical Power Presses" (29 CFR 1910.217) (Ex. 23), which was prepared by Eastern Research Group (ERG) for OSHA in February 1984.

The standard affects mechanical power presses, a type of equipment widely used in various metalworking and other industries. In particular, these machines are extensively used in Fabricated Metal Products (SIC 34), Machinery, Excluding Electrical (SIC 35), and Electrical and Electronic Equipment (SIC 36). The impact of this revision is greater upon Metal Forgings and Stampings (SIC 346), the industry that makes the most intensive use of mechanical power presses. Within SIC 346, Automative Stampings (3465), Crowns and Closures (3466), and Metal Stampings, Not Elsewhere Classified (3469) are the primary users of mechanical power presses. A variety of industries outside the metalworking industries will also be affected by the regulation. Thirteen percent of all machine tools (a category of equipment that includes mechanical power presses) are used in industries other than metalworking industries.

Impact of the Standard

Worker Population

There are about 73,000 employees who will be affected by the standard. Two occupational groups, "punch and stamping press operators" and "job and die setters," contain nearly all the employees now operating the manually fed presses that could be converted to PSDI technology. There are 96,000 employees in the former occupational group and 74,000 in the latter. This total of 170,000 employees includes both operators of non-mechanical presses as well as die setters who do not manually feed the presses. OSHA has estimated that about 60 percent of the first occupational group and 20 percent of the second occupational group work on manually fed power presses. Thus, about 73,000 workers (58,000 "press operatives" and 15,000 "job and die setters) could be affected by the standard.

Technological Feasibility

OSHA is required to assess the technological feasibility of new regulations prior to their promulgation. This standard removes OSHA's prohibition against the use of PSDI on mechanical power presses, but does not require the use of this technology. Under a 1976 OSHA-granted variance, one U.S. metal stamping firm has utilized PSDI technology in a manner consonant with the operational requirements of the standard. This technology has been utilized in Europe for over 30 years. A significant portion of the manually fed mechanical power presses are capable of being retrofitted with PSDI technology. Thus, the safety equipment and work practices contained in the proposed OSHA standard have been demonstrated to be technologically feasible.

Savings and Costs

The current regulatory environment prohibits the use of PSDI on mechanical power presses. OSHA has estimated that allowing employers to convert existing presses to PSDI systems will increase the productivity of each press converted by an average of 24.3 percent. This gain implies that the addition of PSDI technology to an existing press will, on average, annually release about $8,160 worth of resources to the U.S. economy. Multiplying this figure by OSHA's projection of 19,875 conversions of existing mechanical presses indicates that by 1990 this standard would save about $162 million per year.

The net annualized savings to the U.S. economy from the conversion of existing presses to PSDI is the excess of the savings over the cost of these conversions. The cost of these conversions includes: (1) The cost of converting the existing equipment to PSDI technology; (2) the cost of certifying and validating the PSDI safety system; (3) the cost of inspecting and maintaining the PSDI systems; and (4) the cost of training workers. OSHA has estimated these annualized costs at between $49 and $77 million by 1991. Therefore, the estimated net annualized savings from the conversion of existing presses to PSDI is between $85 and $113 million.

OSHA has also estimated that 250 new presses per year will utilize PSDI for an annual productivity increase of $2.04 million. By 1998, after an estimated 2,500 new presses are equipped with PSDI systems, their total annualized

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costs will be between $4.1 and $5.5 million and their total annualized savings will be $20.4 million, resulting in a new annualized savings of $14.9 to $16.3 million for new presses. The combined annualized savings from existing and new presses by 1996 is expected to be between $99.8 and $129.1 million.

Economic Feasibility

As stated, there is no requirement for a press owner to convert to this new technology. If the press owner converts, the annual savings from increased productivity are more than twice the annualized costs of the conversion. Consequently, the amended standard is clearly economically feasible.

Impacts on Small Firms

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA is required to consider the impact of the new regulation on small entities. As a result of this review, the Assistant Secretary certifies that the standard would not have an adverse impact upon a significant number of small entities.

The standard will not have any differential adverse impact on small firms. In fact, small firms may have a relatively greater cost savings than those in larger firms because in the affected industries small firms tend to be newer than large firms. Newer firms tend to have newer presses and as the required investment for retrofitting presses with presence sensing devices usually increases with the age of the equipment, newer firms will incur relatively lower costs than those incurred by older firms.

These relative cost savings may be offset to some extent, however, because a large firm would be able to distribute the overhead costs associated with equipment certification and validation and employee training among more presses than would a small firm. In addition, the relative productivity gain may be smaller for new presses.

International Trade Impacts

Pursuant to Executive Order 12291, OSHA has considered the impact of this standard on the U.S. trade balance. The promulgation of the standard may have a positive impact on the U.S. trade balance for fabricated metal products.

Foreign competition in both U.S. manufacturing and finished products markets has contributed to the recent decreased demand for U.S. contract stamping services. The increase in productivity associated with the use of PSDI systems should improve the competitive position of U.S. parts and equipment manufacturers. These gains should reduce the production costs for certain final products of U.S. manufacturers.

VI. Environmental Impact Assessment—Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance regulations (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact and that the revisions are categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA Compliance regulations.

The proposed revisions to 29 CFR 1910.217 would allow the use of presence sensing devices to initiate the stroke of mechanically powered presses after the operator is out of the danger zone. The provisions of the proposal focus on reducing accidents or injuries by the proper use and handling of equipment, by means of work practices and procedures, by certification of equipment, by worker training, as well as by changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment.

VII. Paperwork Reduction Act

The recordkeeping requirements in this standard have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The approval number is 1218–0143 and the approval has been granted until February 29, 1991.

VIII. State Plan Applicability

The 23 States and two territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of this publication date. These are: Alaska, Arizona, California (for State and local government employees only), Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

IX. Effective Date

The provision for OSHA recognition of third-party validation organizations set forth in Appendix C becomes effective 30 days after date of publication in the **Federal Register**. The other provisions of this standard become effective the later of 90 days after publication in the **Federal Register** or the date of OSHA recognition of a third-party validation organization. As certification/validation is a requirement, PSDI cannot be implemented unit such time as a validation organization has been recognized. A **Federal Register** notice will be published when a third-party validation organization has been recognized by OSHA.

X. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington DC 20210.

List of Subjects in 29 CFR Part 1910

Certification, Light curtains, Mechanical power presses, Occupational safety and health, Presence sensing device initiation, Safety, Training, Validation.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, OSHA is amending § 1910.211, § 1910.217 and the authority citation for Subpart O of 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 7th day of March 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The authority citation for Subpart O of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable. Sections 1910.211 and 1910.217 also issued under 29 CFR Part 1911.

2. Section 1910.211 is hereby amended by revising paragraph (d)(12) and (d)(11)(iii), by removing the period and adding ", or" at the end of paragraph

(d)(11)(iii), and by adding new paragraphs (d)(11)(iv), (d)(61), (d)(62), (d)(63), (d)(64), (d)(65), and (d)(66) to read as follows:

§ 1910.211 Definitions.

* * * * *

(d) * * *

(11) * * *

(iii) Automatically withdraws the operator's hands if the operator's hands are inadvertently within the point of operation as the dies close, or

(iv) Prevents the initiation of a stroke, or stops of stroke in progress, when there is an intrusion through the sensing field by any part of the operator's body or by any other object.

(12) "Presence sensing device" means a device designed, constructed and arranged to create a sensing field or area that signals the clutch/brake control to deactivate the clutch and activate the brake of the press when any part of the operator's body or a hand tool is within such field or area.

* * * * *

(61) "Presence sensing device initiation" means an operating mode of indirect manual initiation of a single stroke by a presence sensing device when it senses that work motions of the operator, related to feeding and/or removing parts, are completed and all parts of the operator's body or hand tools are safely clear of the point of operation.

(62) "Safety system" means the integrated total system, including the pertinent elements of the press, the controls, the safeguarding and any required supplemental safeguarding, and their interfaces with the operator, and the environment, designed, constructed and arranged to operate together as a unit, such that a single failure or single operating error will not cause injury to personnel due to point of operation hazards.

(63) "Authorized person" means one to whom the authority and responsibility to perform a specific assignment has been given by the employer.

(64) "Certification" or "certify" means, in the case of design certification/validation, that the manufacturer has reviewed and tested the design and manufacture, and in the case of installation certification/validation and annual recertification/revalidation, that the employer has reviewed and tested the installation, and concludes in both cases that the requirements of § 1910.217 (a) through (h) and Appendix A have been met. The certifications are made to the validation organization.

(65) "Validation" or "validate" means for PSDI safety systems that an OSHA recognized third-party validation organization:

(i) For design certification/validation has reviewed the manufacturer's certification that the PSDI safety system meets the requirements of § 1910.217 (a) through (h) and Appendix A and the underlying tests and analyses performed by the manufacturer, has performed additional tests and analyses which may be required by § 1910.217 (a) through (h) and Appendix A, and concludes that the requirements of § 1910.217 (a) through (h) and Appendix A have been met; and

(ii) For installation certification/validation and annual recertification/revalidation has reviewed the employer's certification that the PSDI safety system meets the requirements of § 1910.217 (a) through (h) and Appendix A and the underlying tests performed by the employer, has performed additional tests and analyses which may be required by § 1910.217 (a) through (h) and Appendix A, and concludes that the requirements of § 1910.217 (a) through (h) and Appendix A have been met.

(66) "Certification/validation" and "certify/validate" means the combined process of certification and validation.

3. Section 1910.217 is hereby amended by revising paragraph (c)(3)(iii)(*b*) and by adding a new paragraph (h), to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(*b*) The device may not be used as a tripping means to initiate slide motion, except when used in total conformance with paragraph (h) of this section.

* * * * *

(h) *Presence sensing device initiation (PSDI)*—(1) *General.* (i) The requirements of paragraph (h) shall apply to all part revolution mechanical power presses used in the PSDI mode of operation.

(ii) The relevant requirements of paragraphs (a) through (g) of this section also shall apply to all presses used in the PSDI mode of operation, whether or not cross referenced in this paragraph (h). Such cross-referencing of specific requirements from paragraphs (a) through (g) of this section is intended only to enhance convenience and understanding in relating to the new provisions to the existing standard, and is not to be construed as limiting the applicability of other provisions in paragraphs (a) through (g) of this section.

(iii) Full revolution mechanical power presses shall not be used in the PSDI mode of operation.

(iv) Mechanical power presses with a configuration which would allow a person to enter, pass through, and become clear of the sensing field into the hazardous portion of the press shall not be used in the PSDI mode of operation.

(v) The PSDI mode of operation shall be used only for normal production operations. Die-setting and maintenance procedures shall comply with paragraphs (a) through (g) of this section, and shall not be done in the PSDI mode.

(2) *Brake and clutch requirements.* (i) Presses with flexible steel band brakes or with mechanical linkage actuated brakes or clutches shall not be used in the PSDI mode.

(ii) Brake systems on presses used in the PSDI mode shall have sufficient torque so that each average value of stopping times (Ts) for stops initiated at approximately 45 degrees, 60 degrees, and 90 degrees, respectively, of crankshaft angular position, shall not be more than 125 percent of the average value of the stopping time at the top crankshaft position. Compliance with this requirement shall be determined by using the heaviest upper die to be used on the press, and operating at the fastest press speed if there is speed selection.

(iii) Where brake engagement and clutch release is effected by spring action, such spring(s) shall operate in compression on a rod or within a hole or tube, and shall be of non-interleaving design.

(3) *Pneumatic systems.* (i) Air valve and air pressure supply/control.

(A) The requirements of paragraphs (b)(7)(xiii), (b)(7)(xiv), (b)(10), (b)(12) and (c)(5)(iii) of this section apply to the pneumatic systems of machines used in the PSDI mode.

(B) The air supply for pneumatic clutch/brake control valves shall incorporate a filter, an air regulator, and, when necessary for proper operation, a lubricator.

(C) The air pressure supply for clutch/brake valves on machines used in the PSDI mode shall be regulated to pressures less than or equal to the air pressure used when making the stop time measurements required by paragraph (h)(2)(ii) of this section.

(ii) Air counterbalance systems.

(A) Where presses that have slide counterbalance systems are used in the PSDI mode, the counterbalance system shall also meet the requirements of paragraph (b)(9) of this section.

(B) Counterbalances shall be adjusted in accordance with the press manufacturer's recommendations to assure correct counterbalancing of the slide attachment (upper die) weight for all operations performed on presses

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used in the PSDI mode. The adjustments shall be made before performing the stopping time measurements required by paragraphs (h)(2)(ii), (h)(5)(iii), and (h)(9)(v) of this section.

(4) *Flywheels and bearings.* Presses whose designs incorporate flywheels running on journals on the crankshaft or back shaft, or bull gears running on journals mounted on the crankshaft, shall be inspected, lubricated, and maintained as provided in paragraph (h)(10) of this section to reduce the possibility of unintended and uncontrolled press strokes caused by bearing seizure.

(5) *Brake monitoring.* (i) Presses operated in the PSDI mode shall be equipped with a brake monitor that meets the requirements of paragraphs (b)(13) and (b)(14) of this section. In addition, the brake monitor shall be adjusted during installation certification to prevent successive stroking of the press if increases in stopping time cause an increase in the safety distance above that required by paragraph (h)(9)(v) of this section.

(ii) Once the PSDI safety system has been certified/validated, adjustment of the brake monitor shall not be done without prior approval of the validation organization for both the brake monitor adjustment and the corresponding adjustment of the safety distance. The validation organization shall in its installation validation, state that in what circumstances, if any, the employer has advance approval for adjustment, when prior oral approval is appropriate and when prior approval must be in writing. The adjustment shall be done under the supervision of an authorized person whose qualifications include knowledge of safety distance requirements and experience with the brake system and its adjustment. When brake wear or other factors extend press stopping time beyond the limit permitted by the brake monitor, adjustment, repair, or maintenance shall be performed on the brake or other press system element that extends the stopping time.

(iii) The brake monitor setting shall allow an increase of no more than 10 percent of the longest stopping time for the press, or 10 milliseconds, whichever is longer, measured at the top of the stroke.

(6) *Cycle control and control systems.* (i) The control system on presses used in the PSDI mode shall meet the applicable requirements of paragraphs (b)(7), (b)(8), (b)(13), and (c)(5) of this section.

(ii) The control system shall incorporate a means of dynamically monitoring for decoupling of the rotary position indicating mechanism drive from the crankshaft. This monitor shall stop slide motion and prevent successive press strokes if decoupling occurs, or if the monitor itself fails.

(iii) The mode selection means of paragraph (b)(7)(iii) of this section shall have at least one position for selection of the PSDI mode. Where more than one interruption of the light sensing field is used in the initiation of a stroke, either the mode selection means must have one position for each function, or a separate selection means shall be provided which becomes operable when the PSDI mode is selected. Selection of PSDI mode and the number of interruptions/withdrawals of the light sensing field required to initiate a press cycle shall be by means capable of supervision by the employer.

(iv) A PSDI set-up/reset means shall be provided which requires an overt action by the operator, in addition to PSDI mode selection, before operation of the press by means of PSDI can be started.

(v) An indicator visible to the operator and readily seen by the employer shall be provided which shall clearly indicate that the system is set-up for cycling in the PSDI mode.

(vi) The control system shall incorporate a timer to deactivate PSDI when the press does not stroke within the period of time set by the timer. The timer shall be manually adjustable, to a maximum time of 30 seconds. For any timer setting greater than 15 seconds, the adjustment shall be made by the use of a special tool available only to authorized persons. Following a deactivation of PSDI by the timer, the system shall make it necessary to reset the set-up/reset means in order to reactivate the PSDI mode.

(vii) Reactivation of PSDI operation following deactivation of the PSDI mode from any other cause, such as activation of the red color stop control required by paragraph (b)(7)(ii) of this section, interruption of the presence sensing field, opening of an interlock, or reselection of the number of sensing field interruptions/withdrawals required to cycle the press, shall require resetting of the set-up/reset means.

(viii) The control system shall incorporate an automatic means to prevent initiation or continued operation in the PSDI mode unless the press drive motor is energized in the forward direction of crankshaft rotation.

(ix) The control design shall preclude any movement of the slide caused by operation of power on, power off, or selector switches, or from checks for proper operations as required by paragraph (h)(6)(xiv) of this section.

(x) All components and subsystems of the control system shall be designed to operate together to provide total control system compliance with the requirements of this section.

(xi) Where there is more than one operator of a press used for PSDI, each operator shall be protected by a separate, independently functioning, presence sensing device. The control system shall require that each sensing field be interrupted the selected number of times prior to initiating a stroke. Further, each operator shall be provided with a set-up/reset means that meets the requirements of paragraph (h)(6) of this section, and which must be actuated to initiate operation of the press in the PSDI mode.

(xii) [*Reserved*].

(xiii) The Control system shall incorporate interlocks for supplemental guards, if used, which will prevent stroke initiation or will stop a stroke in progress if any supplemental guard fails or is deactivated.

(xiv) The control system shall perform checks for proper operation of all cycle control logic element switches and contacts at least once each cycle. Control elements shall be checked for correct status after power "on" and before the initial PSDI stroke.

(xv) The control system shall have provisions for an "inch" operating means meeting the requirements of paragraph (b)(7)(iv) of this section. Die-setting shall not be done in the PSDI mode. Production shall not be done in the "inch" mode.

(xvi) The control system shall permit only a single stroke per initiation command.

(xvii) Controls with internally stored programs (e.g., mechanical, electro-mechanical, or electronic) shall meet the requirements of paragraph (b)(13) of this section, and shall default to a predetermined safe condition in the event of any single failure within the system. Programmable controllers which meet the requirements for controls with internally stored programs stated above shall be permitted only if all logic elements affecting the safety system and point of operation safety are internally stored and protected in such a manner that they cannot be altered or manipulated by the user to an unsafe condition.

(7) *Environmental requirements.* Control components shall be selected, constructed, and connected together in such a way as to withstand expected operational and environmental stresses, at least including those outlined in Appendix A. Such stresses shall not so

affect the control system as to cause unsafe operation.

(8) *Safety system.* (i) Mechanical power presses used in the PSDI mode shall be operated under the control of a safety system which, in addition to meeting the applicable requirements of paragraphs (b)(13) and (c)(5) and other applicable provisions of this section, shall function such that a single failure or single operating error shall not cause injury to personnel from point of operation hazards.

(ii) The safety system shall be designed, constructed, and arranged as an integral total system, including all elements of the press, the controls, the safeguarding and any required supplemental safeguarding, and their interfaces with the operator and that part of the environment which has effect on the protection against point of operation hazards.

(9) *Safeguarding the point of operation.* (i) The point of operation of presses operated in the PSDI mode shall be safeguarded in accordance with the requirements of paragraph (c) of this section, except that the safety distance requirements of paragraph (h)(9)(v) of this section shall be used for PSDI operation.

(ii)(A) PSDI shall be implemented only by use of light curtain (photo-electric) presence sensing devices which meet the requirements of paragraph (c)(3)(iii)(*c*) of this section unless the requirements of the following paragraph have been met.

(B) Alternatives to photo-electric light curtains may be used for PSDI when the employer can demonstrate, through tests and analysis by the employer or the manufacturer, that the alternative is as safe as the photo-electric light curtain, that the alternative meets the conditions of this section, has the same long term reliability as light curtains and can be integrated into the entire safety system as provided for in this section. Prior to use, both the employer and manufacturer must certify that these requirements and all the other applicable requirements of this section are met and these certifications must be validated by an OSHA-recognized third-party validation organization to meet these additional requirements and all the other applicable requirements of paragraphs (a) through (h) and Appendix A of this section. Three months prior to the operation of any alternative system, the employer must notify the OSHA Directorate of Safety Standards Programs of the name of the system to be installed, the manufacturer and the OSHA-recognized third-party validation organization immediately. Upon request, the employer must make available to that office all tests and analyses for OSHA review.

(iii) Individual sensing fields of presence sensing devices used to initiate strokes in the PSDI mode shall cover only one side of the press.

(iv) Light curtains used for PSDI operation shall have minimum object sensitivity not to exceed one and one-fourth inches (31.75 mm). Where light curtain object sensitivity is user-adjustable, either discretely or continuously, design features shall limit the minimum object sensitivity adjustment not to exceed one and one-fourth inches (31.75 mm). Blanking of the sensing field is not permitted.

(v) The safety distance (Ds) from the sensing field of the presence sensing device to the point of operation shall be greater than or equal to the distance determined by the formula:

$$Ds=Hs\times(Ts+Tp+Tr+2Tm)+Dp$$

Where:

Ds=Minimum safety distance.

Hs=Hand speed constant of 63 inches per second (1.6 m/s).

Ts=Longest press stopping time, in seconds, computed by taking averages of multiple measurements at each of three positions (45 degrees, 60 degrees, and 90 degrees) of crankshaft angular position; the longest of the three averages is the stopping time to use. (Ts is defined as the sum of the kinetic energy dissipation time plus the pneumatic/magnetic/hydraulic reaction time of the clutch/brake operating mechanism(s).)

Tp=Longest presence sensing device response time, in seconds.

Tr=Longest response time, in seconds, of all interposing control elements between the presence sensing device and the clutch/brake operating mechanism(s).

Tm=Increase in the press stopping time at the top of the stroke, in seconds, allowed by the brake monitor for brake wear. The time increase allowed shall be limited to no more than 10 percent of the longest press stopping time measured at the top of the stroke, or 10 milliseconds, whichever is longer.

Dp=Penetration depth factor, required to provide for possible penetration through the presence sensing field by fingers or hand before detection occurs. The penetration depth factor shall be determined from Graph h–1 using the minimum object sensitivity size.

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Penetration Depth Factor Calculation

$Dp = 3.4\,(S - 0.276)$

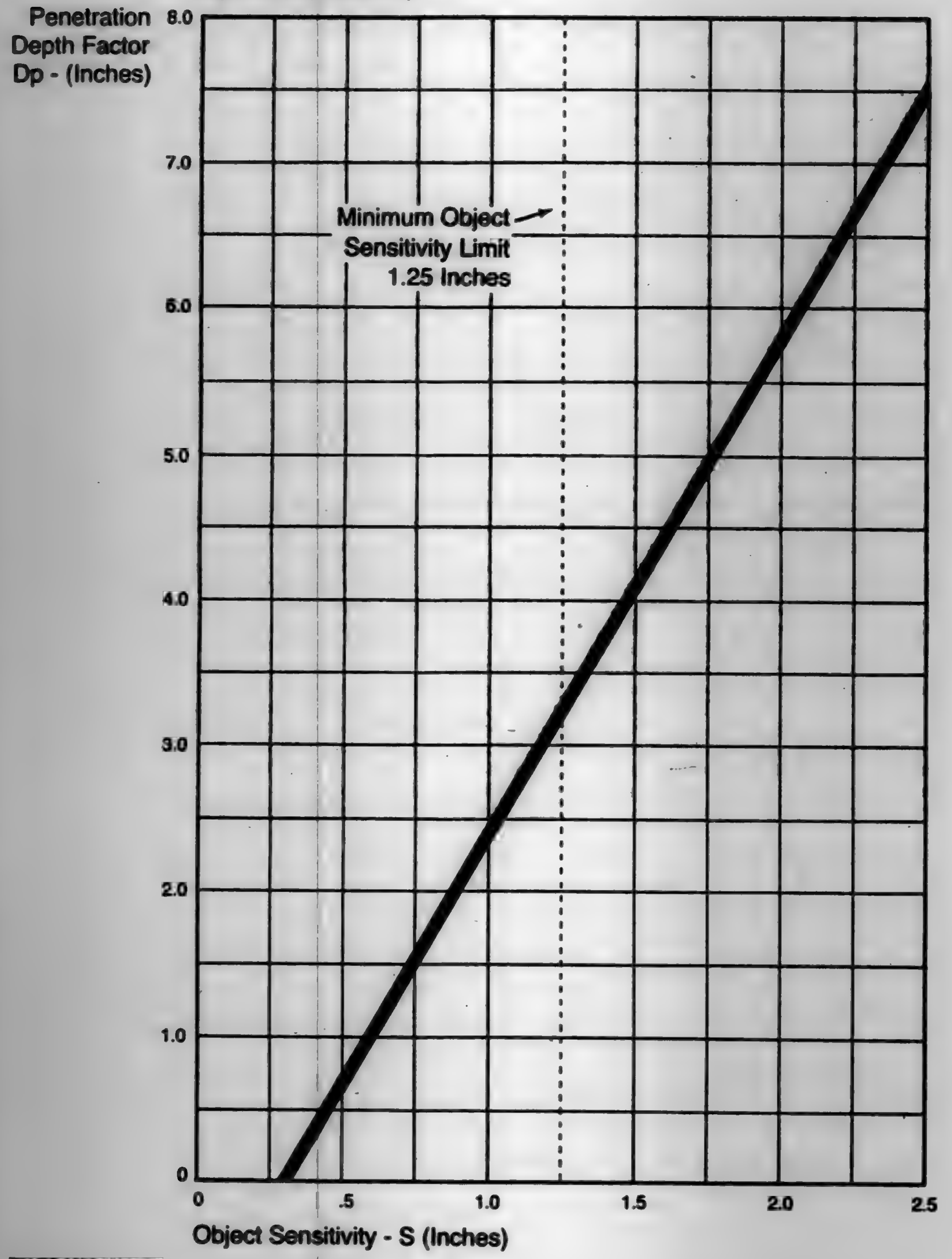

BILLING CODE 4510-26-C

(vi) The presence sensing device location shall either be set at each tool change and set-up to provide at least the minimum safety distance, or fixed in location to provide a safety distance greater than or equal to the minimum safety distance for all tooling set-ups which are to be used on that press.

(vii) Where presence sensing device location is adjustable, adjustment shall require the use of a special tool available only to authorized persons.

(viii) Supplemental safeguarding shall be used to protect all areas of access to the point of operation which are unprotected by the PSDI presence sensing device. Such supplemental safeguarding shall consist of either additional light curtain (photo-electric) presence sensing devices or other types of guards which meet the requirements of paragraphs (c) and (h) of this section.

(A) Presence sensing devices used as supplemental safeguarding shall not initiate a press stroke, and shall conform to the requirements of paragraph (c)(3)(iii) and other applicable provisions of this section, except that the safety distance shall comply with paragraph (h)(9)(v) of this section.

(B) Guards used as supplemental safeguarding shall conform to the design, construction and application requirements of paragraph (c)(2) of this section, and shall be interlocked with the press control to prevent press PSDI operation if the guard fails, is removed, or is out of position.

(ix) Barriers shall be fixed to the press frame or bolster to prevent personnel from passing completely through the sensing field, where safety distance or press configuration is such that personnel could pass through the PSDI presence sensing field and assume a position where the point of operation could be accessed without detection by the PSDI presence sensing device. As an alternative, supplemental presence sensing devices used only in the safeguard mode may be provided. If used, these devices shall be located so as to detect all operator locations and positions not detected by the PSDI sensing field, and shall prevent stroking or stop a stroke in process when any supplemental sensing field(s) are interrupted.

(x) Hand tools. Where tools are used for feeding, removal of scrap, lubrication of parts, or removal of parts that stick on the die in PSDI operations:

(A) The minimum diameter of the tool handle extension shall be greater than the minimum object sensitivity of the presence sensing device(s) used to initiate press strokes; or

(B) The length of the hand tool shall be such as to ensure that the operator's hand will be detected for any safety distance required by the press set-ups.

(10) *Inspection and maintenance.* (i) Any press equipped with presence sensing devices for use in PSDI, or for supplemental safeguarding on presses used in the PSDI mode, shall be equipped with a test rod of diameter specified by the presence sensing device manufacturer to represent the minimum object sensitivity of the sensing field. Instructions for use of the test rod shall be noted on a label affixed to the presence sensing device.

(ii) The following checks shall be made at the beginning of each shift and whenever a die change is made.

(A) A check shall be performed using the test rod according to the presence sensing device manufacturer's instructions to determine that the presence sensing device used for PSDI is operational.

(B) The safety distance shall be checked for compliance with (h)(9)(v) of this section.

(C) A check shall be made to determine that all supplemental safeguarding is in place. Where presence sensing devices are used for supplemental safeguarding, a check for proper operation shall be performed using the test rod according to the presence sensing device manufacturer's instructions.

(D) A check shall be made to assure that the barriers and/or supplemental presence sensing devices required by paragraph (h)(9)(ix) of this section are operating properly.

(E) A system or visual check shall be made to verify correct counterbalance adjustment for die weight according to the press manufacturer's instructions, when a press is equipped with a slide counterbalance system.

(iii) When presses used in the PSDI mode have flywheel or bullgear running on crankshaft mounted journals and bearings, or a flywheel mounted on back shaft journals and bearings, periodic inspections following the press manufacturer's recommendations shall be made to ascertain that bearings are in good working order, and that automatic lubrication systems for these bearings (if automatic lubrication is provided) are supplying proper lubrication. On presses with provision for manual lubrication of flywheel or bullgear bearings, lubrication shall be provided according to the press manufacturer's recommendations.

(iv) Periodic inspections of clutch and brake mechanisms shall be performed to assure they are in proper operating condition. The press manufacturer's recommendations shall be followed.

(v) When any check of the press, including those performed in accordance with the requirements of paragraphs (h)(10)(ii), (iii) or (iv) of this section, reveals a condition of noncompliance, improper adjustment, or failure, the press shall not be operated until the condition has been corrected by adjustment, replacement, or repair.

(vi) It shall be the responsibility of the employer to ensure the competence of personnel caring for, inspecting, and maintaining power presses equipped for PSDI operation, through initial and periodic training.

(11) *Safety system certification/validation.* (i) Prior to the initial use of any mechanical press in the PSDI mode, two sets of certification and validation are required:

(A) The design of the safety system required for the use of a press in the PSDI mode shall be certified and validated prior to installation. The manufacturer's certification shall be validated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section.

(B) After a press has been equipped with a safety system whose design has been certified and validated in accordance with paragraph (h)(11)(i) of this section, the safety system installation shall be certified by the employer, and then shall be validated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section.

(ii) At least annually thereafter, the safety system on a mechanical power press used in the PSDI mode shall be recertified by the employer and revalidated by an OSHA-recognized third-party validation organization to meet all applicable requirements of paragraphs (a) through (h) and Appendix A of this section. Any press whose safety system has not been recertified and revalidated within the preceding 12 months shall be removed from service in the PSDI mode until the safety system is recertified and revalidated.

(iii) A label shall be affixed to the press as part of each installation certification/validation and the most recent recertification/revalidation. The label shall indicate the press serial number, the minimum safety distance (Ds) required by paragraph (h)(9)(v) of this section, the fulfillment of design certification/validation, the employer's signed certification, the identification of the OSHA-recognized third-party validation organization, its signed validation, and the date the certification/validation and recertification/revalidation are issued.

(iv) Records of the installation certification and validation and the most recent recertification and revalidation shall be maintained for each safety system equipped press by the employer as long as the press is in use. The records shall include the manufacture and model number of each component and subsystem, the calculations of the safety distance as required by paragraph (h)(9)(v) of this section, and the stopping time measurements required by paragraph (h)(2)(ii) of this section. The most recent records shall be made available to OSHA upon request.

(v) The employer shall notify the OSHA-recognized third-party validation organization within five days whenever a component or a subsystem of the safety system fails or modifications are made which may affect the safety of the system. The failure of a critical component shall necessitate the removal of the safety system from service until it is recertified and revalidated, except recertification by the employer without revalidation is permitted when a non-critical component or subsystem is replaced by one of the same manufacture and design as the original, or determined by the third-party validation organization to be equivalent by similarity analysis, as set forth in Appendix A.

(vi) The employer shall notify the OSHA-recognized third-party validation organization within five days of the occurrence of any point of operation injury while a press is used in the PSDI mode. This is in addition to the report of injury required by paragraph (g) of this section; however, a copy of that report may be used for this purpose.

(12) *Die setting and work set-up.* (i) Die setting on presses used in the PSDI mode shall be performed in accordance with paragraphs (d) and (h) of this section.

(ii) The PSDI mode shall not be used for die setting or set-up. An alternative manual cycle initiation and control means shall be supplied for use in die setting which meets the requirements of paragraph (b)(7) of this section.

(iii) Following a die change, the safety distance, the proper application of supplemental safeguarding, and the slide counterbalance adjustment (if the press is equipped with a counterbalance) shall be checked and maintained by authorized persons whose qualifications include knowledge of the safety distance, supplemental safeguarding requirements, and the manufacturer's specifications for counterbalance adjustment. Adjustment of the location of the PSDI presence sensing device shall require use of a special tool available only to the authorized persons.

(13) *Operator training.* (i) The operator training required by paragraph (f)(2) of this section shall be provided to the employee before the employee initially operates the press and as needed to maintain competence, but not less than annually thereafter. It shall include instruction relative to the following items for presses used in the PSDI mode.

(A) The manufacturer's recommended test procedures for checking operation of the presence sensing device. This shall include the use of the test rod required by paragraph (h)(10)(i) of this section.

(B) The safety distance required.

(C) The operation, function and performance of the PSDI mode.

(D) The requirements for hand tools that may be used in the PSDI mode.

(E) The severe consequences that can result if he or she attempts to circumvent or by-pass any of the safeguard or operating functions of the PSDI system.

(ii) The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health.

4. Appendices A–D are added to § 1910.217 to read as follows:

Appendix A to § 1910.217.—Mandatory Requirements for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Purpose

The purpose of the certification/validation of safety systems for presence sensing device initiation (PSDI) of mechanical power presses is to ensure that the safety systems are designed, installed, and maintained in accordance with all applicable requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A.

General

The certification/validation process shall utilize an independent third-party validation organization recognized by OSHA in accordance with the requirements specified in Appendix C of this section.

While the employer is responsible for assuring that the certification/validation requirements in §1910.217(h)(11) are fulfilled, the design certification of PSDI safety systems may be initiated by manufacturers, employers, and/or their representatives. The term "manufacturers" refers to the manufacturer of any of the components of the safety system. An employer who assembles a PSDI safety system would be a manufacturer as well as employer for purposes of this standard and Appendix.

The certification/validation process includes two stages. For design certification, in the first stage, the manufacturer (which can be an employer) certifies that the PSDI safety system meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A, based on appropriate design criteria and tests. In the second stage, the OSHA-recognized third-party validation organization validates that the PSDI safety system meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A and the manufacturer's certification by reviewing the manufacturer's design and test data and performing any additional reviews required by this standard or which it believes appropriate.

For installation certification/validation and annual recertification/revalidation, in the first stage the employer certifies or recertifies that the employer is installing or utilizing a PSDI safety system validated as meeting the design requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A by an OSHA-recognized third-party validation organization and that the installation, operation and maintenance meet the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A. In the second stage, the OSHA-recognized third-party validation organization validates or revalidates that the PSDI safety system installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A and the employer's certification, by reviewing that the PSDI safety system has been certified; the employer's certification, designs and tests, if any; the installation, operation, maintenance and training; and by performing any additional tests and reviews which the validation organization believes is necessary.

Summary

The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with all of the requirements in 29 CFR 1910.217 (a) through (h) and this Appendix A. The certification/validation process shall verify that the safety system complies with the OSHA safety requirements as follows:

A. Design Certification/Validation

1. The major parts, components and subsystems used shall be defined by part number or serial number, as appropriate, and by manufacturer to establish the configuration of the system.

2. The identified parts, components and subsystems shall be certified by the manufacturer to be able to withstand the functional and operational environments of the PSDI safety system.

3. The total system design shall be certified by the manufacturer as complying with all requirements in 29 CFR 1910.217 (a) through (h) and this Appendix A.

4. The third-party validation organization shall validate the manufacturer's certification under paragraphs 2 and 3.

B. Installation Certification/Validation

1. The employer shall certify that the PSDI safety system has been design certified and validated, that the installation meets the operational and environmental requirements specified by the manufacturer, that the installation drawings are accurate, and that the installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A. (The operational and installation requirements of the PSDI safety system may vary for different applications.)

2. The third-party validation organization shall validate the employer's certifications that the PSDI safety system is design certified and validated, that the installation meets the installation and environmental requirements specified by the manufacturer, and that the installation meets the requirements of 29 CFR 1910.217 (a) through (h) and this Appendix A.

C. Recertification/Revalidation

1. The PSDI safety system shall remain under certification/validation for the shorter of one year or until the system hardware is changed, modified or refurbished, or operating conditions are changed (including environmental, application or facility changes), or a failure of a critical component has occurred.

2. Annually, or after a change specified in paragraph 1., the employer shall inspect and recertify the installation as meeting the requirements set forth under B., Installation Certification/Validation.

3. The third-party validation organization, annually or after a change specified in paragraph 1., shall validate the employer's certification that the requirements of paragraph B., Installation Certification/Validation have been met.

(Note: Such changes in operational conditions as die changes or press relocations not involving disassembly or revision to the safety system would not require recertification/revalidation.)

Certification/Validation Requirements

A. General Design Certification/Validation Requirements

1. *Certification/Validation Program Requirements.* The manufacturer shall certify and the OSHA-recognized third-party validation organization shall validate that:

(a) The design of components, subsystems, software and assemblies meets OSHA performance requirements and are ready for the intended use; and

(b) The performance of combined subsystems meets OSHA's operational requirements.

2. *Certification/Validation Program Level of Risk Evaluation Requirements.* The manufacturer shall evaluate and certify, and the OSHA-recognized third-party validation organization shall validate, the design and operation of the safety system by determining conformance with the following:

a. The safety system shall have the ability to sustain a single failure or a single operating error and not cause injury to personnel from point of operation hazards. Acceptable design features shall demonstrate, in the following order or precedence, that:

(1) No single failure points may cause injury; or

(2) Redundancy, and comparison and/or diagnostic checking, exist for the critical items that may cause injury, and the electrical, electronic, electromechanical and mechanical parts and components are selected so that they can withstand operational and external environments. The safety factor and/or derated percentage shall be specifically noted and complied with.

b. The manufacturer shall design, evaluate, test and certify, and the third-party validation organization shall evaluate and validate, that the PSDI safety system meets appropriate requirements in the following areas.

(1) Environmental Limits

(a) Temperature

(b) Relative humidity

(c) Vibration

(d) Fluid compatability with other materials

(2) Design Limits

(a) Power requirements

(b) Power transient tolerances

(c) Compatability of materials used

(d) Material stress tolerances and limits

(e) Stability to long term power fluctuations

(f) Sensitivity to signal acquisition

(g) Repeatability of measured parameter without inadvertent initiation of a press stroke

(h) Operational life of components in cycles, hours, or both

(i) Electromagnetic tolerance to:

(*1*) Specific operational wave lengths; and

(*2*) Externally generated wave lengths

(3) *New Design Certification/Validation.* Design certification/validation for a new safety system, i.e., a new design or new integration of specifically identified components and subsystems, would entail a single certification/validation which would be applicable to all identical safety systems. It would not be necessary to repeat the tests on individual safety systems of the same manufacture or design. Nor would it be necessary to repeat these tests in the case of modifications where determined by the manufacturer and validated by the third-party validation organization to be equivalent by similarity analysis. Minor modifications not affecting the safety of the system may be made by the manufacturer without revalidation.

Substantial modifications would require testing as a new safety system, as deemed necessary by the validation organization.

B. Additional Detailed Design Certification/Validation Requirements

1. *General.* The manufacturer or the manufacturer's representative shall certify to and submit to an OSHA-recognized third-party validation organization the documentation necessary to demonstrate that the PSDI safety system design is in full compliance with the requirements of 29 CFR 1910.217(a)–(h) and this Appendix A, as applicable, by means of analysis, tests, or combination of both, establishing that the following additional certification/validation requirements are fulfilled.

2. *Reaction Times.* For the purpose of demonstrating compliance with the reaction time required by §1910.217(h), the tests shall use the following definitions and requirements:

a. "Reaction time" means the time, in seconds, it takes the signal, required to activate/deactivate the system, to travel through the system, measured from the time of signal initiation to the time the function being measured is completed.

b. "Full stop" or "No movement of the slide or ram" means when the crankshaft rotation has slowed to two or less revolutions per minute, just before stopping completely.

c. "Function completion" means for, electrical, electromechanical and electronic devices, when the circuit produces a change of state in the output element of the device.

d. When the change of state is motion, the measurement shall be made at the completion of the motion.

e. The generation of the test signal introduced into the system for measuring reaction time shall be such that the initiation time can be established with an error of less than 0.5 percent of the reaction time measured.

f. The instrument used to measure reaction time shall be calibrated to be accurate to within 0.001 second.

3. *Compliance with § 1910.217(h)(2)(ii).* For compliance with these requirements, the average value of the stopping time, Ts, shall be the arithmetic mean of at least 25 stops for each stop angle initiation measured with the brake and/or clutch unused, 50 percent worn, and 90 percent worn. The recommendations of the brake system manufacturer shall be used to simulate or estimate the brake wear. The manufacturer's recommended minimum lining depth shall be identified and documented, and an evaluation made that the minimum depth will not be exceeded before the next (annual) recertification/revalidation. A correlation of the brake and/or clutch degradation based on the above tests and/or estimates shall be made and documented. The results shall document the conditions under which the brake and/or clutch will and will not comply with the requirement. Based upon this determination, a scale shall be developed to indicate the allowable 10 percent of the stopping time at the top of the stroke for slide or ram overtravel due to brake wear. The scale shall be marked to indicate that brake adjustment and/or replacement is required. The explanation and use of the scale shall be documented.

The test specification and procedure shall be submitted to the validation organization for review and validation prior to the test. The validation organization representative shall witness at least one set of tests.

4. *Compliance with §§ 1910.217(h)(5)(iii) and (h)(9)(v).* Each reaction time required to calculate the Safety Distance, including the brake monitor setting, shall be documented in separate reaction time tests. These tests shall specify the acceptable tolerance band

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sufficient to assure that tolerance build-up will not render the safety distance unsafe.

a. Integrated test of the press fully equipped to operate in the PSDI mode shall be conducted to establish the total system reaction time.

b. Brakes which are the adjustable type shall be adjusted properly before the test.

5. *Compliance with § 1910.217(h)(2)(iii).* a. Prior to conducting the brake system test required by paragraph (h)(2)(ii), a visual check shall be made of the springs. The visual check shall include a determination that the spring housing or rod does not show damage sufficient to degrade the structural integrity of the unit, and the spring does not show any tendency to interleave.

b. Any detected broken or unserviceable springs shall be replaced before the test is conducted. The test shall be considered successful if the stopping time remains within that which is determined by paragraph (h)(9)(v) for the safety distance setting. If the increase in press stopping time exceeds the brake monitor setting limit defined in paragraph (h)(5)(iii), the test shall be considered unsuccessful, and the cause of the excessive stopping time shall be investigated. It shall be ascertained that the springs have not been broken and that they are functioning properly.

6. *Compliance with § 1910.217(h)(7).* a. Tests which are conducted by the manufacturers of electrical components to establish stress, life, temperature and loading limits must be tests which are in compliance with the provisions of the National Electrical Code.

b. Electrical and/or electronic cards or boards assembled with discreet components shall be considered a subsystem and shall require separate testing that the subsystems do not degrade in any of the following conditions:

(1) Ambient temperature variation from -20° C to +50° C.

(2) Ambient relative humidity of 99 percent.

(3) Vibration of 45G for one millisecond per stroke when the item is to be mounted on the press frame.

(4) Electromagnetic interference at the same wavelengths used for the radiation sensing field, at the power line frequency fundamental and harmonics, and also from outogenous radiation due to system switching.

(5) Electrical power supply variations of ±15 percent.

c. The manufacturer shall specify the test requirements and procedures from existing consensus tests in compliance with the provisions of the National Electrical Code.

d. Tests designed by the manufacturer shall be made available upon request to the validation organization. The validation organization representative shall witness at least one set of each of these tests.

7. *Compliance with § 1910.217(h)(9)(iv).* a. The manufacturer shall design a test to demonstrate that the prescribed minimum object sensitivity of the presence sensing device is met.

b. The test specifications and procedures shall be made available upon request to the validation organization.

8. *Compliance with § 1910.217(h)(9)(x).* a. The manufacturer shall design a test(s) to establish the hand tool extension diameters allowed for variations in minimum object sensitivity response.

b. The test(s) shall document the range of object diameter sizes which will produce both single and double break conditions.

c. The test(s) specifications and procedures shall be made available upon request to the validation organization.

9. *Integrated Tests Certification/Validation.* a. The manufacturer shall design a set of integrated tests to demonstrate compliance with the following requirements:

Sections 1910.217(h)(6) (ii); (iii); (iv); (v); (vi); (vii); (viii); (ix); (xi); (xii); (xiii); (xiv); (xv); and (xvii).

b. The integrated test specifications and procedures shall be made available to the validation organization.

10. *Analysis.* a. The manufacturer shall submit to the validation organization the technical analysis such as Hazard Analysis, Failure Mode and Effect Analysis, Stress Analysis, Component and Material Selection Analysis, Fluid Compatibility, and/or other analyses which may be necessary to demonstrate, compliance with the following requirements:

Sections 1910.217(h)(8) (i) and (ii); (h)(2) (ii) and (iii); (h)(3)(i) (A) and (C), and (ii); (h)(5) (i), (ii) and (iii); (h)(6) (i), (iii), (iv), (vi), (vii), (viii), (ix), (x), (xi), (xiii), (xiv), (xv), (xvi), and (xvii); (h)(7) (i) and (ii); (h)(9) (iv), (v), (viii), (ix) and (x); (h)(10) (i) and (ii).

11. *Types of Tests Acceptable for Certification/Validation.* a. Test results obtained from development testing may be used to certify/validate the design.

b. The test results shall provide the engineering data necessary to establish confidence that the hardware and software will meet specifications, the manufacturing process has adequate quality control and the data acquired was used to establish processes, procedures, and test levels supporting subsequent hardware design, production, installation and maintenance.

12. *Validation for Design Certification/Validation.* If, after review of all documentation, tests, analyses, manufacturer's certifications, and any additional tests which the third-party validation organization believes are necessary, the third-party validation organization determines that the PSDI safety system is in full compliance with the applicable requirements of 29 CFR 1910.217(a) through (h) and this Appendix A, it shall validate the manufacturer's certification that it so meets the stated requirements.

C. Installation Certification/Validation Requirements

1. The employer shall evaluate and test the PSDI system installation, shall submit to the OSHA-recognized third-party validation organization the necessary supporting documentation, and shall certify that the requirements of § 1910.217(a) through (h) and this Appendix A have been met and that the installation is proper.

2. The OSHA-recognized third-party validation organization shall conduct tests, and/or review and evaluate the employer's installation tests, documentation and representations. If it so determines, it shall validate the employer's certification that the PSDI safety system is in full conformance with all requirements of 29 CFR 1910.217(a) through (h) and this Appendix A.

D. Recertification/Revalidation Requirements

1. A PSDI safety system which has received installation certification/validation shall undergo recertification/revalidation the earlier of:

a. Each time the systems hardware is significantly changed, modified, or refurbished;

b. Each time the operational conditions are significantly changed (including environmental, application or facility changes, but excluding such changes as die changes or press relocations not involving revision to the safety system);

c. When a failure of a significant component has occurred or a change has been made which may affect safety; or

d. When one year has elapsed since the installation certification/validation or the last recertification/revalidation.

2. *Conduct or recertification/revalidation.* The employer shall evaluate and test the PSDI safety system installation, shall submit to the OSHA-recognized third-party validation organization the necessary supporting documentation, and shall recertify that the requirements of § 1910.217(a) through (h) and this Appendix are being met. The documentation shall include, but not be limited to, the following items:

a. Demonstration of a thorough inspection of the entire press and PSDI safety system to ascertain that the installation, components and safeguarding have not been changed, modified or tampered with since the installation certification/validation or last recertification/revalidation was made.

b. Demonstrations that such adjustments as may be needed (such as to the brake monitor setting) have been accomplished with proper changes made in the records and on such notices as are located on the press and safety system.

c. Demonstration that review has been made of the reports covering the design certification/validation, the installation certification/validation, and all recertification/revalidations, in order to detect any degradation to an unsafe condition, and that necessary changes have been made to restore the safety system to previous certification/validation levels.

3. The OSHA-recognized third-party validation organization shall conduct tests, and/or review and evaluate the employer's installation, tests, documentation and representations. If it so determines, it shall revalidate the employer's recertification that the PSDI system is in full conformance with all requirements of 29 CFR 1910.217(a) through (h) and this Appendix A.

Appendix B to § 1910.217—Nonmandatory Guidelines for Certification/Validation of Safety Systems for Presence Sensing Device Initiation of Mechanical Power Presses

Objectives

This Appendix provides employers, manufacturers, and their representatives, with nonmandatory guidelines for use in developing certification documents.

Employers and manufacturers are encouraged to recommend other approaches if there is a potential for improving safety and reducing cost. The guidelines apply to certification/validation activity from design evaluation through the completion of the installation test and the annual recertification/revalidation tests.

General Guidelines

A. The certification/validation process should confirm that hazards identified by hazard analysis, (HA), failure mode effect analysis (FMEA), and other system analyses have been eliminated by design or reduced to an acceptable level through the use of appropriate design features, safety devices, warning devices, or special procedures. The certification/validation process should also confirm that residual hazards identified by operational analysis are addressed by warning, labeling safety instructions or other appropriate means.

B. The objective of the certification/validation program is to demonstrate and document that the system satisfies specification and operational requirements for safe operations.

Quality Control

The safety attributes of a certified/validated PSDI safety system are more likely to be maintained if the quality of the system and its parts, components and subsystem is consistently controlled. Each manufacturer supplying parts, components, subsystems, and assemblies needs to maintain the quality of the product, and each employer needs to maintain the system in a non-degraded condition.

Analysis Guidelines

A. Certification/validation of hardware design below the system level should be accomplished by test and/or analysis.

B. Analytical methods may be used in lieu of, in combination with, or in support of tests to satisfy specification requirements.

C. Analyses may be used for certification/validation when existing data are available or when test is not feasible.

D. Similarity analysis may be used in lieu of tests where it can be shown that the article is similar in design, manufacturing process, and quality control to another article that was previously certified/validated in accordance with equivalent or more stringent criteria. If previous design, history and application are considered to be similar, but not equal to or more exacting than earlier experiences, the additional or partial certification/validation tests should concentrate on the areas of changed or increased requirements.

Analysis Reports

The analysis reports should identify: (1) The basis for the analysis; (2) the hardware or software items analyzed; (3) conclusions; (4) safety factors; and (5) limit of the analysis. The assumptions made during the analysis should be clearly stated and a description of the effects of these assumptions on the conclusions and limits should be included.

Certification/validation by similarity analysis reports should identify, in addition to the above, application of the part, component or subsystem for which certification/validation is being sought as well as data from previous usage establishing adequacy of the item. Similarity analysis should not be accepted when the internal and external stresses on the item being certified/validated are not defined.

Usage experience should also include failure data supporting adequacy of the design.

Appendix C to § 1910.217—Mandatory Requirements for OSHA Recognition of Third-Party Validation Organizations for the PSDI Standard

This Appendix prescribes mandatory requirements and procedures for OSHA recognition of third-party validation organizations to validate employer and manufacturer certifications that their equipment and practices meet the requirements of the PSDI standard. The scope of the Appendix includes the three categories of certification/validation required by the PSDI standard: Design Certification/Validation, Installation Certification/Validation, and Annual Recertification/Revalidation.

If further detailing of these provisions will assist the validation organization or OSHA in this activity, this detailing will be done through appropriate OSHA Program Directives.

I. Procedure for OSHA Recognition of Validation Organizations

A. Applications

1. *Eligibility.* a. Any person or organization considering itself capable of conducting a PSDI-related third-party validation function may apply for OSHA recognition.

b. However, in determining eligibility for a foreign-based third-party validation organization, OSHA shall take into consideration whether there is reciprocity of treatment by the foreign government after consultation with relevant U.S. government agencies.

2. *Content of application.* a. The application shall identify the scope of the validation activity for which the applicant wishes to be recognized, based on one of the following alternatives:

(1) Design Certification/Validation, Installation Certification/Validation, and Annual Recertification/Revalidation;

(2) Design Certification/Validation only; or

(3) Installation/Certification/Validation and Annual Recertification/Revalidation.

b. The application shall provide information demonstrating that it and any validating laboratory utilized meet the qualifications set forth in section II of this Appendix.

c. The applicant shall provide information demonstrating that it and any validating laboratory utilized meet the program requirements set forth in section III of this Appendix.

d. The applicant shall identify the test methods it or the validating laboratory will use to test or judge the components and operations of the PSDI safety system required to be tested by the PSDI standard and Appendix A, and shall specify the reasons the test methods are appropriate.

e. The applicant may include whatever enclosures, attachments, or exhibits the applicant deems appropriate. The application need not be submitted on a Federal form.

f. The applicant shall certify that the information submitted is accurate.

3. *Filing office location.* The application shall be filed with: PSDI Certification/Validation Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Amendments and withdrawals.* a. An application may be revised by an applicant at any time prior to the completion of the final staff recommendation.

b. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Assistant Secretary in paragraph I.B.8.b.(4) of this Appendix.

B. Review and Decision Process

1. *Acceptance and field inspection.* All applications submitted will be accepted by OSHA, and their receipt acknowledged in writing. After receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition have been omitted. OSHA may inspect the facilities of the third-party validation organization and any validating laboratory, and while there shall review any additional documentation underlying the application. A report shall be made of each field inspection.

2. *Requirements for recognition.* The requirements for OSHA recognition of a third-party validation organization for the PSDI standard are that the program has fulfilled the requirements of section II of this Appendix for qualifications and of section III of this Appendix for program requirements, and the program has identified appropriate test and analysis methods to meet the requirements of the PSDI standard and Appendix A.

3. *Preliminary approval.* If, after review of the application, any additional information, and the inspection report, the applicant and any validating laboratory appear to have met the requirements for recognition, a written recommendation shall be submitted by the responsible OSHA personnel to the Assistant Secretary to approve the application with a supporting explanation.

4. *Preliminary disapproval.* If, after review of the application, additional information, and inspection report, the applicant does not appear to have met the requirements for recognition, the Director of the PSDI certification/validation program shall notify the applicant in writing, listing the specific requirements of this Appendix which the applicant has not met, and the reasons.

5. *Revision of application.* After receipt of a notification of preliminary disapproval, the applicant may submit a revised application for further review by OSHA pursuant to subsection I.B. of this Appendix or may request that the original application be submitted to the Assistant Secretary with a statement of reasons supplied by the applicant as to why the application should be approved.

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6. *Preliminary decision by Assistant Secretary.* a. The Assistant Secretary, or a special designee for this purpose, will make a preliminary decision whether the applicant has met the requirements for recognition based on the completed application file and the written staff recommendation, as well as the statement of reasons by the applicant if there is a recommendation of disapproval.

b. This preliminary decision will be sent to the applicant and subsequently published in the **Federal Register**.

7. *Public review and comment period.* a. The **Federal Register** notice of preliminary decision will provide a period of not less than 60 calendar days for the written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

b. If the preliminary decision is in favor of recognition, a member of the public, or if the preliminary decision is against recognition, the applicant may request a public hearing by the close of the comment period, if it supplies detailed reasons and evidence challenging the basis of the Assistant Secretary's preliminary decision and justifying the need for a public hearing to bring out evidence which could not be effectively supplied through written submissions.

8. *Final decision by Assistant Secretary*—a. *Without hearing.* If there are no valid requests for a hearing, based on the application, supporting documents, staff recommendation, evidence and public comment, the Assistant Secretary shall issue the final decision (including reasons) of the Department of Labor on whether the applicant has demonstrated by a preponderance of the evidence that it meets the requirements for recognition.

b. *After hearing.* If there is a valid request for a hearing pursuant to paragraph I.B.7.b. of this Appendix, the following procedures will be used:

(1) The Assistant Secretary will issue a notice of hearing before an administrative law judge of the Department of Labor pursuant to the rules specified in 29 CFR Part 1905, Subpart C.

(2) After the hearing, pursuant to Subpart C, the administrative law judge shall issue a decision (including reasons) based on the application, the supporting documentation, the staff recommendation, the public comments and the evidence submitted during the hearing (the record), stating whether it has been demonstrated, based on a preponderance of evidence, that the applicant meets the requirements for recognition. If no exceptions are filed, this is the final decision of the Department of Labor.

(3) Upon issuance of the decision, any party to the hearing may file exceptions within 20 days pursuant to Subpart C. If exceptions are filed, the administrative law judge shall forward the decision, exceptions and record to the Assistant Secretary for the final decision on the application.

(4) The Assistant Secretary shall review the record, the decision by the administrative law judge, and the exceptions. Based on this, the Assistant Secretary shall issue the final decision (including reasons) of the Department of Labor stating whether the applicant has demonstrated by a preponderance of evidence that it meets the requirements for recognition.

b. *Publication.* A notification of the final decision shall be published in the **Federal Register**.

C. Terms and Conditions of Recognition, Renewal and Revocation

1. The following terms and conditions shall be part of every recognition:

a. The recognition of any validation organization will be evidenced by a letter of recognition from OSHA. The letter will provide the specific details of the scope of the OSHA recognition as well as any conditions imposed by OSHA, including any Federal monitoring requirements.

b. The recognition of each validation organization will be valid for five years, unless terminated before or renewed after the expiration of the period. The dates of the period of recognition will be stated in the recognition letter.

c. The recognized validation organization shall continue to satisfy all the requirements of this Appendix and the letter of recognition during the period of recognition.

2. A recognized validation organization may change a test method of the PSDI safety system certification/validation program by notifying the Assistant Secretary of the change, certifying that the revised method will be at least as effective as the prior method, and providing the supporting data upon which its conclusions are based.

3. A recognized validation organization may renew its recognition by filing a renewal request at the address in paragraph I.A.3. of this Appendix, above, not less than 180 calendar days, nor more than one year, before the expiration date of its current recognition. When a recognized validation organization has filed such a renewal request, its current recognition will not expire until a final decision has been made on the request. The renewal request will be processed in accordance with subsection I.B. of this Appendix, above, except that a reinspection is not required but may be performed by OSHA. A hearing will be granted to an objecting member of the public if evidence of failure to meet the requirements of this Appendix is supplied to OSHA.

4. A recognized validation organization may apply to OSHA for an expansion of its current recognition to cover other categories of PSDI certification/validation in addition to those included in the current recognition. The application for expansion will be acted upon and processed by OSHA in accordance with subsection I.B. of this Appendix, subject to the possible reinspection exception. If the validation organization has been recognized for more than one year, meets the requirements for expansion of recognition, and there is no evidence that the recognized validation organization has not been following the requirements of this Appendix and the letter of recognition, an expansion will normally be granted. A hearing will be granted to an objecting member of the public only if evidence of failure to meet the requirements of this Appendix is supplied to OSHA.

5. A recognized validation organization may voluntarily terminate its recognition, either in its entirety or with respect to any area covered in its recognition, by giving written notice to OSHA at any time. The written notice shall indicate the termination date. A validation organization may not terminate its installation certification and recertification validation functions earlier than either one year from the date of the written notice, or the date on which another recognized validation organization is able to perform the validation of installation certification and recertification.

6.a. OSHA may revoke its recognition of a validation organization if its program either has failed to continue to satisfy the requirements of this Appendix or its letter of recognition, has not been performing the validation functions required by the PSDI standard and Appendix A, or has misrepresented itself in its applications. Before proposing to revoke recognition, the Agency will notify the recognized validation organization of the basis of the proposed revocation and will allow rebuttal or correction of the alleged deficiencies. If the deficiencies are not corrected, OSHA may revoke recognition, effective in 60 days, unless the validation organization requests a hearing within that time.

b. If a hearing is requested, it shall be held before an administrative law judge of the Department of Labor pursuant to the rules specified in 29 CFR Part 1905, Subpart C.

c. The parties shall be OSHA and the recognized validation organization. The decision shall be made pursuant to the procedures specified in paragraphs I.B.8.b.(2) through (4) of this Appendix except that the burden of proof shall be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked because the validation organization either is not meeting the requirements for recognition, has not been performing the validation functions required by the PSDI standard and Appendix A, or has misrepresented itself in its applications.

D. Provisions of OSHA Recognition

Each recognized third-party validation organization and its validating laboratories shall:

1. Allow OSHA to conduct unscheduled reviews or on-site audits of it or the validating laboratories on matters relevant to PSDI, and cooperate in the conduct of these reviews and audits;

2. Agree to terms and conditions established by OSHA in the grant of recognition on matters such as exchange of data, submission of accident reports, and assistance in studies for improving PSDI or the certification/validation process.

II. Qualifications

The third-party validation organization, the validating laboratory, and the employees of each shall meet the requirements set forth in this section of this Appendix.

A. Experience of Validation Organization

1. The third-party validation organization shall have legal authority to perform certification/validation activities.

2. The validation organization shall demonstrate competence and experience in either power press design, manufacture or use, or testing, quality control or certification/validation of equipment comparable to power presses and associated control systems.

3. The validation organization shall demonstrate a capability for selecting, reviewing, and/or validating appropriate standards and test methods to be used for validating the certification of PSDI safety systems, as well as for reviewing judgements on the safety of PSDI safety systems and their conformance with the requirements of this section.

4. The validating organization may utilize the competence, experience, and capability of its employees to demonstrate this competence, experience and capability.

B. Independence of Validation Organization

1. The validation organization shall demonstrate that:

a. It is financially capable to conduct the work;

b. It is free of direct influence or control by manufacturers, suppliers, vendors, representatives of employers and employees, and employer or employee organizations; and

c. Its employees are secure from discharge resulting from pressures from manufacturers, suppliers, vendors, employers or employee representatives.

2. A validation organization may be considered independent even if it has ties with manufacturers, employers or employee representatives if these ties are with at least two of these three groups; it has a board of directors (or equivalent leadership responsible for the certification/validation activities) which includes representatives of the three groups; and it has a binding commitment of funding for a period of three years or more.

C. Validating Laboratory

The validation organization's laboratory (which organizationally may be a part of the third-party validation organization):

1. Shall have legal authority to perform the validation of certification;

2. Shall be free of operational control and influence of manufacturers, suppliers, vendors, employers, or employee representatives that would impair its integrity of performance; and

3. Shall not engage in the design, manufacture, sale, promotion, or use of the certified equipment.

D. Facilities and Equipment

The validation organization's validating laboratory shall have available all testing facilities and necessary test and inspection equipment relevant to the validation of the certification of PSDI safety systems, installations and operations.

E. Personnel

The validation organization and the validating laboratory shall be adequately staffed by personnel who are qualified by technical training and/or experience to conduct the validation of the certification of PSDI safety systems.

1. The validation organization shall assign overall responsibility for the validation of PSDI certification to an Administrative Director. Minimum requirements for this position are a Bachelor's degree and five years professional experience, at least one of which shall have been in responsible charge of a function in the areas of power press design or manufacture or a broad range of power press use, or in the areas of testing, quality control, or certification/validation of equipment comparable to power presses or their associated control systems.

2. The validating laboratory, if a separate organization from the validation organization, shall assign technical responsibility for the validation of PSDI certification to a Technical Director. Minimum requirements for this position are a Bachelor's degree in a technical field and five years of professional experience, at least one of which shall have been in responsible charge of a function in the area of testing, quality control or certification/validation of equipment comparable to power presses or their associated control systems.

3. If the validation organization and the validating laboratory are the same organization, the administrative and technical responsibilities may be combined in a single position, with minimum requirements as described in E.1. and 2. for the combined position.

4. The validation organization and validating laboratory shall have adequate administrative and technical staffs to conduct the validation of the certification of PSDI safety systems.

F. Certification/Validation Mark or Logo.

1. The validation organization or the validating laboratory shall own a registered certification/validation mark or logo.

2. The mark or logo shall be suitable for incorporation into the label required by paragraph (h)(11)(iii) of this section.

III. Program Requirements

A. Test and Certification/Validation Procedures

1. The validation organization and/or validating laboratory shall have established written procedures for test and certification/validation of PSDI safety systems. The procedures shall be based on pertinent OSHA standards and test methods, or other publicly available standards and test methods generally recognized as appropriate in the field, such as national consensus standards or published standards of professional societies or trade associations.

2. The written procedures for test and certification/validation of PSDI systems, and the standards and test methods on which they are based, shall be reproducible and be available to OSHA and to the public upon request.

B. Test Reports

1. A test report shall be prepared for each PSDI safety system that is tested. The test report shall be signed by a technical staff representative and the Technical Director.

2. The test report shall include the following:

a. Name of manufacturer and catalog or model number of each subsystem or major component.

b. Identification and description of test methods or procedures used. (This may be through reference to published sources which describe the test methods or procedures used.)

c. Results of all tests performed.

d. All safety distance calculations.

3. A copy of the test report shall be maintained on file at the validation organization and/or validating laboratory, and shall be available to OSHA upon request.

C. Certification/Validation Reports

1. A certification/validation report shall be prepared for each PSDI safety system for which the certification is validated. The certification/validation report shall be signed by the Administrative Director and the Technical Director.

2. The certification/validation report shall include the following:

a. Name of manufacturer and catalog or model number of each subsystem or major component.

b. Results of all tests which serve as the basis for the certification.

c. All safety distance calculations.

d. Statement that the safety system conforms with all requirements of the PSDI standard and Appendix A.

3. A copy of the certification/validation report shall be maintained on file at the validation organization and/or validating laboratory, and shall be available to the public upon request.

4. A copy of the certification/validation report shall be submitted to OSHA within 30 days of its completion.

D. Publications System

The validation organization shall make available upon request a list of PSDI safety systems which have been certified/validated by the program.

E. Follow-up Activities

1. The validation organization or validating laboratory shall have a follow-up system for inspecting or testing manufacturer's production of design certified/validated PSDI safety system components and subassemblies where deemed appropriate by the validation organization.

2. The validation organization shall notify the appropriate product manufacturer(s) of any reports from employers of point of operation injuries which occur while a press is operated in a PSDI mode.

F. Records

The validation organization or validating laboratory shall maintain a record of each certification/validation of a PSDI safety system, including manufacturer and/or employer certification documentation, test and working data, test report, certification/validation report, any follow-up inspections or testing, and reports of equipment failures, any reports of accidents involving the equipment, and any other pertinent information. These records shall be available for inspection by OSHA and OSHA State Plan offices.

G. Dispute Resolution Procedures

1. The validation organization shall have a reasonable written procedure for acknowledging and processing appeals or complaints from program participants (manufacturers, producers, suppliers, vendors and employers) as well as other interested parties (employees or their representatives, safety personnel, government agencies, etc.), concerning certification or validation.

2. The validation organization may charge any complainant the reasonable charge for repeating tests needed for the resolution of disputes.

Appendix D to § 1910.217—Nonmandatory Supplementary Information

This Appendix provides nonmandatory supplementary information and guidelines to assist in the understanding and use of 29 CFR 1910.217(h) to allow presence sensing device initiation (PSDI) of mechanical power presses. Although this Appendix as such is not mandatory, it references sections and requirements which are made mandatory by other parts of the PSDI standard and appendices.

1. General

OSHA intends that PSDI continue to be prohibited where present state-of-the-art technology will not allow it to be done safely. Only *part revolution* type mechanical power presses are approved for PSDI. Similarly, only presses with a configuration such that a person's body cannot completely enter the bed area are approved for PSDI.

2. Brake and Clutch

Flexible steel band brakes do not possess a long-term reliability against structural failure as compared to other types of brakes, and therefore are not acceptable on presses used in the PSDI mode of operation.

Fast and consistent stopping times are important to safety for the PSDI mode of operation. Consistency of braking action is enhanced by high brake torque. The requirement in paragraph (h)(2)(ii) defines a high torque capability which should ensure fast and consistent stopping times.

Brake design parameters important to PSDI are high torque, low moment of inertia, low air volume (if pneumatic) mechanisms, non-interleaving engagement springs, and structural integrity which is enhanced by over-design. The requirement in paragrpah (h)(2)(iii) reduces the possibility of significantly increased stopping time if a spring breaks.

As an added precaution to the requirements in paragraph (h)(2)(iii), brake adjustment locking means should be secured. Where brake springs are externally accessible, lock nuts or other means may be provided to reduce the possibility of backing off of the compression nut which holds the springs in place.

3. Pneumatic Systems

Elevated clutch/brake air pressure results in longer stopping time. The requirement in paragraph (h)(3)(i)(*C*) is intended to prevent degradation in stoping speed from higher air pressure. Higher pressures may be permitted, however, to increase clutch torque to free "jammed" dies, provided positive measures are provided to prevent the higher pressure at other times.

4. Flywheels and Bearings

Lubrication of bearings is considered the single greatest deterrent to their failure. The manufacturer's recommended procedures for maintenance and inspection should be closely followed.

5. Brake Monitoring

The approval of brake monitor adjustments, as required in paragraph (h)(5)(ii), is not considered a *recertification*, and does not necessarily involve an on-site inspection by a representative of the validation organization. It is expected that the brake monitor adjustment normally could be evaluated on the basis of the effect on the safety system certification/validation documentation retained by the validation organization.

Use of a brake monitor does not eliminate the need for periodic brake inspection and maintenance to reduce the possibility of catastrophic failures.

6. Cycle Control and Control Systems

The PSDI set-up/reset means required by paragraph (h)(6)(iv) may be initiated by the actuation of a special momentary pushbutton or by the actuation of a special momentary pushbutton and the initiation of a first stroke with two hand controls.

It would normally be preferable to limit the adjustment of the time required in paragraph (h)(6)(vi) to a maximum of 15 seconds. However, where an operator must do many operations outside the press, such as lubricating, trimming, deburring, etc., a longer interval up to 30 seconds is permitted.

When a press is equipped for PSDI operation, it is recommended that the presence sensing device be active as a guarding device in other production modes. This should enhance the reliability of the device and ensure that it remains operable.

An acceptable method for interlocking supplemental guards as required by paragraph (h)(6)(xiii) would be to incorporate the supplemental guard and the PSDI presence sensing device into a hinged arrangement in which the alignment of the presence sensing device serves, in effect, as the interlock. If the supplemental guards are moved, the presence sensing device would become misaligned and the press control would be deactivated. No extra microswitches or interlocking sensors would be required.

Paragraph (h)(6)(xv) of the standard requires that the control system have provisions for an "inch" operating means; that die-setting not be done in the PSDI mode; and that production not be done in the "inch" mode. It should be noted that the sensing device would be by-passed in the "inch" mode. For that reason, the prohibitions against die-setting in the PSDI mode, and against production in the "inch" mode are cited to emphasize that "inch" operation is of reduced safety and is not compatible with PSDI or other production modes.

7. Environmental Requirements

It is the intent of paragraph (h)(7) that control components be provided with inherent design protection against operating stresses and environmental factors affecting safety and reliability.

8. Safety system

The safety system provision continues the concept of paragraph (b)(13) that the probability of two independent failures in the length of time required to make one press cycle is so remote as to be a negligible risk factor in the total array of equipment and human factors. The emphasis is on an integrated total system including all elements affecting point of operation safety.

It should be noted that this does not require redundancy for press components such as structural elements, clutch/brake mechanisms, plates, etc., for which adequate reliability may be achieved by proper design, maintenance, and inspection.

9. Safeguarding the Point of Operation

The intent of paragraph (h)(9)(iii) is to prohibit use of mirrors to "bend" a single light curtain sensing field around corners to cover more than one side of a press. This prohibition is needed to increase the reliability of the presence sensing device in initiating a stroke only when the desired work motion has been completed.

"Object sensitivity" describes the capability of a presence sensing device to detect an object in the sensing field, expressed as the linear measurement of the smallest interruption which can be detected at any point in the field. Minimum object sensitivity describes the largest acceptable size of the interruption in the sensing field. A minimum object sensitivity of one and one-fourth inches (31.75 mm) means that a one and one-fourth inch (31.75 mm) diameter object will be continuously detected at all locations in the sensing field.

In deriving the safety distance required in paragraph (h)(9)(v), all stopping time measurements should be made with clutch/brake air pressure regulated to the press manufacturer's recommended value for full clutch torque capability. The stopping time measurements should be made with the heaviest upper die that is planned for use in the press. If the press has a slide counterbalance system, it is important that the counterbalance be adjusted correctly for upper die weight according to the manufacturer's instructions. While the brake monitor setting is based on the stopping time it actually measures, i.e., the normal stopping time at the top of the stroke, it is important that the safety distance be computed from the longest stopping time measured at any of the indicated three downstroke stopping positions listed in the explanation of Ts. The use in the formula of twice the stopping time increase, Tm, allowed by the brake monitor for brake wear allows for greater increases in the downstroke stopping time than occur in normal stopping time at the top of the stroke.

10. Inspection and Maintenance. [Reserved]

11. Safety System Certification/Validation

Mandatory requirements for certification/validation of the PSDI safety system are provided in Appendix A and Appendix C to this standard. Nonmandatory supplementary information and guidelines relating to certification/validation of the PSDI safety system are provided to Appéndix B to this standard.

[FR Doc. 88-5299 Filed 3-11-88; 8:45 am]

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March 14, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135
Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 25148, Notice No. 88–4]

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes rules to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, and air traffic control facilities not operated by FAA or the U.S. military to have an anti-drug program for employees who perform sensitive safety and security-related functions. Testing under these proposed rules would be conducted prior to employment, periodically, randomly, after an accident and based on reasonable cause. This notice also requests comments on how to provide employers with the maximum flexibility in designing company-specific programs. In addition, these proposed rules seek comments on a regulatory alternative for the rehabilitation to be offered to employees. The proposed rules are needed to prohibit the presence of a prohibited drug in an employee's system at any time. The proposed rules are intended to ensure a drug-free aviation environment and to eliminate drug abuse in commercial aviation.

DATE: Comments must be received on or before June 13, 1988. The FAA is considering holding a public hearing on this proposal.

ADDRESS: Send or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Room 915G, Docket No. 25148, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 25148. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Assistant Manager, Safety Regulations Division (APR–200), Office of Program and Regulations Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591. Telephone (202) 267–9679

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice of Proposed Rulemaking (NPRM) is issued under the Federal Aviation Administration's (FAA) policy of soliciting public participation in rulemaking proceedings. Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25148." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

In an attempt to gather information on how the FAA might combat drug and alcohol abuse in both commercial and general aviation, the FAA on December 4, 1986, issued an Advanced Notice of Proposed Rulemaking (ANPRM) No. 86–20, entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities" (51 FR 44432; December 9, 1986), inviting comments on drug and alcohol abuse by personnel in the aviation industry and options available for regulatory or other actions in the interest of aviation safety.

The Drug Problem in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute on Drug Abuse (NIDA) and by media polls, all of which indicate use of drugs such as marijuana to be widespread. While the problem appears to be "youth centered" because the majority of users are in the younger age categories, the problem also exists with older groups. For instance, data from the 1985 NIDA "National Survey on Drug Abuse" based on scientific random sampling and using population projections, indicates the following national results:

1. In the age 18 to 25 category:

(a) Sixty (60) percent reported using marijuana sometime during their life;

(b) Twenty-two (22) percent reported using marijuana within the past month;

(c) Twenty-five (25) percent reported using cocaine sometime during their lifetime; and

(d) Eight (8) percent reported using cocaine within the past month.

2. In the age 26 and over category:

(a) Twenty-seven (27) percent reported using marijuana sometime during their life;

(b) Six (6) percent reported using marijuana within the past month;

(c) Nine (9) percent reported using cocaine sometime during their life; and

(d) Two (2) percent reported using cocaine within the past month.

Because of statistics like these, many members of the public are concerned that the abuse of drugs by others may jeopardize their personal safety. A recently issued special report from the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society * * *."

There is widespread public sentiment and belief that persons in safety-sensitive occupations should not be drug abusers. A May-June 1986 national survey conducted by Populous Incorporated of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, showed the following results:

1. 88 percent of the respondents favored testing of airline pilots and air traffic controllers;

2. 85 percent of the respondents favored testing of police and other law enforcement agents; and

3. 81 percent of the respondents favored testing of bus drivers.

The survey indicated that respondents favor testing people who are responsible for the physical safety of others.

Another survey, conducted by American Viewpoint, Inc., on August 6–19, 1986, examined the public's attitude toward drug abuse and drug testing and produced informative results. Specifically, "By a margin of 76 percent—22 percent, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While the generic transportation modes (e.g., railroads, aviation, highways, urban mass transportation, and marine or maritime activities) were not included in the survey, safety-related occupations were at the top of the list. Eighty-four percent of the respondents favor testing of police and firefighters; 81 percent favor testing of armed forces personnel; and 81 percent favor testing of doctors and nurses. Another interesting fact was that 80 percent of the respondents indicate that they would participate in voluntary testing if asked to do so by their employer.

These surveys suggest that the majority of the public is concerned about drug abuse and favors the mandatory testing of persons in certain safety-related occupations.

The Drug Problem in Aviation

The FAA, in its regulatory role, has no evidence to suggest that the aviation community differs significantly from the overall population in terms of drug abuse. The public expects, and is entitled to, a drug-free environment in those aviation activities that involve their personal safety. Allegations that certain air carrier crewmembers have used illegal drugs have raised questions about the overall degree of drug abuse in the industry and whether crewmembers are flying after having used drugs, and thus jeopardizing the personal safety of passengers and others.

The available data indicate that drugs have been a factor in general aviation fatalities, but not in commercial aviation fatalities. These data were presented in tabular form in ANPRM No. 86–20. The updated table, including 1986 statistics, follows:

TABLE 1—DRUGS FOUND IN DECEASED GENERAL AVIATION PILOTS BY CLASSIFICATION 1976–1986 [1]

Year	Deceased Pilots	Legal therapeutic drugs [2]	Legal drugs of abuse [3]	Illegal drugs of abuse [4]
1976	377	1	0	1
1977	384	2	1	1
1978	410	2	2	0
1979	388	4	3	2
1980	384	10	0	3
1981	431	5	2	3
1982	389	2	2	3
1983	412	6	0	3
1984	399	2	1	2
1985	412	9	3	4
1986	380	7	7	6
Total	4,376	50	21	26

Notes:

[1] The presence of drugs in an individual's system may, or may not, have been a factor in a fatal accident. For instance, an individual might have been taking a legal therapeutic drug, but could have been abusing it by taking it at more frequent intervals than prescribed. For this reason, the FAA reports all drugs found in fatalities.

[2] This would include over-the-counter drugs, such as aspirin and diet pills, as well as those drugs prescribed by physicians.

[3] A legal drug of abuse is a drug that may be prescribed by a physician or purchased over-the-counter, but which has properties that may result in psychological or physiological dependencies or addiction.

[4] Illegal drugs of abuse would include drugs such as marijuana and cocaine.

As stated in the ANPRM, "there have not been any fatal accidents involving commercial airline pilots where drugs were shown to be factors."

Additional data has been gathered since the ANPRM was issued. Specifically, regarding cargo-carrying aircraft, a fatal accident with a Gates Learjet, Model 25 took place on March 30, 1983, at Newark International Airport. The accident report revealed that the pilot and copilot had used, or been exposed to, marijuana.

One aviation company (a Part 121 and a Part 135 certificate holder), in its comment on the ANPRM, reports that upon initiation of an unannounced testing program, 2.5 percent of its pilots and 4 percent of its mechanics tested positive for a trace or more of illegal drugs. This was based on a population of 180 pilots and 240 mechanics. Although this data group is small and cannot be considered statistically representative of all pilots and mechanics, it does indicate the presence of illegal drugs and the possibility of drug abuse. Data also were provided by some members of the airline industry regarding pre-employment drug screening. These data, however, do not distinguish between specific occupational categories of employees (e.g., pilots, baggage handlers, etc.). The data show that the number of positive tests range from 4.2 percent to 20 percent and that some individual geographic locations reported a positive test range of 25 percent to 30 percent.

In February 1987, the FAA began performing drug tests in connection with periodic medical examinations required of certain sensitive safety and security-related agency employees. As of March 3, 1988, 21,983 samples have been tested pursuant to the periodic testing program. Specimens for 35 employees have been determined to include one or more illegal drugs. In addition, the Department implemented its employee random drug testing program on September 8, 1987. As of February 26, 1988, DOT has conducted 1,191 urinalysis tests pursuant to its random drug testing program for DOT employees occupying critical sensitive safety and security-related positions. Eight employees have tested positive for illegal drugs. These employees are currently in counseling or rehabilitation programs and have been relieved of their critical safety duties pending successful completion of these programs. In addition, since the inception of the DOT program, four employees out of six have tested positive for illegal drugs as a result of reasonable cause drug testing.

It is acknowledged that the above data are sparse and are not conclusive. There are no data indicating drug abuse by Part 121 and Part 135 crewmembers or other employees involved in fatal or major aircraft accidents. Conversely, fatal accidents cannot be the only basis to judge whether there is a problem with drug abuse. For example, there is no way to gauge how many near accidents there are due to pilot impairment. The issue is problematic. A responsive anti-drug program would provide the public with the necessary protection while enabling the FAA to achieve a statistically valid representation and understanding of the Problem. The FAA cannot wait for a problem to reveal itself before acting to protect the public from the problem's consequences.

The absence of more detailed data may be due to several factors. First, the use of drugs is something that persons may go to great lengths to conceal. For commercial pilots, the discovery of their drug use by supervisors or other crewmembers could result in loss of jobs, and individuals would be careful to conceal drug use for fear of detection. The same economic rationale (loss of jobs) would hold true for others who earn their living through aviation. Second, detection is not easy in some situations, such as those of some commercial pilots who may not see their supervisors on a regular basis. In the case of pilots who operate at numerous locations full-time surveillance by the FAA or others is neither practical nor economically feasible. Third, even when there is supervision or surveillance of individuals, not everyone, including fellow crewmembers, is trained to detect drug abuse by observing behavioral or performance cues. As one commenter to the ANPRM states "We have been surprised by the persons who have tested positive. Employees whose personal habits, appearances, and lifestyles appear to be above reproach have tested positive for drugs and subsequently admitted their use." Fourth, it is possible that there are individuals who may serve as "enablers" by tolerating or covering for a person with a drug problem, especially if that person might lose his or her job and suffer adverse financial consequences. Finally, the FAA does not dispute the professionalism of the vast majority of commercial and general aviation pilots and other professionals in aviation and their commitment to a drug-free aviation environment. However, the current situation as it involves drugs can be likened to the 1970's when alcoholism among airline pilots was sometimes ignored or denied. Only after the industry and the affected individuals admitted that a problem existed was the issue faced and action taken.

Comments to the ANPRM

The ANPRM encouraged comments, through a series of questions, to assist the FAA with information gathering in pertinent areas to ensure an aviation environment free of alcohol and drugs. Some of the topics addressed in the ANPRM included:

1. To what extent alcohol and drugs are abused by occupational categories;
2. Whether the consumption of legal drugs is sufficiently monitored;
3. How off-duty alcohol use impacts aviation safety;
4. What kinds of mandatory alcohol and drug testing programs should be required, if any;
5. Who should be tested;
6. Whether regulations should be extended to safety-related occupations not presently covered by the FAA's drug and alcohol rules;
7. What should be included in an Employee Assistance Program;
8. Under what circumstances testing should be conducted based on "reasonable suspicion;"
9. By what means the FAA can achieve an alcohol- and drug-free environment throughout the industry; and,
10. Whether the FAA should request legislation to gain access to the National Driver Register to identify aviation personnel who have convictions for driving under the influence of alcohol or drugs.

The responses to the ANPRM were numerous; over 650 comments were received. Due consideration has been given to all comments received. The information and views received in response to the notice are summarized below.

General Summary of Comments Received

For purposes of general discussion, the comments may be grouped into three categories: Aviation industry organizations and members; Aviation labor organizations and members; and, other commenters. Comments by individuals have been assigned to one of the three categories based on an analysis of the comment. The FAA has noted both the common themes expressed by members of these groups and the many variations on, and exceptions to, these themes. The major themes that were addressed most frequently show that: (1) The vast majority of commenters oppose random drug testing but favor testing based on reasonable suspicion or following accidents; (2) a large majority believe that more thorough enforcement of present regulations will eliminate a minimal drug problem; (3) many commenters urge the FAA to endorse employee assistance programs (EAP's) in lieu of chemical testing programs; and (4) a significant number question the constitutionality of testing for drugs and, in particular, random testing. Basically, all three groups of commenters are against drug and alcohol abuse in the aviation environment and are committed to safety. Whatever differences exist among the groups are principally based on the means by which to best accomplish this objective.

Industry

Among those participating in the comment process are: Air Transport Association of America (ATA); National Business Aircraft Association, Inc. (NBAA); Northwest Airlines, Inc.; American Cyanamid Co.; Continental Airlines, Inc.; Regional Airline Association; ERA Helicopters, Inc., DHL Airways, Inc./Wor1dwide Express; Federal Express Corporation; and National American Wholesale Grocers' Association. Aviation industry organizations and their members generally believe there is a problem and favor rulemaking. One exception to this near consensus of organizations that favor rulemaking is the position taken by the NBAA, representing over 2,900 companies who operate approximately 5,500 aircraft. NBAA bases its opposition to rulemaking on what it considers to be the debatable constitutionality of regulation in this area. The commonly held position of the other industry commenters, however, is best reflected by ATA, representing a number of the air carriers that carry the majority of air travelers. ATA endorses regulatory action.

ATA submitted, along with its comments, a draft regulatory proposal addressing some of the issues on which comments were requested by the ANPRM. ATA advocates testing before employment, after an accident or incident, and based on "reasonable suspicion." Although ATA itself favors the use of random drug testing, member carriers differ on whether this testing should be mandated or expressly permitted. One such member carrier, for example, believes that the Government should set minimum standards for such

categories as mandatory random drug testing. On most other issues, the carrier concurs with the ATA position.

Another issue where the aviation industry organizations are in agreement is in extending the categories of employees to be tested. These organizations want certificated and noncertificated crewmembers, mechanics, and any other employees whose duties could affect the safety of aviation to be tested—generally, those employees participating in operations, maintenance, engineering, and aircraft servicing activities.

ATA believes that there is little similarity between issues and problems surrounding the control of drugs and alcohol usage in the airline industry as compared to general aviation. This organization believes that each should be addressed in a separate rulemaking proceeding; others outside the organization, (e.g., Federal Express) agree with this position.

A number of industry organizations expressed concerns about EAP's. Several carriers believe that EAP's for drug abuse should not be mandated by the FAA; one association suggests that requiring the establishment of EAP's is not an appropriate function of the FAA.

While concurring with the overall views of the industry on EAP's, one carrier suggests that if the FAA does mandate the EAP's, there should be a stipulation that would require limiting the availability of these programs to only those employees who seek treatment prior to becoming involved in a rule violation. For example, an individual who tests positive for a prohibited drug, as a result of testing based on an observed violation of a specific rule or prohibition, should not benefit from the protection of an EAP. For the most part, ATA members believe that participation in EAP's should be limited to only those employees who admit voluntarily to being drug or alcohol dependent.

The issue of whether the FAA should request legislation to exchange information with the National Driver Register (NDR) receive mixed comments. This exchange would identify those pilots with convictions for driving under the influence of drugs or alcohol. The following breakdown describes the position of the commenters: (1) Many express no views on the subject; (2) others support the exchange; and (3) one opposes access to NDR information entirely. Another commenter opposes access to these records by the FAA, but supports records being made available only to employers for pre-employment review of applicants.

Labor

A good cross section of the labor organizations, professional associations, and their membership participated in the public comment process. Among those responding were: Transport Workers Union of America, AFL–CIO; Air Line Pilots Association; Association of Flight Attendants, AFL–CIO; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Stations Employees, AFL–CIO–CLC; Union of Flight Attendants; Aircraft Owners and Pilots Association; Allied Pilots Association; International Association of Machinists and Aerospace Workers; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

With notable exceptions, the aviation labor organizations generally contend that there are sufficient existing regulations to address the problem of drug abuse. One such organization, representing a large membership of both certificated and noncertificated employees, supports FAA's goal to achieve a drug-free environment in commercial aviation but believes that this goal can be more readily achieved by more thorough enforcement of the present FAA regulations.

Many commenters strongly oppose any program for mandatory random or across-the-board testing. These commenters base their views on the lack of statistics to warrant such "drastic" measures. They acknow1edge that an airman who is impaired while on duty creates a potential hazard but emphatically submit that no concrete data of any such abuse in commercial aviation exist. Others in this group concur with that position. They believe that crewmembers are already subject to testing under current Parts 65 and 91 of the Federal Aviation Regulations (FAR) and believe that these provisions are adequate. To substantiate their position, they cite that there is no recorded incident or accident attributable to drug or alcohol impairment involving a commercial cockpit crewmember.

While categorically opposing random drug testing, one major labor association could, however, support testing under the following circumstances: (1) Preemployment evaluations; (2) testing for probable cause; (3) testing after an accident or incident, and (4) random testing as part of aftercare monitoring.

If testing is mandated, several commenters support expanding coverage to all airline employees, the opinion being that personnel working in operations, maintenance, scheduling, loading, controlling, and management all have an impact on safety.

Typically, the labor organizations question the accuracy of methods proposed for testing. Their concerns center around the various drug tests' purported "high" error rate, which could result in suspension and stigmatization of crewmemers accused after less-than-accurate results. The representatives believe that such testing would not provide assurances of lack of impairment or otherwise contribute to the safety of the flying public. Some organizations suggest that they already have successful systems for making management aware of crewmembers suspected of impairment.

The issue of regulating off-duty drug use received numerous comments. Most commenters oppose any attempt to regulate the off-duty conduct of aviation personnel by amending the rules. Nevertheless, one large organization believes strongly that the use of illicit drugs, on or off duty, must be "strictly forbidden."

Most agreement is reached in the area of EAP's. Commenters from labor unequivocally support such programs in lieu of random chemical testing for drugs. Many commenters suggest the need for improving and standardizing existing EAP's. Others believe that labor must actively participate in EAP's to ensure that the programs work well to assist employees with drug problems. Primarily, however, commenters believe that if the programs are to succeed, then the EAP's must be both comprehensive and nonpunitive.

Other Commenters

The last category of commenters encompasses an extensive and varied group: Private citizens, some unaffiliated but more often members of aviation organizations; other governmental agencies; industrial relations firms; public advocacy groups; organizations representing general aviation firms; and recreational pilot associations. This group tends to have many of the same concerns, often with corresponding responses. A substantial number from this group believe that the FAA should make every reasonable effort to enforce present regulations, which they assert adequately prohibit personnel from acting as crewmembers while under the influence of drugs. These commenters believe that the FAA should resort to other measures addressed in the ANPRM only if enforcement of present regulations proves to be ineffective.

A significant number of these commenters share views similar to those of labor. For example, many from this

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group contend that there is no concrete data available to indicate widespread illegal drug and alcohol abuse within the aviation community. They believe that aviation is being unfairly singled out over other transportation modes who license operators of vehicles.

With few exceptions, this large group opposes random and scheduled testing for drugs and alcohol and views it as bordering on intrusive and unconstitutional action.

Comments received from commercial pilots cite that there has never been an accident involving commercial aviation attributable to either drugs or alcohol. Moreover, the commenters recount that this profession is more closely monitored than any other profession in the country. This belief is founded on requirements set for commercial pilots that include frequent proficiency tests and examinations.

Many commenters echo the perception that there is no evidence to support testing, especially for general aviation pilots who conduct only personal, noncommercial flights. Consequently, the financial burden that random and scheduled testing would impose on general aviation is seen as excessive. Also problematic for some commenters is whether the general aviation population, which lacks geographical concentration, would be readily accessible for testing.

There is, however, abundant support among this group to test for probable cause, after an accident, before employment, and following participation in a rehabilitation program.

Opinions vary on which occupations to include for testing. One association favors inclusion of anyone in contact with, or having access to, aircraft. This group would include flight crewmembers, mechanics, security personnel, and baggage handlers. However, this same association supports exclusion from testing for management personnel.

Another commenter, with considerable experience in airport operations, relates that he has observed extensive alcohol and drug abuse within operations and maintenance departments. The abuse he witnessed extends to top-level management personnel. Therefore, the commenter proposes that all individuals be subject to testing and that the tests include random, scheduled, and pre-employment testing to effectively eliminate the problem.

A few commenters tend to support a strong Federal role. They firmly believe it is their constitutional right, as members of the traveling public, to have their safety protected, by whatever means necessary, from persons whose judgment and motor skills may be impaired by the use of alcohol or drugs.

Most commenters, however, dismiss the "by whatever means necessary" approach and insist that the FAA deal with the drug-abuse problem in a lawful, prudent, and humane manner.

Commenters predominantly oppose exchanging information with the NDR. Many base their objection on the lack of correlation between highway actions and subsequent flying actions. Also, commenters caution the FAA on the possibility of misunderstanding and misuse of this information. Several commenters, however, urge the FAA to seek legislative authority to use the NDR to identify aviation personnel whose driver's licenses have been suspended or revoked for drug- or alcohol-related offenses. They contend that substance abusers, in general, will act irresponsibly in more than one situation. Furthermore, they propose that off-duty alcohol and drug use can affect aviation safety. Still, most commenters vehemently oppose extending the regulations to monitor off-duty activities. Some argue that no data has surfaced to connect off-duty use with impaired on-duty performance. Other commenters cite the absence of a test to accurately measure drug-induced impairment.

Notably, the issue that received near-unanimous support was in the area of EAP's. Those commenters that addressed this subject indicate that EAP's are the most effective means to combat drug and alcohol problems. One professional association, although taking no position for or against drug testing, states that drug testing, by itself, will not control substance abuse in the long term.

A substantial number of commenters are not convinced of the accuracy of drug testing. They perceive the testing to be unreliable and encourage the FAA to require EAP's, citing the programs' success within the private sector.

A good many commenters from all three categories share and appreciate the FAA's concern that the general problems of drug and alcohol abuse in our society may spill over into the aviation system and, therefore, impact air safety. As the comments reflect, the issue no longer is simply whether it is reasonable to implement substance abuse programs; rather, the central issue is how such programs should be constructed to operate fairly and effectively.

Overview of the Proposed Anti-Drug Program

The FAA recognizes the complex issues and burdens involved in developing effective anti-drug programs. The FAA also recognizes the serious impact of the proposed program and the concerns of those who are subject to the proposed rule. Conversely, the public interest in a safe and drug-free aviation environment is paramount and will not be overlooked by the FAA. To meet the statutory mandate to promote safety of flight of civil aircraft in air commerce, the FAA must engage in a preventive program to combat drug use and abuse in aviation activities.

The FAA is proposing that employers develop a drug program for sensitive safety and security-related employees: All scheduled and nonscheduled Part 121 and Part 135 certificate holders; those entities that, by contract, provide employees who perform sensitive safety and security-related functions for the Part 121 and Part 135 certificate holders and other aviation operators; including those entities that employ individuals in the capacity of aviation security screeners (also referred to as "airport pre-departure screeners") and control tower operators. Certain persons who conduct operations for compensation or hire who are currently exempt from the requirements of Part 135 would be required to implement, or participate in, an anti-drug program. These individuals conduct the following types of operations: Student instructions; nonstop sightseeing flights that begin and end at the same airport and are conducted within 25 miles of that airport; ferry or training flights; aerial work operations, including crop dusting, seeding, spraying, bird chasing, banner towing, aerial photography or survey, fire fighting, helicopter operations in construction or repair, and powerline or pipeline patrol operations, or similar types of patrol approved by the Administrator; sightseeing flights conducted in hot-air balloons; nonstop flights conducted within 25 miles of the takeoff airport carrying persons for intentional parachute jumps; specified helicopter flights conducted within 25 miles of the takeoff airport; rotorcraft external-load operation pursuant to Part 133; and the carriage of candidates in Federal elections. The FAA invites comments on the proposed range of covered employees. The FAA is not considering covering persons conducting the following types of operations under § 135.1 (b)(8) or (b)(9): Foreign civil aircraft navigated within the United States pursuant to Part 375; and

emergency mail service under section 405(h) of the Federal Aviation Act of 1958. For the purposes of this notice, and the proposed rule, the persons who conduct operations under Part 135 and who would be required to implement a drug program under the proposed rules have been defined as "operators."

These employers would test employees who are required to hold a certificate issued by the FAA or who perform specified sensitive safety and security-related functions, either directly or indirectly, for those employers. These employees would include the following occupational groups: Pilots; flight engineers; flight navigators; aircraft dispatchers; mechanics; repairmen; parachute riggers; ground instructors; flight attendants; security coordinators, and aviation security screeners (airport pre-departure screeners); individuals who perform air traffic control duties who are not employed by, or under contract to, the FAA or by the U.S. military.

Under the proposed anti-drug program, the employer would be required to conduct the following types of testing: Pre-employment testing for all applicants for sensitive safety and security-related jobs; periodic testing for those employees required by Federal Regulation to have periodic medical examinations; random testing; post-accident testing for employees whose performance may have contributed to an accident; and testing based on reasonable cause.

The proposed rule would not require that an employer's anti-drug program be effective immediately. Employers would have 120 days from the effective date in which to develop and submit a proposed anti-drug plan acceptable to the Administrator. The FAA would review an employer's proposed anti-drug program for compliance with the criteria and requirements contained in the proposed appendix to Part 121. The FAA's silence would be tantamount to approval because the FAA will respond only if the plan is not acceptable. The plan must be implemented 180 days after the deadline for submitting the program to the FAA. Thereafter, periodic progress reports must be sent to the FAA according to a predetermined schedule. Employers would be free to submit amendments to their anti-drug programs as warranted. The FAA would respond within 120 days following submission of the amendment if the plan is not "acceptable"; otherwise the amendment would be considered approved. In the final rule, the FAA would specify which of its organizational elements would be responsible for reviewing all plans and reports. FAA also would be able to order an employer to amend an approved program if it is determined that safety and the public interest require it. While the FAA would not prohibit employers from taking independent actions beyond those required by the proposed rule, such actions would not be authorized by the FAA. Additional or more stringent procedures, therefore, would not be considered as part of an employer's approved anti-drug program.

The program would be composed of two distinct parts: The first part is testing for drugs to detect users and to deter future use; the second part is an ongoing and active "preventive" program that would offer EAP services including rehabilitation, education, and training. The two parts of the program are complementary and mutually supportive because the problem of drug abuse is attacked from all directions. Minimum requirements for rehabilitation, education, and training have been included in the proposed rule.

It must be recognized that an EAP, by itself, would not seriously deter drug use and abuse. To do so, it must be accompanied by the threat of drug testing and detection to encourage voluntary referral. An example of a voluntary EAP, unsupported by drug testing, which did not deter drug usage includes a program instituted by the Coast Guard.

From 1980 to 1982 the Coast Guard Drug Exemption Program encouraged uniformed personnel (members) to seek rehabilitation by voluntary disclosure of past illegal drug use. A Commanding Officer's grant of a one-time exemption, following disclosure, precluded disciplinary action and any administrative action other than an honorable discharge. Rehabilitation for members who were retained included counselling, education, and inpatient treatment at U.S. Navy facilities for members who were diagnosed as drug dependent. Users detected without voluntary disclosure were subject to disciplinary or adverse administrative action.

The Drug Exemption Program failed to deter usage. The Coast Guard cancelled the program and initiated a drug testing program that resulted in a decrease in the number of routine confirmatory urinalysis tests from 103 per 1,000 in 1983 to 29 per 1,000 in 1986. Based on this information, the FAA believes that the threat of detection through testing would help reduce the incidence of drug use and motivate those who are drug users to seek help through either EAP's or other referral sources.

The proposed anti-drug program is intended to create a drug-free aviation environment. Therefore, an individual may not use illicit drugs at any time, even off duty. An individual who uses drugs off duty and is tested for drug use upon returning to duty and is found to have such drugs in his or her system would violate this proposed rule even if there is no basis for concluding that an individual is impaired on the job. The absolute prohibition against drug use is based on fundamental safety concerns about the effects of possible impairment on the performance of an individual who uses illicit drugs or abuses illicit drugs. Drug use either on or off duty is prohibited since certain drugs can remain in a person's system long after use and may impair performance. It is clearly in the public interest to ensure that individuals impaired by drug use or abuse are identified before they jeopardize air safety. The FAA considers impairment due to drug use or abuse a serious safety problem because neither the individual nor his or her colleagues may be able to detect the subtle and varying degrees of impairment to motor skills and judgment that are critical to aircraft operation or performance of sensitive safety and security-related duties.

It is important to emphasize that this notice is not intended to alter or contradict the current restrictions contained in the Federal Aviation Regulations (FAR) regarding the use of drugs in aviation-related activities. The FAA has always recognized that even if over-the-counter or prescription drugs are used according to instructions or a physician's orders, these drugs, nevertheless, may impair an individual's job performance or adversely affect critical safety functions. Although the FAA will not require an employer to test for over-the-counter or prescription drugs, section 91.11 will continue to provide that a crewmember may not perform functions for an employer while using any drug that affects the person's faculties in any way contrary to safety.

The question of alcohol abuse was raised in the ANPRM to determine what additional actions might be required, if any, to address the overall issue. After review of the current regulations dealing with the use of alcohol, §§ 61.15, 67.20, 63.12, 63.12a, 65.12 and 91.11 of the FAR, the FAA determined that these regulations are clear and are understood by both employees and employers. In the case of alcohol, an individual would be allowed to consume alcohol off duty as long as he or she complies with

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§ 91.11 of the FAR. The FAA is not proposing any changes in this NPRM regarding the use of alcohol. In addition, the idea of testing for alcohol using urinalysis was rejected based on the inadequacies of urinalysis as a truly acceptable method of testing for the presence of alcohol. The preferable method for testing for alcohol is either a breath measurement device or drawing blood from the individual, the latter method preferred for scientific accuracy. Therefore, if tests were run for alcohol. two different types of tests (breath measurement and blood alcohol concentration) would have to be conducted. This would greatly complicate the process as well as increase costs. Also, the blood test method generally is considered an invasive procedure and would not be favorably received by those being tested. Finally, it is easier to identify someone who abuses alcohol and reports for work impaired than someone who uses drugs. As such, the issue of testing for alcohol was removed from consideration in the rulemaking proceeding. FAA will continue to review the effectiveness of its alcohol abatement programs.

Who Would Establish an Anti-Drug Program

The major issue in determining who should be required to establish an anti-drug program centered around the issue of public trust. The FAA believes that those aviation entities who operate for compensation or hire and who provide services to the public clearly are dependent on public trust and should take steps toward ensuring a drug-free aviation environment. The ANPRM solicited comments regarding other activities, including general aviation operations. While these activities require FAA certification, the FAA believes that they are not subject to the same degree of public trust. In the case of general aviation pilots, the FAA determined that they are private individuals, engaged in a private activity, and, thus, did not fall within the public trust criterion. It is recognized that the exclusion of general aviation pilots will spark controversy, as the FAA acknowledged in the ANPRM, because the major evidence of drug abuse in aviation has been attributed to the general aviation sector. However, at this time the FAA does not propose requirements for general aviation pilots.

Based on these considerations, the FAA is proposing that all scheduled and nonscheduled Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and contractors whose employees perform specific sensitive safety and security-related functions for a certificate holder would be required to establish an anti-drug program. This would include those entities who employ individuals to perform the functions of control tower operators and aviation security screeners. The FAA recognized that nonscheduled Part 135 certificate holders and "operators" as defined in this notice may find it difficult to incorporate any anti-drug program because they only have a small number of employees, are self-employed, or operate in remote locations. The FAA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether there are special considerations FAA should take into account in requiring small entities to develop and implement a program. Commenters who believe that the rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose. The proposed rule calls for all employers, including small operators, to file a drug testing plan with the FAA which describes the details of the anti-drug program. In the case of small operators, they may wish to explore the possibility of working with local drug testing programs or with larger certificate holders who might include them in their anti-drug program.

Substances For Which Testing Must Be Conducted

The FAA would require that an employer test for the five most widely abused drugs. These drugs are cocaine, marijuana, opiates, phencyclidine (PCP), and amphetamines. The proposed rule would not prohibit employers from testing for certain other drugs of abuse. The FAA invites comments as to which additional drugs, if any, should be included. Commenters also should provide cost and benefit data regarding additional drug groups.

Who Would Be Tested

The decision regarding who would be tested under the proposed rules was based on those commercial occupations that have the greatest responsibility for safety. The FAA determined that certain individuals employed by Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and other entities who provide contractual services to these employers have such a responsibility and should be tested. Based on safety considerations, the FAA is proposing that all certificated airmen who are required to perform key safety functions should be included in an anti-drug program. The fact that the FAA requires certification of these individuals demonstrates that the occupation requires specific knowledge and skills which are critical to safe aircraft operation. Individuals in this category are:

Pilots, flight engineers, flight navigators, aircraft dispatchers, mechanics, repairmen, parachute riggers, ground instructors, and control tower operators. Noncertified individuals that would be included in an anti-drug program are flight attendants and aviation security screeners and security coordinators. The flight attendants are included because they perform functions sensitive safety and security-related enough to warrant inclusion. Likewise, employees responsible for aviation security are included based on the requirement for vigilance and attention to detail. Consideration was also given to including employees in other occupational categories who might directly or indirectly affect safety, including aircraft servicing personnel, airport firefighters, police and others, but the FAA concluded that these employees do not perform functions senstive safety and security-related enough to warrant inclusion. In the case of personnel exercising the privileges of the Control Tower Operator (CTO) certificate, the FAA determined that those non-Federal entities that operate control towers should have an anti-drug program for personnel performing CTO duties. Excluded from this requirement would be: FAA employees; private employees in FAA contract towers; active-duty, military CTO holders; and civilian CTO holders employed by the U.S. military. To the extent this group of excluded CTO holders would be covered by the drug testing programs already in place by their employers, they would not be covered by this proposal. The list of employees subject to testing under this proposed rule could be changed based on further information and data gathered during the comment period. Comments are requested on how FAA should define sensitive safety and security-related for purposes of this proposal and whether this definition should include non-certificated. individuals, such as flight attendants, aviation security screeners, and security coordinators. Commenters addressing these issues should provide empirical evidence to support their comments.

Goals of Drug Testing

The overall goal of drug testing is to foster a drug-free aviation environment which merits public confidence. Drug testing serves as a significant deterrent to drug abuse by identifying users or forcing them to seek help based on a fear of detection through drug testing. Reporting the results of these programs would enable the FAA to collect statistically valid and representative data on the extent of drug abuse. In turn, this data would enable the FAA to assist the industry in its rehabilitation, education, training, and efforts to combat drug abuse.

When Testing Would Be Conducted

There are five basic situations when testing would be conducted: before employment, periodically, after an accident, randomly, and based on reasonable cause. The five situations involve different circumstances which form a part of a deterrent or anti-drug prevention program.

1. Preemployment testing would be required of all applicants for specified sensitive safety and security-related positions. The purpose of testing applicants is twofold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help identify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. All screens that produce positive results for drugs would be confirmed using a superior method of testing as specified in proposed Appendix I to Part 121. Applicants would be informed that tests will be conducted to determine the presence of drugs. The effectiveness of preemployment testing is flawed to some extent because individuals can avoid detection by abstinence. However, data received in response to the ANPRM indicates that preemployment testing in the air carrier industry still reveals positive test results from some selected carriers. As such, preemployment testing provides a valuable service in the selection of employees.

The FAA specifically requests comment on the proposed requirements that the certificate holder keep no records of an application for employment that has been withdrawn because of a failed drug test and on the proposed requirement that the certificate holder not disclose the results of the test to any other person. We have made these proposals because we believe they are appropriate policies for the implementation of an effective and non-punitive anti-drug program. Comments are invited to the extent to which these proposals are necessary or justified.

2. Periodic testing would be conducted during required physical examinations. Employees who are required by regulation to have periodic medical examinations would be advised that urine specimens submitted during the examinations would be subjected to testing for drugs. Those specimens would be collected and handled in accordance with chain-of-custody procedures. Although advance notice of periodic testing may enable drug users to avoid detection through abstinence, periodic testing is an important component of an effective anti-drug program. The FAA invites comments on alternatives to the proposed periodic testing requirement, such as randomly selecting only a portion of the samples for testing.

3. Random testing is expected to be the primary deterrent method in the anti-drug program. Random testing avoids potential bias toward and selective harassment of an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random number table or computer-based, random number generator. Both methods select individuals by matching these random numbers against an employee's social security number or payroll account number.

With random testing, abstinence is the only way to avoid the risk of detection of drug use. Random drug testing requires a specific implementation plan to deter drug use. The rules propose to use a sampling rate of up to 125 percent of employees performing specific sensitive safety and security-related functions. The 125 percent sampling rate is based on the Coast Guard testing program. A 125 percent rate for random testing would have certain advantages. This testing rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the present incidence of drug use. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the five years since the program was implemented. This testing rate currently is the best evidence available to the FAA regarding a successful random testing program. The FAA is proposing 125 percent as a potential maximum testing rate. At the same time, the FAA recognizes that the higher the sampling rate, the higher the costs of the program. The FAA invites comments on how low a sampling percentage could be adopted while still maintaining a credible deterrent. In particular, the FAA is interested in information on documented, effective random testing programs and the sampling rates that were used as measured against the incidence of drug use on a year-to-year basis, and information that would provide updated estimates of the relative costs and effectiveness associated with various sampling rates. The FAA also requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how sensitive safety and security-related aviation employees would respond to a similar program.

A sampling rate of 125 percent would mean that a population of 10,000 would provide 12,500 annual samples. Similarly, a sampling rate of 12.5 percent would provide 1,250 samples from the same population. Using true random selection, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be equally subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all during the first year and others could be selected more than once. Another issue in this area is the matter of "randomness" among small or isolated populations. What, for example, is the meaning of a random test to an employee population consisting of only one employee, or a few employees? This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of true random selection, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. The FAA seeks comments how to deal with these problems.

4. Employers would be required to obtain urine samples from sensitive safety and security-related employees whose performance contributed to an accident. For the purposes of defining "accident," the FAA proposes to use the definition contained in the regulations of the National Transportation Safety Board (NTSB) (49 CFR 830.2). Should this or any other definition of accident be used instead?

In administering a drug test after an accident, the FAA proposes to authorize employers to test sensitive safety and security-related employees for any Schedule I or Schedule II drug, even though many of these substances would not be tested for in a preemployment, random, or periodic test. This is the same practice as would be followed by the FAA in testing its employees under the proposed Department of Health and Human Services (HHS) guidelines.

It could be both wasteful and intrusive to require testing without some indication that the tested person might have been a cause of the accident. Therefore, it may be desirable to establish a mechanism through which determination would be made about who would be required to undergo a drug test after an accident. Testing after some accidents could be unwarranted, either because the damage is so slight that it is not justified economically, or because the circumstances indicate that human error was not a factor. The FAA invites comment on how the decision would be made. Should the employer decide whether testing is necessary? Should there be a presumption that all employees at the scene should be tested, unless, for example, two company officials concur otherwise? Would these officials have to be supervisors? There may be situations where only one supervisor is available or the only persons at the scene are not supervisors. Should at least one official involved in the decision concerning whom to test be trained in detecting drug use? Are there any practical problems to this approach? What about employees such as mechanics, who may have caused the accident, but who may be far from the scene at the time of the accident? In small companies, what if the deciding officials are involved in the accident? Should the FAA be involved in the decision? Again, how would this be put into practice?

It is important that drug tests be administered as promptly as possible following an accident. The decision whether to test employees should be made quickly so that tests can be administered while evidence of drug use, if any, is still in the employee's system. Should all sensitive safety and security-related employees involved in an accident be tested unless deciding officials determine within a given period of time that certain employees could not have contributed to the accident and can be excluded? Within what period of time would the decision to exclude certain employees be made? The Federal Railroad Administration requires post-accident testing within 4 hours. In their experience, this time constraint is difficult to meet. For employees to be tested, the FAA recognizes that there may be serious logistical problems in administering a drug test as quickly as might be desired. We are therefore proposing that post-accident tests be given as soon as possible and in no event later than 24 hours after an accident. This 24-hour period is intended to be an absolute maximum, and any delay, even within this period, could seriously reduce the value of the test.

5. Testing based on reasonable cause would be based on a reasonable and articulable belief that a sensitive safety and security-related employee is using drugs. Even if no mistakes are made at work, the employee may demonstrate a change in character or behavior that could be symptomatic of drug use. Such changes are normally characterized by mood swings and changes in appearance, attitude, and speech. Because of the subjectivity of the criteria and the possibility of employee harassment, at least two of the employee's supervisory personnel would have to concur in the decision to test an employee based on a reasonable suspicion of drug use. At least one of these supervisors would have to be trained in detecting symptoms of drug use. Are there practical problems to this approach? Should the observers have to be supervisors? There may be situations where only one supervisor is available or the only person in a position to observe an employee is the supervisor? The FAA invites comments on whether there should be exceptions to the two-supervisor rule. If so, what other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing in order to prevent unwarranted harrassment? Should there be specified circumstances, such as particular rule violations, under which drug testing would be automatic? If so, what kind of rule violations would suggest a drug problem and should trigger reasonable cause testing? We note in this regard that the Federal Railroad Administration has specified, in its existing drug rule, the types of incidents that could justify requiring an employee to undergo drug testing. Could a similar program work in the aviation industry?

FAA proposes to authorize employers to test sensitive safety and security-related employees for any Schedule I or Schedule II drug when there is reasonable cause to believe a particular drug was used, even though many of the Schedule I and II substances would not be tested for in a preemployment, random, or periodic test. This is the same practice as would be followed by the FAA in testing its employees under the proposed HHS guidelines.

Medical Review Officers

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual for referral to an EAP rehabilitation program. The FAA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule requires that a MRO be a licensed medical doctor. The MRO could be a currently employed company physician or could be a private physician who performs MRO services for the employer on a contractual basis.

EAP Services

The FAA has determined that properly managed EAP's benefit both management and employees and can be a positive factor in anti-drug programs. The FAA recognizes that individually established EAP's may be beyond the fiscal resources of some employers. However, the employer has a responsibility to employees and the public to provide a drug-free environment to the maximum extent practical. As such, in certain circumstances, employers would provide EAP services or make such services available through one of the following means: Company-operated EAP; contractor or consortium arrangement; or arrangements with local community service organizations for voluntary referrals or employer-directed referrals. Other alternatives to the above must be approved by the FAA and would have to provide an equivalent level of EAP service to employees.

The proposed rule would require that an EAP provide education, training for employees and supervisory personnel, and an opportunity for rehabilitation. An employee must successfully complete a rehabilitation program before being returned to his or her previous duties. The FAA is not proposing to require employers to pay the cost of rehabilitation. At this time, the proposed rule does not impose any limits on the amount of time that an employee may use to complete a rehabilitation program. However, the FAA recognizes that requiring an employer to hold a position open or adjust operations for an indefinite period, while an employee is enrolled in a rehabilitation, may result in inconvenience and hardship for some employers, especially smaller companies. Therefore, the FAA solicits comments on an equitable and appropriate amount of time for an employee to complete a rehabilitation progam to be specified in the rule, and whether the amount of time should be different for smaller companies. The FAA is particularly interested in time frames that have been shown to be appropriate from other documented rehabilitation programs, taking into account how long it may take for an employee to be admitted to a rehabilitation program. Commenters also should address whether employees involved in EAP programs could be employed in nonsensitive safety and security-related positions during the rehabilitation process. The proposed rule does not require the employer to offer these same opportunities to a repeat offender, to persons not currently employed by the employer who fail a preemployment test, or persons who have been found to use illicit drugs on the job.

The NPRM proposes three different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employees would be reinstated into his or her prior position. The second option would provide rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests; but would not require that the same opportunity be afforded to drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs (regardless of the circumstances, e.g., random, periodic, post-accident, reasonable cause) could be fired immediately. In all cases, employers would be free to offer more rehabilitation options than the minimum we proposed. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize both the costs and the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps incentive to use rehabilitation services, and they may continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative is likely to be the lowest in direct costs, because rehabilitation would be required only for employees who seek it voluntarily, but for the same reason, however, this alternative might produce less in societal benefits. Commenters should address whether, and to what extent the third alternative would encourage drug users to identify themselves before they are tested, in contrast to the first and second alternatives, which appear to provide less incentives for drug users to identify themselves before they are discovered through the testing process.

We specifically invite comment on which of these or other alternatives offer the greatest benefits at the lowest cost.

Under any of these options, if the individual was successfully rehabilitated, the program would require that he or she be offered the opportunity to return to his or her former position. The NPRM does not specify who makes the decision concerning whether the individual has been successfully rehabilitated, however. The FAA seeks comments on whether the final rule should so specify.

If the final rule does specify who makes this decision, who should the decision-maker be? Should it be the medical review officer, the head of the EAP, the head of the drug rehabilitation program in which the employee participated, an independent physician, the FAA (e.g., through the office of the Federal Air Surgeon) for certain types of employees, or some combination of these persons? Are there other individuals that should be permitted or required to make the decision?

The FAA also seeks comments on whether the rule should contain standards for making this determination. If so, what should they be? Should the employer, the FAA, or both have a procedure through which the employee can contest a determination that he or she had not been rehabilitated?

Post-rehabilitation Testing

Once an employee has undergone rehabilitation, there may be a need to conduct tests to ensure continued disassociation from drugs. At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain.

For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The medical review officer, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a longer follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Temporary Employees

Although the rehabilitation of drug users is a cornerstone of this program.

we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he of she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employees. Commenters also should address how the rules should be applied to striking employees or employees scheduled for layoffs. Definitions of these terms also should be addressed.

Implementation

The FAA must exercise oversight over the establishment of individual programs to ensure their effectiveness. This oversight can best be implemented by requiring each employer to submit a plan acceptable to the Administrator that would set forth the specific details of an anti-drug program. The employer's proposed anti-drug plan would have to be submitted to the FAA within 120 days after the effective date of the final rule. The FAA would respond only if a plan was considered inadequate. The FAA would complete its review within 60 days after submission of an employer's program and would notify those employers with inadequate plans within that 60-day period. The anti-drug program would be required to be implemented 180 days after the deadline for submitting the program.

Reporting Requirements

Semiannual and annual reports of the results under each program would be required under the proposed rule. The report would contain demographic data of drug abuse by occupational category, drugs detected, and geographic locations.

Those semi-annual and annual progress reports would be sent to FAA. The FAA is proposing that the reports should provide the following summary information for each type of testing performed: Occupational group of tested employees' the specific drugs detected and the disposition of employees (e.g., termination, rehabilitation, resignation, and other categories as applicable, such as leave without pay). Confidentiality must be afforded to all information regarding drug abuse by employees. This data would be used by the FAA only to summarize trends and determine if additional actions or changes may be required to combat drug use and abuse in aviation. We invite comments on the frequency and content of reports to be filed.

Employer Flexibility

The FAA recognizes that drug use is a complex problem that requires dynamic, responsive solutions. The FAA believes that its proposed program meets the agency's statutory mandate to promote the safety of civil aircraft flying in air commerce and that it responds to the public's need for a safe and drug-free aviation environment. The FAA is also interested in comments on whether there are ways to increase flexibility in the program or reduce costs without decreasing safety. For example, should the FAA allow covered employers the option of submitting to the Administrator for approval a company-specific anti-drug program in lieu of complying with the FAA proposed rule?

Would allowing for company-specific anti-drug programs be consistent with the FAA's mandate for ensuring a safe and drug-free aviation environment? In other areas, such as those dealing with aircraft maintenance, flight operations, airport security, and carry-on baggage, the FAA has permitted airlines and other aviation companies to develop and implement safety programs tailored to meet requirements particular to that company. The FAA reviews such programs for their consistency with FAA safety goals. These programs have made it possible to give increased flexibility to companies while continuing to ensure that the programs are carried out in a manner that ensures safety for the travelling public. Is there any way in which the FAA may best afford employers subject to the proposed drug abatement rule similar flexibility? What would be the likely cost savings, if any, associated with a flexible approach?

The FAA recognizes the costs and burdens associated with drug abatement in general, and wants to ensure that aviation anti-drug programs are as cost-effective as practicable. Would providing for company-specific programs encourage the development of innovative solutions that may be less costly and more effective? How? Could similar innovations be developed under the proposal set forth in this notice? How can the FAA ensure that its final rule will promote the development of efficient and more effective solutions?

The proposed FAA program includes a required random sampling rate that could range as high as 125 percent of the tested population. This level has proven to be effective in reducing drug use among Coast Guard personnel, but we have asked for comments on how low a testing percentage could be adopted without undermining the deterrent effect of the testing program. Whatever sampling rate is chosen as the industry-wide norm, would it be possible for a company-specific program to be designed in a way that would allow employers who can justify a need to test at a lower or higher sampling rate to test at that rate. How could this be accomplished?

The FAA also requests comments on whether employers could also limit the size of the population subject to a full range of testing strategies to those sub-groups of employees where an initial round of testing has revealed a more serious drug-use program. In such a case, the employers may be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems, remain risk-free. In addition, are there ways employers may avail themselves of less costly and less intrusive technologies as such advances are made while ensuring an appropriate-level of safety. Are there other types of flexibility that the FAA should consider? Commenters are requested to submit any empirical data that support their views.

Could the current proposal provide similar flexibility by simply providing a waiver for companies that, for example, ask to use a test they establish achieves an equivalent level of safety? What, if any, fundamental requirements should be present in an acceptable company-specific drug abatement program, and what guidelines would the FAA use in reviewing requests for waivers or amendments if such modifications are

allowed? Should, for example, the FAA be required to approve any modifications that are designed to achieve a safe and drug-free aviation environment? Should these requirements or review guidelines be different from modifications submitted by small companies? Should the FAA be required to act on an application for approval of a company-specific program, an amendment, or a waiver request, within a set time period? What form should the application take? What impact would allowing these alternatives for increasing flexibility have on the FAA?

Access to Employee Drug Use Information

The proposed rule would regulate access to information about an employee's drug testing history under the anti-drug program by subsequent employers or employers in other transportation modes. The FAA specifically requests public comment on what procedures, if any, should be included in the rules to safeguard the privacy of persons tested under the anti-drug program. As noted above, we are considering a variety of options with respect to preemployment drug tests, including mandatory destruction of the documents for employees not hired. The results of drug tests performed for other reasons, however, also raise important privacy questions. Therefore, we specifically invite comments about whether there are circumstances under which we should permit the disclosure of drug test data to persons other than the employer and the employee (such as future employers). If, in the final rule, we were to allow such disclosure, there would appear to be a number of options. First, the data could be released only at the specific requests of the future employer, at either the discretion of the employer conducting the test, or only at the request of the employee. Under another option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A final option under consideration by the FAA is authorizing the release of test results to future employers only in specified circumstances. For example, confirmed positive test results would be released to subsequent employers where an employee had been discharged for a refusal to participate in a rehabilitation program or an employee had failed a drug test after completing rehabilitation. Interested persons also should comment on whether the proposed rules should treat the privacy issues related to preemployment tests differently from random, reasonable cause, and periodic tests.

The potential release of data highlights the importance of an employee's right to contest the test results. A urine sample that had been subject to tampering could unjustly end an employee's career. An employee should have an opportunity to challenge the integrity of the testing process, for example, by contesting whether the positive test result arose from a tampering incident or other error in the testing process. The FAA, therefore, requests comments on what procedures should be adopted. Commenters also should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test and whether the burden or proof on the validity of test results should be borne by the employee or the employer.

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. The FAA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. The FAA requests comments on whether the rule can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee.

A related issue involves whether the FAA should distinguish between general statistical data (the total number of positive tests at a company in a month or a year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed anti-drug program. Since small operators will have few individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential may be exacerbated if the FAA requires that only a small percentage of employees be tested each year.

HHS Guidelines

On August 14, 1987, the Department of Health and Human Services (HHS) published proposed guidelines for drug testing procedures and standards for certifying drug testing laboratories (52 FR 30638; a final version of the guidelines is expected to be published before the final rule based on this NPRM). As drafted, the guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include proposed solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines would establish what illegal drugs are to be tested for (e.g., marijuana, cocaine, amphetamines, PCP, and opiates) and the levels of drug metabolites in a sample that would result in a positive test being reported. The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test).

The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

There are a few particulars in which the proposed rule differs from the proposed HHS guidelines. For example, medical review officers (MROs) are assigned duties in Appendix I in addition to those in the guidelines. There are also additional requirements concerning inspections of laboratories by both the employer and the FAA and concerning employee requests for retesting.

Discussion of Proposed Rules

Performance of Duties by Persons Using Certain Drugs

Proposed §§ 121.455(b) and 135.249(b) would prohibit Part 121 and 135 certificate holders and "operators" as defined in this notice from knowingly using any person to perform, and prohibit any person from performing, a function listed in proposed new Appendix I to Part 121 while that person has a prohibited drug, as defined in Schedules I and II of the Controlled Substances Act, in his or her system. This requirement also would apply to persons performing these functions under contract for the certificate holder or operator. This requirement would not apply if the individual was lawfully using a drug according to a medical prescription unless such use would affect the employee's faculties in any way contrary to safety.

A similar requirement would be added as new § 65.46(c) to apply to an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

Use of Persons Failing a Test for Prohibited Drugs

Proposed §§ 121.445(c) and 135.249(c) would prohibit Part 121 and 135 certificate holders and "operators" as defined in this notice from knowingly using any person to perform, and prohibit any person from performing, a function listed in proposed new Appendix I to Part 121, if that person has failed a required drug test specified in that appendix. This rule would also apply to contractors. An Employee who is required to hold a medical certificate issued under Part 67 of this chapter and who fails a drug test under an FAA approved drug program is subject to suspension or revocation of that certificate if the results of the drug test indicate drug use and the tested employee is found to be drug dependent.

The requirement would not apply to persons who have successfully completed an approved rehabilitation program after notification of failing a drug test, who have received a recommendation for return to duty as a result of that rehabilitation program, and who have not subsequently failed another drug test. Similar provisions for air traffic control tower operators would appear in proposed § 65.46.

Drug Testing Program

A new Appendix I would be added to Part 121. It would contain the requirements with respect to who must be tested and what tests must be conducted. It would provide for testing pursuant to the procedures and requirements set out in the proposed HHS guidelines. The proposed appendix would set out the required content of EAP's, including specifying which employees would be given an opportunity for rehabilitation. It would require an education program and a training program, and state what must be included in each.

Required Testing

Proposed §§ 121.457, 135.251, and 65.46 would require Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and air traffic control facilities not operated by, or under contract with, the FAA or the U.S. military to test each of its employees who perform a function specified in proposed Appendix I in accordance with that appendix. None of these employers would be allowed to use any contractor to perform a function specified in the proposed appendix unless that contractor tests each employee performing such a function in accordance with that appendix.

Required Training

Part 121 and Part 135 certificate holders, "operators" as defined in this notice, and air traffic control facilities not operated by, or under contract with, the FAA or the U.S. military would be required to provide specified training to each employee performing a function listed in proposed Appendix I, and his or her supervisor, with the training specified in the appendix. This training would include instructions on the effects and consequences of drug use on personal health, safety, and work environment, as well as the manifestations and behavioral clues that may indicate drug use. None of these employers would be allowed to use any contractor to perform a function specified in that appendix unless that contractor provides the same training to its employees who perform those functions.

Refusal to Submit to a Test

New Provisions would be added to Parts 61, 63, and 65 to provide that refusal to take a required drug test by a person who performs a function listed in Appendix I when requested to do so by his or her employer under that appendix would be grounds for denial of an application for a certificate. Such a refusal would also be grounds for suspension or revocation of a certificate.

Implementation

Appendix I would require the employer to submit a drug testing plan to the FAA for review within 120 days after the effective date of the final rule, or 120 days after issuance of a certificate under Part 121 or Part 135 to the employer, whichever is later. Operators would be required to submit a drug-testing plan to the FAA for review within 120 days after the effective date of the final rule, or 120 days after beginning covered operations listed in § 135.1(b), whichever is later. Each contractor who provides employees who perform a function listed in that appendix would have to submit a drug testing plan within 120 days after the effective date of the final rule or within 120 days after award of a contract, whichever is later. The plan would have to specify, among other things, the methods by which the employer will comply with the FAA rule. It would also have to specify the procedures and personnel the employer will use to ensure that a determination is made as to the veracity of test results and any possible legitimate explanation for an employee failing a test.

The employer would be allowed to consider its drug testing plan to be acceptable to the Administrator unless notified to the contrary by the FAA within 60 days of the implementation date.

Implementation Date

It is proposed to require that an employer's anti-drug program be implemented 180 days after the deadline for submitting the program to the FAA.

Economic Summary

The following is a summary of the preliminary industry cost impact and benefit evaluation for the regulatory changes proposed in this notice to require domestic and supplemental air carriers, commercial operators of large aircraft, air taxi operators, commercial operators, certain contractors to these operators, air traffic control facilities not operated by, or under contract with, the FAA or by the U.S. military, and certain organizations and individuals operating aircraft for compensation or hire under specified categories listed in § 135.1(b) to have an anti-drug program for employees who perform specific sensitive safety and security-related functions. The proposed rules are needed to prohibit, absolutely, the presence of a prohibited drug in an employee's system at any time. The proposed rules are intended to foster a drug-free aviation environment and to

eliminate drug abuse in commercial aviation.

Under these proposed rules, testing would be conducted prior to employment, periodically, randomly, after an accident, and based on reasonable cause. In addition, these proposed rules would require that an employer provide an Employee Assistance Program (EAP) for its employees. The FAA has determined that the proposed rulemaking is a major rule under Executive Order 12291 because the proposed requirements are likely to result in an annual effect on the economy of over $100 million.

In developing its program, the FAA is considering three alternatives concerning requirements for rehabilitation. All three have been analyzed for costs and benefits using 125 percent and 12.5 percent annual sampling rates for random testing. Under the first option, an employee who comes forward voluntarily or tests positive for illicit drug use for the first time would be eligible for rehabilitation. Once rehabilitated, the employee be reinstated into his or her prior position. The second option would afford rehabilitation rights to employees identified as illicit drug users during periodic or random tests, but would not require employers to afford the same opportunity to drug users identified in post-accident or reasonable cause tests. Under the third option, only volunteers who self identify or are referred by a co-worker would be afforded rehabilitation rights. The employer would have the right to dismiss anyone testing positive for drugs (i.e., periodically, randomly, after an accident, and based on reasonable cause).

One basic assumption the FAA used in developing Option 3 is that there would be a greater number of individuals volunteering for rehabilitation at a higher sampling rate than at lower ones based on fear of detection. Of course, employers would be free to offer more rehabilitation options than the minimums required by this notice. A detailed analysis of these options is presented in the Regulatory Impact Analysis and is contained in the docket. Also, the total cost of compliance with the three different rehabilitation options at different sampling rates are shown in Exhibit A of this summary. The assumptions used in preparing the economic impact estimates of the proposed changes have been developed by the FAA. Cost factors were obtained from information received in response to an earlier Advance Notice of Proposed Rulemaking, and additional data furnished by air carrier industry trade associations, public institutions, and major chemical laboratories. These estimates of cost impact may be revised before the final Regulatory Impact Analysis is issued based on public comment and other information that becomes available.

The proposals to amend Part 121 would affect the 146 currently active scheduled and nonscheduled Part 121 certificate holders and certain entities who provide contractual services to them. The notice also affects the 3,614 scheduled-service and on-demand Part 135 operators and certain entities who provide contractual services to them. In addition, these proposals would also affect an undetermined number of organizations engaging in the types of operations listed under § 135.1(b). Because of the highly diversified and multipurpose nature of operations listed in § 135.1(b), it has not been possible to determine the exact number of organizations that engage in these types of operations. Nevertheless, the FAA has used the 850 currently active pilot schools as the basis for estimating the impact of these proposals on those entities listed under § 135.1(b). While the actual number of these organizations may be higher, the FAA believes that the 850 pilot schools selected represent the majority of organizations conducting operations listed in § 135.1(b). Comments are requested on these estimates.

EXHIBIT A.—AGGREGATE COMPLIANCE COSTS, 1989–97

Option 1

	125% sampling rate		12.5% sampling rate
Employee rehabilitation cost	$600,979,772		$75,130,727
Drug testing program cost	245,885,672		64,700,785
Aggregate compliance cost (10 years—1987 dollars)	846,865,444		139,831,512
(10 years 10% present worth)	597,356,865		98,633,513

Option 2

	125% sampling rate		12.5% sampling rate
Employee rehabilitation cost	599,822,204		74,986,015
Drug testing program cost	245,885,672		64,700,785
Aggregate compliance cost (10 years—1987 dollars)	845,707,876		139,686,800
(10 years 10% present worth)	598,304,520		98,497,933

Option 3

	125% sampling rate		
	10% voluntary	20% voluntary	30% voluntary
Employee rehabilitation cost	79,264,722	158,529,444	237,794,166

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EXHIBIT A.—AGGREGATE COMPLIANCE COSTS, 1989-97—Continued

Drug testing program cost	245,885,672	245,885,672	245,885,672
Aggregate compliance cost (10 years—1987 dollars)	325,150,384	404,415,116	483,679,838
(10 years 10% present worth)	203,824,979	258,718,344	313,611,710
	12.5% sampling rate		
	1% voluntary	2% voluntary	3% voluntary
Employee rehabilitation cost	980,894	1,961,788	2,942,674
Drug testing program cost	54,700,785	54,700,785	54,700,785
Aggregate compliance cost (10 years—1987 dollars)	55,681,679	56,662,573	57,643,459
(10 years 10% present worth)	44,353,326	45,033,344	45,713,357

These entities will incur additional costs because they will be required to comply with the proposed anti-drug programs specified in proposed Appendix I to Part 121. The FAA believes that three major benefits would accrue from these proposals. First, the proposal could help to prevent potential fatalities and property loss resulting from an accident attributed to neglect or error on the part of an individual whose judgment or motor skills may be impaired by the presence of illicit substances in his or her system. Second, benefits would accrue to affected employers from the potential reduction in absenteeism, lost worker productivity, medical and insurance costs, and improved general safety in the work place. Lastly, the reduction of drug abuse in a vital and socially important industry such a commercial aviation would represent a broad benefit to air commerce. The FAA has been unable to estimate quantitatively the extent to which the proposed rule would reduce drug use in the commercial aviation industry, and thus would enhance aviation safety or directly promote the commercial aviation industry and air commerce. A review of the safety record indicates that there have not been any fatal accidents involving passenger carrying commercial airline pilots where drugs or alcohol were shown to be factors. In the absense of statistical data depicting the extent of drug abuse in commercial aviation, and in light of the potential risks associated with drug use, however, the FAA does not consider this safety record to be the only indicator of the potential threat posed to aviation safety by drug use. The FAA believes that drug use, unless stemmed, could be a major threat to aviation safety in the future. The FAA invites commenters to identify other indicators of the risks associated with the drug use by sensitive safety and security-related aviation employees.

As shown in a June 1984 U.S. Department of Health and Human Services report entitled "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980", the economic cost to society at large from drug abuse is estimated to be $66 billion annually. Using this annual figure, the total cost to society from drug abuse over the 10-year period following 1988 would be $405.5 billion (discounted) more if corrective measures are not taken. The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness", which estimated that the economic cost of drug abuse to the United States during 1983 was $59.7 billion. This study, prepared for the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime * * *, reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As the FAA obtains other data on drug use, it will place that data in the docket.

The estimated 511,628 employees in the commercial aviation industry covered by these proposals represent approximately two-tenths of one percent of the United States population of 236,000,000. Thus, if these proposals induce current drug users in the commercial aviation industry to abandon drug use over the 10-year period following enactment of the proposed rules, and if drug use is as prevalent in the aviation industry as society at large, the FAA estimates that there be a discounted savings to society of $879.0 million. Of course, if drug use is not as prevalent among covered aviation employees as it is in society at large, the benefits would be correspondingly smaller. The opposite would be true if drug use is more prevalent. The FAA does not have enough information on which to base an estimate of the incidence of drug use among aviation employees. Absent more accurate data, the FAA assumes, for the purpose of this proposal, that the aviation drug problem is similar to that found among the general population. Should more accurate data become available to the docket, the FAA may revise this analysis as warranted. Commenters are specifically invited to submit data on the incidence of drug use among sensitive safety and security-related aviation employees.

Information available on sampling rates to the FAA indicates that random testing conducted in a work-related environment at a sampling rate of 125 percent of the affected population has been an effective deterrent to drug abuse. Accordingly, the FAA is assuming for the purposes of this analysis that maximum potential benefit to be realized from implementation of any of the proposed options at a rate of 125 percent is $879.0 million. The FAA, however, does not have information on which to base an estimate of the deterrence of a lower sampling rate. However, for purposes of this analysis, the FAA assumed that the potential benefit of testing at 12.5 percent is estimated to be $87.9 million; this is based on the assumption that there would be a tenfold reduction of the overall discounted savings. However, FAA recognizes that lower sampling rates may produce higher or lower benefits. Therefore, the FAA specifically requests comments on this assumption and any relevant data on the effectiveness of a lower sampling rate. Exhibit B, below, shows a comparison of the benefit to cost relationship of these options and using the assumptions outlined above the rate that each would need to be effective in deterring drug abuse for benefits to equal costs.

EXHIBIT B.—SUMMARY OF BENEFITS AND COSTS

[In millions of dollars]

Option 1

	125% random sampling		12.5% random Sampling
Present value:			
Costs	$597.3		$96.6
Benefits	$879.0		$87.9
Benefit/cost ratio	$1.5		$.89
Effectiveness rate (percent)	68		112

Option 2

	125% random sampling		12.5% random Sampling
Costs	$596.3		$96.4
Benefits	$879.0		$87.9
Benefit/cost ratio	$1.4		$.89
Effectiveness rate (percent)	68		112

Option 3

125% random sampling

	10% voluntary	20% voluntary	30% voluntary
Costs	$203.1	$258.7	$313.6
Benefits	$879.0	$879.0	$879.0
Benefit/cost ratio	$4.3	$3.4	$2.8
Effectiveness rate (percent)	23	29	36

12.5% random sampling

	1% voluntary	2% voluntary	3% voluntary
Costs	$44.3	$45.0	$45.7
Benefits	$87.9	$87.9	$87.9
Benefit/cost ratio	$2.0	$2.0	$1.9
Effectiveness rate (percent)	50	51	52

As shown in Exhibit B, the $597.0 million estimated discounted cost on implementing rehabilitation at a random testing sampling rate of 125 percent would be recovered if this alternative were 68 percent effective in eliminating drug use in the commercial aviation industry over the ensuing ten-year period following enactment of the proposed rule. Conversely, the $44.7 million estimated discounted cost of adopting the least costly rehabilitation option at a 12.5 percent random sampling rate, and a 3 percent voluntary EAP enrollment, would be recovered if this option were 52 percent effective in deterring drug abuse. Depending on the effectiveness of a lower testing rate on reducing drug use, the first option may provide more benefits to society by ensuring that more drug users will obtain needed help. These benefits would be provided, however at a much greater cost. If users are simply fired, they may lose access to rehabilitation services and may be more likely to continue to be drug users. On the other hand, a lower sampling rate of 12.5 percent and voluntary EAP enrollment may see fewer individuals motivate (through fear of detection by random testing) to volunteer for rehabilitation. For this reason, adoption of this option may be less costly but could produce lower societal benefits.

Finally, option 3 will probably induce more drug users to self-identify than do options 1 and 2. To the extent that this happens, would the rule achieve a given level of drug abatement, and therefore provide more benefits at a lower sampling rate than would be required under either option 1 or 2?

The FAA lacks information on which to base an assessment of the deterrent effect of the proposed rehabilitation options presented in the proposed program. The FAA, therefore, specifically seeks comments on the effect on the cost and benefits of the proposed program examined in the regulatory evaluation as follows:

(1) What is the deterrent effect of sampling rates of 125 percent versus 12.5 percent? How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation?

(2) What is the lowest sampling rate for random testing that would be effective in deterring drug use?

(3) Would higher sampling rates in sufficiently higher benefits justify the costs?

(4) Do lower sampling rates necessarily result in lower benefits? Is it reasonable to assume that benefits are directly proportional to the sampling rate?

(5) Would higher sampling rates add sufficient deterrence to reduce the costs of and need for rehabilitation?

(6) Who should be afforded EAP services and under what circumstances?

(7) What is the estimated level of voluntary enrollment in EAP rehabilitation services under each rehabilitation option?

(8) What are the estimated costs of individual EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

(9) To what extent would each of the three alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under option 3 than under either of the other two options?

(10) Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse?

(11) Over 50 percent of the $66 billion estimate of the cost of drug abuse in society at large is in the form of reduced income of drug users compared with those who do not use drugs. Is it reasonable to assume that a corresponding percentage of benefits would result from increased productivity of the covered aviation employees? Are there more accurate estimates and estimating methodologies that should be used in estimating the potential benefits associated with this proposal?

The FAA has no statistical data on which to base an assessment on how many individuals will be referred for testing due to reasonable cause. Therefore, the FAA solicits data, views, etc., concerning industry training programs to be provided to supervisors and managers on how to detect drug abuse. Specific comments are requested as follows:

(1) Name and source of training program? Costs of programs?

(2) Identity of methods employed to detect drug abuse?

(3) What is the success rate of these programs? Are success rates different for different classes of illicit drugs? Different types of employees?

(4) Did the number of referrals for testing based on reasonable cause increase after supervisors and employees were trained on how to detect signs of illicit drug abuse, and, what were the referral rates prior to training, and following training?

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of proposed rules to assess their impact on small entities. In consideration of the cost information discussion under the Regulatory Impact Analysis, the FAA concludes that these proposed rules could have a significant economic impact on a substantial

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number of small entities. However, the FAA knows of no practicable alternatives for small employers to adopt that would reduce the cost of compliance yet achieve the levels of protection sought by these proposals. A regulatory flexibility analysis discussing this issue in more detail has been placed in the docket.

International Trade Impact Statement

While these proposals would only affect domestic operators, the costs imposed by these proposals may impact on trade opportunities for U.S. firms doing business overseas on foreign firms doing business in the United States insofar as those firms have employees who work both in foreign and domestic markets and administrative programs that bridge domestic and foreign markets. An assessment of those impacts will be placed in the docket.

Paperwork Reduction Act Approval

Proposed Appendix I Part 121 would require the employer to maintain testing records on each employee and to provide the FAA with periodic written reports summarizing test results. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the record keeping and reporting provisions contained in this notice will be submitted for approval to the Office of Management and Budget (OMB). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer (Telephone 202–395–7340). A copy should be submitted to the FAA Docket. Commenters should especially provide their views on the accuracy of FAA's estimates of the burdens associated with these requirements, the practical utility of the information obtained, and less burdensome reporting alternatives to those proposed in this notice.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Significance

These proposals, if adopted, are likely to result in an annual effect on the economy of $100 million or more and a major increase in costs for consumers, industry, or Federal, State, or local Government agencies. Accordingly, the FAA has determined that this proposal involves proposed regulations that may be major regulations under Executive Order 12291. Since the proposals concern an issue on which there is substantial public interest, the FAA has also determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 2, 1979).

A draft Regulatory Impact Analysis of the proposals has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety.

14 CFR Part 63

Air safety, Air transportation, Airmen, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

14 CFR Part 65

Air safety, Air transportation, Airmen, Aviation safety, Drug abuse, Narcotics, Safety.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Drugs, Narcotics, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Drugs, Narcotics, Pilots.

Proposed Amendment

Accordingly, the FAA proposes to amend Parts 61, 63, 65, 121, and 135 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 121, and 135) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new § 61.14 to read as follows:

§ 61.14 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by the employer, by a local law enforcemet officer under his or her own authority, or by an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for Part 63, Subpart A, is revised to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By adding a new § 63.12b to read as follows:

§ 63.12b Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by the employer, by a local law enforcement officer under his or her own authority, or by an FAA inspector, under the circumstances specified in the appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

6. By adding a new § 65.23 to read as follows:

§ 65.23 Refusal to submit to a drug test.

(a) This section applies to—

(1) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a Part 121 or 135 certificate holder; and

(2) An employee who performs a function listed in Appendix I to Part 121 of this chapter for a person conducting an operation listed in § 135.1(b) of this part for compensation or hire. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(3) An employee of an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter when requested by a Part 121 or 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, an employer as defined in § 65.46 of this part, a local law enforcement officer under his or her own authority, or an FAA inspector, under the circumstances specified in that appendix, is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

7. By adding a new § 65.46 to read as follows:

§ 65.46 Use of prohibited drugs.

(a) For the purpose of this section:

An "employee" is a person who performs an air traffic control function for an employer.

An "employer" means an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military that employs a person to perform an air traffic control function.

(b) Each employer shall provide each employee and his or her supervisor with the training specified in Appendix I to Part 121 of this chapter. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer and his or her supervisor with the training specified in that appendix.

(c) No employer may knowingly use, either directly or by contract, any person to perform, nor may any person perform for an employer, any air traffic control function while that person has a prohibited drug, as defined in Appendix I to Part 121 of this chapter, in his or her system.

(d) Except as provided in paragraph (e) of this section, no employer may knowingly use any person to perform, nor may any person perform for an employer, any air traffic control function, either directly or by contract, if that person failed a test required by Appendix I to Part 121 of this chapter given by an employer or a Part 121 or 135 certificate holder.

(e) Paragraph (d) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to Part 121 of this chapter who has successfully completed a rehabilitation program under that Appendix and has received a recommendation for return to duty as a result of that rehabilitation program, and who has not failed a test required by that appendix for any employer or Part 121 or 135 certificate holder after the first time he or she completed such a program.

(f) Each employer shall test each of its employees in accordance with Appendix I to Part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

8. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

9. By adding a new § 121.429 to read as follows:

§ 121.429 Prohibited drugs.

(a) Each certificate holder shall provide each employee performing a function listed in Appendix I to this part and his or her supervisor with the training specified in that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor provides each of its employees performing that function for the certificate holder and his or her supervisor with the training specified in that appendix.

10. By adding a new § 121.455 to read as follows:

§ 121.455 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to this part for the certificate holder. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder is considered to be performing that function for the certificate holder.

(b) No certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, any function listed in Appendix I to this part while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, any function listed in Appendix I to this part if that person failed a test required by that appendix for any employer.

(d) Paragraph (c) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to this part who has successfully completed a rehabilitation program under that appendix and has received a recommendation for return to duty as a result of that rehabilitation program, and who has not failed a test required by that appendix for any employer after the first time he or she completed such a program.

11. By adding a new § 121.457 to read as follows:

§ 121.457 Testing for prohibited drugs.

(a) Each certificate holder shall test each of its employees who perform a

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function listed in Appendix I to this part in accordance with that appendix.

(b) No certificate holder may use any contractor to perform a function listed in Appendix I to this part unless that contractor tests each employee performing such a function for the certificate holder in accordance with that appendix.

12. By adding a new Appendix I to Part 121 to read as follows:

Appendix I—Drug Testing Program

This appendix contains the standards and components that must be included in a drug testing program required by this chapter.

I. HHS Guidelines

Drug testing programs subject to this regulation shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" proposed by the Department of Health and Human Services (52 FR 30638, August 14, 1987).[1] Terms and concepts referenced in this appendix shall have the same meaning as in those guidelines. Where the guidelines refer to "Federal agencies" or "the agency," this shall mean "the employer" for the purpose of this regulation. This appendix contains requirements for drug testing programs additional to those in the HHS guidelines. Drug testing programs governed by the regulation shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines.

II. Definitions

For the purpose of this appendix, the following definitions apply:

"Accident" means an aircraft accident as defined in the regulations of the National Transportation Safety Board (49 CFR 830.2).

"Employee" is a person who performs, either directly or by contract, a function listed in section III of this appendix for a Part 121 or Part 135 certificate holder, a person conducting an operation for compensation or hire that currently is exempt from the requirements of Part 135 except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, or an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military.

"Employer" is a Part 121 or Part 135 certificate holder, a person conducting an operation for compensation or hire that currently is exempt from the requirements of Part 135 except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, an air traffic control facility, or a contractor whose employees perform a function listed in section III of this appendix for such a certificate holder, person, or facility.

"Failing a drug test" means that the test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"Passing a drug test" means that the test result does not show any positive evidence of the presence of a prohibited drug in an employee's system.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801, 812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by a legal prescription or other exemption under Federal, state, or local law.

III. Employees Who Must Be Tested

Each person who performs a function listed in this section for an employer must be tested pursuant to the employer's drug testing program:

a. Flight crewmember duties.
b. Flight attendant duties.
c. Flight instruction or ground instruction duties.
d. Flight testing duties.
e. Aircraft dispatcher or ground dispatcher duties.
f. Aircraft maintenance or preventive maintenance duties.
g. Aviation security or screening duties.
h. Parachute rigging duties.
i. Air traffic control duties.

IV. Substances For Which Testing Must Be Conducted

Each employer shall test each employee who performs a function listed in section III of this appendix for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), or amphetamines during each test required by section V of this appendix. An employer may test for any other prohibited drug.

V. Types of Drug Testing Required

Each employer shall conduct the following types of testing:

A. Preemployment Testing

No employer may hire any person to perform a function listed in section III of this appendix unless the applicant passes an initial test or confirmation test as specified in the HHS guidelines. The employer shall advise an applicant that preemployment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails either test, the applicant may withdraw his or her application for employment and the employer shall not retain records pertaining to the existence of the application or the reasons for its withdrawal.

B. Periodic Testing

Each employee required to undergo a medical examination under Part 67 of this chapter shall, as part of that examination, provide a urine sample to be tested for a prohibited drug in accordance with the procedures set forth in this appendix and the drug testing guidelines established by the Department of Health and Human Services.

C. Random Testing

In addition to periodic testing, each employer annually shall test randomly [a percentage of employees to be determined up to 125 percent] of all employees who perform a function listed in section III of this appendix. The employer shall select employees for random testing for the presence of a prohibited drug in an employee's system using a random number table or a computer-based, number generator that is matched with an employee's social security number or payroll identification number.

D. Post-accident Testing

Each employer shall test each employee who performs a function listed in section III of this appendix if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The test shall be administered within 24 hours after the accident. The employee shall submit to testing under this section. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the accident, that the employee's performance could not have contributed to the accident.

E. Testing Based on Reasonable Cause

Each employer shall test each employee who performs a function listed in section III of this appendix and who is reasonably suspected of using a prohibited drug. At least two of the employee's supervisors shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of physical indications of probable drug use (e.g., the employee's manner of speech or physical appearance).

VI. Other Administrative Matters

A. Collection Records

All records related to the collection process, including all logbooks and certification statements, must be kept by the employer for at least 2 years. The employer must permit the Administrator to examine these records.

B. Employee Request To Retest a Specimen

The laboratory must reanalyze a specimen when requested by an employee. Each employee may make one request that a sample of the specimen be provided to another laboratory for testing. The original laboratory must follow chain-of-custody procedures. The employee must pay all handling and shipping costs associated with the transfer of the specimen to another laboratory.

C. Laboratory Inspections

The laboratory must permit pre-award inspections by the employer before the laboratory is awarded a testing contract and unannounced inspections, including examination of any and all records, at any time, by the employer or the Administrator.

VII. Review of Drug Testing Results

The employer shall designate or appoint a medical review officer (MRO). If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

A. MRO Qualifications

The MRO must be a licensed physician with knowledge of drug abuse disorders.

B. MRO Duties

The MRO shall perform the following functions for the employer:

1. Review the results of the employer's drug testing program before the results are reported to the employer and summarized for the FAA.

2. Evaluate an employee who has failed a confirmation test for referral to an EAP rehabilitation program.

3. Assist in determining when an employee involved in an EAP rehabilitation program should be returned to duty.

4. Review and interpret each confirmed positive test result in order to determine if there is an alternative medical explanation for the confirmed positive test result. The MRO shall perform the following functions as part of the review of a confirmed positive test result:

a. Conduct a medical interview with the employee.

b. Review the employee's medical history and any relevant biomedical factors.

c. Review all medical records made available by the employee to determine if a confirmed positive test resulted from legally prescribed medication.

d. Verify that the laboratory report and assessment are correct. The MRO shall be authorized to request that the original specimen be reanalyzed to determine the accuracy of the reported test result.

C. MRO Determinations

1. If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO is not required to take further action.

2. If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result that is consistent with legal drug use, the MRO shall refer the employee to an EAP, or to a personnel or administrative officer, for further proceedings in accordance with the employer's anti-drug program.

3. Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug in an employee's system.

VIII. Employee Assistance Program (EAP)

The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and an opportunity for rehabilitation as provided in this appendix.

A. EAP Rehabilitation Program (Option 1)

1. Each employer shall provide one rehabilitation opportunity for the following employees:

a. Each employee who voluntarily enrolls in an EAP.

b. Each employee who is identified as a drug user through random, periodic, or post-accident testing, or testing based on reasonable cause.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a drug test;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

A. EAP Rehabilitation Program (Option 2)

1. Each employer shall provide one rehabilitation opportunity for the following employees:

a. Each employee who voluntarily enrolls in an EAP.

b. Each employee who is identified as a drug user through random or periodic testing.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job or as a result of testing based on reasonable cause or post-accident testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

A. EAP Rehabilitation Program (Option 3)

1. Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

2. Each employer shall retain or rehire an employee who—

a. Has successfully completed his or her first rehabilitation program after voluntary enrollment;

b. Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

c. Has received a recommendation for return to duty as a result of that rehabilitation program.

3. Employees who are identified as drug users on the job or as a result of testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

B. EAP Education Program

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug use in the workplace.

C. EAP Training Program

Each EAP training program must be conducted annually for employees and employer's supervisory personnel. The training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor each year.

IX. Employer's Drug Testing Plan

A. Each employer shall submit a drug testing plan to the FAA for review by [120 days after the effective date of this rule], 120 days after issuance of a certificate under Part 121 or Part 135 to the employer, or 120 days after beginning operations listed in § 135.1(b) for compensation or hire except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958, whichever is later. Each employer who is a contractor who provides employees who perform a function listed in section II of this appendix for an employer shall submit a drug testing plan by [120 days after the effective date of this rule] or within 120 days after award of a contract, whichever is later.

B. The plan must specify the methods by which the employer will comply with the periodic and random testing requirements of this appendix. The plan must provide the name and address of the laboratory which has been selected by the employer for analysis of the specimens collected during the drug testing program.

C. The plan must specify the procedures and personnel the employer will use to ensure that determination is made as to the veracity of test results and possible legitimate explanation for an employee failing a test.

D. The employer may consider the drug testing plan to be acceptable to the Administrator unless notified to the contrary by the FAA.

E. The employer's drug testing plan must be effective and implemented by 180 days after

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[1] A final version of the guidelines will be referenced in the final rule. FAA will include a notice of availability of the final guidelines in the final rule.

the deadline for submitting the program to the FAA.

X. Reporting Results of Drug Testing Program

A. Each employer shall provide a written semiannual report and a written annual report to the FAA summarizing the results of its drug testing program.

B. Each report shall summarize and correlate the following information for each type of testing required, separated as follows:

1. Function performed by the employees tested.
2. Prohibited drug used by the employee.
3. Disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

13. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

14. By revising the introductory text of § 135.1 (b) and adding a new paragraph (c) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) Except as provided in paragraph (c) of this section, this part does not apply to—

* * * * *

(c) For the purpose of §§ 135.249, 135.251, and 135.353, "operator" means any person conducting an operation listed in paragraph (b) of this section for compensation or hire except operation of foreign civil aircraft navigated within the United States pursuant to Part 375 described in paragraph (b)(8) and emergency mail service operation pursuant to section 405(h) of the Federal Aviation Act of 1958 described in paragraph (b)(9). Each operator and each employee of an operator shall comply with the requirements of §§ 135.249, 135.251, and 135.353 of this part.

15. By adding a new § 135.249 to read as follows:

§ 135.249 Use of prohibited drugs.

(a) This section applies to persons who perform a function listed in Appendix I to Part 121 of this chapter for a certificate holder or an operator. For the purpose of this section, a person who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any person to perform, not may any person perform for a certificate holder or an operator, any function listed in Appendix I to Part 121 of this chapter while that person has a prohibited drug, as defined in that appendix, in his or her system.

(c) Except as provided in paragraph (d) of this section, no certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or an operator, any function listed in Appendix I to Part 121 of this chapter if that person has failed a test required by that appendix for any employer.

(d) Paragraph (c) of this section does not apply to a person listed in section VIII.A.1. of Appendix I to Part 121 of this chapter who has successfully completed a rehabilitation program under that appendix and has received a recommendation for return to duty as a result of the rehabilitation program, and who has not failed a test required by that appendix for any employer after the first time he or she completed such a program.

16. By adding a new § 135.251 to read as follows:

§ 135.251 Testing for prohibited drugs.

(a) Each certificate holder or operator shall test each of its employees who perform a function listed in Appendix I to Part 121 of this chapter in accordance with that appendix.

(b) No certificate holder or operator may use any contractor to perform a function listed in Appendix I to Part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

17. By adding a new § 135.353 to read as follows:

§ 135.353 Prohibited drugs.

(a) Each certificate holder or operator shall provide each employee performing a function listed in Appendix I to Part 121 of this chapter and his or her supervisor with the training specified in that appendix.

(b) No certificate holder or operator may use any contractor to perform a function specified in Appendix I to Part 121 of this chapter unless that contractor provides each of its employees performing that function for the certificate holder or the operator and his or her supervisor with the training specified in that appendix.

Issued in Washington, DC, on March 3, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-5402 Filed 3-9-88; 11:34 am]

BILLING CODE 4910-13-M

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federal register

Monday
March 14, 1988

Part V

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Notice of Proposed Rulemaking

OL 53 SS 49 MR 14 988 MI

DEPARTMENT OF EDUCATION

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Assistance to States for Education of Handicapped Children program authorized by Part B of the Education of the Handicapped Act (Part B).

The amendments are needed to implement amendments to Part B included in the Education of the Handicapped Act Amendments of 1986 (1986 Amendments). These proposed regulations would: Require that State plans include sections dealing with interagency agreements and personnel standards; clarify the responsibility of educational and other agencies to provide special education and related services; add nonsupplanting requirements at the State level; permit the State to use additional Part B set-aside funds for monitoring and complaint investigations; modify the funding formula that the Secretary uses for calculating Part B grants; and alter program requirements for the Secretary of the Interior.

DATE: Comments must be received on or before June 13, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Paul Chassy, Acting Branch Chief, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3620—MES 2313) Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3622—MES 2313) Washington, DC 20202; Telephone: (202) 732-1104.

SUPPLEMENTARY INFORMATION: Part B of the Education of the Handicapped Act (20 U.S.C. 1411 *et seq.*), as amended, authorizes formula grants to States and, through States, to local educational agencies and intermediate educational units to assist them in the education of handicapped children. The purposes of the Education of the Handicapped Act are: to ensure that all handicapped children have available to them a free appropriate public education which emphasizes special education and related services designed to meet their unique needs; to ensure that the rights of children who are handicapped and their parents or guardians are protected; to assist States and localities to provide for the education of children who are handicapped; and to assess and ensure the effectiveness of efforts to educate children who are handicapped.

The Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457, amended several parts of the Education of the Handicapped Act, including Part B. These proposed regulations implement changes made to Part B by the 1986 Amendments, as described below.

I. Funding and SEA Responsibility

Existing regulations (§ 300.600) require that all relevant programs in a State be under the general supervision of the State educational agency (SEA). In the 1986 Amendments, Congress further clarified the relationship among public agencies in a State, particularly with respect to the provision of a free appropriate public education to children with handicapping conditions. The 1986 Amendments address the availability of services and funding from public agencies other than the SEA. These statutory amendments are reflected in the proposed regulations, as follows.

Prior to the 1986 Amendments, States were prohibited from using Part B funds to supplant State and local funds expended for special education and related services for children who have handicapping conditions. The 1986 Amendments prohibit States from using Part B funds to supplant Federal, as well as State and local, funds expanded for this purpose. This statutory change is reflected in proposed § 300.150. In that section, "Federal" funds is defined to mean Federal funds other than those provided under Part B. For example, it would be impermissible to use Part B funds to supplant Federal funds under the control of agencies other than educational agencies. This proposed nonsupplanting regulation is applicable to State educational agencies and, consistent with the structure of the statute, is distinct from the current § 300.230, which is applicable to local educational agencies. The Secretary particularly invites comment on this provision of the proposed regulations.

Existing regulations at § 300.600 include interagency agreements as a possible way of implementing an SEA's general supervision requirement. The 1986 Amendments require that State plans include policies and procedures for developing and implementing interagency agreements between the SEA and "other appropriate State and local agencies." This is reflected in § 300.152 of the proposed regulations which also reflects the Department's understanding of section 613(a)(13) of the statute that "other appropriate" agencies are all those State and local agencies other than the SEA that provide or pay for special education or related services for children with handicapping conditions. The regulations would require the SEA to describe the role that each of those agencies will play in providing or paying for those services. As required by statute, the proposed regulations would also require that SEA policies and procedures provide for the development and implementation of interagency agreements that define the responsibilities of each agency and establish mechanisms for resolving interagency disputes.

The 1986 Amendments state that Part B shall not be construed to limit the responsibilities of agencies other than educational agencies for providing or paying for services provided to children under Part B. This is reflected in a proposed new § 300.600(c). The 1986 Amendments also state that Part B shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health programs. A new § 300.601 is added to reflect the statutory amendments. This is intended to ensure that no child is treated differently under these two programs because the child is receiving services under an IEP, or for any other reason related to the existence or applicability of Part B.

II. Preschool Services

A new second paragraph is proposed as an addition to the comment following § 300.552. The propose guideline sets forth the general requirements regarding a public agency's responsibility for the placement of children who have handicapping conditions in the least restrictive environment. The proposed addition to the comment provides suggestions to recipients of Part B funds on how they might meet those requirements when serving preschool children with handicaps if the agency does not generally provide education to nonhandicapped children who are age three, four, or five. This guidance is provided in response to the increased emphasis in Part B, as amended by Pub. L. 99-457, for extending and expanding programs for preschool children with handicapping conditions.

III. Personnel Standards

Prior to the 1986 Amendments, the regulations required that State plans include a comprehensive system of personnel development, including procedures to ensure that personnel are qualified, as defined in § 300.12. The 1986 Amendments added a statutory provision requiring that State plans include policies and procedures to ensure that necessary personnel are "appropriately and adequately prepared and trained." The regulatory proposal for a new § 300.153 incorporates the statutory requirement for policies and procedures, and the statutory requirement that, where there is an inconsistency between the program standard applicable to persons providing services under the State plan and the highest requirements in the State applicable to a profession or discipline, the State plan must describe the steps to be taken to require the hiring or retraining of persons to meet appropriate standards.

Inconsistencies between the standard for service providers under the Part B program and the highest requirement in the State exist where, for example, the program standard requires a lower academic credential than is required by another State agency for professional practice in a setting other than a school setting, or where a program service can be provided under a temporary certificate issued to a person who does not meet the generally applicable standard.

The statutory provision on personnel standards is virtually the same for both this part and the program for infants and toddlers with handicaps under Part H of the Act. Because the language is so similar, the Secretary originally intended to include virtually identical provisions in the NPRMs for both programs. However, since the Part H NPRM was published, the Department has received numerous comments expressing concerns about a provision in the personnel standards section of that NPRM related to "alternative standards." (See proposed 34 CFR Part 303, at FR 44360, November 18, 1987.)

On the basis of those comments, the Secretary has elected not to include the "alternative standards" provision in the NPRM for this part. The Secretary recognizes that this change does not address all of the concerns raised by commenters on the Part H NPRM. The Secretary will carefully consider all of the comments received both on the Part H NPRM and the NPRM for this part in preparing the final regulations for both parts.

IV. Grants to the Secretary of the Interior

The 1986 Amendments state the terms and conditions of grants to the Secretary of the Interior for the education of handicapped Indian children on reservations served by elementary and secondary schools operated by the Department of the Interior. These conditions have been incorporated into § 300.260 and § 300.709 of the proposed regulations. In interpreting the statutory requirements, § 300.260 of the proposed regulations lists the parts of sections 612 and 613 that apply to applications for grants submitted by the Secretary of the Interior.

The 1986 Amendments also increased the percentage of Part B funds available to the Secretary of the Interior from up to one percent to a fixed 1.25 percent. This is reflected in the proposed revision to § 300.709(b).

V. State Entitlement and Use of Funds

The 1986 Amendments include revisions which allow SEAs to use additional Part B set-aside funds to pay for increases in the costs of State-level monitoring activities and complaint investigations. The authorization for this use of funds and the statutory limitation on it have been added to § 300.370(a)(2) in the proposed regulations.

The 1986 Amendments also state that an SEA may count children who have handicapping conditions aged three through five for funding purposes only if the SEA meets the requirements under section 619 of the Education of the Handicapped Act. (The requirements of section 619 were also amended in the 1986 Amendments.) The treatment of children aged three through five in the calculation of Part B grants is, therefore, revised in § 300.701 of these proposed regulations.

Similarly, a proposed revision of § 300.702 reflects a statutory change in the application of the "12% cap" on counting children with handicapping conditions for Federal funding purposes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small local educational agencies (LEAs) receiving Federal financial assistance under this program. However, the regulations would not have a significant economic impact on small LEAs because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 300.152 and 300.153 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503 Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3622, Switzer Building, 330 C Street SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites

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comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 300

Administrative practice and procedures, Education, Education of handicapped, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: January 11, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 300 of Title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for Part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

* * * * *

2. Subpart B is amended by adding a new § 300.150 to read as follows:

§ 300.150 State-level nonsupplanting.

Each program plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of State or local educational agencies—expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C 1413(a)(9))

Comment. The State must assure that EHA–B funds will be used to supplement and not supplant other Federal, as well as State and local, funds (including funds not under the control of educational agencies) expended for appropriate services provided to handicapped children. States may not use EHA–B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in handicapped children's individualized education programs. (H. Rep. 99–860, pp. 21–22 (1986))

3. Subpart B is further amended by adding new §§ 300.152 and 300.153 to read as follows:

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The State educational agency; and

(2) All other State and local agencies that provide or pay for special education or related services for handicapped children.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for special education or related services for handicapped children; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing handicapped children with free appropriate public education;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

(Authority: 20 U.S.C. 1413(a)(13))

§ 300.153 Personnel standards.

(a)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The standards required by paragraph (a)(1) of this section must be consistent with any State approved or recognized certification, licensing, or other comparable requirements which apply to the area in which a person is providing special education or related services.

(b) To the extent that a State's standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(c)(1) In meeting the requirements of paragraphs (a) and (b) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable. standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information in paragraph (c)(1) of this section must be on file in the State educational agency.

(d) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Comment. Under this part, States are required to identify the "highest requirements in the State" for the purposes of hiring or retraining personnel. This means, for example, that if standards for physical therapists are issued by both the SEA and a State licensing board, the standards of the SEA and the State licensing board must be compared to identify the "highest requirements in the State."

For instance, if a State has specific certification requirements in the area of seriously emotionally disturbed (SED) but, because of a severe shortage, the SEA in the past has issued emergency certificates to teachers who have not been trained in that area, the SEA's policies and procedures in the State plan would include: (1) A description of the steps the State is taking to retrain or hire persons that meet appropriate professional requirements (e.g., full SEA certification) in that area; and (2) the timelines for accomplishing those steps. In order to address the shortage of teachers in the area of SED, while taking steps that will lead toward full certification of those teachers, one step that the SEA might include in the State plan would be to limit the issuance of temporary certificates for a fixed term (e.g., 3 years), which would be (1) nonrenewable, and (2) given only to teachers who are continuously enrolled in an approved course of study leading toward full certification.

4. Section 300.260 is revised to read as follows:

§ 300.260 Submission of application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements in sections 612(1), 612(2)(A), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act;

(2) Meets the requirements in sections 613(a), 613(b), 613(c), and 613(e) of the Act;

(3) Meets the requirements of section 614(a) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act

listed in paragraphs (a)(1) through (a)(3) of this section; and

(5) Includes an assurance that there have been public hearings on the application, adequate notice of the public hearings, and an opportunity for members of tribes, tribal governing bodies, and designated local school boards to comment on the application before the adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a) of the Act.

(b) Sections 300.580–300.586 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

5. Section 300.370 is amended by revising the section title and paragraph (a) to read as follows:

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620 through 300.621—

(1) For support services and direct services in accordance with the priority requirements under §§ 300.320 through 300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

* * * * *

6. Section 300.552 is amended by adding a new second paragraph in the comment to read as follows:

§ 300.552 Placements.

* * * * *

The requirements of § 300.552, as well as the other requirements of §§ 300.550 through 300.556, apply to all preschool handicapped children who are entitled to receive a free appropriate public education. Public agencies that provide preschool programs for non-handicapped children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for non-handicapped preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the least restrictive environment embodied in §§ 300.550 through 300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550 through 300.556 include:

(1) Linking (even part-time) the program for preschool handicapped children to other preschool programs operated by public agencies (such as Head Start);

(2) Placing handicapped children in private school programs for non-handicapped preschool children or private school preschool programs that integrate handicapped and non-handicapped children; and

(3) Locating classes for handicapped preschool children in regular elementary schools.

In each case, the public agency must ensure that the placement is based upon each child's individualized education program and meets all of the other requirements of § 300.552.

* * * * *

7. The center heading preceding § 300.600 is revised to read as follows:

General

8. Section 300.600 is amended by adding a new paragraph (c) to read as follows:

§ 300.600 Responsibility for all educational programs.

* * * * *

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to handicapped children in the State.

(Authority: 20 U.S.C. 1412(6))

9. Subpart F is amended by adding a new § 300.601 to read as follows:

§ 300.601 Relation of the EHA–B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to handicapped children, or to alter a handicapped child's eligibility, under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

(Authority: 20 U.S.C. 1413(e))

10. Section 300.701 is amended by revising paragraph (a) to read as follows and removing and reserving paragraph (b).

§ 300.701 State entitlement, formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged six through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

* * * * *

11. Section 300.702 is amended by revising paragraphs (a)(1), (a)(3), and (b) and adding a new paragraph (a)(2) to read as follows:

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701—

(1) If a State serves all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged three through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged three through 17 in the State;

(2) If a State does not serve all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged five through 17 to the extent the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(3) The Secretary does not count handicapped children who are counted under section 146 of Title I of the Elementary and Secondary Education Act, as consolidated by section 554(a)(2)(B) of Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(b) For the purposes of paragraph (a) of this section, the number of children aged three through 17 and five through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

12. Section 300.709 is amended by revising paragraph (b) to read as follows:

§ 300.709 Payments to the Secretary of Interior.

* * * * *

(b) The amount of those payments for any fiscal year is 1.25 percent of the aggregate amounts available to all States for that fiscal year under this part.

(Authority: 20 U.S.C. 1411(f)(1))

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Monday
March 14, 1988

Part VI

Department of Education

34 CFR Part 653

Paul Douglas Teacher Scholarship Program; Withdrawal of Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 653

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Secretary withdraws the Notice of Proposed Rulemaking (NPRM) for the Paul Douglas Teacher Scholarship Program. The Secretary takes this action to inform the public that development of final regulations based on this NPRM is unnecessary.

EFFECTIVE DATE: The NPRM is withdrawn effective March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Gold, Program Specialist, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB–3), 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732–4507.

SUPPLEMENTARY INFORMATION: The Secretary of Education published in the **Federal Register** on November 25, 1987 (52 FR 45290), an NPRM governing the interest rates to be charged to scholarship recipients under the Paul Douglas Teacher Scholarship Program.

In the NPRM, interested parties were invited to submit their comments regarding the interest rate formula contained in § 653.42(c) of the regulations to the Secretary by January 11, 1988. The Secretary did not receive any comments. Since the interest rate formula was incorporated in the final regulations for the Paul Douglas Teacher Scholarship Program that were also published in the **Federal Register** on November 25, 1987 (52 FR 45284), the Secretary hereby withdraws the NPRM.

(Catalog of Federal Domestic Assistance Number 84.176: Paul Douglas Teacher Scholarship Program)

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–5547 Filed 3–11–88; 8:45 am]

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March 14, 1988

Part VII

Department of Education

Notice Inviting New Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

DEPARTMENT OF EDUCATION

[CFDA No. 84.201]

Notice Inviting New Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

Purpose: To provide Federal financial assistance to local educational agencies, community-based organizations, and educational partnerships to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Deadline for Transmittal of Applications: April 25, 1988.

Available Funds: $23,935,000.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 125.

Budget Period: 12 months.

Project Period: Up to 24 months.

Important Notes to Applicants: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department of Education is not bound by these estimates.

This notice is a complete application package containing the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application materials are necessary.

Applicable Regulations: The following regulations apply to the School Dropout Demonstration Assistance Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Supplementary Information and Requirements

References to the authorizing statute refer to section 137(c) of Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988) as referenced to parts A and C of Title VIII of the Senate amendment to H.R. 5.

(a) Selection criteria. (1) The Secretary uses the following criteria under 34 CFR 75.210(b) as adjusted in accordance with 34 CFR 75.210(c), to evaluate an application.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (40 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) above will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications, under paragraphs (b)(4)(i)(A) and (B) above the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) *Evaluation.* Among other requirements that apply in Part 75 of Title 34 of the Code of Federal Regulations, applicants should be aware of the following requirements:

Section 75.590 Evaluation by the grantee.

A grantee shall evaluate at least annually—

(1) The grantee's progress in achieving the objectives in its approved application;

(2) The effectiveness of the project in meeting the purposes of the program; and

(3) The effect of the project on persons being served by the project, including, any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

Section 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(d) *Federal evaluaton.* (1) The Secretary announces that the Department intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. All grantees will be asked to provide descriptive information and outcome data on their projects. A smaller number of grantees will be selected to participate in a more in-depth evaluation. This evaluation will involve use of control or comparison groups and collection of data on student retention, attendance, achievement, and attitudes. Projects selected for in-depth evaluation will receive assistance in conducting activities associated with the evaluation.

(2) Applicants should note that 34 CFR 75.591 requires the cooperation of grantees in any evalution of the program by the Secretary, and that 34 CFR 75.592 states that if a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee has met the evaluation requirements of the program, including those in 34 CFR 75.590.

(e) *Definition of dropout.* (1) For the purpose of this program, the Secretary makes a general statement of policy that the term "dropout," means a student who—

(i) Was enrolled in the district at some time during the previous regular school year;

(ii) Was not enrolled at the beginning of the current regular school year;

(iii) Has not graduated or completed a program of studies by the maximum age established by a State;

(iv) Has not transferred to another public school district or to a nonpublic school or to a State-approved educational program; and

(v) Has not left school because of illness or a school-approved absence.

(2) For the purpose of paragraph (e)(1)—"completed a program of studies" means received a certificate of completion—or similar designation—conferred by a public or nonpublic educational institution to indicate that the student has completed his or her program of studies, e.g., a certificate of attendance, completion of an individualized educational program (IEP) by a special education student, or completion of a State-approved, full-time, alternative secondary school, including the general education development (GED) certification.

(3) Applicants are encouraged to use this definition. If an applicant plans to use another definition in the design or evaluation of its project, the applicant should describe the definition in its application. Should subsequent legislation require a definition of "dropout," the Secretary will publish a proposed definition and invite public comment.

Authority and Program Description

For fiscal year 1988, a program titled "School Dropout Demonstration Assistance Program" (School Dropout Program) is authorized under Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). Section 137(c) of Pub. L. 100–202 states that, subject to certain qualifications, the School Dropout Program is to be carried out in accordance with Parts A and C of Title VIII of the Senate Amendment to H.R. 5. While your attention is called to the text of these provisions, the following is a summary of some of the pertinent parts of that legislation. Unless otherwise noted, section numbers in parentheses after each paragraph refer to sections in Title VIII of the Senate Amendment to H.R. 5.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate: (1) Effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

(Section 8002)

Funding Categories

The Secretary will allot the fiscal year (FY) 1988 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, $5,983,750 for FY 1988); (2) LEAs administering schools with a total enrollment of at least 20,000 but less than 100,000 (40 percent of the amount appropriated, $9,574,000 for FY 1988); (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, $7,180,500 for FY 1988); and (4) community-based organizations (5 percent of the amount appropriated, $1,196,750 for FY 1988). For category (3), grants may be made to intermediate educational units and consortia of not more than 5 LEAs if the total enrollment of the largest such LEA is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(Section 8004 as amended by section 137(c) of Pub. L. 100–202)

Educational Partnerships

In each of the first three categories mentioned under *Funding Categories*, the Secretary will allot 25 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; (2) a business concern, business organization, or community-based organization; and (3) one of the following: A private nonprofit organization, an institution of higher education, a State educational agency, a State or local public agency, a private industry council (established under the Job Training Partnership Act), a museum, a library, an educational television or broadcasting station, or a community-based organization.

(Section 8004)

Distribution of Funds

The Secretary will ensure that, to the extent practicable, in approving grant applications: Grants will be equitably distributed on a geographic basis within each enrollment size category; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

(Section 8007)

Limitation on Costs

Not more than 10 percent of any grant may be used for administrative costs.

(Section 8007)

Federal Funds

The Federal share of grants under this program shall not exceed 90 percent of the total cost of a project for the first year, and 70 percent of such cost for the second year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be in cash or in kind.

(Section 8004)

Applications

Grants may be made only to an LEA, an educational partnership, or a community-based organization that submits an application to the Secretary. The Secretary encourages applicants to submit applications for a two-year period.

Applications must contain: (1) Documentation of the number of children who were enrolled in the schools of the applicant for five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as dropouts; (2) documentation of the percentage that such number of children is of the total school-age population in the aplicant's schools; (3) a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the problem; and (4) a plan for the development and implementation of a project that will include activities designed to carry out the purpose of the program.

(Section 8005)

Allowable Activities

The plan referred to in paragraph (4) of the *Applications* section may include activities that: (1) Implement identification, prevention, outreach, or reentry projects for dropouts and potential dropouts; (2) address the special needs of school-age parents; (3) disseminate information to students, parents, and the community related to the dropout problem; (4) include coordinated activities involving at least one high school and its feeder junior or middle schools and elementary schools for those local educational agencies having such feeder systems; (5) as appropriate, include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act; (6) involve the use of educational telecommunications and broadcasting technologies, and educational materials for dropout prevention, outreach, and reentry; (7) focus on developing occupational competencies that link job skill preparation and training with genuine job opportunities; (8) establish annual procedures for (i) evaluating the effectiveness of the project, and (ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country; (9) coordinate, to the extent practicable, with other student dropout activities in the community; or (10) use the resources of the community and parents to help develop and implement solutions to the local dropout problem.

(Section 8005)

Authorized Activities

In addition to the activities mentioned under *Allowable Activities*, grants may also be used for educational, occupational, and basic skills testing services and activities, including, but not limited to: (1) The establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry; (2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school; (3) the establishment or expansion of work-study, apprentice, or internship programs; (4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population; (5) the evaluation and revision of program placement of students at risk; (6) the evaluation of program effectiveness of dropout programs; (7) the development and implementation of programs for traditionally underserved groups of students; (8) the implementation of activities which will improve student motivation and the school learning environment; (9) the provision of training for school staff on strategies and techniques designed to identify children at risk of dropping out, intervene in the instructional program with support and remedial services, develop realistic expectations for student performance, and improve student-staff interactions; (10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and youth gang prevention community organizations; (11) the study of the relationship between handicapping conditions and student dropouts; (12) the study of the relationship between the ratio of dropouts among gifted and talented students compared to the ratio of dropouts among the general student enrollment; (13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and (14) the provision of other educational, occupational, and testing services and activities that directly relate to the purpose of the program.

(Section 8006)

Activities for Educational Partnerships

Grants under this program may be used by educational partnerships for: (1) Activities that offer jobs and college admissions for successful completion of the program for which assistance is sought; (2) internship, work study or apprenticeship programs; (3) summer employment programs; (4) occupational training programs; (5) career opportunity and skills counseling; (6) job placement services; (7) the development of skill employment competency testing programs; (8) special school staff training projects; and (9) any other activity described under *Authorized Activities*.

(Section 8006)

Priorities

In approving applications, the Secretary will give priority to: (1) Applications that show the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA; or (2) applications that reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(Section 8005)

Special Considerations

The Secretary will give special consideration to: (1) applications that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; and (2) applications which contain provisions for significant parental involvement in the design and conduct of the program for which the assistance is sought.

(Section 8005)

Continuation

In any application from a local educational agency for a grant to continue a project for a second year, the Secretary reviews the progress being made toward meeting the objectives of the project. The Secretary may refuse to award a grant if the Secretary finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(Section [illegible])

Supplement, not Supplant

LEAs must use Federal funds received under this program only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the activities described above.

(Section 8201)

Coordination and Dissemination

LEAs receiving funds under this program must cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(Section 8201)

Definition

As used in this program, the term "community-based organization" means a private nonprofit organization that is representative of a community or significant segments of a community, and that provides educational or related services to individuals in the community.

(Section 8202)

Priorities and Special Considerations

(a) Priorities

In accordance with EDGAR, 34 CFR 75.105(c)(3), applications that meet either of the two priorities in paragraphs (1) and (2) below will receive from the Secretary absolute preference over applications that do not. Applications that do not address one of the priorities will not be considered. Applications must propose projects that either:

(1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency; or

(2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category identified in section 8004(a) of the Act.

(b) Special Considerations

(1) In accordance with EDGAR, 34 CFR 75.105(c)(2), the Secretary will give special consideration to applications that:

(i) Emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; or

(ii) Contain provisions for significant parental involvement in the design and conduct of the program for which assistance is sought.

(2) An application that meets either of these two conditions will receive a competitive preference over an application of comparable merit that does not.

(c) Invitational Priority

(1) In accordance with EDGAR, 34 CFR 75.105(c)(1), the Secretary invites applicants to propose projects that include activities designed to promote and foster—

(i) Strong instructional leadership;

(ii) A safe and orderly climate in schools and related facilities;

(iii) An emphasis on basic skills;

(iv) Frequent assessment of pupil progress;

(v) High teacher expectations for student achievement;

(vi) Opportunities for parents to enroll their children in a school of their choice within the project area;

(vii) Cost-effectiveness for ease of replication or continuation without Federal funding; and

(viii) A positive impact on the family.

(2) An application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and the title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number of this program.

Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF-424 and instructions).

Part II: Budget Information (form and instructions).

Part III: Application Narrative.

No grants may be awarded unless a completed application form has been received.

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OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
☐ NOTICE OF INTENT (OPTIONAL)
☐ PREAPPLICATION
☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER
NOTE TO BE ASSIGNED BY STATE
a. NUMBER
b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
a. NUMBER 8 4 . 2 0 1
MULTIPLE ☐
b. TITLE School Dropout Demonstration Assistance Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State
B—Interstate
C—Substate Organization
D—County
E—City
F—School District
G—Special Purpose District
H—Community Action Agency
I—Higher Educational Institution
J—Indian Tribe
K—Other *(Specify)*:
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant
B—Supplemental Grant
C—Loan
D—Insurance
E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

14. TYPE OF APPLICATION
A—New
B—Renewal
C—Revision
D—Continuation
E—Augmentation
Enter appropriate letter A

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars
B—Decrease Dollars
C—Increase Duration
D—Decrease Duration
E—Cancellation
F—Other *(Specify)*:
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ▶ *Year month day* 19

19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED
☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE ____________

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE▶ *Year month day* 19

30. STARTING DATE *Year month day* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month day* 19

33. REMARKS ADDED
☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION
IS NOT USABLE

424-103

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STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

Instructions for Part I—Federal Assistance Face Sheet (SF-424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A-102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a-h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED-CRS number consisting of the IRS employer identification number prefexed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION

Section A - Budget Categories for Program Year 1988-89

1.	Salary and Wages	$
2.	Fringe Benefits	
3.	Travel	
4.	Equipment	
5.	Supplies	
6.	Contractual Services	
7.	Other (itemize)	
8.	Total Direct Costs (lines 1 to 7)	
9.	Total Indirect Costs	
10.	Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1.	Program Income	$
2.	Non-Federal Funds (State, local, etc.)	
3.	In-Kind Contributions	

Section C - Estimate of Funding Needs

1.	First Fiscal Year	$
2.	Second Fiscal Year	
3.	Third Fiscal Year	N/A

Section D - Estimate of Unobligated Funds

1.	Unobligated Federal Funds from Preceding Fiscal Year	$ N/A
2.	Unobligated Non-Federal Funds from Preceding Fiscal Year	N/A
3.	Total Unobligated Funds from Preceding Fiscal Years (lines 2 + 3)	N/A

Section E - Budget Narrative (see instructions)

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Budget Summary

Enter the Total Fund (Federal) Requirements by Budget Categories

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. Contractural Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1–6 above.

8. Total Direct Costs: Show total for lines 1–7.

9. Total Indirect Costs: Indicate the amount of indirect costs to be charged to the program or project. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

1. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year.

2. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year that are from non-federal sources.

3. Total: Show total for lines 1 and 2.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for individual direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

BILLING CODE 4000-01-M

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM
Data Sheet

Please check the appropriate box.

☐ Total enrollment of 100,000 or more elementary and secondary school students.

☐ Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.

☐ Total enrollment of less than 20,000 elementary and secondary school students, intermediate educational unit, or consortium. Check here if enrollment is less than 2,000 ____.

*Please check the box below if the applicant is a community-based organization.

☐

**Please check the box below if the applicant is submitting the application as an educational partnership. Then list the three members of the partnership and circle the type of organization.

☐

(A)______________________________
LEA

(B)______________________________
business concern, business organization, or community-based organization

(C)______________________________
any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization.

*Evidence of the applicant's non-profit status should be attached.

**Evidence of the applicant's non-profit status should be attached if the educational partnership includes a nonprofit private organization.

BEST COPY AVAILABLE

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please provide the information set forth below on the number and percentage of children who were enrolled in the applicants' schools for 5 academic years prior to the date of this application who have not completed their elementary or secondary education and who are classified as dropout students.

School Year	No. Dropout Students	Total Enrollment	Percentage of Dropouts
1986-87			
1985-86			
1984-85			
1983-84			
1982-83			

Applicant's Definition of a Dropout:

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Absolute Priorities

Identify the priority under which you are submitting the application by marking the appropriate box.

☐ Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA.

☐ Application reflects very high numbers or very high percentages of school dropouts in the applicant's schools.

Competitive Priorities: Special Considerations

Identify the special consideration under which you are submitting the application by marking the appropriate box.

☐ Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.

☐ Application contains provisions for significant parental involvement in the design and conduct of the program.

Invitational Priorities

Identify each invitational priority under which you are submitting the application, if applicable.

☐ ________________________________

☐ ________________________________

☐ ________________________________

☐ ________________________________

BILLING CODE 4000-01-C

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Instructions for Part III—Application Narratives

Before preparing the Application Narrative, applicants should read carefully the programmatic requirements, the information regarding priorities, and the selection criteria for the School Dropout Demonstration Assistance Act. The information is included in this application notice. In addition, applicants should read the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 Administration of Grants and Part 75 Direct Grant Programs.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract—that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice; and
3. Supply necessary data on the data sheets provided. Applicants should record the appropriate priorities, enrollment data, number and percent of dropouts and potential dropouts. Applicants should include the definition of a dropout that they use in collecting data.

Please limit the Application Narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

(Approved by the Office of Management and Budget under control number 1810-0535)

Assessment of Educational Impact: The Secretary requests comments on whether the information collection requirements in this notice would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

FOR FURTHER INFORMATION CONTACT: Janice Williams-Madison, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-1924.

Program Authority: Pub. L. 100-202.

Dated: March 9, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-5543 Filed 3-10-88; 3:22 pm]

BILLING CODE 4000-01-M

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's *List of Public Laws.*

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
*4	14.00	Jan. 1, 1988
5 Parts:		
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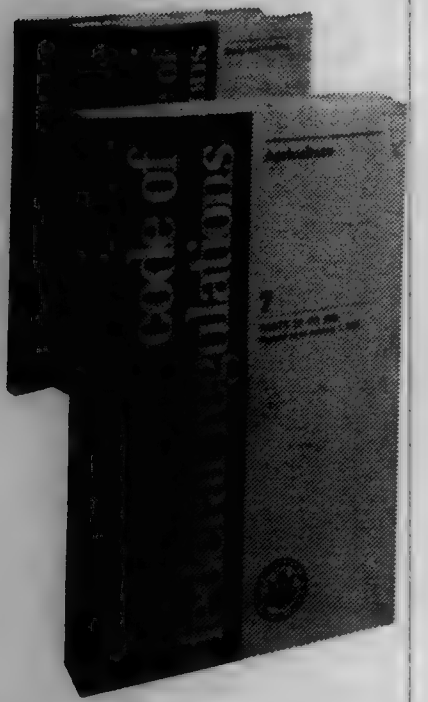

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending Part 1650 by adding a new Subpart J which establishes a claim procedure for participants and beneficiaries who disagree with the Board over the provision of, or failure to provide, a benefit under the Thrift Savings Plan. Part 1650 sets out the Board's regulations governing the withdrawal of funds from the Thrift Savings Plan by a participant or beneficiary.

DATES: Interim rules effective August 26, 1987; comments must be received on or before April 15, 1988.

ADDRESS: Comments may be sent to John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION: This amendment to Part 1650 describes the notice which a participant or beneficiary who is being denied benefits will receive, as well as the content of a request to the Board for review of the denial. In addition, the regulations identify the time and place for filing the request for review and the time limit within which the Board's Executive Director will make a decision on the appeal. These regulations are effective retroactive to August 26, 1987, in order to conform with the effective date of Part 1650.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will only affect participants and beneficiaries of the Thrift Savings Plan who have a claim for benefits.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun making Plan benefits available to participants and beneficiaries and it is necessary to have a claim procedure in place so that they may challenge Board actions on benefits.

List of Subjects in 5 CFR Part 1650

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,
Executive Director.

For the reasons set forth in the preamble, 5 CFR Part 1650 is amended as follows:

PART 1650—[AMENDED]

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), and 8474(c)(1).

2. A new Subpart J is added to read as follows:

Subpart J—Denial of Benefits

Sec.
1650.50 Notice of denial.
1650.51 Request for review.
1650.52 Review decision.

Subpart J—Denial of Benefits

§ 1650.50 Notice of denial.

(a) *Time.* If a claim for benefits under this Part is denied in whole or in part by the TSP Service Office, the claimant will be mailed a notice of the denial within 60 days of the receipt of the claim by the TSP Service Office.

(b) *Content.* The notice of denial shall be written in a manner calculated to be understood by the claimant and it shall contain:

(1) The reason or reasons for the denial;

(2) A reference to the law or regulation upon which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect his or her claim and an explanation of why such material or information is necessary; and

(4) Appropriate information concerning the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

§ 1650.51 Request for review.

(a) *Content.* A claimant or his or her duly authorized representative may, by written application to the Executive Director, request a review of the denial of a claim. A request for review need not be on any particular form, but shall contain the following information:

(1) If the claimant is a participant, the name, address, social security number, date of birth, and current employing agency or, if separated from Government service, the last employing agency.

(2) If the claimant is not the participant, claimant's name, address, and relationship to the participant as well as any of the information about the participant identified in paragraph (a)(1) which the claimant possesses.

(3) A copy of the letter or other communication from the TSP Service Office, denying the claim in question.

(4) A statement of the claimant's reasons, comments or arguments as to why the claim should not have been denied.

(b) *Time and place for filing.* In order to be considered, a request for review must be received by the Federal Retirement Thrift Investment Board within 60 days following the date of mailing of the written notification denying the claim. Delivery may be by ordinary, registered, certified or overnight mail or by hand. The address is: Federal Retirement Thrift Investment Board, 805 15th Street, NW., Washington, DC. Receipt by an employing agency shall not constitute receipt by the Board.

§ 1650.52 Review decision.

The Executive Director shall notify the employee of the decision on the employee's appeal within 60 days after the Board's receipt of the request for review. This decision shall be written in an understandable manner and shall include the reasons therefor as well as references to applicable statutes and regulations. If the decision denies the claimant's request, in whole or in part, the employee shall have exhausted his or her administrative remedy and shall be eligible to file suit in the appropriate Federal district court pursuant to 5 U.S.C. 8477.

[FR Doc. 88-5557 Filed 3-14-88; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Suspension of the Compensation Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This final rule suspends, for an indefinite period, a provision of the marketing order for lemons produced in California and Arizona, relating to compensation rates for Lemon Administrative Committee (LAC) members. The LAC is the agency responsible for local administration of the marketing order for lemons grown in California and Arizona. This action will allow the LAC to recommend an increase in the daily compensation which LAC members or alternates acting as members may receive. Presently, such compensation is limited to $25 per day.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-3920.

SUPPLEMENTARY INFORMATION: This suspension order is issued under Marketing Order No. 910 [7 CFR Part 910], as amended, regulating the handling of lemons grown in California and Arizona. The order is in effect pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons subject to regulation under the lemon marketing order, and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of lemons may be classified as small entities.

This action will not have a significant economic impact on small producers or handlers. The compensation rate paid to LAC members is derived from the administrative budget which consists of uniform assessments collected from handlers in order for the LAC to operate and carry out its functions each crop year. The LAC does not anticipate that it would be necessary to increase the current assessment rate to cover the additional expense. The compensation rate paid to LAC members is not a substantial portion of the LAC's budget, therefore, the U.S. Department of Agriculture (Department) does not expect it to become a substantial item in the budget now or in the future. Thus, there is no significant impact anticipated.

Statement of Consideration

The LAC is responsible for locally administering the marketing order for California-Arizona lemons. The LAC consists of 13 members from three grower districts: Eight grower members, four handler members, and one non-industry member. Each member has an alternate member to act as a member when such member is absent. Each grower member also has an additional alternate member. The LAC normally meets once each week to consider supply and demand conditions for lemons.

Section 910.29 of the lemon marketing order currently provides that members of the LAC, and their respective alternates when acting as members, be reimbursed for expenses necessarily incurred by them in the performance of their duties. Section 910.29 states that these members and alternates shall receive compensation at a rate to be determined by the LAC, which shall not exceed $25 for each day, or portion thereof, spent in attending meetings of the LAC. This rate has been in effect since 1971.

The LAC believes that this compensation rate is too low under current economic conditions. Many LAC members and alternates commute long distances and spend time away from their own or their employers' businesses in order to fulfill their obligations as LAC members. Therefore, the LAC has recommended that the provision of the order limiting compensation to $25 be suspended indefinitely in order to allow the LAC to recommend to the Department an increase in the rate. The LAC intends to recommend an increase in compensation consistent with compensation rates paid to members of the Navel and Valencia Orange Administrative Committees. That rate is $50 per day for members or alternates acting as members and $100 per day for the non-industry member or alternate acting as a non-industry member. Any increase in the compensation rate will be subject to approval by the Secretary in the annual LAC budget approval process.

Notice of this action was published in the Federal Register [53 FR 255] on January 6, 1988. Written comments were invited from interested persons until February 5, 1988. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this suspension order will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that the suspension of the compensation rate in § 910.29, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

It is therefore ordered, that the following provision in § 910.29 of the California and Arizona lemon order is hereby suspended indefinitely.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 910.29 [Amended]

2. In § 910.29, the phrase "at a rate to be determined by the committee, which rate shall not exceed $25" is suspended indefinitely.

Dated: March 8, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-5680 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1987-88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1987-88 marketing year. These percentages specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers.

EFFECTIVE DATES: July 1, 1987 through June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 982 [7 CFR Part 982], as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,400 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the marketing order, is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes the formulas for computing the inshell trade demand, as well as preliminary, interim, and final percentage which establish the amount of inshell filberts/hazelnuts the market can support throughout the season. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must recommend to the Secretary final percentages which release 100 percent of the inshell trade demand plus 15 percent of the prior three years trade acquisitions. The 15 percent over 100 percent of the inshell trade demand is released to ensure an adequate carryover into the following season. The Board's recommendation and this final rule are based on requirements specified in the order.

This final rule restricts the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. However, the domestic outlets for this commodity are characterized by limited demand and the establishment of free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages made available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) during the 1987-88 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced preliminary free and restricted percentages of 19 percent and 81 percent, respectively, which released 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and

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approve its marketing policy and recommend to the Secretary for approval, the establishment of interim and final free and restricted percentages. The Board uses current crop estimates to calculate the interim and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final percentages release an additional 15 percent of the average trade acquisitions which is used to ensure an adequate carryover into the following season. The final percentages must be effective at least 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

On September 3, 1987, the Board discussed its marketing policy and recommended the use of volume control regulations for the 1987–88 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The Board met on November 12, 1987, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1987–88 domestic inshell market. Accordingly, no interim free and restricted percentages were recommended. The final marketing percentages are based on the industry's final production estimates and release 4,723 tons to the domestic inshell market.

In addition to complying with the provisions of the marketing order, the Board also considers the Department's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent year's sales in those outlets before secondary market allocations are approved. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (420 tons) has been included in the calculations used in determining the inshell trade demand. The final percentage, which would make available 100 percent of the inshell trade demand plus 15 percent of the average trade acquisitions, would also make available 125 percent of prior years' sales, thus exceeding the Guideline's requirement.

The marketing percentage are based on the industry's final production estimates and the following supply and demand information for the 1987–88 marketing year:

Inshell supply	Tons
(1) Total production (USDA official forecast of orchard-run production, 1987 crop)	20,000
(2) Less substandard, farm use (disappearance)	1,568
(3) Merchantable production (the Board's adjusted crop estimate)	18,432
(4) Plus undeclared carryin as of July 1, 1987, subject to regulation	0
(5) Supply subject to regulation (Item 3 plus Item 4)	18,432
(6) Average trade acquisition based on three prior years' domestic sales	4,198
(7) Increase to encourage increased sales (10 percent)	420
(8) Less declared carryin as of July 1, 1987, not subject to regulation	525
(9) Inshell Trade Demand	4,093
(10) 15 percent of the average trade acquisitions based on three years' domestic sales	630
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,723

Percentages	Free	Restricted
(12) Final percentages (Item 11 divided by Item 5)×100	26	74

Notice of this action was published in the **Federal Register** [53 FR 901] on January 14, 1988. Written comments were invited from interested persons until February 16, 1988. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that the addition of § 982.237, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1987–88 marketing year began July 1, 1987, and the percentages established herein apply to all merchantable filberts handled from the beginning of the crop year; (2) growers and handlers have been conducting their operations in anticipation of the establishment of the full trade demand and final percentages contained in this document; and (3) handlers are aware of this action which was recommended by the Board at an open meeting and need no additional time to comply with the requirements of this final rule.

List of Subjects in 7 CFR Part 982

Marketing agreements and orders, Filberts/hazelnuts, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended by adding § 982.237 to read as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 982.237 is added to Subpart—Grade and Size Regulation to read as follows:

[*The following section will not be published in the Code of Federal Regulations.*]

§ 982.237 Final free and restricted percentages—1987–88 marketing year.

(a) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1987–88 marketing year shall be 26 and 74 percent, respectively.

Dated: March 10, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5557 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 85-009F]

Standard for Frankfurters and Similar Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the standard of identity in the Federal meat inspection regulations for frankfurters and similar cooked sausages (9 CFR 319.180) and cheesefurters and similar products (9 CFR 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. This provides processors more flexibility than they have had under the standards to produce lower fat frankfurters and similar cooked sausages. Previously the standards required that products contain no more than 30 percent fat and no more than 10 percent added water. This rulemaking was initiated in response to a petition submitted by the American Meat Institute.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" under Executive Order 12291. This final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no changes are required; instead, processor flexibility will be increased.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no changes are required; instead processor flexibility will be increased.

Background

On November 24, 1986, FSIS published in the **Federal Register** (51 FR 42239) a proposal to amend the standard of identity for frankfurters and similar cooked sausage (9 CFR 319.180) and cheesefurters and similar products (9 CFR 319.181) to provide for a maximum combination of 40 percent fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished product. The proposal was developed in response to a petition submitted by the American Meat Institute (AMI) to establish a new standard for a "lite frankfurter" and other similar cooked sausages now provided for in section 319.180 of the Federal meat inspection regulations (9 CFR 319.180). The petitioner requested that the new standard provide for a minimum protein content of 11.5 percent and a maximum fat content of 22.5 percent with no specific restriction on the amount of added water. The petitioner further requested that the name "lite frankfurter" be acceptable without further label statement requirements.

For more than 30 years, the Federal meat inspection regulations (9 CFR 319.180) have required that all cooked sausages contain no more than 10 percent added water. This requirement applies to all types of cooked sausages such as frankfurters, bologna, braunschweiger, cooked salami, and Polish sausage. The standard requested by the petitioner would not limit the amount of added water, although the added water would be indirectly controlled through the establishment of protein and fat levels. The result would be that the amount of added water could be increased above the present 10 percent limit; however, as a result, the amount of fat would be required to be less than then allowed in cooked sausages under the standards. The standards for frankfurters, cheesefurters, and similar cooked sausages permit a maximum fat content of 30 percent. Also, these standards do not specify a minimum protein content. Protein content is indirectly controlled by the limits established for fat and added water.

The Standards and Labeling Division (SLD) of FSIS, which is responsible for approving labeling under the Federal Meat Inspection Act (FMIA) subject to appeal to the Administrator (Sec. 21 U.S.C. 607 (d) and (e); 9 CFR 317.4, 317.5, 335.12), has approved labeling for such "lite" sausages on a case-by-case basis Under SLD's present policy, developed during the course of approval of such labeling, the term "lite" may be used on the labeling of products which have significantly less of a component if the term "lite" is explained on the labeling. In the case of frankfurters and similar products, which have a 30 percent fat limit, a reduction of 17 percent (to 25 percent total fat) was considered significant until March 1986. Therefore, SLD has approved the labeling of a "frankfurter" as "lite" when the fat content did not exceed 25 percent. In March 1986, SLD amended the policy on labeling containing the term "lite". Under the new label approval policy, a significant reduction is a reduction of at least 25 percent. This means that in the case of frankfurters, which have a 30 percent fat limit, a reduction to 22.5 percent fat is needed to use the term "lite". An explanation of the term "lite" continues to be necessary on the label. The explanation may include nutrition labeling or a statement comparing the fat content of the "lite" product to the amount permitted by the standard, found in a market basket survey, or listed in an acceptable recent reference. A "lite" frankfurter, under SLD's policy, would have a protein level of around 12.5 percent because of the added water and fat limitations in the present standard.

A review of nutritional information that accompanied labels approved for frankfurters and similar cooked sausages during the period of July 1983 to April 1984 shows that many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent (most frequently 14 to 16 percent). A portion of this protein arises from the addition of flavors and binders of animal and/or vegetable origin, the use of which varies among manufacturers. In the last 10 years, SLD has approved, on a case-by-case basis, labels for frankfurters and similar cooked sausages as "lower fat" products. Some of these products have a fat content as low as 20 percent.

The Petition

AMI asserted that the existing regulations and policies cannot generally be applied to lower fat cooked sausages because a significant reduction in fat results in dry and unpalatable products. Further, the petitioner claimed that SLD's policy on the use of the term "lite" on a cooked sausage label is overly restrictive and largely unnecessary. AMI asserted that current nomenclature for product with more than 10 percent added water is unreasonably burdensome labeling and has acted to inhibit the marketing of these sausages. AMI also asserted that the policy requiring an explanation of the term "lite" on labeling is without precedent and is inconsistent with the Food and Drug Administration's (FDA) approach to "reduced calorie" claims. The petitioner argued that there is no need for a mandatory quantitative comparison because the composition and labeling of these products would be tightly controlled by the new standard. In addition, the petitioner mistakenly claimed that SLD policy requires nutrition labeling in conjunction with the term "lite", and suggested that this would be unnecessary if a "lite sausage" standard were to be adopted.

AMI recommended a maximum total fat content of 22.5 percent for a "lite" cooked sausage. This would be a 25 percent reduction from the current standard of no more than 30 percent fat.

The petitioner also asserted that the new standard should at least maintain the same protein levels that consumers have come to associate with traditional cooked sausages. The petitioner claimed that the vast majority of cooked sausages have a minimum of 11 percent protein and therefore recommended a minimum of 11.5 percent protein in the standard for "lite frankfurters" as a reasonable and achievable requirement.

The Center for Science in the Public Interest (CSPI) had also been in direct communication with the Agency concerning the AMI petition. CSPI contended that the proposed AMI standard would not result in a product that would be sufficiently low in fat or calories to be called "lite". CSPI added that it believed that the term "lite" would deceive consumers into purchasing the product because they would falsely believe that the product was low in fat or calories.

CSPI also did not agree that palatable lower fat products cannot be prepared under the present standard, and pointed out the presence in the marketplace of cooked sausages that are lower in fat without exceeding the 10 percent added water limit.

CSPI believed that consumers will assume that products labeled "lite" will not only be lower in fat but also higher in protein. Although CSPI did not object to these products containing more than 10 percent added water, it did believe that this fact should be prominently displayed on the label. CSPI did not see a reason for devising a new standard.

Finally, the Western States Meat Association's Board of Directors submitted a resolution that asked the Department to consider standards that would provide flexibility to its industry to market products that are gaining consumer acceptance but do not degenerate or lower product quality.

FSIS Response

In general, FSIS believes that the request of the petitioner (AMI) is in keeping with FSIS's desire to facilitate the marketing, when possible, of lower fat products. Frankfurters and similar cooked sausages are important components of the American diet, and it is desirable to encourage a variety of such products as long as they are not nutritionally inferior to similar products presently in the marketplace.

The petitioner's claim that a significant reduction in fat results in dry and unpalatable products is not supported. Many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent.

Notwithstanding this, FSIS believes that it is appropriate to allow cooked sausages with more added water as long as these products are not nutritionally inferior to the presently available cooked sausages. As a result, FSIS proposed to amend the standards for frankfurters, cheesefurters, and similar cooked sausage products (9 CFR 319.180 (a) and (b) and 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. FSIS believes that this would assure that the products are comparable from a protein, vitamin, and mineral standpoint to the products presently in the marketplace, but at the same time allow for greater flexibility in product formulation.

FSIS also views this approach as preferable to the petitioner's approach because setting an appropriate protein content based on currently available information would be quite difficult. The proposed rule, on the other hand, is restricted to water and fat limits already addressed in the regulations and would allow lower fat levels without the need for additional controls associated with setting new protein levels.

FSIS also questions the wisdom of including in a product standard a specific term such as "lite" when so many other terms could legitimately be used and when the term itself can be used in different ways and contexts. To restrict terminology this way did not seem reasonable and would preclude the use of terms that are just as useful and informative. FSIS believes that standardizing varieties of a product simply to permit manufacturers to avoid a labeling explanation would unduly restrict competition and discourage manufacturers from providing to consumers information now available. Also such a position would be inconsistent with FSIS's policies that assure labeling is not false or misleading and encourage manufacturers to provide additional information. Further, if the term were added to the regulations, this could preempt its use in other contexts. Therefore, FSIS did not propose to include the term "lite" in the regulations.

FSIS also notes that the FDA requires that labels with the term "lite" include full nutrition labeling. USDA does not require nutrition labeling. However, a company can compare the macronutrient content, i.e., the calorie, protein, carbohydrate, and fat content, of a "lite" cooked sausage product to the standard using the recognized format. A comparison of the percentage of the U.S. Recommended Daily Allowance for vitamins, minerals, and protein may also be included. FSIS also notes that many companies preparing food products under the jurisdiction of FDA also provide useful explanatory information such as "One-third less calories than other similar products."

Therefore, FSIS did not propose to adopt a "lite sausage" standard *per se*. FSIS continues to believe that an explanation of the term is necessary to prevent labeling from misleading consumers. It is important that the consumer understand the meaning of the term "lite", and such a term should be explained whenever it is used because of its inherent vagueness. As discussed, the explanation may take the form of a suitable quantitative comparative statement of fat content.

During the rulemaking process, FSIS considered the option of eliminating the standard of identity for frankfurters. As indicated in the notice of proposed rulemaking, no standard setting maximum fat or added water content is currently in place for analogous cooked sausages prepared with poultry product ingredients, e.g., chicken frankfurters. FSIS solicited public comment on whether there is a market failure that creates a need for the frankfurter standard and on the benefits and costs to industry and consumers associated with eliminating the standard.

In addition to eliminating the standard, FSIS considered the use of appropriate labeling. CSPI had stated that without appropriate labeling, consumers will be deceived into thinking that the new frankfurters are not only lower in fat but higher in protein. FSIS solicited comments on CSPI's contention and on whether without a standard there would be a market failure creating the need for labeling. One labeling alternative that FSIS identified as potentially appropriate is labeling each package of frankfurters with the relative percentage of fat, added water, and/or protein. This approach might be easiest for processors because their products are formulated by percentage. However, FSIS did not endorse any specific labeling alternative and actively solicited public comment on the advantages and disadvantages of percentage labeling as well as suggestions on what other types of labeling would be preferable. In evaluating labeling alternatives, commenters were asked to discuss the specific information problems consumers face, the costs and burdens on processors, the technical feasibility of such labeling, and the public's ability to use the labeling effectively.

Comments on the Proposed Rule

The comment period on the proposal was scheduled to close on January 23, 1987. However, in response to several requests, FSIS extended the comment period an additional 60 days (52 FR 2416) until March 24, 1987, and later an additional 90 days (52 FR 9303) until June 22, 1987.

FSIS received 115 comments in response to the proposal—75 from consumers, 12 from trade associations, 15 from industry, and 13 from educational or governmental organizations. Of the comments received, 52 opposed the proposal to allow the replacement of fat with water, 53 supported the proposal, and 10 did not voice an opinion.

Most consumer comments apparently were prompted by brief newspaper article descriptions that did not fully explain the FSIS proposal. Of the 75 comments from consumers, many expressed general opposition to the proposal because they did not want to pay high prices for additional water. While the idea of reduced fat products was supported, the concomitant increased addition of water was often viewed as undesirabel. However, some consumers believe that water is a much better alternative than fat.

Very few consumers offered any alternative approaches to reduced fat products except for the increase in lean content which can be accomplished under the current regulation. However, several commenters maintained that the price of "lite" sausage products would definitely be higher if industry were required to increase the lean content of the product. These commenters believe that consumers should have the choice of purchasing lower fat products that are not substantially more expensive than current sausage products.

The majority of the comments from industry encouraged the immediate implementation of the FSIS proposal since it would provide a minimum of change and increased flexibility. Many believe that the change will stimulate innovation and bring red meat products more in line with similar poultry products. Two commenters agreed with the original AMI request for development of a new "lite" standard that would not require an explanation of "lite" to be included on labeling. However, many commenters were opposed to the use of the term "lite" being dictated. These commenters also pointed out that due to the diverse meanings of the term "lite", it would be misleading not to include an appropriate definition on labeling. After further evaluation, AMI also supports the continued handling of terms such as "lite" within FSIS's current guidelines. FSIS will continue to require an explanation of the term "lite" according to previously established guidelines since there are numerous meanings associated with this term.

The remainder of the comments came from trade associations, consumer groups, universities, and governmental sources. Many supported the proposal to permit the exchange of water for fat, provided the percentage of fat does not exceed 30 and the percentage of fat and added water does not exceed 40. However, much of the support was conditional based upon FSIS's implementing or changing other requirements related to the Federal meat and poultry products inspection regulations.

Of those responding to the FSIS request for views on eliminating the frankfurter standard, only two commenters were in favor of such action. Their reasons were to allow for the addition of wholesome fish protein products as optional ingredients in franks and to allow red meat franks to better compete with poultry franks. Other commenters were vehemently opposed to the elimination of the standard. They believe that standards stabilize the quality of products offered to consumers. Also, as one commenter stated, traditionally, consumers have expressed concern about the ingredient composition of this category of products. Removal of the standard would justifiably heighten their concern. Others also believe that if Part 319 standards were dropped, informal standards would evolve as FSIS personnel attempt to maintain consistency within product categories.

Several commenters responded to FSIS's request for other potentially appropriate labeling approaches, including percentage labeling. Suggested alternative approaches included controls for total protein and fat and minimum meat protein levels similar to the PFF regulations for cured pork products. Only a few commenters suggested alternative approaches and there was no clear consensus on any one approach. However, the majority of those responding to this request for views supported the continuation of a standard and opposed labeling approaches such as percentage labeling as an alternative. While several supported percentage labeling in theory, stating that anything to improve the accuracy of information is desirable, most were opposed due to the cost burden anticipated and were skeptical of consumer interpretation of this type of information. AMI stated that issues involving percentage ingredient labeling must be comprehensively addressed and debated on their own merits rather than being arbitrarily applied to one category of product in such a piecemeal fashion. Another commenter believes that percentage labeling is acceptable for supplementation but a standard is required to insure the integrity of cooked sausage products.

Several issues were raised by those in support of the proposal as well as those in opposition. The following is a summary of the issues and FSIS's response to each.

1. Full Nutrition Labeling

Comment: Consumer groups in particular are concerned that without a requirement for full nutrition labeling, there will be no incentive for companies to continue producing "lite" products by increasing the lean portion if they can increase the water. Also, they believe consumers cannot judge the nutritive value of "high water" franks compared to the currently produced "lite" franks. Finally, nutrition information can alert consumers to the fact that these "lite" products may still be fairly high in fat and sodium.

Response: FSIS continues to encourage the use of full nutrition labeling. For any products labeled as "lite", SLD of FSIS requires an explanation of the term. The explanation must provide to the purchaser quantitative information about the amount of calories, fat, sodium, and/or other components in the product and include a quantitative

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comparison to the amounts permitted by an applicable standard, the amounts found in a market-basket survey, or the amounts in a similar product or class of products as found in recent applicable reference sources. FSIS believes that this requirement provides sufficient information for consumers to make informed choices.

2. Requirements for Other Sausages

Comment: Several commenters stated that the new requirement may be unfair in comparison to other sausage-type products such as salami that will continue to have to comply with the 10 percent maximum on added moisture.

Response: The petition from AMI related specifically to frankfurters and similar cooked sausages which have both fat and water restrictions. FSIS recognizes that other cooked sausage products could also be formulated with more water. However, other cooked sausage standards do not include an analogous fat content limit. In this rulemaking, FSIS has focused its attention on cooked sausages of those types which have both fat and water limitations. Petitions to change the regulations for other sausage-type products would be evaluated by FSIS on their own merits.

3. Non-meat Proteins

Comment: A number of commenters stated that the proposal failed to address the issue of non-meat proteins. Use of certain non-meat proteins can increase the amount of added water since their protein content is not deducted from the total protein prior to calculations for added water. However, other commenters saw no need to address non-meat proteins in this rulemaking since the concern is not limited to one category of products.

Response: FSIS recognizes the importance of non-meat proteins as functional ingredients. However, as several commenters pointed out, the focus of this proposal was to permit the replacement of fat with added water. Also, concerns about non-meat proteins are not limited to a single category of products and should be more comprehensively addressed. FSIS has concluded that it is not appropriate to delay implementation of this rule to address the use of non-meat proteins. FSIS is addressing the non-meat protein issue for all cooked sausage products subject to added moisture controls in a rulemaking proceeding initiated on August 18, 1987 (52 FR 30925).

4. Product Name Qualifiers

Comment: Several commenters objected to the requirement that if binders and extenders such as vegetable protein products are used, the name of each must prominently appear on the label contiguous to the product name, but there is no such requirement when ingredients such as poultry products and Mechanically Separated (Species) are used. One of these commenters also believed that FSIS should eliminate the current use limitations on vegetable protein products and credit in the calculations for added moisture the protein from ingredients such as soy protein isolate, which the commenter considered to be equivalent to meat from a protein quality standpoint.

Response: FSIS recognizes the apparent inconsistency of restrictions imposed on the use of vegetable protein products due to labeling requirements and product standards. However, these issues are not limited to a single category of product. Allowing credit for vegetable proteins, believed by some commenters to be equivalent in quality to meat protein, would allow for the replacement of livestock and poultry product ingredients with other sources of protein, such as hydrated vegetable protein products. Such a change would have broad policy implications, well beyond the scope of this rulemaking. For these reasons, FSIS believes it to be inappropriate to incorporate or consider these changes in this final rule. However, due to the merit of these comments, FSIS intends to pursue a rulemaking proceeding regarding the current use limitations on vegetable protein products and the requirements for product name qualifiers when these products are used.

Final Rule

For reasons set out in the preamble, Title 9, Part 319 of the Code of Federal Regulations is amended as set forth below.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

§ 319.180 [Amended]

2. In § 319.180, paragraphs (a) and (b) are amended by removing that portion of the fourth sentence in paragraph (a) and that portion of the fifth sentence in paragraph (b) reading: "but the sausage shall contain no more than 10 percent of added water" and substituting therefor the following: "but the sausage shall contain no more than 40 percent of a combination of fat and added water".

§ 319.181 [Amended]

3. Section 319.181 is amended by removing that portion of the last sentence reading: "These products shall contain no more than 10 percent of added water and/or ice, 30 percent fat" and substituting therefor the following: "These products shall contain no more than 40 percent of a combination of fat and added water, and no more than 30 percent fat".

Done at Washington, DC, on March 10, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-5656 Filed 3-14-88; 8:45 am]

BILLING CODE 3410-DM-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 145

Registration Requirements for Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Leverage Transaction Merchants and their Associated Persons; Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to its rules governing the registration under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* ("Act"), of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and the associated persons of such registrants by the National Futures Association ("NFA") and the registration of leverage transaction merchants and their associated persons by the Commission. This action is being taken in order to authorize the implementation of certain registration rules which have been submitted by NFA for Commission approval and thereby eliminate any inconsistency between the Commission's rules and those of NFA. The amendments specifically are intended to streamline the registration process by narrowing the circumstances requiring a new registration, eliminating the annual renewal of registrations, eliminating the use of certain forms, authorizing NFA to process withdrawals from registration, and implementing a temporary licensing procedure for persons changing sponsors within a 60 day period.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, attorney, Division of Trading and Markets, Commodity Futures Trade Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated July 2, 1987, NFA submitted for approval, pursuant to section 17(j) of the Act, proposed Registration Rules of NFA [1] which are intended to streamline the registration process and to identify in one set of rules all requirements necessary to become registered under the Act, proficiency requirements necessary to become registered with NFA as an Associate, as well as NFA registration procedures, NFA has adopted a new compilation of all Commission and NFA rules governing the registration process. Those rules essentially restate existing Commission registration requirements (as well as NFA proficiency requirements). However, those rules also introduce numerous substantive procedures which are intended by NFA to facilitate the registration process under the Act but which currently are not provided for by the Commission's registration rules.

In order to facilitate the early implementation of the NFA Rules, the Commission had proposed certain amendments to Part 3 of its regulations governing registration which were intended to eliminate any such inconsistency between the Commission's rules and those new registration procedures as reflected in the NFA Rules. *See* 52 FR 45350 (November 27, 1987). For consistency, amendments also were proposed for Commission rules governing leverage transaction merchants and their associated persons, whose registrations will continue to be processed by the Commission and not by NFA.

II. Explanation of Commission Rule Amendments

Given the extensive review and comment as to the underlying NFA rules by NFA membership,[2] the Commission's proposal did not receive adverse comment.[3] Accordingly, except as otherwise noted in this release, the Commission is adopting the amendments to Part 3 of its regulations is the form in which those amendments were published, and for the reasons previously set forth, in 52 FR 45350 (November 27, 1987).

A. Rule § 3.32

As proposed, the Commission is amending § 3.32 by deleting the reference in § 3.32(a) to changes in the form of organization of a registrant as a change requiring a new registration. The Commission also proposed to incorporate the definitions of changes in control currently described in § 3.32(d) (1)-(5) into a uniform format under § 3.32(a). 52 FR 45352. The changes in control which currently are set forth in § 3.32(d) (1)-(5) expressly were intended to specify the circumstances which the Commission would deem to constitute a change in the control of a corporation. 49 FR 8208, 8216 (March 5, 1984). Although the proposed format of § 3.32 was not intended to change existing substantive requirements, the omission of a specific reference to corporate registrants in proposed § 3.32(a) (1)-(5) could raise uncertainty as to the intent of that rule. In order to eliminate any possibility of ambiguity, the Commission is amending proposed § 3.32(a) (1)-(5) to make clear that those subsections specify changes in the control of corporate registrants.[4]

Thus, other than deleting a change in the form of organization as a basis for requiring a new registration, the Commission intends that the change in format of new § 3.32 not impose any new substantive registration requirement.

B. Rule § 3.40(d)

New § 3.40 provides that the failure of an applicant or the applicant's sponsor to respond timely (*i.e.,* in accordance with such request) to a written request for clarification of application information or resubmission of fingerprints will be deemed to constitute a withdrawal of the application and result in the immediate termination of the applicant's temporary license.

In its proposal, the Commission noted that the failure of a sponsor to respond to NFA could result in the termination of an applicant's temporary license and suggested that the applicant should be notified by NFA of any untimely response by a sponsor. *See* 52 FR 45350, 45354 n.16 (November 27, 1987). In a letter to the Commission dated December 29, 1987, NFA assured the Commission that NFA will give an applicant timely notice of a sponsor's failure to respond to requests for information.

C. Order Granting NFA Withdrawal Authority

As explained in the Commission's proposal,[5] amendments to § 3.33 would authorize procedures for NFA to follow in processing and granting withdrawals for certain registrants for whom the Commission previously has authorized NFA to grant registration (*i.e.,* futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors).[6] The Commission would continue to process withdrawals for leverage transaction merchants.[7] The Commission believes

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[1] On August 1, 1983, the Commission delegated to NFA and NFA assumed responsibilities for processing and granting applications for initial and renewal registrations of introducing brokers and their associated persons. 48 FR 35158 (August 3, 1983). Subsequently, on December 3, 1984 NFA was delegated such responsibilities by the Commission with respect to the registration of FCMs, CPOs, CTAs, and APs of such registrants. 49 FR 39593 (October 9, 1984); 49 FR 45418 (November 16, 1984). On August 22, 1985, the Commission authorized NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as an FCM, IB, CPO, CTA or AP of such registrant who is or may be subject to a statutory disqualification under sections 8a(2)-8a(4) of the Act. 50 FR 34885 (August 28, 1985); 50 FR 39080 (September 27, 1985). On September 23, 1986, the Commission authorized NFA to process and grant applications for registration with the Commission as floor brokers. 51 FR 34490 (September 29, 1986).

[2] The Executive Committee of NFA reviewed a first draft of the Registration Rules (the "Rules") at its meeting on January 15, 1987. This draft was developed by NFA staff with the participation of the Commission's Division of Trading and Markets (the "Division"). NFA staff worked closely with the Division throughout the rule development process. After suggesting certain minor revisions to the Rules, the Executive Committee authorized staff to release the Rules for comment. NFA staff sent a Notice to NFA Members (the "Notice") during the week of February 2, 1987, which explained and sought comment on the substantive changes that the Rules made to the Commission's Part 3 regulations.

In response to the Notice, NFA received comments from eight Members and from a law firm representing the National Association of Futures Trading Advisors. NFA also received comments from its Advisory Committees, all exchanges, and the Association of Registration Managers. All of the comments strongly supported the changes proposed by the Rules. However, certain suggestions were made and were incorporated into the Rules adopted by NFA's Board of Directors.

[3] Comment letters stating general support for the proposed amendments were received from the National Futures Association and an attorney.

[4] Because the amendment of § 3.32(a) (1)-(5) is, as explained above, merely intended to preserve existing Commission requirements in § 3.32, the Commission finds that notice and public comment is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administration Procedure.

[5] 52 FR 45350 (November 27, 1987).

[6] *See* 52 FR 45350, n.2 (November 27, 1987).

[7] The duration of registration of associated persons is coextensive with the duration of their association with a registrant. *See* 17 CFR 3.12(b).

Continued

that granting NFA withdrawal authority is consistent with the general assumption by NFA of registration processing[8] and the the procedures of § 3.33 permit the Commission to retain a necessary degree of control over the withdrawal process.

Accordingly, pursuant to the authority of section 8a(10) of the Act, 7 U.S.C. 12(a), the Commission hereby authorizes NFA to process and grant withdrawals for futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors under the procedures set forth in Commission rule 3.33, 17 CFR 3.33 (1987), as amended and subject to all conditions and undertakings (as appropriate) set forth in the Commission's prior order authorizing the performance of registration funcitions by NFA.[9]

D. Publication of Form 7–W

As noted above, NFA is authorized to process and grant withdrawals from registration for certain registrants and to require such registrants to petition for withdrawal of Form 7–W. Form 7–W is a standardized form which incorporates the filing requirements currently contained in rule 3.33. Thus, the new form will not impose any new substantive requirements, and its adoption simply implements previously adopted rule 3.33 requirements. The Commission is publishing as an appendix to this release a copy of Form 7–W.[10]

III. Technical Amendments

A. Section 145.6

The Commission is amending § 145.6(b) (1) and (2), which specify the parts of Commission registration forms that are available for public inspection and the locations where such forms may be inspected by adding appropriate references to Form 7–W (withdrawal for registration).[12]

B. Elimination of Form 8–S

As explained in the Commission's proposal, Form 8–R previously had been revised to incorporate the information and certifications called for in Form 8–S which is used to effect the special registration procedures of Commission rules 3.12(d) and 3.16(d).[11] As a result, there currently are two forms (8–R and 8–S) which can be used to file under the special registration procedures. NFA has stated, and the Commission concurs, that in light of the prior revisions to Form 8–R, the continued use of Form 8–S essentially constitutes a paperwork "artifact" that no longer is necessary.

Accordingly, the Commission hereby gives notice that Form 8–S is withdrawn and no longer will be used to effect the special registration procedures of Commission rules 3.12(d) and 3.16(d).

C. Removal of § 3.12a–(T)

In an unrelated matter, the Commission is deleting § 3.12a–(T). "Transfer of associated persons; temporary exemption" from its regulations, because that special provision by its terms is no longer effective.

IV. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously had determined that FCMs and registered CPOs should not be considered small entities for purposes of the RFA.[13] With respect to CTAs, floor brokers, introducing brokers and leverage transaction merchants, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities, and if so, that it would analyze the economic impact on them of any rule.[14] Because the rules would amend registration rules that currently are applicable to the above-mentioned registrants, would not result in any additional burdens and would streamline and, in some instances, eliminate the need for filings, the Commission believes that the final rules would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman of the Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this proposal and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection associated with these rules on December 22, 1987 and assigned OMB control number 3038–0023 to the rules. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 3

Associated person, Commodity pool operator, Commodity trading advisor, Futures commission merchant, Introducing broker, Leverage transaction merchant, National Futures Association, Registration requirements, Temporary licensing, Withdrawals from registration.

17 CFR Part 145

Freedom of Information Act, Registration records.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 thereof, (7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23, hereby amends Subparts A and B of Part 3 of chapter I of Title 17 of the Code of Federal Regulations as specified below.

PART 3—REGISTRATION

1. The authority citation for subpart A continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, unless otherwise noted.

3.16(b) and 3.18(b) (1987). Similarly, the duration of registration of floor brokers is coextensive with the floor broker having valid trading privileges. *See* 17 CFR 3.11(b) (1987). Thus, the termination of registration essentially is self-executing for associated persons and floor brokers simply by ceasing their association with their registrant sponsors and the termination of trading privileges, respectively.

[8] *See* 49 FR 39593 (October 9, 1984). The Commission expressly noted that it was not authorizing NFA to process and grant withdrawal petitions.

[9] Order dated October 9, 1984, 49 FR 39593, 39594–39597 (October 9, 1984).

[10] Because Form 7–W merely incorporates the substantive provisions of rule 3.33, which have been published for notice and comment, the Commission finds that notice and public comment with respect to the form itself is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administrative Procedure.

[11] 52 FR 45360, 45362 (November 27, 1987) *citing* 50 FR 28907, 28908 (July 17, 1985).

[12] Because the inclusion of references to Form 7–W in § 145.6 is merely technical in nature, the Commission finds that notice and public comment is unnecessary pursuant to 5 U.S.C. 553(c) of the Code of Administrative Procedure.

[13] 47 FR 18618–18620 (April 30, 1982).

[14] 47 FR 18618, 18620 (April 30, 1982) (CTAs and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers). *See* 49 FR 5498, 5630 (February 13, 1984) (leverage transaction merchants).

Subpart A—Registration

2. Section 3.2 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d) and by revising paragraphs (a) and (d), as redesignated, to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification of registration.

(a) Except as otherwise provided in any rule, regulation or order of the Commission, the registration functions of the Commission set forth in Subpart A, Subpart B and Subpart C of this part shall be performed by the National Futures Association, in accordance with such rules, consistent with the provisions of the Act and this part, applicable to registrations granted under the Act that the National Futures Association may adopt and are approved by the Commission pursuant to section 17(j) of the Act.

* * * * *

(d) Any registration form, any schedule or supplement thereto, any fingerprint card or other document required by this part or any rule of the National Futures Assocation to be filed with the National Futures Association shall be deemed for all purposes to have been filed with, and to be the official record of, the Commission.

3. Section 3.10 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants.

* * * * *

(b) *Duration of registration.* A person registered as a futures commission merchant in accordance with paragraph (a) of this section will continue to be so registered until such registration is suspended, revoked, terminated or withdrawn.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

4. Section 3.12 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2) and (d)(3) and by adding new paragraphs (d)(1)(vi), (d)(4) and (d)(5) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(2) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and who becomes associated with a sponsoring futures commission merchant or introducing broker will be registered as an associated person of such sponsor upon mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, containing the written certifications required by paragraph (d)(1) of this section.

(3) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such Form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license received in accordance with paragraph (d)(1) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

§ 3.12a–(T) [Removed]

5. Section 3.12a–(T) "Transfer" of associated persons; temporary exemption, is removed in its entirety.

6. Section 3.13 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.13 Registration of commodity trading advisors.

* * * * *

(b) *Duration of registration.* A person registered as a commodity trading advisor will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual Filing.* Any person registered as a commodity trading advisor in accordance with paragraph (a) of this section must file with the National Futures Association of Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

7. Section 3.14 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.14 Registration of commodity pool operations.

* * * * *

(b) *Duration of registration.* A person registered as a commodity pool operator will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as a commodity pool operator in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association to protect the commodity futures markets, members of the National Futures Association or the public, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.15 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.15 Registration of introducing brokers.

* * * * *

(b) *Duration of registration.* A person registered as an introducing broker will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as an introducing broker in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

9. Section 3.16 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2), (d)(3), and by adding new paragraphs (d)(1)(vi) and (d)(4) to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing procedure for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(3) and (e) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than 30 days previously in an amendment to such application.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certification permitted by paragraphs (d)(1)(ii)–(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) An applicant will not be granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(4) A temporary license received in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

10. Section 3.17 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3.17 Registration of leverage transaction merchants.

* * * * *

(b) *Duration of registration.* A person registered as a leverage transaction merchant will continue to be registered as such until such registration is suspended, revoked, terminated or withdrawn.

(c) *Annual filing.* Any person registered as a leverage transaction merchant in accordance with paragraph (a) of this section must file with the Commission a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the Commission. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission, the Commission may grant the request for withdrawal from registration.

11. Section 3.18 is amended by revising paragraphs (c)(1)(ii), (d) heading, (d)(1) introductory text, (d)(1)(iii), (d)(2) and (d)(3), and by adding new paragraphs (d)(1)(vi), (d)(4) and (d)(5) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(c) * * *

(1) * * *

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding three years.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (e) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the Commission of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(iii) That such person is eligible to be registered or temporarily licensed in accordance with this paragraph (d);

* * * * *

(vi) That the Disciplinary History portion of such person's registration application contains no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) and (d)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and becomes associated with a sponsoring leverage transaction merchant will be registered as an associated person of such sponsor upon mailing by that sponsor to the Commission of a Form 8–R, completed in accordance with the instructions thereto, containing the written certification required by paragraph (d)(1) of this section.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license granted in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the Commission that such person may be found subject to a statutory disqualification from registration.

* * * * *

12. Section 3.22 is amended by revising paragraphs (a) and (b) to read as follows:

§ 3.22 Supplemental filings.

* * * * *

(a) That information has come to the attention of the staff of the Commission or of the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice, or that the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

(b) That the person, or any individual who, based upon his or her relationship with that person is required to file a Form 8–R in accordance with the requirements of this Part, as applicable, must, within such period of time as the Commission or the National Futures Association may specify, complete and file with the Commission or the National Futures Association a current Form 7–R, or if appropriate, a Form 8–R, in accordance with the instructions thereto. A Form 8–R must be accompanied by that individual's fingerprints on a fingerprint card provided by the Commission or the National Futures Association for that purpose.

* * * * *

13. Section 3.31 is amended by revising paragraphs (a) and (c)(1) introductory text to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedules A, B or C of Form 7–R which no longer renders accurate and current the information contained therein. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto: *Provided,* if a registrant files a Form 3–R to report a change in the form of the organization of the registrant, such Form must be accompanied by a document signed in a manner sufficient to be binding under local law by a person authorized to act on behalf of the registrant, in which the registrant certifies that it will be liable for all obligations of the pre-existing organization under the Act, as it may be amended from time to time, and the rules, regulations or orders which have been or may be promulgated thereunder.

* * * * *

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within twenty days after the occurrence of either of the following, file a notice thereof with the National Futures Association or, in the case of a leverage transaction merchant, with the Commission, indicating:

* * * * *

14. Section 3.32 is amended by revising paragraphs (a), (d), (e)(1), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's initial registration application (or amendment of such application prior to the granting of registration):

(1) Acquires the right to vote or becomes the beneficial owner of 10 percent or more of the corporate registrant's voting securities;

(2) Becomes entitled to receive ten percent or more of the corporate registrant's net profits;

(3) Contributes 10 percent or more of the corporate registrant's capital;

(4) Becomes a director of the corporate registrant;

(5) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

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(6) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(7) Becomes a general partner of the registrant in the case of a partnership.

* * * * *

(d) In the event of a change requiring the filing of an application for registration pursuant to paragraph (a) of this section, if each person not listed as a principal on the registrant's initial application or any amendment thereto currently is registered in any capacity or is a principal of a current Commission registrant with respect to whom the registrant has made all necessary filings under this part, such registration shall not terminate until the earliest of:

(1) 90 days from the date that such change occurred; or

(2) Notification by the National Futures Association or the Commission of the granting of the new registration; or

(3) Five days after service upon the registrant of a notice by the National Futures Association or the Commission that the registrant may be found subject to a statutory disqualification from registration.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraphs (a)(4) or (a)(5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association or, in the case of a leverge transaction merchant, to the Commission, prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association or, in the case of a leverage transaction merchant, from the Commission), and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who will become a principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association, or by the Commission if the registrant is a leverage transaction merchant: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who currently is registered with the Commission as an associated person or floor broker, or is a principal of a Commission registrant for whom the filings required by this part have been made.

* * * * *

(g) Notwithstanding the provisions of §§ 3.12(a), 3.16(a) and 3.18(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10(a), 3.13(a), 3.14(a), 3.15(a), or 3.17(a) of this chapter, the applicant or registrant must file a Form 8–R with the National Futures Association, or the Commission if the applicant or registrant is a leverage transaction merchant. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, or by the Commission if the applicant or registrant is a leverage transaction merchant. This filing need not be made for any such principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association: *Provided,* That within twenty days the applicant or registrant must notify the National Futures Association, or the Commission if the applicant or registrant is a leverage transaction merchant, of the name of such added principal on Form 3–R.

* * * * *

15. Section 3.33 is amended by revising paragraphs (a)(3), (b) introductory text, (e), and (f) to read as follows:

§ 3.33 Withdrawal from registration.

(a) * * *

(3) The registrant is excluded from the persons or any class of persons required to be registered in such capacity: *Provided,* That the National Futures Association or the Commission, as appropriate, may consider separately each capacity for which withdrawal is requested in acting upon such a request.

(b) A request for withdrawal from registration under this section must be made on a Form 7–W completed and filed with the National Futures Association or with the Commission in the case of a leverage transaction merchant, in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, and must specify:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor or commodity pool operator must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the registrant, and by the National Futures Association within three business days of the receipt of such withdrawal request, to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d), 3.13(c), 3.14(c) or 3.15(c) of this chapter to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination. A request for withdrawal from registration as a leverage transaction merchant must be sent only to the Commission at the above address.

(f) Except as otherwise provided §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) and 3.17(c) of this chapter, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association (or, in the case of a leverage transaction merchant, by the Commission), or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) or the Commission of the granting of such request, unless prior to the effective date:

(1) The Commission or the National Futures Association has instituted a proceeding to suspend or revoke such registration;

(2) The Commission or the National Futures Association imposes, or gives notice by mail which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;

(3) The Commission or the National Futures Association notifies the registrant by mail, which notice shall be complete upon mailing, or the registrant otherwise is notified that it is the subject of an investigation to determine, among other things, whether such registrant has violated, is violating, or is about to violate the Act, rules, regulations or orders adopted thereunder;

(4) The Commission or the National Futures Association requests from the registrant further information pertaining to its request for withdrawal from registration; or

(5) The Commission or National Futures Association determines that it would be contrary to the requirements of the Act, or of any rule, regulation or order thereunder, or to the public interest to permit such withdrawal from registration.

* * * * *

Subpart B—Temporary Licenses

16. The authority citation for Subpart B continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act (7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23); 5 U.S.C. 552 and 552b.

17. Section 3.40 is amended by adding paragraph (d) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(d) The failure of an applicant or the applicant's sponsor to respond to a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

18. Section 3.42 is amended by revising paragraph (a)(2) and by adding paragraph (a)(3) to read as follows:

§ 3.42 Termination of temporary licenses of applicants for associated person registration.

(a) * * *

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c); or

Immediately upon the withdrawal of the registration application pursuant to § 3.40(d).

* * * * *

19. Section 3.44 is amended by revising paragraphs (a)(4) (i) and (c) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(4) * * *

(i) The futures commission merchant has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding three years; and

* * * * *

(c) An applicant that fails to respond in accordance with a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

20. Section 3.46 is amended by revising paragraph (a)(3) to read as follows:

§ 3.46 Termination of temporary licenses of applicants for guaranteed introducing broker registration.

(a) * * *

(3) Upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart in accordance with such request.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

21. The authority citation for Part 145 continues to read:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, and Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (7 U.S.C. 4a(j)), unless otherwise noted.

22. Section 145.6 is amended by revising the first sentences of paragraphs (b)(1) and (b)(2) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person and floor broker and biographical supplement to application on Form 7–R), Form 8–S (certificate of special registration), Form 8–T (notice of termination) and Form 7–W (withdrawal from firm registration) will be available for public inspection and copying. * * *

(2) The fingerprint card and any supplementary attachments filed in response to items 6–9 and 14–21 on Form 8–R, to item 3 on Form 8–S, to items 3–5 and 9–11 on Form 8–T, to items 9–10 on Form 7–R or to item 7 on Form 7–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. * * *

Issued in Washington, DC on March 8, 1988 by the Commission.

Jean A. Webb,
Secretary of the Commission.

Note.—The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6351-01-M

BEST COPY AVAILABLE

OMB No. 3038-0023

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant or NFA Membership.

WITHDRAWAL FROM FIRM REGISTRATION AND/OR NFA MEMBERSHIP

1 Registrant for which withdrawal is being requested.

NAME

ADDRESS (STREET)

CITY STATE ZIP CODE

NFA ID# CFTC ID#

2a Request for withdrawal as: (Check all categories for which withdrawal is requested. If withdrawal is for more than one category, and the reason for withdrawal is not the same for each category, provide the reason for withdrawal for each category on a supplemental sheet).

☐ Futures Commission Merchant
☐ Introducing Broker
☐ Commodity Trading Advisor
☐ Commodity Pool Operator
☐ Leverage Transaction Merchant
☐ NFA Membership

2b List clearing firm(s):

2c If a guaranteed IB, list FCM Guarantor:

3 Name and relationship to registrant of person authorized to make the withdrawal request: (In the case of a corporation, attach a certified copy of the resolution of the board of directors authorizing such individual to make the withdrawal request). ☐ ATTACHED

NAME

RELATIONSHIP

4a Person having custody of the books and records of the registrant:

NAME

STREET ADDRESS (P.O. BOX NOT ACCEPTABLE)

ADDRESS

CITY STATE ZIP CODE

TELEPHONE (   )
AREA CODE

4b Books and records of the registrant will be located at:

STREET ADDRESS (P.O. BOX NOT ACCEPTABLE)

ADDRESS

CITY STATE ZIP CODE

5a Basis for withdrawal request: (Check where applicable)

☐ The registrant has ceased or has not commenced, engaging in activities requiring registration in such capacity.
☐ The registrant is exempt from registration in such capacity.
☐ The registrant is excluded from the persons or any class of persons required to be registered in such capacity.
☐ The registrant will cease engaging in activities requiring registration in such capacity when it becomes registered in another capacity for which it has applied for registration. New registration capacity;

FORM 7-W (2-88)

OMB No. 3038-0023

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant or NFA Membership.

WITHDRAWAL FROM FIRM REGISTRATION AND/OR NFA MEMBERSHIP

5a ☐ The registrant will cease engaging in activities requiring registration in such capacity when it merges with another firm which is already registered. Name of firm to be merged with;

5b Under CFTC Regulation 3.33 and NFA Rule 601, the withdrawal will become effective 30 days from the date of NFA's receipt of the request unless the Commission or NFA denies, conditions, postpones or expedites the withdrawal. Does registration need to be withdrawn at a date other than 30 days from NFA's receipt of this request?

☐ Yes ☐ No

If YES check one:

☐ Requested date: ____________ (If withdrawal is requested fewer than 30 days from NFA's receipt of the request, such a request must include an attachment explaining the reasons for expediting the request. See NFA Rule 601.)

☐ ATTACHED

☐ When firm becomes registered in another capacity.

☐ When firm becomes merged with another registered firm. (Follow up with letter advising NFA of merger date).

5c Last date that activities requiring registration were or will be performed:

6 Answer the following items if the withdrawal request is based on the registrant being exempt from registration or excluded from the persons or any class of persons required to be registered: (Attach supplementary sheet if additional space is needed.)

a) INDICATE THE SECTION OF THE ACT, REGULATIONS OR OTHER AUTHORITY PERMITTING THE EXEMPTION OR INCLUSION

b) INDICATE THE CIRCUMSTANCES WHICH ENTITLE THE REGISTRANT TO CLAIM SUCH EXEMPTION OR EXCLUSION

7 If the withdrawal request is based on the registrant having ceased engaging in activities requiring registration, then with respect to each capacity for which the registrant has ceased such activity:

A. Have all customer or option customer agreements, if any, been terminated? ☐ YES ☐ NO*

B. Have all customer or option customer positions, if any, been transferred on behalf of customers or options customers or closed? ☐ YES ☐ NO*
If "Yes" list recipient.

C. In the case of an FCM, have all customers or option customers cash balances, securities or other property, if any, been transferred on behalf of customers or option customers or returned? ☐ YES ☐ NO*
If "Yes" list recipient.

C1. Have all obligations to customers or options customers been satisfied? ☐ YES ☐ NO*

D. In the case of a CPO, have all interests in, and assets of any commodity pool been redeemed, distributed or transferred on behalf of the participants therein? ☐ YES ☐ NO*

D1. Have all obligations to such participants been satisfied? ☐ YES ☐ NO*

E. In the case of an LTM, Have all leverage customer agreements, if any, and all leverage contracts been terminated, and all leverage customer cash balances, securities or other property, if any, been returned? ☐ YES ☐ NO*

OR

E1. Have the leverage contract obligations of the LTM been assumed by another LTM pursuant to Commission approval, and all leverage customer cash balances, securities or other property, if any, been transferred to such LTM on behalf of leverage customers or returned, and all obligations to leverage customers satisfied? ☐ YES ☐ NO*

F. Are there any pending customer, option customer, leverage customer, or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, are there any anticipated or threatened customer, option customer, leverage customer or commodity pool participant claims against the registrant? ☐ YES ☐ NO

*Furnish full details on supplemental sheet(s) or box(es)

2

OMB No. 3038-0023

COMMODITY FUTURES TRADING COMMISSION NATIONAL FUTURES ASSOCIATION FORM 7-W

Request for withdrawal from registration as a Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Floor Broker or Leverage Transaction Merchant.

7

F1. If yes, attach a statement setting forth in full the nature and extent of all such pending or anticipated or threatened claims and what provisions have been made by the registrant to satisfy such claims. ☐ ATTACHED

G. In the case of an FCM which is a party to a guarantee agreement, have all such agreements been, or will all such agreements be terminated in accordance with the provisions of CFTC Regulation §1.10(j) not more than thirty days after the filing of this request for withdrawal? ☐ YES ☐ NO*

*Furnish full details on supplemental sheet(s) or box(es)

8 If the withdrawal request is based on the registrant having ceased engaging in activities requiring registration, then with respect to an IB, FCM, or LTM registration:

A. In the case of IB which is not operating pursuant to a guarantee agreement or an FCM, this request for withdrawal must be accompanied by a Form 1-FR which contains the information specified in CFTC Regulation §1.10(d)(i) as of a date not more than 30 days prior to the date of the withdrawal request. ☐ ATTACHED

B. If such FCM or IB is also registered with the SEC as a securities broker or dealer, it may file a copy of its Focus Report, Part II or Part IIA containing the information specified in CFTC Regulation §1.10(d)(i) as of a date not more than 30 days prior to the date of the withdrawal request, in lieu of Form 1-FR. ☐ ATTACHED

C. If such introducing broker is also a country elevator, it may file a copy of a financial report prepared by a grain commission firm in accordance with CFTC Regulation §1.10(i) containing the information specified in CFTC Regulation §1.10(d)(1) as of a date not more than 30 days prior to the date of the withdrawal request, in lieu of Form 1-FR. ☐ ATTACHED

D. In the case of an LTM, the request for withdrawal must be accompanied by a Form 2-FR which contains the information specified in CFTC Regulation §31.13(F) as of a date not more than 30 days prior to the date of the withdrawal request. ☐ ATTACHED

AUTHORIZATION AND CERTIFICATION

I certify that the person named in Section 4 of this Form 7-W is authorized to make all books and records of the registrant available in accordance with CFTC Regulation 1.31. Also, the undersigned has read and understands the foregoing and represents that all information contained or incorporated in this form, including the schedules attached hereto, is accurate and complete.

Authorized Signatory (President or CEO if a corporation, General Partner, or Sole Proprietor listed in item 3)

PRINT NAME ____________________ TITLE ____________________

SIGNATURE ____________________ DATE ____________________

NOTICE

ALL CLASSES EXCEPT LTM MAIL TO NATIONAL FUTURES ASSOCIATION, 200 WEST MADISON STREET, CHICAGO, ILLINOIS 60606. LTM'S SHOULD MAIL TO COMMODITY FUTURES TRADING COMMISSION, DIVISION OF TRADING AND MARKETS, 2033 K STREET N.W., WASHINGTON, D.C. 20581.

WILLFUL FALSIFICATION, MISREPRESENTATION, OR OMISSION OF ANY MATERIAL FACT REQUIRED TO BE STATED ON THIS FORM CONSTITUTES CAUSE FOR DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION AND PROSECUTION UNDER CRIMINAL STATUES OF THE INDIVIDUAL AND FIRM MAKING THE ABOVE CERTIFICATION.

BILLING CODE 6351-01-C

COMMODITY FUTURES TRADING COMMISSION NATIONAL FUTURES ASSOCIATION FORM 7-R, 7-W

Application for registration or withdrawal of registration as Futures Commission Merchant, Introducing Broker, Commodity Trading Advisor, Commodity Pool Operator, Leverage Transaction Merchant and Application for NFA Membership.

PRIVACY ACT NOTICE

The information on ~~this~~ CFTC Form 7-R and Form 7-W is being collected pursuant to authority granted in Sections 4f, 4n, 8a and 19 of the Commodity Exchange Act [7 U.S.C. 6f, 6n, 12a and 23]. Under Section 4d of the Commodity Exchange Act [7 U.S.C. 6d], it is unlawful for anyone to act as a futures commission merchant or introducing broker without being registered in that capacity with the Commission. Under Section 4m of the Commodity Exchange Act [7 U.S.C. 6m], it is unlawful for a commodity trading advisor or commodity pool operator to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a commodity trading advisor or commodity pool operator without being registered in that capacity with the Commission, except that a commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than 15 persons and does not hold himself out generally to the public as a commodity trading advisor need not register. Under Section 19 of the Commodity Exchange Act [7 U.S.C. 23] and Section 31.5 of the Commission's regulations, it is unlawful for anyone to act as a leverage transaction merchant without being registered in that capacity with the Commission.

The information requested in Form 7-R is designed to assist NFA and the Commission, as appropriate, in determining whether the application for registration should be granted or denied and to maintain the accuracy of registration files. The information in Form 7-W is designed to assist NFA and the Commission in determining whether it would be contrary to the requirements of the Commodity Exchange Act, or any rule, regulation or order thereunder, or to the public interest to permit withdrawal from registration.

All information requested on Form 7-R or 7-W, including any Schedules and supplements thereto, must be furnished before the forms will be processed. The failure by an applicant, registrant or principal to timely file a properly completed Form 7-R may result in the denial of an application for registration or withdrawal thereof or, in the case of an annual Form 7-R, treating the registrant as having petitioned for withdrawal.

With the exception of any supplementary information contained in attachments to items 9-10 on Form 7-R and to item 7 on Form 7-W, this application is considered by the Commission to be a public record and will be available for inspection by any interested person. Copies will be maintained by National Futures Association, Registration Department, Suite 1400, 200 W. Madison Street, Chicago, IL 60606 (except those for leverage transaction merchants, which will be maintained in the public reference facilities of the Commission's Office at 2033 K Street, NW, Washington, DC 20581). Further, the CFTC or NFA may disclose any such supplementary information to third parties pursuant to routine uses which the CFTC has published in the Federal Register or as otherwise authorized under the Privacy Act, 5 U.S.C. 552a, and the Commodity Exchange Act. Disclosure of such information may be made by the CFTC as follows: (1) in connection with administrative proceedings or matters in litigation; (2) in connection with investigations; (3) where the information is furnished to regulatory, self-regulatory and law enforcement or other governmental agencies to assist them in meeting responsibilities assigned to them by law; (4) where disclosure is required under the Freedom of Information Act [5 U.S.C. 552]; (5) in connection with an employer's hiring or retention of an employee; (6) in connection with the verification of information submitted for sponsorship purposes; (7) in other circumstances in which the withholding of such information appears unwarranted; and (8) in connection with legally required or authorized reports. Disclosure may be made by NFA in accordance with rules approved by the CFTC. If the applicant believes that the placing of the information contained in the attachments to items 9-10 on Form 7-R and to item 7 on Form 7-W in the Commission's or National Futures Association's public files would reveal sensitive business information, or would constitute a clearly unwarranted invasion of personal privacy, the applicant may petition the Commission, or National Futures Association, to treat such information as non-public in response to requests under the Freedom of Information Act [5 U.S.C. 552].

Forms which have not been prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this form shall not constitute any finding that it has been filed as required or that the information is true, current or complete. Misstatements or omissions of fact may constitute federal criminal violations [7 U.S.C. 13 and 18 U.S.C. 1001].

[FR Doc. 88-5332 Filed 3-14-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87-34-000 through RM87-34-053; Order No. 500-D]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Modifying Dates

March 8, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order modifying dates.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in order to continue in effect beyond March 31, 1988, the temporary modifications to its take-or-pay crediting provisions adopted in Order No. 500-C [1] unless changed by the final rule in this proceeding. This will give the Commission additional time to develop a final rule, while continuing to mitigate the various problems arising under crediting discussed in Order No. 500-C.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

Order Modifying Dates

Issued March 8, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

In Order No. 500-C,[2] issued on December 23, 1987, the Commission modified until April 1, 1988, the treatment under the Order No. 500 crediting provisions of casinghead gas, gas purchased by processing plants

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[1] 52 FR 48986 (Dec. 29, 1987).

[2] 52 FR 48986 (Dec. 29, 1987).

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under percentage-of-proceeds operating agreements, and gas released by intrastate pipelines. The Commission made these temporary changes [3] in order to mitigate various problems caused by the interim rule's crediting provisions while the Commission developed the final rule responding to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987).

It is not practicable for the Commission to issue a final rule in this proceeding by April 1, 1988. More time is needed in order to develop a final rule in light of the voluminous comments submitted in this proceeding. In addition, the Commission must conduct a public hearing under section 502(b) of the Natural Gas Policy Act of 1978 in order to give interested persons an opportunity for an oral presentation of views. That hearing will be held on April 11 and, if necessary, April 12, 1988. The Commission will need additional time in order to consider the views expressed by the participants in that hearing.

Accordingly, the Commission has determined to continue in effect the temporary modifications to crediting adopted in Order No. 500–C unless changed by the final rule in this proceeding. Specifically, the Commission is amending §§ 284.8(f)(4)(ii), (f)(9), (f)(10)(i), and (f)(10)(ii) and 284.9(f)(4)(ii), (f)(9), (f)(10)(i), and (f)(10)(ii) by removing the deadlines previously established for these provisions. This will give the Commission additional time to develop a final rule, while continuing to mitigate the various problems arising under crediting discussed in Order No. 500–C.

The amendments to the crediting regulations adopted in this order will become effective on March 8, 1988. The Commission finds that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3) (1982) since the amendments continue in effect provisions of the crediting regulations designed to relieve restrictions on the ability of producers and shippers of gas to obtain interstate transportation of gas. With respect to the substance of these changes, the Commission adopts and incorporates in support hereof the administrative findings stated in Part VI of Order No. 500.[4]

List of Subjects in 18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,
Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

§ 284.8 [Amended]

2. In § 284.8, paragraph (f)(4)(ii) is amended by removing the phrase "arising from transportation performed before April 1, 1988," from the last sentence.

3. In § 284.8, paragraph (f)(9) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence of the introductory text and inserting in its place the phrase "after January 1, 1988."

4. In § 284.8, paragraph (f)(10)(i) introductory text is amended by removing the phrase "Until April 1, 1988," from the first sentence.

5. In § 284.8, paragraph (f)(10)(ii) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence and adding in its place and phrase "after January 1, 1988."

§ 284.9 [Amended]

6. In § 284.9, paragraph (f)(4)(ii) is amended by removing the phrase "arising from transportation performed before April 1, 1988," from the last sentence.

7. In § 284.9, paragraph (f)(9) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence of the introductory text and inserting in its place the phrase "after January 1, 1988."

8. In § 284.9, paragraph (f)(10)(i) introductory text is amended by removing the phrase "Until April 1, 1988," from the first sentence.

9. In § 284.9, paragraph (f)(10)(ii) is amended by removing the phrase "from January 1, 1988 through March 31, 1988" from the first sentence and adding in its place the phrase "after January 1, 1988."

[FR Doc. 88–5571 Filed 3–14–88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0518]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 15, 1988; objections by April 14, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFF–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3350), FDA announced that a petition (FAP 7B3978) had been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) of the food additive regulations be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

FDA has evaluated data in the petition an other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in 21 CFR 178.3570 should be amended in paragraph (a)(3) by inserting a new item in the list of substances

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1988, file with the Dockets Management Branch written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3570 is amended in paragraph (a)(3) by alphabetically inserting a new entry to the table to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *
(3) * * *

Substances	Limitations
* * *	* *
N-phenylbenzenamine, reaction products with 2,4,4-trimethylpentene (CAS Reg. No. 68411-46-1).	For use only as an antioxidant at levels not to exceed 0.5 percent by weight of the lubricant.
* * *	* *

* * * * *

Dated: March 7, 1988.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–5618 Filed 3–14–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 26a, and 602

[T.D. 8187]

Estate and Gift Taxes; Effective Date Rules and Return Requirements Relating to the Generation-Skipping Transfer Tax; and OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to the temporary and final regulations relating to the effective date provisions, return requirements, and certain special rules for the tax on generation-skipping transfers. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085). These regulations affect all persons making or receiving a generation-skipping transfer. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: These regulations apply to all generation-skipping transfers made after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document provides temporary generation-skipping transfer tax regulations under Chapter 13 of the Internal Revenue Code of 1986 (Code), as added by section 1431 of the Tax Reform Act of 1986 (the Act), concerning the effective date, return requirements, and certain special rules. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. By a separate notice of proposed rulemaking appearing elsewhere is this issue of the **Federal Register**, the regulations promulgated in this document are also proposed to be prescribed as final generation-skipping transfer tax regulations (26 CFR Part 26) under sections 2601 and 2662.

In General

Chapter 13, as amended by the Act, imposed a flat-rate tax on all noncharitable transfers of propety that result in the avoidance of the estate or gift tax in one or more generations below that of the transferor. Certain exceptions to the generation-skipping transfer tax are provided for gifts excluded from tax under sections 2503 (b) and (e), transfers covered by the $1,000,000 exemption as defined in section 2631, and direct transfers to grandchildren to the extent that the aggregate amount of such transfers does not exceed $2 million per grandchild ("the grandchild exclusion"). The latter exception applies only to transfers that occur before January 1, 1990. See sections 1433(b)(3) and 1433(d) of the Act and § 26.2601–1(d) of these regulations.

Generation-skipping transfers are taxed at the applicable rate as defined in section 2641. This rate is equal to the product of the maximum Federal estate tax rate (55% for 1987–1992) and the inclusion ratio (as defined in section 2642(a)).

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[3] The Commission also made certain other permanent changes in the Order No. 500 crediting provisions not here at issue.

[4] Order No. 500, 52 FR 30334, 30350 (August 14, 1987).

These regulations provide rules relating to the effective date provisions in section 1433 of the Act and return requirements. Because Congress is currently considering major technical revisions to Chapter 13, it was considered inappropriate to promulgate rules addressing other areas in the statute. After Congress has concluded its deliberations, substantive regulations, directed at issues where guidance is most needed, will be promulgated. The Internal Revenue Service requests comments identifying these issues. Additional comprehensive regulations will also be published in the future.

Effective Dates

The Chapter 13 tax as enacted in 1976 has been repealed, retroactive to June 11, 1976. Those persons who paid tax under the prior Chapter 13 are entitled to a refund or credit. The time and manner of filing a claim for such refund is provided in § 26.2601–1(c)(2)(ii) of these regulations.

Chapter 13 of the Code, as added by the Internal Revenue Code of 1986, generally applies to inter vivos transfers occurring after September 25, 1985, and to all transfers occurring after October 22, 1986. The generation-skipping transfer tax does not apply, however, to certain transfers under trusts that were irrevocable on September 25, 1985; transfers occurring under certain wills and revocable trusts executed before October 22, 1986; and certain transfers by a decedent if the decedent was under a mental disability on October 22, 1986. The effective date rules are set forth in section 1433 of the Act and § 26.2601–1(b) of these regulations.

Special Rules

A direct skip is a transfer that is subject to estate or gift tax and that is made to a skip person (as defined in section 2613). Section 1433(b)(3) of the Act provides that the term "direct skip" shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent that the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000 (the "grandchild exclusion").

These regulations do not provide rules for determining when a transfer in trust for the benefit of a grandchild will qualify for the grandchild exclusion because the issue is currently being considered by Congress. However, these regulations do provide guidance regarding the special election provided by section 1433(d) of the Act. That election allows a transferor to elect to treat certain inter vivos and testamentary contingent transfers in trust for the benefit of a grandchild as a direct transfer to the grandchild qualifying the transfers for the grandchild exclusion. The rules for this election are set forth in § 26.2601–1(d).

Return Requirements

These regulations specify the time and manner in which a generation-skipping transfer must be reported to the Internal Revenue Service. The due date for a return depends upon the type of event that gives rise to liability for the tax. Generally, the person liable for the tax is required to file the return. In general, in the case of a direct skip (other than a direct skip from a trust), the transferor or the transferor's executor is liable for the tax and must make the return. In the case of a taxable termination or a direct skip from a trust, the trustee is liable for the tax and must make the return. In the case of a taxable distribution, the distributee is liable for the tax and must make the return. However, the regulations also set forth special return requirements for certain direct skips at death under trusts. The return requirement rules are set forth in § 26.2662–1.

Need for Temporary Regulations

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury Decision with notice and pubic procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The requirements have been approved by OMB (control number 1545–0985).

Drafting Information

The principal author of these regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 26

Estate taxes, Generation-skipping transfer.

26 CFR Part 26a

Estate taxes, Generation-skipping transfer, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 26, Part 26a, and Part 602 are amended as follows:

PART 26a—[REMOVED]

Paragraph 1. Part 26a Temporary Generation-Skipping Transfer Tax Regulations Under the Tax Reform Act is removed.

Par. 2. Part 26 is revised to read as follows:

PART 26—TEMPORARY GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Sec.

26.2600–1 Table of contents.
26.2601–1 Effective dates.
26.2662–1 Generation-skipping transfer tax return requirements.

Authority: 26 U.S.C. 7805. Section 26.2662–1 also issued under 26 U.S.C. 2662.

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This section lists the captions that appear in the temporary regulations under sections 2601 and 2662

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§ 26.2601–1 Effective dates.

(a) *Transfers subject to the generation-skipping transfer tax*—(1) *In general.* Except as otherwise provided in this section, the provisions of Chapter 13 of the Internal Revenue Code of 1986 (the Code) apply to any generation-skipping transfer, as defined in section 2611, made after October 22, 1986.

(2) *Certain transfers deemed made after October 22, 1986.* For purposes of Chapter 13 and paragraph (a)(1) of this section, any inter vivos transfer that was—

(i) Subject to a tax imposed by Chapter 12, and

(ii) Made after September 25, 1985, and before October 23, 1986,

shall be treated as if it were made on October 23, 1986. Where such inter vivos transfer was made to a trust, any subsequent distribution from such trust or termination of an interest in such trust that occurred before October 23, 1986, shall be treated as if the distribution from the trust or termination of interest in the trust occurred immediately after the deemed transfer on October 23, 1986. In the case of multiple transfers to, distributions from, and/or terminations with respect to a trust, all such events shall be treated as if they occurred on October 23, 1986, in the same order as they actually occurred. See paragraph (b)(iv)(B) of this section for rules to determine the portion of such distributions and terminations subject to tax under Chapter 13. This paragraph (a)(2) shall not apply to transfers to trusts covered by the transition rules of paragraphs (b)(2) and (b)(3) of this section.

(b) *Exceptions*—(1) *Irrevocable trusts*—(i) *In general.* The provisions of Chapter 13 will not apply to any generation-skipping transfer under a trust (as defined in section 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a portion of any generation-skipping transfer under an irrevocable trust where additions are made to the trust after Sepember 25, 1985. See paragraph (b)(1)(iv) of this section for rules to determine the portion of such trust subject to the provisions of Chapter 13.

(ii) *Irrevocable trust defined*—(A) *In general.* Unless otherwise provided in either paragraph (b)(1)(ii)(B) or (b)(1)(ii)(C) of this section, any trust (as defined in section 2652(b)) in existence on September 25, 1985, will be considered an irrevocable trust.

(B) *Property includible in estate under section 2038.* A trust will not be considered an irrevocable trust to the extent that, on September 25, 1985, the settlor held a power with respect to such trust that would have caused the value of the trust to be included in the settlor's gross estate for federal estate tax purposes by reason of section 2038 (without regard to powers relinquished before September 25, 1985) if the settlor had died on September 25, 1985. A trust will be considered subject to a power on September 25, 1985, even though the exercise of the power was subject to the precedent giving of notice, or even though the exercise could take effect only on the expiration of a stated period, whether or not on or before September 25, 1985, notice had been given or the power had been exercised. A trust will not be considered subject to a power if the power is, by its terms, exercisable only on the occurrence of an event or contingency not subject to the settlor's control (other than the death of the settlor) and if the event of contingency had not in fact taken place on September 25, 1985.

(C) *Property includible in estate under section 2042.* A policy of insurance on an individual's life that is treated as a trust under section 2652(b) will not be considered an irrevocable trust to the extent that, on September 25, 1985, the insured possessed any incident of ownership (as defined in § 20.2042–1(c)), that would have caused the value of the trust (*i.e.*, the insurance proceeds) to be included in the insured's gross estate for federal estate tax purposes by reason of

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section 2042, if the insured had died on September 25, 1985.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1).

Example (1). On September 25, 1985, S, the settlor of a trust that was created before September 25, 1985, held a testamentary power to add new beneficiaries to the trust. S held no other powers over any portion of the trust. The testamentary power held by S would have caused the trust to be included in S's gross estate under section 2038 if S had died on September 25, 1985. Therefore, the trust is not an irrevocable trust for purposes of this section.

Example (2). On September 25, 1985, W, the wife of the settlor of a trust in existence on that date, had an annual right to withdraw a portion of the corpus of such trust. The trust was otherwise irrevocable on that date. Because the power was not held by the settlor of the trust, it is not a power described in section 2038 of the Code. Thus, the trust is considered an irrevocable trust for purposes of this section.

Example (3). In 1984, A created a trust and retained the right to expand the class of remaindermen to include any of A's afterborn grandchildren. As of September 25, 1985, all of A's grandchildren were named remaindermen of the trust. Since the exercise of A's power was dependent on there being afterborn grandchildren who were not members of the class of remaindermen, a contingency that did not exist on September 25, 1985, the trust is not considered subject to the power on September 25, 1985, and is an irrevocable trust for purposes of this section. The result is not changed even if grandchildren are born after September 25, 1985, whether or not A exercises his power to expand the class of remaindermen.

Example (4). On September 25, 1985, B purchased an insurance policy on her own life and designated her daughter, D, and granddaughter, GD, as the beneficiaries. B retained the power to obtain from the insurer a loan against the surrender value of the policy. B's insurance policy is a trust (as defined in section 2652(b)) for Chapter 13 purposes. This trust will not be considered an irrevocable trust because, on September 25, 1985, B possessed an incident of ownership that would have caused the value of the policy to be included in B's gross estate under section 2042 if B had died on that date.

Example (5). In 1984, S created a trust naming S's grandchildren as the income and remainder beneficiaries. S retained the power to revoke one-half of the value of the trust at any time prior to S's death. S retained no other powers over the trust corpus. S did not die before September 25, 1985, nor did S exercise or release the power before that date. The half of the trust not subject to S's power to revoke is considered to be irrevocable.

(iii) *Trust containing qualified terminable interest property*—(A) *In general.* For purposes of Chapter 13, a trust described in paragraph (b)(1)(ii) of this section that holds qualified terminable interest property by reason of an election under section 2056(b)(7) or section 2523(f) will be treated in the same manner as if the donor spouse had made an election under section 2652(a)(3). Thus, transfers from such trusts will not be subject to Chapter 13, and the donor spouse will be treated as the transferor of such property. See paragraph (b)(1)(v)(C) of this section for rules concerning the treatment of the trust when estate tax otherwise payable out of property in the trust is not paid out of such property.

(B) *Examples.* The following examples illustrate the application of this paragraph (b)(i)(iii).

Example (1). On March 28, 1985, H established a trust. The trust instrument provided that the trustee must distribute all income annually to H's wife, W, during her life. Upon W's death the remainder is to be distributed to H and W's grandson, GS. H elected under section 2523(f) to treat the property in the trust as qualified terminable interest property. On December 1, 1987, W died and soon thereafter the trust assets were distributed to GS. Because the trust was irrevocable on September 25, 1985, the transfer to GS will not be subject to tax under Chapter 13. H will be treated as the transferor with respect to the transfer of the trust assets to GS in the same manner as if H had made an election under section 2652(a)(3) to reverse the effect of the section 2523(f) election for Chapter 13 purposes.

Example (2). Assume the same facts as in example (1) except that the trust instrument provides that after W's death all income is to be paid annually to H and W's daughter, D. Upon D's death the remainder is to be distributed to GS. D dies on October 1, 1986, and soon thereafter the trust assets are distributed to GS. Because the trust was irrevocable on September 25, 1985, the termination of D's interest is not subject to Chapter 13.

(iv) *Additions to irrevocable trusts*—(A) *In general.* An addition made after September 25, 1985, to an irrevocable trust, which is excluded from Chapter 13 by reason of paragraph (b)(1) of this section, will subject a proportionate amount of distributions from, and terminations of interests in property held in, such trust to the provisions of Chapter 13. When an addition is made, the trust shall be deemed to consist of two portions, a portion not subject to Chapter 13 (the "non-Chapter 13 portion") and a portion subject to Chapter 13 (the "Chapter 13 portion"), each with a separate inclusion ratio (as defined in section 2642(a)). The non-Chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in section 2642(a)(2)) for the non-Chapter 13 portion is deemed to be 1 and the inclusion ratio for such portion is 0. The Chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the Chapter 13 portion shall be determined under section 2642. This paragraph requires separate portions of one trust only for purposes of determining inclusion ratios. For purposes of Chapter 13, a constructive addition under paragraph (b)(1)(v) of this section shall be treated as an addition. See paragraph (b)(4) for exceptions to the additions rule of this paragraph (b)(1)(iv) of this section.

(B) *Terminations of interests in and distributions from trusts.* Where a termination or distribution described in section 2612 occurs with respect to a trust to which an addition has been made, the portion of such termination or distribution allocable to the Chapter 13 portion is determined by reference to the allocation fraction, as defined in paragraph (b)(1)(iv)(C) of this section. In the case of a termination described in section 2612(a) with respect to a trust, the portion of such termination that is subject to Chapter 13 is the product of the allocation fraction and the value of the trust (to the extent of the terminated interest therein). In the case of a distribution described in section 2612(b) from a trust, the portion of such distribution that is subject to Chapter 13 is the product of the allocation fraction and the value of the property distributed.

(C) *Allocation fraction*—(*1*) *In general.* The "allocation fraction" is a fraction that allocates appreciation and accumulated income between the Chapter 13 and non-Chapter 13 portions of a trust. The numerator of the allocation fraction is the amount of the addition (valued as of the date the addition was made) determined without regard to whether or not any part of the transfer is subject to tax under Chapter 11 or Chapter 12. The denominator of the allocation fraction is the total value of the entire trust immediately after the addition. For purposes of this section, the phrase "total value of the entire trust" means the fair market value of the property held in trust (determined under the rules of section 2031) reduced by any amount attributable to the trust that is similar to an amount that would be allowable as a deduction under section 2053. Where there is more than one addition to corpus after September 25, 1985, the portion of the trust subject to Chapter 13 after each such addition will be determined pursuant to a revised fraction. In each case, the numerator of the revised fraction is the sum of—

(*i*) The value of that portion of the trust immediately before the latest addition that, because of prior additions, is subject to Chapter 13, and

(*ii*) The amount of the latest addition. The denominator of the revised fraction is the total value of the entire trust immediately after the addition. If the transfer to the trust is a generation-skipping transfer, the numerator and denominator shall be reduced by the amount of the generation-skipping transfer tax, if any, which is imposed by Chapter 13 on the transfer and actually recovered from the trust. The allocation fraction shall be rounded off to five decimal places (.00001).

(*2*) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(iv).

Example (1). On August 16, 1980, A established an irrevocable trust. Under the trust instrument, the trustee is required to distribute the entire income annually to A's child, C, for life, then to A's grandchild, GC, for life. Upon GC's death, the remainder is to be paid to GC's issue. On October 1, 1986, when the total value of the entire trust was $400,000, A transferred $100,000 to the trust. The allocation fraction is computed as follows:

$$\frac{\text{Value of addition}}{\text{Total value of trust}} = \frac{\$100,000}{\$400,000+\$100,000} = .2$$

Thus, immediately after the transfer, 20 percent of the value of future generation-skipping transfers under the trust will be subject to Chapter 13.

Example (2). Assume the same facts as in example (1) except that immediately prior to the transfer on October 1, 1986, the fair market value of the individual assets in the trust totaled $400,000. Also assume that the trust had accrued and unpaid debts, expenses, and taxes totaling $300,000. Assume further that the entire $300,000 represented amounts that would be deductible under section 2053 if the trust were includible in a decedent's gross estate. Thus, the numerator of the allocation fraction is $100,000 and the denominator of the allocation fraction is $200,000 [($400,000–$300,000) + $100,000]. Thus, the allocation fraction is .5 ($100,000/$200,000) and 50 percent of the value of future generation-skipping transfers will be subject to Chapter 13.

Example (3). Assume the same facts as in example (1) except that on January 30, 1988, when the total value of the entire trust is $600,000, A transfers an additional $40,000 to the trust. Before the transfer, the value of the portion of the trust that was attributable to the prior addition was $120,000 [$600,000 × .2]. The new allocation fraction is computed as follows:

$$\frac{\text{Total value of additions}}{\text{Total value of trust}} = \frac{\$120,000+\$40,000}{\$600,000+\$40,000} = \frac{\$160,000}{\$640,000} = .25$$

Thus, immediately after the transfer, 25 percent of the value of future generation-skipping transfers under the trust will be subject to Chapter 13.

Example (4). Assume the same facts as in example (3) except that on March 1, 1989, when the value of the trust is $800,000, C dies. A generation-skipping transfer occurs at C's death because of the termination of C's life estate. Therefore, $200,000 [$800,000 × .25] is subject to tax under Chapter 13.

(v) *Constructive additions*—(A) In general. Except as provided below, where any portion of a trust remains in the trust after the release, exercise, or lapse of a power of appointment over that portion of the trust, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed will be treated as an addition to the trust. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under Chapter 11 or Chapter 12. In the latter case, the transferor for purposes of Chapter 11 or Chapter 12 is the transferor for purposes of Chapter 13.

(B) *Special rule for certain powers of appointment.* The release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in section 2041(b)) will not be treated as an addition to a trust if—

(*1*) Such power of appointment was created in an irrevocable trust that is not subject to Chapter 13 under paragraph (b)(1) of this section, and

(*2*) In the case of an exercise, such power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. If a power is exercised by creating another power it will be deemed to be exercised to whatever extent the second power may be exercised.

(C) *Constructive addition if liability is not paid out of trust corpus.* Where a trust described in paragraph (b)(1) of this section is relieved of any liability properly payable out of the assets of such trust, the person or entity who actually satisfies the liability will be considered to have made a constructive addition to the trust in an amount equal to the liability. The constructive addition occurs when the trust is relieved of liability (*i.e.*, when the right of recovery is no longer enforceable). For example, where an estate fails to exercise the right of recovery available under section 2207A for federal estate tax paid on the value of property includible in the estate under section 2044, the beneficiaries of the estate are considered to have added an amount equal to such federal estate tax attributable to such property to the trust at the time the right of recovery lapses.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(v).

Example (1) On June 19, 1980, H established an irrevocable trust with a corpus of $500,000. The trust instrument provides that the trustee shall distribute the entire income from the trust annually to H's wife, W, during her life. At W's death the remainder is to be distributed to H and W's grandson, GS. H also gave W a general power of appointment over one-half of the trust assets. On December 21, 1989, when the value of the trust corpus is $1,500,000, W dies without having exercised her general power of appointment. The value of one-half of the trust corpus, $750,000 [$1,500,000 × .5], is included in W's gross estate under section 2041(a) and is subject to tax under Chapter 11. Because the value of one-half of the trust corpus is subject to tax under Chapter 11 with respect to W's estate, W is treated as the transferor of that property for purposes of Chapter 13 (see section 2652(a)(1)(A)). For purposes of the generation-skipping transfer tax, the lapse of W's power of appointment is treated as if $750,000 [$1,500,000 × .5] had been distributed to W and then transferred back to the trust. Thus, W is considered to have added $750,000 [0.5 × $1,500,000] to the trust at the date of her death. Because this constructive addition occurred after September 25, 1985, 50 percent of the corpus of the trust became subject to Chapter 13 at W's death.

Example (2). Assume the same facts as in example (1) except that on October 1, 1985, when the trust assets were valued at $800,000, H added $200,000 to the trust. After the transfer on October 1, 1985, the allocation fraction was .2 [$200,000/$1,000,000]. On December 21, 1989, when the value of the trust corpus is $1,500,000, W dies without having exercised her general power of appointment. The lapse of W's general power of appointment is treated as if one-half of the corpus had been distributed to W and then transferred by W back to the trust. The value of the property in the trust immediately prior to the constructive addition (*i.e.* after the deemed distribution to W) would have been $750,000. Thus, after this constructive distribution and constructive addition the new allocation fraction is 0.6 [$900,000/$1,500,000]. The numerator of the fraction is the value of that portion of trust assets that were subject to Chapter 13 immediately prior to the addition (by reason of the first addition) $150,000 [0.2 × $750,000], plus the value of the constructive transfer, $750,000, which equals $900,000. The denominator of the fraction, $1,500,000, is the total value of the trust assets immediately after the transfer. Thus, 60 percent of the corpus of the trust became subject to Chapter 13.

Example (3). On September 25, 1985, B possessed a general power of appointment over the assets of an irrevocable trust that had been created by C in 1980. Under the terms of the trust, B's power lapsed on July 20, 1987. For federal gift tax purposes, B is treated as making a gift of ninety-five percent [100% − 5%] of the value of the corpus (see section 2514). However, because the entire trust was subject to the power of appointment, 100 percent (that portion of the trust subject to the power) of the assets of the trust are treated as a constructive addition. Thus, the entire amount of all generation-skipping transfers occurring pursuant to the trust instrument after July 20, 1987, will be subject to Chapter 13.

Example (4). On March 1, 1985, H established an irrevocable trust as defined in paragraph (b)(1)(ii) of this section. Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to H's son, S, for life, then to H's grandchild, GS, for life. GS has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in paragraph (b)(1)(ii) of this section) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to H's greatgrandson, GGS, for life. Upon GGS's death the remainder is to be paid to GGS's issue. GGS was alive on March 1, 1985, when Trust 1 was created. S died on April 1, 1986. On July 1, 1987, GS exercised the power of appointment. The exercise of GS's power will not subject future transfers pursuant to Trust 2 to tax under Chapter 13 because exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond any life in being at the date of creation of Trust 1 plus a period of 21 years.

Example (5). Assume the same facts as in example (4) except that GS established Trust 2 on June 1, 1987. The exercise of GS's power will not cause future transfers pursuant to Trust 2's governing instrument to be subject to Chapter 13.

Example (6). Assume the same facts as in example (5) except that GGS was born on March 28, 1986. The exercise of GS's power in favor of Trust 2 will cause the corpus of Trust 1 to be subject to Chapter 13, because GGS was not born until after the creation of Trust 1. Thus, such exercise may suspend the vesting, absolute ownership, or power of alienation of an interest in the trust corpus for a period, measured from the date of creation of Trust 1, extending beyond any life in being at the date of creation of Trust 1 plus a period of 21 years.

(vi) *Appreciation and income.* Except to the extent that the provisions of paragraphs (b)(2) (i) and (ii) of this section allocate subsequent appreciation and accumulated income between the original trust and additions thereto, appreciation in the value of the trust and undistributed income added thereto will not be considered an addition to the corpus of a trust.

(2) *Transition rule for wills or revocable trusts executed before October 22, 1986*—(i) *In general.* The provisions of Chapter 13 will not apply to any generation-skipping transfer under a will or revocable trust executed before October 22, 1986, provided that—

(A) The document in existence on October 21, 1986, was not amended at any time after October 21, 1986, in any respect which results in the creation of, or an increase in the amount of, a generation-skipping transfer,

(B) In the case of a revocable trust, no addition was made to the revocable trust after October 21, 1986, which results in the creation of, or an increase in the amount of, a generation-skipping transfer, and

(C) The decedent died before January 1, 1987.

(ii) *Revocable trust defined.* For purposes of this section, the term "revocable trust" means any trust (as defined in section 2652(b)) except to the extent that, on October 22, 1986, the trust—

(A) Was an irrevocable trust described in paragraph (b)(1) of this section, or

(B) Would have been an irrevocable trust described in paragraph (b)(1) of this section had it not been created or become irrevocable after September 25, 1985, and before October 22, 1986.

(iii) *Will or revocable trust containing qualified terminable interest property.* The rules contained in paragraph (b)(1)(iii) of this section shall apply to any will or revocable trust covered by the transition rule of this paragraph (b)(2).

(iv) *Amendments to will or revocable trust.* For purposes of this section, an amendment to a will or a revocable trust in existence on October 21, 1986, will not be considered to result in the creation of, or an increase in the amount of, a generation-skipping transfer where the amendment is—

(A) Basically administrative or clarifying in nature and only incidentally increases the amount transferred, or

(B) Designed to ensure that an existing bequest or transfer qualifies for the applicable marital or charitable deduction for estate, gift, or generation-skipping transfer tax purposes and only incidentally increases the amount transferred to a skip person.

For purposes of determining whether a particular amendment to a will or revocable trust creates, or increases the amount of, a generation-skipping transfer, the effect of the instrument(s) in existence on October 21, 1986, will be measured against the effect of the instrument(s) in existence on the date of death of the decedent or on the date of any prior generation-skipping transfer. If the effect of an amendment cannot be immediately determined, it will be deemed to create, or increase the amount of, a generation-skipping transfer until a determination can be made.

(v) *Additions to revocable trusts.* Except as provided below, any addition made after October 21, 1986, but before the death of the settlor, to a revocable trust will subject all subsequent generation-skipping transfers under the trust to the provisions of Chapter 13. All additions made to a revocable trust after the death of the settlor (if the settlor dies before January 1, 1987) will be treated as additions to an irrevocable trust. See § 26.2601–1(b)(1)(v) for rules involving constructive additions to trusts. See § 26.2601–1(b)(1)(V)(B) for rules providing that certain transfers to trusts will not be treated as additions for purposes of this section.

(vi) *Examples.* The following examples illustrate the application of paragraph (b)(2)(iv) of this section. In the following examples, assume that the testator dies on December 31, 1986.

Example (1). On November 1, 1986, A executes a codicil to a will that was in existence on October 21, 1986, removing one of the co-executors named in the will. Although the codicil may have the effect of lowering administrative costs and thus increasing the amount transferred, it will be considered administrative in nature and thus it will not cause generation-skipping transfers under the will to be subject to Chapter 13.

Example (2). On November 1, 1986, B executes a codicil to his will that was in existence on October 21, 1986, revoking a bequest of $100,000 to C, a non-skip person (as defined under section 2613(b)) and causing that amount to be added to a residuary trust containing generation-skipping provisions. Such an amendment will be deemed to increase a generation-skipping transfer and will prevent any transfers under the will from qualifying under paragraph (b)(2)(i) of this section. If, however, C dies before B and under local law the property would have been added to the residue in any event because the bequest would have lapsed, the codicil will not be considered an amendment that increases a generation-skipping transfer.

Example (3). On October 21, 1986, D's will provided that an amount equal to the maximum allowable marital deduction would pass to D's spouse with the residue of the estate passing to a trust established for the benefit of skip persons. On October 23, 1986, the will is amended to provide that the marital share passing to D's spouse shall be the lesser of the maximum allowable marital deduction or the minimum amount which will result in no estate tax liability for D's estate. The amendment may increase the amount of a generation-skipping transfer. Therefore any generation-skipping transfers under the will will be subject to tax under Chapter 13. If it becomes apparent that the amendment did not increase the amount of a generation-skipping transfer, a claim for refund may be filed with respect to any generation-skipping transfer tax that was paid within the period set out in section 6511.

Example (4). On October 21, 1986, C's will provided for the creation upon C's death of two trusts for the benefit of skip persons. On November 1, 1986, C executed a codicil to the will specifically increasing the amount of a generation-skipping transfer under the will. All transfers made pursuant to the will or either of the trusts created thereunder are precluded from qualifying under the transition rule of paragraph (b)(2)(i) of this section and are therefore subject to tax under Chapter 13.

Example (5). Assume that C in example (4) later executed a second codicil deleting the increase to the generation-skipping transfer. Because the provision increasing a generation-skipping transfer did not become effective it will not be considered an amendment to a will in existence on October 22, 1986.

Example (6). Prior to October 22, 1986, S created a trust in which S retained the power to revoke the transfer at any time prior to S's death. The trust provided that upon the death of S the income was to be paid to S's spouse, W, for life and then to S's nephews A, B, and C (none of whom were skip persons) in equal shares for life, with one-third of the corpus to be distributed per stirpes to each nephew's surviving issue upon the death of the nephew. A became disabled and S modified the trust on December 1, 1986, to increase A's share of the income. Since the amendment did not result in the creation of, or increase the amount of, a generation-skipping transfer, transfers pursuant to the trust will not be subject to Chapter 13.

Example (7). Assume the same facts as in example (6) except that A, B, and C are skip persons (as defined in section 2613). S's amendment of the trust increasing A's share of the income will subject the trust to the provisions of Chapter 13 because the amendment increases the amount of a generation-skipping transfer.

Example (8). Assume the same facts as in example (7) except that S's amendment of the trust adds S's grandchild, D, as an income beneficiary. The trust will be subject to the provisions of Chapter 13 because this amendment creates a generation-skipping transfer.

Example (9). Assume the same facts as in example (6) except that the amendment adds S's brother, B, as a beneficiary. B's issue are to take a one-fourth share of the corpus per stirpes upon B's death. Because the distribution to be made upon B's death may involve skip persons, the amendment will be considered an amendment that creates or increases a generation-skipping transfer until a determination can be made. Accordingly, all distributions from and terminations of interests in such trust shall be subject to Chapter 13 until it is determined that no skip person has been added to the trust. At that time a claim for refund may be filed within the period set out in section 6511 with respect to any generation-skipping transfer tax that was paid.

(3) *Transition rule in the case of mental incompetency*—(i) *In general.* Where an individual was, on October 22, 1986, under a mental disability to change the disposition of his or her property and did not regain his or her competence to dispose of such property before the date of his or her death, the provisions of Chapter 13 shall not apply to any generation-skipping transfer—

(A) Under a trust (as defined in section 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during his life after October 22, 1986), or

(B) Which is a direct skip that occurs by reason of the death of the decedent.

(ii) *Mental disability defined.* For purposes of this section, the term "mental disability" means mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or the care of the decedent's property.

(iii) *Decedent who has not been adjudged mentally incompetent.* If the decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706, either—

(A) A certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or

(B) Sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

(iv) *Decedent who has been adjudged mentally incompetent.* If the decedent has been adjudged mentally incompetent, a copy of the judgment or decree, and any modification thereof, must be filed with the Form 706.

(v) *Rule applies even if another person has power to change trust terms.* In the case of a transfer from a trust, this paragraph (b)(3) shall apply even though a person charged with the care of the decedent or the decedent's property has the power to revoke or modify the terms of the trust, provided that the power is not exercised after October 22, 1986, in a manner that creates, or increases the amount of, a generation-skipping transfer. See paragraph (b)(3)(i) of this section for rules concerning amendments that create or increase the amount of a generation-skipping transfer.

(4) *Exceptions to additions rule.* (i) *In general.* Any addition to a trust made pursuant to an instrument or arrangement covered by the transition rules in paragraphs (b)(2) or (b)(3) will not be treated as an addition for purposes of this section. Moreover, any property transferred inter vivos to a trust will not be treated as an addition if the same property would have been added to the trust pursuant to an instrument covered by the transition rules in paragraph (b)(2) or (b)(3) of this section.

(ii) *Examples.* The following examples illustrate the application of paragraph (b)(4)(i) of this section.

Example (1). On December 31, 1980, A created an irrevocable trust having a corpus of $100,000. Under the terms of the trust, the corpus was to be held for the benefit of A's grandchild, GC. Pursuant to the terms of A's will, a document entitled to relief under the transition rule of paragraph (b)(2) of this section, the residue of the estate was paid to the trust. Because the addition to the trust was paid pursuant to the terms of an instrument (A's will) which was not subject to the provisions of Chapter 13 because of paragraph (b)(2) of this section, the payment to the trust is not considered an addition to the corpus of the trust. Thus, future distributions to or for the benefit of GC, will not be subject to the provisions of Chapter 13.

Example (2). H is the grantor of a trust which was irrevocable on September 25,

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1985. H's will, which was executed before October 22, 1986, and not amended thereafter, provides that upon his death the entire estate will pour over into his trust. On October 1, 1985, H transfers $100,000 to the trust. While H's will otherwise qualifies for relief under the transition rule in paragraph (b)(2) of this section, the transition rule is not applicable unless A dies prior to January 1, 1987. Thus, if H dies after December 31, 1986, the transfer will be treated as an addition to the trust for purposes of any distribution made from the trust after the transfer to the trust on October 1, 1985. If H dies before January 1, 1987, the entire trust (as well as any distributions from or terminations of interests in the trust prior to his death) will be excluded, under paragraphs (b)(2) of this section, from Chapter 13 because the $100,000 would have been added to the trust under a will which would have qualified under paragraph (b)(2) of this section. In either case, for any generation-skipping transfers made after the transfer to the trust on October 1, 1985, but before H's death, the $100,000 will be treated as an addition to the trust and a proportionate amount of the trust will be subject to Chapter 13.

Example (3). H and W are the settlors of separate revocable trusts with equal values. Both trusts were established for the benefit of skip persons (as defined in section 2613). W dies on December 1, 1985, and under the provisions of her trust the corpus pours over into H's trust. If H dies before January 1, 1987, the entire trust is excluded under paragraph (b)(2) of this section from the operation of Chapter 13. If H dies after December 31, 1986, the entire trust is subject to the generation-skipping transfer tax provisions because H's trust is not a trust described in paragraph (b)(1) or (b)(2) of this section. In the latter case, the fact that W died before January 1, 1987, is irrelevant because the corpus of her trust was added to a trust that never qualified under the transition rules of paragraph (b)(1) or (b)(2) of this section.

Example (4). Assume the same facts as in example (3) except that upon the death of W on December 1, 1985, her trust continues as an irrevocable trust and that the corpus of H's trust is to be paid over upon his death to W's trust. Again, if H dies before January 1, 1987, W's entire trust falls within the provisions of paragraph (b)(1) of this section. However, if H dies after December 31, 1986, the "pour-over" is considered an addition to the trust. Therefore, W's trust is not a trust excluded under paragraph (b) (2) because an addition is made to the trust.

Example (5). A, the spouse of the settlor of an irrevocable trust that was created in 1960, had, on September 25, 1985, a general power of appointment over the trust assets. The trust provides that should A fail to exercise the power of appointment the property is to remain in the trust. On October 21, 1986, A executed a will under which A failed to exercise the power of appointment. If A dies before January 1, 1987, without having exercised the power in a manner which results in the creation of, or increase in the amount of, a generation-skipping transfer (or amended the will in a manner that results in the creation of, or increase in the amount of, a generation-skipping transfer), transfers pursuant to the trust or the will will not be subject to Chapter 13 because the trust is an irrevocable trust and the will qualifies under paragraph (b)(2) of this section.

Example (6). Assume the same facts as in example (5) except that on October 22, 1986, A did not have a will. Upon A's death, or upon the prior exercise or release of the power, the value of the entire trust will be treated as having been distributed to A, and A will be treated as having made an addition to the trust in the amount of the entire corpus. All subsequent distributions or terminations pursuant to the trust will be subject to Chapter 13. It is immaterial whether A's death occurs before January 1, 1987, since paragraph (b)(2) of this section is only applicable where a will or revocable trust was executed before October 22, 1986.

(c) *Transfers before October 22, 1986*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, transfers before October 22, 1986, are not subject to generation-skipping transfer tax. In the case of any tax imposed by Chapter 13 of the Internal Revenue Code of 1954 (as in effect on October 21, 1986), such tax (including interest, additions to tax, and additional amounts) will not be assessed and if assessed, the assessment will be abated, and if collected, will be credited or refunded (with interest) as an overpayment, upon filing of a claim for credit or refund.

(2) *Refunds of overpayments*—(i) *Waiver of statute of limitations.* Except as provided below, a refund or credit of any payment of tax referred to in paragraph (c)(1) of this section shall be allowed without regard to whether, at any time before October 22, 1987, such refund or credit is barred by law.

(ii) *Time and manner in which a claim for a credit or refund must be filed.* A claim for a refund or credit, that would otherwise be barred by the statute of limitations but for paragraph (c)(2)(i) of this section, must be filed on or before the later of October 22, 1987, or the expiration of the period for filing a claim set out in section 6511 and the regulations thereunder. To claim a refund, Form 843 must be filed in accordance with the instructions thereto.

(d) *$2,000,000 grandchild exclusion*—(1) *In general.* For purposes of this chapter, the term "direct skip" shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000. For purposes of the preceding sentence, section 2612(c)(2) shall not apply in determining whether an individual is a grandchild of the transferor.

(2) *Treatment of transfers in trust.* [Reserved]

(3) *Election for certain contingent transfers*—(i) *In general.* A transferor may elect to treat certain transfers in trust for the benefit of the transferor's grandchild as a direct skip to a grandchild thereby qualifying it for the $2,000,000 grandchild exclusion as defined in this paragraph (d). The election is available only to the extent that the transfer occurred before October 22, 1986, and would be a transfer that would qualify for the $2,000,000 grandchild exclusion except for the fact that the trust instrument provides that; if the grandchild dies before vesting of the interest transferred as defined in paragraph (d)(3)(ii) of this section, the interest passes to any person other than the grandchild's estate. This election is available only if during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild. This election is not available if the trust has more than one grandchild as a beneficiary. If a transferor makes an election under this paragraph (d)(3) with respect to a transfer, such transfer shall be subject to federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate. If all or a portion of a transferor's generation-skipping transfer exemption was previously allocated to property with respect to which a valid election is made under this paragraph (d)(3), such allocation will be deemed to be ineffective without regard to section 2631(b). In addition, if a transferor paid tax imposed by Chapter 13 on the transfer of property with respect to which a valid election is made under this paragraph (d)(3), such transferor may obtain a refund of such tax by filing Form 843 on or before June 13, 1988. The election once made is irrevocable.

(ii) *Vesting defined.* For purposes of this paragraph (d)(3), an interest in property is vested only if the entire value of the transferred property in which such interest is held will be includible in the grandchild's gross estate for federal estate tax purposes.

(iii) *Manner of election.* The election described in this paragraph (d)(3) is made by attaching a notice of election to a Form 709 filed with the appropriate district office of the Internal Revenue Service within the time set out in paragraph (d)(3)(v) of this section. The notice of election must be signed by both the grandchild (or the grandchild's guardian) and the holders of the contingent gift over (or their authorized representative) and must contain an agreement that:

(A) The property subject to the election or the proceeds thereof, together with any accumulated income therefrom, will be included in the grandchild's estate for federal estate tax purposes even if it is not otherwise includible in such grandchild's estate, and

(B) The estate of the grandchild will have the right of recovery described in paragraph (d)(3)(vi) of this section.

(iv) *Information to be included in the election.*

(A) The notice of election shall also contain the following information:

(*1*) A statement describing the grandchild's right of recovery under paragraph (d)(3)(vi) of this section;

(*2*) The transferor's name and taxpayer identification number as they appear on the generation-skipping transfer tax return;

(*3*) The trust's taxpayer identification number and a copy of the trust instrument;

(*4*) The name, address, and taxpayer identification number of all trust beneficiaries including the holders of the contingent gift over;

(*5*) The transferor's adjusted basis of the transferred property;

(*6*) The date of the transfer;

(*7*) The fair market value of the property at the date of the transfer;

(*8*) A detailed description of the transferred property;

(B) For real estate provide:

(*1*) A legal description of each parcel;

(*2*) The street number, name, and the area if the property is located in a city; and

(*3*) A short statement of improvements made to the property;

(C) For bonds, provide:

(*1*) The number of bonds transferred;

(*2*) The name of obligor;

(*3*) The date of maturity;

(*4*) The rate of interest;

(*5*) The date or dates when interest is payable;

(*6*) The series number if there is more than one issue; and

(*7*) The CUSIP number, if available. The CUSIP number is a nine digit number assigned by the American Banking Association to traded securities.

(D) For stocks provide:

(*1*) The number of shares;

(*2*) The exact name of the corporation;

(*3*) Whether the stock is common or preferred;

(*4*) The issue and par value;

(*5*) The location of the principal business office, the State in which incorporated, and the date of incorporation, if unlisted;

(*6*) The principal exchange where sold, if listed; and

(*7*) The CUSIP number, if available. The CUSIP number is a nine digit number assigned by the American Banking Association to traded securities.

For interests in property based on the length of a person's life, provide the date of birth of the person. For life insurance policies, provide the name of the insurer and the policy number.

(v) *Time for election.* The election provided by this paragraph (d)(3) must be made on or before June 13, 1988.

(vi) *Right of recovery in grandchild's estate*—(A) *In general.* The election must contain an agreement granting the grandchild's estate the right to recover the estate tax (including penalties and interest thereon) attributable to the value of property included in the gross estate solely by reason of an election under this paragraph (d)(3) from the person or persons to whom the property is transferred. The amount of estate tax attributable to such property is the amount by which the total tax under chapter 11 which has been paid, exceeds the total tax under chapter 11 which would have been payable if the value of such property had not been included in the gross estate. Nothing herein should be construed to prohibit the grandchild from directing his executor not to pursue the right of recovery otherwise available under the terms of the agreement.

(B) *More than one recipient of property.* For purposes of this paragraph (d)(3), if there is more than one contingent beneficiary of the property, the agreement may provide that the right of recovery shall apply jointly to all such beneficiaries or it may provide that the estate tax liability be apportioned among such persons according to the relative values of their interests at the time of the inclusion. However, the agreement must provide that the right of recovery shall be against each such contingent beneficiary.

(vii) *Examples.* The following examples illustrate the application of this paragraph (d)(3). Assume in each example that the trust satisfies all requirements for the $2,000,000 grandchild exclusion except as set forth below and that all requirements of the election under this paragraph (d)(3) are satisfied.

Example (1). On September 16, 1986, A established a trust and funded it with $1,000,000. The trust instrument provides that the trust assets shall be transferred to A's grandson, GS, when he attains the age of 30, but if he dies before reaching 30, the assets shall be distributed to GS's heirs. GS is 10 years old at the time of the transfer. The transfer does not qualify for the $2,000,000 grandchild exclusion under paragraph (d)(1) of this section. On April 1, 1987, A elects under this paragraph (d)(3) to treat the transfer as a direct skip to GS. Assuming A's aggregate transfers to GS, up to and including this transfer, do not exceed $2,000,000, the transfer is not subject to tax under Chapter 13.

Example (2). Assume the same facts as in example (1) except that GS dies intestate on March 1, 1988, and GS's mother and father receive the property as GS's heirs. Because of the agreement contained in the notice of election, the property in the trust will be subject to federal estate tax in GS's gross estate in the same manner as if the contingent gift over had been to GS's estate. GS's executor will have a right of recovery against GS's mother and father for the estate taxes attributable to property included in GS's gross estate.

Example (3). Assume the same facts as in example (1) except that the trust instrument provides for payments of income to GS for life, with the remainder to A's greatgrandson, GGS. A is not eligible to make the election under this paragraph (d)(3) because, under the terms of the trust instrument, there is not a contingent gift over.

§ 26.2662–1 Generation-skipping transfer tax return requirements.

(a) *In general.* Chapter 13 imposes a tax on generation-skipping transfers (as defined in section 2611). The requirements relating to the return of tax depend on the type of generation-skipping transfer involved. This section contains rules for filing the required tax return. Paragraph (c)(2) of this section provides special rules concerning the return requirements for generation-skipping transfers pursuant to certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section) such as life insurance policies and annuities.

(b) *Form of return*—(1) *Taxable distributions.* Form 706GS(D) must be filed in accordance with its instructions for any taxable distribution (as defined in section 2612(b)). The trust involved in a transfer described in the preceding sentence must file Form 706GS(D–1) in accordance with its instruction. A copy of Form 706GS(D–1) shall be sent to each distributee.

(2) *Taxable terminations.* Form 706GS(T) must be filed in accordance with its instructions for any taxable termination (as defined in section 2612).

(3) *Direct skip*—(i) *Inter vivos direct skips.* Form 709 must be filed in accordance with its instructions for any direct skip that is subject to a tax imposed by Chapter 12 and occurs during the life of the transferor.

(ii) *Direct skips occurring at death*—(A) *In general.* Form 706 must be filed in accordance with its instructions for any direct skips that are subject to a tax imposed by Chapter 11 and occur at the death of the decedent.

(B) *Direct skips payable from a trust.* Schedule R–1 of Form 706 must be filed in accordance with its instructions for any direct skip from a trust if such direct skip is subject to a tax imposed by Chapter 11. See paragraph (c)(2) of this section for special rules relating to the person liable for tax and required to make the return under certain circumstances.

(c) *Person liable for tax and required to make return*—(1) *In general.* Except as otherwise provided in this section, the following person is liable for the tax imposed by section 2601 and must make the required tax return—

(i) The transferee in a taxable distribution (as defined in section 2612 (b)),

(ii) The trustee in the case of a taxable termination (as defined in section 2612 (a)),

(iii) The transferor (as defined in section 2652(a)(1)(B)) in the case of an inter vivos direct skip (as defined in section 2612(c)),

(iv) The trustee in the case of a direct skip from a trust or with respect to property that continues to be held in trust, or

(v) The executor in the case of a direct skip (other than a direct skip described in paragraph (c)(1)(iv) of this section) if the transfer is subject to a tax imposed by Chapter 11. See paragraph (c)(2) of this section for special rules relating to direct skips to or from certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section).

(2) *Special rule for direct skips occurring at death with respect to property held in trust arrangements*—(i) *In general.* In the case of certain property held in a trust arrangement (as defined in paragraph (c)(2)(ii) of this section) at the transferor's date of death, the person who is required to make the return and who is liable for the tax imposed by Chapter 13 is determined under paragraph (c)(2)(iii) of this section.

(ii) *Trust arrangement defined.* For purposes of this § 26.2662–1, the term "trust arrangement" includes any arrangement (other than an estate) which, although not an explicit trust, has the same effect as an explicit trust. For purposes of this § 26.2662–1, the term "explicit trust" means a trust described in § 301.7701–4 (a).

(iii) *Executor liable if transfer less than $100,000.* In any case of a director skip occurring at death, the executor of the decedent's estate shall be liable for the tax imposed on that direct skip by Chapter 13 and is required to file Form 706 (and not Schedule R–1 of Form 706) if, at the date of the decedent's,—

(A) The property involved in the direct skip is held in a trust arrangement, and

(B) The total value of the property invovled in direct skips with respect to the trustee of that trust arrangement is less than $100,000.

In cases where the rule of this paragraph (c)(2)(iii) imposes liability for the generation-skipping transfer tax on the executor, the executor shall be entitled to recover, from the trustee (if the property continues to be held in trust) or from the recipient of the property (in the case of a transfer from a trust), the generation-skipping transfer tax attributable to the transfer.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(2).

Example (1). On August 1, 1986, A, the insured under an insurance policy, died. The proceeds ($95,000) were includible in A's gross estate for federal estate tax purposes. A's grandchild GC, was named the sole beneficiary of the policy. The insurance policy is treated as a trust under section 2652(b)(1), and the payment of the proceeds to GC is a transfer "from a trust" for purposes of Chapter 13. Therefore, the payment of the proceeds to GS is a direct skip. Since the proceeds from the policy ($95,000) are less than $100,000, the executor is liable for the tax imposed by Chapter 13 and is required to file Form 706.

Example (2). Assume the same facts as in example (1) except that A is the insured under two insurance policies issued by the same insurance company. The proceeds ($75,000) from each policy were includible in A's gross estate for federal estate tax purposes. A's grandson, GS, was named the sole beneficiary of Policy 1 and A's granddaughter, GD was named the sole beneficiary of Policy 2. GS and GD are skip persons (as defined in section 2613). Therefore, the payments of the proceeds are direct skips. Since the total value of the policies ($150,000) exceeds $100,000, the insurance company is liable for the tax imposed by Chapter 13 and is required to rile Schedule R–1 of Form 706.

Example (3). On August 1, 1986, A, the insured under an insurance policy, dies. The policy provides that the insurance company shall make monthly payments of $750 to GC, A's grandchild, for life with the remainder payable to A's greatgrandchild, GGC. The face value of the policy is $110,000. Since the proceeds will continue to be held by the insurance company (the trustee), the proceeds are treated as if they were transferred to a trust for purposes of Chapter 13. The trust is a skip person (as defined in section 2613 (a) (2)) and the transfer is a direct skip. Since the total value of the policy ($110,000) exceeds $100,000, the insurance company is liable for the tax imposed by Chapter 13 and is required to file Schedule R–1 of Form 706.

Example (4). Assume the same facts as in example (3) except that the policy provides that the insurance company shall make monthly payments of $500 to GC and that the face value of the policy is $95,000. The transfer is a transfer to a trust for purposes of Chapter 13. However, since the total value of the policy ($95,000) is less than $100,000, the executor is liable for the tax imposed by Chapter 13 and is required to file Form 706.

(3) *Limitation on personal liability of trustee.* A trustee shall not be personally liable for any increases in the tax imposed by section 2601 which is attributable to the fact that—

(i) A transfer was made to the trust during the life of the transferor for which a gift tax return was not filed, or

(ii) The inclusion ratio with respect to the trust, determined by reference to the transferor's gift tax return, is erroneous, the actual inclusion ratio being greater.

This paragraph (c)(3) shall not apply if the trustee has or is deemed to have knowledge of facts sufficient to reasonably conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous. A trustee will be deemed to have knowledge of such facts if the trustee's agent, employee, partner, or co-trustee has knowledge of such facts.

(4) *Exceptions*—(i). *Minors.* Where a distributee who is a minor is otherwise required to make a return, the return may be made for the minor by the minor's guardian or, if no guardian has been appointed, by a person charged with the care of the minor's person or property.

(ii) *Returns made by fiduciaries.* See section 6012 (b) and the regulations thereunder for a fiduciary's responsibilities regarding the returns of decedents, returns of persons under a disability, returns of estates and trusts, and returns made by joint fiduciaries.

(d) *Time and manner of filing return*—(1) *In general.* Forms 706, 706GS(D), 706GS(D–1), 706GS(T), 709, and Schedule R–1 of Form 706 must be filed with the Internal Revenue Service office with which an estate or gift tax return of the transferor must be filed. The return shall be filed—

(i) In the case of a direct skip, on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer (see section 6075 (b) (3)), and

(ii) In all other cases, on or before the 15th day of the 4th month after the close of the calendar year in which such transfer occurs.

(2) *Exceptions*—(i) *Inter vivos direct skips made after September 25, 1985, and on or before October 22, 1986.* The return with respect to the tax imposed by Chapter 13 on any inter vivos direct skip after September 25, 1985, and on or before October 22, 1986, must be filed on or before May 2, 1988.

(ii) *Taxable distributions and taxable terminations occurring after September 25, 1985, before January 1, 1988.* If the person liable for the tax under this chapter is required to file Form 706GS(T) or 706GS(D), with respect to a transfer which occurred after September 25, 1985, and before January 1, 1988, the return shall be filed on or before a date to be specified in an announcement that will appear in the Internal Revenue Bulletin.

(iii) *Direct skips at death.* The due date for any return with respect to the tax imposed by Chapter 13 or any direct skip attributable to the death of the decedent shall be no earlier than June 13, 1988.

(e) *Place for filing returns.* See section 6091 and the regulations thereunder for the place for filing any return, declaration, statement, or other document, or copies thereof, required by this chapter.

(f) *Lien on property.* The liens imposed under sections 6324, 6324A, and 6324B are applicable with respect to the tax imposed under Chapter 13. Thus, a lien under 6324 is imposed in the amount of the tax imposed by section 2601 on all property transferred in a generation-skipping transfer until the tax is fully paid or becomes uncollectible by reason of lapse of time. The lien attaches at the time of the generation-skipping transfer and is in addition to the lien for taxes under section 6321.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 26.2601–1 . . . 1545–0985" and "§ 26.2662–1 . . . 1545–0985".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
Approved
O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
February 24, 1988.

[FR Doc. 88–5501 Filed 3–14–88; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Public Safety Officers' Death Benefits

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The regulations covering public safety officers' death benefits and the appendix to those regulations are being amended to comply with statutory amendments to the Public Safety Officers' Benefits (PSOB) Act. Changes to the regulation include provision of coverage for members of public rescue squads or ambulance crews whose deaths result from traumatic injuries sustained while responding to a fire, rescue or police emergency.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Yvette Caesar (Attorney Advisor), 202–724–6235.

SUPPLEMENTARY INFORMATION: The purpose of the amendment is to extend coverage of the Public Safety Officers' Benefits Act to include an officially recognized or designated public employee member of a rescue squad or ambulance crew who dies as a direct and proximate result of a personal injury sustained while responding to a fire, rescue or public emergency.

The regulations are not a "major rule" under the requirements of Executive Order 12291. A Regulatory Analysis is not required by the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h), do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Firefighters, Law enforcement officers.

For the reasons set out in the preamble, Title 28, Part 32 and Subpart A of the Code of Federal Regulations are amended as follows.

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

1. The authority for 28 CFR Part 32 is revised to read as follows:

Authority: Secs. 801(a) and 1204(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, Pub. L. 98–473, Pub. L. 99–570 and Pub. L. 99–591).

2. Section 32.1 is revised to read as follows:

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Office of Justice Programs, Bureau of Justice Assistance to pay a benefit of $50,000 to specified survivors of public safety officers, rescue squad and ambulance crew members found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, Pub. L. 98–473, Pub. L. 99–570, and Pub. L. 99–591.

§ 32.2 [Amended]

3. Section 32.2 is amended by revising paragraphs (c) and (h), redesignating paragraphs (k), (l), (m), (n), (o), (p), (q), and (r) as paragraphs (l), (m), (n), (o), (p), (q), (r), and (u), and adding new paragraphs (k), (s), and (t) to read as follows:

* * * * *

(c) (1) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires in obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires, and

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulations, condition of employment or service, or law to perform while responding to a fire, rescue or police emergency.

* * * * *

(h) "Public safety officer" means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

* * * * *

(k) "Rescue squad or ambulance crew member" means an officially recognized or designated employee or member of a rescue squad or ambulance crew who was responding to a fire, rescue, or police emergency.

(s) "Public employee" means an employee of a public agency.

(t) "Rescue" means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing or in imminent danger of bodily harm.

George A. Luciano,

Director, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

Date: March 7, 1988.

[FR Doc. 88-5568 Filed 3-14-88; 8:45 am]

BILLING CODE 4410-18-M

[Attorney General Order No. 1256-88]

28 CFR Part 50

Procedures Governing the Destruction of Contraband Drug Evidence in the Custody of Federal Law Enforcement Authorities

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 28 CFR, Part 50, by adding a new section, § 50.21, establishing the drug destruction policy of the Department of Justice for the timely destruction of unnecessary seized contraband drugs. This final rule is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States. It is necessary since the retention of controlled substances and the continuing acquisition of additional amounts pose increased storage problems. The procedures established herein will permit destruction of unnecessary seized controlled substances, and provide for the retaining of an amount that will be sufficient for evidentiary purpose.

EFFECTIVE DATE: April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis F. Hoffman, Chief Counsel, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537. Telephone (202) 633-1276.

SUPPLEMENTARY INFORMATION: The Attorney General has determined that procedures are necessary to provide for the timely destruction of unnecessary seized contraband drugs and to prevent the warehousing of large quantities of such drugs which are unnecessary for due process in criminal cases. The maintenance of large quantities of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States. The procedures adopted herein will allow for the destruction of unnecessary contraband drugs and will thereby facilitate the retention of quantities sufficient for evidentiary purposes. The notice of proposed rulemaking was published in the **Federal Register** on October 8, 1987, (52 FR 37630 to 37631) to amend 28 CFR, Part 50, by adding a new section, § 50.21. This proposed rulemaking provided the opportunity for interested parties to submit comments or objections in writing on or before November 9, 1987. Two comments were received.

The first comment was a letter dated November 5, 1987, from Clyde E. Robbins, Rear Admiral, United States Coast Guard, Chief, Office of Operations. Admiral Robbins' comments concerned the destruction of marijuana and other controlled substances seized at sea by the Coast Guard as part of its interdiction responsibilities. Admiral Robbins stated that the policies set forth in the proposed rule did not satisfactorily address the issues concerning the contraband seized by the Coast Guard at sea. He suggested that independent authority and standards for destruction of excessive contraband at sea should be included as part of the final rule. The ability to destroy excess contraband which is unnecessary for prosecution would alleviate many of the security and administrative problems related to the Coast Guard seizures. He concluded by suggesting that after appropriate photographing and sampling, the seized contraband be destroyed at sea, and not returned to the United States for testing.

The Coast Guard proposal raises several issues which go beyond the proposed rule. One of those issues concerns the destruction of evidence without prior consultation with the appropriate prosecutor. A second issue concerns the feasibility, propriety and legality of depositing at sea large quantities of marijuana and other drugs, and whether such action would be contrary to existing domestic and international rules concerning environmental protection. Accordingly, Admiral Robbins' suggestion has been referred simultaneously to the Criminal Division and the Land and Natural Resources Division of the Department of Justice for appropriate review and comment. A final decision on Admiral Robbins' suggestions must await such analysis.

A second comment was received from Richard S. Frank, Chief, Forensic Sciences Section, Office of Science and Technology of the Drug Enforcement Administration. Mr. Frank noted that section (e)(5) of the proposed rule requires that the Drug Enforcement Administration and the Federal Bureau of Investigation:

> Maintain the retained portions of the contraband drugs in appropriate laboratory or division vaults until the evidence is no longer required for legal proceedings * * *

Mr. Frank suggested that the words "*in appropriate laboratory of division vaults*" be removed from the procedures. He stated that the inclusion of the six underlined words places unnecessary restrictions on the storage of the seized drugs, and he noted that their removal from the suggested procedures would not in any way effect the intent of the proposed rule. In order respects, Mr. Frank enthusiastically supported the proposed rule.

The comments of Mr. Frank are well-taken. Since it is the responsibility of the Drug Enforcement Administration and/or the Federal Bureau of Investigation to appropriately secure any and all evidence, it is immaterial to the interests of justice where that evidence is secured. Conceivably, the laboratory or division vaults of the Drug Enforcement Administration or the Federal Bureau of Investigation could be incapable of containing all the seized contraband drugs necessary for prosecution. This final rule adopts the suggestion by eliminating the words "*in appropriate laboratory or division vaults*" from section (e)(5) of the proposed rule.

This is not a major rule within the meaning of Executive Order 12291. It will not have a substantial impact on a significant number of small businesses whose interests must be considered under the Regulatory Flexibility Act. 5 U.S.C. 605.

List of Subjects in 28 CFR Part 50

Drugs, Drug traffic control, Law enforcement.

Under the authority vested in the Attorney General, including 28 U.S.C. 509, 510; 5 U.S.C. 301, and 21 U.S.C. 811(a), 28 CFR Part 50 is amended to read as follows:

PART 50—[AMENDED]

1. The authority citation for Part 50 is amended to read as follows:

Authority: 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, 552a, 15 U.S.C. 16(d), E.O. 11247; 3 CFR (1964–65 Comp.) 348, 21 U.S.C. 881(f)(2).

2. Part 50 is amended by adding a new § 50.21 to read as follows:

§ 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

(a) *General.* The procedures set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to the destruction of seized contraband drugs.

(b) *Purpose.* This policy implements the authority of the Attorney General under Title I, section 1006(c)(3) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 which is codified at 21 U.S.C. 881(f)(2), to direct the destruction, as necessary, of Schedule I and II contraband substances.

(c) *Policy.* This regulation is intended to prevent the warehousing of large quantities of seized contraband drugs which are unnecessary for due process in criminal cases. Such stockpiling of contraband drugs presents inordinate security and storage problems which create additional economic burdens on limited law enforcement resources of the United States.

(d) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) The term "Contraband drugs" are those controlled substances listed in Schedules I and II of the Controlled Substances Act seized for violation of that Act.

(2) The term "Marijuana" is as defined in 21 U.S.C. 801(15) but does not include, for the purposes of this regulation, the derivatives hashish or hashish oil for purposes of destruction.

(3) The term "Representative sample" means the exemplar for testing and a sample aggregate portion of the whole amount seized sufficient for current criminal evidentiary practice.

(4) The term "Threshold amount" means:

(i) Two kilograms of a mixture or substance containing a detectable amount of heroin;

(ii) Ten kilograms of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecognine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (d)(4)(ii) (A) through (C) of this section;

(iii) Ten kilograms of a mixture or substance described in paragraph (d)(4)(ii)(B) of this section which contains cocaine base;

(iv) Two hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) Twenty grams of a mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);

(vi) Eight hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidiny] propanamide [commonly known as fentanyl] or two hundred grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl propanamide; or

(vii) Twenty kilograms of hashish or two kilograms of hashish oil [21 U.S.C. 841(b)(1)(D), 960(b)(4)].

In the event of any changes to Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1) as amended occurring after the date of these regulations, the threshold amount of any substance therein listed, except marijuana, shall be twice the minimum amount required for the most severe mandatory minimum sentence.

(e) *Procedures.* Responsibilities of the Federal Bureau of Investigation and Drug Enforcement Administration. When contraband drug substances in excess of the threshold amount or in the case of marijuana a quantity in excess of the representative sample are seized pursuant to a criminal investigation and retained in the custody of the Federal Bureau of Investigation or Drug Enforcement Administration, the Agency having custody shall:

(1) Immediately notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible state/local prosecutor that the amount of seized contraband drug exceeding the threshold amount and its packaging, will be destroyed after sixty days from the date notice is provided of the seizures, unless the agency providing notice is requested in writing by the authority receiving notice not to destroy the excess contraband drug; and

(2) Assure that appropriate tests of samples of the drug are conducted to determined the chemical nature of the contraband substance and its weight sufficient to serve as evidence before the trial courts of that jurisdiction; and

(3) Photographically depict, and if requested by the appropriate prosecutorial authority, videotape, the contraband drugs as originally packaged or an appropriate display of the seized contraband drugs so as to create evidentiary exhibits for use at trial; and

(4) Isolate and retain the appropriate threshold amounts of contraband drug evidence when an amount greater than the appropriate threshold amount has been seized, or when less than the appropriate threshold amounts of contraband drugs have been seized, the entire amount of the seizure, with the exception of marijuana, for which a representative sample shall be retained; and

(5) Maintain the retained portions of the contraband drugs until the evidence is no longer required for legal proceedings, at which time it may be destroyed, first having obtained consent of the United States Attorney, an Assistant United States Attorney, or the responsible state/local prosecutor;

(6) Notify the appropriate United States Attorney, Assistant United States Attorney, or the responsible state/local prosecutor to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of five years. An exemplar sufficent for testing will be retained consistent with this section.

(f) *Procedures.* Responsibilities of the United States Attorney or the District Attorney (or equivalent state/local prosecutorial authority). When so notified by the Federal Bureau of Investigation or the Drug Enforcement Administration of an intent to destroy excess contraband drugs, the United States Attorney or the District Attorney (or equivalent) may:

(1) Agree to the destruction of the contraband drug evidence in excess of the threshold amount, or for marijuana in excess of the representative sample, prior to the normal sixty-day period. The United States Attorney, or the District Attorney (or equivalent) may delegate to his/her assistants authority to enter into such agreement; or

(2) Request an exception to the destruction policy in writing to the Special Agent in Charge of the responsible division prior to the end of the sixty-day period when retaining only the threshold amount or representative sample will significantly affect any legal proceedings; and

(3) In the event of a denial of the request may appeal the denial to the Assistant Attorney General, Criminal Division. Such authority may not be redelegated. An appeal shall stay the destruction until the appeal is complete.

(g) *Supplementary regulations.* The Federal Bureau of Investigation and the Drug Enforcement Administration are authorized to issue regulations and establish procedures consistant with this section.

Dated: February 18, 1988.

Edwin Meese III,
Attorney General.

[FR Doc. 88-5229 Filed 3-14-88; 8:45 am]

BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning April 1, 1988. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after April 1, 1988, and will remain in effect until the PBGC issues new interests rates and factors.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilties that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1988 (53 FR 4135 (February 12, 1988)). Changes in the financial and annuity markets now require a decrease in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1988, which set reflects a decrease of ¼ percent in the immediate interest rate to 7¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after April 1, 1988, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007-11009, 11016(c)(12)-(c)(13) and 11011(a), Pub. L. 99-272, 100 Stat. 239-240, 244-252, 274 and 253-257 and by secs. 9312-13, Pub. L. 100-203, 101 Stat. 1330.

2. Rate Set 72 of Appendix B is revised and Rate Set 73 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred Annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
72	3-1-88	4-1-88	8.00	1.0725	1.0600	1.0400	7	[illegible]
73	4-1-88		7.5	1.0700	1.0575	1.0400	7	[illegible]

Joseph A. Vasquez, Jr.,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-5570 Filed 3-14-88; 8:45 am]

BILLING CODE 7709-01-M

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29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1988.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values of i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_k
	*		*		*			*		*		*			*	
April 1988	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

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Issued at Washington, DC, on this 9th day of March 1988.

Joseph A. Vasquez, Jr.,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–5509 Filed 3–14–88; 8:45 am]

BILLING CODE 7708-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket 87–6A]

Freedom of Information Act; Schedule of Fees and Methods of Payments for Services Rendered

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is published to inform the public that the Copyright Office of the Library of Congress is adopting proposed regulation 37 CFR 203.6 as a final regulation without change. The purpose of the regulation is to bring the fee schedule and fee waiver regulations of the Copyright Office into compliance with appropriate provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570), the OMB Administration Regulations issued pursuant to that Act, and the Justice Department fee waiver policy guide dated April 2, 1987. The effect of this regulation is to establish the fee schedule which will be applied to requests for copies under the Freedom of Information Act and the conditions under which fees will be modified or waived.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287–8380.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 requires agencies to charge for direct costs of providing FOIA services such as search, duplication, and in certain cases, review. It also requires that agencies promulgate procedures and guidelines for determining when such fees should be reduced or waived. On January 5, 1988 the Copyright Office published proposed rules that meet the requirements of the Act, the OMB regulations, and the Justice Department guidelines (53 FR 153). The Office received no comments on the proposed rules and now makes them final without change.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1940, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies and defined in the Administrative Procedure Act. Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 203

Freedom of information.

Final Regulation

In consideration of the foregoing, the Copyright Office amends Part 203 of 37 CFR, Chapter II.

PART 203—[AMENDED]

1. The authority citation for Part 203 would continue to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 203.6 is revised as follows:

§ 203.6 Schedule of fees and methods of payment for services rendered.

(a) *General.* The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, Title 17 of the United States Code (Pub. L. 94–553) requires a fee to be charged. The fees required to be charged are contained in section 708 of Title 17 U.S.C., or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to Title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themseleves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) *FOIA Requests.* In responding to requests under this part the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, $4.

(2) For copies of all other Copyright Office records not otherwise provided for in this section $.45 per page.

(e) For each hour or fraction of an hour spent in searching for a requested record, $10, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For certification of each document, $4.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost of the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programing, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no more than $10.00 per hour or fraction thereof so spent).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) *Fee limitations.* The following limitations on fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to "public understanding."

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as praticable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregation of requests.* Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) *Advance payments.* (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of billing.

Dated: February 29, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 88–5663 Filed 3–14–88; 8:45 am]

BILLING CODE 1410-07-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6780]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community number	Effective date
North Carolina	Andrews, Town of	Cherokee	370060	March 16, 1988.
Do	Asheville, City of	Buncombe	370032	Do.
Do	Unincorporated Areas	Avery	370010	Do.
Do	Blowing Rock, Town of	Watauga	370252	Do.
Do	Crossnore, Town of	Avery	370267	Do.
Do	Dillsboro, Town of	Jackson	370136	Do.
Do	Elk Park, Town of	Avery	370362	Do.
Do	Unincorporated Areas	Graham	370105	Do.
Do	Unincorporated Areas	Madison	370152	Do.
Do	Marshall, Town of	Madison	370154	Do.
Do	Unincorporated Areas	Polk	370194	Do.
Do	Sylva, Town of	Jackson	370137	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88–5563 Filed 3–14–88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[General Docket 84–1234; RM–4247]

Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; extending time for reply comments.

SUMMARY: This action extends the time for filing replies to an opposition to the Petition for Further Reconsideration. The action responds to a request for extension filed by various aviation parties. The aviation parties point out that coordination problems arose between multiple entities while formulating their reply. They state that these difficulties are being resolved but that 3 extra days are needed to finalize the reply. They argue that a 3 day extension should not delay the Commission's decision in this proceeding. In order to obtain as complete a record as possible in this proceeding, the Commission is extending the time for filing replies to February 26, 1988.

DATES: Reply comments are now due February 26, 1988.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, Office of Engineering and Technology, (202) 653–8117.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order in Gen. Docket No. 84–1234, RM–4247, FCC 87–302, adopted September 17, 1987 and released November 9, 1987, *summary published,* 52 FR 44985, November 24, 1987.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 88–5624 Filed 3–14–88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Pears, Plums, and Peaches Grown in California; Proposed Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the Pear Commodity Committee established under Marketing Order 917 for the 1987–88 fiscal year. The expenses would be increased from $899,551 to $910,111. The increase reflects higher than estimated costs for market development and promotion activities undertaken by the pear committee in marketing the 1987 crop.

DATES: Comments must be received by March 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order No. 917 [7 CFR Part 917] regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 43 handlers of California pears under this marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $899,551 for the Pear Commodity Committee for the fiscal period ending February 29, 1988, was published in the **Federal Register** on August 20, 1987 [52 FR 31375]. That action also fixed the assessment rate to be levied on pear handlers during the 1987–88 fiscal period. At at meeting held on January 27, 1988, the Pear Commodity Committee voted unanimously to increase its budget of expenses from $899,551 to $910,111.

The committee incurred higher than expected market development and promotion costs in marketing the 1987 pear crop. The proposed increase is needed to cover these expenses.

No change in assessment rate was recommended by the committee. Adequate funds are available to cover any proposed increase in expenses for the Pear Commodity Committee that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. The committee needs to have authority to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, pears, plums, peaches, California.

For the reasons set forth in the preamble, it is proposed that § 917.247 be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.249 is amended as follows:

This section will not be published in the Code of Federal Regulations.

§ 917.249 [Amended]

Section 917.249 is amended by changing "$899,551" to "$910,111."

Dated: March 10, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5658 Filed 3–14–88; 8:45 a.m.]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Safety Requirements for Industrial Radiographic Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations that apply to industrial radiography. Licensees would be required to use radiographic exposure devices and associated equipment that provide additional safety features and radiographers would be required to wear pocket alarm dosimeters. The

proposed requirements are intended to reduce radiation exposures to both radiography personnel and the general public from the use of radiographic equipment. The proposed amendments would affect persons licensed to perform industrial radiography and manufacturers of radiographic equipment. The proposed amendments would not affect x-ray radiography or devices incorporating naturally occurring or accelerator produced radioactive material.

DATE: Comment period expires May 16, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of a regulatory analysis and a finding of no significant environmental impact prepared for this proposed rule may be examined at: The NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

SUPPLEMENTARY INFORMATION:

Background

Industrial radiography is a technique of nondestructive testing which uses radioactive sources or x-rays to detect flaws in welds, and cracks, breaks and other structural deficiencies in bridges, pipelines and manufactured articles. Most industrial radiography operations are conducted using gamma-ray emitting sources, although x-rays and neutrons can also be used. The procedure for taking radiographs is similar to the procedure used for taking medical x-rays except that a radioactive source is generally used in place of an x-ray machine. The operating principal of all of the devices is similar. Most radiography operations involve projecting a radioactive source out of its shielded position within the device; some devices, such as the so called "pipeliner," utilize a shutter to allow the radiation beam to exit from a shielded position within the device.

The general procedure is as follows. First, a radiation sensitive film is positioned over the area of interest on the item to be examined. Then a radiography exposure device or camera (which contains a sealed gamma-ray emitting source within a radiation shield) is placed nearby. A flexible hollow tube called a "guide tube" is connected to the front of the device and the other end of the guide tube to which an exposure head is attached is positioned on the item to be examined opposite the film. Next, on the back of the device, a "control cable" is connected to the radiation source; this connection is made to the source assembly, sometimes called a "pigtail" (a short length of wire with the source fastened on one end and a connector to the cable on the other). Use of the "pigtail" allows the connection to be made without directly exposing the radiographer. Finally, a hollow tube through which the control cable moves is connected to the back of the device. The control cable and its tube are then unreeled until the cranking device for operating the cable is approximately twenty feet from the device. This distance provides radiation protection for the radiographer. The next step is to crank (push) the radioactive source from the radiographic device to the end of the guide tube. The gamma-rays from the source penetrate the item under examination and interact with the film. At the end of the desired exposure time the source is cranked back into the device. A survey is made with a radiation detection device to ensure that the source is in its shielded position, and the film is retrieved for development. The radiographer is then ready to proceed with the next exposure.

Although the described procedure appears straightforward, and most radiography is performed safely, radiation overexposures to radiographers and occasionally to the general public occur. Accidental radiation overexposures to both radiographers and the public have concerned both the NRC and its Agreement States because the radiation levels of the radioactive sources used in industrial radiography are sufficient to cause serious injury or death.

Industrial radiography performed in the field is of most concern. Unlike many other applications of ionizing radiation which are rigidly controlled and remote from the public, industrial radiography involves the use of high activity sources, somtimes in close proximity to the general public, and is often only under control of the radiographer. The work is generally performed under production pressure and is often performed in adverse weather and environmental conditions. As a result, errors in following proper safety procedures may be made by radiographers and these occasionally lead to radiation overexposures. In many cases the required radiation survey is not made and in some instances assistant radiographers have been left to perform the radiography themselves without the direct supervision of the more highly trained and skilled radiographer. Some of the failures of radiography licensees to follow NRC requirements have been documented in a recent NRC information notice.[1]

Radiography Overexposures

The NRC has been concerned about the number of radiation overexposures among radiographers for several years and has completed, has underway, or is considering, actions intended to reduce the frequency of the overexposures. These actions include: (a) Development of a training manual for radiography personnel to help ensure that they understand the need for, and the application of, good radiation protection practices,[2] (b) consideration of several programs to improve training provided to individual radiographers to help ensure that they are adequately trained and are aware of their direct responsibility for safety performance, (c) increasing inspection time spent observing workers performing actual radiography operations, (d) providing additional guidance for reporting events as required by 10 CFR and ensuring that these reports include clear information concerning equipment failures when appropriate, and (e) the establishment of safety requirements for radiographic equipment.

Radiation overexposures are required to be reported to NRC by its licensees. Over the decade ending in 1984 industrial radiography has accounted for more than one-half of the overexposures reported by all NRC licensees greater

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[1] NRC information Notice No. 87–45: "Recent Safety Related Violations of NRC Requirements by Industrial Radiography Licensees," September 25, 1987. Single copies of this information notice may be obtained by telephone by interested persons at (301) 492–7492.

[2] NUREG/BR–0024, "Working Safely in Gamma Radiography," S. A. McGuire and C. A. Peabody, 1982. Copies of NUREG/BR–0024 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

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than 5 rems to the whole body or 75 rems to the extremities and almost 60% of the overexposures greater than 25 rems to the whole body and 375 rems to the extremities. Over this same period, radiography accounted for almost 25% of all overexposures reported by NRC licensees. (1984 is the most recent year for which complete exposure data has been tabulated for all NRC licensees.)

During the years 1979 through 1983 radiographer overexposures for both NRC and Agreement States combined averaged 18% of all overexposures, although radiographers represent only 4% of all radiation workers. It is believed that many more incidents occur which do not require reporting in which there is a potential for serious overexposure from the high-intensity, relatively high-energy gamma-ray sources used.

The extreme hazard potential involved in radiography overexposures is shown in at least three cases (all incidents in foreign countries), where children and adults have found lost radiography sources and have died from overexposure. In other cases involving radiographers, the overexposures have caused acute effects such as burns and necrosis of body tissues. Some examples of incidents which show the extreme hazard potential are:

(1) *1980, Texas:* The source assembly (pigtail) was not properly connected, and the source remained in the guide tube. A proper radiation survey was not made, and the source was stored in the coiled-up guide tube in a room adjacent to a work area. One radiographer received an overexposure of 75 rems, one other person an overexposure of 198 rems and thirty-one other persons recieved exposures ranging from 0.09 to 4 rems. Had another radiography crew not discovered the next day that the source was missing from the device, many others could have been seriously exposed.

(2) *1985, Wyoming:* The source assembly (pigtail) was not connected properly or became disconnected. The radiography crew failed to make the required radiation survey, and the source was stored in the coiled-up guide tube in the back of a pickup truck for two days. Three radiographers received exposures of 22, 7 and 0.6 rem and six members of the general public and one unbadged employee received doses believed to be less than 0.5 rem each.

(3) *1979, California:* The source assembly (pigtail) became disconnected, was cranked out of the end of the guide tube and fell to the ground. No radiation survey was made. An individual found the source and placed it in his hip pocket and carried it around for about 45 minutes. The individual suffered a severe radiation burn on his right buttock. In 1985 the individual still walked with difficulty and was under periodic medical review. Ten other persons were exposed with two of them developing radiation burns on their fingers.

(4) *1984, Morocco:* A source became disconnected and fell to the ground. A laborer found the source and took it home. Eight members of his family died from overexposure, and several others received significant doses.

(5) *1984, Texas:* An assistant radiographer received an overexposure of 7.5 rems for the quarter. Investigation showed that the radiographer did not always lock the source after each exposure as required, nor did he always make the required radiation survey. Subsequent investigation also revealed that the locking mechanism was defective.

Studies of radiography exposure data have shown that the majority of overexposures to radiographers involve improper retraction of the source, failure of the connecting device to hold the source in the fully shielded position once retracted, and failure of the radiographers to properly perform the radiation surveys required by the regulations.

A major factor in many of the reported overexposures is the failure to follow proper safety procedures. However, NRC data indicate that radiography equipment problems contribute to approximately 40% of all reported overexposure events. The principal causes of reported overexposure in which equipment problems played a contributing role are:

(1) The source moves out of the shielded position after being cranked back into the device and before being locked, or the locking device is defective and fails to retain the source in the proper position.

(2) The source assembly (pigtail) is not properly connected or becomes disconnected so that while it may be cranked out of its shielded position in the device, it cannot be retracted and remains in the guide tube.

(3) The source assembly (pigtail) is not properly connected or becomes disconnected and is cranked out through the end of the guide tube and drops to the ground.

(4) The source becomes stuck in the guide tube due to damage to the guide tube or due to fraying of the control cable.

All of these conditions could be recognized by performing a radiation survey after each radiograph (to verify that the source is in its shielded position within the radiography device). Radiographers are required by the regulations in 10 CFR 34.43(b) to perform such a survey. In many cases, however, the radiation survey instrument is not used, is used incorrectly, or is defective. In the first of the causes listed above, the overexposure generally only involves radiographers. In the other three there is considerable potential for exposure to the public as well as radiography personnel.

Previous Regulatory Initiatives

In an effort to reduce the rate and severity of radiography overexposures attributable to equipment problems, the NRC published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 1978 (43 FR 12718) announcing that it was undertaking the development of safety requirements for radiographic exposure devices that are licensed under 10 CFR Part 34. Among the several comments received, was the suggestion that the NRC delay further action on any rulemaking until completion of a related consensus performance standard. A voluntary consensus standard, NBS Handbook 136, American National Standard N432, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography" was issued in January 1981. Although the standard incorporates many of the safety design features proposed in the ANPRM, it is a voluntary consensus standard. There was no regulatory requirement for manufacturers to adopt the recommendations of the standard but recent amendments to 10 CFR Parts 30 and 32 formalized NRC's source and device registration process and will ensure that future radiography devices meet the requirements of the standard.

In March 1980 (partly as a result of a serious radiation accident that occurred in California in 1979, example 3 above), an ad hoc Radiography Steering Committee composed of NRC personnel and State officials representing the Conference of Radiation Control Program Directors, Inc., was formed to draft recommendations for improving radiography safety. Four task forces were subsequently established by the steering committee to address various aspects of the problem. These task force assignments were: Training and Certification, Radiographic Equipment Design Safety, Inspection, and Collection and Analysis of Incident Data.

In 1982, the NRC published a training manual for industrial radiographers,[3] and in 1984 the equipment safety task force presented its recommendations on performance criteria for radiographic exposure devices [4] to the Radiography Steering Committee and urged that the recommendations be added to the rules as soon as possible. These recommendations include many of the performance criteria specified in the consensus standard together with additional criteria.

The voluntary consensus standard ANSI N432, issued in 1981, is currently under review for possible revision. The revision is expected to incorporate many of the performance requirements in the international standard, ISO 3999, "Apparatus for Gamma Radiography Specification." Some of the performance requirements to be incorporated in the revised standard are the same as those recommended by the equipment task force and included in this proposed rule. However, publication of the revision as a final industry standard may take several years. When issued, NRC will consider if additional rulemaking is appropriate or necessary to incorporate the standard.

While voluntary consensus standard American National Standard N432 has been available since 1981, it does not appear that all manufacturers are actually using the consensus standard nor does it appear that its provisions have been uniformly or completely implemented by radiography equipment manufacturers. Also, some of the equipment currently in use may have been manufactured prior to publication of the standard and may not meet its provisions. As a result, it is assumed that the voluntary consensus standard has had little effect on reducing the number or severity of radiography overexposures. Further, some of the equipment improvements recommended by the Radiography Steering Committee are not included in the standard.

It has been stated earlier that NRC studies indicated that some 40% of the incidents involved equipment problems. Therefore it is felt that regulatory action is needed at this time in order to reduce the number of radiography incidents occurring and possibly to prevent additional serious overexposures that are potentially possible given the high radiation output of the sources used in this industry.

The Radiography Steering Committee also suggested that one means of reducing radiographer overexposures caused by the failure to detect the return of the source to its properly shielded position in the radiographic exposure device, would be to require that radiographers wear alarm dosimeters, (not chirpers). Alarm dosimeters are radiation detection devices that provide an audible alarm at a preset or selectable dose or dose rate. These devices may also have a visual display or dose or dose rate or both. Also, both dose rate alarm and a dose alarm may be incorporated within the same unit.

Audible-alarm dosimeters are especially useful when radiographers cannot hold survey meters because they need both hands to perform a job or when they cannot continually look at the survey meter because the operation they are performing requires them to look elsewhere. Alarm dosimeters are not to be substituted for a radiation survey meter but are to be considered a complementary warning device. The use of alarm dosimeters is now a requirement for radiographer trainees in Canada and has proved useful according to Canadian officials.

NRC Regulatory Guide 8.28 [5] "Audible-Alarm Dosimeters" discusses a program for the appropriate use of alarm dosimeters. Enquiries have indicated that these dosimeters are used in nuclear power plants on a relatively widespread basis. Few, however, are used in the radiography industry in the United States. Alarm dosimeters are considered reliable and hold up well with proper use. They would provide an audible warning to a radiographer when he or she is approaching an exposed source, so that actions can be taken immediately to minimize unnecessary radiation exposure. The steering committee recommended that the use of alarm dosimeters be incorporated in the proposed rule.

Discussion of the Proposed Amendments

Section 34.20(a)

This paragraph incorporates American National Standard N432 by reference into NRC's regulations and will require that future radiography equipment meet the specifications of this standard. The standard addresses performance requirements for radiography devices, source assemblies, and controls. Examples of the requirements specified in the ANSI standard are:

a. Radiography devices and controls will be classified according to handling and operational characteristics. Crank-out devices will be classified as "Type 1" and pipeliner devices as "Type 2." Remote controls will be designated as "Type R" and local controls as "Type L." Local controls may only be used on Type 2 devices.

b. Exposure devices will be marked with the radiation symbol and will display a radiation warning label.

c. Exposure devices, controls, and source assemblies will be expected to meet certain design and construction criteria. Examples include: resistance to stress of use (e.g., the effects of radiation, temperature, and working conditions); appropriate locking mechanisms; adequate control and guide tube connectors; crank direction markings on the control; and control/lock assemblies that will not allow the source to be exposed unless the control is properly connected and the source assembly-drive cable connection properly made.

d. Prototype exposure devices, controls, and source assemblies will be expected to pass certain tests, such as: shielding efficiency, horizontal and vertical shock, accidental drop, stress, crushing, tensile strength, and endurance.

Present 10 CFR Part 34 requirements which limit exterior radiation levels will be replaced by those specified in the ANSI standard. The existing limit of 50 mR/hr at 6 inches (15 cm) was established when lead was commonly used for shielding and before the use of depleted uranium in radiographic devices. With the use of lead, most of the small devices were close to 4 inches (10 cm) in radius and the maximum surface levels were about 300 mR/hr. With the use of depleted uranium, the distance from source to surface can be on the order of 2 inches (5 cm) and a limit of 50 mR/hr at 6 inches (15 cm) can cause radiation levels of 800 mR/hr at the surface. The ANSI standard would limit exterior radiation levels, on portable devices for example, to 200 mR/hr at the surface or 50 mR/hr at 5 cm but in either case not to exceed 2 mR/hr at 1 meter from the surface. The lower external radiation levels for portable and mobile devices should result in lower exposure rates for users of those devices, particularly to that part of the user's body that may be in contact with the surface of the device.

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[3] S.A. McGuire and C.A. Peabody, "Working Safely in Gamma Radiography" NUREG/BR-0024, U.S. Nuclear Regulatory Commission, September 1982.

[4] "Radiographic Equipment Safety Performance Criteria," D. Honey (CA), R. Ratliff (TX), R. Wascom (LA), S. Baggett and A. Tse (NRC), April 30, 1984. For a copy of this report see paragraph heading For Further Information Contact.

[5] Regulatory guide 8.28 is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Regulatory Guide may be purchased by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

In addition to providing the lower limits, ANSI N432 would provide an alternative to determining radiation levels on the surface of the device. Evaluation of surface radiation levels has frequently caused misunderstandings with respect to acceptable procedures. For almost all kinds of radiation measuring instruments, a determination of surface radiation levels requires a combination of an instrument reading and a calculation. The calculation is needed because the instrument reading reflects the radiation level at some location (often the geometric center) within the radiation sensitive chamber of the instrument, and that radiation level may not be the same as the level at the outer surface of the instrument. Under the alternative to determining radiation levels at the surface of the device, the determination may be made at 5 cm from the surface. By specifying a 5 cm distance, determinations can be made directly with many instruments without resorting to calculations. An acceptable procedure for determining the radiation levels near the radiographic exposure device and the amount of radioactive material that the device can contain is given in ANSI N432. Other procedures also may be used for this determination.

Section 34.20(b)

This paragraph would require that a label be displayed on exposure devices with information identifying the sealed source radionuclide, its activity, and the manufacturer and model number. The paragraph would also require that devices to be used as Type B transport containers meet the applicable requirements of 10 CFR Part 71.

Section 34.20(c)

This paragraph would have "crank-out" type exposure devices and associated equipment meet additional performance criteria not specified in ANSI N432. The major provisions of this paragraph are:

a. Require the use of a source assembly to drive cable coupling which requires motion in at least two directions with a positive force in one direction in order to complete the connection. The coupling would also need to be designed, and the manufacturer would be expected to demonstrate, that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

b. Provide a visible source position indicator on radiography devices. The object of this provision is to assure a means for the radiographer to look at the device and see a clear indication that the source is or is not in a safe, shielded position. The indicator should be designed such that under normal and readily foreseeable abnormal conditions it would not falsely indicate the position of the source. Designs which use source assembly ball stop as the "trigger" which have been prototype tested in accordance with ANSI N432 would be acceptable. The visual indicator is not intended to substitute for use of a properly functioning radiation survey meter. The indicator is simply another means of providing safety information to the radiographer about the position of the source.

c. Radiography devices would have to provide a system to automatically secure the source assembly when it is cranked back into the device and a deliberate operation would have to be performed on the device in order to release the source assembly. This provision should help to eliminate the problem of the source accidentally moving out of the safe storage position after it is returned to the device.

d. The sealed source or source assembly would be labelled: "danger—radioactive." This assembly is commonly called the "pigtail" and usually consists of a sealed radiation source, ball stop and connector attached to a flexible wire cable. The entire assembly is comparable in size to a pencil. Labelling of the source assembly should help minimize overexposures if a member of the public finds a lost source assembly. The label should be designed to withstand the intense radiation and to not weaken the structural integrity of the source assembly or interfere with its use in the device.

e. The guide tubes to be used with exposure devices would be expected to pass the crushing tests for control tubes as specified in ANSI N432. Also the guide tube must pass a kinking resistance test that closely approximates the kinking forces likely to be encountered during use. The proposed revision to ANSI N432 has a kinking test for such guide tubes and the NRC would find this test acceptable for meeting the requirements of this section. The test referred to is described in its entirety as follows:

Place the projection sheath without connection, on a horizontal surface and fix one of the ends so that it does not move in any way during the test. The length of the projection sheath shall be the maximum length authorized by the manufacturer.

Form a flat closed loop, either on the right or left of the positioning axis, with the fixed end under the loop, and keep the ends crossed by means of a hoop so that the loop cannot come undone under the action of a vertical component of elasticity and the free end can still slide without noticeable friction.

Apply a tractive force to the free end, at a tangent to the loop, reducing the diameter of the loop. The force shall be applied by means of a dynamometer in such a way that it reaches 200 N in 5 seconds. The force shall be maintained at this level for 10 seconds.

Repeat the test 10 times, undoing and redoing the loop at the same point for each test.

If the projection sheath is composed of various parts with connections, restart the test including a connection in the loop. Close the loop as above so that the connection and the crossing point are opposite each other.

In addition, the proposed rule would require the use of an exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube and that the guide tube to exposure head connection be able to withstand the tensile test for control units specified in ANSI N432. The object of these provisions is to ensure the use of appropriately manufactured guide tubes in radiography. The use of an exposure head and an improved source to drive cable connector should be help to eliminate the risk of accidental source loss.

f. The proposed rule would require that source changers provide a system for securing the source assembly in the safe storage position when connecting the drive cable to the assembly. The system should help to reduce unnecessary exposure which could result with a changer where the source is not secure.

g. The proposed rule would prohibit modifications that could compromise the safety features of the system.

Section 34.21(a)

This paragraph continues the present requirements of § 34.21 which limit the radiation levels exterior to radiography devices and certain other equipment. These requirements apply to all existing equipment received prior to one year after the final rule date. The allowance for these limits for exposure devices will be superseded by new requirements five years after publication of the final rule as indicated in § 34.21(b).

Section 34.30

This new section to Part 34 would require licensees to report certain problems they experience with radiographic equipment. Presently, personnel overexposures are required to be reported to NRC under 10 CFR 20.405. While this section does require that the cause of the overexposure be described, it does not request specific information concerning equipment malfunctions which may have led to the overexposure. 10 CFR Part 21 provides requirements for reporting defects or noncompliance of a basic component in which a defect or failure could cause a substantial safety hazard. However, this part is most applicable to the nuclear power industry and its suppliers. As a result, NRC receives little information concerning radiography equipment malfunctions. The effectiveness of new regulations should be evaluated on a routine basis. This can be best accomplished by requiring licensees to report equipment failures to NRC.

The proposed rule would require licensees to report any event where the source assembly becomes unintentionally disconnected from the drive cable (i.e., failure of the coupling); the source cannot be retracted and secured; or any component of the device fails to operate as intended. The report would include information describing the problem, its cause, identifying the equipment and its manufacturer, when the problem occurred, and the actions taken to correct the problem. If an overexposure occurred in connection with an equipment problem, the report submitted under § 20.405 must also include the above information.

Section 34.33

This section would be amended to include a requirement for the licensee to provide an alarm dosimeter to each radiographer and assistant. The alarm dosimeter would have a pre-set signal which would sound if the individual enters a 500 mR/hr radiation field. The 500 mR/hr set point should be sufficiently low to provide a reliable alarm before a radiographer could get within about 10 feet of a lower activity unshielded source. With higher activity sources, this set point should avoid spurious alarms due to radiation levels close to the camera with the source in the fully shielded position or during routine operations provided radiography personnel are exercising proper use of distance and shielding to avoid unnecessary exposure. The dosimeters would also need to be checked prior to first use each day to ensure that the alarm sounds and would have to be tested on an annual basis for an acceptable response to radiation.

Numerous alarm dosimeter types are on the market, the majority of which provide a digital display of the integrated dose in addition to alarm features. Licensees may find the use of an integrating dosimeter that also incorporates the required dose-rate alarm desirable, but it is to be understood that use of these dosimeters does not relieve the licensee of other requirements in the regulations such as that contained in § 34.33(d) which requires the processing of TLD's or film badges when pocket dosimeters go off scale.

Implementation

As proposed, the dates on which particular requirements become effective depend on when the licensee receives the radiographic exposure device.

If the licensee now has the device or receives a device prior to one year after the effective date of the final rule no immediate action is required.

If the licensee receives a device later than one year after the effective date of the final rule, the device would have to meet all of the requirements of the rule at the time it is received and continue to meet them.

Five years after the effective date of the final rule all devices would be required to meet all the conditions of the rule or be retired from use. Five years was selected based upon discussions with equipment manufacturers, and upon staff experience that indicates that devices which project the source out of its shielded position have an estimated average lifetime of around 5 years and to minimize the impact on small businesses. However, NRC also recognizes that this average life expectancy is dependent on the device and its amount of use.

Under this proposed schedule equipment manufactures are expected to have a reasonable period to produce exposure devices which satisfy all the new requirements. This schedule would provide users with sufficient time to retire old equipment. The need to implement the new requirement does not appear sufficiently urgent to require earlier dates; however, if a significant decrease in safe performance of devices should occur, an earlier implementation date for particular requirements will be considered.

The NRC requests that persons commenting on the proposed amendments particularly address any anticipated hardships that may result from the proposed implementation schedule. Comments regarding anticipated costs to manufacturers and to users of implementing the proposed amendments will be most useful if they include a breakdown that is keyed to the individual requirements in the proposed amendments.

The proposed amendments would not change the present regulatory requirement that the applicant for a radiography license propose the use of equipment (radiographic exposure device) that is adequate to protect health and minimize danger to health or property. The applicant usually satisfies this requirement with respect to the radiographic exposure device by identifying in the application the manufacturer and model number of the device that will be used. The NRC technical reviewer of the application relates the identified device to safety information that was filed by the radiography equipment manufacturer with the NRC or an Agreement State. If the safety information on file indicates the identified device to be acceptable for licensing purposes, then the regulatory requirement for an adequate radiographic exposure device is satisfied. Recent amendments to 10 CFR Part 30 and 10 CFR Part 32 have formalized the administrative practice under which manufacturers filed safety information concerning their products with the NRC in a process called registration. This formalization of procedures assures that all future models of radiography devices approved for distribution by NRC will at least meet the requirements of NRC regulations and the current requirements of ANSI N432 as described under 10 CFR 32.210.

Summary

The proposed amendments are directed toward improving the safety of radiographic exposure devices and associated equipment and reducing the number of overexposures that occur to both radiographers and the public. The changes proposed are in the form of performance standards because it is recognized by the Commission that the radiography equipment manufacturers should have flexibility in the area of construction and design standards. Also the adoption of voluntary consensus standards in government regulations is recommended in OMB circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards." In addition, since the revised regulations will require radiography devices to meet the performance standards, a new section is to be added to the regulations to require the reporting of failures to meet these standards, particularly those involving source assembly disconnects and failures of the automatic securing device. The regulations will also be amended to require the use of alarm dosimeters by radiographers and radiographer assistants.

This rule would apply to all licensees using radiographic exposure devices under 10 CFR Part 34. The rule would also affect the manufacturers of radiographic exposure devices because licensees could not use, and therefore would not purchase, devices which failed to meet the proposed performance standards. Additional costs would be incurred by licensees in the purchase of alarm dosimeters to be used by their radiographers and radiographer assistants and in annual calibration and maintenance of these dosimeters. Some additional costs will also be incurred for labelling under § 34.20(b)(1) and reporting under § 34.30. It is expected that the final rule would impose performance standards on all radiographic exposure devices manufactured one year after the publication date of the effective rule and would require that all radiographic equipment in use meet the performance standards within five years after publication of the final rule. There are an estimated 3,500 radiographic exposure devices in use, including pipeliner type devices. Devices which project the source out of its shielded position have an estimated life-time of around five years so that many, if not all would have to be replaced within five years even if the regulations under consideration are not issued. NRC anticipates that most of the pipeliner type of devices currently in use will meet the proposed requirements.

Impact

The impact on the radiography industry is expected to be moderate. The regulatory analysis accompanying this rule indicates that some 3,500 radiographic exposure devices are currently in use, distributed among approximately 1,100 licensees or approximately 3 devices per licensee. There are also approximately 5,000 radiographers and radiography assistants employed on a full- or part-time basis and an estimated additional 5,000 radiography supervisors who are actively engaged in the field for a few weeks each year. the costs of implementing the proposed changes in radiography devices have been estimated at approximately $150 per device, and the average cost of providing alarm dosimeters to radiographers is $325 per dosimeter. If the average licensee is assumed to have three radiography devices which have an average lifetime of 5 years and 5 full time radiographers the added cost per licensee amounts to $1,625 for the initial purchase of alarm dosimeters and a $930 annual cost for replacement of devices and dosimeters, maintenance reporting, and labelling. The regulatory flexibility analysis, set out in Appendix A of this document presents a more detailed analysis of the costs involved.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The proposed rule will involve engineering design modifications and significant creative engineering may be involved but no requirements for significant quantities of materials, water, electricity or other forms of energy have been identified and no environmental or radiation pollution will be involved.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Donald O. Nellis, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies may be obtained from Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

The Commission requests public comments on the draft regulatory analysis. Comments may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Analysis

The NRC has prepared a regulatory flexibility analysis on the impact of this rule on small entities as required by Section 604 of the Regulatory Flexibility Act. The analysis which is set out in Appendix A of this document, indicates that the proposed rule could have an economic impact of about $1,625 initially, and $930 annually on each radiography licensee, 90% or more of which are considered to be small entities. These costs are not considered to be overburdensome in light of the possible benefits derived.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that on a large licensee; and

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 34

Byproduct material, Packaging and containers, Penalty, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 34:

PART 3—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for Part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.20(a)–(e), 34.21(b), 34.22, 34.23, 34.24, 34.25(a), (b) and (d), 34.28, 34.29, 34.31(a) and (b), 34.32, 34.33(a), (c), (d) and (f), 34.41, 34.42, 34.43(a), (b) and (c) and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 34.11(d), 34.25(c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.30, 34.31(c), 34.33(b) and (e) and 34.43(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 34.20 is added under the Equipment Control heading in Subpart B to read as follows:

§ 34.20 Performance requirements for radiography equipment.

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(a) Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," 1981 (published as NBS Handbook 136). This publication has been approved for incorporation by reference by the Director of the Federal Register. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, Telephone (212) 642–4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Public Document Room, 1717 H Street NW., Washington, DC 20555. A copy of the document is also on file at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20408. A notice of any change in the material will be published in the **Federal Register**.

(b) In addition to the requirements specified in paragraph (a) of this section, the following requirements apply to radiographic exposure devices and associated equipment.

(1) Each radiographic exposure device must have attached to it by the user, a durable, legible, clearly visible label bearing the—

(i) Chemical symbol and mass number of the radionuclide in the device;

(ii) Activity and the date on which this activity was last measured;

(iii) Model number and serial number of the sealed source, and

(iv) Manufacturer of the sealed source.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR Part 71.

(3) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

(c) In addition to the requirements specified in paragraphs (a) and (b) of this section, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be such that the application of motion in two planes and a positive force in one of these planes is necessary to complete the connection. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must be equipped with a readily visible source position indicator which, under normal and reasonably foreseeable abnormal conditions, will not falsely indicate the position of the source.

(3) The device must automatically secure the source assembly when it is cranked back into the fully shielded position in the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(4) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which will protect the source assembly from water, mud, sand or other foreign matter during storage and transportation;

(5) Each sealed source or source assembly must have attached to it or engraved in it a durable, legible, visible label with the words: "DANGER—RADIOACTIVE." The label must not interfere with the safe operation of the exposure device or associated equipment.

(6) The guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(7) Guide tube conduits must be used when moving the source out of the device.

(8) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(9) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432.

(10) Source changers must provide a system for assuring that the source will not be accidentally withdrawn from the changer when the drive cable is being connected to the replacement source assembly.

(d) All new radiographic exposure devices and associated equipment acquired by licensees after (insert a date one year from publication of the final rule in the Federal Register) must comply with the requirements of this section.

(e) All radiographic exposure devices and associated equipment in use after (insert a date five years from publication of the final rule in the **Federal Register**) must comply with the requirements of this section.

3. In § 34.21 the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 34.21 Limit on levels of radiation for radiographic exposure devices and storage containers.

* * * * *

(b) Paragraph (a) of this section shall apply to all existing equipment received prior to (insert a date one year after the publication date of the final rule). Five years after (insert the date of publication the final rule) § 34.21 shall apply only to storage containers and all other radiographic equipment must meet the requirements of § 34.20

4. Section 34.30 is added to read as follows:

§ 34.30 Reporting requirements.

(a) In addition to the reporting requirements specified under other sections of this chapter, each licensee shall provide a written report to the U.S. Nuclear Regulatory Commission: Division of Industrial and Medical Nuclear Safety; Medical, Academic and Commercial Use Safety Branch; Washington, DC 20555 with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable.

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position.

(3) Failure of any component to properly perform its intended function.

(b) The licensee shall include the following information in each report submitted under paragraph (c) of this section:

(1) A description of the equipment problem.

(2) Cause of each incident, if known.

(3) Manufacturer and model number of equipment involved in the incident.

(4) Place, time and date of the incident.

(5) Actions taken to establish normal operations.

(6) Corrective actions taken or planned to prevent recurrence.

(c) Reports of overexposure submitted under 10 CFR 20.405 which involve failure of safety components of radiography equipment must include the information specified in paragraph (b) of this section.

(5) In § 34.33 paragraph (a) is revised to read as follows and a new paragraph (f) is added to read as follows:

§ 34.33 Personnel monitoring.

(a) The licensee shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each such individual wears a direct reading pocket dosimeter, an alarm dosimeter and either a film badge or a thermoluminescent dosimeter (TLD). Pocket dosimeters must have a range from zero to at least 200 milliroentgens and must be recharged at the start of each shift. Each film badge and TLD must be assigned to and worn by only one individual.

* * * * *

(f) Each alarm dosimeter must—

(1) Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

(2) Emit an alarm signal at a preset dose-rate of 500 mR/hr;

(3) Require special means to change the preset alarm function; and

(4) Be tested at periods not to exceed one year for correct response to radiation: Acceptable dosimeters must alarm within plus or minus 20 percent of the true radiation dose-rate.

6. In Appendix A, Item II.C is amended to add an item 3. to read as follows:

Appendix A

II * * *

C * * *

3. Alarm dosimeters

* * * * *

Dated at Washington, DC, this 10th day of March 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A to This Document—Regulatory Flexibility Analysis for Amendments to 10 CFR Part 34 on Safety Requirements for Industrial Radiographic Equipment

The Nuclear Regulatory Commission proposes to amend its regulations that apply to industrial radiography. The proposed amendments would impose additional safety performance standards on radiographic equipment and radiographers would be required to wear alarm dosimeters. In addition, the proposed amendments would require reporting of failures of radiography equipment to meet safety performance standards in the field.

Industrial radiography performed in the field has been of concern to the NRC and its Agreement States for over 20 years, in part because of its high incidence of overexposure (4 to 5 times that of other radiation workers), and in part because of the potential for serious consequences to both the public and radiographers due to the high activity of the radioactive sources used in this industry. Among the actions considered by the NRC to help alleviate the situation are:

(a) A training manual for radiography personnel,

(b) Improved training programs for individual radiographers,

(c) Increasing inspection time observing actual radiographic operations,

(d) Providing additional guidance for reporting events as required by 10 CFR, and

(e) Establishment of safety requirements for radiographic equipment.

The amendments proposed in this rulemaking fall within the last action category above. They are designed to reduce the potential for overexposures by the imposition of safety performance standards on radiographic exposure devices and associated equipment and by providing some redundancy in detecting exposed sources by requiring the use of alarming dosimeters.

A total of approximately 1,100 radiography licenses are currently in effect, approximately one-third have been issued by the NRC and the other two-thirds by the Agreement States.

Based upon a recent survey of some 355 NRC radiography licensees and discussions with Agreement State personnel in California, Louisiana, and Texas, the staff had concluded approximately 90% of all radiography licensees have annual receipts of less than $3.5 million, the criterion for defining "small entites," specified in section 605(b) of the Regulatory Flexibility Act of 1980.

Most of the radiography licensees are in the business of nondestructive testing in which radiography represents only a part of their total income. A few small firms work only in radiography. In spite of the classification as small entities, the NRC survey cited above indicated that 76% of the licensees had annual receipts of over $500K and most of the remainder had annual receipts exceeding $250K.

The estimated costs to individual licensees resulting from the proposed amendments consist of an initial cost of $1,625 for the purchase of alarm dosimeters and an annual cost of $830 for replacement of devices and alarm dosimeters, annual calibration of alarm dosimeters, and annual maintenance costs. In addition, it is estimated that the reporting requirement on defective equipment and the requirement for labeling the devices specified in § 34.20(b)(1) will result in an annual cost to each licensee of about $100.

A breakdown in the annual cost per licensee given above is as follows:

Replacement of exposure devices	$100
Replacement of alarm dosimeters	325
Annual maintenance of dosimeters	160
Calibration of alarm dosimeters	225
Reporting and labeling	[illegible]
	926

Although the majority of the licensees fall within the category of "small entities" as defined by the NRC, the Commission feels that the initial and annual costs of the proposed rulemaking which are described above should not have a significant economic impact on most of the licensees. Further, the Commission has concluded that the benefits that would result to radiographers and to the general public as a result of the proposed rule does not duplicate or conflict with other Federal rules.

[FR Doc. 88–5644 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 26a, and 602

[LR–128–86]

Generation-Skipping Transfer Tax Regulations Under Chapter 13 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed generation-skipping transfer tax regulations. This action is necessary because of changes in the applicable tax law made by the Tax Reform Act of 1986. The Internal Revenue Service is issuing temporary regulations, in the Rules and Regulations portion of this issue of the **Federal Register**, that provide rules relating to the generation-skipping transfer tax. The text of the temporary regulations also services as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 16, 1988. The regulations are proposed to apply to any generation-skipping transfer after October 22, 1986.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–128–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** remove Parts 26 and 26a of Title 26 of the Code of Federal Regulations and replace them with a new Part 26. The regulations provide rules relating to Chapter 13 of the Internal Revenue Code of 1986, as added by section 1431 of the Tax Reform Act of 1986 (Pub. L. 99–51, 100 Stat. 2085). The regulations also provide rules relating to the effective date of this chapter, as added by section 1433 to the Tax Reform Act 1986 (Pub. L. 99–514, 100 Stat. 2085). This document proposes to adopt those temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of these comments to the Service.

Drafting Information

The principal author of these proposed regulations is Maurice B. Foley of the Legislation and Regulations Division of the office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both, on matters of substance and style.

List of Subjects

26 CFR Part 26

Estate taxes, Generation-skipping transfer.

26 CFR Part 26a

Estate taxes, Generation-skipping transfer, Tax Reform Act of 1976.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–5502 Filed 3–14–88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Indiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to a reorganization in State agency structure, changes in the procedures for reclamation project ranking and selection, coordination of other reclamation work within the State, and public participation. In addition, revisions and updating are presented relative to procurement, accounting policies and the general description of endangered and threatened species.

This notice sets forth the times and locations that the Indiana plan and proposed amendments to that plan will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on April 14, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on April 11, 1988; requests to present oral testimony at the hearing must be received by Mr. Richard

D. Rieke at OSMRE's Indianapolis Field Office on or before 4:00 p.m. on March 30, 1988.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana Plan, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 N. Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269–2609

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492

Indiana Department of Natural Resources, Division of Reclamation, 309 W. Washington Street, Suite 201, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 269–2609.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior approved the Indiana plan. Information regarding general background on the Indiana plan, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana plan can be found in the July 26, 1982 **Federal Register** (47 FR 32108). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "**ADDRESSES.**"

The Secretary had adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR Part 884.14 in approving or disapproving an amendment or revision.

II. Discussion of the Proposed Amendment

By letter dated January 22, 1988, Indiana submitted a reclamation plan amendment to OSMRE (Administrative Record No. IND–0547). The proposed amendment consists of revised narratives to replace several sections of the approved Indiana Plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised.

(1) Organization (30 CFR 884.13(d)(1) and (2)): Indiana is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State agency structure.

(2) Project selection (30 CFR 884.13(c)(2)): Indiana has submitted revised project scoring criteria to insure that projects involving threats to the public health and safety are addressed before lower priority problems. Section 403 of the Surface Mining Act, 30 U.S.C. 1233, provides that expenditures from the AML fund on eligible lands and waters reflect certain stated priorities. The first two priorities concern the protection of the public health, safety and general welfare.

(3) The coordination of reclamation work with the Rural Abandoned Mine Program, and OSMRE's reclamation programs (30 CFR 884.13(c)(3)): Indiana has submitted revised procedures reflecting changes in State practices relative to coordination.

(4) Public participation (30 CFR 884.13(c)(7)): The State has revised its public participation procedures to reflect an expanded public participation effort including public awareness programs, public meetings prior to construction grant application submittal, and involvement of local elected officials.

(5) Purchasing and procurement systems (30 CFR 884.13(d)(3)): Indiana has submitted revised information concerning dollar thresholds requiring competitive bidding.

(6) Accounting systems (30 CFR 884.13(d)(4)): Revised information has been submitted which more accurately describes, and clarifies State policies and procedures.

(7) Endangered and threatened plant, fish, and wildlife and their habitat (30 CFR 884.13(f)(3)): The State has submitted a revised description of conditions and State compliance to required considerations.

OSMRE is seeking comments on the adequacy of the Indiana proposed amendments as set forth in 30 CFR 884.15. If approved, the amendments would become part of the Indiana Abandoned Mine Land Reclamation Plan.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSMRE is now seeking comment on whether the amendments proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 884.14. If the amendments are deemed adequate, they will become part of the Indiana plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on March 30, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement of the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 2, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88–5584 Filed 3–14–88; 8:45 a.m.]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Parts 2, 3, and 14

General Counsel Opinions

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) proposes to revise regulations dealing with legal opinions of the VA General Counsel. These amendments would authorize the General Counsel to designate certain legal opinions as precedential for purposes of future adjudications and appellate reviews, applying criteria established by regulation. The amendments would also clarify the conclusive nature of the General Counsel opinions. This regulatory action is intended to clarify the status and effect of General Counsel opinions, thereby assisting VA officials, benefit claimants, and claimants' representatives in utilizing these opinions. The proposed action is also intended to update procedures to reflect current Agency computer capabilities.

DATES: Comments must be received on or before April 14, 1988. Comments will be available for public inspection until April 28, 1988. It is proposed to make these amendments effective 30 days from the date of publication of the final rule in the **Federal Register**.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, (202) 233–2440.

SUPPLEMENTARY INFORMATION: Section 4004(c) of Title 38, United States Code, governing decisions of the Board of Veterans Appeals, provides that the Board shall be bound in those decisions by VA regulations, instructions of the Administrator, and precedent opinions of the chief law officer. Implementing regulations at 38 CFR 19.103(a) refer to VA laws and regulations, decisions and instructions of the Administrator, and precedent opinions of the General Counsel. This regulation, as well as the current provisions of 38 CFR 3.101, reflect the system of Administrator's Decisions employed by the VA until 1974. Under that system, legal opinions prepared by the VA General Counsel and published as Administrator's Decisions or approved by the Administrator of Veterans Affairs were considered binding and precedential with regard to the issues addressed. The issuance of Administrator's Decisions and approval of General Counsel's opinions by the Administrator having been discontinued, and the statutory and regulatory references to "precedent opinions" not having been defined, the VA considered it necessary to update Agency procedures to clarify the status of legal opinions rendered by the General Counsel.

Accordingly, the VA proposes to amend 38 CFR 3.101 and 14.507 to provide that written legal opinions of the General Counsel are conclusive as to all Agency officials and employees with respect to the matter at issue and that those opinions designated by the General Counsel as precedent opinions will be followed in future adjudications and appellate reviews. Section 2.6 of Title 38 is amended to include a specific delegation of authority to the General Counsel to designate opinions as precedential. Criteria relating to the nature and effect of legal opinions are added to § 14.507 to guide the General Counsel in identifying those opinions to be designated precedential. Only advice, recommendations and conclusions on legal issues will be binding and precedential. Policy statements contained in written legal opinions of the General Counsel will not be binding on other VA officials and employees and will not be accorded precedential effect. The VA believes these changes will promote consistency in adjudication and appellate reviews and assist Agency officials, claimants, and claimants' representatives by clarifying the status and effect of General Counsel opinions.

Existing 38 CFR 14.507 provides for digesting, indexing, and filing of printed opinions of the General Counsel. However, due to expansion of the VA's computer capability, General Counsel opinions are no longer printed, but are instead entered into the Office of the General Counsel's computer system for future reference. To reflect this change in procedure, the VA proposes to amend § 14.507 to provide that all precedent opinions of the General Counsel will be serialized and entered in the Office of the General Counsel's computer data base. This change not only updates the regulation to reflect current computer capabilities, but assures public availability of precedent opinions.

The Administrator hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These proposed regulatory amendments have also been reviewed under E.O. 12291 and have been determined to be non-major because they would not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and lcoal government agencies, or geographic regions.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 2

Authority delegations.

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Reporting and Recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: March 1, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Parts 2, 3, and 14 are proposed to be amended as follows:

PART 2—[AMENDED]

1. In 38 CFR Part 2, Delegations of Authority, § 2.6, paragraphs, (e)(9) and (10) are redesignated as paragraphs (e)(10) and (11); and a new paragraph (e)(9) is added to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(e) *General Counsel.*

* * * * *

(9) The General Counsel is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions in Agency adjudications and appellate reviews of claims for benefits under laws administered by the Veterans Administration.

(Authority: 38 U.S.C. 210, 212)

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PART 3—[AMENDED]

2. In 38 CFR Part 3, Adjudication, § 3.101 is revised to read as follows:

§ 3.101 Decisions to conform.

All decisions will conform to the statutes, regulations, Administrator's decisions, and defined policies as enunciated by the Administrator and to the precedent opinions of the General Counsel. Unless designated as precedent opinions under § 14.507(b), legal opinions in individual cases will not be required to be followed as precedents in subsequent cases.

(Authority: 38 U.S.C. 210)

PART 14—[AMENDED]

3. In 38 CFR Part 14, Legal Services, General Counsel, § 14.507 is revised to read as follows:

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel shall be conclusive as to all Agency officials and employees with respect to the matter at issue, unless there is a change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or one acting as the General Counsel or signing for the General Counsel. Advice, recommendations, or conclusions on matters of Government or Agency policy, contained within a written legal opinion, shall not be binding on Agency officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. The written legal opinions rendered in connection with the adjudication or appellate review of a claim for benefits under laws administered by the Veterans Administration, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claims folder.

(b) A written legal opinion of the General Counsel which, in the judgment of the General Counsel or one acting as the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of § 3.101 of this title and 38 U.S.C. 4004(c). All precedent opinions shall be serialized, entered in the Office of the General Counsel's computer data base, and made available to members of the public in accordance with applicable laws.

(c) For purposes of this section, the term "written legal opinion of the General Counsel" means a typed or printed memorandum or letter signed by the General Counsel or one acting as the General Counsel or signing for the General Counsel, addressed to an official or officials of the Veterans Administration, stating a conclusion on a legal issue pertaining to Veterans Administration activities.

(Authority: 38 U.S.C. 210)

[FR Doc. 88-5558 Filed 3-14-88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; [RM 5167]; FCC 86-499]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas; Correction

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission is correcting the Ordering Clauses to a proposed rule concerning rural cellular service previously published in the **Federal Register**, 53 FR 5020, February 19, 1988 to delete paragraph 7.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 632-6450.

Federal Communications Commission.

H. Walker Feaster,

Secretary.

[FR Doc. 88-5485 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-52, RM-6032]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Winstanley Broadcasting, Inc., seeking to substitute Channel 261C2 for Channel 261A at Panama City Beach, Florida, and to modify its construction permit for Channel 261A to specify the Class C2 channel.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard W. Simcox, Jr., Bosari & Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-52, adopted January 26, 1987, and released March 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5625 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-45, RM-5008]

Radio Broadcasting Services; Estherville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jacobson Broadcasting Company, Inc., licensee of Station KILR-FM, Channel 240A Estherville, Iowa, proposing to modify its license from Class A facilities to Class C2 facilities operating on the same Channel 240.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren Colby, Esq., 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-45, adopted January 14, 1988, and released March 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 88-5626 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18, 228, and 402

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Regulations are proposed to implement recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) and Endangered Species Act of 1973 (ESA). These amendments provide a mechanism for allowing certain incidental takings of endangered, threatened and other depleted marine mammals. Previously, the incidental taking of depleted marine mammals was not allowable under the terms of the MMPA. This rule proposes to amend existing procedures governing incidental take authorizations.

DATE: Comments on the proposed rule must be received by May 16, 1988.

ADDRESSES: Comments should be submitted to the Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235.

Documents supporting this proposed rule are available for review at the above address and the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Room 1430, Washington, DC 20240.

Comments on the information collection requirements of 50 CFR Part 228 should be submitted to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, NMFS, 202-673-5348, or Robert Peoples, Division of Fish and Wildlife Management Assistance, FWS 202-343-6307.

SUPPLEMENTARY INFORMATION:

Existing Requirements and Processes

FWS and NMFS share responsibilities under the MMPA (16 U.S.C. 1361 *et seq.*) and ESA (16 U.S.C. 1531 *et seq.*). Under the ESA, most marine species are under the jurisdiction of NMFS and all other species are under the jurisdiction of FWS. Under the MMPA, NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus. FWS is responsible for the dugong, manatees, polar bear, sea and marine otters and walrus. Depending on the animals involved, the term "Service" used in this document may refer to FWS and/or NMFS.

Section 101(a)(5) of the MMPA allows for the incidental taking of marine mammals under certain circumstances; section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and ESA must be met before the incidental take can be allowed.

MMPA—Section 101(a)(5)

Under section 101(a)(5) of the MMPA, the Service can allow the taking of small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical area. For the Service to consider allowing an incidental taking, a written request for specific regulations must be submitted to the Service containing detailed information on the activity in general and impacts of the total potential take. If the Service makes certain findings, specific regulations will be issued that, among other things, establish permissible methods of taking and other means of affecting the least practicable adverse impact on the species. Requestors are advised that the regulatory process takes at least one year.

After regulations are issued, individual Letters of Authorization must be obtained from the Service by those conducting the activity. Only U.S. citizens are eligible to apply for Letters of Authorization.

Procedural regulations implementing this provision of the MMPA are found at 50 CFR 18.27 for FWS and at 50 CFR Part 228 for NMFS.

ESA—Section 7(b)(4)

Under section 7(a)(2) of the ESA, Federal agencies are required to consult with the Service on any action authorized, funded or carried out by such agencies that may affect endangered or threatened species or critical habitat. Although this consultation is primarily between a Federal agency and the Service, applicants for Federal licenses, permits or funding are encouraged to participate. The Federal agency initiates formal consultation by a written request to the Service that includes detailed information concerning the proposed action and its potential effects. Consultation should be concluded within 90 days.

After consultation, the Service issues its biological opinion which includes an assessment of impacts and its conclusion on whether or not the action is likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. If the proposed action is not likely to result in jeopardy but may result in the taking of endangered or threatened species, the Service must issue an incidental take statement under section 7(b)(4). Compliance with the terms and conditions specified in the incidental take statement exempts the Federal agency and any permit or license applicant involved from the taking prohibitions of the ESA up to the level specified in the incidental take statement.

Joint FWS–NMFS regulations governing the section 7 consultation process are found in 50 CFR Part 402.

Summary of Amendments

Prior to amendment, section 101(a)(5) of the MMPA applied only to non-depleted species. Under section 3(1)(C) of the MMPA, all endangered and threatened marine mammals are by definition depleted. Since the more restrictive provisions of the MMPA prevail, the ESA provisions alone could not be used to authorize the incidental taking of endangered or threatened marine mammals, even if the anticipated take would result in only negligible impacts.

Public Law 99–659, Title IV, section 411 (approved November 14, 1986) amended section 101(a)(5) of the MMPA and made conforming changes to sections 7(b)(4) and 7(o) of the ESA. The primary change was to allow the taking of depleted as well as non-depleted species of marine mammals incidental to certain activities under certain conditions. The amendments also changed the conditions under which incidental taking can be allowed.

Impact on Species or Stock

In order to allow a taking under section 101(a)(5) of the MMPA, the Service must find that the total taking will have a negligible impact on the species or stock. The party seeking authorization has the burden to demonstrate, through the best scientific information available, that only a negligible impact is reasonably likely to occur.

The proposed definition of "negligible impact," which differs from the present definition, would implement the specific legislative intent behind Pub. L. 99–659 and is taken from the Senate Section by Section Analysis (see 132 Cong. Rec. S16304–5, October 15, 1986).

A finding of negligible impact means that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. This finding is made with reference to the marine mammal species or stock (as defined in section 2(10) of the MMPA) and not with reference to the effects on individual animals. If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determinations will be made based on the best available scientific information.

Finally, if mitigating measures would render the impacts of a specified activity negligible when it would not otherwise satisfy that requirement, the Service may make a negligible impact finding subject to such mitigating measures being successfully implemented.

To properly interpret and implement the Senate Report language on "negligible impact," the Service believes that the analysis of any adverse effects to recruitment or survival must be conducted within the framework of the management goal to the MMPA, i.e., the maintenance or attainment of an optimum sustainable population (OSP) level for each population stock of marine mammals (see sections 2(2) and (6) of the MMPA). Therefore, the Service would generally apply the proposed definition of "negligible impact" in the following manner: if a request for specific regulations under section 101(a)(5) involves potential impacts to a "depleted" population, then a determination of negligible impact can be made only if the permitted activities are not likely to significantly reduce the increase of that population or prevent it from ultimately achieving its OSP; on the other hand, if a "nondepleted" population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its OSP.

Impact on Habitat

The amendments deleted the required finding that the specified activity have only a negligible impact upon the marine mammal habitat. Under the previous standard, a minor impact to a small segment of habitat might be found to be more than negligible and the incidental take prohibited even if the overall impact on the species or stock utilizing the habitat was negligible. Nevertheless, impacts to rookeries, mating grounds, feeding areas and areas of similar significance could have adverse effects on the species or stock. Thus, impacts to habitat will be considered in making the finding of negligible impact to the species or stock. Further, even if the impact is determined to be negligible, specific regulations must include measures to ensure the least practicable adverse impact on the habitat.

Impact on Subsistence Uses

The amendments changed the standard used to evaluate the impact on subsistence uses from "negligible impact" to "not having an unmitigable adverse impact." To determine that an unmitigable adverse impact to subsistence uses exists, two elements must be present. First, the impact resulting from the specified activities must be likely to reduce the availability of the species to a level insufficient for a

harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to allow subsistence needs to be met.

In addition, the amendments require the specific regulations governing a specified activity to include measures to ensure the least practicable adverse impact on the availability of the species for subsistence uses, even if the activity will not otherwise have an unmitigable adverse impact. These mitigating measures are intended to allow the harvest of enough animals to meet subsistence needs and to minimize impacts on the species or stock and subsistence users. Those conducting the specified activity, the involved Federal agencies, and the affected subsistence users are encouraged to meet and develop mutually agreeable conditions which satisfy the operational, scientific or other needs of the activity and the requirements of the subsistence users.

Coordination Between the ESA and MMPA

Another purpose of the amendments of the MMPA and the ESA was to clarify the relationship between these statutes so that decision processes under each would be coordinated and integrated to the maximum extent practicable. The ESA alone does not provide authority for the incidental taking of endangered or threatened marine mammals, even if the anticipated take would not jeopardize the species or population. To ensure coordination with the MMPA, section 7(b)(4) of the ESA was amended to require that the incidental take of endangered or threatened marine mammals not be authorized until the MMPA section 101(a)(5) process is completed and measures necessary to comply with the MMPA authorization are specified in the ESA incidental take statement. Therefore, in addition to reasonable and prudent measures to minimize the impact of the incidental take, an incidental take statement will include measures which are required to comply with section 101(a)(5) of the MMPA and applicable regulations.

The difficulty of coordinating the ESA consultation and MMPA exemption processes is that section 7(b)(1)(A) of the ESA generally requires that consultation be completed within 90 days while the MMPA regulatory process is much longer. Since Congress intended that the ESA consultation process proceed in a timely manner, the Service will issue the biological opinion and, if appropriate, issue an incidental take statement prior to completion of the MMPA section 101(a)(5) process. However, no incidental take of marine mammals would be allowed under authority of the ESA until the findings and conditions in the incidental take statement were subsequently revised to reflect the outcome of the MMPA section 101(a)(5) process.

To reduce the timing discrepancy between the two processes, the MMPA section 101(a)(5) process should be initiated well in advance of the ESA section 7 process. In this way, the MMPA requirements can be incorporated into the incidental take statement when the biological opinion is issued and subsequent revisions would not be necessary. As an alternative, the Federal agency and the Service may agree to extend the consultation under section 7(b)(1)(A) to accommodate completion of the section 101(a)(5) regulations. The consent of any permit or license applicant is required for an extension of more than 60 days.

Section 7(o) of the ESA

Section 7(o)(2) of the ESA, as amended, specifies that any taking in compliance with the terms and conditions of an incidental take statement is not a prohibited taking under the ESA. No other ESA permit or authorization is required of the Federal agency or applicant in carrying out the action if the incidental take statement applies and if the action complies with the terms and conditions of that statement. The biological opinion plus the incidental take statement operate as an exemption under section 7(o)(2) of the ESA. A new § 402.14(i)(5) is proposed to clarify this provision.

For example, section 10(a) of the ESA allows the Service to issue permits for the taking of endangered species incidental to an otherwise lawful non-Federal action within the United States and its territorial sea, subject to certain conditions. In 1982, Congress added this provision to allow incidental taking associated with private actions that are not subject to the section 7 consultation process. If an endangered or threatened marine mammal may be taken incidentally to a private action, regulations under section 101(a)(5) of the MMPA would be required. Consultation under section 7 of the ESA would be conducted since issuance of the MMPA regulations is a Federal action. The incidental take statement issued with the biological opinion would address taking concerns under the ESA, and a section 10 permit would not be required.

Proposed Regulatory Changes

These regulations propose to amend 50 CFR Parts 18, 228 and 402 to implement the above changes to section 101(a)(5) of the MMPA and sections 7(b)(4) and 7(o) of the ESA. Basic processes for authorizing incidental take under both ESA and MMPA remain the same; the primary changes are (1) allowing the incidental take of depleted marine mammals, and (2) changing the findings that must be made to allow a take.

Classification

The Department of the Interior, as lead agency, has prepared a draft environmental assessment on this proposed rule. A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The proposed regulations are procedural and, by themselves, do not authorize the taking of depleted marine mammals. Issuance of specific regulations under section 101(a)(5) of the MMPA allowing a taking would require compliance with NEPA, including the preparation of a separate environmental assessment or impact statement, if required.

It has been determined that these regulations do not constitute a major rule as defined in Executive Order 12291. The Department of the Interior has certified under the terms of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed amendments or rules governing the take of small numbers of marine mammals incidental to specified activities will have little, if any, economic effect. Direct costs will be those associated with subsequent preparation of applications for "Specific Regulations" and "Letters of Authorization." However, those costs are not likely to approach the $100 million annual threshold for these rules to be considered a major rule in accordance with E.O. 12291. As most of the applicants under the revised rule, as at present, are likely to be oil and gas corporations and their contractors, they would not be considered small entities under the Regulatory Flexibility Act.

The regulations in 50 CFR Parts 18 and 228 contain a collection of information requirement subject to Office Management and Budget (OMB) clearance under the Paperwork

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Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirement associated with the amendment of Part 18 contained in this proposed rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0070. The information requirement in Part 228 is approved under OMB control number 0648–0151. The amendment of Part 402 does not contain information collection requirements requiring OMB approval under the Paperwork Reduction Act.

The analyses under NEPA, E.O. 12291 and the Regulatory Flexibility Act are available for review (see **ADDRESSES**).

The primary authors of this proposal are Robert Peoples, Nancy Sweeney, and Michael Young, Department of the Interior, and Patricia Montanio and Gene Martin, Department of Commerce.

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Alaska, Exports, Imports, Intergovernmental relations, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration.

50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend 50 CFR Parts 18, 228 and 402 as shown below.

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 18.27, paragraph (a) is amended by removing the words "Pub. L. 97–58" and "non-depleted"; paragraph (b), including the note following that paragraph, is revised; in paragraph (c), the definition of "negligible impact" is revised, the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs, and a new definition for "unmitigable adverse impact" is added in alphabetical order; paragraph (d) is amended by removing the word "non-depleted" wherever it appears; and paragraphs (d)(3), (e)(1), (f)(2), and (f)(5)(ii) are revised, to read as follows:

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

* * * * *

(d) *Scope of regulations.* The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the Director of the Fish and Wildlife Service:

(1) Finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses;

(2) Prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(3) Perscribes regulations pertaining to the monitoring and reporting of such taking.

Note: The information collection requirement contained in this § 18.27 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance No. 1018–0070. The information is being collected to describe the activity proposed and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue Specific Regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

(c) * * *

"Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

* * * * *

"Unmitigable adverse impact" means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to allow subsistence needs to be met.

(d) * * *

(3) The Director shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Director finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Director may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary finding of negligible impact shall be proposed for public comment along with the proposed specific regulations.

(e) * * *

(1) Specific regulations will be established for each allowed activity which set forth (i) permissible methods of taking, (ii) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (iii) requirements for monitoring and reporting.

* * * * *

(f) * * *

(2) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(5) * * *

(ii) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or where relevant, more than an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. The authority citation for 50 CFR Part 228 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 228.1 [Amended]

4. Section 228.1 is amended by removing the words "Pub. L. 97–58" and "non-depleted."

5. Section 228.2 is revised to read as follows:

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be

allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses;

(b) Prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this Part 228.

6. In § 228.3, the definition of "negiligible impact" is revised; the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs; and a new definition for "unmitiagble adverse impact" is added in alphabetical order, to read as follows:

§ 228.3 Definitions.

* * * * *

"*Negligible impact*" is an impact resulting from the specified acivity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

* * * * *

"*Unmitigable adverse impact*" means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to allow subsistence needs to be mét.

7. § In § 228.4, paragraph (a) is amended by removing the word "non-depleted" wherever it appears, and paragraph (c) is revised to read as follows:

§ 228.4 Submission of requests.

* * * * *

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administator finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary finding of negligible impact shall be proposed for public comment along with the proposed specified regulations.

8. In § 228.5, paragraph (a) is revised to read as follows:

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth (1) permissible methods of taking, (2) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (3) requirements for monitoring and reporting.

* * * * *

9. In § 228.6, paragraphs (b) and (e)(2) are revised to read as follows:

§ 228.6 Letters of authorization.

* * * * *

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(e) * * *

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or, where relevant, more than an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

10. The authority citation for Part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

11. In § 402.14, paragraph (i)(1) is revised, the second sentence of paragraph (i)(3) is revised, and a new paragraph (i)(5) is added, to read as follows:

§ 402.14 Formal consultation.

* * * * *

(i) * * *

(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(l)(ii) and (i)(l)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

* * * * *

(3) * * * The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

* * * * *

(5) Any taking which is subject to a statement as specified in paragraph (i)(l) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

* * * * *

Dated: January 4, 1988.

William P. Horn,

Assistant Secretary, Fish and Wildife and Parks, Department of the interior.

Dated: February 16, 1988.

William E. Evans,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 88–5642 Filed 3–14–88; 8:45 am]

BILLING CODES 3510-22-M, 4310-55-M

Notices

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1988-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1988-crop and to proposed continuation of the lower loan repayment provisions now in place for the 1987-crop. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended. Written comments are invited from interested persons.

DATE: Comments must be received on or before March 25, 1988 in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Orval Kerchner, Acting Director, commodity Analysis Division, USDA-ASCS, 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7602. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521–1 and have been classified "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to implement a price support program for the 1988 crop of honey by April 1, 1988, the beginning of the marketing season, it is necessary to limit the public comment period to less than 30 days. Accordingly, comments must be received by March 25, 1988 in order to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1988 of 449 million pounds.

Section 201(b) of the Agricultural Act of 1949 (the "1949 Act"), as amended, provides that the price support level shall be 63 cents per pound for the 1987 crop of honey and for the 1988 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the Act to require that once the support levels have been determined using the above method, the 1987 and 1988 rates must be reduced by 2 cents and 0.75 cents per pound, respectively.

The price support loan rate for the 1987 crop of honey was 63 cents per pound, which, when reduced by 5 percent, equals 59.85 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 35.1 cents per pound. Therefore, since the established loan rate (59.85 cents per pound) is in excess of the amount, 59.85 cents per pound is reduced by 0.75 cents per pound, resulting in a price support loan rate for 1988 crop honey of 59.1 cents per pound.

In accordance with section 403 of the 1949 Act, it is proposed that the loan rate for the 1988 crop of honey be adjusted to reflect floral source, color, class and grade, and other market differentials which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act the Secretary may permit producers who have obtained price support loans with respect to the 1986–1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or
(b) Such level that the Secretary determines will:
(1) Minimize the number of loan forfeitures;
(2) Not result in excessive total stocks of honey;
(3) Reduce the costs incurred by the Federal Government in storing honey; and
(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1988 crop:

Proposed Determinations

The 1988 program will be a price support loan program with a loan rate of 59.1 cents per pound as required by statute.

The 1988 crop honey loan rate will be adjusted to reflect floral source, color, class and grade, and other market differentials under which honey is marketed.

Producers with price support loans for the 1988 crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary of Agriculture, or a designee, determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 30 to 40 cents a pound. These levels roughly reflect the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign as well.

Consideration will be given to all views and recommendations that are received relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8:00 a.m. to 4:30 p.m).

Signed at Washington, DC on March 10, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-5659 Filed 3–14–88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 14–88]

Foreign-Trade Zone 68; El Paso, TX; Request for Manufacturing for SNA Nut Co. for Pecan Shelling

The City of El Paso, Texas, grantee of FTZ 68, has requested manufacturing approval from the Foreign-Trade Zones Board to allow the use of zone procedures within FTZ 68 by SNA Nut Company for the shelling of foreign pecans. The request was filed on March 3, 1988.

Shelled pecans (meats) are subject to a Customs duty rate of 10¢ per pound, though those of Mexican origin are duty-free under the Generalized System of Preferences (GSP). Unshelled pecans are dutiable at 5¢ per pound and are not covered by the GSP. SNA wishes to enter unshelled pecans into the zone for shelling and sale of the meats primarily in the United States, paying duty at the 5¢ rate (privileged-foreign status). The benefit sought is to avoid duties on the weight of the shells, which account for some 50 percent of the incoming items's weight. SNA indicates that, because pecan meats can be imported duty-free (GSP) from Mexico, zone procedures are a factor in retaining this operation in the United States.

Comments on the proposed manufacturing operation are invited in writing from interested parties. They should be addressed to the Board's executive secretary at the address below and postmarked on or before April 25, 1988.

A copy of the application is available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: March 9, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-5633 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-701, C-475-702]

Postponement of Final Antidumping and Countervailing Duty Determinations and Postponement of the Antidumping Public Hearing; Certain Granite Products From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in the antidumping investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(d)(2)(A)).

Based on this request, we are postponing our final determinations as to whether sales of certain granite products from Italy have occurred at less than fair value, and whether producers or exporters receive subsidies within the meaning of the countervailing duty law, until not later than June 20, 1988. We are also postponing our public hearing in the antidumping investigation from April 15, 1988, until May 16, 1988.

EFFECTIVE DATE: March 5, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson (AD) (202–377–5288), or Barbara Tillman (CVD) (202–377–2438), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 29, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 6021). This notice stated that if the investigation proceeded normally, we would make our final determination by May 9, 1988.

On March 2, 1988, the respondents requested a postponement of the final determination in the antidumping duty investigation until not later than June 20, 1988, the 112th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act, (19 U.S.C. 1673d(a)(2)(A)). These respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping determination until not later than June 20, 1988. In addition, on January 28, 1988, we granted the request of petitioner, the Ad Hoc Granite Trade Group, to extend the deadline date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product, pursuant to section 705(a)(1) of the Act, (19 U.S.C. 1671d(a)(1)) (53 FR 2521). Accordingly, we are also postponing the date of the final countervailing duty determination until not later than June 20, 1988.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping investigation at 1:30 p.m. on May 16, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons

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for attending; and (4) a list of issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Assistant Secretary for Import Administration by May 9, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determinations or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Administration is being advised of these postponements, in accordance with section 705(d) and 735(d) of the Act. This notice is published pursuant to sections 705(d) and 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 10, 1988.

[FR Doc. 88-5634 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, 8:30 a.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda:

1. Comments from the Public.
2. Review of newly published and pending regulations.
3. Presentation by GE-Calmer on Graphic Workstations.
4. Discussion on AMETC Proposal for addressing inter-TAC issues of common interest.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(b)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P.Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5610 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, at 3:00 p.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Comments from public.
2. User Friendly Regulations.
3. GLV Proposals from Industry.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5612 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held April 5, 1988, 11:30 a.m., in the Herbert C. Hoover Building, Room B841, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

Agenda:

1. Comments from the Public.
2. Proposal from the public for streamlining software controls.
3. Proposal from the Public on networking and switching.
4. Presentation on ISON.
5. Comments/Presentations on:

Export Systems and Artificial Intelligence.

Networking Software.

CAD/CAM.

DBMS.

Supercomputer Software.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5611 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 6, 1988, at 9:00 a.m., in the Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems.

General Session

Agenda

1. Comments from the public.
2. Discussion of LAN proposals.
3. Subcommittee Reports.
4. Forum Report and Summary on Industry Recommendations on Technical Data.
5. Virtual Memory Discussion.
6. Status Report by the Office of Foreign Availability and Recommendations by Industry.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Dated: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5613 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Fiber Optics Subcommittee; Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held April 5, 1988, 2:30 p.m. Herbert C. Hoover Building, Room 5230, 14th Street & Constitution Avenue NW., Wash, DC. The Fiber Optics Subcommittee was formed to study fiber optics communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-5614 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 5, 1988, 9:30 a.m., Room 5230, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advised the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

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Agenda

Open Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Comments are solicited from the public on desired changes to the following entries in the Commodity Control List:

(A) EECN 1501A—Navigation, direction finding, radar, and airborne communication equipment.

(B) ECCN 1502A—Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation, or ultrasonic waves.

4. Consideration of election of Chairmen.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: March 9, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–5615 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DT-M

Switching Subcommittee; Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held April 6, 1988, 9:30 a.m. Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology and Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or Portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspections Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: March 9, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–5616 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DT-M

Carnegie-Mellon University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–278R. *Applicant:* Carnegie-Mellon University, Pittsburgh, PA 15213. *Instrument:* Theta/Theta X-Ray Powder Diffractometer, Model D–MAX–11TBX and Accessories. *Manufacturer:* Rigaku Corporation, Japan.

Comments: None received. *Decision:* Denied. An instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This application is a resubmission of Docket Number 86–278, which was denied without prejudice to resubmission (DWOP). In the DWOP the applicant was asked to address deficiencies cited in the original submission and to provide a comparsion with domestic instruments available from Scintag, Inc. In the resubmission the applicant failed to address the deficiencies cited in the DWOP.

The applicant bases the justification for duty-waiver on three points:

(1) That Scintag cannot be considered a domestic manufacturer;

(2) That Scintag failed to respond to repeated requests for quotation; and

(3) That Scintag did not provide a system without a computer.

Discussion

(1) The applicant contends that most of the parts incorporated into Scintag's instruments are of foreign origin and that, therefore, Scintag's instruments cannot be considered domestically manufactured. We disagree. Section 301.2(g) states "A domestic instrument need not be made exclusively of domestic components or accessories." Scintag imports the diffractometer's goniometer but the drive mechanism of the goniometer incorporates U.S. manufactured stepping motors. The generator (x-ray power source) is wholly foreign. The x-ray tube may be either domestic or foreign, depending on the purchaser's preference. Scintag provides the mainframe, electronics and interfaces, and assembles the various parts into a finished system. This combination of domestic composition is more than adequate to effect a substantial transformation of the foreign parts into a domestic article.

(2) The applicant states that "Scintag never responded to the University's repeated requests to provide a quotation." Scintag claims it has no record of the applicant's claimed

requests, however, and the applicant has been unable to provide evidence of any such request.

(3) Scintag informs us that is "fairly common to sell a diffraction system to a customer without a computer."

Referring to Scintag, the National Bureau of Standards has advised that there is a domestic supplier of a scientifically equivalent instrument.

For these reasons, we deny this application.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–5632 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DS-M

East Orange VA Medical Center et al.; Applications for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 88–3471 at page 4866 in the **Federal Register** of February 18, 1988, the last docket in column 1, *Docket Number:* 87–072 should read: *Docket Number:* 88–072.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–5635 Filed 3–14–88; 8:45 am]

BILLING CODE 2510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Alaska, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87–261R. *Applicant:* University of Alaska, Petroleum Development Laboratory, 437 Duckerring Building, Fairbanks, AK 99775–1260. *Instrument:* JEFRI High Pressure Recombination Apparatus and High Temperature High Pressure Miscibility Apparatus. *Manufacturer:* D.B. Robinson & Associates, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Docket Number: 87–263R. *Applicant:* University of Alaska-Fairbanks, AK 99775. *Instrument:* Phase Behavior PVT System. *Manufacturer:* D.B. Robinson & Associates, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Docket Number: 88–075. *Applicant:* Southern Research Institute, 2000 9th Ave., South, P.O. Box 55305, Birmingham, AL 35255–5305. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used to conduct varied cell and molecular biology-related programs which will include but are not limited to the following:

(1) Effects of hormones and growth factors on growth and differentiation of human fetal normal colon epithelial cells.

(2) Toxicity of chemical carcinogens and bile acids in human normal colon epithelial cells.

(3) Susceptibility to infection by Sendi virus of different epithelial cell types in hamster tracheal explant cultures.

(4) Characterization of epithelial cell cultures derived from the normal and metaplastic epithelium of hamster trachea.

(5) Toxicity and carcinogenicity studies of benzyl acetate in rats.

(6) Propagation of human airway mucin-secreting cells.

(7) Effects of retinoids on growth and differentiation of human bronchial epithelial cell cultures.

Application Received by Commission of Customs: January 21, 1988.

Docket Number: 88—084. *Applicant:* University of Oklahoma, 660 Parrington Oval, Normal, OK 73019. *Instrument:* Temperature-jump and Stopped-flow Instrument. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* Studies of the rates of reversible chemical reactions in solution. The reactions in question are too fast to be studied by rapid-mixing tehcniques such as stopped-flow. The types of reactions to be studied include proton-transfer, metal ion-ligand complexation and molecule-receptor complexation. Experiments will be conducted to deduce the mechanism or step-by-step reaction sequence for the chemical system of interest. By studying a series of related compounds the effects of various structural modifications on the compounds' reactivity can be ascertained. *Application Received by Commission of Customs:* January 26, 1988.

Docket Number: 88–095. *Applicant:* University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. *Intended Use:* The instrument will be used for experiments proposed for two classes of molecular systems: (a) Diatomics (particularly Na_2), and small polyatomics such as SO_2, and (b) large polyatomics such as tetracene or azulene. The work on diatomic and small polyatomic molecules will be used to determine specific information about the photoionization process required to check existing theory. Additionally, it provides a direct probe of whether an exchange of angular momentum is associated with the exchange of energy between the molecular vibration and the excited electron. The work on large molecules will yield information about the vibronic coupling in excited states, the assignment of resonances in the ionization continum, and perhaps the electronic state of molecules undergoing radiationless decay. In addition the instrument will be used for educational purposes in the courses Chemistry 299: Research Chemistry Honors Program, Chemistry 350: Introduction to Research and Chemistry 415: Research in Physical Chemistry. *Application Received by Commissioner of Customs:* February 3, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–5631 Filed 3–14–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of response to a petition for reconsideration of a rule.

SUMMARY: In response to a petition from the Attorney General of North Carolina, the Assistant Administrator for Fisheries, NOAA, has decided not to reopen rulemaking proceedings regarding Sea Turtle Conservation Rules implementated by NOAA on June 29, 1987. The petitioner requested the Department to withdraw and repeal parts of the final regulations pertaining to North Carolina waters not included in the proposed regulations. A request for comments was solicited in the **Federal Register**, October 15, 1987.

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia A. Carter, Office of Protected Resources and Habitat Programs, NMFS, U.S. Department of Commerce, Washington, DC 20235 (202/673–5351) or

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Charles Oravetz, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, (ESA). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys Kempi*), green (*Chenonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas. Based on information provided by observers on shrimp trawlers, NMFS estimates that each year more than 47,000 of these die.

In 1978, NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program led to the development of a turtle excluder device (TED) which releases 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. Despite substantial efforts to transfer the technology to the shrimping industry, the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis.

On March 2, 1987, NMFS published proposed regulations that would require shrimp trawlers in the Gulf of Mexico and Atlantic Ocean off the coast of the Southeastern United States to use approved gear in specified locations and at specific times. Most North Carolina waters were not included in theproposed regulations.

Thousands of comments were received on the proposed regulations. Based on those comments, NMFS made a number of changes, including areas affected and an additional protective measure. On June 29, 1987, NMFS published final regulations requiring shrimp trawlers to use certain protective measures in specified waters at specified times. The final regulations contained requirements for protective measures for sea turtles in North Carolina waters which were not included in the proposed regulations.

On August 27, 1987, Mr. Lacy H. Thornburg, Attorney General of North Carolina, petitioned Mr. Clarence Brown, Acting Secretary of the Department of Commerce, to amend the final rules. The petition requested that parts of the regulations dealing with North Carolina waters be withdrawn and repealed. The petition states among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act.

Based on public comments received on the petition and a review and analysis of the statements made in the petition, NMFS has decided not to reopen the rulemaking proceedings. Two public comments were received and both opposed any modification of the final rule. The following summarizes our response to the State of North Carolina. A complete copy is available from the address above.

We believe the final rules are supported by the record. They are more uniform and more consistent than the proposed rules. They relax the TED requirement (in exchange for a tow-time restriction) for a majority of the Southeast U.S. shrimp fleet and will substantially reduce the incidental catch and mortality of sea turtles from shrimp trawling. Trawlers fishing in inshore waters have the option of using TEDs if they want to tow longer than 90 minutes.

While NMFS believes that the data base on sea turtles in North Carolina waters (and other waters) could be improved, there is evidence that sea turtles occur in North Carolina's waters, that they are captured and killed in shrimp trawls, and that this capture and kill can be reduced by the use of TEDs and reduced tow times. The final rules promulgated for North Carolina are consistent with those of the other states in the South Atlantic area except for the Canaveral area, which has more stringent requirements due to the greater number of turtles in that area.

The States has emphasized that much more shrimping effort occurs in North Carolina inshore waters than in offshore waters and that there are far fewer sea turtle strandings in inshore wates than in offshore waters. We believe that is because the effort of reporting of sea turtle strandings is not consistent; it varies greatly by area and season, with more reports from offshore beaches than from marshes and estuaries. No direct correlation between shrimping effort and dead turtles on beaches can be drawn except that dead turtles wash up on shores adjacent to areas where shrimping occurs.

Our responsibility under the ESA is not merely to avoid the extinction of a listed species, but to use all methods and procedures necessary to bring a listed species to the point where it no longer requires protection and can be delisted. All the available data show that the incidental catch and mortality of sea turtles in shrimp trawls is a major cause hindering the species' recovery. Therefore, a regulation that reduces this source of mortality is consistent with our responsibilities under the ESA.

Dated: March 10, 1988.

William E. Evans,

Assistant Administrator for Fisheries.

[FR Doc. 88-5640 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in the Textile Category System

March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

The Correlation:

Textile and Apparel Categories with Tariff Schedules of the United States Annotated (1988) present the tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. This Correlation should be amended to reflect the changes indicated below:

Add item 300.6024 to Category 300
Add item 358.2510 to Category 220
Add item 363.0200 to Category 899
Add item 381.2835 to Category 634
Add item 384.2738 to Category 832
Change item 374.0505 to 374.0705 in Category 332
Change item 374.0510 to 374.0710 in Category 832
Change item 374.1005 to 374.0715 in Category 332
Change item 374.1010 to 374.0720 in Category 832
Change item 384.9928 to 384.2728 in Category 836
Change item 384.9929 to 384.2729 in Category 835
Change item 384.9930 to 384.2730 in Category 842
Change item 384.9931 to 384.2731 in Category 838
Change item 384.9932 to 384.2732 in Category 844
Change item 384.9933 to 384.2733 in Category 846
Change item 384.9934 to 384.2734 in Category 846
Change item 384.9935 to 384.2735 in Category 845
Change item 384.9936 to 384.2736 in Category 845

Change item 384.9937 to 384.2737 in Category 847
Change item 384.9938 to 384.2738 in Category 832
Change item 384.9939 to 384.2739 in Category 850
Change item 384.9940 to 384.2740 in Category 851
Change item 384.9941 to 384.2741 in Category 859
Change item 384.9988 to 384.2788 in Category 836
Change item 384.9989 to 384.2789 in Category 835
Change item 384.9990 to 384.2790 in Category 851
Change item 384.9991 to 384.2791 in Category 844
Change item 384.9992 to 384.2792 in Category 840
Change item 384.9993 to 384.2793 in Category 850
Change item 384.9994 to 384.2794 in Category 847
Change item 384.9995 to 384.2795 in Category 842
Change item 384.9996 to 384.2796 in Category 859
Change item 310.6055 from Category 600 to 607
Change item 335.6000 from Category 614 to 220
Change item 338.5037 from Category 620 to 629
Change item 338.5047 from Category 618 to 218
Change item 345.1075 from Category 222 to 414
Change item 345.5585 from Category 625 to 222
Change item 355.2510 from Category 220 to 229
Change item 355.2520 from Category 220 to 229
Change item 355.5000 from Category 220 to 229
Change item 363.0103 from Category 300 to 360
Change item 376.0420 from Category 359 to 369
Change item 376.0800 from Category 459 to 469
Change item 381.4110 from Category 338 to 352
Change item 384.0229 from Category 339 to 338
Change item 384.2306 from Category 641 to 640
Change item 384.2313 from Category 641 to 640
Change item 384.3450 from Category 239 to 359
Change item 384.3751 from Category 334 to 333
Change item 389.6260 from Category 627 to 621
Change item 389.6265 from Category 627 to 621
Delete Category 355, item 772.3115
Delete Category 356, item 772.3120
Delete Category 371, item 772.3135
Delete Category 445, item 772.3132
Delete Category 621, item 389.6260
Delete Category 621, item 389.6265
Delete Category 655, item 772.3125
Delete Category 656, item 772.3130
Delete Category 671, item 772.3140

In Category 447, item 381.9952 delete "suits" and change the SYEF from 54 to 18.

In Category 634, item 384.1902, change the SYEF from 36.8 to 41.3.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5609 Filed 3-14-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Air Force Academy Request for Secondary School Transcript; USAFA Form 148; and OMB Control Number 0701-0066.

Type of Request: Extension.

Annual Burden Hours: 4,000.

Annual Responses: 11,450.

Needs and Uses: The Air Force uses USAFA Form 148 to collect information about the academic background of applicants for admission to the Air Force Academy. Candidates for admission and high school officials provide information about the candidates' grades and academic ranking. The Air Force Academy uses the information collected in selecting appointees to the Academy.

Affected Public: Air Force Academy Applicants and High School Officials.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88-5636 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civil Global Positioning Service (GPS)

AGENCY: Command, Control, Communications and Intelligence (C3I), DoD.

ACTION: Notice of Development of a Civil GPS Service (CGS).

SUMMARY: The Air Force directed a study to define and formulate a Civil GPS Service (CGS). This effort is being guided by a steering committee composed of representatives from several user communities interested in the GPS. The proposed function of the CGS is to serve as a source of information and a point of contact for civil users of GPS. This service will accept information regarding GPS status and capability from the GPS Operational Control Segment (OCS) and other sources and disseminate that information to the civil community as a complement to Notices to Airmen (NOTAMS) and Notices to Mariners. It will also serve as a focal point for comments and questions from the civil community to DOD regarding GPS matters.

From an operational standpoint, the CGS will serve as a bridge between the DOD's Air Force management and civil user community. The CGS will receive data from the OCS via the Operational Capability Reporting and Management System and other sources and provide it to the civil user community via a number of means.

For purposes of this study, the civil user community is separated into five user categories:

(1) Professional,
(2) Scientific,
(3) Commercial,
(4) Industrial, and
(5) Recreational.

The types of information which can be provided by the service can be separated into four categories:

(1) Planning information,
(2) Current navigation status information.

(3) Archival (or historical) information, and

(4) Responses to user questions.

In general, the data in the CGS will be updated daily. An exception will be made in the case of satellite vehicle status information, which will be updated as required in the event of changes.

The means of distribution under study and consideration include:

(1) Recorded message,
(2) Computer bulletin board,
(3) Data on magnetic tape/disk,
(4) Telephone interaction, and
(5) Publications.

Due to the potential volume of users, a computer bulletin board is a strong candidate for a distribution system since it can handle a high volume of users with a minimum of attention from the CGS staff. The bulletin board could support inspection of data, transfer of defined data segments from the bulletin board to the user, and message traffic between the user and the CGS.

The recorded message is an appropriate medium for disseminating current status information to those users who may not have access to a computer. Magnetic tape/disk will be useful for distribution of archival data or other large-volume transfers. Telephone interactions will be necessary to respond to user questions. Publications could be available to document system concepts, long-term status for new users, and other data.

The CGS will also serve as a consolidation point for feedback from the civil user community to Air Force management. Questions are reported problems from the civil users will be collected by the CGS and forwarded to the OCS as necessary. The CGS shall also serve to promote community standards on a variety of GPS topics. A subset of these issues would contain standards on nomenclature, algorithms, descriptive and processing techniques, and data/information exchange protocols and formats.

Due to the large number of organizations processing GPS data and producing products based on GPS data, the CGS system could provide a valuable service to the civil user community by serving as a central focal point and clearinghouse for various data supplied by sources other than the OCS. All data resident on the system will be considered to be available for public distribution. Examples of such data are base station data for relative positioning, GPS time transfer information, and announcements of commercial products.

The U.S. Department of Transportation (DOT) has agreed to take a leading role in the distribution of GPS status information to civil users and is currently planning an administrative and operational structure for the CGS. The CGS will probably have a multi-agency administrative structure. The operational segment of the CGS will be the Civil GPS Information Center (CGIC). Current DOT plans have identified a target date of 1990 for a fully operational CGIC. An annoucement for an interim CGIC will be made by DOT in the **Federal Register**.

Specific procedures for developing the service and the means and methods that will be used to provide Civil GPS Service are currently being developed. Civil user needs are being considered. Civil user inputs will be used to establish the interface between the OCS and the civil community. A preliminary interface control document has been prepared for the potential implementation of the CGS. This interface control document is available for review and comments. A copy may be obtained by writing to:

DOT/RSPA, ATTN DMA 26, 400 7th Street SW., Room 8405, Washington, DC 20590,

or

Commandant, USCG Headquarters, G-NRN-2 2100 2nd Street SW., Washington, DC 20593.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88-5603 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 14-15 April 1988 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advise and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with military requirements in the Pacific and strategic defense matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matter listed in 5 U.S.C. Section 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88-5604 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 25 March 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

March 10, 1988.

[FR Doc. 88-5605 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Request for Former Spouse Payments From Retired Pay; DD Form 2293; and OMB Control Number 0704-0182.

Type of Request: Reinstatement.

Annual Burden Hours: 3,650.

Annual Responses: 3,650.

Needs and Uses: DD Form 2293 is used in accordance with 32 CFR Part 63. The use of this form is optional. However, failure to complete this form and provide all the necessary documentation requested may delay its processing or make it impossible to process it at all, resulting in denial of the request. The public information requirements have not been changed or modified in this reinstatement. DD Form 2293 has been revised to reflect a new

Privacy Act Statement and expiration date.

Affected Public: Former spouses and military retirees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1988.

[FR Doc. 88-5602 Filed 3-14-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 24-25 March 1988

Times of Meeting: 0800-1700 hours, 24 March 1988; 0830-1500 hours, 25 March 1988

Place: Fort Belvoir, Virginia.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Belvoir Research, Development and Engineering Center Effectiveness will meet for the purpose of gathering data for the conduct of the effectiveness review for that facility. Briefings will be presented by each directorate covering their work program. The panel will meet in executive session to discuss the methodology for conducting the review and to discuss observations as a result of the RD&E Center briefings. In addition, one-on-one interviews will be conducted with a cross section of the RD&E Center staff. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-5731 Filed 3-14-88; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 23, 1988 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and may include discussion of the Upper Delaware Ice Jam Project.

The subjects of the hearing will be as follows:

Amendment to the Comprehensive Plan Relating to Criteria and Operations Formulae for Emergency Operations During a Lower Basin Drought Warning and Drought.

In February, 1983 the Commission received *Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20.* These recommendations were unanimously agreed to by the Governors of the Commonwealth of Pennsylvania, the States of New York, New Jersey and Delaware, and the Mayor of New York City. Recommendation 4 of these "Good Faith" Recommendations called for the development of a plan for coordinated operation of existing Basin impoundments during drought periods to complement the operating formula for the New York City Delaware Basin reservoirs in order to maintain reliable supplies for essential uses, to conserve water, and to control salinity. Recommendation 4 further specified that the plan should include operating criteria for the Beltzville, Blue Marsh, Walter, Prompton and Nockamixon projects and the hydroelectric power reservoirs in the Basin of the Pennsylvania Power and Light Company and Orange and Rockland Utilities, Inc.

The Commission's Flow Management Technical Advisory Committee has conducted a study and recommended alternative lower Basin drought warning and drought operating plans.

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to the conservation, development and utilization of Basin water resources. Specifically, it is proposed to:

1. Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* by the addition of a new Section 2.5.6 to read as follows:

2.5.6 *Coordinated Operation of Reservoirs During a Lower Basin Drought Warning and Drought.*

A. Banking and Use of Excess Release Quantity—New York City Reservoirs—Prior to June 15 of each year, the parties to the 1954 Supreme Court Decree, the Delaware River Basin Commission and the Delaware River Master will review existing conditions in the basin and shall determine whether or not to bank the "excess release quantity" provided pursuant to Section III, B.1.C of the Decree, as calculated for the seasonal period beginning June 15 and ending the following March 15, for possible use to help prevent "lower basin drought" or to provide "lower basin drought" assistance. Relevant factors to be considered include precipitation in the basin, climatic predictions, streamflows, ground water levels, soil moisture and other hydrologic data in making the determination with respect to the banking and use of the excess release quantity. The excess release quantity shall be reserved and placed in an "excess release bank" if the parties to the 1954 Decree, DRBC and the River Master determine that drought conditions in the lower basin are expected or threatening. If the excess release quantity is reserved and banked, the excess release provisions set forth in Section III.B.1.d of the Supreme Court Decree shall be deemed suspended for that water year beginning June 1 and ending May 31. The "excess release bank" shall be used, during that water year, to provide "lower basin drought" assistance releases to the Delaware River designed to assist in meeting the Trenton flow objective for lower basin "normal" conditions, or 3,000 cfs. Such "lower basin drought" assistance releases shall be made in quantities and at such times as determined by the Delaware River Basin Commission, and directed by the Delaware River Master. The "lower basin drought" assistance releases shall be made provided that the total combined storage available in the New York City Delaware River Basin reservoirs exceed the drought warning criteria set forth in Figure 1 of Section 2.5.3. The total of supplemental lower basin releases made from the New York City Delaware Basin reservoirs during any water operations year under the provision of this section shall not exceed the total quantity available in the "excess release bank" available during that same period. If, while banking excess releases, augmented conservation releases from the New York City Delaware River Basin reservoirs are made that would have been credited towards the "excess release quantity" in the absence of banking, then that amount of agumented conservation release shall be deducted from the "excess release bank".

B. Operations during Lower Basin "Normal" Conditions—when basinwide conditions are "normal" and lower basin conditions are "normal" (as defined by Beltzville Reservoir storage above Elevation 615 m.s.l. and Blue Marsh Reservoir storage above Elevation 283 m.s.l.), the following provisions shall govern lower basin operations:

1. New Jersey Diversion—Diversions by the State of New Jersey during "normal" periods, shall be computed as provided in Section V.B. of the amended Decree of the U.S. Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954) and its total diversion without compensating releases shall not exceed 100 million gallons per day (mgd) as a monthly average, with the diversion on any day not to exceed 120 million gallons, and its total diversion without compensating releases shall not exceed an average of 100 mgd during any calendar year.

2. Trenton Flow Objective—the minimum streamflow objective at the U.S.G.S gaging station located at Trenton, New Jersey, shall be 3,000 cfs.

3. Priority of Releases—Releases shall be made from storage to maintain the minimum Trenton streamflow objective of 3,000 cfs in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware Basin reservoirs, if available as provided under Section A of this plan.

(b) Releases from Beltzville Reservoir from storage between elevations 628 and 615 m.s.l. (73.7% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 290 and 283 m.s.l. (68.9% of storage remaining). Releases may be made from either or both reservoirs considering water quality needs in the Lehigh and Schuylkill Rivers.

C. Operations During Lower Basin "Drought Warning" Conditions.—When the Storage in Beltzville Reservoir falls below elevation 615 m.s.l. (73.7% of storage capacity) and the storage in Blue Marsh Reservoir falls below elevation 283 m.s.l. (68.9% of storage capacity) the Delaware River Basin Commission shall declare a "drought warning" condition in the lower Basin, and the following operating provisions and actions shall automatically be placed in effect:

1. New Jersey Diversion—The total diversion by the State of New Jersey during "lower basin drought warning" conditions in the lower Basin shall be computed as a daily running average, commencing on the day such drought warning becomes effective. The total diversion by New Jersey shall not exceed a running average of 70 mgd with the diversion on any day not to exceed 120 million gallons per day. If the allowable diversion for any condition period following entry into drought warning operations is not fully used, the unused portion may not be credited or used during subsequent periods.

2. Trenton Flow Objective—During "lower basin drought warning" periods, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, New Jersey, shall be established as set forth in Table 2 of Section 2.5.3, in accordance with the seven-day average location of the 250-mg/l isochlor (the "salt front" in the Delaware Estuary).

3. Priority of Releases—Releases shall be made from storage to maintain the minimum streamflow objectives set forth in Table 2 of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and in the case of the New York City Reservoirs, as directed by the Delaware River Master, in the following order of priority:

(a) Releases from the "excess release bank" in the New York City Delaware River Basin Reservoirs, if available, as provided under Section A. Because the "excess release bank" will have been used under lower basin normal conditions, it would only be available in the second or a subsequent year of a "lower basin drought" or "lower basin drought warning."

(b) Releases from Beltzville Reservoir from storage between elevations 615 to 590 m.s.1. (38% of storage remaining), and/or releases from Blue Marsh Reservoir from storage between elevations 283 and 273 m.s.1. (36.8% of storage remaining). Releases may be made from either or both reservoirs, considering water quality needs in the Lehigh and Schuylkill Rivers.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall be modified as set forth in Table 4 of Section 2.5.5 commencing with the declaration of a "lower basin drought warning" condition.

5. Conservation Measures—The Delaware River Basin Commission and the lower basin states will implement and encourage concerted voluntary water conservation measures and programs during the "lower basin drought warning" condition.

6. Consultation by Decree Parties, the Delaware River Basin Commission, and Delaware River Master—within 30 days following triggering of lower basin drought warning conditions, the Delaware River Basin Commission shall convene the authorized representatives of the States of Delaware, New Jersey and New York, Commonwealth of Pennsylvania, City of New York and the Delaware River Master to review current conditions and to consider and determine actions to be implemented in the event of "lower basin drought" emergency conditions declared pursuant to Article 10.4 of the Compact.

7. Ending "Lower Basin Drought Warning"—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective "lower basin drought-warning" storage levels for 30 consecutive days; or when either of those reservoirs spills, the "lower basin drought warning" operation shall automatically terminate and normal operations shall be resumed, unless the Commission unanimously agrees otherwise.

D. Operations During Lower Basin Drought Conditions—when storage in Beltzville Reservoir falls below elevation 580 m.s.1. (38.0% of storage capacity) and storage in Blue Marsh Reservoir falls below elevation 273 m.s.1. (36.8% of capacity) and remains below such levels for three (3) consecutive days, the Delaware River Basin Commission shall, pursuant to Article 10.4 of the Compact, declare a "lower basin drought" emergency condition in the lower basin and the following provisions shall automatically be placed in effect:

1. New Jersey Diversion—the total diversion by New Jersey during lower basin drought conditions shall not exceed a running average of 65 mgd, for the continuous period commencing on the first day following declaration of the "lower basin drought," with the diversion on any day not to exceed 120 mgd.

2. Trenton Flow Objective—During lower basin drought conditions, the minimum streamflow objective at the U.S.G.S. gaging station located at Trenton, New Jersey shall be established as set forth in Table 2 of Section 2.5.3 in accordance with the seven-day average location of the 250 mgl isochlor (the "salt front") in the Delaware Estuary.

3. Reservoir Operations—

(a) If not previously agreed to, within 3 days following the triggering of "lower basin drought" conditions, the parties to the 1954 Decree in consultation with the Delaware River Basin Commission, shall consider and unanimously select, and DRBC shall implement, one of the six "lower basin drought" reservoir operations plans set forth in Subsection D4; or any other plan designed to meet then existing conditions. The parties may by unanimous agreement modify and adjust any such operations plan or plans as necessary and appropriate to reflect actual conditions and needs.

(b) The lower basin drought reservoir operations plans shall consider and include provision of staged releases, as appropriate, from the following storage:

(1) Beltzville Reservoir storage between elevations 580 and 537 m.s.1. (4.65 billion gallons).

(2) Blue Marsh Reservoir storage between elevations 273 and 261 m.s.1. (1.77 billion gallons).

(3) Lake Nockamixon storage between elevations 395 and 325.5 m.s.1. (12.97 billion gallons).

(4) Up to 30 billion gallons of storage in the New York City Delaware Basin Reservoirs, subject to the conditions set forth in subsection D3(d).

(5) Storage in Lake Wallenpaupack and Mongaup facilities (29.81 and 15.38 billion gallons respectively), subject to the conditions set forth in subsection D3(e).

(6) Storage in the New York City Delaware Basin Reservoirs in excess of 80 billion gallons above "drought warning criteria" as set forth in Figure 1 of Section 2.5.3, without compensation.

(7) Storage in the New York City Delaware Basin Reservoirs in excess of 65 billion gallons above "drought warning criteria" as set forth in Figure 1 of Section 2.5.3, with compensation at the rate of 50% of actual releases made for "lower basin drought" assistance only if storage drops below the level of 65 billion gallons above "drought warning." Credits will be added to the "lower basin drought" assistance releases credit bank as defined in Subsection D3(d)(3)(i) and compensated for as provided in Subsection D3(d)(3)(ii).

(8) Available storage in Lake Hopatcong (1.9 to 4.3 billion gallons) subject to the conditions set forth in subsection D3(f).

(c) The Delaware River Basin Commission, in consultation with the parties to the 1954 Decree, shall consider requesting the temporary storage of water in Francis E. Walter and Prompton Reservoirs for future use.

(d) During a lower basin "drought" condition, an amount not to exceed 30 billion gallons of storage in the New York City Delaware Basin Reservoirs may be considered for inclusion in the "lower basin drought" reservoir operations plan to provide "lower basin drought" assistance releases to the Delaware River (in addition to such releases as may be needed to meet the Montague flow objective), in order to assist in meeting the Trenton flow objectives, subject to the following conditions and limitations:

(1) "Lower basin drought" assistance releases may be made under this provision provided that the total combined storage available in the New York City Delaware Basin Reservoirs exceeds by 30 billion gallons the "drought warning" criteria set forth in Figure 1 of Section 2.5.3

(2) The total quantity of supplemental releases made from the New York City Delaware River Basin reservoirs in any water year shall be credited to the City in a "Lower Basin Drought Assistance Releases Credit Bank."

(3) Except as provided in (iii) and (iv), credits accumulated in the "Lower Basin Drought Assistance Releases Credit Bank" shall be carried forward to the following water years, and compensated for as follows:

(i) Credits shall first be used to reduce the "excess release quantity" for the water year beginning the following June as provided under Section III.B.1.c of the 1954 Decree.

(ii) Any remaining credits shall be compensated by a proportionate reduction in the basic Montague flow objective provided under the 1954 Supreme Court Decree and Section 2.5.3. The amount and timing of such reductions shall be determined by the Delaware River Master, in consultation with the Commission and Parties to the 1954 Decree. To the maximum extent possible and considering the hydrological condition of the New York City Delaware River Basin reservoirs and upper basin streamflows, such credits will be worked off on days when releases are required to meet Montague flow objectives, and Trenton flows exceed the applicable flow objective without augmentation from lower Basin storage as ordered by the Delaware River Basin Commission.

(iii) Should any credits still remain at the end of the following water year, the procedure as outlined in D3(d)(3)(i) and D3(d)(3)(ii) shall be repeated for subsequent years as is necessary to totally deplete the "Lower Basin Drought Assistance Releases Credit Bank" except as provided in (iv).

(iv) In the event that any New York City Delaware Basin Reservoir refills and spills, all credits accumulated in the Lower Basin Drought Assistance Releases Credit Bank shall be cancelled.

(e) Power Reservoir Releases—During lower basin "drought" condition, the Delaware River Basin Commission may direct releases from storage in Lake Wallenpaupack and the Mongaup facilities according to Paragraphs (a) through (d). The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission. In order to conserve the waters of the basin, releases from Wallenpaupack and Mongaup shall be made only when water is needed to meet Trenton flow objectives.

(1) Releases from Lake Wallenpaupack may be directed as needed to meet Trenton flow objectives, provided that elevations do not drop below the elevations listed for the following month according to Table 2 of Section 2.5.5 of the Water Code.

(2) Releases from the Mongaup reservoir system may be directed, as needed to meet Trenton flow objectives, following an operations rule curve based upon maximum available storage of 15.38 billion gallons for the total system and providing for refilling the system during the worst hydrologic year of record, maintaining a minimum release and maintaining minimum operating levels. In the absence of an operations rule curve for the Mongaup system, releases shall be made from Mongaup facilities at a ratio of approximately 1 to 2 to the quantity of releases directed from Lake Wallenpaupack.

(3) If the Montague flow objective exceeds the sum of the New York City Delaware River Basin reservoir conservation releases plus uncontrolled flow at Montague by 350 cfs or more, then 350 cfs from the total Wallenpaupack and Mongaup directed releases shall be credited toward the Montague flow objective, and any additional releases required to meet the Montague flow objective shall be made

from the New York City Delaware River Basin reservoirs.

(4) If the Montague flow objective exceeds the sum of New York City Delaware Basin reservoir conservation releases plus uncontrolled flow at Montague by less than 350 cfs, then an amount from the total Wallenpaupack and Mongaup directed releases, which is equal to the difference between the Montague flow objective and the sum of New York City conservation releases plus uncontrolled flow at Montague, shall be credited toward the Montague flow objective, and no additional releases shall be required from the New York City Delaware Basin reservoirs to meet the Montague flow objective.

(f) In selecting the reservoir operations plan and release schedules to be implemented, the parties will consider the following factors:

(1) Lake Hopatcong is a privately-owned non-utility lake.

(2) The water in any reservoir or lake may not be available if under the provisions of a declaration of a drought emergency either within or outside of the basin by the Governor of New York, New Jersey, or Pennsylvania, such facility has been identified to provide supplies for essential health and safety purposes.

(3) There are flow constraints imposed by the outlet works.

(4) There are release limitations due to potential flooding conditions downstream.

(5) The season and seasonal hydrologic conditions.

(6) The status of storage and probability of refill or drawdown for each reservoir.

(7) The status of demands upon each reservoir.

(8) The impact of drought operations upon the authorized uses of each reservoir.

(9) The condition of other water supplies, storage or sources available to the owners and operators of each reservoir.

(10) The variable impact of observed and expected drought conditions in the drainage areas for each reservoir.

(11) Salinity intrusion in the Delaware Estuary.

(12) Releases shall be made from storage to maintain the minimum Trenton streamflow objectives set forth in Table 2, of Section 2.5.3, in such quantities and at such times as determined by the Delaware River Basin Commission, and, in the case of the New York City reservoirs, as directed by the Delaware River Master, in accordance with the schedules and priorities set forth in the operating plan selected or modified by the parties under this section.

4. Operations Alternatives for "Lower Basin Drought" When Basinwide Conditions are Normal.

(a) The alternatives for "lower basin drought" operations presented herein vary considerably and were specifically designed to be able to address the wide range of conditions which may occur. For example, if a "lower basin drought" triggers and the upper basin reservoirs are nearly full, then upper basin reservoirs may play a more significant role in helping to solve the lower basin crisis. On the other hand, if the lower basin is in a drought condition and the basin as a whole is about to enter a "drought warning" condition, then it would be appropriate to look to other sources such as power dams or recreation reservoirs for assistance. In that case, early mobilization of these additional sources would significantly reduce the severity of basinwide drought conditions should they occur. A schematic guide for selecting alternatives for "lower basin drought" operations is presented in Figure 1.

(b) Factors which would indicate the most favorable condition for each alternative are as follows:

(1) *Alternative 1*—Application of Alternative 1 is indicated if the general hydrologic condition of the upper basin is much better than the lower basin, based on various drought indicators, including precipitation, streamflow, groundwater levels and reservoir storage. Under these conditions storage in the New York City Delaware River Basin reservoirs would be high (i.e., 65 bg above the drought warning line), with a low projected demand on the reservoirs. Storage in the New York City non-Delaware reservoirs would also be high.

Under these conditions, Alternative 1 calls for New York City Delaware storage to be used heavily because there would not be a significant risk of drawdown triggering a basinwide drought condition. This alternative would use water which would otherwise likely spill later during the water year.

(2) *Alternative 2*—Use of Alternative 2 is indicated if the general condition in the upper basin is moderately favorable (i.e., storage at least 30 bg above drought warning and less than 65 bg above drought warning). This plan involves extra releases from the New York City reservoirs to assist lower basin conditions. In the event that the City reservoirs drop to less than 30 bg above drought warning, then releases from the power dams would be used instead. Because such releases would tend to increase the risk of the basin entering drought warning, this option should only be considered if it triggers after September 1, when the risk of drawing the basin into drought warning conditions is reduced. This would limit the amount of time water would be needed as well as increase the probability of refill before serious drawdown occurred.

(3) *Alternative 3*—This alternative uses only lower basin reservoirs (i.e., located below Montague) and does not involve the use of New York City or upper basin power reservoirs. This alternative provides the least amount of storage with which to work. Two conditions combined would indicate that application of Alternative 3 is appropriate—(1) the New York City Delaware River Basin reservoirs are very close to entering a drought warning condition (i.e., storage in New York City Delaware reservoirs is less than 30 bg above the drought warning line when lower basin drought triggers) and the non-Delaware River Basin New York City supplies are low; and (2) the "lower basin drought" occurs very late in the season (i.e., after November 1). Under these seasonal conditions, the likelihood of the lower basin reservoirs emptying before the natural refill period is low, and the required releases most likely can be made from the limited remaining contents of the lower basin reservoirs.

(4) *Alternative 4*—This alternative calls upon the upper basin power company reservoirs for assistance. This alternative would be indicated when the New York City Delaware River Basin reservoirs are less than 30 bg above the drought warning line and the lower basin triggers before November 1, thereby increasing the probable need for additional water. In this case, the basin would have a high probability of entering a drought warning condition, thus the City storage should be conserved.

(5) *Alternative 5*—This option proposes the early use of upper basin power company reservoirs followed much later by the use of New York City storage. If a "lower basin drought" triggered early in the year (i.e., before September 1) and City storage were only 30 to 65 bg above drought warning then there would be a distinct risk of the basin entering drought warning later and a strong chance that the lower basin reservoirs could be exhausted. This option, using upper basin power company storage to conserve lower basin and New York City storage for later use addresses these possibilities.

(6) *Alternative 6*—This option is similar to Alternative 2 except that New York City releases would be made concurrently with releases from lower basin storage on a 50-50 basis. The conditions under which it would be most appropriate would be similar to those for Alternative 2.

(7) Alternative Plans—

Operations Alternatives for Lower Basin Drought When Basinwide Conditions are Normal

NJ Diversions—65 MGD.
Lower Basin Condition—Drought.
Trenton Flow Objective—Table 2—Section 2.5.3 flow objectives for salinity control.
Action—
DRBC issues Drought Declaration
Ban on non-essential uses below Montague
Maintain reduced conservation releases

Order of Priority* of Augmented Reservoir Releases to Maintain Trenton Flow Objectives:

Alternative 1

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Make additional releases from NYC Delaware Reservoir storage in excess of 80 bg above Drought Warning without compensation, and in excess of 65 bg above Drought Warning with 50% compensation if storage subsequently drops below 65 bg above Drought Warning, to augment Delaware River flow.
3. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
4. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
5. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
6. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
7. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
8. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.
9. Make releases from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from Mongaup storage****** subject to minimum operating levels.
10. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 2

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make 10 bg of additional releases from NYC Delaware reservoirs to augment Delaware River flow. To the extent NYC Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon at maximum total release rate of 200 cfs, and releases from Lake Hopatcong***** to elev. 919 (1.989) at a maximum release rate of 75 cfs.
5. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.
7. Make 10 bg of additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow. To the extent New York City Delaware reservoirs are unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
8. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 3

1. Impound and use temporary storage in F.E. Walter and Prompton if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)** and release from Lake Hopatcong to elev. 919 (1.9 bg) at a maximum release rate of 200 cfs.
3. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261, and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 4

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 9.9 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make releases from Beltzville, Blue Marsh**** and Nockamixon, to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 5

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.
2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**.
3. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
4. Make releases from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 919 (1.9 bg) at a maximum release rate of 75 cfs.
5. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.
6. Make total of 5 bg release from Beltzville, Blue Marsh**** and Nockamixon, at maximum total release rate of 200 cfs.

7. Make additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow.

8. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong***** to elev. 915.2 (2.4 bg) at a maximum release rate of 75 cfs.

Alternative 6

1. Impound and use temporary storage in F.E. Walter and Prompton, if available.

2. Nockamixon from elev. 395 to elev. 385 (68.7%/4.1 bg)**. Make additional releases from NYC Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Nockamixon; to the extent NYC storage is unavailable, make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

3. Make releases from Beltzville, Blue Marsh**** and Nockamixon to elev. 537, 261 and 325.5 respectively, at maximum total release rate of 200 cfs, and release from Lake Hopatcong to elev. 915.2 at a maximum release rate of 75 cfs. Make additional releases from . NYC Delaware Reservoirs*** to augment Delaware River flow, equal to and simultaneous with releases from Beltzville, Blue Marsh, Nockamixon and Hopatcong; to the extent NYC storage is unavailable. Make releases for Trenton from Lake Wallenpaupack subject to the elevation schedule, and make proportional releases from the Mongaup Power Reservoir System****** subject to minimum operating levels.

4. Reduction of Conservation Releases—In order to conserve storage, conservation releases from the listed lower basin reservoirs shall continue to be modified in accordance with Table 4 of Section 2.5.5 for the duration of a "lower basin drought" condition.

5. Conservation Measures—Upon the declaration of a "lower basin drought" emergency, the lower Basin States shall adopt and implement within the basin drainage area below Montague comparable mandatory conservation measures, including restrictions on nonessential water uses, and shall implement other provisions of drought contingency plans designed to achieve a target of 15 percent reduction in depletive water use. The following water uses shall be deemed non-essential:

(a) Serving of water to any patron of a restaurant, club or other eating place unless specifically requested by such patron.

(b) The use of water for ornamental purposes.

(c) The use of water for washing paved surfaces such as streets, sidewalks, outdoor plazas, driveways, garages, parking areas and patios.

(d) The use of water for non-commercial washing or cleaning of vehicles except for the windshields and windows and except for emergency vehicles.

(e) The use of water for watering of established lawns (i.e., those not newly seeded, sodded or fertilized).

(f) The use of water for watering or sprinkling any part of a golf course except for tees, greens, and aprons.

(g) The use of water for watering non-commercial outdoor gardens, landscaped areas, trees, shrubs and other outdoor plants except: water may be applied with a bucket, can or hand-held hose equipped with automatic shut-off valve.

6. Ending Drought—When the storage levels in Beltzville and Blue Marsh Reservoirs simultaneously exceed their respective "lower basin drought" storage levels for 30 consecutive days or either one of those reservoirs spills, the "lower basin drought" operation shall automatically terminate and either "lower basin drought warning" or normal operations shall be resumed in accordance with Section B or C, unless the Decree parties unanimously agree otherwise.

E. Operations During Basinwide Drought Warning or Drought Following Lower Basin Drought Warning or Drought:

1. Selection of Alternate Plans—If, following the triggering of a "lower basin drought" or "lower basin drought warning" under this plan, the combined storage in the New York City Delaware Basin Reservoirs declines to basinwide "drought warning" or "drought" conditions as defined in Section 2.5.3, the parties to the 1954 Decree shall select and agree to, and the Delaware River Basin Commission shall implement, the provisions of either Section E2 or E3 of this Plan. In the absence of unanimous agreement, the operating rules set forth in Section 2.5.3 shall govern. The parties may by unanimous agreement modify and adjust either plan as necessary and appropriate to respond to actual conditions. In selecting between the alternative plans, and any modification thereto, the parties will consider the following factors:

(a) The extent and severity of drought conditions in various parts of the basin.

(b) The season and seasonal variation of hydrologic conditions.

(c) The status of storage in all affected reservoirs, and the probability of refill or drawdown for each reservoir.

(d) The status of demands upon each reservoir.

(e) The lead time needed to effect conservation measures and to reduce demand.

(f) The prior availability of time and notice to provide for adequate warning and preparation for drought response actions.

(g) The need and ability to take expedited steps to conserve storage in the New York City and other Basin reservoirs.

2. Combined Drought Operations Plan 1.

(a) The schedules of phased reductions governing the maximum allowable rates of diversion of waters of the Delaware Basin by New York City, the minimum compensating releases to be made by the City of New York Delaware Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed in Section 2.5.3.

(b) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide drought conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

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*To be followed after the Excess Release Bank has been exhausted. Order of priority would be reversed for coming out of a drought condition.

**Loss of recreation below this level.

***New York City would be credited this water against the following year's excess release account unless there is an intervening spill condition. In addition, these releases would only be made when New York City Delaware reservoir storage is more than 30 billion gallons above the drought warning curve. The maximum cumulative amount of these releases is 30 bg.

****Sufficient storage would be retained to supply the needs of the Western Berks Water Authority, required conservation releases and water quality augmentation needs on the Schuylkill River.

*****Use of water from Lake Hopatcong is subject to the considerations set forth in Subsection D3(f).

******Releases will be made from Lake Wallenpaupack and the Mongaup Power Reservoir System simultaneously and approximately in a two to one ratio, respectively.

(c) So long as "lower basin drought warning" or "lower basin drought" conditions prevail simultaneously with basinwide drought warning and drought conditions, the maximum allowable rates of diversion of Delaware Basin waters by New Jersey, the streamflow objectives at the U.S.G.S. gaging station located at Trenton, New Jersey, and the operation of storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and any storage made available in the F.E. Walter and Prompton Reservoirs shall be governed by the *stricter* of the provisions of Sections C and D of the Lower Delaware Basin Operating Plan, or the provisions of Section 2.5.3, which permit lesser New Jersey diversions and lower Trenton Flow Objectives.

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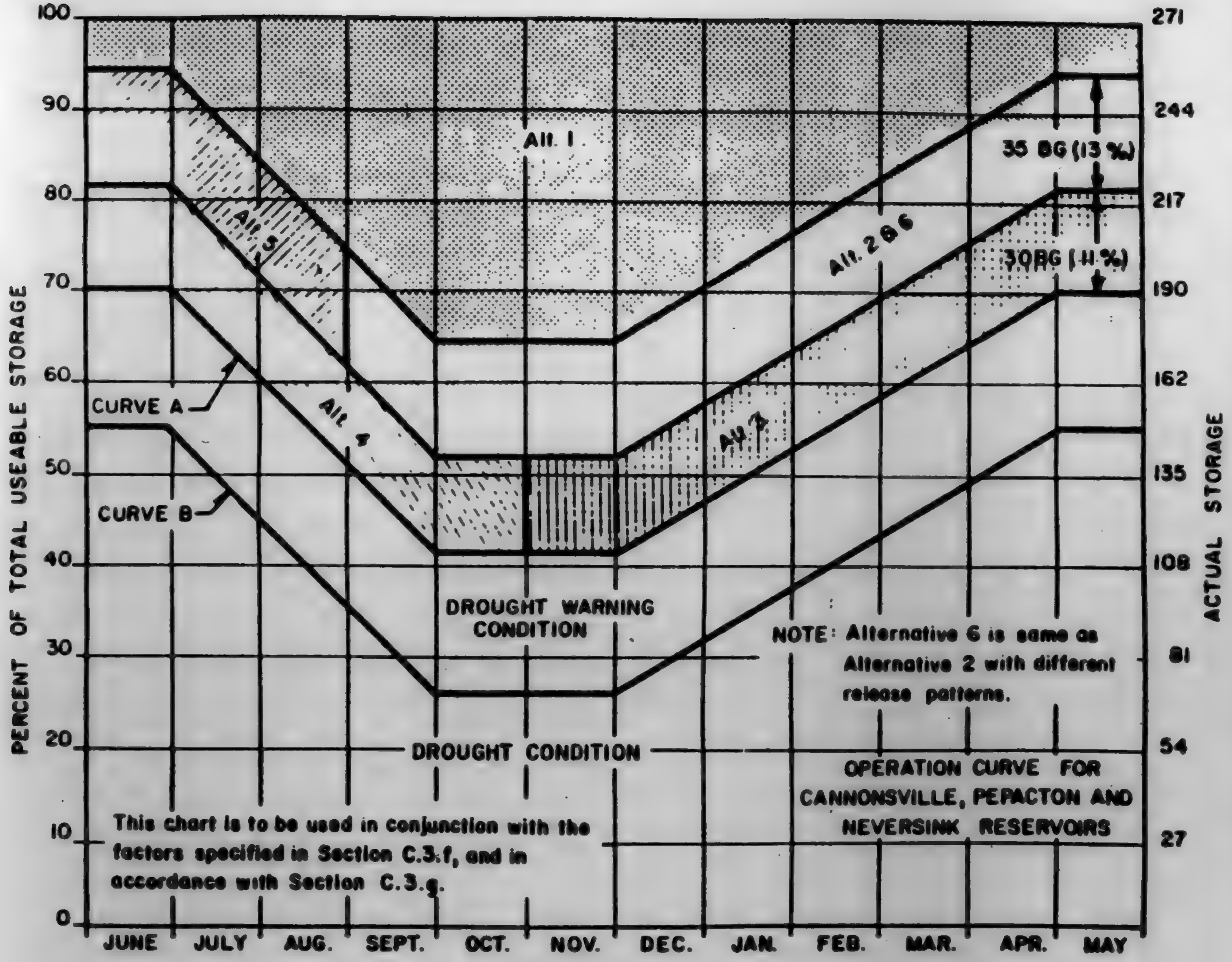

Figure 1

A GUIDE FOR SELECTING ALTERNATIVES FOR LOWER BASIN DROUGHT PLAN OPTIONS

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3. Combined Drought Operations Plan 2.

(a) If during the period May 1 to November 30, the combined storage in the New York City Delaware River Basin Reservoirs is in the upper half of the drought warning condition identified in Figure 1 of Section 2.5.3, the maximum allowable rates of diversion of waters of the Delaware by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin Reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed for "lower half-drought warning" in Tables 1 and 2 of Section 2.5.3. If the combined storage in the New York City Delaware River Basin reservoirs subsequently enters the lower half of the drought warning condition identified in Figure 1 of Section 2.5.3, the maximum allowable rate of diversions of the Delaware Basin by New York City, the minimum compensating releases to be made by the New York City Delaware River Basin reservoirs, and the streamflow objectives at the U.S.G.S. gaging station located at Montague, New Jersey, shall be as prescribed for drought in Tables 1 and 2 of Section 2.5.3.

(b) If during the period December 1 to April 30, the combined storage in the New York City-Delaware Basin Reservoirs falls below the "drought warning" levels identified in Figure 1 of Section 2.5.3, the maximum rates of New York City diversions, the minimum compensating releases made by the New York City Delaware River Basin Reservoirs, and the Montague streamflow objectives shall be as prescribed for the applicable drought warning upper and lower half conditions set forth in Tables 1 and 2 of Section 2.5.3. Any subsequent triggering of basinwide drought conditions shall be governed by Figure 1 of Section 2.5.3.

(c) So long as "lower basin drought warning" or "lower basin drought" conditions prevail simultaneous with a basinwide drought warning condition, the maximum rate of diversion by New Jersey, the minimum streamflow objectives at Trenton, and the operation of available storage in Beltzville Reservoir, Blue Marsh Reservoir, Lake Nockamixon, Lake Hopatcong, and the F.E. Walter and Prompton Reservoirs shall be governed by the provisions of Sections C and D of the Lower Delaware Basin Operating Plan.

(d) In the event that following the triggering of a "lower basin drought warning" or "lower basin drought," the combined storage in the New York City Delaware River Basin Reservoirs is in the drought levels identified in paragraphs a. and b., whichever is applicable, the maximum rate of diversions by New York City and New Jersey, the minimum rates of compensating releases, and the minimum streamflow objectives at Montague, New Jersey and Trenton, New Jersey shall be those set forth in Tables 1 and 2 of Section 2.5.3. The operation of all basin reservoirs shall be as prescribed in the plans for basinwide drought reservoir operation.

(e) The operation of Lake Wallenpaupack and the Mongaup System Reservoirs shall be governed by the storage and release schedules prescribed in the operating plan for basinwide drought conditions. The Commission may delegate to the River Master responsibility for directing operation of the Lake Wallenpaupack and Mongaup facilities under the release schedules and drought management policies of the Commission.

II. This operating plan will be reviewed by the Commission periodically and will be subject to revision when additional water storage projects become operational.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *National Park Service, Upper Delaware Scenic and Recreational River Final River Management Plan D–78–51 CP (Revised).* An application for revision of the Delaware River Basin Commission's (DRBC) Comprehensive Plan to incorporate features of the Final River Management Plan approved by the Secretary of the Interior on September 29, 1987. The Plan provides the basis for creation of a new intergovernmental cooperative advisory structure to involve the National Park Service, the State of New York, the Commonwealth of Pennsylvania, DRBC, and up to 15 towns and townships in the 5-county Upper Delaware region, to be called the Upper Delaware Council. The Management Plan was developed in accordance with the National Parks and Recreation Act of 1978 (Section 704(c) of Pub. L. 95–625) in cooperation with the conference of Upper Delaware Townships, National Park Service, the states, the counties, the towns and townships in both States, the Citizens Advisory Council and DRBC. The Plan includes: (1) Boundary maps; (2) A program for the management of existing and future land and water uses; (3) An analysis of economic and environmental costs and benefits of Plan implementation; (4) A program providing for coordinated implementation and administration of the Plan to involve appropriate governmental units at federal, state, regional and local levels. The boundary maps indicate the land area influenced by the Scenic and Recreational River designation has been reduced since the 1978 DRBC decision. This hearing continues that of February 24, 1988.

2. *Township of Horsham Sewer Authority D–88–2 CP.* An application for addition of an existing sewage treatment plant to the Comprehensive Plan and for approval to continue the operation of the treatment plant, located in Montgomery County, Pennsylvania, previously owned and operated by the Wichard Sewer Company. No expansion or changes to the project are requested in this application. This hearing continues that of February 24, 1988.

3. *U. S. Department of Justice—Otisville Federal Correctional Institution D–83–7 CP RENEWAL.* An application for renewal of a ground water withdrawal project to supply up to 9.3 million gallons (mg)/30 days of water to the applicant's correctional facility from Well Nos. PW1, PW2 and ES1. Commission approval on May 25, 1983 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 9.3 mg/30 days. The project is located in the Town of Deerpark, Orange County, New York.

4. *Warminster Municipal Authority D–87–19 CP.* A ground water withdrawal project to augment the applicant's municipal water supply system in Warminster Township, Bucks County, Pennsylvania. Well No. 39 is located 1,500 feet northwest of the intersection of Street Road (Route 132) and Norristown Road. The applicant proposes to withdraw up to 6.06 mg/30 days from Well No. 39. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Borough of Northampton D–87–46 CP.* An application to expand a 0.7 million gallons per day (mgd) wastewater treatment plant to provide high quality secondary treatment of a design average flow of 1.5 mgd. the plant is located on the east bank of Hokendauqua Creek near Washington Avenue in Northampton Borough, Northampton County, Pennsylvania. In addition to Northampton Borough, a portion of Allen Township will be served by the proposed expansion. The proposed plant is designed to serve an equivalent population of 15,000 persons through the year 2010. A new outfall will be constructed parallel to the existing deteriorated and undersized line. The outfall will discharge to Hokendauqua

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Creek near its confluent with the Lehigh River.

6. *Metropolitan Edison Company D-87-51.* An overhead cable crossing modification to provide an additional neutral wire in order to develop a grounded wye electrical system that will increase voltage from 4.8 to 13.2 KV. The existing facilities must be raised to provide adequate clearance. The 338-foot transmission line crosses the Schuylkill River between Hamburg Borough and Tilden Township, both in Berks County, Pennsylvania. This section is designated for modified recreation under the Pennsylvania Scenic River Act.

7. *H.W. Longacre, Inc. D-87-85.* An application for the upgrading and expansion of the H.W. Longacre, Inc. wastewater treatment plant located in Franconia Township, Montgomery County; Pennsylvania. The existing plant is designed to pretreat up to 0.24 mgd of meat processing wastewater prior to discharging into the Telford Borough Authority Sewage Treatment Plant. The proposed upgrade and expansion is designed to provide tertiary treatment of up to 0.3 mgd. Treatment plant effluent will discharge to an unnamed tributary of Indian Creek.

8. *Delmarva Power & Light Company D-88-10.* An application to construct new earth, rock and concrete capped fenders to protect existing electric transmission towers from being damaged by stray ships. One tower (No. 97) was recently replaced following destruction by a stray ship last year. The project includes a concrete capped mound and five pile clusters around the channel side of Tower No. 97 and two mounds (one upstream, one downstream) around Tower No. 98. The 500 KV line connects the Salem/Hope Creek complex with the Delmarva system in Delaware. The towers are located in New Castle County.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

March 8, 1988.

[FR Doc. 88-5574 Filed 3-14-88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA88-2-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 9, 1988.

Take notice that on March 2, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to be effective April 1, 1988:

Rate Schedule No. X-26, Original Volume No. 3
1st Revised 45th Revised Sheet No. 165
Rate Schedule No. G-2, First Revised Volume No. 1
1st Revised 46th Revised Sheet No. 4.

AER states that the proposed changes would increase AER's system cost by $952,152 and its revenue from jurisdictional sales and service by $28,926 for the six-month PGA period ending September 30, 1988 as adjusted.

AER states that in addition to the above tariff sheets AER submitted for filing the following tariff sheets that cancel its Incremental Pricing clause and deletes all references to same in its PGA and Flexible PGA provisions.

Rate Schedule No. X-26, Original Volume No. 3	Rate Schedule G-2, First Revised Volume No. 1
Cancellation of Incremental Pricing Clause	
16th Revised Sheet No. 185A.	16th Revised Sheet No. 4A
4th Revised Sheet No. 188B.	5th Revised Sheet No. 12B
5th Revised Sheet No. 188C.	4th Revised Sheet No. 12I
1st Revised Sheet No. 188C.1.	1st Revised Sheet No. 12.1
1st Revised Sheet No. 188H.	2nd Revised Sheet No. 12J
Regular PGA and Flexible PGA Provisions	
5th Revised Sheet No. 187.	5th Revised Sheet No. 12A
4th Revised Sheet No. 187A.	7th Revised Sheet No. 12B
4th Revised Sheet No. 187B.	8th Revised Sheet No. 12C
6th Revised Sheet No. 187C.	9th Revised Sheet No. 12D
3rd Revised Sheet No. 187D.	5th Revised Sheet No. 12E
5th Revised Sheet No. 188.	4th Revised Sheet No. 12F
4th Revised Sheet No. 188A.	5th Revised Sheet No. 12G

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5637 Filed 3-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-72-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 9, 1988.

Take notice that on March 2, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets.

Original Volume No. 1-A

Third Revised Sheet No. 202

Original Volume No. 2

First Amended Fourth Revised Sheet No. 2.3
First Amended Thirteenth Revised Sheet No. 2-B

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage to be effective April 1, 1988, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 1-A, and 2. Northwest will file a Revised Sheet No. 10-A of its FERC Gas Tariff, First Revised Volume No. 1, as explained in the filing.

Northwest requests an effective date of April 1, 1988 for each of the respective tariff sheets, which date is 30 days from the date of filing.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before March 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5638 Filed 3-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2901-002 et al.]

Hydroelectric Applications (Nekoosa Packaging Big Island Mill Corp. et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. *Type of Application:* Transfer.

b. *Project No.:* 2901-002.

Date filed: December 14, 1987.

d. *Applicant:* Nekoosa Packaging Big Island Mill Corporation and Nekoosa Packaging Corporation.

e. *Name of Project:* Holcomb Rock Project.

f. *Location:* On the James River in Amherst and Bedford Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Keith R. McCrea & Michael T. Mishkin, Squire, Sanders & Demsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044, (202) 626-6779.

i. *FERC Contact:* Nanzo T. Coley—(202) 376-9416.

j. *Comment Date:* April 8, 1988.

k. *Application to Transfer License:* OI Big Island Mill STS Inc. (licensee), which recently changed its name to Nekoosa Packaging Big Island Mill Corporation, and Nekoosa Packaging Corporation (NPC) have requested that the project license be transferred from the licensee to NPC.

The license was issued on January 29, 1981, and would expire on February 1, 2001.

l. *This notice also consists of the following standard paragraphs:* B and C.

2. a. *Type of Application:* Transfer.

b. *Project No.:* 2901-002.

c. *Date filed:* December 14, 1987.

d. *Applicant:* Nekoosa Packaging Big Island Mill Corporation and Nekoosa Packaging Corporation.

e. *Name of Project:* Big Island Dam Project.

f. *Location:* On the James River in Amherst and Bedford Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Keith R. McCrea & Michael T. Mishkin, Squire, Sanders & Demsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044, (202) 626-6779.

i. *FERC Contact:* Nanzo T. Coley—(202) 376-9416.

j. *Comment Date:* April 8, 1988.

k. *Application to Transfer License:* OI Big Island Mill STS Inc. (licensee), which recently changed its name to Nekoosa Packaging Big Island Mill Corporation, and Nekoosa Packaging Corporation (NPC) have requested that the project license be transferred from the licensee to NPC.

The license was issued on December 8, 1980, and would expire on January 2, 2001.

l. *This notice also consists of the following standard paragraphs:* B and C.

3a. *Type of Application:* Transfer of License.

b. *Project No.:* 3819-006.

c. *Date Filed:* January 22, 1988.

d. *Applicant:* STS Energenics, LTD., Inc. and STS Hydropower, LTD.

e. *Name of Project:* Mt. Elbert.

f. *Location:* On Mt. Elbert Conduit in Lake County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Stephen O. Schultz, Foster, Swift, Collins & Coey, 313 South Washington Square, Lansing, Michigan 48933-2193, (517) 372-8050.

i. *FERC Contact:* Hector M. Perez, (202) 376-1869.

j. *Comment Date:* April 11, 1988.

k. *Description of the Proposed Transfer of License:* STS Energenics, LTD., Inc. proposes to transfer the license to STS Hydropower, LTD. as part of the transfer of all hydropower assets presently held by the STS family of companies to STS Hydropower, LTD. The project is constructed and in operation. The transferee is a private corporation organized under the laws of the State of Michigan. The transferee states that it will comply with all the applicable laws of the State of Colorado as required by section 9(b) of the Federal Power Act.

l. *This notice also consists of the following standard paragraphs:* B and C.

4a. *Type of Application:* Transfer of License.

b. *Project No:* 8047-006.

c. *Date Filed:* February 5, 1988.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Willimantic No. 2.

f. *Location:* On the Willimantic River, Windham Co., Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, P.O. Box 122, Putman, CT 06260, (203) 928-2002.

i. *FERC Contact:* William Guey-Lee, (202) 376-9827.

j. *Comment Date:* March 30, 1988.

k. *Description of the Proposed Transfer of License:* Summit Hydropower proposes to sell the Willimantic No. 2 Project No. 8047 to Willimantic Power Corporation (WPC). WPC agrees to accept all of the terms and conditions of the license and agrees to be bound by the license as though it were the original licensee.

l. *This notice also consists of the following standard paragraphs:* B, C, D2.

5a. *Type of Application:* Transfer of License.

b. *Project No:* 8051-004.

c. *Date Filed:* February 5, 1988.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Willimantic No. 1.

f. *Location:* On the Willimantic River, Windam Co., Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, P.O. Box 122, Putman, CT 06260, (203) 928-2002.

i. *FERC Contact:* William Guey-Lee, (202) 376-9827.

j. *Comment Date:* March 30, 1988.

k. *Description of Transfer:* Summit Hydropower proposes to sell the Willimantic No. 1 Project No. 8051 to Willimantic Power Corporation (WPC). WPC agrees to accept all of the terms and conditions of the license and agrees to be bound by the license as though it were the original licensee.

l. *This notice also consists of the following standard paragraphs:* B, C, D2.

6a. *Type of Application:* Major License (5 MW or Less).

b. *Project No.:* 9419-001.

c. *Date Filed:* March 5, 1987, and supplemented September 18, 1987.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* Riverton Hydro Project.

f. *Location:* On Spring River and Shoal Creek near Lowell, Cherokee County, Kansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Doyle W. Jones, 902 Highway 270 North, Suite 102, Malvern, AR 72104 (501) 337-4804.

i. *FERC Contact:* Ed Lee on (202) 376-9828.

j. *Comment Date:* May 4, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) The existing 500-foot-long, 28-foot-high Lowell Dam; (2) an existing

580-acre reservoir, Empire Lake, having a gross storage capacity of 4,340 acre-feet at normal surface elevation of 807 feet NGVD; (3) a reinforced concrete powerhouse integral with the dam and housing eight 450-kW generating units for a total installed capacity of 3,600-kW; (4) a 150-foot-long, 600-volt transmission line; and (5) appurtanant facilities. The project site is owned by the Empire District Electric Company. The estimated project annual energy generation would be 13,890 MWh.

l. *Purpose of Project:* The project energy will be sold to Empire District Electric Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10533–000.

c. *Date Filed:* January 25, 1988.

d. *Applicant:* Franklin Hydro Company, Inc.

e. *Name of Project:* Franklin Development Project.

f. *Location:* On the Winnipesaukee River, in Merrimack and Belknap Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Wayne E. Nelson, CHI Operations, Inc., P.O. Box 1267, Sanford, MA 04073 (207) 490–1980.

i. *FERC Contact:* Thomas O. Murphy (202) 376–9829.

j. *Comment Date:* May 5, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete gravity dam, 150 feet long, 22 feet high and having a crest elevation of 400 feet mean sea level; (2) a proposed reservoir of 9 acres surface area and no appreciable storage capacity at a normal maximum surface elevation of 400 feet mean sea level; (3) a proposed 12-foot-diameter, 3,750-foot-long penstock; (4) a proposed 32-foot-long, 50-foot-wide concrete powerhouse to house a proposed 5.5 MW capacity turbine/generator operating at a gross head of 84 feet; (5) a proposed 360 kW capacity turbine/generator to be located at the dam and operating at a gross head of 22 feet; (6) a proposed 250-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The estimated annual energy production is 21,000,000 kWh. The applicant proposes to sell the power produced to Public Service of New Hampshire.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, B, C & D2.

8a. *Type of Application:* Petition for Declaratory Order.

b. *Project No.:* EL84–1.

c. *Date Filed:* March 1, 1984.

d. *Applicant:* City of Lanesboro.

e. *Name of Project:* Lanesboro.

f. *Location:* On the South Branch of the Root River, Fillmore County, Minnesota.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Contact Person:* Lynn Iverson, Mayor, City of Lanesboro, Box 333, 202 Parkway South, Lanesboro, MN 55949 (507) 467–3722.

i. *FERC Contact:* Charles T. Brown (202) 376–9129.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The project consists of: (1) A 193-foot-long, curved, stone masonry overflow spillway dam; (2) a 1,000-foot-long power canal with an intake structure; (3) a powerhouse containing two hydro units; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* All project power is sold to Dairyland Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

9a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 9160–001.

c. *Date Filed:* May 2, 1985, and revised February 16, 1988.

d. *Applicant:* Glenwood Springs Power Company.

e. *Name of Project:* Twin Tunnels.

f. *Location:* City of Glenwood Springs, in Garfield County, Colorado.

g. *Filed Pursuant to:* Energy Security Act of 1980, Section 408, 16 U.S.C., 2705 and 2008.

h. *Applicant Contact:* Mr. Scott M. Balcomb, Delaney & Balcomb, PC, P.O. Drawer 790, Glenwood Springs, CO 81602 (303) 945–6546.

i. *FERC Contact:* Mr. Hector M. Perez, (202) 376–1669.

j. *Comment Date:* April 28, 1988.

k. *Description of Project:* The applicant filed a minor license application for this project on May 2, 1985. The application was accepted for filing and a notice of application issued with a last date for comments, motions to intervene, protests, and competing applications of October 11, 1985. On February 16, 1988, the applicant filed a request that its pending license application be treated as a conduit exemption application. The proposed project would utilize the existing City of Glenwood Springs' water supply system and would consist of: (1) A 1,500-foot-long penstock, 18 to 24 inches in diameter collecting the overflow water from an existing storage tank, leading to; (2) a 37-foot by 31-foot powerhouse containing a single turbine-generator unit with a rated capacity of 650 kW and producing an estimated average annual generation of 2.456 GWh; (3) a short tailrace discharging into the Colorado River; and (4) other appurtenances. Applicant intends to sell the project power to either Public Service Company of Colorado or the City of Glenwood Springs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D3b.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 9221–000.

c. *Date Filed:* May 21, 1985.

d. *Applicant:* Dallas Associates.

e. *Name of Project:* Ridgeway Hydro Project.

f. *Location:* On Uncompahgre River in Ouray County, Colorado: Section 6, T46N, R8W: NMB&M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. *FERC Contact:* Jesse W. Short, (202) 376–9616.

j. *Comment Date:* May 13, 1988.

k. *Description of Project:* The proposed project would utilize the U.S. Bureau of Reclamation's Ridgeway Dam and Reservoir and would consist of: (1) A 11-foot, 6-inch diameter penstock connecting to the existing outlet works; (2) a powerhouse with an installed capacity of 4,100 kW; (3) a tailrace returning flow to the river a short distance downstream from the dam; (4) a 69-kV transmission line about 5.7 miles long; and (5) appurtenant facilities. The applicant estimates an average annual energy output of 23,836,000 kWh. The applicant estimates the cost of studies to be $27,000.

l. *Purpose of Project:* Project energy would be sold to local municipalities or the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Exemption (5MW or less).

b. *Project No.:* 10480–000.

c. *Date Filed:* September 24, 1987.

d. *Applicant:* Tuolumne County.

e. *Name of Project:* Phoenix Lake.

f. *Location:* At the base of the Phoenix Reservoir in Tuolumne County, California, in Section 28, T2N, R15E, M.D.B. & M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*

Billy H. Marr, Water Supervisor, Tuolumne County Administration Center, 2 South Green Street, Sonora, CA 95370, (209) 533–5500.

Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323

i. *FERC Contact:* Donald H. Wilt, (202) 376–9807.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The proposed project would utilize Tuolumne County Water Agency's existing Phoenix Lake Dam outlet tower, a 175-foot-long, 30-inch-diameter outlet pipe, and a 50-foot-long, 24-inch-diameter diversion pipe and would consist of the following proposed structures: (1) An 830-foot-long, 33-inch-diameter steel penstock connected to the existing 25-inch-diameter diversion pipe; (2) a powerhouse containing a turbine generator unit with a total rated capacity of 119 kW under a head of 40 feet with flows being returned to Sullivan Creek; and (3) a 500-foot-long, 12-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company line. Applicant estimates the project's annual generation at 527,000 kWh.

l. *Purpose of Project:* Project power will be sold to Pacific Gas and Electric Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

12 a. *Type of Application:* License (< 5 MW).

b. *Project No.:* 10521–000.

c. *Date Filed:* December 4, 1987.

d. *Applicant:* Mahoning Hydro Associates.

e. *Name of Project:* Mahoning Creek.

f. *Location:* On Mahoning Creek near Putneyville, Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, Md 21403, (301) 268–8820.

i. *FERC Contact:* Michael Dees (202) 376–9830.

j. *Comment Date:* May 13, 1988.

K. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Mahoning Creek Dam and reservoir and would consist of: (1) A proposed penstock 12 feet in diameter and 1,070 feet long; (2) a proposed reinforced concrete powerhouse 60 feet long by 60 feet wide by 25 feet high housing two 2,500-kW hydropower units; (3) a proposed tailrace 150 feet long, 40 feet wide and 10 feet deep; (4) a proposed 34.5-kV transmission line six miles long or an alternative 34.5-kV line two miles long; and (5) appurtenant facilities. The estimated annual energy production is 16 GWh. Project power would be sold to Pennsylvania Electric Company.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

13 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10532–000.

c. *Date Filed:* January 11, 1988.

d. *Applicant:* Water Facilities Authority-A Joint Powers Agency.

e. *Name of Project:* WFA–JPA Regional Water Supply Energy Recovery Facilities Project.

f. *Location:* On the water transmission pipeline at three locations within San Bernardino County, Upland, California.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. *Applicant Contact:* Mr. Emmett F. Lowry, General Manager, Water Facilities Authority-A Joint Powers Agency, 1775 Benson Avenue, Upland, CA 91786.

i. *FERC Contact:* Mr. Don Wilt, (202) 376–9807.

j. *Comment Date:* April 28, 1988.

k. *Description of Project:* The proposed project would utilize the applicants' existing water-supply transmission system and would be comprised of three stations. Station No. 1 would consist of a powerhouse containing two turbine generating units with a total rated capacity of 550 kW. Station No. 2 would consist of a powerhouse containing one turbine generating unit with a rated capacity of 250 kW. Station No. 3 would consist of a powerhouse containing one turbine generating unit with a rated capacity of 200 kW. The applicant estimates that the total rated capacity of the three stations would be 1,000 kW with a combined average annual energy output of 7,780,000 kWh.

1. *Purpose of Project:* Project power would be sold to local municipalities or the local power company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3b.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10536–000.

c. *Date Filed:* February 1, 1988.

d. *Applicant:* Public Utility District No. 1 of Okanogan County, Washington.

e. *Name of Project:* Enloe Dam.

f. *Location:* On BLM land at the Enloe Dam on the Similkameen River in T40N, R26 and 27E near Oroville in Okanogan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harlan Warner, P.O. Box 912, Okanogan, WA 98840, (509) 422–3310.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–9812.

j. *Comment Date:* May 19, 1988.

k. *Description of Project:* The proposed project would consist of: (1) The existing 54-foot-high concrete arch-gravity Enloe Dam at elevation 1,004.3 feet m.s.l.; (2) an existing reservoir with a normal surface water elevation of 1,045 feet m.s.l., a gross storage capacity of 1,740 acre-feet and negligible usable storage capacity; (3) two refurbished intake structures; (4) an existing 800-foot-long wood stave penstock and a new 800-foot-long, 88-inch-diameter steel penstock; (5) two steel surge tanks; (6) an existing refurbished powerhouse containing two new generating units with a total rated capacity of 4,500 kW; (7) a tailrace consisting of two vertical cone-shaped draft tubes; and (8) a 3.5-mile long transmission line. Applicant estimates the average annual energy production to be 30 GWh and the cost of the work to be performed under the preliminary permit to be $250,000.

1. *Purpose of Project:* The power produced will be used to displace wholesale power purchases from the Bonneville Power Administration.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10497–000.

c. *Date Filed:* October 30, 1987.

d. *Applicant:* City of Tulsa, Oklahoma.

e. *Name of Project:* Lake Eucha Dam.

f. *Location:* Spavinaw Creek, Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—

h. *Applicant Contract:* Mr. W.B. Smith, Benham-Holway Power Group, 5314 S.

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Yale Avenue, Tulsa, OK 74135, (918) 492–1800.

i. *FERC Contract:* Dean Wight, (202) 376–9821.

j. *Comment Date:* April 25, 1988.

k. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam 2,050 feet long and 99 feet high; (2) an existing impoundment of 2,900 acres surface area and 80,000 acre-feet capacity at a normal maximum surface elevation of 778 feet NGVD; (3) an existing 60-inch-wide penstock; (4) a proposed powerhouse 30 feet wide, 25 feet long, and 25 feet high; (5) three proposed turbine-generators of 900 kW combined capacity; (6) an existing, reconductored 13.2-kV transmission line 8 miles long; and (7) appurtenant facilities. The net hydraulic head would be 75 feet. The estimated annual energy production is 6.2 GWh. Project power would be sold. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000. The existing facilities are owned by the applicant.

1. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response tc and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Edward Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 10, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–5639 Filed 3–14–88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3340-4]

Expert Systems for Environmental Management; Announcement of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of workshop.

Expert systems software vendors and/or developers are invited to demonstrate their expert systems hardware and software at a workshop on "Expert Systems for Environmental Management."

The Workshop is sponsored by the U.S. Environmental Protection Agency and will be held in conjunction with the Hazardous Materials Control Research Institute's" 5th National Resource Conservation and Recovery Act (RCRA) Conference and Exhibition." The workshop will bring together developers and users of expert systems technology for addressing environmental concerns. Many of the attendees will be involved in the selection and acquisition of expert systems products for use in their government, university or commercial organizations.

The workshop will be held April 21–22, 1988, at the Riviera Hotel, Las Vegas, Nevada. Approximately twenty spaces in dividable suites or conference rooms are available on a first-come basis for literature distribution or demonstration of expert systems products. Hands-on capability for the demonstration participants is highly desired. Vendors interested in providing literature, demonstrating an expert system product, or participating in the workshop should contact the workshop coordinator:

FOR FURTHER INFORMATION CONTACT: Mr. Darwin R. Wright, Office of Research and Development, 401 M Street SW., (RD–681), Washington, DC 20460b, (202) 382–5747..

A.W. Lindsey,

Acting Director, Office of Environmental Engineering and Technology Demonstration (RD–681).

[FR Doc. 88–5588 Filed 3–14–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

March 8, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also

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be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0035
Title: Application for Renewal of Auxiliary Broadcast License (Short Form)
Form No.: FCC 313-R
Action: Revision
Respondents: Business (including small business)
Frequency of Response: Every 5 years for TV; every 7 years for radio.
Estimated Annual Burden: 25 Responses; 6 Hours
Needs and Uses: Filing is required to renew licenses of remote pickup, television auxiliary, aural studio link and relay stations that are not broadcast licensees (*e.g.*, cable operators, network entities, motion picture and television producers). The data is evaluated to ensure that the licensed station is operating as authorized.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5623 Filed 3-14-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 1712; No. AC-702]

Edgecombe Homestead and Loan Association, Tarboro, NC; Final Action; Approval of Conversion Application

Date: March 9, 1988.

Notice is hereby given that on February 29, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Edgecombe Homestead and Loan Association, Tarboro, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-5552 Filed 3-14-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-200087

Title: Port of Houston Terminal Agreement
Parties: Port of Houston Authority of Harris County, Texas (Port), Southside Services, Inc. (SSI)
Synopsis: The proposed agreement assigns SSI to perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 21 through 23. The terminal services to be provided include the loading of cargo onto, or unloading of cargo from, land carriers at the terminal facility subject to the charges, rates and rules in the Port's tariff No. 8.

Agreement No.: 224-200086

Title: U.S. Ports Section 18 Cooperative Working Agreement
Parties: United States Public Ports, members of the American Association of Port Authorities
Synopsis: The proposed agreement provides for establishing a cooperative working agreement among United States public ports to assist the Federal Maritime Commission in developing information for its study of issues under section 18 of the Shipping Act of 1984 and to collect data and make analyses and recommendations with regard to the issues to be studied pursuant to section 18.

Agreement No.: 224-200096

Title: Port of Wilmington Marine Terminal Agreement
Parties: North Carolina State Ports Authority Senator Linie (Senator)
Synopsis: The proposed agreement provides that with respect to the operations of Senator at Wilmington, NC, Senator guarantees an annual minimum of 50,000 tons of containerized cargo with reduction of wharfage charge on tonnage in excess of the guaranteed minimum annual tonnage.

By Order of the Federal Maritime Commission.

Dated: March 10, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5585 Filed 3-14-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-5]

Port of Ponce v. Puerto Rico Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Port of Ponce ("Port") against the Puerto Rico Ports Authority ("Authority") was served March 9, 1988. Port alleges that the Authority has violated sections 10(b)(11)-(12) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(11)-(12) and 1709(d)(1), and sections 16 First and 17 of the Shipping Act, 1916, 46 U.S.C. app. 815 First and 816. The practices complained of by Port relate to the Authority's rendering of general harbor services to other commercial ports in Puerto Rico that are allegedly not likewise provided at the Port, using funds derived, in part, from port service charges assessed on vessels calling at the Port.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 9, 1989, and the final decision of the Commission shall be issued by July 10, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5586 Filed 3-14-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; John A. Hineman

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John A. Hineman*, Dighton, Kansas; to acquire an additional 0.94 percent of the voting shares of Dighton National Bancshares, Inc., Dighton, Kansas, and thereby indirectly acquire First National Bank of Dighton, Dighton, Kansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *David Ray Brooks*, Farmersville, Texas, to acquire 6.59 percent, Tommy Mayhew Lovell, Jr., Farmersville, Texas, to acquire 6.9 percent; Weldone Raymond Feagin, Jr., Farmersville, Texas, to acquire 4.64 percent; Wayne Herman May, Farmersville, Texas, to acquire 8.5 percent; Robert Armond Tedford, Farmersville, Texas, to acquire 6.44 percent; Houston Larry Lane, Farmersville, Texas, to acquire 3.51 percent; Joseph Alexander Aston III, Farmersville, Texas, to acquire 4.01 percent; Waddy Calhoun Grisham, Blue Ridge, Texas, to acquire 4.55 percent; and FBI ESOP, Farmersville, Texas, to acquire 8.81 percent of the voting shares of Farmersville Bancshares, Inc., Plano, Texas, and thereby indirectly acquire First Bank at Farmersville.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5555 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

First Sun Capital Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 6, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Sun Capital Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, Republic Leasing Corporation, Columbia, South Carolina, in originating and servicing direct financing leases of equipment, participating solely as a lender in a fixed rate extension of credit (non-operating lease) with the lessee owning the equipment at the end of the lease term pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the States of North Carolina, South Carolina, and Georgia.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Community Bancorp*, Lacey, Washington; to engage *de novo* in providing courier services pursuant to § 225.25(b)(10); and performing real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted throughout the states of Washington and Oregon.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5554 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

Home Point Bancorp, Inc., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 6, 1988.

A. Federa. Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home Point Bancorp, Inc.*, Nantucket, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Nantucket Savings Bank, Nantucket, Massachusetts.

B. Federal Reserve Bank of Atlanta, (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First City Bancorp, Inc.*, Murfreesboro, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First City Bank, Murfreesboro, Tennessee.

Board of Governors of the Federal Reserve System, March 9, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5556 Filed 3-14-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Final Recommendations for Protecting the Health and Safety Against Potential Adverse Effects of Long-Term Exposure to Low Doses of Agents: GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L)

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of Final Recommendations for Protecting Human Health and Safety Against Potential Adverse Effects of Long-term Exposure to low doses of agents GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L).

SUMMARY: Agents GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L) are now stored by the Department of Defense (DOD). Public Law 99-145 (50 U.S.C. 1521) mandates that all unitary (self-contained) lethal chemical munitions be destroyed by 1994. Public Law 91-121 and Public Law 91-441 (50 U.S.C. 1512) mandate that the Department of Health and Human Services review DOD plans for disposing of these munitions and make recommendations to protect human health. Public comment was requested on these recommendations; this notice summarizes comments received, responds to those comments, and states the final recommendations.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Linda W. Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury, Centers for Disease Control, Chamblee 27, Room 1208, MS F29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: On December 22, 1987, the Department of Health and Human Services (HHS) Centers for Disease Control (CDC) published "Recommendations for Protecting the Health and Safety Against Potential Adverse Effects of Long-Term Exposure to Low Doses of Agents: GA, GB, VX, Mustard (H, HD, T), and Lewisite (L)" in the **Federal Register** (52 FR 48458), seeking public comment. We received comments from eight respondents.

One respondent indicated that the recommendations had been sent to several agencies within their organization for review and that they had approved the statement as published. Two other respondents objected to the use of "weak" the characterize the carcinogenicity of mustard agent. Both pointed out that the term is not used by the International Agency for Research on Cancer; one noted further that the National Toxicology Program has not accepted "weak" as a standardized descriptive term. The specific terms "strong" and "weak," as applied to carcinogens, were once used in extrapolating animal data to human prediction. The way in which that was done is not now generally accepted. We agree: the word "weak" has been deleted.

One respondent objected to the statement "* * * Some evidence suggests that Lewisite might be a carcinogen * * *." and referred to a recent comprehensive review of the published literature on Lewisite as well as unpublished reports available in the library of the U.S. Army Chemical Research, Development, and Engineering Center at Edgewood Arsenal. The respondents concluded, from their review of the literature, that Lewisite was not carcinogenic. The documents do mention the same evidence for carcinogenicity which was considered by the group. We agree that the evidence available to us does not seem to be of the quality required to label a chemical as a "suspected carcinogen" but will stand by the original phrasing: "* * * *Some* evidence suggests that Lewisite *might* also be a carcinogen * * *." (emphasis added).

We were advised that the NIOSH recommended standard for occupational exposure to aresenic does not distinguish between organic and inorganic arsenic and recommends a standard of 0.002 mg (As)/m^3. The suggested control limit for Lewisite is equivalent to 0.001 mg/m^3, measured as arsenic, and is thus lower than both the OSHA Permissible Exposure Level and NIOSH's more protective recommendation. The same respondent objected to the comparison of cancer risk to risk of death by injury in industries considered nominally safe on the grounds that such a comparison supports the belief that injury rates are acceptable or irreducible. The objection is valid and the comparison has been removed.

Another respondent suggested that the recommendations would be strengthened by references. An extensive bibliography is available on request. The respondent also recommended use of a pressure-demand respirator when entering munition-storage igloos. This is in keeping with joint NIOSH-OSHA respiratory selection policy guidelines. Entry into igloos is governed by storage regulations and is not included in the Chemical Stockpile Disposal Program. HHS has no authority in matters concerning storage of chemical weapons. We therefore cannot include this recommendation under Pub. L. 91-121, 91-441, or 99-145. We will forward the suggestion to the Army Surgeon General's Office for their consideration.

An unpublished paper on the toxicology of VX was forwarded to us by an interested party. The paper suggested that there was a high probability of serious non-lethal effects with exposure to VX. The doses required to achieve these effects were not specified. Most of the paper was conjecture, based on analogy with other organophosphates. Information available in the open literature describing actual studies on VX was not used. These and other weaknesses in the paper rendered it not helpful for our deliberations; we do not concur with the conclusions of that paper.

One respondent reminded us that a portion of the stockpile is held in the Federal Republic of Germany. This was noted.

A minor typographical error, "skin" misspelled "kin," was noted by several respondents. In addition to this correction, changes have been made in the text to note the NIOSH recommendation, to convey the sense of the epidemiologic evidence on carcinogenic potency without use of the term "weak," and to delete reference to deaths by injury in industries considered nominally safe. The final text of the recommendations follows.

Recommendations: Section 1412 of Pub. L. 99-145 (50 U.S.C. 1521) mandates that the present stockpile of lethal chemical agents be destroyed by September 30, 1994. Public Law 91-121 and Pub. L. 91-441 (50 U.S.C. 1512) mandate that the Department of Health and Human Services (HHS) review Department of Defense (DOD) plans for transporting and/or disposing of lethal chemical agents and make recommendations for protecting human health and safety; HHS has delegated this authority to the Centers for Disease Control (CDC). In the absence of Federal regulatory standards, DOD has developed safety and health standards for handling these agents. Therefore, CDC reviewed the data and is making recommendations for protecting human health and safety during the transportation and/or disposal of these lethal agents.

The national stockpile of lethal chemical agents includes six chemicals:

GA (Tabun or ethyl N,N-dimethyl phosphoroamidocyanidate, CAS 77-81-6)
GB (Sarin or isopropyl methylphosphonofluoridate, CAS 107-44-8)
VX (O-ethyl-S-(2-diisopropylaminoethyl)-methyl phosphonothiolate, CAS 50782-69-9)
H, HD (Sulfur mustard or di-2-chloroethyl sulfide, CAS 505-60-2)
T (Bis(2-chloroethylthioethyl) ether, CAS 63918-89-8)
L (Lewisite or dichloro 2-chlorovinylarsine, CAS 541-25-3)

The DOD stores these agents in bulk containers and/or munitions at eight locations within the continental United States. The remainder of the stockpile is stored outside the continental United States on Johnston Atoll in the Pacific Ocean (Southwest of the Hawaiian Islands) and in the Federal Republic of Germany.

Previously, HHS has made recommendations for protecting human health from the adverse effects of acute exposure to agents GB, VX, and mustard agent. Citizens near depots where chemical weapons are stored have expressed concerns about the potential for delayed effects of acute exposure and about the potential health effects of long-term exposure to low doses of agents. (Here "low dose" means an airborne concentration of agent below the control limits.) To resolve these questions, CDC gathered data on these agents and held an open meeting to discuss the potential delayed effects of acute exposure and of adverse effects of long-term exposure to low doses of these agents. The meeting, announced in the **Federal Register** dated August 20, 1987 (52 FR 31449), was held September 29-30, 1987, in Atlanta, Georgia. The CDC invited consultants and the public. Comments from individuals rather than group comments or consensus were solicited.

Like widely used insecticides, the nerve agents GA, GB, and VX are organic compounds containing phosphorus (organophosphorus compounds). They affect nerves, muscles, and glands by inhibiting acetyl cholinesterase, an enzyme these tissues must have to function properly. Sulfur mustard (H, HD, hereafter referred to simply as "mustard agent") and Lewisite (L) are vesicants—that is, they cause chemical burns or blisters of the skin and mucous membranes, such as the conjunctiva of the eyes and the mucosa of airways. Lewisite is an organic compound containing arsenic. A sixth agent, HT, is a mixture of mustard agent, agent T (bis(2-chloroethylthioethyl) ether), and impurities. Very little is known about the long-term toxicity of agent T. Agent T has much lower volatility than the H with which it is mixed. It is not expected to constitute an airborne hazard unless mustard agent is also present at concentrations much higher than permitted. Almost all (99.97%) of the vapor released by HT is mustard agent. HT control limits will therefore be identical with those for HD, with concentrations measured as HD.

During the public meeting on the potential effects of exposure to these agents, concerns that were raised included: organophosphate-induced delayed neuropathy; electroencephalographic (EEG) or other functional changes following exposure to organophosphates; the carcinogenicity, mutagenicity, and/or teratogenicity of organophosphates; the cumulative effects of organophosphates, decreasing resistance to organophosphorus pesticides; the carcinogenicity, mutagenicity, and teratogenicity of mustard agent and Lewisite; delayed keratitis (injury to the cornea of the eye) following exposure to mustard agent; the response time, sensitivity, and specificity of monitors; the amount of agent in the various parts of the storage and demilitarization facilities; the response times and efficacy of abatement procedures in the event of an upset in plant operations or a release from storage, transportation, or incineration; use of historical monitoring in process control; and interactions of agents with other chemicals in the environment.

Published and unpublished reports of all potential adverse effects including carcinogenicity, mutagenicity, and teratogenicity for all agents were considered. Information on human carcinogenicity following wartime exposure to vesicants supplemented experimental data for mustard agent and Lewisite. Since the acute toxicity of GA and Lewisite had not been reviewed before, it was considered along with the potential long-term health effects. Reports relating delayed keratitis to mustard agent exposure were evaluated. The reports on delayed neuropathy and on EEG changes associated with poisoning by GB were available. In addition, individuals contributed critical information from their own experience and knowledge.

The ability of organophosphates to cause delayed neuropathy has been tested in domestic chickens, a sensitive indicator species. The chickens are given doses from 20 to more than 100 times the mean lethal dose and, for the chickens to demonstrate this effect, they must be protected from death by pretreatment with atropine or with atropine and an oxime. GB caused neuropathy in chickens only at doses several times greater than the mean lethal dose. Under similar conditions, VX did not induce delayed neuropathy. Neuropathy is considered an unlikely outcome from either acute intoxication with any of the nerve agents or from long-term exposure to them.

None of the nerve agents are mutagenic. Results of recently completed studies on GB and initial reports of studies on VX indicate no teratogenic effect. The EEG changes reported after intoxication with GB were considered to be of questionable significance—given the difficulty of demonstrating such changes and the absence of clinically significant effects even when EEG changes are present.

HHS had not previously reviewed standards for GA. The available information indicates that about twice as much GA as GB is needed to produce acute toxicity. Data for adverse reproductive effects are less complete for GA than for GB. The limited amount of GA present in the stockpile (4 tons) and the remoteness of the area where it will be destroyed (Tooele, Utah) provide further assurances that human health will be protected at the same control concentrations previously set for GB.

Questions related to the nerve agents proved relatively easy to resolve. The information bases are fairly complete, and there appears to be little risk either of adverse health effects from long-term exposure to low doses or of delayed health effects from acute exposure. On the basis of the evidence reviewed, HHS concludes that human health will be adequately protected from exposure to GA, GB, and VX vapor at the concentrations shown in Table 1. Even long-term exposure to these concentrations would not create any adverse health effects. At these concentrations, no detectable reduction in resistance to organophosphorus pesticides would occur.

TABLE 1.—CONTROL LIMITS (mg/m ^{3}) FOR CHEMICAL AGENTS [1]

Agent	General population	Workers
GA, GB	0.000003 (3X10^{-6}).	0.0001 (1X10^{-4}).
VX	0.000003 (3X10^{-6}).	0.00001 (1X10^{-5}).
H, HD, HT [2].	0.0001 (1X10^{-4}).	0.003 (3X10^{-3}).
L	0.003 (3X10^{-3}).	0.003 (3X10^{-3}).
Averaging Time.	72 hours	8 hours.

[1] Protection against exposure to agents in aerosol and liquid form must be sufficient to prevent direct contact with the skin and eyes.

[2] DAta supporting the ability to monitor for mustard agent at 0.0001 mg/m^3 at all sites should be developed. HT is measured as HD.

The control limits contained in Table 1 are substantially below concentrations at which adverse effects have been observed for mustard agent and Lewisite. Delayed keratitis and chronic bronchitis are effects that follow acute symptomatic intoxication with mustard agent and would therefore not be expected at the limits proposed. Mustard agent is not a teratogen, but it is a mutagen. Because HHS accepts that mustard agent is a human carcinogen and because some evidence suggests that Lewisite might also be a carcinogen, lower levels of exposure are of potential concern. Although the data suggest that mustard agent is less potent than such other known human carcinogens as tobacco, radon, and chromates, the data do not permit an estimate of the carcinogenic potency or the exact degree of the carcinogenic risk with confidence. Quantitative risk assessments prepared by the Oak Ridge National Laboratories and by a community study group at Edgewood, Maryland were considered. On the basis of a review of the methodology, we conclude that the many uncertainties in the method employed preclude its being used to define precisely the acceptable exposure limits to mustard agent. We conclude that the proposed work-place limits appear to provide adequate protection for workers during the limited time of potential exposure prior to completion of the Chemical Stockpile Demilitarization Program. Control of the stack emissions and the work-place air in accordance with the limits for mustard agent given in Tables 1 and 2 will amply protect a general population 1000 meters or more from a demilitarization site or transportation route.

Exposure to or contact with mustard agent by any route—respiratory, skin, or oral—should be limited to the extent practicable. This can be done by using appropriate engineering controls, personel protective equipment, and work practices. Concentrations in the work-place environment and surrounding air should be measured and verified by instruments that can reliably detect concentrations at or below the control limits. Rail cars or other transport vehicles should be treated as work places for this purpose. At this time, the most sensitive monitors can reliably measure 0.003 mg/m^3 of mustard agent and Lewisite in the work-place air. The cycle time for mustard agent is 8 minutes—that is, the test is automatically repeated every 8 minutes. The cycle time for Lewisite is 12 hours. This level of exposure would be adequate protection for public health. The Army has reported the capability to monitor for mustard agent at concentrations as low as 0.0001 mg/m^3 using a 12-hour sample time. This capability has been proven under usual ambiet conditions at only one site. If it will not delay disposal, it is recommended that such capacity be demonstrated at and used for all sites where mustard agent will be transported or destroyed. The capacity to conduct such monitoring at all sites with mustard agent would represent a redundant safety factor.

Toxicological information specific to Lewisite is sparse. More is known about arsenic-containing compounds in general, but caution must be used in extrapolation. The recommended control concentration limit, 0.003 mg/m^3, (measured as Lewisite) in air is equivalent to 0.001 mg/m^3 measured as arsenic and should be adequate to protect public health. The Occupational Safety and Health Administration has promulgated a standard of 0.5 mg/m^3 (measured as arsenic) for organic arsenic concentrations in work-place air. The National Institute for Occupational Safety and Health (NIOSH) has recommended a standard of 0.002 mg/m^3 for all forms of arsenic. The proposed Lewisite control limits are lower than the existing OSHA occupational standard for organic arsenic by a factor of approximately 500 and are lower than the NIOSH recommended standard by a factor of 2. The Army should seek, through engineering design and operational controls, to minimize exposure to Lewisite. The facts that Lewisite will be destroyed only at Tooele, Utah, a facility remote from population centers, and that the maximum burning time for destruction of the existing stockpile of Lewisite is estimated to be less than 30 days provide additional assurance that human health will not be endangered.

Certain monitoring criteria are essential because any recommended exposure limit is only as good as the capability to measure and verify the exposure concentrations as they may occur. Specifically, the Army has agreed to provide data to CDC that document accurate and reproducible monitoring for agents at the recommended exposure limits and at each transportation or demilitarization facility monitored.

In summary, the control limits specified in Table 1 for all agents listed are considered protective of human health. The relatively short duration of the disposal program provides an additional margin of safety.

Control limits for stack emissions are primarily an engineering matter. These limits should (a) be attainable by a well-designed, well-constructed, and well-operated incineration facility; (b) give an early indication of upset conditions; and (c) be accurately measureable in a timely manner.

Limits based on these criteria will restrict emissions to concentrations well below those that would endanger health; they will usually prove more restrictive than a limit set on health bases alone. CDC has found that the allowable stack concentrations proposed by the Department of the Army. (Table 2) meet the criteria above and are more restrictive than limits set on health bases alone; therefore, CDC recommends no changes in the concentrations. The concentrations must be evaluated by air dispersion modeling of worst-case-credible events and conditions specific to each site to ensure that the control limits for the general population and work place (Table 1) would not be exceeded as a consequence of releases at or below the allowable stack concentrations.

TABLE 2.—ALLOWABLE STACK CONCENTRATIONS (MG/M^3) FOR CHEMICAL AGENTS

TABLE 2.—ALLOWABLE STACK CONCENTRATIONS (MG/M^3) FOR CHEMICAL AGENTS—Continued

Agent	Maximum allowable stack concentration
GA, GB	0.0003 (3×10^{-4}).
VX	0.0003 (3×10^{-4}).
H, HD, HT [1]	0.03 (3×10^{-2}).
L	0.03 (3×10^{-2}).

[1] HT is measured as HD.

Dated: March 8, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–5573 Filed 3–14–88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Medicaid Program; Reconsideration of Disapproval of a Utah State Plan Amendment; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 12, 1988 in Denver, Colorado to reconsider our decision to disapprove Utah State Plan Amendment 12–87.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket clerk by March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4468.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Utah State Plan Amendment 12–87.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Utah SPA 12–87 proposes to limit the scope of physical therapy and/or physical medicine services provided as outpatient hospital services, to limit physical medicine services provided as physician services, and to limit physical therapy as an optional service to individuals approved to receive SNF or ICF services.

The issue in this matter is whether Utah SPA 12–87 violates section 1902(a)(10) of the Social Security Act and Federal regulations at 42 CFR 440.10 through 440.50, 42 CFR 440.230(c), 42 CFR 440.230(d) and 42 CFR 440.240(b).

Section 1902(a)(10) of the Social Security Act mandates that an approvable State plan must provide "for the inclusion of at least the care and services listed in paragraphs (1) through (5) of section 1905(a) * * *" for categorically needy groups described in section 1902(a)(10(A). Among the care and services listed in paragraphs (1) through (5) are "outpatient hospital services" and "physicians' services" (sections 1905(a)(2)(A) and 1905(a)(5)). Pursuant to this statutory requirement, the Medicaid regulations require that a State plan must specify, at a minimum, that categorically needy recipients are provided the services as specified in sections 42 CFR 440.10 through 440.50. Included in those provisions are outpatient hospital services and physicians' services, broadly defined. Additionally, the regulations at 42 CFR 440.230(c) provide that the State agency may not arbitrarily deny or reduce the amount, duration, or scope of the minimum services required for the categorically and medically needy described in sections 42 CFR 440.210 and 440.220 to otherwise eligible recipients solely because of their diagnosis, type of illness, or condition. The full scope of these mandatory services must be provided, including components of those services that separately could be optional services.

Therefore, to the extent that the Utah SPA denies Medicaid coverage for physical therapy or physical medicine services in the mandatory outpatient hospital setting, HCFA has determined the State plan fails to meet the legal requirement for approval. HCFA believes that the State may not administer a State plan which denies coverage of any medically necessary service or procedure within the five required categories even if it is also coverable as an optional service. (The *Beal* and *Katz* cases which the State cites merely holds that a State cannot be required to cover procedures that are *not* medically necessary within the five required categories.) In addition, physical medicine, if provided by a physician or under the direction of a physician, is a physician's service and may not be limited to those needing a specific level of care.

Section 42 CFR 440.240(b) provides that services available to any individual either in the categorically or medically needy groups are equal in amount, duration, and scope for all recipients within the group. Therefore, physical therapy and/or physical medicine services available to nursing home patients as outpatient hospital services must be made equally available to all individuals within the categorically needy group or within the medically needy group. Similarly, HCFA believes the State cannot limit physical medicine, which is a physician service, to a segment of the categorically needy or medically needy population. In addition, while physical therapy is an optional service under section 1905(a)(11), HCFA believes that if the State chooses to provide it under that option, it cannot be limited to such fragments of its categorically needy and medically needy groups as those who are eligible for SNF or ICF care. Although a State may place appropriate limits on a service based on medically necessity criteria or utilization control procedures (42 CFR 440.230(d)), HCFA believes that the State in this case has not demonstrated that the limitation is being placed on the service due to medical necessity or as a utilization control procedure. Therefore, HCFA has determined Utah SPA 12–87 violates 42 CFR 440.230(d) and 42 CFR 440.240(b).

The notice to Utah announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Roderick L. Betit,
Director, Division of Health Care Financing, Utah Department of Health, 288 North 1460 West, Salt Lake City, UT 84116.

Dear Mr. Betit: This is to advise you that your request for reconsideration of the decision to disapprove Utah State Plan Amendment (SPA) 12–87 was received on February 8, 1988.

Utah SPA 12–87 proposes to limit the scope of physical therapy and/or physical medicine services as outpatient hospital services, to limit physical medicine services provided as physician services, and to limit physical therapy as an optional service. The State proposes that physical therapy services and/or physical medicine services performed as outpatient hospital services be restricted to individuals who have been approved by the Department to receive skilled nursing facility (SNF) or intermediate care facility (ICF) services when the services have been ordered by a physician. The SPA further provides that physical medicine provided as physician services is limited to individuals approved to receive SNF or ICF services and that physical therapy provided as an optional service is also limited to individuals approved to receive SNF or ICF services.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are two issues in this matter. The first issue is whether the Utah SPA violates section 1902(a)(10) of the Social Security Act by denying Medicaid coverage for physical therapy and/or physical medicine services in the outpatient hospital setting, physical medicine as a physician service, or physical therapy as an optional service. The second issue is whether the State has demonstrated that the limitations they have placed on services are being placed on the services due to a medical necessity or as a utilization control procedure as required by 42 CFR 440.230(d) and 42 CFR 440.240(b).

I am scheduling a hearing on your request to be held on April 12, 1988 at 10:00 a.m. in Room 431, Federal Building, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4468.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 9, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5628 Filed 3-14-88; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 51, No. 138, pp. 26060 and 26061, dated Friday, July 18, 1986) is amended to reflect functional changes for the Division of Contract Administration (DCA), Office of Qualifications (OQ), Office of Prepaid Health Care. Both OQ and DCA functional statements have been updated to include the responsibility for: (1) The prepaid health care contracting activities, (2) the Health Maintenance Organization and Competitive Medical Plan reconsideration function, and (3) the oversight of the Medicaid contract approval function which was mandated by the Omnibus Budget Reconciliation Act of 1986.

The specific amendments to Part F. are described below:

- Sections FC.20.B., Office of Qualifications (FCA) and FC.20.B.2., Division of Contract Administration (FCA2) are deleted in their entirety and replaced by the following new sections.

B. Office of Qualifications (FCA)

Establishes qualification standards and determines the acceptability of entities seeking to become Federally "qualified." Refines the review procedures as necessary to facilitate the qualification process. Coordinates and insures the consistency of regional office activities related to the qualification process. Assists the Office of the General Counsel in the development of legal actions concerning qualification status. Performs liaison activities related to qualification functions. Develops policy and regulatory proposals related to qualification. Evaluates the impact of policies, legislation, and regulations on the ability of projects to become qualified and provides guidance as to the interpretation of policy guidelines and regulations related to qualification. Administers and promotes prepaid health plan participation in the Medicare program. Responsible for overseeing all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), Health Care Prepayment Plans and national organizations. Provides oversight of regional offices activities related to prepaid health care contracting. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of contract performance, plan enrollment, and payments. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Responsible for processing reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services. Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with prepaid health plans. Responsible for liaison, information exchange, and technical assistance regarding Medicaid capitation issues between HCFA and the State agencies.

2. Division of Contract Administration (FCA2)

Administers and promotes prepaid health plan participation in the Medicare program. Develops procedures for evaluating prepaid health plan contract applications, contract negotiation and implementation, and monitoring contractor compliance. Provides oversight of regional office activities related to prepaid health care. Oversees all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plan (CMPs), Health Care Prepayment Plans and national organizations which include: (1) Establishing and interpreting contract policy, (2) reviewing initial contract applications, contract renewals, and contract modifications and preparing recommendations for approval/disapproval, (3) coordinating HMO and CMP initiated nonrenewals, (4) preparing recommendations for nonrenewals and terminations initiated by HCFA, and (5) acquiring necessary clearance of contracting activities with the Office of the General Counsel. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the area of contract performance. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Evaluates the impact of policies and legislation on prepaid health care operations, proposes alternative, appropriate courses of action, and amends guidelines, manuals, and other operational documents, as necessary. Maintains liaison with national prepayment plan associations and represents the Office of Prepaid Health Care at national meetings. Provides technical assistance to regional office components, consultant groups, and prepaid health plans. Plans, directs, and coordinates the overall processing of reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services. Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with prepaid health plans. Acts as consultant to regional offices, State agencies, and HMOs on policy issues regarding prior approval of Medicaid prepaid health plan contracts over $100,000. Responsible for liaison, information exchange, and technical assistance regarding Medicaid capitation issues between HCFA and the State agencies.

Dated: February 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5629 Filed 3-14-88; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 48, No. 196, pp 46434–46448, dated Wednesday, October 12, 1983) is amended to reflect a change in the organizational structure of the Health Standards and Quality Bureau (HSQB), Associate Administrator for Operations (AAO). HSQB is being reorganized to accommodate the need for increased program emphasis.

The specific changes to Part F. are as follows:

- Section FP.20.C. Health Standards and Quality Bureau is amended by deleting every functional statement after the Bureau functional statement and replacing them with the following updated functional statements, organization titles and administrative codes.

1. Management Resources Staff (FPE-1)

Directs and manages the Bureau's management and administrative operations including facilities management, space utilization, records, publications, travel, correspondence, printing, mail distribution, regulations and issuance control, equipment management, supply operations, facilities maintenance, safety, security, telephone systems and parking. Plans, directs, and administers the Wang office automation activities for all Associate Administrator for Operations' bureaus including access to shared and local data bases, and other office information activities. Plans, directs and coordinates the Bureau's correspondence and public inquiries activities and all related paperwork management functions. Administers the Bureau's personnel utilization and position management programs as well as the Bureau's training and staff development programs. Develops annual and long-range administrative budgets and operating plans for the Health Standards and Quality Bureau. Reviews and processes requests for procurement or purchase and provides required contract support, service and consultation. Initiates and develops financial data and analytical reports on operations. Allocates and reprograms approved funds within the Bureau policies and guides to assist program divisions in formulating budget estimates. Develops, implements and maintains a management planning and control program for the Bureau to ensure the efficient and effective utilization of available resources including: (a) Bureau-wide workplanning and work measurement systems, (b) organization and operational analysis studies and (c) coordination and control of a variety of planning, reporting and monitoring systems required by the Office of Management and Budget, Department of Health and Human Services and other Health Care Financing Administration components. Researches and evaluates new management concepts and techniques for improving the Bureau's management practices and operations.

2. Office of Survey and Certification (FPE5)

Develops and establishes procedures and oversees the implementation and enforcement of health and safety standards for providers and suppliers of health services under Medicare and Medicaid. Administers and monitors the nationwide Medicare and Medicaid provider and supplier certification program. Develops procedures/guidelines for regional certification responsibilities under Medicare and Medicaid. Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid policies by State survey agencies and other approved accrediting bodies. Monitors and evaluates regional performance of oversight responsibilities in survey and certification. Reviews the validity and effectiveness of existing standards. Develops and analyzes national data on the administration of the Medicare and Medicaid standards and certification program and develops methods for improvement. Conducts surveyor training, informational and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid program.

a. Division of Long Term Care Services (FPE55)

Directs and coordinates activities that implement, enforce and monitor health quality and safety standards and other health care procedures for long term care facilities under Medicare and Medicaid. Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of long-term care services and initiates new or revised instructions or standards, as necessary. Reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices and State survey agencies. Prepares provider participation materials and instructions. Develops survey and certification forms utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs. Maintains liaison with professional groups and standards setting organizations. Serves as the focal point for responding to regional office, State agency, Congressional, organizational and individual inquiries relating to application of health and safety requirements and certification procedures for participating providers.

b. Division of Systems Management and Data Analysis (FPE56)

Maintains Section 1864 Agreements and oversees regional office (RO) 1864 negotiations and approval. Responsible for financial operations, including funding requirements and budget justification, of the Medicare and Medicaid State certification program. Designs, tests and manages the centralized Medicare/Medicaid Automated Certification System (MMACS) to provide program related and health management information on

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all providers and suppliers participating in the Medicare and Medicaid programs. Develops data input and output requirements and specifications for modification of computer processing activities. Provides technical assistance and training to central and RO personnel on the operations of MMACS equipment, use of forms, and utilization of data output. Develops new approaches for survey and certification on the basis of needs identified through MMACS data, RO direct surveys, comments from State survey agencies and other program areas. Tests improvements in the State agencies (SAs) certification process including modification of reporting procedures, utilization of personnel and use of financial incentives. Develops procedures for evaluating the effectivenes of RO performance and oversight of State survey agency performance. Collects and analyzes data derived from MMACS for use by ROs and SAs in pinpointing specific certification problems and for development of criteria and procedures to assess the quality of care being provided by Medicare and Medicaid providers. Collects, analyzes and studies data provided from the MMACS data system on a routine and special basis for use by ROs and SAs to identify specific certification and health and safety problems. Develops criteria and procedures through data analysis to assess the quality of care being provided by Medicare and Medicaid providers.

c. Divison of Hospitals and Ambulatory Services (FPE58)

Directs and coordinates activities that implement, enforce, and monitor health quality and safety standards and other health care procedures for acute care providers and suppliers under Medicare and Medicaid. These providers and suppliers include hospitals, rural health clinics, End-Stage Renal Disease facilities, laboratories, physical therapists in independent practice, and home health agencies, etc. Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of provider and supplier services, and initiates new or revised instructions or standards, as necessary. Reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices (ROs) and State survey agencies. Prepares provider and supplier participation materials and instructions. Develops survey and certification forms and procedures utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and other accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs. Conducts liaison with other government organizations, professional groups, and standards setting organizations. Serves as the focal point for responding to RO, State Agency, Congressional organizational and individual inquiries relating to the application of health and safety requirements and certification procedures for participating acute care providers and suppliers.

d. Division of Program Operations (FPE59)

Reviews State agency (SA) performance by conducting onsite reviews and assisting regional offices in program and administrative reviews. Reviews SA certification process with a view to improve management of the survey and certification process. Performs special studies to improve the survey and certification process and prepare guidelines and instructions for regional office (RO) and SA use. Develops procedures for the administration of provider agreements and revises, as needed, the State Operations and Regional Office Manuals. Maintains a system of communications to SAs and ROs relating to provider survey and certification and SA management. Develops and conducts surveyor training and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid programs. Updates existing training materials to state of the art techniques.

3. Office of Peer Review (FPE3)

Coordinates implementation of peer review and other medical review organizations. Develops and interprets policies related to the conduct of peer review at various levels of care. Develops and implements operational procedures and instructions relating to fiscal management of peer review programs, including the principles of reimbursement for review, development of program related budgets, accounting procedures, reports management, statistical reporting, and auditing requirements applicable to such peer review organizations. Develops, implements, and maintains data systems in support of the Office of Peer Review data requirements for the management of the peer review program and contracts. Establishes guidelines relating to the oversight of peer review and other medical review organizations. Evaluates and provides advice and assistance to regional offices in overseeing fiscal and program management activities. Directs and oversees the End-Stage Renal Disease program.

a. Division of Program Operations (FPE31)

Provides overall programmatic and technical management of contracts and any other financial agreements with organizations conducting medical reviews including establishment of expenditure levels, final approval of funding requests and resolution of audit findings. Provides program guidance and assistance to regional office staff in performance of their responsibilities. Develops and monitors plans for funding of Peer Review Organizations (PROs). Defines reporting requirements for PROs and other medical review entities. Develops, implements and administers a comprehensive system for assessment of individual PROs to determine compliance with program requirements and to document the effectiveness and impact of their activities. Initiates and designs studies to analyze data provided through the Office of Peer Review data systems on routine and as needed basis.

b. Division of Review Programs (FPE32)

Develops and interprets review methodolgies and systems for all programs related to Peer Review Organizations' review of medical necessity, reasonableness, quality, and appropriateness of services (e.g., ancillary, inpatient, outpatient, or suppliers of practitioner care) reimbursed under Titles XVII and XIX of the Social Security Act. Develops and interprets policies related to the conduct of peer review at various levels of care. Communicates and interprets the Health Care Fianancing Administration's medical review policies to peer and other medical review organizations and provides or arranges for the provision of technical assistance. Develops and interprets operational policies for the involvement of physicians and other health care professionals in the conduct of peer review. Develops, with other Office of Peer Review components, criteria for objective setting and the application of norms, criteria and standards of peer review. Develops criteria for evaluation of peer review.

Develops and interprets medical review policies regarding the impact of review on technical issues such as waiver of liability, inappropriate level of care, "grace days", and denials of reimbursement based on medical necessity and substandard quality with attendant reconsiderations and appeals. Monitors legislative, regulatory and operational developments related to medical review. Identifies and initiates necessary changes resulting from such developments. Develops legislative agenda and proposals related to statutory changes in medical review policies or procedures. Serves as a technical resource within the Bureau of resolving medical review issues and providing assistance on other program decision areas.

c. Division of Systems Management (FPE33)

Establishes national policies for collection and processing of peer review data and directs and monitors the End Stage Renal Disease (ESRD) Network program. Designs, operates, monitors, maintains and, as necessary, revises the Peer Review Organization (PRO) Management Information System (PMIS), which includes a variety of data in support of the Office of Peer Review (OPR) and regional office medical review branch Automatic Data Processing (ADP) requirements. Responsible for the central office and regional Dispersed Terminal Network which is used to access other Health Care Financing Administration (HCFA) data systems. Designs, tests, and implements new component subsystems using both personal computers and mainframe hardware; develops data imput and output requirements, as well as specifications for the modification of systems processes to adapt to new forms, policies, procedures, and subsystems. Develops and installs the necessary procedures for report and quality control, including screening, editing, logic, and consistency. Analyzes and designs methodolgy for submission of data to OPR ADP systems. Designs, tests, implements, and maintains automated software systems, manual systems, and data bases with emphasis on assuring the accuracy of reported information and retrieval capabilities supportive of program and management information needs. Consults with other components to identify existing or planned data systems strategic to management and program activities. Plans and develops new systems to generate management and analytical information from PRO deliverables and other data sources and meet the needs of management. Performs the Systems Security Officer functions for the Health Standards and Quality Bureau. Provides technical assistance in implementing and maintaining ADP systems to other components and the ROs through conducting regional workshops and training sessions; developing technical assistance materials; and maintaining ongoing liaison with affected systems personnel. Responds to special nonroutine requests for PMIS data from congressional committees, general public, professional organizations, and other government offices. Manages the interface of OPR data with external components and organizations to ensure the compatibility of data systems with HCFA data policy, as articulated by the Bureau of Data Management and Strategy Directs and reviews all aspects of the ESRD Network program including quality assurance initiatives, data gathering, contractor performance, organ procurement, fiscal procedures, liaison with Congress and outside organizations, and technical assistance to the ESRD organizations.

4. Office of Program Assessment and Information (FPE6)

Oversees a variety of research techniques to review the quality of care activities in health care settings and develops the strategy to oversee these functions to determine the quality of care for all Medicare/ Medicaid beneficiaries. Directs and monitors the research, assessment and dissemination of information on the quality of care. Disseminates this information to the public and the professional medical community. Directs the development of strategies for improving the assessment of quality of health care by utilizing a variety of research and analytical techniques. Maintains liaison with other Health Care Financing Administration components, the Department of Health and Human Services, Congress, other government organizations and external professional and medical organizations.

a. Division of Quality of Care Assessment (FPE61)

Utilizes a variety of operations research, epidemiological, statistical, and other analytic techniques to review quality of care activities performed by Health Standards and Quality Bureau and its contractors. Initiates sophisticated statistical and operations research processes to measure the impact of enforcement and review on the outcomes of health care services supported by Medicare and Medicaid. Develops data collection instruments and organizes acquisition of medical and economic data through the Peer Review Organizations (PROs) and other contractors as appropriate. Using the Peer Review Management Information System, develops and manages the data on HCFA mainframe, mini and microcomputers. Develops and implements systems for screening the data by PROs and the Health Standards and Quality Bureau. Designs and implements mathematical and statistical techniques for the assessment of the health status of Medicare and Medicaid beneficiaries and to assess the effectiveness of the quality of care in all health care settings. Assesses the health status and trends of Medicare beneficiaries to determine the impact of PRO activities. Analyzes variations of utilization rates and outcomes of care (mortality, morbidity, disability, costs) to identify conditions and procedures which require focused review. Evaluates the effectiveness of health care performed in hospital and ambulatory care settings to ascertain the causes of the variations and to assist the PROs in the development of objective standards for review. Develops an overall strategy and evaluation plan to produce information to assess review techniques; health care services provided; health care outcomes; and identify quality of care problems.

b. Division of Program Coordination and Information (FPE62)

Develops, coordinates, analyzes and disseminates information on the method and procedures for quality of care assessment and the results of these assessments. Coordinates and oversees the communication of this information to the public and professional medical community. Provides information on the effectiveness of health care services provided to the Medicare population in terms of the outcomes and impact of medical intervention on cost, disability, morbidity, mortality, diagnostic subcategories, and health status. Develops, analyzes, and provides comprehensive and systematic information to provide feedback on the quality of medical care delivered to Medicare beneficiaries for detection and correction of quality of care problems, payment activities, and educational purposes. Establishes specifications for the reporting and dissemination of this information. Maintains liaison and coordinates with other components within the Health Care Financing Administration, Department of Health and Human Services, other government agencies and professional and medical groups such as American Medical Association, American Health Association, etc., and is the focal point of the agency for the release of information on quality of care.

Date: February 22, 1988.

William L. Roper,

Administrator.

[FR Doc. 88-5630 Filed 3-14-88; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

[Docket No. 84F-0407]

Concentrados Marinos, S.A.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to a future filing of a petition (FAP 2A3665) proposing that the food additive regulations be amended to provide for the safe use of fish protein concentrate as a food supplement.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 2, 1985 (50 FR 180), FDA published a notice that it had filed a petition (FAP 2A3665) from Concentrados Marinos, S.A., P.O. Box Casilla 4441, Lima 100, Peru, that proposed to amend Subpart D of Part 172 (21 CFR Part 172) of the food additive regulations to provide for the safe use of fish protein concentrate as a food supplement. Concentrados Marinos, S.A. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5560 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0055]

J.M. Huber Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the J.M. Huber Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4063) has been filed by the J.M. Huber Corp., Route 4, Macon, GA 31298, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5561 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87P-0198]

Dessert Mousse; Request for Information on Need To Establish U.S. Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed by Velvette Foods, Inc., proposing the establishment of a U.S. standard of identity for dessert mousse. The agency is requesting data and information to assist it in determining whether such a standard would be in the best interest of consumers.

DATE: Comments by May 16, 1988.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0109.

SUPPLEMENTARY INFORMATION: Velvette Foods, Inc., P.O. Box 854, Ardmore, PA 19003, has filed a petition to establish a U.S. standard of identity for dessert mousse in 21 CFR Part 135. The statement of grounds submitted by the petitioner in support of the proposal is as follows:

Statement of Grounds

Interest of Petitioner

Presently, there is no standard of identity for dessert mousse, mousse dessert, or any other mousse concoction. Velvette Foods' principal business is the manufacture of dessert mousse, most of which is chocolate flavored and marketed in half pint, one pint, and two and one-half gallon tubs. The company also markets a chocolate mousse sandwich. The petitioner contends that authentic mousee demands a very specific formulation and that it has spent several years perfecting it for the mass retail market.

Facts Relied Upon by Petitioner

Mousse is a French word which literally means "froth." The reference to froth undoubtedly refers to the beaten egg whites invariably used as a stabilizing agent in mousse concoctions. The egg whites give mousse its unique texture and stability at ambient (above 40° F temperatures.

Gelatin is often used in place of egg whites with indistinguishable results. According to the unabridged edition of the Random House Dictionary, mousse is a sweetened preparation with a whipped cream base, often stabilized with gelatin and chilled, e.g., chocolate mousse.

Like many classic food preparations, the origin of the technique for making mousse is lost. However, certain criteria for the production of authentic mousse can be noted from various commonly accepted recipes. These recipes, of diverse origins, show that despite variants there exists a specificity to the formula for dessert mousse. Before a confection can truly be called "mousse," all of the characteristics and ingredients outlined below must be present. Classic dessert mousse will not melt, as opposed to ice cream, sherbet, and other frozen dairy desserts, because of the protein bond created by the egg whites. Chocolate is the most popular flavoring.

However, mousse is made with a myriad of flavorings, fruits, and nuts.

After considering this petition, FDA has concluded that it does not have sufficient information to make a determination as to whether promulgation of the requested regulation would be in the best interests of consumers.

FDA, therefore, is by this notice requesting that interested persons submit all possible data and information as to the need for such a standard as well as on a number of factors including, but not limited to, the following provisions set forth in the Velvette Foods' petition:

(1) Frozen mousse would be defined as a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in paragraph (b) of the U.S. standard of identity for ice cream and frozen custard (21 CFR 135.110), except that butter oil, sweet cream buttermilk, condensed sweet cream buttermilk, and dried sweet cream buttermilk may not be used. (The other optional dairy ingredients permitted include dried cream, plastic cream, butter, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, and those modified whey products generally recognized as safe.)

(2) Frozen mousse would be required to contain the following ingredients: fresh heavy cream (32 to 40 percent butterfat) (primary ingredient), sugar, egg yolk as the emulsifying agent, egg white or gelatin as the protein stabilizer, and cocoa in the chocolate flavor in a quantity greater than 8 percent, by weight.

(3) The fat content in the finished mousse would range from 16 to 20 percent, except that nonchocolate flavored mousse would have a fat content of 20 percent or more in order to achieve the proper consistency.

(4) Additional water would not be permitted.

(5) Caseinates and gums, such as xanthan gum, guar gum, and carageenan, etc., would not be permitted.

Any comments submitted in support of establishing a U.S. standard for this food must be supported by appropriate information and data regarding the impact on small businesses consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354).

Interested persons may, on or before May 16, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 4, 1988.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5562 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 83F-0013 and 83F-0014]

Biosearch Medical Products, Inc.; Withdrawal of Petitions for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of the petitions (FAP's 3A3681 and 3A3682) proposing that the food additive regulations be amended to provide for the safe use of a mixture of essential amino acids and nitrogen-free analogs of amino acids for special dietary use in patients with chronic renal failure and for the safe use of a mixture of the ornithine salts of branched-chain ketoacids for special dietary use in patients with chronic liver disease, respectively.

FOR FURTHER INFORMATION CONTACT: Arthur L. Lipman, Jr., Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b)) the following notice is issued:

In accordance with § 171.1 *Petitions* (21 CFR 171.1), FDA has withdrawn the petitions (FAP's 3A3681 and 3A3682) filed originally by Organon, Inc., West Orange, NJ 07052, and now owned by Biosearch Medical Products, Inc., 35 Industrial Parkway, P.O. Box 1700 Somerville, NJ 08876.

The notice of filing for FAP 3A3681, published in the **Federal Register** of March 1, 1983 (48 FR 8592), proposed that the food additive regulations be amended to provide for the safe use of a mixture of essential amino acids for special dietary use in patients with chronic renal failure. The notice of filing for FAP 3A3682, also published in the **Federal Register** of March 1, 1983 (48 FR 8592), proposed that the food additive regulations be amended to provide for the safe use of a mixture of the ornithine salts of branched-chain ketoacids for special dietary use in patients with chronic liver disease.

The petitioner was notifed by letter of June 17, 1983, that consideration of the petitioned uses for both special dietary supplements would require the submission and evaluation of specific additional data to support such uses. Because Biosearch Medical Products, Inc., acquired the rights to these petitions shortly before the requested data were due, they requested a waiver of the deadline by letter of December 16, 1983. On February 3, 1984, FDA commented on protocols for studies that had been submitted by the petitioner by letter of August 25, 1983. By letter of June 3, 1986, FDA requested that the necessary data be submitted within 30 days or FDA would consider the petitions withdrawn. As the required information has not been submitted, the petitions are now considered by the agency to be withdrawn without prejudice in accordance with § 171.1(j) (21 CFR 171.1(j)), which requires that such requested information be submitted within 180 days after filing of the petition or it will be considered withdrawn without prejudice. Future considerations of the special dietary uses of the salt mixtures will require submission of new food additive petitions.

Dated: March 7, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5619 Filed 3-14-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0068]

Drug Export; Intal ®Nebulizer Solution (Cromolyn Sodium Inhalation, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fisons Corp. has filed an application requesting approval for the export of the human drug Intal® Nebulizer Solution (cromolyn sodium inhalation, USP) to the United Kingdom.

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ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any furture inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–[illegible].

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirment, the agency is providing notice that Fisons Corp., Two Preston Court, Bedford, MA 01730, has filed an application requesting approval for the export of the drug Intal® Nebulizer Solution (cromolyn sodium inhalation, USP), to the United Kingdom. This drug is indicated in the management of patients with bronchial asthma. The application was received and filed in the Center for Drug Evaluation and Research on March 1, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 3, 1988.

Sammie R. Young,

Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–5620 Filed 3–14–88; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Delegation of Authority; Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of February 17, 1988, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Health Professions, with authority to delegate, all of the authorities under section 1921 of the Social Security Act, Information Concerning Sanctions Taken by State Licensing Authorities Against Health Care Practitioners and Providers, as amended, excluding the authorities to issue guidelines or regulations and submit reports to Congress.

This delegation was effective upon date of signature.

Date: March 8, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88–5621 Filed 3–14–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Data for Public Use; Meeting

Pursuant to Pub. L. 92–463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU) will be held April 12–13, 1988, at the Doubletree Hotel, 300 Canal Street, New Orleans, Louisiana. The ACWDPU consists of individuals and representatives of water resources-oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community in plans, policies, and procedures related to water data programs. The Director of the U.S. Geological Survey (USGS) is Chairman of the Committee.

The meeting will convene at 8 a.m. on Tuesday, April 12, 1988. The topic of the meeting will be "Water Resources Aspects of Climate Change." The meeting will adjourn at 12 noon on Wednesday, April 13, 1988.

The meeting will be open to the public, and anyone wishing to attend or desiring additional information should contact Nancy Lopez, Chief, Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092. Her telephone number is (703) 648–5014. A report summarizing the meeting will be available approximately 4 weeks after the meeting.

Date: March 8, 1988.

Nancy Lopez,

Chief, Office of Water Data Coordination.

[FR Doc. 88–5575 Filed 3–14–88; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5671 and 5672, Blocks 36 and 38, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1988. Comments must be received by March 30, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

These practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: March 7, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–5641 Filed 3–14–88; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Availability of Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 115

The proposed Notice of Sale for Sale 115, Western Gulf of Mexico, may be obtained by written request to the Gulf of Mexico Outer Continental Shelf (OCS) Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone (504) 736–2519. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for August 1988.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, has provided the affected States the opportunity to review the proposed Notice of Sale.

Comments should be submitted to the Minerals Management Service, 18th and C Streets, NW., Room 4230 (MS–645), Washington DC 20240, no later than 60 days after signature of this Notice.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

William D. Bettenberg,

Director, Minerals Management Service.

Date: March 10, 1988.

[FR Doc. 88–5662 Filed 3–14–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Capital Region; Intent To Spray Insecticide Bacillus Thuringiensis for Control of Gypsy Moth

ACTION: Notice of intent to spray insecticide *Bacillus thuringiensis* for control of gypsy moth.

SUMMARY: This notice announces the National Park Service proposal to apply the insecticide B.T., *Bacillus thuringiensis*, to control gypsy moth in 7 parks in the National Capital Region. B.t. will be applied by helicopter between the last week in April and the second week of May. Treatment Areas include Rock Creek Park (432 acres), Wolf Trap Farm Park (90 acres), George Washington Memorial Parkway (940 acres), Chesapeake and Ohio Canal National Historical Park (395 acres), Manassas National Battlefield (77 acres), Catoctin Mountain Park (2200 acres), and Harpers Ferry National Historical Park (600 acres). The National Park Service is adopting the USDA Forest Service's program of moth suppression with the intent to spray the insecticide *Bacillus thuringiensis* in accordance with their Final Environmental Impact Statement as Supplemented 1985. For information pertaining to the insecticide B.t., its use, and application refer to the USDA Forest Service EIS.

DATES: There will be a 30-day no-action period beginning March 14, 1988, and ending April 12, 1988. Comments will be invited during this time.

ADDRESSES: Comments should be submitted to Manus J. Fish, Jr., Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC, 20242, phone number 202–485–9666.

Date: March 8, 1988.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 88–5566 Filed 3–14–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations; Idaho et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 5, 1988. Pursuant to § 60.13 of 36 CFR Part 60 Written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 30, 1988.

Amy Schlagel,

Acting Chief of Registration, National Register.

IDAHO

Kootenai County

Coeur d'Alene, *Gray, John P. and Stella, House,* 521 S. Thirteenth St.

INDIANA

Carroll County

Rockfield vicinity, *District School No. 3,* NE corner of CR 750 N and CR 100 W

FOUNTAIN County

Covington, *Boggs, J. D. Fine, House,* 719 Liberty St./US 136

MARYLAND

Price George's County

Mitchellville vicinity, *Melford,* 5103 Crain Hwy.

MICHIGAN

Wexford County

Cadillac, *Cobbs, Frank J., House,* 407 E. Chapin St.

MISSISSIPPI

Hancock County

Nugent Site (22HA592)
SJ Mound (22HA594)
Up the Tree Shell Midden (22HA595)

Humphreys County

Belzoni Mound (22HU500)

NEBRASKA

Douglas County

Omaha, *Hill Hotel,* 509 S. Sixteenth St.

BEST COPY AVAILABLE

NORTH CAROLINA

Wilson County

Wilson, *East Wilson Historic District*, Roughly bounded by E. Gold and Academy Sts., Ward Blvd., Woodard Street Ave. and Elvie St., and Railroad and Pender Sts.

OREGON

Clatsop County

Astoria, *Noonan-Norblad House*, 1625 Grand Ave.

Jackson County

Eagle Point, *Antelope Creek Covered Bridge (Oregon Covered Bridges TR)*, Little Butte Creek, E of Main St. Crossing

Marion County

Salem, *Chemeketa Lodge No. 1 Odd Fellows Buildings*, 185–195 High St. NE.

RHODE ISLAND

Bristol County

Portsmouth, *Hog Island Shoal Lighthouse (Lighthouses of Rhode Island TR)*, S of Hog Island, E passage, Narragansett Bay

Kent County

Warwick, *Conimicut Lighthouse (Lighthouses of Rhode Island TR)*, E of Conimicut Pt. in the Providence River

Warwick, *Warwick Lighthouse (Lighthouses of Rhode Island TR)*, 1350 Warwick Neck Ave.

Newport County

Newport, *Castle Hill Lighthosue (Lighthouses of Rhode Island TR)*, Off Ocean Ave. on Castle Hill at W end of Newport Neck

Newport, *Newport Harbor Lighthouse (Lighthouses of Rhode Island TR)*, N end of Goat Island, Newport Harbor

Portsmouth, *Prudence Island Lighthouse (Lighthouses of Rhode Island TR)*, E end of Sandy Pt. on Prudence Island

Washington County

Narragansett, *Point Judith Lighthouse (Lighthouses of Rhode Island TR)*, 1470 Ocean Rd.

North Kingston, *Plum Beach Lighthouse (Lighthouses of Rhode Island TR)*, Off Plum Beach, W Passage, Narragansett Bay

Tennessee

Williamson County

Allisona, *Wilhoite, James, House (Williamson County MRA)*, US Alt. 31

Brentwood vicinity, *Crockett, Samuel, House (Williamson County MRA)*, Crockett Rd. and Wilson Pike

Brentwood vicinity, *Holt, Thomas, House (Williamson County MRA)*, Crockett Rd. 1 mi. E of Wilson Pike

Brentwood vicinity, *Liberty School (Williamson County MRA)*, Liberty Church Rd. ¼ mi. N of Concord Rd.

Brentwood vicinity, *Owen-Cox House (Williamson County MRA)*, Moores Ln. 1 mi. E of I-65

Brentwood vicinity, *Owen-Primm House (Williamson County MRA)*, Moores Ln. at Wilson Pike

Brentwood vicinity, *Winstead, John M., Houses (Williamson County MRA)*, Concord Rd. 1 mi. E of Edmondson Pike

Brentwood, *Crockett, Andrew, House (Williamson County MRA)*, 8230 Wikle Ln.

Brentwood, *Elliston, Joseph, House (Williamson County MRA)*, Hillsboro Rd./US 431, 1 mi. N of Sneed Rd.

Brentwood, *Frost, John, House (Williamson County MRA)*, Old Smyrna Rd. 1½ mi. E of Wilson Pike

Brentwood, *Hadley, Denny P., House (Williamson County MRA)*, Off US 31/Franklin Rd. S of Brentwood

Brentwood, *Martin, William, House (Williamson County MRA)*, 5215 Seward Rd.

Brentwood, *Sneed, Constantine, House (Williamson County MRA)*, 9135 Old Smyrna Rd.

Burwood vicinity, *Pope, John, House (Williamson County MRA)*, Pope Chapel Rd.

Burwood, *Huff Store (Williamson County MRA)*, Carters Creek Pike

College Grove vicinity, *Allison, William, House (Williamson County MRA)*, US Alt. 31, 2 mi. S of College Grove

College Grove vicinity, *Ogilvie, William, House (Williamson County MRA)*, W side of US Alt. 31, 1 mi. S of College Grove

College Grove, *Bank of College Grove, The (Williamson County MRA)*, US Alt. 31

College Grove, *College Grove Methodist Church (Williamson County MRA)*, US Alt. 31

College Grove, *Owen, Dr. Urban, House (Williamson County MRA)*, US Alt. 31

Duplex, *Lee, Samuel B., House (Williamson County MRA)*, Duplex Rd. ½ mi. W of Lewisburg Pike

Duplex, *Thompson Store (Williamson County MRA)*, Duplex Rd. and Lewisburg Pike

Franklin vicinity, *Boyd Mill Ruins (Williamson County MRA)*, E bank of the West Harpeth River, 1/10 mi. S of Boxley Valley Rd. and Boyd Mill Pike

Franklin, *Boyd, William, House (Williamson County MRA)*, Boyd Mill Pike 1/10 mi. N of Boxley Valley Rd.

Franklin vicinity, *Collins, James E., House (Williamson County MRA)*, Hillsboro Rd./US 431, ½ mi. S of Spencer Creek Rd.

Franklin vicinity, *Crafton, John, House (Williamson County MRA)*, N. Chapel Rd. 2 mi. E of Arno Rd.

Franklin vicinity, *Davis, Stokely, House (Williamson County MRA)*, Old Natchez Trace 1 mi. S of Moran Rd.

Franklin vicinity, *Douglass-Reams House (Williamson County MRA)*, Henpeck Ln. ¼ mi. W of Lewisburg Pike

Franklin vicinity, *Forest Hills School (Williamson County MRA)*, Carters Creek Pike 9/10 mi. S of Bear Creek Rd.

Franklin vicinity, *Gray, Henry P., House (Williamson County MRA)*, Old Hillsboro Rd. at Boyd Mill Rd.

Franklin vicinity, *Hardeman, Franklin, House (Williamson County MRA)*, Lewisburg Pike 1 mi. S of the Goose Creek Bypass

Franklin vicinity, *Herbert, John, House (Williamson County MRA)*, Clovercroft Rd. ¾ mi. E of Wilson Pike

Franklin vicinity, *Hunter, John, House (Williamson County MRA)*, Old TN 96 at Carl Rd.

Franklin vicinity, *Johnson, William W., House (Williamson County MRA)*, Farm Ln. ½ mi. S of Clovercoft Rd. ½ mi. E of Pleasant Hill Rd.

Franklin vicinity, *King, William, House (Williamson County MRA)*, TN 96. 1½ mi. W of US Alt. 41

Franklin vicinity, *Kinnard, Claiborne, House (Williamson County MRA)*, Carters Creek Pike ½ mi. N of Bear Creek Rd.

Franklin vicinity, *Knight-Moran House (Williamson County MRA)*, Off Old Natchez Trace 1/10 mi. S of Moran Rd.

Franklin vicinity, *Lamb-Stephens House (Williamson County MRA)*, Burke Hollow Rd. 1½ mi. E of Wilson Pike

Franklin vicinity, *Leaton, William, House (Williamson County MRA)*, Hillsboro Rd./US 431 at Manley Ln.

Franklin vicinity, *Mayberry, H.G.W., House (Williamson County MRA)*, Bear Creek Rd. ½ mi. W of Carters Creek Pike

Franklin vicinity, *McEwen, Christopher, House (Williamson County MRA)*, Franklin Rd. 9/10 mi. S of Berrys Chapel Rd.

Franklin vicinity, *McEwen, David, House (Williamson County MRA)*, Off the E side of Franklin Rd./US 31, 9/10 mi. N of Spencer Creek Rd.

Franklin vicinity, *McGavock-Gaines House (Williamson County MRA)*, Caruthers Rd. 1 mi. E of Lewisburg Pike

Franklin vicinity, *McMahan, Daniel, House (Williamson County MRA)*, Spencer Creek Rd. ½ mi. W of Franklin Rd.

Franklin vicinity, *Morton, Samuel S., House (Williamson County MRA)*, Carters Creek Pike N of Bear Creek Rd.

Franklin vicinity, *Motheral, John, House (Williamson County MRA)*, Moran Rd. at Big Harpeth River

Franklin vicinity, *Oden, Dr. Hezekiah, House (Williamson County MRA)*, Lewisburg Pike ½ mi. S of Henpeck Ln.

Franklin vicinity, *Old Town (Williamson County MRA)*, Old Natchez Trace 1½ mil S of Moran Rd.

Franklin vicinity, *Old Town Bridge (Williamson County MRA)*, Over Brown's Creek, W of Old Natchez Trace Rd.

Franklin vicinity, *Perkins, Nicholas Tate, House (Williamson County MRA)*, Del Rio Pike 9/10 mi. W of Cotton Rd.

Franklin vicinity, *Pollard, George, House (Williamson County MRA)*, Wilson Pike 1 9/10 mi. S of Peytonsville Rd.

Franklin vicinity, *Puryear, Mordecai, House (Williamson County MRA)*, Lewisburg Pike 9/10 mi. N of Henpeck Ln.

Franklin vicinity, *Rizer, Y.M., House (Williamson County MRA)*, Del Rio pike ¾ mi. W of Hillsboro Rd.

Franklin vicinity, *Seward, John, House (Williamson County MRA)*, Liberty pike ¾ mi. W of Wilson Pike

Franklin vicinity, *Shute, Thomas, House (Williamson County MRA)*, US 31/Franklin Rd. at Spencer Creek Rd.

Franklin vicinity, *Steele, William, House (Williamson County MRA)*, Bethesda—Arno Rd. ½ mi. E of Bethesda

Franklin vicinity, *Toon, Beverly, House (Williamson County MRA)*, Arno Rd. ½ mi. W of Peytonsville Rd.

Franklin vicinity, *Trinity United Methodist Church (Williamson County MRA)*, Wilson Pile 1½ mi. S of Clovercroft Rd.

Franklin vicinity, *Wilson, Joseph, House (Williamson County MRA)*, Clovercroft Rd. 9/10 mi. W of Wilson Pike

Franklin, *Franklin Historic District (Boundary Increase) (Williamson County MRA)*, Third Ave. S between S. Margin St. and the RR

Franklin, *Glass, Samuel F., House (Williamson County MRA)*, TN 96 at Boyd Mill Pike

Franklin, *Knights of Pythias Pavilion (Williamson County MRA)*, TN 96

Franklin, *Lewisburg Avenue Historic District (Williamson County MRA)*, Roughly bounded by S. Margin St., Lewisburg Ave., and Adams St.

Franklin, *Maney—Sidway House (Williamson County MRA)*, Myles Manor Ct. W of Franklin Rd./US 31

Franklin, *Mayberry, Henry, H. House (Williamson County MRA)*, US 31 just across the Harpeth River N of Franklin

Franklin, *Truett, Alpheus, House (Williamson County MRA)*, US 31/Franklin Rd. 9/10 mi. N of the Franklin Sq.

Franklin, *Vaughn, Andrew C., House (Williamson County MRA)*, 501 Murfreesboro Rd.

Greenbrier vicinity, *Beasley—Parham House (Williamson County MRA)*, Lick Creek Rd. 1 mi. N of Natchez Trace

Kirkland, *Scales, James, House (Williamson County MRA)*, US Alt. 31

Liberty Hill, *Liberty Hill School (Williamson County MRA)*, Crow Cut Rd.

Nolensville vicinity, *Green, Sherwood, House (Williamson County MRA)*, Rocky Ford Rd. ½ mi. E of Nolensville

Nolensville vicinity, *Jordan—Williams House (Williamson County MRA)*, Rocky Ford Rd. 2 mi. E of Nolensville

Nolensville vicinity, *Morton, George W., House (Williamson County MRA)*, US Alt. 41, ½ mi. N of Sunset Rd.

Nolensville, *Bank of Nolensville (Williamson County MRA)*, MS Alt. 41

Peytonsville, Smithson, Nathaniel, House (Williamson County MRA), Peytonsville—Bethesda Rd.

Thompsons Station vicinity, *Buford, Spencer, House (Williamson County MRA)*, US 31, ½ mi. S of Critz Lane

Thompsons Station vicinity, *Critz, Jacob, House (Williamson County MRA)*, Evergreen Rd. 1½ mi. E of Pope Chapel Rd.

Thompsons Station vicinity, *Critz, Thomas L., House (Williamson County MRA)*, Critz Ln. 1 mi. E of Columbia Pike/US 31

Thompsons Station vicinity, *Johnson, James P., House (Williamson County MRA)*, US 31, 9/10 mi. S of W. Harpeth Rd.

Thompsons Station vicinity, *Neely, John, House (Williamson County MRA)*, Sedberry Rd. 2 mi. S of W. Harpeth Rd.

Thompsons Station vicinity, *Pointer, Henry, House (Williamson County MRA)*, US 31 S of Thompsons Station

Thompsons Station, *Giddens, James, House (Williamson County MRA)*, Farm Ln. at N boundary of Thompsons Station

Thompsons Station, *Thompson Station Bank (Williamson County MRA)*, Thompson Station Rd.

Triune vicinity, *Webb, James, House (Williamson County MRA)*, US Alt. 31 at Taliaferro Rd.

Triune vicinity, *Glenn, Abram, House (Williamson County MRA)*, McCanless Rd. 1½ mi. E of US Alt. 41

Triune vicinity, *Hyde, Hartwell B., House (Williamson County MRA)*, TN 96, 1 mi. E of TN US Alt. 41

Triune vicinity, *Jordan, Newton, House (Williamson County MRA)*, New Rd. 1 mi. E of US Alt. 41

Triune vicinity, *Russwurm, John S., House (Williamson County MRA)*, Spann Town Rd. ½ mi. E of US Alt. 41

Triune vicinity, *Scales, Joseph, House (Williamson County MRA)*, Off Cox Rd. 1 mi. W of US Alt. 41

[FR Doc. 88–5567 Filed 3–14–88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States; 1988 Adverse Effect Wage Rates and Allowable Charges for Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1988.

SUMMARY: The Director, U.S. Employment Service, announces 1988 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services and logging work may levy upon their workers when they provide three meals per day. AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A) visaholders. AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

Although, because of a recent opinion of the U.S. Court of Appeals for the District of Columbia Circuit, the Department is reviewing its methodology for computing AEWRs, it considers itself compelled to publish these AEWRs at the present time on the basis of the currently applicable methodology.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications. Telephone: 202–535–0163.

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (Department) for an H–2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1186.

On May 5, 1987, the Department published a proposed rule to implement the H–2A labor certification program. 52 FR 16770. Written comments were invited through May 19, 1987. The Department published an interim final rule on June 1, 1987, reopening the comment period through July 31, 1987. 20 CFR Part 655, Subpart B; 52 FR 20496. The Department is continuing its review and consideration of the comments it received on the proposed and interim final rules.

The interim final rule requires that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.107(b)(9); 52 FR at 20515. Reference should be made to the interim final rule, which explains in great depth the purpose and history of AEWRs, the Department's discretion in setting AEWRS, and the new AEWR computation methodology at 20 CFR 655.107(a). 52 FR at 20502–20505.

Upon publication of the interim final rule, the AFL–CIO sued the Department, in pertinent part, to invalidate the interim final 20 CFR 655.107(a). On December 22, 1987, the U.S. Court of Appeals for the D.C. Circuit reversed a lower court decision that had invalidated 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2d 912 (D.C. Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court opinion that stayed the implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(a).

However, the D.C. Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *."

Since the issuance of the Court of Appeals' decision, the Department of Labor has been engaged in an extensive analysis of the opinion, a review of the rulemaking record and other data, and consultations with other affected agencies of the government. The Department is aware of its obligation to develop a rationale for its current AEWR methodology or a new AEWR methodology as promptly as possible. Nonetheless, this area is extremely complex and involves many competing factors and considerations. Even though the Department is working as quickly as possible to comply with the Court's opinion, it has not been able to complete this complex task as of this time.

Nevertheless, the Department is faced with the responsibility to continue to administer the H–2A program. Inasmuch as the Court of Appeals vacated the District Court injunction of the AEWR computation methodology in 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, 1987), that methodology remains in effect at the present time. The Department has received H–2A labor certification requests for 1988 and some have been granted for work beginning as early as mid-March and the Department has received requests to publish 1988 AEWRs. The Department believes that the sound administration of the program requires the use of the current Department of Agriculture data as it becomes available. For this reason, the Department is substituting rates based on this new, current data for that used during 1987. Regulations require the Director of the U.S. Employment Service to publish USDA wage data as AEWRs and publish allowable charges logging employers and H–2A agricultural employers may levy upon their workers for the provision of three meals per day. 20 CFR 655.107(a); 20 CFR 655.102(b)(4); 20 CFR 655.111(a); 20 CFR 655.202(b)(4); and 20 CFR 655.211(a). The U.S. Department of Agriculture recently announced its wage data in the publication *Farm Labor;* this data data produces higher AEWRs for the majority of States. The Department recognizes that the rates published in this notice may be affected by the Department's compliance with the Court of Appeal's opinion. In light of the above, the Department believes that sound administration of the H–2A program requires the publication of the 1988 AEWRs at this time.

A. Adverse Effect Wage Rates (AEWRs) for 1988

Adverse effect wage rates are the minimum wage rates which the Department has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. The Department emphasizes, however, that such employers must pay the higher of the AEWR or the applicable prevailing wage as specified in the regulations.

Except as otherwise provided in 20 CFR Part 655, Subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey (USDA does not provide data on Alaska). 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, 1987).

The regulation at 20 CFR 655.107(a) requires the Director, USES, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1988 AEWRs for work performed on or after the effective dte of this notice, are set forth in the table below:

TABLE—1988 ADVERSE EFFECT WAGE RATES (AEWRs)

State	1988 AEWR
Alabama	$3.86
Arizon	4.30
Arkansas	3.91
California	5.41
Colorado	4.29
Connecticut	4.32
Delaware	4.83
Florida	4.91
Georgia	3.86
Hawaii	7.53
Idaho	3.95
Illinois	4.60
Indiana	4.60
Iowa	4.25
Kansas	4.35
Kentucky	3.90
Louisiana	3.91
Maine	4.32
Maryland	4.83
Massachusetts	4.32
Michigan	4.22
Minnesota	4.22
Mississippi	3.91
Missouri	4.25
Montana	3.95
Nebraska	4.35
Nevada	4.29
New Hampshire	4.32
New Jersey	4.83
New Mexico	4.30
New York	4.32
North Carolina	4.17
North Dakota	4.35
Ohio	4.60
Oklahoma	4.47
Oregon	5.26
Pennsylvania	4.83
Rhode Island	4.32
South Carolina	3.86
South Dakota	4.35
Tennessee	3.90
Texas	4.47
Utah	4.29
Vermont	4.32
Virginia	4.17
Washington	5.26
West Virginia	3.90
Wisconsin	4.22
Wyoming	3.95

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 20 CFR 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for such meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) (52 FR 20496, 20514, and 20523 (June 1, 1987)) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) (1987) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the 12-month percent change in the CPI for All Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the 12-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that.

The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1987 rates for agricultural workers were published in the June 1, 1987 final regulations at 20 CFR 655.102(b)(4) and 655.111(a) (52 FR at 20496 and 20523). The 1987 rates for logging workers were published in a March 27, 1987, **Federal Register** notice at 52 FR 9967.

DOL has determined the percentage change between December of 1986 and December of 1987 for the CPI–U for Food was +3.5%. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1988 are as follows: (1) for 20 CFR 655.102(b)(4) and 20 CFR 655.202(b)(4), the charge, if any, shall be no more than $5.44 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 20 CFR 655.211; (b) for 20 CFR 655.111 and 20 CFR 655.211, the RA may permit an employer to charge workers up to $6.81 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 11th day of March 1988.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 88–5749 Filed 3–14–88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by April 14, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202 682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Folk Arts Guidelines FY 1989–90.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state, local, or regional art agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 354.

Estimated Hours for Respondents to Provide Information: 7,080.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–5622 Filed 3–14–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 34—Proposed Rule: "Safety Requirements For Industrial Radiographic Equipment," (§§ 34.20(b)(1) and 34.30).

3. The form number if applicable: Not Applicable.

4. How often the collection is required: The information on labelling is required whenever a radioactive source is replaced in a device, estimated to be every 8 months. The information involving equipment failure problems is required only when such failures occur.

5. Who will be required or asked to report: Industrial radiography licensees.

6. An estimate of the number of responses: Fifty equipment reports annually and 5250 labels annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1800 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not Applicable.

9. Abstract: 10 CFR Part 34 sets out the information to be provided to the NRC concerning radiographic equipment failure, and the information to be provided on labels attached to the equipment concerning the radioactive source incorporated into the equipment.

Copies of the submittal may be inspected or obtained for a fee from the NRC public Document Room, 1717 H Street NW., Washington, DC 20555.

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Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, MD, this 8th day of March 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–5592 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension
2. The title of the information collection: Class Exemption for Reports Concerning Possible Non-Routine Generic Problems
3. The form number if applicable: Not applicable
4. How often the collection is required: On Occasion
5. Who will be required or asked to report: NRC Licensees/Applicants
6. An estimate of the number of responses: 50
7. An estimate of the total number of hours needed annually to complete the requirement or request: 5,000
8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable
9. Abstract: NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 8th day of March 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–5593 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the license held by Commonwealth Edison Company (CECo, the licensee) for operation of the LaSalle County Station, Units 1 and 2 located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendments would correct an inconsistency between Technical Specification requirements regarding the suppression pool high level alarm. The following changes to the Technical Specification have been proposed:

1. The suppression poll high water level alarm setpoint in Technical Specification 4.6.2.1.c.1 be raised 1 inch to be consistent with Technical Specification Table 3.3.3–2 and the UFSAR.
2. All references to suppression pool level in the Technical Specifications be amended to be consistent with plant indications.
3. A figure be added to the Technical Specification bases which will correlate plant elevation, suppression chamber levels and suppression pool level indications.

These revisions to the licenses of LaSalle County Station, Units 1 and 2 would be made in response to the licensee's application for amendment dated April 29, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed amendments to Facility Operating Licenses NPF–11 and NPF–18 which would revise the Technical Specifications to correct an inconsistency in the requirements regarding the suppression pool high level alarm.

On September 14, 1986 it was discovered that an inconsistency existed between the requirements in Technical Specification 4.6.2.1.c.1 and Technical Specification Table 3.3.3–2. Technical Specification 4.6.2.1.c.1 requires a setpoint of less than or equal to 26 feet 8 inches (equivalent to a plant evaluation of 700 feet 0 inches) for the suppression pool high level alarm. Technical Specification Table 3.3.3–2 and the Updated Final Safety Analysis Report (UFSAR) Table 7.3–1, require a trip setpoint of less than or equal to 700 feet 1 inch and an allowable value of less than or equal to 700 feet 2 inches for suppression pool water level—high. Both of these alarm setpoints are below the maximum allowable Suppression Pool level of 26 feet 10 inches indicated in Technical Specification 3.6.2.1.a.1. These amendments will correct the inconsistency regarding the suppression pool high level alarm.

Environmental Impacts of the Proposed Action

By letter dated April 29, 1987, the licensee provided the background and discussion of the inconsistency between Technical Specification requirements regarding the suppression pool high level alarm. The investigation into the cause of the inconsistency concluded that one of the contributing factors was the use of different reference points for the suppression pool high level alarm setpoints identified in the Technical Specifications. That is, the levels were referenced to plant elevation in one case and to the bottom of the suppression chamber in the other. The investigation also found that the reference points used in the Technical Specifications for the Limiting Conditions for Operations and trip setpoints are not consistent with the instrument references used for the control room and local suppression pool level indications. The instrument zero for all plant suppression pool level indications is set at a plant elevation of 699 feet 11 inches.

The Commission has reviewed the April 29, 1987 submittal and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of LaSalle County Station, Units 1 and 2" dated November 1978, regarding radiological environmental impacts from the plant during normal operation or after

accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of this action will not be adversely affected. CECo is committed to operate LaSalle County Station in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonable achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated November 1978 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of April 29, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated April 29, 1987 and the Final Environmental Statement for LaSalle County Station dated November 1978 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–5596 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–259, 50–260, and 50–296]

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.55a(g)(4) to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Plant, Units 1, 2 and 3, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of 10 CFR 50.55a(g)(4) to the extent that the 120-month pump and valve program inservice testing (IST) interval would be extended to August 31, 1992 rather than ending on March 1, 1988.

The Need for the Proposed Action

The exemption is needed to permit the Browns Ferry pump and valve program (IST) for all units to be on concurrent inspection intervals as opposed to a separate interval for each unit. In addition, the exemption would permit the 120-month IST interval (based on the 1980 edition of Section XI to the ASME Code through Winter Addenda) to be started on August 31, 1982 since that is the date which the licensee submitted a revised, Code updated IST program.

Environmental Impact of the Proposed Action

The proposed exemption to 10 CFR 50.55a(g)(4) would not impact the ability of the plant to effect safe shutdown and would not permit the IST interval to exceed a 120-month interval without a ASME Code update revision.

In addition, the staff has compared the requirements of the 1980 edition of the Code through the Winter Addenda with the Code requirements which would apply in March 1987 if the exemption were not granted (i.e., the 1983 Edition and Addenda through the Summer 1983 Addenda) and has determined that there is no significant differences in the testing requirements for pumps and valves. Therefore, the proposed exemption would provide an acceptable level of safety, equivalent to that attained by compliance with 10 CFR 50.55a(g)(4). On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption encompasses features located entirely within the restricted areas as defined in 10 CFR Part 20. Therefore, it does not affect non-radiological environmental impacts associated with the facility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 6, 1983, and supplemented February 17, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Bethesda, Maryland this 8th day of March 1988.

For the Nuclear Regulatory Commission.

Gerald E. Gears,

Acting Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–5597 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket 40–8820]

Finding of No Significant Impact; Renewal of Source Materials License No. SMB–1416; Amax, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Materials License No. SMB–1416 for the continued storage of contaminated soil and rubble at the Amax, Inc., site near Parkersburg, West Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Amax to continue storing contaminated soil and rubble for the next 5 years at their Parkersburg, West Virginia, site.

The Need for the Proposed Action

This license renewal authorizes only the storage of contaminated soil and rubble. Denial of the license renewal for storage would require the transfer of the contaminated soil and rubble to a facility licensed to accept this type of material. At the present time, this is not a viable option.

Environmental Impacts of the Proposed Action

The engineered area containing the contaminated soil and rubble has been stabilized for the past 5 years. During this time, no radioactive material above the specified action levels of 15 pCi/l alpha or 50 pCi/l beta has been observed in any of the four monitoring wells when sampled biannually.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the Environmental Assessment, staff concludes that the proposed action will not have a significant effect on the quality of the human environment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the semiannual report of well monitoring performed by the State of West Virginia's Department of Health and Information supplied by Amax letter dated June 15, 1987.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies of the Environmental Assessment may be obtained by calling (301) 492–3328 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of March, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88–5594 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–373]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the license held by Commonwealth Edison Company (CECo, the licensee) for operation of the LaSalle County Station (LCS) Unit 1 located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise Technical Specifications (TS) to incorporate new Cycle 3 reload fuel operating limits, and expand operating domains (including operation with equipment out of service). Proposed TS changes specifically related to the Cycle 3 reload fuel operating limits and analyses include: (a) Revising the maximum allowable Linear Heat Generation Rate (LHGR) to be fuel type specific, and establishing a LHGR limit for the new GE8x8EB reload fuel, (b) adding Maximum Average Planner Linear Heat Generation Rate (MAPLHGR) limit curves for the new reload fuel, (c) deletion of the MAPLHGR reduction factor in Single Loop Operation (SLO), and (d) revising the Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time value. Other TS changes in this amendment that resulted from analyses performed by GE for CECo to expand the unit operating region, and allow for operation with certain equipment out-of-service include the following: (e) Change the analyzed operating region to include extended load line limit (ELLLA), increased core flow (ICF) and feedwater temperature reduction (FTR), (f) revision of the Safety/Relief Valve TS to require the safety function of only 17 of the 18 Safety/Relief values to be operable, (g) revision to the End-of-Cycle Recirculation Pump Trip System TS to allow the system to be inoperable provided the MCPR limit is increased, and (h) revision to the Main Turbine Bypass System TS to allow one bypass valve to be inoperable provided the MCPR limit is increased.

Concurrent with the aforementioned TS changes, several administrative and editorial revisions were proposed for continuity. Furthermore, applicable TS bases and references were updated to reflect new information, fuel type, control rod type analyses, computer models, operating domains, and Limiting Conditions of Operation (LCOs).

These revisions to the license of LCS, Unit 1, would be made in response to the licensee's application for amendment dated January 19, 1988.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, CECo has proposed an amendment of Facility Operating License NPF–11, which would revise certain license conditions and TS in order to provide for Cycle 3 operation of LCS Unit 1.

The Unit 1 Reload/2 Cycle 3 replacement reactor fuel is of the GE8x8EB extended burnup fuel design, which has some different mechanical and nuclear features than the Cycle 2 fuel. Although this fuel type has not been employed at LCS before, Reload 2 is still considered a normal reload with no unusual core features or characteristics. The GE8x8EB fuel design described in Topical Report NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel (GESTAR II), has been reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8x8EB fuel was recently approved for another CECo plant (Quad Cities) and for other non-CECo plants (e.g., Fitzpatrick, Peach Bottom, Limerick, and Millstone). This license amendment will establish the necessary critical operating limits, defined operating domains, and surveillance requirements to assure safe operation of LCS Unit 1 with the new Cycle 3 reactor core fuel configuration.

Environmental Impacts of the Proposed Action

By letter dated January 19, 1988, the licensee provided transient and accident safety analyses using approved methods to bound all normal and abnormal conditions of Cycle 3 operation for Unit 1.

The licensee's reload submittal analysis was performed by GE using a new and advanced GEMINI licensing methodology to technically justify Cycle 3 operation. This methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of this reload submittal were transient and accident analyses for the following Equipment Out-of-Service and Extended Operating Domain operating modes (EOOS/EOD): ELLLA, ICF, FW heater(s) out-of-service, FTR, End-of-Cycle Recirculation Pump Trip System Out-of-Service (RPTOOS), Main Turbine Bypass System Out-of-Service (MTBOOS), relief valve out-of-service (RVOOS), and SLO. Operation with a safety/relief valve out-of-service over the extended operating domain was

demonstrated by performing core wide transients and Emergency Core Cooling System (ECCS) analyses with the most restrictive safety/relief valve out-of-service. This reload package, therefore, incorporates changes to allow operation with safety/relief valve out-of-service.

GE has reanalyzed the design basis Loss of Coolant Accident (LOCA) event at LCS with an improved ECCS computer code package called SAFER/GESTR-LOCA Application Methodology. Results from this analysis of postulated plant LOCAs were provided by CECo in accordance with NRC requirement which demonstrated that LCS conforms with the ECCS and Peak Cladding Temperature (PCT) acceptance criteria of 10 CFR 50.46 and Appendix K. Consequently, SAFER/GESTR-LOCA Loss of Coolant Analysis (NEDC–31510P dated December 1987) is now considered the primary ECCS licensing basis reference for LCS.

The Commission has reviewed these analyses and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to Operation of LaSalle County Station Units 1 and 2" dated November 1978 (NUREG–0486) regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. Furthermore, occupational radiological exposure as a result of reload activities and subsequent plant operations allowed by this action will not differ when compared to previous operating and reload cycles. CECo is committed to operate LCS in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated November 1978 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of January 19, 1988 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated January 19, 1988 and the Final Environmental Statement for LCS dated November 1978, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Rockville, Maryland this 7th day of March 1988.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects — III, IV, V and Special Projects.

[FR Doc. 88–5595 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–29017, License No. 47–17725–02; EA 87–157]

Beckley Appalachian Regional Hospital, Beckley, WV; Order Imposing Civil Monetary Penalty

I

Beckley Appalachian Regional Hospital (licensee) is the holder of Material License No. 47–17725–02 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 7, 1986. The license authorizes the licensee to employ the use of radioactive materials for diagnostic purposes in patients in accordance with the conditions specified therein.

II

A routine unannounced inspection of the licensee's activities was conducted on July 27, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 27, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letters dated November 20 and December 11, 1987. In its response, the licensee denied violations A.2, C, D, and E, admitted the remaining violations, and requested mitigation due to the licensee's financial status and inability to pay.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order that violations C, D, and E should be withdrawn, that the remaining violations occurred as stated, and that a portion of the civil penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

> The licensee pay a civil penalty in the amount of One Thousand Dollars ($1,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operation.

Dated at Bethesda, Maryland this 8th day of March 1988.

Appendix—Evaluation and Conclusion

By a letter dated November 20, 1987, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty dated October 27, 1987. In a letter dated December 11, 1987, the licensee restated its reponse to violation A.2. In these responses, the licensee denied four violations and presented corrective actions for one of the denied violations. The licensee also provided financial information and asserted that the licensee was following a prior inspector's instructions on certain procedures. The licensee requests mitigation of the civil penalty based on the inability to pay and the fact that the licensee has spent $5,991 on corrective actions as of December 11, 1987. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

Restatement of Violation A.1

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application date September 19, 1985, and in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 7, Appendix B, of the application requires the Radiation Safety Committee to meet no less than once each calendar quarter.

Contrary to the above, between December 12, 1986 and July 28, 1987, no Radiation Safety Committee meetings were conducted.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted to the violation but stated that the Nuclear Medicine imaging equipment vendor representative informed them that the Radiation Safety Committee was to meet semi-annually.

NRC Evaluation

In a Notice of Violation dated December 18, 1986, violation A referenced the same licensee conditions as the Notice of Violation of October 27, 1987. Violation A of the Notice dated December 18, 1986, stated that the Radiation Safety Committee is required to meet once each calendar quarter. The licensee's contention that it was misinformed on the required meeting frequency is rejected due to the previous citation of the same violation. In addition, the license requirements clearly specify that such meetings will be held no less than quarterly.

Restatement of Violation A.2

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Item 3.a(3) of the ALARA program requires the Radiation Safety Officer (RSO) to review records of radiation level surveys quarterly.

Contrary to the above, the RSO did not review radiation level survey records between August 14, 1986 and July 27, 1987.

Licensee's Response

In the response dated November 20, 1987, the licensee denied the violation, stating the RSO reviews and intitials the radition level surveys monthly and that the inspector did not review the documents during the July 1987 inspection. In the supplemental response dated December 11, 1987, the licensee withdrew the denial, by implication, and stated appropriate corrective action.

NRC Evaluation

Upon review of the licensee's response, it was evident the licensee was mistaken as to what records the violation referenced. Violations A.5 and B refer to the radiation level surveys also, and the licensee admitted to both of those violations. As evidenced by the citations, the inspector did review the documents and clarified this with the licensee in a telephone conversation on December 2, 1987. The licensee submitted a supplemental response dated December 11, 1987, and stated an appropriate corrective action. In view of these additional clarifications, the violation remains as stated.

Restatement of Violation A.3

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 10, Appendix D, Calibration of Dose Calibrator, item B, requires that the licensee use Cobalt-57, Barium-133, and Cesium-137 sources to perform instrument accuracy and constancy tests.

Contrary to the above, as of July 27, 1987, the licensee did not possess and therefore could not use a Barium-133 source to perform instrument accuracy and constancy tests.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted to the violation but stated the NRC inspector in December 1986 instructed them to obtain Co–57, Co–60, and Cs–137 sources for performing constancy checks on the dose calibrator. The licensee contends they were cited by the inspector in July 1987, for following recommendations given by the previous inspector in December 1986.

The licensee also stated that the violation is not similar to a previous violation, since the constancy checks were being performed, but only lacked the Ba–133 source. The licensee states the Ba–133 source was not used because the previous inspector did not instruct them to use it.

Additionally, the licensee referred to NRC Regulatory Guide 10.8, Revision 2, August 1987, and stated that it does not require the use of a Ba–133 source for the constancy checks.

NRC Evaluation

Licensees frequently request information from inspectors concerning NRC regulatory requirements. NRC inspectors do not give specific instructions for obtaining compliance but occasionally will cite examples of acceptable practices. The responsibility

for compliance lies solely with the licensee. To achieve compliance, the licensee must be thoroughly familiar with the pertinent regulations and commitments submitted in its application and additional letters referenced in the license. The inspector who conducted the December 1986 inspection recalls that he provided a copy of the licensee's application and referenced information since the hospital employees could not locate their documents. He also left a copy of NRC Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," which contains various procedures the licensee committed to perform in its application. The inspector recalls that he did review the material with the licensee but did not give specific instructions in achieving compliance. The inspector conducting the inspection of July 1987 states she also left copies of the licensee's application and backup information, as well as NRC Regulatory Guide 10.8, as the licensee employees were again not able to locate the documents. It is apparent the licensee did not thoroughly review the pertinent material left by the inspector in December 1986 to achieve regulatory compliance.

Appendix D, Page 10.8–30, referenced in the license application lists the sources the licensee commited to use for the constancy checks: Co–57, Ba–133, and CA–137. The licensee asserted that this violation was mistakenly referred to as similar to a previous violation. Specifically, violation C of the Notice of Violation dated December 18, 1986, stated that the licensee did not possess the three sealed sources required to perform constancy checks on the dose calibrator and therefore could not perform the constancy checks. Violation A.3 of the Notice dated October 27, 1987, cited the licensee for not possessing the required Ba–133 source for the checks. While the licensee did possess three sealed sources, a Ba–133 source was not among them. Therefore, this is similar to the previous violation, in that all of the required sources were not available.

The licensee response letter also referenced NRC Regulatory Guide 10.8, Revision 2, August 1987. The inspection was conducted on July 27, 1987. Revision 2 had not been issued then and was not operative. The licensee committed to the procedure found in Revision 1, October 1980. Even though Revision 2 had been issued, the licensee was still required to follow Revision 1 unless an amendment to change this part of the license was requested and issued.

Restatement of Violation A.4

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 14, Appendix F, item 2.f, of the application requires that a wipe of the external surface of the final source container be made when opening packages containing radioactive material.

Contrary to the above, the licensee did not perform wipe tests of the final source containers on packages received between August 14, 1986 and July 28, 1987.

This is similar to a violation issued on December 18, 1986.

Licensee's Response

The licensee admitted the violation but listed the following three extenuating circumstances concerning the violation. The licensee (1) asserted that it was following the previous inspector's instructions on performing wipe tests on packages containing radioactive material, (2) denied that this violation was similar to a violation cited on December 18, 1986, because the previous inspector's instructions were being followed, and (3) referred to NRC Regulatory Guide 10.8 stating that it does not require wipe tests of the final source containers unless there is a reason to suspect contamination.

NRC Evaluation

The licensee, again, stated that it was following a previous inspector's instructions for performing wipe tests of packages containing radioactive material and also asserted that because of this, violation A.4 was not similar violation. The inspector who conducted the December 1986 inspection recalls that he left copies of the procedures the licensee committed to perform, and briefly reviewed these procedures. He did not offer detailed instructions to the licensee in achieving compliance. The licensee condition cited specifically requires the external surface of the final source container be wipe tested. It is ultimately the licensee's responsibility to be familiar with the commitments made in its application and supporting documents. Additionally, violation F of the Notice of Violation dated December 18, 1986, stated, "licensee representatives stated that packages containing radioactive material routinely received by the Nuclear Medicine Department were not wipe tested as required." Violation A.4 of the Notice dated October 27, 1987, also involves a failure to perform wipe tests of packages received and is therefore considered to be similar.

The licensee's third extenuating circumstance refers to Regulatory Guide Revision 2, August 1987, which was not operative at the time of the July 27, 1987 inspection. In the licensee's application dated September 19, 1985, and in subsequent letters, a commitment was made to follow Appendix F of Regulatory Guide 10.8, Revision 1, October 1980, for opening packages of radioactive material. The licensee must comply with all commitments made in the application dated September 19, 1985, unless an amendment to follow the revised Regulatory Guide is requested and issued.

Restatement of Violation A.5

License Conditions 14.A and 14.C require that licensed material be used in accordance with statements, representations, and procedures contained in the application dated September 19, 1985, and contained in information received February 13, 1986, which includes Beckley Appalachian Regional Hospital's ALARA Program signed by Dalton G. Smart, Administrator.

Section 17, Appendix I, item 4.b, of the application requires that the method for performing area wipe tests be sufficiently sensitive to detect 200 dpm per 100 cm^2.

Contrary to the above, the licensee used a Capintec Model CRC–7 dose calibrator to analyze the area wipe of approximately 100 cm^2. The Captintec Model CRC–7 dose calibrator has a minimum detectable activity of approximately 22,000 dpm.

Licensee's Response

The licensee admitted the violation but stated an extenuating circumstance. The licensee contended that it was misinformed by the vendor and the previous NRC inspector and that the appropriate equipment was obtained after the July 1987 inspection.

NRC Evaluation

The licensee again asserted that it was misinstructed as to the proper equipment to use for analyzing area wipe tests. As has been stated in the evaluations above, it is the licensee's responsibility to be familiar with the commitments made in the license application and supporting documents and to achieve compliance with requirements. Also, the licensee is responsible for knowing how to perform measurements properly before applying for a license.

Restatement of Violation B

10 CFR 20.401(b) requires the licensee to maintain records of surveys in the same units used in 10 CFR Part 20.

10 CFR 20.5(a) requires that radioactivity be measured in terms of disintegrations per unit time or in curies.

Contrary to the above, between December 4, 1986 and July 28, 1987, the licensee obtained results of area wide surveys in units of millicuries and erroneously recorded them in units of millirem per hour.

Licensee's Response

The licensee admitted the violation and stated extenuating circumstances. The licensee contended that it was misinformed by the vendor and stated that the previous inspector reviewed the technique and unit of measure and approved of both.

NRC Evaluation

The licensee must not depend on an outside consultant or an inspector for basic knowledge of routine instrument use. Each licensee should possess this expertise internally and must take responsibility for achieving regulatory compliance. The inspection process is a sampling review of various conditions and procedures. If an item is not always noted or cited by one inspector, it should not be automatically considered as NRC approved. The inspector conducting the July 1987 inspection noted in a discussion with licensee personnel that the various units of measurement for radioactivity were not well understood. It is also possible that at the time of the December 1986 inspection, the records were maintained properly and that the failure to record the results in millicuries occurred after the inspection.

Restatement of Violation C

10 CFR 20.403(a) requires, in part, that each licensee immediately report any event involving byproduct material possessed by the licensee that may have caused or threatened to cause exposure of the whole body of any individual of 25 rems or more of radiation.

Contrary to the above, a reading of 374 rems to a film badge assigned to an employee was reported to the licensee by the supplier on March 12, 1987. This possible exposure was not officially reported to the NRC immediately, and the NRC was not aware of the badge reading until a July 27, 1987 inspection, at which time the exposure was considered by the licensee to be a photodosimetry error.

Licensee's Response

The licensee contended that the NRC has no regulatory authority over the exposure since the badged employee is the Administrative Technologist for Radiology and does not work with NRC licensed radioactive material. The licensee determined the badge reading was an error. When the vendor reported the badge reading, it was stated that the exposure occurred out of the holder. Based on this fact and on the fact that the Technologist rarely performs diagnostic imaging procedures and never performed Nuclear Medicine Studies during the exposure period, the 374 rem badge reading was determined to be in error and also not reportable under NRC jurisdiction.

NRC Evaluation

The exposure was reported to the NRC on August 14, 1987, by D. Glenn, Ph.D., a Medical Physics Consultant for the licensee. He did so to ensure compliance with all NRC regulations after an Enforcement Conference between the licensee and the NRC on August 12, 1987. A letter dated September 17, 1987, stated the licensee's evaluation of the film badge reading has been reviewed by the NRC. At first, the NRC was concerned that an immediate evaluation was not made and not enough information was known to make a judgement as to the validity or origin of exposure within the reporting deadline. After further discussions with the licensee, the NRC believes that the licensee did perform a prompt evaluation and was justified in not reporting the film badge reading to the NRC. Therefore, violation C will be withdrawn, and our records will be adjusted accordingly.

Restatement of Violation D

10 CFR 20.401(b) requires that each licensee maintain records showing the results of surveys required by 10 CFR 20.201(b). "Survey" as defined in 10 CFR 20.201(a) is an evaluation of the radiation hazards incident to the use of radioactive material.

Contrary to the above, in March 1987, the licensee did not record the results of an evaluation of the circumstances surrounding a reading of 374 rems recorded on the film badge of a radiology technologist.

Licensee's Response

In responding to this violation, the licensee referred to its response to violation C. The licensee denied violation D on both the basis that the badge reading was an error and the basis that the employee did not work with any radioactive material during the film badge exposure period. Therefore, the licensee asserted that the NRC did not have regulatory authority over the incident.

NRC Evaluation

After further clarification of the licensee's evaluation of the high badge reading, the NRC accepts the licensee's position that the employee did not work with NRC licensed radioactive material during the film badge exposure period and calendar quarter in question. Therefore, the NRC regulations are not binding, and no record of the evaluation is required. Violation D will be withdrawn, and our records will be revised accordingly.

Restatement of Violation E

10 CFR 20.401(a) requires that each licensee maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under 10 CFR 20.202.

Contrary to the above, a film badge exposure of 2380 millirems, which the licensee concluded was not received by the individual to which the badge was assigned, was not removed from the individual's exposure record.

Licensee's Response

The licensee stated that though the individual did not receive the full reported exposure, it should not be entirely removed from her exposure history due to previous quarterly readings of 560 to 830 mrem. The licensee also stated that the Radiation Safety Committee, during the annual review of employee exposures, will make adjustments as necessary at that time, and that the annual review had not been performed at the time of the NRC evaluation of the badge reading.

NRC Evaluation

The NRC accepts the licensee's contention that the film badge records will be properly adjusted at the annual review. It should be noted that the licensee's actions in this situation are viewed as being conservative in evaluating the employee's exposure history. Violation E will be withdrawn, and our records will be revised accordingly.

Licensee's Request for Mitigation of Civil Penalty

In the response dated November 20, 1987, the licensee referenced page 36220 of the September 28, 1987, **Federal Register** which discusses the NRC's consideration of a licensee's "ability to pay." The licensee also presented financial information about the hospital. In summary, it stated that the hospital operates in the economically devastated Appalachian region and provided $508,145 in charity care for fiscal year 1986–87 and $171,551 in charity care for the first quarter of fiscal year 1987–88. The hospital's operating deficit for fiscal year 1986–87 was $291,453 and for the first quarter of 1987–88 was $258,564.

In the response dated December 11, 1987, the licensee stated that $5,991 had been spent on corrective actions to achieve full regulatory compliance. Based on this information, the licensee has requested mitigation of the proposed civil penalty.

NRC Response

The **Federal Register** dated September 28, 1987, referenced by the licensee, contains the revised "General Statement of Policy and Procedure for NRC Enforcement Actions" of 10 CFR Part 2, Appendix C. Section V.B addresses civil penalties, which states, "regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis."

In view of the stated NRC policy, the financial information provided by the licensee, and the corrective actions given in the licensee's responses, it has been determined that the proposed civil penalty should be partially mitigated.

Conclusions

After consideration of the responses for November 20, and December 11, 1987, to the Notice of violation and Proposed Imposition of Civil Penalty issued October 27, 1987, the NRC staff has concluded that a sufficient basis was provided for the withdrawal of violations C, D, and E, and that the remaining violations occurred as stated. Additionally, based on the withdrawal of violations C, D, and E, the civil penalty is reduced to $3,500, each violation having been assessed a penalty of $500. Additionally, because of the current financial situation of the licensee, the proposed $5,000 civil penalty has been mitigated to $1,000.

[FR Doc. 88–5598 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company, (the licensee), for operation of Turkey Point Units 3 and 4 located in Dade County, Florida.

The amendments would revise the provisions in the Technical Specifications relating to D.C. power sources to conform more closely to the Standard Technical Specifications. The specific Technical Specifications involved in the proposed amendments relate to surveillance and test requirements for station batteries and battery chargers.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 14, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention would be permitted with particular reference to the following factors: (1) The natue of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 2055, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 10th day of March, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–5599 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–316]

Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 100 to Facility Operating License No. DPR–74, issued to Indiana Michigan Power Company (the licensee), which revised the license for operation of the Donald C. Cook Nuclear Plant, Unit No. 2 (the facility), located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

This amendment approves the steam generator repair program for the facility and provides a license condition related to the repair operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 19, 1987 (52 FR 8680). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission prepared a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on December 2, 1987, at 52 FR 45880.

For further details with repect to this action, see (1) the application for amendment dated March 12, 1987, and the licensee's Steam Generator Repair Report submitted by letter dated November 7, 1986, as revised March 30, July 24, October 20 and December 4, 1987, and February 10, 1988, (2) Amendment No. 100 to License No. DPR–74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 8th day of March 1988.

For The Nuclear Regulatory Commission.

Wayne E. Scott, Jr.,

Acting Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–5600 Filed 3–14–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–62, License No. R–66 EA 87–155]

University of Virginia, Charlottesville, VA; Order Imposing Civil Monetary Penalty

I

The University of Virginia (licensee) is the holder of Operating License No. R–66 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 24, 1960, and renewed on September 30, 1982. The license authorizes the licensee to possess and operate the reactor as a utilization facility in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities pertaining to the events associated with a significant potential for overexposure of personnel in the neutron radiography facility was conducted on July 6–8, and 15–17, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 26, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 18, 1987. In its response, the licensee denied Violations I.B.2 and I.B.4, admitted the remaining violations, and requested mitigation of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that violation I.B.2 should be withdrawn, that the remaining violations occurred as stated in the Notice of Violation, and that a portion of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated for the reasons stated in the Appendix to the Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C.

2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The licensee pay a civil penalty in the amount of One Thousand Two Hundred Fifty Dollars ($1,250) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty as amended in the attached Appendix, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operation.

Dated at Bethesda, Maryland this 8th day of March 1988.

Appendix—Evaluations and Conclusions

On October 26, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC inspection. The University of Virginia responded to the Notice on November 18, 1987. The licensee denied the occurrence of Violations I.B.2 and I.B.4 and admitted the occurrence of the remaining violations. The licensee also requested full remission or mitigation of the proposed civil penalty amount. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

I. Restatement of Violations I.B.2 and I.B.4

Technical Specification 6.3 requires, in part, that written procedures, reviewed and approved by the Reactor Safety Committee, shall be in effect and followed for: (1) Startup, operation, and shutdown of the reactor; (2) installation and removal of experiments and experimental facilities; (3) periodic surveillance (including test and calibration) of reactor instrumentation and safety systems; and (4) preventive and corrective maintenance operations that could have an effect on reactor safety.

Contrary to the above,

* * * * *

2. Procedures were not adequate, in that, between 1983 and June 1987, the neutron radiography facility was operated without written procedures.

* * * * *

4. Prior to July 2, 1987, written procedures were not in effect for surveillance testing of the neutron detector in the neutron radiography block house access control system.

Summary of Licensee's Response to Violation I.B.2

The licensee admitted to not having written procedures to operate the neutron radiography facility; however, the licensee denied the violation. The licensee contends that the lack of experimental operating procedures for the neutron radiography facility is not a violation of Technical Specification 6.3, in that Technical Specification 6.3 addresses the safe operation of the reactor and does not cover other aspects of the operation of ancillary experimental facilities such as radiological safety.

NRC Evaluation of Licensee Response to Violation I.B.2

NRC agrees that Technical Specification 6.3(2) does not require written operating procedures for experimental facilities. Consequently, this violation has been withdrawn and NRC records will be adjusted accordingly.

Summary of Licensee's Response to Violation I.B.4

The licensee contends that Technical Specification 6.3 does not apply to the instrumentation utilized in experimental facilities, but to reactor instrumentation and safety systems. The licensee states that the boron trifluoride (BF_3) and neutron counter is not intended to be part of the access control system and its function is that of a redundant monitor along with the fluid level indicator to indicate beamport draining. The licensee is of the opinion that written surveillance procedures for the counter are not needed, since its operability is automatically checked with each use of the neutron radiography facility. The licensee also stated that it would strongly consider withdrawing the counter from operation to avoid legal entanglements in the future if the Commission requires surveillance in accordance with written procedures. The licensee stated that an agreement between the licensee and the inspector had been made not to require calibration of the neutron counter.

NRC Evaluation of Licensee Response to Violation I.B.4

Technical Specification 6.3 requires radiation control procedures to be maintained and made available to all operational personnel. The licensee response states that the BF_3 neutron counter was not part of an access control system. The NRC maintains that the licensee was in fact utilizing the BF_3 counter and the light emitting diode (LED) sensor for blockhouse access control. In 1982 modifications were made by the licensee to the reactor shielding in such a manner as to increase the radiation hazard associated with operation of the facility. The licensee installed the two diverse access control instrumentation systems (one of which is the BF_3 neutron counter) thereby restoring the original margin of safety. These systems are required to be periodically tested (although not necessarily "calibrated") for radiation control purposes. Without approved written procedures to ensure operability of these systems, operation of the reactor in its modified configuration is a violation of Technical Specification 6.3.

Additionally, the licensee response implies that an agreement had been made between the inspector and licensee representatives to consider the BF_3 counter as a redundant monitor not requiring calibration. The licensee was told by the inspector that calibration of the neutron counter to read dose rates would not be required; however, periodic surveillances described in licensee procedures would be required to ensure that the monitor was functioning properly.

II. Summary of Licensee's Request for Mitigation

In its response the licensee agrees with the assignment of a Severity Level III for the violations. However, the licensee believes that in view of the opportune discovery of the violations, the immediate reporting of the event to the NRC, the verification of no personnel exposures above NRC limits, and the extensive corrective actions, consideration of mitigation of the proposed fine is justified.

NRC Evaluation of Licensee's Request for Mitigation

The NRC recognizes that the licensee promptly identified and reported the event, but does not consider mitigation warranted in view of the fact that the discovery of the event was fortuitous. However, in consideration of the additional broad scope corrective actions reported in the licensee's November 18, 1987, response and the withdrawal of Violation I.B.2, a sufficient basis is provided for mitigation of the civil penalty by 50 percent to $1,250.

III. NRC Conclusion

The NRC has concluded that violation I.B.2 should be withdrawn and that the remaining violations occurred as stated. In addition, in consideration of the licensee's extensive corrective actions, the civil penalty has been mitigated by 50 percent to $1,250.

[FR Doc. 88-5601 Filed 3-14-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Adoption of an Official Seal by the Office of Personnel Management

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the authority of Title 5, section 1101, United States Code, as amended by the Civil Service Reform Act of 1978, the OPM is adopting the revised seal as shown below. It is intended that the seal be OPM's official graphic representation for judicial documents, flags, awards or other occurrences that will convey solemnity or historical significance. The revised OPM seal will replace the old seal.

FOR FURTHER INFORMATION CONTACT: Stinson J. Miller, (202) 632-0220.

Office of Personnel Management.

Constance Horner,

Director.

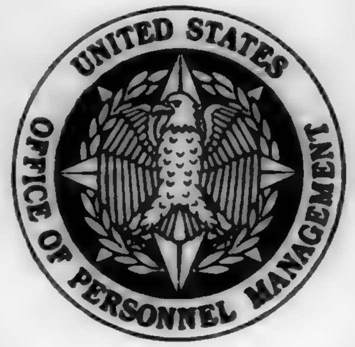

[FR Doc. 88-5617 Filed 3-14-88; 8:45 am]

BILLING CODE 6325-01-M

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members of the OPM Performance Review Board.

DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Policy Development Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Constance Horner,

Director.

Members of the OPM Performance Review Board are:

Ann C. Agnew (Chair), Chief of Staff
Mark J. Barnes, Associate Director for Administration
Steven R. Cohen, Regional Director, Chicago Region
Claudia Cooley, Associate Director for Personnel Systems and Oversight
Curtis J. Smith, Associate Director for Career Entry
Jean M. Barber (Alternate Member), Associate Director for Retirement and Insurance

[FR Doc. 88-5551 Filed 3-14-88; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of New System of Records.

SUMMARY: The purpose of this document is to publish advance notice of the creation of a new Privacy Act system of records, USPS 220.020, Express Mail Service Customer List. The system will contain the names and addresses of users of the Postal Service's Express Mail service and will be used to communicate information and updates concerning that service to those users and to provide management with statistical data to analyze usage and improve Express Mail service.

DATE: The proposed action will be effective without further notice on May 14, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, D.C. 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service offers to the public an expedited class of mail service known as "Express Mail." The labels, forms, and receipts used in connection with this service are generally filled out by the sender of the Express Mail item. Postal facilities throughout the United States will collect the names and addresses of users of "Express Mail" from these documents for computerized transfer to a central computer site. The collected information wil be used (1) as a mailing list to keep Express Mail users apprised of rate, service and other mailing information, and (2) to produce statistical data without personal identifers for management to use in analyzing usage of and improving "Express Mail" service performance. Access to the central computer file will

be restricted to authorized marketing personnel.

Collection of this information should have no adverse affect on any individual's right to privacy. In addition to disclosure restrictions imposed by the Privacy Act, the Postal Service is prohibited from releasing lists of postal customers pursuant to the Postal Reorganization Act (39 USC 412). Further, customers may request at any time that their name and address be removed from the customer list which will be updated at least annually.

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act has been submitted to OMB and Congress, pursuant to paragraph 4b of Appendix I to OMB Circular NO. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Accordingly, the proposed new system description follows:

USPS 220.020

SYSTEM NAME:

Marketing Records—Express Mail Service Customer Mailing List.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters, and its regional, divisional and sectional center marketing components.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Express Mail service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of users of Express Mail service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE:

To communicate information and updates concerning Express Mail service to current users of that service and to provide management with statistical data to analyze usage of and improve Express Mail service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to the Department of Justice, to other counsel representing the Postal Service or in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or processing such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. Information from the system may be disclosed to an expert, consultant or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer storage media and hardcopy printouts.

RETRIEVABILITY:

Name of user and ZIP Code.

SAFEGUARDS:

Records are kept in a secured area, with access limited to authorized marketing personnel; access to information in computer files is limited to personnel having an authorized computer password.

RETENTION AND DISPOSAL:

The master computer file is maintained indefinitely and is updated annually. Hardcopy printouts are destroyed when updated printouts are generated.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager and supply their name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Express Main mailing forms and labels, most of which collect information directly from the customer.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-5563 Filed 3-14-88; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.
Common Stock, Par Value $.02 (File No. 7-3148)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments

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concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5645 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Amre, Inc.
  Common Stock, $.01 Par Value (File No. 7-3135)
Cedar Fair L.P.
  Depository Receipts, No Par Value (File No. 7-3136)
Nicholas Applegate Growth Fund
  Common Stock, $.01 Par Value (File No. 7-3137)
Jepson Corporation
  Common Stock, $.01 Par Value (File No. 7-3138)
Meditrust
  Shares of Beneficial Interest (File No. 7-3139)
Permian Partners L.P.
  Cumulative Convertible Preferred Units No Par Value (File No. 7-3140)
Putnam Premier Income Trust
  Common Stock, No Par Value (File No. 7-3141)
Prudential Strategic Income Fund
  Common Stock, $.01 Par Value (File No. 7-3142)
Scudder New Asia Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7-3143)
Banco de Santander Sociedad
  American Depository Receipts (File No. 7-3144)
Thai Fund (The)
  Common Stock, $.01 Par Value (File No. 7-3145)
U.S. Surgical Co.
  Common Stock, $.01 Par Value (File No. 7-3146)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5646 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 9, 1988

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Alabama Power Company
  Depository Preferred, 1/10 Shares, 8.72 Preferred (File No. 7-3127)
Central Jersey Industries
  Common Stock, $1.00, Par Value (File No. 7-3128)
Clayton Homes, Inc.
  Common Stock, $.10, Par Value (File No. 7-3129)
Oakwood Homes Corporation
  Common Stock, $.50, Par Value (File No. 7-3130)
Rockaway Corporation
  Common Stock, No Par Value (File No. 7-3131)
Sealed Power Corporation
  Common Stock, $.01, Par Value (File No. 7-3132)
Tacoma Boatbuilding Company
  Common Stock, $1.00, Par Value (File No. 7-3133)
Tech-Sym Corporation
  Common Stock, $.01, Par Value (File No. 7-3134)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5647 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.
  Common Stock, Par Value $.02 (File No. 7-3146)

This security is listed and registered on one or more other national securities exchange and is reported in the consoldiated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds,

based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5648 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Prudential Strategic Income Fund (The)
  Common Stock, $.01 Par Value (File No. 7-3120)
Xerox Corporation
  $3.6875 Ten Year Sinking Fund Preferred Stock
  $1.00 Par Value (File No. 7-3121)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested pesons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5649 Filed 3-14-88; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-25426; File No. SR-MSRB-87-11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Fair Dealing, Uniform Practice, and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has interpreted rule G-17 to require dealers assisting issuers to recommend that issuers clearly state whether the issuer reserves the option to redeem escrowed-to-maturity securities prior to their maturity. In addition, the Board has interpreted its confirmation disclosure rules, rules G-12(c) and G-15 (a), to clarify their application to escrowed-to-maturity securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Traditionally, the term escrowed-to-maturity has meant that such securities are not subject to optional redemption prior to maturity. Investors and market professionals have relied on this understanding in their purchases and sales of such securities. Recently, certain issuers have attempted to call escrowed-to-maturity securities. As a result, investors and market professionals considering transactions in escrowed-to-maturity securities must review the documents for the original issue, for any refunding issues, as well as the escrow agreement and state law, to determine whether any optional redemption provisions apply. In addition, the Board understands that there is uncertainty as to the fair market price of such securities which may cause harm to investors.

On March 17, 1987, the Board sent letters to the Public Securities Association, the Government Finance Officers Association and the National Association of Bond Lawyers expressing its concern. The Board stated that it is essential that issuers, when applicable, expressly note in official statements and defeasance notices relating to escrowed-to-maturity securities whether they have reserved the right to call such securities. It stated that the absence of such express disclosure would raise concerns whether the issuer's disclosure documents adequately explain the material features of the issue and would severely damage investor confidence in the municipal securities market. Although the Board has no rulemaking authority over issuers, it advised brokers, dealers and municipal securities dealers ("dealer") that assist issuers in preparing disclosure documents for escrowed-to-maturity securities to alert these issuers of the need to disclose whether they have reserved the right to call the securities since such information is material to a customer's investment decision about the securities and to the efficient trading of such securities.

In the intervening months since the Board's letter, the Board has continued to receive inquiries from market participants concerning the callability of escrowed-to-maturity securities. Apparently, some dealers now are describing all escrowed-to-maturity securities as callable and there is confusion how to price such securities. In order to avoid confusion with respect to issues that might be escrowed-to-maturity in the future, the Board is interpreting rule G-17, on fair dealing, to require that municipal securities dealers that assist in the preparation of refunding documents as underwriters or financial advisors alert issuers of the materiality of information relating to the callability of escrowed-to-maturity securities. Accordingly, such dealers must recommend that issuers clearly state when the refunded securities will be redeemed and whether the issuer reserves the option to redeem the securities prior to their maturity.

Rules G-12(c)(vi)(E) and G-15(a)(iii)(E) require dealers to disclose on inter-dealer and customer confirmations, respectively, whether the securities are "called" or "prerefunded," the date of maturity which has been fixed by the call notice, and the call price. The Board has stated that this paragraph would require, in the case of escrowed-to-maturity securities, a statement to that effect (which would also meet the requirement to state "the date of maturity which has been fixed") and the amount to be paid at redemption. In addition, rules G–12(c)(v)(E) and G–15(a)(i)(E) require dealers to note on confirmations if securities are subject to redemption prior to maturity (callable).

The Board understands that dealers traditionally have used the term escrowed-to-maturity only for non-callable advance refunded issues the proceeds of which are escrowed to the original maturity date or for escrowed-to-maturity issues with mandatory sinking fund calls. To avoid confusion in the use of the term escrowed-to-maturity, the Board has determined that dealers should use the term escrowed-to-maturity to describe on confirmations only those issues with no optional redemption provisions expressly reserved in escrow and refunding documents. Escrowed-to-maturity issues with no optional or mandatory call features must be described as "escrowed-to-maturity." Escrowed-to-maturity issues subject to mandatory sinking fund calls must be described as "escrowed-to-maturity" and "callable." If an issue is advance refunded to the original maturity date, but the issuer expressly reserves optional redemption features, the security should be described on confirmations as "escrowed (or prerefunded) to [the actual maturity date]" and "callable."

The Board believes that the use of different terminology to describe advance refunded issues expressly subject to optional calls will better alert dealers and customers to this important aspect of certain escrowed issues.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

> designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the meachnism of a free and open market in municipal securites, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by interpretive inquiries.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 8, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5653 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25427; File No. SR–NASD-87–31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Inclusion of Put Warrants in the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Part II, section 1(c)(7) of Schedule D to the NASD By-Laws to provide for the inclusion of put warrants in the National Association of Securities Dealers Automated Quotations ("NASDAQ") System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, several member firms have engaged in offerings of put warrants. These instruments grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price, within a specified period of time. A number of companies taking part in the offering of put warrants have requested the inclusion of these instruments in NASDAQ. In the past, the inclusion of a few issues of put warrants in the NASDAQ System has been

authorized by the Executive Committee. In each instance, the Executive Committee concluded that the issue of put warrants was sufficiently similar to the warrants already included in the NASDAQ System that it was approprate to grant an exemption to Schedule D.

The NASD believes that other member firms may be planning similar offerings of put warrants and are likely to request the inclusion of these products in the NASDAQ System. In view of the Executive Committee's conclusion that put warrants are sufficiently similar to warrants already included in the NASDAQ System, and in order to avoid the necessity of continuing to review requests seeking exemptive relief from the Executive Committee on an individual basis in the future, the Board of Governors has approved the proposal to amend the provisions of Schedule D to provide for the inclusion of put warrants in the NASDAQ System.

B. Self Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–87–31 and should be submitted by April 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5652 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25428; File No. SR–NASD-87–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 15, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Article I, Section (c) of the NASD's By-Laws to delete the phrase "located in the United States" from the definition of the term "branch office."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25322, February 8, 1988) and by publication in the **Federal Register** (53 FR 4254, February 12, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5654 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Genentech Inc.
  Common Stock, Par Value $.02 (File No. 7–3147)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5650 Filed 3–14–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 9, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the

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Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Placer Dome Inc.
  Common Shares, No Par Value (File No. 7-3122)
CalMat Co.
  Common Stock, $1.00 Par Value (File No. 7-3123)
Carnival Cruise Lines, Inc.
  Class A Common Stock, $0.01 Par Value (File No. 7-3124)
The Germany Fund, Inc.
  Common Stock, $0.001 Par Value (File No. 7-3125)
UnionFed Financial Corporation
  Common Stock, No Par Value (File No. 7-3126)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5651 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

PRESIDENTIAL LIFE INSURANCE CO.; APPLICATION FOR EXEMPTION

[Release No. IC-16306; File No. 812-6970]

Date: March 9, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Presidential Life Insurance Company (the "Company"), Presidential Variable Account One (the "Separate Account") and Integrated Resources Capital Services, Inc.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants request an exemption from sections 26(a) and 27(c)(2) of the 1940 Act in connection with the issuance and sale of variable annuity contracts which provide for the assessment of a mortality and expense risk charge.

Filing Date: The application was filed on January 27, 1988 and amended on February 24, 1988.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on April 4, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESS: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Presidential Life Insurance Company, 69 Lydecker Street, Nyack, New York 10960.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial Copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Company, a stock life insurance company organized under the laws of the state of New York, established the Separate Account on August 26, 1987. The Separate Account is a segregated investment account of the Company and is registered with the SEC as a unit investment trust.

2. The Company proposes to offer individual flexible purchase payment deferred variable annuity contracts (the "Contracts") which are available for both Qualified and Non-Qualified Retirement Plans under the Internal Revenue Code. The purchase payments under the Contracts will be allocated to the Separate Account. The Separate Account is divided into Divisions. Each Division is invested solely in the shares of one of the portfolios of Integrated Resources Series Trust (the "Fund"), a series fund registered under the Act as a diversified open-end management investment company.

3. The Contracts will be distributed through the principal underwriter, Integrated Resources Capital Services, Inc., a wholly-owned subsidiary of Integrated Resources, Inc.

4. The minimum initial purchase payment for Contracts issued pursuant to a Non-Qualified Plan is $1,000 with minimum additional purchase payments of $500. The minimum initial purchase payment for a Contract issued pursuant to a Qualified Plan is $100.

5. Any premium taxes or other taxes payable to a state or other governmental entity will be charged against the Contract Values.

6. The Company will assess an Annual Contract Charge of $30 against each Contract on the anniversary of the Issue Date of the Contract. This charge reimburses the Company for expenses it incurs in establishing and maintaining the Contracts. The amount of this charge is guaranteed and cannot be increased by the Company. This charge is not assessed during the Annuity Period. When the Contract is surrendered for its full surrender value, on other than the anniversary of the Issue Date of the Contract, the full Annual Contract Charge will be deducted at the time of surrender. This charge has been set at a level necessary to recover actual costs and contains no element of profit.

7. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, the Company deducts a contingent deferred sales charge ("withdrawal Charge") upon the withdrawal of a Contract during the Accumulation Period. After the first Contract Year, there is a Free Withdrawal Amount which applies to the first withdrawal during a Contract Year. The Free Withdrawal Amount is equal to ten (10%) percent of the aggregate purchase payments less prior withdrawals. The withdrawal Charge is deducted from remaining Contract Value so that the actual reduction in Contract Value as a result of the withdrawal will be greater than the withdrawal amount paid. The Withdrawal Charge is 6% of the amount withdrawn if such withdrawal is made within six years of making the purchase payment. Withdrawals of purchase payments are deemed to be on a first-in, first-out basis.

8. The Company will deduct an Administrative Expense Charge equal to .15% of the assets of the Separate Account. This charge is designed to cover the shortfall in revenues from the Annual Contract Charge which are used to reimburse the Company for expenses incurred in the maintenance of the Contracts and the Separate Account.

9. The Company does not intend to profit from the Administrative Expense Charge. Applicants represent that the charge has been set at a level which represents the Company's administrative costs taking into account the Annual Contract Charge. This charge will be reduced to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses. Should this charge prove to be insufficient, the Company will not increase this charge and will incur the loss. The Administrative Expense Charge is assessed during both the Accumulation Period and the Annuity Period.

10. The Company proposes to assess each Division of the Separate Account with daily charges for mortality and expense risks which amount to an aggregate of 1.25% per annum (consisting of approximately .90% for mortality risks and approximately .35% for expense risks.)

11. The mortality risk assumed by the Company arises from its contractual obligation to make annuity payments after the Annuity Date for the life of the Annuitant, to waive the Withdrawal Charge in the event of the death of the Annuitant and to provide the death benefit prior to the Annuity Date. The expense risk assumed by the Company is that the costs of administering the Contracts and the Separate Account may exceed the amount received from the Annual Contract Charge and the Administrative Expense Charge. If the amount deducted for the Mortality and Expense Risk Charge exceeds the Company's actual costs, the excess will be a profit to the Company. The Company expects a profit from this charge.

12. Applicants represent that the 1.25% total which it proposes to charge for the Mortality and Expense Risk Charge is within the range of industry practice for such charge.

13. Applicants' representations are based upon an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, and the expense risks, taking into account the existence of charges against separate account assets for other than mortality and expense risks and the estimated costs, now and in the future, for certain product features. The Company will maintain at its principal office, available to the Commission, a memorandum setting forth in detail this analysis.

14. Applicants acknowledge that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be applied to distribution expenses not reimbursed by the Withdrawal Charge.

15. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the SEC.

16. The Company represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5655 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16307; 812-6907]

GS Mortgage Securities Corp.; Application

March 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of application for amended order of exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: GS Mortgage Securities Corp. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order amending an existing order (Investment Company Act Release No. 15670, April 8, 1987) ("Existing Order") to exempt Applicant and certain trusts (the "Trust") from all provisions of the 1940 Act in connection with the proposed issuance of collateralized mortgage obligations and sale of beneficial ownership interests in the Trusts.

Filing Dates: The application was filed on October 21, 1987, and amended on January 12, 1988, and March 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 30, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Exchange Place, 53 State Street, Boston Massachusetts 02109.

For Further Information Contact: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a direct, wholly-owned, limited purpose subsidiary of Goldman, Sachs & Co., a registered broker-dealer and investment adviser. The Existing Order conditionally exempts Applicant and certain Trusts from all provisions of the 1940 Act in connection with the Trusts' issuance of collateralized mortgage obligations ("Bonds") and the Applicant's proposed sale of beneficial ownership interests in such Trusts ("Trust Certificates"). Applicant now seeks to amend the Existing Order to enable Trusts organized by it to (1) issue variable or floating interest rate Bonds which are structured in ways additional to those described in the Existing Order, (2) issue Bonds collateralized by GS Strips and Funding Agreements (each as described below), (3) sell Bonds to foreign investors pursuant to the conditions described in the application, and (4) sell Trust Certificates to sophisticated non-institutional investors.

2. Applicant will form Trusts for the limited purpose of issuing one or more

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series (each, a "Series") of Bonds and investing in certain Mortgage Certificates which will be used to collateralize such Bonds. By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified pass-through" mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (3) Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (4) Stripped Mortgage Backed Securities issued by GNMA, FHLMC or FNMA ("Stripped Mortgage Backed Securities"), and/or (5) Stripped Mortgage Certificates ("GS Strips") issued by a trust organized by Applicant.[1]

3. The Mortgage Certificates securing each Series of Bonds will be either (i) owned by the Trust issuing such Bonds or (ii) owned by homebuilders, thrifts, commercial banks, insurance companies, mortgage bankers and other entities engaged in mortgage finance, including limited purpose financing entities owned by such entities, and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements").

4. Each Trust will be established under a separate trust agreement ("Trust Agreement") between Applicant, acting as depositor, and an independent bank, trust company or other fiduciary, acting as owner-trustee (the "Owner Trustee"). Each Trust will issue one or more Series of Bonds pursuant to the terms of an indenture ("Indenture") between the Trust and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures (each, a "Series Supplement"). Each Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

5. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates (or Funding Agreements); (b) the Bonds will be directly or indirectly (through Funding Agreements) secured by Mortgage Certificates and certain funds, accounts and other collateral (the "Collateral") having a collateral value, determined under the Indenture and the applicable Series Supplement, at the time of issuance of the Bonds and following each payment date, at least equal to the outstanding principal amount of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds, plus, if so specified in the Series Supplement for such Series of Bonds, reinvestment income thereon, together with the other Collateral pledged to secure such Series of Bonds, will be sufficient to pay any interest due on the Bonds of such Series and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Bond Trustee and will be subject to the lien of the related Indenture.

Applicant's Legal Analysis

1. The requested order is necessary and appropriate in the public interest because (a) the Applicant and the Trusts are not the type of entities, and their activities are not the type of activities, intended to be regulated by the 1940 Act; (b) the Applicant and the Trusts may be unable to proceed with their proposed additional activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933 ("1933 Act") and thereafter by the Bond Trustee representing their interests under the Indenture; (d) the Applicant's activities are intended to serve a recognized and critical public need; and (e) the disclosure to the owners of the Trusts and the limitation of the owners of each Trust to no more than 100 sophisticated investors provide safeguards adequate to assure that such potential owners do not require the protection of the 1940 Act.

Applicant's Conditions

Applicant expressly consents to the following conditions with respect to the requested order:

A. Conditions Relating to the Bonds

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to Section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. In addition, the Mortgage Certificates directly or indirectly securing the Bonds will be limited to GNMA Certificates, FHLMC Certificates, FNMA Certificates, Stripped Mortgage Backed Securities issued by GNMA, FHLMC or FNMA, and/or GS Strips, as described herein.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged as security for a Series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in conditons A.(2) and A.(4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as security for a Series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New

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[1] GS Strips are similar to Stripped Mortgage Backed Securities issued by GNMA, FHLMC and FNMA in that GS Strips are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on the underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. In addition, each series of GS strips (a) will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of GNMA Certificates, FHLMC Certificates or FNMA Certificates and (c) will be "mortgage related securities "within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. Use of GS Strips as collateral for Bonds will not reduce the security afforded to Bondholders nor expose them to a level of risk significantly different from that present in a Series of Bonds secured by GNMA, FHLMC or FNMA Certificates, or by Stripped Mortgage Backed Securities.

Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

(4) All Collateral securing a Series of Bonds will be held by the Bond Trustee, or on behalf of the Bond Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant, any Trust, or the Owner Trustee. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with any of the Trusts or the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of each Trust. In addition, as long as any Bonds of a Series are outstanding, on the basis of a review of the Collateral, the independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal of and any interest due on such Series of Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) Each class of adjustable, variable or floating interest rate Bonds will have set maximum interest rates (interest rate caps) which may vary from period to period as specified in the related prospectus or other offering document.

(2) The Mortgage Certificates and other Collateral initially pledged to secure a Series of Bonds, including a Series of Bonds containing a class or classes of adjustable, variable or floating rate Bonds, will be sufficient to pay the maximum amount of interest and principal due to such Bonds for the life of such Bonds.

(3) In addition to those mechanisms referred to in the application, Applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of floating rate Bonds. Applicant will give the Staff of the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of paragraph B.(2) and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(1) The election by a Trust to treat the arrangement by which any Series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If such an election is made, the Trust that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a matter satisfactory to the agency or agencies rating the Bonds. Each Trust that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the Trust by one or more of the methods described in the application for the Existing Order.

(2) Each Trust will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Trust to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Trust Certificates

(1) Applicant will sell Trust Certificates only in such Trusts which issue a Series of bonds collateralized by GNMA, FNMA and FHLMC Certificates, including Stripped Mortgage Backed Securities, or GS Strips, or Funding Agreements secured by such certificates. Trust Certificates will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Trust Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 of such Trust Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing a Trust Certificate and will have direct, personal and significant experience in making investments in mortgage related securities. Owners of Trust Certificates will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employees benefit plans, insurance companies, real estate investment Trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage related securities.

(2) Each sale of a Trust Certificate will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of a Trust Certificate will prohibit the transfer of such Trust Certificate if there would be more than 100 beneficial owners of Trust Certificates of any Trust at any time.

(4) Each sale of a Trust Certificate will require each purchaser thereof to represent that it is not purchasing for distribution and that it will hold such Trust Certificate in its own name or for accounts as to which it exercises sole investment discretion.

(5) Each sale of a Trust Certificate will provide that (i) no owner of such Trust Certificate may be affiliated with the Board Trustee and (ii) no holder of a Trust Certificate may be affiliated with either the custodian of the Mortgage Certificates or the agency rating the Bonds of the relevant Series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Certificates on behalf of the Board Trustee or (b) any statistical rating agency rating the Bonds.

(7) If any shares of the common stock of the Applicant were to be sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the Applicant, the relief afforded by an order granted on the application would not apply to subsequent Bond offerings by the Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5582 Filed 3-14-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1174]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 6, 1988 at 9:30 a.m. in Room 856, Federal Communications Commission, 1919 M St. NW., Washington, DC.

Study Group B deals with the Preparatory Committee for World Administrative Telegraph and Telephone Conference (PC/WATTC). The Preparatory Committee has finished its work.

The purpose of the meeting will be to report on the work of the Ad hoc group which has been meeting to review U.S. position for the WATTC meeting itself, prior to the appointment of a head of that delegation.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102.

Date: March 2, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 88-5576 Filed 3-14-88; 8:45 am]

BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice 1054]

Delegation of Authority 145-6: Order Amending State Department Delegation of Authority No. 145

By virtue of the authority vested in the Secretary of State by section 4 of the Act of May 26, 1949 (22 U.S.C. 2685), I hereby direct that State Department Delegation of Authority No. 145, as amended, be further amended by deleting the word "and" the second time it appears in section 1(a)(3)(A) and by inserting after subparagraph (B) of that section a new subparagraph (C) to read as follows:

> , and (C) Section 1454 of the Department of Defense Authorization Act, 1986 (P.L. 99-145, 10 U.S.C. 2547), and (to the extent not otherwise expressly delegated or reserved) other authorities and responsibilities of the Secretary of State relating to the provision of Department of Defense equipment or services for humanitarian purposes.

This Order shall be published in the **Federal Register.**

Dated: February 23, 1988.

John C. Whitehead,

Acting Secretary of State.

[FR Doc. 88-5579 Filed 3-14-88; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1056]

Fishermen's Protective Act Procedures; Fee

AGENCY: Department of State.

ACTION: Notice of change of due date for second installment of fees for the agreement year from October 1, 1987 through September 30, 1988.

SUMMARY: Section 7 of the Fishermen's Protective Act of 1967, as amended, requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees fund a program which compensates fishing vessel owners for certain losses they have incurred when vessels have been seized by foreign nations. 52 FR 43145 established the fee for the present agreement year (October 1, 1987, through September 30, 1988) at $22 per gross vessel ton, optionally payable in two equal installments, the first due no later than November 15, 1987, and the second due no later than March 15, 1988. This notice changes the date on which the second payment is due to June 1, 1988.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, telephone number (202) 647-2009.

SUPPLEMENTARY INFORMATION: The Fishermen's Guaranty Fund, under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971-1980), (the "Act"), compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on claims to jurisdiction not recognized by the United States or exercised in a manner inconsistent with international law as recognized by the United States. Pre-existing agreements are required. A fee of $22 per gross vessel ton was established for the present agreement year (October 1, 1987 through September 30, 1988) and appeared in 52 FR 43145. Moving the due date for the second installment of fee payments for the 1988 fiscal year from March 15 to June 1, 1988, will reduce financial burden on fishermen who also have substantial insurance premiums due in March.

Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency * * * contracts," this rule is exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

For the Secretary of State.

Date: March 7, 1988.

Richard J. Smith,

Acting Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 88-5577 Filed 3-14-88; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-11]

Tuna Fish-Tariff-Rate Quota; Calendar Year 1988

AGENCY: U.S. Customs Service, Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1988.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, TSUS, is based on the United States pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1988 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for

consumption during the period January 1 through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Karen L. Cooper, Chief, Quota Branch, Quota and Quality Assurance Division, Office of Trade Operations, U.S. Customs Service, Washington, DC 20229, (202/566-8592).

It has not been determined that 85,185,252 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1988, at the rate of 6 percent ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 112.34 TSUS.

Dated: March 8, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88-5664 Filed 3-14-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

State Government and Congressional Information Systems: A Program for Central American Parliamentarians and Political Leaders

The Office of Private Sector Programs will assist in supporting an exchange that will bring twelve parliamentarians and young political party representatives from six Central American countries to the United States to provide them with an overview of the American legislative process and to enhance the technical and research skills of the specialized support staffs of the legislative assemblies in these countries. The participants will be selected by USIA representatives abroad. The project, scheduled for June 1988, will be conceived and executed by a U.S. not-for-project institution with expertise in State Government and Congressional information systems. The program design will include a state assembly orientation program to observe state legislative processes, information systems, and research support; a comparison of state and federal government in the U.S.; and presentations and meetings in Washington, DC, on library and information retrieval systems, research support groups, and the basic process of making legislation.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully developed and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs,
Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs),
United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-5578 Filed 3-14-88; 8:45 am]

BILLING CODE 8230-01-M

Educational Exchanges With the Soviet Union Application for Fiscal Year 1988

USIA invites applications from U.S. educational, cultural and other not-for-profit institutions to conduct exchanges of students and young people with the Soviet Union, in conformity with recent legislation (Pub. L. 100-204, section 301B) pursuant to the General Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Contacts, Exchanges and Cooperation in the Scientific, Technical, Educational, Cultural and Other Fields (November, 1985).

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world."

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for educational and cultural exchanges of students and young people between the U.S. and the USSR through a wide variety of substantive bilateral activities. USIA seeks to encourage participation of a broad range of sectors, institutions, and geographic areas in the U.S. and the USSR. Support will be available for projects of up to two-years' duration. Preference will be given to projects that expand the range of existing U.S.-Soviet exchanges (by scope, field of focus or institutional base), although support for ongoing activities will not be excluded.

Support is offered for two categories of exchange programs. Category A supports exchanges of young people between the ages of 15 and 25. Category B supports student or student-related exchanges at the undergraduate or graduate level. Both existing and new projects are eligible.

Applications must be received by USIA no later than 5:00 p.m. EDT on Monday, May 2, 1988.

Category A: Youth Exchange

Grant funding for projects submitted under this category is intended to encourage primarily two-way exchanges of young people between the ages of 15 and 25. Participants must be either U.S. or Soviet citizens.

Organizations must document one or more of the following qualifications: (1)

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Three years or more of experience in conducting youth exchanges; (2) three years or more of experience in sponsoring substantive activities for young people; (3) experience conducting youth or adult exchanges with the Soviet Union; (4) experience programming foreign students or visitors in the U.S. Additionally, organizations should be able to demonstrate an adequate resource base for conducting programming in more than one location, if the project requires it. Organizations seeking funds for a high-school study program must be designated by USIA under the "Criteria for Teenager Exchange Visitor Programs."

Preference is given for project activities that exhibit the following features:

—Thematic focus—The substantive portion of the program should have a specific focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, literature, fine arts and film/video); language and culture; conservation and the environment; historic preservation; political, social and economic issues; and agriculture (rural or farm-based exchanges). All projects must demonstrate a balance of views in the presentation of the central theme. The balance of substantive programming and other activities will be carefully reviewed for contribution to project goals. For-credit post-secondary study and sports exchanges are not eligible for support.

—Extensive interaction between American and Soviet youth—Activities should be carefully programmed to provide substantial interaction between the two societies, *e.g.*, homestays, joint seminars, and summer enrichment programs in both countries.

—Orientation programs—All participants should be provided an orientation which introduces the program theme, administrative issues, and substantive issues likely to be raised by their U.S. or Soviet counterparts.

—Minimum stay of four weeks—USIA has a preference for programs in which the duration of stay in country is longer than four weeks. Consideration will be given to those projects which, for reasons of Soviet requirements, are shorter, but under no circumstances will a proposal be reviewed if the length of stay in country is less than three weeks.

—Language qualifications—Language capability is desirable, but not required. However, some participants in each incoming delegation should be conversant in English; some participants in each outgoing delegation should be conversant in Russian and other relevant Soviet languages.

—Adequate lead time to ensure a successful exchange—Projects should include adequate planning time. For those projects involving exchanges to occur after October 1, 1988, the application must demonstrate to the Agency's satisfaction the need to secure commitments or to undertake advance planning before October 1.

Allowable costs for Category A projects: Project awards will be made in a wide range of amounts but will not normally exceed $50,000. The primary objective of grant funding is to expand or enhance exchange programs along the lines described above. Therefore, grant-funded items of expenditure will generally be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Admission fees, camping fees, conference/registration fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing.

Category B: Academic Exchange

Grant funding under this category is intended to enhance and expand the scope of U.S.-USSR student and student-related exchanges in ways that complement existing exchange programs between the two countries. Applications for substantive academic exchange activities will be accepted from accredited, degree-granting U.S. universities or colleges and from not-for-profit organizations engaged in international educational exchange at the undergraduate or graduate level. Participants must be either U.S. or Soviet citizens.

Preference will be given to proposals that represent new approaches to exchange with the Soviet Union, introduce contact with Soviet government ministries and educational and cultural institutions beyond those typically involved in exchanges to date, including institutions below the ministerial level, or involve placement of American students in geographic areas of the USSR outside Moscow and Leningrad. Preference will be given to proposals for exchanges primarily in the arts, humanities, and social sciences.

Language qualifications: Students should have sufficient fluency in the language of the country to be visited to pursue university studies in that language and to converse with citizens of the country without the aid of interpreters.

Allowable costs for Category B projects: The anticipated maximum level of grants is $75,000. Grant-funded items of expenditure will be limited to the following categories:

—In-country travel and per diem.
—Orientation or preparation costs; briefing materials.
—Speaker honoraria (not to exceed $150 per day per speaker).
—Cultural allowances (not to exceed $150 per participant).
—Academic program fees.
—International travel, normally limited to partial support for outgoing Americans.
—Up to 20% of costs requested of USIA may be allotted to administrative costs.

It is expected that applications will demonstrate substantial cost sharing, including tuition waivers where applicable.

Requirements for Application (Both Categories)

1. *Eligibility:* In cases where an application is being submitted on behalf of a U.S. and a Soviet institution, applications must be submitted by the U.S. partner.

2. *Application procedures:* Applicants must submit one original and eleven (11) complete copies of their proposals to:

For Category A proposals:

U.S.-Soviet Exchanges Program, Youth Exchange Staff, E/YX, Room 357, United States Information Agency, 301 4th St. SW., Washington, DC 20547.

For Category B proposals:

U.S.-Soviet Exchanges Program, European Exchanges Branch, Office of Academic Programs, E/AEE, Room 208, United States Information Agency, 301 4th St. SW., Washington, DC 20547.

In order to be eligible for review, the proposal must include:

(1) *Summary document:* A typed, double-spaced abstract of approximately two pages;

(2) *Narrative:* Total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions, with a copy of the charter and list of Board of Directors of the U.S. institution; information on the applicant's prior experience with Soviet exchanges, if any, including details on numbers and length of exchanges in each direction; and a description of the institution's resources that would support the movement of participants from one location to another (if proposed) during the course of the project. Institutions seeking support from USIA for the first time, or those whose experience in the field of exchanges proposed for support is of less than four-years' duration, should state this fact.

N.B. Organizations with less than four years' experience with exchanges are limited by USIA grant guidelines to grants of $60,000.

b. A detailed description of the proposed exchange, including but not limited to: A statement of specific project goals, with reference to ways in which the proposed exchange can contribute to overall U.S.-USSR understanding; name and qualifications, including language skills, of project director and senior project personnel; general description of potential participants and their qualifications, including language skills; a detailed, specific description of program activities, including when and where they will occur, and a justification for each proposed activity in terms of the project's overall goals. Proposals must include a timetable for project activities. Proposals for ongoing activities shuld identify ways in which the original scope of the exchange will be broadened or enriched as a result of the USIA grant. Each proposal must also include a plan for institutional evaluation of the exchange activity. *N.B.: All projects must document active planning with Soviet counterpart institutions before October 1, 1988.*

(3) *A detailed, three-column budget* outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. institutions.

Required format for budget: All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number of round trips by number of participants per fiscal year. Each maintenance request should specify number of participants and rate. For per diem, the request should specify rate times number of participants times number of days. Breakdowns for each category should be provided. direct and administrative costs absorbed by each institution should be specified along with absorbed salary and benefits, under the U.S. and Soviet institutions columns.

	USIA	US inst.	Soviet inst.[1]
Year 1:			
International travel			
Domestic travel			
Maintenance and per diem costs[2]			
Salary and benefits[3]			
Academic program costs			
Orientation costs			
Enrichment programs			
Cultural allowances			
Year 2:			
(Repeat above categories for year 2)			

[1] Assignment of exact dollar or ruble costs may not be possible. In such cases, please provide specific descriptions of activities to be supported by the Soviet side.

[2] Per diem rates may not exceed the maximum set by the U.S. Department of State for overseas locations and the General Services Administration for U.S. localities.

[3] Participating institutions are expected to continue full salary and benefits for staff responsible for organizing and managing the exchange.

No dependents' costs are allowable.

(4) *Appendices* should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the principal project staff, not to exceed two pages in length each, clearly indicating the level of language skills, overseas experience, including experience in the USSR, and other evidence of familiarity with the USSR, experience related to youth or academic exchange, as appropriate, relevant publications and research activities, and citizenship. Bio-sketches for the U.S. project staff must be included; those of non-U.S. staff are desirable but not required.

b. Documentation of institutional support for the proposed exchange program, *including a signed letter of endorsement from the U.S. institution's president, vice-president, chancellor or provost.* Proposals should also provide evidence (if possible, in the form of signed letters from or agreements with heads of universities or other organizations) that designated Soviet institutions are prepared to participate in and support the exchange described in the proposal. General agreements signed or under negotiation with the intended partner institution would also be evidence of Soviet interest and should be cited.

3. *Review process:* USIA will acknowledge all proposals and will send cover sheets and other forms for completion and return to the Agency to applicants whose proposals have arrived complete and within deadline. Technically eligible proposals will be forwarded to committees of USIA officers for review in conformity with the guidelines and criteria set forth herein. All proposals will be reviewed by the Agency's Office of General Counsel. Category B proposals will also be submitted to the Board of Foreign Scholarships.

Complete applications in both categories consistent with the above guidelines will be reviewed according to the following criteria;

a. Soundness of proposal, *e.g.*, as reflected in focused goals, selection of activities, and consistency with Agency program purposes.

b. Feasibility of the program plan.

c. Applicants' experience relevant to program goals.

d. Language capability or program participants as defined above.

e. Multiplier effect. The effects of the exchanges should extend beyond the immediate participants.

f. Contribution to expanding the range of U.S.-USSR exchanges. if the proposal is for support for an established activity, it should provide evidence that USIA support would enhance the exchange relationship.

g. Cost of effectiveness. USIA encourages cost-sharing.

4. *Deadline:* Complete proposal packages must be received by USIA on or before May 2, 1988, 5:00 p.m. EDT. Applicants are responsible for the submission of complete applications. All required items must be received in one package by deadline.

5. *Notification:* All applicants will be notified of the results of the review process on or about July 15, 1988. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

Category A: Janet Garvey, Youth Exchange Staff (202)485-7299.

Category B: William Dickson, Academic Exchanges Division, Europe Branch (202) 485-1509.

Dated: March 9, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 88-5589 Filed 3-14-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

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The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 8, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Medicine and Surgery
2. Application for Furnishing Nursing Home Care to Beneficiaries of the Veterans Administration
3. VA Form 10–1170
4. The information allows the VA medical center staff to determine if the facility (respondent) is, in fact, a nursing home and if the staff of the nursing home appears to meet 42 CFR standards
5. Non-recurring
6. Businesses or other for-profit, Small businesses or organizations, Non-profit institutions
7. 400 responses
8. 133 hours
9. Not applicable

[FR Doc. 88–5559 Filed 3–14–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 10, 1988.

TIME AND DATE: 10:00 a.m., Thursday, March 17, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Ronnie Beavers, et al. and UMWA v. Kitt Energy Corp.*, Docket No. WEVA 85–73–D. (Issues include whether the judge erred in holding that Kitt Energy discriminated against the complainants in violation of Section 105(c) of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–5728 Filed 3–11–88; 3:21 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 21, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement of the Board's organization and procedures and delegation of administrative responsibility and authority. (This item was originally announced for a closed meeting on March 14, 1988.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–5733 Filed 3–11–88; 3:43 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 14, 21, 28, and April 4, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 14

Monday, March 14

2:00 p.m.
Briefing on the Status of Efforts to Develop a De Minimis Policy (Public Meeting)

Thursday, March 17

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood–2 (Public Meeting)
2:00 p.m.
Briefing on Status of TMI–2 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Restart (Tentative) (Postponed from March 10)

Friday, March 18

10:00 a.m.
NRC Participation in International Agreements and Research Programs (Public Meeting)

Week of March 21—Tentative

Monday, March 21

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)

Tuesday, March 22

10:00 a.m.
Discussion/Possible Vote on Rancho Seco (Public Meeting)
2:00 p.m.
Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)

Thursday, March 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 28—Tentative

Thursday, March 31

10:00 a.m.
Briefing on Proposed Final Rule on Station Blackout (Public Meeting)
2:00 p.m.
Briefing on High Priority AEOD Issues (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Week of April 4—Tentative

Thursday, April 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Pending Investigations (Closed—Ex. 2, 5, & 7) was held on March 1.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634–1410.

William M. Hill, Jr.,

Office of the Secretary.

March 10, 1988.

[FR Doc. 88–5843 Filed 3–10–88; 4:39 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on March 8, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation a meeting scheduled for March 22, 1988, in Washington, DC. The members will consider the Postal Rate Commission's recommended decision in Docket No. R87–1.

The meeting is expected to be attended in person or by telephone by the following: Governors Griesemer, Hall, McConnell, Nevin, Peters, Ryan

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and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5; section 410(c)(4) of Title 39, United States Code; and § 7.3(c), (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-5693 Filed 3-11-88; 10:48 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 53, No. 50
Tuesday, March 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-63-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

Correction

In notice document 88-4913 appearing on page 7230 in the issue of Monday, March 7, 1988, the docket number was omitted. It should read as it appears in the headings above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Correction

In notice document 88-4391 appearing on page 6205 in the issue of Tuesday, March 1, 1988, make the following correction:

In the first column, in the first paragraph, the date in the last two lines should read, "March 18, 1988".

BILLING CODE 1505-01-D

federal register

Tuesday
March 15, 1988

Part II

Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

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12 CFR Parts 3, 225 and 325

Risk-Based Capital; Notice of Proposed Guidelines

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 88-5]

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0628]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital; Risk-Based Capital Guidelines

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation.

ACTION: Notice of proposed guidelines.

SUMMARY: Since the early 1980s, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("Office" or "OCC") (collectively, "the Federal banking agencies" or "Agencies") have employed minimum supervisory ratios of primary and total capital to total assets in assessing the capital adequacy of national and state-chartered banks and bank holding companies (collectively, "banking organizations").

While these ratios of capital to total assets have served as a useful tool for assessing capital adequacy, the Federal banking agencies believe that there is a need for a measure that is more sensitive to the risk profiles of individual banking organizations. As a result, the Federal banking agencies first proposed in early 1986 the adoption of a risk-based capital measure that took explicit account of broad differences in risks among a banking organization's assets and off-balance sheet items. Based, in part, on comments received in response to that earlier proposal, the Federal banking agencies, in conjunction with the Bank of England, published a revised risk-based capital proposal in early 1987, which would have established risk-based capital standards applicable to banking organizations in the United States and the United Kingdom ("U.S./U.K. proposal" or "measure"). Implementation of the U.S./U.K. proposal was deferred to enlist the participation of additional countries in the risk-based capital agreement.

The Federal banking agencies are now seeking public comment on a revised risk-based capital proposal in lieu of the U.S./U.K. measure. The current proposal is based upon a risk-based capital framework developed jointly during the past year by supervisory authorities from 12 major industrial countries. Adoption of this proposal would achieve important goals long sought by the Agencies. First, it would establish a uniform risk-based capital framework, applicable to all federally-supervised banking organizations, that is more sensitive to credit risk factors, including off-balance sheet exposures. Second, it would encourage international banking organizations to strengthen their capital positions. Finally, it would mitigate a source of competitive inequality arising from differences in national supervisory requirements.

This proposal represents a major step in the process of coordinating with regulatory authorities of other countries to establish appropriate capital standards for banking organizations, in accordance with the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3901 *et seq.*

DATE: Comments must be submitted on or before May 13, 1988.

ADDRESSES: Comments should be sent to the appropriate Federal banking agency at the following addresses:

OCC: Comments should be sent to Docket No. 88-5, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Lynette Carter. Telephone (202) 447-1800. Comments will be available for inspection and photocopying at the same address.

Board: Comments should refer to Docket No. R-0628, and should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th and Constitution Avenue NW., between the hours of 9:00 a.m. and 5:00 p.m. weekdays. Comments may be inspected in Room 1119, Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FDIC: Comments should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Ed Irmler, Associate Director, Economic and Policy Analysis Division, (202/447-1924); Larry Senter, National Bank Examiner, Commercial Activities Division, (202/447-1164); C. Stewart Goddin, Senior International Economic Advisor, Multinational and Regional Bank Division, (202/447-1747); Sanford Brown, Attorney, Legal Advisory Services Division, (202/447-1880), Office of Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

Board: Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), Stephen M. Lovette, Manager (202/452-3622), Rhoger Pugh, Manager 202/728-5883), Norah Barger, Financial Analyst (202/452-2402), or Kelly S. Shaw, Financial Analyst (202/452-3054), Division of Banking Supervision and Regulation, Board of Governors., or J. Virgil Mattingly, Deputy General Counsel (202/452-3430), or Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division, Board of Governors; or Andrew Spindler, Vice President (212/720-5846), Betsy B. White, Vice President (212/720-5874), Donald E. Schmid, Manager (212/720-6011), or Jeffrey Bardos, Bank Supervision Specialist (212/720-7962), Federal Reserve Bank of New York. For the hearing impaired *only*, Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Stephen G. Pfeifer, Examination Specialist (202/898-6894) or Robert F. Miailovich, Associate Director (202/898-6918) Division of Bank Supervision; or Claude A. Rollin, Attorney, Legal Division (202/898-3985). Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

I. Supplementary Information and Background

The Purpose of the Risk-Based Capital Proposal

In 1986, the Federal banking agencies issued for public comment a risk-based capital proposal applicable to U.S. banks and bank holding companies. The principal objectives of this early proposal, as well as subsequent proposals, were: (1) To develop more systematic procedures for factoring on- and off-balance sheet risks into supervisory assessments of capital adequacy; and (2) to foster coordination among supervisory authorities from major industrial countries, many of which employ risk-sensitive capital measures.

The risk-based capital proposal was consistent with one of the major goals of the International Lending Supervision Act of 1983, which was to strengthen the bank regulatory framework by encouraging greater coordination among regulatory authorities in different countries. In addition to enhancing the Federal banking agencies' authority to establish and enforce minimum levels of capital for U.S. banking organizations, this Act instructed the Federal banking agencies to work with governments, central banks, and regulatory authorities of other major countries to maintain and, where necessary, strengthen the capital positions of banking institutions involved in international lending.

In 1987, the Federal banking agencies, in conjunction with the Bank of England, issued a revised risk-based capital proposal ("U.S./U.K. proposal" or "measure") that would apply to U.S. and U.K. banking organizations.[1] Like the 1986 proposal, a principal objective of the U.S./U.K. measure was to promote the convergence of supervisory policies on capital adequacy assessments among countries with major banking centers. In issuing the proposal, U.S. and U.K. supervisory authorities expressed the hope that it would provide a reasonable basis for working with other countries to achieve a more consistent international framework for assessing capital adequacy.

The Federal banking agencies deferred action on the U.S./U.K. proposal in order to participate in the development of a more broadly-based capital framework that would be applicable to international banking organizations from the major industrial countries. The revised capital proposal described in this Notice of Proposed Guidelines is based upon a risk-based capital framework ("Basle capital framework") developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee").[2] Officials from each of the Federal banking agencies are members of the Basle Supervisors' Committee and have played an active role in the development of the Basle capital framework.[3] This framework was endorsed by the Group of Ten central bank governors and recommended to each of the countries represented on the Basle Supervisors' Committee as a basis for seeking comment on a risk-based capital adequacy measure applicable to international banking organizations in the major industrial countries.

The risk-based capital guidelines described in sections II through V of this joint Notice constitute a proposal for applying the Basle capital framework to U.S. banking organizations. The text of each Federal banking agency's proposed guidelines is attached to this Notice. The guidelines for national banks were developed by the OCC, the guidelines for state-chartered non-member banks by the FDIC, and the guidelines for state member banks and bank holding companies by the Federal Reserve. The Federal banking agencies are seeking comment on these risk-based capital guidelines which supersede the U.S./U.K. proposal.

The current proposal achieves the principal objectives the Agencies have sought in connection with their previous proposals. In particular, the proposal establishes a systematic analytical framework that: (1) Makes regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (2) takes off-balance sheet exposures into explicit account in assessing capital adequacy; and (3) minimizes disincentives to holding liquid, low-risk assets.

The development of a risk-based framework in conjunction with supervisory officials from other industrial countries acknowledges the growing internationalization of major banking and financial markets throughout the world. The harmonization and strengthening of capital standards worldwide should contribute to a more stable and resilient international banking system and help mitigate a source of competitive inequality for international banks stemming from differences in national supervisory requirements.

In addition to international banks, the Federal banking agencies are proposing to extend the application of the risk-based capital framework to all other U.S. banking organizations, regardless of size. Although the Agencies recognize the need to minimize the additional reporting and bookkeeping burden that the risk-based capital framework may impose on small banks, the underlying rationale behind the use of a risk-based capital approach applies to small domestic banking institutions as well as large international banking organizations.

This proposal consists of a definition of capital, a system for assigning assets and off-balance sheet items to risk categories, and a schedule for establishing minimum supervisory standards. The current proposal also provides for transitional arrangements and a phase-in period to facilitate adoption and implementation of the measure. Each of these areas is described in greater detail in sections II through V below. Following is a brief overview of the Basle capital framework and a discussion of how the proposal, as it applies to U.S. banking organizations, relates to previous proposals.

Overview of the Basle Capital Framework

The framework, as already noted, comprises four broad aspects:

(1) A common international definition of core or Tier 1 capital (consisting of common stockholders' equity), and a "menu" of internationally-accepted non-common equity items for supplementing core capital (supplementary or Tier 2 capital components). The proposal affords national supervisors a degree of latitude, within prescribed parameters, for determining which supplementary components will qualify as capital.

(2) A general framework for assigning assets and off-balance sheet items to five broad risk categories (0, 10, 20, 50 and 100 percent) and procedures for calculating a risk-based capital ratio.

(3) A schedule for achieving a minimum risk-based capital ratio by the end of 1990 of 7.25 percent, (of which at least 3.25 percentage points should be in the form of common stockholders' equity) and, by the end of 1992, 8.0 percent (of which at least 4.0 percentage points should be in the form of common stockholders' equity).

(4) Transitional arrangements and a phase-in period (running through the end of 1992) permitting banking organizations to include some supplementary items in core capital on a temporary basis and providing time to bring their capital positions into full conformity with the risk-based capital definitions and minimum supervisory standards.

In setting out a system for measuring and assessing capital adequacy, the Basle capital framework does not mandate a completely uniform structure to be employed by all countries. Rather, the framework attempts to recognize and accommodate, within prescribed limits, unique features of individual

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[1] On March 18, 1987, the Board, together with the Bank of England, also issued a proposal to incorporate counterparty credit risks stemming from interest rate and foreign exchange rate contracts into the proposed U.S./U.K. risk-based capital measure.

[2] The Basle Supervisors' Committee consists of representatives of the central banks and supervisory authorities from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, United Kingdom, United States), Switzerland, and Luxembourg.

[3] The Basle capital framework is described in a consultative paper prepared by the Basle Supervisors' Committee and issued jointly by the Federal banking agencies on December 10, 1987. A copy of the paper and the joint press release are available upon request from the Federal banking agencies.

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countries arising from differences in basic accounting procedures, in the structure and evolution of banking and financial markets, and in fundamental supervisory methodologies and techniques. While not eliminating these differences, the Basle capital framework nonetheless represents a significant step toward the adoption of more consistent international procedures for measuring and evaluating capital adequacy in relation to a broadly-accepted international norm.

The Basle capital framework focuses principally on broad categories of credit risk, although it does provide latitude to national supervisory authorities to take into account interest rate risk associated with certain assets in assigning them to risk categories. The measure does not, however, take account of other factors that can affect an organization's financial condition, such as overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks. A final assessment of capital adequacy must take account of each of these considerations, including, in particular, the level and severity of problem and classified assets. Thus, the risk-based capital ratio is but one element in the assessment of capital adequacy, and the final supervisory judgment on an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

The definitions and provisions of the Basle capital framework, including the definitions of supplementary capital components, the provisions for assigning assets to risk categories, and the interim and final ratio standards, would establish *minimum* supervisory guidelines and standards. Supervisory authorities in each country would be responsible for determining how the risk-based framework would apply to organizations in that country, including whether considerations of safety and soundness or other factors, such as national accounting procedures, justify departures from the Basle framework. Such departures could involve the establishment of definitional guidelines or capital standards that are higher or more restrictive than those incorporated in the proposed Basle capital framework.

Relationship of the Current Proposal to the Previous Proposal

The current risk-based capital measure, based upon the Basle capital framework, is similar to the previous U.S./U.K. proposal in a number of respects.

First, the general nature and construction of the current proposal broadly parallel the U.S./U.K. measure. The current proposal takes the form of supervisory guidelines rather than a formal regulation. Under the current proposal, an organization's risk-based capital ratio would continue to be determined by dividing its capital base by the sum of its weighted risk assets. The proposal defines capital to include core components, generally on an unlimited basis, and other supplementary elements, subject to certain prudential limitations. Weighted risk assets are determined by assigning assets and credit equivalent amounts of off-balance sheet items to one of five risk categories (0, 10, 20, 50 and 100 percent, based primarily upon broad judgments of relative credit risk. (An illustration of how the proposed ratio would be calculated is contained in Table I.)

Second, with the exception of some important, differences noted below, the general treatment accorded many assets and off-balance sheet items in the current proposal is broadly similar to that of the U.S./U.K. proposal. As under that earlier proposal, all short-term claims on banks, both foreign and domestic, would be given identical low-risk treatment in recognition of the role of interbank funding markets as an important source of liquidity. With respect to sovereign transfer risk, the proposal generally opts for limiting low-risk treatment to domestic central governments. Claims by U.S. banking organizations on any foreign government involving an element of transfer risk, without distinguishing among countries, would be placed in the standard (100 percent) risk category.

Third, like the U.S./U.K. measure, this proposal also recognizes that the calculation of a risk-based capital ratio is but one step in the evaluation of an organization's overall capital adequacy. Many other factors and risk considerations must be taken into account before a final judgment on an organization's capital adequacy can be rendered. In this regard, the current risk-based capital proposal provides that, initially, the Federal banking agencies will continue to utilize their existing ratios of primary and total capital to total assets (leverage ratios).

Fourth, as was contemplated but not specified in the U.S./U.K. measure, the current proposal establishes a schedule for achieving a minimum ratio of capital (as defined in the proposal) to weighted risk assets. Banking organizations, under the revised proposal, would generally be encouraged to operate above the minimum risk-based ratio.

Fifth, the Federal banking agencies intend to apply the proposed minimum risk-based capital measure to all banking organizations that they supervise.[4] As discussed in greater detail in Section V below, however, initial implementation efforts would generally be directed toward large international organizations. Moreover, steps would be taken to minimize any additional reporting or recordkeeping burden associated with adoption of the risk-based capital standard, especially for smaller institutions.

Sixth, the revised proposal incorporates explicit procedures for factoring off-balance sheet risks into the risk-based capital framework. As in the U.S./U.K. proposal, the current proposal first applies credit conversion factors to the face value, or notional principal, amounts of off-balance sheet exposures and then assigns the resulting credit equivalent amounts to the appropriate risk category in a manner generally similar to balance sheet assets. With respect to the treatment of counterparty credit risks associated with interest rate and foreign exchange rate contracts, the current proposal (as it applies to U.S. banking organizations) adopts a simplified version of the approach taken in the U.S./U.K. proposal.

The current risk-based capital proposal differs in some respects from the U.S./U.K. measure, as well as from existing capital policies. These differences have resulted primarily from further consideration of key issues in light of discussions with banking supervisors in other countries and comments received in response to earlier risk-based capital proposals. Following is a brief review of the principal differences between the current risk-based capital proposal and the earlier U.S./U.K. measure.

First, while the current proposal, like the U.S./U.K. measure, defines the capital structure to comprise two basic components (core and supplementary

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[4] The risk-based capital guidelines would apply to bank holding companies with less than $150 million in consolidated assets on a *bank-only* basis unless: (1) The holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding debt held by the general public.

capital), the current proposal provides that, after the transition period, core capital is to be comprised solely of common stockholders' equity (including retained earnings) and minority interest in the common equity accounts of consolidated subsidiaries.[5] This is in contrast to the Federal banking agencies' present definition of primary capital which includes both common and perpetual preferred stock, the allowance for loan and lease losses, and mandatory convertible debt instruments. The current proposal also differs from the U.S./U.K. proposal which included the allowance for loan and lease losses (general loan loss reserves in the U.K.) in base capital along with common stockholders' equity.

The requirement that core capital (Tier 1) should ultimately be made up exclusively of common stockholders' equity is not meant to suggest that other elements of capital, such as perpetual preferred stock, mandatory convertible securities, the allowance for loan and lease losses, and subordinated debt do not impart important strengths to an organization's capital position. Indeed, these items continue to be included in capital, under appropriate conditions, within the supplementary components. Rather, the predominant role afforded common stockholders' equity reflects the fact that this element provides maximum strength and flexibility to a banking organization experiencing losses or other financial pressures. For this reason, international supervisors reached a consensus that a minimum level of common stockholders' equity should serve as the foundation of a bank's capital base.

A second difference relates to the treatment of the allowance for loan and lease losses as a component of capital. The Basle framework assigns general loan loss reserves—defined, as reserves not attributed to, or earmarked for, specific assets and not representing a reduction in the value of particular assets—to supplementary elements of capital (Tier 2). It also phases in a limitation on valuation reserves[6] (that is, loan loss reserves that represent valuation adjustments for groups of assets or latent but unidentified losses inherent in the balance sheet). After the transition period, these reserves, as an element of capital, may constitute no more than 1.25 percent of weighted risk assets within the supplementary components.

In practice, it is very difficult to distinguish between the portion of loan loss reserves that is freely available to absorb future losses within the portfolio and the portion that, in reality, may reflect present or imminent losses, perhaps in amounts as yet unquantified, on existing problem or troubled loans. Thus, the Federal banking agencies propose to limit the inclusion of the allowance for loan and lease losses, as an element of capital, to no more than 1.25 percent of weighted risk assets within the supplementary components.[7]

This limitation represents an effort to balance the present supervisory policy of including the allowance for loan losses in regulatory capital with the need to minimize the possibility that reserves reflecting a high level of problem loans will play a prominent role in an organization's capital base. The effect of the limitation is to bring the proportion of regulatory capital that may consist of the allowance for loan losses more broadly into line with the percentage role it played in bank capital generally in the years prior to 1987. The Federal banking agencies will continue to work together, and with banking authorities in other countries, to ensure over time that only reserves that are freely available to absorb future losses qualify for inclusion in regulatory capital.

A third major difference from the U.S./U.K. proposal relates to the treatment of certain intangible assets. While the current risk-based proposal, like the U.S./U.K. measure, provides for the deduction of goodwill from capital,[8] other identifiable intangible assets, such as purchased mortgage servicing rights, would not necessarily be deducted in calculating the risk-based capital ratio. Rather, these identifiable intangibles would be treated in accordance with each Federal banking agency's policies and practices as set forth in their respective proposed guidelines.[9]

Fourth, another significant change in the current proposal is the role for straight term subordinated debt, which was not included in the U.S./U.K. capital definition and which plays only a very limited role in the Federal banking agencies' current definition of total capital. Subordinated debt at the bank level helps to protect both depositors and the Federal deposit insurance fund. At the holding company level, subordinated debt provides a cushion to senior creditors, thereby tending to promote funding stability. Issuance of subordinated debt in prudent amounts can also enhance the role of market forces in disciplining the affairs of banking organizations. Under the current risk-based proposal, term subordinated debt, together with intermediate-term limited-life preferred stock, may be included in supplementary capital up to an amount equal to 50 percent of core capital.

Fifth, the risk-weighting framework of the revised proposal, as applied to U.S. banking organizations, provides for a number of changes from the U.S./U.K. proposal. In particular, under the revised proposal, the major changes include:

- Securities issued by the U.S. Government or its Agencies (defined as agencies whose obligations are explicitly guaranteed by the U.S. Government) with *remaining* maturities of 91 days or less will be assigned to the zero percent risk category, rather than to the 10 percent category.
- All other U.S. Government and Agency obligations will be assigned to the 10 percent risk category, rather than assigning securities with maturities of under one year to the 10 percent category and securities with maturities of over one year to the next higher risk category. (Portions of loans and other assets guaranteed by the U.S. Government or its Agencies, or portions of loans collateralized by cash or U.S. Government or Agency debt, will also be assigned to the 10 percent risk category).
- The weight of the category for short-term interbank claims has been reduced from 25 to 20 percent, reducing, at the same time, the risk weight for other assets assigned to this category. In addition, this

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[5] During the transition period, as described in greater detail in Section V below, non-common equity components may be included in core capital under certain conditions that call for their phaseout into supplementary capital over time.

[6] Both the U.S./U.K. measure and the Basle capital framework exclude from capital allocated reserves representing identified losses on specific assets.

[7] Consistent with the Basle capital framework, the Federal banking agencies are also proposing an interim limitation on the allowance for loan losses in capital. By the end of 1990, the allowance for loan losses, as an element of capital, would be limited to 1.5 percent of weighted risk assets within Tier 2. No limit is being proposed on the role of loan loss reserves in capital for the initial phase of the transition period.

[8] Each of the Federal banking agencies may "grandfather" goodwill in certain institutions under their individual jurisdiction in accordance with terms and conditions spelled out in their respective proposed guidelines.

[9] Under current regulatory policy, the Federal Reserve generally evaluates identifiable intangible assets on a case-by-case basis and makes appropriate adjustments when the level or recorded value of these intangibles is inconsistent with the organization's overall financial condition. The only form of identifiable intangible assets currently permitted for state non-member and national banks by the FDIC and OCC, respectively, are purchased mortgage servicing rights, with other intangibles considered for inclusion only on a case-by-case basis.

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category also now includes long-term claims on domestic, but not foreign, depository institutions.

- The risk weight for securities issued by U.S. Government-*sponsored* Agencies (defined as agencies established by the U.S. Congress to serve public purposes and whose debt obligations are *not explicitly guaranteed* by the U.S. Government) and general obligations of U.S. local governments (defined as debt explicitly backed by the full faith and credit of the taxing authority of U.S. states, counties, or municipalities) has been reduced from 50 percent to 20 percent.
- The effective risk weight for short-term commitments has been reduced to 0 percent, and unused retail credit card lines unconditionally cancellable by the bank at any time have been defined to be short-term commitments.
- The credit conversion factor for short-term, self-liquidating trade-related contingencies, such as commercial letters of credit, has been reduced from 50 percent to 20 percent.
- Portions of assets guaranteed by, or backed by the full faith and credit of, domestic depository institutions will be assigned to the risk category of the guarantor (20 percent).
- The procedures for determining capital requirements for interest rate swaps and foreign exchange contracts have been simplified and the capital requirements have been reduced.
- The assignment of claims on foreign banks to risk categories is based upon original rather than remaining maturity. (In addition, like the U.S./U.K. proposal, the assignment of commitments to risk categories is also based upon original maturity.)

In general, most of the changes made to the proposed risk asset framework result in lower effective risk weightings. These changes were made in light of public comments received on previous proposals and to facilitate international convergence by bringing the Federal banking agencies' risk-based capital proposal into alignment with the Basle capital framework.

Finally, the current proposal sets an explicit schedule for achieving a minimum level of capital to weighted risk assets by the end of the transition period. The proposal establishes an interim target risk-based ratio by the end of 1990 of 7.25 percent (of which 3.25 percentage points must be in the form of common stockholders' equity) and a minimum standard by the end of 1992 of 8 percent (of which at least one-half, or 4 percentage points, must be in the form of common stockholders' equity). While the current proposal establishes no initial standard, banking organizations with ratios below the interim and final supervisory minimums are generally expected to avoid further reductions in their capital positions and should adopt plans and take steps to bring their capital positions into compliance with the risk-based minimums as soon as reasonably possible.

II. Proposed Definition of Capital

In accordance with the Basle capital framework, the Federal banking agencies propose a risk-based capital ratio that relates an institution's qualifying capital base (the numerator of the ratio) to its weighted risk assets (the denominator). An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below.

The Components of Qualifying Capital

1. Core Capital Elements (Tier 1)

Core capital elements consist of:

- Common stockholders' equity (common stockholders' equity includes common stock, surplus, and retained earnings, including disclosed capital reserves that represent an appropriation of retained earnings);
- Minority interest in the common stockholders' equity accounts of consolidated subsidiaries; and,
- Supplementary capital elements (during a transitional period only and subject to limitations set forth below in Section V under "Transition and Implementing Arrangements").

At least 50 percent of the total qualifying capital base (Tier 1 plus Tier 2) of a banking organization must consist of core capital (Tier 1). Core capital is defined as the sum of core capital elements minus goodwill and other disallowed intangible assets. A detailed discussion of each Agency's treatment of goodwill and other intangibles is contained in the respective Agency's proposed risk-based capital guidelines. Arrangements for calculating the risk-based capital ratio during the transitional period are discussed in Section V below.

2. Supplementary Capital Elements (Tier 2)

A portion of an institution's qualifying capital base may consist of supplementary capital elements. Supplementary capital elements include:

- Allowance for loan and lease losses (subject to limitations discussed below);
- Perpetual and long-term preferred stock (original maturity of at least 20 years);
- Hybrid capital instruments, including perpetual debt and mandatory convertible securities; and,
- Subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The maximum amount of supplementary components that may be treated as capital for regulatory purposes would be limited to 100 percent of core capital. In addition, the combined amount of subordinated debt and intermediate-term preferred stock that may be treated as capital for regulatory purposes would be limited to 50 percent of core capital. Amounts in excess of these limits may, of course, be issued and, while not included in the ratio calculation, would be taken into account in the overall assessment of an organization's funding and capital adequacy.

The Basle capital framework also provides for the inclusion of "revaluation reserves" as an element of supplementary capital at the discretion of national supervisory authorities.[10] These items, as well as the other components of supplementary capital, are discussed in greater detail below.

Allowance for loan and lease losses. Allowances for loan and lease losses that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables are included within the meaning of general reserves, which the Basle capital framework assigns to Tier 2. Allowances for loan and lease losses exclude "allocated transfer risk reserves." Allocated transfer risk reserves are reserves that have been established in accordance with section

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[10] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the Basle Agreement, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a bank. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as retained earnings, and, to be included in capital, such reserves must be accepted by the banking organization's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles and long-standing supervisory practice, these types of reserves are not recognized for banks and bank holding companies in the United States. Foreign banking organizations seeking to make acquisitions or conduct business in the United States would be expected to disclose publicly at least the degree of reliance on such reserves in meeting supervisory capital requirements.

905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems. Allowances for loan and lease losses also exclude reserves against identified losses or earmarked for a specified asset.

As noted above, it is not always possible to distinguish clearly between loan loss reserves that are freely available to absorb future losses within the portfolio and the portion that, in reality, may reflect present or imminent losses on existing problem or troubled loans. For this reason, the Federal banking agencies, consistent with the Basle capital framework, propose a phasedown during the transition period of the extent to which allowances for loan and lease losses may be included in an institution's capital base. Initially no limit will apply to these allowances. However, at the end of 1990, allowances for loan and lease losses, as a component of capital, may constitute no more than 1.5 percent of weighted risk assets and, at the end of 1992 and thereafter, no more than 1.25 percent of risk weighted assets.

Perpetual and long-term referred stock. Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. These preferred stock instruments would qualify for inclusion in capital provided that they can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer preferred dividends if dividends on common stock are eliminated. Given these conditions and the perpetual or long-term nature of the instruments, there is no limit on the amount of these instruments that may be included within Tier 2 capital.

Hybrid capital instruments. Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument must be unsecured; fully paid-up; and subordinated to general creditors and, if issued by a bank, also to depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the banking organization's primary Federal regulator.

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement). To satisfy this requirement, the instrument must convert to common stock or perpetual or long-term preferred stock in the event that the sum of the retained earnings and capital surplus accounts of the issuer shows a negative balance.

(4) The instrument must provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters) *and* (b) the issuer eliminates cash dividends on common and preferred stock. (This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.)

In addition to hybrid capital instruments meeting the above conditions, mandatory convertible securities that meet the current criteria for such instruments specified by the banking organization's primary Federal regulatory authority [11] or that have been previously approved as capital would also be treated as qualifying hybrid capital instruments under the proposal. During the transition period, the Federal banking agencies will review the criteria for mandatory convertible securities in light of the definitions contained in the Basle capital framework. As a result of this review, the agencies may modify the mandatory convertible criteria as part of their overall effort to implement the risk-based capital framework.

There is no limit on the amount of hybrid capital instruments and mandatory convertible securities that may be included within Tier 2 capital.

Subordinated debt and intermediate-term preferred stock. The aggregate amount of subordinated debt and intermediate-term preferred stock that may be treated as capital for risk-based capital purposes is limited to 50 percent of core capital. Subordinated debt and intermediate-term preferred stock must have an original average maturity of at least seven years to qualify as supplementary capital.[12] In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by the Federal Deposit Insurance Corporation. To qualify as capital in banks, debt must be subordinated to depositors and general creditors; in bank holding companies, debt must be subordinated in right of payment to all senior indebtedness of the issuer.

Discount of supplementary capital instruments. As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation and becomes less like a component of capital. For this reason, the outstanding amount of term subordinated debt and long- and intermediate-term limited-life preferred stock eligible for inclusion in Tier 2 would be adjusted downward, or discounted, as it approaches maturity. All such instruments would be discounted by reducing the outstanding amount of the capital instrument that would count as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, would have no capital value when they have a maturity of less than a year.

Revaluation reserves. Revaluation reserves include "formal revaluation reserves" and "latent revaluation reserves." Formal revaluation reserves are created through a formal adjustment, or restatement, of the amount at which fixed assets are recorded on the balance sheet to reflect a change in the market value of the assets. Such reserves are recognized as capital in some countries, notably Great Britain, where banks are permitted periodically to revalue their own premises. Latent revaluation reserves are hidden values (that is, values that are not formally recorded on the balance sheet) that reflect unrealized capital appreciation on long-term holdings of equity securities. These reserves are defined as the difference between the current market value of the securities and the carrying value of the securities based on historic cost. In some countries, notably Japan, such revaluation reserves are substantial.

In the United States, banking organizations for the most part follow generally accepted accounting principles (GAAP) when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. Consistent with this approach, the Federal banking agencies have not included unrealized asset values in capital ratio calculations, although such values have long been

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[11] Criteria for instruments issued by state member banks and bank holding companies are set forth in 12 CFR Part 225, Appendix A; those for national banks are set forth in 12 CFR 3.100(e)(5); and those for state non-member banks are set forth in 12 CFR 325.2(e).

[12] Unsecured debt issued by bank holding companies prior to March 12, 1988, and qualifying as capital at the time of issuance, would continue to qualify as capital under the risk-based framework, subject to the 50 percent of core capital limitation. Bank holding company term debt issued after this date must be subordinated in order to qualify as capital.

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taken into account in assessing an organization's overall financial health. In addition to the fact that U.S. accounting procedures have not traditionally recognized revaluation reserves, the uncertainty and volatility that may be associated with the market values of securities and buildings may be viewed as inconsistent with the emphasis on capital as a reliable and determinable source of strength when an organization is experiencing financial adversity.

In light of these considerations, the equivalent of revaluation reserves for U.S. banking organizations will not be formally recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banking organizations are encouraged to disclose publicly their equivalent of premises and equity revaluation reserves, and such values will be taken into account as additional factors in assessing overall capital adequacy and financial condition. For example, other things being equal, organizations with significant and reliable revaluation reserves may be permitted to operate closer to the minimum risk-based capital ratio than organizations without such unrealized gains.

Deductions from capital and other adjustments. Certain assets would be deducted from a banking organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[13] These assets include:

(1) Goodwill and other disallowed intangibles—deducted from Tier 1;

(2) Capital investments in unconsolidated banking and finance subsidiaries and, on a case-by-case basis, other subsidiaries or associated companies at the discretion of the supervisory authority—deducted from the sum of Tier 1 and Tier 2; and

(3) Reciprocal holdings of capital instruments of banking organizations—deducted from the sum of Tier 1 and Tier 2.

Goodwill and other intangible assets. Goodwill is an intangible asset that represents the excess of the purchase price over the fair market value of net assets acquired in acquisitions accounted for under the purchase method of accounting. Because banks generally may not include goodwill in regulatory capital under current supervisory policies, all goodwill in banks will be deducted from Tier 1 capital immediately.[14]

Under current policies, bank holding company goodwill is not deducted automatically from capital for general supervisory purposes. Thus, goodwill acquired by holding companies prior to March 12, 1988, would be "grandfathered" during the transition period (until the end of 1992). Any goodwill acquired after March 12, 1988, and all goodwill (including previously grandfathered goodwill) would be deducted from Tier 1 capital after 1992.

The Federal banking agencies' policies regarding other identifiable intangible assets are discussed in detail in the Agencies' respective proposed risk-based capital guidelines.

As a general rule, the Federal banking agencies believe that banking organizations should maintain strong tangible core capital bases in relation to weighted risk assets. Banking organizations that seek to expand significantly, either through internal growth or acquisition, will be expected to maintain capital positions that are above minimum supervisory levels, or otherwise acceptable to their primary Federal regulator, without undue reliance on intangible assets.

Investments in certain subsidiaries. Any equity or debt capital investments in banking or finance subsidiaries that are not consolidated under regulatory reporting requirements [15] would be deducted from an organization's total capital base (i.e., the sum of core capital and supplementary capital elements).[16] For this purpose, a subsidiary generally is defined as any banking or finance company in which the reporting institution holds more than 50 percent of the outstanding common stock. The assets of unconsolidated subsidiaries are not fully reflected in a banking organization's consolidated total assets. Such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization and its consolidated subsidiaries to considerable risk. For this reason, it is appropriate to view the capital invested in these entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or additional leverage elsewhere in the organization.

As a general rule, U.S. banking organizations do not have unconsolidated subsidiaries engaged in banking or finance since generally accepted accounting principles normally require the consolidation of such entities. Aside from these entities, the deduction of equity and debt capital investments from the banking organization's capital may at some future date be applied in the case of other subsidiaries, such as securities affiliates, if such action were necessary to facilitate functional regulation of financial service subsidiaries. This approach may also be applied, on a case-by-case basis, to certain *consolidated* subsidiaries for the purpose of determining whether the banking organization meets the capital standard without reliance on the capital invested in these subsidiaries. Finally, the Federal banking agencies may, at a later date, seek public comment on the extension of this approach to all subsidiaries engaged in certain specified activities for the purpose of assessing the banking organization's consolidated capital position, exclusive of the capital supporting these activities. In general, when investments in a subsidiary are deducted from a banking organization's capital, the subsidiary's assets will also be excluded from the assets of the banking organization in order to assess the latter's capital adequacy.

The Federal banking agencies had contemplated deducting from capital investments in all other unconsolidated subsidiaries (such as those engaged in businesses other than banking or finance) as well as investments in joint ventures and associated companies, since the rationale set forth above is also applicable to these entities.[17] Although the Agencies continue to believe that unconsolidated subsidiaries and associated companies may pose special risks for banking organizations, they have decided not to *automatically* deduct such investments from capital at this time. Instead, the Agencies intend to monitor the level and nature of such investments for individual banking organizations and, on a case-by-case basis, may deduct such investments from capital or apply an appropriate risk-weighted capital charge against the organization's percentage share of the assets of these entities.

Reciprocal holdings of bank capital instruments. Reciprocal holdings of capital securities (i.e., capital instruments that qualify as Tier 1 or Tier 2 capital) would be deducted from the organizations' total capital bases for the purpose of determining the numerator of the risk-based capital ratio. Reciprocal holdings are cross-holdings or other formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, as this definition implies, deductions would be limited to intentional cross holdings.

The Federal banking agencies also considered whether to deduct non-reciprocal holdings of capital securities issued by other banking organizations on the grounds that the purchase by one banking organization of capital securities issued by another organization does not represent additional capital to the banking system. In addition, such purchases may increase the interdependency of banking institutions generally and thus increase the possibility that problems could be transmitted from one banking institution to another. At present, the Agencies are not proposing to deduct non-reciprocal holdings of such capital instruments. Rather, the Agencies intend to monitor non-reciprocal holdings of other banking organizations' capital securities and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

Table II summarizes the definition of capital for risk-based capital purposes.

III. Risk Weights for Assets and Off Balance Sheet Items

Weighted risk assets are determined by assigning assets and off-balance sheet credit equivalent amounts to one of five broad risk categories based principally on the degree of credit risk associated with the obligor. The five risk categories are 0, 10, 20, 50, and 100 percent—the latter representing the standard risk category which contains most loans to private sector entities. Table III summarizes the assignment of assets to risk categories.

In determining weighted risk assets, the only forms of *collateral* that are formally recognized by the risk asset framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. (See definitions below.) The only *guarantees* that are recognized are guarantees, or guarantee-type instruments, of the U.S. Government or its agencies, U.S. Government-sponsored agencies, domestic state and local governments, and domestic depository institutions. While not formally factored into the ratio, the existence of other forms of collateral or guarantees would be taken into account in making an overall assessment of the risks inherent in an organization's loan portfolio. Maturity is generally not a factor in assigning items to risk categories with the exceptions of securities issued by the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate swaps and foreign exchange contracts—all of which are discussed in greater detail below.

The remainder of this section explains in greater detail the assignment of assets and off-balance sheet items to risk categories.

Risk Weights for Balance Sheet Assets

Category 1—Zero percent. This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, securities issued by the U.S. Government or its agencies (direct obligations) with a remaining maturity of 91 days or less.[18] Any foreign currency held by banks should be converted into U.S. dollar equivalents at current exchange rates. Deposit reserves and other balances at Federal Reserve Banks are included in Category 1, but Federal Reserve Bank stock is assigned to Category 2, and carries a weight of 10 percent.

Category 2—10 percent. This category includes securities issued by the U.S. Government or its agencies with a remaining maturity of over 91 days and all other claims (including leases) on the U.S. Government or its agencies.[19] While these obligations bear no credit risk, this treatment is generally consistent with the latitude afforded by the Basle capital framework to recognize some degree of market and interest rate risk. In addition, all securities and loans *guaranteed* by the U.S. Government or its agencies (including portions of such assets guaranteed) are also included in this category. Only that portion of the loan that is guaranteed by a U.S. Government agency is to be included in this category; the remainder is to be assigned to the risk category otherwise appropriate to the obligor.

Category 2 also includes portions of all loans and other assets that are *collateralized* by securities issued by, or guaranteed by, the U.S. Government or its agencies or by cash on deposit in the lending institution. The degree or extent of collateral backing is based upon the current market value of the underlying collateral. Those portions of claims not secured by recognized collateral would be assigned to the risk category otherwise appropriate to the obligor.

The book value of paid-in stock of a Federal Reserve Bank is also assigned to Category 2.

Category 3—20 percent. The principal items in this category include short-term (original maturity of one year or less) claims on domestic depository institutions [20] and foreign banks,[21] including foreign central banks; cash items in process of collection; long-term (original maturity of more than one year) claims on domestic depository institutions; [22] and the portions of claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions. This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.[23] (The degree of collateralization in this regard is based upon the market value of the underlying collateral.) In addition, this category includes general obligation claims on, or portions of claims guaranteed by the full faith and credit of, U.S. state and local governments. Finally, local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country; [24] and claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member are also assigned to Category 3.[25]

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[13] Any deductions made against capital in computing the numerator of the ratio would also be deducted from the appropriate asset categories in computing the denominator of the ratio.

[14] Goodwill acquired by banks in connection with supervisory mergers would continue to be included in capital for risk-based capital purposes under terms and conditions established by the banking organization's primary Federal regulator. Other previously permitted goodwill would not be deducted from Tier 1 capital until year end 1992.

[15] The requirements for consolidation are spelled out in the Instructions to the bank Consolidated Reports of Condition and Income and the Consolidated Bank Holding Company FR Y-9 Report.

[16] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith.

[17] Under regulatory reporting procedures, associated companies and joint ventures are generally defined as companies in which the banking organization owns 20 to 50 percent of the voting stock.

[18] For this purpose, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[19] Examples of U.S. Government agencies include the Government National Mortgage Association (GNMA), the Small Business Administration (SBA), the Veterans Administration, the Federal Housing Administration, the Export-Import Bank (Exim Bank), and the Overseas Private Investment Corporation (OPIC).

[20] Domestic depository institutions are defined to include branches (foreign and domestic) of banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. To be included in this category, depository institutions must be federally-insured. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic banks, and U.S.-chartered depository institutions owned by foreigners. However, this definition excludes both branches and agencies of foreign banks located in the U.S. and bank holding companies.

[21] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; and have the power to accept demand deposits. Foreign banks include U.S. branches and agencies of foreign banks.

[22] Claims on foreign banks with an original maturity exceeding one year and claims on bank holding companies are assigned to Category 5, which carries a weight of 100 percent.

Claims on banks and depository institutions consist of balances due from such institutions, including demand deposits and other transaction accounts, savings deposits, and time certificates of deposit; and federal funds sold and securities purchased under agreements to resell for which a depository institution is the counterparty. To the extent that federal funds and resale agreements are collateralized by U.S. Government or agency securities, they are to be included in Category 2, which carries a weight of 10 percent.

Among other items considered to be claims on depository institutions are loans to such institutions, including overdrafts and term federal funds; holdings of the institution's own discounted acceptances for which the account party is a depository institution; holdings of bankers acceptances of other banks; and securities issued by depository institutions, except those that qualify as capital (which are to be excluded from this category and included in Category 5).

Category 3 also includes those portions of loans or other assets guaranteed by, or backed by the full faith and credit of, a *domestic* depository institution,[26] such as commercial paper or tax-exempt securities backed by a standby letter of credit. Risk participations in bankers acceptances and standby letters of credit conveyed to other domestic depository institutions are equivalent to financial guarantee-type instruments issued by such institutions. Accordingly, portions of customers' liabilities to the bank on outstanding acceptances guaranteed through risk participations conveyed to other domestic depository institutions are to be netted from the outstanding exposure to the underlying account party and included in Category 3. Likewise, the credit equivalent amount of standby letters of credit conveyed to other domestic depository institutions in the form of risk participations is to be netted from the exposure to the account party and assigned to this category.[27] If the guarantee matures or expires and the asset or off-balance sheet exposure is still outstanding, the guaranteed portion of the asset or off-balance sheet exposure is to be reassigned to the risk category appropriate to the underlying obligor.

General obligations of states and political subdivisions of the U.S. include loans, leases, and securities such as notes, bonds, and debentures (including tax warrants and tax-anticipation notes). Because such general obligation claims are secured by the full faith and credit of the local taxing authority, they are assigned to a lower risk weight category than revenue bonds issued by U.S. state or local governments, which are repayable with revenues from the specific projects financed. Public purpose revenue (non-general obligation) bonds for which the underlying obligor is the state or local governmental authority are assigned to Category 4, which has a risk weight of 50 percent. Revenue bonds for which the underlying obligor is a *private entity* are assigned to Category 5, which has a risk weight of 100 percent.

The Basle capital framework provides flexibility to national supervisory authorities in assigning risk weights to claims on the domestic public sector (e.g., Government-sponsored agencies and state and local governmental units) because risk characteristics of these claims vary from country to country. The assignment of claims on U.S. Government-*sponsored* agencies and general obligation claims on U.S. state and local governments to this category, rather than to the 10 percent category, reflects the fact that while such claims generally involve low risks, they are not identical to claims that carry the explicit full faith and credit guarantee of the U.S. Government.

Category 4: 50 percent. This category includes revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt with revenues from the facilities financed, rather than from general tax funds.

Category 5: 100 percent. All assets not classified in the categories above are assigned to this category, which comprises standard risk assets. This category includes the bulk of the assets typically found in a loan portfolio.

Category 5 consists of all claims on foreign banks with an original maturity exceeding one year, all non-local currency claims on foreign governments, and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country. Thus, this category includes all claims on foreign governments that entail an element of transfer risk. This category also includes all claims on foreign and domestic private sector obligors not included in the categories above; claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims (that is, claims

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[23] For this purpose, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly guaranteed* by the full faith and credit of the U.S. Government. Examples of such agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association.

[24] A foreign central government is defined to include departments, ministries, and agencies of the central government. It does not include state, provincial, or local governments; commercial enterprises owned by the central government; or private agencies sponsored by the central government. In addition, claims on foreign central governments do not include claims on non-central government entities that are guaranteed by the foreign central government.

[25] Claims on official multilateral lending institutions or regional development institutions include securities issued by international and regional organizations to which the U.S. belongs. Claims on such institutions include loans to the International Monetary Fund, the International Bank for Reconstruction and Development (World Bank), the Bank for International Settlements, the Inter-American Development Bank, and the African Development Bank, and bankers acceptances for which the account party is one of these multilateral or regional institutions.

[26] The Basle capital framework does not recognize guarantees issued by foreign banks or depository institutions. The treatment of guarantees by the *issuing* bank in the form of standby letters of credit or acquisitions of risk participations is discussed below in the off-balance sheet section.

[27] This treatment would also apply to participations in commitments conveyed to other domestic depository institutions if the conveying bank remains obligated to the customer for the full amount of the commitment in the event the participating institution fails to fund its portion of the commitment.

assigned to the 100 percent category); [28] investments in fixed assets, premises, and other real estate owned; investments in unconsolidated companies, joint ventures or associated companies that have not been deducted from capital; instruments that qualify as capital issued by other banking organizations; and common and preferred stock of corporations, including stock acquired for debts previously contracted. Also included in this category are industrial development bonds and similar obligations issued by U.S. state or local governments for the benefit of a private party or enterprise where that party or enterprise, not the government, is committed to pay the principal and interest.

Finally, this category includes commercial and individual mortgage loans, including loans secured by 1–4 family residential mortgages. While the Basle capital framework provides for the assignment of the latter to the 50 percent category, the Federal banking agencies, consistent with past risk-based capital proposals, intend to give these assets a weight of 100 percent. The Federal banking agencies, as a matter of general policy, have long sought to avoid the appearance or reality of regulatory credit allocation among private sector borrowers in formulating their capital adequacy programs. Thus, the agencies will continue the policy of *not* singling out particular sectors or segments of the private economy on an *ex ante* basis for the purpose of according special low-risk capital treatment. The agencies believe that decisions on allocating credit among private sector borrowers are better left to bank management. However, for the purpose of supervisory comparisons among major international banking organizations, the Federal banking agencies will take account of, and, where appropriate, adjust for holdings of residential mortgage loans by U.S. banking organizations.

Treatment of Off-Balance Sheet Items

Risk weights for all off-balance sheet items are determined by a two-step process. First, the notional principal, or face value, amount of the off-balance sheet item is generally multiplied by a credit conversion factor to arrive at a balance sheet "credit equivalent amount". Then the credit equivalent amount is assigned, like any balance sheet asset, to the appropriate risk category, according to the obligor, or, if relevant, the guarantor or the nature of the collateral. Table IV summarizes the treatment of off-balance sheet obligations.

Items with a 100 Percent Conversion Factor. Direct credit substitutes are any irrevocable off-balance sheet obligations in which a bank has essentially the same credit risk as if it had made a direct loan to the obligor or account party.[29] Direct credit substitutes include guarantees, or guarantee-type instruments, backing financial claims, such as outstanding securities, loans and other financial liabilities. Thus, direct credit substitutes include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that back or guarantee repayment of commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, commercial letters of credit, or other off-balance sheet exposures that require capital backing under the risk-based capital framework. (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

Direct credit substitutes are converted at 100 percent and the resulting credit equivalent amount is then assigned to the appropriate risk category like any other asset. For example, standby letters of credit backing outstanding commercial paper issued by a private firm, or backing tax-exempt public purpose municipal revenue bonds, would be assigned to the 100 percent and 50 percent categories, respectively. The credit equivalent amount of risk participations conveyed to other domestic depository institutions would be assigned to the 20 percent category.[30]

Standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the bank to pay a third-party beneficiary when the bank's customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (irrevocable or revocable under certain terms) of the bank to fund its customer *in the normal course* of business should the customer seek to draw down the commitment. The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is, therefore, the combination of irrevocability with the notion that funding is triggered by some failure to perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or fails to perform a contractual obligation would be treated, for risk-based capital purposes, as respectively, a financial guarantee-type standby letter of credit or a performance standby.

The acquisition of risk participations in bankers acceptances and participations in financial guarantee-type standby letters of credit or other direct credit substitutes also involve assuming risks that are analogous to direct loans to the account parties or obligors. Participations acquired by a bank in bankers acceptances and direct credit substitutes (including standby letters of credit) are converted at 100 percent and assigned to the appropriate risk weight category depending upon the identity of the account party or obligor.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet, are treated in the same way as direct credit substitutes. The risk-based capital definition of the sale of assets with recourse, including the sale of one-to-four family residential mortgages, is the same as the definition contained in the instructions to the bank Consolidated Reports of Condition and Income (Call Report).[31]

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[28] Customer liabilities on acceptances outstanding involving claims in other than the 100 percent category, such as claims on domestic banks, would be assigned to the risk category appropriate to the identity of the obligor or the other relevant characteristics of the claim.

[29] The focus in this context is on credit risk. For example, if Bank A guarantees, or equivalently backs, a loan from Bank B (beneficiary) to Bank A's customer (account party) and the customer defaults, then Bank A must pay Bank B and Bank A ends up with a problem loan to its customer—the same result as would have occurred if Bank A had made a direct loan to its customer. It is recognized that, while financial guarantee-type instruments involve credit risks similar to direct loans, providing financing through such instruments does not entail funding risks unless the standby is drawn down. The treatment of financial guarantee-type instruments and equivalent standby letters of credit in a manner similar to direct loans is consistent with the fact that such exposures generally are covered by statutory limits on loans to a single borrower, warrant the same credit review and approval process as traditional loans, and are treated and analyzed like loans by bank supervisors.

[30] This refers to participations in which the originating bank remains liable to the beneficiary for the full amount of the standby if the participating depository institution fails to perform under the guarantee. Those participations that are syndicated out, that is, where each depository institution is responsible only for its pro-rata share of the risk and there is *no recourse* to the originating bank, would be excluded entirely from the originating bank's weighted risk assets.

[31] In regulatory reports and under GAAP, bank holding companies are permitted to treat some asset sales with recourse as "true" sales, even though similar transactions by banks must be reported as borrowings on the bank call report. For risk-based

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For U.S.-chartered banks, assets sold subject to an agreement to repurchase, or for which any risk of loss is retained, are generally required to remain on the balance sheet of the "selling" bank and the proceeds of the "sale" are recorded as a borrowing in accordance with the Call Report instructions. Such assets retained on the balance sheet are to be assigned to a risk weight category appropriate to the obligor, guarantor, or collateral. So-called "loan strips" (i.e., short-term advances sold under long-term commitments) sold without direct recourse are accorded the same treatment as assets sold with recourse.

Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward deposits, and partly-paid shares and securities; they do not include commitments to make residential mortgage loans. On the date a bank enters into such an agreement, it should convert the principal amount of the assets to be purchased at 100 percent and then assign this amount to the risk category appropriate to the obligor or guarantor of the item, or the nature of the collateral.

Items with a 50 Percent Conversion Factor. Transaction-related contingencies include bid bonds, performance bonds, performance standby letters of credit, warranties, and standby letters of credit related to particular transactions. These instruments are different from financial guarantee-type standby letters of credit in that performance standbys generally represent obligations backing the performance of *nonfinancial* or *commercial* contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, contractors' and suppliers' performance, labor and materials contracts, and construction bids. These instruments generally involve guaranteeing the account party's obligation to deliver a service or product in the conduct of its day-to-day business.

Unused commitments with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, unconditionally (without cause) cancel the commitment, *and* (2) the bank actually reviews the facility to determine whether or not it should be extended.[32] Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge (that is, they are assigned a 0 percent credit conversion factor). Such short-term commitments are defined to include unused lines of credit on retail credit cards that can be unconditionally cancelled by the bank at any time. However, commitments with an original maturity of over one year to extend loans under home equity or mortgage lines would be converted at 50 percent and then assigned to the 100 percent risk weight category.

For the purpose of calculating the risk-based capital ratio, commitments are defined as any arrangements between a banking organization and its customer that legally obligate the banking organization to extend credit to the customer in the form of loans or leases, the purchase of loans or securities, or participation in loans and leases. They also include such undertakings as overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement, a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the bank of its funding obligation under certain conditions.

Commitments with material adverse change clauses are included because such commitments are nonetheless binding and may involve risk if a bank funds the commitment *before* the customer's condition deteriorates, or before the deterioration is recognized. Moreover, while the Federal banking agencies do not wish to discourage the use of material adverse change clauses, some court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on in all cases to relieve a bank of its obligations pursuant to a commitment.

In the case of commitments structured as syndications, the risk-based capital framework includes only the banking organization's proportional share of such commitments. After conversion at 50 percent, participations in commitments conveyed to other domestic banks, but in which the originating bank retains the full obligation to the borrower if the participating bank fails to perform, would be assigned to the 20 percent risk category. This treatment is analogous to risk participations in standby letters of credit.

Only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, are not also to be included as commitments for purposes of computing the risk asset ratio.

Revolving underwriting facilities RUFs and note issuance facilities (NIFs) also are to be converted at 50 percent. These are arrangements under which a borrower can issue on a revolving basis short-term paper in its own name but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower. The original maturity of the commitment typically is five to seven years, while the paper most frequently is issued for maturities of three or six months. For bank issuers, the paper usually takes the form of short-term certificates of deposit, for non-bank borrowers, it usually takes the form of promissory notes (commonly known as Euro-notes). For the purpose of calculating the risk-based capital ratio, similar arrangements such as note purchase facilities and Euro-note facilities are to be treated in the same manner as RUFs and NIFs.

Items with a 20 Percent Conversion Factor. Short-term, self-liquidating trade-related contingencies which arise from the movement of goods include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

Items with a Zero Percent Conversion Factor. These include unused commitments with an original maturity of one year or less. Original maturity, as noted above, is the earliest date after the commitment is made that a bank: (1) Can, at its option, unconditionally (without cause) cancel the commitment *and* (2) actually reviews the facility to determine whether or not it should be extended. Facilities that, at the bank's option, are *unconditionally* cancellable at any time are not considered to be commitments, provided that the bank makes a separate credit decision before each drawdown under the facility. Unused retail credit card lines are deemed to be short-term commitments if the bank has the unconditional option to cancel the card at any time.

Interest Rate and Foreign Exchange Rate Contracts

Risk weights for interest rate and exchange rate contracts are determined by a two-step process. First, the notional principal amount of the item is converted into a balance sheet equivalent measure which approximates the amount of credit exposure involved. Second, the resulting credit equivalent amount is assigned to the appropriate risk asset category, based primarily on the identity of the obligor counterparty), or, where relevant, on the nature of the guarantee or the underlying collateral.

Risk Analysis. The treatment of interest rate, foreign exchange rate, and related contracts takes account of the fact that the credit risks associated with these contracts is generally not equal to the notional value of the contracts. Rather, the cost to a banking organization of counterparty default on an interest rate or exchange rate contract is the cost of replacing the cash flows specified by the contract. At the time a contract is initiated, it can be replaced at little or no cost because interest rates or exchange rates embodied in the contract reflect those prevailing in the market. But as time passes and market rates change, the value of the cash flows that the banking organization is entitled to receive from the counterparty under the contract terms often will exceed the value of the cash flows it is obligated to pay. If the counterparty were to default in such a circumstance, the banking organization would have to pay a premium to replace, or reestablish, the cash flows specified by the original contract.

A fundamental premise underlying the treatment of off-balance sheet exposures in the risk-based capital framework is that capital support is required not only for current exposure to losses, but also for potential future increases in that exposure. Accordingly, U.S. banking organizations will be required to utilize the *current exposure method*, as set forth in the Basle capital framework, to determine the capital necessary to support their interest rate and exchange rate contract portfolios. This method requires banking organizations to calculate the credit equivalent amount by: (1) Determining the current replacement cost of contracts having positive value on the reporting date by marking them to market, and (2) adding to that amount an estimate (the "add-on") of the potential increase in credit exposure over the remaining life of all contracts by multiplying the notional value of all contracts by the conversion factors prescribed below.[33]

Scope. Credit equivalent amounts would be computed for the following:

I. Interest Rate Contracts

A. Single currency interest rate swaps.
B. Basis swaps.
C. Forward rate agreements.
D. Interest rate options purchased.
E. Any other instrument that gives rise to similar credit risks.

II. Exchange Rate Contracts

A. Cross-currency interest rate swaps.
B. Forward foreign exchange contracts.
C. Currency options purchased.
D. Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in exactly the same way as the other interest rate and exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for potential future exposure.

Exceptions. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

Calculation of Credit Equivalent Amounts. Credit equivalent amounts would be calculated for contracts of the types described under *Scope* above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a bank would sum:

(1) The current exposure, that is, the mark-to-market value (positive values only) of their contracts, and

(2) An estimate of the potential future increases to credit exposure over the remaining life of the instruments.

Examples of the calculation of credit equivalent amounts for these instruments are contained in Table V.

Current Exposure. Current exposure is simply the mark-to-market value of a contract on the reporting date, if positive. The mark-to-market value is the amount the banking organization would have to pay to replace the net payment stream specified by the contract if the counterparty were to default. Negative mark-to-market values would not be taken into account in the calculation of credit equivalent amounts. The mark-to-market value would include the value of interest that has accrued but has not been received. Mark-to-market values would be measured in dollars, regardless of the currency or currencies specified in the contracts.

Potential Future Exposure. Potential future exposure represents the additional exposure that may arise over the remaining life of the contract as a result of fluctuations in interest rates or exchange rates. Such changes may increase the market value of the contract in the future and, therefore, increase the cost of replacing it if the counterparty subsequently defaults. Thus, these contracts entail a commitment by the banking organization to assume additional credit exposure in the future. This commitment requires capital support beyond what is necessary to support the current exposure on the reporting date. Potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market value, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
Less than 1 year		1.0
1 year and over	0.5	5.0

Because exchange rate contracts involve an exchange of principal upon maturity and exchange rates are generally more volatile than interest rates, higher conversion factors are proposed for foreign exchange

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capital purposes, however, such assets sold with recourse and reported as "true" sales by bank holding companies would be converted at 100 percent and assigned to the risk category appropriate to the underlying obligor, provided the transactions met the definition of assets sold with recourse contained in the bank Report of Condition.

[32] Facilities that are unconditionally (without cause) cancellable at any time by the bank are not deemed to be commitments, provided the bank makes a seperate credit decision before each drawing under the facility

[33] Despite the wide range of different instruments in the market, the methodology used for assessing the credit risk on all of the contracts is the same. The analysis consists of examining the behavior of matched pairs of swaps under different volatility assumptions. A matched pair is a pair of contracts with identical terms, for which the banking organization is the buyer of one of the contracts and the seller of the other. The analysis assumes that estimates based on matched pairs provide a more accurate representation of credit exposure on a portfolio of interest rate and exchange rate contracts than estimates based on single contracts. Because banking organizations often act as intermediaries between end-users of contracts, a large share of their portfolios often consist of matched—or nearly matched—pairs. The volatility analysis was conducted by the staffs of the Bank of England and the U.S. Federal bank supervisory authorities. This analysis involved estimating the volatility of interest rates and exchange rates. The analysis produced probability distributions of potential replacement costs over the remaining life of matched pairs of contracts. Potential exposure was then defined in terms of confidence limits for (percentiles of) these distributions. This analysis provided the basis for the "adds-ons" included in the Basle capital framework.

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instruments than for interest rate contracts.

No potential credit exposure would be calculated for single currency floating/floating interest rate swaps; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value.

Application of Credit Equivalent Amounts Within the Overall Risk Framework. Table V provides examples of how credit equivalent amounts for several types of interest rate and foreign exchange rate contracts would be calculated. In each case, three pieces of information are needed to calculate the credit equivalent amount: the current mark-to-market value, the notional principal, and the remaining maturity of the contract.

Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount will be weighted within the overall framework according to the category of the counterparty, and, in some cases, to the nature of any underlying collateral or guarantees. In accordance with the Basle capital framework, the maximum weight applied to the credit equivalent amount would be 50 percent. However, the Federal banking agencies intend to monitor the quality of credits in the interest rate and exchange rate markets and, in the future, would consider, if appropriate, assigning credit equivalent amounts for contracts involving standard risk obligors to the 100 percent risk category, as is the case with other off-balance-sheet instruments.

Accounting. In certain cases, credit exposures arising from the interest rate and exchange rate instruments covered by this proposal may already be reflected, in part, on the balance sheet. For example, U.S. banking organizations generally record current counterparty credit exposures mark-to-market values on forward foreign exchange contracts on the balance sheet. In addition, some U.S. banking organizations also include certain counterparty credit exposures that arise from interest rate swaps and options purchased on the balance sheet.

To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by this proposal may need to be excluded from balance sheet assets in calculating banking organizations' total weighted risk asset ratios. The Federal banking agencies will address this issue in designing reporting systems.

Collateral. The existence of collateral is recognized in assigning credit equivalent amounts for these contracts to risk categories under the same conditions and limitations as discussed above for on-balance sheet claims.

Netting. In accordance with the terms of the Basle capital framework, netting of swaps and similar contracts will not be recognized at this time. While the Federal banking agencies encourage any reasonable arrangements designed to reduce the risks inherent in these transactions, the Basle Supervisors' Committee felt that the legal issues posed by netting arrangements require further consideration.

Relationship to Prior Proposals. The "add-ons" contained in the Basle capital framework differ in several respects from the corresponding calculation for potential future exposure incorporated in the U.S./U.K. proposal.[34] These changes reflect in part recognition of comments received on the U.S./U.K. proposal, and have the effect of reducing the capital requirements contained in that earlier measure.

The proposed method of calculating the potential exposure under the Basle framework is significantly less complex than that recommended in the U.S./U.K. proposal. In simplifying the methodology, assumptions about the pattern of banks' portfolios (including the rates at which contracts have been entered into and their average maturity) have been introduced that have involved a loss of some precision relative to the U.S./U.K. measure. However, the Federal banking agencies believe that the current formula for calculating the credit equivalent amount for interest rate and exchange rate contracts represents an acceptable balance between the need to capture the risks associated with these instruments and the need to avoid unnecessary complexity.

IV. Target Ratio Standard

After the transition period (by the end of 1992), all banking organizations would be expected to meet a minimum ratio of total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of core capital (Tier 1).

The maximum amount of supplementary capital elements that could qualify as Tier 2 capital would be limited to the total amount of core capital. Within Tier 2, the maximum amount of allowance for loan and lease losses that would qualify as capital would be limited to 1.25 percent of weighted risk assets. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that would qualify as Tier 2 capital would be limited to 50 percent of Tier 1 capital.

Total capital is calculated by adding core, or Tier 1, capital (defined to exclude goodwill and disallowed intangibles) to supplementary, or Tier 2, capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, reciprocal holdings of banking organization capital securities, or other items at the direction of the supervisory authority.

A transition period has been provided to give banking organizations time to bring their capital positions into conformity with the risk-based standards and definitions. The transition period would end December 31, 1992. Banking organizations not currently meeting the 8 percent minimum would be expected to undertake a sustained effort to meet that standard by year-end 1992.

V. Transition and Implementing Arrangements

Transition Arrangements

The proposed transition period is designed to facilitate smooth adjustment and phasing in of the risk-based capital measure and the minimum ratio standard within a wide variety of supervisory systems. The transition period would begin on the date that the proposed risk-based capital framework becomes effective and end on December 31, 1992. In addition, there will be an interim target ratio to be met by the end of 1990.

Initial period to the end of 1990. From the beginning of the transition period until the end of 1990, no formal risk-based capital standard or minimum level will be set. As noted above, the Federal banking agencies would expect any organization that has a risk-based ratio of less than 8 percent to move in the direction of that target during the transition period and meet the target by the end of 1992. Banking organizations with ratios of 8 percent or lower should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

As indicated, the Basle capital framework establishes no initial standard. However, for the purpose of calculating the ratio during the initial period, the Basle capital framework allows the core capital of an organization to include some supplementary capital elements. Specifically, a maximum of 25 percent of core capital (before any deduction of goodwill and other disallowed intangibles) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity (including retained earnings). By year-end 1990, banking organizations would be expected to reduce the amount of supplementary capital included in core capital to no more than 10 percent of core capital.

For bank holding companies, any goodwill acquired before March 12, 1988, would be grandfathered until the end of 1992. Goodwill acquired by holding companies after this date, and all goodwill on holding company books after 1992, would be deducted from Tier 1 capital components to arrive at core capital.

Initially, the allowance for loan and lease losses may be included in a banking organization's supplementary capital without limit. However, by the end of 1990, such reserves counted in supplementary capital may not exceed 1.5 percent of weighted risk assets.

Existing primary and total capital-to-*total* assets (leverage) ratios would continue to be employed during this initial period. The Federal banking agencies will, prior to year-end 1990, consider whether a leverage ratio will continue to be employed in conjunction with the implementation of the risk-based standard. If a leverage ratio is employed after 1990, the Agencies may, after appropriate consideration, adopt for leverage ratio purposes the Tier 1 and Tier 2 capital definitions contained in the risk-based capital guidelines.

Year-end 1990 through year-end 1992. During this interval, banking organizations would be expected to meet a minimum total capital to weighted risk asset ratio of 7.25 percent, at least one-half of which should be in the form of core capital. During this period, up to 10 percent of an organization's core capital (before any deduction of goodwill and disallowed intangibles) may consist of supplementary capital elements. Thus, the interim target ratio implies a minimum ratio of core capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum common stockholders' equity to weighted risk assets ratio of 3.25 percent (nine-tenths of the core capital ratio). Any organization not meeting the minimum supervisory ratios would be expected to develop and discuss with its supervisory authority a plan setting forth how the organization intends to reach them.

By the end of 1992, an organization's required core capital must consist solely of common stockholders' equity.

During this period, the maximum amount of allowance for loan and lease losses that may qualify as supplementary capital will be limited to 1.5 percent of weighted risk assets (that is, 1.5 percentage points of the required 7.25 percent), declining to 1.25 percent by year-end 1992. Amounts in excess of these limits may, of course, be maintained, but would not be included in an organization's total capital base. (The Federal banking agencies, however, will continue to require banking organizations to maintain reserves at levels sufficient to cover losses inherent in their loan portfolios.)

A summary of important aspects of the transitional arrangements is contained in Table VI.

Application and Implementation of the Risk-Based Capital Measure

The Basle capital framework recommends that the risk-based standard be applied to international banks but recognizes that each national supervisory authority may wish to apply the framework to a broader class of commercial banking organizations. Since the condition or stability of any institution is affected by its level of off-balance sheet exposure or the risk composition of its asset portfolio, the risk-based capital proposal outlined above provides a systematic analytical framework that is equally relevant for large and small institutions.

For these reasons, the Federal banking agencies intend to apply the risk-based capital measure, including the minimum supervisory ratio guidelines, to all banking organizations on a consolidated basis, regardless of size.[35] This will include an assessment of risk-based capital ratios during examinations and reviews of supervisory applications. In implementing the risk-based ratio, the banking agencies will apply the framework in a flexible manner, giving banking organizations a reasonable amount of time to develop the systems and procedures necessary to calculate the risk-based ratio.

While the risk-based standard will be applied to banking organizations of all sizes, the principal impact of the measure will generally fall on large banking institutions and those with significant off-balance sheet exposures. Aside from the calculation of the risk-based ratio during on-site examinations, the off-site supervisory data collection and monitoring effort associated with the risk-based standard could focus on one of the following three options:

1. All banking organizations;
2. Banking organizations with either (i) consolidated assets in excess of some threshold amount, such as $150 million, $1 billion, or $10 billion, or (ii) off-balance sheet exposure (after adjustment based upon prescribed credit conversion factors) in excess of 20 percent of common stockholders' equity; or
3. Banking organizations with consolidated assets in excess of $20 billion.

Given the objectives of the banking agencies and the Basle capital framework, it would appear necessary to modify the supervisory reporting forms for, at least, the large banking organizations, such as those with consolidated assets in excess of $1 billion, and for those with significant off-balance sheet exposure. However, the Federal banking agencies are seeking public comment on which of the three options above should serve as the primary focus of the supervisory data collection and monitoring effort.

During the transition period, the Federal banking agencies will modify appropriate supervisory reporting forms, primarily for the larger institutions, to bring regulatory reporting requirements generally into line with the major provisions of the risk-based capital measure. In doing this, the Agencies will endeavor to lessen the impact on recordkeeping and reporting burden by phasing in any new reporting requirements, by allowing sufficient time to modify internal recordkeeping and reporting systems, and, under appropriate conditions, by employing *de minimis* exceptions or other arrangements designed to minimize data collection. The latter may be particularly appropriate for smaller banking organizations or those with minimal off-balance sheet exposures. All banking organizations, however, will be expected to develop over time internal recordkeeping and control systems sufficient to allow supervisory officials and examiners to evaluate the organizations' capital positions in a manner generally consistent with the risk-based capital framework.

As noted above, this proposal, consistent with the Basle capital framework, establishes no initial minimum risk-based ratio and provides for a transition period, running through the end of 1992, during which banking organizations are expected to bring their capital positions into compliance with the prescribed framework. As discussed above, the proposed ratio does not take explicit account of all factors affecting an organization's risk profile, such as asset concentrations, overall interest-rate exposure, asset quality problems or other financial or operating weaknesses. For this reason, banking organizations will generally be encouraged to operate above the minimum risk-based capital ratio, and, as is currently the case, the Federal banking agencies may establish a specific target ratio for an individual company that is above the minimum.

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[34] The fact that in-the-money interest rate contracts tend to entail less potential future exposure relative to other contracts is implicitly recognized in the Basle framework. In addition, in this framework, lower confidence levels are employed, and, in the underlying technical analysis, potential future exposures are discounted. Finally, the maximum weight assigned to credit equivalent amounts for standard risk obligors under the Basle framework is 50 percent, rather than 100 percent.

[35] Bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated holding company basis under the same terms and conditions as provided in the Federal Reserve's current Guidelines.

The transition arrangements, including the length of the transition period, are designed to provide banking organizations with a degree of flexibility in complying with the risk-based framework. In particular, these arrangements will minimize the possibility that banking organizations would be forced to take steps that could be disruptive or inconsistent with prevailing conditions in the capital markets. While the proposal provides for a phase-in period, banking organizations, as already noted, are encouraged to bring their capital positions into compliance with minimum supervisory benchmarks as soon as reasonably possible.

Banking organizations will be able to comply with the risk-based capital guidelines in several ways, some of which do not require raising new external capital. For example, an organization can moderate growth or increase earnings retention. More importantly, however, within a risk-sensitive capital standard, an organization can raise its capital ratio by reducing its overall risk profile. This can be done by reducing off-balance sheet exposure or by placing proportionately greater emphasis on those activities that carry lower risk weights.

Relationship to Existing Capital Guidelines

The Federal banking agencies will maintain their existing minimum primary and total capital-to-*total* assets ratios of 5.5 and 6.0 percent, respectively, until the end of 1990—unless revisions to these leverage ratios are made prior to this date. This is appropriate because there is a need for some total leverage guideline, especially during the initial phase of the risk-based transition period, when no minimum risk-based ratio would be in effect. In addition, maintenance of capital-to-total assets standards will provide an important element of continuity during the implementation of the risk-based framework.

By year-end 1990, the Federal banking agencies will review the merits of continuing to employ an overall leverage constraint in tandem with the risk-based capital ratio. In particular, the agencies will consider whether the existing capital-to-total assets ratios should be reduced or eliminated. If the agencies conclude that a total leverage constraint should be maintained, the definition of capital for leverage purposes may, after appropriate consideration, be aligned with the risk-based capital definitions.

Operation of a leverage guideline in parallel with a risk-based capital measure may be appropriate because certain risks associated with high leverage, such as interest rate exposure and the possible depreciation in the market value of certain assets, are not fully factored into the risk-based standard. Under a risk-based standard by itself, a banking organization with a preponderance of assets in the 20, 10, or zero percent risk categories (such as U.S. Government securities) would be subject to only a very minimal constraint on total leverage—or, at least in theory, to no leverage constraint at all, if all assets were held in the form of instruments assigned to the zero percent risk category. Therefore, in the absence of capital-to-total assets guidelines, or other prudential limits on total borrowing in relation to capital, banking organizations could assume an unwarranted degree of leverage.[36]

Issues for Specific Comment

The Federal banking agencies seek comments on all aspects of the proposed risk-based capital proposal. In addition, however, the agencies invite comments on the following specific issues:

1. The proposed risk-based framework assigns claims on foreign banks and commitments to risk categories based, in part, on their *original* maturity. The Federal banking agencies recognize that, for this purpose, a case can be made to utilize *remaining*, rather than original, maturity. Would remaining maturity be a better criterion to use in assigning bank claims and commitments to risk categories?

2. From an analytical standpoint and to avoid possible "window dressing", the preferred approach to calculating capital ratios would generally be to utilize average, rather than period-end, figures—at least for most of the items upon which the ratio is based. However, the determination of average balance sheet figures may involve additional recordkeeping burden for institutions. Should the ratio be calculated from average figures? For which items used in calculating the ratio are average figures most important? How can the burden involved in determining average figures be minimized?

3. While the risk-based standard will be applied to banking organizations of all sizes, its principal impact will generally fall on large banking institutions and those with significant off-balance sheet exposures. Aside from the calculation of the risk-based ratio during on-site examinations, the off-site supervisory data collection and monitoring effort associated with the risk-based framework could focus on one of the following three classes of organizations:

1. All banking organizations;

2. Banking organizations with either (i) consolidated assets in excess of some threshold amount, such as $150 million, $1 billion, or $10 billion, or (ii) off-balance sheet exposure (after adjustment based upon prescribed credit conversion factors) in excess of 20 percent of common stockholders' equity; or

3. Banking organizations with consolidated assets in excess of $20 billion.

Given the objectives of the Federal banking agencies and the Basle capital framework, it would appear necessary to modify the supervisory reporting forms for, at least, the large banking organizations, such as those with consolidated assets in excess of $1 billion, and for those with significant off-balance sheet exposure. However, the Federal banking agencies seek public comment on which of the three options above should serve as the primary focus of the supervisory data collection and monitoring effort.

4. The Basle capital framework generally assigns the credit equivalent amount of interest rate and foreign exchange contracts involving standard risk obligors to the 50 percent, rather than 100 percent, risk category. This is based upon the argument that obligors in these markets tend to be of high quality. The Federal banking agencies seek comments on the merits of this contention, and whether they are

sufficient to warrant the proposed treatment.

5. Under the proposed risk-based capital framework, the amount of intermediate-term preferred stock and subordinated term debt that can be included in supplementary capital is limited to 50 percent of core capital. Limited-life preferred stock with an original maturity of at least 20 years may be counted as supplementary capital without limit. Is this distinction between intermediate-term and long-term preferred stock appropriate? Does the distinction offer banking organizations viable and useful options for maintaining minimum risk-based capital requirements?

6. The proposal assigns claims (excluding obligations with a remaining maturity of 91 days or less) on the U.S. Treasury and U.S. Government agencies to the 10 percent category, while claims on U.S. Government-*sponsored* agencies are placed in the 20 percent category. Under the earlier U.S./U.K. proposal, claims on Government-sponsored agencies were placed in the 50 percent risk category. The distinction between claims on the U.S. Treasury and claims on Government-sponsored agencies is based upon the fact that the latter lack the explicit full faith and credit guarantee of the U.S. Government. In light of the absence of such a guarantee and the proposed treatment of U.S. Treasury obligations, what is the most appropriate treatment of debt issued or guaranteed by U.S. Government-sponsored agencies?

TABLE I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO

	Amount
Example of a bank with $6,000 in total capital and the following assets and off-balance sheet items:	
Balance Sheet Assets:	
Cash	$10,000
Long-term U.S. Government securities	$20,000
Balances at domestic banks	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items:	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000
Long-term commitments to private corporations	20,000
Total Off-Balance Sheet Items	$30,000
This bank's total capital to *total* assets ratio would be: ($6,000/$100,000)=6.00%.	

OBS Item	Face Value		Conversion Factor		Credit Equivalent Amount
To compute the bank's weighted risk assets:					
1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item.					
SLCs backing municipal GOs	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	×	0.50	=	$10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category: Cash	$10,000	×	0	=	$0
10% Category: Long-term U.S. Government securities	$20,000	×	0.10	=	$2,000
20% Category:					
Balances at domestic banks	$5,000				
Credit equivalent amounts of SLCs backing GOs of U.S. municipalities	10,000				
Total	$15,000	×	0.20	=	$3,000
50% Category: No items.					
100% Category:					
Loans to private corporations	$65,000				
Credit equivalent amounts of long-term commitments to private corporations	10,000				
Total	$75,000	×	1.00	=	$75,000
Total Risk-Weighted Assets					$80,000
This bank's *risk-based* capital ratio would be: ($6,000/$80,000)=7.50%.					

TABLE II.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1):	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity.	No limit.
Minority interest in common equity accounts of consolidated subsidiaries.	No limit.
Less: Goodwill and other disallowed intangibles.[1]	
Supplementary Capital (Tier 2):	Total of Tier 2 is limited to 100% of Tier 1.
Allowance for loan and lease losses.	Limited to 1.25% of weighted risk assets.[2]

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[36] If a leverage ratio is adopted in conjunction with the risk-based capital measure, banking organizations could, with the permission of their supervisory authority, be allowed to operate with capital-to-total assets ratios below the minimum. Such organizations would have to be in compliance with the risk-based standard and relatively free of risks not captured by the risk-based measure.

TABLE II.—DEFINITION OF QUALIFYING CAPITAL—Continued

Components	Minimum requirements and limitations after transition period
Perpetual and long-term preferred stock (original maturity 20 years or more).	No limit within Tier 2, long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including perpetual debt mandatory convertible securities).	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building).	Not included; regulators would encourage banks to disclose; would evaluate on case-by-case basis for international comparisons; and would take into account in making overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated banking and finance subsidiaries.	
Reciprocal holdings of bank issued capital securities.	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal rulemaking.
Total Capital (Tier 1 + Tier 2 – Deductions):	Must equal or exceed 8% of weighted risk assets.

[1] Goodwill on books of bank holding companies before March 12, 1988, would be "grandfathered" for transition period. All goodwill and disallowed intangibles in banks, except previously grandfathered intangibles or goodwill approved in supervisory mergers, would be deducted immediately as under current policies. (See each Agency's proposed guidelines for a more thorough discussion of goodwill and other intangibles). All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

TABLE III.—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

Category 1: Zero percent

1. Cash (domestic and foreign).
2. Balances due from, and claims on, Federal Reserve Banks.
3. Securities (direct obligations) issued by the U.S. Government or its agencies[1] with a remaining maturity of 91 days or less.

Category 2: 10 percent

1. Securities issued by the U.S. Government or its agencies[1] with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies.[1]
2. Securities and other claims guaranteed by the U.S. Government or its agenices (including portions of claims guaranteed).
3. Portions of loans and other assets collateralized[2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the leading institution.
4. Federal Reserve Bank stock.

Category 3: 20 percent

1. All claims (long- and short-term) on domestic depository institutions.
2. Claims on foreign banks with an original maturity of one year or less.
3. Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.
4. Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country.
5. Cash items in the process of collection.
6. Securities and other claims on, or guaranteed by, U.S. Government-*sponsored* agencies (including portions of claims guaranteed).[3]
7. Portions of loans and other assets collateralized[4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.
8. General obligation claims on, and claims guaranteed by, U.S. state and local governments that are secured by the full faith and credit of the state or local taxing authority (including portions of claims guaranteed).
9. Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

Category 4: 50 Percent

1. Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
2. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 5: 100 Percent

1. All other claims on private obligors.
2. Claims on foreign banks with an original maturity exceeding one year.
3. Claims on foreign central governments that are not included in item 4 of Category 3.
4. Obligations issued by state or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.
7. Instruments issued by other banking organizations that qualify as capital.
8. All other assets (including claims on commerical firms owned by the public sector).

TABLE IV.

Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit serving as financial guarantees for, or supporting, loans and securities).
2. Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes (e.g., standby letters of credit).
3. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.
4. Forward agreements (that is, contractual obligations) to purchase assets, including financing facilities with *certain* drawdown.

50 Percent Conversion Factor

1. Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).
2. Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingences, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential exposure measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than one year	0	1.0%
One year and over	0.5%	5.0%

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

TABLE V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS

[Interest Rate and Foreign Exchange Rate Related Transactions]

Type of contract (remaining maturity)	Potential exposure						Current exposure			
	National principal (1)	×	Potential exposure conversion factor (2)	=	Potential exposure (dollars) (3)	+	Replacement cost [1] (4)	Current exposure (dollars)[2] (5)	=	Credit equivalent amount
(1) 120-day forward foreign exchange	$5,000,000		0.01		50,000		100,000	100,000		$150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000		–120,000	0		60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		200,000	200,000		250,000
(4) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		–250,000	0		50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000		–1,300,000	0		1,000,000
Total	51,000,000									1,510,000

[1] These numbers are purely for illustration.

[2] The larger of zero or a positive mark-to-market value.

TABLE VI

	Transitional arrangements		Final arrangement: Year-End 1992
	Initial	Year-End 1990	
1. Minimum standard of total capital to weighted risk assets.	None	7.25 percent	8.0 percent
2. Definition of tier 1 capital	Common equity *plus* supplementary elements [1] *less* goodwill and other disallowed intangibles[2].	Common equity *plus* supplementary elements [3] *less* goodwill and other disallowed intangibles[2].	Common equity *less* goodwill and other disallowed intangibles.
3. Minimum standard of tier 1 capital to weighted risk assets.	None	3.625 percent	4.0 percent.
4. Minimum standard of common stockholders' equity to weighted risk assets.	None	3.25 percent	4.0 percent.
5. Limitations on supplementary capital elements.			
a. Allowance for loan and lease losses.	No limit within supplementary capital	1.5 percent of weighted risk assets	1.25 percent of weighted risk assets.
b. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50 percent of tier 1.	Combined maximum of 50 percent of tier 1.	Combined maximum of 50 percent of tier 1.
c. Total qualifying supplementary capital.	May not exceed tier 1 capital	May not exceed tier 1 capital	May not exceed tier 1 capital.
6. Definition total capital	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.

[1] Up to 25 percent of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

[2] See the Notice of Proposed Guidelines and the actual text of the proposed guidelines for discussion of relevant definitions and grandfathering arrangements for goodwill.

[3] Up to 10 percent of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

Regulatory Flexibility Act Analysis

While all commercial banks would presumably be required to make some revisions to their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the Federal banking agencies do not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities, in this case small banking organizations, in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, this proposal would generally not apply to bank holding companies with consolidated assets less than $150 million.

This proposal is designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital, this proposal is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles.

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[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collateralization is determined by current market value.

Executive Order 12291

The Comptroller of the Currency certifies that the proposal, if adopted, would not constitute a "major rule" and, therefore, does not require the preparation of a preliminary regulatory impact analysis.

Comporting Changes to Part 3

If this proposal is adopted, it will, when the Comptroller's guidelines become effective, necessitate certain changes to the existing capital maintenance provisions of 12 CFR Part 3. Specifically, it is anticipated that, at least, portions of §§ 3.2, 3.3, 3.4, 3.6, 3.7 and 3.100 will require changes so as to be consistent with this proposal.

List of Subjects

12 CFR Part 3

National banks, Capital, Risk.

12 CFR Part 225

Banks, Banking, Capital adequacy, Federal Reserve system, Holding companies, Reporting requirements, State member banks.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Federal Deposit Insurance Corporation, Capital adequacy, State nonmember banks.

BILLING CODES 4810-33-M; 6210-01-M; 6714-01-M

DEPARTMENT OF THE TREASURY—OFFICE OF THE COMPTROLLER OF THE CURRENCY

Authority and Issuance

For the reasons set forth in the preamble, Part 3 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—[AMENDED]

1. The authority citation for 12 CFR Part 3 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.*; 12 U.S.C. 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

2. A new Appendix A is added to Part 3 to read as follows:

Appendix A—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions

(a) *Purpose.* (1) An important function of the Office of the Comptroller of the Currency ("OCC") is to evaluate the adequacy of capital maintained by each national bank. Such an evaluation involves the consideration of numerous factors, including the riskiness of a bank's assets and off-balance sheet items. This Appendix A implements the OCC's risk-based capital guidelines. The risk-based capital ratio derived from these guidelines is more systematically sensitive to the riskiness of bank activities than are the capital-to-total assets ratios presently required by 12 CFR Part 3. A bank's risk-based capital ratio is obtained by dividing its capital base (as defined in section 2 of this Appendix A) by its average risk-weighted assets (as calculated pursuant to section 3 of this Appendix A). These guidelines were created within the framework established by the report issued by the Basle Committee on Banking Regulations and Supervisory Practices on December 10, 1987. That report had as its principal objectives the establishment of a uniform capital framework for the international banking system and the mitigation of an important source of competitive inequality for banks arising from differences in the way countries required their banking and finance companies to maintain capital. The OCC believes that the risk-based capital ratio is a useful tool in evaluating the capital adequacy of all national banks, not just those that are active in the international banking system.

(2) The purpose of this Appendix A is to explain precisely (i) how a national bank's risk-based capital ratio is determined and (ii) how these risk-based capital guidelines are applied to national banks. The OCC will review these guidelines periodically for possible adjustments commensurate with its experience with the risk-based capital ratio and with changes in the economy, financial markets and domestic and international banking practices.

(b) *Applicability.* (1) The risk-based capital ratio derived from these guidelines is an important factor in the OCC's evaluation of a bank's capital adequacy. However, the final supervisory judgment on a bank's capital adequacy is based on numerous factors, including those listed in 12 CFR 3.10, and may differ significantly from conclusions that might be drawn solely from the bank's risk-based capital ratio.

(2) Effective December 31, 1990, these risk-based capital guidelines will apply to all national banks. In the interim, banks must maintain minimum capital-to-total assets ratios as required by 12 CFR Part 3, and should begin preparing for the implementation of these risk-based capital guidelines. In this regard, each national bank that does not currently meet the interim ratio established in section 4(a)(1) of this Appendix A should establish a plan for meeting that standard. By December 31, 1990, the OCC will determine the need for operating these risk-based capital guidelines in tandem with some minimum capital-to-total assets ratios. If a tandem system is adopted, it is anticipated that any required minimum capital-to-total assets ratios will be based upon the capital definitions set forth in section 2 of this Appendix A. Under such a system, a national bank that meets the standard set forth in these risk-based capital guidelines may be allowed to operate below the capital-to-total assets ratios on a case-by-case basis, as long as the overall risk profile of that bank is low.

(3) These risk-based capital guidelines will not be applied to federal branches and agencies of foreign banks.

(c) *Definitions.* For purposes of this Appendix A, the following definitions apply:

(1) "Allowance for loan and lease losses" means the balance of the valuation reserve on December 31, 1988, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Associated company" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds a 20 to 50 percent ownership interest.

(3) "Average risk-weighted assets" means a daily average of a national bank's risk-weighted assets.

(4) "Banking and finance subsidiary" means any subsidiary of a national bank that engages in banking-and finance-related activities.

(5) "Cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation in the country in which the reporting bank's office that is clearing or collecting the check or draft is located; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation in the United States or the country in which the reporting bank's office that is handling the drafts is located; and unposted debits.

(6) "Commitment" means any arrangement that obligates a national bank to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(7) "Common stockholders' equity" means common stock, common stock surplus, undivided profits, and capital reserves, net of foreign currency translation adjustment and unrealized losses on non-current marketable equity securities.

(8) "Domestic depository institution" means all federally-insured offices (branch and main, foreign and domestic) of banks and other deposit-taking institutions chartered and headquartered in any of the several states of the United States of America, the District of Columbia, Puerto Rico, and United States territories and possessions. This definition encompasses commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institutions. U.S. branches and agencies of foreign banks are excluded from this definition.

(9) "Exchange rate contracts" include: Cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar

instrument that, in the opinion of the OCC, gives rise to similar risks.

(10) "Foreign bank" means (i) a foreign central bank or (ii) a financial institution which is organized under the laws of a foreign country; that engages in the business of banking; that is recognized as a bank by the bank supervisory or monetary authorities of the country in which its principal banking operations are organized; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. This includes U.S. branches and agencies of foreign banks.

(11) "Foreign central government" means the national governing authority of a country other than the United States of America; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are defined as entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; private agencies sponsored by the central government; and non-central government entities that are guaranteed by the foreign central government.

(12) "Goodwill" means an intangible asset that represents the excess of the purchase price over the fair market value of tangible and identifiable intangible assets acquired in purchases accounted for under the purchase method of accounting.

(13) "Intangible assets" include, but are not limited to, purchased mortgage servicing rights, goodwill, favorable leaseholds, and core deposit value.

(14) "Interest rate contracts" include: Single currency interest rate swaps; basis swaps; forward rate agreements; interest rate options purchased; and any similar instrument that, in the opinion of the OCC, gives rise to similar risks.

(15) "Original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it is unconditionally cancellable at the option of the issuing bank.

(16) "Preferred stock" includes the following instruments: (i) "Convertible preferred stock," which means preferred stock that is mandatorily convertible into either common or perpetual preferred stock; (ii) "Intermediate-term preferred stock," which means preferred stock with an original maturity of at least seven years, but less than 20 years; (iii) "Long-term preferred stock," which means preferred stock with an original maturity of 20 years or more; and (iv) "Perpetual preferred stock," which means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed.

(17) "Reciprocal holdings of bank capital instruments" means cross-holdings or other formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other banking organizations that were taken in satisfaction of debts previously contracted, provided that the reporting national bank has not held such instruments for more than five years or such longer period approved by the OCC.

(18) "State" means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(19) "Subsidiary" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds more than a 50% ownership interest. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting bank has not held such interest for more than five years or such longer period approved by the OCC.

(20) "Total capital" is the sum of a national bank's core (Tier 1) and supplementary (Tier 2) capital elements.

(21) "Unconditionally cancellable," with respect to a commitment-type lending arrangement, including retail credit card lines, means the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(22) "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(23) "United States Government-sponsored agency" means an agency originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

Section 2. Components of Capital

A national bank's qualifying capital base consists of two types of capital—core (Tier 1) and supplementary (Tier 2).

(a) *Core (Tier 1) Capital.* The following elements comprise a national bank's core (Tier 1) capital:

(1) Common stockholders' equity; and

(2) Minority interests in the common stockholders' equity accounts of consolidated subsidiaries.

(b) *Supplementary (Tier 2) Capital.* The following elements comprise a national bank's supplementary (Tier 2) capital:

(1) Allowance for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets, subject to the transition rules in section 4(a)(2) of this Appendix A.

(2) Perpetual preferred stock, long-term preferred stock, and convertible preferred stock, without limit, if the issuing national bank has the option to defer payment of dividends on these instruments. For long-term preferred stock, the amount that is eligible to be included as supplementary (Tier 2) capital is reduced by 20% of the original amount of the instrument (net of redemptions) at the beginning of each of the last five years of the life of the instrument.

(3) Hybrid capital instruments, without limit. Hybrid capital instruments are those instruments which combine certain characteristics of debt and equity, such as perpetual debt. To be included as supplementary (Tier 2) capital, these instruments must meet the following criteria: [1]

(i) The instrument must be unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up;

(ii) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the OCC;

(iii) The instrument must be available to participate in losses while the issuer is operating as a going concern (in this regard, the instrument must automatically convert to common or perpetual or long-term preferred stock if the sum of the retained earnings and capital surplus accounts of the issuer shows a negative balance); and

(iv) The instrument must provide the option for the issuer to defer principal and interest payments, if

(A) the issuer does not report a net profit for the most recent combined four quarters, and

(B) the issuer eliminates cash dividends on common and preferred stock.

(4) Term subordinated debt instruments and intermediate-term preferred stock are included in supplementary (Tier 2) capital, but only to a maximum of 50% of core (Tier 1) capital. To be considered capital, term subordinated debt instruments must meet the requirements of 12 CFR 3.100(f)(1). Also, at the beginning of each of the last five years of the life of either type of instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemptions).

(c) *Deductions from capital.* The following items are deducted from the appropriate segment of a national bank's capital base when calculating its risk-based capital ratio.

(1) Deductions from core (Tier 1) capital: All intangible assets, including goodwill, are deducted from core (Tier 1) capital before the supplementary (Tier 2) portion of the calculation is made, subject to the transition rules contained in section 4(a)(1)(ii) of this Appendix A; however, purchased mortgage servicing rights are not deducted from core (Tier 1) capital. In addition, the OCC might not require national banks to deduct goodwill that they acquire, or have previously acquired, in connection with supervisory mergers with problem or failed banks.

(2) Deductions from total capital:

(i) Reciprocal holdings of capital instruments of banking organizations; and

(ii) Investments in the equity accounts of unconsolidated banking and finance subsidiaries.[2]

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[1] Mandatory convertible debt instruments that meet the requirements of 12 CFR 3.100(e)(5), or that have been previously approved as capital by the OCC, are treated as qualifying hybrid capital instruments, regardless of whether they meet the requirements of this section 2(b)(3).

[2] The OCC may require deduction, on a case-by-case basis, of investments in associated companies, unless the bank can demonstrate that it does not exercise a significant influence over the entity.

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

The denominator of the risk-based capital ratio, *i.e.*, a national bank's average risk-weighted assets, is derived by assigning that bank's assets and off-balance sheet items to one of the five risk categories detailed in section 3(a) of this Appendix A. Each category has a specific risk weight. Before an off-balance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with section 3(b) of this Appendix A. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent that is included in the denominator of the bank's risk-based capital ratio. Thus, an asset/credit equivalent assigned to the 20% category is one against which a national bank is expected to maintain one-fifth of the capital it should maintain against an asset/credit equivalent in the 100% category. Any asset deducted from a bank's capital in computing the numerator of the risk-based capital ratio is not included as part of the bank's risk-weighted assets.

(a) *On-Balance Sheet Assets.* The following are the risk categories/weights for on-balance sheet assets:

(1) *Zero percent Risk Weight.* (i) Cash, including domestic and foreign currency owned and held in all offices of a national bank or in transit. Any foreign currency held by a national bank should be converted into U.S. dollar equivalents.

(ii) Deposit reserves and other balances at Federal Reserve Banks.

(iii) Securities issued by the United States Government or its agencies that have a remaining maturity of 91 days or less.

(2) *10 percent Risk Weight.* (i) Securities issued by the United States Government or its agencies that have a remaining maturity greater than 91 days.

(ii) That portion of assets guaranteed by the United States Government or its agencies.

(iii) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States Government or its agencies.

(iv) The book value of paid-in Federal Reserve Bank stock.

(v) Assets collateralized by cash in a segregated deposit account held by the reporting national bank.

(3) *20 percent Risk Weight.* (i) All claims on domestic depository institutions, and all assets backed by the full faith and credit of domestic depository institutions. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other domestic depository institutions, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other domestic depository institutions. However, bank-issued securities that qualify as capital of the issuing bank are not included in this risk category but are assigned to the 100% risk category of section 3(a)(5) of this Appendix A.

(ii) Claims on foreign banks with an original maturity of one year or less.

(iii) Cash items in the process of collection.

(iv) Local currency claims on foreign central governments, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceed the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(5) of this Appendix A.

(v) Claims on United States Government-sponsored agencies.

(vi) That portion of assets guaranteed by United States Government-sponsored agencies.

(vii) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies.

(viii) General obligations of any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), and that portion of any claims guaranteed by any such state or political subdivision.

(ix) Claims on official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(4) *50 percent Risk Weight.* (i) Revenue bonds issued by any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), for which the underlying obligor is the state or political subdivision, but which are repayable solely from the revenues generated by the project financed through the issuance of the obligations.

(ii) The credit equivalent amount of interest rate and foreign exchange rate contracts, calculated in accordance with section 3(b)(5) of this Appendix A, that do not qualify for inclusion in a lower risk category.

(5) 100 percent Risk Weight. All other assets not specified above, including, but not limited to:

(i) Claims on foreign banks with an original maturity exceeding one year;

(ii) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in section 3(a)(3)(iv) of this Appendix A;

(iii) Instruments issued by other banking organizations that qualify as capital of the issuer;

(iv) Obligations issued by any state or any political subdivision thereof, within the meaning of 12 CFR 1.3(g), for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, *e.g.*, industrial development bonds;

(v) Any investments in unconsolidated subsidiaries that are not required to be deducted from the bank's qualifying capital base, pursuant to section 2(c)(3) of this Appendix A;

(vi) Assets secured by commercial and residential real estate, including mortgages on one-to-four family homes; and

(vii) Claims on foreign and domestic government-owned commercial enterprises.

(b) *Off-Balance Sheet Activities.* The risk weight assigned to an off-balance sheet activity is generally determined by a two-step process. First, the face amount of an off-balance sheet item is multiplied by the appropriate credit conversion factor detailed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit equivalent amount. Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A. The following are the credit conversion factors and the off-balance sheet items to which they apply.

(1) *100 percent credit conversion factor.* (i) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party.[3] The face amount of a direct credit substitute is netted against the amount of any participations sold in that item. The amount not so sold is converted to an on-balance sheet credit equivalent and assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A. If the originating bank remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent with that amount then being assigned to the risk category appropriate for the purchaser of the participation, which, if the purchaser is a domestic depository institution, would be the 20% risk category of section 3(a)(3) of this Appendix A. If the participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating bank, the full amount of the participations sold is excluded from the originating bank's risk-weighted assets;

(ii) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(iii) Assets sold under an agreement to repurchase and assets sold with recourse, to the extent these assets are not reported on a national bank's statement of condition (this includes loan strips sold without direct recourse); and

(iv) Contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets at a specified future date.

(2) *50 percent credit conversion factor.* (i) Transaction-related contingencies, including, *inter alia*, performance bonds and performance-based standby letters of credit related to a particular transaction.[4] To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(ii) The unused portion of loan commitments with an original maturity exceeding one year, including home-equity and mortgage lines of credit; and

(iii) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the bank's customer can issue short-term debt obligations in its own name, but for which the bank has a legally binding commitment to either:

(A) Purchase the obligations the customer is unable to sell by a stated date; or

(B) Advance funds to its customer, if the obligations cannot be sold.

(3) *20 percent credit conversion factor.* (i) Trade-related contingencies. These are short-term self-liquidating instruments used to finance the movement of goods and are collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(4) *Zero percent credit conversion factor.* (i) Unused commitments with an original maturity of one year or less;

(ii) Unused commitments with an original maturity of greater than one year, if:

(A) They are unconditionally cancellable by the bank, and

(B) The bank has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility; and

(iii) Unused retail credit card lines that are unconditionally cancellable by the bank.

(5) *Interest rate and foreign exchange rate contracts.* The credit equivalent amount of such contracts is the sum of two measures of credit exposure—current and potential credit exposure.

(i) *Current credit exposure*—The daily replacement cost of the contract is determined by marking it to market (this value is measured in U.S. dollars, regardless of the currency specified in the contract). Contracts with negative market value are deemed to have no current credit exposure.

(ii) *Potential credit exposure*—To complete the calculation of the on-balance sheet credit equivalent amount of a contract, an estimate of the potential increase in credit exposure over the remaining life of the contract is added on (the "add-on") to the contract's current credit exposure, including contracts with no current credit exposure. The add-on is calculated by multiplying the notional principal amount of the item on a daily basis by one of the following credit conversion factors, as appropriate:[5]

(A) Interest rate contracts—

(I) Zero percent, if the contract has less than one year remaining until maturity, and

(II) 0.5 percent, for contracts with a remaining maturity of one year or more;

(B) Foreign exchange rate contracts—

(I) 1.0 percent, if the contract has less than one year remaining until maturity, and

(II) 5.0 percent, for contracts with a remaining maturity of one year or more.

(iii) *Risk weighting*—The credit equivalent amount, which is derived from sections 3(b)(5) (i) & (ii) of this Appendix A, is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this Appendix A. However, the maximum risk weight assigned to the credit equivalent amount of an interest rate or foreign exchange rate contract is 50%.

(iv) *Exceptions*—The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a national bank's risk-based capital ratio:

(A) Exchange rate contracts with an original maturity of seven days or less; and

(B) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

Section 4. Implementation, Transition Rules, and Target Ratios

(a) *December 31, 1990 to December 30, 1992.* During this time period:

(1) All national banks are expected to maintain a capital to risk-weighted assets ratio of 7.25%.

(i) Fifty percent of this 7.25% must be made up of core (Tier 1) capital; however, of this 50%, up to 10% can be comprised of supplementary (Tier 2) capital elements.

(ii) Intangible assets, including goodwill, that national banks have been allowed to count as capital as a result of the transition rules contained in 12 CFR 3.3 are grandfathered until December 31, 1992, and, therefore, are not deducted from core (Tier 1) capital until that date.

(2) Allowance for loan and lease losses can be included in supplementary (Tier 2) capital up to a maximum of 1.5% of a bank's risk-weighted assets.

(3) Supplementary (Tier 2) capital elements that are not used as Part of core (Tier 1) capital will qualify as part of a national bank's total capital base up to a maximum of 100% of that bank's core (Tier 1) capital.

(b) *On December 31, 1992.*

(1) All national banks are expected to maintain a capital to risk-weighted assets ratio of 8.0%.

(2) One half of a national bank's total capital must consist of core (Tier 1) capital elements.

(3) Supplementary (Tier 2) capital elements qualify as part of a national bank's total capital base up to a maximum of 100% of that bank's core (Tier 1) capital.

Date: February 23, 1988.

Robert L. Clarke,

Comptroller of the Currency.

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909.

Appendix A—[Amended]

2. The Board proposes to amend Appendix A to Part 225 by adding at the end of the title to Appendix A: "Leverage Measure".

Appendix B—[Redesignated as Appendix C]

3. The Board proposes to amend the Appendices to Part 225 by redesignating the current Appendix B as Appendix C and adding a new Appendix B to read as follows:

Appendix B—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure as part of the System's Capital Adequacy Guidelines. (Supervisory leverage ratios relating primary and total capital to total assets are outlined in Appendix A of these Guidelines.) The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from 12 major industrial countries ("the Basle Supervisors' Committee"). This Basle capital framework was recommended by the Group of Ten Central Bank Governors as the basis for implementing a generally consistent international approach to assessing capital adequacy.

The principal objectives of the risk-based measure are to: (i) Make regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (ii) take off-balance sheet exposures into account in assessing capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve a greater degree of consistency in the assessment of the capital adequacy of major banking organizations throughout the world.

The risk-based capital measure comprises a definition of capital and a system for calculating weighted risk assets by assigning assets and off-balance sheet items to risk categories. An institution's risk-based capital ratio is calculated by dividing its qualifying capital base (the numerator of the ratio) by its weighted risk assets (the denominator).

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[3] For purposes of this section 3(b)(1)(i), a "standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any indebtedness undertaken by the account party, in the event that the account party fails to fulfill its obligation to the beneficiary. Performance-based standby letters of credit are defined differently in section 3(b)(2)(i), *infra*.

[4] For purposes of this section 3(b)(2)(i), a "performance-based standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by the account party in the performance of a nonfinancial or commercial obligation. Participations in performance-based standby letters of credit are treated the same as participations in financial guarantee-type standby letters of credit. Financial guarantee-type standby letters of credit are defined in section 3(b)(1)(i), *supra*.

[5] No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the on-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.

The definition of qualifying capital is outlined below in section II, and the procedures for calculating weighted risk assets are discussed in section III. Table I illustrates a sample calculation of weighted risk assets and the risk-based capital ratio. The risk-based guidelines also establish a schedule for achieving a minimum supervisory standard for the ratio of capital to weighted risk assets and provide for transitional arrangements during a phase-in period to facilitate adoption and implementation of the measure. These standards and transitional arrangements are set forth in section IV.

The risk-based guidelines apply to all state member banks and to bank holding companies with consolidated assets of $150 million or more. Bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated basis under the same terms and conditions as described in Appendix A (leverage measure) of the Capital Adequacy Guidelines.

The risk-based guidelines are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. Generally, banking organizations are expected to operate above the minimum risk-based standard. Those institutions with high or inordinate levels of risk should hold capital commensurate with their levels of risk.

The risk-based capital ratio focuses principally on broad categories of credit risk, although it does take one limited aspect of interest rate and market risk (maturity) into account in assigning certain assets to risk categories. The risk-based ratio (like the leverage measure) does not, however, take account of other factors that can affect an organization's financial condition. These factors include: Overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgment on an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based (or leverage-based) capital ratio.

II. Definition of Capital for the Risk-Based Capital Ratio

An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below and are set forth in Table II.

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1).* Core capital elements consist of:

- —Common stockholders' equity (common stockholders' equity includes common stock, surplus, and retained earnings, including disclosed capital reserves that represent an appropriation of retained earnings, net of treasury stock, and including foreign currency translation adjustments);
- —Minority interest in the common stockholders' equity accounts of consolidated subsidiaries; and
- —Supplementary capital elements (during the transition period only, and subject to certain limitations set forth in Section IV below).

At least 50 percent of the qualifying capital base of a bank holding company or state member bank must consist of core capital. For bank holding companies, core capital is defined, during the transition period (that is, through year-end 1992), as the sum of core capital elements minus any goodwill acquired on or after March 12, 1988. (During the transition period, bank holding company goodwill booked before March 12, 1988, would be "grandfathered", that is, would not be deducted from core capital during the transition period.) State member banks generally are prohibited from including goodwill in regulatory capital; thus, all bank goodwill is to be deducted immediately from state member bank core capital without any grandfather arrangements.[1] After the transition period (that is, after year-end 1992), *all* bank holding company goodwill will be deducted from the sum of the core capital elements for purposes of determining core capital and calculating the risk-based capital ratio.

2. *Supplementary capital elements (Tier 2).* A portion of an institution's qualifying capital base may consist of supplementary capital elements. Supplementary capital elements include:[2]

- —Allowances for loan and lease losses (subject to limitations discussed below);
- —Perpetual and long-term preferred stock (original maturity of at least 20 years);
- —Hybrid capital instruments, including perpetual debt and mandatory convertible securities; and
- —Term subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The maximum amount of supplementary elements that may be treated as regulatory capital will be limited to 100 percent of core capital (after any deductions of goodwill). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as supplementary capital for regulatory purposes will be limited to 50 percent of core capital. Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

Redemptions of Tier 2 capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization should consult with the Federal Reserve before redeeming perpetual preferred stock or before redeeming any other Tier 2 capital instrument prior to maturity.

The components of supplementary capital are discussed in greater detail below.

a. *Allowance for loan and lease losses.* Allowances or loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves,"[3] and reserves created against identified losses or earmarked for a specific asset.

The risk-based capital guidelines provide a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. Initially, no limit will apply to these reserves. However, by year-end 1990, the allowance for loan and lease losses, as a component of capital, may constitute no more than 1.5 percent of an institution's weighted risk assets and, at the end of the transition period and thereafter, no more than 1.25 percent of weighted risk assets.[4]

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[1] An exception will continue to be made for goodwill acquired by state member banks in supervisory mergers with troubled or failed banks in which the Federal Reserve has given the bank permission to count goodwill for capital purposes.

[2] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the framework, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a bank. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as retained earnings and, to be included in capital, such reserves must be accepted by the banking organization's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles and long-standing supervisory practice, these types of reserves are not recognized for banks and bank holding companies in the United States. Foreign banking organizations seeking to make acquisitions or conduct business in the United States would be expected to disclose publicly at least the degree of reliance on such reserves in meeting supervisory capital requirements.

[3] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[4] The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of gross risk weighted assets. A banking organization may deduct reserves for loan and lease losses in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from the gross sum of weighted risk assets and use the resulting net sum of weighted risk assets in computing the denominator of the risk-based capital ratio.

b. *Perpetual and long-term preferred stock.* Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. (If the holder has a right to redeem the instrument prior to the original stated maturity, maturity would be defined for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.) When long-term preferred stock has a remaining maturity of less than seven years, it should be treated for capital purposes as intermediate-term preferred stock and subject to the 50 percent of core capital limitation described below.

Perpetual preferred stock and long-term limited-life preferred stock would qualify for inclusion in capital provided that they can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer or reduce preferred dividends if dividends on common stock are eliminated or reduced. Given these conditions and the perpetual or long-term nature of the instruments, there is no limit on the amount of these instruments that may be included within Tier 2 capital.

c. *Hybrid capital instruments.* Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument must be unsecured; fully paid-up; and subordinated to general creditors and, if issued by a bank, also to depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the Federal Reserve. (Consistent with the Board's criteria for perpetual debt and mandatory convertible securities, this requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.)

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument must convert to common or perpetual or long-term preferred stock in the event that the sum of retained earnings and capital surplus accounts of the issuer show a negative balance.

(4) The instrument must provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters); *and* (b) the issuer eliminates cash dividends on common and preferred stock.

Perpetual debt and mandatory convertible securities that meet the criteria set forth in 12 CFR Part 225, Appendix A, will qualify as hybrid capital instruments for state member banks and bank holding companies. During the transition period, the Federal Reserve will review the criteria for mandatory convertible securities in light of the definitions contained in the Basle capital framework. As a result of this review, the Board may modify the mandatory convertible criteria as part of its overall program for implementing the risk-based capital ratio.

There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

d. *Subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as capital for risk-based capital purposes is limited to 50 percent of core capital. Subordinated debt and intermediate-term preferred stock must have an original average maturity of at least seven years to qualify as supplementary capital.[5] (If the holder has the option to redeem the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.) In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to depositors and general creditors; in bank holding companies, debt must be subordinated in right of payment to all senior indebtedness of the issuer. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt before the stated maturity, it should receive prior approval of the Federal Reserve.

e. *Discount of supplementary capital instruments.* As a limited-life capital instrument approaches maturity, it begins to take on characteristics of a short-term obligation and becomes less like a component of capital. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 would be adjusted downward, or discounted, as these instruments approach maturity. All such instruments would be discounted by reducing the outstanding amount of the capital instrument that would count as supplementary capital by a fifth of the original amount, less redemptions, each year during the instrument's last five years before maturity. Such instruments, or portions of such instruments, therefore, would have no capital value when they have a maturity of less than one year.

f. *Revaluation reserves.* The Basle capital framework addresses the role in capital of revaluation reserves with respect to bank premises and long-term holdings of equity securities. When recognized, these reserves result from the restatement of asset carrying values to reflect current market values. In the United States, banks and bank holding companies, for the most part, follow generally accepted accounting principles (GAAP) when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. For this and other reasons the Federal Reserve has generally not included unrealized asset values in capital ratio calculations; although it has long taken such values into account in assessing the overall financial strength of a banking organization.

The equivalent of revaluation reserves for state member banks and bank holding companies will not be formally recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banking organizations are encouraged to disclose their equivalent of premises and equity revaluation reserves, and such values will be taken into account as additional factors in assessing overall capital adequacy and financial condition. For example, in the absence of any notable supervisory, financial, or operating problems, organizations with significant and reliable revaluation reserves may be permitted to operate closer to minimum supervisory capital ratios than organizations without such values.

B. Deductions from Capital and Other Adjustment

Certain assets are to be deducted from an organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[6] These assets include:

(1) Goodwill—deducted from Tier 1—(See discussion below of limited grandfathering of bank holding company goodwill during the transition period);

(2) Investments in unconsolidated banking and finance subsidiaries and, on a case-by-case basis, investments in other subsidiaries or associated companies at the discretion of the Federal Reserve—deducted from the sum of Tier 1 and Tier 2; and

(3) Reciprocal holdings of capital instruments of banking organizations—deducted from the sum of Tier 1 and Tier 2.

1. *Goodwill and other intangible assets.* Goodwill is an intangible asset that represents the excess of the purchase price over the fair market value of net assets acquired in acquisitions accounted for under the purchase method of accounting.

a. *Bank holding company goodwill.* Any goodwill carried on the balance sheet of a bank holding company after December 31, 1992, should be deducted from the sum of core capital elements in determining Tier 1 capital. In addition, bank holding company goodwill acquired as a result of a merger or acquisition that is consummated on or after March 12, 1988, also will be deducted. For bank holding companies, any goodwill in existence before March 12, 1988, would be "grandfathered" during the transition period and would not be deducted from Tier 1 until December 31, 1992.

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[5] Unsecured term debt issued by bank holding companies prior to March 12, 1988, and qualifying as secondary capital at the time of issuance would continue to qualify as capital under the risk-based framework, subject to the 50 percent of core capital limitation. Bank holding company term debt issued on or after March 12, 1988, must be subordinated in order to qualify as capital.

[6] Any assets deducted from capital in computing the numerator of the ratio would not be included in weighted risk assets in computing the denominator of the ratio.

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b. *State member bank goodwill.* Since state member banks generally may not include goodwill in regulatory capital under current supervisory policies, all goodwill in state member banks will be deducted from Tier 1 capital immediately.[7]

c. *Other intangible assets.* The Federal Reserve is not proposing, as a matter of general policy, to deduct any other intangible assets from the capital of state member banks and bank holding companies at this time. The Federal Reserve, however, will continue to monitor closely the level and quality of other intangible assets—including purchased mortgage servicing rights, leaseholds, and core deposit value—and take them into account in assessing the capital adequacy of banking institutions. As with any other asset, banking organizations should review periodically the carrying value of intangible assets and make appropriate adjustments in carrying values or related amortization periods.

As a general rule, the Board believes that banking organizations should maintain strong tangible core capital bases in relation to weighted risk assets. While all intangible assets will be monitored, intangible assets (other than goodwill) that exceed 25 percent of core (Tier 1) capital will be subject to particularly close scrutiny. In addition, the Board will, on a case-by-case basis, continue to consider the level of an individual organization's tangible capital ratio (after deducting all intangible assets), together with the quality and value of the organization's intangible assets, in making an overall assessment of capital adequacy. Moreover, the Board intends to continue its policy of requiring banking organizations experiencing substantial growth internally and by acquisition to maintain strong capital positions that are substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. *Investments in certain subsidiaries*—a. *Unconsolidated banking or finance subsidiaries.* Any equity or debt capital investments in banking or finance subsidiaries [8] that are not consolidated under regulatory reporting requirements are to be deducted from an organization's total capital base, that is, from the sum of core capital and supplementary capital elements.[9] Inasmuch as the assets of *un*consolidated subsidiaries are not fully reflected in a banking organization's consolidated total assets, such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization and its affiliates to considerable risk. For this reason, it is appropriate to view the capital invested in these unconsolidated entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or additional leverage elsewhere in the organization.

b. *Other subsidiaries.* The deduction of equity and debt capital investments from the banking organization's capital may also be applied in the case of other subsidiaries, such as securities affiliates, that, while consolidated for accounting purposes, are not deemed to be consolidated for certain other purposes, such as to facilitate functional regulation of financial or other subsidiaries.

The Federal Reserve will not automatically deduct investments in other unconsolidated subsidiaries (such as those engaged in commercial activities) or investments in joint ventures and associated companies.[10] Nonetheless, the capital invested in these entities, like investments in unconsolidated banking and finance subsidiaries, supports assets not consolidated with the rest of the banking organization's activities and, therefore, may not be generally available to support additional leverage in the banking organization. Moreover, experience has shown that banking organizations stand behind the losses of affiliated institutions, such as joint ventures and associated companies, in order to protect the reputation of the organization as a whole. In some cases, this has led to losses that have exceeded the investments in such organizations.

For this reason, the Federal Reserve will monitor the level and nature of such investments for individual banking organizations and, on a case-by-case basis, may deduct such investments from capital, apply an appropriate risk-weighted capital charge against the organization's proportionate share of the assets of its associated companies, or otherwise require the organization to operate with a risk-based capital ratio above the minimum.

In considering the appropriateness of such adjustments or actions, the Federal Reserve will take into account whether:

(1) The subsidiary, joint venture, or associated company has a name similar to the banking organization;

(2) The banking organization has significant influence over the financial or managerial policies or operations of the affiliated company;

(3) The banking organization is the largest investor in the affiliated company; or

(4) Other circumstances prevail that appear to tie closely the activities of the affiliated company to the investing banking organization.

The Federal Reserve may, on a case-by-case basis, also deduct from capital debt and equity investments in certain *consolidated* subsidiaries in order to determine if the banking organization meets minimum supervisory capital requirements without reliance on the capital invested in the subsidiaries. In addition, the Board may, at some future date, seek public comment on the extension of this approach to all subsidiaries engaged in certain activities for the purpose of assessing the banking organization's consolidated capital position.

In general, when investments in a subsidiary are deducted from a banking organization's capital, the subsidiary's assets will also be excluded from the assets of the banking organization in order to assess the latter's capital adequacy.

3. *Reciprocal holdings of bank capital instruments.* Reciprocal holdings of banking organizations' capital instruments (that is, instruments that qualify as Tier 1 or Tier 2 capital) are to be deducted from an organization's total capital base for the purpose of determining the numerator of the risk-based capital ratio. Reciprocal holdings are cross-holdings resulting from formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, as this discussion implies, deductions would be limited to intentional cross-holdings. At present, the Board does not intend to require banking organizations to deduct non-reciprocal holdings of such capital instruments.[11] The Board, however, intends to monitor non-reciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee, as called for under the Basle capital framework.

III. Procedures for Computing Weighted Risk Assets and Offbalance Sheet Items Used in the Risk-Based Capital Ratio

A. Procedures

Balance sheet assets and credit equivalent amounts of off-balance sheet items of state member banks and bank holding companies are assigned to one of five broad risk categories. The aggregate dollar value of the amount in each category is then multiplied by the weight assigned to that category. The resulting weighted values from each of the five risk categories are added together and this sum is the weighted risk assets total that comprise the denominator of the risk-based capital ratio. Table I provides a sample calculation of this ratio.

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[7] An exception to this rule would be made for those state member banks that have acquired goodwill in connection with supervisory mergers with problem or failed banks and that have been permitted to include such goodwill in capital under current policy. Consistent with this approach, such state member banks would be allowed to continue to include goodwill in capital for risk-based capital purposes.

[8] For this purpose, a subsidiary generally is defined as any banking or finance company in which the reporting institution holds more than 50 percent of the outstanding common stock.

[9] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report) and the Consolidated Financial Statements for Bank Holding Companies (Y-9C Report).

[10] The definition of such entities is contained in the instructions to the commercial bank Consolidated Reports of Condition and Income and the Consolidated Financial Statements for Bank Holding Companies. Under regulatory reporting procedures, associated companies and joint ventures generally are defined as companies in which the banking organization owns 20 to 50 percent of the voting stock.

[11] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143. In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the "credit equivalent amount" of an off-balance sheet item is determined, in most cases, by multiplying the off-balance sheet item by a credit conversion factor. Second, the credit equivalent amount generally is assigned, like any balance sheet asset, to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

B. Collateral, Guarantees, and Other Considerations

In determining the risk classification of various assets, the only forms of collateral that are formally recognized by the risk-based capital framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. The extent to which recognized securities may act as collateral is determined by their current market value. If a claim is partially collateralized, that is, the amount of cash or the market value of the securities serving as collateral is less than the face amount of a balance sheet asset or the credit equivalent amount of an off-balance sheet item, then the portion of the claim that is not collateralized is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. The portion that is collateralized is assigned to the risk category that is associated with the collateral. For example, to the extent that an asset is collateralized by U.S. Government securities, it would be placed in the 10 percent risk category (regardless of the maturity of those securities). A claim secured by two types of collateral that the risk-based capital framework recognizes but places in different risk categories, such as cash and U.S. Government-sponsored agency securities, should be apportioned between the two risk categories according to the amounts of each of the two types of collateral securing the claim.

Guarantees of the U.S. Government and its agencies, U.S. Government-sponsored agencies, domestic state and local governments, and domestic depository institutions are also recognized. While not formally factored into the ratio, the existence of other forms of collateral or guarantees would be taken into account in evaluating the risks inherent in an organization's loan portfolio—which, in turn, would affect the overall supervisory assessment of the organization's capital adequacy. Maturity is generally not a factor in assigning items to risk categories with the exceptions of securities (direct obligations) of the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate and foreign exchange rate contracts.

Table III contains a listing of the risk categories, a summary of the types of assets to be included in each category and the weight assigned to each category, that is, 0 percent, 10 percent, 20 percent, 50 percent and 100 percent. A brief explanation of the components of each category follows.

C. Risk Weights

1. *Category I: Zero Percent.* This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, direct securities issued by the U.S. Government or its agencies excluding any short-term loans guaranteed by the U.S. Government or collateralized by short-term Government debt with a *remaining* maturity of 91 days or less.[12]

2. *Category II: 10 Percent.* This category includes direct securities issued by the U.S. Government or its agencies with a remaining maturity of over 91 days; all other claims (including leases) on the U.S. Government or its agencies; all securities and portions of loans guaranteed by the U.S. Government or its agencies; and claims (including repurchase agreements) collateralized by cash on deposit in the lending institution or by securities issued by, or guaranteed by, the U.S. Government or its agencies.

The book value of paid-in stock of a Federal Reserve Bank is also assigned to Category 2.

3. *Category III: 20 Percent.* This category includes short-term claims (including demand deposits) on domestic depository institutions [13] and foreign banks [14] (including foreign central banks); cash items in the process of collection, both foreign and domestic; local currency claims on foreign central governments to the extent that a bank has local currency liabilities booked in the foreign country; long-term (original maturity of more than one year) claims on domestic depository institutions; [15] and portions of loans or other claims guaranteed by domestic depository institutions.[16]

This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies [17] and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies. Claims on multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member, as well as general obligation claims on, or portions of claims guaranteed by, the full faith and credit of states or other political subdivisions of the United States, are also assigned to this category.

4. *Category IV: 50 percent.* This category includes *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the United States, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Also included in this category are credit equivalent amounts of interest rate and foreign exchange rate contracts involving standard risk obligors, not backed by collateral or guarantees that would allow them to be placed in lower risk weight categories, as noted below in the discussion of interest rate and foreign exchange rate contracts.

5. *Category V: 100 Percent.* All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category. Such assets include long-term claims (over one year) on foreign banks, as well as all non-local currency claims on foreign governments and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country, that is, all claims on foreign governments that entail some degree of transfer risk.

This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims; [18] investments in fixed

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[12] For this purpose, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. These include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Export-Import Bank (EXIM Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[13] Domestic depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks. U.S. chartered depository institutions owned by foreigners are also included in the definition; however, branches and agencies of foreign banks located in the U.S. and bank holding companies are excluded.

[14] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; and have the power to accept demand deposits. Claims on foreign banks include claims on the U.S. branches and agencies of foreign banks.

[15] Claims on foreign banks with an original maturity exceeding one year and all claims on bank holding companies are assigned to Category V, which carries a weight of 100 percent.

[16] These include risk participations in bankers acceptances and in any standby letters of credit, as well as participations in commitments conveyed to other domestic banks.

[17] For this purpose, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA).

[18] Customer liabilities on acceptances outstanding involving non-standard risk claims.

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assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; and commercial and consumer loans, including all residential mortgage loans (except those assigned to lower risk categories due to recognized guarantees or collateral). The following assets also are to be converted at 100 percent if they have not been deducted from capital: Investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including grandfathered goodwill. Also included in this category are industrial development bonds and similar obligations issued under auspices of states or political subdivisions of the United States for the benefit of a private party or enterprise where that party or enterprise, not the government, is obligated to pay the principal and interest.

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally multiplied by a credit conversion factor and the resulting credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral. Table IV sets forth the conversion factors for various types of off-balance sheet items.

1. *Items With a 100 Percent Conversion Factor.* A 100 percent conversion factor applies to direct credit substitutes, which include guarantees or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or backing off-balance sheet items that require capital under the risk-based capital framework. For example, these direct credit substitutes include standby letters of credit, other equivalent irrevocable obligations, or surety arrangements, that guarantee repayment of commercial paper, tax-exempt securities, commercial or individual loans, debt obligations, or commercial letters of credit. They also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring banking institution that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution. (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

In the case of direct credit substitutes that are participated out in the form of a syndication (that is, where each bank is responsible only for its *pro rata* share of the risk and there is no recourse to the originating bank), participated portions would be excluded entirely from the originating bank's weighted risk assets. A banking organization that has conveyed risk participations [19] in a direct credit substitute, such as a standby letter of credit, to a third party should convert the full amount of the direct credit substitute at 100 percent without deducting the risk participations conveyed. Then, those portions of the credit equivalent amount of the direct credit substitute that have been conveyed as risk participations to domestic depository institutions should be assigned to the risk category appropriate to claims guaranteed by domestic depository institutions, that is, 20 percent, rather than to the category appropriate to the account party obligor. This treatment is accorded to these conveyances because they replace, to the extent of the participation or conveyance, the originating bank's exposure to the account party obligor with an exposure to a domestic depository institution. A bank acquiring a risk participation in such a direct credit substitute or bankers acceptance should convert the amount of the acquisition at 100 percent and then assign the credit equivalent amount to the risk weight category appropriate to the account party obligor.

Standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the banking organization to fund its customer *in the normal course* of business should the customer seek to draw down the commitment.

The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* a contractual obligation would be treated for risk-based capital purposes as, respectively, a financial guarantee standby letter of credit or a performance standby.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet, as well as forward agreements, also are to be converted at 100 percent.

The risk-based capital definition of the sale of assets with recourse, including the sale of one-to-four family residential mortgages, is the same as the definition contained in the instructions to the commercial bank Consolidated Reports of Condition and Income. So-called "loan strips" (that is, short-term advances sold under long-term commitments) sold without direct recourse are accorded the same treatment as assets sold with recourse. Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward forward deposits, and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

2. *Items with a 50 Percent Conversion Factor.* Transaction-related contingencies are to be converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, standby letters of credit related to particular transactions, and performance standby letters of credit, as well as acquisitions of risk participations in such standby letters of credit. Performance standby letters of credit represent obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of commitments with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, unconditionally (without cause) cancel the commitment; and (2) the bank is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Facilities that are unconditionally cancellable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility. Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge. Such short-term commitments are defined to include unused lines of credit on retail credit cards that a bank can unconditionally cancel at any time.

Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. After a commitment has been converted at 50 percent, portions that have been conveyed to other domestic depository institutions as participations in which the originating banking organization retains the full obligation to the borrower if the participating bank fails to pay when the instrument is drawn, would be assigned to the 20 percent risk category. This treatment is analogous to that accorded the conveyances of risk participations in standby letters of credit. The acquisition of such a participation would be converted at 50 percent and assigned to the risk category appropriate to the account party obligor.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent. These are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting organizations have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower.

3. *Items with a 20 Percent Conversion Factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

4. *Items with a Zero Percent Conversion Factor.* These include unused commitments with an original maturity of one year or less. Unused retail credit card lines are deemed to be short-term commitments if the bank has the unconditional option to cancel the card at any time.

E. Interest Rate and Foreign Exchange Rate Contracts

1. *Scope.* Credit equivalent amounts are to be computed for each of the following off-balance sheet interest rate and foreign exchange rate instruments:

a. Interest Rate Contracts:

—Single currency interest rate swaps.
—Basis swaps.
—Forward rate agreements.
—Interest rate options purchased (including caps, collars, and floors purchased).
—Any other instrument that gives rise to similar credit risks (including when-issued securities).

b. Exchange Rate Contracts:

—Cross-currency interest rate swaps.
—Forward foreign exchange contracts.
—Currency options purchased.
—Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in the same way as the other interest rate and exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for potential future exposure. Exchange rate contracts with an original maturity of seven days or less and instruments traded on exchanges that require daily payment of variation margin are excluded.

2. *Calculation of Credit Equivalent Amounts.* Credit equivalent amounts are to be calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a banking organization should, for each contract, sum:

a. The mark-to-market value (positive values only) of the contract (that is, its current exposure) [20] and;

b. An estimate of the potential future increases in credit exposure over the remaining life of the instrument.

Potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

Examples of the calculation of credit equivalent amounts for these instruments are contained in Table V.

Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange contracts than for interest rate contracts.

No potential future credit exposure should be calculated for single currency floating/floating interest rate swaps; the credit exposure on these contracts should be evaluated solely on the basis of their mark-to-market value.

3. *Risk Weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of collateral or guarantees. In accordance with the Basle capital framework, however, the maximum weight applied to the credit equivalent amount currently is 50 percent. The Federal Reserve intends to monitor the quality of credits in the interest rate and exchange rate markets and, in the future, would consider, if appropriate, assigning credit equivalent amounts for contracts involving standard risk obligors to the 100 percent risk category, as is the case with other off-balance sheet instruments.

4. *Accounting.* In certain cases, credit exposures arising from the interest rate and exchange instruments covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banking organizations' total weighted risk asset ratios. The Federal Reserve will address this issue in designing appropriate reporting systems.

In accordance with the terms of the Basle capital framework, netting of swaps and similar contracts will not be recognized for purposes of calculating the risk-based ratio at this time. While the Federal Reserve encourages any reasonable arrangements designed to reduce the risks inherent in these transactions, the Basle Supervisors' Committee felt that the legal issues posed by netting arrangements require further consideration prior to the implementation of a netting mechanism on an international basis.

IV. Target Ratio Standard

A. Minimum Risk-Based Ratio After Transition Period

As reflected in Table VI, by year-end 1992, all bank holding companies [21] and state member banks should meet a *minimum* ratio of total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of core capital (Tier 1).[22] Core capital is defined as the sum of common stockholders' equity (including retained earnings and any minority interest in the common stockholders' equity accounts of consolidated subsidiaries) minus any goodwill carried on an organization's balance sheet.[23]

The maximum amount of supplementary (Tier 2) capital elements that would qualify as capital is limited to 100 percent of the total amount of core capital, that is, the sum of Tier 1 capital components (net of goodwill). Within Tier 2, the maximum amount of the allowance for loan and lease losses that would qualify as Tier 2 capital is limited to 1.25 percent of weighted risk assets. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that qualifies as Tier 2 capital is limited to 50 percent of Tier 1 capital.

Total capital is calculated by adding core capital (defined to exclude goodwill) to supplementary capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, reciprocal holdings of banking organization capital securities, or other items at the direction of the Federal Reserve.

B. Transitional Arrangements

The transition period, intended to facilitate implementation of the risk-based capital ratio, ends on December 31, 1992. The transitional arrangements include an interim target risk-based capital ratio to be met by year-end 1990. Any organization not meeting the interim target or final supervisory ratios

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such as claims on domestic depository institutions, are to be assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to domestic depository institutions should be assigned to the 20 percent risk category appropriate to claims guaranteed by domestic depository institutions.

[19] That is, participations in which the originating banking institution remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[20] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract.

[21] As noted above, bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated basis.

[22] Section II contains definitions of capital-related terms used in this section.

[23] Goodwill that state member banks are permitted to include in capital as a result of supervisory mergers with troubled or failed banking organizations would not be deducted.

would be expected to develop and discuss with the Federal Reserve a plan setting forth how the organization intends to reach the minimum supervisory ratios.

1. *Initial Arrangements.* No formal risk-based capital minimum level will be set initially. However, any organization that has a risk-based ratio of less than 8 percent is expected to undertake a sustained effort to move in the direction of that target during the transition period. Banking organizations with ratios of 8 percent or lower should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

While the Basle capital framework does not establish an initial standard for the minimum level of capital during this period, it does permit the core capital of an organization to include some limited supplementary capital elements. Specifically, a maximum of 25 percent of core capital (before any deduction of goodwill) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity. By year-end 1990, banking organizations would be expected to reduce the amount of supplementary capital included in core capital to no more than 10 percent of core capital.

For bank holding companies, any goodwill acquired before March 12, 1988, would be grandfathered until year-end 1992. Goodwill acquired by holding companies on or after March 12, 1988, and all goodwill on holding company books after year-end 1992, would be deducted from Tier 1 capital components to compute core capital.

State member banks are generally not permitted to recognize goodwill on their balance sheets or to include goodwill for capital purposes under current policies. Thus, all goodwill in state member banks would be deducted immediately from Tier 1 components to determine core capital, except for goodwill acquired and approved in connection with supervisory mergers with troubled or failed banks.

Initially, the allowance for loan and lease losses may be included in an organization's supplementary capital without limit. However, by year-end 1990, loan loss reserves counted in supplementary capital may not exceed 1.5 percent of weighted risk assets.

The existing supervisory capital-to-*total* assets ratios, as outlined in Appendix A (the leverage measure) of the Capital Adequacy Guidelines, would continue to be employed during this initial period. The Board will, prior to year-end 1990, consider whether a maximum leverage ratio will continue to be employed in conjunction with the implementation of the risk-based standard. If a maximum leverage ratio is employed after year-end 1990, the Board may, after appropriate consideration, adopt definitions of capital for leverage purposes that are consistent with the definitions in the risk-based capital guidelines.

2. *Year-end 1990 through year-end 1992.* By year-end 1990, banking organizations would be expected to meet a minimum interim target ratio for total capital to weighted risk assets of 7.25 percent, at least one-half of which should be in the form of core capital. In addition, as noted above, during this period up to 10 percent of an organization's core capital (before any deduction for goodwill) may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of core capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum common stockholders' equity to weighted risk assets ratio of 3.25 percent (nine-tenths of the core capital ratio). By year-end 1992, an organization's required core capital must consist *solely* of common stockholders' equity, including minority interest in common equity accounts of consolidated subsidiaries.

The maximum amount of the allowance for loan and lease losses reserves that may qualify as supplementary capital will be limited to 1.5 percent of weighted risk assets (that is, 1.5 percentage points of the minimum required total of 7.25 percent), declining to 1.25 percent by year-end 1992. Allowances for loan and lease losses in excess of these limits may, of course, be maintained, but would not be included in an organization's total capital base. The Federal Reserve will continue to require banks and bank holding companies to maintain reserves at levels fully sufficient to cover losses inherent in their loan portfolios.

TABLE I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO

Example of a bank with $6,000 in total capital and the following assets and off-balance sheet items:	
Balance Sheet Assets:	
Cash	$10,000
Long-term U.S. Government securities	20,000
Balances at domestic banks	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000
Long-term commitments to private corporations	20,000
Total Off-Balance Sheet Items	$30,000
This bank's total capital to *total* assets ratio would be: ($6,000/$100,000)=6.00%.	

OBS Item	Face Value		Conversion Factor		Credit Equivalent Amount
To compute the bank's weighted risk assets:					
1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item.					
SLC's backing municipal GO's	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	×	0.50	=	$10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category: Cash	$10,000	×	0	=	$0
10% Category: Long-term U.S. Government securities	$20,000	×	0.10	=	$2,000
20% Category:					
Balances at domestic banks	$5,000				
Credit equivalent amounts of SLC's backing GO's of U.S. municipalities	$10,000				
Total	$15,000	×	0.20	=	$3,000
50% Category: No items.					
100% Category:					
Loans to private corporations	$65,000				
Credit equivalent amounts of long-term commitments to private corporations	$10,000				
Total	$75,000	×	1.00	=	$75,000
Total Risk-Weighted Assets					$80,000
This bank's *risk-based* capital ratio would be: ($6,000/$80,000)=7.50%.					

TABLE II. DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1)	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity.	No limit.
Minority interest in common equity accounts of consolidated subsidiaries.	No limit.
Less: Goodwill and other disallowed intangibles [1].	
Supplementary Capital (Tier 2).	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses.	Limited to 1.25% of weighted risk assets.[2]
Perpetual and long-term preferred stock (original maturity 20 yrs. or more).	No limit within Tier 2, long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including perpetual debt and mandatory convertible securities).	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building).	Not included; regulators would encourage banks to disclose; would evaluate on case-by-case basis for international comparisons; and would take into account in making overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated banking and finance subsidiaries.	
Reciprocal holdings of bank issued capital securities.	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal rulemaking.
Total Capital (Tier 1 + Tier 2—Deductions).	Must equal or exceed 8% of weighted risk assets.

[1] Goodwill on books of bank holding companies before march 12, 1988, would be "grandfathered" for transition period. All goodwill and disallowed intangibles in banks, except previously grandfathered intangibles or goodwill approved in supervisory mergers, would be deducted immediately as under current policies. All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

Table III.—Summary of Risk Weights and Risk Categories

Category 1: Zero percent

1. Cash (domestic and foreign).
2. Balances due from, and claims on, Federal Reserve Banks.
3. Securities (direct obligations) issued by the U.S. Government or its agencies [1] with a remaining maturity of 91 days or less.

Category 2: 10 percent

1. Securities issued by the U.S. Government or its agencies[1] with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies[1].
2. Securities and other claims guaranteed by the U.S. Government or its agencies (including portions of claims guaranteed).
3. Portions of loans and other assets collateralized [2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the lending institution.
4. Federal Reserve Bank stock.

Category 3: 20 percent

1. All claims (long- and short-term) on domestic depository institutions.
2. Claims on foreign banks with an original maturity of one year or less.
3. Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.
4. Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country.
5. Cash items in the process of collection.
6. Securities and other claims on, or guaranteed by U.S. Government-*sponsored* agencies (including portions of claims guaranteed).[3]
7. Portions of loans and other assets collateralized [4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.
8. General obligation claims on, and claims guaranteed by, U.S., state and local governments that are secured by the full faith and credit of the state or local taxing authority (including portions of claims guaranteed).
9. Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

Category 4: 50 Percent

1. Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
2. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 5: 100 Percent

1. All other claims on private obligors.
2. Claims on foreign banks with an original maturity exceeding one year.
3. Claims on foreign central governments that are not included in item 4 of Category 3.
4. Obligations issued by state or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.
7. Instruments issued by other banking organizations that qualify as capital.
8. All other assets (including claims on commercial firms owned by the public sector).

Table IV.

Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit serving as financial guarantees for, or supporting, loans and securities).
2. Acquisitions of risk participations in bankers acceptances and participations

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[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collaterization is determined by current market value.

VOL
53
ISS
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MR
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UMI

in direct credit substitutes (e.g., standby letters of credit).

3. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.
4. Forward agreements (that is, contractual obligations) to purchase assets, including financing facilities with *certain* drawdown.

50 Percent Conversion Factor

1. Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).
2. Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingences, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The Total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential exposure measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining Maturity	Interest rate contracts	Exchange rate contracts
Less than one year	0	1.0%
One year and over	0.5%	5.0%

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

TABLE V. CALCULATION OF CREDIT EQUIVALENT AMOUNTS

[Interest Rate and Foreign Exchange Rate Related Transactions]

Type of contract (remaining maturity)	Potential exposure					+	Current exposure		=	Credit equivalent amount
	National pencipal (1)	x	Potential exposure conversion factor (2)	=	Potential exposure (dollars) (3)	+	Replacement cost [1] (4)	Current exposure (dollars) [2] (5)	=	
(1) 120-day forward foreign exchange	$5,000,000		0.01		50,000		100,000	100,000		$150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000		−120,000	0		60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		200,000	200,000		250,000
(4) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000		−250,000	0		50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000		−1,300,000	0		1,000,000
Total	51,000,000									$1,510,000

[1] These numbers are purely for illustration.

[2] The larger of zero or a positive mark-to-market value.

TABLE VI

	Transitional arrangements: Initial	Transitional arrangements: Year-End 1990	Final arrangement: Year-End 1992
1. Minimum standard of total capital to weighted risk assets.	None	7.25%	8.0%.
2. Definition of tier 1 capital	Common equity *plus* supplementary elements [1] *less* goodwill and other disallowed intangibles.[2].	Common equity *plus* supplementary elements [3] *less* goodwill and other disallowed intangibles.[2].	Common equity *less* goodwill and other disallowed intangibles.
3. Minimum standard of tier 1 capital to weighted risk assets.	None	3.625%	4.0%.
4. Minimum standard of common stockholders' equity to weighted risk assets.	None	3.25%	4.0%.
5. Limitations on supplementary capital elements.			
a. Allowance for loan and lease losses.	No limit within supplementary capital	1.5% of weighted risk assets	1.25% of weighted risk assets.
b. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50% of tier 1	Combined maximum of 50% of tier 1	Combined maximum of 50% of tier 1.
c. Total qualifying supplementary capital.	May not exceed tier 1 capital	May not exceed tier 1 capital	May not exceed tier 1 capital.
6. Definition total capital	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.	Tier 1 *plus* tier 2 *less*: —reciprocal holdings of banking organization capital instruments. —investments in unconsolidated banking and finance subsidiaries.

[1] Up to 25% of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

[2] See the Notice of Proposed Guidelines and the actual text of the proposed guidelines for discussion of relevant definitions and grandfathering arrangements for goodwill.

[3] Up to 10% of Tier 1 (before deduction of goodwill and other disallowed intangibles) may consist of supplementary elements.

Board of Governors of the Federal Reserve System, effective March 1, 1988.

William W. Wiles,

Secretary of the Board.

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. The Federal Deposit Insurance Corporation proposes to amend Part 325 by adding an Appendix A to Part 325 to read as follows:

Appendix A—Statement of Policy on Risk-Based Capital

Capital adequacy is one of the critical factors that the FDIC is required to analyze when taking action on various types of applications and when conducting various supervisory activities related to the safety and soundness of individual banks and the banking system. In view of this, the FDIC's Board of Directors adopted a capital regulation in February of 1985 that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128) (1985)).

This regulation, contained in Part 325 of the FDIC's rules and regulations, was designed to establish, in conjunction with other Federal bank regulatory agencies, uniform capital standards for all federally-regulated banking organizations, regardless of size. These uniform capital standards are based on ratios of primary and total capital to total assets.

While these leverage ratios have served as a useful tool for assessing capital adequacy, the FDIC believes there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banking organizations. As a result, the FDIC's Board of Directors has adopted this Statement of Policy on Risk-Based Capital.

The framework set forth in this statement of policy consists of (1) a definition of capital for risk-based capital purposes, (2) a system for calculating risk-weighted assets by assigning assets and off-balance sheet items to risk categories, and (3) a schedule, which includes transitional arrangements during a phase-in period, for achieving a minimum supervisory target ratio of capital to risk-weighted assets. An institution's risk-based capital ratio is calculated by dividing its qualifying capital base (the numerator of the ratio) by its risk-weighted assets (the denominator).

This statement of policy applies to all FDIC-insured state-chartered banks (excluding insured branches of foreign banks) that are not members of the Federal Reserve System, hereafter referred to as "state nonmember banks," regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process as well as in the analysis of applications that the FDIC is required to act upon. Generally, banking organizations are expected to operate above the minimum target risk-based capital ratio and those institutions with high or inordinate levels of risk should hold capital commensurate with their risk profiles.

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect an organization's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgment on an organization's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

I. Definition of Capital for the Risk-Based Capital Ratio

An institution's qualifying capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). These capital elements and the various limits, restrictions, and deductions to which they are subject are discussed below.

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1) consist of:*

—Common stockholders' equity capital (includes common stock, surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments);

—Minority interests in the common stockholders' equity capital accounts of consolidated subsidiaries; and

—Supplementary capital elements (during the transition period only, and subject to certain limitations set forth in section III below).

At least 50 percent of the qualifying capital base of a state nonmember bank should consist of core capital. Core capital is defined as the sum of core capital elements minus all intangible assets other than mortgage servicing rights.[1]

2. *Supplementary capital elements (Tier 2)* consist of:

—Allowances for loan and lease losses (subject to limitations discussed below);

—Perpetual and long-term preferred stock (original maturity of at least 20 years);

—Hybrid capital instruments, including mandatory convertible securities; and

—Term subordinated debt and intermediate-term preferred stock (original average maturity of seven years or more).

The definition of supplementary capital does *not* include revaluation reserves or hidden reserves that represent unrealized appreciation on such assets as bank premises and equity securities. Although such reserves will not be explicitly recognized when calculating a state nonmember bank's risk-based capital ratio, these reserves may be taken into account as additional factors when assessing a banking organization's overall capital adequacy.

The maximum amount of supplementary elements that may be recognized for risk-based capital purposes is limited to 100 percent of core capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of supplementary capital for risk-based capital purposes is limited to 50 percent of core capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

Allowance for loan and lease losses. Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [2] and reserves created against identified losses or earmarked for a specific asset.

This risk-based capital framework provides a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. Initially, no limit will apply to these reserves. However, by year-end 1990, the allowance for loan and lease losses, as a component of supplementary capital, may constitute no more than 1.5 percent of risk-weighted assets and, by year-end 1992, no more than 1.25 percent of risk-weighted assets.[3]

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[1] An exception will continue to be allowed for intangible assets that have been explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that were specifically approved by the FDIC.

[2] Allocated transfer risk reserves are reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[3] The amount of the allowance for loan and lease losses that may be included in supplementary capital is based on a percentage of gross risk-weighted assets. A banking organization may deduct reserves for loan and lease losses that are in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from the sum of risk-weighted assets when computing the denominator of the risk-based capital ratio.

Perpetual and long-term preferred stock. Perpetual preferred stock is defined as preferred stock without a fixed maturity date *and* that cannot be redeemed at the option of the holder. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more. When long-term preferred stock has a remaining maturity of less than seven years, it should be treated for risk-based capital purposes as intermediate-term preferred stock, which is discussed below.

Perpetual preferred stock and long-term preferred stock qualify for inclusion in supplementary capital provided that the instruments can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer or reduce preferred dividends if dividends on common stock are eliminated or reduced. Given these conditions, and the perpetual or long-term nature of the instruments, there is no limit on the amount of these preferred stock instruments that may be included within Tier 2 capital.

Hybrid capital instruments. Hybrid capital instruments include long-term debt instruments that generally meet the requirements set forth below:

(1) The instrument should be unsecured, subordinated to depositors and general creditors, and fully paid-up.

(2) The instrument should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC.

(3) The instrument should be available to participate in losses while the issuer is operating as a going concern. (Straight term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument should convert to common or perpetual preferred or long-term preferred stock in the event that the sum of the undivided profits and capital surplus accounts of the issuer results in a negative balance.

(4) The instrument should provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period, defined as combined profits (i.e., net income) for the most recent four quarters, *and* (b) the issuer eliminates cash dividends on common *and* preferred stock.

Mandatory convertible securities that meet the criteria set forth in 12 CFR 325.2(e) will qualify as hybrid capital instruments for state nonmember banks. There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

Term subordinated debt and intermediate-term preferred stock. The aggregate amount of term subordinated debt (excluding mandatory convertible securities) and intermediate-term preferred stock that may be treated as supplementary capital for risk-based capital purposes is limited to 50 percent of core capital. Term subordinated debt and intermediate-term preferred stock should have an original average maturity of at least seven years to qualify as supplementary capital.

In the case of subordinated debt, the instrument should be unsecured, subordinated to all depositors and general creditors, and clearly state on its face that it is not a deposit and is not insured by the Federal Deposit Insurance Corporation. To qualify as supplementar capital, such instruments issued by state nonmember banks should also meet the criteria for subordinated debt set forth in 12 CFR 325.2(j).

Discount of supplementary limited-life capital instruments. As a limited-life capital instrument approaches maturity, the instrument begins to take on characteristics of a short-term obligation and becomes less like a component of capital. Therefore, for risk-based capital purposes, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in Tier 2 will be adjusted downward, or discounted, as the instruments approach maturity. Each limited-life capital instrument will be discounted by reducing the outstanding amount of the capital instrument eligible for inclusion as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, will have no capital value when they have a remaining maturity of less than a year.

B. Deductions From Capital and Other Adjustments

Certain assets are deducted from an organization's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[4]

These assets include:

(1) All intangible assets other than mortgage servicing rights.[5] These disallowed intangibles are deducted from the core capital (Tier 1) elements.

(2) Investments in *unconsolidated* banking and finance subsidiaries.[6] This includes any equity or debt capital investments in banking or finance subsidiaries if the subsidiaries are not consolidated for regulatory capital requirements. These investments are deducted from the banking organization's total (Tier 1 plus Tier 2) capital base.

The FDIC may also deduct certain investments in nonbanking or nonfinancial subsidiaries. Investments by state nonmember banks in securities subsidiaries established pursuant to 12 CFR 337.4 will be deducted from capital for risk-based capital purposes. The FDIC may also consider deducting other investments in subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.

(3) Reciprocal holdings of capital instruments of banking organizations that represent intentional cross-holdings by the banking organizations. These holdings are deducted from the banking organization's total capital base.

II. Procedures for Computing Risk-Weighted Assets

Under the risk-based capital framework, a banking organization's balance sheet assets and credit equivalent amounts of off-balance sheet items are assigned to one of five broad risk categories. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. The resulting weighted values from each of the five risk categories are added together and this sum is the risk-weighted assets total that, as adjusted, comprises the denominator of the risk-based capital ratio.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the notional principal, or face value, amount of each off-balance sheet item generally is multiplied by a credit conversion factor to arrive at a balance sheet "credit equivalent amount." Second, the credit equivalent amount generally is assigned to the appropriate risk category, like any balance sheet asset, according to the obligor or, if relevant, the guarantor or the nature of the collateral.

In determining risk weights of various assets, the only forms of *collateral* that are formally recognized by the risk-based capital framework are cash on deposit in the lending institution; securities issued by, or guaranteed by, the U.S. Government or its agencies; and securities issued by, or guaranteed by, U.S. Government-sponsored agencies. The extent to which these securities are recognized as collateral for risk-based capital purposes is determined by their current market value. If a claim is partially collateralized, the portion of the claim that is not collateralized is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. A claim secured by two types of collateral that the risk-based capital framework recognizes but places in different risk categories should be apportioned to the two risk categories according to the amounts of each type of collateral that secure the claim.

Guarantees of the U.S. Government and its agencies, U.S. Government-sponsored

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[4] Any assets deducted when computing the numerator of the risk-based capital ratio will also be excluded from risk-weighted assets when computing the denominator of the ratio.

[5] In addition to mortgage servicing rights, certain other intangibles may be allowed if explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis.

[6] For risk-based capital purposes, these subsidiaries are generally defined as any banking or finance company in which the reporting banking organization owns more than 50 percent of the outstanding voting stock. In addition to investments in unconsolidated banking and finance subsidiaries, the FDIC may, on a case-by-case basis, deduct investments in associated companies or joint ventures, which are generally defined as any companies in which the reporting banking organization, either directly or indirectly, owns 20 to 50 percent of the outstanding voting stock. Alternatively, the FDIC may, in certain cases, apply an appropriate risk-weighted capital charge against a banking organization's proportionate interest in the assets of associated companies and joint ventures. The definitions for subsidiaries, associated companies and joint ventures are contained in the instructions for the preparation of the Consolidated Reports of Condition and Income.

agencies, domestic state and local governments, and domestic depository institutions are also recognized. *Maturity* is generally not a factor in assigning items to risk categories with the exceptions of securities (direct claims) on the U.S. Government or its agencies, claims on foreign banks, commitments, and interest rate and foreign exchange related contracts. Provided below is a discussion of the risk weights and credit equivalent conversion factors that are used in the risk-based capital framework.

A. Risk Weights for Balance Sheet Assets

The risk-based capital framework sets forth five risk weight categories—0 percent, 10 percent, 20 percent, 50 percent and 100 percent. An explanation of the components of each category and a summary of the types of assets included in each category follows.

Category 1—Zero Percent Risk Weight. This category includes cash (domestic and foreign) owned and held in all offices of a bank or in transit; claims on, and balances due from, Federal Reserve Banks; and, in light of their near-cash characteristics, securities issued by the U.S. Government or its agencies with a *remaining* maturity of 91 days or less.

Category 2—10 Percent Risk Weight. This category includes securities issued by the U.S. Government or its agencies [7] with a remaining maturity of over 91 days; all other claims (including leases) on the U.S. Government or its agencies; all securities and portions of loans guaranteed by the U.S. Government or its agencies; and claims (including repurchase agreements) collateralized by cash on deposit in the lending institution or by securities issued by, or guaranteed by, the U.S. Government or its agencies.

Category 3—20 Percent Risk Weight. This category includes short-term claims (including demand deposits) on domestic depository institutions [8] and short-term claims on all foreign banks [9] (including foreign central banks); cash items in process of collection, both foreign and domestic; local currency claims on foreign central governments to the extent that a bank has local currency liabilities booked in the foreign country; long-term (original maturity of more than one year) claims on domestic depository institutions; [10] and portions of loans or other claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions.[11]

This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies, and portions of claims collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.[12] In addition, this category includes claims on multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by, the full faith and credit of states or political subdivisions of the United States are also assigned to this 20 percent risk category.

Category 4—50 Percent Risk Weight. This category includes *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of state or political subdivisions of the United States, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Category 5—100 Percent Risk Weight. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. Many assets typically found in a banking organization's loan portfolio are assigned to the 100 percent risk category. Such assets include long-term claims (over one year) on foreign banks, and all claims on foreign governments that entail some degree of transfer risk, such as nonlocal currency claims on foreign governments and local currency claims on a foreign central government that exceed local currency liabilities held by the bank in the foreign country.

This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[13] investments in fixed assets, premises and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; and commercial and consumer loans, including all residential mortgage loans (except those assigned to lower risk categories due to recognized guarantees or collateral).

Unless already deducted from capital for risk-based capital purposes, the following assets also are included in the 100 percent risk category: investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and mortgage servicing rights and other allowed intangibles. Also included in this category are industrial development bonds and similar obligations issued by states and political subdivisions of the United States for the benefit of a private party or enterprise where that party or enterprise, rather than the government, is obligated to pay the principal and interest.

B. Credit Equivalent Conversion Factors for Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally multiplied by a credit conversion factor and the resulting credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

1. *Items With a 100 Percent Conversion Factor.* A 100 percent conversion factor applies to *direct credit substitutes*, which include *guarantees*, or equivalent instruments, backing *financial* claims, such as outstanding securities, loans or other *financial* obligations, or backing off-balance sheet items that require capital under the risk-based capital framework. These direct credit substitutes include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that effectively guarantee repayment of commercial paper, tax-exempt securities,

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[7] For risk-based capital purposes, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government. These agencies include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Farmers Home Administration (FmHA), the Export-Import Bank (Exim Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[8] Domestic depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic banks, and U.S.-chartered depository institutions owned by foreigners. However, this definition excludes branches and agencies of foreign banks located in the U.S. and bank holding companies.

[9] Foreign banks are defined as institutions that are organized under the laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business, and have the power to accept demand deposits. Claims on foreign banks include claims on U.S. branches and agencies of foreign banks.

[10] Claims on foreign banks with an original maturity exceeding one year and claims on bank holding companies are assigned to Category 5, which carries a risk weight of 100 percent.

[11] This includes risk participations in bankers acceptances and in any standby letters of credit and participations in commitments *conveyed* to other domestic depository institutions.

[12] For risk-based capital purposes, U.S. Government-*sponsored* agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA).

[13] Customer liabilities on acceptances outstanding involving non-standard risk claims, such as claims on domestic depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to domestic depository institutions should be assigned to the 20 percent risk category that is appropriate to claims guaranteed by domestic depository institutions.

commercial or individual loans or other debt obligations, or commercial letters of credit. Direct credit substitutes also include the acquisition of *risk participations* in bankers acceptances and standby letters of credit. (Standby letters of credit that are performance-related have a credit conversion factor of 50 percent.)

In the case of direct credit substitutes that are structured in the form of a syndication, that is, where each bank is responsible only for its *pro rata* share of the risk and there is no recourse to the originating bank, the participated portions would be excluded entirely from the originating bank's risk-weighted assets. A banking organization that has conveyed risk participations [14] in a direct credit substitute to a third party should convert the full amount of the direct credit substitute at a 100 percent conversion factor without deducting the risk participations conveyed. However, portions of direct credit substitutes that have been conveyed as risk participations to domestic depository institutions may then be assigned to the 20 percent risk category that is appropriate for claims guaranteed by domestic depository institutions, rather than to the risk category appropriate to the account party obligor. A bank acquiring a risk participation in a direct credit substitute or bankers acceptance should convert the participation at 100 percent and then assign the credit equivalent amount to the risk weight category that is appropriate to the account party obligor.

For risk-based capital purposes, standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute) or *fails to perform* some other contractual obligation (performance bond). A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the banking organization to provide funds to its customer *in the normal course* of business should the customer seek to draw down the commitment.

Therefore, the distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform on an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* on a contractual obligation would be treated, for risk-based capital purposes as, respectively, a financial guarantee-type standby letter of credit (100 percent conversion factor) or a performance standby (50 percent conversion factor).

Sale and repurchase agreements and *asset sales with recourse,* if not already included on the balance sheet, and *forward agreements* are also converted at 100 percent. For risk-based capital purposes, the definition of sales of assets with recourse, including the sales of participations in pools of residential mortgages, is consistent with the definition contained in the instructions for the preparation of the Consolidated Reports of Condition and Income. "Loan strips" and similar arrangements involving short-term loans sold by a bank without direct recourse but subject to long-term loan commitments by the bank are accorded the same treatment as assets sold with recourse. Forward agreements are legally binding agreements (contractual obligations) to purchase assets with *certain* drawdown at a specified future date. These obligations include forward purchases, forward deposits, and partly-paid shares and securities but do not include forward foreign exchange rate contracts.

2. *Items With a 50 Percent Conversion Factor.* Transaction-related contingencies are to be converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, and *performance* standby letters of credit related to particular transactions, as well as acquisitions of risk participations in such standby letters of credits. Performance standby letters of credit represent obligations backing the performance of *nonfinancial* or *commercial* contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of *commitments* with an *original* maturity exceeding one year, including underwriting commitments, and commercial and consumer credit commitments, also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which the following two conditions hold: (1) The bank can, at its option, *unconditionally* (without cause) cancel the commitment, and (2) the bank is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Facilities that are unconditionally cancellable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility.

Commitments, for risk-based capital purposes, are defined as any arrangements that obligate a banking organization to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, or similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in risk-weighted assets regardless of whether they contain "material adverse change" clauses or similar provisions that are intended to relieve the issuer of its funding obligation under certain conditions.

In the case of commitments structured as syndications, the risk-based capital framework includes only the banking organization's proportional share of such commitments. After a commitment has been converted at 50 percent, portions of commitments that have been conveyed to other *domestic* depository institutions, but in which the originating banking organization retains the full obligation to the borrower if the participating bank fails to pay when the commitment is drawn upon, will be assigned to the 20 risk category. The acquisition of such a participation would be converted at 50 percent and the credit equivalent amount would be assigned to the risk category that is appropriate for the account party obligor.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent. These are facilities under which a borrower can issue on a revolving basis short-term notes in its own name, but for which the underwriting banking organizations have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

3. *Items With a 20 Percent Conversion Factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies include *commercial letters of credit* and other documentary letters of credit collateralized by the underlying shipments.

4. *Items With a Zero Percent Conversion Factor.* These include unused commitments with an original maturity of one year or less. Unused *retail* credit card lines and related plans are deemed to be short-term commitments if the bank has the unconditional option to cancel the credit line at any time.

C. Conversion Factors and Risk Weights for Interest Rate and Foreign Exchange Rate Related Contracts

Credit equivalent amounts are to be computed for each of the following off-balance sheet interest rate and foreign exchange rate related instruments:

Interest Rate Related Contracts:

(1) Single currency interest rate swaps.

(2) Basis swaps.

(3) Forward rate agreements.

(4) Interest rate options purchased (including caps, collars and floors purchased).

(5) Any other instrument that gives rise to similar credit risks (including when-issued securities).

Foreign Exchange Rate Related Contracts:

(1) Cross-currency interest rate swaps.

(2) Forward foreign exchange contracts.

(3) Currency options purchased

(4) Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased would be treated in the same way as the other interest rate and foreign exchange rate contracts. That is, the credit equivalent amount would be the sum of the marked-to-market replacement cost and the "add-on" amount for the potential future exposure.

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[14] That is, participations in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn upon.

For risk-based capital purposes, foreign exchange rate contracts with an original maturity of seven days or less and instruments traded on exchanges that require daily payment of variation margin are excluded.

1. *Credit Equivalent Amounts for Interest Rate and Foreign Exchange Contracts.* Credit equivalent amounts are to be calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and foreign exchange rate instruments, a banking organization should, for each contract, sum:

(a) The mark-to-market value (positive values only) of the contract (that is, its *current* exposure) [15] and

(b) An estimate of the *potential* future increases in credit exposure over the remaining life of the instrument.

For risk-based capital purposes, potential exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

Because foreign exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

No potential credit exposure should be calculated for single currency floating/floating interest rate swaps; rather, the credit equivalent amount on these contracts should be calculated solely on the basis of their mark-to-market value (positive values only).

2. *Risk Weights for Interest Rate and Foreign Exchange Contracts.* Once the credit equivalent amount for interest rate and foreign exchange rate instruments has been determined, that amount generally should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of collateral or guarantees. However, the *maximum* risk weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

In certain cases, credit exposures arising from the interest rate and foreign exchange rate instruments may already be reflected, in part, on the balance sheet. To avoid the double counting of such exposures in the assessment of capital adequacy and in the assigning of risk weights, counterparty credit exposures arising from these instruments may need to be excluded from balance sheet assets when calculating a banking organization's total risk-weighted asset figure. However, the *netting* of offsetting positions in swaps and similar contracts will not be recognized for purposes of calculating the risk-based capital ratio.

III. Minimum Target Risk-Based Capital Ratio

A. Minimum Target Risk-Based Capital Ratio After Transition Period

State nonmember banks generally will be expected to meet a minimum target ratio of total capital to risk-weighted assets of 8 percent, of which at least 4 percentage points should be in the form of core capital (Tier 1). Core capital is defined as the sum of common stockholders equity capital (including any minority interests in the common stockholders equity capital accounts of consolidated subsidiaries) minus all intangible assets other than mortgage servicing rights.[16]

The maximum amount of supplementary capital elements that qualify as Tier 2 capital is limited to 100 percent of core capital. Within Tier 2, the maximum amount of the allowance for loan and lease losses that qualifies as supplementary capital is limited to 1.25 percent of risk-weighted assets. In addition, the combined maximum amount of term subordinated debt and intermediate-term preferred stock that qualifies as supplementary capital is limited to 50 percent of core capital.

Total capital is calculated by adding core capital (defined to exclude disallowed intangibles) to supplementary capital (limited to 100 percent of core capital) and then deducting from this sum any capital investments in unconsolidated banking and finance subsidiaries, any intentional, reciprocal cross-holdings of banking organizations' capital securities, and any other items that are deducted at the direction of the FDIC.

B. Transitional Arrangements

The transition period commences with the adoption of this statement of policy and ends on December 31, 1992. The transitional arrangements include an interim minimum target ratio that becomes effective on December 31, 1990. Any state nonmember bank not meeting the interim or final minimum target risk-based capital ratios generally will be expected to develop a capital plan acceptable to the FDIC that sets forth how the organization intends to reach the minimum target ratios.

1. *Transitional arrangements—initial period to year-end 1990.* No formal minimum target ratio for the risk-based capital framework will exist during the initial phase of the transition period. However, any state nonmember bank that has a risk-based capital ratio of less then 8 percent generally will be expected to undertake a sustained effort to move in the direction of meeting that ratio during the transition period. State nonmember banks with ratios of 8 percent or lower generally should not make adjustments to their risk profiles or undertake growth plans that would lower their ratios.

During the initial phase of the transition period, a maximum of 25 percent of core capital (before any deduction of disallowed intangibles) may consist of supplementary capital elements, with the remainder consisting of common stockholders' equity capital. By year-end 1990, however, state nonmember banks will be expected to reduce the amount of supplementary capital elements included in core capital to no more than 10 percent of core capital.

During the initial transition period, the allowance for loan and lease losses may be included in supplementary capital without limit. However, by the end of 1990, the amount of the allowance for loan and lease losses that is eligible for inclusion in supplementary capital may not exceed 1.5 percent of risk-weighted assets.

2. *Transitional arrangements—year-end 1990 through year-end 1992.* Beginning with the second and final phase of the transition period, state nonmember banks generally will be expected to meet a minimum total capital to risk-weighted asset ratio of 7.25 percent, at least one-half of which should be in the form of core capital. In addition, during this period, up to 10 percent of an organization's core capital (before any deduction for disallowed intangibles) may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of core capital to risk-weighted assets of 3.6 percent (or one-half of 7.25) and a minimum common stockholders' equity capital to risk-weighted assets ratio of 3.25 percent (or nine-tenths of the core capital ratio). By the end of 1992, a state nonmember bank's core capital should consist *solely* of common stockholders' equity capital.

During this final phase of the transition period, the maximum amount of the allowance for loan and lease losses that may qualify as supplementary capital will be limited to 1.5 percent of risk-weighted assets (that is, 1.5 percentage points of the 7.25 percent interim target risk-based capital ratio) and this percentage limitation will decline to 1.25 percent when the transitional arrangements end on December 31, 1992. For risk-based capital purposes, allowances for loan and lease losses in excess of these limits will not be included in a state nonmember bank's total capital base, even though state nonmember banks shall continue to maintain loan loss reserves at levels sufficient to cover the losses inherent in their loan portfolios.

This Statement of Policy on Risk-Based Capital does not replace or eliminate the existing Part 325 capital-to-total assets ratios, although the FDIC may subsequently consider whether these Part 325 leverage ratios should continue to be employed once the risk-based capital framework is fully implemented. If the leverage requirements are to be permanently maintained in tandem with the risk-based capital framework, the FDIC may also consider whether the Part 325 definitions of capital for leverage purposes should be revised to more closely conform

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[15] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract.

[16] In addition to mortgage servicing rights, certain other intangibles may be allowed in core capital if explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis.

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with the definitions of capital that are used for risk-based capital purposes.

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1)	Must equal or exceed 4% of risk-weighted assets.
Common stockholders' equity capital.	No limit.
Minority interests in common equity capital accounts of consolidated subsidiaries.	No limit.
Less: All intangible assets other than mortgage servicing rights [1].	
Supplementary Capital (Tier 2).	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses.	Limited to 1.25% of risk-weighted assets.[2]
Perpetual and long-term preferred stock (original maturity of 20 years or more).	No limit within Tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
Hybrid capital instruments (including mandatory convertible securities).	No limit within Tier 2.
Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of 7 years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [2] and amortized for capital purposes as they approach maturity.
Deductions (from the sum of Tier 1 plus Tier 2).	
Investments in unconsolidated banking and finance subsidiaries.	
Intentional, reciprocal cross-holdings of capital securities issued by banking organizations.	
Other deductions (such as investments in other subsidiaries or in joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal consideration of relevant issues.
Total Capital (Tier 1 + Tier 2 − Deductions).	Must equal or exceed 8% of risk-weighted assets.

[1] In addition to mortgage servicing rights, certain other intangibles may be allowed in core capital if explicitly approved by the FDIC on a specific case basis. All deductions are for capital adequacy purposes only; deductions would not affect accounting treatment.

[2] Amounts in excess of limitations are permitted but do not qualify as capital.

When calculating the risk-based capital ratio under the framework set forth in this statement of policy, qualifying capital (the numerator) is divided by risk-weighted assets (the denominator). The process of determining the numerator for the ratio is summarized in Table I. The calculation of the denominator is based on the risk weights and conversion factors that are summarized in Tables II and III.

When determining the amount of risk-weighted assets, balance sheet assets are assigned an appropriate risk weight (see Table II) and off-balance sheet items are first converted to a credit equivalent amount (see Table III) and then assigned to one of the risk weight categories set forth in Table II.

The balance sheet assets and the credit equivalent amount of off-balance sheet items are then multiplied by the appropriate risk weight percentages and the sum of these risk-weighted amounts is the gross risk-weighted asset figure used in determining the denominator of the risk-based capital ratio. Any items deducted from capital when determining the amount of qualifying capital may also be deducted from the gross risk-weighted asset figure when determining the denominator for the risk-based capital ratio.

TABLE II.—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

Category 1—Zero Percent Risk Weight
- (1) Cash (domestic and foreign)
- (2) Balances due from, and claims on, Federal Reserve Banks
- (3) Securities issued by the U.S. Government or its agencies [1] with a remaining maturity of 91 days or less

Category 2—10 Percent Risk Weight
- (1) Securities issued by the U.S. Government or its agencies [1] with remaining maturities of over 91 days and all other claims (loans and leases) on the U.S. Government or its agencies [1]
- (2) Securities and other claims guaranteed by the U.S. Government or its agencies (including portions of claims guaranteed)
- (3) Portions of loans and other assets collateralized [2] by securities issued by, or guaranteed by, the U.S. Government or its agencies, or by cash on deposit in the lending institution
- (4) Federal Reserve Bank stock

Category 3—20 Percent Risk Weight
- (1) All claims (long- and short-term) on domestic depository institutions
- (2) Claims on foreign banks with an original maturity of one year or less
- (3) Claims guaranteed by, or backed by the full faith and credit of, domestic depository institutions
- (4) Local currency claims on foreign central governments to the extent the bank has local currency liabilities in the foreign country
- (5) Cash items in the process of collection
- (6) Securities and other claims on, or guaranteed by, U.S. Government-*sponsored* agencies (including portions of claims guaranteed) [3]
- (7) Portions of loans and other assets collateralized [4] by securities issued by, or guaranteed by, U.S. Government-sponsored agencies
- (8) General obligation claims on, and claims guaranteed by, U.S. State and local governments that are secured by the full faith and credit of the State or local taxing authority (including portions of claims guaranteed)
- (9) Claims on official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member

Category 4—50 Percent Risk Weight
- (1) Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. State or local governments, but for which the government entity is committed to repay the debt only out of revenues from the specific projects financed
- (2) Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category

Category 5—100 Percent Risk Weight
- (1) All other claims on private obligors
- (2) Claims on foreign banks with an original maturity exceeding one year
- (3) Claims on foreign central governments that are not included in item 4 of Category 3
- (4) Obligations issued by State or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise
- (5) Premises, plant, and equipment; other fixed assets; and other real estate owned
- (6) Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital
- (7) Instruments issued by other banking organizations that qualify as capital
- (8) All other assets (including claims on commercial firms owned by the public sector)

TABLE III.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

100 Percent Conversion Factor
- (1) Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit that effectively guarantee the repayment of loans, securities and commercial letters of credit)
- (2) Acquisitions of risk participations in bankers acceptances and standby letters of credit
- (3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet
- (4) Forward agreements (that is, contractual obligations) to purchase assets with *certain* drawdown at a specified future date

50 Percent Conversion Factor
- (1) Transaction-related contingencies (e.g., bid bonds, performance bonds, warranties, and performance standby letters of credit related to particular transactions)
- (2) Unused commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines
- (3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements

20 Percent Conversion Factor
- (1) Short-term, self-liquidating trade-related contingencies, including commercial letters of credit

Zero Percent Conversion Factor
- (1) Unused commitments with an original maturity of one year or less or which are unconditionally cancellable at any time

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[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collateralization is determined by current market value.

Credit Conversion for Interest Rate and Foreign Exchange Rate Related Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) would be added to a measure of future potential increases in credit exposure. This future potential measure would be calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
Less than one year	0	1.0
One year and over	0.5	5.0

No potential exposure would be calculated for single currency floating/floating interest rate contracts; the credit exposure on these contracts would be evaluated solely on the basis of their market-to-market value. Exchange rate contracts with an original maturity of seven days or less would be excluded. Also, instruments traded on exchanges that require daily payment of variation margin would be excluded.

By order of the Board of Directors, this first day of March 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

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Part III

Department of Education

Office of Special Education and Rehabilitative Services

Final Annual Funding Priorities for Certain New Direct Grant Awards; Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Annual Funding Priorities for Certain New Direct Grant Awards

AGENCY: Department of Education.

ACTION: Notice of Final Annual Funding Priorities for Certain New Direct Grant Awards.

SUMMARY: The Secretary announces final annual funding priorities for grants under the Handicapped Children's Early Education Program, Services for Deaf-Blind Children and Youth Program for Severely Handicapped Children and Educational Media Research, Production, Distribution, and Training.

EFFECTIVE DATE: These annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these annual funding priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4092–MS 2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: On November 18, 1987 at 52 FR 44324, the Secretary published in the **Federal Register** a Consolidated Application Package (CAP) which contained four programs consisting of 18 program competitions under the Office of Special Education and Rehabilitative Services (OSERS). The notice invited applications for fiscal year 1988 grants.

This notice announces final annual funding priorities for fiscal year 1988.

Analysis of Comments and Changes

OSERS received three letters of comments from the public. Some additional clarifying changes have been made where necessary in the priorities for all programs. A discussion of the requests for clarification and changes on each individual priority follows:

Handicapped Children Early Education Program Clarification of ages to be served (Priorities 3 and 4)

Comments: Two commenters requested clarification of ages of handicapped children addressed by priorities 3 and 4 of the Handicapped Children's Early Education Program, National Outreach Projects, and Statewide Outreach Projects.

Discussion: The intention of these priorities was that needs of children with handicaps ages eight and below be addressed. The Secretary recognizes the importance of facilitating the transition of children with handicaps from preschool age programs to primary grade programs.

Changes: The Secretary has clarified priorities 3 and 4 to assure that the needs of children with handicaps, ages eight and below will be addressed.

Educational Media Research, Production, Distribution and Training Program Expansion of Priorities (Priorities 1 and 2)

Comments: One commenter suggested expanding the priorities to include production of video tapes and media materials.

Discussion: These are permissible activities that the Secretary decided not to support this year.

Changes: None.

Services for Deaf-Blind Children and Youth

Under Services for Deaf-Blind Children and Youth, priority 1 was announced as an absolute priority as authorized under 34 CFR 307.11 and there is no reason to republish in this document.

Title of Program: Handicapped Children's Early Education Program.

CFDA No.: 84.024.

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through eight years of age, including demonstration, outreach, and experimental projects, research and training activities, and two early childhood research institutes.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Handicapped Children's Early Education Program, CFDA 84.024, for fiscal year 1988 to applications that respond to the following priorities: that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Demonstration Projects for Integrated Preschool Services (CFDA No. 84.024A)

This priority supports projects that provide models for integrated preschool services in which children with handicaps receive education and related services alongside nonhandicapped children of the same or similar ages. Projects under this priority must design models to enable preschool-aged children with handicaps to achieve their optimal functioning level within nomalized, nonsegregated, least restrictive environments. These models should implement policies of State and local agencies that can be transferred to and used by a State educational agency to develop or improve local services under the State's administation of the Preschool Grant Program (section 619 of the Education of the Handicapped Act, as amended).

Priority 2: Demonstration Projects for Methodology for Serving Infants and Toddlers with Specific Disabilities (CFDA No. 84.024F)

This priority supports demonstration projects that develop and implement new and improved procedures for serving infants and toddlers with specific disability conditions for which current practices may not be appropriate or adequately developed. Projects may focus on any defined group of infants for whom applicants demonstrate existing procedures to be inadequate, including those with Down's syndrome, cerebral palsy, extremely low birth weight of less than 750 grams, extremely low birth weight in combination with other medical conditions such as bronchialpulmonary dysplasia (BPD), or myleomeningecele. Projects supported under this priority must develop a service model that demonstrates and evaluates the effectiveness of the new and improved procedures.

Priority 3: National Outreach Projects (CFDA No. 84.024C)

This priority supports projects that implement in multiple States proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate through the State education agency (for preschool projects or for projects serving children three through eight years of age) or through the lead agency for the Early Intervention Program for Infants and Toddlers with Handicaps under Part H of the Act in each State in which outreach activities will be implemented; and

(2) Disseminate are replicate those proven models, or components of models, that establish services needed to assist children with handicaps, ages eight and below, to achieve their optimal functioning level within normalized, nonsegregated, least restrictive environments. These services

must, at a minimum, contain the following components:

(i) Curricula relevant to programming in normalized settings including provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and various therapeutic and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for children with handicaps.

Priority 4: State-wide Outreach Projects (CFDA No. 84.024E)

This priority supports projects that implement throughout a specific State proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Disseminate and replicate, in conjunction with the appropriate State agency, activities to improve the quality of early intervention or special education and related services provided throughout the State for children with handicaps, ages eight and below;

(2) Disseminate and replicate those proven models, or components of models, that establish services needed to assist children with handicaps, ages eight and below, to achieve their optimal functioning. Services must at a minimum contain the following components:

(i) Curricula relevant to programming in normalized settings including the provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and therapists and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for children with handicaps.

Priority 5: Nondirected Experimental Projects (CFDA No. 84.024G)

This priority supports investigations of alternate strategies to reach intervention and educational objectives for children with handicaps within the ages birth through eight years. Strategies selected for comparison should include those for which information regarding their relative effectiveness is not available. Projects supported under this priority must:

(1) Compare the alternate strategies in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate strategies; and

(3) Design the research in a manner that will lead to improved services for children with handicaps ages eight and below.

Priority 6: Experimental Projects on Compensatory Strategies (CFDA No. 84.024H)

This priority supports experimental projects that compare compensatory strategies with infants, toddlers, and children with handicaps, aged birth through eight years, for whom developmentally normative responses required in functional tasks are precluded or hindered. Projects supported under this priority must:

(1) Compare compensatory strategies that result in functional skills, such as use of motorized mobility devices, augmentative communication systems, environmental control systems, or other types of adaptations or technological applications that enable functional responding;

(2) Compare the alternate compensatory strategies in typical service settings;

(3) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate compensatory strategies; and

(4) Design the research in a manner that will lead to improved services for children with handicaps within the ages of birth through eight years.

Priority 7: Approaches for Instructing and Maintaining Students with Handicaps in General Education Classrooms (CFDA No. 84.024J)

This priority supports research projects to develop and test instructional approaches to be used with young students with handicaps, aged eight and below, in general education classrooms. The objective of these approaches will be to enable young students with handicaps to receive appropriate instruction within regular education settings. Specifically, projects must develop and test approaches in one of two areas:

(1) Classroom, grade or building level strategies that result in appropriate instruction within the regular classroom for all students ages eight and below including those with handicaps and other students with diverse educational needs. Strategies could include classroom, grade, or building level organizational structures, instructional strategies, management strategies, curricula, materials and equipment, teacher support strategies, and strategies for coordinating primary level instruction with any services provided at the preschool level.

(2) Strategies that ensure primary level (K–3) students with handicaps will function successfully in the upper elementary grades (4–6). Projects must focus on strategies that allow young children with handicaps who have been educated in regular education classrooms to continue in regular education through upper elementary school. Furthermore, the projects must ensure that successful strategies used with these handicapped students in primary grades are communicated and transported to the upper elementary grades in order to bring about the smooth transition across grades and the maintenance of students with handicaps in regular education.

The research design must include measures of implementation and outcome, and employ comparison buildings or classrooms where the strategy is not implemented. The research must be conducted using an overall conceptual framework and must examine the positive and negative impacts of the strategies on students with handicaps as well as their nonhandicapped peers. Multiple outcome measures including, but not limited to, academic achievement, social development, and social integration must be used. One indication of the effectiveness of the strategy would be the successful maintenance in regular education of children with handicaps.

Priority 8: Early Childhood Research Institute—Transitions (CFDA No. 84.024W)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies to improve the transitions that children with handicaps and their families experience during the early childhood period. The goal of the institute is to produce validated intervention procedures that service providers can use to assist children with handicaps and their families as they confront changes in services and changes in personnel who coordinate or provide services during this period. The program of research and development must address, but need not be limited to, the transitions from hospital to home, from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. For each of these major transitions, the research and development program must address the transitional needs of both children and families.

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The institute must conduct a program of research and development to produce intervention strategies that will prevent or reduce the problems that children and families commonly experience when making the transition from hospital to home. The major problems during this period relate to continued psychological and emotional adjustments of parents and other family members, the change in emphasis from receiving medical care to locating other kinds of services, arranging for the transfer of medical information and records from the hospital to other service agencies, and the need for continuity of certain kinds of services. Although many of the transitional interventions at this stage will be directed to parents and families (rather than the child), the institute must also develop interventions that will assist the child to adjust to a different environment, through, for example, provision of some sameness in areas such as handling, interaction patterns, stimulation regimens, and physical environment as well as in other phasing-out and phasing-in procedures across settings.

The institute must also conduct a program of research and development to produce interventions that will prevent or reduce the problems that children and families experience when making the transition from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. Intervention strategies for these transitions, while encompassing many of the transitional needs of children and families described above, must also address the stresses related to arranging for services that will be provided by different personnel and agencies, adjustments to receiving different services than were provided earlier, problems associated with working with new teams of service providers, and issues related to arranging for the receipt of services in the home, at a center, in a local school, or some combination of these during different transition periods. For the child, these transitional periods often signal a major adjustment in daily activities, from being transported to a center or school, to separation from parents for long periods, to entering an environment with other children, to adjusting to new adults, new expectations, and new rules of behavior.

In conducting the research and development activities, the institute's intervention strategies must address the kinds of stresses and demands that are commonly experienced by children and families during each transitional period, but must also be sufficiently flexible to address the unique characteristics and circumstances of particular children and families. The research and development process must produce techniques that will enable service providers to identify specific child and family problems related to each transitional period and to individualize intervention procedures that are needed. Further, the intervention strategies for children must include procedures that will develop the knowledge, skills and competencies needed by the child in new settings as well as accommodations in both current and future environments that will promote successful transitions.

As a part of its program of research and development, the institute must include studies that will (1) determine when the transitional interventions should be implemented to be most effective, (2) ascertain the effectiveness of the intervention across a variety of clients (children and families) and programs, (3) lead to models and strategies for including transitional intervention objectives in individualized family service plans and individualized education programs, and (4) identify effective methods and materials that service providers can use to monitor the outcomes associated with the interventions.

The institute must conduct the program of research and development within a conceptual framework that identifies the transitional periods to be studied; the known and hypothesized problems associated with each transitional period; initial intervention strategies that will be studied; the measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already available knowledge, products and practices; methods of packaging and disseminating the validated intervention strategies to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

Period of Award

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timelines and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 9: Early Childhood Research Institute—Intervention (CFDA No. 84.024S)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies for infants and toddlers with handicaps who, because of the nature of their handicapping conditions, require extended medical care and management and who may require sustained use of life-supporting technologies. The goal of the institute is to produce findings that can be used to optimize the developmental well-being of these infants and toddlers in concert with the provision of intensive health care in Neonatal Intensive Care Units (NICUs), in extended care facilities for infants and toddlers, or in repeated hospitalizations during their first three years of life. The institute must conduct a comprehensive program of research to: (1) Design and validate strategies that can be used with these infants and toddlers to promote development during extended or repeated hospitalizations; (2) improve procedures related to the identification and referral process; and (3) investigate and improve organizational structures to ensure support of comprehensive services for infants and toddlers.

Procedures to optimize the development of infants and toddlers with handicaps that include extensive special health care needs must be carefully designed and implemented. The institute's research must include, but need not be limited to, studies to: (1) Develop exemplary decision-making models to determine the points in an infant's or toddler's life when nonmedical interventions can be appropriately and safely administered; (2) identify a variety of effective nonmedical interventions that are keyed to family and child needs; (3) investigate the use of methods and identify criteria to enlist and involve the services of different State and local agencies, including the State protection and advocacy agency, the State department of health, the State welfare or protective services department and the State lead agency for the Early Intervention Program for Infants and Toddlers with Handicaps under Part H of the Act, in programming for families and their infants and toddlers with handicaps; and (4) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Procedures related to the identification and referral of these infants and toddlers and their families are an essential component of a coordinated system of comprehensive care. Numerous professionals and agencies may need to be involved to support and enable families to meet the extensive health and developmental needs of their children. In addressing these issues, the institute's program of research must include, but need not be limited to, studies to: (1) Establish criteria to identify and define the population of infants and toddlers with developmental and special health care needs; (2) develop exemplary practices for referral to other services and agencies and for tracking services provided for the infant or toddler and the family; and (3) identify effective strategies for involving a team of various disciplines in planning and implementing the individualized family service plan.

Organizational structures that relate to the identification, referral, and intervention process for these infants and toddlers and their families can facilitate or hinder the delivery of comprehensive services. The structures used in NICUs, in-patient acute care facilities, or extended care facilities for infants and toddlers may be quite different from those used by community-based health, education, or service agencies. Organizational structures used in hospital programs must interface with those used in community-based programs to provide quality comprehensive care for families and their children. In investigating this area, the institute's research must include, but need not be limited to, studies to: (1) Identify the full range of medical and developmental services and personnel needed for infants with handicaps and special health care needs while hospitalized in an NICU; (2) develop and validate model organziational structures for NICUs and follow-up clinics and programs that strengthen the role of families and facilitate coordination among medical and developmental services and between inpatient and outpatient care, including descriptions of types of personnel, their roles and responsibilities, and lines of communication; and (3) investigate options for home care of infants and toddlers with developmental and special health care needs that are outside a hospital or inpatient extended care facility and that include appropriate levels of financial and other supports necessary to meet the extensive medical, health, and developmental needs of the infant or toddler.

In addition to conducting the research described above, the institute must commit approximately 20% of its annual budget to conducting inservice training activities. These activities must be designed to assist hospital NICUs and regular staff to learn about new or improved procedures and organizational structures to serve families and their infants and toddlers with handicaps that include special health care needs. The training activities must be based on the results of the institute's research program, already published information, and existing exemplary practices.

In conducting the research program and in order to field test the procedures and organizational structures, the institute supported under this priority must work with a consortium of NICUs and their follow-up clinics and programs as well as participating hospitals that specialize in acute care for children. The consortium must vary on dimensions of quality and comprehensiveness of services, client characteristics, geographic location, intake and referral procedures, and regional coordination. Further, the institute's research program must be conducted within a conceptual framework that identifies the specific issues to be studied; the known and hypothesized problems associated with each issue; the initial intervention strategies and organizational structures that will be studied; measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already existing knowledge, products and practices; methods of disseminating the validated intervention strategies and organizational structures to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and developmental activities, the institute must provide research training and experience for at least 10 graduate students annually. Given the nature of this institute, some of the students selected for training may be graduate students in health or health-related fields who desire to gain expertise in conducting interdisciplinary research and development in hospital settings.

Period of Award

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirement of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timelines and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Program Authority: 20 U.S.C. 1423.

Title of Program: Program for Severely Handicapped Children

CFDA No.: 84.086

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priorities: In accordance with the Education Department General

Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Program for Severely Handicapped Children, CFDA 84.086, in fiscal year 1988, to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Nondirected Demonstration and Research Projects for Severely Handicapped (Other than Deaf-Blind) Children and Youth (CFDA 84.086C)

This priority supports projects: (1) That develop or demonstrate new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of severely handicapped (other than deaf-blind) children and youth; and (2) that conduct research to identify and meet specific educational or related needs selected from the full range of special needs of severely handicapped (other than deaf-blind) children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) improve the education and related services available to individuals with the most severe impairments; (b) improve and expand social interaction skills for people with severe handicaps through training in social interaction and related skills and expansion of social contacts in regular classrooms, workplaces, or recreational activities; or (c) improve curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets these invitational priorities will not be given a competitive or absolute preference over other applications.

Priority 2: Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth (CFDA 84.086H)

This priority supports projects (1) that develop or demonstrate new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of deaf-blind children and youth; and (2) that conduct research to identify and meet specific educational or related needs selected from the full range of special needs of deaf-blind children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) Improve the expressive and receptive communication of children who are deaf and blind; (b) improve the preparation for and transition to supported employment; (c) improve the abilities and opportunities for living in regular community environments; or (d) improve the social network of children with deaf-blindness through related skill training and expansion of social contacts in regular classrooms, workplaces, or recreational settings. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets this invitational priority will not be given a competitive or absolute preference over other applications.

Priority 3: State-wide Systems Change (CFDA No. 84.086J))

This priority supports projects that: (a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments; (b) significantly increase the number of severely handicapped children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers; (c) evaluate the effectiveness of these activities, including collecting and reporting each year on the number of children with severe handicaps in the State in each type of educational setting and showing changes from previous years; and (d) disseminate information about the project's outcomes.

Applicants under this priority must describe in detail how they will accomplish the following tasks:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped;

(2) Improve the State's Part B and Part H child-fund activities pertaining to all children and youth with severe handicaps within the State;

(3) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, non-segregated least restrictive environments. These services must at a minimum:

(i) Develop new approaches for delivery of integrated educational services that include providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Demonstrate through the provision of project service the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(iv) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(v) Describe how the unique needs of deaf-blind children and youth will be addressed by project activities;

(vi) Demonstrate the effectiveness of extended school year activities in promoting the development and maintenance of skills for severely handicapped children and youth; and

(vii) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children and youth;

(4) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures; and

(5) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

Priority 4: Inservice Training—Services for Severely Handicapped Children and Youth (CFDA No. 84.086R)

This priority supports projects that utilize effective inservice training activities that meet the needs of qualified personnel to provide educational and related services to severely handicapped, including deaf-blind, children and youth. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational services to these severely handicapped, including deaf-blind, children and youth; or

(2) Committed by signed contract or other agreement to provide educational services to these severely handicapped, including deaf-blind, children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments; parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized least restrictive environments.

Applicants under this priority must have an on-going model of innovative, effective educational approaches for severely handicapped (including deaf-blind) children or youth through which persons receiving inservice training under this priority will be provided practicum training experiences.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services, and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B and Part H of the EHA (See 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills.

The Secretary may authorize the payment of stipends, on a case-by-case basis, for inservice training in an amount the Secretary determines appropriate for a particular training activity.

Priority 5: Extended School Year Program for Severely Handicapped Children (CFDA 84.086S)

This priority supports demonstration projects that design, implement, and disseminate information about innovative practices that provide extended school year activities for severely handicapped children who may also have visual and hearing handicaps. The extended school-year programs are those that provide services during the interim between two regular school years, if the interim period is at least four weeks in length. Activities provided by these projects may include any of the services under 34 CFR 307.11(a)(1).

These projects must focus on maintaining and enhancing skill development and training of these children in integrated, least restrictive environments that promote social and communicative interaction.

Program authority: 20 U.S.C. 1424.

Title of Program: Services For Deaf-Blind Children and Youth

CFDA No.: 84.025

Purpose: To provide Federal financial assistance for State and Multi-State projects to make available services to deaf-blind children and youth and to provide technical assistance for this population.

Priority 1: State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A)—See statement under Analysis of Comments and Responses.

Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Services for Deaf-Blind Children and Youth Program in fiscal year 1988 to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 2: Technical Assistance to State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA 84.025C)

This priority supports one project that on a national basis provides technical assistance to grantees under 34 CFR 307.11 (State and Multi-State Projects for Deaf-Blind Children and Youth) in the provision of services to deaf-blind children and youth ages birth through 21 years. Applicants must describe how they will meet the requirements specified in 34 CFR 307.12 of the program regulations and demonstrate the capability to serve the heterogenous population of deaf-blind children and youth, including those children who have high as well as low functional levels.

Technical assistance services are to be focused on the improvement of services to children and youth with deaf-blindness in their current placement but promote the movement of those children in restrictive settings to an integrated, less restrictive environment.

The applicant must describe how the project will develop, implement, and evaluate a technical assistance plan with each 34 CFR 307.11 grantee and the State educational agency of the State in which the technical assistance is provided. In addition, the applicant must describe how the project will provide technical assistance to the 34 CFR 307.11 grantees in their preparation and submission of data required under 34 307.40, including a reconciliation of that data with the child count provided by the State under Part B of the Education of the Handicapped Act and Chapter 1 of the Education Consolidation and Improvement Act.

Program Authority: 20 U.S.C. 1422.

Title of Program: Educational Media Research, Production, Distribution, and Training.

CFDA No.: 84.026

Purpose: To provide Federal financial assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps. Awards under this program are authorized under Part F of the Education of the Handicapped Act, as amended.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under the Educational Media Research, Production, Distribution, and Training program, CFDA No. 84.026, for fiscal year 1988 to applications that respond to the following priorities: that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Closed-Captioned Sports Program (CFDA No. 84.026A)

This priority supports one cooperative agreement for the closed-captioning of sports programs to permit full access to remarks made by sports commentators. Currently, access to the commentary and other pertinent information is not available. This project will offer persons with hearing impairments enriched educational and cultural experiences in which sports play a large part.

Priority 2: Closed-Captioned Local and Regional News (CFDA No. 84.026L)

This priority supports new projects for the closed-captioning of local television news programs. Projects would be incrementally funded to encourage closed-captioning of local news. At the end of the third year applicants are

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expected to continue the project without additional Federal support.

Program Authority: 20 U.S.C. 1451, 1452.

Intergovernmental Review

These programs (except the Program for Severely Handicapped Children) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Numbers: 84.024 Handicapped Children's Early Education Program; 84.025 Services For Deaf-Blind Children and Youth; 84.026 Educational Media Research, Production, Distribution, and Training Program; 84.086 Program for Severely (Including Deaf-Blind) Children and Youth.)

Dated: March 2, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-5591 Filed 3-14-88; 8:45 am]

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federal register

Tuesday
March 15, 1988

Part IV

Department of the Treasury

Office of the Assistant Secretary

17 CFR Parts 400, 402, 403, 404 and 450

Implementation of Regulations for the Government Securities Act of 1986; Proposed Rule

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DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary

17 CFR Parts 400, 402, 403, 404, and 450

Implementation of Regulations for the Government Securities Act of 1986

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Department") is issuing for comment several proposed clarifying amendments to the regulations issued on July 24, 1987 (52 FR 27910) under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The amendments are being proposed to resolve some technical problems and omissions in the rule, to make conforming changes, and to clarify the Department's intent with respect to certain provisions that have raised questions.

DATES: Comments must be submitted on or before April 14, 1988.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, Room 209, 999 E Street, Washington, DC 20239-0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Anne Meister (Government Securities Specialist), Don Hammond (Government Securities Specialist) or Clifford Rones (Attorney-Advisor) at 202-376-4632.

SUPPLEMENTARY INFORMATION:

I. Background

The GSA established, for the first time, a federal system for regulation of brokers and dealers who transact business exclusively in government securities, or a government securities business combined with business in non-security financial instruments, exempted securities, and/or futures and other commodity interests regulated by the Commodity Futures Trading Commission ("CFTC"). Previously unregulated government securities brokers and dealers were required to register with the Securities and Exchange Commission ("Commission" or "SEC") and join a self-regulatory organization by July 25, 1987.

The GSA also provided for the regulation of all other brokers and dealers in government securities. Those entities were required to notify their principal regulatory agency of their status as government securities brokers or dealers by July 25, 1987.

The Secretary of the Treasury ("Secretary") is required by Section 15C(b) of the Securities Exchange Act of 1934, as amended by the GSA (15 U.S.C. 78o-5(b)), to adopt rules and regulations concerning the financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit of government securities brokers and dealers. The rules are designed to enhance the protection of investors in government securities while maintaining a fair, honest, and liquid market in such securities. Title II of the GSA (31 U.S.C. 3121(h)) also requires the Secretary to adopt regulations relating to the custody of government securities held by depository institutions. Final regulations in response to this mandate were issued by the Department on July 24, 1987 (52 FR 27910).

Since publication of the final regulations, the Department has received numerous informal comments and inquiries concerning the regulations from government securities brokers and dealers, depository institutions, investors, and their representatives. The Department also has continued to consult on a frequent basis with the agencies responsible for enforcement of the regulations, the SEC, the several financial institution federal regulatory agencies, and the National Association of Securities Dealers ("NASD"), among others.

As a result of the above process, it has become apparent that certain portions of the regulations should be revised to correct omissions or inconsistencies in certain areas or to achieve more accurately the Department's original intent. Thus, the Department proposes to amend the regulations as more fully described below.

II. Section-by-Section Analysis of Proposed Changes

A. Part 400—Rules of General Application

In Part 400, changes are being proposed to § 400.2, which deals with the filing and handling of requests for exemption, for interpretation and of other materials.

Expediting Release of Non-Confidential Material; Treatment of Confidential Material

The Department is proposing to amend portions of § 400.2 that relate to the submission of requests for interpretation, exemption, and classification and the confidential treatment of such requests. The proposed rule would: (1) Provide for expedited publication of written requests for interpretation, exemption, and classification together with the Department's response, unless temporary confidential treatment is granted, and (2) clarify the procedure for requesting confidential treatment of sensitive commercial and business information submitted to the Department in connection with a request for interpretation, exemption, or classification.

Under the current provision, written requests for interpretation, classification, and exemption and the Department's responses are made available to the public 30 days after the response is provided to the requesting party. A requesting party may ask the Department to treat the response and incoming request as confidential for an additional 90 days. This provision, § 400.2(c)(7) of the regulations, was originally modeled after 17 CFR 200.81, which is the Commission's rule addressing release of its no-action, interpretive and exemption letters. The Department notes that the Commission recently published proposed modifications to its rule (52 FR 35115, September 17, 1987) which are similar to those proposed here. The Commission's proposed changes include expedited release of no-action and other letters.

In the SEC's proposal, the Commission indicated that there has been substantial public interest in its staff's interpretive and no-action letters, and that earlier public availability would serve to reduce duplicative requests, simplify administrative procedures, and reduce potential confusion by having these letters made available as soon as possible. The Department believes that the same advantages would accrue to its responses to requests for interpretation, exemption, and classification and proposes to amend its regulations accordingly. Therefore, under the proposed rule, the Department would make requests and responses available to the public for inspection and copying as soon as practicable after the response is provided to the requesting party.

A party making a request for interpretation, exemption, or classification will still be able to ask that the request and the Department's response be kept confidential for up to 120 days. Because of the proposed change to § 400.2(c)(7)(i) expediting public availability of requests and responses, a change is also necessary in the language of § 400.2(c)(7)(ii), to maintain 120 days as the maximum

timeframe for temporary confidential treatment.

In addition, the Department recognizes that there are situations in which a party may submit sensitive commercial or business information, in support of a request for an interpretation, exemption, or classification, that the party would want to keep confidential for a period of time in excess of the 120 days allowed the Department's response and the incoming request. The proposed changes address the concerns that were raised in Executive Order 12600 of June 23, 1987, which instructed Federal Executive agencies to have procedures in place that would notify submitters of potentially sensitive commercial or business information if the information is the subject of a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and to give the submitter of such information a chance to demonstrate why the information should be kept confidential under section (b)(4) of FOIA, 5 U.S.C. 552(b)(4).

The Department revised Part 1 of Title 31 of its regulations, effective August 13, 1987, for the disclosure of records under FOIA and the Privacy Act (52 FR 26302). Those revisions included provisions for predisclosure notification to submitters of business information as described in the Executive Order. See 52 FR 26302, 26311 (revising 31 CFR 1.6). The proposed changes to § 400.2(c)(3)(iv) would clarify the applicability of the Department's regulations, found at 31 CFR 1.6, and would establish a procedure for requesting confidential treatment pursuant to these regulations.

The Department proposes that, if a party submits information in support of a request for interpretation, exemption, or classification that the party wishes to be kept confidential beyond the temporary 120-day period, the party be required to segregate, to the extent possible, such information from the rest of its request and submit a statement asking for confidential treatment and stating the reasons why such treatment should be afforded. In addition, the party requesting confidential treatment would be required to clearly mark and identify all information sought to be kept confidential. Information designated as confidential would not be released with the incoming request and the Department's response. Should a request under FOIA then be received for the segregated information, the Department, as required, would notify the submitter of the information, in accordance with 31 CFR 1.6, that a request for the information has been made and afford the submitting party a chance to state why the information should not be released under exemption (b)(4) of FOIA.

In summary, the proposed changes to § 400.2 would allow protection of sensitive business and commercial information while generally expediting the public availability of the Department's responses to requests for interpretation, exemption, and classification.

B. Part 402—Financial Responsibility

In Part 402, changes are being proposed to § 402.2, which states the capital rule for registered government securities brokers and dealers, and to § 402.2a (Appendix A), which provides a detailed description of the calculation of the market risk haircut required by § 402.2.

Securities of International Organizations

Subsequent to the publication of the final regulations (52 FR 27910, July 24, 1987), the Department became aware of uncertainty regarding the classification, for purposes of the computation of the capital requirements under § 402.2, of certain securities issued by international organizations, such as the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank, which have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. (See, e.g., 22 U.S.C. 286k-1(a).) The Department now proposes to clarify classification of such securities as Treasury market risk instruments pursuant to § 402.2(e)(1) by adding a new category to the list of Treasury market risk instruments. Only those securities issued by these international organizations whose changes in yield are closely correlated with changes in yield of comparable Treasury securities, including STRIPS, would be included as Treasury market risk instruments. Any other securities issued by these entities would be included in the Other Securities Haircut, § 402.2a(b). Futures and forwards on those securities of international organizations that are Treasury market risk instruments would also be included as Treasury market risk instruments.

Credit Volatility Haircut

An amendment to § 402.2(g)(1)(iv) is proposed to clarify that futures and forwards on dollar-denominated time deposits that mature in 45 days or more and whose changes in yield are closely correlated with marketable certificates of deposit of no more than one year to maturity are included in the calculation of the credit volatility haircut. The futures and forwards have a price-change risk based on general perceptions of the relative credit quality of time deposits, which price-change risk is not included in the market risk haircut factors. The credit volatility haircut captures the risk of price changes corresponding to perceptions of changes in the instruments' credit status for short term money market instruments. Accordingly, it is consistent with the current rule's application to clarify that the future or forward contract on a time deposit is to be included in the calculation of the credit volatility haircut.

Changes to the Calculations and Instructions

The Department proposes conforming and clarifying revisions to the portions of § 402.2a addressing (1) the calculation of the market risk haircut and (2) the instructions to the schedules that may be used by government securities brokers or dealers in the calculation of the total haircuts as required by Part 402. Additionally, the changes include the correction of certain descriptions in § 402.2a, paragraphs (a)(3)(i)(A), (a)(3)(i)(A)(*1*), (a)(3)(ii)(A), and (a)(3)(ii)(A)(*1*). The changes clarify that futures and forwards that are Treasury market risk instruments should be included in the calculations of the interim haircuts for long and short futures and forward positions.

C. Part 403—Protection of Customer Securities and Balances

In Part 403, changes are being proposed to §§ 403.1 and 403.4(e), which relate to the provisions for hold-in-custody repurchase transactions effected by registered brokers and dealers and registered government securities brokers and dealers; to § 403.5(d) and (f)(3), which contain provisions relating to financial institutions' handling of hold-in-custody repurchase transactions; to § 403.5(e), which addresses the reserve requirements for government securities brokers or dealers that are branches or agencies of a foreign bank; and to § 403.7, which specifies the various effective dates for this Part.

Conforming Changes

The Department's final rules under the Government Securities Act, in § 403.4, require newly registered government securities brokers and dealers to comply with the Commission's customer protection rule (17 CFR § 240.15c3-3, or "Rule 15c3-3"), with certain

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modifications. Compliance by registered brokers and dealers with various SEC rules, including Rule 15c3–3 as modified, is deemed to constitute compliance with the Treasury rules with respect to the broker or dealer's government securities activities (see § 403.1).

At the time of adoption of the Department's final rules, the amendments to Rule 15c3–3 relating to the requirements applicable to hold-in-custody repurchase transactions had not yet been adopted by the Commission in final form. Thus, the Treasury rules, in § 403.4(e), contained a new section 13–3(b)(4), setting out the requirements applicable to such transactions. The Commission later adopted a virtually identical change to Rule 15c3–3, which was issued as a final rule on August 14, 1987 (52 FR 30331) and became effective on January 31, 1988.

Consequently, the Department is proposing to eliminate the duplicative provisions relating to hold-in-custody repurchase transactions from § 403.4 because they are now incorporated in the Commission's rule that the Department has adopted. The differences between the Treasury rule on hold-in-custody repurchase transactions and the rule adopted by the Commission have been retained in § 403.4(e). These differences are: (1) A slight variation in disclosure language, applicable only to registered government securities brokers and dealers, relating to the coverage of the Securities Investor Protection Act; (2) the Treasury clarification of the acceptable control locations for government securities; and (3) a provision the Commission chose not to adopt permitting the waiver of a confirmation by foreign counterparties under certain circumstances.

Conforming changes relating to the amendment of Rule 15c3–3 are also being made in §§ 403.1 and 403.7.

Applicability to Financial Institutions of § 403.5(d)—Requirements for Hold-in-Custody Repurchase Transactions

Section 403.5(d) contains rules applicable to financial institutions that engage in hold-in-custody repurchase transactions. These rules essentially parallel the requirements of § 403.4 which apply to non-financial institution brokers and dealers. Both rules provide that the repurchase agreement must be obtained in writing; specify certain disclosures that must be included in the agreement; require confirmation of the specific securities that are the subject of a hold-in-custody repurchase transaction by the end of the day on which a transaction is initiated and on any day on which substitution of securities occurs; and specify possession or control requirements.

Section 403.5(d) differs from § 403.4 in one respect. It contains a provision whereby a financial institution is exempt from the provisions of § 403.5(d) if it does not retain the right to substitute securities that are the subject of a repurchase transaction and it delivers the subject securities to the separate control of the safekeeping department. ("Safekeeping" is defined for this purpose in § 403.5(f)(3).)

It was the Department's intention that this provision (the "safekeeping exception") have limited applicability and that the provisions applicable to hold-in custody repurchase transactions engaged in by most financial institutions would be those that parallel the rules applicable to government securities brokers and dealers subject to § 403.4. A primary basis for the safekeeping exception was the idea that the area of the financial institution initiating the repurchase transaction would give up control of the securities by delivering the securities to a custodial area of the financial institution.

Since adoption of the final rule, it has become apparent, through communications with numerous financial institutions, that the safekeeping exception, as currently drafted, has broader potential applicability than the Department intended. For example, it has come to the Department's attention that a number of institutions that actively engage in hold-in-custody repurchase transactions are seeking to use the safekeeping exception as a means of avoiding all or part of the requirements applicable to hold-in-custody repurchase transactions. It is the Department's understanding that these institutions are primarily concerned with the requirement for issuing confirmations under the hold-in-custody rules, particularly as it relates to "sweep" repurchase transactions. In a sweep repurchase transaction, excess funds are swept from a customer's deposit account for overnight investment in a repurchase transaction. Since sweep repurchase transactions are recurring transactions, generally giving rise to a new repurchase transaction daily, the provisions of § 403.5(d) require the issuance of a confirmation each day.

The legislative process giving rise to the Government Securities Act, under which these regulations are issued, focused on hold-in-custody repurchase transactions as an area of major concern in the context of investor protection. The Department believes that the hold-in-custody repurchase transaction requirements—written agreement, required disclosures, prompt confirmation of the subject securities, and possession or control rules—all are fundamental provisions for strengthening investor protection. It should be noted that it was the Department's expectation, even under the safekeeping exception, that securities subject to repurchase transactions be confirmed promptly.

The Department has considered potential refinements to the safekeeping exception to clarify its intended scope but has concluded, after detailed consideration, that it is not possible to create an exception to the basic hold-in-custody transaction rules that would achieve the limited applicability intended and, at the same time, preserve in all cases an acceptable level of customer protection. In the context of repurchase transactions where a financial institution is a party to the transaction and where the movement of the securities in and out of a custodial area may be completely automatic, the Department does not believe that there would realistically be enough relinquishment of control to justify treatment of these transactions as other than hold-in-custody repurchase transactions. For these reasons, the Department is proposing to rescind the safekeeping exception by modifying the introductory language to § 403.5(d)(1) and removing § 403.5(f)(3). It is the Department's intent that this change would become effective one month after publication as a final rule. Public comment is specifically requested on the proposed amendment to § 403.5.

Foreign Branches and Agencies—Reserve Requirements

Section 403.5(e) of the regulations provides that a government securities broker or dealer that is a branch or agency of a foreign bank is subject to a modified version of the reserve requirement applicable to non-bank brokers and dealers. A foreign branch or agency subject to the rule must keep on deposit with a bank (as that term is defined in 12 U.S.C. 1813(h)) an amount computed in accordance with the modified version of the reserve formula. As stated in the preamble to the temporary regulations (52 FR 19648, May 28, 1987), this requirement was meant to provide a degree of assurance to securities customers to whom the foreign branch or agency owes money, by requiring that such funds be available in the United States in the event of a failure.

Inadvertently, the current provision does not include instructions concerning the timing and frequency of the computation of the amount of the deposit and the timing of the deposit. In addition, the current provision does not include a requirement that a record be made of each computation and that such records be preserved. Therefore, the Department proposes to amend § 403.5(e) by adding new paragraphs (e)(5) and (e)(6). Proposed paragraph (e)(5) requires that the computation be made weekly as of the close of the last business day of the week and that the deposit so computed be made no later than one hour after the opening of banking business on the second following business day. Proposed paragraph (e)(6) requires that the foreign branch and agency make and maintain a record of each computation and that these records be preserved for three years, the first two years of which the records must be maintained in an easily accessible place. Both proposed paragraphs are based on comparable provisions relating to the computation of the reserve formula in Rule 15c3–3(e)(3).

Effective Dates—Technical Amendments

Section 403.7 contains effective dates for various provisions of Part 403. In § 403.7 (b), (c), (d) and (e), references to § 403.4(e) have been changed to refer more generally to § 403.4 to conform to the modifications to § 403.4(e) discussed above. Additionally, the introductory language in paragraphs (d)(1) and (d)(2) has been modified to make clear that the interim disclosures addressed in § 403.7(d) were to be used only until such time as the requirement for obtaining a written agreement, with the disclosures required under § 403.4 or § 403.5(d), became effective. With the requirement for a written agreement in effect, hold-in-custody repurchase transactions may not be entered into with a counterparty until such written agreement is obtained from the counterparty.

D. Part 404—Recordkeeping and Record Preservation

In Part 404, changes are being proposed to § 404.4, which contains recordkeeping requirements for government securities brokers and dealers that are financial institutions.

Reference to Part 450; Securities Count

The Department proposes to make two corrections to § 404.4(a). Section 404.4(a)(2) would be corrected to provide that a financial institution government securities broker or dealer must make and keep the records required by § 450.4 (c), (d) and (f) of the regulations. The current provision provides that records required by § 450.4 (c), (d)(3) and (f) be made and kept.

Section 404.4(a)(3) would also be corrected to eliminate the reference to the "physical" count of securities. A government securities broker or dealer that is a financial institution is required by § 403.5(a)(2) of the regulations to comply with Part 450 of the regulations. Section 450.4(d) requires an annual count of government securities held for customers both in definitive and book-entry form. The term physical count is not an accurate description of the securities count required by § 450.4(d) because securities in book-entry form must be included in the count.

E. Part 450—Custodial Holdings of Government Securities by Depository Institutions

In Part 450, a change is being proposed to § 450.1, which addresses the scope of and office responsible for the regulations.

Interpretations of Part 450

A change is being made to § 450.1(b) to clarify that the procedure described for requesting and giving interpretations of the regulations described in § 400.2 is also applicable to interpretations of Part 450.

III. Special Analyses

Based on discussions with government securities brokers and dealers and depository institutions, it is the Department's view that the proposed regulations will not impose any major increase in costs on those affected or significantly affect the economy. In addition, the Department has concluded that the proposed regulations will not have an unnecessary or inappropriate differential impact on classes of entities affected by the regulations such as to create a burden on competition.

The changes described in the section-by-section analysis are clarifications or revisions with limited impact. The proposed revisions to Part 400 modify slightly the procedures for obtaining confidential treatment of sensitive information submitted in connection with requests for interpretation or exemption and do not impose any substantive regulatory requirements. The proposed revisions to Part 402 clarify treatment of certain items included in the required calculation of liquid capital and also do not involve new regulatory requirements. The proposed revision to § 403.4 does not represent a substantive change but merely changes the provision relating to hold-in-custody repurchase transactions to take into account the adoption of an essentially identical provision by the SEC.

With respect to the proposed elimination of the "safekeeping exception" in § 403.5, it was the expectation of the Department that the exception would have limited applicability. As described above, the exception is being withdrawn because the Department has concluded that it is not feasible to provide such an exception without creating the potential for much broader applicability than was anticipated. Potential modifications to the exception have proven to be ineffective in clarifying the intended scope. The proposed revision to § 403.5(e) clarifies that the imposition on branches or agencies of foreign banks of a reserve requirement based on SEC Rule 15c3–3 was intended to incorporate the requirement that the calculation be done weekly. The revision also includes a specific recordkeeping requirement, similar to the requirements of Part 404, that was omitted in the final rule. The proposed revision to Part 450 clarifies that the procedures set out in Part 400 for requests for interpretation also are applicable to interpretations of Part 450.

Based on the foregoing, the Department has concluded that the proposed regulations do not constitute a major rule for the purposes of Executive Order 12291 and that a regulatory impact analysis is not required.

In addition, it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Although the safekeeping exception was intended, in part, to accommodate financial institutions whose repurchase transaction activity normally would be relatively limited, the Department does not expect that its deletion will have a significant impact on that activity or on the institutions as a whole. As a result, a regulatory flexibility analysis is not required.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on those requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Washington, DC 20503, and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 403

Banks, banking, Brokers, Government securities.

17 CFR Part 404

Banks, banking, Brokers, Government Securities, Reporting and recordkeeping requirements.

17 CFR Part 450

Banks, banking, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, it is proposed to amend 17 CFR Parts 400, 402, 403, 404, and 450 as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for Part 400 continues to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5).

2. Section 400.2 is amended by revising paragraphs (c)(1) and (c)(3)(iv); by redesignating (c)(3)(v) as (c)(3)(vi) and revising it; by adding a new (o)(3)(v); and by revising paragraph (c)(7) to read as follows:

§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

* * * * *

(c) * * *

(1) Interpretations under this chapter may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

* * * * *

(3) * * *

(iv) In addition to requests for confidential treatment under paragraph (c)(7)(ii) of this section, a person may request confidential treatment of information that is submitted as part of, or in support of, a request for interpretation, exemption, or classification. A separate request for confidential treatment and the basis for such request shall be submitted at the time the information for which confidential treatment is requested is submitted. The request for confidential treatment must specifically identify the information for which such confidential treatment is requested. To the extent practicable, the information should be segregated from information for which confidential treatment is not requested and should be clearly marked as confidential.

(v) Information designated as confidential in accordance with paragraph (c)(3)(iv) of this section shall not be disclosed to a person requesting such information other than in accordance with the procedures outlined in the Department's regulations published at 31 CFR 1.6.

(vi) An original and two copies of each request letter shall be submitted to the Office of the Commissioner, Bureau of the Public Debt, Room 553, 999 E Street NW., Washington, DC 20239–0001. The envelope shall be marked "Government Securities Act Request." The letter shall indicate in the upper right hand corner of the first page the particular sections of the Act and of the regulations at issue.

* * * * *

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

* * * * *

PART 402—FINANCIAL RESPONSIBILITY

3. The authority citation for Part 402 continues to read as follows:

Authority: Section 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

4. Section 402.2 is amended by redesignating and revising paragraphs (e)(1) (vi), (vii), and (viii) as (e)(1) (vii), (viii), and (ix); by adding a new paragraph (e)(1)(vi); and by revising paragraph (g)(1)(iv) to read as follows:

§ 402.2 Capital requirements for registered government securities brokers and dealers.

* * * * *

(e) * * *

(1) * * *

(vi) Securities, other than equity securities, issued by international organizations that have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 provided their changes in yield are closely correlated to the changes in yield of similar Treasury securities, including STRIPS;

(vii) Futures, forwards, and listed options on Treasury market risk instruments described in paragraphs (e)(1) (i)–(vi) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis;

(viii) Options on those futures contracts described in paragraph (e)(1)(vii) of this section, settled on a cash or delivery basis; and

(ix) Unlisted options on marketable Treasury bills, notes or bonds.

* * * * *

(g) * * *

(1) * * *

(iv) *Credit volatility haircut.* The "credit volatility haircut" equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1) (iii), (iv) and (v) of this section that have a term to maturity greater than 44 days, including futures and forwards thereon, settled on a cash or delivery basis, and futures and forwards on time deposits described in paragraph (e)(1)(vii) of this section, that have a term to maturity greater than 44 days, settled on a cash or delivery basis.

5. Section 402.2a is amended by revising paragraphs (a)(1)(iii)(B), (a)(1)(iii)(C), (a)(1)(iv)(B) and

(a)(1)(iv)(C); by adding paragraphs (a)(1)(iii)(D) and (a)(1)(iv)(D); by revising paragraphs (a)(3)(i)(A) introductory text, (a)(3)(i)(A)(*1*), (a)(3)(ii)(A) introductory text, and (a)(3)(ii)(A)(*1*); by revising in paragraph (c) *Instructions to Schedules A through E, Schedule A—Liquid Capital Requirement Summary Computation,* Line 3 c.; *Schedule B—Calculation of Net Immediate Position in Securities and Financings,* in Columns 3 and 4 revising paragraphs (4), (5) and the first paragraph of concluding text, and adding paragraph (6); and *Schedule D—Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts,* revising the second and third paragraphs, to read as follows:

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net long when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net long when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

(iv) * * *

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net short when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net short when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

(3) * * *

(i) * * *

(A) Gross long futures and forward interim haircut. The "gross long futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each long futures position and each long forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

* * * * *

(ii) * * *

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each short futures position and each short forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

* * * * *

(c) * * *

Instructions to Schedules A through E * * *

Schedule A * * *

Line 3 * * *

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short position in money market instruments qualifying as Treasury market risk instruments which mature in 45 days or more, in futures and forwards on these instruments that are settled on a cash or delivery basis, and in futures and forwards on time deposits described in § 402.2(e)(1)(vii), that mature in 45 days or more, settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) marketable certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper which has no more than one year to maturity and is rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.

* * * * *

Schedule B * * *

Columns 3 and 4 * * *

(4) Bankers acceptances;

(5) Commercial paper of no more than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations; and

(6) Securities described in § 402.2(e)(1)(vi).

Report all positions as of the trade date. If the settlement date is scheduled for more than five business days in the future (or, in the case of a mortgage-backed security, more than thirty calendar days in the future), then report the position as a forward contract on Schedule D. Also, under "Securities Positions" in the appropriate column and category, report any when-issued position in a marketable Treasury security between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

* * * * *

Schedule D * * *

Report on Schedule D futures, forwards, and options which are Treasury market risk instruments as defined in § 402.2(e). These futures, forwards, and listed option contracts may be based on any of the Treasury market risk instruments described in the instructions to columns 3 and 4 on Schedule B or on time deposits whose changes in yield are closely correlated with marketable certificates of deposit which are Treasury market risk instruments, as described in § 402.2(e)(1)(vii). Options on Treasury market risk futures contracts and unlisted options on marketable Treasury bills, notes, and bonds are also to be included. Futures contracts may settle on a cash or delivery basis. Any of these contracts which are being included as part of a hedge in the calculation of the other securities haircut must be excluded from Schedule D.

Report as a forward contract any position for which the time between trade date and settlement date is more than five business days (30 calendar days for a mortgage-

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backed security). Any when-issued position in a marketable Treasury security established between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security established between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date is reported in the appropriate category on Schedule B under "Securities Positions."

* * * * *

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

6. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(A), (b)(2)).

7. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4 (a)-(d), (e)(2)-(3), and (f)-(i), constitutes compliance with this part.

8. Section 403.4 is amended by revising paragraph (e) to read as follows:

§ 403.4 Customer protection—reserves and custody of securities.

* * * * *

(e)(1) For purposes of this section, § 240.15c3-3(b)(4)(i)(C) is modified to read as follows: "(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement."

(2) For purposes of this section, § 240.15c3-3(b)(4)(ii) is modified to read as follows: "(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3-3 (c)(1), (c)(3), (c)(5), (c)(6), or § 403.4(f) of this title."

(3) For purposes of this section, § 240.15c3-3(b)(4)(iv) is redesignated § 240.15c3-3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows: "(B) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section."

* * * * *

9. Section 403.5 is amended by revising the introductory text of paragraph (d)(1); by adding paragraphs (e)(5) and (e)(6) and by removing paragraph (f)(3) to read as follows:

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty shall:

* * * * *

(e) * * *

(5) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day.

(6) A government securities broker or dealer that is a branch or agency of a foreign bank shall make and maintain a record of each computation made pursuant to paragraph (e)(5) of this section and preserve each such record for a period of not less than three years, the first two years in an easily accessible place.

* * * * *

10. Section 403.7 is amended by revising paragraph (b), the first sentence of paragraph (c), the introductory text of paragraphs (d) (1) and (2), (d) (1)(i) and (2)(i), and the introductory text of (d) (1)(ii) and (2)(ii), and paragraph (e) to read as follows:

§ 403.7 Effective dates.

* * * * *

(b) *Confirmations.* The requirement of §§ 403.4 and 403.5(d) to describe the specific securities that are the subject of a repurchase transaction, including the market value of such securities, on a confirmation at the initiation of a repurchase transaction or on substitution of other securities shall be effective January 31, 1988.

(c) *Written repurchase agreements.* The requirement to obtain a repurchase agreement in writing with the provisions described in §§ 403.4 and 403.5(d) shall be effective October 31, 1987, in the case of new customers of a government securities broker or dealer and shall be effective January 31, 1988, in the case of existing customers of a government securities broker or dealer. * * *

(d) *Disclosures.* (1) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a government securities broker or dealer that is subject to § 403.4 shall furnish the counterparty with a separate interim disclosure document containing:

(i) The disclosure referred to in § 403.4 concerning the Securities Investor Protection Act of 1970, and

(ii) If applicable, the following disclosure: * * *

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a financial institution that is subject to § 403.5(d) shall furnish the counterparty with a separate interim disclosure document containing:

(i) The disclosure referred to in § 403.5(d) concerning the inapplicability of deposit insurance, and

(ii) If applicable, the following disclosure: * * *

* * * * *

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§ 403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction initiated on or before August 31, 1987, that, by its terms, matures on a specific date after August 31, 1987.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

11. The authority citation for Part 404 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5(b)(1)(B), (b)(1)(C), (b)(2)).

12. Section 404.4 is amended by revising paragraphs (a)(2) and (a)(3)(i)(A) to read as follows:

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) * * *

(2) Complies with the recordkeeping requirements of §§ 450.4 (c), (d) and (f) of this chapter; and

(3) * * *

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all "long" or "short" positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

* * * * *

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

13. The authority citation for Part 450 continues to read as follows:

Authority: Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 78o-5 (b)(1)(A), (b)(2), (b)(3)(B)); sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110).

14. Section 450.1 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 450.1 Scope of regulations; office responsible.

* * * * *

(b) * * * Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 88-5550 Filed 3-14-88; 8:45 am]

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Part V

Department of Education

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program. These proposed regulations will clarify that the purpose of these programs includes addressing the problems of illiteracy among persons with handicaps. It further provides that public libraries may be used for the distribution of captioned films and educational media.

DATE: Comments must be received on or before May 16, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Joseph Clair, Office of Special Education Programs, 400 Maryland Avenue, SW. (Room 4092—Switzer), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4905–M/S 2312), Washington, DC 20202. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program are authorized by Part F of the Education of the Handicapped Act (20 U.S.C. 1451, 1452 and 1454). Section 652 was amended by section 315 of the Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457). The amendments to section 652(a) of the Act provide that the purpose of the two programs includes addressing problems of illiteracy among deaf individuals and individual with other handicaps. The amendments also provide that public libraries may be used for the distribution of captioned films and educational media.

In addition, the regulations for these two programs have been reviewed for the purpose of deregulation. This review has resulted in the proposed removal of the provisions on how to obtain applications for borrowing captioned films and educational media because these provisions are informational, not regulatory. The cross references to EDGAR in the definitions and applicable regulations would be removed because they are not applicable to either of these programs. The regulations also would be simplified to provide that the sum of any fees collected by borrowers of captioned film and media shall not exceed reasonable overhead expenses.

Executive Order 12291

These amendments to the regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only individuals, the regulations would not have an impact on small entities. Individuals are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4605, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 330 and 331

Education, Education of handicapped, Motion pictures.

(Catalog of Federal Domestic Assistance No. 84.026; Handicapped Media Services and Captioned Films)

Dated: February 29, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 330 and 331 of Title 34 of the Code of Federal Regulations as follows:

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

1. The authority citation for Part 330 is revised to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

2. In § 330.1, paragraph (b) is amended by removing the word "and" following the semicolon at the end of the paragraph, paragraph (c) is amended by removing the period at the end of the paragraph and adding, in its place, the word "; and", and a new paragraph (d) and authority citation are added to read as follows:

§ 330.1 Captioned Films Loan Service for the Deaf Program.

* * * * *

(d) Addressing the problems of illiteracy among the handicapped.

(Authority: 20 U.S.C. 1451, 1452)

3. Section 330.3 is revised to read as follows:

§ 330.3 What regulations apply to the Captioned Films Loan Service for the Deaf Program?

The regulations in this Part 330 apply to the Captioned Films Loan Service for the Deaf Program.

(Authority: 20 U.S.C. 1451, 1452)

§ 330.4 [Amended]

4. Section 330.4 is amended by removing paragraph (a) and by removing the words "(b) *Specific program definitions:*" and adding, in their place, the words "The following definitions apply to terms used in this part:".

§ 330.30 [Removed and Reserved]

5. Section 330.30 is removed and reserved.

6. Section 330.50 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 330.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for use of the films shall not exceed the reasonable expense incurred by the borrower in showing the films to eligible viewers.

* * * * *

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

7. The authority citation for Part 331 is revised to read as follows:

Authority: 20 U.S.C. 1452, unless otherwise noted.

§ 331.1 [Amended]

8. Section 331.1 is amended by removing the period at the end of the sentence and adding, in its place, the words ", including for the purpose of addressing illiteracy among the handicapped."

9. Section 331.3 is revised to read as follows:

§ 331.3 What regulations apply to the Educational Media Loan Service for the Handicapped Program?

The regulations in this Part 331 apply to the Educational Media Loan Service for the Handicapped Program.

§ 331.4 [Amended]

10. Section 331.4 is amended by removing paragraph (a) and by removing the words "(b) *Specific program definitions:*" and adding, in their place, the words "The following definitions apply to the terms used in this part:".

§ 331.30 [Removed and reserved]

11. Section 331.30 is removed and reserved.

12. Section 331.50 is revised to read as follows:

§ 331.50 What are the limitations on the use of the loan service?

A borrower shall use the educational media for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for the use of the educational media shall not exceed the reasonable expenses incurred by the borrower in exhibiting the media to eligible parties.

(Authority: 20 U.S.C. 1452(a))

[FR Doc. 88–5590 Filed 3–14–88; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS Number 1047-88]

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides technical amendments to Part 274a of Title 8 of the Code of Federal Regulations. That regulation, which was published as a final rule in the **Federal Register** on May 1, 1987 at 52 FR 16216, with an effective date of June 1, 1987, was necessitated by the Immigration Reform and Control Act of 1986, Pub. L. 99-603, which amended the Immigration and Nationality Act (Act) by adding provisions relating to the control of employment of aliens in the United States. These provisions make it unlawful for a person or entity to knowingly hire, recruit or refer for a fee, for employment in the United States, aliens that are not authorized to work in the United States.

These provisions also provide for an employment eligibility verification system designed to prevent the employment of unauthorized aliens.

EFFECTIVE DATE: March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Creppy, Associate General Counsel, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington DC 20536, Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. IRCA provides that it is unlawful for a person or entity after November 6, 1986, to knowingly hire, recruit or refer for a fee, for employment in the United States, an alien, knowing that the alien is not authorized to work in the United States. IRCA also makes it unlawful for a person or entity to continue to employ an alien, hired after November 6, 1986, knowing that the alien is or has become unauthorized for employment in the United States. The Act and its augmenting regulations require employers, recruiters and referrers for a fee to verify the identity and employment eligibility of persons hired, recruited or referred. Employers must complete the verification process for all individuals hired after November 6, 1986. Recruiters and referrers for a fee must verify each individual recruited or referred after May 1, 1987, if the person is hired by the employer to which referred.

Since publication on May 1, 1987, INS has received public comments on the regulations recommending certain technical amendments and revisions to clarify language in the final rule. The Service has reviewed the regulations for typographical errors and omissions in light of the comments received. This rule is the result of that review process. This rule amends the final rule published on May 1, 1987 by: (1) Addressing certain public concerns related to the regulations; (2) providing clarification and amplification where needed; (3) correcting typographical errors; (4) removing language inadvertently placed in the regulations; and (5) adding language that was inadvertently omitted.

Many comments were received from employers stating that persons under 18 years of age were experiencing difficulty in obtaining documents evidencing identity. In consideration of these comments, this rule amends the regulation at 8 CFR 274a.2(b)(1)(v)(B)(2), related to the production of identity documents, by providing 16 and 17 year old youths with the documentary options currently available only to those under 16 years of age. These youths will be able to establish their identity by providing documentation from an expanded list of documents, or as an alternative to documentary evidence, have a parent or legal guardian attest to their identity. INS also received comments from organizations and associations which place individuals with handicaps into positions of employment or provide them with vocational rehabilitation opportunities. The Service recognizes the difficulty that the handicapped may have in securing identity documentation. This rule amends the regulation by providing individuals with handicaps who are being placed into employment by a nonprofit organization or association or as part of a rehabilitation program, with the opportunity to provide identity documentation from an expanded list of documents. If the individual cannot present an identity document from either 8 CFR 274a.2(b)(1)(v)(B)(*1*) or 8 CFR 274a.2(b)(1)(v)(B)(*2*), this rule authorizes the parent or legal guardian of the individual or a representative from the nonprofit organization, association or rehabilitation program, placing the individual into a position of employment, to attest to his or her identity.

This rule clarifies the type of documentation that may be used to establish employment authorization. The rule provides that a properly endorsed Form I-20 ID submitted by a nonimmigrant student (F-1) for the specific purpose of student employment, may be used to establish employment authorization pursuant to 8 CFR 274a.2(b)(1)(v)(C)(*7*), provided that the I-20 ID contains all relevant restrictions, limitations, and conditions of employment. There are a number of situations under which a nonimmigrant student may be authorized to accept employment in the United States (as set forth in subpart B of the regulation), some of which require an endorsement, while others do not. For those situations which require an endorsement (part-time off-campus employment due to economic necessity, employment for practical training and employment for a qualifying international organization), the document on which the endorsement is placed by the Service officer or school official who authorizes the employment is normally the Form I-20 ID. (As stated in 8 CFR 274a.12(b), part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary). A properly endorsed I-20 ID is one which has been endorsed by a designated school official or Service officer for practical training or by a Service official for other authorized employment, and which contains the following information:

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(1) Practical Training

The date until which employment is authorized; the occupation and professional field of employment in which practical training is authorized; the name, title and signature of the designated school official or the identifying number of the Service officer; and the date and location of the endorsement.

(2) Part-Time, Off-Campus Employment

The date until which employment is authorized; a statement that the hours authorized for employment while school is in session may not exceed 20 hours per week; the identifying number of the Service officer and the date and location of the endorsement. An I-20 ID which is not properly endorsed does not constitute an employment authorization document. The regulations have also been amended to delete nonimmigrant students engaged in curricular practical training programs (formerly known as work study programs) from 8 CFR 274a.12(b), which contains a listing of those who are authorized to work for a specific employer and who do not receive an employment authorization endorsement ("list B") and to add those students to 8 CFR 274a.12(c), which contains a listing of those who must receive an endorsement ("list C"). In accordance with the provisions of 8 CFR 214.2(f)(10), such employment is authorized by the designated school official at the school the student has been authorized to attend.

The final rule published on May 1, 1987 provided that pursuant to 8 CFR 274a.2(b)(i)(B)(*1*)(*i*), a person could establish identity by presenting a state-issued driver's license or state-issued identification card containing a photograph or other identifying information. The final rule did not provide a definition for the term "state". Included in these technical amendments is that reference. The definition is taken from section 101(a)(36) of the Act. The definition of "state" includes "the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States". Pursuant to these technical amendments, a person may also present a driver's license or an identification card that is issued by an outlying possession of the United States, as that term is defined in section 101(a)(29) of the Act. The term "outlying possession of the United States" includes American Samoa and Swains Island.

Many employers, recruiters and referrers for a fee inquired as to whether the Form I-9 could be placed on microfilm or microfiche. These technical amendments permit the Forms I-9 to be placed on microfilm or microfiche. Standards for the use of microfilm or microfiche are articulated in these amendments. These standards are consistent with current Internal Revenue Service guidelines on microfilm and microfiche.

Employers involved in seasonal agricultural services inquired whether or not they had to complete the verification process for persons hired after November 6, 1986. Section 274A(i)(3) of the Act provides for a deferral of penalties until December 1, 1988, for violations relating to the employment of an individual in seasonal agricultural services, as that term is defined in 52 FR 20372 (1987) (to be codified at 7 CFR Part 1d). Because IRCA requires employers to verify the work authorization of employees and to prepare the Form I-9, INS encourages all employers of seasonal agricultural labor to complete the Form I-9 for all employees engaged in seasonal agricultural services who are hired after November 6, 1986. Recruiters and referrers for a fee involved in recruiting or referring persons for seasonal agricultural services are also encouraged to complete the verification process for each person referred after May 31, 1987, if the person is hired by the employer to which referred. Employers in the agricultural industry whose employees are not engaged in seasonal agricultural services or recruiters or referrers for a fee referring persons to perform other than seasonal agricultural services, are not covered by the deferral of penalty provision.

This rule revises procedures to be followed by a respondent upon whom a Notice of Intent to Fine has been issued. Pursuant to this Rule, a respondent who wishes to contest the Notice of Intent to Fine must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. Because the regulations issued by the Executive Office for Immigration Review require a respondent to file an answer with the Administrative Law Judge, this rule eliminates the requirement for filing the same answer with INS.

Justification for Final Rule

The Immigration and Naturalization Service is invoking the "good cause" exception to the notice and comment rulemaking procedures established by the Administrative Procedures Act (see 5 U.S.C. 553 (b) and (d)). Notice of this rule and related public comment procedures would be contrary to the public interest as the time that would be required for comment would delay implementation of the rule. Expeditious implementation of the rule is needed to address public concerns related to the regulations, and is therefore in the interest of the public. Furthermore, the changes being made are technical in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for Part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a.

§ 274a.1 [Amended]

2. Section 274a.1 is amended by removing from the introductory text after the phrase "purpose of this" the word "chapter" and adding in its place the word "part".

§ 274a.2 [Amended]

3. Section 274a.2 is amended by removing from the first line the "A." before the word "General" and adding in its place the letter "(a)".

4. Section 274a.2(b)(1)(ii)(A) is amended by adding after the phrase "paragraph (b)(1)(v) of this section" the phrase "and ensure that the documents presented appear to be genuine and to relate to the individual".

5. Section 274a.2(b)(1)(v)(B)(*1*) is revised to read as follows:

(*1*) In General:

6. Section 274a.2(b)(1)(v)(B)(*1*)(*i*) is amended by removing the first sentence in the paragraph and adding in its place the following: "A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act)."

7. Section 274a.2(b)(1)(v)(B)(*2*) is amended by removing after the phrase "For individuals under age" the number "16" and adding in its place the number "18".

8. Section 274a.2(b)(1)(v)(B)(*3*) is amended by removing after the phrase "Minors under the age of" the number "16" and adding in its place the number "18"; by adding after the phrase "exempt from producing one of the", the phrase "enumerated identity documents if the".

9. Section 274a.2(b)(1)(v)(B)(*3*)(*i*) is amended by removing after the phrase "minor under age" the number "16" and adding in its place the number "18".

10. Section 274a.2(b)(1)(v)(B)(*3*)(*iii*) is amended by removing after the phrase "minor under age" the number "16" and adding in its place the number "18".

11. A new § 274a.2(b)(1)(v)(B)(*4*) is added to read as follows:

(*4*) Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (*1*) or (*2*) of this section, who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term "special placement" for "minor under age 18", and permitting, in addition to a parent or legal guardian, a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment, to fill out and sign in the appropriate section, the Form I-9. For purposes of this section the term "individual with handicaps" means any person who

(*i*) Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

(*ii*) Has a record of such impairment, or

(*iii*) Is regarded as having such impairment.

12. Section 274a.2(b)(1)(vi) is amended by inserting after the phrase "the document or documents within three" the word "business"; by inserting after the words "document or documents within 21" the word "business".

13. Section 274a.2(b)(1)(vii) is amended by removing in the first sentence after the phrase "If an individual's employment" the phrase "eligibility document" and adding in its place the word "authorization"; by removing from the last sentence after the phrase "recruiter or referrer for a fee" the word "should" and adding in its place the word "must"; by removing from the last sentence after the phrase "identification number and expiration date" the word "of" and adding in its place the word "on".

14. Section 274a.2(b)(1)(viii)(C) is amended by adding after the phrase "The employee is", the word "temporarily".

15. Section 274a.2(b)(1)(viii)(G) is amended by inserting after the phrase "maintains from the previous" the word "employer".

16. Section 274a.2(b)(2)(i)(B) is amended by removing the word "referral" after the phrase "three years after the date of" and adding in its place the word "hire".

17. Section 274a.2(b)(2)(ii) is amended by adding in the first sentence, after the phrase "of the Forms by an authorized" the words "Department of Labor or"; by inserting in the second sentence, after the phrase "Forms I-9 must be made available" the phrase "in their original form or on microfilm or microfiche"; by inserting in the second sentence after the phrase "production was made" a "." and removing the rest of the sentence; by adding after the phrase "production was made." the following: "If the Forms I-9 are kept at another location, the person or entity must inform the Department of Labor or Service officer of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an INS office."

18. A new § 274a.2(b)(2)(iii) is added to read as follows:

(b) * * *

(2) * * *

(iii) The following standards shall apply to Forms I-9 presented on microfilm (or microfiche) submitted to the Service or Department of Labor: Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, recruiter or referrer for a fee.

(A) To provide for the processing, storage and maintenance of all microfilm and

(B) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location and reproduction of any record or records being retained on microfilm. Readers-printers made available to DOL or Service officers shall provide safety features and be in clean condition, properly maintained and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service and at the time of the inspection does not present a properly completed Form I-9 for the employee, is in violation of section 274A(a)(1)(B) of the Act and 8 CFR 274a.2(b)(2).

§ 274a.3 [Amended]

19. Section 274a.3 is amended by inserting an "A" after the phrase "section 274".

§ 274a.7 [Amended]

20. Section 274a.7(a) is amended by removing, after the phrase "defined in § 274a.2(b)" the roman numeral "(vi)" and adding in its place "(1)(viii)".

21. Section 274a.7(b)(3) is amended by removing, after the phrase "the United States under" the phrase "an order" and adding in its place the phrase "a grant".

§ 274a.9 [Amended]

22. Section 274a.9(c) is amended by removing from the second sentence, after the phrase "a Notice of Intent to Fine on Form" the form number "I-762" and adding in its place the form number "I-763"; by inserting in the last sentence after the phrase "with concurrence of the District Counsel or his or her designee" the phrase "or Sector Counsel".

23. Section 274a.9(d) is revised to read as follows:

(d) *Request for Hearing Before an Administrative Law Judge.* (1) If a respondent contests the issuance of a Notice of Intent to Fine, he or she must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the thirty day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by mail, five days shall be added to the prescribed thirty day period. The respondent may, but is not required to, file with the INS an answer responding to each allegation listed in the Notice of Intent to Fine.

(2) If the respondent does not file a request for a hearing in writing within thirty days, the INS shall issue a final order from which there is no appeal.

§ 274a.12 [Amended]

24. Section 274a.12(a)(11) is amended by removing from the second sentence the phrase "Form I____" and adding in its place the phrase "an employment authorization document".

25. Section 274a.12(b)(6) is revised to read as follows:

(6) A nonimmigrant student (F–1) who is in valid non-immigrant student status and pursuant to 8 CFR 214.2(f) is seeking on-campus employment for not more than twenty hours per week while school is in session or full time when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary.

26. Section 274a.12(b)(10) is amended by removing from the third sentence after the phrase "Employment authorization does not" the word "extent" and adding in its place the word "extend".

27. Section 274a.12(b)(11) is amended by inserting in the first sentence, after the words "of this chapter" the phrase "and 22 CFR 514.24"; by inserting after the phrase "United States Information Agency" the phrase "as set forth in the Certificate of Eligibility (Form IAP–66) issued by the program sponsor".

28. Section 274a.12(b)(15) is amended by changing the referenced paragraphs "(b)(9), (11), and (12)" to read "(b)(2), (5), (8), (9), (10), (11), and (12)".

29. Section 274a.12(c)(1) is amended by removing the "," after the phrase "§ 214.2(a)(2) of this chapter" and inserting a ";" and removing the phrase "or the dependent of an employee of a foreign government official (A–3) pursuant to § 214.2(a)(3) of this chapter;".

30. Section 274a.12(c)(3)(i) is amended by removing the word "Chapter" after the phrase "214.2(f) of this" and inserting in its place the word "chapter"; by removing ";" and adding a "." after the phrase "of this chapter" and 2 new sentences to read: "A student authorized employment under this section may use a properly endorsed I–20 ID issued to the student to establish employment authorization pursuant to 8 CFR 274a.2(b)(1)(v)(C)(*7*). To constitute a proper endorsement for this section, the Form I–20 ID must contain the date until which employment is authorized; a statement that the hours authorized per week while school is in session may not exceed 20 hours weekly; the identifying number of the Service officer; and the date and location of the endorsement".

31. Section 274a.12(c)(3)(ii) is amended by adding after the phrase "for purposes of practical training" the phrase "(including curricular practical training)"; by removing the "." after the phrase "pursuant to § 214.2(f) of this chapter" and adding the following text to read:", provided the alien will be employed only in an occupation which is directly related to his or her course of studies. A student authorized employment under this section may use a properly endorsed I–20 ID issued to the student, to establish employment authorization pursuant to 8 CFR 274a.2(b)(1)(v)(C)(*7*). A properly endorsed Form I–20 ID must contain the date until which employment is authorized; the occupation or field in which employment is authorized; the name, title and signature of the designated school official or the identifying number of the Service officer; and the date and location of the endorsement;"; and by removing the last sentence in the section beginning with the words "The alien" and ending with the word "studies".

32. Section 274a.12(c)(15) is amended by changing the referenced paragraphs "(b)(9), (11) and (12)" to read as "(b)(2), (5), (8), (9), (10), (11), and (12)".

§ 274a.13 [Amended]

33. Section 274a.13(a) is amended by removing from the first sentence after the phrase "for employment authorization by an alien under", the term "§ 274.12(c)" and adding in its place the phrase "§ 274a.12(c) and Part 214".

274a.14 [Amended]

34. Section 274a.14(b)(1)(i) is amended by removing after the phrase "or for good cause shown" the "," and adding in its place a ";".

Dated: January 25, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88–5553 Filed 3–15–88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–157–AD; Amdt. 39–5877]

Airworthiness Directives; British Aerospace Model BAe–125 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable certain British Aerospace Model BAe–125 series airplanes, which requires inspection for cracks and repair, if necessary, of the aileron mass blance assembly. This amendment is prompted by reports of cracking of the attachment lugs of the aileron mass balance side plate. This condition, if not corrected, could result in displacement of the side plate, and possible control surface interference.

DATE: Effective April 25, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection for cracks and repair, if necessary, of the aileron mass balance assembly, was published in the Federal Register on December 14, 1987 (52 FR 47401).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter had no objection to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe–125 series airplanes listed in BAe–125 Service Bulletin 57–86, Revision 2, dated October 25, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent displacement of the aileron mass balance side plate, and possible control surface interference, accomplish the following:

A. Within 6 months after the effective date of this AD, perform a dye penetrant inspection of the side plate of the aileron mass balance assembly for cracking of the attachment lugs, in accordance with BAe Service Bulletin 57–86, Revision 2, dated October 25, 1986. Repeat the inspection at intervals not to exceed 2 years.

B. If cracks are detected, repair before further flight, in accordance with Repair Scheme 25WG/R143, issued with Service Bulletin 57–86, Revision 2, dated October 25, 1986.

C. Accomplishment of Repair Scheme 25WG/R143 constitutes terminating action for the repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and has the concurrence of a FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 25, 1988.

Issued in Seattle, Washington, on March 7, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5080 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88–NM–14–AD; Amdt. 39–5879]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, 30, –30F, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 and KC–10A series airplanes without a secondary latching system installed, which requires a security check of the engine core cowl doors after each door is opened and subsequently closed, and a daily security check of engine Numbers 1 and 3 (wing engines). This amendment is prompted by additional incidents in which engine core cowl doors have separated from the airplane. This condition, if not corrected, could result in separation of the door, which in turn may cause structural damage to the airplane.

DATES: Effective April 4, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: On March 12, 1987, the FAA issued AD 87–07–04, Amendment 39–5586 (52 FR 8581; March 19, 1987), applicable to McDonnell Douglas Model DC–10 and KC–10A series airplanes, which requires the installation of a secondary retention system for the engine core cowl doors, within eighteen months after the effective date of the AD. Since that AD was issued, two additional incidents involving Model DC–10 series airplanes, have been reported where the engine core cowl door has separated from the airplane.

In one case, the door separated from the airplane during takeoff, landed on the runway, and was struck by another airplane. In the other case, an engine core cowl door separated from the airplane during takeoff and struck the fuselage, creating a hole approximately 25 inches by 3 inches in the pressure shell. The door also hit the center engine inlet creating two holes and additional damage in that structure.

Consequently, the FAA has determined that, until the installation of the secondary retention system is accomplished, the security of the core cowl door latches must be verified daily for engine Numbers 1 and 3 (wing engines), and for all three engines after each door is opened and subsequently closed.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A71–150, Revision, 1, dated January 27, 1988, which describes the procedures for the security check.

Since this condition is likely to exist or develop on other airplanes of the same type design this AD requires accomplishment of the security check in

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accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket, (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, and KC–10A (Military) series airplanes that do not have a secondary retention system installed in accordance with AD 87–07–04, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage to the airplane due to engine core cowl door separation, accomplish the following:

A. Within ten days after the effective date of this AD, check the core cowl door latches in accordance with McDonnell Douglas Model DC–10 Alert Service Bulletin A71–150, Revision 1, dated January 27, 1988, or later FAA-approved revision, once each day for engine Numbers 1 and 3 (wing mounted engines) and after each core cowl door is opened and subsequently closed.

B. If the latch is open before further flight, properly close the latch; if the latch will not engage, adjust the latch in accordance with Maintenance Manual Chapter 71–13–01, paragraph entitled "Adjustment/test core cowl doors"; if the latch cannot be properly adjusted, replace the latch prior to further flight.

C. The checks required by paragraph A., above may be discontinued after the secondary retention system is installed in accordance with AD 87–07–04.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective April 4, 1988.

Issued in Seattle, Washington, on March 7, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5668 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–35]

Revision of Transition Area; Terrell, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise the transition area located at Terrell, TX. The development of a standard instrument approach procedure (SIAP) to the Terrell Municipal Airport utilizing the new Travis Nondirectional Radio Beacon (NDB) and a change in the categories of aircraft operating into and out of the airport have made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for all SIAP's now serving the airport.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On December 9, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Terrell, TX (52 FR 48448).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Terrell, TX. The development of a new SIAP utilizing the Travis NDB, as well as a change in the categories of aircraft operating into and out of the airport, has necessitated this revision. The revision will increase the existing transition area from a 5-mile radius of the airport to a 6.5-mile radius of the airport, with a new arrival extension to the northeast. The intended effect of this revision is to provided adequate controlled airspace for all SIAP's now serving the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Terrell, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Terrell Municipal Airport (latitude 32°42'36"N., longitude 96°16'02"W.), and within 5.5 miles each side of the 019° bearing from the Travis NDB (latitude 32°45'36"N., longitude 96°14'56"W.), extending from the 6.5-mile radius to 11 miles northeast of the airport.

Issued in Fort Worth, TX, on February 29, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–5675 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency and to update addresses for offices in several regions.

EFFECTIVE DATE: March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn Wilson, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In 1987, there was a major change in FDA's regional organizational structure. FDA reduced its number of regions from 10 to 6 to more evenly distribute workload and staff among the regions. The locations of laboratories, agricultural production patterns, routes of commerce, and natural geographical barriers were additional considerations in the regional restructuring. The regulations are revised in this final rule to reflect this current organizational structure of the agency and to update addresses for offices in several regions.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies); Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Office of Regulatory Affairs.
Office of Management and Operations.
Office of Health Affairs.
Office of Science.
Office of Planning and Evaluation.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Consumer Affairs.

Center for Drug Evaluation and Research [1]

Office of Management

Division of Management and Budget.
Division of Information Systems Design.
Division of Drug Information Resources.
Medical Library.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Radiopharmaceutical Drug Products.
Division of Surgical-Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Metabolism and Endocrine Drug Products.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.

Office of Drug Standards

Division of OTC Drug Evaluation.
Division of Generic Drugs.
Division of Bioequivalence.
Division of Biopharmaceutics.
Division of Drug Advertising and Labeling.

Office of Research Resources

Division of Research and Testing.
Division of Drug Analysis.

Center for Biologics Evaluation and Research [2]

Office of Management

Office of Compliance

Office of Biological Product Review

Division of Product Quality Control.
Division of Biological Investigational New Drugs.
Division of Product Certification.

Office of Biologics Research

Division of Bacterial Products.
Division of Blood and Blood Products.
Division of Virology.
Division of Biochemistry and Biophysics.
Division of Cytokine Biology.

Center for Food Safety and Applied Nutrition [3]

Office of Management

Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Division of Toxicology.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Division of Contaminants Chemistry.
Division of Colors and Cosmetics.
Division of Food Chemistry and Technology.

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[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: 8800 Rockville Pike, Building 29, Bethesda, MD 20814.

[3] Mailing address: 200 C St. SW., Washington, DC 20204.

Office of Nutrition and Food Sciences

Division of Consumer Studies.
Division of Nutrition.
Division of Microbiology.

Center for Devices and Radiological Health [1]

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Information Systems

Division of Computer Services.
Division of Information Resources.

Office of Health Physics

Office of Health Affairs [4]

Office of Standards and Regulations

Office of Compliance [4]

Division of Radiological Products.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.

Office of Device Evaluation [4]

Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Biometric Sciences.
Division of Electronics and Computer Sciences.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Intergovernmental Programs.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center for Veterinary Medicine [1]

Office of Management

Division of Administrative Management.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Drug Manufacturing and Residue Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food and Environmental Safety.

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [5]

Office of Management

Division of Management Services.
Division of Resource Information Management Systems.
Division of Facilities Engineering and Maintenance.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biomedical Toxicology.
Division of Comparative Toxicology.

Office of Research Services

Division of Microbiology.
Division of Animal Husbandry.
Division of Chemistry.

3. Section 5.115 is revised to read as follows:

§ 5.115 Field Structure.

Northeast Region

Regional Field Office: 830 Third Ave., Brooklyn, NY 11232.
New York District Office: 850 Third Ave., Brooklyn, NY 11232.
Boston District Office: One Montvale Ave., Stoneham, MA 02180.
Buffalo District Office: 599 Delaware Ave., Buffalo, NY 14202.

Mid-Atlantic Region

Regional Field Office: 900 U.S. Customhouse, 2nd and Chestnut Sts., Philadelphia, PA 19106.
Philadelphia District Office: 900 U.S. Customhouse, 2nd and Chestnut Sts., Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201.
Cincinnati District Office: 1141 Central Parkway, Cincinnati, OH 45202–1097.
Newark District Office: 61 Main St., West Orange, NJ 07052.

Southeast Region

Regional Field Office: 60 Eighth St., NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St., NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4298 Elysian Fields, New Orleans, LA 70122.
Orlando District Office: 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809.
San Juan District Office: Fernandez Juncos Ave., Stop 8½, Puerta de Tierra, San Juan, PR. Mail to: P.O. Box 5719, Puerta de Tierra Station, San Juan, PR 00906–5719.

Midwest Region

Regional Field Office: 20 N. Michigan Ave., Chicago, IL 60602.
Chicago District Office: 1222 PO Bldg., 433 W. Van Buren St., Chicago, IL 60607.
Detroit District Office: 1560 E. Jefferson, Detroit, MI 48207.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401.

Southwest Region

Regional Field Office: 3032 Bryan St., Dallas, TX 75204.
Dallas District Office: 3032 Bryan St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 1009 Cherry St., Kansas City, MO 64106.
St. Louis Branch: 808 N. Collins Alley, St. Louis, MO 63102.

Pacific Region

Regional Field Office: Rm. 568, Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
San Francisco District Office: Rm. 506, Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
Los Angeles District Office: 1521 W. Pico Blvd., Los Angeles, CA 90015–2486.
Seattle District Office: 909 1st Ave., Seattle, WA 98174.

Dated: March 9, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–5700 Filed 3–15–88; 8:45 am]

BILLING CODE 4160-01-M

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[4] Mailing address: 8757 Georgia Ave., Silver Spring, MD 20910.

[5] Mailing address: Jefferson, AR 72079.

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21 CFR Part 176

[Docket No. 83F–0084]

Indirect Food Additives; Paper and Paperboard Components; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an inadvertent error in its final rule of December 10, 1987 (52 FR 46744), that consolidated three separate listings for polyamine-epichlorohydrin wet-strength resins into a single listing and added a new method of producing this resin. The agency is correcting the error in the December 10, 1987, final rule in response to three objections to this amendment of 21 CFR 176.170(a)(5). These objections pointed out that the consolidated listing inadvertently adopted limitations that were not included in the three previous listings for polyamine-epichlorohydrin wet-strength resins. The agency is also offering a new opportunity for objection to this revised regulation.

DATES: Effective March 16, 1988; objections by April 15, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center For Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1987 (52 FR 46744), FDA issued a final rule amending paragraph (a)(5) of § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170(a)(5)). The regulation responded to a food additive petition by Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63166 (FAP 2B3606), which requested the consolidation into a single listing of three separate listings for polyamine epichlorohydrin resins for use as wet-strength agents and retention aids and the additional use of a new method of producing these resins for such uses. A notice of filing for the petition was published in the **Federal Register** of March 29, 1983 (48 FR 13099); and an amended filing notice was published in the **Federal Register** of May 8, 1986 (51 FR 17096), which specifically described the three listings for polyamine-epichlorohydrin wet-strength resins that would be consolidated. The May 8, 1986, notice also made clear that the petition requested that the use of self-condensation products of 95 percent by weight of C_4 to C_6 aliphatic diamines, and the direct reaction of these diamines and their self-condensation products with epichlorohydrin, be included in the new listing. The new single revised listing was specifically included in the amended filing notice.

FDA's final rule of December 10, 1987, adopted the new single revised listing that was described in the filing notice of May 8, 1986. The final rule also described the agency's review of the safety of the additive, including the safety of the epichlorohydrin and 1,2-dichloroethane which are cancer-causing chemicals that may be found as contaminants in polyamine-epichlorohydrin resins produced by the methods of manufacture included in the regulation. Based upon its review of the petition for the additive and other available information, FDA concluded that the additive could be safely used under the conditions of use listed in the regulation.

The agency's review of the petition also included consideration of the identity of the starting materials for the polyamine-epichlorohydrin resins listed in the consolidated regulation and the methods of manufacture for those resins. The consolidated listing, however, inadvertently imposed a 95 percent limitation on the purity of the starting materials (1) bis(hexamethylene)triamine and higher homologues and (2) hexamethylenediamine that did not exist in the previous listings for these chemicals. This inadvertent error was the primary cause of the three objections and two requests for a hearing on the December 10, 1987, final rule. The objections also stated that deletion of the specific starting materials from the consolidated listing may cause damage to their businesses.

In response to these objections, FDA is correcting the error in the December 10, 1987; final rule by adopting a new consolidated regulation that specifically lists bis(hexamethylene)triamine and higher homologues and hexamethylenediamine as starting materials without purity specifications. The new consolidated regulation also provides the flexibility requested by the Monsanto Co. regarding the manufacture of the polyamine-epichlorohydrin resins for use as wet-strength agents and retention aids.

The corrected regulation, which revises 21 CFR 176.170(a)(5), does not expand the uses of the additive or the methods of manufacture beyond those included in the December 10, 1987, final rule. Therefore, the agency concludes that this correction does not require an additional review of the safety of the additive.

FDA believes that this correction of the error in the final rule adequately addresses the concerns that were expressed by the objections to the December 10, 1987, final rule. The agency also believes that this correction makes it unnecessary to hold the hearings that were requested by the parties. However, to assure that these and other affected parties do not have any further objections to this revised regulation, the agency is offering an additional 30-day objection period.

Any person who will be adversely affected by this regulation may at any time on or before April 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended by revising paragraph (a)(5) to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *
(5) * * *

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List of substances	Limitations
* * *	* *
Polyamine-epichlorohydrin water-soluble thermosetting resin produced by reacting epichlorohydrin with: (i) polyamines comprising at least 95 percent by weight C_4 to C_6 aliphatic diamines and/or their self-condensation products and/or (ii) hexamethylenediamine, and/or (iii) bis(hexamethylene) triamine and higher homologues, and/or (iv) prepolymers produced by reacting 1,2-dichloroethane with the polyamines in (i) and/or (ii) and/or (iii). The finished resin has a nitrogen content of 5.0 to 9.0 percent, a chlorine content of 18.0 to 35.0 percent on a dry basis, and a minimum viscosity, in a 25 percent by weight aqueous solution, of 50 centipoises at 20 °C (68 °F), as determined by Brookfield HAT model viscometer using a No. 1H spindle at 50 r.p.m. (or equivalent method).	For use only as a wet-strength agent and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard, and used at a level not to exceed 1 percent by weight of dry paper and paperboard fibers.
* * *	* *

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Dated: March 10, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-5689 Filed 3-15-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 85-27 and 87-9]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices (MUTCD); comments requested on editorial amendments.

SUMMARY: This document contains notice of amendments to the MUTCD which are being adopted by the FHWA for inclusion therein. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recongnized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATES: Effective March 21, 1988. Comments on the editorial amendments must be received on or before April 25, 1988. Incorporation by reference of the publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, on editorial changes to Docket No. 87-9, to the Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays. For 30 days following the publication of this rule, the referenced materials will be available for inspection and copying at the above address.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

This document contains the dispositions of proposals for changes in the MUTCD which were received or originated by the FHWA. Previous Federal Register actions regarding these requests are listed in the following table:

Item, Request No., and Title	Published in Federal Register FHWA Docket No.
Final Rulings	
1. I-5 (Chng.): Compliance Dates.	Docket No. 87-9 (52 FR 7172, Mar. 9, 1987).
2. II-89 (Chng.): Use of Strong Yellow-Green for Emergency Situations.	Do.
3. II-110 (Chng.): Tourist Oriented Directional Signs (TODS).	Docket No. 85-27 (50 FR 51404, Dec. 17, 1985), (51 FR 44997, Dec. 16, 1986).
4. II-115 (Chng.): Use of ONE WAY and Divided Highway Crossing Signs.	Docket No. 87-9 (52 FR 7172, Mar. 9, 1987).
5. II-122 (Chng.): Improved Legibility of the Directional Legend North, South, East and West.	Do.
6. II-123 (Chng.): Tourist Information Signing—Use of State, County, City or Town Name on Highway Signs.	Do.
7. II-132 (Chng.): Criteria for Emergency Medical Services (EMS) Symbol Sign.	Do.
8. IV-60 (Chng.): Revision to Warrant 3, Minimum Pedestrian Volume.	Do.
9. IV-73 (Chng.): Elimination of "Blind" Change Interval.	Do.
Editorial Changes	
10. IV-75 (Chng.): Height of Vehicle Signal Faces.	Not Previously Published in Federal Register.
11. IV-76 (Chng.): Color of the Signal Heads.	Do.
12. IV-77 (Chng.): Figure 4-4 Major Street-Minor Street.	Do.
13. IV-78 (Chng.): Height Requirement for Signal Heads.	Do.
14. IV-79 (Chng.): Two and Three Lens Signals.	Do.
15. IV-81 (Chng.): Maximum Location of Signal Face.	Do.
16. VI-58 (Chng.): Worker Safety.	Do.
17. VI-62 (Chng.): Warning Light Specification.	Do.
Deferred Ruling	
18. II-118 (Chng.): Standard Motorcycle Warning Sign.	Docket No. 87-9 (52 FR 7172, Mar. 9, 1987.)

Advance copies of the text changes to the MUTCD for all of the adopted requests will be distributed to everyone currently appearing on the FHWA Federal Register mailing list for MUTCD matters. Those wishing to receive an advancy copy of the text changes or to be added to this mailing list should write to the Federal Highway Administration, Office of Traffic Operations, HTO-21, 400 Seventh Street, SW., Washington, DC 20590.

Discussion of Requests

These amendments are being processed in accordance with the rulemaking procedure of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation's regulatory policies and procedures.

Each request is assigned an identification number which indicates, by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

The FHWA has reviewed the comments received in response to the notices and the other information relating to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the MUTCD. Each action and its basis is summarized below:

(1) Request I-5 (Chng.)—Compliance Dates

These amendments establish specific compliance dates for 10 items. Each of these items has been incorporated into the MUTCD by official rulings, however, compliance dates were not established by these prior rulings. The compliance dates are listed in the following table.

Ruling Number	Title	MUTCD Revision No.	Published in Federal Register as:—		Compliance Date
			Final Rule	Notice of Proposed Rulemaking	
II-7 (Chng.)	Signing Public Median Crossovers	3	48 FR 54336	48 FR 1075	12/31/90
II-20 (Chng.)	Symbol for Police Assistance	3	48 FR 54336	48 FR 1075	12/31/90
II-38 (Chng.)	Identifying Left-Hand Exit on Interchange Sequence	3	48 FR 54336	48 FR 1075	12/31/90
II-65 (Chng.)	Service Signing for Liquified Petroleum Gas	4	50 FR 10001	49 FR 1213	12/31/90
II-75 (Chng.)	Sign Requirements for Two-Way Left Turn Only Lanes	4	49 FR 38940	49 FR 1213	12/31/88
III-9 (Chng.)	Uses and Spacing of Raised Payment Markets	4	50 FR 10001	49 FR 1213	[1] 12/31/92
VI-25 (Chng.)	Use of 28-Inch Cones	4	49 FR 38940	49 FR 1213	12/31/88
VI-27 (Chng.)	Minimum Area of Reflective Barricade Rails	[2] 5	50 FR 50784	50 FR 10072	12/31/88
VIII-5 (Chng.)	Use of STOP Signs at Railroad-Highway Grade Crossings.	2	48 FR 1047	47 FR 5298	12/31/89
VIII-11 (Chng.)	Location of DO NOT STOP ON TRACKS Signs (R8-8)	[2] 5	50 FR 50784	50 FR 10072	12/31/90

[1] Existing installations only.

[2] Revision 5 will be printed in the spring of 1988.

Note: Federal Register FHWA Docket Number and Date Published in Federal Register: 47 FR 5298—Docket No. 79-37, Notice 2 (Feb. 4, 1982). 48 FR 1047—Docket Nos. 79-35, 79-37, and 80-10 (Jan. 10, 1983). 48 FR 1075—Docket No. 82-15 (Jan. 10, 1983). 48 FR 54336—Docket No. 82-15, Notice 2 (Dec. 2, 1983). 49 FR 1213—Docket No. 83-26 (Jan. 10, 1984). 49 FR 38940—Docket Nos. 79-31, 79-37, and 83-26 (Oct. 2, 1984). 50 FR 10001—Docket Nos. 79-31, 79-37, 80-10, 82-15, and 83-26 (Mar. 13, 1985). 50 FR 10072—Docket No. 85-3 (Mar. 13, 1985). 50 FR 50784—Docket Nos. 79-37, 83-26, 85-1, 85-3, 85-18, and 85-26 (Dec. 12, 1985).

Fifteen State highway agencies and the National Committee on Uniform Traffic Control Devices (NCUTCD) offered favorable or general comments on these proposals. There was one Docket commenter in opposition to the proposal.

Each of the compliance dates remains the same as was proposed in the March 9, 1987, Notice of Proposed Amendments (NPA), (52 FR 7172), except for Ruling Number VI-25(Chng.)—Use of 28-inch Cones, and Ruling Number III-9(Chng.)—Use and Spacing of Raised Pavement Markers. The Ohio Section of the Institute of Transportation Engineers (ITE) and the NCUTCD, having reviewed each of the proposed compliance dates, have determined that the proposed compliance date of December 31, 1990, for Ruling Number VI-25, is too distant, and have recommended that the compliance date be established as December 31, 1988. The NCUTCD has requested that the compliance date for Ruling Number III-9 be extended to December 31, 1992, because there are many raised pavement markers presently in use and that these have a long service life. The FHWA concurs with these recommendations.

Two commenters objected to the establishment of compliance dates for traffic control devices that are allowed or recommended but not required by the MUTCD. Another commenter asked, what does the "compliance date" mean? Does it require a specific date for the subject change to be included in the State Manual? Or does it require a specific date for the subject change to be completed on the roadway?

For the sake of uniformity, it is the intent of the MUTCD to require that, only a standard traffic control device is to be used when such a standard has been established. Therefore, it is the intent of these compliance dates to foster uniformity by requiring that, all new devices installed shall be standard and all existing devices that are not of the standard design, be replaced by the standard device by the compliance date specified. As an example, to standardize the sign used for police assistance, the word message POLICE sign was adopted in the December 2, 1983, Final Rule (48 FR 54336). Seven years will have elapsed between the adoption date and the compliance date established by Request I-5. By December 31, 1990, all police assistance signs are to be of the design specified in the December 2, 1983, Final Rule and Standard Highway Signs.

The Florida Department of Transportation recommended that for Request II-38(Chng.)—Identifying Left-Hand Exit on Interchange Sequence Signs, the black on yellow panels bearing the legend LEFT or LEFT EXIT, be made mandatory where the exit direction is to the left. This would involve changing the "may" in Section 2E-34 to a "shall" rather than to a "should" as was proposed in the March 9, 1987, NPA. After a review of history of safety and operational problems associated with left exits, the FHWA has determined that interchange name or route number on all Interchange Sequence Signs shall be followed by a yellow panel with the legend LEFT or LEFT EXIT in black where the exit direction is to the left. The compliance date will be December 31, 1990, as proposed.

(2) Request II-89 (Chng.)—Use of Strong Yellow-Green for Emergency Situations

This amendment to Part VI, revises various sections and adds a new subpart VI-H, Traffic Control for Incident Management. The amendment sets forth standard devices to be used for controlling traffic at the site of incidents on the roadway or adjacent to the roadway. The amendment retains the present color, shape, size, and application standards for the regulatory and warning devices.

The Michigan Department of State Police had requested that the MUTCD be amended to allow the use of strong yellow-green (SYG) signs to control traffic under temporary emergency conditions.

There were 34 commenters that had reviewed the FHWA's proposal. Nineteen State DOT's, one State police unit, one city police unit, and the Center for Auto Safety (CAS) basically concurred with the FHWA proposal to cover incident and emergency

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management in Part VI and to use only devices that meet present MUTCD standards for color, shape, etc. One of these 19 State DOT's strongly urged in effect, that all warning signs should be yellow regardless of where and when they are used. That State felt that drivers had not picked up on the intended meaning of orange warning signs in work zones, and that drivers would not understand SYG signs, if they were adopted. Several of the States stated that the FHWA's proposal was more detailed than necessary, and that only basic standards and guidelines are needed as additions to Part VI, in order to bring about desirable traffic controls for incident and emergency operations.

Seven State police units, two city police units, and the International Association of Chiefs of Police offered comments in favor of SYG. Several of these commenters thought that SYG should be reserved for warning signs to be used only by law enforcement personnel for emergency traffic control; however, most of these commenters would be satisfied with allowing SYG as an alternative to yellow and orange.

The NCUTCD requested that the comment period for these issues be extended. The FHWA denied the NCUTCD's request on the basis that the continuance of the comment period and the continuance of the period of experimentation with SYG, will engender further use of the nonstandard device. The closing of this docket item will not preclude consideration of special task force and/or research findings for further revisions to the MUTCD.

This amendment may have some financial impact of State and local jurisdictions. To offset these costs, a compliance date of December 31, 1989, is established.

(3) Request II–110 (Chng.)—Tourist Oriented Directional Signs (TODS)

The comments received from the 140 commenters were divided in the following manner. The majority of State highway agencies agreed with the concept of TODS. The State highway agencies that had experimented with TODS and the businesses that are served or have the potential of being served by TODS, all favored the adoption of the amendment. On the other hand, the States that had no experience with TODS and the outdoor advertisers were generally opposed to the amendment.

A task force of the Signs Technical Committee (STC) of the NCUTCD prepared recommended TODS text and figures for inclusion in the MUTCD. The text and figures were conceptually the same as that proposed by the FHWA. These recommendations were adopted later by the STC but not by the NCUTCD. The American Association of State Highway and Transportation Officials (AASHTO) polled its membership regarding the recommended text and figures. The AASHTO results were: 17 States concurred with the recommendations, 9 States concurred in part, and 16 States did not concur.

The FHWA interprets the AASHTO ballot results to mean that, of the States that responded to the ballot, 26 of 42 or nearly ⅔ concurred totally or in part with the concept of adding TODS standards to the MUTCD. Because the use of TODS is discretionary with each State, the FHWA finds that it is appropriate to add TODS standards to the MUTCD.

The FHWA asked commenters to specifically address four questions. This amendment adopts the text as proposed with minor modifications. The modifications are based, in part, on the comments and suggestions that were received by the docket.

This amendment will impose some additional costs on some of those States that have been experimenting with the TODS program that do not fully meet the standards set forth in this amendment. To offset these costs a compliance date of December 31, 1992, is established.

(4) Request II–115 (Chng.)—Use of ONE WAY and Divided Highway Crossing Signs

Sixteen State DOT's, one city traffic unit, the Ohio Section of the ITE and the NCUTCD reviewed this amendment. None of the commenters were opposed to the clarifications and corrections covered by this amendment. Several commenters suggested simplified text and figures. Others offered further refinements to the amendment. The final text and figures will reflect many of these suggestions.

This amendment will impose no additional costs on highway agencies; therefore, no compliance date is required.

(5) Request II–122 (Chng.)—Improved Legibility of the Directional Legend NORTH, SOUTH, EAST and WEST

Of the 21 commenters that reviewed this amendment, 3 State highway agencies and the NCUTCD opposed its adoption. Two of the opposing commenters stated that they were not aware of a problem.

Several individuals wrote to the FHWA, during the comment period, expressing difficulty in reading the cardinal direction words on highway guide signs. These letters were included in the docket. Several of those who commented in favor of the amendment, felt that the implementation period should be longer. Others objected to the upper/lower case alternative.

As a result of these comments, the FHWA has dropped the upper/lower case alternative, but will not change the implementation period.

This amendment will have some financial impact on State and local jurisdictions. To offset these costs, a compliance date of December 31, 1994, is established.

(6) Request II–123 (Chng.)—Tourist Information Signing Use of State, County, City or Town Name on Highway Signs

Of the 18 commenters that reviewed this amendment, 13 State DOT's, the Ohio Section of ITE and the CAS favored adoption. The CAS stated that design parameter guidance should be established in the MUTCD. Four State highway agencies and the NCUTCD recommended that the amendment not be adopted.

To improve this amendment, several of these comments and suggestions received through the docket will be incorporated into the final text. These changes will not alter the principles and concepts of the amendment.

Because this amendment is to be implemented at the discretion of the States, no compliance date is specified.

(7) Request II–132 (Chng.)—Criteria for Emergency Medical Services (EMS) Symbol Sign

Of the 16 commenters that reviewed the amendment, one State highway agency and the CAS opposed the adoption of the amendments. Both stated that national standards for the use of the sign are essential. Several of those who favored the amendments stated that some guidance would be desirable as a basis for developing State policy.

The National Highway Traffic Safety Administration has made documents available to the FHWA that suggest a reasonable basis for the development of State policies on the use of the Emergency Medical Services (EMS) Symbol Sign. The final text of Section 2D–46 will include guidelines for use by the States in developing policy.

This amendment will impose no additional costs on highway agencies; therefore, no compliance date is needed.

(8) Request IV–60 (Chng.)—Revision to Warrant 3, Minimum Pedestrian Volume

Section 4C–5, WARRANT 3, Minimum Pedestrian Volume, is amended to make it more responsive to the needs of pedestrians, the elderly and the handicapped. Also Warrant 8, Combination of Warrants, will be amended. The existing Warrant 3, in the opinion of numerous traffic engineers, is unrealistic due to high pedestrian volume requirements. Consequently, it is largely ignored by the traffic engineering community. A more realistic warrant was developed in the study, "Candidate Signal Warrants from Gap Data," [1] and was further evaluated in the study "Pedestrian Signalization Alternatives".[2]

The NCUTCD and numerous traffic engineers reviewed the warrant as recommended by the researchers. They found it to be too liberal in that it did not adequately reflect the negative tradeoffs of installing pedestrian signals. Also, it was suggested that provisions for the elderly and handicapped pedestrians be included in the revised warrant. As a result, this amended warrant reflects the concerns of the NCUTCD and other practicing traffic engineers. The amended warrant includes two basic requirements:

1. Minimum pedestrian volume of 100 pedestrians or more for each of any 4 hours; or 190 or more pedestrians for any 1 hour of an average day crossing the major street, and
2. Less than 60 adequate gaps per hour on the major street for those periods when the minimum volume requirements are met.

The elderly and handicapped are accomadated by reducing the pedestrian crossing volume by 50 percent when the predominant pedestrian crossing speed is below 3.5 feet per second.

This existing warrant is also reflected in Warrant 8, "Combination of Warrants." This revised wording has changed the requirements of Warrant 3 so that it is no longer appropriate to include it in the combination of warrants listed in Warrant 8. Therefore, reference to Warrant 3 is being deleted from Warrant 8.

A more detailed discussion of the amended warrant, a summary of comments, and FHWA's response to the comments follows.

Only a few candidate traffic signals are evaluated solely on the basis of pedestrian needs since the bulk of intersections with heavy pedestrian activity, such as in downtown areas, meet a vehicular signal warrant. Also school crossing needs are addressed by a separate school crossing warrant (Warrant 4). One survey found only 1.3 percent of 12,780 traffic signal installations surveyed were justified by the Pedestrian Volume Warrant.[3]

However, it is important that pedestrian needs be addressed at those locations where there is considerable pedestrian activity and a vehicular signal warrant is not met. And the need for traffic signals at mid-block crossings must, of course, be evaluated solely on the basis of the Minimum Pedestrian Warrant. The need for a realistic warrant is especially critical where the elderly and handicapped are crossing.

The problem with the former Minimum Pedestrian Volume warrant related primarily to the requirement that there be 150 or more pedestrians on the highest volume crosswalk crossing the major street for an 8-hour period. The Pedestrian Signalization Alternatives [4] study derives and uses hourly factors and factors of pedestrian volumes crossing each leg of an intersection to project this, for a typical 4-legged intersection, to 7,600 pedestrians in a 24-hour period crossing all four legs or 2,700 crossing at a mid-block location. Such high volumes are unlikely, except in a very small number of locations such as in large urban areas. Instead of relying on the warrant, practitioners had been evaluating the need for traffic signals to meet pedestrian needs and the needs of the elderly and handicapped on the basis of engineering judgement.[5]

There was, therefore, a recognition of the need for a more realistic Minimum Pedestrian Volume Warrant. The recent availability of gap counters and of a gap counting methodology has made it practical to utilize the more realistic criterion of gaps rather than traffic volumes. "A pedestrian desiring to cross the major street is faced with a situation which is analogous to that of a side street vehicle waiting at a STOP sign. Like the driver of the vehicle, a pedestrian must wait for a gap of adequate size to appear in the major street flow before crossing. As the number of adequate gaps decreases, the pedestrians will experience greater delay. If this waiting time becomes excessive, it is very likely that pedestrians will become impatient and may even step off the curb onto the roadway thereby exposing themselves to possible injury or death. Thus, when this threshold value of acceptable pedestrian delay is exceeded, it then becomes necessary to introduce a traffic signal that will artificially create a sufficient number of adequate gaps." [6]

Various research studies have been consistent in selecting 60 seconds as a threshold level of acceptable pedestrian delay.[7] The criterion for gaps recommended by the NCUTCD and adopted by FHWA reflect this threshold level of acceptable pedestrian delay.

Pedestrians suffering more than this threshold level of delay to cross the major street would presumably desire a traffic signal. However, the installation of any traffic signal involves certain tradeoffs which must also be considered. These include, for traffic signals being considered on the basis of pedestrian needs: The cost to install and operate the traffic signal; the delay to vehicular traffic on the main street; an increase or decrease in delay to minor street vehicular traffic, and; increased or decreased delay to pedestrians crossing the minor street. A threshold pedestrian volume is therefore essential to reflect these tradeoffs and to avoid the installation of signals at all locations where there are pedestrians crossing and there are not an acceptable number of gaps. The major problem with the former warrant was that the pedestrian volume threshold was unduly high.

Several research studies have recommended thresholds considerably less than those in the previous warrant. These have ranged between 60 per hour for 1 hour and 100 per hour total across both approaches for a 4-hour period. The study, "Pedestrian Signal Alternatives," [8] recommends the minimum hourly pedestrian volume crossing the major street for an average day meet at least one of the following criteria: 60 or more for each of any 4 hours, 90 or more for each of any 2 hours, or 110 or more during the peak hour. These criteria project, for a typical four-legged intersection, about 1,200 pedestrians in a 24-hour period crossing all four legs or 760 crossing in 24 hours at a mid-block location.

The NCUTCD, in reviewing the above recommendations, were concerned that the criteria did not adequately address the negative tradeoffs of traffic signals installed to meet pedestrian needs and would therefore result in an excessive number of traffic signals. They recommended, and FHWA has adopted, the more reasonable criteria of 100 pedestrians or more for each of any 4 hours of an average day; or 190 or more pedestrians for any 1 hour crossing the major street. These criteria project, for a typical four-legged intersection, to about 2,000 pedestrians in a 24-hour period or 1,250 crossing at a mid-block location.

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[1] *Candidate Signal Warrants From Gap Data,* February 1983, Report No. FHWA/RD–82/152.

[2] *Pedestrian Signalization Alternatives,* July 1985, Report No. FHWA/RD–83/102.

[3] King, G.F., Pedestrian Delay and Pedestrian Signal Warrants, for presentation at the 57th Annual meeting of the Transportation Report, KLD Associates, Inc., Huntington Station New York.

[4] *Pedestrian Signalization Alternatives,* July 1985, Report No. FHWA/RD–83/102.

[5] *Pedestrian Signalization Alternatives,* July 1985, Report No. FHWA/RD–83/102.

[6] *Candodate Signal Warrants From Gap Data,* February 1983, Report No. FHWA/RD–82/152.

[7] *Pedestrian Signalization Alternatives,* July 1985, Report No. FHWA/RD–83/102.

[8] *Pedestrian Signalization Alternatives,* July 1985, Report No. FHWA/RD–83/102.

Problems of added delay to the major street, minor street, and pedestrians crossing the minor street are also mitigated by requirements recommended by the NCUTCD, and adopted by FHWA, that provide for actuation, pedestrian push buttons and, in coordinated systems, coordination of traffic signals installed under this warrant.

A signal warrant for the elderly and handicapped was also recommended in the report on "Pedestrian Signalization Alternatives." [9] This warrant would address the special needs for the elderly and handicapped at a limited number of locations in the proximity of elderly and handicapped high activity areas and population concentrations. The need for a separate warrant to meet these special needs was identified primarily by the traffic engineering community, FHWA, and the researcher, as part of the increasing sensitivity to the needs of the elderly and handicapped. An Institute of Transportation Engineers Committee on Traffic Control Devices for Elderly and Handicapped [10] also recommended a special warrant in 1983 as did a Minnesota Multi-Agency Study Committee on Traffic Engineering for Senior Citizens and Handicapped Pedestrians.[11] These suggested warrants are similar to the one adopted by FHWA.

The warrant recommended in the research report reduce the threshold values for the number of pedestrians by 50 percent. The needs of the elderly and handicapped are also reflected in the gap criterion since the slower walking speeds of this part of the population result in a need for longer gaps. The Minimum Pedestrian Volume Warrant adopted by FHWA incorporates these principles into the pedestrian warrant rather than adopting separate pedestrain and elderly/handicapped warrants.

There were 20 commenters for the FHWA's proposal regarding Warrant 3. Fifteen concurred with the FHWA proposal, three were opposed, and two had no comment. The Colorado Department of Highways was concerned that the 190 or more pedestrians in any 1 hour may be too easily met and the requirement of less than 60 gaps per hour is unrealistic. The 190 per hour and the 100 per hour for 4 hours are screening criteria. The less than 60 gaps per hour requirement must also be met. The threshold values recommended by the researchers have been adjusted to make them, in the opinion of most responding practitioners, more responsive to pedestrian needs and the tradeoffs of added traffic signals.

Two of those opposed, one a private citizen the other the Nebraska Department of Roads, raised issues concerning pedestrian crossings at locations not meeting the warrant. These situations are of concern and problem locations will need to be individually addressed using engineering judgment.

The private citizen also raised other issues concerning the proposed revision. Two of these were similar to issues he had raised as part of a formal discussion included with a 1983 research paper on pedestrian warrants.[12] The citizen's concerns were utilized, to the extent they were considered to have merit, by the NCUTCD in developing the recommended revisions, by those reviewing the proposed amendments and by FHWA in advancing them.

The private citizen points out that a traffic signal installed to benefit pedestrians crossing a major street may disbenefit pedestrians crossing the minor street (assuming the traffic signal is not installed at a mid-block location). Pedestrians crossing the minor street will be required to wait for a GREEN or WALK indication where they formerly had the right-of-way against vehicular traffic that, presumably, was under YIELD or STOP control. He asks if there is evidence to indicate that the safety of pedestrians crossing the minor street is enhanced by a traffic signal warranted solely to protect those pedestrians who wish to cross the major street. Conclusive data is not available on the impacts of traffic signals on pedestrian safety although two studies [13] [14], do indicate that pedestrians are at less risk at signalized intersections than at unsignalized locations. Traffic signals may reduce risks for pedestrians crossing the minor street since there are clear-cut right-of-way indications for pedestrians and motorists whereas drivers, under YIELD or STOP control, must give attention to yielding or stopping at a point where there is adequate sight distance and then seeking an adequate gap in traffic. Some drivers, in such instances, may give inadequate attention to watching for and yielding to pedestrians. In any case, it is, as indicated above, recognized that there are tradeoffs to installing traffic signals and the threshold values in the warrants have been adjusted from those recommended by the researchers to more realistically reflect those tradeoffs.

The private citizen also commented that when pedestrian volumes crossing the major street fall below the threshold volumes of the 4-hour warrant, they are presumed to be adequately protected without the help of a traffic signal, even if there are insufficient gaps. It does not seem justified to apply a stricter standard of control to pedestrians crossing the minor street. The pedestrians would, in the major street case, benefit by installation of a traffic signal but not to the extent of the disbenefits to vehicular traffic and to other pedestrian movements. If, in the minor street example a traffic signal was warranted for pedestrians crossing the major street approaches, pedestrians crossing the minor street approaches against inadequate gaps would also benefit.

The private citizen also points out that the pedestrian has the legal right-of-way on crosswalks. It is his perception, however, that the law is not being properly enforced since it is usually the pedestrian who has to yield to vehicles and find an adequate gap in vehicle flow. He comments that a warrant that took account of the vehicle codes would specify the pedestrian flow. The FHWA believes the revised warrant reflects, for most places, actual pedestrian, driver, and enforcement practices and is therefore responsive to the needs of pedestrians, including the elderly and handicapped.

The private citizen asks why pedestrians have to wait at a red light at

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[9] *Pedestrian Signalization Alternatives*, July 1985, Report No. FHWA/RD-83/102.

[10] *Pedestrian Signalization Alternatives*, July 1985, Report No. FHWA/RD-83/102.

[11] Masa, Miles E., Traffic Control Devices for Elderly and Handicapped Pedestrians, Compendium of Technical Papers, Institute of Transportation Engineers, 53rd Annual Meeting, 1983.

[12] Zegeer, Charles V., Khasnabis, Snehamay, and Fegan, John C., Development of Improved Pedestrian Warrants for Traffic Signals, TRB Record 904, 1983.

[13] *Traffic Control and Roadway Elements, Their Relationship to Highway Safety*, prepared by The Automotive Safety Foundation, 1963.

[14] *Pedestrian Trip Making Characteristics and Exposure Measures*, October 1983, Report No. FHWA/RD-83/074.

locations where the streets are "empty." The traffic signal can be operated on flash to minimize pedestrian and vehicular delay when vehicular and/or pedestrian volumes are low. Pedestrian behavior at traffic control devices is, in any case, governed by laws and ordinances as adopted by States and local entities. These laws and ordinances, in turn, are usually based on the Uniform Vehicle Code and Model Traffic Ordinance (UVC&MTO).[15] Its custodian is the National Committee on Uniform Laws and Ordinances that is composed of government and other officials, as well as individuals, interested in achieving sound, uniform motor vehicle laws and regulations.

This amendment will increase the usefulness of Warrant 3. Few traffic signals are required solely on the basis of pedestrian needs and the bulk of such signals have been installed based on engineering judgment. The amendment therefore does not impose additional costs on State or local highway agencies but rather reduces the amount of engineering effort to determine if traffic signals are needed at pedestrian crossings. No compliance date is needed.

(9) Request IV–73(Chng.)—Elimination of "Blind" Change Interval

Sections 4B–6.5 (a), (c) and 4B–15 are amended to eliminate the optional so-called "blind change interval" following a leading GREEN ARROW.

This amendment will make it mandatory to display a Yellow ARROW between the termination of a GREEN ARROW indication and the showing of a green indication to any conflicting traffic movement.

There were 19 commenters, 16 of which agreed, one disagreed and Oregon and Wisconsin had no comment.

This amendment may have some financial impact on State and local jurisdictions. To offset these costs, a compliance date of December 31, 1993, is established.

Discussion of Editorial Changes

In accordance with the FHWA procedures published in FHWA Docket 83–18 (48 FR 30145, June 30, 1983), the FHWA invites comments to FHWA Docket 87–9 on the following editorial changes (Requests I–7 and IV–71):

The FHWA is making the following editorial changes to the MUTCD. The changes and their basis are summarized below.

These editorial revisions to the MUTCD impose no additional costs on State and local highway agencies. Therefore, no compliance dates are needed for their implementation except in the case of Request IV–81. Request IV–81(Chng.)—Maximum Location of Signal Face is necessary because of the previous amendment IV–42(Chng.)—Traffic Signal Design Configuration, and, therefore, has the same compliance date of October 2, 1994.

(10) Request IV–75(Chng.)—Height of Vehicle Signal Faces

Section 4B–13 is editorially amended to clarify the fact that only "vehicle" signal faces are being referred to in this section and not pedestrian signals.

(11) Request IV–76(Chng.)—Color of the Signal Heads

Section 4B–24 is editorially amended to be technically correct by reflecting the fact that signal heads may be painted or (for plastic) the color embedded in the material.

The title of this section is revised from "Painting" to "Signal Head Housing Color" and reference to painting is deleted from the second paragraph which is revised to read as follows: "To obtain the best possible contrast with visual background, it is desirable that signal head housings be highway yellow."

(12) Request IV–77(Chng.)—Figure 4–4 Major Street—Minor Street

Section 4E–3 is amended to delete Figure 4–4 and reference to the figure in the second paragraph. There were certain inconsistencies in the figure and it was decided that the figure does not serve an important purpose. It is, therefore, being deleted.

(13) Request IV–78(Chng.)—Height Requirement for Signal Heads

Sections 4B–13, 4E–6, 4E–7, and 4E–11 are editorially amended to assure that the height requirement for signal heads is stated in a consistent manner in each section. Therefore, each of the sections will have the terminology "* * * *shall be at least* * * * *but not more than* * * *".

(14) Request IV–79(Chng.)—Two and Three Lens Signals

Section 4E–22 is editorially amended to change the term "Signal Indication" to "Signal Lens."

This section is being revised to make it consistent with the definition of "Signal Lens" as it is currently defined in the MUTCD (Section 4A–3).

(15) Request IV–81(Chng.)—Maximum Location of Signal Face

This editorial revision modifies Section 4B–12(4) to reflect previous ruling IV–42. Ruling IV–42 increased the maximum signal distance requirement to 150 feet. Sections 4B–8.1(c), 4B–12(4) and Figure 4–2 are being revised to reflect that change. Also subparagraph 10 in Section 4B–12 is being deleted because it is being consolidated into the editorial revision of subparagraph 5.

(16) Request VI 58(C)—Worker Safety

The NCUTCD has requested that Part VI of the MUTCD be amended throughout in ways that will call attention to worker and pedestrian protection needs in work zones. The following is offered as an example of the changes.

Revise Section 6C–10 by adding the words "and to reduce the risk of injuries to pedestrians and workers." to the end of the first sentence of the first paragraph. The paragraph will read: "Barriers are highway appurtenances designed to prevent vehicular penetration from the travelway into areas behind the barrier such as to minimize damage to impacting vehicles and their occupants and to reduce the risk of injuries to *pedestrians and workers.*"

(17) Request VI–62(C)—Warning Light Specification

Section 6E–5 is amended to limit the parts of the ITE Purchase Specifications for Flashing and Steady-Burn Lights that are incorporated by reference into the MUTCD. Only those parts of the specification that address the color, size of lens, flash rate, and minimum on time of warning lights are to be incorporated into the MUTCD.

Discussion of Actions To Be Deferred

(18) Request II–118 (Chng.)—Standard Motorcycle Warning Sign

The FHWA has proposed that a new series of signs, Warning Signs for Motorcyclists, be added to the MUTCD following Section 2C–40.

Of the 22 commenters, 9 concurred with the proposal to add a new series of signs, but were divided on the layout and legend for the sign and supplemental plaque. Many of the 13 commenters that opposed the FHWA proposal said that standard warning signs were adequate for this function.

The FHWA will undertake research to determine which of the suggested formats for this series of signs is more clearly understood. Therefore, action on

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[15] *Uniform Vehicle Code and Model Traffic Ordinance*, National Committee on Uniform Traffic Laws and Ordinances, Evanston, Illinois, Revised 1987.

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this request is being deferred pending the completion of the research study.

In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual on Uniform Traffic Control Devices as amended herein and amends Part 655 of Title 23 CFR by revising § 655.601(a) to read as set forth below.

Regulatory Impact

The Federal Highway Administration (FHWA) has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. As stated herein, the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Since the editorial amendments contained in this document are technical in nature, the FHWA finds good cause to make the editorial amendments final without the opportunity for comment under the Administrative Procedure Act. However, interested parties may comment on the editorial amendments by March 28, 1988, and such comments will be placed in FHWA Docket 87–9 and considered. For the same reasons, opportunity for prior comment is not required under the regulatory policies and procedures of the Department of Transportation.

Incorporation by Reference

The MUTCD has been incorporated by reference in 23 CFR Part 655 under the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51 and approved by the Director of the Federal Register as of April 1, 1987. The MUTCD was last revised on March 9, 1987 (52 FR 7128). The MUTCD citation included in 23 CFR Part 655 will be revised to reflect the amendments contained in this document.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 9, 1988.

Robert E. Farris,

Deputy Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, by revising Part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for 23 CFR Part 655, Subpart F continues to read as follows:

Authority: 23 U.S.C. secs. 109(d), 114(a), 217, 315, 402(a), 23 CFR 1204.4; and 49 CFR 1.48(b).

2. In § 655.601, the first sentence of paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as of December 1988. * * *.

* * * * *

[FR Doc. 88–5865 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–88–1223; FR–2064]

Mutual Mortgage Insurance and Rehabilitation Loans; Conveyance of One- to Four-Family Properties Occupied by Tenants or Former Mortgagors; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the Federal Register on January 14, 1988 (53 FR 868) that revised the current regulations at 24 CFR 203.70 through 203.683 under the general heading of Occupied Conveyance. The effective date section of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the Federal Register.

Thirty calendar days of continuous session of Congress have expired in the present Congress since the rule was published.

EFFECTIVE DATE: The effective date for the final rule published January 14, 1988 (53 FR 868) is April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–5740. (This is not a toll-free number.)

Dated: March 11, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–5768 Filed 3–15–88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 25

[T.D. ATF–268; Re: Notice No. 637]

Operation of a Tavern at a Brewery

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is establishing criteria and procedures for operating a tavern on brewery premises. This final rule is based on Notice No. 637, published in the Federal Register of August 31, 1987, at 52 FR 32814, and the public comments received in response to it. The rulemaking originated as a petition submitted by Mr. Bill Owens, proprietor of Buffalo Bill's Brewery, located in Hayward, California.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, Tax Compliance Branch, (202) 566–7602.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1987, ATF published Notice No. 637 in the Federal Register, at 52 FR 32814, proposing criteria and procedures for operation of a tavern on brewery premises. Several newly established breweries operate contiguous taverns as their only sales outlet. ATF believes that more breweries will establish such taverns in the future. This trend presented two problems under the previous regulations.

First, the tavern was required to be segregated from brewery premises, since the previous regulations prohibited the retention of tax-determined beer on brewery premises. Second, the beer was required to be physically removed in portable containers from the brewery to the tavern. ATF had some latitude in determining the size and portability of the container, but physical removal is required by law. Removal of beer by pipeline is only permitted to a contiguous distilled spirits plant, under 26 U.S.C. 5412.

In general, the law permits beer to be consumed at a brewery by employees and visitors without payment of tax. However, the sale and transfer of possession of beer for consumption at a brewery is a taxable event (26 U.S.C. 5052(c)(1)).

Proposal

ATF reconsidered its position of precluding retention of tax-determined beer on brewery premises. In Notice No. 637, ATF proposed to allow a brewer to establish a tavern on brewery premises, and utilize portable packages or dispense beer through pipelines. Notice No. 637 also proposed to establish certain criteria and procedures which are considered to be the minimum controls necessary to protect the revenue.

Notice No. 637 proposed to amend § 25.23 to specifically provide for the operation of a tavern on brewery premises which has been approved pursuant to the procedures set forth in a newly proposed regulation, § 25.25. The proposed regulation provided that a brewer desiring to operate a tavern on brewery premises shall submit, to the regional director (compliance), a Brewer's Notice, ATF F 5130.10, containing information on (1) the boundaries of the tavern and the security measures used to segregate public areas from non-public areas, (2) the method to be used for measuring beer for the purposes of tax determination, and (3) the identification of all tanks which will periodically contain tax-determined beer.

In addition, Notice No. 637 proposed to require the brewer to (1) determine the tax on the beer, whether in bulk or packaged, prior to the time it is dispensed for consumption and record such tax determination in the brewer's records, (2) identify each tank used for tax determination, and (3) determine the taxes each time beer is added to a tax determination tank.

Finally, Notice No. 637 proposed to amend § 25.24 to allow the retention of tax-determined beer on brewery premises when it is intended for sale at a tavern operated on such premises.

Public Comments

In response to Notice No. 637, ATF received 14 comments, all in favor of the proposed rule. The public comments raised three issues which are discussed below.

Sales of Other Commodities

One commenter, Mr. Brian J. McCollam, suggested that the final rule should specifically allow for the sale of food, and/or taxpaid distilled spirits, and/or taxpaid wine, at a tavern operated on brewery premises. Mr. McCollam points out that such sales typically are an integral part of operating a tavern. Since § 25.23 does not specifically name these commodities as authorized for sale on brewery premises, an applicant would still be required to apply for a variance to sell taxpaid distilled spirits, and/or taxpaid wine, and/or food. Since the purpose of this rulemaking is to eliminate the requirement to apply for a variance, ATF believes that this comment should be adopted.

The definition of "tavern" in § 25.25, is modified to specifically allow for optional sales of food, and/or taxpaid distilled spirits, and/or taxpaid wine, on brewery premises. Taxpaid beer produced by other brewers may already be received, stored, and sold on Brewery premises in accordance with § 25.24.

Voluntary Destruction

Another commenter, Ms. Carol Eubank, suggested that the final rule should specifically allow for a refund of tax on taxpaid beer which subsequently spoils. In Notice No. 637, the proposal to allow storage of taxpaid beer of the brewer's own production on brewery premises, under § 25.24, did not provide for this situation. Since the existing regulations do not allow for the storage of taxpaid beer of the brewer's own production on brewery premises, there is no corresponding regulation to allow for voluntary destruction, with benefit of refund, on taxpaid beer which was never removed.

Under the authority of 26 U.S.C. 5056(a), "Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest * * * under such regulations as the Secretary may prescribe, if such beer is

* * * destroyed under the supervision required by such regulations."

This final rule will require the tavern/brewer to prepare a record of the quantity of beer destroyed, the reason for, date of, and method of destruction. The regional director (compliance) may require the brewer to notify the ATF area supervisor in advance of destruction, to allow ATF the option of supervising the destruction. After the destruction is completed, the brewer may file a claim for refund or credit of tax. Since a claim for refund or credit is required by law, the brewer may prepare the record of destruction directly on the claim form, Form 2635 (5620.8).

Hospitality Rooms

The Beer Institute requested that the final rule clarify the tax status of "hospitality rooms" operated by many brewers, in conjunction with guided tours of the premises. ATF's policy on "hospitality rooms" is unchanged. Beer may be dispensed free of tax for consumption by visitors if no fee of any kind is imposed. The imposition of any kind of a mandatory fee, for parking, touring the brewery, etc., renders the dispensing of beer a taxable sale, and only taxpaid beer may be dispensed when a fee is imposed.

Modified Final Rule Adopted

The proposed rule is adopted as modified by the above discussion of the public comments. In addition, § 25.5 is amended to display the OMB Control Number of the new regulations added by this final rule.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

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(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved ATF's amendment of OMB Control Number 1512–0045, covering the requirement to submit additional information in the Brewer's Notice, as proposed in Notice No. 637. No public comments discussed the paperwork burdens contained in the proposed rule.

Drafting Information

The principal author of this document is John Linthicum, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

Issuance

Title 27 CFR is amended as follows:

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

2. The table of sections in Part 25 is amended to add the headings of §§ 25.25 and 25.225, as follows:

Sec.

* * * * *

25.25 Operation of a tavern on brewery premises.

* * * * *

25.225 Destruction of taxpaid beer which was never removed from brewery premises.

* * * * *

§ 25.5 [Amended]

3. Paragraph (b) of § 25.5, the list of sections covered by OMB Control Number 1512–0045, is amended by adding, in numerical order, "25.25" and "25.225".

4. Section 25.23 is amended by revising paragraphs (b)(4) and (b)(5), by adding a new paragraph (b)(6), and by revising paragraph (c), to read as follows:

§ 25.23 Restrictions on use.

* * * * *

(b) *Other authorized uses.* * * *

* * * * *

(4) Are in the public interest because of emergency conditions;

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery; or

(6) Involve operation of a tavern on brewery premises in accordance with § 25.25.

(c) *Application.* Except as provided in § 25.25 for operation of a tavern on brewery premises, a brewer desiring to use a brewery for other purposes shall submit to the Director through the appropriate regional director (compliance), an application listing the purposes. The Director will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5411))

§ 25.24 [Amended]

5. Paragraph (a) § 25.24 is amended by replacing "§ 25.213" with "§ 25.25 or § 25.213".

6. In Subpart C, immediately after § 25.24, the following new § 25.25 is added to read as follows:

§ 25.25 Operation of a tavern on brewery premises.

(a) *General.* A brewer desiring to operate a tavern as an alternate use of brewery premises, shall submit a Brewer's Notice, ATF F 5130.10 containing the information required by paragraph (b) of this section. If the regional director (compliance) finds that the operation of the tavern on brewery premises will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law, the approval of the Brewer's Notice, ATF F 5130.10 shall constitute approval of the alternate use of brewery premises, in lieu of the application required by § 25.23. As used in this section, "tavern" means a portion of brewery premises where beer is sold to consumers. Food, and/or taxpaid wine, and/or taxpaid distilled spirits may also be sold at a tavern operated on brewery premises. Taxpaid beer produced by other brewers may be received, stored and sold on brewery premises in accordance with § 25.24.

(b) *Brewer's Notice.* In preparing the Brewer's Notice, AFT F 5130.10, the applicant shall show the following information, in addition to the information required by the form:

(1) The applicant shall identify the portion of the brewery which will be operated as a tavern by providing a diagram or narrative description of the boundaries of the tavern. The diagram or description shall identify areas of the brewery which are accessible to the public and areas which are not. The applicant shall describe security measures to be used to segregate public areas from non-public areas.

(2) The applicant shall describe in detail the method to be used for measuring beer for the purposes of tax determination.

(3) The applicant shall identify the tanks which will periodically contain tax-determined beer, and any other areas where tax-determined beer will be stored.

(c) *Procedures.* The following procedures shall apply to operation of a tavern on brewery premises:

(1) The brewery shall have a suitable method for measurement of the beer, such as a meter or gauge glass. Tax determination shall consist of the measurement of the beer and the preparation of the brewer's record of tax determination, required by § 25.292(a)(8). The taxes shall be determined prior to the time that the beer is dispensed into a container for consumption.

(2) If the brewer uses one or more tanks for tax determination, the following procedures shall apply:

(i) Each such tank shall be durably marked with the words "tax-determination tank";

(ii) The taxes shall be determined each time beer is added to a tax-determination tank; and

(iii) The brewer may never simultaneously pump into and out of a tax-determination tank.

(3) A brewer qualified under this section may store, on brewery premises, tax-determined beer which is intended for sale at a tavern operated on brewery premises, in accordance with this section. The prohibition of § 25.24 shall not apply to such tax-determined beer.

(4) Beer consumed by employees and visitors in the brewery's tavern shall be beer on which the tax has been paid or determined.

7. Paragraph (a) of § 25.221 is revised to read as follows:

§ 25.221 Voluntary destruction.

(a) *On brewery premises.* (1) A brewer may destroy, at the brewery, beer on which the tax has not beer determined or paid.

(2) A brewer operating a tavern on brewery premises under § 25.25 may destroy taxpaid or tax-determined been stored on brewery premises, in accordance with the requirements of § 25.225.

* * * * *

8. Immediately after § 25.224 in Subpart N, the following new § 25.225 is added to read as follows:

§ 25.225 Destruction of taxpaid beer which was never removed from brewery premises.

(a) *General.* A brewer operating a taven on brewery premises under § 25.25 may destroy taxpaid or tax-determined beer which was never removed from brewery premises, in accordance with the recordkeeping requirements of paragraph (b) of this section, and with the benefit of the tax refund provisions of paragraph (c) of this section.

(b) *Recordkeeping.* (1) When taxpaid or tax-determined beer which was never removed from brewery premises is destroyed, the brewer shall prepare a record of the quantity of beer destroyed, and the reason for, date of, and method of, destruction. The brewer may prepare this record on Form 2635 (5620.8) for submission as a claim under § 25.283.

(2) When required by the regional director (compliance), the brewer shall notify the area supervisor prior to the intended destruction, in accordance with procedures established by the regional director (compliance).

(c) *Refund of tax.* After destruction is completed, the brewer may file a claim for refund or credit of tax, in accordance with § 25.283(c).

9. Section 25.283 is amended by revising the heading of introductory paragraph (a) by redesignating paragraphs (c) and (d), as paragraphs (d) and (e) and adding a new paragraph (c) to read as follows:

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed at a location other than a brewery.* * * *

* * * * *

(c) *Voluntary destruction of taxpaid beer which was never removed from brewery premises.* Claims for refund or credit of tax on beer voluntarily destroyed under the provisions of § 25.225, shall include:

(1) Information required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(9) of this section; and

(2) The information contained in the record required by § 25.225(b).

(d) *Additional evidence.* * * *

(e) *Filing of claim.* * * *

Signed: February 11, 1988.

Stephen E. Higgins,

Director.

Approved: March 1, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88–5627 Filed 3–15–88; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 295

[DMA Instruction 5400.7]

Defense Mapping Agency (DMA), Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule amendment.

SUMMARY: The Department of Defense issued 32 CFR Part 295 which was printed in the Federal Register on Tuesday, March 8, 1988 (53 FR 7358). This amendment is made to correct administrative errors submitted.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. D. Malkie, telephone (202) 653–1131.

Accordingly, 32 CFR Part 295 is amended to read as follows:

PART 295—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 552 as amended by Act of November 21, 1974 (Pub. L. 93–502, 88 Stat. 1–3).

§ 295.2 [Amended]

2. Section 295.2(b) is amended by changing the words "software and data" to "and data and computer software"

§ 295.6 [Amended]

3. Section 295.6(a)(3) and Appendix C, paragraph 3 are amended by changing the words "60 days" to "60 calendar days".

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1988.

[FR Doc. 88–5784 Filed 3–15–88; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 85–229, Phase II; FCC 88–10]

Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order affirming the principal holdings of the *Phase II Order* in *Computer III.*

SUMMARY: The Commission affirmed the principal holdings of its *Phase II Order* (2 FCC Rcd 3072 (1987), 52 FR 20714 (1987)) in the *Computer III* proceeding and, with certain limited exceptions, denied a number of petitions seeking reconsideration of that order. The Commission upheld its decision that protocol processing should be treated as an enhanced, not basic, service.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Oliver, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–10), adopted January 14, 1988, and released February 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted January 14, 1988, affirmed the principal holdings of the *Phase II Order* (2 FCC Rcd 3072 (1987), 52 FR 20714 (1987)) in the *Computer III* proceeding and, with some exceptions, denied nine petitions for reconsideration of that order.

2. The Commission reaffirmed its classification of protocol conversion as a basic service. The Commission also reiterated that the BOCs must minimize the transport costs incurred by other providers of protocol processing that connect with the BOCs' basic service

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facilities, but clarified that multiplexing those connections to aggregate traffic is not the only acceptable cost-reduction technique. A BOC may satisfy this requirement by foregoing the potential cost advantages available from collocating its enhanced service facilities in its central offices and instead charging non-distance-sensitive transmission rates to all enhanced service providers, including its own enhanced service operations and those of noncollocated competitors. The Commission relieved the BOCs of the network utilization rate element (NURE) requirement. The Commission declined to eliminate Open Network Architecture (ONA) and CEI price averaging requirements for protocol conversion. This Order does not alter the Commission's previous findings that internetworking protocol conversions can be treated as basic service.

3. The Commission also described the conditions under which it would eliminate the requirement that AT&T submit reports on the quality of the basic services that it provides as part of its CEI/ONA tariffs. Prior to elimination of such reports, AT&T must amend its ONA plan to include a detailed description of its installation procedures that demonstrates its inability to engage in quality-based discrimination. After Commission approval of such an amendment, AT&T must submit an annual affidavit attesting that it has followed the installation procedures described in its ONA plan amendments and that it has not, in fact, discriminated in the quality of network services used by competing enhanced service providers. The Commission concluded that the BOCs should be afforded the same opportunity to demonstrate that their procedures preclude such discrimination. If they can do so, the BOCs will also be relieved of the quality reporting requirement, subject to the same conditions applicable to AT&T. The commission denied AT&T's request for permission to file installation and maintenance data only for its own enhanced service operations, but modified their requirements to permit AT&T to file reports comparing installation and maintenance intervals provided to its own enhanced service operations with those provided to a sampling of all customers. This Order does not modify the format for the BOCs' installation and maintenance reports, but the Commission will permit each BOC to amend its ONA plan to include a detailed description of its installation and maintenance procedures that demonstrates that it lacks the ability to discriminate, and modified this requirement, in the same way as for AT&T, for each BOC that makes such a demonstration.

4. The Commission declined to require that the BOCs enhanced service personnel be denied access to CPNI absent prior authorization from customers. The Commission expects carriers to take special care to protect the CPNI of customers, especially enhanced service providers, that request restricted treatment of their CPNI. Among other things, the Commission required AT&T and the BOCs to amend their ONA plans to describe the types of information they will treat as CPNI. The Commission also adopted five requirements that should facilitate users' ability to limit access to their CPNI. First, each CPNI notice to multiline business customers must include a response form that customers may use to inform the carrier of their preferred CPNI treatment. Second, the Commission required that a customer's choice to restrict release of its CPNI shall remain in effect until the customer expressly chooses otherwise. Third, the Commission clarified that customers may authorize release of some or all of their CPNI for spcific time periods or for specific purposes. Fourth, the Commission required AT&T and the BOCs to honor customers requests for restricted treatment of CPNI that are sent before the carriers send notices of CPNI rights. Fifth, the Commission required AT&T and the BOCs to include copies of their proposed notification of CPNI rights and response forms with their ONA plans. The Commission also declined to relieve the BOCs of the requirement that they make nonproprietary, aggregate CPNI available to unaffiliated enhanced service providers, and the Commission denied requests that it subject AT&T to the same requirement.

5. This Order clarified the Commission's treatment of multiplexing provided through equipment located on customer premises. The Commission retained the multiplexer exception for network equipment that has already been installed on customer premises, and for updated or improved versions of such equipment. If a carrier wishes to offer, on a regulated basis, any other non-loopback NCTE functions such as multiplexing through equipment located on customer premises, the carrier must request permission to do so on a case-by-case basis. A carrier must satisfy the NCTE waiver standard of the *Phase II Order* (2 FCC Rcd 3072 (1987), 52 FR 20714 (1987)) in order to obtain such permission. This treatment will promote the efficiencies of the competitive CPE marketplace while giving flexibility to carriers to provide basic service efficiently. In adopting this approach, the Commission conformed their regulatory treatment of customer-premises multiplexing with their treatment of other NCTE functions, particularly in light of the *BOC CPE Relief Order* (2 FCC Rcd 143 (1987), 52 FR 2226 (1987)), which permits the BOCs to supply unregulated CPE on an integrated basis with regulated communication services.

Ordering Clauses

6. *It is hereby ordered,* that the Motion for Leave to Exceed Page Limitation filed by BellSouth, and the Motions to Strike of Telenet, Tymnet, and Compuserve, *are dismissed.*

7. *It is further ordered,* that pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the Petitions for Reconsideration and Clarification filed in this proceeding *are denied,* except as provided herein.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5740 Filed 3-15-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 64

[CC Docket No. 85-229, Phase I; FCC 88-9]

Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order upholding the *Phase I Reconsideration Order* in *Computer III.*

SUMMARY: The Commission generally upheld, on further reconsideration, the regulatory framework established in the *Phase I Order* (104 FCC 2d 958 (1986), 51 FR 24350 (1986)) in *Computer III,* because that framework is adequate to prevent improper cost shifting and discrimination to AT&T and the BOCs in their provision ofl enhanced services.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marion Gordon, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88-9), adopted January 14, 1988, and released February 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted January 14, 1988, upheld on further reconsideration the regulatory framework established the *Phase I Order* (104 FCC 2d 958 (1986), 51 FR 24350 (1986)) in *Computer III* proceeding. Three parties had asked for further reconsideration of various portions of the *Phase I Reconsideration Order* (2 FCC Rcd 3035 (1987), 52 FR 29154 (1987)). The Commission generally denied their requests, but issued certain clarifications. It reaffirmed its decision to impose CEI/ONA requirements on AT&T that differ from those for the BOCs. Under those requirements, AT&T must file a modified ONA plan on February 1, 1988, and also must file service-specific CEI plans for its enhanced service offerings. The Commission clarified that, while both AT&T and the BOCs must file ONA plans, it is not requiring either AT&T or the BOCs to adopt a particular business organization for enhanced service operations. It simply required, as it did in the *BOC Structural Relief Order* (2 FCC Rcd 143 (1987), 52 FR 2226 (1987)), that any carrier that does not intend to implement full structural relief must demonstrate that the form of structural separation it proposes to retain either satisfies the Commission's nonstructural safeguards or provides a fully adequate replacement for them.

2. The Commission declined to modify its CEI/ONA pricing requirements to mandate that distance-sensitive transport functions be priced differently for CEI/ONA purposes from the way the same or substantially identical functions are priced in generally applicable interstate tariffs. It declined to eliminate its requirement that carriers must request waivers if a state imposes terms or conditions on the carrier's intrastate BSEs or CEI offerings that are inconsistent with federal CEI/ONA pricing requirements. It also declined to eliminate its requirement that carriers justify to the Commission any use restrictions contained in state tariffs for CEI or ONA basic services.

3. The Commission also stated that it expects the BOCs to make reasonably firm CEI/ONA scheduling projections, but recognizes that the planning horizons for such projections may vary among BSEs. For BOCs whose first ONA plans do not provide for deployment of their initial sets of BSEs throughout their territory, the Commission clarified that those BOCs may submit, in addition to their initial schedules, updated plans in every subsequent year until complete deployment can appropriately be scheduled.

Ordering Clause

4. *It is further ordered,* that pursuant to sections 1, 4 (i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the Petitions for Reconsideration and Clarification filed in Phase I of this proceeding *are denied,* except as provided herein.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5741 Filed 3-15-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Incidental longline category and operating in the area south of 36°00′ N. latitude. Closure of this fishery is necessary because the annual quota of 115 short tons (st) for this area will be attained by the effective date. The intent of this action is to prevent exceeding the annual quota established for this segment of the fishery and thereby maintain the United States' obligations under the International Commission for the Conservation of Atlantic Tunas.

EFFECTIVE DATES: 0001 hours local time, March 16, 1988, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 617-281-3600, extension 324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating fishing for Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR Part 285.

Section 285.22(f)(1) of the regulations provides for an annual quota of 145 short tons (st) of Atlantic bluefin tuna to be taken by vessels permitted in the incidental longline category in the regulatory area. Of this amount, no more than 115 st may be taken in the area south of 36°00 ′N. latitude. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported landings of Atlantic bluefin tuna and the catch rate, that the annual quota of Atlantic bluefin tuna allocated to vessels permitted in the Incidental longline category fishing south of 36°00′ N. latitude will be attained by the effective date. Fishing for or retention of any Atlantic bluefin

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tuna by these vessels in this area must cease at 0001 hours, local time, on March 16, 1988.

Vessels permitted in the Incidental longline category fishing north of 36°00′ N. latitude may continue to fish for and retain Atlantic bluefin tuna until the total annual quota of 145 st is achieved.

Notice of this action has been mailed to all Atlantic Bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: March 10, 1988.

Richard H. Schaefer,

Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5697 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 71260-8037]

Atlantic Surf Clam and Ocean Quahog Fisheries; Final 1988 Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final 1988 fishing quotas.

SUMMARY: NOAA issues a notice of final quotas for the surf clam and ocean quahog fisheries for 1988. These quotas were selected from a range defined as optimum yield for each fishery, as adjusted to reflect fishing activity at the end of 1987. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1988.

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: John G. Terrill (Resource Policy Analyst), 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

In specifying the quota values in this notice, the Regional Director, Northeast Region, NMFS, considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

The proposed 1988 quotas were published on January 6, 1988 (53 FR 265). No public comments were received on the proposed quotas during the comment period. The proposed quotas are adjusted under § 652.21 (a), (b), and (c) to reflect the amount of underharvest or overharvest in each designated surf clam fishery during 1987. At the conclusion of the 1987 fishing season, none of the quotas for the three surf clam fishery areas had been achieved. Using the best available information, the amount of underharvest for the Mid-Atlantic fishery was determined to be 45,000 bushels; for the Nantucket Shoals fishery, 5,000 bushels; and for the Georges Bank fishery, 185,000 bushels. These amounts were added to the proposed quotas, giving the final annual quotas for 1988, as shown in the following table:

1988 FINAL SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery area	1988 quota (in bushels)
Mid-Atlantic surf clam	2,695,000
Georges Bank surf clam	485,000
Nantucket Shoals surf clam	205,000
Ocean quahog	5,000,000

For the surf clam fisheries, the annual quotas are then divided into quarterly quotas, under § 652.21 (a), (b), and (c), which is reflected in the following table:

1988 SURF CLAM QUARTERLY QUOTAS

[In bushels]

Fishery areas	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	707,500	662,500	662,500	662,500
Georges Bank surf clam	121,250	121,250	121,250	121,250
Nantucket Shoals surf clam	41,000	61,500	61,500	41,000

Other Matters

This action is taken under § 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP; under the Regulatory Flexibility Act, the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 88–5698 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 51

Wednesday, March 16, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–12–AD]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which would require modification of the propeller brake electronic control wiring. This proposal is prompted by reports of electrical interference causing the brake to engage prior to command. This condition, if not corrected, could result in an unsymmetrical drag/thrust on landing, and could cause loss of control of the airplane.

DATES: Comments must be received no later than May 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM:103), Attention: Airworthiness Rules Docket No. 88–NM–12–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice or Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–12–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The French Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR–42 airplanes. It has been determined that electrical interference can cause the propeller brake to engage prior to commend. This could result in an unsymmetrical drag/thrust, and lead to loss of control of the airplane on landing.

Aerospatiale has issued Service Bulletin ATR 42–61–0013, Revision 1, dated December 8, 1987, which contains procedures for modification of the propeller brake electrical control wiring system. The DGAC has classified this service bulletin as mandatory to preclude electrical interference with the brake electrical system.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the propeller brake electronic control wiring, in accordance with the Aerospatiale service bulletin previously described.

It is estimated that 23 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estsimated to be $5,520.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, purusant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–61–0013, Revision 1, dated December 8, 1987, certificated in any category. Compliance is required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent electrical interference with propeller brake system, accomplish the following:

A. Modify the propeller brake electonic control wiring in accordance with Aerospatiale Service Bulletin ATR42–61–0013, Revison 1, dated September 8, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides as acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 7, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5670 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87–NM–176–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspection and repair, if necessary, of the wing upper surface stringers for fatigue cracks. This action would require inspection of additional stringer-to-rib attachments on airplanes that have experienced stringer-to-rib attachment cracking and rework of certain repairs. This action is necessary because cracking has been reported at locations inboard of the inspection area defined in the existing AD. Failure to detect and repair cracks could result in loss of a wing panel. Furthermore, certain repairs called out in the existing AD have been found to be inadequate and, if installed, must be reworked.

DATES: Comments must be received no later than May 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–176–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–176–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On June 17, 1983, the FAA issued AD 83–13–03, Amendment 39–4673 (48 FR 29468; June 27, 1983), to require inspection for fatigue cracks and repair, if necessary, of the wing upper surface stringers from wing stations (WS) 601.5 to 738.5. This action was necessary to ensure the structural integrity of the wing.

Since issuance of that AD, inspections of wing upper stringer-to-rib attachments inboard at WS 519.0 and 546.5 have revealed cracking in additional stringers. Accordingly, the FAA has determined that it is necessary to inspect the areas at WS 519.0 and 546.5 if cracking has been found at any of the outboard wing stations. The FAA has also determined that certain repairs accomplished in accordance with the existing AD are unsatisfactory, since additional cracking can occur in the repaired area; therefore, these repairs must be inspected and modified.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–57A159, Revision 4, dated October 15, 1987, which describes procedures for inspection, modification, and repair of the wing upper stringer-to-rib attachment.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 83–13–03 with a new AD to require inspection of the wing upper stringer-to-rib attachments at WS 519 and 546.5 on airplanes that have experienced cracking of stringers outboard of WS 601.5, in addition to the inspections required by AD 83–13–03, in accordance with the service bulletin previously mentioned. Additionally, certain repairs accomplished in accordance with AD 83–13–03 must be inspected and modified. The period for compliance with the initial inspection requirement, however, would remain the same as that required by the existing AD.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD. If the inspection of the wing stringers at WS 519 and 546.5 is conducted at the same time as the inspection of the outboard stringers, it would require 1 to 8 additional manhours, at an average labor cost of $40 per manhour; this would equal a total cost of $40 to $320 per airplane. If the inspection of the stringers at WS 519 and 546.5 is not conducted at the same time as that of the outboard stringers, it would require 29 to 36 manhours, at an average labor cost of $40 per manhour; this would equal a total cost of $1,160 to $1,440 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be between $8,000 and $288,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 83–13–03, Amendment 39–4673 (48 FR 29468; June 27, 1983), with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, except Model 727–200F, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the structural integrity of the wing upper surface stringers, accomplish the following:

A. Using eddy current, x-ray, or visual inspection techniques, inspect wing upper surface stringers for cracks, in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 1, dated October 29, 1982, or later FAA-approved revisions, as follows:

1. For airplanes with 45,000 or more landings on August 16, 1983, inspect prior to the accumulation of 1,000 additional landings after August 16, 1983.

2. For airplanes with at least 40,000 and less than 45,000 landings on August 16, 1983, inspect prior to the accumulation of 2,000 additional landings after August 16, 1983.

3. For all other airplanes, inspect prior to the accumulation of 3,000 additional landings after August 16, 1983, or prior to accumulating 33,000 total landings, whichever occurs later.

B. Repeat the inspections required by paragraph A., above, and, if applicable, paragraph C., below, at the following intervals:

1. If the immediately preceding inspection was performed using eddy current methods, reinspect within the next 22,000 landings.

2. If the immediately preceding inspection was performed using x-ray or visual methods, reinspect within the next 11,000 landings.

C. If cracks are detected during the inspections required by paragraph A. or B., above, unless previously accomplished, inspect the stringer-to-rib attachment at wing stations (WS) 519.0 and 546.5 for cracks, using eddy current, x-ray, or visual techniques, in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, or later FAA-approved revisions, in accordance with the following schedule:

1. Prior to the accumulation of 4,500 flight hours after the effective date of this AD, for airplanes on which cracks have been detected prior to the effective date of this AD.

2. Prior to further flight, for airplanes on which cracks have been detected after the effective date of this AD.

D. Any cracked structure detected as a result of the inspections required by paragraphs A., B., C., E., or F. of this AD, must be repaired prior to further flight, in accordance with a procedure listed in Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, or later FAA-approved revisions. Repair or modification in accordance with Boeing Alert Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, or later FAA-approved revisions, eliminates the repetitive inspection requirements of paragraph B., above, and constitutes terminating action for only those attachments so repaired or modified.

E. Within the next 4,500 flight hours after the effective date of this AD, unless previously accomplished in accordance with Boeing Service Bulletin 727–57A159, Revision 3, dated September 18, 1986, or later FAA-approved revision, inspect and modify stringers (excluding stringer tabs) previously repaired in accordance with Figure 12 of Boeing Service Bulletin 727–57A159, Revision 1, dated October 29, 1982, or Revision 2, dated March 30, 1984.

F. For affected wing stringer rib attach locations previously repaired in accordance with Structural Repair Manual Subject 57–10–4 or any other FAA-approved method (except Boeing Alert Service Bulletin 727–57A159, Revision 1, dated October 29, 1982, or later FAA-approved revisions) that have accumulated 22,000 landings prior to August 16, 1983, inspect within the next 11,000 landings after August 16, 1983, or prior to the accumulation of 33,000 landings since repair, whichever occurs later, and thereafter at intervals in accordance with paragraph B. of this AD.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 8, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5671 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88–ASO–2]

Proposed Designation of Transition Area, Keystone Heights, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Keystone Heights, Florida, transition area to accommodate instrument flight rule (IFR) operations at the Keystone Airpark Airport. This action will lower the base of controlled airspace from 1200 to 700′ above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

DATES: Comments must be received on or before: April 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-2, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following Statement is made:

Comments Invited

"Comments to Airspace Docket No. 88-ASO-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P. O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Keystone Heights, Florida, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Keystone Airpark Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Keystone Heights, Florida (New)

That airspace extending upward from 700' above the surface within a 6.5-mile radius of the Keystone Airpark Airport (Lat. 29°50'39"N., Long. 82°03'01"W.), excluding that airspace that coincides with Restricted Area R-2903B.

Issued in East Point, Georgia, on March 2, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-5873 Filed 3-15-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036C; FRL-33503]

Asbestos; Release of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of additional information.

SUMMARY: Under the authority of section 14(a)(4) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2613(a)(4), EPA is announcing its decision to release all the information currently treated as Confidential Business Information (CBI) contained in three draft documents supporting the TSCA asbestos ban and phase out rulemaking proceeding. The three draft documents are: the Asbestos Exposure Assessment, the Asbestos Modeling Study, and the Regulatory Impact Analysis. These three draft documents contain analyses necessary to support the rulemaking proceeding for the final rule to ban and phase out the use of asbestos.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202 554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

In 1986, EPA proposed a rule under section 6 of TSCA which would ban immediately the manufacture, import, and processing of certain asbestos products, and would phase out the remaining products over a 10-year period (50 FR 3738, January 29, 1986). This proposal outlined several options for implementing the ban and phase out and allowed 5 months for public comment.

EPA has since updated its information base with data collected in a 1986 telephone survey and a 1986-1987 Asbestos Exposure Assessment Questionnaire. This updated information base has been used in the analyses supporting the final rule. The three draft documents containing these analyses and supporting the final rule soon will be released to the public. These three documents are the Asbestos Exposure Assessment, the Asbestos Modeling Study, and the Regulatory Impact Analysis.

In December 1987, EPA announced its intention to release the information currently treated as CBI which is contained in these three documents (52 FR 48286, December 21, 1987). The release of information was proposed under the authority of section 14(a)(4) of TSCA, which authorizes disclosure of CBI when relevant in a TSCA proceeding. EPA received 11 comments in response to this proposal within the deadline for comment. Two other comments were received after the January deadline. EPA is responding to all 13 comments. Eleven of the 13 comments supported the proposed release of this CBI. Only two commentors objected to the proposed release of information.

II. Rationale for the Release of Information

The authority and rationale for the release of the information currently treated as CBI which is contained in the three documents were explained in the **Federal Register** notice proposing this release (52 FR 48286, December 21, 1987). As noted in the proposal, under 40 CFR 2.306(i), EPA may not release CBI under section 14(a)(4) until affected businesses have been informed that the Agency is considering making the information available to the public and have been afforded a reasonable opportunity to comment. EPA made known its intention to release this information to the public through the publication of a notice in the **Federal Register** on December 21, 1987. Further, EPA mailed a copy of that **Federal Register** notice to each of the businesses that provided EPA information which was treated as CBI. A 30-day comment period ending January 20, 1988 was established to afford these businesses and the general public a reasonable opportunity to comment.

During the comment period for the proposed release of the information currently treated as CBI and contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the Regulatory Impact Analysis, EPA received 13 comments. A few of these comments had more than one signatory. All but two comments supported the Agency's proposed action.

The Agency received support for the proposed release of information from several trade associations, the Natural Resources Defense Council, Inc. (NRDC), several companies, and the offices of the Attorneys General of nine states. Only two individual companies objected to the proposed release.

The offices of the Attorneys General of nine states supported the release of information because they believe that the CBI should be released to allow full and effective public comment on this rulemaking proceeding. One manufacturer of roof coatings and the Asbestos Free Gasket Group, a group of gasket manufacturers who are replacing asbestos in their products, urged EPA to proceed with the release in order to expedite the rulemaking proceeding for the ban and phase out of asbestos.

The NRDC also supported the proposed release of the information currently treated as CBI which is contained in any of the three support documents. NRDC believes that release of this information is vital to meaningful public comment.

The Asbestos Information Association/North America (AIA/NA) and the Asbestos Institute (AI) also supported EPA's proposal to release this information but believe that two additional steps should be taken. AIA/NA and AI believe that the proposed release of information will be inadequate to allow full disclosure of disputed material facts, as required by section 19(c)(1)(B) of TSCA. Consequently, AIA/NA and AI want EPA to release even more data, including "the facts lying behind these three reports."

AIA/NA and AI suggested two specific steps to release additional data. First, AIA/NA and AI suggested that EPA individually examine the validity of claims of confidentiality made with respect to information it obtained. Second, AIA/NA and AI suggested that EPA request permission to release the information from each submitter whose claimed confidential information it is using.

AIA/NA and AI suggested that the two steps mentioned above be taken because AIA/NA and AI believe that more information needs to be released. At present, EPA believes that the information to be released in the three documents is sufficient to provide adequate opportunity for public comment because the documents summarize all necessary data concerning the Agency's risk assessment and cost benefit analyses for the final rule. EPA, therefore, does not believe that it is necessary at this point to take the two additional steps AIA/NA and AI suggested.

EPA may consider the release of additional CBI should the Agency determine that disclosure is advisable because of the relevance of any such information to the asbestos ban and phase out rulemaking proceeding and the need for additional comment on the rulemaking proceeding. In such case, appropriate notice and opportunity to comment would be provided affected businesses.

Suggestions concerning the proposal's rationale for the release of the information currently treated as CBI were also received. The NRDC along with the offices of the Attorneys General of the nine states believe that EPA could have proposed the release of CBI under section 14(a)(3) of TSCA, instead of section 14(a)(4). Section 14(a)(3) calls for the release of CBI if the "Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment." Because the Agency believes section 14(a)(4) provides appropriate and sufficient authority for release of the relevant and necessary information at this time, the Agency does not have to determine whether disclosure would also be authorized under section 14(a)(3).

Objections to the proposed release of information came from two companies. Both companies use asbestos in the manufacture of their products. These two companies were primarily concerned that the release of the information they claimed as CBI might cause them competitive harm.

Section 14(a)(4) of TSCA and 40 CFR 2.306(i) authorize the Agency to release CBI, after giving appropriate notice and opportunity for comment, irrespective of potential competitive harm if the information is relevant to a proceeding under TSCA, if EPA determines it in the public interest to release such information, and if the Agency preserves the confidentiality of the information to the extent practicable without impairing the proceeding. EPA believes that in deciding to release the information treated as CBI and contained in any of the three support documents it has met each of these requirements.

The Agency believes it is releasing only that information which is necessary to support the final rule to ban and phase out the use of asbestos, while preserving confidentiality to the extent practicable. Much of the information EPA will be releasing is aggregated

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because information generally will be released on a product category basis.

The General Counsel has concluded that the information is relevant to the subject of the TSCA section 6 rulemaking proceeding for the ban and phase out of the use of asbestos. Based upon the matters discussed in the notice published in the **Federal Register** on December 21, 1987 and after considering all comments, the Office of Toxic Substances remains convinced that the public interest would be served by making the described information publicly available.

Today's **Federal Register** notice informs all affected businesses that all of the information currently treated as CBI and contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the Regulatory Impact Analysis will be released to the public in the near future. In addition to the publication of this **Federal Register** notice, each company that provided the Agency with information claimed as CBI will receive individual notice of this release. The information treated as CBI which is contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the Regulatory Impact Analysis will be disclosed no sooner than 5 calendar days after the businesses have received notice of this decision.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Asbestos.

Date: March 11, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-5882 Filed 3-15-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 795 and 799

[OPTS-42097; FRL-3340-9]

Isopropanol; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to the Interagency Testing Committee's (ITC) designation of isopropanol (CAS No. 67-63-0) for health effects testing consideration, EPA is proposing under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) that manufacturers and processors of isopropanol be required to perform testing of this substance for subchronic toxicity, oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, and pharmacokinetics.

DATES: Submit written comments on or before May 16, 1988. If persons request an opportunity to submit oral comments by May 2, 1988, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VIII. of this preamble.

ADDRESS: Submit written comments identified by the document control number (OPTS-42097) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule for isopropanol under section 4(a) of TSCA in response to the ITC's designation of isopropanol for health effects testing consideration. Testing is being proposed under section 4(a)(1)(B) of TSCA because the production volume of isopropanol is substantial and there is or may be substantial human exposure to it. The Agency has concluded that existing data are inadequate to assess the health risks posed by the manufacture, processing, use, or disposal of and the resulting human exposure to isopropanol and that testing is necessary to develop such data.

I. Introduction

A. ITC Recommendation

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) established the ITC under section 4(e) to recommend to EPA a list of chemical substances and mixtures (chemicals) to be considered for testing under TSCA section 4(a) of the Act. The ITC recommended isopropanol with intent to designate for health effects testing in its 19th Report, published in the **Federal Register** of November 14, 1986 (51 FR 41417). The ITC designated isopropanol for priority consideration in its 20th Report, published in the **Federal Register** of May 20, 1987 (52 FR 19020). The ITC recommended that isopropanol be tested for chronic toxicity including oncogenicity, and for genotoxicity including mutagenicity in mammalian systems and clastogenicity. Testing for developmental and reproductive effects was deferred from consideration pending the outcome of relevant studies currently being conducted in the United Kingdom by the British Industrial and Biological Research Association (BIBRA) for the Food and Drink Federation. The ITC's rationale for recommending these tests was as follows: (1) The large production volume and many uses indicating a potential for widespread human exposure; (2) the large number of workers occupationally exposed and the possibility for general population exposure from use in commercial and household products; (3) the identification of isopropanol in leachates from a landfill site; and (4) the insufficient available data with which to assess the long-term effects of exposure. No chemical fate testing was recommended because any isopropanol released to the environment is widely dispersed and rapidly biodegraded and oxidized. Environmental effects testing was not recommended because there is sufficient information to show that isopropanol is unlikely to persist in the environment at concentrations that would be likely to cause adverse ecological effects.

B. Opportunity for Negotiating a Consent Order

EPA has issued an Interim Final Rule that amends EPA's procedural regulations in 40 CFR Part 790 for the development and implementation of testing requirements under section 4 of TSCA. The amendments establish procedures for using enforceable consent agreements to require testing under section 4 of the Act. EPA intends to use such consent agreements when a consensus exists among the Agency, affected manufacturers and/or processors, and interested members of the public about the need for and scope of testing requirements. The consent agreement provides an alternative to the test rule development process, facilitating the rapid development of test data by removing the necessity for a lengthy rulemaking process.

When EPA concludes that the Agency, the affected firms, and interested parties cannot reach a consensus on the testing requirements or other provisions to be included in the consent agreement, the Agency will proceed with rulemaking under section 4(a) of TSCA. A description of the procedures governing consent agreements and test rules appears in detail in the **Federal Register** of June 30, 1986 (51 FR 23706).

The first step in determining the feasibility of developing a consent agreement for a specific chemical is the identification of interested parties who may wish to participate in negotiations with EPA. In the **Federal Register** of February 3, 1987 (52 FR 19020), EPA announced that the Agency was considering developing a testing consent agreement for isopropanol. The notice requested interested parties to identify themselves. The Chemical Manufacturers Association (CMA), the Environmental Conservation Board (ECB) of the Graphics Communication Industry, and the Natural Resources Defense Council (NRDC) requested participation as "interested parties" in the consent order negotiation process for isopropanol. However, consensus could not be reached on issues raised in the proposals submitted by CMA concerning the EPA science policy requirement of a two-species oncogenicity bioassay. CMA's plan was to use the results of various short-term tests (subchronic and mutagenicity) and pharmacokinetics to establish equivalency between species to negate the need for a second rodent species bioassay. CMA later proposed that there be an "independent scientific body" established to review the feasibility of CMA's approach and that this decision be binding on EPA. Both EPA and NRDC found this approach unacceptable. Since consensus was not reached as required for a consent order, the Agency decided to proceed with rulemaking under section 4(a) of TSCA.

C. Test Rule Development Under TSCA

Section 4 of TSCA provides authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to a particular chemical.

Under section 4 of TSCA, EPA must require testing of a chemical to develop appropriate test data if EPA makes certain findings as described in TSCA under section 4(a)(1) (A) or (B). Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules which were published in the **Federal Registers** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the ITC's testing recommendations for isopropanol, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration and public comments on the ITC's recommendations; production volume, use, exposure, and release information reported by manufacturers of isopropanol under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning isopropanol; and published and unpublished data on isopropanol available to the Agency. From its evaluation, as described in this proposed rule, EPA is proposing health effects testing for isopropanol under TSCA section 4(a)(1)(B). By this action, EPA is responding to the ITC's designation of isopropanol for priority testing consideration as required by TSCA section 4(e).

II. Review of Available Data

A. Chemical Profile

Isopropanol is a colorless, volatile, flammable liquid with a slight odor resembling that of a mixture of ethanol and acetone (Ref. 1), the air odor threshold is 22 ppm (Ref. 2). The freezing point of isopropanol is −88.5 °C and its boiling point is 82.3 °C (Ref. 1). It is miscible in water, ethanol, acetone, and benzene (Ref. 3). At 20 °C, it has a vapor pressure of 33 mmHg and a density of 0.7849 g/cm ^{3} (Ref. 1). The log octanol/water partition coefficent of isopropanol is 0.05 (Ref. 4).

Three grades of isopropanol are marketed in the United States: Anhydrous, and two aqueous solutions containing 95 volume percent and 91 volume percent of isopropanol, respectively (Ref. 1). The 91 volume percent is an azeotropic mixture with water and is usually referred to as CBM (constant-boiling-mixture) isopropanol (Ref. 1).

B. Production

Isopropanol is produced in the United States primarily by two basic commercial processes involving synthesis from propylene; the indirect hydration (sulfuric acid) process and the direct hydration process. The indirect hydration process utilizes a C_3 feedstock stream containing 40 to 60 percent propylene from refinery off-gas that is absorbed in concentrated sulfuric acid and the resulting ester then hydrolyzed. Although there are two variants of the indirect hydration process, the one currently employed by U.S. producers is the weak-acid process (Ref. 57). A strong-acid process is no longer in use. The product is packaged in drums, pails, or glass jugs or shipped in tank cars or trucks (Ref. 6).

The annual production volume of isopropanol has been in excess of 1 billion lb since 1956 (Ref. 7), and it ranked 50th for chemicals produced in the United States in 1985 (Ref. 8).

Isopropanol is manufactured in the United States by four companies (Arco Chemical Company, Exxon Chemical Company, Shell Oil Company, and Union Carbide) at five locations with a combined production capacity of 2.5 billion lb per year as of January 1987 (Refs. 9 and 10). Imports increased from 48 million lb in 1980 to over 100 million lb each year from 1983 to 1986. Exports have exceeded 130 million lb each year since 1980, and increased from approximately 180 million lb per year in 1984 to 1985 to 267 million lb in 1986 (Refs. 7 and 64).

C. Uses

Estimated uses of isopropanol in 1987 were: Coating solvents, 18 percent; process solvents, 14 percent; pharmaceuticals, 14 percent; household and personal products, 14 percent; acetone production, 10 percent; miscellaneous solvents and chemical intermediates, 10 percent; and exports, 20 percent (Ref. 11).

The major use of isopropanol is as a solvent in consumer products and industrial products and procedures. As an industrial process solvent, isopropanol is used as an extractant in many procedures involving natural products such as fat, oils, gums, shellacs, waxes, drugs, spices, and flavorings (Refs. 3 and 13). Its solvent properties for a variety of oils, gums, waxes, resins, and alkaloids make it an important solvent in printing inks, paints, and varnishes (Ref. 1). While formerly the major source of demand for isopropanol, acetone production is now a relatively minor use. Acetone is now manufactured primarily as a by-product of phenol production by cumene oxidation, and is manufactured from isopropanol only as a supplementary supply source.

Many consumer products have been reported to contain isopropanol, including hair sprays, liniments, lotions, cosmetics, perfumes, floor detergents, shoe polishes, insect repellants, flea and tick sprays, air fresheners, windshield deicers, windshield cleaners, paints, and polishes (Ref. 1). Many home, industrial, and medicinal products containing isopropanol rely on its germicidal properties. Included in this category are sanitizers and antiseptics such as rubbing alcohol, a 70 percent isopropanol aqueous solution (Ref. 1). Some of these uses come under the jurisdiction of the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act and are not subject to TSCA.

Isopropanol is an important chemical intermediate. Commercially important

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chemicals derived from it include aluminum isopropoxide, isopropyl acetate, isopropylamine diisopropylamine, isopropyl myristate, isopropyl oleate, and isopropyl xanthate (Refs. 1 and 14). Of these, recent production figures are available only for isopropylamine, which had a production volume of 54 million lb in 1985 (Ref. 12).

Isopropanol also is added to gasoline as an antistall agent. Other automotive uses include windshield deicers and windshield washer concentrates (Ref. 14).

D. Human Exposure and Release

1. Occupational

The National Occupational Hazard Survey (NOHS), conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974, estimated that there were 8,899,594 exposures in 357,173 plants, potentially exposing 5,483,862 people to isopropanol in the workplace in 1970 (Ref. 15). The National Occupational Exposure Survey (NOES) estimates that 1,857,972 workers (60 percent of whom were female) were potentially exposed to isopropanol in the workplace in 1980 (Ref. 16).

Due to its large production volume and use in so many industries and products as a solvent, considerable exposure to isopropanol is expected. An assessment of worker exposure during manufacture was performed by EPA in 1985 (Refs. 6 and 17). These results are summarized in the following Table 1.

TABLE 1.—WORKER EXPOSURE TO ISOPROPANOL DURING 1985 [1]

Exposure phase	Workers exposure [2]	Exposure type	
		Inhalation [3] (mg/m^3)	Dermal [3] (mg/day)
Manufacturing (4 sites)	20–25/day/site	50 [4]	1,300–3,900
Processing (100 sites):			
Ink	1/day/site	5–52	1,300–3,900
Coatings	5/day/site	ND [5]–120	1,300–3,900
Uses:			
Acetone mfg. (4–6 sites)	6–10/day/site	3–4 [2]	1,300–3,900
Coatings (1,000 sites)	10,000–60,000	1–10, 5–11	1,900–5,500
Inks (7,000–11,000 sites)	83,000 [6]	50–1,470, 0–8,000, 240–280	260–780
Rubbing alcohol (5,900 sites)	1,000,000 [6]	ND–110	900–2,700

[1] Source: (Ref. 18).
[2] Estimated.
[3] Measured concentration, unless indicated otherwise.
[4] Upper limit.
[5] Not detected.
[6] National Occupational Exposure Survey (NOES).

Most of these exposures occurred at concentrations that are less than the 400 ppm, 8-hour time-weighted average, which is the Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL), the National Institute for Occupational Safety and Health (NIOSH) recommended exposure limit, and the American Conference of Government and Industrial Hygienists (ACGIH) Threshold Limit Value (TLV). During manufacture, human exposure to isopropanol is primarily through inhalation as a result of filling operations, sampling, and reactor cleanup (Ref. 6).

Sources of occupational exposure include:

a. Use as a solvent in the application and manufacture of surface coatings, including stain, varnish, nitrocellulose lacquers, quick-drying inks and paints, textile coatings and dyes, dopes, and polishes.

b. Use in manufacture and handling of acetone.

c. Use in organic synthesis for isopropyl derivatives, including phenols, acetates, xanthates, ether, amines, myristate, palmitate, nitrite, and glycerin.

d. Use in manufacture of personal care items including liniments, skin lotions, permanent wave lotions, and hair color rinses.

e. Use in preparation, manufacture, packaging, and consumption of disinfectants and sanitizers, including rubbing alcohol, other antiseptic solutions, skin astringents, mouth washes, and medicated sprays.

f. Use in manufacture of cleaning and degreasing agents, including stain and spot removers, glass cleaners, rug and upholstery cleaners, tar remover, liquid soap, and windshield cleaner fluid and use in manufacture of deicing, defogging and antifreeze products.

g. Use in extraction and purification of alkaloids, proteins, chlorophyll, perfumes, sulfuric acid, vitamins, kelp, pectin, resins, gums, and waxes.

h. Use in manufacture of rubber products; use as an additive in antistalling gasoline, lubricants, denatured ethyl alcohol, hydraulic brake fluids, and rocket fuel.

i. Use in manufacture of adhesives, including nitrocellulose film and microfilm cement and in manufacture of safety glass.

General dilution/ventilation and the use of personal protective equipment have been recommended by NIOSH as effective controls to reduce occupational exposure to isopropanol in each of these operations (Ref. 15).

2. Consumer and General Population

Fugitive emissions of isopropanol during production have been estimated to be 1.5 percent of production in 1976 (Ref. 19); no more recent estimates are available. Based on 1985 production figures (1.236 billion lb), this would mean that 18.5 million lb of isopropanol were lost as fugitive emissions during its manufacture. Virtually all of the isopropanol used as a solvent in inks, coatings, and related products, as well as many household and consumer products, is ultimately released to the atmosphere. The majority of these releases are in an indoor environment, potentially resulting in relatively high peak exposures, depending on the product and use circumstances, as well as longer exposures to lower levels of isopropanol after product use and before ventilation can entirely remove the chemical.

In a study to identify environmental pollutants in human milk, isopropanol was detected in all eight samples of mothers' milk from women living in four heavily industrial urban areas; no quantitation was performed (Ref. 20).

The extent of background pollutants, common air and water pollutants, or metabolites of naturally occurring products is unknown in this study.

Isopropanol has been identified in emissions from latex paint by Tichenor (Ref. 63) in experiments conducted to study indoor pollutants from building materials and consumer products. These experiments were performed as part of the EPA indoor air quality research program to characterize sources of indoor air pollutants.

Each year 22 million lb of isopropanol, or about 2 percent of its annual production, goes into rubbing alcohol, which is used in hospitals and industrial settings as an antiseptic and disinfectant (Ref. 6). Over 1 million workers are potentially exposed in this manner (Ref. 16). Levels of exposure from not-detected to 110 mg/m^3 of isopropanol have been estimated from OSHA inspection at two medical centers (Ref. 6). Exposure to rubbing alcohol (70 percent isopropanol) by the general population is also widespread.

Isopropanol occurs naturally as a plant volatile, as a product of fermentation, in animal wastes, and in volcanos and has been found in wine, beer, apples, pears, grapes, and pine logs (Refs. 13, and 21 through 27). Results of a Swedish study show that isopropanol is released in vehicle exhaust (Ref. 28).

3. Environmental Releases

Evidence suggests that considerable quantities of isopropanol may be released in wastewater that enters the aquatic environment. In a comprehensive EPA survey involving 4,000 samples of wastewater from industrial and publicly owned treatment works, 84 occurrences of isopropanol were reported from 19 industrial categories (Ref. 29). Additionally, 94 to 41,000 mg/L of isopropanol have been detected in leachate from municipal landfills (Refs. 30 and 31). Positive samples of groundwater taken from landfill sites have contained 86 to 2,600 mg/L of isopropanol (Ref. 31). Levels of isopropanol ranging from 10 to 2,000 mg/L have been found in a well in South Carolina near an industrial impoundment (Ref. 32).

E. Chemical Fate

Isopropanol enters the environment almost exclusively by evaporation or when discharged in wastewater. In the atmosphere, the major degradative process is expected to be reaction with photochemically formed hydroxyl radicals. Washout by precipitation may also contribute to its removal. Biodegradation should be the dominant degradative mechanism in water and soil. Isopropanol is readily biodegraded as determined in aerobic screening tests. Volatilization from water, especially shallow rivers, will be a significant transport process, as will leaching through soil. Isopropanol is not expected to break down by chemical means in the aqueous environment. Since it is miscible with fresh water, it is expected to remain in the aqueous compartment. In salt water, where it is less soluble, isopropanol may form surface films and evaporate. While no experimental data are available on the adsorption of isopropanol to soil or sediment, this should be insignificant because its octanol/water partition coefficient is low (0.05) (Refs. 33 and 34).

F. Health Effects

1. Acute Toxicity

The Agency has reviewed several studies and has found them sufficient to reasonably predict or determine the acute toxicity of isopropanol.

Oral LD50 values in the range of 4.4 to 8.0 g/kg have been determined for isopropanol in rats, rabbits, dogs, and mice indicating isopropanol to be of a low order of acute oral toxicity. An LD50 of 5.84 g/kg by dermal exposure has been established in the rabbit. A 2-hour LC50 value of 10.39 mg/L (49.120 ppm) has been determined by inhalation in mice. Following inhalation exposure, LC50 values of 1,900 and 22,500 were determined for female and male rats respectively. Studies on the acute effects of isopropanol in humans by the oral, inhalation and dermal routes are also available. These effects include hypotension, facial flushing, dizziness, gastritis, stupor, headaches, mental depression, body ache, nausea, and mild irritation of the ear, nose, and throat. The documentation for the acute effects of isopropanol is found in the isopropanol technical support document prepared by the Syracuse Research Corporation (Ref. 62).

2. Subchronic Toxicity

The Agency has reviewed all of the available studies on the subchronic toxicity of isopropanol and has found them insufficient to reasonably predict or determine the subchronic toxicity of isopropanol. Most of these studies were not conducted according to accepted, standard protocols, or complete data were not available to the Agency for review. The available data on the subchronic toxicity of isopropanol are not suitable for risk assessment purposes. This conclusion is borne out by the summaries that follow.

Daily dermal application of 50 percent isopropanol to albino rats for 187 days produced no skin injuries (Ref. 35), but experimental data are lacking for evaluation. In a 27-week study, rats were given isopropanol (0.5 to 10 percent) in their drinking water. Female rats receiving 1 or 5 percent isopropanol showed retardation of growth and body weight loss while rats in the 10 percent dose group refused to drink and died (due to unknown cause) after 7 to 28 days (Ref. 36). No effects were reported for the 0.5 percent group.

Savolainen et al. (Ref. 66) exposed 20 male Wistar rats to 300 ppm isopropanol vapors, 5 days per week, 6 hours per day for up to 21 weeks. Additional groups of 20 rats were sham-exposed (controls), sham-exposed with ethanol-water solution as sole drinking water source, or exposed to isopropanol vapors with ethanol-water solution as sole drinking water source. Within each group, 5 rats were sacrificed at intervals of 5, 10, 16, and 21 weeks for biochemical analyses of the nervous system. In addition, open field activity tests were conducted at 5-week intervals. Effects observed included reduced cerebellar superoxide dismutase and azoreductase activities in all treated groups, and elevated acid proteinase levels in the ethanol and isopropanol groups, while glial cell glutathione levels were unaltered. In rats administered either isopropanol alone or isopropanol with ethanol and sacrificed after 21 weeks, the lipid phosphorous/cholesterol ratio was slightly decreased relative to controls. The investigators proposed that the results suggest a general degeneration of nervous system tissue, but could not interpret the negative results regarding glutathione levels. Treatment-related changes in spontaneous open-field activity measures were negligible. At 15 weeks, however, isopropanol and combined isopropanol-ethanol treated rats administered caffeine prior to behavioral testing were less active than controls. This study failed to provide a comprehensive evaluation of all potential toxicologic end points.

In an oral subchronic study, Lehman et al. (Ref. 37) administered isopropanol solution to 3 dogs as a sole drinking water source, 1 hour per day for 6 months. Initially, the dogs were given a 1 percent isopropanol solution. By the end of the first month, the concentration had been raised to 4 percent and was maintained at that level until the end of the study. The dogs developed neuromuscular incoordination during the first exposure sessions; less incoordination was observed during subsequent exposures. The dogs

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received a challenge intravenous dose of isopropanol of approximately one half (2.56 cm³) to three quarters (3.84 cm³) of the fatal dose at the end of the 6-month period. Thirty-six hours after this dose, one dog died with evidence of minor hemorrhaging, leucodiapedisis, and microglial involvement in the brain, and hydropic changes and tubular epithelial necrosis of the kidneys. The remaining dogs were sacrificed at this time, and showed only negligible pathological changes. EPA believes this study is inadequate due to unorthodox dosing schedule, the small number of dogs used, and the lack of controls.

Two Russian studies have also described the effects of subchronic exposure to isopropanol (Refs. 38 and 39). Baikov et al. (Ref. 38) exposed an unspecified strain of rats to 20, 2.5, and 0.6 mg/m³ isopropanol vapors continuously for 86 days. Statistically significant effects were observed only at the highest concentration. EPA believes that this study is inadequate to determine subchronic effects because the study suffered from a number of deficiencies including the lack of control animals, lack of details on experimental analysis, and use of obscure physiological measures. In the second study, Guseinov and Abasov (Ref. 39) exposed 10 male and 10 female "nonpurebred" white rats/group to 0, 0.1, or 0.5 mg/L (40 and 203 ppm) isopropanol vapors 5 days per week, 4 hours per day, for 4 months. Effects at the high concentration included increases in relative liver, spleen, and adrenal weight, vessel degeneration, changes in red and white cell counts, and a decrease in hippuric acid excretion and nonspecific cholinesterase activity. The significance of several of the observed effects is obscure, and other effects such as relative red and white cell counts in treated rats showed no consistent trend across months.

3. Chronic Toxicity

The Agency has reviewed the available studies and has found them insufficient to reasonably predict or determine the effect of long-term exposure to isopropanol. The only chronic toxicity data in animals are provided in a study by Boughton (Ref. 35) in which eight albino rats were exposed to 5 percent isopropanol in their drinking water for 304 days. There were no effects on mortality but rats developed forced breathing after several months of treatment. By 30 weeks the treated rats had a 23 percent decrease in weight gain relative to that of controls, and after 8.5 months all isopropanol-treated rats had a 16 percent increase in errors in 15 learning trials. The adequacy of the study is in question since only eight rats were treated. No other data have been found for chronic toxicity.

4. Oncogenicity

The Agency has reviewed all of the available studies on the oncogenicity of isopropanol and has found them insufficient to reasonably predict or determine the oncogenicity of isopropanol. None of the oncogenicity studies submitted to the Agency were conducted using currently accepted standard testing protocols.

Weil et al. (Ref. 40) conducted laboratory studies in six strains of mice on the tumorgenicity of isopropanol and byproducts associated with the strong-acid manufacturing process for isopropanol using different routes of exposure, but experimental details are lacking for assessment. In subcutaneous studies, mice were administered undiluted samples of 0.025 mL/animal for 20 to 40 weeks. However, the subcutaneous route of exposure is inappropriate for isopropanol, and the duration of the experiment was too short. In an inhalation study, mice were reportedly exposed to 0.0075 mg isopropanol/m³, 5 days per week, 3 to 7 hours per day, for 5 to 8 months. In a subsequent communication, however, Weil noted that the actual metered concentration of isopropanol was a millionfold higher (7,700 mg./m³) (Ref. 42). No increase in the incidence of tumors was observed in animals treated with isopropanol. However, an increase in the incidence of tumors was observed in the positive controls and in animals treated with some of the byproducts of the strong-acid process of isopropanol manufacture.

Van Esch (Ref. 43) administered an unspecified quantity of isopropanol to the diet of Swiss mice followed by biweekly applications of croton oil (a known tumor promoter) to the head. This treatment did not increase papilloma formation. Pyleva and Sakharov (Ref. 44) reported that application of isopropanol to the skin of CBA x C57BL mice had a "weak activating", but not a carcinogenic effect (not defined further). These studies were only available as abstracts. Other data were not reported in sufficient detail for evaluation.

Available animal data assessing oncogenicity are inadequate with regard to number of species used in the experiments, number of doses, inappropriate routes of exposure, and insufficiency of data reporting and duration of exposure, and thoroughness in reporting all test data.

5. Mutagenicity

The Agency has reviewed all of the available studies and has found them insufficient to reasonably predict or determine the genotoxicity of isopropanol. The only adequate study was one in which the NTP (Ref. 45) conducted a *Salmonella* reverse mutation assay (plate incorporation) with isopropanol. Isopropanol was tested at concentrations ranging from 100 to 10,000 ug/plate in the presence and absence of mammalian liver S9 fraction. Under the conditions of this assay, isopropanol produced no increase in the reversion frequency in *Salmonella* strains TA97, TA98, TA100, TA1535, or TA1537.

Brockman et al. (Ref. 46) reported that isopropanol had no effect on meiotic nondisjunction and subsequent aneuploidy in crossed strains of Neurospora crassa Only the maximum dose of isopropanol which was consistent with fertility was tested. This screening study is not adequate to address potential clastogenicity of isopropanol.

Isopropanol was assayed for its ability to cause transformation in Syrian hamster embryo cells infected with Simian SA7 virus (Ref. 47) and was found to be negative. At no concentration did isopropanol affect transformation rate; however, the control transformation rate was high and variable. Aristov et al. (Ref. 48) as reported in an abstract of a Russian study, showed that inhalation exposure to an unspecified concentration of isopropanol for 4 months resulted in a significantly increased number of aberrant metaphases in the bone marrow cells of albino rats. The no-effect level was 0.52 mg./m³. Full evaluation of this study is not possible due to the lack of details presented in the abstract.

EPA has therefore concluded that there is not sufficient information to reasonably determine or predict the genotoxic potential of isopropanol for gene mutations and chromosomal aberrations in mammalian systems.

6. Reproductive Effects and Developmental Toxicity

The Agency has reviewed all of the available reproductive effects and developmental toxicity studies for isopropanol and has found them insufficient to reasonably determine or predict the potential toxicity of isopropanol. Nelson et al. (Ref. 49) recently conducted a study of the developmental toxicity effects of isopropanol in female Sprague-Dawley

rats. Groups of 15 animals were exposed to 0 ppm, 3,500 ppm, 7,000 ppm, or 10,000 ppm isopropanol vapor 7 hours per day from days 1 to 19 of gestation. On gestation day 20, the dams were sacrificed, and the number of corpora lutea, resorptions, and live fetuses were recorded. The fetuses were removed and examined for external malformations. Half of the fetuses were analyzed for skeletal malformations, and the other half were examined for visceral malformations.

Administration of the two highest concentrations resulted in reversible maternal toxicity. Initial exposure to 10,000 ppm produced narcosis in dams, and treatment with 7,000 ppm was associated with an unsteady gait. Exposure to 10,000 ppm resulted in significant decrease in maternal body weight gain. Weight gain was slightly reduced in dams exposed to 7,000 ppm. Exposure to 3,500 ppm produced no maternal toxicity.

Effects of isopropanol exposure on developmental parameters included a dose-related decrease in fetal body weight, a reduced number of pregnancies (6/15 were not pregnant, reduced number of implantations), and an increased number of fetal resorptions (4/15 litters had total resorptions) in dams exposed to 10,000 ppm. There were significant increases in skeletal malformations among fetuses in the two higher dose groups. Fetal body weights were reduced in all treated groups. This study is inadequate due to the fact that initially there were only 15 rats per group and in the highest dose group (10,000 ppm) there were only 5 litters available for examination and evaluation.

Lehman et al. (Ref. 37) conducted a three-generation reproductive study. Six female and three male white rats were given free access to 2.5 percent isopropanol in drinking water for 80 days and then mated. This procedure was repeated for the subsequent 2 generations, but only 13 first generation and 10 second generation females were maintained in the experimental protocol. Compared to control rats, first (but not second) generation progeny had reversible delays in development. These were not further defined. Deficiencies in this study include the number of animals used and the lack of details regarding the assessment of developmental toxicity.

Additional data on isopropanol reproductive toxicity were obtained from a Russian study (Ref. 50). In the first series of experiments, isopropanol was administered (probably orally) to female rats for 20 days at doses of 252 or 1,006 mg/kg. Administration of either dose for 20 days during pregnancy resulted in decreased numbers of fetuses in treated females. Treatment with the higher dose was associated with embryolethality. Furthermore, 10 out of 70 fetuses in the high dose group had visceral anomalies in comparison with 0 out of 90 control fetuses. Treatment of non-pregnant females for 45 days with the same doses resulted in statistically significant increases in the length of the estrus cycle. In a second series of studies, isopropanol was administered at 1,800 mg/kg/day to white rats for 3 months prior to pregnancy. There was a significantly higher embryolethality rate among treated rats in comparison with controls. In the chronic portion of the study, male and female rats were administered 0.018, 0.18, 1.8, and 18 mg/kg isopropanol through the drinking water for 6 months. The timing of the exposure period in relation to the mating period was unspecified. Experimental and control male and female rats were cross-mated in a 2x2 factorial design. Offspring mortality was most prevalent in the groups containing experimental females.

When data were collapsed across mating condition, the rats administered 18 mg/kg isopropanol had a 35 percent decrease in weight gain, and the treated offspring had dose-related impairments in a behavioral turning task. This study is deficient due to the limited sample sizes (5 to 7 rats per experimental cell) and ambiguous measuring techniques.

Currently BIBRA is conducting a study at the request of the Government of the United Kingdom consisting of a single-generation reproductive study in the rat with dosages at 0.5 percent, 1.0 percent, and 2 percent isopropanol in drinking water. Ten males were exposed 70 days prior to mating and 20 females were exposed 21 days prior to mating, during mating, during pregnancy, and until sacrificed. Offspring were treated with isopropanol during rearing and until killed. The test protocols for reproductive effects indicated that only 10 females were dosed. In addition, the protocol is for a one-generation study. EPA believes a two-generation study is necessary to sufficiently address the potential reproductive effects of a chemical.

A single-species teratology study in the rat with dosages at 0.5 percent, 1.5 percent and 2.5 percent isopropanol in drinking water is also being conducted at the request of the Government of the United Kingdom. EPA has reviewed the protocol for developmental toxicity in the rat and has determined that it is incomplete. The adequacy of this study will be assessed after receipt of the data.

The TSCA test guideline (40 CFR 798.4900(e)(1)(i)) stipulates that at least two mammalian species be used for testing in order to completely assess the potential developmental toxicity of a chemical. If the study conducted for the Government of the UK is regarded as adequate, then only a single-species developmental toxicity study will be required. If the study is inadequate, then developmental toxicity studies in two mammalian species will be required.

7. Neurotoxicity

The Agency has reviewed all of the available studies and has found them insufficient to reasonably predict or determine the neurotoxicity of isopropanol. The experimental evidence accumulated to date is very limited and some of the data are based upon results of tests performed using isopropanol in combination with other alcohols.

Maizlish et al. (Ref. 51) looked at 240 workers exposed to mixtures of organic solvents over a 7-year period of isopropanol exposure and determined that there was no deleterious effect on six behavioral parameters. The workers included a subset at one plant in which isopropanol was found to be 161 percent of TLV (644 ppm). The significance of the findings with regard to isopropanol is difficult to assess since it was only one component in the solvent mixtures studied.

In a laboratory study, Wallgren (Ref. 52) administered 0.043 mole/kg (2.6 g/kg) isopropanol to groups of 3- to 4-month-old rats and monitored performance on an inclined plane task. After a baseline measure, the investigators administered the alcohol and conducted six tests at 20-minute intervals. Isopropanol treatment reduced the angle at which the rats could maintain themselves to 67.7 percent of baseline values. There was no appreciable recovery 2 hours after treatment.

Leander et al. (Ref. 53) assessed schedule-controlled behavior in three male pigeons after oral administration of 5 percent isopropanol directly into the proventriculus (glandular stomach) twice weekly. Responses were reduced with increasing doses. Other related data as to response rates with varied electric shocks are inadequate due to the small number of animals and the use of isopropanol in combination with ethanol.

Boughton (Ref. 35) administered 5 percent isoproprenol to male rats in their drinking water for 304 days and found no subjective behavioral signs. After 8.5 months, rats given isopropanol had a 16 percent increase in errors in

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their performance in elevated T-mazes for 15 learning trials and had increased running times. Maze performance returned to normal 1 month after treatment ended.

8. Epidemiology

Several studies pertaining to worker exposures to isopropanol have been reviewed. These studies involve workers in the manufacture of isopropanol by the "strong-acid" process. Currently the method of production being used is a closed-system weak-acid process in which propylene is reacted with sulfuric acid and the isopropyl esters are further hydrolyzed to isopropanol. To date, no epidemiology studies have been submitted to the Agency on workers involved in the manufacture of isopropanol using only the newer weak-acid process.

Weil (Ref. 40) investigated the incidence of cancers in workers involved in isopropanol manufacture. Of the various substances to which the workers may have been exposed, only propylene, isopropyl ether, sulfur dioxide, and isopropanol were sufficiently volatile to be inhaled in large quantities. Although an increase in sinus tumors was observed, NIOSH (Ref. 42) concluded that the increase could not be associated with a specific compound and that the entire manufacturing process should be regulated as a "cancer hazard process" Eckardt (Ref. 54) reported that, after appropriate industrial hygiene controls and the weak-acid process were initiated, no cancers were found for a period of more than 20 years. Similar results were obtained in a second plant after conversion to the closed-system weak-acid process. NIOSH (Ref. 55) has since reaffirmed that a carcinogen appeared to have been present in the strong-acid process. Evidence was provided by Wright (Ref. 56) that this carcinogen was likely to have been diisopropyl sulfate.

As reviewed in IARC (1977) (Ref. 13), enhanced incidence of respiratory tract cancer has been reported in two plants manufacturing isopropanol by the strong-acid process. In one plant in which isopropyl oils were formed as byproducts, 7 neoplasms were found among 71 men who had worked for more than 5 years between 1928 and 1950. A conservative estimate is that the incidence of paranasal sinus cancer in this group of workers is more than 3 times that expected in the general population. In another isopropyl alcohol manufacturing factory, in operation in the United States since 1927, two sinus cancers and two intrinsic laryngeal cancers occurred among a total of 11 cancers in 779 employees. All cancer cases occurred in subjects who had worked in the factory for more than 9 years. The incidence of sinus and laryngeal cancers in this group was reported to be 21 times that expected in the general population aged 45 to 54 years.

Additional occupational studies at Shell Oil Refineries in Texas and England (Refs. 57 through 60) were conducted to further assess the impact of the isopropanol production process on worker mortality, with particular emphasis on excess cancer deaths. The group consisted of 124 employees who worked in the isopropanol production unit (strong-acid process) and were transferred subsequently to the epichlorohydrin production area. Analysis of the mortality incidence among 433 isopropanol production workers, who worked in the unit for at least one quarter, showed two deaths from buccal and pharyngeal cancer. The two cases of buccal and pharyngeal cancers were diagnosed in the workers who were subsequently exposed to epichlorohydrin, but 4 out of 7 of the respiratory cancer deaths were in individuals exposed to both production processes. The mixed exposure, the lack of concurrent control data (workers exposed to neither production process), the short followup times, and the low incidence of tumor-related deaths make interpretation of the results difficult.

Alderson and Rattan (Ref. 61) conducted an epidemiological study of workers at a plant that manufactured isopropanol by the strong-acid process. Nine neoplasms were found among 262 men who had worked for more than 1 year between 1950 and 1975. Neoplasms were found at the following sites: 1 in nose and nasal sinus, 1 in esophagus, 2 in lung and pleura, 2 in kidneys and adrenals, and 2 in brain and central nervous system (CNS). Only the single case of nose and sinus cancer was deemed to be of statistical significance. These studies were performed on workers in a manufacturing process that is no longer in use and its relevance to the current process is unknown. To date, no epidemiological studies have been submitted to the Agency for workers employed in the weak-acid process of manufacture of isopropanol.

9. Metabolism and Pharmacokinetics

The Agency has reviewed all of the available studies and has found them insufficient to reasonably predict or determine the metabolism and pharmacokinetics of isopropanol (Ref. 62).

The studies reviewed encompass absorption, tissue distribution, biotransformation, and elimination data mainly in rats, dogs, rabbits, and humans. No data are available for the mouse. The data provide evidence that isopropanol is readily absorbed by the oral, inhalation, and dermal routes of exposure, and that the major metabolic pathway is transformation to acetone by alcohol dehydrogenase (ADH). Elimination of both parent compound and the major metabolite occurs predominantly through the lungs and in the urine.

The studies appear to provide sufficient data to qualitatively assess the biotransformation of isopropanol. However, none of the studies reviewed provide sufficient quantitative data to assess percent absorption, mechanism of elimination, or a materials balance for the relevant species by the oral or inhalation routes of exposure. The Agency is unable to use these data to extrapolate toxic effects from lower species to human, from high to low doses, or from route to route (Ref. 67). Such data are needed to fully assess the metabolism and pharmacokinetics of isopropanol.

III. Findings

Under TSCA section 4(a)(1)(B), EPA finds that isopropanol is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, disposal, and use.

Approximately 1 billion lb of isopropanol has been produced yearly since 1956 (Ref. 7).

There is substantial human exposure to isopropanol in the workplace. The National Occupational Hazard Survey (NOHS) conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974 estimated that there were 6,889,594 exposures in 357,173 plants, potentially exposing 5,483,862 people to isopropanol in the workplace in 1970. The National Occupational Exposure Survey (NOES) estimates that 1,857,972 workers, 60 percent of whom were female, were potentially exposed to isopropanol in the workplace in 1980.

Isopropanol is used as a solvent and is a component of numerous industrial products, consumer products, and commercial sprays. The above uses may result in widespread exposure to workers and consumers. The Agency believes that exposures associated with the manufacture, processing, disposal, and use of isopropanol and its products provide a sufficient basis for a finding of substantial human exposure under TSCA section 4(a)(1)(B) for isopropanol.

On the basis of findings given in Unit II of this document, EPA finds that existing data are insufficient to reasonably determine or predict the subchronic, chronic, oncogenic, genotoxic, reproductive, developmental, and neurotoxic effects of human exposure to isopropanol resulting from its manufacture, processing, disposal, and use and that testing is necessary to develop such data. EPA also finds that there are insufficient data to reasonably predict and compare the absorption, distribution, metabolism, and excretion of isopropanol in the body as a result of oral or inhalation exposure due to isopropanol's manufacture, processing, and use, and that an oral-inhalation comparative pharmacokinetic study of isopropanol is necessary to develop such data. EPA believes that the data generated from this testing will be relevant to a determination as to whether the manufacture, processing, disposal, and use of isopropanol does or does not present an unreasonable risk of injury to human health.

IV. Proposed Rule

A. Proposed Testing and Test Standards

The Agency is proposing that testing be conducted in accordance with specific test guidelines set forth in 40 CFR Parts 795 and 798. All persons conducting tests would conduct tests in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR 792).

On the basis of the findings presented in Unit III, the Agency is proposing that isopropanol be tested under TSCA section 4(a)(1)(B) for: (1) Subchronic inhalation toxicity, 40 CFR 798.2450; (2) oncogenicity by inhalation, 40 CFR 798.3300; (3) reproductive toxicity by gavage, 40 CFR 798.4700; (4) developmental toxicity by gavage, 40 CFR 798.4900; (5) neurotoxicity by inhalation, 40 CFR 798.6050, 798.6200, and 798.6400; (6) developmental neurotoxicity by gavage, 40 CFR 795.250; (7) genotoxicity, 40 CFR 798.5300, 798.5275, 798.5200, 798.5375, 798.5385, 798.5450, and 798.5460; and (8) pharmacokinetics, 40 CFR 795.231.

To assess the degree of toxicological activity of isopropanol upon various target organs, the Agency is proposing that isopropanol be tested for subchronic toxicity by inhalation, 40 CFR 798.2450. To assess the neurotoxic effects of repeated inhalation exposures to isopropanol, the Agency is proposing a subchronic neurobehavioral toxicity evaluation consisting of a neuropathologic evaluation of tissues perfused *in situ*, 40 CFR 798.6400, a functional observation battery, 40 CFR 798.6050, and measurement of motor activity, 40 CFR 798.6200. This proposed battery of neurotoxic evaluation may be combined with the subchronic test 40 CFR 798.2450. To assess the effects of acute neurotoxic inhalation exposures to isopropanol, the Agency is proposing an acute neurobehavioral toxicity evaluation consisting of a functional observations battery, 40 CFR 798.6050, and measurement of motor activity, 40 CFR 798.6200.

To fully assess the developmental neurotoxicity potential of isopropanol the Agency is proposing a developmental neurotoxicity evaluation, 40 CFR 795.250, based upon the TSCA section 4(a)(1)(B) finding. In addition, the Agency is concerned because other simple short-chain alcohols have shown developmental neurotoxic effects. Data on ethanol indicate that it is not only a known developmental toxicant but that it is also a developmental neurotoxicant (Ref. 49). Furthermore, *t*-butanol has been shown to produce developmental neurotoxic effects in animal species (Ref. 49).

Due to substantial exposure to isopropanol and a lack of data regarding potential chronic toxicity or oncogenic effects, the Agency believes that the oncogenicity part of the test program is justified without waiting for results of gene mutation tests. The Agency is thus proposing a 2-year inhalation bioassay in two species, 40 CFR 798.3300. EPA has often used a tiered approach to oncogenicity testing when making exposure findings under section 4(a)(1)(B). EPA and others have found shorter term tests, i.e. subchronic tests and mutagenicity screening tests, very useful for determining the priority of oncogenicity testing needs. However, EPA believes that in the case of isopropanol with its potential for substantial worker and consumer exposure, a 2-year bioassay is necessary to give the Agency the degree of assurance required for regulatory decision-making.

The Agency is proposing testing for reproductive effects, 40 CFR 798.4700, and developmental toxicity, 40 CFR 798.4900, because of the widespread human exposure and lack of data to reasonably predict these effects. EPA is proposing that these two tests be done by gavage.

To assess the potential for isopropanol to cause gene mutations, the Agency is proposing that testing be conducted for gene mutations in cells in culture, 40 CFR 798.5300. If the results of the cells in culture test are positive, a *Drosophila* sex-linked recessive lethal assay (SLRL) would be conducted using the method, 40 CFR 798.5275. A positive result in the SLRL assay would trigger a mouse specific locus test, 40 CFR 798.5200. If the cells in culture test is negative, no further testing would be required. If the SLRL assay is negative, the mouse specific locus test would not be required.

To assess the potential for isopropanol to cause chromosomal aberrations, the Agency is proposing that an *in vitro* cytogenetic assay be conducted on isopropanol, 40 CFR 798.5375. If the results of the *in vitro* test are positive, a dominant-lethal assay would be required, 40 CFR 798.5450. A positive result in the dominant-lethal assay would trigger a heritable translocation assay, 40 CFR 798.5460. If the *in vitro* cytogenetics assay is negative, the *in vivo* bone marrow assay, 40 CFR 798.5385, would be required. Should the *in vivo* bone marrow test results prove negative, no further chromosomal aberrations testing would be required. A positive result in the in *vivo* bone marrow test would trigger the dominant-lethal assay 40 CFR 798.5450. Again, if the dominant-lethal test is positive, a heritable translocation assay, 40 CFR 798.5460 would be conducted.

If the results from the dominant-lethal assay and/or the SLRL are positive, EPA would hold a public program review prior to requiring initiation of the heritable translocation and/or mouse specific locus testing. Public participation in this program review would be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting would be published in the **Federal Register**. Should the Agency determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or mouse specific locus assay is no longer warranted, the Agency would propose to repeal that test requirement and, after public comment, would issue a final amendment to rescind the requirement.

For a more detailed discussion concerning mutagenicity tiered testing and program review, see the final test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

EPA is proposing a tiered testing approach to evaluate whether isopropanol elicits heritable gene mutations. Positive results in SLRL would trigger the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL is necessary, when these lower-tier tests are positive, to establish

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definitively whether a substance is capable of eliciting heritable gene mutations. Under the approach proposed, EPA would consider the positive results in the lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to the Agency. If, after the review, EPA determined that the MVSL was still appropriate, EPA would notify the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA determined that the test was no longer necessary, EPA would propose to amend the rule to delete the test requirement.

Other test rules have included the requirement for the MVSL, including those for the C_9 aromatic hydrocarbon fraction (50 FR 20662), diethylenetriamine (50 FR 21398), and four fluoroalkenes (52 FR 21516). EPA based the requirement in those rules, in part, on information and assumptions about the cost of conducting the test and the availability of laboratories capable of performing the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is in the process of reexamining the MVSL requirement for all those chemical substances for which the MVSL has been required or proposed to be required. In particular EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA Good Laboratory Practice Standards at 40 CFR Part 792 and the cost of such testing. EPA is also reviewing possible alternative tests to the MVSL for which costs may be lower or laboratory availability may be more certain.

Once EPA completes its evaluation of this additional information, EPA will publish a notice in the **Federal Register** concerning the MVSL for isopropanol and other substances subject to proposed and final TSCA section 4 test rules. This notice will provide up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL together with their costs and laboratory availability. The notice will also address EPA's intentions about any changes to the MVSL requirements in the various test rules and will provide an opportunity for public comment. If, after this exercise, EPA concludes that the MVSL is appropriate for isopropanol, EPA will include the MVSL requirements with any appropriate modifications in the final rule.

To fully assess the potential toxicity of isopropanol for quantitative risk assessment purposes, the Agency is proposing metabolism and pharmacokinetics testing by the oral and inhalation routes of exposure. The Agency believes this testing of isopropanol is necessary to reduce uncertainties associated with the extrapolation of test data from high to low doses, from species to species, and from one route of exposure to another. Pharmacokinetic data in rats are being proposed to determine comparative, dose-dependent, oral and inhalation absorption, tissue distribution, bioaccumulation, metabolism, and excretion data. These data are needed for extrapolation purposes. The necessary extrapolations can only be made on the basis of metabolism and pharmacokinetics data obtained from studies performed by both routes of isopropanol administration. Repeated dose studies are needed in order to learn whether multiple exposures modify the metabolism and/or pharmacokinetics of isopropanol.

Although there is some human and rat data provided, these data are not adequate to support the required extrapolations. The Agency is proposing that pharmacokinetics studies be conducted for isopropanol as described in proposed 40 CFR 795.231.

The Agency is proposing that the TSCA health effects test guidelines be employed as the test standards for the purpose of the proposed tests for isopropanol. The TSCA test guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects for substances like isopropanol to which humans are expected to be exposed. The Agency's review of the TSCA Test Guidelines, which occurs on a yearly basis according to the process described at 47 FR 41857 (September 2, 1982), has found no reason to conclude that these guidelines need to be modified significantly.

B. Test Substance

EPA is proposing that isopropanol (CAS No. 67–63–0) of at least 99.9 percent purity be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to isopropanol itself. EPA believes that this grade of isopropanol is readily available for testing purposes.

C. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing ("process" is defined in section 3(10) of TSCA as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce). Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health of the manufacture, processing, disposal, and use of isopropanol, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process isopropanol, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. While EPA has not identified any byproduct manufacturers of isopropanol, such persons would be covered by the requirements of this test rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years, after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this proposed rule would individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. The Agency anticipates that the current manufacturers of isopropanol would form the reimbursement pool and sponsor the required testing. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790, Subpart E.

Manufacturers, including importers, subject to this rule would be required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such

letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, would not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers would pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency would publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for isopropanol.

Manufacturers and processors who are subject to the final test rule would comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

As required in 40 CFR 799.10, all data developed under the final rule would be reported in accordance with its TSCA Good Laboratory Practice (GLP) Standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors would be required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed tests for isopropanol in the following Table 2.

TABLE 2.—PROPOSED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR ISOPROPANOL

Test	Test standard (40 CFR citation)	Reporting deadline for final report[1]	Interim (6-month) reports required
Subchronic Toxicity:			
1. Subchronic inhalation toxicity	§ 798.2450	15	2
Chronic Toxicity:			
2. Oncogenicity	§ 798.3300	53	8
Specific Organ/Tissue Toxicity:			
3. Reproduction and fertility effects	§ 798.4700	24	4
4. Developmental toxicity	§ 798.4900	12	1
Gene Toxicity-Gene Mutations:			
5. Mammalian cells in culture	§ 798.5300	6	
6. *Drosophila* sex-linked recessive lethal	§ 798.5275	18	2
7. Mouse specific locus	§ 798.5200	[2] 48	7
Chromosomal Aberrations:			
8. *In vitro* cytogenetics	§ 798.5375	15	2
9. *In vivo* cytogenetics	§ 798.5385	15	2
10. Dominant lethal assay	§ 798.5450	24	3
11. Heritable translocation assay	§ 798.5460	[2] 24	3
Acute Neurotoxicity:			
12. Functional observation battery	§ 798.6050	15	2
13. Motor activity	§ 798.6200	15	2
Subchronic Neurotoxicity:			
14. Functional observation battery	§ 798.6050	15	2
15. Motor activity	§ 798.6200	15	2
16. Neuropathology	§ 798.6400	15	2
17. Developmental neurotoxicity screen	§ 795.250	15	2
Pharmacokinetics:			
18. Pharmacokinetics (oral and inhalation)	§ 795.231	15	2

[1] Number of months after the effective date of the final rule, except as indicated.

[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for isopropanol, the Agency has determiend that the required testing must be performed.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by the final rule, the Agency would publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a final section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of the final test rule, an exporter of isopropanol would report to EPA the first export or intended export of isopropanol to a particular country in a calendar year. EPA would notify the foreign country concerning the test rule for the chemical.

V. Issues for Comment

1. This proposed rule specifies TSCA test guidelines as the test standards for health effects testing of isopropanol. The Agency is soliciting comments as to whether these test guidelines are appropriate and applicable for the testing of isopropanol.

2. Also regarding the testing of isopropanol, the Agency requests comment on:

a. The adequacy of the proposed testing to characterize the health effects of isopropanol.

b. The reporting requirements for the specified health effects tests.

c. Any alternative approaches that should be considered.

3. The Agency requests comment on the route of exposure for the testing program. The Agency is proposing that most of the proposed tests be conducted by inhalation because it is the most relevant route for human exposure to isopropanol under TSCA. The reproductive effects test, developmental toxicity, and developmental neurotoxicity tests, however, are being

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proposed by gavage due to the technical difficulties in performing these tests by inhalation for isopropanol.

4. The Agency is proposing pharmacokinetics testing in the rat to determine comparative dose-dependent oral and inhalation absorption, tissue distribution, bioaccumulation, metabolism, and excretion data. The Agency believes that these data are useful for dose selection and for high to low dose extrapolations, route to route extrapolations, and animal species to human extrapolations.

The Agency requests comment on:

a. Selection of the rat for the pharmacokinetic studies

b. Need for pharamacokinetic data in the mouse for bioassay dose-selection and for risk assessment.

c. Need for and time-course of the elements required in the pharamacokinetic standard. Specifically, should absorption, distribution, and excretion data be completed prior to the subchronic studies? Should the metabolic fate studies run concurrently, or sequentially after the results of the subchronic toxicity studies are completed?

VI. Economic Analysis of the Proposed Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of isopropanol: (1) Price sensitivity of demand; (2) market expectations; (3) industry cost characteristics; and (4) industry structure. If these indications are negative, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact a more comprehensive and detailed analysis is conducted which more precisely examines the magnitude and distribution of the expected impact.

Total testing costs for the proposed testing of isopropanol are estimated to range from $2.7 to $3.8 million. In order to predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of 15 years, range from $291,000 to $414,000. Based on 1986 production of 1.3 billion lb, the unit test costs range from $0.00022 to $0.00032 per pound. These costs are equivalent to 0.097 to 0.139 percent of the current price of $0.23 per pound.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.14 percent of product prices in the upper bound case.

2. Demand for isopropanol does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis which is contained in the public record for this rule making for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (Ref. 12).

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82–140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing specified in this proposed rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 65) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP standards. However, the barriers faced by testing laboratories to gear up for conducting these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP standards.

VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period of Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554–1404 by May 2, 1988. No meeting will be held unless members of the public indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42097). This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices. The Agency will supplement this record with additional relevant information.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of isopropanol to the Priority List (51 FR 41417; November 14, 1986) and all comments on isopropanol received in response to that notice.

(b) Rules requiring TSCA sections 8 (a) and (d) reporting on isopropanol (51 FR 41320; November 14, 1986).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Interim Final Rule: Procedures Governing Testing Consent Agreements and Test Rules Under the Toxic Substances Control Act (51 FR 23706, June 30, 1986).

(2) Support documents consisting of:

(a) Technical support document for proposed rule.

(b) Economic impact analysis of proposed rule for isopropanol.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials including Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

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X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked "Attention Desk Officer for EPA." The final rule will respond to any OMB or public comments of the information collection requirements.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Testing Laboratories, Provisional testing, Recordkeeping and reporting requirement.

Dated: March 9, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Ch. I be amended as follows:

PART 795—[AMENDED]

1. In Part 795:

A. The authority citation for Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 795.231 to read as follows:

§ 795.231 Pharmacokinetics of isopropanol.

(a) *Purpose.* The purpose of these studies is to:

(1) Ascertain whether the pharmacokinetics and metabolism of isopropanol ("test substance") are similar after oral and inhalation administration.

(2) Determine bioavailability of the test substance after oral, dermal, and inhalation administration.

(3) Examine the effects of repeated dosing on the pharmacokinetics and metabolism of the test substance.

(b) *Definitions.* (1) "Bioavailability" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "Metabolism" means the study of the sum of the processes by which a particular substance is handled in the body, and includes absorption, tissue distribution, biotransformation, and excretion.

(3) "Percent absorption" means as 100 times the ratio between total excretion of radioactivity following oral or inhalation administration and total excretion of radioactivity following intravenous administration of test substance.

(4) "Pharmacokinetics" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for metabolic and toxicological studies.

(ii) *Test animals.* For pharmacokinetics testing, adult male and female rats (Fisher 344 or strain used for major toxicity testing), 7 to 9 weeks of age, shall be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival at the testing laboratory. The animals shall be selected at random for the testing groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each test group shall contain at least 4 animals of each sex for a total of at least 8 animals.

(iii) *Animal care.*—(A) Animal care and housing should be in accordance with DHEW Publication No. (NIH)–78–23, 1978, entitled "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals should be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 24±2 °C and humidity of 50±10 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use and shall be acclimated to the experimental environment for a mimimum of 48 hours prior to treatment.

(C) During the acclimatization period, the animals should be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.*

(2) *Administration of test substances*—(i) *Test substance.* The use of radioactive test substance is required for all studies. Ideally, the purity of both radioactive and nonradioactive test substance should be greater than 99 percent. The radioactive and nonradioactive substances shall be chromatographed separately and together to establish purity and identity. If the purity is less than 99 percent or if the chromatograms differ significantly, EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of test substance, in an appropriate vehicle, shall be administered intraveneously to four rats of each sex.

(B) *Oral.* Two doses of test substance shall be used in the oral portion of the study, a low dose and a high dose. The high dose should ideally induce some overt toxicity, such as weight loss. The low dose level should correspond to a no observed effect level. The oral dosing shall be accomplished by gavage or by administering the encapsulated test substance. If feasible, the same high and low doses should be used for oral and dermal studies.

(c) *Inhalation.*—Two concentrations of the test substance shall be used in this portion of the study, a low concentration and a high concentration. The high concentration should ideally induce some overt toxicity, while the low concentration should correspond to a no observed level. Inhalation treatment should be conducted using a "nose-cone" or "head only" apparatus to prevent ingestion of the test substance through "grooming".

(iii) *Dosing and sampling schedule.* After administration of the test substance, each rat shall be placed in a separate metabolic unit to facilitate collection of excreta. For the inhalation studies, excreta from the rats shall also be collected during the exposure periods. At the end of each collection period, the metabolic cages shall be cleaned to recover any excreta that might adhere to the cages. All studies, except the repeated dose study, shall be terminated at 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(A) *Intravenous study.* Group A shall be dosed once intravenously at the low dose of test substance.

(B) *Oral studies.* (*1*) Group B shall be dosed once *per os* with the low dose of the test substance.

(*2*) Group C shall be dosed once *per os* with the high dose of the test substance.

(C) *Inhalation studies.* A single 6-hour exposure period shall be used for each group.

(*1*) Group D shall be exposed to a mixture of the test substance in air at the low concentration.

(*2*) Group E shall be exposed to a mixture of test substance in air at the high concentration.

(D) *Repeated dosing study.* Group F shall receive a series of single daily oral low doses of nonradioactive test substance over a period of at least 7 consecutive days. Twenty-four hours after the last nonradioactive dose, a single oral low dose of radioactive test substance shall be administered. Following dosing with radioactive substance, the rats shall be placed in individual metabolic units as described above. The study shall be terminated 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(3) *Types of studies*—(i) *Pharmacokinetics studies.* Groups A through F shall be used to determine the kinetics of absorption of the test substance. In groups administered the substance by intravenous or oral routes, (i.e., Groups A, B, C, F), the concentration of radioactivity in blood and excreta shall be measured following administration. In groups administered the substance by the inhalation route (i.e., Groups D and E) the concentration of radioactivity in blood and excreta shall be measured at selected time intervals during and following the exposure period. In addition, in the groups administered the substance by inhalation (i.e., Groups D and E), the concentration of test substance in inspired air shall be measured at selected time intervals during the exposure period.

(ii) *Metabolism studies.* Groups A through F shall be used to determine the metabolism of the test substance. Excreta (urine, feces and expired air) shall be collected for identification and quantification of test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* For animals from each group shall be used for these purposes.

(A) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 minutes, 30 minutes, 1 hour, 2 hours, 8 hours, 24 hours, 48 hours, and 96 hours after initiation of dosing.

(B) *Extent of absorption.* The total quantities of radioactivity shall be determined for excreta collected daily for 7 days, or after at least 90 percent of

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the radioactivity has been recovered in the excreta.

(C) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately over appropriate time intervals. The collection of the intact test substance or its metabolites, including carbon dioxide, may be discontinued when less than one percent of the dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(D) *Tissue distribution.* At the termination of each study, the quantities of radioactivity in blood and in various tissues, including bone, brain, fat, gonads, heart, kidney, liver, lungs, muscle, skin, and residual carcass of each animal shall be determined.

(E) *Changes in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., biotransformation, extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low oral dose of test substance (Group B) shall be compared to the corresponding results obtained in rats receiving repeated oral doses of test substance (Group F).

(F) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the dose eliminated.

(G) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radioactive substances in excreta from the rats receiving a single oral dose (Group B and C) with those in the excreta from rats receiving repeated oral doses (Group F).

(ii) [Reserved]

(d) *Data and reporting.* The final test report shall include the following:

(1) *Presentation of results.* Numerical data shall be summarized in tabular form. Pharmacokinetics data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All quantitative results shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (40 CFR 792.185), the following specific information shall be reported:

(i) Species and strains of laboratory animals;

(ii) Chemical characterization of the test substance, including:

(A) For the radioactive test substance, information on the site(s) and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive substance, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to generate the data.

(iv) Percent absorption of the test substance after oral and inhalation exposures to rats.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood.

(vi) Tissue distribution reported as quality of radioactivity in blood and in various tissues, including bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, skin and in residual carcass of rats.

(vii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering single high and low doses to rats.

(viii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering repeated low doses to rats.

(ix) Pharmacokinetic model(s) developed from the experimental data.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.2325 to read as follows:

§ 799.2325 Isopropanol.

(a) *Identification of of test substance.* (1) Isopropanol (CAS No. 67–63–0) shall be tested in accordance with this section.

(2) Isopropanol of at least 99.9 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import or byproduct manufacture) or process isopropanol, other than as an impurity, from (44 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data or submit exemption applications as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with isopropanol in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA for the subchronic inhalation toxicity test at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(2) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted by inhalation with isopropanol in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(3) *Reproduction and fertility effects*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by gavage with isopropanol in accordance with § 798.4700 of this chapter.

(ii) *Reporting Requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 24 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals begining 6 months after the effective date of the final rule until submission of the final report.

(4) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted by gavage with isopropanol in accordance with § 798.4900 of this chapter.

(ii) *Reporting Requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) A progress report shall be submitted 6 months after the effective date of the final rule.

(5) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A gene mutation test in mammalian cells shall be conducted with isopropanol in accordance with § 798.5300 of this chapter.

(B)(*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be

conducted with isopropanol in accordance with § 798.5275 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), unless the results of the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(5)(i)(A) of this section are negative.

(*2*) For the purpose of this section the following provisions also apply:

(*i*) *Route of administration.* The route of administration shall be by exposure to isopropanol vapors.

(ii) [Reserved]

(C)(*1*) A mouse specific locus test shall be conducted with isopropanol by inhalation in accordance with § 798.5200 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), if the results of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(5)(i)(B) of this section are positive and if, after a public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section the following provisions also apply:

(*i*) *Dose levels.* The duration of exposure shall be for 6 hours per day.

(*ii*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(ii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final report submitted to EPA as follows:

(*1*) The gene mutation in mammalian cells assay within 6 months of the effective date of the final rule.

(*2*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 18 months of the effective date of the final rule.

(*3*) The mouse specific-locus test within 48 months of the date of EPA's notification of the test sponsor by certified letter or Federal Register notice under paragraph (c)(5)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *Drosophila* sex-linked recessive lethal test at 6-month intervals beginning 6 months after the effective date of the final rule until the submission of the final report.

(C) Progress reports shall be submitted to EPA for the mouse specific locus assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(6) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An *in vitro* cytogenetics test shall be conducted with isopropanol in accordance with § 798.5375 of this chapter.

(B)(*1*) An *in vivo* cytogenetics test shall be conducted with isopropanol in accordance with § 798.5385 of this chapter except for the provisions in paragraphs (d)(5) (iii) and (iv), if the *in vitro* test conducted pursuant to paragraph (c)(6)(i)(A) of this section is negative.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days with one sacrifice time or for 6 hours per day for 1 day with 3 sacrifice times.

(C)(*1*) A dominant lethal assay shall be conducted with isopropanol in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), unless both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (c)(6)(i) (A) and (B) of this section are negative.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) Route of administration. Animals shall be exposed to isopropanol by inhalation.

(*ii*) *Treatnemt schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(D)(*1*) A heritable translocation test shall be conducted with isopropanol in accordance with § 798.5460 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), of the results of the dominant lethal assay conducted pursuant to paragraph (c)(6)(i)(C) of this section are positive and if, after a public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) [Reserved]

(ii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The *in vitro* cytogenetics test within 15 months of the effective date of the final rule.

(*2*) The *in vivo* cytogenetics test within 15 months of the effective date of the final rule.

(*3*) The dominant lethal assay within 24 months of the effective date of the final rule.

(*4*) The heritable translocation test within 24 months of the date of EPA's notification of the test sponsor by certified letter or Federal Register notice under paragraph (c)(6)(i)(D) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *in vitro* cytogenetics, the *in vivo* cytogenetics, and the dominant lethal assays at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the applicable final report.

(C) Progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(7) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) A functional observation battery shall be conducted with isopropanol in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d) (5) and (6).

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(B)(*1*) A motor activity test shall be conducted with isopropanol in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(5) and (6).

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(C)(*1*) A neuropathology test shall be conducted with isopropanol in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(5) and (6).

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and fequency of exposure.* Animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(D) A developmental neurotoxicity test shall be conducted with isopropanol in accordance with § 795.250 of this chapter.

(ii) *Reporting requirements.* (A) The functional observation battery, motor activity, neuropathology, and developmental neurotoxicity tests shall be completed and the final reports submitted to EPA within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA for the functional observation battery, motor activity, neuropathology, and developmental neutoxicity tests at 6-month intervals beginning 6 months after the effective date of the final rules until submission of the applicable final report.

(8) *Pharmacokinetic studies*—(i) *Required testing.* An oral and inhalation pharmacokinetic test shall be conducted with isopropanol in accordance with § 795.231 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA for the pharmacokinetics test at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(d) *Effective dates.* (1) This test rule shall be effective 44 days after date of publication of the final rule in the Federal Register.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033)

[FR. Doc. 88-5721 Filed 3-15-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 431, 433, 434, 456, 462, 466, 473, 476, and 489

[HSQ-135-P]

Medicare and Medicaid Programs; Changes to Peer Review Organizations Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule sets forth several proposed changes to the regulations governing Peer Review Organizations. Some of these changes are the result of the passage of legislation (that is, the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted on April 7, 1986 and the Omnibus Budget Reconciliation Act of 1986, enacted on October 21, 1986). Other changes are of a technical nature and are intended to clarify and correct the regulations concerning issues that have arisen in the course of implementing the Peer Review Organization program.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 16, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-135-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-135-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Patricia Booth (301) 966-6859.

SUPPLEMENTARY INFORMATION:

I. Legislative History

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibiiities that previously had been assigned to Professional Standard Review Organizations and fiscal intermediaries. Those responsibilities include the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries regarding the inpatient hospital prospective payment system.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality and appropriateness of health care services. PROs use this information to develop and review profiles (practice patterns) that enable them to focus on suppliers of health care (for example, practitioners and hospitals) and specific aspects of Medicare payment (for example, the assignment of discharges to diagnosis-related groups (DRG) in the hospital prospective payment system) for the purpose of assessing the quality of care being furnished, and to recommend corrective action. PROs transmit their determinations to intermediaries responsible for making payments under the Act.

The PRO legislation contained several provisions affecting data collection and disclosure. Section 1160 of the Act contains the majority of a PRO's statutory responsibilities concerning the disclosure of information. This section recognizes both the need to protect the interests of patients, health care practitioners, and providers of health care in the confidentiality of their medical records and the need to disclose certain information.

On April 17, 1985, we published in the Federal Register several final rules that implemented the PRO program (50 FR 15312-15374). The PRO regulations are located in various parts of Title 42 of the CFR (that is, Parts 405, 462, 466, 473, 476, 489, and 1004). As the result of the passage of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) on April 7, 1986 and of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) on October 21, 1986, we are proposing several conforming changes to those regulations and, in addition, several technical changes, the need for which have become clear as we have gained experience with the PRO progam.

II. Proposed Changes

A. Assistants at Cataract Surgery

Section 9307(a) of Pub. L. 99-272 added a new exclusion of coverage provision that now appears as section 1862(a)(15) of the Act. That section now provides that payment for the services of an assistant at surgery in a cataract operation is not allowed unless, before the surgery is performed, the appropriate PRO (under Part B of Title XI of the Act), or in cases where a PRO does not exist, the appropriate carrier (under section 1842 of the Act) has approved the use of the assistant in the

surgical procedure because the patient has a complicating medical condition. This provision also applies to physician assistants when they are to be used as assistants at cataract surgical procedures.

Section 9338 of Pub. L. 99-509 enacted a new section 1861(s)(2)(K) of the Act to extend Medicare coverage to physician assistants who, under the supervision of a physician, provide services of the type that would be considered physician services if performed by a doctor of medicine or osteopathy. This provision applies only to States in which physician assistants are legally authorized to perform physician services. Therefore, whenever a surgeon proposes to use a physician assistant as an assistant at cataract surgery, that surgeon must seek approval from the PRO before the procedure is performed in order to receive payment from Medicare for the physician assistant.

To incorporate this provision into the regulations, we would add a new paragraph (n) to § 405.310, which deals with services excluded from coverage. The new paragraph would address coverage of services for assistants at surgery in a cataract operation. In addition, we would expand § 473.32(a)(1)(ii) in order to provide for a reconsideration of an initial denial determination relating to procedures for assistants at surgery in a cataract surgery that are to be performed by a facility other than a hospital.

We would also add a new § 466.71(a)(9) in order to include the review of services for assistants at surgery in a cataract operation in the scope of PRO review. In addition, we would add a conforming cross-reference in § 466.71(b), which deals with payment determinations.

B. More than one Member on an HMO Board

Section 9404 of Pub. L. 99-272 amended section 1153(b)(2)(A) of the Act to allow an organization to be a PRO even if it has more than one member who is on a health maintenance organization (HMO) board. To implement this provision of Pub. L. 99-272, we would add a new paragraph (b) to § 462.106 that would provide that, effective April 7, 1986 (the date of enactment of Pub. L. 99-272), an organization is eligible to be a PRO even though it has more than one member who is also serving on the board of directors of an HMO.

C. Consumer Representation

Section 9353(b) of Pub. L. 99-509 enacted a new section 1152(3) of the Act to require that PROs have at least one individual who serves on its governing board as a represenative of consumers. Because of variations in the size of governing boards, we are considering basing consumer representation on a sliding scale or requiring a minimum percentage requirement. The following is an example of the sliding scale we are considering:

PRO board members	Consumer representative requirements
Under 21	1
21 to 60	2
Over 60	3

A recent survey of 42 PROs under contract indicates that the size of the PRO boards surveyed ranges from 9 to 41 members. Thus, the new statutory requirement of one consumer representative in this sample of PROs would result in a range of consumer representation of eleven percent (one out of nine) to two and four tenths percent (one out of forty-one) to two and four tenths percent (one out of forty-one). In addition, section 9353(a)(2) of Pub. L. 99-509 provides competitive procurement procedures for organizations other than PROs. These procedures, as well as the awarding of new PRO contracts, could result in larger governing boards in the future. Therefore, we invite public comments on the idea of a fixed percentage requirement of consumer representation or providing a sliding scale requirement.

The term consumer representative is not defined in section 1152 of the Act. Therefore, we are proposing in § 462.101, which deals with eligibility requirements for a PRO contract, that the consumer representative be a Medicare beneficiary who is not currently a practicing physician; a retired physician; or a governing board member, officer, partner, an owner of more than five pervent interest, or a managing employee of a health care facility or association of health care facilities. We would exclude such a person from being eligible as a consumer representative because we believe people in these circumstances may have conflicting interests. We invite comments on what the role of the consumer representative should be (for example, to educate consumers as to PRO functions, to advise PROs on medical review policies, or to contribute to the identification of practitioners or hospitals for purposes of making PRO sanction recommendations to the Office of the Inspector General).

In conjunction with the proposed revision to § 462.101, we would make a conforming change to § 462.107 by adding a cross-reference to § 462.101(c).

D. Medicaid Quality Review of HMO Services

Section 9431 of Pub. L. 99-509 amended section 1902(a)(3) of the Act by adding a new paragraph (C) to require State Plans for Medicaid Assistance to provide for an annual independent, external review of the quality of HMO services. This review must be conducted by a PRO under Part B of Title XI of the Act, or by a private accreditation body. Section 1902(a)(3) of the Act was further amended by section 4113(b) of the Omnibus Budget Reconciliation Act of 1987. As amended, the provisions of section 1902(a)(30) of the Act permit a State to contract with an entity that meets the requirements determined by the Secretary as set forth in section 1152 of the Act. Thus, we permit States to contract with non-PRO organizations that have a contract to review HMO and competitive medical plan (CMP) services in accordance with section 1154(a)(4)(C) of the Act. The results of these reviews are to be made available to the State, and upon request, to HCFA. The initial external review must be conducted no later than July 1, 1988 and must cover payments for Medicaid made on or after July 1, 1987.

Section 9431(b)(1) of Pub. L. 99-509 and section 4113(b) of Pub. L. 100-203 also amended sections 1902(d) and 1903(a)(3)(C) of the Act. Section 1902(d) of the Act deems the quality review requirement of section 1902(a)(30) of the Act met if the State contracts with a PRO or with an entity that meets the requirements, as determined by the Secretary described in section 1152 of the Act to perform this quality review. Section 1903(a)(3)(C) of the Act permits 75 percent Federal financial participation for these quality review contract costs incurred by the PRO or by an entity that meets the requirements determined by the Secretary, as described in section 1152 of the Act. If a State contracts with a private accreditation body to do quality of care reviews, then the contract costs are matched at the regular 50 percent rate.

Currently, § 434.53 requires State Medicaid agencies to establish a system requiring periodic (at least once a year) medical audits in order to insure that each contractor of medical services furnishes quality and accessible health care to enrolled recipients of HMOs and other prepaid health plans. We believe that the periodic medical audit currently required by § 434.53 would be

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duplicative of the external quality review required by section 9431 of Pub. L. 99–509. Therefore, we are proposing to revise § 434.53 to eliminate the requirement for periodic medical audits and to add new requirements for external reviews.

We are proposing to define external reviews as reviews not conducted by the State or by an HMO. We are proposing to define a private accreditation body as the Accreditation Association for Ambulatory Health Care, the Joint Commission on Accreditation of Healthcare Organizations (formerly the Joint Commission on Accreditation of Hospitals), or other national accreditation body recognized by the Secretary for providing reasonable assurance that the requirements of the contract are met. We specifically invite comments on these proposed definitions.

In addition, we are proposing to make conforming changes to §§ 431.630(a), 433.15(b)(6)(i), 456.2(b)(2), and 456.650(c)(2) to reference the quality review functions described in section 1902(a)(30)(C) of the Act.

E. Reconsiderations and Appeals of Denials

Section 1866(f)(2)(A) of the Act authorizes the Secretary, based on information supplied by a PRO, to "deny payment (in whole or in part) under Part A for inpatient hospital services provided in connection with an unnecessary admission (or subsequent admission of the same individual) * * *." This authority is in addition to the utilization and quality review activities specified in Title XI of the Act.

Section 1862(d) of the Act entitles a provider of services to a hearing if it is dissatisfied with an initial denial determination made in accordance with section 1866(f)(2)(A) of the Act. Hearings and judicial review of PRO determinations made in accordance with Title XI of the Act are covered in 42 CFR Part 473 of the PRO regulations. However, there is no provision in Part 473 or in Part 405, Subpart G (Reconsiderations and Appeals under the Hospital Insurance Program) that addresses the rights of a provider of services to request a hearing concerning denial determinations made in accordance with section 1866(f)(2)(A) of the Act. Therefore, we are proposing to revise the PRO review functions to include denial determinations made in accordance with section 1866(f)(2) of the Act. We would revise § 466.83, which deals with initial denial determinations, to provide that a PRO's initial denial determination made in accordance with section 1866(f)(2)(A) of the Act is governed by Part 405, Subpart G.

In addition, we would revise the PRO reconsideration and appeal regulations to clarify that appeals (beyond the PRO's reconsideration) of an initial denial determination under section 1866(f)(2)(A) of the Act are governed by Part 405, Subpart G. Thus, we would revise § 473.14(c) of the PRO regulations to provide that after a PRO reconsideration, any further appeals would be governed by Subpart G of Part 405. We plan to make necessary changes to Part 405, Subpart G in a separate rulemaking document concerning revisions to Medicare appeal rights.

F. Other Changes

1. Section 1152 of the Act requires that a PRO be composed of, or have available to it, a substantial number of licensed doctors of medicine or osteopathy who are engaged in the practice of medicine or surgery in the PRO area and are representative of the practicing physicians in the area. Section 462.102 sets forth the specific requirements a PRO must meet in order to be considered a physician-sponsored organization. In particular, this section specifies criteria an organization must meet in order to meet the substantial number and representation requirements of section 1152 of the Act. As currently written, § 462.102 fails to make it clear that, in order to be considered a physician-sponsored organization the PRO must—

- Be composed of a substantial number of licensed doctors;
- Be composed of physicians who are representative of practicing physicians in the area; and
- Not be a health care facility or be affiliated with a health care facility or health care facility association.

Also, § 462.102 contains some incorrect references that we would correct in this rule. Section 462.102(c), which establishes requirements PROs must meet in order to be composed of physicians who are representative of practicing physicians in the area, incorrectly references § 462.102(a)(2). In § 462.102(d), the reference to § 462.102(a) incorrectly requires an organization to meet all of the criteria, described above, in order to receive bonus points during the contract evaluation process. Therefore, we are proposing to revise § 462.102 to clarify that the substantial number and representation requirements are two separate and distinct requirements each having their own criteria. The proposed clarification would also correct the incorrect cross-references described above.

2. We would also revise § 466.76 to require a PRO to discuss its administrative and review procedures with health care facilities and physicians in the area. Currently, § 466.76 requires PROs to discuss these procedures only with facilities. However, PROs review the care provided in facilities by physicians. PRO review determinations have an impact upon physicians as well as facilities. Therefore, we believe that it is important for PROs to discuss their administrative and review procedures with both the facility and physicians providing care in the facility.

3. Section 466.78(a) requires hospitals participating in Medicare to maintain a written agreement with a PRO operating in the area in which the hospital is located. Section 9353(e) of Pub. L. 99–509 amended sections 1866(a) and 1876(i) of the Act to require HMOs and CMPs with risk contracts, skilled nursing facilities (SNFs), and home health agencies (HHAs) seeking payment for services provided to Medicare beneficiaries to maintain a written agreement with a PRO operating in the area in which the organization, facility, or agency is located. The HMO and CMP agreements must be maintained with a PRO beginning April 1, 1987. However, these agreements need not be maintained if a non-PRO organization has a contract with Medicare to review HMOs and CMPs, as provided for in section 1154(a)(4)(C) of the Act. SNF and HHA agreements must be maintained with PROs beginning October 1, 1987. Thus, we are proposing to revise § 466.78(a) to require risk HMOs and CMPs and SNFs and HHAs to maintain agreements with PROs as required by section 9353(e) of Pub. L. 99–509. In addition, we would revise § 489.20 to require each SNF and HHA to maintain an agreement with a PRO as part of its basic commitment under its provider agreement with Medicare.

4. Section 466.78(b)(2) provides that health care facilities that submit Medicare claims must cooperate in the assumption and conduct of PRO reviews. The facility must provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information necessary for making its determinations. Section 466.78(b)(2) currently provides that when the PRO review is conducted offsite, the facility must photocopy and deliver to the PRO, without charge, all required information within 30 days of the request.

This policy was challenged by a group of Wisconsin hospitals that brought suit against the Wisconsin Peer Review

Organization (WiPRO) and the Secretary arguing that the "without charge" provision did not adequately take into account the hospitals' increased costs of offsite review. On October 2, 1986, a decision was handed down by the United States District Court for the Western District of Wisconsin in the case of *Burlington Memorial Hospital et al.* v. *Bowen*, 644 F. Supp. 1020 (W.D. Wis. 1986) in favor of the plaintiffs.

The Court found that HCFA's rulemaking record did not adequately address HCFA's contention that photocopying costs were already acknowledged as part of a hospital's payment under the Medicare prospective payment system. However, the court concurred with HCFA's position that the statute does not require that these costs be paid twice, that is, once under the prospective payment system and again under section 1866(a)(1)(F) of the Act, which requires that costs to hospitals relating to agreements with PROs be paid directly by the Secretary to the PRO on behalf of the hospital.

The thrust of the court's holding in the *Burlington Memorial Hospital* case was echoed in a similar suit, *American Hospital Association (AHA)* v. *Bowen*, No. 86–1487–A (E.D. Va. July 13, 1987) and *Beverly Hospital et al.* v. *Bowen*, No. 86–3079 (L.F.O.), (D.D.C. Oct. 20, 1987). In the *AHA* and *Beverly Hospital* cases, the courts expressed the expectation that the Department would promulgate regulations that would specifically accommodate the increased costs that providers incur in the context of offsite review.

In light of these court decisions, we are proposing to revise § 466.78(b)(2) and add a new paragraph (c) to that section. We would provide that HCFA will furnish PROs with funds to be used by PROs to pay hospitals under the prospective payment system directly for photocopying and mailing records for offsite review. These payments will be in addition to a hospital's per discharge payments under the prospective payment system. Hospitals not being paid under the prospective payment system would continue to be paid for photocopying costs under Medicare's principles of reasonable cost.

Under the authority of the revised § 466.78, PROs would negotiate with prospective payment hospitals in their area and, within established constraints, implement a payment process with each hospital that would determine the frequency of payments and the manner by which the PRO would verify aspects of the hospital's photocopying costs. By allowing PROs to negotiate separate payment processes for each hospital, we believe that PROs would be able to reflect more accurately the review methodology (that is, the onsite/offsite mix) used by the PRO.

In prospective payment hospitals, the supplemental payment for photocopying would be made at a national rate based on a fixed cost per page. The fixed cost per page would be determined based on the following assumptions:

- The hospital leases photocopy equipment and the lease costs are in the average price range of similar equipment leased by HCFA. We arrived at what we believe to be the average equipment rental costs by arraying the costs of a number of different machines that typify the spectrum of machines on the market ranging from small to very large.

While we recognize that there is a vast universe of photocopy machines that are available in the market, it would be prohibitively expensive to scientifically ascertain what possible numbers of each machine are being used among the nation's hospitals. It is for this reason that we chose to identify typical machines that could reasonably represent the spectrum of size and cost that would tend to be found nationally. For each machine, we determined not just the basic rental amount, but the costs as well for maintenance and overage (the cost per page over and above what is included in the basic rental agreement).

- Costs for supplies (paper, toner, developer) likewise reflect an average. Understanding that hospitals vary in size and purchasing power, costs for paper are based on bulk order economies that providers typically take advantage of, and not according to prices that might be paid at retail by individual consumers. For the current year, we are basing this element of the rate on a provider's projected average use of 150 cases of paper (for all of its photocopying needs) that can be purchased for slightly in excess of $30 per case.

In arriving at this amount, we tried to be mindful of those who are concerned that our reimbursement rate enable them to purchase paper that is of sufficient quality as not to threaten copier break downs. This amount is almost double the amount we initially considered when developing a formula for the reimbursement of photocopying costs.

Costs for toner and developer were figured on the basis of a machine producing 748,000 pages annually, an amount that we believe surely exceeds the amount experienced by smaller providers.

- We are assuming an average cost of $16,310 per year in salary for the operator of a photocopying machine. Once again, provider experience here may vary, but it is our judgment that the operation of these machines is not a complicated task regardless of the fact medical records are not always comprised of pages that are the same size or that are inserted in the file in a uniform manner. Certainly, training an individual to operate a photocopying machine (and to replace file documents back into a file) is not a particularly specialized or difficult undertaking, nor does it require great technical expertise on the part of the trainee.

It would not be at all unreasonable to expect that a person would earn the minimum wage for this task, but to provide some margin for those providers that are unable to hire staff at this level we are assuming a figure that in fact not only exceeds the minimum wage by about 225 percent, but represents the payment level for an experiencing midlevel secretary in the Federal government.

- We are ascribing fringe benefits of employees to be 27.9 percent of salaries, which is the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A–76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source.
- We are concluding that a typical photocopying machine copies 748,000 pages per year. This amount is based on copying documents at a rate of six pages per minute for every hour in an eight-hour day, five days a week, 52 weeks a year. We believe this calculation to be relatively generous since it is based entirely upon the hand feeding of documents into the photocopying machine for duplication. While certainly many five may require this kind of treatment, it is obvious that there are many photocopying tasks that may be accomplished through automatic feeds that greatly increase the number of pages that can be generated by a machine on an hourly basis, much less annually. Were we to figure in the proportion of documents that could be expected to be reproduced by automatic feeds, it would no doubt significantly reduce the resulting figures for the cost per page to the hospital. Since our proposal provides for reimbursement on

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a cost per page basis, hospitals are free to be overinclusive in photocopying requested records if this approach is more cost effective than a perhaps more time consuming culling of documents.

The fixed cost per page would be determined by dividing the cost of photocopying (equipment rental, supplies, salaries, and fringe benefits) by the number of pages. Under the current application of this methodology, the resulting cost per page is equivalent to $0.0498. While we would expect the methodology to remain constant, the numbers that underlie each assumption in the methodology may be subject to change over time as economic considerations dictate. If it is later determined that changes in the payment rate per page are warranted, announcement of the new rate would be published in the **Federal Register**.

We are proposing to reimburse postage costs as an item over and above the reimbursement we would pay for photocopying costs. Since, on the whole, overnight delivery is not generally a requirement of PROs, we are proposing in general, to pay the costs of mailing records based on actual costs up to the first class postage rate. Not only is first class mail delivered by employees of the United States Postal Service a reasonable means, in terms of speed and cost, to serve as a reimbursement basis, but the use of the first class rate clearly provides the kind of reasonable expectation of confidentiality that many providers wish to have when mailing copies of personally identified medical records through the mail. We would emphasize, however, that for PRO reviews of hospital denial notices, for which time is of the essense, we are proposing to pay the overnight mail rate. Modifications would be made to all PRO contracts specifying reimbursement rates and allocating additional funds for these expenses.

Payment for PRO review is governed by section 1866(a)(1)(F) of the Act, which requires hospitals to maintain an agreement with a PRO and provides that the "cost of such agreement to the hospital * * * shall be paid directly by the Secretary to such (PRO) on behalf of such hospital in accordance with a rate per review established by the Secretary * * *." The legal structure of this arrangement is, in our view, important to determining the extent of Medicare's financial responsibility. The Act contemplates a consultancy-type agreement between each hospital and its PRO that is paid for by Medicare. As is the case in any consultancy agreement, if a hospital were to contract with a peer review organization for a review of the hospital's cases, the hospital would, in addition to the requirement to pay the price for the review specified in the contract, incur certain obligations. In particular, hospital employees would be required to assist the contractor by answering questions, providing space in the facility as necessary, providing necessary documents for review, performing incidental photocopying, and so forth.

We believe that the statute, in requiring Medicare to pay for the costs of the "agreement" between the PRO and the hospital, rather than requiring Medicare to pay the "costs for PRO review" or some similar formulation, contemplated that Medicate would not separately reimburse for all possible effects of PRO review on a hospital's operations. Rather, like any other administrative or overhead expense, these incidental effects of PRO review would be paid for through the basic prospective payment system payment amounts.

Thus, when we first considered the issue of the reimbursement of hospital photocopying costs at the time the current regulations were published, it was our belief that these costs were already being met as part of the hospital's payment under the prospective payment system since those payments are, by definition, intended not only to reimburse a hospital for the provision of the medical care itself, but for all the associated costs that underlie a hospital's operations that can be attributed to the Medicare program. Since a hospital's administrative expenses (for example, photocopying and related administrative costs) were already figured in the provider's base year calculations, we perceived no need to make additional payments to cover this item of expense. Moreover, hospitals' experience under the Professional Standard Review Organization (PSRO) program (that is, the quality review program which was superseded by the PRO program) expressly included record gathering and monitoring and a certain amount of photocopying responsibilities. These costs served as part of the basis for a provider's base year reporting and, hence, were represented both in the provider's hospital-specific rate and, ultimately, in the national DRG rates.

It has become clear to us, however, that, since the inception of the PRO program, there has been some change in the manner in which some PROs have performed their responsibilities, namely, the appearance of offsite review. Unlike the nature of the PRO process as it was implemented at the outset, and unlike the opreation of the largely delegated PSRO program before it, offsite review has become to some degree prevalent in a manner that was not anticipated at the time of the issuance of the current regulations. Specifically, for those hospitals that have experienced increased offsite review, there is little question that these providers have had photocopying tasks that they did not have previously. It is the recognition of these additional costs that has made us recognize a need to revise the photocopying regulations.

In determining that we should now pay certain costs of photocopying related to PRO review, we do not concede that we are necessarily required to do so under the law. The prospective payment system is designed to cover the general category of administrative costs without regard to particular increased or decreased burdens that particular hospitals might incur because of changes in Medicare program requirements, other legal requirements, or other external forces that may impose greater or lesser administrative burdens on a hospital. Based on the court decisions reviewing the photocopying situation, however, we have concluded that the cost of photocopying for some hospitals has become large enough that it could reasonably be the object of separate reimbursement.

The recognition of increased costs, however, does not mean that a revised regulation must accommodate every conceivable element of cost that may be associated with the photocopying process, and it is for this reason that we are limiting our proposed reimbursement increase to those costs associated with the photocopying of medical records that have not previously been taken into account. Specifically, the added costs of items such as equipment, supplies, and staff are those that can be clearly traced to the advent of offsite review. What are not so easily traced to this element of a hospital's operations are those incidental or indirect expenses that are not necessarily attributable to offsite review.

For example, we considered whether to include in the proposed methodology a factor that would reflect the time spent by a hospital in retrieving medical records, carrying them to the photocopying machine, making sure that the records were correctly reinserted into the file, and carrying them back for re-insertion into the permanent file. We concluded that these activities were of such an inconsequential nature that they could not reasonably be undertaken in anticipation of Federal reimbursement.

Whether or not this is the case, it is clear to us that this type of administrative activity is precisely the sort that has been recognized as part of a hospital's prospective payment system payments for which offsite review has had an imperceptible, if any, impact. Indeed, similar, if not identical, costs were necessarily incurred by hospitals in the conduct of review under the PSRO system, and these indirect costs of PSRO review were part of the hospitals' base year reporting and, thus, were reflected in their current rates.

Specifically, the retrieval of files, their conveyance to a copying facility, and their orderly return to a main file room are activities that very much describe the basic outlines of what all hospitals faced when operating under the PSRO system. Certainly, whenever denial notices needed to be sent, denial reconsiderations processed, sanction reports issued, medical care evaluation studies conducted, or a hospital's capability to perform delegated review monitored, files necessarily had to be retrieved, examined, considered for copying, and returned to their proper place. Each of these activities alone, and clearly all of them in combination, posed in varying degrees the kind of significant use of administrative staff that gave rise to measurable costs that were charged to the Medicare program (and have been carried forward in the prospective payment system payment rates). For us to conclude now that offsite review has in fact created a whole new category of indirect costs never previously accommodated, would be to ignore more than 15 years of program experience.

We also considered whether to include in the calculation of costs a component for space costs attributable for off site review. We rejected this possibility, however, for two reasons. First, the prospective payment system already encompasses a capital cost pass-through that is designed specifically to reimburse providers for their allocable costs represented by that share of the hospital's physical plant investment whose use may be apportioned to their Medicare participation. This would expressly include space set aside by a hospital for photocopying purposes. Second, for those hospitals that now experience only offsite review, less space need now be devoted to PRO activity since, by definition, it is taking place outside the facility.

There are two other factors that lead us to believe that the approach we are proposing is a reasonable one. First, the methodology focuses on the reimbursement of a hospital's average costs notwithstanding the fact that whatever added costs that a provider might incur as a result of offsite review are marginal in nature. Specifically, hospitals already had photocopying equipment and supplies, and personnel to operate the equipment long before they had incremental responsibilities brought about by offsite review. Thus, while we could have limited our cost calculations only to accommodate a hospital's marginal costs, we have chosen instead, by reimbursing PRO photocopying expenses on an average cost basis, to credit a hospital as if offsite review were creating some of these basic administrative costs for the first time. Second, while there have been isolated examples (such as Wisconsin) where offsite review became the norm rather than the exception, the fact remains that onsite review still remains by far the most prevalent practice nationwide. Our contract negotiations with PROs were conducted to ensure that at least 80 percent of reviews were conducted onsite. Currently, only about 12 percent are to be performed offsite. Moreover, it is our intention to continue to encourage PROs to conduct their responsibilities onsite to the extent that they can do so within budgetary constraints.

We fully understand that the cost experience of each provider is different in varying degrees from that of its peers. In the context of this regulation, for example, there may be hospitals that do not employ photocopy machine operators and rely instead on higher salaried administrative personnel to undertake the copying responsibilities that are necessitated by peer review. These providers may sustain greater per unit costs than their larger counterparts that have large-scale document reproduction capacities that will be wholly unaffected not just by offsite review, but by peer review itself. Nevertheless, we do not agree with those who contend that Medicare should pay the actual photocopying costs of each hospital, regardless of amount.

In the first place, we believe that reimbursement of each hospital's individually determined photocopying costs would be inconsistent with the basic statutory design. In the case of prospective payment system hospitals, we no longer have the authority under section 1861 of the Act to reimburse a hospital's costs. Authority to pay for photocopying costs must be found in section 1866(a)(1)(F) of the Act, which provides that payment is to be based on a "rate per review established by the Secretary." This language plainly contemplates the establishment of fixed payment amounts, rather than consideration of the costs of individual hospitals. Moreover, in light of general abolition of cost reimbursement, it would be unreasonable to re-establish a cost allocation methodology and associated auditing to ascertain the amount of photocopying costs associated with PRO review, an amount that is minuscule in relation to the total costs of any individual hospital.

It is for these reasons that we believe that our approach in proposing to revise the photocopying regulation would satisfy the concerns expressed by the courts in the *Burlington* and *AHA* cases. Both courts expressed a desire to see a Departmental policy that recognized the impact of offsite review on hospital costs, while recognizing the statute's preclusion of reimbursing hospitals twice for the same cost. We believe that the balance that we have tried to strike in this proposed rule is designed to meet these twin objectives.

We are proposing to make the change in the regulation governing the reimbursement of photocopying costs effective April 1, 1987. The April 1 date signifies the date upon which HCFA determined that an adjustment to the current rule was justified in light of what was essentially a change in circumstances surrounding the implementation of the PRO program, namely the increase in the use of offsite review which may have increased costs of a provider in a way that was not accounted for in the prospective payment system.

We do not believe that any added retroactivity would be justified. The fact remains that at the time that § 466.78 was promulgated, the rule reflected the best information available to the Department in terms of what responsibilities providers could reasonably expect to have to PROs. At that time, we determined that a provider's direct and indirect costs of photocopying were already reflected in its prospective payment system payment rate since these costs were included in the provider's base year calculations.

As we have discussed above, photocopying costs were clearly not a new responsibility arising out of the PRO program since these obligations had been present for some time under the predecessor PSRO program. Providers were routinely being reimbursed for these costs through application of reasonable cost principles and there was no reason to believe that a provider's cost experience would be any different under the new system. Certainly, there was no basis for concluding that Congress intended for

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providers to be reimbursed twice for these costs. Yet, this would have been precisely the result if we had chosen to pay for photocopying costs through the indirect cost element of the prospective payment system and through a specific pass-through in the form of a supplemental photocopying payment discretely aimed at these particular costs.

Thus, given the limited use of offsite review by PROs in the early stages of the program, we did not believe that there was any legal basis for reimbursing these costs in any different manner than the one we adopted. However, recognizing that the complexion of the program was changing to reflect a greater use of offsite review (and the likelihood of its consequent upward effect on a provider's direct costs), we have concluded that, for periods after April 1, 1987, an adjustment to a provider's reimbursement is warranted.

Pursuant to the Court's decision in the *Beverly Hospital* case, we have examined the mechanism that is available for providers that desire to challenge the validity of this regulation (including its April 1, 1987 effective date) in order to claim additional amounts of reimbursement. Any such challenges, as well as any challenge relating to reimbursement for photocopying costs relating to offsite review for cost reporting periods ending before the effective date of this regulation, must be expressed in the dorm of a claim for additional payment for inpatient costs on the hospital's cost report submitted to the intermediary and subject to review pursuant to the provisions of section 1878 of the Act and Subpart R of Part 405.

5. Section 466.78(b)(4) requires hospitals to provide PROs with copies of its notices of noncoverage issued under § 412.42(c). PRO contracts for 1986 through 1988 require PROs to review hospital notices of noncoverage issued under §§ 405.334 and 412.42(c). We believe that in order to perform this review effectively and to protect Medicare beneficiaries from being inappropriately charged by hospitals, PROs must receive copies of the notices of noncoverage. Therefore, we would revise § 466.78(b)(4) to require hospitals to provide PROs copies of notices of noncoverage that are issued under §§ 405.334 and 412.42(c).

6. Currently, § 466.93 requires a PRO physician to discuss a proposed denial with both the attending physician and the hospital. We would revise § 466.93 to allow other hospital staff (that is, nonphysicians) to comment on a proposed denial and to permit PRO nonphysician reviewers to discuss the proposed denial. We are proposing this change in order to conform the regulations to current program policy.

Section I.M. 2003.1 of the PRO manual, published in March 1985, permits hospitals to use nonphysician personnel to comment on proposed denials and also allows PROs to use nonphysician personnel to receive and act on hospitals comments. The purpose of this provision is to afford a hospital peer to peer discussions regarding proposed denials. This means that, if a hospital chooses to use a physician to comment on proposed denials, the PRO must also provide a physician for the discussion. If the hospital chooses to utilize nonphysician personnel, the PRO can also use nonphysician personnel for the discussion.

7. Section 466.94 requires a PRO to provide written notice of all intial denials to the intermediary or carrier. We have found this requirement to be administratively costly. Thus, we are proposing to revise § 466.94 to require that the only time the PRO would be required to notify the intermediary or carrier of a denial determination would be when the denial determination required an action on the part of the intermediary or carrier. It is our belief that this proposed change will both reduce PRO paperwork requirements and reduce the cost of processing claims.

8. The concept of PRO peer review requires that, whenever possible, the PRO must use physician reviewers who practice in a setting similar to the setting of the physician whose services are under review. For example, a physician reviewer who practices in a rural setting would be involved in the review of services provided in the rural setting. Likewise, physician reviewers who practice in an urban setting would be involved in the review of care rendered in an urban setting. We would revise § 466.98 in order to clarify that the PRO, in making initial denial determinations, must use physician reviewers who practice in a setting similar to the setting of the physician whose services are under review. However, we would provide an exception to this requirement if the PRO determines that peers are not available.

9. Section 466.100 describes PRO's use of norms, criteria, and standards as defined in § 466.1. We are proposing to revise § 466.100(a) by eliminating the requirement that PROs use national admission norms to select procedures for preadmission review. In practice, PROs do not generally select preadmission procedures through the use of national admission norms.

We would also revise § 466.100(b) to clarify the purpose and use of criteria. We are adding this explanation because we believe there is widespread misunderstanding on the part of the general public regarding how the criteria are applied. We believe it important that our regulations clearly explain that the criteria are used as screening tools for the purpose of identifying questionable cases for referrals to physician reviewers.

Currently, PROs use criteria for utilization and quality of care reviews. We are proposing to revise § 466.100(b) to include quality of care in the list of review activities for which PROs must use criteria. This change would conform the regulations to current practice. We would also revise paragraph (d) of § 466.100 in order to delete the reference to standards. PROs do not apply standards in the conduct of review and do not routinely develop written standards or variant standards apart from those included in review criteria. The standards necessary for conducting quality review studies would be described in paragraph (c) of § 466.100.

10. Section 473.15 provides that a provider or practitioner dissatisfied with a change to the diagnostic or procedural coding information made by a PRO as the result of DRG validation under section 1866(a)(1)(F) of the Act is entitled to a review of that change if the change caused an assignment of a different DRG and resulted in a lower payment. Thus, the PRO contracts for the years 1984 through 1986 permitted providers and practitioners to request a subsequent review of DRG changes that resulted in a lower-weighted DRG. this subsequent review was permitted because a change in a DRG assignment to a lower-weighted DRG results in reduced payments to providers. However, all changes in DRG assignments (whether to a higher-or lower-weighted DRG) are included in our error computation statistics, and providers with high error computations are placed on intensified review. Since providers can be adversely affected by DRG changes regardless of whether they are to a higher-or-lower-weighted DRG, we believe that it is appropriate to revise § 473.15 to provide for a subsequent review of all DRG changes.

In addition, by including in § 473.15(b) a general cross-reference to "§§ 473.18 through 473.36," we inadvertently implied that beneficiaries may request review of DRG coding changes resulting from DRG validation activities by PROs because that general cross-reference includes references to §§ 473.18(a) and 473.32(a). Beneficiaries are not entitled to a review of changes relating to diagnostic or procedural coding resulting from DRG validation. Thus, we would revise § 473.15(b) to remove the incorrect references to §§ 473.18(a) and 473.32(a).

Also in § 473.18, which lists the locations to which beneficiaries may submit requests for reconsiderations, we are proposing to delete paragraph (a)(3), which references the Railroad Retirement Board Office (if the beneficiary is a railroad retiree) as one of the locations at which a reconsideration request may be filed. There have been several administrative problems in getting these requests forwarded to the appropriate PRO. Thus, to alleviate these problems, we have decided to eliminate this location.

11. The PRO Interim Manual Transmittal (section I.M. 2002.1) requires that a PRO reconsideration reviewer be a board-certified specialist or a board-eligible specialist (that is, eligible to take the boards) in the field under review. However, § 473.28, which specifies the qualifications of a reconsideration reviewer, requires only that the reviewer be a specialist in the type of service under review. In order to conform the regulations to current policy and program guidelines, we are proposing to revise § 473.28 to require that the review specialist be board-certified or board-eligible in the type of services under review.

12. Section 9353(d)(1) of Pub. L. 99–509 amended section 1160(b)(1) of the Act to require PROs to share information with State licensing or certification agencies or with national accreditation bodies that request confidential information relating to a specific case or possible pattern of substandard care to the extent that the information is required by the requesting agency or body to carry out official functions. As provided in section 9353(d)(2) of Pub. L. 99–509, the provisions contained in section 9353(d)(1) of Pub. L. 99–509 are applicable to requests for data and information made on or after April 21, 1987. Thus, we are proposing to revise § 476.133 to include a requirement that a PRO must disclose to Federal and State agencies, licensing, certification, and national accreditation bodies acting in accordance with section 1865 of the Act information that displays practice or performance patterns of a practitioner or provider that relate to possible patterns of substandard care. (Under section 1865 of the Act, a provider may be deemed to meet certification requirements for participation in Medicare if the provider is accredited as a hospital by the Joint Commission on Accreditation of Healthcare Organizations.) Currently, PROs are only required to disclose this information to licensing and certification bodies, not accreditation bodies.

13. Section 1160(a)(2) of the Act prohibits disclosure of confidential PRO information except as provided for in regulations in order to ensure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care. Currently, regulations set forth in Part 476 do not provide for the release of confidential PRO information to Veteran's Administration (VA) hospitals or to the PRO's VA counterpart (VA MEDIPRO). However, occasionally, a PRO's review of services provided to Medicare beneficiaries in civilian hospitals indicate that substandard care may have been provided in a VA hospital. Under our current regulations, this information cannot be provided to the VA and as a result, cases or patterns of substandard care may go uncorrected.

Section 476.138 provides for the release of confidential PRO information for specified purposes, which includes disclosure to licensing and certification bodies, disclosure to the courts, and disclosure to State and local public health officials when necessary to protect the public health. We are proposing to revise § 476.138 to permit PROs to disclose confidential information regarding practice or performance patterns of a VA hospital or practitioner in a VA hospital to their VA counterpart (VA MEDIPRO). However, this information would be releasable only to the extent that the information is necessary in order to carry out a function within the jurisdiction of the VA MEDIPRO.

In a final report issued by the Office of the Inspector General (OIG) entitled "Medicaid Licensure and Discipline: An Overview, Report No. — P-01-8600064," dated June 6, 1986, the OIG recommended that § 416.138 of our regulations be revised to require PROs to disclose to licensing and certification bodies confidential information involving patterns of care. The OIG has informed us that, at a minimum, "confidential information involving patterns of care" would include a copy of the PRO sanction report that was forwarded to the OIG (see § 1004.70).

Currently, PROs are required to disclose confidential information to licensing and certification bodies only upon request. (PROs may currently disclose this information without a request.) We request public comment as to whether additional information releases to licensing and certification bodies should be mandatory or whether each body should work directly with its PRO to request additional confidential information.

We would also provide in § 476.138 that a PRO may without a request, and must upon request, disclose confidential information relating to a specific case or to a possible pattern of substandard care to State or Federal licensing bodies responsible for the professional licensure of practitioners or institutions and to national accreditation bodies acting in accordance with section 1865 of the Act. Confidential information, including PRO medical necessity and quality of care determinations must be disclosed by the PRO but only to the extent that this confidential information is required by an agency to carry out a function within the jurisdiction of the agency in accordance with Federal or State law. We are proposing to require PROs to disclose, with or without a request, a copy of a PRO sanction report forwarded to OIG in accordance with § 1004.70 to any State of Federal licensing body or national accreditation body if the report concerns practitioners or institutions under the jurisdiction of that body.

14. Currently, under § 476.140, PROs must disclose quality review study information onsite (that is, on the PRO's premises) and may disclose quality review study information offsite (that is, away from the PROs premises) to institutions and practitioners so long as the information disclosed is limited to that institution or practitioner. Because we believe that practitioners and institutions whose practice patterns need to be corrected should be informed as quickly as possible of quality review study information in order to expedite corrective action, we would revise § 476.140 to require PROs to disclose quality review information offsite if requested.

III. Regulatory Impact Statement

Executive Order (E.O.) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA.

Since PROs are our contractors, they are not among the types of entities to which the RFA is primarily intended to apply. Nonetheless, when a rule would have a substantial effect on them, it is our practice to treat all PROs as small entities.

We consider hospitals subject to the prospective payment system to be small entities. We are proposing to pay for hospitals' photocopying and mailing costs of records for offsite review. We anticipate that these costs would result in less than $10 million yearly in hospital revenue.

The other changes described in this proposed rule would merely conform the regulations to the law or consist of technical changes that we would make to the regulations to encompass necessary changes as a result of program experience. Therefore, we have determined that a regulatory impact analysis is not required. Also, we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. We have, therefore, not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Paperwork Reduction Act

Sections 466.78 (a) and (b) and 466.94 (a) and (d) of this proposed rule contain revisions to information collection requirements that have been approved under control numbers 0938–0445 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Sections 434.53(b), 476.138(a), 476.140(a) and 489.20(f) of this proposed rule contain new or revised information collection requirements that are subject to approval by OMB. We will submit an information collection request to OMB for approval of these requirements as required by 44 U.S.C. 3507. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs at the following address: Office of Information and Regulatory Affairs, OMB, Room 3208 New Executive Office Building, Washington, DC 20503, Attn: HCFA Desk Officer.

B. Public Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them all individually. However, in preparing a final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs-health, Health Maintenance Organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 462

Grant programs-health, Health care, Health professions, Peer review organizations.

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer review organizations.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer review organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

42 CFR Part 489

Health facilities, Medicare.

Health Care Financing Administration, Department of Health, and Human Services

42 CFR Chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, Subpart C is amended as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

2. In § 405.310, the introductory text is republished and a new paragraph (n) is added to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(n) Services of assistants at surgery during cataract operations unless the use of such an assistant is authorized, before the surgery is performed, by the appropriate PRO (under Part B of title XI of the Act) or by the appropriate carrier under section 1842 of the Act because the use of an assistant is necessary based on the existence of a complicating medical condition.

B. Part 431, Subpart M is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

Subpart M—Relations with Other Agencies

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 431.630, paragraph (a) is revised to read as follows:

§ 431.630 Coordination of Medicaid with PROs.

(a) The State plan may provide for the review of the Medicaid services (including quality review functions described in section 1902(a)(30(C) of the Act) through a contract with a PRO designated under Part 462 of this chapter. Medicaid requirements for medical and utilization review are deemed to be met for those services or providers subject to review under the contract.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

C. Part 433, Subpart A is amended as follows:

Subpart A—Federal Matching Provisions

1. The authority citation for Part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 433.15, paragraph (b)(6)(i) is revised to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) *Activities and rates.*

* * * * *

(6)(i) Funds expended for the performance of medical, utilization, and quality reviews by a PRO or an entity that meets the requirements of section 1152 of the Act as determined by the Secretary under a contract entered into under section 1902(d) of the Act: 75 percent (section 1903(a)(3)(C) of the Act).

* * * * *

PART 434—CONTRACTS

D. Part 434, Subpart D is amended as follows:

Subpart D—Contracts with HMOs and PHPs: Medicaid Agency Responsibilities

1. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 434.53 is revised to read as follows:

§ 434.53 Periodic medical audits.

(a) The agency must provide for an annual review of the quality of services furnished to enrolled recipients in each HMO that provides services under section 1903(m) of the Act. The review must apply to Medicaid payments made for calendar quarters beginning on or after July 1, 1987. The agency must provide for an independent, external review (that is, a review that is not conducted by the State or an HMO) through a contract with—

(1) A PRO or an entity that meets the requirements of section 1152 of the Act, as determined by the Secretary (that is, organizations that have a contract to review HMO and CMP services as provided in accordance with section 1154(a)(4)(C) of the Act); or

(2) A private accreditation body such as the Accreditation Association for Ambulatory Health Care, the Joint Commission on Accreditation of Healthcare Organizations, or other national accreditation body recognized by the Secretary as providing reasonable assurance that the requirements of paragraph (b) of this section are met.

(b) The contract referred to in paragraph (a) of this section must—

(1) Meet the general requirements for all contracts as described in § 434.6(a);

(2) Include a monitoring and evaluation plan in order for the State to ensure satisfactory contractor performance;

(3) Ensure that the review activities performed by the contractor are not inconsistent with PRO review activities for medicare services, and include a description of whether and to what extent contractor determinations are considered conclusive for Medicaid payment purposes; and

(4) Provide that the results of the review be made available to the State, and upon request to Federal officials as permitted under section 1902(a)(30)(C) of the Act.

E. Part 456 is amended as follows:

PART 456—UTILIZATION CONTROL

1. The authority citation for Part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart A—General Provisions

2. In Subpart A, § 456.2, the introductory text of paragraph (b) and paragraph (b)(2) are revised to read as follows:

§ 456.2 State plan requirements.

* * * * *

(b) These requirements may be met by the agency by—

* * * * *

(2) Deeming of medical and utilization review requirements if the agency contracts with a PRO or an entity that meets the requirements of section 1152 of the Act, as determined by the Secretary to perform that review, (including quality review, functions described in section 1902(a)(30)(C) of the Act) which in the case of inpatient acute care review will also serve as the initial determination for PRO medical necessity and appropriateness review for patients who are dually entitled to benefits under Medicare and Medicaid.

* * * * *

3. Subpart J is amended to read as follows:

Subpart J—Penalty for Failure to Make a Satisfactory Showing of an Effective Institutional Utilization Control Program

a. The authority citation for Subpart J continues to read as follows:

Authority: Sec. 1102 and 1903(g) of the Social Security Act (42 U.S.C. 1302 and 1396b(g)).

§ 456.650 [Amended]

b. In § 456.650, the introductory text of paragraph (c) is republished and paragraph (c)(2) is revised to read as follows:

* * * * *

(c) *Scope.*

The reductions required by this subpart do not apply to—

* * * * *

(2) Facilities in which a PRO or an entity that meets the requirements of section 1152 of the Act, as determined by the Secretary is performing medical and utilization reviews (including quality review functions described in section 1902(a)(30)(C) of the Act) under contract with the Medicaid agency in accordance with § 431.630 of this chapter.

F. Part 462 is amended as follows:

PART 462—PEER REVIEW ORGANIZATIONS

1. The authority citation for Part 462 continues to read as follows:

Authority: Secs. 1102, 1152, and 1153 of the Social Security Act (42 U.S.C. 1302, 1320c–1 and 1320–2).

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Subpart C—Utilization and Quality Control Peer Review Organizations

2. Section 462.101 is revised to read as follows:

§ 462.101 Eligibility requirements for PRO contracts.

In order to be eligible for a PRO contract, an organization must—

(a) Be either a physician-sponsored organization as described in § 462.102; or a physician-access organization as described in § 462.103;

(b) Demonstrate its ability to perform review functions as described in § 462.104; and

(c) Have at least one consumer representative on its governing board. The consumer representative must be a Medicare beneficiary who is not—

(1) A practicing or retired physician; or

(2) A current governing board member, officer, partner, part owner holding five percent or more ownership, or a managing employee of a health care facility or association of health care facilities.

3. Section 462.102 is revised to read as follows:

§ 462.102 Eligibility of physician-sponsored organizations.

(a) *Eligibility.* To be eligible for designation as a physician-sponsored PRO, an organization must—

(1) Be composed of a substantial number of licensed doctors of medicine and osteopathy who are practicing medicine in the review area;

(2) Be composed of physicians who are representative of the physicians practicing in the area; and

(3) Not be a health care facility, health care facility association, or health care facility affiliate, as specified in § 462.105.

(b) *Substantial number requirement.* In order to meet the requirements of paragraph (a)(1) of this section, an organization must state and have documentation in its files showing that it is composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area.

(c) *Representation requirement.* In order to meet the requirements of paragraph (a)(2) of this section, an organization must—

(1) State and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or

(2) If the organization is not composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its contract proposal, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

(d) *Evaluation points.* Organizations that meet the requirements in paragraphs (a) (1) and (2) of this section will receive, during the contract evaluation process, a set number of bonus points.

4. The content of § 462.106 is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 462.106 Prohibition against contracting with payor organizations.

* * * * *

(b) Effective April 7, 1986, an organization is eligible to be a PRO even though it has more than one member who is also serving on the Board of Directors of an HMO.

* * * * *

5. In § 462.107, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 462.107 PRO contract award.

HFCA, in awarding PRO contracts, will take the following actions—

(a) Identify from among all proposals submitted in response to an RFP for a given PRO area all proposals submitted by organizations that meet the requirements of § 462.101(c) and either § 462.102 or § 462.103;

* * * * *

G. Part 466, Subpart C is amended as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c-3 and 1395hh).

Subpart C—Review Responsibilities of Utilization And Quality Control Peer Review Organizations (PROs)

2. In § 466.71, the introductory text of paragraph (a) is republished; paragraphs (a)(7) and (a)(8) are revised; paragraph (a)(9) is added; and a new paragraph (b) is revised to read as follows:

§ 466.71 PRO review requirements.

(a) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

* * * * *

(7) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.82 and 412.84 of this chapter.

(8) Whether a hospital has misrepresented admission or discharge information or has taken an action that results in—

(i) The unnecessary admission of an individual entitled to benefits under Part A;

(ii) Unnecessary multiple admissions of an individual; or

(iii) Other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries; and

(9) Whether payments should be made for the services of assistants at cataract surgery because the patient has a complicating medical condition.

(b) *Payment determinations.* On the basis of the review specified under paragraphs (a) (1), (2), (3), (6), (7), (8) and (9) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging postdischarge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b) of this chapter.

* * * * *

3. Section 466.76 is revised to read as follows:

§ 466.76 Cooperation with health care facilities.

Before implementation of review, a PRO must make a good faith effort to discuss the PRO's administrative and review procedures with health care facilities and physicians in the area.

4. In § 466.78, paragraph (a) is revised; the introductory text of paragraph (b) and paragraphs (b)(2) and (b)(4) are revised; and a new paragraph (c) is added to read as follows:

§ 466.78 Responsibilities of health care facilities.

(a) *Written agreements with a PRO.*

(1) Beginning November 15, 1984, every hospital seeking payment for services provided to Medicare beneficiaries must maintain a written agreement with a PRO operating in the area in which the hospital is located. These agreements must provide for the PRO review specified in § 466.71(a).

(2) Beginning April 1, 1987, each HMO and CMP with a risk contract that is seeking payment for services provided to Medicare beneficiaries must maintain a written agreement with the PRO operating in the area in which the HMO or CMP is located. A written agreement need not be maintained if a non-PRO organization has a contract with Medicare to review HMOs and CMPs as provided for in section 1154(a)(4)(C) of the Act.

(3) Beginning October 1, 1987, each SNF and HHA seeking payment for services provided to Medicare beneficiaries must maintain a written agreement with the PRO operating in the area in which the HHA or SNF is located.

(b) *Cooperation with PROs.* Health care facilities that submit Medicare claims must cooperate in the assumption and conduct of PRO review. Facilities must meet the following requirements:

* * * * *

(2) Provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information that is required for the PRO to make its determinations. When review is performed away from the facility, the facility must photocopy and deliver to the PRO, all required information within 30 days of a request. PROs will reimburse hospitals paid under the prospective payment system for the costs of photocopying and postage relating to reviews performed away from the hospital in accordance with a prenegotiated payment rate and the methodology described in paragraph (c) of this section. When the PRO does post-admission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(4) When the facility has issued a written determination in accordance with § 405.334 or 412.42(c)(3) of this chapter that a beneficiary does not require, or no longer requires inpatient hospital care, it must submit a copy of its determination to the PRO within three working days.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system hospitals.* (1) Hospitals subject to the prospective payment system are paid for their photocopying costs that are directly attributable to the hospitals' responsibility to PROs requiring the photocopying of hospital records for offsite review. The payment is based on a fixed amount per page as determined by HCFA in accordance with the methodology described in paragraph (c)(2) of this section.

(2) The fixed amount per page for photocopying costs is determined as follows:

(i) *Step one.* HCFA adds the average costs of photocopy equipment rental, supplies, salary of a photocopy machine operator, and the costs of fringe benefits as determined in accordance with the principles set forth in OMB Circular A–76.

(ii) *Step two.* The amount determined in step one is divided by the number of pages copied by the average photocopying machine annually.

5. The content of § 466.83 is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 466.83 Initial denial determinations.

* * * * *

(b) A determination by a PRO that a hospital has taken an action that results in the unnecessary admission or multiple admissions of an individual entitled to benefits under Medicare Part A, and such action has had the effect of circumventing the prospective payment system then, the determination will be considered an initial denial determination which is appealable under Part 405, Subpart G of this chapter.

6. In § 466.93, the introductory text is republished, paragraphs (a) and (b) are revised, and a new paragraph (c) is added to read as follows:

§ 466.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.

Before a PRO reaches an initial denial determination or makes a change as a result of a DRG validation, it must—

(a) Promptly notify the provider or supplier and the patient's attending physician (or other attending health care practitioner) of the proposed determination or DRG change;

(b) Afford an opportunity for the physician, or physician representative of the provider (or other attending health care practitioner) to discuss the matter with the PRO physician and to explain the nature of the patient's need for health care services, including all factors that preclude treatment of the patient as an outpatient or in an alternative level of inpatient care; and

(c) Allow other hospital staff to comment on a proposed denial. Nonphysician PRO staff may assist in receiving and considering provider comments.

7. In § 466.94, the introductory text of paragraph (a)(1) is republished, and paragraphs (a)(1)(ii), and (a)(1)(iv), and (d) are revised to read as follows:

§ 466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.

(a) *Notice of initial denial determination*—(1) *Parties to be notified.* A PRO must provide written notice of an initial denial determination to—

* * * * *

(ii) The attending physician, or other attending health care practitioner, responsible for the services furnishes to the patient;

* * * * *

(iv) The fiscal intermediary or carrier, if the denial requires an action by the intermediary of carrier.

* * * * *

(d) *Notice to payers.* The PRO must provide prompt written notice of an initial denial determination or DRG changes to the intermediary or carrier within the same time periods as the notices to the other parties as provided in paragraph (a)(2) of this section.

* * * * *

8. In § 466.98, paragraph (a) is revised to read as follows:

§ 466.98 Reviewer qualifications and participation.

(a) *Peer review by physician*—(1) *Requirements.* (i) Except as provided in paragraph (a)(2) of this section, each person who makes an initial denial determination about services furnished or proposed to be furnished by a licensed doctor of medicine, osteopathy, or dentistry must—

(A) Be, respectively, a licensed doctor of medicine, osteopathy, or dentistry who practices in a setting similar to that in which the physician whose services are under review practices; and

(B) Maintain active staff privileges in one or more hospitals in the PRO area.

(ii) For purposes of this paragraph (a), individuals authorized to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands as "medical officers" may only make determinations on care ordered or furnished by their peers. Medical Officers may not make determinations on care ordered or furnished by licensed doctors of medicine, osteopathy, or dentistry.

(2) *Exception.* If a PRO determines that no appropriate physician reviewer as described in paragraph (a)(1) of this section is available to make initial denial determinations, then a doctor of medicine or osteopathy may make denial determinations for services

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ordered or performed by a doctor in any of the three specialties.

* * * * *

9. In § 466.100, paragraphs (a) and (b) and the introductory text of paragraph (d) are revised to read as follows:

§ 466.100 Use of norms and criteria.

(a) *Use of norms.* As specified in its contract, a PRO must use national, or where appropriate, regional norms in conducting review to achieve PRO contract objectives.

(b) *Use of criteria.* PRO health care professionals (nonphysicians) must use criteria to screen cases for medical necessity, appropriateness, and quality and refer questionable cases to a PRO physician for a determination. In assessing the need for and appropriateness and quality of care of an inpatient health care facility stay, a PRO must apply criteria to determine the following:

(1) The necessity for facility admission and continued stay (in cases of day outliers in hospitals under prospective payment).

(2) The necessity for surgery and other invasive diagnostic and therapeutic procedures.

(3) The appropriateness of providing services at a particular health care facility or at a particular level of care. The PRO must determine whether the beneficiary requires the level of care received or whether a lower and less costly level of care would be equally effective.

(4) The quality of care furnished.

* * * * *

(d) *Variant criteria.* A PRO may establish specific criteria to be applied to certain locations and facilities in the PRO area if the PRO determines that—

* * * * *

H. Part 473, Subpart B is amended as follows:

PART 473—RECONSIDERATIONS AND APPEALS

Subpart B—Utilization and Quality Control Peer Review Organization (PRO) Reconsiderations and Appeals

1. The authority citation for Part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.14, a new paragraph (c)(3) is added to read as follows:

§ 473.14 Applicability.

* * * * *

(c) *Nonapplicability of rules to related determinations.*

* * * * *

(3) Determinations made under § 466.83(b) of this chapter are made in accordance with section 1866(f)(2)(A) of the Act, and appeals of these determinations are governed by the reconsideration and appeal procedures described in Part 405, Subpart G of this chapter. References in that subpart to initial and reconsider determinations made by an intermediary, carrier, or HCFA include initial and reconsidered determinations made by a PRO.

3. In § 473.15, paragraphs (a) (1) and (b) are revised to read as follows:

§ 473.15 PRO review of changes resulting from DRG validation.

(a) *General rules.* (1) A provider or practitioner dissatisfied with a change to the diagnostic or procedural coding information made by a PRO as a result of DRG validation under section 1866(a)(1)(F) of the Act is entitled to a review of the change if the change—

(i) Caused an assignment of a different DRG; and

(ii) Resulted in a higher or lower payment.

* * * * *

(b) *Procedures.* Procedures described in § 413.18(b) of this chapter and §§ 473.20, 473.22, 473.24, 473.26, 473.28, 473.30, 473.32(b), 473.34, 473.36, and 473.48 (a) and (c) for a PRO reconsideration or reopening also apply to PRO review of a DRG coding change.

* * * * *

§ 473.18 [Amended]

4. In § 473.18, paragraph (a)(3) is removed.

5. In § 473.28, the introductory text is republished and paragraph (c) is revised to read as follows:

§ 473.28 Qualifications of a reconsideration reviewer.

A reconsideration reviewer must be someone who is—

* * * * *

(c) A board-certified or board-eligible (that is, eligible to take the boards) specialist in the type of services under review, except where meeting this requirement would compromise the effectiveness or efficiency of PRO review.

6. In § 473.32, the introductory text of paragraph (a) is revised, the introductory text of paragraph (a)(1) is republished, and paragraph (a)(1)(ii) is revised to read as follows:

§ 473.32 Time limits for issuance of the reconsidered determination.

(a) *Beneficiaries.* If a beneficiary files a timely request for reconsideration of an initial denial determination, the PRO must complete its reconsidered determination and send written notice to the beneficiary within the following time limits:

(1) Within three working days after the PRO receives the request for reconsideration if—

* * * * *

(ii) The initial determination relates to procedures performed by a facility, or to institutional services for which admission to the institution is sought; the initial determination was made before the procedures were performed or before the patient was admitted to the institution; and a request was submitted timely for an expedited reconsideration.

* * * * *

I. Part 476, Subpart B is amended as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

Subpart B—Utilization and Quality Control Peer Review Organization (PROs)

1. The authority citation for Part 476 continues to read as follows:

Authority: Secs. 1102, 1154(a), 1156(a) and 1160 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a), 1320c–5(a), and 1320c–9).

2. In § 476.133, the introductory text of paragraph (a) is republished and paragraph (a)(2)(ii) is revised to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers and institutions.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

* * * * *

(2) *Disclosure to others.* (ii) Effective April 21, 1987, in accordance with section 1160 of the Act and the procedures for disclosures specified in §§ 476.137 and 476.138, a PRO must disclose information, upon request, that displays practice or performance patterns of a practitioner or institution to the following:

(A) Federal and State agencies that are responsible for the investigation of fraud and abuse in connection with the Medicare or Medicaid programs.

(B) Federal and State agencies that are responsible for licensing and

certification of practitioners and providers and national accreditation bodies acting in accordance with section 1865 of the Act.

* * * * *

3. In § 476.138, the introductory text of paragraph (a) is republished, paragraph (a)(1) is revised, and a new paragraph (a)(4) is added to read as follows:

§ 476.138 Disclosure for other specified purposes.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

(1) *Disclosures to licensing and certification bodies.* (i) A PRO may, without a request, and must, upon request, disclose to State and Federal licensing bodies responsible for the professional licensure of practitioners or providers and to national accreditation bodies acting in accordance with section 1865 of the Act, confidential information relating to a specific case of a possible pattern of substandard care. Confidential information, including PRO medical necessity and quality of care determinations, must be disclosed by the PRO but only to the extent that it is required by an agency to carry out a function within the jurisdiction of the agency in accordance with Federal or State law.

(ii) With or without a request a PRO must provide a copy of any PRO sanction report forwarded to the Office of Inspector General in accordance with Section 1004.70 of this title to any State or Federal licensing body of national accreditation body if the report concerns practitioners or institutions that are subject to the jurisdiction of that body.

* * * * *

(4) *Disclosure to the Veteran's Administration counterpart (VA MEDIPRO).* A PRO must disclose confidential information upon request, and may without a request, to its counterpart in the Veterans Administration (VA MEDIPRO). Confidential information, including medical necessity and quality of care determinations, may only be disclosed to the extent that the information displays practice or performance patterns of a VA hospital or practitioner in a VA hospital, and only to the extent that the information is required to carry out a function within the jurisdiction of the VA MEDIPRO.

* * * * *

4. In § 476.140, the introductory text of paragraph (a) is revised, paragraph (a)(1) is amended by replacing the semicolon at the end of the paragraph with a period, paragraph (a)(2) is revised, paragraph (c) is deleted, and paragraphs (d) and (e) are redesignated and revised as paragraphs (c) and (d), respectively, to read as follows:

§ 476.140 Disclosure of quality review study information.

(a) A PRO must disclose, onsite, quality review study information with identifiers of patients, practitioners or institutions to the following:

* * * * *

(2) An institution or practitioner, if the information is limited to health care services furnished by the institution or practitioner. The PRO must upon request and may without a request disclose this information offsite.

* * * * *

(c) An institution or group of practitioners may redisclose quality review study information, if the information is limited to health care services they provided.

(d) Quality review study information with patient identifiers is not subject to subpoena or discovery in a civil action, including an administrative, judicial or arbitration proceeding. This restriction does not apply to HHS, including Inspector General, administrative subpoenas issued in the course of audits and investigations of Department programs, in the course of administrative hearings held under the Social Security Act, or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

J. Part 489, Subpart B is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1872(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1385x, 1385(h), 1395aa, 1395cc, and 1395hh) and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

2. The introductory text of § 489.20 is republished and a new paragraph (f) is added to read as follows:

§ 489.20 Basic commitments.

The provider agrees—

* * * * *

(f) In the case of a SNF or HHA that furnishes services that may be paid for under Medicare, to maintain an agreement with a utilization and quality control peer review organization (if there is one that is operating in the area in which the facility or agency is located and that has a contract with HCFA under Part B of title XI of the Act) for that organization to review information related to SNF or home health services.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: January 19, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 3, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–5682 Filed 3–15–88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 74 and 78

[Gen. Docket No. 87–552]

Relax the Equipment Authorization Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend its rules to relax the equipment authorization procedure required for certain equipment operated in the broadcast and cable television services. This action would change the appropriate procedure form either type acceptance or notification to either notification or verification. The public would realize faster service by the Commission, and would also realize a cost savings from the paperwork reduction stemming from the changes proposed.

DATES: Comments due on or before May 6, 1988 and reply comments on or before May 26, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (FCC No. 87–376) relating to the Commission's action adopted on December 1, 1987 and released February 1, 1988.

The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the

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Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

SUMMARY: 1. The Commission is initiating this Notice of Proposed Rule Making in which it is proposed to relax the equipment authorization procedure required for certain equipment used in the broadcast and cable television services. This action will modify the procedures required for operating in the affected services from either type acceptance or notification to either notification or verification. The Commission believe that the equipment marketed for use in these services has a satisfactory record of compliance with the technical standards set forth in the Rules, and that continued regulatory oversight can therefore be relaxed.

2. The Commission is proposing to place Parts 74 and 78 microwave transmitters, and all Part 73 transmitting equipment except for equipment associated with the Emergency Broadcast Service, now currently subject to either the type acceptance or notification procedures, under the verification procedure. Additionally, transmitters operated in frequency bands below 900 MHz which are currently subject to type acceptance are proposed to be placed under the notification procedure rather than verification. It is believed that these devices have a higher potential for causing interference due to non-directional transmission characteristics, the degree of congestion currently existing in many of the frequency bands employed for these services, and the extensive number of receivers employed by consumers on many of these bands, coupled with the significant degree of equipment being developed for operation within many of the frequency bands allocated for low power auxiliary stations.

3. We also invite comments as to whether or not it would be appropriate to include FM broadcast boosters, FM translators, TV translators, and UHF translator boosters under the verification procedure as well. That procedure may be applicable since these devices are produced and operated in limited quantities and are employed at fixed locations, making interference sources easier to locate.

4. In order to incorporate the above proposals into the regulations, changes to Part 2, 73, 74 and 78 of the Rules are required. The changes to these rule parts would entail changes only to the reference specifying the required level of equipment authorization.

5. This is a non-restricted notice and comment rule making proceeding. *See* §1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contracts.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, it is certified that the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because it relaxes the Commission's rules and reduces the Commission's application burden.

Comments

Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 6, 1988, and reply comments on or before May 26, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-5737 Filed 3-15-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-88-01; NO1]

Passenger Automobile Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of receipt of petition; request for comments.

SUMMARY: On February 12, 1988, the agency received a petition from the Automobile Importers of America to reduce the corporate average fuel economy standards for passenger cars for model years (MY's) 1989 and 1990. The standards currently are set for these years at 27.5 mpg, and AIA requests that they be lowered to 26.0 mpg. To aid in its determination whether or not to grant the petition, the agency seeks information from manufacturers on their efforts at meeting the CAFE standards, their product plans, and projected estimated CAFE levels. This document requests answers to a list of questions, as well as data on several areas of vehicle specifications.

DATE: Written comments on this notice must be submitted by April 11, 1988.

ADDRESSES: Comments on this notice must refer to the docket and notice number set forth above and be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to the Chief Counsel, NHTSA, DOT, Room 5219, 400 Seventh Street SW., Washington, DC 20590; in addition, 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section, at the previously indicated address.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic and Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366-0846.

SUPPLEMENTARY INFORMATION: On February 12, 1988, the Automobile Importers of America, Inc. (AIA) submitted a petition to reduce the passenger car corporate average fuel economy (CAFE) standards from 27.5 mpg to 26.0 mpg for MY 1989 and 1990. (Docket No. PRM-FE-11) AIA represents 19 foreign automobile manufacturers who import all or a portion of their product lines into the United States for sale to American consumers. Members include such manufacturers as BMW, Isuzu, Mazda, Peugeot, Saab, Toyota, and Yugo. On March 1, 1988, AIA member Volvo submitted a letter and data in support of the AIA petition. (Docket No. PRM-FE-13).

If the agency were to lower the current MY 1989 CAFE stadard of 27.5 mpg, it would have to do so within the time remaining before the beginning of the model year, which is in the Fall of 1988. Accordingly, the agency wishes to move expeditiously in a determination of whether to grant or deny this petition. To assist it in evaluating the issues raised in AIA's petition, the agency seeks information from manufacturers concerning its efforts at compliance with the MY 1989 and 1990 CAFE standards, as well as specific information on its product plans and marketing efforts. The agency requests that anyone interested in this petition submit information as requested in this document no later than April 11, 1988.

Any request for confidentiality must comply with the agency's regulations on

confidentiality, found at 49 CFR Part 512, including a cover letter which sets out the specific basis for the claim of confidentiality. As noted in the "ADDRESSES" section of this preamble, the information submitted under a calim of confidential treatment must be accompanied by public versions of the same material, which is submitted directly to docket.

The information sought by the agency is presented in two parts. Part A asks about a manufacturer's efforts at and estimates of achieving the currently prescribed CAFE level of 27.5 mpg. This includes such information as actions taken to meet the standards, changes in product plans, projected CAFE levels for MY 1989–1990, as well as the impact of uncertainties facing manufacturers and the effect of other Federal standards. Part B requests more specific data concerning a manufacturer's fleet(s), models, and identified technological features and specifications for MY 1988–1990.

Part A

1. What are your current CAFE projections for MY 1989–90? Describe the uncertainties affecting your capabilities during this time period, the effect of each uncertainty on your CAFE during this period, and how these uncertainties should be considered in possibly amending fuel economy standards. Also, include your response answers to the questions addressed in Part B. Charts are provided as examples of a format for this information.

2. Provide a quantitative analysis of the impact on your company, including economic, competitive, and financial consequences, if the current standards remain at 27.5 mph.

3. What are the potential impacts of other Federal standards on your CAFE levels for these two model years? Please include the type of standard (safety, emissions, etc.).

4. Provide a description of any changes in your product plans during MY 1986, 1987, and 1988 which increased or decreased your fuel economy capability, the reasons for such changes, and the impact of those changes on your CAFE.

5. Provide a description of the specific actions taken to reach a CAFE of 27.5 mpg in MY 1989 and beyond, the impact of those actions, and why the original assessment of these actions is no longer valid. Please note that the statute establishing the CAFE program, as early as 1975, specified a CAFE standard of 27.5 mpg for these years, thus providing at least 13 years of leadtime.

Part B

I. Definitions

As Used in This Part B

1. The terms "automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in section 501 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 (the Act).

2. The term "basic engine" has the meaning given in 40 CFR 600.002-80(a)(21). When identifying a basic engine, the commenter should provide the following information:

(i) Engine displacement (in cubic inches).

(ii) Number of cylinders or rotors.

(iii) Cylinder configuration (V, in-line, etc.).

(iv) Number of carburetor barrels, if applicable.

(v) Other engine characteristics, abbreviated as folows:

DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multiport Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System, carbureted

3. "Commenter" means each manufacturer (including all its divisions) providing answers to the questions set forth in this document, and its officers, employees, agents or servants.

4. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

5. "Percent fuel economy improvement" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model of compliance grouping through the application of a specified technology, averaged over all vehicles of that model or in that class which could feasibly use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by commenter to achieve the highest possible fuel economy increase through application of the technology, and should be adjusted for constant vehicle utility. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for commenter's 1988 model year passenger automobiles in the equivalent class.

6. "Percent production implementation rate" means that percentage which corresponds to the maximum number of passenger automobiles of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

7. "Possession" means possession, custody or control.

8. "Production percentage" means the percent of commenter's passenger automobilies of a specified model projected to be manufactured in a specified model year.

9. "Project" or "Projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

10. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

11. "Test weight" is used as defined in 40 CFR 86.082-2.

12. "Transmission Class" is used as defined in 40 CFR 600.002-80(22). When identifying a transmission class, commenter also must indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears.

13. The term "curb weight," and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

14. "Redesign" means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area by 2 percent or more.

15. "Domestically manufactured" is used as defined in section 503(b)(2)(E) of, the Act.

16. For the purposes of this Part B, a "compliance grouping" of passenger automobiles means a group for which compliance is computed separately (e.g., imported passenge cars or domestically produced passenger cars).

17. For the purposes of this Part B, a "model" of passenger automobile is a line, such as the Chevrolet Camaro or Caprice, etc., which exists within a class. "Model type" is used as defined in 40 CFR 600.002-80.

18. "Carline" is used as defind in 40 CFR 600.002-80.

II. Assumptions

All assumptions concerning emission standards, noise and damageability regulations, safety standards, etc., should be listed and described in detail by the commenter.

III. Specifications

1. Identify all passenger automobile models currently offered for sale whose production you project discontinuing before or during MY 1990 and indentify the last model year in which each will be offered.

2. Identify all basic engines offered by commenter in MY 1988 passenger automobiles which commenter projects ceasing to offer for sale in passenger automobiles before or during MY1990, inclusive, and identify the last model year in which each will be offered.

3. Does the commenter currently project offering for sale any new or re-designed passenger automobiles, including vehicles smaller than those new produced, during any of model years 1988 through 1990? If so, provide the following information for each model (e.g., Chevrolet Nova, Ford Escort). Model types which are essentially identical except for their nameplates (e.g., Dodge Omni/Plymouth Horizon) may be combined into one item. See Table A for a sample format.

a. EPA size class to be offered for sale (e.g., mid-size sedan, small station wagon). Provide passenger-carrying volume and number of seating positions.

b. Description of basic engines, including optional horsepower and torque ratings, if any; displacement, number and configuration of cylinders and type of carburetor or fuel injection system.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, and driveline configuration.

d. (i) The range of curb weights offered for each body type.

(ii) The range of test weights offered for each body type.

e. The range of projected fuel economies on the EPA composite driving cycle for each body type in the initial model year of production.

f. Projected introduction date (model year).

g. Projected sales for each model year from the projected year of introduction through MY 1990, expressed both as an absolute number of units sold and as a percentage of all passenger automobiles sold by commenter.

h. Indicate if domestically manufactured or imported.

i. Projections of:

(i) Existing models replaced by new models.

(ii) Reduced sales of commenter's existing models, both passenger automobiles and light trucks as a result of the sale of each of the new models.

(iii) New sales not captured from any of the commenter's existing models.

4. Does commenter project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to question 3, in its passenger automobile fleets in MY's 1988 through 1990? If so, for each basic engine or variant indicate:

a. The project year of introduction,

b. Type (e.g., conventional, diesel or stratified charge),

c. Displacement,

d. Type of carburetion or fuel injection,

e. Cylinder configuration (e.g., V–8, V–6, I–4, etc.),

f. Horsepower and torque ratings,

g. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. For each of the model years 1988 through 1990, and for each passenger automobile model projected to be manufactured by commenter (if answers differ from the various models), provide the requested information ((i) through (vi)) for each of items "a" through "l" listed below:

(i) A description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model, if answers vary within the model;

(iii) The basis for your answer to 5(ii), (e.g., data from dynamometer tests conducted by commenter, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons why a higher implementation rate is not feasible or necessary to comply with 27.5 mpg standard;

(v) A description of the 1988 baseline technologies; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 5(ii) and 5(iv) a tabular presentation, a sample portion of which is shown in Table B.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include a description of how the benefits are to be obtained.

b. Improved manual transmissions. Projections of percent fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percent fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics, accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1988 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, vacuum pump, and emissons air injection pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1988 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearings, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Turbocharging:

i. Improvements in the efficiency of spark ignition engines including (a) increased compression ratio; (b) leaner air-to-fuel ratio; (c) revised combustion chamber configuration; (d) fuel injection; (e) electronic fuel metering; (f) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (g) variable valve timing or valve lift; (h) roller cam followers; (i) reduced piston ring tension; and (j) other methods (specify).

j. Naturally aspirated diesel engines, with direct or indirect fuel injection.

k. Turbocharged diesel engines with direct or indirect fuel injection.

l. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

6. For each model of commenter's passenger automobile fleet projected to be manufactured in each of MY's 1988 through 1990, describe the methods used to achieve reductions in average test

weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used:

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce exterior size while maintaining interior roominess and comfort for passengers, and utility, i.e., the same, or approximately the same, interior volume using the same, basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provide improved weight to interior passenger volume ratio.

7. To the extent commenter projects a CAFE less than 27.5 mpg or suggests the existence of risks which may result in a CAFE of less than 27.5 mph indicate why commenter can't make sufficient additional improvements through the methods listed in items 5 and 6 in the available leadtime.

8. For each model year 1988 through 1990, list all projected passenger automobile model types and provide the information specified in "a" through "l" below for each model type. The information should be in tabular form, with a separate table for each model year. (See Table C for a sample format.) Domestic and non-domestic model types are to be listed separately (identify any model types with less than 75 percent domestic content included in the domestic fleet exemption). Engines having the same displacement but belonging to different engine families are to be grouped separately.

In each model year, begin with the EPA size class having the least interior volume range and continue size class listing from top to bottom in order of classes with increasing interior volume on the left side of the table. Subdivide each size class into specific model types in order of increasing average test weight. List the categories of information in items "a" through "l" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted average engine displacement, average N/V, average test weight, average PAU, and harmonic average fuel economy for domestic and non-domestic passenger cars for each EPA size class and for all of the commenter's passenger automobiles.

a. Carline, e.g., 260E, Cavalier. Identify body code designation and representative model name for passenger cars. Model types which are essentially identical except for their nameplates (e.g., Chevrolet Celebrity/Pontiac 6000 may be combined into one line item.

b. EPA size class.

c. Basic engine: Include the engine Characteristics used in Definition 2.

d. Transmission class (e.g., A3, A4, A40D, M5, CVT): Include the characteristics used in Definition 12.

e. Average N/V, rounded to one decimal place.

f. Average equivalent test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Composite fuel economy (sales weighted, harmonically averaged over the specified vehicles, rounded to the nearest 0.1 mpg).

i. Type of emission control system.

j. Source of fuel economy figure: T=test or E=estimate.

k. Projected sales for the vehicles described in each line item.

l. EPA interior volume index.

9. Please provide (a) historical and (b) your estimates of projected *total industry* U.S. passenger automobile sales for each model year 1988 through 1990, inclusive. Include your company's projection of total imported car sales during each of these model years. Subdivide these sales into EPA market classes. See Table D for sample format.

10. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1988–1990.

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Table A: NEW OR REDESIGNED PASSENGER AUTOMOBILES

MODEL: LT-1B DRIVELINE CONFIGURATION: FRONT ENGINE/REAR DRIVE

a. EPA SIZE CLASS	Passenger Volume	No. Seating Positions	b. CID	No. of Cyl.	Config.	Fuel System	HP/rpm	Torque/ rpm
Compact	Xft^3	4	120	4	I	FI	X/3600	Y/1800
Midsize	Xft^3	4	180	6	V	FI		
Small Wagon	X1ft^3	5	150	4	I	MPFI		

c. Manual Overdrive		Automatic	
1	3.00	1	2.50
2	1.75	2	1.50
3	1.00	3	1.00
4	.80	R	1.90
R	3.15	TC	2.1

Table A (Cont.)

d. Body Type	Range of Curb Weights	Range of Test Weights	Required Options and Weights
Sedan	3000-3200	3250-3500	None
Wagon	3000-3250	3250-3500	None
Convertibles	3200-3500	3500-3000	None

e. Fuel Economy Values

Body	Range of Composite fuel Economy Ratings for Introduction Year
Sedan	28-30
Wagon	26-29
Convertible	27-29

f. and g. Projected Introduction and Sales through MY 1990

1988 (I)*	38,000
1989**	88,400
1990	96,000

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*Mid-year introduction
**Station wagon introduced

h. Domestically manufactured or imported

i. (i) Redesign; replaced LT-1A

(ii) The station wagon introduced in MY 1988 is expected to capture passenger car station wagon sales estimated at 2,000 units in 1988 and 4,000 units in 1987.

(iii) The station wagon in (ii), above, is expected to capture a like amount of sales from competitors in each model year.

Table B

Technological Improvements

Technological Improvement	Economy Improvement	Percent Production Penetration 1988	1989	1990
5 (a) Improved Auto Transmissions				
LT-1	10	14	15	15
LT-2	8	14	15	15
LT-3	7.5	8	10	10
LT-1	10	20	20	20
LT-2	9	20	20	20
LT-3	7.5	10	12	12
U-1	10	14	15	15
5 (b) Improved Manual Transmissions				
LT-1	4	35	35	35
LV-1	4	30	30	30
LV-2	4	30	30	30
U-1	4	35	35	35
5 (c) Overdrive Transmission				
LT-1	6	6	8	8
LV-1	6	5	6	6
LV-2	6	5	6	6
U-1	6	8	10	10

Table C: 1988 Passenger Cars (Import)

Vehicle Model	Size Class	Disp. CID	# of Cyl.	Cyl. Config.	Eng. Char.	Trans. Class	Avg. N/V	Equiv. Test Wgt.	Avg. PAU	Comp. F.E.	Emi. Con. Sys.	Proj. Sales	Int. Vol. Index
NHTSA-21	Compact	119	4	I	TB	M5	45.3	3200	7.5	27.6(T)	TWC,AI	4600	101.6
NHTSA-22	Mid-Size	121											
NHTSA-23	Large												

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Table D

TOTAL US PASSENGER CAR SALES

	Model Year 1988	 1989	 1990
I. IMPORT			
a. Minicompact			
b. Subcompact			
c. Compact			
d. Midsize			
e. Large			
f. Two Seater			
g. Station Wagons			
(i) Small			
(ii) Midsize			
(iii) Large			
II. Domestic			
a. Minicompact			
b. Subcompact			
c. Compact			
d. Midsize			
e. Large			
f. Two Seater			
g. Station Wagons			
(i) Small			
(ii) Midsize			
(iii) Large			

BILLING CODE 4910-59-C

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

(15 U.S.C. 2002, delegation of authority at 49 CFR 1.50)

Issued on: March 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-5831 Filed 3-14-88; 1:13 pm]

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VOL 53 ISS 51 MR 16 988 UMI

Notices

Federal Register
Vol. 53, No. 51
Wednesday, March 16, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collectioin proposal by ACTION, the Federal Domestic Volunteer Agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use

Project Grant Application: Older American Volunteer Programs—This form is required by ACTION and OMB of all new grant applicants and those requesting annual refunding.

To Obtain Information About or to Submit Comments on This Proposed Information Collection, Please Contact Both:

Melvin E. Beetle, ACTION Clearnace Officer, ACTION, Room M-601, 806 Connecticut Ave., NW, Washington, DC 20525, Tel: (202) 634-9318, and
James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395-7316.

Office of ACTION issuing the Proposal: DO/OAVP.

Title of Form: Project Grant Application: Older American Volunteer Programs.

Type of Request: Revision of currently approved collection.

Frequency of Collection: Annual.

General Description of Respondents: Public and private non-profit organizations.

Estimated Number of Annual Responses: 1100.

Estimated Annual Reporting or Disclosure Burden: 9,900 hours.

Respondent's Obligation to Reply: Required to obtain or retain benefit.

Dated: March 10, 1988.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 88-5708 Filed 3-15-88; 8:45 am]

BILLING CODE 8050-28-M

Special Volunteer Programs, Availability of Funds; Demonstration Grants

A. The Program Demonstration and Development Division of ACTION announces the availability of funds during fiscal year 1988 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title I, Part C; 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to human and social concerns such as illicit drug use by youth, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

Consideration will be limited to innovative proposals using volunteers in one of the following three strategies for preventing the use of illicit drugs by youth:

1. The employment of a state-wide parent network to develop new and/or expand existing local volunteers parent groups.
2. The mobilization and coordination of low-income community parents and youth groups, community organizations, businesses, religious institutions, and local government agencies into effective illicit drug prevention networks.
3. The development or expansion of public housing focused illicit drug use prevention and education programs operated by tenant/parent groups, organizations with parent components, or public housing authorities.

B. *Eligible Applicants.* Only applications from private non-profit incorporated organizations and public agencies will be considered.

C. *Available Funds and Scope of the Grant.* ACTION anticipates awarding grants averaging $30,000 but not exceeding $50,000.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for demonstration grants.

D. *General Criteria for Grant Selection.* Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in using volunteers to prevent the use of illicit drugs by youth will be given preference.

1. Potential to recruit and train volunteers in areas of priority.
2. Promise of developing innovations or knowledge in mobilizing and sustaining State and local volunteer efforts to prevent illicit drug use by youth.
3. Potential for replication of the project model including: Plans for implementation and dissemination of results of the project including any products such as reports and manuals for use by others.
4. Plans for continuation of the activities and self-sufficiency of the program following the completion of the project supported by ACTION funds.
5. Carefully formulated measurable time phased objectives, including self-sufficiency, and feasibility of methods for meeting those objectives.
6. Capability of proposed staff.
7. Likelihood of completion of project within proposed timetable.
8. Feasibility of proposed budget.
9. Adequacy of plans for data gathering and evaluation.

10. Letters of support from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.
11. While specific levels of matching funds are not a requirement for grants, evidence of local public and private sector support (financial and in-kind) is strongly encouraged and will be considered in the decisionmaking process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements.

E. *Application Review Process.* ACTION's Program Demonstration Branch which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. *Application Submission and Deadline.* One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on April 27, 1988. Only those applications that are received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (SF 424 Pages 1-2 and ACTION Form A-1017 pages 3-10) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

To receive an application kit, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway St., Room 473, Boston, MA 02222-1039
ACTION State Office, Abraham Ribicoff Federal Bldg., 450 Main St., Room 524, Hartford, CT 06103-3002
ACTION State Office, Federal Bldg., Room 305, 76 Pearl St., Portland, ME 04101-4188
ACTION State Office, 10 Causeway St., Room 467, Boston, MA 02222-1038
ACTION State Office, Federal Post Office and Courthouse, 55 Pleasant St., Room 316, Concord, NH 03301-3939 (New Hampshire/Vermont)
ACTION State Office, John E. Fogarty Bldg., Room 200, 24 Weybosset St., Providence, RI 02903-2882

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048-0206
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608-1507
ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048-0206 (Metropolitan New York)
ACTION State Office, U.S. Courthouse and Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207-2923 (Upstate New York)
ACTION State Office, Frederico DeGetau Federal Office Bldg., Carlos Chardon Ave., Suite 662, Hato Rey, PR 00918-2241 (Puerto Rico/Virgin Islands)

Region III

ACTION Regional Office, U.S. Customs House, 2nd and Chestnut St., Room 108, Philadelphia, PA 19106-2912
ACTION State Office, Federal Bldg., Room 372-D, 600 Federal Place, Louisville, KY 40202-2230
ACTION State Office, Federal Bldg., 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814 (Delaware/Maryland)
ACTION State Office, Federal Bldg., Room 500, 85 Marconi Blvd., Columbus, OH 43215-2886
ACTION State Office, U.S. Customs House, Room 108, 2nd and Chestnut Sts., Philadelphia, PA 19106-2998
ACTION State Office, 400 North 8th St., P.O. Box 10066, Richmond, VA 23240-1832, (Virginia/District of Columbia)

Region IV

ACTION Regional Office, 101 Marietta St. NW., Suite 1003, Atlanta, GA 30323-2301
ACTION State Office, 603 Morris St., 2nd Floor, Charleston, WV 25301-1409
ACTION State Office, 2121 8th Ave. North, Room 722, Birmingham, AL 35203-2307
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803-3750
ACTION State Office, 75 Piedmont Ave NE., Suite 412, Atlanta, GA 30303-2587
ACTION State Office, Federal Bldg., Room 1005-A, 100 West Capital St., Jackson, MS 39269-1092
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville St. Mall, Room 131, Raleigh, NC 27601-1739
ACTION State Office, Federal Bldg., Room 872, 1835 Assembly St., Columbia, SC 29201-2430
ACTION State Office, Federal Bldg./U.S. Courthouse, 801 Broadway, Room 246, Nashville, TN 37203-3869

Region V

ACTION Regional Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604-3964
ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604-3964
ACTION State Office, 46 East Ohio St., Room 457, Indianapolis, IN 46204-1922
ACTION State Office, Federal Bldg., Room 339, 210 Walnut, Des Moines, IA 50309-2195
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226-2799
ACTION State Office, Old Federal Bldg Room 126, 212 Third Ave. South, Minneapolis, MN 55401-2596
ACTION State Office, 517 East Wisconsin Ave., Room 601, Milwaukee, WI 53202-4507

Region VI

ACTION Regional Office, 1100 Commerce, Room 6B11, Dallas, TX 75242-0696
ACTION State Office, Federal Bldg., Room 2506, 700 West Capitol St., Little Rock, AR 72201
ACTION State Office, Federal Bldg., Room 248, 444 SE. Quincy, Topeka, KS 66603-3501
ACTION State Office, 626 Main St., Suite 102, Baton Rouge, LA 70801-1910
ACTION State Office, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106-2009
ACTION State Office, Federal Bldg., Cathedral Place, Room 129, Santa Fe, NM 87501-2026
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102-6093
ACTION State Office, 611 East Sixth St., Suite 107, Austin, TX 78701-3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349

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ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman St., Denver, CO 80203–1167
ACTION State Office, Federal Bldg., Room 8036, 2120 Capitol Ave., Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896
ACTION State Office, Federal Bldg., Room 213, 225 S. Pierre St., Pierre, SD 57501–2452 (North and South Dakota)

Region IX

ACTION State Office, U.S. Post Office and Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198
ACTION Regional Office, 211 Main St., Room 530, San Francisco, CA 94105–1914
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Office, 211 Main St., Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671
ACTION State Office, Federal Bldg., P.O. Box 50024, Honolulu, HI 96850 (Hawaii/Guam/American Samoa)

Region X

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1308
ACTION Regional Office, Federal Office Bldg., 909 First Ave., Suite 3039, Seattle, WA 98174–1103
ACTION State Office, The Alaska Center, Suite 340, 1020 Main St., Boise, ID 83702–5745
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Ave., Seattle, WA 98174–1103 (Alaska)
ACTION State Office, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209–3416.

Signed at Washington, DC, this 2d day of March.

Donna M. Alvarado,

Director.

[FR Doc. 88–5709 Filed 3–15–88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 11, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Farmers Home Administration
  Application Certification, Federal Collection Policies for Consumer of Commercial Debts
  FmHA 1919–11
  On occasion
  Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 165,000 responses; 13,200 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736

Revision

- Farmers Home Administration
  7 CFR Part 1924–B, Management Advice to Individual Borrowers and Applicants
  FmHA 431–1, –2, –4, 432–1, –2, –10
  Recordkeeping: On occasion
  Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 281,500 responses; 2,332,305 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736
- Farmers Home Administration
  7 CFR Part 1965–B, Security Servicing for Multiple Family Housing Loans
  FmHA 1944–33A, –34, –35
  On occasion
  Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 3,420 responses; 2,057 hours; not applicable under under 3504(h)
  Jack Holston (202) 382–9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–5747 Filed 3–15–88; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 11, 1988.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Training Laboratory, Room 402, 33 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection and related services. In particular, the Committee will analyze the financial status of the inspection program and recommend to the Secretary of Agriculture the rate of the user fee for the 1988 crop. The Committee will review the current formula and also consider other options for pairing or grouping burley markets and distributing graders among the markets for the 1988–89 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: March 9, 1988.

William T. Manley,

Acting Administrator.

[FR Doc. 88–5748 Filed 3–15–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Regulations on Conservation of Living Antarctic Resources.
Form Number: Agency—N/A; OMB—N/A.
Type of Request: New Collection.
Burden: 4 respondents; 14 reporting hours.
Needs and Uses: Persons planning to harvest or import living marine resources or their products from the Antarctic must obtain permits and file reports. This information will be used by the National Marine Fisheries Service to meet the research and enforcement obligations of the Antarctic Treaty.
Affected Public: Businesses or other for-profit institutions.
Frequency: On occasion; annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: March 10, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88–5696 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has summitted to OMB for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of Productivity, Technology and Innovation.

Title: Access of U.S. Scientists to Foreign Research Facilities.

Form Number: NA.

Type of Request: New.

Burden: 50 respondents; 250 reporting hours.

Needs and Used: The requested information from firms and universities will help Federal laboratories evaluate cooperative research and development proposals from foreign firms, assist U.S. negotiators in determining strategy for bilateral science and technology agreements, and assist agencies in developing policies and procedures regarding visiting foreign scientists.

Frequency: On occasion.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writting DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendation for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228 New Executive Office Building, Washington DC 20503.

Dated: March 11, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–5736 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 15–88]

Foreign-Trade Zone 122, Nueces/San Patricio Counties, TX (Corpus Christi Port of Entry); Application for Subzone, Reynolds Metals Alumina Plant, San Patricio & Aransas Counties

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the alumina (aluminum oxide) plant of Reynolds Metals Company in San Patricio and Aransas Counties, Texas, adjacent to the Corpus Christi Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 4, 1988.

The Reynolds plant is situated on two parcels (1977 acres). The first site is on State Highway 35 at Route 351 in San Patricio County, some 10 miles northeast of Corpus Christi. The second parcel is on FM Route 881 at Route 136 in San Patricio and Aransas Counties, some 16 miles northeast of Corpus Christi. The facility employs 750 persons and is used to refine bauxite to produce alumina. The bauxite is sourced abroad, and is dutiable at $.044 per ton. Some two-thirds of the alumina is exported.

Zone procedures would exempt Reynolds from Customs duty payments on the material used in its exports, and allow it to defer duties on imports. The company would also be exempt from state and local ad valorem taxes on foreign-sourced bauxite or alumina produced from foreign-sourced bauxite. The applicant indicates that the savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington DC 20230; Don Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe St., Houston, TX 77057; and, Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 25, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Government Plaza, 400 Mann St., Suite 305, Corpus Christi, TX 78401;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania, NW., Washington, DC 20230.

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Dated: March 10, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88–5735 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Short-Supply Review on Certain Carbon Steel Special Sections; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain carbon steel special sections.

DATE: Comments must be submitted on or before March 28, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products * * *."

We have received a short-supply request for certain carbon steel special sections, under three inches in cross-sectional dimension, for use in the manufacture of window frames.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 28, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a nonproprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.

March 4, 1988.

[FR Doc. 88–5734 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Solicitation of Applications; Minority Business Development Center Program; Bakersfield Metropolitan Statistical Area

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of August 1, 1988 to July 31, 1989. The MBDC will operate in the Bakersfield Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I. D. Number for this project will be 09–10–88018–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, March 31, 1988 at 10:00 a.m.

Proposals Are to be Mailed To The Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

Closing Date: The closing date for applications is April 20, 1988. Applications must be postmarked by midnight April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Xavier Mena,
Regional Director, San Francisco Regional Office

March 9, 1988.

[FR Doc. 88–5694 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Applications for Minority Business Development Center; Santa Barbara Metropolitan Statistical Area

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of August 1, 1988 to July 31, 1989. The MBDC will operate in the Santa Barbara Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–88019–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minoirty business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, March 31, 1988 at 10:00 a.m.

Proposals Are To Be Mailed To The Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 211 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

Closing Date: The closing date for applications is April 20, 1988. Applications must be postmarked by midnight April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of applicaiton kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Xavier Mena,
Regional Director, San Francisco Regional Office.

March 9, 1988.

[FR Doc. 88–5695 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

March 11, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 17, 1988. For further information contract Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current limit for cotton textile products in Category 342, produced or manufactured in Sri Lanka. As a result, the limit for Category 343, which is currently closed, will re-open.

Background

On May 15, 1987, a notice was published in the **Federal Register** (52 FR 18413) which announced import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988. Subsequent directives published on January 4, 1988 amended these limits for two separate periods which began on June 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, and at the request of the Government of Sri Lanka, the limit for Category 342 is being increased for carryover for the period January 1, 1988 through May 31, 1988.

In addition, import charges, amounting to 9,919 dozen, are being deducted from the charges made to the current limit for Category 342 and charged to the limit established for the period which began on June 1, 1986 and extended through May 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

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only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 11, 1988.

Commissioner of Customs, *Department of the Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 17, 1988, the directive of December 30, 1987 is further amended to increase the limit for cotton textile products in Category 342 to 114,289 dozen,[1] as provided under the terms of the bilateral agreement of May 10, 1983, as amended.[2]

Also effective on March 17, 198, you are directed to deduct 9,919 dozen from the charges made to the current limit for Category 342. This same amount is to be charged to the limit established for Category 342 for the period June 1, 1988 through May 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5724 Filed 3–15–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a future contract market in 30-day interest rate futures. The Deputy Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 16, 1988.

ADDRESS: Interested person should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT 30-day interest rate futures contract.

FOR FUTURE INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: The proposed contract terms and conditions provide for cash settlement based on the average daily Fed funds rate for delivery month. This average is a simple average of the daily overnight rates as determined by the Federal Reserve Bank of New York.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC., on March 10, 1988.

Blake Imel,

Deputy Director, Division of Economic Analysis.

[FR Doc. 88–5681 Filed 3–15–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement, Dutch Creeks, Henryetta, OK

AGENCY: Tulsa District, Tulsa, Oklahoma, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: This study is to determine the feasibility of providing flood protection for the flood plain of Coal and Dutch Creeks in Henryetta, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Mace, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121–0061, phone (918) 581–7857.

SUPPLEMENTARY INFORMATION: Coal and Dutch Creeks are in urban areas. This study is designed to determine the feasibility of providing flood protection for existing residential, commercial, and public areas in the flood plain. The authorization for the Coal and Dutch Creeks Project, is contained in section 205 of the Flood Control Act of 1948 as amended. Flooding along Coal and Dutch Creeks causes an estimated $432,000 in average annual damages.

Alternatives

Several structural and nonstructural solutions for reducing flood damages were considered, including reservoirs, channel modification, regional detention, flood plain management, flood plain acquisition, flood proofing and levees.

Coordination

The U.S. Fish and Wildlife Service has prepared a Fish and Wildlife Coordination Act Report. The draft supplement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

Scoping

A separate scoping meeting will not be held.

Availability

Estimated date when the DEIS will be available is *April 1988.*

Date: February 29, 1988.

Robert D. Brown,

Chief, Planning Division.

[FR Doc. 88–5687 Filed 3–15–88; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 14, 1988—9:00 a.m. to 4:00 p.m.

ADDRESS: Channel Inn Motel, 650 Water Street, Southwest, Washington, DC, 554-2400.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Committee Reports, Annual Report Review, Review of past projects, Future Activities.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., Suite 4060, Washington, DC 20202, (202) 732–1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:00 p.m.

Signed at Washington, DC, February 19, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88–5726 Filed 3–15–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Government of Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–CA–407, for the sale of 10 micrograms of thorium-229 to McMaster University, Hamilton, Ontario, Canada, for use in mass spectrometry analysis of uranium and thorium in rocks and cave deposits.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Date: March 11, 1988.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5743 Filed 3–15–88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–EU–920, for the sale of 5 microcuries of plutonium–237 to the United Kingdom Atomic Energy Authority, Harwell Laboratory, England for use in metabolism experiments in laboratory rodents.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Date: March 11, 1988.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–5744 Filed 3–15–88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87–67–NG]

Shell Gas Trading Co.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Shell Gas Trading Company (Shell Gas) blanket authorization to export natural gas. The order issued in ERA Docket No. 87–67–NG authorizes Shell Gas to export up to 60 Bcf of natural gas over two-year period to Canada beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural

BEST COPY AVAILABLE

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[2] The bilateral agreement provides, in part, that (1) specific limits and sublimits may be exceeded by certain designated percentage of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 8, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5745 Filed 3-15-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-269-000 et al.]

Public Service Co., et al., Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company

[Docket No. ER88-269-000]

March 9, 1988.

Take notice that on March 2, 1988, Public Service Company of New Mexico (PNM) tendered for filing in accordance with §§ 35.1(a) and 131.52 of the Commission's regulations a Certificate of Concurrence of Texas-New Mexico Power Company (TNP) in the above-referenced docket of "Amendment No. 6 to Contract for Electric Service" between PNM and TNP.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Consumer Power Company

[Docket No. ER88-276-000]

March 9, 1988.

Take notice that on March 2, 1988, Consumer Power Company (Company) tendered for filing Supplement Nos. 1, 2, and 3 to the Transmission Service Agreement between the Company and the Michigan Public Power Agency (MPPA) dated as of December 20, 1985 (Transmission Agreement).

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this document.

3. Ocean State Power

[Docket No. EC88-14-000]

March 10, 1988.

Take notice that on March 4, 1988, Ocean State Power (Ocean State) tendered for filing an Application with the Federal Energy Regulatory Commission (FERC), in Docket No. EC88-14-000 For Authorization To Reorganize Its Partnership pursuant to sections 203 and 204 of the Federal Power Act (FPA), 16 U.S.C. 824b and 824c, and the Commission's regulations promulgated thereunder at 18 CFR Parts 33 and 34. Ocean State also seeks an exemption from the competitive bidding requirements of 18 CFR 34.2(a).

Ocean State is currently a Massachusetts partnership consisting of two Delaware corporations, Ocean State Power Company (OSP Co.) and JMAI Power Corporation (JPC). Upon receipt of the requisite regulatory approval, the Ocean State partnership agreement will be amended and restated under the laws of the State of Rhode Island and four additional partners will be brought into Ocean State. The proposed four new partners are wholly-owned subsidiaries of TransCanada PipeLines Limited, New England Electric System, Newport Electric Corporation, and Eastern Utilities Associates. In addition, the partnership interests of OSP Co. and JPC will be transferred to one company—OSP Corp, a wholly-owned subsidiary of J. Makowski, Inc.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER88-261-000]

March 10, 1988.

Take notice that on March 4, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule and supplement, agreements to sell firm power and energy to the Connecticut Light and Power Company (CL&P) and Boston Edison Company (Boston Edison). The agreement provides for an energy reservation charge of $65.92 per megawattday and an energy charge based upon incremental costs of generation.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of December 23, 1987.

Con Edison states that a copy of this filing has been served by mail upon CL&P, Boston Edison and the New England Power Pool.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER88-278-000]

March 10, 1988.

Take notice that on March 2, 1988, Portland General Electric Company (Portland) tendered for filing (i) an Amendment to the PGE Rate Schedule FERC No. 22, the agreement entitled Pacific-Portland Sales and Exchange Agreement dated August 25, 1972 (Agreement), between Pacific Gas and Electric Company (Pacific) and Portland, and (ii) the Certificate of Concurrence of Pacific Gas and Electric Company.

The Amendment includes the following revisions to the Agreement: (i) The rate paid by Pacific for capacity made available by Portland, (ii) the number of months and hours during the on-peak hours that capacity is made available to Pacific, and (iii) the terms and conditions under which energy may be delivered to Pacific and replacement energy is made available to Portland. Service to Pacific pursuant to the Amendment is proposed to begin on May 1, 1988.

This Amendment will have no effect on the rights and obligations of Southern California Edison Company (Edison) pursuant to the Assignment Agreement among Pacific, Portland and Edison.

Portland requests, if necessary, a waiver of the Commission's notice requirements in order to begin service under the Amendment on May 1, 1988.

Copies of the filing have been served upon Pacific Gas and Electric Company, Southern California Edison Company, the Oregon Public Utility Commission and the Public Utilities Commission, State of California.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER88-200-000]

March 10, 1988.

Take notice that on March 3, 1988, Commonwealth Edison Company (Edison) tendered for filing, on behalf of itself and Iowa Electric Light and Power Company (Iowa), a revised Letter Agreement establishing the rates, terms and conditions under which Edison and Iowa will begin to make short term power and general purpose energy available to each other. The Letter Agreement, as originally filed, had provided for capped maximum prices for short term power and general purpose energy. The revised Letter Agreement provides, in addition, for a minimum price for such transactions.

Edison and Iowa request waiver of the Commission's notice requirements in order to permit an effective date of February 1, 1988. Copies of the filing were served upon Iowa, the Illinois Commerce and the Iowa State Commerce Commission.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER88-274-000]

March 10, 1988.

Take notice that on March 1, 1988, Public Service Company of New Mexico (PNM) tendered for filing as an initial rate schedule an Economy Energy Agreement between PNM and the City of Burbank, California (Burbank). Under the Agreement PNM and Burbank will make economy energy available to each other at rates reflecting current market conditions.

Copies of the filing have been served upon Burbank and the New Mexico Public Service Commission.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Power and Light Company

[Docket No. ER88-277-000]

March 10, 1988.

Take notice that on March 1, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing a Rate Schedule (Schedule), between Iowa Power and Associated Electric Cooperative, Inc. (AEC), dated December 31, 1987.

The Schedule provides for the sale of system participation capacity and energy from Iowa Power to AEC between December 7-31, 1987.

Iowa Power and AEC request that the Commission waiver its prior notice requirements and accept the Schedule for filing with an effective date of December 7, 1987.

Copies of this filing were served upon each affected party and the Iowa State Utilities Board.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corporation

[Docket No. ER88-280-000]

March 10, 1988.

Take notice that on March 3, 1988, Green Mountain Power Corporation (GMP) tendered for filing as a rate schedule an executed agreement dated as of January 11, 1988, between GMP and the City of Burlington, Vermont, Electric Department (BED). The proposed rate schedule provides for the sale of non-firm energy by GMP to BED.

GMP states that a copy of the filing was served on BED, as well as the Vermont Public Service Board and Vermont Department of Public Service.

Comment date: March 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5750 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3186-003]

Joseph M. Keating; Availability of Environmental Assessment

March 15, 1988.

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission's) regulations, 19 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing reviewed the application for license filed by Jospeh M. Keating for the Pyramid Creek Project located in California on Pyramid Creek near Twin Bridges, and prepared an environmental assessment (EA)

Copies of the EA are available for review in the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington DC 20426 or call (202) 357-8118 for further information.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5753 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-346-000 et al.]

Cabot Energy Marketing Corp., et al.; Natural Gas Certificate Filings

March 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Cabot Energy Marketing Corporation

[Docket No. CI88-346-000]

Take notice that on March 3, 1988, Cabot Energy Marketing Corporation (Applicant), of 550 Westlake Park Boulevard, Suite 900, P.O. Box 4544, Houston, Texas, 77210-4544, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity with pregranted abandonment authority for an unlimited term.

Applicant requests a certificate authorizing: (1) Sales in interstate commerce for resale by Applicant, (2) sales to Applicant by others, and (3) sales in interstate commerce for resale by Applicant's suppliers with Applicant acting as agent. Applicant states that such sales will include natural gas made available pursuant to abandonment authority granted by the Commission in separate proceedings without regard to the NGPA category of such gas. Applicant also requests pregranted abandonment authority with respect to all such sales, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 28, 1988, in accordance with Standard Paragraph J at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88-241-000]

Take notice that on February 18, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-241-000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Spot Market Corporation (Spot Market), a broker of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Northern proposes to transport natural gas for Spot Market from one receipt point in Iowa to three delivery points in Kansas and Iowa.

Northern indicates that the peak day volumes would be 100,000 MMBtu, the average daily volumes would be 50,000 MMBtu and the annual volumes would be 36,500,000 MMBtu. Northern also indicates that service respective to the provisions stipulated under Section

284.223(a) is reported in Docket No. ST88-2065.

Comment date: April 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP88-254-000]

Take notice that on February 24, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88-254-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon compression facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Texas Eastern proposes to abandon by sale to Marathon Oil Company (Marathon) two 2,200 horsepower compressor units located in West Cameron South Addition, Block 620, offshore Louisiana. Texas Eastern states that the facilities were installed to enable it to receive gas supplies from West Cameron Block 806 and 620.

It is stated that pursuant to an agreement dated October 28, 1985, Marathon operates and maintains the compressor units at its sole cost. Texas Eastern states that at present one of the compressor units is damaged. It is explained that the damaged unit has not been repaired because the remaining reserves from Block 806 and 620 have declined to the point where the remaining unit is capable of handling the compression requirements.

Texas Eastern and Marathon have determined that it would be in their mutual interest if Marathon owned the units, it is explained. It is further explained, that Marathon has offered to purchase the two units from Texas Eastern at a price of $100,000. Texas Eastern states that Marathon would use the damaged unit for spare parts to keep the other unit operating. In the event Marathon relocates the two compressor units, Marathon would provide the necessary compression to ensure continous flow of gas supplies from West Cameron Blocks 806 and 620 to Texas Eastern.

Comment date: April 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-257-000]

Take notice that on February 25, 1988, United States Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. CP88-257-000 an application, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain natural gas purchase facilities, via sale and least to Mako Energy, Inc. (Mako), all as more fully set forth in the application which is on filed with the Commission and open to public inspection.

It is stated that United proposes to abandon in place for sale to Mako approximately 9.73 miles of 16-inch pipeline, known as the Mustang Island Field Low Pressure Lateral, beginning at its northern terminus in the Edmund St. John Survey, San Patricio County, Texas, and continuing in a generally southern direction to end at a point in the West Little Survey, Nueces County, Texas. It is stated that United also propose to abandon in place for sale to Mako approximately 0.43 miles of 6-inch pipeline, known as the Ransom Island Field Lateral, beginning at its western terminus at the tie-in to the Mustang Island Field Low Pressure Lateral, located in State Tract 331 and continuing in an easterly direction to end at a point in State Tract 336, being all within Nueces County, Texas. United further proposes to abandon in place for lease to Mako approximately 1.064 miles of 20-inch pipeline, except for a pig trap at station 0+00, beginning at the northern terminus of the Mustang Island Lateral and continuing in a generally northwestern direction to a gate valve located at station 0+37 on said line in Edmund St. John Survey, San Patricio County, Texas, it is stated.

It is stated that the Mustang Island Field Lateral was constructed in 1952 to gather the gas reserves produced by Sunray DX Oil Company, and the Ransom Island Field Lateral was built in 1970 to gather production received from Kings Resources. United States that, because of declining field production, measurement facilities were removed form the Ransom Island Field lateral in 1980. Also, Sun Exploration and Production Company (Sun) had given advance notice to its working interest owners and United that it would be permanently closing its Redfish Bay Products Plant because it was receiving insufficient inlet gas volume, it is stated. After the plant closes, United activated its bypass valve and closed off all side valves going to Sun's plant on December 31, 1985, it is stated. As a result, all measurement, chart handling and dehydration requirements became the responsibility of each producer invovled, it is stated.

United requests that this abandonment be made effective January 18, 1988. On that date, United states that it executed a bill of sale to convey the Mustang Island Low Pressure Lateral and the Ransom Field Lateral to Mako. It is stated that, before the sale took place, United determined that these laterals were nonjurisdictional in nature per section 1(a) of the Natural Gas Act and therefore United was not required to obtain abandonment authority from the Commission. Subsequent to that determination and subsequent to the sale, United personnel discovered that these gathering facilities had been certificated, it is stated.

Comment date: April 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-256-000]

Take notice that on February 25, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed an application in Docket No. CP88-256-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline and measurement facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to abandon its North Black Bay Meter Station, appartenances, and related pipeline. Southern states that the subject facilities, consist of one 4-inch meter run and appurtenances, and about 0.923 mile of 4-inch pipeline that extends from Chevron U.S.A. Inc's (Chevron) North Black Bay platform located in Plaquemines Parish, Louisiana, to Southern's 10-inch Black Bay Line. It is explained that the station has been used by Southern to purchase natural gas from Chevron. It is further explained that Chevron has informed Southern that it foresees no future use for this station, as all gas is currently sold to Southern at another station. Therefore, Southern proposes to abandon the subject facilities. Southern states that the pipeline would be disconnected and abandoned in place and the meter and appartenances would be removed. Removal cost of the facilities is estimated to be $6,000, it is stated.

Comment date: April 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Alabama-Tennessee Natural Gas Company

[Docket No. CP88-300-000]

Take notice that on March 3, 1988, Alabama-Tennessee Natural Gas Company (A–T), P.O. Box 918, Florence, Alabama 35631, filed a certificate application in Docket No. CP88-300-000 pursuant to section 7(c) of the Natural Gas Act requesting a limited-term certificate of public convenience and necessity to perform a transportation service for Tennessee River Pulp & Paper Company, Division of Packaging Corporation of America (shipper), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A–T proposes to implement the service pursuant to the terms and conditions of a transportation contract between A–T and shipper, dated February 25, 1988. It is indicated that A–T has agreed to transport up to ten billion Btu of natural gas per day on an interruptible basis for a term of one year from the date of initial deliveries. A–T states that the transportation contract provides that shipper will cause gas to be delivered to various points of interconnection of the facilities of Tennessee Gas Pipeline Company (Tennessee), Columbia Gulf Transmission Company (Columbia), or Tennessee River Intrastate Gas Company, Inc. (TRIGAS), for redelivery to A–T. A–T indicates that it would receive such gas at the existing points of interconnection between the facilities of A–T and Tennessee located in Alcorn County, Mississippi and/or Colbert County, Alabama, and/or an existing point of interconnection between the facilities of A–T and Columbia located in Alcorn County, Mississippi, and/or the existing point of inteconnection of the facilities of A–T and TRIGAS located in Colbert County, Alabama. It is indicated that TRIGAS would receive gas from Texas Eastern Transmission Corporation for redelivery to A–T. A–T states that it would redeliver to shipper a thermally equivalent quantity of gas at existing points of interconnection between the facilities of A–T and shipper.

A–T proposes to charge rates provided by its Rate Schedule IT ranging from a maximum of 10.41 cents per Mcf to a minimum of 0.53 cents per Mcf.

Comment date: April 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5752 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6591-004 et al.]

Conoco Inc., et al.; Applications for Abandonment of Service and Petitions To Amend Certificates[1]

March 10, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Casbell,

Acting Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-8591-004, D, Feb. 24, 1988	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Rincon Field, Starr County, Texas.	(1)
CI61-1425-005, D, Feb. 26, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Jalmat, et al Fields, Lea County, New Mexico.	(2)
CI61-1425-006, D, Feb. 26, 1988	do	El Paso Natural Gas Co., Langlie-Mattix & Jalmat Fields, Lea County, New Mexico.	(3)
CI66-781-001, D, Feb. 29, 1988	do	Williams Natural Gas Company, Bishop Field, Roger Mills County, Oklahoma.	(4)
CI75-346-002, D, Feb. 10, 1988	Conoco, Inc	Mountain Fuel Resources, Inc., Spearhead Ranch, Converse County, Wyoming.	(5)
CI84-262-000, D, Feb. 24, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001 94120-7308.	Northern Natural Gas Company, Division of Enron Corp., Cutter Field, Seward & Stevens Counties, Kansas.	(6)
CI84-263-000, D, Feb. 24, 1988	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, Hugoton Field, Seward & Stevens Counties, Kansas.	(6)
CI88-264-000, B, Feb. 1, 1988	Burk Royalty Co., P.O. Box BRC, Wichita Falls, TX	Texas Eastern Transmission Corporation, North Panther Reef Field, Calhoun County, Texas.	(7)

[1] Effective 11-1-86, Conoco assigned its interest in depths from the surface of the earth down to but not below 7,305 feet underlying the E/2 of C.C.S.D. & R.G.N.G.R.R. Co. Survey 534, Certificate No. 505, containing 323.76 acres; Starr County Texas, to Tenneco Oil Company.

[2] Effective 1-2-86, Sun assigned its interest in Property No. [illegible], State B 36 and Property No. 595027, Langley Greer Com., to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[3] Effective 1-2-86, Sun assigned its interest in Property No. 516126, O.M. Hodge and Property No. 527338, M.F. Legal, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[4] Effective 2-1-88, Sun assigned its interest in Property No. 486287, Eakins Unit with depth limitations, to Kenneth W. Coy.

[5] By instrument of release dated 1-5-87, Conoco surrendered its interest in a portion of Lease Nos. 184418 and 184419, to the lessors.

[6] Effective 8-1-86, Tenneco assigned certain acreage to Beresco Properties, Inc.

[7] Applicant states that the only existing well, State Tract 111 #1 was plugged and abandoned on 10-15-80. Applicant states that development of dedicated acreage has not occurred nor is any planned.

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-5754 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. CP88-248-000 et al.]

Carnegie Natural Gas Co. et al.; Natural Gas Certificate Filings

March 9, 1988.

Take notice that the following filings have been made with the Commission:

1. Carnegie Natural Gas Company

[Docket No. CP88-248-000]

Take notice that on February 22, 1988, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP88-248-000, an application pursuant to Section 7 of the Natural Gas Act and Subpart F of the Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Carnegie to engage in any of the routine activities specified in §§ 157.208 through 157.216 of the Commission's Regulations, including permission and approval to abandon, all as more fully set forth in the request on file with the Commission and open to public inspection.

Comment date; March 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corporation, Penn-York Energy Corporation

[Docket No. CP88-258-000]

Take notice that on February 25, 1988, National Fuel Gas Supply Corporation (National) and Penn-York Energy Corporation) Penn-York), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-258-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to modify the class of storage service being provided by Penn-York to Penn Fuel, Inc. (Penn Fuel) and Connecticut Light & Power (CL&P) and to decrease the level of peaking and banking service provided to Penn-York under National's Rate Schedule X-49, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Penn-York proposes to change the class of storage service it currently provides to Penn Fuel and CL&P from 110-day service under Penn-York Rate Schedule SS-1 to 150-day service under Penn-York Rate Schedule SS-2. It is stated that the change in the class of service to be received by its customers will not affect the aggregate level of service provided by Penn-York and will not require the installation, abandonment or modification of any facilities.

It is further stated that the peaking and banking service National provides to Penn-York is required to enable Penn-York to provide 110-day storage service to its customers and because Penn Fuel and CL&P have requested to change their class of service to 150-day service, the level of peaking and banking service required by Penn-York would be reduced. National proposes to decrease the level of peaking and banking service it provides to Penn-York under Rate Schedule X-49 from a maximum daily rate of 55,645 Mcf and a maximum credit volume of 2,663,000 Mcf to a maximum daily rate of 27,986 Mcf and a maximum credit volume of 2,079,400 Mcf.

Comment date: March 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP88-246-000]

Take notice that on February 19, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-246-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Exxon Corporation (Exxon), a producer of natural gas, under the certificate issued in Docket No. CP86-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 250,000 dt of gas on a daily basis and up

to 91,250,000 dt on an annual basis for Exxon. It is stated that Trunkline would receive the gas from Exxon at existing interconnections between Trunkline and Exxon in South Timbalier, offshore Louisiana. It is explained that Trunkline would deliver for Exxon's account equivalent volumes less 0.7 percent for fuel use at existing interconnections with Monterey Pipeline Company and Southern Natural Gas Company, both located in St. Mary Parish, Louisiana. It is further explained that the gas would then be redelivered to Humble Gas System, Inc. and to four local distribution customers of Southern (Atlanta Gas Light Company, Southern Carolina Pipeline Corporation, Chattanooga Gas Company and Alabama Gas Company).

It is asserted that Trunkline filed an initial report in Docket No. ST88-2078, reporting that the service commenced January 1, 1988, under the automatic authorization provisions of § 284.223(a) of the Commission's Regulations. It is further asserted that no construction of facilities would be required to effect the transportation service. Trunkline proposes to charge Exxon the interruptible transportation rate specified in Trunkline's currently effective Rate Schedule PT. It is stated that the transportation service would have a primary term of one month from the initial date of service under §§ 284.223(a) and would continue on a month-to-month basis thereafter.

Comment date: April 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-260-000]

Take notice that on February 26, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-260-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant be allowed to establish two new delivery points for its customer Orange and Rockland Utilities, Inc. (O & R), under Applicant's blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to O & R's request, it has agreed to establish under Applicant's CD-3 Rate Schedule a new delivery point at Applicant's existing Broad Run Sales Meter Station which is an existing point of interconnection with Columbia Gas Transmission Corportion (Columbia) in Broad Run, West Virginia. Applicant further states that the new delivery point would be restricted for use only with respect to deliveries of interruptible sales gas under its R Rate Schedule and that deliveries would be limited to 50,000 dth/day. It is stated that O & R would request Columbia to transport these quantities from Broad Run to Columbia's existing interconnection with O & R under Columbia's Order No. 436/500 authorizations.

Applicant states that it has also agreed to establish a new CD-5 delivery point to O & R at the Mahwah Sales Meter Station which is an existing point of interconnection between Applicant and Algonquin Gas Transmission Company (Algonquin) in Mahwah, New Jersey. Applicant states that deliveries of CD-5 gas would be limited to 30,000 dth/day. It is stated that O & R gas would request Algonquin to transport these quantities from Mahwah to Algonquin's existing interconnection with O & R under Algonquin's Order No. 436/500 authorization.

Applicant does not propose to change its existing authorization to deliver up to 50,000 Mcf/day of interruptible sales gas to O & R at Mahwah under Applicant's R Rate Schedule. Applicant states that Algonquin would continue to transport the R gas from Mahwah under its T-1 Rate Schedule.

Applicant proposes no increase or decrease in the total daily and/or annual CD quantities that O & R is entitled to purchase from Applicant. Applicant submits that the establishment of a new delivery point to O & R outside of Applicant's Rate Zone 5 would have no adverse rate consequences since no CD quantities would be delivered at the CD-3 delivery point at Broad Run. Applicant further submits that it has sufficient capacity to accomplish the deliveries as proposed without detriment or disadvantage to any of Applicant's other customers.

Comment date: April 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5765 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-86-000 et al.]

Inland Steel Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

March 11, 1988.

Take notice that the following filings have been made with the Commission.

1. Inland Steel Company

[Docket No. QF88-86-000]

On February 17, 1988, Inland Steel Company (Applicant) of 30 West Monroe Street, Chicago, Illinois 60603, amended its application, filed November 12, 1987, for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility currently proposed will be located at Applicant's Indiana Harbor Works in East Chicago, Indiana. The facility will consist of a new 131 MW extraction/condensing steam turbine generator and three high-pressure steam boilers. Extraction steam from the steam turbine will be used at Applicant's Indiana Harbor Works plant for process uses throughout the coke plant and in the blast furnace. The primary energy source will be by-product blast furnace gas.

2. Smith Cogeneration Management Limited Partnership I (Stillwater)

[Docket No. QF88-280-000]

On February 29, 1988, Smith Cogeneration Management Limited Partnership I (Applicant), of First Oklahoma Tower, Suite 810, 210 West Park Avenue, Oklahoma City, Oklahoma 73201 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the University of Oklahoma in Stillwater, Oklahoma. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery steam generator and an extraction/condensing steam turbine generator. The thermal energy recovered from the facility will be used for space heating and mechanical chillers at the University of Oklahoma. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 103.855 MW. The installation of the facility will commence in mid-1989.

3. Smith Cogeneration Management Limited Partnership I (Norman)

[Docket No. QF88-279-000]

On February 29, 1988, Smith Cogeneration Management Limited Partnership I (Applicant), of First Oklahoma Tower, Suite 810, 210 West Park Avenue, Oklahoma City, Oklahoma 73201 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the University of Oklahoma in Norman, Oklahoma. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery steam generator and an extraction/condensing steam turbine generator. The thermal energy recovered from the facility will be used for space heating and mechanical chillers at the University of Oklahoma. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 102.7 MW. The installation of the facility will commence in mid-1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5751 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-70-006 and TA88-1-2-004]

East Tennessee Natural Gas Co.; Rate Filing

March 10, 1988.

Take notice that on March 4, 1988, East Tennessee Natural Gas Company (East Tennessee), tendered for filing ten copies of the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff, to be effective March 1, 1988:

Thirty-Fifth Revised Sheet No. 4

East Tennessee states that the purpose of this filing is (a) to implement interim rate reduction in consideration of the filing of a settlement Stipulation and Agreement (Stipulation) in Docket No. RP87-70 and (b) to correct the cumulative adjustments to Rate Schedules SG and I, which were misstated in East Tennessee's PGA filing in Docket No. TA88-1-2. East Tennessee states that it is filing Interim Rates to reduce the effective base tariff rates, which were accepted conditionally by Commission Order of December 29, 1987, in Docket No. RP87-70, while the Stipulation is pending before the Commission.

East Tennessee states that it has requested appropriate waivers so that the revised rates can be made effective March 1, 1988. East Tennessee states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5758 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-71-000]

El Paso Natural Gas Co.; Change in Rates

March 10, 1988.

Take notice that on March 3, 1988, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates (and certain identified tariff provisions) for natural gas service rendered to jurisdictional customers under all rate schedules currently contained in Volume Nos. 1 and 1-A and certain rate schedules in Volume Nos. 2 and 2A of El Paso's FERC Gas Tariff. El Paso states that such change in rates is necessary in order for El Paso to revise and reinstitute the standby charge for sales customers who elect to swing to transportation service while retaining their current call on sales gas. El Paso has requested that the Statement of Rates tariff sheets become effective in lieu of their counter-part sheets contained in El Paso's compliance filing at Docket No. RP88-44-000 and that the remaining sheets be made effective, all as of the date on which El Paso would otherwise be permitted to implement the revised rates pending at Docket No. RP88-44-000.

El Paso states that on February 26, 1988 at Docket Nos. RP88-44-000 and CP88-203-000, it filed a request for rehearing of the Federal Energy Regulatory Commission's ("Commission") January 29, 1988 order at said dockets, addressing, among other things, the requirement that reinstatement of standby charges would require certificate authorization under section 7. For the reasons stated in such request for rehearing, El Paso states its belief that the standby charges can be reinstituted through a notice of rate change filing under section 4 without the necessity of also securing a certificate under section 7.

El Paso further states that in the January 29, 1988 order, the Commission directed El Paso, *inter alia,* to remove take-or-pay costs from its demand component and to classify these costs to its sales commodity charge and to reflect production costs in the commodity portion of the rates. El Paso states that it classified the take-or-pay costs to the sales commodity charge and the standby charge in the instant filing.

In the event the Commission rejects the above mentioned standby charge, El Paso proposed alternate tariff sheets containing an alternate standby charge to be made effective in lieu of their counterparts, as appropriate. The alternate tariff sheets include El Paso's take-or-pay buyout and buydown costs in the sales commodity rate only.

El Paso requested that the tendered tariff sheets be accepted by the Commission and permitted to become effective thirty (30) days after the date of filing. El Paso requested that waiver be granted of all applicable rules, regulations and orders as may be necessary to receive a shortened suspension period so that the submitted tariff sheets become effective as of the date on which El Paso would otherwise be permitted to implement the revised rates pending at Docket No. RP88-44-000. Further, specific waiver of certain requirements of §§ 154.63 and 154.66, as applicable, was also requested by El Paso.

El Paso states that a copy of the notice of change has been served upon all interstate pipeline system customers of El Paso and upon all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC., 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 88-5756 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-2-16-002 and TA88-2-16-001 [1]]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

March 10, 1988.

Take notice that on March 3, 1988, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Twelfth Revised Sheet No. 4, Third Revised Sheet No. 1, First Revised Sheet No. 5, Second Revised Sheet No. 60, Second Revised Sheet No. 61, Second Revised Sheet No. 63, Second Revised Sheet No. 64, Second Revised Sheet No. 65, Second Revised Sheet No. 66, First Revised Sheet No. 69, and First Revised Sheet No. 70 to become effective February 1, 1988.

National states that the purpose of Substitute Twelfth Revised Sheet No. 4 is to reflect a net increase of 2.14 cents per Dth. This change consists of an increase in current purchase gas cost of 13.22 cents per Dth, and a further decrease in the purchase gas cost surcharge adjustment of 11.08 cents per Dth.

National states that the tariff changes also eliminate references to incremental pricing in accordance with Commission Order No. 478.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5755 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-37-001]

Northwest Pipeline Corp.; Base Tariff Rate Restatement and Redesignation of Tariff Sheet Number

March 10, 1988.

Take notice that on February 26, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing.

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[1] On March 1, 1988, National submitted revised tariff sheets in compliance with the Commission's Order of January 28, 1988, which was designated as Docket No. TA88-3-16-001. Later, National discovered errors and on March 3, 1988, resubmitted a corrected copy, designated as Docket No. TA88-3-16-002, to replace, in its entirety, the submission of March 1, 1988.

OL 53 ISS 51 MR 16 988 MI

Second Amended Thirty-Ninth Revised Sheet No. 10, to be part of its FERC Gas Tariff, First Revised Volume No. 1, effective April 1, 1988.

Northern states that the above-mentioned tariff sheet is tendered to restate the base tariff rates to reflect those of a filing with an earlier effective date, and to redesignate First Amended Thirty-Ninth Revised Sheet No. 10 as filed on February 16, 1988 in the above-captioned docket, to Second Amended Thirty-Ninth Revised Sheet No. 10.

A copy of this filing has been mailed to all jurisdictional sales customers, affected state commissions, and all parties on the TA88-4-37 service list.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5757 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-12-000]

Colorado Interstate Gas Co. v. RJB Gas Pipeline Co.; Complaint

March 11, 1988.

Take notice that on February 5, 1988, Colorado Interstate Gas Company (CIG) filed a complaint against RJB Gas Pipeline Company (RJB) pursuant to rule 206 of the Commission's rules of practice and procedure. 18 CFR 385.206 (1987). CIG alleges that RJB is charging rates or attempting to collect rates in excess of those set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

CIG states that it purchases gas from RJB in Baca County, Colorado, under three separate contracts covering gas produced in the Vilas and Walsh Fields. The gas in question is priced under NGPA section 105. CIG states that since March 1, 1979, it has paid RJB the maximum lawful price (MLP) for the gas. CIG asserts that these gas purchase contracts contain take-or-pay clauses that require CIG to pay for a minimum volume of gas, as specified under the contracts, regardless of whether CIG actually takes the gas. CIG further asserts that RJB has obtained judgment in state court ordering CIG to pay for these minimum volumes of gas even though CIG has not taken them. The court also rejected CIG's request that it be given make-up rights for these payments, holding that CIG had no make-up rights because the contracts had expired. The state court also rejected CIG's motion to dismiss for lack of jurisdiction.

CIG alleges that it has already paid RJB the MLP for the gas delivered under the contracts. CIG contends that any additional amount it is required to pay RJB under the contracts will violate Title I of the NGPA and result in RJB receiving an amount in excess of the MLP. CIG requests that the Commission take jurisdiction in the matter and issue an order finding that RJB's demand for and collection of take-or-pay payments under the gas purchase contracts in question constitutes a demand for payment in excess of the MLP established under Title I of the NGPA, and that any such payments made by CIG to RJB must be refunded with interest.

The procedures applicable to the conduct of this complaint proceeding are found in sections 211 and 214 of the Commission's rules of practice and procedure. 18 CFR 385.211 and 385.214 (1987). All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Such interventions or protests must be filed on or before April 11, 1988. All protests will be considered by the Commission but will not serve to make protestants parties. Any person wishing to become a party must file a motion to intervene in accordance with rule 214.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5761 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

Nagasco Marketing, Inc., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment[1]

March 11, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 28, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI87-700-001, 3-3-88	Nagasco Marketing, Inc. (successor to Caliche Pipeline Company), 8400 North Central Expressway Dallas, TX 75231.	3 years.
CI87-734-001, 3-3-88	Northwest Marketing Company, c/o Northwest Pipeline Corporation, P.O. Box 8900, Salt Lake City, Utah 84108-0899.	1 year.

[FR Doc. 88-5762 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. RP87-102-002 and TA88-1-40-001]

Raton Gas Transmission Co.; Compliance Filing

March 11, 1988.

Take notice that on February 18, 1988, Raton Gas Transmission Company (Raton) tendered for filing Substitute

Eighth Revised Sheet No. 4 as part of its FERC Gas Tariff, Original Volume No. 1, proposed to be effective March 1, 1988.

Raton states that Substitute Eighth Revised Sheet No. 4 is intended to accommodate the Commission Staff's position at a technical conference held in this proceeding and replaces Eighth Revised Sheet No. 4, which previously became effective October 1, 1987, by Commission order issued September 25, 1987. Raton further states that the purpose of this filing is to implement an I-1 rate of 299.33 cents in place of the filed rate of 280.234 cents. Finally, Raton states that it is withdrawing Substitute Eighth Revised Sheet No. 4 filed on February 12, 1988 and requests waiver of the filing fee for the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5759 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-25-004]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 11, 9888.

Take notice that on March 8, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1987;

Original Sheet No. 16CC.1

Second Revised Sheet Nos. 16L–16N
Second Revised Sheet Nos. 16BB–16CC
Second Revised Sheet Nos. 34T–34V

South Georgia states that on November 16, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. On January 15, 1988, South Georgia filed revised tariff sheets pursuant to the Commission's Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Granting Waiver of Notice Requirement and Convening Technical Conference issued December 16, 1987. The Office of Pipeline and Producer Regulation issued a Letter Order dated February 12, 1988, which rejected certain revised tariff sheets without prejudice to South Georgia filing revised sheets within 15 days. South Georgia states that, pursuant to approval of the Commission Staff, South Georgia has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

South Georgia states that copies of the filing were mailed to all of South Georgia's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5760 Filed 3-15-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-50566; FRL-3340-8]

Consent Orders and Significant New Use Rules Issued Under Section 5 of the Toxic Substances Control Act; Availability of Document and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: This notice announces the availability of the document "Standard Provisions for section 5(e) Consent Orders and Corresponding Significant New Use Rule Provisions Issued Under the Toxic Substances Control Act" (TSCA) and the Agency's request for public comment on the provisions contained in the document. The document is available from EPA's TSCA Assistance Office.

DATES: The document will be available for distribution on March 25, 1988. Comments must be received by April 25, 1988.

ADDRESSES: The document may be requested by mail or telephone from EPA's TSCA Assistance Office at the following address or telephone number: Environmental Protection Agency, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460 (202-554-1404).

Written comments must be mailed or delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: The EPA Office of Toxic Substances (OTS) is currently revising the standard provisions for consent orders EPA issues under section 5 of TSCA. These provisions govern the manufacture, processing, distribution in commerce, use, and disposal of new chemical substances pending the development of information sufficient to permit a reasoned evaluation of the health and environmental effects of those substances. The subjects addressed by the provisions include testing requirements, personal protective equipment, employee information and training, product labeling, material safety data sheets, use restrictions, distribution restrictions, disposal restrictions, and recordkeeping requirements.

The solicitation of public comments at this time is part of an Agency effort to standardize the language of the provisions of all section 5(e) consent orders issued by the Agency to the extent possible so that the time and resources required for consent order development can be minimized. Once these revisions are finalized, manufacturers and importers of new chemical substances who agree to the terms of the standard consent order provisions will benefit from an abbreviated order development process and more uniform regulatory provisions with which to comply.

EPA strongly encourages persons who believe they may be submitting premanufacture notices, and thus may be offered the option of agreeing to a consent order, to comment on the language of these standard provisions at this time. Requests to change the language of standard provisions during development of specific consent orders inevitably delay the development process due to the added levels of administrative review such requests necessitate. Persons who are willing to accept standard provisions will generally find that they are able to conclude negotiations, sign an order, and begin production more quickly than those who do not.

The Agency intends to issue a Significant New Use Rule (SNUR) to reflect the terms of each consent order it issues under section 5(e). The SNUR will extend the terms of the order to persons other than the original premanufacture notice submitter who may wish to manufacture or process the chemical substance. On April 29, 1987, the Agency proposed standard language for use in SNURs. That language has been modified to incorporate public comment and is included in the document now being made available so that persons who may be subject to a consent order may compare the provisions that will be used in a corresponding SNUR. The standard language for SNURs may be modified further to reflect comments submitted in response to the document now being made available.

Dated: March 10, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–5720 Filed 3–15–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 88–12]

Offer of Comparably Efficient Interconnection to Enhanced Service Providers

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order conditionally approving Bell Atlantic's comparably efficient interconnection (CEI) plan for a message storage service.

SUMMARY: The Commission conditionally approved Bell Atlantic's Comparably Efficient Interconnection plan for a message storage service for complying with the CEI parameters and pricing requirements established in the *Phase I Order* (104 FCC 2d 958 (1986), 51 FR 24350 (1986)) in *Computer III*, finding that Bell Atlantic satisfied most of those parameters and requirements.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Dujack, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memoradum Opinion and Order (FCC 88–12), adopted January 14, 1988, and released February 18, 1988. The full text of this Commsision decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memoradum Opinion and Order

1. On January 14, 1988, the FCC conditionally approved the Comparably Efficient Interconnection (CEI) plan for message storage service that was filed by Bell Atlantic on March 6, 1987, pursuant to the *Phase I Order* (104 FCC 2d 958 (1986), 51 FR 24350 (1986)) in *Computer III*. Bell Atlantic's proposed service will allow non-telephone company information service providers to store messages electronically in telephone company-owned equipment located in central offices which the public would access through the public switched network, via line-side connections to the end office switch. Bell Atlantic may require a waiver of the MJF provisions to offer this service. Bell Atlantic's CEI pricing proposal, its plan for complying with the network information disclosure safeguard, and its proposed quarterly reports that compare the timing of installation and maintenance were also approved by the Commission.

2. However, the Commission conditioned approval of the plan on Bell Atlantic's obtaining approval of amendments to its ONA plan that demonstrate that such reports are not needed, as specified in the *Computer III, Phase II Reconsideration Order* (FCC 88–10, released Feb. 18, 1988), or of amendments to its CEI plan that includes more detail in its quality and reliability reports. Bell Atlantic is required to amend its plan to conform with the customer proprietary network information requirements of the *Computer III, Phase II Reconsideration Order*.

Ordering Clause

3. It is hereby ordered, that pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, and Bell Atlantic CEI Plan described in paragraph 1 above IS APPROVED, subject to the conditions described herein.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–5742 Filed 3–15–88; 8:45 am]

BILLING CODE 6712-01-M

[FCC 88–11]

Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Pacific Bell and Nevada Bell

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order conditionally approving Pacific Bell and Nevada Bell's Comparably Efficient Interconnection plan for Voice Mail Services.

SUMMARY: The Commission conditionally approved Pacific Bell and Nevada Bell's Comparably Efficient Interconnection (CEI) plan for Voice Mail Services, a type of enhanced service that allows users to leave and retrieve messages stored in equipment collocated with Pacific's basic service facilities. The Commission approved Pacific's plan for complying with the CEI parameters and pricing requirements established in the *Phase I Order* (104 FCC 2d 958 (1986), 51 FR 24350 (1986)) in *Computer III*.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marion Gordon, Policy and Program Planning Divison, Common Carrier Bureau (202) 632–6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–11), adopted January 14, 1988, and released February 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On January 14, 1988, the FCC conditionally approved the Comparably. Efficient Interconnection (CEI) plan for Voice Mail Service (VMS) that was filed by the Pacific Bell and Nevada Bell (Pacific) on July 2, 1987, pursuant to the *Phase I Order* (104 FCC 2d 958) (1986), 51 FR 24350 (1986)) in *Computer III*. Pacific's VMS is a type of enhanced service that allows users to leave and retrieve messages stored in equipment collocated with Pacific's basic facilities. The Commission approved Pacific's proposals for complying with the CEI parameters and pricing requirements.

2. However, the Commission placed certain conditions on Pacific's plan. First, FCC approval is conditioned upon Pacific's obtaining approval either of amendments to its ONA plan that demonstrate that such reports are not needed, as specified in the *Computer III, Phase II Reconsideration Order* (FCC 88–10, released Feb. 18, 1988), or amendments to its CEI plan that include more detail in its quality and reliability reports. Pacific must also amend its plan to conform with the customer proprietary network information requirements of the *Computer III, Phase II Reconsideration Order*. The Commission noted that Pacific must disclose information about network changes or new network services related to VMS whenever required by the Commission's rules. It also required Pacific to describe, by March 21, 1988, the billing arrangements, if any, that will be available to providers of competing services.

Ordering Clause

3. It is hereby ordered, that pursant to sections 1, 4 (i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, Pacific's CEI Plan for VMS is approved, subject to the conditions described herein.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secertary.

[FR Doc. 88–5739 Filed 3–15–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200099.

Title: Seagate Corporation Terminal Agreement.

Parties:

Seagate Corporation (Seagate)
Delaware Operating Company (DOC)

Synopsis: The proposed agreement provides for DOC to render terminal and stevedoring services for Seagate at Piers 82–84 in the Port of Philadelphia.

By Order of the Federal Maritime Commission.

Josepn C. Polking,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88–5702 Filed 3–15–88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–010051–015.

Title: Mediterranean Force Majeure Agreement.

Parties:

Compania Trasatlantica Espanola
  (Spanish Line)
Costa Container Line
Farrell Lines, Inc.
Italia Di Navigazione, S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
A.P. Moller Maersk Line
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Co., Inc.

Synopsis: The proposed amendment would change the name of the agreement to the Mediterranean Space Charter Agreement. It would also eliminate the requirement of a force majeure situation to trigger the chartering authority of the agreement, replacing it with more general space chartering authority at the discretion of the parties and would add an arbitration provision to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88–5710 Filed 3–15–88; 8:45 am]

BILLING CODE 6730-01-M

Shipping Conditions in the United States/Korea Trade; Filing of Petition; Pacific America Line (PACAM)

Navios Management, Inc. d/b/a Pacific America Line ("PACAM"), a common carrier by water in the United States/Korea trade has filed a petition under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 requesting that the Federal Maritime Commission issue regulations under 46 CFR Part 585 to adjust or meet conditions unfavorable to shipping in the foreign trade of the United States. Specifically, PACAM alleges that the cargo preference laws of the Republic of Korea ("ROK"), which reserve for ROK-flag ocean carriers 100 percent of all the steel products exported from the ROK by water, subject to a waiver system, have resulted in irreparable harm to PACAM.

In order for the Commission to make a thorough evaluation of Petitioner's allegations, interested persons are requested to submit views, arguments and/or data on the petition no later than April 15, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC

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20573, in an original and 15 copies. Responses shall also be served on counsel for Petitioner: Alan F. Wohlstetter, Esq., Denning & Wohlstetter, 1700 K Street, NW., Washington, DC 20006.

Concurrently with the publication of the petition, the Commission, by separate letter, is requesting that the Department of State review the matter to determine whether the situation can be resolved through diplomatic channels, and if so, to make whatever efforts appropriate towards reaching such a resolution.

Copies of the petition are available for examination at the Washington, DC, office of the Commission, 1100 L Street, NW., Room 11101.

By the Commission March 9, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5701 Filed 3-15-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-6]

Jorge Villena aka George Villena, Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International; Order of Investigation

This proceeding is instituted pursuant to sections 11, 12 and 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. sections 1710, 1711, and 1712 and sections 22, 27, and 32 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. sections 821, 826, and 831.

It appears that Jorge Villena aka George Villena is operating as a non-vessel operating common carrier ("NVO") in the foreign and domestic commerce of the United States, individually, and as Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International. He conducts business from an office located at 1401 NW., 70th Avenue, Miami, Florida.

In *Cari-Cargo International, Inc. Jorge Villena and Sea Trade Shipping* (I.D. April 24, 1986, administratively final June 5, 1986), the Commission found the respondents named therein, Jorge Villena, Cari-Cargo International, and Sea Trade Shipping, to have violated various sections of the 1916 Act and sections 8(a)(1) (by operating without a tariff on file at the Commission), 10(a)(1) (by underpaying vessel-operating common carriers by means of cargo misdescriptions), and 10(b)(1) (by failing to charge rates specified in tariffs on file at the Commission) of the 1984 Act, 46 U.S.C. app. sections 1707(a)(1), 1709(a)(1), and 1709(b)(1). Each of the named respondents was ordered to cease and desist from violating those sections of the 1984 Act.

It appears that Mr. Villena presently conducts the NVO operations of Sea-Trade Shipping and Star Bright Container Line under filed tariffs and Caribbean Sun International without a tariff on file at the Commission.

It further appears that Mr. Villena has engaged in charging different compensation for the transportation of property than the rates and charges shown in the tariffs of Sea-Trade and Star Bright.

It further appears that in conducting such NVO operations Mr. Villena knowingly and willfully, by false, unjust, or unfair device, attempted to and obtained ocean transportation for property at less than the rates or charges that would otherwise be applicable.

Now Therefore It Is Ordered, That pursuant to section 11 of the 1984 Act and section 22 of the 1916 Act, an investigation into the practices of Jorge Villena aka George Villena, Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International is hereby instituted to determine:

1. Whether, during the period from June 5, 1986 and continuing to the present, Jorge Villena, Sea-Trade Shipping, Star Bright Container Line or Caribbean Sun International knowingly and willfully violated section 10(a)(1) of the 1984 Act, and/or section 16, Initial Paragraph of the 1916 Act, directly or indirectly, by a false or other unjust or unfair device or means, by obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable;

2. Whether, during the period from June 5, 1986 and continuing to the present, Jorge Villena, Sea-Trade Shipping, Star Bright Container Line or Caribbean Sun International violated section 10(b)(1) of the 1984 Act, section 2 of the Intercoastal Shipping Act, 1933, and/or section 18(a) of the 1916 Act by charging, demanding, collecting, or receiving greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in applicable tariffs or service contracts;

3. Whether, during the period from June 5, 1986 and continuing to the present, Jorge Villena or Caribbean Sun International violated section 8(a)(1) of the 1984 Act, section 2 of the Intercoastal Shipping Act, 1933, and/or section 18(a) of the 1916 Act, by failing to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on his or their own routes and on any through transportation route that has been established; and

4. Whether, in the event Jorge Villena, Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International violated any of the above-cited provisions, civil penalties should be assessed and, if so, the amount of such penalties and whether any other appropriate order should be entered.

It Is Further Ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It Is Further Ordered, That Jorge Villena, Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International be designated Respondents in this proceeding;

It Is Further Ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by March 10, 1989 and the final decision of the Commission shall be issued by July 10, 1989.

It Is Further Ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It Is Further Ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It Is Further Ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It Is Further Ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It Is Further Ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on all parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5666 Filed 3-15-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Landmark/Community Bancorp, Inc., et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-1700) published at page 2539 of the issue for Thursday, January 28, 1988.

Under the Federal Reserve Bank of Boston, the entry for Landmark/Community Bancorp, Inc. is revised to read as follows:

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Landmark/Community Bancorp, Inc.,* Hartford, Connecticut; to acquire 100 percent of the voting shares of Landmark Financial Corpporation, Hartford, Connecticut, and thereby indirectly acquire The Landmark Bank, Hartford, Connecticut; Community Bancorp, Inc., Glastonbury, Connecticut, and thereby indirectly acquire Community National Bank, Glastonbury, Connecticut; and up to 24.9 percent of the voting shares of SBT Corp., Old Saybrook, Connecticut, and thereby indirectly acquire a parallel interest in Saybrook Bank and Trust Company, Old Saybrook, Connecticut.

Comments on this application must be received by April 1, 1988.

Board of Governors of the Federal Reserve System, March 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5680 Filed 3-15-88; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp. et al., Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise notes, comments regarding each of these applications must be received not later than April 4, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Linclon Financial Corporation,* Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Rush County National Corporation, Rushville, Indiana, and thereby indirectly acquire Rush County National Bank of Rushville, Rushville, Indiana.

2. *Peoples Bancorporation of Northwest Iowa,* Rock Valley, Iowa; to become a bank holding company by acquiring 83.6 percent of the voting shares of Peoples Bank & Trust, Rock Valley, Iowa. Comments on this application must be received by April 7, 1988.

Board of Governors of the Federal Reserve System, March 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5679 Filed 3-15-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a South Dakota State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 3, 1988 in Denver, Colorado to reconsider our decision to disapprove South Dakota State Plan Amendment 87-4.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove South Dakota State Plan Amendment 87-4.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1). If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether South Dakota SPA 87-4 which adds case management services to its Medicaid State plan violates section 1915(g) (1) and (2) and section 1902(a)(23) of the Social Security Act and implementing Federal regulations at 42 CFR 447.201.

Section 1915(g)(2) of the Social Security Act defines case management as, "Services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational and other services." The State proposes to equate Medicaid case management with court-appointed guardianship. Under State plan amendment 87-4 the State defines case management services to include entering into contracts on behalf of a client, managing client finances, and making annual reports to the court. While these may be appropriate activities for legal guardians, they do not comport with the statutory definition of Medicaid case management services. South Dakota further includes legal services within its definition of case management. HCFA believes this is outside the scope of case

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management services as defined in section 1915(g)(2) of the Act which entails "assisting individuals * * * in gaining access to * * * services." HCFA has determined the actual provision of those services to which access is gained, however, is not encompassed in this definition.

Additionally, section 1915(g)(1) of the Act forbids the use of case management services in any manner which would restrict the choice of an individual to receive medical assistance in violation of section 1902(a)(23) of the Act. The provisions of section 1902(a)(23) apply both to the choice of case management providers and to the nature of the case management services provided.

The State proposes that case managers would either choose a guardian for the client or become guardians themselves. As legal guardians, case managers would make the final decisions regarding care for the client. Since it is the case management provider who chooses the guardian, who in turn is empowered by the court to make decisions on behalf of the client, HCFA has determined this would violate the explicit statutory requirement that case management services not restrict freedom of provider choice. Moreover, South Dakota limits case management providers to "private nonprofit" corporations and develops provider qualifications based on the ability of the agency to provide court-appointed guardianship. HCFA believes such qualifications also serve to restrict free choice of provider in violation of section 1902(a)(23) of the Act.

Furthermore, Congress expressed specific concern that payment for case management services not duplicate payments for this purpose made by other payors (H. Rep. No. 453, 99th Cong., 1st Sess 546 (1985)). The Medicaid statute also precludes payment for services for which another payor is legally responsible or for which no payment would otherwise be required. HCFA believes the provision of guardianship services under the guise of case management services under Medicaid would duplicate provisions under State law for court-appointed guardianship. Moreover, HCFA believes by including in this case management target group those "developmentally disabled individuals residing in ICF, SNF, ICF/MR or home and community-based facilities * * * "another source of payment duplication is created. Activities described as case management, such as gathering essentially information on client background, are an integral part of the institutional or home and community-based services for which Medicaid payment is already made.

Federal regulations at 42 CFR 447.201 require that a State plan describe the policy and methods to be used in setting payment rates for each type of service included in the State's Medicaid plan. Although South Dakota has asked for a retroactive effective date of July 1, 1987, HCFA has determined the State has not provided a description of a payment methodology to be applied to case management services.

The notice to South Dakota announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. James W. Ellenbecker,
Secretary, South Dakota Department of Social Services, Office of Medical Services, Richard F. Kneip Building, 700 Governors Drive, Pierre, South Dakota 57501-2291

Dear Mr. Ellenbecker: This is to advise you that your request for reconsideration of the decision to disapprove South Dakota State Plan Amendment 87-4 was received on February 10, 1988.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are four issues in this matter. The first issue is whether South Dakota's definition of case management services is within the scope of the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act. The second issue is whether the use of case management services as defined by South Dakota would violate a beneficiary's free choice of provider under section 1902(a)(23) of the Act. The third issue is whether the State provides for duplication of payments for Medicaid payment for which another entity is legally obligated or for which no payment would otherwise be required. The fourth issue is whether South Dakota has provided a payment methodology for case management services as required by 42 CFR 447.201.

I am scheduling a hearing on your request to be held on May 3, 1988 at 10:00 a.m. in Room 491, Federal Building, 1961 Stout Street, Denver, Colorado. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4470.

Sincerely,

William L. Roper, M.D.,
Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 10, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 88-5732 Filed 3-15-88; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1787]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 10, 1988.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Insurance Claims Package 223(F)

Office: Administration.

Description of the Need for the Information and its Proposed Use: This information is needed so that lenders can claim insurance benefits on defaulted loans. HUD uses the information to compute the claim settlement due the mortgagee.

Form Number: HUD-27008, 27009B, 27009D, and 27009F.

Respondents: Businesses or Other For-Profit.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 60.

Status: Extension.

Contact: Alice P. Thomas, HUD, (202) 755-7523; John Allison, OMB, (202) 395-6880.

Date: March 10, 1988.

Proposal: Section 8 Housing Voucher Program

Office: Housing.

Description of the Need for the Information and its Proposed Use: Section 207 of the Housing and Urban-Rural Recovery Act of 1983 amends section 8 of the U.S. Housing Act of 1937 to authorize HUD to conduct a housing voucher demonstration program using a payment standard. The payment standard which is based on the fair market rent is used to determine the monthly assistance which may be paid for a family.

Form Number: None.

Respondents: State or local Governments.

Frequency of Respondents: On Occasion, Monthly, Quarterly, and Annually.

Estimated Burden Hours: 240.

Status: Reinstatement.

Contact: Gwendolyn S. Carter, HUD, (202) 755-6477; John Allison, OMB, (202) 395-6880.

Date: March 10, 1988.

[FR Doc. 88-5769 Filed 3-15-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-07-4332-10]

Emergency Closure of Public Lands, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public lands closure.

SUMMARY: The Idaho Falls District of the Bureau of Land Management (BLM) announces the closure of public lands located in the Stinking Springs area north of the South Fork of the Snake River.

DATE: March 4, 1988.

SUPPLEMENTARY INFORMATION: Notice is hereby given that effective March 4, 1988 BLM-administered public lands located in the Stinking Springs area north of the South Fork of the Snake River near Heise, Idaho are closed to motor vehicle use. The area is bounded generally by the South Fork of the Snake River Road on the south and west, the Kelly Canyon Road and Targhee National Forest on the north and east. The legal description of the lands is as follows:

Boise Meridian

Township 4 North, Range 41 East

Section 32: SE¼, SE¼NE¼, and lands east of the Kelly Canyon Road in the NE¼NE¼, NW¼NE¼, SW¼NE¼, and NE¼SW¼.
Section 33: All.

Township 3 North, Range 41 East

Section 2: SW¼.
Section 3: All.
Section 4: SE¼, SE¼SW¼, NE¼SW¼, NW¼SW¼.
Section 5: NW¼NE¼.
Section 8: Lots 6 and 8.
Section 9: NE¼, NW¼, SE¼, NE¼SE¼, and Lots 2 and 3.
Section 10: NW¼, SW¼, NE¼NE¼, NW¼NE¼, SW¼NE¼, and the N½ of Lots 1 and 2.
Section 11: N½NW¼, and Lots 2, 3 and N½ of Lot 4.
Section 15: Lots 7 and 8.

All Federal lands administered by the Bureau of Land Management described above are closed to motor vehicles beginning March 4, 1988. Exceptions to this closure include administrative use of vehicles on the described public lands by the Bureau of Land Management and permittees authorized by the agency.

The purpose of this closure is to protect watershed, wildlife and scenic values from damage caused by off-road vehicle use, and allow vegetation to establish on roads and trails that were seeded in the fall of 1987.

The authority for this closure is 43 CFR 8341.2. This emergency closure will remain in effect until formal designations can be made as specified in the Medicine Lodge Resource Management Plan finalized November 29, 1985. The emergency closure is necessary because of the early spring conditions and unexpected accessibility of the area to motor vehicles.

BLM is considering an interim designation to follow the emergency closure that would close the area except for a motorcycle trail along the Stinking Springs road to the rim of the Snake River Canyon. An environmental analysis is being prepared for the proposed trail that will evaluate the impacts of alternate routes and no action.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 529-1020.

Dated: March 7, 1988.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 88-5683 Filed 3-15-88; 8:45 am]

BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: New Collection.

Bureau/Office: Office of Transportation Analysis.

Title of Form: Railroad User Survey.

OMB Form No.:

Agency Form No.: OTA-1

Frequency: Non-recurring.

Respondents: Shippers using new shortline and regional railroads.

No. of Respondents: 590.

Total Burden Hrs.: 197.

Brief Description of the need & proposed use: This survey will be used to collect selected data from shippers on the impact of new short line and regional railroads. The information will be analyzed and the results reported to congress to help assess our present policy of promoting growth of such railroads.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5661 Filed 3-15-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-37 (Sub-40)]

Commercial Zones And Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: An environmental assessment (EA) has been prepared for this proceeding which proposes to expand motor carrier commercial zones and terminal areas to take into account economic and demographic changes, as well as changes in the motor carrier carrier industry since the extent of commercial zones and terminal areas was last considered in 1976. The EA concludes that the adoption of this action would not have a significant impact on energy consumption or the quality of the human environment. The EA identifies potential adverse and beneficial environmental effects, but concludes that adverse environmental effects, if any, would be slight and short-lived. The EA will be served on all parties of record. Other interested parties may receive copies of the EA from the contact person listed below.

DATES: Comments are requested and should be filed by April 15, 1988.

ADDRESS: Send an original and one copy of pleadings addressed to:

(1) Ex. Parte No. MC-37 (Sub-No. 40)-
Environmental Assessment, Office of the Secretary, Case Control Branch,
Interstate Commerce Commission,
Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Dennis B. Wierdak (Telephone 202-275-0841 or 275-0800).

Assistance for the hearing-impaired is available through TDD services (202) 275-1721.

Authority: 42 U.S.C. 4321, et seq.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5725 Filed 3-15-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31238]

Duluth, Winnipeg and Pacific Railway Co.; Exemption; Trackage Rights; Duluth, Missabe and Iron Range Railway Co.

Duluth, Missabe and Iron Range Railway Company (DM&IR) has agreed to grant overhead trackage rights to Duluth, Winnipeg and Pacific Railway Company at Saunders, WI, between milepost 17.24 and milepost 17.43 of DM&IR's Interstate Branch, a distance of approximately 0.21 miles. The trackage rights became effective on March 3, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western R. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5460 Filed 3-15-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31240]

Lamoille Valley Railroad Co.; Exemption; Trackage Rights; Central Vermont Railway, Inc.

Central Vermont Railway, Inc. has agreed to grant overhead and local trackage rights to Lamoille Valley Railroad Company between milepost 9.9 at the north abutment of the Mississippi River Bridge at Sheldon Junction, VT and milepost 27.4 at Richford, VT. The trackage rights became effective March 7, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5461 Filed 3-15-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31237]

Soo Line Railroad Co.; Exemption; Trackage Rights; Duluth, Missabe and Iron Range Railway Co.

Duluth, Missabe and Iron Range Railway Company (DM&IR) has agreed to grant overhead trackage rights to Soo Line Railroad Company at Saunders, WI, between milepost 13.00 and milepost 19.43 of DM&IR's Interstate Branch, a distance of approximately 6.43 miles. The trackage rights became effective on March 3, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employes affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 2, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5462 Filed 3-15-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS #1100-88]

Proposed Implementation; English Language/Standardized Citizenship Test for Legalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of proposed solicitation.

SUMMARY: Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act (Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), requires that applications for permanent resident status under section 245A(a) of the Act, unless otherwise exempt, must demonstrate either that they have certain basic English language and citizenship skills or that they are satisfactorily pursuing a course of study recognized by the Attorney General to achieve such skills. In order to facilitate the manner in which those applicants who wish to demonstrate that they comply with section 245A(b)(1)(D)(i) of the Act, the Immigration and Naturalization Service (INS) is considering implementing a standardized English language and citizenship skills examination as an alternative testing method. The purpose of this notice is to announce the Service's consideration of implementation of a standardized English language/citizenship test for legalization purposes and to request comments from entities who are capable and interested in developing and implementing standardized tests for this effort. The selection criteria that appear in the supplementary information are in draft form. The INS shall incur no financial liability and intends to make no payments to any entity participating in this program.

DATES: Written comments from parties interested in developing and administering an alternative testing process based on the draft criteria in the supplementary information must be received by close of the business day (5:00 p.m.) on or before March 30, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, or delivered to room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of status of certain qualified aliens in a two-step adjustment process. Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act, as amended, Pub. L. 99-603 ("Act") provides in pertinent part that legalized aliens seeking adjustment of status to permanent resident under section 245A(a) of the Act must, unless otherwise exempt, demonstrate that they "* * * meet the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). In order to facilitate the manner in which legalized aliens can demonstrate that they comply with these requirements, the INS is considering implementing a standardized English language (reading and writing) and basic citizenship skills examination as an alternative testing method. If adopted, the test could be made available to applicants for naturalization as well. Existence of an alternative test would not restrict a legalization applicant from being tested in the required proficiencies by INS. Acceptance of a program will not restrict the INS from accepting or developing other alternative testing methods. The agreement by the INS to accept any alternative testing program will be non-financial. The INS agrees to accept the test results of the program or programs it has approved.

The following criteria and requirements are provided for submission of proposals: (1) The testing entity must have demonstrated experience in developing and administering reliable standard examinations in the English language and civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency); (2) the testing entity will be required to meet with INS representatives to review the test copy and to set the standards for passing test scores. The test should be structured as a pass/fail and should be accomplished within a maximum of thirty (30) minutes; (3) once the INS approves a test, the contents will not be changed by the testing entity unless otherwise directed by the INS; (4) the test questions must come from the revised (1987) Federal Textbooks on Citizenship, which are expected to be available from the Government Printing Office by March 1988; (5) the testing entity will be required to field test the examination prior to implementation in cooperation with the INS; (6) the testing entity must be capable of administering the examination over a broad geographical area of not less than a statewide basis. In administering the examination, the testing entity will be responsible for obtaining and managing adequate testing locations, controlling the time period in which the testing is to be accomplished, staffing the administration of the test, and furnishing supplies; (7) pricing of the examination per applicant will be a reasonable fee to be agreed upon by INS and the testing entity. If the applicant fails to test, he/she shall be given the opportunity to be re-tested one time at no additional cost. The re-test shall be a variance of the initial test; (8) the testing entity will be required to publicize the availability of the examination to legalization applicants. The INS will also maintain a register of the approved entity or entities. This register will be made available to the public; (9) the testing entity will be responsible for scoring the examination and must provide the results to the applicant and INS within five (5) business days from the date of the test; (10) the testing entity must provide for test security. INS will review the procedures the entity has or will establish to provide for test security and integrity; (11) INS reserves the right to determine, through inspection or other means, the continued reliability and integrity of the test. Any testing entity approved by INS may be removed from the register for good cause.

Richard E. Norton,

Associate Commissioner, Examinations.

Date: February 26, 1988.

[FR Doc. 88-5766 Filed 3-15-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Iowa State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of Subpart J of Part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Occupational Safety and Health Act of 1970 on July 2, 1985.

The Iowa plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated August 13, 1987 from Walter H. Johnson, Deputy Labor Commissioner to Alonzo L. Griffin, Area Director, and incorporated as part of the plan, the State submitted State standards comparable to: Occupational Exposure to Ethylene Oxide; Labeling Requirements, 29 CFR 1910.1047 as published in the **Federal Register** (50 FR 41494 dated October 11, 1985) and Occupational Exposure to Cotton Dust; Final Rule, 29 CFR 1910.19, 1910.1000 and 1910.1043 as published in the **Federal Register** (50 FR 51173 dated December 13, 1985). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on March 26, 1986, hearing held on April 28, 1986 and resolution adopted by the Division of Labor Services on June 27, 1986 pursuant to Chapter 17a, Iowa Code. The standards were effective on August 20, 1986 and notice of their adoption was published by the State on July 16, 1986. The State also submitted State standards comparable to: Electrical Standards for Construction; Amendments, 29 CFR 1926.151, 1926.152, 1926.351, 1926.803, 1926.400, 1926.401, 1926.402, 1926.403, 1926.404, 1926.405, 1926.406, 1926.407, 1926.408, 1926.409–1926.415, 1926.416, 1926.417, 1926.431, 1926.432, 1926.433–1926.440, 1926.4441, 1926.442–1926.448 and 1926.449 as published in the **Federal Register** (51 FR 25318 dated July 11, 1986). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on October 22, 1986, hearing held on November 13, 1986 and resolution adopted by the Division of Labor Services on April 17, 1987 pursuant to Chapter 17a, Iowa Code. The standards were effective on June 10, 1987 and notice of their adoption was published by the State on May 6, 1987. The State also submitted State standards comparable to: Occupational Exposure to Cotton Dust, Corrections and Information Collection Requirements Approval, 29 CFR 1910.1043 as published in the **Federal Register** (51 FR 24325 dated July 3, 1986); Occupational Exposure to Ethylene Oxide, Amendments, 29 CFR 1910.1047 as published in the Federal Register (51 FR 25053 dated July 10, 1986) and Commercial Diving Standard, Amendments, 29 CFR 1910.430 as published in the **Federal Register** (51 FR 33033 dated September 18, 1986). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on October 22, 1986, hearing held on November 12, 1986 and resolution adopted by the Division of Labor Services on May 12, 1987 pursuant to Chapter 17a, Iowa Code. The standards were effective on July 8, 1987 and notice of their adoption was published by the State June 3, 1987.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210; Office of the Regional Administrator, OSHA, Room 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 E. Grand, Des Moines, Iowa 50319.

4. Public Participation

Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.
2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective this March 16th, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Kansas City, Missouri this 14th day of August 1987.

Roger A. Clark,

Regional Administrator.

[FR Doc. 88–5711 Filed 3–15–88; 8:45 am]

BILLING CODE 4510-26-M

Iowa State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called for Assistant Secretary) (29 CFR 1953.4)) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of subpart J of Part 1952 containing the decision. Iowa was granted final approval under Section 18(e) of the Occupational Safety and Health Act of 1970 on July 2, 1985.

The Iowa plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated September 2, 1987 from Walter H. Johnson. Deputy Labor Commissioner to Alonzo L. Griffin, Area Director, and incorporated as part of the plan, the State submitted State standards comparable to: Health and Safety Standards; Accident Prevention Tags; Amending Final Rule, 29 CFR 1910.145 as published in the **Federal Register** (51 FR 33260 dated September 19, 1986). This standard which is contained in Chapter 88 of the Code of Iowa (1983) was promulgated after public comment requested on May 20, 1987, hearing scheduled for June 10, 1987 (not conducted due to failure of anyone to appear) and resolution adopted by the Divisions of Labor Services on August 6, 1987 pursuant to Chapter 17a, Iowa Code. The standard was effective on September 30, 1987 and notice of its adoption was published by the State on August 26, 1987. The State also submitted State standards comparable to: Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks revising recordkeeking requirements, 29 CFR 1910.68, 1910.106, 1910.157, 1910.179, 1910.180, 1910.181, 1910.217, 1910.218, 1910.252, and 1910.440 as published in the **Federal Register** (51 FR 34560 dated September 29, 1986) and Hazardous Waste Operations and Emergency Response; Interim Final Rule, 29 CFR 1910.120 as published in the **Federal Register** (51 FR 45663 dated December 19, 1986). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on May 6, 1987, hearing scheduled for May 27, 1987 (not conducted due to failure of anyone to appear) and resolution adopted by the Division of Labor Services on August 6, 1987 pursuant to Chapter 17a, Iowa Code. The standards were effective on September 30, 1987 and notice of their adoption was published by the State on August 26, 1987. The State also submitted State standards comparable to: Hazardous Waste Operations and Emergency Response: Corrections, 29 CFR 1910.120 as published in the **Federal Register** (52 FR 16241 dated May 4, 1987) and Field Sanitation; Final Rule, 29 CFR 1928.110 as published in the **Federal Register** (52 FR 16095 dated May 1, 1987). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on June 3, 1987, hearing scheduled for June 24, 1987 (not conducted due to failure of anyone to appear) and resolution adopted by the Division of Labor Services on August 6, 1987 pursuant to Chapter 17a, Iowa Code. The Standards were effective on September 30, 1987.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the comparable Federal standards and are therefore approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement along with the approved plan, may be inspected and copies during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitutin Avenue NW., Washington, DC 20210; Office of the Regional Administrator, OSHA, Room 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 E. Grand, Des Moines, Iowa 50319.

4. Public Participation

Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause with may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.
2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective March 16, 1988.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Kansas City, Missouri this 2nd day of November 1987.

Roger A. Clark,

Regional Administrator.

[FR Doc. 88–5712 Filed 3–15–88; 8:45 am]

BILLING CODE 4510-26-M

Oregon Safety Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.30 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated January 8, 1987, from William J. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, an amendment to State Standards comparable to 29 CFR 1910.1043, Cotton Dust; 29 CFR 1910.1000, Table Z–1 (Cotton Dust); and 29 CFR 1910.19(f), Special Provisions for Air contaminants, as published in the **Federal Register** (50 FR 51173) dated December 13, 1985, and 29 CFR 1910.1043, Cotton Dust; Corrections and Information Collection Requirements Approval, as published in the **Federal Register** (51 FR 24324) dated July 3, 1986. These rules establish a final standard for Occupational Exposure to Cotton Dust, including a permissible exposure limit.

On March 18, 1986, and October 30, 1986, Notices of Proposed Amendment of Rules were mailed to those persons on the State's mailing list established pursuant to OAR 436–01–000. The Notices were published in the State Administrative Rules Bulletin on March 15, 1986 and November 1, 1986. These actions failed to elicit written comments or requests for public hearings. The State's rules pertaining to Occupational exposure to Cotton Dust and Special Provisions for air contaminants (Cotton Dust), contained in OAR chapter 437, Division 146, were adopted effective June 13, 1986. The State's rule pertaining to Corrections and Information Collection Requirements (Cotton Dust), contained in OAR Chapter 437, Division 146, was adopted effective June 13, 1986. The State's rule pertaining to Corrections and Information Collection Requirements (Cotton Dust), contained in OAR Chapter 437, Division 146, was adopted effective December 4, 1986.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standards and OSHA has determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. The differences are the incorporation of the State's rule numbering system, references to other State rules, and editorial changes. OSHA therefore approves these standards.

3. Location of Supplement For Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 Fist Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon

BEST COPY AVAILABLE

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97310; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds the good cause exists for not publishing the supplement to the Administrator's approval effective upon publication for the following reason:

1. The amended sections of the State's rules are substantially identical to those amended by the Federal standard which were promulgated in accordance with Federal law including meeting requirements for public participation. The standards were adopted in accordance with the procedural requirement of State law which included opportunity for public comment and further public participation would be repetitious.

This decision is effective March 15, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Seattle, Washington this 28th day of March.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 88-5713 Filed 3-15-88; 8:45 am]

BILLING CODE 4510-26-M

Virginia State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribed procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the Federal Register (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated June 17, 1987, from Commissioner Carol Amato, Virginia Department of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.145(f), pertaining to revisions to Accident Prevention Tags as published in the Federal Register of September 19, 1986 (51 FR 33251); (2) 29 CFR 1910.430, pertaining to corrections and revisions to the Commercial Diving Standard as published in the Federal Register of September 18, 1986 (51 FR 33033); (3) 29 CFR 1910 pertaining to amendments to Recorkeeping Requirements for Tests, Inspections and Maintenance Checks as published in the Federal Register of September 29, 1986 (51 FR 34552); (4) 29 CFR 1910.1200 pertaining to amendments to the Hazard Communication Standard published in the Federal Register of September 30, 1986 (51 FR 34590); (5) 29 CFR 1910.1101 and 29 CFR 1926.58 adopting the Asbestos Standard for General Industry and the Construction Industry as published in the Federal Register of October 17, 1986 (51 FR 37002), and (6) 29 CFR 1910.120 adopting the Hazardous Waste Operations and Emergency Response Standard as published in the Federal Register of December 19, 1986 (51 FR 45663).

2. Decision

Having reviewed the State submissions in comparison with the Federal Standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241; and the OSHA Office of State Programs, Room N-3476, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescibe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 16, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania this 2nd day of November 1987.

Linda R. Anku,

Regional Administrator.

[FR Doc. 88-5714 Filed 3-15-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-23]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting on the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: March 24, 1988, 8 a.m. to 4 p.m. (to be held at Dryden Flight Research Facility) and March 25, 1988, 8 a.m. to 4 p.m. (to be held at Ames Research Center).

ADDRESS: National Aeronautics and Space Administration, Dryden Flight Research Facility, Room 1, Building 1400, Edwards, CA 93523 and National Aeronautics and Space Administration, Ames Research Center, Committee Room, Building 200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

March 24, 1988
- 8 a.m.—Overview of Ames Flight Research Activities.
- 10 a.m.—Product of Flight Research Programs.
- 1 p.m.—Capability of Facilities.
- 3 p.m.—Tour of Facilities.
- 4 p.m.—Adjourn.

March 25, 1988
- 8 a.m.—Flight Research Resources.
- 10 a.m.—Partners, Past and Future.
- 11 a.m.—Challenges.
- 2 p.m.—Future Programs.
- 4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 10, 1988.

[FR Doc. 88-5717 Filed 3-15-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-24]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter (NGF).

DATE AND TIME: April 7, 1988, 9:30 a.m. to 4 p.m..

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Headquarters Building, Directors Conference Room, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

April 7, 1988
- 9:30 a.m.—Opening Remarks.
- 9:45 a.m.—Review of NASA's High Performance Programs.
- 1 p.m.—Executive Discussion.
- 4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 10, 1988.

[FR Doc. 88-5718 Filed 3-15-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-25)]

Intent To Grant an Exclusive Patent License; Air Products and Chemicals, Inc.

AGENCY: National Aeronautics and Space Agency Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Air Products and Chemicals, Inc., of Allentown, Pennsylvania, an exclusive license to practice the invention protected by U.S. Patent No. 4,490,229 entitled "Deposition of Diamondlike Carbon Films," which issued on December 25, 1984, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR Part 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel for Intellectual Property whether to grant the license.

DATE: Comments to the Notice must be received by May 16, 1988.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA Director of Patent Licensing, (202) 453-2430.

John E. O'Brien,

General Counsel.

Date: March 10, 1988.

[FR Doc. 88-5719 Filed 3-15-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by the Toledo Edison Company for an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. Notice of consideration of issuance of this amendment was published in the Federal Register on July 2, 1986 (51 FR 24265).

The proposed amendment, in part, would delete the requirement specified in Technical Specification 6.5.1.6.e concerning Station Review Board responsibility to investigate and report Technical Specification (TS) violations. The Commission has determined that this TS provides assurance that the results of investigations of TS violations are brought to the attention of responsible corporate management and, therefore, should not be deleted.

All other provisions of the amendment request have been approved by Amendment No. 109 dated March 9, 1988. Notice of Issuance of Amendment

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No. 109 will be published in the Commission's biweekly **Federal Register** notice.

Toledo Edison Company was notified of the Commission's denial of the proposed TS change by letter dated March 9, 1988.

By April 15, 1988, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel/Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see: (1) The application for amendment dated January 22, 1986, as clarified August 25 and December 28, 1987, and January 15 and February 17, 1988, (2) the Commission's letter to Toledo Edison Company dated March 9, 1988, and (3) the Commission's Safety Evaluation issued with Amendment No. 109 to NPF–3 dated March 9, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 9th day of March, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 88–5715 Filed 3–15–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271–OLA–2; ASLBP No. 88–567–04–OLA]

Vermont Yankee Nuclear Power Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station

[Facility Operating License No. DPR–28]

This Board is being established pursuant to a notice published by the Commission on January 26, 1988, in the **Federal Register** (53 FR 2114) entitled, "Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would change the technical Specifications to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC Systems when one train has a component out of service.

The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;
James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 9th day of March 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88–5763 Filed 3–15–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271–OLA–3; ASLBP No. 88–568–05–OLA]

Vermont Yankee Nuclear Power Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station

[Facility Operating License No. DPR–28]

This Board is being established pursuant to a notice published by the Commission on January 28, 1988, in the **Federal Register** (53 FR 2115) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would revise surveillance frequency requirements for trip system logic testing and calibration from once every six months to once per operating cycle and requires more detailed testing than is presently required by Technical Specifications.

The Board is comprised of the following Administrative Judges:

Helen F. Hoyt, Chairperson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;
Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 9th day of March 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88–5770 Filed 3–15–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–275–OLA; ASLBP No. 88–566–03–OLA]

Pacific Gas and Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2,721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Pacific Gas and Electric Company Diablo Canyon Nuclear Power Plant, Unit 1;

[Facility Operating License No. DPR–80]

This Board is being established pursuant to a notice published by the Commission on October 21, 1987 in the **Federal Register** (52 FR 39296 and 39304) entitled, "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would revise License Condition 2.C.(7) of the Diablo Canyon full power license, DPR–80, to allow submittal of the Long Term Seismic Program (LTSP) final report by July 31, 1989, rather than by July 31, 1988.

The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;
Jerry Harbour Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;
Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 9th day of March 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88–5771 Filed 3–15–88:8:45 am]

BILLING CODE 7590-01-M

Withdrawal of Intent To Establish a Local Public Document Room for the Potential High-Level Waste Geologic Repository Site in Deaf Smith, TX

On October 29, 1987, the Nuclear Regulatory Commission (NRC) published notice of its intent to establish a local public document room (LPDR) for the proposed high-level waste geologic repository site in Deaf Smith, Texas (52 FR 41638). However, as a result of the Nuclear Waste Policy Amendments Act of 1987, the Deaf Smith, Texas, site is no longer being considered for the repository, and the NRC withdraws its intent to establish the Deaf Smith, Texas, local public document room.

The Nuclear Waste Policy Amendments Act of 1987 focuses on a single site in Yucca Mountain, Nevada, as the location for the high-level waste geologic repository. The NRC has already established a local public document room for the Nevada site at the University of Nevada—Las Vegas (53 FR 4473; February 16, 1988).

Dated at Bethesda, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–5716 Filed 3–15–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25441; File No. SR–PHLX–87–35]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 9, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted a proposed rule change to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, to amend Rule 1014(e) [3] by changing the term underlying "security" to underlying "interest" and by clarifying the meaning of the term "trading session."

The proposed rule change was noticed in Securities Exchange Act Release No. 25198, December 15, 1987. No comments were received on the proposed rule change.

The proposed rule change will substitute the term underlying "interest" for underlying "security" in Rule 1014(e)(i). The proposed rule change also will adopt a commentary clarifying the meaning of the term "trading session" in light of the recently instituted evening trading hours on the Foreign Currency Options ("FCO") Floor. On September 16, 1987, the Phlx began trading foreign currency options during an evening trading session. These evening sessions are held Sunday through Thursday evening between 7:00 p.m. and 11:00 p.m. This evening trading session is in addition to the Phlx's normal Monday through Friday 8:00 a.m. to 2:30 p.m. foreign currency option trading session.

Under Rule 1014(e), a registered options trader ("ROT") is prohibited from acting both as a market maker and as a floor broker who executes off-floor orders in options on the same underlying security during the same trading session. The purpose of this provision is to avoid the possibility that a market maker may trade ahead of a customer order or otherwise take advantage of a customer account in conducting proprietary trading activities. Currently, the evening trading sessions are considered part of the next day's trading session for clearing, margin and other purposes.[4] For example, foreign currency option trading that occurs on Monday evening is considered part of Tuesday's 8:00 a.m. to 2:30 p.m. trading session. The proposed Rule change will divide further the daytime and evening foreign currency option trading sessions on the same calendar day into two separate and distinct trading sessions for the purpose of rule 1014(e). Accordingly, the proposed rule change will allow an ROT to act as a floor broker (market maker) by day and a market maker (floor broker) by night.

The Phlx states that FCO participants have asked the exchange for clarification as to whether trading during the daytime hours of 8:00 a.m., and 2:30 p.m. and the evening hours of 7:00 p.m. and 11:00 p.m. on the same calendar day is considered trading during one session or two separate sessions.

The Phlx believes that since the market may move substantially from one day to the next, under the current rule, the ability of an ROT to prefer himself over a customer, or to trade ahead of a customer order, is limited by prohibiting the ROT from acting in a dual capacity in the same sessions. The Phlx further argues that this same

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] *See* Phlx Rule 1014(e)(i).

[4] *See* Securities Exchange Act Release No. 24652 (June 29, 1987).

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reasoning applies with equal force in considering the daytime and evening segments on the FCO Floor to be separate trading session. Finally, the Phlx states that amending Rule 1014(e)(i) to change the term underlying "security" to underlying "interest" is designed to reflect the fact that Phlx trades options on foreign currencies and stock indices as well as on individual securities.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder. The Commission notes that interpreting "trading sessions" in Phlx Rule 1014(e)(i) to mean that the day trading sessions on the FCO Floor during the hours of 8:00 a.m. and 2:30 p.m. are separate and distinct from the evening trading session on the FCO Floor during the hours of 7:00 p.m. and 11:00 p.m. on the same calendar day is consistent with the way the Phlx treats these trading sessions for margin and capital purposes. In addition, the Commission believes that the period of cessation of trading between the day and evening trading sessions (four and one-half hours) and the evening and day trading sessions (nine and one-half hours) is sufficiently substantial so that the two sessions are more akin to two separate trading days rather than one. Since the ability of an ROT to prefer himself over a customer, or trade ahead of a customer order, is limited by prohibiting the ROT from acting in a dual capacity in the same session, the overall objectives of the securities laws—investor protection and maintenance of fair and orderly markets—are satisfied.

Finally, since the term "interest" more accurately represents the nature of the products traded on the Phlx than does the term "security", the Commission also believes that changing the term underlying "security" in Rule 1014(e)(i) to underlying "interest" is appropriate because the Phlx trades options on foreign currencies and stock indexes as well as on individual securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division to Market Regulation, pursuant ot delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5706 Filed 3-15-88; 8:45 am]

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[File No. 22-16727]

Application and Opportunity for Hearing; Citicorp Homeowners, Inc. and Citicorp

March 9, 1988.

Notice is hereby given that Citicorp Homeowners, Inc. (the "Company") and Citicorp (collectively, the "Applicants") have filed an application, pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act"), in connection with an indenture qualified under the Act dated September 1, 1984 (the "Indenture") between Citicorp Homeowners Mortgage Acceptance Corporation 1, Inc. ("CHMAC 1"), a wholly owned, limited purpose subsidiary of the Company, and Mercantile Bank N.A., formerly Mercantile Trust Company N.A. ("Mercantile"), as trustee (the "Trustee"), for a determination by the Securities and Exchange Commission (the "Commission") that Mercantile's trusteeship under such indenture and under certain Pooling and Servicing Agreements (the "Agreements") described below, which have not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mercantile from acting as Trustee under the Indenture or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor under the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures

In support of its application, the Applicant alleges that:

1. In October 1984, CHMAC 1 issued the following series of Collateralized Mortgage Obligations ("CMOs") under the Indenture:

(a) $100,000,000 11½% Class A-1 CMOs with a stated maturity of October 1, 1986;

(b) $115,000,000 12⅜% Class A-2 CMOs with a stated maturity of October 1, 1988;

(c) $135,000,000 12½% Class A-3 CMOs with a stated maturity of April 1, 1991;

(d) $150,000,000 12½% Class A-4 CMOs with a stated maturity of April 1, 2008.

2. The CHMAC 1 CMOs are secured principally by assignments to the Trustee of fixed-rate conventional residential mortgage loans originated or acquired by the Company and serviced by Citicorp Homeowners Services, Inc. ("CHSI"), and by certain obligations of Citicorp, the ultimate parent of both the Company and CHMAC 1, pursuant to a Minimum Principal Payment Guaranty and a Limited Credit Guaranty (the "CMO Guaranties").

3. Citicorp's obligations under the CMO Guaranties rank equally with all of its unsecured and unsubordinated indebtedness.

4. On September 19, 1986, the Securities and Exchange Commission declared effective a shelf registration statement, File No. 33-6718, filed by the Company and Citicorp on Forms S-11 and S-3, respectively (the "Pass-Through Registration Statement"). The Pass-Through Registration Statement provides for the issuance by the Company, in series, of up to $1,000,000,000 aggregate principal amount of mortgage pass-through certificates and the issuance by Citicorp of its related limited guaranties, described more fully below.

5. On December 1, 1986, the Securities and Exchange Commission declared effective shelf registration statements, File Nos. 33-6979 and 33-5702, filed by the Company, Citicorp and certain other affiliates of Citicorp, on Form S-11 (and on Form S-3 insofar as it relates to Citicorp) (together, the "CMO Registration Statement"). The CMO Registration Statement provides for the issuance in series, of up to $700,000,000 aggregate principal amount of collateralized mortgage obligations which may be collateralized by mortgage pass-through certificates issued under the CMO Registration Statement by the Company, and for the issuance by Citicorp of its related limited guaranties, described more fully below. The mortgage pass-through certificates issued or to be issued under the Pass-Through Registration Statement and the CMO Registration Statement are hereinafter collectively referred to as the "Certificates".

6. Each Certificate evidences an ownership interest in one of a number of trusts created by the Company. The trust property of each trust consists of a separate and distinct pool of conventional single-family fixed-rate first mortgage loans originated or acquired and serviced by the Company (the "Mortgage Loans") and related property conveyed to the trust by the Company. Each pool (the "Mortgage Pool") is evidenced by a separate series of Certificates issued pursuant to a separate pooling and servicing agreement (each a "Pooling and Servicing Agreement") entered into among the Company as seller and servicer, and the trustee of the trust fund (the "Certificate Trustee") as named in the applicable prospectus supplement.

7. Citicorp has delivered a guaranty (each, a "Guaranty") to the Certificate Trustee for each Mortgage Pool. Under the Guaranty, Citicorp will to a limited extent honor demands for payment to cover delinquencies or losses with respect to the Mortgage Loans. Citicorp's obligations under each Guaranty will rank equally with all unsecured and unsubordinated indebtedness of Citicorp.

8. Certain Certificates have been issued pursuant to the Pass-Through Registration Statement and the CMO Registration Statement, namely, Series 1986-9 Certificates; Series 1986-10 Certificates; Series 1986-11 Certificates; Series 1986-12 Certificates; and Series 1987-1 Certificates; Series 1987-2 Certificates; Series 1987-3 Certificates; Series 1987-Ia Certificates; Series 1987-Ib Certificates; Series 1987-Ic Certificates; Series 1987-4 Certificates; Series 1987-5 Certificates; Series 1987-6-R Certificates; and Series 1987-7 Certificates. The Company has named Mercantile as Certificate Trustee under the Pooling and Servicing Agreements Pursuant to which Certificates were issued.

9. Section 6.08 of the Indenture states: "The Trustee is subject to [Trust Indenture Act] section 310(b) * * *"

10. Citicorp's obligations under the Guaranties relating to the Certificates, and under the Principal Payment Guaranty and Limited Credit Guaranty relating to the CHMAC 1 CMOs are all unsecured and unsubordinated and are equal in rank to Citicorp's other unsecured and unsubordinated indebtedness.

11. The individual pools of mortgage loans underlying each series of Certificates are separate and distinct from one another and from the pool of mortgage loans pledged to secure the CHMAC 1 CMOs. Citicorp's obligations under the CMO Guaranties and the Guaranties relating to the Certificates are similarly distinct because they are each triggered only be delinquency, default or loss in regard to a particular pool of mortgage loans.

12. For the foregoing reasons, the Applicants believe that the naming of Mercantile as Certificate Trustee under one or more Pooling and Servicing Agreements, providing for the issuance of Certificates is not so likely to involve a material conflicting interest as to make it necessary in the public interest or for the protection of investors that Mercantile be disqualified from acting as trustee under the Indenture.

The Applicants have waived notice of hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application, which is a public document on file in the Offices of the Commission at the Public Reference Room, 460 Fifth Street, NW., Judiciary Plaza, Washington, DC.

Notice is further given that any interested person may, not later than April 4, 1988, request in writing that a hearing be held on such matter, stating the nature of his or her interest, the reasons for such request, and the issues of law or fact raised by such application which he or she desires to controvert, or may request that he or she be notified if the Commission should order a hearing thereon. Any such request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5707 Filed 3-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16310; File No. 812-6879]

Application for Exemption; Life Insurance Company of Virginia, et al.

March 10, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Life Insurance Company of Virginia ("Life of Virginia"); Life of Virginia Separate Account 4 ("Separate Account 4"); and Forth Financial Securities Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the Act.

Filing Date: This application was filed on September 24, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if the hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, in the case of an attorney at law, by certificate. Request notifications of the date of the hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. The Life Insurance Company of Virginia, 6610 West Broad Street, Richmond, Virginia 23230.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Wendell M. Faria (272-3450) or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations and Statements

1. Separate Account 4 was established by Life of Virginia in connection with a proposed issuance of certain individual

flexible premium variable deferred annuity Policies ("Policies").

2. Separate Account 4 has twenty Investment Subdivisions, each of which invests exclusively in the shares of a portfolio of a series-type mutual fund. Currently, there are four such funds available under the Policies: American Life/Annuity Series, the Variable Insurance Products Fund, the Life of Virginia Series Fund, Inc., and the Oppenheimer Variable Account Funds (the "Funds"). Each of the Funds is registered with the Commission as an open-end, diversified investment company.

3. An amount will be deducted from the daily net asset value of Separate Account 4 to reimburse Life of Virginia for certain mortality and expense risks assumed under the Policies. The mortality risk assumed by Life of Virginia arises from its contractual obligation to make Income Payments to each payee regardless of how long all payees or any individual payee may live. Although Income Payments will reflect the investment performance of the shares purchased by each Investment Subdivision of Separate Account 4, they will not be affected by the mortality experience of persons receiving such payments or of the general population. The expense risk assumed by Life of Virginia is that the expenses incurred in issuing and administering the Policies will be greater than estimated and, therefore, will exceed the expense charge limit set by the Policies. This asset charge will be deducted daily in an amount equal to an effective annual rate of 1.15% of the average daily net assets of Separate Account 4, of which approximately .80% will be allocated to cover mortality risks and approximately .35% for expense risks. The rate of this charge is guaranteed never to increase.

4. Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the Act to the mortality and expense risk charge. However, in order to avoid any possibility that questions may be raised as to the potential applicability of those provisions to this charge, Applicants request exemption from these provisions to the extent necessary to permit the assessment of a charge for mortality and expense risks against the assets of Separate Account 4.

5. Applicants assert that the mortality and expense risk charge is a reasonable charge to compensate Life of Virginia for the risk that the payees of Income Payments will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the policies; for the risk that a Policyowner's Death Benefit could exceed his/her Cash Value; for the risk that administrative expenses will be greater than the amounts derived from the administrative charge; and for the risk that the amounts realized from the sales charges will be insufficient to cover actual distribution expenses.

6. Life of Virginia represents, in support of the request, that the charge of 1.15% for mortality and expense risks assumed by Life of Virginia is within the range of industry practice with respect to comparable annuity products. This representation is based upon Life of Virginia's analysis of publicly-available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Life of Virginia represents that it will maintain at its Home Office and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support this representation.

7. Life of Virginia has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Separate Account 4 and the Policyowners. A memorandum setting forth the basis for this representation will be maintained by Life of Virginia at its Home Office and will be available to the Commission.

8. Applicants also represent that Separate Account 4 will invest only in management investment companies which undertake, in the event such a company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, approve any such plan under Rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5704 Filed 3–15–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–24596]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Mississippi Power and Light Co., et al.

March 10, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 4, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power & Light Company, et al. (70–7325)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act.

By order dated December 24, 1986 (HCAR No. 24283), MP&L was authorized to issue and sell, and Middle South to acquire, from time-to-time through December 31, 1987, an aggregate of 2,609,000 shares of MP&L's authorized but unissued common stock, without nominal or par value, at $23.00 per share, for an aggregate cash purchase price of $60,007,000. As of December 31, 1987, none of the shares had been sold.

It is now proposed that MP&L issue and sell, and Middle South acquire, from time-to-time through December 31, 1988, the 2,609,000 shares of MP&L's authorized but unissued common stock.

Louisiana Power & Light Company, et al. (70–7328)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility

subsidiary company, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act.

By order dated December 30, 1986 (HCAR No. 24288), LP&L was authorized to issue and sell, and Middle South to acquire, from time-to-time through December 31, 1987, an aggregate of 11,364,000 shares of LP&L's authorized but unissued common stock, without nominal or par value, at $6.60 per share, for an aggregate cash purchase price of approximately $75 million. As of December 31, 1987, none of the shares had been sold.

It is now proposed that LP&L issue and sell, and Middle South acquire, from time-to-time through December 31, 1988, the 11,364,000 shares of LP&L's authorized but unissued common stock.

Ohio Power Company (70–7498)

The Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

OPCo proposes to issue and sell, from time-to-time through December 31, 1988, first mortgage bonds ("Bonds") and/or unsecured promissory notes ("Notes") in an aggregate amount of up to $200 million, in any combination thereof. The Bonds will be in one or more series, each with a maturity of not less than five years and not more than thirty years. The interest rate and the price of the Bonds will be determined by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). OPCo may amend its declaration to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or private placement.

The Notes will have a maturity of not less than two years nor more than ten years, will be issued to one or more commercial banks or other financial institutions pursuant to a proposed term-loan agreement and will bear interest at a fixed rate per annum. In the event a placement fee is required in connection with the sale and issuance of the Notes, OPCo has requested an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5705 Filed 3–15–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16309/File No. 812–6914]

Russell Insurance Funds, Inc., et al.

Date: March 9, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Russell Insurance Funds, Inc.; Frank Russell Investment Management Company.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 15(a)(1) and Rule 18f–2; and portions of Rule 20a–2; Items 5(b)(iii) and 16(a)(iii) of Form N–1A; Item 48 of Form N–SAR; and sections 6–07(2) (a), (b) and (c) of Regulation S–X.

Summary of Application: Applicants seek an order exempting them from the requirement to disclose in the Funds' prospectuses, proxy statements, and other public documents the fees paid by Frank Russell Investment Management Company to discretionary investment portfolio managers otherwise unaffiliated with the Applicants. The total advisory fee paid by the Funds to Management Company will be disclosed. Applicants also seek an order eliminating their obligation to include in certain proxy statements the balance sheets of, and information concerning transactions in securities of, the otherwise unaffiliated discretionary investment managers.

Filing Date: The application was filed on October 21, 1987, and amended on January 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Russell Insurance Funds, Inc., et al., 1500 First Interstate Plaza, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney (202) 272–2026 or Lewis B. Reich, Special Counsel (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Office in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Russell Insurance Funds, Inc. ("RIF"), is a newly-organized, series-type, open-end management investment company which will initially offer shares representing interests in five different investment portfolios ("Funds"). Each Fund, other than the Money Market Liquidity Fund, will be advised by two or more discretionary investment managers ("Money Managers") otherwise unaffiliated with Applicants. (An investment company structured in this manner is sometimes referred to as a "multi-manager fund.")

2. Frank Russell Investment Management Company ("FRIMCo") will administer the operations of RIF; will recommend hiring, monitor, and recommend termination of the Money Managers (subject to the approval by RIF's Board of Directors), and will be solely responsible for paying the Money Managers' fees. FRIMCo will provide these services pursuant to a written investment advisory contract meeting all of the requirements of section 15 (a) and (c) of the Act. Frank Russell Company ("FRC"), the corporate parent of FRIMCo, will serve as a consultant to FRIMCo and RIF.

3. RIF is completely independent from, and not dependent upon, any of the Money Managers for day-to-day management or operation services. The Money Managers are selected for RIF based primarily upon the research and recommendation of FRC. Each Money Manager is paid an annual fee based upon assets it manages; there are no performance or incentive fees. The fee to be paid to a Money Manager by FRIMCo will be set forth in Schedules to the contract with RIF and FRIMCo.

4. Applicants state that they are able to negotiate discounts from the Money Managers' "posted" fee rates, the ultimate effect of which is to reduce the management fee which FRIMCo would

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otherwise find necessary to charge RIF; but that they can obtain these reductions only if the fees are not publicly disclosed.

5. Applicants assert that the principal reasons for requiring disclosure of fees paid to a mutual fund's investment adviser(s) are: (a) To inform the shareholder of expenses to be charged to the fund; and (b) to enable the investor to compare that fee to the fees charged by other mutual funds. Applicants assert that their proposal satisfies those objectives because the FRIMCo management fee will be fully disclosed to prospective investors and shareholders, who will therefore know what the Funds' charges are and be able to compare them with those of other investment options.

6. Applicants contend that disclosure of the Money Managers' fees would be detrimental to RIF's shareholders if the result were to be higher fees to FRIMCo, and therefore higher fees to RIF and its shareholders.

7. Applicants assert that disclosure of those is of no benefit or practical use to shareholders because shareholders could not obtain the lower fee on their own. Moreover, Applicants assert that the Funds are not dependent upon the Money Managers for administration and distribution services, and FRIMCo and RIF have common interests in negotiating the "lowest reasonable and fair" fees with the Money Managers.

8. With respect to the disclosure of transactions in securities of the Money Managers, the Applicants assert that: (1) RIF is likely to be one of many accounts managed by the Money Managers; (2) no director, officer, or employee of RIF, FRIMCo, or FRC has any material stock ownership interest in any of the Money Managers; and (3) Money Managers cannot use their domination over RIF to "sell" their contracts with RIF or interests in the Money Managers' businesses in the types of transactions dealt with in section 15(f) of the Act. Accordingly, Applicants assert that potentially lengthy disclosure of transactions in securities of Money Managers would provide no meaningful benefit to RIF shareholders.

9. Similarly, Applicants assert that the inclusion of balance sheets of 10 or more Managers would result in significantly increased administrative burdens and costs to RIF without providing any material information to shareholders because RIF is not dependent upon the Money Managers for day-to-day operations and distribution.

Applicants' Legal Conclusion

Applicants assert that the requested orders are necessary and appropriate in the public interest since they reduce the total fees and expenses of the Funds by enabling FRIMCo to reduce its costs of providing discretionary portfolio management services; and they do not deprive investors or shareholders of any information reasonably needed by a shareholder to determine whether to invest in RIF or to vote to approve a Money Manager's contract.

Applicants' Conditions

Applicants agree that if the requested order is granted, FRIMCo will submit to RIF's Board of Directors, including the Directors who are not interested persons of Applicants, information concerning the "posted" fee rates of the Money Managers as well as the fees to be paid by FRIMCo, in connection with the Board's consideration of any investment advisory contract pursuant to section 15 (a) and (c) of the Act; and that they will maintain and preserve this information as a record pursuant to Rule 31a–1(b)(4), dealing with Board of Directors minutes, and Rule 31a–1(b)(11), dealing with advisory materials, and preserve these records in the manner and for the period presented in Rule 31a–2(a)(2).

Applicants further agree that if they should in the future agree to pay a "performance fee" to any Money Manager, the agreement to pay this type of fee would be disclosed in RIF's prospectus. Applicants also agree that they will disclose in RIF's prospectus and proxy statements that the Money Managers may serve other registered investment companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5703 Filed 3–15–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice PE–88–8]

Aviation Systems Inc.; Petition for Exemption; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Summary notice; correction.

SUMMARY: FAA would like to correct an error in the March 3, 1988 **Federal Register** on page 6912 under Petitions for Exemption.

FOR FURTHER INFORMATION CONTACT: Janet H. Glivings, (202) 267–0247.

Action

In FR document 88–4549 on Thursday, March 3, 1988, on page 6912 under the column that says Description of relief sought, disposition for Docket No. 25445 says Partial grant: January 28, 1988, this should be left off totally and left blank

Denise D. Hall,

Acting Mananger, Program Management Staff.

[FR Doc. 88–5676 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

Closure; Flight Service Station; Chanute, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station Closure; Chanute, Kansas.

SUMMARY: Notice is hereby given that on April 2, 1988, the Flight Service Station at Chanute, Kansas, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Wichita, Kansas. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on March 3, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88–5674 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement containing Tier II level information will be prepared for a proposed highway project in Orange County, California. A previous Notice of Intent was published in the **Federal Register** on October 22, 1986. The previous notice indicated that only Tier I level of information was to be prepared.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, CA 95812–1915, Telephone: (916) 551–1310.

SUPPLEMENTARY INFORMATION: The FHWA, working with the California Department of Transportation (Caltrans), Foothill/Eastern Transportation Corridor Agency (TCA), and Orange County Environmental Management Agency (OCEMA) will prepare an environmental impact statement (EIS) on a proposal to locate an alignment for the Eastern Transportation Corridor, a highspeed multimodal facility with 8 to 10 lanes and a median of sufficient width for high occupancy vehicles (HOV) or mass-transit. Transportation improvements are needed to serve existing and planned development. The proposed Eastern Transportation Corridor would extend southeasterly from State Route 91 near the cities of Anaheim and Yorba Linda through the foothills of the Santa Ana Mountains to Interstate 5 in the vicinity of Myford Road and/or State Route 133 in or near the cities of Irvine and Tustin for a distance of 12 to 16 miles.

Alternatives under consideration include (1) taking no action, (2) constructing a new 8 to 10 lane facility, and (3) several no build alternatives including improvements to existing transit facilities and expanded bus and rail transit services. Incorporated into and studied with the various build alternatives will be design variations of grade and alignments.

The local agencies have initiated the preparation of an environmental impact report on the project pursuant to the California Environmental Quality Act. Consultation by Orange County with the public began in April 1984 followed by formal scoping involving public agencies and the general public in May of 1985. In July of 1985, the County Board of Supervisors, responding to scoping comments, directed that the study area be expanded. After the additional studies and public meetings, the County Board of Supervisors approved the alternative alignments currently being studied. An additional scoping meeting was held by Caltrans and FHWA on November 20, 1986 subsequent to publication of the previous Notice of Intent for this project.

These consultations identified areas of special concern along the proposed route which are the focus of the locally initiated (County/Foothill/Eastern TCA) environmental studies. FHWA believes that this early consultation has been extensive and consistent with 40 CFR 1501.7. However, in order to inform potentially affected agencies and the public of FHWA involvement in a Tier II level instead of the previously identified Tier I level, this revised notice is being published.

To ensure that the full range of issues related to this proposed route are addressed and all significant issues identified in light of any changed circumstances since October 1986, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: March 8, 1988.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 88–5682 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Indiana Harbor Belt Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for the request.

All communications concerning this proceeding should identify the appropriate docket number (Waiver Petition Docket Number RSOR–88–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before April 29, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitioner seeking an exemption or waiver of compliance is:

Indiana Harbor Belt Railroad Company

[Waiver Petition Docket Number RSOR–88–1]

The Indiana Harbor Belt Railroad (IHB) seeks an expanded exemption from the requirement to use torpedoes while providing flag protection (Railroad Operating Practices, Title 49, Code of Federal Regulations, § 218.37). In March 1978, the IHB was granted a waiver of this requirement that applies only to its main line between Hammond, Indiana and 31st Street, LaGrange, Illinois (FRA Waiver Petition No. RSOR–77–29). The expanded trackage for which exemption is now requested consists of an additional 7.5 miles of its main line between Ivanhoe, Indiana and Franklin Avenue, Franklin Park, Illinois.

IHB submits that the debris and noise from exploding torpedoes present a hazard and annoyance to the public in this highly congested area where trains operate at lower speeds. IHB feels the request is not contrary to the public interest or safety.

Issued in Washington, DC, on March 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–5691 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Exemption or Waiver; Natchez Trace Railroad, et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that 11 railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Natchez Trace Railroad (NTR)

[FRA Waiver Petition Docket No. HS–87–18]

The NTR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The NTR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the NTR's operation if it encountered unusual

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operating conditions or circumstances. The NTR provides service between Grand Junction, Tennessee, and Oxford, Mississippi, a distance of 54.5 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Oregon, California and Eastern Railway (OCE)

[FRA Waiver Petition Docket No. HS–87–19]

The OCE seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OCE states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the OCE's operation if it encountered unusual operating conditions or circumstances. The OCE provides service between Klamath Falls and Ely, Oregon, a distance of 65 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Seminole Gulf Railway L.P. (SGLR)

[FRA Waiver Petition Docket No. HS–87–20]

The SGLR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SGLR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The SGLR provides service on over 115 miles of track between Arcadia and Vanderbilt Beach, and between Oneco and Venice, all located within the state of Florida.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Indiana and Ohio Central Railroad (IOCR)

[FRA Waiver Petition Docket No. HS–87–21]

The IOCR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The IOCR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The IOCR provides service on over 46 miles of track between Logan, Ohio, and Columbus, Ohio.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Ohio—Rail Corporation (OHIC)

[FRA Waiver Petition Docket No. HS–88–1]

The OHIC seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OHIC states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The OHIC provides service on over 33.8 miles of track between Minerva, Ohio, and Hopedale, Ohio. The company also operates two branch lines, the 3.8 mile Wolf Run Branch and the 1.8 mile Tuscarawas Branch.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Green Mountain Railroad Corporation (GMRC)

[FRA Waiver Petition Docket No. HS–88–2]

The GMRC seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The GMRC states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the GMRC's operation if it encountered unusual operating conditions or circumstances. The GMRC provides freight service between North Walpole, New Hampshire, and Rutland, Vermont, a distance of 52 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Florida Central Railroad (FCR)

[FRA Waiver Petition Docket No. HS–88–3]

The FCR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The FCR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The FCR provides service on over 60 miles of former CSX Transportation trackage in the Orlando, Florida, area.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Galveston Railway Incorporated (GR)

[FRA Waiver petition Docket No. HS–88–4]

The GR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The GR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The GR provides industrial switching service to the Port of Galveston, Texas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Prescott and Northwestern Railroad Company (PNW)

[FRA Waiver Petition Docket No. HS–88–5]

The PNW seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PNW states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the PNW's operation if it encountered unusual operating conditions or circumstances. The PNW provides freight service between Prescott and Highland, Arkansas, a distance of 31.05 miles.

The petitioner indicates that granting the exemption is in the public interest

and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Clarendon and Pittsford Railroad (CLP)

[FRA Waiver Petition Docket No. HS–88–6]

The CLP seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CLP states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help CLP's operation if it encountered unusual operating conditions or circumstances. The CLP provides service between Whitehall, New York, and Rutland, Vermont, a distance of 24 miles and from Florence Junction to Florence, Vermont, a distance of 1 mile.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Vermont Railway (VTR)

[FRA Waiver Petition Docket No. HS–88–7]

The VTR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The VTR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the VTR's operation if it encountered unusual operating conditions or circumstances. The VTR provides service between Burlington, Vermont, and White Creek, New York, a distance of 128 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before April 29, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on March 8, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–5690 Filed 3–15–88; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 51
Wednesday, March 16, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 7464, March 8, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, March 14, 1988.

CHANGES IN THE MEETING: Addition of the following closed items(s) to the meeting:

Proposed statement to be presented to the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations regarding the Real Estate Appraisal Reform Act of 1987.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 14, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5894 Filed 3-14-88; 3:41 pm]

BILLING CODE 6210-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, March 22, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington DC 20507

STATUS: Part of the meeting will be open to the Public and Part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A report on Commission Operations (Optional)
3. Request to Approve the Renewal of a Contract for the Mailout and Processing of the 1988 Employer Information Report (EEO-1) Survey

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634-6748.

Dated: March 11, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88-5822 Filed 3-4-88; 8:45 am]

BILLING CODE 6750-06-M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Wednesday, March 9, 1988, 53 FR 7629.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, March 15, 1988.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item two has been removed from the agenda (Railroad Summary Reports: Southeastern Pennsylvania Transportation Authority (SEPTA) Accidents in Philadelphia (12/10/86) and Ardmore (1/26/87), Pennsylvania).

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 11, 1988.

[FR Doc. 88-5875 Filed 3-14-88; 1:40 pm]

BILLING CODE 7533-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, March 21, 1988 at 3:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-388 (P) (Certain All Terrain Vehicles from Japan—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

March 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-5777 Filed 3-14-88; 9:46 am]

BILLING CODE 7020-02-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME:

Thursday, March 24 9:00 a.m. to 5:00 p.m.
Friday, March 25 9:00 a.m. to 5:00 p.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Adoption of minutes of previous Commission meeting.

2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management and Administrative Sections.

3. Presentation by Dr. Edward Janoff concerning AIDS.

4. Presentation by Charlie Varnon, Chief U.S. Probation Officer, Eastern District of California.

5. Consideration of community confinement and punishment; other cost-effective community corrections proposals which do not adversely affect public protection.

6. Consideration of program to monitor supervision.

7. Consideration of proposal to advance presumptive parole dates.

8. Consideration of proposal to develop a means to obtain data on collection of fines and restitution on curfew parole dates.

9. Consideration of proposal that United States Probation Service be required to submit a supervision report (Form F-3) after the parolee's first year in the community and every year thereafter.

10. Proposal for revision of 28 CFR 2.56(e) to provide for prompt disclosure of prehearing assessments, hearing summary, and/or tape recording of the hearing.

11. Proposal for better monitoring by Probation Officers concerning payment of fines or restitution (discussion only).

12. Proposal that WITSEC coordinators in Central Office screen materials and send only appropriate materials to the regions (discussion only).

Consent Agenda Items

13. Proposal for modification of 28 CFR 2.64 to reflect amendments to Sentencing Reform Act of 1984.

14. Proposal that disclosure of Bureau of Prisons of documents also contained within the Parole Commission's file be conducted by the Parole Commission. If the requester wishes the OP document in his parole file to be processed.

15. Proposal that Procedures Manual paragraph 2.11-14 be amended to clarify that it refers to prisoners out of the institution for testimony or prosecution in court.

AGENCY CONTACT: James Beck, Director Research Section, United States Parole Commission, (301) 492-5936.

Date: March 11, 1988.

Patrick J. Glynn,

General Counsel, U.S. Parole Commission.

[FR Doc. 88-5816 Filed 3-14-88; 10:50 am]

BILLING CODE 4410-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Saturday, March 26, 1988 9:00 a.m. to 1:00 p.m.

PLACE: 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 14 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: David J. Dorworth, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

Date: March 11, 1988.

Patrick J. Glynn,

General Counsel, U.S. Parole Commission.

[FR Doc. 88-5817 Filed 3-14-88; 10:50 am]

BILLING CODE 4410-01-M

VOL
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federal register

Wednesday
March 16, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 150

Expansion of Applicability of Part 150 to Heliports; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 25117; Amdt. No. 150-1]

Expansion of Applicability of Part 150 to Heliports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule expands the applicability of the rules governing the airport noise compatibility planning process to include free-standing public-use heliports and allows operators of those heliports to benefit from the Airport Improvement Program (AIP). The rule expansion is needed because the current rule only includes heliports that are located on public-use airports used by fixed-wing aircraft.

DATE: Effective date of this amendment is March 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Hixson, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Telephone: (202) 267-3565.

SUPPLEMENTARY INFORMATION:

Background

Part 150 of the Federal Aviation Regulations (14 CFR Part 150) contains standards for airport operators who volunteer to submit noise exposure maps and airport noise compatibility planning programs to the FAA. Operators of airports whose maps have been found to be in compliance with the applicable requirements of Part 150 and whose programs have been approved by the FAA in accordance with the provisions set forth under Part 150 are then eligible to apply for noise control project funding under the AIP. The Aviation Safety and Noise Abatement Act of 1979, as amended, (49 U.S.C. 2101 *et seq*, "the ASNA Act") also provides certain legal protections for airport proprietors whose maps have been accepted by the FAA.

Operators of public-use airports have been able to avail themselves of the benefits of Part 150 since its original adoption on an interim basis on January 19, 1981 (46 FR 8316, January 26, 1981). However, in that interim rule and in the final rule adopted December 13, 1984 (49 FR 49260, December 18, 1984), access to Part 150 was denied to the operators of public-use heliports used exclusively by helicopters, "free-standing public-use heliports." The restriction was imposed because there were relatively few free-standing public-use heliports and because adequate computational tools for drawing noise contours around heliports were not available at that time. The recent opening of several prototype public-use heliports and the FAA's development of a Heliport Noise Model (HNM) computer program have prompted expansion of Part 150 to include free-standing public-use heliports.

Discussion of the Comments and the Amendment

On November 4, 1986, FAA issued a notice of proposed rulemaking (NPRM) to expand Part 150 to include free-standing public-use heliports. Interested parties were afforded the opportunity to participate in the development of this final rule by submitting written comments to the public regulatory docket on or before February 3, 1987. Six comments were received in response to Notice No. 86-17 (51 FR 40037; November 4, 1986) and all have been duly considered in promulgating this amendment. All of the comments supported expansion of the applicability of Part 150 to include free-standing public-use heliports. However, three of the comments also included specific suggestions about one or more of the FAA's proposed amendments.

The comments received in response to the notice were grouped by broad categories of issues and are discussed below.

1. Applicability of Rule

Based on his understanding that Part 150, the ASNA Act, and the Airport Improvement Program are related to "public airports" rather than "public-use airports," one commenter suggested that the expanded Part 150 program will not result in significant benefits to the public since the majority of heliports are privately owned and will not be eligible for funds through the ASNA Act and Part 150, even if these heliports are made available for public use.

In replying to this comment it is first necessary to clarify the applicability of the Part 150 program. The amended § 150.3 applies to "airport noise compatibility planning activities of the operators of 'public-use airports,' including heliports, as that term is used in section 101(1) of the ASNA Act as amended (49 U.S.C. 2101) and as defined in section 503(a)(17) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2202)." Section 503(a)(17) of the Airport and Airway Improvement Act defines a public-use airport as "(a) any public airport, (b) any privately owned reliever airport, and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft which is used or to be used for public purposes." Section 503(a)(16) of the Airport and Airway Improvement Act defines a public airport as "any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned." Thus, although the expansion of Part 150 to include heliport noise compatibility planning programs will not include privately owned heliports not used for public purposes, it will include those which are used for public purposes as defined in the Airport and Airway Improvement Act.

2. Availability of Heliport Noise Model

One commenter recommended that reference to the Heliport Noise Model (HNM) not be included in the amendment because the HNM is not available and its ability to produce results which accurately reflect actual heliport noise conditions in its present stage of development may be in question. The commenter also stated that other less complicated methods of producing noise contours are now available to the user public.

The commenter is correct that the final HNM was not available when the NPRM was published; however, it is now available. The HNM represents the best method for obtaining helicopter noise contours. Since the date the docket closed, the HNM has been evaluated by a significant part of the helicopter industry and the FAA has approved the HNM for use in Part 150 heliport studies. It should be noted that the regulation permits the use of FAA approved methodologies or computer programs other than the HNM to obtain noise contours. However, FAA is not aware of any other methodologies applicable to helicopter noise that accurately reflect the noise impact. As with airport noise modeling, where FAA has approved more than one methodology, FAA will approve additional methodologies for heliport noise modeling when their effectiveness is demonstrated.

3. Use of Heliport Noise Model

One commenter suggested changing the wording of the third sentence of proposed section A150.103(c) from "For static operation (hover), identify helicopter type and duration in minutes shall be identified" to "For static operations (hover), identify the types of helicopters involved and the total annual duration in minutes of the hover operation for each type." It should be noted that the NPRM contained a typographical error in this sentence.

Although the FAA agrees with the intent of the commenter in clarifying the wording of this sentence, the total annual duration in minutes of the hover operation is not used as input for the HNM. The HNM develops noise exposure contours by computing the noise exposure for a typical day, with the number of operations for the typical day being the average of the daily operations for a one year period. Thus, the HNM input for hover operations consists of (a) the helicopter type, (b) the duration in minutes of the hover operation for a particular helicopter type, and (c) the average number of daily operations for that helicopter type based on an annual average. The intent of this requirement is to put the data into its most useful form for input to the HNM. Should, at a future date, additional models for assessing heliport noise impacts be approved by the FAA for use in Part 150 studies, that approval will also take into account the date input requirements of those models. Therefore, the final rule retains the HNM inputs. However, to clarify the meaning of this sentence in the regulation, it has been reworded as follows: "For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and the duration in minutes of the hover operation shall be identified."

Synopsis of the Final Rule

Sections 150.3 and 150.7 have been amended to include all public-use heliports. Section A150.103 has been amended to reference use of the HNM and to insert map scale and size requirements which are appropriate to heliports.

Regulatory Evaluation

The FAA evaluated the regulatory impact of removing the Part 150 restrictions which apply to the operators of heliports. It was determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. Since Part 150 is a voluntary program, heliport operators, like other airport operators, will participate only when it is in their best interests. Since the new rule only increases the number of airport operators eligible to apply for Federal matching grants under the Airport Improvement Program (AIP) by one-tenth of one percent, the incremental administrative costs to the FAA will be insignificant. Grant funds come from the AIP in which an 8% set-aside is held for noise mitigation purposes. AIP funding is derived from an 8% tax on passenger tickets and a general aviation fuel tax, as mandated by Congress. The expansion of the program to include heliports is not expected to adversely impact current AIP funding. In addition, this rule will have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Regulatory Flexibility Analysis

As explained in the background section, this amendment to Part 150 to include free-standing public-use heliports will broaden access to a voluntary Federal program. Heliport operators who submit maps or programs under the amendment will do so voluntarily and on the basis of self-interest. Since Part 150 is a voluntary program, this amendment will have no significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Moreover, as of June 1986, only six heliports would be eligible to participate in the Part 150 program; none are small entities.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been made. This amendment to Part 150 does not significantly affect the quality of the human environment.

Reporting and Recordkeeping

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting and recordkeeping provisions in this regulation will be submitted for approval to the Office of Management and Budget (OMB). Participation in the voluntary noise compatibility planning process is estimated by the FAA to affect only six heliports and the reporting and recording impact is minimal. Submission to OMB of the reporting and recording provisions will be made as an amendment to the existing OMB approval for Part 150 (OMB control number 2120-0517). The revised reporting and recordkeeping provisions are not effective until OMB approval has been obtained and notice of the approval is published in the **Federal Register**. Pending OMB approval, FAA will review any submission from an eligible heliport in accordance with the regulations implementing the provisions of the Paperwork Reduction Act of 1980. 5 CFR Part 1320.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Conclusion

The only costs associated with this amendment are (1) the voluntary costs incurred by a heliport operator for the initial preparation and submission of a noise exposure map and compatibility program and (2) the minimal FAA administrative costs. Therefore, the FAA has determined that this amendment involves a regulation that is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities will be affected by the rule, it is certified under the criteria of the Regulatory Flexibility Act that the rule will not have a significant economic impact, either positive or negative, on a substantial number of small entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person indentified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 150

Airports, Noise exposure maps, Noise compatibility programs, Land uses.

The Amendment

Accordingly, Part 150 of the Federal Aviation Regulations (14 CFR Part 150) is amended as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

1. The authority citation for Part 150 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, 1431, 2101, 2102, 2103(a), 2104 (a) and (b), 2201 *et seq.*; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 150.3 [Amended]

2. By running from § 150.3 the words "not used exclusively by helicopters" and substitution in their place the words "including heliports".

§ 150.7 [Amended]

3. By removing from the term "Airport" in § 150.7 the words "not exclusively used by helicopters" and substituting in their place the words "including helicopters".

Appendix A [Amended]

4. By amending paragraph (a) of section A150.103 of Appendix A to add the words "for airports or the Heliport Noise Model (HNM) for heliports" after the words "Integrated Noise Model (INM)".

5. By amending section A150.103(b) of Appendix A to insert at the beginning of the paragraph the words "Except as provided in paragraph (c) of this section."

6. By amending section A150.103 of Appendix A to add a new paragraph (c) to read as follows:

Sec. A150.103 Use of computer prediction model.

* * * * *

(c) For heliports, the map scale required by paragraph (b)(1) of this section shall not be less than 1 inch to 2,000 feet and shall indicate heliport boundaries, takeoff and landing pads, and typical flight tracks out to at least 4,000 feet horizontally from the landing pad. Where these flight tracks cannot be determinded, obstructions or other limitations on flight tracks in and out of the heliport shall be identified within the map areas out to at least 4,000 feet horizontally from the landing pad. For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and the duration in minutes of the hover operation shall be identified. The other information required in paragraph (b) shall be furnished in a form suitable for input to the HNM or other FAA approved methodology or computer program.

Issued in Washington, DC, on March 10 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-5677 Filed 3-15-88; 8:45 am]

BILLING CODE 4910-13-M

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federal register

**Wednesday
March 16, 1988**

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Mandatory Reporting for Emergency Evacuation Systems and Components; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25289; Amdt. 121-195]

Mandatory Reporting for Emergency Evacuation Systems and Components

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to revise the mechanical reliability reporting requirement contained in Part 121 of the Federal Aviation Regulations to require certificate holders to report each failure, malfunction, or defect of emergency evacuation systems and components. This amendment is necessary to collect, record, analyze, and disseminate data concerning those failures, malfunctions, or defects that occur during training, testing, or actual emergency conditions to improve the levels of emergency evacuation system reliability and safety.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George R. Johnson, Project Development Branch (AFS-360), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-3798.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1987, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) No. 87-5 (52 FR 20982; June 3, 1987). The notice proposed to amend the mechanical reliability reporting requirement contained in Part 121 of the Federal Aviation Regulations (FAR) to require certificate holders to report each failure, malfunction, or defect of emergency evacuation systems and components. Section 121.703(a) of the FAR requires each certificate holder to report the occurrence or detection of failures, malfunctions, or defects of 16 specified categories. Section 121.703(c) requires the certificate holder to report any other failure, malfunction or defect in an aircraft that occurs, or is detected at any time if, in its opinion, that failure, malfunction or defect has endangered, or may endanger, the safe operation of an aircraft used by the certificate holder.

The ability to evacuate an airplane safely and quickly during an emergency is a major concern to the FAA, the aviation industry and the public. As part of an effort to collect information about and address these concerns, the FAA sponsored a technical conference in Seattle, Washington, from September 3-6, 1985, related to emergency evacuation of transport category airplanes. Discussions covered the number, capacity, distribution and marking of emergency exits, full-scale evacuation demonstrations, the validity of the data derived from full-scale evacuation tests versus that data obtained from mathematical analysis. Also discussed were the criteria to be used to decide when the mathematical analysis method (used because of full-scale demonstration cost, impracticality, or other reasons) would be acceptable in lieu of a full-scale demonstration. The discussions also covered escape slides and the design standards and certification testing requirements for these slides, slide maintenance failure reporting, and other related topics. Working groups were established to review and discuss existing regulations in Parts 25 and 121 of the FAR and recommended regulatory and non-regulatory changes.

During the conference, a representative from a leading manufacturer stated that its testing of transport category airplane cabin evacuation slides resulted in a 90 percent success rate. Airline pilots, cabin crewmembers and maintenance personnel presented different opinions, expressing their views about the general unrealiability of evacuation slides.

Several comments were made about the lack of, or inadequacy of, reporting of failures, malfunctions, and defects of emergency evacuation systems and components (such as evacuation slides, gas bottles, cables, door indicators, motors, clips, girth bar attachments, etc.). Discussion focused on the present Service Difficulty Report System, the collection and disposition of those reports, the malfunctions and defects that are not presently reported, and potential solutions to the problems discussed. Members of groups representing flight attendants, the National Transportation Safety Board and the National Transportation Safety Association stated their concerns that failures, malfunctions or defects of evacuation systems or components are not being reported to the FAA, thus creating a vacuum of knowledge. The process by which failures, malfunctions, or defects are presently reported was criticized for excluding a large number of events, such as the inadvertent deployment of evacuation slides during cabin safety demonstrations or maintenance checks and overhauls. Representatives from the FAA and other organizations expressed concern that regulatory authorities were unaware of emergency evacuation system incidents taking place in the field and that some of this information could be significant to safety.

There has also been legislative concern regarding the safe evacuation of aircraft. A congressional hearing on this matter was held by the Subcommittee on Investigations and Oversight of the House Committee of Public Works and Transportation on June 24 to 26, 1985. Mechanical Reliability Reports (MRR) and Service Difficulty Reports (SDR) are utilized by the FAA primarily as a maintenance and continued airworthiness surveillance tool and are published in the Aviation Standards Service Difficulty Report Summary by FAA's Aviation Standard National Field Office at Oklahoma City, Oklahoma. This summary consists of air carrier MRR's and is available to FAA personnel, industry affiliates and others with a need for access to this information. This information provides the FAA with reliability and airworthiness statistical data necessary for planning, directing, controlling, and evaluating certain aircraft products, such as emergency evacuation systems and components. These reports also provide a means for measuring the effectiveness of the self-evaluation techniques being employed by certain segments of the civil aviation industry.

Discussion of Comments

The FAA received six comments in response to Notice 87-5 from organizations or associations with an interest in aircraft safety. Two commenters, the National Transportation Safety Board (NTSB) and the Syndicate National De Personnel Navigant Commercial (SNPNC), of France, were in agreement with the proposal as written, and support this regulatory action. The Association of Flight Attendants (AFA) and the National Transportation Safety Association, Inc. also support the amendment, but both suggest it be expanded to include life preservers and life rafts. The Airline Pilots Association (ALPA) suggests adding life rafts, slides and personal flotation devices in their supportive comment.

Although life preservers, life rafts, and personal flotation devices are primarily intended for use during an emergency evacuation of an aircraft, this survival equipment is not considered to be part of the emergency evacuation system, or components thereof, and therefore, is beyond the scope of this amendment. Regarding the suggestion to include slides in the amendment, the evacuation slides and slide/rafts are considered to

be an integral part of the emergency evacuation system and are covered under the provisions of this amendment. However, in response to both a prior NTSB safety recommendation, and an ALPA petition for rulemaking, the FAA is currently developing a regulatory project that will address the continuing airworthiness of emergency water survival equipment that is installed as part of the required safety equipment of aircraft operating under the provisions of FAR Parts 121, 125 and certain portions of Part 135. This project is intended to include the reliability of life preservers.

The Air Transport Association of America (ATA) submitted comments that were essentially in disagreement with the proposal. ATA points out that two of its members do not oppose the proposal, with one of the two already reporting emergency evacuation system failures and malfunctions through the MRR system. ATA also states that two other members would not oppose the proposal if the reporting provisions were narrowed to those defects that would or could actually prevent the systems from performing their intended functions. The thrust of ATA's objection is that emergency evacuation systems may not be appropriate to the SDR system, and that the MRR system, as currently operating, is ineffective. The ATA also contends that the FAA's cost and benefit estimates to support the amendment were derived arbitrarily and lacked sufficient documentation.

The decision to include the mandatory reporting of defects and malfunctions of emergency evacuation systems and components in the MRR system was based on the recommendations of the Maintenance and Reliability Working Group that was part of the emergency evacuation task formed following the September 1986 Public Technical Conference in Seattle. This group reported that the lack of mandatory reporting of emergency evacuation system defects and malfunctions impaired the monitoring of evacuation equipment in service. As a result, the group reported that the FAA does not have a sufficient data base to evaluate door failures which occur in the automatic mode, and the repairs or modifications required to insure a reliable evacuation system. The group recommended that a system of comprehensive mandatory reporting be established to provide for equipment reliability monitoring. The MRR system provides the ideal vehicle for this reporting.

Regarding ATA's comment on the ineffectiveness of the MRR system, it is beyond the scope of this amendment to attempt to address any problem areas that may exist in the reporting system. However, the FAA recognizes that there are faults with the system and a program has been initiated to attempt to remedy these faults.

ATA also commented that the wording of the amendment could result in the submission of useless data that would waste the time of both the operator and FAA personnel analyzing the data. As an example, a scratch in the paint on a emergency exit door could be construed as a "defect" and, as such, would require reporting. The FAA does not agree. It is the responsibility of the operator to evaluate the significance of the defects with a view to the effect that defect would have on the reliability of the affected system or component. The FAA acknowledges operators' ability to recognize safety-significant occurrences and findings, and does not anticipate an overabundance of useless information in response to this amendment. With respect to ATA's critical comments concerning the cost and benefit estimates of Notice 87-5, the FAA disagrees that its cost and benefit estimates were derived arbitrarily and lack sufficient documentation. While the cost and benefit estimates reflect some uncertainty, primarily related to the number of accidents and the magnitude of their respective casualty losses due to defective or inoperative emergency evacuation systems and components, they are considered to be reasonably reliable. These estimates are based on factual data and the informed judgement of FAA personnel, and they have been thoroughly documented in the detailed regulatory evacuation contained in the docket. Since the commenter does not provide any additional, more illuminating, cost and benefit estimates, the FAA will continue to use those benefit and cost estimates contained in Notice 87-5.

Economic Summary

Benefit-Cost-Analysis

This regulatory evaluation examines the benefit and cost elements of a Final Rule to establish mandatory reporting for each failure, malfunction, or defect of emergency evacuation systems and components. The rule amends Part 121 of the Federal Aviation Regulations (FAR), and it will require each certificate holder to report all failures, malfunctions, or defects of emergency evacuation systems and components. This action is necessary to collect, record, analyze, and disseminate data concerning those failures, malfunctions, or defects that occur during training, testing, or actual emergency conditions, so as to improve the reliability and safety of those systems and components. At present, air carriers and airmen report these malfunctions on a voluntary basis. There have been 106 voluntary reports submitted to the FAA between 1980 and 1985.

The rule was prompted largely as a result of concerns expressed by members of groups representing flight attendants, the National Transportation Safety Board, and the National Transportation Safety Association. These organizations stated that failures, malfunctions, or defects of evacuation systems and components are not being adequately reported to the FAA.

Benefits

The FAA states that potential benefits in the form of enhanced safety expected to accrue from implementation of the rule range between $2,600 and $131,000 annually. Such enhanced safety will result in reduced injuries or fatalities during emergency evacuation of air carriers because the improved data provided to FAA as a result of this rule will enable the agency to take timely action to correct deficiencies in emergency evacuation equipment. This timely corrective action would not be possible if the information were not available.

Costs

The FAA estimates that the total cost of compliance expected to accrue from implementation of the rule, dispersed among all air carriers, will range between $25 and $90 annually (in 1985 dollars). This assessment is based largely on information received from personnel at the FAA's Aviation Standards National Field Office in Oklahoma City, Oklahoma.

The FAA believes this rule is clearly cost-beneficial. The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits expected to accrue from the implementation of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

Virtually all of the small entities potentially impacted by the rule are operators of scheduled aircraft for hire who own nine or fewer aircraft, but not necessarily operated. After comparing the upper range of the total annual incremental cost of compliance ($90) to the annualized threshold of significant impact ($51,000), the FAA concludes that a substantial number of small entities would not be significantly impacted by the rule. In order for a small entity to be significantly impacted by the rule, it will have to submit more than an estimated 1,100 service difficulty reports annually to the FAA. This number is approximately 61 times more than the annual average of 18 for all air carriers presently submitting such reports to the FAA. The FAA believes that it is very unlikely this number of reports will be prepared and submitted annually by any one of the subject small entities. Therefore, the FAA believes the rule to require mandatory reporting of deficiencies in emergency evacuation systems and components will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. The rule will primarily have a cost impact on scheduled operators of U.S. registered air carriers such as turbojet and turboprop aircraft who report deficiencies in their emergency evacuation systems and components to the FAA. The size of this cost impact is expected to be small for those reasons previously noted in Section III of the detailed regulatory evaluation.

Conclusion

This amendment will enable the FAA to achieve prompt and appropriate corrections of conditions adversely affecting continued airworthiness of emergency evacuations systems and components. This will be achieved through the collection of service difficulty reports, their consolidation and collation in a common data bank, analysis of that data, and the rapid dissemination of trends, problems, and alert information to the appropriate segments of the aviation community and the FAA.

The amendment provides benefits, with negligible costs to the aviation public, by establishing mandatory reporting requirements which enhance the reliability of the data base for emergency evacuation systems and components.

Because this amendment is not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers, industry, or Federal, State, or local government agencies, it has been determined that it is not a major proposal under Executive Order 12291. In addition, this amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. The FAA has determined that this action is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities. A copy of the final evaluation prepared for this action, including a Regulatory Flexibility determination and Trade Impact Assessment, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "For Further Information Contact."

Paperwork Reduction Act

Information collection requirements in § 121.703(a) have been approved previously by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0008.

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carrier, Air transportation, Common carriers.

The Rule

Accordingly, the Federal Aviation Administration amends Part 121 of the Federal Aviation Regulations [14 CFR Part 121] as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 121.703 by removing the word "and" at the end of paragraph (a)(15); by removing the period at the end of paragraph (a)(16) and inserting "; and" in its place; and by adding a new paragraph (a)(17) to read as follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(17) Emergency evacuation systems or components including all exit doors, passenger emergency evacuation lighting systems, or evacuation equipment that are found defective, or that fail to perform the intended functions during an actual emerency or during training, testing, maintenance, demonstrations, or inadvertent deployments.

* * * * *

Issued in Washington, DC, on March 10, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–5678 Filed 3–15–88; 8:45 am]

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March 16, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes, Fuselage Numbers 1237 through 1368; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-127-AD; Amdt. 39-5876]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes, Fuselage Numbers 1237 through 1368

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive, applicable to certain McDonnell Douglas Model DC-9-80 (MD-80) series airplanes, which currently requires inspection and replacement of certain cowl door latches. That amendment was prompted by reports of failures of cowl door latches on the engine nacelle. Failure of the cowl door latches could lead to loss of directional control during critical flight regimes, or cause a hazard to the public by falling debris. This amendment requires the replacement of certain cowl door latches installed on additional airplanes, fuselage numbers 1237 through 1276.

EFFECTIVE DATE: April 25, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 87-15-06, Amendment 39-5691 (52 FR 28134; July 28, 1987), to require replacement of certain cowl door latches installed on McDonnell Douglas Model DC-9-80 series airplanes, serial numbers 1237 through 1276, was published in the Federal Register on November 2, 1987 (52 FR 42001).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the proposed compliance period be extended from 45 days to 90 days after the effective date of AD. The commenter advised that this request is based upon the ability of the manufacturer to deliver parts required by the AD. The FAA does not agree with the commenter. After further investigation and contact with the manufacturer, the FAA has determined that the initial compliance time of 45 days reflected in the proposed rule is appropriate based on the availability of parts.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 39 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,900.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9-80 (MD-80) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983), and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-15-06, Amendment 39-5691 (52 FR 28134; July 28, 1987), by redesignating existing paragraphs "B., C., D., and E.," as "C., D., E., and F.," respectively, and adding a new paragraph B., as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes, Fuselage Numbers 1237 through 1368, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the integrity of the cowl door latches, accomplish the following:

A. Within 7 days after the effective date of this AD, unless already accomplished within the last 7 days, visually inspect P/N 7958533-517 (Hartwell P/N H2816-3) cowl door latch assemblies for fractures, paying particular attention to the attachment hook. Perform this inspection in accordance with McDonnell Douglas Alert Service Bulletin A71-42, dated June 24, 1987 (hereinafter referred to as ASB A71-42), or later FAA-approved revisions.

1. If fracture is found, prior to further flight replace all latch assemblies on the affected door.

2. If fracture is not found, repeat the visual inspections of the cowl door latches at intervals not to exceed 7 days, until such time as P/N 7958533-517 (Hartwell P/N H2816-3) latch assemblies are replaced with new P/N 7958533-519 (Hartwell P/N H2816-5) latch assemblies in accordance with ASB A71-42.

B. For fuselage number 1237 through 1276 only: Within 45 days after the effective date of this AD, install new latch assemblies P/N 7958533-519 (Hartwell P/N H2816-5), in accordance with ASB A71-42.

C. For fuselage numbers 1277 through 1368 only: Within 70 days after the effective date of this AD, install new latch assemblies, P/N 7958533-519 (Hartwell P/N H2816-5), in accordance with ASB A71-42.

D. Installation of new cowl door latches, P/N 7958533-519 (Hartwell P/N 2816-5), constitutes terminating action for this AD.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective April 25, 1988.

Issued in Seattle, Washington, on March 7, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-5667 Filed 3-15-88; 8:45 am]

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14 and 32
Federal Acquisition Regulation (FAR); Mistake in Bid Procedures and Progress Payments, First Article; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 14

Federal Acquisition Regulation (FAR); Mistake in Bid Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation 14.406–3 to clarify the obligation of the contracting officer to disclose all appropriate information when requesting additional evidence to support a contractor's bid when there is a basis to believe that the bid might contain a mistake.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 16, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–16 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Background

Recently, questions have arisen with respect to the contracting officer's obligation to fully disclose to the contractor all the information which the contracting officer possesses, when the contracting officer suspects a potential mistake in bid prior to award. The proposed coverage is intended to emphasize the importance for the contracting officer to fully describe to the contractor all conditions which had caused the contracting officer to conclude that there is a potential mistake in bid.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule merely clarifies the responsibility of the contracting officer to advise the bidder of the basis for suspecting a potential mistake in bid. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties.

Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 14

Government procurement.

Dated: March 8, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 14 be amended as set forth below:

PART 14—SEALED BIDDING

1. The authority citation for Part 14 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 14.406–3 is amended by revising paragraph (g)(1)(iv) to read as follows:

14.406–3 Other mistakes disclosed before award.

* * * * *

(g) * * *

(1) * * *

(iv) Of any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in bid.

* * * * *

[FR Doc. 88–5085 Filed 3–15–88; 8:45 am]

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48 CFR Part 32

Federal Acquisition Regulation (FAR); Progress Payments, First Article

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 32.501–5 concerning progress payments when there is a requirement for an approved first article.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 16, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–15 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revision to FAR 32.501–5 is considered necessary to improve the Government's ability to protect its financial interests on first article approval items. The Defense Acquisition Regulation had required the contracting officer to limit progress payments on first article work. There was no Federal Procurement Regulation equivalent. It had been intended that the FAR adopt adequate safeguards in FAR Subpart 9,3. Ultimately, however, neither FAR Subpart 9.3 nor FAR Part 32 gave the contracting officer the authority to incorporate additional protective terms for progress payments on first article work. This placed the Government's financial interests in first article work at risk and resulted in cases where unliquidated progress payments could not be recovered. The proposed revision to FAR 32.501–5 allows the contracting officer the authority to limit progress payments on first article work by a stated dollar amount or percentage. The provision is permissive, not mandatory.

B. Regulatory Flexibility Act

The proposed change to FAR 32.501–5 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows: Small businesses will be

impacted to the extent that they are involved in first article work. Agencies do not maintain statistics on how many contracts contain first article approval provisions. One agency estimates that it annually awards roughly 2,000 contracts requiring first article approval; about 40% to 50% being to small businesses. Since the proposed revision is permissive rather than mandatory, use of the protective limitation cannot be predicted. The Initial Regulatory Flexibility Analysis (IRFA) is being submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Building, 18th and F Streets, NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: March 4, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 32 be amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for Part 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 32.501–5 is amended by adding paragraph (e) to read as follows:

32.501–5 Other protective terms.

* * * * *

(e) If first article testing and approval is required (see Subpart 9.3), the contracting officer may include a provision limiting progress payments on first article work by a stated amount or percentage.

[FR Doc. 88–5684 Filed 3–15–88; 8:45 am]

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Part VI

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1924, 1941, 1962, and 1965
Implementation of Provisions of the Supplemental Appropriations Act (Public Law 100-71), Dated July 11, 1987; Final Rule

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1941, 1962, and 1965

Implementation of Provisions of the Supplemental Appropriations Act, (Public Law 100–71), Dated July 11, 1987

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to authorize the making of annual production loans or the granting of subordinations to delinquent FmHA borrowers, who operate or will operate not larger than family size farms; and who apply for assistance and show they can realistically project a positive cash flow, but only to the extent of repaying all annual production monies borrowed and all supplier credit obtained (including interest only on these amounts) for the planned production and marketing cycle, rather than on all current payments on debts outstanding. This assistance will be available only to those delinquent borrowers who do not qualify for an annual production loan after all servicing options have been considered, as set forth in Subpart A of Part 1951, "Account Servicing Policies", along with certain other requirements. The reason for amending these regulations is to comply with a provision in Chapter X of the Supplemental Appropriations Act for 1987, (Pub. L. 100–71, 101 Stat. 429), dated July 11, 1987. The Act requires FmHA to restore its procedures and policies to those in effect from October 1982, through November 30, 1985, known as the "Continuation Policy."

EFFECTIVE DATE: March 16, 1988.

ADDRESS: The Regulatory Impact Statement (RIA) will be made available for public inspection during regular working hours at the following address:

Office of the Chief, Directives Management Branch, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is issuing as a final rule to implement a provision in Chapter X of Pub. L. 100–71, the Supplemental Appropriations Act for 1987 (101 Stat. 429). I find that these regulations comply with that statute and that FmHA has the authority to issue such regulations pursuant to § 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Christopher Hicks,

General Counsel.

Summary of RIA

The USDA has developed a Preliminary Regulatory Impact Analysis (PRIA) which was summarized in the proposed rule. A study was done to document the cost of implementing this rule. While four comments were received concerning the rule, none addressed the PRIA. Therefore, there is no reason to revise these estimates.

Even though the cost exceeds the likely benefits, there is no discretion in implementing this rule as it is law.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the FmHA operating loan program, as listed in the Catalog of Federal Domestic Assistance: 10.406—Farm Operating Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On November 16, 1987, FmHA published a proposed rule in the Federal Register (52 FR 43768—43766) with a common period ending December 16, 1987. The purpose of this final rule is to implement a provision in Chapter X of the Supplemental Appropriations Act for 1987 (Pub. L. 100–71, 101 Stat. 429). That Act provides for the making of annual production loans and the granting of subordinations to delinquent FmHA borrowers, who cannot otherwise be assisted after considering all servicing options as set forth in Subpart A of Part 1951, "Account Servicing Policies". Such delinquent borrowers who apply for assistance must show they can realistically project a positive cash flow, but only to the extent of repaying all annual production monies borrowed and all supplier credit obtained for the planned production and marketing cycle, rather than on all current payments on debts outstanding, subject to certain conditions as enumerated in § 1941.14 of Subpart A of Part 1941 of this chapter.

Discussion of Comments

Four comment letters were received, all from FmHA County Supervisors, including one from the President of the National Association of County Supervisors.

The letters indicated concern over the proposed rule, such as: (1) Delaying the inevitable discontinuation of a farming operation, and causing further deterioration of the business, by providing additional financial assistance to a farmer who is so heavily burdened with debt; and (2) the extreme hardship on county offices in administering this policy.

While these comments make valid points, the statute requires that delinquent FmHA borrowers be offered such assistance and, therefore, FmHA has no choice but to comply with the statute.

Two commenters also expressed the view that this type of assistance should be offered to non-delinquent borrowers as well. Public Law 100–71 does not require this, and such a proposal would not be administratively feasible because of the expense involved. Besides, non-delinquent borrowers already have the opportunity to restructure their FmHA debt under FmHA's servicing regulations and thus to apply and qualify for annual production loans under the other provisions in Subpart A of Part 1941.

One commenter also criticized the requirement to obtain non-disturbance agreements as leading to poor relations among lenders. FmHA believes such a requirement is necessary to protect the Government's interest since assistance to the borrowers involved presents a greater risk to the Government's financial position. However, FmHA has loosened the provision somewhat to just require non-disturbance agreements from those to whom the applicant is behind schedule in payments and will remain so at the time of loan approval.

This commenter went on to suggest changes to further restrict the flow of money to such delinquent borrowers, such as requiring that all the borrowers' income be assigned to FmHA and put in a supervised bank account and limiting the annual production loan to 60% of the value of projected gross sales. FmHA believes that adoption of these comments would severely restrict a borrower's ability to continue operating and, in the case of the 60% limit, would not comply with Pub. L. 100–71. Therefore, FmHA is not adopting these suggestions.

Discussion of Changes

Upon a further review and due to the Agricultural Credit Act of 1987 (Pub. L. 100–233) that was enacted on January 6, 1988, we have made some changes in the final rule that differ from the proposed rule, including some minor changes for clarification.

In the introductory language of § 1941.14, we have made it clear that the loans made or subordinations granted under that section will be available only to those delinquent borrowers who have not yet been accelerated. FmHA's "Continuation Policy," which these regulations restore, did not apply to accelerated borrowers. If, for any reason, an acceleration is withdrawn, then the delinquent borrower affected would be able to apply for a loan or subordination under this section.

Section 1941.14(a)(6) has been revised to state that non-disturbance agreements will be obtained for the term of the FmHA annual production loan being made, but only from creditors to whom the applicant will be behind in payments at the time of loan approval.

Because of the Agriculture Credit Act of 1987, we have revised § 1941.14(c) and (d) from the proposed rule to delete all references to Forms FmHA 1924–25, "Notice of Intent to Take Adverse Action," and FmHA 1924–26, "Borrower Acknowledgement of Notice to Take Adverse Action," and to liquidation action. These paragraphs now instruct the County Supervisor to follow the procedure in § 1941.33(b) and (d) of Part 1941 after an eligibility determination has been made. In essence, this states that further processing of the loan application will continue if the applicant is determined eligible. If an unfavorable decision is made, the applicant will be notified in writing and will be informed of the opportunity to appeal the decision.

List of Subjects

7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by revising paragraph (c)(5)(ii) to read as follows:

§ 1924.57 Planning.

* * * * *

(c) * * *

(5) * * *

(ii) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

PART 1941—OPERATING LOANS

3. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

4. Section 1941.14 is added to read as follows:

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility requirements in § 1941.12 of this subpart, whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering all servicing options in Subpart A of Part 1951 of this chapter, including distressed Farmer Programs loans for softwood timber production in applicable areas, may qualify for annual production loans under this section or subordinations under Subpart A of Part 1962 and Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled due to:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or underemployment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Item D of Form FmHA 431–2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplier credit for the production and marketing cycle can be repaid from

the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Non-disturbance agreements will be obtained, for the term of the FmHA annual production loan being made, from *all* creditors to whom the applicant is indebted when repayment of the indebtedness is behind schedule and will remain so at the time the FmHA loan is approved.

(b) Loan funds will be used to pay annual operating and family living expenses *only*, as further explained in § 1941.16 of this subpart.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(d) of this subpart.

(e) Form FmHA 1941-1, "Criteria for Continuing Assistance to Delinquent Borrowers" is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941-A-1, "Advice to Borrower of Financial Condition," of their serious financial condition; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision willl be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941-A-1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

PART 1962—PERSONAL PROPERTY

5. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

6. Section 1962.30 is amended by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(2) through (b)(9) and by adding a new paragraph (b)(1) to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(b) * * *

(1) A subordination for an annual production loan only to a delinquent borrower may also be approved, if the borrower meets the requirements set forth in § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

PART 1965—REAL PROPERTY

7. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

8. Section 1965.12 is amended by revising (b)(2)(ii)(C) to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) When a farm tract secures any FmHA loan, and it is determined essential for the borrower to remain in farming, the State Director may approve a subordination for annual operating credit when no other alternative exists. The reason(s) and justification supporting the subordination for operating expenses will be fully documented in the case file by the County Supervisor prior to submission to the State Director. A subordination for an annual production loan only, to a delinquent borrower, may also be approved by the State Director, if the borrower meets the requirements in § 1941.14 of Subpart A of Part 1941 of this chapter.

* * * * *

Date: February 29, 1988.

La Verne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 88-5746 Filed 3-15-88; 8:45 am]

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federal register

Wednesday
March 16, 1988

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25567; Notice No. 88–5]

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Part 25 of the Federal Aviation Regulations (FAR) to upgrade the structural requirements for transport category airplane pressurized cabins by: (1) Amending the criteria for evaluation of the secondary effects of openings in the pressure vessel, and (2) extending the area of consideration to include openings anywhere within the pressure vessel. The required opening sizes to be considered would not be changed. This proposal is a result of an FAA review of the pressurized cabin load requirements, and is intended to make the pressurized cabin load requirements less design-dependent and more objective. It would require evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside of the pressurized cabin.

DATES: Comments must be received on or before July 14, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 25567, 800 Independence Avenue SW., Washington, DC 20591, or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25567.

Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM–7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Haynes, Policy & Procedures Branch (ANM–111), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–2113.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25567." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 25.365 "Pressurized cabin loads" was revised by Amendment 25–54 (effective October 14, 1980) to include a new requirement for the structural evaluation of the effects of rapid depressurization resulting from a specific size opening in the fuselage. This requirement was initially instigated by a transport airplane accident in which a failed door resulted in decompression and collapse of the floor with subsequent jamming of the flight controls and loss of the airplane. Concerns brought to light by this accident included the reliability of outward opening doors and the potential harm to the airplane from openings that may occur in the pressure vessel from a variety of causes including the detonation of bombs, mid-air collisions, and maintenance and production errors. These concerns resulted in proposal number 1051 of the Biennial Airworthiness Review of 1974–1975, and the final result of this regulatory review was NPRM No. 75–31 (40 FR 29410; July 11, 1975).

Notice of Proposed Rulemaking No. 75–31 proposed to prevent floor failure, or any structural failure that would prevent continued safe flight and landing caused by the sudden release of pressure in any compartment through an opening at any approved operating altitude by considering openings from bomb detonations, nonplug door failures, engine disintegrations, bird strikes, and any other eventualities. However, the adopted rule (Amendment 25–54, effective October 14, 1980) limited the compartment openings to those caused by engine disintegration and other airplane or equipment failures and prescribed a computed opening size to account for the other events. In addition, the location of the computed opening was limited to the passenger and cargo compartments and the evaluation of the effects was limited to partitions, floors and bulkheads within the pressurized cabin.

The changes brought about by Amendment 25–54 addressed the original concerns by: (1) Revising § 25.783 "Doors" which significantly improved the standards for doors to the point that the failure of an outward opening door was considered extremely improbable, and (2) requiring a design that would prevent the collapse of floors and bulkheads in the event of a specific size opening in passenger and cargo compartments. The required opening size was up to 20 square feet depending on the maximum cross-sectional area of the fuselage.

The changes to § 25.783 were considered to adequately address the occurrence of fuselage openings resulting from the openings of large doors and the changes to § 25.365 were considered to provide protection against the secondary effects of decompression resulting from many other causes of fuselage openings. The principal cause of the openings considered in the proposal and the adoption of the rule was the detonation of bombs in the cabin during pressurized flight. However, the required opening size was considered large enough to cover other conceivable causes of openings such as structural failure resulting from corrosion; failure of rotating machinery; or the effects of maintenance, production and operation errors, so that the specific enumeration of events was not considered necessary.

The intent of the proposed change to § 25.365(e) in NPRM No. 75–31 was to provide some level of protection for the critical systems and components from the effects of decompression in the event of a fuselage opening that in itself may not cause loss of the airplane. The specific rule, as adopted, required the airplane to be designed to prevent collapse of floors and bulkheads in the event of a specified opening size. Physiological effects of depressurization on the crew and passengers, or loss of structural integrity at the opening location, were not considerations of NPRM No. 75–31 or of Amendment 25–54.

Section 25.365(e) required the airplane to be designed to prevent the collapse of floors and bulkheads that could result from an opening in any passenger or cargo compartment. The location of the opening was limited to these areas since they were considered the most likely locations for a bomb. In addition, a detonation in the cockpit area was considered more likely to result in direct loss of the airplane.

A similar retroactive requirement was issued in the form of an airworthiness directive and made applicable to all wide body airplanes. This airworthiness directive resulted in the strengthening of the floors and additional provisions for ventilation between compartments. The benefits gained from this requirement may have been realized in 1984 when a Boeing 747 airplane survived a 40 square foot opening from a bomb detonation.

Discussion

Although § 25.365(e), as adopted by Amendment 25–54, significantly reduced the vulnerability of transport airplanes to openings in the pressure vessel, its focus now appears too limited. The principal concern was originally loss of critical flight control systems from secondary structural failures; however, the regulation focused on collapse of floors and bulkheads which were the specific events that occurred in the instigating accident. As a result, transport airplanes are only required to be designed to prevent failure of these components. Hazards to critical systems, other than those resulting from the collapse of floors and bulkheads, are not addressed by the current rule.

Pressure venting into normally unpressurized compartments and cavities can cause secondary structural damage to components other than floors and bulkheads which in turn can lead to failure of critical flight control systems and components. The loss of a Boeing 747 airplane in 1985 may have been caused by an opening in the rear pressure bulkhead, venting pressure into an unpressurized area of the vertical fin, resulting in further structural damage to the empennage and finally in loss of the critical flight control systems. The actual opening in this case may have been less than the maximum that would have been required under § 25.365(e). Although § 25.365(e) of Amendment 25–54 was not directly applicable to this particular airplane, an airworthiness directive (AD No. 75–15–05), containing some of the essential provisions of § 25.365(e), was applicable but did not require evaluation of this type of event, though such secondary failures were part of the general concerns that led to the AD. Rather than focus on the general objective and concerns regarding structural requirements for pressurized cabins, the airworthiness directive and the current role focus on the specific events that occurred in a particular accident.

Although there are additional rules requiring failsafe and damage tolerant evaluation, they are limited to the normal design envelope or to specific discrete events. The purpose of § 25.365(e) is to provide some level of protection against secondary failures due to depressurization caused by events outside the normal design envelope. The original concerns specified in the Biennial Airworthiness Review of 1974–1975 were openings resulting from bomb detonations, mid-air collisions, engine disintegrations, bird strikes, and the effects of production, operation and maintenance errors. The level of protection established by the current rule is based on the evaluation of an opening size of up to 20 square feet depending on the fuselage diameter. Service experience does not indicate a deficiency in the required opening size and no change in opening size is proposed. The proposed rule would require evaluation of structural components under pressure differential loads resulting from decompression to insure continued safe flight and landing. The loss of structural integrity at the opening location or physiological effects on occupants are not considerations of the proposed rule.

The current rule limits the location of the opening required by § 25.365(e)(2) to passenger and cargo compartments. The required size of the opening was considered to be large enough to account for a survivable bomb detonation as well as other conceivable events. Although a bomb detonation might be catastrophic within itself in smaller compartments such as the cockpit area, the original concern was for openings due to other causes as well. Openings caused by structural failures resulting from severe corrosion or poor maintenance and repair, or both, are as likely in small compartments as in other locations of the pressure vessel. It is also likely that openings of this size in the cockpit area could be survivable in some cases and it is proposed that they be evaluated to insure that the airplane will not be lost due to secondary failures or collapse of other critical components. Recent experience has also shown that no area of the pressure vessel is immune to bomb detonation and there is some likelihood that they could be survivable regardless of the location if sufficient protection from secondary effects is provided. Some compartments within the pressurized cabin may be so small and of such a geometry that the specified maximum opening could not reasonably be expected to involve only the one compartment. It is proposed that such compartments be evaluated for the largest opening that can be expected to remain confined within the compartment. For the larger openings, up to the maximum specified, the compartment may be combined with an adjacent compartment and both treated as a single compartment.

The proposed regulation would require evaluation of secondary effects after decompression resulting from a specified opening anywhere in the pressure vessel. Specifically, the proposal would require that no structural failure resulting from the effects of decompression would prevent continued safe flight and landing. All effects on systems, equipment or other structural components resulting from the secondary structural failures would have to be evaluated.

Regulatory Evaluation

The proposed rule potentially impacts U.S. and foreign manufacturers that sell newly type certificated transport category airplanes in the U.S.

The FAA estimates the incremental cost of compliance that would accrue from implementation of the proposed rule would be minor. This assessment is

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based largely on information received from industry sources. According to the industry sources, the Japan Airlines (JAL) flight 123 accident prompted increased worldwide safety awareness which, coupled with an anticipation of FAA rulemaking action related to the subject accident, provided most of the impetus behind the voluntary adoption of structural changes (similar to those required by the proposed rule) by manufacturers of transport category airplanes (including business jets). Manufacturers of these airplanes reviewed their existing and future designs for possible flaws similar to those believed to have contributed to the JAL flight 123 accident. Appropriate structural changes were made to some airplanes in the design stage and to some airplanes currently in use by operators. For these reasons, the FAA believes compliance with the proposed rule would not impose any significant additional costs on manufacturers of transport category airplanes.

The potential benefits of the proposed rule represent the prevention of casualty losses (fatalities and to a lesser extent property damage) that would occur if sufficient protection were not taken against the effects of decompression resulting from openings anywhere within pressure vessels of transport category airplanes.

Based largely on information received from industry sources, the FAA expects the proposed rule to ensure that a sufficient level of safety would be attained with regard to the effects of openings up to 20 square feet in size anywhere within the pressurized fuselages of U.S. transport category airplanes. If, however, the proposed rules were not adopted, at least one aviation accident involving a transport category airplane would more than likely take place during the next 10 years. It is estimated that one such accident would amount to either a uniform stream of $13.6 million annually or a cumulative $84 million discounted over the next 10 years, in 1985 dollars, starting in 1988. These estimates represent only one accident, because it is not known how many aviation accidents would occur over the subject 10-year period, though probability of occurrence for one of them would be almost certain.

On balance, the FAA believes this regulatory actions is cost beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this proposed rule.

Under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. The RFA applies only to U.S. entities. In the United States, there are only two manufacturers that specialize in the manufacture of commercial transport category airplanes: (1) The Boeing Company and (2) The McDonnell Douglas Corporation. In addition, there are a number of General Aviation (GA) manufacturers that manufacture commercial transport category airplanes such as business jets. Some of these GA manufacturers include: (1) Gates Learjet, (2) Cessna Aircraft, and (3) Gulfstream America.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees. None of the transport category airplane manufacturers are considered small entities, and all U.S. manufacturers of such airplanes are believed to have more than 75 employees. Thus, no significant economic impact would be incurred by a substantial number of small entities.

The proposed rule is not expected to have an adverse impact on the trade opportunities of either U.S. manufacturers of transport category airplanes doing business abroad or foreign aircraft manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers which sell in the United States, there would be no competitive trade advantage to either.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 25

Air transportion, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend Part 25 of the Federal Aviation Regulations (FAR) 14 CFR Part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983), 49 CFR 1.47(a).

2. By amending § 25.365, by revising the introductory text, by revising paragraphs (e) introductory text and (e)(2), and by adding a new paragraph (h) to read as follows:

§ 25.365 Pressurized cabin loads.

For each airplane with a pressurized cabin the following apply:

* * * * *

(e) Partitions, bulkheads, and floors in pressurized cabins must be designed to withstand the effects of a sudden release of pressure through an opening in any compartment at any approved operating altitude resulting from any of the following conditions acting simultaneously with 1g level flight loads. Under these loads, the structure must not fail and must not deform such as to interfere with safe flight and landing.

* * * * *

(2) Any opening in any compartment of the pressurized cabin up to the size H_0 in square feet. However, small compartments may be combined with an adjacent pressurized compartment and both considered as a single compartment for openings that cannot reasonably be expected to be confined within the small compartment. The size $H_0=PA_s$

where:

H_0 = maximum opening in square feet, need not exceed 20 square feet.

$$P=\frac{A_s}{6{,}240}+.024$$

A_s = maximum cross-sectional area of pressurized shell normal to the longitudinal axis, in square feet; and

* * * * *

(h) Any structure, internal or external to the pressurized cabin, the failure of which could interfere with continued safe flight and landing, must be designed to withstand any loads arising from the conditions specified in paragraph (e) of this section, acting simultaneously with the expected 1g level flight loads.

Issued in Seattle, Washington, on March 8, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-5672 Filed 3-15-88; 8:45 am]

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The final rule will change provisions relating to when the President or Executive Vice President, CCC, may temporarily waive one or more of the standards of this subpart.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation of the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that this rule will not increase the federal paperwork burden for individuals, small businesses, and other persons. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Therefore, the Regulatory Flexibility Act is not applicable to this rule, and a Regulatory Flexibility Analysis was not prepared.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as asking price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC may not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Presently, program requirements permit producers to obtain price support loans on their grain only when it is stored in approved space on the farm or in commercial warehouses. In a small number of specific instances, some producers as well as commercial warehousemen, may not have sufficient storage space available to meet their needs. Some producers may be required to haul their grain a considerable distance to a CCC approved warehouse with space available in order to obtain a price support loan even though a commercial warehouse may be available within the community that is not CCC approved because it cannot meet all of these standards. The regulations at 7 CFR 1421.5557 now permit the CCC to exempt in writing, applicants in such an area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard the interests of CCC.

However, warehousemen who are currently under contract with CCC are required to meet all of the terms and conditions of the regulations. The status of the warehouseman, particularly his ability to meet financial requirements of the standards, may have changed. This places the President or Executive Vice President, CCC, in the position of being unable to waive one or more of the standards even if the warehouse space is needed by CCC.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on August 17, 1987, 52 FR 30689, requesting comments with respect to changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and ended on September 16, 1987.

An amendment to the regulations at 7 CFR 1421.5557 was proposed which would permit the President or the Executive Vice President, CCC, to temporarily waive one or more of the standards for warehousemen who are currently under contract with CCC when it is determined that the warehouse services are needed in a local area.

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One comment was received from a national grain and feed association concerning the proposed rule. They opposed any rule which would pemit CCC to temporarily waive one or more of the standards for warehousemen who are currently approved under the Uniform Grain Storage Agreement (UGSA). Their main objection was that CCC may waive the financial requirements in the standards and thereby provide less security for grain depositors and an economic advantage to UGSA warehouses obtaining the exemption. In addition, they believed that CCC did not articulate adequately the extent to which the waiver authority would be used and did not demonstrate the need for the change.

The Standards of Approval are intended to protect the interest of CCC. Although some benefit may accrue to other depositors, that benefit is solely incidental to the primary purpose of the Standards; the protection of the interest of CCC. The regulations at 7 CFR 1421.5557 now permit the CCC to exempt, in writing, applicants for the UGSA from one or more of the standards when it is determined that the warehouse services are needed in the local area. During 1987, CCC has waived the standards for four warehousemen. In three of these cases, the warehousemen were required to furnish irrevocable Letters of Credit to meet their maximum net worth requirements. The three warehousemen were doing business with financial institutions that were not insured by the Federal Deposit Insurance Corporation (FDIC). The financial institutions furnished the warehousemen with an irrevocable Letter of Credit and the standard requiring all irrevocable Letters of Credit be issued by a bank that is insured by FDIC was waived temporarily until the warehousemen were able to obtain a Letter of Credit from a FDIC insured bank.

The fourth waiver granted this year involved a parent company's wholly-owned subsidiary that purchased a new warehouse. The waiver permitted the parent company to submit a financial statement, which included the financial position of the wholly-owned subsidiary and the new warehouse, to meet CCC financial requirements for the new warehouse. However, before the waiver was granted, the parent company had to execute a Guarantee Agreement which required the parent company to promptly pay any monies which become due and owing to CCC from the new warehouse.

As evidenced by the four waivers granted this year, the CCC exercises prudent control over the waiver authority. In each of the cases cited, CCC was not at a greater financial risk because it granted the waivers nor did any of the warehouses involved have an economic advantage over their competitors. The CCC cannot predict the frequency or the specific reason the waiver authority will be used in the future. However, the CCC intends to use the waiver authority only when: (1) It is in the best interest of CCC; (2) there is no greater financial risk to CCC, and (3) the warehouse will meet all standards within a short period of time.

Accordingly, it has been determined that the provisions of the proposed rule should be adopted without change as a final rule.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Final Rule

Accordingly, the regulations at 7 CFR part 1421 are amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421, *Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed* continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 1072 (15 U.S.C. 714 b and c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99-198, unless otherwise noted.

2. Section 1421.5557 is revised to read as follows:

§ 1421.5557 Exemption from requirements.

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agreements and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

Signed at Washington, DC on March 11, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-5833 Filed 3-16-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 88-14]

Change in the Customs Service Field Organization—Port Manatee, FL

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a new Customs port of entry to be known as Port Manatee in the Tampa, Florida, Customs District of the Southeast Region. The change is part of a Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control (202-566-9425).

SUPPLEMENTARY INFORMATION: As part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on August 25, 1987 (52 FR 32025) proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to change the Customs field organization by establishing a new Customs port of entry at Port Manatee, Florida, within the Tampa, Florida, Customs District, Southeast Region.

Discussion of Comments

Three comments were received in response to the **Federal Register** notice. Two comments strongly supported the proposal. A third comment expressed some concern about a possible reduction of Customs service presently provided at Tampa which may be caused by the creation of a new port of entry. Since we already service Port Manatee out of our Tampa location, the assignment of a Customs officer thereto would not affect our current ability to service Tampa. Therefore, after further review of the matter, Customs has determined that it is in the public

interest to establish a Customs port of entry at Port Manatee, Florida.

Geographical Description

The geographical limits of Port Manatee, Florida, will be that portion of Manatee County bounded on the north by the Manatee-Hillsborough County line, on the east by U.S. Interstate Highway I-75, on the south by State Highway 64, but excluding the western offshore island communities of Anna Maria, Bradenton Beach, Holmes Beach, and Longboat Key.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon small entities in the Tampa, Florida, area, it is not expected to have a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Authority

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR Parts 1949-1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No 1010-5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965: 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by inserting in appropriate alphabetical order, "Port Manatee, including the territory described in T.D. 88-14" in the column headed "Ports of entry" in the Tampa, Florida, Customs District of the Southeast Region.

Wm. Rosenblatt,

Acting Commissioner of Customs.

Approved: March 1, 1988.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 88-5883 Filed 3-16-88; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8188]

Income Tax; Consolidated Return Regulations; Adjustment on Disposition of Stock of Subsidiary

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that add new § 1.1502-32T to the consolidated return regulations. The temporary regulations supplement the adjustment under § 1.1502-32(g) on the disposition by a member of stock of a subsidiary. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective for stock of a subsidiary that ceases to be a member of an affiliated group filing a consolidated return during a taxable year of the group ending after November 30, 1987. A member may elect to apply the new rules to stock not otherwise covered by such rules if the stock is disposed of in a taxable year ending after November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (Telephone 202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds temporary regulations § 1.1502-32T to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

General Description

Section 1.1502-32(g) of the consolidated return regulations provides that when a subsidiary in a group filing a consolidated return leaves the group, members of the group owning stock in the subsidiary must reduce the basis of such stock by the excess of the net positive adjustments for all consolidated return years over the net negative adjustments for all consolidated return years. The reduction is made on the first day of the subsidiary's first separate return year, and it applies only to stock retained by members. Section 1.1502-32(g) also applies if a member that owns stock in a subsidiary leaves the group. The purpose of the reduction is to prevent artificial losses when the stock retained by the member is subsequently sold.

Members of a group filing a consolidated return are subject to the investment adjustment rules of § 1.1502-32. These investment adjustment rules require that the basis of the stock of subsidiary members be increased to reflect undistributed earnings and profits and decreased upon the distribution of these earnings and profits. The effect of the investment adjustment rules is to ensure that the income and loss of members of a consolidated group are taken into account only once in computing the taxable income of the group. Without § 1.1502-32(g), during a separate return year a subsidiary could distribute consolidated earnings and profits without the members making a corresponding reduction in the basis of their retained stock. Thus in separate return years, members would retain the high basis in the subsidiary's stock that they obtained through positive investment adjustments for earnings and profits during the consolidated years. Absent the § 1.1502–32(g) reduction in basis, a separate return year distribution of the subsidiary's consolidated earnings and profits would set the stage for an artificial loss on the sale of the subsidiary's stock.

For example, assume that in 1986, corporation P forms subsidiary S with $100 capital. In 1986 and 1987, P and S file consolidated returns and S has earnings and profits of $200. On the last day of 1987, P's basis in the stock of S is $300 (due to the investment adjustment rules of § 1.1502–32). On December 31, 1987, P sells one-half of its S stock to corporation X, a nonmember, for $150. P has no gain on this sale ($150 amount realized less $150 basis in one-half S stock). On January 1, 1988, P's basis in its remaining S stock is reduced by $100 under the provisions of § 1.1502–32(g) (the portion of the $200 positive investment adjustment resulting from S's earnings that is attributable to P's remaining 50 percent stock ownership in S).

Absent § 1.1502–32(g), S could create an artificial loss by distributing its $200 earnings and profits ($100 to P and $100 to X) on January 1, 1988. P would not be required to make a negative adjustment to its basis in its remaining S stock to reflect this distribution, since S would no longer be a member of the P group and therefore would not be subject to the investment adjustment rules of § 1.1502.32. P's basis in the S stock it retained would remain $150, even though the value of the S stock held by P would be $50 following the distribution. Therefore, P could sell its remaining S stock for $50 and recognize a $100 loss on the sale.

Section 1.1502–32(g) prevents a distribution of consolidated earnings and profits by a subsidiary after disaffiliation from creating the potential for a subsequent artificial loss on the sale of the subsidiary's stock, by requiring a reduction in the basis of the stock at the time of disaffiliation. However, the reduction that § 1.1502–32(g) requires may cause harsh results in certain situations because the basis adjustment occurs at the time of disaffiliation, whether or not dividend stripping subsequently occurs.

To avoid the effect of § 1.1502–32(g), consolidated groups have utilized the deemed dividend provisions of § 1.1502–32(f)(2). Under § 1.1502–32(f)(2), a group may capitalize the earnings and profits of a subsidiary by treating the earnings and profits as distributed to the parent and immediately contributed by the parent to the capital of the subsidiary. After a deemed dividend, there generally is no net positive adjustment remaining in the stock of the subsidiary. Instead, the basis of the subsidiary's stock has been increased by the deemed capital contribution. There is no need to apply § 1.1502–32(g), since there are no longer any earnings and profits in the subsidiary.

The deemed dividend, however, is available only to groups that own 100 percent of the subsidiary's stock on each day of its taxable year. Also, since a deemed dividend applies to the subsidiary's earnings and profits account as of the last day of the prior taxable year, it cannot be used to capitalize earnings and profits accumulated in the final consolidated return year. Groups that own subsidiaries with minority shareholders have used the consent dividend provisions of section 565 as a substitute for the deemed dividend provisions. Groups also have used the consent dividend to capitalize the earnings and profits of the subsidiary for its final consolidated return year. T.D. 8166, published December 15, 1987, restricts the use of consent dividends under section 565 to corporations that are subject to the accumulated earnings tax, personal holding companies, foreign personal holding companies, regulated investment companies, and real estate investment trusts. Because of the restrictions placed upon the use of consent dividends by T.D. 8166, most groups do not qualify to use consent dividends.

Explanation of Provision

The temporary regulations do not change the amount of the adjustment, and they continue to treat the portion of the adjustment in excess of the basis of the adjusted stock as immediately includible in income as income described in § 1.1502–19(a). The temporary regulations, however, do not immediately reduce basis when a subsidiary (or a member that owns the subsidiary's stock) leaves the group. Instead, the basis reduction is deferred, generally until the subsidiary makes a distribution that would have caused a reduction in the basis of its stock had affiliation continued to exist.

The deferral of the basis reduction is accomplished through the establishment of a basis reduction account that applies to the stock of the subsidiary retained by the member. The basis reduction account also applies to any stock acquired by the member in exchange for the disaffiliated subsidiary's stock if the acquired stock has a substituted basis in the hands of the member. In addition, it continues to apply if the stock is transferred to another member. However, if the stock is transferred to a nonmember corporation that is related to the transferror corporation within the meaning of section 304, the basis of the stock is reduced, immediately before the transfer, by the amount of the basis reduction account, and the basis reduction account is eliminated. A special rule provides for the elimination of a basis reduction account when a nonmember whose stock is subject to the basis reduction account becomes a member.

An anti-duplication rule is provided to deal with cases where a distribution of earnings and profits would result in reductions in basis under both the temporary regulations and other provisions of the Code and regulations.

The regulations also provide that members owning stock of a subsidiary that ceased to be a member of the group in a taxable year ending on or before November 30, 1987, may elect to apply the new rules to stock disposed of in a taxable year of the group ending after November 30, 1987. Taxpayers that make this election must certify that they have the information necessary to determine these adjustments.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control number 1545–1046).

Drafting Information

The principal author of the temporary regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * § 1.502–32T also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502–32 is amended by adding paragraph (g)(4) to read as follows:

§ 1.1502–32 [Amended]

* * * * *

(g) * * *

(4) For dispositions of stock in taxable years ending after November 30, 1987 see § 1.1502–32T.

Par. 3. There is added immediately after § 1.1502–32 a new § 1.1502–32T to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

(a) *Adjustment on disposition*—(1) *Amount of adjustment.* A member owning stock in a subsidiary shall determine the net basis increase in each share of such stock that the member owns on the first day of the first separate return year of the member or of the subsidiary, whichever occurs first. The net basis increase is the excess with respect to such share of—

(i) The net positive adjustment under § 1.1502–32(e)(2) for all consolidated return years, over

(ii) The net negative adjustments under § 1.1502–32(e)(1), plus any decreases under § 1.1502–32(f) (1)(i), for all consolidated return years.

(2) *Amount taxable.* If the net basis increase with respect to a share exceeds the basis of the share, the amount of the excess shall, as of the day immediately preceding such first day, be included in the income of the member as income described in § 1.1502–19(a).

(3) *Basis reduction on distribution*—(i) *General rule.* The amount of the net basis increase not included in income under paragraph (a)(2) is treated as a "basis reduction account." If subsequently there is a dividend distribution with respect to the share, the basis of the share is reduced under this section by the amount of the distribution, but only to the extent of the basis reduction account for that share. The basis reduction account is decreased by distributions to which the preceding sentence applies.

(ii) *Anti-duplication rule; earnings and profits adjustments.* Adjustments under paragraph (a)(3)(i) of this section to the basis of a share for distributions shall not duplicate adjustments otherwise applicable to the same distributions, such as adjustments under § 1.1502–32(b)(2)(iii) with respect to the consolidated return of another group. If the preceding sentence applies because of a reduction under § 1.1502–32, the basis reduction account is decreased, except to the extent a distribution is attributable to earnings and profits earned after the establishment of the basis reduction account. Appropriate adjustments shall also be made with respect to the earnings and profits of each member.

(4) *Special rules*—(i) *Nonmember becomes a member.* If a nonmember whose stock is subject to a basis reduction account becomes a member of the group with respect to which the net basis increase under paragraph (a)(1) of this section was determined, the basis reduction account for the stock is eliminated.

(ii) *Disposition of stock subject to a basis reduction account*—(A) *In general.* Except as provided in paragraph (a)(4)(ii) (B) and (C) of this section, if stock subject to a basis reduction account is disposed of by a member, the basis reduction account is eliminated.

(B) *Exchanges in substituted basis transactions.* If a member exchanges stock subject to a basis reduction account for stock of another corporation, and the member's basis in the stock received in the exchange is determined in whole or in part by reference to the member's basis in the stock exchanged, the stock received becomes subject to the basis reduction account, and the rules of this section apply to the stock received as if it were the stock exchanged. For purposes of the preceding sentence, a reorganization described in section 368(a)(1)(F) shall be considered to result in an exchange.

(C) *Transfers to members.* Stock that is subject to a basis reduction account in the hands of a transferor member will continue to be subject to the basis reduction account in the hands of a transferee member.

(D) *Reduction of basis in certain transactions.* If stock that is subject to a basis reduction account is transferred to a nonmember, and the nonmember is controlled by the transeferor within the meaning of section 304(c), the basis of the stock is reduced, immediately before the transfer, by the amount of the basis reduction account at that time and the basis reduction account is eliminated.

(iii) *Exchange of member stock for nonmember stock creating a basis reduction account.* If a member exchanges stock of a member subsidiary for stock of a nonmember, and the member's basis in the stock received in the exchange is determined in whole or in part by reference to the member's basis in the stock exchanged, then the stock of the nonmember shall be treated as becoming subject to this section as a result of the exchange, as if the member subsidiary had become a nonmember immediately before the exchange.

(5) *Example.* The following example illustrates the application of paragraph (a) of this section.

Example: (i) Corporation P forms corporation S with a capital contribution of $100. P and S file a consolidated return for 1987. S has $100 of earnings and profits for 1987, which increases P's basis in the S stock by $100. On January 1, 1988, X, the common parent of an unrelated group, buys all the stock of P, and P and S are included in the consolidated return of the X group for 1988. During 1988, S has earnings and profits of zero, and it distributes $10 to P. On January 1, 1989, P sells all of the stock of S to an unrelated purchaser.

(ii) Under paragraph (a)(1) of this section, P must determine its net basis increase in the stock of S as of the first day of P's or S's first separate return year. Under § 1.1502–1(e), consolidated return years of the X group are separate return years of the P group, and the computation is therefore made as of January 1, 1988. The net basis increase is $100. Since this amount is less than $200, the basis of the stock, no amount is taxable under paragraph (a)(2) of this section. The basis of the S stock is not reduced under this section on January 1, 1988, but a basis reduction account is established under paragraph (a)(3)(i) of this section in the amount of $100.

(iii) The $10 distribution by S is a distribution to which this section applies, since (from the standpoint of the former P group) it is a dividend distribution to a member with respect to stock of a subsidiary for which there is a basis reduction account. However, the distribution also results in a basis reduction in the stock of S under § 1.1502–32(b)(2)(iii)(c), since (from the standpoint of the X group) it is a distribution of earnings and profits accumulated in separate return years of S. Under paragraph (a)(3)(ii) of this section, the reduction under paragraph (a)(3)(i) is not made, and since the distribution is not attributable to earnings and profits earned after the basis reduction account was established, the basis reduction account is decreased from $100 to $90.

(iv) P's basis for determining gain or loss on the sale of the S stock is $190. The remaining $90 basis reduction account in the stock is eliminated under paragraph (a)(4)(ii)(A) of this section as a result of P's sale of the stock.

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(b) *Effective date*—(1) *General rule.* Paragraph (a) of this section applies, and § 1.1502–32(g) does not apply, to stock of a subsidiary that ceases to be a member of a group during a taxable year of the group ending after November 30, 1987.

(2) *Election to apply paragraph (a).* A member owning shares of stock of a subsidiary to which paragraph (a) of this section does not apply, may elect to have paragraph (a) and not § 1.1502–32(g) apply to shares disposed of in a taxable year of the group ending after November 30, 1987. The election shall contain a certification that the member has the information necessary to determine the adjustments required by paragraph (a) of this section. The election is made by attaching a statement to the return of the member for the taxable year in which the stock is disposed of. To the extent that the basis of stock is increased pursuant to an election under this paragraph (b)(2), appropriate adjustments shall be made to the earnings and profits of each member for the taxable year in which the election is made and subsequent years to reflect such increase in basis and, as appropriate, adjustments later made to the basis reduction account.

The provisions contained in this Treasury Decision are needed to immediately amend the consolidated return regulations in response to the restrictions placed upon the use of consent dividends by temporary regulations under section 565. It is therefore found impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: March 14, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-5807 Filed 3-14-88; 5:14 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

Candidacy Age Requirements in Union Officer Elections

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Final rule.

SUMMARY: This document amends the Department of Labor's interpretative regulations concerning restrictions on candidacy for union office which are based on personal characteristics. The amendment provides that a union's general maximum age restriction on candidacy would be unreasonable. The amendments are made, in part, because of recent amendments to the Age Discrimination in Employment Act of 1967.

EFFECTIVE DATE: March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Kay Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Washington, DC 20210; telephone 202-523-7373 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's interpretative regulations on union officer elections under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), are set forth at 29 CFR Part 452. Those regulations provide at § 452.46 that a labor organization may establish certain restrictions on the right to be a candidate based on personal characteristics which have a direct bearing on fitness for office and which are not inconsistent with any Federal law. Section 452.46 presently indicates that a compulsory retirement age for officers, consistent with Federal law, would be an acceptable basis on which to restrict candidacy in LMRDA officer elections. Amendment is needed to reflect a recent revision of the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits a labor union's general compulsory retirement of individuals.

The ADEA provides at 29 U.S.C 623(c) that it is unlawful for a union to "limit, segregate, or classify its membership * * * in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities * * * because of such individual's age." Candidacy for union office has been regarded as an employment opportunity within the meaning of the ADEA.

As originally enacted, the ADEA protections against age discrimination extended only to individuals between 40 and 65 years of age. It was amended in 1978 to extend those protections to individuals up to 70 years old. Public Law 99–592 has most recently amended the ADEA to remove the maximum age limit on its coverage. Effective January 1, 1987, the ADEA prohibits a labor organization's general compulsory retirement of individuals over forty years of age. A labor organization rule establishing a general compulsory retirement age for officers or a comparable age restriction on candidacy would, therefore, be inconsistent with the ADEA. Accordingly, such a rule would be an unreasonable restriction on candidacy in LMRDA elections.

Publication in Final

The undersigned has determined that this amendment of the regulations need not be published as a proposed rule as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553, since this rulemaking merely sets forth interpretative rules and general statements of policy. It is, thus, exempt under section 553(b)(A) of the APA.

Effective Date

Furthermore, the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is interpretative and a statement of policy. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d)(2).

Classification—Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to the regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain any new collection of information requirement.

List of Subjects in 29 CFR Part 452

Labor unions.

Adoption of Amendments of Regulations

Accordingly, 29 CFR Part 452 is amended as set forth below.

PART 452—[AMENDED]

1. The authority citation for Part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534; 29 U.S.C. 481, 482; Secretary's Order No. 3–84 (49 FR 20578).

2. Section 452.46 is revised to read as follows:

§ 452.46 Characteristics of candidate.

A labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office. A union may, for example, require a minimum age for candidacy. However, a union may not establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of a particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964. Nor may it establish a general compulsory retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended. A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nominations. Nor may it require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the members' fitness for office.

Signed at Washington, DC, this 14th day of March, 1988.

Salvatore R. Martoche,

Assistant Secretary for Labor-Management Standards.

[FR Doc. 88-5901 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-86-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-003]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the U.S. Army Corps of Engineers, Wilmington, North Carolina, the Coast Guard is changing the regulations governing the drawbridges across the Atlantic Intracoastal Waterway at mile 113.8 in Fairfield, at mile 157.2 in Hobucken, and at mile 195.8 in Beaufort, North Carolina, by restricting the number of bridge openings during the boating season. This action will accommodate the needs of vehicular traffic and reduce wear and tear on the machinery of these 50-year-old bridges, while still providing for the reasonable needs of navigation. This rule also consolidates all of the drawbridge regulations for the North Carolina segment of the Atlantic Intracoastal Waterway in one section.

EFFECTIVE DATE: These regulations become effective on April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On September 8, 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** (52 FR 33836) concerning the bridges at Fairfield and Hobucken, North Carolina. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice dated November 9, 1987. In the notice of proposed rulemaking, interested persons were given until October 26, 1987, to submit comments. In the public notice, interested persons were given until December 18, 1987, to submit comments.

On June 22, 1987, the Coast Guard published an interim rule with a request for comments in the **Federal Register** (52 FR 23441) concerning the Core Creek bridge at Beaufort, North Carolina. Interested persons were given until August 28, 1987, to submit comments. A public notice was not issued.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Comments

The U.S. Army Corps of Engineers has requested that the drawbridges at Fairfield and Hobucken, North Carolina, only be required to open on the hour and half hour, daily between 7:00 a.m. and 7:00 p.m., from April 1 through November 30, and that the Core Creek Bridge at Beaufort, North Carolina, only be required to open on the hour and half hour between 6:00 a.m. and 7:00 p.m., from April 1 through November 30. Both measures were intended to help alleviate highway congestion, but also to reduce wear and tear on these 50-year-old bridges, which are scheduled to be replaced by fixed bridges. Because of the difficulties the Corps of Engineers was having maintaining the Core Creek bridge at Beaufort, an interim rule with a request for comments was issued.

Three comments were received as a result of the public notice relating to the bridges at Fairfield and Hobucken. The Major of the City of Elizabeth City in a letter dated December 14, 1987, offered no objections to the change in the regulations, but expressed a concern for the lack of mooring facilities for vessels awaiting bridge openings. A letter from the Committee of 100 in Elizabeth City expressed the same views as the Mayor of the City of Elizabeth City and offered no objection to the change in the regulations. Since mooring facilities for vessels falls within the jurisdiction of the U.S. Army Corps of Engineers, the above mentioned letters have been forwarded to the U.S. Army Corps of Engineers in Wilmington, North Carolina, for consideration. The U.S. Fish and Wildlife Service in Raleigh, North Carolina, responded to the public notice offering no objection to the change in the regulations.

It is the Coast Guard's position that the lack of mooring facilities does not constitute a safety hazard for vessels waiting for a bridge opening. While the construction of such facilities would provide a convenience to the boaters, they are not necessary.

No comments were received in response to the interim rule for the Core Creek bridge.

Since the proposed amendments relating to the bridges at Fairfield and Hobucken and the interim rule for the Core Creek bridge will relieve highway congestion during the summer seasons, reduce the wear and tear on the bridge machinery, and will still provide for the reasonable needs of navigation, they are being adopted.

In addition, this rule consolidates all of the regulations governing drawbridges over the Atlantic Intracoastal Waterway in North Carolina into one section.

Since the regulations governing the S58 drawbridge across the Atlantic Intracoastal Waterway, mile 206.7, at Atlantic Beach, North Carolina, were revoked on December 8, 1987, paragraph (b)(4) of the proposal has been deleted and the remaining subparagraphs renumbered. (See the December 29, 1987, **Federal Register** [52 FR 49010] for the rule revoking those regulations.)

This rule also incorporates the final rule for the drawbridge across the Atlantic Intracoastal Waterway, mile

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283.1, at Wrightsville Beach, North Carolina, which was published in the Federal Register on December 21, 1987 (52 FR 48283). That rule went into effect on January 20, 1988. As a result, paragraph (b)(6) of the proposed rule (renumbered as paragraph (b)(5)) has been amended to conform with that amendment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Wrightsville Beach, North Carolina.

(a) The drawbridges over the Atlantic Intracoastal Waterway in North Carolina shall open on signal for public vessels of the United States, state and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property.

(b) The drawbridges over the Atlantic Intracoastal Waterway in North Carolina shall open on signal for pleasure vessels, except that the following drawbridges may remain closed to pleasure vessels if they open on signal for waiting pleasure vessels at the times and during the periods specified below:

(1) S.H. 94 bridge, mile 113.7, at Fairfield, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(2) S.R. 304 bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(3) S.R. 101 bridge, mile 195.8, at Beaufort (Core Creek), NC, from April 1 to November 30, between 6:00 a.m. and 7:00 p.m., must open if signaled on the hour and half hour.

(4) S.R. 50 bridge, mile 260.7, at Surf City, NC, from May 1 to October 31, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(5) S.R. 74 bridge, mile 283.1, at Wrightsville Beach, NC, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

(c) If a pleasure vessel is approaching a drawbridge, which is only required to open on the hour or on the hour and half hour, and cannot reach the draw on the hour or half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: March 8, 1988.

A. D. Breed,

Rear Admiral, U.S. Coast Guard; Commander, Fifth Coast Guard District.

[FR Doc. 88-5889 Filed 3-16-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals promulgates final regulations to provide procedures for administrative review of the proposed assessment of individual civil penalties against a director, officer, or agent of a corporation under the Surface Mining Control and Reclamation Act of 1977. These rules are necessary to inform parties of who may petition for review of a proposed assessment, when and where the petition must be filed, what the contents of a petition must be, what must be proved at a hearing and who bears the burden of proof, and who may petition for a review of a decision by an administrative law judge. The intended effect of these regulations is to provide the mechanisms for administrative review of proposed individual civil penalties.

EFFECTIVE DATE: These rules are effective April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: (703) 235-3750.

SUPPLEMENTARY INFORMATION: On December 24, 1986, the Office of Hearings and Appeals (OHA) published proposed regulations providing procedures for administrative review of the proposed assessment of individual civil penalties against a director, officer, or agent of a corporation under section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1268(f) (1982). 51 FR 47846–46848 (Dec. 24, 1986). The Office of Surface Mining Reclamation and Enforcement (OSM) also published proposed regulations implementing section 518(f) on that day. *See* 51 FR 46838–46844 (Dec. 24, 1986) Comments on OHA's proposed regulations were received from five organizations. These comments are summarized and OHA's responses are provided in the following discussion.

Editorial changes have been made in the final rule to conform with the terminology used in the corresponding OSM rule on individual civil penalties. The document used to notify an individual concerning the assessment of a penalty is now called a "notice of proposed individual civil penalty assessment."

1. Section 4.1302

One comment argues that § 4.1302(a) "lacks the necessary flexibility for the protection of an individual's right to due process" and should be revised to allow the filing of a petition for review of a proposed assessment after 30 days of its service under extenuating circumstances such as "faulty service of the assessment or ambiguous nature of the propose assessment." "OHA should change the mandatory language which precludes the exercise of discretion to consider a petition filed late for good cause," the comment suggests, as well as delete the second sentence of proposed § 4.1302(b), which specifies the sanctions for untimely filing of a petition, because it has "no statutory support."

OHA distinguishes between deadlines for filing documents that inititate administrative review proceedings, which it regards as jurisdictional, and

deadlines for filing subsequent briefs or other pleadings. Untimely filing of documents in the former category, such as petitions for review under § 4.1302, mandates dismissal of the proceeding, while dismissal of the proceeding for untimely filing of documents in the later category is discretionary and depends in part on whether another party was prejudiced by the untimely filing. *See, e.g., James C. Mackey*, 96 IBLA 356, 358, 94 I.D. 132, 134 (1987). The distinction is well-recognized, *see, e.g., Pressentin*, v. *Seaton*, 284 F.2d 195, 199 (D.C. Cir. 1960), and may be established under the authority of 5 U.S.C. 301 (1982) as well as under the authority of the Surface Mining Act. *See* 51 FR 16319–20 (May 2, 1986). The suggestion is rejected.

2. Section 4.1303

One comment objected to the requirement in proposed § 4.1303(a)(3) that an individual filing a petition for review provide a copy of the permit, order or final decision that the corporate permittee is charged with violating. Such document might be difficult for an individual to find in time for filing within 30 days, especially if he has left the corporation, and it is more appropriate for OSM to produce them as part of its prima facie case, the comment argues. Finally, the comment notes, comparable regulations only require a petitioner to file items that have previously been served on him. *See, e.g.*, 43 CFR 4.1164(c).

The proposed regulation has been revised to require the filing only of all documents that OSM has served on the individual in connection with the proposed civil penalty. *See* 30 CFR 724.17(a), 846.17(a).

3. Section 4.1304

A comment observes that there is no sanction comparable to § 4.1302(b), second sentence (discussed above), for failure to comply with the requirement of § 4.1304 that OSM file an answer or motion, or a statement that it will not file an answer or motion, within 30 days of receipt of a copy of a petition. The commenter proposes that no extension be available for a filing under § 4.1304, and that failure to timely file in accordance with it be deemed to be a statement that OSM will not file anything in response to a petition.

OHA has held, as the commenter apparently recognizes, that OSM's failure to file an answer should not result in vacating a notice of violation or cessation order, absent extreme circumstances. *William Francis Rice*, 3 IBSMA 17, 88 I.D. 299 (1981). Although failure to comply with § 4.1304 would presumably be regarded similarly, the regulation is intended to require OSM to file either an answer or a motion or a statement that it does not intend to file a substantive answer or motion so that the administrative law judge will have a clear indication when the case is ready to be set for hearing. Although treating OSM's silence as a statement that it would not file anything would have the same effect as the proposed regulation, OHA prefers the definiteness that will result from requiring that it file one of the documents specified. The suggestion is not accepted.

4. Section 4.1307(a)

One comment objects that proposed § 4.1307(a)(1) goes beyond the authority of section 518(f) in authorizing imposition of an individual civil penalty for violation "of any requirement of the Act or implementing regulations," and states the quoted language must be stricken.

Section 518(f) authorizes a civil penalty for a director, officer, or agent of a corporation "[w]henever a corporate permittee violates a condition of a permit * * * or fails or refuses to comply with any order issued under section 521 of this Act * * *." § 4.1307(a)(1) has been revised to correspond to this language.

Under § 4.1307(a)(1), OSM can meet its burden by establishing a prima facie case of either a violation, or of a failure or refusal. In cases where an individual civil penalty is based on a failure or refusal, OSM need not prove the fact of a violation; it need only show that it cited a violation in an order issued to a corporate permittee. Section 518(f) of the Act subjects a director, officer or agent of a corporation to an individual civil penalty for the corporation's failure or refusal to comply with an applicable order, even where the director, officer or agent had no role in committing the underlying violation itself.

5. Section 4.1307(b)

Two comments object to the provision of proposed § 4.1307(b) that the "existence of a corporate permittee's violation * * * is conclusively established if the violation or order has been upheld in a final decision" in an administrative review proceeding before OHA. The commenters presume that the rule is based on principles of res judicata or collateral estoppel, but object that a corporate director, officer, or agent would not necessarily be either a party to administrative litigation involving the corporation's violation or in privity with the corporation. No precedent exists for "the concept of a *per se* application of collateral estoppel without a specific showing of the requisite privity," it is argued.

The question is when a director, officer, or agent of a corporation may be precluded from relitigating the issue whether that corporation violated a permit condition or failed or refused to comply with an order issued under section 521 or by the Secretary. The answer is that

> when an administrative body has acted in a judicial capacity and has issued a valid and final decision on disputed issues of fact properly before it, collateral estoppel will apply to preclude relitigation of fact issues only if: (1) there is identity of the parties or their privies; (2) there is identity of issues; (3) the parties had an adequate opportunity to litigate the issues in the administrative proceeding; (4) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (5) the findings on the issues to be estopped were necessary to the administrative decision.

Pantex Towing Corp. v. *Glidewell*, 763 F.2d 1241, 1245 (11th Cir. 1985). *See United States* v. *Utah Construction & Mining Co.*, 384 U.S. 394, 421–22 (1966); *Nasem* v. *Brown*, 595 F.2d 801, 806–07 (D.C. Cir. 1979). Under these circumstances an individual may be collaterally estopped from contesting the existence of a corporate permittee's violation or failure or refusal to comply with an order.

The provision authorizing the preclusion of this issue has been added to § 4.1307(a)(1), proposed § 4.1307(b) has been deleted, and proposed § 4.1307(c) has been redesignated as § 4.1307(b).

6. Section 4.1307(c)

Three comments observe that, unlike 43 CFR 4.1155 in civil penalty proceedings involving permittees under section 518(a) of the Act, proposed § 4.1307(c) imposes the ultimate burden of persuasion on the individual to show by a preponderance of the evidence that the elements for imposing the proposed penalty have not been established. Unless a basis exists for distinguishing why the ultimate burden of persuasion should be allocated differently between the two proceedings, the comments suggest that § 4.1307(c) (now § 4.1307(b)) be revised to allocate this burden of persuasion to OSM as it is in § 4.1155.

43 CFR 4.1155 provides that OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty. As to the fact of violation, the allocation of the ultimate burden of persuasion to OSM in § 4.1155 is inconsistent with § 4.1171, which

allocates the ultimate burden to the applicant for review because "the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S.R. No. 128, 95th Cong., 1st Sess. 93 (1977)." 43 FR 34381 (Aug. 3, 1978). Because the allocation of the ultimate burden in § 4.1155 as to the fact of violation is inconsistent with this congressional intent, and because there are now contradictory ultimate burdens of persuasion as to the fact of violation in consolidated application for review/petition for review of civil penalty proceedings involving the same notice of violation or cessation order (see section 518(b) of the Act and 43 CFR 4.1113), OHA has proposed an amendment to § 4.1155 that will allocate to OSM the ultimate burden of persuasion as to the amount of the civil penalty and allocate to the petitioner for review the ultimate burden of persuasion as to the fact of violation. 52 FR 38246 (Oct. 15, 1987). For these reasons, the allocation of the ultimate burden of persuasion in § 4.1307(b) as to § 4.1307(a)(1) will remain on the individual, as it will on the issue of whether he was an officer or director, since he will have readier access to facts on this issue. A new 4.1307(c) is added, however, providing that OSM bears the ultimate burden of persuasion as to whether the individual was an agent of the corporation, as to § 4.1307(a)(3), and as to the correctness of the amount of the civil penalty proposed, because these are issues it is appropriate for the government to demonstrate.

7. Section 4.1308

Section 4.1308(b) has been revised to conform when payment is due with 30 CFR 724.18 or 846.18.

8. Section 4.1309

One comment suggests OHA clarify whether a petition for discretionary review is required to exhaust administrative remedies before seeking judicial review under section 526 of the Act and, if so, specify that the time for seeking judicial review begins with the issuance of the Board's decision.

Filing of a petition for discretionary review is required for the exhaustion of administrative remedies. A statement is added to § 4.1309(f) that if a petition is denied by order, the decision of the administrative law judge shall be final for the Department, subject to 43 CFR 4.5. The date of such an order, or of a decision by the Board on the petition if it is granted, would be the date of the order or decision for purposes of section 526(a)(2).

Section 4.1309(g) has been added to provide that payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

Determination of Effects

Because this rulemaking only provides administrative review procedures, the Department has determined that it is not major, as defined by Exec. Order No. 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment, on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, § 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501.

Drafting

These rules were drafted by Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Penalties, Surface mining

For the reasons stated in the preamble, Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is amended by adding §§ 4.1300–4.1309 as set forth below.

Dated: February 2, 1988.

Earl E. Gjelde,
Under Secretary.

PART 4—[AMENDED]

1. The authority citation for 43 CFR Part 4, Subpart L continues to read:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. 43 CFR Part 4, Subpart L, is amended by adding a new heading and §§ 4.1300–4.1309 to read:

Petitions for Review of Proposed Individual Civil Penalty Assessments Under Section 518(f) of the Act

Sec.
4.1300 Scope.
4.1301 Who may file.
4.1302 Time for filing.
4.1303 Contents and service of petition.
4.1304 Answer, motion, or statement of OSM.
4.1305 Amendment of petition.
4.1306 Notice of hearing.
4.1307 Elements; burdens of proof.
4.1308 Decision by administrative law judge.
4.1309 Petition for discretionary review.

Petitions for Review of Proposed Individual Civil Penalty Assessments Under Section 581(f) of the Act

§ 4.1300 Scope.

These regulations govern administrative review of proposed individual civil penalty assessments under section 518(f) of the Act against a director, officer, or agent of a corporation.

§ 4.1301 Who may file.

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Phone: 703–235–3800.

§ 4.1302 Time for filing.

(a) A petition for review of a notice of proposed individual civil penalty assessment must be filed within 30 days of its service on the individual.

(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Secretary and any tardy petition shall be dismissed.

§ 4.1303 Contents and service of petition.

(a) An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide—

(1) A concise statement of the facts entitling the individual to relief;

(2) A copy of the notice of proposal assessment;

(3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by OSM; and

(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with § 4.1109 (a) and (b) of this part.

§ 4.1304 Answer, motion, or statement of OSM.

Within 30 days from receipt of a copy of a petition, OSM shall file with the Hearings Division an answer or motion, or a statement that it will not file an answer or motion, in response to the petition.

§ 4.1305 Amendment of petition.

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of OSM made in accordance with § 4.1304 of this part. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with § 4.1304 of this part. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting the motion to amend.

§ 4.1306 Notice of hearing.

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1307 Elements; burdens of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under §§ 4.1150–4.1158, 4.1160–4.1171, or 4.1180–4.1187, and 4.1270 or 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in § 4.1307(a)(1) of this part and as to whether he was a director or officer of the corporation at the time of the violation or refusal.

(c) OSM shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the individual was an agent of the corporation, as to 4.1307(a)(3) of this part, and as to the amount of the individual civil penalty.

§ 4.1308 Decision by administrative law judge.

(a) The administrative law judge shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in § 4.1307 of this part.

(b) If the administrative law judge concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 30 CFR 724.18 or 846.18, absent the filing of a petition for discretionary review in accordance with § 4.1309 of this part.

§ 4.1309 Petition for discretionary review.

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of an individual civil penalty proceeding under § 4.1308 of this part.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition for review under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in §§ 4.1273–4.1276 of this part are applicable. If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5 of this part.

(g) Payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 74–14; Notice 54]

Anthropomorphic Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In July 1986, this agency published a final rule mandating the use of the Hybrid III test dummy in compliance testing under Standard No. 208 beginning September 1, 1991. That same rule permitted the optional use of the Hybrid III test dummy for compliance testing beginning October 23, 1986. Eleven organizations filed petitions for reconsideration of this rule.

In response to these petitions, the agency is making three significant and several other changes to the final rule published in July 1986. The first of the significant changes is the suspension of the September 1, 1991 date for mandatory use of the Hybrid III test dummy in compliance testing. The mandatory use date is being suspended because, inadvertently, insufficient time was permitted to address the technical questions that may arise through the use of this new test dummy.

The second significant change is the amendment of the thorax deflection requirement to increase the permissible deflection of the Hybrid III thorax (chest) during compliance testing from two to three inches. The thorax deflection limit is being increased because it appears that most 2-point automatic belt designs used in current vehicles would not comply with the previously established two inch thorax deflection limit. The available accident data do not show an increased risk of thorax injuries to occupants of 2-point belt systems, as compared with occupants of 3-point belt systems or air bags. On the other hand, some limited biochemical data appear to suggest that 2-point belted occupants may suffer chest injuries more frequently than their 3-point belted or air bag restrained counterparts. These inconsistencies between the different data cannot be resolved at the present time. The agency intends to take the necessary steps to obtain sufficient data in this area to arrive at a satisfactory resolution of the inconsistencies. Given the current uncertainties, however, this rule establishes a three inch chest deflection

limit for the Hybrid III test dummy. The available data for 2-point and 3-point belt systems and for air bags indicate that this three inch limit is practicable and meets the need for safety.

The third significant change is a delay until September 1, 1990 in the use of the Hybrid III dummy for compliance testing of vehicles that do not use any restraint system to provide automatic occupant protection. Such restraint systems have generally been called "passive interiors". Up to this point, the agency has established the same chest deflection limit for Hybrid III dummies restrained by safety belts and those that are unrestrained. However, the agency wants to further investigate whether it is appropriate to establish separate chest deflection limits for unrestrained and safety-belt restrained Hybrid III dummies. Additionally, the agency wants to determine if the Hybrid III dummy with a three inch chest deflection limit is equivalent to the older type of test dummy when both are unrestrained. The temporary delay in the use of the Hybrid III test dummy for certain vehicles will provide the agency with sufficient time to determine whether a chest deflection limit lower than three inches should be proposed for unrestrained Hybrid III dummies, and, if so, which lower limit should be proposed.

This notice also makes several other changes to the July 1986 rule in response to the petitions for reconsideration. These are:

1. This notice adjusts the required calibration responses for the dummy's thorax and femur. The thorax force response adjustment is necessary to reflect the characteristics of the dummy's rib cage structure when the ribs are manufactured with new rib damping material. The femur force adjustment narrows the acceptable force response range during calibration. Both of these adjustments will result in more consistently repeatable dummy impact responses during crash testing. NHTSA has made the appropriate adjustments to the drawing and specifications package for the Hybrid III dummy to reflect these changes.

2. This notice makes certain clarifying amendments to Standard No. 208 to permit the use of the Hybrid III test dummy for compliance testing with all the requirements of Standard No. 208 and to permit the use of both types of test dummies in any Standard No. 208 testing conducted before the use of the Hybrid III becomes mandatory.

EFFECTIVE DATE: The regulatory changes made in response to the petitions for reconsideration are effective on March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Crashworthiness Division, NRM–12, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4912).

SUPPLEMENTARY INFORMATION:

Background

In December 1983, General Motors (GM) petitioned the agency to amend 49 CFR part 572, *Anthropomorphic Test Dummies*, to include specifications for the Hybrid III test dummy that GM had developed. GM stated in its petition that the Hybrid III test dummy provides more meaningful information about the occupant protection potential of a vehicle than does the test dummy specified in Subpart B of Part 572. GM also argued that the Hybrid III test dummy's impact responses during a crash are more representative of human responses. Additionally, GM stated that the Hybrid III allows the assessment of more types of potential injuries, with 31 total measurements as opposed to eight measurements with the Part 572 Subpart B test dummy. GM also claimed that the repeatability and reproducibility of the Hybrid III are as good as those of the Subpart B test dummy. In support of these claims, GM submitted numerous documents to the agency.

After evaluating the petition and the supporting documents, NHTSA published a proposal on April 12, 1985 (50 FR 14602). That notice proposed to adopt the Hybrid III test dummy as an alternative to the Part 572 Subpart B test dummy for compliance testing under Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) until September 1, 1991. After that date, the agency proposed to use only the Hybrid III test dummy for compliance testing under Standard No. 208.

The agency proposed that action because it tentatively concluded that the Hybrid III test dummy appeared to represent an appreciable advance in the state-of-the-art of human simulation. NHTSA was particularly interested in the Hybrid III test dummy because of its apparently superior biofidelity and updated anthropometry, as compared with the Part 572 Subpart B test dummy. Further, because the Hybrid III test dummy has the capability of monitoring almost four times as many injury indicating parameters as the Subpart B test dummy, it can be used to measure injury producing forces, accelerations, deflections, moments, etc. for areas of the body that are not instrumented in the Subpart B test dummy. For instance, the Hybrid III test dummy has instrumentation capable of measuring injury producing forces experienced by the neck and lower legs. Although these body areas show a high incidence of serious and/or disabling injuries in crashes, the agency cannot make use of the Subpart B test dummy to evaluate the extent of the protection afforded to these body areas by vehicle safety systems. Because of these attributes of the Hybrid III test dummy, NHTSA believed that it should eventually replace the Subpart B test dummy as the tool used to evaluate the protection that vehicles afford occupants during frontal crashes.

The Final Rule

After evaluating the comments on the April 1985 proposal, NHTSA published a final rule adopting the Hybrid III test dummy on July 25, 1986 (51 FR 26688). This final rule made some adjustments to the calibration procedures proposed to be used with the Hybrid III test dummy. The calibration procedures involve a series of static and dynamic tests of the test dummy components to determine whether the responses of the dummy fall within specified ranges. These calibration procedures help ensure that the test dummy has been properly assembled and that the assembled test dummy will give repeatable and reproducible results during crash testing. (Repeatability refers to the ability of the same test dummy to produce the same results when subjected to identical tests. Reproducibility refers to the ability of one test dummy to provide the same results as another test dummy built to the same specifications.)

The preamble to the final rule also stated that the agency had concluded that the two types of test dummies were equivalent; i.e., when both test dummies were restrained by lap/shoulder belts or with air bags, only minimal differences in test results were shown by the two types of dummies. The importance of equivalence is that vehicles, which will pass or fail Standard No. 208 using one type of dummy, will achieve essentially the same result using the other dummy.

The exception to the finding of equivalence occurred for chest acceleration measurements for unrestrained Hybrid III test dummies. The chest acceleration measurements for unrestrained Hybrid III dummies were consistently lower than the chest acceleration measurements for unrestrained Part 572 Subpart B dummies. If the two test dummies were to be equivalent, some additional measurement of injury producing forces to the chest of the Hybrid III test dummy would have to be recorded to compensate for the lower chest acceleration measurements with this test dummy. Chest injuries generally are caused by excessive loading on the chest, when the chest contacts the restraint system and possibly the steering system, if the occupant is restrained, or the steering system or other passenger compartment components, if the occupant is unrestrained. The agency concluded that a measurement of chest deflection in testing with the Hybrid III test dummy would appropriately compensate for that dummy's lower chest acceleration measurements when it was unrestrained. Therefore, the July 1986 final rule specified a limit on the amount of thorax deflection that could occur with the Hybrid III test dummy, as the means of ensuring equivalence of the two types of test dummies. See 51 FR at 26693–26694.

Having determined that a thorax deflection limit was necessary to ensure equivalence of the two types of test dummies, the obvious question was what that limit should be. The agency began by examining biomedical data on thorax deflection. Excessive chest deflection can produce rib fractures which can impair breathing and inflict serious damage to the internal organs within the perimeter of the chest structure. The agency began by examining test results to compare the measured responses of Hybrid III test dummies and the injuries induced in cadavers under identical impact conditions. Injuries induced in the cadavers were rated on the Abbreviated Injury Scale (AIS). An AIS rating of 1 is a minor injury, while an AIS of 3 is a serious injury. The rated cadaver injuries were then compared with the chest deflection experienced by a Hybrid III test dummy under identical impact conditions.

In tests using a relatively stiff air bag, which was preinflated and not vented, the cadaver sustained an average injury level of AIS 1.5 (minor to moderate), while the Hybrid III test dummy experienced a 2.7 inch chest deflection under the same conditions. NHTSA concluded that these results demonstrated that a system that symmetrically and uniformly distributes impact loads over the entire chest can produce approximately three inches of chest deflection, as measured on the Hybrid III dummy, and still adequately protect an occupant from serious injury.

However, the testing with belt restraints that did not uniformly or symmetrically spread loads over the entire chest and with other protective systems where the impact loads were highly concentrated over a relatively small area suggested that chest deflection in other portions of the chest could be significantly greater than was shown by the centrally-mounted chest deflection gauge on the Hybrid III dummy. Accordingly, it appeared reasonable to establish a chest deflection limit of less than three inches to ensure that those restraint systems would provide a level of chest protection comparable to that provided by restraint systems that symmetrically spread the load over the entire chest surface. When evaluating lap/shoulder belts in a laboratory environment, the cadavers had moderate to serious injuries (AIS of 2.6) induced under the same conditions that the Hybrid III experienced chest deflection of 1.6 inches. Additionally, some pendulum test, were conducted for GM. In these tests, blunt, concentrated loads are intended to simulate unrestrained vehicle occupant impacts into the steering wheel or other interior components. This testing showed that the cadavers had serious chest injuries induced (average AIS of 2.8) under the same impact conditions in which the Hybrid III dummy measured 2.63 inches of chest deflection.

The available biomechanical data on this subject are based on a limited number of cadaver tests that are not large enough to make statistically significant injury projections. While the agency could not and did not rely on these limited biomechanical data *alone* to justify a decision to establish any particular limit for chest deflection, these data did suggest that a limit as low as 1.6 inches of chest deflection should be considered for the Hybrid III test dummy.

In addition to the indications from the biomechanical data that a chest deflection limit of less than three inches should be adopted for impact exposures that provide concentrated loadings over a limited area of the chest, the agency was also concerned that the Hybrid III test dummy could, in many instances, underestimate actual chest deflection. The Hybrid III measures chest deflection by a deflection sensor located near the third rib of the test dummy, on the midsternum of the dummy's chest. NHTSA testing has shown that the Hybrid III's deflection sensor underestimates chest displacement when a load is applied to an area away from the deflection sensor.

The agency recognized the limitations of the biomechanical data when it was considering what chest deflection limit should be established for restraint systems that can provide concentrated loadings over a limited area of the chest. Given these limitations, NHTSA examined the chest deflection levels that occur with current vehicle restraint systems. To do this, NHTSA examined the crash performance of existing restraint systems in available accident files, such as National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS). These data showed that existing 2- and 3-point safety belts, when used, offer vehicle occupants a high level of safety protection, including protection against the risk of serious chest injuries. Therefore, the agency determined that the chest deflection limit could safely be set at a level that was compatible with the level of chest deflection that would be experienced in 30 mph tests with existing 2- and 3-point belt designs.

Test data available to the agency at the time of the final rule indicated that the two inch limit could be satisfied by existing designs of 3-point manual belts, 2-point automatic belts, and 3-point manual belts with air bags. For instance, the data available of 3-point manual safety belts in 30 mph frontal impacts with the Hybrid III test dummy showed chest deflections ranging from an average of 0.67 inches in NHTSA car-to-car testing to 1.89 inches in GM sled testing. For the Volkswagen 2-point automatic belts, the data showed chest deflections ranging from 0.79 inches to 1.09 inches in NHTSA testing. Based on these data, the agency concluded that a two inch chest deflection limit was an achievable level for existing restraint system designs.

Thus, the decision to adopt a two inch chest deflection limit for restraint systems that did not generally distribute the load over the entire chest area was based on the following factors:

1. The limited biomechanical data that were available suggested that there was a safety need for a chest deflection limit at a level below three inches;

2. A chest deflection limit below three inches would compensate for the Hybrid III's tendency to underestimate chest deflection when a load is applied to a small area away from the deflection sensor; and

3. Existing 2- and 3-point belt systems could comply with a two inch chest deflection limit, based on the limited testing data available to the agency.

Petitions for Reconsideration

The agency received petitions for reconsideration of this final rule from nine different organizations. Many of the petitions for reconsideration raised

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issues involving the positioning of the Hybrid III dummy during compliance testing. In its November 23, 1987 final rule establishing dynamic testing requirements for light trucks and light multipurpose passenger vehicles (MPV's) (52 FR 44898), NHTSA permitted the use of Hybrid III test dummies for compliance testing of those vehicle types. The dummy positioning issues that were raised in the petitions for reconsideration of the Hybrid III dummy had to be resolved in that rule, to allow the Hybrid III dummies to be properly positioned during compliance testing. Although that rule addressed only light trucks and MPV's, the positioning problems in those vehicle types are similar to the positioning problems for passenger cars. Accordingly, the dummy positioning procedures set forth therein are applicable to positioning the Hybrid III test dummy in any type of vehicle, including passenger cars. Persons interested in reviewing the agency's response to the Hybrid III test dummy positioning issues raised in the petitions for reconsideration should consult that document. This notice addresses all other issues raised in the petitions for reconsideration of the final rule establishing requirements for the Hybrid III test dummy.

Chest Deflection Limits

The chest deflection limits generated the most requests for reconsideration. Chrysler, Ford, GM, Honda, the Motor Vehicle Manufacturers Association (MVMA), Nissan, Renault, Toyota, Volkswagen, and Volvo all asked for some changes to these requirements. GM stated that it uses a two inch deflection limit as an internal design and performance guide in its development of belt restraint systems. However, GM stated that there is no biomedical basis for such a limit. GM concluded by stating that it believed a two inch chest deflection limit was overly conservative as a mandatory requirement and that a three inch limit would be a more appropriate regulatory requirement.

Toyota stated that the two inch limit was unreasonable. Toyota stated that it has no knowledge of any accidents in which occupants of a Cressida equipped with this automatic belt system have suffered serious chest injuries. Yet, according to this petitioner, in 30 miles per hour (mph) barrier impact tests using the Hybrid III test dummy, the 2-point automatic belt system installed in its Cressida model causes chest deflections that average 2.3 inches, with a maximum of 2.9 inches. Thus, these vehicles would not comply with the two inch chest deflection limit. Toyota asserted that retention of the two inch chest deflection limit would force it to discontinue offering this 2-point automatic belt system, even though accident data indicate that the system offers effective occupant protection. Toyota urged the agency to increase the chest deflection limit to three inches for all restraint systems. Volkswagen made a similar point with respect to the 2-point automatic belt system installed in its Golf models, as did Chrysler for the 2-point automatic belt systems installed in some of its models.

Volvo stated that the data on which NHTSA had based the two inch deflection limit were inadequate to provide conclusive evidence of biomechanical tolerance levels. Renault requested the agency to amend the chest deflection limit to 2.5 inches until the uncertainties associated with the test data, which were the basis for the two inch limit, are fully resolved. MVMA asked that the two inch limit be suspended until the agency had resolved the issues surrounding this aspect of occupant protection.

Restrained Hybrid III dummies. In response to these petitions, NHTSA has thoroughly reexamined this subject. The agency has no basis for questioning its previous statements that the Hybrid III can underestimate actual chest deflections in certain circumstances Further, after again reviewing the available biomechanical data, the agency continues to believe those data suggest the need to establish a chest deflection limit for restraint systems that do not evenly distribute the load over the entire thorax surface at some level below three inches.

If the biomechanical data were complete and reliable, the agency could rely on these data alone as the primary support for a particular chest deflection limit somewhere below three inches. However, the currently available biomechanical data are limited. NHTSA believes that it should not rely on these biomechanical data *alone* to support a particular chest deflection limit. Even when the agency's concern about the Hybrid III dummy's propensity to underestimate actual chest deflection in certain situations is combined with the available biomechanical data, the agency cannot demonstrate at this time that a two inch chest deflection limit is necessary to meet the need for safety

The most broad-based data source available for examination when establishing a new chest deflection limit is the accident files for the restraint systems currently in production. As noted above, those accident files show that current 2- and 3-point safety belts, when used, afford a high level of protection against serious thorax injuries. When the agency adopted the two inch chest deflection limit, the data available to the agency indicated that existing 2- and 3-point safety belt systems would not have to be redesigned to comply with this requirement. In the case of 2-point automatic belts, the available data consisted of 1982 and 1984 Volkswagen Rabbit tests. This testing showed chest deflections of 1.09 and 1.06 for the Hybrid III dummy at the driver's position, and chest deflections of 0.79 and 0.86 inches for the Hybrid III dummy at the passenger's position. Based on these test results, the agency had no reason to believe that existing 2-point automatic belt systems would have to be redesigned to comply with the two inch chest deflection limit.

However, manufacturers of vehicles with 2-point automatic belt systems submitted new test results as part of their petitions for reconsideration, showing that their existing belt systems do not comply with a two inch chest deflection limit. As not above, Toyota and Chrysler submitted test results showing that their models with 2-point automatic belt systems would not comply with a two inch chest deflection limit. Most significantly. Volkswagen submitted test data for its 1987 Golf model. This vehicle uses a very similar design of 2-point automatic belts to that which was present in the 1982 and 1984 Rabbit models that were tested by the agency. Volkswagen's testing of its 1987 Golf showed that the Hybrid III test dummies at both the driver and the passenger positions experienced chest defections of 2.3 inches. These chest deflections are significantly higher than those measured in the NHTSA testing. Both Volkswagen and MVMA alleged in their petitions for reconsideration that a scaling error may account for the large differences in test results for what is essentially the same restraint system. Both petitioners stated that the agency may have improperly converted centimeters to inches. Volkswagen showed that when the NHTSA results were multiplied by 2.54 (the number of centimeters in one inch), the NHTSA and Volkswagen data show very good agreement.

In response to these allegations, NHTSA has begun an investigation of its previous test results. The preliminary conclusion from that investigation is that the discrepancy between the NHTSA and Volkswagen test results cannot be definitely attributed to a data processing scaling error in the NHTSA

data. However, it concluded that those previous test results must be regarded as highly suspect.

Subsequent sled tests by NHTSA using Volkswagen Golf interiors produced chest deflections substantially greater than the results of the previous NHTSA crash testing of Volkswagen Rabbits. For example, this subsequent sled testing of a Golf showed a chest deflection of 2.8 inches for the current design of the Golf interior and restraint system. The agency then made several modifications to the Golf interior and restraint system to explore the sensitivity of the parameters that influence the magnitude of measured chest deflection. One of these modifications resulted in a chest deflection of 1.9 inches. However, this modification increased the HIC level to 2362. None of the chest deflections measured in these 11 tests of the Golf were near the level of 1.09 inches measured in the previous NHTSA testing of the Rabbit, and all but the one modification discussed above had chest deflections above two inches.

Additionally, the agency has also conducted several 30 mph frontal impact tests of vehicles equipped with 2-point automatic belts. The Chrysler LeBaron had a chest deflection of 2.35 inches at the driver's position and 2.56 inches at the passenger's position. The Subaru XT had a chest deflection of 2.48 inches at the driver's position and 2.61 inches at the passenger's position. The Toyota Camry had a chest deflection of 1.66 inches at the driver's position and 2.15 inches at the passenger's position. These results likewise are substantially greater than the chest deflection of 1.09 inches measured for the Volkswagen Rabbit in the agency's previous testing.

The subsequent testing by NHTSA and by the manufacturers has not been able to replicate the results of NHTSA's previous testing of 2-point automatic belts. To date, the agency has not been able to identify the source(s) of the discrepancies between current and previous test results. Accordingly, the agency believes that it cannot rely on the chest deflection measurements obtained in that previous round of testing for any purpose until such time as the agency can explain or replicate those results.

Data available to the agency indicate that most of the two point belt systems currently offered and some three point belt systems could not comply with the two inch chest deflection limit. Moreover, the accident data for vehicles equipped with restriant systems that do not comply with the two inch chest deflection limit do *not show* that persons restrained by these belt systems experience a higher level of chest injuries in crashes than those restrained by belt systems that comply with the two inch chest deflection limit. Given these accident data and the acknowledged limitations of the available biomechanical data, the agency has concluded that it does not have an adequate basis for imposing a two inch chest deflection limit at this time. Accordingly, this notice amends the chest deflection level upward.

The remaining question is what level should be established as the limit for permissible chest deflection. As noted above, agency sled tests have measured a 2.8 inch chest deflection for the Volkswagen Golf. NHTSA vehicle tests measured chest deflections of 2.56 inches in the Chrysler LeBaron and 2.61 inches in the Subaru XT. In one of Toyota's tests, a chest deflection of 2.9 inches was measured in its Cressida model. The agency currently has no field evidence that persons restrained by the restraint systems in these vehicles are exposed to an unacceptable risk of serious chest injuries. Therefore, this notice amends the chest deflection limit for Hybrid III test dummies to specify that the chest deflection shall not exceed three inches for any occupant protection system.

Unrestrained Hybrid III dummies. As noted above, the available accident data suggest that, when the impact forces that produce 2.9 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by 2-point belts, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Similarly, NHTSA has test data showing that, when the forces that produce 2.7 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by air bags, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Accordingly, the agency believes that a three inch chest deflection limit for the Hybrid III test dummy when restrained by safety belts or air bags appears to meet the need for motor vehicle safety.

In both the NPRM and the final rule adopting the Hybrid III test dummy, the agency treated all occupant protection systems other than those that were "gas inflated and provide distributed loading to the torso during a crash" as a single category. This treatment had the effect of establishing the same chest deflection limit for Hybrid III dummies that were restrained by safety belts and those that were unrestrained. Following this same reasoning, one would infer that since the three inches of chest deflection in the Hybrid III dummy can safely be tolerated by vehicle occupants when those forces are imposed by safety belts, that same level of chest deflection could be safely tolerated when it is imposed on unrestrained vehicle occupants.

However, the accident data and the limited biomechanical data that are currently available for unrestrained occupants raise concerns about the decision to assign the same chest deflection limit to unrestrained and belt-restrained occupants. To respond to these concerns, NHTSA believes that it should reexamine the basis for its decision to establish the same chest deflection limit for belt-restrained and unrestrained Hybrid III test dummies.

Moreover, the preamble to the final rule establishing the Hybrid III test dummy expressed the agency's concerns about the equivalence of the Hybrid III test dummy and the Part 572 Subpart B test dummy, relying solely on data gathered when both types of test dummies were *unrestrained*. The equivalence of the two test dummies is essential if the agency is to ensure that permitting a choice of test dummies will not lead to a degradation in vehicle safety performance. That is, both test dummies must reach similar conclusions in identifying vehicle designs that could cause or increase occupant injury. Based on a review of all available data comparing the test responses of the two dummies, the agency concluded that there was no consistent trend for either test dummy to measure higher or lower Head Injury Criterion (HIC) or femur measurements than the other. With respect to chest acceleration responses, however, the preamble explained the following:

> In the case of chest acceleration measurements, the data again do not show higher or lower measurements for either test dummy, except in the case of unrestrained tests. In unrestrained tests, the data show that the Hybrid III generally measures lower chest g's than the existing Part 572 test dummy. This difference in chest g's measurement is one reason why the agency is adopting the additional chest deflection measurement for the Hybrid III, as discussed further below. 51 FR 26688, at 26694; July 25, 1986.

Later, the preamble said:

> In summary, the test data indicate the chest accleration responses between the Hybrid III and the existing Part 572 test dummy are about the same for restrained occupants, but differ for some cases of unrestrained occupants. This is to be expected since a restraint system would tend to make the two dummies react similarly even though they have different seating postures. The different seating postures, however, would allow unrestrained dummies to impact different vehicle surfaces, which would in most instances produce different responses. Since the Hybrid III dummy is more human-like, it

should experience loading conditions that are more human-like than would the existing Part 572 test dummy. One reason that the agency is adding a chest deflection criteria for the Hybrid III is that the unrestrained dummy's chest may experience more severe impacts with vehicle structures than would be experienced in an automatic belt or air bag collision. Chest deflection provides an additional measurement of potential injury that may not be detected by the chest acceleration measurement. *Id.*, at 26694–95.

NHTSA's 1986 determination that the Hybrid III and the Part 572 Subpart B test dummies were nevertheless equivalent test devices for unrestrained occupants was based on the addition of a chest deflection limit for unrestrained Hybrid III test dummies. The chest deflection limit was established at two inches, based primarily upon data that had been gathered for *belt-restrained* occupants. However, today's notice has amended the chest deflection limit for Hybrid III test dummies to three inches, based in part on the inadequate support for the two inch value. Despite our acknowledgement of the limitations in the support for the two inch value, NHTSA is also concerned that none of the limited available data indicate that a three inch chest deflection limit for *unrestrained* Hybrid III test dummies is the correct value to make the Hybrid III test dummy equivalent to the Part 572 Subpart B test dummy.

Given the limitations of the available data to support any particular chest deflection value for unrestrained occupants and the concerns about the equivalence of the Hybrid III and Subpart B test dummies without a two inch chest deflection limit, the agency has concluded that it should not permit the Hybrid III dummy to be used until September 1, 1990 to test vehicles that do not use any restraint systems (such as automatic safety belts or air bags) to provide automatic occupant protection. This period of time will allow the agency to gather and analyze additional data, so that it can determine whether a chest deflection limit of less than three inches is necessary for unrestrained Hybrid III test dummies, and, if so, what specific limit should be proposed.

Furthermore, the agency has already determined that the injury criteria applicable to unrestrained Subpart B test dummies are reasonably correlated to the tolerance limits of unrestrained vehicle occupants. Accordingly, mandating the use of the Subpart B test dummy until September 1, 1990, for compliance testing of vehicles that do not use restraints to provide occupant protection will ensure that any such vehicles afford a level of occupant protection equivalent to that afforded by vehicles that use restraint systems.

The agency would like to make clear that the available data do *not* establish that the three inch chest deflection limit for unrestrained Hybrid III test dummies fails to meet the need for safety or fails to ensure equivalence with the Subpart B test dummy. To repeat, the agency has always treated unrestrained and belt-restrained Hybrid III dummies as a single category for the purposes of chest deflection throughout this rulemaking. If the agency were to continue following this course, there would be no reason for the temporary delay in the use of the Hybrid III for certain types of vehicles. However, the accident data and the limited biomechanical data that are available suggest that it would not be appropriate to continue to treat belt-restrained and unrestrained Hybrid III test dummies in a single category for purposes of the chest deflection limit. The agency wants to investigate this subject further, to ensure that the chest deflection limit that is established for unrestrained Hybrid III test dummies both meets the need for safety and ensures that these dummies are equivalent to the Subpart B test dummy in similar conditions.

If the agency cannot substantiate its concerns with data by the time this temporary delay in the use of the Hybrid III dummy for some vehicles expires, NHTSA will assume that it is reasonable to continue imposing a single chest deflection limit for belt-restrained and unrestrained Hybrid III dummies. Accordingly, *unless* there is some future rulemaking action in this area, this rule provides that vehicles that do not use any restraint systems to provide occupant protection and that are manufactured on or after September 1, 1990 *may* use the Hybrid III test dummy with the three inch chest deflection limit in Standard No. 208 compliance testing.

The agency is not aware of any manufacturer's plans to certify a vehicle design as complying with Standard No. 208 without including any automatic restraint system before September 1, 1990. Hence, this temporary delay in the use of the Hybrid III for testing vehicles without any automatic restraint systems should not adversely affect any manufacturer. After this temporary delay has expired, the Hybrid III dummy will be available for compliance testing for any type of occupant protection system a manufacturer may certify as complying with Standard No. 208. This reflects the agency's continuing belief that the Hybrid III test dummy should eventually replace the older Subpart B test dummy as the tool used to evaluate the protection that *all* vehicles afford occupants during frontal crashes, including vehicles that do not use any restraint systems to protect the occupants, because of the Hybrid III's enhanced biofidelity and capability of measuring injury producing forces for areas of the body that are not measured by the Subpart B test dummy.

Mandatory Use Date for Hybrid III

There are a number of questions that are currently unresolved regarding the injury criteria that should be established for the Hybrid III dummy. The following are some of the issues that need to be addressed to develop sound injury criteria for that test dummy:

1. What is the extent of the occupant chest injury problem in real world motor vehicle crashes? How does the problem vary by restraint system type?
2. Is chest deflection a relevant chest injury measure, in addition to chest acceleration, when using the Hybrid III test dummy?
3. What process should be used to correlate laboratory-based test data about chest injuries with the actual accident data for chest injuries?
4. How accurate and valid are the current chest deflection measurement technology and any current technological alternatives for assessing chest injury potential (such as measurements of shoulder belt loading)?
5. To what extent should the performance requirement limiting chest deflection differentiate among the varous types of restraint systems?
6. Are the responses of the Hybrid III test dummy adequately repeatable when used to measure the chest deflection of various types of restraint systems?

The available data are inadequate to permit the agency to resolve these questions with a reasonable degree of confidence. Until the agency has a reasonable confidence in its answers to these types of questions, NHTSA believes it would be premature to mandate the use of only this test dummy for compliance testing under Standard No. 208. Accordingly, this notice suspends the mandatory use date for the Hybrid III test dummy. The July 1986 final rule had established September 1, 1991 as the date after which NHTSA would use only the Hybrid III test dummy for its passenger car compliance testing under Standard No. 208.

NHTSA has already initiated further testing of current restraint systems with the Hybrid III test dummy. In addition, the agency intends to broaden its biomechanical data base to fill in the gaps in the existing data regarding the appropriateness of limits on permissible

chest deflection. NHTSA will also attempt to correlate the biomechanical data, Hybrid III chest deflections and/or related injury assessments, and injuries observed in vehicle crashes. Finally, the agency will gather more chest deflection and injury data from vehicle test crashes. After the agency has performed this additional research, it will propose a new mandatory use date for the Hybrid III dummy in Standard No. 208 compliance testing.

In connection with this suspension of the mandatory use date for the Hybrid III dummy in NHTSA's compliance testing, the agency emphasizes that it is aware of the need to allow all manufacturers to obtain and gain experience with using the Hybrid III dummy *before* that test dummy is used for passenger car compliance testing. NHTSA previously determined that at least four years should be allowed for manufacturers to gain experience with the Hybrid III, after those test dummies were commercially available in sufficient quantities; 51 FR 26688, at 26699, July 25, 1986. When proposing a new mandatory use date for the Hybrid III, NHTSA will again specify a leadtime that is adequate to allow all manufacturers to gain experience with the Hybrid III test dummy. Because of the problems that have arisen vis-a-vis chest deflection, NHTSA will not include the time that has elapsed since the July 25, 1986 final rule in its leadtime estimate.

Other Issues Raised in Petitions for Reconsideration

As noted above, all issues related to the Hybrid III positioning procedures that were raised in these petitions for reconsideration were addressed in the November 23, 1987 final rule establishing dynamic testing requirements for light trucks and light multipurpose passenger vehicles (52 FR 44898). Interested persons are referred to that rule if they wish to review the agency's response to those issues. Besides the issues of the appropriate chest deflection limits, the mandatory use date for the Hybrid III test dummy, and the positioning procedures, the following issues were raised in petitions for reconsideration.

1. Acceptability of the Hybrid III's Design and Performance Specifications

Ford commented that the performance requirements for Hybrid III test dummies that were specified in the final rule were based on versions of the Hybrid III that reflected the proposed requirements. However, the version of the Hybrid III mandated in the final rule includes new rib damping material, knee sliders, ball-joint ankles, and so forth. Ford asserted that the performance requirements in the final rule may not have taken these changes into account. In addition to the changes noted by Ford, the requirements for the Hybrid III dummy specified in the final rule differed from those proposed with respect to the calibration procedures to be followed.

Ford's assertion that the agency failed to account for the changes made to the test dummy between the proposal and the final rule is not correct. In the case of the new rib damping material, data submitted by GM (Docket No. 74–14–N–45–027) and testing conducted for NHTSA show that the new rib damping material shifts the impact force response calibration limits upward by about six percent, but has little or no effect on the chest deflection characteristics.

The design changes to the knee, lower leg, and ankle were made to reduce the dummy's design complexity which, in turn, should enhance the dummy's reproducibility. The size, mass, mass distribution, and rigidity of the knee, lower leg, and ankle are identical to those which were proposed. Additionally, NHTSA conducted its testing of the Hybrid III dummy's knees with the proposed knees, that is, *without* a shear module. GM conducted its testing of the dummy's knees with the knees adopted in the final rule, that is, *with* the shear module. The agency and GM test results for the knees were nearly identical. These test results show that the addition of the knee shear module did not significantly affect the performance of the knees in testing.

Ford did not offer any explanation of why it believes the changes to the knee, lower leg, and ankle would affect the performance of the Hybrid III dummy during testing. The dummy calibration modifications that were made between the proposal and the final rule simply reduced the complexity and redundancy of the calibration procedures. The available evidence indicates that the only effect on the performance of the Hybrid III as a result of the calibration modifications was to ensure that the test dummy produces more consistent impact responses. Accordingly, NHTSA has not amended the rule in response to Ford's concern.

2. Calibration Requirements

The calibration procedures involve a series of static and dynamic tests of the test dummy components to determine whether the responses of the dummy fall within specified ranges. These calibration procedures help ensure that the test dummy has been properly assembled and that the assembled test dummy will give repeatable and reproducible results during crash testing.

a. *Thorax calibration response requirements.* In its petition, Ford asked NHTSA to revise the thorax calibration specifications to reflect the characteristics of the rib cage structure with the new United McGill rib damping material. NHTSA changed to this new rib damping material after proposing to use a different rib damping material. Ford also indicated that it has experienced some intermittent difficulties in getting its Hybrid III dummies to comply with the thorax calibration requirements. Honda, Volkswagen, and Toyota also indicated they had experienced problems with getting Hybrid III dummies to meet the thorax calibration requirements. These three manufacturers also indicated that they had difficulties obtaining consistent thorax impact responses. GM urged the agency to revise the midpoint of the thorax resistive forces specified in the calibration requirements upwards by 47.5 pounds. GM stated that this increase would more appropriately reflect the range of acceptable responses for newly manufactured Hybrid III test dummies incorporating the new rib damping material.

The agency believes that these petitions raise a legitimate point. NHTSA confirmed in its own testing and testing conducted by the Hybrid III dummy manufacturers that the rib design specification set forth in the final rule is too broad. The dimensional extremes permissible under that specification result in the test dummy's thorax exhibiting excessive impact response variations. During the months of November and December 1986, a series of round robin test were conducted by the two dummy manufacturers and GM to determine what rib steel and damping material combinations would produce the most consistent impact responses, while ensuring biofidelity with the human rib cage. Those tests indicated that a rib steel thickness of 0.080 inches and 0.53 inch thickness of the new rib damping material would yield the most consistent responses and retain biofidelity (NHTSA Docket No. 74–14–N45–027). However, this report also concluded that the calibration force requirements should be adjusted upwards by 80 pounds.

Subsequently, the agency performed a similar series of tests of the rib cages made by both dummy manufacturers, to ensure that rib cages that comply with these new specifications could be calibrated within the higher force levels and that rib cages that comply with these new specifications and that are calibrated at the higher force levels yield consistent impact responses. These tests showed that both dummy manufacturers can produce Hybrid III rib cages well within these new specifications and that both manufacturers' rib cages built to these new specifications gave repeatable and reproducible impact responses. (NHTSA Docket No. 74–14–N45–038).

Therefore, in response to the petitions and these test results, § 572.34(b) is revised to specify that the thorax shall resist a force of 1242.5±82.5 pounds. This is an increase of the midpoint force level by 80 pounds, or about six percent, over the previously specified level. The specifications for rib steel thickness have been narrowed from 0.078±0.002 inch to 0.080±0.001 inch. The specifications for rib damping material thickness are revised from a range of 0.250–0.625 inch to a range of 0.53±0.03 inch. These changes should ensure that the Hybrid III thorax will yield more consistent impact responses.

b. *Knee impact calibration responses.* Ford stated in its petition for reconsideration that the knee impact calibration should be conducted without the lower leg attached. In support of this request, Ford stated that it is hard to accurately measure the required angle specified for the lower leg, using the new lower leg. Additionally, Ford noted that § 572.35(c) requires the use of the new lower leg for knee impact testing, while Figure 24 shows the lower leg that was proposed, but not adopted in the final rule.

The agency was not persuaded by this argument. First, the agency has not encountered any problems in its testing with rotating the leg to the specified angle and maintaining it in the correct orientation. Ford did not explain what specific difficulties it has encountered. Second, removal of the lower leg would require the dummy to be disassembled during the calibration procedures. This would add time and effort to the calibration process with no corresponding benefit. Hence, this suggested change has not been adopted.

Additionally, Ford's suggestion that Figure 24 needs to be revised to show the version of the lower leg adopted in the final rule is not persuasive. The proposed lower leg included instrumentation on the tibia, while the final rule specified a non-instrumented tibia. There were no other differences in the lower leg. Figure 24 merely shows a lower leg, without identifying any particular lower leg by a part number or the like. The identification of the lower leg in § 572.35 correctly identifies the leg assembly with the non-instrumented tibia. Hence, no clarifying amendments are necessary.

Both Ford and GM stated that the knee impact calibration tolerances were overly broad in the final rule. That rule specified a tolerance of ±22 percent, with an acceptable variation of 44 percent (not less than 996 pounds nor more than 1566, with a midpoint of 1281 pounds). Ford stated that potential test variability would be significantly reduced if the range were narrowed to ±10 percent (not less than 1153 pounds nor more than 1409 pounds, with the midpoint remaining at 1281 pounds).

Based on a series of round robin tests between NHTSA and itself, GM also stated that the range of acceptable knee impact force requirements is too broad, expecially when compared with the typical knee impact responses of newly manufactured Hybrid III dummies. GM recommended, based on the round robin testing, that the calibration performance requirements be modified to be not less than 1060 pounds nor more than 1300 pounds. This would lower the midpoint of the acceptable range to 1180 pounds, and would fall within the ± 10 percent tolerance limit suggested by Ford.

After reconsidering this issue, NHTSA agrees with Ford and GM that the knee impact response range specified in the final rule is too broad. The knee response is governed primarily by the flesh covering the knee. It is relatively simple to control the consistency of this flesh when manufacturing new dummies, and relatively simple to replace the flesh on used dummies, when the response falls out of the acceptable calibration range. Based on the round robin testing, this notice adopts GM's suggested calibration range of 1060–1300 pounds. NHTSA and GM testing showed that this range is practicable and relatively simple to attain. This narrower range should also yield more repeatable impact responses from the Hybrid III dummies in crashes.

c. *Conforming Changes to the Drawings and Specifications Package for the Hybrid III Test Dummy.* As a part of the amendments to the calibration specifications and to correct errors in the previous package, NHTSA is making some changes to the drawings and specifications package for the Hybrid III test dummy. These changes consist of the following:

(i) A revised rib thickness specification;

(ii) A revised rib damping material specification;

(iii) A revised rib cage assembly specification (to reflect the changes in (i) and (ii));

(iv) A new abdominal insert specification (to eliminate possible interference by the insert with the lever arm of the chest deflection potentiometer);

(v) A new specification for the pelvis angle during thorax calibration tests; and

(vi) An update of the dummy assembly drawing to reflect these changes.

3. Chest Temperature Sensitivity

The final rule provided that the stabilized temperature of the Hybrid III test dummy is to be between 69 and 72 °F for the Standard No. 208 compliance testing. This narrow temperature range is necessary, because testing has shown that the Hybrid III test dummy's measurements of chest deflection and chest acceleration are temperature sensitive. The agency stated that it believed this temperature range was practicable.

Ford stated that its barrier crash facility cannot maintain the specified temperature range. However, Ford recommended that the temperature range could be broadened because "the new rib damping material will probably exhibit somewhat different temperature sensitivity." Based on this assumption, Ford suggested that the temperature range be broadened by 2 to 5 °F. As an alternative to broadening the temperature range, Ford suggested that this narrow temperature range be applied only to the dummy components that have shown great temperature sensitivity, and that the dummy components that do not exhibit temperature sensitivity should not be subject to tight temperature controls.

According to Mazda's petition for reconsideration, the specified temperature range can only be maintained with separate on-board air conditioning, and such an arrangement would limit the number and variety of tests that were possible. Like Ford, Mazda asserted that the reduced temperature sensitivity of the new rib damping material would permit the agency to expand the permissible temperature range, which Mazda suggested be set at 68 to 76 °F. Honda stated that its test facility could control the temperature within 8 °F and urged that the permissible temperature range be expanded to an 8 °F limit. Volvo stated that the permissible temperature range is practicable, but that it is excessively time consuming and complicated, especially because the test cycle has to be interrupted frequently for various technical reasons unrelated to temperature.

Contrary to the assertions by some of these petitioners, test data available in

the public docket (NHTSA Docket No. 74–14–N39–049) show that the new rib damping material has nearly the identical temperature sensitivity as the damping material it replaces. If the agency were to establish a broader temperature range for the testing, it would introduce excessive variability into the compliance test results. The preamble to the final rule discussed at length the several means that the agency and its contractors have used to maintain the temperature within the specified range (51 FR 26692). In addition, in a submission to the docket, General Motors indicated successful use of temperature normalization factors which a manufacturer may want to use to predict response values at the exact specified mean temperature. NHTSA has concluded that the specified temperature range is practicable and necessary to reduce variability of the test results, so this provision has not been changed in this notice.

4. Dummy Durability

Nissan stated that, in 35 mph sled tests, its Hybrid III test dummy had experienced damage to the neck, rib cage and wrists. Similarly, Volvo stated in its petition for reconsideration that the Hybrid III dummy is less durable in 35 mph impacts than the currently specified test dummy. Additionally, Volvo stated that the thorax needs more frequent replacement in 35 mph impacts than was stated by the agency. In the preamble to the final rule, the agency said that testing had shown that Hybrid III dummies could be used for about 17 crash tests before the ribs must be replaced, and concluded that this level of durability was reasonable. Volvo did not provide any data to support its assertions.

The agency has not examined the durability of the Hybrid III test dummy in 35 mph impact tests. However, the agency does not believe this issue is relevant to the announced use of the Hybrid III test dummy. The final rule specified that the Hybrid III dummy would be used in compliance testing for Standard No. 208, which requires 30 mph impacts. If and when the agency decides to use the Hybrid III dummy in testing for the New Car Assessment Program, which involves 35 mph frontal impacts, the agency will examine the durability of the dummy in 35 mph frontal impacts. Until such a decision is made, NHTSA believes that its resources can be better spent examining other issues related to the Hybrid III test dummy.

During extensive testing in 30 mph impacts conducted for NHTSA and manufacturers, the Hybrid III dummy has demonstrated adequate durability under those conditions (NHTSA Docket No. 74–14–GR–602). To the extent that the durability of the Hybrid III thorax may have been in question, agency testing has shown that Hybrid III test dummies with the new ribs and new rib damping material show minimal changes in force and deflection responses of the thorax after 20 consecutive pendulum impacts. After the 20th impact, the rib cage force and deflection response levels had changed less than 3 percent from the mean responses of the first four impacts. (NHTSA Docket No. 74–14–N45–038). Based on these test results, NHTSA concludes that the Hybrid III test dummy has adequate durability in 30 mph impacts.

5. Changes to the Text of Standard No. 208 and Part 572

Chrysler, Ford, and MVMA all requested the addition of text to sections S7.4.3–S7.4.5 to permit use of the Hybrid III test dummy to test compliance with the comfort and convenience requirements of S7.4. The final rule establishing dynamic testing requirements for light trucks and multipurpose passenger vehicles has already amended section S7.4.4 to permit the use of either type of test dummy for such testing. This notice makes similar changes to sections S7.4.3 and S7.4.5.

Renault asked that Standard No. 208 be clarified as to the question of whether the two dummy types may be used interchangeably in the driver and/or passenger positions. NHTSA has previously concluded that both dummy types yield equivalent safety assessments of vehicles. Therefore, until the time when only the Hybrid III test dummy is used for compliance testing, NHTSA believes manufacturers should be allowed to base their certifications of compliance on the use of either type of test dummy in any combination and in any of the designated seating positions. Language to this effect has been added to Standard No. 208.

Ford also suggested some technical changes to clarify certain parts of Standard No. 208 and Part 572. Ford stated that section S6.2.3 of Standard No. 208 currently provides that, "The resultant acceleration calculated from the thoracic instrumentation * * *" Ford stated that the acceleration is calculated from the output signal of the instrumentation, not from the instrumentation itself, and asked that the language be amended to state that. The agency agrees, and has made this change.

Ford stated that the positive and negative signs had been reversed in § 572.33 (b)(1)(ii) and (b)(2)(ii). This statement is incorrect. According to the sign convention for the output of the Hybrid III transducers referenced in § 572.31(a)(5) and sign conventions adopted by the Society for Automotive Engineers (SAE) Instrumentation Subcommittee, the positive and negative signs were correctly used in the sections questioned by Ford.

Ford also asked that the definition of and references to "time zero" be deleted from § 572.34(b), because the agency had deleted the proposed specifications that thorax load be measured 19 milliseconds after impact and that thorax displacement be measured 25 milliseconds after impact. Because of these deletions, Ford asserted that the references and definition of time zero were unnecessary and potentially misleading. NHTSA agrees with this point, and this rule has amended § 572.34 to delete the reference to "time zero."

Impact Assessments

1. *Economic and Other Impacts.* NHTSA has considered the impacts of this response to the petitions for reconsideration of the final rule on the Hybrid III test dummy and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The several technical corrections made by this notice should not significantly affect the cost estimates set forth in the final regulatory evaluation that was prepared in connection with the final rule on the Hybrid III test dummy. Interested persons are referred to that document, which is available in NHTSA Docket No. 74–14, Notice 45. Copies of that regulatory evaluation may be obtained by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–2992.

The most important changes made in this response to the petitions are the amendment of the chest deflection limit, the delay until September 1, 1990, in using the Hybrid III dummy for compliance testing of vehicles that don't use restraint systems to provide automatic occupant protection, and the suspension of the mandatory effective date for use of the Hybrid III dummy. The amendment of the chest deflection limit for the Hybrid III dummy is necessary to ensure that the adoption of a new compliance test device does not require the redesign of most existing designs of 2-point automatic belt systems. Amending the chest deflection limit to three inches both recognizes the effectiveness of existing 2-point automatic belt systems and avoids unnecessary adverse impacts on any party.

The temporary delay in the use of the Hybrid III test dummy for compliance testing of vehicles that provide automatic occupant protection without using any restraint systems is necessary to allow the agency to further examine its decision to establish the same chest deflection limits for those systems and systems that use either safety belts or air bags. No manufacturer currently certifies any such vehicle design, nor is the agency aware of any plans to certify such a vehicle design before September 1, 1990. Hence, this temporary delay should not adversely affect any person.

The suspension of the effective date for mandatory use of the Hybrid III test dummy is necessary to permit the agency to resolve some remaining technical issues, principally related to chest deflection. The agency does not believe that postponing the mandatory use date for the Hybrid III test will have any adverse impacts on any person. Those manufacturers that wish to certify their vehicles on the basis of testing with the Hybrid III test dummy are permitted to do so. Those manufacturers that wish to certify their vehicles on the basis of testing with the Part 572 Subpart B dummy are also permitted to do so. Once the agency has resolved the outstanding technical issues associated with the Hybrid III test dummy, a new date for the mandatory use of that test dummy in NHTSA's compliance testing will be proposed through the rulemaking process. That rulemaking will consider all the impacts associated with a new mandatory use date.

2. *Regulatory Flexibility Act.* NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this response to the petitions for reconsideration will not have a significant economic impact on a substantial number of small entities. These changes will affect motor vehicle manufacturers, few of which are small entities. As described above, no adverse impacts will be associated with this action. Further, since no price increases will result from this action, small organizations and small governmental entities will not be affected by this action when they purchase new vehicles.

3. *Environmental Impacts.* NHTSA has analyzed this regulatory action for the purposes of the National Environmental Policy Act, and determined that this action will not have a significant impact on the quality of the human environment.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, 49 CFR 571.208, *Occupant Crash Protection*, and 49 CFR part 572, *Anthropomorphic Test Dummies*, are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S5 of Standard No. 208 is amended by revising S5.1 introductory text and S5.2.1 introductory text to read as follows:

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1990 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a).

* * * * *

S5.2 *Lateral moving barrier crash test.*

S5.2.1 Vehicles subject to S5.2 shall comply with either S5.2.1(a) or S5.2.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1990 that comply with the requirements of S4.1.2.1(c) by means not including any type of seat belt or inflatable restraint shall comply with S5.2.1(a).

* * * * *

3. S6.2 of Standard No. 208 is amended by revising S6.2.3 and S6.2.4 to read as follows:

S6.2 *Injury Criteria for the Part 572, Subpart E, Hybrid III Test Dummy.*

* * * * *

S6.2.3 The resultant acceleration calculated from the output of the thoracic instrumentation shown in drawing 78051–218, revision R incorporated by reference in Part 572, Subpart E of this chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.2.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation shown in drawing 78051–317, revision A incorporated by reference in Part 572, Subpart E of this chapter, shall not exceed 3 inches.

* * * * *

4. S7.4 of Standard No. 208 is amended by revising S7.4.3 and the first sentence of S7.4.5, to read as follows:

S7.4 *Seat belt comfort and convenience.*

* * * * *

S7.4.3 *Belt contact force.* Except for manual or automatic seat belt assemblies that incorporate a webbing tension-relieving device, the upper torso webbing of any seat belt assembly shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy, positioned in accordance with either S10 or S11 of this standard in the seating position for which that seat belt assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line on the dummy's chest.

* * * * *

S7.4.5 *Retraction.* When tested under the conditions of S8.1.2 and S8.1.3, with anthropomorphic test dummies whose arms have been removed and which are positioned in accordance with either S10 or S11, or any combination thereof, in the front outboard designated seating positions and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract to a stowed position either when the adjacent vehicle door is in the open position and the seat belt latchplate is released, or, at the option of the manufacturer, when the latchplate is released. * * *

* * * * *

PART 572—[AMENDED]

5. The authority citation for Part 572 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

6. Section 572.31 is amended by revising paragraphs (a)(1), (a)(3), and (b) to read as follows: ((a) introductory text is republished for the convenience of the reader)

§ 572.31 General description.

(a) The Hybrid III 50th percentile size dummy consists of components and assemblies specified in the Anthropomorphic Test Dummy drawing

and specifications package which consists of the following six items:

(1) The Anthropomorphic Test Dummy Parts List, dated December 15, 1987, and containing 13 pages, and a Parts List Index, dated December 15, 1987, containing 8 pages.

* * * * *

(3) A General Motors Drawing Package identified by GM Drawing No. 78051–218, revision R, and subordinate drawings.

* * * * *

(b) The dummy is made up of the following component assemblies:

Drawing No.	Revision
78051–61 head assembly—complete	(T)
78051–90 neck assembly—complete	(A)
78051–89 upper torso assembly—complete.	(K)
78051–70 lower torso assembly—without pelvic.	
Instrumentation assembly, drawing No. 78051–59.	(D)
86–5001–001 leg assembly—complete (LH).	(E)
86–5001–002 leg assembly—complete (RH).	(E)
78051–123 arm assembly—complete (LH).	(D)
78051–124 arm assembly—complete (RH).	(D)

* * * * *

7. Section 572.33 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 572.33 Neck.

* * * * *

(b) * * *

(1) *Flexion.* (i) Plane D, referenced in Figure 20, shall rotate between 64 degrees and 78 degrees, which shall occur between 57 milliseconds (ms) and 64 ms from time zero. In first rebound, the rotation of Plane D shall cross 0 degrees between 113 ms and 128 ms.

* * * * *

8. Section 572.34 is amended by revising paragraphs (a), (b), and (c)(2) to read as follows:

§ 572.34 Thorax.

(a) The thorax consists of the upper torso assembly in drawing 78051–89, revision K and shall conform to each of the drawings subtended therein.

(b) When impacted by a test probe conforming to § 572.36(a) at 22 fps ± 0.40 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–218, revision R) with left and right shoes (78051–294 and –295) removed, shall resist with a force of 1242.5 pounds ± 82.5 pounds measured by the test probe and shall have a sternum displacement measured relative to spine of 2.68 inches ± 0.18 inches. The internal hysteresis in each impact shall be more than 69% but less than 85%. The force measured is the product of pendulum mass and deceleration.

(c) *Test procedure.* (1) * * *

(2) Seat the dummy without back and arm supports on a surface as shown in Figure 23, and set the angle of the pelvic bone at 13 degrees plus or minus 2 degrees, using the procedure described in S11.4.3.2 of Standard No. 208 (§ 571.208 of this chapter).

* * * * *

9. Section 572.35(b) is revised to read as follows:

§ 572.35 Limbs.

(a) * * *

(b) When each knee of the leg assemblies is impacted, in accordance with paragraph (c) of this section, at 6.9 ft/sec ±0.10 ft/sec by the pendulum defined in § 572.36(b), the peak knee impact force, which is a product of pendulum mass and acceleration, shall have a minimum value of not less than 1060 pounds and a maximum value of not more than 1300 pounds.

* * * * *

10. Section 572.36 is amended by revising paragraphs (b), (c), (d), (e), (f), and (h) to read as follows:

§ 572.36 Test conditions and instrumentation.

* * * * *

(b) Test probe used for the knee impact tests is a 3 inch diameter cylinder that weights 11 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.02 inches. The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis colinear to the longitudinal centerline of the cylinder.

(c) Head accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted in the head as shown in drawing 78051–61, revision T, and in the assembly shown in drawing 78051–218, revision R.

(d) The neck transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing 83–5001–008 or its equivalent and be mounted for testing as shown in drawing 79051–63, revision W, and in the assembly shown in drawing 78051–218, revision R.

(e) The chest acclerometers shall have the dimensisons, response characteristics, and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted as shown with adaptor assembly 78051–116, revision D for assembly into 78051–218, revision R.

(f) The chest deflection transducer shall have the dimensions and response characteristics specified in drawing 78051–342, revision A or equivalent and be mounted in the chest deflection transducer assembly 78051–317, revision A for assembly into 78051–218, revision R.

* * * * *

(h) The femur load cell shall have th dimensions, response characteristics, and sensitive axis locations specified in drawing 78051–265 or its equivalent and be mounted in assemblies 78051–46 and –47 for assembly into 78051–218, revision R.

* * * * *

Issued on March 11, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–5828 Filed 3–14–88; 4:06 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Mammals and Birds to the United States.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; Supplement.

SUMMARY: On February 4, 1988, the Fish and Wildlife Service (Service) determined that it was necessary to delay the effective date of a final rule with regard to transport of wild animals from February 8, 1988, to August 1, 1988. This notice provides further information regarding the reasons for the Service's decision.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Acting Chief, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329, telephone (202) 343–3968.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Service published a rule (53 FR 3894) delaying the effective date of its previously-published final rule on humane and healthful transport of wild animals and birds to the United States (52 FR 43274). While the February 10 rule sought comments relating to the content of the rule and possible interpretation or amendment thereof, it did not seek comments relating to the decision to delay the effective date. The

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Service wishes to clarify that it did not seek comments on the decision to delay the earlier final rule for good cause, as further explained herein. The decision not to seek comment was made for the following reasons:

(1) Comments received during January 1988, indicated substantial public confusion over implementation of the rule, and areas of potentially serious ambiguity. The Service's Law Enforcement division indicated its belief that, under these conditions, the rule could not be strictly enforced.

(2) These comments also indicated a risk that the confusion resulting from the final rules might actually result in harm or inhumane treatment to certain species.

(3) These comments indicated substantial reason to believe that certain sections might impose unnecessary hardship on the wildlife transportation and importation industries, or contained ambiguities which needed interpretation in order to comply. The Service received no comments specifically arguing that the final rule would impose a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. However, some comments did indicate that small businesses and organizations might have had unanticipated adverse effects if the rules were allowed to go into effect. Such hardships, if avoidable, are not the intent of the Service and would be contrary to the goals of the cited Act.

(4) The final rule had diverged in certain respects from the proposed rule, based on new information which had become available during the comment period. The Service had determined that these changes were not of sufficient magnitude to require a new proposed rule. The information and requests subsequently submitted to the Service, however, have provided some new information indicating there might be a need not originally foreseen for reopening the rules for additional comment.

(5) The approaching effective date left no time to seek comment on the advisability of delaying the rules. The indications of problems in those rules were received by the Service over a timespan from January 4 to January 27. The final rule's effective date would have been February 8, 1988. No time remained in which to seek comment.

(6) In light of these considerations, it appeared appropriate to seek remedy for these problems through reopening of the comment period for 30 days, to be immediately followed by a review and analysis of needs for clarification of ambiguous sections, and preparation of revisions to other sections if necessary. In any event, the Service judged that the final regulations could take effect by August 1, 1988. While this delay of six months is regrettable, it is in the Service's view a necessary course of action to use this period to ensure that all provisions of the regulations are necessary, enforceable, effective, and consistent with all applicable laws.

For all the above reasons, the Service has concluded good cause existed to give immediate effect to this action, and that notice and public comment procedures would have been, and remain impracticable and contrary to the public interest. As indicated in its February 10, 1988, notice, the Service will consider comments relating to interpretation and improvement of the November 10, 1988, rule received through March 11, 1988, with the intent of putting in place regulations with an effective date of August 1, 1988.

Dated: March 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-5811 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 70998-7198]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule to implement the Antarctic Marine Living Resources Convention Act of 1984 (Act) which provides the legislative authority for United States implementation of the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The Convention establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources. Under the provisions of the Convention and the Act most of this rule is already in force with respect to U.S. citizens and nationals.

EFFECTIVE DATE: March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (International Science, Development and Polar Affairs 202-673-5302).

SUPPLEMENTARY INFORMATION: Concern regarding the conservation of Antarctic marine living resources expressed by the Consultative Parties at the Ninth Consultative Meeting of the Antarctic Treaty, in 1977, and the importance of the provisions of Recommendation IX-2 led to the establishment of the Convention on the Conservation of Antarctic Marine Living Resources in 1980. The Convention applies to Antarctic marine living resources (those finfish, mollusks, crustacea, and all other species of living organisms, including birds, found in the area south of the Antarctic Convergence [1]). The objective of the Convention is conservation of Antarctic marine living resources. Any harvesting and associated activities in the area covered by the Convention must be conducted within the following principles of conservation established by the Convention:

(a) Prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment (for this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment);

(b) Maintenance of the ecological relationships between harvested, dependent, and related populations of Antarctic marine living resources, and the restoration of depleted populations to the levels defined in (a) above; and

(c) Prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem, and the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

The United States is a Contracting Party to the Convention, as well as a member of the Commission for the Conservation of Antarctic Marine Living Resources (Commission), established by the Convention. The function of the Commission is to give effect to the objective and principles of the Convention.

Article IX prescribes the procedures for the formulation, adoption and revision of conservation measures by the Commission. After adoption of measures the Commission must notify all of its members of the adopted measures. Conservation measures become binding upon all Commission members 180 days after the notification, unless a Commission member notifies the Commission within 90-days following such notification that it is unable to accept the conservation measure in whole or in part.

By the terms of a memorandum of understanding between the Department of Commerce, the Department of State and the National Science Foundation, the Department of State will, effective with the 1987 meeting of the Commission, coordinate Federal and public review within the 90-day period of all future conservation measures adopted by the Commission. This will permit public participation, through response to **Federal Register** notices, in U.S. decisions on whether or not to accept and be bound by conservation measures.

On November 8, 1984, the President of the United States signed the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*, the Act). The Act provides the legislative authority necessary to implement the Convention with respect to the United States.

The Secretary, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States promulgates this rule to implement and publish certain requirements under the Convention and provisions of the Act. This rule establishes a new Part 380 in Title 50 of the Code of Federal Regulations. Subpart B of this new part contains the conservation measures adopted by the Commission at its September 1984, 1985, and 1986 meetings. The United States has agreed to these measures and is bound by Article IX of the Convention to implement them. Under the Convention and the Act, they are in force with respect to U.S. citizens and nationals. Subpart B also contains an incidental catch limit on the take of *Notothenia rossii* (marbled rockcod) around the Kerguilen Islands (Statistical subarea 58.5) which was strongly recommended by the Commission for conservation reasons. This is being implemented immediately without a opportunity for comment because of this recommendation. Subpart A of this new part contains a purpose-and-scope section and a definitions section which support Subpart B.

The balance of Subpart A is reserved for proposed gear and vessel identification, permit, recordkeeping and other requirements to give effect to these conservation measures and other provisions of the Act and the Convention. As is explained in an accompanying proposed rule, public comment will be considered prior to implementing them as a final rule. (See the notice of proposed rulemaking elsewhere in this part of today's **Federal Register.**)

The final rule, and the rule issued after analysis of comments on the proposed rule, will regulate the harvest of Antarctic marine living resources and other associated activities by a person subject to the jurisdiction of the United States, and the importation into the United States of any Antarctic marine living resource. The proposed rule would require any person who harvests, by reducing to possession or attempting to reduce to possession any Antarctic marine living resource, to obtain a permit from NMFS or to obtain a permit from the National Science Foundation (NSF) for such activity. It also would require that any importation of Antarctic marine living resources into the United States must be accompanied by either an NMFS harvesting permit, an NSF permit to harvest or import, or an NMFS import permit covering those resources. A person operating under an NMFS permit must submit an accurate and complete reporting form required by the permit. The proposed rule also includes requirements related to enforcement similar to those for other fisheries under Federal management.

In order to notify the public of convention measures in effect under the terms of the Convention and the Act, and to implement some of them more specifically, this final rule (1) identifies all waters within 12 miles of South Georgia Island as closed to any harvesting; and (2) specifies that the use of certain mesh sizes in pelagic and bottom trawls for several Antarctic finfishes in prohibited. The Commission adopted, and the United States accepted, conservation measures that prohibit directed fishing for *Notothenia rossii* in statistical subareas 48.1, 48.2 and 48.3, and that require that the by-catches of *N. rossii* in these areas be kept to the level allowing the optimum recruitment to the stock. NMFS is implementing this in § 380.22 by setting catch limits in those areas, that is by limiting to one percent of the catch (by weight) the amount of *N. rossii* that can be taken from those areas. The Commission recommended that consultative parties to the Commission adopt identical measures to govern fishing in statistical subarea 58.5. The United States is therefore setting a catch limit for statistical subarea 58.5. The management measures in Subpart B do not apply to scientific research.

The Commission is currently considering a system of observation and inspection as provided for in Article XXIV of the Convention. When the system is established (See 16 U.S.C. 2434 (b)), and appropriate provision will be added to Part 380.

Classification

The Assistant Administator for Fisheries, NOAA (Assistant Administrator) prepared an environmental assessment (EA) for both this rule and the proposed rule under Executive Order 12114 and the Administrator concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Assistant Administator (See **ADDRESSES** section in the proposed rule for Part 380 published in this same issue of the **Federal Register**).

Under the terms of the Convention and the Act, the closed area of § 380.20, the mesh restrictions of § 380.21, and the catch restriction for subareas 48.1, 48.2 and 48.3 (found in § 380.22) are currently in effect. The Commission has recommended that the catch restriction of subarea 58.5 be implemented immediately to protect *Notothenia rossii* from over-exploitation. The Administrator therefore decided to implement that restriction, without an opportunity for public comment, by including it also in § 380.22. Furthermore, a statement of purpose and scope, and definitions of terms used in Subpart B (§§ 380.20–380.23) have been adopted now as §§ 380.1 and 380.2 of Subpart A. Because implementation of these measures is a foreign affairs function, section 553 of the Administrative Procedure Act does not apply.

Implementation of the remainder of this rule (§§ 380.3–380.11 of Subpart A) is also a foreign affairs function and therefore exempt from section 553 of the Administative Procedure Act. However, the Secretary has decided that this portion of the rule does not need to be implemented immediately and that the public should be provided the opportunity to comment on it. Therefore, the public is provided a 45-day comment period on the measures found in §§ 380.3–380.11 of Subpart A.

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[1] The latitude of the Antarctic Convergence varies at different points of longitude from 45° to 60° S. latitude.

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This action is exempt from Executive Order 12291 because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared.

At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under NSF permits. Accordingly, these regulations should not have an incremental economic impact of U.S. vessels harvesting or performing associated activities in the Convention area.

As the Commission for the Conservation of Antarctic Marine Living Resources adopts additional management measures which govern the harvesting of Antarctic marine living resources, and where such measures are considered for acceptance by the United States, there will be an opportunity to assess the economic impacts of each proposed measure.

The provisions of Part 380 put into immediate effect by this final rule contain no collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: March 14, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Chapter III of Title 50, Code of Federal Regulations, is amended by adding a new Subchapter D consisting of Part 380 to read as follows:

SUBCHAPTER D—CONVENTION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

Subpart A—General Provisions

Sec.
380.1 Purpose and scope.
380.2 Definitions.
380.3 Relationship to other treaties and laws. [Reserved]
380.4 Harvesting permits. [Reserved]
380.5 Import permits. [Reserved]
380.6 Reporting and recordkeeping requirements. [Reserved]
380.7 Vessel and gear identification. [Reserved]
380.8 Facilitation of enforcement. [Reserved]
380.9 Gear disposal. [Reserved]
380.10 Prohibitions. [Reserved]
380.11 Penalties. [Reserved]

Subpart B—Management Measures

380.20 Closed area.
380.21 Mesh size.
380.22 Catch restrictions.
380.23 Scientific research.

Authority: 16 U.S.C. 2431 *et seq.*

Subpart A—General Provisions

§ 380.1 Purpose and scope.

(a) The purpose of this part is to conserve and protect the Antarctic marine living resources and to implement the Antarctic Marine Living Resources Convention Act of 1984.

(b) This part regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States,

(2) The harvesting of Antarctic marine living resources or other associated activity by any vessel of the United States, and

(3) The importation into the United States of any Antarctic marine living resource.

§ 380.2 Definitions.

The terms used in this part have the following meanings:

Act means the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*).

Antarctic Convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

Latitude	Longitude
50 °S	0.
50 °S	30 °E.
45 °S	30 °E.
45 °S	80 °E.
55 °S	80 °E.
55 °S	150 °E.
60 °S	150 °E.
60 °S	50 °W.
50 °S	50 °W.
50 °S	0

Antarctic finfishes include the following:

Scientific name	Common name.
Notothenia gibberifrons	Humped rockcod.
Notothenia rossii	Marbled rockcod.
Notothenia squamifrons	Grey rockcod.
Dissostichus eleginoides	Patagonian toothfish.
Patagonothen brevicauda guntheri.	Patagonian rockcod.
Pleuragramma antarcticum.	Antarctic silverfish.
Trematomus spp	Antarctic cods.
Chaenocephalus aceratus.	Blackfin icefish.
Chaenodraco wilsoni	Spiny icefish.
Champsocephalus gunnari.	Mackerel icefish.
Chionodraco rastrospinosus.	Ocellated icefish.
Pseudochaenichthys georgianus.	South Georgia icefish.

Antarctic marine living resources means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and their parts or products.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, DC 20235, or a designee. *Address:* National Marine Fisheries Service, Washington, DC 20235.

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into force with respect to the United States on April 7, 1982.

Convention waters means all waters south of the Antarctic Convergence.

Directed fishing with respect to any species or stock of fish, means any fishing that results in such fish comprising more than one percent by weight, at any time, of the catch on board the vessel.

Fish means finfish, mollusks, and crustaceans.

Fishing means

(a) The catching or taking of fish;

(b) The attempted catching or taking of fish;

(c) Any other activity which can reasonably be expected to result in the catching or taking of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Harvest means to engage in harvesting or other associated activities.

Harvesting or other associated activities means

(a) The harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(b) Attempting to engage in any activity set forth in paragraph (a) of this definition;

(c) Any other activity which can reasonably be expected to result in any activity described in paragraph (a); and

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Harvesting vessel means any vessel of the United States (this includes any boat, ship, or other craft), which is used for, equipped to be used for, or of a type which is normally used for harvesting.

IRCS means International Radio Call Sign.

Import means to land on; bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

Individual permit means an NSF permit issued under 45 CFR Part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under 50 CFR 216.31; or an endangered species permit issued under 50 CFR 222.21.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

NMFS means National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

NSF means National Science Foundation.

Person means an individual, partnership, corporation, trust, association, or any other entity subject to the jurisdiction of the United States.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Scientific Committee means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established under Article XIV of the Convention.

Scientific research activities means any activity for which a person has a permit from NMFS under 50 CFR 216.31 or an award letter from NSF or a permit from the NSF under 45 CFR Part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

Vessel of the United States means

(a) A vessel documented under chapter 121, title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

(b) A vessel owned in whole or part by

(1) The United States or a territory, commonwealth, or possession of the United States;

(2) A State or political subdivision thereof;

(3) A citizen or national of the United States; or

(4) A corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(c) A vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

Vessel subject to the jurisdiction of the United States includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

§ 380.3 Relationship to other treaties and laws. [Reserved]

§ 380.4 Harvesting permits. [Reserved]

§ 380.5 Import permits. [Reserved]

§ 380.6 Reporting and recordkeeping requirements. [Reserved]

§ 380.7 Vessel and gear identification. [Reserved]

§ 380.8 Facilitation of enforcement. [Reserved]

§ 380.9 Gear disposal. [Reserved]

§ 380.10 Prohibitions. [Reserved]

§ 380.11 Penalties. [Reserved]

Subpart B—Management Measures

§ 380.20 Closed area.

Fishing is prohibited in waters within 12 nautical miles of South Georgia.

§ 380.21 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm; and

(2) *Notothenia gibberifrons, N. kempi, N. squamifrons* and *Champsocephalus gannari*—80 mm.

(b) Any means or device which would reduce the size or obstruct the opening of the meshes is not allowed.

(c) The following procedure will be used for assessing a mesh violation.

(1) Description of gauges.

(i) Gauges for determining mesh sizes will be 2 millimeters (mm) thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) Use of the gauge.

(i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

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(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) Selection of meshes to be measured.

(i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) Inspection procedure.

(i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kilograms) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kilograms).

(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

§ 380.22 Catch restrictions.

The catch limit for *N. rossii* is one percent of all Antarctic finfishes on board a vessel fishing in subareas 48.1, 48.2, 48.3, and 58.5 (see Figure 1).

BILLING CODE 3510-22-M

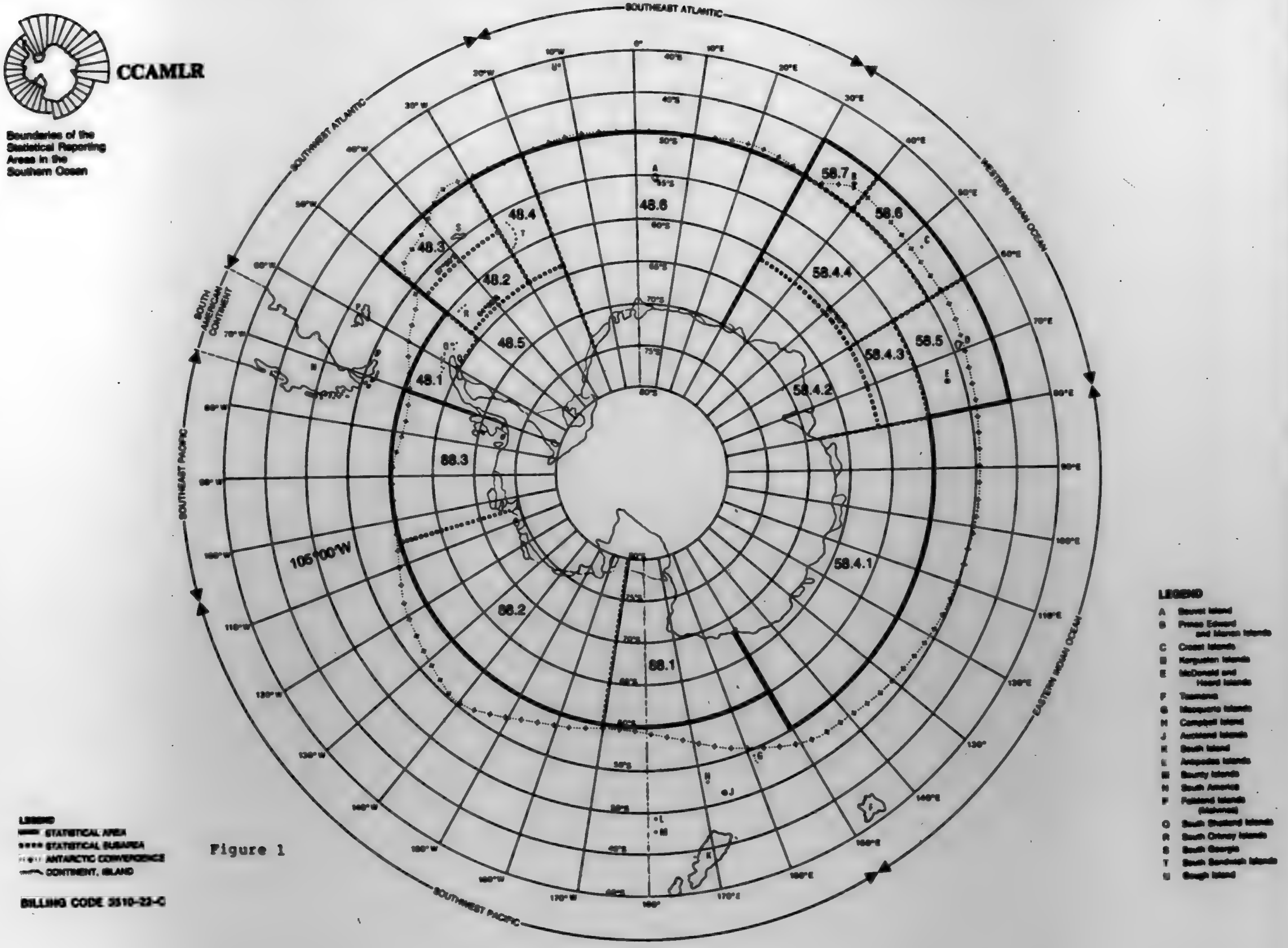
CCAMLR
Boundaries of the Statistical Reporting Areas in the Southern Ocean
SOUTHEAST ATLANTIC
SOUTHWEST ATLANTIC
WESTERN INDIAN OCEAN
EASTERN INDIAN OCEAN
SOUTHWEST PACIFIC
SOUTHEAST PACIFIC
SOUTH AMERICAN CONTINENT
48.1
48.2
48.3
48.4
48.5
48.6
58.4.1
58.4.2
58.4.3
58.4.4
58.5
58.6
58.7
88.1
88.2
88.3
105°00'W
0°
10°E
20°E
30°E
40°E
50°E
60°E
70°E
80°E
90°E
100°E
110°E
120°E
130°E
140°E
150°E
160°E
170°E
180°
170°W
160°W
150°W
140°W
130°W
120°W
110°W
100°W
90°W
80°W
70°W
60°W
50°W
40°W
30°W
20°W
10°W
40°S
50°S
60°S
70°S
80°S
LEGEND
STATISTICAL AREA
STATISTICAL SUBAREA
ANTARCTIC CONVERGENCE
CONTINENT, ISLAND
LEGEND
A Bouvet Island
B Prince Edward and Marion Islands
C Crozet Islands
D Kerguelen Islands
E McDonald and Heard Islands
F Tasmania
G Macquarie Islands
H Campbell Island
J Auckland Islands
K South Island
L Antipodes Islands
M Bounty Islands
N South America
P Falkland Islands (Malvinas)
Q South Shetland Islands
R South Orkney Islands
S South Georgia
T South Sandwich Islands
U Gough Island

Figure 1

BILLING CODE 3510-22-C

§ 380.23 Scientific research.

These management measures do not apply to scientific research activities.

[FR Doc. 88-5895 Filed 3-15-88; 9:55 am]

BILLING CODE 3510-22-M

Proposed Rules

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Vol. 53, No. 52
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-28-88]

Consolidated Return Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add new § 1.1502-32T to the consolidated return regulations. Section 1.1502-32T supplements the adjustment under § 1.1502-32(g) on the disposition by a member of stock of a subsidiary. The text of the new temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective Dates

The final regulations under section 1502 are proposed to be effective for stock of a subsidiary that ceases to be a member of an affiliated group filing a consolidated return during a taxable year of the group ending after November 30, 1987. A member may elect to apply the new rules to stock not otherwise covered by such rules if the stock is disposed of in a taxable year ending after November 30, 1987.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by May 16, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-28-88], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.1502-32T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). Final regulations are proposed to be based on the new temporary regulations. The final regulations generally would require a member of an affiliated group filing a consolidated return to reduce its basis in the stock of a disaffiliated subsidiary when the disaffiliated subsidiary distributes its earnings and profits. For the text of the new temporary regulations, see T.D. 8188 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the regulations.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Furthermore, the Secretary of the Treasury has certified that this rule, if issued, will not have a significant economic impact on a substantial number of small entities. The rule applies only to affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. It would not significantly alter the reporting or recordkeeping duties of small entities. A regulatory flexibility analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 88-5906 Filed 3-14-88; 5:14 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-88-01]

Anchorage Ground; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to amend Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. The shifting of the boundary would prevent damage from anchoring vessels to an existing submarine power cable and a newly installed fiber optic telecommunications cable. This would reduce the southern reaches of the anchorage in the shallow waters off Treasure Island.

DATES: Comments must be received on or before May 2, 1988.

ADDRESSES: Comments should be mailed to Commander(oan), Eleventh Coast Guard District, Union Bank Building, Rm. 701, 400 Oceangate, Long Beach, CA 90822. The comments and other materials references in this notice will be available for inspection and copying at Commander, Eleventh Coast Guard District, Office of Aids to Navigation, Room 701, 400 Oceangate, Long Beach, CA 90822. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone number: (213) 499–5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD11–88–01] and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael Lodge, project officer, and Lieutenant Commander A.E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Twelfth Coast Guard District, dis-established and combined with the Eleventh Coast Guard District on 1 July 1987 (FR 21 April 1987 pg. 13082), proposed changes to Anchorage number 7 (FR 9 April 1987 pg. 11512). No comments had been received. Action had not been taken on this proposal prior to the District change. The proposal under docket CGD12–87–02 is withdrawn. However, under the authority of the Commander, Eleventh Coast Guard District, it is again proposed for the reasons stated below.

Anchorage No. 7 primarily exists for the temporary anchorage of commercial vessels for up to 12 hours duration. After that the vessel would proceed to either a pier facility or an alternative anchorage ground. The anchorage presently has a submarine power cable transversing the southeastern corner. In addition, the Coast Guard has been advised that AT&T has laid a Fiber Optics cable across San Francisco Bay between Oakland and San Francisco alongside the existing power cable. To prevent the possibility of damage to those cables from the anchoring of vessels, the southern boundary of Anchorage No. 7 would be pivoted approximately 230 yards north along Treasure Island. This change would have minimal impact on vessel anchorage since the area eliminated is infrequently used due to its shallow depth.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will have minor impact because the small area being deleted is seldom used due to limited depth of water.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33 Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(4) is revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e)(4) *Anchorage No. 7, Treasure Island.* In San Francisco Bay at Treasure Island bounded a line connecting the following coordinates:

Latitude	*Longitude*
37°49'36"N	122°22'40"W; to
37°50'00"N	122°22'57"W; to
37°50'00"N	122°23'44"W; to
37°49'22.5"N	122°23'44"W; to
37°48'40.5"N	122°22'38"W; to
37°49'00.0"N	122°22'16"W; thence along the shore to
37°49'36"N	122°22'40"W.

* * * * *

Dated: March 7, 1988.

A. B. Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 88–5886 Filed 3–16–88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD1–87–085]

Special Anchorage Areas; Shelter Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish two special anchorage areas in the waters adjacent to the Town of Shelter Island, New York. This proposal is being considered because the town fathers requested that these areas be so designated to provide safe anchorages well away from fairways where vessels less than 65 feet in length could safely remain unlighted at night. There are no such anchorages currently available in the immediate area. This area sustains a large number of pleasure boats during the summer months.

DATES: Comments must be received on or before May 2, 1988.

ADDRESSES: Comments should be mailed to Captain of the Port, Bldg. 109, Governors Island, NY 10004, Attention to: Vessel Movement Office. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8:00 A.M. and 4:30 P.M., Monday through Friday, except holidays. Comments may also be hand delivered to that address. Persons wishing to visit the Vessel Movement Office must make an appointment so that clearance onto Governors Island (a military installation) can be arranged.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) A.J. DiNinno, Vessel Movement Officer, Captain of the Port, New York at (212) 668–7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1–87–085) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The two areas proposed for designation as special anchorages are located in the waters contiguous to Shelter Island. The northern area is located in that portion of Cedar Island Cove which is enclosed by a line drawn between Sungic Point and latitude 41° 04' 09" North, longitude 72° 17' 55" West in Coecles Harbor, Shelter Island, New York. The southern area is located in that portion of West Neck Harbor which is enclosed by a line drawn between latitude 41° 02' 48" North, longitude 72° 20' 28" West and a point on Shell Beach located at latitude 41° 02' 29" North, longitude 72° 21' 00" West. The Captain of the Port, New York was contacted by Councilmen Rowland V. Clark and Kenneth L. Lewis of the Town of Shelter Island Waterways Committee regarding the establishment of two special anchorage areas which would provide safe well defined anchorages for visiting recreational boaters. The town has indicated that it will administer these special anchorage areas. At the request of the Captain of the Port, New York, Councilman Lewis contacted the New York State Department of Environmental Conservation regarding this project. That office responded affirmatively to the special anchorage proposal. This rule would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The two areas will not effect navigable channels and are located where general navigation will not endanger or be endangered by unlighted vessels. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Environment Impact

These proposed regulations do not alter the use of these areas in any way. They have been and will continue to be places for vessels to anchor.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of these proposed special anchorage areas will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, two new paragraphs (y) and (y-1) are added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(y) *Coecles Harbor at Shelter Island, New York.* That portion of Coecles Harbor bounded on the north by a line drawn between the northernmost point of land at Sungic Point and latitude 41° 04' 09" North, longitude 72° 17' 55" West, thence eastward along the shoreline to the point of origin.

(y-1) *West Neck Harbor at Shelter Island, New York.* That portion of West Neck Harbor bounded on the north by a line between latitude 41° 02' 48" North, longitude 72° 20' 28" West and a point on Shell Beach located at latitude 41° 02' 29" North, longitude 72° 21' 00" West; thence eastward along the shoreline to the point of origin.

Dated: March 4, 1988.

R. L. Johanson,

Rear Admiral, United States Coast Guard Commander, First Coast Guard District.

[FR Doc. 88–5887 Filed 3–16–88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88–7]

Service Contracts; "Most-Favored-Shipper" Provisions

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its service contract regulations to prohibit the use of contract clauses that affect the rate charged under a service contract by referencing rates offered or published by other carriers or conferences, whether in their service contracts or their tariffs. However, contract clauses that adjust a service contract rate by referencing a rate in the contract carrier's or conference's own tariffs or service contracts would continue to be permitted.

DATE: Comments due on or before May 2, 1988.

ADDRESS: Comments (original and 15 copies) to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202 523–5796.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

I. Background

The International Council of Containership Operators ("ICCO") has filed a Petition for Rulemaking ("Petition") pursuant to Rule 51 of the Commission's Rules of Practice and

Procedure, 46 CFR 502.51.[1] The Petition requests that the Commission promulgate a rule prohibiting (1) the inclusion in service contracts subject to the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1701–1720, of so-called "most-favored-shipper" clauses, and (2) *de minimis* liquidated damages provisions. ICCO also requests that all existing contracts containing such provisions be declared "null and void."

The Petition was published in the **Federal Register** and interested persons were invited to comment. The Commission received 41 separate comments representing 56 parties. These comments divide into two groups: Carriers, conferences and carrier associations which support the Petition;[2] and shippers, shippers' associations and the Department of Justice ("DOJ") which oppose the Petition.[3] Comments were also submitted by three members of Congress.[4]

II. Summary of the Petition

ICCO alleges that experience with service contracts under the Shipping Act of 1984 reveals an imbalance between the interests of shippers and carriers that is contrary to the intent of Congress. The widespread use of so-called "most-favored-shipper" clauses and *de minimis* liquidated damages provisions in contracts is said to reflect a lack of mutuality of consideration and illusory cargo commitments. ICCO has proposed that the Commission adopt regulations which would prohibit the use of such provisions in service contracts.

ICCO defines a "most-favored-shipper" clause as being any form of service contract provision where the rate charged is contingent upon other rates for the same commodity charged by that or other carriers. ICCO identifies two primary types of such clauses. The first is where the contracting carrier agrees that the rate charged to the shipper will be the same as that the contracting carrier offers to any other shipper of the same commodity. The second, referred to by ICCO as the "Crazy Eddie" clause, is where the carrier agrees that the rate charged to the shipper will be the same rate that either that carrier, or any other carrier, offers by tariffs, service contract, or otherwise, to the shipper, or any other shipper, for that commodity.

ICCO submits that "most-favored-shipper" clauses are contrary to the requirement of the 1984 Act that a service contract provide for a certain rate or rate schedule. Additionally, ICCO argues that "Crazy Eddie" clauses are contrary to the Act's requirement that a carrier not charge rates other than those set forth in *its* tariffs or service contracts.

ICCO also contends that service contracts with *de minimis* liquidated damages provisions do not meet the definition of service contracts contained in the 1984 Act and should be prohibited. It maintains that a service contract must include a commitment by the shipper which allows a carrier to count on predictable revenues. However, *de minimis* liquidated damages clauses are alleged to be nothing more than written verification of the lack of a true shipper commitment. ICCO would, therefore, have the Commission prohibit any liquidated damages provision which is an amount less than seventy-five percent of the rate which would have been applied to that cargo had it been tendered and carried.

ICCO concludes that "most-favored-shipper" clauses and *de minimis* liquidated damages clauses in service contracts have had a destabilizing effect on ocean common carriage in the U.S. foreign commerce and are contrary to the requirements of the 1984 Act. ICCO further submits that the Commission has authority to promulgate rules to prohibit such clauses to ensure that service contracts comply with the requirements of the 1984 Act.

III. Summary of Comments

In light of the number of filings and the fact that many of the comments make the same points, the arguments of each commenter will not be individually summarized. Instead, the major comments will be presented in two broad categories—those generally supporting the Petition and those generally opposed to it.

Those carrier, conference and carrier association parties commenting in support of the Petition agree with the factual allegations and legal analysis set forth in the Petition. They maintain that the viability and integrity of service contracts are at issue and claim that if service contracts are to have any meaning, they must fulfill the traditional role of a contract—*i.e.*, be an agreement freely entered into by parties of essentially equal bargaining power who intend and expect to be bound by the contract. These supporting parties also contend that, because the industry is and will continue to be plagued by extensive overcapacity, it is unlikely that the relative bargaining power of the parties will come into balance. As a result, service contracts have allegedly become shams because big shippers, as a result of the leverage they command, dictate terms that make the contracts virtually meaningless. The types of

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[1] The following were members of ICCO at the time the Petition was filed: American President Lines, Ltd.; Atlantic Container Line Service Ltd.; The Australian National Line; Ben Line Containers Ltd.; Blue Star Line Ltd.; Compagnie General Maritime, CMB S.A.; Crowley Maritime Corporation; The East Asiatic Company Ltd. A/S; Evergreen International Corporation; Societa Finanziari Marittima (Finmare); Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck; Hapag-Lloyd AG; Lykes Bros. Stemship Co., Inc.; A.P. Moller (Maersk Line); Mitsui O.S.K. Lines, Ltd.; Koninklijke Nedlloyd Groep N.V.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Overseas Containers Limited; Sea-Land Service, Inc.; South African Marine Corporation, Limited; Transatlantic Shipping Company, Limited; Trans Freight Lines, Inc.; Transportation Maritima Mexicana, S.A. de C.V.; United Arab Shipping Company (S.A.G.); United States Lines, Inc.; and Wilh. Wilhelmsen.

[2] Comments supporting the Petition were received from: Maritime Institute for Research and Industrial Development; Johnson Scanstar; Safmarine; Transpacific Westbond Rate Agreement and West Coast/Middle East/West Asia Rate Agreement (joint comment); United Arab Shipping Company; Blue Star Line, Ltd.; Transportation Institute; Associated Container Transportation (Australia) Ltd.; AFL–CIO Maritime Committee; Pacific Coast European Conference and the North Europe-U.S. Pacific Freight Conference (joint comment); Asia North America Eastbound Rate Agreement, the U.S. Atlantic & Gulf/Australia-New Zealand Conference; the American West African Freight Conference, and the "8900" Lines (joint comment); Seafarers International Union of North America, AFL–CIO; Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference (joint comment); Council of European & Japanese National Shipowners' Associations; Nippon Yusen Kaisha; American President Lines, Ltd.; Council of American-Flag Ship Operators; Labor Management Maritime Committee, Inc.; Mitsui O.S.K. Lines, Ltd.; Sea-land Service, Inc.; Atlantic and Gulf/West Coast of South American Conference, United States Colombia Conference, United States Atlantic and Gulf/Ecuador Freight Association, United States Atlantic and Gulf/Hispaniola Steamship Freight Association, United States Atlantic and Gulf/Hispaniola Steamship Freight Association, United States Atlantic and Gulf/Southeastern Caribbean Conference, and the Central America Liner Association (joint comment); U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference, Gulf-European Freight Association, and North Europe-U.S. Gulf Freight Association (joint comment); EAC Lines Trans-Pacific Service; and California Shipping Lines, Inc.

[3] In addition to DOJ, comments opposing the Petition were received from: National Industrial Transportation League; American Institute for Shippers' Associations, Inc.; General Electric Company; Digital Equipment Corporation; California Shipping Line, Inc.; International Shippers Association; Chemical Manufacturers Association; Ford Motor Company; Wine and Spirits Shippers Association; E.I. DuPont de Nemours and Company; PPG Industries, Inc.; Phillips Petroleum Company; General Foods Corporation; IBP, Inc.; and the International Association of NVOCCs.

[4] Congressional comments were received from: the Honorable Walter B. Jones, Chairman, House Committee on Merchant Marine and Fisheries; the Honorable Daniel K. Inouye and the Honorable Ted Stevens, then Ranking Majority and Minority members of the Senate Subcommittee on Merchant Marine (joint comment).

contracts that are the subject of the Petition are said to indicate how illusory some of these contracts have become.[5]

These parties further contend that the effects of "most-favored-shipper" provisions demonstrate the absence of mutuality in these contracts. A contract which gives a shipper a contract rate, usually below the tariff rate, with a promise that the rate will be further reduced if the market goes down, is argued to be fundamentally at odds with rate stability, rate equity, survival of carriers as competitors, and avoidance of rates that do not cover carriers' costs. Moreover, when "most-favored-shipper" clauses are coupled with damages provisions so minimal as to permit the shipper not to perform what is usually a minimal cargo commitment, any resemblance to a true, long-term contract if affreightment at fixed rates allegedly disappears.

These commenters argue that if the present chaotic environment continues, a major restructuring of carriers through merger, consolidation, or outright business failures will result. A further consequence will allegedly be a significant reduction in competition, through the reduction of competitors, and a concomitant concentration of economic power.

Carriers supporting the Petition also contend that the minimum standards set by the Commission for service contracts tend to determine how contracts are in fact written by many carriers, even against their better judgment. This creates pressure on other carriers to adopt similar service contracts which may lack mutuality and which could destroy the tariff structure and stability in a trade. Unless the Commission adopts standards to address "most-favored-shipper" clauses and the absence of real liquidated damages, the marketplace will allegedly produce results which conflict with the objectives of the 1984 Act.

The Honorable Daniel K. Inouye, then Ranking Majority Member and the honorable Ted Stevens, then Ranking Minority Member of the Subcommittee on Merchant Marine, U.S. Senate, Committee on Commerce, Science, and Transportation, express their concern that service contracts may be being used to circumvent the tariff filing requirements for ocean common carriers that the 1984 Act reaffirmed. They believe that if that is the case, two fundamental objectives of the 1984 Act—non-discriminatory treatment of shippers and rate stability—could be undermined. They further contend that service contracts were intended to provide greater rate stability by permitting shippers and carriers to make mutually binding, substantial commitments. Similarly, Congressman Walter B. Jones, Chairman, House Merchant Marine and Fisheries Committee, contends that a particular concern of that Committee is the maintenance of common carriage. He further expresses concern that the provision allowing service contracts should not be used to frustrate the original purpose of the Act—liner regulation.

Those opposed to the Petition are generally shippers and shippers' associations, but also include DOJ. DOJ contends that there is no need for regulation in the areas of liquidated damages and service commitments. It believes that carriers and shippers are freely entering into service contracts and would not do so unless it benefits each of them. Moreover, it contends that there is no provision in the 1984 Act that gives the Commission the authority to impose minimum levels for cargo and service commitments or for liquidated damages. DOJ notes that Congress did not require that liquidated damages be imposed. The "if any" language in the Act is said to indicate that Congress contemplated that there could be situations where a service contract would not include any liquidated damages for nonperformance.

DOJ also argues that it would be extremely difficult to set efficient minimum levels for liquidated damages, because liquidated damages should reflect the actual costs to the parties for breach of a service contract, and such costs would depend on the particular facts involved. It is possible that the optimal level of liquidated damages could, in certain cases, be *de minimis*. In any event, DOJ argues that carriers and shippers have the best knowledge of what their respective losses would be in the event of a breach, and thus, have the best basis on which to negotiate liquidated damages provisions.

Large volume shippers that utilize service contracts submitted their views on the underlying industry conditions that concern the carriers and conferences. They contend that the marketplace should set the tone and scope of contract pricing and terms, not a regulatory body. They further submit that pricing and contracting are dynamic, especially in an industry historically subject to wide fluctuation in pricing. In addition, they argue that carriers made shippers seek "most-favored-shipper" clauses because of the carriers' "rate-of-the-day" approach to contract pricing. Moreover, the types of clauses challenged by the Petition are said to be so common and characteristic of modern commercial contracts that there can be no doubt that such clauses do not render the obligation imposed by a contract wholly illusory in the eyes of the law.

These parties opposing the Petition also note that contract disputes must, under the 1984 Act, be resolved in the courts, not before the Commission. They therefore contend that the Commission should not be forced into setting languaghe which it cannot adjudicate and which would only serve to satisfy one party—the carriers. They further suggest that there is available under the existing law a far less involved solution to the problems cited in the Petition, *i.e.*, liner operations could resolve their contractual differences through negotiation with their customers.

Moreover, these shipper commenters claim that shippers need the flexibility afforded them by the complained of clauses to meet their competitive pressures. Properly designed clauses that are utilized by ethical companies allegedly enhance and preserve business opportunities and markets for both the carrier and the shipper. The effective removal of service contracts, as a result of the adoption of the proposed rules, might upset the commercial balance contained in the 1984 Act and frustrate the Congressional intent of the statute.

Lastly, some shippers' association commenters opposing the Petition contend that "most-favored-shipper" clauses do provide a mutuality of obligation, because mutuality of obligation does not require a fixed dollar value of revenue to the contracting carrier. They also argue that the legislative history of the 1984 Act contemplates "most-favored-shipper" clauses. In requiring carriers to offer essential terms to all similarly-situated shippers, Congress allegedly contemplated the use of "most-favored-shipper" clauses, and in some circumstances, service contracts do not need to state price terms.

The parties opposed to the Petition therefore suggest that the Petition be denied and that the Commission not propose any rules that might limit the flexibility of service contracts.

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[5] Some commenters further believe that service contracts have become devices for special discounts from tariff rates to secure relatively small quantities of cargo. To this extent, they allegedly serve the same purposes and have the same deleterious effects as a prohibited rebate and do not provide the kinds of mutual, long-term obligations which transportation contracts should have to serve objectives other than one-shipper discounts.

BEST COPY AVAILABLE

IV. Discussion

A. Introduction

So-called "most-favored-shipper" clauses are provisions in service contracts which permit the rate to be changed if other, non-contract shippers are able to obtain transportation under better rates during the life of the contract. According to ICCO, these provisions generally fall into one of two distinct categories:

> Under the first if, during the term of the contract, the contract carrier (or conference) offers to any other shipper (by service contract or by tariff), a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate.
>
> The second type of clause has been referred to as a "Crazy Eddie" clause * * *. Under a Crazy Eddie clause if, during the contract term, the contract carrier or *any other carrier* offers the contract shipper *or any other shipper* (by service contract or by tariff), a lower rate for that commodity for that service than is offered to the contract shipper under the service contract, the contract shipper will prospectively receive that lower rate.

ICCO Petition, at 8–9 (emphasis in original).

Liquidated damages clauses are provisions in contracts by which the parties set an amount to be paid an injured party in the event the contract is breached. In the area of service contracts, liquidated damages are most often provided for the breach which occurs when a shipper fails to meet its minimum cargo commitment.

The Petition requests a proposed rule which would prohibit both forms of "most-favored-shipper" clauses, while severely limiting cross-referencing to rates and charges not stated in a service contract.[6] The Petition also requests that the Commission prohibit service contracts which include a provision establishing liquidated damages for contract breach in an amount which is *de minimis.*[7] As noted above, ICCO believes that *de minimis* liquidated damages should be deemed to be an amount less than 75 percent of the contract rate.

The fundamental legal issue that must first be considered in addressing the Petition is whether the Commission has the statutory authority to regulate service contracts and establish substantive service contract standards. ICCO argues that the Commission has such authority. Many commenters disagree and argue that service contracts are private commercial arrangements and, although the Commission may establish "form and manner" standards relating to the filing and publication of service contracts, it has no authority to regulate the substance of contract terms.

In order to determine the scope of the Commission's authority to impose substantive service contract terms or standards, particularly those advanced by ICCO, it would be useful to review the Commission's rulemaking authority as it relates to service contract regulation.

B. General Rulemaking Authority

The source of the Commission's general rulemaking authority is contained in section 17(a) of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), which provides:

> The Commission may prescribe rules and regulations as necessary to carry out this Act.

This provision is a recodification of the rulemaking authority contained in former seciton 43 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 841a, and can be presumed to incorporate the administrative and judicial interpretations given the prior provision. *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978).

Originally, the 1916 Act did not contain general rulemaking authority. This power was granted to the Commission by the 1961 amendments to the 1916 Act. Pub. L. 87–346, 75 Stat. 762. The legislative history of section 43 indicates that the authority conferred on the Commission is very broad. S. Rep. No. 860, 87th Cong., 1st Sess. 20, *reprinted in* 1961 U.S. Code Cong. & Ad. News 3108, 3128. Congress intended that he statute confer far-reaching rulemaking authority to enable the Commission to give precision to the general statutory standards. *Pacific Coast European Conference v. FMC,* 376 F.2d 785 (D.C. Cir. 1967). The statute imposes no specific limits on the Commission's rulemaking authority and the only general limits are that regulations must further the statute's requirements and impose no unequal burden on U.S.-flag carriers vis-a-vis their foreign competitors. *Alcoa S.S. Co. v. FMC,* 348 F.2d 756 (D.C. Cir. 1965).

The Commission is not limited to adopting rules that remedy specific proven acts of unlawful conduct, but may impose rules "reasonably adapted to the accomplishment of a Congressional objective" supported by reasonable inferences of illegal conduct derived from the language and acknowledged use of shipping documents. *See Outward Continental Conference v. FMC,* 385 F.2d 981 (D.C. Cir. 1967). Likewise, the Commission's rulemaking authority is applicable to all sections of the statute and, most importantly permits the precise definition of statutory standards that would otherwise arise by adjudication, so long as the regulations are congruous with the statutory and legislative intent and are shown to be a reasonable response to industry conditions. *See Trans-Pacific Freight Conference v. FMC,* 650 F.2d 1235 (D.C. Cir. 1980).

There is no provision in the 1984 Act that exempts service contracts from the rulemaking authority of section 17(a) or limits that authority to "form and manner" requirements. Although section 2(1) of the 1984 Act, 46 U.S.C. app. 1701(1), expresses a Congressional policy of minimum government intervention,[8] this purpose underlies the entire 1984 Act and cannot be construed as a specific limitation on the Commission's authority to regulate the use of service contracts or as a provision in derogation of the rulemaking authority generally conferred by section 17(a). *See Association of American Railroads v. Costle,* 562 F.2d 1301, 1316 (D.C. Cir. 1977). While section 2(1) may affect the policy choices presented the Commission in administering the 1984 Act, it should not be construed as imposing a *laissez-faire* regulatory regime as argued by some of those opposed to the Petition. *See International Brotherhood of Teamsters v. I.C.C.,* 801 F.2d 1423, 1430 (D.C. Cir. 1986).

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[6] The ICCO Petition requests that the Commission allow a limited exception to an absolute requirement that service contracts be self-contained:

> A service contract may be incorporate by reference charges, surcharges, allowances, or adjustment factors set forth in the contract carrier's or contract conference's tariff.

ICCO Petition, at 22.

[7] In addition to urging the Commission to promulgate substantive standards concerning "most-favored-shipper" clauses and *de minimis* liquidated damages in service contracts, ICCO also proposes that such clauses in current service contracts be declared "null and void." Those parties opposed to the Petition argue that this would constitute unlawful retroactive rulemaking.

Declaring contract provsiions, now filed and in effect, to be "null and void" would appear to constitute a retroactive application of a newly promulgated rule. *See Georgetown University Hospital v. Bowen,* 821 F.2d 750 (D.C. Cir. 1987). Accordingly, it appears that a rule restricting the use of certain provisions in service contracts could only be applied to contracts filed after its effective date.

[8] Section 2(1) of the Act provides:

> The purposes of this Act are—(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs * * *.

To the contrary, the legislative history of the 1984 Act indicates that Congress is "seriously concerned that service contracts not be employed so as to discriminate against all who rely upon the common carriage tradition of the liner system" and that Congress "expects the FMC to be cognizant of the effects * * * (on) common carriage that abuse of service contracting may occasion." H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 17 (1983). It appears that Congress intended the Commission to take an active role in ensuring that the integrity of the legislative scheme of the 1984 Act is preserved.

C. Statutory Provisions Relating to Service Contracts

The provisions of the 1984 Act that directly relate to service contracts are: (1) The service contract definition in section 3(21) of the 1984 Act, 46 U.S.C. app. 1702(21); (2) the "Tariffs" provisions governing the contents of service contracts in section 8(C) of the Act, 46 U.S.C. app. 1707(c); and (3) certain provisions in section 10, "Prohibited Acts," 46 U.S.C. 1709, which specify the service contract practices made unlawful by the 1984 Act.

1. The Service Contract Definition

The definition of a service contract in section 3(21) of the 1984 Act [9] contains several legal requirements. Only certain types of entities may enter into service contracts, and these contracts have specific attributes different from other types of contracts. That is, service contracts may *only* be entered into between shippers or shippers' associations and ocean common carriers or conferences and *must* contain *commitments* for: (a) A "certain minimum quantity of cargo over a fixed period of time" from the shipper; and (b) a "certain rate or rate schedule as well as a defined service level" from the carrier. Although the definition also contains a *permissive* element, *i.e.,* nonperformance provisions, all other elements are mandatory and without them a contract does not fall within the definition. Thus, a service contract, as defined in the 1984 Act, is not just a common law contract but also a statutory contract.

In urging a prohibition of "most-favored-shipper" clauses in service contracts, ICCO relies on the contract definition requirement of a "certain rate or rate schedule." This argument appears to be well-founded at least to the extent that the contract must be drafted so as to permit a person to ascertain the agreed upon rate from either the face of the document or a specified rate schedule document incorporated by reference in the service contract. While it does not necessarily mean that the contract may not contain alternative or contingent rates, it does appear to require more than the minimum certainty of terms required at common law.[10]

However, the definition of "service contract" does not lend support to the ICCO proposal to require service contracts to contain minimum liquidated damages clauses. Liquidated damages clauses are nonperformance provisions and, as such, are a permissive element of service contracts. The "service contract" definition in section 3(21) does not provide otherwise. Therefore, that definition does not give the Commission a basis to require liquidated damages for breach of contract, much less specify a level that must be stated in a service contract.

2. The "Tariffs" Provision for Service Contracts

Section 8(c) of the 1984 Act contains the core of the statutory scheme relevant to service contracts.[11] It requires, *inter alia,* that the "essential terms" of privately negotiated transportation contracts, including the "line-haul rate" and "liquidated damages for nonperformance, if any," be published in tariff format and made available to similarly situated shippers. Section 8(c) also provides that the exclusive remedy for a contract breach, unless the parties otherwise agree, "shall be an action in an appropriate court."

On their face, the section 8(c) provisions indicate parallels with key aspects of the service contract definition in section 3(21) of the Act. Consistent with use of the term "certain rate or rate schedule" in the service contract definition, requiring the publication of a "line-haul rate" in "tariff format" would appear to require a *specific numerical rate.* The legislative history of section 8(c) supports this interpretation and also indicates that Congress intended that the rate stated in a service contract would be a single-factor numerical rate for each specified volume committed by the shipper.[12] However, reference by incorporation to a rate stated in the contracting carrier's general public tariff is also contemplated.[13] Obviously, if the referenced tariff charge varies, then the contract charge will likewise vary. This type of varying rate provision appears to be permitted. Similarly, the "incorporation by reference" concept would appear to support tying the contract rate to the "essential terms" of other service contracts offered by the contracting carrier because those terms are also "published."

This analysis does not, however, appear to support the legality of the more extreme forms of "most-favored-shipper" clauses, particularly those where the contracting carrier agrees to match the lowest rate "offered" the shipper by any carrier in the trade covered by the contract. Tying the "line-haul rate" to an unpublished, nonbinding rate "offer" that cannot be readily ascertained by an interested party does not appear to "provide meaningful commercial disclosure," as contemplated by Congress. It does not inform other shippers of the rates available to them, either directly or by reference to other published rate matter. It would appear, therefore, that such clauses do not fulfill the minimum disclosure requirements of section 8(c) and are not permissible in contracts filed pursuant to that section.

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[9] Section 3(21) of the 1984 Act, provides:

> (21) "service contract" means a contract between a shipper and ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

[10] At common law, absolute certainty on price is not essential, only a definite agreement to agree on a price. *See Vigland v. Wylain, Inc.,* 633 F.2d 522, 526 (8th Cir. 1980).

[11] Section 8(c) of the 1984 Act provides:

> (c) SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—
>
> (1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;
>
> (2) the commodity or commodities involved;
>
> (3) the minimum volume;
>
> (4) the line-haul rate;
>
> (5) the duration;
>
> (6) service commitments; and
>
> (7) the liquidated damages for nonperformance, if any
>
> The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.

[12] *See* S. Rep. No. 3, 98th Cong., 1st Sess. 31–33 (1983).

[13] The Senate Report, in discussing the "line-haul rate" requirement and its relationship to volume commitments, explains:

> Many service contracts may provide for charges or allowances for transporting and handling the goods involved that may be different from those published in the otherwise applicable general tariff and, accordingly, any such variance must be identified in the line-haul rate disclosure. *To the extent any contract charge or allowance is the same, as that in the carrier's or conference's general public tariff, incorporation by reference will suffice.* (Emphasis added).

Id. at p. 31–32.

The type of "most-favored-shipper" clause that is the most difficult to evaluate under section 8(c) is that which ties in "line-haul rate" to the lowest rate published in either the tariffs or service contracts of another carrier operating in the trade covered by the contract. At a minimum, it does not appear that this type of clause constitutes the type of "incorporation by reference" provision found acceptable in the Senate Report because it does not reference the contracting carriers' *own* rate publications.

Section 8(c) does not support ICCO's position that the Commission may establish minimum liquidated damages standards. The language of section 8(c), like the definition, indicates that liquidated damages clauses are optional, the use of the term "if any," being particularly significant. This would suggest that Congress did not intend the Commission to establish a liquidated damages minimum. The language of section 8(c) also indicates that to the extent liquidated damages provisions provide for remedies due to volume commitment breaches, they are subject to enforcement by the courts.

3. Prohibited Acts

The final area of analysis of the Commission's authority to promulgate substantive standards for service contracts is whether any types of provisions are proscribed by the 1984 Act itself. The Commission might preclude certain service contract provisions to prevent violations of the "prohibited acts" contained in section 10 of the act. The provisions of section 10 presented or raised by the Petition are sections 10(b)(1) and 10(a)(1), 46 U.S.C. app. 1709(b)(1) and 1709(a)(1).

a. *Section 10(b)(1).* Section 10(b)(1) of the 1984 Act makes it unlawful for any carrier or conference to charge rates for any service different from those shown in its tariffs or service contracts.[14]

ICOO takes the position that service contracts which reference rates not actually stated in the contracting carrier's tariffs and essential terms publications, whether such rates be another carrier's tariffs or service contracts or reflect some third party offer, "are unlawful under section 10(b)(1)."

Section 10(b)(1) is an adaptation of former section 18(b)(3) of the 1916 Act [15] that was made applicable to tariffs and service contracts filed under the 1984 Act. The Commission by rule interpreted section 18(b)(3) to prohibit a carrier's tariff from referencing the rates published in any other carrier's tariff. 46 CFR 580.6(k)(2) (1985).[16] Because this rule prohibition continues in effect under the 1984 Act, section 10(b)(1) has been similarly applied.

Accordingly, to the extent the prohibitions of section 10(b)(1) of the 1984 Act were made applicable to service contracts, it appears that providing transportation under a service contract that incorporates by reference a competing carrier's tariff rates or service contract essential terms publication could be prohibited under the 1984 Act.

b. *Section 10(a)(1).* ICCO does not expressly allege a violation of section 10(a)(1) in its Petition with regard to *de minimis* liquidated damages clauses.[17] However, it does argue that service contracts that do not specify meaningful damages are illusory arrangements and, because they lack meaningful commitments, are not in fact "contracts." ICCO 's position is not without merit.

The Commission itself has recently noted that *de minimis* liquidated damages clauses may render a contract a "device to evade the otherwise applicable tariff rate," [18] and that "[s]ervice contracts with no meaningful cargo or service commitments could, at a minimum, violate section 10(a)(1) of the Act." [19] A "commitment" is required to make the contract a "service contract" as defined in section 3(21) of the 1984 Act. A service contract with a volume commitment that by its terms may be breached without significant penalties would appear not to contain a meaningul commitment on the part of the contracting shipper. As a result, such a contract could be deemed to constitute an "unjust or unfair device or means," allowing the shipper to obtain a contract rate different from the carrier's tariff rate "that would otherwise be applicable," in violation of section 10(a)(1) of the Act.

IV. Conclusion

The Commission has determined to grant the Petition and to issue a proposed rule providing the relief sought, but only to the extent indicated below.

1. Most-Favored-Shipper Clauses

The Commission is proposing a rule that would establish reasonable standards for the use of "most-favored-shipper" clauses in service contracts. Under this rule, the Commission would permit service contracts that allow the carrier to match the service contract rate with the contracting carrier's best "published" rate for the contract commodity in the contract trade area.[20]

The proposed rule would, however, prohibit service contract provisions which make a contracting carrier's rate dependent upon another carrier's contract rate or tariff rate, whether that rate be in the form of an unpublished offer or a rate published in that other carrier's tariff or service contracts. Any service contract that ties its governing rate to an unpublished, non-binding rate "offer" that cannot be readily ascertained by an interested party, does not appear to provide the "meaningful commercial disclosure" contemplated by Congress. Contracts with such open-ended rate clauses also do not appear to inform other shippers of the rates available to them, either directly or by reference to other published rate matter, and, as a result, do not appear to fulfill the minimum essential terms disclosure requirements of section 8(c).

Service contract rates made dependent on another carrier's tariff or service contract rates, while possibly less objectionable, also appear to be unacceptable. The "incorporation by reference" sanctioned in the 1984 Act's legislative history would not appear to extend to references of other carrier's rates. Moreover, this type of "most-favored-shipper" clause appears inconsistent with established Commission policy that precludes a carrier's tariff from referencing the rates published in any other carrier's tariff. This policy is grounded on historical precedent and was designed to lessen the burden on a shipper to refer to another carrier's tariff to determine applicable freight charges.

However, given the greater commercial freedoms service contracts appear to have been intended to provide, a direct application of tariff case law and policy to service contracting may be inappropriate. Accordingly, interested parties are specifically requested to address this issue.

2. De Minimis Liquidated Damages Provisions

ICCO's specific concern is that liquidated damages not be established at such low levels that they render meaningless any commitment made by the contract shipper to the carrier. Shippers correctly point out, on the other hand, that carriers are not forced to sign contracts with unacceptably low damages provisions.

That the Commission lacks the authority to directly regulate the use of liquidated damages provisions does not necessarily mean that the Commission is without authority to preclude service contract liquidated damages provisions which may permit evasion of the otherwise applicable tariff rate contrary to the 1984 Act and the policies underlying it, regardless of whether both parties to the contract willingly or unwillingly agree to those provisions. At a minimum, the Commission can police individual service contracts to ensure compliance with the Act. This would include investigations under section 10(a)(1) of the 1984 Act to determine whether contracts with *de minimis* liquidated damages provisions have been used as a device to unlawfully circumvent otherwise applicable tariff rates.

The fundamental problem involved in addressing *de minimis* liquidated damages provisions is devising an efficient and appropriate regulatory requirement that would preclude the possibility of illusory service contracting. Because the Commission cannot directly regulate the level of liquidated damages, it is difficult to prevent such contracting by regulation without establishing requirements that specify the consequences of non-performance of service contract commitments by prescribing the lawful rate that can be applied to contract shipments. We recognize, however, that restricting the freedom of contract parties to negotiate service contracts in this manner could inhibit the fundamental purposes of section 8(c) of the 1984 Act. Therefore, such a rulemaking must be evaluated very carefully and should only be undertaken upon a convincing showing the use of *de minimis* liquidated damages clauses is widespread and presents a serious problem that threatens the viability of the overall legislative scheme of the 1984 Act. Although the Petition and some comments indicate that the potential for illusory contracting through the use of *de minimis* liquidated damages clauses exists, and that such contracting may on occasion have occurred, it does not appear to be of sufficient magnitude to impose the significant restrictions on service contracting that effective remedial regulations could inevitably entail.

Moreover, surveys of recently filed service contracts indicate that although liquidated damages provisions are commonly below the contract rate level, they appear seldom set at a level that is patently *de minimis.*[21] Given this situation and the present capability of the Commission to identify and separately address any potentially unlawful arrangements, the policing of individual contracts identified in this fashion appears to be a more appropriate response to the ills complained of in the Petition.

However, this result should not be interpreted as the last word on this subject. If specious contracting through *de minimis* liquidated damages clauses becomes a widespread malpractice, policing of individual contracts exclusively in this fashion would require a substantial commitment of the Commission's limited resources and could prove impractical as well as inefficient. Under such circumstances the only alternative might be to establish regulatory requirements that would preclude the possibility of such unlawful service contracting. While this alternative does not appear to be required at this time, both shippers and carriers should be mindful of the potential industry-wide ramifications and the regulatory response, that the spread of contracting abuses would likely produce.

Finally, the Commission wishes to emphasize that the use of *de minimis* liquidated damages provisions or other contract provisions that may render a service contract other than a *bona fide* transaction is the type of activity or practice that Congress expected the Commission to prevent in order to preserve the common carriage system underlying the 1984 Act. *See,* H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 17 (1983). Meaningful minimum quantities of cargo over a fixed time period and rate and defined service level commitments between a carrier and a shipper are the legislative *quid pro quo* for departing from the published tarriff rates of the carrier that would otherwise apply. The failure of the contract parties to fulfill the basic requirements of this *quid pro quo* not only offends the legislative scheme crafted by Congress but also could, as noted above, make the service contract but a device to evade the carrier's tariff rates in violation of section 10(a)(1) of the 1984 Act. We believe that the Commission is not only empowered but also recognizes that it has the responsibility to take whatever regulatory action may be necessary and appropriate to ensure against this result.

Accordingly, it is the stated policy of the Commission to require meaningful rate and volume commitments on the part of the shipper and meaningful service commitments on the part of the carrier in all service contracts entered into under the authority of section 8(c) of the 1984 Act. The Commission will scrutinize contracts carefully at the time of filing to ensure that they contain such commitments, pursuant to the requirements of 46 CFR 581.1(n). Failure to comply with the requirements of 46 CFR 581.1(n), as herein interpreted, will result in the rejection of the contract pursuant to 46 CFR 581.8 or other appropriate Commission action.

The Commission is therefore limiting this rulemaking to the promulgation of standards for the use of most-favored-shipper clauses in service contracts. The proposed rule will: (1) Define "most-favored-shipper" clauses; (2) prohibit the use of such clauses; and (3) permit a service contract to reference only matters set forth in a contracting carrier's or conference's tariffs or essential term's publications.

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[14] Section 10(b)(1) specifically provides:

(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) charge, demand, collect, or receive greater, less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

[15] Section 18(b)(3) of the 1916 Act, 46 U.S.C. 817(b)(3) (1983) provided, in pertinent part:

(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time * * *

[16] 46 CFR 580.6(k)(2) provides:

(2) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

See also, 46 CFR 580.13(b).

[17] Section 10(a)(1) provides:

(a) IN GENERAL.—No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

[18] Docket No. 86-6—*Service Contracts,* Notice of Proposed Rulemaking at 21, 51 FR 5734, 5739 (Feb. 18, 1986).

[19] *Service Contracts,* 24 S.R.R. 277, 301 (1987).

[20] This may also have the practical effect of allowing the contracting carrier to match the best *published* offering of a competitor, by amending its tariff to meet any published rate reduction of that competitor.

[21] Surveyed were a sample of 90 service contracts out of 2136 contracts filed between January 2, 1987 and April 21, 1987, and 100 out of 748 contracts filed between September 1, 1987 and November 30, 1987. The selections were based upon a random computer-generated sampling of filed service contracts and are considered representative of all the contracts filed during those periods. The sampling disclosed that while some 50% of filed contracts had liquidated damages at a level below the contract rate, only some 6% established liquidated damages at $100 per container or less.

The Commission has determined that these rules are not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission finds that the proposed rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability to rates or practices relating to such rates * * *" As the proposed rule relates to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 350(h)). Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Part 581

Maritime carriers, Contracts, Rates and fares.

Therefore, it is ordered, that the Petition for Rulemaking filed by the International Council of Containership Operators is granted to the extent indicated above and denied in all other respects.

Further, pursuant to 5 U.S.C. 553; sections 8, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, and 1716); the Federal Maritime Commission proposes to amend Part 581 of Title 46 of the Code of Federal Regulations as follows:

PART 581—[AMENDED]

1. The authority citation for Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

§ 581.1 [Amended]

2. Section 581.1 is amended by redesignating paragraphs (f) through (t) as (g) through (u).

3. A new § 581.1(f) is added to read as follows:

§ 581.1 Definitions.

* * * * *

(f) "*Most-Favored-Shipper Clause*" means a service contract provision that allows the contract rate or rate schedule(s), or any other essential term(s), to be changed to adopt (by direct match, formula or by any other means) any provision offered to the contracting shipper or another shipper, by tariff filing, other service contract, or any other offering, by any other carrier or conference.

* * * * *

4. In § 581.5, paragraph (a)(3) is redesignated paragraph (a)(5) and new paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 581.5 Content of essential terms; contingency clauses.

(a) * * *

(3) May not contain a most-favored-shipper clause as defined in this part.

(4) May incorporate by reference additional charges, surcharges, allowances, or adjustment factors as set forth in the service contract carrier's or conference's tariff of general applicability or service contract essential terms publication in the same trade in effect on the date of execution of the service contract. The reference must be made by specific FMC tariff or essential terms publication number to an active publication. The service contract may also provide for adjustments in such charges as effected by adjustments in the carrier's or conference's tariff of general applicability or essential terms publication. Each service contract shall describe any restriction(s) or limitation(s) which apply to such adjustments.

* * * * *

By the Commission.[22]

Joseph C. Polking,

Secretary.

Commissioner Ivancie concurring in part and dissenting in part:

I would have denied this Petition, with the exception of prohibiting certain most-favored-shipper clauses described below, because in my opinion it is premature to alter the Commission's service contract regulations inasmuch as there is an on-going and unfinished review of the effects of the Shipping Act of 1984 which will, among other things, directly affect the issue of service contracts. I, however, agree with the granting of this Petition to the limited extent that the proposed rule prohibits certain most-favored-shipper clauses that bind the contracting carrier to match unpublished, nonbinding offers. These types of offers cannot be adequately ascertained by interested parties and they do not afford a meaningful commercial disclosure, as contemplated by Congress.

[FR Doc. 88–5802 Filed 3–16–88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–06, Notice 2]

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking, technical corrections.

SUMMARY: This document corrects a notice of proposed rulemaking (NPRM) on amending Standard No. 214, *Side Door Strength.* The NPRM proposed to upgrade Standard No. 214 by adopting dynamic test procedures and performance requirements for passenger cars and appeared at page 2239 of the **Federal Register** of January 27, 1988 (53 FR 2239). This notice is necessary to correct technical errors that appeared in the NPRM. (In another notice in today's **Federal Register**, the agency is correcting a related NPRM on a test dummy to be used in dynamic testing.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4916.

The following corrections are made in FR Doc. 88–1541 appearing on 2239 in the issue of January 27, 1988:

1. On page 2245, column two, first full paragraph, "Component Test Procedure For Side Impact Protection" is corrected to read "Composite Test Procedure For Side Impact Protection".

PART 571—[AMENDED]

§ 571.214 [Amended]

2. S5.4 is corrected to read as follows:

S5.4 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position. Position adjustable lumbar supports so that they are set in their released, i.e., full back position.

3. S5.13.1 is corrected to read as follows:

S5.13.1 The anthropomorphic test dummies used for evaluation of a vehicle's side impact protection conform to the requirements of Subpart F of Part 572 of this Chapter. In a test in which the test vehicle is to be struck on its left side, each dummy is to be configured and instrumented to be struck on its left side, in accordance with Subpart F of Part 572. In a test in which the test vehicle is to be struck on its right side, each dummy is to be configured and instrumented to be struck on its right side, in accordance with Subpart F of Part 572.

4. S6 through S6.4.2 is corrected to read as follows (designated as S6 through S6.4.3):

S6 *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to Subpart F of Part 572 of this Chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and another conforming test dummy in the rear outboard position on the same side of the vehicle, as specified in S6.1 through S6.4. Each test dummy is restrained only in seating positions for which there is an automatic belt restraint. In addition, any folding armrest is retracted.

S6.1 *Torso.*

S6.1.1 *For a test dummy in the driver position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and passes through the center of the steering wheel rim.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and coincides with the longitudinal centerline of the bucket seat.

S6.1.2 *For a test dummy in the front outboard passenger position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and the same distance from the vehicle's longitudinal centerline as would be the midsagittal plane of a test dummy positioned in the driver position under S6.1.1.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

S6.1.3 *For a test dummy in either of the rear outboard passenger positions.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and, if possible, the same distance from the vehicle's longitudinal centerline as the midsagittal plane of a test dummy positioned in the driver position under S6.1.1. If it is not possible to position the test dummy so that its midsagittal plane is at this distance from the vehicle's longitudinal centerline, the test dummy is positioned so that the outermost point of the skin of the upper torso just touches the innermost surface of the vehicle next to the test dummy.

S6.2 *Lower torso.*

S6.2.1 *H-point.* The H-points of each test dummy coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE J826 (Apr 80) except that the length of the lower leg and thigh segments of the H-point machine are adjusted to 16.3 and 15.8 inches, respectively instead of the 50th percentile values specified in Table 1 of SAE J826.

S6.2.2 *Pelvic angle.* As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in Part 572, Subpart E of this Chapter) which is inserted into the H-point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

S6.3 *Legs.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces is 11.5 inches. To the extent practicable, the left leg of a test dummy in the driver position and both legs of test dummies in other positions are in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S6.4 for various passenger compartment configurations is permitted.

S6.4 *Feet.*

S6.4.1 *For a test dummy in the driver position.* The right foot of the test dummy rests on the undepressed accelerator with the heel resting as far forward as possible on the floorpan. The left foot is set perpendicular to the lower leg with the heel resting on the floorpan in the same lateral line as the right heel.

S6.4.2 *For a test dummy in the front outboard passenger position.* The feet of the test dummy are placed on the vehicle's toeboard with the heels resting on the floorpan as close as possible to the intersection of the toeboard and floorpan. If the feet cannot be placed flat on the toeboard, they are set perpendicular to the lower legs and placed as far forward as possible such that the heels rest on the floorpan.

S6.4.3 *For a test dummy in either of the rear outboard passenger positions.* The feet of the test dummy are placed flat on the floorpan and beneath the front seat as far as possible without front seat interference. If necessary, the distance between the knees can be changed in order to place the feet beneath the seat.

Issued on March 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–5830 Filed 3–14–88; 1:01 pm]

BILLING CODE 4910-59-M

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49 CFR Part 572

[Docket No 88–07, Notice 2]

Side Impact Anthropomorphic Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking, technical corrections.

SUMMARY: This document corrects a notice of proposed rulemaking (NPRM) on establishing the specifications and qualification requirements for a side impact anthropomorphic test dummy. The NPRM was issued in conjunction with a proposal to upgrade Standard No. 214 by adding dynamic test procedures and performance requirements for passenger cars and appeared at page 2254 of the **Federal Register** of January 27, 1988 (53 FR 2254). This notice is necessary to correct technical errors that appeared in the NPRM (In another notice in today's **Federal Register**, the agency is correcting a related NPRM.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC 20590. Telephone: (202) 366–4916.

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[22] Commissioner Ivancie's concurring and dissenting opinion is attached.

The following corrections are made in FR Doc. 88–1542 appearing on 2254 in the issue of January 27, 1988:

PART 572—[AMENDED]

1. Section 572.42(a) introductory text, (b)(1) and (b)(4) are corrected to read as follows:

§ 572.42 Thorax.

(a) When the thorax of a completely assembled dummy (SA–SID–M001) is impacted by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

* * * * *

(b) * * *

(1) With the dummy seated and positioned on a seating surface as specified in § 572.44(h), adjust the dummy legs at a setting of 1 g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) * * *

(3) * * *

(4) Position the dummy as specified in § 572.44(h), so that the thorax's midsagittal plane and tangential plane to the Hinge Mounting Block (Drawing SID–034) are vertical.

* * * * *

2. Section 572.43 (a) and (b)(1) are corrected to read as follows:

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy (SA–SID–M001) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40 g and not more than 60 g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20 g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

(b) *Test Procedure.* (1) With the dummy seated and positioned on a surface as specified in § 572.44(h), adjust the dummy's leg joints at a setting of 1 g, which just supports the limbs' weight when the limbs are extended horizontally forward.

* * * * *

3. Section 572.44 (b)(1), (c), (d), (e), and (h)(1) are corrected to read as follows:

§ 572.44 Instrumentation and test conditions.

* * * * *

(b) * * *

(1) One accelerometer is mounted on the Thorax to Lumbar Adaptor (SID 005) by means of a T12 Accelerometer Mounting Platform (SID 009) and T12 Accelerometer Mount (SID–037) with its seismic mass center at any distance up to 0.4 inches from a surface point on the Thorax to Lumbar Adaptor where two perpendicular planes aligned with the adaptor's vertical and horizontal center lines intersect.

* * * * *

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane The accelerometer is mounted on the rear wall of the instrument cavity (Drawing SID–067), with its seismic mass center located up to 0.30 inches from the point of intersection of the centerlines and 0.34 inches rearward of the rear wall of the instrument cavity.

(d) Instrumentation and sensors used must conform to the SAE J–211 (1980) recommended practice requirements. The outputs of the accelerometers installed in the dummy are then processed in the following manner:

(1) Analog data recorded in accordance with SAE J–211 (1980) recommended practice channel class 1000 specification.

(2) Filter the data with a 300 Hz. SAE Class 180 filter;

(3) Subsample the data to a 1600 Hz sampling rate; and

(4) Filter the data with a Finite Impluse Response (FIR) filter having the following characteristics—

(A) Passband frequency, 100 Hz.

(B) Stopband frequency, 189 Hz.

(C) Stopband gain, −50 db

(D) Passband ripple, 0.0225 db

(5) The digital computer program for the FIR filter is contained in Docket 79–04. Notice 02–018.

(e) The mountings for the spine, rib and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

* * * * *

(h) * * *

(1) The dummy is placed on a flat, rigid, clean, dry, horizontal smooth aluminum surface whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. The dummy's torso is positioned to meet the requirements of § 572.42 and § 572.43. The seating surface is without the back support and the test dummy is positioned so that the dummy's midsagittal plane is vertical and centered on the seat surface.

* * * * *

Issued on March 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–5829 Filed 3–14–88; 1:01 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 70999–7199]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) requests comment on and proposes this rule to implement the Antarctic Marine Living Resources Convention Act of 1984 which provides the legislative authority for United States implementation of the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The Convention establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources.

DATE: Comments on this rule must be received by May 2, 1988.

ADDRESS: Comments on this rule and requests for copies of the environmental assessment prepared for this rule should be sent to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, DC 20235. Mark on the envelope "Antarctic Convention Regulations."

Comments on the collection of information subject to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503. Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (International Science, Development and Polar Affairs, 202–673–5302).

SUPPLEMENTARY INFORMATION: For background information on this proposed rule, and definitions of some of the terms in it, see the final rule establishing this part which is published in this same issue of the Federal Register. NMFS has reserved §§ 380.3 through 380.11 in the final rule; this

proposed rule offers these sections for public comment. These sections for comment are not already in effect by international agreement and NOAA has some measure of discretion in their interpretation. Public comments will be used to develop the final rule to add these sections, now reserved, to 50 CFR Part 380.

Classification

See the final rule for Part 380 published in this same issue of the Federal Register for further classifications or determinations under other related laws.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared an environmental assessment (EA) for the final rule and this proposed rule under Executive Order 12114, and the Administrator concluded that there will be no significant impact on the environment as a result of these actions. A copy of the EA may be obtained from the Assistant Administrator at the address above.

This action is exempt from Executive Order 12291 because it involves a foreign affairs function of the United States. For the same reason section 553 of the Administrative Procedure Act does not apply. Nevertheless, NOAA is seeking comments on the proposed rule in order to provide the public with an opportunity to participate in the development of the Antarctic regulatory scheme. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared.

At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under NSF permits. Accordingly, these regulations should not have an incremental economic impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. Comments on this requirement may be sent to OMB (see ADDRESSES).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: March 14, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble of this proposed rule and that of the final rule published in this same issue of the Federal Register, 50 CFR Part 380 is proposed to be amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCE CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Subpart A is amended by adding §§ 380.3 through 380.11 to read as follows:

§ 380.3 Relationship to other treaties and laws.

(a) Persons affected by these regulations should be aware that other Federal treaties, statutes, and regulations may also apply to their activities.

(b) The Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The provisions of the Conservation Act and its regulations titled "Conservation of Antarctic Animals and Plants" (45 CFR Part 670) apply to U.S. citizens engaged in certain specifically defined activities south of 60° S. latitude and may impose additional restrictions.

(c) Other Federal statutes and regulations regarding living resources that apply to persons affected by these regulations are the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations. These may impose additional restrictions on harvesting and importing.

§ 380.4 Harvesting permits.

(a) *General.*

(1) Each vessel of the United States that reduces an Antarctic marine living resource to its possession, or attempts to reduce an Antarctic marine living resource to its possession, must have a permit issued under this subsection and must have on board a completed permit form, or the individual doing the harvesting must have in his possession an individual permit for that harvesting. Notwithstanding the above, recreational fishing does not require a harvesting permit.

(2) Permits issued under this section do not authorize vessels of the United States or persons to harass, capture, harm, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidental to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this part, and any permit issued under the Act and this part. The owners and operators of each harvesting vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Application.* (1) Application forms are available from the Assistant Administrator. Completed applications for harvesting permits must be submitted for each vessel requiring a permit under this part. The applicant should allow 90 days for processing before the anticipated date to begin harvesting.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Substitutions of one vessel for another must be made by application to the Assistant Administrator. They are considered new applications.

(d) *Issuance.* (1) Permits may be issued to a harvesting vessel by the Assistant Administrator after the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and these regulations and approves the permit application.

(2) Before a permit is issued, the Assistant Administrator must determine that harvesting will not

(i) Decrease the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;

(ii) Upset the ecological relationships between harvested, dependent, and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in paragraph (d)(2)(i) of this section; and

(iii) Cause changes or increase the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources;

(iv) Violate the management measures of §§ 380.20, 380.21, and 380.22; or

(v) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(3) A completed permit form must contain

(i) The name and IRCS of the harvesting vessel and its permit number;

(ii) A detailed description of the proposed harvesting;

(iii) The date of issuance and expiration;

(iv) A list of the information to be submitted to NMFS; and

(v) All conditions and restrictions, and any additional restrictions and technical modifications, appended to the permit.

(4) Separate permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(e) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the harvesting vessel to which it is issued.

(g) *Display.* Each harvesting vessel operator must have a properly completed permit form available on board the harvesting vessel when engaged in harvesting and must produce it at the request of an authorized officer.

(h) *Suspension and revocation.* 15 CFR Part 904 governs permit sanctions under this part. A permit may be revoked or suspended, or additional permit restrictions may be imposed if the harvesting vessel is involved in the commission of any violation of the Act or this part.

(i) *Change in application information.* (1) The owner or operator of a harvesting vessel must report in writing any change in the information supplied under paragraph (c) of this section to the Assistant Administrator within 15 calendar days of the change. Failure to report a change within the specified time voids the permit. If a change in ownership is not reported and the permit is voided, penalties involved may accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the information supplied in the permit application requested or reported by an applicant such as a change in IRCS, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a harvesting vessel could significantly affect the states of any Antarctic marine living resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the owner or operator of a harvesting vessel of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(j) *Additional restrictions.* (1) The Assistant Administrator may, to achieve the purposes of the Convention and the Act, add additional restrictions to a permit for the conservation and management of Antarctic marine living resources. Violations of the additional restrictions will be treated as violations of this part.

(2) Notice of proposed additional restrictions will be sent to each harvesting vessel affected. The notice will include a summary of the reasons underlying the proposal. The owners of affected vessels or their representatives will be allowed 15 days to comment to the Assistant Administrator. The Assistant Administrator may make the proposed additional restrictions effective immediately, if necessary, to prevent substantial harm to Antarctic marine living resources.

(3) The final additional restrictions will be appended to the permit after the end of the 15-day comment period. Notice of the final additional restrictions will be sent to each person whose vessels are affected. A notice will include a response to comments from the owner or representative of the affected vessel.

(4) The effective date of additional restrictions which increase the regulatory burden is seven days after the Assistant Administrator's approval of the final version, or when the permit is issued, whichever is appropriate. The effective date of additional restrictions which relieve the regulatory burden is the date of approval.

(5) Additional restrictions may be modified by following the procedures of paragraphs (j)(2) through (j)(4) of this section.

§ 380.5 Import permits.

(a) *General.* (1) Any person importing Antarctic marine living resources into the United States must have either a permit under this subsection or a permit to harvest these resources as required by § 380.4.

(2) A permit issued under this subsection authorizes the importation of legally harvested Antarctic marine living resources but does not authorize any harvest of these resources.

(b) *Application.* (1) Application forms are available from the Assistant Administrator. Applicants should allow 30 days for processing before the anticipated date of importation.

(2) Applicants must provide complete and accurate information requested on the application form. This information will include, but not be limited to—

(i) The amount and type of Antarctic marine living resources to be imported;

(ii) The name of the vessel(s) that will harvest or has (have) harvested the resources;

(iii) The nationality (flag) of the harvesting vessel(s); and

(iv) A description of the method and location of the harvest of the resources to be imported, if the vessel involved is a vessel of a nation that is not a Contracting Party to the Convention or is a vessel of a nation that is not bound by a conservation measure that is in force with respect to the United States.

(c) *Issuance.* (1) Permits for importation may be issued after the Assistant Administrator finds that the importation meets the requirements of the Act and approves the permit application.

(2) Before a permit is issued the Assistant Administrator must find that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this section.

(3) A completed permit must contain

(i) The name of the importer;

(ii) The name of the vessel(s) involved in the harvesting;

(iii) The type and quantity of the resources to be imported;

(iv) The date of issuance and expiration; and

(v) Any conditions and restrictions deemed necessary by the Assistant Administrator.

(d) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* Permits are not transferable or assignable.

(f) A copy of the permit must accompany the resources being imported.

(g) *Change in application information.* (1) The applicant must report in writing any change in the information supplied under paragraph (b) of this section to the Assistant Administrator within 15 calendar days of any change. Failure to report a change within the specified time voids the permit.

(2) The Assistant Administrator may make technical changes in the permit requested by an applicant which will be effective immediately, if the changed information does not affect the legality of the importation.

(3) If in the opinion of the Assistant Administrator a requested permit change could change the finding made under paragraph (c) of this section, the request will be processed as an application for a new permit under this section.

(h) *Dispostion of resources not accompanied by required documentation.* (1) When Antarctic marine living resources are imported into the United States unaccompanied by a permit authorizing import, the importer must either

(i) Abandon the resources,

(ii) Waive claim to the resources, or

(iii) Place the resources into a bonded warehouse for no more than 60 days to allow the importer to obtain a permit authorizing import.

(2) If, within 60 days of such marine resources being placed into a bonded warehouse, the District Director of Customs receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within the specified 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them waived, the resources will be delivered to the Administrator of NOAA, or a designee, for storage or disposal as authorized by law.

§ 380.6 Reporting and recordkeeping requirements.

The operator of any vessel required to have a permit under this part must

(a) Maintain on board the vessel an accurate and complete reporting form required by its permit;

(b) Make the report available for inspection by an authorized officer or designee of the Assistant Administrator; and

(c) Within the time specified in the permit submit to the Assistant Administrator a copy of the report.

§ 380.7 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each harvesting vessel assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel not assigned an IRCS, such as small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the nonassigned vessel.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the harvesting vessel in block roman alphabet letters and arabic numerals at least one meter in height for harvesting vessels over 20 meters in length, and at least one-half meter in height for all other harvesting vessels.

(b) *Navigational lights and shapes.* Each harvesting vessel must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear which is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for two miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for two miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each harvesting vessel must

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the harvesting vessel obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel's activity and are properly functioning.

§ 380.8 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any harvesting vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the harvesting vessel; to move the harvesting vessel to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and resource and resource products on board for purposes of enforcing the Act and this part.

(2) The operator of each harvesting vessel subject to this part must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each harvesting vessel must be equipped with a VHF–FM radiotelephone station location so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each harvesting vessel must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) Harvesting vessels that are not equipped with processing facilities and that deliver all catches to a processing vessel on the harvesting grounds are exempt from the requirements of paragraph (b)(2) of this section.

(4) Harvesting vessels with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the

requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The Assistant Administrator, with the agreement of the appropriate Coast Guard commander, may, upon request by the owner or operator, accept alternatives to the radio requirements of this section for certain harvesting vessels or types of harvesting vessels provided they are adequate for communications needs.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any harvesting vessel subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc," which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 380.6 of this part;

(ii) "RY–CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you": and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of a harvesting vessel's operator to stop the vessel when directed to do so by an authorized officer using VHF–FM radiotelephone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard a harvesting vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the harvesting vessel instantly.

(d) *Boarding.* The operator of a harvesting vessel signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF–FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the harvesting vessel and facilitate boarding by the authorized officer and the boarding party;

(3) Provide the authorized officer or boarding party a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the harvesting vessel and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent standard approved by letter from the Assistant Administrator, with agreement of the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the harvesting vessel, accounting for all conditions of loading and trim of the harvesting vessel and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.8 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted a' the point of boarding or leaving the harvesting vessel not less than 0.7 meter (2 feet 3 inches) not more than 0.8 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.2 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each harvesting vessel must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters.

(2) The owner and operator of each harvesting vessel must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each harvesting vessel storing Antarctic marine living resources in a storage space must ensure that all non-resource product items are neither stowed beneath nor covered by resource products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

§ 380.9 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettision or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Coast Guard commander or authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear into Convention waters.

§ 380.10 Prohibitions.

(a) It is unlawful for any person to do the following:

(1) Reduce to possession or attempt to reduce to possession any Antarctic marine living resources without a permit for such activity as required by § 380.4;

(2) Import into the United States any Antarctic marine living resources without either a permit to import those resources as required by § 380.5 of this part or a permit to harvest those resources as required by § 380.4 of this part;

(3) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention;

(4) To ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any Antarctic marine living resource which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource;

(5) Refuse to allow any authorized officer to board a vessel of the United States or vessel subject to the jurisdiction of the United States for the purpose of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(6) Resist a lawful arrest for any act prohibited by the Act, this part, or any permit issued under this part;

(7) Forcibly assault, resist, oppose, impede, intimidate or interfere with an authorized officer in the conduct of any boarding, inspection, or search described in paragraph (a)(5) of this section;

(8) Interfere with, delay, or prevent by any means the apprehension, arrest, or detention of another person, with the knowledge that such other person has committed any act prohibited by the Act, this part, or any permit issued under this part;

(9) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(10) Fail to identify, falsely indentify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this part;

(11) Falsify, or fail to make, keep, maintain, or submit any record or report required by this part;

(12) Fish in a closed area specified in § 380.20;

(13) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in § 380.21(a);

(14) Use any means or device which would reduce the size or obstruct the opening of the trawl meshes specified in § 380.21(a);

(15) Possess fish in violation of the catch limit specified in § 380.22;

(16) Discard netting or other substances in the Convention Area in violation of § 380.9; or

(b) It is unlawful to violate or attempt to violate any provision of this part, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

§ 380.11 Penalties.

Any person or harvesting vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR Part 904 (Civil Procedures), and other applicable laws.

[FR Doc. 88–5896 Filed 3–15–88; 9:56 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 80112–8012]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS); NOAA Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has determined that the risk of overharvesting sablefish by hook-and-line vessels in the Gulf of Alaska justifies implementing an "area registration" program to provide information on the numbers of these vessels participating in the fishery. The Secretary, therefore, proposes to implement an area registration program beginning in 1988, that requires operators of hook-and-line vessels to notify the Director, Alaska Region, NMFS (Regional Director), before fishing for groundfish in any area or district which is open to directed fishing for sablefish with hook-and-line gear. This requirement is necessary to allow the Regional Director to estimate fishing effort to avoid exceeding the hook-and-line harvest quotas. This action is intended as a conservation and management measure that will prevent the overharvest of sablefish and promote orderly fishing while providing for full utilization of the sablefish resource.

DATES: Comments must be submitted on or before March 29, 1988.

ADDRESS: Copies of the environmental assessment (EA) for this action may be obtained from Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Comments on the EA are specifically invited. Comments on the collection of information requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (3–200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations at 50 CFR 611.92 for foreign fishing and Part 672 for domestic fishing.

Total allowable catches (TACs) of sablefish are established for the Southeast Outside/East Yakutat and West Yakutat Districts of the Eastern

Regulatory Area and for the Central and Western Regulatory Areas in the Gulf of Alaska (see Figure 1 of 50 CFR 611.92). Shares of the TACS are assigned to hook-and-line gear. Large numbers of vessels using hook-and-line gear are expected to participate in the fishery in 1988 and subsequent years. The potential for hook-and-line vessels exceeding harvest quotas for sablefish in any of the above management areas is high.

This fishery grew rapidly in recent years. It displaced the foreign fishery completely in 1986. Numbers of hook-and-line vessels making landings in each of the management areas increased markedly between 1985 and 1986 and between 1986 and 1987 (see tabulation below of numbers of vessels making landings). Percentage increases between 1986 and 1987 ranged between 45 and 79 percent.

NUMBERS OF HOOK-AND-LINE VESSELS MAKING LANDINGS DURING 1985, 1986, AND 1987

	1985	1986	1987	% change 1986–87
Southeast outside East Yakutat districts	115	243	353	45
West Yakutat district	80	131	216	65
Central area	121	216	391	79
Western area	53	63	94	49

Numbers of hook-and-line vessels fishing for sablefish in 1988 will almost certainly increase markedly from the numbers fishing in 1987, because continued high prices for sablefish will attract entrants into the fishery. Also, the Council has identified this fishery as a candidate for limited entry. Increased effort usually occurs in fisheries where limited entry is being considered, because fishermen seek to establish recognized rights in whatever limited entry scheme is implemented.

The directed hook-and-line sablefish fishery will start April 1. Because of the rapid growth of the fishery, projecting fishing effort in 1988 and subsequent years cannot be done with precision by reference to past years. Information on the actual amount of effort is needed to predict when area quotas will be taken; area registration is necessary to obtain this information.

Alternatives to area registration are estimates of effort based on: (1) Counting vessels which are Federally permitted to fish for groundfish with hook-and-line gear in 1988; (2) physically counting vessels in ports; (3) surveying processors to obtain an estimate of the number of vessels buying ice and/or bait; or (4) projecting numbers of vessels based on the increase from 1986 to 1987. Counting Federally permitted hook-and-line vessels would not provide accurate estimates of effort by management area. Physically counting vessels in port or surveying processors is labor intensive, costly, and prone to error. Projecting effort from past effort changes assumes some kind of predictable relationship in the increase in numbers of vessels. NMFS projects that effort will increase, but the extent of the increase is not known.

A program for area registration was implemented for the 1987 sablefish season by emergency rule (52 FR 9171, March 23, 1987) under Magnuson Act section 305(e). The Regional Director was able to use the numbers of vessels registered to estimate the amount of effort on the grounds. The amount of effort was substantial and represented marked increases from vessel effort in 1986. For examples, see the above tabulation of vessels making landings.

When sablefish are abundant and fishermen experience good catches, TACs can be achieved rapidly. Even at current levels of effort, an extra day of fishing can cause the TACs to be grossly exceeded. In 1987, season lengths in the Gulf of Alaska were short. The shortest seasons were in the Southeast Outside/East Yakutat and the West Yakutat Districts where initial season openings were 8–½ and 14 days, respectively. Experience gained by fishery managers during 1987 from the area registration program then in effect will improve the efficacy of area registration as a useful tool for predicting fishery closures. For these reasons, the Secretary proposes to establish area registration is the Gulf of Alaska, which would be in effect in each management area beginning with the 1988 hook-and-line sablefish directed fishing season.

The proposed area registration program will be designed to minimize burdens of fishermen. As in the past, vessel operators will be informed by news releases and contacts with organizations that they may begin registering on March 14, 1988, by calling (a) one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday; or between the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 4:30 p.m., local time, Saturday and Sunday: Juneau, Alaska—Fishery Management Division, 706 West Ninth Street, toll-free telephone, in Alaska 800–478–7644, outside Alaska 800–334–7865; or (b), one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday: Kodiak, Alaska, Enforcement Division, 1211 Gibson Cove Road, telephone 907–486–3298; Sitka, Alaska, Enforcement Division, Post Office Building, telephone 907–747–6940.

The only information that the Regional Director will require to be submitted is the name of the person who is registering, the vessel's Federal Gulf of Alaska groundfish permit number, the regulatory area or regulatory district being registered for, and the date the vessel will start fishing. All groundfish fishermen using hook-and-line gear who are regulated under 50 CFR Part 672 must register before fishing for groundfish in any of the regulatory areas or districts in the Gulf of Alaska that are open to directed fishing for sablefish with hook-and-line gear. This means fishermen will be required to register each time they begin fishing in a different area. The Secretary has specified separate sablefish TACs for the Western Area, Central Area, West Yakutat District, and the combined East Yakutat/Southeast Outside Districts. Fishermen who intend to fish in either the East Yakutat District or Southeast Outside District, therefore, are required to register for the combined pair.

Even those fishermen who are fishing with hook-and-line gear for other groundfish species, such as rockfish and Pacific cod, must register if they are fishing in areas open to directed fishing for sablefish with hook-and-line gear. Imposition of area registration on all hook-and-line fishermen during the sablefish directed fishing season is necessary to facilitate enforcement of area registration. Otherwise, no practical means exist to differentiate whether a hook-and-line fisherman is fishing for sablefish or some other species of groundfish regulated under 50 CFR Part 672. As a practical matter, however, the economic return to fishermen fishing for sablefish is so great during the short sablefish directed

fishing seasons that few hook-and-line fishermen will be fishing for any groundfish species other than sablefish.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the sablefish fishery in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, National Marine Fisheries Service, prepared an environmental assessment/regulatory impact review (EA/RIR) for this rule. The Assistant Administrator for Fisheries concluded that no significant impact on the environment will occur as a result of this rule. You may obtain a copy of the EA/RIR from the Regional Director at the address above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socio-economic impacts discussed in the EA/RIR. A program for area registration is superior to other alternatives considered. Since NMFS conducted an area registration program during the 1987 hook-and-line fishery, NMFS considers costs incurred in that program to be representative of those that will occur in future years. The analysis is summarized as follows:

In 1987, fishermen registered with the National Marine Fisheries Service either in person or by telephone at offices in Juneau, Kodiak, or Sitka. If they registered by telephone, they called either from a local telephone or long distance. For long distance telephone calls, NMFS provided a toll-free telephone number both for calls from within and from outside Alaska. Actual billings to NMFS were $437 for long distance calls made from outside Alaska and $2,244 for long distance calls made from within Alaska.

NMFS also hired a temporary employee whose main job was to answer telephone calls to register fishermen. His salary of $1,680 was a cost to NMFS. Some time was spent by existing NMFS personnel in administering the program. During the time that area registration was in effect, NMFS personnel spent about 1 man-week, or 40 hours, in administration of the program. At a salary of about $20 per hour, the labor invested by NMFS was worth about $800. Since no new NMFS personnel were hired to administer the program, this amount was not a direct cost as a result of the area registration program, but is included here for perspective.

Although the costs of making telephone calls were borne by NMFS, fishermen were required to spend some of their own time to register prior to fishing. NMFS estimates that fishermen spent an average of 5 minutes per registration during 1987. Using 1987 as an estimate of costs of the program for subsequent years, about 770 fishermen will register a total of 1,118 times. At 5 minutes per registration, 5,590 minutes, or 93 hours will be spent by fishermen in this program. If time expended is worth $10 per hour, fishermen will spend about $930 in this program, or an average of about $1.20 per fishermen. This analysis shows that the total costs, including NMFS labor and private costs, will be about $5,300.

Successful management of the sablefish fishery prevents stocks from being overharvested, which reduces the risk that overfishing will occur. The purpose of the area registration program is to promote successful management of the hook-and-line sablefish fishery. The benefits of this program can be expressed in terms of the value of the sablefish harvest. In 1988, the total exvessel value of sablefish in the hook-and-line fishery will be about $34 million. This value is estimated from the total amount of sablefish assigned to hook-and-line gear, which is 23,100 metric tons, multiplied by 2,204 pounds per metric ton, multiplied by 0.67, which is the round weight to dressed weight conversion factor, and multiplied by $1 per pound dressed weight. To the extent that successful management prevents overharvesting the quota, this program conveys a benefit to the fishermen by promoting a stable fishery in future years, which in 1988 is worth about $34 million exvessel.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because registration for a particular area is estimated to take fishermen only about 5 minutes to either register in person or place a toll free telephone call at a time cost of about $1.20 per fishermen (using a labor rate of $10 per hour). As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: March 14, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. For reasons given in the preamble, a new § 672.6 is added to read as follows:

§ 672.6 Area registration.

(a) *General.* The operator of any fishing vessel regulated under this part must register the vessel with the Regional Director and be issued a registration number before fishing for groundfish with hook-and-line gear in any regulatory area or regulatory district, defined at § 672.2 of this part, that is open to directed fishing for sablefish with hook-and-line gear, except that registration will be combined for the Southeast Outside and East Yakutat Districts.

(b) *Information required for area registration.* For each registration, registrants must select only one regulatory area or regulatory district and provide the following information:

(1) The name of the vessel operator;

(2) The name of the vessel;

(3) The vessel's Federal Gulf of Alaska groundfish permit number;

(4) The date the vessel will begin fishing for groundfish in the selected regulatory area or regulatory district with hook-and-line gear; and

(5) The regulatory area or regulatory district in which such hook-and-line fishing will take place.

(c) *Limitations.* (1) Any registration under this section will have the effect of canceling any previous registration as of the date specified under paragraph (b)(4) of this section.

(2) The information required by paragraph (b) of this section must be submitted at:

(i) One of the following three NMFS locations in person or by telephone at one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday:

Fishery Management Division, National Marine Fisheries Service, 709 W. 9th Street, Juneau, Alaska, Toll-free telephone (In Alaska) 800–478–7644, (Outside Alaska) 800–334–7865

Enforcement Division, National Marine Fisheries Service, 1211 Gibson Cove Road, Kodiak, Alaska, Telephone 907–486–3298

Enforcement Division, National Marine Fisheries Service, Sitka, Alaska, Telephone 907–747–6940

or

(ii) at one of the following numbers between the hours of 8:00 a.m. to 12:00 noon, and 1:00 p.m. to 4:30 p.m., local time, Saturday and Sunday:

Fishery Management Division, National Marine Fisheries Service, Juneau, Alaska, Toll-free telephone (In Alaska) 800–478–7644, (Outside Alaska) 800–334–7865.

(3) It is unlawful for any person to fish for groundfish from a vessel regulated under this part with hook-and-line gear in any regulatory area or regulatory district, which is open to directed fishing for sablefish with hook-and-line gear, unless that vessel has been registered in accordance with this section and is in receipt of a registration number.

[FR Doc. 88–5807 Filed 3–14–88; 5:07 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 52

Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meeting of the Committee on Judicial Review

ACTION: Committee on Judicial Review; notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of two meetings of the Committee on Judicial Review of the Administrative Conference of the United States. The committee will discuss two draft reports, one of which will be considered at each meeting: a study concerning assignment of federal court jurisdiction over interlocutory challenges to agency action, prepared by Professor Thomas O. Sargentich, Washington School of Law, American University, and a study of nonacquiescence in federal court decisions by administrative agencies, prepared by Professors Samuel Estreicher and Richard Revesz, New York University School of Law.

DATES: Thursday, March 31, 1988, at 9:30 a.m. (Topic: Sargentich study of jurisdiction over interlocutory challenges). Thursday, April 7, 1988, at 10:00 a.m. (Topic: Estreicher and Revesz study of nonacquiescence by agencies).

Location: Office of the Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: March 14, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–5898 Filed 3–16–88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Cooperative Agreements; Colorado State University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Colorado State University to provide partial support funding for collaborative international research on Increasing Plant Growth and Disease Resistance with New Trichoderma harizianum Mutants.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Colorado State University (CSU) to collaborate on international research for Increasing Plant Growth and Disease Resistance with New Trichoderma harizianum Mutants. Approximately $20,000 will be available in FY1988 to CSU to conduct collaborative research with Hungary's University of Technical Sciences.

Assistance will be provided only to CSU, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for supplies, research assistants and travel costs. Hungary's University of Technical Sciences will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $20,000 will be available in FY1988 to support this work. A total of $54,480 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–8–023 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 14, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5823 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements; Howard University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Howard University to provide partial support funding for collaborative international research on Vernonia galamensis as Potential Raw Materials for Industrial Use.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY 1988) to enter into a cooperative agreement with Howard University to collaborate on international research on the utilization of Vernonia galamensis. Approximately $25,000 will be available in FY 1988 to Howard University's Departments of Chemistry and Nutrition and Food to conduct collaborative research with the Department of Research and Specialist Services in Zimbabwe's Ministry of Agriculture.

Assistance will be provided only to Howard University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, processing, laboratory assistants, and travel. Zimbabwe's Department of Research and Specialist Services in the Ministry of Agriculture will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $25,000 will be available in FY 1988 to support this work. A total of $50,000 is anticipated to be provided for this cooperative research effort over a two-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–8–020 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Allen Wilder,

Contracting Officer.

Date: March 14, 1988.

[FR Doc. 88–5824 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements; Oregon State University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Oregon State University to provide partial support funding for collaborative international research on Application of US and French Data Bases to Evaluate Crop Water Requirement Estimating Methods and Effects of Climate.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Oregon State University to collaborate on international research on Application of US and French Data Bases to Evaluate Crop Water Requirement Estimating Methods and Effects of Climate. Approximately $22,000 will be available in FY1988 to Oregon State University's Department of Agriculture Engineering to conduct collaborative research with France's National Institute of Agronomy Research.

Assistance will be provided only to Oregon State University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for equipment and supplies, a research assistant, and international travel. France's National Institute of Agronomy Research will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $22,000 will be available in FY1988 to support this work. A total of $55,800 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–8–021 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 14, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5825 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements; University of Rhode Island

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with the University of Rhode Island to provide partial support funding for collaborative international agricultural research on the Colorado Potato Beetle's Ecology, Natural Enemies, and Pest Potential.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Rhode Island to collaborate on international research on the Colorado Potato Beetle's Ecology, Natural Enemies, and Pest Potential. Approximately $21,000 will be available in FY1988 to the University's Department of Plant Sciences to conduct collaborative research with Mexico's Morelos State University.

Assistance will be provided only to the University of Rhode Island, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs of equipment and supplies, research assistants and travel. Mexico's Morelos State University will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $21,000 will be available in FY1988 to support this work.

Information on proposed Agreement #58–319R–8–024 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 14, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5826 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-DP-M

Cooperative Agreements; Rutgers University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Rutgers University to provide partial support funding for collaborative international research on Integrated Vegetable Production Systems for Controlled Environment Agriculture.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Rutgers University to collaborate on international research on Integrated Vegetable Production Systems for Controlled Environment Agriculture. Approximately $20,000 will be available in FY1988 to Rutgers University to conduct collaborative research with the Dutch Ministry of Agriculture's Institute of Agricultural Engineering, Vegetable Research Station, and Center for Agrobiological Research.

Assistance will be provided only to Rutgers University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, a research assistant, and international travel. The Dutch Ministry of Agriculture will support their portion of the research.

Based on the above, this is not a formal request for application. It is estimated $20,000 will be available in FY1988 to support this work. A total of $49,655 is anticipated to be provided for this cooperative research effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–8–022 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: March 14, 1988.

Allen Wilder,

Contracting Officer.

[FR Doc. 88–5827 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-DP-M

Forest Service

Supplements To Draft Environmental Impact Statements for Land and Resource Management Plans of the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, Wallowa-Whitman, and Wenatchee National Forests of Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare supplements to draft environmental impact statements for seven National Forests in Oregon and Washington.

SUMMARY: The Department of Agriculture, Forest Service, has withdrawn its intent to prepare a supplements to draft environmental impact statements (EIS) for the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, Wallowa-Whitman, and Wenatchee National Forests. The purpose of each supplement was to present for public review and comment additional information that was not included in the draft EIS and proposed plan for these seven National Forests. The technical basis for the proposed supplement is still undergoing review at the national level, creating uncertainty about the need and scope for supplements. In view of this uncertainty, the Notice of Intent which scheduled documents for public review in August and September 1987, is now being withdrawn.

The Notice of Intent, published in the **Federal Register** of July 17, 1987, is hereby rescinded (52 FR 27035).

FOR FURTHER INFORMATION CONTACT: Questions and comments about these supplements should be directed to Tom Nygren, Acting Director of Planning, P.O. Box 3623, Portland, OR 97208; Phone (503) 221–2387.

Dated: March 11, 1988.

James F. Torrence,

Regional Forester.

[FR Doc. 88–5834 Filed 3–16–88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on March 24, 1988, at the Radisson Hotel, Broadway and Vine Streets, Lexington, Kentucky. The purpose of the meeting is to review for approval a briefing report summarizing information received at community forums conducted by the Advisory Committee in Lexington and Louisville and to develop program plans for FY 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Ccmmission.

Dated at Washington, DC, March 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–5835 Filed 3–16–88; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on March 25, 1988, at the Vanderbilt Plaza Hotel 2100 West End Avenue, in Nashville. The purpose of the meeting will be to discuss current civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James F. Blumstein, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–5836 Filed 3–16–88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committees for Trade Policy Matters

SUMMARY: In accordance with subsection 135(c) of the Trade Act of 1974, 19 USC 2155, as amended by the Trade Agreements Act of 1979, (Pub. L. 95–39), the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Subpart 101–6.10 (1987), Federal Advisory Committee Management Rule, it has been determined by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) that the renewal of the Advisory Committes for Trade Policy Matters is in the public interest.

- Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters
- Industry Sector Advisory Committees for Trade Policy Matters
  - (ISCA 1)—Aerospace Equipment
  - (ISCA 2)—Capital Goods
  - (ISCA 3)—Chemicals and Allied Products
  - (ISCA 4)—Consumer Goods
  - (ISCA 5)—Electronics and Instrumentation
  - (ISCA 6)—Energy
  - (ISCA 7)—Ferrous Ores and Metals
  - (ISCA 8)—Footwater, Leather, and Leather Products
  - (ISCA 9)—Industrial and Construction Material and Supplies
  - (ISCA 10)—Lumber and Wood Products
  - (ISCA 11)—Nonferrous Ores and Metals
  - (ISCA 12)—Paper and Paper Products
  - (ISCA 13)—Services
  - (ISCA 14)—Small and Minority Bunisess
  - (ISCA 15)—Textiles and Apparel
  - (ISCA 16)—Transportation, Construction, and Agricultural Equipment
  - (ISCA 17)—Wholesaling and Retailing
- Industry Functional Advisory Committee on Customs Matters
- Industry Functional Advisory Committee on Standards
- Industry Functional Advisory Committee on Intellectual Property Rights

The committees were established in 1980, and renewed in 1982, 1984, and 1986 to provide technical and policy advice and information to the Secretary and the USTR on trade policy matters, including factors relevant to U.S. positions in trade negotiations, and on other matters arising in connection with the administration of U.S. trade policy. Members of each committee are appointed by and serve at the discretion of the Secretary and the USTR. It is proposed that each committee will meet at least semi-annually at the request of the Secretary and the USTR, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Trade Advisory Center, International Trade Administration (ITA) of the Department of Commerce, administers the program.

Copies of the Committees' charters will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress.

EFFECTIVE DATE: March 8, 1988.

Membership: Representatives from industry or industry associations wishing to be considered for appointment to serve on these committees are requested to make application in writing to the Trade Advisory Center, Room H–4012, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3268. Comments and inquiries may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Clare Soponis, Director, Trade Advisory Center, telephone (202) 377–3268.

Date: March 11, 1988.

Michael R. Czinkota,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 88–5882 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 80217-8017]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the fourth quarter of 1987.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1986–87 NVLAP Directory of Accredited Laboratories (NBSIR 87–3519) is published pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period October 1, 1987, through December 31, 1987.

	TIM	CTS	CAR	STO	ACO	CPL	DOS	ECT	Total
Initial		1			1	1	1	1	5
Suspended			−1						−1
Terminate		−3		−5					−8
Balance	36	23	21	4	9	8	51	17	169

The laboratories awarded initial accreditation are:

CTS: Engineers International, Westmont, IL, Madan M. Singh 312–963–3460
ACO: Twin City Testing Corp., St. Paul, MN, Norman E. Henning 612–645–3601
CPL: Champion International Corp., West Nyack, NY, Diane M. Lee 914–578–7157
DOS: Nuclear Sources and Services, Houston, TX, G.T. O'Bannion 713–641–1370
ECT: Stauffer Japan, Ltd., Ibaraski, Japan, Mitsonobu Samoto 03–261–8987

The laboratories whose accreditation was terminated are:

CTS: CalMat Co., Irwindale, CA
The Walt Keeler Co., Wichita, KS
Smith-Emery Company, Los Angeles, CA
STO: PFS Corporation, Madison, WI
R.F. Geisser & Assoc., East Providence, RI
Shelton Research, Inc., Santa Fe., NM
Arnold Green Testing Laboratories, Auburn, MA
Warnock-Hersey International, Middleton, WI

TIM—Insulation LAP
CTS—Construction Testing Services LAP (formerly Concrete LAP)
CAR—Carpet LAP
ACO—Acoustical Testing Services LAP
STO—Stove LAP
CPL—Commercial Products LAP (Paint, Paper, Seals and Sealants)
DOS—Dosimetry LAP
SEA—Seals and Sealants LAP
ECT—Electromagnetic Compatibility and Telecommunications

Ernest Ambler,

Director.

Date: March 11, 1988.

[FR Doc. 88–5814 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

March 14, 1988.

In the table of the letter to the Commissioner of Customs published in the **Federal Register** on January 4, 1988 (53 FR 55), correct the sublimit for Category 340–Y to 359,000 dozen. (This limit was incorrectly changed to 395,000 dozen. See 53 FR 3909, dated February 5, 1988.)

In addition, TSUSA number 384.5214 in Category 359–D should be added to the TSUSA exceptions for Category 359–O in footnote 18 and TSUSA number 706.4111 in Category 369–L should be

added to the TSUSA exceptions for Category 369–O in footnote 20.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5876 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

Guaranteed Access Levels for Cotton and Man-Made Fiber Textile Products From the Dominican Republic

March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A notice was published in the **Federal Register** on December 28, 1987 (52 FR 48858) announcing that the United States had requested consultations to establish levels of restraint on exports from the Dominican Republic of products in Categories 338/339 (cotton knit shirts), 342/642 (cotton and man-made fiber skirts) and 647/648 (man-made fiber trousers, slacks and shorts). Consultations are scheduled to be held this month.

In previous consultations on called categories with the Dominican Republic, guaranteed access levels have been established for shipments qualifying for the Special Access Program.

In view of this fact, it is recommended that firms that intend to use the guaranteed access level, should one be established as a result of consultations on these called categories, begin using form ITA–370P to accompany the shipment of cut parts exported from the United States that would qualify under the Special Access Program.

This action is without prejudice to the outcome of consultations with the Domician Republic on these called categories.

U.S. Customs will sign the first section of the form ITA–370P accompanying the shipment of cut parts exported from the United States. Until notification to the contrary, all shipments of products in these categories will require a visa issued by the Government of the Dominican Republic for entry into the United States. Entry cannot be made under the Special Access Program.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5877 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3712.

Summary

In the letter published below, the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs to restore unused carryforward to the current limits for Categories 341 and 648.

Background

A CITA directive dated May 12, 1987 (52 FR 18413), as amended on November 16, 1987 (52 FR 44623) and December 30, 1987 (53 FR 52), established limits for cotton and man-made fiber textile products in Categories 341 and 648, among others, produced or manufactured in Sri Lanka and exported during the period which began on June 1, 1987 and extended through December 31, 1987. The November 16, 1987 directive is being rescinded.

A CITA directive also dated December 30, 1987 (53 FR 53) established import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 341 and 648, produced or manfactured in Sri Lanka and exported during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sir Lanka, the current limits for Categories 341 and 648 are being adjusted to restore carryforward that was requested but not used during the previous agreement year which began on June 1, 1986 and extended through May 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers in available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

March 14, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of November 16, 1987 from the Chairman, Committee for the Implementation of Textile Agreements, adjusting the limits of cotton and man-made fiber textile products in Categories 341 and 648, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988.

This directive amends, but does not cancel, the directive issued to you on December 30, 1987 concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

Effective on March 18, 1988, the directive of December 30, 1987 is amended to adjust limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended [1]

Category	12-mo. adjusted limit [1]
341	222,915 doz.
648	73,611 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

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[1] The bilateral agreement provides, in part, that: (1) specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement.

BEST COPY AVAILABLE

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5878 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

Changes in Authority To Issue Export Visas and Certification for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From the Dominican Republic

March 11, 1988.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice.

AUTHORITY: Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic

SUMMARY: The Government of the Dominican Republic has notified the United States Government that, effectively immediately, Dominga Martinez Cruz has been authorized to issue export visas and certifications for textiles and textile products exported from the Dominican Republic, replacing Jose Manuel Fernandez. Accordingly, shipments of textiles and textile products accompanied by an export visa or certification issued by Jose Manuel Fernandez will be denied entry by U.S. Customs. Importers are advised that a new visa must be obtained or a visa waiver must be requested from the Government of the Dominican Republic.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: See **Federal Register** notices 46 FR 34619, dated July 2, 1981; and 51 FR 6595, dated March 4, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5879 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products From Indonesia

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of the March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, into the United States of textile products in merged Categories 342/642 exported from Indonesia on and after July 1, 1987 for which the Government of Indonesia has not issued an appropriate export visa.

Background

A CITA directive dated May 19, 1987 was published in the **Federal Register** (52 FR 20134) which announced the establishment of a new export visa arrangement for entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia.

A further CITA directive dated December 24, 1987 was published in the **Federal Register** (52 FR 49189) which amended the visa arrangement to coincide with the implementation of the new category system.

Under the terms of the Bilateral Textile Agreement of September 25 and October 3, 1985, as amended, the directive of May 19, 1987, as amended, is further amended to include coverage of cotton and man-made fiber textile products in merged Categories 342/642, produced or manufactured in Indonesia and exported to the United States on and after July 1, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, as amended on December 24, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements concerning export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia.

Effective on March 18, 1988, you are directed to prohibit shipments of cotton and man-made fiber textile products in merged Categories 342/642 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), which have been produced or manufactured in Indonesia and exported on and after July 1, 1987 from Indonesia for which the Government of Indonesia has not issued an appropriate visa.

Further, should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category is added to the agreement or becomes subject to import quotas shall require a visa. In the event that a sublimit of a merged category exists, or is established, a visa for that category is required.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–5880 Filed 3–16–88; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Jamaica to Review Trade in Categories 342/642

March 14, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on

embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner to establish a ninety-day limit for cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the period February 8, 1988 through May 7, 1988.

Background

On February 8, 1988, the Government of the United States requested consultations with the Government of Jamaica with respect to Categories 342/642 (cotton and man-made fiber skirts). This request was made under the terms of the bilateral textile agreement between the Governments of the United States and Jamaica of August 27, 1986, as amended, relating to trade in cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products which provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which begins on May 8, 1988 and extends through December 31, 1988 at a level of 94,253 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Categories 342/642 exported during the ninety-day consultation period which began on February 8, 1988 and extends through May 7, 1988 at the prescribed limit of 42,275 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Jamaica, further notice will be published in the **Federal Register**.

In previous consultations with the Government of Jamaica on called categories, guaranteed access levels have been established for shipments qualifying for the Special Access Program.

In view of this fact, it is recommended that firms that intend to use the guaranteed access level, should one be established as a result of consultations on these categories, begin using form ITA–370P to accompany the shipment of cut parts exported from the United States that would qualify under the Special Access Program.

This action is without prejudice to the outcome of consultations with Jamaica on these called categories.

U.S. Customs will sign the first section of the form ITA–370P accompanying the shipment of cut parts exported from the United States. Until further notification, all shipments of products in these categories will require a visa issued by the Government of Jamaica for entry into the United States. Entry cannot be made under the Special Access Program.

A summary market statement for these categories follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642, under the agreement with Jamaica, or in any other aspect thereof, or to comment on domestic production or availability of apparel products included in the categories, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Jamaica—Market Statement

Cotton and Man-made Fiber Skirts (Category 342/642)

January 1988.

Summary and Conclusions

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from Jamaica were 120,787 dozen during year ending November 1987, eight and one half times the 13,936 dozen imported a year earlier. During the first eleven months of 1987, imports of cotton and man-made fiber skirts (Category 342/642) from Jamaica reached 118,247 dozen, eight and one half times the 13,615 dozen imported during the same period of 1986, seven times the total imported in calendar year 1986, and 44 times the 2,653 dozen shipped in calendar year 1985.

The U.S. market for cotton and man-made fiber skirts (Category 342/642) has been disrupted by imports. The sharp and substantial increase in imports from Jamaica has contributed to this disruption.

U.S. Production and Market Share

U.S. Production of cotton and man-made fiber skirts has been on the decline, dropping from 90,101 thousand dozen in 1982 to a depressed 7,940 thousand dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 recovered slightly, reaching 8,126 thousand dozen, but remained below the 1983 level and was 11 percent below the 1982 level. Annualized U.S. production data for the first six months of 1987 indicates that 1987 production of cotton and man-made fiber skirts will be up a little more reaching an estimated 8,284 thousand dozen. The estimated 1987 production level is equal to the 1983 level, but still nine percent below the 1982 level. The domestic manufacturers' share of the market dropped 25 percentage points in just four years, falling from 83 percent in 1982 to 58 percent in 1986. The U.S. market share is expected to continue its decline into 1987, falling another eight percentage points, to 50 percent. U.S. imports are expected to have a greater share of the U.S. market than domestic manufacturers in 1987.

U.S. Imports and Import Penetration

U.S. Imports of cotton and man-made fiber skirts (Category 342/642) at 5,995 thousand dozen in 1986 were more than three times tne amount imported in 1982. The sharp and substantial increase in imports continued into 1987. Cotton and man-made fiber skirt imports (Category 342/642) during the first eleven months of 1987 were 7,673 thousand dozen, 38 percent above the 5,542 thousand dozen imported during the same period in 1986. The ratio of imports to domestic production nearly quadrupled, increasing from 20 percent in 1982 to 74 percent in 1986. The ratio is expected to increase above 100 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 86 percent of Jamaica's cotton and man-made fiber skirt imports during the first ten months of 1987 entered under TSUSA number 384.3444—women's and girls' cotton knit skirts not ornamented; 384.5251—women's cotten woven skirts, not of corduroy, denim or velventeen, not ornamented; and 384.9445—women's man-made fiber woven skirts, not ornamented. These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

Committee for the Implementation of Textile Agreements

March 14, 1988.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 18, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Jamaica and exported during the ninety-day period which began on February 8, 1988 and extends through May 7, 1988, in excess of 42,275 dozen.[1]

Textile products in Categories 342/642 which have been exported to the United States prior to February 8, 1988 shall not be subject to this directive.

Textile products in Categories 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5881 Filed 3-16-88; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The limit has not been adjusted to account for any imports exported after February 7, 1988.

DEPARTMENT OF ENERGY

Conservation and Renewable Energy Office

National Energy Extension Service Advisory Board; Change in Meeting Dates

This is to advise that the meeting notice of the National Energy Extension Service Advisory Board was in error, and the meeting announced in the **Federal Register** (53 FR 4711) on February 17, 1988, was held on March 7 and 8, rather then March 21 and 22, 1988.

Transcripts

Available within three weeks for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 14, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88-5868 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-08-NG]

Alenco Resources Inc.; Application to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for the short-term importation, exportation, and sale of natural gas on a blanket basis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 12, 1988, of an application filed by Alenco Resources Inc. (Alenco) requesting blanket authorization to import natural gas from Canada for sale to purchasers in the United States on a short-term or "spot" basis and to export natural gas to Canada for sale to spot market purchasers.

Alenco requests that the scope of the authorization be broad enough for Alenco to import up to 54 Bcf and to export up to 54 Bcf of natural gas over a two-year term beginning with the date of the first import or export. Alenco also requests that ERA set import and export limits as a total volume over the term of the authorization rather than setting maximum daily quantities.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than April 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Alenco contemplates purchasing natural gas supplied from a variety of Canadian suppliers, including its affiliates, and reselling such supplies to any suitable purchaser, which could include local distribution companies, pipelines, and commercial and industrial end-users. Alenco also contemplates acting as a facilitator for the importation of other natural gas supplies, acting as agent on behalf of both producers and purchasers.

Alenco, a Delaware Corporation, is a wholly owned subsidiary of Alenco Inc. which is a wholly owned subsidiary of Alberta Energy Company Ltd.

Alenco intends to utilize the existing facilities of U.S. and Canadian pipelines and it will file quarterly reports with the ERA detailing its transactions.

Alenco requests that an authorization be granted on an expedited basis. An ERA decision on Alenco's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import/export policy guidelines, under which the competitiveness of an import/export arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import/export arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Alenco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 10, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5869 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-06-NG]

Midcon Sales, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 2, 1988, of an application filed by MidCon Sales, Inc. (MidCon Sales), for blanket authorization to import up to 200 Bcf of natural gas per year over a two-year term beginning on the date of first delivery. MidCon Sales would import the gas on a short-term or spot basis for its own account or act as a broker for a wide range of U.S. purchasers and Canadian suppliers.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than April 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Larine Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: MidCon Sales is a Delaware corporation with its principal place of business in Lombard, Illinois. The applicant is an indirect wholly-owned subsidiary of MidCon Corp., Occidental Petroleum Corporation. No contracts have been executed and therefore the application does not identify the suppliers, buyers, or prices, however, MidCon Sales asserts that the specific terms of each import and sale would be based on competition in the marketplace. MidCon Sales intends to utilize existing pipeline facilities for transportation of the volumes imported and proposes to submit quarterly reports detailing each transaction.

MidCon Sales has requested that the ERA consider its requested authorization on an expedited basis. An ERA decision on MidCon Sales' request for expedited treatment, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this import arrangement, it may designate a total amount of authorized volumes for the term rather than the annual unit requested, in order to provide the applicant with maximum operating flexibility.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 10585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MidCon Sales' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 10, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5870 Filed 3-17-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 18 Through January 22, 1988

During the week of January 18 through January 22, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Glen Milner, 1/22/88, FKFA-0153

Glen Milner filed an Appeal from a partial denial by the Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that only one division of the Albuquerque Operations Office, the Transportation Safeguards Division, had conducted an adequate search for responsive documents. The DOE also found that another division, the Weapons Production Division, has not conducted a search even though that Division may possess responsive documents. Accordingly, the matter was remanded to the Authorizing Official, who was instructed to conduct a search for responsive documents in the Weapons Production Division.

Petition for Special Redress

Oklahoma, 1/20/88, KEG-0025

The Department of Energy (DOE) issued a Decision and Order concerning the Petition for Special Redress filed by the State of Oklahoma. Oklahoma sought approval to use Stripper Well funds for a program previously determined to fall outside the terms of the Stripper Well Settlement Agreement. After considering Oklahoma's Petition, the DOE approved the State's proposal to use $190,000 for the installation of energy conservation equipment at Langston University, a state institution. The DOE found that the program would result in increased energy conservation, timely restitution to energy consumers, and a balanced distribution of oil overcharge monies. The DOE concluded, therefore, that the proposed expenditure was permissible under the terms of the Settlement Agreement. Accordingly, Oklahoma's Petition for Special Redress was approved.

Refund Applications

Apco Oil Corp./Clarinda Oil Co., 1/20/88, RF 83-53

The DOE issued a Decision and Order concerning an Application for Refund filed by Clarinda Oil Company. Clarinda, a motor gasoline and distillate fuel oil a retailer, sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corp. Based on an evaluation of the firm's refund claim using the three-step competitive disadvantage methodology, the DOE found that Clarinda was injured by Apco's alleged overcharges in sales of motor gasoline. The DOE granted Clarinda a refund for motor gasoline of $45,294, representing $29,384 in principal plus $15,910 in interest. That portion of Clarinda's claim which was based upon its distillate fuel oil purchases was denied.

Apco Oil Corporation/Hunter Oil Company 1/22/88, RF83/52

The DOE issued a Decision and Order concerning an Application for Refund filed by Hunter Oil Company. Hunter sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corporation. Hunter is a motor gasoline and distillate fuel oil retailer which purchased these products from Apco during 56 months of the period covered by the Apco consent order. The DOE granted Hunter's refund application based upon standards established in *Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985). The refund granted to Hunter totaled $9,551 ($6,196 in principal, plus $3,355 in interest).

Apco Oil Corp./Leo's Enterprises, Inc., 1/22/88, RF83-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Leo's Enterprises, Inc., a motor gasoline and distillate fuel oil reseller. Leo's sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corp. Based upon its evaluation of Leo's refund claim, the DOE determined that the applicant was injured by Apco's alleged overcharges in sales of motor gasoline. The DOE granted Leo's a refund for motor gasoline of $76,216, representing $49,444 in principal plus $26,772 in interest. The DOE further determined that Leo's failed to demonstrate that it was injured by Apco's pricing practices as they related to distillate fuel oil.

Diamonds Ranch, 1/21/88, RF272-2178

The Department of Energy (DOE) issued a Decision approving an Application for Refund in the Crude Oil Subpart V refund proceedings. The claimant was a farmer who used sales receipts to compute the amount of petroleum products used during the August 1973 to January 1981 period. Because the claimant calculated the amount of grease in pounds rather than gallons, DOE converted the total pounds of grease into gallons. Because the claimant relied on the end-user presumption, he was not required to demonstrate injury. A total of $21 was approved in this Decision and Order.

Gulf Oil Corporation/Calfee Oil Company, 1/21/88, RF40-3591

The DOE issued a Decision and Order concerning an Application for Refund filed by Calfee Oil Company (Calfee), a Gulf consignee agent. In an attempt to rebut the presumption that Gulf consignee agents were not injured by Gulf's alleged overcharges, Calfee claimed in its application that it actually purchased Gulf products and that the individual retailers with whom Calfee did business received commissions for the gallons of products sold at the retail outlets. The DOE determined, however, that the invoices submitted by Calfee showed that the individual retailers, not Calfee, had paid Gulf for the products. Because Calfee had failed to

submit any evidence that supported its assertion that it purchased products from Gulf, it could only receive a refund through an Assignment of Refund rights to Calfee by the individual retailers. Calfee submitted such Assignments of Refunds executed by several individual retailers and was therefore deemed eligible to receive a Gulf refund based on these retailers purchases from Gulf. Accordingly, the DOE granted Calfee a refund of $258, representing $202 principal plus $56 interest.

Marathon Petroleum Co./R.J. Oil Co., Inc., 1/21/88, RF250-1567, RF250-1568

This Decision and Order concerns two Applications for Refund filed by R.J. Oil Co., Inc. in the Marathon Petroleum Company refund proceeding. R.J. Oil claimed that it purchased 30,768,755 gallons of refined products from Marathon during the Marathon consent order period. Since the applicant did not claim a refund in excess of $5,000, the DOE granted its request without requiring a showing of injury. The refunds granted in this Decision were $5,000 in principal plus $714 in accrued interest.

Marvin Wehrman, et al., 1/19/88, RF272-2086 et al.

The Department of Energy (DOE) issued a Decision approving thirty-eight Applications for Refund in the Crude Oil Subpart V refund proceedings. The thirty-eight claimants were farmers who used either the USDA formula or their own records to derive the number of gallons of petroleum products they used during the August 1973 to January 1981 period. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $931 was approved in this Decision and Order.

Mobil Oil Corporation/Amos Post Company, 1/19/88, RF225-8206, RF225-10931

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Amos Post Company (Amos), a reseller of Mobil refined petroleum products. In its refund application, Amos elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). With regard to the first part of a showing of injury, Amos submitted banks of unrecouped increased product costs based on annual, financial and gallonage data. The DOE found that this data was insufficiently detailed and did not provide a sound basis for the firm's refund application. However, applicants who attempt to demonstrate injury and fail are nevertheless eligible for a refund under the presumptions outlined in *Mobil*. Therefore, because Amos has submitted the information necessary for a refund under the level-of-distribution presumption, the DOE granted Amos a refund based on its purchases of Mobil motor gasoline. The total refund granted to Amos was $8,673, representing $7,001 in principal plus $1,672 in interest.

Mobil Oil Corp./Fremont Airport, Inc., 1/21/88, RF225-6231

The DOE issued a Decision and Order granting Fremont Airport, Inc. (Fremont), a refund from the Mobil Oil Corporation consent order fund. Fremont applied as an end-user and a retailer of 158,146 gallons of aviation gasoline which it purchased directly from Mobil during the Mobil consent order period. Under the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), end-users who were directly supplied by Mobil are entitled to a refund equivalent to the amount of their documented purchase volumes times 100 percent of their per gallon volumetric refund amount. Retailers who purchased products other than motor gasoline from Mobil and whose total claim is $5,000 or less are also eligible for a refund equivalent to the amount of their documented purchase volumes times 100 percent of the volumetric refund amount without making a detailed showing of injury. The total amount of Fremont's refund approved in this Decision and Order is $83 ($67 principal plus $16 interest).

Mobil Oil Corporation/Heater Oil Company Inc., 1/21/88, RF225-9218, RF225-9219

The DOE issued a Decision and Order granting an Application for refund from the Mobil Oil Corporation escrow account filed by Heater Oil Company, Inc., a reseller of Mobil refined petroleum products. In its refund application, Heater elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Heater, the DOE determined that the Mobil motor gasoline purchased by the firm during the consent order period was purchased at prices consistently higher than market average prices. The DOE concluded that Heater was therefore eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline. However, because the firm received a refund greater than $5,000 for its purchases of motor gasoline, the DOE determined that Heater was ineligible for a refund based on its purchases of Mobil middle distillates. The total refund granted to Heater was $49,708, representing $40,126 in principal plus $9,582 in interest.

Standard Oil Co. (Indiana)/Iowa et al., 1/20/88, RQ251-408 et al.

The DOE issued a Decision approving second-stage refund plans filed by the States of Iowa and Tennessee. In its application, Iowa proposed to spend its remaining share of Standard Oil Co. (Indiana) funds and its entire allotment of Vickers Energy Corp. funds for five projects: An energy management program for non-profit organizations; an alternative fuels program; an energy conservation marketing program; installation of energy-efficient ventilation controls at a regional medical center; and weatherization of low-income housing. In Tennessee's application, the State proposed to use its share of Standard Oil Co. (Indiana) (Amoco II), National Helium Corp., Charter Co., Perry Gas Processors, and Coline Gasoline Corp. second-stage monies to fund six projects: a park and ride program; a ridesharing promotion program; a vanpool assistance program; a transportation services program for the elderly; a fossil fuel audit program for small businesses; and an energy efficiency seminar program for small businesses. The DOE found that each of the projects proposed by Iowa and Tennessee would promote energy conservation and provide restitution to injured consumers of refined petroleum products. Accordingly, Iowa was granted $287,432 in *Amoco* monies and was authorized to receive $72,984 in *Vickers* monies when and if those funds are made available to the States. Tennessee was granted a total of $949,230 in second-stage refund monies of the projects proposed in its application.

Vernon Grubb et al., 1/20/88, RF272-919 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 37 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision was $1,418. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

The Southland Corporation, 1/21/88, RF270-28

The Department of Energy (DOE) issued a Decision and Order concerning a Motion for Reconsideration of a September 25, 1987 dismissal of an Application for Refund filed by the Southland Corporation (Southland) in the Surface Transporters' proceeding. Southland's initial application for a refund on behalf of its Manufacturing and Distribution Group (Manufacturing Group) had been dismissed as void, *ab initio*, because the firm: (i) had impermissibly altered the waiver essential to its claim; and (ii) had already been approved for a refund from another M.D.L. 378 escrow account. In its Motion, Southland asserted that the alteration to the waiver was not material because the Manufacturing Group was separate and distinct from the firm's Transportation Group that had received the first refund. Thus, it claimed, it was entitled to a second refund under *Union Pacific Railroad Co.*, 16 DOE ¶ 85,526 (1987) (*Union Pacific*). Upon reconsideration, the DOE determined that the Manufacturing Group was not a separate legal identity entitled to a refund under *Union Pacific*. Thus, Southland's alteration of the waiver was material and mandated dismissal of the firm's Surface Transporters refund application. Therefore, the DOE determined that the Motion for Reconsideration should be denied.

Contract Freighters, Inc., 1/21/88, RF270-2515

The Department of Energy (DOE) issued a Supplemental Order modifying a Decision and Order which granted refunds to a number of applicants in the Surface Transporters refund proceeding. *C.F. England & Sons, Inc.*, 16 DOE ¶ 85,465 (1987) (*C.F. England*). In the Supplemental Order, DOE found, *sua sponte*, that the volume approved for one of the applicants in *C.F. England*, Contract Freighters, Inc. (RF270-1913) (Contract Freighters), should be modified. The volume previously approved was based on Contract Freighters' own direct purchases, and did not include volumes purchased by the firm's owner-operators for which Contract Freighters was liable for reimbursement. The DOE held that companies such as Contract Freighters are eligible for refunds based on fuel cost reimbursement contracts. *Food Haulers, Inc.*, 16 DOE ¶ 85,605 (1985). The DOE therefore modified *C.F. England* to increase the volume approved for Contract Freighters from 417,653 gallons to 14,074,474 gallons.

Dismissals

The following submissions were dismissed:

Name	Case No.
Cairo-Durham Central School	RF225-6183 RF225-6184
Central Maine Power Co	RF225-4737 RF225-4738
Friendly Service Oil Co	RF225-10907 RF225-10908 RF225-10917
Lakewood Oil Co., Inc	RF225-10932 RF225-10933 RF225-10934
Larco, Inc	RF225-10935
Kirkland Oil Co	RF225-10936 RF225-10937 RF225-10938
Peoples Oil Co	RF225-8842 RF225-8843 RF225-8844
Sears, Roebuck and Co	RR270-29

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 10, 1988.

[FR Doc. 88-5871 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of February 1 Through February 12, 1988

During the period of February 1 through February 12, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

March 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Commonwealth of the Northern Mariana Islands, Saipan, Northern Marinana Islands, KEE-0151

The Commonwealth of the Northern Mariana Islands (CNMI) filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. The exception request, if granted, would waive the requirement that buildings in the CNMI eligible for grants under the Department of Energy's Institutional Conservation Program be heated or cooled by mechanical means. On February 10, 1988, the Department of Energy issued a Proposed Decision which determined that the exception request be granted.

[FR Doc. 88-5872 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of February 16 Through February 19, 1988

During the week of February 16 through February 19, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

March 10, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Delgado Oil Company, Pinedale, Wyoming, KEE-015.

Delgado Oil Company filed an Application for Exception from the requirment that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Delgado to be permanently exempt from filing Form EIA-782B. On February 18, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied because Delgado had not demonstrated that it was experiencing a hardship or inequity as a result of the requirement that it file the Form.

[FR Doc. 88-5873 Filed 3-16-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of The Secretary

Secretary's Commission on Nursing; Advisory Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of April 1988:

Name: Secretary's Commission on Nursing

Date: April 4, 1988

Time: 9:00 a.m.

Place: Room 703-727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: The agenda for this meeting will include consideration of issues associated with the recruitment and retention of nurses. There will be a panel presentation on ways in which the environment of nursing practice can be modified to improve both staff retention and quality of care.

Agenda items are subject to change as priorities dictate. Anyone wishing information regarding the Commission should contact the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245-0409

Dated: March 14, 1988.

John Buss,

Administrative Offices, Secretary's Commission on Nursing.

[FR Doc. 88-5861 Filed 3-16-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88F-0053]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-octene-1 copolymers as adhesives in multilayer structures intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4066) has been filed by The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of ethylene-octene-1 copolymers as adhesives in multilayer structures intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 10, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-5818 Filed 3-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0101]

Drug Export; POLYTRIM Brand Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Burroughs Wellcome Co. has filed an application requesting approval for the export of the human drug POLYTRIM Brand Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, North Carolina 27709, has filed an application requesting approval for the export to Canada of the drug POLYTRIM Trimethoprim Sulfate and Polymyxin B Sulfate Ophthalmic Solution. This drug is indicated in the treatment of suface ocular bacterial infection, including the acute bacterial conjunctivities and blepharo conjunctivitis caused by susceptible strains of the following organisms (1) *Staphylococcus aureus;* (2) *staphylococcus epidermidis;* (3) *streptococcus pneumoniae;* (4) streptococcus viridans; (5) *haemophilus influenzae;* and (6) *pseudomonas aeruginosa.* The application was received and filed in the Center for Drug

Evaluation and Research on March 1, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 28, 1988 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-5806 Filed 3-16-88; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

[Program Announcement No. 13631-88-2]

Availability of Grants To Determine the Feasibility and Desirability of Developing a Nationwide Information and Referral System for Persons With Developmental Disabilities; Correction

AGENCY: Administration on Development Disabilities (ADD), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of correction of the date comments are due from state single points of contact.

SUMMARY: This document corrects a date cited in the program announcement, published February 25, 1988, in the Federal Register (53 FR 5643), regarding the date comments are due from State Single Points of Contact on applications for projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities.

FOR FURTHER INFORMATION CONTACT: Judy Moore, Projects of National Significance Coordinator, at (202) 245-1961.

SUPPLEMENTARY INFORMATION: On February 25, 1988, the Administration on Developmental Disabilities published in the Federal Register an announcement of the availability of funds and request for applications for projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. (53 FR, pages 5640–5645.) On page 5643 of the announcement, a correction is required in the date comments are due from State Single Points of Contact (SPOCS).

SPOCs have 60 days from the date applications are due in the Office of Human Development Services (OHDS) (April 11, 1988) to comment on these applications for financial assistance. The February 25, 1988 program announcement incorrectly cited the date that SPOC comments are due as April 25, 1988.

Therefore, the OHDS is correcting page 5643, column 2, first sentence to read: Comments are, therefore, due no later than June 10, 1988.

Approved: March 14, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-5883 Filed 3-16-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-08-4410-08]

Farmington Resource Area, NM; Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings and a hearing.

SUMMARY: The Bureau of Land Management (BLM) announces special meetings and a special hearing to be held on the land ownership adjustment issue as it relates to lands south of the "fourth standard parallel north" as presented in the proposed Farmington Resource Management Plan. This issue is a concern to the City of Gallup and others in that general area.

DATE: The special meetings will be held at the following locations in Gallup, New Mexico:

Date, Time and Meeting Location

April 8, 1988, 7:00 p.m.–9:00 p.m.: Kennedy Middle School, 600 Boardman Drive

April 9, 1988, 9:30 a.m.–11:30 a.m.: Kennedy Middle School, 600 Boardman Drive

The special hearing will be held at the following location in Gallup, New Mexico:

Date, Time and Hearing Location

April 9, 1988, Starting at 1:30 p.m.: Kennedy Middle School, 600 Boardman Drive

SUPPLEMENTARY INFORMATION: The purpose of the meetings scheduled is to make information available, including maps to the general public, to discuss concerns and answer questions regarding the land ownership adjustment issue presented in the Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) in this area. These will be informal meetings.

The purpose of the public hearing scheduled is to allow the public to make formal comments regarding the land ownership adjustment issue presented in the PRMP/FEIS for the area around Gallup. At this hearing, oral and written comments will be received into the record. A hearings officer will preside at the hearing, and each person who signs up to speak will be allowed 10 minutes to give their statement for the record. A court reporter will be present to record all comments. Speakers will be registered at the door prior to the hearing. If a large number of speakers are registered, the hearing officer may set a time limit of less than 10 minutes for each speaker so that all who have registered may have the opportunity to speak. In addition, written comments will be accepted if postmarked on or before April 18, 1988. Written comments must be sent to the following address: RMP Team Leader, BLM, 1235 La Plata Highway, Farmington, New Mexico 87401.

The comments received at the hearing will be given to the New Mexico State Director of the BLM for consideration prior to approving the Farmington RMP.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Draft RMP/EIS or the PRMP/FEIS, contact Ron Fellows, Area Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 (505) 327-5344.

Larry L. Woodard,

State Director.

Dated: March 11, 1988.

[FR Doc. 88-5812 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-FB-M

[MT-070-07-4322-01-ADVB]

Montana; Butte District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Change of date for meeting.

SUMMARY: The Butte District Advisory Council meeting scheduled for March 16 and 17 (February 25, 1988, 53 FR 5651) will be held instead on Wednesday and Thursday, April 6 and 7. The meeting will begin at 10:00 a.m. on April 6.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

March 9, 1988.

James A. Moorhouse,

District Manager.

[FR Doc. 88-5837 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-040-08-4322-12]

Ely District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Ely District Advisory Council will be held on Tuesday and Wednesday, May 24 and 25, 1988.

The Advisory Council will tour the Wilson Creek Allotment located in the southeastern portion of the Schell Resource Area.

An evening orientation meeting will be held on May 24, 1988, at 6:00 p.m. at the Lincoln County Courthouse in Pioche, Nevada. The tour participants will leave Pioche at 8:00 a.m. on May 25, 1988.

Members of the public are invited to accompany the advisory council, but must provide their own transportation and lunch.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Terry Dailey, (702) 289-4865.

Date: March 7, 1988.

Kenneth G. Walker,

District Manager.

[FR Doc. 88-5838 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ 020-41-5410-10-ZAEF; A-23225]

Mineral Interest Application; Arizona

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Peter R. Makaus, Suzan Makaus and RCJ Corporation have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 2 E.
  Sec. 31, Lots 1, 2, W½SE¼SW¼, SE¼SE¼SW¼.
  Containing 109.70 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 3, 1988, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: March 10, 1988.

[FR Doc. 88-5839 Filed 3-16-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-08-4212-13; CA-19606]

Realty Action; Proposed Land Exchange in San Benito County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; proposed land exchange of public and private lands in San Benito County, CA.

SUMMARY: This notice is to advise the public that the Hollister Resource Area of the Bureau of Land Management and Mr. Charles F. McCullough, Jr. are proposing a land exchange.

SUPPLEMENTARY INFORMATION: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mt. Diablo Meridian, California

T. 15 S., R. 9 E.,
  Sec. 1, SW¼NW¼, N½SW¼, W½NW¼SE¼, W½SW¼SE¼, SE¼SW¼SE¼, S½SE¼SE¼;
  Sec. 2, SE¼NE¼;
  Sec. 11, S½NW¼, SW¼;
  Sec. 14, NE¼NW¼.
  Containing 590.00 acres, more or less.

In exchange for these lands, the Federal Government will acquire tracts of non-Federal lands in San Benito County from Mr. Charles F. McCullough, Jr., described as follows:

Mt. Diablo Meridian, California

T. 17 S., R. 11 E.,
  MS 5062;
  MS 5251;
  MS 5252;
  MS 5253;
  MS 5957;
  MS 5958.
  Containing 288.081 acres, more or less.

The purpose of the exchange is to acquire the non-Federal lands to provide access to isolated Federal lands and enhance their management. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Cultural Stipulation: A covenant as follows will be placed within the title in order to protect the archeological site.

Covenant

The property described below is hereby conveyed subject to the conditions, restrictions, and limitations herein set forth, which shall be considered as covenants running with the property which the grantee, his heirs, successors and assigns covenant and agree, in the event that the property is sold or otherwise disposed, will be inserted in the conveyance or other:

T. 15S., R. 9E., M.D.M.
  Sec 1: SWSWSE

1. No physical change to the archaeological site CA–SBN–153 as shown and described on the archaeological site record on file with the California Archaeological Sites Inventory or its surface covering shall be made or altered without the prior

written approval of the California State Historic Preservation Officer.

2. Scientific investigations (not relating to the recovery of data to mitigate the adverse effects of development of the property) at one or more of the sites involving removal of archaeological materials or disturbance of those materials shall be permitted only if the investigations are consistent with the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 FR, Vol. 190, September 29, 1983, pp. 44716–44742) or subsequent contemporary Federal guidance, with the written approval of the California State Historic Preservation Officer of the research design for the investigation(s) and providing that the patentee, his heirs and assigns have granted permission for the investigation.

3. The patentee, his heirs and assigns will contact the California State Historic Preservation Officer and arrange for an inspection of the site subsequent to any scientific investigations. The purpose of the inspection will be to determine the necessity of retaining the protection provided by this covenant at CA–SBN–183.

4. The patentee, his heirs and his assigns shall not permit the removal or collection of archaeological artifacts from any of the protected sites, except as provided for in a scientific investigation as described in Number 2 above.

5. The above restrictions shall be binding on the parties hereto, their heirs, successors, and assigns in perpetuity or until CA–SBN–183 no longer retains the scientific data for which it is significant. Such determination shall be made by or in concurrence with the California State Historic Preservation Officer.

6. In the event of a violation of the above restrictions, any affected party may institute a suit to enjoin such violation or for damage by reason of any breach thereof.

The acceptance of the delivery of this patent shall constitute conclusive evidence of the agreement of the patentee to be bound by the conditions, restrictions, and limitations and to perform the obligations herein set forth.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for a period of two years. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Detailed information concerning the exchange, including the environmental assessment, is available at the Hollister Resource Area Office, 402 Hill Street, P.O. Box 365, Hollister, California 95024–0365.

For a period of 45 days from publication of this notice in the *Federal Register*, interested parties may submit comments to the Area Manager, Hollister Resource Area Office at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

Dated: March 14, 1988.

David Howell,

Area Manager.

[FR Doc. 88–5820 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-40-M

[CO–070–08–4212–13; C–38487]

Exchange of Lands in Garfield County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange of Lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Lands

Disposal Parcel 18—146.96 Acres

T. 7 S., R. 94 W.
  Sec. 17: Lot 4, SW¼NW¼, W½SW¼

Disposal Parcel 158—318.07 acres

T. 7 S., R. 95 W.
  Sec. 35: S½S½
  Sec. 36: Lots 13, 14, 15, and 16

Disposal Parcel 159—162.43 acres

T. 7 S., R. 95 W.
  Sec. 25: Lots 13 and 14
  Sec. 36: Lots 3 and 4

Offered Private Land

Parcel O–1—40.00 Acres

T. 7 S., R. 94 W.
  Sec. 15: SW¼NW¼

Parcel O–2—313.14 Acres

T. 7 S., R. 94 W.
  Sec. 11: Lots 3 and 4, S½NW¼, SW¼

Parcel O–3—257.08 Acres

T. 7 S., R. 94 W.
  Sec. 1: SW¼SW¼, SE¼SW¼, S½SW¼SE¼
  Sec. 12: Lots 3 and 4, S½NW¼

Any adjustments to offered private land to equalize values would be made in T. 7 S., R. 94 W., Sec. 15, W½NW¼.

These 627.46 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Joan L. Savage.

In the proposal, 610.22 acres of offered private land with public values would be exchanged for 627.46 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final apprasial of the lands, the acreage will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patent issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land use, including grazing leases, unless waived.

4. The reservation of oil and gas lease C–27872.

5. The reservation of oil and gas lease C–05173.

6. The reservation of right-of-way C–36806 for public access.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws and the mineral leasing laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Barry C. Cushing,

Acting District Manager, Grand Junction District.

[FR Doc. 88–5783 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-JB-M

[NV–930–08–4212–24; N–47788]

Realty Action; 20 Year Nonrenewable Lease in Lincoln County, NV

The following described land has been determined to be suitable for leasing by non-competitive procedures under section 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 173.

Mount Diablo Meridian, Nevada

T. 6 S., R. 57 E.
  Sec. 25, NW¼SW¼NW¼NW¼.
  Aggregating 2.5 acres.

The purpose of the lease is to authorize improvements which have been located on the site for approximately fifteen years. The improvements resulted from the overdevelopment of a Section 4 Grazing Permit granted in 1973 to D–4 Enterprise, Inc., c/o Steve Medlin.

The lease will be offered at fair market rental to Steve and Glenda Medlin as a nonrenewable, nonassignable, noninheritable, 20 year lease. The land is not required for any conflicting federal purpose. The lease is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments this realty action will become the final determination of the Department of the Interior.

Date: March 8, 1988.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 88–5781 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-HC-M

[NM–940–08–4220–11; NM NM 52387, NM NM 013679]

Proposed Continuation of Withdrawals; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that part of two existing land withdrawals for the Navajo Unit, Colorado River Storage Project, continue until December 31, 2060. This is the estimated life of the Project. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATE: Comments should be received by June 15, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, 505–988–6554.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Order of December 6, 1915, and Director's Order of March 22, 1956, be continued until December 31, 2060, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are located within the following described townships:

New Mexico Principal Meridian

T. 31 N., R. 5 W.
T. 30 N., R. 6 W.
T. 31 N., R. 6 W.
T. 32 N., R. 6 W.
T. 30 N., R. 7 W.
T. 31 N., R. 7 W.
T. 32 N., R. 7 W.
T. 30 N., R. 8 W.
T. 31 N., R. 8 W.

The areas described aggregate 17,533 acres in San Juan and Rio Arriba Counties.

The purpose of the withdrawals is for protection, operation, and maintenance of project facilities of the Navajo Unit of the Colorado River Storage Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

The Project consists of four withdrawals. Notices for continuation of two withdrawals were published in the **Federal Register** on June 20, 1985, and January 11, 1985. The four withdrawals comprising the Project will be consolidated into one final public land order.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Monte G. Jordan,

Associate State Director.

Dated: March 8, 1988.

[FR Doc. 88–5780 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ–020–08–4212–13; A–18992]

Realty Action; Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The public land description contained in the notice of termination/

realty action published on Thursday, December 31, 1987, in **Federal Register** document 87–29988, page 49526, should read as follows:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 20 W.,
Section 4, lots 5, 8, and 9;
Section 9, lots 2 and 3, SW¼NW¼, N½N½N½NW¼SW¼,N½S½N½N½NW¼SW¼.

Containing 142.0 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Kingman Resource Area, (602) 757–3161.

Dated: March 10, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–5840 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–725785

Applicant: Gordon H. Brandenburger, Anaconda, MT.

The applicant requests a permit to import the personal sport-hunted trophy of a bontabok (*Damaliscus dorcas dorcas*), culled from the herd of M. G. Wienand in Bedford, Republic of South Africa, for the purpose of enhancement of propagation.

PRT–720880

Applicant: Cactus by Dodie, Lodi, CA.

The applicant requests a permit to sell in interstate commerce and export for sale in foreign commerce the following species of artificially propagated cacti: *Coryphantha minima, C. sneedii* var. *leei, C. sneedii* var. *sneedii, Echinocereus engelmannii var purpureus, E. fendleri var. kuenzleri, E. reichenbachii* var. *albertii, E. triglochidiatus* var. *inermis* and *E. viridiflorus* var. *davisii.*

PRT–725687

Applicant: Ferdinand Ferco Hantig, Las Vegas, NV.

The applicant requests a permit to import one captive born male tiger (*Panthera tigris*) which was purchased from the Bellewaerde Park, Belgium. The applicant will display the tiger in a manner designed to educate the public with regard to the species' ecological role and conservation needs. The applicant anticipates future exports and reimports of this tiger for exhibition purposes.

PRT–725772

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import three male and three female captive hatched Fiji banded iguanas (*Brachylophus fasciatus*) from Mrs. Ivy Watkins, Orchid Island, Suva, Fiji Islands, for the purpose of introducing new bloodlines to their existing group.

PRT–725729

Applicant: Thomas William Cianciola, Glendale, WI.

The applicant requests a permit to purchase 10–20 captive born adult masked bobwhite quail (*Colinus virginianus ridgwayi*) from three U.S. breeders for the purpose of captive propagation of the species.

PRT–725559

Applicant: Charles Pankow, Gibsonton, FL.

The applicant requests a permit to reexport one female Asian Elephant (*Elephas maximus*) born in the wild to Mike Hackenberger, Bowmanville Zoo, Bowmanville, Ontario, Canada for the purpose of enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: March 14, 1988.

R. K. Robinson,

Chief, U.S. Office of Management Authority.

[FR Doc. 88–5905 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permit Applications

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.* the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

File No. PRT–690715

Applicant Name: U.S. Fish & Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research

Name of Animals: Walrus (*Odobenus rosmarus*)—60

Summary of Activity to be Authorized: The applicant proposes to attach flipper tags, permanently mark by hot branding, attach VHF radio transmitters and attach satellite-linked transmitters to Pacific walruses for purposes of scientific research to aid in the understanding of the population dynamics of the species. The walruses must be immobilized for attachment of the satellite-linked transmitters. The immobilization drugs to be tested are telezol and demerol/seritol. The immobilization drugs and techniques will be tested on walruses on a terrestrial haul-out prior to their use on females on pack ice. Tagged specimens will be monitored and, if the radio-tags or satellite transmitters malfunction, will be recaptured for refitting with another package. Biological samples will be salvaged from walruses found dead and from walruses that die as a result of the activities carried out under the proposed permit. Further biological samples will be imported for comparison with material from walruses from Alaskan waters.

Source of Marine Mammals for Research: Take on west coast of Alaska and the Bering and Chukchi seas. Import biological samples from Greenland, Canada, Norway and the Soviet Union.

Period of Activity: April 1, 1988 through December 31, 1990.

File No. PRT–723414

Applicant Name: J.H. Walker, Director, British Columbia Ministry of Environment and Parks, Parliament Buildings Wildlife Branch, Victoria, B.C. V8V 1X5, Canada.

Type of Permit: Scientific Research

Name of Animals: Up to 40 Northern sea otters *Enhydra lutris lutris.*

Summary of Activity to be Authorized: The applicant proposes to take up to 40 northern sea otters for the purpose of reestablishing a sea otter colony in the Queen Charlotte Islands, British Columbia, Canada.

Source of Marine Mammals for Research: Prince William Sound, Alaska

Period of Activity: February 15, 1989 to November 15, 1989.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to

the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: March 14, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–5906 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc., Unit Operator of the Green Canyon Block 184 Federal Unit Agreement No. 14–08–0001–20257, has submitted a DOCD describing the activities it proposes to conduct on the Green Canyon Block 184 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on March 7, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region; Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2659.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 9, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–5787 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation, Unit Operator of the Vermilion Block 164 Federal Unit Agreement No. 14–08–0001–7800, has submitted a DOCD describing the activities it proposes to conduct on the Vermilion Block 164 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 7, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 9, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–5786 Filed 3–16–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-273]

Certain Cellular Mobile Telephones and Subassemblies and Component Parts Thereof; Commission Decision Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of investigation on the basis of a consent order; issuance of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of a consent order.

Termination of the investigation on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1092.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the presiding ALJ issued an ID terminating the investigation. The ID granted the joint motion of complainant Motorola, Inc. and all respondents to terminate the investigation on the basis of a consent order, consent order agreement and settlement agreement. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 9, 1988.

[FR Doc. 88-5774 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Nonreview of Initial Advisory Opinion

AGENCY: International Trade Commission.

ACTION: Notice of nonreview of initial advisory opinion.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial advisory opinion issued by the presiding administrative law judge (ALJ) finding that a certain miniature hacksaw sought to be imported by Disston Company, Inc. does not infringe claims 1-9 of U.S. Letters Patent 3,756,298. The miniature hacksaw is therefore not covered by the exclusion order and the cease and desist orders issued by the Commission in January 1987 at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, telephone 202-252-1096. Hearing impaired invididuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: At the conclusion of the above-captioned investigation, the Commission issued an order excluding from entry into the United States certain minature hacksaws that infringed U.S. Letters Patent 3,756,298 (the '298 patent) and a cease and desist order directed to respondent Disston Inc. (Disston). Later, at the request of Disston, the Commission instituted advisory opinion proceedings to determine whether a hacksaw sought to be imported by Disston is covered by the previously-issued exclusion order and cease and desist order. The Commission has completed the advisory opinion proceedings and determined not to review the presiding ALJ's initial advisory opinion that Disston's miniature hacksaw does not infringe claims 1-9 of the '298 patent.

The Commission's action was taken pursuant to 19 U.S.C. 1337 and 19 CFR 211.54(b).

Copies of the initial advisory opinion and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of Commission.

Issued: March 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-5775 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Certain Minoxidil Power, Salts and Compositions for Use in Hair Treatment; Commission Order Remanding to the Presiding Administrative Law Judge an Initial Determination Terminating Respondent ACIC Canada, Inc., on the Basis of a Proposed Consent Order

On November 27, 1987, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 35) granting a joint motion (Motion No., 267-30) of complainant The Upjohn Company (Upjohn) and respondent ACIC Canada, Inc. (ACIC), to terminate this investigation as to ACIC on the basis of a proposed consent order. The Commission investigative attorney (IA) filed a public interest statement in support of the motion.

The ID was served on November 27, 1987, and notice of is receipt by the Commission was published in the **Federal Register** on December 3, 1987. 52 FR 46009. On December 29, 1987, the Commission decided to review that ID as to the appropriateness of the certification requirements in paragraph 1 of the proposed consent order. 53 FR 292 (Jan. 6, 1988). Written submissions were received from Upjohn, the IA, former respondent S.S.T. Corporation, and the U.S. Customs Service.

The proposed consent order would permit ACIC to export minoxidil to the United States only if the import documents included a certification that the minoxidil was for specified uses. The purpose of the certification seems to be to permit entry of ACIC minoxidil for the specified uses should an exclusion order be issued in this case. However, the Customs Service is correct in objecting to the proposed certification provisions on the ground that it is unnecessary, since the Commission, not Customs, will enforce the consent order. Further, Customs "considers the presentation of unnecesary documentation at the time of entry as administratively burdensome and directly contrary to Customs' pressent mission to reduce the amount of paperwork required for the entry of merchandise."

A simple undertaking by ACIC should be sufficient in the consent order. Certification is more properly addressed in the context of issuing any exclusion order in this case.

In view of the foregoing, *it is hereby ordered:*

The subject ID (Order No. 35) is remanded to the presiding ALJ for further proceedings consistent with this order.

Kenneth R. Mason,

Secretary (For the Commission).

Date: March 9, 1988.

[FR Doc. 88-5772 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision To Remand to the Presiding Administrative Law Judge an Initial Determination Terminating one Respondent on the Basis of a Consent Order

AGENCY: International Trade Commission.

ACTION: Remand to the presiding administrative law judge (ALJ) of initial determination terminating respondent ACIC Canada, Inc. on the basis of a proposed consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand to the presiding ALJ an initial determination (ID) (Order No. 35) issued by the ALJ terminating respondent ACIC Canada, Inc. in the above-captioned investigation on the basis of a proposed consent order.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1092.

SUPPLEMENTARY INFORMATION: On November 27, 1987, the presiding ALJ issued an ID terminating the investigation with respect to ACIC Canada, Inc. The ID granted the joint motion of complainant The Upjohn Company and ACIC Canada, Inc. to terminate the investigation with respect to ACIC on the basis of a proposed consent order and settlement agreement. Subsequently, the Commission determined to review the ID with respect to the question of the appropriateness of requiring certifications in consent orders, such as that set out in paragraph 1 of the proposed consent order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.56.

Copies of the Commission's Order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 9, 1988.

[FR Doc. 88-5773 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision Not To Review Initial Determination Finding Three Respondents in Default

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination finding three respondents in default.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) finding three respondents in default pursuant to Commission rule 210.25.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1092.

SUPPLEMENTARY INFORMATION: On February 2, 1988, the presiding ALJ ordered respondents Chem Tri State, Inc., Life Essentials, and Ocean Chemicals to show cause why they should not be found in default. No responses were received. Consequently, the ALJ issued the subject ID (Order No. 51) finding these respondents in default under Commission rule 210.25. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 9, 1988.

[FR Doc. 88-5776 Filed 3-16-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31209]

The Indiana Rail Road Co. Exemption; Trackage Rights; Illinois Central Gulf Railroad Co.

Illinois Central Gulf Railroad Company has agreed to grant local trackage rights to The Indiana Rail Road Company between milepost 109 and Milepost 114, in Sullivan County, IN, to provide rail service to a single rail user. The trackage rights are to become effective on March 8, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5463 Filed 3-16-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Amended Consent Decree Under Clean Air Act to Enjoin Discharge of Air Pollutants, Boise Cascade Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an amended consent decree in *United States v. Boise Cascade Corporation*, Civil Action No. 1244, was lodged with the United States District Court for the Northern District of New York on February 29, 1988. The amended consent decree establishes a compliance program for Boise Cascade Corporation in Beaver Falls, New York, to bring the facility into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* and New York State SIP opacity and particulate emission regulations, 6 NYCRR §§ 227.3 and 227.4 relating to the discharge of air pollutants.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the amended consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of justice, Washington, DC 20530 and should refer to *United States v. Boise Cascade Corporation*, D.J. Ref. No. 90-5-2-1-486A.

The amended consent decree may be examined at the office of the United States Attorney, District of New Jersey, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the amended consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check for $1.50 ($.10 per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5792 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Order Pursuant to Clean Water Act; Baton Rouge, LA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of Baton Rouge and State of Louisiana,* Civil Action No. 88-191A, was lodged with the United States District Court for the Middle District of Louisiana on March 3, 1988. The proposed Consent Decree concerns the control and prevention of illegal discharges of pollutants into the Mississippi River by the City of Baton Rouge, Louisiana from its three wastewater treatment plants known as the North Plant, the Central Plant and the South Plant.

The decree provides that the City of Baton Rouge shall pay a civil penalty of $750,000.00 to settle the United States' claims of violations of its National Pollutant Discharge Elimination System ("NPDES") permits in violation of Section 309 of the Clean Water Act, 33 U.S.C. 1319. The decree further provides that the City of Baton Rouge shall construct at each plant facilities enabling each plant to comply with the requirements of its NPDES permit and the Clean Water Act and to ensure against future illegal discharges of pollutants into the river.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. The City of Baton Rouge,* and D.J. reference # 90-5-1-1-2769.

The proposed Consent Decree may be examined at the office of the United States Attorney, Second Floor, 352 Florida Street, Baton Rouge, Louisiana 70801, at the Region VI office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1716, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00, payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88-5788 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

Addendum to Partial Consent Decree Under Clean Water Act to Enjoin Discharge of Water Pollutants; East Rutherford, NJ, et al.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that an addendum to the partial consent decree in *United States v. Joint Meeting—Rutherford, East Rutherford; Carlstadt; Borough of Rutherford, New Jersey; Borough of East Rutherford, New Jersey; Borough of Carlstadt, New Jersey, State of New Jersey,* Civil Action No. 84-2744(SA), was lodged with the United States District Court for the District of New Jersey on December 30, 1987. The addendum to the partial consent decree establishes a compliance program for the Rutherford, Bergen County, New Jersey sewage treatment facility owned and operated by defendants, Joint Meeting—Rutherford and the Boroughs of Rutherford, East Rutherford, and Carlstadt, to bring the facility into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its National Pollutant Discharge Elimination System ("NPDES") permit, relating to the discharge of pollutants into navigable waters of the United States.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the addendum to the partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Joint Meeting—Rutherford, East Rutherford, Carlstadt, et al.,* D.J. Ref. No. 90-5-2-1-2152.

The addendum to the partial consent decree may be examined at the office of the United States Attorney, District of New Jersey, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the addendum to the partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a certified check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5796 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; General Motors Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States v. General Motors Corporation, et al.,* Civil Action No. 87-464-CMW, was lodged with the United States District Court for the District of Delaware March 9, 1988. The Consent Decree concerns cost recovery in regard to the Harvey & Knotts hazardous waste site located in New Castle County, Delaware. The complaint in this action alleged that certain parties, including Harvey & Harvey, Inc., contributed to the contamination of the site. The Consent Decree provides that Harvey & Harvey, Inc. will reimburse the United States an amount up to $350,000, plus interest, over a ten year period for past and future response costs incurred by the federal government in relation to the site.

Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States v. General Motors Corporation, et al.,* D.J. Ref. No. 90-11-2-34A.

The Consent Decree may be examined at the Office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Room 5110, Wilmington, Delaware 19801; at the Region III office to the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; and the Environmental Enforcement Section, Land and Natural Resources Division,

Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclose a certified check payable to "Treasurer, United States of America" for $1.80 (10 cents per page) to cover the costs of copying.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5813 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Harrison, AR, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 16, 1988, a proposed consent decree in *United States v. City of Harrison, Arkansas and The State of Arkansas,* Civil Action No. 88-3007, was lodged with the United States District Court for the Western District of Arkansas. This consent decree settled a lawsuit filed February 16, 1988, pursuant to Section 309 of the Clean Water Act, (the "Act"), 33. U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the City of Harrison, Arkansas (the "City"). The complaint alleged, among other things, that a municipal wastewater treatment plant owned and operated by the City was discharging pollutants into navigable waters in excess of the limits set forth in the City's National Pollutant Discharge Elimination System ("NPDES") permit. The complaint alleged that these unauthorized discharges constituted violations of section 301 of the Act, 33 U.S.C. 1311.

Under the terms of the proposed consent decree, the City will make improvements to its wastewater treatment plant that will allow it to attain and maintain compliance with all the terms and conditions of its NPDES permit. The decree requires the City to complete all construction by March 9, 1989, and to attain and maintain compliance with all terms and conditions of its NPDES permit by April 1, 1989. The decree includes interim effluent limits that are to remain in effect from the date the decrce is entered until April 1, 1989, at which time the City shall comply with the final effluent limits of its NPDES permit. The proposed decree also calls for stipulated penalties against the City for failure to meet any of the deadlines set by the decree or failure to meet any of the effluent limitations set by the decree. In addition, the proposed consent decree requires the City to pay a civil penalty of $20,000 with respect to the violations of the Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. All comments should refer to *United States v. City of Harrison, Arkansas, and The State of Arkansas,* D.J. Ref. 90-5-1-1-2947.

The consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Quinton Farley, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (211) 767-2129

United States Attorney's Office

Contact: Willaim M. Cromwell, Assistant United States Attorney, Western District of Arkansas, P.O. Box 1524, Fort Smith, Arkansas 72902, (501) 783-5125

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room l250, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044-7611. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed decree, please enclose a check for copying costs in the amount of $1.20 payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5794 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Jersey City, NJ

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 23, 1988, a proposed consent decree in *United States of America v. City of Jersey City* (consolidated with *United States of America v. City of Hoboken, et al.,* Civ. No. 79-2030) was lodged with the United States District Court for the District of New Jersey. The proposed consent decree settles the United States' claims under the Clean Water Act against the City of Jersey City, New Jersey, the Jersey City Sewerage Authority ("JCSA"), the City of Union City, and the Hudson County Utilities Authority relating to discharges from two Jersey City sewage treatment plants without providing secondary level treatment, in violation of applicable permit requirements. The decree also settles similar claims of the Interstate Sanitation Commission against the same defendants.

The proposed consent decree requires Jersey City and JCSA to complete work currently underway to connect their sewerage system to the secondary wastewater treatment facility operated by the Passaic Valley Sewerage Commissioners in Newark, New Jersey, and to divert all sewage flows in their system to that facility by December 31, 1988. The decree also requires (1) payment of $500,000 to the United States in settlement of its civil penalty claims, (2) compliance with interim effluent limitations until the diversion is completed, and (3) various operating improvements and repairs to the existing Jersey City treatment plants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Jersey City,* D.J. Ref. 90-5-1-1-2460.

The proposed consent decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.80 (10 cents per page

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reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–5780 Filed 3–16–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; the Pillsbury Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 11, 1988, a proposed Consent Decree in *United States v. The Pillsbury Company*, Civil No. 88–18–W was lodged with the United States District Court for the Southern District of Iowa. The proposed Consent Decree concerns a complaint filed under Section 110 of the Clean Air Act, 42 U.S.C. 7410, that alleged violations of the Iowa State Implementation Plan ("SIP") for control of fugitive dust at Pillsbury's Red Oak, Iowa facility. The Consent Decree requires defendant to implement specific measures to reduce fugitive dust emissions including enclosing the shed at the truck dumping location and covering the open hatches in the rail cars at the rail loading location. The defendant is also required to pay a civil penalty of $14,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. The Pillsbury Company*, DOJ Ref. No. 90–5–2–1–878.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, E. First and Walnut Street, Des Moines, Iowa, 50309, and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–5781 Filed 3–16–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Schlage Lock Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 4, 1988, a proposed consent decree in *United States v. Schlage Lock Company*, Civil Action No. 87–K–1078, was lodged with the United States District Court for the District of Colorado. The proposed consent decree resolves a judicial enforcement action brought by the United States against Schlage Lock Company ("Schlage") for violations of the Clean Water Act.

The proposed consent decree requires Schlage to demonstrate and maintain compliance with the general pretreatment regulations in 40 CFR Part 403 and the metal finishing pretreatment regulations in 40 CFR Part 433. Schlage is required to monitor and sample its effluent discharges and to submit monthly reports of those samples to the United States Environmental Protection Agency ("EPA"). Schlage is also required to submit quarterly reports to EPA on the status of a proposed new treatment facility. The consent decree provides for stipulated penalties in the event Schlage violates any of the monitoring or reporting requirements or the discharge limitations in 40 CFR Part 433. Finally, the consent decree requires Schlage to pay a civil penalty of $120,000 within 30 days of the entry of the decree by the Court.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Schlage Lock Company, D.J. Ref. 90–5–1–1–2892*.

The proposed consent decree may be examined at the office of the United States Attorney, Federal Building, Suite 1200, 1961 Stout Street, Denver, Colorado 80294, and at the Region VIII office of the United States Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–5784 Filed 3–16–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Settlement Stipulation; Smith International, Inc., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on February 29, 1988, a proposed Stipulation and Agreement to Settle in *In re: Smith International, Inc., et al.*, was lodged with the United States District Court for the Central District of California. The settlement is in connection with a proof of claim filed by the Department of Justice on behalf of the Environmental Protection Agency ("EPA") in Smith International's Chapter 11 bankruptcy reorganization proceedings.

The United States filed a proof of claim in Smith's bankruptcy on March 31, 1987, regarding costs incurred by EPA under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, at the Operating Industries, Inc. landfill ("OII") in Monterey Park, California. The proof of claim stated that EPA had incurred costs of $8 million at the OII site at the time the proof of claim was filed. The United States claim against Smith at the OII site is based on evidence that Smith sent hazardous substances for disposal to the site.

The settlement provides that Smith will pay $100,350 of EPA's past costs at the OII site, which represents 1% of EPA's $10.035 million in past costs incurred at the site up to the time of the settlement agreement. Smith will also pay 0.65% of EPA's future costs at the OII site, up to a maximum payment of $5 million. EPA also reserves the right to seek 0.65% of costs incurred if it is shown after completion of the remedy that the remedy is not protective of human health and the environment and further work is needed at the site, regardless of whether the $5 million cap has been reached. Smith reserves the

right to challenge EPA's costs on the basis that the costs incurred were inconsistent with the National Contingency Plan. The settlement with Smith does not affect or discharge the liability of any other party at the OII site.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: Smith International, Inc.*, D.J. Ref. 90–11–3–210.

The proposed settlement stipulation may be examined at the office of the United States Attorney, 312 North Spring Street, Los Angeles, California 90012 and at the Region IX office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed settlement stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement stipulation may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the settlement stipulation should be accompanied by a check in the amount of $1.80 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–5785 Filed 3–16–88; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Missing Children's Assistance Act Proposed Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of proposed FY 1988 program priorities under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for comment a Notice of FY 1988 proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974.

DATE: Comments are due on or before May 13, 1988.

ADDRESS: Send comments to Verne L. Speirs, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724–7751.

FOR FURTHER INFORMATION CONTACT: Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724–7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. The proposed funding priorities were established, as required by the Missing Children's Assistance Act, in consultation with the Missing Children's Advisory Board appointed by the Attorney General. The Administrator is hereby announcing these proposed priorities and inviting public comment on them for sixty days.

The new proposed priorities are as follows:

1. *Model Community Program:* The purpose of this program is to design and implement a community organization and planning strategy to guide comprehensive program development focused on missing and exploited children. The program would promote specific programmatic and procedural prototypes to serve this youth population, and suggest organizational, planning and program development strategies to coordinate and concentrate the resources of the juvenile service system to address the issue of the missing and exploited youth, with emphasis on the family and mobilizing volunteers.

2. *Parent/Family Abductions:* This program would address the complex legal issues of child abductions by parents and family members. The strengths and weaknesses in current public and private sector approaches to the problem would be identified. Emphasis would be placed on providing instructional assistance on legal and jurisdictional difficulties in dealing with the problem.

3. *Assistance to Private Voluntary Organizations:* The grants are intended to expand the capacity of private voluntary organizations serving missing and exploited children.

Listed below are programs under section 406 of the Missing Children's Assistance Act that are continuation programs for FY 1988.

National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth

This study describes current law enforcement policies and practices and identifies the most effective law enforcement methods for handling reports and investigating, identifying, and recovering children who may be missing or homeless and at risk of exploitation. It also provides better estimates of the number of cases of missing children reported to law enforcement agencies annually.

The Child Victim as Witness Research and Development Program

This study designs, implements, and tests new strategies to be used to improve court policies and practices for handling child victim witnesses.

Research on the Psychological Consequences of Abduction and Sexual Exploitation

The purpose of this research is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences of families with missing and exploited children.

Assistance to State Clearinghouses for Missing and Exploited Children

This program, administered by the National Center for Missing and Exploited Children, solicits applications from states to assist in the development, coordination and exchange of uniform data with regard to missing children.

Listed below are programs under section 404 of the Missing Children's Assistance Act which have been funded with FY 1987 funds and which are continuing funding priorities for FY 1988.

The National Center for Missing and Exploited Children

The National Center for Missing and Exploited Children will continue to (1) operate a national toll-free telephone line by which individuals may report information regarding the location of missing children; (2) provide technical

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assistance in the location and recovery of missing children, and in the prevention, investigation, prosecution and treatment of missing and exploited child cases; (3) coordinate public and private programs which locate, recover, or reunite missing children with their legal custodian; and (4) disseminate information about innovative and model missing children's programs, services and legislation. (Section 404(a)(3) 404(b)(1))

National Incidence Study

This study will continue the development process for obtaining reliable estimates of the number of missing children, profiles of missing children, and the circumstances surrounding the events. (Section 404(b)(3))

Dated: March 11, 1988.

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-5821 Filed 3-16-88; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workes are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 28, 1988.

The petitons filed in this case area available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 7th day of March 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
Anchor Hocking Industrial Glass Co. (Workers)	Bremen, OH	3/7/88	2/12/88	20,498	Glassware.
B.F. Goodrich (Workers)	Akron, OH	3/7/88	2/15/88	20,499	Aircraft Tires.
Cooper Industries/Electrical Distribution Products (Workers)	Earlysville, VA	3/7/88	2/25/88	20,500	Electrical Breakers.
Control Data Corp., Magnetic Peripherals, Inc. (Workers)	Minnetonka, MN	3/7/88	2/16/88	20,501	Disc Drives.
Elliott Co. (Workers)	Scranton, PA	3/7/88	2/29/88	20,502	Turbines, Compressors and Parts.
General Electric Co. Austintown Products Div. (IUE)	Austintown, OH	3/7/88	2/19/88	20,503	Filaments.
General Motors, BOC Flint (UAW)	Flint, MI	3/7/88	2/22/88	20,504	Auto Assembly, Transmission Components.
General Motors BOC Flint Assembly (UAW)	Flint, MI	3/7/88	2/22/88	20,505	Auto Assembly.
General Motors, Central Foundry-Gray/Nodular Iron (UAW)	Saginaw, MI	3/7/88	2/22/88	20,506	Engine Components.
General Motors, CPC Framingham (UAW)	Framingham, MA	3/7/88	2/22/88	20,507	Auto Assembly.
General Motors, Hydramatic—Willow Run ((UAW)	Ypsilanti, MI	3/7/88	2/22/88	20,508	Automatic Transmission.
General Motors, Hydramatic—Three Rivers (UAW)	Three Rivers, MI	3/7/88	2/22/88	20,509	Automatic Transmission.
General Motors, New Departure Hyatt (UAW)	Sandusky, OH	3/7/88	2/22/88	20,510	Automotive Bearings Products.
Fun Footwear Co. (Workers)	West Hazleton, PA	3/7/88	2/22/88	20,511	Plastic Footwear.
H.J. Jeffries Truck Line, Inc. (Workers)	Lone Star, TX	3/7/88	2/22/88	20,512	Transport Service.
Maidenform (ILGWU)	Edison, NJ	3/7/88	2/22/88	20,513	Ladies Intimate Apparel.
Mont-Hard (Workers)	New Braunfels, TX	3/7/88	2/22/88	20,514	Industrial Door Hinges.
DNE Corp. (UAW)	Brentwood, TN	3/7/88	2/22/88	20,515	Transmissions for GM Corvettes.
Paralled Petroleum Corp. (Workers)	Midland, TX	3/7/88	2/18/88	20,516	Crude Oil and Natural Gas.
Sabine Oil Corp. (Workers)	Lee County, KY	3/7/88	2/26/88	20,517	Crude Oil.
Southwestern Portland Cement Co. (Workers)	Amarillo, TX	3/7/88	2/25/88	20,518	Cement.

[FR Doc. 88-5903 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,314]

Mast Industries, Inc., Andover, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Mast Industries, Incorporated, Andover, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20.314; Mast Industries, Incorporated, Andover, Massachusetts (March 4, 1988.)

Signed at Washington, DC this 4th day of March 1988.

Marvin M. Fooks,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-5899 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 29, 1988—March 4, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,374; RTE Corporation, Distribution Transformers Div., Waukesha, WI

TA-W-20,384; MRM Industries, Inc., Meriden, CT

TA-W-20,366; Hussmann/Bastian-Blessing Grand Haven, MI

TA-W-20,368; Brentwood Furniture, Haverhill, MA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,367; Enka Company, Dubuque, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,363; American Trading & Production Corp., Oil & Gas Div., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,378; VW Federal Credit Union, Youngwood, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,458; Jordache Footwear Co., New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,457; Wire Technical, Inc., St. Paul, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,402; Clarksburg Electro-Plating, Inc., Clarksburg, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,441; E.R. Wagner Manufacturing, Hustisford, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,383; Dirigo Lumber Co., Greenville Junction, ME

U.S. imports of softwood lumber decreased in quantity both absolutely and relative to U.S. production 1986 compared with 1985 and in Jan-Sept 1987 compared with the same period one year earlier.

Affirmative Determinations

TA-W-20,357; Kaiser Cement Corp., Longhorn Plant & Quarry, San Antonio, TX

A certification was issued covering all workers of the firm separated on or after December 11, 1986 and before January 11, 1988.

TA-W-20,304; Philadelphia Gear Corp., King of Prussia PA

A certification was issued covering all workers of the firm separated on or after November 15, 1986.

TA-W-20,390; Courtaulds CPD, Inc., Neward, NJ

A certification was issued covering all workers of the firm separated on or after January 5, 1987 and before january 31, 1988.

TA-W-20,375; Rohm & Haas Tennessee, Inc., Knoxville, TN

A certification was issued covering all workers of the firm separated on or after December 12, 21, 1986.

TA-W-20,382; Bogen Communication, Inc., Ramsey, NJ

A certification was issued covering all workers of the firm separated on or after January 4, 1987.

I hereby certify that the aforementioned determinations were issued during the period February 29, 1988—March 4, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 8, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-5900 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on March 29 and 30, 1988 in Room C2318, U.S. Department of Labor, Frances Perkins Building, Third Street and Constitution Ave., NW., Washington, DC. The meeting is open to the public and will start at 9:00 a.m.

Agenda items will include a discussion of possible revisions to OSHA construction standards concerning Steel Erection (Subpart R), Concrete and Masonry (Subpart Q), and Hazard Communication, and discussion of OSHA's Voluntary Protection Program and other items concerning the construction industry. Written data, views or documents may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anybody wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue NW., Washington, DC, 20210 Telephone: 202-523-8615.

The official record of the meeting will be available for public inspection and copying at the OSHA Docket Office.

Room N-3670, Frances Perkins Building, Third Street and Constitution Ave. NW., Washington, DC 20210. Telephone 202-523-7894.

Signed at Washington, DC this 11th day of March, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-5778 Filed 3-16-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-26]

NASA Advisory Council, History Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee (HAC).

Date and Time: March 25, 1988, 9 a.m. to 3 p.m.

ADDRESS: NASA Headquarters, Federal Office Building 10B, Room 525, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code XH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8300).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Arthur Norberg, consists of 6 members.

This meeting will be closed to the public from 2:30 p.m. to 3 p.m. for a discussion of the qualifications of a candidate for membership. Such a discussion would invade the privacy of the candidate and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 20 persons, including Committee members and other participants. Visitors will be requested to sign a visitor's register. It is imperative that the meeting be held on this date to accommodate the schedules of the key participants.

Type of Meeting: Open—except for a closed session, as noted in the agenda below.

Agenda:

March 25, 1988:

9 a.m.—Introductory Remarks

9:15 a.m.—Report on NASA Advisory Council (NAC) Meeting

9:30 a.m.—Report of the Director, NASA History Office

11:30 a.m.—Discussion of Current Program

1 p.m.—Prospects and Issues

2:30 p.m.—Nomination of New Member (HAC). (This portion of meeting will be closed.)

3 p.m.—Adjourn.

March 11, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-5815 Filed 3-16-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Guidelines and Submission Requirements for the Installation of Microwave Antennas on Federal Property in the National Capital Region

AGENCY: National Capital Planning Commission.

ACTION: Final Guidelines and Submission Requirements.

SUMMARY: On November 18, 1987, the National Capital Planning Commission (NCPC) published Proposed Guidelines and Submission Requirements for the Installation of Satellite Antennas on Federal Property in the National Capital Region (52 FR 44237); No comments were received as the direct result of the publication of these draft Guidelines in the **Federal Register**. However, following the elapse of the 30-day comment period, the NCPC did receive communications from the CIA and the Department of the Navy. The views expressed by these parties were considered by the NCPC in the preparation of the finalized Guidelines. The NCPC reviewed the draft Guidelines at its January 7, 1988 meeting and made the following changes:

1. Substituted the word "microwave" for "satellite" wherever it appeared in the Guidelines. This change was made to eliminate any confusion regarding the NCPC's intent to review both satellite and terrestrial microwave antenna installations.

2. Added language regarding the multiple use of antennas by adjacent Federal facilities to minimize the impact of multiple antennas.

3. Added language to indicate that any existing antenna that is moved or relocated must comply with the submission requirements of the Guidelines.

The Guidelines, with the above modifications, were adopted by the NCPC on January 7, 1988.

DATE: March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Martin J. Rody, Director, Planning Services Division, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576 or by telephone at 202/724-0179.

Reginald W. Griffith,

Executive Director.

The National Capital Planning Commission finds that certain microwave antennas may adversely impact the aesthetics of the National Capital Region and the health and welfare of its population. Therefore, in order to minimize the visual impacts of microwave antennas on the skyline of the Nation's Capital and on the general appearance of Federal facilities and to protect the public from any potential adverse radio frequency bio-effect impacts from transmitting microwave antennas, the National Capital Planning Commission is providing the following Guidelines and Submission Requirements to be used by Federal agencies in the National Capital Region in the preparation and submission of plans for antenna installations. (The National Capital Region includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia; and the District of Columbia).

(a) Prior to the installation of any microwave antenna on Federal property in the National Capital Region, Federal agencies shall submit (pursuant to section 5 of the National Capital Planning Act of 1952, as amended; section 5-432, D.C. Code, in the District of Columbia; and as appropriate, Section 4 of the International Center Act of 1968, as amended) all such installation proposals to the National Capital Planning Commission for review and comment. Approval by the NCPC of such installations will be limited to five years. This time period may be increased to 10 years at the NCPC's discretion on sites outside the

Monumental Core [1] and surrounding lands and designated Historic Districts.

(1) Specific Submission Requirements:

(i) A statement of need—justifying the size of the antenna and other appropriate data regarding the particular installation consistent with security limitations.

(ii) Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the antenna(s).

(iii) Construction drawings showing the proposed method of installation.

(iv) Description of the texture and color of materials to be used.

(v) Screening plan—including proposed materials, color and texture for rooftop installations. For ground-level installations also include the number, species, and size of trees or shrubs to be used as a screen.

(vi) Site line studies illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets and public open spaces. These studies should include all alternatives considered.

(vii) A review of alternatives considered to meet the telecommunications needs of the agency.

(2) General Criteria Applying to Antenna Installations:

(i) No rooftop microwave antenna in the National Capital Region should exceed the height of the roof of any permitted penthouses on Federal buildings.

(ii) Materials used in the construction of antennas and their mountings should not be bright, shiny, or reflective and should be of a color that blends with the surrounding building materials.

(iii) Any masts or towers should be non-combustible, corrosion resistant, and protected against electrolytic action.

(iv) All antennas should be adequately grounded to protect against a direct lightning strike.

(b) Federal agencies may request an extension of the approval prior to expiration of the original approval. The request should be accompanied by a certification that:

(1) The original installation is structurally sound and continues to meet all the submission requirements;

(2) Clearly establishes the continued need for the installation; and

(3) Technological advances have not offered any alternatives that permit the elimination of the antenna or reduction in its size to minimize the visual impacts.

Any antenna installation which does not receive re-certification by the NCPC should be dismantled and removed as soon as possible after the expiration of the NCPC's approval period.

(c) To the extent possible, Federal agencies should anticipate the need for antennas on all new buildings and design such buildings in such a fashion as to screen the needed antennas in a manner appropriate to the design of each building.

(d) Rooftop antennas on existing Federal buildings or ground level installations in the National Capital Region should be designed and installed in a manner that minimizes or eliminates their visual impacts on adjacent properties or public rights-of-way. Where appropriate to the character of a building, retro-fitting to screen antennas not accommodated in original building designs and plans should be considered. Various architectural solutions are possible for retro-fitting buildings to screen antennas installations. The architectural style, orientation, available rooftop space, and structural character of a building, as well as the heights of neighboring buildings, are all important considerations in the retro-fit option selected. A variety of materials, including plastic, fiberglass, and glass can be used to screen or obscure antennas. Any materials that do not block the passage of the radio frequency signals are suitable as a screen.

(e) Reasonable precautions are necessary in locating and operating transmitting microwave antennas, because of potential adverse radio frequency bio-effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site specifc basis. All submissions to the NCPC for a transmitting microwave antenna should be accompanied by an environmental assessment. The environmental assessment shall include, among other considerations, an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts/centimeter squared and the safeguards proposed to protect the public from any potential adverse bio-effects. A manufacturers certification as to electromagnetic radiation at the above distances and a statement that the proposed antenna meets all American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) current radio frequency emission standards should be made part of the environmental assessment. The NCPC will continue to seek state-of-the-art information on health and human safety issues and shall apply that information and resulting awareness of issues in reviewing and approving antenna installations.

(f) All agencies responsible for antenna installations existing at the time of the adoption of these guidelines are required to apply for approval of all such installations within five years after the adoption of these Guidelines and Submission Requirements.

(g) These guidelines are general in nature and convey the spirit of the concerns regarding potential adverse visual and/or bio-effect impacts to be mitigated. Each installation is a special case and the appropriateness of the solutions selected to reduce the visual impacts will, in a large measure, be determined by the particular location or locations chosen for the installation and the architectural character of the building. These guidelines provide general criteria to be applied on a case-by-case basis. It is the intent of these Guidelines to apply to any existing microwave antenna(s) which are moved or relocated to another location on the Federal facility and to encourage the joint use of microwave antennas wherever possible.

(h) The NCPC will, in its review of proposals for microwave antenna installations, be particularly concerned with the agency's statement of need, justification of antenna size, and measures employed to minimize the visual impacts of the proposed installation. The NCPC will continue to review all microwave and terrestrial microwave antenna proposals, on a case-by-case basis, as a modification to previously approved site and building plans.

[FR Doc. 88-5841 Filed 3-16-88; 8:45 am]

BILLING CODE 7520-02-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

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[1] The Monumental Core as defined in the Federal Facilities element of the "Comprehensive Plan for the National Capital."

Title: Research Opportunities for Women (telephone survey).

Affected Public: Individuals.

Response/Burden Hours: 600 responses; 300 burden hours.

Abstract: Survey will gather views of several groups (e.g., ROW Awardees, declinees, "Mainstream: award winners and declinees) to assess initial impacts of Research Opportunities for Women program and investigate several questions related to program's importance to the targeted group, its development, and its management.

Dated: March 11, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-5860 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

The National Science Foundation announced the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: April 6-8, 1988—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part Open.

Open 04/06, 9:00 a.m. to 12:00 noon.

Closed 04/06, 1:00 p.m. to 5:00 p.m. and 04/07 & 04/08, 8:30 a.m. to 5:00 p.m.

Contact Person: Dr. Patrick J. Webber, Program Director, Ecology (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards. Open: 04/06/88, 9:00 a.m. to 12:00 noon. Discussion to include long-range planning in ecology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5861 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies

Dates and Times:

April 7, 1988—9:00 a.m.–5:00 p.m.

April 8, 1988—8:30 a.m.–5:00 p.m.

Place: Carnegie Mellon University, Information Technology Center Conf. Room, University Computing Center, 4910 Forbes Avenue, Pittsburgh, PA 15213

Type of Meeting:

Open

April 7, 1988—9:00 a.m.–5:00 p.m.

April 8, 1988—9:30 a.m.–5:00 p.m.

Closed

April 8, 1988—8:30 a.m.–9:30 a.m.

Contact Person: Mr. Donald R. Mitchell, National Science Foundation, Phone: 202/357-9717

Summary of Minutes: May be obtained from Donald R. Mitchell

Purpose of Meeting: To review progress and provide advice and recommendations concerning NSF support and oversight of EXPRES and related technologies

Agenda: The open session will be focused on the progress to date and planned future milestones of the EXPRES program. The closed session will discuss pending funding actions.

Reason for Closing: The pending funding actions being discussed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the projects. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), the Government in Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5862 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Integrative Neural Systems Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Integrative Neural Systems Program

Date and Time:

April 6 and 7 1988; 9:00 a.m.–5:00 p.m.

April 8, 1988; 9:00 a.m.–12:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Room 543.

Type of Meeting: Part Open—

Closed 04/06—9:00 a.m. to 5:00 p.m.

Closed 04/07—9:00 a.m. to 5:00 p.m.

Open 04/08—9:00 a.m. to 11:00 a.m.

Closed 04/08—11:00 a.m. to 12:00 Noon

Contact Person: Dr. Nathaniel G. Pitts, Program Director, Integrative Neural Systems Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7040.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in integrative neural systems.

Agenda:

Open—General discussion of the current status and future plans of the Integrative Neural Systems Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5863 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Plant Science Centers; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Plant Science Centers.

Date and Time: April 9 and 10, 1988—8:30 a.m. to 5:00 p.m. each day.

Place: Rooms 540, 543, 540B and 523, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert Rabin, Senior Advisor for Biotechnology, Directorate for Biological, Behavioral and Social Sciences, (202) 357-9894, Room 212, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for the establishment of Plant Science Centers and the research to be conducted in each.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5864 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Collections

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Collections

Date: April 8, 1988, 8:30 a.m.–4:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 523, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Nancy Parezo, Associate Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for preservation of Systematic Anthropological Collections.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5865 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

United States Antarctic Program Safety Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: United States Antarctic Program (USAP) Safety Review Panel

Date: April 4 and 5, 1988

Time:

10:00 a.m. to 5:00 p.m. on April 4

9:00 a.m. to 5:00 p.m. on April 5

Place: Omni Georgetown Hotel (Smithsonian Room), 2121 P St., NW; Washington, DC

Type of Meeting: Open

Contact Person: Mr. Russell L. Schweickart, Chairman, USAP Safety Review Panel, Room H-217, National Science Foundation, Washington, DC 20550, Telephone (202) 634-4892

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Review safety issues as they relate to the U.S. presence in Antarctica.

Agenda: Review of Panel's recent trips to Antarctica and discussion of Panel's report on safety issues.

Special Note: The above meeting replaces the scheduled meeting of March 10 & 11, 1988, which had to be cancelled at the last moment due to the illness of the Chairman.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-5866 Filed 3-16-88; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force followed by a public hearing on April 7, 1988, followed by a meeting of the Task Force on April 8, 1988.

Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology

Date: April 7, 1988

Time: 9:30 a.m. to 5:00 p.m.

Place: Radcliffe College, Cronkhite Graduate Center, 6 Ash Street, Cambridge, MA 02138

Purpose:

The Task Force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education and social aspects.

Testimony will be heard in three ways: (1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; (2) summary statements from the floor of three-minute duration accompanied by any longer written statements or materials for the record; and (3) written testimony submitted to the Task Force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology, 330 C Street, SW., Washington, DC 20201.

The public hearing will be followed by a discussion of the testimony by the Task Force members April 8, 1988.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology

Date: April 8, 1988

Time: 9:00 a.m. to 12:00 noon

Place: Radcliffe College, Cronkhite Graduate Center, 6 Ash Street, Cambridge, MA 02138

Type of Meeting: Open

Purpose: The purpose of the Task Force on Women, Minorities and the Handicapped is to:

—Examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally-assisted research programs;

—Coordinate existing federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers:

—Suggest cooperative interagency programs for promoting such employment;

—Identify exemplary programs in the state, local or private sectors; and

—Develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education and Social Aspects, as well as other business of the Task Force.

All meetings and public hearings of the Task Force are open to the public and all proceedings will be recorded and will be available at the Task Force offices.

Sue Kamnitzer,

Executive Director, (202) 245–7477.

March 1, 1988.

[FR Doc. 88–5867 Filed 3–16–88; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Anchorage, AK; Aircraft Accident

In connection with its investigation of the accident involving Ryan Air Services, Inc., Flight 103, N401RA, at the Homer Airport, Homer, Alaska, on November 23, 1987, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on April 6, 1988, in the Mid Deck Room of the Discovery Ballroom, at the Hotel Captain Cook, 939 West 5th Avenue, Anchorage, Alaska. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, telephone (202) 382–6605.

Bea Hardesty,

Federal Register Liaison Officer.

March 10, 1988.

[FR Doc. 88–5874 Filed 3–16–88; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN–50–456 and STN 50–457]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses for the Commonwealth Edison Company (CECo, the licensee) for Byron Station, Units 1 and 2, located in Ogle County Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would add two radiation monitors in the Technical Specifications for each station and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system. These monitors have been added to assure that the release limits of 10 CFR Part 20 are not exceeded when fluids are discharged from the condensate cleanup system sump and the turbine building fire and oil sump to the circulating water system.

These revisions to the licenses of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, would be made in response to the licensee's application for amendment dated February 18, 1987, as supplemented November 17, 1987, and clarified January 8, 1988.

The Need for the Proposed Action: Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses NPF–37 and NPF–66 for Byron Station, Units 1 and 2, respectively and Facility Operating Licenses NPF–72 and NPF–75 for Braidwood Station, Units 1 and 2, respectively. The amendments would add two radiation monitors in the Technical Specifications for each station and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system.

One of the proposed radiation monitors would monitor the discharge from the condensate cleanup system sump. The condensate cleanup system was originally intended to be used for system flushing during startup. However, operating experience has indicated the need to run this system during normal operation. Thus, the potential exists for low level radioactivity in the condensate cleanup system sump.

The other proposed radiation monitor would monitor discharge from the turbine building fire and oil sump. The original plant design for turbine building equipment and floor drains was to collect drain effluent into the oil separator, then route the separated water directly to the radwaste treatment system for processing and release via the release tank. Present operating experience has shown that the water volume is higher than originally anticipated, generating a heavy load for the radwaste treatment system for a negligible reduction in activity release. Therefore, the licensee is proposing to drain the separated water to the fire and oil sump.

Environmental Impacts of the Proposed Action: The Commission has evaluated the radiological impact of the proposed amendments and concludes that they meet the acceptance criteria for the process and effluent radiological monitoring instrumentation and sampling systems based on the following regulations and guidance: (1) 10 CFR Part 20, 20.16 as related to radioactivity monitoring of effluents to unrestricted areas; (2) Regulatory Guides 8.8 and 1.21 as related to sampling frequencies, required analyses, instrument alarm/trip setpoints, calibration and sensitivities, gross beta-gama measurements, etc.; (3) 10 CFR Part 50, Appendix 1 as related to the numerical guides for design objectives and limiting conditions for operation to meet the criterion "as low as is reasonably achievable" given in Appendix I; (4) General Design Criterion 60 as related to control releases of radioactive materials to the environment, and (5) Drawings showing how the monitors are located in the effluent release path and describing the actuation logic of the monitors and how the monitors isolate the valves as per NUREG–0472, "Standard Radiological Effluent Specifications for PWR's," Revision 2, February 1980.

The proposed amendments involve a change to a requirement with respect to the installation of use of a facility component located within the restricted area as defined in 10 CFR Part 20. Succinctly, the amendment adds two radiation monitors to the Technical Specifications for each station: one on the condensate cleanup (CP) system sump and the other on the fire and oil sump. Upon detection of unacceptable levels of radioactivity in sump effluent, the monitors are designed to alarm and automatically terminate sump discharge. Monitor setpoints are conservatively selected to ensure that 10 CFR 20.106 limits are not exceeded.

With regard to nonradiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Byron Station, Units 1 and 2" dated April 1982 and in the "Final Environmental Statement related to the operation of Braidwood Station, Units 1 and 2" dated June 1984, regarding radiological environmental impacts from the plants during normal operation or after accident conditions, are not adversely altered by this action.

Alternative to the Proposed Actions: The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements related to these facilities.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's submittals of February 18, 1987, November 17, 1987 and January 8, 1988; and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated February 18, 1987, as supplemented November, 1987, and clarified by letter dated January 8, 1988, and the Final Environmental Statements for Byron, dated April 1982, and Braidwood, dated June 1984; which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc 88–5842 Filed 3–16–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–461]

The Illinois Power Co. et al.; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of Appendix J to 10 CFR Part 50 to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) for the Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois. The exemption was requested by the licensees by letter dated January 13, 1988.

Environmental Assessment

Identification of Proposed Action: The exemption will provide a one-time relief from the 2-year surveillance interval requirement of Section III.D.3 of Appendix J, 10 CFR Part 50, for performing Type C local leak rate tests (LLRTs) for containment isolation valves (CIVs) 1E12–F023, 1E51–F034, 1E51–F035, 1E51–F390, 1E51–F391, 1E12–F061, 1E12–F062, and 1E51–F013. The licensees have proposed to conduct these tests prior to startup from the first refueling outage. This outage, which is currently scheduled to be initiated in January of 1989, must be initiated by no later than February 28, 1989. These tests must be performed prior to when containment integrity needs to be assured following the refueling operation.

The Need for the Proposed Action: The end of the initial 24-month testing interval for these eight CIVs is October 21, 1988. With the exception of these eight valves, the licensees either have, or plan to perform the required Type C tests for the CIVs on schedule. Many of the tests will be conducted during the spring 1988 maintenance outage. The licensees have stated that due to plant constraints it is not possible to perform the testing of these eight valves without extending the outage solely for the purpose of these tests.

The licensees have indicated that performing the leak testing on these eight valves will require the removal of the drywell head and the disassembly of the reactor head spray piping to allow installation of a blind flange as an inboard test boundary. Reassembly of the reactor head spray piping will require that a reactor coolant system boundary leakage test be performed in accordance with the ASME Code. The licensees estimate that these tasks would extend the spring 1988 maintenance outage by about one week, and cause additional personnel exposure of approximately one to two Man-Rem.

The first refueling outage is scheduled to be initiated in January of 1989. Drywell head removal and a reactor coolant boundary leakage test will be required during this outage. Performance of the leak tests for these Containment Isolation Valves during this outage would bring the test schedule into alignment with the fuel cycle. Thus, the licensees indicated that the time to perform the required testing has been accounted for in planning the first refueling outage. If IP encounters a problem prior to the first refueling outage which entails removal of the drywell head and disassembly of the reactor head spray piping, the required leakage tests will be performed in order to return to full compliance with the regulations.

Environmental Impacts of the Proposed Action: The licensees have indicated that the previous Type C LLRTs were performed satisfactorily for the valves covered by the requested exemption. The licensees also indicated that the calculated percentages of the leakage contribution of the subject valves to the allowable leakage limit are small. Further, the licensees have surveyed industry LLRT data for valves of this type and have determined that for all types of valves identified in the requested exemption, the probabilities of a leakage related failure during the 238 day extension period requested were low (0.84% for the worst case). Therefore, the licensees have concluded that the granting of the requested exemption would not present a significantly increased probability of containment leakage other than contemplated in Appendix J.

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected containment leakage and that containment integrity would thus be maintained. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Because the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in an outage of considerable duration with attendant costs and would result in an unnecessary loss of power to the grid when the distribution system's need for power is high.

Alternative Use of Resources: This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Clinton Power Station, Unit No. 1," dated May 1982.

Agencies and Persons Consulted: The Commission's staff reviewed the licensees' request and did not consult other agencies or persons. The State of Illinois was consulted with regard to a related Technical Specification change to the Clinton Power Station Facility Operating License.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated January 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-5843 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power and Light Co.; Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 82 to Facility Operating License No. NPF-6, to Arkansas Power and Light Company, which revised the Technical Specifications for operation of the Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas. The amendment was effective as of the date of its issuance.

The amendment approves changes in the boron concentration in the refueling tank, safety injection tanks, and boric acid makeup tank. The changes provide safety and operational enhancements specifically suited to the use of extended cycle cores.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 21, 1987 (52 FR 48348). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1977.

For further details with respect to this action, see: (1) The applications for amendment dated October 26, 1987, as supplemented by letter dated January 19, 1988, (2) Amendment No. 82 to Facility Operating License No. NPF-6, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 7268). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 11th day of March, 1988.

For the Nuclear Regulatory Commission.

George F. Dick,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5844 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to the surveillance testing of the 480-volt emergency bus and the addition of an action statement for the voltage sensors on this bus. The license application for amendment is dated January 5, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be

filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases of each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes as additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Project Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-5845 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to Control Rod Position, a reference to movable incore detectors, which will be deleted and a reference to three-loop operation which will also be deleted. The licensee's applications for amendment are dated December 23, 1987 and January 18, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

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results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri) (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after if completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Project Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-5846 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would revise the provisions in the Technical Specifications relating to crane travel over the spent fuel pit. The licensee's application for amendment is dated January 15, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Project Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-5847 Filed 3-16-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

Extension

File No. 270-8, Rule 15b1-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, as amended in 1986, the Securities and Exchange Commission has submitted for extension of OMB clearance Rule 15b1-3 which provides that if a broker-dealer succeeds to or continues the business of a registered broker-dealer, the registration of the predecessor shall remain effective as the registration of the successor for 75 days after the succession provided that an amendment to Form BD is filed by the successor within 30 days after the date of succession. Fifty respondents incur an estimated average of three burden hours to comply with the Rule.

Submit comments to OMB Desk Officer: Mr Robert Neal (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

March 8, 1988.

[FR Doc. 88-5848 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 25439; File No. SR-MBS-88-4]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. In a March 2, 1988 letter, MBSCC amended the proposal to take effect upon submission of the letter pursuant to section 19(b)(3)(A) of the Act. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposed rule change adds a new group of GNMA coupons to the list of GNMA coupons eligible for conversion to book-entry form. Once converted to book-entry form, the securities will become subject to MBSCC's withdrawal procedures, which limit physical withdrawal except in certain circumstances.[1] For settlements beginning March 21, 1988, the 12.50%-12.99% GNMA coupons will be eligible for conversion to book-entry form.[2]

MBSCC has filed related proposed rule changes for review under the Act. For example, MBSCC previously filed a proposed rule change (File No. SR-MBS-87-2) requesting permanent approval of the withdrawal procedures for certain coupon rates and any others that MBSCC may add by filing at a later date. That proposal currently is under review.[3] MBSCC also filed a proposed rule change, effective upon filing, similar to File No. SR–MBS–88–4.[4] That filing (SR–MBS–88–5) and this filing (SR–MBS–88–4) will be effective for 60 days from the date of publication of this notice.

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[1] MBSCC's withdrawal procedures implement the Public Securities Association's Good Delivery Guidelines to provide that, for securities converted to book-entry form, physical withdrawals are limited to instances where certificates are legally required to be maintained by a participant or customer outside the depository. Withdrawal requests that satisfy the guidelines must be submitted within appropriate time frames.

[2] At present, GNMA coupons with the following coupon rates have been converted to book-entry form and are subject to the Public Securities Association's Good Delivery Guidelines: 5.50%-7.49% and 13.00%-17.50%.

[3] *See* Securities Exchange Act Release No. 24120 (February 17, 1987) 52 FR 6096 (February 27, 1987).

In anticipation of the proposed rule change, MBSCC senior management has completed the installation and testing of expanded computer hardware and software required by larger-than-anticipated increases in participation and trading volume. MBSCC has also assisted Depository Division participants in making necessary changes to their own operating systems. MBSCC believes that with such installation, testing, and modifications, the 12.50%–12.99% GNMA coupons can be implemented in an orderly manner.

MBSCC states that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 ("Act") in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (a) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number (File No. SR–MBS–88–4) and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 10, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5902 Filed 3–16–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25440; File No. SR–MBS–88–5]

Self-Regulatory Organizations; MBS Clearing Corp.; Physical Withdrawal of Securities Eligible for Deposit in MBSCC's Depository Division, Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1988, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division. The procedures will be in effect for the period starting on February 15, 1988, and ending 60 days from the date of publication of the notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to obtain or maintain physical possession of the securities.

Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to obtain or maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver for financing purposes the withdrawn securities.

At the present time, GNMA securities with the following coupon rates have been converted to book-entry form and are subject to the PSA guideline: 5.50%–7.49%, 16.00%–17.50%, 14.00%–15.99%, and 13.00%–13.99%. On April 27, 1987, PSA and MBSCC modified the conversion schedule of GNMA securities. For additional coupons, notice will be given of coupons to be designated as specified for book-entry settlement 45 days in advance of the issuance date of new pools of coupons. In addition, MBSCC has recently filed a rule change to convert the 12.50–12.99% GNMA coupons to book-entry form, for settlements beginning March 21, 1988.

In response to concerns raised by various commentators, MBSCC has further revised the withdrawal policy to make it clear that a Participant may make a request to withdraw securities subject to the PSA Good Delivery Guideline if it is legally required to maintain, as well as obtain, physical possession of securities. The phrase "legally required to obtain or maintain physical possession" is expanded to include those legal requirements imposed by any rule or regulation of any governmental agency, self-regulatory organization as defined in the Securities Exchange Act of 1934 or designated contract market as defined in the Commodity Exchange Act. In addition, the policy has been revised to enable the Participant, or its customer, to obtain securities in time to comply with such legal requirements.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgate-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgage-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

While written comments have not been generally solicited, MBSCC has submitted responses to comments submitted to the Commission. In response to certain concerns raised by the Chicago Board of Trade regarding the obtaining of GNMA certificates for collateral purposes relating to Collateralized Depository Receipts, MBSCC has made revisions to the proposed rule change discussed in Item 3(a) above.

In a separate rule filing to MBSCC's Depository Division rules (SR–MBS–87–7, submitted July 24, 1987), MBSCC has responded to concerns raised by some commentators regarding the submission of claims under a GNMA or other similar guarantee on behalf of Participants. The Depository Division rules have been amended to make clear that MBSCC, in filing claims for payment under any guarantee, will be acting solely as agent for its Participants, except in certain circumstances, where MBSCC or a third-party lender have made principal and interest advances.

Representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–5 and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 10, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A—MBSCC Procedure for Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. the Procedure ocovers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the Guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guideline. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to obtain or maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to obtain or maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn. For purposes hereof, a Participant or its customer will be deemed legally required to obtain or maintain physical possession of securities if obligated to do so under any applicable law or any rule or regulation of any governmental agency, any self-regulatory organization as defined in the Securities Exchange Act of 1934, or any designated contract market as defined in the Commodity Exchange Act (including, in the case of a self-regulatory organization or designated contract market which is a Participant in the Depository, the rules or regulations of such self-regulatory organization or designated contract market).

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[4] *See* File No. SR–MBS–88–4, which is being published simultaneously with the present filing.

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available: (a) Seven calendar days from the date of withdrawal request, or (b) on such earlier date as the Participant requesting the withdrawal certifies to MBSCC is necessary to enable the Participant or its customer to comply with any applicable legal requirement. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, a MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 88-5849 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25438; File No. SR-MSRB-87-13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of Municipal Securities Rulemaking Board; Disclosure in Connection With New Issues

On October 6, 1987, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-87-13) under 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change amends MSRB Rule G-32 on disclosures in connection with new issues. The Commission published notice of the proposed rule change on November 9, 1987,[1] and received no comments in response.[2]

The proposed rule change would provide an objective definition of "underwriting period" for sole underwritings for purposes of rule G-32 on disclosures in connection with new issues. The proposed amendment would define the underwriting period for sole underwritings to begin upon the first submission of an order for the issue or the purchase of the issue from the issuer by the underwriter, whichever occurs first. It would define the underwriting period to end when both of the following conditions are met: (i) The issuer delivers the securities to the underwriter; and (ii) the underwriter no longer retains an unsold balance of the securities or 21 calendar days elapse after the first submission of an order to the underwriter, whichever occurs first.

Rule G-32 requires all dealers selling new issue municipal securities during the underwriting period to deliver a copy of the official statement for the issue, if one will be prepared, to each customer no later than settlement with the customer. The underwriting period has been defined to begin with the first submission to a syndicate of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever occurs first. The underwriting period is defined to end when the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of the securities, whichever occurs last. This definition is designed to ensure that a sufficient number of investors receive new issue disclosures. The Board previously has interpreted rule G-32 to apply to new issue securities distributed by a sole underwriter ("sole underwritings") notwithstanding the use of the term "syndicate" in the definition of underwriting period and has stated that the number of underwriters is irrelevant to the purposes of the rule. The definition of underwriting period for syndicated underwritings, however, is not appropriate for sole underwritings because a sole underwriter may retain portions of an issue in its inventory long after the delivery of the issue by the issuer and completion of the initial reoffering.

The proposed rule change addresses this problem by providing objective criteria to determine the underwriting period in sole underwritings. The definition in the proposed rule change is consistent with the definition used for syndicated underwritings, with the addition of a 21-day limitation on the underwriting period in cases which the issuer has delivered the issue and the underwriter continues to retain an unsold balance. This objective definition allows dealers to determine their obligations under rule G-32 more easily and would facilitate enforcement of the rule by enforcement agencies.

The Commission believes the proposed rule change is consistent with the Act, particularly section 15B, which provides, in pertinent part, that MSRB rules by designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. By defining the end of underwriting periods for sole underwritings as, at the latest, 21 days after the first order is submitted to the underwriter, the proposal strikes an appropriate balance between ensuring as wide dissemination as possible of information about the issue and the need to provide objective and realistic standards for industry participants to gauge their disclosure responsibilities under Rule G-32.

It is therefore ordered, pursuant to section 19(b)(2) of the Act tht File No. SR-MSRB-87-13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5850 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 25084 (November 2, 1987), 52 FR 43140.

[2] The MSRB also sought comments on the proposal in March, 1987 (see MSRB Reports, Vol. 7, No. 2 (March 1987)). The MSRB received three comments and responded to them in its submission to the Commission. *See* Securities Exchange Act Release No. 20564.

[Release No. 34-25437; File No. SR-NASD-88-8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Mandatory Use of Trade Acceptance and Reconciliation Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Section 66 to the NASD's Uniform Practice Code to require members of the NASD that are also participants in a registered clearing corporation for purposes of clearing over-the-counter ("OTC") transactions to subscribe to and reconcile all eligible transactions through the NASD's Trade Acceptance and Reconciliation Service ("TARS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change was considered by the NASD Board of Governors and the Uniform Practice Committee. Since 1983 the NASD has offered TARS to members that are participants in a registered clearing corporation. TARS is an on-line, trade reconciliation facility that allows both parties to an unresolved trade to view on their NASDAQ terminals uncompared and advisory OTC transactions that are cleared through the facilities of a registered clearing agency and to enter corrections through those terminals. Corrections entered by one side are immediately displayed to the other side and this information is automatically transmitted each day to the clearing corporation, eliminating the need to separately prepare and submit trade correction tickets to the clearing corporation.

Currently TARS has 105 subscribers that account for 86% of all cleared OTC transactions. Since its introduction, TARS has substantially reduced the percentage of uncompared OTC transactions by bringing those transactions into an automated comparison environment. TARS service provides its subscribers with five primary benefits over other methods of trade reconciliation. These are as follows:

1. TARS is available from 8:00 a.m. until 6:00 p.m. (5:00 p.m. for municipal bonds). The 6:00 p.m. deadline gives a subscriber at least five additional hours to complete its securities processing to the clearing corporation. Most clearing corporation submissions must be received by the processing facility by 1:00 p.m.
2. All work processed through TARS provides the subscriber with printer confirmations of its own work and that of the contra party. This allows the subscriber and the contra party, if it is also a TARS subscriber, to be able to conform actions taken between themselves that day, and therefore takes the guess work out of what response, if any, was taken by the contra side, which would otherwise not be known until the following day.
3. All TARS input is validated for trade action, broker relationship, security symbol and CUSIP number. If any of this data is entered incorrectly, the on-line system will automatically provide the subscriber with a reject message. The subscriber at such time can correct the data and thereby prevent the trade from being rejected at the clearing corporation. Rejected trades are reported to subscribers by the clearing corporation on the day following submission.
4. All work entered through TARS can be backed-out, in case of error, prior to the System's close at 6:00 p.m. (5:00 p.m. for municipal bonds).
5. Subscribers have the ability of interrogating the TARS data base by utilizing selective query functions which can extract specific contract sheet information. For example, a subscriber may wish to view only uncompared or advisory trades; or view transactions with a specific firm; or transactions in a particular security. Through the query process this information is readily available.

The NASD believes that requiring all clearing corporation participants to become TARS subscribers and to utilize TARS for reconciling their OTC transactions will further enhance the value of the system by increasing the percentage of OTC transactions which will be reconciled through TARS. The NASD believes that this will be of particular value during periods of high volume when the uncompared rate can increase dramatically. TARS service was operted for extended hours during the days following the October 19, 1987 market break, demonstrating that even in such extreme periods, the rate of uncompared transactions could be quickly reduced to within normal limits through the utilization of the system. The NASD believes that mandatory use will further improve this performance.

The proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the NASD's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities. The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit comments on the proposed rule change. It did however solicit comments on a proposed amendment to the NASD By-Laws authorizing the NASD to require the reporting of trade information by members conducting an interdealer OTC business in Notice to Members 87-79. A total of 16 comments were received. Some of the most frequent areas of comments included assertions that the proposals would impose an undue burden on small member firms and would require such firms to incur additional costs, which in some cases could cause the firms to cease doing an OTC securities business. Of the commentators opposing the adoption of the By-Laws amendment, only three are members of a registered clearing agency and therefore only these members would be impacted by the proposed rule change. Subsequent to the comment period, the staff of the NASD Uniform Practice Department contacted each of these firms, all of which indicated that they had not been clear on the implications of the By-Law and did not object to participation in TARS.

The NASD Board of Governors and its Uniform Practice Committee considered the comments and determined that the benefits obtained from requiring TARS participation by all clearing corporation participants could substantially enhance the effectiveness of the system and facilitate further reductions in uncompared trades in OTC securities and thereby substantially outweigh the additional costs to members that are of substantial enough size and capitalization to be participants in a registered clearing corporation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–8 and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 9, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5851 Filed 3–16–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25429; File No. SR–NYSE–87–47]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.; Proposed Increases in Floor Facilities Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C., 78s(b)(1), notice is hereby given that on December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting certain Floor Facilities fees, as of January 1, 1988.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The revenues generated by the Floor Facilities fees increase will be used to defray the expenses of this area. The current Floor Facilities fees do not fully recover the costs of providing the facilities. Increases in projected expenses are anticipated because of continuing demands in the area. The purpose of the proposed rate increase is to continue the process of recapturing the cost of this activity.

(2) *Statutory Basis*—The basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

According to the Exchange, the fees increase is primarily designed to defray the increasing costs of providing floor facilities to its members and other floor facility users. In addition, the Exchange indicates in its filing that the current floor facilities fees do not adequately recover expenses related to provinding such facilities and that the revenues generated from the fees increase will facilitate its efforts to continue to recapture the costs of operating these facilities. We note that the proposed fee increases, for the most part, are modest. Finally, the two new proposed fees are on par with similar fees being imposed for the use of other floor space. In view of the foregoing, the Commission finds that the increase in floor facilities fees is reasonable and consistent with section 6(b) (4) of the Act which provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19b–4. At anytime within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

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[1] The proposal would, among other things, increase both floor privilege fees and specialist floor fees from the current amount of $3,720 to $4,000. In addition, the proposed rule change would effect rate increases for a number of other floor facility fees including booth fees (*i.e.*, option and stock booths, option private line, and order pad privilege and clearance), post fees, fees for regular and special telephone clerk tickets charges for radio paging service, fees for financial vendor services, and member telephone service rates. The proposal also established two new fees. The QT Booth space, with a fee of $1200, provides additional space under the expanded blue room that can be used as additional work space for members. The Option Podium Post with a fee of $4,365, is an optional service for options specialists that includes a desk with electronic hook-ups. The NYSE notes both these spaces are being made available to the membership at their request and are optional.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the propsoed rule change between the Commission and any person, other than those that may by withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 9, 1988.

[FR Doc. 88–5852 Filed 3–16–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25442; File No. PHLX 88–9]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Value Line Arithmetic Average Computation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory orgnization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 (the "Act") and its Rule 1009A proposes to revise the method of computation of the Value Line Composite Stock Average Index underlying index options contracts to an arithmetic avearge from a geometric average. All other contract terms respecting the Value Line Index Options contracts including the equal weighted feature would remain unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to conform index options trading on the Value Line Composite Stock Average Index ("XVL") with index futures trading respecting the same to be traded upon approval by the Commodity Futures Trading Commission ("CFTC") on the Kansas City Board of Trade ("KCBT"). The KCBT in cooperation with Value Line Inc. and the PHLX proposes to revise the computation of the XVL to an arithmetic average from a geometric average. The PHLX has been approved to trade the XVL index utilizing a geometric average computation pursuant to approval by the Securities and Exchange Commission under SEC Release No. 34–21392 dated October 10, 1984. The Exchange has also received Commission approval, but has not yet introduced European style options on the Value Line Index. *See* SEC Release No. 34–24508 dated May 22, 1987. The PHLX began trading the XVL on January 11, 1985.

In symbols, the geometric average, at any time during the day is:

$$IC = IP \times \frac{P1}{C1} \times \frac{P2}{C2} \times \ldots \times \frac{PN}{CN}^{\,1/N}$$

where,

IC = current value of the index

IP = closing value of the index on the previous day

Pi = current price of stock i

Ci = closing price of stock i on the previous day

N = number of stocks in the index

The proposed arithmetic average, in symbols, at any time during the day, is:

$$IC = IP \times \frac{\left(\frac{P1}{C1} + \frac{P2}{C2} + \ldots + \frac{PN}{CN}\right)}{N}$$

where each of the variables represents the same quantities that they do in the mathematical representation of the geometric index.

Value Line Inc. developed the Value Line Composite Stock Average Index as a geometric average to differentiate it from other popular price and capitalization weighted market indices which tend to only reflect the top bracket of publicly traded common stocks. While geometric averaging serves to differentiate the Value Line Composite Stock Average Index from other popular measurements of market performance it poses a number of problems for market participants utilizing a cash based valuation of their common stock portfolios which are arithmetically averaged as are all other index futures and options contracts. Geometric averaging tends to underperform an arithmetic average. The greater the volatility, the more significant the downward bias. This impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks. In the past, this has resulted in substantial disparities between prices of the Value Line Composite Stock Average Index futures and options contracts and the level of the underlying cash index. The PHLX believes, as does the KCBT, that geometric averaging of the Value Line Composite Stock Average Index has created investor confusion and dissatisfaction and impaired confidence in Exchange markets. It is anticipated that a revision of the Value Line Composite Stock Average Index to arithmetic computation will facilitate cash market hedging while simplifying the task of broker-dealers explanation of the XVL product to investors interested in utilizing a strategic investment hedging product to protect diversified portfolios of common stocks.

The PHLX proposes to coordinate the introduction of options on the arithmetically computed Value Line Index with the KCBT. Attached herein as Exhibit 2 is a copy of the KCBT regulatory filing respecting this matter presently under consideration before the CFTC.

KCBT proposes to introduce futures contracts based on the revised arithmetic index promptly upon CFTC approval, beginning with the September 1988 contract and subsequent contract months. (The KCBT currently has futures on the geometric index only through the June contract month.) PHLX would like to coordinate introduction of the arithmetic contract to coincide with the KCBT's start-up date, but proposes to introduce American and European style options on the arithmetically derived index on a somewhat different manner. Rather than introduce options on the arithmetic index only for contract months beginning after the last currently outstanding options on the geometric XVL expire (the XVL currently has options outstanding through December), the Exchange proposes to introduce European and American options on the arithmetic Value Line index beginning with the near-term months. No new contract months on the existing geometric Value Line index would be added so that by December 1988 that options contract will be phased out. In the meantime, for a short period of time, there may be some arithmetic and geometric series open simultaneously.

The PHLX believes that a revision in the method of averaging the Value Line Composite Stock Index Average will significantly enhance the economic utility of XVL options contracts to market participants and could substantially increase contract volume by making the XVL index options easier to understand and use.

XVL volume and open interest is presently at historic lows. The PHLX believes that the proposed revision in computation of the Value Line Composite Stock Average Index will be least disruptive to the market place if made at this time. In this regard the PHLX requests expedited treatment with respect to this proposed rule change as it is necessary to coordinate with the KCBT the introduction of the arithmetically computed Value Line Composite Stock Index Average futures and options contracts.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the Exchange facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 10, 1988.

[FR Doc. 88-5853 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17824]

Application and Opportunity for Hearing; Chemical New York Corp.

Notice is hereby given that Chemical New York Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Bank") under an indenture dated as of March 1, 1974 (the "1974 Indenture"), between the Company and Bank which was heretofore qualified under the Act and under an indenture dated as of February 15, 1984 (the "Original Indenture"), as amended by a First Supplemental Indenture dated as of May 1, 1987, a Second Supplemental Indenture dated as of August 14, 1987 and a Third Supplemental Indenture dated as of November 6, 1987 (such Original Indenture as supplemented hereinafter referred to as the "1984 Indenture") between Texas Commerce Bancshares, Inc., the Company and Bank which was heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under these indentures.

The Company alleges:

(1) Pursuant to the 1974 Indenture, the Company has outstanding approximately $43,660,000 aggregate principal amount of its 8.40% Debentures Due 1999, (the "Debentures"). The Debentures were registered under the Securities Act of 1933, (the "1933 Act") and the 1974 Indenture was qualified under the Act.

(2) Pursuant to the 1984 Indenture Texas Commerce Bancshares, Inc. ("TCB"), a wholly-owned subsidiary of the Company, has outstanding approximately $31,350,000 aggregate principal amount of its Floating Rate Notes Due 1996, (the "Notes"). The Notes were registered under the 1933 Act and the 1984 Indenture was qualified under the Act. Bankers Trust Company ("Bankers Trust") had been acting as Trustee under the 1984 Indenture. As of June 29, 1987, the Company guaranteed on a subordinated basis the obligations of TCB under the 1984 Indenture with respect to the due and punctual payment of principal (and premium, if any) and interest on the Notes (the "Subordinated Guarantee"). On September 16, 1987, Bankers Trust notified the Company of its intention to resign as Trustee under the 1984 Indenture. The Company requested the Bank to accept appointment as Successor Trustee under the 1984 Indenture, and, as of November 6, 1987, the Bank accepted such appointment.

Simultaneously with such acceptance, the Company issued to the Bank for the benefit of the holders of the Notes, in full substitution and replacement of the Subordinated Guarantee, a new guarantee (the "Senior Guarantee"), under which the obligations of the Company in respect of its guarantee of payment of the Notes rank *pari passu* with the Company's obligations in respect of the Debentures.

(3) The Company's obligations with respect to the Debentures and under the Senior Guarantee with respect to the Notes are in each case wholly unsecured and rank equally *pari passu.*

(4) There is no default under the 1974 Indenture or the 1984 Indenture.

(5) Such differences as exist between the 1974 Indenture and the respective obligations of the Company as guarantor under the 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under either Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17824, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than April 4, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 88-58-54 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9536]

Issuer Delisting; Application To Withdraw From Listing and Registration; International Telecharge, Inc, (Common Stock $.01 Par Value)

March 10, 1988.

International Telecharge, Inc. ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Common Stock of International Telecharge, Inc. ("Company") has been approved for listing and has commenced trading, as of March 4, 1988, on the American Stock Exchange, Inc. ("Amex"). The Company wishes to have its Common Stock traded only on the Amex. In this connection, the Company delisted from the NASDAQ National Market System at the open of business on Friday, March 4, 1988.

Any interested person may, on or before March 31, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, it any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5855 Filed 3-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16311; (812-6958)]

Wells Fargo Bank, N.A. and Wells Fargo Investment Advisors; Application and Temporary Order

March 11, 1988.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order of Permanent Exemption under the Investment Company Act of 1940 ("1940 Act") and Order of Temporary Exemption.

Applicants: Wells Fargo Bank, N.A. ("Bank") and Wells Fargo Investment Advisors ("WFIA").

Relevant 1940 Act Sections: Permanent order requested, and temporary order granted, under section 9(c) from section 9(a).

Summary of Application: Applicants seek a permanent order pursuant to section 9(c) of the 1940 Act granting exemption from the provisions of section 9(a). Applicants also request a temporary order granting exemption from section 9(a) until the Commission takes action on the request for the permanent order.

Filing Dates: The application was filed on January 15, 1988, an amended on February 1 and March 3, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on April 5, 1988. Request a hearing in writing, stating the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549; Applicants, 420 Montgomery Street, San Francisco, California 94163.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. Applicants are both wholly-owned subsidiaries of Wells Fargo & Company, a California corporation and a publicly held registered bank holding company. The Bank currently serves as investment adviser to Wells Fargo Investment Trust for Retirement Programs, an investment company registered under the 1940 Act. WFIA currently serves as investment adviser to the Dreyfus Index Fund and a series of the Frank Russell Investment Company, both of which are also investment companies registered under the 1940 Act. In addition, the Bank anticipates serving as investment adviser to Overland Express Funds Inc. ("Overland"), a newly organized investment company, and WFIA proposes to serve as investment adviser to the Benham Variable Insurance Trust ("Benham"), another newly organized investment company. According to the application, it is expected that Overland, within two to three weeks, and Benham in early March, will file pre-effective amendments to their 1933 Act registration statements and at that time request that those registration statements be declared effective. Moreover, either or both of the Applicants may serve as investment advisers to, depositors of or principal underwriters for, additional investment companies in the future.

2. According to the application, on November 19, 1987, the Commodity Futures Trading Commission ("CFTC") filed a civil complaint ("Complaint") in the United States District Court for the Central District of California against the Bank. The CFTC alleged that the "Wells Fargo Gold Market Certificates" ("Certificates") that were offered and sold by the Bank to members of the general public had the characteristics of a call option based on a regulated commodity, namely gold; thus, they could be traded only on or subject to the rules of a CFTC-designated contract market, and only by or through a member of such a contract market.

3. On the same day that the Complaint was filed, the Bank consented, without admitting or denying any of the allegations in the Complaint (except as to jurisdiction), to the entry of an order ("Order") permanently enjoining the Bank, its directors, officers, employees, agents, subsidiaries and affiliates, from directly or indirectly engaging in any transaction involving a commodity option in violation of any CFTC rule, regulation or order. In addition, the Bank was rquired to rescind and cancel all outstanding Certificates and make full restitution to each purchaser of the Certificates.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the 1940 Act, as here relevant, automatically disqualifies any person from serving as investment adviser to, depositor of or a principal underwriter for any registered investment company if such person is, by reason of any misconduct, permanently or temporarily enjoined by any court order, judgment of decree from: (i) "acting as an * * * entity or person required to be registered under the Commodity Exchange Act;" (ii) "engaging in or continuing any conduct or practice in connection with any such activity;" or (iii) engaging in or continuing any conduct or practice "in connection with the purchase or sale any security." Although the Order named only the Bank, all persons generically referred to therein (including WFIA) were also enjoined, and thus, all such persons are disqualified from serving registered investment companies in the capacities set forth in section 9(a). Accordingly, Applicants seek exemptive relief on behalf of themselves and all persons generally referenced in the Order. Section 9(c) of the 1940 Act provides that the Commission shall grant an application for an exemption from the provisions of section 9(a), either unconditionally or conditionally, on a permanent or temporary basis if it is established that the prohibitions of section 9(a), as applied to the applicant(s), are "unduly or dispropoortionately severe", or that the conduct of the applicant(s) has been such as "not to make it against the public interest or protection of investors to grant such applicant."

2. In support of their position that the Commission should grant the requested temporary and permanent exemptions from the prohibitions of section 9(a) of the 1940 Act, to the extent such provisions are applicable as a result of the Order, Applicants assert the following.

a. Applicants submit that even if the enjoined activities cause the prohibitions of Section 9(a) to be applicable, either because they are found to relate to registration under the Commodity Exchange Act, or because the Certificates are deemed to be securities, such activities are, at most, peripheral to the central purposes of Section 9(a) in that they do not relate to, or raise any issues regarding, investment advisory activities (or activities as a depositor or principal underwriter for an investment company), any person's qualifications to act in such capacities or any issues relating to Applicants' honesty or integrity.

b. None of the allegations in the Complaint relates in any way to the current or proposed activities of any investment companies or, specifically, to Applicants' current or proposed activities as investment advisers to (or, as depositors of or principal underwriters for) any investment companies. Similarly, the prohibitions set forth in the Order do not directly apply, in any manner, to the current or proposed activities of any investment companies. Moreover, none of the personnel of the Bank and WFIA involved in the day-to-day provision of investment advisory services to any existing investment companies was involved in the facts and circumstances that gave rise to the Complaint and Order. The Bank consented to make, and has already made, full restitution to each purchaser of Certificates.

c. The prohibitions of section 9(a) would be unduly and disproportionately severe, as applied to Applicants, because such prohibitions, in substance, would deprive the funds currently advised by either applicant and their shareholders (who have selected the Bank and WFIA as their respective investment advisers), of Applicants' investment advisory services. Moreover, the independent sponsors and distributors of such funds would be deprived of the investment advisory services of the Bank and WFIA, which services they negotiated for at the time those funds were organized. Such deprivation could operate significantly to the detriment of the financial interests of such funds and/or existing and prospective shareholders, none of whom were in any way involved in, or implicated by, the facts and circumstances that gave rise to the Complaint and Order.

d. The prohibitions of section 9(a) would be unduly and disproportionately severe, as applied to the Bank and WFIA, in that both have expended substantial resources in connection with the organization and registration activities associated with the start-up of the newly established funds. Moreover, the independent sponsor and distributor of a newly established investment company that is nearing effectiveness, which has expended substantial resources in connection with the start-up of the fund and which has in no way been implicated by the facts and circumstances that gave rise to the Complaint and Order, would be subject to severe and unwarranted hardships if Applicants' request is not granted. Such an independent sponsor and distributor would be required either to abandon, or substantially delay, plans for the public sale of the shares of such fund or attempt to procure a new adviser possessing comparable investment advisory capabilities. Such a sponsor and distributor would find it difficult, if not impossible, to find a satisfactory substitute investment adviser.

e. The prohibitions of section 9(a) would be especially unfair as applied to WFIA and the other companies of which the Bank is an affiliated person, which were not implicated by the facts and circumstances that gave rise to the Complaint and Order, but which are subject to the Order, and would be subject to the Section 9(a) prohibitions, solely because of their affiliation with the Bank.

f. The facts and circumstances that gave rise to the Complaint and Order are such as not to make it against the public interest or protection of investors for the Commission to grant the requested exemption. In this regard, no fraudulent activities, misleading statements or material omissions, of any nature, were alleged in connection with the offer and sale of the Certificates. Indeed, it is noteworthy that the Bank's consent to entry of the Order contains the stipulation that the Order "shall not in the future constitute the sole basis for denying, suspending, or revoking any registration of Wells Fargo with the Commodity Futures Trading Commission."

g. The public interest and the goal of protecting investors dictate that the temporary requested exemption be granted so that the investment companies currently advised by either the Bank or WFIA can maintain uninterrupted operations and that the funds in registration can proceed as reasonably contemplated by the other participants, including their independent sponsors and distributors. Moreover, granting the temporary exemption would protect the interests of the investment companies being served by Applicants by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the Applicants' responsibilities to successors, or both. Such result is fully consistent with the purposes and policies underlying the provisions of the 1940 Act.

h. Neither the Bank nor WFIA has ever previously applied for an exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act.

3. In making this application, Applicants acknowledge, understand and agree that the application and any temporary or permanent exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including, without limitation, the consideration of Applicants' instant request for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act, or the revocation or removal of any temporary exemption granted in connection with the application.

Temporary Order:

Based on the foregoing, including Applicants' representations, the Complaint and the Order, and the remedial provisions resulting therefrom, the Commission has considered the matter and finds, under the standards of section 9(c) of the 1940 Act applicable to this matter, that the Applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, it is ordered, under section 9(c) of the 1940 Act, that the Applicants and all persons generically referred to in the Order are hereby temporarily exempted, to the extent necessary as a result of entry of the Order, from the provisions of section 9(a) of the 1940 Act until the Commission takes final action on the application for an order granting the Applicants and such persons a permanent exemption from the provisions of section 9(a) of the 1940 Act.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–5856 Filed 3–16–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05–0206]

Hidden Oaks Financial Services, Inc.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Hidden Oaks Financial Services Inc., 4620 West 77th Street, Suite 155, Edina, Minnesota 55435, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors, and major shareholders of the Applicant as follows:

C. Patrick Schulke, 8905 Hidden Oaks Drive, Eden Prairie, Minnesota 55344, President, Director, 33⅓ percent.
Curtis A. Stephan, 17220 19th Avenue, N., Plymouth, Minnesota 55447, Vice President, 33⅓ percent.
Charles E. Bidwell, 835 Windjammer Lane, Mound, Minnesota 55364, Vice President, Director, 33⅓ percent.
Michael W. Wilson, 1783 Holton Street, Falcon Heights, Minnesota, Treasurer.
Rick L. Olson, 4620 West 77th Street, Suite 155, Edina, Minnesota 554165, Manager.

The Applicant, Hidden Oaks Financial Services, Inc. a Minnesota Corporation will begin operations with $1,025,000 paid in capital and paid in surplus, will conduct its activities primarily in the State of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and the upper Pennisula of Michigan but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended and the SBA Rules and Regulations.

Notice is further given that any person may, not later, than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St. NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Edina, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 11, 1988.

[FR Doc. 88-5810 Filed 3-16-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of previous notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be forthcoming, as was specified in the original Notice of Intent published in the Federal Register on October 10, 1986 (51 FR 36332).

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: Having considered the limited scope of the work now proposed (pavement rehabilitation and shoulder construction), the Department of Transportation has decided not to seek Federal funding for improvement of State Route 1 from 0.2 miles north to 1.5 miles north of Juan Higuera Creek Bridge in Monterey County, California.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: March 9, 1988.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 88-5782 Filed 3-16-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 11, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0083.
Form Number: CF 5520.
Type of Review: Reinstatement.
Title: Special Summary Steel Invoice.
Description: The importer/manufacturer completes the Customs Form 5520, the entry is reviewed by Customs personnel for accuracy. The document is transferred to the International Trade Administration, Department of Commerce where the information is computerized and monitored for compliance with the requirements of various steel programs.
Respondents: Businesses or other for-profit.
Estimated Burden: 32,640 hours.
Clearance Officer: Dennis Dore, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5807 Filed 3-16-88; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 10, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0284.
Form Number: IRS Form 5309.
Type of Review: Extension.
Title: Application for Determination of Employee Stock Ownership Plan.
Description: Form 5309 is filed with Form 5301, 5303, or 5307, when applying for a determination letter as to a deferred compensation plan's qualification status under sections 409 and 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.
Respondents: Businesses or other for-profit.
Estimated Burden: 221 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5806 Filed 3-16-88; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 10, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0094.
Form Number: None.
Type of Review: Extension.
Title: Notice of Future and Forward Placement Contract Activities (BC-79).
Description: All national banks are required to notify OCC of their intent to undertake, purchase and sale of future contracts and forward placement contracts. They are also advised to maintain records permitting them and OCC examiners to verify that such activity does not endanger the safety and soundness of those banks.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 12,513 hours.
OMB Number: 1557-0166.
Form Number: None.
Type of Review: Extension.
Title: Minimum Capital Requirements (12 CFR Part 3).
Description: Information collection requirements ensure compliance with minimum capital requirements of 12 CFR Part 3. Information will be used to evaluate banker plans to meet capital ratios imposed by regulation.
Respondents: Businesses or other for-profit; Small businesses or organizations.
Estimated Burden: 13,560 hours.
Clearance Officer: John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-5809 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Acceleration National Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24603 to reflect this addition:

ACCELERATION NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017. UNDERWRITING LIMITATION *b/*: *$808,000. SURETY LICENSES c/*: AL, DC, GA, IA, KY, MI, MS, NM, OH, OK, WY. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS *d/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: March 9, 1988.

[FR Doc. 88-5857 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Island Insurance Co., Ltd.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24616 to reflect this addition:

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: 1022 Bethel Street, Honolulu, Hawaii 96813. UNDERWRITING LIMITATIONS *b/*: *$2,867,000.* SURETY LICENSES *c/*: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS *b/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business, and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 9, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-5858 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; United Capitol Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24627 to reflect this addition:

United Capitol Insurance Company. BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, Georgia 30319. UNDERWRITING LIMITATION *b/*: *$2,758,000. SURETY LICENSES C/*: WI and AZ. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS *d/*.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 9, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-5859 Filed 3-16-88; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under the Federal Advisory Committee Act that a meeting of the Cooperative Studies Evaluation Committee will be held at the Back Bay Hilton Hotel, Dalton Street, Boston, MA, on April 26 and 27, 1988. The session on April 26 is scheduled to begin at 7:30 a.m. and end at 3:30 p.m. and the session on April 27 is scheduled to begin at 7:30 a.m. and end at 1:00 p.m. The meeting will be for the purpose of reviewing three proposed new clinical trials, one in cardiovascular and two in cancer research, and the progress of on-going studies concerning epilepsy and liver diseases. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on April 26, 1988 to discuss the general status of the program. To assure adequate accommodations, those whose plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–233–2861), prior to April 16, 1988.

The meeting will be closed from 8 a.m. to 3:30 p.m. on April 26, and from 8 a.m. to 1 p.m. on April 27, 1988, for consideration of specific proposals in accordance with provisions set forth in sections 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: March 9, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–5891 Filed 3–16–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 52

Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 3:00 p.m., Sunday, March 13, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 3530

The Commission will consider Enforcement Matter OS# 3530.

The Commission decided that agency business required holding this meeting without the usual advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 14, 1988.

[FR Doc. 88–5987 Filed 3–15–88; 3:15 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m, Monday, March 14, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 3530

The Commission will consider Enforcement Matter OS# 3530.

The Commission decided that agency business required holding this meeting without the usual advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 14, 1988

[FR Doc. 88–5988 Filed 3–15–88; 2:19 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 23, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–5999 Filed 3–15–88; 3:42 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m. on Friday, March 25, 1988, and continue until 11:00 a.m.

PLACE: The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —Meeting of January 29, 1988
3. Consideration of the FY 1987 Audit Report
4. Review of Monthly Expenditures for December and January

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–6007 Filed 3–15–88; 4:00 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The open meeting of the Board of Directors will commence at 11:00 a.m. or immediately following the Audit and Appropriations Committee meeting. The meeting is to be held on Friday, March 25, 1988, in the New Mexico Room. An Executive Session will also be held on Friday from 12:00 p.m. until 1:30 p.m. in the Rainbow Room.

PLACE: The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters
2. Litigation and Investigation Matters

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes
   —Feburary 26, 1988
3. Report from the Audit and Appropriations Committee
4. Ratification of FY 1988 Budget
5. Report from the Provision of the Delivery of Legal Services Committee
6. Report by Douglas J. Besharov of the American Enterprise Institute on "Maximizing Access to Justice"
7. Consideration of the FY 1989 Budget Request and President Reagan's Proposed 1989 Budget
8. Report on Functional Accounting
9. Consideration of Revised 45 CFR Part 1611, Poverty Income Guidelines
10. Report on Reprograming of 45 CFR 1607.6, Compensation

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–6006 Filed 3–15–88, 4:00 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Provision for the Delivery of Legal Services Committee

TIME AND DATE: The meeting will commence at 5:00 p.m. on Thursday, March 24, 1988, and continue until 7:00 p.m.

PLACE: The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—August 7, 1987
3. Consideration of State Support Center Funding Status

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–6005 Filed 3–15–88; 4:00 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Voucher Subcommittee to the Provisions for the Delivery of Legal Services Committee

TIME AND DATE: The meeting will commence at 4:00 p.m. on Thursday, March 24, 1988, and continue until 5:00 p.m.

PLACE: The La Fonda Hotel, New Mexico Room, 100 East San Francisco, Post Office Box 1209, Santa Fe, New Mexico 87504.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Public Comment Concerning the Voucher Program

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: March 15, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–6006 Filed 3–15–88; 4:00 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register

Vol. 53, No. 52

Thursday, March 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3119/R927; FRL-3312-2]

Oxyfluorfen; Pesticide Tolerance

Correction

In rule document 88-161 beginning on page 243 in the issue of Wednesday, January 6, 1988, make the following correction:

On page 243, in the third column, in the fifth paragraph, in the last line, "23.13 percent" should read "23.17 percent".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 356, and 369

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-1455 beginning on page 2436 in the issue of Wednesday, January 27, 1988, make the following corrections:

1. On page 2438, in the second column, in the second complete paragraph, in the 19th line, "working" should read "wording".

2. On page 2450, in the first column, in the fourth line "217" should read "211".

3. On page 2455, in the first column, in designated paragraph 22, the second line should read "Panel in § § 356.50(c)(1)(i) and (ii),".

§ 356.55 [Corrected]

4. On page 2459, in the second column, in § 356.55(d)(6)(i)(A), in the fourth line, remove ". Gargle, swish around, or" and insert a comma.

5. On the same page, in the second column, in § 356.55(d)(6)(i)(B), in the third and fourth lines, remove "Apply to the affected area."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline To Participate in Off-Site Emergency Planning

Correction

In rule document 87-25439 beginning on page 42078 in the issue of Tuesday, November 3, 1987, make the following correction:

On page 42079, in the third column, in the second complete paragraph, in the sixth line, "generally" should read "equally".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

Hazardous Materials Table

CFR Correction

In the October 1, 1987 revision of Title 49 (Parts 100 to 177) of the Code of Federal Regulations, on pages 78 through 167, the text of several entries in the "Hazardous Materials Table" in § 172.101 was incorrectly published based on the amendatory language contained in the rule document of November 21, 1986 (51 FR 42174). The table is corrected as follows:

1. Columns 1 through 7(c) for the shipping descriptions listed below are removed.

Adipic acid
Aluminum sulfate, solid
Ammonium acetate
Ammonium benzoate
Ammonium bicarbonate
Ammonium chloride
Ammonium chromate
Ammonium citrate, dibasic
Ammonium sulfamate
Ammonium sulfite
Ammonium tartrate
Ammonium thiocyanate
Ammonium thiosulfate
Antimony trioxide
Benzoic acid
n-Butyl phthalate
Cadmium acetate
Cadmium bromide
Cadmium chloride
Calcium chromate
Calcium dodecylbenzenesulfonate
Captan
Chromic acetate
Chromic sulfate
Chromous chloride
Cobaltous bromide
Cobaltous formate
Cobaltous sulfamate
Cupric acetate
Cupric oxalate
Cupric sulfate
Cupric sulfate, ammoniated
Cupric tartrate
Dicamba
Dichlobenil
Dichlone
2,4-Dichlorophenoxyacetic acid ester
Dinitrotoluene, liquid
Dinitrotoluene, solid
Diquat
Diuron
Ethylenediaminetetraacetic acid
Ferric ammonium citrate
Ferric ammonium oxalate
Ferric fluoride
Ferric sulfate
Ferrous ammonium sulfate
Ferrous sulfate
Fumaric acid
Heptachlor
Isopropanolamine dodecylbenzenesulfonate
Kelthane
Kepone
Lead acetate
Lead iodide
Lead stearate
Lead sulfate
Lead sulfide
Lead thiocyanate
Lithium chromate
Mercaptodimethur
Methoxychlor
Naled
Naphthenic acid
Nickel ammonium sulfate
Nickel chloride
Nickel hydroxide
Nickel sulfate
Nitrophenol
Nitrotoluene
Pentachlorophenol
Polychlorinated biphenyls
Potassium chromate
Propargite
Pyrethrins
Quinoline
Resorcinol
Sodium chromate
Sodium dodecylbenzenesulfonate
Sodium phosphate, dibasic
Sodium phosphate, tribasic
Strontium chromate
2,4,5-Trichlorophenoxyacetic acid amine, ester, or salt
2,4,5-Trichlorophenoxypropionic acid ester
Triethanolamine dodycylbenzenesulfonate
Vanadium pentoxide
Vanadyl sulfate
Zinc acetate
Zinc ammonium chloride
Zinc borate
Zinc bromide
Zinc carbonate
Zinc chloride, solid
Zinc fluoride
Zinc formate
Zinc phenolsulfonate
Zinc silicofluoride
Zinc sulfate
Zirconium potassium fluoride

2. In Column 2, the following shipping descriptions are corrected:

"Allyl alcohol (*RQ–100/45.4*)" should read "Allyl alcohol".

"Carbofuran mixture, liquid (*RQ–10/45.4*)" should read "Carbofuran mixture, liquid".

"Hydrogen chloride *or* Hydrogen chloride, anhydrous (*RQ5000/2270*)" should read "Hydrogen chloride *or* Hydrogen chloride, anhydrous".

"Lead sulfate (*RQ–5000/2270*)" should read "Lead sulfate".

"Phosphorus pentasulfide (*RQ–100/45.4*)" should read "Phosphorus pentasulfide".

"Phosphorus trichloride (*RQ–5000/2270*)" should read "Phosphorus trichloride".

"Resorcinol (*RQ–1000/454*)" should read "Resorcinol".

"Sodium methylate, dry (*RQ–1000/454*)" should read "Sodium methylate, dry".

"Uranyl acetate (*RQ–5000/2270*)" should read "Uranyl acetate".

"Uranyl nitrate hexahydrate solution (*RQ–5000/2270*)" should read "Uranyl nitrate hexahydrate solution".

"Uranyl nitrate, solid (*RQ–5000/2270*)" should read "Uranyl nitrate, solid".

BILLING CODE 1505-01-D

Thursday
March 17, 1988

Part II

Department of Transportation

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations; Potomac River, District of Columbia et al.; Temporary Deviation From Drawbridge Regulations With Request for Comments and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–88–09]

Drawbridge Operation Regulations; Potomac River, District of Columbia et al.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from drawbridge regulations with request for comments.

SUMMARY: The City of Alexandria, Virginia, Fairfax County, Virginia, and Congressman Frank R. Wolf of Virginia have requested that the Coast Guard amend the regulations for the Woodrow Wilson Memorial (I–95) drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to most vessel traffic. The requested change is intended to help relieve highway traffic congestion during the extended rush hours on this major commuter artery, an important segment of the interstate highway system that connects the northeastern and southeastern portions of the United States. The purpose of this deviation from the regulation is to evaluate the impact of the proposed operating schedule for the bridge on both highway and waterway users.

DATES: This temporary deviation from the regulations is effective from April 15, 1988, through June 15, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this temporary deviation. Following normal rulemaking procedures is unnecessary and impractical, since the impact on the proposed change to the regulations governing the Woodrow Wilson bridge cannot be completely assessed without this temporary deviation to permit an evaluation of the proposed change. This procedure is authorized by 33 CFR 117.43. Although this temporary deviation is published as a "final rule" for a limited period without prior opportunity for public comment, public comments are desired to ensure that the temporary deviation and the proposed rule are reasonable and workable.

Persons wishing to make comments expressing their views or arguments may do so by submitting written comments to the office listed under **ADDRESS** in this preamble. Commenters should include their names and addresses, identify the docket number for this temporary deviation (CGD5–88–09), give reasons for their comments, and include any available supporting data.

Persons desiring an acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary deviation or the proposed regulations should be amended in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Temporary Deviation

The temporary deviation extends the times when the draw will remain closed to vessel traffic during both the morning and evening rush hours. At the present, the drawbridge remains closed to most vessel traffic Monday through Friday, from 6:30 a.m. to 9:00 a.m. and 4:00 p.m. to 6:30 p.m. During the test period, with one exception, the bridge will remain closed to all vessel traffic Monday through Friday, from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m. The provision that requires the draw to open on signal at all times for public vessels, tour boats, and vessels in distress is also eliminated. This temporary deviation is being issued in conjunction with a notice of proposed rulemaking (CGD5–88–08), which is published elsewhere in this issue of the Federal Register.

With one exception, that notice proposes to make permanent the changes to the regulations contained in this temporary deviation. This temporary deviation differs from the notice of proposed rulemaking to the extent that this temporary deviation preserves the current opening schedule for deep draft, oceangoing vessels bound to or from the Robinson Terminals in Alexandria, Virginia.

This exception was preserved in the temporary deviation to permit an additional analysis of the possible economic impact of the proposed rule on the Robinson Terminals. Other than naval vessels visiting the Washington, DC area, the vessels, that call at the Robinson Terminals are the only deep draft, oceangoing vessels that routinely operate on the Potomac River. Due to tidal restrictions on when those vessels can navigate the river, the extension of the closed period may have a significant impact on the economic viability of that terminal. That economic impact will be assessed during the comment period of the notice of proposed rulemaking.

This temporary deviation also amends the temporary rule (CGD5–88–02) governing this bridge issued on February 16, 1988, with a beginning effective date of February 29, 1988. The temporary rule was published in the Federal Register on March 4, 1988 (53 FR 6984).

Economic Assessment and Certification

This temporary rule is considered to be non-major under the Executive Order 12291 and nonsignificant under the Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this temporary deviation is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the temporary deviation will continue to provide the same opportunities for bridge openings for the only large commercial vessels that currently use the waterway.

Further, the temporary deviation will help eliminate traffic backups on this vital highway link, resulting in savings of time and fuel by highway users.

The other vessels that may be impacted by this temporary deviation will include public vessels (primarily naval vessels visiting the Washington, DC area and Coast Guard buoy tenders working aids to navigation on the upper Potomac River), a few fuel barges being handled by towing vessels, and recreational sailboats. It is our understanding that all of the tour boats that routinely use the upper Potomac River are able to pass under the bridge at normal tide levels.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, it will not have a significant economic impact on a substantial number of small entities.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District (804) 398–6222.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Deviation

In consideration of the foregoing, §117.255(a) of Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.255(a) is revised to read as follows:

§ 117.255 Potomac River.

(a) The draw of the Woodrow Wilson Memorial (I–95) bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, shall open on signal, except the draw need not open:

(1) For the passage of deep draft, oceangoing vessels bound for or from the Robinson Terminals in Alexandria, Virginia, from 6:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:30 p.m., on Mondays through Fridays, other than Federal holidays.

(2) For the passage of other vessels from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal holidays.

(3) From 10:00 a.m. to 3:00 p.m., on Mondays through Fridays, other than Federal Holidays, unless at least one hour advance notice is given for an opening.

* * * * *

3. This temporary deviation is effective from April 15, 1988, until June 15, 1988, unless amended or terminated before that date.

Dated: March 8, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–5880 Filed 3–16–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-08]

Drawbridge Operation Regulations; Potomac River, District of Columbia et al.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia have requested that the Coast Guard amend the regulations for the Woodrow Wilson Memorial (I–95) drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, to extend the times that the draw remains closed to vessel traffic. The purpose of this proposed change is to help relieve highway traffic congestion during the extended rush hours on this major commuter artery, an important segment of the interstate highway system that connects the northeastern and southeastern portions of the United States. This action should help relieve some of the serious traffic congestion on this bridge and approach roads.

DATE: Comments must be received on or before May 2, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, and arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Proposed Regulations

The City of Alexandria, Virginia; Fairfax County, Virginia; and Congressman Frank R. Wolf of Virginia have requested that the drawbridge be regulated to further restrict openings during morning and evening rush hours, Monday through Friday, except Federal Holidays, by extending the current hours that the bridge is required to be closed to vessel traffic. Currently the drawbridge remains closed to most vessel traffic Monday through Friday, from 6:30 a.m. to 9:00 a.m., and 4:00 p.m. to 6:30 p.m. The requested change would extend the closed period to include the hours between 6:00 a.m. to 10:00 a.m., and 3:00 p.m. to 8:00 p.m. The provision that requires the draw to open on signal at all times for public vessels, tour boats, and vessels in distress has been eliminated in this proposal.

This proposed rule is being issued in conjunction with a notice of temporary deviation from drawbridge regulations with request for comments (CGD5–88–09) which is published elsewhere in this issue of the **Federal Register**. This notice differs from the temporary deviation to the extent that this notice does not preserve the current opening schedule for deep draft, oceangoing vessels bound to or from the Robinson Terminals in Alexandria, Virginia. That exception was allowed in the temporary deviation in order to permit an additional analysis of the possible economic impact of this proposed rule on the Robinson Terminals. The District of Columbia Department of Transportation has provided data that shows that bridge openings during rush hours during the month of February, 1988, caused traffic backups up from one to one and a half miles in length. Anecdotal information indicates that these backups do not automatically clear when the draw is closed. It generally takes a while to return to a normal traffic flow, as a result of the related traffic accidents and mechanical breakdowns that frequently occur during traffic stoppages, such as bridge openings.

The Woodrow Wilson Bridge, a part of I–95, is an important link in the Interstate Highway System. It is on the primary route for vehicle traffic, particularly large trucks, between the Northeastern and Southeastern sections of the Nation. It is also a major commuter artery for commuters traveling between Maryland, Virginia, and the District of Columbia. The bridge is heavily traveled throughout the day and night, with the heaviest use during the extended morning and evening rush hours. Extensive backups at the bridge can have a major impact on other routes in the region. A temporary rule (CGD5–88–02) governing the operation of this bridge during current repairs was issued on February 14, 1988, with a beginning effective date of February 29, 1988. The temporary rule was published in the **Federal Register** on March 4, 1988 (53 FR 6984). The temporary rule requires one hour advance notice for draw openings between 9:00 a.m. and 4:00 p.m. on Mondays through Fridays, other than Federal holidays. The temporary deviation from the drawbridge regulations (CGD5–88–09), issued in conjunction with this notice of proposed rulemaking, amended the temporary rule by incorporating extended rush hour opening restrictions into that temporary rule. If this proposed regulation is adopted, the temporary rule, which is effective until November 30, 1988, unless amended or terminated before that date, will need to be amended.

Economic Assessment and Certification

The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). However, a full regulatory evaluation may be required before a final rule is issued. Other than naval vessels visiting the Washington, DC area, the vessels that call at the Robinson Terminals are the only deep draft, oceangoing vessels that routinely operate on the Potomac River. The operator of the Robinson Terminals has advised us that this proposal may have an adverse impact on his ability to stay in business. The economic impact of this proposal on Robinson Terminal and others will be assessed during the comment period of this notice of proposed rulemaking.

The other vessels that may be impacted by the proposed change will include public vessels (primarily naval vessels visiting the Washington, DC area and Coast Guard buoy tenders working aids to navigation on the upper Potomac River), a few fuel barges being handled by towing vessels, and recreational sailboats. It is our understanding that all of the tour boats that routinely use the upper Potomac River are able to pass under the bridge at normal tide level.

The proposed change should have a positive effect on vehicular traffic on this vital highway link, resulting in saving of time and fuel by highway users.

List of Subject in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.255(a) is revised to read as follows:

§ 117.255 Potomac River.

(a) The draw of the Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, shall open on signal, except the draw need not open for the passage of vessels from 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 8:00 p.m., on Mondays through Fridays, other than Federal Holidays.

Dated: March 8, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 88–5888 Filed 3–16–88; 8:45 am]

BILLING CODE 4910-14-M

federal register

Thursday
March 17, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

Advisory List of Critical Devices—1988; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0499]

Advisory List of Critical Devices—1988

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its updated and expanded "Advisory List of Critical Devices—1988" prepared by FDA's Center for Devices and Radiological Health (CDRH). In the preamble to FDA's final rule establishing current good manufacturing practice (CGMP) regulations for medical devices that FDA promulgated in 1978. FDA provided an illustrative list of devices that would be subject to the "critical device" requirements in that final rule. FDA's revisions to that list reflect current classification names for devices. changes resulting from petitions for exemption, and FDA decisions based upon recommendations of the Device Good Manufacturing Practices Advisory Committee (the Committee). FDA is taking this action under the Medical Device Amendments of 1976.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910. 301-427-7984.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1978 (43 FR 31508), FDA published the current good manufacturing practices (CGMP) regulations for medical devices. The preamble to the CGMP regulations provided a "Guideline List of Critical Devices" (43 FR 31511). This was an illustrative list of 75 devices provided to give examples of devices that FDA concluded met the definition of critical device as found in the final CGMP regulations (21 CFR 820.3(f)). The definition reads "a device that is intended for surgical implant into the body or to support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user." In developing this list, FDA used the recommendations received from the Committee (21 CFR 14.100(d)(2)) and the device advisory panels (21 CFR 14.100(d)(1)). The agency announced that the list was not exhaustive and that it was based on the most current information available to FDA. The agency also stated that the list would be updated periodically as additional information became available and after consultation with the Committee (43 FR 31511).

As discussed below. seven devices have been removed from the list since publication of the original list of 75 critical devices. In the **Federal Register** of November 14, 1978 (43 FR 52761). FDA published a correction to the original "Guideline List of Critical Devices" to remove two of the 75 devices: the catheter. embolectomy (No. 16); and the catheter. septostomy (No. 18). These two devices had been erroneously listed as critical devices. Recently, on its own initiative. FDA has removed an additional device from the list: apparatus, suturing, stomach, and intestinal (No. 8).

On July 3, 1980, in response to a petition (79P-0460), FDA removed three additional devices from the critical device list: the airway. bi-nasopharyngeal (No. 1); the airway. nasopharyngeal (No. 3); and the airway. oropharyngeal (No. 4). After examining manufacturing inspection reports, performance data, and the manufacturing technology used to fabricate these devices, the agency determined that noncritical CGMP requirements are sufficient to provide reasonable assurance of the safety and effectiveness of these three devices.

On September 9, 1982, in response to a petition (81P-0362), FDA clarified its intent to require critical controls only for the life supporting or life sustaining gas machine for anesthesia (21 CFR 868.5160(a)) (No. 42). Previously, in the **Federal Register** of July 16, 1982 (47 FR 31130 at 31146), FDA had identified separately the gas machine for analgesia intended for dental conscious sedation (21 CFR 868.5160(b)). In response to the petition, FDA determined that the gas machine for analgesia was neither life sustaining nor life supporting and did not meet the definition of a critical device in 21 CFR 820.3(f).

The Committee has held several meetings to discuss additions and changes to the original "Guideline List of Critical Devices." The transcripts and summary minutes for the meetings held on June 29, 1979, November 8 and 9, 1979, July 22, 1980, March 29, 1984, October 23 and 24, 1985, and March 20 and 21, 1986, are available from the Dockets Management Branch under the docket number found in the heading of this document. Data used by Committee members to prepare for the October 1985 and March 1986 meetings are also available from the Dockets Management Branch. The information available includes the Committee's vote in November 1979, the identified risks to health attributed to the use of each device, the additional CGMP requirements that apply only to critical devices, and the rationale for these additional requirements

Although the Committee discussed critical device issues at the June 1979 meeting, no voting took place. At the November 1979 meeting, the Committee recommended that 88 of 107 proposed additions be considered critical devices. The Committee reconsidered 20 of these devices at the July 1980 meeting, and as a result of presentations made by interested parties, again voted to add 19 of the 20 devices to the critical device list. In October 1985, and in March 1986, the Committee again considered the devices that had previously been recommended for the critical device list, as well as newly proposed additions to the list. Based upon information and recommendations from the classification panels and the appropriate divisions within CDRH, and based upon the recommendations of the Committee, the list of critical devices was again expanded and is now comprised of 182 devices.

To accommodate all of these changes, FDA is making available this revised and expanded "Advisory List of Critical Devices—1988." The list identifies devices by Code of Federal Regulations (CFR) part and section numbers, and by the classification names of the devices established in FDA's classification regulations (21 CFR Parts 862 through 892). For each device on the current critical device list that was also on the original list, FDA is cross-referencing the number (1 through 75) of that device on the former list.

The term "classification name" of a device is defined at 21 CFR 807.3(j) to mean "* * * the term used by the Food and Drug Administration and its classification panels to describe a device or class of devices for purposes of classifying devices under section 513 of the act." For those few devices whose classification has been proposed but is not yet final, FDA is identifying the devices by the names used in their proposed classification regulations. In its list, FDA also is cross-referencing the former names for those devices on the list that where used before the classification regulations were promulgated.

Devices which are not the subject of proposed or final classification regulations are identified by a suitable description of their regulatory status. In those situations were not all devices identified in a section of a classification regulation are considered to be critical devices, the list describes which of the devices covered by the section are considered critical devices.

Periodically, FDA will revise its list after consulting with the Committee. Any revisions of the list will be published in the **Federal Register** and will be available from the Dockets Management Branch and from CDRH's Division of Compliance Programs, 8757 Georgia Ave., Silver Spring, MD 20910. As stated in the preamble to the CGMP regulations, FDA emphasizes that this list of devices is only illustrative and is not intended to be binding or exhaustive (43 FR 31511). Each manufacturer should continue to refer to the definition of a critical device (21 CFR 820.3(f)) in determining whether the critical device requirements apply to that manufacturer's device.

In order to allow manufacturers sufficient time to comply with critical device requirements, FDA advises that it does not intend to apply those requirements to newly added devices for a period of 180 days from the date of this notice.

A person seeking some form of administrative action with respect to the list of critical devices may file a citizen petition pursuant to 21 CFR 10.30. FDA requests that each petition address the scope of the action of relief sought, such as whether it would apply to a particular manufacturer or to all manufacturers of the subject device or devices. Guidance on how to file a petition is available from the Division of Small Manufacturers Assistance. 800-638-2041.

For the convenience of the reader, the agency is publishing its "Advisory List of Critical Devices—1988" in its entirety:

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
PART 868—ANESTHESIOLOGY DEVICES			
1. 868.1200	Indwelling blood oxygen partial pressure (P_{O_2}) analyzer	5	Analyzer, oxygen, neonatal invasive
2. 868.2375	Breathing frequency monitor		Apnea monitor.
3. 868.5090	Emergency airway needle	43	Needle, emergency airway.
4. 868.5160(a)	Gas machine for anesthesia	42	Machine, gas anesthesia/analgesia, complete systems. The gas machine for analgesia (868.5160(b)) is exempt from critical device requirements
5 868.5240	Anesthesia breathing circuit	19	Circuit, breathing (with connector, adaptor y-piece).
6. 868.5400	Electroanesthesia apparatus	6, 62	Apparatus, electroanesthesia; and stimulator, electroanesthesia.
7 868.5440	Portable oxygen generator	32	Generator, oxygen, portable
8. 868.5470	Hyperbaric chamber. (Monoplace)		
9 868.5610	Membrane lung for long-term pulmonary support	41	Lung, membrane (for long-term pulmonary support).
10 868.5650	Esophageal obturator	2	Airway, esophageal (obturator).
11 868.5720	Bronchial tube	66	Tube, bronchial (with and without connector).
12. 868.5730	Tracheal tube	67	Tube, tracheal (with and without connector).
13. 868.5740	Tracheal/bronchial differential ventilation tube	68	Tube, tracheal/bronchial, differential/ventilation (with and without connector).
14. 868.5750	Inflatable tracheal tube cuff	27	Cuff, tracheal tube, inflatable.
15. 868.5800	Tracheostomy tube and tube cuff	69	Tube, tracheostomy (with and without connector).
16. 868.5810	Airway connector	25	Connector, airway (extension).
17. 868.5830	Autotransfusion apparatus	9	Autotransfusion apparatus.
18. 868.5895	Continuous ventilator	73, 56	Ventilator, continuous (respirator) and respirator, neonatal ventilator.
19. 868.5905	Noncontinuous ventilator (IPPB)	75	Ventilator, noncontinuous (respirator).
20. 868.5915	Manual emergency ventilator	58, 70	Manual emergency ventilator; and resuscitator, pulmonary, manual.
21. 868.5925	Powered emergency ventilator	70	Unit emergency oxygen and resuscitation
22. 868.5935	External negative pressure ventilator	74	Ventilator, external body negative pressure, audit (cuirass).
PART 870—CARDIOVASCULAR DEVICES			
23. 870.1025	Arrhythmia detector and alarm	29	Detector and alarm arrhythmia.
24. 870.1330	Catheter guide wire		For use with percutaneous transluminal coronary angioplasty catheters (see no. 56).
25. 870.1360	Trace microsphere		
26. 870.1750	External programmable pacemaker pulse generator	34	Generator, pulse, pacemaker, external, programmable.
27. 870.1800	Withdrawal-infusion pump	54	Pump, withdrawal/infusion.
28. 870.3250	Vascular clip	22	Clip, vascular.
29. 870.3260	Vena cava clip	23	Clip, vena cava.
30. 870.3300	Arterial embolization device		
31. 870.3375	Cardiovascular intravascular filter	31	Filter intravascular, cardiovascular.
32. 870.3450	Vascular graft prosthesis of less than 6 millimeters diameter	47, 52	Prosthesis, arterial graft synthetic, and prothesis vascular graft.
33. 870.3460	Vascular graft prosthesis of 6 millimeters and greater diameter.	47, 52	Prosthesis, arterial graft synthetic, and prosthesis, vascular graft.
34. 870.3470	Intracardiac patch or pledget made of polypropylene, polyethylene terephthalate, or polytetrafluoro-ethylene.		
35. 870.3535	Intra-aortic balloon and control system.	10	Balloon, intra-aortic, and control system.
36. 870.3545	Ventricular bypass (assist) device	15	Bypass, ventricular (assist).
37. 870.3600	External Pacemaker pulse generator	33	Generator, pulse, pacemaker, external.
38. 870.3610	Implantable pacemaker pulse generator	35	Generator, pulse, pacemaker, implantable.
39. 870.3620	Pacemaker lead adaptor.		
40. 870.3650	Pacemaker polymeric mesh bag		
41. 870.3670	Pacemaker charger		
42. 870.3680	Cardiovascular permanent or temporary pacemaker electrod	30	Electrode, pacemaker, permanent and temporary.
43. 870.3700	Pacemaker programmers		

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
44. 870.3710	Pacemaker repair or replacement material		
45. 870.3800	Annuloplasty ring		
46. 870.3850	Carotid sinus nerve stimulator		
47. 870.3925	Replacement heart valve	71	Valve, heart replacement.
48. 870.4320	Cardiopulmonary bypass pulsatile flow generator		
49. 870.4350	Cardiopulmonary bypass oxygenator	44	Oxygenator, cardiopulmonary.
50. 870.4360	Nonroller-type cardiopulmonary bypass blood pump	13	Blood pump, cardiopulmonary bypass, nonroller.
51. 870.4370	Roller-type cardiopulmonary bypass blood pump	14	Blood pump, cardiopulmonary bypass roller type.
52. 870.5200	External cardiac compressor	24, 57	Compressor, external, cardiac powered, and resuscitator, cardiac mechanical.
53. 870.5225	External counter-pulsating device	26	Counter-pulsating device, external.
54. 870.5300	DC-defibrillator (including paddles)	28	Defibrillator, DC-powered (including paddles).
55. 870.5550	External transcutaneous cardiac pacemaker (noninvasive)	45	Pacemaker, cardiac, external trans-cutaneous.
56. ——	Percutaneous transluminal coronary angioplasty (PTCA) balloon dilation catheter.	—	Premarket approval device.
57. ——	Automatic implanted cardioverter defibrillator system		Premarket approval device.

PART 872—DENTAL DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
58. 872.3640	Endosseous implant		

PART 874—EAR, NOSE, AND THROAT DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
59. 874.3620	Ear, nose, and throat synthetic polymer material		
60. 874.3695	Mandibular implant facial prosthesis		
61. 874.3730	Laryngeal prosthesis (Taub design)	49	Prosthesis, laryngeal.
62. 874.3820	Endolymphatic shunt		
63. 874.3850	Endolymphatic shunt tube with valve		
64. 874.3930	Tympanostomy tube with semipermeable membrane		
65. ——	Ear, nose, and throat natural polymer-collagen material		Preamendments device; not yet classified.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
66. 876.3350	Penile inflatable implant		
67. 876.5270	Implanted electrical urinary continence device		
68. 876.5540	A-V shunt cannula		Included in blood access device and accessories (876.5540).
69. 876.5630	Peritoneal dialysis system and accessories	46	Peritoneal dialysis system, automatic delivery.
70. 876.5820	Hemodialysis system and accessories, dialysate concentrate, hollow fiber capillary dialyzers, disposable dialyzers, high permeability dialyzers, parallel flow dialyzers, single coil dialyzers, twin coil dialyzers, single needle dialysis set, dialysate delivery systems.	36	Dialysate concentrate added to this list.
71. 876.5870	Sorbent hemoperfusion system	7	Apparatus, hemoperfusion, sorbent.
72. 876.5880	Isolated kidney perfusion and transport system and accessories.		
73. 876.5955	Peritoneo-venous shunt		
74. 46 FR 7566; January 23, 1981.	Urethal sphincter prosthesis	51	Prosthesis, urethra sphincter. Device not known to be in commercial distribution.
75. 46 FR 7566; January 23, 1981.	Urethral replacement	55	Replacement, urethral. Device not known to be in distribution.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

(The following are class III devices. See 21 U.S.C. 360j(1).)

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
76. 42 FR 63474 December 16, 1977.	Absorbable surgical sutures	64	Class III transitional device.
77. 42 FR 63474; December 16, 1977.	Nonabsorbable surgical sutures	64	Class III transitional device.
78. 42 FR 63474; December 16, 1977.	Polytetrafluoroethylene (Teflon) injectable		Do.

(The following are proposed classifications discussed in the **Federal Register** of January 19, 1982 (47 FR 2810).)

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
79. 878.3300	Surgical mesh		
80. 878.3500	Polytetrafluoroethylene with carbon fibers composite implant material.		
81. 878.3530	Inflatable breast prosthesis		
82. 878.3540	Silicone gel-filled breast prosthesis		
83. ——	Implanted mammary prosthesis of composite saline and gel-filled design.		Preamendments device; not yet classified.
84. 878.3610	Esophageal prosthesis	48	Prosthesis, esophagus.
85. 878.3720	Tracheal prosthesis	50	Prosthesis, trachea.
86. 878.4300	Implantable clip		
87. 878.4750	Implantable staple		
88. ——	Maxillofacial prosthesis		ENT facial prosthesis, maxillofacial.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
89. 880.5130	Infant radiant warmer	12	Bed, radiant heat.

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
90. 880.5400	Neonatal incubator	37	Incubator, neonatal ventilator.
91. 880.5410	Neonatal transport incubator		
92. 880.5725	Infusion pump	53	Term "cardiovascular" dropped since not used in classification regulation and devices not marketed as "cardiovascular infusion pumps."
93. ——	Implanted infusion pump		Premarket approval device.

PART 882—NEUROLOGICAL DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
94. 882.5030	Methyl methacrylate for aneurysmorrhaphy		
95. 882.5150	Intravascular occluding catheter	17	Catheter, intravascular occluding.
96. 882.5200	Aneurysm clip	20	Clip aneurysm.
97. 882.5225	Implanted malleable clip		
98. 882.5250	Burr hole cover		
99. 882.5300	Methyl methacrylate for cranioplasty		
100. 882.5320	Preformed alterable cranioplasty plate		
101. 882.5330	Preformed nonalterable cranioplasty plate		
102. 882.5360	Cranioplasty plate fastener		
103. 882.5550	Central nervous system fluid shunt and components	59	Shunt, central nervous system fluid and components.
104. 882.5820	Implanted cerebellar stimulator	60	Stimulator, cerebella implanted.
105. 882.5830	Implanted diaphragmatic/phrenic nerve stimulator	61	Stimulator, diaphragmatic/phrenic nerve, implanted.
106. 882.5840	Implanted intracerebral/subcortical stimulator for pain relief	63	Stimulator, intracerebral/subcortical implanted (pain relief).
107. 882.5850	Implanted spinal cord stimulator for bladder evacuation		
108. 882.5860	Implanted neuromuscular stimulator		
109. 882.5870	Implanted peripheral nerve stimulator for pain relief		
110. 882.5880	Implanted spinal cord stimulator for pain relief		
111. 882.5880	Epidural spinal electrode		Component of implanted spinal cord stimulator for pain relief (No. 110).
112. 882.5900	Preformed craniosynostosis strip		
113. 882.5910	Dura substitute		
114. 882.5950	Artificial embolization device	65	Thromboemboli, intra-vascular (artificial embolization device).
115. ——	Lyophilized human (cadaver) dura mater		Preamendments device; not yet classified.
116. ——	Stabilized epidural spinal electrode		Premarket approval device.
117. ——	Implanted intracranial pressure monitor		Do.
118. ——	Totally implanted spinal cord stimulator for pain relief		Do.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
119. 884.5360	Contraceptive intrauterine device (IUD) and introducer	38	Intrauterine contraceptive device (IUD) and introducer.
120. 884.5380	Contraceptive tubal occlusion device (TOD) and introducer	11, 21, 72	Band, tubal occlusion; clip, tubal occlusion; valve, tubal occlusion.

PART 886—OPHTHALMIC DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
121. 886.3300	Absorbable implant (scleral buckling method)		
122. 886.3400	Keratoprosthesis	39	Keratoprosthesis, noncustom.
123. 886.3600	Intraocular lens	40	Lens, intraocular, ophthalmic; class III transitional device.
124. 886.3920	Eye valve implant		

PART 888—ORTHOPEDIC DEVICES

Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
125. 888.3000	Bone cap		
126. 888.3010	Bone fixation cerclage		
127. 888.3020	Intramedullary fixation rod		
128. 888.3025	Passive tendon prosthesis		
129. 888.3027	Polymethylmethacrylate (PMMA) bone cement		Class III transitional device.
130. 888.3030	Single/multiple component metallic bone fixation appliance and accessories.		
131. 888.3040	Smooth or threaded metallic bone fixation fastener		
132. 888.3050	Spinal interlaminal fixation orthosis		
133. 888.3060	Spinal intervertebral body fixation orthosis		
134. 888.3100	Ankle joint metal/composite semiconstrained cemented prosthesis.		
135. 888.3110	Ankle joint metal/polymer semiconstrained cemented prosthesis.		
136. 888.3120	Ankle joint metal/polymer non-constrained cemented prosthesis.		
137. 888.3150	Elbow joint metal/metal or metal/polymer constrained cemented prosthesis.		
138. 888.3160	Elbow joint metal/polymer semi-constrained cemented prosthesis.		
139. 888.3170	Elbow joint radial (hemi-elbow) polymer prosthesis		
140. 888.3180	Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis.		
141. 888.3200	Finger joint metal/metal constrained uncemented prosthesis		
142. 888.3210	Finger joint metal/metal constrained cemented prosthesis		
143. 888.3220	Finger joint metal/polymer constrained cemented prosthesis		
144. 888.3230	Finger joint polymer constrained prosthesis		
145. 888.3300	Hip joint metal constrained cemented or uncemented prosthesis.		

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Section or FR cite	Classification name of device	Device No. on original list	Former device name, or additional information
146. 888.3310	Hip joint metal/polymer constrained cemented or uncemented prosthesis.		
147. 888.3320	Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.		
148. 888.3330	Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.		
149. 888.3340	Hip joint metal/composite semi-constrained cemented prosthesis.		
150. 888.3350	Hip joint metal/polymer semi-constrained cemented prosthesis.		
151. 888.3360	Hip joint femoral (hemi-hip) metallic cemented or uncemented prosthesis.		
152. 888.3370	Hip joint (hemi-hip) acetabular metal cemented prosthesis		
153. 888.3380	Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis.		
154. 888.3390	Hip joint femoral (hemi-hip) metal/polymer cemented or uncemented prosthesis.		
155. 888.3400	Hip joint femoral (hemi-hip) metallic resurfacing prosthesis		
156. 888.3410	Hip joint metal/polymer semiconstrained resurfacing cemented prosthesis.		
157. 888.3480	Knee joint femorotibial metallic constrained cemented prosthesis.		
158. 888.3490	Knee joint femorotibial metal/composite non-constrained cemented prosthesis.		
159. 888.3500	Knee joint femorotibial metal/composite semi-constrained cemented prosthesis.		
160. 888.3510	Knee joint femorotibial metal/polymer constrained cemented prosthesis.		
161. 888.3520	Knee joint femorotibial metal/polymer non-constrained cemented prosthesis.		
162. 888.3530	Knee joint femorotibial metal/polymer semi-constrained cemented prosthesis.		
163. 888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.		
164. 888.3550	Knee joint patellofemorotibial ploymer/metal/metal constrained cemented prosthesis.		
165. 888.3560	Knee joint patellofemorotibial polymer/metal/polymer semi-constrained cemented prosthesis.		
166. 888.3570	Knee joint femoral (hemi-knee) metallic uncemented prosthesis.		
167. 888.3580	Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis.		
168. 888.3590	Knee joint tribial (hemi-knee) metallic resurfacing uncemented prosthesis.		
169. 888.3640	Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.		
170. 888.3650	Shoulder joint metal/polymer non-constrained cemented prosthesis.		
171. 888.3660	Shoulder joint metal/polymer semi-constrained cemented prosthesis.		
172. 888.3680	Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis.		
173. 888.3690	Shoulder joint humeral (hemi-shoulder) metallic uncemented prosthesis.		
174. 888.3720	Toe joint polymer constrained prosthesis		
175. 888.3730	Toe joint phalangeal (hemi-toe) polymer prosthesis		
176. 888.3750	Wrist joint carpal lunate polymer prosthesis		
177. 888.3760	Wrist joint carpal scaphoid polymer prosthesis		
178. 888.3770	Wrist joint carpal trapezium polymer prosthesis		
179. 888.3780	Wrist joint polymer constrained prosthesis		
180. 888.3790	Wrist joint metal constrained cemented prosthesis		
181. 888.3800	Wrist joint metal/polymer semi-constrained cemented prosthesis.		
182. 888.3810	Wrist joint ulnar (hemi-wrist) polymer prosthesis		

Interested persons may submit to the Dockets Management Branch (address above) written comments on the list. Comments will be considered in determining if further changes to the "Advisory List of Critical Devices—1988" are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. The list, references, and comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–5884 Filed 3–16–88; 8:45 am]

BILLING CODE 4160-01-M

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Presidential Documents

Title 3—

The President

Executive Order 12630 of March 15, 1988

Governmental Actions and Interference With Constitutionally Protected Property Rights

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. *Purpose.* (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. *Definitions.* For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

Sec. 3. *General Principles.* In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use if interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

Sec. 4. *Department and Agency Action.* In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

Sec. 5. *Executive Department and Agency Implementation.* (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sec. 6. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
March 15, 1988.

[FR Doc. 88-6145
Filed 3-16-88; 4:53 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5776 of March 16, 1988

Freedom of Information Day, 1988

By the President of the United States of America

A Proclamation

Freedom of Information Day reminds us of some of our most important principles. "We the People," as the framers of the Constitution called us in the Preamble, govern ourselves through representative government. All of us, of course, have the right to do so. We are best able to do so when every citizen is informed on matters of public importance and can therefore take full part in civic affairs and in the exercise of fundamental rights. We can all be grateful indeed to the Founders who through the Constitution—including the Bill of Rights—provided for freedoms for all Americans that make a well-informed electorate possible.

No one understood these principles more thoroughly than James Madison, our fourth President, whose birthday, March 16, is the occasion for Freedom of Information Day. Long before he became President, he served as chief recorder of the Constitutional Convention; he was perhaps the most influential architect of our charter of liberty and limited government. Throughout life he championed conditions that could foster responsive government, such as a free press and a vigorous flow of information among the public, tempered with the recognition that for legitimate government to function, some matters must remain outside the public domain. He maintained this balance eloquently when he helped draft the Bill of Rights, and especially the First Amendment, while restricting access to most of the documents that form the Constitutional record.

Two centuries later, Madison's ideals continue to strengthen our Nation. We Americans cherish our freedoms and use them; we thrive on the benefits of free exchanges with those who represent us in government and discharge the public trust. This interaction requires forthrightness in government and public access to most government information. Indeed, the responsible flow of such information to the public is entirely compatible with the necessary and proper protection of vital public interests such as national security, privacy, and effective law enforcement.

On the anniversary of President Madison's birth, let us celebrate our history and heritage of freedom of information by remembering and revering the life and example of this wise and generous patriot and lover of liberty.

The Congress, by Senate Joint Resolution 126, has designated March 16, 1988, as "Freedom of Information Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 16, 1988, as Freedom of Information Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-6144
Filed 3-16-88; 4:52 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 53
Friday, March 18, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 677]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 677 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 18 through March 24, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 677 (§ 907.977) is effective for the period March 18 through March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC. 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 15, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a six to four vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is steady.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.977 is added to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 907.977 Navel Orange Regulation 677.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 18, 1988, through March 24, 1988, are established as follows:

(a) District 1: 1,700,000 cartons;
(b) District 2: 300,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: March 16, 1988.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-6114 Filed 3-17-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 605]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 605 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period March 20 through March 26, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 605 (§ 910.905) is effective for the period March 20 through March 26, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1978-88. The committee met publicly on March 15, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 11-2 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.905 is revised to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 910.905 Lemon Regulation 605.

The quantity of lemons grown in California and Arizona which may be handled during the period March 20, 1988, through March 26, 1988, is established at 325,000 cartons.

Dated: March 16, 1988.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service

[FR Doc. 88-6113 Filed 3-17-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-27; Special Condition No. 25-ANM-17]

Special Conditions; British Aerospace BAe ATP Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special condition is issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) for the British Aerospace BAe ATP airplane with PW124 series engines. Control of these engines is provided electronically with mechanical backup. A special condition is necessary because airplanes with these series engines have novel or unusual design features associated with the installation of the full authority electronic engine control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. This special condition contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are protected.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1982, British Aerospace made an application to the Federal Aviation Administration for an amended type certificate for the advanced turboprop (ATP) airplane. Subsequently, the manufacturer determined that a new U.S. type certificate was desirable and changed his application to reflect this.

BAe ATP Design Features

General

The BAe ATP airplane is a stretched variant of the British Aerospace HS 748 (formerly Hawker Siddeley HS 748). It is 17.5 feet longer and carries 68 passengers. Other differences from the HS 748 include: Type III overwing emergency exits, new doors, Pratt and

Whitney (Canada) PW124A engines, six bladed propellers, swept fin, improved wing center section structure, new wing tips, main landing gear, nose gear, electrical generating system and hydraulic pumps, introduction of a bleed air environmental control system (ECS), weight increase to 50,760 pounds, smaller windows, electronic flight instrument systems and electronic engine controls.

Lightning Protection

The regulations incorporated by reference in the HS 748 type certificate include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The BAe ATP with PW124 engines is being designed with the propulsion systems using electrical interfaces for critical functions such as crew inputs to the engines. The system also provides mechanical manual reversion. The electrical part of these systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike causing electrical or magnetic interference.

Discussion

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in JAR AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D) A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple-strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t)=I_0(e^{-at}-e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_0, amp	218,810	109,405	54,703	10,572
a, sec^{-1}	11,354	22,708	22,708	187,191
b, sec^{-1}	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:				
i_{peak}	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec)	1.4×10^{11} t=0+sec	1.4×10^{11} t=0+sec	0.7×10^{11} t=0+sec	2.0×10^{11} t=0+sec
di/dt, (amp/sec)	1.0×10^{11} t=.5 us	1.0×10^{11} t=.25 us	0.5×10^{11} t=.25 us	
Action integral (amp^2 sec)	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	

Discussion of Comments

Notice of proposed special conditions No. SC-88-1-NM for the British Aerospace BAe ATP airplane with PW124 series engines was published in the **Federal Register** on February 3, 1988 (53 FR 3040). The only comments received were from the applicant. These comments pointed out errors in the general airplane description, and a typographical error in the value of a constant in the description of the double exponential equation for component D. Corrections have been made accordingly.

Type Certification Basis

The United Kingdom (UK) type certification basis for this airplane is Joint Airworthiness Requirements (JAR) 25. Based on the provisions of 14 CFR 21.17 and the Bilateral Airworthiness Agreement between the U.S. and the UK, BAe, through CAA-UK, will show compliance with Part 25 of the FAR, as amended by Amendments 25-1 through 25-54, and Amendment 25-62, including any exceptions and exemptions which are identified in the Type Certificate Data Sheet.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(a) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b) and may become part of the type certification basis in accordance with § 21.101.

As the intended type certification date for the first BAe ATP airplane to incorporate the PW124 series engines is March 29, 1988, which is a date earlier than the effective date would be under standard practice April 18, 1988, the FAA finds that good cause exists to make this special condition effective upon publication.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued for the British Aerospace BAe ATP airplanes with PW124 series engines.

1. The authority citation for this special condition reads as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Lightning Protection.* Each electronic propulsion control system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

Issued in Seattle, Washington, on March 9, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-5910 Filed 3-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-156-AD; Amdt. 39-5881]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires installation of brake metering valve tire burst guards in the main landing gear wheel wells. This amendment is prompted by reports of two airplanes in production found without the left and right main landing gear brake metering valve tire burst guards installed. This condition, if not corrected, could lead to loss of hydraulic systems A and B, brakes, and nose wheel steering.

DATES: Effective May 1, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires installation of brake metering valve tire burst guards in the main landing gear wheel wells of Boeing Model 737 series airplanes, was published in the **Federal Register** on December 14, 1987 (52 FR 47400).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America agreed with the proposal in stating that its one member affected by the proposal planned to accomplish the proposed modification within the compliance period.

After a careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,400.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Service Bulletin 737-32-1202, dated August 27, 1987, certificated in any category. Compliance required within the next six months after the effective date of this AD, unless previously accomplished.

To prevent damage to the hydraulic systems and loss of brakes and nose wheel steering, accomplish the following:

A. Install left and right main landing gear brake metering valve tire burst guards in accordance with Boeing Service Bulletin 737-32-1202, dated August 27, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 1, 1988.

Issued in Seattle, Washington, on March 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-5911 Filed 3-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-51-AD; Amdt. 39-5878]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 series airplanes, which requires repetitive inspection procedures and repair, if necessary, of the main landing gear (MLG) support structure. This amendment is prompted by reports of cracks in the MLG rear pintle support beam. This condition, if not corrected, could lead to the collapse of the MLG.

DATES: Effective April 25, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires periodic inspections for cracks in the MLG pintle support beam on British Aerospace Model BAC 1-11 200 series airplanes, and repair or replacement, if necessary, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 14, 1987 (52 FR 30380), and as a Supplemental NPRM on January 6, 1988 (53 FR 258).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the Air Transport Association (ATA) of America, had no objections to the proposed rule.

Another commenter, the manufacturer, suggested that, instead of the proposed new AD, the FAA should consider revising AD 86-04-07, Amendment 39-5235 (51 FR 4686; February 6, 1986), to add the subject inspections for the Model BAC 1-11 200 series airplanes to those now existing in that AD for the Model 400 series. The FAA disagrees. In developing this rulemaking action, the FAA did consider such an approach; however, the FAA has determined that, in the interest of keeping possible confusion for operators to a minimum, the issuance of a new, separate AD, applicable to the Model 200 series only, is appropriate.

The FAA notes that additional comments from the manufacturer were contributory to the issuance of the Supplemental NPRM, and were addressed in the preamble to that action.

No comments were received in response to the Supplemental NPRM.

Paragraph B.1. has been revised to clarify that, for pre-modification PM3070 airplanes, if cracks are present in the aft half-beam, cracked parts must be replaced prior to further flight. After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted.

It is estimated that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,840.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the collapse of the main landing gear due to cracks in the rear pintle support beam, accomplish the following.

A. Prior to the accumulation of 50,000 landings or within the next 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1–11 Alert Service Bulletin 57–A–PM5896, Issue Number 3, dated April 13, 1987. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

B. If cracks are discovered during the inspections required by paragraph A., above, accomplish the following:

1. If cracks are less than 0.6 inches on pre-modification PM3070 airplanes, or less than 0.2 inches on post-modification PM3070 airplanes, repair or replace the cracked part prior to further flight, in accordance with paragraph 2.2.1 of the Accomplishment Instructions of British Aerospace BAC 1–11 Alert Service Bulletin 57–A–PM5896, Issue Number 3, dated April 13, 1987. If cracks are repaired in accordance with the service bulletin, continue to perform eddy current or dye penetrant inspections at intervals not to exceed 800 landings, providing that, in the case of pre-modification PM3070 airplanes, if cracks are present in the aft half-beam, cracked parts must be replaced prior to further flight.

2. If cracks exceed 0.6 inches on pre-modification PM3070 airplanes, or exceed 0.2 inches on post-modification PM3070 airplanes, replace the cracked part with an airworthy part prior to further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 25, 1988.

Issued in Seattle, Washington, on March 7, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5913 Filed 3–17–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ANE–08; Amdt. 39–5865]

Airworthiness Directives; General Electric (GE) CF34–1A and –3A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to GE CF34–1A and –3A turbofan engines installed in Canadair Limited Model CL–600–2A12 and CL–600–2B16 aircraft. The AD requires replacement of all fuel controls with reworked units incorporating a redesigned bypass valve piston. The AD also requires cleaning of certain fuel controls having possible internal contamination. The compliance schedules for the AD are dependent upon the compliance status of the operator with respect to Canadair's airplane flight manual (AFM) temporary revisions with limitations regarding the use of continuous ignition and single engine demonstration for training. This amendment is needed to prevent uncommanded engine power roll-back or flameout and subsequent inflight shutdown.

DATES:

Effective—March 23, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before April 18, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 23, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88–ANE–08, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 88–ANE–08".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletins (SB's) may be obtained from General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910. The applicable AFM temporary revisions may be obtained from Canadair Limited, 1800 Laurentien Blvd., Saint Laurent, Quebec, Canada H4R 1K2, or P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9.

A copy of the SB's and the AFM temporary revisions are contained in Rules Docket Number 88–ANE–08, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7091.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been ten engine flameout and uncommanded power roll-back events involving the fuel controls of certain GE CF34 engines. One of the events occurred during a simulated engine out demonstration with the automatic power reserve (APR) system activated. The flameout or roll-

back incidents occurred as a result of internal contamination due to either inadequate cleaning during assembly of the fuel control or deterioration of the bypass valve teflon piston ring seal. The contaminant can cause malfunction of the control sensor or the fuel metering valve. This results in reduced fuel flow to the engine, causing uncommanded engine power roll-back or flameout.

The fuel control manufacturer has implemented an improved cleaning procedure and redesigned the bypass valve piston eliminating the teflon seal. GE has issued SB's (CF–34) 73–5 and 73–6, both dated January 22, 1988, requiring replacement of the bypass valve piston with redesigned hardware for all CF34–1A and –3A engines, and internal cleaning of the fuel control by a new process. Canadair Limited has issued AFM Temporary Revision Numbers 601/10–1 and 601/11 for Model CL–600–2B16 aircraft, and Numbers 601/17–1 and 601/18 applicable to the Model CL–600–2A12 aircraft, which require the use of continuous ignition on both engines for all takeoffs and landings, to and from 800 feet above ground level, and during engine-out operation for all other flight regimes. In order to further minimize the consequences of power loss, single engine demonstration and training are prohibited. In addition this increased usage of continuous ignition imposes a more severe operating environment on the engine igniters. Therefore, cumulative time limitations have been specified in the Canadair AFM temporary revisions on the use of continuous ignition and the usage time must be logged by the crew.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires incorporation of the GE SB's on GE CF34 engine fuel controls to correct the unsafe condition within 500 hours in service after the effective date of this AD, or prior to September 30, 1988, whichever occurs sooner, when operting in accordance with the Canadair AFM temporary revisions. Incorporation of the GE SB's is required prior to further flight after the effective date of this AD when not operating in accordance with the Canadair AFM temporary revisions.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 88–ANE–08". The postcard will be date/time stamped and returned to the commenter.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation, if filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

General Electric: Applies to General Electric (GE) CF34–1A and –3A turbofan engines installed in the Canadair Limited Model CL–600–2A12 and CL–600–2B16 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent an engine flameout or uncommanded power roll-back and subsequent inflight shutdown due to contamination of the fuel control, accomplish the following:

(a) For the engines not operated in accordance with Canadair Airplane Flight Manual (AFM) Temporary Revision Numbers 601/10–1 and 601/11 for Model CL–600–2B16, or Temporary Revision Numbers 601/17–1 and 601/18 for Model CL–600–2A12, accomplish the following prior to further flight after the effective date of this AD:

(1) For engines with fuel controls identified in GE Service Bulletin (SB) Number (CF34) 73–5, dated January 22, 1988, replace the fuel control with a reworked unit which has a redesigned bypass valve piston installed and cleaned internally by the improved process, in accordance with this SB.

(2) For engines with fuel controls identified in GE SB Number 73–6, dated January 22, 1988, replace the bypass valve piston with redesigned hardware in accordance with this SB.

(b) For the engines operated in accordance with Canadair AFM Temporary Revisions Numbers 601/10–1 and 601/11 for Model CL–600–2B16, or Temporary Revision Numbers 601/17–1 and 601/18 for Model CL–600–2A12, accomplish paragraphs (a)(1) and (a)(2) above within 500 hours in service from the effective date of this AD, or prior to September 30, 1988, whichever occurs sooner.

(c) Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of the AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine

BEST COPY AVAILABLE

Certification Office, New England Region, may adjust the compliance times specified in this AD.

General Electric Service Bulletins (CF34) 73–5, dated January 22, 1988, and (CF34) 73–6 dated January 22, 1988, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the engine manufacturer's SB's may obtain copies upon request to General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910.

These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 88–ANE–06, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on March 23, 1988.

Issued in Burlington, Massachusetts, on February 23, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88–5912 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25563; Amdt. No. 1369]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also indentifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on this criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on March 4, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 Gmt on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective May 5, 1988*

Evergreen, AL—Evergreen, VOR/DME RWY 9, Amdt. 2
Sitka, AK—Sitka, NDB–A, Orig.
Sitka, AK—Sitka, NDB–A, Orig., CANCELLED
Aspen, CO—Aspen-Pitkin Co/Sardy Field, VOR/DME–C, Amdt. 1
Craig, CO—Craig-Moffat, VOR RWY 25, Amdt. 2
Denver, CO—Stapleton Intl, LOC RWY 18, Amdt. 2
Denver, CO—Stapleton Intl, LDA/DME RWY 35R, Amdt. 2
Denver, CO—Stapleton Intl, NDB RWY 26L, Amdt. 38
Denver, CO—Stapleton Intl, NDB RWY 26R, Amdt. 8
Denver, CO—Stapleton Intl, ILS/DME 1 RWY 8R, Amdt. 5
Denver, CO—Stapleton Intl, CONVERGING ILS/DME 2 RWY 8R, Amdt. 2
Denver, CO—Stapleton Intl, ILS/DME 1 RWY 17L, Amdt. 6
Denver, CO—Stapleton Intl, CONVERGING ILS/DME 2 RWY 17L, Amdt. 2
Denver, CO—Stapleton Intl, ILS RWY 26L, Amdt. 46
Denver, CO—Stapleton Intl, ILS RWY 35L, Amdt. 38
Denver, CO—Stapleton Intl, ILS RWY 35R, Amdt. 11
Denver, CO—Stapleton Intl, ILS RWY 36, Amdt. 2
Bedford, IN—Virgil I. Grissom Muni, VOR/DME Rwy 13, Amdt. 8
Bedford, IN—Virgil I. Grissom Muni, VOR/DME Rwy 31, Amdt. 7
Bloomington, IN—Monroe County, VOR RWY 6, Amdt. 15
Bloomington, IN—Monroe County, VOR RWY 17, Amdt. 10
Bloomington, IN—Monroe County, VOR RWY 24, Amdt. 9
Bloomington, IN—Monroe County, VOR/DME RWY 35, Amdt. 12
Charles City, IA—Charles City Muni, NDB RWY 12, Amdt. 10
Ginnell, IA—Grinnell Muni, VOR/DME RWY 31, Orig.
Mapleton, IA—Mapleton Muni, NDB RWY 20, Amdt. 3
Waterloo, IA—Waterloo Muni, RNAV RWY 6, Amdt. 4, CANCELLED
Liberal, KS—Liberal Muni, VOR RWY 17, Amdt. 6, CANCELLED
Liberal, KS—Liberal Muni, VOR DME RWY 35, Amdt. 2, CANCELLED
Louisville, KY—Standiford Field, LOC BC RWY 11, Amdt. 5, CANCELLED
Norwood, MA—Norwood Memorial, LOC RWY 35, Amdt. 6
Norwood, MA—Norwood Memorial, NDB RWY 35, Amdt. 6
Hallock, MN—Hallock Muni, VOR/DME RWY 31, Amdt. 5
Millville, NJ—Millville Muni, VOR RWY 10, Amdt. 3
Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 8
Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 4
Newark, NJ—Newark Intl, ILS RWY 4L, Amdt. 8
Newark, NJ—Newark Intl, ILS RWY 4R, Amdt. 5
Pembina, ND—Pembina Muni, VOR RWY 33, Amdt. 5
Norman, OK—University of Oklahoma Westheimer Airpark, VOR/DME RWY 3, Amdt. 2, CANCELLED
Shawnee, OK—Shawnee Muni, RNAV RWY 17, Amdt. 2, CANCELLED
Corpus Christi, TX—Corpus Christi Intl, RADAR 1, Amdt. 9, CANCELLED
Casper, WY—Natrona County Intl, NDB RWY 7, Amdt. 12
Casper, WY—Natrona County Intl, ILS RWY 7, Amdt. 22

. . . *Effective April 7, 1988*

Park Rapids, MN—Park Rapids Muni, VOR RWY 31, Amdt. 11
Kansas City, MO—Kansas City Downtown, LOC RWY 3, Orig.
Lumberton, NC—Lumberton Muni, VOR RWY 5, Amdt. 7
Lumberton, NC—Lumberton Muni, VOR RWY 13, Amdt. 8

. . . *Effective February 22, 1988*

Boston, MA—General Edward Lawrence Logan Intl, ILS/DME RWY 27, Amdt. 3

The FAA published an Amendment in Docket No. 25547, Amdt. No. 1368 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 41 Page 6593; dated Wednesday, March 2, 1988) under Section 97.29 effective April 7, 1988, which is hereby amended as follows:

Washington, DC, Dulles Intl, ILS RWY 12, Amdt. 13 should read Washington, DC, Dulles Intl, ILS RWY 12, Amdt. 3

[FR Doc. 88–5914 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP–300180; FRL 3351–8]

Revocation of Human Food Additive Regulations and Animal Feed Additive Regulations for Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes human food additive regulations in 21 CFR Part 193 and animal feed additive regulations in 21 CFR Part 561 related to certain pesticide chemicals. EPA is initiating this final rule without the benefit of a proposed rulemaking or solicitation for public comments because it simply removes obsolete and expired residue limitations.

EFFECTIVE DATE: March 18, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–2226.

SUPPLEMENTARY INFORMATION: EPA established certain food additive regulations in 21 CFR Parts 193 and 561 for residues of the pesticides enumerated below in processed food commodities, to expire on the dates specified in the regulations. These residues resulted from use of the pesticides in accordance with the provisions of experimental use permits (EUP's) which have also expired; several of the regulations specify "interim" tolerances but do not mention the experimental program.

The various pesticides for which these regulations were established have not been authorized since 1985 for use under EUP's on the subject processed food commodities or on the raw agricultural commodities from which the food commodities are processed, and there is no longer any expectation of residues occurring in the processed food products from the EUP use. Thus, the existing food additive regulations are no longer necessary and should be deleted from 21 CFR Parts 193 and 561.

Therefore, EPA is amending the regulations discussed in this rule by revoking the section in its entirety or removing the applicable paragraph containing the expired tolerances, as follows:

In Part 193

§ 193.15	Aldicarb
§ 193.84	Chlorothalonil
§ 193.87	Cypermethrin
§ 193.152	2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate
§ 193.156	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothothioate
§ 193.277	Metalaxyl
§ 193.468	Pirimiphos-methyl
§ 193.469	5-(4-Chlorophenyl)-2,3-diphenylthiophene

In Part 561

§ 561.273	Metalaxyl
§ 561.277	Methamidophos
§ 561.432	Pirimiphos-methyl
§ 561.433	5-(4-Chlorophenyl)-2,3-diphenylthiophene

Since this regulatory action is intended only to remove obsolete and unnecessary information from the Code of Federal Regulations, it has been determined that this rule is not subject to a review under Executive Order 12291. Likewise, this rule does not require a regulatory impact analysis under the Regulatory Flexibility Act.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: March 11, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Parts 193 and 561 are amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 193.84, 193.87, and 193.469 [Removed]

b. By removing §§ 193.84, 193.87, and 193.469.

§ 193.15 [Amended]

c. By removing and reserving paragraph (b) in § 193.15.

§§ 193.152 and 193.277 [Amended]

d. By removing paragraph (c) in §§ 193.152 and 193.277.

§ 193.156 [Amended]

e. By removing paragraphs (b), (c), and (d) and reserving paragraph (b) in § 193.156.

f. By revising § 193.468 to read as follows:

§ 193.468 Pirimiphos-methyl.

(a) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl (*O*-[2-diethylamino-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate) and its metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following processed foods when present therein as a result of application to stored grains:

Foods	Parts per million
Corn milling fractions (except flour)	40
Corn oil	88
Sorghum milling fractions (except flour)	40

(b) [Reserved]

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 561.277 and 561.433 [Removed]

b. By removing §§ 561.277 and 561.433.

§ 561.273 [Amended]

c. In § 561.273, by removing paragraph (c).

d. By revising § 561.432 to read as follows:

§ 561.432 Pirimiphos-methyl.

(a) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl (*O*-[2-diethylamino-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate) and its metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following processed feeds when present therein as a result of application to stored grains:

Foods	Parts per million
Corn milling fractions (except flour)	40
Sorghum milling fractions (except flour)	40

(b) [Reserved]

[FR Doc. 88-6072 Filed 3-17-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, 204, 205, 207, 213, 220, 221, 231, 232, 234, 240, 241, 242, 244, 250, 251, 255, and 885

[Docket No. R-88-1375; FR-3445]

Miscellaneous Revisions to FHA Single Family and Multifamily Mortgage Insuring Authorities; Section 202 Per Unit Cost Limits

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a number of the amendments to HUD's single family and multifamily mortgage insurance authorities made by the Housing and Community Development Act of 1987. Major changes include liberalization in the way HUD determines the maximum mortgage amounts for high-cost areas in FHA's home mortgage and individual-unit condominium insurance programs, revisions to the procedures by which the public may request increases in the single family and condominium unit mortgage limits, increases in the per unit mortgage limits for HUD's multifamily mortgage insurance programs, an expanded FHA insuring authority for the refinancing of single family insured graduated payment mortgages (GPMs), and an expansion of mortgagors eligible for FHA single family mortgage insurance on Hawaiian home lands. The rule also increases the per unit cost limits for housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Questions concerning single family program amendments in this rule should be referred to John J. Coonts, Deputy Director, Office of Insured Single Family Housing, Room 9266, telephone 755-3046. Questions concerning amendments to multifamily programs contained in this rule should be referred to James Hamernick, Director, Office of Insured Multifamily Housing Development, room 6134, telephone 755-6500. Questions concerning amendments to the Section 202 program of housing for the elderly or handicapped contained in the rule should be referred to Robert Wilden, Director, Assisted Housing and Handicapped Housing Division, room 6116, telephone 426-8730 (None of the listed telephone numbers is toll-free.) Written inquiries should be directed to the listed addresses and room numbers, with the remainder of the address, in each instance, as follows: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000.

SUPPLEMENTARY INFORMATION: On February 5, 1988, the President signed into law the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act). This rule implements a number of the 1987 Act's changes to HUD's single family and multifamily mortgage insurance programs and increases the per unit cost limits for the Section 202 program of Housing for the Elderly and Handicapped. A discussion of these changes follows.

Single Family Mortgage Insurance

1. *High-cost areas.* Section 203(b) of the National Housing Act (NHA)—HUD's basic home mortgage insuring authority—establishes the dollar limits for an insurable mortgage by use of base dollar limits (varying with the number of family residences involved), with "high-cost" overrides on an area-by-area basis. HUD is authorized to set "high-cost" limits for any geographic area in which the Commissioner finds that moderate- and middle-income persons have limited housing opportunities, due to high prevailing housing sales prices. Before enactment of the 1987 Act, these "high-cost" limits could not exceed the lesser of (1) 133⅓ percent of the base dollar limits or (2) a percentage of the median one-family house prices in the area, keyed to the number of units involved.

The 1987 Act made two changes in this system. First, section 404 increased the 133⅓ percent factor to 150 percent. Second, section 423 specified that, for purposes of determining the median house price in the second part of the "high-cost" formula, the term "area" means a county, or a metropolitan statistical area (MSA), as established by the Office of Management and Budget (OMB), whichever results in the higher dollar amount.

The rule amends 24 CFR Part 203 (Mutual Mortgage Insurance and Rehabilitation Loans) and Part 234 (Condominium Ownership Mortgage Insurance) to implement these changes for the basic home mortgage and individual-unit condominium mortgage insurance programs. Other single family authorities affected by these changes include 24 CFR Part 204 (Coinsurance), Part 220 (Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas), Part 222 (Servicemen's Mortgage Insurance), and Part 240 (Mortgage Insurance on Loans for Fee Title Purchase).

It should be noted that section 423 raised an issue of statutory construction. The amendment defined the term "area" for purposes of the "pending sentence" in the statute. The "preceding sentence" uses "area" in two contexts: The median sales price component of the "high-cost" formula and the threshold test for determining whether a given area should be considered "high-cost." The House Report on the 1987 Act,[1] from which the definition of "area" derived, however, makes clear that the amendment only applies to the median sales price determination:

> The Committee accepted a provision that calls for developing a more accurate way of calculating the median single family house price by requiring the Secretary to use either the Standard Metropolitan Statistical Area (SMSA) or the county when determining the area used for this calculation.
>
> Prior to August, 1988, HUD used a county area calculation, but when the regulation was changed, the median house price in an urban area within a county was lowered. The Committee believes this change is necessary to produce more realistic housing prices for the FHA insurance program. (H. Rep. No. 122, 100th Cong., 1st Sess. 67 (1987).)

The rule reflects this interpretation.

2. *Changes in mortgage limits.* Sections 203.18b(a) and 234.27(b) provide a system by which the public may request an increase in HUD's mortgage limits for single family dwellings and individual units in condominiums. If a party believes that the mortgage limit for any area does not accurately reflect the extent to which moderate- and middle-income families have limited housing opportunities because of high prevailing housing sales prices, the party may submit documentation to the HUD field office in support of an alternative mortgage limit.

Under present §§ 203.18b(a) and 234.27, the required documentation consists of a sample of the actual sales prices in the area for new and existing homes and condominiums, and the actual or estimated median sales price for all sales included in the sample. The sample should be representative of the total sales made for the area involved for at least a three-month period.

The final rule makes two principal changes to this system. First, it makes clear that the area for which an increased mortgage limit may be requested includes a county located within an MSA (as established by OMB). This change parallels the amendment discussed above for determining the median sales prices for one- to four-family residences. The rule also specifies that requests for increased mortgage amounts may not be made for an area smaller than a county.

Second, instead of the *sample* of sales prices used by the *existing* procedure, the rule requires submission of a listing of acutal sales prices for all or nearly all sales, over a period of time that varies with the sales volume, as follows:

Sales volume	Revised data period
500 or more per month	1 mo.
250 to 499 per month	2 mos.
Less than 250 per month	3 mos.

This change does not impose new burdens on the public, since the current system requires that all (or almost all) sales prices be reviewed in order to arrive at a representative sample. It does, however, significantly relax the reporting requirement, by permitting reports for areas with high sales volumes for periods less than the current rule's flat three-month minimum.

The rule incorporates these changes in §§ 203.18b(a) and 234.27(b).

3. *Refinancing of FHA-Insured Graduated Payment Mortgages (GPMs).* Section 406(a) of the 1987 Act amends section 223(a)(7) of the NHA by authorizing HUD to insure a mortgage to refinance an existing mortgage insured pursuant to the GPM authorities of 24 CFR 203.45 (eligibility of graduated payment mortgages) and 203.46 (eligibility of modified graduated payment mortgages). Under the new authority, the refinancing mortgage may equal the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than that due under the existing mortgage for the month in which the refinancing mortgage is executed.

Before enactment of the 1987 Act, insured refinancing under section

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[1] Throughout this preamble, reference is made to the *House and Senate Committee Reports* and the Conference Report "on the 1987 Act." These committee documents actually refer to a version of the 1987 legislation that was reported from conference committee, but not approved by the Senate. The enacted version of the 1987 Act was a "new" bill that was considered and passed later. This bill, however, was based upon the conference-reported measure and contained its predecessor's provisions, except for several budget-related changes. Therefore, the Department believes that the committee and conference reports on the earlier version of the 1987 Act constitute valid legislative history that should be consulted in construing the provisions in the enacted 1987 Act that were carried over from the conference-reported version.

223(a)(7) could not exceed the original principal balance of the existing mortgage. GPMs provide for lower monthly mortgage payments for the early years of the mortgage, with increases over time to amortize the loan within the applicable mortgage term. Interest that accrues, but is unpaid because of the initial lower monthly payments, is added to the loan balance, creating "negative amortization." Thus, GPMs typically have outstanding balances for several years into the life of the loan that exceed the original principal balance of the mortgage.

Section 408(a) is designed to give GPM homeowners access to insured refinancing under section 223(a)(7). It allows them to get relief through the benefit of a lower interest rate and the consequent lower monthly mortgage payments, by authorizing HUD to insure the refinancing of the *entire* outstanding balance of an insured GPM, without regard to the current appraised value of the property, rather than limiting such insurance to the original amount of the existing mortgage. This should also benefit HUD by reducing mortgage insurance claims stemming from homeowner default on insured GPMs.

4. *Mortgagors eligible for single family mortgage insurance on Hawaiian home lands.* Section 247 of the NHA authorizes HUD to insure single family mortgages for "Native Hawaiians" on Hawaiian home lands. Before enactment of the 1987 Act, section 247(c)(1) defined "Native Hawaiian" to mean any descendant of not less than one-half part of the blood of the races living in Hawaii before January 1, 1778.

Section 413(a) of the 1987 Act amended section 247(c)(1) to specify that the term "Native Hawaiian" includes an individual who succeeds a spouse or parent in a leasehold interest in Hawaiian home lands and who has such lower blood percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitiled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5)). The rule incorporates this change.

Section 413(b) of the 1987 Act provides that mortgages insured pursuant to section 247 of the NHA are obligations of the General Insurance Fund (GIF). As implemented by HUD under the Housing and Urban Rural Recovery Act of 1983, section 247 mortgages were obligations of the Mutual Mortgage Insurance Fund (MMIF). No regulatory change is needed to effect this change. It should be noted, however, that the amendment will have prospective effect only. Mortgages that are the obligations of the MMIF will remain the obligations of that Fund.

The rule does, however, amend § 203.259a to provide for the continuation of the one-time mortgage insurance premium (MIP) collection system for section 247 mortgages. The Department has implemented the one-time MIP system for all MMIF mortgages, including pre-1987 Act section 247 mortgages. Mortgages that are subject to the GIF have not been brought within the one-time MIP system, but continue to pay MIP on a periodic basis. Although future section 247 mortgages will be obligations of the GIF, the Department will continue to use the one-time MIP procedures for them. This decision is consistent with the original agreement between HUD and the State of Hawaii, Department of Hawaiian Home Lands Commission for administering section 247. The Department does not believe that Congress intended to require a change in MIP procedure for the Hawaiian Home Lands program.

5. *Seasonal homes.* Section 406(c) of the 1987 Act repealed section 203(m) of the NHA—HUD's authority to insure mortgages covering vacation and seasonal homes. This authority has never been used. The rule removes the regulations for section 203(m) at 24 CFR 203.18(f), 203.19(c), and 203.43b. It also makes conforming changes at §§ 203.28, 203.43c(a), 203.45(g), 203.47(g), 203.49(h), 203.50(b), 204.1, 220.100, and 240.1.

Multifamily Mortgage Insurance

6. *Dollar mortgage limits.* Section 426 of the 1987 Act increased the per unit cost limits for a number of HUD's multifamily insuring authorities. The following lists the programs and limits, as increased by section 426.

a. *Section 207 of the NHA (Rental Housing Insurance) (24 CFR Part 207), Section 213 of the NHA (Cooperative Housing Insurance) (24 CFR Part 213), and Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance) (24 CFR Part 220).*

Base[1]		Elevator structures[1]
$25,350	Per family unit with 0 bedrooms	$29,250
28,080	Per family unit with 1 bedroom	32,760
33,540	Per family unit with 2 bedrooms	40,170
41,340	Per family unit with 3 bedrooms	50,310
46,800	Per family unit with 4 or more bedrooms	56,865

[1] Limits for 2, 3, or 4 or more bedrooms under section 220 of the NHA may be increased by 25 percent for rehabilitation projects with not more than 5 units. The rule implements this authority.

b. *Section 221(d)(3) of the NHA (Housing for Moderate Income and Displaced Families) (24 CFR Part 221).*

Base[1]		Elevator structures[1]
$28,032	Per family unit with 0 bedrooms	$29,500
32,321	Per family unit with 1 bedroom	33,816
38,979	Per family unit with 2 bedrooms	41,120
49,893	Per family unit with 3 bedrooms	53,195
55,583	Per family unit with 4 or more bedrooms	58,392

[1] These limits are for nonprofit, cooperative, or public body, and certain special mortgagors; dollar limits for other mortgagors are 90 percent of those listed. The rule implements this two-tier system.

c. *Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families) (24 CFR Part 221).*

Base		Elevator structures
$25,226	Per family unit with 0 bedrooms	$27,251
28,636	Per family unit with 1 bedroom	31,239
34,613	Per family unit with 2 bedrooms	37,986
43,446	Per family unit with 3 bedrooms	49,140
49,231	Per family unit with 4 or more bedrooms	53,942

d. *Section 231 (Housing for Elderly Persons) (24 CFR Part 231).*

Base		Elevator structures
$23,985	Per family unit with 0 bedrooms	$27,251
26,813	Per family unit with 1 bedroom	31,239
32,019	Per family unit with 2 bedrooms	37,986
38,532	Per family unit with 3 bedrooms	49,140
45,300	Per family unit with 4 or more bedrooms	53,942

e. *Section 234 (Mortgage Insurance for Condominiums) (24 CFR Part 234).*

Base		Elevator structures
$28,032	Per family unit with 0 bedrooms	$29,500
32,321	Per family unit with 1 bedroom	33,816
38,979	Per family unit with 2 bedrooms	41,120
49,893	Per family unit with 3 bedrooms	53,195
55,583	Per family unit with 4 or more bedrooms	58,392

Because final rules of the Department must, under section 7(o)(3) of the Department of Housing and Urban Development Act, await thirty days of continuous session of the Congress before they may become effective, the several amendments made in this rule, including the above-described changes in per unit cost limits for HUD's multifamily insuring authorities, will not be effective until April 27, 1988.

However, the Secretary has the authority to waive regulatory requirements that are not required by statute, in individual cases. HUD anticipates that, during the period between publication of this rule and its effective date, circumstances may arise wherein it would be unfair to deny full availability of HUD's multifamily programs by enforcing the current per unit cost limits and high cost area limits—all of which have been increased under the 1987 Act.

Accordingly, pending the effectiveness of this rule, the per unit limit increases and the new high cost area maximums set out in Parts 207, 213, 220, 221, 231, 234, 251, 255 and 885 of this rule may be made available for application to mortgages initially or finally endorsed for insurance between the date of publication of this rule and its effective date. (Thereafter, the higher limits will be available to all other applications for mortgage insurance meeting underwriting requirements.) (In the case of direct loans under the section 202 program (Part 885), a borrower, at any time up to final closing, may request that the new per unit amounts and high cost limits set out in this rule applied in the computation of the loan amount, if the existing per unit and high cost limits in Part 885 would otherwise limit the loan amount for which the borrower is eligible.)

Clearly, the application of these higher limits is consistent with the intent of the Congress in revising the statutory limits, and allowing case-by-case waiver of HUD's regulations providing for lower limits (where all other underwriting requirements and restriction are met) will have the effect of making the new limits available more promptly.

By separate publication (53 FR 6922, March 3, 1988) the Department announced a similar policy with reference to high cost area limits in its single family mortgage insurance programs.

It should be noted that the maximum dollar amount increases for section 234 of the NHA raised on issue of statutory interpretation. Section 422(a) of the 1987 Act increased the maximum section 234 limits to those for a comparable unit under section 221(d)(3) of the NHA, as described above. Section 426(g) of the 1987 Act also increased the dollar limits, but by a lesser amount.

The legislative history indicates the following. The House-passed 1987 Act contained what later became section 422(a). The Conference Report (at 217) states that the House provision is included in the reported bill. The Senate-passed bill increased the multifamily per unit cost limits, but only for sections 221(d)(3) and 221(d)(4) of the NHA. The House-passed bill contained the multifamily high-cost increase discussed below in item 7. The Conference Report indicates that it accepted "both the House and Senate provisions, with an amendment to the Senate provision" to increase the per unit cost limits for the other multifamily programs, including section 234. (Conference Report at 218.)

It appears, therefore, that the conferees erred in adopting two conflicting per unit cost limit increases for section 234. Since the intent of Congress was to liberalize the multifamily per unit cost limits and since we believe that section 422(a)'s cross-reference takes precedence over the amounts added by section 426(g) as a matter of statutory construction, the Department has adopted the higher limits contained in section 422(a).

7. *High-cost limits.* Before enactment of the 1987 Act, HUD had authority to increase the maximum dollar limits detailed in item 6, above, by the following:

a. 75 percent in any area in which HUD determines cost levels so require.

b. 140 percent, where HUD determines it necessary on a project-by-project basis, except 90 percent where a mortgage purchased by GNMA under its Special Assistance Functions (section 305 of NHA) is involved.

Section 426(h) of the 1987 Act increased the high-cost area percentage from 75 to 110 percent.

The rule implements this change for each of the authorities listed in item 6, above, as well as 24 CFR Part 251 (Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects) and Part 255 (Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects). (These coinsurance authorities do not require revision to make cost increases effective.)

8. *Per unit cost limits for Section 202 Elderly or Handicapped Housing.* The Conference Report on the 1987 Act expresses the conferees' intent that HUD—

> raise the mortgage limits for Section 202 projects to levels commensurate with the new limits established in [section 426(d)] for Section 221(d)(3). (H. Rep. No. 426, 100th Cong., 1st Sess. 218 (1987))

Section 202(i)(3) of the Housing Act of 1959 requires HUD, in establishing per unit cost limits for the program, to take into account design features necessary to meet the needs of elderly or handicapped residents, and requires the limits to reflect the cost of providing these features. The provision also requires HUD to adjust the limits to reflect changes in the general level of construction costs.

The Department believes that the per unit cost limits suggested by the conferees meet each of these requirements. Accordingly, the rule amends 24 CFR 885.410 to incorporate the section 221(d)(3) per unit limits referred to in item 6.b., above. The limits included are those for nonprofits, since section 202 borrowers must be nonprofit entities.

The rule also amends § 885.410 to incorporate the percentage increase for high-cost areas referred to in item 7., above.

Other Changes

9. *Coinsurance.* Section 414(a) of the 1987 Act repealed section 244(c) of the NHA. This provision prohibited insurance under section 244, unless HUD determined, after due consultation with the mortgage lending industry, that coinsurance would not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon NHA mortgage insurance. The rule amends 24 CFR Parts 250, 251, and 255 to reflect this change.

10. *Negotiated interest rate.* Section 429(e)(2) of the 1987 Act amended section 232(i)(2)(B) of the NHA to make clear that the interest rate for supplemental loans to purchase and install fire safety equipment for nursing homes and related facilities would be that agreed upon by the borrower and the lender. This is a technical change to

bring section 232(i)(2)(B) into conformity with the amendments made to virtually all other HUD insuring authorities by the Housing and Urban-Rural Recovery Act of 1983.

11. *Authority to insure adjustable rate mortgages.* Section 415 of the 1987 Act increases the volume of adjustable rate mortgages that HUD may insure in any fiscal year to not to exceed 30 percent of the aggregate number of mortgages insured by HUD under title II of the NHA during the preceding fiscal year. Before enactment of the 1987 Act, the NHA limited the number of insured single family indexed mortgages, ARMs, and Shared Appreciation Mortgages (SAMs) to no more than 10 percent of the previous fiscal year's insurance totals under title II. Section 415 leaves the 10 percent limit intact for indexed mortgages and ARMs. The rule amends §§ 203.49(i) and 234.79(i) to incorporate the new limits.

12. *Minimum principal loan amount.* Section 419 of the 1987 Act prohibits a mortgage or lender from requiring, as a condition of providing a loan insured under the NHA or secured by a mortgage insured under the NHA, that the principal amount of the loan exceed a minimum amount established by the mortgage or lender. The provision also prohibits a mortgagee from requiring a minimum principal amount to be outstanding on the loan secured by the existing mortgage. The rule implements both of these provisions.

Notice and Comment Rulemaking

The Secretary had determined that this rulemaking should not be subject to prior notice and public comment. Providing for public participation for the following provisions would be contrary to the public interest:

a. Increases in the per unit cost limits for the section 202 program and HUD's multifamily mortgage insurance authorities;

b. Refinancing of HUD-insured GPMs;

c. Establishing a new appeal procedure for setting maximum high-cost single family mortgage limits;

d. Increasing the percentage multiplier for determining maximum single family high-cost mortgage amounts; and

e. Retaining the one-time mortgage insurance premium for Native Hawaiians under section 247 of the NHA.

The Section 202 and multifamily per unit cost increases provide a clear public benefit without imposing any burden or detriment on the public. The Section 202 loan limits were last revised in 1983. Immediate implementation of the 1987 Act increases are necessary to ensure the Department's continuing ability to meet Section 202's statutory objective of encouraging the construction and substantial rehabilitation of multifamily residences for lower income elderly or handicapped individuals and families. The FHA multifamily mortgage limits were last increased in 1979. The increases contained in this rule will enhance achievement of the multifamily programs' purpose of encouraging the construction, substantial rehabilitation, and refinancing of moderately priced, unsubsidized residential projects. Neither of these authorities should have to await the completion of notice and comment rulemaking before making their benefits available to the public.

In addition, the Department has fully complied with congressional intent by setting each of the per unit cost limits for the multifamily and Section 202 programs at the statutory limit. With regard to the Section 202 program, the Conference Report on the 1987 Act states that the conferees "intend the Secretary to raise the mortgage limits for section 202 projects to levels commensurate with the new limits established * * * for section 221(b)(3)." (H. Rep. No. 426, 100th Cong., 1st Session 218 (1987)).

Finally, although the Department has discretion to set the multifamily and section 202 limits below those specified in the statute, adoption of the congressional ceilings involves an exercise of discretion that historically has attended past congressional action in this area, and that virtually no one is likely to find surprising or troubling. This should be distinguished from the situation if the Department were to use its discretion to adopt *lower* limits. This would deviate not only from congressional intent in enacting the 1987 Act, but also from HUD's past history of implementing increases, and would have made a strong case for notice and comment rulemaking. For these reasons, the Department believes that the Section 202 and multifamily mortgage insurance limits should be implemented immediately, without the necessity to await the completion of notice and comment rulemaking.

The new GPM refinancing authority also provides a clear public benefit, and requires immediate implementation. During the six-year period from 1980 through 1985, when the interest rate ranged from 13½ percent to an all-time high of 17 percent, and back down to 12¾ percent, about 280,000 HUD-insured Section 245 GPMs were written. The fact that these loans allow negative amortization, coupled with depressed market conditions in certain areas, has resulted, in some cases, in an outstanding balance which is more than the value of the property. Accordingly, a number of these mortgages represent prospective defaults and, ultimately, claims against HUD's insurance funds. This problem has manifested itself especially in States that have been adversely affected by the troubled oil industry, such as Texas, Oklahoma, Louisiana, and Colorado. We understand from lenders in these States that many mortgagors face the trap of high mortgage payments and barely stable or declining values.

The Department estimates that there are about 32,800 insured GPMs in these areas. Although the Department cannot estimate a realiable figure, we believe the potential loss to the Department could be between $10 and $20 million, with the bulk of this attributable to proposective defaults under the modified GPM program (§ 203.46), section 245(b), the program with the more liberal terms. Since HUD already insures these obligations, including the amount due to negative amortization, refinancing would not put the Department in a more risky position than it is in currently. In fact, risk would be reduced because of the increased capacity of the mortgagor to carry the loan. It is important that this new authority be implemented as soon as possible in order that its benefits may begin accruing to the government, in the form of reduced insurance claims, and to the mortgagors of GPMs, in the form of reduced risk of default and foreclosure on their homes. Finally, it should be noted that the new refinancing authority imposes no new burdens on the public, since its use is voluntary with GPM mortgagors, and, as noted above, it should lessen the Federal exposure to insurance claims as compared to existing insured GPMs.

The amendment to revise the procedure by which the public may request increases in FHA's single family and single-unit condominium mortgage insuring authorities contains two principal changes. First, the rule specifies the areas for which increases may be sought: Any area that is not smaller than a county and counties within metropolitan statistical area. Each is a minor, procedural change. In the case of the minimum acceptable area, the change provides areas of sufficient size for HUD to make a meaningful determination on whether to grant an alternative mortgage limit. In the case of MSA counties, the revision brings the permissible area in line with the 1987 Act amendment to "area" (discussed above) for purposes of determining high-cost area median sales prices.

Second, the rule revises the documentation that must be sent to HUD to support a mortgage limit increase, from a representative sample over a fixed period of three months to a listing of all area sales over periods of one to three months, depending on sales volume. This change is also modest in effect. In order to prepare a representative sample, the requester must review all or almost all sales prices. In addition, the rule relaxes the submission requirement for areas with 250 or more sales per month, by permitting the reporting period to be less than three months. These changes are beneficial to program users and administrators alike, and should not have to await a period of notice and comment before taking effect.

As noted earlier, the 1987 Act increased the percentage by which the maximum dollar limits for single family mortgages could be increased in high-cost areas, from 133⅓ percent to 150 percent of the basic dollar amounts. Establishing new high-cost limits to reflect this change involves an exercise of discretion on the Department's part. Like the increases discussed above for the Section 202 loan and multifamily mortgage limits, however, implementing the 150 percent provision is important to carrying out the purposes of the single family insuring authorities subject to the new limit, is consistent with congressional intent, and involves discretion that is neither surprising nor significant in its exercise. Thus, the Department believes that to require prior notice and comment before making this provision effective would be unnecessary and contrary to the public interest.

The continuation of the one-time mortgage insurance premium for mortgage insurance on Hawaiian home lands is essentially a technical change. When enacted by the 1983 Act, mortgages insured pursuant to section 247 of the NHA were made obligations of the Mutual Mortgage Insurance Fund (MMIF). Mortgages backed by the Fund used the one-time mortgage insurance premium collection system. Mortgages that were obligations of HUD's other insurance funds, including the General Insurance Fund, used the periodic premium payment system. The 1987 Act specified that mortgages insured pursuant to section 247 are obligations of the GIF, rather than the MMIF. The Department's decision to retain the one-time premium for section 247 mortgages is consistent with its agreement with the State of Hawaii, Department of Hawaiian Home Lands with respect to the sharing of MIP. The decision imposes no new obligation: It simply continues the current system for collecting mortgage insurance premiums.

The other amendments made by this rule do not require notice and comment rulemaking, since they involve revising the Department's regulations to incorporate legislative changes, with no exercise of agency discretion. These changes include: (1) An expanded definition for "area" for FHA single family mortgage insurance; (2) the removal of regulations dealing with the repealed authority for the insurance of mortgages covering seasonal homes; (3) negotiated interest rates for Section 232 fire and safety equipment loans; (4) eligible mortgagors for single family mortgage insurance on Hawaiian home lands; (5) an increase in the permissible volume of insured ARMs; and (6) a prohibition against mortgagees requiring minimum principal amounts for insured or refinanced mortgages under the NHA.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the statutorily required establishment of loan limits and similar cost and rate determinations are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect in the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule contains a number of changes to improve the ability of HUD's mortgage insurance and other programs to serve program users. Any economic effect on small entities should be insignificant.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments relating to information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. After OMB review an approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.157.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots.

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage Insurance.

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental Housing, Loan programs: housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 231

Aged, Mortgage insurance.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 240

Mortgage insurance, Fee title purchase.

24 CFR Part 241

Energy conservation, Mortgage insurance, Solar energy, Projects.

24 CFR Part 242

Hospitals, Mortgage insurance.

24 CFR Part 244

Health facilities, Mortgage insurance.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 255

Mortgage insurance.

24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low and moderate income housing.

Accordingly, 24 CFR Parts 201, 203, 204, 205, 207, 213, 220, 221, 231, 232, 234, 240, 241, 242, 244, 250, 251, 255, and 885 are revised to read as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 201.10, a new paragraph (g) is added to read as follows:

§ 201.10 Loan amounts.

* * * * *

(g) A lender may not require, as a condition of providing a loan insured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

3. The authority citation for Part 203 is revised to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

§ 203.18 [Amended]

4. Section 203.18(f) is removed.

5. In § 203.18b, paragraphs (a)(1) and (b) are revised to read as follows:

§ 203.18b Increased mortgage amount.

(a) * * *

(1)(i) If a party believes that the mortgage limit for any area does not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices, the party may submit documentation in support of an alternative mortgage limit. For purposes of this paragraph (a)(1)(i), an "area" (A) must at least be the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (B) an area for which the mortgage limits contained in § 203.18(a) apply.

(ii) The documentation referred to in paragraph (a)(1)(i) of this section must consist of sufficient housing sales price data for the entire geographic area for which the request is made to justify the alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing one-family homes and condominiums, over a period of time that varies with the sales volume, as follows:

(A) For 500 or more sales per month, a one-month reporting period;

(B) For 250 through 499 sales per month, a two-month reporting period; and

(C) For less than 250 sales per month, a three-month reporting period.

The listing should contain a brief address for each property, its county location, its sale price, the month and year of its sale, and whether it is new or existing.

(iii) In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in paragraphs (a)(1) (i) and (ii) of this section may also include separate median sales prices for both the new and existing homes.

* * * * *

(b)(1) The increased dollar limitation may not exceed the lesser of (i) 150 percent of the dollar limitation specified in § 203.18(a), or (ii) the following percentage of the median one-family house price in the area, as determined by the Commissioner:

(A) 95 percent for a one-family residence,

(B) 107 percent for a two-family residence.

(C) 130 percent for a three-family residence.

(D) 150 percent for a four-family residence.

(2) For purposes of paragraph (b)(1) of this section, the term "area" means a county, or a metropolitan statistical area as established by the Office of Management and Budget, whichever results in the higher dollar amount.

* * * * *

6. Part 203, Subpart A, is amended by adding a new § 203.18d, to read as follows:

§ 203.18d Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

§ 203.19 [Amended]

7. In § 203.19, paragraph (c) is removed.

§ 203.28 [Amended]

8. In § 203.28, paragraph (d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e).

9. In § 203.43, paragraphs (c) (1), (3), and (4) are revised, and a new paragraph (c)(5) is added, to read as follows:

§ 203.43 Eligibility of miscellaneous type mortgages.

* * * * *

(c) * * *

(1)(i) Except as provided by paragraph (c)(1)(ii) of this section, the refinancing mortgage must be in an amount that does not exceed the lesser of (A) the original principal amount of the existing mortgage, or (B) the sum of the unpaid principal balance of the existing mortgage, plus loan closing charges approved by the Commissioner;

(ii) In the case of graduated payment mortgages insured under section 203 of the Act pursuant to section 245 (a) or (b) of the Act (24 CFR 203.45, or 203.46 (as in effect immediately before its removal at 52 FR 32754, published August 28, 1987)), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

(iii) If a one-time mortgage insurance premium (MIP) was financed as part of the existing mortgage referred to in paragraphs (c)(1) (i) and (ii) of this section, the amount of the premium refund to which the mortgagor is entitled must be deducted in determining the original principal amount and the unpaid principal balance of the existing mortgage under paragraph (c)(1)(i) of this section and the outstanding balance of the existing mortgage under paragraph (c)(1)(ii) of this section. However, the maximum amount of the refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the one-time MIP (if any) associated with the refinancing mortgage;

* * * * *

(3) It must result in a reduction in regular monthly mortgage payments by the mortgagor; in the case of a graduated payment mortgage, this means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(5) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

* * * * *

§ 203.43b [Removed and reserved]

10. Section 203.43b is removed and reserved.

11. Section 203.43c(a) is revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.28, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

* * * * *

12. In § 203.43i, paragraph (c) is revised to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(c) *Definitions.* (1) "Department of Hawaiian Home Lands" (DHHL) is a Department of the State of Hawaii responsible for management of Hawaiian home lands for the benefit of native Hawaiians.

(2) "Hawaiian home lands" means all land given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provisions of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959.

(3) "Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before Janaury 1, 1778 (or, in the case of an individual who succeeds a spouse or parent in an interest in a lease of Hawaiian home lands, such lower percentage as may be established for such succession under section 209 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959).

* * * * *

13. In § 203.45, paragraph (g) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(g) This section shall not apply to a mortgage that meets the requirements of §§ 203.18 (c) (d), (e) or (f), 203.43, 203.43a, 203.43j, or 203.49.

* * * * *

14. In § 203.47, paragraph (g) is revised to read as follows:

§ 203.47 Eligibility of growing equity mortgages.

* * * * *

(g) This section shall not apply to a mortgage which meets the requirements of § 203.43, § 203.43a, or § 203.49.

* * * * *

15. In § 203.49, paragraphs (h) and (i) are revised to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(h) *Cross-reference.* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) shall not apply to this section. This section shall not apply to a mortgage that meets the requirements of §§ 203.18(c) (non-occupant owners), 203.18(d) (outlying area properties), 203.18(e) (disaster victims), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), and 203.47 (growing equity mortgages).

(i) *Aggregate amount of mortgages insured.* The aggregate number of mortgages insured pursaunt to this section and § 234.79 of this chapter in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Commissioner under title II of the Act during the preceding fiscal year.

* * * * *

16. In § 203.50, paragraph (b) is revised to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(b) The provisions of § 203.18 (except as otherwise provided in §§ 203.50(f) (1) and (2)) and 203.43c shall not apply to loans insured under this section.

* * * * *

17. Section 203.259a is revised to read as follows:

§ 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to § 203.280 for mortgages that (1) are insured pursuant to § 203.43i or (2)(i) are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by § 203.270) and (ii) are insured pursuant to, as appropriate:

(A) An application for a conditional commitment received on or after September 1, 1983; or

(B) An application for mortgage insurance endorsement under the single family Direct Endorsement program as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after September 1, 1983.

(b) The periodic MIP provisions of §§ 203.260 through 203.266 shall not apply to mortgages referred to in paragraph (a) of this section, except that the Commissioner shall have discretion to reinstitute use of the periodic MIP, during such period as the Commissioner may find it appropriate, if the Commissioner determines that use of the one-time MIP would not be consistent with sound financial and actuarial practice or would significantly increase financial burdens on mortgagors. Any such reinstitution of the periodic MIP, as well as any subsequent reinstitution of the one-time MIP, shall apply only with respect to mortgages insured pursuant to applications for conditional commitments received (or, in the case of the single family Direct Endorsement program, applications for mortgage insurance endorsement, where the property appraisal report is signed by the mortgagee's approved underwriter) after such date as the Commissioner shall specify.

PART 204—COINSURANCE

18. The authority citation for Part 204 is revised to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z–9, 1715(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 204.1 [Amended]

19. In § 204.1, § 203.43b is removed from the listing of sections.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

20. The authority citation for Part 205 is revised to read as follows:

Authority: Sec. 1010, National Housing Act (12 U.S.C. 1749jj); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. Section 205.68 is revised to read as follows:

§ 205.68 Eligibility of refinancing transactions.

A mortgage given to refinance an existing mortgage may be insured under this subpart. The principal amount and the term of the new mortgage may not exceed the unpaid amount and the unexpired term of the existing insured mortgage. The mortgage may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

22. Part 205, Subpart A, is amended by adding, before the undesignated center heading, a new § 205.69, to read as follows:

§ 205.69 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

23. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 206(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

24. In § 207.4, paragraphs (a)(2), (b)(1), and (c)(1) are revised to read as follows:

§ 207.4 Maximum mortgage amounts.

(a) * * *

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

* * * * *

(b) * * *

(1) Increase the dollar amount limitations per family unit, as provided in paragraph (a)(2) of this section, to not to exceed:

(i) $29,250 without a bedroom.

(ii) $32,760 with one bedroom.

(iii) $40,170 with two bedrooms.

(iv) $50,310 with three bedrooms.

(v) $56,885 with four or more bedrooms.

* * * * *

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitations in paragraphs (a)(2) and (b)(1) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

25. Part 207, Subpart A, is amended by adding, before the undesignated center heading, a new section, to read as follows:

§ 207.16a Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

26. In § 207.32, a new paragraph (d) is added, to read as follows:

§ 207.32 Eligibility of refinancing transactions.

* * * * *

(d) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

27. In § 207.32a, paragraph (b) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(b) *Maximum mortgage amounts—general.* In addition to the limitations in paragraphs (c) and (d) of this section, a mortgage may not involve a principal obligation in excess of the lesser of the following:

(1) 85 percent of the Commissioner's estimate of the value of the project, except that—

(i) With respect to a cooperative project, a mortgage may not involve a principal obligation in excess of 90 percent of the Commissioner's appraised value of the project for continued use as a cooperative and

(ii) With respect to a project that meets the eligibility requirements of paragraph (k) or paragraph (*l*) of this section, a mortgage may not involve a principal obligation in excess of 90 percent of the Commissioner's estimate of the value of the project; or

(2)(i) The total of the amounts per family dwelling unit (excluding exterior land improvements, as defined by the Commissioner) depending on the number of bedrooms, which may be:

(A) $25,350 without a bedroom.

(B) $28,080 with one bedroom.

(C) $33,540 with two bedrooms.

(D) $41,340 with three bedrooms.

(E) $46,800 with four or more bedrooms.

(ii) *Increased mortgage amount—elevator type structure.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (b)(2)(i) of this section, to not to exceed:

(A) $29,250 without a bedroom.

(B) $32,760 with one bedroom.

(C) $40,170 with two bedrooms.

(D) $50,310 with three bedrooms.

(E) $56,885 with four or more bedrooms.

(iii) *Increased mortgage amounts—high-cost areas.* (A) The Commissioner may increase the dollar amount limitations in paragraphs (b)(2)(i) and (b)(2)(ii) of this section—

(*1*) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require, and

(*2*) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(B) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased by such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high-cost area increases, if any, otherwise applicable by more than one-half thereof.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

28. The authority citation for Part 213 continues to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. In § 213.7, paragraphs (a)(2), (d)(1), and (g), are revised to read as follows:

§ 213.7 Maximum insurable amounts.

(a) * * *

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

* * * * *

(d) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitation in paragraphs (a)(2) and (g) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require, and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

(g) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in paragraph (a)(2) of this section, to not to exceed:

(1) $29,250 per family unit without a bedroom.

(2) $32,760 per family unit with one bedroom.

(3) $40,170 per family unit with two bedrooms.

(4) $50,310 per family unit with three bedrooms.

(5) $56,885 per family unit with four or more bedrooms.

* * * * *

30. Part 213 is amended by adding in Subpart A, before the undesignated center heading, a new § 213.19a, and in Subpart C, before the undesignated center heading, and new § 213.519, to read as follows:

§ 213.19a Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

§ 213.519 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

31. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 220.100 [Amended]

32. In § 220.100, § 203.43b is removed from the listing of sections.

33. In § 220.507, paragraphs (a), (b), and (c)(1) are revised to read as follows:

§ 220.507 Maximum mortgage amounts.

(a) *Dollar limitation—in general.* A mortgage may involve a principal obligation not in excess of the following:

(1) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner), an amount per family unit, depending on the number of bedrooms, which may be:

(i) $25,350 without a bedroom.

(ii) $28,080 with one bedroom.

(iii) $33,540 with two bedrooms.

(iv) $41,340 with three bedrooms.

(v) $46,800 with four or more bedrooms.

(2) Where the project involves the rehabilitation of not more than five family units, the mortgage amounts per family unit designated in paragraph (a)(1) of this section may be increased by 25 percent, as follows:

(i) $41,925 for a unit with two bedrooms.

(ii) $51,675 for a unit with three bedrooms.

(iii) $58,500 for a unit with four or more bedrooms.

(b) *Increased dollar limitation—elevator type structures.* In order to compensate for higher costs incident to the construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amounts per family unit in paragraph (a)(1) of this section, as follows:

(1) With respect to any elevator type structure, to not to exceed:

(i) $29,250 without a bedroom.

(ii) $32,760 with one bedroom.

(iii) $40,170 with two bedrooms.

(iv) $50,310 with three bedrooms.

(v) $56,885 with four or more bedrooms.

(2) With respect to any elevator type project involving the rehabilitation of not more than five family units, the dollar amounts per family unit, as provided in paragraph (b)(1) of this section, may be increased by 25 percent, as follows:

(i) $50,213 for a unit with two bedrooms.

(ii) $62,888 for a unit with three bedrooms.

(iii) $71,106 for a unit with four or more bedrooms.

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase any of the dollar amount limitations in paragraphs (a) and (b) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis. In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

34. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. In § 221.514, paragraphs (a)(1), (b), and (c)(1) are revised to read as follows:

§ 221.514 Maximum mortgage amounts.

(a) * * *

(1) *Dollar limitations on units.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(A) $28,032 without a bedroom.
(B) $32,321 with one bedroom.
(C) $38,979 with two bedrooms.
(D) $49,893 with three bedrooms.
(E) $55,583 with four or more bedrooms.

(ii) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(A) $25,229 without a bedroom.
(B) $29,089 with one bedroom.
(C) $35,081 with two bedrooms.
(D) $44,904 with three bedrooms.
(E) $50,025 with four or more bedrooms.

(iii) For projects to be insured under section 221(d)(4) of the Act:

(A) $25,228 without a bedroom.
(B) $28,636 with one bedroom.
(C) $34,813 with two bedrooms.
(D) $43,446 with three bedrooms.
(E) $49,231 with four or more bedrooms.

* * * * *

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in paragraph (a)(1) of this section, to not to exceed:

(1) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(i) $29,500 without a bedroom.
(ii) $33,816 with one bedroom.
(iii) $41,120 with two bedrooms.
(iv) $53,195 with three bedrooms.
(v) $58,392 with four or more bedrooms.

(2) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:

(i) $26,550 without a bedroom.
(ii) $30,434 with one bedroom.
(iii) $37,008 with two bedrooms.
(iv) $47,876 with three bedrooms.
(v) $52,553 with four or more bedrooms.

(3) For projects to be insured under section 221(d)(4) of the Act:

(i) $27,251 without a bedroom.
(ii) $31,239 with one bedroom.
(iii) $37,986 with two bedrooms.
(iv) $49,140 with three bedrooms.
(v) $53,942 with four or more bedrooms.

(c) *Increased mortgage amounts—high-cost areas.* (1) The Commissioner may increase the dollar amount limitations in paragraphs (a) (1) and (b) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

36. Part 221, Subpart C, is amended by adding a new § 221.519b, to read as follows:

§ 221.519b Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

37. Section 221.560 is amended by adding a new paragraph (d), to read as follows:

§ 221.560 Eligibility of refinanced mortgages.

* * * * *

(d) The mortgage may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

38. The authority citation for Part 231 continues to read as follows:

Authority: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. In § 231.3, paragraph (a) is revised to read as follows:

§ 231.3 Maximum mortgage amounts—new construction.

* * * * *

(a) *Family unit limitations.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $23,965 without a bedroom.
(2) $26,613 with one bedroom.
(3) $32,019 with two bedrooms.
(4) $38,532 with three bedrooms.
(5) $45,300 with four or more bedrooms.

* * * * *

40. Section 231.5 is revised to read as follows:

§ 231.5 Increased mortgage amounts—elevator type structures.

In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in § 231.3(a), to not to exceed:

(a) $27,251 without a bedroom
(b) $31,239 with one bedroom.
(c) $37,986 with two bedrooms.
(d) $49,140 with three bedrooms.
(e) $53,942 with four or more bedrooms.

41. In § 231.6, paragraph (a) is revised to read as follows:

§ 231.6 Increased mortgage amounts—high cost areas.

(a) The Commissioner may increase the dollar amount limitations in §§ 231.3(a) and 231.5—

(1) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(2) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

42. The authority citation for Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

43. Section 232.42 is revised to read as follows:

§ 232.42 Eligibility of refinanced mortgages.

A mortgage given to refinance an existing insured mortgage covering a facility having 20 or more beds may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act, if it meets the requirements of § 207.32(a) through (d) of this Chapter, as well as the requirements of this subpart.

44. Part 232, Subpart A, is amended by adding a new § 232.44, to read as follows:

§ 232.44 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

45. In § 232.560(a), the caption and paragraph (a) are revised to read as follows:

§ 232.560 Interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower.

* * * * *

46. Part 232, Subpart C, is amended by adding a new § 232.566, to read as follows:

§ 232.566 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

47. The authority citation for Part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

48. In § 234.27, paragraph (b) is revised to read as follows:

§ 234.27 Maximum mortgage amounts.

* * * * *

(b) *Increased mortgage amount.* For any geographic area in which the Commissioner finds that moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices, the Commissioner may from time to time set mortgage limits that exceed the dollar limitation specified in paragraph (a)(1) of this section to the extent the Commissioner determines to be necessary, by publishing the applicable dollar limitations in a Notice in the **Federal Register**. The increased dollar limitation may not exceed the lesser of 150 percent of the amount specified in paragraph (a)(1) of this section, or 95 percent of the median one-family house price in the area, as determined by the Commissioner. For purposes of the preceding sentence, the term "area" means a county, or a metropolitan statistical area as established by the Office of Management and Budget, whichever results in the higher dollar amount.

(1)(i) If a party believes that the mortgage limit for any area does not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices, the party may submit documentation in support of an alternative mortgage limit. For purposes of this paragraph (a)(1)(i), an "area" (A) must at least be the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (B) may be an area for which the mortgage limit contained in paragraph (a)(1) of this section applies.

(ii) The documentation referred to in paragraph (b)(1)(i) of this section must consist of sufficient housing sales price date for the entire geographic area for which the request is made to justify the alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing one-family homes and condominiums, over a period of time that varies with the sales volume, as follows:

(A) For 500 or more sales per month, a one-month reporting period;

(B) For 250 through 499 sales per month, a two-month reporting period; and

(C) For less than 250 sales per month, a three-month reporting period.

The listing should contain a brief address for each property, its county location, its sale price, the month and year of its sale, and whether it is new or existing.

(iii) In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in paragraphs (b)(1) (i) and (ii) of this section may also include separate median sales prices for both the new and existing homes.

(2) Requests for alternative mortgage limits, together with supporting documentation, should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

* * * * *

49. In § 234.52, paragraphs (a), (c), and (d) are revised, and a new paragraph (e) is added, to read as follows:

§ 234.52 Refinancing of existing mortgages.

* * * * *

(a)(1) It must be in an amount that does not exceed the lesser of (i) the original principal amount of the existing mortgage, or (ii) the sum of the unpaid principal balance of the existing mortgage, plus loan closing costs approved by the Commissioner;

(2) In the case of graduated payment mortgages insured under section 234(c) of the Act pursuant to section 245 (a) or (b) of the Act (24 CFR 203.45 or 203.46 (as in effect before its removal at 52 FR

32754, published August 28, 1987)), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

* * * * *

(c) It must result in a reduction in regular monthly mortgage payments by the mortgagor; in the case of a graduated payment mortgage, this means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

(d) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(e) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

50. Part 234, Subpart A, is amended by adding a new § 234.53, to read as follows:

§ 234.53 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

51. In § 234.79, paragraph (i) is revised to read as follows:

§ 234.79 Eligibility of adjustable rate mortgages.

* * * * *

(i) The aggregate number of mortgages insured pursuant to this section and § 203.49 of this chapter in any fiscal year may not exceed 30 percent of the aggregate number of mortgages insured by the Commissioner under title II of the Act during the preceding fiscal year.

52. In § 234.525, paragraph (b) is revised to read as follows:

§ 234.525 Maximum mortgage amounts—new construction.

* * * * *

(b) *Family unit limitation.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $28,032 without a bedroom.
(2) $32,321 with one bedroom.
(3) $38,979 with two bedrooms.
(4) $49,893 with three bedrooms.
(5) $55,583 with four or more bedrooms.

* * * * *

53. In § 234.530, paragraphs (a) and (b)(1) are revised to read as follows:

§ 234.530 Increased mortgage amounts.

(a) *Elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit, as provided in § 234.525(b), to not to exceed:

(1) $29,500 without a bedroom.
(2) $33,816 with one bedroom.
(3) $41,120 with two bedrooms.
(4) $53,195 with three bedrooms.
(5) $58,392 with four or more bedrooms.

(b) *High-cost areas.* (1) The Commissioner may increase the dollar amount limitations in § 234.525(b) and in paragraph (a) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require and

(ii) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Commissioner determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

* * * * *

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

54. The authority citation for Part 240 is revised to read as follows:

Authority: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 240.1 [Amended]

55. In § 240.1, § 203.43b is removed from the listing of sections.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

56. The authority citation for Part 241 continues to read as follows:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z-6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

57. Part 241 is amended by adding new §§ 241.165 and 241.586, to read as follows:

§ 241.165 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

§ 241.586 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

58. The authority citation for Part 242 is revised to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

59. Section 242.96 is amended by adding a new paragraph (d), to read as follows:

§ 242.96 Eligibility of refinancing transactions.

* * * * *

(d) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

60. Part 242, Subpart A, is amended by adding a new § 242.97, to read as follows:

§ 242.97 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

61. The authority citation for Part 244 is revised to read as follows:

Authority: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

62. Part 244, Subpart A, is amended by adding a new § 244.69, to read as follows:

§ 244.69 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

63. The authority citation for Part 250 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

64. Section 250.2 is revised to read as follows:

§ 250.2 Effect of implementation of program on the flow of mortage credit to older declining areas.

Insurance will continue to be available under this part only to the extent the Secretary has determined that the availability of insurance authorized by this part does not adversely affect the flow of mortgage credit to older, declining areas and to purchasers of older and lower cost housing.

65. Part 250, Subpart B, is amended by adding a new § 250.136, to read as follows:

§ 250.136 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the mortgagee.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

66. The authority citation for Part 251 is revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 251.1 [Amended]

67. Section 251.1 is revised by removing paragraph (c) and by redesignating paragraphs (d), (e), (f), and (g) as paragraphs (c), (d), (e), and (f), respectively.

68. Part 251, Subpart B, is amended by adding a new § 251.109, to read as follows:

§ 251.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this Part, that the principal amount of the loan exceed a minimum amount established by the lender.

69. In § 251.203, paragraph (a) is revised to read as follows.

§ 251.203 Maximum mortgage limitation.

* * * * *

(a) *Statutory cost limits.* Congress has established maximum per unit dollar amounts for costs attributable to dwelling use. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the National Housing Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are percentage increases over the otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 210 percent of the basic limit. The factor applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high-cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it. However, in any case that involves projects purchased or to be purchased by the Government National Mortgage Association (GNMA) under its Special Assistance Functions authorized by former section 305 of the Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam, and Hawaii, the Commissioner may approve the use of a factor of up to 360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the National Housing Act) or certain residential energy conservation measures (as defined in sections 210(11)(A) through (G) and (I) of Pub. L. 95–619). The maximum coinsurable amount may not exceed the sum of the project's total calculated statutory cost limit, plus the applicable percentage, below, of structural and land costs not attributable to dwelling use:

Section	Mortgagor	Percentage
(1) 221(d)(3)	General and limited distribution.	90
(2) 221(d)(3)	All others	100
(3) 221(d)(4)	All mortgagors	90

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

70. The authority citation to Part 255 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 255.1 [Amended]

71. Section 255.1 is revised by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f), and (g)

72. Part 255, Subpart B, is amended by adding a new § 255.109, to read as follows:

§ 255.109 Minimum principal loan amount.

A lender may not require, as a condition of providing a loan secured by a mortgage coinsured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

73. In § 255.203, paragraph (a) is revised to read as follows:

§ 255.203 Maximum mortgage limitations.

* * * * *

(a) *Statutory cost limits.* Congress has established maximum per-unit dollar amounts for costs attributable to dwelling user. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the National Housing Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are percentage increases over otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 210 percent of the basic limit. The factor applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high-cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it. However, in cases involving projects to be purchased by the Government National Mortgage Association (GNMA) under its Special Assistance Functions authorized by former section 305 of the National Housing Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam, and Hawaii, the Commissioner may approve the use of a factor of up to

300 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the National Housing Act) or certain residential energy conservation measures (as defined in sections 210(11)(A) through (G) and (I) of Pub. L. 95-619). The maximum coinsurable amount may not exceed the sum of the project's total calculated statutory cost limit, plus the applicable percentage below of estimated cost not attributable to dwelling use:

(1) Cooperative project loans—98 percent;

(2) Project loans insured under § 207.32a(*l*)—90 percent;

(3) All other project loans—85 percent.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

74. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec 7(d), Department of Housing of Urban Development Act (42 U.S.C. 3535(d)).

75. In § 885.410, paragraphs (b), (c), and (f)(1) are revised to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, may not exceed:

(1) $28,032 per family unit without a bedroom.

(2) $32,321 per family unit with one bedroom.

(3) $38,979 per family unit with two bedrooms.

(4) $49,893 per family unit with three bedrooms, restricted to nonelderly handicapped families.

(5) $55,583 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit, as provided in paragraph (b) of this section, to not to exceed:

(1) $29,500 per family unit without a bedroom.

(2) $33,816 per family unit with one bedroom.

(3) $41,130 per family unit with two bedrooms.

(4) $53,193 per family unit with three bedrooms, restricted to nonelderly handicapped families.

(5) $58,392 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

* * * * *

(f) Increased Mortgage Limits—High Cost Areas. (1) The Assistant Secretary may increase the dollar amount limitations in paragraph (b) and (c) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Assistant Secretary finds that cost levels so require and

(ii) By not to exceed 140 percent where the Assistant Secretary determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Assistant Secretary determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) * * *

* * * * *

Date: March 2, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-5904 Filed 3-17-88; 8:45 am]

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24 CFR Part 888

[Docket No. N-88-1786; FR-2377]

Section 8 Housing Assistance Payments Program—Fair Market Rent Schedules for Use in the Existing Housing Certificates Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final FY-88 fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents periodically, but not less frequently than annually. This notice announces final FY-1988 Fair Market Rent schedules for the Section 8 Existing Housing Certificate Program (Part 882, Subparts A and B) including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificates Program (Part 882, Subpart F); the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E); and Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 loan management and property disposition programs). FMRs are used to determine payment standard schedules in the Housing Voucher Program.

The Department published proposed FMRs for the Section 8 Existing Housing Program on August 28, 1987 (52 FR 32672) and solicited public comment. Today's document is the second announcement of effective FY-1988 FMRs. This notice contains an analysis and response to public comments on the proposed FMRs and makes appropriate revisions to the first announcement of effective FY-1988 FMRs published December 21, 1987 (52 FR 48205). This notice also establishes Westchester County, NY as a separate FMR area, sets the FMRs for this area, and requests comments on the Westchester County FMRs.

DATE: The Fair Market Rents published in this notice are effective on March 18, 1988. Comments are invited on the announced FMRs for Westchester County, NY. These comments are due May 17, 1988.

ADDRESSES: Interested persons should submit their comments on Westchester County FMRs to the Rules Docket Clerk Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this notice. Each commenter should simultaneously submit a copy of its comments to the Economic and Market Analysis Staff, New York Regional Office, 26 Federal Plaza, New York, NY 10278-0068. A copy of each comment submitted to the Rules Docket Clerk will be available for public inspection during regular business hours at the above Washington, DC addresses.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Office of Elderly and Assisted Housing, telephone (202) 755-6477. For technical information on the development of schedules for specific areas or the method used for the rent

calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas.

In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Proposed Fair Market Rents

On August 28, 1987 (52 FR 32672), the Department proposed FMRs for Section 8 existing housing for FY-1988. These FMRs reflected estimated rent levels as of April 1, 1988. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR Part 888, Subpart A and have been in use since 1983.

The elements used by HUD in development FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a)).

In establishing the proposed FMRs, HUD used the most accurate data available. Data used to compute the FY-1988 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data and reliable area specific data submitted by public commenters in the development of the FY-1986 and FY-1987 FMRs.

This year's proposed FMRs were calculated by updating last year's final FMRs one additional year to April 1, 1988, based on the most recent CPI data available on average annual changes for rents and utilities. This year's proposed FMRs for manufactured homes spaces were calculated by updating last year's FMRs to April 1, 1988, using the most current average annual change in the CPI residential rent index (with heating costs included in the rent factored out).

Final FMR Schedules

On December 21, 1987 (52 FR 48205), HUD published its first notice announcing *effective* FMRs for all FMR areas for FY-1988. In accordance with the procedures announced in the August 28, 1987 notice, the FMRs announced in the December 21, 1987 notice were set either at the proposed level, or at the existing FY-1987 level. (FMRs for FY-1987 were published April 29, 1987 (52 FR 15630) and June 30, 1987 (52 FR 24381).)

The December 21, 1987 publication stated that the announced FMRs were subject to revision only if the FMRs were addressed by public comments. HUD stated that it would publish a second announcement making any necessary revisions to the FMR schedules, based on a review of the information contained in the public comments, as supplemented by information collected by field offices. Today's notice makes these revisions and includes an analysis and response to the public comments.

Modifications Required by Housing and Community Development Act of 1987

Section 142(b) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 8(c)(1) of the United States Housing Act of 1937 by adding: "The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York." In accordance with this statutory requirement, today's notice establishes separate effective FMRs for Westchester County.

Our prior notices included Westchester County as a part of the New York City FMR area. In response to the request for comments on the proposed FMRs, HUD received a comment filed by Westchester County on behalf of 18 PHAs administering Section 8 housing programs in that county. This comment included Westchester County FMR data. Today's notice provides the public with a further opportunity to comment on the appropriate FMR levels for Westchester County. HUD will accept public comments on this limited issue for 60 days following the publication of this notice. Following HUD's analysis of the public comments, HUD will publish a final notice making any necessary revisions for Westchester County FMRs.

Comments on the Westchester County FMR levels must include sufficient information (including a full description on local data and methodology used) to justify any proposed changes. Recommendations and supporting data must reflect the rent levels that exist within Westchester County. Local rental market surveys must show the 45th percentile rent levels. To be representative, the local data must exclude units built within the last two years of the PHA's survey, should not be drawn solely from vacant units, and should approximate the same proportion of units by structure type (for example, highrise or single family detached) and date of construction as exists in the total local inventory.

Public Comments

The December 21, 1987 notice stated that 80 comments were received in response to the proposed FMRs. HUD inadvertently failed to include one comment, addressing Alleghany, Ashe, Avery, Mitchell, Watauga, Wilkes, and Yancey Counties, NC. This comment has been considered in today's notice, and appropriate revisions to the FMR areas for five of these counties have been made in this notice.

Approximately two-thirds of the comments were submitted by PHAs. Of the remainder, 14 were from State and local governments, nine were from management companies, development corporations, and owners, two were filed by members of Congress, and two were from others.

Except for two comments supporting the proposed FMRs, all commenters stated that one or more of the proposed FMRs for their areas were too low. The Department has evaluated all comments carefully and has sought to look behind the information presented when the commenter's data appeared to have merit, but were incompletely or poorly represented. As a result of HUD's evaluation, modifications have been made in 38 of the 94 contested FMR areas.

Computation of FMRs

a. *Geographic areas.* Section 888.113 provides that FMRs are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents. Twenty-one commenters felt, given the actual markets existing in their areas, that it would be more appropriate for their jurisdiction to be included in an adjacent FMR area (with higher FMRs), to recompute FMRs for their areas to reflect FMRs in an

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adjacent or similarly situated FMR area with higher FMRs, or to exclude certain lower cost areas from their FMR areas.

A FMR published for Section 8 Existing Housing is established on a market area basis (*i.e.*, a geographic area within which housing units are in mutual competition). The factors used by the Office of Management and Budget (OMB) to define metropolitan and nonmetropolitan areas include commuting patterns, and population densities. These factors are also appropriate to define housing market areas. The Department believes that these OMB determinations constitute a rational basis for determining housing market areas and will continue to use the definitions of metropolitan and nonmetropolitan areas adopted by OMB.

Since FMRs within any geographic area reflect the rent level below which 45 percent of the rents will fall, actual rents will vary within each area. Thus, the 45th percentile rents for a specific locality within a FMR area may be more than the FMR. For such areas, HUD's regulations permit, under specified conditions, PHAs to approve rents that exceed FMRs. (See e.g., 24 CFR 882.106(a).) HUD has found that these exception rents usually will be sufficient to achieve the objectives of the Section 8 program.

b. *Data base.* As noted above, HUD computes FMRs by using a combination of 1980 census, AHS and CPI data. One commenter questioned HUD's use of the 1980 census data as a base. This commenter felt that the census figures, when applied to its FMR area, were erroneous or misinterpreted by HUD. HUD continues to believe that the estimates resulting from the application of the Census, AHS and CPI data provide FMRs that generally reflect local market conditions and changes. However, the Department relies on the public comment process to identify those areas where the use of the data is not appropriate or where there have been abrupt changes in local market areas. (Most questions regarding the accuracy of the HUD data base have been addressed at length in prior FMR publications. See HUD's August 29, 1985 publication of FMRs for FY-1986 (50 FR 31014, 31015-16) and the June 30, 1987 publication of FMRs for FY-1987 (52 FR 24382, 24383-84).

c. *Rent differentials by unit size.* One commenter argued that the two-bedroom FMR for its area was too low. The commenter's argument was based on the incorrect assumption that the two-bedroom FMRs are derived by applying a fixed percentage to the zero-bedroom (efficiency unit) FMR level for the area. FMRs are actually computed by using the *two-bedroom* FMR as a base. (*I.e.* HUD establishes the two-bedroom FMR at the 45th percentile, and establishes FMRs for larger and smaller bedroom sizes by applying fixed percentages to the two-bedroom FMR). The two-bedroom FMR is used because these units comprise the largest share of the rental inventory. Percentage relationships developed from national data from the 1980 census and post-1980 American Housing Surveys are used to establish 45th percentile rents for zero- and one-bedroom units. Higher percentage relationships are provided for units that contain three or more bedrooms. (See 24 CFR 888.113(c).)

To the extent that commenters have demonstrated that the fixed percentages do not reflect their local market, the Department has made appropriate adjustments to the final FMRs.

d. *Local conditions.* Approximately two-thirds of the commenters argued that HUD's proposed FMRs ignored local conditions mandating higher FMRs. Commenters cited factors that create a high demand for, and low supply of, suitable rental properties in the area. These factors included: the location or expansion of universities, military bases or industries in the area; the proximity of major, often expanding, urban centers; the loss of housing due to condominium or cooperative conversions, gentrification, condemnation, demolition, or natural disasters; the high demand for seasonal rentals; declines in new construction; rapid population increases; and other factors. Many commenters cited sharp increases in housing costs including utility costs, insurance expenses, security costs, debt servicing costs, and local taxes.

HUD recognizes that the proposed FMRs may not keep pace with abrupt shifts in local rental housing conditions. However, we rely on local data submitted during the public comment period to identify such shifts. To the extent that the public comments have demonstrated that the proposed FMRs do not adequately reflect local conditions, the FMRs published for effect today have been revised.

Several commenters noted that increased utility costs have caused or will soon cause PHAs to increase the amount of utility allowances. These commenters noted that the increased allowances will effectively reduce the amount available for contract rent and urged HUD to permit FMR increases to offset the projected increases to the allowances.

The FMRs developed under Part 888 are intended to include the cost of contract rent and utilities (except telephones). In market areas for which data were submitted to demonstrate utility cost increases beyond the level reflected in the proposed FMRs, HUD has made appropriate adjustments.

e. *Tax code changes.* Several commenters predicted that recent tax code changes will increase ownership costs and argued that the FY-1988 FMRs should reflect these expected increases. Like all increase to expenses associated with the ownership of rental housing, if the projected changes occur, they will be reflected by an increase to the 45th percentile, standard quality, recent mover FMR standard. To the extent that these tax impacts will occur and are reflected in 45th percentile rents for future years, HUD will make appropriate increases to future FMRs levels.

Impact of the FMRs

Approximately 60 percent of the commenters discussed the impact that low FMRs would have on the functioning of Section 8 existing housing. The primary concern was that the proposed FMRs would not ensure an adequate supply of decent, safe and sanitary housing. Specifically, commenters argued that proposed FMRs would: (1) Not provide a sufficient economic incentive to owners to participate or continue to participate in the program; (2) severely limit the options of certificate and housing voucher holders, making it difficult or impossible to locate housing within prescribed time limits; (3) cause the clustering of assisted families in areas of low income or minority concentration, contrary to the purposes of the Section 8 program; (4) reduce the quality of housing by limiting family options to marginally acceptable units and by failing to provide the owner with sufficient revenues to maintain and rehabilitate deteriorating rental units; (5) increase homelessness; (6) have a negative impact on the Housing Voucher Program by increasing the percentage of family income necessary to rent an acceptable unit; (7) make it easier for owners to discriminate against low income and minority individuals; and (8) encourage owners to demand illegal "side payments" from certificate holders. One commenter argued that low FMRs would make it difficult to find owners willing to participate in the Rental Rehabilitation program.

The Department balanced many competing factors in establishing the FMR standard. HUD's objective was to set FMRs at a level high enough to provide a broad range of housing

locations and amenities to assisted families while recognizing the need to serve as many families as possible within the limited resources. The use of the 45th percentile of recent mover rents is a standard that meets this objective.

Administrative Fee

FMRs are used to calculate the administrative fees paid to PHAs under the covered section 8 programs. (Administrative fees are not provided under the Property Disposition and Loan Management Programs (24 CFR Part 886, Subparts A and C) because HUD, rather than the PHA, administers these programs.) For the purpose of computing the administrative fee of a PHA administering a Section 8 program in a FMR area where the two-bedroom FMR is increased by this notice or was increased by the first notice of effective FMRs for FY-1988, the administrative fee will be computed as if the FMR was in effect on December 21, 1987, the effective date of the first announcement of FMRs.

One commenter argued that the administrative fee calculated from the proposed FMRs is inadequate and would impair the PHA's ability to administer the program. One component of the administrative fee (the ongoing fee) is based upon a percentage of the FMR. Today's notice is concerned only with the amount of the FMRs, not with the methodology for determining fees. Any change in the administrative fee calculation will be considered in the context of the rules and requirements for the affected program.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321-4374) is unnecessary, since the Section 8 Existing Housing program is categorically excluded from the Department's National Environment Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the project were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules are proposed to be amended as follows:

Date: March 10, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Schedules B & D—General Explanatory Notes

1. Geographic Coverage

a. Except as described in paragraph c. below, FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

b. Except as described in paragraph c. below, FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. FMRs for Existing Housing (Schedule B) and Manufactured Homes in the Section 8 Certificate Program (Schedule D) are also established for Westchester County, NY.

d. The current 338 MSAs and PMSAs are those established by the Office of Management and Budget effective October 18, 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA-PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the MSA-PMSA names in each State listed in Schedule B. All of the constituent parts of an MSA that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

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SCHEDU R EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 020488
FINAL

STATE: ALABAMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BUTLER	201	244	287	359	402

STATE: CALIFORNIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN JOSE, CA PMSA COUNTY(IES): SANTA CLARA	585	661	772	1007	1106

STATE: CONNECTICUT

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
STAMFORD, CT PMSA COUNTY FAIRFIELD TOWNS OF DARIEN, GREENWICH, NEW CANAAN, STAMFORD	560	680	800	1000	1120

STATE: DIST. OF COLUMBIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES) WASHINGTON	449	546	641	801	897

STATE: FLORIDA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBIA	229	278	327	409	458
WASHINGTON	220	268	315	394	441
WAKULLA	218	264	311	389	435

STATE: LOUISIANA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CALDWELL	194	235	277	341	381

STATE: MARYLAND

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES): CALVERT, CHARLES, FREDERICK, MONTGOMERY, PRINCE GEORG	449	546	641	801	897

STATE: MICHIGAN

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS, MI MSA COUNTY(IES): KENT, OTTAWA	306	376	439	548	619

STATE: NEW YORK

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WESTCHESTER, NY COUNTY(IES): WESTCHESTER	450	545	642	802	898

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
JEFFERSON	297	361	425	530	595

STATE: NORTH CAROLINA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BURLINGTON, NC MSA COUNTY(IES): ALAMANCE	308	374	440	550	617

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AVERY	239	288	338	422	463
MITCHELL	239	288	338	422	464
ROBESON	206	268	298	368	412
WILKES	278	331	388	485	532
IREDELL	231	354	415	478	535
PENDER	211	257	348	434	487
WATAUGA	328	395	463	578	635
YANCEY	257	309	363	453	498

STATE: OKLAHOMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MCCURTAIN	218	266	313	390	437

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 020488
FINAL FMRS
S T A T E: OREGON                                                              0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS
----------
PORTLAND, OR PMSA                                                               301        367        457        604        669
        COUNTY(IES): CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL

S T A T E: TEXAS
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NONMETROPOLITAN COUNTIES
          0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

MCCULLOCH    220        269        317        393        438

S T A T E: VIRGINIA                                                            0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS
----------
WASHINGTON, DC-MD-VA  MSA                                                       449        545        641        801        897
        COUNTY(IES): ARLINGTON, FAIRFAX, LOUDOUN, PRINCEWILLIA, STAFFORD, ALEXANDRIA, FAIRFAX, FALLS CHURCH, MANASSAS
                     MANASSAS PRK

S T A T E: WASHINGTON                                                          0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS
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VANCOUVER, WA PMSA                                                              288        314        410        542        600
        COUNTY(IES): CLARK

S T A T E: WEST VIRGINIA
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NONMETROPOLITAN COUNTIES
          0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS              0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS
BARBOUR      246        298        351        439        491        LEWIS        246        298        351        439        491
RANDOLPH     246        298        351        439        491        TUCKER       246        298        351        439        491
UPSHUR       246        298        351        439        491

S T A T E: WISCONSIN
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NONMETROPOLITAN COUNTIES
          0 BEDROOMS 1 BEDROOM  2 BEDROOMS 3 BEDROOMS 4 BEDROOMS

SAUK         266        324        381        476        533
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  NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH
ADDITIONAL BEDROOM.  TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF
THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.
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SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 020588

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
STATE: CALIFORNIA		
RIVERSIDE-SAN BERNARDINO, CA PMSA	140	230
COUNTY(IES): RIVERSIDE, SAN BERNARDINO		
SAN DIEGO, CA MSA	250	273
COUNTY(IES): SAN DIEGO		
STATE: NEW YORK		
EXCEPTION COUNTY: WESTCHESTER	217	217
STATE: VERMONT		
BURLINGTON, VT MSA	140	161
COUNTY: CHITTENDEN TOWNS OF BURLINGTON, CHARLOTTE, COLCHESTER, ESSEX, HINESBURG, JERICHO, MILTON, RICHMOND, ST. GEORGE, SHELBURNE, SOUTH BURLIN, WILLISTON, WINOOSKI		
COUNTY: FRANKLIN TOWNS OF GEORGIA		
COUNTY: GRAND ISLE TOWNS OF GRAND ISLE, SOUTH HERO		
EXCEPTION COUNTY: FRANKLIN	115	132
EXCEPTION COUNTY: ORANGE	125	144
EXCEPTION COUNTY: WASHINGTON	115	132
EXCEPTION COUNTY: WINDHAM	165	190
EXCEPTION COUNTY: WINDSOR	177	203

[FR Doc. 88-5073 Filed 3-17-88; 8:45 am]

BILLING CODE 4210-27-C

OFFICE OF INDEPENDENT COUNSEL

28 CFR Part 701

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Office of Independent Counsel.

ACTION: Final rule.

SUMMARY: On December 14, 1987, the Office of Independent Counsel issued a proposed regulation to amend Title 28 of the Code of Federal Regulations, Chapter VII, by adding Part 701, Procedures for Disclosure of Records Under the Freedom of Information Act. This action was necessary to ensure the effective discharge of the Office's obligations under the Freedom of Information Act.

The Office of Independent Counsel received one comment concerning its proposed regulation. The Office of Independent Counsel has reviewed the comment and has made minor changes regarding fees (§ 701.11) and notice to business submitters (§ 701.15).

EFFECTIVE DATE: March 18, 1988.

FOR FURTHER INFORMATION CONTACT: Pamela Krems, Office of Independent Counsel, Telephone Number (202) 383–8989.

SUPPLEMENTARY INFORMATION: The Office of Independent Counsel operates pursuant to two distinct and separate sources of authority. On December 4, 1986, Attorney General Edwin Meese III filed an application for appointment of an Independent Counsel with the Division for the purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit. On December 19, 1986, the Special Division of the Court of Appeals filed an order appointing Lawrence E. Walsh as Independent Counsel in the Iran/Contra matter. Order Appointing Independent Counsel, *In re Oliver L. North, et al.*, Div. No. 86–6 (Dec. 19, 1986).

On March 5, 1987, Attorney General Meese issued a regulation that created an "Office of Independent Counsel: Iran/Contra" and provided that office with the same jurisdiction and powers that it already possessed under the Ethics in Government Act, 28 U.S.C. 591–598, and the December 19, 1986 court order appointing Independent Counsel Walsh. 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987) (to be codified at 28 CFR Parts 600 and 601). The "Office of Independent Counsel" and the "Office of Independent Counsel: Iran/Contra" are in actuality one and the same office. This regulation is issued by Independent Counsel under both grants of authority.

This order relates primarily to individuals rather than to small business entities. However, as required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Office hereby states that this regulation will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 701

Freedom of Information.

Dated: March 14, 1988.

Lawrence E. Walsh,

Independent Counsel.

For the reasons set forth in the preamble, and pursuant to the authority vested in me by the Ethics in Government Act, 28 U.S.C. 591–598, the December 19, 1986 Court order, and the authority delegated to me by the Attorney General pursuant to the Attorney General's regulation issued on March 5, 1987, 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987), and 5 U.S.C. 552, Title 28 of the Code of Federal Regulations, Chapter VII, is amended by adding Part 701, to read as follows:

PART 701—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.
701.10 General provisions.
701.11 Requirements pertaining to requests.
701.12 Responses by the Office to requests.
701.13 Form and content of Office responses.
701.14 Classified information.
701.15 Business information.
701.16 Appeals.
701.17 Preservation of Records.
701.18 Fees.
701.19 Other rights and services.

Authority: 5 U.S.C. 552.

§ 701.10 General provisions.

(a) This part contains the regulations of the Office of Independent Counsel implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with regulations issued pursuant to the Privacy Act. To the extent permitted by other laws, the Office will also consider making available records that it is permitted to withhold under the FOIA if it determines that such disclosure would be in the public interest and would not interfere with the functioning of the Office.

(b) As used in this part, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of his request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(4) "Requester" means any person who makes a request to the Office.

(5) "Business information" means trade secrets or other commercial or financial information.

(6) "Business submitter" means any commercial entity that provides business information to the Office and that has a proprietary interest in the information.

(c) The FOIA/PA Officer of the Office of Independent Counsel shall be responsible to Independent Counsel for all matters pertaining to the administration of this part.

(d) The Office of Independent Counsel shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). The Office shall notify a requester whenever it is unable to respond to or process the request or appeal within the time limits established by the FOIA. The Office shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 701.11 Requirements pertaining to requests.

(a) *How made and addressed.* A requester may make a request under this part for a record of the Office of Independent Counsel by writing to the Office at: FOIA/PA Officer, Office of Independent counsel, Suite 701 West, 555 Thirteenth Street NW., Washington, DC 20004. A request should be sent to the Office at its proper address and both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) *Request must reasonably describe the records sought.* A request must describe the records sought in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be indentified by a technique or process that is not unreasonably burdensome or disruptive of Office operations. Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In additon, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If the Office determines that a request does not reasonably describe the records sought, the Office shall either advise the requester what additional information is needed or otherwise state why the request is insufficient. The Office also shall extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner that will meet the requirements of this section.

(c) *Agreement to pay fees.* (1) The filing of a request under this part shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 701.18 of this part, up to $25, unless a waiver of fees is sought. The Office shall confirm this agreement in its letter of acknowledgement to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

(2) If a waiver of fees up to $25 is sought in the requester's request to the Office, the Office will make its determination on the fee waiver (and notify the requester as soon as possible) after receipt of the request. The submission of a request for fee waiver will not delay the Office's responsibility to search for responsive records.

(3) If the fee waiver is denied by the Office, and the fees involved total $25 or less, the Office will send the responsive documents to the requester, along with a bill for fees. The collection of the unpaid bill shall follow the procedures found herein at § 701.18 (g)(2) and (h).

§ 701.12 Responses by the Office to requests.

(a) *Authority to grant or deny requests.* The head of the Office, or his designee, is authorized to grant or deny and request for a record of the Office.

(b) *Initial action by the Office.* When the Office receives a request for a record in its possession, the Office shall promptly determine whether another agency of the Government is better able to determine whether the record is exempt, to any extent, from mandatory disclosure under the FOIA; and whether the record, if exempt to any extent from mandatory disclosure under the FOIA, should nonetheless be released to the requester as a matter of discretion. If the Office determines that it is the agency best able to determine whether to disclose the record in response to the request, then the Office shall respond to the request. If the Office determines that it is not the agency best able to determine whether to disclose the record in response to the request, the Office shall either:

(1) Respond to the request, after consulting with the other agency best able to determine whether to disclose the record and with any other agency having a substantial interest in the requested record or the information contained therein; or

(2) Refer the responsibility for responding to the request to another agency that generated or originated the record, but only if that other agency is subject to the provisions of the FOIA. Under ordinary circumstances, the agency that generated or originated a requested record shall be presumed to be the agency best able to determine whether to disclose the record in response to the request.

(c) *Law-enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of criminal law or to a criminal law-enforcement proceeding and that was generated or originated by another agency, the Office shall refer the responsibility for responding to the request to that other agency; however, such referral shall extend only to the information generated or originated by that other agency.

(d) *Classified information.* Whenever a request is made for a record containing information that has been classified, or that may be eligible for classification, by another agency under the provisions of Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall refer the responsibility for responding to the request to the agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by the Office because it contains information classified by another agency, the Office shall refer the responsibility for responding to the request to the agency that classified the underlying information; however, such referral shall extend only to the information classified by the other agency.

(e) *Notice of referral.* Whenever the Office refers all or any part of the responsibility for responding to a request to another agency, the Office will consult with the other agency to obtain specific approval to notify the requester of the referral and inform the requester of the name and address of the agency to which the request has been referred and the portions of the request so referred.

(f) *Agreements regarding consultations and referrals.* No provision of this section shall preclude formal or informal agreements between the Office and another agency to eliminate the need for consultations or referrals of requests or classes of requests.

(g) *Separate referrals of portions of a request.* Portions of a request may be referred separately to one or more other agencies whenever necessary to process the request in accordance with the provisions of this section.

(h) *Date for determining responsive records.* In determining records responsive to a request, the Office ordinarily will include only those records within the Office's possession and control as of the date of its receipt of the request.

§ 701.13 Form and content of Office responses.

(a) *Form of notice granting a request.* After the Office has made a determination to grant a request in whole or in part, the Office shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the Office. The Office shall inform the requester in the notice of any fees to be charged in accordance with the provisions of § 701.18 of this part.

(b) *Form of notice denying a request.* The Office, when denying a request in whole or in part, shall so notify the requester in writing. The notice must be signed by the FOIA/PA Officer, or her designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions that the Office has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 701.16(a) and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Office shall so notify the requester in writing.

§ 701.14 Classified information.

In processing a request for information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall review the information to determine whether it warrants classification. Information that does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552(b)(1). The Office shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Executive Order 12356 or any other Executive Order concerning the classification of records.

§ 701.15 Business information.

(a) *In general.* Business information provided to the Office by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Notice to business submitters.* The Office shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (c) of this section, except as is provided in paragraph (g) of this section, and only to the extent permitted by law. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(c) *When notice is required.* For business information submitted to the Office it shall provide a business submitter with notice of a request whenever the business submitter has in good faith designated the information as commercially or financially sensitive, or the Office has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter. Notice of a request for business information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the Office shall afford a business submitter a reasonable period within which to provide the Office with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* (1) The Office shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Office decides to disclose business information over the objection of a business submitter, the Office shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Office shall promptly notify the business submitter.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The Office determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The Office is a criminal law-enforcement agency that acquired information in the course of a lawful investigation of a possible violation of criminal law.

§ 701.16 Appeals.

(a) *Appeals to Independent Counsel.* When a request for access to records or for a waiver of fees has been denied in whole or in part, or when the Office fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to Independent Counsel within 30 days of his receipt of a notice denying his request. An appeal to Independent Counsel shall be made in writing and addressed to the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street NW., Washington, DC 20004. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal."

(b) *Action on appeals by the Office of Independent Counsel.* Unless Independent Counsel otherwise directs, his designee shall act on behalf of the Independent Counsel on all appeals under this section, except that a denial of a request by Independent Counsel shall constitute the final action of the Office on that request.

(c) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 701.17 Preservation of records.

The Office shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 701.18 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the

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schedule contained in paragraph (b) of this section for services rendered by the Office in responding to and processing requests for records under this part. All fees so assessed shall be charged to the requester, except when the charging of fees is limited under paragraph (c) of this section or when a waiver or reduction of fees is granted under paragraph (d) of this section. The Office shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this part, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7), and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The Office may assess fees for time spent searching even if it fails to locate any respective record or when records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. When the search and retrieval cannot be performed entirely by clerical personnel—for example, when the identification of records within the scope of the request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. When the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). The Office is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For other methods of duplication, the Office shall charge the actual direct costs of duplicating a record.

(3) *Review.* Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that when the time of professional personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel. Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when the Office analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly when that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Office shall provide without charge

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under this section is $5.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $5.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under the FOIA shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section when the Officer determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government—the Office shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern the identifiable operations of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone would not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding or government operations or activities.* The disclosable portions of requested records must be meaningfully informative or specific governmental operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of identified persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to convey effectively information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Office shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) *The existence and Magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests that would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only when, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Office shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market governmental information for direct economic return shall not be presumed to serve primarily the "public interest."

(4) When only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* When the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases when a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* When the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly. The Office may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. When requests are separated by a longer period, the Office shall aggregate them only when there exists a solid basis for determining that such aggregation is warranted, *e.g.*, when the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) When the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment or where a fee waiver, or reduction of fees, has been requested. In the case where a fee waiver or reduction of fees has been requested, the requester shall submit the advance payment, if required by the agency. This prepayment will not affect the Office's responsibility for speedy determination of the fee waiver, or reduction of fees, nor be deemed in derogation of the request for the fee waiver or reduction of fees. If the agency approves the fee waiver, or reduction of fees, the appropriate sum will be reimbursed to the requester, with no accumulated interest, if any.

(2) When a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owned, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of may estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Office shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) When a component acts under paragraphs (g) (1) or (2) of this section,

the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Office has received payment of the assessed fee.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing. The Office shall follow the provisions of the Debt Collection Act of 1982, Pub. L. No. 97–265 (Oct. 25, 1982), 96 Stat. 1749, and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government priniting entity such as the Government Printing Office or the National Technical Information Service to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) When records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Office shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures that the Office actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Office shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Office shall not engage in line-by-line search when merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Office shall determine, as well as reasonably possible, the use to which a requester will put the records requested. When the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Office otherwise has reasonable cause to doubt a requester's stated use, the Office shall provide the requester a reasonable opportunity to submit futher clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, and institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Office shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, when the

Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

§ 701.19 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.

[FR Doc. 88–5923 Filed 3–17–88; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

[Army Reg 340–17]

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule for administering the Freedom of Information Act by revising Initial Denial Authorities' responsibilities resulting from reorganization.

DATES: March 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

SUPPLEMENTARY INFORMATION: This amendment shifts responsibilities for initial denial authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. Initial denial responsibility for the functions of the following former offices has been absorbed by the Administrative Assistant to the Secretary of the Army: Assistant Chief of Staff for Information Management (records relating to information systems, including automation, telecommunications, records management, publications, and audio-visual resources); records under the purview of the Directorate for Contracting and the Competition Advocate General, Office of the Deputy Chief of Staff for Logistics, which transferred to the Assistant Secretary of the Army (Research, Development, and Acquisition); The Comptroller of the Army (finance and accounting records); The Deputy Chief of Staff for Research, Development, and Acquisition (records created by his office relating to the Army's research, development, and acquisition programs and activities); The Inspector General; and, the Auditor General. The initial denial authority responsibilities of the Deputy Chief of Staff for Intelligence has been absorbed by the Commander, US Army Intelligence and Security Command. The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 32 CFR Part 518

Information, Archives and records, Privacy, Freedom of Information.

Dated: March 4, 1988.

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

PART 518—[AMENDED]

32 CFR Part 518 is amended to read as follows:

* * * * *

Subpart E—Release and Processing Procedures

1. 32 CFR Part 518.15 is amended by revising paragraphs (a)(4) (i) thru (xvii) and removing (a)(4) (xviii) thru (xxiii) as follows:

§ 518.15 Initial determinations.

(a) * * *

(4) * * *

(i) The Administrative Assistant to the Secretary of the Army, is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, as well as those requests requiring the personal attention of the SA, except the activities specified which follow:

(A) The Inspector General remains a separate IDA authorized to act on requests for all Inspector General records under AR 20–1.

(B) The Auditor General remains a separate IDA authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10–2. This includes requests for related records developed by the Audit Agency.

(ii) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces, and military police records and reports; prisoner confinement and correctional records.

(iii) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries; letters of instruction to boards; behavioral science records; safety records; and general education records.

(iv) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations; policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(v) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(vi) The Surgeon General is authorized to act on requests for medical research and development records; and the medical records of active duty military personnel, dependents, and persons given physical examinations or treatment at DA medical facilities.

(vii) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical rites performed by DA chaplains, and privileged communications relating to the clergy.

(viii) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal-type records. TJAG is also authorized to act on requests for records described elsewhere in this AR, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(ix) The Chief, National Guard Bureau, is authorized to act on requests for all Army National Guard records, unless such records clearly fall within another IDA's responsibility. This includes National Guard organization and training files; plans, operations, and

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readiness files; policy files; historical files; and files relating to National Guard military support and civil disturbance activities.

(x) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all Army reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. This includes records relating to USAR plans, policies and operations, changes in the organizational status of USAR units; mobilization and demobilization policies; active duty tours; and the Individual Mobilization Augmentation Program.

(xi) The Commanding General, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(xii) The Commanding General, United States Army Criminal Investigation Command (USACIDC), is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activities. This includes criminal investigation records, investigation-in-process records, and military police reports that result in criminal investigation reports.

(xiii) The Commanding General, United States Total Army Personnel Agency, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; voting; records relating to identification cards, naturalization, citizenship, commercial solicitation, Military Postal Service Agency and Army postal and mail service; civilian personnel records, other civilian personnel matters and personnel administration records.

(xiv) The Commanding General, U.S. Army Community and Family Support Center is authorized to act on requests for records relating to morale, welfare and recreation activities; nonappropriated funds; child development centers; community life programs; family action programs; retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with DA relationships and social security, veterans' affairs, United Service Organization, U.S. Soldiers' and Airmen's Home; and American Red Cross.

(xv) The Commander, U.S. Army Intelligence and Security Command, is authorized to act on request for intelligence investigation and security records; foreign scientific and technological information; intelligence training, mapping and geodesy information; ground surveillance records; intelligence threat assessments; and, missile intelligence data relating to tactical land warfare systems.

(xvi) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60–201/AFR 147–14.

(xvii) The Commander, US Army Forces Command, as a specified commander, is authorized to act on requests for specified command-unique records under 1–510, DOD 5400.7–R.

[FR Doc. 88–5686 Filed 3–17–88; 8:45 am]

BILLING CODE 3710-08-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–294; RM–5273]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 279C2 for Channel 288A at Vero Beach, Florida, and modifies the Class A license for Station WAVW(FM) to specify the new channel, at the request of the licensee Treasure Coast Radio, Inc. Additionally, Channel 259C2 is allotted to Vero Beach in response to requests for use of a second wide coverage area station. With this action, this proceeding is terminated.

DATES: *Effective* April 21, 1988. The window period for filing applications on Channel 259C2 will open on April 22, 1988 and close on May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–294, adopted February 11, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Vero Beach, Florida, Channels 259C2 and 279C2 are added, Channel 288A is removed.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5949 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–350; RM–5930]

Radio Broadcasting Services; Nebraska City, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Great Lakes Broadcasting Company, substitutes Channel 249C2 for Channel 249A at Nebraska City, Nebraska, and modifies its license for Station KNCY–FM to specify operation on the higher powered channel. Channel 249C2 can be allocated to Nebraska City, Nebraska, in compliance with the Commission's minimum distance separation requirements and can be used at Station KNCY–FM's present transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–350, adopted February 11, 1988, and released March 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nebraska is amended by revising the entry for Nebraska City by deleting Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5952 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–295; RM–5756]

Radio Broadcasting Services; Edenton, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Edenton Christian Radio, Inc., substitutes Channel 261C2 for Channel 261A at Edenton, North Carolina, and modifies its license for Station WBXB to specify the higher powered channel. Channel 261C2 can be allocated to Edenton in compliance with the Commission's minimum distance separation requirements and can be used at Station WBXB's current transmitter location. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 21, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–295, adopted February 11, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Edenton, North Carolina, by deleting Channel 261A and adding Channel 261C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5950 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–360; RM–5929]

Radio Broadcasting Services; North Bend, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Big Bay Radio, Inc., allocates Channel 297C1 to North Bend, Oregon, as the community's second local FM service. Channel 297C1 can be allocated to North Bend in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective April 22, 1988. The window period for filing applications will open on April 25, 1988, and close on May 25, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–360, adopted February 11, 1988, and released March 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by revising the entry for North Bend by adding Channel 297C1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5953 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–309; RM–5807]

Television Broadcasting Services; Montrose and Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the request of Christian Discerner, Inc. to reallocate Channel 64 from Scranton to Montrose, Pennsylvania. The Commission found that petitioner had failed to provide a sufficient reason to do so in light of the pending applications for its use at Scranton. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–309, adopted February 5, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–5947 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-206; RM-5650]

Radio Broadcasting Services; Bay City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C2 for Channel 221A at Bay City, Texas, and modifies the license of Station KMKS-FM to specify operation on the new frequency, at the request of Sandlin Broadcasting Company, Inc., as that community's first wide coverage area FM service. Channel 273C2 requires a site restriction of 24.7 kilometers (15.3 miles) southwest of Bay City (28-47-50; 96-06-56). This action also allots Channel 241C2 to Bay City, as a second wide coverage area FM service, at the request of Bay Broadcasting, Ltd., licensee of Station KIOX(AM), Bay City. A site restriction of 25.4 kilometers (15.8 miles), southwest of the city is required for Channel 241C2 (28-47-32; 96-06-58). With this action, this proceeding is terminated.

DATES: Effective April 21, 1988; The window period for filing applications will open on April 22, 1988, and close on May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-206, adopted February 5, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas, by deleting Channel 221A and adding Channels 241C2 and 273C2 for Bay City.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-5948 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-90]

Radio Broadcasting Services; Clarification of Revised FM Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Public Notice* clarifies three matters regarding the release of the revised FM Table of Allotments (§ 73.202 of the Commission's Rules) reflecting the reclassification of FM allotments resulting from BC Docket 80-90 (52 FR 39774, October 23, 1987). The first matter is the premature inclusion of the Channel 238A allotment at Carmel, California. That channel was not adopted as of the October 21, effective date. Rather, the action took place on November 4, 1987. That action also established a January 12 to February 11, 1988 filing window for the Carmel allotment. The second matter notes that a requested change in class for Station KEZS, Cape Girardeau, Missouri, from Class B to C1 will not be reflected in the Table until a covering license application is granted. The third matter involves Channel 216B at Thousand Oaks, California. This is a noncommercial educational FM channel and should not be listed in the FM Table of Allotments. Accordingly, it will be deleted.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission *Public Notice*, and released March 7, 1988. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5951 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 80 and 87

[PR Docket No. 87-133; FCC 88-56]

Maritime and Aviation Services; Use of Continuous Wave (CW) and Voice Modulation by Emergency Position Indicating Radiobeacons (EPIRBs) and Emergency Locator Transmitters (ELTs)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These new rules authorize EPIRBs and ELTs to use CW and voice modulation in addition to the current use of non-voice swept audio signal modulation. Also certain criteria are set forth regarding the power distribution and frequency shift of the transmitted carrier to facilitate the reception of EPIRB and ELT signals by the COSPAS/SARSAT satellites. This action was initiated in response to a new Federal Aviation Administration (FAA) Technical Standard Order (TSO) TSO-C91a and a request by ARNAV Systems, Inc. (ARNAV). The effect of the rules would be to improve the detection of distress situations and search-and rescue operations.

EFFECTIVE DATE: April 18, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554; (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted February 16, 1988, and released March 14, 1988. The full text of this decision including the adopted rule is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this

decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 27, 1987, the Commission released a *Notice of Proposed Rule Making*, PR Docket No. 87-133, FCC 87-159, 52 FR 21334, which proposed to amend the rules to allow the use of CW and voice modulation by EPIRBs and ELTs in addition to the mandatory non-voice swept audio signal modulation. The Commission took this action in response to the new ELT technical standards contained in TSO-C91a, published by FAA, and a request by ARNAV. The U.S. Coast Guard and U.S. Air Force who are responsible for domestic search and rescue as well as the FAA supported the ARNAV request. The comments filed by the participants in this proceeding requested that the power distribution and frequency shift of the transmitter carrier should meet certain criteria to facilitate the reception of EPIRB and ELT signals by the COSPAS/SARSAT satellites. The *Report and Order* discusses the comments filed to these proposals and amends the Rules to improve the detection of distress situations and aid in search and rescue operations.

2. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public.

3. We certify that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because it will not have a significant economic impact on a substantial number of small entities. The changes proposed herein will have a minor beneficial effect on the maritime and aviation communities by permitting the use of additional types of modulation in EPIRBs and ELTs and by enhancing the detection of EPIRB and ELT signals by satellites. The increased cost to manufcturers to implement the new criteria for the power distribution of the transmitter carrier is estimated to be less than $2.00 per unit.

4. This *Report and Order* is issued under the authority of 47 U.S.C. 154(i) and 303(g) and (r).

5. A copy of the *Report and Order* will be served on the Chief Counsel for Advocacy of the Small Business Administration.

6. *It is ordered*, That Parts 80 and 87 of the Commission's Rules are amended as shown below. *It is further ordered*, That this proceeding is *terminated*.

List of Subjects

47 CFR Part 80

Radio, Emergency position indicating radiobeacons, Incorporation by reference.

47 CFR Part 87

Radio, Emergency locator transmitters, Incorporation by reference.

Federal Communications Commission.

H. Walker Feaster III,

Secretary

Appendix

Parts 80 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.207(d), the emission designators under Classes of Emission in the Distress, Urgency and Safety frequencies are revised to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
* * * * *	
Distress, Urgency and Safety [8] [9]	
500 kHz [10]	A2A and A2B or H2A and H2B.
2182 kHz [10] [11]	A2B, A3B, H2B, H3E, J2B, and J3E.
8364 kHz	A2A, H2A.
121.500 MHz	A3E, A3N, N0N.
123.100 MHz	A3E.
156.750 and 156.800 MHz	G3E, G3N.
243.000 MHz	A3E, A3N, N0N.

[8] For direction finding requirements see § 80.375.

[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

[10] On 500 kHz and 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.

[11] Ships on domestic voyages must use J3E emission only.

3. In § 80.223 paragraph (d) is revised to read as follows:

§ 80.223 Special requirements for survival craft stations.

* * * * *

(d) When an EPIRB is part of a survival craft station the EPIRB portion must be capable of transmitting only on the frequencies 121.500 MHz and 243.000 MHz with A3E, A3N and N0N emissions.

4. In § 80.1053 subparagraphs (a) (5), (6), (7), (8), (9), (10), (11) and (12) are renumbered (a) (6), (7), (9), (10), (11), (12), (13) and (14), respectively; subparagraph (a)(4) is revised; subparagraphs (a)(5) and (a)(8) are added; subparagraph (a)(7) of the newly renumbered subparagraphs is revised; and paragraph (c) is revised to read as follows:

§ 80.1053 Special requirements for Class A EPIRB stations.

(a) * * *

(4) Use A3N emission on a mandatory basis and A3E and N0N emissions on an optional basis on the frequencies 121.500 MHz and 243.000 MHz;

(5) Transmission of A3E or N0N emission must not exceed 90 seconds and must be followed by a transmission of at least three minutes of A3N emission; each transmission of a synthesized and/or pre-recorded voice message must be preceded by the words "this is a recording";

* * * * *

(7) The types of emissions for EPIRBs must be in accordance with those specified in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO-C91a titled "Emergency Locator Transmitter (ELT) Equipment" dated April 29, 1985. TSO-C91a is incorporated by reference in accordance with 5 U.S.C. 552(a). TSO-C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue, SW., Washington, DC 20591;

(8) EPIRBs manufactured effective October 1, 1988, or in order to satisfy USCG equipment carriage requirements are either newly installed in a ship station effective April 1, 1989, or regardless of the date of installation are used in a ship station effective August 1, 1991, must have in emissions A3N, A3E and N0N a clearly defined carrier frequency distinct from the modulation sidebands. On 121.500 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be

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contained within ±30 Hz of the reference carrier frequency. On 243.000 MHz at least thrity percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within ±60 Hz of the reference carrier frequency. See TSO–C91a at paragraph (a)(3)(ii). Additionally, if the type of modulation is changed the carrier frequency must not shift more than ±30 Hz from the fixed reference frequency on 121.500 MHz and not more than ±60 Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 80.209(a).

* * * * *

(c) The power and modulation requirements specified in paragraphs (a) (6), (7) and (8) of this section must be met under the environmental test conditions specified in the RTCA Document DO–183 except that the air temperature limits for testing these devices must be from −20 to +55 degrees Celsius. Tests specified by RTCA with regard to altitude, decompression and overpressure are not applicable to EPIRB stations.

* * * * *

5. In § 80.1055(a) subparagraph (3) is revised to read as follows:

§ 80.1055 Special requirements for Class B EPIRB stations.

(a) * * *

(3) Meet the requirements in § 80.1053(a) (4) through (8), (a)(14), and (c) through (i);

* * * * *

PART 87—AVIATION SERVICES

1. The authority for Part 87 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 87.5 the definition for "Emergency locator transmitter" is revised to read as follows:

§ 87.5 Definition of terms.

* * * * *

Emergency locater transmitter (ELT). A transmitter of an aircraft or survival craft actuated manually or automatically that is used as an alerting and locating aid for survival purposes.

* * * * *

3. In § 87.67(b) two emission designators are added following A3E[12] and F7D[8] and footnote 7 is revised to read as follows:

§ 87.67 Types of emission.

* * * * *

(b) * * *

Authorized bandwidth (kilohertz)	Class of emission	Emission designator		
		Below 50 MHz	Above 50 MHz	Frequency deviation
*	*	*	*	*
A3E	3K20A3E [7]		[7] 25	
*	*	*	*	*
NON	NON		[7] None	
*	*	*	*	*

[7] Applicable only to Survival Craft Stations and to the emergency locator transmitters and emergency locator transmitter test stations employing modulation in accordance with that specified in § 87.73 (h), (i) and (j) of the rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after October 21, 1973.

4. In § 87.73 paragraph (h) is revised and new paragraphs (i) and (j) are added to read as follows:

§ 87.73 Modulation requirements.

* * * * *

(h) The types of emissions for ELTs must be in accordance with those specified in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO–C91a titled "Emergency Locator Transmitter (ELT) Equipment" dated April 29, 1985. TSO–C91a is incorporated by reference in accordance with 5 U.S.C. 552(a). TSO–C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue SW., Washington, DC 20591.

(i) Transmission of A3E or NON emission must not exceed 90 seconds and must be followed by a transmission of at least three minutes of A3N emission; each transmission of a synthesized and/or pre-recorded voice message must be preceded by the words "this is a recording."

(j) ELTs manufactured effective October 1, 1988, must have in emissions A3N, A3E and NON a clearly defined carrier frequency distinct from the modulation sidebands. On 121.500 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within ±30 Hz of the reference carrier frequency. On 243.000 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within ±60 Hz of the reference carrier frequency. See TSO–C91a at paragraph (a)(3)(ii). Additionally, if the type of modulation is changed the carrier frequency must not shift more than ±30 Hz from the fixed reference frequency on 121.500 MHz and ±60 Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 87.65.

5. In § 87.183 paragraphs (f) and (l) are revised to read as follows:

§ 87.183 Frequencies available.

* * * * *

(f) *121.5 MHz:* This is a universal simplex frequency for use by aircraft in distress or emergency condition. Except for use in an ELT, the frequency 121.5 MHz will be assigned only when other frequencies are available for normal aircraft communications. The frequency is available as follows:

* * * * *

(l) *243.0 MHz:* This is an emergency and distress frequency available for use by survival craft stations, ELTs and equipment used for survival purposes which are also equipped to transmit on the frequency of 121.5 MHz.

* * * * *

[FR Doc. 88–5736 Filed 3–17–88; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 215, 242, and 252

Department of Defense Federal Acquisition Regulation Supplement; Estimating Systems

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to sections 215.811 and 242.302, and Part 252 of the DoD FAR Supplement (DFARS) to (a) require that businesses which submit certified cost and pricing data to the DoD establish and maintain adequate estimating systems; (b) require certain large businesses to disclose their estimating system in writing; (c) provide guidelines concerning characteristics of adequate estimating systems; and (d) provide guidance for conducting estimating system reviews by the Government.

EFFECTIVE DATE: March 18, 1988. (Effective on all solicitations issued on or after March 18, 1988.)

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266

SUPPLEMENTARY INFORMATION:

A. Background

Upon review of reports developed by the General Accounting Office and the DoD Inspector General, the DAR Council concluded that it was necessary to establish DFARS coverage requiring contractors receiving a significant amount of DoD prime contracts or subcontracts based on cost or pricing data to establish, maintain, disclose, and utilize adequate estimating systems. A proposed rule was published establishing such a requirement in the Federal Register on July 17, 1987 (52 FR 27019) for public comment.

B. Development of the Final Rule

In developing the final rule, the DAR Council evaluated the GAO and DoD IG reports, testimony presented to the House Government Operations Committee, and public comments received in response to the July 17, 1987 proposed rule. In response thereto, several changes were made to the proposed rule. The most significant changes were the simplification of the definition of "significant estimating system deficiency" and the elimination of the access to records portion of the clause.

The proposed rule attempted to define a "significant estimating system deficiency" using quantitative criteria. Public comments convinced the DAR Council that these criteria would confuse rather than clarify the term "significant deficiency". Consequently, the definition contained in this final rule has been simplified. The access provision was eliminated from this case and is being considered under DAR Case 86–96.

Other changes from the proposed rule include revision of the policy statement to more clearly indicate that the DoD expects all contractors, not just larger contractors, to have an estimating system which produces well-supported proposals that are an acceptable basis for negotiation of fair and reasonable prices. Only larger contractors, however, will be governed by the specific requirements of section 215.811, i.e., disclosure and formal review of the estimating system. The policy statement was also revised to more closely indicate that the estimating system should be consistent with and integrated with other contractor management systems. Also, the threshold for applying the specific provisions of section 215.811 was raised from $25 million to $50 million. The change was made to reduce the number of contractors required to undergo mandatory systems review every three years, thereby reducing the administrative impact on defense contractors. The DAR Council concluded that the Government's interest is adequately protected by providing for inclusion of the relevant clause in all contracts awarded on the basis of certified cost and pricing data and allowing the contracting officer to require compliance with disclosure and review requirements as needed by selected contractors which received at least $10 million in prime contracts or subcontracts for which certified cost or pricing data was required.

Instructions were also added to provide for the protection of information given to the Government containing contractor commercial or financial information regarded as privileged or confidential. Other changes were made to clarify or amplify the coverage, or to make editorial adjustments.

C. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Although the final rule requires all contractors receiving DoD contracts based on certified cost or pricing data to have estimating systems adequate to support their proposals, only large businesses meeting certain dollar thresholds are required to disclose their estimating systems to the DoD in writing or to undergo a formal systems review.

D. Paperwork Reduction Act

This final rule results in a reduction of 12,000 burden hours. A revised Paperwork Reduction Analysis has been submitted to OMB for their review.

List of Subjects in 48 CFR Parts 215, 242, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, 48 CFR Parts 215, 242, and 252 are amended as follows:

1. The authority citations for Parts 215, 242, and 252 continue to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.811 is revised and sections 215.811–70 through 215.811–79 are added to read as follows:

Subpart 215.8—Price Negotiation

* * * * *

Sec.
215.811 Estimating systems.
215.811–70 Definitions.
215.811–71 Policy.
215.811–72 Applicability.
215.811–73 Responsibilities.
215.811–74 Contractor estimating system standard.
215.811–75 System disclosure and maintenance requirements.
215.811–76 Characteristics of an adequate estimating system.
215.811–77 Indicators of potentially significant estimating deficiencies.
215.811–78 Procedures.
215.811–79 Contract clause.

* * * * *

215.811 Estimating systems.

The coverage in sections 215.811–70 through 215.811–79 below and the clause at 252.215–7003 provides, for the convenience of DoD activities, a consistent but more detailed and comprehensive treatment of estimating system policies and procedures than FAR 15.811.

215.811–70 Definitions.

"Contractor", for purposes of this section, means a business unit as defined in FAR 30.102.

"Estimating System" is a term used to describe a contractor's policies, procedures and practices for generating cost estimates which forecast costs based on information that is available at the time. It includes the organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; flow of work, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and analyses used by a contractor to generate estimates of costs and other data included in proposals submitted in the expectation of receiving contract awards.

"Significant Estimating System Deficiency" means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for either total cost or a major cost element which is not an acceptable basis for negotiation of fair and reasonable prices.

215.811–71 Policy.

It is the policy of the DoD that all contractors have estimating systems that consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices. An estimating system should be consistent with and integrated with the contractor's related management systems, and should be subject to applicable financial control systems.

215.811–72 Applicability.

(a) The specific requirements of sections 215.811–75 to 215.811–78 and paragraphs (d) and (e) of the clause at

252.215–7003, Cost Estimating System Requirements, apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more for which certified cost or pricing data were required.

(b) For a large business contractor not meeting the criteria in paragraph (a) of this section but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10 million or more for which certified cost or pricing data were required, the PCO may require disclosure and review in compliance with paragraphs (d) and (e) of the clause at 252.215–7003 with the concurrence or at the request of the ACO when such compliance is in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly to the Government).

(c) The disclosure, maintenance and review requirements of sections 215.811–75 to 215.811–78 do not apply to small businesses or to educational institutions or other nonprofit organizations.

215.811–73 Responsibilities.

(a) For a contractor meeting the requirements in 215.811–72(a) or (b) above, the cognizant ACO shall determine the adequacy of the contractor's estimating system and pursue appropriate corrections of deficiencies.

(b) On behalf of the ACO, the cognizant auditor is responsible for being the team leader in conducting estimating system reviews.

215.811–74 Contractor estimating system standard.

To be considered adequate, a contractor's estimating system must be established, maintained, reliable, consistently applied, and must produce verifiable, supportable and documented cost estimates.

215.811–75 System disclosure and maintenance requirements.

(a) An estimating system disclosure is adequate when the contractor has provided the cognizant ACO with documentation that:

(1) Accurately describes those policies, procedures and practices that the contractor currently uses in preparing cost proposals; and

(2) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(b) Significant changes to the cost estimating system must be disclosed to the cognizant ACO on a timely basis.

(c) If the contractor notifies the ACO and the auditor that disclosed information relative to its estimating system contains commercial or financial information which it regards as privileged and confidential, such information will be protected and will not be released outside the Government without the permission of the contractor. The contractor should place an appropriate legend on the face of the disclosed document at the time of submission.

215.811–76 Characteristics of an adequate estimating system.

(a) *General.* The adequacy of an estimating system is dependent on the successful interrelationship of many variables. The relative importance or necessity of each is determined largely by the particular conditions applicable to an individual contractor. In general, adequate systems should provide for the use of appropriate source data, utilize sound estimating techniques and appropriate judgment, maintain a consistent approach, and adhere to established policies and procedures. Although it is not possible to list all of the characteristics of an adequate estimating system, there are some characteristics that should be present in most systems. Listed in paragraph (b) of this section are examples of the types of characteristics which should be considered by the ACO when evaluating a contractor's estimating system. They are not, however, intended as a checklist.

(b) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system—

(1) Establishes clear responsibility for preparation, review and approval of cost estimates;

(2) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates, and the various functions that contribute to the estimating process such as accounting, planning, etc.;

(3) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(4) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(5) Provides for appropriate supervision throughout the estimating process;

(6) Provides for consistent application of estimating techniques;

(7) Provides for detection and timely correction of errors;

(8) Protects against cost duplication and omissions;

(9) Provides for the use of historical experience where appropriate;

(10) Requires use of appropriate analytical methods;

(11) Integrates information available from other management systems as appropriate;

(12) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(13) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(14) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(15) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

§ 215.811–77 Indicators of potentially significant estimating deficiencies.

Some indicators of conditions that may produce or lead to significant estimating deficiencies are listed below. These indicators are not intended as a comprehensive checklist. They may, however, suggest the need for further analysis or evaluation. Since estimating is not an exact science and is partly based on judgment, differences between individual estimates and subsequent actual data are not necessarily indications of a system deficiency.

(a) Failure to assure that relevant historical experience is available to and utilized by cost estimators as appropriate.

(b) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(c) Consistent absence of analytical support for significant proposed cost amounts.

(d) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available.

(e) Recurring significant defective pricing findings within the same cost element(s).

(f) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired.

(g) Failure to provide established policies, procedures and practices to persons responsible for preparing and supporting estimates.

215.811–78 Procedures.

(a) *System reviews.* Cognizant audit and contract administration activities will establish and manage regular programs for reviewing selected contractors' estimating systems. Reviews and reports shall be accomplished as a contract audit and contract administration office team effort, with the contract auditor designated as team leader. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to ensure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. The ACO or a representative should coordinate the contract administration activity's review, consolidate findings and recommendations, and, when appropriate, prepare a comprehensive written report which shall be submitted to the auditor. The contract administration activity's written report shall be attached to the estimating survey team report. A system review shall be conducted at least every three years of a contractor required to make disclosure pursuant to 215.811–72 and paragraphs (d) and (e) of the clause at 252.215.7003, Cost Estimating System Requirements, except where the auditor, in coordination with the ACO, determines that past experience and a current vulnerability assessment of the pricing activity of a contractor discloses low risk. If the auditor and the ACO determine that the Government is subject to high risk, estimating system reviews should be done more frequently. To the extent possible, the team leader should inform the contractor and the ACO of significant findings during the conduct of the review. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) *Disposition of survey team findings*—(1) *Reporing of survey team findings.* The auditor will document the results of the system review in a report to the ACO. The report shall address the survey team findings and recommendations. If there are significant estimating deficiencies, the report shall recommend disapproval of all or a portion(s) of the estimating system.

(2) *Field pricing reports.* When the report of a system review indicates that there may be a significant estimating system deficiency, the effect of such deficiency shall be mentioned in the field pricing report for each contractor proposal reviewed until resolution of such deficiency.

(3) *Contracting officer responsibility.* The contracting officer responsible for negotiation of a specific proposal generated by an estimating system with an identified deficiency shall evaluate such proposal in light of the system deficiency. If the contracting officer determines that the deficiency does not have a significant impact on the instant negotiation, then he or she should proceed with the instant negotiations. If the contracting officer determines that the system deficiency does affect the proposal and does have a significant impact on the instant negotiation, then the contracting officer should consider pursuing such alternatives as:

(i) Allowing additional time for the contractor to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost element(s) affected by the system's deficiency, e.g., what should the element(s) cost (See the Armed Services Pricing Manual (ASPM) for appropriate analytical techniques.);

(iv) Segregating the questionable areas as a cost reimbursable line;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract clause that provides for adjustment of the contract amount after award (reopener clause). The contracting officer who incorporated the clause into the contract shall be responsible for negotiating price adjustments required by the clause. A reopener clause necessitated by an estimating deficiency should clearly identify the amount(s) and item(s) which are in question at the time of negotiation. It should also indicate either a specific time or subsequent event by which the contractor will submit a proposal identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost and pricing data submitted as part of the supplemental proposal, and that, should the contractor fail to submit such a proposal, the contracting officer will make a unilateral price adjustment. Failure of the contractor and the Government to agree to the adjustment shall be a dispute under the Disputes clause.

(4) *Initial notification of contractor.* Upon receipt of the system review report, the ACO shall provide a copy to the contractor and allow 30 days or a reasonable extension thereto for submission of its written response. If no significant deficiencies are identified, the ACO will notify the contractor in writing in a timely manner.

(i) *Contractor agreement.* If the contractor agrees with the report findings and recommendations, the contractor should, within 60 days of receipt of the initial notification, correct any identified system deficiencies or submit a corrective action plan showing milestones and actions leading to elimination of the deficiencies.

(ii) *Contractor disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(5) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response and determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) Any such deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion(s) of the contractor's estimating system; or

(iii) Any proposed corrective action(s) are adequate to correct the deficiency.

(6) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of his/her determination and, if appropriate, of the Government's intent to disapprove all or a selected portion(s) of the system. The notice shall list the cost elements it covers and identify any deficiencies requiring correction. The notice shall also require the contractor to make correction or submit a corrective action plan within 45 days showing proposed milestones and actions related to all identified deficiencies.

(7) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take whatever action is determined necessary to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include but are not limited to bringing the issue to the attention of higher level management, reducing or suspending progress payments in accordance with FAR

32.503-6 and/or recommending nonaward of potential contracts.

(8) *Notice of disapproval.* (i) If, within 45 days after receipt of the notice of deficiency (see paragraph (b) (4) of this section) or a reasonable extension thereto, the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies, all or a selected portion(s) of the contractor's estimating system shall be disapproved in writing. The notice of disapproval shall identify the cost element(s) covered by the disapproval and list the deficiencies which prompted the disapproval for each affected cost element.

(ii) A copy of the Notice of Disapproval shall be sent to the cognizant auditor and to each contracting office and contract administration office having substantial business with the contractor.

(9) *Withdrawal of estimating system dissapproval.* After the ACO determines that the contractor has corrected the significant system deficiencies, the ACO shall notify the contractor, the auditor, and all affected contracting activities that the disapproval has been withdrawn.

215.811-79 Contract clause.

The contracting officer shall insert the clause at 252.215-7003 in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.302 is amended by adding paragraph (S-75) to read as follows:

242.302 Contract administration functions.

* * * * *

(S-75) Review contracting estimating systems.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.215-7003 is added to read as follows:

252.215-7003 Cost estimating system requirements.

As prescribed in 215.811-79, insert the following clause.

Cost Estimating System Requirements (May 1988)

(a) *Definition.* "Estimating System" is a term used to describe a contractor's policies, procedures and practices for generating cost estimates which forecast costs based on information that is available at the time. It includes the organizational structure; established lines of authortiy, duties, and responsibilities; internal controls and managerial reviews; flow of work, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and analyses used by a contractor to generate estimates of costs and other data included in proposals submitted in the expectation of receiving contract awards.

(b) *General.* The Contractor shall have an estimating system that consistently produces well supported proposals that are an acceptable basis for negotiation of fair and reasonable prices. The estimating system should be consistent with and integrated with the Contractor's related management systems and subject to applicable financial control systems.

(c) *Applicability.* Paragraphs (d) and (e) are also applicable if the Contractor is a large business and, in its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contractors or subcontracts thereunder totaling fifty million dollars ($50 million) or more for which certified cost or pricing data were required. This clause is also applicable if the Contractor is a large business which, in its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts thereunder totaling ten million dollars ($10 million) or more for which certified cost or pricing data were required, and during performance of this contract the Contracting Officer notifies the Contractor in writing that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* The Contractor shall establish and maintain an estimating system in compliance with subsection 215.811-74 of the DoD FAR Supplement.

(1) The Contractor shall disclose its estimating system to the Contracting Officer responsible for contract administration (ACO) in writing. If the Contractor wishes the Government to protect such information as privileged or confidential, an appropriate legend should be placed on the face of the document(s) at the time of submission. An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation which (i) accurately describes those policies, procedures and practices that the Contractor currently uses in preparing cost proposals; and (ii) provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the Contractor's estimating practices.

(2) Significant changes to the cost estimating system must be disclosed to the ACO on a timely basis.

(3) The Contractor shall comply with its disclosed estimating system.

(e) *Estimating system deficiencies.* (1) If during the period of performance of this contract, the Contractor receives a report of the review of its estimating system which identifies deficiencies in the system, the Contractor agrees to respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall, within thirty (30) days of receipt of such report, indicates its agreement in writing; and within (60) days of receipt of such report, correct any identified deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall respond in writing within thirty (30) days of receipt of the report, indicating its rationale for each area of disagreement.

(2) The ACO shall evaluate the Contractor's response to the report and notify the Contractor of his/her determination concerning any remaining deficiencies and/or the adequacy of any proposed or completed corrective action(s).

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60224-7282]

Regulations Governing the Importation of Tuna Taken in Association With Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: NMFS issues this interim final rule in response to a 1984 amendment to the Marine Mammal Protection Act (MMPA). The rule amends marine mammal regulations regarding the importation of yellowfin tuna caught with purse seines in the eastern tropical Pacific Ocean (ETP).

Under this rule, any nation wishing to export yellowfin tuna to the United States that has purse seine vessels in the ETP must satisfy a two-part test that requires: (1) Documentary evidence that the nation has adopted a regulatory program governing the incidental taking of marine mammals in the fishery that is comparable to the program of the United States, and (2) documentation that the average rate of incidental mortality of marine mammals in the fishery by its vessels is comparable to the rate of incidental mortality of marine mammals from fishing by the U.S. fleet.

DATE: This rule is effective April 18, 1988. Comments on the rule must be submitted no later than May 17, 1988.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235. An Environmental Assessment/Regulatory Impact Review is available upon request.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton (Director, Southwest Region, NMFS), 213 514-6196; or Nancy Foster (Director, Office of Protected Resources and Habitat Programs, NMFS), 202-673-5355.

SUPPLEMENTARY INFORMATION:

Background

NMFS issued a proposed rule on August 13, 1986 (51 FR 28963), to amend 50 CFR 216.24 to modify the importation requirements for yellowfin tuna caught in association with marine mammals in foreign purse seine vessels in the ETP. As a result of comments received on the proposed rule, modifications and clarifications have been made to the rule.

Accordingly, the rule is being published as an interim final rule with a 60-day comment period. The regulatory procedures adopted in this rule are based on the best information available to NMFS at this time and represent a prudent approach to saving marine mammals. However, NMFS does not want the regulatory procedures adopted here to frustrate the purpose of the 1984 amendment and this regulation, that of saving marine mammals. In particular, NMFS wants to encourage foreign nations to comply with these regulations by implementing comparable programs and working to reduce their kill rates, rather than cause them to seek tuna markets outside the United States, thus frustrating U.S. efforts to reduce the total marine mammal kill by all nations. Furthermore, NMFS recognizes that changing conditions in the tuna industry, and the development of new and effective basic equipment and techniques for saving marine mammals, may necessitate re-evaluation of these regulations in the future. Therefore, NMFS invites comments from other Federal agencies, the public and foreign governments on this interim final rule. In particular, NMFS invites comments on the criteria set forth in this notice for determining comparability of regulatory program and kill rate, and their possible effects on the development of improved techniques and equipment.

Regulations governing the taking of marine mammals incidental to commercial fishing operations appear at 50 CFR Part 216. Included in these regulations are provisions concerning the importation of yellowfin tuna and tuna products from nations whose vessels participate in the yellowfin tuna purse seine fishery in the ETP. Effective January 1, 1978, these importation provisions made the importation of yellowfin tuna and tuna products from nations known to be involved in the ETP fishery contingent upon certain findings by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator). Under § 216.24(e)(5)(i), the Assistant Administrator must find (a) that the fishing operations of the nation concerned * * * are conducted in conformance with U.S. regulations and standards * * *" or (b) that * * * "although not in conformance with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S. fishing operations under these regulations." These findings are subject to an annual review in which the information items listed in 50 CFR 216.24 (e)(5)(ii) are updated for the previous calendar year.

Since 1978, 18 nations in addition to the United States have purse seined in the ETP. Currently, findings are in effect for the following countries: the Cayman Islands, Costa Rica, Ecuador, Mexico, Panama, Spain, Vanuatu, and Venezuela. The Congo, El Salvador, Mexico, Peru, Senegal, and the Union of Soviet Socialist Republics (U.S.S.R.) have been prohibited from exporting yellowfin tuna to the United States during some period of time under these regulations. The Congo, Peru, and Senegal subsequently removed their fleets from the ETP. El Salvador and the U.S.S.R. do not have findings and therefore cannot export yellowfin tuna to the United States. Bermuda, Canada, the Republic of Korea, Nicaragua, and New Zealand have not purse seined in the ETP in recent years. Additional information can be found at 51 FR 18844, May 21 1986; 50 FR 3950, January 29, 1985; 48 FR 56966, December 27, 1983; 48 FR 30422, July 1, 1983; 48 FR 14431, April 4, 1983; 47 FR 11307, March 16, 1982; and, 46 FR 10974, February 5, 1981.

The most recent information available indicates that the active purse seine fleets with vessels of over 400 tons carrying capacity for nations currently with findings are as follows:

Nation	Number of vessels [1]
Cayman Islands	1
Costa Rica	1
Ecuador	4
Mexico	43
Panama	1
Spain	2
Vanuatu	4
Venezuela	15

[1] As of December 31, 1986.

Non-U.S. fleets have substantially increased their fishing for yellowfin tuna associated with marine mammals in the ETP since 1984. The Inter-American Tropical Tuna Commission (IATTC) estimated that non-U.S. vessels harvested 398,000 short tons (st) of yellowfin tuna on marine mammals during 1979–86, an average of about 49,750 st per year. The non-U.S. fleets are estimated to have taken 45,700 st of yellowfin tuna in marine mammal sets in 1984 and 109,600 st in 1985. Preliminary 1986 estimates indicate that the total yellowfin tuna catch by all vessels (including U.S. vessels) in the IATTC Yellowfin Tuna Regulatory Area (CYRA) was about 253,200 st, which is up from 142,300 st in 1984 and 217,000 st in 1985. The highest catch year on record for these species in the CYRA was 1986. The estimated total fleet capacity in 1986 was 122,900 st, which was a slight reduction from 129,500 st in 1985.

Nations with findings accounted for 194,862 st or 66 percent of all yellowfin tuna caught in the ETP during 1986. Mexico caught 59 percent of this amount, or 114,070 st. Other major nations catching ETP yellowfin tuna included Venezuela and Ecuador. Of the total amount of yellowfin tuna caught in the ETP by nations with findings during 1986, 24 percent, or 46,722 st, was imported into the United States fresh or frozen for use by domestic canneries. The estimated value of this product was approximately $37 million. Imports from Venezuela comprised the largest share of ETP yellowfin tuna, representing 35 percent of the total amount. Other major suppliers included Ecuador (19 percent) and Mexico (7 percent). Other nations with findings collectively accounted for 39 percent of the total ETP yellowfin tuna imported by U.S. canneries. Much of this amount was transshipped from Panama to U.S. canners in Puerto Rico.

With the exception of Mexico, nations with findings were very dependent upon the United States in 1986 as a market source for ETP-caught yellowfin tuna. Fifty-three percent of the yellowfin tuna caught in the ETP by Venezuelan vessels was imported into the United States by domestic canners in 1986. The value of this product was approximately $14 million. Twenty-six percent of all Ecuadorian-caught ETP yellowfin tuna

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was imported by U.S canneries. Only 3 percent of the Mexican-caught ETP yellowfin tuna was imported by the United States during 1986 due to Mexico's strong European market for yellowfin tuna. Sixty-three percent of the ETP yellowfin tuna caught by all other countries was imported by U.S. canneries during 1986. These countries include the Cayman Islands, Panama, Spain and Vanuatu.

Canned tuna from ETP fishing nations amounted to 11,517 st, only 4 percent of all canned tuna imported into the United States. The amount of yellowfin tuna actually caught in the ETP, canned by nations with findings, and later imported into the United States is estimated to be very small but cannot be traced due to the present U.S. Customs importation classification system.

Public Law 98-364

On July 17, 1984, the President signed into law an act (Pub. L. 98-364) reauthorizing and amending the MMPA. One amendment is to ensure that each nation exporting yellowfin tuna to the United States has in place a regulatory program for the protection of marine mammals that is comparable to the program of the United States. It further requires documentation that the average rate of incidental taking of marine mammals by vessels of the harvesting nation in the ETP tuna fishery is comparable to that of the United States.

The House Committee on Merchant Marine and Fisheries noted that the regulatory program of the United States is quite extensive and detailed (see H.R. Report 98–758, p. 8). The Committee in reporting this legislation stated that it does not intend to require that the regulatory program of foreign countries be identical to that of the United States. Programs that require the basic equipment and techniques used to protect marine mammals and have as their purpose the minimization of the number of animals incidentally taken would be comparable as long as they provided a level of protection substantially equivalent to that of the U.S. program. Similarly, the Committee recognized that the average rate of incidental taking will vary from year to year. The Committee stated that it did not intend for the importation of tuna products to be banned from a nation if the rate of incidental taking is slightly higher in any given year. However, it added that the report of levels or rates of incidental mortality being consistently higher than those of the United States or significantly higher in any given year should result in the prohibition of imports.

Several important points must be made in this context. First, the statute clearly requires the Secretary of Commerce to evaluate performance on a country-by-country basis. Second, the Congress indicated that NMFS should continue to encourage nations which have not already done so to implement observer programs either on their own or in cooperation with the IATTC. Third, the Congress intended that NMFS require estimates of incidental take that are equivalent in accuracy and reliability to observer data obtained in the U.S. and IATTC observer programs. In summary, the Congress expects that the importation regulations will result in demonstrable evidence that those nations which have purse seine fishing vessels in the ETP and want to export yellowfin tuna to the United States have effective programs to prevent or reduce marine mammal mortality.

Comments and Responses

A proposed rule was published on August 13, 1986 (51 FR 28963), for public review and comment. NMFS received seven letters of comment on the proposed rule. Three letters were from or on behalf of national or local environmental organizations, two were from U.S. Government entities and two were from the tuna industry. A summary of the comments received and the NMFS response to those comments are as follows:

1. *Comment:* Several commenters expressed concern that the proposed regulations will not lessen high incidental mortality rates by foreign vessels. The commenters strongly recommended that a nation should have gear and procedure requirements comparable to U.S. industry or prove the effectiveness of the system in use.

Response: NMFS concurs. The Guidelines for Comparable Regulatory Programs and Mortality Rates have been amended to describe what NMFS considers as minimum gear and procedural requirements to be accepted as comparable to the U.S. industry.

2. *Comment:* Several commenters suggested that the consequences of not having a comparable observer program should be more clearly defined.

Response: NMFS agrees and has modified the Guidelines for Comparable Regulatory Programs and Mortality Rates to require participation in an approved observer program and to identify an annual observer coverage goal of 33 percent for individual harvesting nations. The consequence for a nation not meeting this goal could be a negative finding by the Assistant Administrator if it is determined that the data submitted are not sufficient to make a finding of conformance.

3. *Comment:* Several commenters suggested that area fished and stock composition be considered in comparing the average rate of incidental marine mammal mortality between U.S. and foreign fleets.

Response: NMFS acknowledges that incidental marine mammal mortality varies by stock and geographic area. Based on recent summarized data available from IATTC, three distinct geographic areas have been established in the regulations for comparing U.S. and foreign marine mammal mortality rates. The distribution and behavior of the common dolphin were found to be sufficiently different from other marine mammal stocks that mortality data also will be requested separately for comparability purposes.

4. *Comment:* Four commenters suggested that the 50 percent criterion for comparing incidental mortalities between U.S. and foreign fleets be reviewed, because it appeared to be too high.

Response: NMFS has made substantial modifications to the criterion for determining comparability rates of incidental mortality of marine mammals. These modifications are designed to demonstrate firmness in U.S. efforts to achieve comparability between U.S. and foreign fleets in reducing marine mammal mortality without precluding foreign cooperation in saving marine mammals by issuing criteria so stringent that nations will seek tuna markets outside the United States, thus circumventing U.S. efforts to reduce the total marine mammal mortality by all nations.

The revised criterion for determining comparability establishes the average number of marine mammals killed per ton of tuna caught in sets made on marine mammals over a five-year period or for the most recent year, whichever is lower, as the measure of performance for U.S. and foreign fleets. Comparability will be evaluated annually by geographic area, separating data on common dolphin sets from all other marine mammal species. Details of the system are provided later in this preamble.

5. *Comments:* One commenter recommended that the reference to "incidental mortality" be amended to "incidental take."

NMFS has chosen to use the rate of kill as the standard for the rate comparison test, and not to use other types of "takings" like chase, encirclement, or capture. This decision is supported by the fact that virtually

the entire focus of the domestic regulatory program in practice is "kill", and the yearly quota used for monitoring and controlling the fishery established first by regulation and now by statute is in terms of "kill". Although studies are underway on the effects of chase, encirclement, and capture, the application of these "takings" to the rate comparison test is premature. When or if restrictions on these types of "takings" are sufficiently supported by scientific evidence to be meaningfully incorporated into the domestic regulatory program then their use in the comparison test would be appropriate.

6. *Comment:* One commenter questioned our preference for "kill-per-ton" over "kill-per-set" for making mortality rate comparability determinations.

Response: Although the proposed rule would have used both "kill-per-ton" and "kill-per-set" rates, NMFS has concluded that the use of marine mammals killed per ton of yellowfin tuna is the best single rate to use in the comparability test implemented in these regulations. Because species groups and area of catch are factored into the comparison test along with the kill rate, NMFS has determined that the complications of using both kill-per-set and kill-per-ton in addition to these other factors is not warranted. Although kill-per-set is useful for some purposes, NMFS has concluded that kill-per-ton is a better rate for comparison test purposes because it takes into consideration the performance of vessels for any given amount of yellowfin tuna caught. This rate best focuses foreign countries on the desirable result of minimizing marine mammal kill for any given amount of catch of yellowfin tuna.

7. *Comment:* Two commenters expressed concern that the regulations would encourage nations to market their tuna products outside the United States because of difficulties in obtaining detailed tuna/marine mammal data from foreign nations and, in some instances, enacting acceptable statutes to meet U.S. requirements.

Response: The statute requires that this regulatory system be established. NMFS has selected only the most relevant data requirements which are known to be available and necessary to make a finding.

NMFS recognizes the difficulties encountered by certain nations in enacting acceptable statutes to meet the finding requirement when the vessels operating under their flags are under charter to another nation whose vessels operate under statutes already approved by the United States. To accommodate these rare situations, provision has been made to consider foreign vessels chartered in another country to be operating under the laws of that nation. A definition for certified charter vessel has been added in the regulation for this purpose.

8. *Comment:* Several commenters questioned why alternative programs could not be used as a management tool. Multi-regional cooperative programs and foreign quotas on incidental take were specific suggestions as alternatives to the proposed regulation.

Response: The 1984 amendments to the statute mandate that each nation is to be examined separately for comparability with the U.S. performance and programs.

Interim Final Rule

This interim final rule implements a performance-based import certification program consistent in basic structure and in principle with the marine mammal protection program for U.S. vessels which take marine mammals incidental to yellowfin tuna while purse seine fishing. This certification program is a new approach, the elements of which may be modified by NMFS as new information becomes available and experience demonstrates better ways to achieve lower mortality.

A two-part test will be used each year to determine whether to grant or extend a finding of conformance for any individual nation. This test applies to any nation that has a vessel or a certified charter vessel of 400 tons carrying capacity or greater that fishes for tuna in the ETP. This is consistent with U.S. regulations and recognizes that smaller vessels cannot effectively set on marine mammals. First, each nation must be found to have a regulatory program to protect marine mammals that is comparable to the U.S. program. The annual evaluation of the regulatory program will consider the comparability of laws, regulations, and guidelines which govern the gear and techniques which each nation's vessels must use to prevent or minimize marine mammal mortality when purse seining for yellowfin tuna associated with marine mammals. Second, the effectiveness of each nation's regulatory program will be assessed by monitoring the nation's annual marine mammal kill rate. Each nation must demonstrate, using reliable and verifiable data, that the average annual rate of incidental mortality of marine mammals per ton of yellowfin tuna taken with marine mammals from fishing vessels operating under its laws is comparable to the incidental rate of marine mammal mortality achieved by U.S. vessels fishing in the same geographic area and in association with the same species groups. For purposes of this test, the two species groups considered are common dolphins and all other marine mammal species. The Comparable Regulatory Program test will be applied immediately and the kill rate test will be applied in 1991 when adequate data are available to allow a meaningful comparison to be made, as explained below.

Initial Certification

An existing finding of conformance will continue in effect until a determination (either positive or negative) is made on a new request for a finding under these new regulations, if the request and documentation are submitted within 120 days from the effective date of these regulations and if the application as submitted is complete. Findings for nations not submitting the required documentation will expire 180 days after the effective date of these regulations. Any nation that does not have an existing finding of conformance but has one or more vessels of 400 tons carrying capacity or greater using purse seine gear in the ETP that desires to export yellowfin tuna or yellowfin tuna products to the United States must submit documentation to support a finding at least 120 days prior to the date it wishes to commence exportation of yellowfin tuna.

The Assistant Administrator will review each nation's submission for completeness and will assess each nation's described regulatory program for comparability with the U.S. program. Additional information may be requested from the nation before issuing an affirmative finding. An affirmative finding for this test is likely to be issued if the program contains provisions similar to those in the guidelines that follow. Copies of the relevant U.S. regulations have been provided to all interested nations. Each nation's submission must contain sufficient detail so that the Assistant Administrator will be able to determine that the nation's regulatory program is comparable in substance and effectiveness to the U.S. program. At a minimum, the documentation for an initial finding must contain:

1. A description of gear and procedural requirements, including copies of relevant laws, guidelines, and implementing regulations, and the enforcement program designed to reduce or prevent the incidental mortality and injury of marine mammals in purse seine fishing by its vessels;

2. A description of the observer program by which the incidental mortality of marine mammals is monitored and by which annual species mortality and fleet mortality rates are estimated. If the nation is not participating in the IATTC observer program but is conducting an independent observer program, the nation must provide details regarding the number and percentage of trips covered, training requirements for observers, the data collected by observers, and the agency to contact for additional information;

3. A description of the methods used to identify problems and solutions to improve the performance of individual fishermen in reducing incidental mortality and how fishermen will be advised (e.g., through technical experts or a peer advisory group);

4. A list of the purse seine vessels of 400 short tons carrying capacity or greater (i.e. IATTC Category 6 vessels) in the nation's fleet which operated in the ETP in 1986 or 1987, or both; the status of each vessel during 1986 and 1987 (e.g., actively fishing in the ETP, actively fishing in other waters, or inactive); and the expected status during 1988 of the above vessel(s) and all other purse seine vessels expected to operate in the ETP in 1988.

5. Data on the performance of the nation's purse seine vessels (including certified charter vessels) operating in the ETP for either or both of the previous two fishing years (1986–1987) including:

a. Total number of tons of yellowfin tuna observed caught in each fishing area by purse seine sets on:

1. Common dolphin and
2. All other marine mammal species;

b. Total number of marine mammals observed killed in each area by purse seine sets on:

1. Common dolphin and
2. All other marine mammal species;

c. Number of observed trips and number of observed purse seine sets on marine mammals by the nation's purse seine fleet during the year;

d. Total number of vessel trips and total number of purse seine sets on marine mammals by the nation's purse seine fleet during the year; and

e. The number of observed purse seine sets in which more than 15 marine mammals were killed.

The information requested in 5 a–c, and 5e refers to information obtained by observers on the tuna vessels. For purposes of the information requested above, a purse seine set on common dolphins is one in which more than 50 percent of the marine mammals captured are common dolphins.

These data must be provided by geographic area and for two species groups, common dolphin and all other marine mammals. A mortality of 15 animals or more in a set is used to identify problem sets that require special attention by the nation to analyze skipper performance or the effectiveness of fishing techniques to avoid future mortalities from similar causes.

Guidelines for Comparable Regulatory Programs and Mortality Rates

Documentation submitted annually by a nation must show that certain minimum requirements have been met in order to satisfy the two-part test for comparability.

Comparable Regulatory Program Test

1. Marine mammal rescue gear, equipment and procedural requirements and guidelines.

At a minimum, the gear and procedural requirements must include the installation and use of a superapron or fine mesh system in the purse seine net, a backdown procedure, the availability of speedboats with towing bridles to hold open nets, the availability of a raft to aid live animals after backdown, a prohibition on brailing and sacking up live animals from the net and the installation and use during darkness of a lighting system capable of illuminating the backdown channel with at least 140,000 lumens. Sets on pure schools of eastern spinner dolphin and on pure schools of any other species of marine mammals except offshore spotted dolphin stocks, striped dolphin species, and common dolphin species must be prohibited.

2. An observer program to monitor the effectiveness of marine mammal rescue gear and procedures and to record the incidental mortality and serious injury of marine mammals associated with fishing.

To be comparable with the U.S. observer program, a nation must participate in an observer program with a goal of 33 percent observer coverage on trips involving fishing on tuna associated with marine mammals. This could be achieved by an individual nation placing a qualified technical observer aboard its vessels on every third trip or on a regional basis by nations participating in the IATTC observer program. If a program's observer coverage falls below 33 percent, the nation must explain the cause of the problem and how it will be rectified in the future. Observer coverage consistently below 33 percent or drastically below 33 percent in any one year would be a basis for finding that the program is not comparable to that of the United States.

3. An advisory group to identify problems and solutions to improve the performance of individual fishermen in reducing incidental marine mammal mortality.

A panel of expert captains is a peer advisory group established by the U.S. industry to review and improve individual skipper performance. A similar peer advisory group established by an individual nation or on a regional basis would be considered comparable, as would an advisory group of technical experts.

Comparable Mortality Rate Test

The ultimate goal for comparability is to attain foreign marine mammal mortality rates (kill-per-ton) at least as low as those of the United States. However, after reviewing the limited kill-rate summary data for the aggregate foreign tuna fleet, it was found that the current kill rate may be up to four times higher than the U.S. rate. Based on this starting rate, it was determined that, as an interim step, kill rate comparisons should not be used as a basis for a negative finding until 1991. This allows nations time to gather adequate data to allow the United States to make a meaningful comparison, and to work with their skippers to reduce their kill rates.

NMFS will monitor the annual kill-per-ton rate through 1990 by species and fishing area. During this period, nations will be expected to maintain a negative trend in their kill-per-ton rates to assure that effective regulatory programs are being conducted and that rates comparable with the United States will be attained at the end of the interim period. A negative trend will be assessed by fitting a statistical regression line to the annual kill-per-ton rates for the years 1986–90, and determining the slope of the line. If the U.S. kill-per-ton rate increases during this period, however, the kill-per-ton rate for foreign nations can increase in proportion to the U.S. rate.

However, beginning with the 1988 data, if the annual kill-per-ton rate for any nation does not decline, or increases more than the U.S. rate increases, the Assistant Administrator will issue a negative finding unless, after a review of the nation's explanation of the causes and actions taken, the Assistant Administrator determines that actions taken or being taken are likely to reduce marine mammal mortality in the future. In conducting the review, the Assistant Administrator will request specific details concerning the actions taken to identify and counsel any skippers whose performance is unsatisfactory and to handle any other specific factors causing high mortality.

NMFS decided that this phase-in period was appropriate because it would encourage foreign nations to comply with these regulations by implementing comparable programs and working to reduce their kill rates, rather than cause them to seek tuna markets outside the United States, thus frustrating U.S. efforts to reduce total marine mammal kill by all nations.

The rates of marine mammal mortality (kill-per-ton) estimated from extensive observer data have varied significantly for the U.S. fleet since 1979 in each fishing area. We assume that the foreign kill rate will also vary significantly from year to year. To reduce this variability, NMFS will use a five year running average for kill rate comparison if adequate data for the five year period exists. This will provide a larger data base for use in the analysis. Most nations with current findings were participating in an adequate observer program by 1986. Therefore, during the interim period of 1986 through 1990, most countries could gather 5 years of data. If a country does not have five years of adequate data by 1990 or when they apply for a certification after 1990, NMFS will use the information from those years for which the country has adequate data. If a nation's kill rate for the most recent year is lower than the multi-year average, the nation can use that for comparison. This, however, should not be interpreted as allowing a nation to have high mortality rates for four years, and then by meeting the comparability test in the last year, that importation will necessarily be allowed. It should be remembered that nations must also achieve a negative trend in its kill rate during the first five year period, absent an explanation acceptable to NMFS.

There are significant differences in mortality rates in three different areas of the ETP. These areas are the major inshore area (Area 1) and offshore area (Area 2) fished by all nations, and all other areas fished (Area 3). Also, the marine mammal kill rate in sets on common dolphin is significantly greater than the kill rate from sets on all other species. NMFS has decided that these differences should be accounted for in applying the kill rate test. This would result in a fairer and more accurate comparison than a simple comparison of rates without considering the effect of area and species differences upon mortality. Therefore, before comparing a foreign kill rate with the U.S. kill rate, NMFS will weight the U.S. kill rate according to the amount of tuna that the foreign nation caught in the three different areas and on the two different species groups, as shown in the example below.

The United States will have more confidence in an estimate of a nation's kill rate if that nation has observer data from at least 5 trips and 100 sets per year. Conversely, we will have less confidence in data derived from less than 5 trips and 100 sets. Because of the uncertainty of estimates of kill and the small numbers of porpoise involved in the fisheries of nations with small fleets, we will use a less stringent test for these nations. If a nation's kill rate is derived from data from at least 5 trips and 100 sets per year, that nation's kill rate may be no more than 25 percent higher than the comparable U.S. kill rate to receive a positive finding for the kill rate test. If the kill rate is derived from data from fewer than 5 trips and 100 sets per year, the nation must have a kill rate that is no more than 75 percent greater than the comparable U.S. kill rate to receive a positive finding on the kill rate test.

Summary and Example: The comparable mortality rate test consists of comparing a nation's average mortality rate to the average mortality rate of the United States which is weighted to account for dissimilar amounts of fishing activity between the United States and the foreign nation in three discrete fishing areas and for two groupings of species. The foreign rate is then adjusted by an allowable 25 percent or 75 percent depending upon the number of trips and sets in a year. The foreign nation's average mortality rate using the most recent year of data, or the average of all of the data available from the last five years, whichever is lower, will be used to compare with the same time period of the U.S. data.

Formulas Used To Calculate Foreign and U.S. Mortality Rates

The mortality rate (dolphins killed/ton yellowfin caught) for each foreign nation (R_f) is calculated using data stratified by year, species grouping and area as

$$R_f = \sum_{i=1}^{m} \sum_{j=1}^{2} \sum_{k=1}^{3} M_{ijk} \sum_{i=1}^{m} \sum_{j=1}^{2} \sum_{k=1}^{3} C_{ijk}$$

where M_{ijk} equals the number of dolphins killed during year i, of species group j and in area k and C_{ijk} is the tons of yellowfin tuna caught during year i, on species group j and in area k. Note that m equals 1 if only the most recent year's data are used and equals 5 if the five-year running average is used.

The weighted average mortality rate for the U.S. fleet is calculated by weighting the U.S. rate by the proportion of the total yellowfin tuna caught by the foreign nation that was caught in each year, on each species grouping, and in each area. The U.S. weighted average (R_{US}) is calculated as:

$$R_{US} = (1/C\ldots) \left[\sum_{i=1}^{m} \sum_{j=1}^{2} \sum_{k=1}^{3} (K_{ijk}/T_{ijk}) C_{ijk}\right]$$

where K_{ijk} equals the number of dolphins killed by the United States fleet during year i, of species grouping j and in area k and T_{ijk} equals the tons of yellowfin caught by the U.S fleet during year i, on species grouping j and in area k. C_{ijk} equals the tons of yellowfin tuna caught by the foreign nation during year i, on species grouping j, and in area k and C * * * is the total catch of the foreign nation for all years, species groupings, and areas combined.

Finally, the U.S. rate (R_{US}) is multiplied by 1.25 if the foreign nation has completed more than 5 observed trips and made more than 100 observed sets or by 1.75 if it has completed less than 5 trips or made less than 100 observed sets. If the foreign nation's rate is less than or equal to the U.S. rate then they have met the mortality rate test standard.

Example: To simplify this hypothetical example, we will assume that nation X has chosen to use only the most recent year (or the only year data was collected). During the year, nation X has completed 6 observed trips and made 250 observed sets on dolphins. Dolphin mortality and yellowfin catch during dolphin sets for nation X and the United States during the most recent year are presented in Table 1.

1. Nation X Rate (hypothetical)

$$R_f = \frac{(1000+800+0+600+5000+2500)}{(1000+500+0+2000+21000+6000)}$$

$= 9900/30500$
$= 0.325$

2. United States Rate (hypothetical)

$R_{US} = (1/30500)\,[(200/500)1000+(600/1800)500+(100/400)0+(25/200)2000+(6000/20000)21000+(2000/6000)6000]$
$= (400+166.667+0+250+6300+2000)/30500$
$= 0.298$

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3. Comparison of Nation X and United States Rates (hypothetical)

Nation X rate=0.325

U.S. rate $(R_{US})\times1.25=0.299\times1.25=0.374$

Therefore, because Nation X's rate is less than the adjusted U.S. rate, it will be eligible to export yellowfin tuna to the United States.

TABLE 1. NUMBER OF DOLPHINS KILLED AND YELLOWFIN TUNA CAUGHT BY NATION X AND THE UNITED STATES DURING THE MOST RECENT FISHING YEAR, ON COMMON AND ALL OTHER SPECIES, AND IN THREE FISHING AREAS

[Hypothetical example]

Area	Common dolphin sets		All other sets		Total catch
	Mortality (animals)	Catch (tons)	Mortality (animals)	Catch (tons)	
Nation X:					
1	1,000	1,000	500	2,000	
2	800	500	5,000	21,000	
3	0	0	2,500	6,000	
Total		1,500		29,000	30,500
United States:					
1	200	500	25	200	
2	500	1,800	6,000	20,000	
3	100	400	2,000	6,000	

Annual Review

Commencing in July 1989, the Assistant Administrator will annually review all existing findings. The Assistant Administrator will require that each nation submit an annual report by July 31 of each year if it desires an extension of an affirmative finding for the following year. This date was chosen because the annual IATTC information is generally available in early July. This annual report will update the information in the original submission as well as provide data on the performance by its vessels during the previous year. The annual report will include the following:

1. Any changes in the gear, equipment or procedural requirements (including copies of relevant laws, regulations, guidelines, etc.) governing incidental taking of marine mammals by the nation's ETP purse seine vessels;

2. Any changes in the number of vessels, names of vessels or status of vessels on the vessel list submitted previously;

3. Actions (e.g., participation in IATTC workshops) taken by the nation in the past year to reduce or prevent marine mammal mortality and serious injury associated with fishing by its vessels; and,

4. Data on the performance of the nation's purse seine vessels (including certified charter vessels) operating in the ETP for the previous fishing year including:

a. Total number of tons of yellowfin tuna observed caught in each fishing area by purse seine sets on:

1. Common dolphin and
2. All other marine mammal species;

b. Total number of marine mammals observed killed in each area by purse seine sets on:

1. Common dolphin and
2. All other of marine mammal species;

c. Number of observed trips and number of observed purse seine sets on marine mammals by the nation's purse seine fleet during the year;

d. Total number of vessel trips and total number of purse seine sets on marine mammals by the nation's purse seine fleet during the year; and

e. The number of observed purse seine sets in which more than 15 marine mammals were killed.

The annual report must describe in detail the method used to obtain these data. In this context, NMFS recognizes the role filled by IATTC in collecting data on incidental marine mammal mortality through its international observer program and in estimating total mortality associated with U.S. and non-U.S. fishing. The IATTC observer program is comparable to the U.S. observer program and, as now constituted, provides reliable data to estimate total mortality and rates of mortality for vessels from participating nations. These data and resulting estimates represent the best scientific information available for the purposes of these regulations and will be used to monitor mortality in the fishery. Data obtained through participation in the IATTC program and submitted to the Assistant Administrator by the nation requesting certification or by IATTC on behalf of a nation requesting certification will be accepted.

However, a nation is not required to participate in the IATTC program in order to provide acceptable data. A nation may establish its own program or participate in a program like that of IATTC. A nation not participating in the IATTC observer program must provide sufficient information on the observer training and the sampling methodology used in the program in order to demonstrate that any data submitted are of comparable accuracy and reliability. The adequacy of the observer training and observer coverage of such a program will be determined by a scientific review conducted by NMFS in consultation with other scientific experts.

The first annual report will be due July 31, 1989, to cover fishing during the 1988 fishing year.

The Assistant Administrator will review each report carefully to decide whether to extend or terminate a finding under this program. A nation's finding will terminate on December 31 of any year unless the Assistant Administrator receives a complete annual report, determines that the nation's program and kill rates are comparable, and publishes his finding for the following year in the **Federal Register**. Every year the Assistant Administrator will determine whether the nation's program is comparable to that of the United States. In 1989, the Assistant Administrator will also review the kill rate trend as described earlier in the preamble. In 1991, the Assistant Administrator will review the program and the kill rate as described earlier, to determine if both the regulatory program and the kill rate are comparable to those of the United States.

The Assistant Administrator will review the performance of the U.S. fleet by July 1 each year to establish its revised five-year baseline performance level and supporting data that will be used to determine the comparability for each nation for its subsequent year's finding. The revised five-year baseline data will include: the proportion of sets made on marine mammals associated with high mortality sets (more than 15 porpoises killed) and separate computations for the kill-per-ton of common dolphin and for all other marine mammals for each fishing area.

The current five-year average kill-per-ton will be computed using the most recent year's data submitted by the foreign nation which will be added to that nation's four previous years of data to determine whether the new average kill-per-ton rate is within 25 percent or 75 percent, whichever is appropriate, of the weighted U.S. rate for the same years.

In future years, the general procedure will be to receive annual estimates of marine mammal mortality by species and stocks; to receive annual reports with detailed program information and fleet data, to assess these annual reports so that the Assistant Administrator can determine whether each nation's marine mammal regulatory program and kill rate continue to be comparable to the U.S. program and kill rate, and to announce findings at least 60 days before the start of each new calendar year.

Modifications to the Proposed Rule

In addition to those changes to the proposed rule discussed in detail in the preamble above (i.e. 5-year baseline. data gathering period; 25/75 percent mortality rate comparability test; and 3 fishing area—2 species designations) the following modifications to the proposed rule have been made in the interim final rule:

1. Definitions for "certified charter vessel" and "kill-per-ton" have been added to 50 CFR 216.3. The proposed definition for "ETP" has been modified to designate 3 distinct fishing areas.

2. Modifies Tariff Schedule Numbers to reflect changes made by U.S. Customs Service.

3. Does not adopt the proposal to eliminate the Yellowfin Tuna Certificate of Origin (SF 370–1) because it was determined that the necessary documentation was not obtainable elsewhere. The form was however, simplified. The required information items from the form have been added to the rule. The interim final rule eliminates the bill of lading requirement because information is now on the Yellowfin Tuna Certificate of Origin.

4. Places responsibility for monitoring, enforcement and data reporting for certified charter vessels to the nation which charters the vessel(s).

5. Clarifies that mortality rate data must be submitted from vessels with observers. Nations are to submit the observed data, rather than extrapolate from the observed data to an overall kill-per-ton rate.

6. Requires that data submitted for calculating mortality rates must be authentic and accurate.

Confidentiality

All data submitted by foreign nations in compliance with this rule will be kept confidential as allowed by U.S. law. Generally, this means that the data will be made available to the public only in aggregated form.

Classification

The Assistant Administrator has determined that the modifications to the regulations being made at 50 CFR 216.24(e) will not have a significant impact on the human environment. NMFS has prepared an environmental assessment (EA) on the modification. The finding of that EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request (see ADDRESS).

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The estimated economic impact of ETP yellowfin tuna import prohibitions, if any, could be expected to result in a short-term, slightly positive benefit to U.S. fishermen and a short-term, slightly negative impact on tuna processors if affirmative findings are not made for nations now exporting ETP yellowfin tuna to U.S. processors. The impact would depend upon the number of nations embargoed and the amount of yellowfin tuna normally provided by the nation(s). This impact would exist until such time as any reduction in imports is made up by exports from other areas of the world, especially from the western Pacific nations which are not affected by this action or by non-embargoed ETP nations. NMFS prepared a regulatory impact review as part of its EA which concluded that this rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. However, if more stringent rules are adopted and/or all ETP fishing nations are unable to qualify to export yellowfin tuna to the United States, it was determined that up to 47,000 st of yellowfin tuna valued at approximately $37 million could be lost to U.S. processors. Such a loss of imported tuna would represent about 24 percent of U.S. production. A copy of the review is available upon request (see ADDRESS).

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed modification to the regulations will not have a significant economic impact on a substantial number of small entities. As noted above, more stringent regulations likely would adversely affect the single remaining tuna canning plant in California and the tuna processing facilities in Puerto Rico and American Samoa. These facilities are by definition not small businesses. They would also affect an unknown number of import-export businesses and support industries. The impact on these industries is believed to be insignificant since lightmeat tuna, especially the canned product, is available world-wide and alternate markets are readily available if some ETP sources became unavailable. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The collections which are subject to the Act are found at 50 CFR 216.24(e) (3) and (4) and have been approved by the Office of Management and Budget under OMB Control Number 0648–0040.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Date: March 14, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

2. Section 216.3 is amended by adding in alphabetical order five new definitions, one for "certified charter vessel," one for "ETP," one for "harvesting nation," one for "purse seine set on common dolphins" and one for "kill-per-ton," to read as follows:

§ 216.3 Definitions.

* * * * *

"Certified charter vessel" means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

* * * * *

"ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

"ETP Fishing Area 1" means the northern coastal portion of the ETP east of 117° W. longitude and north of 5° N. latitude.

"ETP Fishing Area 2" means the offshore area south of 14° N. latitude, north of 6° N. latitude, east of 150° W. longitude, and west of 123° W. longitude.

"ETP Fishing Area 3" means all other areas within the ETP not included in Fishing Areas 1 and 2.

* * * * *

"Harvesting nation" means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

* * * * *

"Purse seine set on common dolphins" means a purse seine set in which more than 50 percent of the marine mammals captured are common dolphins.

* * * * *

"Kill-per-ton" means the number of small toothed cetacean marine mammals killed per ton of yellowfin tuna caught in sets made on marine mammals.

* * * * *

3. Section 216.24 is amended by revising paragraphs (e) (1), (2), (3), (4), and (5) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) *Importation.* (1) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen.

(2) The following fish and categories of fish, which the Assistant Administrator has determined may be involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the requirements of this subsection:

(i) *Yellowfin tuna.* The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States and which are subject to the restrictions of paragraphs (e)(3) and (e)(5) of this section:

110.10–20	Tuna; yellowfin, whole fish
110.10–25	Tuna; yellowfin, eviscerated, head on
110.10–30	Tuna; yellowfin, eviscerated, head off
110.10–37	Tuna; yellowfin, other
112.30–40	Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
112.34–20	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
112.90–00	Tuna; canned, other, in oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator
113.56–65	Tuna; other, not in oil, prepared or preserved—except shipments of loins and discs marked other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(ii) *Salmon and halibut.* The following U.S. Tariff Schedule Item Numbers identify the categories of salmon and halibut products which are imported into the United States and are subject to the restrictions of paragraph (e)(4) of this section:

110.20–25	Halibut, fresh or chilled
110.20–30	Halibut, frozen
110.20–45	Salmon, fresh or chilled
110.10–50	Salmon, frozen
110.70–40	Halibut, other—except portion controlled steaks
111.48–00	Salmon, salted
111.88–00	Salmon, smoked or kippered
112.16–00	Salmon, preserved, not in oil

(3) *Yellowfin tuna.* (i) All shipments of tuna and tuna products listed in paragraph (e)(2)(i) of this section, from any nation, may not be imported into the United States unless a finding required in paragraph (e)(5) of this section has been made and unless accompanied by a separate Yellowfin Tuna Certificate of Origin (Standard Form 370–1).

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:

(A) Country of registry of the fishing vessels involved;

(B) Nation under whose laws a certified charter vessel is operating;

(C) Exporter (name and address);

(D) Consignee (name and address);

(E) Identity and quantity of the tuna to be imported, listed by U.S. Tariff Schedule Number;

(F) Name of vessel(s) which caught the yellowfin tuna;

(G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; and

(H) A declaration signed either by a responsible government official of the country whose flag vessel or certified charter vessel caught the fish, the owner's representative, or the vessel master which states: "I certify that the above information is complete, true and correct to the best of my knowledge and belief."

(4) *Salmon and halibut.* All shipments of fish and fish products listed in paragraph (e)(2)(ii) of this section, from any nation, may not be imported into the United States unless the following conditions are met:

(i) The shipment is accompanied by a commercial invoice and/or a bill of lading indicating the following.

(A) Nation of registry of the fishing vessel(s) involved;

(B) Exporter (name and address);

(C) Consignee (name and address);

(D) Identity and quantity of the fish or fish products to be imported; *and*

(ii) The shipment is accompanied by a statement by a responsible official of the harvesting nation or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement will identify the species, quantity, and exporter of the fish to which the statement refers, and be submitted at the time of importation; *or*

(iii) A responsible official of the harvesting nation may certify to the Assistant Administrator that all of its flag vessels are fishing in conformance with these regulations or that the fishing technology practiced by the harvesting nation with respect to the species of fish presented for importation into the United States does not result in deaths to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Upon receipt of a

statement of conformance, the Assistant Administrator may then make a finding, and publish such finding in the **Federal Register**, that fish imports listed in paragraph (e)(2)(ii) of this section from the nation were not caught with commercial fishing technology which results in the incidental kill of marine mammals in excess of U.S. standards.

(5) *Yellowfin tuna.* (i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from nations whose flag vessels and certified charter vessels of 400 tons carrying capacity or greater operate in the ETP tuna purse seine fishery, as determined by the Assistant Administrator, may not be imported into the United States unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State and publishes the finding in the **Federal Register** that:

(A) The government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to the regulatory program of the United States; and

(B) The average rate of that incidental mortality by the vessels of the harvesting nation is determined comparable to the average rate of incidental mortality of marine mammals by U.S. vessels in the course of such harvesting. Upon such a finding, unloading will be allowed for the period of validity specified in the finding.

(ii) A harvesting nation which desires an initial finding under these regulations that will allow it to export to the United States those products listed in paragraph (e)(2)(i) of this section must submit by appropriate government official to the Assistant Administrator the information listed below 120 days before that nation wants to begin exportation of yellowfin tuna to the United States. The required information follows.

(A) A detailed description of the nation's regulatory and enforcement program governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna, including:

(*1*) A description, with copies of relevant laws, implementing regulations and guidelines, of the gear and procedures required in the fishery to protect marine mammals;

(*2*) A detailed description of the method (e.g., international or national observer records) by which the incidental mortality of marine mammals will be monitored; and

(*3*) A description of the methods used to identify problems and solutions to improve the performance of individual fishermen in reducing incidental mortality and how they will be advised.

(B) A list of its vessels and any certified charter vessels of 400 tons carrying capacity and greater which purse seined for yellowfin tuna at any time during the preceding two years in the ETP, indicating the status of each such vessel during that two year period (i.e. actively fishing in ETP, fishing in other waters; in port for repairs; inactive) and the status of each vessel expected to operate in the ETP in the year in which the submission is made.

(C) The best available data for the 1986 calendar year and any subsequent calendar year on the performance of its purse seine vessels (including certified charter vessels) fishing for tuna associated with marine mammals within the ETP including the following:

(*1*) Total number of tons of yellowfin tuna observed caught in each fishing area by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*2*) Total number of marine mammals observed killed in each area by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*3*) Number of observed trips and number of observed purse seine sets on marine mammals by the nation's purse seine fleet during the year;

(*4*) Total number of vessel trips and total number of purse seine sets on marine mammals by the nation's purse seine fleet during the year; and

(*5*) The number of observed purse seine sets in which more than 15 marine mammals were killed.

(D) A description of the source of the data requested in paragraph (e)(5)(ii)(C) of this section and, if from other than the Inter-American Tropical Tuna Commission, a description of the method used to obtain data on marine mammal mortality by species/stocks in sufficient detail to certify the authenticity and accuracy of the data.

(iii) The Assistant Administrator's determination on a nation's initial finding will be announced within 120 days of receipt of the information described in paragraph (e)(5)(ii) of this section and will be published in the **Federal Register**. A finding will be valid only for the calendar year for which it was issued.

(iv) A harvesting nation for which a positive finding under this section is in effect may request a renewal of such a finding for the subsequent calendar year by submitting, by the appropriate government official, to the Assistant Administrator the following information either by July 31 of the current year or for nations participating in the IATTC observer program, 14 days after the date the IATTC releases data on porpoise mortality, whichever is later:

(A) A description (with copies of relevant new laws, regulations and guidelines) of any changes in the regulatory program of that nation governing incidental taking of marine mammals in the yellowfin tuna purse seine fishery by its vessels and any certified charter vessels;

(B) Any changes in the number, names or status of vessels on the nation's list of vessels and certified charter vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining in the following year;

(C) Data required by paragraph (e)(5)(ii)(C) of this section for the preceding fishing year. A nation will be required to submit vessel performance data on any vessels leaving its fleet for that portion of the year that the vessel operated under its flag or as a certified charter vessel;

(D) A description of the actions taken by the nation in the previous year to achieve greater reductions in marine mammal mortality incidental to purse seining by its vessels or any certified charter vessels; and

(E) A statement of the source of the data requested in paragraph (e)(5)(ii)(C) of this section and, if from other than the Inter-American Tropical Tuna Commission, a description of the method used to obtain data on marine mammal mortality by species/stocks in sufficient detail to certify the authenticity and accuracy of the data.

(v)(A) The Assistant Administrator will make a positive finding or renew a positive finding for a harvesting nation if:

(*1*) The harvesting nation has provided all information required by paragraphs (e)(5)(ii) or (e)(5)(iv) of this section;

(*2*) The nation's regulatory program is comparable to the regulatory program of the United States as described in paragraphs (a), (b), (c), (d)(2), and (f) of this section;

(*3*) The data on marine mammal mortality submitted by the harvesting nation are determined to be accurate; and

(*4*) The average kill-per-ton rate for the longest period of time for which data are available, up to 5 years, or for the most recent year, whichever is lower, does not exceed the U.S. kill-per-ton rate for the same period by the amount specified in paragraph (e)(5)(v)(D) of this section below.

(B) During an initial five-year baseline period (1986–90), the Assistant Administrator will not make a negative finding based on the kill-per-ton rate because adequate data are not available. However, the annual kill-per-ton rate for nations must demonstrate a negative trend in order for a nation to retain a positive finding. A negative trend will be assessed by fitting a line to the annual kill-per-ton rates for the years after 1985 and determining the slope of the line. If the U.S. kill-per-ton rate increases during this period, the rate for harvesting nations can increase in proportion to the U.S. rate. However, if the annual kill-per-ton rate for any nation does not decline or remain proportional with any increase in the U.S. rate, after 1988 the Assistant Administrator will issue a negative finding unless, after a review of the nation's explanation of the causes and actions taken, the Assistant Administrator determines that the actions taken are likely to sustain a reduction of marine mammal mortality in the future. In conducting the review, the Assistant Administrator will request specific details concerning the actions taken to identify and counsel individual skippers whose performance is unsatisfactory and to handle any other specific factors causing the high mortality rates.

(C)(*1*) After 1990, those harvesting nations having purse seine vessels of 400 tons carrying capacity or greater that harvest yellowfin tuna in the ETP and whose vessels have observer data for at least five (5) trips and 100 sets per year must have an average mortality rate which is no more than 25 percent greater than the U.S. average.

(*2*) Harvesting nations having purse seine vessels of 400 tons carrying capacity or greater that harvest yellowfin tuna in the ETP and whose vessels have observer data for fewer than five (5) trips and 100 sets per year are recognized as likely to experience greater variation in their kill-per-ton rates due to the small number of sets observed during a year. These nations must have an average mortality rate which is no more than 75 percent greater than the U.S. average.

(D) A nation's average mortality rate will be compared with the U.S. mortality rate which is weighted to account for dissimilar amounts of fishing activities between the two nations in the three ETP fishing areas and for the two species groups.

(E) The Assistant Administrator will consider an explanation of special circumstances, submitted by a harvesting nation with a request for a finding, describing reasons and actions taken to mitigate marginal performance and unusually high rates of marine mammal mortality.

(vi) The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator may reconsider a finding upon a request from and the submission of additional information by the harvesting nation.

(vii)(A) Any finding in effect on the date the interim final rule becomes effective will terminate without further notice 180 days after that date unless the Assistant Administrator has received within 120 days of that date a valid, signed and substantially complete application for a new finding in which case the existing finding will remain in effect until the Assistant Administrator's decision is announced.

(B) The time limits specified in paragraphs (e)(5) (ii) and (iii) of this section do not apply to a harvesting nation that applies in a timely manner for a new finding under paragraph (e)(5)(vii)(A) of this section.

(C) Paragraph (e)(5)(vii) of this section is effective only until September 1, 1989.

* * * * *

[FR Doc. 88-5907 Filed 3-15-88; 12:20 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 53
Friday, March 18, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection, Weighing, and Appeal Inspection Services Performed in Canada

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to increase fees from approximately 124 to 159 percent for official inspection, weighing, and appeal inspection services performed in Canada under the United States Grain Standards Act (USGSA), as amended. This increase is intended to cover the FGIS operating costs.

DATES: Comments must be submitted on or before April 18, 1988.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-1738. All comments received will be made available for public inspection at the above office during regular business hours (7 CFR 1.27(b)). A summary of comments received on this proposal will be published with the final rule.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services do not meet the requirements for small entities.

Proposed Action

The USGSA, as amended (7 U.S.C. 71 *et seq.*), requires FGIS to charge and collect reasonable fees that cover its estimated cost for performing official inspection, weighing, reinspection, and appeal inspection services. The fees are to cover the costs to FGIS for performance of these official services, including related administrative and supervisory costs. These fees appear in § 800.71 of the regulations (7 CFR 800.71). The USGSA fees for official inspection, weighing, and appeal inspection services performed in Canada were last revised and made effective on January 5, 1987 (51 FR 43723), to cover as nearly as practicable, the projected fiscal year 1987 operating costs.

In fiscal year 1987, FGIS revenues for official inspection, weighing, and appeal inspection services performed in Canada totaled $227,000, operating costs totaled $378,000, resulting in a loss of $151,000, which seriously depleted the applicable operating reserves.

FGIS operating costs includes personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. While the demand for the services FGIS provides in Canada may fluctuate, certain FGIS costs remain constant in order to provide quality service on demand.

The period October 1986 through September 1987, the most current actual 1-year figures available to compare the FGIS operating costs with revenue, was used to project budgeted fiscal year 1988 operating costs and thereby establish revenue levels necessary to cover projected operating costs for services performed in Canada. The FGIS projected fiscal year 1988 operating costs are expected to be approximately $403,000 and fiscal year 1988 revenues are expected to be approximately $306,000 (assuming the proposed fees are implemented on June 1, 1988). The proposed fee increase would reduce the estimated revenue deficit in fiscal year 1988, and cover estimated costs in subsequent years.

The proposed increase in fees for official inspection, weighing, and appeal inspection services performed in Canada would be from approximately 124 to 159 percent. The current regular workday hourly fees for original inspection, weighing, and appeal inspection services would be changed from $47.60 per hour for contract services and from $63.80 for noncontract services to $114.00 and $143.00 respectively. The nonregular workday services would be changed from $58.40 per hour for contract services and from $76.60 for noncontract services to $151.00 and $169.00, respectively.

In order to contain the costs of providing services in Canada, during fiscal year 1988, the FGIS plans to provide inspection, weighing, and appeal service in Canada with (1) fewer employees stationed in Canada, and (2) with employees being detailed to Canada, on an as needed basis, from FGIS offices located in the United States.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. In § 800.71(a), Schedule B is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA[1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday through Saturday)	Nonregular workday (Sunday and holiday)
(1) Original inspection services and official weighing services:[2,3]		
(i) Contract services (per hour per service representative)	$114.00	$151.00
(ii) Noncontract service (per hour per service representative)	142.00	189.00
(2) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight revalification, evaluation of inspection and weighing equipment demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

* * * * *

Dated: February 24, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-6020 Filed 3-17-88; 8:45 am]

BILLING CODE [illegible]

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 352, 354, 355, 362, and 381

[Docket No. 87-026P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to increase fees charged by FSIS to provide overtime and holiday inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees would reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and a change in the fee structure to include the Science program as support for the meat and poultry inspection services.

DATE: Comments must be received on or before: April 4, 1988.

ADDRESS: Send written comments to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L. West, (202) 447-3367. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services and a corrected calculation of program support costs.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Regulations Office and should refer to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views must make such request to Mr. West so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. Comments submitted in response to this document will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, identification, certification, or laboratory services. The fees to be charged for these services are determined by an analysis of data on the current cost of these services, as well as anticipated costs associated with changes in operations of the program, coupled with the increase in those costs due to an increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 or any other increases affecting Federal employees, such as costs for travel and benefits.

In this year's cost analysis, the Agency has reevaluated its organizational structure to identify all components that support the inspection services. This is in accordance with OMB Circular No. A-25 which states that the cost computation shall cover the direct and indirect cost to the government of carrying out the activity. In reviewing the organizational structure and their functions, the Science program, which in previous years was omitted from the cost computation, was identified as an indirect cost of carrying out the inspection activity. The Science program conducts all scientific product testing and research activities for the Agency through its field and contract laboratories. Normally, the volume of laboratory samples tested is in proportion to the volume of product inspected including that which is produced during overtime or on holidays. In addition to systematically scheduled product sampling, inspectors submit samples for analysis any time they suspect problems, including during overtime or holiday production. In the future, Science will play a more significant role in FSIS regulatory activities as the inspection system changes from the traditional organoleptic inspection to a scientific-based system to detect chemical and microbial hazards. For example, listeria and salmonella contamination are current health issues receiving increased Agency attention.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1988 pay raise of two percent for Federal employees, increased costs of the new retirement system in 1988, increased health insurance and travel costs, and the inclusion of Science as program support, FSIS proposes to increase the fees relating to such services.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis my be incurred to accommodate the business needs of particular establishments. Furthermore, there may also arise from time-to-time a need for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. For example, if a suspect product is rejected, and the establishment requests and FSIS agrees to perform additional laboratory analysis to verify that the reconditioned product is in compliance, the cost of the additional laboratory services will be borne by the particular establishment at the rate of $43.80 per hour. Any or all of these costs, which are not a part of the mandatory inspection service, are recoverable by the Government.

Currently, § 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate of $22.84 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS will be reimbursed at the rate of $22.84 per inspector hour for overtime and holiday poultry inspection services. These fees would be increased to $24.68 per inspector hour.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $19.04 per inspector hour (sections 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5). The overtime and holiday hourly rate is currently $22.84. The rate for laboratory services is currently $41.36 per hour. The hourly rates for these services would be increased to $21.16, $24.68, and $43.80, respectively.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Reimbursable services, Technical animal fats.

9 CFR Part 352

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 354

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 355

Meat inspection, Reimbursable services, Certified products.

9 CFR Part 362

Meat inspection, Reimbursable services, Voluntary poultry.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

Accordingly, the Federal meat and poultry products inspection regulations in 9 CFR would be amended as follows:

PART 307—AMENDED

1. The authority citation for Part 307 would be revised to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 621, 695; 7 CFR 2.17 (g) and (i), 2.55.

2. Section 307.5(a) would be revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $24.68 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

PART 350—[AMENDED]

3. The authority citation for Part 350 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55

4. Section 350.7(c) would be revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

5. The authority citation for Part 351 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

6. Section 351.8 would be revised to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $21.16 per hour for base time, $24.68 per hour for overtime, travel, and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) would be revised to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for

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[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

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examination shall be $21.16 per hour for base time and $24.68 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 352—[AMENDED]

8. The authority citation for Part 352 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

9. Section 352.5(c) would be revised to read as follows:

§ 352.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 354—[AMENDED]

10. The authority citation for Part 354 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

11. Section 354.101 (b) and (c) would be revised to read as follows:

§ 354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $21.16 for base time and $24.68 for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be $43.80 per hour for that part which is not covered under the base time, overtime, and/or holiday costs.

PART 355—[AMENDED]

12. The authority citation for Part 355 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

13. Section 355.12 would be revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $21.16 per hour for base time, $24.68 per hour for overtime, including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the costs or the inspection service furnished.

PART 362—[AMENDED]

14. The authority citation for Part 362 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

15. Section 362.5(c) would be revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

16. The authority citation for Part 381 would be revised to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17(g) and (i), 2.55.

17. Section 381.38(a) would be revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $24.68 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

Done at Washington, DC, on: March 8, 1988.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 88-5968 Filed 3-17-88; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Announcements of Inspectors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to ensure that the presence of NRC inspectors on power reactor sites is not announced or otherwise communicated to licensee and contractor personnel without the expressed request to do so by the inspector. This change will allow the NRC inspectors, badged at the facility, to observe ongoing activities as they are being performed without advanced notification of the inspection to licensee and contractor personnel. There is a need for this change because of the possible altering of attention and performance levels of a licensee and/or its contractors when the licensee is aware of NRC surveillance. Past incidences where site and/or contractor personnel have been notified of NRC's presence onsite have heightened concern in this area.

DATES: Submit comments by April 18, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street NW., Washington, DC 20555, between 7:30 a.m. and 4:15 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: George Barber, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1296.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to ensure that NRC inspectors be granted immediate and unannounced access (i.e., unfettered access equivalent to access provided regular plant employees) to licensed facilities, following proper identification and compliance with applicable access control procedures. The NRC proposes that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of a NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities where the ability of properly badged NRC inspectors to inspect and assess—on an unannounced basis—activities related to the license or construction permit was compromised by the licensee employees or contractor employees who informed others at the facility of the presence of the NRC inspectors. The proposed change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate access to ongoing activities as these activities are being performed without accompaniment and without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors would not be on site.

Environment Impact: Categorical Exclusion

The NRC has determined that this proposed change is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

The proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

This proposed rule will have no significant impact on state and local governments and geographical regions. It may have significant impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective inspections. The intent of the rule is to clarify that NRC inspectors are to have a realistic picture of the actual conditions at a site, and therefore, be better able to identify potentially dangerous conditions and/or practices for corrective action and to ensure that licensees comply with laws, regulations, and orders administered by the NRC. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule applies only to licensees authorized to construct or operate nuclear power reactors, who are not small business entities within the meaning of the act or implementing regulations. Therefore, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because this amendment is not within the definition of backfitting, as set out in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Section 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161(b), 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c), and 50.54 are issued under sec. 161(i), 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.70, paragraph (b)(4) is added to read as follows:

§ 50.70 Inspections.

* * * * *

(b) * * *

(4) The licensee or construction permit holder shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested to do so by the NRC inspector.

Dated at Bethesda, MD, this 8th day of March 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-5983 Filed 3-17-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–05]

Airworthiness Directives; Switlik Parachute Co., Inc., TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for cracks and, if needed, replacement of Carbon Dioxide (CO_2) inflators on Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices. The proposed AD is needed to prevent the malfunctioning of the CO_2 inflators on TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices which could result in inadequate inflation of the devices when operated during emergency conditions.

DATES: Comments must be received on or before April 28, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Rules Docket No. 88–ANE–05, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 88–ANE–05".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable Service Bulletin (SB) Number 25–00–19, dated September 8, 1987, may be obtained from Switlik Parachute Company, Inc., 1325 East State Street, P.O. Box 1328, Trenton, New Jersey 08607.

A copy of the SB is contained in Rules Docket No. 88–ANE–05, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516)791–6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowlege receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 88–ANE–05". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices may have CO_2 inflators which were incorrectly manufactured. The CO_2 inflators could develop cracks and or chipping after assembly, preventing proper inflation of the life preservers and individual flotation devices when operated. Since this condition is likely to exist or develop on other TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices of the same type design, the proposed AD would require inspection of CO_2 inflators for cracks and chipping and, if needed, replacement of inflators on all Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices, manufactured between September 1, 1984, thru January 30, 1985, and June 1, 1985 thru October 30, 1985.

Conclusion

The FAA has determined that this proposed regulation involves 69,220 inflator units, at an approximate cost of $3.50 labor per inflator. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) Proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Switlik Parachute Company, Inc.: Applies to Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices: All models and all part numbers manufactured between September 1, 1984 thru January 30, 1985, and June 1, 1985 thru October 30, 1985. (Date located on identification label on front surface).

Compliance is required as indicated, unless already accomplished.

To prevent the improper functioning of the Carbon Dioxide (CO_2) inflators on TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices, accomplish the following:

(a) At the next regularly scheduled service or within six (6) months after the effective date of this AD, whichever comes first, visually inspect the CO_2 inflators for cracks and chipping and, if necessary, replace CO_2 inflators in accordance with Paragraph 2, Accomplishment Instructions, of Switlik Parachute Company, Inc., Service Bulletin Number 25–00–19, dated September 8, 1987.

(b) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

(c) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581 may adjust the compliance time specified in this AD.

The FAA will request the approval of the office of the Federal Register to incorporate by reference the manufacturer's Service Bulletin Number

25–00–19, dated September 8, 1987, identified and described in this document.

Issued in Burlington, Massachusetts, on March 9, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88–5918 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88–NM–15–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the body station (BS) 1241 bulkhead splice strap and forging for cracks, and repairs, if necessary. This action would require that airplanes on which the strap replacement modification was incorporated in accordance with Boeing Service Bulletin 747–53–2219 be subjected to more frequent repetitive inspections. This action would also require that factory-modified airplanes be inspected. This action is prompted by reports indicating that modified airplanes are still subject to cracking. This condition, if not corrected, could lead to failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

DATES: Comments must be received no later than May 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–15–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–15–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: On August 24, 1984, FAA issued AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), to require inspection and repairs, if necessary, of the Boeing Model 747 BS 1241 bulkhead splice strap and forging. This was done in order to prevent failure of the bulkhead forging, which could result in loss of cabin pressure or the inability to withstand regulatory fail-safe loads. Airplanes which incorporated a preventative modification in service were required to be reinspected less frequently. Some airplanes had a preventative modification incorporated during original manufacture; these airplanes are not subject to the current AD.

Since issuance of that AD, it has been discovered that the preventative modifications are also subject to cracking. Therefore, this action would require more frequent inspections of the airplanes modified in service. This action would also add certain airplanes, modified during original manufacture, to the applicability of the AD.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2283, dated December 17, 1987, which describes inspections for cracks, and repairs necessary to maintain the airworthiness of the airplane. This new service bulletin supersedes Boeing Service Bulletin 747–53–2219, which is referenced in AD 84–18–01.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and, if necessary, repairs, in accordance with Boeing Service Bulletin 747–53–2283.

It is estimated that 40 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 110 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $176,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Groups 1, 2, and 3 Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747–53–2283, dated December 17, 1987. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 1241 bulkhead forging, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of airworthiness directive (AD) 84–18–01 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later FAA-approved revisions:

1. Prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR), perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987, or later FAA-approved revisions. If no cracks are found, inspect thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found in the bulkhead splice strap at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987, or later FAA-approved revisions. If no cracks are found, or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspection at the forward hole at intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair as follows:

a. If the cracks found in the forging do not exceed the forward hole rework limits specified in Boeing Service Bulletin 747–53–2283, dated December 17, 1987, or later FAA-approved revisions, and the hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin, and continue to inspect in accordance with paragraph A.2. of this AD.

b. If the cracks found in the forging exceed the forward hole rework limits, or if the hole coldwork has been previously accomplished, repair in accordance with an FAA-approved procedure prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–01 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later FAA-approved revisions: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD.

C. For Group 1 airplanes that have been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later FAA-approved revisions: Perform the inspections and repairs, if necessary, as described in paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings (1,500 landings for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings since the time of modification (13,500 landings for Model 747–100SR), whichever occurs later.

D. For Group 2 and 3 airplanes:

1. Within the next 1,000 landings (1,500 landing for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR) total time-in-service, whichever occurs later, perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987, or later FAA-approved revisions. If no cracks are found, repeat the inspections thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found in the bulkhead splice strap at the aft hole, prior to further flight perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987, or later FAA-approved revisions. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspection at the forward hole at intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair in accordance with an FAA-approved procedure prior to further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time-in-service by the operator's fleet average time from takeoff to landing for the airplane type.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5916 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88–NM–13–AD]

Airworthiness Directives; Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes certified for operation up to 37,000 feet, which would require replacement of cabin pressure safety relief valves. This proposal is prompted by reports of cabin pressure safety relief valves becoming inoperative due to accumulated moisture freezing in the valves. This condition, if not corrected, could lead to excessive pressure buildup in the airplane in the event of a pressurization system malfunction.

DATES: Comments must be received no later than May 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–13–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–13–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: Six operators of Boeing Model 737 airplanes certified for operation up to 37,000 feet have reported freezing of cabin pressure safety relief valves in flight due to moisture condensing and accumulating in the sensor poppet. When the valves freeze, they no longer relieve at the design overpressure. As these frozen valves are not apparent to the crew, concurrent malfunctions of the airplane pressurization system can lead to pressure in the airplane exceeding the pressure for which the fuselage is designed.

The FAA has reviewed and approved Boeing Service Bulletin 737–21–1096, dated December 10, 1987, which describes the replacement of the cabin safety pressure valves.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of cabin pressure safety relief valves in accordance with the service bulletin previously mentioned.

It is estimated that 312 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $49,920.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, which have been approved for operation up to 37,000 feet, certificated in any category. Compliance required within the next 15 months after the effective date of this AD, unless previously accomplished.

To prevent fuselage pressures in excess of design limits due to freezing of cabin pressure safety relief valves if pressurization malfunctions occur, accomplish the following:

A. Replace the cabin pressure safety relief valves (2) in accordance with Boeing Service Bulletin 737–21–1096, dated December 10, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 11, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–5915 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88–ACE–03]

Proposed Alteration of Transition Area, Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at Kansas City, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Kansas City, Missouri, Downtown Airport utilizing the Runway 3 localizer.

DATES: Comments must be received on or before April 21, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA Central Region, 601 East 12th Street, Kansas City, 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace

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Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by altering the 700-foot transition area at Kansas City, Missouri. To enhance airport usage, the Kansas City Downtown Airport is being provided with localizer approach capability to Runway 3. The establishment of this new instrument approach procedure based on this localizer entails alteration of the transition area at Kansas City, Missouri, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involve an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Kansas City, MO [Revised]

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Kansas City Downtown Airport (lat. 39°07'20.7" N., long. 94°35'30" W.) within 4.5 miles each side of the Riverside VOR 212 radial extending from the 10-mile radius arc to 14.5 miles southwest of the Downtown Airport, within a 6.5-mile radius of the Sherman AAF (lat. 39°22'15" N., long. 94°54'45" W.) within an 8.5-mile radius of the Kansas City International Airport (lat. 39°17'50.8" N., long 94°42'54.6" W.) within 5 miles each side of the Runway 19 ILS localizer north course extending from the 8.5-mile radius area to 25 miles north of the Dottie LOM, within 5 miles each side of the Kansas City VORTAC 098° radial extending from the 8.5-mile radius area to 11.5 miles east of the VORTAC, and within 5 miles each side of the Runway 1 ILS localizer south course extending from the 8.5-mile radius area to 11 miles south of the Dottie LOM.

Issued in Kansas City, Missouri, on March 7, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88-5910 Filed 3-17-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 91 and 135

[Docket No. 25149; Notice No. 88-3]

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM); correction.

SUMMARY: The notice published in the Federal Register on March 4, 1988, contained a map of the Grand Canyon area showing an outline of the proposed Special Flight Rules Area. The map did not accurately reflect the FAA proposal in certain respects. This document publishes a corrected map.

DATES: *Comment dates:* Comments must be received on the proposed rule on or before March 25, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25149, 800 Independence Avenue SW., Washington, DC 20591;

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

Correction of the Notice of Proposed Rulemaking

In consideration of the above, Notice 88-3 (53 FR 7098; March 4, 1988) is corrected by replacing the map published on page 7107 with the following map.

Issued in Washington, DC on March 14, 1988.

John H. Cassady,

Assistant Chief Counsel.

BILLING CODE 4910-13-M

FEDERAL AVIATION ADMINISTRATION RECOMMENDATION FOR AIRCRAFT MANAGEMENT AT GRAND CANYON NATIONAL PARK

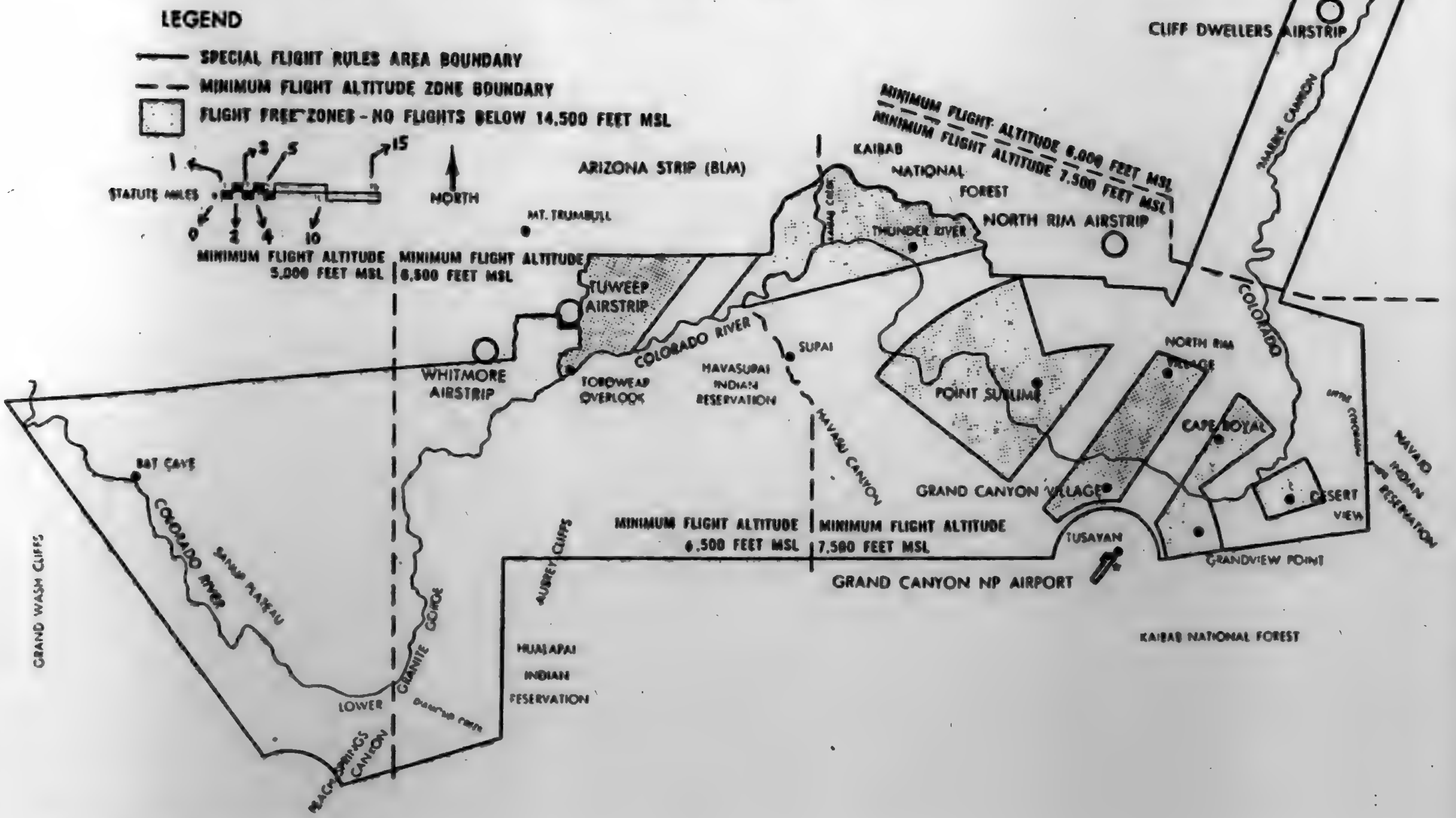
LEGEND
SPECIAL FLIGHT RULES AREA BOUNDARY
MINIMUM FLIGHT ALTITUDE ZONE BOUNDARY
FLIGHT FREE ZONES - NO FLIGHTS BELOW 14,500 FEET MSL
STATUTE MILES
0
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5
10
15
NORTH
ARIZONA STRIP (BLM)
MT. TRUMBULL
MINIMUM FLIGHT ALTITUDE 5,000 FEET MSL
MINIMUM FLIGHT ALTITUDE 6,500 FEET MSL
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LEES FERRY
MARBLE CANYON AIRSTRIP
CLIFF DWELLERS AIRSTRIP
MARBLE CANYON
KAIBAB NATIONAL FOREST
THUNDER RIVER
NORTH RIM AIRSTRIP
TUWEEP AIRSTRIP
WHITMORE AIRSTRIP
TOROWEAP OVERLOOK
COLORADO RIVER
SUPAI
HAVASUPAI INDIAN RESERVATION
HAVASU CANYON
POINT SUBLIME
NORTH RIM VILLAGE
CAPE ROYAL
COLORADO
LITTLE COLORADO
NAVAJO INDIAN RESERVATION
GRAND CANYON VILLAGE
DESERT VIEW
TUSAYAN
GRANDVIEW POINT
GRAND CANYON NP AIRPORT
KAIBAB NATIONAL FOREST
BAT CAVE
COLORADO RIVER
SANUP PLATEAU
GRAND WASH CLIFFS
AUBREY CLIFFS
GRANITE GORGE
LOWER
DIAMOND CREEK
PEACH SPRINGS CANYON
HUALAPAI INDIAN RESERVATION

[FR Doc. 88-5917 Filed 3-17-88; 8:45 am]

BILLING CODE 4910-13-C

BEST COPY AVAILABLE

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Fees for Audits of Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission periodically adjusts the formulas for calculating fees charged for certain program services, activities and functions to assure that the formulas accurately reflect the cost to the Commission of providing those services. In this regard, the staff has recently reviewed the Commission's formula for calculating fees for audits of leverage transaction merchants and has determined that the formula for fees for this service should be amended. The Commission is, therefore, proposing to amend 17 CFR Part 31, Appendix B, to require that the annual fee for audits of leverage transaction merchants be calculated as a percentage of actual average costs in the preceding three fiscal years for each firm.

DATES: Comment Deadline: April 18, 1988.

ADDRESSES: Gerry Smith, Office of the Executive Director, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, 2033 K Street NW., Washington, DC 20581, telephone number (202) 254–6090.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982 (Pub. L. 97–444, 96 Stat. 2294, 2328, January 11, 1983) amended Section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission:

> To promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: Provided, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute is to be strictly limited to Commission activities directly related to" eight enumerated Commission functions including "Commission audits of firms which are not members of contract markets or of a registered futures association."

On February 13, 1984, the Commission published interim final rules governing the regulation of leverage transactions. 49 FR 5498. In accordance with those rules, leverage transaction merchants, which are not members of contract markets or registered futures associations, are subject to the audit and financial review program of the Commission. The program includes full-scope and limited-scope financial and sales practice audits. The purpose of the financial audits is to ensure that leverage transaction merchants are complying with the Commission's financial regulations, including net capital, segregation and cover requirements. Sales practice audits include a detailed sample review of customer files for items such as confirmations monthend statements, recision documents, a review of all advertising material and customer complaints, an examination of the registration status of the firm's sales staff, and a profile of the firm's personnel organization and business structure.

On May 16, 1984, the Commission promulgated fees for these audits of leverage transaction merchants. 49 FR 20644. Under this regulation, leverage transaction merchants were charged an FY 1984 audit fee of $8,000, which was, at the time, a conservative estimate of the future costs of auditing each of these firms. No fee was due in FY 1985. *See* 49 FR 20645. In FY 1986, the Commission maintained the fee for audit of leverage transaction merchants at $8,000, even though the actual costs during FY 1984 and FY 1985 indicated that the actual average cost of auditing the three leverage firms was $14,807. (See 51 FR 21149, June 11, 1986.) In FY 1987, the Commission reviewed the actual average costs for FY 1984, FY 1985 and FY 1986. The actual average cost per firm for those three years had increased to $15,461. However, because the program had only been in place since late FY 1984, the Commission determined to raise the fee by only $1,000 to $9,000. 52 FR 22634. As discussed below, a review of the costs of auditing the three leverage transaction merchants during FY 1985, FY 1986 and FY 1987 yields an actual average cost of $30,705 per firm, which prompted the Commission to propose amending the formula for calculating the audit fee.

II. Proposed Rule

Because the cost to the Commission of auditing leverage transaction merchants is not reflected in the current fee, the Commission is now proposing to amend the formula for calculating the fee. Under the proposal, each firm would be charged an annual fee based on a calculation of the actual average cost of auditing that firm over the preceding three fiscal years, multiplied by 65% and rounded to the nearest $100. This method of calculation would put the fee for audits of leverage transaction merchants on a par with the Commission's fee for exchange rule enforcement and financial reviews. See 17 CFR Part 1, Appendix B.

III. Computation of Fees

The proposed fee would be calculated based on the actual cost to the Commission of auditing each of the three leverage transaction merchants. This procedure is similar to that used to allocate annual audit fees for futures exchanges. In calculating the actual cost, the Commission takes into account Commission personnel costs, benefits and administrative costs.

The Commission first determines the personnel costs associated with each audit by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on audits of leverage transaction merchants and other projects under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead figure varies slightly from year to year as changes occur in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs. The overhead factors in the last three fiscal years are as follows: FY 1985—98%; FY 1986—104%; FY 1987—101%.

Under the proposed rule the fees for each leverage transaction merchant would be as follows:

	Actual avg. costs by firm, FY 1985–87	Proposed FY 1988 fee
First Asset Corporation	$10,821	$7,000
Monex International Ltd	54,280	35,300
International Precious Metals Corp	27,014	17,600
Total	92,115	59,900

If adopted, the fee would be due 60 days following publication of the final schedule of fees in the Federal Register.

IV. Regulatory Flexibility Act

The changes proposed in this release affect leverage transaction merchants. Because of the minimum financial requirements for registration of leverage transaction merchants, the Commission does not consider these firms "small entities." Therefore, the requirements of the Regulatory Flexibility Act do not apply to leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees proposed herein do not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 31

Audits of leverage transaction merchants, Fees.

PART 31—LEVERAGE TRANSACTIONS

1. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 6c(c), 7, 7a, 12a(5) and 16a, 31 U.S.C. 9701.

Appendix B to Part 31—[Amended]

2. In Appendix B, paragraph (a) is revised to read as follows:

(a) The Commission shall compute the annual fee for each leverage transaction merchant by computing the actual average annual cost to the Commission of auditing that leverage transaction merchant over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest $100.

* * * * *

Issued in Washington, DC on March 14, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–5927 Filed 3–17–88; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

North Dakota Abandoned Mine Land Reclamation Plan Amendment

30 CFR Part 934

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On September 15, 1987, the State of North Dakota submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the North Dakota Plan). Revisions to the Plan are not intended to change the objectives, scope or major policies followed by North Dakota in the conduct of its reclamation program. All changes are proposed for purposes of clarity and administrative ease. This notice sets forth the times and locations that the North Dakota Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing.

DATES: Written comments not received on or before 4:00 p.m. on April 18, 1988 will not necessarily be considered. A public hearing on the proposal will be held, if requested, on April 12, 1988, at the address listed below under "**ADDRESSES**". Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m., M.S.T., on April 4, 1988. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or handdelivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

The public hearing, if requested, will be held at the North Dakota Capitol Building, Bismarck, North Dakota 58505.

See "**SUPPLEMENTARY INFORMATION**" for address where copies of the North Dakota Plan amendment, the North Dakota program, and the administrative record on the North Dakota program are available. Each requester may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION: Copies of the North Dakota Plan amendment, the North Dakota program, and the administrative record for the North Dakota Plan are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street NW., Room 5131 Washington, DC 20240; Telephone: (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776

North Dakota Public Service Commission Reclamation Division, Capitol Building, Bismarck, North Dakota 58505; Telephone: (701) 224–4096

Background

The Secretary of the Interior approved the North Dakota AMLR Program on December 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and disposition of comments can be found in the December 23, 1981 **Federal Register** notice (46 FR 62253–62256). Subsequent program amendments are identified at 30 CFR 934.20.

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "**ADDRESSES.**"

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director, proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

Discussion of Proposed Amendment

By letter dated September 15, 1987, North Dakota submitted a reclamation plan amendment to OSMRE. The proposed amendment consists of revisions for purposes of clarity and administrative ease. The revisions are not intended to change the objectives, scope or major policies followed by North Dakota in the conduct of its reclamation plan. Specifically, wording has been deleted from or added to the existing North Dakota Plan to simplify and clarify the language without changing the intent.

Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the requirements of 30 CFR 732.15 for the approval of State AMLR Plan amendments. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Casper, Wyoming, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., M.S.T., April 4, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 7, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-5941 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 1

Parking Fees at VA Medical Facilities

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to establish regulations for determining parking fees at certain VA medical facilities and to provide definitions of terms relating to the payment of parking charges at those facilities. The need for this action results from the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 which requires that parking fees be established at VA medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding $500,000, or, in the case of acquisition by lease, $100,000 per year; that employees, visitors and other individuals having business at such medical facility be charged a parking fee for the use of a parking facility at the medical facility; and that the established fees be reasonable under the circumstances. The effect of these regulations will be to provide a uniform basis for establishing fees and to provide definitions of terms relating to the payment of fees.

DATES: Comments must be received on or before April 18, 1988. Comments will be available for public inspection until May 2, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Donald E. Johnson, Chief, Real Property Management Division, Office of Facilities, (202) 233-5026.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Pub. L. 99-576, section 223, Parking Facilities, amends section 5009 of title 38, United States Code, and provides for the establishment and collection of parking fees at certain VA medical facilities, with the deposit of fees collected into a Revolving Fund. The law provides that parking fees shall not be charged for the accommodation of any vehicle used to transport, to or from a VA medical facility, a veteran or eligible person seeking examination or treatment, or a volunteer worker in connection with such worker performing services for the benefit of veterans receiving care at a VA medical facility. The proposed regulations will provide definitions to be used in implementing the law, including a definition of the term "volunteer worker"; provide for the terms and conditions under which parking will be provided; and establish a methodology for determining reasonable parking charges to be established by the Administrator at affected VA medical facilities.

The Administrator of Veterans Affairs hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. The reason for this certification is that these regulations would not directly affect any small entities. Only VA employees, visitors and others having business at the medical facilities could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The VA has determined, in accordance with Executive Order 12291, that this proposed regulation is nonmajor for the following reasons:

(1) It will not have an effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

There is no Catalog of Federal Domestic Assistance Program number for these proposed regulations.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Freedom of information, Government employees, Government property, Investigations, Privacy, Veterans.

Approved: February 2, 1988.

Thomas K. Turnage,

Administrator.

PART 1—[AMENDED]

38 CFR Part 1, *General*, is proposed to be amended by adding an undesignated heading and §§ 1.300 through 1.303 to read as follows:

Parking Fees at VA Medical Facilities

Sec.
1.300 Purpose.
1.301 Definitions.
1.302 Applicability and scope.
1.303 Policy.

Parking Fees at VA Medical Facilities

§ 1.300 Purpose.

Sections 1.300 through 1.303 prescribe policies and procedures for establishing parking fees for the use of Veterans Administration controlled parking spaces at VA medical facilities.

(Authority: 38 U.S.C. 210(c)(1), 5009)

§ 1.301 Definitions.

As used in §§ 1.300 through 1.303 of this title:

(a) "Administrator" means the Administrator of Veterans Affairs.

(b) "Eligible person" means any individual to whom the Administrator is authorized to furnish medical examination or treatment.

(c) "Garage" means a structure or part of a structure in which vehicles may be parked.

(d) "Medical facility" means any facility or part thereof which is under the jurisdiction of the Administrator for the provision of health-care services, including any necessary buildings and structure, garage or parking facility.

(e) "Parking facilities" includes all surfaces and garage parking spaces at a VA medical facility.

(f) "Volunteer worker" means an individual who performs services, without compensation, under the auspices of the VA Voluntary Service (VAVS) at a VA medical facility, for the benefit of veterans receiving care at that medical facility.

(Authority: 38 U.S.C. 5009)

§ 1.302 Applicability and scope.

(a) The provisions of §§ 1.300 through 1.303 apply to VA medical facility parking facilities in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, and to such parking facilities for the use of VA medical facilities jointly shared by the VA and another Federal agency when the facility is operated by the VA. Sections 1.300 through 1.303 apply to all users of those parking facilities. Fees shall be assessed and collected at medical facilities where parking garages are constructed, acquired, or related at a cost of exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year). The administrator, in the exercise of official discretion, may also determine that parking fees shall be charged at any other VA medical facility.

(b) All fees established shall be reasonable under the circumstances and shall cover all parking facilities used in connection with such VA medical facility.

(Authority: 38 U.S.C. 5009)

§ 1.303 Policy.

(a) *General.* Parking spaces at VA medical facilities shall only be provided under the following conditions:

(1) The VA and its employees shall not be liable for any damages to vehicles (or their contents) parked in VA parking facilities, unless such damages are directly caused by such employees acting in the course of their VA employment.

(2) Parking facilities at VA medical facilities shall only be made available at each medical facility for such periods and under such terms as prescribed by the facility director, consistent with §§ 1.300 through 1.303.

(3) VA will limit parking facilities at VA medical facilities to the minimum necessary, and administer those parking facilities in full compliance with ridesharing regulations and Federal laws.

(b) *Fees.* (1) As provided in § 1.302, VA will assess VA employees, contractor employees, tenant employees, visitors, and other individuals having business at a VA medical facility where VA parking facilities are available, a parking fee for the use of that parking facility. All parking fees shall be set at a rate which shall be equivalent to one-half of the fair monthly rental value for the use of equivalent commercial space in the vicinity of the medical facility, subject to the terms and conditions stated in paragraph (a) of this section. Fair rental value shall include an allowance for the costs of management of the parking facilities. The Administrator will determine the fair market rental value through use of generally accepted appraisal techniques. If the appraisal establishes that there is no comparable commercial rate because of the absence of commercial parking facilities within a two-mile radius of the medical facility, then the rate established shall be not less than the lowest rate charged for parking at the VA medical facility with the lowest established parking fees. Rates established shall be reviewed biannually by the Administrator to reflect any increase or decrease in value as determined by appraisal updating.

(2) No parking fees shall be established or collected for parking facilities used by or for vehicles of the following:

(i) Volunteer workers in connection with such workers performing services for the benefit of veterans receiving care at the medical facility;

(ii) A veteran or an eligible person in connection with such veteran or eligible person receiving examination or treatment;

(iii) An individual transporting a veteran or eligible person seeking examination or treatment; and

(iv) Federal Government employees using Government owned or leased or private vehicles for official business.

(Authority: 38 U.S.C. 5009)

[FR Doc 88-5996 Filed 3-17-88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-80, RM-5625]

Radio Broadcasting Services; Fort Myers Villas, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sunshine Broadcasting, Inc., which seeks to substitute Channel 291A for Channel 292A at Fort Myers Villas and to modify its construction permit to specify the new channel.

DATES: Comments must be filed on or before April 29, 1988, and reply comments on or before May 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner or its counsel or consultant, as follows: Peter Tannenwald, Agent, Fox Kintner Plotkin and Kahn 1050 Connecticut Avenue NW., Washington, DC 20036-5339 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-80, adopted February 12, 1988, and released March 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5955 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-75, RM-5334]

Television Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to allot and reserve UHF Television Channel *68 to Panama City, Florida, as its second noncommercial educational station, in response to a petition filed by Nolan Ball. The proposal for Channel *68 at Panama City is not affected by the recently imposed freeze on new allotments within the minimum co-channel separation distance of thirty major markets. See *Order*, 52 FR 28346, published July 29, 1987.

DATES: Comments must be filed on or before April 28, 1988, and reply comments on or before May 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nolan Ball, 2413 North Harris Avenue, Panama City, Florida 32405 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-75, adopted February 11, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5959 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-77, RM-5900]

Radio Broadcasting Services; Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to substitute Channel 228C2 for Channel 228A at Key West, Florida, and to modify the Class A license for Station WKRY(FM) accordingly, in response to a petition filed by the licensee, Key Chain, Inc. (coordinates 24,34,18 and 81,45,19).

DATES: Comments must be filed on or before April 28, 1988, and reply comments on or before May 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Q. Hearne, Fisher, Wayland, Cooper and Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-77, adopted February 11, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5954 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-76, RM-6054]

Radio Broadcasting Services; Alma and Dublin, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by State Broadcasting Company, Inc., licensee of Station WQZY(FM), Dublin, Georgia, which seeks to substitute Channel 240C2 for Channel 240A, and to modify its license to specify the new channel. To provide for the Dublin modification it will be necessary to substitute Channel 282A for Channel 240A at Alma, Georgia, and modify the license for Station WKXH-FM, accordingly. An *Order to Show Cause* is being issued to Station WKXH-FM, to obtain its consent to the proposed change in channel.

DATES: Comments must be filed on or before April 28, 1988, and reply comments on or before May 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard Jr., Ward and Mendelsohn P.C., 1100 17th Street NW., Suite 900, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-76, adopted February 11, 1988, and released March 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5958 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-79, RM-6053]

Radio Broadcasting Services; Iuka, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Segars Communications, Inc., proposing the substitution of FM Channel 285C2 for Channel 285A at Iuka, Mississippi, and modification of the license of Station WTIB to reflect the higher class of channel. There is a site restriction 27 kilometers southwest of the community.

DATES: Comments must be filed on or before April 29, 1988, and reply comments on or before May 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Olender, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-79, adopted February 11, 1988, and released March 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5957 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-78, RM-6185]

Radio Broadcasting Services; Leland, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Leland Broadcasting Group to allocate Channel 231A to Leland, North Carolina, as the community's first local FM service. Channel 231A can be allocated to Leland in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) southwest to avoid a short-spacing to unoccupied and unapplied for Channel 229A at Wrightsville Beach, North Carolina, and to Station WZKB, Channel 232A, Wallace, North Carolina.

DATES: Comments must be filed on or before April 29, 1988, and reply comments on or before May 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-78, adopted February 11, 1988, and released March 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-5856 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 80111-8011]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NOAA issues a proposed rule to implement certain allocative regulations governing fishing for halibut in the Bering Sea as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to provide economic protection for the developing Pacific halibut fisheries carried out by persons who land their total annual catch of Pacific halibut at ports within Regulatory Areas 4C and 4E. Such persons generally are those who live on the Pribilof Islands and in communities on the west coast of Alaska including Nelson and Nunivak Islands.

DATES: Comments on the proposed rule and its supporting documents, especially the environmental assessment and regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), are invited until April 14, 1988.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Copies of the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953. The Convention is carried out by the International Pacific Halibut Commission (IPHC). In 1977, the Secretary of State, in cooperation with the Secretary of Commerce (Secretary), determined that the Convention was inconsistent with the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act, Pub. L. 94-265). Consequently, the United States and Canada amended the Convention in 1979. The Northern Pacific Halibut Act of 1982 (Halibut Act, Pub. L. 97-176) was subsequently enacted to give effect to the 1979 Protocol.

Until 1987, all regulations governing the Pacific halibut fishery in the waters off Alaska were adopted by the IPHC and, for United States fishermen, recommended to the Secretary of State for approval and published at 50 CFR Part 301. However, section 5(c) of the Halibut Act provides for the appropriate Regional Fishery Management Council under the Magnuson Act to develop regulations, including limited access regulations, governing the U.S. portion of Convention waters and applicable to nationals or vessels of the United States, which are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as their primary purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies, and staff between August 15 and September 15, 1987. The Council received 73 proposals, which were reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment Advisory Group (RAAG). At its meeting on September 23-25, 1987, the Council reviewed the recommendations of the MT and RAAG and decided to consider only those allocative regulations adopted in 1987 by the IPHC for Regulatory Areas 4C and 4E. The previous allocative regulations at 50 CFR Part 301 are, therefore, proposed to be repromulgated (republished) with changes for 1988 through the Council process.

The MT prepared a draft EA/RIR/IRFA that assesses the potential environmental and economic effects of all regulatory alternatives considered by the Council in September 1987 as required by the National Environmental Policy Act, Regulatory Flexibility Act Executive Order 12291, and NOAA policy. A notice of availability of this document was published in the Federal Register on October 28, 1987 (52 FR 41485).

At its December 8-11, 1987, meeting, the Council considered public testimony

and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then voted to adopt preferred alternatives and solicit public comment on the proposed rule. The MT has revised the EA/RIR/IRFA accordingly (revised draft dated January 1988).

A description of and the reasons for the regulatory proposals that would be implemented by this action follow.

1. In § 301.5, a revised paragraph would be added that would prohibit fishermen that do not land all of their catch in Area 4E or the closed area from fishing in Area 4E until 80 percent of the Area 4E quota has been taken.

2. In § 301.9, the maximum catch per fishing period for Regulatory Area 4C would remain 10,000 pounds but would change to 20,000 pounds when 50 percent of the catch limit specified in § 301.8(a) was taken. In addition, a new maximum catch per fishing period for Regulatory Area 4E of 6,000 pounds would be specified.

3. The entire § 301.12 relating to vessel clearance and hold inspections, and § 301.15(h), which relieves a restriction on fishing with setline gear within 72 hours of a fishing period for persons who fish in Areas 4C and 4E would be repromulgated (republished) without change.

The principal reason for this action, and the specified objective of the Council, is to maintain the allocative effects of the previous IPHC regulations for both regulatory areas. Certain changes to the existing regulatory language are proposed, however. In § 301.5, a new paragraph is proposed that prescribes a time when persons who do not land their total annual catch of Pacific halibut within Regulatory Area 4E may begin fishing. This additional provision is designed to assure the allocative *status quo* for Area 4E. In § 301.9, a change in the catch limit per fishing period in Regulatory Area 4C also is proposed to further assure and support the distribution of the total catch limit for that area according to the distribution of catch experienced in 1987. The additional proposed catch limit of 6,000 pounds per fishing period in Regulatory Area 4E will serve to further protect fishermen who land their total annual catch of Pacific halibut in that area from competition with large vessels used by fishermen who land their halibut catch in other areas. This is particularly important during periods of poor weather that prevent the small vessels used by "4E fishermen" from fishing, but not the larger "non-4E" vessels.

Classification

This proposed rule is published under section 5(c) of the Halibut Act and may only be implemented with the approval of the Secretary. At this time the Secretary has not determined that this proposed rule is consistent with the Halibut Act and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment in combination with a regulatory impact review and initial regulatory flexibility analysis for this regulatory amendment. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above and comments on it are requested.

The Assistant Secretary, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. Based on the same document, the Assistant Secretary also concluded that this proposed rule, if adopted, may have significant effects on small entities. The economic impact of the proposed actions is a shift of potential income to local fishermen from non-local fishermen who choose to fish in Regulatory Areas 4C and 4E. The allocation protects local fishermen with fewer economic alternatives, who operate small vessels limited by severe weather conditions and have less access to markets. Non-local fishermen are expected to catch a smaller proportion of the halibut quotas for the two areas than without the proposed allocation; however, these fishermen may fish in other areas not subject to the allocation measures, use larger vessels that can be operated in a variety of weather conditions, and have more ready access to markets.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: March 14, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773-773k.

2. Section 301.5 is amended by revising paragraph (f) to read as follows:

§ 301.5 Fishing periods.

* * * * *

(f) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or within the closed area defined in § 301.7 of this part, may fish for halibut in Area 4E from any vessel until 80 percent of the catch limit for Area 4E specified in § 301.8(a) of this part has been taken.

3. Section 301.9 is revised to read as follows:

§ 301.9 Trip limits.

(a) Vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds of halibut per fishing period until 50 percent of the catch limit for Area 4C specified in § 301.8(a) of this part has been taken, and thereafter shall be limited to a maximum catch of 20,000 pounds of halibut per fishing period.

(b) Vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds of halibut per fishing period.

4. Section 301.12 is repromulgated (republished) without change as follows:

§ 301.12 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.7 of this part may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

5. In § 301.15, paragraph (h) is repromulgated (republished) without change.

§ 301.15 Fishing gear.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in § 301.4 (h) and (j) of this part.

* * * * *

[FR Doc. 88-5937 Filed 3-15-88; 11:07 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 53

Friday, March 18, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CENTRAL INTELLIGENCE AGENCY

Retirement and Disability System, Lifetime Annuity Benefit for Former Spouses

New lifetime annuity benefit entitlement for former spouses divorced prior to November 15, 1982 under the Central Intelligence Agency Retirement and Disability System. Qualified former spouses should respond to the address listed below.

On 20 December 1987, President Reagan signed the Intelligence Authorization Act for Fiscal Year 1988 (Pub. L. 100-178), effective 2 December 1987. In accordance with this legislation, certain former spouses who were divorced from Central Intelligence Agency employees, former employees, and retirees prior to 15 November 1982 may be entitled to a lifetime annuity equal to a percentage of 50 percent of the participant's annuity.

This lifetime annuity will be financed solely by a special appropriation to the Central Intelligence Agency Retirement and Disability System fund, and in no way affects the particpant's retirement annuity nor any entitlements in favor of any other individual (a current spouse, for instance) based upon the participant's annuity.

A letter of application must be submitted by 2 June 1990. For further information about applying for the lifetime annuity benefit under provisions of the Intelligence Authorization Act for Fiscal Year 1988, please write to the following address: Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Dated: March 10, 1988.

Approved:

R. M. Huffstutler,

Deputy Director for Administration.

[FR Doc. 88-5989 Filed 3-17-88; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket Number 80336-8036]

Foreign Buyer Program; Support for Domestic Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of implementation of the 1989 Foreign Buyer Program.

SUMMARY: This notice sets forth objectives, circumstances and application review criteria associated with the Department's program to support domestic U.S. trade shows.

DATE: Applications must be received by April 20, 1988.

ADDRESS: Export Promotion Services/Foreign Buyer Program, U.S. and Foreign Commerical Service (US&FCS), International Trade Administration, U.S. Department of Commerce, Room 2118, 14th and Constitution Avenue, NW., Washington, DC 20230 (202/377-0872).

FOR FURTHER INFORMATION CONTACT: Director, Marketing Development Branch, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce 14th and Constitution Avenue, NW., Room 2118, Washington, DC 20230 (202/377-0872).

SUPPLEMENTARY INFORMATION: The International Trade Administration of the U.S. Department of Commerce is accepting applications for the 1989 Foreign Buyer Program.

The Foreign Buyer Program was established to select and promote leading trade shows in the United States in high export-potential industries. The Foreign Buyer Program has been created to provide practical, hands-on assistance to U.S. companies interested in exporting. The assistance provided includes export counseling, marketing analysis, and overseas promotion to potential foreign buyers, end-users, agents and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets.

The U.S. Department of Commerce implemented the Foreign Buyer Program in May 1985 in keeping with the Department's mission to foster, promote and develop U.S. commerce. As part of its mission, the Department has for many years assisted U.S. firms participating in domestic trade shows to meet with potential foreign buyers, agents and distributors.

Under the Foreign Buyer Program, the Department will select and promote domestic trade shows in high-export potential industries in order to bring foreign buyers together with U.S. firms. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event, must submit a new application for selection for each occurrence of the event.

The Department will select 18 to 25 events during calendar year 1989. The Department will select those events which in its judgment most clearly and best meet the Department's objectives as well as satisfy the general selection criteria. For this reason, failure to select an event should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

Department of Commerce Support of Foreign Buyer Program Events. The supporter provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services may include, but are not limited to, special overseas marketing efforts by staff of the US&FCS. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals.

Specific Department Actions. For selected shows the Department of Commerce will:

(a) Designate a Program Manager as central contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The Program Manager will work with the show organizer's contact to develop an international marketing plan and overall promotional timetable.

(b) Prepare and distribute an information letter and form ITA-4014P to CEOs (if available) of exhibiting U.S. companies to determine their international business objectives in meeting with foreign buyers (Form 4014P has been approved by the Office of Management and Budget under control number 0625-0151).

(c) Contact U.S. companies that will be exhibiting at the event and encourage them to meet with foreign buyers attending the show. The Department will print an Export Interest Directory, containing pertinent information on those companies that express such interest. The Export Interest Directory will list U.S. company names, products or services they wish to export, international marketing objectives (agent/distributor/direct sales etc.) and geographic areas of interest to the company. This document will be distributed to all U.S. Embassies and Consulates prior to the event.

(d) Advise and work closely with all interested U.S. Embassies and Consulates to assure maximum trade show promotion and exposure for those companies listed in the Export Interest Directory.

(e) Promote industry trade show participation through announcements in key domestic and international publications (e.g., regional, posts and embassy commercial newsletters, *Business America*, and *Commercial News USA*).

(f) Provide show organizer with specifications of a DOC-designed International Business Center (IBC), including furniture requirements, DOC office, conference rooms, storage area, etc.

(g) Provide show organizer with specifications for a multi-language brochure; U.S. Embassy/Consulate address labels, shipping instructions and quantities required for overseas shipment.

(h) Provide a final show report to the show organizer not later than 90 days after the show.

(i) Request US&FCS District Offices in the U.S. to provide export counseling or specific marketing information to those U.S. participants that have indicated a need for such counseling both prior to and during the show.

Services Provided at Trade Show Site. (a) Two (2) Program Managers will provide primary management of the International Business Center (IBC) and assist with on-site registration (if appropriate) of foreign buyers and post-organized groups, facilitate matching foreign buyers with exhibiting U.S. companies at trade show, and inform U.S. companies about US&FCS products and services and other ITA programs. At least one Trade Specialist from the US&FCS District Offices will be available throughout the show to provide additional export counseling.

(b) The Department of Commerce will provide export counseling or specific geographic marketing information to exhibitors in a designated area in the International Business Center, and assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) Participate, as appropriate, in special export service seminars specifically aimed at new-to-market/new-to-export firms exhibiting at trade show.

(d) Encourage local bank and financial institutions to have a representative available to provide export finance counseling.

Specific Responsibilities of the Show Organizer. The show organizer will:

(a) Designate an official authorized to work with the US&FCS Program Manager on all aspects of the show promotion.

(b) Provide the Program Manager with a contact during the show to assist with foreign visitor information and product referral.

(c) Provide the Program Manager with a current list of exhibitors, with names and addresses. The name of the contact should, if possible, be the decision maker of the exhibiting firm on international matters. The exhibitor list should be on gummed mailing labels.

(d) Produce and distribute a multilingual promotional brochure in the quantities specified by the Program Manager for overseas distribution. Draft of the brochure must be approved by the Program Manager prior to printing. These brochures must be printed not less than six months prior to the show.

(e) Provide all U.S. exhibitors information about the IBC and US&FCS services prior to the show.

(f) Provide to the Program Manager names and addresses of foreign attendees at organizer's most recent show. Provide a list of pre-registered foreign attendees at the current show, including names, addresses, because interests and product interests. Both lists are to be provided by country and on a mutually agreed upon date.

(g) Establish a registration system to assure US&FCS Program Managers access to all foreign attendees at time of registration, and on a daily basis during the show, provide names, addresses, business and product interests of registered foreign attendees. This information to be diseminated at conclusion of event to all firms listed in the Export Interest Directory.

(h) Establish an International Business Center (IBC) at the show in a prominent location, adjacent to the main registration area. Show organizer agrees to construct the IBC (minimum of 1500 sq. ft.) according to DOC-designed specifications which will include: (a) A separate registration area for foreign visitors, (b) appropriate furniture and office equipment, telephone, telex, etc., (c) interpreters, (d) registration staff and support, (e) DOC office and a minimum of 2 conference rooms, storage area, refershments and lounge. The IBC must be given high visibility in show catalog/program daily newsletters, floor plans, and by strategically placed signs at the exhibition entrance, registration area and on the exhibition floor. DOC design specifications do not allow for pipe and drape at the IBC. A hard panel system will be required.

(i) Provide to the Project Manager a Convention Center floor layout indicating the location and dimensions of the International Business Center.

(j) On an agreed date following the show, provide the Program Manager with a registration printout of the names and addresses of the foreign attendees, by country.

(k) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate fee. For calendar year 1989 the fee is $3,500.

(l) The show organizer will allow for a one page advertisement in the show catalog highlighting the Foreign Buyer Program and the International Business Center. The copy will be supplied by the Department.

(m) Provide for interpreters at the International Business Center.

Selection. Selection indicates that the Department has found the event to be a leading international trade show worthy of participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce logo and/or logo of the US&FCS for use in its advertising promotional materials.

Exclusions. Trade shows which will not be considered are those that are either first time events or are horizontal, that is, not industry specific. Annual trade shows will not be selected more than twice in any three year period (e.g., shows selected for calendar years 1987 and 1988 are not eligible for inclusion in a calendar year 1989 Foreign Buyer Program, but will be considered in subsequent years at which time the cycle will begin anew).

General Selection Criteria. Subject to Departmental budget and resource constraints, selection will be granted to those events that, in the judgment of the Department, most clearly and best meet the following criteria:

(a) *Export Potential.* The products and services to be promoted at the trade

show must be from U.S. industries which have high export potential as determined by U.S. Department of Commerce sources.

(b) *International Interest.* Trade shows selected must meet the needs of a significant number of overseas markets covered by the US&FCS, correspond to marketing opportunities as identified by these posts, and warrant the attention and promotional effort by those overseas posts. Previous foreign attendance at the show may be used as an indicator.

(c) *Scope.* The event must offer a broad spectrum of U.S. made products and/or services. Trade shows with a majority of American firms exhibiting will be given preference.

(d) *Stature.* The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor Interest.* There must be a clearly demonstrated interest on the part of U.S. exhibitors to receive international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional foreign markets.

(f) *Logistics.* The trade show site, facilities, transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

(g) *Cooperation.* Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show producer/owner and the US&FCS. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further ITA export expansion goals, adhere to target dates set out in the (MOU) and all other program requirements covered by the MOU and this announcement.

When, Where and How to Apply for Selection in the 1989 Foreign Buyer Program

Collection of the information required in an application is authorized by law (15 U.S.C. 1512 *et seq.*). The Office of Management and Budget has approved the information collection requirement contained in this notice under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) (OMB Control Number 0625–0130, approved for use through 08/31/88). A trade show will not be considered for the 1989 Foreign Buyer Program unless a completed application has been received by the Marketing Development branch no later than April 20, 1988.

Except to the extent required by laws, no information of a proprietary nature reported on this application will be disclosed without the prior written consent of the relevant firm.

Please type the information requested below on company letterhead and mail two (2) complete sets of your application to: Marketing Programs Division, Marketing Development Branch, U.S. and Foreign Commercial Service, International Trade Administration, Room 2118, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Answers to the questions listed below constitute the formal application:

(1) Name of show.

(2) Site of show.

(3) Dates of show. Indicate if show is held annually, bi-ennially, or other.

(4) Name, address, and phone number of applicant.

(5) Name, address, and phone number of applicant contact.

(6) Name, address, and phone number of show sponsor (trade association, national or state government, etc.).

(7) Basic history or description of show. Applicant must demonstrate that subject is a leading international trade show for the industry. Include copies of previous show promotion materials.

(8) Resume of applicant's show experience.

(9) Planned number of U.S. exhibitors. A majority of show exhibitors must be of U.S.A. origin.

(10) Specify gross area of show (sq. ft. or sq. mtrs.). Net area for exhibit space (show U.S. and foreign separately).

(11) Admission fees for show visitors and indicate if there is a reduced fee for international visitors.

(12) Description of technical program and cost to attend (if applicable).

(13) Product categories to be displayed.

(14) Audience profile or potential foreign customers (target countries, industries, profession or technical level).

(15) Submit 2 sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following and submit with the appropriate signature:

"The above information is correct and the applicant will abide by the terms set forth in the Notice of Implementation of the Foreign Buyer Program for 1989."

Applications will be processed by the Marketing Development Branch, Export Promotion Services and final selection of events will be made by May 6, 1988.

Fee. The Department will charge a fee of $3,500 for shows selected and promoted during Calendar Year 1989.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Mike Frisby,

Director, Marketing Development Branch, Marketing Programs Division, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

March 14, 1988.

[FR Doc. 88–5992 Filed 3–17–88; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

[Transmittal No. 06–10–88009–01 and Project I.D. No. 06–10–88009–01]

Little Rock Minority Business Development Center MBDC); Solicitation of Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of August 1, 1988 to July 31, 1989. The MBDC will operate in the Little Rock Standard Metropolitan Statistical Area SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Little Rock SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing mangement and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is April 22, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Desslene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on March 25, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Bobby Jefferson,

Chief Business Development Group, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Little Rock MBDC (Geographic Area or SMSA)
Project Identification Number: 06-10-88009-01
Project Start and End Dates: 08/01/88 to 07/31/89
Project Duration: 12 months
Total Federal Funding (85%): $165,000
Minimum Non-Federal Share (15%): $29,118
Total Project Cost (100%): $194,118
Closing Date for Submission of this Application: April 22, 1988

Geographic Specifications: The Minority Business Development Center shall offer assistance in the geographic area of: *Little Rock, Arkansas* SMSA.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the intitial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:
Finanical packages, $2,747,000
Billable M&TA, $84,000
Number of Professional Staff, 3
Procurements, $5,493,000
M&TA Hours, 1,680
Number of Clients, 76

[FR Doc. 88-5945 Filed 3-17-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Application for Marine Mammals Permit; Kyushu African Lion Safari Co. Ltd. (P412)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Kyushu African Lion Safari Co. Ltd. 2-1775-1, Aga-nishinodai, Oaga-minamibata, Agim-cho, Usa-gun, Oita-ken
2. Type of Permit: Export for Public Display
3. Name and Number of Marine Mammals: California sea lions (*Zalophus californianus*)
4. Type of Take: beached/stranded or captive born
5. Location of Activity: Sea World, San Diego
6. Period of Activity: 2 Years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammals Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7514.

Date: March 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-5938 Filed 3-17-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 18, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 16, December 15, 1987 and January 7, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 43785, 52 FR 47624, and 53 FR 436) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to provide the commodities and service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1988:

Commodities

Strap Assembly
5855-00-137-7767
5855-00-125-0762
5855-00-125-0713
Tray, Fiberboard, Three-Sided
P.S. Item No. D-3915

Service

Rehabilitation of Recorder Covers, U.S. Geological Survey, Bay St. Louis, Mississippi

C. W. Fletcher,

Executive Director.

[FR Doc. 88-6001 Filed 3-17-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase form the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: April 18, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1988, December 10, 1987 (52 FR 46926):

Services

Janitorial/Custodial
  Federal Building and U.S. Courthouse, 500 Fannin Street, Shreveport, Louisiana
Janitorial/Custodial
  Federal Office Building and Joseph C. O'Mahoney Federal Center, Cheyenne, Wyoming

C.W. Fletcher,

Executive Director.

[FR Doc. 88-6002 Filed 3-17-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Amex Commodities Corporation Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Amex Commodities Corporation ("ACC") has applied for designation as a futures contract market in ten-year Treasury note futures. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 17, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the ACC ten-year Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: The proposed contract terms and conditions provide for delivery of newly auctioned ("on-the-run") Treasury notes having a maturity of ten years from date of issue. A contract month is listed immediately following the auction of the particular ten-year note underlying that contract.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the ACC in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the ACC in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on March 15, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-5928 Filed 3-17-88; 8:45 am]

BILLING CODE 6351-01-M

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has applied for designation as a contract market in options on medium-term U.S. Treasury note futures. The application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 18, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT medium-term U.S. Treasury note futures option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures option contract, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's rules. That petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> * * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application; * * *

The Division notes that the CBT's four to six year U.S. Treasury note futures contract which will underlie the proposed option contract currently is not listed for trading and is dormant under Commission Regulation 5.2. No trades have occurred in the contract since September 1981. Pursuant to the requirements in Regulation 5.2 governing the reactivation of dormant contracts, the Exchange has submitted a proposal to list additional months in that futures contract. The Exchange is also proposing to change the name of the contract to medium-term U.S. Treasury note futures.[1]

As discussed in more detail in previous Federal Register notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.[2]

In requesting comment on the CBT's proposed option on medium-term U.S. Treasury note futures, the Division is seeking specific comment on whether it should grant the CBT's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CBT for the proposed contract.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address of by phone at (202) 254-6314.

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[1] In conjunction with its proposal to reactivate this futures contract, the CBT has submitted for Commission consideration a proposal to amend several terms and conditions of the futures contract, including changes to the provisions regarding the deliverable maturity range, the delivery procedures, and the procedures for listing contract months, as well as a change in the name to medium-term U.S. Treasury note futures. These proposals currently are under review at the Commission.

[2] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures option contract or the petition, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on March 15, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-5929 Filed 3-17-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: DoD FAR Supplements, Part 9 Contractor's Qualifications; No form; and OMB Control Number 0704-0204.

Type of request: Extension.

Annual Burden Hours: 2,519.

Annual Responses: 229.

Needs and Uses: Information concerns certain equipment available to contractors in the performance of work required by Statement of Work, e.g., type and location of bulk petroleum storage facilities, pump capacities, and delivery systems. Reporting is necessary to assure contractor's ability to perform and to properly evaluate offers.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 14, 1988.

[FR Doc. 88-5870 Filed 3-17-88; 8:45 am]

BILLING CODE 3810-01-M

Availability of an Environmental Impact Statement (EIS); Camp Ripley, MN

AGENCY: National Guard Bureau, Minnesota Department of Military Affairs, DOD.

ACTION: Notice of Availability of an Environmental Impact Statement: Proposed Mission Expansion/Multiple Construction at Camp Ripley Army National Guard Training Site, Minnesota.

Background

Camp Ripley Army National Guard Training Area is a state owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Minnesota Department of Military Affairs have, acting as co-lead agencies, prepared a Draft Environmental Impact Statement on the proposed master plan mission expansion/multiple construction at Camp Ripley, Minnesota. On July 22, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the Federal Register. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR Part 1500 through 1508)) was conducted on July 31, 1986, at Morrison County Courthouse, Little Falls, Minnesota, to identify significant issues related to the proposed master plan mission expansion/multiple construction at Camp Ripley.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges and associated maneuver areas, and a potential for increased training site utilization. The Draft Environmental Impact Statement addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Draft EIS:

(a) No Action (Status quo)
(b) Modification/Alteration of Proposed Action
(c) Conduct actions at another location

Document Availability

The selection of the preferred actions in the Draft Environmental Impact Statement does not constitute a final decision. A Final Environmenal Impact Statement will be prepared and published based on comments received on the Draft EIS. The Final EIS and comments on that document will be used by the Army National Guard to reach a Record of Decision. Copies of the Draft EIS may be obtained by writing or telephoning: Minnesota Department of Military Affairs, ATTN: John F. Ebert, Facilities Management Office, P.O. Box 348, Little Falls, Minnesota 56345-0348, (612) 632-6631.

Requests for time, date, and location for the public meeting, and submission of comments on the Draft Environmental Impact Statement should be addressed to the above.

Lewis D. Walker,

Deputy for Environmental, Safety, and Occupational Health, OASA (I&L).

[FR Doc. 88-5779 Filed 3-17-88; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Meeting; Ada Board

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held April 6-8, 1988 from 9:00 a.m. to 5:00 p.m. each day, at the COMPRI Hotel at 2700 Eisenhower Avenue, Alexandria, Virginia.

Purpose: The purpose of this Ada Board meeting will be to discuss the Ada 9x process and related issues.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Gausvik, Ada Information Clearinghouse, IIT Research Institute, 4600 Forbes Boulevard, Second Floor, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

March 14, 1988.

[FR Doc. 88–5969 Filed 3–17–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Notice of a New Ongoing Computer Matching Program Between the Department of Defense and the State of Florida on Eligibility of Food Stamp Recipients

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

SUMMARY: The DoD is providing public notice that it intends to conduct a continuing computer matching program between the State of Florida and the DoD to identify DoD personnel who are recipients of Food Stamp Program benefits administered by the State of Florida. The purpose of the computer matching, at the request of the State of Florida, is to identify food stamp recipients who are also receiving Federal salary or benefit payments so as to identify specific individuals whose Federal income or benefit payments may reduce or disqualify them from receiving the food stamp benefit. The DoD will act as the matching agency and Florida as the source agency.

DATE: It is anticipated that the matching program will be effective and begin without further notice on April 18, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send written comments to Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center 550 Camino El Estero, Suite 200, Monterey, CA 93940–3231. Telephone: (408) 375–4131; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD, has been requested by the Division of Public Assistance Fraud (DPAF), Office of the Auditor General, State of Florida, to be a matching agency for the purpose of verifying that the food stamp recipients are supplying correct information when applying for benefits. The computer matching will be performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using food stamp records supplied on computer tape by the State of Florida and the DoD employment records of both military and civilian personnel, active and retired. The match will be accomplished using the social security number. Matching records will be returned to the Office of the Auditor General, State of Florida, the agency responsible for reviewing the matching data and for assuring that the food stamp recipient receives proper notification and due process before any adverse action is taken as a result of matching.

Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget (OMB) dated May 11, 1982 (47 FR 21656, May 19, 1982).

A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget on March 8, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 14, 1988.

Report of a New Ongoing Computer Matching Program Between the Department of Defense and the Office of the Auditor General, State of Florida, on Eligibility of Food Stamp Recipients

a. *Authority:* 5 U.S.C. 552a, Privacy Act of 1974; 7 U.S.C. 2011–2029, Food Stamp Act of 1977, as amended; 10 U.S.C. 136, Assistant Secretaries of Defense; appointment; powers and duties; precedence; 7 CFR Part 272—Requirements for Participating State Agencies (Agriculture); 7 CFR Part 273—Certification of Eligible Households (Agriculture); Office of Management and Budget Memorandum M–82–5, dated May 11, 1982 entitled: Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982); FLA. STAT. § 11.50 (1981), "Legislative Organization, Procedures, and Staffing—Division of Public Assistance Fraud"; FLA. STAT. § 409.325, "Social and Economic Assistance—Fraud."

b. *Program Description:* The Office of the Auditor General, State of Florida, 319 East Gaines Street, Tallahassee, Florida 32302 is the source agency. The Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD), 550 Camino El Estro, Suite 200, Monterey, California 93940–3231 is the matching agency.

The Office of the Auditor General, State of Florida, is responsible under federal law for reviewing the records to determine if recipients are entitled to participate in the state food stamp program and that they meet all the qualifications for benefit entitlements by verifying that recipients are suppling correct information when applying and that any excess benefits are recouped from the benefit recipients.

The purpose of this computer matching program is to identify those DoD employees and members who are recipients of food stamp benefits administered by the State of Florida Food Stamp Program and also receiving Federal salary or benefit payments so as to identify individuals whose Federal income or benefit payments may reduce or disqualify them from receiving the food stamp benefit.

The State of Florida, as the source agency, will provide a computer tape to the DMDC, the matching agency, containing the Florida file of food stamp recipient accounts. The DMDC will match this source tape with a tape containing records of DoD active and retired civilians as well as active duty and retired military members, including the Reserve. The match will be accomplished using the social security number. A "hit" will consist of a match of the social security number on both files. Once a match is made, the hit data will include on active members: Rank, name, a five line duty or home address, the amount of base pay, amount of all other pay and allowances, amount of dependent's allotment and the number of years of service. Hit data on other category of individuals, such as retirees, will include similar data. Hit data will be printed out on a magnetic tape and furnished to the Division of Public Assistance Fraud (DPAF), Office of the Auditor General, State of Florida.

DMDC will make reasonable efforts, pursuant to Section (e)(6) of the Privacy Act (5 U.S.C. 552a), to assure that the DoD records are accurate, complete, timely, and relevant for agency purposes before disclosure. Further, it will insure that an accounting of the disclosures pursuant to Section (c) of the Privacy Act is maintained.

DPAF officials will review the hit data and make the initial follow-up determinations; to enhance steps taken by Florida to insure due process and that only those persons entitled to are receiving public assistance. The match results will be compared with income reported in the food stamp case file. Corrections in benefit amounts or disqualification will be considered when unreported income is identified which may reduce or disqualify individuals from receiving food stamp benefits. In those situations where there is any questions as to eligibility, the recipient will be contacted to resolve the issue. No benefits will be reduced or discontinued solely on the basis of the hit data listings alone without independent verification.

c. *Records to be Matched:*

STATE OF FLORIDA (Source Agency).

(1) Non-Federal State of Florida food stamp recipient records.

DEPARTMENT OF DEFENSE (Matching Agency).

(1) System Identification: S322.10 DLA–LZ.

System Name: Defense Manpower Data Center Data Base.

Federal Register Citation: 53 FR 4442, February 16, 1988.

d. *Period of the Match:* The matching program will begin as soon as possible after this public notice becomes effective as set forth under "DATE" in the preamble of this notice and will be repeated periodically thereafter.

e. *Security safeguards to be afforded the records:* Under written agreement between DMDC and the Division of Public Assistance Fraud (DPAF), of the Office of the Auditor General, State of Florida, dated December 30, 1987, only DMDC personnel who perform the actual match will have access to the Florida Food Stamp Program data. The DMDC will not duplicate or copy the tape provided by DPAF. The DPAF tape will only be used to perform the match agreed to. The tape will not be used to extract information on any "non-hit" individuals. When the computer match is completed, the DPAF tape will be returned along with the magnetic tape of names and data on DoD "hits." Only one match listing will be produced and the DMDC will not retain a copy. The DPAF will insure that the adequate safeguards are applied to the handling and use of the information contained on the match magnetic tape produced by the DMDC. Information on DoD personnel provided as a result of "hits" will not be used except for the purpose of the match. DPAF will not provide the information on DoD members contained on the magnetic tape to any other group or individual other than the record subject for verification purposes or other official purposes such as investigation. Storage of the magnetic tape of matching hits on DoD personnel will be maintained in a secure tape library. DPAF will retain the match tape for no more than 12 months, after which the tape will be returned to the DMDC. Tapes in the control of the DMDC are accessible only by password and access to the computer center is by key or picture identification. Access is limited to authorized personnel only on a need-to-know basis.

[FR Doc. 88–5971 Filed 3–17–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board, Research and Technology Utilization Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date and Time: April 14, 1988—8:30 am–5:00 pm.

Place: Department of Energy, 1000 Independence Ave., SW., Room 1E–245, Washington, DC 20585.

Contact: Claire H. Sink, Executive Secretary, Research & Technology Utilization Panel, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3560.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel is reviewing the process and effectiveness of opportunities to access scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; reviewing the technology transfer objectives and efforts of the major Departmental programs; evaluating the effectiveness of past activities in this area; and is to make recommendations to improve the activities. The purpose of this Panel meeting is to further discuss a draft report in preparation for the Panel's report to the ERAB.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Claire Sink at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays. Issued at Washington, DC on March 7, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88–6000 Filed 3–17–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ID–2326–000 et al.]

C. Thayer Browne et al.; Interlocking directorate Applications

March 14, 1988.

Take notice that the following filings have been made with the Commission:

1. C. Thayer Browne

[Docket No. ID–2326–000]

Take notice that on March 7, 1988, C. Thayer Browne filed an application pursuant to § 45.9 of Title 18 of the Code of Federal Regulations for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation
Vice President and Treasurer.	Northeast Utilities.
Vice President and Treasurer.	The Connecticut Light and Power Co.
Vice President and Treasurer.	Western Massachusetts Electric Co.
Vice President and Treasurer.	Holyoke Water Power Co.
Vice President and Treasurer.	Holyoke Power and Electric Co.
Vice President and Treasurer.	Northeast Nuclear Energy Co.
Vice President and Treasurer.	Northeast Utilities Service Co.
Vice President and Treasurer.	The Quinnehtuk Co.
Vice President and Treasurer.	The Rocky River Realty.
Vice President and Treasurer.	Research Park Inc.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

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2. Donald P. Jacobs

[Docket No. ID-2332-000]

Take notice that on March 8, 1988, Donald P. Jacobs filed an application pursuant to section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation
Director	Commonwealth Edison Co.
Director	First Chicago Edison Co.
Director	The First National Bank of Chicago.

Comment date: March 28, 1988, in accordance with Standard paragraph E at the end of this notice.

3. James J. O'Connor

[Docket No. ID-2330-000]

Take notice that on March 8, 1988, James J. O'Connor filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation
Chairman and Director.	Commonwealth Edison Co.
Director	First Chicago Corp.
Director	The First National Bank of Chicago.

Comment date: March 28, 1988, in accordance with Standard paragraph E at the end of this notice.

4. Leonard A. O'Connor

[Docket No. ID-2329-000]

Take notice that on March 7, 1988, Leonard A. O'Connor filed application pursuant to § 45.9 of Title 18 of the Code of Federal Regulations for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation
Vice President—Finance and Accounting (Gas).	The Connecticut Light and Power Co.
Vice President and Treasurer.	Connecticut Yankee Atomic Power Co.
Vice President—Finance and Accounting (Gas).	Northeast Utilities Service Co.
Vice President—Finance and Accounting (Gas).	The Housatonic Corp.

Comment date: March 28, 1988, in accordance with Standard paragraph E at the end of this notice.

5. Patrick J. Ryan

[Docket No. ID-2331-000]

Take notice that on March 8, 1988, Patrick J. Ryan filed an application pursuant to section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation
Director	Commonwealth Edison Co.
Director	First Chicago Corp.
Director	The First National Bank of Chicago.

Comment date: March 28, 1988, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5974 Filed 3-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-265-000 et al.]

Stingray Pipeline Co. et al.; Natural Gas Certificate Filings

March 14, 1988.

Take notice that the following filings have been made with the Commission:

1. Stingray Pipeline Company

[Docket No. CP88-265-000]

Take notice that on March 1, 1988, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-265-000 an application pursuant to section 7 of the Natural Gas Act, and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Stingray states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under new Rate Schedules FTS and ITS which would provide self-implementing firm and interruptible transportation services. Stingray requests all necessary waivers of the Commission's Regulations to permit the implementation of its programs as proposed.

Stingray states that its proposed FTS rate schedule would apply to firm transportation service performed thereunder and that its proposed ITS rate schedule would apply to interruptible service performed thereunder. It is stated that the rates would be set at a maximum level, pursuant to each rate schedule unless it is agreed in writing between Stingray and its customer that a lower price, down to a minimum specified in each rate schedule, would be charged.

Stingray states that it will accept its blanket certificate only if its existing firm shippers (Trunkline Gas Company, Natural Gas Pipeline Company of America, United Gas Pipe Line Company) are permitted to transport gas for third parties using their existing certificated capacity in Stingray's system as provided for in each of the transportation agreements between shipper and Stingray. Stingray asserts that such use of third party capacity for "in line" conjunctive transportation has been previously authorized by the Commission as being in the public convenience and necessity.

Comment date: April 4, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-259-000]

Take notice that on February 26, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-259-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm and interruptible transportation service for Panhandle Eastern Pipeline Company (Panhandle) as authorized in Docket No. CP76-528 by Commission order issued February 1, 1977, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to abandon the firm transportation service of 3,300 Mcf of natural gas per day and the interruptible transportation service of 2,000 Mcf of natural gas per day pursuant to the terms of a transportation agreement between Natural and Panhandle dated September 1, 1976. It is stated that Natural's transportation service was part of a transportation and sale arrangement that was provided by Panhandle and Trunkline Gas Company (Trunkline) for Mississippi River Transmission Corporation (MRT) as authorized by Commission order in Docket No. CP77-16. It is noted that Natural received gas for the account of Panhandle in Beckham County, Oklahoma and redelivered the gas to Panhandle in Beckham or Dewey Counties, Oklahoma, or Clark County, Kansas. Natural states that no pipeline facilities will be abandoned by this application.

Pursuant to the terms of the transmission agreement, Panhandle notified Natural by letter [1] dated January 19, 1987, of the cancellation and termination of its need for the transportation service to be effective February 1, 1988, it is stated.

Natural requested the Commission permit the abandonment of the transportation service to be retroactively effective on February 1, 1988, so that Panhandle would not be penalized for Natural's failure to make the request in a timely manner for the abandonment of service.

Comment date: April 4, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[CP88-262-000]

Take notice that on February 29, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-262-000 a request, pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Amagas Resources, Inc. (Amagas), under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for Amagas from receipt points located offshore Louisiana, offshore Texas, and in the States of Texas, Ohio, Louisiana, Mississippi, Alabama, New Jersey, and Massachusetts. Applicant states that the gas would be redelivered to points located at interconnecitons with various interstate pipelines and local distribution companies as specified in Exhibits A, A-1, B and C of Applicant's gas transportation agreement of December 10, 1987, with Amagas. It is asserted that the ultimate consumers of the gas are various end-users located on the pipelines or local distribution companies receiving gas from Tennessee.

The Applicant further states that the peak day, average daily and annual quantities would be 450,000 dekatherms, 5,185 dekatherms, and 1,892,525 dekatherms, respectively. Applicant indicates that service under § 284.223(a) of the Commission's Regulations commenced on February 5, 1988, as reported in Docket No. ST88-2217, filed on February 16, 1988.

Comment date: April 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-255-000]

Take notice that on February 24, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1369, Houston, Texas 77251, filed in Docket No. CP88-255-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain sales services to South Carolina Pipeline Corporation (South Carolina), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it entered into a service agreement with South Carolina's predecessor, Carolina Pipeline Company, (collectively referred to as Carolina) dated October 26, 1966, providing for the sale for resale of natural gas under Transco's Rate Schedule ACQ-2. It is indicated that the Commission authorized such service to Carolina by various orders issued in Docket Nos. CP65-70-000 and CP66-233-000.

Transco further states that on July 25, 1983, Carolina provided it with written notice of termination of the service agreement to be effective December 31, 1984, pursuant to the provisions of Article II of the service agreement. Transco explains that it has not delivered gas to Carolina and that Carolina has not requested deliveries under the subject ACQ service agreement since December 31, 1984. By the subject application, Transco requests authorization effective retroactive to December 31, 1984, to abandon sales service to Carolina under Transco's Rate Schedule ACQ-2.

Transco explains that it has been advised by Carolina that Carolina no longer requires the ACQ service. Transco notes that the load which Carolina formerly served with ACQ gas has been lost to alternate fuels, probably on a permanent basis.

Comment date: April 4, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

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[1] Submitted as Exhibit U to the application.

BEST COPY AVAILABLE

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorizaton pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5831 Filed 3-17-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL88-17-000]

Blue Earth and Mountain Lake, MN; Filing

March 14, 1988.

Take notice that on March 8, 1988, Blue Earth and Mountain Lake, Minnesota tendered for filing pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, a Complaint against Northern States Power Company. Blue Earth and Mountain Lake, Minnesota state that the Northern States Power Company's (Minnesota) practice of charging Blue Earth and Mountain Lake a full postage stamp wheeling rate, while providing identical wheeling service over the same transmission line at no charge to five other Minnesota cities is unjust, unreasonable, unduly discriminatory and unduly preferential, and unlawfully violates Section 206 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection. Answers to the complaint shall also be due on or before April 13, 1988.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5880 Filed 3-17-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI88-318-000 et al.]

Consolidated Oil & Gas, Inc.; Applications for Permanent Abandonment With Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate

March 14, 1988.

Take notice that on February 16, 1988, as supplemented on March 4, 1988, Consolidated Oil & Gas, Inc. (Applicant) filed applications pursuant to Section 7 of the Natural Gas Act for authorization in Docket Nos. CI88-318-000 and CI88-336-000 through CI88-343-000 to permanently abandon service to El Paso Natural Gas Company and requesting limited-term pregranted abandonment for sales for resale in interstate commerce of the released gas under Applicant's small producer certificate in Docket No. CS72-694. Applicant states that such limited-term pregranted abandonment is requested for as long as permitted by the Commission. Applicant further states it will accept a three-year limited-term pregranted abandonment. Applicant requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1]

The sales to be abandoned are currently authorized to be made pursuant to nine contracts covering sales to El Paso in Blanco Mesaverde and Basin Dakota Fields in San Juan County, New Mexico. Applicant states that deliverability is approximately 900 Mcf/d and that the gas is NGPA section 104 gas.

Since Applicant has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5884 Filed 3-17-88; 8:45 am]
BILLING CODE 6717-01-M

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in Section 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

[Docket Nos. ST88-1529-000, et al.]

Delhi Gas Pipeline Corp., et al.; Self-Implementing Transactions

March 14, 1988.

Take notice that the following transactions have been reported to the Commissioner as being implemented pursuant to Part 284 of the Commission's Regulations, and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,
Acting Secretary.

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST88-1529—Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	01-04-88	C		
ST88-1530—Delhi Gas Pipeline Corp	Pacific Gas and Electric Co	01-04-88	C		
ST88-1531—Delhi Gas Pipeline Corp	Northern Natural Gas Co	01-04-88	C		
ST88-1532—Gulf Energy Pipeline Co	Consumers Power Co	01-04-88	C		
ST88-1533—Ozona Residue Systems Co	Tennessee Gas Pipeline Co	01-04-88	C		
ST88-1534—Panhandle Eastern Pipe Line Co	Consumers Power Co	01-04-88	B		
ST88-1535—Texas Eastern Transmission Corp	Endevco Pipeline Co	01-04-88	B		
ST88-1536—Texas Eastern Transmission Corp	Philadelphia Electric Co	01-04-88	B		
ST88-1537—Natural Gas Pipeline Co. of America	Peoples Natural Gas Co	01-05-88	B		
ST88-1538—Natural Gas Pipeline Co. of America	Peoples Natural Gas Co	01-05-88	B		
ST88-1539—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-05-88	B		
ST88-1540—Natural Gas Pipeline Co. of America	Washington Gas Light Co	01-05-88	B		
ST88-1541—Natural Gas Pipeline Co. of America	City of Richmond	01-05-88	B		
ST88-1542—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-05-88	B		
ST88-1543—Red River Pipeline	Pacific Gas and Electric Co	01-05-88	C	6-03-88	0.36
ST88-1544—Tennessee Gas Pipeline Co	Cincinnati Gas & Elect. Co., et al	01-05-88	B		
ST88-1545—Tennessee Gas Pipeline Co	Elizabethtown Gas Co., et al	01-05-88	B		
ST88-1546—Tennessee Gas Pipeline Co	Nashville Gas Co., et al	01-05-88	B		
ST88-1547—Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	01-05-88	G-S		
ST88-1548—Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	01-05-88	B		
ST88-1549—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-06-88	B		
ST88-1550—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-06-88	B		
ST88-1551—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-06-88	B		
ST88-1552—Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	01-06-88	B		
ST88-1553—Northern Border Pipeline Co	PSI, Inc	01-06-88	G-S		
ST88-1554—Northern Border Pipeline Co	Enron Gas Marketing	01-06-88	G-S		
ST88-1555—ANR Pipeline Co	Memphis Light, Gas and Water Division	01-06-88	B		
ST88-1556—El Paso Natural Gas Co	Southern California Gas Co	01-06-88	B		
ST88-1557—Trunkline Gas Co	Michigan Consolidated Gas Co	01-06-88	B		
ST88-1558—ANR Pipeline Co	Consumers Power Co	01-07-88	B		
ST88-1559—ANR Pipeline Co	Union Natural Gas Pipeline Co	01-07-88	B		
ST88-1560—ANR Pipeline Co	Brooklyn Union Gas Co	01-07-88	B		
ST88-1561—ANR Pipeline Co	Ohio Gas Co	01-07-88	B		
ST88-1562—Tennessee Gas Pipeline Co	Boston Gas Co	01-07-88	B		
ST88-1563—Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	01-07-88	B		
ST88-1564—Tennessee Gas Pipeline Co	UCG Energy Corp	01-07-88	B		
ST88-1565—Tennessee Gas Pipeline Co	Entex, Inc	01-07-88	B		
ST88-1566—Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	01-07-88	B		
ST88-1567—Tennessee Gas Pipeline Co	National Fuel Gas Distribution Corp	01-07-88	B		
ST88-1568—Tennessee Gas Pipeline Co	Natural Gas Pipeline Co. of America	01-07-88	G		
ST88-1569—Tennessee Gas Pipeline Co	TEJAS Gas Corp	01-07-88	B		
ST88-1570—Tennessee Gas Pipeline Co	Nashville Gas Co	01-07-88	B		
ST88-1571—Tennessee Gas Pipeline Co	Humphreys County Utility District	01-07-88	B		
ST88-1572—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1573—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1574—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1575—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1576—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1577—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1578—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1579—Trunkline Gas Co	Northern Indiana Public Service Co	01-07-88	B		
ST88-1580—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1581—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1582—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1583—Trunkline Gas Co	Consumers Power Co	01-07-88	B		
ST88-1584—Trunkline Gas Co	Consumers Powers Co	01-07-88	B		
ST88-1585—El Paso Natural Gas Co	City of Willcox	01-11-88	B		

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.¹ and transporter/seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (¢/MMBtu)
ST88-1586—Monterey Pipeline Co	Texas Eastern Transmission Corp	01-11-88	C	06-09-88	02.00
ST88-1587—Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	01-11-88	B		
ST88-1588—Natural Gas Pipeline Co. of America	Louisiana Gas Marketing Co	01-11-88	B		
ST88-1589—Natural Gas Pipeline Co. of America	Washington Gas Light Co	01-11-88	B		
ST88-1590—Natural Gas Pipeline Co. of America	Northern Illinois Gas Co., et al	01-11-88	B		
ST88-1591—Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	01-11-88	B		
ST88-1592—Natural Gas Pipeline Co. of America	Central Illinois Light Co., et al	01-11-88	B		
ST88-1593—Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	01-11-88	B		
ST88-1594—Natural Gas Pipeline Co. of America	Illinois Power Co	01-11-88	B		
ST88-1595—Natural Gas Pipeline Co. of America	Columbia Gas of Ohio, Inc	01-11-88	B		
ST88-1596—Natural Gas Pipeline Co. of America	Washington Gas Light Co	01-11-88	B		
ST88-1597—Natural Gas Pipeline Co. of America	Taft Pipeline Co	01-11-88	B		
ST88-1598—Natural Gas Pipeline Co. of America	City of Richmond	01-11-88	B		
ST88-1599—Natural Gas Pipeline Co. of America	City of Richmond	01-11-88	B		
ST88-1600—Natural Gas Pipeline Co. of America	People Gas Light & Coke Co., et al	01-11-88	B		
ST88-1601—Southern Natural Gas Co	City of Grantville	01-11-88	B		
ST88-1602—Southern Natural Gas Co	City of Calera	01-11-88	B		
ST88-1603—Southern Natural Gas Co	City of Brookside	01-11-88	B		
ST88-1604—Southern Natural Gas Co	City of Adairsville	01-11-88	B		
ST88-1605—Southern Natural Gas Co	City of Summerville	01-11-88	B		
ST88-1606—Southern Natural Gas Co	City of Waynesboro	01-11-88	B		
ST88-1607—Southern Natural Gas Co	City of Lafayette	01-11-88	B		
ST88-1608—Southern Natural Gas Co	City of Hogansville	01-11-88	B		
ST88-1609—Southern Natural Gas Co	City of Thomson	01-11-88	B		
ST88-1610—Southern Natural Gas Co	City of Warner Robins	01-11-88	B		
ST88-1611—Southern Natural Gas Co	City of Cochran	01-11-88	B		
ST88-1612—Southern Natural Gas Co	City of Perry	01-11-88	B		
ST88-1613—Southern Natural Gas Co	City of Statesboro	01-11-88	B		
ST88-1614—Southern Natural Gas Co	City of Fort Valley	01-11-88	B		
ST88-1615—Southern Natural Gas Co	City of West Point	01-11-88	B		
ST88-1616—Southern Natural Gas Co	City of Millen	01-11-88	B		
ST88-1617—Southern Natural Gas Co	City of Claxton	01-11-88	B		
ST88-1618—Southern Natural Gas Co	City of Louisville	01-11-88	B		
ST88-1619—Southern Natural Gas Co	City of Monticello	01-11-88	B		
ST88-1620—Southern Natural Gas Co	City of Sparta	01-11-88	B		
ST88-1621—Texas Eastern Transmission Corp	Victoria Gas Corp	01-11-88	B		
ST88-1622—Texas Eastern Transmission Corp	City of New Harmony	01-11-88	B		
ST88-1623—Texas Eastern Transmission Corp	Pontchartrain Natural Gas System	01-11-88	B		
ST88-1624—Texas Eastern Transmission Corp	Mississippi Gas Corp	01-11-88	B		
ST88-1625—Texas Eastern Transmission Corp	Western Kentucky Gas Co	01-11-88	B		
ST88-1626—Texas Eastern Transmission Corp	Excel Intrastate Pipeline Co	01-11-88	B		
ST88-1627—Texas Eastern Transmission Corp	American Distribution Co., Inc	01-11-88	B		
ST88-1628—Texas Eastern Transmission Corp	Commonwealth Gas Services	01-11-88	B		
ST88-1629—Texas Eastern Transmission Corp	Endevco Pipeline Co	01-11-88	B		
ST88-1630—Texas Gas Transmission Corp	Western KY Gas Utility Co	01-11-88	B		
ST88-1631—Texas Gas Transmission Corp	Excel Intrastate Pipeline Co	01-11-88	B		
ST88-1632—Texas Gas Transmission Corp	City of Hamilton	01-11-88	B		
ST88-1633—Trunkline Gas Co	Consumers Power Co	01-11-88	B		
ST88-1634—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1635—Consolidated Gas Transmission Corp	New York State Electric and Gas Co	01-11-88	B		
ST88-1636—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1637—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1638—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1639—Consolidated Gas Transmission Corp	New York State Electric and Gas Co	01-11-88	B		
ST88-1640—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1641—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1642—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1643—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1644—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1645—Consolidated Gas Transmission Corp	Connecticut Natural Gas Corp	01-11-88	B		
ST88-1646—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1647—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1648—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1649—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1650—Consolidated Gas Transmission Corp	East Ohio Gas Co	01-11-88	B		
ST88-1651—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1652—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1653—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1654—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1655—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1656—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1657—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1658—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1659—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1660—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1661—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1662—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1663—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1664—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1665—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1666—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1667—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1668—Consolidated Gas Transmission Corp	National Fuel Gas Distribution Corp	01-11-88	B		
ST88-1669—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1670—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1671—Consolidated Gas Transmission Corp	River Gas Co	01-11-88	B		
ST88-1672—Consolidated Gas Transmission Corp	Peoples Natural Gas Co	01-11-88	B		
ST88-1673—Consolidated Gas Transmission Corp	Peoples Natural Gas Co	01-11-88	B		
ST88-1674—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1675—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1676—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1677—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1678—Consolidated Gas Transmission Corp	East Ohio Gas Co	01-11-88	B		
ST88-1679—Consolidated Gas Transmission Corp	Hope Gas, Inc	01-11-88	B		
ST88-1680—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1681—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1682—Consolidated Gas Transmission Corp	Niagara Mohawk Power	01-11-88	B		
ST88-1683—Consolidated Gas Transmission Corp	National Fuel Gas Distribution Corp	01-11-88	B		
ST88-1684—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1685—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1686—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1687—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1688—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1689—Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	01-11-88	B		
ST88-1690—Consolidated Gas Transmission Corp	New York State Electric and Gas Co	01-11-88	B		
ST88-1691—Consolidated Gas Transmission Corp	East Ohio Gas Co	01-11-88	B		
ST88-1692—Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	01-11-88	B		
ST88-1693—Northern Natural Gas Co	Texas Gas Transmission Corp	01-11-88	G		
ST88-1694—Northern Natural Gas Co	Channel Industries Gas Co	01-11-88	B		
ST88-1695—Northern Natural Gas Co	Pacific Gas and Electric Co	01-11-88	B		
ST88-1696—Seagull Natural Gas Co	Transcontinental Gas Pipe Line Corp	01-11-88	C		
ST88-1697—Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	01-11-88	B		
ST88-1698—Tennessee Gas Pipeline Co	Indiana Gas Co., et al	01-11-88	B		
ST88-1699—Tennessee Gas Pipeline Co	Lexington Gas System	01-11-88	B		
ST88-1700—Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp., et al	01-11-88	B		
ST88-1701—Trunkline Gas Co	Columbia Gas of KY, Inc., et al	01-11-88	B		
ST88-1702—Trunkline Gas Co	Consumers Power Co	01-11-88	B		
ST88-1703—Trunkline Gas Co	Consumers Power Co	01-11-88	B		
ST88-1704—Trunkline Gas Co	Baltimore Gas & Elect. Co., et al	01-11-88	B		
ST88-1705—Trunkline Gas Co	Consumers Power Co	01-11-88	B		
ST88-1706—Trunkline Gas Co	Michigan Consolidated Gas Co., et al	01-11-88	B		
ST88-1707—ANR Pipeline Co	Wisconsin Natural Gas Co	01-12-88	B		
ST88-1708—ANR Pipeline Co	Columbia Gas of Ohio, Inc	01-12-88	B		
ST88-1709—ANR Pipeline Co	Wisconsin Public Service Co	01-12-88	B		
ST88-1710—ANR Pipeline Co	Ohio Gas Co	01-12-88	B		
ST88-1711—ANR Pipeline Co	Michigan Consolidated Gas Co	01-12-88	B		
ST88-1712—ANR Pipeline Co	Bishop Pipeline Corp	01-12-88	B		
ST88-1713—Northwest Pipeline Corp	Mobil Oil Corp	01-12-88	G-S		
ST88-1714—Panhandle Eastern Pipe Line Co	City of Roseville	01-12-88	B		
ST88-1715—Panhandle Eastern Pipe Line Co	KPL Gas Service Co	01-12-88	B		
ST88-1716—Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	01-12-88	B		
ST88-1717—Panhandle Eastern Pipe Line Co	Wisconsin Southern Gas Co., Inc	01-12-88	B		
ST88-1718—Panhandle Eastern Pipe Line Co	Central Illinois Light Co	01-12-88	B		
ST88-1719—Trunkline Gas Co	Victoria Gas Corp	01-12-88	B		
ST88-1720—Natural Gas Pipeline Co. of America	North Shore Gas Co	01-13-88	B		
ST88-1721—Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	01-13-88	B		
ST88-1722—Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	01-13-88	B		
ST88-1723—Natural Gas Pipeline Co. of America	United Texas Transmission Co	01-13-88	B		
ST88-1724—El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	01-13-88	B		
ST88-1725—Enserch Gas Transmission Co	Transcontinental Gas Pipe Line Corp	01-14-88	C		
ST88-1726—Palo Duro Pipeline Co., Inc	Northern Natural Gas Co	01-13-88	C		
ST88-1727—Palo Duro Pipeline Co., Inc	Northern Natural Gas Co	01-13-88	C		
ST88-1728—Palo Duro Pipeline Co., Inc	Northern Natural Gas Co	01-13-88	C		
ST88-1729—Texas Gas Transmission Corp	Mississippi Fuel Co	01-14-88	B		
ST88-1730—Texas Gas Transmission Corp	Consumers Power Co	01-14-88	B		
ST88-1731—Texas Eastern Transmission Corp	Excel Intrastate Pipeline Co	01-15-88	B		
ST88-1732—Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	01-15-88	B		
ST88-1733—Texas Eastern Transmission Corp	Allied Gas Co	01-15-88	B		
ST88-1734—Texas Eastern Transmission Corp	Western Kentucky Gas Co	01-15-88	B		
ST88-1735—Tennessee Gas Pipeline Co	Bay State Gas Co	01-15-88	B		
ST88-1736—Tennessee Gas Pipeline Co	East Ohio Gas Co	01-15-88	B		
ST88-1737—Tennessee Gas Pipeline Co	North Alabama Gas District	01-15-88	B		
ST88-1738—Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	01-15-88	B		
ST88-1739—Natural Gas Pipeline Co. of America	Illinois Power Co	01-15-88	B		
ST88-1740—Natural Gas Pipeline Co. of America	Winnie Pipeline Co	01-15-88	B		
ST88-1741—Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	01-15-88	B		
ST88-1742—Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	01-15-88	B		
ST88-1743—Northern Border Pipeline Co	Natural Gas Clearinghouse, Inc	01-15-88	G-S		
ST88-1744—Panhandle Eastern Pipe Line Co	Western Gas Supply Co	01-15-88	B		
ST88-1745—Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	01-15-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-1746—Panhandle Eastern Pipe Line Co	Village of Roseville	01-15-88	B		
ST88-1747—Stauffer Wyoming Pipeline Co	Colorado Interstate Gas Co	01-15-88	C	06-12-88	13.00
ST88-1748—Colorado Interstate Gas Co	Greeley Gas Co	01-14-88	B		
ST88-1749—Panhandle Eastern Pipe Line Co	Duluth Water & Gas Co	01-20-88	B		
ST88-1750—Valero Transmission, L.P	Trunkline Gas Co	01-19-88	C		
ST88-1751—Valero Transmission, L.P	Transwestern Pipeline Co	01-19-88	C		
ST88-1752—Valero Transmission, L.P	El Paso Natural Gas Co	01-19-88	C		
ST88-1753—Valero Transmission, L.P	Transwestern Pipeline Co	01-19-88	C		
ST88-1754—Delhi Gas Pipeline Corp	Panhandle Eastern Pipe Line Co	01-19-88	C		
ST88-1755—Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	01-19-88	C		
ST88-1756—Algonquin Gas Transmission Co	Fall River Gas Co	01-19-88	B		
ST88-1757—Natural Gas Pipeline Co. of America	Spindletop Gas Distribution System	01-19-88	B		
ST88-1758—Natural Gas Pipeline Co. of America	Louisiana Resources Co	01-19-88	B		
ST88-1759—Natural Gas Pipeline Co. of America	Southern California Gas Co	01-19-88	B		
ST88-1760—Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	01-19-88	B		
ST88-1761—Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	01-19-88	B		
ST88-1762—Natural Gas Pipeline Co. of America	DOW Intrastate Gas Co	01-19-88	B		
ST88-1763—Tennessee Gas Pipeline Co	Columbia Gas of Ohio, Inc	01-19-88	B		
ST88-1764—Tennessee Gas Pipeline Co	Commonwealth Gas Co	01-19-88	B		
ST88-1765—Tennessee Gas Pipeline Co	Total Minatome Corp	01-19-88	G-S		
ST88-1766—Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co	01-19-88	G		
ST88-1767—Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	01-19-88	G		
ST88-1768—Northern Natural Gas Co	Westar Transmission Co	01-19-88	B		
ST88-1769—Mountain Fuel Resources, Inc	Public Service Co. of Colorado	01-19-88	B		
ST88-1770—SNG Intrastate Pipeline, Inc	Southern Natural Gas Co	01-19-88	C	06-17-88	35.90
ST88-1771—United Gas Pipe Line Co	Sabine-Desoto Pipeline Co., Inc	01-19-88	B		
ST88-1772—United Gas Pipe Line Co	Wisconsin Public Service Corp., Inc., et al	01-19-88	B		
ST88-1773—United Gas Pipe Line Co	Columbia Gas of Ohio, Inc., et al	01-19-88	B		
ST88-1774—United Gas Pipe Line Co	Atlanta Gas Light Co., et al	01-19-88	B		
ST88-1775—United Gas Pipe Line Co	Mobile Gas Service Corp	01-19-88	B		
ST88-1776—United Gas Pipe Line Co	Olympic Pipeline Co	01-19-88	B		
ST88-1777—United Gas Pipe Line Co	Polaris Corp	01-19-88	B		
ST88-1778—United Gas Pipe Line Co	Public Service Co. of NC, et al	01-19-88	B		
ST88-1779—United Gas Pipe Line Co	Baltimore Gas & Elect. Co., et al	01-19-88	B		
ST88-1780—El Paso Natural Gas Co	Southern California Gas Co	01-19-88	B		
ST88-1781—El Paso Natural Gas Co	Pacific Gas and Electric Co	01-19-88	B		
ST88-1782—Southern Natural Gas Co	City of Cartersville	01-19-88	B		
ST88-1783—Southern Natural Gas Co	Town of Tchula	01-19-88	B		
ST88-1784—Southern Natural Gas Co	City of Sylvania	01-19-88	B		
ST88-1785—Southern Natural Gas Co	Atlanta Gas Light Co	01-19-88	B		
ST88-1786—Southern Natural Gas Co	Town of Fayette	01-19-88	B		
ST88-1787—Southern Natural Gas Co	Town of Roxie	01-19-88	B		
ST88-1788—Southern Natural Gas Co	Atlanta Gas Light Co	01-19-88	B		
ST88-1789—Southern Natural Gas Co	Town of Ragland	01-19-88	B		
ST88-1790—Southern Natural Gas Co	Chattanooga Gas Co	01-19-88	B		
ST88-1791—Southern Natural Gas Co	South Carolina Pipeline Corp	01-19-88	B		
ST88-1792—Southern Natural Gas Co	City of Tallahassee	01-19-88	B		
ST88-1793—Southern Natural Gas Co	City of Warner Robins	01-19-88	B		
ST88-1794—Southern Natural Gas Co	South Carolina Electric and Gas Co	01-19-88	B		
ST88-1795—Southern Natural Gas Co	South Carolina Pipeline Corp	01-19-88	B		
ST88-1796—Southern Natural Gas Co	Atlanta Gas Light Co	01-19-88	B		
ST88-1797—Southern Natural Gas Co	City of Dadeville	01-19-88	B		
ST88-1798—Southern Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	01-19-88	B		
ST88-1799—Southern Natural Gas Co	City of Hawkinsville	01-19-88	B		
ST88-1800—Southern Natural Gas Co	City of Austell	01-19-88	B		
ST88-1801—Southern Natural Gas Co	City of Vicksburg	01-19-88	B		
ST88-1802—Southern Natural Gas Co	City of Oneonta	01-19-88	B		
ST88-1803—Southern Natural Gas Co	Marshall County Gas District	01-19-88	B		
ST88-1804—Southern Natural Gas Co	City of Cartersville	01-19-88	B		
ST88-1805—Southern Natural Gas Co	City of Lagrange	01-19-88	B		
ST88-1806—Louisiana Intrastate Gas Corp	Trunkline Gas Co	01-20-88	C	06-15-88	22.40
ST88-1807—Louisiana Intrastate Gas Corp	ANR Pipeline Co	01-20-88	C	06-18-88	22.40
ST88-1808—United Gas Pipe Line Co	Brooklyn Union Gas Co., et al	01-20-88	B		
ST88-1809—Equitable Gas Co	Columbia Gas of Pennsylvania, Inc	01-20-88	B		
ST88-1810—Columbia Gulf Transmission Co	Monterey Pipeline Co	01-20-88	B		
ST88-1811—Texas Gas Transmission Corp	Mississippi Valley Gas Co	01-21-88	B		
ST88-1812—Tennessee Gas Pipeline Co	Baltimore Gas and Electric Co	01-21-88	B		
ST88-1813—Arkla Energy Resources	Entex, Inc	01-21-88	B		
ST88-1814—ANR Pipeline Co	Northern Indiana Public Service Co	01-21-88	B		
ST88-1815—ANR Pipeline Co	Wisconsin Power and Light Co	01-21-88	B		
ST88-1816—Transcontinental Gas Pipe Line Corp	Eastex Gas Transmission Co	01-21-88	B		
ST88-1817—Transcontinental Gas Pipe Line Corp	Corpus Christi Industrial Pipeline Co	01-21-88	B		
ST88-1818—Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	01-21-88	B		
ST88-1819—Transcontinental Gas Pipe Line Corp	City of Lexington	01-21-88	B		
ST88-1820—Transcontinental Gas Pipe Line Corp	Mississippi Valley Gas Co., et al	01-22-88	B		
ST88-1821—Natural Gas Pipeline Co. of America	Corning Municipal Utilities	01-22-88	B		
ST88-1822—Natural Gas Pipeline Co. of America	Colony Pipeline Corp	01-22-88	B		
ST88-1823—Colorado Interstate Gas Co	Coastal States Gas Transmission Co	01-22-88	B		
ST88-1824—Tennessee Gas Pipeline Co	Berkshire Gas Co	01-22-88	B		
ST88-1825—Trunkline Gas Co	Battle Creek Gas Co	01-22-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-1826—Transcontinental Gas Pipe Line Corp	Bishop Pipeline Corp	01-22-88	B		
ST88-1827—Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	01-22-88	B		
ST88-1828—Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	01-22-88	B		
ST88-1829—Transcontinental Gas Pipe Line Corp	Public Service Electric And Gas	01-22-88	B		
ST88-1830—Transcontinental Gas Pipe Line Corp	United Cities Gas Co	01-22-88	B		
ST88-1831—Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	01-22-88	B		
ST88-1832—Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	01-22-88	B		
ST88-1833—Transcontinental Gas Pipe Line Corp	Union Gas Co	01-22-88	B		
ST88-1834—Transcontinental Gas Pipe Line Corp	Corpus Christi Industrial Pipeline Co	01-22-88	B		
ST88-1835—Transcontinental Gas Pipe Line Corp	City of Shelby	01-22-88	B		
ST88-1836—Transcontinental Gas Pipe Line Corp	City of Lexington	01-22-88	B		
ST88-1837—Transcontinental Gas Pipe Line Corp	Commission of Public Works, Greenwood	01-22-88	B		
ST88-1838—Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority	01-22-88	B		
ST88-1839—Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	01-22-88	B		
ST88-1840—Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	01-22-88	B		
ST88-1841—Transcontinental Gas Pipe Line Corp	North Carolina Gas Service Co	01-22-88	B		
ST88-1842—Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	01-22-88	B		
ST88-1843—Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	01-22-88	B		
ST88-1844—Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	01-22-88	B		
ST88-1845—Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	01-22-88	B		
ST88-1846—Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	01-22-88	B		
ST88-1847—Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	01-22-88	B		
ST88-1848—Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	01-22-88	B		
ST88-1849—Transcontinental Gas Pipe Line Corp	City of Danville	01-22-88	B		
ST88-1850—Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	01-22-88	B		
ST88-1851—Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	01-22-88	B		
ST88-1852—Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	01-22-88	B		
ST88-1853—Taft Pipeline Co	Northern Natural Gas Co	01-22-88	C	06-20-88	09.60
ST88-1854—United Gas Pipe Line Co	Niagara Mohawk Power Corp, et al	01-25-88	B		
ST88-1855—Trunkline Gas Co	Central Illinois Light Co	01-25-88	B		
ST88-1856—Tennessee Gas Pipeline Co	Louisiana State Gas Corp	01-25-88	B		
ST88-1857—Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	01-25-88	B		
ST88-1858—Oasis Pipe Line Co	Northern Natural Gas Co	01-25-88	C		
ST88-1859—Oasis Pipe Line Co	El Paso Natural Gas Co	01-25-88	C		
ST88-1860—Houston Pipe Line Co	Natural Gas Pipeline Co. of America	01-25-88	C		
ST88-1861—Houston Pipe Line Co	Texas Eastern Transmission Corp	01-25-88	C		
ST88-1862—Houston Pipe Line Co	Natural Gas Pipeline Co. of America	01-25-88	C		
ST88-1863—Houston Pipe Line Co	Natural Gas Pipeline Co. of America	01-25-88	C		
ST88-1864—Houston Pipe Line Co	Florida Gas Transmission Co	01-25-88	C		
ST88-1865—Houston Pipe Line Co	Natural Gas Pipeline Co. of America	01-25-88	C		
ST88-1866—Houston Pipe Line Co	Neches Gas Distribution Co	01-25-88	C		
ST88-1867—Houston Pipe Line Co	Northern Natural Gas Co	01-25-88	C		
ST88-1868—Houston Pipe Line Co	Northern Natural Gas Co	01-25-88	C		
ST88-1869—Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	01-26-88	B		
ST88-1870—Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	01-26-88	B		
ST88-1871—Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	01-26-88	B		
ST88-1872—Cabot Pipeline Corp	El Paso Natural Gas Co	01-26-88	C	06-24-88	54.00
ST88-1873—Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	01-26-88	B		
ST88-1874—Mississippi River Transmission Corp	Laclede Gas Co	01-25-88	G-S		
ST88-1875—Trunkline Gas Co	Consumers Power Co	01-26-88	B		
ST88-1876—Tennessee Gas Pipeline Co	Sea Robin Pipeline Co	01-27-88	G		
ST88-1877—Natural Gas Pipeline Co. of America	Midwest Gas Co	01-27-88	B		
ST88-1878—Natural Gas Pipeline Co. of America	ONG Transmission Co	01-27-88	B		
ST88-1879—Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	01-27-88	B		
ST88-1880—Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	01-27-88	B		
ST88-1881—Natural Gas Pipeline Co. of America	Illinois Power Co	01-27-88	B		
ST88-1882—Natural Gas Pipeline Co. of America	Apache Transmission Co	01-27-88	B		
ST88-1883—Natural Gas Pipeline Co. of America	City of Lenox	01-27-88	B		
ST88-1884—Natural Gas Pipeline Co. of America	North Shore Gas Co	01-27-88	B		
ST88-1885—Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	01-27-88	B		
ST88-1886—Tennessee Gas Pipeline Co	Consolidated Gas Transmission Corp	01-27-88	G		
ST88-1887—Trunkline Gas Co	Consumers Power Co	01-28-88	B		
ST88-1888—Trunkline Gas Co	Illinois Power Co	01-28-88	B		
ST88-1889—Trunkline Gas Co	Consumers Power Co	01-28-88	B		
ST88-1890—ONG Transmission Co	Phillips Gas Pipeline Co	01-28-88	C	06-26-88	10.00
ST88-1891—Trunkline Gas Co	Consumers Power Co	01-28-88	B		
ST88-1892—Texas Gas Transmission Corp	Alabama Gas Corp., et al	01-28-88	B		
ST88-1893—Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	01-28-88	B		
ST88-1894—Texas Gas Transmission Corp	Louisville Gas & Electric Co	01-28-88	B		
ST88-1895—Texas Gas Transmission Corp	Louisville Gas & Electric Co	01-28-88	B		
ST88-1896—ANR Pipeline Co	Wisconsin Public Service Co	01-28-88	B		
ST88-1897—ANR Pipeline Co	Wisconsin Gas Co	01-28-88	B		
ST88-1898—Wintershall Pipeline Corp	Gulf South Pipeline Co	01-28-88	C	06-26-88	04.00
ST88-1899—Trunkline Gas Co	Consumers Power Co	01-29-88	B		
ST88-1900—Monterey Pipeline Co	ANR Pipeline Co	01-29-88	C	06-27-88	09.00
ST88-1901—Monterey Pipeline Co	Southern Natural Gas Co	01-29-88	C	06-27-88	10.00
ST88-1902—Natural Gas Pipeline Co. of America	Southern California Gas Co	01-29-88	B		
ST88-1903—Natural Gas Pipeline Co. of America	Southern California Gas Co	01-29-88	B		
ST88-1904—Natural Gas Pipeline Co. of America	Orange and Rockland Utilities, Inc	01-29-88	B		
ST88-1905—Natural Gas Pipeline Co. of America	Corning Natural Gas Corp	01-29-88	B		

Docket No.[1] and transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST88-1906—Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	01-29-88	B		
ST88-1907—Natural Gas Pipeline Co. of America	Columbia Gas Distribution Companies	01-29-88	B		
ST88-1908—SNG Intrastate Pipeline, Inc	Southern Natural Gas Co	01-29-88	C	06-27-88	25.00
ST88-1909—SNG Intrastate Pipeline, Inc	Southern Natural Gas Co	01-29-88	C	06-27-88	25.00
ST88-1910—Transcontinental Gas Pipe Line Corp	Southern Indiana Gas Co	01-29-88	B		
ST88-1911—Transok, Inc	Phillips Gas Pipeline Co	01-29-88	C	06-27-88	37.13
ST88-1912—Transok, Inc	Lone Star Gas Co	01-29-88	C	06-27-88	37.13
ST88-1913—Transok, Inc	Phillips Gas Pipeline Co	01-29-88	C	06-27-88	37.13
ST88-1914—Columbia Gulf Transmission Co	LGS Intrastate, Inc	01-25-88	B		
ST88-1915—Northern Natural Gas Co	Iowa Public Service Co	01-29-88	B		
ST88-1916—Northern Natural Gas Co	TPC Pipeline Co	01-29-88	B		
ST88-1917—Northern Natural Gas Co	Shell Gas Trading	01-29-88	G-S		
ST88-1918—ANR Pipeline Co	Consumers Power Co	01-29-88	B		
ST88-1919—Louisiana Intrastate Gas Corp	Trunkline Gas Co	01-29-88	C	06-27-88	10.00
ST88-1920—Northern Border Pipeline Co	Dyco Gas Marketing	01-29-88	G-S		
ST88-1921—Northern Border Pipeline Co	Western Gas Marketing USA Ltd	01-29-88	G-S		
ST88-1922—Northern Border Pipeline Co	Center Explorers, Inc	01-29-88	G-S		
ST88-1923—Northern Border Pipeline Co	Hendson Gas Systems, Inc	01-29-88	G-S		
ST88-1924—Northern Border Pipeline Co	Suncor, Inc	01-29-88	G-S		
ST88-1925—Northern Border Pipeline Co	San Diego Gas & Electric Co	01-29-88	B		
ST88-1926—Transwestern Pipeline Co	Southern California Gas Co	01-29-88	B		
Below is a petition for rate approval noticed out of sequence. It was filed subsequent to its initial report and is noticed at this time to give interested parties the appropriate 150-day comment period.					
ST88-0727—Cabot Pipeline Corp	El Paso Natural Gas Co	01-20-88	C	06-18-88	32.00

[1] Notice of transactions do not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-5932 Filed 3-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-301-001, CI85-522-000, and CI87-836-000]

Marathon Oil Co.; Petition for Clarification and Alternative Request for Authorization

March 14, 1988.

Take notice that on January 22, 1988, Marathon Oil Company (Marathon) filed a petition with the Commission requesting clarification that gas produced from the South Marsh Island Block 141 Field, Offshore Louisiana, for which Marathon received and accepted Commission authority to make sales to Texas Eastern Transmission Corporation (Texas Eastern), in Docket No. CI85-522-000, is eligible to be sold under Marathon's limited-term abandonment and certificate (LTA) authority granted in Docket No. CI87-301-000, *Odeco Oil & Gas Co., et al.*, 38 FERC ¶ 61,343 (1987). Marathon states that there were no deliveries to Texas Eastern and thus abandonment may not have been required. In the alternative, Marathon requests limited-term, blanket authority under its LTA to make sales of such gas with pregranted abandonment, effective with the release of the gas by the purchaser, for a three-year term.

Any person desiring to be heard or to make any protest concerning Marathon's request should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR §§ 385.211 or 385.214). All such filings should be made not later than 30 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5935 Filed 3-17-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-751-001 et al.]

Pennzoil Gas Marketing Co. et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregrated Abandonment[1]

March 14, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 28, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, § .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Requested term of extension
CI87-751-001, 3-4-88	Pennzoil Gas Marketing Company[3] c/o Pennzoil Company, P.O. Box 2967, Houston, Texas 77002-2967	3 years.
CI88-1-001, 3-7-88	CSX Oil & Gas Corporation, P.O. Box 4326, Houston, Texas 77210-4326	1 year.
CI88-30-001, 3-4-88	Brandywine Industrial Gas Inc., P.O. Box 2197, Houston, Texas 77252	3 years.

[3] Applicant also requests authorization to sell contractually uncommitted NGA gas.

[FR Doc. 88-5936 Filed 3-17-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3350-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 29, 1988 through March 4, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-K65113-00, Rating E02, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV. SUMMARY: EPA expressed environmental objections because of potential impacts to water quality and protected beneficial uses from vegetation management activities. The DEIS did not adequately discuss how the vegetation management program relates to individual BLM resource management plans or what NEPA environmental documentation BLM will prepare for individual site specific vegetation management projects.

ERP No. D-COE-L90019-WA, Rating LO, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and Sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, King, Clallam, Pierce, and Snohomish Counties, WA. SUMMARY: EPA believes the program proposed will not result in significant degradation of the aquatic environment. EPA commends the participating agencies' commitment and efforts to reach this consensus management program.

ERP No. D-FHW-D40 231-MD, Rating EC2, US 50/Salisbury Bypass Construction, U.S. 50 east of Rockawalkin Road to the U.S. 50 and U.S. 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD. SUMMARY: EPA questions the rationale for eliminating Alternate 5 from consideration. There is also great concern regarding potential impacts to groundwater, especially the Salisbury Paleochannel. EPA recommends that more information regarding geology, recharge areas and wells be included in the FEIS. In addition, any secondary impacts resulting from the project should be discussed.

ERP No. D-FHW-E40712-SC, Rating EC2, Cross Island Expressway Construction, US 278 to Palmetto Bay Road, Hilton Head Island, Funding and Section 10 and 404 Permits, Beaufort County, SC. SUMMARY: EPA's review concluded that a significant amount of wetland would be impacted and that a detailed wetland mitigation plan is needed. Provisions are needed to minimize impacts to shellfish resources from roadway runoff at the Broad and Jarvis Creek crossings. Commitments for more impact abatements should be included in the FEIS.

ERP No. D-FHW-E40295-IN, Rating EC2, Harding Street Improvement, I-465 to Washington Street, Funding and 404 Permit, Marion County, IN. SUMMARY: EPA's review concluded that additional air quality modeling should be undertaken at busy intersections. If such modeling indicates that significant adverse impacts result, then a commitment should be made to incorporate mitigation into the design of the project. Sediment sampling should be undertaken in the vicinity of the crossing over the White River. If possible contaminant sources exist in the watershed above the proposed crossing over Lick Creek, then sediment from this water body should also be sampled.

EPR No. D-FHW-G40119-TX, Rating LO, US 65 Bypass Construction, near FM-1434 to near Spur 102, Cleburne, Funding, Johnson County, TX. SUMMARY: EPA expresses no objections to the proposed alternative as described in the Draft EIS.

Final EISs

ERP No. FS-FHW-B40037-RI, RI-138 Improvement, Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, Funding, Newport County, RI. SUMMARY: EPA objects to the proposed project because of significant adverse impacts to high quality wetland and wildlife habitat, and the availability of less damaging alternatives. In addition, EPA believes that the project would violate the antidegradation provision of the water quality standards regulations, and would provide insufficient mitigation for unavoidable wetland impacts.

ERP No. F-FHW-D40220-MD, Warren Road Extension, MD-45/York Road to I-83/Harrsiburg Expressway, Funding and 404 Permit, Baltimore County, MD. SUMMARY: The FEIS statisfactorily address issues raised in response to the DEIS.

ERP No. F-FHW-E40697-KY, Georgetown Bypass Construction, US 460 West/Frankfort Road to US 460/62 East/Paris-Cynthiana Roads Intersection, Funding and 404 Permit, Scott County, KY. SUMMARY: EPA stated that its primary concern was the potential for contamination of the current Georgetown, KY area drinking water supply and the need to protect North Elkhorn Creek and the various sinkholes from highway runoff and spills. Noise impact abatement should include active participation for affected residents after an appropriate information campaign by the Kentucky Transportation Cabinet.

ERP No. F–FHW–E40707–MS, MS-301 Reconstruction, MS–304 Tennessee State Line, Funding, DeSoto County, MS. SUMMARY: EPA believes that noise impact abatement measures have not been adequately addressed. Potential wetland losses, although small, should be offset.

ERP No. F–IBR–K390027–NV, Newlands Project, Operating Criteria and Procedues, Adoption, Implementation and Possible 404 Permit, Carson River Basin, Tuckee and Carson Rivers Water Division, Churchill and Storey Counties, NV. SUMMARY: EPA expressed grave concerns about the probable unmitigated loss of 6,000 or more acres of Lahontan Valley wetlands. EPA strongly urged the U.S. Bureau of Reclamation (USBR) to provide assurances that it will work now and in the future to mitigate this unprecedented wetlands loss. EPA stated that the project as proposed appears to violate Executive Order 11990 (Protection of Wetlands) and requested that the USBR prepare a supplemental EIS to address these grave concerns.

Dated: March 15, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-6004 Filed 3–17–88; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–3350–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed March 7, 1988 Through March 11, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880072, DSuppl, FHW, CA, I–5/Santa Ana Freeway Widening and Interchanges Reconstruction, CA–22/57 Interchange to CA–55, Additional Transitway Construction Alternative, CA–55 to CA–22, Funding and 404 Permit, Orange County, CA, Due: May 10, 1988, Contact: C Glenn Clinton (916) 551–1310.

EIS No. 880073, Draft, FHW, MN, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I–35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN, Due: May 31, 1988, Contact: Stan Graczyk (612) 290–3237.

EIS No. 880074, DSuppl, COE, NC, Wilmington Harbor, Northeast Cape Fear River Navigation Improvements, Fourth East Jetty Channel to near Hilton Railroad Bridge, Project Changes and Additional Information, Implementation, New Hanover and Brunswick Counties, NC, Due: May 2, 1988, Contact: William F. Adams (919) 343–4748.

EIS No. 880075, Draft, BLM, CA, Arcata Planning Area, Land and Resource Management Plan, Implementation, Humboldt, Mendocino, Trinity and Sonoma Counties, CA, Due: May 2, 1988, Contact: John T Lloyd (707) 822–7648.

EIS No. 880076, Draft, FHW, AK, North Douglas Highway Extension, Outer Point to Point Hilda, Funding, Section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK, Due: May 2, 1988, Contact: Thomas Neunaber (907) 586–7428.

EIS No. 880077, Draft, AFS, CA, Sherwin Bowl Ski Area Development, Alpine Skiing, Special Use Permit, Inyo National Forest, Mammoth Ranger District, Mono County, CA, Due: May 2, 1988, Contact: Bob Wood (619) 934–2505.

EIS No. 880078, Final, FHW, TN, Nonconnah Parkway Construction, I–240 to TN–57, Funding, Section 10 and 404 Permit, Shelby County, TN, Due: April 18, 1988, Contact: Dennis C. Cook (615) 736–5394.

EIS No. 880079, Draft, COE, NV, Galena Resort Construction and Operation, Section 404 Permit and Special Use Permit, Toiabe National Forest, Washoe County, NV, Due: May 2, 1988, Contact: Jim Gibson (916) 551–2261.

EIS No. 880080, Draft, USA, MN, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN, Due: May 2, 1988, Contact: John F. Ebert (612) 632–6631.

EIS No. 880081, Draft, UAF, NC, Seymour Johnson AFB, F–4 to F–15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC, Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV, Due: May 2, 1988, Contact: Alton Chavis (804) 764–7844.

Amended Notices

EIS No. 880067, Draft, AFS, Mt. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forests, Mt. Shasta Ranger District, Siskiyou County, CA, Due: May 16, 1988, Contact: Douglas P. Schleusner (916) 275–1587. Publish FR 3-11-88—Review period reestablished.

Dated: March 15, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-6003 Filed 3–17–88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–51702; FRL–3351–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of two hundred seventy-nine such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-375—March 8, 1988.

P 88-376 and 88-377—March 9, 1988.

P 88-378—March 6, 1988.

P 88-379, 88-380, 88-381, and 88-382—March 9, 1988.

P 88-383—March 12, 1988.

P 88-384—March 13, 1988.

P 88-385—March 6, 1988.

P 88-386—March 12, 1988.

P 88-387—March 13, 1988.

P 88-388—March 14, 1988.

P 88-389, 88-390, 88-391, 88-392, 88-393, 88-394, 88-395, 88-396, 88-397, and 88-398—March 13, 1988.

P 88-399—March 14, 1988.

P 88-400, 88-401, 88-402, and 88-403—March 13, 1988.

P 88-404, 88-405, 88-406, 88-407, 88-408, and 88-409—March 14, 1988.

P 88-410, 88-411, 88-412, 88-413, 88-414, 88-415, 88-416, 88-417, 88-418, 88-419, and 88-420—March 15, 1988.

P 88-421, 88-422, 88-423, 88-424, 88-425, and 88-426—March 16, 1988.

P 88-427, 88-429, 88-432, and 88-433—March 19, 1988.

P 88-434—March 18, 1988.

P 88-436, 88-437, 88-438, 88-439, and 88-440—March 19, 1988.

P 88-441, 88-442, 88-443, 88-444, 88-445, 88-446, and 88-447—March 20, 1988.

P 88-448, 88-449, 88-450, 88-451, 88-452, 88-453, 88-454, 88-455, 88-456, 88-457, and 88-458—March 21, 1988.

P 88-459—March 13, 1988.

P 88-460, 88-461, 88-462, 88-463, 88-464, and 88-465—March 21, 1988.

P 88-466—March 26, 1988.

P 88-467 and 88-468—March 22, 1988.

P 88-469—March 13, 1988.

P 88-470—March 26, 1988.

P 88-471, 88-472, 88-473, 88-474, 88-475, 88-476, 88-477, 88-478, 88-479, 88-480, 88-481, 88-482, 88-483, 88-484, and 88-485—March 27, 1988.

P 88-487, 88-489, 88-490, 88-491, 88-492, 88-493, 88-494, 88-495, 88-496, 88-497, 88-498, 88-499, 88-500, 88-501, 88-502, 88-503, 88-504, and 88-505—March 28, 1988.

P 88-506, 88-507, 88-508, 88-509, 88-510, 88-511, 88-512, 88-513, 88-514, and 88-515—April 2, 1988.

P 88-516, 88-517, 88-518, 88-519, 88-520, and 88-521—April 3, 1988.

P 88-522, 88-523, and 88-524—April 4, 1988.

P 88-525 and 88-526—April 5, 1988.

P 88-527, 88-528, 88-529, 88-530, 88-531, 88-532, 88-533, 88-534, 88-535, 88-536, 88-537, 88-538, 88-539, 88-540, and 88-541—April 9, 1988.

P 88-542—April 12, 1988.

P 88-543, 88-545, 88-546, 88-547, 88-548, 88-550, 88-551, 88-552, 88-553, 88-554, and 88-555—April 10, 1988.

P 88-556, 88-557, 88-558, and 88-559—April 11, 1988.

P 88-560, 88-561, 88-562, 88-563, and 88-564—April 12, 1988.

P 88-565—April 17, 1988.

P 88-566 and 88-568—April 13, 1988.

P 88-569, 88-570, 88-571, 88-572, 88-573, 88-574, 88-575, and 88-576—April 17, 1988.

P 88-577 and 88-578—April 13, 1988.

P 88-582—April 18, 1988.

P 88-583 and 88-584—April 17, 1988.

P 88-585, 88-586, 88-578, 88-588, 88-589, 88-590, 88-591, 88-592, 88-593, 88-594, and 88-595—April 18, 1988.

P 88-596, 88-597, 88-598, 88-599, 88-600, 88-601, 88-602, 88-603, 88-604, 88-605, 88-606, and 88-607—April 19, 1988.

P 88-608—April 17, 1988.

P 88-609 and 88-610—April 20, 1988.

P 88-611—April 23, 1988.

P 88-612, 88-613, 88-614, 88-615, 88-616, 88-617, 88-618, and 88-619—April 20, 1988.

P 88-620—April 19, 1988.

P 88-621, 88-622, 88-623, 88-624, and 88-625—April 20, 1988.

P 88-626, 88-627, 88-628, 88-629, 88-630, 88-631, 88-632, 88-633, 88-634, and 88-635—April 23, 1988.

P 88-636, 88-637, 88-638, 88-639, 88-640, 88-641, 88-642, 88-643, 88-644, 88-645, 88-646, and 88-647—April 24, 1988.

P 88-648, 88-649, 88-650, 88-651, 88-652, 88-653, 88-654, 88-655, 88-656, 88-657, 88-658, 88-659, 88-660, 88-661, 88-662, and 88-663—April 25, 1988.

P 88-666, and 88-667—April 26, 1988.

Written comments by:

P 88-375—February 7, 1988.

P 88-376 and 88-377—February 8, 1988.

P 88-378—Feburary 5, 1988.

P 88-379, 88-380, 88-381, and 88-382—February 8, 1988.

P 88-383—February 11, 1988.

P 88-384—February 12, 1988.

P 88-385—February 5, 1988.

P 88-386—February 11, 1988.

P 88-387—February 12, 1988.

P 88-388—February 13, 1988.

P 88-389, 88-390, 88-391, 88-392, 88-393, 88-394, 88-395, 88-396, 88-397, and 88-398—February 12, 1988.

P 88-399—February 13, 1988.

P 88-400, 88-401, 88-402, and 88-403—February 12, 1988.

P 88-404, 88-405, 88-406, 88-407, 88-408, and 88-409—February 13, 1988.

P 88-410, 88-411, 88-412, 88-413, 88-414, 88-415, 88-416, 88-417, 88-418, 88-419, and 88-420—February 14, 1988.

P 88-421, 88-422, 88-423, 88-424, 88-425, and 88-426—February 15, 1988.

P 88-427, 88-429, 88-432, and 88-433—February 18, 1988.

P 88-434—February 17, 1988.

P 88-436, 88-437, 88-438, 88-439, and 88-440—February 18, 1988.

P 88-441, 88-442, 88-443, 88-444, 88-445, 88-446, and 88-447—February 19, 1988.

P 88-448, 88-449, 88-450, 88-451, 88-452, 88-453, 88-454, 88-455, 88-456, 88-457 and 88-458—February 20, 1988.

P 88-459—February 12, 1988.

P 88-460, 88-461, 88-462, 88-463, 88-464, and 88-465—February 20, 1988.

P 88-466—February 25, 1988.

P 88-467 and 88-468—February 21, 1988.

P 88-469—February 12, 1988.

P 88-470—February 25, 1988.

P 88-471, 88-472, 88-473, 88-474, 88-475, 88-476, 88-477, 88-478, 88-479, 88-480, 88-481, 88-482, 88-483, 88-484, and 88-485—February 26, 1988.

P 88-487, 88-489, 88-490, 88-491, 88-492, 88-493, 88-494, 88-495, 88-496, 88-497, 88-498, 88-499, 88-500, 88-501, 88-502, 88-503, 88-504, and 88-505—February 27, 1988.

P 88-506, 88-507, 88-508, 88-509, 88-510, 88-511, 88-512, 88-513, 88-514, and 88-515—March 3, 1988.

P 88-516, 88-517, 88-518, 88-519, 88-520, and 88-521—March 4, 1988.

P 88-522, 88-523, and 88-524—March 5, 1988.

P 88-525 and 88-526—March 6, 1988.

P 88-527, 88-528, 88-529, 88-530, 88-531, 88-532, 88-533, 88-534, 88-535, 88-536, 88-537, 88-538, 88-539, 88-540, and 88-541—March 10, 1988.

P 88-542—March 13, 1988.

P 88-543, 88-545, 88-546, 88-547, 88-548, 88-550, 88-551, 88-552, 88-553, 88-554, and 88-555—March 11, 1988.

P 88-556, 88-557, 88-558, and 88-559—March 12, 1988.

P 88-560, 88-561, 88-562, 88-563, and 88-564—March 13, 1988.

P 88-565—March 18, 1988.

P 88-566 and 88-568—March 14, 1988.

P 88-569, 88-570, 88-571, 88-572, 88-573, 88-574, 88-575, and 88-576—March 16, 1988.

P 88-577 and 578—March 14, 1988.

P 88-582—March 19, 1988.

P 88-583 and 88-584—March 18, 1988.

P 88-585, 88-586, 88-587, 88-588, 88-589, 88-590, 88-591, 88-592, 88-593, 88-594, and 88-595—March 19, 1988.

P 88-596, 88-597, 88-598, 88-599, 88-600, 88-601, 88-602, 88-603, 88-604, 88-605, 88-606, and 88-607—March 20, 1988.

P 88-608—March 18, 1988.

P 88-609 and 88-610—March 21, 1988.

P 88-611—March 24, 1988.

P 88-612, 88-613, 88-614, 88-615, 88-616, 88-617, 88-618, and 88-619—March 21, 1988.

P 88-620—March 20, 1988.

P 88-621, 88-622, 88-623, 88-624, and 88-625—March 21, 1988.

P 88-626, 88-627, 88-628, 88-629, 88-630, 88-631, 88-632, 88-633, 88-634, and 88-635—March 24, 1988.

P 88-636, 88-637, 88-638, 88-639, 88-640, 88-641, 88-642, 88-643, 88-644, 88-645, 88-646, and 88-647—March 25, 1988.

P 88-648, 88-649, 88-650, 88-651, 88-652, 88-653, 88-654, 88-655, 88-656, 88-657, 88-658, 88-659, 88-660, 88-661, 88-662, and 88-663—March 26, 1988.

P 88-666 and 88-667—March 27, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS–51702)" and the specific PMN number shoudl be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, Sw., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA.The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8 a.m. and 4 p.m.,

OL
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Monday through Friday, excluding legal holidays.

P 88-375

Manufacturer. Confidential

Chemical. (G) Amine-modified polyalkylene glycol polymer.

Use/Production. (G) Photo accelerator additive. Prod. range: Confidential.

P 88-376

Importer. Dragoco Inc.

Chemical. (S) Tricyclo(5.2.1.0) decen-3(4), 8-(3′-hydroxy-butyl).

Use/Import. (S) Fragrance mixture. Import range: 1,700 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 500 mg/kg. Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative, species (guinea pig). Phototoxicity: Negative, species (guinea pig).

P 88-377

Importer. Dragoco Inc.

Chemical. (S) Tricyclo (5.2.0 2,6) decen-3(4), 8-(3′-hydroxy-2′-methyl-butyl).

Use/Import. (S) Fragrance mixture. Import range: 1,700 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >500 mg/kg. species (rat.) Acute demal toxicity: LD50 >2,000 mg/kg. species (rabbit). Eye irritation: None, species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative, species (guinea pig). Phototoxicity: Negative, species (guinea pig).

P 88-378

Importer. Hoechst Celanese Corporation.

Chemical. (G) Ethylene oxide; epichlorohydrin.

Use/Import. (S) Frangrance mixture. Prod. range: 1,700 kg/yr.

Toxicity Date. Acute oral toxicity: LD50 2,000–3,150 mg/kg, species (Wister rat). Eye irritation: Strong, species (rabbit). Skin irritation: Negligible, species (rabbits).

P 88-379

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Aromatic Ketone.

Use/Production. (G) Intermediate. Prod range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >11,000 mg/kg species (male rats). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88-380

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Polyether ketone.

Use/Production. (S) Theroplastic for parts, film coatings. Prod, range: Confidential.

P 88-381

Importer. Orient Chemical Corporation.

Chemical. (G) Metal complex of azo dye.

Use/Import. (S) Electrographic toner component. Prod. range: 12,000 kg/yr.

P 88-382

Manufacturer. Confidential.

Chemical. (G) Polymer of alophatic diols and aromatic carboxylicacids and an aromatic epoxy.

Use/Production. (G) Textile resin. Prod range: Confidential.

P 88-383

Importer. Confidential.

Chemical. (G) Aliphatic amine derivative and aliphatic amine derivative copolymer.

Use/Import. (G) Paper additive. Import range: Confidential.

P 88-384

Manufacturer. SSC Industries, Division of Chemtech.

Chemical. (S) 2–Butenedioic (E)-, di-n-octyl ester.

Use/Production. (S) Monomer. Prod. range: 10,000 kg/yr.

P 88-385

Importer. Mitsui Mining & Smelting Co. (U.S.A.).

Chemical. (G) Acryl styrene resin with cross-linking 1,3,5–triazine–2,4,6-triamine, n,n,n,n,n,n-hexakis-methoxymethyl (methyloxymethyl).

Use/Import. (G) Nondisperses use. Prod. range: 2,000 kg/yr.

P 88-386

Manufacturer. Confidential.

Chemical. (G) Hydroxy resin.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-387

Manufacturer. Confidential.

Chemical. (G) Reaction products from compound carboxylic acids, alkyl, and substituted alkyl amines.

Use/Production. (G) General surface coating. Prod. range: 250,620 kg/yr.

P 88-388

Manufacturer. Confidential.

Chemical. (G) Unsaturated silyl ester.

Use/Production. (S) Chemical intermediate. Prod. range: 24,000 kg/yr.

P 88-389

Manufacturer. Confidential.

Chemical. (G) Metal alkyl.

Use/Production. (S) Reagent. Prod. range: Confidential.

P 88-390

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Copolyester.

Use/Production. (G) General purpose molding resin. Prod range: Confidential.

P 88-391

Importer. Confidential.

Chemical. (G) Direct dye.

Use/Import. (S) Dye. Import range: Confidential.

P 88-392

Manufacturer. Confidential.

Chemical. (G) Acrylate methacrylate polymer.

Use/Production. (G) Coating. Prod. range: 128,000 kg/yr.

P 88-393

Manufacturer. Confidential.

Chemical. (G) Reaction products from complex carboxylic acids, alkyl, and substituted alkyl amines.

Use/Production. (G) Surface coating. Prod. range: 250,000 kg/yr.

P 88-394

Importer. Hoechst Celanese Corporation.

Chemical. (S) Potassium montanoate.

Use/Import. (S) Transportation wax. Import range: 1,500 kg/yr.

P 88-395

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Alkyl phosphate salt.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

P 88-396

Manufacturer. Columbian Chemicals Co.

Chemical. (S) Potassium ferrite.

Use/Production. (S) Catalyst raw material. Prod. range: Confidential.

P 88-397

Manufacturer. Olin Corporation.

Chemical. (G) Polyester acetate.

Use/Production. (G) Sealant plasticizer. Prod. range: Confidential.

P 88-398

Manufacturer. Dow Chemical Company.

Chemical. (G) Polybenzoxazole.

Use/Production. (G) Reinforced plastics. Prod. range. Confidential.

P 88-399

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Molded parts. Prod. range: Confidential.

P 88-400

Manufacturer. Alkaril Chemicals, Inc.

Chemical. (G) N-(substituted imidazolinium chloride) alkyl stearamide.

Use/Production. (S) Fabric softener. Prod. range: Confidential.

P 88-401

Manufacturer. Alkaril Chemicals, Inc.

Chemical. (G) N-(substituted imidazolinium chloride) alkyl stearamide.

Use/Production. (S) Fabric softener. Prod, range: Confidential.

P 88-402

Manufacturer. Alkaril Chemicals, Inc.

Chemical. (G) N-(substituted imidazolinium chloride) alkyl stearamide.

Use/Production. (S) Fabric softener. Prod. range: Confidential.

P 88-403

Manufacturer. Alkaril Chemicals, Inc.

Chemical. (G) N-(substituted imidazolinium chloride) alkyl stearamide.

Use/Production. (S) Fabric softener. Prod. range: Confidential.

P 88-404

Manufacturer. Ashland Chemical Company.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (G) Cured thermoset plastics. Prod. range: 10,000 kg/yr.

P 88-405

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Molded parts. Prod. range: Confidential.

P 88-406

Manufacturer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organopolysiloxane.

Use/Production. (S) Cross-linking agent for silicones. Prod. range: 800 kg/yr.

P 88-407

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Silsesquioxane.

Use/Import. (S) Resin. Import range: 2,000 kg/yr.

P 88-408

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Modified organosilicone.

Use/Import. (S) Vehicle for paints. Import range: 1,000 kg/yr.

P 88-409

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Organosiloxane.

Use/Import. (S) Resins. Import range: 2,000 kg/yr.

P 88-410

Importer. Confidential.

Chemical. (G) Reaction product of alkanolamine and dicarboxylic acid.

Use/Import. (G) Fluid additive. Import range: Confidential.

P 88-411

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Ethylene Interpolymer.

Use/Production. (G) Molded parts. Prod. range: Confidential.

P 88-412

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted alkylamino aryl disulfide.

Use/Production. (G) Intermediate. Prod. range: 20,000 kg/yr.

P 88-413

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Acrylate-anhydride copolymer.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 88-414

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Acrylate-anhydride-aromatic copolymer.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 88-415

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Salt of substituted naphthalene disculfonic acid.

Use/Production. (S) Fiber reactive dye. Prod. range: 13,000 kg/yr.

P 88-416

Importer. Nuodex Inc.

Chemical. (G) Saturated polyester resin from dibasic acids and diols.

Use/Import. (S) Coatings. Import range: Confidential.

P 88-417

Importer. Nuodex Inc.

Chemical. (G) Saturated polyester resin from dibasic acids and diols.

Use/Import. (S) Coatings, adhesives. Import range: Confidential.

P 88-418

Manufacturer. Fritzsche Dodge & Olcott.

Chemical. (S) 1,1-diethoxy-2-methyl-3-(4-methylphenyl) propane.

Use/Production. (S) Fragrance. Prod. range: Confidential.

P 88-419

Manufacturer. Schnee-Morehead, Inc.

Chemical. (G) Trialkoxy silane derivative.

Use/Production. (S) Adhesion promoter. Prod. range: Confidential.

P 88-420

Manufacturer. Schnee-Morehead, Inc.

Chemical. (G) Trialkoxy silane derivative.

Use/Production. (S) Adhesion promoter. Prod. range: Confidential.

P 88-421

Manufacturer. Confidential.

Chemical. (G) Trialkyl triazine.

Use/Production. (G) Fuel and lube additive. Prod. range: Confidential.

P 88-422

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, monoalkyl ester, amine salt.

Use/Production. (G) Fuel/lube petrochemical additive. Prod. range: Confidential.

P 88-423

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, dialkyl ester, amine salt.

Use/Production. (G) Fuel/lube petrochemical additive. Prod. range: Confidential.

P 88-424

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, monoisoalkyl ester, amine salt.

Use/Production. (G) Fuel/lube petrochemical additive. Prod. range: Confidential.

P 88-425

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, diisoalkyl ester, amine salt.

Use/Production. (G) Fuel/lube petrochemical additive. Prod. range: Confidential.

P 88-426

Importer. Mitsubishi Yuka America, Inc.

Chemical. (S) Condensates of aniline, o-toluidine and terephthaldehyde, reaction product with maleic anhydride.

Use/Import. (S) Coating. Import range: 30,000 kg/yr. Condensates of anilines, o-toluidine and terephthaldehyde, reaction product with maleic anhydride

P 88–427

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalene sulfonic acid.

Use/Production. (G) Fiber reactive dye. Prod. range: 49,200 kg/yr.

P 88–428

Manufacturer. Confidential.

Chemical. (G) Blocked aliphatic polyisocyanate.

Use/Production. (S) Resin. Prod. range: 100,000 kg/yr.

P 88–432

Manufacturer. Confidential.

Chemical. (S) Confidential.

Use/Production. (S) Thermosetting resin. Prod. range: Confidential.

P 88–433

Manufacturer. Confidential.

Chemical. (S) Confidential.

Use/Production. (S) Thermosetting resin. Prod. range: Confidential.

P 88–434

Manufacturer. Hach Company.

Chemical. (S) Unreacted 2,2′-bicinchoninic acid.

Use/Production. (S) Reagent. Prod. range: 10 kg/yr.

P 88–436

Importer. Ausimont USA, Inc.

Chemical. (G) Poly(triazinyl piperazine).

Use/Import. (S) Flame retardant additive. Import range: Confidential.

P 88–437

Importer. Confidential.

Chemical. (G) Polyurethane.

Use/Import. (S) Coating. Import range: Confidential.

P 88–438

Manufacturer. Confidential.

Chemical. (G) Isocyanate reaction products with disubstituted benzene and alkyl amines.

Use/Production. (G) Oil thickener. Prod. range: Confidential.

P 88–439

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified polyacrylate polymer.

Use/Production. (G) Polymeric dispersant. Prod. range: Confidential.

P 88–440

Importer. Ciba-Geigy Corporation.

Chemical. (S) Confidential.

Use/Import. (S) Resin. Import range: Confidential.

P 88–441

Importer. Confidential.

Chemical. (G) Phenylmethylpolysiloxane polyester resin and paraffinic oils in 1,1,1-trichloroethane.

Use/Import. (S) Molded parts. Import range: Confidential.

P 88–442

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic polyurethane.

Use/Production. (G) Coating. Prod. range: 100,000 kg/yr.

P 88–443

Manufacturer. Confidential.

Chemical. (G) Polyurethane polyurea.

Use/Production. (G) Coating. Prod. range: 50,000 kg/yr.

P 88–444

Manufacturer. AT&T Nassau Metals Corporation.

Chemical. (G) Precious metal plating solution.

Use/Production. (G) Plating solution. Prod. range: 1,500 kg/yr.

P 88–445

Manufacturer. AT&T Nassau Metals Corporation.

Chemical. (G) Precious metal plating solution.

Use/Production. (G) Plating solution. Prod. range: 1,500 kg/yr.

P 88–446

Manufacturer. FMC Corporation.

Chemical. (S) 1-Allyloxy-2-hydroxy-propoxy-agarose.

Use/Production. (S) Cross-linking agent. Prod. range: Confidential.

P 88–447

Importer. Confidential.

Chemical. (G) Substituted benzene sulfonic acid.

Use/Import. (S) Dye Intermediate. Import range: Confidential.

P 88–448

Manufacturer. Andrews Paper & Chemical Co., Inc.

Chemical. (S) Confidential.

Use/Production. (S) Film. Prod. range: 1,000 kg/yr.

P 88–449

Manufacturer. Confidential.

Chemical. (G) Cresol-aldehyde polymer.

Use/Production. (G) Coating. Prod. range: Confidential.

P 88–450

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Pigment dispersant. Prod. range: Confidential.

P 88–451

Manufacturer. Andrews Paper & Chemical Co., Inc.

Chemical. (G) 3,3′-Methylene bis (acetoacetanilide.

Use/Production. (S) Diazo reproduction film. Prod. range: 2,000 kg/yr.

P 88–452

Manufacturer. Confidential.

Chemical. (G) Iso-eicosenyl succinic anhydride.

Use/Production. (G) Sizing agent for paper. Prod. range: Confidential.

P 88–453

Manufacturer. R.T. Vanderbilt Co., Inc.

Chemical. (S) Zinc, Bis(bis(2-methylpropyl)carbamodithioatos,s′-).

Use/Production. (S) Antioxidant for lubricants. Prod. range: Confidential.

P 88–454

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) Zinc.

Use/Production. (S) Antioxidant for lubricants. Prod. range: Confidential.

P 88–455

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Coating. Prod. range: 200,000 kg/yr.

P 88–456

Manufacturer. Confidential.

Chemical. (G) (Nitroaromatic alkyl) substituted heterocycle.

Use/Production. (G) Chemical intermediate. Prod. range: 25,000 kg/yr.

P 88–457

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd resin. Prod. range: 82,000 kg/yr.

P 88–458

Manufacturer. Confidential.

Chemical. (G) Sulfurated polyether.

Use/Production. (G) Chemical intermediate: Prod. range: Confidential.

P 88–459

Manufacturer. Confidential.

Chemical. (G) Esters prepared from anhydride, phosphite and glycols.

Use/Production. (G) Metalworking lubricant additive. Prod. range: 23,000 kg/yr.

P 88–460

Importer. Confidential.

Chemical. (G) Direct dye.

Use/Import. Dye. Import range: Confidential.

P 88–461

Manufacturer. Confidential.

Chemical. (S) Benzoic acid modified veg oil, pentaerythritol, chlorendic anhydride alkyd resin.

Use/Production. (S) Coating. Prod. range: 160,000 kg/yr.

P 88–462

Manufacturer. Confidential.

Chemical. (S) Fatty acids, trimethylol ethane, benzoic acid, chlorendic anhydride resin.

Use/Production. (S) Coating. Prod. range: 160,000 kg/yr.

P 88–463

Manufacturer. Takasago.

Chemical. (S) p-Isobutyl-d-methyl-dihydrocinnamic aldehyde.

Use/Production. (S) Perfume. Prod. range: 3,000 kg/yr.

P 88–464

Manufacturer. Neville Chemical Company.

Chemical. (G) Modified hydrocarbon resin.

Use/Production. (S) Resin. Prod. range: Confidential.

P 88–465

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Azobenzene.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–466

Manufacturer. Confidential.

Chemical. (G) Phenyl ketone mixture.

Use/Production. (G) Additive for oil well treatment. Prod. range: Confidential.

P 88–467

Importer. Uniroyal Chemical Co., Inc.

Chemical. (S) Confidential.

Use/Import. (G) Rubber tire additive. Import range: Confidential.

P 88–468

Manufacturer. Pennwalt Corporation.

Chemical. (G) Oxo-(substituted amino) acetic acid hydrazide.

Use/Production. (G) Chemical Intermediate. Prod. range: Confidential.

P 88–469

Manufacturer. Confidential.

Chemical. (G) Esters prepared from anhydride, phosphite and glycols.

Use/Production. (G) Metalworking lubricant additive. Prod. range: 23,000 kg/yr.

P 88–470

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Copolyester.

Use/Production. (G) Auto parts and tubing. Prod. range: Confidential.

P 88–471

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–472

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–473

Manufacturer. Confidential.

Chemical. (G) Fluorinated alcohol.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–474

Manufacturer. Confidential.

Chemical. (G) Perfluoroalkyl disulfide.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–475

Importer. Confidential.

Chemical. (S) Formamide, N,N-dimethyl.

Use/Import. (G) Photosensitive material. Import range: Confidential.

P 88–476

Importer. Confidential.

Chemical. (G) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with poly(difluoromethylene), omega. -(2-((1-oxo-2-propenyl)oxy)ethyl)-.

Use/Import. (G) Coating additive. Import range: Confidential.

P 88–477

Importer. Confidential.

Chemical. (G) 5-(Substituted benzylidene)-5H-dibezo a,d cycloheptene.

Use/Import. (G) Organic semiconductor. Import range: Confidential.

P 88–478

Importer. Confidential.

Chemical. (S) Formamide, N,N-dimethyl-.

Use/Import. Organic photosensitive material. Import range: Confidential.

P 88–479

Importer. Confidential.

Chemical. (G) Lactum, polymer, N-methoxymethylated.

Use/Import. (G) Coating resin. Import range: Confidential.

P 88–480

Importer. Confidential.

Chemical. (G) Benzene, ethenyl-, polymer with siloxane and silicones, di-me.

Use/Import. (G) Coating additive. Import range: Confidential.

P 88–481

Importer. Confidential.

Chemical. (G) Aldehyde, polymer with ethenol.

Use/Import. (G) Binder resin. Import range: Confidential.

P 88–482

Importer. Confidential.

Chemical. (S) Formamide, N,N-dimethyl-.

Use/Import. (G) Photosensitive material. Import range: Confidential.

P 88–483

Importer. Confidential.

Chemical. (G) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with siloxane and silicones, di-me.

Use/Import. (G) Veterinary products. Import range: Confidential.

P 88–484

Importer. Confidential.

Chemical. (G) Carbonic dichloride, polymer with bis (phenol).

Use/Import. (G) Binder resin. Import range: Confidential.

P 88–485

Manufacturer. R.T. Vanderbilt Co., Inc.

Chemical. (G) Aqueous solution of organic acid amine salts.

Use/Production. (S) Rust inhibitor. Prod. range: Confidential.

P 88–487

Manufacturer. Lonza, Inc.

Chemical. (G) Doc-chloride.

Use/Production. (G) Chemical intermediate. Prod. range: 8,000 kg/yr.

P 88–489

Manufacturer. Finetex, Inc.

Chemical. (G) N-alkoxy-N,N-bis(alkylene alkylamide)-N-alkyl′-quaternary-ammonium-alkyl′-sulfate.

Use/Production. (S) Finishing agent. Prod. range: 20,000 kg/yr.

P 88–490

Manufacturer. Confidential.

Chemical. (G) Alkoxylated amine complex of a nitrogen heterocycle.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–491

Manufacturer. Nuodex, Inc.
Chemical. (G) Metal alkanoates.
Use/Production. (G) Coatings additives, Prod. range: Confidential.

P 88–492

Manufacturer. Confidential.
Chemical. (G) Phenol, formaldehyde, alkylamine resin.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–493

Manufacturer. Lonza, Inc.
Chemical. (G) 1,6-bis (5-p-chlorophenylbiguando) hexane diacetate; 1,6-di (N-chlorophenyldiguando) hexane diacetate.
Use/Production. (G) Veterinary product. Prod. range: Confidential.

P 88–494

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted aliphatic carbamate.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–495

Manufacturer. Milliken & Co.
Chemical. (G) Substituted phenylpolyoxyalkylene.
Use/Production. (G) Chemical Intermediate. Prod. range: Confidential.

P 88–496

Manufacturer. Milliken & Co.
Chemical. (G) Disubstituted naphthol-azo-carbocyclopolyoxy-alkylene.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–497

Manufacturer. Milliken & Co.
Chemical. (G) Trisubstituted naphthol-azo-carbocyclopoloxy-alkylene.
Use/Production. (G) Nondispersive use. Prod. range: Confidential.

P 88–498

Manufacturer. Milliken & Co.
Chemical. (G) Substituted phenylpolyoxyalkylene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–499

Manufacturer. Spencer Kellogg Products/NL Industries.
Chemical. (G) Acrylic copolymer resin.
Use/Production. (G) Resin. Prod. range: Confidential.

P 88–500

Manufacturer. Confidential.
Chemical. (G) Rubber modified polyamide.
Use/Production. (G) Component. Prod. range: Confidential.

P 88–501

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic reaction products.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–502

Manufacturer. General Electric Company.
Chemical. (G) S-triaryl branched aryl alkyl aryl capped polycarbonate.
Use/Production. (S) Packaging. Prod. range: Confidential.

P 88–503

Manufacturer. General Electric Company.
Chemical. (G) S-triaryl branched aryl polycarbonate.
Use/Production. (S) Packaging. Prod. range: Confidential.

P 88–504

Manufacturer. General Electric Company.
Chemical. (G) S-triaryl branched alkyl aryl capped polycarbonate.
Use/Production. (S) Packaging. Prod. range: Confidential.

P 88–505

Manufacturer. Confidential.
Chemical. (G) Hydroxypropyl acrylate acrylic acid polymer, ammonium salt.
Use/Production. (G) Dispersant. Prod. range: Confidential.

P 88–506

Importer. Nagase American Corporation.
Chemical. (G) 4-Methyl-n-phenyl -o-anisidine.
Use/Import. (G) Color former. Import range: Confidential.

P 88–507

Importer. Nagase America Corporation.
Chemical. (S) 1,3-Bis (2-methyl-1H-indol-3-yl)-1(3H)-isobenzo-furane; 3-(2-methyl-1H-indol-3-yl)-3'-(2-methyl-1-pentyl-1H-indol-3-yl)-1(3H)-isobenzofurane.
Use/Import. (G) Color former. Import range: Confidential.

P 88–508

Importer. Nagase American Corporation.
Chemical. (G) 3,3-Bis(2-(4-dimethylaminophenyl)-2-(4-methoxyphenyl) vinyl)-trichlorophthalide.
Use/Import. (G) Color former. Import range: Confidential.

P 88–509

Manufacturer. Confidential.
Chemical. (G) Trimethylsilyl terminated 3-mercaptopropyl-siloxane.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 88–510

Importer. Nagase America Corporation.
Chemical. (G) 3,3-Bis(2-(4-(1-pyrrolidinyl)phenyl)-2-(4-methoxyphenyl)vinyl)-trichlorophthalide.
Use/Import. (S) Color former. Import range: Confidential.

P 88–511

Importer. Nagase America Corporation.
Chemical. (S) 2-(2-(4-(Dodecyloxy)-3-methoxyphenol)ethenyl)-quinoline.
Use/Import. (G) Color former. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rat). Static acute toxicity: time LC50 96hr >150 ppm species (rainbow trout). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: positive, species (guinea pig).

P 88–512

Importer. Nagase America Company.
Chemical. (S) 2-(4-(Ethyl (3-methylbutyl)amino) 2-2-hydroxybenzoyl) benzoic acid.
Use/Import. (G) Color former. Import range: Confidential.

P 88–513

Importer. Nagase American Corporation.
Chemical. (S) 2-(4-(Ethylphenyl)amino)-2-hydroxybenzoyl) benzoicacid.
Use/Import. (G) Color former precursor. Import range: Confidential.

P 88–514

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene disulfonic acid.

Use/Production. (S) Dye. Prod. range: 16,000 kg/hr.

P 88–515

Manufacturer. Hoechst Celanese Corporation.
Chemical. (S) Substituted.
Use/Production. (S) Dye. Prod. range: 29,400 kg/yr.
Toxicity Date. Acute oral toxicity: LD50 >5 g/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–516

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted haloaryl and halo substituted aryl thio substituted pyrayole.
Use/Production. (G) Contained use. Prod. range: 50,000 kg/hr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Eye irritation: None, species (rabbit). Skin irritation: Negligible, species (rabbit). Mutagenicity: Negative. Skin sensitization: Negative, species (guinea pig).

P 88–517

Manufacturer. Lithium Corporation of America.
Chemical. (S) 2-Methyl-1-pentyloxy magnesium chloride.
Use/Production. (S) Precursor, reagent. Prod. range: Confidential.

P 88–518

Manufacturer. Confidential.
Chemical. (G) Polyurethane acrylate.
Use/Production. (G) Ink resin. Prod. range: Confidential.

P88–519

Importer. Confidential.
Chemical. (G) Acrylic polyol.
Use/Import. (G) Coating resin. Import range: Confidential.

P 88–520

Manufacturer. Confidential.
Chemical. (G) Hydroxy acrylic resin.
Use/Production. (S) Paint resin. Prod. range: Confidential.

P 88–521

Manufacturer. Confidential.
Chemical. (G) Modified maleated calcium resinate.
Use/Production. (S) Printing ink.
Toxicity Data. Acute oral toxicity: LD50 >5 gm/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–522

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (S) Polyurethane stabilizer. Prod. range: 2,000 kg/hr.

P 88–523

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating. Prod. range: 74,500 kg/hr.

P 88–524

Importer. Scanroad, Inc.
Chemical. (G) Fatty acid derivative.
Use/Import. (G) Chemical for mining industry. Import range: Confidential.

P 88–525

Importer. Confidential.
Chemical. (G) Substituted-trisubstituted-indolium salt.
Use/Import. (S) Textile colorant. Import range: Confidential.

P 88–526

Manufacturer. PPG Industries, Inc.
Chemical. (G) Epoxy modified styrenated acrylic.
Use/Production. (G) Component. Prod. range: 125,000 kg/yr.

P 88–527

Manufacturer. Confidential.
Chemical. (G) Silane-modified polyurethane polyvinyl alcohol co-polymer
Use/Production. (G) Open, nondispersive. Prod. range: 40,000 kg/yr.

P 88–528

Importer. Rhone-Poulene, Inc.
Chemical. (G) Polyaryphenol Ethoxylate.
Use/Import. (S) Surfacant. Import range: Confidential.

P 88–529

Importer. Rhone-Poulene, Inc.
Chemical. (G) Polyarylphenol ethoxylate.
Use/Import. (G) Nonionic emulsifier. Import range: Confidential.

P 88–530

Importer. Rhone-Poulenec, Inc.
Chemical. (G) Phosphated polyarylphenol ethoxylate.
Use/Import. (S) Antistatic & anti wetting agent. Import range: Confidential.

P 88–531

Importer. Rhone-Poulenc, Inc.
Chemical. (G) Polyarylphenol ethoxylate.
Use/Import. (S) Surfactant pesticides. Import range: Confidential.

P 88–532

Importer. Rhone-Poulenc, Inc.
Chemical. (G) Phosphated polyarylphenol ethoxylate.
Use/Import. (S) Dispersant, viscosity modifier. Import range: Confidential.

P 88–533

Importer. Rhone-Poulenc, Inc.
Chemical. (G) Sulfphated and ethoxylated trisyrylphenol.
Use/Import. (S) Dispersing agent. Import range: Confidential.

P 88–534

Manufacturer. Confidential.
Chemical. (G) Acrylates copolymer.
Use/Production. (G) Adsorber/caprier. Prod. range: Confidential.
Toxicity Data.
Acute oral toxicity: LD50 >5 g/kg.
Inhalation toxicity: LC50 >200 mg/L species (rat).
Skin irritation: Slight, species (rabbit).

P 88–535

Manufacturer. Confidential.
Chemical. (G) Alkoxylamino alkene.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–536

Manufacturer. Confidential.
Chemical. (G) Disubstitutednaphthyl azo disubstitutedphenyl azo disubstitutedsulfonaphthyl azo substitutedbenzoic acid, mixed salts.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–537

Manufacturer. Confidential.
Chemical. (G) Disubstitutednaphthyl azo disubstitutedsulfonaphthyl azo substitutedbenzoic acid, sodium salt.
Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 88–538

Manufacturer. Confidential.
Chemical. (G) Disubstituted heteropolycycle, salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–539

Manufacturer. Confidential.
Chemical. (G) Disubstituted dialkylaminobenzene, salt.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–540

Manufacturer. Confidential.
Chemical. (G) Silane-modified polyurethane polyvinyl alcohol copolymer.

Use/Production. (G) Open, nondispersive Use. Prod. range: 40,000 kg/yr.

P 88–541

Manufacturer. Dow Corning Corporation.

Chemical. (S) Polydimethylalkenylsiloxane.

Use/Production. (G) Coating. Prod. range: Confidential.

P 88–542

Manufacturer. Dow Corning Corporation.

Chemical. (G) Polydimethyl alkenyl siloxane.

Use/Production. (G) Coating. Prod. range: Confidential.

P 88–543

Importer. Confidential.

Chemical. (G) Direct dye.

Use/Importer. (S) Dye. Import range: Confidential.

P 88–545

Manufacturer. Interez, Inc.

Chemical. (S) Bisphenol A; triphenylphospine; dibutyltin dil aurate.

Use/Production. (S) Coating. Prod. range: Confidential.

P 88–546

Importer. Atlantic Industries, Inc.

Chemical. (G) Trisubstituted anthraquinone.

Use/Import. (G) Dying & printing of polyester textile. Prod. range: Confidential.

Toxicity Data.

Mutagenicity: negative.

P 88–547

Manufacturer. Confidential.

Chemical. (G) Water reducible styrenated alkyd.

Use/Production. (S) Chewing gum base. Prod. range: Confidential.

P 88–549

Manufacturer. Confidential.

Chemical. (G) Water reducible styrenated alkyd resin.

Use/Production. (S) Addustrial coatings. Prod. range: Confidential.

P 88–550

Manufacturer. Confidential.

Chemical. (G) Acrylic multipolymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–551

Manufacturer. Interez, Inc.

Chemical. (S) Bisphenol A; sodium benzoate; potassium hydroxide.

Use/Production. (S) Coating used in primers. Prod. range: Confidential.

P 88–552

Importer. Sherex Chemical Company.

Chemical. (G) Epoxy curing agent.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–553

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (G) Phemethyltris(trimethylsiloxy)silane.

Use/Production. (S) Heat transfer medium. Prod. range: Confidential.

P 88–554

Manufacturer. Dynamit Noble Chemicals.

Chemical. (G) Hexaethylene glycol; pentaethylene glycol; 1,1 dimethylsila-17-crown-6; hexaethylene glycolyldimethylethoxy-silane.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 88–555

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyurethane.

Use/Production. (G) Coating. Prod. range: 14,300 kg/yr.

P 88–556

Importer. Confidential.

Chemical. (G) 2-Ethylhexylmethacrylate-cyclohexylmetharylate-Copolymer.

Use/Import. (S) Binder resin of toner. Import range: Confidential.

P 88–557

Importer. Confidential.

Chemical. (G) Polysubstituted, substituted benzene.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity. LD50 >5,000 mg/kg, species (rat). Static acute toxicity: time LC50 96hr >100 mg/L, species (rat). Eye irritation. Slight, species (rabbit).

P 88–558

Manufacturer. Confidential.

Chemical. (G) Hydroxy acrylic resin.

Use/Production. (S) Paint manufacturing resin. Prod. range: Confidential.

P 88–559

Manufacturer. National Starch and Chemical Corporation.

Chemical. (S) 1,3-Isobenzofurandione, 5,5'–(2,2,2-trifluorol-trifluoromethyl)ethylidene), bis-; benzenamine, 3- ethyny L-; benzenamine, 3,3'-(phenylene bis oxy) bis-.

Use/Production. (G) Resin. Prod. range: Confidential.

P 88–560

Importer. Confidential.

Chemical. (G) Polyglycol carbonate.

Use/Import. (G) Plastic manufacture. Import range: Confidential.

P 88–561

Manufacturer. Confidential.

Chemical. (G) Ammonium zirconium carboxylate.

Use/Production. (G) External crosslinker. Prod. range: Confidential.

P 88–562

Manufacturer. Confidential.

Chemical. (G) Water reducible alkyd resin.

Use/Production. (S) Finishes. Prod. range: Confidential.

P 88–563

Manufacturer. Confidential.

Chemical. (G) Polymer of dimer fatty acids and ethylenediamine, 1,2-propylene diamine, trimethylhexomethylene diamine, and propionic acid.

Use/Production. (G) Flexographic printing ink resin. Prod. range: 60,000 kg/yr.

P 88–564

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Boric acid ester of alkanolamine.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 200–500 mg/kg, 2,000 mg/kg, species (female and male rat). Static acute toxicity: time LC50 96hr >500 mg/L, species (zebra fish). Eye irritation: Strong, species (N.Z. albino rabbit). Skin irritation: Moderate, species (N.Z. albino rabbit).

P 88–565

Manufacturer. Sybron Chemicals, Inc.

Chemical. (G) Diarylmethane.

Use/Production. (S) Color fixing agent for leather. Prod. range: Confidential.

P 88–566

Importer. MTC America, Inc.

Chemical. (G) 9,10-Anthracenedione, diaminomonocycloxycarbonyl.

Use/Import. (G) Ink. Import range: Confidential.

P 88–568

Manufacturer. Arizona Chemical Company.

Chemical. (G) Fatty acid amidoamine.

Use/Production. (S) Epoxy curing agent for grouts & concrete. Prod. range: 24,000 kg/yr.

P 88–569

Importer. Confidential.

Chemical. (G) Alkylorthosilicate.

Use/Import. (S) Curing paste. Import range: Confidential.

P 88–570

Manufacturer. Confidential.

Chemical. (G) Ammonium salts of phosphonomethylated diamine.

Use/Production. (G) Dispersive. Prod. range: Confidential.

P 88–571

Manufacturer. Confidential.

Chemical. (G) Sodium metal salt of phosphonomethylated diamine.

Use/Production. (G) Dispersive Use. Prod. range: Confidential.

P 88–572

Manufacturer. Confidential.

Chemical. Phosphonomethylated diamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–573

Manufacturer. Confidential.

Chemical. (G) Potassium metal salt of phosphonomethylated diamine.

Use/Production. (G) Dispersive. Prod. range: Confidential.

P 88–574

Manufacturer. Confidential.

Chemical. (G) Alkoxylated alcohol.

Use/Production. (G) Dispersive. Prod. range: Confidential.

P 88–575

Manufacturer. Confidential.

Chemical. (G) Fatty acids, C–18–unsaturated, dimers, hydrogenated polymers with a diamine and a monobasic acid.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–576

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted naphthalene sulfonic acid.

Use/Production. (S) Fiber reactive dye. Prod. range: 27,000 kg/yr.

P 88–577

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted succinic acid amide.

Use/Production. (S) Corrosion inhibitor. Prod. range: 50,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >2,000 mg./kg, species (rat). Static acute toxicity: time LC50 9,610,000 percent, species (zebra warbling). Eye irritation: Strong, species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–578

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted succinic acid amine.

Use/Production. (G) Corrosion inhibitor. Prod. range: 50,000 kg/yr.

P 88–582

Importer. Hoechst Celanese Corporation.

Chemical. (G) Calcium salt of glycine derivative.

Use/Import. Corrosion inhibitor. Import range: 50,000 kg/yr.

P 88–583

Importer. Confidential.

Chemical. (S) Cyclosiloxanes, di-me.

Use/Import. (S) Plastic additive. Import range: 2,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Eye irritation: None; species (rabbit). Skin irritation: Negligible, species (rabbit).

P 88–584

Manufacturer. Doe Corning Corporation.

Chemical. (G) Polydimethylsiloxane.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–585

Importer. Hoechst Celanese Corporation.

Chemical. (G) Polyvinyl sulfonate.

Use/Import. (S) Fluid loss additive for drilling fluids. Import range: 20,000 kg/yr.

Toxicity Data.

Acute oral toxicity: LD50 >5,000, species (rat).

Eye irritation: None, species (rabbit).

Skin irritation: Negligible, species (rabbit).

P 88–586

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Reaction of a polyethylene glycol with substitutedimidazolidione.

Use/Production. (S) Resin for fabric. Prod. range: 200,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Eye irritation: None, species (rabbit).

P 88–587

Manufacturer. Dow Chemical U.S.A.

Chemical. (G) Modified styrene/butadiene polymer.

Use/Production. (G) Cationil emulsion asphalt modifier. Prod. range: Confidential.

P 88–588

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) Acrylic copolymer emulsion.

Use/Production. (G) Film former. Prod. range: Confidential.

P 88–589

Manufacturer. Amoco Corporation.

Chemical. (G) Fatty acid amide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 88–590

Manufacturer. M–I Drilling Fluids Company.

Chemical. (G) Titanium lignite.

Use/Production. (G) Drilling fluid additive. Prod. range: Confidential.

P 88–591

Manufacturer. Confidential.

Chemical. (G) Copolymer of merthacrylic esters.

Use/Production. (G) Modifier for coating, inks, adhesives.

Prod. range: Confidential.

P 88–592

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyurethane.

Use-Production. (S) Modifier for coating, inks. Prod. range: Confidential.

P88–593

Importer. UNI–NTF, Inc.

Chemical. (G) Blocks polyurethane X–5877.

Use-Import. (S) Resin. Import range: 20,000 kg/yr.

P 88–594

Importer. UNI–NTF, Inc.

Chemical. (G) Blocked polyurethane X–1500.

Use/Import. (S) Adhesion promotor of PVC platisol. Import range: 24,000 kg/yr.

P 88–595

Manufacturer. Environmental Systems Company.

Chemical. (G) Organic swellable water insoluble alkylstyrene copolymer.

Use/Production. (G) Prod. range: 650,000 kg/yr.

P 88–596

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Fatty acid, alkanolamine condensate.

Use/Production. (G) Corrsion inhibitor. Prod. range: 60,000 kg/yr.

P 88-597

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted sulfonic acid.

Use/Production. (S) Intermediate for dyestuff manufacture. Prod. range: 7,630 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5 g/kg, species (rat). Eye irritation: Moderate, species (rabbit). Skin irritation: Moderate, species (rabbit). Mutagenicity: Positive.

P 88-598

Importer. Hoechst Celanese Corporation.

Chemical. (G) Azo substituted aniline derivative.

Use/Import. (S) Polyester dye. Import range: 20,000 kg/yr.

Toxicity Data: Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Skin irritation: Negligible, species (rabbit).

P 88-599

Manufacturer. Confidential.

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Coating/adhesive. Prod. range: Confidential.

P 88-600

Importer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted aniline derivative.

Use/Import. (S) Dispersive dye for polyester. Import range: 20,000 kg/hr.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg, species (rat). Acute dermal toxicity: LD50 >2,000 mg/kg, species (rat). Skin irritation: Negligible, species (rabbit).

P 88-601

Importer. Confidential.

Chemical. (G) Acrylic functional epoxy modified prepolymer.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88-602

Manufacturer: Hoechst Celanese Corporation.

Chemical. (G) Azo substituted naphthalene disulfonic acid.

Use/Production. (S) Fiber reactive dye. Prod. range: 55,800 kg/yr.

Toxicity Data. Eye irritation: Slight species (rabbit). Skin irritation: Slight, species (rabbit).

P 88-603

Manufacturter. Hoechst Celanese Corporation.

Chemical. (G) Dibasic acid, alkanol amine condensate.

Use/Production. (S) Corrosion inhibitor. Prod. range: 60,000 kg/yr.

P 88-604

Manufacturer. Confidential.

Chemical. (G) Substituted amino anthraquinones.

Use/Production. (G) Petroleum products colorent. Prod. range: Confidential.

P 88-605

Manufacturer. Confidential.

Chemical. (G) Substituted azo alkyl phenol.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

P 88-606

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Tri substituted naphthalene disulfonic acid.

Use/Production. (S) Fiber reactive dye. Prod. range: 54,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5 gm/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Slight, species (rabbit).

P 88-607

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalene disulfonic acid.

Use/Production. (S) Fiber reaction dye. Prod. range: 14,700 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5 mg/kg, species (rat). Eye irritation: Slight, species (rabbit). Skin irritation: Slight, species (rabbit).

P 88-608

Manufacturer. Dow Chemical U.S.A. R&D.

Chemical. (G) Halogenated alkane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-609

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Trimethysilyldiazomethane.

Use/Production. (S) Organic intermediate. Prod range: Confidential.

P 88-610

Manufacturer. Dynamit Nobel Chemical.

Chemical. (G) Cyclohexyltriethoxysiliane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-611

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, partial salt.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-612

Manufacturer. Confidential.

Chemical. (S).

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88-613

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Phenolics modified silicone.

Use/Import. (G) Stress reducing agent for epoxy resins. Prod. range: 950 kg/yr.

P 88-614

Importer. Shin-Estu Silicones of America, Inc.

Chemical. (G) Phenolics modified silicone.

Use/Import. (G) Stress reducing agent for epoxy resins. Prod. range: 1,000 kg/yr.

P 88-615

Importer. Shin-Estu Silicones of America, Inc.

Chemical. (S) Organopolysiloxane containing epoxy group.

Use/Import. (S) Finishing agents. Import range: 5,000 kg/yr.

P 88-616

Importer. Shin-Estu Silicones of America, Inc.

Chemical. (S) Organopolysiloxane containing group.

Use/Import. (S) Textile finishing agent rubber or plastics additive. Prod. range: 4,000 kg/yr.

P 88-617

Importer. Dynamit Nobel Chemicals.

Chemical. (S) Triglyceride of C8–C10 vegetable fatty acids, adipic acid modified.

Use/Import. (S) Sliding release agent. Import range: Confidential.

P 88-618

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Trimethoxysilylpropyl-n-methyldiallyl ammonium chloride.

Use/Production. (S) Coupling agent. Prod. range: Confidential.

P 88-619

Manufacturer. Confidential.

Chemical. (G) Acrylic resin solution.

Use/Production. (S) Resin. Prod. range: Confidential.

P 88-620

Manufacturer. Confidential.

Chemical. (G) Derivative of poly-(oxy(l-ethyl-1,2-ethanediyl))-a-(p-tetra(l-

propene)-phenoxy-w-hydro) ester with carbono-chloridic acid.

Use/Production. (G) Fuel additive. Prod. range: Confidential.

P 88-621

Manufacturer. NL Industries.

Chemical. (G) Water dispersible copolymer.

Use/Production. (G) Dispersible. Prod. range: Confidential.

P 88-622

Importer. Dynamit Nobel Chemicals.

Chemical. (S) Polyethylane glycol rapeseed oil fatty acid ester.

Use/Import. (S) Self-emulsifying oil. Import range: Confidential.

P 88-623

Manufacturer. Confidential.

Chemical. (S) Dicyclopentadione; soya oil; gydrocarbon resin in medite; hydrocarbon intermediate.

Use/Production. (S) Resins for adhesives. Prod. range: 3,000,000 kg/yr.

P 88-624

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (G) 1,1,3,3-Tetramethyl disiloxane; 1,3-diphenyltetrakis-1,1,3,3-(dimethylsiloxane.

Use/Production. (S) Silicone elastomers. Prod. range: Confidential.

P 88-625

Manufacturer. Confidential.

Chemical. (G) (Substitutedphenyl azo)-(substitutedphenyl azo)-substituted-naphthalene disulfonic acid, salt.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-626

Manufacturer. Confidential.

Chemical. (G) Alkylalkoxysilane.

Use/Production. (S) Lubricant for aluminum cans. Prod. range: Confidential.

P 88-627

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) 1,2,3,4,5,6-Hexamethylcyclotrisilazane.

Use/Production. (S) Chemical vapor for coating. Prod. range: Confidential.

P 88-628

Importer. Tioxide America, Inc.

Chemical. (S) Any compound of isopropanol, 1-aminoethanol; and 2,2'-amion bisethanol.

Use/Import. (S) Crosslinking agent. Import range: Confidential.

P 88-629

Manufacturer. Confidential.

Chemical. (G) Alkylalkoxysilane.

Use/Production. (G) Additive for polymerization catalyst. Prod. range: Confidential.

P 88-630

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (G) Alkylalkoxysilane.

Use/Production. (G) Additive for polymerization catalyst. Prod. range: Confidential.

P 88-631

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Trialkylchlorosilane.

Use/Production. (G) Surface modifier. Prod. range: Confidential.

P 88-632

Manufacturer. Dynamit Nobel Chemcials.

Chemical. (G) Dialkylmonoalkanenitrilochlorosilane.

Use/Production. (G) Surface modifier. Prod. range: Confidential.

P 88-633

Manufacturer: Confidential.

Chemical. (GM) Alkylalkoxysilane.

Use/Production. (G) Additive for polymerization catalyst. Prod. range: Confidential.

P 88-634

Importer. Goldschmodt Chemical Corporation.

Chemical. (S) Methanol.

Use/Import. (G) Monomer for silicone polymer. Import range: Confidential.

P 88-635

Importer. Confidential.

Chemical. (G) Alkylated polysilanes.

Use/Production. (G) Open, nondispersive use. Import range: Confidential.

P 88-636

Importer. Confidential.

Chemical. (G) Perfluoroalkylacrylate copolymer.

Use/Import. (S) Textile finish. Import range: Confidential.

P 88-637

Importer. Confidential.

Chemical. (G) Perfluoroalkyacrylate copolymer.

Use/Import. (S) Textile finish. Import range: Confidential.

P 88-638

Manufacturer. Confidential.

Chemical. (G) Isophorone diisocyanate and methylene bis(4-cyclohexylisocyanate) terminated polytetrahydrofuran and ethylene oxide capped polypropylene glycol.

Use/Production. (G) Resin. Prod. range: Confidential.

P 88-639

Manufacturer. Confidential.

Chemical. (G) Functionalized acrylate methacrylate polymer.

Use/Production. (S) Automotive topcoat. Prod. range: 125,000 kg/yr.

P 88-640

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Terpene-styrene oil.

Use/Production. (S) Adhesive tackifier. Prod. range: Confidential.

P 88-641

Manufacturer. Sherex Chemical Company.

Chemical. (G) Fatty imidazoline.

Use/Production. (G) Textile antistat. Prod. range: Confidential.

P 88-642

Manufacturer. Reichhold Chemicals Inc.

Chemical. (G) Epoxy ester.

Use/Production. (G) Adhesion promoter. Prod. range: Confidential.

P 88-643

Manufacturer. Eastman Kodak Company.

Chemical. (G) Benzyl alkyl substituted ammonium salt.

Use/Production. (G) Nondispersive use. Prod. range: 3,700 kg/yr.

P 88-644

Manufacturer. Confidential.

Chemical. (S) Oil free polyester of dibasic acids.

Use/Production. (S) Coating. Prod. range: 23,350 kg/yr.

P 88-645

Manufacturer. Dow Corning Corporation.

Chemical. (S) 1,1,3,3-Tetramethyl-1,3-di(5-hexenyl)disiloxane.

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-646

Manufacturer. Dow Corning Corporation.

Chemical. (S) Methyl (5-hexenyl) dichlorosilane).

Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88-647

Manufacturer. Confidential.

Chemical. (G) Oxime blocked polyurethane polymer waterborne.

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Use/Production. (G) Isomer use. Prod. range: Confidential.

P 88-648

Importer. Confidential.
Chemical. (G) Fiber reactive navy blue dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-649

Importer. Confidential.
Chemical. (G) Fiber reactive blue dye.
Use/Import. (S) Reactive dye. Prod. range: 30,000–35,000 kg/yr.

P 88-650

Importer. Confidential.
Chemical. (G) Fiber reactive red dye.
Use/Import. (S) Reactive dye. Import range: Confidential.

P 88-651

Importer. Confidential.
Chemical. (G) Fiber reactive orange dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-652

Manufacturer. Confidential.
Chemical. (G) Hexol polyol.
Use/Production. (G) Starch binder-insolubilizer. Prod. range: 135,000–450,000 kg/yr.

P 88-653

Manufacturer. Confidential.
Chemical. (G) Diene terpolymer.
Use/Production. (S) Fabric coating. Prod. range: Confidential.

P 88-654

Importer. Confidential.
Chemical. (G) Fiber reactice yellow dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-655

Importer. Confidental.
Chemical. (S) Confidential.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-656

Manufacturer. Confidential.
Chemical. (G) Water reducible epoxy ester copolymer resin.
Use/Production. (S) Industrial air-dry coatings. Prod. range: Confidential.

P 88-657

Manufacturer. Hanna Chemical Coatings Corp.
Chemical. (G) Expoxy modified polyester.
Use/Production. (S) Coatings. Prod. range: 48.000 kg/yr.

P 88-658

Importer. Atlantic Industries Incorporated.
Chemical. (G) Substituted heterocyclic azo benzeneamine.
Use/Import. (S) Dyeing & printing of textiles. Import range: Confidential.

P 88-659

Manufacturer. Hanna Chemical Coatings.
Chemical. (S) Tetrakis (dimethylsiloxy) silane
Use/Production. (S) Crosslinker for silicone. Prod. range: Confidential.

P 88-660

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) Methanol; hexamethyl disiloxane; di(aminopropyl); tetra(trimethylsiloxy)disiloxane.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88-661

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) l-Methoxyl-l-(trimethylsiloxy)-2-methyl-l-propene.
Use/Production. (S) Reagent. Prod. range: Confidential.

P 88-662

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) 7-(3-(Chlorodimethylsilyl)propoxy)4-methylcoumarin.
Use/Production. (S) Reagent. Prod. range: Confidential.

P 88-663

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) 1,3-dimethyl-1,3-bis(trimethylsiloxy) disiloxane hexamethyl disoloxane.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88-666

Importer. Confidential.
Chemical. (G) Aromatic polyester carbonate.
Use/Import. (S) Molded parts. Import range: Confidential.

P 88-667

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Gravure printing inks. Prod. range: Confidential.

Date: March 14, 1988.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-5976 Filed 3-17-88; 8:45 am]

BILLING CODE [illegible]

[OPTS-59257; FRL-3351-1]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for examption, provides a summary, and requests comments on the appropriateness of granting this exemption.

Written comments by:

T88-7—March 17, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59257)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554.1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T88-7

Close of Review Period. March 31, 1988.
Manufacturer. Confidential.
Chemical. (G) Functional lights derivative.
Use/Production. (G) Dispersive Use. Prod. range: Confidential.

Dated: March 14, 1988.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-5979 Filed 3-17-88; 8:45 am]

BILLING CODE [illegible]

[OW-FRL-3350-9]

Water Quality Act of 1987 Implementation; Final Guidance Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a final guidance document entitled "Guidance for Implementation of Requirements under Section 304(1) of the Clean Water Act as Amended."

DATE: Copies of this final guidance document are available beginning today.

ADDRESSES: Copies of this document can be obtained by writing Mr. Jim Taft, Office of Water Enforcement and Permits, EN-336, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or telephoning him at (202) 475-9537.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act (CWA) requires States to develop lists of impaired waters, identify point sources and amounts of pollutants they discharge that cause toxic impacts, and develop individual control stratgies for each such point source. The general effect of § 304(1) is to focus national surface water quality protection programs immediately on addressing known water quality problems due entirely or substantially to point source discharges of "priority pollutants" listed in accordance with § 307(a) of the CWA.

The guidance document announced in today's notice provides specific information for States and Regions on interpretation of statutory requirements of § 304(1) of the CWA, as amended, and places the new requirements in the context of the ongoing nationwide program for controlling toxic pollutants and toxicity.

Dated: March 10, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88-5975 Filed 3-17-88; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 10, 1988.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Mangement and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634-1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0282
Title: Section 94.17, Shared use of radio stations and the offering of private carrier communications service
Action: Extension
Respondents: businesses (including small businesses), state or local governments, and non-profit institutions
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 300 Recordkeepers; 100 Hours
Needs and Uses: Licensees of private microwave radio facilities are required to keep in their station records the written agreement they use to share the facilities. They must also keep a current list of station sharers and private carrier subscribers and the basis of their eligibility under Part 94 (Private Operational-Fixed Microwave Service) of the Commission's Rules. This information is needed to ensure compliance with microwave sharing rules.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-5866 Filed 3-17-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-81]

Applications for Consolidated Hearing; Jonesville FM Group and Peter J. Rinaldi

1. The Commission has before it the following mutually exclusive application for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Jonesville FM Group Limited Partnership	Jonesville, LA	BPH-851210MK	88-81
B. Peter J. Rinaldi	Jonesville, LA	BPH-851212MD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Comparative	A, B
2. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may

also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5980 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–89]

Applications for Consolidated Hearing; Knight Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Knight Communications Corp	Fairhaven, MA	BPH-860826MC	88–89
B. Sage Broadcasting Corporation of Fairhaven Massachusetts	Fairhaven, MA	BPH-860902MH	
C. Community Oriented Radio of Fairhaven	Fairhaven, MA	BPH-860903MA	
D. Ararat Broadcasting Corporation	Fairhaven, MA	BPH-860903ME	
E. Fairhaven Communications Systems, Inc	Fairhaven, MA	BPH-860903MJ (Dismissed Herein).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative	A, B, C, D
2. Ultimate	A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5981 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–84]

Applications for Consolidated Hearing; Posey County Broadcasting Co. Inc. and Southern Indiana Broadcasting Ltd.

Applicant	City/State	File No.	MM Docket No.
A. Posey County Broadcasting Co., Inc	Mount Vernon, IN	BPH-861023MD	88–84
B. Southern Indiana Broadcasting, Limited	Mount Vernon, IN	BPH-861126MP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particualr applicant.

Issue heading	Applicants
1. Comparative	A, B
2. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5962 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Marvin G. Schwartz et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Marvin G. Schwartz	San Jacinto, CA	BPH-870312MF	88–82
B. Hartline Broadcasting	San Jacinto, CA	BPH-870327MF	
C. Ernesto V. Najar	San Jacinto, CA	BPH-870331MW	
D. Joel T. Saxberg	San Jacinto, CA	BPH-870331NA	
E. Collins Radio Broadcasting	San Jacinto, CA	BPH-870331PQ	

2. Pursuant to section 309(e) of the Communications act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, E
2. Comparative, All
3. Ultimate, All

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5963 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Proceeding; Thief River Radio et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Thief River Radio	Thief River Falls, MN	BPH-860930MB	88–90
B. Rita Cole	Thief River Falls, MN	BPH-861002SY	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative	Both
2. Ultimate	Both

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transportation Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5984 Filed 3–17–88;8:45am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Karen E. Younginger et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Karen E. Younginger	Webster, NY	BPH-870220MD	88–83
B. Joseph C. Motto	Webster, NY	BPH-870312MI	
C. Webster-Fuller Communications Association	Webster, NY	BPH-870312MJ	
D. Anthony E. Trimble	Webster, NY	BPH-870313MF	
E. Denny Workman d/b/a Webster Communications	Webster, NY	BPH-870313MM	
F. Peter Achilles Brolkou	Webster, NY	BPH-870313MP	
G. CCI-FM, Ltd	Webster, NY	BPH-870313MQ	
H. Bay Area Communications	Webster, NY	BPH-870313MR	
I. Webster Broadcast Associates	Webster, NY	BPH-870313MY	
J. Webster Broadcasting, Inc	Webster, NY	BPH-870313NV	

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2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicants
1. Financial Qualifications	E
2. Air Hazard	J
3. Comparative	All
4. Ultimate	All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–5965 Filed 3–17–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

First Federal Savings and Loan Association, Paducah, KY; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal Savings and Loan Association, Paducah, Kentucky on March 11, 1988.

Dated: March 14, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88–5972 Filed 3–17–88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Truck Detention Charges at California Ports; Filing of Petition for Rulemaking

Notice is given that a petition for rulemaking ("CTA Petition") has been filed by the California Trucking Association ("CTA") requesting that the Federal Maritime Commission ("Commission") institute a rulemaking proceeding to regulate the computation of truck detention time and the penalties therefor with regard to truck delays at seven California ports. The CTA Petition appears to be modeled on the regulations promulgated by the Commission in 1975 and amended in 1987, governing truck detention at the Port of New York (46 CFR Part 530).

The CTA Petition addresses the same general situation as did a petition for rulemaking filed by the Waterfront Rail Truckers Union ("WRTU Petition") on November 16, 1987. The WRTU Petition was published in the Federal Register (52 FR 45496) on November 30, 1987, and comments from interested persons have been received.[1] While the two petitions are similar, it appears that the WRTU Petition may be somewhat broader in scope in terms of the problems complained of and the regulatory schemed proposed; the CTA Petition, however, is broader in geographic scope than the WRTU Petition.

In order for the Commission to make a thorough evaluation of the CTA Petition, interested persons are requested to submit views, arguments or data on the CTA Petition no later than April 15, 1988. Because of the similarity between the CTA Petition and the WRTU Petition, the Commission will consider the two petitions and responses thereto jointly, and persons may incorporate by reference their previously submitted comments on the WRTU petition in their comments on the CTA Petition. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, in an original and 15 copies. Responses shall also be served on counsel for CTA: Richard W. Smith, Esq., Daniel J. McCarthy, Esq., 1251 Beacon Blvd., West Sacramento, CA 95691.

Copies of the CTA Petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., Room 11101.

By the Commission March 8, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–6009 Filed 3–17–88; 8:45 am]

BILLING CODE 6730-01-M

Intent To Cancel Inactive Tariffs

The files of the Federal Maritime Commission ("Commission" or "FMC") contain 13 terminal tariffs for firms which appear no longer to be operating as terminal operators. For the purpose of this Notice, a terminal operator is considered no longer to be operating if: (1) A letter mailed to the terminal operator at its last known address has been returned as undeliverable by the United States Postal Service; (2) attempts by FMC staff to contact the terminal operator by telephone have been unsuccessful; and (3) the terminal operator has not amended its tariff during the preceding twelve months.

Tariffs of firms no longer acting as terminal operators reflect inaccurate information and serve no useful purpose. Accordingly, in the absence of a showing of good cause why such action should not be taken, the Commission proposes to cancel the tariffs of the companies included on the attached list.

Therefore, it is ordered, That each terminal operator included on the attached list advise the Commission's Director, Bureau of Domestic Regulation, at 1100 L Street, NW., Washington, DC 20573, in writing, within 30 days after the publication of this Notice in the Federal Register, of any reason why its tariff should not be cancelled;

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of each terminal operator appearing on the attached list;

It is further ordered, That the tariff of each terminal operator named in the attached list will be cancelled unless, within the time allotted, the terminal operator provides good cause for maintaining its tariff in an active status;

It is further ordered, That this Notice be published in the Federal Register.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix—Federal Maritime Commission Inactive Terminal Operators

Alltrans Express U.S.A., Inc., P.O. Box 7866, San Francisco, CA 94120
Coakley Terminals, 700 Erieside Avenue, Cleveland, OH 44114
Containerfreight Terminals Company, 1730 Third Street, San Francisco, CA 94107

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[1] The comment period expired March 7, 1988.

Full Service Distribution, 2850 NW 31st Avenue, Portland, OR 97210
International Shipping Co., Inc., 1001 Connecticut Avenue, NW. Suite 828, Washington, DC 20036
Koppel Incorporated Grain, c/o Koppel Terminal, P.O. Box 2330, Long Beach, CA 90801
W. W. Lynch, Inc., 1500 West 8th Street, Long Beach, CA 90813
NWT Distribution Services, 215 SE Morrison, Portland, OR 97214
Ocean Cargo Facilities, Inc., 85 Grand Canal Drive, Suite 309 Miami, FL 33144
Omni Overseas Freighting, Inc., 3001 S. Ridgeland Avenue, Berwyn, IL 60402
Riverway Terminal Inc., 2995 N.W. So. River Drive, Miami, FL 33125
Sea-Tac International Warehouse, Inc., 22 So. Idaho Street, Seattle, WA 98134
Tulane Fleeting, Inc., 201 Evans Rd., Suite 409, Harahan, LA 70123

[FR Doc. 88–6010 Filed 3–17–88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), Federal Register, Vol. 52, No. 163, pp. 31818–31819, dated Monday, August 24, 1987) is amended to reflect a change within the Office of the Associate Administrator for Management and Support Services. The change revises the Bureau of Data Management and Strategy (BDMS), Office of Information Resources Management (ORIRM) functional statement to more accurately reflect the responsibilities of the Office.

The specific change to Part F. is as follows:

- Section FH.20.D.3. is deleted in its entirety and replaced by the following:

3. Office of Information Resources Management (FHE–2)

Serves as the focal point for the planning of HCFA's information systems. Develops and assures compliance with HCFA's long-and short-range information plans and processes. Determines and assures compliance with internal HCFA automated data processing (ADP) policies and procedures including information systems planning, systems approval, security, and privacy. Provides the systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with departmental, other higher monitoring authorities, and with HCFA policies, standards, and information plans. Develops and maintains an inventory of HCFA's information systems. Coordinates and provides liaison on policy and planning for information systems within HCFA and between HCFA and other governmental agencies and nongovernmental groups. Develops, implements, and maintains a HCFA-wide ADP financial management program to fund and support ADP operations and information systems development activities. Formulates and executes the HCFA ADP common expense budget and the Information Technology System plan and budget in conjunction with Agency-wide budgetary submissions to the Department. Administers the HCFA ADP project management program to monitor selected system-related activities. Performs the Agency-wide ADP resource management function to assess and monitor ADP resource utilization. Develops, coordinates, and directs the HCFA ADP systems security program to ensure the protection of HCFA systems and ADP equipment. Negotiates and administers agreements and provides liaison between HCFA, the Social Security Administration, and other external organizations for the provision of ADP support services. Develops and coordinates HCFA's participation in the Federal Information Processing Standards Program. Develops and controls a comprehensive Bureau-wide management and organization development program, including management analysis and management information systems. Develops, implements, and maintains a Bureau-wide financial management program to support administrative operations.

Date: February 25, 1988.

William L. Roper,

Administrator.

[FR Doc. 88–5998 Filed 3–17–88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

United Network for Organ Sharing; Policies and Rationale for Transplantation of Organs for Foreign Nationals and Exportation of Organs Outside the United States

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: General Notice.

SUMMARY: Notice is hereby given that on January 25, 1988 the United Network fo Organ Sharing (UNOS), a private organization that operates the Organ Procurement and Transplantation Network (OPTN) under contract with the Health Resources and Services Administration (HRSA), pursuant to section 372 of the Public Health Service Act, has made available for public comment the UNOS policies concerning: (1) Organ transplantation for non-resident aliens and (2) the exportation of organs outside the United States. Section 1138 of the Social Security Act requires all hospitals which perform organ transplants and all Organ Procurement Organizations (OPOs) participating in Medicare or Medicaid to be members of the Network established under section 372 of the Public Health Service Act and to abide by its rules and requirements (Sections 1138(a)(1)(B) and 1138(b)(1)(D) of the Social Security Act). It also requires that a designated OPO allocate organs "within its service area and nationally, in accordance with * * * the policies of the Network" (Section 1138(b)(1)(E)). Because UNOS, as the Public Health Service's contractor under section 372, has certain authority affecting participants in the Medicare and Medicaid programs, HRSA has determined that it is in the public interest for these notices to be issued in order to enhance public awareness of the policies of the UNOS and encourage public comment on these policies. The HRSA and the other components of the Department have not taken any position as to the appropriateness of the proposed policies.

SUPPLEMENTARY INFORMATION: The UNOS policies being circulated for comment are based upon the general principles that selection of patients for transplantation: (1) Shall be based on waiting time and on medical and scientific criteria that are publicly stated and fairly and uniformly applied, and (2) shall not be subject to favoritism or based on political influence, discrimination on the basis of race or sex, or financial advantage. With respect to transplantation of organs in foreign nationals, the UNOS policy sets forth guidelines that must be followed by any UNOS transplant center that places non-resident aliens on its waiting list. The policy further provides for review and audit by the UNOS Committee on Foreign Relations of non-resident alien transplantation activities of UNOS transplant facilities. With respect to the exportation of organs outside the United States, the UNOS policy establishes restrictions on the exportation of organs from the United

States (except to Canada) and provides that acquisition, processing, and shipping costs for any organ that is exported outside the United States may not be billed to the Health Care Financing Administration for reimbursement.

Distribution of Policies and Rationale

Copies of the policies and the rationale for their adoption will be sent by UNOS to all members of UNOS. Other interested parties wishing to obtain a copy should contact Mr. John Persons at the United Network for Organ Sharing, 3001 Hungary Springs Road, P.O. Box 28010, Richmond, Virginia 23228, Telephone (804) 755-1600.

DATE: To receive consideration, written comments and recommendations concerning the policies and rationale should be mailed to the above UNOS address and must be received no later than May 2, 1988.

This notice is not required by statute but is published as a service to consumers and the health care community.

Dated: March 13, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88–5930 Filed 3–17–88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Food and Drug Administration, Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 52 FR 38275 October 15, 1987) is amended to reflect the establishment of the office substructure in the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research, Food and Drug Administration.

Creation of the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) was approved by the Secretary for Health and Human Services on October 6, 1987. These two new Centers replaced the former Center for Drugs and Biologics (CDB). Among its drugs responsibilities, the new human drug review programs will be the focus of CDER. The Acquired Immune Deficiency Syndrome (AIDS) program will be the focus of CBER, in addition to its biologics evaluation and research functions. The Centers' office structures reflect these priorities in new human drug review and AIDS research and development.

Section HF–B, *Organization and Functions* is amended as follows:

1. Delete subpargraphs (n–1) through (n–6) and all subpargraphs in their entirety and insert new subparagraphs (n–1) through (*n–7*) for the center for Drug Evaluation and Research reading as follows:

(n–1) *Office of the Center Director* (HFN1). Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, management, and regulatory programs, plans and policies.

Provides leadership and direction for all Center activities.

Coordinates and directs the Center management, planning, and evaluation systems to assure optimum utilization of Center manpower, financial resources, and facilities.

(n–1–i) *Office of Management* (HFN12). Monitors the development and operation of planning systems for Center activities and resource allocations and advises the Center Director on Center administrative policies and guidelines and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial and personnel management, employee development and training, equal employment opportunity (EEO) activities, and office services.

Directs Center organization, management, and information systems, and provides library services.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

Provides coordination for receipt and distribution of initial drug applications and other related documents.

Prepares, develops, and coordinates Center and agency responses to drug-related requests under the Freedom of Information (FOI) Act, the Privacy Act, and other statutes.

(n–2) *Office of Compliance* (HFND). Monitors the quality of marketed drugs through product testing, surveillance, and compliance programs.

Advises the Center Director and other agency officials on FDA's regulatory responsibilities for drugs.

Directs and coordinates Center regulation-writing activities.

Develops standards for drug industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for drug products.

Identifies problems in drug regulation, manufacturing, and quality assurance and conducts voluntary compliance programs and studies.

Develops drug quality assurance compliance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations, provides support and guidance to the field on legal actions, case development and contested cases, and reviews and decides disposition of field submissions involving deviations from standards.

Recommends approval, denial of approval, or revocation of approval of activities that use methandone and other drugs for which treatment standards have been promulgated, taking any appropriate compliance action.

Evaluates, in coordination with appropriate agency regulatory affairs officials, a firm's conformance with CGMP in producing drugs for procurement by Federal and State agencies.

Evaluates, classifies, and recommends drug recalls and provides Center coordination with field recall activities.

Develops and implements policies and procedures in support of Center compendial operations and directs the Compendial Monographs Development and Evaluation Program.

Initiates Center-field surveillance assignments to monitor pivitol research data submitted as part of pre-marketing applications.

(n–3) *Office of Drug Standards* (HFNE). Oversees the development and implementation of standards for the safety and effectiveness of prescription, biopharmaceutical, over-the-counter (OTC), and generic drugs and drug advertising and labeling.

Reviews and evaluates abbreviated new drug applications (ANDAs), Antibiotic Forms 6, and their amendments or supplements and determines approvability based on medical and scientific data findings.

Evaluates bioavailability and pharmacokinetic data and protocols on investigational, new, and marketed drugs, and coordinates other biopharmaceutics activities.

Coordinates the formulation and implementation of OTC drug monographs with other agency components and assists in final monograph publication.

Establishes bioequivalency specifications for drug products, develops guidelines for bioavailability and equivalency reviews, and develops guidelines for industry protocols and studies.

Monitors, evaluates, and develops policy for prescription drug promotion and labeling.

Initiates necessary actions to maintain industry compliance with prescription drug advertising and labeling regulations.

Participates in agency sponsored consumer and professional educational programs on drug standards.

(n–4) *Office of Drug Evaluation I* (HFNG). Reviews notices of claimed investigational exemptionals for new drugs (INDs) within classes of drugs regulated by the Office and recommends appropriate action with respect to safety and effectiveness of clinical trials.

Evaluates for safety and effectiveness and approves new drug applications (NDAs) for products regulated by the Office, and evaluates supplements that proposed changes in the conditions upon which NDA approvals are based.

Evaluates manufacturing methods, controls, and facilities of manufacturers of drugs submitted for approval in NDAs for products regulated by the Office.

Develops policy and procedures governing the review and evaluation of drug investigations and NDAs.

Evaluates and takes appropriate action on recommendations concerning withdrawal of approval of NDAs for products regulated by the Office.

Performs consulting medical and scientific evaluations of submissions on generic drugs under monograph, and over-the-counter drug products regulated by other offices in the Center.

Conducts, in coordination with other agency components, continuing surveillance and medical evaluation of labeling, clinical experience, and reports submitted by holders of NDAs for products regulated by the Office.

(n–5) *Office of Drug Evaluation II* (HFNK). The Office of Drug Evaluation II will have the same functions and will conduct the same activities as the Office of Drug Evaluation I, but for different classes of drug products.

(n–6) *Office of Epidemiology and Biostatistics* (HFNJ). On behalf of both CDER and CBER, conducts programs to collect and evaluate epidemiological and nonepidemiological information on drug and biological product usage, adverse reactions, poisoning, safety, quality, and effectiveness.

Disseminates drug and biological product information to other components of the Center and the agency.

Collaborates with users of drug and biological product information to insure that information collected and evaluated is sufficient, relevant, and useful.

Provides statistical services to Center scientific and regulatory programs.

Conducts research on, develops, and evaluates statistical methodologies.

Conducts research and develops information using epidemiological and other strategies to determine the best way to communicate drug and biological product usage information to health professional and consumers.

Develops liaison with sources of medical and scientific information related to drugs and biological products.

(n–7) *Office of Research Resources* (HFNL). Conducts research and develops scientific standards on the composition, quality, safety, and effectiveness of human drug products.

Directs the FDA insulin certification program.

Directs large scale drug quality surveillance activities for the Center as required by regulations.

Coordinates Centerwide research activities in biomathematical/statistical, pharmaco-epidemiological, econometric, and regulatory process or administration oriented subject areas.

Coordinates basic and applied pharmaceutical research including in vitro physiochemical or analytical biochemistry studies and in vivo rodent, non-human primate, and human clinical research.

Develops and coordinates Center extramural research policy and monitors research projects.

Provides scientific training for new employees through the development and coordination of Staff College programs.

Sponsors cooperative University-based and industry-linked education programs for postdoctoral traineeships and sabbatical programs.

In coordination with the Office of the Commissioner educates the public on Center and agency policy and activities.

2. Insert new subparagraphs (p–1) through (p–4) for the Center for Biologics Evaluation Research reading as follows:

(p–1 *Office of the Center Director* (HFB1). Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, management, and regulatory programs, plans and policies.

Provides leadership and direction for all Center activities.

Coordinates and directs the Center management, planning, and evaluation systems to assure optimum utilization of Center manpower, financial resources, and facilities.

Serves as the focus for and coordinates the agency's Acquired Immune Deficiency Syndrome (AIDS) program, including Center efforts to develop an AIDS vaccine and AIDS diagnostic tests; coordinates other AIDS-related activities.

(p–1–i) *Office of Management* (HFB12). Monitors the development and operation of planning systems for Center activities and resource allocations and advises the Center Director on Center administrative policies and guidelines and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial and personnel management, employee development and training, equal employment opportunity (EEO) activities, and office services.

Directs Center organization, management, and information systems.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

(p–2) *Office of Compliance* (HFBC.) Monitors the quality of marketed biological products through surveillance, inspections, and compliance programs and coordinates testing of marketed products with other parts of FDA.

Advises the Center Director and other agency officials on FDA's regulatory responsibilities for biological products.

Directs and coordinates Center regulation-writing activities.

Directs the headquarter's biologics inspection program and training of headquarter's inspectors of biological products.

Develops standards for biological product industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for biological products.

Identifies problems in biological product regulation, manufacturing, and quality assurance and conducts voluntery compliance programs and studies.

Develops biological product quality assurance compliance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations, provides support and guidance to the field on legal actions, case development and contested cases, and reviews and decides disposition of field and headquarter's submissions involving deviations from standards.

Evaluates, in coordination with appropriate agency regulatory affairs officials, a firm's conformance with CGMP in producing biological products for procurement by Federal and State agencies.

Evaluates, classifies, and recommends biological product recalls and provides Center coordination with field recall activities.

Coordinates Center inspectional programs including providing appropriate training opportunities for Center inspectors.

Initiates Center-field surveillance assignments to monitor pivitol research data submitted as part of pre-marketing applications.

(p–3) *Office of Biological Product Review* (HFBD). Reviews, evaluates, and takes appropriate action on establishment and product licenses and other marketing applications submitted by manufacturers, tests products submitted for release in coordination with other Center components, as appropriate, and establishes written and physical standards for biological products regulated by the Office.

Develops policy and procedures on and reviews, evaluates, and takes appropriate action on biological product investigations and biological product licenses.

Administers applicable provisions of the FD&C Act as they pertain to investigational products and to certain devices and drugs that are related to biological products.

Evaluates and takes appropriate action, in coordination with other agency components, on the results of continuing surveillance and medical evaluation of the labeling, advertising, clinical experience, and reports submitted by manufacturers and sponsors of products regulated by the Center.

Reviews, evaluates, and takes appropriate action on recommendations concerning withdrawal of approval of license applications for products regulated by the Center.

Prepares, develops, and coordinates Center and agency responses to inquiries on biological products from health professionals, consumers, and others including requests under the Freedom of Information (FOI) Act, the Privacy Act, and other statutes.

(p–4) *Office of Biologics Research* (HFBE). Plans and conducts research related to the development, manufacture, testing, and actions of biological products, including those related to AIDS and those prepared by genetic engineering and synthetic procedures, in order to develop and maintain a scientific base for establishing standards designed to ensure the continued safety, purity, potency and effeciveness of biological products.

Develops policy and procedures governing the review and evaluation of biological products in keeping with the provisions of the PHS Act and applicable provisions of the FD&C Act.

Reviews and evaluates on investigational new drug applications (INDs).

Reviews, evaluates, and takes appropriate action on establishment and product license applications submitted by manufacturers of biological products, tests products submitted for release as appropriate, and proposes written and physical standards for biological products regulated by the Office.

Performs inspections of manufacturing facilities for compliance with applicable standards.

Administers applicable provisions of the FD&C Act as they pertain to certain devices that are biological products.

Conducts, in coordination with other agency components, continuing surveillance and evaluation of labeling, clinical experience, and reports for products regulated by the Office.

Reviews, evaluates, and takes appropriate action on applications for registration of blood collection facilities.

Reviews, evaluates, and takes appropriate action on recommendations concerning withdrawal of license applications for products regulated by the Office.

Cooperates with other agency components of FDA, other PHS organizations, governmental and international agencies, the World Health Organization, volunteer health organizations, universities, individual scientists, nongovernmental laboratories, and manufacturers of biological products on a variety of issues relating to biological products.

Prior Delegations of Authority

Pending further delegations, directives, or orders by the Commissioner of Food and Drugs all delegations of authority to the Director, Deputy Director, and office directors of the abolished Center for Drugs and Biologics are vested in the Directors, Deputy Directors, and office directors of the new Center for Drug Evaluation and Research and the new Center for Biologics Evaluation and Research as the delegations relate to their newly assigned functions and all delegations of authority to any other officer or employee of the Center in effect prior to the date of this order shall continue in effect in them or their successors.

Dated: March 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–5982 Filed 3–17–88; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

[Program Announcement No. SSA–OP– 88–1]

Federal Old-Age, Survivors, and Disability Insurance

ACTION: Announcement of the availability of funds for Section 702 grants.

SUMMARY: The Commissioner of Social Security announces that competing applications will be accepted for new research grants authorized under section 702 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1988 funds in support of the proposed activities. Part I discusses the purpose of the announcement and briefly describes the application process. Part II describes the programmatic priorities under which the Social Security Administration (SSA) is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATE: The closing date for the receipt of grant applications in response to this announcement is May 17, 1988.

Part I. Purpose

A. Program Purpose, Goals, and Objectives

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of SSA programs.

In general, SSA will fund the following types of projects:

1. Those that examine rates of return for Social Security comparisons.
2. Those that examine the demand for older workers.
3. Those that examine the economic status of the aged in the future.

B. Fiscal Year 1988 Grant Process

The grant application process for FY 1988 will consist of a one-stage, full application. Applications are limited to 20 single-space pages (excluding résumés, forms, etc.) and must relate to the selection criteria established for review of applications.

Applicants may submit applications for multiyear projects.

The applications should include a budget for the first budget period (12 months) and the anticipated needs for each of the succeeding budget periods (also 12 months each). If the application is approved, a grant will be awarded for the first budget period. Funding for subsequent budget periods is dependent upon satisfactory performance, continued relevance of the project and the availability of fiscal year funds.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. Rates of Return for Social Security Comparisons—SSA–OP–88–001

A critical question that comes up in "money's worth" comparisons of Social Security and private retirement alternatives is what is the appropriate private comparison. Should the rate of return on Social Security be compared to that on government bonds, corporate bonds, corporate stocks, etc., or some combination thereof? In other words, what rate should be used to discount (i.e., to determine today's value of) future benefits and flows in developing estimates of the Social Security wealth held by workers and retirees? How important is the risk component of this rate, and how is that risk component related to the types of uncertainty associated with Social Security wealth? In studies to date, the choice of the alternative private rate for comparison (or equivalently, the discount rate) has been essentially ad hoc. What is needed is a more rigorous analysis of the choice of rate for comparison.

Grant proposals should be based on well-developed, rigorous analysis of the following questions: What are the risks associated with Social Security wealth, and how should these risks be measured? Can specific portfolios of alternative retirement instruments (such as government bonds, corporate stocks, IRAs, private pension funds, etc.) be identified that have the same risk as Social Security wealth? What has been the historical experience of such portfolios? Can any projection for the future be made of comparable private portfolios?

Projects that include only theoretical analysis or both theoretical and empirical analysis will be considered. Multiyear projects will be considered for this priority area. It is anticipated that $75,000 will be allocated to fund one (1) grant for the initial 12-month period of the multiyear grant activity.

B. Demand for Older Workers—SSA–OP–88–002

The Social Security Amendments of 1983 will raise the retirement age, increase the delayed retirement credit (DRC), and liberalize the earnings test in the relatively near future. Changes in the Social Security program may induce behavioral responses—changes in saving behavior, in work and retirement patterns, and other aspects of individual behavior. How changes in work incentive provisions in the 1983 amendments affect the behavior of older workers will depend on whether older workers will be able to find employment. Almost all retirement studies have been based on a model of worker choice that assumes that older workers who retire are able to find jobs at the prevailing wage. Because this assumption may not be valid, there is a need to examine the demand for older workers. Among the questions to be addressed are: Will changes in the age structure of the labor force and changes in the Social Security law encourage firms to continue to employ older workers or hire new older workers, either on a full-time or part-time basis? What will be the effect on job search attitudes and employment of older workers who become unemployed before reaching the eligible age for Social Security and/or private pension benefits? Will older workers be reemployed in occupations involving new technologies? What will be the effect of the later retirement age on the employment status of older workers who are in physically demanding occupations or whose health has diminished? Will such older workers be employed in less strenuous jobs at the end of their work career? Will other labor market changes occur (e.g., job training for older workers)?

Grant proposals should examine the demand for older workers within the framework of well-developed models of labor-market behavior. Particular consideration should be given to explaining the employment of older workers who are in physically demanding occupations or whose health has diminished. All research should consider the demand for older workers in the context of projected changing demographic patterns.

It is anticipated that a total of $80,000 will be allocated to fund one (1) grant for the initial 12-month period of a multiyear grant activity.

C. The Economic Status of the Aged in the Future—SSA–OP–88–003

An important issue in the analysis of the Social Security system is the economic status—the income and wealth—of the aged in the future, that is, in the early 21st century. Their future income levels depend on the relative importance and rates of growth of the various types of income received by the aged. What is the expected future growth in Social Security benefits, taking account of the 1983 Social Security amendments, including the phase-in of the new delayed retirement credit, the liberalized earnings test, and the scheduled increase in retirement age? Can we expect average earnings to rise? What will happen to earnings of older workers, particularly as the labor force becomes older? Will increased coverage rates translate into increased pension receipt rates? What can be expected to happen to pension amounts at and after retirement? What is the expected growth path for income from assets? Closely related, what will be the asset position of future generations of retirees?

These questions should be examined for different subgroups of the aged, as well as for all aged. For example, expected changes in income and assets could be quite different for the low-income, the middle-income, and the high-income aged. Particular demographic subgroups, such as the old-old (persons 80 or 85 and above) and widows living alone, could also show different patterns of change.

The projected relative future position of the aged and non-aged is also of importance. What is expected to happen to the income and assets of the aged relative to the income and assets of the non-aged? Is the rapid relative increase in the income of the aged in recent years expected to continue?

Grant proposals that examine both income and assets are preferred, but proposals that examine income alone will be considered. All proposals should be based on rigorous analytical models including, but not limited to, simulation models. Assumptions and method of analysis should be clearly identified. The projection period should be 20 to 30 years.

It is anticipated that $80,700 will be allocated to fund one (1) grant for the initial 12-month period of this multiyear grant activity.

Note: To foster the sharing of research, principal investigators for each priority area will be required to discuss the results of their research with SSA staff. Funds should be included in the budget for one meeting per year at the SSA Office of Research and Statistics.

Part III—Application Process

A. Eligible Applicants

Any State, local government and public or private organization or agency (including educational institutions) may apply for a grant under this announcement. Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered any amount in excess of the allowable costs of the grant.

B. Availability and Duration of Funding

These grant projects will be funded under the authority of section 702 of the Social Security Act. SSA anticipates allocating $75,000 to fund one (1) project in priority area SSA–OP–88–001 (Rates of Return for Social Security Comparisons); $80,000 to fund one (1) project in priority area SSA–OP–88–002 (Demand for Older Workers); and $80,700 to fund one (1) project in priority area SSA–OP–88–003 (The Economic Status of the Aged in the Future). Applications will be accepted for multiyear projects in all priority areas. The initial grant award will be issued for a 12-month period but may be continued on a noncompetitive basis for additional 12-month periods if the grant recipient demonstrates acceptable progress, fiscal year funds are available, and the activity has continuing relevance to program goals.

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by May 17, 1988. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel. Successful applicants may expect funding during the third quarter of FY 1988.

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from Mr. Lawrence H. Pullen, Chief, Grants Management Staff; Division of Contract and Grant Operations, Office of Acquisition and Grants; Office of the Deputy Commissioner for Management at the following addresses:

Prior to April 15, 1988. 1–C–1 Dogwood West Building; 1848 Gwynn Oak Avenue; Baltimore, Maryland. 21207; telephone (301) 594–0284.

On or after April 15, 1988. 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue, Baltimore, Maryland, 21241; telephone (301) 965–9502. When requesting an application kit, the applicant should refer to project announcement number SSA–OP–88–1 and the date of this announcement to insure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Mrs. Towanda R. McIver; Office of Research and Statistics; Office of Policy; Social Security Administration; 518 Altmeyer Building; 6401 Security Boulevard; Baltimore, Maryland, 21235; telephone (301) 965–2843.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Staff. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96, item 7), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OP–88–1) and must show the appropriate project identifier (i.e., SSA–OP–88–001, etc.).

Applications must be submitted to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Office of the Deputy Commissioner for Management; Social Security Administration; 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue; Baltimore, Maryland, 21241.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed competitively against the evaluation criteria specified in No. 6(b) of this announcement and evaluated by Federal officials and non-Federal personnel. The results of this evaluation will assist the Commissioner of Social Security in considering competing applications. Senior staff may also take into account comments from SSA headquarters program staff offices. The Commissioner of Social Security will determine the action to be taken on each application.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and will specify any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) *Screening requirements.* In order for an application to be in conformance, it must meet *all* of the following requirements:

(1) *Number of Copies:* An original signed application and two copies must be submitted. Five additional copies are optional but will expedite processing.

(2) *Length:* The narrative portion of the application must not exceed 20 single-spaced pages, exclusive of resumes, forms, etc., typewritten on one side of the paper only. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) *Non-Federal Contribution (Match):* Grant recipients must contribute towards the project costs. Generally, 5 percent of the total costs is acceptable.

(b) Evaluation criteria. Applications which pass the screening will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the following criteria. Relative weights are shown in parentheses.

(1) Project Objective: (15 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) A concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) data to be collected, including

specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, indicate that they have the skills required to competently carry out the research and to produce a final report that is comprehensive and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

(4) Organization and Budget: (10 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Are funds specified for each budget period? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome?

(5) Expectd Outcomes: (15 points)

What is the potential usefulness of the anticipated results and expected benefits to SSA and other target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is May 17, 1988.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Office of the Deputy Commissioner for Management; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland, 21241.

Applications must be received by the Grants Management Staff on or before the above closing date to be considered. Personally delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday on or prior to the established closing date. An application will be considered to be received on time if personally delivered to SSA, mailed through the U.S. Postal Service, or sent by commercial carrier on or before the closing date (as evidenced by a legible U.S. Postal Service postmark or legibly dated receipt from a commercial carrier). Private metered postmarks will not be considered acceptable as proof of timely mailing.

Applications submitted by any means other than the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address on or before the deadline date. Applications which are not received on time will not be considered for funding.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using form SSA–96, *Federal Assistance*, which has OMB clearance No. 0960–0184.

Executive Order 12371—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12371 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payments—Research and Demonstration)

Dated: March 7, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–5942 Filed 3–17–88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 930–08–4410–08]

Availability of Draft Environmental Impact Statement; Arcata Resource Management Plan, California

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability of Draft Resource Management Plan/Environmental Impact Statement.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act of 1976 and Section 102(c) of the National Environmental Policy Act of 1969, a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Arcata Resource Area. The Arcata Resource Area Plan, Ukiah District, contains approximately 257,000 acres of public land located in northwestern California, including Humboldt, Mendocino, Trinity and Sonoma Counties. The Draft RMP/EIS examines five management plan alternatives: Administrative adjustments, enhancement of natural values, consumptive uses, present management (No Action) and the preferred alternative.

SUPPLEMENTARY INFORMATION: Public Participation: Copies of the Draft RMP/EIS are available from the Arcata Resource Area Office, PO Box 1112, Arcata, California 95521, phone (707) 822–7648 and the Ukiah District Office, 555 Leslie Street, Ukiah, California 95482, phone (707) 462–3873.

Written comments on the Draft RMP/EIS should be submitted by June 18, 1988, to John Lloyd, Area Manager, PO Box 1112, Arcata, California 95521.

All comments concerning the adequacy of the Draft RMP/EIS will be considered in the preparation of the final RMP/EIS for the Arcata Resource Area.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Area Manager, Arcata Resource Area, P.O. Box 1112, Arcata, CA 95521 (707) 822–7648.

Dated: March 10, 1988.

Ed Hastey,

State Director.

[FR Doc. 88–5924 Filed 3–17–88; 8:45 am]

BILLING CODE 4310-40-M

[UT–050–08–4410–08]

Availability of Draft Environmental Assessment (EA); Henry Mountain Coordinated Resource Management Area, Utah

AGENCY: Bureau of land management, Richfield, Utah, Interior.

ACTION: Notice of comment period for the Henry Mountain Coordinated Resource Management Draft EA, ending April 19, 1988.

SUMMARY: The EA analyzed the impacts of the proposed action and alternatives to manipulate or maintain vegetation on 12,600 acres in the Henry Mountains. Also 1,000 acres would be aerial seeded in the Mt. Pennell WSA (UT–050–248).

The draft EA is available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701. For additional information contact Roy Edmonds, Environmental Coordinator,

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at the above address or call (801) 896-8221.

Donald L. Pendleton,

District Manager.

March 9, 1988.

[FR Doc. 88-6015 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Michigan Department of Natural Resources, Lansing, MI—PRT-725828.

The applicant requests a permit to import two giant pandas *(Ailuropoda melanoleuca)* on loan from the Sichuan Foreign Affairs Office, Chengdu, Sichuan, China for the purpose of exhibition, conservation education and enhancement of the survival of the species. It should be noted that the Service will be unable to take final action on applications for short-term exhibition loans until further information has been obtained from Chinese authorities on the effects of these loans on wild or captive-breeding panda populations.

Documents and other information submitted with this application are available to the public during normal business (7:45 am to 4:15 pm), Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on this within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the applicant and PRT number when submitting comments.

Date: March 15, 1988.

R.K. Robinson,

Chief, U.S. Office of Management Authority.

[FR Doc. 88-6011 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-AN-M

Intent To Prepare a Legislative Environmental Impact Statement on the Proposed Acquisition of Inholdings on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a legislative environmental impact statement for the acquisition of various inholdings in national wildlife refuges in Alaska. This notice is being furnished to inform the public of the Service's action and to provide information on the proposed schedule for the impact statement.

FOR FUTHER INFORMATION CONTACT: John H. Doebel, Associate Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telephone (907) 786-3543.

SUPPLEMENTARY INFORMATION: This legislative environmental impact statement is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and other appropriate Federal regulations and Service procedures for compliance with those regulations.

The issues and conerns addressed in the impact statement related to various alternative means of acquiring various refuge inholdings are derived from previous land planning efforts in Alaska, relevant portions of comprehehsive conservation plans, concerns voiced by the Governor's Office and by the Alaska State Legislature, expressions of interest by members of Congress, issues and concerns raised by private groups and individuals during preparation of the 1002(h) (Arctic Coastal Plain) report and public presentations on the proposed exchanges, and internal scoping sessions conducted by Service personnel. The following issues will be addressed in the impact statement:

Continued use and access to refuge inholdings;
Limited oportunities to acquire refuge inholdings;
Equity of interests to be exchanged;
Propriety of land negotiations prior to a Congressional opening of the coastal plain for oil and gas development;
Protection and management of fish and wildlife habitat on the refuge inholdings;
Oil and gas development on the Arctic Coastal Plain area and protection of fish and wildlife resources;
Financial implications of the exchange;
Effects on subsistence resources and use;
Implications of acquiring only surface estate of inholdings;
Transfer of Native-owned lands back to Federal jurisdiction; and
The need to acquire lands protected by Section 22(g) of the Alaska Native Claims Settlement Act.

Public input to date has been extensive as previously described, but further public comment is welcome at anytime. Preparation of the Legislative Environmental Impact Statement is underway; a draft statement is expected to be available for public review by late July 1988. A formal public comment period with hearings will follow the release of the draft legislative environmental impact statement.

Date: March 14, 1988.

Frank Dunkle,

Director, Fish and Wildlife Service.

[FR Doc. 88-5909 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Record of Decision; Finding of No Significant Impact; Three Sisters Lighthouse, Cape Cod National Seashore

AGENCY: National Park Service, Interior.

ACTION: Record of decision; selection of Alternative H for relocation of Three Sisters Lighthouse.

SUMMARY: The National Park Serivce has selected Alternative H (restoration at the existing location), site of the "Twins" since 1920 and the "Beacon" since 1983 for permanent location of the Three Sisters Lighthouses.

The Record of Decision and Finding of No Significant Impact is on file and available for inspection at Park Headquarters, Cape Cod National Seashore, South Wellfleet, Massachusetts, upon request.

With this Record of Decision the National Park Service will accept comments on the selection of alternative H for a period of 30 days.

DATE: Written comments will be accepted until April 18, 1988.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Copies of the Record of Decision are available at the Cape Cod National Seashore Headquarters Office in South Wellfleet, Massachusetts 02663.

Date: March 1, 1988.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 88-5891-filed 3-17-88; 8:45 am]

BILLING CODE 4310-70-M

Minerals Management Service

Receipt of Development Operations Coordination Document From Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9104, Block A-171, High Island Area, offshore Texas, Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 9, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 11, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-5925 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Development Operations Coordination Document From Tenneco Oil Exploration & Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD prescribing the activities it proposes to conduct on Lease OCS-G 5477, Block 275, South Marsh Island Area, offshore Louisiana Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 11, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 or Title 30 of the CFR.

Dated: March 11, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-5926 Filed 3-17-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Griffith Consumers Company, 2510 Schuster Drive, Cheverly, Maryland 20781

2. Wholly owned subsidiaries which will participate in the operations, and state(s) of incorporation:

Griffith Gas Hauling & Delivery Company, Inc. (a Maryland corporation), 5910 Farrington Avenue, Alexandria, Virginia 22304

Noreta R. McGee,

Secretary.

[FR Doc. 88-5890 Filed 3-17-88; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-95]

Passenger Train Operation; Atchison, Topeka and Santa Fe Railway Co.

To: The Atchison, Topeka and Santa Fe Railway Company.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana and Los Angeles, California, via El Paso, Texas. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Los Angeles, California, are temporarily out of service because of a derailment. An alternate route is available via the Atchison, Topeka and Santa Fe Railway Company between Los Angeles, California and Phoenix, Arizona.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Los Angeles, California, and a connection with Southern Pacific Transportation Company at Phoenix, Arizona.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act any by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:20 p.m., (EST), March 3, 1988.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EST), March 4, 1988, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, March 3, 1988.

By the Commission, Bernard S. Gillard, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5901 Filed 3-17-88; 8:45 am]

BILLING CODE 7035-01-M

Supplement to Notice of Exemption East Portland Traction Co.; Operation Exemption

The notice of exemption served February 19, 1988, concerned the acquisition and operation by the East Portland Traction Company (East Portland) of certain properties of Portland Traction Company (Portland). The involved properties consist of a portion of the Portland rail line from milepost 0.26 at East Portland in Multnomah County, OR, where interchange is made with Southern Pacific Transportation Company (Southern), to milepost 4.54 (East 17th Street) in the Milwaukie Industrial Park, at Milwaukie in Clackamas County, OR, where the line branches into several industrial spurs, plus 2.11 miles of secondary and yard trackage.

The notice of exemption stated that East Portland would grant overhead trackage rights to Portland to reach the trackage east of milepost 4.54 until such time as that portion is abandoned. The notice of exemption also indicated that the transaction was expected to be consummated on or about February 15, 1988.

By supplement statements filed February 16, 1988 and March 7, 1988, East Portland states that it will not need to grant overhead trackage rights to Portland to reach the outer portion of its line. The outer portion is to be abandoned prior to sale of the remaining trackage. A purchase agreement is being negotiated with Union Pacific Railroad Company and Southern, Portland's owners, and if successful, the transaction is now expected to be consummated on or about June 1, 1988.

The notice of exemption should be considered clarified to the extent indicated here, and in all other respects it shall remain in full force and effect. Decided: March 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6089 Filed 3-17-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31205]

Supplement to Notice of Exemption; FRVR Corp.; Acquisition and Operation Exemption

On December 23, 1987, FRVR Corporation (FRVR) and Chicago and North Western Transportation Company (CNW) filed a notice of exemption for FRVR, a non-carrier, to acquire and operate CNW's "Duck Creek South" lines between Green Bay and Milwaukee, WI. Additional, FRVR was to acquire certain incidental trackage rights over CNW lines between Granville, WI, and CNW's Butler Yard in Milwaukee for purposes of interchanging traffic. The notice of exemption became effective on December 30, 1987, under 49 CFR 1150.32(b), and a caption summary of it was served and published in the Federal Register on January 11, 1988 (53 FR 647).[1]

On March 1, 1988, FRVR and CNW filed a supplement to their notice of exemption stating that as part of the transaction CNW (and any future purchaser of CNW's lines north of Duck Creek) will also retain incidental, overhead trackage rights over approximately a 4-mile segment of the Duck Creek South lines between Duck Creek (milepost 4.00) and Green Bay (milepost 0.00) for the exclusive purpose of interchanging traffic at CNW's North Green Bay Yard, which is being acquired by FRVR. These trackage rights reflect operating considerations in the Green Bay area and were inadvertently overlooked when the notice of exemption was originally filed because CNW originally expected to close first on the sale of its lines north of Duck Creek, in which case a grant (instead of a reservation) of the Duck Creek-Green Bay trackage rights would have been made to that buyer and would have pre-dated the instant transaction. The instant reservation of tackage rights became necessary because the Duck Creek south transaction will close first.

Any comments must be filed with the Commission and served on:

Thomas J. Bryne, Carl V. Lyon, 1101 30th Street NW., Suite 302, Washington, DC 20007

Fritz R. Kahn, L. John Osborn, Verner, Liipfort, Bernhard, McPherson and Hand, Chartered, 1660 L Street NW., Suite 1000, Washington, DC 20036.

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[1] Petitions for revocation of the exemption have been filed and will be considered by the Commission in a subsequent decision.

This supplement to the original notice is filed under 49 CFR 1150.31. If the supplement contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6090 Filed 3-17-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31235]

Exemption; McCormick/Ashland City & Nashville Railroad Co., Inc.; Change in Operator Exemption Rail Authority

McCormick/Ashland City & Nashville Railroad Co., Inc. (MAC&N), has filed a notice of exemption to operate a line of rail owned by the Cheatham County Rail Authority, beginning at milepost 205 at Nashville, TN, and extending to milepost 180 at Ashland City, TN, a distance of 25 miles with 3 miles of switching leads. The line has been operated previously by Nashville & Ashland City Railroad Company. The transaction is expected to be consummated March 11, 1988. Any comments must be filed with the Commission and served on: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6091 Filed 3-17-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Superior Chrome Plating Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 24, 1988, a proposed Consent Decree in *United States v. Superior Chrome Plating Company,* Civil No. 85-7866 CBM was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the failure by Superior Chrome to timely meet the pretreatment regulations for electroplating facilities and the failure to institute necessary procedures to achieve continuous compliance with the pretreatment regulations in violation of the Clean Water Act and the pretreatment regulations. The proposed Consent Decree requires Superior to comply with the pretreatment regulations prior to discharging wastewater and to pay a civil penalty of $31,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Superior Chrome Plating Company, DJ. Ref. 90-5-1-1-2502.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 1100 United States courthouse, 312 North Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decreee may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5790 Filed 3-17-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Research, Evaluation, and Pilot and Demonstration Projects Program; FY 1987 Availability of Funds and Request for Applications; Workplace Literacy

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and notice of Solicitation for Grant Application.

SUMMARY: The Employment and Training Administration announces the beginning of its Job Training Partnership Act Research, Evaluation, and Pilot and Demonstration Projects Program regarding workplace literacy for Program Year 1987.

DATES: The closing date of receipt of applications under this announcement is April 18, 1988. To receive consideration, applications submitted by mail must be postmarked no later than April 12, 1988.

Hand-delivered applications must be received by 2:00 P.M., local time, on April 18, 1988. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service. It is preferred that applications be mailed.

ADDRESS: Mail or hand deliver applications to: U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management, Division of Acquisition and Assistance, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams, Reference: SGA/DAA 102-88.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Division of Acquisition and Assistance, Telephone: (202) 535-8700.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the beginning of its Research, Evaluation, and Pilot and Demonstration program regarging workplace literacy for Program Year (PY) 1987 (July 1, 1987-June 30, 1988).

Funding for ETA grants is authorized by the Job Training Partnership Act

(JTPA), as amended. Title IV—Federally Administered Programs, Part D—National Activities, Section 402—Migrant and Seasonal Farmworkers Programs, and Section 452—Research and Demonstration.

This program announcement provides background information on the ETA Research, Evaluation, and Pilot and Demonstration Projects Program, describes the need for the improvement of workplace literacy, mentions several important points concerning the application process, and describes the programmatic topics for which ETA solicits applications for funding of projects in the area of literacy and basic skills improvement. This announcement also provides guidance on how to prepare and submit an application.

A. Background

ETA's PY 1987 Research, Evaluation, and Pilot and Demonstration Program in Relation to the Improvement of Workplace Literacy by State and Local Governments and Non-Profit Community Based Organizations

This Solicitation for Grant Application (SGA) notice, covering the general subject of workplace literacy, is one of a series of such notices pertaining to different subject areas for which grant and contract awards will be made by ETA during Program Year 1987 for research, evaluation, and pilot and demonstration (REP&D) projects. The other areas initially announced in 52 FR 41287–41396 (October 27, 1987) are: Labor Market Research, State and Local Coordination, Employment Service/Unemployment Insurance/Labor Market Information, Partnership, and Homelessness.

These areas, which constitute the major portion of the PY 1987 Program, support the Department of Labor's (DOL) Workforce 2000 mission. According to recent DOL studies, the bulk of labor force entrants between now and the year 2000 will consist of groups that have been traditionally underutilized or have experienced labor market barriers—women, minorities and immigrants. At the same time, the employment base of the economy is changing in structure from that of manufacturing to services. Many new jobs will require higher levels of reading, communication, mathematical and problem-solving skills than at present.

The country now has an unprecedented opportunity and need to help prepare those who have suffered chronic unemployment or underemployment to meet the evolving requirements for workforce participation. The purpose of this program announcement is to solicit projects which will provide knowledge, direction and stimulus concerning the role of training providers to meet the problem of literacy remediation as it affects labor market participation.

In 1986, ETA began a "Workplace Literacy" initiative as an ongoing examination of a number of issues concerning the literacy and basic skills needs of workers. This SGA is directed at the literacy improvement efforts made by state and local governments and nonprofit community-based organizations. Potential grantees are asked to design and implement innovative projects providing literacy services through existing programs or through new activities. For the purposes of this SGA literacy and basic skills are defined as those reading, computation, communication, problem-solving, and analytical skills necessary to obtain and keep a job.

The Hudson Institute publication *Workforce 2000* and Bureau of Labor Statistics projections assert that a growing number of jobs, particularly in services, will demand more technical competence while, concurrently, there will be a decline in jobs with minimal educational requirements. In fact, such developments are already apparent in the loss of manufacturing production worker jobs. It would appear that workers with some technical skills and an ability to learn quickly will be in an advantageous position in the future work force.

The payoff for the acquisition of literacy skills will increase as the economy adjusts to new technology, foreign competition, and an educated consumerism that demands high quality goods and services. Yet, with these challenges comes the reality that proportionately more women, minorities and immigrants will be entering the labor force. These are groups subject to labor market handicaps of various kinds including educational deficiencies.

The problems of literacy are being faced up to by a great many organizations and in a great many contexts. This SGA will try to encourage some systematic responses in literacy and basic skills remediation aimed at placing individuals in jobs they are excluded from because of deficiencies in reading, writing and computational skills. Successful grantees will show: (1) How literacy and basic skills levels can be raised through existing job training programs in the prevailing labor market climate and (2) how special groups can be helped with tactics unique for the groups being aided. Grantees will be asked to demonstrate how remediation is conducted so that such projects may be duplicated by others within the education and training network.

This SGA is being undertaken under the broad authority of JTPA which seeks to train and place disadvantaged and dislocated workers, including young workers with little or no job experience.

As is well known, JTPA supports a decentralized training and placement system which is supposed to be coordinated with the private sector. By its nature JTPA favors expeditious means to help the needy unemployed by getting them into paid employment as soon as possible. In one respect JTPA is a good instrument to train those with basic skills needs because of the well established principle that individuals learn if there is economic incentive. Yet it is manifest that many workers have profound learning problems not easily overcome with short-term training.

The institutions which provide literacy training may or may not be designed to help unemployed people. The massive formal education system is successful in aggregate terms but there is a stream of students who leave school early for various reasons and end up as JTPA clientele. There is also a substantial adult education system which meets many needs including some basic skills remediation. The adult education option depends, to some degree however, on the preexistence of means and motivations that are weak among the traditional JTPA clientele. Finally, there is basic skills instruction available through JTPA which does suit such a clientele but which needs improvement through new approaches, such as basing instruction in functional settings. The nature of supplemental help may depend on coordination of such activities as linkages to the school system, to social services and health care, and to the provision of transportation and child care.

B. Scope

The grantee shall provide all personnel, material, and facilities necessary to perform a pilot or demonstration project and produce a report detailing the results of the project. In the life of the grant the project will be designed and implemented and reports submitted in accordance with the grant. Each grantee will actually work with a population eligible or likely to be eligible for assistance under JTPA. Potential grantees are also advised that ETA may support more than one proposal within a subject area or, conversely, may not make any awards within a subject area failing suitable proposals.

C. Statement of work

This SGA seeks to promote an action agenda under the rubric of "workplace literacy". There are two centers of

interest: community-based mechanisms to treat literacy among special groups, and state and local programs set up under JTPA that attack the literacy and basic skills remediation problem. In both instances there will be a description of the remedial process—how clients are found and tested, how individual needs are assessed, how training is prescribed, how progress is defined and what outcomes are expected.

There must also be evidence that programs are keyed to a known demand for workers and that such a demand is realistic. This is a delicate problem.

Employers may stress the screening value of, say, a high school diploma. This insistence may be restrictive when what is needed is a general kind of basic competence. ETA is also aware that literacy and basic skills improvement strategies are often keyed toward drop-out prevention or the attainment of a high school equivalency diploma. This can result in an exclusion bias against unemployed workers who, for the most part, are through with the formal school system. Yet, it is also desirable to give trainees basic skills which can accompany them through a career in the face of the changing requirements of labor force demand.

(1) Increasing the Literacy Levels of Workers

Grants will be awarded to community-based and non-profit organizations to develop literacy projects aimed at definable groups such as youth, minorities, women, the handicapped, non-English speakers, and migrant and seasonal farmworkers. The projects may provide literacy service, instruction, and technical assistance. Projects may concentrate on organizational methods to bring the target populations into a teaching environment or may concentrate on teaching techniques including computer-assisted instruction, interactive videodisc coursework and other technical means. Grantees may also focus on testing teaching methods which may be especially cost-effective or yield high success rates or are a useful combination of the two.

ETA also has interest in programs which go beyond placement in jobs, the usual limit on further JTPA assistance. If one accepts the premise that the future jobs will be constantly undergoing an upward qualitative revision then it is likely that workers employed at entry-level jobs will need continuing education to either stay employed or to be promoted. This implies that grantees will address this 'follow-on' aspect, perhaps moving into a cooperative mode with employers to upgrade employees' literacy skills.

Grantees are also asked to differentiate needs within specified target groups. There is every reason to suppose there is a distribution of needs and abilities within any group, but it is also probable that there are unique aspects. The training of minority parents, for example, must recognize the clients' time and child care restraints. One also recognizes that there may be some sub-population that has to be selected out and referred to another kind of care. This may include those with severe learning disabilities requiring very specialized treatment. In this case the useful service provided may be careful assessment.

For the purposes of this procurement and in view of JTPA responsibilities, "special groups" may include "dislocated workers", provided that such workers are likely to remain unemployed and who are judged to have deficient basic skills. A study of such workers, for example, showed that 20 percent read below the sixth-grade level. Of particular interest in this context would be projects which improve literacy and basic skills for older displaced workers, a particularly hard-to-place category.

Total support for demonstration projects is estimated at $1.7 million with the likelihood of multiple grants for a grant period not to exceed 24 months.

(2) State and Local Models To Increase the Literacy Levels of Workers and Potential Workers

Grants under this subject area will be awarded to States and local JTPA administrative agencies. Title II, Parts A and B, of JTPA provides funds for remedial education and basic skills training. However, it is undeniable that some program operators tend to select for skill training those who do not have serious literacy problems. This project seeks to serve those who do have basic skills deficiencies and in doing so to provide new program insights and baseline data on costs and program expectations.

The target populations for this undertaking may largely duplicate that of the "special groups" cited in C.(1). above. The methods of amelioration may also be similar, i.e., organizational response, cooperative ventures, new techniques for testing and teaching, and so on. The difference lies in the relationship to JTPA which, in this instance, holds literacy and basic skills to be integrated into a comprehensive assistance package consisting of outreach, testing and assessment, counseling, job search assistance, and skills training. In other words, literacy and basic skills improvement is bonded to other actions and for the most part is measured in terms of successful placement.

Nothing precludes potential grantees from spreading the JTPA net to include not only the unemployed but also those outside the labor force such as welfare recipients and the handicapped; and from drawing in other community resources such as post-secondary educators, literacy volunteers and firms interested in upgrading potential and actual employees. One challenge might be to mix human and financial resources so as to improve the overall quality of the local labor force to meet shortages or to achieve economies of scale for training expenditures, if there are convergent interests.

Potential grantees should be aware of considerable experience in coordinating JTPA with other activities including welfare, economic development, education, vocational education and vocational rehabilitation. Some populations served by JTPA under the cooperative umbrella include dropout-prone youth, school dropouts, the disabled, homeless and runaway youth, Native American youth, and farm and migrant labor. Many such efforts have touched on the literacy problem or have dealt with it directly as basic skills remediation. Bidders are encouraged to become familiar with the SGA on State and Local Coordination which will be available concurrent with this offering. This SGA references a number of cooperative activities with JTPA and may serve as a useful guide.

Support for this activity is estimated at $800,000 with likelihood of multiple grants for a grant period not to exceed 24 months.

D. Eligible Applicants

The grants will be awarded to eligible applicants, as stated in Section C. Statement of Work (1) and (2). Applicants may be submitted by JTPA Private Industry Councils (PIC) or JTPA administering entitles (State, or local level) including JTPA Section 402 migrant and seasonal farmworker program grantees. Individuals are not eligible to apply. ETA encourages applications that are developed jointly by State, local JTPA and community-based social services agencies, the private sector, and foundations or universities, since this helps to coordinate local resources and serves to combine expertise in the subject area. For these applications, a lead organization must be identified, and that organization must be a JTPA PIC or administering entity. Applications from organizations that do not meet the eligibility restrictions will not be reviewed. The period of performance will not exceed 24 months.

E. Instructions for Completing Applications

Each copy of the application must contain:

(1) *A fact sheet* which includes the following: a. name of institution or organization submitting proposal; b. address of organization, including zip code; c. telephone number, including area code; and d. name, position, and phone number of official who is approving the submission of the proposal. This person should be someone with legal authority to commit the organization to the proposed project.

(2) *Budget Information* (see attachment Appendix A).

(3) *Program Narrative.* Describe the project you propose in response to this announcement addressing the specific concerns mentioned under C. statement of work C(1) and C(2). Your narrative (20 pages typed double-spaced) should provide information on how the application meets the evaluation criteria in H. (page 23) of this announcement.

The final decision on the award will be based on what is most advantageous to the Government in terms of technical quality and other factors as determined by the Grant Officer.

F. Closing Date for Receipt of Applications

The closing date for submittal of applications under this program announcement is (insert 30 days after publication in the Federal Register).

G. Reporting Requirements

The grantee shall furnish the reports and documents listed below:

(1) Financial Reports

The grantee shall submit to the Federal Representative, Department of Labor, an original and two copies of a monthly detailed account of expenditures. The detailed report of expenditures must include the same line items of cost categories as those specified in the grant budget.

(2) Program Reports

a. *Quarterly Progress Reports.* The grantee shall submit to the Federal Representative within 10 days following the end of each quarter, five copies of a quarterly progress report, which provides a detailed account of services provided during each quarter of grant performance. Reports shall include, in brief narrative form, such information as:

1. A description of overall progress of work activities accomplished during the reported period;
2. An indication of any current problems which may delay performance, and proposed corrective action, if any:
3. Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

b. Draft Final Report. Five copies must be submitted at least 2-1/2 months prior to the grant expiration date.

(3) Final Report. This report shall summarize the project activities and results and shall be submitted in 10 copies by the grant expiration date.

H. Evaluation Criteria

Reviewers will score the applications, basing their scoring decisions on the following criteria:

(1) *Need for the Project:* 20 points. The application clearly describes, in concerte terms, a literacy or basic skills need problem that prompts the applicant to propose a project. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed is described. It also describes how the proposed project builds upon previous work, how it advances that state of knowledge from a national perspective and how it addresses a topic identified in this announcement.

(2) *Project Methodology:* 20 points. The application describes specific plans for conducting the projects in terms of the tasks to be performed. It includes relevant information about: a hypotheses to be tested (if appropriated); b. goals and measurable objectives; c. what the project will do; d. how the project will be conducted; e. data to be collected (including specification of data sources); and f. a plan for data analysis; g. a chart with tasks laid out over time (e.g. a Gantt chart); and h. a client flow chart which depicts the planned sequence of services to be provided by each participating organization. A detailed discussion is provided on how the approach proposed will accomplish the project objectives. Whenever possible, innovative use should be made of volunteers, and the private sector should be involved.

(3) *Expected Outcomes:* 20 points. The proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products are specified and the expected benefits for specific target groups and job training and employment and other human services providers are delineated. Outcomes as opposed to process measures are emphasized. Where appropriate, evaluation plans and procedures should be capable of measuring the degree to which project objectives have been accomplished.

(4) *Dissemination and Utilization:* 20 points. The application describes the methods the project will use to share its experience and findings in the field of literacy and basic skills remediation in general and specifically with agencies and organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings, and the Federal and non-federal resources required, are described. The specific audiences to which the products will be addressed should be identified.

(5) *Level of Effort:* 20 points. The resources that will be needed to conduct the project are specified including personnel, time, funds and facilities. These resources should be adequate to meet the work plan described in the application. The staff (or other personnel resources) should be qualified and the team should have the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly links responsibilities to project tasks. The total cost of the project is reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations is clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) or the total funds required and of the sources of outside support, if any, that will be used must be included.

These evaluation criteria correspond to the outline for the narrative section of the application and the descriptions of the five criteria above should be used in developing the program narrative.

Signed at Washington, DC, this 8th day of March, 1988.

Roberts T. Jones

Acting Assistant Secretary of Labor.

Appendix A—Budget Information

Each applicant shall submit a project budget using the following format. In addition, a detailed breakdown supporting each budget line item is required.

SPECIAL CLAUSE NO. BUDGET

	Government	Grantee contribution	Total
Direct costs:			
Staff salaries and wages.	$	$	$
Fringe benefits for staff.			
Staff travel and per diem.			
Consultant fees			
Materials and supplies.			
Communications			
Subcontract			
Total direct costs.			
Indirect costs:			
Total Estimated cost [1].			

[1] The maximum Government contribution under this grant will be $——————.

[FR Doc. 88-6028 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-30-M

Research, Evaluation, and Pilot and Demonstration Projects Program for Program Year 1987; Availability of Funds and Request for Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of funds for its Job Training Partnership Act Research, Evaluation, and Pilot and Demonstration Projects Program for Program Year 1987 (July 1, 1987–June 30, 1988); and a Solicitation for Grant Applications (SGA) under that program.

DATES: The closing date for receipt of applications under this announcement is April 18, 1988. To receive consideration, applications submitted by mail must be postmarked no later than April 12, 1988. Hand-delivered applications must be received by two (2) o'clock P.M., local time, April 18, 1988. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

ADDRESS: Mail or hand-deliver applications to: U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management (OFAM), Division of Acquisition and Assistance, Room C-4305, 200 Constitution Avenue, NW., Washington, D.C. 20210, Attention: Gwendolyn Simms; Reference: *SGA/DAA 101-88.*

FOR FURTHER INFORMATION CONTACT: Gwendolyn Simms, Division of Acquisition and Assistance, Telephone: (202) 535-8708.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds for Job Training Partnership Act Research, Evaluation, and Pilot and Demonstration Projects Program for Program Year 1987 (July 1, 1987–June 30, 1988) and a Solicitation for Grant Applications (SGA) under the program. Funding for ETA grants is authorized by the Job Training Partnership Act (JTPA), as amended, Title IV—Federally Administered Programs, Part D—National Activities, Section 452—Research and Demonstration.

This program announcement consists of four parts. Part I provides background information on the ETA Research, Evaluation, and Pilot and Demonstration Projects Program, describes the benefits of the State and Local coordination and the role of JTPA, and mentions several important points concerning the application process. Part II describes the programmatic topics for which ETA solicits applications for funding of projects in the area of State and Local Coordination. Part III describes the grant application process, and Part IV provides guidance on how to prepare and submit an application.

Although submission of grant applications is restricted to JTPA Private Industry Councils (PIC) or JTPA State or local administering entities, potential cooperating organizations/institutions are encouraged to seek cooperative arrangements with eligible JTPA applicants for the purpose of fostering viable State/local coordination demonstration projects. Examples of cooperating organizations include but are not limited to public agencies, educational establishments, community-based organizations, foundations and private employers.

Part I—Preamble

A. ETA's PY 1987 Research, Evaluation, and Pilots and Demonstration Program in Relation to Workforce 2000

This SGA notice, covering the general subject of State and Local Coordination, is one in a series of such notices pertaining to different subject areas for which grant and contract awards will be made by ETA during Program Year 1987 for research, evaluation, and pilot and demonstration (REP&D) projects. The other areas initially announced in 52 FR 41287-41396 (October 27, 1987) are: Labor Market Research, Workplace Literacy, JTPA, Employment Service/Unemployment Insurance/Labor Market Information, Partnership, and Homelessness.

These areas, which constitute the major portion of the PY 1987 REP&D Program, support the Department of Labor's (DOL) Workforce 2000 mission. According to recent DOL studies, the bulk of labor force entrants between now and the year 2000 will consist of groups that have been traditionally underutilized or have experienced labor market barriers—women, minorities and immigrants. At the same time, the employment base of our economy is changing in structure from that of manufacturing to services. Many new jobs will require higher levels of reading, communication, mathematical and problem-solving skills than at present.

We now face an unprecedented opportunity and need to help prepare those who have suffered chronic unemployment or underemployment to meet the evolving requirements for workforce participation. The purpose of this program announcement is to solicit projects which will provide knowledge, direction and stimulus concerning the role of JTPA programs in effecting more cost effective delivery of services to certain target groups through coordination/collaboration with other human services agencies and the private sector.

B. The Coordination Role of JTPA

JTPA shifted major job training program responsibilities from DOL to State governors and, at the same time, made business and industry a partner in the planning, administration, and oversight of the program at both the State and local levels. JTPA provides job training and other employment services, such as job placement to unskilled and economically disadvantaged individuals who need training to obtain employment. JTPA requires States to plan for coordinating program activities with related State and local human services programs to achieve a comprehensive integrated service delivery system. Many States have moved in the direction of coordinating/integrating their training and employment programs with those of vocational and adult education, rehabilitation services, public assistance, economic development, and other related programs. While progress has been made, there is much room for improvement.

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JTPA funds for local programs are formula-allocated from the State level to some 600 local service delivery areas (SDAs). Recognizing that training programs should respond to the needs of business and industry for a well-trained labor force, JTPA not only requires that each State establish an ongoing partnership with the private sector through the State Job Training Coordinating Council, but that each SDA do the same through the local Private Industry Council (PIC).

The grant recipient/administrative entity for JTPA funds—a local unit of government in 70 percent of SDAs—is responsible for the delivery of services according to plans approved by local Private Industry Councils. The more common JTPA services are classroom training, on the job training (OJT), and remedial education/basic education. These are provided by a wide range of institutions including: public agencies (the Employment Service, vocational education, secondary education, post-secondary education, vocational rehabilitation, and local government); private/nonprofit organizations (community-based organizations and Chambers of Commerce); and private/for-profit organizations (private firms and proprietary schools).

The transfer of program management from the Federal level to the States provides maximum flexibility to State and local officials in designing and operating programs with their private-sector partners. The objective of this approach is to allow such partnerships to tailor programs to the unique needs of their respective labor markets. ETA is seeking to identify problems, issues, and approaches, and to plan, demonstrate and assess cost-effective arrangements in which JTPA programs link up with other service deliverers to serve the self-sufficiency/employability needs of several designated target groups—linkage that are susceptible to replication in other States and localities.

C. The Case for Coordination

JTPA alone does not have the resources to address employment-related problems of individuals with multifaceted problems. However, there are creative ways of linking JTPA resources with other programs in the community to meet the overall needs of our clientele. The general advantages of such linkages are numerous, including the more integrated use of Federal dollars for social programs, reduced duplication of effort in programming and administration, and the potential to expand the level and array of services which can be made available. Thus, program clients benefit from an expanded number of services, simplified access to a variety of programs, expanded access to job and employment/career information, and a greater potential for individualizing or tailoring training and education services to specific client needs. Administrators are likely to enjoy lower costs for monitoring/data collection/reporting functions, more effective and realistic planning based on an expanded pool of programming ideas and experiences, and shared accountability. Service providers are likely to experience enhanced program resources with which to serve at-risk populations, better program information for targeting services to meet the needs of particular populations, simplified proposal development and reporting, and improved analysis of the cost-effectiveness of services.

D. The Elements of Coordination

Collaborative efforts can and do vary in terms of their degree of formalization, complexity, and interchangeability of funds, facilities, materials, and staff services. Some of the stronger linkage efforts are occurring under the heading of "services integration." Such projects, which tend to be "client-centered," include a number of elements that might serve as goals toward which less formally structured projects might strive. These elements include: Unified planning, needs assessment and evaluation; standardized purchase of service procedures; case management systems or single point access to all available services; collocation of service agencies or related transportation services; uniform application and eligibility determination procedures; an integrated information and referral system or resouce directory; and a common service terminology.

Barriers to satisfying the above criteria include such factors as institutional rigidity, "turfism," and conflicting regulations among categorical programs. ETA is seeking grant applications that will detail the major problems involved in developing operating linkages among agencies, provide viable solutions for overcoming barriers to interagency coordination involving JTPA programs, and indicate planning approaches for implementing and demonstrating the proposed solutions in practice.

E. Application Elements Common to All Grant Topics

Grant awards for the topics considered under this announcement will be made on a competitive basis according to a common set of evaluation criteria, which relate directly to the methodology which grant applicants will use in preparing their proposals for grant topics. In addition to a standard criteria and methodology, there is a common set of grantee eligibility, grant matching and grant reporting requirements. These elements of the application process are discussed under Part III. Instructions for completing the SF 424 application form are under Part IV.

Part II—Programmatic Topics

The programmatic topics included in the State and Local Coordination area of the ETA PY 1987 Research, Evaluation, and Pilots and Demonstration Projects Program are as follows:

Topic 1: Private Industry Council Partnerships for Serving Displaced Homemakers
Topic 2: Recruitment and Training of Women to Enter Nontraditional Jobs
Topic 3: Policy and Program Strategies for Serving Special Target Groups: Adult and Youth Offenders; Public Housing Residents; and the Learning Disabled
Topic 4: An Assessment of the JTPA Role in State and Local Coordination Activities

A. Special Information on Topic 4

Program descriptions of grant projects for Topics 1, 2, and 3 are included in Part II of this announcement. Because Topic 4 is being competed via the Request for Proposals (RFP) method, its work specifications are advertised separately. Topic 4 will reveiw and synthesize a wide range of accumulated experiences concerning the coordination of JTPA with other human services programs and identify present and future issues, directions, and exemplary approaches which can be used as a basis for practical guidance to program operators, for establishing new policy initiatives, and recommending future research in the area of State and Local Coordination. Potential offerers for Topic 4 should consult the *Commerce Business Daily* estimated date: February 3, 1988, for information on how to obtain a copy of the RFP.

B. Program Descriptions of Grant Projects for Topic 1, 2, & 3

Topic 1: Private Industry Council Partnerships for Serving Displaced Homemakers

Background.—The employability assistance needs of the Nation's displaced homemaker population have become a matter of increasing Federal attention during the past decade. These needs have been documented in the U.S. Office of Technology Assessment (OTA)

report, *Technology and Structural Unemployment: Reemploying Displaced Adults* (February 1986), and in the Displaced Homemakers Network report, *A Status Report on Displaced Homemakers and Single Parents in the United States* (July 1987). According to these reports, displaced homemakers are women whose principal job has been homemaking and who have lost their main source of income because of divorce, separation, widowhood, disability or long term unemployment of a spouse, or loss of eligibility for public assistance. Analyses of the 1980 Census place the number of displaced homemakers number at 11.5 million. The displaced homemaker is distinguished by her general lack of employment; if employed at all, she works part time or for part of the year. Among displaced homemakers in the prime working years (ages 35 to 64), two thirds are unemployed. Over one half of displaced homemakers consist of older, white widows. Minority displaced homemakers have a much higher absolute poverty rate than their white counterparts—60 percent of black, Hispanic, and Native American displaced homemakers have incomes below poverty level.

Federal legislation to assist displaced homemakers began in 1976 with the amendments to the Vocational Education Act, directing that States could use their Voc Ed grants to meet the needs of displaced homemakers. The 1982 JTPA legislation provided flexibility for serving displaced homemakers by including them among the 10 percent of Title IIA recipients that need not meet low income eligibility criteria. More recently, JTPA Section 456 was amended to authorize the use of such funds as may be available under Federally Administered Programs to conduct projects for populations with multiple barriers to employment. Displaced homemakers are named as one of the populations (not otherwise targeted by the Act) that should receive special consideration. Finally, the Carl D. Perkins Vocational Educational Act of 1984 reserves 8.5% of grants funds for single parents and homemakers—including displaced homemakers.

Displaced homemakers projects exist across the country—in community-based organizations (25%), community colleges (30%), vocational/technical schools (34%), and others in city or State agencies, or independent centers. There were more than 425 centers in operation in 1984, which were probably serving at least 100,000 clients per year. Nearly half of the programs receive funds from more than one source: vocational education funds support 32% of the programs; State legislated funds support 24%; and 7% of programs receive JTPA funds. JTPA reports that its Title IIA programs enrolled 27,000 displaced homemakers nationwide in 1985; 95 percent were economically disadvantaged; 65% were white; and 29% were high school dropouts.

A comprehensive service delivery system for displaced homemakers might include the following services: outreach, intake/orientation, counseling, assessment and testing, career/educational counseling, life skill development, remediation and skills training, pre-employment preparation, supportive services, referral to social services, job development and placement and a program management staff reflecting the racial/ethnic composition of those served.

Women who have never worked or have been out of the labor force for many years often require strong counseling support to build confidence and establish vocational direction. In addition, they often require remedial assistance for updating their computational skills. Supportive services are often among those most needed by displaced homemaker participants and, at the same time, most difficult to fund. Child care, transportation, health benefits, and financial assistance during training are often crucial to successful transition from home to work. Unlike most other workers, few displaced homemakers qualify for unemployment insurance. Few can rely on other family members for support. Despite the many opportunities for coordination that have been afforded by recent Federal initiatives in the legislative area, focussed planning and implementation must be done by State and local administrators, policymakers, service providers, and clients.[1]

Purpose and Scope of Study.—To further develop and help spread knowledge of effective means of State and local coordination of services to displaced homemakers through JTPA/PIC initiatives, ETA proposes to award a series of $50,000, 12-month planning grants leading to the development and demonstration of model projects of interagency coordination for this target group. Those programs that show evidence of effective planning and implementation after 12 months may be eligible to receive a second year of funding to help strengthen the prospects for institutionalization of the coordinated homemaker services that were initiated in local communities during Year 1. JTPA Private Industry Councils are encouraged to take the lead in project development. The agencies whose services will be coordinated in these projects will include displaced homemaker centers, vocational education agencies, community colleges or other post-secondary institutions, private employers, foundations, and any other organization that can make a contribution to the model project. Anticipated outcomes of such programs might include: achieving participant placements in jobs with wages above the minimum wage and full health benefits such that the family experiences a net economic gain; achieving participant educational gains; and achieving job permanence, through demonstration of job retention after one year.

State or local JTPA organizations only are eligible to apply for these grants. They must develop integrated, comprehensive service delivery strategies tailored to the needs of the population to be served. Contact with other appropriate organizations in the preparation of a proposal is required. Organizations identified in the proposal as participating in the demonstration project should reflect this commitment in letters attached to the proposal.

Topic 2: Recruitment and Training of Women to Enter Nontraditional Jobs

Background.—The workplace impact of technological development and the need to adapt occupations and industries to meet global competition will require workers to change occupational areas at least five or six times on average. ETA will consider applications under this topic that seek to demonstrate State/local coordination with strong PIC involvement. These projects should be designed to facilitate the movement, i.e., the recruitment, training, occupational entry and upward mobility of women into nontraditional occupations. Nontraditional occupations for women are defined as those in which, according to Census or BLS data, 75 percent or more of the jobs in any given category are held by men. In 1983, for example, women were only 1 percent of firefighters and 6 percent of police. In construction trades, women accounted for less than 2 percent of all workers; they were 1 percent each of carpenters, plumbers, and electricians, and about 3 percent of all mechanics or repairers of machinery or equipment.

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[1] Numerous complementary features and resources of JTPA and the Perkins Act for serving displaced homemakers are detailed in the manual, "The Road to Collaboration: Increasing Services to Women through JTPA/Perkins Joint Venturing," produced for the Displaced Homemakers Network (DHN) by Wider Opportunities for Women, Inc., April 1986. DHN, which is supported with funds from the U.S. Women's Bureau, provides a wide variety of information on the characteristics and needs of displaced homemakers and on relevant programs and Federal/State legislation aimed at serving this target group—for further information, applicants may write to: Displaced Homemakers Network, 1411 K Street, NW., Suite 930, Washington, DC 20005; or call (202) 628-6767.)

A major issue for women is their continuing lack of wage parity with men despite their sharp increase in labor force participation rate. Therefore fundamental reasons for women to consider nontraditional occupations are that they frequently offer higher pay, and in addition, better fringe benefits, a wider variety of work schedules, greater job security, and more opportunities of advancement than are offered by traditional occupations.

There are a number of barriers that explain the continuation of occupational segregation along traditional lines. Among the internal barriers that help to maintain this segregation are sex bias and stereotyping that originate in early family and education experience, and later become reflected in career choices relating to education, training and occupational selection. In addition to sex stereotyping, women often suffer from other "internal" barriers to nontraditional job entry, which include lack of self-confidence, age, and concern for femininity. Frequently cited "external" barriers include lack of finances, child care, lack of basic skills in mathematics/science/use of tools, negative social attitudes and harassment, isolation, and discrimination. Because of the unusual challenges and associated costs of providing specialized outreach, counseling and other support services, remediation, and curricula/training development needs for those who would embark on nontraditional careers, such individuals may be viewed as being "at-risk" and in need of a wide range of services if they are to achieve success in their chosen occupations.

Much of the experience regarding the planning and implementation of programs designed to overcome barriers to nontraditional job entry have been garnered from large-scale, Federally sponsored pilot and demonstration projects conducted during the most recent decade. Much of this experience—dealing with outreach and recruitment, intake and assessment, supportive services, curriculum development, prevocational skills training, and job development/placement and followup—is reflected in the publications of the U.S. Women's Bureau. An example is: "Women in Nontraditional Careers (WINC): Curriculum Guide," which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Purpose and Scope of the Study.—Applications will be considered that have strong JTPA/PIC involvement and which are likely to have significant employment impacts for female participants. There is a wide range of potential service providers that might be considered in developing linkages for facilitating the movement of women into nontraditional occupations. These include: Public agencies (the Employment Service, vocational education, secondary education, post-secondary education, vocational rehabilitation, and local government); private/nonprofit organizations (community-based organizations, e.g., YWCA's and Chambers of Commerce) and private-for-profit organizations (private firms and proprietary schools.)

Applicants should consider the possibility of potential vocational education linkages made possible by the Carl D. Perkins Vocational Education Act of 1984. The Perkins Act authorizes a 3.5% set-aside for use in eliminating sex bias and increasing sex equity in the vocational system. A sex equity coordinator in each State oversees the use of funds to expand access to existing programs, to design and implement new model programs, and to stimulate interest in vocational education. The Act also authorizes a 12% set-aside to allow States to provide, improve, and expand their vocational education services to train and retrain adults and specifically encourages JTPA collaboration in this portion of the program for the purpose of providing additional training to participants in the JTPA Title III dislocated workers programs.

ETA has available approximately $250,000 for the funding of two or three 12-month demonstrations, with the possibility of a second year of funding at a level of approximately $50,000 per project (total availability of second year funds is $100,000) for projects that demonstrated exceptional effectiveness during year one. Special consideration in the determination of awards will be given to proposals which provide for final products which supplement the final report of the grant, e.g., "how-to" guides, including special counseling approaches and supporting occupational training curricula.

State or local JTPA organizations only are eligible to apply for demonstration grants. They must develop integrated, comprehensive service delivery strategies tailored to the needs of the population to be served. Contact with other appropriate organizations in the preparation of a proposal is required. Organizations identified in the proposal as participating in the demonstration project should reflect this commitment in letters attached to the proposal.

Topic 3: Policy and Program Strategies for Serving Special Target Groups: Adult and Youth Offenders; Public Housing Residents; and the Learning Disabled

Background.—One of the Department's Workforce 2000 goals is to better integrate individuals who have been traditionally utilized or who have experienced traditional barriers to employment or entry into the work force. Many of these individuals have multiple employment-related problems and are ill-equipped to look for help from human service delivery systems that are fragmented and frequently bewildering. As the JTPA system focuses more closely on serving individuals with multifaceted needs, linkages with non-JTPA services become increasingly important to the cost-effective management of public resources and to the accomplishment of individual vocational goals and outcomes.

JTPA is just one critical element in a loosely connected system of education, job training, social services, employment and economic development. State and local JTPA agencies should seek to mesh JTPA activities and services with those of other human resource organizations to provide cost-effective services to increase the economic self-sufficiency of various target groups. The groups targeted for service under this topic are:

Adult and Youth Offenders.—The proportion of school dropouts among the incarcerated individuals is three times larger than the general population. According to a 1983 Bureau of Justice Statistics study, male inmates 20–29 are less likely to have completed school. For every 1,000 males incarcerated in this age group, about a fourth had no schooling at all. About 40 percent of males age 18–54 were unemployed when they entered jail. Substantial adjustments will need to be made for offenders to help them acquire the skills for today's and tomorrow's jobs; many of them will also need to overcome behavioral and attitute problems to take advantage of training opportunities and jobs. Examples of organizations involved include JTPA, the criminal justice system including the courts, schools, community organizations, social services and health agencies, employers, and labor organizations.

Public Housing Recipients.—The March 1986 Current Population Survey identifies 3,799,000 households in public or other subsidized rental housing. Most of these households (78 percent) are in metropolitan areas, and over half have incomes below the poverty level. The situation for female householders is critical. Over two-thirds of the households in public housing are headed by women, and three-fourths have incomes below the poverty level. Slightly less than half worked in 1985, and of those who did, nearly two-thirds had fulltime jobs with a median income of $8,455. About 92 percent of these households had children under 18 years old. The complex relationship between basic skills, job skills, employment, family, income, and living/transportation arrangements requires the attention of JTPA, education, welfare, social and health services, housing, economic development, and the private sector.

The Learning Disabled.—There are estimates that up to 15 percent of American adults may have learning disabilities of one kind or another. There are many different, overlapping definitions—in large part because there are a wide variety of conditions encompassed by the term learning disabled. These problems include: deficiencies in visual perception (e.g., having difficulty picking out one line of print from another or reversing letters); auditory problems (e.g., not realizing that the letter which is seen is the same letter heard); and directional problems, (e.g., having difficulty in distinguishing left from right). Providing education, training, and employment services to these individuals is likely to require adjustments in such items as diagnosis, service strategy planning, counseling, instruciton, staff training, work environment design, and job placement strategies. A number of organizations and agencies could assist in addressing the training and employment needs of the learning disabled including: JTPA, private and public schools, community colleges and universities, vocational rehabilitation, community organizations, libraries, special purpose organizations focused on the handicapped, employers, and labor organizations.

Purpose and Scope of the Study.—This study is designed to provide grants to demonstrate which JTPA activities and services can be coordinated with other State and local programs to improve the cost-effectiveness of services intended to increase the economic self-suffiency of three groups of seriously at-risk individuals: Adult and youth offenders, public housing residents, and the learning disabled.

Approximately $600,000 will be available to provide four to six grants to assist these individuals in achieving economic self-sufficiency. The objectives of the demonstration are to:

- Develop innovative, cost-effective employability development projects for selected target groups;
- Demonstrate how community and State resources can be combined to provide a comprehensive and flexible delivery of services to selected target groups;
- Develop and strengthen the employability of selected target groups;
- Establish operational links between State and local JTPA programs and other human resource and related programs leading to the economic self-sufficiency of selected target groups; and
- Develop effective models that can be replicated by States, local community organizations, schools, private organizations, job training and employment programs, or other human resource agencies.

State or local JTPA organizations only are eligible to apply for these demonstration grants. They must develop integrated, comprehensive service delivery strategies tailored to the needs of a specific target group. Contact with other appropriate organizations in the preparation of a proposal is required. Organizations identified in the proposal as participating in the demonstration project should reflect this commitment in letters attached to the proposal.

Based upon the availability of funds and the first project year's performance, successful applicants will have the opportunity to submit a proposal for second, final year funding.

Part III—Application Process

A. Eligible Applicants

Applications may be submitted by JTPA Private Industry Councils (PIC) or JTPA administering entities (State or local level). Individuals are not eligible to apply. ETA encourages applications that are developed jointly by State, local JTPA and community-based social services agencies, the private sector, and foundations or universities, since this helps to coordinate local resources. For these applications, a lead organization must be identified, and that organization must be a JTPA PIC or administering entity. Applications from organizations that do not meet the eligibility restrictions will not be reviewed.

B. Grantee Share of the Project

ETA wil *not* make grant awards for the entire project cost under this announcement. Successful applicants are eligible to receive $3 in JTPA Title IV pilot and demonstration funds for each $1 secured from local resources—either public or private. Local resources are broadly defined to include locally available funds, Federally sponsored programs such as JTPA or the Carl D. Perkins Vocational Education Act, or funds from public assistance programs, foundations or private employers. At least 25% of the total cost for each budget period of proposed projects must come from a source other than JTPA Title IV pilot and demonstration funds (i.e., one dollar match for every three dollars requested from ETA).

The non-JTPA Title IV or local share of total project costs for each budget period may be in the form of grantee-incurred costs or thrid party in-kind contributions. ETA strongly encourages applicants to propose a grantee share which is more than 25% of the project costs. ETA also encourages applications where the matching requirements will be met in cash (as opposed to in-kind contributions) from State/local funding sources.

(If the required non-JTPA Title IV or local share is not met by a funded project, ETA will disallow any unmatched Federal dollars.)

Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Part III.

C. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming applications will then be reviewed and scored competitively.

1. Screening Requirements

In order for an application to be in conformance it must meet both of the following requirements:

(a). Fact Sheet which includes the following: (1) Legal name of institution or organization submitting proposal; (2) address of organization, including zip code; (3) telephone number, including area code; and (4) name, position, and phone number of official who is approving the submisson of the proposal. This person should be someone with legal authority to commit the organization to the proposed project.

(b) Length: The narrative portion of the application must not exceed twenty double-spaced pages, typewritten on one side of the paper only. The capability statement must not exceed two double-spaced typewritten pages.

2. Evaluation Criteria

Reviewers will score the applications, basing their scoring decisions on the following criteria:

(a) Need for the Project: 20 points. The application clearly describes, in concrete terms, a training or employment problem or other situation that prompts the applicant to propose a project. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed is described. It also describes how the proposed project builds upon previous work, how it advances the state of knowledge from a national perspective and how it addresses a topic identified in this announcement.

(b) Project Methodology: 20 points. The application describes specific plans for conducting the projects in terms of the tasks to be performed. It includes relevant information about: (1) Hypotheses to be tested (if appropriate); (2) goals and measurable objectives; (3) what the project will do; (4) how the project will be conducted; (5) data to be collected (including specification of data sources); (6) a plan for data analysis; (7) a chart with tasks laid out over time (Gantt chart); and (8) *a client flow chart which depicts the planned sequence of services to be provided by each participating organization.* A detailed discussion is provided on how the approach proposed will accomplish the project objectives. Whenever possible, innovative use should be made of volunteers, and the private sector should be involved.

(c) Expected Outcomes: 20 points. The proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products are specified and the expected benefits for specific target groups and job training and employment and other human service providers are delineated. Outcomes as opposed to process measures are emphasized. Where appropriate, evaluation plans and procedures should be capable of measuring the degree to which project objectives have been accomplished.

(d) Dissemination and Utilization: 20 points. The application describes the methods the project will use to share its experience and findings in the field of employment and training in general and specifically with agencies and organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings, and the Federal and non-Federal resources required, are described. The specific audiences to which the products will be addressed should be identified.

(e) Level of Effort: 20 points. The resources that will be needed to conduct the project are specified including personnel, time, funds, and facilities. These resources should be adequate to meet the work plan described in the application. The staff (or other personnel resources) should be qualified and the team should have the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly links responsibilities to project tasks. The total cost of the project is reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations is clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) of the total funds required and of the sources of outside support that will be used to meet the matching requirements is included. The funds (total of Federal funds and non-Federal funds) are specified for each budget period.

These evaluation criteria correspond to the outline for the narrative section of the application and the descriptions of the five criteria above should be used in developing the program narrative.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications.

The final decision on the award will be based on what is most advantageous to the Government in terms of technical quality and other factors as determined by the Grant Officer.

D. Closing Date for Receipt of Applications

The closing date for submittal of applications under this program announcement is April 18, 1988.

Part IV—Instructions for Completing Applications

Each copy of the application must contain:

1. A fact sheet as described on page 29, paragraph C–1–a.

2. Budget Information (see Appendix A page 42)

3. Summary Description

4. Program Narrative—should be no more than twenty double-spaced typewritten pages, using one side of the paper only. In addition, an organizational capability statement no more than two double-spaced typewritten pages should be included

5. Letters which show collaboration or substantive commitment to the project by organizations other than the applicant organization are not part of the narrative and, therefore, are not counted against the twenty page limit for the narrative.

Preparing the Application

Prepare your application in accordance with the following instructions;

Summary Description: Use a separate sheet of 8 ½ x 11 plain paper to provide this summary description of the project. Clearly mark name.The Summary description should not exceed 1,200 characters including words, spaces and punctuation. These 1,200 characters become part of the computer data base on each project. The description should be specific and concise. It should describe the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major projects that will result from the proposed project such as materials, management procedures, implementation plans, data collection instruments, training or instructions packages, software packages or videos). Remember this summary description is limited to 1,200 characters.

1. Part III—Budget Information:

2. Program Narrative: Describe the project you propose in response to this announcement addressing the specific concerns mentioned under the priority area description in Part II. Your narrative (20 pages typed double-spaced) should provide information on how the application meets the evaluation criteria in Part III of this announcement.

We strongly recommend that you follow these format and page suggestions:

a. Need for the Project (5 pages double-spaced).

b. Project Methodology (8 pages double-spaced).

c. Expected Outcomes (2 pages double-spaced).

d. Dissemination and Utilization (2 pages double-spaced).

e. Level of Effort: (3 pages double-spaced).

3: Organizational Capability Statement: A brief (maximum 2 pages double-spaced) background description of how the applicant organization (or the particular division of a larger organization which will have responsibility for this project) is organized and the types and quality of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under level of effort. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. It may include a description of the qualifications of key staff described in a few paragraphs rather rthan in formal vitae.

4. Letters of assurance of cooperation are not to be counted in the 20-page double-spaced narrative nor in the 2-page double-spaced Organizational Capability Statement; rather, such letters are in addition to the aforementioned sections.

7. Reporting Requirements

The grantee shall furnish the reports and documents listed below:

A. Financial Reports

The Grantee shall submit to the Federal Representative, Department of Labor, an original and two copies of a monthly detailed account of expenditures. The detailed report of expenditures must include the same line items of cost categories as those specified in the grant budget.

B. Program Reports

(1) *Quarterly Progress Reports.* The grantee shall submit to the Federal Representative within 10 days following the end of each quarter, five copies of a quarterly progress report, which provides a detailed account of services provided during each quarter of grant performance. Reports shall include, in brief narrative form, such information as:

(a) A description of overall progress of work activities accomplished during the reported period;

(b) An indication of any current problems which may delay performance, and proposed corrective action, if any;

(c) Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

(2) Draft Final Report. Five copies must be submitted at least 2½ months prior to the grant expiration date.

(3) Final Report. This report shall summarize the project activities and results and shall be submitted in 10 copies by the grant expiration date.

C. Points To Remember

In computing the required match for projects please note that 25% of the total (the amount requested and your cost share) project cost is equivalent to ⅓ of the amount requested from ETA. Thus, for every 3 Federal dollars you request, you must match with one dollar from your organization or another source. An application may be unduly penalized in the review process by careless errors relating to the computation of the non-Federal share or match. In order to compute the required minimum match, divide the amount you are requesting from ETA by 3. For example, if your request for Federal funds is $100,000, then the required minimum match is $33,333.

- Your are required to send an original and six copies of an application.
- Designate, at the top of the first page of SF 424, your application for one topic area only.
- Applications containing narratives in excess of twenty typewritten double-spaced pages or capability statements of more than two double-spaced pages will *not* be considered.
- The summary description of 1,200 characters or less is an essential element of the application. It is important that this accurately reflect the nature and scope of the proposed project.
- Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.
- Value letters of general support endorsing the project are not to be included. On the other hand, letters of assurance from cooperating organizations, detailing an organization's role and specific contribution to the project, are encouraged.
- The qualifications of key staff should be described in a few paragraphs rather than in formal vitae. Vitae or résumés are not to be provided and will not be included in the applications provided to reviewers.
- Although multiple applications (on different topics) from the same applicant are not prohibited, they are not encouraged.
- Applicants are strongly encouraged to have someone other than the writer apply the screening requirements and evaluation criteria to the application prior to its submittal. In this way, applicants will gain a sense of their application's quality and potential competitiveness.
- The activities below generally will not meet the purposes of this announcement when the activity is not in response to the outcomes described under Part II of the announcement.

—Projects whose main activity is a conference or meeting;

—Projects whose only major product is a manual;

—Proposals that are solely directed toward the expansion or continuation of existing services or programs without due regard for the aims of this announcement; or

—Proposals which would establish clearinghouses.

Signed at Washington, DC on March 8, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor

Appendix A—Budget Information

Each applicant shall submit a project budget using the following format. In addition, a detailed breakdown supporting each budget line item is required.

SPECIAL CLAUSE NO. BUDGET

	Government	Grantee contribution	Total
Direct costs:			
Staff salaries and wages.	$	$	$
Fringe benefits for staff.			
Staff travel and per diem.			
Consultant fees			
Materials and supplies.			
Communications			
Subcontract			
Total direct costs.			
Indirect costs:			
Total estimated cost [1].			

[1] The maximum Government contribution under this grant will be $————.

[FR Doc. 88–6029 Filed 3–17–88; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of Title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-Servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1988. The revised schedule was issued on February 26, 1988, in Unemployment Insurance Program Letter No. 21–88 and is effective with respect to UCX first claims filed on or after April 3, 1988.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after April 3, 1988.

Pay grade	Monthly rate
(1) Commissioned officers:	
O–10	$7,219
O–9	7,219
O–8	7,219
O–7	6,482
O–6	5,471
O–5	4,581
O–4	3,790
O–3	3,123
O–2	2,504
O–1	1,871
(2) Warrant officers:	
W–4	3,443
W–3	2,909
W–2	2,502
W–1	2,072
(3) Enlisted personnel:	
E–9	3,183
E–8	2,694
E–7	2,331
E–6	1,967
E–5	1,680
E–4	1,418
E–3	1,249
E–2	1,152
E–1	1,005

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on March 11, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88–6030 Filed 3–17–88; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Virginia:
  VA88–19—pp. 1160i–1160j
  VA88–20—pp. 1160k–1160l

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
  AL88–18 (Jan. 8, 1988)—p. 36
Florida:
  FL88–17 (Jan. 8, 1988)—p. 144
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  NY88–2 (Jan. 8, 1988)—pp 684–691
  NY88–3 (Jan. 8, 1988)—pp 702–703
  NY88–4 (Jan. 8, 1988)—pp 710–713
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  NY88–6 (Jan. 8, 1988)—pp 728–730
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Illinois:
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  LA88–5 (Jan. 8, 1988)—pp. 386–387, 400
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California:
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Washington:
  WA88–2 (Jan. 8, 1988)—p. 387
  WA88–7 (Jan. 8, 1988)—pp. 414–418

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of March 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–5727 Filed 3–17–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–1–M]

Columbia Silica Sand Co.; Petition for Modification of Application of Mandatory Safety Standard

Columbia Silica Sand Company, 1247 Sumter Street, Columbia, South Carolina 29201 has filed a petition to modify the application of 30 CFR 56.9003 (mobile equipment brakes) to its Edmund Mine and Mill (I.D. No. 38–00124) located in Lexington County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that powered mobile equipment be provided with adequate brakes.

2. As an alternate method, petitioner proposes to use a 988 Caterpillar front-end loader without parking brakes.

3. In support of this request, petitioner states that it has always been standard practice with the operators to lower the bucket if the machine's engine is running while in a parked situation. Also, the terrain on which the machine is operated is virtually level and because the soil is sandy, it would require engine power to move the machine.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (April 18, 1988). Copies of the petition are available for inspection at that address.

Dated: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–6031 Filed 3–17–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–31–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidated Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1704–2(a) (escapeway routes; examination; escapeway maps; drills) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all travelable passageways designated as escapeways are requried to be located as to follow the safest direct practical route to the nearest mine opening suitable for the safe evacuation of miners. Escapeways from working sections may be located through existing entries, rooms, or crosscuts.

2. Petitioner seeks modification of the standard for a distance of 240 feet in the existing intake escapeway on the 2–South longwall section, where a difficulty in supporting a roof cavity exists.

3. As an alternate method, petitioner proposes to use approximately 240 feet of the adjacent No. 3 track belt entry and approximately 240 of the No. 1 entry as the 2–South section intake escapeway. In support of this request, petitioner states that—

(a) Ten self-contained self-rescuers (SCSR's) will be stored on the inby side of the restricted fall area for use, if needed. The SCRS's will be stored in accordance with the requirements of the SCSR storage plan;

(b) Mandoors will be installed in the first crosscuts inby and outby the roof fall area between entries Nos. 1 and 2, and 2 and 3. A rope would extend through the entire proposed escape routes in entries Nos. 1 and 3.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Date: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–6032 Filed 3–17–88; 8:45am]

BILLING CODE 4510–43–M

[Docket No. M–88–6–C]

D. & F. Deep Mine Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

D. & F. Deep Mine Coal Company, P.O. Box 369, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Buck Mountain Drift (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Petitioner states that installation of automatic couplers on the track haulage cars would result in a diminution of

safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Dated: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6033 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-30-C]

Diamond "S" Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Diamond "S" Mining Company, P.O. Box 767, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16043) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Dated: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6034 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-37-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. 2, Box 2110, Homer City, Pennsylvania 15748-0504 has filed a petition to modify the application of 30 CFR 75.1400(e) (hoisting equipment; general) to its Homer City Mine (I.D. No. 36-08926) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that where persons are transported into or out of a mine by a hoist, a qualified hoisting engineer is requested to be on duty while any person is underground.

2. Petitioner states that when it becomes necessary to hoist or lower persons in and out of the mine, a Sanford Day Brakeman Car is used in conjunction with the Nordberg Hoist. The Hoist operator does not assist in the attachment or actual operation of the Brakeman. Persons being lowered or hoisted are task trained in the operation of the Brakeman.

3. As an alternate method, petitioner proposes that persons operating the hoist will have at least one year of experience, and will be required to complete an outlined training plan consisting of classroom and on-site training. MSHA Education and Training personnel will be asked to observe the instructors during the first classroom training session in an attempt to have this person(s) qualified by MSHA. All subsequent classroom type training will then be given by an MSHA qualified Hoisting Instructor.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Dated: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6035 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-39-C]

Manalapan Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Manalapan Mining Company, Inc., Route 1, Box 374, Evarts, Kentucky 40828 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-05423) and its No. 3 Mine (I.D. No. 15-15224) both located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on the mine's Long-Airdox Bridge carrier would result in a diminution of safety to the miners affected because the operator would be required to crawl along side the bridge. There are no seats or deck on this type of bridge carrier. The height of the canopy is fixed and cannot be adjusted once installed, thereby creating poor visibility and fatigue for the operator. Due to the position of the belt line, the canopy would rub the right rib placing the operator in added danger.

3. Petitioner further states that all areas the operator is in are fully bolted and strapped on 4 inch centers. Therefore, the operator is always under supported roof.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Dated: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6036 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-2-M]

Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 57.19011 (drum flanges) to its Sunshine Mine (I.D. NO. 10-00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that flanges on drums extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, which ever is lesser.

2. Petitioner states that the requirement for extra drum flange was designed to minimize the risk of having the cable drop off the drum completely.

3. As an alternate method, petitioner proposes to use Lebus grooving which would provide safe, consistent and totally controlled progression of layers of hoist cable on the drums, and eliminate the likelihood of improper winding of the hoist cable on the drum.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Date: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6037 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-5-C]

Whitaker Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Whitaker Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its EAS No. 1 Mine (I.D. No. 15-02085) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to hazardous roof conditions in the abandoned areas of the mine, it is hazardous for certified persons to make the weekly examinations.

3. As an alternate method, petitioner proposes to establish ventilation check points at specific locations.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Date: March 7, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6038 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-3-C]

Zeigler Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Zeigler Coal Company, 331 Salem Place, Fairview Heights, Illinois 62208 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Murdock Mine (I.D. No. 11-00586) located in Douglas County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. Petitioner states that application of the standard would result in a diminution of safety because of geological conditions and the added roof systems used in the mine.

3. As an alternate method, petitioner proposes to install start/stop control switches where needed along the conveyor belt to allow miners to stop

the conveyor belt so that they will not have to pass through a travelway less than 24 inches wide without stopping the conveyor belt.

4. In support of this request, petitioner states that miners do not have to travel in any area which has a travelway of less than 24 inches because the conveyor belt is enclosed and there are additional entry ways which run parallel to the entire conveyor belt that miners have access to and can use as opposed to having to use any travelway along the conveyor belt.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the mines affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 18, 1988. Copies of the petition are available for inspection at that address.

Date: March 14, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6039 Filed 3-17-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6642] et al.

Proposed Exemptions; Orchard, Hiltz & McCliment, Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Orchard, Hiltz & McCliment, Inc. Profit Sharing Plan (the Plan), Located in Southfield, Michigan

[Application No. D-6642]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The prospective transfer of title (the Sale) of certain real property owned by the Plan to Orchard, Hiltz & McCliment, Inc. (the Employer) pursuant to a land contract (the Contract) amended by the parties on July 18, 1986; and (2) the past extension of credit by the Plan to the Employer under the Contract in connection with the Sale; provided that the terms and conditions of both transactions are as favorable to the Plan as those obtainable in an arm's-length transaction between unrelated parties.

EFFECTIVE DATE: The effective date of Transaction 1 will be the date of the final grant of this proposed exemption. The effective date of Transaction 2 will be July 18, 1986.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 41 participants and total assets of $1,359,589 as of July 18, 1986. The trustees of the Plan are Messrs. Melvin E. Orchard, William McCliment, and John J. Hiltz, who are also principals of the Employer. The Employer is a civil engineering firm.

2. The Plan owns certain improved real property located at 34935 Schoolcraft Road, Livonia, Michigan (the Property). The Property was purchased in 1969 by a predecessor corporation of the Employer for $52,000. In 1971, the Plan purchased the Property from the Employer for $227,000 and then leased it back pursuant to a year-to-year lease (the Lease).[1] The Lease provided for

annual adjustments of the rental rate which, for the term ending June 30, 1984, was $50,000.

3. The applicant request an exemption that would permit the Sale of the Property to the Employer under the terms of the Contract executed on July 27, 1984.[2] The applicant represents that, in early 1984, the Employer realized that the Lease would no longer be exempt from the prohibited transaction sections of the Act after June 30, 1984. The applicant further represents that the Employer could not locate an unrelated third party purchaser for the Property and decided to purchase the Property itself.

4. The Employer obtained an appraisal of the Property from Peter H. Ventura of Burland, Reiss, Murphy & Rembiesa, Inc., realtors located in Southfield, Michigan (the Appraiser). The Appraiser determined that the fair market value of the Property was $480,000 (the Appraisal). Notwithstanding the Appraisal, the Employer executed the Contract for the Sale of the Property by the Plan for $450,000.[3] Under the terms of the Contract, the Employer made a 20% cash down payment to the Plan in amount of $90,000 with a remaining outstanding principal balance of $360,000. The Contract further required monthly payments of principal and interest over a 15-year (180-month) period at a rate of 11 percent per annum.

5. On July 18, 1986, the parties amended the Contract to increase the sales price of the Property to $480,000 in conformity with the Appraisal and to revise the amortization schedule to a 145-month period. As of July 18, 1986, the outstanding principal balance of the Contract was $298,309.

6. Comerica Bank-Detroit (the Bank) was appointed the independent fiduciary for the proposed transaction effective July 1, 1985 and represents the following as of October 16, 1985:

(a) It is an independent fiduciary with respect to the Plan;

(b) It has examined the Plan's investment portfolio and cash-flow needs and has found them satisfactory;

(c) The Plan is appropriately diversified and the Contract furthers the investment goals of the Plan;

(d) The investment in the Contract is sound and reasonable under the circumstances;

(e) The fair market value of the Property represents 150 percent of the amount of the Contract;

(f) The interest rate of the Contract represents fair market value;

(g) The Contract is adequately secured;

(h) To date, all payments on the Contract have been made; and

(i) It will monitor future payments under the Contract to ensure that all payments are timely made.

7. In summary, the applicant represents that the transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Plan will receive fair market value for its asset;

(b) The Plan will receive a fair market interest rate under the terms of the Contract;

(c) The Bank will serve as an independent fiduciary to enforce and monitor the receipt of all payments due the Plan under the Contract;

(d) The Bank will safeguard the Plan's interests at the time of the Sale and completion of the Contract when title to the Property will be transferred to the Employer; and

(e) The Plan's independent fiduciary has determined that the transactions are in the interests and protective of the Plan and its participants and beneficiaries.

For further information contact: Mrs. Betsy Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Transco Energy Company Thrift Plan (the Thrift Plan) and Employee Stock Ownership Plan (the ESOP; collectively, the Plans), Located in Houston, Texas

[Application No. D-6716]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 71-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), and 407(a) of the Act, shall not apply to: (1) The acquisition and holding by the Plans of certain depositary units (the Units or Unit) representing limited partnership interests in Transco Exploration Partners, Ltd. (TXP), a party in interest with respect to the Plans, distributed as dividends to the Plans as shareholders of shares of common stock (the Stock) of Transco Energy Company (the Employer); and (2) the future purchase and holding of additional Units acquired on the open market at the fair market value as listed on the New York Stock Exchange (NYSE) on the date of acquisition by the individual accounts of participants in the Thrift Plan with cash distributions received with respect to the Units, the sale proceeds of other existing investment options, the participants' future contributions, and those of the Employer; provided that the value of all of the Units held in a participant's individual account after the purchase of Units on the open market does not exceed ten percent (10%) of the value of the total assets of such participant's individual account in the Thrift Plan.

Effective Date: If the proposed exemption is granted, the exemption will be effective August 31, 1984.

Summary of Facts and Representations

1. The Plans are two qualified defined contributions plans. As of September 30, 1985, there were 3,034 and 3,203 participants in the Thrift Plan and the ESOP, respectively. The Plans are sponsored by the Employer and its wholly-owned subsidiary, Transcontinental Gas Pipe Line Corporation for participation by their eligible employees. First City National Bank of Houston, Texas, N.A. serves as custodial trustee (the Trustee) of both Plans and has no investment discretion for either of the Plans. The Plans are administered by separate administrative committees.

2. The Thrift Plan is an individual account profit sharing plan. Participants make either after-tax contributions and/or pre-tax 401(k) contributions to the Thrift Plan through a salary reduction agreement. The Employer and its subsidiary match up to the first 6% of these contributions. The Thrift Plan has assets of approximately $130,978,000 as of June 30, 1986.

Some of the assets of the Thrift Plan are held in four funds (Fund A, B, C, and D; collectively, the Funds). Participants may direct their contributions to be invested in any of the Funds. The Funds are: (1) Fund A, a U.S. Government bond fund with an approximate value of $5 million; (2) Fund B, a fund investing approximately $64 million in the Stock of the Employer; (3) Fund C, a diversified equity fund managed by Metropolitan Life Insurance Company

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[1] The applicant represents that the Lease is covered by section 414 of the Act and was not a prohibited transaction until July 1, 1984. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant represents that Form 5330, Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all appropriate excise

Continued

taxes for the Lease, continuation of the Lease, and the extension of credit will be paid by the Employer within 60 days of the granting of this proposed exemption.

[2] The applicant represents that under applicable Michigan law, a land contract is a contract for the sale of land whereby the seller retain titles to the land until the buyer completes performance, of the contract. Until completion of performance, the buyer holds an equitable mortgage only in the property, not title. Upon completion of performance, title transfers to the buyer from the seller and a deed is tendered.

[3] The applicant represents that the Property will not be used as collateral for the Contract because the Plan retains title to the Property until all the terms of the Contract have been performed. The applicant further represents that the Contract will be voided by both the Plan and the Employer and both parties restored to their original positions if an exemption is not granted by the Department.

(Met) with an approximate value of $2 million; and (4) Fund D, a guaranteed rate insurance contract of approximately $42 million issued by Met. Pursuant to the terms of the Thrift Plan, participants may change their investment direction, subject to certain restrictions, with respect to the investment of their contributions and matching contributions of the Employer at the end of any month by giving prior written notice to the administrative committee of the Thrift Plan.

3. The ESOP Is a tax credit employee stock bonus plan which meets the requirements of section 409 of the Code. The ESOP is designed such that all contributions are invested in the Stock of the Employer. The assets of the ESOP totaled approximately $32,277,000, as of June 30, 1986.

4. The Employer is a diversified energy company that is engaged in the operation of a major interstate pipeline system, oil and gas exploration and production, the production and sale of coal, and other energy related activities. The principal office of the Employer is located at 2800 Post Oak Boulevard, Houston, Texas.

5. The Stock is listed on the NYSE. There are approximately 35,000 shareholders who own 24.3 million shares of the outstanding Stock. The Thrift Plan and the ESOP hold approximately 1.3 million and 700,000 shares of the Stock, respectively.

6. TXP is a Texas limited partnership that on July 20, 1983, succeeded to the oil and gas exploration and production business previously conducted by Transco Exploration Company (TXC), a subsidiary of the Employer. TXP explores for and develops oil and gas primarily off shore in the Gulf of Mexico, on shore in the Gulf Coast states of Texas, Louisiana, and Mississippi, in the rocky Mountain region, and in various other areas in the United States. TXP is managed by the officers and directors of TXC. TXC presently owns more than a majority of the limited partnership interests of TXP. The Employer and TXC are also general partners in TXP with a combined general partnership interest of 1%.

7. On July 3, 1984, the Board of Directors of the Employer established a new divided policy with respect to the Stock. In addition to the payment of its regular cash dividend, effective September 1984, the Employer distributed the Units quarterly to holders of the Stock. It is represented that the TXP Unit dividend distributions constituted approximately $4.20 per share out of a total of $6.40 per share annual dividends on the Stock with the remaining amount of the dividend distributed in cash. As of November 1, 1985, the Employer and its affiliates owned approximately 78% of the issued and outstanding TXP Units.

Each TXP Unit evidences entitlement to a percentage of TXP's income, gains, losses, deductions, credits, and distributions. The amount of a Unitholder's percentage of interest in TXP is subject to dilution whenever TXP issues more Units or other securities of senior rank.

Initially, one-sixteenth of a Unit was issued as a dividend for each share of the Stock; however, in July 1985, the rate was changed to one-twentieth of a Unit per share of the Stock. In July 1986, the Employer ceased issuing Units as dividends on the Stock. The Employer represents that it may, at its discretion, reinstate a TXP Unit dividend policy at any time.

All of the Units distributed by the Employer to its common stockholders are on deposit with the Morgan Guaranty Trust Company (Morgan) of New York and are evidenced by depositary receipts (the Receipts) issued by Morgan. Any TXP Unit withdrawn from Morgan is not transferrable, except upon death, by operation of law, or by transfer to TXP. However, since July 1983, the Receipts have been freely traded on the NYSE to United States citizens, except as restricted by state and federal securities laws and by a federal prohibition against non-United States citizens owning an interest in federal off shore oil and gas leases.

8. Because the Thrift Plan and the ESOP both hold Stock, they, along with all other shareholders, acquired Units evidenced by Receipts as dividend distributions on the Stock until July 1986, when the Employer ceased issuing Units as dividends.[4] It is represented that the Employer has on file a declaration of United States citizenship for each participant in the Plans. Any Receipts evidencing Units allocable to ESOP participants who are not United States citizens were sold by the Trustee on the open market at the fair market value on the date of sale and the proceeds were reinvested in Stock. Similarly, Receipts evidencing Units allocated to non-United States citizens who are participants in the Thrift Plan were also sold on the open market at the fair market value on the date of sale and the proceeds reinvested in Fund A, B, C, or D under the participants' investment directions. For participants in the Thrift Plan who are United States citizens, it is represented that the Employer amended the Thrift Plan to provide that Units received as dividends were to be held in the Plan, unless a participant directed that the Units allocated to his account were to be sold and the proceeds reinvested in any of the four Funds in the Thrift Plan.

Effective October 1, 1985, the Employer amended the ESOP to provide that any Units which the ESOP had acquired to that date or any Units which the ESOP was entitled to receive after such date as dividends from the Stock were to be transferred directy to the Thrift Plan to be held outside the four Funds by the Trustee but within the Thrift Plan on behalf of each employee who participated in both of the Plans. The applicants represent that this procedure was adopted to prevent the Units from becoming a significant portion of the assets of the ESOP. For participants in the ESOP who were not participants in the Thrift Plan, the amendment provided that the Units to which the ESOP participant was entitled be sold on the open market at the fair market value on the date of sale and the proceeds reinvested in additional shares of Stock which were to be allocated to individual accounts of those participants in the ESOP. From September 1984 to June 1986, a total of 307,935 Units were transferred from the ESOP to the Thrift Plan.[5]

9. As of June 1986, 898,986 Units were being held by the Trustee on behalf of the participants of the Thrift Plan, including the 307,935 Units transferred from the ESOP to the Thrift Plan and 591,051 Units received directly by the Thrift Plan as dividends on the Stock. As of January 30, 1986, the Thrift Plan held approximately 1.1% of the issued and outstanding Units. Based on the market values on the same date, the Units constituted 9.29% of the total assets of the Thrift Plan. However, the Units exceeded ten percent (10%) of the value of certain participants' individual account balances in circumstances where the participants have either made a withdrawal, changed investment direction, liquidated Stock and transferred the proceeds to another Fund, or terminated employment and received a subsequent allocation of Units which are not distributed until a later valuation date.

10. The applicants represent that upon grant of this exemption, a fifth investment fund (Fund E) within the Thrift Plan will become operable. Fund E was established by the Employer pursuant to an amendment to the Thrift Plan effective Agust 31, 1984.

Through Fund E, the participants in the future will be able on a monthly basis to direct the purchase of additional Units and to sell Units on the open market at the fair market value on the NYSE on the date of the purchase or the sale. The applicants represent that Units will not be acquired by the Thrift Plan on behalf of a participant if, after the acquisition, the value of the Units held the Thrift Plan on behalf of such participant would represent more than ten-percent (10%) of the value of the assets in that participant's individual account in the Thrift Plan.[6] The regular provisions of the Thrift Plan will apply concerning participant direction as to the sale of any of the Units held in the Thrift Plan on behalf of any participant and the reinvestment of proceeds from such sale into one or more of the other four Funds. However, once a participant has directed that Units which were originally received as dividends be sold, he may not for a period of six months repurchase Units, and then may do so only with future contributions. It is represented that all commissions and brokerage fees associated with the sales of TXP Units are paid by the participants whose TXP Units are sold. Also, after meeting certain vesting requirements, participants wil be able to withdraw Units from Fund E in the Thrift Plan prior to termination of their employment.

11. The applicants represent that the acquisition and holding of the Units provides an alternative form of investment for the participants of the Thrift Plan to share in the growth of the Employer's business and to obtain additional flexibility by directly investing in the Employer's oil and gas exploration activities conducted by TXP. It is represented that the Thrift Plan benefits from annual cash distributions on the Units of $2.36 per Unit, such distribution constitutes an annual return on the Units of approximately 11.2% based on the market price as of September 30, 1985, of $21.00 per Unit. Accordingly, the applicants represent that the subject transactions are in the best interest of the participants and beneficiaries of the Plans.

12. In summary, the applicants represent that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The acquisition and holding of the Units by the Plans was the result of the Employers quarterly dividend distribution to all shareholders of the Stock; (2) the dicision to acquire additional Units from the open market in the future and the decision to hold or dispose of all Units will be made by the participants in the Thrift Plan in accordance with directions given to the Trustee by each participant for his or her individual account; (3) the value of any Units held in a participant's individual account after the purchase of Units in the future on the open market will not exceed ten percent (10%) of the value of the assets of such participant's individual account in the Thrift Plan; (4) the participants may change their previous instructions monthly to the Trustee regarding the acquisition or disposition of the Units; and (6) all transactions concerning the Units are conducted at the fair market value on the NYSE on the date of the transaction.

For further information contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Freeman Companies Savings and Investment Plan and Trust Agreement (the Plan), Located in Nashville, Tennessee

[Application No. D-7022]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in FRISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restriction of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchases by the Plan of units of certain real estate limited partnerships which are organized, underwritten, offered and operated by certain of the Freeman Companies, the sponsors of the Plan; provided that such purchases are on terms which are at least as favorable to the Plan as the Plan could obtain in transactions with unrelated parties; and provided further that investments in any such units by the Plan shall not exceed twenty-five percent of the total assets of the Plan and total investments by the Plan in such units shall not exceed ten percent of the units of any one of such partnerships.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan with provisions for individual participant contributions pursuant to section 401(k) of the Code. There were seventy participants in the Plan as of December 29, 1986. The Plan is sponsored by Harvey Freeman and Sons, Inc. and its eighteen affiliate companies (collectively, the Sponsors). The Sponsors are engaged in real estate investment and management services, specializing in organizing, underwriting, selling, managing and operating real estate limited partnerships. The Plan trustee is the Third National Bank in Nashville, Tennessee (the Trustee). Currently, the Plan document provides that each Plan participant must direct the investments of his or her individual account by filing with the Trustee written investment instructions. The Plan participants may choose any investment so long as it is not contrary to applicable law. The Plan participants may also direct the Trustee to invest, on their behalf, in public offerings of real estate limited partnerships (the Partnerships) which are ogranized, underwritten, offered, sold, managed and operated by the Sponsors, pursuant to an individual administrative exemption, Prohibited Transaction Exemption 86–113 (PTE 86–113, 51 FR 32556, September 12, 1986), which describes the terms and conditions under which such investments are permissible.

2. The Sponsors represent that PTE 86–113 has served appropriately to allow the investments by individual participants in public offerings of Partnership units under the existing structure of the Plan. However, the Sponsors state that numerous administrative problems are arising with respect to the Plan's existing individual investment authority arrangements. Within the next two years, many of the Sponsors' employees will meet the requirements for participation in the Plan and it is anticipated that the Plan will grow to include approximately 1,000 participants. These prospective new participants are located at Sponsor sites throughout the eastern United States.

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[4] The applicants represent that TXP is an affiliate of the Employer for the purpose of section 407(d)(7) and that the TXP Units are "employer securities" within the definition of section 407(d)(1). However, the applicants state that relief from section 406(a) and 407(a) of the Act is necessary for the acquistion and subsequent holding of the Units by the Plans, because such Units are not "qualifying employer securities," as defined under section 407(d)(5) of the Act.

[5] The Department, herein, is not proposing relief for the transfer of Units from the ESOP to the Thrift Plan.

[6] The Department notes that the ten percent (10%) limitation applies to future purchases of Units on the open market and that if in the future the Employer were to reinstate the distribution of TXP Units as a dividend on the Stock, the Thrift Plan would ensure that TXP Unit received as future dividends on behalf of any participant's individual account which exceed the 10% limitation would be sold by the Thrift Plan and the proceeds reinvested in the other four Funds. However, the ten percent (10%) limitaton does not impose upon the Trustee of the Thrift Plan an obligation to dispose of any of the Units merely because the value of the Units exceeds ten percent (10%) of the value of the participant's individual account on a date subsequent to the date the Units were acquired due to, for example, an increase in the market value of the Units.

The Sponsors represent that the increased communication in receiving and implementing the investment directions of the new participants will complicate administration of the Plan. Accordingly, in order to simplify Plan administration, the Sponsors desire to amend the Plan document to eliminate prospectively the maintenance of individualy directed accounts in the Plan and to provide instead for the establishment of a general trust fund (the General Fund) to be invested at the discretion of the Trustee. The Sponsors wish to continue to provide the Plan participants with the collective opportunity, pursuant to the sole discretion of the Trustee, to invest in the Partnerships. The Sponsors are requesting an exemption to permit the General Fund's proposed investments in public offerings of Partnerships units under the terms, conditions and limitations described herein.

3. The Sponsors propose to amend the Plan effective July 1, 1987 to establish the General Fund. Contribution to the Plan made on or after that date will constitute the General Fund and will be invested at the sole discretion of the Trustee. Contribution to the Plan made before July 1, 1987, and the earnings thereon, will continue to be maintained in individual participant accounts and invested at the direction of the individual participants. Participants maintaining individual accounts will be given the opportunity to direct that their individual account balances and the earnings thereon be invested in the General Fund. The Trustee represents that it sufficiently independent of an unrelated to the Sponsors and adequately experienced under the Act to serve as independent fiduciary on behalf of the General Fund in the proposed transactions. The Trustee states that no officers or directors of the Bank are officers or directors of the Sponsors and that total deposits and loans of the Sponsors with the Trustee constitute less than one percent of the Trustee's total deposits and outstanding loans.

4. It is the intention of the Sponsors that individual participants who maintain individually directed accounts in the Plan after establishment of the General Fund be allowed to continue to direct the Trustee to purchase Partnerships units on their behalf pursuant to PTE 86–113. Pursuant to the requirements of PTE 86–113, investments in the Partnership units by any individually directed account in the Plan will not exceed twenty-five percent of the assets of such individual account. The parties intend that the Partnership units purchased by individual accounts shall be added to the Partnership units purchased by the General Fund for purposes of the quantitative limits imposed by this proposed exemption on the total Plan investment in the Partnership units. Accordingly, total investments in the Partnership units by the General Fund plus investments in the Partnerships units by individually directed accounts in the Plan shall not exceed twenty-five percent of the total assets of the Plan. Additionally, total investments in the Partnership units by the General Fund plus investments in the Partnership units by individually directed accounts in the Plan shall not exceed ten percent of the units of any one of the Partnerships. The Sponsors represent that no commissions will be paid to or received by the Sponsors in any purchase of Partnership units by the General Fund.

5. Typical of the Partnerships is the Freeman Growth Plus Limited Partnership (FGP). The applicant represents that the subject Partnerhips will be organized and will operate substantially the same as FGP as described herein. The exemption proposed herein is restricted to those Partnerships which are organized, offered and operated by the Sponsors in substantially the same manner as FGP. FGP is a Delaware partnership registered with the Securities and Exchange Commission and organized to engage in the acquisition, holding and management of income-producing real property. FGP is designed as an investment vehicle suitable for qualified pension and profit-sharing plans and other entities intended to be exempt from federal taxation. All aspects of the organization, operation and termination of FGP are specified in detail in a prospectus (the Prospectus) made available to all potential investors, describing the terms of the partnership agreement (the Agreement) under which FGP will operate. FGP's initial offering is for 25,000 limited partnership units at $1,000 per unit and a minimum investment requirements of five units. The Prospectus describes the investment objectives of FGP as the acquisition, holding and operation of existing income-producing residential and commercial real properties which will provide long-term capital appreciation, cash distributions from operations, and diversified real estate portfolio while avoiding "unrelated business taxable income" and preserving FGP's capital. All proceeds of the offering are to be held in a fiduciary capacity for the benefit of limited partners, to be used solely for the purposes set forth in the Agreement.

6. The Prospectus states and the applicant respects that with respect to potential investments in FGP by qualified plans, the general partners and their affiliates are not permitted to purchase Partnership units with assets of any qualified plan (including a Keogh or IRA) if they (1) have investment discretion with respect to such assets, or (2) regularly give individual investment advice which serves as the primary basis for the investment decisions made with respect to such assets. The Sponsors represent that pursuant to regulations issued by the Department, specifically 29 CFR 2510.3–101, the assets of the Partnership do not constitute plan assets under the Act. The Sponsors represent that each of the Partnerships will be registered with the Securities and Exchange Commission. The Sponsors represent that the proposed transactions between the Partnerships and the Plan will be at arm's length and at least as favorable to the Plan as the Plan could obtain in transactions with unrelated parties. The Sponsors further represent that investors in the Partnerships, including the Plan, are not liable for additional amounts beyond the purchase price of the Partnership units.

7. The Trustee represents that it is independent of the Sponsors and that it is substantially experienced in fiduciary responsibilities under the Act, providing full investment and administrative services to over 400 qualified plans with an adequate market value of $1.4 billion, $650 million over which the Trustee has investment discretion. Additionally, the Trustee notes that it is experienced with a broad range of asset classes, including real estate. The Trustee represents that management of the General Fund will be directed by one of its investment officers and that the Trustee will have full and sole investment discrimination over the General Fund's assets. The Trustee represents that it will be under no obligation to invest in any of the Partnerships or to consult with any officer or representative of the Sponsors regarding any decision to buy or sell Partnership units. The Trustee represents that investment will be made in the Partnerships only if the Trustee, in its sole discretion, deems such investments to be appropriate as compared to other real estate investments. The Trustee affirms that it will monitor investments in Partnership units by the General Fund and the individually directed accounts in the Plan to ensure that the quantitative limits set forth herein are not exceeded. The Trustee represents that its financial services division has thoroughly

investigated the Sponsors and considered the merits of the General Fund's proposed potential purchases of Partnership units. Representing that it has a policy of high selectively in endorsing real estate limited partnership investments, the Trustee states that the Sponsors constitute a premier real estate syndication and that the Partnerships units constitute prudent investment options for the General Fund.

8. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the proposed transactions for the following reasons: (1) The General Fund will be represented in any purchase Partnership units by the Trustee, an independent fiduciary with sole investment discretion over the General Fund's assets; (2) The Trustee will be under no obligation to consult with any representative of the Sponsors in the purchase or sale of Partnership units; (3) The General Fund will be dealing in public offerings of Partnership units on the same terms and conditions as unrelated parties who invest in the Partnership units, except that the General Fund will pay no sales commissions in any purchase of Partnership units; (4) No more than twenty five percent of the total assets of the Plan may be invested in the Partnership units; and (5) Total investments by the Plan in the Partnership units shall not exceed the percent of the units of any one of the Partnerships.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

First Atlanta Corporation Retirement Plan (the Plan), Located in Atlanta, Georgia

[Application No. D–7068]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a)(1), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed contribution to the Plan of certain real property located in Fulton County, Georgia (the Property), by First Atlanta Corporation (the Employer), the Plan sponsor and party-in-interest with respect to the Plan; provided that the terms and conditions of the proposed transaction are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with an estimated 4,124 plan participants. The Plan had total assets of $49,410,800 as of March 6, 1986. The Employer is a bank holding company, which wholly owns the First National Bank of Atlanta, the Plan's trustee (the Trustee).

2. The applicant requests an exemption to permit the Employer's contribution to the Plan of the Property in lieu of a portion of the Employer's cash contribution for the fiscal year ending December 31, 1987. The Employer proposes to contribute the Property in addition to cash equal to the difference between the minimum required contribution and the appraised fair market value of the Property. The Property consists of 3.77 acres of realty improved with a 22,000 square foot office warehouse located at 535 Morosgo Drive, N.E., Atlanta, Fulton County, Georgia. The Employer purchased the Property for $3,157,000 on April 30, 1986 from an unrelated third party. The Plan owns the adjacent 4.04 acres of an improved land located at 500 Lindbergh Drive, N.E., Atlanta, Fulton County, Georgia (the Lindbergh Property). The Plan acquired the Lindbergh Property from an unrelated party on May 20, 1974 for $420,000 and leases it to an unrelated party.

3. Joe Ball, M.A.I., of Pritchett, Ball & White, Inc., independent appraisers in Atlanta (the Appraisers), determined the fair market value of the Property to be $2,646,000 and of the Lindbergh Property to be $3,500,000 as of December 1, 1986. The Plan's Property is situated immediately behind and adjacent to the Lindbergh Property. The Appraisers determined that the combined fair market value for both the Property and the Lindbergh Property (collectively, the Properties) as of December 1, 1986 would be $6,800,000.

4. First RepublicBank Dallas, N.A. (First Republic) has been appointed independent fiduciary for the Plan in connection with the proposed transaction. First Republic represents that it is independent of and has no association or relationships with the Plan, the Employer or the Trustee, except as to a nominal correspondent banking relationship with the Trustee.

5. In its capacity as independent fiduciary, First Republic has reviewed the Plan's investment portfolio, the application for exemption, and the Apppraisers' valuation as of December 1, 1986, and has physically inspected the Properties and the surrounding area. First Republic has concluded that the Plan's acquisition of the Property is consistent with the investment objectives of the Plan and represents that the value to be placed on the Property at the time of contribution to the Plan is at least equivalent to the Property's fair market value. First Republic opines that the acquisition of the Property would enhance the value of the Lindbergh Property already held by the Plan. First Repbulic believes the Properties are under-utilized as to their highest and best use in view of their location adjacent to the Lindbergh Center Station of the Metropolitan Atlanta Raid Transit Authority (MARTA), Atlanta's rapid rail system. Because of the proximity of the Properties to MARTA, First Republic believes them to have excellent potential for commercial development. With the addition of the MARTA station, redevelopment in the subject area and the renewed interest in the area west of the Properties, First Republic considers they should be a prime area for new development. Moreover, with the Plan owning both Properties, First Republic views the Properties could be developed together, canceling an easement now burdening the Plan's Lindbergh Property.

6. First Republic represents that the Employer's proposed contribution to the Plan of the Property is in the interests of and protective of the Plan and its participants and beneficiaries because it will be an excellent investment for the Plan and will reduce the overall risk of the portfolio.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the act because:

(a) It will be a one-time transaction;

(b) It will result in a significant enhancement in the value of real property already owned by the Plan;

(c) The Plan will acquire a valuable parcel of real property which has a significant potential for substantial future return to the Plan; and

(d) The Plan's independent fiduciary has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

(e) The Property will constitute less than 25% of the Plan's assets; and

(f) The Property's fair market value has been determined by a qualified independent appraiser.

For further information contact: Betsy Scott of the Department, telephone (202)

523–8883. (This is not a toll-free number.)

Tru-Stone Defined Benefit Pension Plan for Vance Jola (the Jola Plan)

Tru-Stone Defined Benefit Pension Plan for Ed Ray (the Ray Plan; Collectively the Plans), Located in Waite Park, MN

[Application Nos. D-7235 and D-7236]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resultng from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sales of 11.6 and 5.8 shares of non-voting common stock (the Class B Stock) of Big Bear Farm Stores, Inc. (Big Bear) by the Jola Plan and the Ray Plan, respectively, to Vance Jola (Mr. Jola) and Ed Ray (Mr. Ray), who are parties in interest, respectively, to the Jola Plan and the Ray Plan; provided that the sales price of the Class B Stock is not less than the fair market value of such Class B Stock on the date of sale.

Summary of Facts and Representations

1. The Plans are both defined benefit pension plans within the meaning of section 3(2) of the Act. Each of the Plans has only one participant. The fair market values of the Jola Plan and the Ray Plan are approximately $213,160 and $109,196, respectively, as of December 31, 1986. The trustees of the Jola Plan are Mr. Jola and Alvin Kern (Mr. Kern). The trustees of the Ray Plan are Mr. Ray and Mr. Jola.

2. Tru-Stone Corporation (the Employer), the sponsor of the Plans, is located a 1101 Sundial West, Waite Park, Minnesota. The Employer engages primarily in the manufacture of precision calibration devices from granite and has approximately forty (40) employees. Mr. Jola, Mr. Ray, and Mr. Kern own one-third of the common stock of the Employer each and, respectively, hold the offices of president, vice president, and secretary/treasurer. It is represented that retirement benefits are provided to the employees of the Employer, other than Mr. Jola and Mr. Ray, through the Tru-Stone Money Purchase Pension Plan which is not involved in the proposed transactions.

3. Big Bear, a closely held corporation, engages in retail trade and markets a broad array of family goods for the home and farm. Prior to May 13, 1986, all of the outstanding shares in Big Bear were awned by its parent company, Fuqua Industries, Inc. (Fuqua). On May 13, 1986, Fnqua sold, for cash and notes received, in the amount of $1,200,000, all of its outstanding shares of Big Bear stock to the management employees of Big Bear. Subsequently, Big Bear issued two classs of stock with 17.4 shares in each class. The first class consists of voting common stock (Class A Stock). The second class, Class B Stock, consists of non-voting common stock. The management employees of Big Bear acquired all of the Class A Stock. The trustees on behalf of the Jola Plan acquired from Big Bear 11.6 shares and on behalf of the Ray Plan acquired 5.8 shares of Class B Stock at a price per share of $11,494.31. As of December 31, 1987, the Class B Stock constituted approximately 61.8% and 61% of the assets of the Jola Plan and the Ray Plan, respectively.[7]

Prior to the Plan's acquisition of Class B stock, Messrs, Jola, Ray, and Kern had no relationship with Fuqua, Big Bear, or the officers and directors of Fuqua or Big Bear. Immediately after the Plans acquired the Class B Stock, Mr. Ray was appointed to the Board of Directors of Big Bear to serve as a representative of the interests of the owners of the Class B Stock. Mr. Ray receives a fee as compensation for serving as a director of Big Bear.[8] It is represented that the trustees of the Plans have not at any time owned any Class A Stock or Class B Stock of Big Bear in their individual capacity.

4. Each of the Plans proposes to sell all shares of Big Bear Class B Stock at a cash price per share of the greater of $13,554.05 or the fair market value of the shares on the day of the sale. Mr. Jola will purchase the 11.6 shares of Class B Stock from the Jola Plan, while Mr. Ray will purchase the 5.8 shares of Class B Stock from the Ray Plan. It is represented that the sale of the Class B Stock will permit the trustees of the Plans to better diversify the investments of the Plans by purchasing publicly traded securities with the proceeds from the sale. It is represented that the Plan will pay no sales commissions or fees in connection with the sale.

5. Mr. Steven R. Thorp (Mr. Thorp), Group Manager of Summit Investment Corporation, Corporate Finance Group (Summit), located in Minneapolis, Minnesota, appraised the Class B Stock, as of April 30, 1987. Using the discounted cash-flow approach, Mr. Thorp, valued the Class B Stock at $13,544.05 per share. With this approach, Mr. Thorp analyzed the projected future revenues and other pertinent financial information on Big Bear, selected an appropriate discount pre-adjusted fair market value for the Big Bear Class B Stock. It is represented that Mr. Thorp then further reduced the pre-adjusted fair market value of the Class B Stock to account for the Plans' minority interest, non-voting status, and lack of marketabilty for the Class B Stock. Further, Mr. Thorp states that he has reviewed and analyzed relevant national and regional economic and industrial information, has referenced comparable publicly held securities, and has based his opinion of the value of the Class B Stock on his experience in business and securities valuation, in general, and upon numerous other factors as they existed on the date of the appraisal.

Mr. Thorp represents that neither he, Summit, nor any of the its officers, directors, or agents has any financial interest in Big Bear or the Employer. Further, Mr. Thorp represents that his fee, though paid by the Employer, was not contingent upon any values, opinions, or conclusions stated in the appraisal. Mr. Thorp is qualified to engage in stock valuation as a certified member of the American Society of Appraisers, as a holder of graduate and undergraduate degrees, respectively, in business administration and finance, and as an experienced analyst in the valuation of both private and publicly held companies since 1980.

6. Because a discount will be applied to the sale price received by the Jola Plan and the Ray Plan, respectively, from Mr. Jola and Mr. Ray for the Big Bear Class B Stock, the applicants represented that similar discounts where taken into applicants represented that similar discounts where taken into account when the Plans originally purchased the Class B Stock on May 16, 1986. The applicants represent that at the time of the Plans' acquisition of the Class B Stock, the trustees negotiated the purchase price at arm's length with the Big Bear management. The trustees assert that they as experienced businessmen were capable of evaluating the worth of Big Bear and that the price paid by the Plans to acquire the Class B Stock was not excessive.

7. The First National Bank of St. Cloud, Minnesota has agreed to act as independent fiduciary on behalf of the Plans with respect to the proposed sales of the Class B Stock. The Bank is independent in that neither Mr. Ray, Mr. Jola, Mr. Kern, the Employer, nor Big Bear have any ownership interest in the Bank. It is represented that the Bank is qualified to serve as independent fiduciary, as the trust department of the Bank has fiteen (15) years of experience, is the largest in the St. Cloud area, and services numerous ERISA accounts.

After reviewing the proposed transactions, the Bank states that the sales of the Class B Stock are necessary to diversify the assets of the Plans and to increase the liqudity of the Plans. Further, the Bank reviewed the appraisal of the Class B Stock prepared by Mr. Thorp on April 30, 1987, using the discounted cash-flow method. The Bank found that the discounts used to adjust the value for the marketability of the Class B Stock were reasonable for purposes of valuation. The Bank recommended that the appraisal be updated to reflect the current fair market value of the Class B Stock before the transactions are completed.

8. In summary, the Employer and Messrs. Jola, Ray, and Kern represent that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plans will receive no less than the fair market value of the Class B Stock as determined in a current fair market appraisal by an independent qualified appraiser and approved by an independent fiduciary; (b) the sales of the Class B Stock will involve no commission or fees to be paid by the Plans; (c) the transactions will involve Plans in which the party in interest purchasing the Class B Stock is the sole participant; (d) the sales will involve one-time purchases for cash; and (e) the transactions will permit the trustees to diversify the investments of each of the Plans.

Notice to Interested Persons: Because Mr. Jola and Mr. Ray are each the only participant, respectively, in the Jola Plan and the Ray Plan, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Conatact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.),

Medical Center of Delaware, Inc., Retirement Plan (the Plan), Located in Wilmington, DE

[Application No. D-7244]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective May 22, 1985, to the past sale and purchase of publicly-traded securities, on May 22, 1985, between the Plan and the endowment fund (the Fund) of the Medical Center of Delaware, Inc. (the Employer), provided that the Plan received no less than the fair market value of the securities it sold and paid no more than the fair market value for the securities it purchased.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with approximately 4290 participants and assets of approximately $57,000,000.

2. The Employer is a not-for-profit hospital located in Wilmington, DE. The Employer is exempt from Federal income tax under section 501(c)(3) of the Code. The Fund provides part of the Employer's operating budget. The Fund is not a separate entity from the Employer.

3. Wilmington Trust Company (the Bank) was, until May, 1985, the trustee for the Plan and agent for the Fund, with certain discretionary investment powers over each.

4. The applicant represents that early in 1985, the Employer decided to appoint new investment managers for approximately 70 percent of the Fund and the Plan. The Employer decided to hire additional investment managers in order to diversify the actions of those in charge of selecting the Fund's and the Plan's asset portfolios. However, the new investment managers are required to abide by the same general investment objectives and guidelines as the Bank. It hired DeMarche Associates (DeMarche), a consulting firm, to recommend suitable new investment managers. In addition, it delegated to DeMarche substantial responsibility to coordinate the eventual transfer to the new managers of control over the assets in the Fund and the Plan. DeMarche located and recommended, and the Employer selected, four suitable new investment managers by early May. They were Wilmington Capital Management, Inc. (Wilmington), Lehman Management Co., Inc. (Lehman), Delaware Trust Co. (Delaware) and Fiduciary Trust Co. However, only Wilmington, Lehman and Delaware (the New Managers) participated in the subject transactions.

5. In April, 1985, the Employer informed the Bank of its decision to hire the new investment managers. On April 24 the Employer proposed that, pursuant to this decision, the Bank would relinquish its discretionary investment powers over approximately $40 million in assets from the Plan and approximately $30 million in assets from the Fund. However, it could continue to act as trustee of the entire Plan, and as custodian for the Plan and the Fund. The new investment managers were to manage equity accounts, fixed income accounts, or both, depending on the Employer's evaluation of their level of expertise. The target date for the "redeployment of assets" was June 1, 1985.

On May 3, representatives of the Employer, the Bank and DeMarche met to coordinate the redeployment of assets from the Plan and the Fund. The redeployment would involve the establishment by the Bank of 5 sub-accounts each for the Plan and the Fund which the new investment managers would use as repositories for the assets they managed. The Bank would retain the securities from each fund it wished to continue to manage and transfer the remaining securities to a segregated account (Segregated Account) for each fund. The new investment managers would then select any securities they desire to retain in their Plan and/or Fund sub-accounts from the respective Segregated Accounts. Any securities still remaining would be liquidated and the cash proceeds used to complete the funding of the new sub-accounts.

6. The initial stages of the transfer of control to the new investment managers proceeded essentially as planned. By May 14, the Bank had selected the securities that it wished to retain under its own management, and placed the rest in Segregated Accounts. Because the securities held by the Bank in its four existing securities and options sub-accounts satisfied the investment standards established by the Employer for the Plan and the Fund, and the Employer had not told the Bank to change its investment policies or objectives with respect to either the Plan or the Fund, for the most part the Bank simply reduced its positions in each of

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[7] The Department herein is not proposing relief for any violation of Part IV of the Act which may have arisen as a result of the acquisition of the Class B Stock by the Jola Plan or the Ray Plan.

[8] The Department herein is not proposing relief from violations of sections 406 of the Act which may have resulted from the appointment of Mr. Ray to the Board of Directors of Big Bear subsequent to the acquisition by the Ray Plan of the Class B Stock of Big Bear and from the receipt of a fee by Mr. Ray for seriving as a director of Big Bear.

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the securities that it held. The new investment managers selected those securities that they wished to retain from the Segregated Accounts, and communicated their choices to DeMarche, by May 21.

7. Each of the New Managers chose the securities it desired for its sub-accounts on the basis of the general investment guidelines for the Plan and the Fund established by the Employer, and its own investment philosophy and analysis within those guidelines.

8. An "over-subscription" problem developed when the Bank began preparations to transfer those securities that the New Managers had selected to the six new equities sub-accounts. According to the applicant, DeMarche told the New Managers that they could select securities that they wished to retain from both the Plan's and the Fund's Segregated Accounts at the same time. In short, the New Managers perceived that the contents of the Plan and the Fund were pooled for selection purposes. As a result of this belief, some of the New Managers selected more of certain securities for their Plan sub-accounts than existed in the Plan's Segregated Account. The same problem occurred with respect to the Fund's Segregated Account. Thus, when the Bank received the New Managers' selections from DeMarche, with instructions to transfer them from the Segregated Accounts into the New Managers' respective sub-accounts, they discovered that there were not enough shares of some securities in the individual Segregated Accounts to satisfy all of their demands.

The subject transactions followed directly from this over-subscription problem. Although the Bank was not sure that the proposed transfers were proper, after consultations with DeMarche, the Employer and its own legal department, the Bank agreed to transfer the relevant securities from the Fund to the Plan and the Plan to the Fund, and sufficient cash between the two to compensate each for such securities.[9] The Employer pointed out in these consultations that the transactions would allow the Plan and the Fund to avoid brokerage commissions which would otherwise be incurred if they simply sold and repurchased the same securities on the open market.

9. Having satisfied themselves that the proposed exchange was appropriate, the Bank followed the Bank's standard operating procedures to determine the fair market values of the securities to be transferred.

Specifically, the Bank obtained the high and low trading prices on May 21 for the securities to be transferred between the Plan and the Fund from the May 22 *Wall Street Journal*. The average values were then computed and used as the fair market values of the securities to be transferred.

10. The Plan sold securities to the Fund at a price of $735,999.38 and purchased securities from the Fund at a price of $772,873.75. The applicant represents that the difference between the Plan's cash outlay and receipt, $36,874.37, had no impact on the Plan's liquidity. The total amount involved in the transactions, $1,508,873.13, represented approximately 2.6% of the Plan's assets. In the process the Plan and the Fund saved brokerage commissions on the sales of the securities involved. They also saved commissions that would otherwise have been incurred in the purchase of securities with the proceeds of the sale of the securities which were exchanged.

11. The applicant represents that the Employer, the Bank, the New Managers and DeMarche all received no additional compensation or fees of any kind in connection with the sale of the securities between the Plan and the Fund. Furthermore, all of the securities were sold or purchased by the Plan at their fair market value on the date of sale or purchase, as determined by the Bank's representative, based on the average of the high and low prices for that date.

12. The transaction at issue was noticed in March, 1986 by the Employer's accountants, who were preparing a financial statement for the Fund on behalf of the Employer. They contacted the comptroller of the Employer, who consulted several secondary sources. He ultimately concluded that no prohibited transactions had occurred. He reasoned that the transfer of assets had been made at arm's-length, for their fair market value at the time, and therefore did not constitute a transfer of Plan assets "for the use or benefit of a party in interest." The accountants also contacted the Bank's trust department and advised them of the prohibited transactions. The trust department's attorney made a preliminary investigation and recognized the possibility that the transfer of assets between the Plan and the Fund may have been a prohibited transaction within the meaning of the Act and the Code. The trust department's attorney called an outside law firm for advice. Following discussions among the Employer, the Bank, the accountants and outside counsel, the parties decided that there was a sufficient possibility that a prohibited transaction had occurred. Accordingly, a request for an exemption under section 408(a) of the Act was prepared and submitted to the Department.

13. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) because: (a) The purchases and sales were one-time transactions for cash; (b) the transactions were all at fair market value as evidenced by published quotations; (c) the Plan paid no commissions or other fees in connection with the transactions; (d) the applicants discovered the prohibited nature of the transactions through internal scrutiny and promptly applied for an exemption; (e) the New Managers, acting as Plan fiduciaries, determined that the transactions were in the best interests of the Plan; (f) the Bank approved the transactions; and (g) the transactions involved less than 3% of the Plan's assets.

For further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Knox Nelson Oil, Co., Inc. Money Purchase Plan (the M/P Plan)

Knox Nelson Oil, Co., Inc. Profit Sharing Plan (the P/S Plan; Collectively the Plans), Located in Pine Bluff, Arkansas

[Application Nos. D–7306 and D–7307]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed series of loans (the Loans) by each of the Plans to Knox Nelson Oil, Co., Inc., (the Employer); provided that the terms and conditions of the Loans are not less favorable to the Plans than those obtainable in similar arm's length transactions with unrelated third parties; and provided further that the total amount of the Loans outstanding from either of the Plans at the time any of the Loans are entered and throughout the duration of the Loans does not exceed twenty-five percent (25%) of the fair market value of the assets of the M/P Plan or the P/S Plan from which such Loans are made.

Temporary Nature of Exemption

The Department has determined that this exemption will be temporary in nature and will expire five (5) years after the date of grant. The Plans may enter into Loans during this five (5) year period and may hold such Loans to maturity for a period not to exceed five (5) years for each of the Loans. The applicants may submit another application for exemption, if they wish to extend this exemption beyond a period of five (5) years.

Summary of Facts and Representations

1. The Plans are a defined contribution money purchase plan and a defined contribution profit sharing plan, each of which had five (5) participants as of December 31, 1986. Participation by individuals in each of the Plans is identical. As of July 31, 1987, the M/P Plan and the P/S Plan had assets of $34,734 and $278,852, respectively. The trustee for the Plans is the National Bank of Commerce of Pine Bluff, Arkansas. The administrator of the Plans is Knox Nelson (Mr. Nelson) who is also a participant in each of the Plans.

2. The Employer and the sponsor of the Plans is located at 101 Pennsylvania, Pine Bluff, Arkansas. The Employer is engaged in the bulk distribution of oil and gas products. Mr. Nelson is the president, director, and controlling shareholder of the Employer.

3. The applicants request an exemption to permit the Plans for a period of five (5) years from the date of the grant to make Loans on a recurring basis to the Employer. In addition, the applicants seek an exemption to allow the Plans to hold Loans originated during this five (5) year period until repaid; provided that the holding period does not exceed five (5) years for each of the Loans. The proceeds of such Loans will be used in the day-to-day operations of the Employer. It is represented that Loans will not be made, unless an independent fiduciary reviews, approves, and monitors the terms of the Loans and that such terms will not be less favorable to the Plan than those for similar transactions negotiated at arm's length between unrelated third parties.

Each of the Loans will be evidenced by a promissory note (the Note) and will be amortized over a period not to exceed five (5) years. Payments of principal and interest will be made in at least quarterly installments, commencing three (3) months from the date of the Note which evidences each of the Loans. The Loans will be secured either by real property or by accounts receivable owned by the Employer. For Loans which are secured by real property, it is represented that the fair market value of the collateral will exceed 150% of the total amount for such Loans. For Loans which are secured by accounts receivable, it is represented that the fair market value of the collateral will exceed 200% of the total amount for such Loans. It is further represented that such ratio of the amount of the loan to the value of the collateral will be maintained throughout the duration of all of the Loans.

4. Initially, the M/P Plan and the P/S Plan propose to lend to the Employer $8,675 and $69,700, respectively, which amounts constitute 24.9% of the assets of each of the Plans. The initial Loans will bear interest at a rate of 11% per annum. It is represented that the independent fiduciary will review this interest rate prior to closing and will adjust it appropriately. These initial Loans will be secured by a recorded first mortgage on improved real property (the Property) which is owned by the Employer.

5. The Property which will serve as security for the initial Loans is located on Route 7, Box 33–34 Sulphur Springs Road, Pine Bluff, Arkansas. The Property consists of two tracts (Tract A and Tract B) that are improved by a commercial building (the Building) and a residence (the Residence), respectively. Tract A lies at the intersection of Sulphur Springs Road and East Lake Drive and is described as a level, rectangular parcel with a total land area of 35,000 square feet. The Building on Tract A is a single story frame structure of 3,240 square feet. A portion of the Building (2,592 square feet) is utilized as a convenience and grocery store. The remaining 648 square feet is designated as retail space available for lease. Tract A also is improved by a 20′ × 20′ metal canopy which covers five above-ground gasoline pumps and three underground fuel tanks and by approximately 11,745 square feet of asphalt paving.

Tract B consists of a 1.31 acre slightly irregular, but level site, which is improved by a one-story Residence. The Residence is described as a single family detached dwelling approximately forty-seven (47) years old. Additional features of the Residence include a brick fireplace, patio, circular gravel drive, and several porches.

6. James C. Buckner (Mr. Buckner), president of Buckner Appraisal Company and Buckner Realty & Insurance Co., Inc. located in Pine Bluff, Arkansas, appraised Tract A and Tract B on July 28, and July 18, 1987, respectively. Mr. Buckner valued Tract A at $150,000 and Tract B at $37,000. Mr. Buckner is qualified by his experience since 1972 as a fee appraiser and mortgage loan officer. In addition, Mr. Buckner is an M.A.I. candidate with the American Institute of Real Estate Appraisers. Mr. Buckner certifies his independence in that he has no interest in the Property and that neither his employment nor compensation is contingent on the value of the Property appraised.

7. Kirk Stone (Mr. Stone), a certified public accountant with the firm of Baird, Kurtz & Dobson has agreed to act as independent fiduciary with respect to the proposed Loans. Mr. Stone has accepted responsibility for reviewing, approving, and enforcing the terms of the Loans and will monitor the Loans throughout their duration to insure that the participants and beneficiaries of the Plans are protected by adequate security on the Loans. If necessary, he will demand timely payment on the Loans, bring suit, or take other appropriate action to protect the Plans.

Mr. Stone represents that he is independent of the parties in interest involved in the proposed Loans. In the course of providing services to ERISA qualified employee plans, Mr. Stone states that he is aware of the prohibited transaction rules, the high standard of care required of, and the responsibilities and duties of a fiduciary under the Act. He states that he is qualified to serve as independent fiduciary of the Plans for the proposed Loans, as he is employed in providing financial planning and tax preparation for clients and in representing such clients in obtaining loans from local or regional commercial lenders. In addition, Mr. Stone represents that he often analyzes accounts receivable in the course of preparing financial statements or tax returns for clients.

Mr. Stone has reviewed the initial Loans and has determined that these Loans are in the best interest of the Plans. His conclusions are based upon the following analysis:

(a) There are no existing loans between the Plans and the Employer and the amount of the initial Loans from the Plans does not exceed 25% of each of the Plans' total assets;

(b) The initial Loans will be secured by recorded first mortgages on the Property which has a current fair market value as determined by a qualified independent appraiser which is in excess of 150% of the total amount of the initial Loans;

(c) The interest rate of 11% on the initial Loans reflects a rate of 1% above

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[9] The Department is expressing no opinion as to whether any of the actions described herein of the Bank, the Employer, DeMarche or the new Managers constitutes a violation of section 406 of the Act.

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local bank prime rate. Mr. Stone has determined that such rate represents the interest that would be charged a borrower who had a similar financial position to that of the Employer by a third party lender who had no long term business history with such borrower;

(d) The Plans' cash flow needs are low because participants in the Plans have stable employment histories and because participants do not anticipate retiring in the near future; and

(e) The duration of the initial Loans does not exceed five (5) years and the amount of such Loans will be paid in at least quarterly installments of principal and interest.

8. In addition to the initial Loans which are to be secured by the Property, the applicants propose to make Loans in the future which will be secured by accounts receivable of the Employer. Mr. Stone represents that he will not permit the Plans to enter into any future Loans until he has made the following determinations:

(a) These future Loans are secured by accounts receivable which throughout the duration of such Loans have a fair market value in excess of 200% of the amount of such Loans;

(b) The duration of each of these Loans does not exceed five years, and the amounts of such Loans are paid in at least quarterly installments of principal and interest;

(c) The interest rate and other terms of the future Loans will be investigated through interviews with third party lending institutions in order to insure that they are not less favorable to the Plans than those negotiated at arm's length between unrelated third parties in similar transactions.

(d) For any accounts receivable which serve as collateral for any of the future Loans, a detailed accounts receivable aged list will be obtained from the Employer from which will be excluded all accounts older than sixty (60) days, all accounts of owners of the Employer, and all accounts with individuals who are creditors of the Employer to the extent of the dollar amount owed by the Employer.

Mr. Stone states that once the net dollar amount of accounts receivable has been determined in accordance with paragraph 8(d) above, it will be reduced by twenty percent (20%), and such amount will be used as the fair market value of the collateral, unless further information about such accounts receivable indicates that a lesser value is in fact the fair market value of such accounts. Mr. Stone represents that he has investigated the quality of the Employer's accounts receivable. He has determined that 85% of all such accounts receivable turn over every month because of the nature of the Employer's business and that less than one percent (1%) of all such accounts receivable each year are uncollectible. Based on his knowledge of the nature and quality of the Employer's accounts receivable, his general experience, and his familiarity with lending practices of local institutions concerning financing secured by accounts receivable, Mr. Stone represents that he will be able to determine the fair market value of such accounts receivable when used as collateral for the future Loans. Mr. Stone further asserts that any accounts receivable used as collateral will be perfected through the recording of a security agreement and financing statement.

Finally, Mr. Stone represents that in determining whether any future Loans should be made, he will review the cash-flow needs of the Plans, conformity of the terms of such Loans to the Plans' investment policies, the overall investment portfolios of the Plans, the diversification of the assets of the Plans, and the liquidation of Plans' assets needed to fund such Loans.

9. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Loans will be approved, monitored, and enforced by an independent fiduciary;

(b) The initial Loans will be secured by property which has a current fair market value as determined by a qualified independent appraiser which is at least equal to 150% of the amount of such Loans;

(c) Any future Loans will be secured by accounts receivable of the Employer the value of which will exceed 200% of the amount of such Loans;

(d) The exemption will be for a five (5) year period from the date of the inception of each of the Loans;

(e) The toal amount of the Loans will at no time exceed twenty-five percent (25%) of the assets of either of the Plans from which such Loans are made; and

(f) The independent fiduciary has determined that the initial Loans are in the best interest of the Plans and will make the same determination before the Plans enter into any future Loans with the Employer.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Mardale, Inc. Profit Sharing Plan (the Plan) Located in Waukegan, Illinois

[Application No. D–7353]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of $25,000 by the Plan to Mardale, Inc. (Mardale) under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. Mardale is a manufacturing company which produces portioned controlled jams, jellies and condiments. Mardale maintains the Plan, which is a profit sharing plan with approximately 14 participants. As of May 31, 1987, the Plan had assets of approximately $106,303. The trustee of the Plan is Ms. Margaret Winslow, who is also the sole owner of Mardale.

2. Mardale proposes to borrow $25,000 from the Plan in order to purchase a new machine called "The Lane Cup Packager". The machine is designed to reduce the cost of individual packaging, and will also enable Mardale to develop a new line of product.

3. The loan will be repaid over five years in monthly payments of interest and principal. The loan will have a floating interest rate equal to one-half point above the prime interest rate of the Bank of Waukegan (the Bank), which is located in Waukegan, Illinois. The interest rate will be adjusted monthly. The terms of the loan will also provide for an interest floor of 7%. The Bank represents that Mardale currently has a loan from the Bank at an identical rate to that of the subject loan.

4. The loan will be secured by a first lien on a machine (the Machine) owned by Mardale, a Prodo-Pak Packaging Machine, Model 601–CSW. Mardale purchased the Machine in May, 1984. Mr. Dick Orth of Clear Lam Packaging, Inc. of Elk Grove Village, Illinois, a company that services such machines and acts as a broker in the sales of the machines between the manufacturer and the purchaser, has represented that the

Machine had a current market value in excess of $50,000 as of November 16, 1987. The applicant represents that if the value of the Machine falls below 200% of the outstanding balance of the loan, additional collateral will be added so that collateral will at least equal in value 200% of the outstanding balance of the loan. The applicant represents that a financing statement evidencing the Plan's security interest in the Machine will be filed with the Illinois Secretary of State.

5. For purposes of this proposed transaction, the Plan has appointed Mr. Herb Davis as independent fiduciary. Mr. Davis is a pension consultant whose business provides administrative and actuarial services to over 450 qualified plans. The company, however, has never provided any service to Mardale or the Plan. Mr. Davis also is in the insurance business and is a lawyer by training. Mr. Davis, however, does no insurance business with Mardale. Mr. Davis represents that he understands and accepts his duties, responsibilities and liabilities as a fiduciary under the Act.

6. Mr. Davis represents that he has reviewed the proposed transaction on behalf of the Plan. He has considered the transaction with regard to the Plan's liquidity needs and diversification of investments. Mr. Davis has also reviewed the proposed rate of return to the Plan and the security provided for the proposed loan. Mr. Davis has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries. In addition, Mr. Davis represents that he will monitor the transaction and take whatever action may be necessary to enforce the Plan's rights under the loan. He will also determine the appropriateness of the continued holding of the loan as a Plan investment.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria contained in section 408(a) of the Act because: (1) The loan represents less than 25% of the Plan's assets; (2) the interest rate paid to the Plan for the loan will be identical to that paid by Mardale to a local bank for a similar loan; (3) the loan will be secured by the Machine, which has been appraised by an independent expert as having a current fair market value in excess of 200% of the amount to be loaned; (4) Mr. Herb Davis, the Plan's independent fiduciary, has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (5) Mr. Davis will monitor the loan throughout its duration and take whatever action is necessary to enforce the Plan's rights under the loan.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sunset Machine, Inc. Profit Sharing Plan and Trust and Sunset Machine, Inc. Money Purchase Plan (the Plans), Located in Ann Arbor, Michigan

[Application Nos. D–7374 and D–7375]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).[10] If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale for cash by the Plans of certain real property (the Real Property) to James F. Walters (Mr. Walters), the trustees of the Plans, and, therefore, a disqualified person with respect to the Plans, provided that the amount received by the Plans is the greater of the fair market value of the Real Property as of the date of sale or the Plans' total outlay for the Real Property to the date of sale, including, but not limited to, the price originally paid by the Plans for the Real Property, property taxes, and any expenses to the Plans in connection with their acquisition and holding of the Real Property.

Summary of Facts and Representations

1. The Plans are a profit sharing plan (the Profit Sharing Plan) and a money purchase pension plan (the Money Purchase Plan), respectively. Mr. Walters is trustee and sole participant in the Plans and is sole shareholder of Sunset Machine, Inc., brokers of used heavy factory equipment doing business in Ann Arbor, Michigan, the Plans' sponsor. On March 15, 1985, the Plans purchased from an unrelated third party the Real Property, a parcel of unimproved real estate in Scio Township, just outside Ann Arbor, Michigan, for $25,000 in cash. The Plans hold the Real Property as tenants in common in a commingled trust in which the Profit Sharing Plan holds a 57.2% interest and the Pension Plan holds a 42.8% interest. In connection with the purchase the Plans paid $86 in expenses and have since paid $1,232.55 in taxes on the Real Property.

2. The applicant represents that he caused the Plans to purchase the Real Property for investment purposes, but that he now wishes the Plans to sell the Real Property in order to diversify the Plans' assets, and to avoid the continuing expense of property taxes. The applicant represents that he has not made use of the Real Property in any way since its purchase by the Plans.

3. On May 29, 1987, Gerald V. Alcock, M.A.I., S.R.P.A., owner, and Susan M. Wedzel, staff appraiser, of Gerald Alcock Company, a real estate and business consulting and appraising firm doing business in Ann Arbor, Michigan, acting as independent qualified appraisers for the Plans, determined the fair market value of the Real Property as of that date to be $28,000.

4. Accordingly, the applicant proposes that Mr. Walters buy the Real Property from the Plans for cash at a price no less that the greater of the fair market value of the Real Property on the date of sale or the total outlay by the Plans for the Real Property to the date of sale, including, but not limited to, the price originally paid by the Plans for the Real Property, property taxes, and any expenses to the Plans in connection with their acquisition and holding of the Real Property. The Plans will pay no commissions, fees, or taxes in connection with the sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The Real Property will be sold for the greater of its fair market value on the date of sale as determined by an independent appraiser or the total expenses to the Plans in connection with their acquisition and holding of the Real Property; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plans; (d) the Plans will not suffer any loss in connection with their acquisition and holding of the Real Property; and (e) Mr. Walters, the sole participant in and trustee of the Plans, and the only person affected by the transaction, desires that the transaction be consummated.

Notice to interested persons: Because Mr. Walters is the only participant in the Plans, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

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[10] The applicant represents that James F. Walters is trustee and sole participant in the Plans and is sole shareholder of Sunset Machine, Inc., the Plans' sponsor. Hence, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of March, 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–6027 Filed 3–17–88; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Babcock and Wilcox Reactor Plants (Rancho Seco); Meeting

The ACRS Subcommittee on Babcock and Wilcox Reactor Plants (Rancho Seco) will hold a meeting on April 6, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 6, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss issues relating to the restart of Rancho Seco following its December 1985 shutdown.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–6016 Filed 3–17–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Occupational and Environmental Protection System; Cancellation

The ACRS Subcommittee meeting on Occupational and Environmental Protection Systems scheduled to be held on March 22 and 23, 1988 has been cancelled. Notice of this meeting was published in the **Federal Register** on Monday, March 7, 1988 (53 FR 7269).

Dated: March 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–6017 Filed 3–17–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Pressurized Water Reactors; Meeting

The ACRS Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on April 5, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 5, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss and hear presentations from Westinghouse representatives and the NRC Staff regarding the PRA for WAPWR (RESAR SP/90) design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634–3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–6018 Filed 3–17–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Revision

The ACRS Subcommittee meeting on Waste Management scheduled to be held on March 17 and 18, 1988, the notice of which was published in the **Federal Register** on Tuesday, March 1, 1988 (53 FR 6211), has been *rescheduled to Thursday (only), March 17, 1988.* The Subcommittee will review the following nuclear waste management topics: (1) Methodology for setting nuclear waste management research priorities, (2) TMI–2 waste liner event, (3) status of NRC recommendation of resin content limitation in cement-based LLW, (4) recent developments in LLW licensing and status of state compacts, and (5) "Q-List" Technical Position on items and activities in the high-level waste geologic repository program subject to quality assurance requirements. All other items pertaining to this meeting remain the same as in the previous notice.

Dated: March 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–6019 Filed 3–17–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–285]

Omaha Public Power District and Fort Calhoun Station, Unit 1; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–40, issued to Omaha Public Power District, (the licensee), for operation of Fort Calhoun Station, Unit 1, located in Washington County, Nebraska. The request for amendment was submitted by letter dated March 9, 1988.

The proposed amendment would revise the Technical Specification (TS) to allow a one-time extension in the 18 month surveillance interval for the inspection of Diesel Generator No. 1. This extension would allow performance of this inspection during the refueling outage scheduled to begin September 1988. The 18 month inspection of Diesel Generator No. 1 is currently due by April 30, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

This determination is based upon the staff's review of the licensee's discussion regarding the above criteria which proposes to determine that the requested charges do not involve a significant hazards consideration because the proposed changes would not:

1. Significantly increase the probability of occurrence or the consequences for an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. The diesel generators are standby equipment. They do not contribute to the occurrence of an accident. However, the diesel generators are used in certain accident-mitigating sequences. This one-time extension does not degrade the ability of Diesel Generator No. 1 to respond and operate as required for accident mitigation. Past operating history has indicated a high degree of reliability for Diesel Generator No. 1. Monthly surveillances on Diesel Generator No. 1 will continue to be performed as required by the Technical Specifications to monitor performance parameters.

2. Create the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report. The diesel generators are standby equipment. Operability of Diesel Generator No. 1 is still assured and the one-time extension does not alter the failure modes previously analyzed in the safety analysis report.

3. Significantly reduce the margin of safety as defined in the basis for any Technical Specification. The function of Diesel Generator No. 1 remains unchanged and the possibility of the failure of a diesel generator is within the bounds of the margins of safety as defined in the Fort Calhoun Station Technical Specifications.

The staff agrees with the licensee's analysis, and accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda Maryland form 8:15 a.m. to 5:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 18, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interests. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the end to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to LeBoeuf, Leiby, Lamb, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified to 20 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 14th day of March, 1988.

For the Nuclear Regulatory Commission.

Anthony Bournia,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–5980 Filed 3–17–88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program—Postal Service/Office of Personnel Management

AGENCY: United States Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/Office of Personnel Management.

SUMMARY: The U.S. Postal Service (USPS) is providing notice that the Postal Inspection Service plans to conduct a one-time computer matching program to audit the Postal Service's accounts receivable file (1) to identify active annuitants who retired from and are indebted to the USPS, and to initiate collection procedures to recoup those debts; and (2) to identify former postal employees whose postal debts are uncollectible due to present unavailability of an existing retirement account due to lump sum refunds, or other reasons, thereby updating the accounts receivable file. As the source agency, the Office of Personnel Management (OPM) will provide retirement information to be matched against the USPS accounts receivable file.

DATE: The match is expected to begin in or about March 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 8121, Washington, DC 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268–5161.

SUPPLEMENTARY INFORMATION: The Postal Inspection Service is initiating a one-time computer matching program for the purpose of identifying former Postal Service employees whose postal debts are collectible from available retirement accounts, or are uncollectible due to lump sum refunds of contributions or lump sum death benefits, etc., having been made. Collection action may be initiated against active annuitants who are debtors to the USPS by means of offset from the Civil Service retirement fund. For former employees whose indebtedness to the Postal Service is not collectible from the employees' retirement accounts, the Postal Service will examine and verify those accounts and update and improve the accuracy of its accounts receivable file.

Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and Office of Personnel Management (OPM).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the USPS will conduct the following matches:

(1) OPM will provide to the USPS a tape containing the name, Social Security Account Number (SSAN), and date of birth (DOB) of active annuitants who have retired from the USPS. Using SSAN and DOB, the USPS will match that tape against its accounts receivable file (USPS 050.005) identifying active annuitants who are indebted to the Postal Service. USPS plans to initiate collection procedures by offset of available retirement funds through OPM, following applicable laws and regulations. Disclosure of information to OPM for collection purposes is authorized by routine use No. 9 in USPS 050.005, Finance Records—Accounts Receivable File Maintenance, most recently published in 53 FR 1533 of January 20, 1988.

(2) OPM also will provide to the USPS a tape containing the name, SSAN, and DOB of former civil service employees, deceased employees, and retirees who received lump sum refunds of contributions or whose lump sum death benefits were paid in the last three years. Using SSAN and DOB, the USPS will match that tape against its accounts receivable file (USPS 050.005, Finance Records—Accounts Receivable File Maintenance), identifying postal employees whose retirement accounts have been refunded by OPM and are not available for offset of debts owed to the Postal Service. Those debts will be written off by the Postal Service as uncollectible. External disclosures will not be made as a result of this second match, the goal of which is to improve controls and the accuracy of the Postal Service's accounts receivable file.

The source information provided by OPM for this matching program is found in OPM/Central-1, Civil Service Retirement and Insurance Records; disclosure is authorized by routine uses "r" and "hh" of that system.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in or around March 1988 and end no later than March 1989.

d. *Security:* The matching program will be conducted in accordance with a written agreement between the USPS and OPM. This agreement calls for maintaining proper safeguards to prevent unauthorized use of all data exchanged. The OPM extract files will not be duplicated or disseminated within or outside the USPS unless authorized in writing by OPM. USPS personnel performing the matches will (a) have the only access to OPM's computer tapes, (b) use them only to accomplish the official stated purposes of the matching program, and (c) safeguard them from unauthorized access. Likewise, any information disclosed to OPM by USPS under this matching effort will be under the same security conditions. All information exchanged as a result of this matching program will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The source tapes remain the property of OPM and must be returned to OPM immediately upon completion of the matching operation. Information about individuals verified as "non-hits" must be destroyed immediately.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by OPM in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–5946 Filed 3–17–88; 8:45 am]

BILLING CODE 7710-12-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Public Meetings

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Tuesday, April 5, 1988, and Wednesday, April 6, 1988, 9:00 a.m. to 5:00 p.m. at the Interstate Commerce Commission Building, Lecture Room B, 12th and Constitution Avenue, NW., (Constitution Avenue Entrance) Washington, DC.

The purpose of the meeting is to allow representatives of public and private organizations to address the Presidential Commission on the societal and legal factors associated with the HIV Epidemic. Agenda items are subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655—15th Street, NW., Suite 901, Washington, DC 20005. For further information please contact (202) 376–2206.

Polly L. Gault,

Executive Director.

[FR Doc. 88–6063 Filed 3–17–88; 8:45 am]

BILLING CODE 4160-15-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 10:00 a.m. on Tuesday, April 5, 1988, at the Senator Inn, 284 Western Avenue, Augusta, Maine, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Roy Perry, District Director, U.S. Small

Business Administration, 40 Western Avenue, Augusta, Maine (207) 622–8382.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 8, 1988.

[FR Doc. 88–6024 Filed 3–17–88; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 8:00 a.m. on Thursday, May 5, 1988, at the Marc Plaza Hotel, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration and others present.

For further information, write or call Robert C. Miller, Branch Manager, U.S. Small Business Administration, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin 53203, (414) 291–3941.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 8, 1988.

[FR Doc. 88–6025 Filed 3–17–88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01–5343]

The Argonauts MESBIC Corp.; Application for a 301(d) SBIC LICENSE

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661 *et seq.*) has been filed by The Argonauts MESBIC Corporation (Argonauts), 155 North Beacon Street, Brighton, Massachusetts 002135, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102.

The officers, directors and major shareholders of the Applicant are as follows:

Chi Fu Yeh, 12 Doyle Circle, Framingham, MA 01701	President & Director	20% Stockholder.
Yung Chi Chang, 17 Surrey Lane, Needham, MA 02192	Treasurer & Director	10% Stockholder.
Shih-Chun David Liu, 110 Algonquin Road, Newton, MA 02167	Clerk & Director	15% Stockholder.
Don Chou, 644 High Mt. Rd., Franklin Lakes, NJ 07417	Vice President & Director	50% Stockholder.
Diana Y. Chen, 17 Arthur Place, Montville, NJ 07045		5% Stockholder.

The Argonauts MESBIC Corporation, a Massachusetts Corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. Argonauts will conduct its activities primarily in the State of Massachusetts but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant.

Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Brighton, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 15, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–6026 Filed 3–17–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending March 11, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45506

Parties: Members of International Air Transport Association
Date Filed: March 8, 1988
Subject: Europe—Australia Fares
Proposed Effective Date: April 1, 1988

Docket No. 45507

Parties: Members of International Air Transport Association
Date Filed: March 8, 1988
Subject: U.S. Israel Economy Fares
Proposed Effective Date: April 1, 1988

Docket No. 45512

Parties: Members of International Air Transport Association
Date Filed: March 9, 1988
Subject: Rate Levels ex-Yugoslavia
Proposed Effective Date: April 1, 1988

Docket No. 45513

Parties: Members of International Air Transport Association
Date Filed: March 9, 1988
Subject: TC2 Cargo Rates Board
Proposed Effective Date: April 1, 1988

Docket No. 42412

Parties:
Saudi Arabian Airlines Corporation
The Flying Tiger Line Inc.
Date Filed: March 9, 1988
Subject: Joint request of Saudi Arabian Airlines Corporation and The Flying Tiger Line Inc. for a six-month extension of approval of agreement to provide all-cargo service between New York, New York, and the Kingdom of Saudia Arabia until October 1, 1988, pursuant to section 412 and renewal of antitrust immunity, pursuant to section 414.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–6013 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 11, 1988

The following applications for certificate of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45504

Date Filed: March 8, 1988
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 1988
Description: Application of Air Niagara Express Inc. pursuant to section 402 of the Act and Subpart Q of the Regulations requests authority to carry persons and property (cargo), charter flights between any point or points in Canada and the United States on large and small aircraft and also to conduct charter flights between U.S. and foreign countries other than Canada.

Docket No. 45508

Date Filed: March 8, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 5, 1988
Description: Application of Foster Aviation, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket No. 45514

Date Filed: March 9, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 6, 1988
Description: Application of Pan Air Sociedad Anonima, pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in scheduled property and mail operations between points in Praguay and Miami, Florida.

Docket No. 45516

Date Filed: March 9, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 6, 1988
Description: Application of Venexcargo, Transporte Aereo de Carga S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing it to provide sheduled foreign air transportation of property and mail between Venezuela and the United States.

Docket No. 45523

Date Filed: March 11, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 8, 1988
Description: Application of Ontario Express Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign air transportation between Toronto, Canada and Hamilton-Pittsburgh, Pennsylvania.

Docket No. 44500

Date Filed: March 10, 1988
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 7, 1988
Description: Second Amendment to the Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations for an initial foreign air carrier permit to operate a scheduled service between Toronto, Ontario, Canada and Saginaw/Grand Rapids/Lansing, Michigan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–6012 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88–3–37; Docket 44100]

Application of Air North America, Inc. for Redetermination of its Fitness

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 88–3–37) Docket 44100.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Air North America, Inc., continues to be fit and reissuing it certificates of public convenience and necessity for interstate and overseas scheduled air transportation and worldwide charter air transportation.

DATE: Persons wishing to file objections should do so no later than March 30, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 44100 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2341.

Dated: March 15, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–6014 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Commissioning of Airport Traffic Control Tower; Martha's Vineyard, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commissioning Air Traffic Control Tower.

SUMMARY: Notice is hereby given that on May 26, 1988, through September 28, 1988, the airport traffic control tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time Federal Aviation Administration (FAA) facility. Tower hours of operation will be established in advance by a Notice to Airmen, and thereafter published in the Airman's Information Manual. The designated facility identification for the FAA airport control tower will be: VINEYARD TOWER.

This information will be reflected in the FAA organization statement.

FOR FURTHER INFORMATION CONTACT: Communications to the tower should be directed to: Mr. T. Askew, Manager, Cape Hub, Federal Aviation Administration, Airport Traffic Control Tower, RFD, Martha's Vineyard Airport, Box 31, Vineyard Haven, Massachusetts 02568 (Telephone No. (617) 693–1170).

(49 U.S.C. 1348 and 1354(a); 49 U.S.C. 106(g) (Revised Pub. L. 97–449 (January 12, 1983)))

Issued in Burlington, Massachusetts, on March 10, 1988.

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 88–5920 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Availability of Funds for a Research Study Regarding the Safety of Fuel Tank Systems on Over-the Road Trucks

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Grant Availability

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SUMMARY: The National Highway Traffic Safety Administration announces that competitive applications for a grant are being accepted to conduct a comprehensive study and investigation regarding the safety of fuel tank systems on over-the-road trucks.

DATE: Applications must be submitted on or before April 4, 1988.

ADDRESS: Applications must be submitted to the attention of the Director, Office of Contracts and Procurement, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5301, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. James Auten, Office of Contracts and Procurement, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–9559.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Post-crash fires are involved in nearly 16 percent of all fatalities to the occupants of medium and heavy trucks. The comparable figure for passenger cars is 4 percent. Although in many cases it is extremely difficult to pinpoint exactly the sources of these fires, studies indicate that between 10 and 50 percent of these fires result from fuel loss from the truck's fuel containment and delivery system.

The research sought under this program is intended to provide the basis for a report to Congress (called for in the fiscal year 1988 NHTSA appropriation) regarding the safety of fuel tank systems on over-the-road trucks. Such study shall include the results of tests on safety foam and other available products which claim to greatly reduce the hazards associated with fuel tank related fires and explosions.

This research will focus on non-cargo-related fires involving medium and heavy trucks with diesel engines. The research will be supported by a one-year grant of $96,000. The grant will commence no later than May 1, 1988. The final report will be submitted to DOT by March 1, 1989.

Eligible Applicants

Eligible applicants are colleges and universities.

Applications must be submitted on Standard Form 424 (an original and five copies must be submitted) and include:

1. A description of the research to be pursued including the approach that will be used to:
   - Carry out accident analyses,
   - Document the layout of heavy truck fuel system storage and delivery systems (including a thermal analysis of the system and identification of likely points of system vulnerability in accidents),
   - Identify likely fuel and ignition sources,
   - Discuss the chemistry and physics of fires,
   - Review the literature and document available technologies to reduce the fire hazards of fuel systems and the relevance of these approaches to the highway situation,
   - Propose appropriate tests to evaluate the efficacy of potential countermeasures.
   - Carry out a limited number of such tests.
   - Propose possible design changes to decrease the vulnerability of fuel storage and delivery systems in crashes.
2. A list of those individuals responsible for the conduct of the research, their qualifications and the role each will play.
3. A complete budget for the period of this research, to include the grantee's shared cost, and
4. A description of the applicants' previous or on-going efforts that relate to this type of research.

Review Process

All proposals will be reviewed and evaluated by NHTSA staff to determine the applicant's understanding of the problem, the applicant's qualifications, the suitability of the proposed research plan, and evidence of the applicant's capability to effectively carry out the project on schedule.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Awards will be subject to the provisions of OMB Circular A–110, Grants and Agreements with Institutions of Higher Learning, Hositals, and Other Non-Profit Organizations.

Project Management

An agreement will be reached with the grantee following the award of the grant.

Issued on: March 15, 1988.

Michael M. Finkelstein,

Associate Administrator for Research and Development.

[FR Doc. 88–6023 Filed 3–17–88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 11, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0200.
Form Number: ATF F 5110.31.
Type of Review: Extension.
Title: Application and Permit to Ship Puerto Rican Spirits to the U.S. Without Payment of Tax.
Description: ATF F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amount of spirits to be shipped and the bond of the U.S. person to cover taxes on such spirits.
Respondents: Businesses or other-for profit, Small businesses or organizations.
Estimated Burden: 450 hours.
OMB Number: 1512–0211.
Form Number: ATF F 5110.52.
Type of Review: Revision.
Title: Deferred Tax Return—Distilled Spirits (Puerto Rico).
Description: ATF F 5110.52 describes the tax liability and tax payment by a proprietor who has shipped spirits from Puerto Rico into the United States on a deferred basis (posted a bond). The form identifies the taxpayer, amount of tax due, method and amount of taxpayment, related records on which tax was deferred and certification of taxpayment by Government officials.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 114 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–5943 Filed 3–17–88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 14, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0873.
Form Number: IRS Form 8569.
Type of Review: Extension.
Title: Availability Statement.
Description: This statement is completed by candidates applying for Executive Selection and Development or a position centralized to the Executive Resources Board. It remains on file as the minimum area of availability, to be used for future job placement consideration.
Respondents: Individuals or households Federal agencies or employees.
Estimated Burden: 25 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880. Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–5944 Filed 3–17–88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 53
Friday, March 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:50 p.m. on Sunday, March 13, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to a request for assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 15, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-6043 Filed 3-16-88; 9:46 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 14, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 15, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-6044 Filed 3-16-88; 9:46 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88-5369.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 17, 1988, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

DATE AND TIME: Tuesday, March 22, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, March 24, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1988-5—Bernard E. Schneider on behalf of Friends of Gray Hart—1988, Inc.
Draft Advisory Opinion 1988-7—Peter M. Bakal.
Draft Advisory Opinion 1988-8—Thomas W. Keen.
Status of Presidential Audits.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-6022 Filed 3-15-88; 4:36 pm]

BILLING CODE 6715-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 8297, March 14, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 16, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added:

Item No., Docket No., and Company

CAG-51

- CI85-685-003, Exxon Corporation
- CI85-695-004, TXP Operating Company
- CI86-46-003, Chevron U.S.A. Inc.
- CI87-531-001, FMP Operating Company
- CI87-767-001, Ensource Inc.
- CI87-310-001, Shell Offshore Inc., *et al.*
- CI85-29-010, Odeco Oil & Gas Company
- CI87-301-001, Marathon Oil Company
- CI85-633-005, Tenneco Oil Company, *et al.*
- CI86-535-002, Zapata Exploration Company
- CI85-692-004, Cities Services Oil and Gas Corporation, *et al.*
- CI87-292-001, Mobil Oil Corporation, *et al.*
- CI87-375-001, The Louisiana Land and Exploration Company
- CI86-19-005, Amoco Production Company
- CI87-337-001, Pelto Oil Company
- CI88-9-001, Amerada Hess Corporation
- CI87-130-001, Grace Petroleum Corporation
- CI87-399-001, Union Oil Company of California and Union Exploration Partners, Ltd.
- CI86-39-003, Conoco Inc.
- CI88-356-000, Seagull Energy E&P Inc.
- CI86-348-001, Anadarko Petroleum Corporation, *et al.*

CP-3

- CP88-111-000, CP87-328-000 and 001, Northwest Pipeline Corporation

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6076 Filed 3-16-88; 8:45 am]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on March 11, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, March 21, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding the Community Reinvestment Act.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6045 Filed 3-16-88; 10:14 am]

BILLING CODE 6210-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10:30 a.m. Tuesday, April 5, 1988.

PLACE: Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of October 26, 1987 meeting.
4. Report of the Chairman:
   a. Discussion of any proposed changes in 1989 or 1990 scholarship program.
   b. Impact of the President's Budget on the program.
   c. Determination of cost of living increase annually in maximum level of scholarship.
   d. Announce speaker for 1989 Awards Ceremony.
   e. Discussion of other program changes.
5. Report of the Executive Secretary.
   a. Status of the Trust Fund.
   b. Update on Scholars.
   c. Regional Review Panel update.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, etc.
7. Resolution approving 1988 Scholars and Alternates.
8. New Business.
9. Discuss and set date, time and place of Fall Board meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone 202/395-4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 88-6105 Filed 3-16-88; 2:18 am]

BILLING CODE 9500-01-M

Corrections

Federal Register
Vol. 53, No. 53
Friday, March 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-00251; FRL-3305-3]

Pesticide Tolerances for Benomyl; Technical Amendment and Correction

Correction

In rule document 87-29367 beginning on page 48536 in the issue of Wednesday, December 23, 1987, make the following corrections:

§ 180.294 [Corrected]

1. On page 48537, in the first column, in § 180.294(a), the entry "Koganberries" should read "Loganberries".

2. On the same page, in the same column, in § 180.294(a), the entry "Melon" should read "Melons".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3360/R894; FRL-3395-8]

Pesticide Tolerances for Permethrin

Correction

In rule document 87-29370 beginning on page 48539 in the issue of Wednesday, December 23, 1987, make the following correction:

§ 180.378 [Corrected]

On page 48540, in the second column, in § 180.378(d), in the third line, "dichloroethenyl" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/56; FRL-3332-7]

Dichlorvos; Initiation of Special Review

Correction

In notice document 88-3905 beginning on page 5542 in the issue of Wednesday, February 24, 1988, make the following correction:

On page 5545, in the second column, in the second paragraph, in the 10th line, "10^{-4}" should read "10^{-1}".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-21806]

Conveyance of Public Land; Reconveyed Land Opened to Entry in Mohave County, AZ

Correction

In notice document 88-4562 appearing on page 6876 in the issue of Thursday, March 3, 1988, make the following correction:

In the second column, in the 13th line from the bottom, "T. 19.," should read "T. 19 N.,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3110-10-7201, NM 65305]

New Mexico; Realty Action Exchange, Federal Minerals in Cibola, Valencia, Catron and Socorro Counties, NM for Private Minerals Within El Malpais National Conservation Area and National Monument

Correction

In notice document 88-3446 beginning on page 5051 in the issue of Friday, February 19, 1988, make the following correction:

On page 5052, in the first column, after the comma at the end of the 23rd line, add "E½SW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-08-4220-10; M-072014]

Termination of Proposed Withdrawal and Reservation of Lands, Opening Order; Montana

Correction

In notice document 88-4421 beginning on page 6707 in the issue of Wednesday, March 2, 1988, make the following corrections:

1. On page 6707, in the second column, in the heading of the document, the docket number should read as it appears above.

2. On the same page, in the third column, under *Boulder Creek Campground and Road Termini*, the first line should read "T. 1 N., R. 21 W.,".

3. On the same page, in the same column, under *Bertie Lord River Flat Recreation Area*, in the third line, "E½NE¼NE¼SE¼" should read "E½NE¼NE¼SW¼".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

Correction

In rule document 88-5570 beginning on page 8454 in the issue of Tuesday, March 15, 1988, make the following correction:

Appendix B to Part 2619—[Corrected]

On page 8455, in Appendix B, in the table, in entry 73, in the third column, "7.5" should read "7.75".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-11]

Tuna Fish-Tariff-Rate Quota; Calendar Year 1988

Correction

In notice document 88-5664 beginning on page 8540 in the issue of Tuesday, March 15, 1988, make the following correction:

On page 8541, in the first column, in the first indented paragraph, in the first line, "has not" should read "has now".

BILLING CODE 1505-01-D

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federal register

Friday
March 18, 1988

Part II

Office of Personnel Management

SES Positions That Were Reserved During 1987; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1987

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1987.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Personnel, (202) 632–7727.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1987, whether or not they were still career reserved on December 31, 1987. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

U.S. Office of Personnel Management.

Constance Horner,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ACTION	
OFFICE OF ASSISTANT DIRECTOR COMPLIANCE	INSPECTOR GENERAL.
OFFICE OF ASSISTANT DIRECTOR FOR FINANCIAL MANAGEMENT	ASST DIR FOR FINANCIAL MANAGEMENT
ADMINISTRATIVE CONFERENCE OF THE U.S.	
ADMINISTRATIVE CONFERENCE OF THE U.S.	EXECUTIVE DIRECTOR.
	GENERAL COUNSEL.
	RESEARCH DIRECTOR.
	LEGAL COUNSEL.
ADVISORY COUNCIL ON HISTORIC PRESERVATION	
OFC OF THE EXEC DIRECTOR.	EXECUTIVE DIRECTOR.
DEPARTMENT OF AGRICULTURE	
OFC OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSPECTOR GENERAL FOR AUDIT
	ASST INSPECTOR GENERAL FOR SEC & SPEC OPER.
	ASST INSPECTOR GENERAL FOR ANALYSIS AND EVAL.
	DEP ASST INSPECTOR GENERAL FOR AUDIT.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFFICE OF OPERATIONS	DIRECTOR OFFICE OF OPERATIONS.
OFFICE OF FINANCE AND MANAGEMENT	DIRECTOR, APPLICATIONS SYSTEMS DIVISION.
	DIR. INFO RESOURCES MANAGEMENT DIVISION.
	DIRECTOR, FINANCIAL SERVICES DIVISION.
	DIRECTOR, INFORMATION CENTER.
	DIR, THRIFT SAVINGS PLAN DEVELOPMENT DIVISION.
FARMERS HOME ADMINISTRATION	DEPUTY ADMINISTRATOR FOR MANAGEMENT.
	ASSISTANT ADMINISTRATOR, FINANCE OFFICE.
	ASST ADMR, FOR AUTOMATED INFO SERVICES.
	ASST ADMR, COMMUNITY AND BUSINESS PROGRAMS.
FEDERAL CROP INSURANCE CORPORATION	ASST MGR FOR ACTUARIAL & UNDERWRITING SVCS.
AGRICULTURAL MARKETING SERVICE	DEPUTY ADMINISTRATOR, MANAGEMENT
	DIRECTOR, FRUIT & VEGETABLE DIVISION.
	DIRECTOR, COTTON DIVISION.
	DIRECTOR, DAIRY DIVISION.
	DIRECTOR, LIVESTOCK DIVISION.
	DIRECTOR, TOBACCO DIVISION.
	AGRICULTURAL MARKETING SVC, DIR POULTRY DIV
	ASSOC. DEPUTY ADMINISTRATOR FOR COMPLIANCE.
	DIRECTOR.
ANIMAL & PLANT HEALTH INSPECTION SERVICE	DEPUTY ADMINISTRATOR FOR MANAGEMENT & BUDGET
	ASSOC DEP ADMINISTRATOR FOR MGT. & BUDGET
VETERINARY SERVICES	ASST DEPT ADMR, INRNATL PROG, VET SERVICES.
	DIR NATL VETERINARY SERVICES LABS, AMES.
	ASST DEP ADMR, PROG PLNNG & DEVELOPMENT
	DIRECTOR, NORTHERN REGION
	DIR, S E REGION, VETERINARY SERVICES.
	DIRECTOR, WESTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	ASSISTANT DEPUTY ADMINISTRATOR.
	DEP ADMR, ANIMAL DAMAGE CONTROL.
PLANT PROTECTION & QUARANTINE SERVICE	DIR, NAT PROG PLAN STAFF, PLANT PROT&QUARANTINE.
	ASSIST DEP ADMIN FOR INTERNATIONAL PROGRAMS.
	DIRECTOR NORTHEASTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	DIRECTOR, WESTERN REGION.
	DIRECTOR, SOUTHEASTERN REGION.
	ASST TO THE ASST DEP ADMR, NATL PROGRAMS, PPQ.
FOOD SAFETY AND INSPECTION SERVICE	ASST DEPUTY ADMIN TECHNICAL SERVICES.
	DEP ADMIR-ADMINISTRATIVE MGMT
	DIR NORTHEAST REGION, PHILA. PA.
	REGL DIRECTOR, ATLANTA, GEORGIA.
	DIR, NORTH CENTRAL REGION, DES MOINES, IOWA.
	DIRECTOR, SOUTHWESTERN REGION, DALLAS, TEXAS.
	DIR, WESTERN REGION, ALAMEDA, CALIFORNIA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASST DEP ADMR COMP & STAFF OPERATIONS.
	ASST DEP ADMR REGL OPER MEAT/POUL INSPEC OPER.
	ASST DEP ADMR, SCIENTIFIC STAFF SERVICES.
	DEPUTY ADMINISTRATOR, SCIENCE.
	DEP ADMR INTERNAL PROGRAMS.
	ASST DEP ADMR ADMINISTRATIVE MANAGEMENT.
	ASSOCIATE DEPUTY ADMINISTRATOR.
	ASST DEP, ADMR, SCIENTIFIC OPERATIONS.
FOOD & NUTRITION SERVICE	DEPUTY ADMIN FOR FINANCIAL MANAGEMENT.
	DEPUTY ADMR FOR MANAGEMENT.
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE.	ACCOUNTING OFFICER.
FOREIGN AGRICULTURAL SERVICE	ASST ADMINISTRATOR, MANAGEMENT.
	DIR. GRAIN & FEED DIV.
	DIR OILSEEDS & PROD. DIV.
	DEPUTY ASSISTANT ADMINISTRATOR EXPORT CREDITS.
	DEP ASST ADMR, INTERNL AGRIC STATISTICS.
AGRICULTURE RESEARCH SERVICE	DEP ADMR FOR ADM MGMT.
	ASSOC DEP ADMIN FOR ADMINISTRATIVE MANAGEMENT.
	ASST ADM FOR COOPERATIVE INTERACTIONS.
NATIONAL PROGRAM STAFF OFFICE	DEPUTY ADMINISTRATOR NATIONAL PROGRAM STAFF.
	ASSOC DEP ADMR.
	ASSOC DEP ADMR. NATL PROG STAFF.
BELTSVILLE AREA OFFICE	DIR. BELTSVILLE HUMAN NUTRITION RESEARCH CTR.
	DIRECTOR BELTSVILLE AREA OFFICE.
	HEAD SENSORS & CONTROL SYSTEMS GROUP.
NORTH ATLANTIC AREA OFFICE	DIRECTOR, EASTERN REGL RESEARCH CENTER.
	DIR. PLUM ISLAND ANIMAL DISEASE CTR.
	DIRECTOR, NORTH ATLANTIC AREA.
SOUTH ATLANTIC AREA OFFICE	RESEARCH LEADER-FORAGE AND TURF RESEARCH.
	RES LEADER-PLANT PHYSIO & PHOTOSYNTHESIS RES.
	DIRECTOR SOUTH ATLANTIC AREA.
	ASSOCIATE DIR SOUTH ATLANTIC AREA.
MIDWEST AREA OFFICE	DIR NORTHERN REGIONAL RESEARCH CENTER.
	DIRECTOR, NATL SOIL EROSION RES LABORATORY.
	DIR MIDWEST AREA.
	DIR NORTHERN REGIONAL RESEARCH CTR.
MIDSOUTH AREA OFFICE	DIR, SOUTHERN REGIONAL RES CENTER, NEW ORLEANS.
	DIRECTOR, MID-SOUTH AREA.
	ASSOCIATE DIRECTOR, MID SOUTH AREA.
NORTHERN STATES AREA OFFICE	DIRECTOR, NORTHERN STATES AREA.
CENTRAL PLAINS AREA OFFICE	DIR NATL ANIMAL DISEASE CTR.
	DIRECTOR CENTRAL PLAINS AREA.
SOUTHERN PLAINS AREA OFFICE	DIRECTOR SOUTHERN PLAINS AREA.
	DIRECTOR CONSERVATION & PRODUCTION RES LAB.
NORTHERN PLAINS AREA OFFICE	DIRECTOR, NORTHERN PLAINS AREA.
	ASSOCIATE DIRECTOR, NORTHERN PLAINS AREA OFC.
NORTHWEST AREA OFFICE	DIRECTOR, NORTHWEST REGION.
PACIFIC WEST AREA OFFICE	DIRECTOR, WESTERN REGIONAL RESEARCH CENTER.
	RESEARCH LEADER-FRUIT & VEGETABLE CHEM RESEARCH.
	DIRECTOR, U.S. SALINITY LABORATORY.
	RES LEADER NATURAL PRODUCTS CHEMISTRY RES.
	DIR, WESTERN HUMAN NUTRITION RESEARCH CENTER.
	DIRECTOR, PACIFIC WEST AREA OFFICE.
	DIRECTOR, PLANT GENE EXPRESSION CENTER.
	ASSOCIATE DIRECTOR, PACIFIC WEST AREA OFFICE.
EXTENSION SERVICE	DEPUTY ADMIN MANAGEMENT.
	DEP ADMR, HOME ECONOMICS & HUMAN NUTRITION.
	DEP ADMR, NATURAL RESOURCES AND RURAL DEV.
SOIL CONSERVATION SERVICE	DIRECTOR ENGINEERING DIVISION.
	DIR ECOLOGICAL SCIENCES AND TECHNOLOGY DIVISI.
	DEP CHF FOR ADMINISTRATION.
	DIR, CONSV PLANNING AND APP.
	DIR, PROJECT DEV AND MAINT.
	DIR, BASIN & AREA PLANNING (SOIL CONSERV).
	ASSOC DEP CHIEF FOR ADMINISTRATION.
	DIR, SOILS (SOIL SCIENTIST).
	DIR. LAND TREATMENT PROGRAM.
	DIR INFORMATION RESOURCES MANAGEMENT.
	DIR SOUTH NATIONAL TECHNICAL CENTER.
	SPECIAL ASST FOR SCIENCE & TECHNOL.
	DIR MIDWEST NATIONAL TECHNICAL CENTER.
FOREST SERVICE	DEP CHF FOR ADMINISTRATION.
	ASSOCIATE DEPUTY CHIEF-ADMINISTRATION.
	DIR FOREST PEST MGMT STAFF.
	DIR FISCAL AND ACCOUNTING MANAGEMENT.
	ASSOCIATE DEPUTY CHIEF FOR ADMINISTRATOR.
	DIRECTOR, FIRE AND AVIATION STAFF.
RESEARCH	DIRECTOR, TIMBER MGMT RESEARCH STAFF.
	DIR INSECT AND DISEASE RESEARCH STAFF.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIR FOREST ENVIRONMENT RESEARCH STAFF.
	DIRECTOR, FOREST RESOURCE ECONOMICS STAFF.
	DIR FOREST PROD & HARVESTING & RESEARCH STAFF.
	DIR, FOREST FIRE & ATMOS SCIENCES RES STAFF.
NAT'L FOREST SYSTEM	DIR, RANGE MANAGEMENT STAFF.
	DIR, RECREATION, MGMT STAFF.
	DIR TIMBER MANAGEMENT STAFF.
	DIRECTOR, ENGINEERING STAFF.
	DIRECTOR, LANDS STAFF.
	DIR LAND MANAGEMENT PLANNING STAFF.
	DIR, WILDLIFE & FISHERIES MGMT STAFF.
	DIR, MINERALS & GEOLOGY STAFF.
	DIRECTOR, WATERSHED & AIR MANAGEMENT STAFF.
STATE & PRIVATE FORESTRY	DIR OF AREA PLANNING & DEV STAFF.
	DIR COOPERATIVE FORESTRY.
FIELD UNITS	NE AREA DIR, STATE & PRIVATE FORESTRY, U DARB.
	DIR INTERMOUNTAIN FOREST & RANGE EXP STaT, OGD.
	DIR N EASTERN FOREST EXPERIMENT STATION.
	DIR, NORTH CENTRAL FOREST EXP STATION.
	DIR, PACIFIC NW FOREST & RANGE EXP STATION.
	DIR, PACIFIC SW FOR & RANGE EXPER STA.
	DIRECTOR ROCKY MT FOREST & RANGE EXPER STAT.
	DIR S EASTERN FOREST EXPERIMENT STATION.
	DIR, S. FOREST EXPERIMENT STATION, NEW ORLEAN.
	DIRECTOR, FOREST PRODUCTS LABORATORY.
	DEP DIR FOREST PRODUCTS LAB.
ECONOMIC RESEARCH SERVICE	ADMR, ECONOMIC RESEARCH SERVICE.
	ASSOCIATE ADMINISTRATOR-ECONOMIC RSCH SVC.
	DIRECTOR AGRICULTURE & TRADE ANALYSIS DIV.
	DIRECTOR COMMODITY ECONOMICS DIVISION.
	DIRECTOR RESOURCES & TECHNOLOGY DIVISION.
	DIRECTOR AGRICULTURE & RURAL ECON DIVISION.
	DEPUTY ADMINISTRATOR FOR SITUATION & OUTLOOK.
ECONOMICS MANAGEMENT STAFF	DIRECTOR, ECONOMICS MANAGEMENT STAFF.
NATIONAL AGRICULTURAL STATISTICS SERVICE	ADMR, NATIONAL AGRICULTURAL STATISTICS SERV.
	DEPUTY ADMINISTRATOR FOR OPERATIONS.
	DIR ESTIMATES DIV.
	DIR, RESEARCH AND APPLICATIONS DIVISION.
	DIR, STATE STATISTICAL DIVISION.
	DEPUTY ADMINISTRATOR FOR PROGRAMS.
WORLD AGRICULTURAL OUTLOOK BOARD	CHAIRPERSON.
	DEP CHAIRPERSON.
BOARD FOR INTERNATIONAL BROADCASTING	
	EXEC DIRECTOR.
	DIR FOR RESEARCH & ENGINEERING.
	FOREIGN INFORMATION OFFICER.
	DEP EXEC DIRECTOR/DIRECTOR OF PROGRAM REVIEW.
DEPARTMENT OF COMMERCE	
OFFICE OF THE GENERAL COUNSEL	ASST GENERAL COUNSEL FOR FINANCE & LITIGATION.
OFC OF ASST SECY FOR ADMINISTRATION	DEP ASST SECY FOR SPECIAL PROGRAMS.
	DIR, OFC OF FINANCE & FEDERAL ASSISTANCE.
	SPEC ASST TO THE ASST SECY FOR ADMINISTRATION.
DIRECTOR FOR MANAGEMENT AND INFORMATION	DIR, OFC OF INFORMATION RESOURCES MANAGEMENT.
DIRECTOR FOR PROCUREMENT & ADMINISTRATIVE SERVICES.	DIRECTOR FOR PROCUREMENT & ADMIN SERVICES.
	DEP DIR FOR PROCUREMENT & ADMIN SERVICES.
	DEPUTY DIRECTOR FOR PROCUREMENT.
DIRECTOR PERSONNEL AND CIVIL RIGHTS	DIRECTOR FOR PERSONNEL AND CIVIL RIGHTS.
	DEPUTY DIRECTOR OF PERSONNEL.
DIRECTOR FOR PLANNING BUDGET AND EVALUATION.	DIRECTOR, OFFICE OF BUDGET.
OFC OF THE UNDER SECY FOR ECONOMIC AFFAIRS	STATISTICAL COORD FOR THE UNDER SEC/ECO AFF.
	DIR, OFFICE OF BUSINESS ANALYSIS.
	SUPERVISORY ECONOMIST.
BUREAU OF ECONOMIC ANALYSIS	DIRECTOR.
	DEP DIR, BUR OF ECONOMIC ANALYSIS.
	ASSOC DIR FOR NATL ECONOMIC ACCOUNTS.
	ASSOC DIR FOR NATL ANALYSIS & PROJECTIONS.
	ASSOC DIR FOR REGIONAL ECONOMICS.
	ASSOC DIR FOR INTERNATAL ECONOMIC.
	CHIEF ECONOMIST.
	CHF STATISTICIAN.
	ASST TO THE DIRECTOR FOR ECONOMETRICS.
	CHF, NAT:L INCOME & WEALTH DIV.
	CHIEF, CURRENT BUSINESS ANALYSIS DIV.
	CHIEF, BUSINESS OUTLOOK DIV.
BUREAU OF THE CENSUS	DEP DIR.
	ASST DIRECTOR FOR ADP.
	CHIEF, TECHNICAL SERVICES DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASSOC DIR FOR MANAGEMENT SERVICES.
	SENIOR PROGRAM ANALYST.
	ASST DIR FOR ADMINISTRATION.
	CHIEF DATA USER SERVICES DIVISION.
	CHIEF, COMPUTER SERVICES DIVISION.
DEMOGRAPHIC FIELDS	ASSOCIATE DIRECTOR FOR DEMOGRAPHIC FIELDS.
	ASST DIR FOR DEMOGRAPHIC CENSUSES.
	CHF, POPULATION DIV.
	CHF, STATISTICAL METHODS DIV.
	CHIEF DEMOGRAPHIC SURVEYS DIVISION.
	ASST DIR FOR INTERNATIONAL PROGRAMS.
	ASST DIR FOR PUBLICITY AND OUTREACH.
	ASSOCIATE DIRECTOR FOR THE DECENNIAL CENSUS.
	CHIEF, DECENNIAL PLANNING DIVISION.
	CHIEF, DECENNIAL OPERATIONS DIVISION.
	CHIEF, STATISTICAL SUPPORT DIVISION.
	CHF, INTERNATIONAL STATISTICAL PROGRAMS CTR.
	CHIEF, STATISTICAL METHODS DIVISION.
STATISTICAL STANDARDS AND METHODOLOGY	ASSOC DIR FOR STATISTICAL STANDARDS & METHODO.
	CHIEF STATISTICAL RESEARCH DIVISION.
FIELD OPERATIONS	ASSOC DIR FOR FIELD OPERATIONS.
	CHF. GEOGRAPHY DIV.
	CHIEF, FIELD DIV.
	CHIEF DATA PREPARATION DIVISION.
ECONOMIC FIELDS	ASSOCIATE DIRECTOR FOR ECONOMIC FIELDS.
	ASST DIR FOR ECONOMIC & AGRIC CENSUSES
	CHIEF, AGRICULTURE DIV.
	CHF, BUSINESS DIV.
	CHF, CONSTRUCTION STATISTICS DIV.
	CHF, ECON SURVEYS DIV.
	CHF, FOREIGN TRADE DIV.
	CHF, GOVERNMENT DIV.
	CHF, INDUSTRY DIV.
	CHF, CENSUS PROGRAMMING DIVISION.
INSTITUTE FOR TELECOMMUNICATIONS SCIENCES	ASSOC ADMR FOR TELECOMMUNICATIONS SCIENCE.
	DEPUTY DIR FOR SYSTEMS & NETWORKS.
	SPECIAL TECHNOLOGY LIAISON.
	DEPUTY DIRECTOR FOR SPECTRUM.
ECONOMIC DEVELOPMENT ADMINISTRATION	DEPUTY ASST SECRETARY FOR MANAGEMENT SUPPORT.
	DEPUTY DIRECTOR FOR GRANT PROGRAMS.
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEPUTY ASSISTANT INSPECTOR GEN FOR AUDITING.
	ASST INSP GEN FOR PLNG, EVAL & INSPECTIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEP ASST INSP GEN FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR AUTO INFO SYS.
OFC DEP ASST SECY FOR CAP GOODS & INTL CONST.	DIR, OFFICE OF SPECIAL INDUSTRIAL MACHINERY.
OFC OF DEP ASST SECY FOR BASIC INDUSTRIES	DIR, OFC OF METALS, MINERALS & COMMODITIES.
OFC OF DEP ASST SECY FOR AUTOMOTIVE AFF & CONS GDS.	DIRECTOR OFFICE OF CONSUMER GOODS.
NATIONAL MARINE FISHERIES SERVICE	CHIEF, MANAGEMENT AND BUDGET STAFF.
FISHERIES RESOURCE MANAGEMENT	DIRECTOR, OFFICE OF ENFORCEMENT.
FISHERIES CENTERS	DIR NE FISHERIES CTR.
	DIR-SE FISHERIES CTR.
	DIR SW FISHERIES CENTER.
	DIR NW & ALASKA FISHERIES CTR.
NATL ENVIRON SATELLITE, DATA & INFO SERVICES	GENERAL PHYSICAL SCIENTIST.
	CHIEF, SYSTEMS PLANNING & DEVELOPMENT STAFF.
DEP ASST ADMR FOR INFORMATION SERVICES	DIR, NATL OCEANOGRAPHIC DATA CENTER.
	DIR, ASSESSMENT AND INFORMATION SERVICES.
	DEPUTY DIRECTOR.
	DIRECTOR, NATIONAL CLIMATIC DATA CENTER.
	DIR. NATIONAL GEOPHYSICAL DATA CENTER.
OFFICE OF SEA GRANT & EXTRAMURAL PROGRAMS.	DEP DIR, OFC OF SEA GRANT & EXTRAMURAL PROGR.
ENVIRONMENTAL RESEARCH LABORATORIES	DEP DIR, ENVIRONMENTAL RESEARCH LABORATORIES.
	DIR, SPACE ENVIRONMENT LABORATORY.
ATLANTIC OCEANOGRAPHIC AND METEROLOGICAL LABS.	DIR, ATLANTIC OCEANOGRAPHIC & METEOROLOGICAL.
	DEPY DIR ATLANTIC OCEANOGRAPHIC & METEOROLOGI.
WAVE PROPAGATION LAB	DIRECTOR.
AERONOMY LAB	DIRECTOR, AERONOMY LABORATORY.
	SENIOR SCIENTIST/DEPUTY DIRECTOR.
GEOPHYSICAL FLUID DYNAMICS LABORATORIES	DIRECTOR.
	SUPERVISORY RSCH METEOROLOGIST.
	SUPERVISORY RSCH METEOROLOGIST.
	SUPERVISORY RSCH METEOROLOGIST.
GREAT LAKES ENVIRONMENTAL RESEARCH LAB	DIR GREAT LAKES ENVIRONMENTAL RESEARCH LAB.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
NATIONAL SEVERE STORMS LABORATORY	DIR NAT'L SEVERE STORMS LAB.
AIR RESOURCES LABORATORY	DIRECTOR AIR RESOURCES LABORATORY.
PACIFIC MARINE ENVIRONMENTAL LAB	DIR PACIFIC MARINE ENVIRONMENTAL LAB.
OCEAN SERVICES & COASTAL ZONE MANAGEMENT	SPECIAL ASSISTANT TO THE CHIEF SCIENTIST.
OCEAN AND COASTAL RESOURCES MANAGEMENT	SPEC ASST TO DIR OFC OF OCEAN & COASTAL RES.
	DIR, NATIONAL MARINE POLLUTION PROGRAMS OFC.
OCEANOGRAPHY & MARINE SERVICES	CHIEF, OCEAN SYSTEMS DIVISION.
	CHIEF, OCEAN RESOURCES ASSESSMENT DIVISION.
	CHF, PHYSICAL OCEANOGRAPHY DIVISION.
NATIONAL OCEAN SERVICE	DIR GEODETIC RESEARCH & DEVELOPMENT LAB.
	ASSOC DIR OFC OF AERONAUTICAL CHARTING & CART.
	CHF, NOAA CHARTING RES & DEVEL LABORATORY.
	CHIEF GEODESIST.
NATIONAL WEATHER SERVICE	DIRECTOR, NOAA DATA BUOY OFFICE.
	DIR, TRANSITION PROGRAM OFFICE.
	DIR, NEXRAD JOINT SYSTEMS PROGRAM OFC.
	CHIEF, MANAGEMENT AND BUDGET STAFF.
	CHIEF, INTERNATIONAL AFFAIRS DIVISION.
	CHF, OFC OF THE FED COORDINATOR FOR METEORLOG.
	CHIEF, POLICY AND LONG RANGE PLANNING STAFF.
OFFICE OF METEOROLOGY	DIR, OFFICE OF METEOROLOGY.
	CHIEF OPERATIONS DIVISION.
	CHF, PROG REQUIREMENTS & PLNG DIVISION.
OFFICE OF HYDROLOGY	DIRECTOR, OFFICE OF HYDROLOGY.
	CHIEF, HYDROLOGIC SERVICES DIVISION.
	CHIEF, HYDROLOGIC RESEARCH LABORATORY.
OFFICE OF SYSTEMS OPERATIONS	CHIEF, ENGINEERING DIVISION.
	CHIEF, SYSTEMS OPERATIONS CENTER.
	CHIEF, SYSTEMS INTEGRATION DIVISION.
	DIR, OFFICE OF SYSTEMS OPERATIONS.
OFFICE OF SYSTEMS DEVELOPMENT	DIRECTOR, OFFICE OF SYSTEMS DEVELOPMENT.
	CHIEF, INTEGRATED SYSTEMS LABORATORY.
	CHIEF, TECHNIQUES DEVEL LABORATORY.
	PROGRAM MANAGER.
	DEP DIR, OFFICE OF SYSTEMS DEVELOPMENT.
	CHF/AWI INTERACTIVE PROCESSING SYSTEM/1990'S.
NATIONAL METEOROLOGICAL CTR	DIRECTOR NATIONAL METEOROLOGICAL CENTER.
	DEPUTY DIRECTOR.
	DIRECTOR, CLIMATE ANALYSIS CENTER.
	CHIEF, AUTOMATION DIVISION.
	CHIEF, DEVELOPMENT DIV.
	CHF, METEOROLOGICAL OPERATIONS DIVISION.
REGIONAL OFFICES & CENTERS	DIR SOUTHERN REGION, FT WORTH.
	DIR, SALT LAKE CITY REGION.
	DIR, ALASKA REGION, ANCHORAGE.
	DIR EASTERN REGION NWS.
	DIRECTOR CENTRAL REGION.
	DIR, NATL SEVERE STORMS FORECAST CENTER.
	DIRECTOR NATL HURRICANE CENTER.
NATIONAL BUREAU OF STANDARDS	ASSOC DIR FOR INTERNATIONAL & ACADEMIC AFFS.
	TECH ADVISOR TO THE DIRECTOR.
	DIR, OFC OF RES & TECHNOLOGY APPLICATIONS.
	CHIEF, PROGRAM OFFICE.
	DIRECTOR, PLANNING OFC.
	ASSOC DIR FOR PROGRAMS, BUDGET, AND FINANCE.
	DEP ASSOC DIR FOR INTERNATIONAL AFFAIRS.
	ASST DIR FOR MANAGEMENT INFORMATION TECHNOLOG.
	DIRECTOR FOR ACADEMIC AFFAIRS.
	DEPUTY DIR OFFICE OF PRODUCT STANDARDS POLICY.
NATIONAL MEASUREMENT LAB	SENIOR SCIENCE ADVISOR.
	SENIOR MATHEMATICAL STATISTICIAN.
	GROUP LEADER SURFACE AND STRUCTURE KINETICS.
	CHIEF, MOLECULAR SPECTROSCOPY DIVISION.
	CHIEF INORGANIC ANALYTICAL RESEARCH DIVISION
	CHIEF GAS AND PARTICULATE SCIENCE DIVISION.
DEPUTY DIRECTOR FOR PROGRAMS	DEPUTY DIRECTOR FOR PROGRAMS.
	CHIEF, OFF OF ENVIRONMENTAL MGMTS.
	DIRECTOR, STANDARD REFERENCE DATA.
	PROG MANAGER, INDUSTRIAL PROCESS DATA.
	DIRECTOR, MEASUREMENT SERVICES.
	CHIEF, OFFICE OF STANDARD REFERENCE MATERIALS.
CENTER FOR BASIC STANDARDS	DIR, CENTER FOR BASIC STANDARDS.
	SENIOR RESEARCH FELLOW.
	CHIEF, ELECTRICITY DIVISION.
	CHIEF, QUANTUM METROLOGY DIVISION.
	MGR. TECH APPLICATIONS OF MEASUREMENT STDS.
	CHIEF, QUANTUM PHYSICS DIVISION.
QUANTUM PHYSICS DIVISION	SENIOR SCIENTIST & FELLOW OF JILA.
	SENIOR SCIENTIST.
	SENIOR SCIENTIST & FELLOW OF JILA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHIEF, TEMPERATURE AND PRESSURE DIVISION.
TIME AND FREQUENCY DIVISION	CHIEF, TIME AND FREQUENCY DIVISION.
	GROUP LEADER & SENIOR SCIENTIST.
CENTER FOR ANALYTICAL CHEMISTRY	DIRECTOR-CENTER FOR ANALYTICAL CHEMISTRY.
	DEPUTY DIRECTOR, CTR FOR ANALYTICAL CHEMISTRY.
	SCIENTIFIC ASST TO THE DIR CTR FOR ANALYTICAL.
	CHIEF ORGANIC ANALYTICAL RESEARCH DIVISION.
CENTER FOR RADIATION RESEARCH	DIR CENTER FOR RADIATION RESEARCH.
	DEPT DIR, CTR FOR RADIATION RESEARCH.
	CHIEF, ATOMIC AND PLASMA RADIATION DIVISION.
	CHF, RADIATION SOURCE & INSTRUMENTATION DIV.
	CHIEF RADIOMETRIC PHYSICS DIVISION.
IONIZING RADIATION DIVISION	CHF, NUCLEAR RADIATION DIVISION.
	PHYSICIST (NUCLEAR).
	PRIN SCIENTIST NUCLEAR RADIATION DIVISION.
CENTER FOR RADIATION RESEARCH	PHYSICIST (NUCLEAR).
	PRINCIPAL SCIENTIST IN X-RAY PHYSICS.
	GROUP LEADER FOR FAR ULTRAVIOLET PHYSICS.
INSTITUTE FOR MATERIALS SCIENCE & ENGINEERING.	DIR INSTITUTE FOR MATERIALS SCIENCE & ENG.
	SENIOR SCIENTIST.
	CHF, OFC OF NONDESTRUCTIVE EVALUATION.
	SCIENTIFIC ASSISTANT TO THE DIRECTOR.
	MANAGER, COLD NEUTRON PROGRAM.
	A/D FOR R/O, INSTIT FOR M/S AND ENGINEERING.
FRACTURE AND DEFORMATION DIVISION	CHF FRACTURE AND DEFORMATION DIVISION.
CERAMICS DIVISION	GROUP LEADER FOR CYSTALLOGRAPHY.
	GRP LEADER FOR GLASS TECH INORGANIC MATERL DV.
	GROUP LEADER, MECHANICAL PROPERTIES.
	CHIEF CERAMICS DIVISION.
POLYMER SCIENCE AND STANDARDS DIVISION	PHYSICIST (SOLID STATE).
	CHIEF, POLYMERS DIVISION.
REACTOR RADIATION DIVISION	CHIEF, REACTOR RADIATION DIVISION.
	GROUP LEADER NEUTRON CONDENSED MATTER SCIENCE.
CENTER FOR CHEMICAL PHYSICS	DIRECTOR CENTER FOR CHEMICAL PHYSICS.
	DEPUTY DIRECTOR, CENTER FOR CHEMICAL PHYSICS.
	CHIEF, SURFACE SCIENCE DIV.
NATIONAL ENGINEERING LAB	ASSOC DIR FOR TECHNICAL EVALUATION.
CENTER FOR FIRE RESEARCH	DIRECTOR-CENTER FOR FIRE RESEARCH.
	CHIEF, FIRE SAFETY TECHNOLOGY DIVISION.
	CHIEF, FIRE MEASUREMENT & RESEARCH DIVISION.
	CHIEF, OFFICE OF FIRE RESEARCH RESOURCES.
	DEPUTY DIRECTOR, CENTER FOR FIRE RESEARCH.
CENTER FOR BUILDING TECHNOLOGY	DIR, CENTER FOR BUILDING TECHNOLOGY.
	DEPUTY DIRECTOR, CENTER FOR BUILDING TECH.
	CHIEF, STRUCTURES DIVISION.
	CHIEF BUILDING PHYSICS DIVISION.
	CHIEF, BUILDING MATERIALS DIV.
	CHIEF, BUILDING ENVIRONMENT DIVISION.
CTR FOR MANUFACTURING ENGRING	DIR, CENTER FOR MANUFACTURING ENGINEERING.
	CHIEF, PRECISION ENGINEERING DIVISION.
	MANAGER OFC OF AUTO MANUFACTURING TECH TRANSF.
	CHIEF, ROBOT SYSTEMS DIVISION.
	CHIEF, FABRICATION TECHNOLOGY DIVISION.
	CHIEF, THERMOPHYSICS DIVISION.
CENTER FOR APPLIED MATHEMATICS	DIRECTOR, CENTER FOR APPLIED MATHEMATICS.
	DEPUTY DIRECTOR.
	CHIEF, STATISTICAL ENGINEERING DIVISION.
	CHIEF, SCIENTIFIC COMPUTING DIVISION.
	ASSOC DIR FOR COMPUTING.
	CHIEF, OPERATIONS RESEARCH DIVISION.
	CHIEF, MATHEMATICAL ANALYSIS DIVISION.
CENTER FOR ELECTRONICS AND ELECTICAL ENGRING.	DIR, CTR FOR ELECRONICS & ELECTRICAL ENG.
	CHIEF, ELECTROSYSTEMS DIVISION.
	CHF-ELECTROMAGENTIC TECHNOLOGY DIVISION.
	SENIOR RESEARCH SCIENTIST.
	CHIEF, ELECTROMAGNETIC FIELDS DIVISION.
	CHIEF, SEMICONDUCTOR ELECTRONICS DIVISION.
	DEP DIR, CTR FOR ELECTRONICS & ELECTRICAL ENG.
CENTER FOR CHEMICAL ENGINEERING	DEPUTY DIRECTOR CTR FOR CHEMICAL ENGINEERING.
	DIRECTOR CENTER FOR CHEMICAL ENGINEERING.
INST FOR COMPUTER SCIENCES AND TECHNOLOGY	DIR CENTER FOR PROGRAMMING SCIENCE & TECHN.
	DIR CENTER FOR COMPUTER SYSTEMS ENGINEERING.
	CHIEF, SYSTEMS & NETWORK ARCHITECTURE DIV.
	CHF, INFO SYST ENGINEERING DIVISION.
	CHF, SYSTEMS AND SOFTWARE TECHNOLOGY DIVISION.
	DEP DIR, INSTITUTE FOR COMPUTER SCI & TECHNOL
	CHIEF, INFORMATION SYSTEMS ENGINEERING DIV.
PATENT AND TRADEMARK ADMINISTRATION	ASST COMMISSIONER FOR FINANCE AND PLANNING.
	ASSISTANT COMMISSIONERS FOR EXTERNAL AFFAIRS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFFICE OF ASSISTANT COMMISSIONER FOR PATENTS.	ADM'R FOR DOCUMENTATION.
	DEP ASSISTANT COMMISSIONER FOR ADMINISTRATION.
CHEMICAL	GROUP DIRECTOR 110.
	GROUP DIRECTOR 120.
	GROUP DIRECTOR FOR 130.
	GROUP DIRECTOR 150.
	GROUP DIRECTOR FOR 260.
	GROUP DIRECTOR 180.
ELECTRICAL	GROUP DIRECTOR 210.
	GROUP DIRECTOR FOR 220/290.
	GROUP DIRECTOR 230.
	GROUP DIRECTOR 240.
	GROUP DIRECTOR 250.
MECHANICAL	GROUP DIRECTOR 310.
	GROUP DIRECTOR 320.
	GROUP DIRECTOR 330.
	GROUP DIRECTOR 340.
	GROUP DIRECTOR 350.
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS.	CHAIRMAN, TRADEMARK TRIAL & APPEAL BOARD.
	DEPUTY ASST COMMISSIONER FOR TRADEMARKS.
	DIRECTOR, TRADEMARK EXAMINING OPERATION.
COMMODITY FUTURES TRADING COMMISSION	
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUNSEL (OPINIONS & REVIEW).
	DEPUTY GENERAL COUNSEL (LITIGATION).
	DEPUTY GENERAL COUNSEL (REG. & ADM).
OFFICE OF THE EXECUTIVE DIRECTOR	DEP EXEC DIR.
	DIR, OFC IN INFORMATION RESOURCES MGMT.
DIVISION OF ECONOMICS ANALYSIS	DEP CHF ECONOMIST.
	CHF, ANALYSIS SECTION.
	ASSOCIATE DIRECTOR FOR SURVEILLANCE.
DIVISION OF ENFORCEMENT	DEPUTY DIRECTOR (WESTERN OPERATIONS).
	DEPUTY DIRECTOR (EASTERN OPERATIONS).
DIVISION OF TRADING AND MARKETS	DEPUTY DIRECTOR (CONTRACT MARKETS).
	CHIEF COUNSEL.
CONSUMER PRODUCT SAFETY COMMISSION	
OFC OF EXECUTIVE DIR	ASSOCIATE EXECUTIVE DIR FOR FIELD OPERATIONS.
	DIR, OFFICE OF PROGRAM MANAGEMENT & BUDGET.
OFFICE OF AED FOR EPIDEMIOLOGY	ASSOCIATE EXEC DIR FOR EPIDEMIOLOGY.
OFC OF AED FOR COMPLIANCE & ADMINISTRATIVE LITIGATION.	ASSOC EXEC DIR FOR COMPL & ADMIN LITIGATION.
OFC OF AED FOR ADMINISTRATION	ASSOC EXEC DIR FOR ADM.
OFC OF THE AED FOR ECONOMICS	ASSOCIATE EXECUTIVE DIRECTOR FOR ECONOMICS.
OFC SEC OF DEFENSE	
OFFICE OF THE SECRETARY	ASST TO THE SECY OF DEFENSE (INTEL OVERSIGHT).
OFC OF DEPUTY UNDER SECY FOR POLICY	DIR, C/I PROGRAMS.
OFC OF DEP ASST SECY (POLICY ANALYSIS)	DIRECTOR FOR POLICY PLANNING.
DIRECTOR OPERATIONAL TEST AND EVALUATION	DEPUTY DIRECTOR FOR PLANS AND PROGRAMS.
OFC OF INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR AUDIT FOLLOW-UP.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DIR, CONTRACT & EXT O/SIGHT AND EVALUATION.
	DEP ASST INSPECTOR GEN FOR GAO REPORTS ANALY.
	DIRECTOR MAJOR ACQUISITION PROGRAMS.
	DIRECTOR CONTRACT AUDIT PROGRAMS.
	ASST INSPECTOR GENERAL FOR AUDITING.
	ASST INSP GEN FOR CRIMINAL INVEST POL & OVSHT.
	ASST INSPECTOR-GEN FOR AUDIT POLICY & OVERSHT.
	DEP INSPECTOR GEN PROGRM PLNG. REVIEW & MGT.
	ASST DEPT IG FOR PROG PLANNING, REVIEW & MGNT.
	DEP ASST INSPECTOR GENERAL (AUDIT-FOLLOWUP).
	DEPT ASST INSPECTOR GENERAL FOR AUDITING.
	DIR FINANCIAL MANPOWER & SECURITY ASST AUDITS.
	DEPT ASST INSPECTOR GEN FOR INVESTIGATIONS.
	ASSOC DIR, RESOURCES & OVERSEAS AUDITS.
	DEPT ASST INSPECTOR GENERAL FOR INSPECTIONS.
	DIRECTOR, ACQUISITION SUPPORT PROGRAMS.
	DIRECTOR PLANNING RESOURCES & REPORTS.
	DIR INTELLIGENCE COMM & RELATED PROGRAMS.
	DIRECTOR LOGISTICS & SUPPORT PROGRAMS.
	ASST INSPECTOR GENERAL FOR AUDITING.
OFC DEP ASST SEC (CIVILIAN PERSONNEL POLICY & REQ).	DEP DIR COMPENSATION & OVERSEAS EMPLY POLICY.
	DIR FOR W/R, TRAINING & STAFFING POLICY.
	DIRECTOR, PERSONNEL MANAGEMENT.
	DEP DIR C/E STABILITY, N/F SPECIAL PROJECTS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFC OF DEP ASSIST SECY (FORCE MANAGEMENT & PERSONNEL).	DIRECTOR, ACCESSION POLICY.
OFC OF DIR OF DOD DEPENDENTS SCHOOLS	DIR PACIFIC REGION DODDS.
	DIRECTOR, GERMANY REGION.
ODASD (MOBILIZATION PLANNING & REQUIREMENTS)	ASSISTANT DIRECTOR FOR ENGINEERING.
	ASSOCIATE DIRECTOR FOR ENGINEERING.
OFFICE ASSISTANT SEC HEALTH AFFAIRS	DIR, DEFENSE MEDICAL SYSTEMS SUPPORT CENTER.
	DAS OF DEFENSE FOR MEDICAL RESOURCE ADM.
	DEP DIR, DEF MEDICAL SYSTEM SUPPORT.
ORGANIZATION ABOLISHED	DIR, PLANNING AND EVALUATION.
OFC DIRECTOR WEAPONS SUPPORT	DEP DIRECTOR WEAPON SUPPORT.
	DIR COMPUTER AIDED LOGISTICS SUPPORT OFFICE.
OFC DEP ASST SECY (PRODUCTION SUPPORT)	DASD (PRODUCTION SUPPORT).
	DIR STANDARDIZATION & ACQUISITION SUPPORT.
	DIR INDUSTRIAL RESOURCES.
	DIR, INDUSTRIAL PRODUCTIVITY & QUALITY.
	DEP DIR FOR MANUFACTURING AND QUALITY.
OFC DEP ASST SECY (PROCUREMENT)	DEP ASST SEC OF DEFENSE (PROCUREMENT).
	DIRECTOR COST PRICING AND FINANCE.
	DIRECTOR MAJOR SYSTEMS ACQUISITION.
	DIR DOD CONTRACT STUDIES & MGMT SPT SERVICES.
	DIR, CONTRACT POLICY AND ADMINISTRATION.
	DEPUTY DIRECTOR, MAJOR SYSTEMS ACQUISITION.
	DIR, DEFENSE SYSTEMS PROCUREMENT STRATEGIES.
OFFICE OF ASSISTANT SECRETARY, PUBLIC AFFAIRS.	DIR, FREEDOM OF INFORMATION & SECURITY REVIEW.
OFC OF DEP DIR (THEATER ASSESSMENTS & PLANNING).	ASSISTANT FOR PLANNING.
WASHINGTON HEADQUARTERS SERVICES	DIRECTOR OF PERSONNEL AND SECURITY.
DASD CONTRACT AUDIT COST CONTROL	DIRECTOR FOR CONTRACT AUDIT MANAGEMENT.
OFC OF UNDER SECY OF DEF FOR ACQUISITION POLICY.	DIRECTOR FOR ADMINISTRATION.
	DIRECTOR, SYSTEMS EVALUATION.
OFC OF THE DIR, RES & ENGR OUSD (ACQUISITION)	DIRECTOR, PROGRAM CONTROL AND ADMINISTRATION.
	EXEC DIR OF THE DEF SCIENCE BOARD.
OFC OF DEP UNDER SECY (INTERNATIONAL PROGRAMS AND TECH).	ADUSD (TECHNOLOGY COOPERATION & PLANNING.
	SPEC ASST FOR MCTL & LONG-RANGE PLNNG MATTERS.
	ADUSD (NATO/EUROPEAN AFFAIRS).
	ADUSD (ASIA/SOUTHERN HEMISPHERE AFFAIRS).
	ADUSD (INTERNATIONAL PROGRAMS & TECHNOLOGY).
OFFICE OF THE DUSD (DEVEL, TEST & EVALUATION).	STAFF SPEC FOR STRATEGIC NAVAL & C31 SYSTEMS.
	DEPUTY DIRECTOR, TEST FACILITIES & RESOURCES.
	DEPUTY DIRECTOR, STRATEGIC NAVAL & C31 SYST.
	ASST DEPUTY UNDER SECRETARY OF DEFENSE (LFT).
	ASST DEP UNDER SEC WEAPONS SYS ASSESSMENT.
	ASST DEP DIR FOR WEAPON SYSTEMS ASSESSMENT.
OFC OF DEP UNDER SECY FOR RESEARCH AND ADVANCED TECH.	DIR (ENGINEERING TECHNOLOGY).
	STAFF SPECIALIST FOR VEHICLE PROPULSION.
	STAFF SPECIALIST FOR MATERIALS & STRUCTURES.
	STAFF SPEC FOR ELEC WARFARE AND TARGET ACQ.
	STAFF SPECIALIST FOR WEAPONS TECHNOLOGY.
	STAFF SPECIALIST FOR SEARCH AND SURVEILLANCE.
	STAFF SPECIALIST FOR RESEARCH.
	DIR ENVIRONMENTAL & LIFE SCIENCES.
	STAFF SPEC/MOBILITY, LOGISTICS & ADV CONCEPTS.
	DIR, RESEARCH & LABORATORY MANAGEMENT.
	ADUSD (RESEARCH AND ADVANCED TECHNOLOGY).
	DIR, COMPUTER & ELECTRONICS TECHNOLOGY.
	SPEC ASST TO THE DUSD (R&AT) (SPEC PROJECTS).
	DIRECTOR ELECTRONICS SYSTEMS TECHNOLOGY.
OFC OF DEP U/SECY STRATEGIC & THEATER NUCLEAR FORCES.	A/D UNDER S/D (OFFENSIVE & SPACE SYSTEMS).
	A/D UNDER S/D (DEFENSIVE SYSTEMS).
	A/D UNDER S/D (STRATEGIC AERON & THEATER N/S).
	STAFF SPECIALIST FOR SPACE & ADVANCED SYSTEMS.
	STAFF SPEC FOR TECHN & ANALYSIS (OFF SYS).
	A/D UNDER S/D (START & ARMS CONTROL).
	STAFF SPEC FOR BALL MISSILE DEF SYS.
	A/D UNDER SECY OF DEF (F/A, CONCEPTS & PLANS).
OFC OF DEP UNDER SECY TACTICAL WARFARE PROGS.	ASST DEP UNDER SECY OF DEF (AIR WARFARE).
	ASST DEP UNDER SECY OF DEF (N W AND MOBILITY).
	STAFF SPEC FOR INTERDICTION/NAVAL STRIKE.
	STAFF SPECIALIST FOR GROUND AIR DEFENSE SYS.
	STAFF SPEC. CLOSE AIR SUP/BATTLEFIELD INT.
	STAFF SPECIALIST FOR ANTISUB & MINE SYSTEMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	STAFF SPECIALIST FOR AIR MOBILITY.
	STAFF SPEC FOR NAVAL PROJ & ANTI-AIR WARFARE.
	DIRECTOR, OFFICE OF MUNITIONS.
	STAFF SPEC INTERTHEATER & INTRATHEATER MODIL.
	STAFF SPECIALIST FOR PROPULSION.
	ASST DEP UNDER SECY OF DEF (LAND WARFARE).
	DIR. OFC OF CONVENTIONAL INITIATIVES.
	SPEC ASST FOR C/F MODERNIZATION ASSESSMENT.
OFFICE OF DEP ASST SECY OF DEFENSE (C3)	STAFF SPECIALSIT FOR TACTICAL COMMAND & CONTR.
	DIRECTOR, INFORMATION SYSTEMS.
	DIR THEATER & TACTICAL COMMUN COMMAND & CONTR.
	DIR STRATEGIC & THEATER NUCLEAR FORCES C3.
	ASSISTANT DIRECTOR, ELECTRONIC COMBAT SYSTEMS.
	ASST DIR FOR ELEC COMBAT C3 COUNTERMEASURES.
	DIRECTOR, SPECIAL OPERATIONS.
	DIR, ELECTRONIC COMBAT & SPECIAL SYSTEMS.
	STAFF ASST S/C, CONTROL & COMMUNICATIONS.
	SPEC ASST FOR C3 MOBILIZATION.
OFFICE OF DEP ASST SECY OF DEFENSE (INTELLIGENCE).	DIRECTOR NATIONAL INTELLIGENCE SYSTEMS.
	SR SCIENTIST FOR NATL INTELLIGENCE SYSTEMS.
	SENIOR SCIENTIST FOR TACTICAL INTELL SYSTEMS.
	DIRECTOR TACTICAL INTELLIGENCE SYSTEMS.
	DEP DIR, TACTICAL INTELLIGENCE SYSTEMS.
	DEP DIR, NATIONAL INTELLIGENCE SYSTEMS.
OFC OF ASST DEP UNDER SECY OF DEF (SYSTEMS INTEGRATION).	DIRECTOR, INTELLIGENCE RESOURCES.
	DIR, INTELLIGENCE RESOURCES & TRAINING.
DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.	DEPUTY DIRECTOR, DARPA.
	CHIEF SCIENTIST.
	SPECIAL ASSISTANT TO THE DIRECTOR, DARPA.
	DEP DIR FOR SYSTEMS AND TECHNOLOGY.
	DEPUTY DIRECTOR FOR RESEARCH.
TECHNOLOGY ASSESSMENT & LONG RANGE PLANNING OFFICE.	DIR, TECHNOL ASSESSMENT & LONG RANGE PLNG OFC.
	D/DIR, TECH ASSESSMENT & LONG RANGE PLNNG OFC.
TACTICAL TECHNOLOGY OFFICE	DIR-TACTICAL TECHNOLOGY OFFICE.
	DEP DIR TACTICAL TECHNOLOGY OFFICE.
	ASSISTANT DIRECTOR FOR LAND WARFARE.
AERO SPACE TECHNOLOGY	DIRECTOR, AERO-SPACE TECHNOLOGY OFFICE.
	DEPUTY DIRECTOR AERO-SPACE TECHNOLOGY OFFICE.
INFORMATION SCIENCE & TECHNOLOGY OFFICE	ASSISTANT DIRECTOR, ELECTRONICS SCIENCES.
	SPEC ASST STRATEGIC C/E DIR, I/S & TECHN OFC.
	DIR, INFORMATION SCIENCE & TECHNOLOGY OFFICE.
NAVAL TECHNOLOGY OFFICES	DIR, NAVAL TECHNOLOGY OFFICE.
DEFENSE SCIENCES OFFICE	DIR DEFENSE SCIENCES OFFICE.
	ASSISTANT DIRECTOR FOR MATERIAL SCIENCES.
STRATEGIC TECHNOLOGY OFFICE	DIR-STRATEGIC TECHNOLOGY OFFICE.
	DEP DIR, STRATEGIC TECHN OFC.
	ASSISTANT DIRECTOR FOR GEOPHYSICAL SCIENCES.
PROTOTYPE PROJECTS OFFICE	DIR, PROTOTYPE PROJECTS OFFICE.
CONTRACTS MANAGEMENT OFFICE	DIR, CONTRACTS MANAGEMENT OFFICE.
DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.	DIR DARPA LIAISON OFFICE EUROPE.
NUCLEAR MONITORING OFFICE	DIRECTOR, NUCLEAR MONITORING OFFICE.
OFFICE OF THE JOINT CHIEFS OF STAFF	SCIENTIFIC & TECH ADV TO DIR FOR JOINT ANALY.
	DEP JOINT REQUIR INTTEGRAT MGR/SCI TECH ADV.
	JIONT ADP/COMMUN INTEG MGR/ SCIE & TECHN ADV.
STRATEGIC DEFENSE INITIATIVE ORGANIZATION	ASSISTANT DIRECTOR FOR INTERCEPTORS.
	ASSISTANT DIRECTOR FOR TECHNOLOGY.
	ASST DIR FOR SENSORS DEMONSTRATIONS.
	ASSISTANT DIRECTOR FOR SENSOR TECHNOLOGY.
	DEPUTY DIRECTOR, RESOURCE MANAGEMENT.
	DEPUTY COMPTROLLER.
DEFENSE CONTRACT AUDIT AGENCY	DIRECTOR, DCAA.
	DEPUTY DIRECTOR, DCAA.
	ASSISTANT DIRECTOR, OPERATIONS.
	ASST DIR, POLICY & PLANS.
	DIRECTOR, FIELD DETACHMENT.
REGIONAL MANAGERS	REGIONAL DIRECTOR, EASTERN.
	REGIONAL DIRECTOR, NORTHEASTERN.
	REGIONAL DIRECTOR, CENTRAL.
	REGIONAL DIRECTOR, SOUTHWESTERN.
	REGIONAL DIRECTOR, MID-ATLANTIC.
	REGIONAL DIRECTOR, WESTERN.
DEFENSE LOGISTICS AGENCY	SPECIAL ASST FOR INTEGRITY IN CONTRACTING.
	CHIEF ACTUARY.
DIRECTORATE FOR CONTRACT MANAGEMENT	EXECUTIVE DIRECTIVE, CONTRACT MANAGEMENT.
	CHIEF, PLANS, POLICIES & SYSTEMS DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
DIRECTORATE OF QUALITY ASSURANCE	DEP EXEC DIR, QUALITY ASSURANCE.
OFC OF STAFF DIR-SMALL & DISADVANTAGED BUSINESS UNTIL.	STAFF DIR, SMALL & DISADV BUSIN UTILIZATION.
OFFICE OF CIVILIAN PERSONNEL	STAFF DIRECTOR, PERSONNEL.
	DEPUTY STAFF DIRECTOR, PERSONNEL.
OFC OF TELECOMMUNICATIONS & INFORMATION SYSTEMS.	CHIEF, AIS DEVELOPMENT & CONTROL DIVISION.
DIRECTORATE OF CONTRACTING	EXECUTIVE DIRECTOR, CONTRACTING.
	CHIEF, CONTRACTS DIVISION.
DIRECTORATE OF TECH & LOGISTICS SERVICES	CHF, PROPERTY DISPOSAL DIV.
DEFENSE PERSONNEL SUPPORT CENTER	EXEC DIR, ACQUISITION MGMT, PLAN & SUPP.
DEFENSE TRAINING & PERFORMANCE DATA CENTER.	DIR DEFENSE TRAINING AND PERFORMANCE DATA CTR.
OFC OF ASSOCIATED DIRECTOR FOR ENG AND TECHNOLOGY.	ASSOC DIR FOR ENGINEERING & TECHNOLOGY.
SPECIAL PROGRAMS ORGANIZATION	DIR, SPECIAL PROGRAMS ORGANIZATION.
	DEP DIR, SPECIAL PROGRAMS ORGANIZATION.
	SPEC ASST TO THE DIR, SPEC PROG ORGANIZATION.
NATIONAL COMMUNICATIONS SYSTEM	DEPUTY MANAGER, NATL COMMUNICATIONS SYSTEMS.
	ASST MGR NCS TECHNOLOGY & STANDARDS.
	ASST MGR NCS, PLANS & OPERATIONS.
	SCIENTIFIC ADVISOR FOR OPERATIONS RESEARCH.
CENTER FOR COMMAND CONTOL & COMMUNICATIONS (C3) SYS.	DEPUTY WWMCCS ENGINEER—EUROPE.
	DEP DIR, MIL SATELLITE COMMUNICATION SYSTEM.
	DEP DIR FOR SWITCHED NETWORK ENGINEERING.
	DIR, PLANNING & SYSTEMS INTEGRATION CENTER.
	ASSOC DIR NMCS/WWMCCS ENGINEERING INTEGRATION.
	DEP DIR, COMMAND & CONTROL SYS ORGANIZATION.
	S/A TO THE DIR, CPSI FOR SATELLITE COM SYS.
	S/A TO THE DIR, CPSI FOR NATO & INTERN'L C3.
	ASST DIR FOR PROG DEVELOPMENT & COORDINATION.
	SPEC ASST TO DIR, CTR FOR C3 FOR INT DIG ARCH.
DEFENSE COMMUNICATIONS SYSTEM ORGANIZATION.	DEP DIR, DEFENSE COMM SYSTEM ORGANIZATION.
	PROGRAM MANAGER, DEFENSE SWITCHED NETWORK.
	DEPUTY DIRECTOR FOR DCS INTEGRATION.
DEFENSE COMMUNICATIONS ENGINEERING CENTER.	ASSOCIATE DEPUTY DIRECTOR, SWITCHED SYSTEMS.
	DIR, DEF COMMUNICATIONS ENGINEERING CENTER.
	CHF, INTEROPERABILITY & STANDARDS OFFICE.
OFFICE OF COMPTROLLER	DEPUTY DIRECTOR, RESOURCE MANAGEMENT.
JOINT DATA SYSTEMS SUPPORT CENTER	DIRECTOR, JOINT DATA SYSTEMS SUPPORT CENTER.
	TECH DIR, WWMCCS ADP TECHNICAL SUPT DIRECT.
	ASST DEP DIR FOR COMPUTER SERVICES.
	DEPUTY DIRECTOR, NMCS ADP DIRECTORATE.
	ASSOC DIR FOR TECHNICAL & MANAGEMENT SUPPORT.
JOINT TACTICAL COMMAND, CONTROL & COMMUNICATIONS AGENCY.	ASST DIR FOR WASHINGTON OPERATIONS.
OFFICE OF THE DIRECTOR	DIR, ACQUISITION MANAGEMENT.
	DEPUTY DIRECTOR, OPERATIONS DIRECTORATE.
	DIRECTOR FOR PLANS, PROGRAMS & REQUIREMENTS.
OFFICE OF DEPUTY DIRECTOR SCIENCE & TECHNOLOGY.	DEP DIR (SCIENCE & TECHNOLOGY).
	SCIENTIFIC ASST TO DEP DIR (SCIENCE AND TECH).
	ASST TO DEP DIR (SCI & TEC) FOR THEORETICAL R.
	ASST TO THE D/D (SCI & TECHNOL) FOR EXPER RES.
	CHF, STRATEGIC STRUCTURES DIVISION.
	CHF, AEROSPACE SYS DIV.
	CHIEF, ATMOSPHERIC EFFECTS DIVISION.
	SCIENTIFIC DIRECTOR, AFRRI.
	CHF, ELECTROMAGNETIC PULSE EFF DIV.
	CHIEF, LETHALITY HARDENING DIVISION.
	CHIEF, ELECTRONICS VULNERABILITY DIVISION.
D M A HEADQUARTERS	DEP DIR FOR SYSTEMS & TECHNIQUES.
	DEP DIR, MNGMT & TECHNOLOGY.
	ASST DEP DIR FOR PLANS AND REQUIREMENTS.
	DIRECTOR OF PERSONNEL.
	ASST DEPUTY DIR FOR PROGRAMMING.
	ASST DEPUTY DIR FOR PRODUCTION AND DISTRIBUTION.
	DIR, SPEC PROG OFC FOR EXPLOITATION MODERN.
	ASSOCIATE DEPUTY DIRECTOR FOR HYDROGRAPHY.
	DEP DIR, SPEC PROG OFC EXPLOIT MODERNIZATION.
	DIRECTOR OF ACQUISITION.
	CHIEF, ADVANCED TECHNOLOGY DIVISION.
	DEP DIR FOR PROGS, PRODUCTION & OPERATIONS.
	ASST CHIEF, SPEC PROGRAMS DIVISION.
	DEP DIR FOR RESEARCH & ENGINEERING.
	DEPUTY DIR MANAGEMENT & TECHNOLOGY.
	ASST DEP DIR FOR PRODUCTION & DISTRIBUTION.
D M A FIELD ACTIVITIES	TECH DIR, DMA AERO CENTER.
	TECH DIR, DMA HYDROGRAPHIC-TOPOGRAPHIC CENTER.
	DEP DIR FOR PROG, PROD & OPERATIONS DMA HTC.
	DEP DIR FOR PROGS, PRODUCTION AND OPERATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIR, DMA OFC OF TELECOMMUNICATIONS SERVICES.
	DIR, DMA SPECIAL PRODUCTION PROGRAM OFFICE.
	CHIEF, DATA SERVICES DEPARTMENT.
	CHIEF, DATA SERVICES DEPARTMENT.
	CHIEF PROGRAM INTEGRATION DIVISION.
	TECH DIR, DEP DIR, OFC OF DISTRIBUTION SERV
	CHIEF PLANS AND PROGRAM BRANCH.
	CHIEF SCIENTIFIC DATA DEPARTMENT.
	CHIEF, SCIENTIFIC DATA DEPARTMENT.
	DIRECTOR SYSTEMS CENTER.
	DEPUTY DIRECTOR FOR SYSTEMS DEVELOPMENT.
DEFENSE INVESTIGATIVE SERVICE	DIR, DEFENSE INVESTIGATIVE SERVICE.
	DEPUTY DIRECTOR (INVESTIGATIONS).
	DEP DIR (INDUSTRIAL SECURITY).
DEPARTMENT OF AIR FORCE	
OFC OF ADMINISTRATIVE ASSISTANT TO THE SECRETARY.	ADMINISTRATIVE ASSISTANT TO THE SECY.
	DEP ADM ASST.
	CHIEF, PUBLISHING DIV.
OFC OF SMALL & DISADV BUS UTILIZATION	DIR, OFC OF SMALL & DISADV BUS UTILIZATION.
OFFICE OF SPECIAL PROJECTS	DEPUTY FOR CONTRACTING.
OFFICE OF THE INSPECTOR GENERAL	DEP ASST INSPECTOR GEN/SPEC INVESTIGATIONS.
OFFICE OF THE COMPTROLLER OF THE AIR FORCE	DEP COMPTROLLER.
	DEPUTY ASSISTANT SECRETARY (ACCT AND AUDIT).
DIRECTORATE OF BUDGET	DEPUTY DIRECTOR OF BUDGET.
	ASST DEP DIR OF BUDGET (OPERATIONS).
	CHF, INVESTMENT APPROPRIATIONS DIV.
	CHIEF BUDGET MANAGEMENT DIVISION.
DIRECTORATE OF COST	ASSOC DIR OF MGMT ANALYSIS.
ODAS ACQUISITION MANAGEMENT	DEP ASST SECY (ACQUISITION MANAGEMENT).
	DEP FOR ACQUISITION.
	DEP FOR PROGRAMS & PRODUCTION.
OFFICE OF THE COMPETITION ADVOCATE	DEPUTY COMPETITION ADVOCATE GENERAL.
	COMPETITION ADVOCATE GENERAL.
OFFICE OF THE MILITARY DEPUTY FOR ACQUISITION.	ASSOC DIR OF CONTRACTING & MANUFACTURING POL.
OFFICE OF ASAF FOR MANPOWER & RESERVE AFFAIRS.	DEP FOR AIR FORCE REVIEW BOARDS.
ODAS LOGISTICS	DEP FOR SUPPLY & MAINTENANCE.
	DEP FOR TRANSPORTATION & CIVIL AVIATION.
ODAS INSTALLATIONS	DEPUTY FOR INSTALLATIONS MANAGEMENT.
OFFICE, ASST VICE CHIEF OF STAFF	CHIEF OFFICE OF AIR FORCE HISTORY.
ASST CHIEF OF STAFF FOR C3 AND COMPUTERS	ASST TO THE ACS SYS FOR COMMAND COMM & COMPUT.
OFC OF DEP CHIEF OF STAFF, LOGISTICS AND ENGINEERING.	ASSOC DIR FOR LOGISTICS PLANS & PROGRAMS.
	ASSOC DIR OF MAINTENANCE ENGINEERING & SUPPLY.
	ASSOC DIR FOR ENGINEERING & SERVICES.
	CHIEF MODIFICATION & O&M PROGRAMS DIVISION.
	CHIEF COMBAT SUPPORT PROGRAMS DIVISION.
	DEPUTY DIRECTOR FOR CONSTRUCTION.
OFFICE OF DEPUTY CHIEF OF STAFF, PERSONNEL	DIR OF CIVILIAN PERSONNEL.
	DEPUTY DIRECTOR OF PERSONNEL MANAGEMENT.
	DEPUTY DIRECTOR FOR PLANS AND REQUIREMENT.
	DEP DIR FOR WORK FORCE EFFECTIVENESS.
NATIONAL GUARD BUREAU	SPEC ASST TO THE CHIEF, NGB.
OFFICE OF THE COMMANDER	COMMAND COMPETITION ADVOCATE.
DCS CONTRACTING & MANUFACTURING	PRIN ASST/CONTRACTING & MANUFACTURING.
	TECHNICAL DIRECTOR, MANUFACTURING & IND PREP.
	DIR CONTRACT CLEARANCE & POLICY DEVELOPMENT.
DCS PERSONNEL	DIRECTOR OF CIVILIAN PERSONNEL.
DCS/PRODUCT ASSURANCE AND ACQUISITION LOGISTICS.	TECHNICAL DIRECTOR, PRODUCT ASSURANCE.
DEPUTY CHIEF OF STAFF/COMPTROLLER	ASST TO THE DCS/COMPTROLLER.
DCS/DEVELOPMENT PLANS	ASST DEP CHIEF OF STAFF/PLANS AND PROGRAMS.
DCS/SYSTEMS	TECH DIR, DEP CHF OF STAFF/SYSTEMS.
DCS/SCIENCE & TECHNOLOGY	DIRECTOR OF PLANS & PROGRAMS.
AF OFC OF SCIENTIFIC RESEARCH	TECH DIRECTOR AF OFC OF SCIENTIFIC RESEARCH.
SPACE DIVISION	ASST FOR ACQUISITION MANAGEMENT & COMPETITION.
AIR FORCE SPACE TECHNOLOGY CENTER	DEPUTY DIRECTOR (AFSTC)
AIR FORCE WEAPONS LABORATORY	TECHN DIR (PHYSICAL OPTICS, LASERS, PROTOTYPE.
AERONOMY DIVISION	CH, ATMOSPHERIC STRUCTURE BR.
SPACE PHYSICS DIVISION	DIR, SPACE PHYSICS DIV. AFGL.
OPTICAL & INFRARED TECHNOLOGY DIVISION	DIRECTOR OPTICALS INFRATED TECHNOLOGY DIV
AIR FORCE ROCKET PROPULSION LABORATORY	DIR, SOLID ROCKET DIV.
	DEP COMMDR FOR DEV PLANS & SUPPORT SYSTEMS.
ELECTRONIC SYSTEMS DIVISION	DEPUTY (ACQUISITION LOGISTICS & TECHN OPER).
	ASST DEP FOR CONTRACTING & MANUFACTURING.
	ASSISTANT DEPUTY COMMANDER/TACTICAL SYSTEMS.
	ASST DEP FOR STRATEGIC SYSTEMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEP COMM FOR INTEL C3 COUNTERMEAS & SUPP SYS
	TECH DIR, DEP CMD TACTICAL SYST, J-TIDS-AWACS.
	TECHNICAL DIRECTOR.
ROME AIR DEVELOPMENT CENTER	DIRECTOR (PLANS).
	TECHN DIR (INTELLIGENCE & RECONNAISSANCE)
	TECHNICAL DIRECTOR (COMMUNICATIONS).
	TECHNICAL DIR (SURVEILLANCE).
	TECHNICAL DIRECTOR (COMMAND & CONTROL).
AERONAUTICAL SYSTEMS DIVISION	DEPUTY COMPTROLLER.
	DIRECTOR (MISSION ANALYSIS).
DEP FOR PROC AND MANUFACTURING, ASD	ASST DEPUTY FOR CONTRACTING & MANUFACTURING.
DEPUTY FOR TACTICAL SYSTEMS	ASST DEPUTY (DEPUTY FOR TACTICAL SYSTEMS).
DEPUTY FOR PROPULSION	ASST DEP FOR PROG (DEPT FOR PROPULSION).
DEP FOR ENGINEERING, ASD	ENGINEERING ADVISOR PRODUCT ASSURANCE ENGR.
	TECHNICAL DIR SUPPORT SYSTEMS ENGINEERING.
	TECHNICAL DIR AVIONICS ENGINEERING.
	TECHN DIR, FLT SYSTEMS ENGINEERING.
	DIR OF ENG. ADVANCED TACTICAL FIGHTER.
SYSTEMS ENGINEERING OFFICE, ASD	DIRECTOR OF ENGINEERING (F-16).
	DIRECTOR OF ENGINEERING TACTICAL SYSTEMS.
	DIR OF ENG RECONNAISSANCE & ELEC WARFARE SYS.
	DIRECTOR OF ENGINEERING (AIRLIFT TRAINER SYS).
	DIR ENGINEERING PROPULSION SYSTEMS.
	DIRECTOR OF ENGINEERING (STRATEGIC SYSTEMS).
	DIR OF ENGINEERING (ADVANCED TECHNOL BOMBER).
MATERIALS LABORATORY, AFWAL	DIR, METALS & CERAMICS DIV.
	DIR MANUFACTURING TECHNOLOGY DIVISION.
	DIR, NONMETALLIC MATERIALS DN.
AERO PROPULSION LABORATORY, AFWAL	DIR, TURBINE ENGINE DIV.
ARMAMENT DIVISION	TECHNICAL ADVISOR.
FOREIGN TECHNOLOGY DIVISION	TECHNICAL DIRECTOR (SENIOR DATA)
	TECHNICAL DIRECTOR (TECHNOLOGY AND THREAT).
USAF SCHOOL OF AEROSPACE MEDICINE	RESEARCH DIRECTOR (CREW TECHNOLOGY).
AEROSPACE MEDICAL RESEARCH LAB	DIR, TOXIC HAZARDS DIV.
	DIRECTOR HUMAN ENGINEERING.
AIR FORCE HUMAN RESOURCES LAB, AMD	CHIEF SCIENTIST.
AIR FORCE FLIGHT TEST CENTER	TECHN DIR (ENGINEERING).
AIR FORCE LOGISTICS COMMAND	ASST DCS-COMPTROLLER.
	ASST DEP CHF OR STAFF, MAINTENANCE.
	CHAIRMAN AF LOGISTICS COMMAND PROCUR COMMITT.
	ASSISTANT DCS/PLANS & PROGRAMS.
	DIRECTOR OF CIVILIAN PERSONNEL.
	A/D CHF OF STAFF-CONTRACTING & MANUFACTURING.
	DEPUTY ASST TO THE COMMDR-INTERNL LOGISTICS.
	ASST DEPUTY CHIEF OF STAFF, MATERIAL MGT.
	ASST DEPUTY CHIEF OF STAFF LOGIS MANGNT SYSTEM.
AF ACQUISITION LOGISTICS DIV	ASST TO THE COMMANDER AFALD.
	ASST TO THE COMMANDER, LOGISTICS OPER CENTER.
	A/D AERONAUTICAL PROG AF ACQUISITION LOG CTR.
AIR LOGISTICS CENTER, SAN ANTONIO	DEP DIR, DIRECTORATE OF MAINTENANCE.
	DEP. DIR. MATERIAL MGT. SAN ANTONIO LOG. CTR.
	DEP DIRECTOR, CONTRACTING AND MANUFACTURING.
AIR LOGISTICS CENTER, OKLAHOMA CITY	DEP DIR, DIRECTORATE OF MATERIEL MGMT.
	DEP DIR, DIRECTORATE OF MAINTENANCE.
	DEP DIRECTOR, CONTRACTING AND MANUFACTURING.
AIR LOGISTICS CENTER, WARNER ROBINS.	DEPUTY DIRECTOR, DIRECTORATE OF MATERIEL MGT.
	DEPUTY DIR, DIR OF MAINTENANCE.
	DEP DIRECTOR, CONTRACTING AND MANUFACTURING.
AIR LOGISTICS CENTER, OGDEN	DEP DIR, DIRECTORATE OF MAINTENANCE.
	DEPUTY DIRECTOR, DIRECTORATE OF MATERIEL MGT.
	DEP DIR CONTRACTING & MANUFACTURING.
AIR LOGISTICS CENTER, SACRAMENTO	DEP DIR DIRECTORATE OF MATERIEL MANAGEMENT.
	DEP DIR, DIRECTORATE OF MAINTENANCE.
	DEP DIRECTOR CONTRACTING & MANUFACTURING.
AIR FORCE AUDIT AGENCY	THE AUDITOR GENERAL OF THE AIR FORCE.
	DIRECTOR OF FIELD ACTIVITIES.
	DIRECTOR OF OPERATIONS.
	DIRECTOR OF FORCES AND SUPPORT MANAGEMENT.
	DIR, ACQUISITION & LOGISTICS SYSTEMS.
AIR FORCE ELECTRONIC SECURITY COMMAND	ASST TO THE COMMANDER.
AIR FORCE COMMUNICATIONS COMMAND	TECHNICAL DIRECTOR.
MILITARY AIRLIFT COMMAND	ASST DEP CHF OF STAFF/AIR TRANSPORTATION.
STRATEGIC AIR COMMAND	CHIEF, OPERATIONS ANALYSIS DIVISION.
	CHIEF, APPLIED RESEARCH DIVISION.
TACTICAL AIR COMMAND	CHIEF SCIENTIST TACTICAL AIR WARFARE CTR.
HEADQUARTERS, PACIFIC AIR FORCE	CHIEF, OPERATIONS ANALYSIS.
U.S. AIR FORCES IN EUROPE	DIRECTOR OF CIVILIAN PERSONNEL.
SHAPE TECHNICAL CENTER	CHIEF, INFORMATION SYSTEMS DIVISION, NATO.
	DEPUTY DIRECTOR.
AF SPACE COMMAND	SENIOR SCIENTIFIC AND TECHNICAL ADVISOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
AF OPERATIONAL TEST & EVAL CTR (AF OTEC)	SCIENTIFIC ADVISOR (TEST & EVALUATION).
AIR UNIVERSITY	DIRECTOR OF ACADEMIC AFFAIRS.
JOINT ELECTRONIC WARFARE CENTER (JEWC)	TECHNICAL DIRECTOR.
AIR FORCE COMMISSARY SERVICE	DEPUTY TO THE COMMANDER, A F COMMISSARY SERV.
DIRECTORATE OF ACCOUNTING & FINANCE	DEP DIR, ACCTNG & FINANCE.
	DIRECTOR OF PLANS & SYSTEMS.
U.S. CENTRAL COMMAND	SCIENTIFIC ADVISOR.
DEPARTMENT OF THE ARMY	
OFFICE OF THE UNDER SECRETARY	OPERATIONS RESEARCH ANALYST.
	CHF, OPERS RES GRP FOR FORCES & READINESS.
	OPERATIONS RESEARCH ANALYST FOR SYSTEMS.
	OPERS RESEARCH ANALYST FOR CMD, CONT, C & I.
OFC OF THE ADMINISTRATIVE ASSISTANT	ADM ASST TO THE SECY OF THE ARMY.
	DEP ADMINISTRATIVE ASSISTANT.
	DIRECTOR, DEFENSE SUPPLY SERVICE-WASHINGTON.
ODASA ACQUISITION	DEP FOR MATERIEL ACQ MGMT.
	DEP FOR PROCUREMENT POLICY.
O D A S A MANAGEMENT AND PROGRAMS	DEPUTY FOR PROGRAM EVALUATION.
	DEPUTY FOR PROGRAMS.
	DEPUTY ASST SECRETARY (SYSTEMS MANAGEMENT)
OFC OF ASST SECRETARY (INSTALLATIONS & LOGISTICS).	DEPUTY ASSISTANT SECRETARY OF ARMY (LOG).
	DEP/PROG & COMMER ACTIV/COMMER ACTIV AGENCY.
OFF OF ASST SECRETARY, MANPOWER & RESERVE AFFAIRS.	DEP A/S OF THE ARMY (REV BDS & PERSONNEL SEC).
OFC OF ASST SECRETARY CIVIL WORKS	DEP FOR PROGRAM PLANNING REVIEW & EVALUATION.
	DEPUTY FOR MANAGEMENT AND BUDGET.
	DEP FOR POLICY, PLNG & LEGISLATIVE AFFAIRS.
OFFICE, ASSISTANT CHIEF OF STAFF, INTELLIGENCE	SPEC ASST TO THE ACSI.
	DEP DIRECTOR FOREIGN SCI & TECHNOLOGY CENTER.
	DIRECTOR MISSILE INTELLIGENCE AGENCY.
	DEPUTY AND TECHNICAL DIRECTOR.
USA STRATEGIC DEFENSE COMMAND HUNTSVILLE AL OSCA FOA.	CHIEF, CONTRACTS OFFICE.
	PROJ MGR EXATMOSPHERIC REENT VEH INTEPT.
	PROJ MGR HIGH ENDO ATMOS DEF INT PROJ.
	D/S LETHALITY & KEY TECHNOLOGIES DIRECTORATE.
	DIR KINETIC ENERGY WEAP DIV.
BALLISTIC MISSILE DEF ADV TECHN CTR	DIR DISCRIMINATION DIRECTORATE.
	DIRECTOR RADAR DIRECTORATE.
	DIR-DATA PROCESSING DIRECTORATE.
	DIRECTOR OPTICS DIRECTORATE.
	DIRECTOR, DIRECTED ENERGY WEAPONS DIRECTORATE.
	PRIN ADVISOR RESP FOR CONTRACTING.
	CHIEF, PASSIVE SENSORS DIVISION.
	CHF. ACTIVE SENSORS DIV SENSORS DIRECTORATE.
	CHF, DISCRIMINATION DIV SENSORS DIRECTORATE.
CHF SCIENTIST & DIRECTOR OF ARMY RESEARCH	ASST DIRECTOR FOR RESEARCH PROGRAMS.
	RDA ANALYSIS OFFICER.
	ASST DIR TECHNOLOGY PLANNING.
	DIRECTOR OF ARMY RESEARCH & TECHNOLOGY.
	ASSISTANT DIRECTOR LAB ACTIVITIES.
DIR OF COMBAT SUPPORT SYSTEMS	ASSISTANT DIRECTOR TECHNOLOGY ASSESSMENT.
	ASSISTANT DIRECTOR THREAT INTEGRATION.
DIR OF WEAPONS SYSTEMS	PHYSICAL SCIENTIST (AEROSPACE ENGR).
OFFICE, DEP CHIEF OF STAFF FOR PERSONNEL	S/A TO DEP CHF OF STAFF/PERSONNEL/MANPRINT.
DIRECTORATE OF CIVILIAN PERSONNEL	DIRECTOR OF CIVILIAN PERSONNEL.
	DEP DIRECTOR OFC CIV PERSONNEL.
	CHIEF EMPLOYMENT AND CLASSIFICATION OFFICE.
CIVILIAN PERSONNEL CENTER	CHIEF, CIVILIAN PERSONNEL CENTER
ARMY RESEARCH INSTITUTE FOR BEHAVIORAL & SOCIAL SCIENCES.	DIR, SYSTEMS RSCH & ASSOC DIR ARI.
	DIR, TRNG RES LAB & ASSOC DIR, ARI.
	DIR, MANP & PERS RES LAB & ASSOC DIR, ARI.
DIR MANPOWER PROGRAMS AND BUDGET	DEP DIR MANPOWER PLANS AND BUDGET.
OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS	ASST DIRECTOR FOR SUPPLY MGMT.
	ASST DIR FOR RESOURCES AND MGMT.
	ASST DIR FOR MAINTENANCE MGMT.
	SPEC ASST TO DCSLOG & CHF AV LOG OFC.
	CHIEF SECURITY ASSISTANCE POLICY COORD OFC.
	ASST DIR FOR TRANSPORTATION.
	ASST DIR FOR ENERGY & TROOP SUPPORT.
	DEP DIR CONTRACTING SUPPORT AGENCY.
	DEP TO THE COMMANDER, TROOP SUPPORT AGENCY.
	CHF, CONTRACTING POLICIES & PROCEDURES.
OFFICE OF THE COMPTROLLER OF THE ARMY	DEP COMPTROLLER.
	DIRECTOR OF COST ANALYSIS.
	DEPUTY DIRECTOR OF OPERATIONS & MAINTENANCE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIRECTOR OF RESOURCE MANAGEMENT.
	DIRECTOR, RESOURCE MANAGEMENT SYSTEMS.
	DIR, OF USA COST & ECON A/C & A/C COST ANAL.
FINANCE AND ACCOUNTING CENTER	PRIN DEP CMDR-DEP ACDOA FOR FIN & ACTG.
	ARMY INTRERNAL CONTROL PROGRAM ADMINISTRATOR.
DIRECTOR OF ARMY BUDGET	DEPUTY DIRECTOR OF ARMY BUDGET.
	DEP DIR OR ARMY BUDGET FOR BUDGET MANAGEMENT.
ARMY AUDIT AGENCY	THE AUDITOR GENERAL, U.S. ARMY.
	DEPUTY AUDITOR GENERAL.
	DIRECTOR, LOGISTICAL & FINANCIAL AUDITS.
	DIRECTOR, ACQUISITION & SYSTEMS AUDITS.
	DIR PERSONNEL AND FORCE MANAGEMENT AUDITS.
	DIR AUDIT POLICY PLANS AND RESOURCES.
	REGIONAL AUDITOR GENERAL (EUROPEAN REGION).
OFC DEP CHF OF STAFF FOR OPERATIONS & PLANS.	TECH ADV.
DIRECTORATE OF COMMAND, CONTROL, COMMS & COMPUTERS.	DEP ASST CHF OF STAFF AUTOMATION AND COMMS.
	ARMY SPECTRUM MANAGER.
US ARMY COMPUTER SYSTEMS COMMAND	DIR, ARMY MGMT SYSTEMS SUPPORT AGENCY.
US ARMY INFO SYST & SEL ACQ ACTIVITY	OFC, U.S. ARMY INFO SYST & SEL ACQ ACTIVITY.
US ARMY NUCLEAR & CHEMICAL AGENCY	TECHNICAL DIRECTOR.
CONCEPTS ANALYSIS AGENCY (OCSA)	ASSISTANT DIR FOR RES AND ANALYSIS SUPPORT.
ARMY CENTER OF MILITARY HISTORY	CHIEF HISTORIAN.
ARMY WAR COLLEGE	DIRECTOR OF ACADEMIC AFFAIRS.
USA MED RSCH & DEVEL CMD	SPECIAL ASSISTANT FOR BIOTECHNOLOGY.
TRAINING AND DOCTRINE COMMAND (TRADOC)	SCIENTIFIC ADVISOR.
	SCIENTIFIC ADVISOR.
	DEP CHIEF OF STAFF FOR PERSNL ADMIN LOGISTICS.
	ASST DEPUTY CHIEF OF STAFF FOR RESOURCES MGMT.
COMBAT DEVELOPMENTS EXPERIMENTATION COMMAND.	DIR, USA COMBAT DEVELOP EXPERIMENTATION CTR.
TRADOC OPERATIONS RESEARCH ACTIVITY	DIRECTOR. TRADOC OPERATIONS RESEARCH ACTIVITY.
US ARMY TRADOC SYSTEMS ANALYSIS ACTIVITY	DIRECTOR OF OPERATIONS.
TRADOC COMBINED ARMS TEST FACILITY	SCIENTIFIC ADVISOR.
MILITARY TRAFFIC MGMT COMMD	SPECIAL ASSISTANT FOR TRANSPORTATION ENGR.
U.S. ARMY FORCES COMMAND	CIVILIAN PERSONNEL DIRECTOR.
	DEPUTY COMPTROLLER.
U.S. ARMY CORPS OF ENGINEERS	CHIEF, OFFICE OF PERSONNEL.
	SPEC ASST TO THE CHF OF ENGIN FOR INTERNAL AFF.
	DEPUTY DIRECTOR, RESOURCE MANAGEMENT.
	DIRECTOR RESOURCE MANAGEMENT.
OFC, ASST CHF OF ENGINEERS	CHIEF, PROGRAMMING DIV, ACE.
DIRECTORATE OF CIVIL WORKS	CHF-OFC OF POLICY.
	CHF, PROGRAMS DIV.
	CHF-PLANNING DIVISION.
	CHIEF OPERATIONS & READINESS (CW).
WATER RESOURCES SUPPORT CENTER	CHIEF DREDGING DIVISION.
DIRECTORATE OF ENGINEERING & CONSTRUCTION	DEP/DIR ENGINEERING AND CONSTRUCTION.
	DEPUTY CHIEF CONSTRUCTION DIVISION.
	CHIEF CONSTRUCTION DIVISION.
	CHIEF ENGINEERING DIVISION.
	CHIEF FACILITIES ENGINEERING DIV.
BOARD OF ENGINEERS FOR RIVERS AND HARBORS	TECH DIR, BD ENGR RIVERS AND HARBORS.
US ARMY COE WATER RESOURCE CTR	DIRECTOR INSTITUTE FOR WATER RESOURCES.
PLANNING DIVISION, COE	CHF PLANNING DIV, OHIO RIVER DIV.
	CHF PLANNING DIV, NO PACIFIC DIV.
	CHF, PLANNING DIV, SOUTH ATLANTIC DIV.
	CHIEF, PLANNING DIV LOWER MISS VALLEY DIV.
	CHF PLANNING DIV, MO RIVER DIV.
	CHF, PLANNING DIV, SOUTH PACIFIC.
	CHIEF PLANNING DIV, N. ATLANTIC DIV.
	CHF PLANNING DIV-SOUTHWESTERN DIV.
	CHF PLANNING DIR NORTH CENTRAL DIV.
ENGINEERING DIVISION, COE	CHIEF, ENGINEERING DIV., OHIO RIVER DIV.
	CHIEF, ENGINEERING DIV, SOUTHWESTERN DIV.
	CHIEF, ENGINEERING DIV., N. CENTRAL DIV.
	CHIEF, ENGINEERING DIV., S. PACIFIC DIV.
	CHIEF ENGINEERING DIV, N ATLANTIC DIV.
	CHIEF, ENGINEERING DIV, S. ATLANTIC DIV.
	CHIEF ENGINEERING DIV, LOWER MISS DIV.
	CHIEF ENGINEERING DIV, MIDDLE EAST.
	CHIEF, ENGINEERING DIV, MISSOURI RIVER DIV.
	CHIEF, ENGINEERING DIV, NORTH PACIFIC DIV.
	CHIEF, ENGINEERING DIV, PACIFIC OCEAN DIV.
	CHF ENGINEERING DIV, EUROPE DIV.
	CHIEF ENGINEERING DIV, HUNTSVILLE DIV.
	CHIEF CONSTRUCTION OPERATIONS DIVISION.
CONSTRUCTION DIVS-COE	CHIEF CONSTRUCTION-OPERATIONS DIV, SATL.
	CHIEF CONSTRUCTION-OPERATIONS DIV, S WESTERN.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHIEF CONSTRUCTION-OPERATIONS DIV, OHIO RIVER.
	CHIEF CONSTRUCTION-OPERATIONS DIV. LR MS VAL.
	CHIEF CONSTRUCTION OPERATIONS DIVISION.
	CHF. CONSTRUCTION-OPERATIONS DIVISION.
	CHIEF CONSTRUCTION-OPERATIONS DIV, NATL.
	CHIEF CONSTRUCTION-OPERATIONS DIV, PACIFIC.
OFFICE OF DCS FOR INFORMATION MANAGEMENT	DEPUTY CHIEF OF STAFF FOR INFORMATION MGMT.
OFFICE OF DCS SUPPLY MAINTENANCE & TRANSPORTATION.	ASST DCS FOR SUPPLY MAINTENANCE & TRANS.
OFFICE OF THE CHIEF OF STAFF	DEP CHIEF OF STAFF FOR PRODUCT ASSUR/TESTING.
	DEPUTY DIRECTOR OF PRODUCT ASSURANCE AND TEST.
OFC DEP CMDG GEN MATERIAL DEV DARCOM	PRIN ASST DEP FOR RES DEVELOP AND ACQUISITION.
	ASST DEP FOR SCIENCE & TECHNOLOGY.
	ASST DEP INT'L PROGRAMS & TECHNICAL TRANSFER.
DIR FOR DEVEL ENGINEERING & ACQUISITION	DEP DIR OF DEVELOP ENGINEERING & ACQUISITION.
	DEPUTY FOR SYSTEMS MANAGEMENT.
	DEPUTY FOR PROGRAM MANAGEMENT.
OFFICE OF MANUFACTURING TECHNOLOGY	DIR OF MANUFACTURING TECHNOLOGY.
OFC DEP CMOLG GEN MATL READINESS	ASST DEP FOR MATERIAL READINESS.
DIREC FOR INTERNAT'L LOGISTICS	DEP DIR OF SECURITY ASSISTANCE.
DIREC FOR MATERIAL MANAGEMENT	ASST DEP CHF OF STAFF FOR POLICY & PROCEDURES.
DEPUTY CHF OF STAFF/CONVENTIONAL AMMUNITION.	DEPUTY CHF OF STAFF/CONVENTIONAL AMMUNITION.
OFFICE OF DCS FOR PROCUREMENT	ASST DCS FOR READINESS.
OFFICE OF DCS FOR PROCUREMENT	DEP DIR PROCUREMENT AND PRODUCTION.
	ASST DCS FOR PROCUREMENT.
DIREC FOR TEST, MEASUREMENT & DIAG EQ	DEPUTY EXECUTIVE DIRECTOR FOR TMDE.
OFC DEP COMMANDING GENERAL FOR RESOURCE MANAGEMENT.	ASST DEPUTY FOR RESOURCE MANAGEMENT.
DIREC FOR PERSONNEL TNG & FORCE DEV	ASST DEPUTY CHF OF STAFF FOR PERSONNEL.
OFFICE OF COMPTROLLER DARCOM HQ	ADCS FOR RESOURCE MGMT
	ADCS FOR COST ANALYSIS.
PROGRAM ANALYSIS & EVALUATION DIRECTORATE	DIRECTOR FOR PROGRAM ANALYSIS & EVALUATION.
AUTOMATED LOGISTICS MANAGEMENT SYSTEMS ACTIVITY.	DIR AUTOMATED LOGISTICS MGT, SYSTEMS ACTIVITY
ARMAMENT MATERIEL READINESS COMMAND (ARRCOM).	COMPTROLLER.
	DEPUTY FOR PROCUREMENT AND PRODUCTION.
	DEPUTY FOR LOGISTICS READINESS.
	DEP FOR INDUST PREPAREDNESS & INSTALLATIONS.
	DEP FOR INDUSTL PREPAREDNESS & INSTALLATIONS.
OFFICE OF THE COMMANDER AMCCOM (ARDEC)	A/TECH/DIR/ (SYS DEVELOPMENT & ENGINEERING).
	DIRECTOR OF PRODUCT ASSURANCE.
	ASSOC TECH DIR (PRODUCIB & PROCESS TECHNOL).
LARGE CALIBER WEAPON SYSTEMS LAB ARRADCOM.	CHIEF MUNITIONS SYSTEMS DIVISION.
	CHIEF APPLIED SCIENCES DIVISION.
	CHF VULNERABILITY LETHALITY DIVISION.
CHEMICAL SYS LAB AMCCOM	CHF MUNITIONS DIVISION.
	CHIEF RESEARCH DIVISION.
AVIATION SYSTEMS COMMAND (AVSCOM)	DIR OF PROCUREMENT AND PRODUCTION.
	DEPUTY AVIONICS RESEARCH & DEVELOPMENT ACT.
	PROGRAM EXEC OFCR FOR COMBAT SUPP & AVIATION.
AVIATION RESEARCH DEVELOPMENT & ENGINEERING CENTER.	DIR US ARMY AVIATION RES & TECH ACTIVITY.
	DIRECTOR OF ENGINEERING.
	DIRECTOR AEROFLIGHT DYNAMICS.
	DIRECTOR PROPULSION DIRECTORATE.
	DEP PROJ MANAGER, LIGHT HELICOPTER FAMILY.
	DIRECTOR AERO STRUCTURES DIV.
COMMUNICATIONS & ELECT COMD (CECOM)	COMPTROLLER, CERCOM.
	DIR OF PROCURMENT AND PRODUCTION.
	DIR, OF PRODUCT ASSURANCE AND TEST.
	ASSISTANT DEP FOR PROCUREMENT AND READINESS.
US ARMY COMMUNICATON ELECTRONICS COMM	ASSOC TECH DIR (ENGINEERING & ACQUISITION).
ASSOC TECHN DIR (RESEARCH & TECHNOLOGY).	
COMMUNICATION RES & DEV COMMAND (CORADCOM).	DIRECTOR, COMMUNICATIONS SYSTEMS CENTER.
	DIR SYSTEMS ENGINEERING AND INTEGRATION.
PROGRAM MGR ARMY TACTICAL DATA SYSTEMS (CORADCOM).	ASSOC TECHN DIR (COMMAND, CONTROL & COMMUN).
	DIR, LIFE CYCLE SOFTWARE ENGINEERING DIR.
DEPOT SYSTEMS COMMAND (DESCOM)	DEPUTY FOR COMMAND OPERATIONS.
	DEP FOR SUPPLY, MAINTENANCE & TRANSP.
US ARMY LABORATORY COMMAND	ASSOC TECHNICAL DIR FOR RES & TECHNOLOGY.
	ASSOC TECH DIR FOR ELEC WARFARE AND INTEL.
HARRY DIAMOND LABS (HDL)	DIRECTOR HARRY DIAMOND LABORATORIES.
	CHF, DEV & ENG DIV.
ARMY RESEARCH OFFICE (AMC)	DIR, ENGR SCI DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
US ARMY BALLISTIC RESEARCH LABORATORY	CHF, SYS ENGINEERING & CONCEPTS ANALYSIS DIV
	CHIEF INTERIOR BALLISTICS DIVISION.
	CHF-LAUNCH AND FLIGHT DIVISION.
	CHF TERMINAL BALLISTICS DIV.
RESEARCH DEVELOPMENT & ENGINEERING CENTER.	DIRECTOR FOR PROCUREMENT.
	DIR, MISSILE LOGISTICS CTR.
	DIRECTOR OF PRODUCT ASSURANCE.
PROJECT MANAGEMENT OFFICES (MICOM)	DEPUTY DIRECTOR FOR DIRECTED ENERGY.
	DIRECTOR FOR DIRECTED ENERGY.
ENGINEERING LAB (MICOM)	DIR FOR SYSTEM ENGINEERING & PRODUCTION
	DEP DIR SYSTEMS SIMULATION & DEVELOPMENT
RESEARCH DEVELOPMENT & ENGINEERING CENTER	DIR FOR TEST AND EVALUATION.
	DIRECTOR FOR ADVANCED SENSORS.
	CHIEF, ADVANCED TECHNOLOGY FUNCTION.
	ASST DEP FOR READINESS.
	ASSOCIATE DIRECTOR FOR SYSTEMS.
	DEP DIRECTOR, APPLIED TECHNOLOGY DIRECTORATE
TROOP SUPPORT COMMAND (TROSCOM)	DIRECTOR OF PROCUREMENT AND PRODUCTION.
BELVOIR RESEARCH & DEVELOPMENT CENTER	ASSOC TECH DIR FOR ENGINEERING AND ACQUI.
	DIR, COMBAT ENGINEERING DIRECTORATE.
	DIRECTOR, LOGISTICS SUPPORT DIRECTORATE.
NATICK RESEARCH DEVELOPMENT & ENGINEERING CENTER.	DIRECTOR INDIVIDUAL PROTECTION LABORATORY.
	DIRECTOR, SCIENCE & ADV TECH DIRECTORATE.
	DIRECTOR, FOOD ENGINEERING DIRECTORATE.
TANK-AUTOMOTIVE COMD (TACOM)	COMPTROLLER, TARCOM.
	DIR FOR PROCUREMENT AND PRODUCTION.
	DIRECTOR OF PRODUCT ASSURANCE.
TANK-AUTOMOTIVE RES & DEV CMD (TARADCOM)	ASST DEPUTY FOR PROCUREMENT AND READINESS.
	ASSOCIATE DIRECTOR FOR SYSTEMS.
TEST AND EVALUATION COMMAND (TECOM)	DIRECTOR FOR TEST
ABERDEEN PROVING GROUND, MD. T&E COMMAND	TECHNICAL DIRECTOR COMBAT SYST TEST ACTIVITY.
PATRIOT PROJECT OFFICE	DEPUTY AIR DEFENSE PM.
XM-1 TANK PROJECT OFFICE	TECHNICAL DIRECTOR.
NUCLEAR MUNITIONS PROJECT OFFICE	DEP PROGRAM MGR-FIGHTING VEHICLE SYSTEMS.
ADVANCED ATTACK HELICOPTER PROJECT OFFICE	DEP/PROG/MGR ADVANCE ATTACK HELICOPTER.
ARMY MATERIAL SYSTEMS ANALYSIS ACTIVITY DARCOM.	CHF COMBAT SUPPORT DIV AMSAA.
	CHF AIR WARFARE DIV.
	CHF, RELIABILITY, AVAILABILITY & MAINTAINABIL.
	CHF GROUND WARFARE DIVISION-AMSAA.
	CHF, LOGISTICS READINESS & ANALYSIS DIVISION.
ARMY INFORMATION SYSTEMS COMMAND	COMPTROLLER.
HEADQUARTERS, US ARMY, EUROPE	ASST DEP CHF OF STAFF, PERSONNEL (CIV PERS).
	ASST DEP CHIEF OF STAFF ENG FOR ENG & HOUSING.
	ASST DEP CHF OF STAFF, RESOURCE MGMT USAREUR.
HEADQUARTERS US ARMY INTELLIGENCE AGENCY	DEPUTY DIRECTOR.
ARMY INTEL AND SECURITY COMMAND	DEPUTY FOR POLICY & DEVELOPMENT.
NICSMA, NATO	ASST DIR, COMMAND, CONTROL AND COMMS SYST.
JOINT TACTICAL COMMAND, CONTROL & COMMS AGENCY.	DEPUTY DIRECTOR FOR ARCHITECTURE.
	ASSOCIATE DIRECTOR JTC3A OFC.
DOD WAGE FIXING AUTHORITY	DIRECTOR, TECHNICAL STAFF.
DEPARTMENT OF NAVY	
OFFICE OF THE SECRETARY	SPEC ASST (MERCHANT MARINE & DEF MATTERS).
OFFICE OF THE UNDER SECRETARY OF THE NAVY	DIR, NAVAL INDUSTRIAL MANAGEMENT PROGRAM.
	ASSISTANT FOR ADMINISTRATION.
OFFICE OF THE AUDITOR GENERAL	AUDITOR GENERAL OF THE NAVY.
NAVAL AUDIT SERVICE HEADQUARTERS	DIRECTOR, PLANS AND POLICY.
	DIRECTOR, AUDIT OPERATIONS.
OFC OF THE ASST SECY OF NAVY (MANPWR & RES AFFS).	STAFF DIR DIR MANPOWER ANALYSIS STAFF.
OFFICE OF CIVILIAN PERSONNEL MANAGEMENT	DIR WRK FORCE MGNT LABOR & EMP REL PROG DEPRT.
	DIR, OFC OF CIVILIAN PERSONNEL MANAGEMENT.
	DIRECTOR, WORKFORCE RELATIONS DEPARTMENT.
	DIRECTOR SKILLS ACQUISITION DEPARTMENT.
	DIR WRK FORCE INFO EVAL & CLASSIF PROG DEPART.
	DIRECTOR MGMT AND ASSESSMENT DEPARTMENT.
	DIR, CLASSIFICATION, COMPENSATION & INFO DEPT.
OCPM-PACIFIC REGION	DIRECTOR PACIFIC REGION.
	DIR PACIFIC REGION.
OFC OF THE ASST SECY OF NAVY (SHPBLDG & LOGS).	DIRECTOR, CONTRACTS & BUSINESS MANAGEMENT.
	ASST DEP CHF NAV MAT (RELIABILITY AND ENG).
	DIRECTOR, FINANCIAL MANAGEMENT OFFICE.
	ASST DIR, CONTRACTS & PRICING DIVISION.
	DIRECTOR OF ACQUISITION FOR SPECIAL PROGRAMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	SPECIFICATION CONTROL ADVOCATE GENERAL.
OFC OF THE ASST SECY OF NAVY (RSCH ENGRNG & SYST).	DEP DIR, SUBMARINE/ANTI-SUBMARINE W/P.
OFC OF THE ASST SECY OF NAVY (FINANCIAL MANAGEMENT).	ASSOC DIRECTOR, INFORMATION SYSTEMS DIVISION.
NAVAL CENTER FOR COST ANALYSIS	S/A FOR COST A/T DIR, NAVAL CTR FOR COST ANAL.
OFFICE OF THE COMPTROLLER OF THE NAVY	ASSOC DIR, BUDGET & REPORTS/FISCAL MANAG DIV.
	EXEC ASST COMPT FOR FINANCIAL MGMT SYSTEMS.
	EXEC ASST COMP BANK, CASH MGMT, CONT FIN, COMPS.
	COUNSEL.
	DIR, INVESTMENT & DEV DIV.
	DIR, BUDGET & MGMT, POLICY AND PROCEDURES DIV.
	EXEC ASST COMPTROLLER FOR ACCOUNTING POLICY.
	DIR, BUDGET EVALUATION GROUP.
	DIR, FINANCE CONTROL DIVISION.
	DIRECTOR, CIVILIAN-CONTRACTOR MANPOWER DIV
NAVY COMPTROLLER STANDARD SYSTEMS ACTIVITY.	DIR, NAVY COMPTROLLER STANDARD SYS ACTIVITY.
OFFICE OF THE GENERAL COUNSEL	ASST GENERAL COUNSEL (ACQUISITION).
	ASST GEN COUNSEL (CIVILIAN PERSONNEL LAW).
DIRECTOR-NAVAL ADMINISTRATION/ASST VICE CNO.	DEPUTY DIRECTOR, LONG RANGE PLANNING GROUP.
	DIRECTOR FOR R&D PROGRAMS.
DIRECTOR, NAVY PROGRAM PLANNING	HEAD, STUDIES & ANALYSIS BRANCH.
	ASST DIR FOR READINESS APPRAISAL.
	CHAIRMAN RESOURCES & COST ANALYSIS.
	TACTICAL DEVELOPMENT & EVALUATION SUPPORT.
	DEPUTY DIRECTOR FOR PROGRAMMING.
	HEAD, LOGISTICS & FLEET SUPPORT BRANCH.
DIRECTOR NAVAL MEDICINE & SURG GENERAL	DIRECTOR RESOURCES DIVISION.
DIRECTOR COMMAND AND CONTROL	DIR, ELECTROMAGNETIC SPECTRUM MANAGEMENT.
DIRECTOR, NAVAL WARFARE	ADVANCED TECHNOLOGY ADVISOR.
	TECHNICAL ADVISOR.
OFFICE OF THE OCEANOGRAPHER OF THE NAVY	TECHNICAL DIRECTOR.
DIRECTOR, R&D TEST AND EVALUATION	DIRECTOR R&D PROGRAMMING & BUDGETING DIVISION.
DIRECTOR, NAVAL INTELLIGENCE	TECHNICAL DIRECTOR.
	ADVISOR FOR RESEARCH & DEVELOPMENT PROGRAMS.
	SR ADV TO THE DIR OF NAVAL INTEL FOR SOV DOC.
DCNO (MANPOWER, PERSONNEL & TRAINING)	DIR, TOTAL FORGE INFO RES & SYS MGNT DIV.
	DIR, CIVILIAN PERSONNEL PROGRAMS DIVISION.
OFFICE DCNO (SUBMARINE WARFARE)	TECH DIR, SUBMARINE & SSBN SECURITY PROGRAM.
OFFICE DCNO (LOGISTICS)	DIR, ACQUISITION LOGISTICS AND ASSESSMENTS.
	D/DIR JOINT OPERATNL LOGIS PLANS & PROGS DIV.
	COORD FOR PROD & INDUSTRIAL MOBILIZATION.
	DIRECTOR STRATEGIC SEALIFT DIVISION.
OFFICE DCNO (AIR WARFARE)	SPEC ASST FOR AVIATION BUDGET AND ACQUISITION.
	SPECIAL ASST FOR TECHNOLOGY AND ANALYSIS.
OFFICE DCNO (PLANS, POLICY & OPERATIONS)	ASSOC DIR OP-63/DIR, INTERN'L PROG, POL & NEG.
NAVAL MILITARY PERSONNEL COMMAND	DIR MILITARY PAY FINANCIAL MGMT DIRECTORATE.
NAVAL OBSERVATORY	DIR, TIME SERVICE DIV.
NAVAL DATA AUTOMATION COMMAND HEADQUARTERS.	TECHNICAL DIRECTOR.
	DIR, NAVAL DATA AUTOMATION COMMAND.
NAVAL SECURITY AND INVESTIG COMM	DIR, NAVAL INVESTIGATIVE SERVICE.
NAVAL SECURITY GROUP COMMAND	SPECIAL ASSISTANT FOR THREAT ASSESSMENT.
NAVAL INTELLIGENCE SUPPORT CENTER	TECHNICAL DIRECTOR.
	DIRECTOR OF THREAT ASSESSMENTS.
NAVAL MEDICAL COMMAND	DEP COMMANDER FOR FIN MGMT & COMPTROLLER.
NAVAL MEDICAL RESEARCH AND DEVELOPMENT COMMAND.	DIR OF PROG & SCIENTIFIC ADVISOR.
NAVAL MEDICAL RESEARCH INSTITUTE	SCIENTIFIC DIRECTOR.
MILITARY SEALIFT COMMAND	DEPUTY COMMANDER.
	COUNSEL.
	ENGINEERING OFFICER.
	COMPTROLLER.
	COMPTROLLER.
	VICE COMMANDER.
NAVAL TACTICAL SUPPORT ACTIVITY	DIR NAVY TACTICAL SUPPORT ACTV.
NAVAL SPACE COMMAND	TECHNICAL DIRECTOR.
OFC OF COMMANDER IN CHF/ALLIED FORCES/SOUTHERN EUR.	DIRECTOR, TACTICAL DEVELOPMENT & TRAINING.
OFFICE OF THE COMMANDER-IN-CHIEF PACIFIC	SCIENTIFIC ADVISOR.
OFC OF THE CHIEF OF NAVAL EDUCATION AND TRAINING.	COMPTROLLER.
	DEP CHIEF OF NAVAL EDUCATION & TRAINING.
	DIRECTOR NROTC SELECTION AND PLACEMENT.
EXECUTIVE DEVELOPMENT CADRE	DIRECTOR, CIVILIAN RESOURCES MANAGEMENT DIR.
	SCIENCE AND TECHNOLOGY ADVISOR.
	TECHNOLOGY ASSESSMENT CONSULTANT.
	ASST FOR RDT&E/ACQUISITION MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	SPEC ASST FOR LONG RANGE STRATEGIC PLANNING.
	CHIEF, RESEARCH AND ANALYSIS.
	SPEC ASST PRIN DEP ASST SECY NAVY (RES E & S).
	SPECIAL ADVISOR FOR MPT RE&S.
STRATEGIC SYSTEMS PROGRAM OFFICE	DIRECTOR, PLANS & PROGRAMS DIVISION.
	HD, GUIDANCE SECTION.
	HEAD FIRE CONTROL SECTION.
	HEAD OPERATIONS ENGINEERING SECTION.
	TEST & INSTRUMENTATION BRANCH ENGINEER.
	BRANCH ENGR, LAUNCHER BRANCH.
	SEC ENGR, ENGRG SECTION.
	HD, NAVIGATION EQUIP SECT.
	CHF ENGR, MISSILE BRANCH.
	CHF ENGR.
	BR ENGR FIRE CONTROL & GUIDANCE BR.
	BRANCH ENGR, SHIP INSTALLATION & DESIGN BR.
	SECT HEAD, REENTRY SYSTEMS SECT. MISSILE BR.
	DEPUTY LOGISTICS SUPPORT COORDINATION.
	DEPUTY DIRECTOR, PLANS & PROGRAMS DIVISION.
	HEAD, RESOURCES BRANCH.
	BRANCH ENGINEER, NAVIGATION BRANCH.
	ASST FOR SYSTEMS INTEGRATION & COMPATIBILITY.
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS	DEPUTY DIR LOGISTICS/FLEET SUPPORT & GROUP.
	EXECUTIVE DIRECTOR, MANAGEMENT, PLANS & PROGR.
	EXEC DIR FOR ACQUISITION MANAGEMENT.
	EXEC DIR, PROCUREMENT MANAGEMENT.
	DEPUTY COMPTROLLER.
	COUNSEL, NAVAL AIR SYSTEMS COMMAND.
	TECHNICAL DIRECTOR, WEAPONS ENGINEERING DIV.
	DIR, ENGINEERING SUP & PROD INTEG MGMT DIV.
	TECHN DIR, COMPUTER RESOURCES & AVIONICS DIV.
	DIRECTOR, WEAPONS DIVISION.
	DIR, EVALUATION DIV.
	TECHN DIR, RES & TECHN.
	TECHNICAL DIRECTOR AIR VEHICLE DIVISION.
	ASST DIR LOGISTICS MGMT DIV.
	DIR AIRCRAFT WEAPONS SYSTEMS PURCHASE DIV.
	PROG DIR, AIR, FOR WEAPON & ARMAMENT PROGRAMS.
	PROG DIR/AIR FOR EW & MISSION SUPPORT PROG.
	EXEC DIR, ACQUISITION DIRECTORATE.
	ADC/FOR ANTI-SUBMARINE WARFARE & SUPPORT PROJ.
	DIR, MISSILE WEAPONS SYSTEMS CONTRACTS DIV.
	DIR, SYSTEMS ACQUISITION DIRECTORATE.
	DIRECTOR COST ANALYSIS DIVISION.
	TECHNICAL DIR JOINT CRUISE MISSILE PROGRAM.
	CHIEF SCIENTIST.
	DIR, SURVEILLANCE AND AVIONICS DIVISION.
	TECHNOLOGY DEMONSTRATION MANAGER.
	DIR, SYSTEMS ALTERNATIVES DIRECTORATE.
	TECHN DIR, NAVY RANGES & FIELD ACTIVITY MGMT.
	DIR MISSION AND EFFECTIVENESS ANALYSIS DIV.
	DIRECTOR, AIRCRAFT DIVISION.
	ASST DIR PROPULSION & POWER DIVISION.
	ASSOC DIR SYSTEMS ENGINEERING MGMT.
	DEPUTY COMMANDER, NAVAL AIR SYS COMMAND.
	DIR CRUISE MISSILE CONTRACTS DIVISION.
	DIRECTOR, PROCUREMENT BUDGET DIVISION.
	DIRECTOR, AIRBORNE WEAPONS LOGISTICS DIVISION.
	DIRECTOR LOGISTICS RESOURCES DIVISION.
	DIR. CORPORATE MANAGEMENT DIRECTORATE.
	EXECUTIVE DIRECTOR FOR AVIATION DEPOTS.
	DIRECTOR, CORPORATE MANAGEMENT DIRECTORATE
	DIR, ASW/SUPPORT A/A COMPONENTS CONTRACTS DIV.
NAVAL WEAPONS ENGINEERING SUPPORT ACTIVITY.	DIR. NAVAL WEAPONS ENG SUPPORT ACTIVITY
NAVAL AIR ENGINEERING CENTER	EXECUTIVE DIRECTOR.
NAVAL AIR TEST CENTER	TECHNICAL DIRECTOR, NATC, PATUXENT RIV, MD.
	DIR, RANGE DIRECTORATE.
NAVAL AVIONICS CENTER	EXECUTIVE DIRECTOR.
	DIR OF APPLIED RESEARCH.
	DIRECTOR OF ENGINEERING.
PACIFIC MISSILE TEST CENTER	ASSOC DIR AND ASSOC TD (RANGES AND TESTS).
	DIRECTOR, WEAPONS EVALUATION DIRECTORATE.
	TECHNICAL DIRECTOR.
	DIR ELEC WARFARE DIR/ASSOC TECH DIR (ELEC/WF).
ORGANIZATION ABOLISHED	EXEC DIR.
NAVAL TRAINING SYSTEMS CENTER	TECHNICAL DIRECTOR.
	DIRECTOR OF RESEARCH & TECHNOLOGY.
	DIRECTOR OF ENGINEERING.
SPACE & NAVAL WARFARE SYSTEMS COMMAND	DIRECTOR, OFFICE OF NAVAL LABORATORIES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASSOCIATE DIRECTOR OF NAVAL LABORATORIES.
	EXEC DIR, CONTRACTS.
	TECHN DIR, SHIP & SHORE COMMUNICATIONS.
	DEPUTY PROG DIRECTOR/TECHNICAL DIRECTOR
	TECH DIR, NAVY SPACE PROJECT OFC.
	ASST PROJECT MGR FOR ELF COMMUNICATIONS.
	ASST PROJ MANAGER FOR SUBMARINE COMMUN SYST.
	ASSOC DEPUTY PROGRAM MANAGER/TECHNICAL DIR.
	DEP PROGRAM MGR DIRECTED ENERGY LASER WEAPONS.
	DIR, INDEPENDENT RESEARCH AND DEVELOPMENT.
	DEPUTY COMPTROLLER.
	COUNSEL.
	TECHN DIR, SYS INTEGRATION & DESIGN GROUP.
	DEP COMMANDER FOR FIN, CONTRACTS & MANAGEMENT.
	TECHNICAL DIRECTOR.
	TECHN DIR.
	ADC–LIFE CYCLE (ENGRING & PID).
	DEPUTY PROJECT MGR/TECH DIR COM SYS PROJ OFC.
	TECHN DIR, C31 SYSTEMS & TECHN DIRECTORATE.
	EXECUTIVE DIRECTOR FOR SYSTEMS ENGINEERING.
	TECHNICAL DIRECTOR, SUBMARINE COMMUNICATIONS.
	DEPUTY DIRECTOR RESEARCH AND TECHNOLOGY GROUP.
	DEP & TECHN DIR, NCCS AFLOAT PROG OFFICE.
	DEP PROG DIR, SPACE & SENSOR SYS DIRECTORATE.
	EXECUTIVE DIRECTOR, LIFE CYCLE SUPPORT GROUP.
	TECHNICAL DIR, C3 SOFTWARE DEV & SUPPORT.
	ASST COMMANDER ACQUISITION & LOGISTIC PLNNG.
	TECH DIR INFO TRANSFER SYS PROGRAM DIRECTOR.
	TECHN DIR, WARFARE SYST ARCHITECTURE GROUP.
	TECHNICAL DIR, ANTI–SUBMARINE WARFARE SYSTEMS.
	TECH DIR, WARFARE SYSTEMS ENGINEERING.
	EXEC DIR, C31 REQUIREMENTS ANALYSIS GROUP.
	DIR, WARFARE SYS ENGINEERING POLICY DIV.
	TECHN DIR. ADVANCED ANTI-SUMARINE WRFR PROG.
	TECHN DIR. WAREFARE SYS ARCH & ENGR DIRECT.
NAVY MANAGEMENT SYSTEMS SUPPORT OFFICE	TECHNICAL DIRECTOR.
NAVAL AIR DEVELOPMENT CENTER	DIR COMM AND NAVIGATIONAL TECH DIREC.
	DIR SENSORS & AVIONICS TECHNOLOGY DIRECTORATE.
	DIR-SYSTEMS DIRECTORATE.
	DIR AIRCRAFT AND CREW SYSTEMS TECHNOLOGY DIRE.
	DIR-PLANNING ASSESSMENT RESOURCES STAFF.
	TECHNICAL DIRECTOR/CONSULTANT.
	DIR, SOFTWARE/COMPUTER TECHNOLOGY DIRECTORATE.
	DEPARTMENT HEAD.
	DEPT HEAD, MISSION AVIONICS TECHNOLOGY DEPT.
	HEAD SYSTEMS & SOFTWARE TECHNOLOGY DEPT.
	HEAD, TACTICAL AIR SYSTEMS DEPARTMENT.
	HEAD, BATTLE FORCE SYSTEMS DEPARTMENT.
	HEAD, AERO ANALYSIS DIVISION.
	WEAPONS SYSTEMS TECHNOLOGY MANAGER.
	HEAD, AIR VEHICLE TECHNOLOGY & PROGRAMS.
	ASSOC DIR FOR ANTISUBMARINE WARFARE.
NAVAL COASTAL SYSTEMS CENTER	TECH DIR/CONSULTANT.
	HEAD, RESEARCH & TECHNOLOGY DEPARTMENT.
	HEAD ENGINEERING & TEST/EVALUATION DEPARTMENT.
	HEAD SYSTEMS DEPARTMENT.
NAVAL OCEAN SYSTEMS CENTER	HEAD, SURVEILLANCE DEPT.
	DIR, UNDERSEA WEAPON SYSTEMS DEPARTMENT.
	HEAD, ENGINEERING & COMPUTER SCIENCES DEPT.
	CHF RES SCIENTIST (ARCTIC SUBMARINE TECH.
	TECHNICAL DIRECTOR/CONSULTANT.
	DEPUTY TECHNICAL DIRECTOR.
	HEAD, MARINE SCIENCES & TECHNOLOGY DEPT.
	HEAD, COMMAND AND CONTROL DEPARTMENT.
	HEAD ELECTRONICS ENGINEERING & SCIENCES DEPT.
	HEAD, COMMUNICATION DEPARTMENT.
	DIRECTOR, SYSTEMS PLANNING GROUP.
NAVAL PERSONNEL RES & DEV CENTER	TECHNICAL DIRECTOR, NPRDC.
	DIRECTOR TRAINING RESEARCH LABORATORY.
DAVID TAYLOR RESEARCH CENTER	ASSOCIATE TECH DIR FOR SYS DEVELOPMENT.
	DIR FOR LONG RANGE PLANS & PROGRAMS.
	ASST TECH DIR (RESEARCH CONSULTANT).
	HEAD SUBMARINE DIVISION.
	ASSOC TECH DIR FOR AREODYNAMICS.
	TECH DIR CONSULTANT.
	ASSOCIATE TECHNICAL DIRECTOR FOR STRUCTURES.
	ASSOC TECH DIR, COMPUTATION & MATHEMATICS.
	ASSOC TECH DIR FOR SHIP ACOUSTICS.
	A/T DIR FOR PROPULSION & AUXILIARY SYSTEMS.
	ASSOC TECH DIR FOR SHIP PERFORMANCE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASSOC TECHN DIR FOR MATERIALS SCI & TECHNOLOGY.
	A/T DIR FOR SHIP E/S & HEAD, SHIP E/S DEPART.
NAVAL SURFACE WAREFARE CENTER	TECH DIR CONSULTANT.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECHN DIR/ASSOC TECHN DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOC TECH DIR.
	DEPT HD/DEP TECH DIR/ASSOCIATE TECH DIR.
	DEP H/D TECH DIR/ASSOC TECH DIRECTOR.
	HEAD, PROTECTIVE SYSTEMS DEPARTMENT.
NAVAL UNDERWATER SYSTEMS CENTER	HEAD, SUBMARINE SONAR DEPARTMENT.
	HEAD, SURFACE SHIP SONAR DEPARTMENT.
	ASSOC TECH DIR FOR TECHNOLOGY.
	TECH DIR, CONSULTANT.
	HEAD UNDERSEA RANGES DEPARTMENT.
	ASSOC TECH DIR FOR SUBMAR COMBAT CONTROL ACOU.
	ASSOC TECHN DIR FOR SUBMARINE WARFARE SYSTS.
	A/T DIR FOR SURFACE ANTI-SUBMARINE WARFARE ASW.
	HD, SUBMARINE ELECTROMAGNETIC SYS DEPT.
	HEAD COMBAT CONTROL SYSTEMS DEPARTMENT.
	HD/ENVIRONMENTAL & TACTICAL SUPPORT SYS DEPT.
	HEAD COMBAT SYSTEMS ANALYSIS STAFF.
NAVAL WEAPONS CENTER	LABORATORY DIR/DEPUTY TECH DIR.
	DEPT TECHN DIR FOR MANPOWER & PERSONNEL.
	ASST TECH DIR DEV (E/W)/HD ELEC WARFARE DEPT.
	ASST TECH DIR DEVE (ORD SYS) & DEPT HEAD.
	TECH DIR/CONSULTANT.
	ASST TECH DIR FOR RES & HEAD RES DEPT.
	TEST & EVAL DIR/ASST TECH DIR FOR TEST & EVAL.
	ASST TECH DIR FOR AIRCRAFT WPNS INTEGRATION.
	ASST TECH DIR FOR ENGNR & HEAD ENGNR DEPT.
	ASST TECH DIR FOR PLANS & HD WEAPONS PLAN GRP.
	ASST TECH DIR FOR FUZES/HD FUZES DEPT.
	HEAD AEROTHERMOCHEMISTRY DIVISION.
	ASST TECH DIR FOR WEAPONS & HEAD WEAPONS DEPT.
	ASST TECH DIR AND HEAD, RANGE DEPARTMENT.
	ASST TECHN DIR FOR TECHNOL B/T BASE DIRECTOR.
NAVAL FACILITIES ENGINEERING COMMAND	COUNSEL.
	DEP DIR OF PROGRAMS & COMPTROLLER.
	DEPUTY COMMANDER FOR CONTRACTS.
	CHIEF ENGINEER.
	TECHN ADVISOR-REAL PROPERTY MANAGEMENT.
	DEPUTY ASSISTANT COMMANDER FOR CONSTRUCTION.
	ASST COMMANDER FOR ENGINEERING & DESIGN.
	ASST COMMANDER FOR FACILITIES & TRANSP.
NAVAL CIVIL ENGINEERING LAB	TECHNICAL DIRECTOR.
NAVAL SEA SYSTEMS COMMAND	DIR, RESEARCH TECHN & ASSESSMENT OFC.
	EXECUTIVE DIR FOR COMBAT SYS ENGINEERING.
	ASST DEP CHF OF NAVAL MATERIAL (OPER & LOGIST).
	EXECUTIVE DIR FOR ELECTRONIC WARFARE.
	COUNSEL.
	ASST DEP COMMANDER FOR CONTRACTS.
	DEP PROJ MGR & TECH DIR.
	DEP DIR, SUBMARINE LOGISTICS DIV.
	EXECUTIVE DIRECTOR/DEPUTY COMPTROLLER.
	DEP PROJ MGR/TECH DIR NUCL POWER AIRCRAFT LAB.
	DEP PROD MGR, SSN21 ACQUIS PROG DIRECTORATE.
	DEPUTY DIR, SURFACE WARFARE SYSTEMS GROUP.
	DIR, SHIP SYSTEMS RES & TECHNOLOGY OFFICE.
	DIR, SHP DES RES & TECH OFC (SEA-03R).
	DEP/TECH DIR, ASW & UNDERSEA WARFARE SYS DIR.
	DIRECTOR-SSW SUBMARINE SYSTEMS DIVISION.
	DIRECTOR-REACTOR MATERIALS DIVISION.
	HEAD ADVANCED DESIGN BRANCH.
	HEAD, IMPROVED REACTOR DESIGN BRANCH.
	DIR-SECONDARY PLANT COMPONENTS DIVISION.
	ASST DIR REACT ENGR DIV, HD ADV REACTOR BR.
	DIR, P/D DIV/ASST DEP DIR, SHIP DESIGN GROUP.
	DIR, STRUCTURAL INTEGRITY SUBGROUP.
	DIRECTOR, NAVAL ARCHITECTURE SUBGROUP.
	DEPUTY DIR HULL SYSTEMS SUB GROUP.
	DIR COMBAT SYSTEMS DESIGN & TEST SUBGROUP.
	DEPUTY DIRECTOR, AUXILIARY SYSTEMS SUBGROUP.
	DEPUTY DIRECTOR, SHIP DESIGN GROUP.
	DEP DIRECTOR, HULL ENGINEERING GROUP.
	DIRECTOR COST ESTIMATING & ANALYSIS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIR SHIPBLDG & OVERHAUL CONTRACTS DIV.
	ASST DEP CMDR, IND/FAC MGMT DIRECTORATE.
	EXECUTIVE DIRECTOR, SURFACE SHIP DIRECTORATE.
	EXEC DIR SUBMARINE DIRECTORATE.
	DEP PROJ MGR/TECH DIR AUX & SPEC MISSION SHIP.
	DEP PROGRAM MGR AMPHIBIOUS SHIP ACQ PROGRAM.
	DEP CHIEF ENGINEER FOR LOGISTICS.
	DEPUTY DIRECTOR, SUPSHIP MANAGEMENT DIVISION.
	D/C ENGINEER, DESIGN & MANUFACTURING QUALITY.
	TECH DIR THEATER NUCLEAR WARFARE PROG OFFICE.
	ASST DEPUTY COMMANDER FOR LOGISTICS.
	DEP PROG MANAGER TECH DIR ATTACK SUBM PROG.
	D/P MGR, GAS TURBINE COMBATANT SHIP PROG OFC.
	DIR, NUCLEAR PROPULSION LOGISTICS DIVISION.
	DIRECTOR REACTOR PLANT VALVE DIVISION.
	DEP PROG MANAGER, AIRCRAFT CARRIER PROG OFC.
	DEPUTY DIRECTOR FOR SUBMARINES.
	DIR SURFACE SHIP SYSTEMS DIVISION.
	TECHNICAL ASSISTANT FOR SURFACE SHIP SYSTEMS.
	DIR, PROPULSION SYSTEMS SUBGROUP.
	DIR, HULL SYSTEMS SUBGROUP.
	EXEC DIRECTOR, COMBAT SYSTEMS DIRECTORATE.
	DIRECTOR, MACHINERY GROUP.
	DIRECTOR, MATERIALS ENGINEERING OFFICE.
	D/T D/T DIR, AMPH & COMBAT S/S LOGISTIC DIV.
	DEP DIR, ELECTRICAL SYSTEMS SUBGROUP.
	EXEC DIR, ANTI-AIR & SURFACE WARFARE SYSTEMS.
	TORPEDO MK 48/ADCP DEFUTY PROGRAM MANAGER.
	ASST DEP C/T DIR, SHIP DESIGN & ENGIN DIREC.
	PROG MGR, AMPHIBIOUS W & S SEALIFT PROGRAM.
	DIRECTOR NAVAL SHIPYARD OPERATIONS GROUP.
	DIR, SURFACE WARFARE, ELEC & R&D CONTRACT DIV.
	DEP COMMANDER FOR AQUISITION PLAN APPRAISAL.
	EXEC DIR, AMPH, AUX, MINE & SEALIFT SHIPS DIR.
	DIR, REACTOR REFUELING DIVISION.
	DEPUTY COUNSEL.
	EXEC DIR. AEGIS SHIPBUILDING PROGRAM.
	PROJECT MANAGER, DEEP SUBMERGENCE SYS PROJECT.
	DEPUTY COMMANDER.
	S/A DIR COMBAT SYS OPER AND ORD SUPPORT GROUP.
CONSOLIDATE CIVILIAN PERSONNEL OFFICE/CRYSTAL CITY.	DIR/CONSOLIDATED CIV PERS OFC/CRYSTAL CITY.
NAVAL SHIP SYSTEMS ENGINEERING STATION	TECHNICAL DIRECTOR.
NAVAL WEAPONS SECTION, SEAL BEACH	TECHNICAL DIRECTOR.
NAVAL UNDERSEAR WARFARE ENGINEERING STATION.	TECHNICAL DIRECTOR.
NAVAL SHIP WEAPONS SYSTEMS ENGINEERING STATION.	TECHNICAL DIRECTOR.
NAVAL ORDNANCE STATION	TECHNICAL DIRECTOR.
NAVAL SUPPLY SYSTEMS COMMAND HDQTRS	SPEC ASST TO DIR RES MGMT-DIR FIN MGMT SYS DI.
	COUNSEL.
	ASST DEP CMDR FOR FIN MGMT/COMP.
	ASST DEP COMMANDER, CONTRACTING MANAGEMENT.
	DIRECTOR BREAKOUT DIVISION.
	A/D COMMANDER, INVENTORY & INFO SYST DEV.
	DIR ADVANCED LOGIS TECH DIV.
	PROG MGT AND TECHNOLOGY PROGRAM MGT OFFICE.
NAVY SHIPS PARTS CONTROL CENTER	EXEC DIR ACQUISITON & LOGISTICS PLNG & SUPPT.
NAVY AVIATION SUPPLY OFFICE	EXECUTIVE DIR LOGISTICS PLANNING & SUPPORT.
NAVY FLEET MATERIAL SUPPORT OFFICE	EXEC DIR, ADP SYSTEM PLANNING AND DEVELOPMENT.
NAVAL SUPPLY CENTER, NORFOLK	EXECUTIVE DIRECTOR, PLANNING AND RESOURCES.
U.S. MARINE CORPS HEADQUARTERS OFFICE	FISCAL DIR OF THE MARINE CORPS.
	ASST DCS FOR INSTALLATIONS AND LOGISTICS.
	DIR CONTRACTS DIVISION.
	COUNSEL FOR THE COMMANDANT.
	CHIEF SCIENTIST.
	ACCOUNTING & FIN OFFICER OF THE MARINE CORPS.
	SPECIAL ASSISTANT TO THE DIR OF INTELLIGENCE.
	DEPUTY DIRECTOR MATERIEL DIVISION.
	ACCOUNTING OFFICER OF THE MARINE CORPS.
	DEP ASST CHIEF OF STAFF, REQUIREMENT PROGRAM.
OFFICE OF NAVAL RESEARCH	DIRECTOR, OFC OF NAVAL RESEARCH.
	DIR OF PLANNING AND ASSESSMENT.
	DEP DIR FOR TECHNOLOGY PROGRAMS.
	COUNSEL, OFFICE OF NAVAL RESEARCH.
	SCIENCE ADVISOR.
	DIRECTOR, OCEAN SCIENCE & TECHNOLOGY.
	ASSOC DIR. CONTRACT RESEARCH DEPARTMENT.
OFC OF THE COMPTROLLER	DIR. FIN MGMT/COMPT/SPEC ASST (FM) TO ASN (R,E&S).
	DEP TO THE SPEC ASST (FM) TO THE ASN (RE&S).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFC OF ASSISTANT CHIEF FOR PATENTS	FIELD DIR, NAVY PATENTS.
	DEPUTY COUNSEL (PATENTS).
OFFICE OF PROCUREMENT SERVICES	DIRECTOR, ACQUISITION.
OFFICE OF THE ASSISTANT CHIEF FOR RESEARCH	DIRECTOR CONTRACT RESEARCH DEPARTMENT.
	DIRECTOR, COMPUTER SCIENCES DIVISION.
	DIRECTOR, MECHANICS DIVISION.
	DIRECTOR, OCEAN ENGINEERING DIVISION.
	DIRECTOR, PHYSICS DIVISION.
	DIRECTOR, CHEMISTRY DIVISION.
	DIR, COGNITIVE & NEURAL SCIENCES DIV.
	DIRECTOR, LIFE SCIENCES DIRECTORATE.
	DIRECTOR, BIOLOGICAL SCIENCES DIVISION.
	DIR, MATHEMATICAL & PHYSICAL SCIENCES DIR.
	DIR, MATHEMATICAL SCIENCES DIVISION.
	DIR, ENGINEERING SCIENCES DIRECTORATE.
	DIRECTOR, ELECTRONICS DIVISION.
	DIRECTOR, GEOPHYSICAL SCIENCES DIVISION.
	DIRECTOR, OCEAN SCIENCES DIVISION.
	DIRECTOR, MATERIALS DIVISION.
ASSISTANT CHIEF FOR TECHNOLOGY	DIR MGMT & MANPOWER.
OCEAN SCIENCE AND TECHNOLOGY DIVISION	DIR, ENVIRONMENTAL SCIENCES DIRECTORATE.
OFFICE OF NAVAL TECHNOLOGY	DIR ANTI/AIR ANTI/SURF WARF & AEROSPACE TEC DV.
	DEP TECH DIR/DIR, TECH PLAN'G & ASSESS GROUP.
	DIR, OFFICE OF NAVAL TECHNOLOGY.
	DIR, INDUSTRY INDEPENDENT RES & DEVEL DIR.
	DIRECTOR, SUPPORT TECHNOLOGY DIVISION.
	CHIEF SCIENTIST.
	DIR ANTI SUBMARINE WARFARE & UNDERSEA TECH.
OFFICE OF UNIVERSITY AFFAIRS	DIRECTOR, OFFICE OF UNIVERSITY AFFAIRS.
NAVAL OCEAN RESEARCH AND DEVELOPMENT ACTIVITY.	TECHNICAL DIRECTOR.
	ASSOC TECH DIR&DIR, OCEAN SCIENCE DIRECTORATE.
	ASSOC TECH DIR&DIR OCEAN ACOUSTICS & TECH DIR.
NATO SACLANT ASW RESEARCH CENTER	DIRECTOR NATO SACLANT ASW RESEARCH CENTRE.
NAVAL RESEARCH LABORATORY	SUPT, CHEMISTRY DIV.
	SUPERINTENDENT, OPTICAL SCIENCES DIV.
	SUPT MATERIALS SCI AND TECH DIVISION.
	SUPERINTENDENT, PLASMA PHYSICS DIV.
	SUPT CONDENSED MATTER & RADIATION SCI DIV.
	A/D RES & DIR M/S COMPONENT TECHNOLOGY.
	SUPERINTENDENT, COMMUNICATIONS SCIENCES DIV.
	HEAD THERMOSTRUCTURAL MATERIALS BRANCH.
	HEAD, SPACE TECHNOLOGY BR.
	HEAD COMBUSTION AND FUELS BRANCH.
	CHF SCI, LAB FOR STRUCTURE OF MATTER.
	DIR OF RESEACH.
	SUPERINTENDENT SPACE SCIENCE DIV.
	SUPERINTENDENT MARINE TECHNOLOGY DIVISION.
	SUPT, RADAR DIV.
	CONT THERM RES COORD/HD, EXP PLAS PHYSICS BR.
	ASSOC DIR OF RES & DIR OF GEN SCI AND TECH.
	ASSOC DIR OF RES & DIR OF SYS RES AND TECH.
	SUPT, ACOUSTICS DIV.
	SUPERINTENDENT ELECTRONICS TECHNOLOGY DIV.
	SUPT, TACTICAL ELECTRONIC WARFARE DIV.
	SUPT UNDERWATER SOUND REFERENCE DIVISION.
	CHIEF SCI LAB FOR COMPUTATIONAL PHYSICS.
	C/S FOR TELECOMS & HEAD, TRANSM TECHNOL BR.
	HEAD OPT TECH STRATEGIC PLANNING ORGANIZATION.
	SUPERINTENDENT, SPACE SYST & TECHN DIVISION.
	SUPERINTENDENT, SPACE SYST TECHNOLOGY DEP.
	HEAD ELECT WARFARE STRATEGIC PLANNING ORG.
	ASSOC DIR OF RES & DIR OF TECH SERVICES.
	ASSOC DIR OF RESEARCH FOR STRATEGIC PLANNING.
	HEAD PROGRAM COORDINATION OFFICE.
	ASSOC DIR OF RESE & DIR OF WARFARE SYS.
	SUPERINTENDENT, SPACE SYST DEVELOPMENT DEP.
	SUPERINTENDENT, SPACECRAFT ENGINEERING DEP.
	CHIEF SCIENCE FOR TELECOMMUNICATION HEAD.
	DIR, NAVAL CENTER FOR SPACE TECHNOLOGY.
DEPARTMENT OF EDUCATION	
MANAGEMENT	DIR, ADMIN RESOURCE MANAGEMENT SERVICE.
	DIRECTOR PERSONNEL MANAGEMENT SERVICE.
	DIR, ASSISTANCE MANAGEMENT & PROCUREMENT SERV.
	DIRECTOR FINANCIAL MANAGEMENT SERVICE.
	DIRECTOR, GRANTS AND CONTRACTS SERVICE.
INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSP GEN FOR POLICY PLNG & MGMT SERV.
	ASST INSPECTOR GENERAL FOR INVESTIGATION

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEP ASST INSP GEN FOR AUDIT OPERATIONS.
	DEP ASST INSPECTOR GEN FOR TECHN AUDIT SVC.
GENERAL COUNSEL	ASSOCIATE GENERAL COUNSEL.
POST-SECONDARY EDUCATION	DIR, DIV OF GRANTS & LOAN MANAGEMENT.
EDUCATIONAL RESEARCH AND IMPROVEMENT	RESEARCH COORDINATOR.
	SENIOR ADVISOR ON LIBRARY PROGRAMS.
NATIONAL CENTER FOR EDUCATION STATISTICS	ASST ADMR POSTSECONDARY & VOC ED STATS.
	ADM, NATIONAL CTR FOR EDUCATIONAL RESEARCH.
	CHIEF, MATHEMATICAL STATISTICIAN.
DEPARTMENT OF ENERGY	
OFFICE OF HEARINGS & APPEALS	DEP DIR FOR LEGAL ANALYSIS.
	DEP DIR FOR FINANCIAL ANALYSIS.
	DEP DIR FOR ECON ANALYSIS.
	DIRECTOR QUALITY ASSURANCE DIVISION.
ALBUQUERQUE OPERATIONS OFFICE	DIR FAC QUALITY ASSURANCE DIVISION.
	ASST MGR FOR ADMINISTRATION.
	DIR TRANSPORTATION SAFEGUARDS DIV.
	DIR OFC OF STRATEGIC PLANNING & ANALYSIS
	DIR BUDGET & RESOURCES MGNT DIV.
	DIRECTOR, PRODUCTION OPERATIONS DIV.
	DIRECTOR, WEAPON PROGRAMS DIVISION.
	WIPP PROJECT MANAGER.
	DIR OF EMERGENCY PLANS & OPERATIONS.
	ASST MANAGER.
	DIR OFC OF MGT PLAN & ANALYSIS.
CHICAGO OPERATIONS OFFICE	ASST MANAGER FOR ADMINISTRATION.
	AREA MANAGER BATAVIA AREA OFFICE.
	ASST MGR FOR ACQUISITION AND ASSISTANCE.
	ASST MGR FOR LABORATORY MANAGEMENT.
IDAHO OPERATIONS OFFICE	ASSISTANT MANAGER FOR ADMINISTRATION.
	DIR REACTOR OPS & PRGMS.
NEVADA OPERATIONS OFFICE	CHIEF COUNSEL.
	ASSISTANT MANAGER FOR ADMINISTRATION.
OAK RIDGE OPERATIONS OFFICE	ASSISTANT MANAGER FOR ADMINISTRATION.
RICHLAND OPERATIONS OFFICE	ASST MGR FOR ADMIN.
	ASST MGR COMMERCIAL NUCLEAR WASTE & PROJECTS.
	ASST MGR SAFETY ENVIRONMENT & SECURITY.
SAN FRANCISCO OPERATIONS OFFICE	ASST MGR FOR ADMIN.
	DIRECTOR, LIVERMORE SITE OFFICE.
SAVANNAH RIVER OPERATIONS OFFICE	ASST MGR FOR ADMIN.
BONNEVILLE POWER ADMINISTRATION	ASST ADMR FOR PWR MGMT.
WESTERN AREA POWER ADMINISTRATION	ASST ADMR FOR MGMT SVCS.
OFC OF THE INSPECTOR GENERAL	SPEC ASST FOR POLICY AND PLANNING.
OFC OF ASST INSP GEN FOR AUDITS	MANAGER, WESTERN REGIONAL AUDIT OFFICE.
	DIRECTOR PROGRAM DEVELOPMENT DIVISION.
	MANAGER, EASTERN REGIONAL AUDIT OFFICE.
	DIRECTOR AUDIT MANAGEMENT DIVISION.
	DIR CAPITOL REGIONAL AUDIT OFFICE.
OFC OF ASST INSP GEN FOR INSPECTIONS	ASST INSP GEN FOR INSPEC.
OFC OF ASST INSP GEN FOR INVESTIGATIONS	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEPUTY ASST INSPECTOR GEN FOR INVESTIGATIONS.
ENERGY INFORMATION ADMINISTRATION	DIRECTOR, EIA-ADP SERVICES STAFF.
OFFICE OF OIL & GAS	DIR, OFC OF OIL AND GAS.
	DEP DIR, OFC OF OIL AND GAS.
	DIRECTOR PETROLEUM SUPPLY DIVISION.
	CHIEF DATA ANALYSIS AND SUPPORT BRANCH.
	DIR RESERVES AND NATURAL GAS DIVISION.
	DIRECTOR PETROLEUM MARKETING DIVISION.
OFC. OF COAL, NUCLEAR, ELECTRIC & ALTERNATE FUELS.	DIR OFC OF COAL NUCL ELEC & ALTERN FUELS.
	DIR COAL DIVISION / DEP DIR OFC.
	DIRECTOR ELECTRIC POWER DIVISION.
	DIR, NUCLEAR AND ALTERNATE FUELS DIVISION.
OFFICE OF ENERGY MARKETS & END USE	DIRECTOR, OFC OF ENERGY MARKETS & END USE.
	DIRECTOR, ENERGY END USE DIVISION.
	DIRECTOR ECONOMICS & STATISTICS DIVISION.
	DIR INTERNL & CONTINGENCY PLANNING DIVISION.
	DIR, ENERGY ANALYSIS & FORECASTING DIVISION.
	DIR ENERGY END USE DIV.
OFFICE OF STATISTICAL STANDARDS	DIR OFC OF STATISTICAL STANDARDS.
	DIRECTOR QUALITY ASSURANCE DIVISION.
ASST. SEC. FOR CONSERVATION & RENEWABLE ENERGY.	DIR PHOTOVOLTAIL ENERGY TECHNOLOGY DIV.
OFFICE OF ENERGY SYSTEMS RESEARCH	DIRECTOR, ENERGY STORAGE DIVISION.
OFFICE OR RENEWABLE TECHNOLOGY	DIR, GEOTHERMAL TECHNOLOGY DIV.
	DIR, BIOFUEL & MUNICIPAL WASTE TECH DIV.
	DIR, SOLAR THERMAL TECHNOLOGY DIV.
DEPUTY ASST SEC FOR ENVIRONMENT SAFETY & HEALTH.	DIRECTOR, OFFICE OF ENVIRONMENTAL AUDIT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ASSISTANT SECRETARY FOR DEFENSE PROGRAMS	STRATEGIC ISSUES DIRECTOR.
OFFICE OF RESOURCE MANAGEMENT	DEP DIR, OFC OF PLANS & RESOURCE MANAGEMENT.
DEP ASST SEC FOR MILITARY APPLICATION	ASSOC DEP ASST SECY FOR MILITARY APPLICATION.
OFFICE OF MILITARY APPLICATION	DIR, PROG ANALYSIS & RESOURCE MANAGEMENT DIV.
	DEP DIR, DIV OF SAFTY, ENVR & EMERGY ACTION.
	ASSOCIATE DIRECTOR OF MILITARY APPLICATIONS.
	DIR, OFC OF WEAPONS RES. DEV AND TESTING.
DEPUTY ASSISTANT SECRETARY FOR INTELLIGENCE.	DIR DIV OF SCIEN & TECHNOLOGICAL INTELLIGENCE.
DEP ASST SEC FOR ENERGY EMERGENCIES	DIR, OFC OF ENERGY EMERGENCY POL & EVAL.
OFFICE OF ENERGY RESEARCH	SCIENTIFIC COMPUTING STAFF.
OFFICE OF MANAGEMENT	DIRECTOR, FISCAL MANAGEMENT DIVISION.
	DEPUTY DIR FOR MANAGEMENT.
	DIRECTOR FOR MANAGEMENT.
	DEPUTY DIR FOR NUCLEAR SAFETY SAFEGUARD.
OFFICE OF HEALTH & ENVIRONMENTAL RESEARCH	DIRECTOR, HUMAN HEALTH & ASSESSMENT DIV.
	DIR HEALTH EFECTS RESEARCH DIVISION.
OFFICE OF FUSION ENERGY	DIR, INTERNATIONAL PROGRAMS STAFF.
	DIR, CONFINEMENT SYSTEMS DIV.
OFFICE OF BASIC ENERGY SCIENCES	DIR ENGR MATH AND GEO SCI DIV.
	DIR CHEM SCI DIV.
	DIR ADV EGY PROJ DIV.
	DIR MAT SCI DIV.
	CHF PROCESSES AND TECH BR.
OFFICE OF HIGH ENERGY & NUCLEAR PHYSICS	CHF PHYSICS RESEARCH BRANCH.
	DIR HIGH EN PHYSICS DIV.
ASSISTANT SECRETARY FOR FOSSIL ENERGY	DIR, OFFICE OF CLEAN COAL TECHNOLOGY.
DEP A/S SEC FOR MGMT PLANNING & TECHNICAL COORD.	DIRECTOR, OFC OF RESOURCE MANAGEMENT.
	ASSOC DAS FOR MGMT. F/RES. & COOPERATIVE DEV.
ASSISTANT SECRETARY FOR NUCLEAR ENERGY	DEPUTY DIRECTOR FOR NAVAL REACTORS.
DEPUTY ASSISTANT SECRETARY FOR NAVAL REACTORS.	PROGRAM MANAGER FOR COMMISSIONED SUBMARINES.
	DIR REACTOR SAFETY & COMPUTATION DIV.
	DIR SUBMARINE SYSTEMS DIV.
	DIR INSTRUMENTATION & CONTROL DIV.
	DIRECTOR OFFICE OF RESOURCES MANAGEMENT.
	H/L R/P, BUDGETING, UPGRADING & A/D SECTION.
	DIRECTOR REACTOR REFULEING DIV.
	DEP DIR KESSELING/WINDSOR/SITE/CGN/S6G REC SV.
	HD SURFACE SHIP SECTION.
	ASST PROGRAM MANAGER FOR SURFACE SHIPS.
	PROG MGR FOR PROTOTYPES & SAPSO.
	ASST CHIEF PHYSCIST.
	DIRECTOR NUCLEAR TECHNOLOGY DIV.
	ASSOC DIR FOR SECURITY, PUBLIC & FOREIGN MAT.
	DIR REACTOR ENGINEERING DIVISION.
	HEAD, CORE MANUFACTURING BRANCH.
	DEP DIRECTOR REACTOR MATERIALS DIVISION.
	DIRECTOR, FISCAL DIVISION.
	PROGRAM MANAGER FOR SHIPYARD MATTERS.
	DIR NUCLEAR COMPONENTS DIVISION.
	PROG MGR FOR SURFACE SHIP/ADV SUBMARINE PROJ.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	MANAGER, WEST MILTON FIELD OFC.
	PROG MANAGER FOR ADVANCED SUBMARINES.
	PROGRAM MANAGER FOR SURFACE SHIPS.
SCHNECTADY NAVAL REACTORS OFFICE	ASST MANAGER FOR OPERATIONS.
PITTSBURGH NAVAL REACTORS OFFICE	SR. NAVAL REACTORS REP (PORTSMTH).
	NAVAL REACTORS REP. (NWPT NEWS).
	SENIOR NAVAL REACTORS REP (PEARL HARBOR).
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	MANAGER, IDAHO BRANCH OFFICE.
DEP ASST SECRETARY FOR URANIUM ENRICHMENT	DIR, OFC OF TECHN DEPLOYMENT & STRATEGIC PLNG.
ASST SECRETARY FOR MANAGEMENT & ADMINISTRATION.	SPEC ASST TO THE PRINC DAS FOR MGMT & ADM.
DIRECTORATE OF ADMINISTRATION	DIR OFC OF ORG AND MGMT SYS.
OFFICE OF PERSONNEL	DIR OFC OF PERSONNEL.
	DIR-EXEC RESOURCES MANAGEMENT DIVISION.
	DIRECTOR, PERSONNEL POLICIES AND PROGRAMS.
	DIR EMPL DVLMT & TRNG DIV.
	DIR HQ PERSONNEL OPERATIONS DIV.
OFFICE OF ORGANIZATION & MANAGEMENT SERVICES.	DEP DIR OFC OF ORG AND MGMT.
	DIR MANAGEMENT SYS ANALYSIS DIV.
	DIR MANPWR RES MGMT DIV.
	DIR ORG PLNG AND MGMT DIV.
OFFICE OF PROJECT & FACILITIES MANAGEMENT	DIR, PROG/CONST MGM, PROCE & OPERATIONS DIV.
	DEP DIR OFC OF PROJECT AND FACILITIES MGMT.
	DIRECTOR, POLICY DEVELOPMENT DIVISION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFFICE OF ADMINISTRATIVE SERVICES	DIR OFC OF ADMIN SVCS.
	DEP DIR OFC OF ADMIN SERV.
OFFICE OF ADP MANAGEMENT	DIR OFC OF ADP MGMT.
	DEP DIR OFC OF ADP MGMT.
OFFICE OF COMPUTER SERVICES & TELECOMMUN MGMT.	DIR OFC OF COMP SERV AND TEL MGMT.
	DEP DIR OFC OF COMP SERV AND TELE MGMT.
	DIR DIV OF TELECOMMUNICATIONS.
	DIRECTOR, OPERATIONS DIVISION.
	DIR INFORMATION SYSTEMS DIVISION.
	D/ADP TELECOMM PLNING & INTEGRITY DIVISION.
OFFICE OF INDUSTRIAL RELATIONS	DIR OFC OF INDUSTRIAL RELATIONS.
PROCUREMENT & ASSISTANCE MANAGEMENT DIRECTORATE.	DIRECTOR, PROCUREMENT MANAGEMENT REV DIV.
	DIRECTOR, POLICY & PROCEDURES DIVISION.
	ASSOC DIR OF PROCUREMENT FOR COMPETITION.
	DIRECTOR, OFFICE OF REVIEW AND ANALYSIS.
	DIRECTOR, OFFICE OF CLEARANCE AND SUPPORT.
OFC OF SMALL DISADVANTAGED BUSINESS UTILIZATION.	DIR OF SM AND DISADV BUS UTILZ.
OFFICE OF POLICY	DIR OFC OF POLICY.
ORGANIZATION ABOLISHED	DIR OFC OF PROCUREMENT SUPPORT.
ORGANIZATION ABOLISHED	DIRECTOR OFFICE OF PROCUREMENT REVIEW.
	DIR CONT BUS CLRNCE DIV.
OFFICE OF PROCUREMENT OPERATIONS	DIR OFC OF PROCUREMENT OPERATIONS.
	DEP DIR OFC OF PROCUR OP.
CONTROLLER	DIR OFC COMPLIANCE AND AUDIT LIAISON.
ASST CONTROLLER FOR BUDGET POLICY & COMPLIANCE.	DIR OFC OF BUDGET.
	DEP DIR OF BUDGET.
	DIRECTOR, BUDGET ANALYSIS DIVISION.
	DIRECTOR, BUDGET OPERATIONS DIVISION.
ASST CONTROLLER FOR FINANCIAL SYS & ACCOUNTING.	DIR OFC OF HEADQUARTERS ACCOUNTING OPERATIONS.
	DIR OFC DEP ACCOUNTING & FIN SYS DEV.
	DIR OFC OF FINANCIAL POLICY.
OFFICE OF GEOLOGIC REPOSITORIES	DIR REP COORDINATION DIVISION.
	DIRECTOR, ENGINEERING & GEOTECHNOLOGY DIV.
	DIR, SITING, LICENSING & QUALITY ASSUR DIV.
OFFICE OF STORAGE & TRANSPORTATION SYSTEMS.	DEPUTY ASSOC DIR FOR STORAGE & SYS DEVEL.
	DIR, TRANSPORTATION AND WASTE SYSTEMS DIV.
	DIRECTOR STORAGE DIVISION.
ENVIRONMENTAL PROTECTION AGENCY	
OFFICE OF THE ASSOC ADMR FOR INTERNATL ACTIVITIES.	SR ADVISOR FOR INTERN'TL CHEMICAL AFFAIRS.
OFC OF THE ASST ADMR FOR ADMIN & RESOURCES MANAGEMENT.	DEP ASST ADMR FOR ADMIN & RESOURCES MGMT.
	SPC ASST TO ASST ADMIN FOR ADMIN & RESC MGNT.
	SPEC ASST TO THE ASST ADMR FOR ADM & RES MGMT.
OFFICE OF THE COMPTROLLER	DIR OFC OF THE COMPTROLLER.
	DIR, FINANCIAL MGMT DIV.
	ASSOCIATE COMPTROLLER.
	DIRECTOR, BUDGET DIVISION.
	DIR RESOURCE SYSTEMS STAFF.
	ASSOC DIR, FINANCIAL MANAGEMENT DIVISION.
OFFICE OF ADMINISTRATION	DIR OFC OF ADMINISTRATION.
	DEPUTY DIR OFC OF ADMINISTRATION.
	DIR OCCUPATIONAL HEALTH & SAFETY STAFF.
	DIR. GRANTS ADMIN. DIV.
	DIRECTOR, PERSONNEL MANAGEMENT DIV.
	DIR, MANAGEMENT AND ORGANIZATION DIVISION.
	DIR PROCUREMENT & CONTRACTS MGMT DIVISION.
	DIR. FACILITIES & SUPPORT SERVICES DIVISION.
	SPEC ASST FOR EMPLOYEE WELLNESS PROGRAM.
OFFICE OF INFORMATION RESOURCES MANAGEMENT.	DIR OFC OF INFORMATION RESOURCES MANAGEMENT.
	ASSOC DIR FOR MGMT PLANNING & EVALUATION.
OFFICE OF ADMINISTRATION-CINCINNATI, OH	DIR OFC OF ADMIN. CINCINNATI.
OFFICE OF ADMINISTRATION-RTP, NC	DIRECTOR OFFICE OF ADMINISTRATION RES MGMT.
	DIRECTOR, OFFICE OF DATA PROCESSING.
OFFICE OF HUMAN RESOURCE MANAGEMENT	DIRECTOR, OFFICE OF HUMAN RESOURCE MGMT.
	DIRECTOR, SENIOR EXECUTIVE SERVICE STAFF.
	SPECIAL ASSISTANT TO DIRECTOR, OHM.
	DEP DIR, OFFICE OF HUMAN RESOURCES MANAGEMENT.
OFC ASST ADMR FOR ENFORCEMENT & COMPLIANCE MONITORING.	DIR OFC COMPLIANCE ANALYSIS PROG OPERATIONS.
NATIONAL ENFORCEMENT INVESTIGATIONS CTR-DENVER.	DIR NAT'L ENFORCEMENT INVESTIGATIONS CENTER.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFFICE OF POLICY ANALYSIS	DIR ECON ANALYSIS DIV.
	DIR, REGULATORY INTEGRATION DIVISION.
OFFICE OF STANDARDS AND REGULATIONS	DIR, CHEMICAL & STATISTICAL POLICY DIVISION.
OFFICE OF MANAGEMENT SYSTEMS AND EVALUATION.	DIR OFC OF MANAGEMENT SYSTEMS & EVALUATION.
	DIR, MANAGEMENT SYSTEMS DIV.
OFFICE OF THE INSPECTOR GENERAL	ASSIST INSPECTOR GEN FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR AUDITS.
	DEP ASST INSPECTOR GENERAL FOR AUDITS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPECTOR GEN FOR MGMT & TECH ASSESSMENT.
	DEPUTY INSPECTOR GENERAL.
OFFICE OF WATER ENFORCEMENT AND PERMITS	DIRECTOR ENFORCEMENT DIVISION.
	DIRECTOR, PERMITS DIVISION.
OFFICE OF WATER REGULATIONS AND STANDARDS	DIRECTOR, INDUSTRIAL TECHNOLOGY DIVISION.
	DIRECTOR, MONITORING & DATA SUPPORT DIV.
	DIR, ANALYSIS AND EVALUATION DIVISION.
	DIR, CRITERIA AND STANDARDS DIVISION.
OFFICE OF WATER PROGRAM OPERATIONS	DIRECTOR, MUNICIPAL FACILITIES DIVISION.
	DIRECTOR MUNICIPAL CONSTRUCTION DIVISION.
OFFICE OF DRINKING WATER	DIRECTOR, STATE PROGRAMS DIVISION.
	DIR OFCV OF PROGRAM DEVELOPMENT & EVALUATION.
	DIRECTOR, CRITERIA AND STANDARDS DIVISION.
OFFICE OF GROUND-WATER PROTECTION	SR ADV FOR GROUND-WATER POLICY & MANAGEMENT.
OFFICE OF WASTE PROGRAMS ENFORCEMENT	DEP DIR, OFFICE OF WASTE PROGRAMS ENFORCEMENT.
	DIR, CERCLA ENFORCEMENT DIVISION.
	DIRECTOR, RCRA ENFORCEMENT DIVISION.
OFFICE OF SOLID WASTE	DIR WASTE MGMT AND ECONOMICS DIVISION.
	DIR. CHARACTERIZATION & ASSESSMENT DIVISION.
	DIRECTOR, PERMITS & STATE PROGRAMS DIVISION.
	DIR, OFC OF POLICY, PLANNING & INFORMATION.
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE	DIR, HAZARDOUS RESPONSE SUPPORT DIV.
	DIR, EMERGENCY RESPONSE DIV.
	DIRECTOR, HAZARDOUS SITE CONTROL DIVISION.
OFC OF THE ASST ADMR FOR AIR AND RADIATION	DIRECTOR, OFC OF PROGRAM MGMT OPERATIONS.
	DIRECTOR, STANDARDS & REGULATION DIV.
	SENIOR SCIENCE ADVISOR.
OFFICE OF AIR QUALITY PLANNING AND STANDARDS.	DIR-STATIONARY SOURCE ENFORCEMENT DIV.
	DIRECTOR, MONITORING & DATA ANALYSIS DIVISION.
	ASSOC DIR FOR INTERMEDIA & INTGOVT PROG.
	DEPTY DIR EMISSION STANDARDS DIVISION.
OFFICE OF MOBILE SOURCES	DIRECTOR, EMISSION CONTROL TECHNOLOGY DIV.
	DIRECTOR CERTIFICATION DIVISION.
	DIR MANUFACTURERS OPERATIONS DIVISION.
	DIR FIELD OPERATIONS & SUPPORT DIVISION.
OFFICE OF RADIATION PROGRAMS	DIR. CRITERIA & STANDARDS DIV.
OFC OF ASST ADMR FOR PESTICIDES & TOXIC SUBSTANCES.	DIR OFC OF PROGRAM MANAGEMENT OPERATIONS.
OFFICE OF PESTICIDES PROGRAMS	DIR. OFC OF PESTICIDES PROGRAMS.
	DIR-REGISTRATION DIVISION.
	DIRECTOR-PROGRAM SUPPORT DIVISION.
	DIR-HAZARD EVALUATION DIVISION.
	DIR BENEFITS AND FIELD STUDIES DIV.
	SR SCIENCE ADVISOR/NAT'L LABORATORY AUD PROG.
	SENIOR SCIENCE ADVISOR.
	CHIEF, TOXICOLOGY BRANCH.
OFFICE OF TOXIC SUBSTANCES	DIRECTOR EXPOSURE EVALUATION DIVISION
	DIR. EXISTING CHEMICALS ASSESSMENT DIVISION.
	DIR. HEALTH & ENVIRONMENTAL REV DIV.
	DIR TOXIC SUBS CONTROL ACT ASSISTANCE OFC.
	DIRECTOR ECONOMICS & TECHNOLOGY DIVISION.
	DIRECTOR, CHEMICAL CONTROL DIVISION.
	DIRECTOR, INFORMATION MANAGEMENT DIVISION.
OFC OF THE ASST ADMR FOR RESEARCH AND DEVELOPMENT.	DIR, OFC OF EXPLORATORY RESEARCH
	DIR OFC OF REG SUPPORT & SCIENTIFIC ANALYSIS
OFC OF RESEARCH PROGRAM MANAGEMENT	DEP DIR FOR TECHNICAL INFORMATION.
	DEP DIR FOR OPERATIONS.
CENTER FOR ENVIRONMENTAL RESEARCH INFO-CINCINNATI.	DIR, ENVIRONMENTAL RESEARCH INFORMATION CENTER.
OFFICE OF HEALTH AND ENVIRONMENTAL ASSESSMENT.	DIRECTOR, CARCINOGEN ASSESSMENT GROUP.
	DIRECTOR EXPOSURE ASSESSMENT GROUP.
ENVIRONMENTAL CRITERIA & ASSESSMENT OFC (RTP).	DIR, ENV CRITERIA & ASSESSMENT OFC (AIR)-RTP.
OFC OF MONITORING SYSTEMS AND QUALITY ASSURANCE.	DIR, AIR TOXICS & RADIATION MONITORING RES DIV.
	DIR, ACID DEPOSITION & ATOMSPHERIC RES DIV.
ENVIRONMENTAL MONITORING SYSTEMS LAB-RTP	DIR, ENVIRONMENTAL MONITORING SYS LABORATORY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ENVIRONMENTAL MONITORING & SUPPORT LAB-CINCINNATI.	DIR ENVIRONMENTAL MONITORING & SUPPORT LAB CIN
OFC OF ENVIRONMENTAL ENGINEERING AND TECHNOLOGY.	DIR, ENERGY PROCESSES DIVISION.
INDUSTRIAL ENVIRONMENTAL RESEARCH LABORATORY-RTP.	DIR, INDUSTRIAL ENVIRONMENTAL RESEARCH LAB RTP
INDUSTRIAL ENVIRONMENTAL RESEARCH LAB-CINCINNATI.	DIR, HAZARDOUS WASTE ENGIN RES LAB-CINCINNATI
	DEP DIR-INDUSTRIAL ENV RES LAB CINCINNATI.
MUNICIPAL ENVIRONMENTAL RESEARCH LAB-CINCINNATI.	DIRECTOR MUNICIPAL ENVIRONMENTAL RESEARCH LAB.
OFFICE OF ENVIRONMENTAL PROCESS AND EFFECTS RES.	DIRECTOR, WATER AND LAND DIVISION.
ENVIRONMENTAL SCIENCES RESEARCH LABORATORY-RTP.	DIR, ENVIRONMENTAL SCIENCES RES LAB-RTP
ENVIRONMENTAL RESEARCH LABORATORY-CORVALLIS.	DIR, ENV RESEARCH LABORATORY CORVALLIS.
ENVIRONMENTAL RESEARCH LABORATORY-ATHENS.	DIR, ENVIRONMENTAL RESEARCH LAB ATHENS GA.
ROBERT B KERR ENVIRONMENTAL RES LABORATORY-ADA.	DIR, ROBERT S KERR ENVIRONMENTAL RES LAB.
ENVIRONMENTAL RESEARCH LABORATORY-DULUTH.	DIR, ENVIRONMENTAL RESEARCH LAB DULUTH.
ENVIRONMENTAL RESEARCH LABORATORY-NARRAGANSETT.	DIR, ENVIRONMENTAL RES LAB, NARRAGANSETT
ENVIRONMENTAL RESEARCH LABORATORY-GULF BREEZE.	DIR ENV RES LAB GULF BREEZE.
HEALTH EFFECTS RESEARCH LABORATORY-RTP	DIR-HEALTH EFFECTS RESEARCH LAB-RTP.
REGION I-BOSTON	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIR WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIRECTOR, PLANNING & MANAGEMENT DIVISION.
REGION II-NEW YORK	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	DIRECTOR, WATER MANAGEMENT DIVISION.
	ASST REGL ADMR FOR POLICY AND MANAGEMENT
	DIR AIR & WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REGION II, NEW YORK.
	DIR, OFFICE OF EMERGENCY & REMEDIAL RESPONSE.
REGION .I.-PHILADELPHIA	DIRECTOR, WATER MANAGEMENT DIVISIONS REG III.
	REGIONAL COUNSEL.
	ASST REG ADMIN FOR POLICY & MANAGEMENT.
	DIRECTOR, HAZARDOUS WASTE MGMT DIV.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
REGION IV—ATLANTA	DIR WATER MANAGEMENT DIVISION REGION IV.
	DIR AIR & WASTE MANAGEMENT DIVISION.
	DIR ENVIRONMENTAL SERVICES DIVISION REGION IV
	ASST REGIONAL ADMIN FOR POLICY AND MGMT.
	REGIONAL COUNSEL, REG IV, ATLANTA, GEORGIA.
	DIRECTOR WASTE MANAGEMENT DIVISION.
REGION V—CHICAGO	DIR AIR MANAGEMENT DIV REGION V
	DIR ENVIR SERVICES DIV REGION V.
	DIR WATER MANAGEMENT DIV REGION V.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT
	REGIONAL COUNSEL.
	DIRECTOR, WASTE MANAGEMENT DIVISION.
REGION VI—DALLAS	DIR AIR & WASTE MANAGEMENT DIV.
	DIR WATER MANAGEMENT DIVISION.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	ASST REGIONAL ADMR FOR MANAGEMENT.
	REGIONAL COUNSEL.
REGION VII—KANSAS CITY	DIR WATER MANAGEMENT DIVISION.
	DIR AIR & WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	ASST REG ADMIN FOR POLICY & MGNT—REG VII.
REGION VIII—DENVER	DIR WATER MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIR AIR TOXICS DIVISION.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
REGION IX—SAN FRANCISCO	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIRECTOR, AIR MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REG IX, SAN FRAN. CAL.
	DIR TOXICS & WASTE MANAGEMENT DIV.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
REGION X—SEATTLE	DIR—WATER DIV REG X.
	REGIONAL COUNSEL.
	DIRECTOR AIR AND TOXICS DIVISION.
	DIRECTOR, HAZARDOUS WASTE DIVISION.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	
OFFICE OF THE CHAIRMAN	DIRECTOR, OFFICE OF REVIEW AND APPEALS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
REGION I—EAST	DIST DIR (BALTIMORE).
	DIST DIR (NEW YORK).
	DIST DIR (ATLANTA).
	DIST DIR (MIAMI).
	DIST DIR-(BIRMINGHAM).
	DIST DIR-(CHARLOTTE).
	DIST DIR-(PHILADELPHIA).
REGION II—WEST	DIST DIR (HOUSTON).
	DISTRICT DIRECTOR (DETROIT).
	DIST DIR (SAN FRANCISCO).
	DIST DIR (DALLAS).
	DIST DIR (CHICAGO).
	DIST DIR—(ST. LOUIS).
	DIST DIR—(INDIANAPOLIS).
	DIST DIR—(MEMPHIS).
	DIST DIR—(LOS ANGELES).
	DIST DIR—(DENVER).
	DIST DIR—(NEW ORLEANS).
	DIST DIR—(PHOENIX).
	DIST DIR—(MILWAUKEE).
	DIST DIR—(SEATTLE).
	DIST DIR—(CLEVELAND).
FARM CREDIT ADMINISTRATION	
OFC OF GEN COUN	ASSOC GEN COUNSEL FOR LITIGATION & ENFORCE.
OFFICE OF EXAMINATION	DIVISION DIRECTOR.
	DIVISION DIRECTOR.
	DIVISION DIRECTOR.
	DIVISION DIRECTOR.
	ASSISTANT CHIEF EXAMINER.
	CHIEF EXAMINER.
	DIVISION DIRECTOR.
OFC OF ADMINISTRATION	DIRECTOR, RECORDS AND PROJECTS DIVISION.
	DIRECTOR, OFFICE OF ADMINISTRATION.
OFC OF INTERNAL AUDIT	DIRECTOR OF INTERNAL AUDIT.
OFFICE OF ANALYSIS & SUPERVISION	CHIEF, FINANCE & OPERATIONS DIVISION.
	ASST DIR OFC OF ANAL & SUPERVISION.
	DIR, OFFICE OF ANALYSIS & SUPERVISION.
	DEPUTY DIR OFFICE OF ANALYSIS & SUPERVISION.
	ASST DEP DIR, OFC OF ANALYSIS & SUPERVISION.
FEDERAL COMMUNICATIONS COMMISSION	
OFFICE OF THE MANAGING DIRECTOR	ASSOC MANAGING DIRECTOR/HUMAN RESOURCES MGMT
MASS MEDIA BUREAU	CHIEF AUDIO SERVICES DIVISION.
	CHIEF VIDEO SERVICES DIVISION.
	CHF. ENFORCEMENT DIV.
PRIVATE RADIO BUREAU	CHIEF LAND MOBILE & MICROWAVE DIVISION.
FIELDS OPERATIONS BUREAU	CHIEF ENFORCEMENT DIVISION.
COMMON CARRIER BUREAU	CHIEF, TARIFF DIVISION.
	ASST BUREAU CHIEF (INTERNATIONAL).
	CHIEF DOMESTIC FACILITIES DIVISION.
	CHIEF ACCOUNTING & AUDITS DIVISION.
OFC OF ENGINEERING TECHNOLOGY	CHIEF TECHNICAL ANALYSIS DIVISION.
	CHIEF, SPECTRUM ENGINEERING DIVISION.
	CHIEF, AUTHORIZATION AND EVALUATION DIVISION.
FEDERAL EMERGENCY MANAGEMENT AGENCY	
OFFICE OF THE DIRECTOR	INSPECTOR GENERAL.
	COMPTROLLER.
OFFICE OF CHIEF OF STAFF	DIRECTOR OF SECURITY.
EMERGENCY OPERATIONS DIRECTORATE	ASST. ASSOC. DIRECTOR OF FACILITIES MGMT
	ASST ASSOC DIR READINESS PLNG & OPS.
	ASST. ASSOC. DIR. OF EMERG COORD & SUPPORT
	DEP ASST ASSOC DIR/CHF, FIELD OPS DIVISION.
NATIONAL PREPAREDNESS PROGRAMS DIRECTORATE.	DEPUTY ASSOCIATE DIRECTOR.
	ASST ASSOCIATE DIRECTOR, OFC OF OPERATIONS.
	ASST ASSOC DIR OPERATING SYSTEMS MGMT
	SENIOR POLICY ADVISOR.
OFFICE OF MOBILIZATION PREPAREDNESS	ASST ASSOC DIR OFC OF MOBILIZATION PREPAREDNESS.
OFFICE OF CIVIL PREPAREDNESS	CHIEF MOBILIZATION RESOURCES DIV.
OFFICE OF SYSTEMS ENGINEERING	ASST ASSOC DIR OFC OF SYSTEMS ENGINEERING.
OFFICE OF OPERATIONS	ASST ASSOCIATE DIRECTOR OFC OF OPERATIONS.
OFFICE OF NATURAL AND TECHNOLOGICAL HAZARDS PROGRAMS.	CHIEF, TECHNOLOGICAL HAZARDS DIVISION.
FEDERAL INSURANCE ADMINISTRATION	DEPUTY ADMINISTRATOR.
FEDERAL ENERGY REGULATORY COMMISSION (DOE)	
OPC OF CHIEF ACCOUNTANT	DEPUTY CHIEF ACCOUNTANT
	DIR DIVISION OF AUDITS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
OFC OF PIPELINE AND PRODUCER REGULATION	DIR, DIV OF PRODUCER RATES AND CERTIFICATIONS.
OFC OF HYDROPOWER LICENSING	DIR, DIV OF INSPECTION.
FEDERAL HOME LOAN BANK BOARD	
OFFICE OF ADMINISTRATION	DIRECTOR ADMINISTRATION.
OFFICE OF ENFORCEMENT	DIRECTOR, OFFICE OF ENFORCEMENT.
OFC OF INTERNAL EVAL AND COMPLIANCE	DIR INTERNAL EVALUATION AND COMPLIANCE OFC.
FEDERAL LABOR RELATIONS AUTHORITY	
OFFICE OF THE CHAIRMAN	CHIEF COUNSEL.
OFFICE OF MEMBER	CHIEF COUNSEL.
OFFICE OF MEMBER	CHIEF COUNSEL.
FEDERAL SERVICE IMPASSES PANEL	EXEC DIRECTOR FSIP.
OFC OF THE EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR/ADMINISTRATOR.
	SOLICITOR.
	DIR CASE MANAGEMENT.
OFC OF THE GENERAL COUNSEL	ASSOC GENERAL COUNSEL.
	ASST GENERAL COUNSEL (FIELD MANAGEMENT).
	ASST GENERAL COUNSEL (APPEALS).
	ASST COUNSEL (FIELD MGMT/LEGAL POLICY).
REGIONAL OFFICES	REGIONAL DIRECTOR—WASHINGTON, D.C.
	REGIONAL DIRECTOR—BOSTON.
	REGIONAL DIRECTOR—NEW YORK.
	REGIONAL DIRECTOR—ATLANTA.
	REGIONAL DIRECTOR—DALLAS.
	REGIONAL DIRECTOR, CHICAGO ILLINOIS.
	REGIONAL DIRECTOR—LOS ANGELES.
	REGIONAL DIRECTOR, SAN FRANCISCO.
	REGIONAL DIRECTOR, DENVER.
FEDERAL MARITIME COMMISSION	
OFFICE OF THE MEMBERS	SECRETARY.
OFFICE OF THE GENERAL COUNSEL	DEP GEN COUN FOR REPORTS OPINIONS AND DECISIO.
OFFICE OF THE MANAGING DIRECTOR	DEP MANAGING DIR.
	DIRECTOR, BUREAU OF ADMINISTRATION.
	DIRECTOR, BUREAU OF TRADE MONITORING.
	DIRECTOR, BUREAU OF DOMESTIC REGULATION.
	DIR, BUREAU OF INVESTIGATIONS.
	DIR, BUREAU OF HEARING COUNSEL.
FEDERAL MEDIATION AND CONCILIATION SERVICE	
OFFICE OF EXECUTIVE DIRECTOR	DIR, OFFICE OF ADMINISTRATION.
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD.	ASST DIR OF FINANCE FOR INVESTMENTS.
FEDERAL TRADE COMMISSION	
OFC OF EXECUTIVE DIRECTOR	DEPUTY EXEC DIR FOR MANAGEMENT.
	DEP EXEC DIR FOR PLANNING & INFORMATION.
GENERAL SERVICES ADMINISTRATION	
OFFICE OF THE ADMINISTRATOR	DIR, OFC OF SMALL & DISADVANTAGED BUS UTILIZ.
OFFICE OF ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION.	DIRECTOR, OFFICE OF ADMINISTRATIVE SERVICES.
	DIR OF AUDIT RESOLUTION & INTERNAL CONTROLS.
	DIRECTOR OF PERSONNEL.
	DEPUTY DIRECTOR OF PERSONNEL.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR AUDITING.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITING.
	ASST I/G FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSP GEN FOR POLICY, PLANS & MGMT SYS.
OFFICE OF ACQUISITION POLICY	ASSOC ADMINISTRATOR FOR ACQUISITION POLICY.
	DEPUTY ASSISTANT ADMR FOR AQUISITION POLICY.
	DIR OF ACQUIS MGMT AND CONTRACT CLEARANCE.
	POLICY ADVR TO THE ASST ADMR FOR ACQ POLICY.
OFFICE OF THE COMPTROLLER	DEPUTY COMPTROLLER FOR FINANCE.
	DEPUTY COMPTROLLER FOR BUDGET.
	DEP TO THE DEP COMPTROLLER FOR FINANCE.
	DIRECTOR, OF TRANSPORTATION AUDITS.
FEDERAL PROPERTY RESOURCES SERVICE	ASST COMM FOR REAL ESTATE POLICY/SALES (FPRS).
	ASST COMMR FOR NATATIONAL DEFENSE STOCKPILE.
PUBLIC BUILDINGS SERVICE	DIR, LAW ENFORCEMENT DIVISION.
	ASST COMR FOR PROCUREMENT.
	DEP ASST COMR FOR PROCUREMENT.
	ASST COMR FOR REAL PROPERTY DEVELOPMENT.
	ASST COMMISSIONER FOR FACILITY PLANNING.
	ASST COMM GOVT WIDE REAL PROP POL OVERSIGHT.
	DIRECTOR, FACILITY MGMT DIVISION.
OFFICE OF INFORMATION RESOURCES MANAGEMENT.	DIRECTOR OF INFORMATION RESOURCES PROCUREMENT,

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASST COMMISSIONER FOR NETWORK SERVICES.
	ASST COMMISSIONER FOR INFO RES MGMT POLICY.
	ASST COMMISSIONER FOR REGIONAL INFO SERVICES.
	DIRECTOR OF GSA INFORMATION SYSTEMS.
	DIR OF SYSTEMS AND TECHNOLOGY ASSESSMENT.
	DIR OF WASH INTERAGENCY TELECOMMUN SYSTEMS.
	DIRECTOR OF TECHNICAL ASSISTANCE.
	DIR OF REGIONAL TELECOMMUNICATIONS SERVICES.
	DIRECTOR OF INNOVATIVE RECORDS SYSTEMS.
OFFICE OF FEDERAL SUPPLY AND SERVICES	ASST COMM FOR POLICY AND AGENCY LIAISON.
	ASST COMMR FOR QUALITY AND CONTRACT ADMN
	ASST COMMISSIONER FOR COMMODITY MANAGEMENT.
	ASST COMMISSIONER FOR CUSTOMER SUPPORT MGMT.
	DEP ASST COMMR FOR CUSTOMER SUPPORT MGMT.
	ASST COMMISSIONER FOR TRANSPORTATION AUDITS.
REGION 2-NEW YORK	DEP REGIONAL ADMR.
	ASST REG ADMR FOR PUBLIC BLDS & REAL PROPERTY.
	ASST REG ADMR FOR FEDERAL SUPPLY & SERVICES.
REGION 3-PHILADELPHIA	ASST REGL ADMR FOR PUBLIC BLDING & REAL PROTY.
	ASST REG ADMR FOR INFO RESO MGMT SER, NE ZONE.
NATIONAL CAPITAL REGION	ASST REGL ADMR FOR INFO RESOURCES MGMT.
	ASST REGL ADMINISTRATOR FOR OPERATIONS.
	ASST REG ADMR FOR REAL ESTATE & DEVEL, NCR.
	DIR OF FED DOMES ASST CTLG STAFF (IRMS) NCR.
REGION 4-ATLANTA	ASST REG ADMR FOR PUBLIC BLDS & REAL PRO R-4.
	ASSISTANT REG ADMIN FOR INFORM RES MGMT-R-4.
	ASST REG ADMR FOR FEDERAL SUPPLY & SERVICES.
REGION 5-CHICAGO	ASST REGL ADMR FOR PUB BLDGS & REAL PROP R-5.
REGION 6-KANSAS CITY	ASST REGIONAL ADMR FOR ADMINISTRATION, R-6.
	ASST REG ADMR FOR PUBLIC BLDS & REAL PROPERTY.
REGION 7-FORT WORTH	ASST REGL ADMR FOR PUB BUILDINGS & REAL PROP.
	ASST REGL ADMR FOR INFO RESOURCES MGMT R-7
	ASST REG ADMR FEDERAL SUPPLY SERVICE.
REGION 9-SAN FRANCISCO	ASST REGL ADMR FOR PUB BLDGS & REAL PROPERTY.
	ASST REG ADMR FOR FEDERAL SUPPLY & SERVICES.
	ASST REG ADMR FOR INFORMATION RES MANAGEMENT.
DEPARTMENT OF HEALTH AND HUMAN SERVICES	
OAS FOR MANAGEMENT AND BUDGET	DIR, OFC OF ASST POL & SYSTEMS REVIEW.
	DEP ASST SEC. FINANCE.
	DIR, DIV OF ACCOUNTING SYSTEMS & PROCEDURES.
	DEP ASST SECY FOR PROCUREMENT, ASST AND LOG.
	DIR OFC OF PROCUREMENT & ASST POLICY.
	DIR OFF PROCUREMENT & ASST FINANCIAL MGMT.
	DEPUTY TO THE DEPUTY ASSISTANT SECY, FINANCE.
OAS FOR PERSONNEL ADMINISTRATION	ASST SEC FOR PERSONNEL ADMINISTRATION.
	DIR, OFC OF HUMAN RELATIONS.
ASSOCIATE GENERAL COUNSEL DIVISIONS	ASSOC GEN COUN, BUSINESS & ADM LAW DIVISION.
	DEP ASSOC GEN COUNL, BUS & ADM LAW DIV.
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR AUDIT.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	SR ASST INSP GEN FOR AUDIT & SYSTEMS.
	DEP ASST INSP GEN FOR CRIMINAL INVESTIGATION.
	DEP ASST INSPECTOR GEN FOR CIVIL FRAUD.
	ASST/DEP/INSP/GEN FOR INFO RES MANAGEMENT.
	ASST INSP GEN FOR ANALYSIS & INSPECTIONS.
	DEP ASST INSP GEN FOR ANAL & INSPECTIONS.
	DEP ASST INSP GEN FOR AUDIT, SOCIAL SECURITY.
	DEP ASST INSP G/A GRANT, INT SYST & EDP.
	DEP ASST INSP GEN FOR AUDIT, HEALTH CARE FIN.
	DEP ASST INSP G/A MGMT, OPS & EVAL.
OAA FOR MANAGEMENT AND SUPPORT SERVICES	DIR OFC OF FINANCIAL MGMT & ADMIN SYSTEMS.
	CHIEF ACTUARY.
	DIR, BUREAU OF DATA MANAGEMENT AND STRATEGY.
	DEP DIR, BUREAU OF DATA MANAGEMENT & STRATEGY.
OAA FOR OPERATIONS	DIR OFC OF PROG ADM, BUR OF PROG OPERATIONS.
	DEPUTY DIRECTOR BUREAU OF QUALITY CONTROL.
OAA FOR PROGRAM DEVELOPMENT	DIR OFFICE OF DEMONSTRATIONS AND EVALUATIONS.
	DIRECTOR, OFC OF RESEARCH.
OAS FOR HEALTH	DEP DIR, OFFICE OF ADMINISTRATIVE MANAGEMENT.
	DIRECTOR, OFFICE OF RESOURCE MANAGEMENT.
NATL CENTER HEALTH SVCS RSCH/TECH ASSMT	DIR, DIV OF INTRAMURAL RESEARCH.
	DIR, DIV OF EXTRAMURAL RESEARCH.
ALCOHOL, DRUG ABUSE & MENTAL HEALTH ADMIN	ASSOC ADMIN FOR EXTRAMURAL PROGRAMS.
NATL INST OF ALCOHOL ABUSE & ALCOHOLISM	CHIEF LABORATORY OF CLINICAL STUDIES.
	DIR DIVISION OF EXTRAMURAL RESEARCH.
	DIR, DIV OF INTRAMURAL CLINICAL & BIO RES.
	DIRECTOR, OFFICE OF SCIENTIFIC AFFAIRS.
NATIONAL INSTITUTE ON DRUG ABUSE	DIRECTOR ADDICTION RESEARCH CENTER.
	DIR DIV OF PRECLINICAL RESEARCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIRECTOR DIVISION OF CLINICAL RESEARCH.
	DIR, DIV OF EPIDEMIOLOGY & STATISTICAL ANALY.
NATL INST OF MENTAL HEALTH	CHF, THEORETICAL STATISTICS & MATHMATICS BRAN.
	EXECUTIVE OFFICER NIMH.
	DIRECTOR, DIVISION OF BASIC SCIENCES.
	DIR, DIV OF EDUC & SERV SYST LIAISON.
	DIRECTOR, DIVISION OF EXTRAMURAL ACTIVITIES.
	DIR DIVISION OF BIOMETRY & APPLIED SCIENCES.
ORGANIZATION ABOLISHED	DIRECTOR JOHN F MARR DIVISION.
	CHIEF DEPARTMENT OF MEDICINE.
INTRAMURAL RESEARCH	DIR, INTRAMURAL RESEARCH PROGRAMS.
	DIR DIVISION OF SPECIAL MENTAL HEALTH RESEARC.
	CHF, LAB OF CEREBRAL METABOLISM.
	CHIEF, SECTION ON MYELIN CHEMISTRY.
	CHF LAB OF NEUROCHEMISTRY.
	CHF LAB OF GEN & COMPARATIVE BIOCHEMISTRY
	CHIEF, LAB OF BRAIN EVOLUTION & BEHAVIOR.
	CHF LAB OF DEVELOPMENTAL PSYCHOLOGY.
	CHF-CLINICAL NEUROPHARMACOLOGY BRANCH.
	CHIEF LAB OF PSYCHOLOGY AND PSYCHOPATHOLOGY
	CHIEF LABORATORY OF NEUROPSYCHOLOGY DCBR.
	CHIEF SECTION HISTOPHARMACOLOGY.
	CHIEF, BIOLOGICAL PSYCHIATRY BRANCH.
	CHIEF, CHILD PSYCHIATRY BRANCH.
CENTERS FOR DISEASE CONTROL	CHIEF RETROVIRUS BRANCH.
	DEPUTY DIRECTOR (AIDS).
	ASSOC DIR FOR RESEARCH & METHODOLOGY.
CENTER FOR INFECTIOUS DISEASES	ASST DIR FOR LABORATORY SCIENCE.
	DIRECTOR, DIVISION OF VIRAL DISEASES.
NATL INST FOR OCCUPATIONAL SAFETY AND HEALTH.	DEPUTY DIRECTOR, NIOSH.
	SENIOR ADVISOR FOR LABORATORY SCIENCE.
CENTER FOR ENVIRONMENTAL HEALTH	DIR CLINICAL CHEMISTRY DIV.
NATIONAL CENTER FOR HEALTH STATISTICS	ASSOC DIR FOR ANALYSIS & EPIDEMIOLOGY.
	ASSOC. DIR. OFC. OF PROG. PLNG. EVAL. & COORD.
FOOD AND DRUG ADMINISTRATION	DIRECTOR PARKLAWN COMPUTER CENTER.
OFFICE OF REGULATORY AFFAIRS	REGL FOOD & DRUG DIR REG I, BOSTON.
	FOOD & DRUG DIR. REG III, PHILADEPHIA.
	REGL:L DIR, FOOD & DRUG ADM, REG IV, ATLANTA.
	REGL FOOD AND DRUG DIRECTOR, REG V, CHICAGO.
	REGIONAL FOOD & DRUG DIR. REG VI, DALLAS.
	REG:L DIR, FOOD & DRUG ADM, REG IX (SAN FRANC).
	REGL FOOD & DRUG DIR, REG X, SEATTLE.
	DIRECTOR CONTAINMENTS POLICY STAFF.
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH.	DIRECTOR, DIVISION OF BIOMETRY.
CENTER FOR FOOD SAFETY & APPLIED NUTRITION	DIR DIVISION OF TOXICOLOGY.
	DIR OFC OF PHYSICAL SCIENCES.
	DIR OFC OF NUTRITION & FOOD SCIENCES.
	ASSOC DIR FOR LABORATORY INVESTIGATIONS.
	DIR, DIV OF NUTRITION.
	DIR OFC OF COMPLIANCE.
	DIR DIV OF MICROBIOLOGY.
	DIR DIV OF CHEMICAL TECHNOLOGY.
	DIRECTOR OFC OF TOXICOLOGICAL SCIENCES.
CENTER FOR DRUG EVALUATION AND RESEARCH	DIR DIV ONCOLOGY & RADIOPHARMACEUTICAL DRUG P
	DIR DIV OF SCIENTIFIC INVESTIGATIONS.
	DIR DIV OF CARDIO-RENAL DRUG PRODUCTS.
	DIR OFFICE OF COMPLIANCES.
	DEP DIR OFC OF EPIDEMIOLOGY & BIOSTATISTICS.
	DIR DIV OF BIOMETRICS.
	DIR DIV/DRUG & BIOLOGICAL PRODUCT EXPERIENCE.
	DIRECTOR DIV OF BIOPHARMACEUTICS.
	DIR, DIV OF NEUROPHARMACOLOGICAL DRUG PROD.
	DIR DIV OF SURGICAL DENTAL DRUG PRODUCTS.
	DIR. DIV OF METABOLISM & ENDOCRINE DRUG PROD.
	DEP DIR FOR PROG MANAGEMENT.
	DEPUTY DIRECTOR FOR MEDICAL ACTIVITIES.
	DIRECTOR, DIVISION OF OTC DRUG EVALUATION.
	DIR OFC OF DRUG RESEARCH & REVIEW CTR.
	DIRECTOR, OFFICE OF DRUG STANDARDS.
	DEPUTY DIR, OFC OF DRUG STANDARDS.
	DIRECTOR, DIVISION OF GENERIC DRUGS.
	DEPUTY DIRECTOR FOR PROGRAM MANAGEMENT.
	DIR. DIV OF G & C DRUG PRODUCTS.
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH.	DIR DIV BIOLOGICAL PRODUCT COMPLIANCE.
	DEP DIR OFC OF BIOLOGICS RESEARCH & REVIEW.
	DIRECTOR, DIVISION OF BIOCHEM & BIOPHYSICS.
	DIRECTOR, DIVISION OF BACTERIAL PRODUCTS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
CENTER FOR VETERINARY MEDICINE	DIR-DIV OF THERA DRUGS FOR NON FOOD ANIMALS.
	DIR OFC OF SURVEILLANCE & COMPLIANCE.
	DIRECTOR, OFC OF NEW ANIMAL DRUG EVALUATION.
	DIRECTOR, OFFICE OF SCIENCE.
	DIR, DIV OF DRUGS MANUFACTURING & CONTROLS.
	DIR DIV OF BIOMETRICS & PRODUCTION DRUGS.
	DIR DIV OF THERAPEUTIC DRUGS FOR FOOD ANIMALS.
	DIR DIV OF VETERINARY MEDICAL RESEARCH.
	ASSOC DIR SCIENTIFIC INFOR & EDUCATION.
	DIRECTOR, DIVISION OF ANIMAL FEEDS.
CENTER FOR DEVICES & RADIOLOGICAL HEALTH	DIR OFC OF DEVICE EVALUATION.
	DIR OFC OF STANDARDS & REGULATIONS.
	DIR OFFICE OF SCIENCE & TECHNOLOGY.
	DEPUTY DIRECTOR, OFFICE OF COMPLIANCE.
	DEP DIR OFFICE OF DEVICE EVALUATION.
IMMEDIATE OFFICE OF THE DIRECTOR	DIRECTOR, DIV OF FINANCIAL MANAGEMENT.
	DIRECTOR, DIVISION OF CONTRACTS & GRANTS.
	ASSOCIATE DIR FOR MED APPLICATIONS OF RESCH.
	DIR OFC OF PROTECTION FROM RESEARCH RISK.
	ASSOC DIR FOR INTRAMURAL RESEARCH.
	SR ADV TO DEP DIR FOR EXTRAMURAL RES & TRNG.
	DIRECTOR, DIVISION OF PROGRAM ANALYSIS.
NAT'L HEART, LUNG & BLOOD INSTITUTE	ASSOC DIRECTOR FOR REVIEW.
	ASSOC DIR EPIDEMIOLOGY & BIOMETRY PROGRAM.
	CHIEF, SICKLE CELL DISEASE BR.
	DIR DIV OF LUNG DISEASES.
	DIR, DIV OF BLOOD DISEASES & RESOURCES.
	DIR, A/SCLEROSIS, HYPERTENSION & LIP MET PROG.
	DEP DIRECTOR DIV OF EXTRAMURAL AFFAIRS.
	ASSOC DIR, CLINICAL APPLS PREVENTION PROG.
	DIRECTOR, DIVISION OF EXTRAMURAL AFFAIRS.
INTRAMURAL RESEARCH	CHF LAB OF BIOCHEMICAL GENETICS.
	CHF LAB OF BIOCHEMISTRY.
	CHIEF LAB OF MOLECULAR HEMATOLOGY.
	HD, SECTION ON CHEMISTRY.
	CHIEF, LABORATORY OF CHEMICAL PHARMACOLOGY
	SR RSCH CHEMIST, SECT ON CELL BIOLOGY.
	CHIEF MACROMOLECULES SECTION.
NATIONAL CANCER INSTITUTE	ASSOCIATE DIRECTOR FOR INTERNATIONAL AFFAIRS.
DIVISION OF CANCER BIOLOGY & DIAGNOSIS	DEP DIR DIV OF CANCER BIOLOGY & DIAGNOSIS.
	CHIEF, LABORATORY OF CELL BIOLOGY.
	HEAD DEVELOPMENTAL BIOCHEMISTRY SECTION.
	CHIEF LABORATORY OF BIOCHEMISTRY.
	ASSOCIATE DIRECTOR EXTRAMURAL RESEARCH PROG.
	CHF, MACROMNLECULAR INTERACTIONS SECTION.
	CHIEF, DERMATOLOGY BRANCH.
	HEAD, CELLULAR IMMUN OF MOD SELF ANTIGENS GR.
	CHIEF, GENE REGULATION SECTION.
	CHIEF LABORATORY OF IMMUNOBIOLOGY.
DIVISION OF CANCER ETIOLOGY	DIR. DIV OF CANCER ETIOLOGY.
	CHIEF LAB OF BIOLOGY.
	CHIEF CLINICAL EPIDEMIOLOGY BRANCH.
	CHIEF LABORATORY OF MOLECULAR CARCINOGENESIS.
	CHF LAB OF EXPERIMENTAL PATHOLOGY.
	HEAD, MATH STATISTICS & APPLIED MATHEMATICS.
	HEAD IN VITRO CARCINOGENESIS SECTION.
	ASSOCIATE DIR FOR BIOLOGICAL CARCINOGENIS.
	ASSOC DIR FOR CHEM & PHYSICAL CARCINOGENISIS.
DIVISION OF CANCER PREVENTION & CONTROL	DEP DIR. OF CANCER PREVENTION & CONTROL.
	ASSOC DIR CANCER PREVENTION RESEARCH PROG.
	ASSOC DIR, CENTERS & COMMUNITY ONCOLOGY PROG.
DIVISION OF EXTRAMURAL ACTIVITIES	DIR. DIV OF EXTRAMURAL ACTIVITIES.
	DEPUTY DIR. DIV OF EXTRAMURAL ACTIVITIES.
DIVISION OF CANCER TREATMENT	CHF-RADIATION ONCOLOGY BR.
	CHF-DRUG EVALUATION BRANCH.
	CHF-LAB OF MEDICINAL CHEMISTRY & BIOLOGY.
	ASSOC DIR RADIATION RESEARCH PROGRAM.
	ASSOC/DIR BIOLOGICAL RESPONSE MODIFIERS PROG.
NATL INSTITUTE OF DIABETES & DIGESTIVE & KIDNEY DIS.	DIR DIV KIDNEY, UROLOGIC & HEMATOLOGIC DISEASES.
	DIR DIVISION OF EXTRAMURAL ACTIVITIES.
	ASSOC DIR FOR DIABETES, ENDOCRIN & METAB DIS.
	ASSOCIATE DIRECTOR FOR DIGESTIVE DISEASES.
	ASSOC DIRECTOR FOR RESEARCH & ASSESSMENT.
	ASSOC DIR DISEASE PREVENTION TECHNOL TRANSFER.
INTRAMURAL RESEARCH	CHF SECT ON INTERMEDIARY METABOLISM.
	CHIEF SECTION ON BIOCHEMICAL MECHANISMS.
	CHF SECT OF BIOCHEMISTRY.
	CH SECT BIOCHEMISTRY OF AMINO ACIDS.
	CHF, SECTION ON SPECTROSCOPY & STRUCTURE.
	CHF SECT. ON METABOLIC ENZYMES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHF SECT ON PHYSICAL CHEMISTRY.
	CHIEF, SECTION ON MOLECULAR STRUCTURE.
	SR RES PHYSICIST, MATHEMATICAL RESEARCH BR.
	SR CHEMIST, CLINICAL ENDOCRINOLOGY BR.
	SENIOR RESEARCH CHEMIST.
	CHIEF LAB OF CHEMISTRY.
	SENIOR RESEARCH CHEMIST.
	CHIEF, LABORATORY OF BIO-ORGANIC CHEMISTRY.
	CHIEF OXIDATION MECHANISMS SECTION L B C.
	CHIEF LABORATORY OF BIOCHEMISTRY & METABOLISM.
NATL INSTITUTE OF ARTH MUSCULOSKELETAL & SKIN DISEASES.	CHF, LAB OF PHYSICAL BIOLOGY.
	ASSOC DIR FOR ARTHRITIS, BONE, SKIN DISEASES.
NATIONAL LIBRARY OF MEDICINE	DEP DIR, NATL LIB OF MEDICINE.
	DEP DIR FOR RES AND EDUCATION.
	ASSOCIATE DIRECTOR FOR LIBARY OPERATIONS.
	ASSOC DIR FOR EXTRAMURAL PROGRAMS.
	ASSOC DIR, SPECIALIZED INFO SERVICES.
	ASST DIR FOR INTERNATIONAL PROGRAMS.
	DEP DIR LISTER HILL NATL CTR FOR BIOMED COMMS.
	ASSOCIATE DIRECTOR FOR PLANNING.
	DIRECTOR, INFORMATION SYSTEMS.
NATL INST OF ALLERGY & INFECTIOUS DISEASES	DIR-IMMUNOLOGY-ALLERGIC & IMMUNOLOGIC DISEASE.
	CHF, LAB OF PARASITIC DISEASES.
	CHF, LAB OF BIOLOGY OF VIRUSES.
	CHF, LABORATORY OF MICROBIAL IMMUNITY.
	SPEC ASST FOR BIOMETRY, OFF SCI DIR.
	HD, MOLECULAR VIROLOGY SECTION.
	DIRECTOR, MICROBIOLOGY & INFECTIOUS DIS PROGS.
	CHIEF, LAB OF IMMUNOGENETICS.
	DIRECTOR, EXTRAMURAL ACTIVITIES PROGRAM.
	CH, LAB OF MICROBIAL STRUCTURE AND FUNCTION.
	CHIEF LAB OF MOLECULAR MICROBIOLOGY.
	HEAD MALARIA SECTION.
NATL INST ON AGING	SCIENTIFIC DIR NIA.
	NATL INST ON AGING.
	CHIEF, LAB OF MOLECULAR AGING.
	CHIEF LAB OF CELLULAR & MOLECULAR BIOLOGY.
	ASSOCIATE DIR FOR BEHAVIORAL SCIENCES RES.
	ASSOC DIR BIOMED RES & CLINICAL MEDICINE PROG.
	ASSOC DIR, OFFICE OF EXTRAMURAL AFFAIRS.
	ASSOC DIR, EPIDEMI, DEMO, & BIOMETRY PROGRAM.
	ASSOC DIR FOR PLNG, ANALYSIS & COMMUNICATIONS.
NATL INST OF CHILD HEALTH & HUMAN DEVELOPMENT.	CHIEF, LABORATORY OF MOLECULAR GENETICS.
	DEPT DIR CENTER FOR POPULATION RES.
	CHF, ENDOCRINOLOGY & REPRODUCTION RESEARCH BR.
	DIR EPIDOMIOLOGY & BIOMETRY RES PROGRAM.
	DIRECTOR CTR FORRES FOR MOTHERS & CHILDREN.
	DIRECTOR CNTR FOR POPULATION RESEARCH.
	CHF, LAB OF NEUROCHEMISTRY & NEUROIMMUNOLOGY.
	CHIEF, SECTION ON GROWTH FACTORS.
	ASSOC DIR FOR PREVENTION RESEARCH.
NATL INST OF DENTAL RESEARCH	CHIEF LAB OF MICROBIOLOGY & IMMUNOLOGY.
	CHF, LABORATORY OF DEV BIOLOGY & ANOMALIES.
	CHF, ENZYME CHEMISTRY SECTION.
	ASSOC DIR, EXTRAMURAL RESEARCH PROGRAM.
	CHIEF MINERALIZED TISSUE RESEARCH BRANCH.
	DIR, EPIDEMIOLOGY & ORAL DISEASE PREVENT PROG.
	CHIEF, EPIDEMIOLOGY BRANCH.
NATL INST OF ENVIRONMENTAL HEALTH SERVICES	DIR, DIV OF INTRAMURAL, NIEHS.
	CHF LAB OF PULMONARY PATHOBIOLOGY.
	HD, CELL PHARMACOLOGY SECTION.
	CHIEF, LAB OF GENETICS.
	HEAD MUTAGENESIS SECTION.
	HEAD MAMMALIAN MUTAGENESIS SECTION.
	DIR. DIV OF BIOMETRY AND RISK ASSESSMENT.
	SENIOR SCIENTIFIC ADVISOR.
NATL INST OF GENERAL MEDICAL SCIENCES	DIR. CELL & MOLEC BASIS OF DISEASE PROG.
	DIR GENETICS PROGRAM.
	ASSOC DIR FOR PROGRAM ACTIVITIES.
	DIR, PHARMACOLOGICAL SCIENCES PROGRAM BRANCH.
	DIR BIO PHYS SCIENCES PROGRAM BRANCH.
NATL INST OF NEURO & COMM DISORDERS & STROKE.	DIR FUNDAMENTAL NEUROSCIENCES PROGRAM.
	DIRECTOR, COMMUNICATIVE DISORDERS PROGRAM.
	DIRECTOR, STROKE AND TRAUMA PROGRAM.
INTRAMURAL RESEARCH	CHIEF LAB OF CENTRAL NERVOUS SYSTEM STUDIES.
	CHF, DEVEL & METAB NEUROLOGY BRANCH.
	CHF, LAB OF MOLECULAR BIOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEPUTY CHIEF, LAB OF CENTRAL NERVOUS SYS STUD.
	HD CELLULAR NEUROPATHOLOGY SECTION.
	CHIEF, SECTION ON NEURORADIOLOGY.
	CHIEF, LAB OF BIOPHYSICS.
	CHF, LAB OF NEUROPATHOLOGY & NEUROANATOMICAL S.
	CHF, LAB OF NEUROCHEMISTRY.
	CHIEF, NEURONAL INTERACTIONS SECTION.
	CHF, SURGICAL NEUROLOGY BRANCH.
	CHF, LAB OF NEURO-OTOLARYNGOLOGY.
	CHIEF, LABORATORY OF MOLECULAR GENETICS.
	CHIEF BIOMETRY & FIELD STUDIES BRANCH.
NATL EYE INSTITUTE	CHF, LAB OF VISION RESEARCH.
	DIR, INTRAMURAL RESEARCH PROGRAM, NEI.
	CHIEF, LAB OF MOLECULAR & DEV. BIOLOGY.
	CHIEF, LABORATORY OF SENSORIMOTOR RESEARCH.
	CHIEF, LAB OF OPHTHALMIC PATHOLOGY.
	ASSOC DIR, BIOMETRY & EPIDEMIOLOGY PROG.
	DEP ASSOC DIR, BIOMETRY & EPIDEMIOLOGY PROG.
NIH CLINICAL CENTER	ASSOC DIR FOR CLINICAL CARE/DIR, CLINICAL CTR.
	HEALTH SYSTEMS ADMINISTRATOR.
	ASSOCIATE DIRECTOR FOR PLANNING.
DIVISION OF COMPUTER RESEARCH & TECH	CHIEF, COMPUTER CENTER BRANCH.
	CHIEF, PHYSICAL SCIENCES LAB.
	CHIEF, DATA MANAGEMENT BRANCH.
DIVISION OF RESEARCH RESOURCES	DIR, DIV OF RESEARCH RESOURCES.
	DEP DIR, DIV OF RES RESOURCES.
	DIR, GEN CLINICAL RES CENTER PROGRAM BRANCH.
DIVISION OF RESEARCH GRANTS	ASSOCIATE DIRECTOR FOR REFERRAL AND REVIEW.
	ASSOC DIR FOR STATISTICS & ANALYSIS.
DIVISION OF RESEARCH SERVICES	CHF BIOMEDICAL ENGINEERING & INSTRUMENTATION.
NATIONAL CENTER FOR NURSING RESEARCH	DIRECTOR NATIONAL CNTR FOR NURSING RESEARCH.
OFC OF COMMISSIONER	CHIEF FINANCIAL OFFICER.
OFC OF ACTUARY	CHF ACTUARY.
	DEP CHIEF ACTUARY (LONG-RANGE).
	DEP CHIEF ACTUARY SHORT RANGE SSA.
OFC OF SYSTEMS INTEGRATION	DIRECTOR, OFFICE OF PROGRAMMATIC SYSTEMS.
OFC OF SYSTEMS OPERATIONS	DIR, OFC OF COMPUTER PROCESSING OPERATIONS.
OFC OF SYSTEMS REQUIREMENTS	DIR, OFFICE OF CLAIMS & PAYMENT REQUIREMENTS.
	DIR. OFC. OF PLANNING CONTROL & VALIDATION.
	DIR. OFC. OF PRE-CLAIMS REQUIREMENT.
OFC OF ASSESSMENT	ASSOC. COMMR. FOR ASSESSMENT
	DEPUTY ASSOCIATE COMMISSIONER ASSESSMENT.
OFC OF MGMT, BUDGET, AND PERS.	DIR OFC OF MATERIEL RESOURCES.
	DIR OFC OF FINANCIAL RESOURCES.
	DIRECTOR, OFFICE OF ACQUISITION AND GRANTS.
FAMILY SUPPORT ADMINISTRATION	ASSOC ADMIN OFC OF FINANCIAL MANAGEMENT.
	ASSOC ADMR, OFC OF MGMT AND INFO SYSTEMS.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	ASST I G FOR FRAUD CONTROL & MGMT OPERATIONS.
	DEPUTY ASST INSPECTOR GEN FOR AUDIT OPERATION.
	DEP ASST INSP GEN FOR PLNG & QLTY ASSURANCE.
ASSISTANT SECRETARY FOR ADMINISTRATION	DEPUTY DIRECTOR, OFC. OF PERSONNEL & TRAINING.
	DIRECTOR, OFFICE OF FINANCE & ACCOUNTING.
	DIR MORTGAGE INSURANCE ACCOUNTING SERV GROUP.
	DIRECTOR OFC OF PROCUREMENTS & CONTRACTS.
	DIRECTOR, GENERAL & PROGRAM ACCOUNTING GROUP.
	DEPUTY DIRECTOR OFFICE OF FINANCE & ACCOUNTG.
	SPECIAL PROJECTS OFFICER.
ASSISTANT SECRETARY FOR HOUSING	DIRECTOR, FIELD MONITORING STAFF.
ASST SECY FOR FAIR HOUSING AND EQUAL OPPORTUNITY.	DIR OFC OF HUD PROGRAM COMPLIANCE.
	DIR OFC OF FAIR HOUSING ENFORCE AND SEC 3.
ASST SECY FOR COMMUNITY PLANNING AND DEVELOPMENT.	DIR OFFICE OF ENVIRONMENT AND ENERGY.
REGION II NEW YORK	MANAGER.
REGION III PHILADELPHIA	MANAGER.
REGION IV ATLANTA	MANAGER.
REGION V CHICAGO	MANAGER.
	MANAGER.
	MANAGER.
	MANAGER.
REGION VI DALLAS	MANAGER.
	MANAGER.
REGION IX SAN FRANCISCO	MANAGER.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
DEPARTMENT OF INTERIOR	
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITS.
OFC OF THE SOLICITOR	DEPUTY ASSOC SOLICITOR, GENERAL LAW.
	ASST SOLICITOR BUREAU OF PARKS AND RECREATION.
	SPEC ASST TO THE ASSOC SOLICITOR, INDIAN AFFR.
	SPECIAL ASST TO THE ASSOC SOLICITOR-GEN LAW
	DEP ASSOCIATE SOLICITOR-ENERGY & RESOURCES.
	DEP ASSOC SOLICITOR, INDIAN AFFAIRS.
ASST SECY FOR POLICY, BUDGET & ADMINISTRATION.	CHIEF, DIVISION OF ACQUISITION AND GRANTS.
	ASST DIR FOR ECONOMICS.
	ASST DIR FOR PROGRAMS.
	CHIEF, DIV OF BUDGET OPERATIONS (A).
	ASST DIR FOR SPECIAL ANALYSIS.
	CHIEF DIVISION OF BUDGET OPERATIONS (B).
NAT'L PARK SERVICE	SENIOR SCIENTIST
	SUPERINTENDENT GREAT SMOKY MTNS NATL PARK.
	SCIENCE & TECHNOLOGY ADVISOR.
	ASST DIR MINORITY BUSINESS ENTERPRISE.
US FISH & WILDLIFE SERVICE	DEPUTY ASSOCIATE DIRECTOR-RESEARCH.
	(SPECIAL ASSISTANT TO THE DIRECTOR).
	DEP ASST DIR—FISH & WILDLIFE ENHANCEMENT
	DEP ASST DIR—POL, BUDGET, & ADMINISTRATION.
	RESEARCH DIRECTOR PATUXENT RESEARCH CENTER.
	DEP ASST DIR—FISHERS.
	DEP ASST DIR—RESEARCH & DEVELOPMENT
	DEP ASST DIR—FISH & WILDLIFE ENHANCEMENT
	ASST REGL DIR—TECHN & ADM SERVICES.
BUREAU OF MINES	RESCH DIR, PITTSBURGH RESEARCH CENTER.
	RESEARCH DIR, TWIN CITIES RESEARCH CTR.
	RESEARCH DIRECTOR, ALBANY RESEARCH CTR.
	CHF, DIV OF MINERALS INFORMATIONS SYSTEMS.
	CHIEF DIV OF MATERIALS & RECYCLING TECHNOLOGY
	CHIEF DIVISION OF MINERALS AVAILABILITY
	STAFF ASST TO DEPUTY ASSOC DIR RESEARCH.
	CHIEF, DIVISION OF MINING TECHNOLOGY
	CHIEF DIVISION OF ENVIRONMENTAL TECHNOLOGY
	DEPUTY ASSOCIATE DIRECTOR RESEARCH.
	CHIEF DIVISION OF MINERAL COMMODITIES.
	ASST ASSOCIATE DIR-FINANCE AND MANAGEMENT
	DEPUTY ASSOC DIR INFO & ANALYSIS.
	CHIEF DIVISION OF HEALTH SAFETY & MIN TECH.
	STF ASST TO THE DEP ASSOC DIR-INFO ANALYSIS.
BUREAU OF RECLAMATION	CHIEF, DIV OF ATMOSPHERIC WATER RESOURCES MGM.
	CHIEF DIV OF RESEARCH & LAB SERVICES.
	CHIEF DIVISION OF PLANNING.
	DEPUTY ASST COMMISSIONER ENG & RESEARCH.
	CHIEF DIVISION OF WATER & LAND.
	PROJECT MANAGER/ARIZONA PROJECTS OFFICE.
	CHIEF DIV PROG COORDINATION & FINANCE.
US GEOLOGICAL SURVEY	DEPUTY ASST DIR FOR INFORMATION SYSTEMS.
	STAFF GEOLOGIST FOR NPRA/ALASKA ACTIVITIES.
NATIONAL MAPPING DIV	CHIEF, NATIONAL MAPPING DIVISION.
	ASSOCIATE CHIEF, NATIONAL MAPPING DIVISION.
	CHIEF, EROS DATA CENTER.
	ASST DIVISION CHIEF FOR PLANS OPERATIONS.
	CHIEF WESTERN MAPPING CENTER.
	CHIEF MID-CONTINENT MAPPING CENTER.
	CHIEF ROCKY MOUNTAIN MAPPING CENTER.
	ASST DIV CHIEF FOR INFORMATION & DATA SVC.
	CHIEF EASTERN MAPPING CENTER.
	ASST DIV CHF FOR RESEARCH.
	DIGITAL CARTOGRAPHY PROGRAM MANAGER.
WATER RESOURCES DIV	CHIEF HYDROLOGIST.
	ASSOC CHIEF HYDROLOGIST
	REGL HYDROLOGIST CENTRAL REG LAKEWOOD.
	CHIEF, BRANCH OF GROUND WATER.
	REGL HYDROLOGIST SOUTHEASTERN REGION.
	REGIONAL HYDROLOGIST, WESTERN REGION.
	REGIONAL HYDROLOGIST, NORTHEASTERN REGION.
	CHF, WATER DATE COORDN.
	ASST CHF HYDROLOGIST FOR OPERATIONS.
	ASST CHIEF HYDROLOGIST FOR SCIEN INFO MGMT
	CHF, OFC NATL WATER SUMMARY & LONG RANGE PLNG.
	ASST CHF HYDRO FOR RES & EXTRNL COORDINATION.
	ASST CHF HYDROLOGIST/PROG COORD & TECH SUPP
	CHF, OFC OF ATMOSPHERIC DEPOSITION ANSLYSIS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHF, OFC OF HYDROLOGIC RESEARCH.
	CHIEF, WRSIC PROGRAM.
	CHIEF OFFICE OF WATER QUALITY.
	CHF, BR OF WATER INFORMATION TRANSFER.
	CHIEF, OFFICE OF EXTERNAL RESEARCH.
	WATER RESEARCH PROGRAM MANAGER.
GEOLOGIC DIV	CHIEF GEOLOGIST.
	CHIEF, OFC OF EARTHQUAKES, VOLCANOES & ENGR.
	CHIEF, OFC OF SCIENTIFIC PUBLICATIONS.
	ASSOC CHF GEOLOGIST.
	CHF OFC OF MINERAL RESOURCES.
	CHIEF, OFFICE OF ENERGY & MARINE GEOLOGY.
	CHIEF OFFICE OF INTERNATIONAL GEOLOGY.
	CHIEF, OFFICE OF REGIONAL GEOLOGY.
	ASST CHIEF, OFC OF ENERGY AND MARINE GEOLOGY.
	ASSISTANT CHIEF GEOLOGIST FOR PROGRAMS.
	STAFF ASSISTANT TO CHIEF GEOLOGIST.
BUREAU OF LAND MANAGEMENT	DEP ASST DIR, LANDS & REWABLE RESOURCES.
	ASST DIR FLUID LEASABLE MINERALS.
	DIRECTOR, BOISE INTERGENCY FIRE CENTER.
	ASST DIR SOLID LEASABLE MINERALS.
	SPECIAL LIAISON FOR TRIBAL & INDIAN LANDS.
OFC OF SURFACE MINING RECLAM & ENFORCEMENT.	ADMINISTRATOR-TECHNICAL CENTER-EAST.
	ADMINISTRATOR-TECHNICAL CENTER-WEST.
	SPEC ASST TO THE ASST DIR, TECH SERVS & RES.
	DEP ASST DIR EASTERN FLD OPS (PROGRAMS OPS).
	SPEC ASST TO THE ASST DIR FOR PROG OPERATIONS.
	SPEC ASST TO THE ASST DIR FOR EASTN FLD OPER.
	ASSISTANT DIRECTOR, WESTERN FIELD OPERATIONS.
MINERALS MANAGEMENT SERVICE	REGIONAL DIRECTOR, GULF OF MEXICO OCS REGION.
	DEP ASSOCIATE DIRECTOR FOR OFFSHORE LEASING.
	CHIEF, LEASING MANAGEMENT DIVISION.
	REGIONAL MANAGER, ATLANTIC OCS REGION.
	REGIONAL MANAGER, ALASKA OCS REGION.
	ASSISTANT ASSOC DIR FOR OFFSHORE MINERALS MGT
	REGIONAL MANAGER, PACIFIC OCS REGION.
	DEP ASSOCIATE DIR FOR ROYALTY MANAGEMENT.
	DEP ASSOCIATE DIR FOR OFFSHORE OPERATIONS.
	DEP ASSOC DIR FOR COLLECTION & DISBURSEMENT
	PROG DIR OFC OF STRAT & INTER MINERALS MGMT
BUREAU OF INDIAN AFFAIRS	DIRECTOR OF ADMINISTRATION.
	DIR, FACILITIES MANAGEMENT OPERATIONS.
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY	
OFC OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR SECURITY.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL.
OFFICE OF EQUAL OPPORTUNITY PROGRAMS	DIR OFC OF EQUAL OPPORTUNITY PROGRAMS.
BUREAU FOR MANAGEMENT	ASSISTANT TO THE ADMINISTRATOR FOR MANAGEMENT
OFFICE OF FINANCIAL MANAGEMENT	CONTROLLER AND SENIOR FINANCIAL OFFICER.
	DEPUTY CONTROLLER.
OFFICE OF PERSONNEL MANAGEMENT	DEP, DIR, OFFICE OF PERSONNEL MANAGEMENT
DIRECTORATE FOR PROGRAM AND MANAGEMENT SERVICES.	ASSOCIATE DIRECTOR FOR MANAGEMENT.
	DIR OFFICE OF INFORMATION RESOURCE MANAGEMENT
	DEPUTY DIR FOR PROGRAM OPERATIONS.
	DIRECTOR OFFICE OF PROCUREMENT.
	DIR, OFC OF MANAGEMENT OPERATIONS.
INTERSTATE COMMERCE COMMISSION	
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUNSEL—LITIGATION.
	DEP GEN COUNSEL RESEARCH & LEGISLATION.
OFC OF THE MANAGING DIRECTOR	DIR OF PERSONNEL.
BUREAU OF ACCOUNTS	DIRECTOR, BUREAU OF ACCOUNTS.
	DEPUTY DIRECTOR.
BUREAU OF TRAFFIC	DIR, BUREAU OF TRAFFIC.
OFFICE OF COMPLIANCE & CONSUMER ASSISTANCE.	DEPUTY DIRECTOR FOR ENFORCMENT.
	DEPUTY DIRECTOR/CHIEF SECTION OF OEPRATIONS.
	ASSOC DIR, OFC OF COMPLIANCE & CONSUMER ASST DIRECTOR.
	ASSOCATE DIRECTOR-POLICY & REVIEW.
REGIONAL OFFICES	REGIONAL DIRECTOR (PHILADELPHIA).
	REGIONAL DIRECTOR (CHICAGO).
	REGIONAL DIRECTOR (SAN FRANCISCO).
OFFICE OF PROCEEDINGS	ASSOCIATE DIR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEPUTY DIRECTOR.
	DEPUTY DIRECTOR.
	ASSISTANT DEPUTY DIRECTOR.
DEPARTMENT OF JUSTICE	
OFFICE OF THE ATTORNEY GENERAL	COUNSEL ON PROFESSIONAL RESPONSIBILITY.
	DEP COUNSEL ON PROFESSIONAL RESPONSIBILITY.
JUSTICE MANAGEMENT DIVISION	DEP ASST ATTORNEY GEN: INFO & ADMIN SVC.
	ASST ATTORNEY GENERAL FOR ADMINISTRATION.
	PRIN DEP ASST ATTY GENERAL FOR ADMINISTRATION.
	DIR AUDIT STAFF.
	DIR, SECURITY & EMERGENCY PLANNING STAFF
	DIR LIBRARY STAFF.
	DEPUTY DIRECTOR AUDIT STAFF.
	DIR, FACILITIES AND ADMINISTRATIVE SVC STAFF
	GEN COUN TO THE ASST ATTORNEY GEN FOR ADMIN.
	COUNSELOR TO THE ASST ATTORNEY GEN FOR ADMIN.
	ASSOCIATE ASSISTANT ATTORNEY GENERAL.
	A/A ATTY GEN, OFC OF THE ASST ATTY GEN ADM.
	ASSOCIATE ASSISTANT ATTORNEY GENERAL.
	DIRECTOR MANAGEMENT AND PLANNING STAFF
	DIRECTOR, BUDGET STAFF.
	SENIOR MANAGEMENT COUNSEL.
OFFICE OF THE CONTROLLER	DEP ASST ATTORNEY GENERAL- CONTROLLER.
	DIR FINANCE STAFF
	DIRECTOR, EVALUATION STAFF
	SPECIAL PROJECTS OFFICER.
	DEPUTY COMPTROLLER.
	DEP ASST ATTY GEN FOR DEBT COLLECTION.
OFFICE OF PERSONNEL AND ADMINISTRATION	DIRECTOR PERSONNEL STAFF
	DIRECTOR GENERAL SERVICES STAFF.
OFFICE OF INFO & ADMIN SERVICES	DEPUTY ASSISTANT ATTORNEY GENERAL.
	DIR COMPUTER TECHN & TELECOMMUNICATIONS STAFF
	DIRECTOR, SYSTEMS POLICY STAFF.
	DIR, LEGAL AND INFORMATIONS SYSTEMS STAFF.
	DIRECTOR, INFORAMTION SYSTEMS STAFF
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW	CHIEF IMMIGRATION JUDGE.
	ASSISTANT TO THE DIRECTOR.
ANTITRUST DIVISION	CHIEF ECONOMIC LITIGATION SECTION.
CIVIL RIGHTS DIVISION	EXECUTIVE OFFICER.
IMMIGRATION AND NATURALIZATION SERVICE	COMPTROLLER.
	ASST COMMISSIONER FOR DETENTION & DEPORTATION.
	ASSISTANT COMMISSIONER FOR BORDER PATROL.
	ASST COMMISSIONER FOR EMPLOYMENT COOPERATION.
ASSOCIATE COMMISSIONER FOR INFORMATION SYSTEMS.	ASSISTANT COMMISSIONER FOR RECORDS SYSTEMS.
ASSOCIATE COMMISSIONER FOR EXAMINATIONS	ASST COMMISSIONER FOR ADJUDICATION & NATURAL.
	ASST COMM FOR INSPECTIONS.
ASSOCIATE COMMISSIONER FOR ENFORCEMENT	ASSISTANT COMMISSIONER FOR INVESTIGATIONS.
ASSOCIATE COMMISSIONER FOR MANAGEMENT	ASST COMMISSIONER FOR ADMINISTRATION.
	ASST COMMR FOR PERSONNEL & TRAINING.
COMMUNITY RELATIONS SERVICE	REGL DIRECTOR, REGION IX, SAN FRANCISCO.
	REGL DIRECTOR, REGION III, PHILADELPHIA.
EXECUTIVE OFC FOR U.S. ATTORNEYS	DIR OFC OF MGMT INFORMATION SYSTEMS SUPPORT.
	DIR, OFFICE OF ADMINISTRATION & REVIEW.
FEDERAL PRISON SYSTEM	ASST DIR FOR PLANNING AND DEVELOPMENT.
	GENERAL COUNSEL.
	ASSOC COMMR, FED PRISONS INDUSTRIES, UNICOR.
	DEP ASSOC COMMR-SEC, FED PRISON INDUSTRIES, I.
	DEP ASSOC COMM FOR FED PRISON INDUSTRIES.
	DEP ASST DIR FOR EDU AND VOCATIONAL TRAINING.
	DEPUTY ASST DIR FOR ADMIN.
	DEPUTY ASSOCIATE COMMISSIONER.
	DEP ASST DIR MEDICAL/SERVS DIV PD# O5002463.
	DEPUTY DIRECTOR.
OFFICE OF CORRECTIONAL PROGRAMS	DEP ASST DIR FOR CORRECTIONAL PROGRAMS.
	ASST DIR CORRECTIONAL PROGRAMS DIV.
NORTHEAST REGION	REGIONAL DIRECTOR.
	WARDEN, LEWISBURG, PA.
	WARDEN, OTISVILLE, NEW YORK.
	WARDEN.
	WARDEN.
	WARDEN FT WORTH TEXAS.
SOUTHEAST REGION	REGIONAL DIRECTOR.
	WARDEN ATLANTA.
	WARDEN.
	WARDEN, LEXINGTON KENTUCKY.
	WARDEN BUTNER NORTH CAROLINA.
NORTH CENTRAL REGION	REGIONAL DIRECTOR.
	WARDEN LEAVENWORTH KANSAS.
	WARDEN.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	WARDEN TERRE HAUTE, IN.
	WARDEN ROCHESTER MN.
SOUTH CENTRAL REGION	REGIONAL DIRECTOR.
	WARDEN EL RENO OKLA.
WESTERN REGION	REGIONAL DIRECTOR.
	WARDEN TERMINAL ISLAND, CA.
	WARDEN, LOMPOC, CA.
OFC OF JUSTICE PROGRAMS	ASST DIR, OFC OF PLANNING AND MANAGEMENT
	ASST DIR, OFC OF OPERATIONS SUPPORT.
	GEN COUNSEL.
	COMPTOLLER, OFC OF THE COMPTROLLER.
OFC OF JUVENILE JUSTICE AND DELIQUENCY PREVENTION.	DEP ASST ADMR, OFC OF CRIMINAL JUSTICE PROGS.
	ASST ADMINISTRATOR OFC OF CRIMINAL JUSTICE PR.
NATIONAL INSTITUTE OF JUSTICE	ASST DIR, OFC OF RESEARCH PROGRAMS.
	ASST DIR, OFC OF DEV TESTING & DISSEMINATION.
BUREAU OF JUSTICE STATISTICS	DEPUTY DIR, BUREAU OF JUSTICE STATISTICS.
	ASST DIR, SYSTEMS DEV DIV.
U.S. MARSHALS SERVICE	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	ASSOCIATE DIRECTOR FOR OPERATIONS.
	ASST DIR FOR PLANNING BUDGET & ADMIN.
	ASST DIR FOR LEGAL AND PERSONNEL PROGRAMS.
	ASSISTANT DIRECTOR FOR INSPECTIONS.
	ASSISTANT DIRECTOR FOR FINANCIAL MANAGEMENT.
DEPARTMENT OF LABOR	
OFC OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR INVESTIGATIONS.
	ASST INSPECTOR GEN FOR AUDIT.
	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	DIR OFC RESOURCE MGNT & LEGISLATIVE ASSMT.
	DEP ASST INSP GEN FOR LABOR RACKETEERING.
OFFICE OF THE SOLICITOR	DEPUTY SOLICITOR (REGIONAL OPERATIONS).
	ASSOCIATE SOLICITOR FOR LABOR-MANAGEMENT LAWS.
	ASSOC SOLICITOR FOR PLAN BENEFITS SECURITY.
	ASSOC SOLICITOR FOR CIVIL RIGHTS.
	ASSOC SOLICITOR FOR OCCUPATIONAL SAFETY & HLT.
	ASSOC SOLICITOR FOR MINE SAFETY & HEALTH.
	ASSOC SOLICITOR FOR FAIR LABOR STANDARDS.
	ASSOC SOLICITOR FOR EMPLOYEE BENEFITS.
	ASSOCIATE SOLICITOR FOR SPEC LITIGATION.
	ASSOC SOL FOR SPEC APPEL & SUP COURT LIT.
	DEP SOLICITOR FOR PLANNING AND COORDINATION
	DIR, OFFICE OF MANAGEMENT.
REGIONAL SOLICITORS	REGIONAL SOLICITOR.
	REGIONAL SOLICITOR REGION IV-ATLANTA.
	REGL SOLICITOR BOSTON.
	REGL SOLICITOR NEW YORK.
	REGIONAL SOLICITOR PHILADELPHIA.
	REGL SOLICITOR DALLAS.
	REGL SOLICITOR KANSAS CITY.
	REGL SOLICITOR SAN FRANCISCO.
OAS FOR ADMINISTRATION AND MANAGEMENT	ASST SEC'Y FOR ADMIN & MGMT.
	DEP ASST SEC FOR ADM AND MGMT.
	DIR ADMIN SERV & SAFETY & HEALTH PROGRAMS.
	DIRECTOR, OFFICE OF BUDGET.
	DIR OF MANAGEMENT POLICY AND SYSTEMS.
	COMPTROLLER FOR THE DEPARTMENT.
	DIR OF PERSONNEL MANAGEMENT.
	DEP DIR OF PERSONNEL MANAGEMENT.
	DEPUTY COMPTROLLER.
	DIR OFC OF INFORMATION TECHNOLOGY.
	DIR, OFC OF CIVIL RIGHTS.
	DIR NATL CAPITAL SERVICE CENTER.
	DIRECTOR OF INFORMATION RESOURCES MANAGEMENT.
	DIR, ADMINISTRATIVE & PROCUREMENT PROGRAMS.
OFFICE OF MANAGEMENT, ADMINISTRATION AND PLANNING.	DIR OFC OF MGMT, ADMINISTRATION AND PLANNING.
OFC OF FEDERAL CONTRACT COMPLIANCE PROGRAMS.	DIRECTOR DIVISION OF PROGRAMS OPERATIONS.
WAGE AND HOUR DIVISION	ASST ADMIN FOR PROGRAM OPERATIONS.
	ASST ADMIN FOR POLICY PLANNING & REVIEW.
OFC OF WORKERS COMPENSATION PROGRAMS	DIR FEDERAL EMPLOYEES COMPENSATION.
	DIR COAL MINE WORKERS COMPENSATION.
PENSION & WELFARE BENEFITS ADMINISTRATION	ASSOCIATE DIRECTOR FOR ENFORCEMENT.
	ASSOC DIR FOR REGULATIONS & INTERPRETATIONS.
	ASSOCIATE DIRECTOR FOR PROGRAM SERVICES.
	DEPUTY ASSOCIATE DIRECTOR FOR PROGRAM SERV.
	DIRECTOR OF POLICY DEVELOPMENT & EVALUATION.
	DIRECTOR OF PROGRAM OPERATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEP ASST SECY FOR PROGRAM OPERATIONS.
OFFICE OF LABOR MANAGEMENT STANDARDS	DIR OFC OF STANDARDS, TECH ASST & DISCLOSURE.
	DIR OFC OF ELECT TRUSTSHP/INTERN'L UNION AUDT.
BUREAU OF LABOR STATISTICS	ASSOCIATE COMMISSIONER FOR FIELD OPERATIONS.
DATA ANALYSIS	ASSOC COMMR-OCC SAFETY & HEALTH STAT.
	ASSOC COMMR, ECONOMIC GROWTH.
	ASSOC COMMR FOR PRICES AND LIVING CONDITIONS.
	ASSOC COMMR PRODUCTIVITY & TECHNOLOGY.
	ASSOC COMMR FOR WAGES & INDUSTRIAL RELATIONS.
	ASSOC COMMR FOR RESEARCH & EVALUATION.
	ASSOC COMMR FOR EMPLOYMENT & UNEMPL STATISTICS.
	ASST COMMR FOR CONSUMER PRICES & PRICE INDEXES.
	ASST COMMR FOR INDUST PRICES & PRICE INDEXES.
	DEP ASSOC COMM FOR EMPL & UNEMPL STATISTICS.
	ASST COMMISSIONER FOR MATHEMATICAL STATISTICS.
	ASSISTANT COMMISSIONER FOR ECONOMIC RESEARCH.
	ASST COMMISSIONER FOR FEDERAL-STATE PROGRAMS.
	ASST COMMISSIONER FOR CURRENT EMPLOY ANALYSIS.
	ASST COMR FOR COMPENSATION LEVELS & TRENDS.
	ASST COMR FOR SAFETY, H & W CONDITIONS.
	ASSOC COMR COMPENSATION & WORKING CONDITIONS.
ADMINISTRATIVE AND INTERNAL OPERATIONS	DEP COMM FOR ADM AND INTERNAL OPERATIONS.
	ASSISTANT COMMISSIONER FOR ADMINISTRATION.
	DIRECTOR OF SURVEY PROCESSING.
	DIR OF TECHNOLOGY & COMPUTING SVCS.
	ASST COMR FOR TECHNOLOGY & SURVEY PROCESSING.
EMPLOYMENT AND TRAINING ADMIN	ADM. OFFICE OF PROGRAM & FISCAL INTEGRITY.
OFFICE OF EMPLOYMENT SECURITY	DIRECTOR, OFC OF TRADE ADJUSTMENT ASSISTANCE.
OFFICE OF FINANCIAL & ADMINISTRATIVE MANAGEMENT.	DIR OFC OF MANAGEMENT & INFORMATION SYS.
	COMPTROLLER.
	ADMR. OFC OF FINANCIAL & ADMINISTRATIVE MGMT.
	DEP ADMR. OFC OF FINANCIAL & ADM MANAGEMENT.
	DIR, OFC OF INFORMATION RESOURCES MANAGEMENT.
	DEP ADMR FOR INFORMATION RESOURCES MANAGEMENT.
ADMINISTRATIVE PROGRAMS	DIR, ADM PROGS.
HEALTH STANDARDS PROGRAMS	DIR HEALTH STANDARDS PROGRAMS.
SAFETY STANDARDS PROGRAMS	DIRECTOR SAFETY STANDARDS PROGRAMS.
FEDERAL/STATE OPERATIONS	DIRECTOR, FEDERAL/STATE OPERATIONS.
TECHNICAL SUPPORT	DIR TECH SUPPORT.
MINE SAFETY AND HEALTH ADMINISTRATION	CHF OF STANDARDS, REGULATIONS & VARIANCES.
	DIRECTOR OF ADMINISTRATION AND MANAGEMENT.
	DIRECTOR OF TECHNICAL SUPPORT.
MERIT SYSTEMS PROTECTION BOARD	
OFC OF THE EXECUTIVE DIRECTOR	MANAGING DIR.
	DIRECTOR, OFFICE OF POLICY & EVALUATION.
	DEP EXEC DIR FOR REGIONAL OPERATIONS.
	DEP ASST MANAGING DIRECTOR FOR MANAGEMENT.
	EXECUTIVE DIRECTOR.
	DIRECTOR, OFFICE OF ADMINISTRATION.
OFC OF GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
	ASSOCIATE GENERAL COUNSEL FOR LITIGATION.
OFFICE OF APPEALS COUNSEL	DEPUTY DIRECTOR OFFICE OF APPEALS COUNSEL.
REGIONAL OFFICES	REGIONAL DIRECTOR, NEW YORK.
	REGIONAL DIRECTOR, SAN FRANCISCO.
	REGIONAL DIRECTOR, CHICAGO.
	REGIONAL DIRECTOR, ATLANTA.
	REGIONAL DIRECTOR, PHILADELPHIA.
	REGIONAL DIRECTOR, DALLAS.
	REGIONAL DIRECTOR, WASHINGTON, D.C.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	
OFFICE OF THE COMPTROLLER	ASST COMPT FOR PROG STATUS REV & COST ASSESS.
	TECHNICAL ASSISTANT TO THE COMPTROLLER.
INSTITUTIONAL ANALYSIS DIVISION	DIRECTOR INSTITUTIONAL ANALYSIS DIVISION.
FINANCIAL MANAGEMENT DIVISION	DIR FINANCIAL MGMT DIV.
	DEP DIR, FINANCIAL MANAGEMENT DIV.
RESOURCES ANALYSIS DIVISION	SPEC ASST TO THE COMPTROLLER.
	DIR RESOURCES ANALYSIS DIVISION.
OFC SAFETY RELIABILITY MAINTAINABILITY & QUAL ASSUR.	DIRECTOR, SAFETY DIVISION.
	DIR, RELIABILITY & QUALITY ASSURANCE DIVISION.
	DEPUTY CHIEF ENGINEER.
	DEP ASSOC A/S, RELIABILITY, M/Q ASSURANCE.
INFORMATION SYSTEMS OFFICE	MANAGER, INFORMATION SYSTEMS OFFICE.
EARTH SCIENCE AND APPLICATIONS DIVISION	DEP/DIR EARTH SCIENCE & APPLICATIONS DIVISION.
	CHIEF, OCEANIC PROCESSES BRANCH.
	DISCIPLINE SCIENTIST INTERPLANETARY PHYSICS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHF, UPPER ATMOSPHERIC R/T CHEMISTRY BRANCH.
	CHF, ATMOSPHERIC DYNAMICS AND RADIATION BR.
	DIRECTOR, SPACE PHYSICS DIVISION.
	CHIEF LAND PROCESSES BRANCH.
COMMUNICATIONS DIVISION	DEPUTY DIRECTOR COMMUNICATIONS DIVISION.
LIFE SCIENCES DIVISION	DEP DIR LIFE SCIENCES DIVISION.
	ASSISTANT DIRECTOR FOR PROGRAM MANAGEMENT.
	CHF, RES & TECH DEVELOPMENT BRANCH.
	CHIEF, SPACE MEDICINE & BIOLOGY BRANCH.
	CHIEF, FLIGHT PROGRAMS BRANCH.
ADMINISTRATION AND RESOURCES MANAGEMENT DIVISION.	DEP DIR, ADMINISTRATION & RESOURCES MGMT DIV.
SOLAR SYSTEMS EXPLORATION DIVISION	DEP/DIR SOLAR SYSTEM EXPLORATION DIVISION.
	CHIEF SCIENTIST (GEODYNAMICS PROGRAM).
	CHIEF, PLANETARY SCIENCE BRANCH.
	DEP DIR FOR ADV STUDIES, SOLAR SYS EXPLTN DIV.
SHUTTLE PAYLOAD ENGINEERING DIVISION	MGR. ADVANCED INSTRUMENTATION & SENSOR ENGINEER.
	CHIEF ASTROPHYSICS PAYLOAD BRANCH.
ASTROPHYSICS DIVISION	DEP DIR, ASTROPHYSICS DIVISION.
	MANAGER, ADVANCED PROGRAMS & TECHNOLOGY.
	CHF, HIGH ENERGY ASTROPHYSICS BR.
	CHIEF, ASTRONOMY/RELATIVITY BRANCH.
	CHIEF, OBSERVATORIES DEVELOPMENT BRANCH.
	CHF, SOLAR & HELIOSPHERIC PHYSICS BR.
	ASST DIRECTOR, ASTROPHYSICS DIV (TECHNICAL).
	CHIEF, FLIGHT PROGRAMS BRANCH.
MICROGRAVITY SCIENCES DIVISION	DEP DIR, MICROGRAVITY SCI & APPLICATIONS DIV.
SPACE TELESCOPE DEVELOPMENT DIVISION	DIR SPACE TELESCOPE DEVELOPMENT DIVISION.
OFFICE OF PROCUREMENT	ASST ADMR FOR PROCUREMENT.
	DEPUTY ASST ADMR FOR PROCUREMENT.
	DIRECTOR, PROGRAM OPERATIONS DIVISION.
	DIRECTOR, PROCUREMENT POLICY DIVISION.
	DIR PROCUREMENT MANAGEMENT DIVISION.
	DIR CONTRACT PRICING & FINANCE OFFICE.
OFC OF ASST ADMR FOR COMMERCIAL PROGRAMS	DEP DIR, COMMERCIAL DEVELOPMENT DIV.
	DIR, PLANS, POLICY & EVALUATION DIVISION.
	DIRECTOR, PROGRAM SUPPORT OFFICE.
	DEPUTY ASSISTANT ADMINISTRATOR (PROGRAMS).
	DIR, SMALL BUSINESS INNOVATION RES OFFICE.
CONGRESSIONAL RELATIONS OFFICE	DEP ASST ADMIN FOR CONGRL RELATIONS (OPER).
DEFENSE & INTEGOVTL RELATIONS DIVISION	DEP DIR INDUSTRY AFFAIRS DIVISION.
OFC OF THE ASSOC ADMR SPACE FLIGHT	SPEC ASST TO THE ASSOC ADMR FOR SPACE FLIGHT.
	CHF, PLATFORMS & SERVICES BRANCH.
	MANAGER OPERATIONS INTEGRATION OFFICE.
	DIRECTOR, UTILIZATION DIVISION.
	TECH ASST TO THE ASST ASSOC ADMN (SPACE SHUT).
	DIR STRATEGIC PLANNING OFFICE.
	DIR SAFETY RELIABILITY & QUALITY ASSURANCE.
UNMANNED LAUNCH VEHICLE AND UPPER STAGES DIV.	CHIEF, STS/CENTAUR PROGRAM BRANCH.
	DEP DIR UNMANNED LAUNCH VEHICLES & UPPER STAG
SHUTTLE CARRIER SYSTEMS DIVISION	DEP DIR SHUTTLE CARRIER SYSTEMS DIVISION.
ADVANCED PROGRAM DEVELOPMENT DIVISION	CHIEF, DEVELOPMENT BRANCH.
	DIRECTOR, SPECIAL PROGRAMS.
	DEPUTY DIRECTOR, ADVANCED PROGRAMS DIVISION.
ORGANIZATION ABOLISHED	CHIEF, OPERATING BRANCH.
RESOURCES MANAGEMENT	DEPUTY DIR RESOURCES & INSTITUTIONS OFC.
TRANSPORTATION SERVICES	DIR TRANSPORTATION SERVICES OFFICE.
	DEP DIR, SPACE TRANSP SUPPORT PROG DIV.
SPACELAB DIVISION	DIR, SPACE FLIGHT SPACE STATION INTEGRAT.
	DIR, SPACE FLT/SPACE STATION INTEGRATION OFC.
NATIONAL SPACE TRANSPORTATION SYSTEM	CHF, COMMERCIAL & FOREIGN UTILIZATION BRANCH.
	CHIEF, NASA UTILIZATION BRANCH.
	CHIEF, POLICY/BUSINESS DEVELOPMENT BRANCH.
	DEPUTY MANAGER, NSTS PROGRAM.
	SPEC ASST TO DIR, CUSTOMER SERVICES DIV.
	DEP DIR, NATL SPACE TRANSPORTATION SYSTEM.
	MANAGER, ENGINEERING INTEGRATION OFFICE.
	MANAGER, INTEGRATION AND OPERATIONS.
	DEPUTY DIRECTOR, CUSTOMER SERVICES DIVISION.
	DEP MGR, NATL SPACE TRANS SYST OPERATIONS.
	MANAGER, SHUTTLE PROJECTS OFFICE.
SYSTEM ENGINEERING AND ANALYSIS	DIRECTOR, SHUTTLE OPERATIONS DIVISION.
	DEPUTY DIRECTOR, SHUTTLE PROPULSION DIVISION.
	MGR. SPC SHUTTLE PROPULSION PRO/OPER SUPPORT.
	DEPUTY DIRECTOR, SHUTTLE OPERATIONS DIVISION.
	CHIEF, OPERATIONS INTEGRATION.
OPERATIONS UTILIZATION	DIRECTOR SHUTTLE ORBITER DIVISION.
	CHIEF, EXTERNAL TANK PROGRAMS.
	DIR OPERATIONS UTILIZATION DIRECTORATE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER-RESERVED POSITIONS
	DIRECTOR, SHUTTLE PROPULSION DIVISION.
	DIRECTOR, JSC PROJECTS.
	DEP DIR, OPERATIONS UTILIZATION DIRECTORATE.
OFFICE OF THE ASSOCIATE ADMINISTRATOR, MANAGEMENT.	DIR AIRCRAFT MANAGEMENT OFC.
	S/A TO THE ASSOC. ADMINISTRATOR FOR MANAGEMENT.
HEADQUARTERS ADMINISTRATION	DEP DIR HEADQUARTERS ADMINISTRATION DIVISION.
	DIR, INFORMATION SYST & TECHNOLOGY DIVISION.
FACILITIES MANAGEMENT	DIR FACILITIES ENGINEERING DIV.
	DEP DIRECTOR FACILITIES ENG DIV.
	DEP ASST ASSOC ADMR FOR FACILITIES MANAGEMENT.
LOGISTICS AND SECURITY	DIR, LOGISTICS MGMT & INFO PROGRAMS DIVISION.
	CHF SCIENTIFIC AND TECH INFO BR.
	DEP DIR, LOGISTICS MGMT & INFO PROG DIV.
	DIR, LOGISTICS & SECURITY DIVISION.
PERSONNEL AND GENERAL MANAGEMENT	DIR PERSONNEL PROGRAMS DIV.
	DEP DIR PERSONNEL PROGS DIV.
	DIRECTOR OF PERSONNEL.
	ASST ASSOC ADMR FOR PERSONNEL & GENERAL MGMT.
OFFICE OF THE ASSOC ADMR FOR POLICY	S/A TO THE ASSOC ADMR FOR POLICY INTEGRATION.
OFC OF DIRECTOR FOR AERONAUTICS	DEP DIR FOR AERONAUTICS (PROGRAM DEVELOPMENT).
	ASST DIR FOR AERONAUTICS (ROTORCRAFT).
	A/D FOR AERONAUT (GEN AVIAT & TRANS AIRCRAFT).
	DIR FOR AERONAUTICS (HIGH-PERF AIRCRAFT).
OFC OF DIR FOR SPACE	DEPUTY DIRECTOR FOR SPACE.
	ASST DIR FOR SPACE (SPACECRAFT TECHNOLOGY).
	ASST DIR FOR SPACE (SPACE STATION TECHNOLOGY).
OFC OF DIR FOR INSTITUTIONS	DEPUTY DIRECTOR FOR RESOURCES.
	DIRECTOR FOR INSTITUTIONS.
AERODYNAMICS DIVISION	DEPUTY DIRECTOR, AERODYNAMICS DIVISION.
MATERIALS & STRUCTURES DIVISION	DIRECTOR, MATERIALS AND STRUCTURES.
PROPULSION, POWER, & ENERGY DIVISION	DIR, PROPULSION, POWER AND ENERGY DIVISION.
	DEP DIR PROPULSION POWER & ENERGY DIV.
NATIONAL AEROSPACE PLANS OFFICE	DIRECTOR, NATIONAL AERO-SPACE PLANE OFFICE.
	NATL AERO-SPACE PLANE DIR FOR NASA (DARPA).
	DEP DIR, NATIONAL AERO-SPACE PLANE OFFICE.
OFC OF ASSOC ADMR FOR SPACE STATION	SENIOR ENGINEER.
	S/A TO THE ASSOC ADMR FOR SPACE STATION.
POLICY DIVISION	CHIEF, PLANS INTEGRATION BRANCH.
	DEPUTY DIRECTOR, POLICY DIVISION.
	DIRECTOR, POLICY DIVISION.
	CHIEF COOPERATIVE PROGRAMS PLANS BRANCH.
OPERATIONS DIVISION	CHIEF SYS/MANAGEMENT ENGINEERING BRANCH.
	DEPUTY DIR ENGINEERING DIVISION.
UTILIZATION DIVISION	SPECIAL ASSISTANT TO THE DIRECTOR FOR TECHNOL.
	S/A TO THE DIR, FOR UTILIZATION REQUIREMENTS.
	DIR UTILIZATION DIVISION.
STRATEGIC PLANS PROGRAMS DIVISION	DIRECTOR, STRATEGIC PLANS AND PROGRAMS DIV.
RESOURCES & ADMINISTRATION DIVISION	DEP DIR, RESOURCES & ADMINISTRATION DIVISION.
	DIR, RESOURCES & ADMINISTRATION DIVISION.
SPACE STATION PROGRAM OFFICE	ASSOCIATE PROGRAM DIRECTOR.
	DEP DIR, SPACE STATION PROGRAM OFFICE.
UTILIZATION & OPERATIONS GROUP	DIR, PROGRAM UTILIZATION & OPERATIONS GROUP.
	DEP DIR, UTILIZATION & OPERATIONS GROUP.
INTERNATIONAL PROGRAMS GROUP	DIRECTOR LOGAON R.
	ASST DIR, INTERNATIONAL PROGRAMS GROUP.
OFC OF THE ASSOC ADMR SPACE OPERATIONS	D/A/A SPACE TRACKING & DATA SYSTEMS (NETWORKS).
	SPEC ASST (OPERATIONS).
	ASSISTANT ASSOCIATE ADMINISTRATORS (PLANS).
NETWORK SYSTEM DIVISION	DEP DIR, GROUND NETWORK DIVISION.
	MANAGER SPACE NETWORK OPERATIONS.
COMMUNICATIONS AND DATA SYSTEMS DIVISION	DIR, COMMUNICATIONS & DATA SYSTEMS DIV.
	DEP DIR, COMMUNICATIONS & DATA SYSTEMS DIV.
TDRSS DIVISION	DEPUTY DIRECTOR TDRSS DIVISION.
	MANAGER TRACKING & DATE RELAY SATEL SYS PROG.
DISCRIMINATION COMPLAINTS DIVISION	DIRECTOR, DISCRIMINATION COMPLAINTS DIVISION.
OFFICE OF THE INSPECTOR GENERAL	ASSIST INSPECTOR GENERAL FOR INVESTIGATION.
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR TECHNICAL SERVICES.
AMES RESEARCH CENTER	ASSOC DIR, NASA AMES RES CTR.
	ASST TO THE CENTER DIR FOR ADVANCED SYSTEMS.
AEROSPACE SYSTEMS DIRECTORATE	CHIEF, AERODYNAMICS DIVISION.
	CHF, AMES RES AIRCRAFT OPERATIONS DIVISION.
	CHF FLIGHT SYSTEMS & SIMULATION RSCH DIV.
	CHF, ROTOCRAFT & POWERED-LIFT FLIGHT PROJ DIV.
	DEPUTY DIR AEROSPACE SYSTEMS DIRECTORATE.
SPACE RESEARCH DIRECTORATE	DEPUTY DIRECTOR OF SPACE RESEARCH.
	CHIEF, LIFE SCIENCES DIVISION.
	CHIEF AERO-SPACE HUMAN FACTORS RESEARCH DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ENGINEERING AND TECHNICAL SERVICES DIRECTORATE.	DEP DIRECTOR ENGINEERING & TECH SVCS.
AEROPHYSICS DIRECTORATE	CHIEF, SPACE SCIENCES DIVISION.
	CHIEF COMPUTATIONAL FLUID DYNAMICS BRANCH.
	CHF, SYSTEMS ENGINEERING DIV.
	CHIEF, INFORMATION SCIENCES OFFICE.
	DEPUTY DIRECTOR OF AEROPHYSICS.
	CHIEF FULL SCALE AERODYNAMICS RESEARCH CENTER.
	CHIEF, FLUID DYNAMICS DIVISION.
	CHIEF COMPUTER SYSTEMS & RESEARCH DIVISION.
	CHIEF THERMOSCIENCE DIVISION.
	CHIEF, INFORMATION SCIENCES DIVISION.
	DIR NUMERICAL AERODYNAMICS SIMU SYS DIV.
FLIGHT OPERATION AND RESEARCH DIRECTORATE	CHIEF, SCIENCE & APPLICATIONS AIRCRAFT DIV.
	CHF ENGINEER.
	CHF, DRYDEN RESEARCH AIRCRAFT OPERATIONS DIV.
	DEPUTY CHIEF DRYDEN RESEARCH AIRCRAFT OPER DI.
	CHIEF, RESEARCH ENGINEERING DIVISION.
GODDARD SPACE FLIGHT CENTER	COMPTROLLER.
MANAGEMENT OPERS DIRECTORATE	DEP DIR OF MANAGEMENT OPERATIONS.
	ASSOCIATE DIRECTOR FOR ACQUISITION.
FLIGHT ASSURANCE DIRECTORATE	DIRECTOR OF FLIGHT ASSURANCE.
FLIGHT PROJECTS DIRECTORATE	DEPUTY DIRECTOR OF FLIGHT PROJECTS.
	DEP DIR FLIGHT PROJ SPACE TELESCOPE GODDARD.
	PROJECT MGR, TRACKING & DATA RELAY SATELLITE SY.
	ASSOC DIR OF FLIGHT PROJ FOR MISSION SYSTEMS.
	DE DIR FLIGHT PROJ PLNG BUSINESS MANAGEMENT.
	PROJ MGR, TRACKING & D/R SATEL SYST (TDRSS).
	DEP DIR OF FLIGHT PROJ FOR SPACE STAT-GODDARD.
	MGT, GSFC WORK PACKAGE, SPACE STATION PROJECT.
	PROJECT MGR, UPPER ATMOSPHERE RES SATELLITE.
	PROJECT MANAGER, METSAT PROJECT.
	ASSOC DEP DIR OF FLT PROJ/SPACE STA PROJ-GDD.
MISSION OPERATIONS & DATA SYSTEMS DIRECTORATE.	ASSOC DIR OF MISSION OPERATIONS & DATA SYST.
	DEPUTY DIR OF MISSION OPERATIONS & DATA SYS.
	CHIEF NETWORKS DIVISION.
SPACE & EARTH SCIENCES DIRECTORATE	HEAD, ELECTRODYNAMICS BRANCH.
	CHIEF, LAB FOR HIGH ENERGY ASTROPHYSICS.
	CHIEF, LAB FOR ASTRONOMY AND SOLAR PHYSICS.
	CHIEF, LAB FOR EXTRATERRESTRIAL PHYSICS.
	ASST DIR FOR SPACE STATION (MISSION PLANNING).
	CHIEF LABORATORY FOR ATMOSPHERES.
	CHIEF, SPACE DATA AND COMPUTING DIVISION.
	CHIEF, LABORATORY FOR TERRESTRIAL PHYSICS.
	DEP DIR, SPACE AND EARTH SCIENCES.
	CHIEF LABORATORY FOR OCEANS.
	ASSOCIATE DIRECTOR FOR PROGRAM PLANNING.
	ASSOCIATE DIRECTOR FOR SPACE STATION.
	CHIEF, GODDARD INSTITUTE FOR SPACE STUDIES.
ENGINEERING DIRECTORATE	DEP DIR OF ENGINEERING.
	CHIEF, INSTRUMENT DIVISION.
	CHF, APPLIED ENGINEERING DIV.
	CHIEF, SPACE TECHNOLOGY DIVISION.
	ASST DIR OF ENGINEERING FOR DEVELOPMENT PROJ.
	ASSISTANT DIRECTOR FOR TECHNICAL RESOURCES.
JOHNSON SPACE CENTER	ASSISTANT DIRECTOR (PLANS).
	DIR OF PUBLIC AFFAIRS.
	EXECUTIVE ASSISTANT TO THE DIRECTOR.
	SPEC ASST FOR ENGINEERING OPERATIONS & SAFETY.
	TECHNICAL ASST TO THE DIRECTOR.
	SPECIAL ASSISTANT TO THE DIRECTOR.
	SPECIAL ASSISTANT TO THE DIRECTOR.
CENTER SUPPORT	DEPUTY DIR CENTER OPERATIONS.
	DEPUTY DIR ADMIN.
	DIR ADMIN.
	DIR OF PROCUREMENT.
	DEPUTY DIRECTOR, ADMINISTRATION.
	DIR CENTER OPERATIONS.
SPACE OPERATIONS	ASSISTANT TO THE DIRECTOR OF SPACE OPERATIONS.
	CHIEF, ASTRONAUT OFFICE.
	CHIEF, AIRCRAFT OPERATIONS DIVISION.
	CHIEF TRAINING DIVISION.
	DIRECTOR, MISSION OPERATIONS.
	DEPUTY DIRECTOR, MISSION SUPPORT.
	ASSISTANT DIRECTOR FOR OPERATIONS.
	CHIEF, SYSTEMS DIVISION.
	ASST DIR FOR SYSTEMS.
	CHIEF, FLIGHT DIRECTOR OFFICE.
	DEPUTY DIRECTOR, MISSION OPERATIONS.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DEP DIR, FLIGHT CREW OPERATIONS.
	CHIEF, SPACECRAFT SOFTWARE DIVISION.
RESEARCH & ENGINEERING	DEPUTY DIRECTOR, ENGINEERING.
	ASSISTANT DIRECTOR, SPACE & LIFE SCIENCES.
	CHIEF, TRACKING & COMMUNICATIONS DIVISION.
	CHIEF, PROPULSION & POWER DIVISION.
	CHIEF STRUCTURES AND MECHANICS DIVISION.
	CHIEF, CREW & THERMAL SYSTEMS DIVISION.
	CHIEF SOLAR SYSTEM EXPLORATION DIVISION.
	CHIEF, MEDICAL SCIENCES DIVISION.
	DEPUTY DIRECTOR, SPACE AND LIFE SCIENCES.
	ASSISTANT DIRECTOR, ENGINEERING.
	DIRECTOR, ENGINEERING.
NATL SPACE TRANSP SYS PROG OFC	DEP MANAGER NATL SPACE TRANS SYSTEM OFFICE.
	MANAGER SYSTEMS INTEGRATION.
	MANAGER ORBITER ENGINEERING OFFICE.
	MANAGER STS INTEGRATION & OPERATIONS OFFICE.
	DEP MANAGER STS INTEGRATION & OPERATIONS OFC.
	DEPUTY MANAGER STS ORBITER GFE PROJECTS OFC.
	MANAGER STS ORBITER & GFE PROJECTS OFFICE.
	DEPUTY MANAGER STS ORBITER & GFE PROJECTS OFC.
SPACE STATION PROJECT OFFICE	MANAGER, DATA MANAGEMENT & OPERATIONS OFFICE.
	DEPUTY MANAGER, SPACE STATION PROJECTS OFFICE.
	MANAGER PROJECT ENGINEERING OFFICE.
	MANAGER FOR DEVELOPMENT.
	DEP MGR, SPACE STATION PROJECTS OFFICE.
SAFETY, RELIABILITY & QUALITY ASSURANCE	DIR, SAFETY, RELIABILITY, & QUALITY ASSURANCE.
	DEP DIR, SAFETY, RELIABILITY & QUAL ASSURANCE.
STS OPERATIONS PROGRAM OFFICE	MANAGER, CUSTOMER INTEGRATION OFFICE.
	MANAGER OPERATIONS INTEGRATION OFFICE.
	DEP MANAGER, SPACE STATION PROGRAM OFFICE.
	MANAGER, SYS ENGINEERING & INTEGRATION OFFICE.
	MANAGER, INTEGRATION & EXTERNAL AFFAIRS OFC.
	ASST TO THE MGR OPERATIONS INTEGRATION OFFICE.
NASA WHITE SANDS TEST FACILITY	MANAGER, NASA WHITE SANDS TEST FACILITY.
KENNEDY SPACE CENTER	DIR, EXEC MANAGEMENT OFC.
	ASSOCIATE DEPUTY DIRECTOR.
BIOMEDICAL OFFICE	CHF., BIOMEDICAL OFFICE.
PUBLIC AFFAIRS	DIR PUBLIC AFFAIRS.
SAFETY, REALIABILITY AND QUALITY ASSURANCE	DIR., SAFETY, RELIABILITY & QUALITY ASSURANCE.
	DIRECTOR, SAFETY AND RELIABILITY.
	DIRECTOR, PROTECTIVE SERVICES.
	DIR OF SAFETY, RELIABILITY & QUALITY ASSUR.
	DIRECTOR, QUALITY ASSURANCE.
SHUTTLE MANAGEMENT OPERATIONS	MANAGER SPACE STATION PROJECTS OFFICE.
KSC OFF SITE OPERATIONS SHUTTLE PROJECT	MANAGER, KSC OFF-SITE OPERATIONS SHUTTLE PROJ.
SHUTTLE PROCESSING	DIRECTOR, LAUNCH AND LANDING OPERATIONS.
LAUNCH SUPPORT SERVICES	DEPUTY DIRECTOR OF SHUTTLE OPERATIONS.
INFORMATION SYSTEMS	DIRECTOR, INFORMATION SYSTEMS.
CENTER SUPPORT OPERATIONS	DIRECTOR OF CENTER SUPPORT OPERATIONS.
	DEPUTY DIRECTOR OF CENTER SUPPORT OPERATIONS.
ENGINEERING DEVELOPMENT	DEPUTY DIRECTOR OF ENGINEERING DEVELOPMENT.
PROJECT MANAGEMENT	DIRECTOR, PROJECT MANAGEMENT.
MECHANICAL AND FACILITIES ENGINEERING	DIR., MECHANICAL & FACILITIES ENGINEERING.
ELECTRONIC ENGINEERING	DIRECTOR, ELECTRONIC ENGINEERING.
CARGO MANAGEMENT AND OPERATIONS	DEP DIR OF PAYLOAD MGMT AND OPERATIONS.
STS CARGO OPERATIONS	DIRECTOR, STS PAYLOAD OPERATIONS.
DEPLOYABLE PAYLOADS	DIRECTOR, DEPLOYABLE PAYLOADS.
SHUTTLE PROJECTS OFFICE	DIRECTOR, SHUTTLE LOGISTICS.
	DIRECTOR, SHUTTLE OPERRATIONS.
	DIRECTOR, GROUND ENGINEERING.
SHUTTLE ENGINEERING	DIRECTOR OF SHUTTLE ENGINEERING.
ELECTRONICS DIRECTORATE	CHF., ANALYSIS & COMPUTATION DIVISION.
	CHF., FLIGHT ELECTRONICS DIVISION.
	CHF. INSTRUMENT RESEARCH DIVISION.
	CHIEF, PROJECTS DIVISION.
STRUCTURES DIRECTORATE	CHF., ACOUSTICS & NOISE REDUCTION DIV.
	CHIEF, STRUCTURES AND DYNAMICS DIVISION.
	CHF., MATERIALS DIVISION.
	CHIEF, LOADS AND AEROELASTICITY DIVISION.
AERONAUTICS DIRECTORATE	CHIEF, ADVANCED VEHICLES DIVISION.
	CHIEF, TRANSONIC AERODYNAMICS DIV.
	CHIEF, LOW-SPEED AERODYNAMICS DIVISION.
	DEPUTY DIRECTON FOR AERONAUTICS.
	CHIEF, HIGH SPEED AERODYNAMICS DIVISION.
SPACE DIRECTORATE	CHIEF, SPACE SYSTEMS DIVISION.
	CHIEF, ATMOSPHERIC SCIENCES DIVISION.
	DEPUTY MANAGER, SPACE STATION OFFICE.
	MANAGER EVOLUTIONARY DEFINITION OFFICE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
SYSTEMS ENGINEERING AND OPERATIONS DIRECTORATE.	DEP DIR FOR SYST ENGINEERING & OPERATIONS
	CHIEF FACILITIES ENGINEERING DIVISION.
	CHIEF SYSTEMS ENGINEERING DIV.
FLIGHT SYSTEMS DIRECTORATE	CHIEF INFORMATION SYSTEMS DIVISION.
	CHF, GUIDANCE AND CONTROL DIVISION.
	CHIEF FLIGHT MANAGEMENT DIVISION.
LEWIS RESEARCH CENTER	DEP DIR OFC OF RSCH & TECHNOLOGY ASSESSMENT.
ADMINISTRATION & COMPUTER SERVICES	CHIEF, COMPUTER SERVICES DIVISION.
AERONAUTICS DIRECTORATE	CHIEF INTERNAL FLUID MECHANICS DIVISION.
	CHF, PROPULSION SYSTEMS DIV.
	CHIEF AEROPROPULSION FACILITIES & EXPER DIV.
	CHIEF TECHNOLOGIST
	DEPUTY DIRECTOR OF AERONAUTICS
	MANAGER AEROPROPULSION PROJECT DEVELOPMENT
	MANAGER, AEROPROPULSION PROJECT DEVELOPMENT
SPACE STATION SYSTEMS DIRECTORATE	DEP DIR OF SPACE STATION SYSTEMS.
	CHIEF, PHOTOVOLTAIC POWER MODULE DIVISION.
	CHF SYS ENGINEERING & INTEGRATION DIVISION.
	CHIEF, POWER TECHNOLOGY DIVISION.
AERO SPACE TECHNOLOGY DIRECTORATE	CHIEF, SPACE PROPULSION TECHNOLOGY DIVISION
	CHIEF, MATERIALS DIVISION.
	CHIEF, STRUCTURES DIVISION.
SPACE FLIGHT SYSTEMS DIRECTORATE	MANAGER, ATLAS CENTAUR PROJECT OFFICE.
	MANAGER SHUTTLE/CENTAUR PROJECT OFFICE.
	MANAGER, ACTS PROJECT OFFICE.
	CHIEF, SPACE EXPERIMENTS DIVISION.
	CHIEF, SPACE COMMUNICATIONS DIVISION.
ENGINEERING & TECHNICAL SERVICES DIRECTORATE.	DIRECTOR OF ENGINEERING.
	DEPUTY DIRECTOR OF ENGINEERING.
MARSHALL SPACE FLIGHT CENTER	CENTER COMPTROLLER, NASA MSFC.
	EXECUTIVE ASSISTANT TO THE DIRECTOR.
	DIR ADMIN OPERATIONS OFFICE.
OFFICE OF SFTY, REL & QUALITY ASSURANCE	DIRECTOR, QUALITY ASSURANCE OFFICE.
	DIR, SYSTEMS SAFETY & RELIABILITY OFFICE.
	DIR, SFTY, REL, MAINT, & QUALITY ASSURANCE
SCIENCE AND ENGINEERING	DEP DIR, SCIENCE & ENGINEERING.
	ASSOC DIR FOR ENGINEERING.
	CHF ENGINEER, SOLID ROCKET BOOSTER INTEGRATIO.
	CHF, ENGINEER, SPACE SHUTTLE MAIN ENGINEER.
	CHIEF ENGINEER, HUBBLE SPACE TELESCOPE.
	DIR, MATERIALS & PROCESSES LABORATORY.
	DIRECTOR, SPACE SCIENCES LAB.
	DIRECTOR, PROPULSION LABORATORY.
	DEP DIR STRUCTURES AND PROPULSION LAB.
	DIRECTOR, SYST ANAL & INTEGRATION LABORATORY.
	DEP DIR SYS ANALYSIS AND INTEGRATION LAB.
	CHF MISSION ANALYSIS DIVISION.
	DIRECTOR, SYSTEMS DYNAMICS LABORATORY.
	CHF, AEROPHYSICS DIV.
	DIR-TEST LABORATORY.
	DEPUTY DIRECTOR MATERIALS AND PROCESSES LAB.
	ASSOCIATE DIRECTOR FOR SPACE SYSTEMS.
	ASSOCIATE DIR FOR PROPULSION SYSTEMS.
	CHF ENGINEER, SPACE SHUTTLE MAIN ENGINE PROJ.
	DEP DIR, SYSTEMS DYNAMICS LABORATORY.
	DIRECTOR INFORMATION & ELECTRONIC SYS LAB.
	DEP DIR INFORMATION & ELECTRONIC SYSTEMS LAB.
	ASSISTANT TO THE DIRECTOR SCIENCES & ENG.
	DIR STRUCTURES DYNAMICS LABORATORY.
	DEP DIR, STRUCTURES AND DYNAMICS LABORATORY.
SPECIAL PROJECTS OFFICE	MANAGER, ORBITAL MANEUVERING VEHICLE PROJECT.
SPACELAB PAYLOAD PROJECT	DEPUTY MANAGER PAYLOAD PROJECTS OFFICE.
	MANAGER APPLICATIONS & TECHNOLOGY MISSIONS.
	MANAGER SCIENCE PAYLOADS PROJECTS.
SPACE STATION PROJECTS OFFICE	MANAGER, SPACE STATION PROJECTS OFFICE.
	DEP MGR, SPACE STATION PROJECTS OFFICE.
SPACELAB PROGRAM OFFICE	DEPUTY MANAGER, SPACELAB PROGRAM OFFICE.
PROGRAM DEVELOPMENT	DEPUTY DIRECTOR, PROGRAM DEVELOPMENT.
	DIRECTOR, PRELIMINARY DESIGN OFFICE.
SHUTTLE PROJECTS OFFICE	MANAGER, EXTERNAL TANK PROJECT OFFICE.
	MANAGER, SOLID ROCKET BOOSTER PROJECT OFFICE.
	MANAGER, FLIGHT ENGINE PROJECT.
	DEPUTY MANAGER SHUTTLE PROJECTS OFFICE.
	DEPUTY MANAGER, FOR PRODUCTION & LOGISTICS.
	MANAGER, SYSTEMS MANAGEMENT OFFICE.
	MGR SPACE SHUTTLE MAINE ENGINE PROJECT.
SPACE TELESCOPE PROJECT OFFICE	DEPUTY MANAGER, SPACE TELESCOPE PROJECT.
	MANAGER SUPPORT SYSTEM MODULE PROJECT OFFICE.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ADMINISTRATION AND PROGRAM SUPPORT	DEP DIR, ADMINISTRATION & PROGRAM SUPPORT.
	DIRECTOR, PROCUREMENT OFFICE.
NATIONAL SPACE TECHNOLOGY LABORATORIES	DEPUTY MANAGER.
	DIR, EARTH RESOURCES LABORATORY.
NATIONAL ARCHIVIST & RECORDS ADMINISTRATION	
NATIONAL ARCHIVIST & RECORDS ADMINISTRATION.	DEPUTY ARCHIVIST OF THE UNITED STATES.
	ASST ARCHIVIST FOR THE NATIONAL ARCHIVES.
	ASST ARCHIVIST FOR FEDERAL RECORDS CENTERS.
	ASST ARCHIVES FOR RECORDS ADMINISTRATION.
	DIRECTOR, LYNDON B. JOHNSON LIBRARY.
	DIRECTOR, HARRY S. TRUMAN LIBRARY.
	DIRECTOR, DWIGHT D. EISENHOWER LIBRARY.
NATIONAL CAPITAL PLANNING COMMISSION	
NATIONAL CAPITAL PLANNING COMMISSION STAFF	ASSOC EXEC DIR REGIONAL AFFAIRS.
	EXECUTIVE DIRECTOR.
	ASSOC EXEC DIR D.C. AFFAIRS.
	ASSISTANT EXECUTIVE DIRECTOR FOR OPERATIONS.
NATIONAL ENDOWMENT FOR THE ARTS	
NATIONAL ENDOWMENT FOR THE ARTS	DIRECTOR OF PROGRAM COORDINATION.
	DEPUTY CHAIRMAN FOR MANAGEMENT.
NATIONAL ENDOWMENT FOR THE HUMANITIES	
NATIONAL ENDOWMENT FOR THE HUMANITIES	DIR OFFICE OF PLANNING & BUDGET.
	ASST CHAIRMAN FOR ADMINISTRATION.
NATIONAL LABOR RELATIONS BOARD	
OFC OF THE BOARD MEMBERS	EXECUTIVE SECY.
	DEPUTY EXECUTIVE SECRETARY.
DIV OF ENFORCEMENT LITIGATION	DEPUTY ASSOC. GEN. COUNSEL APPELLATE COURT BR.
	DIRECTOR,OFFICE OF APPEALS.
DIV OF ADVICE	ASSOCIATE GEN COUNSEL, DIV OF ADVICE.
	DEPUTY ASSOC GEN COUNSEL.
DIV OF ADMINISTRATION	DIRECTOR OF ADMINISTRATION.
	DEPUTY DIRECTOR OF ADMINISTRATION.
DIV OF OPERATIONS MANAGEMENT	ASSOC GENERAL COUNSEL, DIV OF OPERATION-MGMT.
	DEP ASSO GEN COUNSEL, DIV OF OPERATIONS-MGMT.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASST TO THE GENERAL COUNSEL.
REGIONAL OFFICES	REGL DIR REG 1 BOSTON.
	REGIONAL DIRECTOR, REG 2, NEW YORK.
	REGIONAL DIRECTOR, REG 3, BUFFALO.
	REGL DIR REG 4 PHILADELPHIA.
	REGIONAL DIRECTOR, REG. 5, BALTIMORE.
	REGIONAL DIRECTOR, REG. 6, PITTSBURGH.
	REGL DIR, REGION 7, DETROIT MICH.
	REGIONAL DIRECTOR, REG. 8, CLEVELAND.
	REGIONAL DIRECTOR, REG. 9, CINCINNATI.
	REGL DIR REG 10 ATLANTA.
	REGL. DIR. REG. 11, WINSTON-SALEM.
	REGIONAL DIRECTOR, REG 12, TAMPA.
	REGIONAL DIRECTOR, REG 13, CHICAGO.
	REGL DIR REG 14 ST LOUIS.
	REGL DIR REG 15 NEW ORLEANS.
	REGL DIR REG 16 FT WORTH.
	REGL DIR REG 17 KANSAS CITY.
	REGL DIR REG 18 MINNEAPOLIS.
	REGL DIR REG 19 SEATTLE.
	REGIONAL DIR, REG 20, SAN FRANCISCO.
	REGIONAL DIRECTOR, REG. 21 LOS ANGELES.
	REGIONAL DIRECTOR REG 22 NEWARK.
	REGIONAL DIRECTOR REG 23 HOUSTON TEXAS.
	REGIONAL DIRECTOR REG 24 HATO REY PUERTO RICO.
	REGL DIR, REG 25, INDIANAPOLIS.
	REGL DIR REG 26 MEMPHIS.
	REGL DIR REG 27 DENVER.
	REGL. DIR. REG. 28 PHOENIX.
	REGL DIR REG 29 BROOKLYN.
	REGL DIR REG 30 MILWAUKEE.
	REGL. DIR., REG 32, OAKLAND.
	REGIONAL DIRECTOR, REG. 33 PEORIA, ILL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	REGL DIR REG 31 LOS ANGELES
NATIONAL SCIENCE FOUNDATION	
OFFICE OF THE DIRECTOR	SENIOR STAFF ASSOCIATE.
	SPECIAL ASSISTANT.
	SPECIAL ASSISTANT.
	SPECIAL ASSISTANT.
OFFICE OF INFORMATION SYSTEMS	DIR OF INFORMATION MANAGEMENT.
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF BUDGET, AUDIT, AND CONTROL	DIRECTOR, PROGRAM EVALUATION STAFF.
DIVISION OF AUDIT AND OVERSIGHT	DIVISION DIRECTOR.
DIVISION OF BUDGET	DIVISION DIRECTOR.
DIRECTORATE FOR GEOSCIENCES	EXECUTIVE OFFICER.
DIVISION OF ATMOSPHERIC SCIENCES	SECTION HEAD GRANT PROGRAMS SECTION.
	SECTION HEAD-CTRS AND FACILITIES PROGRAM SEC.
	SECTION HEAD, UPPER ATMOSPHERE SECTION.
DIVISION OF EARTH SCIENCES.	SECTION HEAD, RESEARCH GRANTS SECTION.
DIVISION OF OCEAN SCIENCES	SECTION HEAD OCEAN SCIENCES RESEARCH SECTION.
DIVISION OF POLAR PROGRAMS	DEPUTY DIVISION DIRECTOR.
	MANAGER POLAR OPS SECTION.
	HEAD, POLAR COORDINATION & INFO SECTION.
DIVISION OF CRITICAL ENGINEERING SYSTEMS	DEPUTY DIVISION DIRECTOR.
DIV OF ELECTRICAL, COMMUNICATIONS & SYSTEMS ENGINEERING.	DEPUTY DIVISION DIRECTOR.
DIV OF MECHANICS, STRUCTURES, AND MATERIALS ENGINEERING.	DEPUTY DIVISION DIRECTOR.
DIV OF MECHANICS, STRUCTURES, AND MATERIALS ENGINEERING.	DEPUTY DIVISION DIRECTOR.
OFFICE FOR ENGINERING INFRASTRUCTURE DEVELOPMENT.	OFFICE HEAD.
	SENIOR STAFF ASOCIATE.
DIRECTORATE FOR BIOLOGICAL, BEHAVIORAL SOCIAL SCIENCES.	EXECUTIVE OFFICER.
	SENIOR ADVISOR FOR BIOTECHNOLOGY.
ORGANIZATION ABOLISHED	OFFICE HEAD.
DIVISION OF SOCIAL AND ECONOMIC SCIENCES	DEPUTY DIVISION DIRECTOR.
	SENIOR SCIENTIST.
DIVISION OF CELLULAR BIOSCIENCES	DEPUTY DIVISION DIRECTOR.
DIRECTORATE FOR MATHEMATICAL AND PHYSICAL SCIENCES.	EXECUTIVE OFFICER.
	SENIOR STAFF ASSOCIATE FOR PLANNING.
DIVISION OF PHYSICS	SENIOR STAFF ASSOCIATE.
	DIVISION DIRECTOR.
DIVISION OF ASTRONOMICAL SCIENCES	SECTION HEAD—ASTRONOMY CENTERS.
	SECTION HEAD—ASTRONOMY RESEARCH.
DIVISION OF MATHEMATICAL SCIENCES	DEPUTY DIVISION DIRECTOR.
DIVISION OF MATERIALS RESEARCH	SECT HEAD, METALLURGY, POLYMERS, & CERAMICS
	SECT HD COND MATTER SCIENCE.
	SENIOR STAFF SCIENTIST.
DIVISION OF CHEMISTRY	HEAD SPECIAL PROJECTS OFFICE.
OFFICE OF COLLEGE SCIENCES INSTRUMENTATION	OFFICE HEAD.
DIVISION OF POLICY RESEARCH AND ANALYSIS	SECTION HEAD, SCIENCE & INNOVATION POL. SEC.
DIVISION ODF SCIENCES RESOURCES STUDIES	SECTION HEAD SURVEY AND ANALYSIS SECTION.
	SECTION HEAD, SPECIAL ANALYTICAL STUDIES SECT.
DIVISION OF INTERNATIONAL PROGRAMS	DEPUTY DIVISION DIRECTOR.
	HEAD, SPECIAL PROGRAM SECTION.
	HEAD, INDUSTRIAL COUNTRIES SECTION.
	HEAD, DEVELOPING COUNTRIES SECTION.
	HEAD SPECIAL PROJECTS OFFICE.
	SENIOR STAFF ASSOCIATE.
	HEAD, INFORMATION AND ANALYSIS SECTION
DIVISION OF INDUSTRIAL SCIENCES & TECHNOLOGY INNOVATION.	SECTION HEAD INDUSTRIAL SUPPORT SECTION.
	SENIOR STAFF ASSOCIATE.
DIVISION OF RESEARCH INITIATION & IMPROVEMENT.	SENIOR STAFF ASSOCIATE.
DIVISION OF GRANTS AND CONTRACTS	DIVISION DIRECTOR.
DIVISION OF FINANCIAL MANAGEMENT	DIVISION DIRECTOR.
DIVISION OF ADMINISTRATIVE SERVICES	DIVISION DIRECTOR.
DIVISION OF PERSONNEL AND MANAGEMENT	DIVISION DIRECTOR
DIRECTORATE FOR COMPUTER & INFO SCIENCE & ENGINEERING.	EXECUTTIVE OFFICER.
DIV OF ADVANCED SCIENTIFIC COMPUTING	DEPUTY DIRECTOR.
DIV OF COMPUTER AND COMPUTATION RESEARCH	DEPUTY DIVISION DIR.
NATIONAL TRANSPORTATION SAFETY BOARD	
OFFICE OF THE MANAGING DIRECTOR	DEPUTY MANAGING DIRECTOR.
BUREAU OF ADMINISTRATION	DIR BUREAU OF ADMINISTRATION.
BUREAU OF ACCIDENT INVESTIGATION	DIRECTOR BUREAU OF ACCIDENT INVESTIGATION.
	DEPUTY DIRECTOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
BUREAU OF FIELD OPERATIONS	DIRECTOR.
BUREAU OF TECHNOLOGY	DIR BUREAU OF TECHNOLOGY.
	DEPUTY DIRECTOR OF TECHNOLOGY
BUREAU OF SAFETY PROGRAMS	DIRECTOR, BUREAU OF SAFETY PROGRAMS.
	DEPUTY DIRECTOR.
NUCLEAR REGULATORY COMMISSION	
ATOMIC SAFETY AND LICENSING BRD PANEL	CHAIRMAN ASLBP.
	DEPUTY CHIEF ADMINISTRATIVE JUDGE EXECUTIVE.
ATOMIC SAFETY AND LICENSING APPEAL PANEL	CHAIRMAN ASLAP.
OFFICE OF INSEPCTOR AND AUDITOR	DIRECTOR, OFFICE OF INSPECTOR & AUDITOR.
	DIR OIA.
	DEPUTY DIRECTOR, OFC OF INSPECTOR & AUDITOR.
OFFICE OF INVESTIGATIONS	ASSOCIATE DIRECTOR FOR LEGAL AFFAIRS.
OFFICE OF DEPUTY GC FOR LICENSING & REGULATION.	DEPUTY ASSISTANT GC/LEGISLATIVE COUNSEL.
OFFICE OF DEPUTY GC FOR HEARINGS & ENFORCEMENT.	DEP ASST GC/SPEC COUNSEL FOR ADM LITIGATION.
OFFICE OF ASSISTANT GC FOR HEARINGS	DEPUTY ASSISTANT GC FOR HEARING (SECTION I).
	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
OFC FOR ANA AND EVA OPER DATA	CHIEF, PROGRAM TECHNOLOGY BRANCH.
DIVISION OF OPERATIONAL ASSESSMENT	CHIEF INCIDENT RESPONSE BRANCH.
	CHF, DIAGNOSTIC EVAL & INCIDENT INVEST BRANCH.
DIVISION OF SAFETY PROGRAMS	CHF, REACTOR OPERATIONS ANLAYSIS BRANCH.
	CHF, TRENDS & PATTERNS ANALYSIS BRANCH.
DEPUTY DIRECTOR FOR ADMINISTRATION	DIRECTOR DIVISION OF CONTRACTS.
	DIRECTOR, DIV OF SECURITY.
DEPUTY DIRECTOR FOR FINANCIAL MANAGEMENT & CONTROLLER.	DIR DIVISION OF ACCOUNTING AND FINANCE.
OFC OF SMALL AND DISADV BUS UTILIZATION/CIVIL RIGHTS.	DIRECTOR.
PROGRAM MANAGEMENT, POLICY DEVELOPMENT & ANALYSIS STAFF.	CHF, PLNG. PROGRAMS, & MGMT SUPPORT BRANCH.
	CHF, POL DEV & TECH SUPPORT BRANCH.
	CHF, INSPECTION, L & R INTEGRATION BRANCH.
ASSISTANT DIRECTOR FOR REGION I REACTORS	PROJECT DIR, PWR PROJECT DIRECTORATE #1.
	PROJECT DIR, PWR PROJECT DIRECTORATE #2.
	PROJECT DIR. PWR PROJECT DIRECTORATE #3.
	PROJECT DIRECTOR, PWR PROJECT DIRECTORATE #4.
	PROJECT DIR. PWR PROJECT DIRECTORATE #5.
	PROJECT DIR. PROJECT DIRECTORATE I–1.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–2.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–3.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–4.
ASSISTANT DIRECTOR FOR REGION II REACTORS	CHIEF, ENGINEERING BRANCH (PWR–A).
	CHIEF, PLANT SYSTEMS BRANCH (PWR–A).
	CHF, ELECTR INSTR & CTL SYST BRANCH (PWR–A):
	CHF, REACTOR SYSTEMS BRANCH (PWR–A).
	CHF. FACILITY OPERATIONS BRANCH (PWR–A).
	PROJ DIR PROJECT DIRECTORATE II 1.
	PROJ DIR PROJECT DIRECTORATE II 2.
	PROJ DIR PROJECT DIRECTORATE II 3.
ASSISTANT DIRECTOR FOR REGION III & V REACTORS.	PROJECT DIR. PWR PROJECT DIRECTORATE #6.
	PROJECT DIR, PWR PROJECT DIRECTORATE #7.
	PROJECT DIR, PWR PROJECT DIRECTORATE #8.
	PROJ DIR PROJECT DIRECTORATE III 1.
	PROJ DIR PROJECT DIRECTORATE III 2.
	PROJ DIRECTOR PROJECT DIRECTORATE III 3.
	PROJ DIR PROJECT DIRECTORATE V.
ASSISTANT DIRECTOR FOR REGION IV REACTORS & SPEC PROJ.	PROJ DIR STD NON POWER REACTOR PROJ DIRECTORA.
	PROJ DIR INTEGRATED SFTY ASSESS PROJ DIR.
	PROJ DIR, TIM–2 CLEAN UP PROJECT DIRECTORATE
	CHF, ENGINEERING BRANCH (PWR–B).
	CHF, PLT ELECT INSTR? CTL SYST BRANCH (PWR–B).
	CHF, REACTOR SYST BRANCH (PWR–B).
	CHF, FACILITY OPERATIONS BRANCH (PWR–B).
	PROJ DIR PROJECT DIRECTORATE IV.
DIVISION OF ENGINEERING & SYSTEM TECHNOLOGY.	PROJ DIR, BWR PROJECT DIRECTORATE #1.
	PROJECT DIR, BWR PROJECT DIRECTORATE #2.
	PROJECT DIR, BWR PROJECT DIRECTORATE #3.
	PROJECT DIR, BWR PROJECT DIRECTORATE #4.
ASSISTANT DIRECTOR FOR ENGINEERING	CHIEF, ENGINEERING BRANCH (BWR).
	CHF, ELEC INSTR & CONTROL SYST BRANCH (BWR).
	CHIEF, FACILITY OPERATIONS BRANCH (BWR).
	CHF, MATERIALS ENGINEERING BRANCH.
	CHF, MECHANICAL ENGINEERING BRANCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHF, STRUCTURAL & GEOSCIENCES BRANCH.
	CHF, CHEMICAL ENGINEERING BRANCH.
ASSISTANT DIRECTOR FOR SYSTEMS	CHF, PLANT SYSTEMS BRANCH.
	CHF, REACTOR SYSTEMS BRANCH.
	CHF, INSTRUMENTATION & CONTROL SYST BRANCH.
	CHF, ELECTRICAL SYSTEMS BRANCH.
DIVISION OF OPERATIONAL EVENTS ASSESSMENT	CHIEF, GENERIC COMMUNICATIONS BRANCH.
	CHF, MAINTENANCE & TRAINING BRANCH.
	CHF, TECHNICAL SPECIFICATION BRANCH.
	SPECIAL ASSISTANT FOR AUDITS.
	CHF, EVENTS ASSESSMENT BRANCH.
DIVISION OF REACTOR INSPECTION & SAFEGUARDS.	CHF, REGULATORY IMPROVEMENTS BRANCH.
	CHF, RELIABILITY & RISK ASSESSMENT BRANCH.
	CHIEF REACTOR SAFETY ISSUES BRANCH.
	CHIEF ENGINEERING ISSUES BRANCH.
	CHF, VENDOR INSPECTION BRANCH.
	CHF, SAFEGUARDS BRANCH.
	CHF, SPECIAL INSPECTIONS BRANCH.
DIV OF RADIATION PROTECTION & EMERGENCY PREPAREDNESS.	CHIEF EMERGENCY PREPAREDNESS BRANCH.
	CHF, RISK APPLICATION BRANCH.
	CHF, RADIATION PROTECTION BRANCH.
DIVISION OF LICENSEE PERFORMANCE & QUALITY EVALUATION.	CHIEF QUALITY ASSURANCE BRANCH.
	CHF, HUMAN FACTORS ASSESSMENT BRANCH.
	CHF, OPERATOR LICENSING BRANCH.
	CHF, PERFORMANCE EVALUATION BRANCH.
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS.	DIR, SPECIAL ISSUES DIRECTORATE.
	ASST DIR, SPECIAL ISSUES GROUP.
DIVISION OF SAFEGUARDS & TRANSPORTATION	CHIEF SAFEGUARDS SPECIAL PROJECTS BRANCH.
	CHF, FACILITY ASSESSMENT & STANDARDIZATION BH.
	CHF, SG MATL LICENSING & ENTERNATL ACT BRCH.
	CHF SG REACTOR & TRANSP LICENSING BCH.
	CHIEF, OPERATIONS BRANCH.
	CHIEF, LICENSING BRANCH.
	CHIEF, TRANSPORTATION BRANCH.
DIV OF INDUSTRIAL & MEDICAL NUCLEAR SAFETY	CHIEF, TRANSPORTATION CERTIFICATION BRANCH.
	CHF URANIUM FUEL LICENSING BR.
	CHIEF PROCEDURES AND CERTIFICATION BR.
	CHF ADVANCED FUEL & SPENT FUEL LICENSING BR.
	CHIEF, MATERIALS LICENSING BRANCH.
	CHIEF, OPERATIONS BRANCH.
	CHIEF, FUEL CYCLE SAFETY BRANCH.
	CHIEF, MEDICAL, ACAD & COM USE SFTY BRANCH.
DIVISION OF HIGH LEVEL WASTE MANAGEMENT	CHIEF REPOSITORY PROJECTS BRANCH.
	CHIEF, POLICY & PROGRAM CONTROL BRANCH.
	CHIEF GEOTECHNICAL BRANCH.
	CHIEF ENGINEERING BRANCH.
	CHIEF LOW LEVEL WASTE & URANIUM REC P BRANCH.
	CHIEF, SYSTEMS ENGR & EVALUATION BRANCH.
	CHIEF, OPERATIONS BRANCH.
	CHIEF, TECHNICAL REVIEW BRANCH.
DIV OF LOW LEVEL WASTE MANAGEMENT & DECOMMISSIONING.	CHIEF, OPERATIONS BRANCH.
	CHIEF, TECHNICAL BRANCH.
	CHIEF, REGULATORY BRANCH.
DIVISION OF ENGINEERING	CHIEF, ENGINEERING BRANCH.
	CHIEF, MATERIALS ENGINEERING BRANCH.
	CHIEF CHEMICAL ENGINEERING BRANCH.
	CHIEF WASTE MANAGEMENT BRANCH.
	CHIEF, ENGINEERING ISSUES BRANCH.
	CHIEF, ELECTRICAL AND MECHANICAL ENGINEER BRH.
	CHIEF, STRUCTURAL AND SEISMIC ENGINEERING BRH.
DIVISION OF REACTOR ACCIDENT ANALYSIS	CHIEF FUEL SYSTEMS RESEARCH BRANCH.
	CHIEF RISK ANALYSIS BRANCH.
	CHIEF, REACTOR SYSTEMS BRANCH.
	CHIEF CONTAINMENT SYS RESEARCH BRANCH.
	CHIEF, ACCIDENT EVALUATION BRANCH.
	CHIEF, SEVERE ACCIDENT ISSUES BRANCH.
	CHF, PROBABILISTIC RISK ANALYSIS BRANCH.
DIVISION OF REGULATORY APPLICATIONS	CHIEF SAFETY RESEARCH APPLICATION BRANCH.
	CHIEF REGULATION DEVELOPMENT BRANCH.
	CHIEF, RADIATION & HEALTH EFFECTS BR.
	CHIEF ADV REACTORS AND GENERIC ISSUES BRANCH.
DIVISION OF REACTOR & PLANT SYSTEMS	CHIEF, REACTOR AND PLANT SYSTEMS BRANCH.
	CHIEF REACTOR AND PLANT SFTY ISSUES BRANCH.
	CHF, RELIABILITY AND HUMAN FACTORS BRANCH.
ORGANIZATION ABOLISHED	DIRECTOR ENFORCEMENT STAFF.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
ORGANIZATION ABOLISHED	CHIEF, OPERATING REACTOR PROGRAMS BRANCH.
	CHIEF, REACTOR CONSTRUCTION PROGRAMS BRANCH.
	CHIEF, SAFEGUARDS & MATERIALS PROGRAMS BRCH.
ORGANIZATION ABOLISHED	CHIEF VENDOR PROGRAM BRANCH.
ORGANIZATION ABOLISHED	CHIEF, EVENTS ANALYSIS BRANCH.
REGION I	DEPUTY REGIONAL ADMINISTRATOR.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DIRECTOR DIVISION OF REACTOR SAFETY.
	DEP DIR, DIV OF REACTOR SAFETY.
	DIRECTOR, DIVISION OF REACTOR PROJECTS.
	DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS.
REGION II	DEPUTY REGIONAL ADMINISTRATOR REGION II.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DIRECTOR, DIVISION OF REACTOR PROJECTS.
	DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS.
	DIRECTOR, DIVISION OF REACTOR SAFETY.
	DEP DIR, DIV OF REACTOR SAFETY.
	DIRECTOR, TVA PROJECTS.
REGION III.	DEP REGIONAL ADMINISTRATOR REGION III.
	DIRECTOR, DIVISION OF REACTOR SAFETY.
	DEP DIR, DIV OF REACTOR SAFETY.
	DIRECTOR, DIVISION OF REACTOR PROJECTS.
	DEPUTY DIRECTOR DIVISION OF REACTOR PROJECTS.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
REGION IV.	DEPUTY REGIONAL ADMINISTRATOR REGION IV.
	DIRECTOR URANIUM RECOVERY FIELD OFFICE.
	DIRECTOR DIV OF REACTOR PRJECTS.
	DEPUTY DIRECTOR, DIV OF REACTOR PROJECTS.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DIR, DIVISION OF REACTOR SAFETY.
	DEP DIRECTOR, DIV OF RADIATION SAFEGUARDS.
REGION V	DEPUTY REGIONAL ADMINISTRATOR REGION V.
	DIR DIV OF REACTOR SAFETY AND PROJECTS.
	DEP DIR DIV OF REACTOR SAFETY AND PROJECTS.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
OFFICE OF MANAGEMENT AND BUDGET	
OFFICE OF THE DIRECTOR	ASSISTANT DIRECTOR FOR ADMINISTRATION.
	DEPUTY ASSOCIATE DIR FOR ECONOMIC POLICY.
OFFICE OF SPECIAL COUNSEL/CIVIL RIGHTS	DEP GEN COUNSEL FOR REG AFFR & LITIGATION
LEGISLATIVE REFERENCE DIVISION	ASST DIR LEGISLATIVE REFERENCE.
	DEP/ASST/DIR FOR LEGISLATIVE REFERENCE.
	CHIEF, ECONOMICS, SCIENCE & GOVT. BRANCH.
	CHIEF, RESOURCES-DEFENSE-INTERNATIONAL BRANCH.
OFFICE OF FEDERAL PROCUREMENT POLICY	ASSOC. ADMINISTRATOR FOR MANAGEMENT CONTROL.
OFFICE OF INFORMATION AND REGULATORY AFFAIRS.	CHIEF INFORMATION POLICY BRANCH.
	CHIEF, COMMERCE AND LANDS BRANCH.
	CHIEF STATISTICAL POLICY BRANCH.
	DEPUTY CHIEF, INFORMATION POLICY BRANCH.
	CHIEF, NATURAL RESOURCES BRANCH.
	COUNSELOR TO THE ADMINISTRATOR.
	CHF, INFO TECHNOLOGY MANAGEMENT BRANCH.
ASSOCIATE DIRECTOR FOR MANAGEMENT	DEPUTY ASSOCIATE DIRECTOR FOR OPERATIONS.
	DEP ASSOC DIR FOR FINANCIAL MGT.
	CHIEF PERSONNEL & GENERAL SERVICES BRANCH.
PRODUCTIVITY MANAGEMENT BRANCH	CHIEF, PRODUCTIVITY MANAGEMENT BRANCH.
ASSOCIATE DIRECTOR FOR PRIVATIZATION	DEP ASSOC DIR FOR FINANCE AND ACCOUNTING.
BUDGET REVIEW DIVISION	ASST DIR FOR BUDGET REVIEW.
	DEP ASSISTANT DIRECTOR FOR BUDGET REVIEW.
	CHIEF FISCAL ANALYSIS BRANCH.
	DEP CHIEF FISCAL ANALYSIS BRANCH.
	CHF, BUDGET PREPARATION BRANCH.
	CHIEF, RESOURCES SYSTEMS BRANCH.
	DEPUTY CHIEF BUDGET PREPARATION BRANCH.
ASSOC DIR FOR NATIONAL SECURITY AND INTERNATIONAL AFFS.	DEP ASSOC DIR FOR MANAGEMENT.
INTERNATIONAL AFFAIRS DIVISION	DEP ASSOC DIR FOR INTERNATL AFFAIRS.
	DEP CHIEF. INTERNATIONAL AFFAIRS DIVISION.
	CHIEF, STATE-USIA BRANCH.
	CHIEF, ECONOMIC AFFAIRS BRANCH.
	CHIEF INTERNATIONAL SECURITY AFFAIRS BRANCH.
NATIONAL SECURITY DIVISION	DEP ASSOC DIR FOR NATIONAL SECURITY.
	DEP CHIEF.
	CHF., INTELLIGENCE COMMUNITY BRANCH.
	CHIEF, NAVY BRANCH.
	CHIEF, AIR FORCE BRANCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	CHIEF, ARMY BRANCH.
	CHIEF, MANPOWER, PAY & POLICY BRANCH.
ASSOC DIR FOR HUMAN RESOURCES, VETERANS AND LABOR.	DEP ASSOC DIR FOR SPECIAL STUDIES.
HEALTH AND INCOME MAINTENANCE DIVISION	DEP ASSOC DIR FOR HEALTH & INCOME MAINTENANCE.
	CHF, INCOME MAINTENANCE BRANCH.
	CHIEF HEALTH & SOCIAL SERVICES BRANCH.
	CHIEF HEALTH & FINANCING BRANCH.
LABOR, VETERANS, AND EDUCATION DIVISION	DEPUTY ASSOCIATE DIRECTOR FOR LABOR, VET & ED.
	DEP DIV CHF-LABOR.
	CHIEF, EDUCATION BRANCH.
	CHF VETERAN AFFAIRS BRANCH.
ASSOCIATE DIRECTOR FOR ECONOMICS AND GOVERNMENT.	DEP ASSOC DIR FOR SPECIAL STUDIES.
TRANSPORTATION, COMMERCE, AND JUSTICE DIVISION.	DEP ASSOC DIR FOR TRANSP COMMERCE & JUSTICE.
	CHIEF COMMERCE & JUSTICE BRANCH.
	CHIEF TRANSPORT GENERAL SERVICES BRANCH.
HOUSING, TREASURY AND POSTAL DIVISION	CHIEF, HOUSING/BANKING BRANCH.
	DEP ASSOC DIR FOR HOUSING, TREAS & PERSONNEL.
	CHIEF, TREASURY/POST BRANCH.
ASSOC DIR FOR NATURAL RESOURCES, ENERGY, AND SCIENCE.	DEP ASSOC DIR FOR SPEC STUDIES.
NATURAL RESOURCES DIVISION	DEP. ASSOCIATE DIR. FOR NATURAL RESOURCES.
	CHIEF, WATER RESOURCES BRANCH.
	CHIEF, AGRICULTURAL BRANCH.
	CHIEF, ENVIRONMENT BRANCH.
	CHIEF INTERIOR BRANCH.
	ASST DIVISION CHIEF NRD.
ENERGY AND SCIENCE DIVISION	DEP. ASSOC. DIR FOR ENERGY & SCIENCE.
	CHIEF, NUCLEAR ENERGY BRANCH.
	CHIEF SCIENCE AND SPACE PROGRAMS BRANCH.
	DEPUTY DIV CHIEF.
	CHIEF NON-NUCLEAR ENERGY BRANCH.
OFFICE OF PERSONNEL MANAGEMENT	
OFFICE OF THE INSPECTOR GENERAL	INSPECTOR GENERAL.
OFFICE OF FINANCE AND ADMINISTRATIVE SERVICES.	ASSISTANT DIRECTOR FOR FINANCE & ADMIN SERV.
OFFICE OF INFORMATION MANAGEMENT	EXECUTIVE FOR ADP OPERATIONS.
OFFICE OF ACTUARIES	CHIEF ACTUARY.
OFFICE OF INSURANCE PROGRAMS	ASST DIR FOR INSURANCE PROGRAM.
OFFICE OF RETIREMENT PROGRAMS	ASST DIR FOR RETIREMENT PROGRAMS.
OFFICE OF EXAMINATION DEVELOPMENT	ASST DIRECTOR FOR EXAMINATION DEVELOPMENT.
ORGANIZATION ABOLISHED	CHIEF, EXAMINING POLICY ANALYSIS DIVISION.
OFFICE OF ADMINISTRATIVE LAW JUDGES	ASST DIR FOR ADMINISTRATIVE LAW JUDGES.
STAFFING SERVICE CENTER	DIRECTOR, STAFFING SERVICE CENTER.
OFFICE OF AGENCY COMPLIANCE & EVALUATION	ASST DIR FOR AGENCY COMPLIANCE & EVALUATION.
OFFICE OF CLASSIFICATION	ASST DIR FOR CLASSIFICATION.
ORGANIZATION ABOLISHED	ASSISTANT DIR FOR STANDARDS DEVELOPMENT.
OFFICE OF FEDERAL INVESTIGATIONS	ASST DIR FOR FEDERAL INVESTIGATIONS.
OFFICE OF WASHINGTON EXAMINING SERVICES	ASST DIR FOR WASH EXAMINING SERVICES.
OFFICE OF THE SPECIAL COUNSEL (MSPB)	
HEADQUARTERS, OFFICE OF THE SPECIAL COUNSEL.	ASSOC SPEC COUNSEL (INVESTIGATION).
	ASSOC SPECIAL COUNSEL (PROSECUTION).
	DEPUTY ASSOCIATE SPEC COUNSEL FOR PROSECUTION.
	MANAGING DIRECTOR FOR OPERATIONS.
	ASST SPECIAL COUNSEL PLANNING AND OVERSIGHT.
RAILROAD RETIREMENT BOARD	
RAILROAD RETIREMENT BOARD	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
BOARD STAFF	EXECUTIVE DIRECTOR.
	ASSOC EXEC DIR FOR UNEMPL & SICKNESS INSUR.
	ASSOC EXEC DIRECTOR FOR FISCAL OPERATIONS.
	ASSOCIATE EXECUTIVE DIR FOR DATA PROCESSING.
	ASSOCIATE EXECUTIVE DIR FOR PROGRAM ANALYSIS.
	ASSOC EXEC DIR FOR LEGAL & ADM SERV & GEN COU.
	ASSOC EXEC DIR FOR RETIREMENT CLAIMS.
	CHIEF ACTUARY.
	ASSOC EXEC DIRECTOR—FIELD SERVICES.
SECURITIES AND EXCHANGE COMMISSION	
OFFICE OF THE CHAIRMAN	DEP CHF ACCOUNTANT.
OFFICE OF THE EXECUTIVE DIRECTOR	DEP EXEC DIRECTOR.
DIV OF CORPORATION FINANCE	ASSOC DIR (OPERATIONS).
SELECTIVE SERVICE SYSTEM	
SELECTIVE SERVICE SYSTEM	ASSOC DIR INFORMATION MANAGEMENT.
	ASSOCIATE DIRECTOR, OFC OF MGT. SERVICES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
SMALL BUSINESS ADMINISTRATION	
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
OFFICE OF THE GENERAL COUNSEL	ASSOCIATE GENERAL COUNSEL FOR GENERAL LAW.
	ASSOC GEN COUNSEL LITIGATION.
	ASSOCIATE GENERAL COUNSEL FOR FINANCIAL LAW.
OFFICE OF HEARINGS & APPEALS	ASST ADMINISTRATOR FOR HEARINGS AND APPEALS.
OFFICE PROCUREMENT ASSISTANCE	DIRECTOR FOR PRIME CONTRACTS.
OFFICE OF INFORMATION RESOURCES MGMT	ASST ADMIN FOR INFORMATION RESOURCES.
OFFICE OF PERSONNEL	DIRECTOR OF PERSONNEL.
OFFICE OF THE COMPTROLLER	COMPTROLLER.
OFFICE OF EEO & COMPLIANCE	DIR OFC OF EQUAL EMPLOYMENT OPPORT & COMPLIAN.
DISTRICT DIRECTORS	DISTRICT DIR PHILA.
	DISTRICT DIRECTOR, REGION IX, SAN FRANCISCO.
	DISTRICT DIR, REG IX, LOS ANGELES.
	DISTRICT DIRECTOR, REGION V, CHICAGO.
	DISTRICT DIRECTOR, NEW YORK.
	DISTRICT DIRECTOR.
DEPARTMENT OF STATE	
FOREIGN POLICY PLANNING STAFF	MEMBER, PLANNING & COORDINATION STAFF.
BUREAU OF ADMINISTRATION	SUPERVISORY STRUCTURAL ENGINEER.
BUREAU OF ECONOMIC & BUSINESS AFFAIRS	DIR, OFFICE OF EAST-WEST TRADE.
BUREAU OF INTELLIGENCE AND RESEARCH	DIR, OFC OF RESOURCES POLICY.
	DIR OFC OF RESEARCH & ANALYSIS SOVIET AFFRS.
	DEP DIR, OFC OF ECONOMIC ANALYSIS.
OFFICE OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSP GEN FOR POLICY, PLNG AND MANAGMENT.
INTERNATIONAL BOUNDARY & WATER COMMISSION.	SUPERVISORY CIVIL ENGINEER.
DEPARTMENT OF TRANSPORTATION	
OFFICE OF INSPECTOR GENERAL	ASST INSP GENERAL FOR AUDITING.
	ASST I/G FOR POLICY, PLANNING AND RESOURCES.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DIR OFC OF SURFACE TRANSPORTATION PROGRAMS.
	DIR, OFC OF AVIATION MARINE & RESEARCH PROGS.
	DEP ASST INSPECTOR GENERAL FOR AUDITING.
	DIR, OFFICE OF ADP AUDITS & TECHNICAL SUPPORT.
ASST SEC FOR ADMINISTRATION	ASST SECY FOR ADMINISTRATION.
	SENIOR PROCUREMENT ADVISOR.
OFFICE OF ACQUISITION & GRANT MANAGEMENT	DIRECTOR OFC OF ACQUISITION & GRANT MGNT.
ASSOC ADM'R FOR SAFETY	ASSOC ADMR FOR SAFETY.
	DIR, OFFICE OF RESEARCH AND DEVELOPMENT.
	DIRECTOR, OFFICE OF SAFETY ENFORCEMENT.
OFC OF PIPELINE SAFETY REGULATION	ASSOCIATE DIR, OFC OF PIPELINE SAFETY REG.
OFC OF PIPELINE SAFETY	DIR, OFC OF PIPELINE SAFETY.
OFC OF ASSOC ADMR FOR MARKETING & DOMESTIC ENTERPRISE.	ASSOC ADMR FOR MARKETING & DOMESTIC ENTERPRISE.
OFFICE OF ASSOC ADMR FOR SHIPBUILDING OPERS & RESEARCH.	DIR/OFC OF NAVAL ARCHITECTURE & ENGINEERING.
	DIR OFFICE OF SHIPBUILDING COSTS & PRODUCTION.
OFFICE OF ASSOCIATE ADMINISTRATOR FOR MARITIME AIDS.	ASSOCIATE ADMINISTRATOR FOR MARITIME AIDS.
ASSOC ADMR FOR BUDGET AND POLICY	DIR, OFC OF BUDGET & FINANCIAL MANAGEMENT.
OFFICE OF AVIATION SAFETY	DIR OFC OF AVIATION SAFETY, OFC AVIATION SAF.
ASST ADMINISTRATOR/SCIENCES & ADVANCED TECHNOLOGY.	ASST ADMINISTRATOR/SCIENCE & ADVANCED TECH.
	MANAGER SCIENCE AND TECHNOLOGY DIVISION.
OFFICE OF ACCOUNTING	DIR OFFICE OF ACCOUNTING.
ACQUISITION AND MATERIEL SERVICE	DIR ACQUISITION & MATERIEL SERVICE.
	DEPUTY DIR ACQUISITION & MATERIEL SERVICE.
	MGR, CONTRACTS DIVISION.
ASSOC ADMR FOR AIR TRAFFIC	ASSOC, ADMINISTRATOR FOR AIR TRAFFIC.
	DEP ASSOC ADMIN FOR AIR TRAFFIC.
	MANAGER QUALITY ASSURANCE STAFF.
	ASSOC ADMIN FOR AIR TRAFFIC.
OFC OF AIR TRAFFIC EVALUATIONS & ANALYSIS	DIR, OFC OF AIR TRAFFIC EVALUATIONS & ANAL.
AIR TRAFFIC PLANS & REQUIREMENTS SERVICE	MANAGER SYSTEM PLANS & PROGRAM DIV.
	DIR, AIR TRAFFIC PLANS & REQUIREMENTS SERV.
	MANAGER AUTOMATION SOFTWARE DIVISION.
AIR TRAFFIC OPERATIONS SERVICE	MANAGER, PROCEDURES DIVISION.
	MGR, AIRSPACE-RULES & AERONAUTICAL INF. DIV.
	MANAGER, OPERATIONS DIVISION.
	DIR AIR TRAFFIC OPERATIONS SERVICE.
ADVANCED AUTOMATION PROGRAM OFFICE	DIRECTOR AUTOMATION SERVICE.
	DEP DIR AUTOMATION SERVICE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	MGR AUTOMATION ENGINEERING DIVISION.
	MGR ADVANCED AUTOMATION SYSTEM DIV.
OFFICE OF AIRPORT PLANNING & PROGRAMMING	DIR., OFFICE OF AIRPORT PLANNING & PROGRAM.
	MGR, GRANTS-IN-AID DIVISION.
ASSOC ADMR FOR AVIATION STANDARDS	ASSOC ADMR FOR AVIATION STANDARDS.
	DEPUTY ASSOC ADMR FOR AVIATION STANDARDS.
OFFICE OF PROGRAM & REGULATION MANAGEMENT.	DIR, OFC OF PROG AND REGULATIONS MGT.
OFFICE OF AIRWORTHINESS	DIRECTOR OFFICE OF AIRWORTHINESS.
	DEPUTY DIRECTOR OFFICE OF AIRWORTHINESS.
	MANAGER, AIRCRAFT ENGINEERING DIVISION.
	MANAGER AIRCRAFT MAINTENANCE DIVISION.
OFFICE OF CIVIL AVIATION SECURITY	DIRECTOR, OFFICE OF CIVIL AVIATION SECURITY.
	DEP DIR, OFFICE OF CIVIL AVIATION SECURITY.
OFFICE OF FLIGHT OPERATIONS	DIR OFC OF FLIGHT OPERATIONS.
	DEPUTY DIRECTOR OFFICE OF FLIGHT OPERATIONS.
	MGR, GENERAL AVIATION AND COMMERICAL DIV.
	MGR, AIR TRANSPORTATION DIV.
AVIATION STANDARDS-NATIONAL FIELD OFFICE	DIR. AVIATION STANDARDS NATL FIELD OFC.
	DEPUTY DIRECTOR.
OFFICE OF AVIATION MEDICINE	FED AIR SURGEON.
	DEPUTY FEDERAL AIR SURGEON.
	MGR. AEROMEDICAL STDS DIV.
	MGR. CIVIL AEROMED INSTITUTE.
GREAT LAKES REGION—CHICAGO	MANAGER, AIR TRAFFIC DIVISION.
	MANAGER, FLIGHT STANDARDS DIVISION.
NEW ENGLAND REGION—BURLINGTON, MA	MGR, FLIGHT STANDARDS DIVISION.
	MGR, AIRCRAFT CERTIFICATION DIVISION.
	MANAGER, AIR TRAFFIC DIVISION.
NORTHWEST MOUNTAIN REGION—SEATTLE	MGR, AIRCRAFT CERTIFICATION DIVISION.
	MGR, FLIGHT STANDARDS DIV.
	MGR, AIR TRAFFIC DIVISION.
CENTRAL REGION—KANSAS CITY	MGR, FLIGHT STANDRDS DIV.
	MGR, AIRCRAFT CERTIFICATION DIVISION.
	MANAGER, AIR TRAFFIC DIVISION.
EASTERN REGION—NEW YORK	MGR, AIR TRAFFIC DIVISION.
	MGR, FLIGHT STANDARDS DIV.
SOUTHERN REGION—ATLANTA	MGR, FLIGHT STANDARDS DIVISION.
	MGR, AIR TRAFFIC DIVISION.
SOUTHWEST REGION—FORT WORTH	MGR, AIR TRAFFIC DIV.
	MGR, FLIGHT STANDARDS DIV.
	MGR, AIRCRAFT CERTIFICATION DIVISION.
WESTERN PACIFIC REGION—LOS ANGELES	MGR, FLIGHT STANDARDS DIV.
	MGR, AIR TRAFFIC DIVISION.
FEDERAL HIGHWAY ADMINISTRATION	EXECUTIVE DIRECTOR.
ASSOC ADMR FOR ADMIN	DIRECTOR OFFICE OF FISCAL SERVICES.
	DIRECTOR OFFICE OF CONTRACTS AND PROCUREMENT.
ASSOCIATE ADMINISTRATOR FOR SAFETY & OPERATIONS.	ASSOC ADMINISTRATOR FOR SAFETY & OPERATIONS.
OFFICE OF HIGHWAY SAFETY	DIR. OFFICE OF HIGHWAY SAFETY.
ASSOC ADMR FOR RIGHT OF WAY AND ENVIRONMENT.	ASSOC ADMR FOR RIGHT-OF-WAY & ENVIRONMENT.
OFF OF ENVIRONMENTAL POLICY	DIR OFC OF ENVIRONMENTAL POLICY.
	CHIEF ENVIRONMENTAL OPERATIONS DIVISION.
OFF OF RIGHT OF WAY	DIR OFC OF RIGHT OF WAY.
	CHIEF, REAL ESTATE DIVISION.
	CHIEF RELOCATION DIVISION.
OFFICE OF MOTOR CARRIER STANDARDS	DIR, OFC OF MOTOR CARRIER STANDARDS.
OFFICE OF MOTOR CARRIER SAFETY FIELD OPERATIONS.	DIR, OFC OF MOTOR CARRIER S/F OPERATIONS.
NATL CENTER FOR STATISTICS AND ANALYSIS	CHF, ACCIDENT INVESTIGATION DIV.
VEHICLE RESEARCH AND TEST CTR	CHF SAFETY RESEARCH LAB.
OFC OF VEHICLE SAFETY STANDARDS	CHF CRASH AVOIDANCE DIVISION.
	CHF CRASHWORTHINESS DIVISION.
DEPARTMENT OF TREASURY	
OFFICE OF THE SECRETARY	SENIOR NATIONAL INTELLIGENCE ADVISER.
OFFICE OF THE GENERAL COUNSEL	CHIEF COUNSEL.
OFC OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL (FISCAL SVC/ADP).
	ASSISTANT INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL (TOSCA).
	ASST INSPECTOR GENERAL FOR AUDIT (DOTOCC).
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFC OF TAX ANALYSIS	SENIOR ADVISOR (ECONOMICS).
	DEP DIR (ECONOMIC MOD & COMPUTER APPLICAT).
OFC OF ASST SECY (ECONOMIC POLICY)	ASST DIR FOR ECONOMIC FORECASTING.
	SENIOR ADV FOR BAL OF PAYMENTS ANAL & PROJ.
	SR ECONOMIST.
OFC OF THE FISCAL ASST SECY	FISCAL ASSISTANT SECRETARY.
	DEPUTY FISCAL ASST SECY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASSISTANT FISCAL ASSISTANT SECRETARY.
BUREAU OF GOVERNMENTAL FINANCIAL OPERATIONS FINANCIAL.	COMMR OF FINANCIAL MANAGEMENT SERVICE.
	DEP COM FINANCIAL MANAGEMENT SERVICE.
	ASSISTANT COMMISSIONER, INFORMATION SYSTEMS.
	ASST COMMISSIONER FEDERAL FINANCE.
	ASSISTANT COMMISSIONER, COMPTROLLER.
	ASST COMMISSIONER HEADQUARTERS OPERATIONS.
	ASST COMMISSIONER FIELD OPERATIONS.
	DIRECTOR OPERATIONS GROUP.
	DIRECTOR, ACCOUNTING GROUP.
	ASST COMMISSIONER ADMINISTRATION.
	DIRECTOR, SYSTEMS DEVELOPMENT GROUP.
	DIR, TECHNOLOGY & INFORMATION GROUP.
	DIRECTOR, WORKING CAPITAL GROUP.
BUREAU OF PUBLIC DEBT	COMMISSIONER.
	DEP COMMR OF THE PUBLIC DEBT.
	ASST COMMISSIONER (SAVINGS BOND OPERATIONS).
	ASST COMMR (FINANCING).
	ASST COMMR (ADMINISTRATION).
	ASST COMMR/SECURITIES & ACCOUNTING SERVICES.
	ASST COMMISSIONER (AUTOMATED INFO SYSTEMS).
FEDERAL FINANCE	DIR, OFC OF FINANCE AND MARKET ANALYSIS.
OFC OF FOREIGN EXCHANGE OPERATIONS	DIR, OFC OF FOREIGN EXCHANGE OPERATIONS.
OFC OF THE COMPTROLLER OF THE CURRENCY	DEP COMPTROLLER FOR ECON ANAL & STRAT PLNG.
OFC OF THE CHIEF COUNSEL	DIR, ENFORCEMENT & COMPLIANCE.
	DIR, LITIGATION DIV.
	DIR LEGAL ADVISORY SERVICES DIVISION.
SR DEP COMPTROLLER (POLICY & PLANNING)	DEP COMPTROLLER, BANK ORG & STRUCTURE.
SR DEP COMPTROLLER (BANK SUPERVISION)	DEP COMPT INTERNATL REL & FINAN EVALUATION.
SPECIAL SURVEILLANCE	DIR FOR SPEC PROJECTS.
	DEPUTY COMPTROLLER, SPECIAL SUPERVISION.
	DEPUTY COMPTROLLER FOR SUPERVISORY SYSTEMS.
CHIEF NATIONAL BANK EXAMINER	CHF NATIONAL BANK EXAMINER.
	ASSISTANT CHIEF NATIONAL BANK EXAMINER.
	DEPUTY COMPTROLLER FOR COMPLIANCE.
	CHIEF NATIONAL BANK EXAMINER.
SR DEP COMPTROLLER (NATIONAL OPERATIONS)	DEPUTY COMPTROLLER FOR OPERATIONS.
	SENIOR DEPUTY COMPTROLLER FOR ADMINISTRATION.
DISTRICT OFFICERS	DEPUTY COMPTROLLER (NORTHEASTERN DISTRICT).
	DEPUTY COMPTROLLER OF THE CURRENCY.
	DEPUTY COMPTROLLER OF THE CURRENCY.
	DISTRICT ADMINISTRATOR (MIDWESTERN DISTRICT).
	DISTRICT ADMINISTRATOR.
	DEPUTY COMPTROLLER (SOUTHEASTERN DISTRICT).
	DEPUTY COMPTROLLER (SOUTHWESTERN DISTRICT).
	DISTRICT ADMINISTRATOR.
	DISTRICT ADMINISTRATOR.
	DEPUTY COMPTROLLER (WESTERN DISTRICT).
	DISTRICT ADMINISTRATOR (NORTHEASTERN DISTRICT).
	DISTRICT ADMINISTRATOR (CENTRAL DISTRICT).
	SR DEP COMPTROLLER—BANK SUPERVISION OPERS.
	SR DEP COMPTROLLERS–BANK SUPERVISION POLICY.
OFC OF ASST SECY MANAGEMENT	DIRECTOR, OFFICE OF PROCUREMENT.
OFC OF PERSONNEL	DEP DIR OF PERSONNEL.
BUR OF ALCOHOL, TOBACCO, FIREARMS	ASSISTANT DIRECTOR INTERNAL AFFAIRS.
	MIDWEST REGL COUNSEL.
	SOUTHEAST REGL COUNSEL.
	NORTH-ATLANTIC REGIONAL COUNSEL.
	STAFF ASSISTANT TO THE CHIEF COUNSEL.
DEPUTY DIRECTOR (COMPLIANCE OPERATIONS)	DEPUTY DIRECTOR (COMPLIANCE OPERATIONS).
	DEP. ASSOCIATE DIR. (COMPLIANCE OPERATIONS).
DEPUTY DIRECTOR (LAW ENFORCEMENT)	DEPUTY DIRECTOR (LAW ENFORCEMENT).
	CHIEF, EXPLOSIVES DIVISION.
	DEPUTY ASSOC DIR (LAW ENFORCEMENT).
	CHIEF, FIREARMS DIVISION.
COMPTROLLER	DIRECTOR, LABORATORY SERVICES.
US CUSTOMS SERVICE	AREA DIR, NEWARK.
	EXEC DIR THE INTERDICTION COMMITTEE.
OFC OF THE CHIEF COUNSEL	ASST CHIEF COUNSEL (CUSTOMS COURT LITIGAT).
	MIAMI REGL COUNSEL.
	CHICAGO REGL COUNSEL.
	NEW YORK REGL COUNSEL.
	REGIONAL COUNSEL (PACIFIC REGION).
OFFICE OF THE COMPTROLLER	DIR OFC OF FINANCIAL MGMT & PROG ANALYSIS.
	COMPTROLLER.
	DIR BUDGET AND PLANNING.
	DIR OFC OF HUMAN RESOURCES.
OFC OF ASST COMMR FOR INTERNAL AFFAIRS	ASST COMMISSIONER FOR INTERNAL AFFAIRS.
OFC OF ASST COMMR FOR ENFORCEMENT	DEPUTY ASSISTANT COMMISSIONER (ENFORCEMENT).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIR OFC OF PATROL.
	DEP ASST COMMISSIONER, AVIATION OPERATIONS.
OFC OF ASST COMMR FOR INSPECTION & CONTROL.	ASST COMMR (INSPECTION & CONTROL)
	DEPUTY ASST COMMR (INSPECTION & CONTROL).
OFC OF ASST COMMR FOR COMMERCIAL OPERATIONS.	DIRECTOR, TECHNICAL SERVICES DIV.
	DIRECTOR, CLASSIFICATION AND VALUE DIVISION.
	DIR OFC OF REGULATIONS AND RULINGS.
	DIRECTOR, ENTRY PROCEDURES & PENALTIES DIV.
	DIR OFC OF TRADE OPERATIONS.
	DIRECTOR, COMMERCIAL COMPLIANCE DIVISION.
REGIONAL OFFICES	REGL COMMR REG 2 NY
	REG COMMR, REG 1, BOSTON.
	ASST REGN COMMR OPERATIONS REG II NEW YORK.
	REGL COMMR, REG 4, MIAMI.
	REG COMMR, REG V, NEW ORLEANS.
	REGIONAL COMMISSIONER, CHICAGO.
	ASST REGIONAL COMMR (OPERATIONS).
	ASST REGL COMMR (OPERATIONS).
	ASST REGL COMMR (OPERATIONS).
	ASST REGL COMMR (OPERATIONS).
	ASST REGIONAL COMMR (OPERATIONS).
	ASST REGIONAL COMMISSIONER ENFORCEMENT.
	DEPUTY REGIONAL COMMISSIONER, PACIFIC REGION.
	AREA DIRECTOR, JFK AIRPORT.
	AREA DIRECTOR, NEW YORK SEAPORT.
	ASST REGL COMMR—HOUSTON (ENFORCEMENT).
	ASST REGL COMMR—MIAMI (ENFORCEMENT).
	REGIONAL COMMISSIONER.
	DISTRICT DIRECTOR, LOS ANGELES.
	ASSISTANT REGL COMMISSIONER (ENFORCEMENT).
	ASST REGL COMMR (ENFORCEMENT).
	ASST REGIONAL COMMISSIONER (ENFORCEMENT).
US SECRET SERVICE	DIRECTOR OF THE SECRET SERVICE.
	DEPUTY DIRECTOR U.S. SECRET SERVICE.
	ASST TO THE DIR, TRAINING.
	ASST TO THE DIR, PUB AFFS.
OFC OF ADMINISTRATION	ASSISTANT DIRECTOR, ADMINISTRATION.
OFC OF INSPECTION	ASSISTANT DIRECTOR INSPECTION.
OFC OF PROTECTIVE RESEARCH	ASST DIR (PROTECTIVE RESEARCH).
	DEP. ASST. DIR. (PROTECTIVE RESEARCH).
	SPEC AGENT IN CHARGE—TECH SEC DIV.
	SPEC AGENT IN CHARGE—INTELLIGENCE DIV.
	CHF, INFO RESOURCES MANAGEMENT DIVISION.
OFC OF PROTECTIVE OPERATIONS	ASST DIR (PROTECTIVE OPERATIONS.
	DEP ASST DIR (PROTECTIVE OPERATIONS).
	SPEC AGENT IN CHARGE—PRESIDENTIAL PROTECTIVE.
	DAD PROTECTIVE OPERS (UNIFORMED DIV).
	SPEC AGENT IN CHARGE—VP PROTECT DIV.
	DEPUTY ASST DIR PROTECTIVE OPERATIONS.
	SPEC AGENT IN CHARGE DIGNITARY PROTECTIVE DIV.
	DEPUTY SPECIAL AGENT IN CHARGE PRES PROT DIV.
	DEPUTY SPECIAL AGENT IN CHARGE.
OFFICE OF INVESTIGATIONS	ASST DIRECTOR, INVESTIGATIONS.
	DEP ASST DIR INVESTIGATIONS.
	SPECIAL AGENT IN CHARGE, NEW YORK OFFICE.
	SPECIAL AGENT IN CHARGE, CHICAGO.
	SPECIAL AGENT IN CHARGE, LOS ANGELES OFFICE.
	SPEC AGENT IN CHARGE—WASHINGTON FIELD OFFICE.
	SPEC AGENT IN CHARGE—PHILADELPHIA FIELD OFFIC.
	SPEC AGENT IN CHARGE—MIAMI FIELD OFFICE.
	SPECIAL AGENT IN CHARGE—BOSTON FIELD OFFICE.
	SPEC AGENT IN CHARGE—ATLANTA FIELD OFFICE.
BUREAU OF THE MINT	ASSOCIATE DIRECTOR OF OPERATIONS.
	ASSOC DIR OF POL & MANAGEMENT.
	ASSOCIATE DIRECTOR FOR MARKETING.
OFFC OF THE COMMISSIONER.	DEPUTY COMMISSIONER
	ASST TO THE DEPUTY COMMISSIONER.
	DIRECTOR, LEGISLATIVE ANALYSIS DIVISION.
	ASST TO THE COMMISSIONER (EQUAL OPPORTUNITY).
	SENIOR DEPUTY COMMISSIONER.
	TAXPAYER OMBUDSMAN.
	DEPUTY COMMISSIONER (OPERATIONS).
	DEPUTY COMMISSIONER (PLANNING & RESOURCES).
	SENIOR ADVISOR.
	EXECUTIVE SECRETARY.
	ASSISTANT TO THE SENIOR DEPUTY COMMISSIONER.
APPEALS DIVISION	DIRECTOR, APPEALS DIVISION.
	REGL DIR OF APPEALS—CENTRAL REGION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	REG DIR OF APPEALS, MID-ATLANTIC REGION.
	REG DIR OF APPEALS—SOUTHWEST REG.
	REGL DIR OF APPEALS—SOUTHEAST REG.
	REGIONAL DIR OF APPEALS NORTH ATLANTIC REGION.
	REGL DIR OF APPEALS, MIDWEST REG.
	REGIONAL DIRECTOR OF APPEALS—WESTERN REGION.
	CHIEF APPEALS OFFICE NEW YORK CITY.
DATA PROCESSING	ASSOC COMMR (DATA PROCESSING).
	DIRECTOR, TAXPAYER SERVICE DIVISION.
	DIRECTOR, NATIONAL COMPUTER CENTER.
	DIR, RETURNS PROCESSING AND ACCOUNTING DIV.
	DIRECTOR PLANNING AND CONTROL STAFF.
	DIR, PROGRAM PLANNING & REVIEW STAFF.
	ASST DIR RETURNS PROCESSING & ACCOUNTING DIV.
	DEP ASST COMMISSIONER (COMPUTER SERVICES).
	DIRECTOR, STATISTICS OF INCOME DIVISION.
	ASSISTANT COMMISSIONER (TAX SYSTEM REDESIGN).
	DEP ASST COMMR (RETURNS & INFO PROCESSING).
	DIRECTOR, COMPLIANCE PROCESSING SYSTEMS DIV.
	ASSISTANT DIR, TAXPAYER SERVICE DIVISION.
	ASST COMMISSIONER (R & IP).
	DIR TAXPAYER SERVICE DIVISION.
	DIRECTOR, HARDWARE DIVISION.
	ASSISTANT DIRECTOR SOFTWARE DIVISION.
	DIRECTOR, SOFTWARE DIVISION.
	ASST COMMR (COMPUTER SERVICES).
OFC OF ASST COMM: R, INSPECTION	ASSISTANT COMMISSIONER (INSPECTION).
	DEP ASST COMMR (INSPECTION).
	DIRECTOR, INTERNAL AUDIT DIV.
	ASSISTANT DIRECTOR INTERNAL AUDIT DIVISION.
	DIRECTOR, INTERNAL SECURITY DIVISION.
	ASST DIR, INTERNAL SECURITY DIVISION.
	REGIONAL INSPECTOR, MIDWEST REG.
	REGIONAL INSPECTOR, NORTH ATLANTIC.
	REGIONAL INSPECTOR, WESTERN REGION.
	REGIONAL INSPECTOR, SOUTHWEST REG.
	REGIONAL INSPECTOR, MID-ATLANTIC REG.
	REGIONAL INSPECTOR, CENTRAL.
	REGIONAL INSPECTOR SOUTHEAST.
POLICY AND MANAGEMENT	ASSOCIATE COMMISSIONER (POLICY AND MGMT).
	DIR, TAX FORMS & PUBLICATIONS DIV.
	DIR, IRS DATA CENTER DETROIT.
	DIR FINANCE DIVISION.
	DIR, FACILITIES MGT DIV.
	DIR, NATL OFC RESOURCES MANAGEMENT DIVISION.
	DIRECTOR, TAX ADMINISTRATION ADV SERV DIV.
	ASST COMMR (PLANNING, FINANCE & RESEARCH).
	DEP ASST COMMR (PLANNING, FINANCE, & RESCH).
	DIRECTOR, HUMAN RESOURCES TECHNOLOGY STAFF.
	DEP ASST COMMR (HUMAN RESOURCES).
	DIRECTOR, PLANNING DIVISION.
	DIRECTOR, HUMAN RESOURCES DIVISION.
	DIR. CONTRACTS & ACQUISITIONS DIVISION
	DIRECTOR, RESEARCH DIVISION.
	ASSISTANT DIR, TAX FORMS & PUBLICATIONS DIV.
	ASSISTANT COMMISSIONER (HUMAN RESOURCES).
CENTRAL REGION	REGIONAL COMMR.
	ARC (EXAMINATION) CENTRAL REGION.
	ASST REGIONAL COMMISSIONER (CRIMINAL INVESTI).
	ASST REG COMM (RESOURCE MANAGEMENT).
	ASSISTANT REGIONAL COMMISSIONER (COLLECTION).
	ASST REGL COMMISSIONER (DATA PROCESSING).
	DIR SERVICE CTR CINCINNATI.
	DISTRICT DIR (CLEVELAND).
	DISTRICT DIRECTOR DETROIT.
	DISTRICT DIRECTOR (PARKERSBURG).
	DISTRICT DIRECTOR, INDIANAPOLIS.
	DISTRICT DIRECTOR, LOUISVILLE.
	DISTRICT DIR, CINCINNATI.
	ASST DISTRICT DIRECTOR, CLEVELAND.
	ASSISTANT DISTRICT DIRECTOR DETROIT.
	ASST SERVICE CENTER DIRECTOR.
MID-ATLANTIC REGION	REG COMMISSIONER.
	ARC (EXAMINATION) MID-ATLANTIC.
	ARC (CRIMINAL INVESTIGATION) MID ATLANTIC REG.
	ASST REG COMMR (COLLECTION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIR, PHILADELPHIA.
	DISTRICT DIR, NEWARK.
	DISTRICT DIR, PHILADELPHIA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DISTRICT DIR, PITTSBURGH.
	DISTRICT DIRECTOR RICHMOND DISTRICT.
	ASST DISTRICT DIR, PHILADELPHIA.
	ASST DISTRICT DIRECTOR (NEWARK).
	ASSISTANT DISTRICT DIRECTOR—BALTIMORE, MD.
	DISTRICT DIRECTOR, WILMINGTON.
	DISTRICT DIR, BALTIMORE.
	DISTRICT DIRECTOR.
	ASSIST REG'L COMMISSIONER (RESOURCES MGMT).
	ASST SERVICE CENTER DIRECTOR.
MIDWEST REGION	REGIONAL COMMR, MIDWEST REGION.
	ASST REG COMMR (RESOURCES MGMT).
	ARC (CRIMINAL INVESTIGATION) MIDWEST REGION.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	ARC (EXAMINATION), MIDWEST REGION.
	ARC (COLLECTION) MIDWEST REGION.
	SRVC CTR DIR, KANSAS CITY.
	DISTRICT DIR, CHICAGO.
	DISTRICT DIRECTOR ST LOUIS.
	DISTRICT DIR, DES MOINES.
	DISTRICT DIR, ST PAUL.
	DISTRICT DIR, OMAHA.
	DISTRICT DIR, SPRINGFIELD.
	DISTRICT DIR, MILWAUKEE.
	ASST DISTRICT DIR, CHICAGO.
	ASST DISTRICT DIR, ST LOUIS.
	DISTRICT DIRECTOR, FARGO.
	DISTRICT DIRECTOR, ABERDEEN.
	CHIEF, EXAMINATION DIVISION.
	DISTRICT DIRECTOR, HELENA.
NORTH ATLANTIC REGION	REG COMMR.
	ASST REG COMMR (EXAM) NORTH ATLANTIC REG.
	ARC (CRIMINAL INVESTIGATION).
	ARC (RESOURCES MGMT).
	ARC (COLLECTION) NORTH ATLANTIC REGION.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, ANDOVER, MASS.
	SRVC CTR DIR, BROOKHAVEN.
	DISTRICT DIR, MANHATTAN.
	DISTRICT DIR, BROOKLYN.
	DISTRICT DIR BOSTON.
	CHIEF EXAMINATION DIV MANHATTAN.
	DISTRICT DIR, ALBANY.
	DIST DIR (HARTFORD).
	DISTRICT DIR, BUFFALO.
	ASST DIST DIR, BROOKLYN.
	ASSISTANT DISTRICT DIRECTOR MANHATTAN.
	ASST DISTRICT DIR, BOSTON.
	DISTRICT DIRECTOR PROVIDENCE.
	DIST DIR, AUGUSTA.
	DISTRICT DIRECTOR, PORTSMOUTH.
	DISTRICT DIRECTOR, BURLINGTON.
	ASST SERVICE CENTER DIRECTOR.
SOUTHEAST REGION	REG COMMR.
	ARC (EXAMINATION) SOUTHEAST REGION.
	ASST REG COMMISSIONER—CRIMINAL INVESTIGATION.
	ASST REG'L COMMR (RESOURCES MANAGEMENT).
	ASST REG (COLLECTION) SE REG ATLANTA.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, MEMPHIS.
	SRVC CTR DIR, ATLANTA.
	DISTRICT DIR, JACKSONVILLE.
	DISTRICT DIR, ATLANTA.
	DISTRICT DIRECTOR GREENSBORO.
	DISTRICT DIR, NASHVILLE.
	DISTRICT DIRECTOR BIRMINGHAM.
	DISTRICT DIR, NEW ORLEANS.
	DISTRICT DIRECTOR, COLUMBIA.
	DISTRICT DIRECTOR LITTLE ROCK DISTRICT.
	DISTRICT DIRECTOR, JACKSON, MISS.
	ASST DISTRICT DIRECTOR, JACKSONVILLE.
	ASSISTANT DISTRICT DIRECTOR, ATLANTA.
	ASSISTANT DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
SOUTHWEST REGION	REGIONAL COMMR.
	ASST REGL COMMR (EXAMINATION).
	ARC (CRIMINAL INVESTIGATION) SW REGION
	ARC (RESOURCES MGMT).
	ASSISTANT REGIONAL COMMISSIONER (COLLECTION).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIR, OGDEN.
	SERVICE CENTER DIRECTOR, AUSTIN.
	DISTRICT DIR, AUSTIN.
	DISTRICT DIRECTOR, DALLAS.
	DISTRICT DIRECTOR WICHITA.
	DISTRICT DIRECTOR OKLAHOMA CITY.
	DISTRICT DIR, PHOENIX.
	DISTRICT DIR, DENVER.
	ASST DIST DIR, AUSTIN.
	ASSISTANT DISTRICT DIRECTOR DALLAS.
	DISTRICT DIRECTOR, ALBUQUERQUE.
	DISTRICT DIRECTOR, CHEYENNE.
	DISTRICT DIRECTOR, SALT LAKE CITY.
	ASSISTANT DISTRICT DIRECTOR, HOUSTON.
	DISTRICT DIRECTOR, HOUSTON.
WESTERN REGION	REG COMMR.
	ARC (CRIMINAL INVESTIGATION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	ASST REGIONAL COMMISSIONER (EXAMINATION).
	ASST REGL COMMR (COLLECTION).
	ASST REGL COMMR/(RESOURCES MANAGEMENT).
	SERVICE CENTER DIRECTOR, FRESNO.
	DISTRICT DIR, LOS ANGELES.
	DISTRICT DIR, SAN FRANCISCO.
	DISTRICT DIRECTOR PORTLAND DISTRICT.
	DISTRICT DIR, SEATTLE.
	ASST DISTRICT DIR, LOS ANGELES.
	ASST DIST DIR SAN FRANCISCO.
	DISTRICT DIRECTOR, HONOLULU.
	DISTRICT DIRECTOR ANCHORAGE.
	DISTRICT DIRECTOR BOISE.
	CHF, EXAMINATION DIV, LOS ANGELES.
	DISTRICT DIRECTOR (SACRAMENTO).
	DISTRICT DIRECTOR (LAS VEGAS).
	DISTRICT DIRECTOR, SAN JOSE.
	ASSISTANT DISTRICT DIRECTOR, LAGUNA NIGUEL.
	DISTRICT DIRECTOR, LAGUNA NIGUEL.
OPERATIONS	ASSOC COMMR (OPERATIONS).
	ASST COMM'R (EMPLOYEE PLANS & EXEMP & ORGANIZA.
	SPECIAL ASST FOR EXEMPT ORGANIZATION MATTERS.
	SPEC ASST FOR EMPLOYEE PLANS.
	ASSISTANT COMMISSIONER (EXAMINATION).
	ASST COMMR (CRIMINAL INVESTIGATION).
	DIR EXEMPT ORGANIZATIONS TECHNICAL DIVISION.
	DIR EMPLOYEE PLANS & EXEMPT ORG OPER DIV.
	D/EMPLOYEE PLANS TECH & ACTUARIAL DIVISION.
	DEPUTY ASSISTANT COMMISSIONER (EXAMINATION).
	DEP ASST COMMR (CRIMINAL INVESTIGATION).
	ASST/DIR EXEMPT ORGANIZATIONS TECHN DIVISION.
	ASST/DIR EMPLOYEE PLANS TECHN & ACTUARIAL DIV.
	TECH ADV/ASST TO DIR EMPLOYEE PLANS DIV.
	DEPUTY ASST COMMR TAX SYSTEM REDESIGN.
	D/A COMMISSIONER (EMPLOYEE PLANS & EXEMPT ORGS).
	DEP ASST COMMR (COLLECTION).
	ASSISTANT COMMISSIONER (COLLECTION).
	ASSISTANT COMMISSIONER (INTERNATIONAL).
	DEPUTY ASST COMMISSIONER (INTERNATIONAL).
OFC OF CHF COUNSEL	DEPUTY CHIEF COUNSEL.
	ASSOCIATE CHIEF COUNSEL (TECHNICAL).
	ASSOCIATE CHIEF COUNSEL (LITIGATION).
	DEPUTY ASSOCIATE CHIEF COUNSEL (TECHNICAL).
	DIRECTOR, INDIVIDUAL INCOME TAX DIV.
	DIRECTOR, CORPORATION TAX DIVISION.
	CHF, CORPORATION TAX BRANCH.
	CHF, INDIVIDUAL INCOME TAX BRANCH.
	CHIEF, ENGINEERING & VALUATION BRANCH CORP TA.
	ASST DIR, INDIVIDUAL TAX DIVISION.
	DEPUTY DIRECTOR.
	DIR, GENERAL LITIGATION DIV.
	DIR, TAX LITIGATION DIV.
	DIR, INTERPRETATIVE DIV.
	DIR, LEGISLATION & REGULATIONS DIV.
	DIRECTOR, OPERATIONS DIVISION.
	DIR, CRIMINAL TAX DIV.
	DIR, GEN LEGAL SERVICES DIV.
	DIRECTOR, DISCLOSURE LITIGATION DIVISION.
	DIR-EMPLOYEE PLANS & EXEMPT ORG DIV.
	ASST DIR TAX LITIGATION DIV.
	ASST DIR INTERPRETATIVE DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	ASST DIR, LEGISLATION & REGULATIONS DIV.
	DIRECTOR CORPORATION TAX DIVISION.
	CHF ESTATE & GIFT, WAGE EXCISE & PROV BR.
	CHIEF, REORGANIZATION BRANCH.
	DEP ASSOC CHIEF COUNSEL (FIN & MANAGEMENT).
	SPECIAL ASSISTANT TO THE CHIEF COUNSEL.
	SPECIAL APPELLATE COUNSEL.
	SEN TECH ADV TO THE ASSOC CHF COUNSEL (TECH).
	DEP ASSOC CHIEF COUNSEL INTERNATIONAL.
	DEP CHF COUNSEL (POLICY AND LEGAL PROGRAMS).
	CHIEF, REORGANIZATION BRANCH.
	DEPUTY CHIEF MGNT AND OPERATIONS.
	SPECIAL LITIGATION COUNSEL.
	DEPUTY ASSOCIATE CHIEF COUNSEL (LITIGATION).
	DEPUTY CHIEF COUNSEL.
	ASSOC CHF COUNSEL (FINANCE & MANAGEMENT).
	ASSOC CHIEF COUNSEL (INTERNATIONAL).
	ASSOC CHIEF COUNSEL TECH AND INTERNATIONAL.
REGIONAL COUNSELS	REGL COUNSEL, CENTRAL REG.
	REGIONAL COUNSEL, MID-ATLANTIC REGION.
	DEP REGL COUNSEL (CRIMINAL TAX).
	REGL COUNSEL MIDWEST REGION.
	DEP REGL COUNSEL (CRIMINAL TAX).
	REGL COUNSEL, NORTH ATLANTIC REGION.
	DEP REGL COUN (TAX LITIGAT) NO-ATLANTIC REG.
	DEPUTY REGIONAL COUNSEL (GENERAL LITIGATION).
	REGIONAL COUNSEL SE REGION.
	REGL COUNSEL SOUTHWEST REGION.
	REGIONAL COUNSEL.
	DEP REGL COUNSEL (GEN LITIGATION).
	DISTRICT COUNSEL-BOSTON.
	DISTRICT COUNSEL-LOS ANGELES.
	DISTRICT COUNSEL CINCINNATI.
	DISTRICT COUNSEL-PHILADELPHIA .
	DISTRICT COUNSEL-NEWARK.
	DISTRICT COUNSEL, CHICAGO .
	DISTRICT COUNSEL, MANHATTAN.
	DISTRICT COUNSEL-DALLAS.
	DISTRICT COUNSEL-SAN FRANCISCO.
	DEPUTY REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL BROOKLYN, NEW YORK.
	DISTRICT COUNSEL, HOUSTON, TEXAS.
	DISTRICT COUNSEL, DENVER.
US ARMS CONTROL AND DISARMAMENT AGENCY	
OFFICE OF THE DIRECTOR	EXECUTIVE SECRETARY.
VERIFICATION AND INTELLIGENCE BUREAU	CHIEF, VERIFICATION DIVISION VER & INTELL BUR.
	CHIEF, OPERATIONS ANALYSIS DIVISION.
	SENIOR OPERATIONS RESEARCH ANALYST.
OFC OF ADMINISTRATION	ADMINISTRATIVE DIRECTOR.
OFFICE OF THE GENERAL COUNSEL	SPECIAL COUNSEL.
STRATEGIC PROGRAMS BUREAU	DEPUTY ASSISTANT DIRECTOR.
THEATER AFFAIRS DIVISION	CHIEF, THEATER AFFAIRS DIVISION-A966.
STRATEGIC AFFAIRS DIVISION	CHIEF, STRATEGIC AFFAIRS DIVISION A-977.
NUCLEAR AND WEAPONS CONTROL BUREAU	CHIEF SCIENTIST.
	CHF, NUCLEAR SAFEGUARDS & TECHNOLOGY DIV.
	CHIEF, INTERNATIONAL NUCLEAR AFFAIRS DIVISION.
	CHF, INTERNATIONAL NUCLEAR AFFAIRS DIVISIONS.
MULTILATERAL AFFAIRS BUREAU	CHIEF SCIENTIST.
	CHIEF SCI & TECHNOLOGICAL DIVISION.
UNITED STATES INFORMATION AGENCY	
OFC OF THE DIRECTOR	INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR CONTRACT.
	ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS.
BUREAU OF MANAGEMENT	DIRECTOR, OFFICE OF PERSONNEL.
	DIRECTOR, OFFICE OF THE COMPTROLLER.
	DIR OFF SECURITY.
	DEP DIR OF ADMIN FOR TECHNOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1987—Continued

AGENCY/ORGANIZATION	CAREER RESERVED POSITIONS
	DIR OFC OF CONTRACTS.
VOICE OF AMERICA	DIR ENGINEERING AND TECHNICAL OPERATIONS.
	DEPUTY OF SYSTEMS ENGINEERING.
	CHIEF BROADCAST SYSTEMS ENGINEERING DIVISION.
	DEPUTY FOR PROJECTS MANAGEMENT.
	DEPUTY FOR OPERATIONS.
OFC OF THE GEN COUNSEL & CONG LIAISON	DEP GENERAL COUNSEL.
US INTERNATIONAL TRADE COMMISSION	
OFFICE OF INDUSTRIES	DIR OFC OF INDUSTRIES
OFFICE OF INVESTIGATIONS	DIR, OFC OF INVESTIGATIONS
VETERANS ADMINISTRATION	
INSPECTOR GENERAL	DEP INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSP GEN FOR POLICY, PLAN & RESOURCES.
	DEP ASST FOR INSPECT GENERAL FOR HDQTRS AUDITS.
	DEP ASST INSPEC GENERAL FOR REGIONAL AUDITS
	DEP ASST I/G FOR POLICY, PLANNING & RESOURCES.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
BOARD OF VETERANS APPEALS	CHAIRMAN.
	VICE CHAIRMAN.
	DEPUTY VICE CHAIRMAN.
	DEPUTY VICE CHAIRMAN.
OFFICE OF PERSONNEL & LABOR RELATIONS	ASSOC DIR FOR PERSONNEL POLICY.
	ASSOC DIR FOR PERSONNEL OPERATIONS.
OFFICE OF FACILITIES	NORTHEASTERN AREA PROJECT MANAGER.
	SOUTHERN AREA PROJECT MANAGER.
	CENTRAL AREA PROJECT MANAGER.
	WESTERN AREA PROJECT MANAGER.
	DIR PROGRAM CONTROL AND ANALYSIS.
	DIR, OFFICE OF PROJECT MANAGEMENT.
	DIRECTOR OFC OF ARCHITECTURE & ENGINEERING.
	DEP DIR, OFC OF ARCHITECTURE & ENGINEERING.
OFFICE OF PROCUREMENT AND SUPPLY	DIR OFFICE OF PROCUREMENT & SUPPLY.
	DEP DIR OFFICE OF PROCUREMENT AND SUPPLY.
	DIR, PROCUREMENT SERVICE.
OFFICE OF INFO MGMT & STATISTICS	DIR, OFFICE OF INFORMATION MGMT & STATISTICS.
OFFICE OF SYSTEMS PLANNING, POLICY & ACQUISITION CONTL.	DIR, SYST PLNNG, POL & ACQUISITION CONTROL.
OFFICE OF INFO SYSTEMS & TELECOMMUNICATIONS.	ASSOC DIR FOR ADP POLICY AND OPER MANAGEMENT.
	ASSOC DIR FOR SYS DESIGN & INTEGRATION MGMT.
	DIRECTOR FOR TELECOMMUNICATIONS.
	DIRECTOR FOR CUSTOMER SUPPORT.
	DIRECTOR FOR OPERATIONS MANAGEMENT.
DATA PROCESSING CENTER (DCP) DIRECTORS	DIRECTOR DPC AUSTIN.
DEPARTMENT OF VETERANS BENEFITS	DIRECTOR BUDGET STAFF.
	DEP DIR COMPENSATION & PENSION SERVICE.
	DEP DIR LOAN GUARANTY SVC.
	DIR, PLANS AND CONTRACTS SERVICE.
DEPARTMENT OF MEDICINE & SURGERY	DIR FACILITY ENG PLANN & CONSTRUCTION OFFICE.
	DEP DIR, MENTAL HEALTH & BEHAVIORAL SCIENCES.
	DIR CANTEEN SERVICE.
	DIR, RESOURCES MANAGEMENT OFC.
	DEPUTY DIRECTOR, RESOURCE MANAGEMENT OFFICE.

[FR Doc. 88-5730 Filed 3-17-88; 8:45]

BILLING CODE 6325-01-M

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federal register

Friday
March 18, 1988

Part III

Department of Education

34 CFR Part 700

Educational Research Grant Program; Notice of Proposed Rulemaking and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 700

Educational Research Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Educational Research Grant Program. These amendments are needed to implement certain provisions of the General Education Provisions Act (GEPA), as amended by Title XIV of the Higher Education Amendments of 1986, and to improve the operation of the program.

DATES: Comments must be received on or before May 2, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Lawrence Bussey, Jr., Office of Educational Research and Improvement, Office of Research, U.S. Department of Education, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208–1633.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Bussey, Jr. (202) 357–6249.

SUPPLEMENTARY INFORMATION: The Educational Research Grant Program (ERGP) provides assistance to institutions of higher education, public and private organizations, institutions and agencies and individuals for educational research and related activities designed to advance educational theory and practice.

The Secretary is proposing changes in these regulations to comply with the provisions of the General Education Provisions Act (GEPA) as amended by the Higher Education Amendments of 1986 (Amendments) and to improve the operation of the program. The major proposed changes are as follows:

- Under these regulations, three types of applications are proposed: Invitational, field-initiated, and unsolicited. Invitational applications are submitted under a competition in which the Secretary establishes one or more priorities. Field-initiated applications are submitted under a competition in which the choice of educational research topic is left to the applicant. In accordance with sections 405(d)(A)(iii) and 405(d)(4)(F) of GEPA, as amended, the Secretary proposes to inform the public of the availability of funds for field-initiated research by publishing an application notice in the **Federal Register**.

  Unsolicited applications are those submitted by applicants on their own initiative, rather than in response to an application notice published in the **Federal Register**. In the current regulations, unsolicited applications are called "field-initiated" applications, thus, the proposed regulations use revised terminology.
- The Secretary proposes to amend the list of funding priorities to reflect the list of priority research and development needs in section 405(a)(3) of GEPA, as amended. Proposed amendments were also developed in consultation with researchers, practitioners, civic and business leaders, policymakers, interested citizens, and professional associations, some of whom participated in a series of regional forums sponsored by the Department.
- A two-tier review process for applications is proposed. Under this process, all applications would be reviewed on the basis of the selection criteria, and a rank order would be prepared in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.217 (b) and (c). The Secretary would choose applications for further consideration based on the rank order and the factors in 34 CFR 75.217(d). Those applications chosen for further consideration would be reviewed to determine if they would address educational problems of the greatest national importance. Only those applications that propose activities that address educational problems of the greatest national importance would be chosen for funding.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the proposed changes will place unnecessary burden on small entities submitting applications. Some of the proposed changes are technical and will remove obsolete provisions from the regulations. These changes will reduce unnecessary burden imposed by existing regulations and will benefit all applicants.

Paperwork Reduction Act of 1980

Section 700.22 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 610, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 700

Education, Education research, Grant programs—education.

Dated: February 19, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.117: Educational Research and Development)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 700 to read as follows:

PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

Subpart A—General

Sec.
700.1 What is the Educational Research Grant Program?
700.2 Who is eligible for an award?
700.3 What types of activities may the Secretary fund?
700.4 What priorities may the Secretary establish?
700.5 What regulations apply?
700.6 What definitions apply?

Subpart B—How Does One Apply For An Award?

700.10 What types of applications may one submit?
700.11 When may one submit an unsolicited application?

Subpart C—How Does The Secretary Make An Award?

700.20 How does the Secretary evaluate an application?
700.21 What special procedures does the Secretary use to evaluate an unsolicited application?
700.22 What selection criteria does the Secretary use?
700.23 What additional procedures may the Secretary use to determine which applications will be selected for funding?
700.24 What additional factors may the Secretary consider in making awards for invitational applications and field-initiated applications?

Subpart D—What Conditions Must Be Met After An Award?

700.30 What restrictions apply to the use of funds awarded under this program?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 700.1 What is the Educational Research Grant Program?

The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice.

(Authority: 20 U.S.C. 1221e)

§ 700.2 Who is eligible for an award?

The following are eligible for awards under the Educational Research Grant Programs:

(a) Institutions of higher education.

(b) Public and private organizations, institutions, and agencies.

(c) Individuals.

(Authority: 20 U.S.C. 1221e)

§ 700.3 What types of activities may the Secretary fund?

(a) The Secretary may fund applications that include, but are not limited to, those designed to carry out one or more of the following activities:

(1) Educational research.

(2) Dissemination of educational research.

(3) Training of individuals in educational research.

(b) For each competition, the Secretary may restrict applications to one or more of the activities in paragraph (a) of this section.

(c) For each competition for invitational applications announced in the **Federal Register**, the Secretary may restrict educational research projects to one or more of the following activities:

(1) Basic research.
(2) Applied research.
(3) Development.
(4) Planning.
(5) Surveys.
(6) Assessments.
(7) Evaluations.
(8) Investigations.
(9) Experiments.
(10) Demonstrations in education and fields related to education.

(Authority: 20 U.S.C. 1221e)

§ 700.4 What priorities may the Secretary establish?

(a) For each competition for invitational applications, the Secretary may select funding priorities from a list of biennial research priorities published in the **Federal Register** for public comment pursuant to section 405(b)(4) of the Act. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities from the following list of priorities or combinations of these priorities:

(1) Learning.
(2) Teaching.
(3) Technology in education.
(4) Instructional processes and materials, including textbooks and computer software for instruction.
(5) Education and staff development for teachers, administrators, and other education staff.
(6) Organization and management of schools, including effective education leadership.
(7) Evaluation and indicators, including testing, measurement, and standards of performance.
(8) Governance of education, including school board policies and practices.
(9) Educational finance and productivity.
(10) Education and the law.
(11) Dissemination and knowledge utilization in education.
(12) Improvement in education, including State and local reform initiatives.
(13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.
(14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.
(15) Education, work, and careers.
(16) Equity and excellence, including the effects of ability grouping.
(17) Guidance and counseling.
(18) International education.
(19) English literacy, including reading, writing, and language skills.
(20) Mathematics.
(21) Science.
(22) Foreign languages.
(23) Early childhood education.
(24) History and social sciences including economics, geography, political science, sociology, anthropology, and psychology.
(25) Physical and health education.
(26) Humanities, including music, art, literature, and dance.
(27) Citizenship and character education.
(28) Elementary education.
(29) Secondary education.
(30) Early adolescent education.
(31) Adolescent education.
(32) Postsecondary education.
(33) Adult and continuing education.
(34) Teachers.
(35) School professionals and personnel.
(36) Public and private institutions.
(37) School discipline and crime in schools.
(38) Education of special populations, including the educationally disadvantaged or students at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(Authority: 20 U.S.C. 1221e)

§ 700.5 What regulations apply?

The following regulations apply to grants under the Educational Research Grant Program:

(a) The Education Department General Administrative Regulations (EGAR) 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government).

(b) The regulations in this Part 700.

(Authority: 20 U.S.C. 1221e)

§ 700.6 What definitions apply?

(a) *Definitions in EDGAR.* The

following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the General Education Provisions Act, as amended.

"Educational research" means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

"Field-initiated applications" means applications to conduct educational research on a topic or topics chosen by the applicant.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C, 1141(a))

"Invitational applications" means applications meeting one or more priorities established by the Secretary in accordance with § 700.4 and 34 CFR 75.105.

"Unsolicited application" means an application not specifically invited by the Secretary, to carry out one or more of the activities listed in § 700.3(a).

(Authority: 20 U.S.C. 1221e)

§ 700.11 When may one submit an unsolicited application?

An applicant may submit an unsolicited application at any time during a fiscal year.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does One Apply For An Award?

§ 700.10 What types of applications may one submit?

An eligible party listed in § 700.2 may submit one or more of the following types of applications for awards under this program:

(a) An invitational application in response to an application notice that establishes one or more priorities in accordance with § 700.4 and 34 CFR 75.105.

(b) A field-initiated application in response to an application notice in accordance with 34 CFR 75.100.

(c) An unsolicited application as described in § 700.11.

(Authority: 20 U.S.C. 1221e)

§ 700.11 When may one submit an unsolicited application?

An applicant may submit an unsolicited application at any time during a fiscal year.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Make an Award?

§ 700.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates separately invitational applications, field-initiated applications, and unsolicited applications.

(b) (1) The Secretary evaluates applications on the basis of the selection criteria in § 700.22.

(2) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (b)(4) of this section, based on the selection criteria in § 700.22.

(3) Subject to paragraph (b)(4) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading of the criterion.

(4) For each competition announced in the **Federal Register** for awards for invitational applications and field-initiated applications, the Secretary distributes the reserved 25 points among the criteria in § 700.22, as announced in a notice published in the **Federal Register**, and for unsolicited applications, the Secretary distributes the reserved 25 points in accordance with § 700.21(d).

(Authority: 20 U.S.C. 1221e)

§ 700.21 What special procedures does the Secretary use to evaluate an unsolicited application?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications, for projects that do not meet a priority established in accordance with § 700.4 (a) and (b), and that have not been submitted under a competition for field-initiated applications for that fiscal year.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary selects an unsolicited application for funding in accordance with the procedures in § 700.20.

(d) The Secretary assigns 15 of the reserved 25 points under § 700.20(b)(2) to the selection criteria in § 700.22(f) (Significance) so that the maximum number of possible points for this criterion is 30 and 10 of the reserved points to the selection criterion in § 700.22(g) (Technical soundness) so that the maximum number of possible points for this criterion is 25.

(Authority: 20 U.S.C. 1221e)

§ 700.22 What selection criteria does the Secretary use?

(a) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(3) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(b) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(d) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Significance* (15 points).

(1) The Secretary reviews each application to determine the significance of the proposed project.

(2) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied.

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(g) *Technical soundness* (15 points).

(1) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(2) The Secretary determines—

(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity* (0 points). The Secretary may assign points to this criterion pursuant to § 700.20(b)(3). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 1221e)

§ 700.23 What additional procedures may the Secretary use to determine which applications will be selected for funding?

(a) After review of applications and preparation of a rank order of applications on the basis of the selection criteria in § 700.22 and in accordance with 34 CFR 75.217(b) and (c), the Secretary selects highly rated applications for further consideration on the basis of the factors in 34 CFR 75.217(d).

(b) For field-initiated applications, the Secretary reviews each application chosen for further consideration to determine whether the proposed activities would address educational problems of national importance. The Secretary determines the relative importance of field-initiated applications and selects only those applications that propose activities that are of the greatest national importance.

(c) In determining the order in which applications chosen for further consideration may be selected for funding under 34 CFR 75.217(d), the Secretary may consider the recommendations of experts.

(Authority: 20 U.S.C. 1221e)

§ 700.24 What additional factors may the Secretary consider in making awards for invitational applications and field-initiated applications?

In addition to the criteria in §§ 700.22 and 700.23(b), the Secretary may consider the following factors in selecting invitational applications and field-initiated applications for funding:

(a) The geographical distribution of projects funded under a particular competition or under this program.

(b) The diversity of activities or projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 1221e)

Subpart D—What Conditions Must Be Met After an Award?

§ 700.30 What restrictions apply to the use of funds awarded under this program?

Of the funds made available through an award under the program, the Secretary may restrict the amount of funds used to purchase equipment.

(Authority: 20 U.S.C. 122le)

[FR Doc. 88–5993 Filed 3–17–88; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.117E]

Notice Inviting Applications for New Awards for Field-Initiated Studies Under the Educational Research Grant Program for Fiscal Year 1988

Purpose: To support field-initiated studies designed to advance educational theory and practice.

Weighting for Selection Criteria: The program regulations at 34 CFR 700.20(b)(4) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.22 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 25 points as follows: 15 additional points to the criterion at § 700.22(f) (Significance), bringing the total for this criterion to 30 points; and 10 additional points to the criterion at § 700.22(g) (Technical soundness), bringing the total for this criterion to 25 points.

Deadline for Transmittal of Applications: May 13, 1988.

Applications Available: March 29, 1988.

Available Funds: $500,000.

Estimated Range of Awards: $30,000 to $70,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 10.

Project Period: 12 to 18 months.

Applicable Regulations: (a) The regulations for the Educational Research Grant Program, to be codified in 34 CFR Part 700. Applications will be accepted based on the notice of proposed rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications. (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Ms. Delores Monroe, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Mail Stop 1606, Washington, DC 20208. Telephone Number (202) 357–6223.

Program Authority: 20 U.S.C. 1221e.

Dated: March 7, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–5994 Filed 3–17–88; 8:45 am]

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federal register

Friday
March 18, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Access to Secured Areas of Airports; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25568; Notice No. 88–6]

Access to Secured Areas of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require certain airport operators to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas are able to obtain that access, and also ensures that such access is denied promptly to individuals whose authority to have access changes. Operators would be required to install and use a computer-controlled card system for access to secured areas of the airport. The proposal would permit alternative systems that provide an equivalent level of security. This proposed rule is needed to improve control of the locations that provide access to secured areas. It is intended to enhance airport security by precluding access to these areas by unauthorized persons.

DATE: Comments must be received on or before May 2, 1988.

ADDRESS: Send comments on this proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 25568, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments in duplicate to: FAA, Rules Docket, Room 915–G, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25568. Comments may be examined in Room 915–G on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Donnie R. Blazer, Domestic Civil Aviation Security Division (ACS–100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from adoption of the proposal contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address listed above. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25568." The postcard will be dated, time stamped, and returned to the commenter.

All written communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA Personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a written request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 7, 1987, 38 passengers and 5 crewmembers aboard Pacific Southwest Airlines (PSA) Flight 1771 were killed after departure from Los Angeles International Airport. Preliminary investigation by the Federal Bureau of Investigation (FBI) indicates that a passenger carried an unauthorized firearm onboard Flight 1771 and used this firearm to commit a criminal act on the aircraft. It appears that these actions were the underlying cause of the crash of Flight 1771 that killed 43 persons. The FBI investigation also suggests that the passenger who committed these acts was a former airline employee who had been fired.

While it has not been established that the former airline employee used an air carrier employee identification card to gain access to secured areas of the airport, the FAA is concerned that current airport identification procedures may allow individuals, using forged, stolen, or noncurrent identification, to compromise the secured area. Also, the FAA is concerned that a former employee may be able to use his or her familiarity with airline and airport procedures to stow a firearm in an airport and then smuggle it aboard the aircraft.

This recent tragedy highlights FAA's interest in improving the control of access to secured areas of an airport by unauthorized persons. The FAA has worked with a number of airports as they have developed improved access procedures, especially involving computer-controlled card access systems. The FAA believes it is time to accelerate efforts to improve security systems in order to head off the type of situation potentially reflected by the crash of Flight 1771 and to improve the level of security generally.

Recently, the FAA promulgated an emergency final rule amending the preboarding screening procedures contained in Part 108 and Part 129 of the Federal Aviation Regulations (52 FR 48508; December 22, 1987). The final rule limits the application of special procedures that historically allowed certain classes of individuals, with authorized identification, to bypass the screening process and enter a sterile area of an airport without inspections of their person or accessible property. The FAA tightened the security screening procedures applicable to air carriers to enhance the clearance procedures for those individuals entering the sterile area.

A report of the U.S. General Accounting Office (GAO), containing testimony given to the House Subcommittee on Government Activities and Transportation, recently was transmitted to the Secretary of Transportation. That report identified security deficiencies at certain U.S. airports that, ". . . if left uncorrected, . . . could allow unauthorized persons access to air operations areas and aircraft." GAO found that chief among the problems they found were "inadequate controls over personnel identification systems and over access to those parts of the airport where aircraft operate."

An airport area where access to aircraft and airport facilities is possible should be accessible only to an individual who is authorized to be in that area. These areas should be controlled carefully to prevent tampering with aircraft and airport facilities and preclude tragic consequences. Thus, to raise the level of security, restrict the ability of an unauthorized individual to bypass the security system, and complement the procedures required by the emergency regulation promulgated by the FAA in December 1987, the FAA is proposing an additional computer-controlled card access system that would give increased control of locations on the airport that provides access to secured areas of the airport. The FAA is also proposing to permit airport operators to install alternative systems that provide an equivalent level of security. Because this measure promotes the safety of the travelling public, it is possible that a final rule will be published in the **Federal Register** within approximately 90 days after the comment period for this notice has closed.

This proposal would supplement, not replace, the existing photo identification system required by an airport's approved security program. The continuous display of individual identification in secured areas is necessary so that unauthorized individuals can be challenged in accordance with § 107.13. An airport operator would have the option of integrating the systems and issuing a single credential.

Discussion of Proposed Amendment

The FAA intends to expand the performance standards of security systems at certain airports. It is proposed in this notice that specified airports be required to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas are able to obtain that access, and also ensures that such access is denied immediately to individuals whose authority to have access changes. The amendment program must provide for different levels of authority within the airport secured area. That is, the amended program must provide a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. Airports would be required to amend their security plans to prevent recently discharged employees and other unauthorized persons from gaining access to secured areas. The only system the FAA has identified at this time that would achieve this objective is a computer-controlled card system.

A computer controlled card system would operate as follows. The airport operator would issue cards to individuals needing access to secured areas. The computer-controlled card access system would have the capability to monitor each location where access to the secured area is permitted by means of a "card reader" linked to the control computer and to deny access for persons who do not possess an appropriate card. These systems can be designed to have unique coding for each card so that the computer can be reprogrammed in a matter of minutes to deny access to a specific card. Card holders would promptly report lost or stolen cards. Thus, lost or stolen cards or cards of former employees could be rendered ineffective immediately. These systems also would have the capability to perform other functions that can improve an airport's security profile, including the ability to cause an alert when access is denied to a person who attempts to use an invalid card and to establish a log of the system's activity.

The number of locations where card readers would be placed would depend on the size, layout, operation, and other factors of the particular airport. The FAA estimates that the number of card readers necessary under this system would vary from approximately 10 at an average small airport to approximately 130 at an average large airport. The details regarding the actual locations of the card readers and the operational methods to be employed by the system are not addressed in this notice and would be specific to each individual airport that employed such a system. In addition, such detailed security information is properly confined to an airport's approved security program. Generally, the system would be designed to provide positive control of access to the secured areas in and around the terminal area where air carrier aircraft are loaded, unloaded, and parked. Other locations around the airport where access to the secured area would be permitted also would be included within the system; (*e.g.*, a gate where air carrier or airport employees enter the secured area to park or catch a shuttle bus). However, at locations where positive control of access is provided by other means, (*e.g.*, a locked gate which may be opened only by airport safety or law enforcement personnel), a card reader would not be necessary. While the FAA requests comments from airport operators on the general scope of the system, specific details of current or proposed security arrangements should not be discussed in the comments to the docket.

Implementation

Currently, the FAA is proposing that the airport operator submit proposed amendments to its approved security program according to a schedule based on the number of passengers screened at the airport each year. In additon, the proposed rule would authorize the FAA Director of Civil Aviation Security to designate an airport for the first phase of the schedule notwithstanding the number of persons screened. However, the assignment of an airport to a particular phase of the proposed schedule is subject to change at the time the final rule is promulgated by the FAA. The final rule may include additional phases, based on the number of persons screened annually or some other criteria, or may assign a particular airport to a different phase. The FAA seeks comments from airport operators regarding the proposed schedules and the criteria used to assign airports to a particular phase.

The FAA expects that airport operators will implement their systems within 6 months after the airport operator's amendments have been approved by the Administrator. The FAA recognizes that it may be difficult for an airport operator to comply with the requirements of the proposed rule within that time frame for some locations that provide access to the more remote airport areas. Therefore, it is possible that the Administrator would approve amendments that ensure implementation at the most critical airport locations (*e.g.*, areas where aircraft operate, load, and disembark cargo and passengers) within 6 months. The Administrator may allow some additional time for implementation at certain locations on each airport deemed to be less of a threat to civil aviation security. It is possible that the Administrator may allow up to an additional 6 months for an airport operator for implementation at some remote locations. However, each airport operator must justify the need for any additional time, beyond the 6-month period, before the Administrator will grant additional time for implementation. The FAA requests specific comments on which airport areas must have a fully operational system within the 6-month time frame and which areas could be delayed for no more than an additional 6 months without adversely affecting the safety of airport secured areas.

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The schedule has the following 4 phases:

Phase I: Airports where 25 million or more persons are screened annually or as designated by the Director of Civil Aviation Security.

Phase II: Airports where more than 2 million persons are screened annually.

Phase III: Airports where 500,000 to 2 million persons are screened annually.

Phase IV: Airports where less than 500,000 persons are screened annually.

Airports in phase I would be required to submit proposed amendments to their approved security programs within 30 days after the effective date of the final rule. Airports in phase II would be required to submit proposed amendments to their approved security programs within 60 days after the effective date of the final rule. Airports in phase III would be required to submit proposed amendments to their approved security programs within 180 days after the effective date of the final rule. Airports in phase IV would be required to submit proposed amendments to their approved security programs within 270 days after the effective date of the final rule. Comments are invited on the proposed timeframe and specifically on the performance standards in the proposed rule. The FAA also invites commenters to submit views on how the agency can best accommodate the needs of smaller airports in developing and implementing amendments to approved security programs.

The cost of a computer-controlled card system might be significant. However, several airports either have currently in place an acceptable system or are considering such a system. As a security item, a computer-controlled card access system would be eligible for funding under the Airport Improvement Program. Other systems may or may not be eligible. In any event, funds may not be available to pay for the costs of the systems in every case. Moreover, funds expended for these systems will affect funding for other airport improvement projects.

Regulatory Evaluation

The FAA is unable to estimate the cost associated with systems other than a computer-controlled card system because the FAA has not identified any other acceptable system. For the purpose of this evaluation, however, the FAA is assuming that all covered airport operators will employ the computer-controlled card system. To the extent that airport operators are able to identify acceptable less expensive solutions, these costs would be reduced. A computer-controlled card access system would allow the airport operator to monitor controlled points of entry to a secured area. Such a system would be implemented by all affected airports in phases over a scheduled period. For purposes of the proposed schedule, the FAA has categorized airports as phase I, II, III, and IV.

These airports would be required to submit proposed amendments to their approved security programs to the FAA after the effective date of the final rule within the times specified below:

Phase I Airports—30 days
Phase II Airports—60 days
Phase III Airports—180 days
Phase IV Airports—270 days

The methods and factors used in this analysis to prepare the regulatory analysis for the proposed addition of § 107.14 have been developed by the FAA. The estimates of economic effects for a computer-controlled card access systems have been constructed from unit costs and other data obtained from airports, security companies, airport trade associations, and FAA's airport facility records. These estimates are subject to change if better information is made available during the public comment period.

This analysis estimates that the total cost of compliance to the affected 269 airports with the computer-controlled card access system requirements of this notice is $149.5 million in 1987 dollars and $110.1 million at a discounted value of 10 percent over the 10-year evaluation period from 1989 to 1998. The following table shows an annualized breakdown of the cost by phase over the same 10-year span.

COST OF COMPUTER-CONTROLLED CARD ACCESS SYSTEMS FOR YEARS 1989–2001

	Phase I	Phase II	Phase III	Phase IV	Total costs
Year:					
1989	[1] $20,681,600	[1] $32,519,040	[1] $10,702,960	[1] $7,656,000	$71,649,620
1990	[2] 1,872,000	[2] 4,043,040	[2] 1,849,230	[2] 376,000	8,140,270
1991	1,872,000	4,043,040	1,849,230	376,000	8,140,270
1992	1,872,000	4,043,040	1,849,230	376,000	8,140,270
1993	2,486,400	4,907,040	2,106,730	856,000	10,436,170
1994	1,872,000	4,043,040	1,849,230	376,000	8,140,270
1995	1,872,000	4,043,040	1,849,230	376,000	8,140,270
1996	1,872,000	4,043,040	1,849,230	376,000	8,140,270
1997	2,486,400	4,907,040	2,106,730	856,000	10,436,170
1998	1,872,000	4,043,040	1,849,230	376,000	8,140,270
Total cost (1987 dollars)	36,796,400	70,834,400	28,111,050	12,000,000	149,503,850
Total cost (present value: 10% discount rate)	29,244,259	51,632,871	19,846,044	9,430,180	110,153,455

[1] One-time installation costs, incurred in the first year each airport is required to be in compliance, include computers, peripheral equipment, card readers, security access cards, engineering site survey and design, and Manager/Operator training.

[2] Recurring annual costs include security access card replacement, computer maintenance, software update and support, and additional labor. Recurring costs also include card reader maintenance every 4th year.

The primary benefit of these proposals will be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts and acts of terrorism perpetrated against domestic aviation interests. The FAA has not been able to estimate quantitatively the extent to which these proposals will be effective in deterring acts of criminal violence and air piracy. The FAA believes, however, that the estimated total cost of $110.1 million (discounted present value) for the requirements proposed in this notice can be fully recovered if only one accident, involving the loss of 140 passengers and crew and a two- or three-engine, wide-body jet aircraft typically used in domestic operations, is prevented as a result of the improved security programs at any time during the 10-year period of this analysis. The improved control of secured areas also will provide unquantifiable benefits to airports and air carriers from the potential reduction of theft and acts of vandalism. Furthermore, additional unquantifiable benefits will accrue to affected airports and air carriers from public perception of the additional safety provided by this proposal.

Regulatory Flexibility Determination

The FAA has determined that the proposed addition of § 107.14 will not have a significant economic impact, positive or negative, on a substantial number of small entities. The proposed amendment to Part 107 of the FAR would affect 269 of the 440 airports subject to the security provisions of Part 107. The FAA's small entity size standards criterion defines a small airport as one owned by a county, city, town, or other jurisdiction with a population of 49,999 or less. Applying the FAA's size threshold criterion, 86 of the 440 airports are small. Since only 22 of the 269 airports that would be required to comply with this proposal are small, the proposal would not affect a substantial number (at least one third) of the 86 small airports subject to Part 107.

Trade Impact Statement

This proposal affects only certain domestic airports subject to Part 107 of the FAR. Accordingly, this notice would have no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States.

Reporting and Recordkeeping

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the FAA has evaluated this proposal for its impact on reporting and recordkeeping. The amendments to approved security programs proposed to be submitted by airport operators would include a slight additional reporting and recordkeeping burden to the existing OMB Control No. 2120–0075 for Airport Security—Part 107. The FAA will forward the appropriate justification to the Office of Management and Budget for approval as an amendment.

Federalism Implications

The regulation proposed herein may or may not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government depending on the net direct expense necessary to implement amendments to approved security programs. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted at this time. However, if the FAA determines, at the time of a final rule, that there would be substantial direct effects on the States a Federalism Assessment will be prepared at that time.

Conclusion

Because this proposal is not expected to result in an annual effect on the economy of $100 million or more, the FAA has determined that this proposed regulation is not a major regulation as defined in Executive Order 12291. Because of the substantial public interest in aviation security matters, however, this action is significant as defined in the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since considerably less than a third of the 86 small airports subject to Part 107 would be impacted by this proposal, it is certified that, under the criteria of the Regualtory Flexibility Act, the proposed rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of entities. A copy of the draft regulatory evaluation for this action may be examined in the public docket or obtained from the person identified under the caption, "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Aviation security, Secured areas.

Proposed Amendment

Accordingly, the FAA proposes to amend Part 107 of the Federal Aviation Regulations (14 CFR Part 107) as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new § 107.14 to read as follows:

§ 107.14 Access control system.

(a) Except as provided in paragraph (b) of this section, each operator of an airport regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 60 seats shall submit to the Administrator, for approval and inclusion in its approved security program, amendments that provide for the installation and use of a computer-controlled card system for access to secured areas of the airport. The system shall ensure that only those persons authorized to have access to secured areas by the operator's security program are able to obtain that access, and shall specifically provide a means to ensure that such access is denied immediately to individuals whose authority to have access changes. The system shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. The system shall be capable of limiting an individual's access by time and date. Unless otherwise authorized by the Administrator, the system must be in use within 6 months after the date on which an airport operator's amendments to its approved security program are approved by the Administrator. The Administrator may allow up to an additional 6 months for implementation of the system at certain locations on each airport.

(b) The Administrator will approve amendments to an airport's security program that provide for the installation and use of an alternative system, if, in the Administrator's judgment, the alternative system would have the capabilities specified in paragraph (a) of this section and would provide an equivalent level of security.

(c) Each airport operator shall submit the amendments to its approved security program required by paragraph (a) of this section according to the following schedule.

(1) [By 30 days after the effective date of the final rule] for airports where at least 25 million persons are screened annually or that have been designated by the Director of Civil Aviation Security.

(2) [By 60 days after the effective date of the final rule] for airports where more than 2 million persons are secreened annually.

(3) [By 180 days after the effective date of the final rule] for airports where at least 500,000 but not more than 2 million persons are screened annually.

(4) [By 270 days after the effective date of the final rule] for airports where less the 500,000 persons are screened annually.

Issued in Washington, DC, on March 11, 1988.

Raymond A. Salazar,
Director of Civil Aviation Security.

[FR Doc. 88–5940 Filed 3–16–88; 11:32 am]

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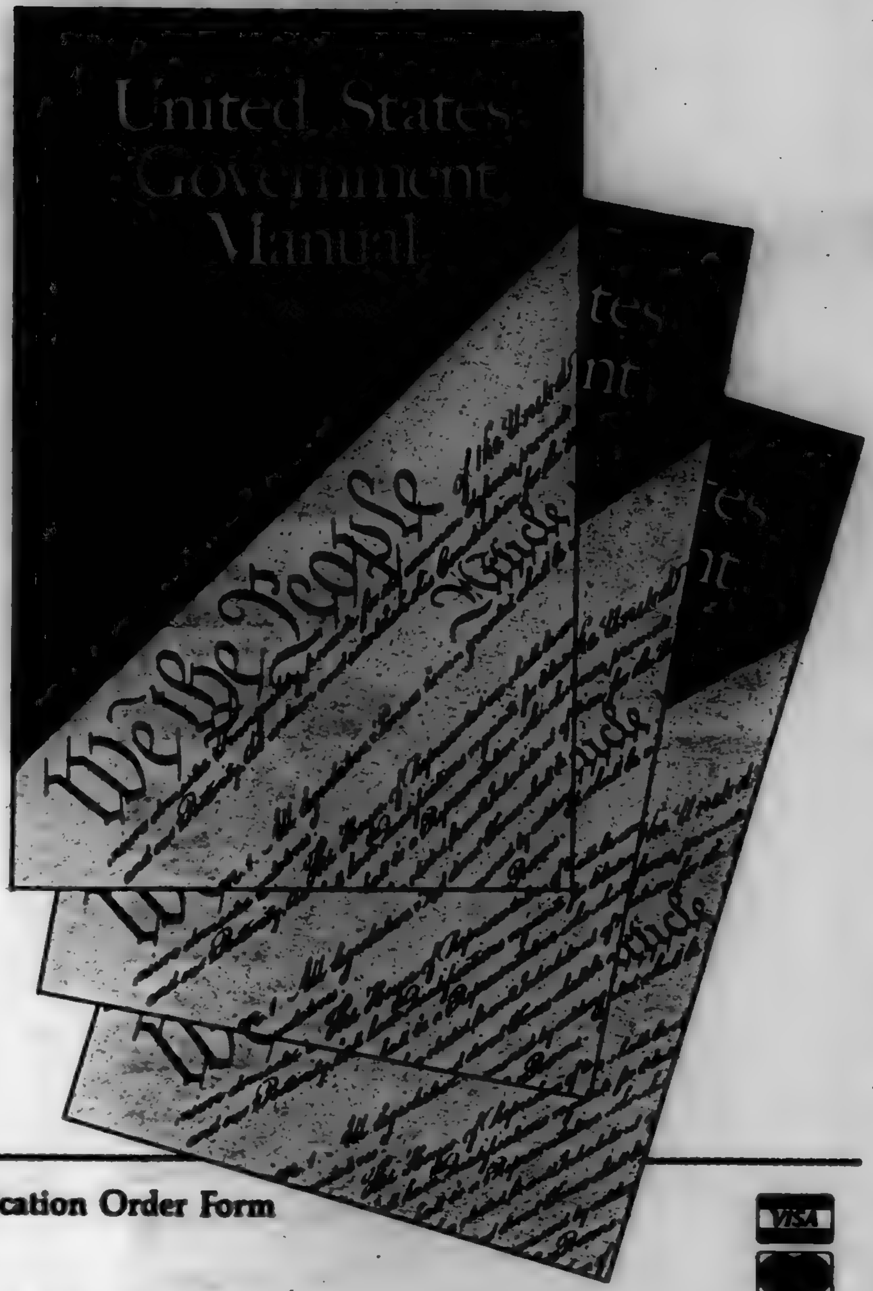

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federal register

Monday
March 21, 1988

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10 Causeway Street,
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Rules and Regulations

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 14; Doc. No. 5101S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Tuesday, September 29, 1987 at 52 FR 36400. The interim rule amended the General Crop Insurance Regulations (7 CFR Part 401), by redefining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed, and delivered to the service office in addition to the other attachment references therein. The intended effect of this rule is to prevent the possibility of adverse selectivity resulting in an automatic replant payment.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, September 29, 1987, FCIC published an interim rule, in the **Federal Register** at 52 FR 36400, amending the General Crop Insurance Regulations (7 CFR Part 401), by redefining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed and delivered to the service office in addition to the other attachment references therein.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 401

Crop insurance, General crop insurance regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Tuesday, September 29, 1987, at 52 FR 36400, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 23, 1988.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6081 Filed 3-18-88; 8:45 am]
BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 8; Docket No. 5484S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Wednesday, March 2, 1988, at 53 FR 6559, amending the General Crop Insurance Regulations (7 CFR Part 401) to add a new section § 401.118, the Canning and Processing Bean Endorsement. In that publication, the State of Utah was inadvertently omitted from the section listing those states where canning and processing bean crop insurance is otherwise authorized to be offered, and where bean acreage by type may be divided into more than one unit under certain conditions. This notice is published to correct that error.

EFFECTIVE DATE: March 21, 1988.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

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SUPPLEMENTARY INFORMATION: FR Document 88–4529, appearing at pages 6559 through 6561, previously corrected at 53 FR 7878, is further corrected as follows:

On page 6560, in Column 2, section 5 of 7 CFR 401.118, the Canning and Processing Bean Endorsement, is corrected to read as follows:

§ 401.118 Canning and Processing Bean Endorsement.

* * * * *

5. *Unit division.*

For Idaho, Michigan, Minnesota, Oregon, Tennessee, Utah, Washington, and Wisconsin bean acreage by type (snap or lima) that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

Done in Washington, DC, on March 10, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6062 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 26; Doc. No. 5379S]

General Crop Insurance Regulations; Texas Citrus Tree Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new subpart, 7 CFR 401.134, be known as the Texas Citrus Tree Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection of citrus trees in Texas in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is established as November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.134, the Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring citrus tree in Texas.

The provisions for insuring citrus trees contained in 7 CFR 401.134 will supersede those provisions contained in 7 CFR Part 440, the Texas Citrus Tree Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 440 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 440 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Texas Citrus Tree Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring Texas citrus trees as follows:

1. Section 1—*Rio Red* grapefruit trees have been added to the Star Ruby (Type IV) designation and Ruby Red grapefruit trees have been designated type V. These changes place tree insurance units on the same basis as the citrus fruit insurance units.

2. Section 2—Cyclone was replaced by excess wind as an insured cause of loss. This change provides insurance against damage from shear wind of defined force as well as cyclonic winds

3. Section 4—Language has been added to clarify that trees less than one year old on June 1 are limited to 33% of the normal amount of insurance.

4. Section 7—Add unit division to include language indicating that additional premium may be required for unit division.

5. Section 13—Add definitions of excess moisture, excess wind, and non contiguous land.

On Friday, January 8, 1988, FCIC published a notice of proposed rulemaking (NPRM) in the Federal Register at 53 FR 507 to provide the provisions of crop insurance protection on citrus trees in Texas in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

In reviewing the provisions for insuring Texas citrus trees, FCIC has determined that some clarification is needed in three sections, as follows:

1. Subsection 1.b.(3)—Add the words "or nursery stock" following the words "onto existing root stock" and before the words "within the one year period prior to * * *"

This term is added to clarify the intention of FCIC with respect to not insuring any citrus trees which have been grafted onto nursery stock and which are subsequently sold before grafts were known to have survived.

2. Subsections 6.a. (1) and (2)—Delete the word "cyclone" and substitute the words "excess wind".

Cyclone was replaced by excess wind as an insurable cause of loss in the NPRM. These two references were inadvertently not changed.

3. Subsection 7.b.—Delete the last sentence reading "Production that is commingled between optional units will cause those units to be combined".

This reference does not apply to tree crop insurance and was inadvertently included in the NPRM.

Since the provisions contained in these regulations must be filed in the services offices by February 28, 1988, in order to be effective for the 1989 crop year, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Texas Citrus Tree Endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.134 Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to read as follows:

§ 401.134 Texas Citrus Tree Endorsement.

The provisions of the Texas Citrus Tree Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Texas Citrus Tree Endorsement

1. Insured crop.

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I Early and mid-season orange trees;
Type II Late orange (including Temple) trees;
Type III Grapefruit trees except types IV and V;
Type IV. Rio Red and Star Ruby grapefruit trees; or
Type V Ruby Red grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit or juice.

b. In addition to the citrus trees not insurable in section 2 of the general crop insurance policy, we do not insure any citrus trees:

(1) Which are not irrigated;

(2) For the crop year the application for insurance is filed unless we inspect the acreage and consider it acceptable;

(3) Which have been grafted onto existing root stock or nursery stock within the one year period prior to the date insurance attaches; or

(4) In any established groves which do not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure such trees;

c. We may exclude from insurance or limit the amount of insurance on any acreage which was not insured by us the previous crop year.

2. Causes of loss.

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

(1) Freeze;
(2) Excess moisture;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Excess wind; or
(7) Failure of the irrigation water supply;

unless those causes are excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any damage to trees due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove.

3. Report of acreage, share, number, type, age of trees, and practice (Acreage Report).

a. In addition to the information required in section 3 of the general crop insurance policy, you must report:

(1) The number and type of trees;

(2) The date of original set out; and

(3) The date of replacement or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years.

b. If any insurable acreage of trees is set out after June 1, and you elect to insure such acreage during that crop year, you must report to us within 72 hours of the completion of set out the acreage, practice, type, number of trees, date set out is completed, and your share.

c. The date by which you must annually submit the acreage report is June 30 of the calendar year in which insurance attaches.

4. Amounts of insurance.

a. The amount of insurance shown on the actuarial table will be reduced for any acreage which has not reached the fourth growing season after being set out or the fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance contained in the actuarial table by:

(1) 33 percent the year of set out or the year following dehorning (insurance will be limited to this amount until trees that are set out are one year of age or older on June 1);

(2) 60 percent the first growing season after being set out or the second year following dehorning;

(3) 80 percent the second growing season after being set out or the third year following dehorning; or

(4) 90 percent the third growing season after being set out or the fourth year following dehorning.

b. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual Premium.

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance period.

a. In lieu of section 7 of the general crop insurance policy, insurance attaches on June 1 for each crop year except that for the first crop year insured if the application is accepted by us after June 1:

(1) The insurance against excess wind and freeze will attach the tenth day after the properly completed application is submitted to the service office; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion, except for excess wind and freeze; and

(3) For all other instances, insurance attaches on the date the application is accepted.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) Total destruction of the insured trees.

7. Unit division.

a. Citrus tree acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus tree acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and the insured trees are located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided.

8. Notice of damage or loss.

a. In lieu of section 8 of the general crop insurance policy and in case of damage or probable loss, you must within 10 days give us written notice of:

(1) The dates of damage; and

(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we must inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

9. Claim for indemnity.

a. In addition to the requirements in section 9 of the general crop insurance policy you must furnish records to us concerning all trees on the unit.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with subsection 9.c., the following applicable amount:

(a) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(b) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(c) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

c. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred, (any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out);

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union, (however, no damage will be considered if more than 12 inches of wood above the bud union is alive).

(2) Any percentage of damage by uninsured causes, will not be included in the percent of damage.

d. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

10. *Cancellation and termination dates.*

The cancellation and termination dates are May 31 prior to the date insurance attaches.

11. *Contract changes.*

The date by which contract changes will be available in your service office is February 28 preceding the cancellation date.

12. *Meaning of terms.*

a. "*Crop year*" means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

b. "*Dehorning*" means the cutting back of each scaffold limb to a length that is no longer than ¼ the height of the tree.

c. "*Destroyed*" means trees which are damaged to the extent that removal is required.

d. "*Excess wind*" means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. "*Freeze*" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

f. "*Non-contiguous land*" means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

g. "*Set out*" means transplanting the citrus tree from the nursery to the grove.

h. "*Total destruction*" means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

Done in Washington, DC on February 18, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6083 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 413

[Amdt. No. 1; Doc. No. 5445S]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Friday, July 24, 1987, at 50 FR 27781. The interim rule amended the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), effective for the 1987 calendar year only, by extending the date for filing contract changes specified in the policy for insuring such citrus in Texas. The intended effect of this rule was to allow additional time for FCIC to complete actuarial studies of this program for possible amendment of the contract for the 1988 crop year.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, July 24, 1987, FCIC published an interim rule in the **Federal Register** at 50 FR 27781, amending the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), by extending the date for filing contract

changes specified in the policy for insuring citrus in Texas. The intended effect of this rule was to allow additional time for FCIC to complete actuarial studies of this program for possible amendment of the contract for the 1988 crop year.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas Citrus Crop Insurance Regulations.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Friday, July 24, 1987, at 50 FR 27781, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 24, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6080 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 420

[Amdt. No. 1; Doc. No. [illegible]]

Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Grain Sorghum Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.113, Grain Sorghum Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 420 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34670, to maintain the effectiveness of the present Grain Sorghum Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 34670 thereby amending the subpart heading to provide that 7 CFR Part 420 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), as follows:

PART 420—[AMENDED]

1. The authority citation for 7 CFR Part 420 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 420 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 25, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6064 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 440

[Amdt. No. 3; Doc. No. 5421S]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for 1988 only, by extending the date for filing contract changes specified in the policy for insuring citrus trees. The intended effect of this rule is to (1) allow additional time for FCIC to file actuarial data on this program in the service offices prior to issuing the provisions of crop insurance protection on citrus trees as an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops: and, (2) allow policyholders sufficient time to study the changes in the policy and to determine their insurance needs.

DATES: This interim rule is effective upon publication in the **Federal Register.** Written comments, data, and opinions on this interim rule must be submitted not later than May 20, 1988.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged as November 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for insuring citrus trees (7 CFR Part 440) provides that any changes in the contract must be placed on file in the service office by February 28. The contract consists of the application, the policy, and the actuarial table. FCIC is completing actuarial data prior to issuing the program as an endorsement to the General Crop Insurance Policy (7 CFR Part 401), beginning with the 1989 crop year.

In order to allow time for completion of this project and the transition of the program to an endorsement format, FCIC has determined that the date by which such changes are required to be placed on file in the service office shall be extended from February 28, 1988 to March 31, 1988, for Texas Citrus Tree insurance.

FCIC is soliciting public comment on this interim rule for 60 days after publication in the **Federal Register.** Written comments on this interim rule should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Any written comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 440

Crop insurance, Texas Citrus Trees.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1988 calendar year only in the following instances:

PART 440—[AMENDED]

1. The authority citation for 7 CFR Part 440, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 440.7(d)16 is revised to read as follows:

§ 440.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by February 28 (March 31, effective for the 1988 calendar year only), preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

Done in Washington, DC on February 19, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-6065 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9074]

General Motors Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1980 consent order with respondent (45 FR 44920) by changing the accounting procedures for the sale of repossessed cars and light trucks. The Commission has replaced the repossession accounting procedure with a "repossession guide" which respondent must provide to its dealers.

DATES: Consent Order issued June 11, 1980. Modified Order issued March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Thomas Massie, FTC/S-4631, Washington, DC 20580. (202) 326-2177 or 326-2982.

SUPPLEMENTARY INFORMATION: In the Matter of General Motors Corporation, General Motors Acceptance Corporation. The prohibited trade practices and/or corrective actions, as set forth at 45 FR 44920 remain unchanged.

List of Subjects in 16 CFR Part 13

Repossessed vehicles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9074]

In the matter of General Motors Corporation, General Motors Acceptance Corporation.

Order Reopening The Proceeding and Modifying Cease and Desist Order

Commissioners

Daniel Oliver, Chairman
Patricia P. Bailey
Terry Calvani
Mary L. Azcuenaga
Andrew J. Strenio, Jr.

On November 5, 1987, General Motors Corporation (GM) and General Motors Acceptance Corporation (GMAC) filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and Part VIII.B of the order in this matter, to reopen the proceeding and modify the order issued against GM and GMAC on June 11, 1980, in Docket No. 9074, 95 F.T.C. 825.

This matter arose out of allegations that certain franchised General Motors dealerships and certain dealerships owned in whole or in part by GM were failing to account for and pay to defaulting customers surpluses generated by the sale of repossessed motor vehicles.[1] A complaint was issued against GM, GMAC and a franchised GM dealer on February 10, 1976. Similar complaints were issued against Chrysler Corporation (D.9072), Ford Motor Company (D.9073), their respective credit subsidiaries, and a franchised dealer of each. GM and GMAC consented to the order that is the subject of this decision. Similar consent orders were issued against Chrysler and Ford and their respective credit subsidiaries.

A principal feature of each of these orders is a repossession accounting procedure that dealers of these automobile manufacturers were to use in conjunction with the disposition of repossessed motor vehicles returned to them under a recourse or repurchase agreement. The repossession accounting procedure was intended to bring about the uniform calculation of surpluses and deficiencies resulting from the resale of repossessed motor vehicles by Chrysler, Ford, and GM dealers. Each of these orders also contained a most favored corporation provision. In the GM order that provision is found at Part VIII.B. It reads as follows:

> In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to Section 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order to such less restrictive standards proscribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

It is implicit in the application of uniform standards such as the repossession accounting standards that GM, Ford, and Chrysler have required their dealers to follow under their respective orders, that those applying such standards will bear similar added costs. A function of uniformity is to avoid creating an artificial competitive imbalance among those affected. The purpose of Part VIII.B is to avoid creating such a competitive imbalance if a similarly situated respondent is able to demonstrate the need for less restrictive standards. On April 3, 1987, we issued our decision modifying the order against Ford and Ford Credit in Docket No. 9073. We concluded, based on the materials submitted, that it was in the public interest to defer to state law with respect to the subject matter enumerated in clauses (1) and (2) of the most favored corporation provision set out above and accordingly ordered modification to that order consistent therewith.

Since there is now a final order in a related proceeding prescribing less restrictive standards with respect to enumerated subject matter and GM and GMAC having petitioned to modify their order in the same manner as that granted Ford, we conclude that the modifications requested are warranted.

It Is Therefore Ordered that the proceeding be reopened and that the final order issued June 11, 1980, in Docket No. 9074 be, and it hereby is modified to read as follows:

I. Definitions

It Is Ordered that for purposes of this Order the following definitions shall apply:

A. "General Motors respondents" or "respondents" means General Motors Corporation ("General Motors") and General Motors Acceptance Corporation ("GMAC"), corporations. References to General Motors respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. However, references to General Motors shall not include GMAC and references to General Motors respondents shall not include dealerships. The requirements imposed on the General Motors respondent shall apply only to transactions within the United States.

B. "Vehicle" means an automobile or truck with a gross vehicle weight rating less than 11,000 pounds (4,990 kilograms) or a motor home. The term includes all parts, accessories and appurtenances of the vehicle. A van is deemed a "truck."

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship as to its operations within the United States pursuant to a Sales and Service Agreement with General Motors' Buick, Cadillac,

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[1] The obligation of the secured creditor or his guarantor to account for and pay surpluses arises out of Article Nine of the Uniform Commercial Code (UCC), which has been adopted by 49 states and the District of Columbia. Under the UCC, a secured party, after repossession and disposition of the collateral, is required to account to the defaulting buyer for any surplus of proceeds from the sale or disposition of the collateral in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees. *See* U.C.C. 9-504.

Chevrolet, Oldsmobile, or Pontiac divisions, or the GMC Truck Division.

D. "Retail sale" means the sale of a vehicle by a dealer, other than for purposes of resale (e.g., sales to dealers or wholesalers), lease or rental, to a customer who is not a fleet purchaser.

E. "Recourse financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase", "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Equity dealership" means a dealership in which General Motors holds 50 percent or more of the voting stock or is entitled to elect 50 percent or more of the board of directors.

G. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

H. "Disposition" or "dispose" means a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a recourse agreement. Such sale or lease includes only transactions with an independent third party; i.e., it does not include a sale or lease to the financing institution, the dealership or a representative of either. Disposition or dispose shall not mean the transfer of a repossessed vehicle to a dealership pursuant to a recourse agreement, or to a person or firm liable under a guaranty, endorsement, or recourse agreement covering the repossessed vehicle, nor mean a sale subseqnent to a judicial sale.

I. "Proceeds" means whatever is received for a repossessed vehicle upon its disposition, as proceeds are described in the Initial Compliance Report. Among other things, it does not include charges for separately priced warranties and service contracts itemized in the sales contract or lease.

J. "Allowable expenses" means commercially reasonable expenses allowable under applicable state law. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for disposition and disposing of the vehicle, and not otherwise reimbursed to the dealership disposing of the vehicle.

K. "Contract balance" means (1) the unpaid balance as of the date of repossession, less any payments made thereafter and less applicable finance charge, insurance premium and service contract rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession. It may reflect a deduction for insurance, service contract and warranty payments received or to be received by the financing institution.

L. "Surplus" means:

+proceeds
+applicable insurance or warranty reimbursements received by the dealership or financing institution unless these reimbursements were deducted in computing the contract balance
+any other applicable rebates or credits not deducted in computing the contract balance
–allowable expenses
–amounts paid to discharge any security interest in the vehicle provided for by law

=Surplus. A negative (minus) amount produced by this calculation is referred to as a "deficiency"

M. "Pay" or "paid," in reference to payment of a surplus, means a commercially reasonable attempt to pay.

II. Repossession Accounting Procedures

It is further ordered that General Motors shall provide to all dealers within 60 days of service of this Modified Order, and to each new dealer within 30 days of entering into a Sales and Service Agreement, guidelines for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. These guidelines (the "repossession accounting guide") shall, by physical insertion or as a supplement, be made a part of the General Motors uniform accounting system referred to in the various dealer Sales and Service Agreements between General Motors and its dealers. These agreements provide that this system (currently called the "General Motors Dealers Standard Accounting System Manual") should be followed in dealership operations. The repossession accounting guidelines shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The repossession accounting guidelines shall include a standardized form ("dealer repossession accounting form") which dealers should use in determining for each vehicle the existence and amount of any surplus and of any deficiency sought, and in recording payment of each surplus, in accordance with the provisions of Paragraph C below.

C. The repossession accounting procedures shall provide that:

1. Each surplus should be determined and paid to the recourse financing customer within a reasonable period of time of disposition in accordance with a method conforming to Paragraphs I.H through I.L of this Order;

2. Expenses other than allowable expenses should not be deducted in calculating surpluses and deficiencies sought;

3. Dispositions should be commercially reasonable. The dealer should make the same efforts to obtain the best available price for a repossessed vehicle as would be made for a comparable used vehicle, except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles.

4. If any rebate owed to the resource financing customer's account has not been received at the time the dealer repossession accounting form is completed, such rebate should be applied for promptly;

5. If any rebate is received after completion of the dealer repossession accounting form, any surplus or deficiencies should be redetermined and any remaining surplus paid within a reasonable time of disposition or within a reasonable time of receiving the rebate, whichever is later;

6. The dealer repossession accounting form should be prepared by the dealer for each disposition of a repossessed vehicle and:

a. Should set forth the calculations of each surplus and of each deficiency sought;

b. Should identify the vehicle and the financing customer and should be signed by a person authorized to sign retail installment contracts on behalf of the dealership;

c. A copy of the form should be sent with the surplus payment to each recourse financing customer to whom a surplus is paid and should be sent to each recourse financing customer from whom a deficiency is sought; and

d. Should be retained by the dealer, together with all relevant underlying documentations, for at least two years from the date of disposition.

7. Dealers should not obtain waivers of surplus or redemption rights from recourse financing customers, except as allowable under applicable state law.

8. Failure to account for and pay surpluses to customers may expose the dealer to legal action.

III. Equity Dealerships Procedures

It is further ordered that:

A. General Motors shall require each General Motors employee who is a director of an equity dealership to:

1. Provide the "repossession accounting guide" described in Part II of this order to each such dealership; and

2. Vote for resolutions so each such dealership handles repossessions in accordance with applicable state law.

IV. GMAC Retail Plan Changes, Deficiency Representations, Post-Repossession Notices

It is further ordered that GMAC:

A. Shall, in connection with the extension and enforcement of retail credit obligations relating to the sale of vehicles by dealers, cease and desist from:

1. Purchasing a repossessed vehicle at or through any type of sale (title clearance) conducted by GMAC.

2. Misrepresenting, directly or indirectly, orally, in writing, or in any other manner, that the debtor may be liable to pay a deficiency where GMAC knows or should know that it is not entitled under state or federal law to collect a deficiency.

3. Collecting or attempting to collect a deficency from a defaulting customer, or from his or her successors or assigns, where GMAC knows or should know that (a) it is not entitled under state or federal law to collect such deficiency, or (b) such deficiency is greater than the amount determined in accordance with the definitions set forth in Part I of this Order. For purposes of this subparagraph, the definitions of "proceeds" and "allowable expenses" will apply to GMAC's own dispositions.

4. Obtaining waivers of redemption or surplus rights from financing customers, except as allowable under state law.

B. Shall incorporate, by addendum or otherwise, provisions to the following effect into its Retail Plan as it relates to recourse financing, and into any subsequent edition or successor document:

1. Dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition;

2. Dealers are to permit redemption in accordance with the post-repossession notice sent by GMAC to the customer;

3. Dealers are to determine whether a surplus exists on a recourse financing repossession according to the repossession accounting procedures described in Part II of this Order;

4. In determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;

5. Dealers are to account for and pay each surplus within a reasonable period of time of disposition.

C. Shall develop revised retail installment contract forms which (except as modified as described in Paragraph D below) include a clear, concise statement in lay language that, in the event of repossession:

1. No expenses other than reasonable expenses incurred, as a direct result of repossessing, holding, preparing for disposition and dispositing of the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and

2. Any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

D. Shall distribute the revised retail installment contract forms to all dealers who use GMAC forms after the Commission issues a final rule or final adjudicated order not less restrictive than the Paragraph C statements of allowable expenses and the duty to any surpluses. If the final rule or final adjudicated order is less restrictive than the Paragraph C statements, GMAC shall complete the distribution after the Commission has modified Paragraph C to render it consistent with the final rule or final adjudicated order. GMAC shall direct its branch offices that after the distribution to a dealership of the revised GMAC retail installment contract forms, they are not to purchase from that dealership GMAC forms of retail installment contracts that are not on the revised forms.

E. Shall establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to GMAC financing customers as soon as practicable after repossession.

1. GMAC shall periodically examine its branches' files, in accordance with its usual monitoring procedures to determine whether the post-repossession notices have been and are being sent and shall institute appropriate actions to assure that the procedure for sending post-repossession notices is adhered to.

2. The post-repossession notice shall have a GMAC heading and shall specify in clear, lay language:

a. The name and address of the place at which the vehicle is being stored and the address and telephone number of the GMAC branch office to be contacted;

b. The date or interval of time within which the customer may redeem by reinstating the contract in states where the creditor is required to permit reinstatement of the contract;

c. The amount necessary to redeem by reinstating the contract at the time and notice is dated, if the customer is entitled to or will be permitted to redeem by reinstatement;

d. The net amount necessary to redeem by discharging the customer's obligation at the time the notice is dated, except where the customer is entitled to or will be permitted reinstatement until the vehicle is disposed of;

e. The date or interval of time prior to which the vehicle will not be disposed of;

f. That the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

g. That additional expepses may be incurred and may increase the amount necessary to redeem the vehicle if redemption is delayed (as further described in the Initial Compliance Report);

h. That GMAC should be contacted for further information about getting the vehicle back;

i. That any surplus resulting from a sale or lease is to be paid to the customer within a reasonable time after disposition (the notice may also state that an agreement between the dealer and GMAC provides that the dealer is to pay any surplus);

j. That failure to account for and pay a surplus may give the customer a right to sue for the amount of the surplus and for any penalties provided by law

k. That the customer will be liable for a deficiency or that the deficiency cannot be collected (the notice is to include the applicable language only);

l. That the customer should call the insurance company or the dealer to make sure that any insurance or service contract has been cancelled and that the customer has a right to credit for any refunds.

F. Shall issue no new materials to dealers inconsistent with this Order.

G. In any action by the Commission seeking civil penalties for a violation of subparagraphs A.2–4 and Paragraph E, GMAC may not be held liable if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. In applying this paragraph, judicial interpretations of section 130(c) of the Truth in Lending Act, 15 U.S.C. 1640(c) (1974), shall be used.

V. Effect of Inconsistent Rule or Order

It is further ordered that:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, financing companies or dealerships than a corresponding provision or provisions of this Order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this Order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. However, the General Motors respondents shall advise the Commission of their intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this Order 30 days in advance of reliance thereon.

B. In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this Order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to § 3.72 of the Commission's Rule of Practice, reopen this proceeding and order modifications of this Order or other relief as necessary and appropriate to conform this Order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

VI. Standard Reporting and Recordkeeping

It is further ordered that:

A. The General Motors respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this Order. These include, but are not limited to, copies of notices sent to financing customers pursuant to Part IV. The General Motors respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Promptly following service of this Order, General Motors shall distribute a copy of this Order to its car divisions, GMC Truck Division, and Motors Holding Division unless previously furnished, and GMAC shall distribute a copy of this Order to each of its regional managers, unless previously furnished.

C. Each of the General Motors respondents shall notify the Commission at least 30 days prior to any proposed corporate change which may negate any of the obligations of the General Motors respondents arising out of this Order. Such changes include dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the discontinuance of General Motors present program for investing in equity dealerships, and the creation or dissolution of subsidiaries or any other change which may have such effect. No notice need be provided in the event of General Motors terminating, reducing or acquiring any interest in an equity dealership.

By the Commission.
Issued: March 4, 1988.

Emily H. Rock,
Secretary.

[FR Doc. 88-6065 Filed 3-18-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2929]

Interco Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1978 consent order (43 FR 48991) with respondent and its subsidiaries by removing the ban on "preticketing", the listing of suggested retail prices on tags, with respect to the raincoats and outerwear sold by Londontown. The Commission also ordered the respondents to show cause why the provision should not be set aside in its entirety.

DATES: Consent Order issued September 28, 1978. Modified Order issued February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2067.

SUPPLEMENTARY INFORMATION: In the Matter of Interco Incorporated, Londontown Corporation, and Queen Casuals, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, remain unchanged.

List of Subjects in 16 CFR Part 13

Raincoats, Outerwear, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; (15 U.S.C. 45, 13); sec. 3, 38 Stat. 731; (15 U.S.C. 14))

Before Federal Trade Commission

[Docket No. C-2929]

In the matter of INTERCO Incorporated, a corporation; Londontown Corporation, a corporation; and Queen Casuals, Inc., a corporation.

Order Reopening and Modifying Order Issued September 28, 1978 and Order To Show Cause

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

October 28, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. Londontown is a division and Queen Casuals is a wholly owned subsidiary of Interco. The Request asked the Commission to reopen the consent order issued on September 28, 1978 ("the order") and set aside a portion of paragraph 4 of Part I of the order. Respondents' Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

Paragraph 4 of Part I of the order, the provision at issue here, prohibited respondents for a three year period ending October 10, 1981, from communicating in writing any resale price or sale period to any reseller or prospective reseller of its products. After October 10, 1981, respondents are permitted by the order to suggest resale prices on the pages of any list, book, advertising, promotional material or other document if they include the following statement on such material:

THE (RESALE PRICES OR SALE PERIODS) QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN (RESALE PRICE OR SALE PERIODS).

Paragraph 4 of Part I of the order also provides:

> A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

It is this latter provision, which prohibits a practice known as "preticketing," that respondents request the Commission to set aside insofar as it is applicable to raincoats and outerwear sold by Londontown.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4; *Hospital Corporation of America*, Docket No. 9161, Letter to Peter J. Nickles, Esquire (November 27, 1987), at 3.

The Commission may also modify an order pursuant to section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Therefore, § 2.51 of the Commission's Rules, 16 CFR 2.51, invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether the modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. See *Federated Department Stores v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

After reviewing respondents' Request, the Commission has concluded that respondents have not made a satisfactory showing that changed circumstances require that the ban on preticketing in the order should be set aside. Respondents have submitted market share and concentration data for the years 1983-1986 that tend to indicate that Londontown does not have market power in the manufacture, distribution and sale of raincoats and outerwear. However, the complaint in this matter made no allegation as to market power or market shares, and there is no reason to believe that the order or the ban on preticketing was imposed because of considerations of market share or market power. Changed factual circumstances justify modification of an order only when the changed circumstances are significant and respondent shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Albertson's, Inc.*, Docket No. C-3084, (petition to reopen and set aside order granted on July 1, 1987) at 2-3; *Cooper Industries, Inc.*, Docket No. C-2970, Letter to Sean F. Boland, Esquire (September 18, 1987), at 1. *Hosptial Corporation of America*, Docket No. 9161, Letter to Peter J. Nickles, Esquire (November 27, 1987), at 3. The changed circumstances alleged by respondents clearly do not meet this standard and are irrelevant to the allegations of the complaint. Accordingly, these changes do not constitute changed circumstances that require modification of the order.

The Commission has concluded, however, that it is in the public interest to reopen and set aside the ban on preticketing in the order. Respondents have shown that the ban on preticketing prohibits them from marketing their products in a manner that is available to their competitors and that would otherwise be lawful. Accordingly, the ban on preticketing places the respondents at a competitive disadvantage with respect to their competitors who are not subject to similar provisions.

The affirmative need to modify the order to eliminate the competitive disadvantage outweighs any continuing need for the prohibition on preticketing. The ban on preticketing is in the nature of a "fencing-in" provision to prevent respondents from using otherwise lawful preticketing as a device to accomplish vertical price fixing. The Commission believes that the conduct that led to the entry of this order has been interrupted for a sufficient period of time so that the ban on preticketing is no longer necessary either to dissipate the effects of respondents' past conduct or to prevent its recurrence.

Respondents have requested that the ban on preticketing be removed only with respect to raincoats and outerwear sold by Londontown. However, the Commission believes that the provision should be deleted in its entirety inasmuch as it no longer appears to be serving a remedial purpose and is inhibiting lawful competitive behavior.

Accordingly, *It Is Ordered* that this matter be and it hereby is reopened and that the last sentence of paragraph 4 of Part I of the Commission's Decision and Order issued on September 28, 1978, shall be modified as of the effective date of this order to read as follows:

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller except as to raincoats and outerwear sold by Londontown.

It Is Further Ordered that respondents show cause why the foregoing provision should not be set aside in its entirety. In accordance with § 3.72 of the Commission's Rules of Practice, 16 CFR 3.72, respondents have 30 days from the date of service of this order to file an answer hereto or be deemed to have accepted the action proposed herein

By the Commission, Commissioner Bailey dissenting.

February 23, 1988.

Emily H. Rock,
Secretary.

[FR Doc. 88-6064 Filed 3-18-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 10 percent for underpayments and 9 percent for overpayments for the quarter beginning April 1, 1988. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of April 1, 1988—June 30, 1988 are 10 percent for underpayments and 9 percent for overpayments. These rates will remain in effect through June 30, 1988, and are subject to change on July 1, 1988. They will remain in effect until changed by another notice in the **Federal Register**.

Dated: March 11, 1988.

Wm. Rosenblatt,

Acting Commissioner of Customs.

[FR Doc. 88–6046 Filed 3–18–88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41, and 42

[SD-106.865; 106.866]

VISAS; Regulations Pertaining to Both Nonimmigrants and Immigrants, Under the Immigration and Nationality Act, as Amended; Correction

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors, and makes editorial and technical amendments, to final rule 106.865 published in the **Federal Register** on November 5, 1987. It also corrects the effective date to final rule 106.866 published in the **Federal Register** of November 17, 1987.

FOR FURTHER INFORMATION CONTACT: Guida Evans-Magher at (202) 663–1206.

SUPPLEMENTARY INFORMATION: On November 5, 1987, the Department issued final rule 106.865, 52 FR 42590–42623, which completely reorganized Parts 41 and 42 to Title 22 of the Code of Federal Regulations. This rule makes necessary editorial and technical corrections to that publication. One of these corrections, for instance, reinstates citations contained in Title 22 CFR Parts 41 and 42, which were inadvertently omitted from final rule 106.865. Furthermore, on November 17, 1987 the Department published final rule SD 106.866 at 52 FR 43894–43897, which amended certain regulations in Parts 41 and 42 intended for incorporation into Title 22 prior to the reorganization of Parts 40, 41 and 42. For purposes of codification, however, in addition to the November 17, 1987 effective date, SD 106.866 should also have set forth the expiration date of the document. Thus for the final rule expiration would have preceded the November 29, 1987 reorganization date of Title 22 Parts 40, 41 and 42.

Accordingly, the following corrections are made: To SD 106.865, published November 5, 1987.

PART 40—[CORRECTED]

Make the following corrections to the sections listed below.

§ 40.7 [Corrected]

On page 42593, in § 40.7(a)(9)(i), reverse the order of the two sentences to begin with the second sentence "Before a finding * * *" followed by the first sentence "A determination that a crime * * *".

On page 42596, in § 40.7(a)(28)(v), line 6, remove "automatically".

On page 42596, in § 40.7(b)(1)(iv), line 2, remove "law or".

On page 42596, § 40.7(b)(1)(v) is revised to read: "(v) The necessary fee is not paid for the issuance of the visa, or, in the case of an immigrant visa, for the application therefor;".

On page 42596, § 40.7(b)(1)(vi) is revised to read: "(vi) In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or".

On page 42596, in § 40.7(d), line 4, insert "," after "(E)" and on line 12 remove the "," after "immunities".

PART 41—[CORRECTED]

Make the following corrections to the sections listed below.

§ 41.2 [Corrected]

On page 42598, in § 41.2(i), line 28, change "Socialist" to "Democratic".

§ 41.12 [Corrected]

On pages 42599 and 42600, in § 41.12 revise the table to read:

Class	Section of law or treaty citation	Visa symbol
Ambassador, public, minister, career, diplomatic or consular officer, and members of immediate family.	101(a)(15)(A)(i); 66 Stat. 167	A–1.
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii); 66 Stat. 167	A–2.
Attendant, servant, or personal employee of A–1 and A–2 classes, and members of immediate family.	101(a)(15)(A)(iii); 66 Stat. 167	A–3.
Temporary visitor for business	101(a)(15)(B); 66 Stat. 167	B–1.
Temporary visitor for pleasure	101(a)(15)(B); 66 Stat. 167	B–2.
Temporary visitor for business and pleasure	101(a)(15)(B); 66 Stat. 167	B–1 and B–2.
Alien in transit	101(a)(15)(C); 66 Stat. 167	C–1.
Alien in transit to United Nations Headquarters District under §11, (3), (4), or (5) of the Headquarters Agreement with the United Nations.	101(a)(15)(C); 66 Stat. 167	C–2.
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit.	212(d)(8); 66 Stat. 188	C–3.
Crew member (ship or aircraft crew)	101(a)(15)(D); 66 Stat. 167	D.
Treaty trader, spouse and children	101(a)(15)(E)(i); 66 Stat. 168	E–1
Treaty investor, spouse and children	101(a)(15)(E)(ii); 66 Stat. 168	E–2.
Student (academic or language-training program)	101(a)(15)(F)(i); 66 Stat. 168 75 Stat. 527	F–1
Spouse and children of alien classified F–1	101(a)(15)(F)(ii); 75 Stat. 527	F–2.
Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family.	101(a)(15)(G)(i); 66 Stat. 168	G–1
Other representative of recognized foreign member government to international organization, and members of immediate family.	101(a)(15)(G)(ii); 66 Stat. 168	G–2.
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family.	101(a)(15)(G)(iii); 66 Stat. 168	G–3.
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv); 66 Stat. 168	G–4.
Attendant, servant, or personal employee of G–1, G–2, G–3, and G–4 classes and members of immediate family.	101(a)(15)(G)(v); 66 Stat. 168	G–5.
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i); 66 Stat. 168	H–1.
Temporary worker performing agricultural services unavailable in the United States	101(a)(15)(H)(ii)(a); 100 Stat. 3411	H–2(A).
Temporary worker performing other services unavailable in the United States	101(a)(15)(H)(ii)(b); 66 Stat. 168; 100 Stat.	H–2(B).
Trainee	101(a)(15)(H)(iii); 66 Stat. 168; 84 Stat. 116	H–3.
Spouse and children of alien classified H–1, H–2, or H–3	101(a)(15)(H); 84 Stat. 168	H–4.
Representative of foreign information media, spouse and children	101(a)(15)(I); 66 Stat. 168	I.
Exchange visitor	101(a)(15)(J); 66 Stat. 167; 75 Stat. 527	J–1.
Spouse and children of alien classified J–1	101(a)(15)(J); 75 Stat. 527	J–2.
Fiance(e) of U.S. citizen	101(a)(15)(K); 84 Stat. 116	K–1.
Children of alien classified K–1	101(a)(15)(K); 84 Stat. 116	K–2.
Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation).	101(a)(15)(L); 84 Stat. 116	L–1.
Spouse and children of alien classified L–1	101(a)(15)(L); 84 Stat. 116	L–2.
Student (vocational or other recognized nonacademic)	101(a)(15)(M)(i); 95 Stat. 1611	M–1.
Spouse and children of alien classified M–1	101(a)(15)(M)(ii); 95 Stat. 1611	M–2.
The parent of an alien child classified SK–3 under section 101(a)(27)(I)(i)	101(a)(15)(N); 100 Stat. 3359	N–8.
The child of parent classified N–8 or of alien classified SK–1; SK–2; SK–4 under section 101(a)(27)(I) (ii), (iii), or (iv).	101(a)(15)(N); 100 Stat. 3359	N–9.
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098	NATO–1.
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.	NATO–2.
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.	Art. 14, 5 UST 1096	NATO–3.
Officials of NATO (other than those classifiable under NATO–1) and members of immediate family.	Art. 18, 5 UST 1098	NATO–4.
Experts, other than NATO officials classifiable under the symbol NATO–4, employed on missions on behalf of NATO and their dependents.	Art. 21, 5 UST 1100	NATO–5.
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877	NATO–6.
Attendant, servant, or personal employee of NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, and NATO–6 classes, and members of immediate family.	Arts. 12–20, 5 UST 1094–1098	NATO–7.

§ 41.21 [Corrected]

On page 42600, at the end of § 41.21(d)(2) introductory text, remove "s;" from the word "nonimmigrants;" and add "visa applicants;"

On page 42600, § 41.21(d)(2)(ii) is revised to read "(ii) Class A–2: INA 212(a)(27) and (29);".

§ 41.26 [Corrected]

On page 42602, in § 41.26(c)(1)(xiv), change "(a) to (k)" to read "(c)(1)(i) to (c)(1)(xi)".

On page 42602, in § 41.26(c)(2)(xi), remove the hyphen in "Co-operation".

§ 41.27 [Corrected]

On page 42602, § 41.27(c)(1)(iii), remove "22 CFR" and insert "§" symbol.

On page 42602, § 41.27(c)(1)(xii), change "(a) through (k)" to read "(c)(1)(i) through (c)(1)(xi)".

On page 42602, § 41.27(c)(1)(xiii), change "(a) through (m)" to read "(c)(1)(i) through (c)(1)(xiii)".

§ 41.32 [Corrected]

On page 42604, § 41.32(f), line 10, remove the second "l" from the word "mutilliated".

§ 41.101 [Corrected]

On page 42608, in § 41.101(a), line 14, insert "officer" after the first "consular".

§ 41.102 [Corrected]

On page 42608, in § 41.102(a)(6), line 2, remove "officer" after "nonimmigrant".

§ 41.105 [Corrected]

On page 42609, in § 41.105(b), last line insert the missing fourth "i" in "eligibility".

§ 41.112 [Corrected]

On page 42610, in § 41.112(d)(2) introductory text, remove "(1)" and insert "(d)(1)".

On page 42610, in § 41.112(d)(2)(ii), remove "(a)" and insert "(d)(2)(i)".

PART 42—[CORRECTED]

Make the following corrections to the sections listed below.

§ 42.11 [Correction]

On page 42615, in § 42.11(b) under Class, Section of law, and Visa symbol columns remove the fifth entry.

On page 42615, in § 42.11(c), between the 14th and 15th entries insert the following entry:

Class	Section of law	Visa symbol
* *	* *	*
"Fourth preference: Spouse of alien classified C4-1 (conditional status)"	203(6); 216(a), 100 Stat. 3537	C4-2.

On page 42615, in § 42.11(c), in the last "Fourth preference" entry remove the "." after "216(a)." and insert ", 100 Stat. 3537".

§ 42.31 [Corrected]

On page 42617, in § 42.31(a), line 19, remove "§" symbol and insert "22 CFR".

§ 42.52 [Corrected]

On page 42618, in § 42.52(b)(3)(iii), remove "§" symbol and insert "22 CFR".

§ 42.53 [Corrected]

On page 42618, in § 42.53(b)(2)(ii), remove "§ " symbol and insert "22 CFR".

§ 42.64 [Corrected]

On page 42619, in § 42.64(b), remove "22 CFR" and insert "§ " symbol.

§ 42.67 [Corrected]

On page 42620, in § 42.67(a)(2), line 14, remove the second "then".

§ 42.81 [Corrected]

On page 42622, in § 42.81(e), line 3, change "1" to "one".

§ 42.83 [Corrected]

On page 42623, in § 42.83 (a) and (b), lines 5 and 4, respectively, change "1" to "one".

In SD 108.866 published at 52 FR 43894 November 17, 1987, correct the effective date to read as follows:

DATES: Effective November 17, 1987; Expires November 28, 1987.

Date: March 15, 1988.

Cornelius D. Scully, III,

Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office.

Editorial Note: Additional corrections to this document are published in the Corrections Section of this issue of the **Federal Register.**

[FR Doc. 88-6042 Filed 3-18-88; 8:45 am]

BILLING CODE 4710-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3351-6]

Designations of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: This rulemaking revises the Pierce Township, Clermont County designation for sulfur dioxide (SO_2) from nonattainment to attainment of the National Ambient Air Quality Standards.

USEPA's action is in response to the Ohio Environmental Protection Agency's request to redesignate this area to attainment. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This final rulemaking becomes effective on April 20, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following address: U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the redesignation request are also available at: Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0189.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. For Ohio, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

USEPA's criteria for data that warrant redesignating an area are set out in an April 21, 1983 memorandum, "Section 107 Designation Policy Summary" from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. Accordingly, SO_2 redesignations must be supported by:

(a) Ambient monitoring data showing no violations over the most recent consecutive eight quarters (or four quarters if actual, commensurate, enforceable, concurrent emission reductions have also occurred).

(b) A USEPA reference modeled attainment demonstration at the SIP allowable emission limitations.

(c) Certification of compliance with the SIP limits based on the federally approved test methods.

(d) A redesignation cannot relax the SIP.

On December 14, 1982, OEPA requested USEPA to redesignate Clermont County (Pierce Township) from nonattainment to attainment for SO_2. This request was based on available ambient air quality data which have shown no violations since January 1980.

On July 17, 1984 (49 FR 28886), USEPA proposed action on the State's request. In the notice, USEPA proposed to disapprove the redesignation of Pierce Township, Clermont County, due to the lack of current compliance data for the Cincinnati Gas and Electric Company (CG&E), Beckjord Generating Station. In response to the notice of proposed rulemaking, CG&E submitted results of a recent stack test for its Beckjord plant and requested that Clermont County be designated attainment.

The Stack tests demonstrated compliance with the SIP emission limits for Units 1-4 (1.84 lbs/MMBTU) and Units 5-6 (7.18 lbs/MMBTU), and the coal burned during the test was representative of the Beckjord coal

supply. Consequently, these compliance data, together with the modeled attainment demonstration for the SIP limits, and the available monitored data over eight quarters showing no violations, supported redesignation to full attainment.

OEPA has reviewed the CG&E Beckjord Station for consistency with USEPA's Stack Height Rules (50 FR 27892). Because all stacks and units were in existence prior to December 31, 1970, Beckjord is not subject to the Stack Height Rules.

On December 8, 1986 (51 FR 44018), USEPA proposed rulemaking to revise the SO_2 designation for Pierce Township in Clermont County, Ohio from nonattainment to attainment of the NAAQS. A 30-day comment period was provided at the time of the proposed rulemaking. In response to a request from the Natural Resources Defense Council (NRDC), the public comment period was extended until May 15, 1987.

In response to the Notice of Proposed Rulemaking, public comments were submitted by: The Ohio Environmental Protection Agency (OEPA), Cincinnati Gas & Electric Company (CG&E), Natural Resources Defense Council (NRDC), and the Southwestern Ohio Air Pollution Control Agency (SWOAPCA).

In addition to these comments, USEPA, Region V has further considered the representativeness of the coal used by CG&E during the stack test to demonstrate compliance with the existing SO_2 emission limitations. Although this evaluation raised some questions about continuous compliance, USEPA maintains its previous determination that the stack test was performed under representative conditions.

Each of the comments raised during the public comment period and USEPA's responses are discussed below.

Comment: OEPA, SWOAPCA and CG&E claimed that the existing technical support materials satisfy the criteria in USEPA's redesignation policy and urged USEPA to finalize the redesignation to attainment.

USEPA Response: As noted in the summary provided below, USEPA agrees that the redesignation criteria have been met and, thus, final redesignation to attainment is appropriate.

Comment: NRDC stated that the Notice of Proposed Rulemaking failed to describe the modeled attainment demonstration in sufficient detail to permit any meaningful public comment. NRDC requested a copy of the modeling analysis and additional time to review and comment on the modeling.

After receiving the modeling, NRDC commented that the analysis may have been valid in 1976, but it does not meet USEPA's current modeling guidelines and is, thus, unacceptable.

USEPA Response: USEPA's December 14, 1984, technical support document for the proposed rulemaking explained that the modeled attainment demonstration for Clermont County was described in detail in another document (i.e., "Technical Support Document: Sulfur Dioxide Control for the State of Ohio", April 1976). On February 4, 1987, USEPA sent copies of the actual computer printout from the original Clermont County modeling analysis and the relevant pages of the April 1976 Technical Support Document to NRDC.

USEPA recognizes that the modeling analysis is over 10 years old and that certain elements of the modeling (e.g., years of meteorological data, receptor resolution) are incomplete relative to current modeling guidelines. USEPA does not, however, require States to revise previous attainment demonstrations when new modeling guidelines are developed, unless there is information available showing that the existing emission limits are inadequate to attain and maintain the NAAQS. The commenter has not provided any evidence that the emission limits resulting from that modeling do not ensure attainment of the SO_2 NAAQS. In the absence of such information, USEPA will continue to presume that the existing emission limits are adequate. Thus, USEPA believes that the age and completeness of the modeling does not affect this redesignation.

Comment: NRDC objected to the use of block average concentrations in the modeled attainment demonstration. NRDC believes that the 3-hour and 24-hour SO_2 NAAQS are not limited to block average periods and should instead be interpreted on a running average basis.

In counter-comments, CG&E argued that block averaging is consistent with "* * * applicable law and long-standing Agency policy, and is required by the Agency's current rules."

USEPA Response: On March 28, 1986, Gerald Emison, Director, Office of Air Quality Planning and Standards, USEPA issued a memo entitled "Block Averages in Implementing SO_2 NAAQS". Briefly, Mr. Emison stated that block averages will be used in actions implementing the 3-hour and 24-hour SO_2 NAAQS. The Clermont County redesignation is consistent with that policy.

Comment: NRDC cited recent daily average coal sampling and analysis (CSA) data as showing that the Beckjord Station, Units 1-4, were routinely violating the applicable SO_2 emission limitations. Since the promulgated compliance test method (i.e., a stack test) represents basically a 3-hour period, NRDC claimed that the daily CSA violations understate the degree of 3-hour noncompliance. Based on this information, NRDC stated that the Beckjord Station is not in compliance with its SO_2 emission limits and the nearby area is not in attainment of the SO_2 NAAQS.

In counter-comments, CG&E noted that the only approved compliance test method is a stack test in accordance with 40 CFR Part 60, Appendix A, Reference Method 6 under representative conditions; and CSA is not an approved method in the Ohio SIP for showing compliance or noncompliance. CG&E cited its 1984 stack test which showed compliance and was performed using coal that was determined in 1984 to be representative by USEPA. CG&E maintained that the coal burned in 1984 "* * * continues to be representative of the coal burned at the Beckjord Plant."

USEPA Response: According to the SO_2 SIP for Ohio, the only test method and procedure to determine compliance applicable to Beckjord is a stack test conducted under "* * * such conditions as the Administrator shall specify based on representative performance of the affected facility."

USEPA acknowledges the 1984 stack tests as showing compliance with the applicable emission limitations. Furthermore, although the 1986 CSA data raise some questions about continuous compliance, the data do justify the representativeness of the coal data burned during the stack test (i.e., 1986 CSA data are consistent with 1984 CSA data). Thus, USEPA believes that the stack test data and CSA data satisfy the SIP compliance requirements.

Conclusion: USEPA's redesignation policy contains five main criteria for SO_2 redesignations to attainment. USEPA believes that these criteria have been met, as noted below. Thus, redesignation of Clermont County to attainment is approvable.

1. Consistency With GEP Stack Height Regulations

As noted previously all stacks and units at Beckjord were in existence prior to December 31, 1970. Thus, Beckjord is not subject to the Stack Height Regulations.

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2. Modeled Attainment Demonstration at SIP Emission Limits

The modeled attainment demonstration for Clermont County is discussed in "Technical Support Document: Sulfur Dioxide Control for the State of Ohio," April 1976. This modeling analysis showed attainment of the SO_2 NAAQS at the SIP emission limits. Since no data have been provided showing that the SIP emission limits do not protect the NAAQS, USEPA will continue to presume that these limits are adequate.

3. Evidence of Implementation of the SIP Emission Limits

In 1984, CG&E performed a stack test under representative conditions at the Beckjord Station. The stack test showed that the SIP emission limits were being met. Because the only approved compliance test method is a stack test, the 1984 stack test results are evidence of compliance.

4. Recent Monitored Attainment

No exceedances of the SO_2 NAAQS were measured at the two ambient monitors in Clermont County during the 1980–1986 period.

Note: Because these monitors are not sited to measure the maximum impacts from Beckjord, this redesignation is based primarily on the modeled attainment demonstration.

5. Redesignation Must Not Relax the SIP

The redesignation of Clermont County will not relax the SO_2 emission limitations for any source in the County.

USEPA is taking final action approving the redesignation of Pierce Township, Clermont County to attainment for the SO_2 NAAQS. SO_2 implementation plans for nonattainment areas are designed to satisfy the requirements of Part D of the Clean Air Act and provide for attainment and maintenance of the SO_2 NAAQS. Evidence of failure to maintain compliance with the applicable SO_2 standard may result in a requirement to conduct future stack tests until compliance is maintained.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Sulfur Dioxide, Wilderness areas.

Dated: March 12, 1988.

Lee M. Thomas,
Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.336 the Table for Ohio Sulfur Dioxide is amended by revising the entry for Clermont County to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO.—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Clermont County				X
* * * * * * *				

[FR Doc. 88-6111 Filed 3-18-88; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nurse Anesthetist Traineeships

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations set forth the requirements for grants, authorized by section 831(a) of the Public Health Service Act (the Act), to public or private nonprofit institutions to cover the costs of traineeships for the training of registered nurses to be nurse anesthetists. They also conform the regulations to an amendment made by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986, and to departmental grants policy.

DATES: These regulations are effective on the date they appear in the Federal Register, except §§ 57.509(c), 57.510(a), and 57.512(b) which will be effective upon OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas P. Phillips, Chief, Advanced Nurse Education Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–13, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–6333.

SUPPLEMENTARY INFORMATION: Section 831(a) of the Act authorizes the Secretary to make grants to public or private nonprofit institutions to cover the costs of traineeships for the training of registered nurses to be nurse anesthetists. On December 16, 1986, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the Federal Register (51 FR 45000), a Notice of Proposed Rulemaking (NPRM) to add a new Subpart F to Part 57 of Title 42 of the Code of Federal Regulations to implement section 831(a) of the Act. Section 831 was added to the Act by the Nurse Training Amendments of 1979 (Pub. L. 96–76). The Nurse Education Amendments of 1985 (Pub. L. 99–92), enacted August 16, 1985, extended the authority for traineeships through FY 1988 under section 831(a).

The public comment period on the proposed regulations closed on February 17, 1987. The Department received no

comments. The following is a summary of the major items, by their section numbers and headings, that are included in these final regulations.

Section 57.502 Definitions.

The term "nurse anesthetists training program" is defined as a full-time educational program which: (1) Is designed to qualify registered nurses as nurse anesthetists; and (2) is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools (CANAEPS); and (3) has students enrolled in the program who are beyond the twelfth month of study.

Section 831(a) of the Act requires that the nurse anesthetist program be accredited by an entity of entities designated by the Secretary of Education. CANAEPS is the accrediting entity for nurse anesthetist programs recognized by the Secretary of Education. Therefore, certification by CANAEPS is a requirement of the definition of "nurse anesthetist training program."

Section 57.504 How will applications be evaluated?

The NPRM included a special consideration for institutions that: (a) Show evidence of efforts to attract and retain minority students, (b) demonstrate that they award traineeships to students who have clear financial need, and (c) plan to sustain nurse anesthetist traineeship programs beyond the period during which Federal assistance is available. The Secretary has decided to omit this special consideration as part of a newly implemented policy to announce any special factors related to national needs that will be considered in funding applications in periodic notices in the **Federal Register**, and to retain in regulations only those special considerations that are in the statute. The policy was adopted by the Secretary to provide maximum flexibility for programs management, thus enabling the grant program to respond more quickly to new and emerging health care needs. The removal of the special consideration in this instance does not necessarily preclude the announcement of all or a part of the special consideration in a forthcoming **Federal Register** notice.

Section 57.506 How is the amount of the award determined?

Section 57.506 states that the Secretary will use a formula

$$G = F X \frac{N.}{E}$$

to determine the amount to be awarded to each approved nurse anesthetist training program. G represents the amount of grant to be awarded. F represents the amount of traineeship funds appropriated to implement section 831(a) in the fiscal year in which application is made. E represents the total number of full-time students enrolled beyond the twelfth month of study in all the approved applicant nurse anesthetist training programs. N represents the number of full-time students enrolled beyond the twelfth month of study in the applicant nurse anesthetist training program. Should special factors for determining the funding of applications be announced by the Secretary in the **Federal Register**, N will be adjusted upward when an applicant meets the specific criteria as announced. This adjustment will result in the award of additional traineeship funds to successful applicants who meet the criteria of the special factors.

The Department intends to fund every approved application. This formula is an equitable way of distributing grants. The formula permits each applicant to receive a proportional share of the available funds based on its enrollment of students who are beyond the twelfth month of study.

Section 57.507 For what purposes may grant funds be spent?

This provision has been clarified to indicate that grant funds may be spent only for traineeships.

Section 57.509 Who is eligible for financial assistance as a trainee?

Section 57.509(b) requires a registered nurse to be enrolled as a full-time student beyond the twelfth month of study in the nurse anesthetist training program to be eligible to receive a traineeship. In addition, § 57.509(c) requires that the registered nurse demonstrate financial need, as determined by the institution.

Additionally, the final regulations make further revisions to the proposed regulations. Since these revisions are technical and ministerial, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. These revisions are summarized below according to the section numbers and their headings:

1. Revise § 57.502, entitled "*Definitions.*", to revise the term "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia." in accordance with Pub. L. 99–239;

2. Revise § 57.503, entitled "*Who is eligible to apply for a grant?*", to add a footnote which provides the address for obtaining application forms and instructions.

3. Revise § 57.505, entitled "*How long does grant support last?*" to:

(a) Reflect current departmental grants policy in paragraph (c) by adding a sentence regarding continuation support; and

(b) Remove paragraph (d), concerning federally obligated grant funds, and relocate it in § 57.507, entitled "*For what purposes may grant funds be spent?*";

4. Revise § 57.507, entitled "*For what purposes may grant funds be spent?*" by:

(a) Reformatting the section text;

(b) Adding a paragraph (b) to state that grants funds may not be spent for sectarian instruction or for any religious purpose in accordance with departmental grants policy; and

(c) Adding a paragraph (c) on the expenditure of any balance of federally obligated grant funds in accordance with departmental grants policy;

5. Revise § 57.509(a), entitled "*Who is eligible for financial assistance as a trainee?*", to incorporate the eligibility requirement of a trainee's United States Citizenship status provided by the Immigration and Naturalization Service policy as it relates to the admission, into the United States, its territories and possessions, of citizens of the Republic of the Marshall Islands and the Federated States of Micronesia (formerly entities of the Trust Territory of the Pacific Islands), in accordance with Pub. L. 99–239; and

6. Revise § 57.513, entitled "*What additional Department regulations apply to grantees?*", to include "45 CFR Part 75—Informal grant appeals procedures" in accordance with departmental grants policy.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined this rule is not a major rule under

Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Sections 57.509(c), 57.510(a), and 57.512(b) contain information collection activities which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted an information request to OMB for approval of these requirements. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the Federal Register to notify the public of such action.

List of Subjects in 42 CFR Part 57

Grant programs—nursing, Health manpower shortage area, Health professions, Medical and dental schools, Nursing advanced training, Nurse practitioner, Nurse practitioner traineeship program, Student aid.

Accordingly, Subpart F is added to Part 57 of Title 42 of the Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance, No. 13.124, Grants for Nurse Anesthetist Traineeships)

Dated: January 27, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 1, 1988.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart F, consisting of §§ 57.501 through 57.514, entitled, "Grants for Nurse Anesthetist Traineeships" to read as follows:

Subpart F—Grants for Nurse Anesthetist Traineeships

Sec.
57.501 To what programs do these regulations apply?
57.502 Definitions.
57.503 Who is eligible to apply for a grant?
57.504 How will applications be evaluated?
57.505 How long does grant support last?
57.506 How is the amount of the award determined?
57.507 For what purposes may grant funds be spent?
57.508 What financial support is available to trainees?
57.509 Who is eligible for financial assistance as a trainee?
57.510 What are the requirements for traineeships and the appointment of trainees?
57.511 Duration of traineeships.
57.512 Termination of traineeships.
57.513 What additional Department regulations apply to grantees?
57.514 Additional conditions.

Subpart F—Grants for Nurse Anesthetist Traineeships

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 831 of the Public Health Service Act, 93 Stat. 580, and 98 Stat. 2081; redesignated as sec. 831(a) as amended by 99 Stat. 306–307 (42 U.S.C. 297–1).

§ 57.501 To what programs do these regulations apply?

These regulations apply to grants awarded to public or private nonprofit institutions for the purpose of providing traineeships to registered nurses enrolled in nurse anesthetist training programs.

§ 57.502 Definitions.

"Act" means the Public Health Service Act, as amended.

"Fiscal Year" means the Federal fiscal year, beginning October 1 and ending the following September 30.

"National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States (as defined in 8 U.S.C. 1101(a)(22), the Immigration and Nationality Act).

"Nonprofit" as applied to any school, agency, organization, or institution means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Nurse anesthetist" means a registered nurse who has successfully completed a nurse anesthetist training program.

"Nurse anesthetist training program" means a full-time educational program which:

(1) Is designed to qualify registered nurses as nurse anesthetists;

(2) Is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools; and

(3) Has students enrolled in the program who are beyond the twelfth month of study.

"Registered nurse" means a person who has graduated from a school of nursing and is licensed to practice as a registered/professional nurse in a State.

"School of nursing" means a collegiate, associate degree, or diploma school of nursing as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services (HHS), to whom the authority involved has been delegated.

"State" includes, in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Trainee" means a student who is receiving a traineeship from a grant under this subpart.

§ 57.503 Who is eligible to apply for a grant?

Any public or private nonprofit institution which is located in a State and administers a nurse anesthetist training program is eligible to apply for a grant by submitting an application at the time and in the form that the Secretary may prescribe.[1]

§ 57.504 How will applications be evaluated?

Within the limits of funds available, the Secretary will award a grant to each eligible institution whose application is found to meet the requirements of section 831(a) of the Act and these regulations. In determining the funding of applications, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the Federal Register.

§ 57.505 How long does grant support last?

(a) The Notice of Grant Award specifies the period during which grant funds are available for obligation by the grantee. This period, called the budget period, will not exceed 1 year.

(b) The grant will initially be funded for 1 year, and subsequent awards will also be for 1 year at a time. A grantee must submit a separate application to have support continued for each subsequent year. Decisions about the amount of all awards will be made by formula as described in § 57.506 of these regulations. In all cases awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.506 How is the amount of the award determined?

(a) The Secretary will use the following formula to determine the amount of the grant to be awarded to each approved nurse anesthetist training program:

$$G = F \times \frac{N}{E}$$

G represents the amount of grant to be awarded. F represents the amount of traineeship funds appropriated to implement section 831(a) in the fiscal year in which application is made. E represents the total number of full-time students enrolled beyond the twelfth month of study in all the approved applicant nurse anesthetist training programs. N represents the number of full-time students enrolled beyond the twelfth month of study in the applicant nurse anesthetist training program. Should special factors for determining the funding of applications be announced from time to time in the Federal Register, N will be adjusted upward for those applicants meeting the specific criteria as announced. (This adjustment will result in the award of additional traineeship funds to successful applicants who meet the criteria of the special factors.)

(b) Students will be counted as of October 15 of the Federal fiscal year in which application is made.

§ 57.507 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart for traineeships according to § 57.508, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) A grantee may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of the budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and made available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's need for that period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.508 What financial support is available to trainees?

Expenditures from traineeship funds are limited to:

(a) Tuition and fees, in accordance with the established rates of the institution, except as limited by the Secretary.

(b) Stipends in whatever amount the grantee determines that each trainee needs to pursue the training program, as long as that amount does not exceed the limits established by the Secretary. Stipends may only be paid to the trainee in monthly installments.

(c) Transportation allowance on an individual basis when prior approval has been obtained from the Secretary in the following circumstance:

The grantee may pay a trainee an allowance from grant funds for travel to field training if the site is beyond a reasonable commuting distance and requires the trainee to establish a temporary new residence. However, the grantee may not pay an allowance for daily commuting from the new place of residence to the field training headquarters.

§ 57.509 Who is eligible for financial assistance as a trainee?

To be eligible for a traineeship, a registered nurse must:

(a) Be a resident of the United States and either a U.S. Citizen, a U.S. National, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands (CNMI), a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands (RMI) or the Federated States of Micronesia (FSM) (both formerly part of the TTPI);

(b) Be enrolled as a full-time student beyond the twelfth month of study in a nurse anesthetist training program;

(c) Demonstrate financial need, as determined by the institution; and

(d) Not be receiving concurrent support for the same training from another Federal education award which provides a stipend or otherwise duplicates financial provisions except education benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.510 What are the requirements for traineeships and the appointment of trainees?

(a)(1) The grantee must complete a statement which documents the appointment of each trainee. To complete this statement the grantee must require each trainee to provide information and documentation of his or her eligibility.

(2) The statement of appointment must be completed by the beginning of the training period or as soon thereafter as possible if the trainee receives notice of his or her traineeship appointment after the training period has begun. The statement of appointment must include information to document the eligibility of the trainee and certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement on behalf of the grantee, and the trainee must sign it thus certifying the statements are true and complete. The original copy of the statement must be retained by the grantee to be available for program review and financial audit. A copy shall be provided to the trainee for his or her records.

(b) The grantee may not require trainees to perform any work which is not an integral part of the nurse anesthetist training program and required for all students in the program, or to perform services which detract from or prolong their training.

§ 57.511 Duration of traineeships.

The initial appointment to a traineeship must be made for a full academic year, not to exceed 12 months, except that a shorter appointment may be made when necessary to enable the trainee to complete the training program. A second appointment may not exceed 6 months. The total period of support for any trainee may not exceed 18 months.

§ 57.512 Termination of traineeships.

(a) The grantee must terminate a traineeship:

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[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(1) Upon request of the trainee;

(2) If the trainee withdraws from the grantee institution; or

(3) If the grantee determines that:

(i) The trainee is no longer an enrolled student; or

(ii) The trainee is not eligible or able to continue in accordance with its standards and practices.

(b) The grantee must deposit any Federal portion of the tuition refund owed to a trainee into the grant account and provide written notice to the trainee that it is doing so.

§ 57.513 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.514 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 88–6067 Filed 3–18–88; 8:45 am]

BILLING CODE 4160–15–M

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[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94–484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94–63.

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Department of Defense Federal Acquisition Regulation Supplement; Restriction on Procurement From Toshiba Corp. and Kongsberg Vapenfabrikk

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment.

SUMMARY: The Department of Defense is modifying Subpart 225.70 of the FAR Supplement to comply with section 8124 of DoD FY 88 Appropriations Act, Pub. L. 100–202. Section 8124 of the Act prohibits acquisitions of goods and services of Toshiba Corporation and Kongsberg Vapenfabrikk and their subsidiaries. The interim rule differs from an earlier proposed rule, 53 FR 4044, as follows:

(a) The terms "component" is defined.

(b) Section 225.7011–5, Waiver, has been revised to add "unique supplies" as one circumstance when a waiver of the statutory restriction is good for all such purchases during the year.

(c) The clause prescription has been revised to clarify that the clause shall be inserted in all solicitations and contracts *including small purchases.*

(d) The coverage has been revised to clarify that the statutory prohibition on awards applies to all contracts including options exercised thereunder.

DATES: *Effective Date:* March 21, 1988 (effective for all solicitations issued on or after March 21, 1988 and for all contracts, including options, awarded (regardless of the solicitation date) on or after March 21, 1988). Comments on this interim rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before April 20, 1988. Please cite DAR Case 87–322 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Charles W. Lloyd, Executive Secretary, DAR Council, OASD (P&L), DASD(P)/DARS, c/o Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sullivan in the Office of International Acquisition, DASD(P) (IA), (202) 697–9351.

SUPPLEMENTARY INFORMATION:

A. Background

On February 11, 1988, (53 FR 4044) the Department of Defense published a proposed rule announcing its intention to modify Subpart 225.70 of the DoD FAR Supplement to comply with section 8124 of the DoD FY 88 Appropriations Act, Pub. L. 100–202 which prohibits acquisitions of goods or services of Toshiba Corporation and Kongsberg Vapenfabrikk and their respective subsidiaries. Public comments received in response to the proposed rule were considered in the development of this interim rule.

B. Regulatory Flexibility Act Information

This interim rule may have an effect on small entities performing under DoD contracts. However, information currently available is insufficient to permit determination as to extent of such impact. A determination in this regard will be made at a later date. Comments are hereby solicited. Comments from small entities concerning these changes will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in all correspondence.

C. Paperwork Reduction Act Information

This interim rule does not contain new information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 225 and 252 as follows:

PARTS 225 and 252—[AMENDED]

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 225.7011 is added to read as follows:

225.7011 Restriction on procurement from Toshiba Corporation or from Kongsberg Vapenfabrikk.

(a) "Component", as used in this subpart, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(b) Section 8124 of the Department of Defense Appropriations Act, 1988 (Pub. L. 100–202) provides in part that none of the funds available to the Department of Defense are available for obligation or expenditure to procure either directly or indirectly any goods or services from

Toshiba Corporation or any of its subsidiaries or from Kongsberg Vapenfabrikk or any of its subsidiaries.

(1) For as long as this restriction or any similar restriction in a subsequent act is in effect, no contracts shall be awarded to nor options exercised with Toshiba Corporation or any of its subsidiaries or of Kongsberg Vapenfabrikk or any of its subsidiaries unless a waiver has been granted as described below. No contracts shall be awarded to nor options exercised with other firms for goods or services of Toshiba Corporation or any of its subsidiaries or of Kongsberg Vapenfabrikk or any of its subsidiaries unless a waiver has been granted as described below. In order to ensure that contracting activities of the Department of Defense do not procure indirectly goods or services of Toshiba Corporation, Kongsberg Vapenfabrikk or their respective subsidiaries, solicitations shall require offerors to identify the goods or services of Toshiba Corporation or Kongsberg Vapenfabrikk or their respective subsidiaries that the offeror would deliver under the contract.

(2) An item of personal property specified as an item to be delivered under the contract shall be considered to be goods of Toshiba Corporation or of Kongsberg Vapenfabrikk, or their respective subsidiaries, if such item contains components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries and such components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; *Provided That,* notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation, or of Kongsberg Vapenfabrikk, or of their respective subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries exceeds 50 percent of the cost of all its components.

(3) Services shall be considered services of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries if they are performed by an employee of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries.

(c) Waiver. (1) Section 8124 permits the Secretary of Defense, on a case-by-case basis, to waive the prohibition imposed by section 8124 if the Secretary determines, in writing, that compliance with the prohibition would be detrimental to national security interests of the United States. Any such determination must be sent to the Committees on Appropriations of the Senate and the House of Representatives. The Secretary of Defense has delegated this authority to the Secretaries of the Military Departments, with the authority to redelegate to a level not below the level of Assistant Secretary and to the Deputy Assistant Secretary of Defense (Procurement) for procurements by defense agencies.

(2) Case-by-case determinations with respect to replacement parts, unique supplies, or maintenance services for equipment owned or leased by the Department may cover all similar replacement parts, unique supplies, or maintenance services estimated to be purchased during the year for the equipment.

(d) Provision and clause. The solicitation provision set forth in section 252.225–7023 shall be included in all solicitations. The contract clause set forth in 252.225–7024 shall be included in all contracts (including small purchases).

3. Sections 252.225–7023 and 252.225–7024 are added to read as follows:

252.225–7023 Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrikk.

As prescribed in DFARS 225.7011(d) insert the following provision:

Notice of Restriction on Contracting With Toshiba Corporation or Kongsberg Vapenfabrikk—Offerors Representation (March 1988)

(a) Offerors are advised that the Department of Defense may not procure either directly or indirectly any goods or services from Toshiba Corporation or any of its subsidiaries or Kongsberg Vapenfabrikk or any of its subsidiaries. Offers from Toshiba Corporation or any of its subsidiaries or from Kongsberg Vapenfabrikk or any of its subsidiaries shall be rejected unless a determination is made in accordance with law permitting such a procurement. Offers from offerors, other than Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries, of goods or services of Toshiba Corporation, Kongsberg Vapenfabrikk, or their respective subsidiaries shall be rejected unless a determination is made in accordance with law permitting such a procurement.

(b) Definitions for purposes of this clause.

(1) Component, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(2) Goods of Toshiba Corporation or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Toshiba Corporation or any of its subsidiaries and such components produced or manufactured by Toshiba Corporation or any of its subsidiaries have not been substantially transformed into a new and different acticle or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation or any of its subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(3) Goods of Kongsberg Vapenfabrikk or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries and such components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Kongsberg Vapenfabrikk or any of its subsidiaries if the cost of the components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(4) Services of Toshiba Corporation are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Toshiba Corporation or any of its subsidiaries.

(5) Services of Kongsberg Vapenfabrikk are any service specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Kongsberg Vapenfabrikk or any of its subsidiaries.

(c) The offeror hereby represents that if awarded the contract it will not provide any goods and services of Toshiba Corporation, Kongsberg Vapenfabrikk, or any of their respective subsidiaries other than those listed below:

(list)

(End of provision)

252.225–7024 Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrikk.

As prescribed in DFARS 225.7011(d) insert the following clause.

Restriction on Contracting With Toshiba Corporation or Kongsberg Vapenfabrikk (March 1988)

(a) The contractor agrees that, unless a determination is made in accordance with law permitting such delivery, no goods or services delivered to the Government under this contract will be goods or services of either

(1) Toshiba Corporation or any of its subsidiaries or

(2) Kongsberg Vapenfabrikk or any of its subsidiaries.

(b) Definitions for purposes of this clause:

(1) Component, means those articles, materials, or supplies incorporated directly into an item to be delivered under the contract.

(2) Goods of Toshiba Corporation or any of its subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Toshiba Corporation or any of its subsidiaries and such components, produced or manufactured by Toshiba Corporation or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; provided that, notwithstanding such transformation or merger, the item shall be considered to be goods of Toshiba Corporation or any of its subsidiaries if the cost of the components produced or manufactured by Toshiba Corporation or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(3) Goods of Kongsberg Vapenfabrikk or any of subsidiaries are any item of personal property specified in the schedule of this contract as an item to be delivered if such item contains components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries and such components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries have not been substantially transformed into a new and different article or have not been merged into a new and different article; *Provided That*, notwithstanding such transformation or merger, the item shall be considered to be goods of Kongsberg Vapenfabrikk or any of its subsidiaries if the cost of the components produced or manufactured by Kongsberg Vapenfabrikk or any of its subsidiaries exceeds 50 percent of the cost of all its components.

(4) Services of Toshiba Corporation are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of the Toshiba Corporation or any of its subsidiaries.

(5) Services of Kongsberg Vapenfabrikk are any services specified in the schedule of this contract as an item to be delivered that is performed by any employee of Kongsberg Vapenfabrikk or any of its subsidiaries.

(End of clauses)

[FR Doc. 88–6177 Filed 3–18–88; 8:45 am]

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Proposed Rules

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 339

Medical Qualification Determinations

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management proposes to amend its regulations governing medical qualification determinations to allow agencies greater flexibility to set appropriate medical standards and requirements without OPM approval, to develop necessary medical information about a medical condition which may affect safe and efficient performance, and to ensure treatment of applicants and employees consistent with Federal law and policy requiring nondiscrimination and affirmative action in Federal employment of individuals with handicaps.

DATE: Comments must be submitted on or before May 20, 1988.

ADDRESS: Send or deliver comments to Chief, Staffing Policy Division, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632–6817.

SUPPLEMENTARY INFORMATION: In January 1984, OPM published final regulations (49 FR 1321) on the use of medical information in making personnel decisions (5 CFR Parts 339, 432, 752, and 831). These regulations represented a major change in how medical factors were developed and used in making employment decisions. In particular, the new Part 339 regulations—

—Circumscribed an agency's authority to require medical examinations in general,
—Specifically restricted the circumstances under which agencies could require psychiatric examinations (or psychological assessments),
—Shifted responsibility for raising and documenting a medical condition from the agency to the employee, and
—Defined the items constituting medical documentation in a way that would provide the most useful information for agency decisionmaking.

These new regulations have generally worked well, but experience in applying them has revealed the need for some changes and additional guidance. Thus, the proposed new regulations and corresponding FPM instructions contain the following key provisions.

1. Delegate to agencies the authority to establish medical standards for occupation that predominate in one agency (i.e., a single agency standard), and appropriate physical requirements for individual positions in accordance with OPM-prescribed criteria.

2. Clarify and expand the existing authority for agencies to establish medical evaluation programs when such programs are necessary to safeguard employee health or to ensure continued ability to perform safely and efficiently without undue hazard to the individual or to others.

3. Clarify and agency's authority to require medical examinations for employees who occupy positions which are subject to medical standards, medical evaluation programs, or physical requirements.

4. Allow agencies specific authority to examine employees injured on the job, but only for the purpose of determining the employees' qualifications for reemployment, not for entitlement to compensation.

5. Clarify that routine pre-appointment examinations are not allowed for positions that are not subject to specific medical standards, physical requirements, or a medical evaluation program—i.e., where health status is not an important component of a position, there is no authority to require a medical examination.

6. Allow agencies specific authority to require acceptable medical documentation from employees whenever there is evidence of a health problem which may affect safe and efficient performance.

7. Establish that agencies have the right to designate the examining physician when they order or offer an examination.

8. Allow psychiatric exams (or psychological assessments) when specifically required by medical standards or a medical evaluation program, or when a general medical examination otherwise authorized under these regulations rules out a physical cause to explain actions or behavior causing performance or conduct problems on the job. The examinations may be performed by a licensed practictioner authorized to conduct such exams, in accordance with accepted professional standards.

9. Clarify that the agency pays for all examinations which it orders or offers. The employee pays for all other examinations.

10. Restrict the basis on which agencies can disqualify candidates because of medical history.

11. Provide a regulatory basis for the existing agency authority to disqualify nonpreference eligibles for medical reasons, and for OPM review of the medical disqualification of 30 percent or more compensably disabled veterans by the U.S. Postal Service.

12. Clarify that the 1978 amendments to the Rehabilitation Act apply to wage grade employees as well as others, which means that agencies may only establish medical requirements and inquire into a person's health status to ensure that the individual is fit to perform the duties of the job safely and efficiently.

13. Provide that all actions under this regulation must comply with EEOC regulations governing the employment of individuals with handicaps under section 501 of the Rehabilitation Act.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 339

Government employees, Health.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to revise Part 339 of Title 5, Code of Federal Regulations, to read as follows:

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

Sec.
339.101 Coverage.
339.102 Purpose and effect.
339.103 Compliance with EEOC regulations.
339.104 Definitions.

Subpart B—Physical and Medical Qualifications

339.201 Disqualification by OPM.
339.202 Medical standards.
339.203 Physical requirements.
339.204 Waiver of standards and requirements.
339.205 Medical evaluation programs.

Subpart C—Medical Examinations

339.301 Authority to require an examination.
339.302 Authority to require medical documentation.
339.303 Authority to offer examinations.
339.304 Examination procedures.
339.305 Payment for examination.
339.306 Records and reports.
339.307 Processing medical eligibility determinations on certificates of eligibles.

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

Subpart A—General

§ 339.101 Coverage.

This part applies to all competitive service employees, and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, separation of an excepted service veteran under Part 752.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title and corresponding Federal Personnel Manual instructions.

(c) Failure to meet a properly established medical standard for physical requirement under this part means that the individual is not qualified for the position. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary action.

§ 339.103 Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613.701 *et seq.* Particularly relevant to medical qualification determinations are § 613.704 (requiring reasonable accommodation of individuals with handicaps); § 1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and § 1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition, use of the term "qualified" in these regulations shall be interpreted consistently with § 1613.702(f), which provides that a "qualified handicapped individual" is a person "who, with or without reasonable accommodation, can perform the essential functions of the position * * * without endangering the health or safety of the individual or others."

§ 339.104 Definitions.

For purposes of this part—

"Accommodation" means "reasonable accommodation" as described in 29 CFR 1613.704.

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement from a licensed physican or other appropriate practitioner which provides information the agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted medical principles and practices. The determination that the diagnosis meets this criteria is made by or in coordination with the agency's physician. Such a statement would include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical condition, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physicial examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation (or psychological assessment), the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clincial status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restructions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic or risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer harm by carrying out, with or without accommodation, the task or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. (In this context, "static or well-stablilized medical condition" means a medical condition which is not likely to change:

(1) As a consequence of the natural progression of the condition;

(2) Specifically as a result of the normal aging process; or

(3) In response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of capabilities.)

"Medical evaluation program" means a program of recurring medical examinations or tests established by written agency policy or directive, to determine the health of certain employees for job-related reasons.

"Medical standard" is a written description of the medical requirements for a *particular occupation* on the basis that a certain level of fitness or health status is required for successful performance.

"Physical requirement" is a written description of the physical demands which are considered essential for successful performance in a *specific position.*

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Practitioner" means a person providing health services who is not a medical doctor, but who is licensed by a national organization or a State to provide the service in question.

Subpart B—Physical and Medical Qualifications

§ 339.201 Disqualification by OPM.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instuct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability under § 831.502, § 844.103, § 844.202, or Subpart L of Part 831 of this title, and does not necessarily entitle the employee to disability retirement under sections 8337 or 8451 of title 5, United States Code.

§ 339.202 Medical standards.

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., common to more than one agency). An agency may establish medical standards for positions that predominate in one agency (i.e., where an agency has 50 percent or more of the positions in a particular occupation). Such standards must be justified on the basis that the duties of the position are arduous or hazardous, or require a specific level of fitness because of a high degree of responsibility toward the public. The rationale for establishing the standard must be documented. Standards established by an agency must be:

(a) Established by agency directive and uniformly applied,

(b) Reasonably related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

§ 339.203 Physicial requirements.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position, documented in the position description, and approved by agency headquarters.

§ 339.204 Waiver of standards and requirements.

Agencies must waive a medical standard or physical requirement established under this part where there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the job without endangering the health or safety of the individual or others.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic examination programs by written policies or directives to safeguard the health of employees: (a) Whose work places them or others at substantial risk; (b) whose jobs involve environmental hazards such as exposure to toxic substances; or (c) who occupy centain sensitive positions involving national security in which the duties are such that it is essential for incumbents to be free of medical impairments that could impede successful performance or pose an unacceptable risk. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(b) An agency may require an employee who sustains a compensable on-the-jog injury to report for an examination to determine medical limitations that may affect placement decisions.

(c) An agency may require an employee who is released from his/her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(d) An agency may order a psychiatric examination (including a psychological assessment) only when:

(1) The result of a current general medical examination otherwise authorized under this part indicates no physical explanation for behavior or actions causing performance or conduct problems on the job, or

(2) A psychiatric examination is specifically called for as part of the procedures set by medical standards or a medical evaluation program established under this part.

A psychiatric examination (or psychological assessment) must be conducted in accordance with accepted professional standards, by a licensed practitioner authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's metal fitness to successfully perform the duties of his or her position.

(e) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

§ 339.302 Authority to require medical documentation.

(a) If at any time there is evidence of a health problem which is likely to affect safe and efficient performance or pose a significant risk to the individual or others, the agency may require an employee to supply specific medical documentation, as described in § 339.104 of this part, to establish that he or she is able to perform the duties of the position safely and efficiently.

(b) A candidate may not be disqualified solely on the basis of a medical history unless the condition at issue is itself disqualifying and there is evidence it is likely to recur, or the particular history of the condition poses an unacceptable risk.

§ 339.303 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical information to make an informed management decision. This may include situations where an individual requested for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering and examination must be documented. An offer of a preemployment examination shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.304 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.)

(b) The agency designates the examining physician, but must offer the individual an opportunity to submit medical documentation from his or her personal physician. The agency must review and consider all such documentation supplied by the individual's personal physician.

§ 339.305 Payment for examination.

Agencies must pay for all examinations ordered or offered under this subpart. Applicants and employees must pay for a medical examination conducted by a private physician selected by the applicant or employee.

§ 339.306 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR Part 293, Subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of Part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

§ 339.307 Processing medical eligibility determinations or certificates of eligibles.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible, or

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force.

[FR Doc. 88-6073 Filed 3-18-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 87-AWP-32]

Proposed Establishment of Restricted Area R-2309; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R-2309 located near Yuma, AZ. This action would provide for the deployment of a tethered aerostat-borne radar system at the request of the U.S. Customs Service. This action would provide the U.S. Customs Service with the capability to provide surveillance of a volume of airspace from ground level to an altitude of approximately 15,000 feet mean sea level (MSL) and detect low altitude suspect aircraft attempting to penetrate the airspace. In order to establish R-2309, it would be necessary to amend slightly the descriptions of R-2307 and R-2308A.

DATE: Comments must be received on or before April 25, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWP-32, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy related aspects of the proposals. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Division, 1301 Constitution Avenue NW., Washington, DC 20229. Phone: (202) 566-5371.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Area R-2309 located near Yuma, AZ. If approved, the U.S. Customs Service would deploy a tethered aerostat-borne radar system with the capability to detect low altitude suspect aircraft attempting to penetrate the airspace. The system would increase the probability of intercept-interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve this mission, it would be necessary to restrict airspace from the surface to an altitude of approximately 15,000 feet MSL within a 1½-nautical mile radius. In order to establish R-2309, it would be necessary to slightly amend the descriptions of R-2307 and R-2308A. R-2309 would also be added to the Continental Control Area. Sections 71.151 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2309 Yuma, AZ [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

4. Section 73.23 is amended as follows:

R-2309 Yuma, AZ [New]

Boundaries. A circular area 1½ nautical miles in a radius centered at lat. 33°00'56"N., long. 114°14'31"W.

Altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. United States Customs Service.

R-2307 Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309".

R-2308A Yuma, AZ [Amended]

By adding to the end of the boundary description ", excluding R-2309".

Issued in Washington, DC, on March 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-6040 Filed 3-18-88; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 21

Extension of Independent Living Services Program

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) proposes to amend existing vocational rehabilitation regulations governing the provision of programs of independent living services. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986 extended the period during which programs of independent living services may be furnished eligible veterans under the vocational rehabilitation program through September 30, 1989. The proposed regulatory amendments implement the changes contained in the law and make other related changes designed to improve administration of these services.

DATES: Comments must be received on or before April 19, 1988. Comments will be available for public inspection until May 3, 1988. These amendments are effective October 28, 1986, except for the changes contained in §§ 21.162(c) and 21.294(b). Those changes will be effective upon final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington DC, 20420. All written comments received will be available for public inspection at the above address only in the Veterans Services Unit, Room 132 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2886.

SUPPLEMENTARY INFORMATION: Public Law 96-466, Veterans' Education and Training Amendments of 1980 established a four-year pilot program of independent living services as a part of the vocational rehabilitation program administered by the VA between the period from FY 1981 through FY 1985. A report to Congress was required by law on the conduct and results of the program, including recommendations for legislative and administrative changes. The VA recommended that the independent living services program be extended. Following consideration of this report and other information, Congress approved extension of the program through FY 1989. In addition to the extension of the program other changes approved by Congress include:

1. Submission of a statistical report on the program by February 1, 1989; and

2. Insertion of the term "currently" in the statutory language to clarify that the VA is not required to determine that achievement of a vocational goal is permanently reasonably infeasible. The individual veteran need only be found not to be reasonably feasible for pursuit of a vocational goal at the time the determination is made by VA staff.

The VA is also proposing other regulatory amendments related to implementation of Pub. L. 99–576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, to improve administration of the program of independent living services. These changes include elimination of the requirement that program participation be approved by the Director, Vocational Rehabilitation and Education Service. In addition to proposing changes required by, or related to, implementation of the law, the VA is proposing to clarify its authority to use private, for-profit agencies to provide independent living services for veterans in vocational rehabilitation programs.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

The VA proposes to make the regulations implementing these changes retroactively effective, except for §§ 21.162(c) and 21.294(b), which are effective upon the date of final publication. These are interpretative rules which, with the exception of §§ 21.162(c) and 21.294(b), implement certain provisions of Pub. L. 99–576. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy. The proposed regulatory amendment enabling the VA to utilize private for profit agencies to provide independent living services as a part of a vocational rehabilitation program will only affect the few agencies providing these services and will not have any significant effect on small businesses. Other proposed changes only concern the eligibility and participation of individual veterans in this program.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan program, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 22, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.35, paragraphs (f)(2), (h), (i)(1)(i), and the authority citation following paragraph (i) are revised to read as follows:

§ 21.35 Definitions.

* * * * *

(f) * * *

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 1501(6); Pub. L. 99–576)

* * * * *

(h) *Vocational goal.*

(1) The term "vocational goal" means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term "achievement of a vocational goal is reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term "achievement of a vocational goal is not currently reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 1501(6) 1501(9)(A)(i), Pub. L. 99–576)

(i) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

* * * * *

(Authority 38 U.S.C. 1501(9); Pub. L. 99–576)

2. In § 21.45 paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.

* * * * *

(a) The veteran's medical condition (service and nonservice-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or

* * * * *

(Authority: 38 U.S.C. 1503(d); Pub. L. 99–576)

3. In § 21.50 paragraph (b)(5) and the authority citation which follows paragraph (b)(9) are revised to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(b) * * *

(5) Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.

* * * * *

(9) * * *

(Authority: 38 U.S.C. 220, 1506(d), 1516; Pub. L. 99–576)

* * * * *

4. In § 21.53 paragraphs (e) and (f) are revised to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable feasibility not met.* (1) When the VA finds that the provisions of paragraph (d) of this section are not met, but the VA has not determined that achievement of a vocational goal is not currently reasonably feasible, the VA shall provide the rehabilitation services contained in § 21.35(i)(1)(i) of this part as appropriate;

(2) A finding that achievement of a vocational goal is not currently reasonably feasible without providing the services contained in §21.35(i)(1)(i) of this part requires:

(i) Consultation with the Vocational Rehabilitation Panel; and

(ii) Compelling evidence which establishes that achievement of a vocational goal is not currently reasonably feasible beyond any reasonable doubt.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

(f) *Responsible staff.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

5. In § 21.57 paragraphs (a) and (c) are revised to read as follows:

§ 21.57 Extended evaluation.

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 1506(c), Pub. L. 99–576)

* * * * *

(c) *Determination.* The determination of the current reasonable feasibility of a vocational goal will be made at the earliest time possible during an extended evaluation, but no later than the end of the period of evaluation or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor.

(1) When a vocational goal is currently reasonably feasible, an Individualized Written Rehabilitation Plan (IWRP) will be developed as indicated in § 21.84 of this part.

(2) When a vocational goal is not currently reasonably feasible, information developed in the evaluation will be the basis for recommendations and referral to the Vocational Rehabilitation Panel. The panel will consider the case under provisions of § 21.62(b) of this part.

(Authority: 38 U.S.C. 1506(d), Pub. L. 99–576)

6. In § 21.62 paragraph (b)(3) and the authority citation following it are revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

* * * * *

(b) * * *

(3) *Rehabilitation not currently reasonably feasible.* The panel will review each finding by VR&C staff that a rehabilitation program is not currently reasonably feasible, if the panel has not previously participated in consideration of the case. This includes:

(i) A finding that vocational rehabilitation is not currently reasonably feasible; or

(ii) A finding that a program of independent living services is not currently reasonably feasible because:

(A) The veteran's level of independence cannot be measurably improved; or

(B) Such a program is medically contraindicated at this time.

(Authority: 38 U.S.C. 1506(a), Pub. L. 99–576)

* * * * *

7. In § 21.70 paragraph (b)(1)(i) and the authority citation at the end of paragraph (b) are revised to read as follows:

§ 21.70 Vocational rehabilitation.

* * * * *

(b) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:

* * * * *

(Authority: 38 U.S.C. 1501(9), Pub. L. 99–576)

* * * * *

8. In § 21.74 paragraphs (a), (c)(2), (c)(3) and the authority citation at the end of paragraph (c) are revised to read as follows:

§ 21.74 Extended evaluation.

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonable feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.

Authority: 38 U.S.C. 1506(a); Pub. L. 99–576)

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is a reasonable certainty that the current feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain technical assistance from the Vocational Rehabilitation Panel in each veteran's case before granting an extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within the extended period. The concurrence of the Director, Vocational Rehabilitation and Education Service is also required for this extension.

(Authority: 38 U.S.C. 1505(a), 1506(b); Pub. L. 99–576)

9. Section 21.86 is revised to read as follows:

§ 21.86 Individualized extended evaluation plan.

(a) *Purpose.* The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 1507; Pub. L. 99–576)

(b) *Elements of the plan.* An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1507(a); Pub. L. 99–576)

10. In § 21.90 paragraph (a) is revised to read as follows:

§ 21.90 Individualized independent living plan.

(a) *Purpose.* The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community.

(Authority: 38 U.S.C. 1509; Pub. L. 99–576)

* * * * *

11. In § 21.160 paragraphs (c)(2) and (c)(4) are revised to read as follows:

§ 21.160 Independent living services.

* * * * *

(c) * * *

(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;

* * * * *

(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:

(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;

(ii) Become reasonably feasible for a vocational rehabilitation program; or

(iii) Become reasonably feasible for extended evaluation.

(Authority: 38 U.S.C. 1504(a)(15); Pub. L. 99-576)

* * * * *

12. In § 21.162 paragraph (a), the heading and introductory text of paragraph (b), paragraphs (b)(1) and (b)(3), and paragraph (c) are revised to read as follows:

§ 21.162 Participation in a problem of independent living services.

(a) *Approval of a program of independent living services.* A program of independent living services and assistance is approved when:

(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by § 21.90 and § 21.92 of this part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and

(4) The Vocational Rehabilitation and Counseling Officer concurs in the IILP.

(Authority: 38 U.S.C. 1508, 1520, Pub. L. 99-576)

(b) *Special considerations affecting approval by the Director, Vocational Rehabilitation and Education Service.* The Director, Vocational Rehabilitation and Education Service, shall consider the following factors before approving the participation of a veteran in an independent living program:

(1) Conformity of the proposed plan with provisions of paragraph (a) of this section;

(2) * * *

(3) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA hospitals and nursing homes:

* * * * *

(c) *Limitations.* (1) A program of independent living services and assistance may not be approved after September 30, 1989. Programs authorized prior to that date may be continued until completion or other termination;

(2) Any contract for services initiated before September 30, 1989, may be continued in effect for the purpose of providing necessary services and assistance;

(3) The limitations on provision of independent living services by for-profit agencies and facilities to veterans for whom such services constitute the whole of a program are not applicable to veterans being provided independent living services as a part of a rehabilitation program during periods identified in § 21.160(c)(1), (c)(2), (c)(3) of this part. For-profit agencies and facilities may be used to provide specific independent living services as a part of a rehabilitation program during the periods described above under the following conditions:

(i) Necessary services are not reasonably available through public or private nonprofit agencies; and

(ii) The facility meets the criteria contained in § 21.294(c) of this part.

(Authority: 38 U.S.C. 1504(a)(15), Pub. L. 99-576)

13. In § 21.294 paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 21.294 Selecting the training or rehabilitation facility.

* * * * *

(b) * * *

(2) The VA will only utilize public and nonprofit agencies to furnish independent living services, when such services constitute the whole of a rehabilitation program. These facilities must be:

(i) VA medical centers which provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services; or

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by the VA to be able to provide necessary services in an individual veteran's case.

(3) The VA may utilize for-profit facilities and agencies to provide specific independent living services as a part of a rehabilitation program under the conditions specified in § 21.162(c) of this part. These agencies and facilities must meet the standards established by local, state (including the State rehabilitation agency), and federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 1515, 1520(a), Pub. L. 99-576)

* * * * *

[FR Doc. 88-5996 Filed 3-18-88; 8:45 am]

BILLING CODE 8320-01-M

Notices

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

MiniGrants; Availability of Funds

AGENCY: Action.

ACTION: Notice of availability of funds.

SUMMARY: This notice announces the availability of funds for Fiscal Year 1988 under the ACTION MiniGrant Program authorized by the Domestic Volunteer Service Act of 1973, as amended (P. L. 93–113, Title I, Part C, 42 U.S.C. 4993).

Pursuant to MiniGrant Guidelines published in the **Federal Register** on October 12, 1984, (49 40063, ACTION has established the MiniGrant funding priority for Fiscal Year 1988. The project areas for which MiniGrants will be considered are as follows:

(1) Projects that focus either on illicit drug/alcohol use prevention and education activities for youth or the prevention of prescribed or over-the-counter drug misuse or abuse by senior citizens. These applications should:

—In the case of youth, provide a clear no-use message;
—Focus on prevention rather than intervention or treatment;
—Emphasize strengthening the family;
—Provide positive alternatives to illicit drug use;
—Create or enhance community coalitions against illicit drug/alcohol use; and
—Mobilize local resources to continue the project.

Applications incorporating responsible use of illicit drug methodologies will not be considered.

(2) Project that address specific problems of pregnant teenagers, teenage parents, and their families, in particular social, nutritional, and economic problems.

—Projects targeted to strengthen the family and parenting skill, e.g., guidance for families of pregnant teenagers and teenage parents.
—Projects targeted to encourage proper pre-natal care by pregnant teenagers with particular emphasis on the discouragement of alcohol and drug abuse.
—Projects targeted to establish special support systems for pregnant teenagers, e.g. big sister programs that foster peer counseling or intergenerational activities.
—Projects targeted to enhance the employability of teenage parents, e.g., literacy tutoring, job training, and accessibility to day care.

Priority will be given to applications that include senior citizens intergenerational activities, community-wide coalition building, and mobilization of local resources to continue the project.

Subject to the availability of Fiscal Year 1988 funding, approximately $253,000 will be available for grants averaging $8,000–$9,000 in size.

Eligibility: Public and private non-profit organizations which utilize, or will utilize volunteers as an integral part of their provision of services may apply for grants.

Deadlines: One signed original and two copies of all completed applications will be submitted to the appropriate ACTION State Office, no later than 5:00 p.m. local standard time on May 2, 1988. Only those applications received at the appropriate office by the deadline will be eligible. Addresses of the State Offices will be included in the application package. In addition to the address list, the application package will contain an application form, a copy of the MiniGrant guidelines which were published in the **Federal Register**, October 12, 1984, and a guide to help individuals complete the application.

Awards: Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amounts of funds available, or any part thereof.

To receive an application package, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction.

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039
ACTION State Office, Abraham Ribicoff Federal Building, 450 Main Street, Room 524, Hartford, CT 06103–3002
ACTION State Office, Federal Bldg., Rm 305, 76 Pearl Street, Portland, ME 04101–4188
ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038
ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301–3939, (New Hampshire/Vermont)
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608–1507
ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Branch Office, U.S. Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207–2923
ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241, (Puerto Rico/Virgin Islands)

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106–2912
ACTION State Office, Federal Building, Room 371–D, 600 Federal Place, Louisville, KY 40202–2230
ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (Delaware/Maryland)
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215–2886
ACTION State Office, U.S. Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2996
ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832, (Virginia/Dist. of Columbia)
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION Regional Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323–2301

ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307
ACTION State Office, 930 Woodstock Road, Suite 221, Orlando, FL 32803–3750
ACTION State Office, 75 Piedmont Ave., NE., Suite 412, Atlanta, GA 30303–2587
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269–1092
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601–1739
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3869

Region V

ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922
ACTION State Office, Federal Building, Rm 339, 210 Walnut, Des Moines, IA 50309–2195
ACTION State Office, Federal Bldg. Room 652, 231 West Lafayette Blvd., Detroit, MI 48226–2799
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202–4507

Region VI

ACTION State Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242–0696
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201
ACTION State Office, Federal Building, Room 248, 444 S.E. Quincy, Topeka, KS 66603–3501
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–3026
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349
ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626–0101
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896
ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, (North & South Dakota)

Region IX

ACTION Regionl Office, 211 Main Street, Rm 530, San Francisco, CA 94105–1914
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Branch Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671
ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850, (Hawaii/Guam/American Samoa)

Region X

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1209
ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3038, Seattle, WA 98174–1103
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (Alaska)
ACTION State Office, Federal Bldg., Room 647, 511 NW. Broadway, Portland, OR 97209–3416

Signed at Washington, DC, this 11th day of March.

Donna M. Alvarado,

Director.

[FR Doc. 88-6074 Filed 3-18-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-029]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that twelve permit applications for release into the environment of various genetically engineered organisms are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with the regulations in 7 CFR Part 340 which regulate the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 634, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7472.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit prior to introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products which are deemed "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining limited permits for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following permit applications for release into the environment, which are being reviewed by the Agency:

Accession No.	Date received	Organism	Field test location
87-329-01	11-25-87	Genetically engineered tomatoes for tobacco mosaic virus tolerence	Florida.
87-329-02	11-25-87	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
87-331-01	11-27-87	Genetically engineered tomatoes for sulfonylulurea herbicide tolerance	Do.
87-355-01	12-21-87	Genetically engineered microorganism to control lepidopteran insects	Maryland.
88-011-01	1-11-88	Genetically engineered tomatoes for glyphosate herbicide tolerance	California.
88-028-01	1-28-88	Genetically engineered tobacco for alfalfa mosaic virus tolerance	Wisconsin.
88-029-02	1-29-88	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
88-036-01	2-5-88	Genetically engineered tobacco for lepidopteran insect tolerance	North Carolina.
88-041-01	2-10-88	Genetically engineered tomatoes for tobacco mosaic virus tolerance	Illinois.
88-041-04	2-10-88	Genetically engineered tomatoes for lepidopteran insect tolerance	Do.
88-041-07	2-10-88	Genetically engineered tomatoes for glyphosate herbicide tolerance	Do.
88-054-01	2-23-88	Genetically engineered tobacco for sulfonylurea herbicide tolerance	North Carolina.

Done at Washington, DC, this 16th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-6131 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Shoshone Critical Area, Treatment RC&D Measure, Lincoln County, ID; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Rodney M. Alt, Acting State Conservationist, Soil Conservation Service, 304 North 8th Street, Room 345, Boise, Idaho 83702, telephone (208) 334–1601

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shoshone Cricial Area Treatment RC&D Measure, Lincoln County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rodney M. Alt, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Shoshone Critical Area Treatment RC&D Measure will provide treatment to nine actively eroding sections of Little Wood River through the town of Shoshone, Lincoln County, Idaho. Planned treatments to control the severe erosion and sedimentation problem on 9 sites includes approximately 650 feet of either vegetative barriers, rock riprap and gabion baskets on the eroding banks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Rodney M. Alt. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject tot he provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: March 11, 1988.

Rodney M. Alt,

Acting State Conservationist.

[FR Doc. 88-6067 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-16-M

Calapooya Creek Watershed, OR; Deauthorization of Federal Finding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Calapooya Creek Watershed project, Douglas County, Oregon, effective on February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, Federal Building, 1220 SW. Third Avenue, Room 1640, Portland, Oregon 97204, telephone (503) 221–2751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Jack P. Kanalz

State Conservationist.

March 8, 1988.

[FR Doc. 88-6066 Filed 3-18-88; 8:45 am]

BILLING CODE 3410-16-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Seville, Spain and will be chaired by Commission Chairman John N. Goudie.

DATES: Friday, April 15, 1988 at 9:30 a.m. (Open). Saturday, April 16, 1988 at 9:00 a.m. (Open).

ADDRESSES: On April 15, from 9:30 a.m. to 12:00 p.m. at the Hotel Sol, "Salon Bali," level "R," Seville, Spain. April 16 from 9:00 a.m. to 12:00 p.m. at the Hotel Sol, "Salon Bali," level "R," Seville, Spain.

FOR FURTHER INFORMATION CONTACT: Dr. John Alexander Williams, (202) 632–1992.

SUPPLEMENTARY INFORMATION: On April 15 and 16, the Commission will meet to discuss proposals for endorsement of Quincentenary projects and the creation of advisory committees. The Commission will also review committee recommendations and hear presentations on Spain's plans for 1992, including the Seville World's Fair, along with a financial review of the Commission, and fundraising strategies for corporate participation in the Quincentenary.

John Alexander Williams,
Director.

[FR Doc. 88-6117 Filed 3-18-88; 8:45 am]

BILLING CODE 6820-RE-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 16-88]

Proposed Foreign-Trade Zone, North Haven, CT; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater New Haven Chamber of Commerce, Inc. (GNH), a non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in the Town of North Haven, Connecticut, within the New Haven Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 7, 1988. Pursuant to section 7–136d of the General Statutes of Connecticut (P.A. 76–160, S.1,5), the Town of North Haven authorized GNH to apply for authority to establish a foreign-trade zone in that community.

The proposal calls for a general-purpose zone of 10 acres within a 30-acre industrial plant site owned by O.F. Mossberg & Sons, Inc., at 7 Grasso Avenue in the Town of North Haven. There are two buildings at the site with 107,000 sq. ft. of space, of which some 5,000 sq. ft. would be available for initial zone warehousing activity.

The application contains evidence of the need for zone services in the greater New Haven area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of pharmaceuticals, chemicals, glass products and automotive parts. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110–2104; and Colonel Thomas A. Rhen, U.S. Army Engineer Division, New England, 420 Trapelo Rd., Waltham, Massachusetts 02254–9149.

As part of its investigation, the examiners committee will hold a public hearing on April 20, 1988, beginning at 9 a.m., in the Community Room of the North Haven Memorial Library, 17 Elm St. North Haven, CT.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202-377-2862) by April 12, 1988. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 20, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director, U.S. Customs Service,
Federal Building, 150 Court Street,
New Haven, Connecticut 06511

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania Avenue, NW.,
Washington, DC 20230.

Dated: March 14, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-6121 Filed 3-18-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

President's Export Council Executive Committee and the Full Council; Closed and Open Meetings

Meetings of the President's Export Council Executive Committee and the Full Council will be held April 5, 1988, at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Executive Committee Meeting—Closed Session: 11:45 a.m.–1:15 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with fiscal and monetary policies, trade negotiating strategies, and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

Full Council Meeting—Open Session: 1:30 p.m–4:30 p.m., Ballroom Center. Discussion of the EXPORT NOW initiative, the U.S. manufacturing sector, and other related trade matters.

A limited number of seats are available for the open Full Council meeting. For further information or copies of the minutes, contact Sylvia Lino (202) 377–1125.

Date: March 15, 1988.

Henry P. Misisco,
Director, Office of Planning and Coordination.

[FR Doc. 88-6070 Filed 3-18-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Steel Products; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.–EC Arrangement on Certain Steel Products with respect to certain types of grades 304 and 316 stainless steel sheet.

DATE: Comments must be submitted on or before March 31, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.–EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for the following types of stainless steel sheet, generally meeting American Society of Testing Materials specification A–240:

1. AISI grade 304 stainless steel sheet, bright annealed, with a width of 17.5 inches and a thickness of 0.036 inch;

2. AISI grade 304 stainless steel sheet, pickled and plannished or pinch-passed finished, with a width of 33.86 inches and a thickness of 0.024 inch;

3. AISI grade 316 stainless steel sheet, bright annealed, with a width ranging from 17.5 to 30.0 inches and a thickness of 0.036 inch; and

4. AISI grade 316 stainless steel sheet, pickled and plannished or pinch-passed finished, with a width ranging from 19.17 to 46.26 inches and a thickness ranging from 0.020 to 0.036 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 31, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file.

The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.

March 15, 1988.

[FR Doc. 88-6122 Filed 3-18-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 16, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 22, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letters published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported to the United States during the periods which began on April 1, 1987 and extended through December 31, 1987 and on January 1, 1988 and extends through March 31, 1988.

Background

A CITA directive dated March 23, 1987 was published in the Federal Register (52 FR 9684) which established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1987 and extends through March 31, 1988. Subsequent directives dated December 21, 1987 were published in the Federal Register (52 FR 49061 and 49062) which amended these limits for two new restraint periods which began on April 1, 1987 and extended through December 31, 1987 and which began on January 1, 1988 and extends through March 31, 1988.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of August 7 and 29, 1985, as amended, the current limits for Categories 218, 219, 225/317/326, 314, 334/335, 336, 337, 352, 359/659, 363, 369–D, 433, 445/446, 604, 624, 638/639, 647/648, 666 and 669–P are being increased for carryover of unused quota of the prorated period April 1, 1987 through December 31, 1987. The limits for the period April 1, 1987 through December 31, 1987 are being decreased for shortfall used in a separate directive.

The unit of measure for Categories 359/659 should be corrected to square yards equivalent in the December 21, 1987 directive establishing the limits for January 1, 1988 through March 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

March 16, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the three-month period which began on January 1, 1988 and extends through March 31, 1988.

Effective on March 22, 1988, the directive of December 21, 1987 is amended to include the following adjusted limits, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, as amended:[1]

Category	Adjusted 3-month limit[1]
218	3,383,267 square yards.
219	4,786,076 square yards.
225/317/326	5,776,736 square yards.
314	3,567,635 square yards.
334/335	34,782 dozen.
336	22,892 dozen.
337	103,222 dozen.
352	265,543 dozen.

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[1] The provisions of the bilateral agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Category	Adjusted 3-month limit [1]
359/659	4,694,695 square yards equivalent.
363	6,979,416 numbers.
369–D [2]	606,296 pounds.
433	15,430 dozen.
445/446	50,830 dozen.
604	224,578 pounds.
624	4,328,876 square yards.
638/639	212,909 dozen.
647/648	487,877 dozen.
666	1,389,178 pounds.
669–P [3]	1,901,744 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 369–D, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2860.

[3] In Category 669–P, man-made fiber bags in TSUSA number 385.5300.

The unit of measure for Categories 359/659 should be corrected to square yards equivalent in the December 21, 1987 directive establishing the limits for January 1, 1988 through March 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth to Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 16, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs, *Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1986, as amended, between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on March 22, 1988, you adjust the limits established in the directive of December 21, 1987 for cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the period which began on April 1, 1987 and extended through December 31, 1987:

Category	Adjusted limit [1]
310/318	604,257 square yards.
314	716,781 square yards.
319	8,226,616 square yards.
334/335	54,612 dozen.
336	16,635 dozen.
337	8,891 dozen.
352	127,717 dozen.
359/659	1,323,164 square yards equivalent.
363	8,169,184 numbers.
369–D [2]	132,994 pounds.
433	1,227 dozen.
445/446	14,448 dozen.
604	252,422 pounds.
614	2,070,374 square yards.
638/639	11,811 dozen.
647/648	17,743 dozen.
666	406,582 pounds.
669–P [3]	345,456 pounds.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1987.

[2] In Category 369–D, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[3] In Category 669–P, man-made fiber bags in TSUSA number 385.5300.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–6108 Filed 3–18–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: April 23–28, 1988 (Detailed agenda follows).

ADDRESS: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meeting and discussions:

Saturday, 23 April 1988

1:00 p.m.–8:00 p.m.
  Registration: Radisson Mark Plaza Hotel, Alexandria, Virginia

Sunday, 24 April 1988

8:00 a.m.–9:00 a.m.
  No-host breakfast for new DACOWITS members sponsored by the Vice Chair for New Member Orientation
9:00 a.m.–10:50 a.m.
  Chair's Procedural Session and no-host breakfast for current DACOWITS members only
11:00 a.m.–11:30 a.m.
  OSD Overview and Update on OSD Task Force on Women in the Military
12:00 noon–1:30 p.m.
  Get Acquainted Luncheon (Current DACOWITS members MilReps, and Liaison Officers only)
1:30 p.m.–3:00 p.m.
  Comprehensive Navy Briefing
  —Update on Navy Study Group Report on Women in the Military
  —Navy Action Plan for Assignment of women to nontraditional ratings and officer communities
  —Naval Mobile Construction Battalion
  —Assignment of Coast Guard personnel to Navy ships
3:15 p.m.–4:45 p.m.
  Comprehensive Marine Corps Briefing
  —Results of Marine Corps Study Group on Women in the Military
  —Implementation of Enlisted Women Marine Review
  —Marine Officer Classification, Assignment and Deployment Policies
5:00 p.m.–7:00 p.m.
  Subcommittee Sessions
  (Evaluate Service Responses)
  Subcommittee #3 briefings: 1986 Reserve Components) Surveys of Officer and Enlisted Personnel and Military Spouses
8:00 p.m.–9:00 p.m.
  Social Buffet

Monday, 25 April 1988

9:30 a.m.–10:00 a.m.
  Official Opening—Pentagon Auditorium (5A1070)
10:30 a.m.–12:00 noon
  Coast Guard Briefing: Assignment of Women Officers to Coast Guard Cutters
  —Assignment of Women Enlisted members to leadership positions in Coast Guard cutters
12:00 noon–2:00 p.m.
  Installation Visit Luncheon
2:00 p.m.–3:30 p.m.
  Comprehensive Army Briefings
  —Direct Combat Probability Coding
  —Women in Army Forward Support Battalions
  —Women in Field Artillery
3:45 p.m.–5:00 p.m.
  Subcommittee Sessions
  —Subcommittee #3 briefing: Coast Guard Uniform Board Update
  —Subcommittee #3 OASD(HA) preview of OB/GYN Health Care Survey (FRI #25)
7:00 p.m.–10:30 p.m.
  OSD Reception and Dinner—Officer's Club, Bolling Air Force Base (By Invitation Only)

Tuesday, 26 April 1988

8:30 a.m.–11:00 a.m.

  Field trip to Air Force One—for DACOWITS Members only
11:30 a.m.–1:30 p.m.
  OSD Luncheon (By Invitation Only)
1:35 p.m.–3:00 p.m.
  Field trip to White House and meet with White House official—for DACOWITS members only
3:45 p.m.–5:45 p.m.
  Subcommittee Sessions

Wednesday, 27 April 1988

8:00 a.m.–9:30 a.m.
  No host DACOWITS Executive Committee breakfast
9:30 a.m.–10:00 a.m.
  Presentation by Member of the Public
10:00 a.m.–12:00 noon
  Briefing: Danish and Canadian Studies about Women in the Military
12:30 p.m.–2:45 p.m.
  Subcommittee Sessions (tentative)
2:45 p.m.–5:30 p.m.
  Executive Committee Mark-up
7:00 p.m.–9:30 p.m.
  Resume Executive Committee Mark-up

Thursday, 28 April 1988

7:30 a.m.–8:00 a.m.
  Individual Review of Resolutions
8:00 a.m.–10:00 a.m.
  General Business Session
  Adjourn

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 4, 1988.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentation by members of the public will be permitted only from 9:30 a.m. to 10:00 a.m. on Wednesday, April 27, 1988, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by April 15, 1988.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Thursday, April 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 15, 1988.

[FR Doc. 88–6139 Filed 3–18–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88–283–000 et al.]

Gulf Power Company et al.; Electric Rate and Corporate Regulation Filings

March 14, 1988.

Take notice that the following filings have been made with the Commission:

1. Gulf Power Company [Docket No. ER88–283–000]

Take notice that on March 7, 1988, Gulf Power Company tendered for filing a rate schedule constituting a transmission service agreement between Gulf Power Company and Bay Resource Management, Inc. The agreement between Gulf Power Company and Bay Resource Management, Inc. provides for baseload capacity service and transmission service for the customer's facility located in Bay County, Florida. Charges for such services are to based on formulary rates set forth in the transmission service agreement.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company [Docket No. ER88–284–000]

Take notice that on March 7, 1988, San Diego Gas & Electric Company (SDG&E) tendered for filing a Notice of Termination of SDG&E FERC Electric Tariff 1st Revised Volume No. 1, Original Sheet Nos. 1–8.

SDG&E requests termination of said Tariff as of April 30, 1988, pursuant to its terms and to make this the effective date of termination.

Copies of this filing have been served upon the Public Utilities Commission of the State of California.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this document.

3. Tampa Electric Company

[Docket No. ER88–285–000]

Take notice that on March 4, 1988, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J providing for negotiated interchange service between Tampa Electric and Seminole Electric Cooperative (Seminole). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement to the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric's Rate Schedule FERC No. 22.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for the firm interchange of 80 megawatts of capacity and energy between Tampa Electric and Seminole.

Tampa Electric proposes an effective date of March 7, 1988 for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-6077 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-281-000 et al.]

James River Paper Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

March 14, 1988.

Take notice that the following filings have been made with the Commission.

1. James River Paper Company

[Docket No. QF88-281-000]

On March 1, 1988, James River Paper Company (Applicant), of 100 Island Avenue, Parchment, Michigan 49004, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the existing James River powerhouse in Parchment, Michigan. The facility will consist of two existing extraction/condensing turbine generators, a new combustion turbine generator, and a new heat recovery steam generator. Thermal energy recovered from the facility will be used for heating and for industrial processes. Primary energy source will be natural gas. The net electric power production capacity of the facility will be 122.8 MW. Startup of the new facility is expected to begin in the last quarter of 1990.

2. Union Carbide Corporation, Linde Division

[Docket No. QF88-277-000]

On February 23, 1988, Union Carbide Corporation, Linde Division, 39 Old Ridgebury Road, Danbury, Connecticut 06817-0001, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a bottoming cycle cogeneration facility. It will use waste heat as its primary energy source. It will have one condensing extraction steam turbine and generator. The facility will have a nominal rated electric power production capacity of 11 MW. It will be located on the property of Union Carbide Corporation, Linde Division, in Wilmington, California. Installation of the facility will begin approximately June, 1989.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6078 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-348-001]

Anadarko Petroleum Corp., et al.; Application for Extension of Blanket Limited-Term Abandonment and Certificate With Pregranted Abandonment

March 16, 1988.

Take notice that on March 10, 1988, Anadarko Petroleum Corporation, APX Corporation (formerly Pan Eastern Exploration Company), Matagorda Island Development Corporation, Matagorda Island Exploration Corporation and APX Western Corporation (formerly Panhandle Western Gas Company) (together referred to as Applicant) of P.O. Box 1330, Houston, Texas 77251-1330, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for a term through March 31, 1989, or the effective date of Order No. 490; all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6136 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-39-003 et al.]

Conoco Inc., et al.; Applications for Extension of Blanket Limited-Term Abandonments and Certificates With Pregranted Abandonment[1]

March 14, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI88-39-003:3-4-88	Conoco Inc.[1] P.O. Box 2197, Houston, Texas 77252.	3 years.
CI88-356-000:3-8-88[2]	Seagull Energy E & P Inc., c/o Seagull Energy Corporation, 1001 Fannin, Suite 1700, Houston, Texas 77002.	3 years.

[1] Applicant also requests blanket sales authorization with pregranted abandonment authorization for uncommitted gas and previously abandoned gas.

[2] Applicant seeks extension of the authorizations previously granted in Docket Nos. CI86-7-002 and CI86-7-003.

[FR Doc. 88-6079 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. RP82-71-021 et al.]

Enron (Northern Natural Gas Co.), et al.; Filing of Pipeline Refund Reports and Refund Plans

March 16, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 4, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
10/30/87	Enron (Northern Natural Gas Company).	RP82-71-021.
1/19/88	Mountain Fuel Resources.	RP86-7-005.
1/27/88	Algonquin Gas Transmission Company.	RP72-110-045.
2/1/88	Ozark Gas Pipe Line Corporation.	RP84-53-008.
2/18/88	Enron (Northern Natural Gas Company).	RP82-71-022.
3/8/88	Panhandle Eastern Pipe Line Company.	RP82-58-025.

[FR Doc. 88-6135 Filed 3-18-88; 8:45 am]

Billing Code 6717-01-M

[Docket Nos. CP86-676-003, CP86-676-004, RP88-64-001, and RP88-64-002]

Equitrans, Inc.; Compliance Filings

March 15, 1988.

Take notice that on March 8, 1988, Equitrans, Inc. (Equitrans) tendered for filing in Docket Nos. CP86-676-003 and RP88-64-001 certain pages that were inadvertently omitted from its compliance filing of February 26, 1988. Equitrans states that the following pages were to be included in Tab "D" of the first bound volume of the filing entitled "Compliance Filing."

(1) *Immediately behind Tab "D"*

Letter to Lois D. Cashell
Certificate of Service
Service List
Table of Contents

(2) *Tab Statement "N"*—Schedule N-5, sheets 3 and 4 of 31

Equitrans states that parties on the service list were not supplied the attachments filed on March 8, 1988, since their copies were corrected prior to mailing.

On March 10, 1988, Equitrans tendered for filing in Docket Nos. CP86-676-004, and RP88-64-002 the following FERC Gas tariff sheets in compliance with the Commission's order issued January 20, 1988:

Original Volume No. 1

Substitute Original Sheet No. 17
Substitute Original Sheet No. 19
Substitute Original Sheet No. 20
Substitute Original Sheet No. 23

Original Volume No. 3

Substitute Original Sheet No. 2
Substitute Original Sheet No. 4
Substitute Original Sheet No. 8

Equitrans states that copies of the March 10, 1988 filing have been served on all its jurisdictional customers and affected state regulatory commissions. Equitrans requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective April 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6134 filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-7-004 et al.]

Seagull Marketing Services, Inc., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 14, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI86-7-004; Mar. 8, 1988	Seagull Marketing Sevices, Inc.,[1] c/o Seagull Energy Corp., 1001 Fannin, Suite 1700, Houston, TX 77002	3 years.
CI87-826-001; Mar. 7, 1988	Standard Gas Marketing Co., 5151 San Felipe, P.O. Box 4587, Houston, TX 77210	Do.

[1] Applicant also requests authorization to sell contractually uncommitted gas.

[FR Doc. 88-6080 Filed 3-18-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3361-5]

Assessment of Naphthalene As a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of naphthalene assessment results and solicitation of information.

SUMMARY: This notice announces the results of EPA's assessment of naphthalene under the Clean Air Act (CAA). The EPA has concluded that the health data base for naphthalene is limited in several respects. The available data are considered inadequate to determine the carcinogenic potential of naphthalene; as such, the Agency has classified naphthalene in Group D (not classifiable as to human carcinogenicity) under its weight-of-evidence criteria for cancer data. The health data base for naphthalene is also limited with regard to noncancer health effects. Although exposure to high concentrations of naphthalene has been associated with local and systemic health effects in humans and laboratory animals, there is little information on the health effects of naphthalene at lower exposure levels. Given this lack of information, the EPA has determined that regulation of naphthalene under the CAA is not warranted at this time.

Given the limited opportunity for prior public review of the health and exposure information incorporated in this notice, the Agency is soliciting comment on this determination. This finding has no effect on the regulation of naphthalene in order to attain the national ambient air quality standards for ozone or particulate matter. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of naphthalene.

DATE: Written comments pertaining to this notice must be received on or before June 20, 1988.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), U.S. Environmental Protection Agency, Attn: Docket No. A-8710, 401 M Street SW., Washington, DC 20460. Docket No. A-8710, which contains information relevant to this notice, is located in the Central Docket Section of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. The Docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information

Information on the availability of the health assessment summary document for naphthalene, "Summary Review of Health Effects Associated with naphthalene: Health Issue Assessment," can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513-684-7562 commercial/684-7562 FTS). The document (PB 88-172-374) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. The above document and other information on the sources, emissions, and environmental fate are summarized in several reports which are found in the docket.

FOR FURTHER INFORMATION CONTACT: Robert Kellam, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 (Telephone: 919-541-5647 commercial/629-5647 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated an assessment of naphthalene based on the large production volume and the potential for adverse health effects associated with exposure to naphthalene in the ambient air. In the course of this assessment, the Agency collected the available relevant information and today's notice provides a summary of this information on the following topics: Chemical characterization, production and uses, sources and emissions, atmospheric fate, health effects, monitored ambient air concentrations, exposure estimation, risk characterization, and existing regulations and guidelines.

Chemical Characterization

Naphthalene (CAS No. 91-20-3) is a bicyclic aromatic hydrocarbon with the empirical formula $C_{10}H_8$ and a molecular weight of 128.16. Pure naphthalene is a white, crystalline solid at room temperature. Naphthalene is practically insoluble in water and has a low vapor pressure. At 25 °C, 1 part per million is equal to 5.2 milligrams per cubic meter (mg/m^3) (U.S. EPA, 1987a).

Production and Uses

In 1985, naphthalene production capacity was approximately 184,000 megagrams. Naphthalene is used as an intermediate in the manufacture of phthalic anhydride (74% of naphthalene consumption in 1983), carbamate insecticides (7%), surface active agents (7%), synthetic tanning agents (6%) and miscellaneous organic chemicals (2%). The only direct use of naphthalene is as a moth repellent (4% of consumption) (U.S. EPA, 1986a).

Sources and Emissions

Naphthalene is released into the environment via industrial gaseous and particulate emissions, aqueous waste streams, and through consumer uses. A summary of major sources of naphthalene emissions to the air and their respective estimated emissions is shown in Table 1. Based on the available information, the largest sources of naphthalene emissions to the atmosphere are coke by-product recovery facilities and plants that produce phthalic anhydride and naphthalene (U.S. EPA, 1986a).

Atmospheric Fate

In the atmosphere, naphthalene exists predominantly in the vapor phase and is subject to various photo-oxidative or oxidative reactions. Naphthalene may be subject to hydroxyl radical attack during the daytime and to nitrate radical attack at night. A daytime half-life of approximately 8 hours and a nighttime half-life of approximately 15 hours have been estimated (U.S. EPA, 1987a).

Health Effects

The Agency has prepared a document entitled "Summary Review of the Health Effects Associated with Naphthalene: Health Issue Assessment" (U.S. EPA, 1987a). This document discusses the relevant data available for assessing the health effects associated with exposure to naphthalene in the ambient air. This health information is summarized below.

TABLE 1.—SOURCES OF NAPHTHALENE AND ESTIMATED EMISSIONS [a]

Emission source	Estimated emissions (Mg/yr)
Coke byproduct recovery [b]	80
Naphthalene production [c]	
Coal tar	30.7
Petroleum	22.3
Naphthalene end uses:	
Phthalic anhydride	54.8
Carbamate insecticides	4.6
Surface active agents	7.4
Synthetic tanning agents	6.4
Miscellaneous chemicals	1.4
Miscellaneous sources [d]	5.1
Total	212.7

[a] From U.S. EPA (1986a).

[b] An estimated 80% or more of naphthalene emissions from this source category will be controlled under the proposed benzene coke byproduct recovery regulation (49 FR 23522, June 6, 1984). The estimate of 80 Mg/yr reflects naphthalene emissions prior to the benzene regulation.

[c] Naphthalene emissions from production and handling of moth repellent are included in this source category since this product is made directly at naphthalene production facilities.

[d] Naphthalene emissions from combustion processes, primarily residential wood and coal heating.

Carcinogenicity and Mutagenicity

Only one published study has examined the oncogenic response of mice to naphthalene following inhalation exposure (Adkins et al., 1986). In this investigation the strain A mouse lung tumor bioassay was used as a short-term *in vivo* model for predicting potential carcinogenesis. Exposure of strain A/J mice for 6 months to 10 and 30 ppm (52 and 156 mg/m^3, respectively) naphthalene did not cause a significant change in the number of tumors per mouse but did show a significant increase in the number of tumors per tumor-bearing lung. Although statistically significant, the actual change in the number of tumors per tumor-bearing lung was relatively small, increasing from 1.00 in unexposed mice to 1.25 in mice exposed to both 10 and 30 ppm. The results of this study are considered inconclusive with regard to the oncogenic potential of naphthalene.

Effects of chronic exposure of mice to 10 and 30 ppm naphthalene are being examined in a 2-year inhalation study by the National Toxicology Program (NTP). Preliminary results of the NTP study have been submitted by industry to the Agency pursuant to section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act. After the full report of the findings has been peer-reviewed by the NTP Board of Scientific Counselors in late 1988, the EPA will evaluate the results to determine if any changes in the current regulatory assessment are warranted.

There is only limited information on the carcinogenic potential of naphthalene following oral, dermal or subcutaneous administration in laboratory animals. With the exception of a study by Knake (1956) in which mice and rats were exposed to naphthalene by the dermal and subcutaneous routes, respectively, the available studies have failed to demonstrate any carcinogenic activity. The value of Knake's study for assessing carcinogenicity is limited because impurities in the coal tar-derived naphthalene used in the study may be carcinogenic, the vehicle in the mouse skin painting study has been shown to cause leukemias, and the site of subcutaneous injection in the rat study was painted with carbofuchsin, a known carcinogen, prior to injection.

Naphthalene has not been adequately tested for mutagenic potential. In the two reports available, naphthalene did not give evidence of mutagenicity.

Based on the nature and limitations of the carcinogenicity data, the Agency has concluded that there is inadequate evidence to evaluate the carcinogenic potential of naphthalene. Accordingly, naphthalene is classified as a Group D compound (not classifiable as to human carcinogenicity) using the EPA weight-of-evidence criteria for carcinogenicity (U.S. EPA, 1986b).

Noncancer Health Effects

The data base concerning naphthalene exposure of humans via ambient air associated health effects is virtually nonexistent. Human data consist primarily of occupational case reports and accidental overexposure by inhalation or ingestion. Inhalation of naphthalene has been reported to cause headaches, loss of appetite and nausea. Concentrations of naphthalene in excess of about 75 mg/m^3 can cause irritation of the eyes. Dermatitis can result from direct contact with naphthalene. In instances of overexposure, acute hemolytic anemia has been a frequent finding and fatalities have been reported. Groups of individuals shown to be especially susceptible to naphthalene-induced hemolytic anemia include neonates, persons whose erythrocytes are deficient in glucose 6-phosphate dehydrogenase, and persons in whom erythrocyte glutathione is rapidly depleted by certain oxidant

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chemicals. There is suggestive evidence that overexposure is associated with cataract formation.

Information on the effects of acute, subchronic and chronic exposure of laboratory animals to naphthalene is also limited, particularly with regard to inhalation exposures. The acute oral LD_{50} values (*i.e.*, dose that is lethal to 50% of the animals) for mice and rats indicate that the toxicity of naphthalene is relatively low. For mice, LD_{50} values are in the range of 500 to 700 mg/kg, while for rats, the range is 2200 to 2400 mg/kg. Inhalation LC_{50} values have not been determined. One study indicates that mortality in mice does not occur during a 4-hour exposure level of 90 ppm (470 mg/m^3. However, at this level lung lesions are prominent. Rabbits appear to be less sensitive than rats or mice following acute exposures.

Two principal target tissues have been identified in animals: Nonciliated bronchiolar epithelial cells (Clara cells) and eye tissue. In mice, exposure to naphthalene (intraperitoneal) results in a dose-dependent necrosis of Clara cells in the lungs. The extent and severity of this lesion appears to correlate with the degree of binding of reactive metabolites of naphthalene in the lung. The nature of the reactive metabolite(s) and its source (whether the Clara cell or liver) have not been identified. Naphthalene-induced pulmonary damage has not been observed in rats and hamsters. Naphthalene has been shown to produce cataracts in rats and rabbits following oral administraiton. Cataract formation, as well as hepatic and renal necrosis, was not observed in mice following subchronic oral administration of naphthalene.

Only limited testing for reproductive effects has been accomplished. In these studies, oral and intraperitoneal exposure to naphthalene did not result in any gross congenital abnormalities. One report, however, assocated ingestion of naphthalene in drinking water with suppressed spermatogenesis and poor progeny development in laboratory animals.

Monitored Ambient Concentrations

Few ambient air monitoring data for naphthalene are available. In one study, quarterly naphthalene concentrations were determined in 13 cities across the United States (Hunt et al., 1984). The range of reported quarterly means for naphthalene was from none detected to 0.012 mg/m^3. Other monitoring data showed ambient naphthalene concentrations of 3.5×10^{-7} mg/m^3 in an urban area and 5.0×10^{-8} mg/m^3 in a rural area (U.S. EPA, 1982).

Exposure Estimation

The exposure assessment relied primarily upon modeling to estimate naphthalene concentrations close to emission sources. In order to assess the potential for adverse noncancer health effects from short-term exposure to naphthalene, a conservative screening modeling analysis was performed (U.S. EPA, 1985). The model employs a point source Gaussian air dispersion model and applies several reasonable worst-case assumptions for source location, emissions, meteorology and terrain. Although the short-term screening model is designed to produce conservative estimates of ambient concentrations by using several reasonable worst-case assumptions, the emission rates used in this analysis are derived from estimates of annual releases and may not be representative of accidental or intermittent emissions. For this assessment, the largest emitting sources were selected and the maximum levels of naphthalene that could occur near each plant were calculated. Maximum concentrations of 4.6 and 2.6 mg/m^3 were estimated for averaging times of 15 minutes and 8 hours, respectively (U.S. EPA, 1987b).

Estimates of long-term human exposure to atmospheric naphthalene emitted from all facilities within each source category identified in EPA's source assessment for naphthalene (U.S. EPA, 1988a) were calculated using the Human Exposure Model (HEM) (U.S. EPA, 1986c). The HEM estimated concentrations to which populations living within 50 kilometers of specific sources may be exposed. The results of this modeling analysis indicated a maximum annual naphthalene concentration of 0.033 mg/m^3 (U.S. EPA, 1988a).

Risk Characterization

Maximum modeled short-term concentrations (4.6 and 2.6 mg/m^3 for 15 minutes and 8 hours, respectively) are greater than one order of magnitude below levels asociated with eye irritation (greater than 75 mg/m^3), which is the most sensitive health endpoint for which quantitative information is available. Information from occupational case reports, accidental over-exposures in humans and acute exposure studies in animals suggests that adverse health effects more serious than eye irritation would be expected at exposure levels much higher than the modeled concentrations. There is no information which suggests that exposure to the maximum modeled average long-term concentration (0.033 mg/m^3) causes adverse human health effects.

Existing Regulations and Guidelines

The National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration and the American Conference of Governmental Industrial Hygienists (ACGIH) have adopted regulations or have made recommendations for an 8-hour time-weighted average (TWA) level of 50 mg/m^3. This is the concentration to which nearly all workers may be exposed for 8 hours per day, 40 hours per week, week after week, without adverse effect. The TWA for naphthalene is based on the observation that eye irritation is experienced at levels above 75 mg/m^3, and that more serious eye effects can result from continued exposure. The ACGIH also recommends a 15-minute short-term exposure limit (STEL) of 75 mg/m^3 to prevent ocular effects (ACGIH, 1986). A STEL is defined as a 15-minute time-weighted average exposure which should not be exceeded at any time during a work day even if the 8-hour time-weighted average is within the threshold limit value.

Naphthalene is regulated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA, naphthalene as a commercial chemical product, manufacturing chemical intermediate or off-specification chemical product is considered by EPA to be a hazardous waste under certain conditions as defined by 40 CFR Part 261. Such hazardous wastes must be managed in accordance with requirements adopted by EPA or States as described in 40 CFR Parts 260–271.

Naphthalene is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, reportable quantities are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the RCRA, the CAA (section 112) and the Toxic Substances Control Act (50 FR 13456–13522, April 4, 1985). Section 103(a) of the CERCLA requires any release of naphthalene to the environment (including the air) that is equal to or greater than 100 pounds in any 24-hour period must be reported immediately to the National Response Center (telephone 800–424–8802 or 202–426–2675 for the Washington, DC metropolitan area) (U.S. EPA, 1987c).

Naphthalene is also subject to the reporting requirements of the Toxic Chemical Release Reporting, Community Right-to-Know rule (U.S. EPA, 1988b), under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313 requires that owners and operators of certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to each environmental medium. In addition, certain suppliers of toxic chemicals must notify recipients of such chemicals in mixtures and trade name products.

Conclusions

The Agency concludes that the currently available data are insufficient to indicate health concerns that warrant specific Federal regulation of routine naphthalene emissions under the CAA at this time. A number of uncertainties, however, are associated with this conclusion. With regard to the health assessment, the health data are inadequate to judge naphthalene's carcinogenic potential in humans. Furthermore, there are virtually no dose-response data for noncancer health effects in humans, and the available inhalation data from animals are minimal. Regarding the exposure assessment, EPA's techniques for estimating short-term and long-term concentrations resulting from routine emissions are based on screening models rather than on extensive site-specific modeling. The concentrations estimated from the short-term modeling exercise do not account for emissions resulting from accidental releases or intermittent or batch operations, thus providing a potential for underestimation of short-term concentrations. In addition, the few available ambient monitoring data for naphthalene are of limited usefulness in the exposure assessment.

Although EPA considers today's action appropriate in view of the current health and exposure information, the Agency will continue to monitor new data as they become available. Results of the NTP chronic inhalation bioassay, which are expected to be published in approximately one year, may significantly improve the data base on the potential carcinogenicity of naphthalene. In addition, the Agency has recently added naphthalene to the list of substances in the Health and Safety Data Reporting Rule, 40 CFR Part 716 (U.S. EPA, 1987d). This listing requires past, current and prospective manufacturers, importers, and processors of these substances to provide EPA with lists and copies of unpublished health and safety studies on these substances. Various program offices within EPA will use this information to support a more detailed assessment of the health and environmental risks of these substances.

The EPA invites comments and submission of information pertinent to the determination made today. A further notice will be published if public comments or other additional information suggest a need to reevaluate today's findings and revise EPA's conclusions.

Date: March 14, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

References

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U.S. EPA (U.S. Environmental Protection Agency) (1987c). Reportable Quantity Adjustments; Proposed Rules. Federal Register 52:8140–8156.

U.S. EPA (U.S. Environmental Protection Agency) (1987d). Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies on Certain Substances. Federal Register 52:16022–16029.

U.S. EPA (U.S. Environmental Protection Agency) (1988a). Napthalene Exposure and Risk Analysis. Memorandum from Fred Hauchman to files. Office of Air Quality Planning and Standards, Research Triangle Park, NC, January 14, 1988.

U.S. EPA (U.S. Environmental Protection Agency) (1988b). Toxic Chemical Release Reporting; Community Right-to-know; Final rule. Federal Register 53:4500–4554.

[FR Doc. 6112 Filed 3–18–88; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–813–DR]

Major Disaster and Related Determinations; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–813–DR), dated March 11, 1988, and related determinations.

DATED: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice

Notice is hereby given that, in a letter dated March 11, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a fire which occurred on February 10, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

To the extent authorized by law, Federal assistance pursuant to this major disaster declaration will be provided by the Department of Education.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

North Slope Borough for assistance under the programs of the Department of Education for the Early Childhood Education Center and Kindergarten.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-6068 Filed 3-18-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011178.

Title: APL/Waterman Cooperative Agreement for Charter of S.S. President Taylor.

Parties: American President Lines, Ltd., Waterman Steamship Corporation ("Waterman").

Synopsis: Under the terms of the proposed agreement the parties would share, on a limited basis, in the profits and losses on voyages of the S.S. President Taylor, to be operated by Waterman under a chartering arrangement in the trade between U.S. Atlantic and Gulf ports and ports in the Red Sea, Arabian Gulf, India, Pakistan, Bangladesh, Sri Lanka, Burma, Mediterranean Egypt, Indonesia, Malaysia and Singapore. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88-6120 Filed 3-18-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

A. W. Bailey, Jr.; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *A. W. Bailey, Jr.*, to acquire 4.12 percent; F. Herman Coleman, to acquire 8.5 percent; Donna M. Howell, to acquire 2.65 percent; J. Rodney Lee, to acquire 3.46 percent; Rodney T. Gray, to acquire 5.2 percent; Tommy G. Salome, to acquire 3.25 percent; Donal S. Sharp, to acquire 2.32 percent; Rodney G. Kroll, to acquire 1.47 percent; Fred J. Schultz, to acquire 1.0 percent; Ned Snyder III, to acquire 2.0 percent; Paul H. Hubbard, to acquire 3.19 pecent; Dietz Memorial, Inc., to acquire 2.0 pecent; O'Flaherty Holdings, Inc., to acquire 4.0 percent; and Kenneth L. Burgess, Jr., to acquire 0.27 percent of the voting shares of Central Texas Bancorp, Inc., Waco, Texas, and thereby indirectly acquire Texas National Bank in Waco. All of the notificants reside in Waco, Texas.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6054 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

CNBC Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the Offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNBC Bancorp, Inc.* Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Development Corporation, Chicago, Illinois, in making and servicing loans or other extensions of credit such as would be made by a commercial finance company pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

2. *Midwest Financial Group*, Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Mortgage Banking Company, Peoria, Illinois, in marketing and servicing loans secured by real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by April 13, 1988.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6055 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Larry Collins; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Larry Collins*, Portland, Tennessee; to acquire 28.3 percent of the voting shares of BOC Bancorp, Inc., Woodbury, Tennessee, and thereby indirectly acquire Bank of Commerce, Woodbury, Tennessee.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6056 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Home Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 8, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Home Bancorp, Inc.*, Brooklyn, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Home Savings Bank, Brooklyn, New York.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Ballston Bancorp, Inc.*, Arlington, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Northern Virginia, Arlington, Virginia, a *de novo* bank.

2. *First United Bancorporation*, Anderson, South Carolina; to acquire 100 percent of the voting shares of Spartanburg National Bank, Spartanburg, South Carolina, a *de novo* bank.

3. *Key Centurion Bancshares, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of The National Bank of Commerce of Williamson, Williamson, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First State Corporation*, Waynesboro, Mississippi; to acquire 24.9 percent of the voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Affiliated Bancorp, Inc.*, Watseka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Watseka First National Bank, Watseka, Illinois.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Alma Bancshares, Inc.*, Alma, Kansas; to become a bank holding company by acquiring 81.6 percent of the voting shares of The First National Bank of Alma, Alma, Kansas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bank of Seoul*, Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Seoul Bank of California, Los Angeles, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6057 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank, PLC; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (21 CFR 225.21(a)) to aquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing on the question whether consummation of the proposal can "reasonably be excepted to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Midland Bank, PLC*, London, England; to engage *de novo* through its subsidiary, Thomas Cook, Inc., Princeton, New Jersey, in the purchase and sale of foreign currency as approved by Board order. *Southern Bancorporation Inc.*, 69 *Fed. Res. Bull.* 224 (1983).

Board of Governors of the Federal Reserve System, March 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6058 Filed 3-18-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Management and Budget; Model Framework for Management Control Over Automated Information Systems, January 1988

SUMMARY: In a January 15, 1988 memorandum, M-88-10, the Deputy Director of the Office of Management and Budget, Joseph R. Wright issued an important document for managers and others working with automated information systems. The complete text of Mr. Wright's memorandum is repeated here:

Memorandum for the Heads of Departments and Agencies

From: Joseph R. Wright, Jr., Deputy Director

Subject: Model Framework for Management Control Over Automated Information Systems

I am pleased to provide you with the attached document entitled *Model Framework for Management Control Over Automated Information Systems.* This document is the product of a joint undertaking by the President's Council on Management Improvement and the President's Council on Integrity and Efficiency to help Federal managers better understand, establish, and document internal controls for their systems. I am initiating actions to institutionalize a program to facilitate the type of coordinated and integrated thinking provided in the document.

I believe the document can be useful guidance to Federal managers in better understanding certain requirements for control imposed by the Federal Manager's Financial Integrity Act of 1982, the Privacy Act of 1974, and OMB Circular Nos. A-123, A-127, and A-130. The document provides an integrated view of these requirements and adds nothing new. Thus, it will be an important tool for orienting Federal managers in the effective and responsible use of modern information technologies to support their programs.

The *Model Framework* was the product of many months of coordination across Federal agencies. It was clear from the 41 responses submitted on the February 1987 draft of the document from 27 agencies, that there is a need for this (or similar) methodology. Reviewers' comments provided the basis for the revision of the draft and recommendations for further work, which were presented to the President's Councils on Management and Improvement, and Integrity and Efficiency last fall.

The finalized *Model Framework* has been distributed to affected Committee Chairpersons and Members of the U.S. Senate and House of Representatives, Department and Agency Heads and Senior Information Resources Management (IRM) officials, and principals on the Interagency Committee on officials, and principals on the Interagency Committee on IRM sponsored by the General Services Administration.

Ordering Information

The document has been formally distributed to the Heads of Departments and Agencies, and single copies can be obtained from the contact identified below while supplies last. Additional copies of the document may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. GPO Stock Number is 017-000-00255-4; unit price is $3.50.

FOR FURTHER INFORMATION CONTACT: Wallace O. Keene, Deputy Director, Office of Finance, HHS, 200 Independence Avenue SW., Room 737H, Washington, DC 20201. Telephone: (202) 245-7084.

Dated: March 15, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-6123 Filed 3-18-88; 8:45 am]

BILLING CODE 4150-04-M

Office of the Assistant Secretary for Health

Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of April 1988:

Name: National Advisory Council on Health Care Technology Assessment (Medicare Coverage Process Subcommittee).

Date and Time: April 19, 1988—8:30 a.m. to 4:00 p.m.

Place: Dupont Plaza Hotel, Embassy A Room, 1500 New Hampshire Avenue, Northwest, Washington, DC.

Open for entirety of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The meeting will be devoted to discussions of a draft report of the findings, conclusions, and possible recommendations resulting from the Subcommittee's study of the technology assessment and Medicare coverage processes. The draft report will address timing of assessments, the internal HCFA review process, and the OHTA assessment process.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-5650.

Agenda items are subject to change as priorities dictate.

Date: March 11, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Service Research and Health Care Technolgy Assessment.

[FR Doc. 88-6066 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Control; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for Project Grants for Sexually Transmitted Diseases (STD) Control programs.

Authority

This grant program is authorized under the Public Health Service Act, Section 318 (42 U.S.C. 247c), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and D. The Catalog of Federal Domestic Assistance Number is 13.977.

Eligible Applicants

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, and the Republic of Palau.

Purpose

The purpose of this grant program is to reduce morbidity and mortality from STD by preventing cases and complications.

Availability of Funds

Approximately $48,500,000 will be available to award up to 65 grants. The average award is expected to be $745,000, with individual awards ranging from $15,000 to $3,000,000. Depending on the availability of funds, grants are usually funded in 12 month budget periods in a 3 to 5 year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1988 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Information

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Application forms, information on review procedures, deadlines and the consequences of late submission, copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: March 14, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3512-35 Market Street, Mailing Address: P.O. Box 12716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 426-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 88-6069 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88F-0064]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to permit the use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resins and butene/ethylene copolymers.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4062) has been filed by Shell Oil Co., Houston, TX 77210, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from poly-1-butene resisns and butene/ethylene copolymers complying with § 177.1570.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 14, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-6061 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings; Blood Products Advisory Committee; et al.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and places. April 7 and 8, 1988, 8:30 a.m., April 7, 1988, Wilson Hall, 3rd Floor, Bldg. 1; and April 8, 1988, Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 7, 1988, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12:30 p.m.; open committee discussion, 1:30 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5:30 p.m.; open committee discussion, April 8, 1988, 8 a.m. to 5 p.m.; Linda Smallwood, Division of Blood and Blood Products (HFB–830), Office of Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike Bethesda, MD 20892, 301–497–0393.

General function of the committee. The committee reviews and evaluates available data on the safety effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committed should communicate with the committee contact person.

Open committee discussion. On the morning of April 17, 1988, the committee will discuss a medical device premarket approval application for a test for hepatitis B core antibody (DuPont), and in the afternoon will hear an update on human immunodeficiency virus (HIV) testing issues. On April 8, 1988, the committees will participate in the Public Workshop on "the Application of Biosafety Principles in Blood Establishments".

Closed presentation of data. The committee will discuss trade secret or confidential commercial information relevant to the DuPont medical device premarket approval application for the anti-hepatitis B core antigen test. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to the pending medical device premarket application, investigational new biological product applications, and biological product license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(b)(c)(4)).

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. April 7 and 8, 1988, 9 a.m., Bldg. 13, Conference Room, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open committee discussion, April 7, 1988, 9 a.m. to 5 p.m.; open committee discussion, April 8, 1988, 9 a.m. to 10 a.m.; closed committee discussion, 10 a.m. to 12:30 p.m. and 2 p.m. to 3 p.m.; Ronald F. Coene, National Center for Toxicological Research, Food and Drug Administration, 5600 Fishers Lane, Rm. 14–101, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises the Director, National Center for Toxicological Research (NCTR), in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The board provides that extra-agency review in ensuring that research programs at NCRT are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the board contact person before April 1, 1988, and submit a brief statement of the general nature of the evidence or argument they wish to present, the name and address of proposed participants, and an indication of the approximate time requested to make their comments.

Open board discussion. The board will receive an update of NCTR's progress on the "Project on Caloric Restriction." A final agenda will be available on March 29, 1988, by communicating with the board contact person.

Closed board deliberations. The board will review the projects and progress of NCTR's post-doctoral fellowship programs. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with these programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Ophthalmic Devices Panel

Date, time, and place. April 21 and 22, 1988, 9 a.m., Auditorium Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing April 21, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, April 22, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Dr. Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety, effectiveness, and suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact persons before April 2, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 21, 1988, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers and intraocular lenses (IOL's), and may discuss specific PMA's for these devices. If discussion of all pertinent Nd:YAG laser or IOL issues is not completed, discussion will be continued the following day. On April 22, 1988, the committee will discuss PMA's for

contact lenses and other devices, and requirements for PMA approval.

Closed committee deliberation. On April 21, and 22, 1988, the committee may discuss trade secret and/or confidential commercial or financial information relevent to PMA's for IOL's Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. April 29, 1988, 8:30 a.m., Rm. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Dr. Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 15, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a prosthetic heart valve and have a discussion of Panel evaluation of PTCA (percutaneous transluminal coronary angioplasty) catheters.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are limited above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Laine, Rockville, MD 20857, aproximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory commitee.

Dated: March 15, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-6090 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meetings; Veterinary Medicine Advisory Committee et al.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Veterinary Medicine Advisory Committee

Date, time, and place. April 12 and 13, 1988, 8:15 a.m., Conference Rm. I, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 12, 1988, 8:15 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 4:30 p.m.; open committee discussion, April 13, 1988, 8 a.m. to 8:15 a.m.; open public hearing, 8:15 a.m. to 8:45 a.m.; open committee discussion, 8:45 a.m. to 11:30 a.m.; Max Crandall, Center for Veterinary Medicine (HFV-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3450.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Criteria for classification of prescription and over-the-counter products, (2) sulfamethazine residues, and (3) CVM new research programs.

Oncologic Drugs Advisory Committee

Date, time, and place. April 19, 1988, 8:30 a.m., Parklawn Bldg., Conference Rms. G and H, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; David F. Hersey, Center for Drug Evaluation and Research, Rm. 8B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should comunicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Ifosfamide (NDA 19763) for use in combination with approved cytotoxic drugs for treatment of refractory testicular cancer; (2) FDA requirements for approval of new drugs for treatment of colon cancer and rectal cancer; (3) treatment of advanced metastatic colorectal cancer; (4) leucovorin and fluorouracil for advanced metastatic colon cancer; and (5) adjuvant therapy of rectal cancer.

Dermatologic Drugs Advisory Committee

Date, time, and place. April 28, 1988, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research, Rm. 8B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Adverse effects of isotretinoin (Accutane/Hoffmann-LaRoche, Inc.); and (2) an update on evaluation patch test kits.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. April 28 and 29, 1988, 8:30 a.m., Conference Rm. 10, 6th floor, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 28, 1988, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, April 29, 1988, 8:30 a.m. to 2:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research, Rm. 8B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On April 28, 1988, the committee will discuss: (1) The new drug evaluation review process, (2) the use of caffeine for apnea of prematurity, and (3) data supporting pediatric use of inhaled albuterol. On April 29, the committee will discuss the guidelines for testing bronchodilators.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of

data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 14, 1988.

Adam J. Trujillo,

Acting Commissioner for Regulatory Affairs.

[FR Doc. 88-6059 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Public Health Service, Final Funding Priority for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces the final funding priority which will be applied in the distribution of grant awards in Fiscal Year 1988 for Grants for Programs for Physician Assistants.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

In determining the priority for funding of applications recommended for approval, consideration will be given to the following factors:

1. The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students;
2. Conducting substantial portions of the programs in a health manpower shortage area(s) or in an area health education center, funded under section 781 of the PHS Act;
3. Establishment of a program in a State which does not have a program; and
4. Conducting a program in conjunction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

In addition, a proposed funding priority was published in the Federal Register of January 5, 1988 (53 FR 184) for public comment. No comments were received during the 30-day comment period.

Therefore, as proposed, a funding priority will be given to projects which expand or develop and implement new curriculum concerning the prevention of HIV-infection and the care of HIV-infected persons, including AIDS patients.

Physician Assistants are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients, in both inpatient and outpatient settings. However, organized formal curricular offerings for these trainees are not in place. This priority is designed to encourage new offerings.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: March 15, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-6110 Filed 3-18-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Cancer Biology-Immunology Contract Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, April 25, 1988, 9000 Rockville Pike, Building 31C, Conference Room 8, Bethesda, Maryland 20892.

This meeting will be open to the public on April 25 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L.

92–463, the meeting will be closed to the public on April 25 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: March 10, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6118 Filed 3–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, March 24–25, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 24 from 8:30 a.m. to 9:30 p.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on March 24 until recess and on March 25 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building, 31, Room 6A/51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: March 10, 1988.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 88–6119 Filed 3–18–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

White Earth Reservation Land Settlement Act of 1985; Ratification of Questionable Land Transfers

December 4, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Certification.

SUMMARY: This certifies that all three of the conditions enumerated in section 10(a) of the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264, have been satisfied. This certification is required by section 6(a) of the Act.

FOR FURTHER INFORMATION CONTACT: White Earth Project Director, Bureau of Indian Affairs, c/o Minnesota Agency, Route 3, Box 112, Cass Lake, Minnesota 56633, Telephone: (218) 335–6913, Ext. 454.

SUPPLEMENTARY INFORMATION: Sections 4(a) and 4(b) of the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264, define circumstances by which the title to an allotment of land, or interest therein, may have been lost through a questionable tax forfeiture, sale, mortgage, or other conveyance during the trust period. For each allotment or interest which falls within the scope of sections 4(a) and 4(b) of the Act, settlement compensation will be paid to the individuals determined to be entitled thereto. In addition, section 5(c) of the Act describes allotments of land which were granted to individuals who died prior to the selection dates thereof, and provides that the White Earth Band of Chippewa Indians shall be compensated for such allotments.

The three conditions set forth in section 10(a) of the Act have now been satisfied, to wit: (1) The Department of the Interior and the State of Minnesota have agreed upon the transfer of 10,000 acres from the State to the United States, to be held in trust for the White Earth Band of Chippewa Indians, (2) the State has appropriated $500,000 for technical and computer assistance in implementing the Act, and (3) the United States has appropriated $6.6 million for economic development for the benefit of the White Earth Band of Chippewa Indians. Pursuant to sections 6(a) and 6(c) of the Act, respectively, this certification will operate to: (1) Retroactively ratify questionable land transfers which fall within the scope of sections 4(a), 4(b), or 5(c); and (2) bar any subsequent suits to recover title, or damages, relating to transactions described in sections 4(a), 4(b), 5(a), or 5(c).

The questionable land transfers to be ratified hereby will be identified by separate publication in the **Federal Register**. On September 19, 1986, a list of 723 allotments and interests, which had been determined to fall within the scope of sections 4(a), 4(b), or 5(c) of the Act, was published in the **Federal Register** (51 FR 33348). Section 7(c) of the Act, as amended, requires that a supplemental list be published in the **Federal Register** by March 12, 1989.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88–6246 Filed 3–18–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AZ-020-08-4212-13; A-23217]

Public Land Exchange; Mohave and Yavapai Counties, AZ

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action; mineral exchange.

SUMMARY: The Federal mineral interests within the following described areas have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 16½ N., R. 9 W.,

  Sec. 25.
T. 16 N., R. 9W.,
  Secs. 1–4, 8–15, 17–31, and 33–35.
T. 15 N., R. 6 W.,
  Secs. 30 and 31.
T. 15 N., R. 7 W.,
  Secs. 5, 17, 20–22, 27–31, 33, and 34.
T. 15 N., R. 8 W.,
  Secs. 12, 16, 21–26, 28, and 36.
T. 15 N., R. 9 W.,
  Secs. 9–11, 17, 18, and 22–24.
T. 14½ N., R. 6.,
  Sec. 21.
T. 14½ N., R. 8 W.,
  Secs. 22–28.
T. 14 N., R. 4 W.,
  Secs. 3, 10, 11, 15, 19, 22–26, 28, and 35.
T. 14 N., R. 5 W.,
  Secs. 27–31 and 33–35.
T. 14 N., R. 6 W.,
  Secs. 4, 5, 9, and 24.
T. 14 N., R. 9 W.,
  Secs. 7, 10, 18–21, 25–28, and 33–35.
T. 13 N., R. 4 W.,
  Secs. 5, 6, 11, 14, and 23.
T. 13 N., R. 5 W.,
  Secs. 1, 3, 4, 7, 10–15, 23, and 24.
T. 13 N., R. 6 W.,
  Sec. 5.
T. 13 n., R. 7 W.,
  Secs. 22, 23, 25, and 28.
T. 13 N., R. 8 W.,
  Secs. 12–14, 23, 24, 26, 31, and 35.
T. 13 N., . 9 W.,
  Secs. 3, 4, 9, 17–21, and 26–28.
T. 12 N., R. 5 W.,
  Secs. 27, 28, 33, and 36.
T. 12 N., R. 6 W.,
  Secs. 1–13, 18, 19, and 30.
T. 12 N., R. 7 W.,
  Secs. 12–14, 21–28, and 33–35.
T. 12 N., R. 8 W.,
  Secs. 3–6, 8–12, 17–20, and 29–31.
T. 12 N., R. 9 W.,
  Secs. 4, 9–14, and 22–25.
T. 11 N., R. 5 W.,
  Secs. 5–8, 17–21, 28–31, and 34.
T. 11 N., R. 6 W.,
  Secs. 1, 3, 4, 9–15, 23–27, 30, and 31.
T. 11, N., R. 7 W.,
  Secs. 3–5, 7, 8, 11, 13, 17–21, 23, 27, and 34.
T. 11 N., R. 8 W.,
  Secs. 1, 3–5, 9–15, 22–26, and 35.
T. 10 N., R. 6 W.,
  Secs. 4–9, 13, 17–21, 25, and 29.
T. 10, N., R. 7 W.,
  Secs. 1, 3, 4, 9–14, 22–28, 33, and 35.
T. 10 N., R. 8 W.,
  Secs. 2 and 11.
  Containing 169, 195.88 acres, more or less.

In exchange for these interests, the United States will acquire the mineral interests owned by the Santa Fe Pacific Railroad Company within the following described areas:

Gila and Salt River Meridian, Arizona

Lake Havasu City Airport

T. 14 N., R. 20 W.,
  Secs. 9.
  Containing 640.00 acres, more or less.

Havasu National Wildlife Refuge

T. 17 N., R. 21 W.,
  Secs. 21 and 27.
T. 16 N., R. 20 W.,
  Sec. 31.
T. 16 N., R. 20½ W.,
  Sec. 35.
T. 16 N., R. 21 W.,
  Secs. 3 and 35.
T. 15 N., R. 20 W.,
  Secs. 7, 19, and 31.
T. 15 N., R. 20½ W.,
  Secs. 1, 3, 11, 13, 23, 25, and 35.
T. 15 N., R. 21 W.,
  Secs. 1, 3, and 13.
T. 14 N., R. 20½ W.,
  Sec. 1.
T. 11 N., R. 17 W.,
  Secs. 19, 21, 25, 27, 29, 33, and 35.
T. 11 N., R. 18 W.,
  Secs. 11 and 13.
  Containing 9,227.63 acres, more or less.

Grand Canyon National Park

T. 31 N., R. 11 W.,
  Secs. 17, 21, 25, 29, 31, 33, 35.
T. 31 N., R. 12 W.,
  Secs. 9, 15, 17, 19, 23, 25, and 35.
T. 31 N., R. 13 W.,
  Secs. 1, 5, 7, and 25.
T. 31 N., R. 15 W.,
  Secs. 31 and 33.
T. 30 N., R. 11 W.,
  Secs. 9, 11, 23, and 27.
T. 30 N., R. 15 W.,
  Secs. 5, 7, 9, 17, 19, and 21.
T. 30 N., R. 16 W.,
  Secs. 11 and 13.
T. 29 N., R. 11 W.,
  Secs. 5, 9, 13, 15, 23, and 25.
  Containing 21,085.30 acres, more or less.

Mount Tipton Wilderness Study Area

T. 26 N., R. 18 W.,
  Sec. 33.
T. 25 N., R. 17 W.,
  Sec. 31.
T. 25 N., R. 18 W.,
  Secs. 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29, 31, 33, and 35.
T. 24 N., R. 18 W.,
  Secs. 5, 7, and 9.
  Containing 13,340.60 acres, more or less.

Mount Nutt Wilderness Study Area

T. 20 N., R. 20 W.,
  Secs. 11, 13, 23, 25, 27, and 35.
T. 19 N., R. 20 W.,
  Sec. 1.
  Containing 3,845.20 acres, more or less.

Warm Springs Wilderness Study Area

T. 18 N., R. 20 W.,
  Secs. 25, 33, and 35.
T. 17 N., R. 20 W.,
  Secs. 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 33, and 35.
T. 16½ N., R. 19 W.,
  Secs. 21, 23, 27, and 33.
  Containing 13,532.08 acres, more or less.

Wabayuma Peak Wilderness Study Area

T. 19 N., R. 16 W.,
  Secs. 9, 17, 19, 21, 25, 27, 29, 31, 33, and 35.
T. 19 N., R. 17 W.,
  Secs. 13, 23, 25, 27, and 35.
T. 18 N., R. 16 W.,
  Secs. 1, 3, 5, 7, 9, 11, 15, 17, 19, 21, 23, 27, 29, 31, and 33.
T. 18 N., R. 17 W.,
  Secs. 1, 3, 13, 23, and 25.
T. 17 N., R. 16 W.,
  Sec. 5.
  Containing 21,988.08 acres, more or less.

Aubrey Peak Wilderness Study Area

T. 13 N., R. 14 W.,
  Sec. 31.
T. 13 N., R. 15 W.,
  Secs. 27, 33, and 35.
T. 12 N., R. 14 W.,
  Secs. 5 and 7.
T. 12 N., R. 15 W.,
  Secs. 1, 3, 5, 7, 9, 11, 15, 17, 21, 23, 27, and 29.
  Containing 10,458.40 acres, more or less.

Black Mesa Wilderness Study Area

T. 13 N., R. 14 W.,
  Secs. 27, 33, and 35.
T. 12 N., R. 13 W.,
  Secs. 7, 17, 19, 21, and 29.
T. 12 N., R. 14 W.,
  Secs. 1, 3, 9, 11, 15, 23, 25, 27, and 35.
  Containing 10,298.47 acres, more or less.

Arrastra Mountain Wilderness Study Area

T. 13 N., R. 12 W.,
  Secs. 17, 19, 29, and 31.
T. 13 N., R. 13 W.,
  Secs. 11, 13, 15, 23, 25, 33, and 35.
T. 12 N., R. 13 W.,
  Secs. 5, 9, 17, and 21.
  Containing 8,801.00 acres, more or less.

Lower Burro Creek Wilderness Study Area

T. 15 N., R. 12 W.,
  Sec. 35.
T. 14 N., R. 12 W.,
  Secs. 1 and 11.
  Containing 1,879.08 acres, more or less.

Crossman Peak Wilderness Study Area

T. 15 N., R. 18 W.,
  Secs. 29, 31, and 33.
T. 14 N., R. 18 W.,
  Secs. 25, 31, 33, and 35.
T. 14 N., R. 19 W.,
  Secs. 3, 5, and 7.
  Containing 5,742.30 acres, more or less.

Gibralter Mountain Wilderness Study Area

T. 11 N., R. 16 W.,
  Sec. 35.
T. 10 N., R. 17 W.,
  Secs. 19 and 31.
T. 10 N., R. 16 W.,
  Secs. 3, 9, 11, 13, 15, 23, 25, 27, 33, and 35.
  Containing 7,800.00 acres, more or less.

Planet Peak Wilderness Study Area

T. 10 N., R. 17W.,
  Secs. 13, 21, 23, 25, 27, 29, 33, and 35.
  Containing 5,040.00 acres, more or less.

Swansea Wilderness Study Area

T. 10 N., R. 15 W.,
  Secs. 5, 7, and 9.
T. 10 N., R. 16 W.,
  Secs. 1, 3, and 11.
T. 11 N., R. 15W.,

Secs. 17, 19, 21, 29, and 31.
T. 11 N., R. 16 W.,
Sec. 25.

Containing 7,015.74 acres, more or less.
Total Santa Fe Pacific Railroad mineral interest being 140,803.46 acres, more or less.

The purpose of this exchange is to eliminate split estate by disposing of unclaimed Federal mineral interests beneath State surface and acquiring private mineral interests beneath Federal surface.

Publication of this Notice will segregate the Federal mineral interests from operation of the mining laws and mineral leasing laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

Date: March 15, 1988.

[FR Doc. 88-6071 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4220-10; Sacramento 054898]

California; Partial Termination and Reservation of Land; Correction

March 4, 1988.

In notice document 88-4056 beginning on page 5654 in the issue of February 25, 1988, make the following correction:

On page 5654 in the second column, 14th line from the bottom, "March 28, 1988" is hereby corrected to read "February 25, 1988".

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-5328 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1986

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1986 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1986 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1986, and was submitted to the Congress on February 17, 1988. By this notice, the public is informed that the report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, 202-632-2202.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 7, 1988.

Frank Dunkle,

Director.

[FR Doc. 88-6053 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Micro-Enterprise Advisory Committee Meeting; Change of Location

A Notice of Meeting of the Micro-Enterprise Advisory Committee was published on March 14, 1988 (53 FR 8288). The site for the meeting has been changed from the Decatur Carriage House to the Key Bridge Marriot Hotel, 1401 Lee Highway, Arlington, VA. The date of the meeting, March 28, 1988, remains the same. For further information, contact Dr. Ross Bigelow at (703) 235-8964.

Michael Farbman,

A.I.D. Representative, Micro-Enterprise Advisory Committee.

Date: March 15, 1988.

[FR Doc. 88-6047 Filed 3-18-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Lodging a Complaint and Consent Decree Pursuant to the Clean Water Act; Biokyowa, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 9, 1988 a proposed Complaint and Consent Decree in *United States v. Biokyowa, Inc.*, Civil Action No. S88-0042-C, was lodged with the United States District Court for the Eastern District of Missouri.

The Complaint filed by the United States alleged that the defendants had violated section 301 of the Clean Water Act ("the Act"), and their National Pollutant Discharge Elimination System ("NPDES") permit, seeking an injunction and a civil penalty. The company owns and operates a pharmaceutical manufacturing plant which produces 1-lysine, an animal feed supplement, as well as a wastewater treatment facility which is intended to treat a molasses-like effluent generated as a byproduct in the manufacturing process. Inspections of the facility have revealed continuing effluent limit violations. The proposed consent decree requires the defendants to pay a civil penalty of $170,000 and construct a pipeline to convey wastewater from its treatment system directly to the Mississippi River. The proposed decree also requires compliance with the Act and the NPDES permit by August 1, 1988.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent

Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Biokyowa, Inc.*, DOJ# Ref. 90-5-1-1-2870. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, Eastern District of Missouri, U.S. Court & Custom House, 1114 Market Street, St. Louis, Missouri 63101. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Complaint and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6051 Filed 3-18-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Order Pursuant to Clean Air Act; Borden, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Borden, Inc.*, Civil Action No. 83-982B, and *United States* v. *Borden, Inc. and Monochem, Inc.*, Civil Action No. 83-744B was lodged with the United States District Court for the Middle District of Louisiana on February 1, 1988. The proposed Consent Decree concerns the control and prevention of releases of vinyl chloride to the atmosphere from a vinyl chloride complex in Geismar, Louisiana, in complance with 40 CFR 61.60 *et seq.*

The decree provides that Borden, Inc. and Monochem, Inc. shall pay a civil penalty of $1,000,000.00, and shall pay $250,000.00 to the Louisiana State University Foundation to settle the United States' claims of releases of vinyl chloride in excess of 87,000 pounds to the atmosphere in violation of 40 CFR 61.60 *et seq.* The decree further provides that Borden Chemicals and Plastics Operating Limited Partnership, the current owner and operator of the Geismar facility, shall take corrective action at the facility to ensure against future releases of vinyl chloride. The corrective action includes addition and modernization of equipment to prevent releases of vinyl chloride during power failures or when there are malfunctions in the flare incineration system, as well as improved methods of monitoring and reporting releases. The scheduled completion date for all corrective actions is December 31, 1988.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borden, Inc.* and *United States* v. *Borden, Inc. and Monochem, Inc.*, and D.J. reference # 90-5-2-1-604, 90-5-2-1-624 and 90-5-2-1-1170.

The proposed Consent Decree may be examined at the office of the United States Attorney, Second Floor, 352 Florida Street, Baton Rouge, Louisiana 70801, at the Region VI office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section, Land and Natural Resources Divisions of the Department of Justice, Room 1716, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00, payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88-6048 Filed 3-18-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Ford Motor Co.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Unites States v. Ford Motor Company*, Civil Action No. 84-CV-4459-DT, was lodged with the United States District Court for the Eastern District of Michigan. The complaint filed by the United States alleged that the defendant violated Section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Michigan State Implementation Plan ("SIP") pertaining to the control of volatile organic compound ("VOC") emissions.

The proposed Decree establishes a deadline for achieving compliance with Michigan Air Pollution Control Commission Rule R.3336.1610 (that part of the Michigan SIP relating to VOC emissions from vinyl coating lines) by requiring Ford permanently to cease operating the violating vinyl coating lines.

In addition, the proposed Consent Decree requires defendant to pay a civil penalty of $1,750,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ford Motor Company*, and D.J. Reference No. 90-5-2-1-711.

The proposed Consent Decree may be examined at the office of the United States Attorney, U.S. Courthouse, 231 W. Lafayette Street, Detroit, Michigan 48226 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and National Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of th Department of Justice. In requesting a copy please enclose a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6040 Filed 3-18-88; 8:45 am]

BILLING CODE 4410-01-M

Stipulation for Dismissal Pursuant to the Safe Drinking Water Act; Grace Petroleum Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Stipulation for Dismissal in *United States v. Grace Petroleum Corporation*, Civil Action No. CV-88-03-GF-PGH, was lodged with the United States District Court for the District of Montana, Great Falls Division, on March 10, 1988. The complaint in this action alleged that the defendant continued to operate a brine disposal injection well after it had lost authorization to do so in violation of the Safe Drinking Water Act, 42 U.S.C. 300h-2(b)(1) and the regulations

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promulgated thereunder. By the Stipulation for Dismissal, the defendant agrees to pay the amount of $55,300 in settlement of this matter.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments related to the Stipulation for Dismissal. Comments should be addressed to the Assistant Attorney General, Washington, DC 20530 and should refer to *United States v. Grace Petroleum Corporation*, D.J. Ref. No. 90–5–1–1–2383.

The Stipulation for Dismissal may be examined at the Office of the United States Attorney, District of Montana, 5043 Federal Building, 28th Street & 3rd Avenue, Billings, Montana 59103; at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the Stipulation for Dismissal may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6050 Filed 3–18–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Sections 301 and 309 of the Clean Water Act in United States v. Winchester Municipal Utilities et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 22, 1988 a proposed Consent Decree in *United States v. Winchester Municipal Utilities*, Civil Action No. 84–289, was lodged with the United States District Court for the Eastern District of Kentucky. The original complaint in this Clean Water Act ("the Act") action was filed on August 31, 1984 against Winchester Municipal Utilities and the Commonwealth of Kentucky. The Commonwealth of Kentucky was joined as a defendant pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e). The Complaint sought injunctive relief and civil penalties and alleged that defendant Winchester Municipal Utilities ("Winchester") violated the Clean Water Act, 33 U.S.C. 1251 *et seq.*, by discharging pollutants from its Strode's Creek Wastewater Treatment Plant in excess of effluent limitations contained in its National Pollutant Discharge Elimination System ("NPDES") permit. The Consent Decree requires that Winchester comply with the Clean Water Act and all the terms and conditions of its NPDES permit no later than March 31, 1991 and construct certain improvements at its sewage treatment plant. The Consent Decree provides for payment of a $10,000 civil penalty for past permit violations, establishes interim effluent limitations and monitoring requirements and imposes stipulated penalties for failure to comply with interim limits.

The Department of Justice will receive, for a period of thirty (30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assisitant Attorney General, Land and Natural Resources Division, U.S. Depertament of Justice, Washington, DC 20530, and should refer to *United States v. Winchester Municipal Utilities*, D.J. Ref. No. 90–5–2–1–2134.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Kentucky, Fourth Floor, Federal Bldg., Limestone & Barr Streets, Lexington, Kentucky 40507. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th Street & Pennsylvania Avenue, NW. 20530. In requesting a copy, please enclose a check in the amount of $1.60 payable to the Treasurer of the United States for copying.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6052 Filed 3–18–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

NAHB Research Foundation; National Cooperative Research Act of 1984; Smart House Project

Notice is hereby given that, pursuanat to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 22, 1988 disclosing (1) the identities of two additional advisors to the Smart House Project, International Conference of Building Officials and Northern Illinois Gas, effective dates November 17, 1987, and October 27, 1987, respectively, and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of current parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following are current parties and have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies., Inc.
Bell Northern Research Ltd.
Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E.I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer, Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company

Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Gas Association
Baltimore Gas & Elecric Company
Bell Canada
Bell Communications Research, Inc.
Bell South Services
The Bell Telephone Company of Pennsylvania
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Copper Development Association Inc.
The Dayton Power and Light Company
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydor Quebec
Illinios Consolidated Telephone Co.
International Conference of Building Officials
National Association of Home Builders
National Cable Television Association
Northern Illinois Gas
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfuncations in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, April 3, 1987, June 30, 1987, August 25, 1987 and December 2, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), and on January 5, 1988 (53 FR 186), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–6109 Filed 3–18–88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in King of Prussia, PA; Railroad Accident

In connection with its investigation of the collision of Amtrak Train 66, The Night Owl, with On-Track Maintenance-of-Way Equipment at Chester, Pennsylvania, January 29, 1988, the National Transportation Safety Board will convene a public hearing at 10:00 a.m. (local time), on April 27, 1988, at the Sheraton-Valley Forge Hotel, Grand Ballroom South, North Gulph Road and First Avenue, King of Prussia, Pennsylvania 19406. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6605.

Bea Hardesty,

Federal Register Liaison Officer.

March 16, 1988.

[FR Doc. 88–6132 Filed 3–18–88; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Low-Level Radioactive Waste Disposal Facility; Availability of Publications Concerning License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of two publications concerning license application for a Low-Level Radioactive Waste Disposal Facility:

1. NUREG–1199, Rev. 1, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility";

2. NUREG–1200, Rev. 1, "Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility";

These documents were revised to provide technical guidance for the belowground vault and earth mounded concrete bunker alternative disposal methods. The first publication identifies information needed by NRC to perform its licensing review; the second publication explains the technical review process.

ADDRESS: Copies of NUREG–1199, Rev. 1, and NUREG–1200, Rev. 1, may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3438.

SUPPLEMENTARY INFORMATION: Section 61.10 of Title 10 of the Code of Federal Regulations (10 CFR 61.10) identifies the information that must be submitted as part of a license application for a Low-Level Radioactive Waste Disposal Facility. The Nuclear Regulatory Commission's safety review is primarily based on the information provided by the applicant in the license application.

The NUREG–1199, Rev. 1, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility" (SF&C) identifies the specific information which should be provided and the format for presenting that information.

The use of the SF&C will (1) help ensure that the license application contains the information required by 10 CFR Part 61, (2) aid the applicant in ensuring that the information is complete, (3) help persons reading the application to locate information, and (4) contribute to shortening the time required to review the license application. Applications must conform to NUREG–1199, Rev. 1, to ensure that the NRC staff can review and process that application within 15 months in order to meet the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1985, (LLRWPAA), Pub. L. 99–240. By defining the contents of a complete application, this document provides a basis for making the completeness findings pursuant to section 5(e)(1)(C) and (D) of the LLRWPAA or 1985.

The NUREG–1200, Rev. 1, "Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility" (SRP) has been prepared for the guidance of NRC staff license reviewers in performing safety reviews of applications to construct and operate a low-level waste disposal facility. The principal purpose of the SRP is to ensure the quality and uniformity of staff reviews. Another purpose is to improve communication and understanding of the staffs review process for State Officials, Compact Commissions and interested members of the public and the industry.

Dated at Rockville, Maryland, this 14th day of March, 1988.

For the Nuclear Regulatory Commission.

Michael S. Kearney,

Chief, Division of Low-Level Waste Management and Decommissioning.

[FR Doc. 88–6103 Filed 3–18–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–335]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 91 to Facility Operating License No. DPR–67, issued to the Florida Power and Light Company (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida. The amendment was effective as of the date of its issuance.

The amendment allows the expansion of the spent fuel pool storage capacity from the current 728 fuel assemblies to the proposed 1706 fuel assemblies. The expansion is to be achieved by removing the existing racks and installing new, higher density ones.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 31, 1987 (52 FR 32852). A request for a hearing was filed on September 30, 1987 by Mr. Campbell Rich.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards considerations are involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards considerations. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has prepared an Environmental Assessment (March 4, 1988, 53 FR 7085) related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for St. Lucie 1 dated June 1973.

For further details with respect to the action, see (1) the application for amendment dated June 12, 1987, as supplemented by letters dated September 8, 1987, October 20, 1987 (three letters), December 21, 1987, December 22, 1987, December 23, 1987 (three letters), and January 28, 1988, (2) Amendment No. 91 Facility Operating License No. DPR–67, (3) the Commission's related Safety Evaluation, and (4) the Commission's related Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 11th day of March 1988.

For the Nuclear Regulatory Commission.

E.G. Tourigny,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6104 Filed 3–18–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25457; SR–NASD–87–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change

March 14, 1988.

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 7, 1988, copies of a proposed rule change pursuant to section 19 of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to establish a two-year Pilot Program with the Stock Exchange of Singapore ("SES"), for the exchange and distribution of information on certain selected securities.

Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 25085, October 28, 1987) and by publication in the **Federal Register** (52 FR 42167, November 3, 1987). The Commission did not receive any written comments on the proposed rule change.

The Commission believes the Pilot Program represents an important step in the internationalization of the securities markets. It will be the first Pilot Program for the exchange of static information between a Far East exchange and a United States ("U.S.") self-regulatory organization. The Commission believes that the NASD's approach, a two-year Pilot Program for the daily exchange of end-of-day quotation information, is a practicable preliminary step to determine the degree of interest in Singapore for U.S. over-the-counter

("OTC") securities. The trial nature of the program will enable the NASD and the SES to explore the possibility for and implications of a trading link between the two entities while they address any problems that might arise with the information exchange.

The NASD-SES Pilot Program provides only for the exchange of end-of-day static information concerning 35 securities specified in the agreement.[1] The program does not contemplate a trading linkage.[2] Investors in both countries will continue to purchase securities in the same manner as before. Quotation information will be disseminated over NASDAQ Level 2 and 3 terminals, which for the most part are only located in firm upstairs trading rooms and headquarter offices. Thus, data on the 35 Pilot securities predominately will benefit NASDAQ (SES) market makers who would be preparing to establish their opening markets in those securities.[3]

Finally, any potential for increased manipulative activity is substantially reduced because of the nature of the information exchanged and because there is no overlap in the trading hours of the NASDAQ and the SES markets.[4] Nevertheless, as stated below, the NASD and SES have agreed to establish procedures to share surveillance information if necessary. Such surveillance sharing procedures should help to detect and deter possible abuse.

Specifically, the agreement between the NASD and the SES provides that the NASD will have access to all regulatory information it needs for purposes of its surveillance and investigation responsibilities with respect to the designated securities. In this regard, although the NASD–SES surveillance sharing agreement is general, in view of the fact that the Pilot Program is for the exchange of static information only, the Commission believes that the surveillance measures in the agreement constitute adequate regulatory safeguards for the limited purposes of the Pilot Program. Moreover, the Monetary Authority of Singapore expressly has represented that Singapore does not have a blocking statute that prevents access to regulatory information for the purpose of conducting investigations.[5] In addition, the Pilot Program will provide both parties with the opportunity to evaluate each others' willingness to cooperate concerning information disclosure, quotation and trading halts, suspensions and resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. Given the limited circumstances, the Commission believes that this exchange of quotation information will enhance market efficiency without raising significant new concerns regarding the enforcement of the U.S. securities laws. The Commission emphasizes, however, the importance of assurance of cooperation among the relevant regulatory authorities with respect to the reciprocal exchange of surveillance and investigatory information.

The Commission finds that approval of the proposed rule change on a two-year pilot basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of two years from the date of this Order.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6093 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25456; File No. SR–NASD–87–47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 28, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to add section 67 to the NASD's Uniform Practice Code, requiring syndicate managers of public offerings underwritten on a firm-commitment basis to notify the NASD of anticipated delays in the closing of such offerings.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25307, February 4, 1988), and by publication in the **Federal Register** (53 FR 4067, February 11, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6094 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25451; File No. SR–NYSE–87–48]

Self-Regulatory Organizations; Filing and Immediate Effectiveness to a Portion of the Proposed Rule Change by New York Stock Exchange, Inc.; Rate Increases Affecting Electronic Access Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting Electronic Access

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[1] The planned link between the OTC markets proposes that 35 NASDAQ issues will be eligible for quotation in the newly created SES Foreign Equities Market by certain Singapore dealers. The securities were selected based on the issuer's overall international significance and/or particular interest in Southeast Asia.

[2] Any change in the terms or operation of the Pilot Program must be submitted to the Commission for its review pursuant to section 19 of the Act.

[3] The NASD represented to the staff that it will undertake to monitor quotations received from the SES pursuant to the market linkage for distribution over the NASDAQ system to evaluate the accuracy of the quotes and their relationship to the prevailing market when disseminated in this country.

[4] There is a thirteen hour time difference (twelve hours during Eastern Daylight Time) between Singapore time and Eastern Standard Time in the United States.

[5] *See* letter to Frank Wilson, Executive Vice President and General Counsel, NASD from Koh Beng Seng, Director, Monetary Authority of Singapore, dated February 23, 1988.

Membership dues.[1] The proposed new fee for 1988 will be $77,000 instead of the current amount of $37,000. In addition, the proposed rule change provides for annual adjustments to the Electronic Access Membership dues which will be 70% of the 12 month average Physical Access fee.[2] Thus, under the proposal, the 1989 Electronic Access Membership fee would be calculated in the following manner:

$136,960 (current physical access fee)
+1,500] (dues)
$138,460

$70% of $138,460=$96,922.

Accordingly, under this aspect of the proposal, in 1989, Electronic Access member firms would be required to pay dues totalling $96,922, a 26% increase over the proposed 1988 Electronic Access Membership fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) The purpose of this proposed rule change is to bring the cost of an Electronic Access Membership to a more equitable and realistic level, commensurate with the significant rise in seat and lease prices over the last several years.[3]

Costs for alternative forms of access, such as the purchase of equity seats or the fixing of lease rentals, are detemined by market conditions in negotiations between purchaser and seller or lessor and lessee. The dues charged by the Exchange to physical access members are measured largely by the average of the annual rental payable under *bona fide* leases, and are thus also affected by market conditions.[4]

Consequently, it is necessary that Electronic Access Memberships be realistically priced to reflect the market conditions as evidenced by the rise in seat prices and annual lease rentals.

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using is facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not formally solicited written comments regarding this proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed increase in the Exchange's 1988 Electronic Access Membership fee is reasonable and consistent with section 6(b)(4) of the Act in view of the increased market value of alternate forms of access occurring over the years (which, according to the Exchange, largely reflects market conditions) and will allow the cost of an Electronic Access Membership to more accurately reflect its market value.[5]

The foregoing portions of the proposed rule change that will increase the Electronic Access Membership fee for 1988 have become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19b–4. At anytime within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. The Commission is soliciting comments pursuant to section 19(b)(2) of the Act on the remaining portion of the filing that would establish a formula for adjusting the Electronic Access Membership fee annually.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88–6095 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] Article II, section 1(c) of the NYSE Constitution provides that an electronic access member, upon payment of its annual dues, is entitled "to maintain electronic or telephonic access to (i) the floor facilities of a member, member firms or member corporation, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board of Directors may from time to time determine." There are currently 95 NYSE electronic access members. Electronic Access members generally do not have physical access to the Exchange floor; rather, as mentioned previously, these members gain access to the trading floor electronically or by telephone.

[2] Physical Access members generally gain access to the Exchange floor through either ownership or leasing of an Exchange seat, whereas Electronic Access members gain access to the Exchange floor primarily through electronic hardware or by telephone. *See*, NYSE Constitution, Article II, section 1(B) and Ar'icle X, section 1(B).

[3] For example, according to documents included in the filing, the price of an equity seat in 1984 ranged from $290,000 to $400,000 while annual lease rentals ranged from $30,000 to $70,000. By contracts, in 1987, the price of an equity seat ranged from a low of $605,000 to a high of $1,150,000, with the cost of annual lease rentals ranging from $85,000 to $108,000. During this four year period of dramatic increases in the prices of equity seats and annual lease rentals, which generally reflects changes in the marketplace, the Exchange imposed only one rate increase in electronic access membership dues in 1984 from $18,500 to the current amount of $37,000.

[4] In this regard, the NYSE notes that while the costs of other alternative forms of access to the Exchange, through the purchase of equity seats or seat lease rentals are largely determined by market conditions, including physical access fees, which are determined by calculating the 12 month average of lease rentals, the dues charged for electronic access memberships are determined by the NYSE Board of Governors as provided in the Exchange's Constitution. *See*, Article X, Sections 1 B and C of the NYSE Constitution.

[5] *See*, Securities Exchange Act Release No. 20720 (March 6, 1984), 49 FR 9524, where the Commission last approved an increase in NYSE electronic access membership fees. In that order, the Commission relied on the fact that the proposed increase in fees was consistent with the increased value of other forms of access to the Exchange.

[Release No. 34-25490; SR-NYSE-87-28]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on August 28, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to increase the size of the Opening Automated Report Service ("OARS") [3] from 5,099 shares to 30,099 shares.

The proposed rule change, together with its terms of substance, was noticed by the issuance of a Commission release (Securities Exchange Act Release No. 24993, October 5, 1987) and by publication in the **Federal Register** (52 FR 37862, October 9, 1987). No comments were received regarding the proposed rule change.

The OARS system automatically accepts member firms' preopening market orders up to the current size limit of 5,099 shares. The OARS system relieves specialists of the need to handle paper orders by automatically and continuously pairing buy and sell orders and calculating the order imbalance up to the opening, thereby assisting the specialist in setting the opening price. Once the market has opened and the order has been executed, OARS will also send execution reports to the member firms that placed their orders on the system.

Under the proposed rule change, the size of orders eligible for OARS would be increased from the present 5,099 shares to 30,099 shares. The Exchange believes that the proposed increase in the OARS size limit will enable NYSE member firms to obtain efficient execution of large size orders in a timely and reliable manner. These larger market orders are now generally given to the specialist at opening. Expanding the OARS size limit will enable many of these orders to be entered directly on OARS and ensure that the firms entering those orders on OARS will receive the execution reports more rapidly.[4]

In addition, the Exchange believes that the proposed increase in OARS order size eligibility will facilitate the Exchange's comparison and settlement process by allowing larger orders to be entered into the OARS system and thereby become subject to the system's enhanced comparison and settlement procedures.[5]

In the Commission's Order approving the OARS system,[6] we observed that OARS was designed to (1) achieve system efficiencies which would materially assist specialists in arranging the opening transactions in their assigned stocks through automation of several clerical tasks at the trading post for the critical period just prior to the opening; (2) improve reporting of completed trades through immediate dissemination of execution reports upon the opening of trading; and (3) result in fewer questioned trades at the opening, thereby promoting more efficient and accurate clearing and settlement of securities transactions. The Commission continues to believe that the OARS system provides major benefits to specialists and the market as a whole and agrees with the NYSE that the proposed increase in OARS order eligibility will serve to expand the number of pre-opening market orders eligible for entry into this system and thereby improve the Exchange's ability to provide more effecient and effective market operations, particularly during times of heavy order flow.[7]

The Commission has previously allowed increase in OARS order size eligibility to 30,099 shares for limited time periods such as the initial offerings of American Telephone & Telegraph and the divestiture issues in 1983,[8] and, more recently, as part of auxiliary opening procedures for handling increased order flow in connection with the Expiration Fridays of June 19, 1987 and September 18, 1987.[9] Experience with these events has proven the effectiveness of OARS in facilitating the opening trades in equity securities.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and section 17A(a)(1) in that it will assist in the prompt and accurate clearance and settlement of securities transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 14, 1988.

[FR Doc. 88–6096 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] OARS is the opening system for the Exchange's "Super Dot" electronic order routing system through which member firms are able to transmit market and limit orders in NYSE listed securities directly to specialist posts on the Exchange floor. NYSE Rule 115A.30 sets out the procedures for the operation of the OARS system.

[4] The NYSE has indicated that, if this proposal is approved, it would increase the size of orders eligible for OARS by 10,000 shares immediately. Thereafter, the NYSE intends to increase the size limit in 10,000 share increments at three month intervals, depending on the Exchange's evaluation of the impact of increased order size limits on the ability of specialists to facilitate the opening and the reaction of members.

[5] As noted above, the OARS system automatically and continuously pairs buy and sell orders entered into the system from member firms electronically. The system "locks-in" these orders since the source, quantity and price of the orders are automatically offset against an NYSE omnibus account. Omnibus comparison is a mechanism that relieves the system user from having to compare his trade with the contra-side of the trade. This reduces the rate of uncompared orders, and means that OARS orders do not need to go through the regular way confirmation process.

[6] Securities Exchange Act Release No. 17132, September 8, 1980, 45 FR 60528.

[7] The NYSE has stated that it did not experience problems with the OARS system under the extremely heavy volume the Exchange encountered during the October 1987 market break. *See The October 1987 Market Break*, Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, Chapter 7, Note 72. The NYSE has informed the Commission that, with the proposed increase in order size eligibility for OARS, the system would be able to handle the order flow experienced during the October market break. Telephone conversation between Catherine R. Kinney, Senior Vice President of Equities, NYSE, and Robert J. Sevigny, Attorney, Division of Market Regulation, on March 11, 1988.

[8] Securities Exchange Act Release No. 20400, November 16, 1983, 48 FR 53627.

[9] Securities Exchange Act Release No. 24566, June 16, 1987, 52 FR 23618; Securities Exchange Act Release No. 24917, September 11, 1987, 52 FR 35178.

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[Release No. 34-25458; File No. SR-OCC-88-03]

Self-Regulatory Organizations; Options Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1988, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change described below. The proposal would expand OCC's valued securities program [1] to include preferred stock and corporate debt issues. The Commission is publishing this notice to solicit comment on the proposal.

I. Description of the Proposal

The proposed rule change would amend OCC Rule 604 dealing with forms of margin that OCC will accept from clearing members. Specifically, the proposal would expand OCC's valued securities program to enable OCC clearing members to post margin in the form of certain preferred stock and corporate debt issues (corporate bonds), in addition to common stock. The preferred stock and corporate bonds, like common stock, would be valued at 50% of current market value for margin purposes.

Under the rule change, preferred stock and corporate bonds would have to meet certain eligibility standards to be acceptable as OCC margin deposits. Preferred stock would be required to meet the same standards currently in place for common stock (*i.e.*, have a market value greater than $10 per share, be traded on a national securities exchange, have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan, or be traded in the over-the-counter market and designated as National Market System Securities pursuant to Rule 11Aa2–1 under the Act). The proposal would require eligible bonds to be listed on a nationl securities exchange and not be in default. This allows OCC to incorporate the listing and maintenance standards of the various exchanges, using the exchanges' assessments of the proper levels of safety and liquidity. The bonds also would need to have a current market value that is readily determinable on a daily basis.

Preferred stock and corporate bonds, like common stock, would be valued daily at the then maximum loan value of such securities pursuant to the provisions of Regulation U or such lower value as OCC's Margin Committee may prescribe.[2] Current market value would be the closing price on the primary market for such stock or bond during the preceding trading day or, if it was not traded in the primary market, the lowest reported bid quotation for such stock or bond at or about the close of trading on such day.

The proposal also would change OCC's limitation on margin credit available to a clearing member for the equity and debt securities of any one issuer. Currently, securities of any one issuer can not be valued at an amount in excess of 10% of the margin requirement in the account for which such securities are deposited. The proposal would limit the margin credit for the securities of any one issuer to 10% of the aggregate margin requirements of a given clearing member.

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act. OCC states in its filing that the proposal would assure the safeguarding of securities and funds by enhancing OCC's margin protection. OCC believes the standards for both preferred stock and corporate bonds provide OCC with a proper level of safety and liquidity. Moreover, OCC believes the margin credit of 50% of the securities' current market value serves as an inherent safeguard.

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office. All comments should refer to file number SR–OCC–88–3 and should be submitted by April 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority. 17 CFR 200.30–3.

Dated: March 14, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6097 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] The valued securities program enables OCC clearing members to receive margin credit for certain equity securities pledged to OCC. Pursuant to Regulation U of the Federal Reserve Board, the maximum loan value of such stock is 50% of the securities' market value.

[2] Although convertible debt is defined as "margin stock" under Regulation U and therefore only 50% of the market value would be eligible as the advance rate, Regulation U recognizes non-convertible debt up to "good faith loan value," which OCC defines as 70% of market value. Nevertheless, in new Interpretation and Policy .09 to OCC Rule 604, OCC has prescribed the 50% rate for both convertible and non-convertible debt.

[Release No. 34-25448; File No. SR-Phlx-87-41]

Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange Relating to Continuity of the Office of the Chairman and Vice Chairman of the Board of Governors

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on November 17, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78(b)(1) and Rule 19b–4 thereunder to remove restrictions on the number of terms to which the Chairman and Vice Chairman of the Board of Governors ("Board") may be elected.[1]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 25351, February 12, 1988) and by publication in the **Federal Register** (53 FR 5508 February 24, 1988). No comments were received regarding the proposal.

Article IV, Section 4–2 of the Phlx By-laws currently limits the number of

terms to which the Board Chairman and Vice Chairmen may be elected.[2] Under the provision, the Board Chairman is restricted to serving two consecutive two-year terms, while the Vice Chairmen are similarly restricted to serving four consecutive one year terms. The proposed rule change would eliminate these restrictions and would allow the Chairman and Vice Chairmen to serve unlimited terms.[3]

The Phlx has requested that the proposed rule change be approved before March 14, 1988 in order to accommodate elections for Chairman and Vice Chairmen scheduled for that day.

After considering the proposed amendment the Commission believes that the proposal to eliminate restrictions currently imposed on the number of terms to which the Board Chairman and Vice Chairmen may be elected is appropriate. In particular, the Commission believes that the proposal will enable current or future Board Chairmen and Vice Chairmen to propose long-term initiatives that extend beyond their current four year term limitations and allow them to oversee the implementation of these initiatives while in office. Further, the Commission notes that the Board Chairman and Vice Chairmen are elected by the Exchange membership; therefore, if Exchange members disapprove of or generally become dissatisfied with Board leadership and governance, they may express these sentiments through the Exchange's electoral process (*i.e.*, by nominating and electing candidates to these offices who fully represent their views). Finally, the Exchange maintains that the proposed rule change will provide added continuity to the governance of the Exchange thereby furthering investor protection and the public interest in accordance with section 6(b)(5) of the Act. In view of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the Exchange has scheduled board elections for March 14, 1988. The proposed rule change would allow the current Vice Chairman to run in that election. Moreover, to date the Commission has received no comments on the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: March 11, 1988.

[FR Doc. 88–6098 Filed 3–18–88; 8:45 am]

BILLING CODE 8010-01-M

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[1] Pursuant to Article IV, Section 4–1 of the Phlx's By-laws, the Board has two Vice Chairmen.

[2] We note, however, the By-law provides that each officeholder may seek re-election to office after a one year interval.

[3] Article XXII, Section 22–2 of the Phlx's By-laws generally requires the Board of Governors to provide written notice to the Exchange membership of any proposed amendment to the By-laws originating in, and approved by, the Board. After receiving a written announcement of the proposed By-law amendment, the membership has 10 days to request a special meeting to consider and vote on the proposed amendment. In the absence of such a request, the Board may adopt the amendment at any regular or special meeting with approval of fifteen members of the Board. The Phlx indicates in its filing that, in adopting the proposed amendment, it complied with these procedural requirements and notes that no request for a special meeting was made by the Exchange membership.

[Release No. 34-25449; File No. SR-PHLX-88-2]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Registered Options Traders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on February 18, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 under the Act,[1] hereby proposes to amend its Options Rule 1014 regarding Registered Options Trader ("ROT") assignments and responsibilities. Currently ROTs are permitted to select up to 30 or more options as their assigned classes. Under Commentary .03 to Rule 1014, 50 percent of their trading activity in each quarter must be in their assigned options. The proposed rule change would eliminate these provisions and provide instead that ROTs are automatically assigned in all classes of options traded on the Exchange.

ROTs would now be subject to the market maker obligations set forth in section (c) of the rule for all classes of securities. The rule provides that the ROT, when called into a trading crowd, is expected to engage to a reasonable degree under the existing circumstances, in dealing for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

The wording of Options Rule 1022 is also being revised to conform to the new Rule 1014. This rule provides that Specialists and ROTs must report to the exchange opening positions and every purchase and sale in each option in which they are assigned by 9:30 a.m. on the business day following order entry date. ROTs will not be required to submit reports for all options classes.

A number of Options Floor Procedure Advices that generally track the wording of specific sections of Rule 1014 have also been revised to conform to the amended rule. These include Advice No. A–3, Requestig Market Quotations; No. A–4, Specialist as Registered Options Trader; and No. B–3 Trading Requirements.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepare summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The PHLX currently employs a system on its Options Floor where there are both Specialists and Registered Options Traders ("ROTs"). Every option traded on the PHLX has been allocated to a specialist unit which has undertaken the responsibility to engage in a course of dealings for its own account in order to help maintain a fair and orderly market in its assigned options as well as executing the commission orders in such options which have been entrusted to the unit. (See Options Rule 1020). ROTs are traders on the Options Floor who are permitted to trade for their own account. Similar to specialists, ROTs are currently registered to trade one or more specific classes of options, but unlike specialists. ROTs are required to conduct at least 50 percent of their trading activity in any quarter (measured in contract volume) in those classes of options to which they are assigned (See Options Rule 1014).

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[1] 17 CFR 240.19b–4 (1987).

ROTs, like specialists, are subject to certain affirmative and negative obligations. In those classes of options in which ROTs are registered to trade, the ROT is obligated to make markets when there exists or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts or the same class. ROTs can be called into the trading crowd at the post where one of their assigned options is traded and requested to make a market.

The PHLX is proposing to abolish this system whereby ROTs are assigned a limited number of options. The ROT would now be assigned to trade every option on the Exchange, except those where the ROT or the ROT's firm is registered as options specialist. In those options, the ROT is prohibited from trading in an ROT capacity. The requirement that ROTs conduct at least 50% of their trading activity in assigned options would no longer be applicable since 100% of their trading activity will be in assigned options. The language describing criteria for assigning options to ROTs and that regarding the 50% requirement has been deleted. Further, the language in the rule which sets out different obligations of ROTs in appointed and non-appointed classes has been deleted. Options Rule 1022 and the applicable Options Floor Procedure Advices (A3, A4, and B3) have also been revised to reflect the changes to the main ROT rule (Rule 1014).

The Exchange has determined that this system of assigning a limited number of options to ROTs and its corrolary 50% rule are unnecessary, anti-competitive, burdensome and difficult to monitor. For these reasons, the Exchange is proposing this amendment of the ROT rule.

When the rule was originally enacted, there were relatively few ROTs on the Options Floor. It was often difficult to find an ROT to make a market so the Exchange assigned ROTs the responsibility to make markets in those options in which they were registered. This rule assured that there was always at least one ROT available to make a market when called upon. Currently on the Options Floor, there are over 150 ROTs. Although there is always at least one ROT available and willing to make a market in a particular option, it is not necessarily one of the ROTs who is registered in that option. This can and has presented a problem near the end or the quarter when an ROT has done close to 50 percent of his trading in nonregistered options. Large public customer orders could be turned away because the ROTs who can provide the deepest markets are unable to participate without violating the 50 percent requirement and facing a warning or fine.

The current assignment rule was introduced because it was felt necessary to provide liquidity across-the-board, particularly in less active options. This concern has proven unfounded, and is made unnecessary by several other Exchange rules and market structure arrangements that more directly address this concern.

Under Rule 1063, an Options Floor Broker must make sure that at least one ROT is present at the trading post prior to representing an order for execution. For every execution of a public customer order, there is then guaranteed to be a specialist and at least one ROT making a market in the option. Under the provisions of Rule 1014, only the few ROTs who were assigned in a specific option generally could be required to come into that trading crowd to make a market. The new rule would allow specialists, Floor Officials and Floor Brokers to ask any ROT to join a trading crowd and make a market. This is clearly more efficient, more competitive, and better for public customers. Moreover, the specialist himself is obligated to trade for his own account in options when there exists a lack of price continuity or lack of depth in the options market or a temporary disparity between supply and demand in the options market. Further, ROTs are required under Rule 1014 to execute in person and not through the use of orders, the greater of 1,000 contracts or 50% of their contract volume on the Exchange in each quarter (*See*, Commentary .14 accompanying Rule 1014 and Options Floor Procedure Advice B–3). ROTs are required by this rule to make two-sided markets in most options instead of just one-sided markets through brokered orders.

An additional safeguard is a recently approved amendment to PHLX Rule 1033 which requires a specialist or ROT to fill public customer orders in a series to a minimum depth of ten contracts if that specialist or ROT is quoting the best bid or offer in such series. This requirement assures liquidity in all series where the specialist or ROT quotes the best market.

The Exchange has also determined that eliminating the assignment rule will foster greater competition on the trading floor. Currently, ROTs are allowed to trade in every option on the PHLX as long as the majority of their trades are in their assigned options. This rule has hindered ROTs from joining trading crowds because the option being traded is not one of their assigned options. When the ROT is barred from joining a trading crowd that he otherwise would have joined, there is less competition with the specialist and therefore the quote spreads are wider and the markets less liquid than they could have been. If ROTs are permitted to trade freely in any option they will join more trading crowds which will provide more liquidity and encourage better markets to be made.

Finally, this rule requires strict monitoring by both the ROTs and the Exchange's Market Surveillance Department. Further, there are exceptions built into the rule that create opportunities for error and disagreement. For instance, if the ROT is temporarily acting as a specialist in classes of options to which he is not assigned, that activity is not counted in the calculation. The responsibility to keep track of this percentage is unnecessarily burdensome to both the Exchange staff and the ROT firms. The Market Surveillance Department also must guard against extraordinary trading activity between ROTs in their assigned options near the end of a quarter. This might occur to artificially increases the ROT's activity in those options to meet the 50% requirement and is reversed after the quarter.

In August of 1987, the Commission approved the Exchange's new alternate specialist rule 201A. In that rule,

approved equity specialists are permitted to apply to be alternate specialists in all issues except those in which the alternate specialist or any person associated with the alternate specialist or the member organization with which the laternate specialist is affiliated, is either a specialist in the options overlying that equity issue, or an ROT with an assignment in the overlying options. This new ROT rule will now make all ROTs assigned in all options. There will most likely be a greater number of alternate specialists who are affiliated with ROTs in the overlying options now. The Department of Securities will be reviewing alternate specialist applications to make sure that the unit is not applying to be registered as an alternate specialist in any equity issue where they are affiliated with an ROT unit.

Options Rule 1022 is also being revised to reflect the fact that ROTs are now assigned in all options. This rule provides that Specialists and ROTs must report to the Exchange opening positions and every purchase and sale in each option in which they are assigned by 9:30 a.m. on the business day following order entry date. ROTs will now be required to submit reports for all options classes.

An additional change is being made to Rule 1022 which is purely administrative. The daily time for reporting opening positions and purchases and sales for specialist and ROT accounts used to be 10:00 a.m. when the Exchange began trading on its equity and equity options floors at 10:00 a.m. The purpose of Rule 1022 was to require submission of these reports at the opening of trading every day. In coordination with the New York Stock Exchange, in 1985, the Exchange changed its opening time on these trading floors to 9:30 a.m. and revised its rules accordingly. Through an oversight, it neglected to revise Rule 1022 at that time. The Exchange now wishes to rectify this problem concurrent with this substantive rule change.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to perfect the mechanism of a free and open market and to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition. Indeed, the Exchange believes the proposed will foster competition on its floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-6009 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25450; File No. Phlx 87-30]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Professional Execution Standards Applicable to all Orders Received by the Specialists Over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1987 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., pursuant to Rule 19b–4 of the Act, submits a proposed rule change specifying and requiring adherence to professional exceution standards with respect to all orders received by specialists over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") on an order delivery system basis for manual execution.

The following constitutes the full text of the proposed rule change (deletions bracketed; additions italicized).

Rules of Board of Governors

* * * * *

Rule 229. No change.

* * * Supplementary Material

General

The following PACE execution parameters are minimum standards. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01 Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market and limit orders up to the maximum number of shares traded under PACE as shall be fixed by the Exchange from time to time. *All orders in eligible securities shall be executed in whole or in part on a first in first out basis.*

.02 through .10(a) No change.

.10(b) Round-lot limit orders of 600 to 1000 shares, [and] PRL's of 601 to 1099 shares *and such limit orders of greater size that the specialist may accept* entered after the opening shall [not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Philadelphia Stock Exchange.] *be provided a professional execution in accordance with the following standards:*

1. Circumstances: Limit order price is between the PACE Quote when received by the specialist.

Standard: Each time the New York market prints a trade at the limit order's price, a portion of the limit order equal to the size of the New York market print shall be entitled to be executed. Additionally, marketable PACE limit orders are due executions against contra side Phlx orders regardless of whether the primary market prints trades at the limit price.

2. Circumstance: Limit order price is on the PACE Quote when received by the specialist.

Standard: The quotation size associated with the PACE bid or offer which matches the limit price shall be ascertained (hereinafter referred to as the Reference Quote). The limit order shall be entitled to an execution when the New York market prints a trade or trades equalling the limit price and aggregating to the size of the Reference Quote; after which each time the New York market prints a trade at the limit order's price, a portion of the limit order equal to the size of the New York market print must be executed.

3. Circumstance: Limit order price is away from the PACE Quote when received by the specialist.

Standard: When the PACE bid or offer quotation, as the case may be, reaches the limit price the size of that quotation must be ascertained at that instant. The limit order then is entitled an execution when the New York market prints a trade or trades at the limit price aggregating to:

(1) one-half the size of the Reference Quote size for limit orders on the book for over one day or (2) the full size of the Reference Quote size for limit orders placed on the book on the same day in which they are executed; after which each time the New York market prints another trade at the limit order's price, a portion of the limit order equal to the size of the primary market print must be executed.

4. Circumstance: Limit price traded through by a transaction reported on a market eligible to compose the PACE Quote.

Standard: The limit order in its entire size, regardless of the size of the trade that caused the trade-through, must be executed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

PACE currently provides to Phlx member organizations a cost-efficient, competitive order delivery and execution system for pubilc customer orders. Under the proposed rule change, both market and limit orders up to 599 shares will continue to be executed in accordance with the current provisions of Phlx Rule 229. For limit orders of 600 shares and greater, the Exchange expects that specialists will provide a professional execution, but is rules to date have not provided guidance regarding what constitutes a professional execution of such orders. In this regard, the proposal provides both specialists and order entry firms with standards for professional execution of limit orders above 599 shares but up to 1,099 shares or as great an amount as specialist so accepts, which are eligible for routing to the specialist over the PACE order delivery system. By specifying these execution standards in the rules of the Exchange, the proposed rule will provide for increased consistency in the execution of limit orders on the floor and will provide notice to both specialists and PACE users of the kind of execution they can expect for larger limit orders delivered over the PACE system. It should be noted, to the extent a specialist accepts limit orders over the PACE system above 1099 shares, these orders would also be entitled to an execution under the terms of the proposed rule.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles trade; facilitate transactions in securities and remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Firth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted on or before April 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 11, 1988.

[FR Doc. 88-6100 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 15, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Genentech, Inc.
  Common Stock, $0.02 Par Value (File No. 7–3149)
The Neiman-Marcus Group, Inc.
  Common Stock, $0.01 Par Value (File No. 7–3150)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 5, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6101 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16312; File No. 812–6896]

FVL Growth Fund, Inc.; Application for Deregistration

March 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 ("1940 Act").

Applicant: FVL Growth Fund, Inc.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Application for an SEC order declaring that Applicant has ceased to be an investment company.

Filing Date: The application was filed on January 6, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later 5:30 p.m., on April 5, 1988. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Cindy J. Rose (202) 272–3032 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant registered under the 1940 Act on Form N–8A on November 25, 1977, as a non-diversified, open-end management investment company. Applicant filed Form S–5 under the Securities Act of 1933 on December 21, 1977. The 1933 Act Registration Statement was declared effective on December 22, 1977.

2. Applicant is a corporation organized and existing under the laws of The State of Maryland.

3. The Board of Directors of Applicant approved an Agreement and Plan of Reorganization (the "Plan") at a meeting on March 19, 1987 and at a Special Meeting on April 16, 1986, the shareholders of the Applicant approved the adoption of the Plan. On April 30, 1987, Applicant transferred all of its assets and liabilities to Variable Investors Series Trust, a Massachusetts business trust (the "Trust"), pursuant to the Plan in return for a number of shares of beneficial interest of the Common Stock Portfolio of the Trust (the "Common Stock Portfolio") equal to the number of shares of Common Stock of Applicant then outstanding. On April 30, 1987, immediately prior to the transaction, Applicant had 1,914,941.568 shares of Common Stock with a net asset value on a per share basis of $22.37. Immediately thereafter, Applicant distributed to its sole shareholder in complete liquidation all such shares of beneficial interest in the Common Stock Portfolio. Each share of beneficial interest in the Common Stock Portfolio immediately after the transactions described above had a net asset value equal to the net asset value of a share of Common Stock of Applicant immediately prior to such transactions.

4. Applicant has no outstanding assets except its name and its status as a Maryland corporation and a registered investment company. Applicant has no outstanding liabilities other than those assumed by the Trust, which include all of Applicant's fees and expenses in connection with the Plan.

5. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceedings.

6. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant will file a Certificate of Dissolution with the Department of Assessments and Taxation of The State of Maryland.

7. The sole securityholder of Applicant is First Variable Life Insurance Company. There are no former securityholders of Applicant to whom distributions in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6102 Filed 3-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1057]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The Retail Price Schedule is the source of information used in establishing and justifying temporary lodging, travel per diem, and post (cost of living) allowances for all Federal civilian employees, statutory salaried employees, and Uniformed Services personnel assigned to foreign and non-foreign areas. The following summarizes the information collection proposal submitted to OMB:

Type of Request—Extension.

Originating Office—Bureau of Administration.

Title of Information Collection—Retail Price Schedule.

Form Number—DSP–23.

Frequency—Quarterly and Annually.

Respondents—Merchants.

Estimated Number of Responses—670.

Estimated Burden Hours—1,871.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Date: March 11, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88–6062 Filed 3–18–88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88–017]

Meetings of the Working Groups for the Subcommittee on Vapor Control; Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of meetings of the Fire Protection Working Group, Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working groups is to develop recommended safety requirements for vapor control systems in their respective areas. The recommendations of each working group will be considered by the full Subcommittee at its next meeting. The meetings of the working groups will be held on Thursday, April 7, 1988 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC. Prior to convening the working groups, members of each working group will meet jointly in order to coordinate efforts. The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.
4. Discussion and development of safety requirements relating to vapor control systems and their components in the area of each working group.
5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: March 16, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–6126 Filed 3–18–88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88–015]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Licensing and Manning will meet on 15 April 1988 in Room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 1:00 p.m. The agenda for the meeting follows:

(a) Interim Final Rule on Licensing of Maritime Personnel, and

(b) Inland Radar.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1477.

Dated: March 16, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88–6127 Filed 3–18–88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Danbury Municipal Airport, Danbury, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by City of Danbury, Connecticut for Danbury Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Danbury Municipal Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 22, 1988.

DATES: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is February 24, 1988. The public comment period ends on April 24, 1988.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, MA 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Danbury Municipal Airport is in compliance with applicable requirements of Part 150, effective February 24, 1988. Further, the FAA is reviewing a proposed noise

compatibility program for that airport which will be approved or disapproved on or before August 22, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by the FAA to be in compliance with the requirements of the Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Danbury submitted to the FAA on July 9, 1987, noise exposure map, descriptions and other documentation which were produced during Airport Noise Compatibility Planning (Part 150) Study at Danbury Municipal Airport from July 1985 to May 1987. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Danbury. The specific map under consideration is Figure 1.1 along with the supporting documentation in Volume I: Noise Exposure Map of the Part 150 Study. The FAA has determined that the map for Danbury Municipal Airport is in compliance with applicable requirements. This determination is effective on February 24, 1988. The FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Danbury Municipal Airport, also effective on February 24, 1988. Preliminary review of the Submitted materials indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 22, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.22. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, MA 01803

Mr. Paul D. Estefan, Airport Administrator, Danbury Municipal Airport, Wibling Road, Danbury, CT 06810

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on February 24, 1988.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88–5921 Filed 3–18–88; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for New Orleans International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Publ. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the New Orleans Aviation Board. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for New Orleans International Airport were in compliance with applicable requirements effective February 25, 1987. The proposed noise compatibility program will be approved or disapproved on or before August 18, 1988.

DATES: The effective date of the start of FAA's review of the nosie compatibility program is February 20, 1988. The public comment period ends April 20, 1988.

ADDRESS: Comments on the proposed noise compatibility program should be submitted to Donald C. Harris, Department of Transportation, Federal

Aviation Administration, Fort Worth, Texas 76193–0611.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, at the above address, (817) 624–5609.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for New Orleans International Airport which will be approved or disapproved on or before August 18, 1988. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for New Orleans International Airport, effective on February 20, 1988. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 18, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Department of Transportation, Federal Aviation Administration, ATTN: Donald C. Harris, Fort Worth, TX 76193–0611

Director of Aviation, New Orleans Aviation Board, New Orleans International Airport, New Orleans, LA 70141

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, February 20, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88–5922 Filed 3–18–88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE–88–10]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 15, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21750	United States Air Force Auxiliary	14 CFR 61.118	To allow Civil Air Patrol members holding private pilot certificates to be reimbursed for fuel, oil, and maintenance while serving on official Civil Air Patrol missions.
22558	Boeing Commerical Airplane Co	14 CFR 47.69(b)	To extend Exemption No. 3513E, which allows petitioner to use Dealer's Aircraft Registration Certificates outside the United States for flight testing and sales demonstrations.
25538	DORNIER GmbH	14 CFR 43.3(a), 145.71, and 145.73	To allow petitioner to be certified as a foreign repair station to work on and approve products for return to service on U.S.-registered DORNIER 228 aircraft regardless of base or area of operation.
25533	British Airways Plc	14 CFR 145.71 and 145.73	To allow petitioner, at its approved foreign repair stations and London (Heathrow) Airport, London (Gatwick) Airport, and Treforest in Wales to carry out maintenance on U.S.-registered aircraft normally operated and maintained wholly within the United States

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
054CE	Air Tractor, Inc	14 CFR 23.49(b)	Petition for exemption from the stall speed requirements of § 23.49 for the Air Tractor Models AT–503 and AT–802 airplanes.
055CE	Swearingen Engineering and Technology, Inc.	14 CFR 23.803(e)(2)	Petition for exemption from the requirements of § 23.803(e)(2) relative to a means of stopping rotation of engines in support of the certification of the SA–30 airplane.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
23908	Piedmont Airlines	14 CFR 121.371(a) and 121.378	To extend Exemption No. 3974A that allows petitioner to employ original equipment manufacturers, Braathens S.A.F.E. of Stavanger Airport, N–4050 Sola, Norway, and FFV Aircraft Maintenance of S-581 82 Linkoping, Sweden, to overhaul and repair its Fokker F-28 aircraft components, accessories, and engines, even though the companies and their employees performing the work do not hold appropriate U.S. airman certificates. *Grant, March 8, 1988.*
25449	Channel Flying, Inc.	14 CFR 43.3(g)	To allow pilots of petitioner to remove seats in petitioner's single-engine aircraft so that medivacs can be conducted from remote locations as well as providing delivery of mail, groceries, and freight. *Grant, March 10, 1988.*
25494	Bohlke International Airways	14 CFR 43.3(g)	To allow properly certificated and trained pilots employed by petitioner to remove and replace cabin passenger seats and install and remove certain ambulatory stretcher and base assemblies that are installed in the Aero Commander 680V and Piper Seneca aircraft operated by petitioner. *Grant, March 8, 1988.*
25519	Wings West Airlines, Inc., d.b.a. American Eagle.	14 CFR 121.411(a) (1), (2), (3), and (6) and 121.413 (b) and (c).	To allow petitioner to use certain highly qualified pilot flight instructors from British Aerospace (BAe) for the purpose of training petitioner's initial cadre of pilots in the BAe advanced turbo prop (ATP) airplane in the United Kingdom (U.K.) in U.K.-registered BAe ATP airplanes without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *Grant, March 7, 1988.*
25552	The Commissioner of the Department of Transportation of the State of Alaska.	14 CFR 45.29(h)	To allow persons operating within, to or from the State of Alaska to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the Alaska Air Defense Identification Zones (ADIZ) or Defense Early Warning Identification Zones (DEWIZ). *Partial Grant, March 4, 1988.*

[FR Doc. 88–6041 Filed 3–18–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88–13]

Commercial Gauger Conditional Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of conditional approval.

SUMMARY: Pursuant to § 151.13 of the Customs regulations (19 CFR 151.13), Amspec, Inc., 1901 E. Linden Ave., Bldg 17, Linden, New Jersey 07036–1110, applied to Customs for approval to gauge imported petroleum and petroleum products, single organic chemicals in bulk, and animal and vegetable oils. Customs has determined that Amspec meets all of the requirements for approval as a commercial guager.

In accord with § 151.13(e) of the Customs regulations, Amspec, Inc., is hereby granted conditional approval to gauge the products named above in all Customs districts. This conditional approval will expire in six months unless it is superseded by permanent approval.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2446).

Dated: March 16, 1988.

Roger J. Crain,

Special Assistant for Commercial and Tariff Affairs, Office of Technical Services.

[FR Doc. 88–6129 Filed 3–18–88; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 122 (Rev. 2]

Delegation of Authority; Assistant Commissioners; International and Equal Opportunity

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The authority to arrange for and authorize the temporary assignment of personnel between the Internal Revenue Service and State and local governments and institutions of higher education under Title IV of Pub. L. 91–648 is delegated to Assistant Commissioner (International), District Directors (for Tax Practitioner Institute assignments), and to Assistant to the Commissioner (Equal Opportunity) (for assignments to historically black colleges and universities). The text of the Delegation Order appears below.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Linda McAllan, IN:TAAS, Rm. 2211, Internal Revenue Service, Office of Assistant Commissioner (International), 950 L'Enfant Plaza South, SW., Washington, DC 20024, (202) 287-4323 (Not a toll-free telephone number).

Joe D. Hook,

Director, Office of Tax Administration Advisory Services.

Order No. 122 (Rev. 2)

Assignment of Personnel Under Intergovernmental Personnel Act

The authority vested in the Commissioner of Internal Revenue by Chapter 250 of the Treasury Personnel Manual to arrange for and authorize the temporary assignment of personnel between the Internal Revenue Service and State and local governments and institutions of higher education under Title IV of Pub. L. 91–648 is hereby delegated to the following officials:

1. Assistant Commissioner (International), for all Intergovernmental Personnel Act (IPA) assignment agreements except those in 2. and 3. below.

2. District Directors, for Tax Practitioner Institute IPA assignment agreements.

3. Assistant to the Commissioner (Equal Opportunity), for IPA assignments to Historically Black Colleges and Universities (HBCUs).

The authority delegated to the Assistant Commissioner (International) may be redelegated to the Director, Office of Tax Administration Advisory Services, and may not be further redelegated. The authority delegated to District Directors and Assistant to the Commissioner (Equal Opportunity) may not be redelegated.

Approved:

Michael J. Murphy,

Senior Deputy Commissioner.

Dated: February 17, 1988.

[FR Doc. 88–6128 Filed 3–18–88; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 10, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Reinstatement (Medical).
3. VA Form 29–352.
4. The form is used by veterans to apply for reinstatement of their lapsed Government Life Insurance and/or Total Disability Income Provision. The data collected is used by the Veterans Administration to determine eligible for reinstatement.
5. On occasion.
6. Individuals or households.
7. 700 responses.
8. 1050 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Application for Authority to Close Loans on an Automatic Basis-Nonsupervised Lenders.
3. VA Form 26–8736.
4. This form is submitted by nonsupervised lenders desiring authority to process loans under 38 U.S.C. 1810 on automatic basis. The information collected is essential to VA application of standards required by 38 U.S.C. 1802(d)(3).
5. On occasion.
6. Businesses or other for-profit.
7. 200 responses.
8. 83 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Claims for Repurchase of Loan.
3. VA Form 26–8084.
4. This form is completed and submitted by the holder of a vendee account which has been guaranteed by the VA. The holder may request VA to repurchase a loan pursuant to 38 CFR 36.4600.
5. On occasion.
6. Businesses or other for-profit.
7. 9,696 responses.
8. 4,848 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Request to Lender for Status of Loan Account—LCS.
3. VA Form 26–8778.
4. This form is used by the VA to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System. VA must obtain this information in order to assure that necessary action is taken to cure the default.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 29,167 hours.
9. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Claim Under Loan Guaranty.
3. VA Form 26–1874.
4. This form is submitted by financial institutions to Veterans Administration in order to obtain payment of amounts claimed on foreclosed home loans originated and guaranteed under 38 U.S.C. 1810. Serves as the notification of default required of holder by 38 U.S.C. 1816(a).
5. On occasion.
6. Businesses or other for-profit, Small businesses or organizations.
7. 36,739 responses.
8. 36,739 hours.
9. Not applicable.

[FR Doc. 88–6115 Filed 3–18–88; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April, 7, 1988, at 2:30 p.m.
Thursday, April 21, 1988, at 2:30 p.m.

Thursday, May 5, 1988, at 2:30 p.m.
Thursday, May 19, 1988, at 2:30 p.m.
Thursday, June 2, 1988, at 2:30 p.m.
Thursday, June 16, 1988, at 2:30 p.m.
Thursday, June 30, 1988, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: March 14, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–6116 Filed 3–18–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, March 25, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building proposals and budget regarding the Helena Branch of the Federal Reserve Bank of Minneapolis.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 17, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–6211 Filed 3–17–88; 3:55 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 53, No. 54
Monday, March 21, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413 and 485

[BERC-451-F]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

Correction

In rule document 88-4431 beginning on page 6526 in the issue of Tuesday, March 1, 1988, make the following corrections:

§ 413.178 [Corrected]

1. On page 6549, in the first column, in § 413.178(e)(2), in the fifth line, "intern" should read "interim".

2. On the same page, in the same column, in § 413.178(g), in the third line, "disagree's" should read "disagrees".

§ 485.304 [Corrected]

3. On page 6550, in the second column, in § 485.304(a), in the first line, "By" should read "Be".

§ 485.306 [Corrected]

4. On page 6551, in the first column, in § 485.306(a), in the first line, "HCHA" should read "HCFA".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-86-4220-11; C-2498]

Continuation of Withdrawal; Colorado

Correction

In notice document 88-5218 beginning on page 7810 in the issue of Thursday, March 10, 1988, make the following correction:

On page 7810, in the third column, under "Hahn's Peak Reservoir Recreation Area Addition", in the first line, "82 W." should read "86 W.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-08-4212-12; A 21806, A 23047, A 23069]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise, Graham and Pinal Counties, AZ, and Cancellation of Private Exchange and State Exchange

Correction

In notice document 88-4596 beginning on page 6877 in the issue of Thursday, March 3, 1988, make the following correction:

1. On page 6878, in the first column, in the land description, under T. 6 S., R. 16 E., in Sec. 4, "S½N½S½" should read "S½N½,S½".

2. On the same page, in the same column, in the land description, under T. 16 S., R. 30 E., in Sec. 11, "NE¼N½ SE¼" should read "NE¼,N½SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40, 41, and 42

[108.865]

Visas; Regulations and Documentation Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act

Correction

In rule document 87-25443 beginning on page 42590 in the issue of Thursday, November 5, 1987, make the following corrections:

§ 40.1 [Corrected]

1. On page 42592, in the first column, in § 40.1(d), in the first line, "used" should read "defined".

2. On the same page, in the second column, in § 40.1(f), in the second line, "competent" should read "component".

§ 40.7 [Corrected]

3. On page 42594, in the second column, in § 40.7(a)(14)(i), in the second line, "applies" should read "applicable"; in the fourth line, "applicable" should read "applies".

4. On the same page, in the third column, in § 40.7(a)(15)(ii), in the sixth line, "INS" should read "INA".

5. On page 42595, in the first column, in § 40.7(a)(19)(ii), in the 12th line, insert "a" after "made".

6. On the same page, in the third column, in § 40.7(a)(28)(i), in the 13th line, insert "to" after "bring".

§ 41.31 [Corrected]

7. On page 42603, in the first column, in § 41.31(a), in the second line, "of" should read "for".

§ 41.53 [Corrected]

8. On page 42606, in the first column, in § 41.53(a)(4), in the ninth line, "of" should read "or".

§ 41.105 [Corrected]

9. On page 42609, in the second column, in § 41.105(a)(3), in the eighth line, "11/2" should read "1½".

§ 41.112 [Corrected]

10. On page 42610, in the second column, in § 41.112(c)(2), in the fourth line, "basis" was misspelled.

§ 42.11 [Corrected]

11. On page 42614, in the second column, in § 42.11(a), in the left column of the table, the last entry was incomplete and should read "Accompanying spouse or child of alien classified SF-1".

12. On the same page, in the third column, in § 42.11(a), in the middle column of the same table, the entry opposite "SK-3" should read "101(a)(27)(I)(i) 100 Stat. 3434.".

NOTE: For a Department of State correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

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federal register

**Monday
March 21, 1988**

Part II

Environmental Protection Agency

40 CFR Part 425

Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines; Final Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 425

[FRL 3304-6]

Leather Tanning and Finishing Industry Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes effluent limitations guidelines and standards limiting the discharge of pollutants into navigable waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) by existing and new sources engaged in leather tanning and finishing. EPA is promulgating these amendments in accordance with a settlement agreement with the Tanners' Council of America, Inc. (The Tanners' Council of America, Inc., was redesignated the Leather Industries of America, Inc., in 1985). The agreement settles a dispute between the Council and EPA that was the subject of a petition for judicial review of the final leather tanning and finishing rule promulgated by EPA on November 23, 1982 (47 FR 52848).

This final rule, which was proposed on January 21, 1987 (52 FR 2370), (1) adds a new analytical method for the determination of the presence of sulfide in wastewaters for use in the Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory (Subpart C); (2) clarifies procedural requirements for publicly owned treatment works to follow in determining whether sulfide pretreatment standards are applicable; (3) revises certain of the effluent limitations for "best practicable control technology currently available" (BPT) and new source performance standards (NSPS); (4) changes the pH pretreatment standard for tanneries falling under the provisions of Subpart C; and (5) clarifies the production levels below which the chromium pretreatment standards for existing sources (PSES) do not apply. In addition, EPA clarifies in the preamble to this final rule its statements on median water use ratios, changes in subcategorization, tanneries with mixed subcategory operations, and composite samples of effluent discharges from multiple outfalls.

DATES: In accordance with 40 CFR 23.2 and 40 CFR 23.11, this rule shall be considered issued for the purposes of judicial review at 1:00 p.m. eastern daylight time on April 4, 1988. This rule shall become effective May 4, 1988.

Under section 509(b)(1) of the Clean Water Act as amended by section 505(a)(2) of the Water Quality Act of 1987, judicial review of this rule may be made by filing a petition for judicial review in the United States Court of Appeals not later than 120 days after the rule is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Address questions on the final rule to Rexford R. Gile, Jr., Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Leather Tanning and Finishing Industry Final Rule. The basis for this rule is detailed in the "Supplemental Development Document for Effluent Limitations Guidelines for the Leather Tanning and Finishing Point Source Category." A copy of this technical development document may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487-6000. Technical information may be obtained by writing to Rexford R. Gile, Jr., Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling (202) 382-7146.

The record for the final rule will be available for public review not later than April 4, 1988, at the EPA Public Information Reference Unit, Room M2904 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rexford R. Gile, Jr., (202) 382-7146.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal Authority.
II. Background.
A. Prior Regulations.
B. Challenge to the 1982 Regulation by the Tanners' Council of America, Inc.
C. Settlement Agreement.
III. Amendments to the Leather Tanning and Finishing Point Source Category Regulation.
A. Alternative Sulfide Analytical Method.
1. TCA Concerns and EPA Response.
2. Amendment to § 425.02 General Definitions.
3. Amendment to § 425.03 Sulfide Analytical Methods.
B. Applicability of Sulfide Pretreatment Standard.
1. TCA Concern and EPA Response.
2. Amendment to § 425.04 Applicability of Sulfide Pretreatment Standard.
C. Changes to Effluent Limitations Guidelines and Standards Based on Revised Water Use Ratios, pH Pretreatment Standard, and Changes to the Small Tannery Exemption.
1. Changes to Effluent Limitations Guidelines and Standards.
2. PSES for pH.
3. Small Tannery Exemption.
IV. Clarifications.
A. Changes in Subcategorization.
B. Tanneries with Mixed Subcategory Operations.
C. Multiple Outfalls.
V. Environmental Impact of Amendments.
VI. Economic Impact of Amendments.
VII. Public Participation and Response to Comments.
VIII. Executive Order 12291.
IX. Regulatory Flexibility Analysis.
X. OMB Review.
XI. List of Subjects in 40 CFR Part 425.

I. Legal Authority

These amendments to 40 CFR Part 425 are being promulgated under the authority of sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act [the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Act")]; 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318, and 1361; 86 Stat. 816, *et seq.*, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; and Pub. L. 100-4. These amendments to the regulation are also being promulgated in response to the Settlement Agreement in *Tanners' Council of America, Inc.* v. *U.S. Environmental Protection Agency*, No., 83-1191, (4th Cir.).

II. Background

A. Prior Regulations

EPA promulgated a regulation on April 9, 1974, establishing effluent limitations guidelines and standards for the leather tanning and finishing point source category based on the best practicable control technology currently available ("BPT"), the best available technology economically achievable ("BAT"), new source performance standards ("NSPS") for new direct dischargers, and pretreatment standards for new indirect discharges ("PSNS") (39 FR 12958; 40 CFR Part 425, Subparts A-F). The Tanners' Council of America, Inc., (TCA), challenged this regulation, and the U.S. Court of Appeals for the Fourth Circuit left BAT and PSNS undisturbed, but remanded the BPT and NSPS limitations and standards for several reasons (see *Tanners' Council of America, Inc.* v. *Train*, 540 F.2d 1188 (4th Cir. 1976)).

On March 23, 1977 (42 FR 15696), EPA promulgated pretreatment standards for existing sources ("PSES") for the leather tanning and finishing industry. This regulation established specific pH standards and other pretreatment standards for existing indirect dischargers to avoid interference with POTWs. This rule was not challenged.

EPA proposed a new regulation (44 FR 38746, July 2, 1979) establishing effluent limitations guidelines and standards for the leather tanning and finishing point source category based on revised BPT and NSPS to replace the remanded BPT and NSPS limitations and standards, new best conventional pollutant control technology ("BCT") limitations, and revised BAT, PSES, and PSNS limitations and standards. EPA accepted comments on the proposed regulation until April 10, 1980. The leather tanning and finishing industry commented that the data and supporting record material relied upon by EPA in proposing the regulation contained a large number of errors. The Agency responded by completely reviewing the entire data base and all documentation supporting the rulemaking, and by acquiring supplemental data during and after the comment period.

On June 2, 1982 (47 FR 23958), EPA made available for public review and comment supplementary technical and economic data and related documentation received after proposal of the regulation. The Agency also summarized the preliminary findings on how the supplementary record materials might influence the final rulemaking.

The final regulation for the leather tanning and finishing industry point source category was promulgated on November 23, 1982 (47 FR 52848) and established effluent limitations guidelines and standards to control specific toxic, nonconventional, and conventional pollutants for nine subcategories in the Leather Tanning and Finishing Category.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 1)
Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 2)
Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory (Subcategory 3)
Subpart D—Retan-Wet, Finish-Sides Subcategory (Subcategory 4)
Subpart E—No Beamhouse Subcategory (Subcategory 5)
Subpart F—Through-the-Blue Subcategory (Subcategory 6)
Subpart G—Shearling Subcategory (Subcategory 7)
Subpart H—Pigskin Subcategory (Subcategory 8)
Subpart I—Retan-Wet Finish-Splits Subcategory (Subcategory 9)

BPT effluent limitations guidelines were established for all subcategories based on high solids extended aeration activated sludge biological treatment. They included production-based effluent limitations (kg/kkg or lb/1,000 lb or raw material) for one toxic pollutant (total chromium), three conventional pollutants (BOD5, TSS, oil and grease), and established an acceptable pH range. BPT production-based effluent limitations were derived using subcategory median water use ratios, attainable effluent concentrations, and variability factors.

BAT and BCT effluent limitations guidelines were also established for all nine subcategories in the leather tanning and finishing point source category. The technology basis and production-based effluent limitations guidelines for BAT and BCT were the same as those for the promulgated BPT effluent limitations guidelines. The BCT effluent limitations guidelines control three conventional pollutants (BOD5, TSS, oil and grease), and established an acceptable pH range. The BAT effluent limitations guidelines controlled one toxic pollutant (total chromium).

The production-based NSPS for all nine subcategories limited one toxic pollutant (total chromium) and three conventional pollutants (BOD5, TSS, oil and grease), and established an acceptable pH range. NSPS were based on the same technology, effluent concentrations, and variability factors as BAT, but the production-based limitations for NSPS were different from those for BAT because the NSPS limitations were based on reduced water use ratios.

The final regulation established concentration-based categorical pretreatment standards for existing and new source indirect dischargers for one toxic pollutant (total chromium) for all nine subcategories except for existing small indirect dischargers in subcategories in Subparts A, C, and I.

Concentration-based categorical pretreatment standards were also established for the control of sulfides in subcategories in Subparts A, B, C, F, and H where unhairing operations are included. However, the regulation included a provision which allows a POTW to certify to the Regional Water Management Division Director of EPA in the appropriate Regional Office, in accordance with § 425.04, that the discharge of sulfide from a particular facility does not interfere with its treatment works. If this certification is made, and EPA determines that the submission is adequate, EPA will publish a notice in the **Federal Register** identifying the facility where the sulfide pretreatment standard would not apply.

The cost of pretreatment technology can be minimized by reducing to the maximum extent feasible the volume of wastewater treated. Therefore, the Agency used reduced water use ratios to calculate the costs of PSES/PSNS technology for indirect dischargers instead of median water use ratios for existing sources.

B. Challenge to the 1982 Regulation by the Tanners' Council of America, Inc.

The Tanners' Council of America, Inc. (TCA), filed a petition for judicial review of several aspects of the final regulation in the U.S. Circuit Court of Appeals for the Fourth Circuit on March 2, 1983 (*Tanners' Council of America, Inc.* v. *U.S. Environmental Protection Agency*, No. 83-1191), and followed this by filing with EPA an administrative Petition for Reconsideration on May 9, 1983. The Agency responded by completely reviewing the entire data base and all documentation supporting the rulemaking, and by acquiring supplemental data. After extensive discussions, TCA and EPA resolved the issues raised by the Council through a settlement agreement.

C. Settlement Agreement

On December 11, 1984, TCA and EPA entered into a comprehensive settlement agreement which resolved all issues raised by TCA in its petitions. EPA agreed to propose regulatory amendments and preamble language to the leather tanning and finishing regulation and to solicit comments on the regulatory and preamble language. TCA agreed to move to dismiss its petition for judicial review and voluntarily withdraw the "Petition for Reconsideration" if each provision of the final leather tanning and finishing industry regulation and each preamble statement is substantially the same as that called for by the settlement agreement.

Copies of the settlement agreement were sent to EPA Regional Offices and State NPDES permit-issuing authorities on December 21, 1984. In accordance with the settlement agreement, EPA proposed regulatory amendments and preamble language to the leather tanning and finishing regulation on January 21, 1987 (52 FR 2370) and solicited comments regarding these proposed amendments. The comment period on the proposal closed on February 20, 1987.

As part of the settlement agreement, TCA and EPA jointly requested the U.S. Court of Appeals for the Fourth Circuit in *Tanners' Council of America, Inc.* v. *EPA* to stay the effectiveness of the sections of 40 CFR Part 425 which EPA had agreed to propose to amend, pending final action by EPA on each proposed amendment. On February 22, 1985, the Court entered an Order staying the following sections of the regulation promulgated on November 23, 1982: § 425.02(a); § 425.03; § 425.11, except for the pH limitations; § 425.15(b); § 425.31, except for the pH limitation; the pH limitation in § 425.35(a); § 425.35(b); § 425.41, except for the pH limitation; § 425.44, except for the pH limitation; § 425.51, except for the pH limitation; § 425.61, except for the pH limitation; § 425.64, except for the pH limitation; § 425.71, except for the pH limitation; § 425.91, except for the pH limitation; and § 425.95(b). EPA is amending these sections in this final rule in accord with the settlement agreement.

All effluent limitations guidelines and standards contained in the final leather tanning and finishing industry regulation promulgated on November 23, 1982, which are not specifically listed in these amendments to the regulation, were not stayed by the Order entered by the Court. In addition, EPA is not deleting or modifying any of the effluent limitations guidelines and standards not affected by the settlement agreement or Order.

III. Amendments to the Leather Tanning and Finishing Point Source Category Regulation

In the final rule, EPA is amending Part 425 in accordance with the settlement agreement to (1) allow use of a new alternative sulfide analytical method, (2) clarify the procedures to be followed by a POTW when changed circumstances justify application of sulfide pretreatment standards where previously waived, or a certification by a POTW that the discharge of sulfide will not interfere with the operation of the POTW, (3) revise BPT effluent limitations guidelines and NSPS standards based on corrected and more complete information, and (4) allow the small tannery exemption without restriction as to the number of working days per week. These amendments are discussed in this section.

A. Alternative Sulfide Analytical Method

1. *TCA Concerns and EPA Response.* EPA had promulgated a categorical sulfide pretreatment standard and required all facilities to use the Society of Leather Trades' Chemists' "Method for Sulfide Analysis SLM 4/2" in which the sulfide solution is titrated with standard potassium ferricyanide solution in the presence of a ferrous dimethylglyoxime ammonia complex (§ 425.03). TCA and some industry members conducted testing to determine the validity of this analytical method. These test results revealed the following problems with the SLM 4/2 method.

a. The method described in the previously promulgated § 425.03(c)(1) provides for the removal of the suspended matter by rapid filtration through *either* glass wool *or* coarse filter paper. The lack of standardization of glass wool could potentially cause inconsistent analytical results.

b. The titrant equivalence statement as set forth in the previously promulgated § 425.03(c)(4) will lead to confusion in the reporting of analytical results because it expresses the results in terms of sodium sulfide instead of sulfide upon which the pretreatment standards are based.

c. Colored tannery wastewater, especially vegetable tanners' wastewater, makes it difficult to detect the destruction of the pink color at the end point. Additionally, certain simple phenolic substances (pyrogallol and pyrocatechol), which are model substances for the nontannins of vegetable tanning materials, consume the ferricyanide titrant under the prescribed SLM 4/2 conditions. These interfering substances may yield false results.

In response to the first problem, EPA is amending the promulgated approved method to delete glass wool as an alternative rapid filtration medium. EPA is also amending the previously promulgated method to specify use of a coarse filter paper. In response to the second problem, EPA is amending the method to express the results of the titrant equivalence statement in terms of mg. per liter of sulfide which is the basis for the pretreatment standards.

In response to the third problem, EPA and TCA conducted a cooperative sampling and analytical methods development program for vegetable tanning wastewaters using both the promulgated SLM 4/2 method and a method suggested by TCA, the modified Monier-Williams method. Raw and pretreated wastewaters were collected at seven tanneries, including two vegetable tanning tanneries, for analysis by EPA and TCA. The analytical data showed that the modified Monier-Williams method was able to measure sulfide in vegetable tannery wastewater when wastewater color prevented detection of the end point color change using the SLM 4/2 procedure. The data also showed that the method produced considerably better spike recoveries than the SLM 4/2 procedure. These data and EPA's summary of the results are part of the record of this rulemaking. The modified Monier-Williams method, thus, is an acceptable procedure for pretreatment standard compliance monitoring in the leather tanning and finishing industry. EPA is amending Part 425 by including the modified Monier-Williams method as a sulfide analytical procedure for facilities with vegetable tanning wastewaters and as an alternative sulfide analytical procedure for other tanneries.

2. *Amendment to § 425.02 General Definitions.* EPA is making two minor changes to the general definitions sections to address analytical methods issues. EPA is defining "sulfide" in § 425.02(a) as total sulfide as measured by either the potassium ferricyanide titration procedure ("Method for Sulfide Analysis SLM 4/2") in Appendix A to Part 425 or the modified Monier-Williams procedure described in Appendix B to Part 425. This is a technical change required to allow use of the new procedures. These two analytical procedures are moved to appendixes to the final rule for the convenience of the user.

Under the settlement agreement, EPA agreed to propose that the Minimum Reportable Concentration (MRC) should be determined periodically in each of the two sulfide analytical procedures by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268. The term MRC is not explicitly defined in the settlement agreement or in the 1982 "Methods" document cited. Rather, the 1982 "Methods" document describes the Method Detection Limit (MDL) procedure which is also described in Appendix B to 40 CFR Part 136. EPA interprets MRC to be synonymous with the MDL procedure described in Appendix A to the 1982 "Methods" document and Appendix B to 40 CFR Part 136. Therefore, the MDL procedure is used as the MRC method. For the convenience of the user, the definition and procedure for the determination of the Method Detection Limit is contained in Appendix C to Part 425.

3. *Amendment to § 425.03 Sulfide Analytical Methods.* The previously promulgated § 425.03 describes the potassium ferricyanide titration (SLM 4/2) method in detail. As explained above, this method and the modified Monier-

Williams method are described in new appendixes to Part 425. Section 425.03 is amended to provide that the potassium ferricyanide method is approved for analysis of sulfide except for those tanneries covered by Subpart C (Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory). For these tanneries, the modified Monier-Williams method is the approved method; tanneries in other subcategories may also use the modified Monier-Williams method to detect sulfide.

B. Applicability of Sulfide Pretreatment Standard

1. *TCA Concern and EPA Response.* The previously promulgated § 425.04 provided that, until October 13, 1983, POTWs may take steps to certify that sulfide pretreatment standards do not apply. (40 CFR 425.04(c)). The previous rule did not provide a procedure by which POTWs could revoke a previously issued certification of inapplicability. TCA criticized the provision of § 425.04 under which, after October 13, 1983, a POTW is precluded from certifying that the sulfide pretreatment standards should not apply to a particular facility. TCA noted that there may be changed circumstances after that deadline under which it may still be appropriate for a POTW to allow such a certification. EPA agrees that there may be changed circumstances after the October 13, 1983 deadline which would justify both the issuance and revocation of a certification as to the applicability or inapplicability of the sulfide pretreatment standards, and is amending § 425.04 to permit a POTW to initiate proceedings, revoke, or issue certification on the inapplicability of the sulfide pretreatment standards subsequent to the October 13, 1983 deadline.

2. *Amendment to § 425.04 Applicability of Sulfide Pretreatment Standard.* EPA is amending § 425.04 by adding paragraphs (d)(1), (d)(2), and (e) to § 425.04. The amended §§ 425.04(d) (1) and (2) provide a procedure for POTWs to revoke a previously issued certification of inapplicability of the sulfide pretreatment standard. If, as a result of this revocation, the sulfide pretreatment standards are to be applicable to an indirect discharger, the discharger will be required to comply with these standards no later than 18 months from the publication date of the **Federal Register** notice announcing the revocation.

EPA is amending § 425.04(e) which authorizes POTWs to initiate proceedings to certify that sulfide pretreatment standards should not apply to specified facilities after October 13, 1983. Under this subsection, a POTW may determine that circumstances have arisen since that date that justify a determination that the sulfide pretreatment requirements should not apply. The POTW may propose to certify that the pretreatment standard does not apply and may initiate proceedings to this end. This certification would be governed by the existing certification procedures and time intervals in §§ 425.04 (b) and (c).

C. Changes to Effluent Limitations Guidelines and Standards Based on Revised Water Use Ratios, pH Pretreatment Standard, and Changes to the Small Tannery Exemption

1. *Changes to Effluent Limitations Guidelines and Standards.* TCA criticized EPA's median flow ratios for three subcategories (Subparts D, F, and I) alleging that the flow ratios developed by EPA were erroneous based on new water use data submitted by TCA. EPA had developed median flow ratios for each subcategory to derive production-based effluent limitations for direct discharging facilities.

After reviewing the revised data base for the subcategory median and new source water use ratios, EPA determined that changes should be made in the median water use ratios for a number of subcategories. Table 1 reflects the revisions in median water use ratios for existing plants as well as revisions in the number of plants in the subcategory data bases and the number of plants achieving median water use ratios. Table 2 reflects the revisions in the new source water use ratios and in the number of plants achieving these water use ratios.

TABLE 1

Subcategory	Median water use ratio (gals/lb)	Plants in data base: Number of plants in subcategory data base	Plants in data base: Number of plants in data base achieving water use ratios
1	6.6	34	17
2	5.6	4	3
3	4.8	11	6
4	6.9	7	4
5	5.7	10	5
6	2.3	3	2
7	10.7	2	1
8	5.0	2	1
9	4.1	6	3

TABLE 2

Subcategory	New source water use ratio (gals/lb)	Number of Plants in data base achieving water use ratio
1	4.3	6
2	4.9	1
3	4.2	4
4	4.6	2
5	3.8	3
6	2.1	1
7	9.4	1
8	4.1	1
9	2.5	2

As a result of the review of EPA's data base, supplemented by information supplied by TCA, and corrections to identified errors in the interpretation of existing water use data, the subcategory median and new source water use ratios used to establish BPT and NSPS limitations and standards were recalculated. These amendments will result in BPT effluent limitations guidelines for Subparts A, D, F, G, and I that are less stringent than those in the final regulation (47 FR 52848, November 23, 1982), while the BPT limitations for Subparts C and E will be more stringent than those in the final regulation. NSPS for subparts D and F will be less stringent than those in the final regulation. The Supplemental Development Document for Effluent Limitations Guidelines and Standards for the Leather Tanning and Finishing Industry Point Source Category" documents the basis for the changes to effluent limitations guidelines and standards based on revised water use ratios.

2. *PSES for pH.* EPA established a pH range of 7.0 to 10.0 for leather tanneries with alkaline wastestreams in the 1982 final regulation. EPA established 10 as the uppermost level of the pH range because of the solubility of chromium at pH levels in excess of 10. TCA argued that EPA should establish a waiver procedure to allow relief for tanneries with a pH in excess of 10 in certain circumstances.

After careful consideration, EPA concluded that a waiver from the higher standard would be unduly complicated. In response to TCA's request, EPA did agree to delete the higher (alkaline) pH standard for vegetable tanneries in Subpart C only (§ 425.35(a)). EPA is less concerned about the chromium solubility for vegetable tanneries since these tanneries typically discharge low levels of chromium. The higher pH pretreatment standards for the other subcategories will remain as promulgated because they will reduce the probability of chromium solubility. The low (acid) pH standard has been retained to ensure that the formation of hydrogen sulfide gas is minimized.

3. *Small Tannery Exemption.* The pretreatment standards for the leather tanning and finishing industry provide that chromium standards are now inapplicable to small plants in Subparts A, C, or I which discharge to publicly owned treatment works if these plants produce less than a specified number of hides/splits per day and a specified weight of hides/splits per year in their respective subcategories. In a correction notice dated June 30, 1983, the Agency specified the annual weight basis as well as the number of working days per year underlying the specified hide and split limits (48 FR 30115). Subsequent to discussing this matter with TCA, the Agency has reconsidered this issue. The Agency is deleting all references to the annual weight basis and the number of working days per year underlying the specified hide and split limits. Accordingly, tanneries with a seven-day workweek could qualify for the exemption.

Therefore, EPA is amending Subpart A (§ 425.15(b)), Subpart C (§ 425.35(b)), and Subpart I (§ 425.95(b)) by deleting references to the annual weight basis and the number of working days per year that were specified in the correction notice (48 FR 30115, June 30, 1983) to the final regulation for the small tannery exemption from pretreatment standards for chromium. The Agency has not, however, made any changes to the underlying exemption based on numbers of hides or splits per day.

IV. Clarifications

In addition to the amendments discussed in Section III, EPA is clarifying several issues: Changes in subcategorization, classification of tanneries with mixed subcategory operations, and multiple outfalls. These issues are addressed below.

A. Changes in Subcategorization

Under 40 CFR 403.6(a) of the general pretreatment regulations, an existing industrial user or a POTW may seek written certification from the Approval Authority as to whether the industrial user falls within a particular subcategory of a promulgated categorical pretreatment standard. Existing users must make the request within 60 days after the effective date of a pretreatment standard for a subcategory under which the user may be included or within 60 days after the **Federal Register** notice announcing the availability of the technical document for the subcategory. New sources must request this certification prior to commencing discharge.

Persons have inquired as to the procedures that existing leather tanning facilities should use to seek an Agency determination if the facility decides to change its subcategorization subsequent to the expiration of the 60-day deadline under 40 CFR 403.6(a). In fact, 40 CFR 403.6(a) does not preclude leather tanning and finishing facilities from changing operations which would in turn automatically change their subcategorization status. Facilities that are planning to change their subcategorization status and are unsure which subcategory they will fall into should request written certification from the Approval Authority as to whether the facility falls within a particular subcategory prior to commencing discharges which would fall within that subcategory.

B. Tanneries With Mixed Subcategory Operations

The pretreatment standards for chromium are not applicable to plants with mixed subcategory operations if the greatest part of the plant's production is in either subcategory 1, 3, or 9 and if the total plant production is less then the specified number of hides or splits per day for the particular subcategory. The intent of this exemption is to exclude small plants from the chromium pretreatment standards, not to exclude processing operations at medium or large plants.

C. Multiple Outfalls

Most indirect discharging plants combine their process wastewaters and discharge them all through one outfall. The Agency has costed this approach by including costs for internal plant piping for wastewater collection as well as contingency costs to account for any unforeseen site specific costs.

If, however, an indirect discharging plant does not choose to combine its process wastewaters for treatment and to discharge them through one outfall, a composite sampling of the multiple outfalls could be acceptable. A single composite sample for multiple outfalls must be comprised of representative process wastewaters from each outfall. A composite sample must be combined in proportions determined by the ratio of process wastewater flow in each outfall to the total flow of process wastewaters discharged through all outfalls. If nonprocess wastewater is combined with process wastewater or if a plant has operations in more than one subcategory, the plant would have to use the "combined wastestream formula" in 40 CFR 403.6(e) to make this calculation. Flow measurements for each outfall must be representative of the plant's operation. An analysis of the total sample would then be compared to the applicable categorical standard to determine compliance.

V. Environmental Impact of Amendments

EPA estimates that the industry-wide direct BPT discharge of conventional and toxic pollutants under the final leather tanning and finishing regulation as amended by these amendments will increase less than four percent by weight as reflected in Table 3.

TABLE 3.—COMPARISON OF INDUSTRY-WIDE DIRECT BPT DISCHARGES OF CONVENTIONAL AND TOXIC POLLUTANTS UNDER FINAL AND AMENDED REGULATIONS FOR LEATHER TANNING AND FINISHING

Pollutant	Discharge (lbs/yr)			Percent increase
	Final [1] regulation	Amended regulation	Increase	
BOD_5	913,000	949,000	36,000	3.9
TSS	1,330,000	1,380,000	50,000	3.8
Oil & grease	381,000	392,000	11,000	2.9
Total chromium	19,300	19,900	600	3.1

[1] Final regulation, 47 FR 52848, November 23, 1982.

VI. Economic Impact of Amendments

These amendments will not alter the recommended technologies for complying with the leather tanning and finishing regulation. The Agency considered the economic impact of the regulation when the regulation was previously promulgated (see 47 FR 52848). These amendments will not alter the determinations with respect to the economic impact to leather tanning and finishing facilities.

VII. Public Participation and Response to Comments

This regulation was proposed on January 21, 1987 (52 FR 2370). The comment period ended on February 20, 1987. Only one commenter, the Leather Industries of America, Inc. ("LIA"), formerly Tanners' Council of America, Inc., the principal trade association of the United States leather industry, submitted comments pointing out a few typographical errors in the proposed regulation to modify the effluent limitations guidelines and pretreatment standards for the leather tanning and finishing point source category. EPA has, in today's final rule, corrected these minor typographical errors. In their comments, LIA stated that, subject to these minor comments, the proposed rulemaking, if finally adopted, would substantially comply with the requirements of the settlement agreement. Moreover, in general, LIA voiced full support for the Agency's amended regulatory and preamble language as set forth in the proposal.

VIII. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses on major regulations. Major rules are defined as those which result in an annual cost of $100 million or more, or meet other economic impact criteria, such as cause major increases in costs and/or prices, or significant adverse effects on the ability of domestic producers to compete with foreign enterprises, or on competition, investment, productivity, or innovations. The 1982 final regulation for the leather tanning and finishing industry was not a major rule according to these definitions, and, therefore, did not require a formal regulatory impact analysis. This rulemaking also satisfies the requirements of the Executive Order for a non-major rule.

IX. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. In the preamble to the 1982 final rule, EPA concluded that significant impacts on small entities had been eliminated by exempting small tanners from chromium PSES. That conclusion is equally applicable to these amendments. The Agency is not, therefore, preparing a formal analysis for these amendments.

X. OMB Review

This final rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room 2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 425

Leather, Leather Tanning and Finishing, Water Pollution Control, Wastewater Treatment and Disposal.

Dated: March 2, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, EPA is amending Part 425, Subchapter N, Chapter I, of Title 40, Code of Federal Regulations, as follows:

PART 425—[AMENDED]

1. The authority citation for Part 425 is revised to read as follows:

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

General Provisions

2. Section 425.02 is amended by revising paragraph (a) to read as follows:

§ 452.02 General definitions.

* * * * *

(a) "Sulfide" shall mean total sulfide as measured by the potassium ferricyanide titration method described in Appendix A or the modified Monier-Williams method described in Appendix B.

* * * * *

3. Section 425.03 is amended by revising it to read as follows:

§ 425.03 Sulfide analytical methods and applicability.

(a) The potassium ferricyanide titration method described in Appendix A to Part 425 shall be used whenever practicable for the determination of sulfide in wastewaters discharged by plants operating in all subcategories except the hair save or pulp, non-chrome tan, retan-wet finish subcategory (Subpart C, *see* § 425.30). In all other cases, the modified Monier-Williams method as described in Appendix B to Part 425 shall be used as an alternative to the potassium ferricyanide titration method for the determination of sulfide in wastewaters discharged by plants operating in all subcategories except Subpart C.

(b) The modified Monier-Williams method as described in Appendix B to Part 425 shall be used for the determination of sulfide in wastewaters discharged by plants operating in the hair save or pulp, non-chrome tan, retan-wet finish subcategory (Subpart C, *see* § 425.30).

4. Section 425.04 is amended by adding paragraphs (d) and (e) to read as follows:

§ 425.04 Applicability of sulfide pretreatment standards.

* * * * *

(d) (1) If, after EPA and the POTW have determined in accordance with this section that the sulfide pretreatment standards of this Part are not applicable to specified facilities, a POTW then determines that there have been changed circumstances (including but not limited to changes in the factors specified in paragraph (b) of this section) which justify application of the sulfide pretreatment standards, the POTW shall revoke the certification submitted under paragraph (c) of this section. The POTW and EPA shall then adhere to the general procedures and time intervals contained in paragraph (c) of this section in order to determine whether the sulfide pretreatment standards contained in this Part are applicable.

(2) If pursuant to paragraph (d)(1) of this section, the sulfide pretreatment standards of this Part are applicable to a specified facility, the indirect discharger shall comply with the sulfide pretreatment standards no later than 18 months from the date of publication of the **Federal Register** notice identifying the facility.

(e) At any time after October 13, 1983, if a POTW determines that there have been changed circumstances (including but not limited to changes in the factors specified in paragraph (b) of this section), it may initiate proceedings contained in paragraph (c) of this section to determine that the sulfide pretreatment standards of this Part shall not be applicable. The POTW and EPA shall follow the procedures and time intervals contained in paragraph (c) of this section to make this determination. A final determination that the sulfide pretreatment standards are not applicable must be made prior to the discharge of sulfide not in accordance with the standards set forth in this Part.

4a. Section 425.05 is revised to read as follows:

§ 425.05 Compliance dates.

The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSES) is the date the new source commences discharge. The compliance date for BPT effluent limitations and guidelines and pretreatment standards for existing sources to no later than March 31, 1989.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

5. Section 425.11 is amended by revising the table of BPT limitations to read as follows:

§ 425.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds of raw material	
BOD5	9.3	4.2
TSS	13.4	6.1
Oil & Grease	3.9	1.7
Total Chromium	0.24	0.09
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0

6. Section 425.15 is amended by revising paragraph (b) to read as follows:

§ 425.15 Pretreatment standards for existing sources (PSES).

* * * * *

(b) Any existing source subject to this subpart which processes less than 275 hides/day shall comply with § 425.15(a), except that the total chromium limitations contained in § 425.15(a) do not apply.

Subpart C—Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish Subcategory

7. Section 425.31 is amended by revising the table of BPT limitations to read as follows:

§ 425.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	6.7	3.0
TSS	9.7	4.4
Oil & Grease	2.8	1.3
Total Chromium	0.17	0.06
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0

8. Section 425.35 is amended by revising the table of PSES standards in paragraph (a) and revising pagaraph (b) to read as follows:

§ 425.35 Pretreatment standards for existing sources (PSES).

(a) * * *

Pollutant or pollutant property	PSES limitations	
	Maximum for any 1 day	Maximum for monthly average
	Milligrams per liter (mg/l)	
Sulfide	24	—
Total Chromium	12	8
pH	([1])	([1])

[1] Not less than 7.0.

(b) Any existing source subject to this subpart which processes less than 350 hides/day shall comply with § 425.35(a), except that the Total Chromium limitations contained in § 425.35(a) do not apply.

Subpart D—Retan-Wet Finish-Sides Subcategory

9. Section 425.41 is amended by revising the section heading and the table of BPT limitations to read as follows:

§ 425.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	8.9	4.0
TSS	12.8	5.8
Oil & Grease	3.7	1.7
Total Chromium	0.23	0.08
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

10. Section 425.44 is amended by revising the table of NSPS to read as follows:

§ 425.44 New source performance standards (NSPS).

* * * * *

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	6.5	2.9
TSS	9.3	4.3
Oil & Grease	2.7	1.2
Total Chromium	0.17	0.08
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

Subpart E—No Beamhouse Subcategory

11. Section 425.51 is amended by revising the table of BPT limitations to read as follows:

§ 425.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	8.9	3.6
TSS	11.8	5.3
Oil & Grease	3.4	1.5
Total Chromium	0.21	0.08
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

Subpart F—Through-the-Blue Subcategory

12. Section 425.61 is amended by revising the table of BPT limitations to read as follows:

§ 425.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	3.2	1.5
TSS	4.7	2.1
Oil & Grease	1.4	0.61
Total Chromium	0.08	0.03
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

13. Section 425.64 is amended by revising the table of NSPS to read as follows:

§ 425.64 New source performance standards (NSPS).

* * * * *

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	3.0	1.3
TSS	4.3	1.9
Oil & Grease	1.2	0.55
Total Chromium	0.08	0.03
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

Subpart G—Shearling Subcategory

14. Section 425.71 is amended by revising the table of BPT limitations to read as follows:

§ 425.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	15.0	6.8
TSS	21.7	9.9
Oil & Grease	6.3	2.8
Total Chromium	0.39	0.14
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

Subpart I—Retan-Wet Finish-Splits Subcategory

15. Section 425.91 is amended by revising the table of BPT limitations to read as follows:

§ 425.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Maximum for monthly average
	kg/kkg (or pounds per 1,000 pounds) of raw material	
BOD5	5.8	2.6
TSS	8.3	3.8
Oil & Grease	2.4	1.1
Total Chromium	0.15	0.05
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

16. Section 425.95 is amended by revising paragraph (b) to read as follows:

§ 425.95 Pretreatment standards for existing sources (PSES).

* * * * *

(b) Any existing source subject to this subpart which processes less than 3,600 splits/day shall comply with § 425.95(a), except that the total chromium limitations contained in § 425.95(a) do not apply.

17. Part 425 is amended by adding Appendix A to read as follows:

Appendix A to Part 425—Potassium Ferricyanide Titration Method

Source

The potassium ferricyanide titration method is based on method SLM 4/2 described in "Official Method of Analysis," Society of Leather Trades' Chemists, Fourth Revised Edition, Redbourn, Herts., England, 1965.

Outline of Method

The buffered sulfide solution is titrated with standard potassium ferricyanide solution in the presence of a ferrous dimethylglyoxime ammonia complex. The sulfide is oxidized to sulfur. Sulfite interferes and must be precipitated with barium chloride. Thiosulfate is not titrated under the conditions of the determination (Charlot, "Ann. chim. anal.", 1945, 27, 153; Booth; "J. Soc. Leather Trades' Chemists," 1956, 40, 238).

Apparatus

Burrette, 10 ml.

Reagents

1. Preparation of 0.02N potassium ferricyanide: Weigh to the nearest tenth of a gram 6.6 g. of analytical reagent grade potassium ferricyanide and dissolve in 1 liter distilled water. Store in an amber bottle in the dark. Prepare fresh each week.

2. Standardization of ferricyanide solution: Transfer 50 ml. of solution to a 250 ml. Erlenmeyer flask. Add several crystals of potassium iodide (about 1 g.), mix gently to dissolve, add 1 ml. of 6N hydrochloric acid, stopper the flask, and swirl gently. Let stand for two minutes, add 10 ml. of a 30 percent zinc sulfate solution, and titrate the mixture containing the gelatinous precipitate with standardized sodium thiosulfate or phenylarsine oxide titrant in the range of 0.025–0.050N Add 1 ml. of starch indicator solution after the color has faded to a pale yellow, and continue the titration to the disappearance of the blue color. Calculate the normality of the ferricyanide solution using the equation:

$$\text{Normality of Potassium Ferricyanide } [K_3Fe(CN)_6] = \frac{(\text{ml of thiosulfate added})\ (\text{normality of thiosulfate})}{\text{Ml of } K_3Fe(CN)_6}$$

3. Preparation of 6M ammonium chloride buffer, pH 9.3: Dissolve 200 g. ammonium chloride in approximately 500 ml. distilled water, add 200 ml. 14M reagent grade ammonium hydroxide and make up to 1 liter with distilled water. The buffer should be prepared in a hood. Store in a tightly stoppered container.

4. Preparation of 0.05M barium chloride solution: Dissolve 12–13 g. barium chloride dihydrate in 1 liter of distilled water.

5. Preparation of ferrous dimethylglyoxime indicator solution: Mix 10 ml. 0.6 percent ferrous sulfate, 50 ml. 1 percent dimethylglyoxime in ethanol, and 0.5 ml. concentrated sulfuric acid.

6. Preparation of stock sulfide standard, 1000 ppm: Dissolve 2.4 g. reagent grade sodium sulfide in 1 liter of distilled water. Store in a tightly stoppered container. Diluted working standards must be prepared fresh daily and their concentrations determined by EPA test procedure 376.1 (see 40 CFR 136.3, Table IB, parameter 66 (49 FR 43234, October 26, 1984, with correction notice at 50 FR 690, January 4, 1985)) immediately prior to use.

7. Preparation of 10N NaOH: Dissolve 400 g. of analytical reagent grade NaOH in 1 liter distilled water.

Sample Preservation and Storage

Samples are to be field filtered (gravity or pressure) with coarse filter paper (Whatman 4 or equivalent) immediately after collection. Filtered samples must be preserved by adjustment to pH> 12 with 10N NaOH. Sample containers must be covered tightly and stored at 4 °C until analysis. Samples must be analyzed within 48 hours of collection. If these procedures cannot be achieved, it is the laboratory's responsibility to institute quality control procedures that will provide documentation of sample integrity.

Procedure

1. Transfer 100 ml. of sample to be analyzed, or a suitable portion containing not more than 15 mg. sulfide supplemented to 100 ml. with distilled water, to a 250 ml. Erlenmeyer flask.

2. Adjust the sample to pH 8.5–9.5 with 6N HC1.

3. Add 20 ml. of 6M ammonium chloride buffer (pH 9.3), 1 ml. of ferrous dimethylglyoxime indicator, and 25 ml. of 0.05M barium chloride. Mix gently, stopper, and let stand for 10 minutes.

4. After 10 minutes titrate with standardized potassium ferricyanide to disappearance of pink color. The endpoint is reached when there is no reappearance of the pink color after 30 seconds.

Calculation and Reporting of Results.

$$1.\ \text{mg./l. sulfide} = \frac{A \times B \times 16{,}000}{\text{vol. in ml. of sample titrated}}$$

where A = volume in ml. of potassium ferricyanide solution used,
and B = normality of potassium ferricyanide solution.

2. Report results to two significant figures.

Quality Control

1. Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability and the analysis of replicate and spiked samples as a continuing check on performance. The laboratory is required to maintain performance records to define the quality of data that is generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within precision and accuracy limits expected of the method.

2. Before performing any analyses, the analyst must demonstrate the ability to generate acceptable precision and accuracy with this method by performing the following operations.

(a) Perform four replicate analyses of a 20 mg./l. sulfide standard prepared in distilled water (see paragraph 6 under "Reagents" above).

(b)(1) Calculate clean water precision and accuracy in accordance with standard statistical procedures. Clean water acceptance limits are presented in paragraph 2(b)(2) below. These criteria must be met or exceeded before sample analyses can be initiated. A clean water standard must be analyzed with each sample set and the established criteria met for the analysis to be considered under control.

(2) Clean water precision and accuracy acceptance limits: For distilled water samples containing from 5 mg./l. to 50 mg./l. sulfide, the mean concentration from four replicate analyses must be within the range of 50 to 110 percent of the true value.

3. The Method Detection Limits (MDL) should be determined periodically by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA-660/4-82-057, July 1982, EMSL, Cincinnati, OH 45268. For the convenience of the user, these procedures are contained in Appendix C to Part 425.

4. A minimum of one spiked and one duplicate sample must be performed for each analytical event, or five percent spikes and five percent duplicates when the number of samples per event exceeds twenty. Spike levels are to be at the MDL (see paragraph 3 above for MDL samples) and at x where x is the concentration found if in excess of the MDL. Spike recovery must be 40 to 120 percent for the analysis of a particular matrix type to be considered valid. If a sample or matrix type provides performance outside these acceptance limits, the analyses must be repeated using the modified Monier-Williams procedures described in Appendix B to this Part.

5. Report results in mg./liter. When duplicate and spiked samples are analyzed, report all data with the sample results.

18. Part 425 is amended by adding Appendix B to read as follows:

Appendix B to Part 425—Modified Monier-Williams Method

Outline of Method

Hydrogen sulfide is liberated from an acidified sample by distillation and purging with nitrogen gas (N_2). Sulfur dioxide interference is removed by scrubbing the nitrogen gas stream in a pH 7 buffer solution. The sulfide gas is collected by passage through an alkaline hydrogen peroxide scrubbing solution in which it is oxidized to sulfate. Sulfate concentration in the scrubbing solution is determined by either EPA gravimetric test procedure 375.3 or EPA turbidimetric test procedure 375.4 (see 40 CFR 136.3, Table IB, parameter 65 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)).

*Apparatus**

(See Figure 1.) * Catalogue numbers are given only to provide a more complete description of the equipment necessary, and do not constitute a manufacturer or vendor endorsement.

Heating mantel and control (VWR Cat. No. 33752-464)

1000 ml. distilling flask with three 24/40 joints (VWR Cat. No. 29280-215)

Friedricks condenser with two 24/40 joints (VWR Cat. No. 23161-009)

BILLING CODE 6560-50-M

FIGURE 1
EQUIPMENT ASSEMBLY

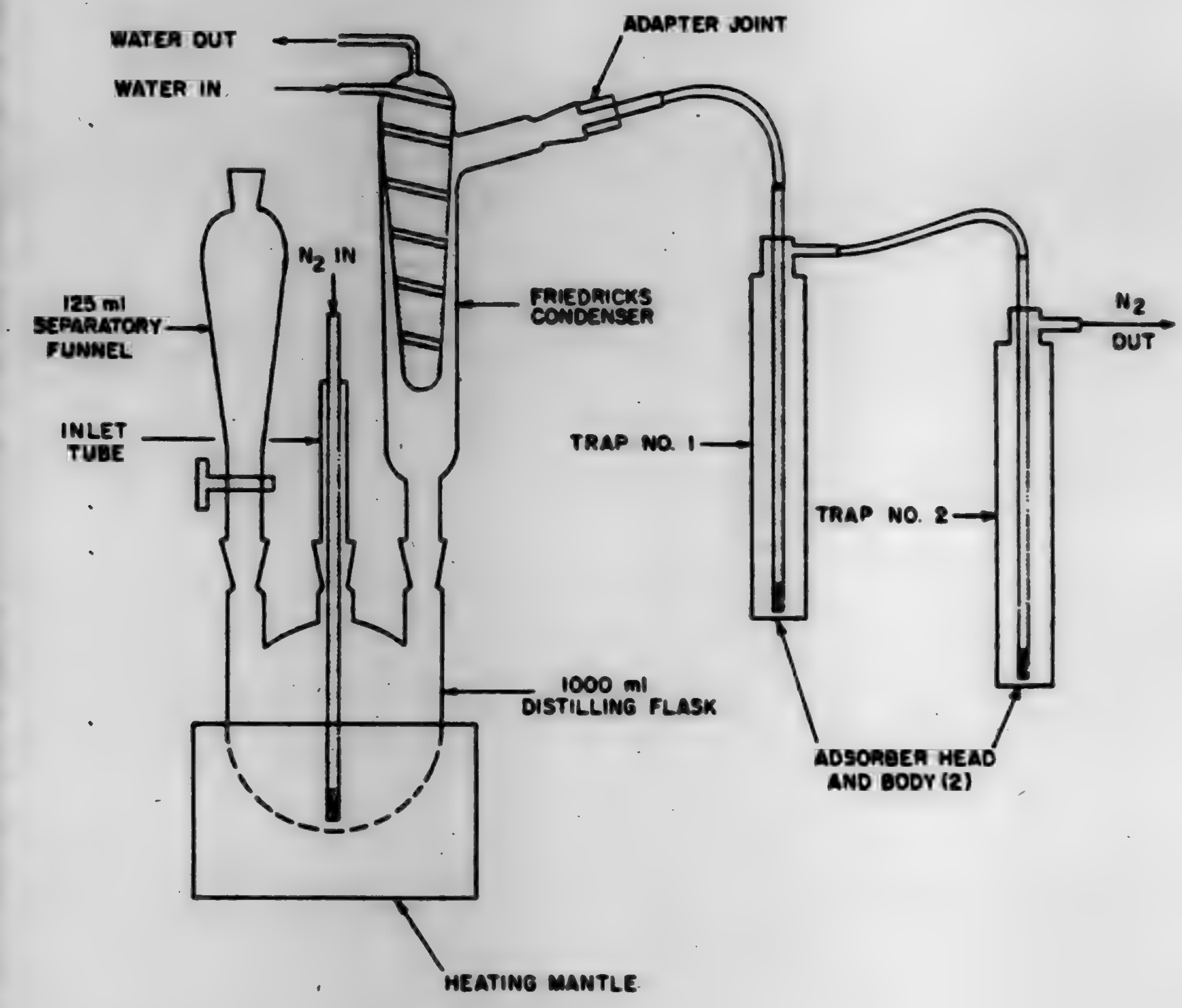

BILLING CODE 6560-50-C

125 ml. separatory funnel with 24/40 joint (VWR Cat. No. 30357–102)
Inlet tube with 24/40 joint (VWR Cat. No. 33057–105)
Adapter joint 24/40 to 19/38 (VWR Cat. No. 62905–26)
Adsorber head (2 required) (Thomas Cat. No. 9849–R29)
Adsorber body (2 required) (Thomas Cat. No. 9849–R32)
Laboratory vacuum pump or water aspirator

Reagents

1. Potassium hydroxide, 6N: Dissolve 340 g. of analytical reagent grade KOH in 1 liter distilled water.

2. Sodium hydroxide, 6N: Dissolve 240 g. of analytical reagent grade NaOH in 1 liter distilled water.

3. Sodium hydroxide, 0.03N: Dilute 5.0 ml. of 6N NaOH to 1 liter with distilled water.

4. Hydrochloric acid, 6N: Dilute 500 ml. of concentrated HCl to 1 liter with distilled water.

5. Potassium phosphate stock buffer, 0.5M: Dissolve 70 g. of monobasic potassium phosphate in approximately 800 ml. distilled water. Adjust pH to 7.0 ± 0.1 with 6N potassium hydroxide and dilute to 1 liter with distilled water. Stock solution in stable for several months at 4 °C.

6. Potassium phosphate buffer, 0.05M: Dilute 1 volume of 0.5M potassium phosphate stock buffer with 9 volumes of distilled water. Solution is stable for one month at 4 °C.

7. Alkaline 3% hydrogen peroxide: Dilute 1 volume of 30 percent hydrogen peroxide with 9 volumes of 0.03N NaOH. Prepare this solution fresh each day of use.

8. Preparation of stock sulfide standard, 1000 ppm.: Dissolve 2.4 g. reagent grade sodium sulfide in 1 liter of distilled water. Store in a tightly stoppered container. Diluted working standards must be prepared fresh daily and their concentrations determined by EPA test procedure 376.1 immediately prior to use (see 40 CFR 136.3, Table IB, parameter 66 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)).

Sample Preservation and Storage

Preserve unfiltered wastewater samples immediately after collection by adjustment to pH>9 with 6N NaOH and addition of 2 ml. of 2N zinc acetate per liter. This amount of zinc acetate is adequate to preserve 64 mg./l. sulfide under ideal conditions. Sample containers must be covered tightly and stored at 4 °C until analysis. Samples must be analyzed within seven days of collection. If these procedures cannot be achieved, it is the laboratory's responsibility to institute quality control procedures that will provide documentation of sample integrity.

Procedure (See Figure 1 for apparatus layout.)

1. Place 50 ml. of 0.05M pH 7.0 potassium phosphate buffer in Trap No. 1.

2. Place 50 ml. of alkaline 3 percent hydrogen peroxide in Trap No. 2.

3. Sample introduction and N_2 prepurge: Gently mix sample to be analyzed to resuspend settled material, taking care not to aerate the sample. Transfer 400 ml. of sample, or a suitable portion containing not more than 20 mg. sulfide diluted to 400 ml. with distilled water, to the distillation flask. Adjust the N_2 flow so that the impingers are frothing vigorously, but not overflowing. Vaccum may be applied at the outlet of Trap No. 2 to assist in smooth purging. The N_2 inlet tube of the distillation flask must be submerged deeply in the sample to ensure efficient agitation. Purge the sample for 30 minutes without applying heat. Test the apparatus for leaks during the prepurge cycle (Snoop or soap water solution).

4. Volatilization of H_2S: Interrupt the N_2 flow (and vacuum) and introduce 100 ml. of 6N HCl to the sample using the separatory funnel. Immediately resume the gas flow (and vacuum). Apply maximum heat with the heating mantle until the sample begins to boil, then reduce heat and maintain gentle boiling and N_2 flow for 30 minutes. Terminate the distillation cycle by turning off the heating mantle and maintaining N_2 flow through the system for 5 to 10 minutes. Then turn off the N_2 flow (and release vacuum) and *cautiously* vent the system by placing 50 to 100 ml. of distilled water in the separatory funnel and opening the stopcock carefully. When the bubbling stops and the system is equalized to atmospheric pressure, remove the separatory funnel. Extreme care must be exercised in terminating the distillation cycle to avoid flash-over, draw-back, or violent steam release.

5. Analysis: Analyze the contents of Trap No. 2 for sulfate according to either EPA gravimetric test procedure 375.3 or EPA turbidimetric test procedure 375.4 (see 40 CFR 136.3, Table IB, parameter 65 (49 FR 43234, October 26, 1984, and correction notice at 50 FR 690, January 4, 1985)). Use the result to calculate mg./l. of sulfide in wastewater sample.

Calculations and Reporting of Results

1. Gravimetric procedure:

$$\text{mg sulfide/l.} = \frac{(\text{mg. }BaSO_4\text{ collected in Trap No. 2})\times(137)}{\text{volume in ml. of waste sample distilled}}$$

2. Turbidimetric procedure:

$$\text{mg. sulfide/l.} = \frac{A\times B\times 333}{C}$$

where A=mg./l. of sulfate in Trap No. 2
B=liquid volume in liters in Trap No. 2
and C=volume in ml. of waste sample distilled

3. Report results to two significant figures.

Quality Control

1. Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability and the analysis of replicate and spiked samples as a continuing check on performance. The laboratory is required to maintain performance records to define the quality of data that is generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within precision and accuracy limits expected of the method.

2. Before performing any analyses, the analyst must demonstrate the ability to generate acceptable accuracy and precision by performing the following operations.

(a) Perform four replicate analyses of a 20 mg./l. sulfide standard prepared in distilled water (see paragraph 8 under "Reagents" above).

(b)(1) Calculate clean water precision and accuracy in accordance with standard statistical procedures. Clean water acceptance limits are presented in paragraph 2(b)(2) below. These criteria must be met or exceeded before sample analyses can be initiated. A clean water standard must be analyzed with each sample set and the established criteria met for the analyses to be considered under control.

(2) Clean water precision and accuracy acceptance limits: For distilled water samples containing from 5 mg./l. to 50 mg./l. sulfide, the mean concentration from four replicate analyses must be within the range of 72 to 114 percent of the true value.

3. The Method Detection Limit (MDL) should be determined periodically by each participating laboratory in accordance with the procedures specified in "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268. For the convenience of the user, these procedures are contained in Appendix C to Part 425.

4. A minimum of one spiked and one duplicate sample must be run for each analytical event, or five percent spikes and five percent duplicates when the number of samples per event exceeds twenty. Spike levels are to be at the MDL (see paragraph 3 above for MDL samples) and at x when x is the concentration found if in excess of the MDL. Spike recovery must be 60 to 120 percent for the analysis of a particular matrix type to be considered valid.

5. Report all results in mg./liter. When duplicate and spiked samples are analyzed, report all data with the sample results.

19. Part 425 is amended by adding Appendix C to read as follows:

Appendix C to Part 425—Definition and Procedure for the Determination of the Method Detection Limit [1]

The method detection limit (MDL) is defined at the minimum concentration of a substance that can be identified, measured and reported with 99 percent confidence that the analyte concentration is greater than zero and determined from analysis of a sample in a given matrix containing analyte.

Scope and Application

This procedure is designed for applicability to a wide variety of sample types ranging

from reagent (blank) water containing analyte to wastewater containing analyte. The MDL for an analytical procedure may vary as a function of sample type. The procedure requires a complete, specific and well defined analytical method. It is essential that all sample processing steps of the analytical method be included in the determination of the method detection limit.

The MDL obtained by this procedure is used to judge the significance of a single measurement of a future sample.

The MDL procedure was designed for applicability to a broad variety of physical and chemical methods. To accomplish this, the procedure was made device- or instrument-independent.

Procedure

1. Make an estimate of the detection limit using one of the following:

(a) The concentration value that corresponds to an instrument signal/noise ratio in the range of 2.5 to 5. If the criteria for qualitative identification of the analyte is based upon pattern recognition techniques, the least abundant signal necessary to achieve identification must be considered in making the estimate.

(b) The concentration value that corresponds to three times the standard deviation of replicate instrumental measurements for the analyte in reagent water.

(c) The concentration value that corresponds to the region of the standard curve where there is a significant change in sensitivity at low analyte concentrations, i.e., a break in the slope of the standard curve.

(d) The concentration value that corresponds to known instrumental limitations.

It is recognized that the experience of the analyst is important to this process. However, the analyst must include the above considerations in the estimate of the detection limit.

2. Prepare reagent (blank) water that is as free of analyte as possible. Reagent or interference free water is defined as a water sample in which analyte and interferent concentrations are not detected at the method detection limit of each analyte of interest. Interferences are defined as systematic errors in the measured analytical signal of an established procedure caused by the presence of interfering species (interferent). The interferent concentration is presupposed to be normally distributed in representative samples of a given matrix.

3. (a) If the MDL is to be determined in reagent water (blank), prepare a laboratory standard (analyte in reagent water) at a concentration which is at least equal to or in the same concentration range as the estimated MDL. (Recommended between 1 and 5 times the estimated MDL.) Proceed to Step 4.

(b) If the MDL is to be determined in another sample matrix, analyze the sample. If the measured level of the analyte is in the recommended range of one to five times the estimated MDL, proceed to Step 4.

If the measured concentration of analyte is less than the estimated MDL, add a known amount of analyte to bring the concentration of analyte to between one and five times the MDL. In the case where an interference is coanalyzed with the analyte:

If the measured level of analyte is greater than five times the estimated MDL, there are two options:

(1) Obtain another sample of lower level of analyte in same matrix if possible.

(2) The sample may be used as is for determining the MDL if the analyte level does not exceed 10 times the MDL of the analyte in reagent water. The variance of the analytical method changes as the analyte concentration increases from the MDL, hence the MDL determined under these circumstances may not truly reflect method variance at lower analyte concentrations.

4. (a) Take a minimum of seven aliquots of the sample to be used to calculate the MDL and process each through the entire anlaytical method. Make all computations according to the defined method with final results in the method reporting units. If blank measurements are required to calculate the measured level of analyte, obtain separate blank measurements for each sample aliquot anlayzed. The average blank measurement is subtracted from the respective sample measurements.

(b) It may be economically and technically desirable to evaluate the estimated MDL before proceeding with 4a. This will: (1) Prevent repeating this entire procedure when the costs of analyses are high and (2) insure that the procedure is being conducted at the correct concentration. It is quite possible that an incorrect MDL can be calculated from data obtained at many times the real MDL even though the background concentration of analyte is less than five times the calculated MDL. To insure that the estimate of the MDL is a good estimate, it is necessary to determine that a lower concentration of analyte will not result in a significantly lower MDL. Take two aliquots of the sample to be used to calculate the MDL and process each through the entire method, including blank measurements as described above in 4a. Evaluate these data:

(1) If these measurements indicate the sample is in the desirable range for determining the MDL, take five additional aliquots and proceed. Use all seven measurements to calculate the MDL.

(2) If these measurements indicate the sample is not in the correct range, reestimate the MDL, obtain new sample as in 3 and repeat either 4a or 4b.

5. Calculate the variance (S^2) and standard deviation (S) of the replicate measurements, as follows:

$$S^2 = \frac{1}{n-1}\left[\sum_{i=1}^{n} x_i^2 - \left(\sum_{i=1}^{n} x_i\right)^2 \Big/ n\right]$$

$$S = (S^2)^{0.5}$$

where: the x_i, i = 1 to n are the analytical results in the final method reporting units obtained from the n sample aliquots and

$$\sum_{i=1}^{n} x_i^2$$

refers to the sum of the X values from i = 1 to n.

6. (a) Compute the MDL as follows:

$MDL = t_{(n-1,\,1-\alpha=.99)}\,(S)$

where:
MDL=the method detection
$t_{(n-1,\,1-a=.99)}$=the students' t value appropriate for a 99 percent confidence level and a standard deviation estimate with n-1 degrees of freedom. See Table.
S=standard deviation of the replicate analyses.

(b) The 95 percent confidence limits for the MDL derived in 6a are computed according to the following equations derived from percentiles of the chi square over degrees of freedom distribution (X2/df) and calculated as follows:

MDL_{LCL}=0.69 MDL
MDL_{UCL}=1.92 MDL where MDL_{LCL} and MDL_{UCL} are the lower and upper 95 percent confidence limits respectively based on seven aliquots.

7. Optional iterative procedure to verify the reasonableness of the estimated MDL and calculated MDL of subsequent MDL determinations.

(a) If this is the initial attempt to compute MDL based on the estimated MDL in Step 1, take the MDL as calculated in Step 6, spike in the matrix at the calculated MDL and proceed through the procedure starting with Step 4.

(b) If the current MDL determination is an iteration of the MDL procedure for which the spiking level does not permit qualitative identification, report the MDL as that concentration between the current spike level and the previous spike level which allows qualitative identification.

(c) If the current MDL determination is an iteration of the MDL procedure and the spiking level allows qualitative identification, use S^2 from the current MDL calculation and S^2 from the previous MDL calculation to compute the F ratio.

$$\text{if}\quad \frac{S_A^2}{S_B^2} < 3.05$$

then compute the pooled standard deviation by the following equation:

$$S_{pooled} = \left[\frac{6S_A^2 + 6S_B^2}{12}\right]^{0.5}$$

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[1] Source: "Methods for Chemical Analysis of Municipal and Industrial Wastewater," EPA–600/4–82–057, July 1982, EMSL, Cincinnati, OH 45268

$$\text{if}\quad \frac{S_A^2}{S_B^2} > 3.05,$$

respike at the last calculated MDL and process the samples through the procedure starting with Step 4.

(d) Use the S_{pooled} as calculated in 7b to compute the final MDL according to the following equation:

$MDL = 2.681\ (S_{\text{pooled}})$
where 2.681 is equal to $t_{(12,\ 1-\alpha=.99)}$

(e) The 95 percent confidence limits for MDL derived in 7c are computed according to the following equations derived from percentiles of the chi squared over degrees of freedom distribution.

$MDL_{LCL} = 0.72\ MDL$
$MDL_{UCL} = 1.65\ MDL$

where LCL and UCL are the lower and upper 95 percent confidence limits respectively based on 14 aliquots.

Reporting

The analytical method used must be specifically identified by number or title and the MDL for each analyte expressed in the appropriate method reporting units. If the analytical method permits options which affect the method detection limit, these conditions must be specified with the MDL value. The sample matrix used to determine the MDL must also be identified with the MDL value. Report the mean analyte level with the MDL. If a laboratory standard or a sample that contained a known amount analyte was used for this determination, report the mean recovery, and indicate if the MDL determination was iterated.

If the level of the analyte in the sample matrix exceeds 10 times the MDL of the analyte in reagent water, do not report a value for the MDL.

Reference

Glaser, J.A., Foerst, D.L., McKee, G.D., Quave, S.A., and Budde, W.L., "Trace Analysis for Wastewaters," Environmental Science and Technology, 15, 1426 (1981).

TABLE OF STUDENTS' t VALUES AT THE 99 PERCENT CONFIDENCE LEVEL

Number of replicates	Degrees of freedom (n−1)	$t_{(n-1,\ 1-\alpha=.99)}$
7	6	3.143
8	7	2.998
9	8	2.896
10	9	2.821
11	10	2.764
16	15	2.602
21	20	2.528
26	25	2.485
31	30	2.457
61	60	2.390
		2.326

[FR Doc. 88-5722 Filed 3-18-88; 8:45 am]

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federal register

Monday
March 21, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27, 29, and 133

Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 4; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27, 29, and 133

[Docket No. 25570; Notice No. 88-7]

Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice deals primarily with airframe and related equipment certification requirements for rotorcraft in both the transport and normal airworthiness categories. One proposal affects a change to an operating rule for external load operators. These proposals, which grew out of a rotorcraft regulatory review program, arise from the rapidly changing rotorcraft industry and the recognition by both government and industry that updated safety standards are needed. These proposals, if adopted, would provide a high level of safety in design requirements while removing certain unnecessary existing burdens and more fully utilizing the unique characteristics and capabilities of rotorcraft.

DATE: Comments must be received on or before September 19, 1988.

ADDRESSES: Comments on the proposals may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25570; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in duplicate to: Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: Docket No. 25570. Comments may be examined in Room 915-G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, Regulations Program Management, ASW-111, Aircraft Certification Division, FAA, Fort Worth, Texas 76193-0111, telephone number (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rule Docket address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in the notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement in made: "Comments to Docket No. 25570." The postcard will be date/time stamped, and mailed to the commenter.

For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the section to which they relate.

Availability of This Notice

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The FAA gave notice of its Rotorcraft Regulatory Review Program (RRRP) and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference in Notice 79-1 (44 FR 3250; January 15, 1979). In Notice 79-1A (44 FR 12685; March 8, 1979), the FAA extended the period for submission of proposals after receiving petitions for extension.

The FAA received 613 proposals in response to Notice 79-1, of which 569 were placed on the conference agenda. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

The FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana, December 10-14, 1979, and that the conference agenda and compilation of proposals were available in Notice 79-1B (44 FR 60747; October 22, 1979). At the conference, which was held as scheduled, each proposal was discussed in one of several committees. A transcript of those discussions has been placed in Docket No. 18689. The conference proposals that relate to this notice were primarily discussed in Committee I.

In response to comments suggesting an agenda schedule revision, the FAA changed the agenda schedule in Notice 79-1C (44 FR 67136; November 23, 1979). On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace Industries Association of America, Inc., requesting a meeting to present industry concerns to the Rotorcraft Regulatory Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest to afford all interested persons the opportunity to listen and comment on industry concerns. Accordingly, Notice 79-1D (45 FR 43202; June 26, 1980) announced a Rotorcraft Regulatory Review meeting which was held August 18-20, 1980, in Washington, DC. A copy of the transcript of that meeting is contained in Docket No. 18689.

Parts 27 and 29 of the Federal Aviation Regulations (FAR) presently have many common standards because of design features and characteristics that are common to both normal and transport category rotorcraft. Several proposals that would affect such common standards identically were discussed concurrently during the Rotorcraft Regulatory Review Conference. The FAA and industry recognize the desirability of commonality for normal and transport rotorcraft airworthiness standards wherever justified. Many of the strength requirement standards and the design and construction standards are influenced very little by the size or complexity of rotorcraft, or they are objective performance standards that are not influenced by any design factors. Consequently, this notice contains many proposals to identically amend or add standards to both Parts 27 and 29. The FAA intends to maintain identical design or performance standards for normal and transport category rotorcraft wherever appropriate or justified.

Prior Regulatory Action

Some of the rules adopted in RRRP Amendment No. 1 (48 FR 4374; January 31, 1983) require transport helicopters with 10 or more passenger seats to comply with certain Category A design (multiengine) standards under Part 29 and allow transport helicopters with less than 10 passenger seats to comply with certain Category B design standards. The proposals contained in this notice were prepared with these added requirements in mind.

The Proposals

This notice deals primarily with proposals for certification rules of Parts 27 and 29 that are applicable to rotorcraft airframes and structures. An external cargo operating rule proposal for Part 133 is also contained in this notice. A number of unadopted conference proposals are listed in the appendix along with the reasons for which the FAA decided not to proceed with these proposals. This notice is part of the ongoing regulatory program of the FAA to upgrade, improve, and clarify certification standards for rotorcraft.

Economic Impact

Introduction

The initial regulatory evaluation represents the preliminary industry cost impact and benefit assessment for the regulatory changes contained in Notice No. 4 of the Rotorcraft Regulatory Review Program. The NPRM proposes to adopt new and amend existing airworthiness standards relating to Parts 27 and 29 rotorcraft certification and it includes an external cargo operating rule proposal for Part 133.

The NPRM and other rulemaking activity noted in the supplemental information are a result of a number of proposals submitted at the Rotorcraft Regulatory Review Conference held in New Orleans, Louisiana, in December 1979 and the Rotorcraft Regulatory Review Meeting of August 18-20, 1980, held in Washington, DC. The evaluation also includes proposals developed within the FAA after the completion of the previously mentioned conferences.

The estimates of economic impacts and benefit assessment for these proposals are based on the best information currently available to the FAA. The estimates of economic impact contain information provided to the FAA by consultant personnel and rotorcraft industry certification experts. This information indicates that all except one of these proposals would only impose very minor costs or no costs at all. The conclusions regarding economic consequences reflect the judgment of FAA. These estimates are subject to change after the public comment period if better information becomes available.

Summary

A large number of the proposed regulatory changes contained in this notice have been determined to have negligible or no technical and economic impact. Many of these proposed changes are either editorial or clarifying in nature. In addition, all but one proposal in corporates current industry or FAA certification practice and procedure. No estimates of specific costs or savings are made for these groups of proposals. The proposals having a negligible impact on certification costs are not discussed in this economic evaluation but are listed in the current regulatory evaluation which is filed in the docket for this notice.

The single proposed standard determined to have an economic impact is related to the added emergency evacuation demonstration requirements for certain Part 29 rotorcraft. The FAA estimates the one-time demonstration costs for an emergency evacuation demonstration to range from $125,000 to $300,000 for each new design. The exact costs would depend on the size of the rotorcraft in question and whether a mock-up of the airframe already exists. Historic accident data pertaining to transport category rotorcraft do not provide a precise basis for evaluating the effectiveness of emergency evacuation demonstrations in mitigating casualty losses in survivable accidents. However, data obtained from assessing the emergency evacuation capability of a rotorcraft resting on its side show that it is likely to increase the probability of safe occupant egress in an otherwise survivable accident. If, for example, this proposal can prevent one fatality (assuming for purposes of analysis a minimum value of a life of $1 million), and the cost of compliance is three times greater than the higher estimate for similar evacuations with small transport airplanes (3×$300,000=$900,000), the benefits of the proposed rule would exceed its costs. Nevertheless, the FAA solicits data, views, etc., relating to the economic impact of this particular proposed standard. Specific comments regarding proposed § 29.803(d) are requested as follows:

1. In your opinion, have there been rotorcraft accidents in which the lack of emergency exits prevented survival?
2. Can the current method of evacuation tests and analyses predict the level of protection afforded rotorcraft passengers when the aircraft is resting on its side?
3. What are the costs of the additional tests and analyses required by the proposed rule?
4. Are there alternative methods of accomplishing the objectives of the proposal which would ensure rapid and safe evacuation of passengers in an emergency when the aircraft is resting on its side?

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments to Parts 27, 29, and 133 proposed in this notice, at promulgation, will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review proposed rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities. The FAA criteria for a small entity define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria only three of the present eleven rotorcraft manufacturers subject to the certification changes to Parts 27 and 29 have fewer than 75 employees. Accordingly, the proposed amendments to Parts 27 and 29 contained in this notice will not impact more than one third (i.e., will not impact a substantial number) of small entities. Similarly, the proposed amendment to Part 133 will not have a significant impact on a substantial number of small entities. The anticipated marginal increase in certification costs for Parts 27 and 29 helicopter manufacturers is not perceived to raise any barrier to entry into this market for small manufacturers.

International Trade Statement

The FAA believes that the certification cost which may be imposed by the evacuation demonstration proposal for certain transport category rotorcraft will not result in a competitive trade disadvantage or advantage for American manufacturers in domestic or foreign markets. This assumption is based on the fact that foreign manufacturers must comply with the certification standards of Parts 27 and 29 as a condition to entry into U.S. markets. Considering the size of the U.S. market, foreign manufacturers are likely to comply with the certification standards of the United States which is the largest segment of their export markets. Further, foreign and U.S. rotorcraft manufacturers are expected to pass any new certification costs on to consumers in their respective domestic and foreign markets.

The FAA has determined that this document involves proposed regulations which are not considered major under the procedures and criteria prescribed in Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified in the section entitled "**FOR FURTHER INFORMATION CONTACT.**" For the reasons stated in the regulatory evaluation, I certify that these regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. In addition, these proposals, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 133

Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Cargo, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 27, 29, and 133 of the Federal Aviation Regulations (FAR) (14 CFR Parts 27, 29, and 133) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4–1. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–2. By amending § 27.307 by revising paragraph (a) to read as follows:

§ 27.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition in the environments to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those for which experience has shown this method to be reliable. In other cases, substantiating load tests must be made.

* * * * *

Explanation: This proposal would require proof of compliance with the strength and deformation requirements of Subpart C (Part 27) to be shown in the environmental conditions to which the structure will be exposed in operation. The effects of the environment on the strength properties of materials should be considered when evaluating the proof of structure. Such effects could seriously deteriorate the level of safety of rotorcraft structure. The strength of some composite materials significantly deteriorates under certain environmental conditions. An identical requirement is proposed for § 29.307.

Advisory Circular (AC) 20–107A, Composite Aircraft Structure, contains policy and guidance for certification. The proposed rule change would provide a specific regulatory basis for determining environmental effects on the strength of composites, but the standard would apply to metallic structures as well as composites. In previous certification programs, the FAA has considered any significant strength deterioration of metallic structures that is due to exposure at elevated temperatures.

Ref: Proposals 43 and 199; Committee I.

4–3. By revising § 27.337 to read as follows:

§ 27.337 Limit maneuvering load factor.

The rotorcraft must be designed for—

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

(1) The probability of being exceeded is shown by analysis and flight tests to be extremely remote; and

(2) The selected values are appropriate to each weight condition between the design maximum and design minimum weights.

Explanation: The proponent of the conference proposal suggested wording changes to clarify § 27.337 (a) and (b). The FAA agreed with the intent of the proposal but offered a counterproposal that was accepted.

The notice proposal would clarify the standard by revising paragraphs (a) and (b) and adding new paragraphs (b) (1) and (2). The substance of proposed paragraph (b)(1) is presently contained in the last part of paragraph (b) of § 27.337. Paragraph (b)(2) is the only change not discussed at the conference. New paragraph (b)(2) would relate the selection of limit load factors to the minimum and maximum design weights and would be identical to present § 29.337(b)(2). This change in the section would reflect present certification practice in the application of both §§ 27.337 and 29.337.

Proposed § 29.337 in this notice agrees with this proposal.

Ref: Proposals 45 and 201; Committee I.

4–4. By adding a new § 27.351 to read as follows:

§ 27.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the maneuvers specified in paragraphs (b) and (c) of this section with—

(1) Unbalanced aerodynamic moments about the center of gravity reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE},—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less,—

(1) Displace the cockpit directional control suddenly to the maximum deflection limited by the control stops or by the pilot force specified in § 27.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

Explanation: Yawing conditions are not presently contained in Part 27 of this chapter. The rotorcraft manufacturers advocate yawing standards. Several

rotorcraft designs have been voluntarily substantiated for yawing conditions. The proposed standard, if adopted, would assure that objective and limited yawing conditions are considered and uniformly applied for structural design of normal category rotorcraft. Yawing or sideslip flight conditions of present day small helicopters create significant aerodynamic forces on the stabilizing surfaces. When tail rotor thrust and vertical stabilizer surface forces are combined, significant loads are imposed on the fuselage. Yawing conditions for transport rotorcraft are presently contained in § 29.351 of Part 29. This notice also contains a proposal to revise § 29.351. Yawing condition standards that relate to design capability should be identical in Parts 27 and 29.

See the explanation for the proposed revision to § 29.351 for further information.

Ref. Proposals 46 and 47; Committee I.

4–5. By revising § 27.391 to read as follows:

§ 27.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 27.395, 27.397, 27.399, 27.401, 27.403, 27.411, 27.413, and 27.427.

Explanation: With adoption of proposed new § 27.427 concerning unsymmetrical loads on the horizontal stabilizer, the general rule for control surfaces would need to include this section. See the explanation for proposed new § 27.427. A previous oversight would be corrected by adding present § 27.399 to the general requirements list.

4–6. By amending § 27.395 by revising paragraph (b) to read as follows:

§ 27.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 27.397;

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the force output of each normally energized power device, including any single power boost or actuator system failure;

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 27.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads; and

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 27.397, without yielding.

Explanation: Conference proposals were considered concurrently to revise the standards to recognize powered control actuators or boost systems, to increase the minimum design load requirements for a control system jam, to allow lower minimum design loads, and to clarify the standards for normal and transport category rotorcraft. One conference participant suggested an update of § 27.395 to include design requirements for powered control systems (either boost to pilot effort or use of negligible pilot effort). Another participant suggested elimination of the current minimum design loads which are 60 percent of the specified limit pilot forces and another suggested raising the minimum design load to equal the limit pilot forces which would then account for a possible jam, ground gust, control inertia, or friction.

Conference discussions pertaining to the proposal that would eliminate the current minimum design loads noted that § 29.395(b) permits usage of a rational analysis in lieu of the specified minimum design loads, and the proposed revision to § 29.395(b) which allows use of lower loads derived from a rational analysis is, therefore, unnecessary.

Most existing helicopter designs having gross weights over 2,500 pounds use either power boost or full actuation control systems, and smaller helicopters principally rely on manual control. Normal category rotorcraft, those of less than 6,000 pounds gross weight, usually have single boost systems with manual reversion. Amending § 27.395(b) to provide revised design standards for control boost or actuation systems would not affect manually powered control systems.

The notice proposal would add paragraph (b)(2) for powered control systems, either boost or full actuation, which would reflect many current control system designs. This proposed new standard would agree with present § 27.695(a)(1) concerning power control systems and would not be a substantive change in the standards.

The notice proposal would add a new paragraph (b)(4) to add minimum design loads similar to proposed § 29.395(b)(4) in this notice. Increasing the minimum design loads from 60 to 100 percent of limit pilot forces to account for possible jamming, ground gusts, control inertia, or friction would probably affect manually powered control systems used in the smaller rotorcraft, but should not appreciably affect other control systems.

The proposed standard would reflect the general design practice of rotorcraft having primary control system stops located between the crewmember and the power actuators, but near the crewmember controls. Secondary stops may be located elsewhere but would be subject to the same design loads as primary stops. Present § 27.395(b) would also be changed from referring to "The part of each control system from the control stops to the attachment to the rotor blades (or control areas) * * *" to "Each primary control system, including its supporting structure, * * *." This proposed change in wording would not be substantive and would agree with proposed § 29.395(b) contained in this notice. To clarify the standard, present paragraph (b) would be separated into three subparagraphs with the changes included, and a new subparagraph (b)(4) would be added.

The proposed amendment to § 27.395(b) should result in a standard equal to the proposed § 29.395(b), with one exception. For normal category rotorcraft, the limit pilot forces would not be combined with the power device output force since experience has shown it is not necessary to combine maximum pilot forces of § 27.397 with the maximum output force of the power device.

Ref: Proposals 49 and 205; Committee I.

4–7. By adding a new § 27.427 following § 27.413 and before the heading, Ground Loads, to read as follows:

§ 27.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from yawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 27.413 acts on the

surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions is § 27.413 acts on the surface on each side of the plane of symmetry but in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

Explanation: This notice proposal would add a new standard requiring application of unsymmetrical loads when evaluating horizontal stabilizing surfaces. The conference proposal was initially submitted as a revision to §§ 27.413 and 29.413. It is more appropriate and consistent with the regulatory philosophy to use the same paragraph numbers for the same standards found in different parts. The notice proposal would add a new paragraph, similar to § 25.427, containing the unsymmetrical loading requirements under control surface and system loads.

A participant at the conference stated that the present requirements of § 27.413(b) are adequate to account for the unsymmetrical loading design conditions. Section 27.413(b) states that load distributions must closely simulate the actual pressure distribution conditions. The participant also questioned the difference found in the conference proposed standard when compared to the unsymmetrical loading requirements specified in §§ 23.427 and 25.427 for airplanes. The participant requested an explanation from the FAA concerning a different and possibly more critical standard for helicopter stabilizing or control surfaces as compared to airplane surfaces. At the conference, it was noted that while impingement of the rotor wake on a stabilizing surface of a helicopter is somewhat different from an airplane surface air load, certain airplane flight conditions do cause wing vortices and jet engine exhausts to impinge on the stabilizing surface and create some unsymmetrical loading. The participant objected to the adoption of a more stringent rotorcraft standard such as 100 percent on one side and zero on the other, and requested that such a proposal be fully justified with technical data.

The FAA does not agree that the present requirements of §§ 27.413(b) and 29.413(b) are adequate to account for the unsymmetrical loading design condition. Sections 27.413(b) and 29.413(b) do not clearly and specifically address unsymmetrical loading conditions. Sections 27.427 and 29.427 are proposed to clearly and specifically inform the public as to the required standards for unsymmetrical loading design conditions. Such clarity and specificity will also aid the FAA in uniformly interpreting these requirements.

Any horizontal stabilizer unsymmetrical loading design condition must be interpreted and imposed with uniformity to produce an equal and appropriate level of safety throughout the industry. This notice proposal would achieve this objective by adding new §§ 27.427 and 29.427 that pertain to horizontal stabilizer unsymmetrical loading. Furthermore, the FAA does find justification for a difference in standards between airplanes and rotorcraft. Unsymmetrical loading on rotorcraft horizontal stabilizer surfaces has been found during previous type certification programs. In addition, § 25.427 for airplanes specifically notes that the loading conditions described in § 25.427(b)(1) are applicable only to airplanes that are conventional in regard to location of propellers, wings, tail surfaces, and fuselage shape. Rotorcraft are not considered conventional aircraft in the context of § 25.427(b)(1) and different standards should be prescribed than the design loading conditions which are prescribed for conventional airplanes.

Generally, horizontal stabilizing surfaces on typical rotorcraft are subjected to complex airflow distributions which are directly affected by flight conditions and by possible tail rotor wake impingement. The resulting load distributions are not comparable to those of airplanes.

The proposal allows use of rationally determined unsymmetrical design loads for the stabilizer. In the absence of design loads derived from a rational analysis, two different empirical load distributions are specified. One condition would impose 100 percent of the surface load from § 27.413 or § 29.413 on the stabilizer half and no load on the opposite half stabilizer. The other empirical condition would impose 50 percent of the surface load from § 27.413 or § 29.413 on the right or left half ½of the stabilizer and 50 percent of the design load acting opposite in direction on the opposite half of the stabilizer. If the stabilizer protrudes from only one side of the fuselage or tail boom, the standard would not apply.

Ref: Proposals 51 and 208; Committee I.

4–8. By amending § 27.501 by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 27.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between the skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tube attachments.

Explanation: The notice proposal concerns two aspects of skid landing gear design loads. A conference proposal (54a; Committee I) was submitted to reduce the severity of sideload design conditions by dividing the specified sideload equally between each of two skid tubes, instead of applying the specified sideload to one skid tube as specified in present § 27.501(d)(3). The sideload, both inward and outward acting, of each skid tube would be reduced by 50 percent. The proponent of proposal 54a contended the present rule is unduly severe and drastically exceeds standards for other types of aircraft landing gear. The proponent also stated the outward acting sideload condition is especially unrealistic. The proponent stated Civil Air Regulations (CAR) Part 6 helicopters designed to standards similar to those proposed at the conference prove, through extensive experience, that the proposal would provide a high degree of safety.

The agency reviewed the certification standards for Bell Model 47 helicopters on Type Certificate Nos. H–1 and 2H1 which were certificated under CAR Part 6. The numerous models with curved and straight cross tubes were certified to special standards (contained in the docket of this notice) containing much less severe sideload criteria than those in the present standard. Exemption No. 2950 was issued in 1980 to reduce the side load by 50 percent for certain Bell Model 47G helicopters certified to CAR Part 6, § 6.247(c)(3). The service history of the landing gear on these helicopters is satisfactory and demonstrates an adequate level of safety. For comparison, the certification standards

for wheel landing gear sideload conditions, such as §§ 27.485, 29.485, 23.485, and 25.485, require less severe combined side and vertical loads than those contained in §§ 27.501(d)(3) and 29.501(d)(3). The wheel standards require, in summary, 0.3 of the total vertical load, acting outward, and 0.4 of the total vertical load, acting inward, in combination with the only one-half of the vertical load.

Section 27.501(d)(1) presently requires application of 100 percent, not one-half, of the vertical load in combination with the specified sideload, 0.5 of the vertical load. It is also noted that a notice proposal to change §§ 27.571 and 29.571 would require measurement of the operating stress levels of the rotorcraft landing gear as a part of the fatigue substantiation program. These operating stresses or loads data should supplement the strength substantiation of new rotorcraft designs. In light of the foregoing, an amendment to §§ 27.501(d)(3) and 29.501(d)(3) is proposed that would reduce the inward and outward acting sideload standard by 50 percent. The vertical load standard for skid landing gear would not be changed.

The second aspect of proposed changes to the skid landing gear standards concerns the "midpoint" obstruction load. Two proposals (55 and 209; Committee I) were considered to eliminate the concentrated load "midpoint" obstruction requirement for longitudinal skid tubes of skid landing gear for transport and normal category rotorcraft. A proponent contended that military helicopter designs are not subject to this particular standard or to any similar standard. The service experience with these designs indicates that elimination of the "midpoint" obstruction requirement for skid gear on civil helicopter designs would be of no significance. Supplemental information and data on the military UH–1 series helicopter service experience with skid landing gear were subsequently sent to conference docket No. 18689 for FAA consideration. This information indicates that all types of problems involving skid landing gear occurred in service.

While the proponent had contended that only a small number of these reports involved the skid tubes, this was not adequately supported in the service data submitted. Justification for eliminating the "midpoint obstruction" concentrated load requirement is not conclusive due to insufficient details about the condition of skid tubes in civil and military service records. However, in view of many years of service history with the absence of service records specifically on skid tubes, an evenly distributed load of the same magnitude but applied over 33.3 percent of the skid tube length between the cross tube attachments, and located midway between the skid attachments, is an appropriate design condition for typical unprepared landing sites in which the empirical load may be attained. This revised empirical design condition should represent most unprepared landing surfaces. The load magnitude for this condition will remain at one-half of the skid tube vertical load derived from present §§ 27.501(b) and 29.501(b). Present §§ 27.501(a)(4)(ii) and 29.501(a)(4)(ii) require rational distribution of the specified landing loads along the bottom of both skids without reduction of load. In accordance with the foregoing, the notice proposal would additionally amend §§ 27.501(f)(2)(ii) and 29.501(f)(2)(ii) by removing the concentrated midpoint load and adding an equal empirical but evenly distributed load that would be applied to part of the midspan of the longitudinal skid tubes of normal and transport category rotorcraft.

Ref: Proposals 54a, 55, and 209; Committee I.

4–9. By revising § 27.563 to read as follows:

§ 27.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural strength for ditching must meet the requirements of this section and § 27.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. A rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, or its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 27.801(d). Maximum roll and pitch angles determined from compliance with § 27.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is 1.11 of the float deployed airspeed operating limit.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion prescribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

Explanation: Conference proposals were made to specify standards for structural strength of normal and transport category rotorcraft ditching configurations. Rotorcraft have been approved for "ditching" under objective standards such as §§ 27.563, 29.563, 27.801(e) and 29.801(e). The configurations generally relied upon auxiliary or emergency inflatable float bags that have several compartments and a combined buoyancy in excess (at least 1.25) of the rotorcraft gross weight. The emergency inflatable bags may inflate in flight or may inflate promptly after water contact to prevent capsizing of the rotorcraft. Design standards are necessary to account for both types of emergency float systems. Industry representatives at the conference agreed that standards would be desirable. Conference proposals would have included the standards in §§ 27.801 and 29.801. However, §§ 27.563 and 29.563 are the proper sections for structural load or strength standards.

Adding these new objective or performance standards would provide a consistent basis for design and evaluation of ditching configurations. Reference to the objective standards in §§ 27.801(e) and 29.801(e), as

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appropriate, would be retained. These two standards are not changed by this notice.

The notice proposal was derived from hull type and auxiliary float standards (§ 29.519) in conjunction with a vertical descent limit speed of 5 feet per second derived in part from § 29.561. The speeds in the proposal are limit speeds relative to the water. Although Part 27 does not contain appropriate design standards that are similar to § 29.519, § 29.519 would be used as a basis for Part 27 standards. Conference participants did not object to this philosophy. The rotorcraft structure would be subject to the design conditions specified in proposed paragraph (a) whether the emergency floats are inflated before or after water entry. Sections 27.801(d) and 29.801(d) presently contain additional structural design standards.

Section 29.563 would be revised to agree with proposed § 27.563 since "ditching" conditions are the same for both normal and transport category rotorcraft.

Ref: Proposals 86 and 258; Committee I.

4–10. By amending § 27.571 by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 27.571 Fatigue evaluation of flight structure.

(a) *General.* Each portion of the flight structure (the flight structure includes rotors, rotor drive systems between the engines and the rotor hubs, controls, fuselage, landing gear, and thir related primary attachments), the failure of which could be catastrophic, must be identified and must be evaluated under paragraph (b), (c), (d), or (e) of this section. The following apply to each fatigue evaluation:

* * * * *

(4) The loading spectra must be as severe as those expected in operation, including but not limited to, external cargo operations, if applicable, and ground-air-ground cycles. The loading spectra must be based on loads or stresses determined under paragraph (a)(3) of this section.

* * * * *

Explanation: Conference proposals were considered to include fatigue evaluation of the landing gear, assessment of the effect of the ground-air-ground cycle, and assessment of the effects of sling load operations, where applicable. Service experience, such as described in the preambles to Airworthiness Directives 76–14–03, 76–14–07, and 76–12–05, and service experience referenced in the conference proposal indicate that the landing gear is susceptible to "in-service" fatigue failures. The proposed evaluation of the landing gear should preclude fatigue failure of the landing gear.

Ground-air-ground cycle evaluation of the flight structure, excluding the landing gear, has been accomplished in several previous certification programs under the present rules. A realistic number of cycles per flight hour, such as four to six, has been used in the past.

The effects of sling load operations were also evaluated in past certification programs under the policy contained in Review Case Nos. 37 and 55 of FAA Order 8110.6, prior to Amendments 27–11 and 29–12 (41 FR 55454; December 20, 1976), as a variation of or as a separate type of operating spectrum. A copy of each review case is contained in the docket of this notice. If the normal or standard certified gross weight, c.g. ranges, and other limitations were not exceeded for the external cargo configuration, fatigue evaluation was not required by the operating rules in Part 133. The various rotorcraft manufacturers generally substantiated their aircraft for external cargo operations (typically sling loads), whether or not the standard gross weight was exceeded. But, experience has shown that fatigue evaluation for external cargo operations should now be a requirement, not an option. Rotorcraft which have frequent landings and takeoffs have experienced landing gear and drive system failures attributable to fatigue. Drive system failures in some helicopter models were related to sling load operations that may have caused excessive drive shaft misalignment.

In light of the foregoing, the notice proposal would require fatigue evaluation of the landing gear, assessment of the effects of the ground-air-ground cycle on the entire rotorcraft (not just the landing gear), and assessment of the effects of applicable external cargo operations on the rotorcraft.

Assessment of sling load operations and limitations for a Class B rotorcraft-load combination would also suffice for fatigue evaluation of the rotorcraft leading to approvals for external cargo carriers, such as boxes or racks, and for wire-stringing equipment within the same operating limitations. It is noted that Part 133 concerns external cargo operations using either standard or restricted category aircraft. If an "external cargo configuration" is not presented for certification, fatigue assessment for this operation would not be required. In this case, the agency may add a statement to the type certificate data sheet noting that an external cargo configuration was not evaluated.

A substantively identical change is proposed for § 29.571 concerning transport category rotorcraft.

Ref: Proposals 58, 60, 216, and 217; Committee I.

4–11. By amending § 27.613 by revising paragraph (b) and the introductory text of (d) and by adding a new paragraph (e) to read as follows:

§ 27.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structure, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values must be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: Two conference proposals (65 and 224) would have added new §§ 27.615 and 29.615, entitled "Design properties," that would be substantively identical to current § 25.615. Section 25.615 refers to design properties contained in MIL–HDBK–5, Metallic Materials and Elements for Flight Vehicle Structure, and provides conditions for use of these properties. In Notice 84–21 (49 FR 47358; December 3, 1984), the agency proposes to remove § 25.615 from Part 25 and amend § 25.613 in a manner similar to this proposal for § 27.613. The conference proposals have merit since material design and property standards should be equally applied to all aircraft. Therefore, §§ 27.613 and 29.613 should be amended to include design property standards for rotorcraft materials that are equal to airplane standards. The proposal contained herein would revise paragraph (b) by adding specific probability values for material strengths in both redundant and nonredundant structures in new paragraphs (b)(1) and (b)(2). Thereby §§ 27.613(b) and 29.613(b) would be identical to proposed § 25.613(b) in Notice 84–21.

New paragraphs (b)(1) and (b)(2) would relate to the data bases design allowables called A bases and B bases, respectively, specified in MIL–HDBK–5 series handbooks. A new paragraph (e) would be added which is similar to the proposal for § 25.613(e) in Notice 84–21. This would allow the use of materials whose strength or other pertinent property is determined by proper quality control inspections or tests. That is, materials better than standard materials could be used on a selective basis when proven by the applicant. In addition, this proposal would make an editorial change in paragraph (d) of §§ 27.613 and 29.613 for the correct address to secure copies of the documents specified in these sections.

Ref: Proposals 64, 65, 223, and 224; Committee I.

§ 27.629 [Amended]

4–12. By amending § 27.629 by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

Explanation: Flutter is an aeroelastic phenomenon associated with aerodynamic surfaces, such as stabilizers, fins, control surfaces, wings, and rotor blades. This proposal would correct the standard to prevent any misunderstanding. A substantively identical revision is proposed for § 29.629.

Ref: Proposal 228; Committee I.

4–13. By amending § 27.663 by revising paragraph (a) to read as follows:

§ 27.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

* * * * *

Explanation: Conference proposals would change paragraph (b) to clarify the requiement for investigation of probable failure of the ground reasonance prevention means (damping means) and to clearly allow proof, through analysis, that probable failures would not be hazardous. Paragraph (b) of present §§ 27.663 and 29.663 concerns probable service variations and is not concerned with probable failure of the damping means. Paragraph (a) of the present standards concerns reliability or malfunction of the damping means. In line with these comments, the notice proposal would amend paragraph (a) to include failure assessment and to allow use of analysis or tests to prove that a malfunction or failure of a single means will not cause ground resonance of the rotorcraft.

The notice proposal for § 29.663 would revise paragraph (a) to agree with proposed § 27.663(a). In addition, the notice proposal would also revise § 29.663(b) to add the content of present § 27.663(b). See the explanation for the notice proposal for § 29.663. These two standards should be equal since they are objective airworthiness standards that are not dependent on rotorcraft size.

Ref: Proposal 230; Committee I.

4–14. By adding a new § 27.674 to read as follows:

§ 27.674 Interconnected controls.

Each flight control system must provide for safe flight and operate independently after a malfunction, failure, or jam of any interconnected control, such as engine and collective or collective and directional.

Explanation: Service history for a turbine-engine-powered rotorcraft revealed jamming of the engine N_2 control cable resulted in a jammed collective control. The engine N_2 control was connected to the collective control as is the general case. The pilot in the incident was reportedly unable to enter into an autorotation or to control the engine power. Present §§ 27.1309(b) and 29.1309(b) have been used in the past to evaluate some control systems. A conference proposal was made to revise §§ 27.691 and 29.691, "Autorotation control mechanism," to clarify the intent of the standard and require evaluation of failures of interrelated controls that might result in jamming the collective or autorotation control.

A conference counterproposal would add an additional paragraph to §§ 27.691 and 29.691 requiring consideration of malfunction, failure, or jamming effects for those controls which attach to or derive their actuation from main rotor blade pitch or autorotation control mechanisms.

Engine controls and directional controls have been or may be interconnected to the collective or autorotation control mechanism. A malfunction, failure, or jam in these controls should not affect safe operation of the collective control. These requirements are similar to the standards and philosophy of two-control airplanes contained in §§ 23.673(b) and 25.673. Sections 27.691 and 29.691 presently apply to collective control systems that may have detents or intermediate stops that must be bypassed to enter autorotation in the event of power failure. Autogyros generally have control position detents.

In light of the foregoing, to accomplish the intent of the conference-proposed changes to §§ 27.691 and 29.691, the notice would add new §§ 27.674 and 29.674, "Interconnected controls." These proposed standards would require safe operation of the flight control systems after malfunction, failure, or jamming of an interconnected flight control or engine control for normal and transport rotorcraft. The standards would also include the cyclic and collective controls, if interconnected.

Present §§ 27.691 and 29.691 concerning autorotation control design features of rotorcraft, including autogyros, would not be revised. The proposed standards are intended to assure that the cyclic, collective, or directional system of any rotorcraft will safely operate independently of a jam or failure in another system.

Ref: Proposal 68; Committee I.

4–15. By amending § 27.685 by adding new paragraphs (d), (e), and (f) to read as follows:

§ 27.685 Control system details.

* * * * *

(d) Cable systems be designed as follows:

(1) Cables, cable fittings, turnbuckles, splices, and pulleys must be of an acceptable kind.

(2) The design of cable systems must prevent any hazardous change in cable tension throughout the range of travel under any operating conditions and temperature variations.

(3) No cable smaller than three thirty-seconds of an inch diameter may be used in any primary control system.

(4) Pulley kinds and sizes must correspond to the cables with which they are used. The pulley cable combinations and strenght values specified or referenced in MIL–HDBK–5 (available from the Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120) must be used where applicable.

(5) Pulleys must have close fitting guards to prevent the cables from being displaced or fouled.

(6) Pulleys must lie close enough to the plane passing through the cable to

prevent the cable from rubbing against the pulley flange.

(7) No fairlead may cause a change in cable direction of more than 3°.

(8) No clevis pin subject to load or motion and retained only by cotter pins may be used in the control system.

(9) Turnbuckles attached to parts having angular motion must be installed to prevent binding throughout the range of travel.

(10) There must be means for visual inspection at each fairlead, pulley, terminal, and turnbuckle.

(e) Control system joints subject to angular motion must incorporate the following special factors with respect to the ultimate bearing strength of the softest material used as a bearing:

(1) 3.33 for push-pull systems other than ball and roller bearing systems.

(2) 2.0 for cable systems.

(f) For control system joints, the manufacturer's static, non-Brinell rating of ball and roller bearings may not be exceeded.

Explanation: While reviewing a proposal to change transport rotorcraft control system standards, it was found that specific cable control system design standards and control system bearing standards were not contained in Part 27. The proposal contained herein was not publicly discussed at the conference; however, it is presented for rulemaking. The notice proposal would add design practice standards for cable control systems that would be similar to those for transport rotorcraft control systems found in § 29.685(d), except the cable minimum size would be three thirty-seconds of an inch diameter for normal category rotorcraft. The Part 27 standards would require use of acceptable cables, fittings, turnbuckles, splices, and pulleys, and specify a source for minimum strength values. Installation practices or features would be specified.

Typical normal category rotorcraft may use cable systems for tail rotor control and controllable surfaces. A minimum size of three thirty-seconds of an inch diameter should be satisfactory for use on the lightly loaded controls of the smaller, typical normal category rotorcraft. Larger cable sizes will be required when necessary for adequate margins of strength.

In addition, the proposal would add new paragraphs (e) and (f), identical to § 29.685 (e) and (f), for specific control system bearing standards rather than simply relying on the subjective standards in § 27.623, "Bearing factors." These proposed standards would add margins of safety for bearings and joints and would facilitate the design of control systems. Control system bearings, whether used in normal or transport category rotorcraft, may be identical. Bearings are made to the same industry standards. This proposed standard would reflect current practice in rotorcraft designs.

4–16. By amending § 27.727 by revising paragraph (c) to read as follows:

§ 27.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than the landing gear and external accessories, to impact the landing surface.

Explanation: As requested at the conference, the notice proposal would define the collapse of a landing gear. A participant of the conference wanted the FAA to specifically define "collapse" of skid landing gear which use elastic spring members that yield under limit loads. Section 27.501(a)(2) allows yielding of elastic spring members under limit loads. Thus, § 27.501(a)(2) reflects and accepts the elastic/plastic and energy absorbing characteristics of aluminum skid landing gear. Steel spring gear and other types of typical aircraft landing gear are generally designed to avoid yielding under limit loads.

Under the reserve energy drop test, significant yielding or plastic deformation of typical aluminum skid landing gear will occur. The present standard requires landing gear to sustain a reserve energy drop test without collapse. The notice would add a definition for the collapse of any type landing gear, including skid landing gear elastic spring members. Each landing gear unit may be tested separately as stated in § 27.725(c). External accessories noted in this proposal are items such as lights, search lights, external speakers, and mirrors whose presence would not significantly alter the energy absorbing ability or features of the landing gear during this test. These accessories should be installed with frangible fittings and devices. Fuel tanks are not considered accessories in this case.

Another participant also proposed a similar change for § 27.501(a)(2) to define the collapse of a landing gear. However, revising the strength and load standards of § 27.501 may be confusing and would not be beneficial. Section 27.501 addresses skid landing gear strength and loads and allows exceptions for the characteristics of elastic spring members. Generally, compliance with the strength aspects of § 27.501 is accomplished by analytical means.

Static or dynamic tests of skid landing gear that use yielding elastic members would be difficult and would require several sets of landing gear to test or prove all of the critical load conditions specified in § 27.501. With yielding at limit load, ultimate load would be difficult to attain or sustain in a static test. The reserve energy absorption drop test standard, § 27.727 should, therefore, contain the criteria for collapse of all landing gear designs. A similar amendment is proposed for § 29.727.

Ref: Proposal 72; Committee I.

4–17. By amending § 27.783 by revising paragraph (b) to read as follows:

§ 27.783 Doors.

* * * * *

(b) Each external door must be located where persons using it will not be endangered by the rotors, propellers, engine intakes, and exhausts when appropriate operating procedures are used. If opening procedures are required, they must be marked inside on or adjacent to the door opening device.

Explanation: This proposal would revise paragraph (b) by removing the word "disc" following "rotor" to avoid further possible confusion between rotorcraft rotors and turbine engine rotor discs.

For passenger protection, paragraph (b) would be further revised to equal proposed § 29.783(b). This aspect of the proposal would additionally require consideration of engine intakes and exhausts and of propellers, if applicable, when preparing operating instructions and procedures for use of each external door. The present standard concerns passenger doors. The proposal would apply to each door, whether it is a passenger, cargo, or service door. The door operating procedures would be those presented in the flight manual procedures section. Procedures for opening of doors from the inside, if necessary for a particular design, would be located on a placard, stencil, or label on or adjacent to the particular door, as prescribed. See the explanation for proposed § 29.783 for further information.

Ref: Proposals 77 and 245; Committee I.

4–18. By amending § 27.807 by revising paragraph (d) to read as follows:

§ 27.807 Emergency exists.

* * * * *

(d) *Ditching emergency exists for passengers*. If certification with ditching provisions is requested, one emergency exist on each side of the fuselage must be proven by test, demonstration, or analysis to—

(1) Be above the waterline;

(2) Have at least the dimensions specified in paragraph (b) of this section; and

(3) Open without interference from flotation devices whether stowed or deployed.

Explanation: A conference proposal was considered to revise §§ 27.801(b) and 29.801(b) by requiring a demonstration, test, or analysis to show that passenger exits will open and be usable after emergency float bags or flotation devices are deployed with the aircraft in the water. The FAA agrees, and introductory paragraph (d) would be revised and new paragraph (d)(3) would be added to ensure that these exits are usable. See explanation for § 29.807(d)(3) for information on transport rotorcraft passenger exits.

Ref: Proposal 84; Committee I.

4–19. By revising § 27.861 to read as follows:

§ 27.861 Fire protection of structure, controls, and other parts.

Each part of the structure, controls, rotor mechanism, and other parts essential to a controlled landing that would be affected by powerplant fires must be fireproof or protected so they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire condition.

Explanation: The present standard concerns use of parts that were not fireproof but would be affected by a powerplant fire. Use of fireproof material for "essential parts" is an equivalent means of compliance with the standard and has been accepted in past certification programs. A conference proposal was made to allow, as a specific alternative, use of fireproof parts on normal category rotorcraft without further proof. The proposal contained herein would provide this alternative.

A similar proposal is made to § 29.861 for Category B rotorcraft.

Ref: Proposals 88 and 270; Committee I.

4–20. By amending § 27.865 by revising introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 27.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 27.337 through 27.341, of the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 27.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

Explanation: A conference proposal was submitted to redefine the present 2.5 limit load factor as an ultimate load factor. In the original issue of Part 133 of this chapter, the 2.5 load factor was, in effect, defined as a proof load factor. A proof load factor is considered to be equal to a limit load factor in this case. This limit load factor will be retained except as allowed in this notice proposal.

A counterproposal was offered at the conference to allow use of a lower limit load factor that would be derived from an aircraft maneuvering and gust capability as substantiated in §§ 27.337 through 27.341 or §§ 29.337 through 29.341. The notice proposal presented here would accept this conference proposal to use a 2.5g load factor or a lower factor that an aircraft, due to its design characteristics, is not likely to exceed.

A conference proposal was also made to exclude the cargo attaching means from the fatigue evaluation of § 27.571 or § 29.571, provided a failure of the attaching means would not be catastrophic. This proposal has merit and would be contained in new paragraph (d) of this section. Loss of the total external cargo load due to a possible failure in the aircraft cargo attaching means is not considered a hazard to the rotorcraft since "emergency" release of the cargo is a typical feature and requirement.

An identical proposal is made for transport rotorcraft, § 29.865, "External cargo attaching means." Other proposals submitted to revise §§ 27.865 and 29.865 were deferred. An explanation for the disposition of each deferred proposal is contained in the appendix of this notice.

During conference discussions concerning the standard, it was stated that carriage of persons externally on a "hoist" is an operating rule consideration. Rules for carriage of persons on a routine basis as a Class D rotorcraft-load combination may be found in Amendments 1–33 and 133–9 (51 FR 40692; November 7, 1986). Section 133.45, as amended by Amendment 133–9, contains operating limitations and design standards for a Class D rotorcraft-load combination.

Ref: Proposals 89, 90, 91, 272, 273, and 274; Committee I.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4–21. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–22. By amending § 29.307 by revising paragraph (a) to read as follows:

§ 29.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition in the environment to which the structure will be exposed in operation. Structural analysis (static or fatigue) may be used only if the structure conforms to those for which experience has shown this method to be reliable. In other cases, substantiating load tests must be made.

* * * * *

Explanation: See explanation for proposed § 27.307.

Ref: Proposal 199; Committee I.

4–23. By amending § 29.337 by revising paragraph (a) and introductory text of paragraph (b) to read as follows:

§ 29.337 Limit maneuvering load factor.

* * * * *

(a) A limit maneuvering load factor ranging from a positive limit of 3.5 to a negative limit of −1.0; or

(b) Any positive limit maneuvering load factor not less than 2.0 and any negative limit maneuvering load factor of not less than −0.5 for which—

* * * * *

Explanation: See explanation for proposed § 27.337.

Ref: Proposal 201; Committee I.

4–24. By revising § 29.351 to read as follows:

§ 29.351 Yawing conditions.

(a) Each rotorcraft must be designed for the loads resulting from the manuevers specified in paragraphs (b) and (c) of this section, with—

(1) Unbalanced aerodynamic moments about the center of gravity reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces; and

(2) Maximum main rotor speed.

(b) To produce the load required in paragraph (a) of this section, in unaccelerated flight with zero yaw, at forward speeds from zero up to 0.6 V_{NE}—

(1) Displace the cockpit control suddenly to the maximum deflection limited by the control stops or by the maximum pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 90°, whichever is less; and

(3) Return the directional control suddenly to neutral.

(c) To produce the load required in paragraph (a) of the section, in unaccelerated flight with zero yaw, at forward speeds from 0.6 V_{NE} up to V_{NE} or V_H, whichever is less,—

(1) Displace the cockpit directional control suddenly to the miximum deflection limited by the control stops or by the pilot force specified in § 29.395(a);

(2) Attain a resulting sideslip angle or 15°, whichever is less, at the lesser speed of V_{NE} or V_H;

(3) Vary the sideslip angles of paragraphs (b)(2) and (c)(2) of this section directly with speed; and

(4) Return the directional control suddenly to neutral.

Explanation: This proposals contains alternative but specific requirements for yaw design criteria which would be more representative of rotorcraft operation. Both low and high speed conditions are addressed, and specific sideslip design limits are provided. The present standard requires a rational analysis to determine maximum sideslip angles.

A conference participant noted that clarification of the meaning of § 29.351 is necessary inasmuch as it is not possible to maintain maximum directional control displacement at low airspeed and achieve a stabilized sideslip angle.

A participant also suggested that the proposal for § 29.351 should be identically incorporated in § 27.351 for normal category rotorcarft. Another participant opposed the incorporation of the § 29.351 proposal into § 27.351 and made an alternate proposal for § 27.351.

The FAA questions the rational for the differences in the proposals for §§ 27.351 and 29.351. The latter participant noted that a proposal for § 29.351 recognized the need for an additional investigation of the low speed yawing maneuver for structural design reasons. The FAA finds that the two conference proposals submitted for § 27.351 include forward speeds up to V_{NE} or V_H, whichever is less, which would therefore include the investigation of low speed yawing conditions. The FAA suggested at the conference that any additional rationale should be submitted to support the proposition that §§ 27.351 and 29.351 requirements should be different, but none were received. Further, no rationale could be found to support differences in the standards. It is noted that both conference proposals would limit the maximum design yaw or sideslip angle to 15° at the high speed limit which was included in this proposal.

The FAA has an obligation to be consistent in its regulations where there are no differences in the aircraft to justify different standards. The FAA intends to standardize the regulations wherever possible. Thus, the notice proposals for new § 27.351 and revised § 29.351 should be identical for normal and transport category rotorcraft, respectively.

The notice proposal would establish a maximum sideslip angle of 15° at V_{NE} or V_H, whichever is less, and 90° at 0.6 V_{NE}. The design sideslip angle for speeds between these two speed limits will vary directly with respect to airspeed. Of course, as an option, smaller sideslip angles may be sued when substantiated by rational analysis using the rotorcraft design characteristics and capabilities.

Ref: Proposals 27, 202, and 203; Committee I.

4–25. By revising § 29.391 to read as follows:

§ 29.391 General.

Each auxiliary rotor, each fixed or movable stabilizing or control surface, and each system operating any flight control must meet the requirements of §§ 29.395 through 29.403, 29.411, 29.413, and 29.427.

Explanation: With the adoption of new § 29.427, concerning unsymmetrical loads on the horizontal stabilizer, the general rule for control surfaces needs to include this standard. See explanation for new § 27.427.

4–26. By amending § 29.395 by revising paragraph (b) to read as follows:

§ 29.395 Control system.

* * * * *

(b) Each primary control system, including its supporting structure, must be designed as follows:

(1) The system must withstand loads resulting from the limit pilot forces prescribed in § 29.397;

(2) Notwithstanding paragraph (b)(3) of this section, when power-operated actuator controls or power boost controls are used, the system must also withstand the loads resulting from the limit pilot forces prescribed in § 29.397 in conjunction with the forces output of each normally energized power device, including any single power boost or actuator system failure;

(3) If the system design or the normal operating loads are such that a part of the system cannot react to the limit pilot forces prescribed in § 29.397, that part of the system must be designed to withstand the maximum loads that can be obtained in normal operation. The minimum design loads must, in any case, provide a rugged system for service use, including consideration of fatigue, jamming, ground gusts, control inertia, and friction loads. In the absence of a rational analysis, the design loads resulting from 0.60 of the specified limit pilot forces are acceptable minimum design loads; and

(4) If operational loads may be exceeded through jamming, ground gusts, control inertia, or friction, the system must withstand the limit pilot forces specified in § 29.397, without yielding.

Explanation: Conference proposals were considered concurrently to revise the standards to accommodate power-operated actuators, to increase the design load requirements for a control jam, and to clarify the current design practices and standards for normal and transport category rotorcraft.

One conference participant suggested that the present standards of § 29.395(b) include design standards for power control actuators. Present transport rotorcraft designs use power control systems requiring negligible pilot effort rather than a "boost" system supplementing pilot effort. The present standard refers to power boost systems. Transport category rotorcraft generally use dual, redundant power actuators and hydraulic components specified in § 29.695 (a) and (b) since manual reversion is not practicable for a modern design transport rotorcraft. Present § 29.395(b) agrees with § 29.695 (a) and (b). The control system must withstand the force output of the power device including any single failure in the power device system.

Conference discussions pertaining to the elimination of the current minimum design loads noted that § 29.395(b) permits the use of a rational analysis to derive minimum design load in lieu of the specified, 60 percent of limit pilot forces, minimum design loads. The conference proposed revision to § 29.395(b) that would allow use of lower loads derived from a rational analysis is therefore unnecessary. Another participant suggested elimination of the current minimum design loads because of possible control system jam could require pilot forces or effort in excess of 60 percent of limit pilot forces to clear a jam.

In light of the foregoing, the notice proposal would revise the standard to include power actuators, would separate present § 29.395(b) into three subparagraphs to clarify the standard, and would add paragraph (b)(4) to increase the minimum design loads, if appropriate, to account for a possible jam in the controls, ground gusts, control inertia, or excessive friction. Paragraph (b)(4) is the only proposed substantive change. The control system from the crewmember to the control surface or rotor blades would be subject to the appropriate loads specified in paragraph (b) of this proposed standard.

A proposed amendment to § 27.395(b) for normal category rotorcraft, also included in this notice, would result in a standard comparable to proposed § 29.395(b). The FAA is committed to standardization of airworthiness rules whenever necessary and possible, such as this instance. See explanation for proposed § 27.395 contained in this notice.

Ref: Proposals 49 and 205; Committee I.

4–27. By adding a new § 29.427 following § 29.413 and before the heading, Ground Loads, to read as follows:

§ 29.427 Unsymmetrical loads.

(a) Horizontal tail surfaces and their supporting structure must be designed for unsymmetrical loads arising from vawing and rotor wake effects in combination with the prescribed flight conditions.

(b) To meet the design criteria of paragraph (a) of this section, in the absence of more rational data, both of the following must be met:

(1) One hundred percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on one side of the plane of symmetry, and no loading acts on the other side.

(2) Fifty percent of the maximum loading from the symmetrical flight conditions in § 29.413 acts on the surface on each side of the plane of symmetry, in opposite directions.

(c) For empennage arrangements where the horizontal tail surfaces are supported by the vertical tail surfaces, the vertical tail surfaces and supporting structure must be designed for the combined vertical and horizontal surface loads resulting from each prescribed flight condition, considered separately. The flight conditions must be selected so that the maximum design loads are obtained on each surface. In the absence of more rational data, the unsymmetrical horizontal tail surface loading distributions described in this section must be assumed.

Explanation: This proposal would add a new standard requiring application of unsymmetrical loads when evaluating horizontal stabilizing surfaces and certain vertical tail surfaces. The proposal was initially submitted as a revision to §§ 27.413 and 29.413. It is more appropriate and consistent with the regulatory philosophy to use the same paragraph number for the same standards found in the different Parts. The proposal would add a new paragraph, similar to § 25.427, containing the unsymmetrical loading requirements. See the explanation for proposed § 27.427.

Ref: Proposals 51 and 208; Committee I.

4–28. By amending § 29.501 by revising paragraphs (d)(3) and (f)(2)(ii) to read as follows:

§ 29.501 Ground loading conditions: Landing gear with skids.

* * * * *

(d) * * *

(3) The total sideload must be applied equally between skids and along the length of the skids.

* * * * *

(f) * * *

(2) * * *

(ii) Distributed equally over 33.3 percent of the length between the skid tube attachments and centrally located midway between the skid tubes attachment.

Explanation: See explanation for proposed amendment to § 27.501. The objective certification standards for normal and transport category rotorcraft skid landing gear have been and should remain identical.

Ref: Proposal 209; Committee I.

4–29. By amending § 29.519 by revising the title and by revising paragraphs (a), (b), and (c) to read as follows:

§ 29.519 Hull type rotorcraft: Water-based and amphibian.

(a) *General.* For hull type rotorcraft, the structure must be designed to withstand the water loading set forth in paragraphs (b), (c), and (d) of this section considering the most severe wave heights and profiles for which approval is desired. The loads for the landing conditions of paragraphs (b) and (c) of this section must be developed and distributed along and among the hull auxiliary floats, if used, in a rational and conservative manner, assuming a rotor lift not exceeding two-thirds of the rotorcraft weight to act throughout the landing impact.

(b) *Vertical landing conditions.* The rotorcraft must initially contact the most critical wave surface at zero forward speed in likely pitch and roll attitudes which result in critical design loadings. The vertical descent velocity may not be less than 6.5 feet per second relative to the mean water surface.

(c) *Forward speed landing conditions.* The rotorcraft must contact the most critical wave at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes and with a vertical descent velocity of not less than 6.5 feet per second relative to the mean water surface. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out landing.

* * * * *

Explanation: This proposal is intended to remove superfluous and obsolete standards for limited amphibians that are contained in paragraph (a). Limited amphibian configurations no longer exist. The one rotorcraft model previously certified to the limited amphibian standards was subsequently approved under "ditching" standards similar to those contained in present §§ 29.563 and 29.801. Reference to limited amphibian would be removed also from § 29.755, "Bouyancy," and § 29.803, "Emergency evacuation," since these standards are also superfluous. See the explanation for proposed §§ 29.755 and 29.803. This intention to eliminate limited amphibian standards was not discussed at the conference.

The proposal would require consideration of the wave profiles along with presently stated wave heights for water impact landing load. The words "and profiles" would be added to the standard in paragraph (a) since the wave profile or shape, including the height, determines the criticality of the wave. The words "the most critical wave" would be added to paragraph (b) emphasizing that impact with waves must be considered for landing. The words "relative to the mean water surface" would be added to paragraph (c) to clarify the definition of the vertical descent velocity. Paragraph (c) also contains an editorial change. Industry representatives at the conference expressed concurrence with such a proposal for water-based or amphibious rotorcraft.

Ref: Proposal 210; Committee I.

4–30 By revising § 29.563 to read as follows:

§ 29.563 Structural ditching provisions.

If certification with ditching provisions is requested, structural strength for ditching must meet the requirements of this section and § 29.801(e).

(a) *Forward speed landing conditions.* The rotorcraft must initially contact the most critical wave for reasonably probable water conditions at forward velocities from zero up to 30 knots in likely pitch, roll, and yaw attitudes. The rotorcraft limit vertical descent velocity may not be less than 5 feet per second relative to the mean water surface. A rotor lift may be used to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine-out touchdown.

(b) *Auxiliary or emergency float conditions.*—(1) *Floats fixed or deployed before initial water contact.* In addition to the landing loads in paragraph (a) of this section, each auxiliary or emergency float, or its support and attaching structure in the airframe or fuselage, must be designed for the load developed by a fully immersed float unless it can be shown that full immersion is unlikely. If full immersion is unlikely, the highest likely float buoyancy load must be applied. The highest likely buoyancy load must include consideration of a partially immersed float creating restoring moments to compensate the upsetting moments caused by side wind, unsymmetrical rotorcraft loading, water wave action, rotorcraft inertia, and probable structural damage and leakage considered under § 29.801(d). Maximum roll and pitch angles determined from compliance with § 29.801(d) may be used, if significant, to determine the extent of immersion of each float. If the floats are deployed in flight, appropriate air loads derived from the flight limitations with the floats deployed shall be used in substantiation of the floats and their attachment to the rotorcraft. For this purpose, the design airspeed for limit load is 1.11 of the float deployed airspeed operating limit.

(2) *Floats deployed after initial water contact.* Each float must be designed for full or partial immersion prescribed in paragraph (b)(1) of this section. In addition, each float must be designed for combined vertical and drag loads using a relative limit speed of 20 knots between the rotorcraft and the water. The vertical load may not be less than the highest likely buoyancy load determined under paragraph (b)(1) of this section.

Explanation: See the explanation for proposed § 27.563. The proposal would add standards for forward speed landings and for float immersion in addition to retaining the reference to § 29.801(e) for objective structural design standards.

Ref: Proposal 258; Committee I

4–31. By amending § 29.571 by revising paragraphs (a) introductory text and (a)(4) to read as follows:

§ 29.571 Fatigue evaluation of flight structure.

(a) *General.* Each portion of the flight structure (the flight structure includes rotors, rotor drive systems between the engines and the rotor hubs, controls, fuselage, landing gear, and their related primary attachments), the failure of which could be catastrophic, must be identified and must be evaluated under paragraph (b), (c), (d), or (e) of this section. The following apply to each fatigue evaluation:

* * * * *

(4) The loading spectra must be as severe as those expected in operation, including but not limited to external cargo operations, if applicable, and ground-air-ground cycles. The loading spectra must be based on loads or stresses determined under paragaph (a)(3) of this section.

* * * * *

Explanation: See the explanation for proposed § 29.571. The objective standards for fatigue evaluation of transport and normal category rotorcraft have been and should remain equal.

Ref: Proposals 216 and 217; Committee I.

4–32. By amending § 29.613 by revising paragraph (b) and the introductory text of paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 29.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraphs (d) and (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability—

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence; and

(2) For redundant structures, those in which the failure of individual elements would result in applied loads being safely distributed to other load-carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(d) Design values must be those contained in the following publications (available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120) or other values approved by the Administrator:

* * * * *

(e) Other design values may be used if a selection of the material is made in which a specimen of each individual item is tested before use and it is determined that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: See explanation for proposed § 27.613.

Ref: Proposals 64, 65, 223, and 224; Committee I.

§ 29.629 [Amended]

4–33. By amending § 29.629 by removing the word "part" and inserting in place thereof the words "aerodynamic surface."

Explanation: See explanation for § 27.629.

Ref: Proposal 226; Committee I.

4–34. By revising § 29.663 to read as follows:

§ 29.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing through analysis or tests that malfunction or failure of a single means will not cause ground resonance.

(b) The probable range of variations, during service, of the damping action of the ground resonance prevention means must be established and must be investigated during the test required by § 29.241.

Explanation: See explanation for proposed § 27.663(a). The proposed revision to paragraph (b) is not substantive. The proposal would require that the probable range of damping be established as well as investigated. This notice proposal for § 29.663(b) would result in a standard identical to the present § 27.663(b).

Ref: Proposal 230; Committee I.

4–35. By adding a new § 29.674 to read as follows:

§ 29.674 Interconnected controls.

Each flight control system must provide for safe flight and independently operate after a malfunction, failure, or jam of any interconnected control, such as engine and collective or collective and directional.

Explanation: See explanation for proposed § 27.674.

Ref: Proposal 68; Committee I.

4–36. By amending § 29.727 by revising paragraph (c) to read as follows:

§ 29.727 Reserve energy absorption drop test.

* * * * *

(c) The landing gear must withstand this test without collapsing. Collapse of the landing gear occurs when a member of the nose, tail, or main gear will not support the rotorcraft in the proper attitude or allows the rotorcraft structure, other than landing gear and external accessories, to impact the landing surface.

Explanation: Even though no one submitted a conference proposal to change § 29.727, the agency proposes to amend § 29.727 in the same manner as § 27.727. The regulatory philosophy of the drop test standard for transport category rotorcraft landing gear should be identical to the normal category standard. Size of the rotorcraft does not influence this test criterion. See explanation for proposed § 27.727 for further information.

Ref: Proposal 72; Committee I.

§ 29.755 [Amended]

4–37. By amending § 29.755 by removing the designator "(a)" from paragraph (a), and by removing paragraph (b).

Explanation: This notice proposal would remove the superfluous standards for limited amphibian hull buoyancy. The standards contained in present §§ 29.563 and 29.801 for rotorcraft "ditching configurations" are sufficient.

See explanations for proposals concerning §§ 29.519 and 29.803. These sections are associated standards for limited amphibians.

4–38. By amending § 29.783 by revising paragraphs (b) and (c) to read as follows:

§ 29.783 Doors.

* * * * *

(b) Each external door must be located and appropriate operating procedures must be established to ensure that persons using the door will not be endangered by the rotors, propellers, engine intakes, and exhausts when the operating procedures are used.

(c) There must be means for locking crew and external passenger doors and for preventing their opening in flight inadvertently or as a result of mechanical failure. It must be possible to open external doors from inside and outside the cabin even though persons may be crowded against the door on the inside of the rotorcraft. The means of opening must be simple and obvious and so arranged and marked that it can be readily located and operated.

* * * * *

Explanation: A proposed revision to § 29.783(b) would remove "disc" following "rotor" and add additional hazards which should be considered when evaluating the location of passenger as well as other doors. Helicopter operators may load and/or unload passengers and cargo/baggage with the engine running and the rotors turning. Listing these additional hazards in the standards would assure that appropriate conditions are considered in the rotorcraft design. In addition, the notice proposal would include each external door, not just passenger doors, in the evaluation. The notice proposal would require "operating procedures" for each external door, as prescribed, rather that having persons follow "appropriate instructions" as currently stated for use of passenger doors. This change would agree with § 25.783(d) for airplane doors. The objective of the standards, to protect persons who use doors, would be clarified. The proposed revised wording should be easier to understand. The means of opening must be marked per § 29.783(c). Any operating procedures would be similarly marked adjacent to or on the door as well.

One conference proposal would include a standard for persons crowding against doors, including inward opening passenger doors. This proposal stems from § 25.783(b) for transport airplanes. Industry concurs with the conference proposal provided the applications of this proposed standard are consistent with the previous application to airplane doors. That is, the standard should contain relief for inward opening doors. The FAA concurs with the conference proposal, except that proposed § 29.783(c) does not provide relief for crowding against inward opening doors since such door designs are highly unlikely for rotorcraft, and the relief found in § 25.783(b) in this respect is unnecessary.

Another conference proposal, in part, would make § 29.783(e) applicable to hinged, outward opening doors, thereby excluding other doors (such as inward opening doors and sliding doors) from the standards. The conference proposal would have also qualified direct visual inspection means for locking mechanisms of doors.

The comments and objectives pertaining to this latter proposal have been carefully reviewed. The conference proposal would exclude inward opening and sliding doors from further compliance with the direct visual inspection means of the locking mechanism and with the visual means to signal when normally used external doors are closed and fully locked, thereby reducing the existing level of safety for such doors. Justification for this reduction was not submitted.

The present standard requires that all external doors, regardless of type, must provide means for direct visual inspection of the locking mechanism by crewmembers to determine whether they are fully locked. The direct visual inspection means of the locking mechanism may be in the form of indicator flags, possibly handle position for handles with positive lock features that also meet the standards of § 29.783(c) or equivalent positive position indicators. These direct visual inspection means comply with the current requirements. Application of the current standard is sufficient, and incorporation of the conference proposal is not necessary. Note that the door locking features must comply with the standards of § 29.783(c).

The direct visual inspection means do not give warning or command to the pilot or flightcrew while at their stations and cannot be classified as a signal. The current standard requires a visual signal means to the appropriate crewmembers when normally used external doors are closed and fully locked. Justification is not provided for removing such a signal. The current rule would permit usage of reliable mechanical visual means, provided the mechanical device functions as a signal to the appropriate crewmember and not as an inspection device.

It was proposed to remove sliding doors from § 29.783 (e) and (f). The rationale for the conference proposal focuses on operational requirements and external cargo uses with the doors open in flight. Specific operational requirements are not the subject of Part 29. However, flight with doors fully open or removed is presently evaluated during certification, when requested.

This facilitates operational approvals under Part 133. The safety aspects of the proposed change to remove sliding doors are not adequately addressed by the proponent. The conference proposal is not accepted because it would result in a decrease in the existing level of safety presently found on sliding doors.

Economic data in support of the conference proposals were requested at the conference, but none have been provided for the docket.

Ref: Proposals 244, 245, 246, and 247; Committee I.

4–39. By amending § 29.803 by removing and reserving paragraph (c) and by adding new paragraphs (d) and (e) to read as follows:

§ 29.803 Emergency evacuation.

* * * * *

(d) Except as provided in paragraph (e) of this section, rotorcraft in any of the following three categories must be tested in accordance with the conditions and procedures contained in Appendix D of this Part to demonstrate that the maximum seating capacity, including the crewmembers required by the operating rules, can be evacuated from the rotorcaft to the ground within 90 seconds:

(1) Rotorcraft which have a seating capacity of more than 44 passengers.

(2) Rotorcraft which have all of the following:

(i) Ten or more passengers per passenger exit as determined under § 29.807(b).

(ii) No main aisle, as described in § 29.815, to each row of passenger seats.

(iii) Access to each passenger exit for each passenger by virtue of design features of seats, such as folding or break-over seat backs or folding seats.

(3) Rotorcraft that have only side-of-fuselage exits and that have a maximum seating capacity of 10 or more passengers.

(e) A combination of analysis and tests may be used to show that the rotorcraft is capable of being evacuated within 90 seconds under the conditions specified in § 29.803(d) if the Administrator finds that the combination of analysis and tests will provide data, with respect to the emergency evacuation capability of the rotorcraft, equivalent to that which would be obtained by actual demonstration.

Explanation: Section 29.803(c) concerning passenger exit standards for limited amphibians is considered superfluous and would be removed. As an example, Sikorsky Model S–61N helicopters were initially approved as "limited amphibians" rather than approved for "ditching." They were subsequently approved under objective ditching standards contained in present § 25.801. The Bell Model 212 helicopter was similarly approved for "ditching." The objective design and exit standards are now contained in present §§ 29.807(d) and 29.801(e). Thus, § 29.803(c) would be marked "[Reserved]" since these standards concern "limited amphibian" and are unnecessary and supplanted by present §§ 29.807(d) and 29.801(e). This notice proposal for § 29.803(c) was not discussed at the conference. It would not be a substantive change in the standards.

Two conference proposals address demonstrating an emergency evacuation of transport rotorcraft in an upright and in an overturned position or resting on its side. One would change § 29.807(c) to require a demonstration with an overturned aircraft. The other would change § 29.803 requiring demonstration for all rotorcraft with unconventional interiors such as those with high density seating and no lengthwise aisles.

A conference participant cited the evacuation demonstration standards for transport airplanes, but noted these standards should not be applied to all rotorcraft without research and development work. All transport airplane designs having more than 44 passengers are subject to an evacuation demonstration. The FAA concluded that a demonstration was unnecessary for evaluating features of transport airplanes with fewer than 45 passengers. The necessity for an evacuation demonstration of rotorcraft having relatively few passengers was questioned, and it was noted that the configuration of helicopter interiors and exits is a most important consideration.

In light of the conference proposals and comments, the notice proposes an emergency evacuation demonstration for: (1) Rotorcraft having more than 44 passengers; (2) rotorcraft, described as van or limousine-type interior, with rows of seats across the width of the cabin having an average of 10 or more passengers per passenger exit, no main aisle serving each row of seats, and each passenger exit accessible to each passenger by virtue of design features of seats, such as folding or break-over seat backs, or folding seats; or (3) rotorcraft having 10 or more passengers with only side-of-fuselage exits. All of the features from the second criterion must be present before a demonstration based on that criterion would be required. The third criterion in new paragraph (d) would cover the possibility that a rotorcraft with 10 or more passengers may roll over on its side, blocking the exits and doors on one side of the rotorcraft.

The first criterion would coincide with evacuation standards (§ 25.803) for transport airplanes. The second criterion would recognize design features unique to rotorcraft. These features are small, low height cabins with main entrance doors on each side of the fuselage, no passenger aisles, four or more abreast seats in a row, and exits at or adjacent to the ends of each row of seats. The doors may be used as exits in these rotorcraft, or separate exits may be located in the doors or fuselage. The third criterion would require a positive assessment of an evacuation from a rotorcraft resting on its side. This would apply to rotorcraft having 10 or more passengers and only side-of-fuselage exits.

For any one rotorcraft model, only one demonstration, using the most conservative configuration, would be required by the proposed standard. The following sequence should be used in determining what evacuation demonstration procedure to use.

First, a demonstration would be required with the rotorcraft on its side if it has 10 or more passengers and no exit or exits in the top, bottom, or ends of the rotorcraft. The most critical exit configuration would be used in the demonstration.

Second, a demonstration would be required with the rotorcraft upright if it has a van or limousine-type interior and has an exit or exits in the top, bottom, or ends of the rotorcraft.

Third, a demonstration would be required with the rotorcraft upright if it has more than 44 passengers and has an exit or exits in the top, bottom, or ends of the rotorcraft in compliance with § 29.809(c)(1). The proposal envisages small to large rotorcraft with only side-of-fuselage exits. A rotorcraft with 44 or fewer passengers having a main aisle (§ 29.815) the length of the passenger compartment and exits in the sides and top, bottom, or end would not be subject to a demonstration.

Proposed paragraph (e) of § 29.803 would allow a combination of analysis and tests, or demonstrations, as prescribed.

Emergency evacuations of transport rotorcraft having high density interior arrangements with no main aisle and evacuations of an overturned rotorcraft have been a concern. Due to rotorcraft configurations, density of seating arrangements, rows and numbers of seats, location, size, and number of exits or doors, the effectiveness of possible escape routes from each seat to the ground has been and will be difficult to evaluate. The proposals would require a positive assessment of egress for certain rotorcraft configurations described in the proposed standards. These evacuation proposals should appear primarily as a revision to § 29.803 only rather than as a revision to both §§ 29.807(c) and 29.803 as advocated by proponents. However, current § 29.807(c) specifies installation of exits other than side-of-fuselage exits in certain cases and would be changed concurrently to complement amended § 29.803. See explanation for the proposal to amend § 29.807.

The criteria or conditions for the demonstrations would be contained in Appendix D to Part 29 of this chapter. The proposed Appendix D is contained in Item 4–47 of this notice and was derived from § 25.803(a) for transport airplanes.

This proposal incorporates the substance of the proposals for emergency evacuation submitted for discussion at the regulatory review conference.

Ref: Proposals 260 and 262; Committee E

4–40. By amending § 29.805 by adding a new paragraph (c) to read as follows:

§ 29.805 Flightcrew emergency exits.

* * * * *

(c) Each exit may not be obstructed by water or flotation devices after a ditching. This must be shown by test, demonstration, or analysis.

Explanation: Rather than revise § 29.801(b) as proposed at the conference, both crew and passenger exit standards would be revised in this notice to ensure the exits required for evaucation in the event of a ditching would not be obstructed by water or floating devices. However, the crew exit threshold may be slightly below the waterline provided it is not obstructed. If the crew uses the passenger exit, § 29.807(d) would apply.

This aspect of the ditching configuration was not discussed at the public conference; however, it is directly related to the rotorcraft ditching configurations and protection of the occupants. See explanation for § 29.807(d).

Ref: Proposals 84 and 256; Committee I.

4–41. By amending § 29.807 by removing the "or" at the end of paragraph (c)(1); by revising paragraph (c)(2); and by adding a new paragraph (c)(3) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(c) * * *

(2) An evacuation demonstration, if required by § 29.803(d)(3), must be accomplished; or

(3) A rotorcraft with a maximum passenger seating capacity of nine or less must have design features that allow evacuation with the rotorcraft on its side or have design features that minimize the probability of the rotorcraft coming to rest on its side after a crash landing.

* * * * *

Explanation: A demonstration is considered necessary by a conference proposal proponent to assure safe evacuation of the rotorcraft with the rotorcraft resting on its side. A notice proposal is made hereby to add another option that would allow certification of rotorcraft with only side-of-fuselage exits by successfully completing an evacuation demonstration with the rotorcraft on its side.

The present standard, § 29.807(c), allows certification of transport rotorcraft having only side-of-fuselage exits, regardless of passenger capacity, provided the probability of the rotorcraft coming to rest on its side in a crash landing is extremely remote. In recent years, "extremely remote" has been synonymous with "extremely improbable" as related to transport airplane systems. "Extremely improbable" has been assigned a probability of occurrence value of 10^{-9} per flight hour. This probability of occurrence value, if applied to § 29.807(c), would be equal to 33,333 rotorcraft each achieving about 30,000 hours of operation without one of these rotorcraft experiencing a crash landing in which the rotorcraft came to rest on its side. The FAA has service information that would not allow approval of any transport rotorcraft using the transport category airplane systems probability value for "extremely improbable" unless exits were also located in the top, bottom, or ends of the rotorcraft.

To preclude confusion with "extremely remote" and "extremely improbable," the proposal contained herein would remove "extremely remote" and would allow approval of only side-of-fuselage exits by (1) completing an evacuation demonstration when required by proposed § 29.803(d)(3); or (2) having nine or less passengers and rotorcraft design features that either allow evacuation with the rotorcraft on its side or that minimize the probability of the rotorcraft coming to rest on its side after a crash landing.

The proposed revision to paragraph (c)(2) would require an evacuation demonstration for certain rotorcraft with the rotorcraft on its side by referring to § 29.803(d)(3). Proposed new paragraph (c)(3) would complement § 29.803(d)(3) in this notice by excluding certain small rotorcraft from the evacuation demonstration. Proposed §§ 29.803(d) and 29.807(c) would complement each other.

See explanation for revised § 29.803 for more information.

Ref: Proposal 262; Committee I.

4–42. By further amending § 29.807 by revising the introductory text of paragraph (d) and by adding a new paragraph (d)(3) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, ditching emergency exits must be provided in accordance with the following requirements and must be proven by test, demonstration, or analysis unless the emergency exists required by paragraph (b) of this section already meet these requirements.

* * * * *

(3) Flotation devices, whether stowed or deployed, may not interfere with or obstruct the exits.

* * * * *

Explanation: A conference proposal was considered to revise §§ 27.801(b) and 29.801(b) by requiring a demonstration, test, or analysis that passenger and crew exits would open and be usable after emergency float bags or flotation devices are deployed and the aircraft is sitting in the water. Amending §§ 27.801(b) and 29.801(b) is not appropriate since exit standards are contained in §§ 27.807, 29.805, and 29.807.

Sections 27.807(d) and 29.807(d) pertain to "passenger ditching emergency exits." These paragraphs state that the thresholds of the exits must be above the waterline; that is, not obstructed by water. Requirements for additional obstructions should also be contained in this standard. The proposal would add new obstruction considerations for passenger exits that must be proven by demonstration, if necessary, or by an analysis. The conference proposal would also apply to required crew exits as well. To accommodate this objective, § 29.805, "Flightcrew emergency exits," would be revised to preclude obstruction from water or other causes similarly stated in § 29.807(d). See amended § 29.805 for crew exit standards.

It is acknowledged that the proposal would not necessarily require a demonstration. For configurations which are considered to have critical occupant egress capabilities due to liferaft locations and/or ditching emergency exit locations and floats proximity, an actual demonstration of egress may be required. The method of compliance could be determined during the course of certification, hopefully early in the certification program. As recommended by a conference participant, it is only necessary to evaluate the crew and passenger emergency exits required for evacuation in a ditching. If the crew uses the passenger exits, only the passenger exits would have to comply with the proposed standard. The introductory paragraph would be revised and new paragraph (d)(3) would be added by this proposal to ensure the exits are usable. See explanation for § 27.807(d)(3) for information on the proposal for normal category rotorcraft exits.

Ref: Proposals 84 and 250; Committee I.

4–43. By amending § 29.809 by revising paragraph (f) and by adding new paragraphs (g), (h), and (i) to read as follows:

§ 29.809 Emergency exit arrangement.

* * * * *

(f) Except as provided in paragraph (h) of this section, each land-based rotorcraft emergency exit must have an approved slide as stated in paragraph (g) of this section, or its equivalent, to assist occupants in descending to the ground from each floor level exit and an approved rope, or its equivalent, for all other exits, if the exit threshold is more than 6 feet above the ground—

(1) With the rotocraft on the ground and with the landing gear extended;

(2) With one or more legs or part of the landing gear collapsed, broken, or not extended; or

(3) With the rotorcraft resting on its side, if required by § 29.803(d).

(g) The slide for each passenger emergency exit must be a self-supporting slide or equivalent, and must be designed to meet the following requirements:

(1) It must be automatically deployed and deployment must begin during the interval between the time the exit opening means is actuated from inside the rotorcraft and the time the exit is fully opened. However, each passenger emergency exit which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the slide when the exit is opened from either the inside or the outside under nonemergency conditions for normal use.

(2) It must be automatically erected within 10 seconds after deployment is begun.

(3) It must be of such length after full deployment that the lower end is self-supporting on the ground and provides safe evacuation of occupants to the ground after collapse of one or more legs or part of the landing gear.

(4) It must have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground.

(5) Each slide installation must be qualified by five consecutive deployment and inflation tests conducted (per exit) without failure, and at least three tests of each such five-test series must be conducted using a single representative sample of the device. The sample devices must be deployed and inflated by the system's primary means after being subjected to the inertia forces specified in § 29.561(b). If any part of the system fails or does not function properly during the required tests, the cause of the failure or malfunction must be corrected by positive means and after that, the full series of five consecutive deployment and inflation tests must be conducted without failure.

(h) For rotorcraft having 30 or less passenger seats and having an exit threshold more than 6 feet above the ground, a rope or other assist means may be used in place of the slide specified in paragraph (f) of this section, provided an evacuation demonstration is accomplished as prescribed in § 29.803(d) or (e).

(i) If a rope, with its attachment, is used for compliance with paragraph (f), (g), or (h) of this section, it must—

(1) Withstand a 400-pound static load; and

(2) Attach to the fuselage structure at or above the top of the emergency exit opening, or at another approved location if the stowed rope would reduce the pilot's view in flight.

Explanation: While § 29.803(a) requires rapid evaluation of the rotorcraft in a crash landing with the landing gear extended or retracted, no accounting is presently required for a damaged landing gear. In case of a damaged gear, the exit threshold may be more than 6 feet from the ground but would not necessarily have a slide or rope fitted for the exit. The notice proposal would eliminate the apparent omission by including an evaluation of the descent provisions with the landing gear damaged. A slide or rope would be required only for exits more than 6 feet from the ground as defined in this section.

The standards for the exit rope would be retained in this section, but would be moved from present paragraphs (f) (1) and (2) to proposed paragraphs (i) (1) and (2). Proposed paragraph (g) would provide standards for this slide. This criterion was extracted from transport airplane standards contained in § 25.809(f)(1).

In proposed paragraph (h), relief is provided from slide requirements for rotorcraft with a passenger seating configuration of 30 or less if an evacuation demonstration is accomplished; that is, a rope or other assist means may be approved. This provision is consistent with a similar standard considered several years ago for a "commuter" type of airplane.

Ref: Proposal 263; Committee I.

4–44. By amending § 29.811 by revising paragraph (f)(1) to read as follows:

§ 29.811 Emergency exit marking.

* * * * *

(f) * * *

(1) There must be a 2-inch colored band outlining each passenger emergency exit, except small rotorcraft with a maximum weight of 12,500 pounds or less may have a 2-inch colored band outlining each exit release lever or device of passenger emergency exits which are normally used doors.

* * * * *

Explanation: The present rule requires a band outlining the exit. A conference proposal was submitted to permit identifying bands outlining exit release handles for small rotorcraft whose exits are obvious and are normally used doors for entering and leaving the rotorcraft. Four exemptions for four rotorcraft designs have already been issued to allow a 2-inch colored band outlining each crew and passenger door exit handle. The conference proposal would eliminate the necessity for further exemption, if adopted.

The proponent noted that hatches or other emergency exits that are not normally used doors must be identified by a band outlining the exit to comply with the standard. An objective of the conference proposal was that an exit outline band may be omitted for small rotorcraft designs when the cabin access provisions are reasonably obvious to the rescuers.

The notice proposal achieves the objectives and desires of the proponent. The proposal would require bands outlining each exit as presently prescribed except for normally used doors on small (12,500 pounds or less weight) rotorcraft which are qualified or approved as passenger emergency exists. Those doors/exits may have a 2-inch band, circular, oval, or rectangular around the door/exit handle lever or release device that releases the emergency exits. The standard would apply to hinged or sliding doors qualified as exits. If windows, hatches, or service doors are qualified as emergency exits, a band outlining the exit would be required. The proposal would not allow a solid color background but would require a distinct, separate 2-inch-wide band outlining the door/exit release lever or device as provided in paragraph (f)(2) of this section. Also, AC 20–47, Exterior Colored Band Around Exists on Transport Airplanes, sets forth, in part, acceptable means of complying with the contrasting color standard contained in paragraph (f)(2).

Ref: Proposal 265; Committee I.

4–45. By amending § 29.855 by revising paragraph (a) to read as follows:

§ 29.855 Cargo and baggage compartments.

(a) Each cargo and baggage compartment must be constructed of or lined with materials in accordance with the following:

(1) For accessible and inaccessible compartments not occupied by passengers or crew, the material must be at least fire resistant.

(2) Materials must meet the requirements in § 29.853(a)(1), (a)(2), and (a)(3) for cargo or baggage compartments in which—

(i) The presence of a compartment fire would be easily discovered by a crewmember while at his station;

(ii) Each part of the compartment is easily accessible in flight;

(iii) The compartment has a volume of 200 cubic feet or less; and

(iv) Notwithstanding § 29.1439(a), protective breathing equipment is not required.

* * * * *

Explanation: The present fire protection standards, § 29.853, for passenger and crew compartment interior linings require, in part, a vertical burn test for most interior materials and a horizontal burn test for acrylic windows and other items. The present standards in § 29.855 require that each cargo and baggage compartment be constructed of, or lined with, fire resistant material. Aluminum alloys of certain thicknesses are generally proven to be a fire resistant material.

A conference proposal was made to allow an "all cargo operation," that is, carriage of cargo in the unoccupied passenger compartment, without having a fire resistant liner or any liner to protect the windows and structure from a possible compartment fire. The FAA does not agree with this. Evidence was not submitted to show that for larger compartments, the window panes would remain intact during a possible fire to prevent air (oxygen) from feeding the fire and to show that the doors and structure would remain intact until a fire could be extinguished or the rotorcraft safely landed and evacuated. A fire in a rotorcraft cargo or baggage compartment must be safely contained or suppressed by limiting oxygen or must be extinguished before loss of the rotorcraft or landing and evacuation of the rotorcraft.

Therefore, the current proposal would continue to require accessible and inaccessible compartments to be completely lined with or constructed of fire resistant materials. Nonetheless, new standards would be added to specifically identify small, easily accessible compartments of less than 200 cubic feet volume and to allow use of passenger compartment interior materials including windows in those compartments. Additionally, protective breathing equipment would not be required for approval of those small, easily accessible compartments. Operating rules may subsequently require protective breathing equipment for certain cargo operations. The materials in these small, accessible compartments would meet the appropriate "vertical and horizontal burn test" standards specified in present § 29.853(a).

This proposal is similar to airplane Class A cargo compartment classification standards in § 25.857(a) of Amendment 25–60 (51 FR 18236; May 16, 1986). Airplane fuselage cargo compartments may not be classified as "Class A" compartments. It is appropriate for the standards for airplane and rotorcraft small cargo and baggage compartments to be similar even though rotorcraft may descend and land at a greater number of available landing areas.

However, even rotorcraft operators may find that suitable emergency landing sites are not always readily available to rotorcraft when needed. Thus, fire resistant or equivalent liners specified in the standard are intended to protect structural members and to contain or suppress a possible fire in rotorcraft accessible and inaccessible cargo and baggage compartments, except as stated for small and easily accessible compartments. Present operating rules such as §§ 121.285, 127.98, and 135.87 pertain to cargo in passenger compartments.

Additionally, § 29.855(d) of Amendment 29–24 (49 FR 44422; November 6, 1984) allows use of a smoke detector as well as the fire detector previously prescribed in that standard.

It is noted that the present flammability standards of § 29.853(a) (2) and (3) pertain to cargo blankets and cargo tie down equipment used in passenger compartments.

Ref: Proposals 268 and 269; Committee I.

4–46. By amending § 29.861 by revising paragraph (b) to read as follows:

§ 29.861 Fire protection of structure, controls, and other parts.

* * * * *

(b) For Category B rotorcraft, fireproof or protected so that they can perform their essential functions for at least 5 minutes under any foreseeable powerplant fire conditions.

Explanation: A conference proposal was made to allow use of fireproof parts on Category B rotorcraft without further substantiation. Fireproof parts are presently required in paragraph (a) for Category A rotorcraft without further substantiation. Fireproof parts have been accepted in past certification programs of Category B rotorcraft without further proof of performance. The proposal would provide an alternative to the present standard and would also incorporate current practice into the standard.

A similar proposal is made to § 27.861 for normal category rotorcraft.

Ref: Proposals 86 and 270; Committee I.

4–47. By amending § 29.865 by revising introductory text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 29.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external load attaching means can withstand a limit static load equal to 2.5, or some lower factor approved under §§ 29.337 through 29.341, of the maximum external load for which authorization is requested. The load is applied in the vertical direction and in any direction making an angle of 30° with the vertical, except for those directions having a forward component. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(d) The fatigue evaluation of § 29.571(a) does not apply to this section except for a failure of the cargo attaching means that results in a hazard to the rotorcraft.

Explanation: See the explanation for the proposal to amend § 27.865. Standards for external cargo attaching means should be identical for normal and transport category rotorcraft because they are not affected by the size of these rotorcraft.

Ref: Proposals 272, 273, and 274; Committee I.

4–48. By amending § 29.1415 by revising paragraph (b)(1) to read as follows:

§ 29.1415 Ditching equipment.

* * * * *

(b) * * *

(1) Provide not less than two rafts, of an approximately equal rated capacity and buoyancy to accommodate the occupants of the rotorcraft; and

* * * * *

Explanation: This proposal was not discussed at the conference. A disparity between aircraft operating rules and the type certification standard exists. Present § 29.1415(b)(1) requires excess liferafts to allow loss of one raft of the largest rated capacity and still have adequate remaining rafts to accommodate all occupants.

The operating rules, such as §§ 91.189(a) and 135.167(a)(2), require, in part, for extended overwater operations, enough liferafts of a rated capacity and buoyancy to accommodate the occupants of the aircraft.

The proposal would eliminate the difference by revising § 29.1415(b)(1) to provide for enough rafts of a rated capacity to accommodate the occupants and would require at least two rafts as a minimum design standard. Rafts of approximately equal capacity would be required. Any overload capacity rating of the raft may not be used to determine compliance.

4–49. By adding a new Appendix D to Part 29 to read as follows:

Appendix D To Part 29—Criteria for Demonstration of Emergency Evaluation Procedures Under § 29.803

(a) Rotorcraft in upright attitude. Demonstration of compliance with § 29.803(d)(1) or (2) with the rotorcraft in an upright attitude.

(1) The demonstration must be conducted either during the dark of the night or during daylight with the dark of night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted inside a darkened hangar having doors and windows covered. In addition, the doors and windows of the rotorcraft must be covered if the hangar illumination exceeds that of a moonless night. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the rotorcraft's windows or doors.

(2) The rotorcraft must be in a normal attitude with landing gear extended.

(3) Safety equipment such as mats or inverted liferafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the rotorcraft's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(4) Except as provided in paragraph (a)(1) of this appendix, only the rotorcraft's emergency lighting system may provide illumination.

(5) All emergency equipment required for the planned operation of the rotorcraft must be installed.

(6) Each external door and exit and each internal door or curtain must be in the takeoff configuration

(7) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in that seat until receiving the signal for commencement of the demonstration. For compliance with this section, each crewmember must be—

(i) A member of a regularly scheduled line crew; or

(ii) A person having knowledge of the operation of exits and emergency equipment.

(8) A representative passenger load of persons in normal health must be used as follows:

(i) At least 25 percent must be over 50 years of age, with at least 40 percent of these being females.

(ii) The remaining, 75 percent or less, must be 50 years of age or younger, with at least 30 percent of these being females.

(iii) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger, except for a total passenger load of less than 44 but more than 19, one doll must be carried. A doll is not required for 19 or less passenger load.

(iv) Crewmembers, mechanics, and training personnel, who maintain or operate the rotorcraft in the normal course of their duties, may not be used as passengers.

(9) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by paragraph (a)(12) of this appendix, no employee of the applicant may be seated next to an emergency exit, except as allowed by the Administrator.

(10) Seat belts and shoulder harnesses (as required) must be fastened.

(11) Before the start of the demonstration, approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at several locations in the aisles and emergency exit access ways to create minor obstructions.

(12) No prior indication may be given to any crewmember or passenger of the particular exits to be used in the demonstration.

(13) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have taken part in this type of demonstration within the preceding 6 months.

(14) A pretakeoff passenger briefing may be given. The passengers may also be advised to follow directions of crewmembers, but not be instructed on the procedures to be followed in the demonstration.

(15) If safety equipment, as allowed by paragraph (a)(3) of this appendix, is provided, either all passenger and cockpit windows must be blacked out or all emergency exits must have safety equipment to prevent disclosure of the available emergency exits.

(16) Not more than 50 percent of the emergency exits in the sides of the fuselage of a rotorcraft that meet all of the requirements applicable to the required emergency exits for that rotorcraft may be used for demonstration. Exits that are not to be used for the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means placed outside the exits to indicate fire or other reasons why they are unusable. The exits to be used must be representative of all the emergency exits on the rotorcraft and must be designated by the applicant, subject to approval by the Administrator. If installed, at least one floor level exit (Type I: § 29.807(a)(1)) must be used as required by § 29.807(c).

(17) All evacuees must leave the rotorcraft by a means provided as part of the rotorcraft's equipment.

(18) Approved procedures must be fully utilized during the demonstration.

(19) The evacuation time period is completed when the last occupant has evacuated the rotorcraft and is on the ground.

(b) Demonstration of compliance with § 29.803(d)(3) with the rotorcraft on its side. The conditions of paragraph (a) of this appendix must be used except for the following conditions—

(1) The rotorcraft must be resting on its side, with its landing gear extended;

(2) All available exits, those not blocked because of the rotorcraft attitude, may be used; and

(3) A floor level exit (Type I) must be used, if installed.

Explanation: The proposed appendix would contain the criteria or conditions for complying with the objective standards contained in proposed § 29.803. See explanation for § 29.803 for further information.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

4–50. The authority citation for Part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4–51. By amending § 133.43 by removing the "or" at the end of paragraphs (a)(2) and (b)(1); by removing the period at the end of paragraphs (a)(3) and (b)(2); by inserting "; or" at the end of paragraphs (a)(3) and (b)(2); and by adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 133.43 Structures and design.

(a) * * *

(4) Section 21.25 of this chapter.

(b) * * *

(3) Section 21.25 of this chapter, except the device must comply with §§ 27.865(b) and 29.865(b), as applicable, of this chapter.

* * * * *

Explanation: Two conference proposals were discussed to allow use of external cargo attaching means and quick release devices approved under restricted category type certificates issued in accordance with § 21.25. Military rotorcraft generally are equipped with external cargo hooks. The published military limitations for the aircraft, as well as for the cargo hook,

are acceptable for restricted category certification without further substantiation. However, military design cargo hooks may not have quick release devices having features that comply with §§ 27.865(b) or 29.865(b).

By Amendment 133–8 (42 FR 24196; May 12, 1977), restricted category rotorcraft are allowed to be used in Part 133 operations for compensation and hire. The proposal contained herein would allow use of military rotorcraft design cargo hooks, provided the quick release devices complied with the design features specified in §§ 27.865(b) and 29.865(b). A primary and a manual release device are necessary to assure quick release of any external cargo if required in an emergency. The proposal would revise the operating rule to agree with type certification practice.

Ref: Proposals 529 and 530; Committee I.

APPENDIX—MISCELLANEOUS PROPOSALS REMOVED FROM FURTHER CONSIDERATION—THE ROTORCRAFT REGULATORY REVIEW PROGRAM

[Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review Conference and the information submitted by interested persons, the following proposals considered at the conference are removed from further consideration for the reasons set forth in the following]

14 CFR (FAR section)	Proposal No.	Proponent
27.235	42	FAA
27.397	50	FAA
27.413	52	HAI and AIA
27.501	53	HAI and AIA
27.561	56	HAI and AIA
27.561	57	AECMA
27.561	58a	FAA
27.621	66	HAI and AIA
27.633	67	DGAC, France
27.725	71	AECMA
27.787	82	HAI and AIA
27.787	83	FAA
27.801	85	NTSB
27.865	90	Aerospatiale Helicopter Division (France)
27.865	91	FAA
29.235	198	FAA
29.397	206	FAA
29.413	207	HAI and AIA
29.561	211	ALPA
29.561	212	HAI and AIA
29.561	213	AECMA
29.561	214	FAA
29.561	215	CAA (UK)
29.621	225	HAI and AIA
29.631	227	CAA (UK)
29.631	228	HAI and AIA
29.633	229	DGAC, France
29.675	232	HAI and AIA
29.665	233	CAA (UK)
29.775	236	HAI and AIA
29.775	[illegible]	DGAC, France
29.787	251	ALPA
29.787	252	CAA (UK)
29.787	253	HAI and AIA
29.787	254	FAA
29.801	255	NTSB
29.801	257	CAA (UK)
29.803	259	Aerospatiale Helicopter Corp.
29.807	261	Aerospatiale Helicopter Corp.
29.813	266	HAI and AIA
29.853	267	FAA
29.865	273	Aerospatiale Helicopter Division (France)
29.865	274	FAA
133.43	526	FAA
133.43	531	HAI

Proposals 42 and 198. The proposals would shift the standards in §§ 27.235 and 29.235, Subpart B, to Subpart D of Parts 27 and 29 of this chapter, respectively. These proposals were withdrawn by the proponent without explanation.

Proposals 50 and 206. These conference proposals would increase the amount of foot force applied to the pilot's foot controls, at each pilot station, from 130 pounds to 300 pounds for both normal category and transport category rotorcraft. At the conference, industry was opposed to this value but was agreeable to an increase in force to 200 pounds. Service experience was furnished stating that 900 helicopters designed to the present standard were used in military flight training. No failures of the foot-operated (directional) controls were reported. However, a proposal mentioned that service experience on one helicopter model in production for many years, designed to the present standard, revealed that foot-operated controls failed due to pilot-applied forces. The pilot's foot force exceeded the strength of the pedal supports. General research has revealed that a mean pedal force may exceed 300 pounds in response to critical situations. However, rotorcraft accident and incident information compiled since 1970 does not list a case of a pedal and/or pedal support failure as a result of pilot applied forces. Therefore, these proposals are not supported by the service record and are unnecessary.

Proposals 52 and 207. These proposals would delete specific minimum values for stabilizing and control surface loads or coefficients. The proposals would require surfaces to withstand the maximum forces. Sections 27.413(a)(2) and 29.413(a)(2) presently require the surfaces to withstand critical loads. The substance of the proposals is contained in the present standard. The proposed amendments are not necessary.

Proposal 53. The proposal would have amended § 27.501(a) by adding a new paragraph describing a means of complying with the standards contained in § 27.501 for skid landing gear. The proposal would specifically allow analytical strength substantiation. A rule change is not necessary because (1) analytical substantiation rather than physical test has been used in past certification programs; (2) advisory circulars are appropriate documents for providing FAA policy on means or methods of complying with certification standards; and (3) the explanation for proposed changes to § 27.727 contains information about the present standards in § 27.501.

A participant noted that the applicant for a certificate was required to conduct a static test to show the skid landing gear would not plastically deform or yield under limit loads. The standard in § 27.501(a)(3) clearly allows structural yielding as stated, and that standard takes precedence over the general rule, § 27.305. The unique feature of certain skid landing gear designs is recognized by this specific rule.

Proposals 56, 57, 58a, 211, 212, 213, 214, and 215. These proposals would have increased, in varying amounts, the design load factors for minor crash conditions. Several proposals would have a new 3g backward load design condition. In addition, proposals would have added specific design standards for restraining any item of mass that could injure an occupant.

A report prepared by the U.S. Army was submitted to the docket for consideration in this rulemaking action. Further justification and specific data in support of the various proposals were requested by the FAA; however, the information and data have not been submitted to the docket. The FAA has developed and announced a crash dynamics program plan to develop technology which will satisfy current aircraft occupant safety and survivability needs. The plan involves large and small airplanes as well as rotorcraft. Thus, proposed changes to §§ 27.561 and 29.561 will be deferred until completion of the crash dynamics program. The FAA crash dynamics program was announced in a draft advisory circular on human exposure to impact and a preview of the agency's crash dynamics program (49 FR 37111; September 21, 1984).

Proposals 66 and 225. These proposals would identically change §§ 27.621 and 29.621 concerning critical and noncritical castings. Two facets are related to noncritical castings, and two facets are also related to critical castings.

Noncritical castings having a casting factor of at least 1.50 would be subject to visual inspections only. A factor of at least 2.00 is presently required in conjunction with visual inspections. A casting factor of 1.25 to 1.50 would be allowed without radiographic inspections, whereas radiographic inspections are presently required in conjunction with this range of factors.

Critical castings would have a reduction from present 1.25 to 1.00 for the minimum casting factor, provided materials with guaranteed properties were used. The second facet would permit testing of only one critical casting, provided the factor achieved in this test of one specimen was 1.50 or higher. This procedure or means of compliance with a 1.50 casting factor has been accepted under the present standards for many years. The rule change is not necessary.

The remaining facets of the proposals involve standards for all aircraft castings, not just rotorcraft castings. The justification for the reduction in inspection standards and in casting factors was based on military aircraft and their service experience. Corroboration of the information was requested at the conference, but none has been received. A rule change for aircraft castings is not warranted at this time.

Proposals 67 and 229. Two proposals to add new hail damage standards for IFR approvals of normal and transport category rotorcraft were withdrawn by the proponent.

Proposal 71. This proposal would have revised § 27.725(a)(1) by requiring a gear limit drop test height of at least 8 inches from the lowest point of the landing gear to the ground. The present standard requires a drop height of at least 13 inches or any lesser height but not less than 8 inches in certain circumstances as stated in § 27.725(a). Transport rotorcraft landing gear limit drop test height is at least 8 inches as stated in present § 29.725(a). Present § 27.725(a)(2) would continue to permit use of an 8-inch drop test height whenever proven for the particular rotorcraft design. The proposed rule change is unwarranted.

Proposals 82, 83, 251, 252, 253, and 254. These proposals would, generally, increase the design strength standards for cargo and baggage compartments in both normal and transport category rotorcraft. The present standards in §§ 27.787(c) and 29.787(c) specify that there must be a means to protect each occupant from injury by the compartment contents under a 4g ultimate forward inertia force. The present design standard in §§ 27.787(a) and 29.787(a) imposes vertical design loads.

The proposals would increase the forward load factor in current §§ 27.787(c) and 29.787(c) and would add sideward and upward design load factors for compartment contents. Another proposal would apply these strength or load factor standards to compartments adjacent to the crew or passenger compartment and would, therefore, exclude cargo compartments separated from these compartments by a sufficient distance. The proponent wanted to exclude cargo compartments located in the tail booms from the design standards. Another proposal would require cargo and baggage to be restrained for ultimate load factors, sideward, forward, upward, and downward, specified in §§ 27.561(b)(3) and 29.561(b)(3). This proposal has merit. However, proposals to revise the standards in §§ 27.787(c) and 29.787(c) are deferred. The FAA is committed to a program to determine appropriate standards for minor crash conditions prior to proposing changes to the occupant protection standards in §§ 27.561(b)(3), 29.561(b)(3), 27.787(c) and 29.787(c). See the discussion for Proposals 56, 57, 58, and 211 through 215 for further information. These proposals concern changes to §§ 27.561(b)(3) and 29.561(b)(3) that were also deferred.

Proposals 85 and 255. These proposals would require installation of an underwater locating device prior to certification of any "ditching" configuration approved under §§ 27.801 and 29.801. A participant noted the proposals should be considered an operational standard and should not be an airworthiness standard. The device would be installed for extended overwater flights. Accordingly, Proposals 85 and 255 were addressed in Notice No. 85–8 (50 FR 10144; March 13, 1985).

Proposals 90 and 273. These proposals would have made three identical changes to §§ 27.865 and 29.865, "External load attaching means." The proponent's proposal would (1) allow an electrically operated "backup" load release device instead of the present manual mechanical release device; (2) require a load indicator or meter and dynamometer for pilot's use to comply with the allowable load limit or weight for the cargo hook; and (3) require specific color cockpit warning lights to indicate the "release" position or loaded case for the cargo hook.

The proposal is deferred. Electrically operated "backup" devices are not as reliable as solely mechanical devices. Load indicator and dynamometers have been approved as advisory and optional equipment. The reliability and accuracy of the indicator and dynamometer were not determined or required for such approvals. The present operating and airworthiness standards are adequate to control applied weights when properly followed. It is not necessary to require hook position indicator lights. Furthermore, present § 29.1322 specifies colors for certain lights. This rule is sufficient for cargo hook position indicator lights whenever installed. An indicator light for the cargo hook loaded case required further evaluation and justification.

Proposals 91 and 274. These FAA proposals would have made identical changes to §§ 27.865 and 29.865. The proposal would separate the structural substantiation standards into those for Class A rotorcraft-load combinations (nonjettisonable loads) and those for Class B and C rotorcraft-load combinations (jettisonable loads). The proponent contends that Class A (nonjettisonable) external loads should be substantiated for the aircraft design load factors, where higher, rather than the 2.5 limit design load factor specified. Operating and service experience associated with the use of the 2.5 limit load factor has been satisfactory. this factor has been used since 1964, first in § 133.43 and later in §§ 27.865(a) and 29.865(a). No compelling proof was offered to show the standards are deficient for Class A loads. The proposals are therefore deferred from further consideration.

Proposals 227, 228, and 238. These proposals would require proof that transport rotorcraft windshields and main rotor head (controls) could safely sustain a 2- or 4-pound bird impact. the 2-pound bird would apply to transport rotorcraft of 12,500 pounds or less gross weight. A proponent believes larger rotorcraft would encounter the 4-pound bird. Transport rotorcraft are presently unpressurized and are seldom, if ever, flown at altitudes exceeding 10,000 feet above sea level except to avoid terrain. The windshields of rotorcraft are typically large and have compound curves. Transport rotorcraft have been approved for single and two pilot operations, but a passenger may sit in the seat at the second pilot station.

Main rotor pitch controls are exposed and are vulnerable to a possible bird strike; however, reports of serious damage to exposed main rotor controls have not been found. Bird strikes of rotorcraft windshields have been reported. However, the damage incurred in these cases does not exceed the anticipated cost of requiring bird resistant or bird proof windshields for all new transport rotorcraft designs.

Safety benefits of a bird resistant windshield design are difficult to assess from the current rotorcraft statistics. Nevertheless, the possible benefits do not outweigh the cost of certifying and installing a bird resistant windshield. Executive Order 12291 requires that benefits should exceed costs.

Bird resistant windshields have been approved as an optional or voluntary design feature for a few transport rotorcraft designs. Birds weighing 2 and 4 pounds have been used in tests of these optional design windshields. Voluntary installation and proof of bird resistant windshields are encouraged to enhance safety of transport rotorcraft operations. Since preliminary data reveal costs would probably exceed benefits, these proposals are deferred.

Proposal 232. The proposal would revise § 29.675(a) to reflect current technology for control systems. The present standard specifies that the control systems have stops to positively limit the range of travel.

The rule does not preclude use of more than one set of stops if necessary or appropriate for the design. Whenever additional stops are installed, appropriate design loads, whether pilot effort or actuator maximum output loads, must be imposed on the stops. This criterion stems from the present standards in §§ 29.675 and 29.395. The proposed change is unnecessary and deferred.

Proposal 233. The proposal would have amended § 29.685 by revising paragraph (d)(10) to require inspection provisions for other various parts of the control system which necessitate periodic inspections. It is noted that § 29.685(d) deals with cable control system design standards only. Identical standards are contained in §§ 23.268(a)(3) and 25.689(f) for airplanes. Present § 29.611, "Inspection provisions," requires inspection provisions for cable control systems as well as other types of control systems when necessary for recurring inspections. The proposed rule change for cable control systems is unnecessary because the present standards are sufficient to achieve the objective of the proposal.

Proposal 239. The proposal was withdrawn by the proponent in favor of Proposal 228. See explanation for Proposals 227, 228, and 229.

Proposal 257. The proposal would add specific wave height to length ratios for both Category A and B rotorcraft for proof of capsize stability on the water. In addition, one compartment of the buoyancy flotation device would be deflated or flooded and other likely structural damage would be considered in the stability evaluations. Buoyancy of fuel tanks would be allowed, but reference to any jettisonable volume of fuel would be removed from the present rule. A standard would be added for model tests and for conditions used in these tests. The proponent contends the present standard is not sufficiently precise and submitted the proposal to correct this.

A participant suggested that rather than change the standard, the FAA issue an advisory circular containing these criteria as a means of complying with the present objective standards in §§ 27.801(d) and 29.801(d). The proposal is deferred for a possible advisory circular since the standards are sufficient.

Proposal 259. The proposal would require antiskid material on external surfaces used for emergency egress. The proposal was withdrawn by the proponent.

Proposal 261. The proposal would add a new paragraph to § 29.807(c) requiring an evacuation demonstration of certain rotorcraft designs with the rotorcraft on its side. The proposal was withdrawn by the proponent.

Proposal 266. This proposal would revise the standards for access to emergency exits by adding a new paragraph (d) to § 29.813. Certain high density, "wide body," or compact interior configurations having 20 or more passengers would be excluded from complying with the present unobstructed exit opening and exit access standards. The unobstructed exit opening and exit access standards are necessary to allow rapid evacuation of the rotorcraft. Justification for this HAI and AIA proposal is quoted for reference. "Current requirements are not adoptable to helicopters of the "wide body" configuration, therefore, a statement is necessary to exclude this configuration helicopter from § 29.813." This and the oral justification given during the conference were insufficient. As noted during the conference, applicants for type certification of "wide body" configurations may petition for an equivalent safety determination and present the arguments and specific design features that might exclude the design from literal compliance with § 29.813(c) and (c)(1). The proposal is deferred for further consideration.

Proposal 267. This proposal would add standards for flammability of materials used in crew and passenger compartments. The proposal was withdrawn by the proponent since the present flammability standards in § 29.853 are adequate.

Proposal 528. The proposal was submitted by the FAA and was withdrawn by the FAA without conference discussion.

Proposal 531. The proposal would revise § 133.43(c) by deleting any reference to structural operating limits for Class C rotorcraft-load combinations. Class C rotorcraft-load combinations are cable laying, wire stringing, etc. The proponent suggests that the operational checks or demonstrations in present § 133.41(d) would be sufficient for airworthiness requirements and would be adequate for proof of specific "structural" evaluation of the external cargo attaching means. The proponent contends these requirements represent structural design limits that should be contained in rotorcraft certification standards of Parts 27 and 29 of this subchapter.

The proposal would require the rotorcraft manufacturer to anticipate the particular use of a fleet of rotorcraft and to prove structural design requirements and limitations for unique uses in Class C rotorcraft-load combinations. By such a rule change to § 133.43(c), the operator would not be obligated to evaluate his unique use of the device or to assure that a wire stringing device installation, for example, would be within aircraft design limitations proven by the manufacturer.

Structural design limitations are established for a type design under §§ 27.865 and 29.865 for external cargo configuration attaching means. Certain structural limits are known. Class C rotorcraft-load combinations are generally unique and have innovative equipment. The operator, the FAA, and the rotorcraft manufacturer, if necessary, may work together using the limits approved under present §§ 27.865 and 29.865 to arrive at specific allowable limits, if needed, for complying with the requirements of § 133.43(c) that pertain to Class C rotorcraft-load combinations.

The manufacturer cannot envision all possible "external cargo" uses for each rotorcraft design. Class C rotorcraft-load combinations present very unique load cases and should be approved on an individual basis. Present § 133.43(c) correctly provides for this evaluation. The proposal is deferred.

Issued in Fort Worth, Texas, on March 14 1988.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 88-5988 Filed 3-18-88; 8:45 am]

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federal register

Monday
March 21, 1988

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Parts 3000 et al.

Minerals Management; Onshore Oil and Gas and Geothermal Leasing; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA-620-08-4111-02-24-10]

Minerals Management; General: Oil and Gas Leasing: Noncompetitive Leases: Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve-Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas: Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by the Bureau of Land Management, including National Forest System lands, in order to comply with the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203), enacted as part of the Omnibus Budget Reconciliation Act of 1987. Also, this proposed rulemaking contains amendments to implement bonding and reclamation provisions contained in the Act as well as revisions to bonding requirements recommended by a Bureau of Land Management task force that reviewed bonding procedures for oil and gas and geothermal resources leasing.

DATE: Comments should be received by April 21, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Judith I. Reed, (202) 653–2194
or
Ted Hudson, (202) 343–8735.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would make changes in the regulations governing the onshore oil and gas leasing program of the Bureau of Land Management that are required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (the Act) of December 22, 1987 (Pub. L. 100–203). The Act further requires that a final rulemaking be promulgated within 180 days following its enactment. Because of the short statutory deadline, the Bureau of Land Management is requesting public comments to be submitted within a 30-day comment period. The changes proposed are discussed under their appropriate Parts.

Part 3000—Minerals Management; General

The definition of "proper BLM office" would be amended in § 3000.0–5(f) of this proposed rulemaking to remove the provision for filing simultaneous oil and gas lease applications in the Wyoming State Office and replace it with a provision for filing competitive parcel nominations in such Bureau of Land Management office as may be specified by the Director in the List of Lands Available for Competitive Nominations or in a notice issued by the Bureau in accordance with the regulations in Subpart 3120 of this rulemaking.

A new § 3000.9 referencing the enforcement provisions of section 5108 of the Act would be added to this Part. This provision would state that these provisions shall be enforced by the United States Department of Justice.

Part 3100—Oil and Gas Leasing

Section 3100.0–3 would be amended to include the authority for the prohibition of leasing in the various categories of wilderness study areas listed in revised section 43(a) of the MLA. Also, the special leasing provisions and restrictions for designated wilderness lands would be moved from § 3100.3 to § 3100.0–3.

Section 3100.0–5 would be amended by adding definitions of "offer for noncompetitive lease" and "bid" and by removing the definitions for "favorable petroleum geological province" and "known geological structure," both of which are made obsolete by the Act. Also removed would be the present provisions of § 3100.3, which applies the concepts of known geological structure and favorable petroleum geological province to determine whether lands should be leased competitively or noncompetitively, that were made obsolete by the Act.

Section 3100.4 concerning options would be renumbered as § 3100.3.

A new § 3101.1–4 would be added by this proposed rulemaking to address modification of lease terms and stipulations in accordance with section 5102(d) of the Act.

Section 3101.7 would be amended to clarify the coordination, review, consultation, consent, and appeals provisions for lands under consideration for leasing, the surface of which is administered by a surface managing agency other than the Bureau of Land Management. This applies particularly to National Forest System lands, where leasing may occur only when there is no objection from the Secretary of Agriculture.

Section 3101.8 would be amended by the proposed rulemaking to provide a time frame of 30 days instead of 90 days in which the entity could suggest lease stipulations or file any objections it may have to lease issuance. The shorter time frame is necessary to meet the requirements of the Act for lease issuance within 60 days of determining priority, and is considered reasonable since such an entity would have provided comments and stipulations prior to the lands being offered for competitive leasing. Noncompetitive offers filed after completion of the competitive process would require a check only to determine if any changes have occurred which would require additional comments or stipulations.

Section 3102.1 would be amended to provide that a lease cannot be issued to any person or entity that is not in compliance with the act, including anyone who has failed or refused to comply with the reclamation requirements and other standards as required by section 5102(d) of the Act.

Section 3102.5 would be amended by requiring certification that a lessee or potential lessee is not in violation of section 5108 of the Act concerning fraudulent activities and is in compliance with the reclamation requirements established in section 5102(d) of the Act. Section 3102.5–1(f) would specify when noncompliance with reclamation requirements of the Act would begin, thereby prohibiting issuance of leases or approval of assignments/transfers, and would provide for cancellation of any lease issued or transfer/assignment approved during the period that the entity was in violation of the reclamation requirements.

A new § 3102.6 would be added to set forth the procedures under which an agent may sign and file lease-related documents on behalf of a principal. This new section is being reproposed subsequent to the June 12, 1987, proposed rulemaking. That proposed rulemaking made a distinction between the procedures needed for an attorney-in-fact and an agent to act on behalf of a lessee or potential lessees. The need for

these procedures was made obsolete by the new law.

Section 3103.1–1 would be amended to remove currency or cash as an acceptable form of remittance in order to avoid security problems, and to allow for use of other arrangements, such as electronic wire transfers and credit cards, as may be determined acceptable by the Bureau of Land Management.

Section 3103.2–1(a) would be amended to require payment of the first year's rental for parcels at the time nominations or competitive bids are made. The intent of this requirement is to ensure that parcel nominations and bids are serious and that the Federal Government promptly obtain all revenues due.

Section 3103.2–1(b) would be amended to provide that payment of an incorrect amount of first year's rental based on an incorrect acreage indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale is curable within 10 days of notice of the error.

Section 3103.2–2 would be amended to specify the rental rate for all competitive and noncompetitive leases issued after enactment of the Act, including leases issued under special leasing acts in Subpart 3109 of this title. For both competitive and noncompetitive leases the rental would be set at the minimum rate of $1.50 per acre for the first five years, to be increased to $2 per acre for each year thereafter. This is in accordance with section 5102(c) of the Act. The proposed regulations would provide for the following exceptions to this rental rate. Leases issued prior to enactment of the Act would remain at the rate specified in the lease. Grandfathered applications, offers, and bids received before, but issued after, enactment would carry the rate specified in the regulations in effect on December 22, 1987. Leases issued under former Subpart 3112 on or after February 19, 1982, which required a rental increase to $3 per acre in the sixth year, under the proposed rulemaking would have a rental increase only to $2 per acre. These leases had been granted a rental reduction through February 1, 1989, by the Secretary of the Interior in accordance with the authority under section 39 of the Mineral Leasing Act. Under this proposed rulemaking the annual rental rate would increase to $2 on the rental due date after February 1, 1989. A determination that the lands are in a known geological structure or favorable petroleum geological province made after enactment of the Act would not affect rental rates of leases grandfathered by the Act. Exchange and renewal leases would carry a $2 rental rate. The proposed regulatons also clarify that the lessee shall pay an annual rental in addition to compensatory royalty assessed on nonproducing leases, consistent with an opinion of the Office of the Solicitor, Department of the Interior (M–36546, January 7, 1959). Additionally, under the proposed rulemaking, reinstated competitive and noncompetitive leases and converted unpatented oil placer mining claims issued under Subpart 3108 would no longer be affected by a determination of a known geological structure or of a favorable petroleum geological province.

Section 3103.3–1 would be amended to make it clear that the royalty rate for new competitive and noncompetitive leases shall be fixed at 12½ percent, but that the royalty rate for leases issued after enactment of the Act for offers and bids made prior to the enactment date would be as provided in the regulations in effect on December 22, 1987. It also would provide for a fixed 12½ percent royalty rate on exchange and renewal leases issued after the effective date of the regulations. The proposed rulemaking also would restore the provision inadvertently omitted in the July 1983 rulemaking that allows leases that qualify under the provisions of the Act of August 8, 1946 (30 U.S.C. 226c) to apply for a limitation of a 12½ percent royalty rate.

Section 3103.3–2(a) would be amended to provide that leases issued under the authority of the new law shall pay a minimum royalty in lieu of rental for leases in production, which would be not less than the rental that would otherwise be required for that lease year. This provision is in accordance with section 5102(c) of the Act. The section also would be amended to clarify the minimum royalties for existing leases and those leases issued from applications, offers, or bids made before the date of enactment of the Act.

The proposed rulemaking would amend section 3104 to clarify that bonding is required before surface disturbing activities related to drilling operations can be authorized, and to list the factors, such as reclamation requirements, used to determine the minimum bond amount. This section also would be amended, in accordance with the Act, to require bonding in an amount sufficient to ensure adequate reclamation. Presently, surface disturbing activities performed on a lease are covered by either a $10,000 lease bond, a $25,000 Statewide bond, or a $150,000 nationwide bond. Recent studies of the adequacy of these bonds indicated that these bond amounts help ensure that an operator will adequately reclaim well sites and surface disturbances, primarily because of the operator's potential inability to qualify for future bond coverage or the threat that the operator's credit rating will be jeopardized, should default occur. The ability of the Bureau of Land Management or the U.S. Forest Service to require additional bond coverage and, for most operators working in environmentally sensitive areas, the desire to maintain a good public image and a good working relationship with the Bureau, U.S. Forest Service, and the public also are strong factors in ensuring compliance with operations and reclamation requirements. Provisions of the Act that require the denial of assignments and prohibit issuance of new leases to an entity or related affiliate when such entity has failed to comply with reclamation requirements, including the proposal in this rulemaking under § 3104.5 to require 100 percent bond coverage for an entity which has failed to comply with reclamation requirements over the past 5 years, would further guarantee complete and timely reclamation.

Establishment of national reclamation standards would not be appropriate because of the diverse land surfaces, vegetation, animal life, soil types, etc., and the uniqueness of many surface disturbances. Therefore, standards for reclamation and mitigation measures to minimize adverse impacts are established by Bureau and Forest Service personnel during the onsite inspection as part of the review of each Application for Permit to Drill and the accompanying surface use plan of operations, using national guidance and recommendations provided by the joint Bureau of Land Management/Forest Service "Oil and Gas Surface Operating Standards for Oil and Gas Exploration and Development," Second Edition, August 1978, which is currently undergoing further revision for a third edition.

The proposed rulemaking would amend Subpart 3104 to incorporate provisions identified as necessary after consideration of the comments received on a proposed rulemaking published in the **Federal Register** on May 1, 1985 (50 FR 18614). That proposed rulemaking would have amended the existing regulations covering fluid mineral bonding requirements and would have increased the existing bond amounts which have been adjusted only once since 1920.

That proposed rulemaking received a mixed response from the public. Most of the public comments supported the amendments that would have

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consolidated bond forms, but nearly all of the comments opposed an increase in the bond amount. The opposition stemmed from concerns about industry's ability to obtain new bonds at the proposed higher amounts, the current economic state of the oil industry, and the "business health" of surety companies.

Because of the concerns expressed in those comments, the Bureau of Land Management convened a task force composed of three Bureau of Land Management State Directors and a representative from the Minerals Management Service. In addition, representatives from the U.S. Forest Service and the Office of Surface Mining Reclamation and Enforcement participated as *ex officio* members. This task force was directed to review bonding issues, solicit industry views, evaluate various bonding alternatives, and provide reccommendations to the Director of the Bureau of Land Management for consideration.

After an extensive study of the bonding issue, including a review of State government and private industry bonding requirements, the task force developed final recommendations. In December 1986, the Director of the Bureau of Land Management approved the recommendations, with certain amendments. One of the recommendations approved by the Director was to allow the use of letters of credit. The proposed rulemaking at § 3104(c)(5) would allow the use of a irrevocable letter of credit. The letter of credit, to be acceptable, would have to be issued by a financial institution, be irrevocable for the term agreed upon, and payable only to the Department of the Interior as the agent. In the event of noncompliance with any lease terms, the Bureau of Land Management could demand from the issuing financial institution immediate payment up to and including the face amount of the letter of credit.

The proposed rulemaking also includes bonding revisions not directly addressed by the bonding task force. One revision of § 3104.1(c) would eliminate cash as an acceptable form of personal bond. This is due to concerns expressed by the Federal Reserve Board and Bureau of Land Management field offices that included concerns about sophisticated counterfeiting techniques and security problems involved in accepting and handling large sums of cash.

The elimination of cash as an acceptable form of bonding should not pose any problems to industry, because Bureau field offices have advised that a bond in the form of cash is rarely submitted.

Another proposed revision in § 3104.1(c) would allow personal bonds to be submitted in the form of a certificate of deposit. The certificate of deposit would have to be issued by a Federally insured financial institution and grant the Secretary of the Interior full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. Furthermore, Secretarial approval would be required prior to allowing any party to redeem the certificate of deposit.

The proposed rulemaking would revise § 3104.2 to clarify that a lease bond may be filed by either the lessee, the owner of operating rights (sublessee), or the operator, thus removing the distinction between operator's bonds and lessee's bonds. This revision also is made in §§ 3104.3 and 3104.4 of this proposed rulemaking.

The proposed rulemaking also would amend § 3104.5 to provide regulatory authority and standards for the authorized officer to ensure that bonding levels are adequate under section 5102(d) of the Act. Paragraph (a) of this section of the proposed rulemaking would require 100 percent bond coverage for a proposed operation if the operator has failed to comply with reclamation requirements during the past 5 years. The 5-year time frame was determined by the Bureau of Land Management to be a reasonable period to observe the operator's compliance and to provide an indication of the operator's intent to comply with reclamation requirements. Failure to comply with the reclamation requirements would be evidenced by a demand placed by the Bureau on the opeator's bond or other financial guarantee during that period. This section also would allow the authorized officer to require an increase in the amount of any bond when the operator is determined to be a risk.

Section 5103 of the Act authorizes the Secretary of the Interior to disapprove assignments of leases or portions thereof that contain less than 640 acres outside of Alaska, or less than 2,560 acres within Alaska. It also continues to allow the Secretary broad discretion to disapprove assignments of a separate zone or deposit under any lease or a part of a legal subdivision, unless such assignment is demonstrated to the satisfaction of the authorized officer as furthering the development of oil and gas. The proposed rulemaking would amend § 3106.1 to include these change.

The proposed rulemaking would amend § 3107.2–2 to specify the date when the 60-day period begins for commencement of reworking or drilling operations on a lease that is not producing, and would amend § 3107.2–3 to make it consistent with the provision of the Mineral Leasing Act. The proposed rulemaking also would amend § 3107.7 and 3107.8 by adding a provision to each for compliance with reclamation requirements that the Secretary of the Interior is authorized to enforce under section 5102(d) of the Act.

Section 3108.1 would be revised to add a provision requiring a relinquishment to be subject to the reclamation requirements in accordance with section 5102(d) of the Act.

Section 3108.3 would be amended by adding the statutory requirement that the Secretary of the Interior shall provide the lessee 30 days notice of lease cancellation for failure to comply with the provisions of the lease. Also, in accordance with the Act, the proviso that the Secretary may cancel the lease in these circumstances only if the land is not known to contain valuable deposits of oil and gas is amended to allow cancellation unless or until the lease contains a well capable of production of oil or gas in paying quantities, or is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of such production.

Part 3110—Noncompetitive leases

Part 3110 would be revised by proposed rulemaking to provide for noncompetitive leasing of lands that are not leased competitively in accordance with section 5102(a) of the Act. For clarity and convenience, this entire Part of the regulations is provided in this proposed rulemaking, including those provisions proposed in the rulemaking published in the **Federal Register** on June 12, 1987 (52 FR 22592), revised to accommodate the requirements of the Act. References throughout this Part of the regulations to "known geological structure" and "favorable petroleum geological province" would be removed, because these terms are made obsolete by the Act.

A new § 3110.1 of the proposed rulemaking would specify that the only lands available for noncompetitive leasing are those which do not receive a bid higher than or equal to the national minimum acceptable bid. Such lands, as specified in section 5102(a) of the Act, would be available for noncompetitive lease offer as stated in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease

Sale and would remain available for a period of 2 years afterwards. No applications or offers for noncompetitive leases filed prior to the competitive offering of such lands would be accepted after the effective date of this rulemaking.

Section 3110.2 of the proposed rulemaking would revise the provisions in § 3111.1–1(b) of the existing regulations that govern priority of noncompetitive lease applications and offers. Section 3110.2(a) would provide that lease offers filed prior to the effective date of this rulemaking would be processed in accordance with the regulations in effect at the time of filing of the offer. Section 3110.2(b) of the proposed rulemaking would provide that all offers filed on the same day on or after the effective date of this rulemaking would receive priority as of the date of filing, with respect to conflicing offers, regardless of the time of day, and would be subject to a drawing in accordance with § 1821.2–3(a) of this title. Any such offer filed would not be made available for inspection by any member of the public until the day after such filing. Section 3110.2(c) would provide for priority of filings made pursuant to an opening order or other notice, which would set forth the specific provisions regarding filing procedures and priority. Section 3110.2(d) would provide that if there were multiple filings for the same parcel under former Subpart 3112, only a single priority filing would be selected. All remaining applications on that parcel would be rejected. If a lease is not issued from that application selected, the lands in the parcel would be offered competitively in accordance with the provisions of Part 3120 of the regulations.

Sections 3110.1–1, 3110.1–2, and 3110.1–3 of the existing regulations would be renumbered in the proposed rulemaking as § 3110.3–1, 3110.3–2, and 3110.3–3, respectively. Section 3110.3–3 would be revised to allow a noncompetitive lease offer to include less than 640 acres if the offer is filed on the entire parcel as it was offered by the Bureau of Land Management in the competitive process under Subpart 3120 of the regulations. This section of the proposed rulemaking also would clarify that parcels of land that meet only at a corner would not be considered contiguous for purposes of this rulemaking.

Section 3110.1–3(d) of the existing regulations would be removed in this proposed rulemaking, because under the Act this provision is no longer applicable.

Section 3110.2 of the existing regulations would be renumbered as § 3110.4 by the proposed rulemaking. Revisions would be made to the section to remove references to withdrawal of simultaneous lease applications or offers now made obsolete by the Act. This section of the proposed rulemaking also would specify that an offer may not be withdrawn until at least 60 days after the date that it was filed with the proper BLM office.

Section 3110.3 of the existing regulations would be renumbered in the proposed rulemaking as § 3110.5, and § 3111.1–1(e) and 3111.1–1(f) of the existing regulations would become paragraphs (c) and (d) in this section. These paragraphs would specify action taken on a noncompetitive offer by the authorized officer.

Section 3110.6 of the proposed rulemaking would include the provision for an amendment to a lease which was inadvertently omitted by the July 1983 rulemaking. There is a continuing need for this provision.

Subpart 3111 which would be removed in its entirety by this proposed rulemaking, but several of its provisions would be renumbered, included in Part 3110, and adapted to reflect changes required by the Act. Section 3110.7(a) of the proposed rulemaking would be revised to delete the phrase "attorney-in-fact", to provide that a duly authorized agent would be acceptable to sign an offer in lieu of the offeror, to be consistent with the proposed revisions in § 3102.6. Section 3110.7(b) of the proposed rulemaking would provide that defects in noncompetitive lease offers that require rejection under the existing regulations would be correctable subject, however, to an intervening proper and complete offer for all or part of the same lands. There would be no additional filing fee for a corrected offer. This change would expedite the leasing of lands where an error in the offer is identified during adjudication of the offer, and there is no competing offer for the same lands.

Section 3110.8 would be revised to specify the land description requirements for noncompetitive lease offers, now in § 3111.2, and would set forth separate requirements for public lands, for acquired lands, and for accreted lands. A new paragraph 3110.8–1(a) would be added to provide for the description of an offer by the parcel number as assigned by the Bureau of Land Management in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale. Use of the parcel number in lieu of the land description would be mandatory during the month of the competitive process. An offer filed during this period of time would be required to include only the lands in the parcel as offered by the Bureau. After the end of the month, the lease offer size and description of the lands would be required to be in accordance with § 3110.3–3 as well as the remainder of § 3110.8–1 of the proposed rulemaking.

Section 3110.8–3 would allow an offeror, in describing acquired lands in an offer, to provide the acquisition or tract number assigned by the acquiring agency and maps depicting the location of the parcel, on the request of the authorized officer, without loss of priority. This change also would be included in § 3110.3–3(b)(2) of the proposed rulemaking. This section was § 3111.2–2 in the existing regulations, and has been extensively rewritten to reduce confusion in land description requirements for offers of acquired lands minerals.

Section 3111.3 of the existing regulations addressing future interest leases would be revised and renumbered as § 3110.9 by the proposed rulemaking. All reference to a supplement agreement would be removed, as in the proposed rulemaking published in the **Federal Register** on June 12, 1987. A noncompetitive future interest offer would be required to be accompanied by evidence of ownership of the present mineral interest or of agreement between the offeror and the mineral fee owner, lessee, or operator holding rights to the present fee interests in the lands.

A new § 3110.9–4 in the proposed rulemaking would provide that annual rental and royalty would not be required until the oil and gas interests vest in the United States. This section also would provide that any transfer of a future interest lease must be filed in accordance with the provisions of Subpart 3106, and that if a future interest lease is relinquished, cancelled, terminated or expired, any rights enuring from the United States also cease or terminate.

The proposed rulemaking would delete Subpart 3112 on Simultaneous Filings because the Act makes those noncompetitive leasing procedures obsolete.

Part 3120—Competitive Leases

The proposed rulemaking would amend Part 3120 of the regulations to accommodate the changes in the competitive onshore oil and gas leasing program made by the Act. For clarity and the convenience, this entire Part of the regulations is provided in this proposed rulemaking, including provisions proposed in the rulemaking of June 12, 1987 (52 FR 22592), revised to accommodate the requirements of the Act. The presence of a known geological structure or a favorable petroleum geological province would no longer be used to determine whether a given parcel shall be leased competitively. Section 5107 of the Act provides for conducting test sales pending a final rulemaking to implement the Act. The Director of the Bureau of Land Managment has authorized two types of test sales during the period of promulgation of this rulemaking. The conduct of these test sales will provide an opportunty for the public to participate and comment on the differences in the test sales as part of this rulemaking process.

On type of test sale will involve a nomination process described in § 3120.3 of the proposed rulemaking. In this sale, nominations of parcels accompanied by a remittance of the national minimum acceptable bid were filed and processed in the Wyoming State Office for the three Bureau of Land Management State Offices testing this type of sale. Parcels have been posted on a List of Lands Available for Competitive Nominations. At the close of the 15-working day nomination period, those lands receiving nominations have been placed on a Notice of Competitive Lease Sale and will progress to an oral auction. Lands which do not receive a national minimum acceptable bid through the nomination process, having been subjected to the competitive process, would become available for noncompetitive leasing for the two-year period specified in section 5102(a) of the Act.

The second type of test sale to be conducted is a one-step competitive process, with parcels directly posted on a Notice of Competitive Lease Sale by three Bureau of State Offices and offered at an oral auction without the initial nomination step. Lands not receiving oral bids become available for noncompetitive leasing for a two-year period after conclusion of the auction at the time specified in the sale notice.

Variations on the manner of oral bidding are also being tested. Some Bureau of Land Management State Offices will require bids on a per parcel total acreage basis while others will accept bids on a pre-acre basis. No set bid increments have been specified for any of the oral auctions.

A final decision has not been made on which of the test sales or variations will become the permanent competitive leasing process. Therefore, this proposed rulemaking includes procedures for both types of sale, i.e., with or without the parcel nomination step. The public is invited to comment on both types of test sales and all variations of the compteitive leasing process.

Section 3120.1 of the proposed rulemaking would be reorganized to identify the lands subject to competitive leasing under this subpart and the other specific requirements of the Act. Section 3120.1–2 would provide that the national minimum acceptable bid would be payable on the gross parcel acreage rather than net acreage for lands in which the United States owns a fractional interest. Section 3120.1–3 would provide for suspension of a specific lease parcel and not the entire sale if a protest or appeal is made against inclusion of any specific parcel in the oral auction.

Section 3120.2 of the proposed rulemaking would specifiy the lease terms. Section 3120.2–3 would be revised to make the maximum competitive lease size not more than 2,560 acres outside Alaska, or 5,760 acres within that State, as required by section 5102 of the Act.

Section 3120.3–1 would provide the flexibility for the Bureau either to establish an informal nomination process or to continue the formal process now being tested in sales in certain Bureau of Land Management State Offices. In the informal process, the Bureau may request expressions of interests or other appropriate means to identify lands for competitive bidding. Proposed § 3120.3–2 would provide a formal nomination procedure. Parcel nominations may be requested to be submitted on a form approved by the Director, and the List of Lands Available for Competitive Nominations may specify that the completed nomination forms be submitted either to the State office having jurisdiction over the lands or to a central Bureau office, i.e., the Wyoming State Office. The formal nomination process would require the posting by the Bureau State Offices of a List of Lands Available for Competitive Nominations, submission of a nomination form approved by the Director and payment by each nominator of the national minimum acceptable bid, the first year's rental, and a $75 administrative fee for each parcel nomination. Withdrawal of a nomination would be prohibited. Signature on the nomination form would constitute a binding offer to lease and allow lease issuance without further signature by the nominator if the nominator is the highest bidder.

Sections 3120.3–5 and 3120.3–6 of the proposed rulemaking would provide for inclusion of nominated parcels in a Notice of Competitive Lease Sale, and for parcels receiving no minimum bid through the nomination process to be available for noncompetitive offers in accordance with section 5102 of the Act. The date noncompetitive offers could be made would be specified in the List of Lands Available for Competitive Nominations. Parcels that are withdrawn by the Bureau of Land Management would be identified in the Notice of Competitive Lease Sale as not available for noncompetitive leasing. Parcels that receive multiple nominations also would be identified in the sale notice in order to prevent the nominating parties from bidding against themselves on single-bid tracts at the oral auction.

Section 3120.3–7 of the proposed rulemaking provides that the national minimum acceptable bid, first year's rental and the $75 administrative fee that covers the proportionate share of the sale costs which is charged to the highest bidder would be refunded to all nominators who are unsuccessful at the oral auction.

Section 3120.4 of the proposed rulemaking would require the preparation of a Notice of Competitive Lease Sale. The purpose of the sale notice is to identify parcels by number, describe the lands by legal subdivision or by metes and bounds, as appropriate, indicate the parcel acreage, state the total minimum acceptable bid and amount of first-year rental due, set forth lease stipulations that would be included in the lease, and state the time, date and location of the oral auction. A Notice of Competitive Lease Sale would be posted for either type of sale process. Either the Notice of Competitive Lease Sale or the List of Lands Available for Competitive Nominations would be posted at least 45 days prior to the oral auction to meet the statutory time frame. This section also would require for the Bureau of Land Management to furnish a copy of the list or notice to each surface managing agency having jurisdiction over any lands being offered.

Section 3120.5 of the proposed rulemaking would address the logistics of the oral auction, the payments required, and the awarding of a competitive lease. Any national minimum acceptable bid that is received through the nomination process would be announced prior to oral auction of each parcel. If two or more nominations have been received, and no higher bids are made at the oral sale, the tie nominations would be rejected and the

monies submitted would be returned. The parcels would then be offered again competitively at a subsequent auction. Payments required under § 3120.5–2 of this title would not be permitted in currency in order to eliminate handling and security problems. On the day the parcel is sold, the highest bidder would be required to pay 20 percent of the bonus bid, the first year's rental, and an administrative fee of $75 for each parcel. The balance of the bonus is due in the proper BLM office within 10 working days or all monies submitted will be forfeited. The $75 fee charged the highest bidder would help defray the costs of the sale and is based on the average unit cost to the Bureau of Land Management of preparing parcel offerings. The public is requested to comment on this provision specifically and on any possible alternative payment procedures.

Section 3120.5–3 would require the highest bidder to execute a competitive bid form, approved by the Director, to be submitted with the required payments on the day the parcel is sold. Signature on the bid form would constitute a legally binding offer to lease. This would allow issuance of a lease with no further action required on the part of a bidder. Use of this bid form would also provide the opportunity for a potential lessee to use an agent to tender a bid at the oral auction and execute required forms or to execute the forms themselves prior to the auction.

Section 3120.6 of the proposed rulemaking would provide that if no bids are received on a parcel, the lands would be available for noncompetitive leasing for a 2-year period beginning on the date specified in the Notice of Competitive Lease Sale.

Section 3120.7 of the proposed rulemaking would provide that future interest leasing also would be subject to the competitive process under Subpart 3120. This section of the proposed rulemaking also emphasizes the need for a present interest leaseholder to exceed the highest acceptable bid at the oral auction; otherwise the future interest lease will be issued to the highest acceptable bidder.

A new § 3120.7–2 would be added specifying that rental and royalties are not payable until the oil and gas rights in the lands vest in the United States. This section also would require that a transfer of the present interest would require a transfer to be filed in accordance with Subpart 3106 of the regulations, and if the present lease interests are relinquished, cancelled, terminated or expired, such lease rights with the United States also would cease or terminate. These terms and conditions were previously specified in supplemental agreements that would be deleted by this proposed rulemaking.

Part 3130—Oil and Gas Leasing—National Petroleum Reserve—Alaska

Subpart 3134 would be revised by the proposed rulemaking in a manner similar to Subpart 3104 discussed earlier in this preamble. The proposed revisions would clarify in § 3134.1 that either personal or surety bonds may be furnished, with personal bonds allowed to be in the form of certified check, cashier's check, certificate of deposit, negotiable Treasury securities, or an irrevocable letter of credit.

Part 3160—Onshore Oil and Gas Operations

The proposed rulemaking would amend § 3162.3–1 (d) and (e) to clarify that the drilling plan and surface use plan of operations are distinct and separate parts of an Application for Permit to Drill. This amendment implements 5102(d) of the Act which specifies that the Secretary of the Interior, or for National Forest System lands the Secretary of Agriculture, must approve the surface use plan of operations in Applications for Permit To Drill. The surface use plan of operations would be a distinct part of the Application for Permit To Drill so that it can be separated and forwarded to the U.S. Forest Service for approval on National Forest System Lands.

Section 3162.3–1(d)(4) of the existing regulations would be revised to remove language indicating that an Application for Permit To Drill could be approved in less than 30 days. This is no longer applicable since section 5102(d) of the Act requires a 30-day public posting of a map or narrative description of the affected lands prior to approval of an Application for Permit To Drill.

Section 3162.3–1(f) of the current regulations would be redesignated as section (h). New sections (f) and (g) would clarify the information required to be included in the surface use plan of operations and to require public posting of a map or narrative description of the affected lands prior to approval of the Application for Permit To Drill. Any substantial modifications to lease terms also would have to be posted for at least 30 days prior to approval of the Application for Permit To Drill. The 30-day posting is for public information and to invite comment on the specific proposal. Any appeal should relate to the approval or denial of the proposal and not to the posting process.

Section 3164.3(b) would be amended by the proposed rulemaking to indicate that the surface use plan of operations portion of an Application for Permit To Drill on National Forest System lands must be approved by the Secretary of Agriculture. However, the authorized officer of the Bureau of Land Management is responsible for the approval and supervision of drilling, development, and production activities on the leasehold.

Part 3180—Onshore Oil and Gas Unit Agreements—Unproven Areas

The proposed rulemaking would revise Subpart 3184 to clarify that bonds are to be furnished in the manner provided in section 3104, as discussed earlier in this preamble.

Part 3200—Geothermal Resources Leasing; General

The proposed rulemaking would revise Subpart 3206 in a manner similar to the revisions proposed in § 3104.1, discussed earlier in this preamble. The proposed changes would clarify the types of bonds acceptable to the Bureau of Land Management and would provide consistency between the bonding provisions for the geothermal resources leasing program and the oil and gas leasing program. The Bureau bonding task force, discussed earlier in conjunction with the revisions proposed in § 3104.1, also reviewed the bonding aspects and procedures related to geothermal leasing, and the Director of the Bureau recommended that the proposed changes be consistent for both leasing programs.

The principal authors of this proposed rulemaking are Rob Cervantes, Sie Ling Chiang, Karl Duscher, Lois Mason, Judy Reed, and Jeffrey Zabler, of the Bureau of Land Management Washington Office assisted by numerous Bureau of Land Management Field Office representatives and the staff of the Division of Legislation and Regulatory Management.

Section 5107 of the Act requires the Secretary of the Interior to issue final regulations to implement the Act and provides that the promulgation of such regulations shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and thus that no statement pursuant that section is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0034, 1004–0067, 1004–0074, 1004–0034, 1004–0132, 1004–0136, 1004–0137, 1004–0138, and 1004–0145.

Amended information collection requirements associated with the nomination form (1004–0065) have been submitted to the Offce of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects

43 CFR Part 3000

Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Land Management Bureau, Mineal royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3280

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Pub. L. 100–203, and other authorities cited below, it is proposed to amend Part 3000, Group 3000, and Parts 3100, 3110, 3120, 3130, 3160, and 3180, Group 3100, and Parts 3200 and 3280, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3000—[AMENDED]

1. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

2. Section 3000.0–5 is amended by revising paragraph (f) to read:

§ 3000.0–5 Definitions.

* * * * *

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that:

(1) The proper office to file nominations under Subpart 3120 of this title may be another Bureau office designated by the Director in the List of Lands Available for Competitive Nominations or other notice; and

(2) All oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821.2–1 of this title for office location and area of jurisdiction of Bureau of Land Management offices).

3. Section 3000.9 is added to read as follows:

§ 3000.9 Enforcement.

Provisions of section 41 of the act shall be enforced by the United States Department of Justice.

PART 3100—[AMENDED]

4. The authority citation for Part 3100 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et. seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

Subpart 3100—Oil and Gas Leasing; General

5. Section 3100.0–3 is amended by removing the word "and" at the end of paragraphs (a)(2)(iii) and (v), by adding paragraphs (vii), (viii), (ix), (x), and (xi) to paragraph (a)(2), and by removing the word "and" at the end of paragraph (b)(2)(vi), and adding paragraphs (viii), (ix), (x), (xi), and (xii) to paragraph (b)(2), to read as follows:

§ 3100.0–3 Authority.

(a) * * *

(2) * * *

(vii) Lands recommended for wilderness allocation by the surface managing agency;

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) * * *

(2) * * *

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

* * * * *

6. Section 3100.0–3(c) is amended by removing the citation "(Pub. L. 96–514)" and replacing it with the citation "(42 U.S.C. 6508)".

7. Section 3100.0–5 is amended by revising paragraphs (k) and (l) to read:

§ 3100.0–5 Definitions.

* * * * *

(k) "Offer for noncompetitive lease" means an offer filed for lands available for a 2-year period for noncompetitive leasing after the lands have been competitively offered by the Bureau under Part 3120 and received no bids.

(l) "Bid" means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

§§ 3100.3, 3100.3–1, and 3100.3–2 [Removed]

8. Sections 3100.3, 3100.3–1, and 3100.3–2 are removed in their entirety.

§§ 3100.4, 3100.4–1, 3100.4–2, 3100.4–3 [Redesignated as §§ 3100.3, 3110.3–1 3100.3–2, 3100.3–3]

9. Sections 3100.4, 3100.4–1, 3100.4–2, and 3100.4–3 are redesignated as 3100.3, 3100.3–1, 3100.3–2, and 3100.3–3, respectively, and the cross reference to "§ 3100.4–1(b)" in newly redesignated § 3100.3–3 is amended to read "§ 3100.3–1(b)".

Subpart 3101—Issuance of Leases

10. A new § 3101.1–4 is added to read:

§ 3101.1–4 Modification of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer had determined, prior to lease issuance, that a stipulation involved an issue of major concern to the public, waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before waiver.

11. Section 3101.7–1 is revised to read:

§ 3101.7–1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

§§ 3101.7–2 and 3101.7–3 [Removed].

12. Sections 3101.7–2 and 3101.7–3 are removed in their entirety.

§ 3101.7–4 [Redesignated as § 3101.7–2 and Amended].

13. Section 3101.7–4 is redesignated as 3101.7–2 and paragraph (b) is revised to read:

§ 3101.7–2 Action by the Bureau of Land Management.

(a) * * *

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

§ 3101.7–5 [Redesignated as § 3101.7–3 and Revised].

14. Section 3101.7–5 is redesignated as 3101.7–3 and is revised to read:

§ 3101.7–3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under Part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that stipulations be included in a lease or has objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

§ 3101.8 [Amended].

15. Section 3101.8 is amended by changing the term "90 days" in the first sentence to read "30 days".

Subpart 3102—Qualifications of Lessees

16. Section 3102.1 is amended by making the existing paragraph (a), and by adding the new paragraph (b) to read:

§ 3102.1 [Amended].

* * * * *

(b) No lease shall be issued to a person or entity that is not in compliance with § 3102.5–1 of this title.

17. Section 3102.5–1, which was proposed at 52 FR 22805, June 12, 1987, is revised to read:

§ 3102.5–1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0–5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term "entity" is defined at § 3400.0–5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the act; and

(f) In compliance with section 17(g) of the act, in which case the signature on an offer, lease, assignment, or transfer constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding consideration by the authorized officer of any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings.

18. Section 3102.6 which was proposed at 52 FR 22605, June 12, 1987 is revised to read:

§ 3102.6 Agent.

Any party filing or signing documents on behalf of another constitutes an agent, and may be requested at any time by the authorized officer to provide a power of attorney or agency agreement that:

(a) Expressly provides authority for the agent to execute and file lease documents on behalf of the principal;

(b) Expressly provides authority to the agent to execute all statements of interests and holdings and other statements required by the act or regulations on behalf of the principal; and

(c) Binds the principal to representation on his/her behalf by the agent and waives any and all defenses to contest, disaffirm, or negate the actions taken by the agent under the power of attorney/agency agreement.

Subpart 3103—Fees, Rentals, and Royalty

19. Section 3103.1–1 is revised to read:

§ 3103.1–1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified checks, money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

20. Section 3103.2–1 is amended by revising the first sentence of paragraph (a) and all of paragraph (b) to read:

§ 3103.2–1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. * * *

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 10 calendar days of notice by the authorized officer of the error.

* * * * *

21. Section 3103.2–2 is amended by removing paragraphs (a) through (k) and inserting in their place paragraph (a) through (f) to read:

§ 3103.2–2 [Amended].

* * * * *

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) For any lease issued on or before December 22, 1987, or issued pursuant to an offer to lease filed prior to that date, the annual rental shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former Subpart 3112 of this title on or after February 19, 1982, shall be subject to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2–3 of this title, and on noncompetitive leases that were originally issued under § 3108.2–4 of this title, the annual rental shall be $5 per acre or fraction thereof upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2–3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

22. Section 3103.3–1 is revised to read:

§ 3103.3–1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2–4 of this title, issued after December 22, 1987, except:

(i) leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16⅔ percent on noncompetitive leases reinstated under § 3108.2–3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that quality under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under Part 16 of this title.

§ 3103.3–2 [Amended]

23. Section 3103.3–2(a) is revised to read:

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

* * * * *

Subpart 3104—Bonds

24. Section 3104.1 is revised to read:

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease.

25. Section 3104.2 is revised to read:

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or in the name of the lessee or sublessee, provided that the necessary documentation to include the operator within the coverage of the bond is provided.

26. Section 3104.3 is revised to read:

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

27. Section 3104.4 is revised to read:

§ 3104.4 Unit operator's bond.

The approved unit operator may furnish and maintain a unit operator bond, in the manner set forth in § 3104.1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms and conditions of every lease subject thereto in lieu of a separate lease bond for each lease committed to the unit agreement. (See § 3186.2 of this title for an example of a unit bond form.) A unit operator's bond shall be furnished upon request and in the amount determined appropriate by the authorized officer.

28. Section 3104.5 is revised to read:

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely and in a timely manner, the authorized officer shall require, prior to approval of the outstanding Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there may be uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

29. Section 3106.1 is amended by removing the first 2 sentences of paragraph (a) and adding in their place the following, and revising paragraph (b) to read:

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, under any lease shall be disapproved. A transfer of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the transfer constitutes the entire lease or sublease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. * * *

(b) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

Subpart 3107—Continuation, Extension or Renewal

30. Section 3107.2–2 is amended by adding at the end thereof a sentence to read:

§ 3107.2–2 Cessation of production.

* * * The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

31. Section 3107.2–3 is amended by revising the first sentence to read:

§ 3107.2–3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. * * *

32. Section 3107.7 is amended by revising the last sentence to read:

§ 3107.7 Exchange leases—20-year term.

* * * An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the provisions of § 3102.5 of this title and the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75.

33. Section 3107.8–1(a) is revised to read:

§ 3107.8–1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee and operating rights owners (subleasees), and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations, including those pertaining to reclamation requirements.

* * * * *

34. Section 3107.8–3(a) is amended by revising the last sentence to read:

§ 3107.8–3 Approval.

(a) * * * Upon execution of the lease forms, including certification of compliance with § 3102.5 of this title, and an appropriate satisfactory lease bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

* * * * *

Subpart 3108—Relinquishments, Termination, Cancellation

35. Section 3108.1 is amended by revising the last sentence to read:

§ 3108.1 Relinquishment.

* * * A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

§ 3108.2–4 [Amended]

36. Section 3108.2–4(e)(2) is amended by removing "§ 3102.3–1" and replacing it with "§ 3103.3–1."

37. Section 3108.3 (a) and (c) are revised to read as follows:

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31 of the act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) * * *

(c) Leases for lands containing a well capable of production of oil or gas in paying quantities, or leases for lands committed to an approved cooperative or unit plan or communitization agreement that contain a well capable of production of unitized substances in paying quantities may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

Subpart 3109—Leasing Under Special Acts

§ 3109.3 [Removed]

§ 3109.4 [Redesignated as § 3109.3]

38. Section 3109.3 is removed, and § 3109.4 is redesignated as § 3109.3.

39. Part 3110 is revised to read:

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.
3110.1 Lands available for noncompetitive leasing.
3110.2 Priority.
3110.3 Lease terms.
3110.3–1 Duration of lease.
3110.3–2 Dating of leases.
3110.3–3 Lease offer size.
3110.4 Withdrawal of offer.
3110.5 Action on offer.
3110.6 Amendment to lease.
3110.7 Requirements for offer.
3110.8 Description of lands in offer.
3110.8–1 Parcel number description.
3110.8–2 Public domain.
3110.8–3 Acquired lands.

Sec.
3110.8–4 Accreted lands.
3110.8–5 Conflicting descriptions.
3110.9 Future interest offer.
3110.9–1 Availability.
3110.9–2 Form of offer.
3110.9–3 Fractional present and future interest.
3110.9–4 Future interest terms and conditions.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive leasing.

Only lands that have been offered for competitive leasing under Subpart 3120 of this title for which no bids were received shall be available under this subpart for an offer for noncompetitive lease. Such lands shall be available for a period of 2 years after the competitive process is concluded, as authorized by the Director and stated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale.

§ 3110.2 Priority.

(a) Offers filed prior to the effective date of these regulations, for lands then available for noncompetitive leasing, shall receive priority as of the time of filing. Conflicting offers shall be subject to the provisions of § 1821.2–3(a) of this title.

(b) Noncompetitive offers filed on or after the effective date of these regulations, shall receive priority as of the date of filing. Conflicting offers shall be subject to the provisions of § 1821.2–3(a) of this title, except that the time referred to therein shall be 1 day. Offers to lease received in the mail or over-the-counter during official business hours on that day shall be considered simultaneously filed. An offer may be available for public inspection the first working day following filing.

(c) Noncompetitive filings made pursuant to an opening order or other notice shall be subject to all provisions and procedures stated in such order or notice.

(d) Where there are multiple filings for the same parcel made under former Subpart 3112 of this title, only a single priority filing shall be drawn. All other filings shall be rejected. If the drawn filing does not mature into a lease, the land shall be reoffered under Subpart 3120 of this title.

§ 3110.3 Lease terms.

§ 3110.3–1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years.

§ 3110.3–2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3–3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. This paragraph shall not apply to offers made under § 3108.2–4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer incudes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.8–2(d) of this title in lieu of any other description,

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority shall be lost.

§ 3110.4 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. Such withdrawal may be made only if the withdrawal is received by the proper BLM office at least 60 days after the date of filing and before the lease, an amendment of the lease, or a separate lease, whichever covers the lands described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3–3(a) of this title.

§ 3110.5 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected. Unless such lease form has been declared obsolete by the Director prior to the filing, filing an offer on a lease form not currently in use shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.6 Amendment to lease.

After the competitive process has concluded in accordance with Subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the news offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3–2 of this title.

§ 3110.7 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2–4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by a nonrefundable application fee of $75 and the first year's rental. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A noncompetitive offer to lease a future interest applied for under § 3110.9 of this title shall be accompanied by a nonrefundable application fee of $75. Where remittances for offers are returned for insufficient funds, the offer shall not obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2–1(a) and 3103.3–3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with Subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

§ 3110.8 Description of lands in offer.

§ 3110.8–1 Parcel number description.

The only acceptable description of lands in a noncompetitive offer shall be the parcel number assigned in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale until the end of the month of the competitive process. Each offer shall consist of a single parcel. After that date, the description of lands shall be made in accordance with the remainder of this section.

§ 3110.8–2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular survey system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the Federal Register, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under 3108.2–3 of this title, except that deficiencies shall be curable.

§ 3110.8–3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described either by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described either as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offeror form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, such number may be provided in lieu of other descriptions required by this section.

(e) The requirements in paragraph (d) of this section to provide a land description may be waived by the authorized officer on a determination that providing the acquisition or tract number constitutes an adequate description.

(f) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.8–4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.8–5 Conflicting descriptions.

If there is any variations in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3110.9 Future interest offers.

§ 3110.9–1 Availability.

A noncompetitive future interest lease shall be issued only to an offeror who owns all or substantially all of the present operating rights in the lands, either as an operator holding such rights or as mineral fee owner, or as lessee or another party in interest.

§ 3110.9–2 Form of offer.

(a) An offer to lease a future interest shall be filed in accordance with this subpart, and shall be accompanied by a certified abstract of title or certificate of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease, sublease or contract, the offer shall also be accompanied by a copy of such lease, sublease or contract.

(b) If the offer is submitted by any other party in interest, the offeror shall set forth on the offer form or on a separate accompanying sheet, the names of all other parties who, as mineral fee owner, lessee, or operator holding such rights, own or hold any interest in the present operating rights or lease and/or interest in the offer. A statement signed by both the offeror and the other parties in interest, setting forth both the nature of any oral understanding between them, and a copy of any written agreement between them shall be filed with the proper BLM office prior to the issuance of a future interest lease. Such statement and/or agreement shall include or be accompanied by a statement signed by all parties setting forth the nature and extent of their respective interests.

(c) A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9–3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9–4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, prior to the vesting of the oil and gas rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any over-the-counter lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

Subparts 3111 and 3112 [Removed]

40. Subparts 3111 and 3112 are removed in their entirety.

41. Part 3120 is revised in its entirety to read:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.
3120.1 General.
3120.1–1 Lands available for competitive leasing.
3120.1–2 Requirements.
3120.1–3 Protests and appeals.
3120.2 Lease terms.
3120.2–1 Duration of lease.
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3120.3. Nomination process.
3120.3–1 General.
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3120.3–3 Minimum bid and rental remittance.
3120.3–4 Withdrawal of a nomination.
3120.3–5 Parcels receiving nominations.
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Sec.
3120.4 Notice of conmpetitive lease sale.
3120.4–1 General.
3120.4–2 Posting of notice.
3120.5 Competitive sale.
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3120.5–2 Payments required.
3120.5–3 Award of lease.
3120.6 Parcels not receiving bids.
3120.7 Future interest.
3120.7–1 Nomination to make lands available for competitive lease.
3120.7–2 Future interest terms and conditions.
3120.7–3 Compensatory royalty agreements.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty.Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1–1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

§ 3120.1–2 Requirements.

(a) Lease sales shall be held at least quarterly for each State where eligible lands are available.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1–3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

§ 3120.2 Lease terms.

§ 3120.2–1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2–2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2–3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

§ 3120.3–1 General.

The Director may elect to accept nominations and may elect to require submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions continued therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3–2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form aproved by the Director shall:

(a) include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record;

(b) be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in § 3120.5–2(b) of this title for each parcel nominated on the form.

§ 3120.3–3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable.

§ 3120.3–4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for a cause.

§ 3120.3–5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3–7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4–1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

§ 3120.4–2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BIM office having jurisdiction over the lands as specified in § 1821.2–1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5–1 Oral auction.

(a) Parcels shall be offered by oral bidding. A nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more bids equal to the national minimum acceptable bid level, with no higher oral bid being made, shall be rejected with all monies returned. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart.

§ 3120.5–2 Payments required.

(a) Payments shall be made in accordance with § 3103.1–1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours on the day of the sale for the parcel:

(1) 20 percent of the total bonus bid or balance thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5–3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with Subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5–2(b) of this title. Failure to comply with § 3120.5–2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5–2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

§ 3120.6 Parcels not receiving bids.

Lands offered at the competitive sale which receive no bids shall be available for noncompetitive leasing for a 2-year period as specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7–1 Nomination to make lands available for competitive lease.

(a) A nomination for a future interest lease shall be filed in accordance with this subpart.

(b) Holder(s) of the present operating rights in the lands being offered under this subpart shall have the opportunity to exceed the highest acceptable bid at the competitive lease sale. Failure to do so shall be considered a waiver of all claims to the competitive future interest lease, and the lease shall be awarded to the highest responsible qualified bidder in accordance with this subpart.

§ 3120.7–2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, prior to the vesting of the oil and gas rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7–3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

42. The authority citation for Part 3130 is revised to read:

Authority: The Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)

§ 3134.1 [Amended]

43. Section 3134.1(a) is amended by inserting the words "in accordance with the provisions of § 3104.1 of this title" after the word "bond" in the first sentence, and by removing the word

"special" in the two places it appears in this paragraph.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

44. The authority citation for Part 3160 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*); the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101).

Subpart 3162—Requirements for Lessees and Operators

45. Section 3162.3-1 is amended by revising paragraphs (d) and (e), by redesignating paragraphs (f) and (g) (paragraph (g) proposed at 52 FR 22823, June 12, 1987) as (h) and (i), respectively, by adding new paragraphs (f) and (g), and by revising newly redesignated paragraphs (h) and (i), all to read as follows:

§ 3162.3-1 Drilling applications and plans.

* * * * *

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is anticipated. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160-3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected problems and hazards, and proposed mitigation. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for restoration of the surface, and other pertinent data as the authorized officer may require.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, and a map showing location of the site; and any substantial modifications to the lease terms. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other appropriate interested parties and shall take one of the following actions upon conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or stipulations;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

46. Section 3162.3-2(a) is amended by adding at the end of the first sentence thereof the words "to injection."

Subpart 3163—Noncompliance and Assessments

§ 3163.1 [Amended]

47. Section 3163.1(a)(5) is amended by removing the words "and forfeiture declared under the surety bond" from the second sentence.

Subpart 3164—Special Provisions

§ 3164.3 [Amended]

48. Section 3164.3(b) is amended by removing the initial word "The" and replacing it with the words "Except for the approval of the surface use plan of operations for Applications for Permit to Drill on National Forest System lands, the * * *".

PART 3180—[AMENDED]

Subpart 3184—Bonds

49. Section 3184.1 is revised to read:

§ 3184.1 Bonds.

In lieu of separate bonds required for each Federal lease committed to a unit agreement, the unit operator may furnish and maintain a surety bond or personal bond in accordance with the provisions of § 3104.1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the Federal leases subject thereto. Liability under the bond shall be for such amount as the authorized officer shall determine to be adequate to protect the interests of the United States, and additional bonding may be required whenever deemed necessary. The bond shall be filed with the authorized officer. A form of corporate surety bond is set forth in § 3186.2 of this title. In case of change of unit operator, a new bond shall be filed or consent of surety to such change of unit operator shall be furnished.

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

50. The authority citation for Part 3200 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Subpart 3206—Lease Bonds

51. Section 3206.1-1 is revised to read:

§ 3206.1-1 Bond obligations.

(a) A surety or personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease.

§§ 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 [Removed]

52. Sections 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 are removed in their entirety.

§ 3206.5 [Redesignated as § 3206.4 and Revised]

53. Section 3206.5 is redesignated as § 3206.4 and revised to read:

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

§ 3206.6 [Redesignated as § 3206.5 and Revised]

54. Section 3026.6 is redesignated § 3206.5 and revised to read:

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases

§§ 3206.7, 3206.7-1, 3206.7-2, 3206.8, and 3206.9 [Redesignated as §§ 3206.6, 3206.6-1, 3206.6-2, 3206.7, and 3206.8]

55. Sections 3206.7, 3206.7-1, 3206.7-2, 3206.8, and 3206.9 (§ 3206.9 proposed at 52 FR 22823, June 12, 1987) are redesignated as §§ 3206.6, 3206.6-1, 3206.6-2, 3206.7, and 3206.8, respectively.

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS—UNPROVEN AREAS

56. The authority citation for Part 3280 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Subpart 3284—Bonds

57. Section 3284.1 is amended by removing the second sentence thereof in its entirety, and by revising the first sentence to read as follows:

§ 3284.1 Bonds.

In lieu of separate bonds required for each Federal lease committed to a unit agreement, the unit operator may furnish and maintain a surety bond or personal bond in accordance with the provisions of § 3206.1-1 of this title, conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the leases subject thereto.

* * *

March 2, 1988.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 88-6143 Filed 3-18-88; 8:45 am]

BILLING CODE 4310-84-M

federal register

Monday
March 21, 1988

Part V

Department of Education

Applications for Awards Under the Workplace Literacy Partnerships Grants Program for Fiscal Year 1988; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.198]

Invitation of Applications for Awards Under the Workplace Literacy Partnerships Grants Program for Fiscal year 1988

Purpose of Program: To provide assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations, and education organizations.

Deadline for Transmittal of Applications: June 6, 1988.

Available Funds: $9,574,000.

Estimated Range of Awards: $50,000–$500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 32.

Project Period: Up to 15 months.

Important Notes to Applicants: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates.

This notice is a complete application package containing all the information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Selection Criteria: (a)(1) The Secretary uses the following criteria to evaluate applications for grants under the Workplace Literacy Partnerships Grants Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (12 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590, Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Description of Program: The Workplace Literacy Partnerships Grants Program for fiscal year 1988 is authorized under Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988). Section 137(b) of Pub. L. 100–202 states that the Workplace Literacy Partnerships Grant Program is to be carried out in accordance with the provisions of section 317 of the Adult Education Act, as contained in the Senate amendment to H.R. 5. The following conditions apply:

(a) Assistance is provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or community-based organization).

(b)(1) "Community-based organizations" means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001 Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(13) of the Rehabilitation Act of 1973, 29 U.S.C. 706(13)), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations, and organizations serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups (29 U.S.C. 1503(5)); and

(2) "Private industry council" means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

(c) An application must be submitted jointly by an entity listed in paragraph (a)(1) of this section and an entity listed in paragraph (a)(2) of this section.

(d) An application must contain a description of the respective roles of each member of the partnership, evidence of the applicant's experience in providing literacy services to working adults, assurances that the applicant will use the funds to supplement and not supplant funds otherwise available for the purposes of this program, and a plan for carrying out the proposed project.

(e) A project must be designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace by—

(1) Providing adult literacy and other basic skills services and activities;

(2) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(3) Meeting the literacy needs of adults with limited English proficiency;

(4) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(5) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(6) Providing for adult workers education counseling, transportation, and child care services during nonworking hours while the workers participate in the project.

(f) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(g) An award under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (f)(2) of this section;

(2) 100 percent of the administrative costs incurred by State educational agencies and local educational agencies in establishing projects during the start-up period referenced in paragraph (f)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (f)(1) of this section.

(h)(1) The Secretary anticipates that a project's start-up period will last no longer than 90 days; and

(2) Applicants are encouraged to minimize the start-up period, if any, proposed for their projects.

(i) Costs incurred during both the start-up and operational periods of a project must be necessary and reasonable.

Priority: (a) In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

(b) The Secretary invites applications from workplace literacy partnerships that demonstrate a strong relationship between skills taught and the literacy requirements of actual jobs, especially partnerships to address the increased skill requirements of the changing workplace. Projects should be targeted on adults with inadequate basic skills for whom the training described will mean new employment, continued employment, career advancement, or increased productivity. Projects should include support services, based on cooperative relationships within the partnerships, necessary to reduce barriers to participation by these adults. These support services could include education counseling, transportation, and child care during nonworking hours while workers are participating in a project.

The application must indicate how, as a part of project evaluation, the grantee will provide for monitoring progress of training activities during the project period.

Other Information: The Secretary wishes to highlight the fact that certain provisions in 34 CFR Part 75—34 CFR 75.128 and 75.129—are of particular importance to partnerships applying for awards under this program. In general the provisions state that if a group of eligible parties applies for a grant, the members of the group shall either designate one member of the group to apply for the grant or establish a separate, eligible legal entity to apply for the grant. The members of the group shall enter into an agreement that details the activities that each member of the group plans to perform and binds each member of the group to every statement and assurance made by the applicant in the application.

The applicant shall submit the agreement with its application.

If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for the use of all grant funds and ensuring that the project is carried out by the group in accordance with Federal requirements. Each member of the group is legally responsible to carry out the activities it agrees to perform and use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

Instructions for Transmittal of Applications: (a) The applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The applicant *must* indicate on the envelope CFDA number 84.198.

(3) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: Ms. Nancy E. Smith, National Projects Branch, Division of Innovation and Development, Room 519, Reporters Building or Ms. Sarah Newcomb, Program Services Branch, Division of Adult Education, Room 522, Reporters

BEST COPY AVAILABLE

Building, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5516. Telephone (202) 732–2359 or (202) 732–2390, respectively.

Application Instructions and Forms: This application is divided into three parts. The submitted application should be organized in the same manner. The parts are as follows:

PART I: Federal Assistance Fact Sheet (Form SF 424 and instructions).

PART II: Budget Data (form and instructions).

PART III: Program Narrative.

No grants may be awarded unless a complete application form has been received.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
☐ NOTICE OF INTENT (OPTIONAL)
☐ PREAPPLICATION
☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER *NOTE: TO BE ASSIGNED BY STATE*
a. NUMBER
b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
a. NUMBER 8 4 . 1 9 8
MULTIPLE ☐
b. TITLE Workplace Literacy

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State
B—Interstate
C—Substate Organization
D—County
E—City
F—School District
G—Special Purpose District
H—Community Action Agency
I—Higher Educational Institution
J—Indian Tribe
K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant
B—Supplemental Grant
C—Loan
D—Insurance
E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

14. TYPE OF APPLICATION
A—New
B—Renewal
C—Revision
D—Continuation
E—Augmentation
Enter appropriate letter A

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars
B—Decrease Dollars
C—Increase Duration
D—Decrease Duration
E—Cancellation
F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ▶ *Year month day* 19

19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE ____________

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE▶ *Year month day* 19

30. STARTING DATE *Year month day* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month day* 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION
IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

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Instructions for Part I—Federal Assistance Face Sheet (SF 424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular No. A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience.

Below is a list of instructions to assist you in completing the applicable items on the form.

For items 2, 4, and 5, provide information for the entity that will serve as the legal applicant. (See 34 CFR 75.128 and 75.129)

Attach to the application the agreement required in 34 CFR 75.128(b) and (c).

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a–h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer identification number of applicant assigned by Internal Revenue Service (IRS). If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

7. Provide the title and a summary description of the project (use "Remarks" section on second page of form).

8. "City" includes town, township, or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

12a. Projects will be funded for only one project period of not more than 15 months. Federal funds may be used to pay no more than 70 percent of project costs, with the exception that Federal funds may be used to pay 100 percent of administrative costs incurred by State educational agencies and local educational agencies in establishing projects under this program.

23a–b. Name, title, and signature of authorized representative of legal applicant.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION

Section A - Budget Categories for Program Year 1988-89

1. Salary and Wages	$
2. Fringe Benefits	
3. Travel	
4. Equipment	
5. Supplies	
6. Contractual Services	
7. Other (itemize)	
8. Total Direct Costs (lines 1 to 7)	
9. Total Indirect Costs	
10. Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1. Program Income	$
2. Non-Federal Funds (State, local, etc.)	
3. In-Kind Contributions	

Section C - Estimate of Future Federal Funding Needs

Not applicable.

Section D - Estimate of Unobligated Funds

Not applicable.

Section E - Budget Narrative

See instructions.

BILLING CODE 4000-01-C

Instructions for Part II—Budget Data

Section A—Detailed Budget

1. *Salaries and Wages:* Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. *Fringe Benefits:* Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. *Travel:* Indicate the amount requested for travel of employees.

4. *Equipment:* Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. *Contractual Services:* Show the amount to be used for: (1) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above) and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. *Other:* Indicate all direct costs not clearly covered by lines 1–6 above.

8. *Total Direct Costs:* Show totals for lines 1–7.

9. *Total Indirect Costs:* Indicate the amount of indirect costs to be charged to the program or project.

10. *Total Project Costs:* Total lines 8 and 9.

Section B—Cost Sharing

1. *Project Income:* Enter the dollar amount of estimated project income that will be generated by Federal funds if authorized by the Department of Education.

2. *Non-Federal Funds:* Enter the dollar amount of funds to be provided from other sources, e.g., State, local governments, private organizations, etc.

3. *In-Kind Contributions:* Enter the dollar value of donated services and goods to be used to support the project.

Section C—Estimate of Funding Needs

Not applicable.

Section D—Estimated Unobligated Funds

Not applicable.

Section E—Budget Narrative

Fully explain and justify the following major items contained in the project budget. Include sufficient detail to facilitate determination as to allowability, relevance to the project, and cost benefits.

Personnel Salaries: Include a statement which shows the total commitment of time and the total salary to be charged to the project for each key member of the project staff.

Travel: While all travel must be fully justified, foreign travel should be separately identified and justified.

Equipment: List items of equipment in the following format: Item, Number of Units, Cost per Unit, Total Cost.

Contractual: Indicate the name of the agency or organization that is expected to receive each proposed contract/sub-grant. For consultant expenses, give the total number of consultants that will work on the project and their costs (fees, per diem, and travel).

Indirect Costs: Enter the type of indirect rate (provisional, pre-determined, final, or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Instructions for Part III—Program Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the information regarding the priority. This information is included in this application notice.

The narrative should describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice.

Please limit the Application Narrative to no more than 25 pages.

(Approved under OMB Control No. 1830–0507)

Assessment of Educational Impact: The Secretary requests comments on whether any information collection in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Program Authority: Pub. L. 100–202.

Dated: March 16, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–6142 Filed 3–18–88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
March 21, 1988

Part VI

Department of Education

34 CFR Part 779

College Library Technology and Cooperation Grants Program; Notice of Proposed Rulemaking and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 779

College Library Technology and Cooperation Grants Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations implement the College Library Technology and Cooperation Grants Program authorized under Title II–D of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. The program is designed to encourage resource-sharing projects among the libraries of institutions of higher education and to improve library and information services provided to them by public and nonprofit private organizations.

DATES: Comments must be received on or before May 5, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to Frank Stevens or Louise Sutherland, Library Programs, Office of Educational Research and Improvement (OERI), Department of Education, 555 New Jersey Avenue, NW., Room 402, Washington, DC 20208–1430.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, (202) 357–6315.

SUPPLEMENTARY INFORMATION: The College Library Technology and Cooperation Grants Program was designed to improve the sharing of library resources throughout the higher education community by the use of technology and networking. Funds may also be granted to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

It is anticipated that approximately 62–120 grants will be made under this program to institutions of higher education and to public and nonprofit private organizations providing library and information services to institutions of higher education. The regulations do not impose burdensome requirements on any grantee participating in the program.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 779.20, 779.21 and 779.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary specifically invites comments on proposed § 779.21(a)(1), a selection criterion relating to the sufficiency of an applicant's description of its project, and whether the point value awarded to that section should be diminished by the Secretary.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 402D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 779

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Networks, Reporting and recordkeeping requirements.

Dated: February 19, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.197, College Library Technology and Cooperation Grants)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 779 to read as follows:

PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

Subpart A—General

Sec.
779.1 What is the College Library Technology and Cooperation Grants Program?
779.2 What types of grants does the Secretary provide?
779.3 Who is eligible for an award?
779.4 What activities may the Secretary fund?
779.5 What priorities may the Secretary establish?
779.6 What regulations apply?
779.7 What definitions apply?
779.8 What is the time period for expenditure of grant funds?

Subpart B—How Does One Apply for an Award?

779.10 What assurance must an applicant give regarding maintenance of effort?

Subpart C—How Does the Secretary Make an Award?

779.20 How does the Secretary evaluate an application?
779.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

779.30 What agency must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

Subpart A—General

§ 779.1 What is the College Library Technology and Cooperation Grants Program?

The College Library Technology and Cooperation Grants Program provides grants for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing.

(Authority: 20 U.S.C. 1047)

§ 779.2 What types of grants does the Secretary provide?

Under the College Library Technology and Cooperation Grants Program, the Secretary shall make competitive awards in each of the following four types of grants:

(a) *Networking Equipment Grant.* These grants are designed to plan, develop, acquire, install, maintain, or replace technological equipment necessary to participate in networks for sharing of library resources.

(b) *Joint-Use Grant.* These grants are designed to establish and strengthen joint-use library facilities, resources, or equipment.

(c) *Services to Institutions Grant.* These grants are designed to establish, develop, or expand programs or projects that improve the grantee's services to institutions of higher education.

(d) *Research and Demonstration Grant.* These grants are designed to conduct research or demonstration projects to meet specialized national or regional needs in utilizing technology to enhance library and information sciences.

(Authority: 20 U.S.C. 1047)

§ 779.3 Who is eligible for an award?

The following are eligible to receive an award under this program:

(a) For Networking Equipment Grants, institutions of higher education.

(b) For Joint-Use Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations which provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

(Authority: 20 U.S.C. 1047)

§ 779.4 What activities may the Secretary fund?

(a) The Secretary awards grants under this program to enable eligible recipients to develop or implement activities or services that the Secretary determines are likely to carry out a purpose specified in § 779.2.

(b) The following types of activities or services are illustrative:

(1) Networking membership fees and expenses;

(2) Acquisition of equipment and supplies, including computer hardware and software;

(3) Telecommunications expenses;

(4) Evaluation of the project; and

(5) Dissemination of information about the project.

(Authority: 20 U.S.C. 1047)

Cross Reference. (See 34 CFR Part 74, Appendix D.)

§ 779.5 What priorities may the Secretary establish?

(a) Each year, the Secretary may select as a priority one or more of the types of grants listed in § 779.2.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(c) Each year, the Secretary announces the approximate amount of funding available for each type of award.

(Authority: 20 U.S.C. 1047)

Cross Reference. (See 34 CFR 75.105 Annual priorities.)

§ 779.6 What regulations apply?

The following regulations apply to the College Library Technology and Cooperation Grants Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 779.

(Authority: 20 U.S.C. 1021)

§ 779.7 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Combination of institutions of higher education" means—

(1) Two or more institutions of higher education that have entered into a formal cooperative agreement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"Institution of higher education" means a public or nonprofit private institution of higher education as defined in 34 CFR 668.3.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or nonprofit private organization or agency that provides library services or programs.

"Network" means a system of sharing library resources that is developed, maintained, or operated by a library organization or agency and that possesses the following characteristics:

(1) The system is primarily or exclusively used by other library organizations or agencies.

(2) The system provides users with cooperative services or activities beyond traditional interlibrary loan services.

(3) The system is not restricted in access or use to units, departments, branches, or components that are part of the library organization or agency sponsoring the system.

(4) The system is constituted under a formal written instrument that describes services, activities, and membership offered by the system.

(Authority: 20 U.S.C. 1021)

§ 779.8 What is the time period for expenditure of grant funds?

Grant funds for these projects may be expended over a three-year period.

(Authority: 20 U.S.C. 1047)

Subpart B—How Does One Apply for an Award?

§ 779.10 What assurance must an applicant give regarding maintenance of effort?

An applicant shall, in its application, give satisfactory assurance that, if it is selected as a grantee, it will—

(a) Expend, for the same purpose as the purpose for which the grant is made, an amount not less than one-third of the grant during the three-year period for which the grant is made; and

(b) Make that expenditure from funds other than funds received under Title II of the Higher Education Act of 1965.

(Authority: 20 U.S.C. 1047)

Subpart C—How Does the Secretary Make an Award?

§ 779.20 How does the Secretary evaluate an application?

(a) The Secretary uses the general selection criteria in § 779.21(a) and the special program criteria in § 779.21(b) to evaluate applications for new grants.

(b) The maximum possible score for the general criteria is 60 points.

(c) The maximum possible score for the special criteria is 40 points.

(Authority: 20 U.S.C. 1047)

§ 779.21 What selection criteria does the Secretary use?

(a) *General selection criteria.* An applicant may receive up to 60 points under the general selection criteria in this section, for each type of grant, as follows:

(1) *Project description* (10 points). The Secretary reviews each application to determine the quality of the applicants project, including—

(i) A concise description of the project;

(ii) A clear statement of the project objectives; and

(iii) Evidence of adequate planning.

(2) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The effectiveness of the plan of management to assure proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (a)(3) (i) and (ii) of this section will commit to the project; and

(iv) Knowledge of librarianship and library technology.

(4) *Budget and cost-effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plans for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are objective and produce data that are quantifiable.

Cross Reference. (See 34 CFR 75.590 Evaluation by the grantee.)

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each type of grant, as follows:

(1) *Networking Equipment Grant.* The Secretary reviews each Networking Equipment Grant application to determine the extent to which—

(i) The project strengthens the academic programs of the institution;

(ii) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints institutional size, or any other factors—

(A) To plan, develop, acquire, install, maintain, or replace technological equipment with its existing resources; and

(B) To participate in resource-sharing networks;

(iii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iv) There is evidence of strong and continuing institutional willingness to share library resources and to participate in cooperative arrangements with other libraries;

(v) The project would increase local, regional, or national access to materials; and

(vi) The applicant possesses, or will possess, after an award of a grant under this program, equipment compatible with that of other members of the network.

(2) *Joint-Use Grant.* The Secretary reviews each Joint-Use Grant application to determine the extent to which—

(i) There is a need for special assistance as evidenced by the inability of the institution to establish and strengthen joint use of library facilities, resources, or equipment with its existing resources because of fiscal constraints, institutional size, or any other factors;

(ii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iii) There is evidence of willingness to share library resources and to participate in cooperative arrangements with other libraries;

(iv) The academic programs of the institutions of higher education described in the application would be strengthended by the project;

(v) Local, regional, or national resource sharing would increase;

(vi) Project equipment would be compatible with that of other networks; and

(vii) Technological expertise would be shared with the library community.

(3) *Services to Institutions Grant.* The Secretary reviews each Services to Institutions Grant application to determine the extent to which—

(i) The project would establish, develop, or expand local, regional, or national resource-sharing programs;

(ii) There is a demonstrated level of support from institutions of higher education that the project is needed and desired;

(iii) There is evidence of the applicant's commitment to the project and capability to continue the project, and of the likelihood that the applicant will build upon the project when the grant period ends; and

(iv) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(4) *Research and Demonstration Grant.* The Secretary reviews each Research and Demonstration Grant

application to determine the extent to which—

(i) The applicant proposes an innovative approach in utilizing technology for library services;

(ii) There is evidence from library users, library educators, or library administrators that the research or demonstration project is desirable;

(iii) The project would meet a special national or regional need in utilizing technology to enhance library or information sciences; and

(iv) The project has been developed in consultation with leading experts and has taken account of current research.

(Authority: 20 U.S.C. 1047)

Subpart D—What Conditions Must Be Met After an Award?

§ 779.30 What agency must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Authority: 20 U.S.C. 1022)

[FR Doc. 88-6137 Filed 3-18-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.197]

Notice Inviting Applications for New Awards Under the College Library Technology and Cooperation Grants Program for Fiscal Year 1988

Purpose of Program: To encourage resource-sharing projects among the libraries of institutions of higher education and to imrprove the services provided to them by public and nonprofit private organizations.

Deadline for Transmittal of Applications: May 16, 1988

Deadline for Intergovernmental Review: July 15, 1988

Available Funds: $3,590,000

Estimated Average Size of Awards: Networking Equipment Grant—$30,000, Joint-Use Grant—$125,000, Services to Institutions Grant—$25,000, Research and Demonstration Grant—$100,000.

Estimated Number of Awards: Networking Equipment Grant—87, Joint-Use Grant—5, Services to Institutions Grant—10, Research and Demonstration Grant—7.

Project Period: 12–36 months. The Department is not bound by any estimates in this notice.

Application: This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 79 (Intergovernmental Review of Department of Education Programs and Activities); (b) The regulations governing the College Library Technology and Cooperation Grants Program as proposed to be codified in 34 CFR Part 779.

Applications are being accepted based on the notice of proposed rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications.

Intergovernmental Review of Federal Programs: The regulations implementing Executive Order 12372, "Intergovermental Review of Federal Programs", are in 34 CFR Part 79.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list pubished in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.197, U.S. Department of Education, M.S. 6355, 400 Maryland Avenue, SW., Washington, DC 20202.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA No.: 84.197), Washington, DC 20202

or

(2) Hand deliver the original and three copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA No.: 84.197), Room 3633, Regional Office Building Number 3, Seventh and D Streets, SW.,
Washington, DC 20202

Note to Applicants: Although 34 CFR 75.109(a) requires only an original and two copies, an additional copy is requested for this program.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. (2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program. (3) The applicant *must* indicate on the envelope the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: These forms and instructions are found in the appendix to this notice. No grants may be awarded unless a completed application form has been received.

For Further Information Contact: Frank A. Stevens or Louise V. Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208-1430. Telephone Number: (202) 357-6315.

Assessment of Educational Impact: The Secretary requests comments on whether any information collection in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: March 16, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

Appendix

Form Approved

[OMB No. 1850-0622]

Expiration Date 1/1991

Department of Education, Office of Educational Research, and Improvement

Washington, DC 20208

Application Instructions—Fiscal Year 1988 College Library Technology and Cooperation Grants Program

General

The application is divided into 3 parts. Applications to be submitted should follow this organization.

The Sections are as follows:

PART I: Federal Assistance Face Sheet (Form SF 424)
PART II: Budget Data
PART III: Program Narrative—General and Special

No grants may be awarded unless a completed application form has been received (20 U.S.C. 1021, 1041; 34 CFR 779).

Submit the original application and three copies to:

U.S. Department of Education,
Application Control Center, Attention: 84.197, 400 Maryland Avenue, SW
Washington, DC 20202

Note: In addition to the instructions listed below, joint applicants should refer to sections 75.127 through 75.129 of the Education Department General Administrative Regulations (EDGAR) which explains group applications.

Instructions for Part I—Federal Assistance Face Sheet (SF-424)

This is a standard form used by applicants as a required face sheet for applications.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Items 1, 6, 7, 11, 14, 17 and 19 are reprinted.

Items which are not applicable have been marked "N/A".

Joint applications must include a separate face sheet (SF 424) for each cooperating institution and must designate a primary applicant as fiscal agent. (See EDGAR 75.127–129)

Below is a list of instructions to assist you in completing the form.

Item 4. Indicate the legal name of applicant, the name of the primary organization unit which will undertake the assistance activity, complete the address of applicant, and the name and telephone number of the person who can provide further information about this request.

Item 5. Employer identification number assigned by Internal Revenue Service (IRS). If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in item 5.

Item 12. For joint applications, the total amount of funding requested for the project should be given in Item 12, of the primary applicants; this item should be blank on the SF 424's of the other institutions. Section IV "Remarks" of the SF 424's should state that a joint application is being submitted and list the institutions.

Item 16. Indicate the proposed length of the project. This may be one, two or three years.

Item 22. The applicant certifies that they have complied with all state regulations and procedures required under E.O. 12372.

Item 23. Give the name and title of the person authorized by the applicant to sign applications for Federal assistance.

Designation of Different Payee: If the payee will be other than the applicant, enter the following information in Section IV—Remarks, of the SF 424: the payee's name, complete address, and Employer Identification number or ED entity number. If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

[BILLING CODE 4000-01-M]

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
☐ NOTICE OF INTENT (OPTIONAL)
☐ PREAPPLICATION
☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER
NOTE: TO BE ASSIGNED BY STATE
a. NUMBER
b. DATE ASSIGNED *Year month day* 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
a. NUMBER 8 4 . 1 9 7
MULTIPLE ☐
b. TITLE College Library Technology & Cooperation Grants Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State
B—Interstate
C—Substate Organization
D—County
E—City
F—School District
G—Special Purpose District
H—Community Action Agency
I—Higher Educational Institution
J—Indian Tribe
K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant
B—Supplemental Grant
C—Loan
D—Insurance
E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

14. TYPE OF APPLICATION
A—New
B—Renewal
C—Revision
D—Continuation
E—Augmentation
Enter appropriate letter A

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars
B—Decrease Dollars
C—Increase Duration
D—Decrease Duration
E—Cancellation
F—Other (Specify): NA
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ▶ *Year month day* 19

19. FEDERAL AGENCY TO RECEIVE REQUEST U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS
400 Maryland Avenue, S.W.
Washington, D.C. 20202-3561

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION I—APPLICANT/RECIPIENT DATA

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE ____________________

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION II—CERTIFICATION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE▶ *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

SECTION III—FEDERAL AGENCY ACTION

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

-3-

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Instructions For Part II—Budget

Sections A, B, C, and D are to be completed by the applicant. Please check the appropriate box at the top of the budget form indicating the type of grant requested.

Section A—Detailed Budget by Categories

Line 1. Indicate salary and wages to be paid to personnel employed in the project only.

Fees and expenses for consultants are to be included in line 6.

Line 2. Include contributions for Social Security, employees insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost note.

Line 3. Indicate travel of employees only. Travel of consultants, resources persons, evaluators, etc., should not go on this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Line 4. Indicate the cost of non-expendable personal property. Such property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit.

A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all personal property as defined above.

Line 5. Include cost of consumable supplies and materials to be used in the project. These should be items which cost less than $500 per unit with a useful life of less than two years.

Line 6. Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies or equipment listed above); and (2) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 7. Indicate all direct costs not clearly covered by lines 1–6 above.

Line 8. Show totals for lines 1 through 8.

Line 9. Indicate the amount of indirect cost. Indirect costs must be the institution's federally negotiated rate.

Line 10. Total lines 8 and 9.

Section B—Estimate of Expenditures

Lines 1, 2 and 3. If project is more than one year, indicate expenditure of funds for each year the project is planned.

Section C—Budget Narrative

Attach a budget narrative which explains amounts for individual direct costs categories including the indirect cost rate and base. This narrative should not exceed five double-spaced pages.

Include in the narrative details about the following items:

Section A, Salaries and Wages from Line 1:

Show the total commitment of time and the salary to be charged to the project for each key member of the project staff.

Equipment and Supplies from Lines 4 and 5:

List items of equipment and supplies in the following format: Item, Number and Units, Cost per Unit, Total cost.

Contractual Services from Line 6:

Indicate the names of the agency or organization that will receive each proposed contract, if available. If not, clearly indicate what factors the number on line 6 is based upon.

Other from Line 7:

Provide itemized breakdown of all items figured into the number on line 7.

Indirect costs from Line 9:

Attach a copy of the approved negotiated rate agreement.

Section D—Maintenance of Effort

Sign and date the assurance of maintenance of effort as required under 779.9 of the program regulations.

Instructions for Part III—Program Narrative

The narrative should address how the project will meet the objectives of the program as stated in the regulations. The narrative portion of the application should not exceed 20 double-spaced typewritten pages.

It should be typed on one side only of standard 8½" 11" paper, consecutively paginated, and stapled at the upper left corner. The application should not be bound or enclosed in a folder. The type of grant requested, either Networking Equipment Grant, Joint-Use Grant, Services to Institutions Grant or Research and Demonstration Grant, should be clearly stated on the first page of the program narrative.

The program narrative must include a response to the General Selection Criteria in Section 779.21 (a) and the Special Program Criteria in Section 779.21 (b) of the program regulations. *Please be careful to respond to the Special Program Criteria in § 779.21 (b) which relate directly to the type of grant you are seeking.* Applicants may provide other relevant information, including pertinent exhibits, but each application must be a self-contained document.

It is advisable to respond to each of the criterion in the order presented.

In responding to the criteria under 779.21 (a)(4) *Budget and Cost Effectiveness*, applicants are encouraged to submit an itemized breakdown and justification of the proposed budget.

It is suggested that single-page abstract be prepared which summarizes the content of the proposed project. The abstract should be used as a cover page to the program narrative and provide the following information: (a) Name and address of applicant; (b) title of project; (c) project director's name, title address, and telephone number; (d) funding level being requested; (e) beginning and ending date of the project period; and (f) a single-spaced statement of 150 words or less summarizing the proposed project.

Narratives for joint applicants (a single application submitted by combinations of institutions) should detail the activities that each member of the group plans to perform (see § 75.127 through § 75.129 of the Education Department General Administrative Regulations, which explains group applications)

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PART II - BUDGET INFORMATION
FY 88

CHECK TYPE OF GRANT REQUESTED

___A. Networking Equipment

___B. Joint-Use Grant

___C. Services to Institutions Grant

___D. Research and Demonstration Grant

Section A - Detailed Budget by Categories

1. Salary and Wages	$
2. Fringe Benefits	
3. Travel	
4. Equipment	
5. Supplies	
6. Contractual Services	
7. Other (itemize)	
8. Total Direct Costs (lines 1 to 7 totaled)	
9. Total Indirect Costs	
10. Total Project Costs (lines 8 - 9)	

Section B - Estimate of Expenditures

1. Year One	$
2. Year Two	
3. Year Three	

Section C - BUDGET NARRATIVE - see Budget Information.

Section D - Maintenance of Effort

An assurance of maintenance of effort is required under section 779.9 of the program regulations. Please certify that:

If selected as a grantee, the applicant will expend, for the same purpose as the grant, an amount not less than one-third the grant during the period for which the grant is sought; and make that expenditure from funds other than funds received under Title II of the Higher Education Act.

Signed_______________________________ Date_______________

Title_______________________________

[FR Doc. 88-6138 Filed 3-18-88; 8:45 am]

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Part VII

Department of Health and Human Services

42 CFR Part 1003

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information; Proposed Rule

45 CFR Part 60

National Data Bank for Adverse Information on Physicians and Health Care Practitioners; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1003

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish civil money penalties (CMPs) against any individual or entity that fails to report information on medical malpractice payments in accordance with section 421(c) of Pub. L. 99–660, Title IV, the Health Care Quality Improvement Act of 1986, and against any individual or entity who breaches the confidentiality of information reported to the National Data Bank established to collect and disseminate required information in accordance with section 427(b) of that Act.

DATE: To assure consideration, comments must be mailed and delivered to the address provided below by May 20, 1988.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–15–P, Room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5643, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–15–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5643, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: James Patton, Office of Investigations, (301) 594–3557.

SUPPLEMENTARY INFORMATION:

I. Background

Health Care Quality Improvement Act

The Health Care Quality Improvement Act, Title IV of Pub. L. 99–660, established specific requirements for the reporting and release of information concerning (1) the payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions and claims, and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. The stated purpose of these provisions is both to improve the quality of medical care by identifying those physicians and dentists who are engaged in unprofessional behavior, and to restrict the ability of those incompetent physicians and dentists to move from State to State without disclosure or discovery of their damaging or incompetent performance.

The Act requires the Secretary to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Data Bank to serve as a national source of information on physicians, dentists and, under cetain circumstances, other health care practitioners concerning: (1) Payments made as a result of medical malpractice actions or claims; (2) adverse licensure actions taken by Boards of Medical Examiners and equivalent State licensing boards for other health care practitioners; and (3) adverse actions on clinical privileges taken by health care entities, such as suspensions for 30 days or longer. (Reporting of information on each of the three categories for physicians and dentists is required. For other licensed health care practitioners, reporting is required for medical malpractice payments, is voluntary on the part of health care entities for adverse actions on clinical privileges, and is not applicable to licensure actions.)

The reporting requirements to the National Data Bank would apply, as appropriate, to hospitals, health care entities, boards of medical examiners, professional societies of physicians, dentists or other licensed health care practitioners, along with individuals and entities (including insurance companies) making payments with respect to medical malpractice actions or claims. The Act provides that information reported to the National Data Bank is confidential and is to be disclosed only for purposes specified in the Act. This information may be used solely with respect to activities in furtherance of the quality of health care. The specific procedures and requirements for reporting and dissemination of this information by the National Data Bank is published elsewhere in this issue of the **Federal Register**.

Existing OIG Civil Money Penalty Sanctions

Until the enactment of the Department's civil money penalty (CMP) authorities under section 2105 of Pub. L. 97–35, the Federal government had to rely solely upon litigation under the False Claims Act or criminal proceedings. Under this CMP authority, the Department's Office of Inspector General has been authorized under section 1128A of the Social Security Act, and through implementing regulations at 42 CFR Part 1003, to administratively impose CMPs and assessments for a number of false or improper billing or quality of care violations in the Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs. These existing CMP authorities have specifically served to strengthen the Department's ability to protect the health care programs and its beneficiaries against those persons or organizations that would defraud, abuse or otherwise circumvent those programs by creating an administrative action to supplement court litigation.

Congress has increasingly used the CMP authorities to insure compliance with its intended statutory provisions. The original CMP authorities were specifically designed to address penalties for false claims and unnecessary services. The authority for levying CMP was further expanded in recent years to address issues involving the quality of care furnished to program beneficiaries and others. With the enactment of the Health Care Quality Improvement Act, the Congress has broadened OIG's existing CMP authorities to specifically enforce reporting and confidentiality of data reporting elements of the National Data Bank.

Under the current CMP authorities, while there is a maximum penalty amount established for each type of CMP violation, the statute requires the Department to take into account a number of factors in determining the amount of any penalty or assessments imposed. The OIG regulations at 42 CFR 1003.106 presently include specific guidelines that set forth various factors and circumstances that may be considered mitigating—resulting in a reduced penalty or assessment amount, and those that would be considered aggravating—resulting in a higher penalty or assessment up to the specified amount stated in the statute.

In addition, the existing OIG regulations at 42 CFR Part 1003 addressing the Department's CMP authorities provide to those persons and organizations against whom penalties or assessments have been imposed an opportunity for a hearing on the record in accordance with the Administrative Procedure Act, for appeal to the Secretary, and for the judicial review of the Secretary's final determination.

II. Provisions of the Proposed Rule

CMP for violations under Title IV of Pub. L. 99–660

In an effort to (1) encourage the efficient and timely collection and reporting of medical malpractice payments by any person or entity, including insurance companies, and (2) promote effective professional peer review by providing for the protection and confidentiality of the information furnished under these provisions, sections 421(c) and 427(b)(2) of Pub. L. 99–660 set forth two new authorities as a basis for taking CMP action.

A. CMP for Failure To Report Medical Malpractice Payments

The medical malpractice system has been the primary approach that aggrieved patients have taken to deal with inadequate medical care, and the effective reporting of such malpractice payment data can provide important information for evaluating the credentials of health care providers. As indicated above, and addressed further in the accompanying Public Health Service (PHS) regulations published in this issue of the **Federal Register**, any person or entity, including an insurance company, that makes payment on a medical malpractice action or claim will be required to report such information, and the circumstances of such settlement, to the National Data Bank established by the Secretary. Also, this information must be reported to the appropriate licensing board(s) in the state in which the medical malpractice action or claim arose. To assure the timely collection and reporting of medical malpractice payments, the OIG has been delegated the specific responsibility under section 421(c) of the Act to levy a CMP of up to $10,000 against any individual or entity that fails to report each such payment on a timely and complete basis, as specified in proposed 42 CFR 60.4, 60.5 and 60.6 of the PHS regulations.

B. CMP for Breaching Confidentiality of Information

In accordance with the statute and the proposed PHS regulations, all information reported and collected by the national data bank under these provisions with respect to a physician, dentist or other licensed practitioner is to be furnished, upon request, to State licensing boards, hospitals, and other health care entities (1) that have entered, or may be entering, into an employment or affiliation relationship with the physician or practitioner, or (2) to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff. Such information is intended to be used solely with respect to activities for the betterment of health care provided by the individuals or entities requesting this information, and is considered confidential. Except for professional review activities and medical malpractice actions, this information will not be disclosed to any party other than to the physician or practitioner involved. State licensing boards and other parties specifically authorized under other provisions of law to release such information may continue to do so. (See accompanying PHS regulations for specific information regarding disclosure of National Data Bank information.)

To protect the confidentiality of information reported under this provision, the OIG has been delegated the specific responsibility under section 427(b)(2) of the Act to levy for each violation a CMP of up to $10,000 against any person who inappropriately discloses such information.

The CMP action may lie against State licensing board employees, employees of other health care entities, including health maintenance organizations, and employees of the Secretary or a private or public agency, or directly against those entities or organizations that violate the confidentiality requirements of section 427(b)(1). In any case in which it is determined that more than one party was responsible for improperly disclosing confidential information in accordance with these provisions, a penalty, up to the maximum limit, may be imposed against each responsible individual, entity or organization. Utilization and Quality Peer Review Organizations (PROs) under Part B of Title XI of the Social Security Act are governed by separate confidentiality and penalty provisions contained in 42 CFR Part 476.

C. Determining the Amount of Penalty

In determining the penalty amount for each occurrence, we are proposing in these regulations five criteria for consideration: (1) The nature and circumstances resulting in the failure to report medical malpractice payments or the disclosure of information; (2) the degree of culpability of the person or entity in failing to provide timely and complete payment data or in breaching the confidentiality of collected information; (3) the materiality or significance of omission of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information; (4) any prior history of the person or entity with respect to these occurrences; and (5) in general, other matters required by justice.

The notification, effectuation and appeal procedures under existing CMP regulations will be used for all violations resulting from these provisions.

Non-substantive Regulatory Changes

In addition to these changes outlined above, we are making a number of minor conforming and non-substantive revisions to these regulations by inserting "OIG" for "Secretary" in section 1003.105, and by deleting the existing paragraph (b) in section 1003.114 which is now obsolete.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule, that is, any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of the Executive Order. As indicated, these proposed regulations would establish new authority for the OIG to impose CMPs against those who fail to report required information and against those who breach the confidentiality of the information gathered by the National Data Bank. As such, we have concluded that this regulation would have no direct effect on the economy or on Federal or State expenditures, and that an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 5 U.S.C. 604(a), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action would have on small entities, and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would have no significant economic impact. While some CMPs imposed by the OIG as a result of these regulations could have an impact on some small business entities, we do not anticipate that a substantial number of small entities would be affected by this rulemaking. Therefore, we have concluded that an initial regulatory flexibility analysis is not required for this rulemaking.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. While the proposed regulations prepared by PHS contain specific information collection requirements, we have determined that these proposed penalty provisions do not contain such information collection requirements and would not increase the Federal paperwork burden on the public and private sectors.

IV. Other Required Information

A. Response to Comments

Because of the number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule we will consider all comments received in response to these penalty provisions and respond to them in the preamble to that document.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Chapter V, Part 1003 is proposed to be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 1003 would be revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act, and secs. 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1302, 1320a-7, 1320a-7a, 1395u(j) and 1395u(k), 11131(c) and 11137(b)(2)).

2. Section 1003.100 would be revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j) and 1842(k) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1320a-7(c), 1320a-7a, 1395u(j) and 1395u(k), 11131(c), and 11137(b)(2).

(b) *Purpose.* This part (1) establishes procedures for imposing—

(i) Civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs, and

(ii) Civil money penalties against those who fail to report medical malpractice payments or who breach the confidentiality of information reported under Title IV of Pub. L. 99-660, as specified in 42 CFR Part 60 of this title;

(2) Establishes procedures for suspending from the Medicare and Medicaid programs, certain persons against whom a civil money penalty or assessment has been imposed; and (3) specifies the appeal rights of persons subject to a penalty or assessment.

3. Section 1003.101 would be amended by adding a definition for the term "medical malpractice action or claim" to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of, or failure to provide, health care services, including a legal action brought in any State or Federal court or other adjudicative body.

* * * * *

4. Section 1003.102 would be amended by redesignating and republishing existing paragraph (c) to read as paragraph (d); and by adding a new paragraph (c) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(c) The OIG may impose a penalty against any person or entity, including an insurance company, that fails to report information on a payment of a medical malpractice claim in accordance with section 421 of Pub. L. 99-660 (42 U.S.C. 11131) and regulations in § 60.6 of this title, and against any person or entity that improperly discloses information in violation of section 427 of Pub. L. 99-660 (42 U.S.C. 11131) and regulations in § 60.11 of this title.

(d)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section; each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

5. Section 1003.103 would be revised to read as follows:

§ 1003.103 Amount of penalty.

(a) The OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under paragraphs (a) and (b) of § 1003.102.

(b) The OIG may impose a penalty of not more than $10,000 against any person or entity, including an insurance company, for each occurrence subject to a determination under paragraph (c) of § 1003.102.

6. Section 1003.105 would be amended by revising paragraph (a) to read as follows:

§ 1003.105 Suspension from participation in Medicare and Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the OIG to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The OIG will notify the State agency if and when it waives suspension in response to such a request.

* * * * *

7. Section 1003.106 would be amended by revising paragraphs (a), (b) introductory text, (b)(1), (2) and (3), and (c) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a)(1) In determining the amount of any penalty or assessment, in accordance with § 1003.102 (a) and (b), the OIG will take into account:

(i) The nature of the claim or request for payment and the circumstances under which it was presented,

(ii) The degree of culpability of the person submitting the claim or request for payment,

(iii) The history of prior offenses of the person submitting the claim or—request for payment,

(iv) The financial condition of the person presenting the claim or request for payment, and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG will take into account:

(i) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information,

(ii) The degree of culpability of the person or entity, including the insurer, in failing to provide timely and complete payment data or in breaching the confidentiality of reported information,

(iii) The materiality, or significance of omission, of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information,

(iv) Any prior history of an individual or entity with respect to these violations, and

(v) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered:

(1) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items or services subject to a determination under § 1003.102 (a) and (b) included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reimbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102 (a) and (b), the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed for every item, service or incident subject to a determination under § 1003.102 (a) and (b).

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102 (a) and (b).

8. Subsection 1003.109 would be amended by revising paragraph (a) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to suspend a respondent from participation in Medicare or Medicaid, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and suspension, as applicable. The notice will include:

(1) Reference to the statutory basis for the penalty, assessment, and suspension;

(2) With respect to determinations under § 1003.102 (a) and (b), a description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspector General is relying upon statistical sampling pursuant to § 1003.133, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) With respect to determinations under § 1003.102(c), a description of the episode and the circumstances under which the penalty is being imposed;

(4) The reason why such claims and requests for payment, or with respect to Title IV of Pub. L. 99-660, such failure to report required information or breach of confidentiality, subject the respondent to a penalty, assessment, and suspension (where applicable); the amount of the proposed penalty, assessment, and the period of proposed suspension (where applicable);

(5) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty and assessment and the period of suspension (where applicable);

(6) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

* * * * *

9. Section 1103.114 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102 (a) and (b).

(b) To the extent that a proposed penalty is based on a violation of Title IV of Pub. L. 99–660, the Inspector General must prove by a preponderance of the evidence that the person or entity failed to report medical malpractice payments on a timely and complete basis, or a party breached the confidentiality of information reported, as set forth in § 1003.102(c) and in 42 CFR Part 60 of this title.

(c) Where a final determination that the respondent (1) presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 (a) and (b), or (2) failed within the scope of § 1003.102(c) to report medical malpractice payments or breached the confidentiality of information, has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

10. Section 1003.125 would be amended by revising paragraph (c) to read as follows:

§ 1003.125 Initial decision; administrative review; finality.

* * * * *

(c) The findings of fact shall include a finding on each of the following issues for every item, service or occurrence with respect to which a penalty or assessment was proposed.

(1) Whether the item, service or occurrence is subject to a determination under § 1003.102;

(2) If the item, service or occurrence is subject to a determination under § 1003.102 whether there are mitigating or aggravating circumstances as described in § 1003.106.

* * * * *

Dated: July 15, 1987.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: October 9, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–5984 Filed 3–18–88; 8:45 am]

BILLING CODE 4150-04-M

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45 CFR Part 60

National Data Bank for Adverse Information on Physicians and Health Care Practitioners

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes rules that would govern the reporting and release of information concerning (1) payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions and claims, and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. This information would be collected in and released from a National Data Bank, in accordance with the requirements of Part E of the Health Care Quality Improvement Act of 1986, Title IV of Pub. L. 99–660.

DATE: As discussed below, comments are invited. To be considered, comments must be received by May 20, 1988.

ADDRESSES: Written comments should be addressed to Dr. J. Jarrett Clinton, Director, Bureau of Health Professionals (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Margaret Wilson, Ph.D., Bureau of Health Professions, at the above address; telephone 301 443–3626.

SUPPLEMENTARY INFORMATION: Part B of Title IV of the Health Care Quality Improvement Act of 1986 ("the Act"), Pub. L. 99–660, enacted on November 14, 1986, and amended by Pub. L. 100–177, requires the Secretary of Health and Human Services to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Data Bank to collect and release information concerning payments made on behalf of physicians, dentists, and other licensed health care practitioners as a result of medical malpractice actions and claims, and information concerning certain adverse actions regarding the licenses and clinical privileges of physicians and dentists. In addition, Part A of the Act provides, for hospitals and members of bodies that conduct peer review, immunity from liability for damages with respect to actions taken in the course of such review. The purposes of the Act are to:

(1) Improve the quality of medical care by encouraging physicians and dentists to identify, for disciplinary purposes, other physicians and dentists who engage in unprofessional behavior; and

(2) Restrict the ability of incompetent physicians and dentists to move from State to State without disclosure or discovery of their previous damaging or incompetent performance.

The Department was not able to comply with the statutory implementation date of November 14, 1987, for the establishment of the National Data Bank due to lack of available funds. The Secretary will announce the date of operation for the National Data Bank in an announcement in the **Federal Register**.

Individuals and entities will not be held responsible for any reporting requirements of the Act until the National Data Bank has been established and the Secretary has announced its operation. Further, data will only be collected from the date determined and announced by the Secretary, not from November 14, 1987.

These proposed regulations would implement the requirements for reporting to the National Data Bank and the procedures for obtaining information from the National Data Bank. These requirements would apply to hospitals; health care entities; boards of medical and dental examiners; professional societies of physicians, dentists, or other licensed health care practitioners; and individuals and entities (including insurance companies) making payments with respect to medical malpractice actions or claims. The Secretary regards the immunity provisions (Part A) of the Act as self-implementing. Thus, these proposed regulations do not address that portion of the Act.

The Act permits the Secretary to establish and operate the National Data Bank either directly or by contract with an appropriate private or public agency. See section 424(b) of the Act. The Secretary has chosen the latter method and, as indicated in § 60.4 of the proposed regulations, will announce the name, address, telephone number and other details concerning the National Data Bank through notice in the **Federal Register** as well as through press releases and notices to the various professional associations of hospitals, health care providers, and insurers, and to boards of medical examiners, among others.

It should be noted that section 427(c) of the Act, as amended, explicitly provides immunity in any civil action for any person or entity concerning reports made to the National Data Bank. This immunity also applies to the agency which will operate the National Data Bank through contract.

The National Data Bank would function as a national source of information on physicians, dentists, and, to a more limited degree, other health care practitioners concerning:

(1) Payments made as a result of medical malpractice actions or claims;

(2) Adverse licensure actions taken by Boards of Medical Examiners, and equivalent State licensing boards for other health care practitioners; and

(3) Adverse actions on clinical privileges taken by health care entities.

The Act requires the reporting of information in each of these three categories for physicians and dentists. Regarding other licensed health care practitioners, reporting is required for medical malpractice payments, is voluntary on the part of health care entities for adverse actions on clinical privileges, and is not applicable to licensure actions.

The Act further requires each hospital to request information from the National Data Bank every 2 years concerning physicians, dentists and other licensed health care practitioners on its medical staff (courtesy or otherwise) or who have clinical privileges. Inquiry is also required when a physician or health care practitioner applies for clinical privileges or a staff position. Other individuals and entities, as described below, are permitted to obtain reports from the National Data Bank. The Secretary stresses that the information from the National Data Bank would serve as only an indicator of professional quality and not as conclusive or complete evidence of it.

Fees will be imposed on individuals and entities who request information from the National Data Bank, pursuant to section 427(b) of the Act as amended. The fees will reflect the costs of processing requests for disclosure and of providing such information. The amounts of these fees will be announced in periodic notices in the **Federal Register**.

The Act and the proposed regulations provide that information reported to the National Data Bank is confidential and is to be disclosed only for the purposes specified in the Act. This information may be used solely with respect to activities in furtherance of the quality of health care. The Act provides a penalty of not more than $10,000 for each violation of this confidentiality provision. This penalty will be imposed through procedures published elsewhere in this issue of the **Federal Register** proposing to amend 42 CFR Part 1003. The organization which operates the National Data Bank will be required to verify the identity of all individuals and organizations which report and request information from the Data Bank and for individuals representing organizations, their affiliation to the requesting entity.

Although the statute does not require the application of these provisions to Federal health care entities, physicians, dentists and other health care providers, the intent of the law appears clear that coverage be as broad as possible, and hence that Federal providers be included to the extent feasible. Accordingly, the Secretary is pursuing the execution of Memoranda of Agreements with the Department of Defense, the Veterans Administration, and the Drug Enforcement Administration of the Department of Justice. Also, the Secretary is considering the manner in which health care providers in the Department of Health and Human Services will participate in this National Data Bank.

The major provisions of these proposed regulations are described below.

Section 60.3 Definitions.

The term "Physician" is defined in section 431(8) of the Act to include dentists as well as osteopathic physicians and allopathic physicians. For clarity, the Secretary is proposing to define the term in the traditional sense (i.e., osteopathic and allopathic physicians) and to refer to dentists separately.

The term "Board of Medical Examiners" is defined to include a Board of Osteopathic Examiners and a Board of Dentistry, since the regulations would also apply to both dentists and osteopathic physicians.

The term "Health care entity" includes a group medical practice which shares facilities, personnel, medical records, and responsibilities, has incomes set by contract, and follows a formal peer review process for furthering quality health care. "Health care entity," as defined, would also include Community and Migrant Health Centers and National Health Service Corps sites.

The Secretary notes that the Act (section 431(4)(B)) excludes from the definition of "Health care entity" a professional society which has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of health care practitioners. Since this exclusion is only relevant to the immunity provisions of the Act and does not concern the reporting or disclosure provisions, the proposed regulations do not reference this exclusion.

Section 60.5 When information must be reported.

The Act does not permit the Secretary to require reports less often than monthly (see section 424(a)). The Department therefore proposes to require that information be submitted to the National Data Bank within 30 days following the action to be reported. For medical malpractice payments, the 30-day period would begin when an actual payment is made, in whole or in part. For adverse actions on licenses and clinical privileges, the event triggering the 30-day period would be the date of decision by the Board or health care entity, rather than the effective date of the decision. It is the Secretary's view that the quality of health care can best be improved by incorporating information in the National Data Bank at the earliest practical time, consistent with the requirements of the Act. The effective date of the adverse action would be contained in the information reported to the National Data Bank under §§ 60.7 and 60.8.

The Department, as a routine procedure, intends to notify individuals who are the subject of reports, when the reports are received by the data bank.

Section 60.6 Reporting Medical Malpractice Payments.

Pursuant to the Act, this section would require the reporting of payments on medical malpractice actions or claims, regardless of the size of payment. The Act requires the Secretary to report to Congress, by November 14, 1988, on whether information on small payments and on *all* claims should continue to be required to be reported.

The Act provides a penalty of $10,000 for failure to report information on a payment required to be reported. This penalty will be imposed pursuant to procedures published elsewhere in this issue of the **Federal Register** proposing to amend 42 CFR Part 1003.

This section lists information which would be required to be reported concerning each payment. Similar lists are contained in §§ 60.7 and 60.8 for reporting licensure actions and professional review actions on clinical privileges. The Secretary invites comments on the information proposed to be reported. The information was determined as that necessary to carry out the purpose of the Act while

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minimizing the reporting burden. The Secretary proposes to identify the physician, dentist or other health care practitioner who is the subject of a report as precisely as possible to avoid mistakes in using National Data Bank information.

Section 60.8 Reporting Adverse Actions On Clinical Privileges.

This section would require a health care entity to report:

(1) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(2) When it accepts the surrender of clinical privileges of a physician or dentist—

(i) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(ii) In return for not conducting such an investigation or proceeding or

(3) In the case of a health care entity which is a professional society, when it takes a professional review action which adversely affects the membership of a physician or dentist in the society.

Health care entities would be required to report when an individual has surrendered privileges in order to avoid an adverse action. An example of this is a physician's surrender of clinical privileges during, or to avoid, an investigation of possible incompetence. There is evidence that physicians have surrendered privileges prior to receipt of an adverse action or to preclude investigation of their competency in one health care entity, but continued or obtained privileges at another health care entity which had no knowledge of, or information on the reason for, the prior surrender. Congress intended this information to be included in the National Data Bank. These proposed requirements do not go beyond those of the Act.

It should be noted that the Act and the proposed regulations require health care entities to report to Boards of Medical Examiners who, in turn, must report to the National Data Bank. The Act also requires the Boards to monitor the compliance of health care entities with these provisions.

Under section 411(b) of the Act, the Secretary is required to provide a health care entity with an opportunity for a hearing before determining that the entity has failed to comply with the reporting requirements of the Act. Section 423(c)(1) provides that such a determination will result in the health care entity's loss of the immunity protection of the Act. Section 60.8(c) describes the availability of and method of requesting such a hearing, and also states that the loss of immunity will be effective for 3 years.

To help assure that the hearing process is administered as efficiently and cost-effectively as possible for the entities and the Federal Government, this provision would set forth procedures for determining if a hearing is warranted. These procedures would require that a health care entity's request for a hearing be submitted within 30 days after receipt of written notice from the Secretary describing the entity's noncompliance, and contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. The Secretary would be authorized to deny a hearing if:

(1) The request for a hearing is beyond the specified time limit;

(2) The entity fails to provide a statement of material factual issues in dispute; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

This provision would also state that the hearings will be held in the Washington, DC, metropolitan area. The Secretary has determined that this is necessary for efficiency and economy of administration.

Section 60.10 Obtaining information from the National Data Bank.

Section 60.10(a) specifies who may obtain information, and what information may be available, from the National Data Bank:

(1) A hospital that requests information concerning a physician, dentist or health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(2) A physician, dentist, or health care practitioner who requests information concerning himself or herself;

(3) A state licensing board or health care entity which has entered or may be entering an employment or affiliation relationship with a physician, dentist or health care practitioner, or to which the physician, dentist or health care practitioner has applied for clinical privileges or appointment to the medical staff;

(4) An attorney, or individual acting on his own behalf, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or health care practitioner who is also named in the action or claim. *Provided*, that this information will be disclosed only upon the submission of evidence that the hospital failed to obtain information from the National Data Bank as required by § 60.9(a) and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(5) A health care entity with respect to professional review activity; and

(6) A person or entity who requests information in a form which does not permit the identification of any particular health care entity, physician, other health care practitioner or patient.

Section 60.10(b) refers to procedures for obtaining National Data Bank information.

The Department proposes to implement the Act literally concerning who may obtain information, with the exception of medical malpractice actions.

Section 60.10(a) (4) and (6) are proposed to implement amendments made to the Act by Pub. L. 100–177. Section 60.10(a)(4), which would enable attorneys to obtain information in certain medical malpractice actions, is intended to "carry out" section 425(b) of the Act as provided in section 427(b)(1), as amended. Section 425(b) (see also proposed § 60.9(b) below) provides that if a hospital fails to request information from the National Data Bank as required by section 425(a) of the Act, then it is presumed to have knowledge of this information. In order for section 425(b) to be "carried out," it is necessary that the complainant in a medical malpractice action have access to the information that is to be imputed to the hospital.

Proposed § 60.10(a)(6) reflects another amendment to section 427(b)(1) of the Act, which is intended to enable individuals and entities to obtain information for purposes of research. Accordingly, information from the National Data Bank that does not permit identification of persons or health care entities is not considered confidential.

Section 60.11 Fees applicable to requests for information.

This section proposes fees which would apply to all requests for information from the National Data Bank. These fees, as provided in section 427(b)(4) of the Act, would be based on the costs of processing requests for disclosure and of providing such information. This notice sets forth the criteria for establishing the fees and the procedures for assessing and collecting fees. The actual amounts of the fees will be announced in periodic notices in the **Federal Register** published by the Secretary.

Section 60.13 How to dispute the accuracy of National Data Bank information.

This section proposes procedures for filing a dispute and revising disputed information. The Secretary proposes minimal involvement in the resolution of disputed information, leaving this to the individual practitioner and the entity submitting the disputed report. The regulation would provide for flagging information in the National Data Bank as "disputed" while a dispute is being resolved. In the event that a resolution is not reached by the parties, the Secretary would, upon written request, review the dispute and all relevant evidence. After review, the Secretary would either:

(1) Continue to note the information as "disputed" and include a brief statement by the physician or health care practitioner describing the disagreement, if the Secretary concludes that the information is accurate; or

(2) Send corrected information to previous inquirers if the Secretary concludes that the information was incorrect.

In order to carry out this provision, the Secretary would maintain a record of all inquiries made to the National Data Bank and any information provided as a result of an inquiry.

In light of the sensitivity of this information we specifically solicit comments on how disputed information should be handled prior to settlement of the dispute.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. These proposed regulations would establish procedures for the reporting and releasing of information from the National Data Bank on physicians, dentists and health care practitioners involved in medical malpractice actions and claims concerning certain adverse actions regarding their licenses and clinical privileges. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

Sections 60.4, 60.6, 60.7, 60.8, 60.9 and 60.12 contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. The Department has submitted a copy of these information collection requirements to OMB for approval. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer for HHS.

List of Subjects in 45 CFR Part 60

Health Professions, Malpractice, Insurance companies.

Accordingly, the Department of Health and Human Services proposes to add a new Part 60 to Title 45 of the Code of Federal Regulations, as set forth below.

Dated: August 18, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 9, 1987.

Otis R. Bowen,

Secretary.

PART 60—NATIONAL DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND HEALTH CARE PRACTITIONERS

Subpart A—General Provisions

Sec.
60.1 The National Data Bank.
60.2 Applicability of these regulations.
60.3 Definitions.

Subpart B—Reporting of Information

60.4 How information must be reported.
60.5 When information must be reported.
60.6 Reporting medical malpractice payments.
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60.8 Reporting adverse actions on clinical privileges.

Subpart C—Disclosure of Information by the National Data Bank

60.9 Information which hospitals must obtain from the National Data Bank.
60.10 Obtaining information from the National Data Bank.
60.11 Fees applicable to requests for information.
60.12 Confidentiality of National Data Bank information.
60.13 How to dispute the accuracy of National Data Bank information.

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Subpart A—General Provisions

§ 60.1 The National Data Bank.

The Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, as amended, authorizes the Secretary to establish (either directly or by contract) a National Data Bank to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. These regulations set forth the reporting and

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disclosure requirements for the National Data Bank.

§ 60.2 Applicability of these regulations.

These regulations establish reporting requirements applicable to hospitals; health care entities; Boards of Medical Examiners; professional societies of physicians, dentists or other licensed health care practitioners which take adverse licensure or professional review actions; and individuals and entities (including insurance companies) making payments as a result of medical malpractice actions or claims. They also establish procedures to enable individuals or entities to obtain information from the National Data Bank or to dispute the accuracy of National Data Bank information.

§ 60.3 Definitions.

"Act" means the Health Care Quality Improvement Act of 1986, Title IV of Pub. L. 99–660, as amended.

"Adversely affecting" means reducing, restricting, suspending, revoking, denying, or failing to renew State licensure, clinical privileges or membership in a health care entity, or certification by a specialty board.

"Board of Medical Examiners," or "Board," means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2) of the Act, has designated an alternate entity to carry out the reporting activities of § 60.7 due to a Board's failure to comply with § 60.7, the term "Board of Medical Examiners" or "Board" refers to this alternate entity.

"Clinical privileges" means the authorization by a health care entity to a physician, dentist or other health care practitioner for the provision of health care services, including privileges and membership on the medical staff.

"Dentist" means a doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) legally authorized to practice dentistry by a State (or who, without authority, holds himself or herself out to be so authorized).

"Formal peer review process" means the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.

"Health care entity" means:

(a) A hospital;

(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or

(c) A professional society or specialty board, or a committee or agent thereof, including those at the national, State, or local level, of physicans, dentists, or health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and a group medical practice which shares facilities, personnel, medical records, and responsibilities, and has incomes set by contract.

"Health care practitioner" means an individual (other than a physician or dentist) who is licensed or otherwise authorized by a State to provide health care services.

"Hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of or failure to provide health care services, including a legal action brought in any State or Federal Court or other adjudicative body.

"Physician" means a doctor of medicine (M.D.) or osteopathy (D.O.) legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized).

"Professional review action" means an action or recommendation of a health care entity taken in the course of professional review activity, which action or recommendation is based on the professional competence or professional conduct of an individual physician, dentist or health care practitioner (which competence or conduct affects or could affect adversely the health or welfare of a patient or patients), and which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician, dentist or health care practitioner.

(a) This term includes:

(1) A formal decision not to take an action or make a recommendation described above; and

(2) Professional review activities related to a professional review action.

(b) This term excludes actions which are primarily based on:

(1) The physician's, dentist's or health care practitioner's association, or lack of association, with a professional society or association;

(2) The physician's, dentist's or health care practitioner's fees or the physician's, dentist's or health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;

(3) The physician's, dentist's or health care practitioner's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;

(4) A physician's, dentist's or health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or

(5) Any other matter that does not relate to the competence or professional conduct of a physician, dentist or health care practitioner.

"Professional review activity" means an activity of a health care entity with respect to an individual physician, dentist or health care practitioner:

(a) To determine whether the physician, dentist or health care practitioner may have clinical privileges with respect to, or membership in, the entity;

(b) To determine the scope or conditions of such privileges or membership; or

(c) To change or modify such privileges or membership.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human services to whom the authority involved has been delegated.

"State" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the National Data Bank or to a Board of Medical Examiners as required under §§ 60.6 and 60.8, in such form and manner as the Secretary may prescribe. Persons and entities are responsible for the accuracy of information which they report to the National Data Bank. If

errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the National Data Bank.

§ 60.5 When information must be reported.

Information required under §§ 60.6, 60.7 and 60.8 must be submitted to the National Data Bank within 30 days following the action to be reported, beginning with actions occurring on or after the effective date of these regulations or the date of the establishment of the National Data Bank, whichever is later, as follows:

(a) *Malpractice Payments (§ 60.6)*—Persons or entities must submit information to the National Data Bank within 30 days from the date that a payment, as described in § 60.6, is made. If required under § 60.6, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.7)*—The Board must submit information within 30 days from the date the licensure action was taken.

(c) *Adverse Actions (§ 60.8)*—A health care entity must report an adverse action to the Board within 20 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 10 days from the date on which it received this information. If required under § 60.8, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located.

§ 60.6 Reporting medical malpractice payments.

(a) *Who must report.* Each person or entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, in settlement of or in satisfaction in whole or in part of a claim or a judgment in a medical malpractice action, must report information as set forth in paragraph (b) to the National Data Bank and to the appropriate State licensing board(s) in the State in which the act or omission which gave rise to the medical malpractice claim occurred.

(b) *What information must be reported.* Persons or entities described in paragraph (a) must report the following information:

(1) With respect to the physician, dentist or health care practitioner for whose benefit the payment is made—

(i) Name,

(ii) Work and home addresses,

(iii) License number(s),

(iv) Drug Enforcement Administration registration number,

(v) Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a), and

(vi) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting person or entity:

(i) Name and address of the person or entity making the payment, and

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity;

(iii) Relationship of the reporting person or entity to the physician, dentist, or health care practitioner for whose benefit the payment is made.

(3) With respect to the judgment or settlement resulting in the payment:

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid and date of payment,

(v) Amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(vii) Other information as required by the Secretary and announced from time to time in the **Federal Register**.

(c) *Sanctions.* Any person or entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty of up to $10,000 for each such payment involved. This penalty will be imposed pursuant to procedures at 42 CFR Part 1003.

§ 60.7 Reporting licensure actions by Boards of Medical Examiners.

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the National Data Bank any action—

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license;

(2) Which censures, reprimands, or places on probation a physician or dentist, for reasons relating to the physician's or dentist's professional competence or professional conduct; or

(3) Under which a physician's or dentist's license is surrendered.

(b) *Information that must be reported.* The Board must report the following information for each action:

(1) The physician's or dentist's name;

(2) The physician's or dentist's work and home address;

(3) The physician's or dentist's license number;

(4) The physician's or dentist's Drug Enforcement Administration registration number;

(5) The physician's or dentist's Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a);

(6) A description of the acts or omissions or other reasons for the action taken;

(7) A description of the Board action, the date the action was taken, and its effective date;

(8) Classification of the action per State reporting code; and

(9) Other information as required by the Secretary and announced from time to time in the **Federal Register**.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.7.

§ 60.8 Reporting adverse actions on clinical privileges.

(a) *Reporting to the Board of Medical Examiners.*—(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the appropriate Board of Medical Examiners the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action which adversely affects the membership of a physician or dentist in the society.

(2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) of this section with

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respect to other health care practitioners.

(3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:

(i) Name;

(ii) Work and home address;

(iii) License number;

(iv) Drug Enforcement Administration registration number;

(v) Social Security number, if known, and if obtained and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a);

(vi) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and

(vii) Action taken, date the action was taken, and effective date of the action;

(viii) Other information as required by the Secretary and announced from time to time in the Federal Register.

(b) *Reporting by the Board of Medical Examiners to the National Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions.*—(1) *Health care entities.* If the Secretary has reason to believe that a health care entity has failed to report information in accordance with § 60.8, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not compiled with § 60.8, the Secretary will provide the entity with a written notice describing the noncompliance and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely;

(ii) The health care entity does not provide a statement of material factual issues in dispute; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential. In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the Federal Register. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the Federal Register.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

Subpart C—Disclosure of Information by the National Data Bank

§ 60.9 Information which hospitals must obtain from the National Data Bank.

(a) *When information must be obtained.* Each hospital must request information from the National Data Bank concerning a physician, dentist or health care practitioner as follows:

(1) At the time a physician, dentist or health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every 2 years concerning any physician or health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to obtain information.* Any hospital which does not obtain the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the National Data Bank concerning this physician, dentist or health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the National Data Bank to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

§ 60.10 Obtaining information from the National Data Bank.

(a) *Who may obtain information and what information may be available.* Information in the National Data Bank will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) A hospital that requests information concerning a physician, dentist or health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(2) A physician, dentist, or health care practitioner who requests information concerning himself or herself;

(3) Boards of Medical Examiners or other State licensing boards, and health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist or health care practitioner, or to which the physician, dentist or health care practitioner has applied for clinical privileges or appointment to the medical staff.

(4) An attorney, or individual acting on his own behalf, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist or health care practitioner who is also named in the action or claim. *Provided,* that this information will be disclosed only upon the submission of evidence that the hospital failed to obtain information from the National Data Bank as required by § 60.(9a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(5) A health care entity with respect to professional review activity; and

(6) A person of entity who requests information in a form which does not permit the identification of any particular health care entity, physician, other health care practitioner or patient.

(b) *Procedures for obtaining National Data Bank information.* Persons and entities may obtain information from the National Data Bank by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fee as described in § 60.11.

§ 60.11 Fees applicable to requests for information.

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the National Data Bank. These fees are authorized by section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137). They reflect the costs of processing requests for disclosure and of providing such information. The actual fees will be announced by the Secretary in periodic notices in the Federal Register.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees;

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used;

(3) Postage—actual cost;

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

(c) *Assessing and collecting fees.*

(1) A request for information from the National Data Bank will be regarded as also an agreement to pay the associated fee.

(2) Normally, a bill will be sent along with or following the delivery of the requested information. However, in order to avoid sending numerous small bills to frequent requesters, the charges may be aggregated for certain periods. For example, such a requester may receive a bill monthly or quarterly.

(3) In the event that a requester has failed to pay previous bills, the requester will be required to pay the fee before a request for information is processed.

(4) Fees must be paid by check or money order made payable to "U.S. Department of Health and Human Services" or to the unit stated in the billing and must be sent to the billing unit. Payment must be received within 30 days of the billing date or the applicant will be charged interest and a late fee on the amount overdue.

§ 60.12 Confidentiality of National Data Bank information.

(a) *Limitations on disclosure.* Information reported to the National Data Bank is considered confidential and shall not be disclosed, except as specified in § 60.9, § 60.10 and § 60.13. Persons and entities which receive information from the National Data Bank must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) of this section shall be subject to a civil money penalty of up to $10,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR Part 1003.

§ 60.13 How to dispute the accuracy of National Data Bank information.

(a) *Who may dispute National Data Bank information.* Any physician, dentist or health care practitioner may dispute the accuracy of information in the National Data Bank concerning himself or herself.

(b) *Procedures for filing a dispute.* A physician, dentist or licensed health care practitioner may dispute National Data Bank information by:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it;

(2) Requesting simultaneously that the disputed information be entered into a "disputed" status and be reported to inquirers as being in a "disputed" status; and

(3) Entering into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.* (1) If the reporting entity revises the information originally submitted to the National Data Bank, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity fails to revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the physician, dentist or health care practitioner, and the reporting entity), and related information which is available, including, but not limited to, that available from malpractice insurers, test examination results, State administrative procedures and judicial decisions, and the Health Care Financing Administration. After review, the Secretary will either:

(i) Continue to note the information as "disputed" if the Secretary concludes that the information is accurate, and include a brief statement by the physician, dentist or health care practitioner describing the disagreement concerning the information, or

(ii) Send corrected information to previous inquiries if the Secretary concludes that the information was incorrect.

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Monday
March 21, 1988

Part VIII

Department of Justice

Immigration and Naturalization Service

8 CFR Part 245a

Adjustment of Status for Certain Aliens; Interim Rule With Request for Comments

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1106-88]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. The Service published implementing regulations at 52 FR 16205 (May 1, 1987). The Service found it necessary to amend these regulations and published an interim rule at 52 FR 43843 (November 17, 1987). This rule will amend the regulations further to provide for another class of eligible aliens, specifically, certain nationals of countries for which extended voluntary departure (EVD) was made available at any time during the 5 year period ending on November 1, 1987.

EFFECTIVE DATE: Interim rule is effective March 21, 1988. Comments must be received on or before April 20, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The regulations, published on May 1, 1987, were subsequently amended on November 17, 1987. On December 22, 1987, the Department of State Authorization Bill, Pub. L. 100-204 was signed into law. Section 902 of the bill establishes another class of eligible aliens who are eligible to apply for temporary residence status as provided by the Immigration Reform and Control Act of 1986. During the 5 year period ending on November 1, 1987, EVD was provided to the nationals of Poland, Ethiopia, Afghanistan, and Uganda. The bill extends most of the same benefits, conditions, and responsibilities to qualifying applicants as does section 245A of the INA. The eligibility requirements and application period differ from those for aliens who are under the scope of the Immigration Reform and Control Act of 1986. Therefore, the Service is creating a new regulatory section—"245a.4" entitled "Adjustment to Lawful Resident Status of Certain Nationals of Countries for Which Extended Voluntary Departure has been made Available."

Part 245a is being revised at the heading to reflect implementation of Pub. L. 100-204, section 902.

Section 245a.4(a) is being established to define terms applicable to this class of aliens.

Section 245a.4(b) is being established to provide for the application for temporary residence of this class of aliens.

Section 245a.4(c) is being established to provide for the application for adjustment from temporary to permanent resident status for this class of aliens.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements which have been cleared by the OMB under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The part heading for Part 245a is revised to read as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

2. The authority citation for Part 245a is revised to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub. L. 100-204, 101 Stat. 1331.

3. Section 245a.4 is added to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a) *Definitions.* As used in this section.

(1) "Act" means the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(2) "Service" means the Immigration and Naturalization Service (INS).

(3) "Resided continuously" means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application. An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States pursuant to the stateside criteria program, shall be considered as having "resided continuously."

(4) "Continuous residence" means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent

reasons the return to the United States could not be accomplished within the time period(s) allowed.

(5) "To make a determination" means obtaining and reviewing all information required to adjudicate an application for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibited by the Act is established during the process of making the determination on the application, the Service shall refer to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(6) "Continuous physical presence" means actual continuous presence in the United States since December 22, 1987, until filing of any application for adjustment of status. Aliens who were outside of the United States after enactment may apply for temporary residence if they reentered prior to March 21, 1988, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(7) "Brief, casual, and innocent" means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, for not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(8) "Brief and casual" means temporary trips abroad as long as the alien established a continuing intention to adjust to lawful permanent resident status. However, such absences must not exceed the specific periods of time required in order to maintain continuous residence.

(9) "Certain nationals of countries for which extended voluntary departure has been made available on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987" is limited to nationals of Poland, Afghanistan, Ethiopia, and Uganda.

(10) "Public cash assistance" means income or needs-based monetary assistance to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(11) "Designated entity" means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for legalization status.

(12) "Through the passage of time" means through the expiration date of the nonimmigrant permission to remain in the United States, including any extensions and/or change of status.

(13) "Prima facie eligibility" means eligibility is established if the applicant presents a completed I-687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(b) *Application for temporary residence.*—(1) *Application for temporary residence.* (i) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan who has resided continuously in the United States since prior to July 21, 1984, and who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the twenty-one-month period beginning on March 21, 1988, and ending on December 22, 1989.

(ii) An alien who fails to file an application for adjustment of status to that of a temporary resident under this section during the respective time period(s), will be statutorily ineligible for such adjustment of status.

(2) *Eligibility.* (i) The following categories of aliens who are not otherwise excludable under section 212(a) of the Act are eligible to apply for status to that of a person admitted for temporary residence:

(A) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to July 21, 1984, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(B) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and whose period of authorized admission expired through the passage of time prior to January 21, 1985, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(C) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and who applied for asylum prior to July 21, 1984, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(D) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, who would otherwise be eligible for temporary resident status and who establishes that he or she was in an unlawful status prior to July 21, 1984, and who subsequently reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. An alien described in this paragraph must have received a waiver of section 212(a)(19) as an alien who entered the United States by fraud.

(E) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and was a nonimmigrant who entered the United States in the classification A, A-1, A-2, G, G-1, G-2, G-3, or G-4, for Duration of Status (D/S), and whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to July 21, 1984, and who thereafter continued to reside in the United States in an unlawful status.

(F) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and who was a nonimmigrant who entered the United States as an F, F-1, or F-2 for Duration of Status (D/S), and whose completed a full course of studies, including practical training (if any), and whose time period to depart the United States after completion of studies expired prior to July 21, 1984, and who has thereafter continued to reside in the United States in an unlawful status. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I-94, Arrival-Departure Record that extended beyond July 21, 1984 is considered eligible if the principal F-1 alien is found eligible.

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(3) *Ineligible aliens.* (i) An alien who has been convicted of a felony, or three or more misdemeanors.

(ii) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(iii) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived.

(4) *Documentation.* Evidence to support an alien's eligibility for temporary residence status shall include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD–258), and a completed medical report of examination (Form I–693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for the four categories of documentation are discussed as follows:

(i) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Driver's license or similar document issued by a state if it contains a photo;

(E) Baptismal Record/Marriage Certificate; or

(F) Affidavits.

(ii) *Proof of nationality.* Evidence to establish nationality is listed as follows:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(iii) *Assumed names*—

(A) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraphs (b)(4) (i) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(B) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other eividence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight.

(iv) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(A) Past employment records, which may consist of pay stubs, W–2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, a state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organizations must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(*1*) Alien's address at the time of employment;

(*2*) Exact period of employment;

(*3*) Periods of layoff;

(*4*) Duties with the company;

(*5*) Whether or not the information was taken from official company records; and

(*6*) Where records are located, whether the Service may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of paragraphs (b)(4)(iv)(A) (*5*) and (*6*) of this section. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(B) Utility bills (gas, electric, phone, etc.) receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(C) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States must show the name of school and periods of school attendance.

(D) Hospital or medial records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(E) Attestations by churches, unions, or other organizations as to the appicant's residence by letter which:

(*1*) Identify applicant by name;

(*2*) Are signed by an official (whose title is shown);

(*3*) Show inclusive dates of membership;

(*4*) State the address where applicant resided during membership period;

(*5*) Include the seal of the organization impressed on the letter or the letterhead of the organization; if the organization has letterhead stationery;

(*6*) Establish how the author knows the applicant; and

(*7*) Establish the origin of the information being attested to.

(F) Additional documents to support the applicant's claim may include:

(*1*) Money order receipts for money sent in or out of the country;

(*2*) Passport entries;

(*3*) Birth certificates of children born in the United States;

(*4*) Bank books with dated transactions;

(*5*) Letters or correspondence between applicant and other person or organization;

(*6*) Social Security card;

(*7*) Selective Service card;

(*8*) Automobile license receipts, title, vehicle registration, etc.;

(*9*) Deeds, mortgages, contracts to which applicant has been a party;

(*10*) Tax receipts;

(*11*) Insurance policies, receipts, or letters; and

(*12*) Any other relevant document.

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges unless the applicant demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. Generally, the evidence of employment submitted

under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is likely to become a public charge will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(*A*) Evidence of a history of employment (i.e., employment letter, W–2 forms, income tax returns, etc.);

(*B*) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(*C*) Form I–134, Affidavit of Support, completed by a spouse on behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the Affidavit of Support shall be extended to other family members in unusual family circumstances.

(vi) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

(vii) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(5) *Filing of application.* (i) The application must be filed on Form I–687 at an office of a designated entity or at a Service office within the jurisdiction of the district wherein the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the Service office. In the case of applications filed at a Service office, the district director may, at his or her discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

The applicant must appear for a personal interview at the Service office as scheduled. If the applicant is 14 years of age or older, the application must be accompanied by a completed form FD–258 (Applicant Card).

(ii) At the time of the interview, whenever possible, original documents must be submitted except the following: official government records; employment or employment-related records maintained by employers, union, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear the seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of the original document is desired by the applicant, the document must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the Service office to which the documents were submitted.

(iii) A separate application (I–687) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check, or certified bank check, made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(6) *Filing date of application.* The date the alien submits a completed application to a Service office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service office having jurisdiction over the location of the alien's residence. Designated entities are required to forward completed applications to the appropriate Service office within sixty days of receipt.

(7) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 26, are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS–1 at the time of filing Form I–687 with the Immigration and Naturalization Service or a designated entity. Form SSS–1 will be forwarded to the Selective Service System by the Service.

(8) *Continuous residence.* (i) For the purpose of this Act, an applicant for temporary residence status shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(A) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(B) The alien was maintaining a residence in the United States; and

(C) The alien's departure from the United States was not based on an order of deportation.

(ii) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(9) *Medical examination.* An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examination must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4) or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S.

Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Forms I-688A and I-688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14 years of age, or when it is impractical because of the health or advanced age of the applicant.

(11) *Applicability of exclusion grounds.*—(i) *Grounds of exclusion not to be applied.* Paragraphs (14), (workers entering without labor certification); (20), (immigrants not in possession of a valid entry document); (21), (Visas issued without compliance with section 203); (25), (illiterates); and (32) (Graduates of non-accredited medical schools) of section 212(a) of the Act shall not apply to applicants for temporary resident status.

(ii) *Waiver of grounds of exclusion.* Except as provided in paragraph (b)(11)(iii) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the Service office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the Service office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the alien's application for adjustment of status was filed except that in cases involving clear statutory ineligibility or fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefore. Appeal from an adverse decision under this part may be taken by the applicant on Form I-694 within thirty (30) days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of § 103.3(a) of this chapter.

(iii) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (b)(11)(ii) of this section:

(A) Paragraphs (9) and (10) (criminals);

(B) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(C) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(D) Paragraph (33) (participated in Nazi persecution).

(iv) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family, even though his or her income may be below the poverty level, may be admissable under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

(v) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(12) *Continuous physical presence since December 22, 1987.* (i) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since December 22, 1987. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legislation if they reentered prior to March 21, 1988, and meet the continuous residence requirements and are otherwise eligible for legalization.

(ii) A brief, causal, and innocent absence means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(13) *Departure.* (i) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service office and the date status as a temporary resident is granted, the alien applicant can only be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(ii) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(A) Is not under departure proceedings, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered departed if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

(B) Has not been absent from the United States more than thirty (30) days on the date application for admission is made;

(C) Has not been absent from the United States for an aggregate period of more than ninety (90) days since the date the alien was granted lawful temporary resident status;

(D) Presents Form I-688;

(E) Presents himself or herself for inspection; and

(F) Is otherwise admissible.

(iii) The periods of time in paragraphs (b)(13)(ii)(B) and (C) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief and causal trip abroad due to emergent or extenuating circumstances beyond the alien's control.

(14) *Employment and travel authorization.*—(i) *General.* Authorization for employment and travel abroad for temporary resident status applicants under this section may only be granted by a Service office. INS district directors will determine the Service location for the completion of processing of travel documentation. In the case of an application which has been filed with a designated entity, employment authorization may only be granted by the Service after the application has been properly received at the Service office.

(ii) *Employment and travel authorization to the granting of temporary resident status.* (A) Permission to travel abroad and accept employment may be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status.

(B) If an appointment cannot be scheduled within thirty (30) days, authorization to accept employment will be given, valid until the scehduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. Form I-688A, Employment Authorization, will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by a Service office. This temporary employment authorization will be restricted to six months duration, pending final determination on the application for temporary resident status.

(iii) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a Regional Processing Facility, the processing facility will forward a notice of approval to the alien at his or her last known address, or to his or her legal representative. The alien will be required to return to the Service office where the application was initially received, surrender the I-688A previously issued, and will be issued Form I-688, Temporary Resident Card, authorizing employment and travel abroad.

(iv) *Revocation of employment authorization upon denial of temporary resident status.* Upon denial of an application for adjustment to temporary resident status the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period.

(15) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefore. An appeal from an adverse decision under this part may be taken by the applicant on Form I-694.

(16) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after service of the notice of denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period consists of any time required for service or receipt by mail, including the 3-day allotment for mail receipt as stated in § 103.5a(b) of this chapter.

(17) *Motions.* The Regional Processing Facility director may sua sponte reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(18) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact.

(19) *Date of adjustment to temporary residence.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Service office.

(20) *Termination of temporary resident status.*—(i) *Termination of temporary resident status (General).* The status of an alien lawfully admitted for temporary residence under this section may be terminated at any time. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(A) It is determined that the alien was ineligible for temporary residence under this section and 245A of the Act;

(B) The alien commits an act which renders him or her inadmissible as an immigrant unless a waiver is obtainable, as provided in this part;

(C) The alien is convicted of any felony, or three or more misdemeanors;

(D) The alien fails to file for adjustment of status from temporary resident to permanent resident within thirty-one (31) months of the date he or she was granted status as a temporary resident.

(ii) *Procedure.* Termination of an alien's status will be made only on notice to the alien sent by certified mail directed to his or her last known address, and to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the Regional Processing Facility shall notify the alien of the decision and the reason for the termination, and further notify the alien that any Service Form issued to the alien authorizing employment and/or travel abroad, or any Form I-688, Temporary Resident Card previously issued to the alien will be declared void by the director of the Regional Processing Facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the Regional Processing Facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the

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official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(iii) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase "termination of status" of an alien granted lawful temporary residence under this section shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(iv) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the status held prior to the adjustment, and render him or her amendable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate.

(21) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under this section is not entitled to submit a petition pursuant to section 203(a)(2) or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence.

(22) *Declaration of intending citizen.* An alien who has been granted the status of temporary resident under this section may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I-772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

(c) *Application for adjustment from temporary to permanent resident status. Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months temporary residence has been completed. Applications for lawful permanent residence will be accepted at Service offices beginning on September 21, 1989.

Dated March 15, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

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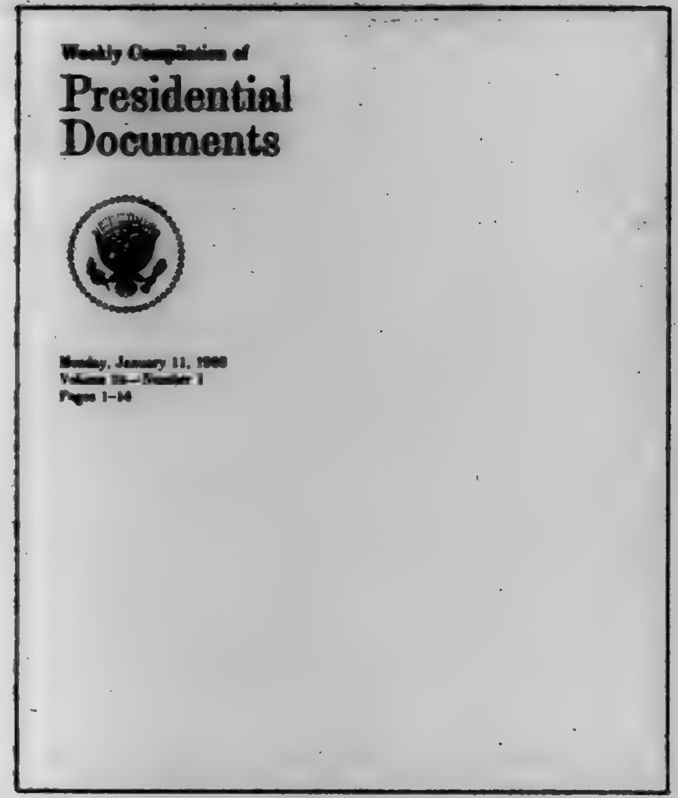

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Rules and Regulations

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 241, 242 and 287

[INS #1005-88]

Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole Judicial Recommendations Against Deportation Proceedings To Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal Field Officers; Powers and Duties

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the present regulations by (1) the addition of supplementary definitions to those already found in the regulations; (2) the establishment of procedures for expeditious processing of aliens convicted of offenses which render them deportable from the United States; and (3) the establishment of procedures for determining whether or not the Service will issue detainers against aliens arrested for controlled substance violations. These changes are necessitated by the amendments to the Immigration and Nationality Act contained in the Anti-Drug Abuse Act of 1986, Pub. L. 99-570; and the Immigration Reform and Control Act of 1986, Pub. L. 99-603. Prompt establishment of the procedures contained in these regulations is necessary in order to ensure that Service operations are conducted in a manner consistent with the public interest and Congressional intent regarding the aforementioned statutes.

EFFECTIVE DATE: March 22, 1988.

FOR FURTHER INFORMATION CONTACT: Walter D. Cadman, Deputy Assistant Commissioner, Investigations, Immigration and Naturalization Service, 425 "I" Street, NW., Rm 2207, Washington, DC 20536, (202) 633-2997.

SUPPLEMENTARY INFORMATION:

1. Background

Over the last two decades the Congress and the nation have grappled with the issue of drug abuse prevention and control. This problem has become particularly acute in recent years. Congress has formally recognized the extensive involvement of certain aliens in narcotics trafficking and the problem of criminal aliens in general. This recognition has come to fruition through amendments to the Immigration and Nationality Act (INA) contained in the Anti-Drug Abuse Act of 1986 and the Immigration Reform and Control Act of 1986 (IRCA). Establishment of uniform definitions and procedural requirements will allow the Service to implement these new provisions of the Act in an orderly and consistent fashion. Because many of the key words and phrases are not defined in these statutes, the Service has developed definitions and procedural obligations to avoid ambiguity and protect the due process rights of the affected individuals. These procedures also serve to protect the interests of the Service and other governmental entities whose actions may have an adverse impact on the affected individuals. Lastly, these procedures serve to protect the interests of society in ensuring, to the extent possible, the safety of our streets through detection and removal of alien criminals and narcotics offenders. Where appropriate, these words and phrases have been defined to comport with existing law, regulation or precedent. What follows is an analysis of the amendments and a discussion of the conforming regulatory changes to this chapter.

2. Changes Based on the Anti-Drug Abuse Act of 1986

Subtitle M (Section 1751) of this Act, entitled the Narcotics Traffickers Deportation Act, amended sections 212(a)(23), 241(a)(11), and 287 of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(23), 1251(a)(11), and 1357, as follows:

Section 212(a)(23) was amended to render excludable any alien convicted of violating any law or regulation involving controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), of a state, the United States or a foreign country.

Section 241(a)(11) was amended to render deportable any alien convicted of any law or regulation involving controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), of a state, the United States or a foreign country. Accordingly, 8 CFR Parts 212 and 241 have been changed by the addition of §§ 212.11 and 241.2, respectively, in order to define "controlled substance(s)" for use in determining an alien's excludability or deportability based on convictions for such violations. Although the amendment defines controlled substances for the purposes of sections 212(a)(23) and 241(a)(11) of the INA by reference to 21 U.S.C. 802, as noted above, it does not enumerate a listing of controlled substances. The specific substances may be found in Schedules I through V, contained in 21 U.S.C. 812 and 21 CFR 1308.1 et seq., as promulgated under the authority of the Controlled Substances Act, 21 U.S.C. 801 et seq. For clarity, these further citations are incorporated by reference into the regulatory amendments contained in this rulemaking.

Section 287 of the INA was also amended by the addition of a new subsection (d) to require that when the Immigration and Naturalization Service (INS) is expeditiously informed of an alien's arrest for a violation of any law relating to controlled substances, the Service must promptly determine whether or not to issue a detainer. Accordingly, 8 CFR Parts 242 and 287 have been amended to likewise define the terms "controlled substance(s)," "arrested," "law enforcement official (or other official)," and to establish procedures for determining whether or not the Service should issue a detainer as required in section 287(d)(3) of the Act.

—The term "arrested by a federal, state, or local law enforcement official" has been defined to require that an alien must have been (1) physically taken into custody, and (2) officially booked or charged, or (3) accorded an initial appearance before a judicial officer

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where the alien has been informed of the charges and the right to counsel. The term has been defined in this manner to ensure that the Service is not required to react to situations involving assumption of custody, and possible removal, of an alien whose civil rights may have been violated through illegal or unconstitutional detention by law enforcement officials. Requiring that the alien(s) be officially processed minimizes such concerns.

—The term "law enforcement (or other) official" has been defined to establish the nature and kind of official agencies to which the Service must respond, i.e., criminal justice agencies, courts, correctional, or probation and parole departments.

—The term "controlled substance" has been defined consonant with the revised provisions of sections 212(a)(23) and 241(a)(11) of the INA, i.e., by reference to the Controlled Substances Act, 21 U.S.C. 801 et seq., and in accordance with the schedules enumerated in 21 CFR Part 1308.

The public should be aware that the Immigration Reform and Control Act of 1986 (IRCA) also amended section 287 of the INA through addition of a new subsection (d). The subsection (d) provisions contained in IRCA are unrelated to the subsection (d) provisions of the Anti-Drug Abuse Act. The like numbering of unrelated subsections appears to have occurred as a result of an editorial oversight. It is anticipated that this editorial oversight will be annotated by footnote, or possible redesignation by a conforming technical amendment of the Act, in the printed final revision of the amended Title 8 of the United States Code.

3. Changes Based on the Immigration Reform and Control Act of 1986 (IRCA)

Title VII, section 701, of IRCA amends section 242 of the INA by requiring the Attorney General to begin deportation proceedings as expeditiously as possible after the date of conviction of an alien for an offense which makes the alien subject to deportation. Accordingly, 8 CFR 242.2 has been amended to codify the authority of the Service to issue detainers, and to establish procedures for their use and limitations in situations involving aliens amenable to Service action. A paragraph concerning the use of convictions has also been added to codify the point at which a conviction is considered "final" for purposes of immigration laws. Because actual jurisdiction over proceedings once commenced by the issuance and filing of an order to show cause with an Immigration Judge rests with the Executive Office for Immigration Review (8 CFR 3.0), the procedures and definitions contained in these regulatory amendments are confined to those within the jurisdiction and control of the Service.

On May 5, 1987, the Service published a Notice of Interim Rulemaking in the **Federal Register** (52 FR 16370), with a request for comments to be received no later than June 4, 1987. No comments were received. This final rule contains no substantive changes from the interim rule; however, there have been some editorial changes to clarify the language and, where applicable, to adopt definitions from existing law, regulation and precedent. Accordingly, the affected text has been revised to avoid any ambiguity between the interim and final rule as stated herein.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule is not a major rule as defined in E.O. 12291, nor is it expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–611).

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas.

8 CFR Part 241

Administrative practice and procedure, Aliens, Controlled substance definition, Deportability, Judicial recommendations against deportation.

8 CFR Part 242

Administrative practice and procedure, Aliens, Authority delegation, Cancellation proceeding, Detention, Order to show cause.

8 CFR Part 287

Criminal violations, Definitions, Detainers, Disposition of cases of aliens arrested without warrant, Immigration law enforcement officers, Power and authority to administer oaths, Proof of official records, Subpoena.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252.

2. Section 212.11 is revised to read as follows:

§ 212.11 Controlled substance convictions.

In determining the admissibility of an alien who has been convicted of a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, the term "controlled substance" as used in section 212(a)(23) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801, et seq., and shall include any substance contained in Schedules I through V of 21 CFR 1308.1, et seq. For the purposes of this section, the term "controlled substance" includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION

3. The authority citation for Part 241 of Title 8 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357.

4. The heading of Part 241 is revised to read as follows:

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION; CONTROLLED SUBSTANCE VIOLATIONS

5. Section 241.2 is revised to read as follows:

§ 241.2 Controlled substance convictions.

In determining the deportability of an alien who has been convicted of a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, the term "controlled substance" as used in section 241(a)(11) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801, et seq., and shall include any substance contained in Schedules I through V of 21 CFR 1308.1, et seq. For the purposes of this section, the term "controlled substance" includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

6. The authority citation for Part 242 of Title 8 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1251, 1252, 1254, 1362.

7. Section 242.2 is amended by revising paragraph (a); removing paragraph (g) and redesignating paragraphs (b) through (f) as (c) through (g) respectively; adding a new paragraph (b); and amending newly redesignated (c)(2) by changing the two references to "paragraph (b) of this section" to read "paragraph (d) of this section"; and amending newly redesignated paragraph (d) by changing the reference to "paragraph (a) of this section" to read "paragraph (c) of this section"; and amending newly redesignated paragraph (e) by changing the reference to "paragraph (b) of this section" to read "paragraph (d) of this section".

§ 242.2 Apprehension, custody and detention.

(a) *Detainers in general.* (1) Only an immigration officer as defined in section 101(a)(18) of the Act, or § 103.1(q) of this chapter is authorized to issue a detainer. Detainers may only be issued in the case of an alien who is amenable to exclusion or deportation proceedings under any provision of law; however, no detainer shall be issued in the case of an alien who is in the United States without legal authority and is eligible to apply, or has applied, for legalization or special agricultural worker status under the provisions of section 245A or 210 of the Act, unless the Service has denied, or has issued a notice of intent to deny, the benefit applied for.

(2) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer, serving an order to show cause, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Service of a conviction or act which renders an alien excludable or deportable under any provision of law shall provide the Service with all documentary records and information available from the agency which reasonably relates to the alien's status in the United States, or which may have an impact on conditions of release.

(3) *Telephonic detainers.* Issuance of a detainer in accordance with this section may be authorized telephonically, *provided* such authorizations are confirmed in writing on Form I–247, or by electronic communications transfer media (e.g. the National Law Enforcement Telecommunications System (NLETS)) within twenty-four hours of the telephonic authorization. The contents of the electronic transfer shall contain substantially the same language as the Form I–247.

(4) *Temporary detention at Service request.* Upon a determination by the Service to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed forty-eight hours, in order to permit assumption of custody by the Service.

(5) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter shall incur any fiscal obligation on the part of the Service, until actual assumption of custody by the Service, except as provided in paragraph (a)(4) of this section.

(b) *Use of convictions.* The term "conviction" as used in section 242(i) of the Act means that—

(1) There has been a conviction by a court of competent jurisdiction; and

(2) All direct appeal rights have been exhausted or waived; or

(3) The appeal period has lapsed.

* * * * *

PART 287—FIELD OFFICERS; POWERS AND DUTIES

8. The authority citation for Part 287 of Title 8 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357.

9. Section 287.1 paragraphs (g) through (i) are revised to read as follows:

§ 287.1 Definitions.

* * * * *

(g) *Arrested by federal, state, or local law enforcement official.* The term "arrested," as used in section 287(d) of the Act (as amended by section 1701 (Subtitle M) of the Anti-Drug Abuse Act of 1986, Pub. L. 99–509), means that an alien has been—

(1) Physically taken into custody for a criminal violation of the controlled substance laws; and

(2) Subsequently booked, charged or otherwise officially processed; or

(3) Provided an initial appearance before a judicial officer where the alien has been informed of the charges and the right to counsel.

(h) *Law enforcement or other official.* The phrase "law enforcement official (or other official)," as used in section 287(d) of the Act, and § 242.2(a) of this part means an officer or employee of an agency engaged in the administration of criminal justice pursuant to statute or executive order, including (1) courts; (2) a government agency or component which performs the administration of criminal justice as defined in 28 CFR Part 20 including performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(i) *Controlled substance.* The term "controlled substance," as used in section 287(d)(3) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801 et seq., and shall include any substance contained in Schedules I through V of 21 CFR 1308.1 et seq. For the purposes of this chapter, the term "controlled substance" includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

10. Section 287.7 is revised to read as follows:

§ 287.7 Detainer provisions under section 287(d)(3) of the Act.

(a) *Detainers in general.* (1) Only an immigration officer as defined in section 101(a)(18) of the Act, or § 103.1(q) of this chapter is authorized to issue a detainer. Detainers may only be issued in the case of an alien who is amenable to exclusion or deportation proceedings under any provision of law; however, no detainer shall be issued in the case of an alien who is in the United States without legal authority and is eligible to apply, or has applied, for legalization or special agricultural worker status under the provisions of sections 245A or 210 of the Act, unless the Service has denied, or has issued a notice of intent to deny, the benefit applied for.

(2) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer, serving an order to show cause, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the service of a conviction or act which renders an alien excludable or deportable under any provision of law shall provide the Service with all documentary records and information available from the agency which reasonably relates to the alien's status in the United States, or which may have an impact on conditions of release.

(3) *Telephonic detainers.* Issuance of a detainer in accordance with this section may be authorized telephonically, *provided* such authorizations are confirmed in writing on Form I–247, or by electronic communications transfer media (e.g. the National Law Enforcement Telecommunications System (NLETS)) within twenty-four hours of the telephonic authorization. The contents of the electronic transfer shall contain substantially the same language as the Form I–247.

(4) *Temporary detention at Service request.* Upon a determination by the

Service to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed forty-eight hours, in order to permit assumption of custody by the Service.

(5) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter shall incur any fiscal obligation on the part of the Service, until actual assumption of custody by the Service, except as provided in paragraph (a)(4) of this section.

Date: March 2, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-5767 Filed 3-21-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-26; Amdt. 39-5860]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corporation (Formerly Detroit Diesel Allison) Allison Model 250-C30 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Allison Model 250-C30 series engines. The AD requires daily post flight check of Gas Producer Support Pressure Oil Tube Assembly P/N 23037410 or P/N 6892825 until P/N 23037410 is replaced with Tube Assembly P/N 23038235, or P/N 6892825 is replaced with Pressure Oil Fitting Assembly, P/N 23035275, and Tube Assembly, P/N 23038235. These replacements are required not later than April 15, 1988, and July 1, 1988, respectively. The AD is needed to prevent possible loss of engine oil during operation and subsequent in-flight shutdown.

DATES: Effective—March 30, 1988.

Compliance required as prescribed in body of AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 30, 1988.

ADDRESSES: The applicable Commercial Engine Bulletin (CEB) may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206-0420.

A copy of the CEB is contained in the Rules Docket, Office of Regional Counsel, Federal Aviation Administration, New England Region, Attn: Rules Docket No. 87-ANE-26, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Royace H. Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7132.

SUPPLEMENTARY INFORMATION: There have been reports of the Gas Producer Support Pressure Oil Tube Assembly, P/N 6892825, which supplies oil to the number 8 bearing, cracking on certain model 250-C30 series engines. This condition on occasions has resulted in loss of engine oil/pressure and the necessity for a pilot initiated in-flight shutdown. An initial Tube Assembly replacement, P/N 23037410, had a dimensional problem and is being superceded by P/N 23038235.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires daily post flight check of the Gas Producer Support Pressure Oil Tube Assembly, P/N 23037410 or P/N 6892825, until P/N 23037410 is replaced with Tube Assembly P/N 23038235 or P/N 6892825 is replaced with a new number 8 Bearing Pressure Oil Fitting Assembly, P/N 23035275, and Tube Assembly, P/N 23038235. These replacement actions are required not later than April 15, 1988, and July 1, 1988, respectively.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this proposed regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Allison Gas Turbine Division, General Motors Corporation (Allison, formerly Detroit Diesel Allison): Applies to Allison Model 250-C30 Series engines installed in, but not limited to, Sikorsky Model S-76A, Bell Model 206L-3, Bell Model 206L-1, modified to incorporate the Allison 250-C30 engine, Aerospatiale Model AS-350D "ASTAR" modified to incorporate the Allison 250-30M engine, and McDonnell Douglas Helicopter Company (Hughes) Model 369F and 369FF aircraft.

The following engine models and turbine serial numbers are affected:

Engine model	Turbine serial number
250-C30	CAT 90001 thru 90683, 95001 thru 95600.
250-C30S	CAT 90001 thru 90683, 95001 thru 95600.
250-C30M	CAT 95001 thru 95600.
250-C30P	CAT 95001 thru 95600, 97501 thru 97550.
250-C30L	CAT 95001 thru 95600, 97501 thru 97550.
250-C30R(T703-AD-700).	AT 19001 thru 19140.

Except: Existing model 250-C30 series engines which have incorporated Part II or III of Allison Commercial Engine Alert Bulletin 250-C30, CEB-A-72-3165, dated August 31, 1987, or FAA approved equivalent.

Compliance is required as indicated, unless already accomplished.

To prevent possible cracks of the Gas Producer Support Pressure Oil Tube Assembly, P/N 6892825, or P/N 23037410, from progressing to where a loss of engine oil could cause an in-flight shutdown, accomplish the following:

(a) Following the last flight of each day after the effective date of this AD, until compliance with paragraph (b) or (c) is accomplished, check for oil leaks and, if a leak is found remove before further flight the Gas Producer Support Pressure Oil Tube Assembly, P/N 23037410 or P/N 6892825, in accordance with Part I of Allison Commercial Engine Alert Bulletin 250-C30, CEB-A-72-3165, dated August 31, 1987, or FAA approved equivalent.

Note.—The checks required above may be performed by the pilot and must be recorded in accordance with FAR Section 43.9.

(b) Replace Gas Producer Support Pressure Oil Tube Assembly P/N 23037410 with P/N 23038235 or FAA approved equivalent in accordance with Part II of Allison Commercial Engine Alert Bulletin 250-C30, CEB-A-72-3165, dated August 31, 1987, not later than April 15, 1988.

(c) Replace Gas Producer Support Pressure Oil Tube Assembly P/N 6892825 with number 8 Bearing Pressure Oil Fitting Assembly, P/N 23035275, and Tube Assembly, P/N 23038235, or FAA approved equivalents in accordance with Part III of Allison Commercial Engine Alert Bulletin 250-C30, CEB-A-72-3165, dated August 31, 1987, or FAA approved equivalent, not later than July 1, 1988.

(d) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FAR) 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

(f) Upon submission of sustantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office may adjust the compliance time specified in this AD.

Allison Commercial Engine Alert Bulletin 250-C30 CEB-A-72-3165 dated August 31, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain a copy upon request to Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, Indiana 46206-0420. This document also may be examined at the office of Regional Counsel, Federal Aviation Administration, Attn: Rules Docket No. 87-ANE-26, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective March 30, 1988.

Issued in Burlington, Massachusetts, on February 17, 1988.

Gary W. Tucker,

Acting Director, New England Region.

[FR Doc. 88-6146 Filed 3-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-21]

Designation of Transition Area; Nashville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Nashville, Georgia, transition area to accommodate instrument flight rule (IFR) operations at the Berrien County Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 UTC, May 1, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On January 6, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Nashville, Georgia, transition area (53 FR 2503). This action will provide additional controlled airspace in the vicinity of the Berrien County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Nashville, Georgia, transition area and lowers the base of controlled airspace in the vicinity of the Berrien County Airport from 1,200 feet to 700 feet above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Nashville, Georgia [New]

That airspace extending upward from 700 feet above the surface within a six-mile radius of the Berrien County Airport (latitude 31°12'45" N, longitude 83°13'40" W).

Issued in East Point, Georgia, on March 8, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-6147 Filed 3-21-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 18, 24, 122, 123, and 162

[T.D. 88-12]

Air Commerce Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: As part of the general revision of the Customs Regulations,

Customs is revising its rules relating to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft. This revision sets forth the general Customs requirements applicable to all air commerce. It is presented in a new format and includes changes or additions in language to clarify various provisions and to make some minor substantive changes.

EFFECTIVE DATE: April 21, 1988.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Larry L. Burton, Carrier Rulings Branch (202–566–5706).

Operational Aspects: Glenn Ross, Office of Inspection and Control (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken to review and revise selected parts of the Customs Regulations contained in Chapter I, Title 19, Code of Federal Regulations (19 CFR Ch. I), with the objective of reducing and/or eliminating, to the fullest extent possible, obsolete and unnecessary regulatory requirements. This action was mandated by the Regulatory Flexibility Act, and by the Treasury Department Regulatory Flexibility Review Plan which appeared in the **Federal Register** on April 14, 1982 (47 FR 16033). As stated in a notice published by Customs in the **Federal Register** on June 10, 1983 (48 FR 26831), Part 6, Customs Regulations (19 CFR Part 6), is one of those which has been scheduled for revision under the Treasury plan. Before making this revision, Customs published a notice in the **Federal Register** on July 26, 1985 (50 FR 30455), describing the changes to be made and inviting public comments. The comments and our analysis are contained in this document.

The revised Part 6, redesignated as Part 122, sets forth all air commerce regulations administered by Customs in a clearly stated new format, which incorporates both current provisions and substantive changes. The major changes from the long-standing air commerce regulations are deletion of the requirements that American-flag aircraft report foreign repairs and pay duty (a change resulting from a provision of the Trade Agreements Act of 1979), and the inclusion of a subpart dealing with requirements relating to aircraft liquor kits. The revision also contains regulatory amendments concerning overflight exemptions and reporting requirements which was published as T.D. 86–72 in the **Federal Register** of March 31, 1986 (51 FR 11004), and T.D. 87–42 published in the **Federal Register** on March 30, 1987 (52 FR 10047), requirements for access to Customs security areas published as T.D. 86–174 in the **Federal Register** on September 12, 1986 (51 FR 32448), and elimination of the now defunct international airport at Portal, North Dakota.

Additionally, amendments necessitated by the revision of the Customs bond structure published as T.D. 84–213 in the **Federal Register** on October 19, 1984 (49 FR 41152), have been incorporated into this revision.

We are aware of the impact of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570), upon the penalty provisions of the air commerce regulations. Potentially extensive amendments are beyond the scope of this general revision and clarification of existing provisions. Accordingly, any necessary amendments in this regard will be subject of a separate document.

Revised Part 122 is divided into 17 subparts. Following is information concerning the origins of the various sections as well as a discussion of the major changes in each of the subparts.

Section 122.0 is new and sets forth in general terms the scope and geographic applicability of the revised part.

Subpart A—General Definitions and Provisions

1. Section 122.1(a) substitutes the statutory definition of "aircraft" from 49 U.S.C. 1301(5) for the present narrower definition of "civil aircraft."
2. Section 122.1(b) is unchanged from § 6.1(e).
3. Section 122.1(c) revises § 6.1(g) by substituting the word "agent" for the phrase "authorized person (authorized agent of an owner or operator)."
4. Section 122.1(d) is new and clarifies the difference between commercial and non-commercial (private and public) flights.
5. Section 122.1(e) clarifies § 6.1(h).
6. Section 122.1(f) is new and defines, for the first time, a "landing rights airport."
7. Section 122.1(g) is a rephrasing of § 24.18.
8. Section 122.1(h) is new and defines "private aircraft."
9. Section 122.1(i) is new and defines "public aircraft."
10. Section 122.1(j) is new and defines "residue cargo." The definition is loosely derived from § 6.9(a).
11. Section 122.1(k) is a rephrasing of § 6.1(f).
12. Section 122.1(l) combines § 6.1 (b) and (c) and includes Puerto Rico in the definition of "United States."
13. Section 122.2 is largely unchanged from § 6.10.
14. Section 122.3 is a rephrasing of § 6.6(b).
15. Section 122.4 is a rephrasing of § 6.6(a).
16. Section 122.5 significantly revises the specific requirements for reproduction of Customs forms found in § 6.6(a).

Subpart B—International Airports

1. Section 122.11(a) rephrases § 6.12 (a), (b) and (d).
2. Section 122.11(b) is a rephrasing of § 6.12(c).
3. Section 122.11(c) is a rephrasing of § 6.12(e).
4. Section 122.12(a) is a restatement of § 6.12(f).
5. Section 122.12(b) is a restatement of § 6.12(g).
6. Section 122.12(c) is a restatement of § 6.12(h).
7. Section 122.12(d) is a restatement of § 6.12(i) with deletion of the reference to "Area."
8. Section 122.13 is unchanged from § 6.13.
9. Section 122.14 is new and is based upon T.D. 86–174, published in the **Federal Register** on September 12, 1986 (51 FR 32448).

Subpart C—Private Aircraft

1. Section 122.21 is new and makes the subpart applicable to all private aircraft.
2. Section 122.22 makes the landing requirements in § 122.31 applicable to private aircraft.
3. Section 122.23(a) is new and is based upon definitions found in the Department of Transportation regulations relating to exemptions for air taxi operations (14 CFR Part 298).
4. Section 122.23 (b) and (c) is a restatement of § 6.14(a) as amended by T.D. 86–22, published in the **Federal Register** on March 31, 1986 (51 FR 11004).
5. Section 122.24 (a) and (b) is a restatement of § 6.14 (d) and (g).
6. Section 122.25 (a), (b), (c), (d) and (e) is a restatement of § 6.14(f), as amended by T.D. 86–72 and T.D. 87–42.
7. Section 122.26 is new and exempts private aircraft from entry and clearance requirements.
8. Section 122.27 is partially new and partially a restatement of § 148.5. It sets forth the documentation necessary for declaring baggage and cargo upon arrival of a private aircraft, as well as documentation and requirements for departing with certain cargo not for hire
9. Section 122.28 is based upon § 148.32 and relates to a U.S. resident returning a private aircraft to the U.S. which has been taken abroad for non-commercial purposes.
10. Section 122.29 is new and sets forth the changes and procedures relating to overtime services rendered by Customs in connection with an arriving private aircraft. The section is based in part upon § 24.16.
11. Section 122.30 is based upon §§ 6.10 and 6.11, and lists other regulatory requirements applying to private aircraft.

Subpart D—Landing Requirements

1. Section 122.31(a) contains a complete rewording and restructuring of § 6.2(b)(1) and sets forth reporting requirements for all non-excepted aircraft arriving from outside the U.S. Exceptions appear in § 122.31(b).
2. Section 122.31(b) is based upon § 6.2(b)(3).
3. Section 122.31(c)(2) is based upon § 6.2(b)(2).
4. Section 122.31(d) is based upon § 6.2(b)(4).
5. Section 122.31(e) is based upon § 6.2(b)(5).
6. Section 122.31(f) is based upon the second sentence of § 6.2(b)(1).
7. Section 122.32 is based upon the first sentence of § 6.2(a).
8. Section 122.33 is based upon the second sentence of § 6.2(a). The revision adds reference to two other sections relating to alternative landing sites.
9. Section 122.34 is based upon the last three sentences of § 6.2(a).
10. Section 122.35 is based upon § 6.2(h).
11. Section 122.36 is based upon § 6.2(b)(6).
12. Section 122.37 is based upon present § 6.2(h).
13. Section 122.38(a) is based upon the sentence of present § 6.2 (e) and (f).
14. Section 122.38(b) is based upon § 6.2 (e) and (f).
15. Section 122.38(c) is based upon § 6.2 (e) and (f).
16. Section 122.38(d) is based upon § 6.2 (e) and (f) and provides exceptions for the need to obtain a permit or special license for each arrival or departure.
17. Section 122.38(e) is based upon § 6.2(g).
18. Section 122.38(f) is new and is based upon Customs Circular INS–2–EV, dated 12/14/61, and provides the procedure for requesting automatic renewal of permits and special licenses.

Subpart E—Aircraft Entry and Entry Documents

1. Section 122.41 is based upon §§ 6.3(a), 6.4(a) and (b), and 6.9(c).
2. Section 122.42 is based upon §§ 6.3(b), 6.4(c), and 6.7.

Note: Much of the remainder of Subpart E is based upon § 6.7. It covers all of the various forms required for entry. The revision is structured so that each required form is treated in a separate section.

3. Section 122.43(a) and (c) is based upon § 6.7(a) and (b).
4. Section 122.43(b) is based upon Customs Circular Air–4–ICS, dated 1/24/68, and permits entry upon presentation of an air cargo manifest in lieu of a general declaration.
5. Section 122.44 is new and is based upon Customs Circular BAG–3–CO (AIR–4–AIR), dated 8/9/65. It states that aircraft crewmembers arriving from a foreign area must file a crew baggage declaration as provided in Subpart G, Part 148, Customs Regulations (19 CFR Part 148).
6. Section 122.45 is based upon § 6.7(b)(1) and substitutes "crew list" for "crew manifest."
7. Section 122.45(d) is based upon Customs Circular BAG–3–CO, dated 8/9/65, and sets forth requirements for crewmembers returning as passengers.
8. Section 122.46(a) is based upon § 6.7(b)(2). The qualifying phrase "for any aircraft required to enter by § 122.41" is added.
9. Section 122.46(b) is based upon the last sentence of § 6.7(b)(2), as well as Customs Circular AIR–4–ICS, dated 1/24/68. The section includes a cross-reference to Subpart G, Part 148, Customs Regulations (19 CFR Part 148).
10. Section 122.46(c) is based upon the second and third sentences of § 6.7(b)(2). The reference to "attached list" is replaced by "crew purchase list."
11. Section 122.47(a) is based upon § 6.7(f).
12. Section 122.47(b) is based upon 6.7(f).
13. Section 122.47(c)(1) is based upon § 6.7(b)(3)(v).
14. Section 122.47(c)(2) is based upon § 6.7(b)(3)(v) and (vi), and includes major changes. The section specifies that "other domestic supplies" may be omitted from the stores list when an appropriate statement appears on the manifest or stores list. Further, the statement "Aircraft of scheduled airline" is deleted, thus being made applicable to all aircraft required to enter.
15. Section 122.47(d) is based upon § 6.7(f).

Note: Section 122.48 is taken from § 6.7(b)(3). Subparagraphs (v) and (vi) are included in proposed § 122.47(c).

16. Section 122.48(a) is based upon § 6.7(b)(3), and the phrase "for any aircraft required to enter under § 122.41" is added for clarification.
17. Section 122.48(b) is based upon § 6.7(b)(3). There is no substantive change except as concerns the requirement that company mail be listed on the cargo manifest.
18. Section 122.48(c) is based upon § 6.7(b)(3), with the words "duty free" inserted for clarity.
19. Section 122.48(d) is based upon § 6.7(b)(3)(vii), as amended by T.D. 84–128, published in the **Federal Register** on June 4, 1984 (49 FR 23038).
20. Section 122.48(e) is new and is based upon Customs Circular AIR–7–IEI, dated 1/31/72. This section concerns accompanied baggage in transit.
21. Section 122.49(a) is based upon § 6.7(h)(1) and (2).
22. Section 122.49(b) is based upon § 6.7(h)(1) and (3), as well as § 4.12(a). The sections were combined and put in outline form, making it unnecessary to continually refer back to Part 4, Customs Regulations (19 CFR Part 4), to check the applicability of the vessel regulations to aircraft.
23. Paragraphs (c), (d), (e), and (f) of § 122.49 are based upon §§ 6.7(h) and 4.12. The comments relating to § 122.49(b) apply to these paragraphs as well.

Note: All reference to the applicability of the vessel repair statute (19 U.S.C. 1466) to repairs made to aircraft, currently reflected in § 6.7(d) and (e), are deleted in Part 122 due to enactment of the Trade Agreements Act of 1979 (Title 6, section 601(a)(3), Pub. L. 96–39), which relieved aircraft from the duty provisions of 19 U.S.C. 1466.

Subpart F—International Traffic Permit

1. Section 122.51 is based upon § 6.2(d)(3). The word "civil" is deleted and the phrase "passengers carried for hire or merchandise" is replaced by the word "commercial."
2. Section 122.52(a) is based upon § 6.2(d)(3). The word "civil" is deleted and the term "commercial aircraft" replaces the term "international traffic."
3. Section 122.52(b) is based upon § 6.2(d)(3).
4. Section 122.52(c) is based upon the last two sentences of § 6.2(d)(3). The term "international traffic" has been changed to "commercial aircraft."
5. Section 122.53 is new and is based upon the Federal Aviation Administration regulations (14 CFR 121.153).
6. Section 122.54 (a) and (b) is based upon § 6.2(d)(1). The term "or agent" is added to paragraph (b), and necessary information is listed for inclusion on Customs Form 7507 (Permit to Proceed).
7. Section 122.54(c) is based upon § 6.2(d)(1).
8. Section 122.54 (d), (e) and (f) is based upon § 6.2(d)(1).
9. Section 122.54(g) is based upon § 6.2(d)(2).

Subpart G—Clearance of Aircraft and Permission to Depart

1. Section 122.61 is based upon § 6.3(c) and includes a general statement covering all aircraft except public and private.

2. Section 122.62 (a), (b) and (c) is based upon the third, fourth, and fifth sentences of § 6.3(c), and names those aircraft not otherwise required to clear.

3. Section 122.63(a) is based upon § 6.5(c).

4. Section 122.63(b) is based upon § 6.5(c).

5. Section 122.64 is based upon § 6.3(d) and is largely a restatement of § 122.63 (a) and (b), but deals with aircraft not using the procedure outlined therein.

6. Section 122.65 is new and provides that aircraft commanders must notify Customs if departure is delayed or cancelled after the aircraft has been cleared or given permission to depart.

Subpart H—Documents Required for Clearance and Permission to Depart

1. Section 122.71 is based upon § 6.8(a) and rephrases the telephonic clearance procedures, added by T.D. 82–92, published in the **Federal Register** on May 14, 1982 (47 FR 20750).

2. Section 122.72 is based upon § 6.8(a).

3. Section 122.73 is based upon § 6.8(b) and T.D. 82–92, and concerns the form and preparation of air cargo manifests.

4. Section 122.74(a) is based upon § 6.8(a) and the Bureau of the Census regulations (15 CFR 30.24). The term "Customs officer in charge" is changed to "district director."

5. Section 122.74(b) is based upon § 6.8(a). The term "Customs officer in charge" is changed to "district director."

6. Section 122.74(c) is based upon § 6.8(a) and 15 CFR 30.24(a).

7. Section 122.74(c)(1) is based upon § 6.8(a) and 15 CFR 30.24(a), and concerns shipments to foreign countries.

8. Section 122.74(c)(2) is based upon § 6.8(e) and 15 CFR 30.24(a)(1), and concerns shipments to and from Puerto Rico.

9. Section 122.74(c)(3) is based upon § 6.8(a) and 15 CFR 30.24(a)(1), and concerns shipments to U.S. possessions.

10. Section 122.74(d) is based upon § 6.8(e). The phrase "or all required cargo documents will be filed within the 7-day bond period" is added.

11. Section 122.75(a) (1) and (2) is based upon § 6.8(e) and 15 CFR 30.21(b), and concerns the contents of a complete air cargo manifest.

12. Section 122.75(b) is based upon the third and fourth sentences of § 6.8(e).

13. Section 122.76 is based upon § 6.8(a) and 15 CFR 30.1, and sets forth the requirements for Shipper's Export Declarations.

14. Section 122.77 is based upon § 6.8(d).

15. Section 122.78 is based upon § 6.8(c). The phrase "cargo manifest" replaces "outward manifest."

16. Section 122.79(a) is based upon §§ 6.5(b) and 6.3(c), and concerns shipments to U.S. possessions, other than Puerto Rico.

17. Section 122.79(b) is based upon §§ 6.5(b) and 6.3(c), and concerns manifest requirements on direct flights to Puerto Rico.

18. Section 122.80 is based upon § 6.8(e), and concerns verification by Customs of statements made on shipping records.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

1. Section 122.81 is based upon § 6.9(a).

2. Section 122.82 is based upon §§ 6.9(a), 4.85(a), 113.13 (a) and (b), and 113.61, and details the bond requirement for aircraft seeking a permit to proceed while carrying residue cargo.

3. Section 122.83(a) is based upon § 6.9(b), footnote 6. The term "area" is deleted, and the phrase "an authorized person" is replaced by the word "agent."

4. Section 122.83(b) is based upon § 6.9(b), and includes a provision for crew purchases and stores lists, as well as alternate procedures for unlisted items.

5. Section 122.83(c) is based upon § 6.9(b). The clarifying phrase "An abstract general declaration and manifest need not be filed at the last domestic port of discharge" is added.

6. Section 122.83(d) is based upon § 6.9(b), and relates to the contents of a permit to proceed. The word "agent" replaces the phrase "authorized person", and the phrase "Customs officer in charge" replaces "appropriate Customs officer."

7. Section 122.83(e) is based upon § 6.9, and includes a reproduction of Customs Form 7512–C, Permit to Proceed.

8. Section 122.83(f) is based upon § 6.9(b). The phrase "The documents presented by the aircraft commander or authorized person when applying for clearance shall be delivered to the aircraft commander" is replaced by "* * * must be delivered to aircraft commander or agent." The word "agent" replaces the phrase "authorized person."

9. Section 122.84(a) and (b) is based upon § 6.9(c).

10. Section 122.84(c) is based upon § 6.9(c). The section provides that declarations are to be detached by Customs.

11. Section 122.84(d) is based upon § 6.9(c), and concerns departure from an intermediate airport.

12. Section 122.85 is based upon § 6.9(d). It concerns arrival at the final airport.

13. Section 122.86 is new and is based upon Customs Circular AIR–7–EV, dated 11/23/59. It concerns the substitution of aircraft under the residue cargo procedures.

14. Section 122.87 is based upon § 6.9(e).

15. Section 122.88 is based upon § 6.9(f).

Subpart J—Transportation in Bond and Merchandise in Transit

1. Section 122.91 is based upon § 6.15(a).

2. Section 122.92(a) and (b) is based upon § 6.15(b)(1) and (2).

3. Section 122.92(c) is based upon § 6.15(b)(3).

4. Section 122.92(d) is based upon § 6.15(b)(4).

5. Section 122.92(e) is based upon § 6.15(b)(5), and the phrase "aircraft of the same line" is changed to "aircraft of the same airline."

6. Section 122.92(f) is based upon the first sentence of § 6.15(b)(6).

7. Section 122.92(g) is based upon the second sentence of § 6.15(b)(6).

8. Section 122.93(a) is based upon § 6.15(c). The word "port" is changed to "airport", the phrase "authorized person" is replaced by the word "agent", and reference to appropriate Customs forms is inserted.

9. Section 122.93(b) is based upon § 6.15.

10. Section 122.94(a) is based upon § 6.16.

11. Section 122.94(b) is based upon § 6.16, and the phrase "authorized person" is replaced by the word "agent."

12. Section 122.95 is based upon footnote 9 of § 6.15(a).

Subpart K—Accompanied Baggage in Transit

1. Sections 122.101 and 122.102 are new and are based upon Customs Circular AIR–7–IEI, dated 1/31/72. These sections concern entry and inspection of accompanied baggage in transit.

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

1. Section 122.111 is based upon § 6.17.

2. Section 122.112(a), (b) and (c) is based upon the definition portion of § 6.17.

3. Section 122.112(d) is based upon § 6.18(a), and defines the use of the transit air cargo manifest.

4. Section 122.113 is based upon § 6.18(a), and discusses the form used for transit air cargo manifest procedures.

5. Section 122.114(a) is based upon the last sentence of § 6.18(a), and Customs Circular AIR–EV, dated 5/8/62.

6. Section 122.114(b) is based upon the first sentence of § 6.18(b).

7. Section 122.114(b)(2) is based upon the second sentence of § 6.18(b).

8. Section 122.114(c) is based upon § 6.18(d).

9. Section 122.114(d) is based upon Customs Circular AIR–7–EV, dated 5/8/62, and concerns corrections to the route shown on the original manifest.

10. Section 122.115 is based upon § 6.18(e) and Customs Circular AIR–7–EV, dated 5/8/62. The section concerns labeling of cargo.

11. Section 122.116 is based upon § 6.19.

12. Section 122.117(a)(1) is based upon the first sentence of § 6.20(c).

13. Section 122.117(a)(2) is based upon the second sentence of § 20(c).

14. Section 122.117(b) is based upon § 6.20(b) and (d).

15. Section 122.117(c)(1) is based upon § 6.20(c) and concerns responsibility for direct exploration of transit air cargo.

16. Section 122.117(c)(2) is based upon the fourth sentence of § 6.20(c).

17. Section 122.117(c)(3) is based upon the last sentence of § 6.20(c). Section 122.17(c)(4) is based upon the third sentence of § 6.20(c).

18. Section 122.117(d) is based upon § 6.20(e) and concerns receipts for split shipments.

19. Section 122.118(a) is based upon § 6.24(a). All material in the section following the phrase "in the United States" is deleted and the words "under this section" are added.

20. Section 122.118(b) is based upon § 6.21(c).

21. Section 122.118(c) is based upon § 6.24 (b) and (c).

22. Section 122.118(d) is based upon § 6.24(g) with the phrase "air-carrier" being replaced by the word "airline."

23. Section 122.118(f) is based upon Customs Circular AIR–7–CO, dated 3/17/65. It concerns the exportation of post-entered air cargo.

24. Section 122.118(g) is based upon § 6.24(d).

25. Section 122.119(a) is based upon § 6.22(a).

26. Section 122.119(b) is based upon § 6.21(a).

27. Section 122.119(c) is based upon § 6.22(a) and Customs Circular TRA–1–IMS, dated 7/15/68.

28. Section 122.119(d) (1) and (2) is based upon § 6.22 (c) and (d), and concerns failure to deliver transit air cargo in a timely fashion.

29. Section 122.119(e) is new and concerns the transfer of cargo between carriers.

30. Section 122.120(a) is based upon § 6.23(a) and establishes the authority for transporting cargo to another port for exportation.

31. Section 122.120(b)(1) is based upon the first sentence of § 6.23(a).

32. Section 122.120(b)(2) is based upon the second sentence of § 6.23(c). The phrase "when the goods are ready for lading" is replaced by the phrase "when transit air cargo is ready for lading."

33. Section 122.120(c) is based upon § 6.21(b), and concerns the time limit for delivery of transit air cargo for exportation.

34. Section 122.120(d) is based upon § 6.23 and sets forth new procedures for using Customs Form 7512–C.

35. Section 122.120(e) is based upon § 6.23(b) and details the requirements for presentation of the carrier manifest copy.

36. Section 122.120(f) is based upon the first sentence of § 6.23(c).

37. Section 122.120(g) is based upon § 6.23(e).

38. Section 122.120(h) is based upon § 6.23(d). The phrase "these documents (including the clearance copies of transit air cargo manifest)" is replaced by the phrase "the exportation and clearance copies of transit air cargo manifests."

39. Section 122.120(i) is based upon § 6.23(h).

40. Section 122.120(j) is based upon § 6.23(h) and concerns cargo laden on more than one aircraft of the same airline.

41. Section 122.120(k) is based upon § 6.23(g).

Subpart M—Aircraft Liquor Kits

Note: Sections 122.131 through 122.137, the aircraft liquor kit provisions, do not appear in Part 6, Customs Regulations. The subpart is based upon Customs Circular AIR–7–AIR, dated 6/16/64.

Subpart N—Flights to and From the U.S. Virgin Islands

1. Section 122.141 is a new definition section, inserted to help clarify the subpart.

2. Section 122.142 is based upon § 6.25(a).

3. Section 122.143 is based upon § 6.25(b).

4. Section 122.144(a)(1) is based upon § 6.25(c)(1).

5. Section 122.144(a)(2) is based upon § 6.25(c)(2).

6. Section 122.144(b) is based upon § 6.25(c)(3).

7. Section 122.144(c) is based upon § 6.25(c)(4).

Subpart O—Flights to and From Cuba

Sections 122.151 through 122.158 are based upon § 6.3a, as amended by T.D. 87–77, published in the **Federal Register** on June 30, 1987. (52 FR 24291).

Subpart P—Public Aircraft

(Reserved)

Subpart Q—Penalties

1. Section 122.161 is based upon § 6.11.

2. Section 122.162 is based upon § 6.7(h)

3. Section 122.163 is based upon § 6.22(e).

4. Section 122.164 is based upon § 6.23(g).

5. Section 122.165 is new and is based upon Customs Circular AIR–4–CR, dated 11/12/72. It concerns the Air Cabotage statue, 49 U.S.C. App. 1508(b).

6. Section 122.166 is new and is based upon amendments to 19 U.S.C. 1433 and 1436.

7. Section 122.167 is new and is based upon amendments to 19 U.S.C. 1433 and 1436.

Editorial Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the existing air commerce regulations.

Analysis of Comments

Only six comments were received in response to the July 26, 1985, **Federal Register** notice. Of these, two were from aircraft and airline industry associations, two from Federal Government offices, one from a customs broker, and one from an aircraft importer.

Two commenters stated that the requirements in § 122.23, relating to 1-hour advance notice of penetration of U.S. airspace by private aircraft arriving from areas south of the U.S., are burdensome, and that compliance may be impossible in some instances.

As discussed in T.D. 86–72, published in the **Federal Register** on March 3, 1986 (51 FR 11004), Customs changed the notice time in § 6.14 from 15 minutes to 1 hour after very careful consideration of the effect and impact of such a change. The revised reporting time was determined to be necessary for valid enforcement reasons. If the 1-hour time period proves unworkable for some aircraft operators, Customs will consider accepting notification of intended airspace penetration when a flight plan is filed with the Federal

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Aviation Administration or at any time prior to departure from the U.S.

A discussion of the other sections commented upon follows.

Section 122.2(c) (1) and (2). (renumbered § 122.1(c) (1) and (2) in this document). Companies acting as an agent for an airline temporarily importing an aircraft for modifications, or, if a used aircraft, being traded in for a new one, should be permitted to act as an agent for the airline without holding a power of attorney or without having written authority from the airline. This comment is outside the scope of this revision. Relevant procedures for these matters are set forth in § 10.36a, Customs Regulations (19 CFR 10.36a).

Section 122.6(b). (renumbered § 122.5(b) in this document). Airlines need to have flexibility in determining the size, shape, and color of general declaration and air cargo manifest forms to conform with other private sector documents.

The requirements in § 6.6, upon which § 122.6 is based, were amended by T.D. 85–157, published in the **Federal Register** on September 19, 1985 (50 FR 37996). The amendment permits private sector printing of the forms so long as the same size, wording arrangement, style and size of type, and quality of paper are used.

Section 122.13. The list of international airports should be revised frequently.

This section is unchanged from § 6.13. The comment is not relevant to this revision. Changes to the list are made as needed.

Section 122.23(b). The requirement that advance notice of U.S. airspace penetration be made by aircraft arriving from the south, even though not touching foreign territory, is unduly burdensome.

As stated earlier in this document, the amendment to § 6.14 by T.D. 86–72 represents a necessary enforcement requirement. However, Customs will continue to accept the notification either prior to or during such a flight.

Section 122.24. Houston Intercontinental Airport should be added to the list of designated airports.

As no explanation or justification was offered, no such action will be taken at this time.

Section 122.25. The section should be changed to permit air ambulances to get single flight exemptions from special landing requirements without the necessity of notification 15 days in advance.

Such exemption may be granted in the discretion of the appropriate district director.

Section 122.27. The minimum dollar amount for which landing certificates or copies of foreign customs entries for merchandise must be filed should be changed from $100 to $500.

As this suggestion has merit, it has been adopted.

Section 122.29. The question is posed as to why Customs overtime charges apply to aircraft and not to vehicles.

This is because service is provided 24 hours a day to aircraft and vessels. The service is free during normal working hours, but must be reimbursed at other times. Automobiles must arrive at Customs border stations during regular hours of operation only and no service is provided during other times.

Section 122.34. Landing rights airports should be required to provide proper office and other space for use by Federal officials.

Authority for such a requirement is found in 31 U.S.C. 9701, and airports provide the necessary space for use by the Federal Inspection Services.

Section 122.34(a)(1). The words "or his representative" should be added to the section to indicate that the regional commissioner need not personally grant landing rights.

This suggestion has been adopted.

Section 122.42. The section should be changed to permit aircraft to land for refueling only, without the need to formally enter.

As the suggestion has merit, it has been adopted. the section has been changed to set forth certain conditions which must be met for aircraft to be excepted from the entry requirement.

Section 122.46. The section, which concerns crew purchase lists, should be changed to reflect contemporary procedures.

We believe that the section is properly drafted at present because, while it is true that a crew purchase list is rarely used, the requirement should be retained as an optional procedure for crewmember declarations.

Section 122.48. The following changes were suggested: Airline company mail should be considered "baggage" without the necessity to include it on a manifest. Reference to Customs Form 5119A should be changed to 7501. The third sentence of paragraph (d) should be changed to read "* * * added to the cargo list * * *," rather than "* * * shown on the cargo manifest." Finally, the second sentence of paragraph (e) should be changed to "* * * while in transit through the U.S." instead of "* * * during the flight."

Customs believes that company mail should continue to be manifested as cargo and be subject to examination. The remaining points are well taken, and appropriate changes have been made.

Section 122.49. The section should provide for corrections made to air way bills as well as air cargo manifests.

We agree and have amended the section accordingly.

Section 122.52(c). Paragraph (c) should be changed to read, in appropriate part, "* * * carrying neither passengers nor cargo," in lieu of the words "* * * in ballast."

We agree and have made the necessary change.

Subpart F. The subpart title should be changed to avoid confusion with Subpart I.

We agree and have changed the title.

Subpart H. The subpart should include the requirements for an outward general declaration, Customs Form 7507.

This was an inadvertent omission which has been corrected.

Section 122.65. The section should include mention of a time limit within which an aircraft must depart after receiving clearance to depart.

The suggestion has been adopted and the section has been appropriately amended.

Section 122.71. The section is burdensome because it requires an aircraft to depart only from an airport where Customs officers are stationed.

This is an incorrect interpretation. Aircraft departing with no commercial export cargo may clear by telephone in advance with the district director nearest the departure place.

Section 122.83(d). The "permit to proceed" form printed in the section should be changed in two respects. First, the phrase "number of pieces of cargo not cleared" should be deleted because it has no application to aircraft which can now accommodate up to 60 breakbulk containers, and the counting of pieces is not done the same way at any two airports. Second, reference to Public Health Service (PHS) clearance should be deleted because PHS personnel no longer routinely inspect arriving passengers.

We concur in the first suggestion and have modified the form accordingly. We have contacted the PHS regarding the second suggestion and as they have no objection to deletion of the requirement, this change has also been made.

Section 122.86(d)(2). The last sentence, which reads, "No other cargo may be laden on the substitute aircraft.", should be deleted.

This sentence was inserted to insure that foreign aircraft are not used in violation of the air cabotage law, prohibiting certain air transit within the U.S. However, as the Federal Aviation Administration, which is responsible for

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this requirement, did not object to the suggestion, the change has been made.

Section 122.92 (a) and (b). Customs Form 7520, Manifest of Baggage Shipped in Bond, should be described in the section, and the requirement for submitting both the Customs Form 7512 and Customs Form 7512–C should be deleted.

Use of the CF 7520 is described in § 18.13, Customs Regulations (19 CFR 18.13), and we have added an appropriate reference to that section. In regard to the requirement that both the CF 7512 and CF 7512–C be completed for in-bond merchandise, it has been determined that the information on the CF 7512–C is easier to read and use than that on the CF 7512. Accordingly, at this time, the requirement that both forms be submitted is being retained.

Section 122.115 The warning label procedure in regard to transit air cargo not directly exported from the port of arrival is impractical and should be dropped.

Customs continues to experience problems associated with the unauthorized delivery of in-bond merchandise. Therefore, we must continue to require that the warning label be affixed to all such shipments which are not sealed.

Conforming Amendments

The revision of the air commerce regulations by elimination of Part 6, Customs Regulations (19 CFR Part 6), and the addition of a new Part 122, Customs Regulations (19 CFR Part 122), requires that certain non-substantive amendments be made to other parts of the Customs Regulations to conform them to the revised scheme. These amendments consist wholly of changing citations to Part 6 of the appropriate citations in Part 122 wherever they appear.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, U.S.C. 601 et. seq.), it is certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other offices participated in its development.

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in revised Part 122 to superseded Part 6.]

Revised section	Superseded section
122.0	New.
122.1(a)	New.
122.1(b)	6.1(e).
122.1(c)	6.1(g).
122.1(d)	New.
122.1(e)	6.1(h).
122.1(f)	New.
122.1(g)	Based on 19 CFR 24.16.
122.1(h)	New.
122.1(i)	New.
122.1(j)	New.
122.1(k)	6.1(f).
122.1(l)	6.1(b), (c).
122.2	6.10.
122.3	6.6(b).
122.4	6.6(a)
122.5	6.6(a).
122.11(a)	6.12(a), (b), (d).
122.11(b)	6.12(c).
122.11(c)	6.12(e).
122.12(a)	6.12(f).
122.12(b)	6.12(g).
122.12(c)	6.12(h).
122.12(d)	6.12(i).
122.13	6.13.
122.14	6.12a.
122.21	New.
122.22	New.
122.23(a)	New.
122.23(b), (c), (d), (e)	6.14(a).
122.24(a), (b)	6.14(b), (g).
122.25(a), (b), (c), (d)	6.14(f).
122.26	New.
122.27	Based on 19 CFR 148.5.
122.28	Based on 19 CFR 148.32.
122.29	New.
122.30	6.10 and 6.11.
122.31(a)	6.2(b)(1).
122.31(b)	6.2(b)(3).
122.31(c)(2)	6.2(b)(2).
122.31(d)	6.2(b)(4).
122.31(e)	6.2(b)(5).
122.31(f)	6.2(b)(1).
122.32	6.2(a).
122.33	6.2(a).
122.34	6.2(a).
122.35	6.2(h).
122.36	6.2(b)(5).
122.37	6.2(h).
122.38(a)	6.2(e), (f).
122.38(b)	6.2(e), (f).
122.38(c)	6.2(g).
122.38(d)	6.2(e), (f).
122.38(e)	6.2(g).
122.38(f)	New. Based on Customs Circular INS–2–EV, dated 12–14–61.
122.41	6.3(a), 6.4(a), (b) and 6.9(c).
122.42	6.3(b), 6.4(c), and 6.7.
122.43(a), (c)	6.7(a), (b).
122.43(b)	New. Based on Customs Circular AIR–4–ICS, dated 1–24–68.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 122 to superseded Part 6.]

Revised section	Superseded section
122.44	New. Based on Customs Circular BAG–3–CO (AIR–4–AIR), dated 8–9–65.
122.45	6.7(b)(1).
122.45(d)	New. Based on Customs Circuler BAG–3–CO (AIR–4–AIR), dated 8–9–65.
122.46(a)	6.7(b)(2).
122.46(b)	6.7(b)(2). Also based on Customs Circular AIR–4–ICS, dated 1–24–68.
122.46(c)	6.7(b)(2).
122.47(a)	6.7(f).
122.47(b)	6.7(f).
122.47(c)(1)	6.7(b)(3)(v).
122.47(c)(2)	6.7(b)(3)(V), (vi).
122.47(d)	6.7(f).
122.48(a), (b), (c), (d)	6.7(b)(3).
122.48(e)	New. Based on Customs Circular ATR–7–IEI, dated 1–31–72.
122.49(a)	6.7(h)(1), (2).
122.49(b), (c), (d), (e), (f)	6.7(h)(1), (3). Also based on 19 CFR 4.12(a).
122.51	6.2(d)(3).
122.52(a), (b), (c)	6.2(d)(3).
122.52(d)	6.2(d)(3)(ii). Also based on T.D. 55063(1), dated 3–4–60.
122.53	New. Based on 14 CFR 121.153.
122.54(a), (b), (c), (d), (e), (f).	6.2(d)(1).
122.54(g)	6.2(d)(2).
122.61(a)	6.3(c).
122.62(a), (b), (c)	6.3(c).
122.63(a), (b)	6.5(c).
122.64	6.3(d).
122.65	New.
122.71	6.8(a).
122.72	6.8(a).
122.73	6.8(b). Also based on T.D. 82–92, dated March 22, 1982.
122.74(a)	6.8(a). Also based on 15 CFR 30.24.
122.74(b)	6.8(a).
122.74(c)	6.8(a). Also based on 15 CFR 30.24(a).
122.74(c)(1)	6.8(a). Also based on 15 CFR 30.24(a).
122.74(c)(2)	6.8(a). Also based on 15 CFR 30.24(a)(1).
122.74(c)(3)	6.8(a). Also based on 15 CFR 30.24(a)(1).
122.74(d)	6.8(a).
122.75(a)(1), (2)	6.8(a). Also based on 15 CFR 30.21(b).
122.75(b)	6.8(a).
122.76	6.8(a). Also based on 15 CFR 30.1.
122.77	6.8(d).
122.78	6.8(c).
122.79(a), (b)	6.3(c) and 6.5(b).
122.80	6.8(e).
122.81	6.9(a).
122.82	6.9(a). Also based on 19 CFR 4.85(a), 19 CFR 113.13a(a), (b) and 19 CFR 113.61.
122.83(a), (b), (c), (d)	6.9(b).
122.83(e)	6.9.
122.83(f)	6.9(b).
122.84(a), (b), (c), (d)	6.9(c).
122.85	6.9(d).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 122 to superseded Part 6.]

Revised section	Superseded section
122.86	New. Based on Customs Circular AIR-7-EV, dated 11-23-59.
122.87	6.9(e).
122.88	6.9(f).
122.91	6.15(a).
122.92(a), (b)	6.15(b)(1), (2).
122.92(c)	6.15(b)(3).
122.92(d)	6.15(b)(4).
122.92(e)	6.15(b)(5).
122.92(f), (g)	6.15(b)(6).
122.93(a)	6.15(c).
122.93(b)	6.15.
122.94(a), (b)	6.16.
122.95	6.15(a).
122.101	New. Based on Customs Circular AIR-7-IEI, dated 1-31-72.
122.102	New. Based on Customs Circular AIR-7-IEI, dated 1-31-72.
122.111	6.17.
122.112(a), (b), (c)	6.17.
122.112(d)	6.18(a).
122.113	6.18(a).
122.114(a)	6.18(a). Also based on Customs Circular AIR-7-EV, dated 5-8-62.
122.114(b)	6.18(b).
122.114(b)(2)	6.18(b).
122.114(c)	6.18(d).
122.114(d)	New based on Customs Circular AIR-7-EV, dated 5-8-62.
122.115	6.18(e). Also based on Customs Circular AIR-7-EV, dated 5-8-62.
122.116	6.19.
122.117(a)	6.20(c).
122.117(b)	6.20(b), (d).
122.117(c), (d)	6.20(c).
122.118(a)	6.24(a).
122.118(b)	6.21(c).
122.118(c)	6.24(b), (c).
122.118(d)	6.24(g).
122.118(e)	New. Based on 19 CFR 18.25.
122.118(f)	New. Based on Customs Circular AIR-7-CO, dated 3-17-65.
122.118(g)	6.24(d).
122.119(a)	6.22(a).
122.119(b)	6.21(a).
122.119(c)	6.22(a). Also based on Customs Circular TRA-1-IMS, dated 7-15-68.
122.119(d)	6.22(c), (d).
122.119(e)	6.22(a).
122.120(a)	6.23(a).
122.120(b)(1)	6.23(a).
122.120(b)(2)	6.23(c).
122.120(c)	6.21(b).
122.120(d)	6.23.
122.120(e)	6.23(b).
122.120(f)	6.23(c).
122.120(g)	6.23(e).
122.120(h)	6.23(d).
122.120(i), (j)	6.23(h).
122.120(k)	6.23(g).
122.131 through 122.137	New. Based on Customs Circular AIR-7-AIR, dated 6-16-64.
122.141	New definition section.
122.142	6.25(a).
122.143	6.25(b).
122.144(a)(1)	6.25(c)(1).
122.144(a)(2)	6.25(c)(2).
122.144(b)	6.25(c)(3).
122.144(c)	6.25(c)(4).
122.151 through 122.158	6.3a.
122.161	6.11.
122.162	6.7(h).
122.163	6.22(e).
122.164	6.23(g).
122.165	New. Based on Customs Circular AIR-4-CR, dated 11-12-72.
122.166	New based on 19 U.S.C. 1433 and 1436.
122.167	New based on 19 U.S.C. 1433 and 1436.

PARALLEL REFERENCE TABLE

[This table show the relationship of sections in Part 6 to revised Part 122]

Superseded section	Revised section
6.1 (b), (c)	122.1(1).
6.1(e)	122.1(b).
6.1(f)	122.1(k).
6.1(g)	122.1(c).
6.1(h)	122.1(e).
6.2(a)	122.32, 122.33, 122.34.
6.2(b)	122.31.
6.2(b)(6)	122.36.
6.2(d)(1)	122.54 (a) through (f).
6.2(d)(2)	122.54(g).
6.2(d)(3)	122.51 and 122.52.
6.2 (e), (f)	122.38 (a), (b), (d), (e) and (f).
6.2(g)	122.38(c).
6.2(h)	122.35 and 122.37.
6.3(a)	122.41.
6.3(b)	122.42 (a), (b).
6.3(c)	122.61(a), 122.62 (a), (b), (c) and 122.79(a).
6.3(d)	122.64.
6.3a	122.151 through 122.158.
6.4 (a) and (b)	122.41.
6.4(c)	122.42(b).
6.5 (b), (c)	122.63 (a), (b) and 122.79(b).
6.6(a)	122.4 and 122.5.
6.6(b)	122.3.
6.7(a)	122.43(a).
6.7(b)	122.43(c), 122.45, 122.46 (a), (b), (c) and 122.47(c).
6.7(f)	122.47 (a), (b), and (d).
6.7(h)	122.49, and 122.162.
6.8(a)	122.122.71, 122.72, 122.74 (a), (b), and (c) (1) and (3) and 122.76.
6.8(b)	122.73.
6.8(c)	122.78.
6.8(d)	122.77.
6.8(e)	122.74(c)(2), 122.74(d), 122.75(a), (1) and (2), 122.75(b) and 122.80.
6.9(a)	122.81 and 122.82.
6.9(b)	122.83.
6.9(c)	122.84.
6.9(d)	122.85.
6.9(e)	122.87.
6.9(f)	122.88.
6.10	122.2, 122.30 and 122.161.
6.11	122.161.
6.12 (a), (b), (d)	122.11(a).
6.12(c)	122.11(b).
6.12(e)	122.11(c).
6.12 (f), (g), (h), (i)	122.12.
6.12a	122.14.
6.13	122.13.
6.14(a)	122.23 (b), (c), (d), (e).
6.14 (b), (g)	122.24 (a), (b).
6.14(f)	122.25.
6.15(a)	122.91 and 122.95.
6.15(b)	122.92.
6.15(c)	122.93.
6.16	122.94.
6.17	122.111 and 122.112 (a), (b), (c).
6.18(a)	122.112(d), 122.113, and 122.114(a).
6.18(b)	122.114(b).
6.18(d)	122.114(c).
6.18(e)	122.114(e).
6.19	122.116.
6.20 (b), (d)	122.117(b).
6.20(c)	122.117 (a), (c), and (d).
6.21(a)	122.119(b).
6.21(b)	122.120(c).
6.21(c)	122.118(b).
6.22(a)	122.119 (a), (c), and (e).
6.22 (c), (d)	122.119(d).
6.22(e)	122.163.
6.23(a)	122.120 (a) and (b)(1).
6.23(b)	122.120(e).
6.23(c)	122.120 (b)(2) and (f).
6.23(d)	122.120(h).
6.23(e)	122.120(g).
6.23(g)	122.120(k) and 122.164.
6.23(h)	122.120 (i), (j).
6.24(a)	122.118(a).
6.24 (b), (c)	122.118(c).
6.24(d)	122.118(g).
6.24(g)	122.118(d).
6.25(a)	122.142.
6.25(b)	122.143.
6.25(c)(1)	122.144(a)(1).
6.25(c)(2)	122.144(a)(2).
6.25(c)(3)	122.144(b).
6.25(c)(4)	122.144(c).
6.25(c)(5)	122.144(d).

List of Subjects

19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports, Cuba, Freight.

19 CFR Parts 4, 6, 10, 18, 24, 123, 162

Customs duties and inspection.

PART 6—[REMOVED]

Chapter I of Title 19, Code of Federal Regulations, is amended by removing Part 6 (*Air Commerce Regulations*) (19 CFR Part 6).

Chapter I of Title 19, Code of Federal Regulations, is further amended by adding a new part, Part 122, to read as follows:

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

§ 122.0 Scope.

The regulations in this part relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the U.S. not specified herein. They do apply to the U.S. Virgin Islands as stated in Subpart N (§§ 122.141 through 122.144), and Cuba as stated in Subpart O (§§ 122.151 through 122.158).

Subpart A—General Definitions and Provisions

§ 122.1 General definitions.

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft.* An "aircraft" is any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include hovercraft.

(b) *Aircraft commander.* An "aircraft commander" is any person serving on an aircraft who is in charge or has command of its operation and navigation.

(c) *Agent.* An "agent" is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a non-scheduled airline, by power of attorney.

The authority to act shall be in writing and satisfactory to the district director.

(d) *Commercial aircraft.* A "commercial aircraft" is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.

(e) *International airport.* An "international airport" is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport.* A "landing rights airport" is any airport, other than an international airport, at which flights from a foreign area may be allowed to land.

(g) *Preclearance.* "Preclearance" is the examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be used only for air travelers and their baggage, not for merchandise.

(h) *Private aircraft.* A "private aircraft" is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes:

(2) Leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft.* A "public aircraft", is any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in Subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) Carrying neither passengers nor cargo.

(j) *Residue cargo.* "Residue cargo" is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in the U.S., for final delivery in a foreign area.

(k) *scheduled airline.* A "scheduled airline" is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR Parts 201 and 213.

(l) *United States.* Except when used in another context, "U.S." means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

§ 122.2 Other Customs laws and regulations.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from or departing for any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels to the extent that such laws and regulations are administered or enforced by Customs, as provided in 49 U.S.C. App. 1509(c).

§ 122.3 Availability of forms.

The forms mentioned in this part may be purchased from the district director at a port of entry. A small quantity of each form is set aside by district directors for free distribution and official use.

§ 122.4 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written or printed in a foreign language.

§ 122.5 Reproduction of Customs forms.

(a) *Specifications.* Subject to approval by Customs, the forms mentioned in this part may be printed by private parties if the specified size, wording arrangement, style and size of type, and quality of paper are used.

(b) *Exceptions.* District directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The privately printed forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration.* Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on the reverse side of the official form may be omitted.

(2) *Air cargo manifest.* Customs Form 7509 may be changed to allow for additional information used by the airline.

Subpart B—International Airports

§ 122.11 Designation as international airport.

(a) *Procedure.* International airports, as defined in § 122.1(e), will be designated after due investigation to establish that sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen, rather than a general area or district. International airports will be publicly owned, unless circumstances require otherwise

(b) *Withdrawal of designation.* The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government.* Each international airport shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

§ 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge by Customs. However, charges may be assessed by the airport for commercial or private use of the airport.

(b) *Servicing of aircraft.* When an aircraft enters or clears through an international airport, it shall be

promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges imposed by the airport operators shall not be greater than the schedule of charges in effect at the airport in question.

(c) *Federal Aviation Administration rules.* International airports shall follow and enforce any requirements for airport operations, including airport rules, that area set out by the Federal Aviation Administration in 14 CFR Part 91.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the Customs district served by the airport demand.

§ 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury.

Location	Name
Akron, Ohio	Akron Municipal Airport
Albany, N.Y	Albany County Airport
Baudette, Minn	Baudette International Airport
Bellingham, Wash	Bellingham International Airport
Brownsville, Tex	Brownsville International Airport
Burlington, Vt	Burlington International Airport
Calexico, Calif	Calexico International Airport
Caribou, Maine	Caribou Municipal Airport
Chicago, Ill	Midway Airport
Cleveland, Ohio	Cleveland Hopkins International Airport
Cut Bank, Mont	Cut Bank Airport
Del Rio, Tex	Del Rio International Airport
Detroit, Mich	Detroit City Airport
Detroit, Mich	Detroit Metropolitan Wayne County Airport
Douglas, Ariz	Bisbee-Douglas International Airport
Duluth, Minn	Duluth International Airport
Duluth, Minn	Sky Harbor Airport
Eagle Pass, Tex	Eagle Pass Municipal Airport
El Paso, Tex	El Paso International Airport
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash.	Friday Harbor Seaplane Base
Grand Forks, N. Dak.	Grand Forks International Airport
Great Falls, Mont	Great Falls International Airport
Havre, Mont	Havre City-County Airport
Houlton, Maine	Houlton International Airport
International Falls, Minn.	Falls International Airport
Juneau, Alaska	Juneau Municipal Airport
Juneau, Alaska	Juneau Harbor Seaplane Base
Ketchikan, Alaska	Ketchikan Harbor Seaplane Base
Key West, Fla	Key West International Airport
Laredo, Tex	Laredo International Airport
Massena, N.Y	Richards Field
McAllen, Tex	Miller International Airport
Miami, Fla	Chalk Seaplane Base
Miami, Fla	Miami International Airport
Minot, N.Dak	Minot International Airport
Nogales, Ariz	Nogales International Airport
Ogdensburg, N.Y	Ogdensburg Harbor
Ogdensburg, N.Y	Ogdensburg International Airport
Oroville, Wash	Dorothy Scott Airport
Oroville, Wash	Dorothy Scott Seaplane Base
Pembina, N.Dak	Pembina Municipal Airport
Port Huron, Mich	St. Clair County International Airport
Port Townsend, Wash.	Jefferson County International Airport
Ranier, Minn	Ranier International Seaplane Base
Rochester, N.Y	Rochester-Monroe County Airport
Rouses Point, N.Y	Rouses Point Seaplane Base
San Diego, Calif	San Diego International Airport (Lindbergh Field)
Sandusky, Ohio	Griffing-Sandusky Airport
Sault Ste. Marie, Mich.	Sault Ste. Marie City-County Airport
Seattle, Wash	King County International Airport
Seattle, Wash	Lake Union Air Service (Seaplanes)
Tampa, Fla	Tampa International Airport
Tucson, Ariz	Tucson International Airport
Watertown, N.Y	Watertown New York International Airport
West Palm Beach, Fla.	Palm Beach International Airport
Williston, N. Dak	Sloulin Field International Airport
Wrangell, Alaska	Wrangell Seaplane Base
Yuma, Ariz	Yuma International Airport

§ 122.14 Access to Customs security areas.

(a) For the purposes of this section, the term "Customs security area" means the Federal inspection services area (as provided for by § 122.11(c)), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b) With the exception of all Federal, and uniformed State and local law enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area must openly display or produce upon demand, an approved identification card, strip, or seal, to be issued by Customs. The approved identification card, strip, or seal shall be in the possession of the person in whose name it is issued at all times when the person is in the Customs security area. The identification strip or seal or any Customs issued card remains the property of Customs and any bearer must immediately surrender it upon demand by any authorized Customs officer.

(c) An application for an approved identification card, strip, or seal as required by this section, shall be filed by the applicant with the district director on Customs Form 3078. This requirement applies to all employees, regardless of the length of their employment. For employees hired on or after November 1, 1985, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant. The background check shall include, at a minimum, investigation of references and employment history to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. For any employee hired before November 1, 1985, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. The fingerprints of the applicant may be required on FD 258 at the time of the filing of the application. Proof of citizenship or authorized residency, and a photograph may also be required. In addition, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained by them and made available upon request by the district director for a period of 1 year following cessation of employment of the employees.

(d) Law enforcement officers and other Federal, State, or local officials whose duties require access to the Customs security area may request from the district director the issuance of an approved identification card, strip, or seal. They need not make application nor submit to background checks for security area access.

(e)(1) An approved identification card, strip, or seal shall not be issued to any person whose employment necessitates access to the Customs security area and whose access will, in the judgment of the district director, endanger the

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revenue or the security of the area. Grounds for denial of access shall include, but are not limited to:

(i) Any cause which would justify suspension or revocation of the identification card, strip, or seal under the provisions of paragraph (j) of this section; or

(ii) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct.

(2)(i) The district director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant. Specific reasons for denial shall not be furnished to the employer.

(ii) The denial will be final unless the applicant files with the district director a written notice of appeal. The applicant's written notice must be filed within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the statement of the district director. The district director shall render his decision on the appeal to the applicant within 30 days of receipt of the notice of appeal.

(iii) If the district director denies the application on appeal, the applicant may file a further written notice of appeal to the Commissioner within 10 days of receipt of the district director's decision on the appeal. The further notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the district director's decision. The Commissioner or his designee shall review the appeal, and render a written decision. This final decision shall be transmitted to the district director and served by him on the applicant.

(f) An employee may obtain a new identification card, strip, or seal from the district director in the following circumstances, without completing a new application, except as determined by the district director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of his employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the identification card, strip, or seal.

(g) The identification card, strip, or seal shall be removed from the employee by the district director when, for security reasons, it is necessary to change the nature of the identification.

(h) The loss or theft of an identification card, strip, or seal shall be promptly reported in writing by the employee to the district director, and the card, strip, or seal may be replaced as provided in paragraph (f) of this section.

(i) If an approved identification card, strip, or seal is presented by a person other than the one to whom it was issued, the identification card, strip, or seal shall be removed by the district director and destroyed.

(j)(1) An approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the district director. In addition, the district director may revoke or suspend access to the Customs security area and demand that the identification strip or seal or Customs issued card be surrendered, for any of the following reasons:

(i) The approved identification card, strip, or seal was obtained through fraud or the misstatement of a material fact;

(ii) The employee is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(iii) The employee permits the approved identification card, strip or seal to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(iv) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area.

(v) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation; or

(vi) The employee's duties no longer require that he have access to the Customs security area for an extended period of time at the airport of issuance. In this instance the employer shall notify the district director in writing, return the identification card, strip, or seal, and give information regarding the status of the employee who was issued the card, strip, or seal and who no longer requires access. If the employee returns to duties in the Customs security area at the airport within 1 year, a Customs Form 3078, as required by paragraph (d) of this section, need not be submitted, at the discretion of the district director.

(2) The district director shall suspend or revoke access to the Customs security area by giving notice of the proposed action in writing to the employee with a copy of the notice to the employer. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the employee unless he files with the district director a written notice of appeal as provided in subparagraph (3) of this paragraph.

(3) The employee may file a written notice of appeal from the revocation or suspension within 10 calendar days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the employee to the statement of the district director. The employee, in his notice of appeal, may request a hearing.

(4) If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner or his designee within 30 calendar days following the request. The employee shall be notified of the time and place of the hearing at least 5 calendar days before the hearing.

(5) The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented. Both parties will have the right of cross-examination. A stenographic record of the proceedings shall be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall promptly transmit all papers and the stenographic record of the hearing to the Commissioner or his designee, together with his recommendation for final action.

(6) Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the employee may submit to the Commissioner or his designee, additional written views and arguments on matters in the record.

(7) If neither the employee nor his attorney appear for a scheduled hearing, the hearing officer shall record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer shall promptly transmit all papers together with his recommendations to the Commissioner or his designee.

(8) After consideration of the recommendations of the hearing officer or the district director, the Commissioner or his designee shall render his decision, in writing, stating his reasons for the final action. The decision shall be transmitted to the district director and served by him on the employee.

(k) When an approved identification card, strip, or seal is required under paragraph (b) of this section, and the

district director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary identification card, strip, or seal for his employee. The employer must satisfy the district director that a hardship to his business would result if the request is not granted.

(l) The temporary identification card, strip, or seal shall be valid for a period of 60 days. The district director may renew the temporary identification card, strip, or seal for additional 30-day periods if he determines that the circumstances under which the temporary identification card, strip, or seal was originally issued continue to exist. The temporary identification card, strip, or seal shall be destroyed by the district director when the permanent approved identification card, strip, or seal is issued, or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification card, strip, or seal shall be valid for a period of 30 days. In the case of official visitors, the temporary identification card, strip, or seal shall be valid for the day of issuance only. Temporary employee and official visitor identification cards, strips, or seals are renewable for periods equal to their original period of validity.

(3) The temporary identification card, strip, or seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary identification card, strip, or seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

Subpart C—Private Aircraft

§ 122.21 Application.

This subpart applies to all private aircraft as defind in § 122.1(h). No other provisions of this part apply to private aircraft, except where stated in this subpart.

§ 122.22 Notice of arrival.

When arriving in the U.S. from a foreign area, all private aricraft not covered by § 122.23 shall give advance notice of arrival as required in § 122.31.

§ 122.23 Private aircraft arriving from areas south of the U.S.

(a) *Definitions.* (1) For the purpose of this section, "private aircraft" means all aircraft except:

(i) Public aircraft;

(ii) Those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation, authorizing interstate, overseas air transportation; and

(iii) Those aircraft with a seating capacity of more than 30 passenges or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. App. 1372 and 14 CFR Part 298).

(2) The term "place" as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of them inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(b) *Advance report of penetration of U.S. airspace.* All private aircraft arriving in the Continental U.S. via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 122.1(1)) from Puerto Rico, (which if from Puerto Rico, are conducting flight under visual flight rules (VFR)), shall furnish a notice of intended arrival to Customs at the nearest designated airport to point of crossing listed in § 122.24(b), for the first landing in the U.S. The notice must be furnished at least 1 hour before crossing the U.S. coastline or border. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnishd through the Federal Aviation Administration to Customs. The requirement to furnish a notice of intended arrival shall not apply to private aircraft departing from Puerto Rico and conducting flight under instrument flight rules (IFR) until corssing the U.S. coastline or proceeding north of 30 degrees north latitude.

(c) *Contents of notice.* The advance notice of arrival shall include the following:

(1) Aircraft registration number;

(2) Name of aircraft commander;

(3) Number of U.S. citizen passengers;

(4) Number of alien passengers;

(5) Place of last departure;

(6) Estimated time and location of crossing U.S. border/coastline;

(7) Estimated time of arrival;

(8) Name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

§ 122.24 Landing requirements.

(a) *In general.* Private aircraft arriving in the U.S. from a foreign area shall follow the landing requirements set out in §§ 122.23 and 122.36.

(b) *Special requirements.* Private aircraft required to furnish a notice of intended arrival in compliance with § 122.23 shall land for Customs processing at the nearest designated airport to the border or coastline crosing point as listed in this paragraph unless exempted from this requirement in accordance with § 122.25. In addition to the requirement in accordance with § 122.25. In addition to the requirements of this section, private aircraft commanders must comply with all other landing and notice of arrival requirements. This requirement shall not apply to private aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

Location	Name
Beaumont, Tex	Jefferson County Airport.
Brownsville, Tex.	Brownsville International Airport.
Calexico, Calif	Calexico International Airport.
Corpus Christi, Tex.	Corpus Christi International Airport.
Del Rio, Tex	Del Rio International Airport.
Douglas, Ariz	Bisbee-Douglas International Airport.
Eagle Pass, Tex.	Eagle Pass Municipal Airport.
El Paso, Tex	El Paso International Airport.
Fort Lauderdale, Fla.	Fort Lauderdale Executive Airport.
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport.
Fort Pierce, Fla	St. Lucie County Airport.
Houston, Tex	William P. Hobby Airport.
Key West, Fla	Key West International Airport.
Laredo, Tex	Laredo International Airport.
McAllen, Tex	Miller International Airport.
Miami, Fla	Miami International Airport.
Miami, Fla	Opa-Locka Airport.
New Orleans, La.	New Orleans International Airport (Moissant Field).
New Orleans, La.	New Orleans Lakefront Airport.
Nogales, Ariz	Nogales International Airport.
Presidio, Tex	Presidio-Lely International Airport.

VOL
53
ISS
55
MR
22
988
MI

Location	Name
San Diego, Calif.	Brown Field.
Tampa, Fla	Tampa International Airport.
Tucson, Ariz	Tucson International Airport.
West Palm Beach, Fla.	Palm Beach International Airport.
Yuma, Ariz	Yuma International Airport.

§ 122.25 Exemption from special landing requirements.

(a) *Request.* Only companies principally headquartered in the U.S. or individuals principally residing in the U.S. that have operational control over U.S. registered aircraft required to give advance notice of arrival under § 122.23, may request an exemption from the special landing requirements in § 122.24. Exemptions are within the discretion of the district director and may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the district director at the airport at which the majority of Customs overflight processing is desired by the applicant. The request shall be submitted:

(1) At least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of one year; or

(2) At least 15 days before the anticipated arrival if the request is for a single flight.

(c) *Content of request.* A request for exemption from the special landing requirements shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer, and shall include the following information:

(1) Aircraft U.S. registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft include class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number, and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number, Federal Aviation Administration certificate number, and place and date of birth;

(6) A statement from the individual signing the application, as specified in paragraph (c)(4) of this section, that the pilot(s) and crewmembers(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers, and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemption.

Note.—Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in § 122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application.

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports.

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If a private aircraft is granted an exemption from the landing requirement as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in § 122.24. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§ 122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must:

(i) Notify Customs of a change of Federal Aviation Administration registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification, or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencment of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the district director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(vi) The notifications specified in this paragraph must be given to Customs within 5-working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h), are not required to formally enter or to obtain formal clearance upon departure. However, entry and clearance requirements do apply to air charter and air taxi operators.

§ 122.27 Documents required.

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in Part 148 of this chapter. An oral declaration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059–B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059–B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR Part 30) and the Export Administration (15 CFR Parts 368 through 399) regulations and any other applicable export laws shall be followed. A foreign landing certificate or certified copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than $500.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

§ 122.28 Private aircraft taken abroad by U.S. residents.

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in § 148.32 of this chapter. Repairs made abroad, and accessories purchased abroad shall be included in the baggage declaration as required by § 148.32(c), and may be subject to entry and payment of duty as provided in § 148.32.

§ 122.29 Overtime services.

(a) *Application.* Private aircraft arriving in the U.S. and requiring Customs services to be performed outside the regular hours of duty are subject to overtime charges. The overtime charges to be assessed against the operator of a private aircraft in connection with each arrival are limited to a maximum of $25.

(b) *Procedures.* An application must be made on Customs Form 3171 to receive overtime services. The application shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, and may be effective up to one year. See § 24.16(c) of this chapter.

§ 122.30 Other Customs laws and regulations.

Sections 122.2 and 122.161 apply to private aircraft.

Subpart D—Landing Requirements

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the U.S. from a foreign area shall give advance notice of arrival. When a private aircraft, as defined in § 122.23(a) of this part, enters the U.S. from a foreign area in the Western hemisphere south of the U.S., advance notice shall be given as provided in § 122.23. Aircraft arriving from Cuba shall follow the procedures set forth in Subpart O of this part.

(b) *Exceptions for scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule shall have been filed with the district director for the district in which the first landing is made. Scheduled airlines shall also submit a copy of their schedules to the regional commissioner of the region in which the scheduled aircraft will land. This notice shall be given 30 days before the effective date of the schedule.

(c) *Giving notice of arrival*—(1) *Procedure.* The commander of an aircraft covered by this section shall give the advance notice of arrival. Notice shall be given to the district director at or nearest the place of first landing, either:

(i) Directly by radio, telephone, or other method; or

(ii) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival shall include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by Customs;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival shall be furnished far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft.

(f) *Notice of other Federal agencies.* When advance notice is received, the district director shall inform any other concerned Federal agency.

§ 122.32 Aircraft required to land.

Any aircraft coming into the U.S., including Puerto Rico, from an area outside the U.S., is required to land, unless exempted by the Federal Aviation Administration.

§ 122.33 Place of first landing.

The first landing of an aircraft entering the U.S. from a foreign area shall be at an international airport (see § 122.13, International airports). Permission to land at another place may be given under § 122.34 (Landing rights airport) or § 122.35 (Emergency or forced landing).

§ 122.34 Landing rights airport.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the regional commissioner, or his representative, of the region in which first landing is made.

(2) *Other aircraft.* All other aircraft may be allowed to land at a landing rights airport by the district director at the port of entry or station nearest the first place of landing.

(3) *Additional flights, charters or changes in schedule*—(i) *Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the regional commissioner.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the district director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(4) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (see § 122.35).

(b) *Notice to Federal agencies.* If an aircraft is given permission to land at a landing rights airport, the Customs officer who granted the landing rights shall notify the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other interested Federal agency at once.

(c) *Payment of expenses.* The owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given. When permission to land is given to scheduled aircraft of a scheduled airline, no inspection charge is made except for the overtime expenses of Customs officers. (see § 24.16 of this chapter).

§ 122.35 Emergency or forced landing.

(a) *Application.* This section applies to emergency or forced landings made by aircraft when necessary for safety or the preservation of life or health, when such aircraft are:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice.* When an emergency or forced landing is made, notice shall be given:

(1) To the Customs officer at the intended place of first landing, nearest international airport, or nearest port entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make a full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers.* The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs.

(d) *Merchandise and baggage.* The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers arrive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail.* Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

§ 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and Customs officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure.

§ 122.37 Precleared aircraft.

(a) *Application.* This section applies when aircraft carrying crew, passengers and baggage, or merchandise which has been precleared pursuant to § 148.22 of this chapter at a location listed in § 101.5 of this chapter and makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice.* The aircraft commander or agent shall give written notice to the Customs office at:

(1) The intended place of unlading; and

(2) The place of preclearance.

(c) *Time of notice.* Notice shall be given within 7 days of the unscheduled or unintended landing unless other arrangements have been made in advance between the carrier and the district director.

§ 122.38 Permit and special license to unlade and lade.

(a) *Applicability.* Before any passengers, baggage, or merchandise may be unladen or laden aboard on arrival or departure of an aircraft subject to these regulations, a permit and/or special license to unlade or lade shall be obtained from Customs.

(1) *Permit to unlade or lade.* A permit is required to obtain Customs supervision of unlading and lading during official Customs duty hours.

(2) *Special license to unlade or lade.* A special license is required to obtain Customs supervision of unlading and lading at any time not within official Customs duty hours (generally, at night, Sundays or holidays).

(b) *Authorization required.* A permit or special license shall be required for each arrival and departure unless a term permit or special license has been granted. No permit or special license shall be issued unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(c) *Term permit or special license.* A term permit or special license may be issued covering all arrivals and departures during a period of up to one year, providing local arrangements have been made to notify Customs before services are needed. The notice shall specify the kinds of services requested, and the exact times they will be needed. No term permit or special license shall be issued, and any term permit or special license already issued shall be revoked, unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on Customs Form 3171, and shall be submitted to the district director for the district in which the unlading and lading will take place. The application shall be accompanied by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the district director may waive the requirement under paragraph (d) of this

section that either a bond or a cash deposit be made, if he is convinced the revenue is protected and that all Customs requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a bond on Customs Form 301 containing the appropriate bond conditions set forth in Subpart G of Part 113 of this chapter is on file. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the district director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the district director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10 on Customs Form 3171 shall be changed by adding the following words after the period of time indicated: "And automatic annual renewal thereof for so long as the bond is renewed and remains in effect."

Subpart E—Aircraft Entry and Entry Documents

§ 122.41 Aircraft required to enter.

All aircraft coming into the U.S. from a foreign area shall make entry under Subpart E except:

(a) Public and private aircraft; and

(b) Aircraft traveling from airport to airport in the U.S. under Subpart I, relating to residue cargo procedures.

§ 122.42 Aircraft entry.

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry*—(1) *First landing at international airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at international airport pursuant to §§ 122.34 or 122.35, the aircraft commander or agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

(d) *Exception to entry requirement.* Except for flights to Cuba (provided for in Subpart O of this part), an aircraft of a scheduled airline which stops only for refueling at the first place or arrival in the U.S. shall not be required to enter provided:

(1) That such aircraft departs within 24 hours after arrival;

(2) No cargo, crew, or passengers are off-loaded; and

(3) Landing rights at that airport as either a regular or alternate landing place shall have been previously secured.

§ 122.43 General declaration.

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under § 122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see § 122.48) may be filed in place of the general declaration, regardless of whether cargo is on board. The air cargo manifest shall state the following:

> I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.
>
> Signature ______________________
>
> (Aircraft Commander or Agent)

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under § 122.5. The form shall contain all required information, unless the information is given is some other manner under Subpart E of this part.

§ 122.44 Crew baggage declaration.

If an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in Subpart G, Part 148 of this chapter.

§ 122.45 Crew list.

(a) *When required.* A crew list shall be filed by all aircraft required to enter under § 122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

(1) On the general declaration in the column headed "Total Number of Crew"; or

(2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

§ 122.46 Crew purchase list.

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under Subpart G of Part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* If a crewmember enters articles for which a written crew declaration is not required (see Subpart G, Part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

(1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and

(2) The statement "Crew purchases as per attached crew declaration" appears on the general declaration or crew list.

§ 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement "Stores List Attached" must appear on the cargo manifest.

(c) *Contents*—(1) *Required listing.* The stores list shall include all of the following:

(i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;

(ii) Bonded merchandise arriving as stores;

(iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement "Domestic supplies and equipment and fuel for immediate flight only, except as noted" appears on the cargo manifest or on the separate stores

list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

§ 122.48 Air cargo manifest.

(a) *When required.* An air cargo manifest for all cargo on board shall be filed together with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a foreign country on the same through flight. Any cargo manifest already on board may be inspected. All articles on board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The cargo manifest shall be on Customs Form 7509. The form shall contain all required information, except that a more complete description of the cargo shipped under air waybills may be provided by attaching a copy of each master air waybill and, if a consolidated shipment, copies of the house air waybills to the cargo manifest. The statement "Cargo as per air waybills attached" shall appear on the cargo manifest when this is done. Each air waybill number shall also be listed on the cargo manifest.

(d) *Unaccompanied baggage.* Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited may be subject to seizure. Such unaccompanied checked baggage shall be added to the cargo list in columns under the following headings:

Check No.	Description	Where from	Destination	Name of examining officer	Disposition

The two columns, headed "Name of examining officer" and "Disposition," are provided on the cargo manifest for the use of Customs officers. Unaccompained unchecked baggage arriving as air express or freight shall be manifested as other air express or freight.

(e) *Accompanied baggage in transit.* This section applies when accompaned baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage while in transit through the U.S., the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

§ 122.49 Correction of air cargo manifest or air waybill.

(a) *Shortages*—(1) *Reporting.* Shortages (merchandise listed on the manifest or air waybill but not found) shall be reported to the district director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked "Shortage Declaration," and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in Part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* The aircraft commander or agent shall supply proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting.* Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the district director by the aricraft commander or agent. The report shall be made.

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked "Post Entry" and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

> I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.
>
> Signature ______________________
>
> (Aircraft Commander or Agent)

(d) *Notice by district director.* The district director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required.* A correction in the manifest or air waybill is not required if:

(1) The district director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable.* If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompained baggage for which a manifest or air waybill must be filed, sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply.

Subpart F—International Traffic Permit

§ 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

§ 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in § 122.1(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* If an aircraft covered by this section is entered as an imported article, and any applicable duty for the aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. In this instance, the aircraft commander must file a declaration that states the:

(1) Port where entry was made;

(2) Date duty, if any, was paid; and

(3) Number of the entry.

(c) *Aircraft not entered as imported article*—(1) *Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in § 122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

(i) Is used only for commercial purposes between the U.S. and foreign areas; and

(ii) Will leave the U.S. for a foreign destination in commercial use or carrying neither passengers nor cargo.

(2) *Treatment as an imported article.* Any aircraft covered by this section which was not entered as an imported article shall make entry if it:

(i) Is withdrawn from commercial use between the U.S. and foreign areas; or

(ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(3) *Aircraft damage and duty payment*—(i) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(ii) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commerical use and is not subject to entry or to duty as imported merchandise.

(iii) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft or any salvageable part of it is not exported, then:

(A) Entry is required to be made for the damaged aircraft or any salvageable part of it; and

(B) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

§ 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft for purposes of this subpart.

§ 122.54 Aircraft of foreign registry.

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for an international traffic permit when the aircraft;

(1) Is not an imported article; and

(2) Is ferried (proceeds carrying neither passengers nor cargo) from the airport of first arrival to one or more airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for discharge in the U.S., see Subpart I of this part).

(b) *International traffic permit.* The international traffic permit shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following information and must be approved by the appropriate Customs officer:

(1) Type of aircraft;

(2) Nationality and registration number of aircraft;

(3) Name and country of aircraft manufacturer;

(4) Name of aircraft commander;

(5) Country from which aircraft arrived;

(6) Name and location of airport where international traffic permit is issued;

(7) Date international traffic permit is issued;

(8) Name and location of airport to which aircraft is proceeding;

(9) Purpose of stay in the U.S.;

(10) Signature of Customs officer giving permit.

(c) *Permit on board.* The international traffic permit shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note the following information on the permit:

(1) Name and location of the airport;

(2) Date and arrival time;

(3) Purpose of the visit;

(4) Name and location of the next airport to be visited; and

(5) Date and time of departure.

(e) *Final airport.* The international traffic permit shall be given to the Customs officer in charge at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that the aircraft was properly inspected by Customs in the U.S.

(f) *Port of issue.* The international traffic permit shall be returned after final clearance to the district director at the port where the permit was issued, to be kept on file.

(g) *Enforcement.* Once the permit to proceed has been issued for an aircraft, the district director at the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the district director shall report the matter to the Customs agent in charge of the area for investigation.

Subpart G—Clearance of Aircraft and Permission To Depart

§ 122.61 Aircraft required to clear.

(a) All aircraft, except public and private aircraft, leaving the U.S. for a foreign area are required to clear if:

(1) Carrying passengers and/or merchandise for hire; or

(2) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

(b) Any aircraft used by members of air travel clubs are required to clear, and foreign aircraft traveling under a permit to proceed shall also clear.

§ 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR 30.1), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Office of Export Administration.* Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Office of Export Administration (Department of Commerce) is required for the aircraft under the Export Control Regulations (15 CFR Part 370). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State.* Aircraft not covered by Export Control Regulations are subject to the Department of State export licensing authority as set out in 22 CFR Parts 121 and 123. Such aircraft may depart from the U.S. only with the proper Department of State license.

§ 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft of scheduled airlines covered by this subpart.

(a) *Clearance at other than airport of final departure.* Aircraft may clear at each airport where merchandise and/or passengers are taken on board for transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (regardless of whether it is an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport.* Clearance or permission to depart may be requested at the Customs port of entry (regardless of whether it is an international airport) nearest the last departure airport, unless some other place is designated by the district director at that port.

§ 122.64 Other aircraft.

Clearance or permission to depart shall be requested by the aircraft commander or agent for aircraft covered by this subpart other than those of scheduled airlines. The request must be made to the district director at the Customs port of entry (regardless of whether it is an international airport) nearest the final departure airport, unless some other place is designated by the district director

§ 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart it must depart within 72 hours. The aircraft commander or agent shall report promptly to the district director if departure is delayed beyond or cancelled within 72 hours after the aircraft received clearance or permission to depart.

Subpart H—Documents Required for Clearance and Permission to Depart

§ 122.71 Aircraft departing with no commercial export cargo.

(a) *Application.* This section applies to aircraft departing for foreign territory with no export cargo, but not to those aircraft which are themselves being exported.

(1) Such aircraft may clear by telephone in advance with the district director nearest the departure place if departing empty or carrying only:

(i) Passengers for hire; or

(ii) Non-commercial cargo for which Shipper's Export Declarations are not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, shall be submitted to Customs:

I declare to the best of my knowledge and belief that there is no cargo on board this aircraft.

Signature ______________________________

(Aircraft Commander or Agent)

(b) *Timeliness.* The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo.

(c) *Documentation.* If clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

§ 122.72 Aircraft departing with commercial export cargo.

If an aircraft with export cargo leaves the U.S. for any foreign area, a general declaration, if required, an air cargo manifest and any required Shipper's Export Declarations, shall be filed in accordance with this subpart for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See § 122.79 for special requirements regarding shipments to U.S. possessions.

§ 122.73 General declaration and air cargo manifest.

(a) *General declaration*—(1) *Form.* The general declaration shall be on Customs Form 7507 and shall show all information required.

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the general declaration with the district director at the departure airport.

(3) *Exception.* A general declaration shall not be required if the air cargo manifest, Customs Form 7509, contains the statement shown in paragraph (b) of this section.

(b) *Air cargo manifest.*

(1) *Form.* The air cargo manifest shall be on Customs Form 7509, and shall show all information required. If a general declaration is not presented, the following statement, signed by the aircraft commander or agent, shall appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signature ______________________________

(Aircraft Commander or Agent)

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the air cargo manifest with the district director or the departure airport. Three copies of the air cargo manifest shall be filed if the aircraft is covered by § 122.77(b). The air cargo manifest must be filed in:

(i) Complete form, with all required Shipper's Export Declarations (see § 122.75); or

(ii) Incomplete form (pro forma) under § 122.74.

§ 122.74 Incomplete (pro forma) manifest.

(a) *Application.* Clearance or permission to depart may be given to an aircraft by the district director before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, except for aircraft bound for locations referred to in paragraph (b) of this section.

(b) *Exceptions.* An incomplete manifest will not be accepted:

(1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or

(2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign country listed in § 4.75 of this chapter.

In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with the district director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required Shipper's Export Declarations and a complete air cargo manifest shall be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments between the U.S. and Puerto Rico, the complete manifest (when required) and all Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure.

(3) *Shipments to U.S. possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure. See § 122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the 4-day bond period; or

(2) All required documents will be filed within the 7-day bond period.

Once all documents have been filed, a statement as required by § 122.75(b) shall be made.

§ 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest shall list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. If an item does not requires a Shipper's Export Declaration, it shall be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement "Cargo as per Air Waybill Attached" must appear on the air cargo manifest if this is done.

(2) *Direct departure.* This subsection applies only to direct departures of shipments requiring a Shipper's Export Declaration. A copy of each declaration may be attached to the air cargo manifest, and the number of each declaration shall be listed on the air cargo manifest in the column for air waybill numbers. The statement "Cargo as per export Declarations Attached" must appear on the manifest if this is done.

(b) *Statement required.* (1) When all required documents are ready for filing, the following statement must appear on the air cargo manifest, or on the general declaration form if an air cargo manifest is not required:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

(2) If an incomplete set of documents has been filed and is later completed, the following statement shall accompany the Shipper's Export Declarations and any required air cargo manifests:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. ________, Flight No. ________ cleared direct for ________, on ________ except cargo listed on any cargo manifest required to be filed for such flight.

Airline ______________________________

Authorized Agent ______________________________

§ 122.76 Shipper's Export Declarations and inspection certificates.

At the time of clearance, the aircraft commander or agent shall file with the district director at the departure airport any Shipper's Export Declarations required by the Bureau of Census (see § 122.62(a)). The aircraft commander or authorized agent also shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR Part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine or goats.

§ 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the district director to show that clearance is granted.

(b) *Scheduled aircraft.* If a scheduled aircraft clears at an airport which is not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed at the port by the district director at the port where clearance is obtained, and the second copy shall be attached to the first for use at subsequent U.S. ports.

§ 122.78 Entry or withdrawal for exportation or for transportation and exportation.

If a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show the following information for each entry or withdrawal:

(a) Number;

(b) Date; and

(c) Class of entry or withdrawal, as follows:

(1) Transportation and exportation;

(2) Withdrawal for transportation and exportation;

(3) Immediate exportation;

(4) Withdrawal for exportation; or

(5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where the merchandise is laden for exportation, shall also appear on the air cargo manifest.

§ 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico.* An air cargo manifest shall be filed for aircraft transporting cargo between the U.S. and U.S. possessions. Shipper's Export Declarations are not required for shipments from the U.S. or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the U.S., Puerto Rico, or another U.S. possession.

(b) *Puerto Rico.* This subsection applies when an aircraft carries merchandise on a direct flight between the U.S. and Puerto Rico. If the requirements contained in Subpart I, relating to residue cargo procedures, have been satisfied, an air cargo manifest is required only for:

(1) Merchandise transported as cargo for which a Shipper's Export Declaration is not required; or

(2) Cargo for which a Shipper's Export Declaration cannot be filed on time. (See 15 CFR 30.21).

Any required air cargo manifest or Shipper's Export Declarations shall be filed with the district director at the point of departure.

§ 122.80 Verification of statement.

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

§ 122.81 Application.

(a) *Aircraft arriving with cargo.* Aircraft arriving in the U.S. from a foreign area with cargo shown on the manifest to be traveling to other airports in the U.S. or to foreign areas may proceed under the provisions of this subpart.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, has been filed and covers the aircraft.

§ 122.82 Bond requirements.

A bond on Customs Form 301, containing the bond provisions set forth in Subpart G of Part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the district director at the entry airport.

§ 122.83 Forms required.

(a) *Traveling general declaration and manifest.* When applying for examination and release from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest*—(1) *Crew purchase and stores list.* The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list.* A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the aircraft with his or her purchase at the first entry port.

The crew member's declaration must be attached at the port where the articles listed on the declaration receive clearance.

(c) *Abstract general declaration and manifest.* The abstract general declaration and manifest shall consist of one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet examined and released by Customs or any other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed.* A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

Permit to Proceed From one Airport to Another

Airport of Departure ____________________
Date ____________________

Permission is hereby given aircraft __________ to proceed to __________

(Next Domestic Airport)

The aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Customs ________

Number of passengers not cleared by Customs ________

Number of pages of the traveling manifest ________

____

(Customs Officer and Title)

Declaration on Entry of Aircraft at Following Airport

Airport of Arrival ____________________
Date ____________________

I, __________, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of ________, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

____

(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

(1) The abstract general declaration;

(2) The traveling general declaration when an abstract general declaration is not required; or

(3) A separate sheet of paper.

(e) *Permit to proceed for nonscheduled aircraft.* For each permit to proceed issued to a nonscheduled aircraft carrying residue cargo the transit air cargo manifest procedures shall be followed and a numbered Customs Form 7512–C shall be filled out and filed. The number on the form shall be placed in the upper right hand corner of the permit to proceed. The original copy of Customs Form 7512–C shall be forwarded as required by the issuing port and the duplicate must be attached to the permit and given to the aircraft commander. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed and Customs Form 7512–C (duplicate) to Customs.

(f) *Use of form.* When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the Customs officer in charge at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

§ 122.84 Intermediate airport.

(a) *Application.* The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

(b) *Entry.* When an aircraft arrives at the next airport, the aircraft commander or agent shall make entry by filing the:

(1) Abstract general declaration and manifest;

(2) Traveling general declaration and manifest; and

(3) Permit to proceed.

The *Declaration on Entry of Aircraft at Following Airport,* found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations.* The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the Customs officer in charge and are kept at the airport.

(d) *Departure.* When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not yet cleared by Customs or another interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under paragraph (c) of this section, shall be returned to the aircraft commander or agent for filing at the next entry airport.

§ 122.85 Final airport.

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

§ 122.86 Substitution of aircraft.

(a) *Application.* The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors which prevent an aircraft on arrival of the flight at the first port from continuing inbound to interior ports scheduled for that flight.

(b) *Clearance and entry.* Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification.* An identification of all substitute aircraft shall be clearly made on all clearance and entry documents.

(d) *Transporting cargo*—(1) *Forwarding.* The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions.* All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo.

§ 122.87 Other requirements.

Section 4.85 of this chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in this subpart.

§ 122.88 Aircraft carrying domestic (stopover) passengers.

Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are continuing on the flight to their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. The carriers requirements are as follows:

(a) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(b) A $2.00 charge must be paid for each revenue producing domestic (stopover) passenger reinspected in the U.S. (see § 24.12 of this chapter).

(c) Arrangements must be made for the checked baggage of all passengers requiring inspection on the previously described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(d) All stopover passengers shall be notified in writing, prior to boarding, that they will be subject to full reinspection by Customs. This written notification shall contain the following language: "Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry."

(e) Domestic (stopover) passengers shall be provided a Customs declaration identified by the words "Domestic Flight". The domestic (stopover) passenger is only required to complete items 1–4 on that declaration.

(f) The carrier shall present to Customs, as otherwise required by law, the permit to proceed and/or the general declaration, clearly stating the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final) where an inspection of passengers is to take place.

Subpart J—Transportation in Bond and Merchandise in Transit

§ 122.91 Application.

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

(a) For immediate transportation to another airport without appraisement; or

(b) For transportation through the U.S. and later exportation by aircraft.

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512.* Customs Form 7512 or other Customs approved documents shall be used for both entry and manifest. Three copies of the form or other document are required to be filed with Customs at the port of origin for merchandise for immediate transportation without appraisement. Four copies of the form or other document are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a) of this chapter). Each copy shall be signed by the carrier or its authorized agent.

(2) *Customs Form 7512–C.* The "Origin" copy of Customs Form 7512–C shall be filed with Customs Form 7512, and its number shall be placed on all copies of Customs Form 7512.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document, and the duplicate copy of Customs Form 7512–C shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs Form 7512 and one copy of Customs Form 7512–C or other Customs approved document shall be delivered to the carrier.

(3) *After delivery.* After delivery, the forms or other document shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond, and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(d) *Split shipment—(1) Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512 or other Customs approved document) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* If any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment shall state that the rest of the shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be used as notice of each arrival at the destination airport.

(e) *Transhipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. If merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in § 18.4(e) of this chapter, to each bonded package.

§ 122.93 Procedure at destination or exportation airport.

(a) *Delivery to district director.* When a bonded shipment arrives at the destination or exportation airport, the aircraft commander or agent shall deliver one copy of the entry and manifest with Customs Form 7512–C attached (Customs Form 7512 or other Customs approved document) covering the shipment to the district director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the district director.

(b) *Delivery to consignee.* When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in § 141.11(a)(4) of this chapter.

§ 122.94 Certificate of lading for exportation.

(a) *Required filing.* This section applies to merchandise entered for transportation and exportation by aircraft. A certificate of lading for exportation, Customs Form 7512 with Customs Form 7512–C attached, or other Customs approved document (see § 122.93 of this subpart) shall be filed when the merchandise reaches the final departure airport. The form shall be filled out and signed at the place where aircraft clearance for the merchandise is given.

(b) *Clearance not at place of final departure.* If an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or its authorized agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

§ 122.95 Other provisions.

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of merchandise under this subpart unless stated otherwise.

Subpart K—Accompanied Baggage in Transit

§ 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in-transit procedures.

When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in § 122.48.

§ 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the district director.

(b) In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

§ 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through, or from, the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See Subparts I and J of this part, and Parts 18 and 123 of this chapter.)

§ 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* "Transit air cargo" is cargo, including manifested baggage, transported under the requirements of this subpart.

(b) *Port of arrival.* The "port of arrival" is the port in the U.S. where imported cargo must be documented for further transportation under this subpart.

(c) *Transfer or transferred.* "Transfer or transferred" means the change of documentation of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by air or surface movement to the port of destination.

(d) *Transit air cargo manifest.* "Transit air cargo manifest" is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

§ 122.113 Form for transit air cargo manifest procedures.

A manifest on Customs Form 7509 is required for transit air cargo, as provided in § 122.48(c) of this part. The words "Transportation Entry and Transit Air Cargo Manifest" shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

§ 122.114 Contents.

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Shipments shown on manifest*—(1) *Country of exportation.* Each transit air cargo manifest sheet may list:

(i) Only air cargo shipments from one exporting country, with the name of the country shown in the heading; or

(ii) Air cargo shipments from several exporting countries, with the name of the exporting country shown in the "Nature of Goods" column.

(2) *Shipment to same port.* Each transit air manifest sheet may list only those shipments manifested by way of the port of arrival for:

(i) The same Customs port of destination;

(ii) The same Customs port for later exportation; or

(iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

(1) The foreign port of lading;

(2) The date the aircraft arrived at the port of arrival;

(3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Corrections.* If corrections in the route shown on the original manifest for the cargo are required at the port of arrival to make a manifest sheet workable as a transit air cargo manifest, the district director at the port of arrival may allow the corrections.

§ 122.115 Labeling of cargo.

A warning label, as required by § 18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival before the cargo leaves the port of arrival.

§ 122.116 Identification of manifest sheets.

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander or its authorized agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

§ 122.117 Requirements for transit air cargo transport.

(a) *Transportation*—(1) *Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in paragraph (b) of this section. The receipt may be given only to an airline which:

(i) Is a common carrier for the transportation of bonded merchandise; and

(ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, as provided in § 18.25 of this chapter.

(b) *Receipt*—(1) *Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the lay order period, or an authorized extension period (see § 4.37 of this chapter).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo manifest, clearly signed and dated if required, in the following form:

> Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

Name of carrier (or exporter)

Attorney or agent of carrier (or exporter)

Date

(c) *Responsibility for transit air cargo*—(1) *Direct exportation.* The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(2) *Other than direct exportation.* When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(3) *Carting.* When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under Part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines.* An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

(i) Give a receipt for the air cargo;

(ii) File an appropriate bond; and

(iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments.* A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

(1) By § 122.92(d) under a single combined entry and manifest;

(2) By § 122.118(d); or

(3) By § 122.119(e), permitting the use of a surface carrier for transport.

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See Subpart J).

§ 122.118 Exportation from port of arrival.

(a) *Application.* Transit air cargo may be transferred for exportation from any port of arrival under this section. The district director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time.* Transit air cargo shall be exported from the port of arrival within 10 days from the date the exporting airline receives the cargo. After the 10-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy.* The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt on the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy.* The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy.* The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting airline's receipt for the cargo, aircraft number, flight number, and the date.

(d) *Direct export on different aircraft.* Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. If this occurs, two additional copies of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* If shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by § 18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., overages) which has been post entered under § 122.49(b) may be exported from the port of origin under this subpart. If this occurs, four copies of the air cargo manifest, Customs Form 7509, marked "Post Entry", shall be provided. All requirements of § 122.44(b) shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in § 122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required license must be placed under constructive Customs custody in a special area of the airline's terminal until the license is obtained.

§ 122.119 Transportation to another U.S. port.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The district director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 15 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Four copies of the transit air cargo manifest, including a carrier manifest copy, and two copies of Customs Form 7512–C (original and duplicate) shall be filed by the airline giving a receipt for moving the cargo shipments to their destination.

(1) *Permit copy.* This copy is used and kept by Customs at the port of arrival.

(2) *Customs Form 7512–C (duplicate).* This copy accompanies the transit air cargo to the port of destination.

(d) *Failure to deliver on time*—(1) *Procedure.* If transit air cargo does not arrive at the destination port on time, the district director at the port of arrival shall take action as provided in §§ 18.6 and 18.8 of this chapter. The amount of duty and tax shall be decided at the port of arrival on the basis of information:

(i) On the permit copy kept at the port of arrival; and

(ii) Obtained from the carriers as necessary.

The district director at the port of arrival shall notify the airline that presented a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that presented a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the district director at the port of arrival. The answer shall provide any information or documents related to the value and description of the cargo involved that the receipting airline and the importing airline can produce.

(e) *Surface movement to port of destination.* If an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

(1) The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement;

(2) The description of the cargo on the transit air cargo manifest must be complete;

(3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface carrier; and

(4) The requirements of § 122.114(b) must be followed.

§ 122.120 Transportation to another port for exportation.

(a) *Application.* Air cargo may be transferred as transit air cargo at the port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision*—(1) *From port of arrival to exportation port.* The district director at the port of arrival shall order any supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and to enforce any other Federal agency requirements, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest and a Customs Form 7512–C (original and duplicate) shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as "permit" and "control" copies, and Customs Form 7512–C (original) shall be filed with Customs at the port of arrival. The duplicate shall accompany the shipment as provided in § 122.119(c)(2) of this part. Filing shall be made when the arriving aircraft enters, or before the lay order period ends, by the airline which presents a receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies, marked separately as "exportation" and "clearance" copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall then be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest in one storage space. This storage space shall be separate from the area in which special shipments which require a license under paragraph (g) of this section are stored.

(g) *Export license*—(1) *Review.* A Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information inadequate.* If the manifest information is not enough for Customs to determine that a license or other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When license or other requirement applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline's cargo terminal.

(h) *Filing of exportation and clearance copies*—(1) *Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show:

(i) The aircraft number;

(ii) The aircraft flight number; and

(iii) The date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Forms 7512 and 7512–C are required for each cargo shipment listed:

(1) For transportation and exportation under Subpart J of this part; or

(2) For direct exportation under § 18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, § 122.118(d) applies.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 40 days, the district director at the port of arrival shall take action as provided in § 122.119(d).

Subpart M—Aircraft Liquor Kits

§ 122.131 Application.

(a) *Liquor and tobacco.* Subpart M applies to:

(1) Duty-free and tax-free liquor and tobacco; and

(2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft.* Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

(1) Duty-free and tax-free liquor and tobacco withdrawn from bond under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309); or

(2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

§ 122.132 Sealing of aircraft liquor kits.

(a) *Sealing required.* Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be kept under seal while on the ground unless taken to an authorized airline in-bond liquor storeroom.

(b) *Exception.* When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

(1) The liquor kits are kept on board the aircraft; and

(2) The district director finds that sealing is not required for revenue protection.

(c) *Seals to be used.* Aircraft liquor kits shall be sealed with serially numbered, Customs approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in Part 24 of this chapter. A small number of seals may be obtained from the district director.

(d) *Removing seals.* When sealed liquor kits are on the ground, the Customs seals may be broken only by:

(1) A Customs officer; or

(2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing.* When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an approved seal.

§ 122.133 Stores list required on arrival.

(a) *When required, contents.* Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores list shall state for each type of liquor and bottle size:

(1) Number of full bottles;

(2) Number of partially filled bottles; and

(3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies.* One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

(1) One copy shall be filed with the inward cargo manifest; and

(2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear.* If an aircraft is not required to enter and/or clear:

(1) One copy shall be given to the Customs officer upon arrival; and

(2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.* When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by crew members under Customs supervision.

§ 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the district director, may be:

(1) Kept on board the aircraft;

(2) Removed and replaced upon the aircraft; or

(3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseal the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by this section. The lading shall be done under any supervision the district director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

§ 122.135 When airline has in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board an aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be removed and restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the district director. The inventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the district director:

(1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and

(2) Signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall immediately report to the district director any:

(1) Evidence of seal tampering;

(2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and

(3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits*—(1) *Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done only under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in § 122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

§ 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax-paid stock and added to liquor kits. The outgoing stores list shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of copies.* The two copies of the outgoing stores list shall be used as follows:

(1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and

(2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in § 122.133(c).

In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See § 122.133(c)).

§ 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

Subpart N—Flights to and From the U.S. Virgin Islands

§ 122.141 Definitions.

Under Subpart N, the following definitions apply:

(a) *United States.* The term "U.S." includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term "foreign area" means any area other than the several States, the District of Columbia and Puerto Rico.

§ 122.142 Flights between the U.S. Virgin Islands and a foreign area.

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the U.S. Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in the U.S. from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

§ 122.143 Flights from the U.S. to the U.S. Virgin Islands.

(a) *In general.* Aircraft on flights from the U.S. to the U.S. Virgin Islands are governed by the provisions of this part that apply to aircraft on a flight within the U.S.

(b) *Bureau of the Census.* When Bureau of the Census regulations (15 CFR Part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the district director. Permission to depart shall not be given unless:

(1) A complete manifest and Shipper's Export Declarations as required by 15 CFR Part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.24 is filed and the complete manifest and Shipper's Export Declarations are filed within 7 business days after departure.

§ 122.144 Flights from the U.S. Virgin Islands to the U.S.

(a) *Aircraft not inspected.* This paragraph applies to aircraft departing from the U.S. Virgin Islands and arriving in the U.S., without having been inspected prior to departure.

(1) *On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the U.S. Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in the U.S. from a foreign area.

(b) *Supervision.* When aircraft are inspected by Customs in the U.S. Virgin Islands, the district director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S.:

(i) Of domestic origin; or

(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding carrying neither passengers nor cargo, or with cargo and/or passengers solely from the U.S. Virgin Islands.

Two copies of the certificate shall be given to the inspecting Customs officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

(i) Of foreign origin;

(ii) Not duty paid; and

(iii) Proceeding carrying neither passengers nor cargo.

The permit to proceed, as required by Subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding carrying neither passengers nor cargo. The permit to proceed, as required under Subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under Subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

Subpart O—Flights to and From Cuba

§ 122.151 Definitions.

Under this subpart, the following definitions apply:

(a) *United States.* The term "U.S." includes the several States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(b) *Cuba.* The term "Cuba" does not include the Guantanamo Bay Naval Station.

§ 122.152 Application.

This subpart applies to all aircraft entering or departing the U.S. to or from Cuba except public aircraft. Public aircraft are covered by Subpart P.

§ 122.153 Limitations on airport of entry or departure.

The owner or person in command of any aircraft clearing the U.S. for, or entering the U.S. from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, shall clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida, and comply with the requirements in this part unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida.

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba shall give advance notice of arrival.

(b) *Procedure for giving advance notice of arrival.* The commander of an aircraft covered by this section shall give the advance notice of arrival not less than one (1) hour before crossing the U.S. coast or border. Notice shall be given either:

(1) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration); or

(2) Directly to the Customs officer in charge at the Miami International Airport, Miami, Florida.

(c) *Contents of notice.* The advance notice of arrival shall state:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Number of U.S. citizen passengers;

(4) Number of alien passengers;

(5) Place of last foreign departure;

(6) Estimated time and location of crossing the U.S. coast or border; and

(7) Estimated time of arrival.

§ 122.155 Document to be presented upon arrival.

Upon arrival, the aircraft commander shall present:

(a) A manifest of all passengers on board, as required by the U.S. Immigration and Naturalization Service pursuant to 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer;

(b) The documents required by Subpart E of this part.

§ 122.156 Release of passengers.

No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart before the passengers are released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

§ 122.157 Documents required for clearance.

As a condition precedent to clearance, the aircraft commander shall present to Customs:

(a) The documents required by Subpart H of this part; and

(b) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19 or a license issued by the Department of State, as provided in 22 CFR Part 123.

§ 122.158 Other entry and clearance requirements.

All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this subpart.

Subpart P—Public Aircraft [Reserved]

Subpart Q—Penalties

§ 122.161 In general.

Except as provided in § 122.14, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to a civil penalty of $5,000 as provided by 49 U.S.C. App. 1474, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival as required in which case the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under Part 171 of this chapter.

§ 122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

(1) The required notice and explanation are not made in time;

(2) The district director is not satisfied that the differences were caused by clerical error or other mistake;

(3) There has been a loss of revenue to the U.S.; or

(4) The district director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, "clerical error or other mistake" means a non-negligent, inadvertant, or typographical mistake, made when the manifest is prepared, assembled or submitted.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

(1) Shortage in delivery;

(2) Irregular delivery; or

(3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise.* The district director shall determine the value of merchandise for assessment purposes based on the following factors:

(1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and

(2) Other information available to the district director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the district director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. App. 1508(b)) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term "foreign civil aircraft" includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Carrier Rulings Branch. Liability should not be assessed under 49 U.S.C. App. 1471 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties.* Except as otherwise provided, any aircraft pilot violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

(1) Advance notification of arrival;

(2) Report of arrival;

(3) Landing of aircraft;

(4) Presentation of documentation;

(5) Departure from the port, place, or airport of arrival without authorization; or

(6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties.* Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, that person shall be subject to an additional fine as set forth in 19 U.S.C. 1436 and described in paragraph (c) of this section.

(c) *Civil and criminal penalties described*—(1) *Civil penalty.* The pilot of any aircraft who fails to comply with the requirements of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any aircraft used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the pilot of any aircraft who intentionally fails to comply with the requirements of this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the aircraft is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than the equivalent of vessel sea stores, is imported or brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

§ 122.167 Aviation smuggling.

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than $10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section:

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxilliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

Conforming Amendments to the Regulations

Parts 4, 10, 18, 24, 123, and 162, Customs Regulations (19 CFR Parts 4, 10, 18, 24, 123, and 162), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103.

§ 4.30 [Amended]

2. Section 4.30(l) and (m) is amended by removing the references to "Part 6", and by inserting, in their places, references to "Part 122".

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

§ 10.41 [Amended]

2. Section 10.41(c) is amended by removing the reference to "Part 6", and by inserting, in its place, a reference to "Part 122".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1551, 1552, 1553, 1624.

§ 18.2 [Amended]

2. Section 18.2(c)(2) is amended by removing the reference to "§ 6.21" and inserting, in its place, a reference to "§ 122.118".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624; 31 U.S.C. 9701.

§ 24.12 [Amended]

2. Section 24.12(d) is amended by removing the reference to "§ 6.9(f)" and inserting, in its place, a reference to "§ 122.86".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624.

§ 123.0 [Amended]

2. Section 123.0 is amended by removing the reference to "Part 6" and inserting, in its place, a reference to "Part 122".

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

§ 162.72 [Amended]

2. Section 162.72(b)(3)(ii) is amended by removing the reference to "§ 6.11" and inserting, in its place, a reference to "§ 122.161".

3. Section 162.72(c) is amended by removing the reference to "§ 6.7(h)(5)" and inserting, in its place, a reference to "§ 122.162".

William von Raab,
Commissioner of Customs.

Approved: March 8, 1988.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 88–5723 Filed 3–21–88; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 4

[T.D. 88–15]

Customs Regulations Amendment Removing Ecuador From the List of Countries Entitled to Special Tonnage Tax Exemption

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by removing Ecuador from the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State has informed Customs that U.S. vessels have been paying lighthouse fees in Ecuadorian ports since at least 1983, in apparent violation of a reciprocal agreement under which the vessels of neither country would be assessed such duties. Exemption from the assessment of such duties is a privilege which is extended to vessels of countries which extend such privileges to U.S. vessels. Since U.S. vessels are no longer exempt from special tonnage fees and light money in Ecuador, the privileges regarding exemption from the payment of such duties at U.S. ports will no longer be extended to vessels registered in Ecuador.

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof, satisfactory to the President, that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S., and from payment of light money.

Ecuadorian ships have been exempt as the result of a finding, based upon reciprocity, issued in 1944. By letter, dated January 12, 1988, the Department of State informed the U.S. Customs Service that the U.S. Embassy in Quito, Ecuador had reported it had been advised that U.S. vessels have been paying lighthouse fees in Ecuadorian ports since 1983. This is in violation of the requirement for reciprocal treatment, since Ecuadorian vessels were not being charged such fees at U.S. ports. Because of this lack of reciprocity, the Department of State recommended that Ecuador be removed from the list of nations whose vessels are exempted from payment of special tonnage taxes and light money. On February 4, 1988, the Director, Office of Regulations and Rulings of the U.S. Customs Service determined that, as of that date, Ecuador should be deleted from the list in § 4.22.

By virtue of the authority vested in the President by section 4228 of the revised statutes, as amended (116 U.S.C. 141), the President delegated the authority to grant the exemption from payment of special tonnage tax and light money to the Secretary of the Treasury by E.O. 10289, September 17, 1951, as amended by E.O. No. 10882, July 18, 1960 (3 CFR 1959–1960 Comp., Ch. II). By Treasury Department Order 165025, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 4.22 and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office Regulations and Rulings, who then redelegated it to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State, as described above, it has been determined that the U.S. is in possession of satisfactory evidence regarding the

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assessment of lighthouse fees on U.S. vessels by the nation of Ecuador in violation of an agreement to the contrary. Therefore, Ecuador will be deleted from the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of February 4, 1988.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

The Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Effective Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs inspection and duties, Harbors, Vessels.

PART 4—VESSELS IN FOREIGN DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority for § 4.22 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624, 46 U.S.C. 3, 2103.

Section 4.22 also issued under 46 U.S.C. 121, 128, 141.

§ 4.22 [Amended]

2. Section 4.22, Customs Regulations (19 CFR 4.22), is amended by removing "Ecuador" from the list of nations entitled to exemptions from special tonnage taxes and light money.

Date: March 14, 1988.

B. James Fritz,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 88-6106 Filed 3-21-88; 8:45 am]

BILLING CODE 9107-37-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Amendments to the Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing the approval of a proposed amendment submitted by the State of Indiana as a modification to its permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment consists of revisions to the Indiana program pertaining to the removal and segregation of topsoil at both surface and underground mining sites. This action is in response to OSMRE's imposition of a required amendment at 30 CFR 914.16(d) to delete the inclusion of the term "permanent impoundments" from the listings of those areas for which topsoil need not be removed.

EFFECTIVE DATE: March 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204. Telephone (317) 269-2609 or (FTS) 331-2609.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The general background on the Indiana submission and the approval process, as well as the Secretary's findings, the disposition of comments and an explanation of the conditions of approval can be found in the July 26 1982 **Federal Register** (47 FR 32107). Other actions concerning the approval, subsequent program amendments, and required amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Proposed Amendment

In 1985, OSMRE determined that "permanent impoundments" would not be considered minor disturbances and that topsoil from such sites must be removed and salvaged (50 FR 20206, May 15, 1985). As a result, a required program amendment was imposed on the Indiana program to remove the term "permanent impoundments" from the listings of sites for which topsoil need not be removed.

By letter dated April 10, 1987 (Administrative Record No. IND-0482), the Indiana Department of Natural Resources submitted to OSMRE, pursuant to 30 CFR 732.17, a proposed State program amendment for approval in response to the requirements at 30 CFR 914.16(d). Indiana proposed to amend 310 IAC 12-1-12.5(a)(3)(i) and 310 IAC 12-5-78.1(a)(3)(i) pertaining to topsoil removal at surface and underground coal mine sites, respectively. The amended rules delete the term "permanent impoundments" from the list of sites from which topsoil need not be removed.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Indiana on April 10, 1987, meets the requirements of SMCRA and 30 CFR Chapter VIII. Removal of the term "permanent impoundments" from the lists of sites from which topsoil need not be removed renders the Indiana provisions no less effective than the Federal rules at 30 CFR 816.22.

IV. Public Comment

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. No substantive comments were received.

On July 9, 1987, OSMRE published a notice of the receipt of the amendment and invited public comment on the adequacy of the proposed amendment in the **Federal Register** (52 FR 25887). The notice stated that a public hearing would be held only if requested. Since there were no requires for a hearing, a hearing was not held. The comment period closed on August 10, 1987, with no public comments received.

V. Director's Decision

Based on the findings, the Director is approving the amendment to the Indiana program as submitted on April 10, 1987. The Director is amending § 914.15 or 30 CFR Chapter VII to implement this decision. In addition, the required program amendments section at 30 CFR 914.16(d) is being removed to reflect the fulfillment of the requirement amendments.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no evironmental impact statement need be prepared on this rulemaking.

2. *Compliance with the National Environmental Policy Act:* the Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need by prepared on this rulemaking.

2. *Compliance with Executive Order No. 12291:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. *Compliance with the Regulatory Flexibility Act:* The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 14, 1988.

Robert E. Boldt,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Paragraph (r) is added to § 914.15 to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(r) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on April 10, 1987, are approved effective March 22, 1988: amendments to the Indiana regulations at 310 IAC 12-5-12.1(a)(3)(i) and 310 IAC 12-5-78.1(a)(3)(i) concerning removal of the term "permanent impoundments" from the listings of sites for which topsoil need not be removed.

* * * * *

§ 914.16 [Amended]

3. Section 914.16 is amended by removing paragraph (d) in its entirety.

[FR Doc. 88-6174 Filed 3-21-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Department of Defense.

ACTION: Final rule amendment.

SUMMARY: The Department of Defense issued 32 CFR Part 40a which was printed in the **Federal Register** on Tuesday, December 22, 1987 (52 FR 48431).

This amendment is made to correct an administrative error submitted.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 40a

Government procurement.

Accordingly, 32 CFR Part 40a is amended to read as follows:

PART 40a—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 2307.

§40a.1 [Amended]

2. In § 40a.1, change "Morrison Knudsen Corp." to "Morrison Knudsen Co., Inc."

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1988.

[FR Doc. 88-6227 Filed 3-21-88; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a document published on Friday, March 11, 1988. That document concerned "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments".

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller Policy Division (202) 646-3717.

In FR Doc. 88-5251 beginning on page 8034 in the issue for Friday, March 11, 1988, make the follow correction. On page 8078, in the second column, the sixth paragraph is corrected to read "Title 44 of the Code of Federal Regulations is amended by adding Part 13 as set forth at the end of this document."

Arthur E. Curry,

Chief, Policy Division.

Date: March 16, 1988.

[FR Doc. 88-6170 Filed 3-21-88; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822,1823, 1910, 1941, 1942, 1943, 1944, 1945, 1951, 1955, and 1965

Use of Certification Statements in Collection of Debt by the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to add a new requirement concerning the use of applicant certification statements. This action is necessary to comply with OMB Circular A–129, Subject: Managing Federal Credit Programs. The intended effect is to establish procedure to ensure that applicants for Federal loans are aware of debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

DATE: Comments must be submitted on or before May 23, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, FmHA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Norma Weetman, Chief, Management Analysis Branch, Financial and Management Analysis Staff, Farmers Home Administration, Room 4929, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475–3859.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372 which required intergovernmental consultation with State and local officials.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under: 10.404 Emergency Loans; 10.405 Farm Labor Housing Loans and Grants; 10.406 Farm Operating Loans; 10.407 Farm Ownership Loans; 10.410 Low Income Housing Loans; 10.411 Rural Housing Site Loans; 10.414 Resource Conservation and Development Loans; 10.415 Rural Rental Housing Loans; 10.416 Soil and Water Loans; 10.417 Very Low-Income Housing Repair Loans and Grants; 10.418 Water and Waste Disposal Systems Loans; 10.419 Watershed Protection and Flood Prevention Loans; 10.421 Indian Tribes and Tribal Corporation Loans; and 10.423 Community Facilities Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it requires applicants only to read and to acknowledge a list of actions that the Government can take to collect delinquent debt.

Background

OMB Circular A–129 requires that Federal Agencies must use Certification Statements during the loan application process to notify applicants about the Federal Government's debt collection policies. Therefore, FmHA proposes to amend its regulations to require that the County Suprevisor or District Director must review a certification statement with applicants for insured loans and that the applicant must sign and date the certification statement to show that the applicant is aware of and understands the debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

List of Subjects

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative Practice and Procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1965

Administrative practice and procedure, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.271 [Amended]

2. Section 1822.271(e) is amended by adding the following entry to the list of forms after the Application Letter and Attachments and before the Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority):

Form No.	Name of form or document	Total No. of copies	Signed by borrower	No. for loan docket	Copy for borrower
*	*	*	*	*	*
FmHA 1910–11.	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	2–O&C	1–O	1–C
*	*	*	*	*	*

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

3. The authority citation for Part 1823 is added to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 25 U.S.C. 490, 7 CFR 2.23, 7 CFR 2.70.

Subpart N—Loans to Indian Tribes and Tribal Corporations

Exhibit A [Amended]

4. Exhibit A, Section 1 is amended by adding the following phrase to the list of forms after Form AD 621 and before Form FmHA 442–12:

"Form FmHA 1910–11: Aplicant Certification, Federal Collection Policies for Consumer or Commercial Debts. (O & 1C—Sign O)"

PART 1910—GENERAL

5. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

6. Section 1910.8 is amended by adding paragraph (f) to read as follows:

§ 1910.8 Reaching an understanding.

* * * * *

(f) *Use of Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* Before loan closing, all insured Single Family Housing (502 and 504) and Farmer Program loan applicants will have Form FmHA 1910–11 reviewed with them by the County Supervisor, and all insured Multi-Family Housing and Community Program loan applicants will have Form FmHA 1910–11 reviewed with them by the Loan Approval Official (District Director or State Director, as appropriate.) Form FmHA 1910–11 explains collection policies that will be taken by FmHA to recover delinquent or defaulted debt on insured loans. Form FmHA 1910–11 will be signed and distributed in accordance with the Forms Manual Insert. The applicant certification statement does not constitute a notification under the Debt Collection Act or the Deficit Reduction Act.

PART 1941—OPERATING

7. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

Exhibit A [Amended]

8. Exhibit A is amended in item A. APPLICANT INTERVIEW, by adding the following entry to the list of application processing forms after Form FmHA 410–1 and before Form FmHA 1910–5.

Form No.	Name	
*	* * *	*
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	(X)
*	* * *	*

PART 1942—ASSOCIATION

9. The authority for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989, 16 U.S.C. 1005, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Community Facilities Loans

10. Section 1942.2 is amended by adding a new paragraph (a)(2)(v) to read as follows:

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MI

§ 1942.2 Processing applications.

(a) * * *

(2) * * *

(v) The District Director will review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. The applicant must sign and date the form after this review. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER, AND RECREATION

11. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.32 [Amended]

12. Section 1943.32 (a) is amended by adding the following entry to the list of forms after Form FmHA 410–1 and before Form FmHA 410–8:

FmHA Form No.	Name of form	Total of No. of copies	Signed by borrower [1]	Loan docket [1]	Copy for borrower [1]
	* * * * *				
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	2–O&C	1–0	1–C
	* * * * *				

[1] O=Original; C=Copy.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.82 [Amended]

13. Section 1943.82(a) is amended by adding the following entry to the list of forms after Form FmHA 410–1 and before Form FmHA 410–8:

FmHA Form No.	Name of form	Total of No. of copies	Signed by borrower [1]	Loan docket [1]	Copy to borrower [1]
	* * * * *				
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	2–O&C	1–0	1–C
	* * * * *				

[1] O=Original; C=Copy.

* * * * *

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

§ 1943.122 [Amended]

14. Section 1943.132(a) is amended by adding the following entry to the list of forms after Form FmHA 410–1 and before Form FmHA 410–8:

FmHA Form No.	Name of form	Total of No. of copies	Signed by borrower [1]	Loan docket [1]	Copy to borrower [1]
	* * * * *				
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	2–O&C	1–0	1–C
	* * * * *				

[1] O=Original; C=Copy.

PART 1944—HOUSING

15. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23, 7 CFR 2.70.

§ 1944.30 [Amended]

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

16. Section 1944.30(a) is amended by reading the following entry to the list of forms after Form FmHA 410–4 and before Form FmHA 1944–12:

Form No.	Name of form	Total of No. of copies	Signed by borrower [1]	Loan docket [1]	Copy for borrower [1]
	* * * * *				
FmHA 1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	[1,2] 2	[1] 1	[2] 1
	* * * * *				

[1] Original. [2] C=Copy.

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* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.171 [Amended]

17. Section 1944.171(d) is amended by reading the following entry to the list of forms after Form AD–625 and before Exhibit A–1:

Form No.	Name of form or document	Total No. of copies	Signed by borrower [1]	No. for docket [1]	Copy for borrower [1]
	* * * * *				
FmHA 1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	2–O&C	1–0	1–C
	* * * * *				

Subpart J—Section 504 Rural Housing Loans and Grants

18. Section 1944.467 is amended by revising paragraph (a), by redesignating paragraphs (g)(2) and (g)(3) as (g)(3) and (g)(4) and by adding a new paragraph (g)(2) to read as follows:

§ 1944.467 Processing applications.

(a) *Application form.* Application for Section 504 loans and grants will be made on Form FmHA 410–4, "Application for Rural Housing Loans Assistance (Non-Farm Tract)," and processed in accordance with Subpart A of Part 1910 of this chapter.

* * * * *

(g) * * *

(2) Review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with applicants for loans.

* * * * *

PART 1945—EMERGENCY

19. The Authority Citation for Part 1945 is added to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.73, 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Exhibit A [Amended]

20. In Exhibit A, paragraph III A 5 is amended by adding the following entry to the list of forms after Form FmHA 410–1 and before Form FmHA 1910–5:

Form No.	Name	Use
	* * * * *	
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	X
	* * * * *	

22. The authority for Part 1951 is added to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

23. Section 1951.210 is amended by adding a new paragraph (f) (15) to read as follows:

§ 1951.210 Transfer of security and assumption of loans.

* * * * *

(f) * * *

(15) Form FmHA 1910–11, "*Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts*." The District Director must review Form FmHA 1910–11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant.

* * * * *

24. Section 1951.211 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1951.211 Mergers.

* * * * *

(c) *Processing mergers.* Processing is made according to all applicable items of § 1951.210 (e) (1) through (15) of this subpart. In addition:

* * * * *

PART 1955—PROPERTY MANAGEMENT

25. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

26. Section 1955.108 is amended by adding paragraph (i) to read as follows:

§ 1955.108 Processing and closing (CONACT).

* * * * *

(i) *Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts*." The County Supervisor or District Director must review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant.

27. Section 1955.118 is amended by adding a new paragraph (h) to read as follows:

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

* * * * *

(h) *Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts*." The County Supervisor or District Director must review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant.

PART 1965—REAL PROPERTY

28. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

29. Section 1965.27 is amended by adding paragraph (b) (21) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(21) Form FmHA 1910-11, "*Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.*" For all transfers, the County Supervisor must review form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

Subpart B—Security Servicing for Multiple Housing Loans

30. Section 1965.65 is amended by adding a new paragraph (a) (10) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(10) for all transfers, the District Director must review Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

* * * * *

Dated: February 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-6021 Filed 3-21-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-130-AD]

Airworthiness Directives; Short Brothers, Ltd., SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD) that would have required replacement of certain pitot tubes on Shorts Model SD3-60 series airplanes. That proposal was prompted by reports of inoperative pitot tubes due to icing. This condition, if not corrected, could result in erroneous airspeed and altitude indications. This action proposes to revise the applicability of the proposed rule to identify the appropriate model of airplane affected by the proposed action.

DATES: Comments must be received no later than May 2, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Short Brothers Ltd., Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David Herron, Systems and Equipment Branch, Seattle Aircraft Certification Office, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the replacement of certain pitot tubes made from stainless steel on Short Brothers, Ltd. Model SD3-60 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 14, 1987 (52 FR 38107). The comment period closed on November 12, 1987.

Interested parties have been afforded an opportunity to comment on this proposal. Due consideration has been given to the comments received.

One commenter stated that the effectivity section of the applicable service bulletin listed the serial numbers of Shorts Model SD3-30 series airplanes, rather than Model SD3-60 series airplanes. The FAA has verified this fact with the manufacturer. Further discussion with the manufacturer has also verified that, while the applicable service bulletin refers to inoperative pitot tubes on Model SD3-60 airplanes, the procedures described in the service bulletin apply to the Model SD3-30, not the Model SD3-60. In light of the foregoing, the FAA has determined that the applicability of this proposed action must be revised to reflect only Shorts Model SD3-30 series airplanes.

Since this action changes the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment. Further, a reiteration of the discussion follows, for the benefit of those operators now affected by this supplemental proposed action:

This action is prompted by several reports of inoperative pitot tubes due to icing, which have resulted in erroneous airspeed and altitude indications.

Short Brothers, Ltd., issued Service Bulletin SD3-345-26, Revision 1, dated

October 1985, which indicates that pitot tubes produced between October 1982 and October 1983 were manufactured from stainless steel, in lieu of copper, with a resultant reduction of efficiency of the anti-icing system. These stainless steel pitot tubes bear a code letter "Z" adjacent to the serial number. The service bulletin describes inspection of pitot tubes for code letter "Z," and replacement, if necessary with copper pitot tubes bearing a code letter other than "Z." The United Kingdom Civil Aviation Authority (CAA) has classified the service bulletin as Mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on Shorts Model SD3-30 series airplanes registered in the United States, an AD is proposed which would require replacement of left and right pitot tubes bearing code letter "Z" adjacent to the serial number with pitot tubes bearing a code letter other than "Z," in accordance with the service bulletin previously mentioned.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,920.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending the applicability statement of the Notice of Proposed Rulemaking, Docket No. 87-NM-130-AD, published in the **Federal Register** on October 14, 1987 (52 FR 38107), FR Doc. 87-23678, as follows:

Short Brothers, Ltd.: Applies to Model SD3-30 series airplanes; serial numbers SH3002 through SH3096, inclusive; certificated in any category. Compliance required as indicated, unless previously accomplished."

To prevent pitot tubes from becoming inoperative due to icing, which could result in erroneous airspeed and altitude indication, accomplish the following:

A. Within the next 180 days after the effective date of this AD, replace pitot tubes having the code letter "Z" adjacent to the serial number with one containing a code letter other than "Z," in accordance with accomplishment instructions in Service Bulletin SD3-34-26, Revision 1, dated September 1, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements required by this AD.

All persons affected by this proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers, Ltd., Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 14, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-6148 Filed 3-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-1]

Establishment of Transition Area; Litchville, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Litchville, ND, transition area to accommodate air taxi operators requesting a direct route to Alexandria, MN from Jamestown, ND and the Minneapolis-St. Paul, MN area. The intended effect of this action is to ensure segregation of Instrument Flight Rule (IFR) aircraft from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before April 21, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AGL–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Litchville, ND.

Presently, air taxi operators from Jamestown, ND, to the Minneapolis-St. Paul, MN area, routinely request a direct route to Alexandria, MN to save time and fuel. There are no airways. However, radar coverage is adequate to routinely approve a direct route, but when a direct route is used a portion of the climb or descent is made in uncontrolled airspace adding an additional workload on controllers. By designating this transition area better radar vectoring service for users going to and from Jamestown Municipal Airport will be provided. It will also eliminate an additional workload on controllers; and, will save the aviation users time and fuel.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Litchville, ND [New]

That airspace extending upward from 1200' AGL beginning at lat. 46°30'00" N., long. 98°29'30" W., to lat. 46°30'00" N., long. 97°38'00" W., to lat. 46°32'30" N., long. 97°37'00" W., to lat. 46°40'00" N., long. 97°42'00" W., to lat. 46°48'00" N., long. 97°54'00" W., to lat. 46°49'30" N., long. 98°15'00" W., to lat. 46°46'00" N., long. 98°10'00" W., to lat. 46°37'20" N., long. 98°22'00" W., to lat. 46°41'00" N., long. 98°27'00" W., to lat. 46°39'30" N., long. 98°31'00" W., to the point of beginning.

Issued in Des Plaines, Illinois, on March 7, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 88–6149 Filed 3–21–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 293

[Docket No. RM88–5–000]

Regulations Governing Bidding Programs

March 16, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking (NOPR).

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to adopt regulations which would authorize state regulatory authorities and nonregulated electric utilities to implement bidding procedures as a means of establishing rates for power purchases from qualifying facilities (QFs) under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

A bidding program is a formally organized market to acquire incremental supplies of electricity. The purpose of this proposed rule is to permit bidding programs that would accurately establish utilities' avoided cost. To accomplish this goal, the Commission proposes to amend its current regulations to establish conditions and to provide specific guidance to the state regulatory authorities and nonregulated electric utilities on the use of bidding programs to set avoided costs. This proposed rule sanctions the use of bidding as a procedure for purchasing electricity from QFs.

The Commission believes that bidding will promote the statutory objectives of PURPA by encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers.

DATES: The Commission is scheduling a public hearing to be held on July 5, 1988, to provide interested persons with an opportunity to make oral presentations of their views. Requests to participate must be filed in writing (separately from comments) with the Secretary on or before June 14, 1988. An original and 14 copies of written comments on this proposed rule must be filed with the Commission on or before June 14, 1988. Replies to written comments must be filed with the Commission on or before July 14, 1988. Replies to written comments shall not exceed 15 double-spaced pages.

ADDRESS:

Public hearing and comments:

Federal Energy Regulatory Commission,
825 North Capitol Street NE.,
Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

General questions:

Martha M. Poindexter, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 357–8428.

Technical questions:

William Longenecker, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 376–4444.

James C. Liles, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 357–8069.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88–5–000 adopted and released March 16, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426; at the Atlanta Regional Office, 730 Peachtree Street NE., Room 800, Atlanta, GA 30308; at the Chicago Regional Office, Federal Building, 230 South Dearborn Street, Room 3130, Chicago, IL 60604; at the New York Regional Office, 201 Varick Street, Room 664, New York, NY 10014; at the Portland Regional Office, 1120 South West 5th Avenue, Suite 1340, Portland, OR 97204; and at the San Francisco Regional Office, 901 Market Street, 3rd Floor, San Francisco, CA 94103. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 293

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Parts 35 and add Part 293, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Stalon concurred with a separate statement. Commissioner Trabandt concurred in part and dissented in part with a separate statement.

Lois D. Cashell,
Acting Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citiation for Part 35 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.13, paragraph (h)(37)(i) is revised to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(h) * * *

(37) *Statement BL—Rate design information.* * * *

(i) A narrative statement describing and justifying the objectives of the design of the changed rate. If the purpose of the rate design is to reflect costs, the utility must state how that objective is achieved, and must accompany it with a summary cost analysis that would justify the rate design, including any discount or surcharges based on delivery voltage level or other specific consideration. Such summary cost analysis must be consistent with, derived from, and cross-referenced to the data in cost of service Statement BK. If the rate design is not intended to reflect costs, whether fully distributed, marginal, incremental, or other, the utility must provide a statement to justify the departure from cost-based rates. For noncost based rates established in a bidding program under Part 293 of this chapter, the electric utility must submit a copy of the state certification of the bid selection under § 293.212 of this chapter in lieu of any of the cost of service information otherwise required by Statements AA through BM.

* * * * *

3. Part 293 is added to read as follows:

PART 293—REGULATIONS GOVERNING THE USE OF BIDDING PROGRAMS TO PURCHASE ELECTRIC CAPACITY AND ASSOCIATED ENERGY FROM QUALIFYING FACILITIES UNDER PURPA

Subpart A—General Provisions

Sec.
293.101 Purpose.
293.102 Applicability.
293.103 Definitions.

Subpart B—Requirements for Bidding Programs

293.201 Rates for purchases.
293.202 Capacity reservations.
293.203 Sources of capacity.
293.204 Solicitation of bids.
293.205 Evaluation of bid selection.
293.206 Negotiation and bidding programs.
293.207 Preference for qualifying facilities.
293.208 Waiver of efficiency standard.
293.209 Availability of electric utility system cost data.
293.210 Small qualifying facilities.
293.211 State certification of bid selection.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982), as amended; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended.

Subpart A—General Provisions

§ 293.101 Purpose.

(a) The purpose of this part is to set forth minimum requirements for any bidding program that is used to determine rates for the purchase of electric capacity and associated energy from qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA).

(b) Nothing in this part relieves an electric utility of its obligation to:

(1) Purchase electric energy from a qualifying facility under § 292.303(a) of this chapter;

(2) Sell electric energy to a qualifying facility under § 292.303(b) of this chapter;

(3) Interconnect with a qualifying facility under § 292.303(c) of this chapter.

(4) Transmit to another electric utility under § 292.303(d) of this chapter; and

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(5) Operate in parallel with a qualifying facility under § 292.303(e) of this chapter.

§ 293.102 Applicability.

(a) This part applies to any State regulatory authority or nonregulated electric utility that chooses to establish a bidding program to determine rates for the purchase of electric capacity and associated energy from qualifying facilities and others.

(b) Either a State regulatory authority or a nonregulated electric utility can establish or rescind a bidding program.

(c) If a State regulatory authority or nonregulated electric utility establishes a bidding program, the bidding program must:

(1) Not alter existing contracts between electric utilities and qualifying facilities; and

(2) Not be unduly discriminatory toward any participant in the bidding program.

§ 293.103 Definitions.

For the purpose of this part:

(a) "Person" means an individual or a corporation;

(b) "Corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing;

(c) The terms "qualifying facility," "purchase," "rate" and "avoided cost" have the same meaning as defined in § 292.101 of this chapter;

(d) "Bidding program" means an established procedure through which offers from qualifying facilities under the Public Utility Regulatory Policies Act of 1978 and others are solicited, obtained and selected in order to meet a specified need for electric capacity and associated energy;

(e) "Benchmark avoided cost" means an avoided cost calculated on the basis of any sources of capacity not permitted to submit offers in a bidding program;

Subpart B—Requirements for Bidding Programs

§ 293.201 Rates for purchases.

(a) Rates for purchases established in a bidding program under this part must:

(1) Be just and reasonable to the electric consumer of the electric utility and in the public interest;

(2) Not discriminate against qualifying facilities; and

(3) Not exceed the incremental cost of alternative electric energy.

(b) Rates established through a bidding program that meets the requirements of this part satisfy paragraph (a) of this section.

§ 293.202 Capacity Reservations.

A state regulatory authority or nonregulated electric utility that implements a bidding program may reserve or withhold a portion of the utility's planned capacity needs from bidding. Qualifying facilities must be:

(a) Permitted to submit offers for the capacity subject to bidding; and

(b) Given the opportunity to satisfy the planned capacity need reserved or withheld from bidding.

§ 293.203 Sources of capacity.

(a) Except as provided in paragraph (c) of this section a bidding program under this part must take into account all sources for satisfying the planned capacity needs of the electric utility.

(b) A State regulatory authority or nonregulated electric utility can satisfy the requirement in paragraph (a) of this section by either:

(1) Permitting all sources of capacity to submit offers in a bidding program; or

(2) Limiting the sources of capacity, other than qualifying facilities, that may submit offers in a bidding program by calculating a benchmark avoided cost which:

(i) Takes into account any source of capacity excluded from the bidding program; and

(ii) Serves as a ceiling for the rates established in the bidding program.

(c) If a state regulatory authority or nonregulated electric utility excludes any wholesale source from the benchmark avoid cost calculation required under paragraph (b)(2) of this section, it must explain in writing why the wholesale source was excluded.

§ 293.204 Solicitation of bids.

(a) *General rule.* The solicitation of bids must be:

(1) Open to all persons who sell electric capacity and associated energy other than those persons prohibited by the State regulatory authority or nonregulated electric utility pursuant to § 293.203 or this part; and

(2) Publicly noticed sufficiently in advance of the date offers are to be submitted to allow preparation of the bids or offers to sell electric capacity and associated energy.

(b) The solicitation of bids must include a full description of:

(1) The planned need for capacity and associated energy;

(2) The criteria for participation, including any conditions which limit prospective participants with respect to ownership, affiliation, condition of the facility, technology, experience of the owner or operator, financial capability, site control, fuel supply guarantees, and permits or licenses; and

(3) The selection criteria to be used for selecting the winning bids including the factors set forth in § 292.304(e) and § 292.304(b)(5) and (d) of this chapter.

§ 293.205 Evaluation of bid selection.

The evaluation of all bids submitted in a bidding program under this part must be in writing and must be based on the criteria identified in the solicitation of bids, including those factors in § 292.304(e) and § 292.304(b)(5) and (d) of this chapter.

§ 293.206 Negotiation and bidding programs.

(a) Except as provided in paragraphs (b) or (c) of this section, an electric utility may not negotiate to acquire electric capacity and associated energy to be obtained through a bidding program, if any, from the time the final bids are submitted to the time the winning bids are selected.

(b) An electric utility may negotiate with a winning bidder on terms and conditions not stated in the solicitation of bids.

(c) An electric utility may negotiate to acquire any capacity and associated energy that is not subject to bidding from the time the final bids are submitted to the time the winning bids are selected. must be given an opportunity to offer to satisfy this capacity.

§ 293.207 Preference for qualifying facilities.

In any bidding program under this part, in the case of a tie among bids between a qualifying facility and a nonqualifying facility, the qualifying facility's bid must be selected over the nonqualifying facility's bid.

§ 293.208 Waiver of efficiency standard.

If a qualifying oil- or gas-fired topping cycle cogeneration facility is selected as a winning bidder, the efficiency standard in § 292.205(a)(2) of this chapter is waived.

§ 293.209 Availability of electric utility system cost data.

(a) Except as provided in paragraph (b) of this section, an electric utility whose planned capacity needs are subject to a bidding program must provide to the State regulatory authority or nonregulated electric utility and must maintain for public inspection at its principal place of operation the following data:

(1) The estimated avoided cost on the electric utility's system;

(2) The electric utility's plan for the addition of capacity by amount and type, including wholesale sources; and

(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity purchases.

(b) *Exception.* (1) If an electric utility submits an offer in a bidding program to satisfy its own planned capacity needs, the State regulatory authority may exempt the electric utility from the requirement to make the data in paragraph (a) of this section publicly available. However, the data in paragraph (a) of this section must still be submitted to the appropriate State regulatory authority.

(2) If a nonregulated electric utility submits an offer in a bidding program to satisfy its own capacity needs, the nonregulated electric utility is not required to make the data in paragraph (a) of this section publicly available. However, the data in paragraph (a) of this section must be submitted to the Commission.

§ 293.210 Small qualifying facilities.

(a) A State regulatory authority or nonregulated electric utility may exempt from participation in a bidding program qualifying facilities not exceeding one megawatt in size.

(b) Rates and terms and conditions for qualifying facilities exempted under paragraph (a) of this section must be determined by a bidding program under this part.

§ 293.211 State certification of bid selection.

Any State regulatory authority or nonregulated electric utility that establishes a bidding program under this part must:

(1) Approve the price and selection of the bids pursuant to any bidding program under its jurisdiction; and

(2) Notify the Commission of the winning bidders.

[FR Doc. 88-6217 Filed 3-21-88; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Parts 38 and 382

[Docket No. RM88-4-000]

Regulations Governing Independent Power Producers

March 16, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking (NOPR).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to streamline regulation of a class of nontraditional utility suppliers, called independent power producers (IPPs). The proposed regulations would: (1) Authorize rates for IPPs to be determined through competitive bidding or rate negotiation subject to a price cap, thereby freeing IPPs from cost-based ratemaking while ensuring rates fall within a zone of reasonableness; (2) authorize IPPs to file rate schedules without having to provide extensive cost support; (3) exempt IPPs from cost-related accounting, reporting and recordkeeping requirements; (4) streamline the corporate and financial regulation of IPPs; (5) provide for virtually automatic authorizations to engage in certain corporate activities; (6) revise filing fees; (7) waive annual charges; and (8) adopt an advance certification procedure to qualify as an IPP. By promulgating these regulations the Commission seeks to increase supply options in the wholesale electric energy market and thereby fulfill its statutory responsibilities under the Federal Power Act (FPA) and Public Utility Regulatory Policies Act of 1978 (PURPA).

DATES: The Commission is scheduling a public hearing to be held on July 5, 1988, to provide interested persons with an opportunity to make oral presentations of their views. Requests to participate must be filed in writing (separately from comments) with the Secretary on or before June 14, 1988. An original and 14 copies of written comments on this proposed rule must be filed with the Commission on or before June 14, 1988. Replies to written comments must be filed with the Commission on or before July 14, 1988. Replies to written comments shall not exceed 15 double-spaced pages.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

General questions: Gilda E. Rodriguez, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 357-9155.

Technical questions: William Longenecker, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: 376-4444.

David Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: 357-8024.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88-4-000 adopted and released March 16, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426; at the Atlanta Regional Office, 730 Peachtree Street NE., Room 800, Atlanta, GA 30308; at the Chicago Regional Office, Federal Building, 230 South Dearborn Street, Room 3130, Chicago, IL 60604; at the New York Regional Office, 201 Varick Street, Room 664, New York, NY 10014; at the Portland Regional Office, 1120 South West 5th Avenue, Suite 1340, Portland, OR 97204; and at the San Francisco Regional Office, 901 Market Street, 3rd Floor, San Francisco, Regional Office, 901 Market Street, 3rd Floor, San Francisco, CA 94103. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

List of Subjects

18 CFR Part 38

Electric power, Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission proposes to add Part 38 and amend Part 382, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement.

Lois D. Casbell,
Acting Secretary.

1. Part 38 is added to read as follows:

PART 38—REGULATIONS GOVERNING INDEPENDENT POWER PRODUCERS UNDER THE FEDERAL POWER ACT

Subpart A—General Applicability

Sec.
38.101 Purpose.
38.102 Application.
38.103 Definitions.

Subpart B—Rate Regulation

38.201 Sales by independent power producers.
38.202 Rate application.
38.203 Filing of rate schedules.

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38.204 Notice requirements.

Subpart C—Disposition of Facilities, Merger or Consolidation of Facilities, or Acquisition of Securities

38.301 Applicability.
38.302 Commission authorization.
38.303 Contents of the application.
38.304 Number of copies.
38.305 Verification.

Subpart D—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities

38.401 Applicability.
38.402 Commission authorization.
38.403 Exemptions.
38.404 Contents of the application.
38.405 Number of copies to be filed.
38.406 Verification.

Subpart E—Application for Authorization To Hold Interlocking Positions

38.501 Applicability.
38.502 Commission authorization.
38.503 Positions subject to authorization.
38.504 Time of filing.
38.505 Contents of the application.
38.506 Number of copies.

Subpart F—Procedures for Obtaining Advance Cretification Independent Power Production (IPP) Status

38.601 Advance certification.
38.602 Notice.
38.603 Revocation of independent power producer status.

Subpart G—Accounting and Reporting Procedures

38.701 Accounting requirements.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982), as amended; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended.

Subpart A—General Applicability

§ 38.101 Purpose.

The purpose of this part is to establish procedures to regulate and certify independent power producers under the Federal Power Act.

§ 38.102 Application.

(a) This part applies to:

(1) An independent power producer (IPP), as that term is defined in § 38.103(a); and

(2) The sale for resale in interstate commerce of electric energy from an IPP to a wholesale customer.

(b) A public utility that has not been granted a retail service franchise territory and that is primarily engaged in transactions in which it qualifies as an independent power producer (IPP), qualifies for regulatory treatment under subparts C, D, and E of this part.

(c) A public utility that does not meet the requirements in paragraph (b) of this section may apply for regulatory treatment under subparts C, D, and E of this part on a case-by-case basis.

(d) Unless otherwise provided in this part, IPPs are exempt from Parts 33, 34, 35, 41, 45, 46, 50, 101, 141, and 382 of this chapter.

§ 38.103 Definitions.

For the purposes of this part:

(a) A public utility as defined in section 201(e) of the Federal Power Act is an "independent power producer" (IPP) only when it:

(1) Sells or will sell electric energy produced by an independent power facility to a customer outside any retail service franchise territory that the public utility (or its affiliate) may have been granted; and

(2) Does not control transmission facilities essential to the customer purchasing electric energy from that independent power facility.

(b) "Independent power facility" (IPF) is a facility, or portion thereof, that is not regulated on a cost-of-service basis as that term is defined in paragraph (a)(1) of this section.

(c) "Transmission facility essential to a customer" means a transmission facility that supplies a necessary or indispensable amount of electric energy to the customer served by such facility. Absent a Commission order to the contrary, a transmission facility that supplies less than 50 percent of the electric energy needs of the customer is not essential.

(d) "Affiliate" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the IPP.

(e) "Control" for purposes of an affiliate (including the terms "controlled by," and "under common control with") means the possession, directly or indirectly, of the authority to direct or cause the direction of the management and policies of a company, whether such authority is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract or any [illegible] direct or indirect means.

[illegible] of transmission facilities" means [illegible] ability to prevent the use of transmission facilities for the purpose of transmitting electric energy.

(g) "Securities" means any note, stock, treasury stock, bond, or debenture or other evidence of interest in or indebtedness of a corporation subject to the Federal Power Act.

(h) "Person" means an individual or corporation.

(i) "Corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees or any of the foregoing. Corporation does not include "municipalities" as defined in the Federal Power Act.

(j) "Purchaser's avoided cost" means the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the IPP, such utility would generate itself or purchase from another source.

(k) "Regulated on a cost-of-service basis" means rate treatment that provides, under an approved rate on file, for recovery of plant related costs including operation, maintenance, income and non-income taxes return on investment, return of capital, and lease expense.

Subpart B—Rate Regulation

§ 38.201 Sales by independent power producers.

(a) An independent power producer (IPP) must file an application for a rate schedule in accordance with §§ 38.202–204 for any sale of electric energy subject to the jurisdiction of the Commission.

(b) *Ceiling price.* A rate filed by an IPP is just and reasonable if the rate is at or below the purchaser's avoided cost, as that term is defined in § 38.103(j).

(c) *Purchaser's avoided cost.* A purchaser's avoided cost can be determined, consistent with § 38.103(j), by:

(1) The purchaser in a statement filed by the IPP, verified and attested to by an authorized representative of the purchaser; or

(2) A State regulatory agency that has administratively determined the purchaser's avoided cost pursuant to Part 292 of this chapter; or

(3) A bidding program pursuant to Part 293 of this chapter.

§ 38.202 Rate application.

An initial or changed rate application filed under this subpart must contain the following information:

(a) The rate schedule with copies of all contracts (including the terms and conditions of sale) that affect or relate to the rates, charges, or services, as required by section 205(e) o' the Federal Power Act;

(b) A list of documents submitted with the initial rate or rate change schedule;

(c) A letter to transmit to the Commission for filing the rate schedule. The transmittal letter must contain the following information:

(1) The date on which the service under the initial rate schedule or changed rate schedule is expected to commence;

(2) The names and addresses of those to whom the rate schedule has been mailed;

(3) A brief description of the kinds of services to be furnished at the initial or changed rates specified therein including:

(i) Whether the IPP will sell electric energy from an independent power facility (IPF) outside any retail service franchise territory that the IPP or its affiliate may have been granted; and

(ii) Whether the IPP or its affiliate controls transmission facilities essential to the customer purchasing electric energy from the IPF;

(4) A summary of the circumstances which show that all requisite agreement to the rate schedule or its filing, including any contract embodied therein, has in fact been obtained; and

(d) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the application so as to acquaint the public with its scope and purpose.

§ 38.203 Filing of rate schedules.

(a) An independent power producer (IPP) must file with the Commission and maintain, rate schedules that show the rates for any sale of electric energy subject to the Commission's jurisdiction. The filing of the rate schedule must meet the requirements of this section.

(b) An IPP must:

(1) Make available a copy of every current rate schedule on file or as tendered for filing with the Commission during regular business hours for public inspection in a convenient form at its principal place of business and at any offices in the territory in which it sells power; and

(2) Mail to every purchaser under such rate schedule a copy of that schedule when the IPP sends it to this Commission for filing.

(c) If an IPP files for an increase or decrease in rates or charges, or other change in contract terms or conditions, the IPP must mail to each purchaser and to each State regulatory authority within whose jurisdiction such purchaser distributes and sells electric energy at retail, a copy of the rate schedule showing the increase or decrease in rates or charges or other change in contract terms and conditions, and if requested by a purchaser or State regulatory authority, a copy of the supporting data required to be submitted to this Commission under this part.

(d) The effective date of a rate schedule means the date on which a rate schedule, filed pursuant to the requirements of this section, is permitted by the Commission to become effective as a filed rate schedule.

(e) A rate schedule covered by the terms of this section must contain the following provisions when it is the intent of the contracting parties to withhold from the party furnishing service, the right to file any unilateral rate change under section 205 of the Federal Power Act:

> The rates for service specified herin shall remain in effect for the term of XXX or until XXX, and shall not be subject to change through application to the Federal Energy Regulatory Commission pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of all parties thereto.

(f) *Form and style of rate schedules.* A rate application filed with the Commission under this part must include the following:

(1) The name of the rate applicant;

(2) Identity of the parties;

(3) A brief description of the service to be provided under the rate schedule;

(4) A verified statement that the proposed rates are at or below the purchasers avoided cost as defined in § 38.103(j).

(5) A rate schedule tendered for filing under this part must conform to the specifications in § 385.2003 of this chapter. All copies must be clear, legible, complete, and must show the name(s) of all signatures to executed documents.

(g) *Number of copies.* An applicant must supply an original and three copies of all rate schedules or parts thereof, and material related to the rate schedule, including any change in rates, notices of cancellation or termination, and notices of succession that are filed with the Commission. All copies are to be included in one package, together with three copies of the transmittal letter and all other materials and information required by these regulations. The package should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

(h) *Identification and numbering of rate schedules.* Every rate schedule filed with the Commission will be numbered and the filing independent power producer will be advised of the rate schedule FERC number. Whenever a rate schedule change is offered for filing and is dependent upon, or amendatory of, an existing rate schedule on file with the Commission, it will be designated as a supplement or an exhibit to the existing rate schedule and will be so numbered.

§ 38.204 Notice requirements.

(a) *Rate schedules.* A rate application for an initial or changed rate must be filed with the Commission at least 60 days before the electric service begins and becomes effective under that rate schedule.

(b) *Construction of facilities.* If a rate schedule involves construction of facilities, the IPP may file the rate schedule up to 60 days before the date the parties have agreed the contract would go into effect.

(c) *Termination of service.* An IPP must file a notice of termination 60 days before service is to be terminated.

(d) *Waiver.* Upon application and for good cause shown, the Commission may waive the notice requirements of this section.

Suppart C—Disposition of Facilities, Merger or Consolidation of Facilities, or Acquisition of Securities

§ 38.301 Applicability.

(a) An independent power producer (IPP) must file an application for Commission approval of any proposed transaction under this subpart.

(b) The requirements of this section apply to an IPP that seeks authority under section 203 of the Federal Power Act to:

(1) Dispose by sale, lease or otherwise the whole of its electric facilities subject to Commission jurisdiction, or any part thereof of a value in excess of $50,000;

(2) Merge or consolidate, directly or indirectly, its facilities subject to the Commission's jurisdiction which have a value in excess of $50,000, with those of any other person or corporation;

(3) Acquire electric facilities used for the transmission or sale at wholesale of electric energy in interstate commerce which, except for ownership, would be subject to the Commission's jurisdiction;

(4) Purchase, acquire, or take a security of any other IPP or public utility.

(c) "Value in excess of $50,000" as used in section 203 of the Federal Power Act is the original cost undepreciated as defined in Part 101 of this chapter.

§ 39.302 Commission authorization.

Except as provided in § 38.102(c), an IPP is authorized by the Commission to dispose of jurisdictional facilities, to merge or consolidate jurisdictional facilities, and to acquire the securities of any other public utility provided that it complies with all the requirements of this subpart.

§ 38.303 Contents of the application.

(a) An application for a proposed transaction described in § 38.301 must contain the following information:

(1) An identification of the parties to the transactions including:

(i) The address of the principal business offices of the parties;

(ii) The name and address of the person authorized to receive notices and communications; and

(iii) The State or other sovereign power under which incorporated, the respective dates of incorporation, and the State in which the party is domiciled;

(2) A statement whether the application is for a disposition of facilities by sale, lease, or othewise, a merger or consolidation of facilities, or for purchase or acquisition of securities of an IPP or other public utility;

(3) A description of the consideration in the transaction, if any, and the method of determining the amount of consideration;

(4) A statement as to the effect the proposed transaction may have on:

(i) The applicant's retail service franchise territory and control of transmission facilities; and

(ii) Any contract for the purchase, sale, or interchange of electric energy;

(5) A statement describing the jurisdictional facilities or securities to be disposed of, consolidated, merged, or acquired;

(6) A statement whether the proposed disposition of facilities or plan for consolidation or merger includes all the operating facilities of the parties to the transaction;

(7) A statement whether any application with respect to the transaction or any part thereof is required to be filed with any other Federal or State regulatory authority; and

(8) A form of notice suitable for publication in the **Federal Register**, which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose.

(b) The application must include the following exhibits:

(1) *Exhibit A.* A signed copy of opinion of counsel with respect to legality of the proposed transaction;

(2) *Exhibit B.* A copy of all contracts with respect to the proposed disposition, merger or consolidation of facilities, or acquisition of securities, together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction pertaining thereto.

§ 38.304 Number of copies.

An applicant must provide the Commission with an original and three copies of each application filed under this subpart.

§ 38.305 Verification.

The application must meet the requirements in § 385.2005 of this chapter and must be verified under oath.

Subpart D—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities

§ 38.401 Applicability.

Except as provided in § 38.403, an independent power producer (IPP) must file and application for authorization from the Commission pursuant to section 204 of the Federal Power Act to issue securities or to assume an obligation or liability.

§ 38.402 Commission authorization.

Except as provided for in §38.102(c), an IPP is authorized by the Commission to issue securities or assume an obligation or liability provided that it complies with the requirements of this subpart.

§ 38.403 Exemptions.

(a) The provisions of this subpart do not apply to:

(1) An applicant who is organized and operating in a State where its security issues are regulated by a State regulatory authority; or

(2) The issuance, renewal, or assumption of laibility on a note or draft if:

(i) The note or draft does not mature more than one year after the date of such issuance, renewal, or assumption of liability; and

(ii) The note or draft does not total (together with all other then outstanding notes and drafts of a maturity of one year or less on which such IPP is primarily or secondarily liable) more than five percent of the par value of the other securities of the IPP then outstanding. In the case of securities having no par value, the par value is the fair market value of the securities on the date of issuance, renewal or assumption of liability.

(b) To qualify for the exemption in paragraph (a) of this section the applicant must file with the Commission, within 10 days of the issuance, renewal, or assumption of liability, a certificate of notice in the form provided in § 131.50 of this chapter.

§ 38.404 Contents of the application.

An application to the Commission for authority to issue securities or assume an obligation or liability must contain the following information:

(a) A statement describing the transaction subject to the jurisdiction of the Commission under section 204 of the Federal Power Act;

(b) A description as to how the securities are to be issued and sold or the procedure by which the applicant will assume any obligation or liability as guarnator, endorser, surety, or otherwise;

(c) A statement whether the proposed issuance of securities or assumption of liabilities is for some lawful object, within the corporate purposes of the applicant;

(d) A statement, pursuant to section 204(d) of the Federal Power Act, declaring that the proposed issuance does not authorize the capitalization of the right to be a corporation or of any franchise, permit, or contracts for consolidation, merger or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract;

(e) A statement as to whether the application, with respect to the transaction or any part thereof, is required to be filed with any State regulatory body; and

(f) A form of notice suitable for publication in the **Federal Register**, providing:

(1) The legal name of the applicant; and

(2) The securities offered for issuance including the proposed issue date.

§ 38.405 Number of copies to be filed.

An applicant must submit to the Commission an original and three copies of each application filed pursuant to this subpart.

§ 38.409 Verification.

The application must meet requirements in § 385.2005 of this chapter and must be verified under oath.

Subpart E—Application for Authorization to Hold Interlocking Positions

§ 38.501 Applicability.

An officer or director of an independent power producer (IPP) who holds or will hold an interlocking position as described in § 38.503, must file under sectin 305(b) of the Federal Power Act, an application for authorization to hold the interlocking position with the Commission.

§ 38.502 Commission authorization.

Except as provided in § 38.102(c), an officer, or director of an IPP is authorized by the Commission to hold the interlocking positions described in § 38.503, if the officer or director of the IPP complies with the requirements of this subpart.

§ 38.503 Position subject to authorization.

(a) This subpart applies to a person seeking to hold the following interlocking positions:

(1) Officer or director of an IPP and the officer or director of another public utility;

(2) Officer or director of an IPP and the officer or director of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility; or

(3) Officer or director of an IPP and the officer or director of any company supplying electrical equipment to the IPP.

(b)(1) The positions subject to this section include those of any person elected or appointed to perform the duties or functions ordinarily performed by a president, vice president, secretary, treasurer, general manager, comptroller, chief purchasing agent, director or partner, or to perform any other similar executive duties or functions.

(2) If a position which the applicant holds and which is invested with executive authority is not specifically mentioned in paragraph (b)(1), the applicant must state in the application the source of such executive authority, whether by bylaws, action of the board of directors, or otherwise.

§ 38.504 Time of filing.

A person authorized to hold interlocking positions under this subpart must file an application with the Commission within 30 days of assuming the duties of the position.

§ 38.505 Contents of the application.

An application filed with the Commission under this subpart must contain the following information:

(a) The applicant's full name, and business address;

(b) A list of the jurisdictional interlocks, identifying the affected companies and the positions held by the applicant, including a description of those positions; and

(c) A form of notice suitable for publication in the **Federal Register**, which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose.

§ 38.506 Number of copies.

An applicant must provide the Commission with an original and three copies of each application filed under this subpart.

Subpart F—Procedures for Obtaining Advance Certification Independent Power Producer (IPP) Status

§ 38.601 Advance certification.

(a) Any person or corporation seeking advance certification as an IPP under this part may, pursuant to either paragraphs (b) or (c) of this section file with the Commission an application for certification that the applicant is an IPP.

(b) If a public utility meets the requirements of § 38.102(b) it must, in order to be certified as an IPP, provide the following information:

(1) The name and address of the applicant;

(2) A verified statement that the applicant has not been, and will not be, granted a retail service franchise territory; and

(3) A verified statement that the applicant is or will be primarily engaged in transactions in which it qualifies as an IPP.

(c) If a public utility does not meet the requirements of § 38.102(b), it must, in order to be certified as an IPP, provide the following information:

(1) The name and address of the applicant;

(2) A brief description of the independent power facility (IPF) as that term is defined in § 38.103(b) of this part;

(3) A brief description of the IPP transaction;

(4) A description of the retail service franchise territory, if any, which has been granted to the applicant or its affiliate; and

(5) A verified statement that the applicant or its affiliate does not control a transmission facility which is essential to the customer purchasing electric energy from the IPF.

§ 38.602 Notice.

Applications filed under this subpart must provide the Commission with a form of notice suitable for publication in the **Federal Register**, which will briefly summarize the facts contained in the application.

§ 38.603 Revocation of independent power producer status.

The certification of a power producer as an IPP under this section is revoked if the power producer fails to comply with any of the statements contained in its application.

Subpart G—Accounting and Reporting Procedures

§ 38.701 Accounting requirments.

Except for its transactions regulated on a cost-of-service basis, an independent power producer is exempt from Parts 41, 50, 101 and 141 of this chapter.

PART 382—ANNUAL CHARGES

2. The authority citation for Part 382 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Title III, Subtitle E, sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 382.102 [Amended]

3. In § 382.102, paragraph (b) is amended by adding the phrase ", or an independent power producer (IPP) as defined in Part 38 of this chapter." at the end of the sentence.

[FR Doc. 6215 Filed 3–21–88; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 292

[Docket No. RM88-6-000]

Administrative Determination of Full Avoided Costs, Sales of Power To Qualifying Facilities, and Interconnection Facilities

March 16, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking (NOPR).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing purchases and sales of electric energy and capacity between electric utilities and qualifying cogeneration facilities and qualifying small power production facilities. The proposed changes would §§ 292.304, 292.305, and 292.306 of the Commission's regulations (18 CFR 292.304, 292.305, and 292.306 (1987)) by: (1) More sharply defining guidelines and criteria for administrative determinations of full avoided costs by state regulatory authorities and nonregulated electric utilities; (2) revising guidelines with

respect to the provision of supplemental, backup, maintenance, and interruptible power to qualifying facilities and requiring certain factors to be considered in setting rates for back-up and maintenance power; and (3) permitting the ownership of internconnection and transmission facilities by qualifying facilities.

DATES: The Commission is scheduling a public hearing to be held on July 5, 1988, to provide interested persons with an opportunity to make oral presentations of their views. Requests to participate must be filed in writing (separately from comments) with the Secretary on or before June 14, 1988.

An original and 14 copies of written comments on this proposed rule should be filed with the Commission on or before May 16, 1988. Replies to written comments should be filed with the Commission on or before July 14, 1988. Replies to written comments shall not exceed 15 double-spaced pages.

ADDRESS: Public hearing and comments: Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

General questions:

Andre Goodson, Office of the General Counsel, Federal Energy Regulatory Commission, Washington, DC 20426, (202) 357–8467.

Technical questions:

Stratford Douglas, Office of Economic Policy, Federal Energy Regulatory Commission, Washington, DC 20426, (202) 357–8741

James K. Newton, Office of Electric Power Regulation, Federal Energy Regulatory Commission, Washington, DC 20426, (202) 376–9020

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's action in Docket No. RM88–6–000 adopted and released March 16, 1988.

The full text of this Commission action is available for inspection and copying during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426; at the Atlanta Regional Office, 730 Peachtree Street NE., Room 800, Atlanta, GA 30308; at the Chicago Regional Office, Federal Building, 230 South Dearborn Street, Room 3130, Chicago, IL 60604; at the New York Regional Office, 201 Varick Street, Room 664, New York, NY 10014; at the Portland Regional Office, 1120 South West 5th Avenue, Suite 1340, Portland, OR 97204; and at the San Francisco Regional Office, 901 Market Street, 3rd Floor, San Francisco, CA 94103. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 292

Electric power plants, Electric utilities, Natural Gas, Reporting and recordkeeping requirements.

The Commission proposes to amend Part 292, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement.

Lois D. Cashell,
Acting Secretary.

PART 292—REGULATIONS UNDER SECTION 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation in Part 292 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 C.F.R. 1978 Comp., p. 142; Independent Offices Appropriationis Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended.

2. In § 292.101, paragraphs (b)(8), (b)(9), (b)(10), and (b)(11) are revised and (b)(12) is added to read as follows:

§ 292.101 Definitions.

* * * * *

(b) *Definitions* * * *

(8) "Supplemantary Power" means electric energy and capacity supplied by an electric utility regularly used by a qualifying facility in addition to that which the facility generates itself.

(9) "Back-up power" means electric energy and capacity supplied by an electric utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

(10) "Maintenance power" means electric energy and capacity supplied by an electric utility to replace energy ordinarily generated by the qualifying facility's own generation equipment during scheduled outages of the qualifying facility.

(11) "Interruptible service" means electric energy and capacity supplied by an electric utility subject to interruption by the electric utility under certain circumstances, such as by contractual agreement between the electric utility and the qualifying facility or as specified by a state regulatory authority.

(12) "Firm service" means service that is not subject to interruption.

3. In § 292.304, paragraph (a)(2) is revised, paragraph (b)(5) is revised, paragraph (b)(6) is added, paragraphs (c))(1), (c)(2), and (c)(3)((i) are revised, paragraph (d)(2) is revised, paragraph (e) introductory text is revised, paragraphs, (e)(3) and (e)(4) are revised, paragraph (e)(5) is added, and paragraph (g) is added to read as follows:

§ 292.304 Rates of purchases.

(a) *Rates for purchases.* * * *

(2) Except as provided in paragraph (b)(5) of this section, a State may not require under this subpart an electric utility to purchase energy or capacity from a qualifying facility at a rate higher than the electric utility's avoided cost.

(b) *Relationship to avoided costs.* * * *

(5) Rates for purchases from a qualifying facility pursuant to a contract or other legally enforceable obligation may differ from avoided cost at the time of delivery only if the rates:

(i) Are based on estimates of avoided costs over the term of the contract or other legally enforceable obligation;

(ii) Do not result in payments in excess of the total avoided costs as calculated at the time the obligation is incurred; and

(iii) Take into account

(A) The time value of money.

(B) The qualifying facility's financing needs, and

(C) Any inequities that may result from the difference between the rate paid to the qualifying facility and the avoided cost at the time of delivery.

(6) A rate for purchase from qualifying facility must be based on the amount an electric utility would have paid another wholesale source if the purchase from the qualifying facility displaces the purchase from the other wholesale source.

(c) *Standard rates for purchases.* (1) Standard rates must be established for purchases from qualifying facilities that have a deisgn capacity of 1 megawatt or less.

(2) Standard rates may be established for purchases from qualifying facilities with a design capacity of more than 1 megawatt.

(3) * * *

(i) Must be set in accordance with paragraphs (a), (e), and (g) of this section; and

* * * * *

(d) *Purchases "as available" or pursuant to a legally enforceable obligation.* * * *

(2) To provide energy or capacity pursuant to a contract or other legally enforceable obligation for the delivery of energy or capacity over a specified term, in whch case the rates for such purchases must, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on:

(i) The avoided costs as calculated at the time of delivery; or

(ii) Any other payment schedule that meets the requirements of paragraph (b)(5) of this section.

(e) *Factors affecting rates for purchases.* A determination of avoided costs must be supported in writing and must address the following factors:

* * * * *

(3) The amount of capacity or energy needed by the utility and the qualifying facility's ability to meet those needs;

(4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity; and

(5) The value to the electric utility of a diversity of fuel sources.

* * * * *

(g) *Adjustment of avoided capacity cost.* (1) If the amount of capacity offered by qualifying facilities exceeds an electric utility's capacity needs, a state regulatory authority or nonregulated electric utility should consider redetermining the electric utility's avoided capacity cost rate.

(2) An avoided capacity cost rate redetermined under paragraph (g)(1) of this section would not affect any existing contract or other legally enforceable obligation between an electric utility and a qualifying facility, unless the contract or legally enforceable obligation specifies otherwise.

4. Section 292.305 is revised to read as follows:

§ 292.305 Rates for sales.

(a) *General rules.* (1) Rates for sales:

(i) Must be just and reasonable and in the public interest; and

(ii) must not discriminate against qualifying facility in comparison to rates for sales to other customers served by the electric utility.

(2) Rates for sales do not discriminate against a qualifying facility, if those rates:

(i) Are based on accurate data; and

(ii) Use the same ratemaking principles that are used to establish rates for the utility's customers other than qualifying facilities.

(b) *Additional services to be provided to qualifying facilities.* (1) Except as provided in paragraph (b)(3), upon request of a qualifying facility, an electric utility must provide either firm or interruptible service for:

(i) Supplementary power;

(ii) Back-up power; and

(iii) Maintenance power.

(2) An electric utility must provide back-up power and maintenance power supplied under paragraph (b)(1) of this section to both the power producing equipment of a qualifying facility and any electric loads normally served by that facility.

(3) A juridsdictional State regulatory authority or the Commission, (with respect to any nonregulated electric utility) may waive the requirement in paragraph (b)(1) of this section if, after notice and an opportunity for public comment in the area served by the electric utility, the electric utility demonstrates and the appropriate regulatory authority finds that compliance would:

(i) Impair the electric utility's ability to render adequate service to its customers; or

(ii) Place an undue burden on the electric utility.

(c) *Rates for sales of back-up power.* (1) Unless supported by factual data, the rate for sales of back-up power may not be based on the assumption that:

(i) Reductions in electric output by all qualifying facilities on an electric utility's system will occur at the same time; or

(ii) Reductions in electric output by a qualifying facility will occur during the system peak.

(2) A determination of rates for back-up power must be supported in writing and include:

(i) The expected timing of forced outages of the qualifying facility, if there is any reason to expect they would not occur with random probability;

(ii) The expected frequency of forced outages of the qualifying facility;

(iii) The expected duration of forced outages of the qualifying facility;

(iv) The expected demand placed on the supplying utility's generating resources in the event of a forced outage of the qualifying facility;

(v) The expected cost of electric energy associated with the capacity used to meet the demand in the event of a forced outage of the qualifying facility;

(vi) The costs, if any, associated with transmission and distribution facilities used to meet the demand resulting from a forced outage of the qualifying facility; and

(vii) The terms of back-up service, in regard to its provision as firm or interruptible service, and the cost such terms of service impose on the supplying utility.

(d) *Rates for sales of maintenance power.* (1) Rates established for sales of maintenance power must consider the cost of producing electric energy and supplying capacity when an outage of a qualifying facility is scheduled to occur.

(2) A determination of rates for maintenance power must be supported in writing and must include:

(i) The ability of the qualifying facility to schedule outages and the associated maintenance power purchases with the utility;

(ii) The season of the year during which maintenance power is scheduled;

(iii) The ability of the qualifying facility to schedule maintenance power for a particular time of the day or days of the week;

(iv) The duration of scheduled outages of the qualifying facility;

(v) The expected demand placed on the supplying utility's generating resources if there is a scheduled outage by the qualifying facility;

(vi) The expected cost of electric energy associated with the capacity used to meet the demand in the event of a scheduled outage by the qualifying facility;

(vii) The costs associated with transmission and distribution facilities used to meet the demand that results from a scheduled outage by the qualifying facility; and

(viii) The terms of maintenance service, whether firm or interruptible, and their cost to the supplying utility.

(e) *Standard rates for sales.* A state regulatory authority or nonregulated utility must establish standard rates for sales to qualifying facilities that have a capacity of 1 megawatt or less. Rates for sales under this paragraph:

(1) Must be consistent with the requirements of this section; and

(2) May vary among qualifying facilities using different technologies and energy sources.

5. In § 292.306, paragraph (c) is added to read as follows:

§ 292.306 Interconnection costs.

* * * * *

(c) *Qualifying facility ownership of interconnection or transmission* *facilities*. A qualifying facility may construct or own an interconnection or transmission facility if the interconnection or transmission facility:

(1) Is used for the transmission of energy between the qualifying facility and an electric utility purchasing energy from, or selling energy to, the qualifying facility; and

(2) Meets all applicable State regulations.

[FR Doc. 88-6216 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

POSTAL SERVICE

39 CFR Part 111

Supplements and Enclosures in Second-Class Publications; Extension of Comment Period

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 3, 1988, the Postal Service published in the **Federal Register** (53 FR 6837) a proposed rule change intended to clarify and improve current postal regulations and procedures concerning the mailing of supplements to second-class publications. The Postal Service requested comments on the proposed rule change on or before April 4, 1988.

Certain mailer representatives requested a twenty-one day extension of the comment period in order to make a more complete assessment of the proposal and its potential effects.

The Postal Service believes that the requested extension is reasonable and will serve the public interest in this case. Accordingly, the Postal Service is extending the deadline for comments on the proposed rule change until April 25, 1988.

DATE: Comments on the proposed rule change must be received on or before April 25, 1988.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-6152 Filed 3-21-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3351-9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Spongex International, Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Spongex International Ltd. in Shelton, Connecticut. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan approved by EPA on March 21, 1984 (49 FR 10542).

DATES: Comments must be received on or before April 21, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of Connecticut's submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On April 8, 1987, the Connecticut Department of Environmental Protection (DEP) submitted a SIP revision to EPA for parallel-processing. This revision is proposed State Order No. 8008 which defines VOC control requirements for Spongex International, Ltd. (Spongex) in Shelton, Connecticut. These control requirements constitute RACT for this facility as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Subsection 22a-174-20(ee) requires the DEP to determine and impose RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to the Control Techniques Guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of SIP Revision

Spongex manufactures a variety of polyvinyl chloride (PVC) foam products at its Shelton facility. Process equipment which emits VOC emissions includes mixers, injection molding presses and normalizing ovens. The first step in the foam manufacturing process involves mixing PVC resins, solvents, blowing agents and other components in the mixers to form a dough compound mix. The mixing process takes place in closed vessels at ambient temperatures and VOC emissions are estimated to be minor. The second step in the process consists of placing the dough in the injection molding presses where it is high compression molded at high temperatures. During this process, the blowing agent in the dough mix decomposes, and the dough changes to a foam which expands and fills the mold forming the completed article.

The final step involves the removal of this material from the injection molding equipment and heating the completed articles in the normalizing ovens to remove the remaining solvent from the product. From mass balance calculations it is estimated that 80 percent of the total VOC emissions emitted from this process are emitted during this final step.

State Order No. 8008 requires Spongex to reduce the overall VOC emissions from the foam manufacturing process by sixty-five percent by December 31, 1987. Spongex is required to achieve this reduction in either one of two ways. Spongex can achieve the reduction by

reformulating all of its compound dough mixtures to VOC levels equivalent to a sixty-five percent reduction based on the unformulated compound dough mixture for each product. If Spongex chooses to comply utilizing this method, it is required to submit documentation which verifies that a sixty-five percent reduction from historical levels has been achieved for each product. Additionally, Spongex will be required to institute a recordkeeping procedure to verify that each batch quantity of compound dough mix contains no more than the allowable VOC content which is equivalent to a sixty-five percent reduction from historical levels.

If Spongex chooses not to comply through reformulation of the compound dough mixtures or cannot achieve sufficient reductions with that method, then Spongex will be required to install add-on control equipment on all of its normalizing ovens. Provided that eighty percent of the overall VOC emissions from the process are emitted from the normalizing ovens, Spongex is required to achieve a ninety percent capture efficiency of the VOC emissions from the normalizing ovens and is required to reduce those emissions by ninety percent with the add-on control equipment in order to achieve the sixty-five percent overall reduction in VOC emissions required by the State Order. If it is determined that less than eighty percent of the total VOC emissions are emitted from the normalizing ovens, Spongex will be required to increase the capture and destruction efficiencies to the appropriate levels necessary for a sixty-five percent overall reduction. To verify compliance, the State Order requires Spongex to conduct an emissions test of the add-on control system in an EPA and DEP-approved manner in order to demonstrate the required destruction and capture efficiencies.

Spongex is required to achieve full compliance with the requirements of the State Order No. 8008 by December 31, 1987 which is allowed under subsection 22a-174-20(ee) of the Connecticut's federally-approved SIP. The application of RACT by Spongex as required by State Order No. 8008 will reduce Spongex's actual emissions from approximately 303 tons per year to 106 tons per year.

EPA has reviewed the requirements of State Order No. 8008 and its compliance dates, and has determined that they constitute RACT for Spongex International, Ltd.

EPA is proposing to approve DEP's proposed Order as a revision to the Connecticut SIP, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the Region I office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State of Connecticut and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's proposed State Order No. 8008 as a revision to the Connecticut SIP. The provisions of Connecticut's proposed State Order No. 8008 define and impose RACT for Spongex International, Ltd. as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Editorial Note: This document was received by the Office of the Federal Register on March 17, 1988.

Date: June 30, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88-6190 Filed 3-21-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3352-2]

Approval and Promulgation of Implementation Plans; Non-CTG RACT Determination for General Motors, Framingham, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at General Motors in Framingham, Massachusetts. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 Ozone Attainment Plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 21, 1988. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, 8th Floor, One Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 565-3244; FTS 835-3244.

SUPPLEMENTARY INFORMATION: On June 30, 1987 the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for General Motors (GM) located in Framingham, Massachusetts. GM, Framingham has four operations that emit greater than 100 tons per year (TPY) of VOCs which are not covered by a control technique guideline (CTG).

Massachusetts requested and was granted an extension until December 31, 1987 to come into attainment with the

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national ambient air quality standard (NAAQS) for ozone. The SIPs of all extension States must require the control of non-CTG sources with the potential to emit 100 TPY or more of VOCs. Massachusetts submitted a regulation, 310 CMR 7.18(17), requiring RACT on all such non-CTG sources as part of its 1982 Ozone Attainment Plan (48 FR 51480). In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the 100 TPY individual RACT determinations to EPA for incorporation into the Massachusetts SIP. Each RACT determination is submitted as a source-specific SIP revision.

This revision includes a Plan Approval proposed by the DEQE to impose RACT on four processes at GM that are not covered by a CTG. This is in accordance with SIP Regulation 310 CMR 7.18(17). The Plan requires that the prephosphate cleaning operation use a specified low solvent compound to clean and remove oil, dust and grease from automotive parts; that the flexible parts operation which paints plastic fascias cease operation by August 31, 1987; and that the operations involving miscellaneous sealers, adhesives, paints and solvents be controlled by imposing emission limitations and work practice standards on the use of those materials. Additionally, GM is required to report to the DEQE on a quarterly basis the amount of miscellaneous sealers, adhesives, paint and solvents used and VOCs emitted.

EPA has reviewed the proposed Plan Approval and supporting documents submitted by the DEQE regarding this RACT determination. EPA generally concurs with the DEQE's determination that limiting emissions by requiring the use of a low solvent cleaner for the prephosphate cleaning; cessation of flexible parts operation that has the potential to emit 267 TPY; and usage controls for the miscellaneous sealers, adhesives, paints and solvents that are small operations scattered throughout the plant constitute RACT for these processes. (Justification to support the proposed RACT determination is discussed in the technical support document (TSD) available at the EPA address given above.) However, EPA is requiring through this notice that the Plan Approval itself must be amended to incorporate as enforceable conditions the items identified below:

(1) A quarterly recordkeeping and reporting requirement must be established for the prephosphate cleaning operation to ensure that GM does not use any compound other than that specified in the Plan Approval; and

(2) Emission limits and work practice standards reflecting DEQE's determination of how the use of miscellaneous sealers, adhesives, paints and solvents will be controlled must be clearly specified. These emission limits and work practice standards must be enforceable conditions of the Plan Approval.

These amendments to the Plan Approval must be addressed in the version of that document formally submitted as a revision for EPA's final approval and incorporation into the SIP. EPA is proposing to approve this SIP revision for General Motors in Framingham, which was submitted on June 30, 1987, and is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 CFR 27073). If the proposed revision is substantially changed, in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted to EPA for incorporation into the SIP. "Parallel processing", it is estimated, will reduce the time necessary for final approval of this SIP revision by 3 to 4 months.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination for four non-CTG operations at General Motors Framingham automobile manufacturing plant. Final EPA approval is contingent upon the DEQE amending its Plan Approval to include quarterly recordkeeping and reporting for the prephosphate cleaning operation and emission limits and work practice standards for the miscellaneous sealers, adhesives, paints and solvents as specified in this notice of proposed rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Administrator's decision to approve or disapprove this plan revision will be based on whether it meets the requirements of sections 110(a) (2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: November 4, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–6191 Filed 3–21–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3352-3]

Approval and Promulgation of Implementation Plans; Massachusetts Non–CTG RACT Determination for North American Philips Lighting Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan revision submitted by the Commonwealth of Massachusetts. This proposed revision establishes and imposes reasonably available control technology (RACT) to reduce volatile organic compounds (VOC) from certain processes at the North American Philips Lighting Company in Lynn, Massachusetts. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth in accordance with commitments made in its approved 1982 Ozone Attainment Plan (48 FR 51480). This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 21, 1988. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, 8th floor, One Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 565–3244; FTS 835–3244.

SUPPLEMENTARY INFORMATION: On June 30, 1987 Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for North American Philips Lighting Company in Lynn, Massachusetts. North American Philips Lighting Company's three glass tube, phosphor coating lines are not controlled by a control technique guideline (CTG) regulation and emit greater than 100 tons per year (TPY) of volatile organic compounds (VOCs).

Massachusetts requested and was granted an extension until December 31, 1987 to come into attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The SIPs of all extension states must require the control of non-CTG sources with the potential to emit greater than 100 TPY of VOCs. Massachusetts submitted a regulation, 310 CMR 7.18(17), requiring RACT on all such non-CTG sources as part of its 1982 Ozone Attainment Plan. Regulation 310 CMR 7.18(17) states that the DEQE will determine and impose RACT on a case-by-case basis for all non-CTG sources with the potential to emit greater than 100 TPY of VOCs and submit each determination as a source-specific SIP revision.

This revision includes a Plan Approval proposed by the DEQE to impose RACT on North American Philips Lighting Company's three glass tube, phosphor coating lines in accordance with SIP Regulation 310 CMR 7.18(17).

North American Philips Lighting Company manufactures fluorescent light bulbs which involves washing and drying the raw glass tubes, coating them, drying them in a hot tunnel, and fitting them with electrical parts. The coating operation involves coating the insides of the glass tubes with a VOC containing phosphor coating. North American Philips Lighting Company has five such coating lines. Three lines, Units 23, 24 and 25 are subject to RACT and two lines, All Purpose (AP) and Unit 22 are subject to best available control technology (BACT) under the SIP's approved new source review regulations. Units 23, 24, and 25 coat the glass tubes in an enclosed application room which is vented to a carbon adsorption device. The RACT determination requires that the carbon adsorber achieve 81% control efficiency. The imposed 81% control efficiency represents the equivalent of 90% capture efficiency of 90% removal efficiency. These are the efficiencies considered RACT by EPA for other surface coating source categories for which EPA has published CTGs.

EPA has reviewed the proposed Plan Approval and the supporting documents the DEQE submitted regarding this RACT determination. While EPA generally concurs with the DEQE's RACT determination, the Plan Approval must be amended to incorporate as enforceable conditions monitoring, recordkeeping and reporting requirements that will ensure that the 81% control efficiency is maintained. These requirements must be included in the version of the Plan Approval formally submitted for EPA's final approval and incorporation into the SIP.

EPA is proposing to approve this SIP revision for North American Philips Lighting Company in Lynn, which was submitted on June 30, 1987, and is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 CFR 27073). If the proposed revision is substantially changed in areas other than those identified and required by this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on this revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted to EPA for incorporation into the SIP. "Parallel processing", it is estimated, will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination for the three non-CTG glass tube, phosphor coating lines (Units 23, 24, and 25) at North American Philips Lighting Company in Lynn. Final EPA approval is contingent upon DEQE amending its Plan Approval to include enforceable monitoring, recordkeeping and reporting requirements to ensure that the 81% control efficiency is maintained.

Under 5 U.S.C. 605(b), I certify that the SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110 (a)(3) of the Clean Air Act, as amended, and EPA regulations in CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: October 7, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–6192 Filed 3–21–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, and 489

[BERC-462-P]

Medicare Program; Miscellaneous Changes Affecting Payment for Inpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to make several revisions to the regulations governing payment for inpatient hospital services. These proposed changes, which, in general, are necessary to conform the regulations to current policy, include—

- Clarifying in regulations when the changes in urban/rural designations are recognized for purposes of the prospective payment system;
- Clarifying in the regulations the effective date of the revised payment rate for a hospital that is classified as a sole community hospital;
- Adding to the regulations a definition of patient days used in computing a hospital's disproportionate share patient percentage as well as clarifying how we calculate the Supplemental Security Income/Medicare percentage based on Medicare patient days; and
- Clarifying in the regulations that the provisions that govern requests for

exceptions to and exemptions from a hospital's rate-of-increase ceiling also govern requests for adjustments to the ceiling and that we grant a hospital's request for an exception or adjustment only if its costs exceed its rate-of-increase ceiling.

In addition, we are making two technical and conforming changes to the regulations.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 23, 1988.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–462–P, P.O. Box 28676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–462–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (301) 966–4534.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), the prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. The regulations governing this inpatient hospital prospective payment system are located in 42 CFR Part 412.

The inpatient operating costs of those hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience in a base period. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

In this document, we are proposing to make the following changes in the regulations that govern payment for inpatient hospital services:

- We would clarify that, for purposes of paying hospitals under the prospective payment system, changes in Metropolitan Statistical Area (MSA) and New England County Metropolitan Area (NECMA) designations are recognized only at the beginning of a Federal fiscal year.
- We would clarify that a hospital classified as a sole community hospital would receive a revised payment rate effective with discharges occurring on or after 30 days after the date of HCFA approval of the classification.
- We would revise the regulations to provide that, for purposes of determining a hospital's qualification for payment as a disproportionate share hospital, the Supplemental Security Income (SSI)/Medicare percentage is calculated based on Medicare patient days associated with discharges occurring during the Federal fiscal year. In addition, we would add to the regulations a definition of patient days.
- The regulations governing hospital requests regarding applicability of the rate-of-increase ceiling would be revised to make it clear that they apply to a hospital's request for an adjustment to the rate of increase ceiling as well as to the currently included requests for an exemption or exception. We would also clarify that a request for an exception or adjustment is granted only in those cases in which the hospital's costs exceed its rate-of-increase ceiling.
- Two technical, conforming changes would be made to the regulations as follows:
  - —We would add payment adjustments for hospitals that serve a disproportionate share of low-income patients to the list of additional payments to hospitals set forth at § 412.2(e).
  - —We would delete from the regulations the special provision for hospitals that provides for waiver of requirements concerning Part A billing and cross-references to that deleted section, since the authority to provide such waivers expired with cost reporting periods beginning on or after October 1, 1986.

These proposals are discussed below in detail.

II. Discussion of Proposed Changes

A. Recognition of Changes in Urban/Rural Redesignations (§§ 412.63 and 412.210)

Sections 1886(d) (2)(D) and (3)(A) of the Act requires that the average standardized amounts per discharge, which are used to determine payment to hospitals subject to the prospective payment system, be determined for hospitals located in rural and urban areas. Thus, a hospital's payment rate is dependent, to some degree, on whether the county in which the hospital is located is designated as an urban area or a rural area. The term "urban" area is defined in section 1886(d)(2)(D) of the Act and in regulations at §§ 412.62(f)(1)(ii), 412.63(b), and 412.208(f)(1)(i) (which pertains to the prospective payment system in Puerto Rico that was adopted at 52 FR 33034 (September 1, 1987) and 52 FR 35350 (September 18, 1987), in accordance with the Executive Office of Management and Budget's (EOMB's) designations, as an MSA, a NECMA, or certain New England counties deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) (42 U.S.C. 1395ww (note)). A "rural" area is any area outside an urban area.

Periodically, EOMB revises the list of MSA/NECMA designations based on a continuing analysis of factors such as changes in population. In addition, Congress occasionally directs EOMB to change an MSA or NECMA designation. Depending on the changes, a county may be reclassified as urban and thus hospitals located in the county would receive a higher urban payment rate, or a county may lose its urban area status, and thus hospitals located in the county would receive the lower, rural payment rate.

In the preamble to the August 31, 1984 prospective payment final rule, we stated that for purposes of determining payment, we recognize these MSA reclassifications beginning with the start of the Federal fiscal year following the announcement of the change (49 FR 34738). We restated this policy in the September 3, 1985 and September 3, 1986 final rules and most recently in the June 10, 1987 proposed rule (52 FR 22104). However, we have never included this policy in the regulations. Therefore, we are proposing to revise §§ 412.63(b) and 412.210(b) to state specifically that any changes in MSA designations are recognized for purposes of payment beginning on the October 1 (that is, the start of the Federal fiscal year) following the announcement of the change.

B. Sole Community Hospitals (§ 412.92)

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of sole community hospitals (SCHs) be taken into account under the prospective payment system. SCHs are defined as those hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), are the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area. Regulations governing the Special Treatment of SCHs under the prospective payment system are set forth in § 412.92.

A hospital that is classified as an SCH is paid in accordance with the method of establishing payment for the first year of the transition period under the prospective payment system. Thus, the payment rate for an SCH is composed of 75 percent of the hospital-specific rate and 25 percent of the Federal regional rate.

We have stated in the preamble to two Federal Register documents that the effective date of the payment for an SCH is 30 days after the date of HCFA's approval of the hospital's request. (See the September 1, 1983 interim final rule (48 FR 39781) and January 3, 1984 final rule (49 FR 271).) However, we continue to receive requests from hospitals that the effective date of the revised payment rate for an SCH should be the date that the hospital first met the classification criteria for an SCH, rather than 30 days after the date of HCFA's approval.

We stated in the January 3, 1984 final rule that to set the effective date as the day the hospital first met the SCH classification criteria would *not* be in keeping with the basis of the prospective payment system. We maintain that our prospective payment policy continues to be an appropriate method of paying an SCH, and are proposing to revise § 412.92(b) to clearly state that the effective date of the payment adjustment for an SCH is 30 days after the date of HCFA's approval of the hospital's request.

C. Hospitals That Serve a Disproportionate Share of Low-Income Patients (§ 412.106)

Section 1886(d)(5)(F) of the Act requires that we make an additional payment to hospitals that serve a disproportionate share of low-income patients. Sections 1886(d)(5)(F) (i) and (v) of the Act provide that, for discharges occurring before October 1, 1989, an additional payment must be made for each prospective payment hospital that meets one of the following criteria:

- During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—
  - — 15 percent if the hospital is located in an urban area and has 100 or more beds;
  - — 40 percent if the hospital is located in an urban area and has fewer than 100 beds; or
  - — 45 percent if the hospital is located in a rural area.
- The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its total inpatient care revenues are derived from State and local government payments for indigent care furnished to patients not covered by Medicare or Medicaid.
- The hospital is located in a rural area, has 500 or more beds, and, during its cost reporting period, the hospital has a disproportionate patient percentage that equals or exceeds a percentage specified by the Secretary. Through regulation (§ 412.106(b)(2)), the Secretary has specified the percentage as 15 percent.

The criteria for qualification as a disproportionate share hospital are set forth in regulations at § 412.106(b).

Under the authority of section 1886(d)(5)(F)(vi) of the Act, § 412.106(a)(1) defines the term "disproportionate patient percentage" as the sum of the following two fractions, which is expressed as a percentage:

$$\frac{\text{Number of covered patient days of those patients entitled to both Medicare Part A and SSI (excluding those patients receiving State supplementation only)}}{\text{Number of patient days of those patients entitled to Medicare Part A}}$$

$$\frac{\text{Number of patient days of those patients entitled to Medicaid but not to Medicare Part A}}{\text{Total number of patient days}}$$

As we stated in the May 6, 1986 interim final rule (51 FR 16777), which added this provision to the regulations, the number of patient days of those patients entitled to both Medicare Part A and SSI will be determined by matching data from the Medicare hospital billing file with the Social Security Administration's SSI file. The match of SSI eligibility records to Medicare inpatient hospital days for a hospital consists of counting the days in which Medicare inpatient hospital services are furnished during each month to patients entitled to both Medicare Part A and SSI, summing those days, and dividing by the total number of days for which Medicare inpatient hospital services are furnished to all Medicare Part A beneficiaries in the hospital.

Since patient days used in computing the SSI/Medicare percentage are taken from the Medicare bills for discharges occurring during the Federal fiscal year, all of the inpatient days associated with those discharges may not have occurred during the same Federal fiscal year. For example, if a patient was admitted at the end of the prior fiscal year and discharged in the current fiscal year, all days associated with the stay would be counted in the current fiscal year. Similarly, if a patient is admitted at the end of the current fiscal year but is not discharged until the following fiscal year, those days would not be counted until the date of discharge. We are revising § 412.106(a)(1) to clearly state that this is how we count patient days in making the computation of the SSI/Medicare percentage.

We are also proposing to add a definition of patient days to the regulations. For purposes of computing a hospital's disproportionate patient percentage, patient days, whether total days or Medicare, Medicaid, or SSI days, are determined by counting those inpatient days attributable only to those areas of the hospital subject to the prospective payment system. Patient days attributable to excluded distinct part units of the hospital, such as psychiatric and rehabilitation units, are not counted. We do not believe it is appropriate to consider patient days from excluded units of the hospital since the disproportionate share adjustment is a prospective payment system adjustment and is not available to hospitals or units that are excluded from the prospective payment system.

Section 1886(d)(5)(F)(i) of the Act specifically provide that an additional payment amount is made for each subsection (d) hospital that serves a significantly disproportionate number of low-income patients. Section 1886(d)(1)(B) of the Act defines a subsection (d) hospital as "a hospital located in one of the fifty States or the District of Columbia * * * and * * * does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital * * *." Since section 1886(d)(5)(F)(i) of the Act incorporates the definition of hospital by reference to subsection (d), we believe that all further references in that subparagraph to hospital, unless stated otherwise, should be taken to mean a subsection (d) hospital. We believe that this interpretation of the statute produces the most consistent application of the disproportionate share adjustment, since data from only prospective payment hospitals (or the portions of the hospital subject to the prospective payment system) are used in determining both the qualifications for and the amount of additional payments to those hospitals.

Currently, the regulations do not specifically define patient days for purposes of calculating a hospital's disproportionate patient percentage. Therefore, we are proposing to revise § 412.106(a) to state that only those days attributable to parts of the hospital paid under the prospective payment system—that is, to the subsection (d) hospital as defined in section 1886(d)(1)(B) of the Act—would be counted in determining a hospital's eligibility for a disproportionate share adjustment.

D. Adjustments to the Rate-of-Increase Ceiling and Hospital Cost Limits (§§ 413.40 and 413.30)

As discussed above, hospitals that are excluded from the prospective payment system are subject to the rate-of-increase limits under section 1886(b) of the Act. Each hospital has a target amount that is applied as a ceiling on its allowable inpatient operating costs per discharge. A hospital that has inpatient operating costs in excess of its target amount is paid no more than that amount. However, a hospital that has costs less than its target amount is paid its costs plus the lower of—

- Fifty percent of the difference between the inpatient operating cost per discharge and the target amount; or
- Five percent of the target amount.

Section 1886(b)(4) of the Act provides for exemptions from, and exceptions and adjustments to, the rate-of-increase ceiling. Currently, § 413.40(e) describes how a hospital may request an exemption from, or exception to, the ceiling. Section 413.40(e) also states that the time required for HCFA to review a hospital's request for an exception is considered good cause for the granting of an extension of the time limit to apply for review by the Provider Reimbursement Review Board (PRRB), as specified in § 405.1841(b). The following three paragraphs, § 413.40(f) through (h), detail the conditions under which an exemption, exception, and adjustment, respectively, will be granted.

Since § 413.40(e) does not specifically refer to requests for adjustments to the rate-of-increase ceiling, even though § 413.40(h) describes when HCFA will make an adjustment, it is unclear whether a hospital's right to a PRRB review is protected while HCFA reviews an adjustment request. Therefore, we are proposing to revise § 413.40(e) to clarify that a request for an adjustment would be treated the same as a request for an exemption or exception.

Similarly, we are proposing to revise § 413.30(c) concerning provider requests regarding applicability of cost limits. Hospitals have been subject to cost limits since 1974. Under § 413.30(h), for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, HCFA may make an adjustment to a hospital's cost limits. Like the current § 413.40(e), § 413.30(c) does not include a hospital's request for an adjustment to its cost limits, even though § 413.30(h) describes when HCFA makes an adjustment. In the interest of clarity, we would revise § 413.30(c) so that the provisions of that section apply to a hospital's request for an adjustment to its cost limits.

In summary, we are proposing to revise §§ 413.30(c) and 413.40(e) to clarify that the time it takes HCFA to review a request for an exception, exemption, or adjustment (and, in the case of § 413.30(c), a request for reclassification) is good cause for extending the period allowed for requesting PRRB review.

We are also proposing to revise § 413.40(g) and (h) to clearly state that we would not grant an exception or adjustment to a hospital's rate-of-increase ceiling if the hospital's costs do not exceed its target amount. We believe that an actual disallowance of costs as a result of the application of the rate-of-increase ceiling is a necessary precondition to HCFA's granting an exception or adjustment under § 413.40(g) or (h) and that the exceptions and adjustments provided under section 1886(b)(4) of the Act should be used to increase a hospital's incentive payment under section 1886(b)(1)(A) of the Act.

The rate-of-increase ceiling provision was added to the Act by section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). The Conference Report that accompanied Pub. L. 97–248 (H.R. Rep. No. 760, 97th Cong., 2d Sess. 419–421 (1982)) does not contain any explicit expression of congressional intent with regard to whether an exception or adjustment should be granted only if a hospital exceeds its target amount. Rather, the report states, "The Secretary of HHS would be required to provide for appropirate exemptions, exceptions, and adjustments as in the Senate provision." Thus, it appears that Congress deferred to the Secretary's judgment in implementing the exemption, exception, and adjustment process.

We also note that the report does state that it was the Senate provision the Conference Committee adopted with regard to this process. The Senate amendment did not provide for incentive payments to hospitals with costs below the target amount. Thus, the language in the statute authorizing the exemptions, exceptions, and adjustments was added by the Senate without its contemplating that this process would apply in cases in which the hospital's costs do not exceed the target amount and the hospital receives an incentive payment. Based on this evidence, we believe that our policy is consistent with congressional intent.

Even though the current regulations do not specifically state that we will not grant an exception of adjustment to increase incentive payments, there are references to this policy in the preamble to the interim final rule (45 FR 43282, September 30, 1982) and final rule (48 FR 39412, August 30, 1983) that first added § 413.40 (then § 405.463) to the regulations. In the interim final rule, in defining the exceptions process, we stated, "An exception allows a hospital to have its ceiling adjusted to take costs into account that would otherwise be disallowed by application of the ceiling." (See 47 FR 43288.) In addition, in the final rule, in addressing a comment concerning when an exception request may be filed, we stated, "Under both the rate-of-increase ceiling and the total cost limits, a hospital may request an exception whenever it has a reasonable basis for estimating that its costs will exceed its rate-of-increase target amount or cost limit." (See 48 FR 39419.)

We believe that these statements make it clear that it has always been our policy not to award exceptions or adjustments under the rate-of-increase ceiling if there has been no disallowance of a hospital's actual costs. Therefore, we are proposing to revise § 413.40(g) and (h) to clearly state our current policy concerning the granting of exceptions and adjustments.

E. Additional Payments to Hospitals (§ 412.2(e))

In addition to payments based on the prospective payment rates, hospitals receive additional payments for the following:

- Outlier cases.
- The indirect cost of graduate medical education.
- Costs excluded from the prospective payment rate.
- Medicare bad debts.

- End-Stage Renal Disease beneficiary discharges if these discharges are 10 percent or more of the hospital's total Medicare discharges.
- Serving a disproportionate share of low-income patients.

Currently, § 412.2(e) lists all these additional payments except the payments to disproportionate share hospitals. Therefore, we are proposing to revise that section to include those payments.

F. Special Provision for Waiver of Certain Inpatient Hospitals Services Requirements (§§ 405.310(m), 412.50(b), and 489.23)

When the original prospective payment system was enacted by Congress through the Social Security Amendments of 1983 (Pub. L. 98–21), section 602(k) of that law (42 U.S.C. 1395y (note)) authorized a temporary waiver, in certain circumstances, of the requirement set forth in sections 1862(a)(14) and 1866(a)(1)(H) of the Act that hospitals bill for all nonphysician inpatient hospital services under Medicare Part A. This waiver authority is implemented through our regulations governing provider agreements (§ 489.23). The waiver was authorized for cost reporting periods begining before October 1, 1986.

Since the waiver authority has now expired, we are proposing to delete § 489.23 from the regulation. We would also make a conforming change to §§ 405.310(m) and 412.50(b), which contain a reference to § 489.23. In addition, we are proposing to make a change in § 412.50(b), regarding inpatient hospital services of an anesthetist employed by a physician, to conform it with § 405.310(m).

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are proposing to amend §§ 412.2, 412.63, 412.92, 412.106, 412.210, 413.30, and 413.40 only to bring them into conformity with existing policy. The changes to §§ 405.310, 412.50, and 489.23 reflect the statutory expiration of authority under section 602(k) of Pub. L. 98–21 governing payments to certain hospitals under the prospective payment system. Thus, these regulations would not implement either new statutory provisions or new policies, and, for this reason, we believe it is unnecessary to prepare or publish a regulatory impact analysis.

B. The Regulatory Flexibility Act

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

In addition, section 1102(b) of the Social Security Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must also conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

For the same reasons stated above in connection with E.O. 12291, we have determined that a regulatory impact analysis not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals, and we have therefore not prepared a regulatory flexibility analysis or an impact analysis for small rural hospitals.

IV. Other Required Information

A. Responses to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or repond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

The proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 405, Subpart C is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayments, Liability of a Certifying Officer and Suspension of Payment

A. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

B. In § 405.310(m)(2) is revised to read as follows:

§405.310 Particular services excluded from coverage.

* * * * *

(m) *Services to hospital inpatients.*

* * * * *

(2) *Exception.* Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis, and services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4), are not excluded.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. In Subpart A, § 412.2, the introductory text in paragraph (e) is republished and a new paragraph (e)(6) is added to read as follows:

Subpart A—General Provisions

§ 412.2 Basis of payment.

* * * * *

(e) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates, hospitals will receive payments for the following:

* * * * *

(6) Serving a disproportionate share of low-income patients, as provided in § 412.106.

C. In Subpart C, § 412.50(b) is revised to read as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

§ 412.50 Furnishing of inpatient hospital services directly or under arrangements.

* * * * *

(b) HCFA does not pay any provider or supplier other than the hospital for services furnished to a beneficiary who is an impatient, except for physicians' services reimbursable under § 405.550(b) of this chapter and services of an anesthetist employed by a physician reimbursable under § 405.553(b)(4) of this chapter.

* * * * *

D. In Subpart D, § 412.63 is amended by adding a new paragraph (b)(4) to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(b) *Geographic classifications.* * * *

(4) For purposes of this section, any change in an MSA or NECMA designation is recognized on the October 1 following the effective date of the change.

* * * * *

E Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, a new paragraph (b)(1)(iv) is added to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(b) *Classification procedures*—(1) *Request for classification as sole community hospital.* * * *

(iv) A hospital classified as a sole community hospital receives a payment adjustment, as described in paragraph (d) of this section, effective with discharges occurring on or after 30 days after the date of HCFA's approval of the classification.

* * * * *

2. § 412.106, the introductory text of paragraph (a)(1) is republished, paragraph (a)(1)(i) is revised, and a new paragraph (a)(5) is added to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) *Basic rule.* (1) Unless a hospital elects the option concerning the period of time used for counting the number of patient days (that is, the hospital's cost reporting period rather than the Federal fiscal year), as described in paragraph (a)(2) of this section, a hospital's disproportionate patient percentage is the sum of the following, expressed as a percentage:

(i) Number of covered patient days associated with discharges occurring during each month of the Federal fiscal year in which the hospital's cost reporting period begins of those patients who are entitled during that month to both Medicare Part A and Supplemental Security Income benefits under title XVI of the Act (excluding those patients receiving State supplementation only), summed for the months of the Federal fiscal year, and divided by the number of patient days associated with discharges occurring during that same Federal fiscal year of those patients entitled to Medicare Part A.

* * * * *

(5) For purposes of making the calculation in paragraph (a)(1) of this section, patient days are determined by counting those days attributable only to areas of the hospital subject to the prospective payment system. Patient days attributable to areas or units of the hospital excluded from the prospective payment system are not included in the count of patient days.

* * * * *

F. In Subpart K, § 412.210(b) is revised to read as follows:

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

§ 412.210 Puerto Rico rates for fiscal years after Federal fiscal year 1988.

* * * * *

(b) *Geographic classifications.* For purposes of this section—

(1) The definitions set forth in § 412.208(f) apply; and

(2) Any change in an MSA designation is recognized on the October 1 following the effective date of the change.

* * * * *

III. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1302, 1320a–1, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395hh, 1395rr, and 1395ww).

B. Subpart C is amended as follows:

Subpart C—Limits on Cost Reimbursement

1. In § 413.30, paragraph (c) is revised to read as follows:

§ 413.30 Limitations on reimbursable costs.

* * * * *

(c) *Provider requests regarding applicability of cost limits.* A provider may request a reclassification, exception, or exemption from the cost limits imposed under this section. In addition a hospital may request an adjustment to the cost limits imposed under this section. The provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement. The intermediary makes a recommendation on the provider's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the provider of HCFA's decision. The time required for HCFA to review the request is considered good cause for the granting of an extension of the time limit to apply for a Board review, as specified in § 405.1841 of this chapter. HCFA's decision is subject to review under Subpart R of Part 405 of this chapter.

* * * * *

2. In § 413.40, paragraphs (e), (g)(1), and (h)(1)(iii) are revised to read as follows:

§ 413.40 Ceiling on rate of hospital cost increases.

* * * * *

(e) *Hospital requests regarding applicability of the rate of increase ceiling.* A hospital may request an exemption from, or exception or adjustment to, the rate of cost increase ceiling imposed under this section. The hospital's request must be made to its fiscal intermediary no later than 180 days from the date on the intermediary's notice of program reimbursement. The intermediary makes a recommendation on the hospital's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the hospital of HCFA's decision. The time required for HCFA to review the request is considered good cause for the granting of an extension of the time limit to apply for review by the Provider Reimbursement Review Board, as specified in § 405.1841(b) of this chapter. HCFA's decision is subject to review under Subpart R of Part 405 of this chapter.

* * * * *

(g) *Exceptions*—(1) *General procedure.* HCFA may adjust a hospital's operating costs (as described in paragaph (b)(1) of this section) upward or downward, as appropriate, under circumstances as specified in paragraphs (g) (2) and (3) of this section. HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary. HCFA may grant an exception only if a hospital's operating costs exceed the rate of increase ceiling imposed under this section.

* * * * *

(h) *Adjustments.* * * *

(iii) HCFA may adjust the amount of operating costs, under paragraph (c)(1) of this section, to take into account factors such as a change in the inpatient hospital services that a hospital provides, that are customarily provided directly by similar hospitals, or the manipulation of discharges to increase reimbursement. A change in the inpatient hospital services provided could result from changes that include, but are not limited to, opening or closing a special care unit or changing the arrangements under which such services may be furnished, such as leasing a department. HCFA may grant an adjustment only if a hospital's operating costs exceed the rate of increase ceiling imposed under this section.

* * * * *

IV. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

A. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa(m), 1395cc, and 1395hh).

B. The table of contents of Part 489 is amended by removing the title for §489.23.

§ 489.23 [Removed]

C. Subpart B is amended by removing § 489.23.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: January 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: February 10, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–6124 Filed 3–21–88; 8:45 am]

BILLING CODE 4120–01–M

VOL 53 ISS 55 MR 22 1988 UMI

Notices

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of publication of list of warehouses licensed under the U.S. Warehouse Act and availability of list of cancellations and/or terminations occurring during calendar year 1987.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1987, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1987. A copy of the list of warehouses as of December 31, 1987, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, ASCS, Warehouse Division, Warehouse Licensing Branch, U.S. Department of Agriculture, P.O. Box 2415, Room 5968, South Agriculture Bldg., Washington, DC 20013, Telephone: 202–447–3822.

Signed at Washington, DC, March 15, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–6206 Filed 3–21–88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974—Revision of Four Existing Systems of Records

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the requirements of the Privacy Act, (5 U.S.C. 552a) and OMB Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals", this notice announces revision of four existing systems of records entitled: COMMERCE/DEPT–3, Conflict of Interest Records, Appointed Officials; COMMERCE/DEPT–10, Executive Correspondence Files; COMMERCE/NOAA–3, Commissioned Officer Official Personnel Folders; and COMMERCE/NOAA–8, Individuals Engaged in Weather Modification Activities. These revisions reflect minor administrative changes, and do not require a report to Congress and OMB.

EFFECTIVE DATE: April 21, 1988.

ADDRESS: Please address or deliver written comments to Ms. Geraldine P. LeBoo, Office of Management and Organization, Department of Commerce, Room 6628, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine P. LeBoo, Office of Management and Organization, (202) 377–3630.

SUPPLEMENTARY INFORMATION: The minor changes to the systems are as follows: COMMERCE/DEPT–3, Conflict of Interest Records, Appointed Officials—change in location of records as a result of organizational realignment, change in retention and disposal period, system manager, and address for notification procedures; COMMERCE/DEPT–10, Executive Correspondence Files—deletion of one category of records covered, and change in filing system for the records; COMMERCE/NOAA–3, Commissioned Officer Official Personnel Folders—change of address under notification procedures; COMMERCE/NOAA–8, Individuals Engaged in Weather Modification Activities—change in system location, and notification procedures because of organizational realignment.

These systems were last published in the **Federal Register** on December 31, 1981, 46 FR 63498.

Dated: March 15, 1988.

J. Randall Blumenschein,

Chief, Management Support Division, Office of Management and Organization.

COMMERCE/DEPT-3

SYSTEM NAME:

Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3

SYSTEM LOCATION:

Office of General Counsel, Room 5897, U.S. Department of Commerce, Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, past and present, appointed by the President to Commerce Department offices and other senior level officers of the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of personal and family shareholding and other interests in business enterprises; copies of blind trust and other agreements pertaining to such interests; correspondence as to insulation of control of such interests; opinions of counsel; and confirmation materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 18 U.S.C. 208, 28 U.S.C. 533–535, 44 U.S.C. 3101, E.O. 10450, and E.O. 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine use paragraphs of Prefatory Statement, except paragraphs 6, 8, and 10.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Disposed of 6 years after separation of employee.

SYSTEM MANAGERS AND ADDRESS:

Assistant General Counsel for Administration, Room 5883, U.S. Department of Commerce, Washington, DC 20230.

NOTIFICATION PROCEDURE:

Information may be obtained from: Assistant General Counsel for Administration, U.S. Department of Commerce, Washington, DC 20230. Requester should provide name, and date of appointment pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

The subject individual, financial institutions involved, counsel, and those authorized by the individual to furnish information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record which meets the criteria of 5 U.S.C. 552a(k)(5) is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations in order to fulfill commitments made to protect the confidentiality of sources, and to maintain access to sources of information which are necessary to determine suitability for employment.

COMMERCE/DEPT-10

SYSTEM NAME:

Executive Correspondence Files—COMMERCE/DEPT–10.

SYSTEM LOCATION:

a. For Office of the Secretary correspondence: Executive Secretariat and Office of Information Management (Computer Services Division); U.S. Department of Commerce; 14th & Constitution Avenue, NW., Washington, DC 20230.

b. For EDA correspondence: Executive Secretariat, EDA, Room 7227, 14th and Constitution Avenue, NW., Washington, DC 20230.

c. For MBDA correspondence: MBDA Secretariat, Room 5083, 14th and Constitution Avenue, NW., Washington, DC 20230.

d. For NOAA correspondence: Executive Secretariat, Office of the Administrator, NOAA, Room 5807, 14th and Constitution Avenue, NW., Washington, DC 20230. Records on magnetic tape are also temporarily located at the contractor's installation: Dialcom Inc., 1104 Spring Street, Silver Spring, MD. 20910.

e. For PTO correspondence: Office of the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who correspond with the Secretary of Commerce, and the Deputy Secretary, and individuals whose correspondence has been referred by the White House, other Executive agencies or Members of Congress to the Secretary or Deputy Secretary for response.

(b) Individuals who correspond with top level officials in EDA, MBDA, NOAA, and PTO. In these categories the individuals include only those who express views or seek information or assistance. Freedom of Information Act or Privacy Act requests are not indexed in this system (See Freedom of Information and Privacy Request Records—COMMERCE/DEPT–5).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may include the name and address or correspondent, summary of subject matter, original correspondence, official response, referral letters, memoranda or notes concerning the subject of the correspondence, or copies of any enclosures. The records in the system are arranged numerically by control number assigned to each item of correspondence. Authority for maintenance of the system: 5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by personnel in the Office of the Secretary, Executive Secretariat, and administrative offices of each operating unit of the Department to assure that each request receives an appropriate and timely reply and to prepare statistical reports for management on correspondence volume or topics of public interest. Information from or copies of the records may be provided to the original addresses of the original correspondence. General routine uses of the Prefatory Statement also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form and on diskettes and magnetic tape.

RETRIEVABILITY:

By agency responsibility, by control number, by correspondent's name, by subject, by addressee, by category of writer (e.g., Member of Congress, White House staff, Cabinet member, mayor, citizen) by category of correspondence, by Executive Secretariat analysts' identification code, by type of priority for response time, by date, or possibly by city and state of correspondent's address.

SAFEGUARDS:

Paper records, disk, and magnetic tape as stored in file cabinets on secured premises with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of in accord with the appropriate records disposition schedule approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a.: Director, Executive Secretariat, Office of the Secretary, U.S. Department of Commerce, Washington, DC 20230. for records at location b.: Chief, Executive Secretariat, EDA, Room 7227, 14th and Constitution Avenue NW., Washington, DC.

For records at location c.: Chief, MBDA Secretariat, Room 5063, 14th and Constitution Avenue NW., Washington, DC 20230. For records at location d.: Director, Executive Secretariat, Office of the Administrator, National Oceanic and Atmospheric Administration, Washington, DC 20230. For records at location e.: Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

NOTIFICATION PROCEDURE:

For records at location a., information may be obtained from the Director, Office of Management and Organization, U.S. Department of Commerce, Washington, DC 20230. For records at location b., information may be obtained from the Director, Office of

Public Affairs, EDA, U.S. Department of Commerce, Washington, DC 20230.

For records at location c., information may be obtained from the Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, DC 20230.

For records at location d., information may be obtained from the Assistant Administrator for Management and Budget, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852. For records at location e., information may be obtained from the Solicitor, U.S. Patent and Trademark Office, Washington, DC 20231.

All requests for information should provide the correspondent's name as included in original correspondence, or provide any items listed under the retrievability section above pursuant to the inquiry provisions of the Department's rules that appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Request for access and disclosures should be addressed to the same address as stated in the Notification section above. Contesting record procedures:

The Department's rules for access, for contesting contents, and for appealing initial determination by the individual concerned appear in 15 CFR Part 4b. Requests for correction should be addressed to manager as shown above.

RECORD SOURCE CATEGORIES:

The correspondent, referral source, Department employees involved in processing the correspondence, and other individuals, as required to prepare an appropriate response.

COMMERCE/NOAA-3

SYSTEM NAME:

Commissioned Officer Official Personnel Folders—

COMMERCE/NOAA-3

SYSTEM LOCATION:

Office of the Director, NOAA Corps (NC), National Oceanic and Atmospheric Administration, Rockville, Maryland 20852.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned Officers of the NOAA Corps (active, retired, and deceased) and former commissioned officers separated within previous six months.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number; selective service number; promotion history; history of assignments; performance evaluations; date of birth; education; prior employment history; prior uniformed service; pay and allowance data; relatives; references; commendations; discipline; insurance; medical evaluations; and similar personal information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

33 U.S.C. 853a-t, 854a-a2, 855, 856, 857, 857-1-5, 857a, 858, 864, 865, 872, 873, 874, 875, 876; 5 U.S.C. 301; 28 U.S.C. 533–535; 44 U.S.C. 3101; and, E.O. 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine use paragraphs of the Prefatory Statement. Users are Selective Service System, Veteran's Administration, Federal Housing Administration, Social Security Administation, Public Health Service, Department of Defense elements, Taxing authorities (Federal, State and local), unemployment compensation authorities, and the organization to which officer is assigned such as branches of U.S. Military Service, branches of foreign military services, World Weather Organizations, etc.

Selected information is disseminated to determine eligibility for retention, promotion, retirement, separation, and other personnel actions; physical fitness; entitlement to pay and various allowances; report taxes withheld; entitlement to social security benefits, Veteran's benefits, unemployment compensation, waivers for repayment of student loans, death benefits, survivor benefits, and FHA in-service loans; assignments; and selective service status.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders (selected data elements in this system are duplicated on word processing equipment for ease of retrieval).

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records ar maintained in secured area. Access only on the authority of the Director, NOAA Corps or the Chief/Deputy Cheif, Commissioned Personnel Division.

RETENTION AND DISPOSAL:

Records are retained indefinitely on active, retired, and deceased officers; discharged officers' records are retained for approximately 6 months, then transferred to the National Personnel Records Center, St. Louis, Missouri 63118.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NOAA Corps, see above address.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Administration, NOAA, Room 6863, Herbert C. Hoover Building, Washington, DC 20230.

Requester should provide name, address, social security number, and date of birth pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individuals concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, official correspondence and forms generated by routine personnel actions, previous employers, prior military service, Selective Service System, Federal Housing Administration, Social Security Administration, and similar sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record which meets the criteria of 5 U.S.C. 552a(k)(5), is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f)) of the agency regulations in order to fulfill commitments made to protect the confidentiality of sources, and to maintain access to sources of information which are necessary to determine employee's suitability for employment in the NOAA Corps.

COMMERCE/NOAA-8

SYSTEM NAME:

Individuals Engaged in Weather Modification Activities, COMMERCE/NOAA-8

SYSTEM LOCATION:

Assistant Administrator for Oceanic and Atmospheric Research NOAA, U.S. Department of Commerce, 6010 Executive Boulevard, Rockville, Md. 20852.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and associations involved in weather modification operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and address; type of weather modification activity; location and duration of project; and equipment used. Authority for maintenance of the system: Pub. L. 92-205; 15 CFR Part 908.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See routine use paragraphs in the Prefatory Statement. Also information is made available to anyone who so requests to comply with Pub. L. 92–205.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data base.

RETRIEVABILITY:

Filed sequentially by name.

SAFEGUARDS:

Records are located on an electronic data base with full public access upon request to comply with Pub. L. 92–205.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Office of Weather Modification, see above address.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Administration, NOAA, Room 6863, Herbert C. Hoover Building, Washington, DC 20230. Requester should provide name, address, date(s) of project etc., pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual or association involved and those authorized by the foregoing to furnish information.

[FR Doc. 88-6242 Filed 3-21-88; 8:45 am]

BILLING CODE 3510-CW-M

National Bureau of Standards

Electromagnetic Properties of Materials Consortium Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Bureau of Standards will host an informal workshop on May 3 and 4 to organize a research consortium on the electromagnetic properties for materials in 2–300 GHZ applications. The focus of the research consortium is on development of measurement techniques and reference materials. During this workshop, NBS would like to discuss industry's needs, a research program to address these needs, consortium member benefits, and business issues related to participating in the research consortium.

DATE: The workshop will be held on May 3 and 4, 1988, from 9:00 a.m. to 4:30 p.m. both days.

Place: The workshop will be held in the Radio Building (Building 1), National Bureau of Standards, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: William Kissick, Electromagnetic Fields Division, National Bureau of Standards, Boulder, CO 80303; telephone (303) 497–3339 for reservations.

Dated: March 17, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-6172 Filed 3-21-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Alaska Coastal Management Program; North Slope Borough

ACTION: Notice of Preliminary Approval of Amendment.

SUMMARY: The Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Alaska to amend the Alaska Coastal Management Program (ACMP) to incorporate the North Slope Borough Coastal Management Program (NSBCMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 14559(g) and implementing regulations at 15 CFR 923.81. The NSBCMP creates a new coastal boundary for the ACMP in the region and establishes goals and policies for activities taking place in the Borough. The NSBCMP follows the guidelines and standards for local program development set in the ACMP and will be administered both by the Borough and the State.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary finding that the ACMP as amended will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the amendment under the National Environmental Policy Act of 1969, as amended, is not required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA) and the Director's Preliminary Findings of Approvability, are available at the address below.

Comments on the Preliminary Findings to approve the Alaska amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5111.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 88-6231 Filed 3-21-88; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Oregon, Massachusetts, South Carolina and Connecticut Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: March 11, 1988.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 88–6181 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Invitation To Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Maryland Coastal Management Program; the Hawaii (Waimanu) National Estuarine Research Reserve (NERR); Maine (Wells) NERR; New York (Hudson) NERR; and Rhode Island (Narragansett) NERR through June 30, 1988. The review of the coastal management program will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews of National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99–272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419)

Date: March 11, 1988.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 88–6182 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–10–M

[Modification No. 1 to Permit No. 573]

Marine Mammals; Modification of Permit Dr. William Watkins (P70C)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 573 issued to Dr. William Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, on November 21, 1986, (51 FR 311793) is modified in the following manner:

Section B.5 is replaced by:

> 4. The authority to take by harassment, tagging, or other activities authorized herein, shall extend from the date of issuance through December 31, 1990.

This modification became effective on December 31, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, D.C.:

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702.

Dated: March 16, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 88–6179 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit: Horizons West, Ltd. (P158C)

On December 23, 1987, Notice was published in the **Federal Register** (52 FR 48558) that an application had been filed by Horizons West, Ltd., dba Marine Life Aquarium, Keystone Route Box 365, Rapid City, South Dakota 57701, to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on March 14, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115.

Dated: March 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–6180 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council and its advisory bodies will convene separate public meetings at the Sheraton Hotel, Anchorage, AK, as follows:

Council—on April 13, 1988, at 9 a.m., will decide which of the proposed amendments to the groundfish fishery management plans (FMPs) for the Gulf of Alaska and Bering Sea and Aleutian Islands will be sent for public review; a draft of the FMP for king and Tanner crab in the Bering Sea/Aleutian Islands will be considered for public review, and there may be a new draft Salmon FMP for review. In addition to the regular reports on domestic and foreign fisheries, enforcement, and legislation, the Council will also hear the results of a recent survey of pollock in the southern half of the international waters in the Bering Sea, and discuss the annual meeting of the International Pacific Halibut Commission. The Council will also convene a closed session (not open to the public) at least once to review ongoing litigation, and other appropriate matters. The public meeting will adjourn at approximately noon on April 15.

Advisory bodies—The Council's Scientific and Statistical Committee, and its Advisory Panel will convene April 11 at 10 a.m. Other Plan Team and workgroup meetings may be convened on short notice also.

For more information contact the North Pacific Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–3809.

Date: March 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6223 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group will convene a public meeting, March 29, 1988, at 1 p.m., at the Red Lion Inn—Portland Center, Coos Bay Room, 310 SW., Lincoln Street, Portland, OR, to review progress on development of Amendment 4 to the FMP. The public meeting will adjourn on March 31.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW., First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: March 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6224 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene separate public meetings at the Sheraton Brickell Point Hotel, Miami, FL, as follows:

King and Spanish Mackerel Advisory Panel—Will convene April 11, 1988, from 1 p.m. to 6 p.m., to review the mackerel stock assessment, and make recommendations for modifications to the Total Allowable Catch (TAC), and bag limits.

Snapper/Grouper Advisory Panel—Will convene April 12, 1988, from 9 a.m. to noon, to review and offer input on the trawl prohibition contained in Amendment #1 to the Snapper/Grouper Fishery Management plan (FMP). They also will offer input regarding the concept of Special Management Zones (SMZs), to assist the Council as it begins reevaluation of the SMZ concept.

Scientific and Statistical Committee—Will convene April 12, 1988, from 1 p.m. to 5 p.m., to review and make recommendations on the trawl prohibition contained in Amendment #1 to the Snapper/Grouper FMP. They also will offer input regarding the concept of SMZs, to assist the Council as it begins reevaluation of the SMZ concept. The SSC will also review and make recommendations regarding the draft Summer Flounder FMP. Detailed agendas for these three meetings will be available to the public on or about April 1, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 16, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6225 Filed 3–21–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the List of Exempt Traditional Folklore and Handicraft Textile Products From Pakistan

March 17, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 23, 1988. For further information contact Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as further amended on June 2, 1987, established an export visa arrangement and exempt certification for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan. Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, the Governments of the United States and Pakistan have exchanged letters amending the bilateral agreement to include additional folklore and handicraft textile products made in the cottage industry of Pakistan which are exempt from the limits of the agreement and visa requirements when properly certified by the Government of Pakistan prior to exportation. All "Pakistan items" must be cut, sewn, or otherwise fabricated by hand in the cottage industry of Pakistan in order to qualify for exemption. A list of these additional exempt products is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 17, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended on June 2, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa requirements for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on March 23, 1988, you are directed to include the items described in the enclosure to this letter among the folklore and the handicraft products which are exempt from the limits of the bilateral agreement when properly certified by the Government of Pakistan prior to exportation. All "Pakistan items" must be cut, sewn, or otherwise fabricated by hand in the cottage industry of Pakistan in order to qualify for exemption.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure

List of Pakistan Items

Shalwar—Loose baggy pants at waist with drawstring. Narrows down to ankle which has cuffs or elastic.

Pyjama—A pair of trousers, loose at waist, with either drawstring or hooks and tapering to a tight fit at ankle. It is traditionally a Moghul costume worn by Punjabi women since the 16th century along with a kurta and dupatta (an oblong scarf)

Chaddi—Plain shorts worn by young and old as the national outfit while playing Kabadi games. Worn in plain or printed fabric, has drawstring at waist and two side pockets.

Plain Kurta—Strip susi shirt made in full sleeve, has front pocket, worn in short and ankle length.

Punjab Kamiz—Sargodha ladies tunic. Worn by the native of district Sargodha; comes with embroidery; knee length.

Roomal—Headwear made up of printed or embroidered fabrics. Worn by Muslim devout, both by men and by women.

Sleeveless Kurta—Shisha top from Peshawar made from natural khaddar with mirror work and embroidery.

Ghagra—Koprapar Langha. It's a drawstring skirt with Bandni printed design worn by people living in Koprapar suburb of Karachi. Comes in knee and ankle length.

[FR Doc. 88-6241 Filed 3-21-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: Application (Request) for DoD/Armed Forces Community Relations Support; No Form; and No OMB Control Number.

Type of Request: New.

Annual Burden Hours: 4,000.

Annual Responses: 8,000.

Needs and Uses: The Armed Services frequently are asked to support community events with aerial demonstrations, musical support, and speakers. To evaluate these requests, certain information is required which is summarized in the formats. Information is requested about the event, the sponsor, the exact nature of the desired support, and safety considerations.

Affected Public: Individual, State and local governments, Federal agencies, Nonprofit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain government support.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liason Officer, Department of Defense.

March 17, 1988.

[FR Doc. 88-6228 Filed 3-21-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Strategic Defense Initiative Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on April 15, 1988.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on April 15, 1988 the subcommittee will discuss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1988.

[FR Doc. 88-6229 Filed 3-21-88; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on April 12-14, 1988.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on April 12-14, 1988, the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matter listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1988.

[FR Doc. 88-6230 Filed 3-21-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATE: April 7 and April 8, 1988—9:00 a.m. until 5:00 p.m.

The meeting will be conducted at the Radisson Hotel, 1550 Court Place, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202 (202 732-5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I Roll Call
II Approval of Minutes of Previous Meeting
III Introduction of Visitors
IV Presentation of Information by OBEMLA Director or Designee
V Presentation of information by Members of General Public or Organizations on Agenda Items (Limited to 5 minutes per person from any one group)
VI Committee Reports
VII Old Business
VIII New Business
IX Meetings of Individual Committees
X Reconvening of Council
XII Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.—5:30 p.m.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88-6206 Filed 2-21-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-286-000 et al.]

Arizona Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

March 17, 1988.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER88-286-000]

Take notice that on March 10, 1988, Arizona Public Service Company (APS) tendered from filing a Certificate of Concurrence with San Diego Gas and Electric Company's filing of February 5, 1988. The aforementioned filing provides for an amendment to the Mutual Assistance Transmission Agreement (Amendment) between APS and San Diego Gas and Electric Company, Southern California Edison Company and Imperial Irrigation District (collectively the "Parties").

The Amendment modifies the methodology of the Mutual Assistance Transmission Agreement to conform to the "Transmission System Operating Principles" executed as of October 7, 1986 between the parties, Los Angeles Department of Water and Power, Nevada Power Company and the Western Area Power Administration.

Copies of this filing were served on San Diego Gas & Electric Company and the Arizona Corporation Commission.

Comment date: March 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company Public Service Company of New Hampshire

[Docket No. ER88-218-000]

Take notice that on March 11, 1988, New England Power Company (NEP) and Public Service Company of New Hampshire (PSNH) tendered for filing an amendment to their January 28, 1988 submittal in the above-referenced docket. NEP and PSNH state that the amendment consists of three pages to Exhibit B to the Seabrook Transmission Support Agreement which were inadvertently omitted from the original filing.

Comment date: March 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER88-285-000]

Take notice that on March 10, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during January 1988, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Gas & Electric Co—Supplement No. 30
City of Glendale—Supplement No. 34
Sierra Pacific Power Co.—Supplement No. 72
Utah Power & Light Co.—Supplement No. 74

Comment date: March 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Power and Light Company

[Docket No. ES88-32-000]

Take notice that on March 2, 1988, Iowa Power and Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue not more than $100 million of First Mortgage Bonds.

Comment date: April 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6222 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-387-002 et al.]

Pennsylvania Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

March 16, 1988.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Company

[Docket No. ER87-387-002]

Take notice that on March 9, 1988, Pennsylvania Power & Light Company tendered for filing a compliance refund report.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this document.

Allegheny Power Service Corporation on behalf of Monongahela Power Company

[Docket No. ER86-379-003]

Take notice that on March 8, 1988, Allegheny Power Service Corporation on behalf of Monongahela Power Company tendered for filing Tenth Revision of Sheet No. 14, Monongahela Power Company FERC Electric Tariff, Original Volume No. 1.

The new tariff page reduces the demand charge on the Company's rate schedule for sales to the City of Philippi and Town of New Martinsville, West Virginia, the Harrison Rural Electric Association, the Potomac Edison Company, and West Penn Power Company in accordance with the provisions of the Settlement Agreement in this docket to reflect the change in return on equity of Allegheny Generating Company effective March 1, 1988, ordered by the Commission in Docket Nos. EL86-37-002 and EL86-38-002. The Company has requested that the change in the rate be effective March 1, 1988, in accordance with the provisions of the Settlement Agreement.

Copies of the filing have been served upon all the jurisdictional customers and the West Virginia Public Serivice Commission.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Kansas Power and Light Company

[Docket No. ER88-24-000]

Take notice that on March 9, 1988, Kansas Power and Light Company (KPL) tendered for filing an amendment to its filing in Docket No. ER88-24-000 pursuant to a deficiency letter dated February 5, 1988. KPL states that the purpose of the filing is to revise the appropriate rate schedules to exclude the adjustment intended to track changes in revenue credits.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Allegheny Power Service Corporation on behalf of West Penn Power Company

[Docket No. ER87-156-001]

Take notice that on March 8, 1988, Allegheny Power Service Corporation on behalf of West Penn Power Company tendered for filing West Penn Power Company FERC Electric Tariff, Original Volume No. 1, Sixth Revised Sheet No. 11, and Original Volume No. 2, Sixth Revised Sheet No. 9, Fifth Revised Sheet No. 10, and Sixth Revised Sheet No. 12.

The new tariff pages reduce the demand change on the Company's rate shedules for sales to the Allegheny Electric Cooperative, Inc., and the Boroughs of Chambersburg and Mount Alto, Pennsylvania, and reduce the energy charge to Metropolitan Edision Company in accordance with the provisions of the Settlement Agreements in this docket to reflect the change in return on equity of Allegheny Generating Company effective March 1, 1988, ordered by the Commission in Docket Nos. EL86-37-002 and EL86-38-002. The Company has requested that the change in the rate by effective March 1, 1988, in accordance with the provisions of the Settlement Agreements.

Copies of the filing have been served upon all the jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF88-5011-000]

Take notice that on March 7, 1988, the Under Secretary of the Department of Energy, by Rate Order No. WAPA-38, did confirm and approve on an interim basis, to be effective on May 1, 1988, that being the first day of the May 1988 billing period, Western Area Power Administration (Western) tendered for filing Power Rate Schedule CV-F6 and Transmission Rate Schedule CV-FT1, CV-NFT1, and CV-TPT2 for the Central Valley Project (CVP). The power and transmission rates will be in effect on an interim basis pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The power repayment study, on which the power rates are based, indicated that the rates are adequate to recover the full cost of service. A brief summary comparing the provisional rates to the previous rates follows.

	Capacity ($/kW-Mo)	Energy (mills/kWh)	Composite (mills/kWh)
Previous rates	3.75	31.44	39.40
Provisional rates:			
May 1, 1988, through September 30, 1989	6.86	14.43	28.86
Oct. 1, 1989, through Sept. 30, 1991	7.49	15.76	31.53
Oct. 1, 1991, through Apr. 30, 1993	7.74	16.30	32.60

The provisional rates for the CVP will cover all annual operating expenses and repay the federal investment allocated to the commercial power function. The provisional firm power rates are composed of capacity and energy charges that initially represent approximately a 17.5 percent decrease from the previous composite power rate, and then increase in two steps over the 5-year cost evaluation period of May 1, 1988, through March 30, 1993. The rate step increases are necessary to track projected escalation in annual purchased power and wheeling expenses and result in a composite rate in 1993 that is approximately 7 percent below the previous rate (Schedule CV-F5). The previous power rate for CVP firm power service to commercial customer loads was: $3.75/kW-month for capacity and $31.44 mills/kWh for energy. If calculated on a composite basis, the previous rate would be 39.40 mills/kWh for energy (assuming the average projected customer load factor of 64.55 percent for the cost evaluation period). However, the previous power rate included cost recovery for third-party wheeling expenses as well as the expense of Western's provisions for certain voltages and direct service discounts. The provisional power rates have been modified in design to exclude cost recovery for third-party transmission expenses, thus eliminating the need for any discounts. If the previous rates were modified consistent with this provisional rate design, then on a composite basis, it would be 34.98 mills/kWh.

Revenues from CVP power sales under the previous rate (adjusted to parallel the proposed rate design) would have produced annual revenue amounts ranging from $253 million in FY 1988 to $259 million in FY 1993. These power sales revenue figures reduce to about $211 million in FY 1989 and $241 million in 1993 with the provisional power rates.

Two adjustment clauses incorporated in the provisional CVP power rates that have not been included in previous CVP power rate schedules are: the power factor adjustment clause (PFAC), and the revenue adjustment clause (RAC). The PFAC is characteristic of standard utility practice and requires that CVP commercial power customers maintain a minimum power factor level during peakload period to avoid a revenue surcharge. The RAC has been developed to provide greater stability in the repayment of the CVP investment. The RAC provides this stability by tracking certain projected major expenses and revenue categories used in developing the provisional rates, and "balancing" them periodically against actual incurred expenses and revenues.

In addition to the proposed CVP power rates, three provisional CVP transmission rate schedules are being proposed for approval and implementation on a final basis effective May 1, 1988. These schedules provide for the direct passthrough recovery from CVP power customers of third-party transmission expenses incurred by Western in the delivery of CVP commercial power (Rate Schedule CV-TPT2); and for firm and nonfirm transmission rates for transmission services provided by Western over the CVP transmission system for non-CVP power (Rate Schedules CV-FT1 and CV-NFT1, respectively). Rate Schedule CV-TPT2, which provides for the recovery of all third-party wheeling charges, will supersede Rate Schedule CV-TPT1, which provided for the recovery of all third-party wheeling expenses above the high-voltage wheeling charges and losses assessed by the Pacific Gas and Electric Company; the high-voltage wheeling charges and losses were previously included in the power rate design revenue recovery. No charge is proposed in the assessment of losses; however, the new rate schedule will provide for the direct pass through of all wheeling charges assessed by Western's wheeling agents.

The previous firm and nonfirm transmission rates were $0.35/kW-month and 1.0 mill/kWh, respectively. The provisional firm transmission rate of $0.481/kWh represents a 37.4 increase. The provisional 1.022 mill/kWh nonfirm transmission rate represents a 2.2 percent increase. The disproportionate increase in the firm transmission rate reflects an appropirate change in the rate calculation methodology. Both of the provisional CVP transmission rates reflect slight increases due to minor escalation over the past 5-year in the transmission system's operation, maintenance, replacements, additions, and administrative overhead expenses.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rate to customers consistent with sound business principles. The rate schedules are submitted by the Under Secretary for confirmation and approval on a final basis beginning May 1, 1988, and extending through April 30, 1993, pursuant to authority vested in the Federal Energy Regulatory Commission by Amendment No. 1 to Delegation Order No. 0204-108.

Comment date: March 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6214 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-261-000 et al.]

United Gas Pipe Line Company et al. Natural Gas Certificate Filings

March 15, 1988.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP88-261-000]

Take notice that on February 29, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP88-261-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, requesting a certificate of public convenience and necessity authorizing construction and operation of facilities and for issuance of an order permitting and approving abandonment of other, older facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, United is seeking Commission approval to replace a portion of its 12-inch Barataria-New Orleans Main Line with 3.77 miles of 6-inch pipeline. It is stated that this facility is located along the bank of a canal in Jefferson Parish, Louisiana and the tide and boat traffic in the canal has resulted in the line losing its cover. It is also stated that the new pipeline would be laid approximately 100 feet behind the canal in order to eliminate this problem and it would cost $671,000, which will be paid from funds on hand.

Comment date: April 5, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP84-336-002]

Take notice that on February 29, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-336-002 a petition to amend the order issued in Docket No. CP84-336-000, on October 3, 1984, pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for storage (injection/withdrawal) for Elizabethtown Gas Company (Shipper) from additional sources of supply, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco states that the purpose of the instant petition to amend is to secure Commission authorization permitting Applicant to transport quantities of gas for Shipper that Shipper may purchase from National Fuel Gas Supply Corporation (National Fuel) or from local production. Transco, it is said, would receive such alternative supply from National Fuel at the existing interconnection between National Fuel and Transco near the Wharton Storage Field and redeliver equivalent quantities to Shipper.

Transco states that such transportation of alternative quantity would involve no additional facilities or capacity.

Comment date: April 5, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Southern Natural Gas Company

[Docket No. CP88–268–00]

Take notice that on March 2, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 filed in Docket No. CP88–268–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorities to consolidate the operation of two delivery points under its blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it currently provides natural gas service to Southeast Alabama Gas District (Southeast) at delivery points in Elmore and Lee Counties, Alabama. Southern proposes to consolidate these two delivery points into one area delivery point containing two meter stations. Southern states that Southeast has informed Southern that the consolidation would enable it to more efficiently nominate volumes for distribution to its customers.

Southern states that in order to consolidate the delivery point it would not have to construct any new facilities or operate the meter stations in a different manner. Southern states that the total Contract Demand to be delivered to Southeast after the proposed consolidation would not exceed the total volumes authorized prior to the rearrangement.

Comment date: April 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP88–263–000]

Take notice that on March 1, 1988, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88–263–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and meter for delivery of natural gas to Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a 4-inch tap and meter on its Line T in Jefferson County, Arkansas, to enable ALG to establish alternative means of providing natural gas service to two existing retail customers, the Natural Center for Toxicological Research, and an office of the Environmental Protection Agency. Arkla states that the estimated cost of the facilities is $54,720. These two customers are presently served from ALG's distribution system in the Pine Bluff area, it is explained. Arkla states that increasing requirements in the Pine Bluff area make it more efficient for ALG to serve the two customers from R.E. 1235, a new 6-inch, 3.5 mile pipeline to be constructed by ALG. It is explained that natural gas usage by the two customers would be about 438,000 Mcf per year and 1,650 Mcf on a peak day.

Comment date: April 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the mattter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6220 Filed 3-21-88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–310–000]

Consolidated Oil & Gas, Inc., et al.; Application for Permanent Abandonment and Pregranted Abandonment for Sales Under Small Producer Certificate

March 17, 1988.

Take notice that on February 19, 1988, as supplemented on March 3, 1988, Consolidated Oil & Gas, Inc. *et al.* [1] (Consolidated, *et al.*) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's Regulations requesting permission to permanently abandon sales of gas to Sunterra Gas Gathering Company (Sunterra) pursuant to four gas purchase contracts dated August 24, 1956, January 1, 1958, September 6, 1960, and November 28, 1960. Consolidated, *et al.*, also request pregranted abandonment for sales for resale in ineterstate commerce under Consolidated's small producer certificate in Docket No. CS72–694. Consolidated, *et al.*, state that while such pregranted abandonment is requested on a permanent basis, Consolidated, *et al.*, will accept a three-year limited-term authorization. Consolidated, *et al.*, state that they recognize that the Commission has undertaken dramatic revision of its abandonment procedures in Order No. 490 issued on February 5, 1988. However, Consolidated, *et al.*, state that Order No. 490 does not become effective until, at the earliest, 60 days following publication in the **Federal Register** (April 12, 1988), and the order will be subject to rehearing, possible administrative stay, judicial review, and possible judicial stay. Therefore, Consolidated, *et al.*, request that permanent abandonment and pregranted abandonment be granted under the current Commission regulations and procedures.

Consolidated, *et al.*, state that the abandonment involves sales obligations under four gas purchase contracts between Consolidated and Sunterra, successor to Southern Union Gathering Company. Consolidated, *et al.*, state that their obligations arose when Sunterra sold surplus volumes of gas, including gas covered by these four contracts, to El Paso Natural Gas Company (El Paso). Consolidated, *et al.*, state that deliveries of their gas to El Paso by Sunterra were authorized by certificates issued by the Commission to Consolidated in 1959 and 1963, which were subsequently terminated when Consolidated's small producer certificate was issued. According to Consolidated, *et al.*, the Commission determined, over Consolidated's objection, that because of the deliveries by Sunterra to El Paso, all of Consolidated's sales pursuant to all four contracts were subject to the jurisdiction of the Commission under the Natural Gas Act.[2]

Consolidated, *et al.*, state that El Paso has been unable or unwilling to purchase any gas from Sunterra since 1985. Consolidated, *et al.*, state that Sunterra submitted its application to abandon all sales to El Paso and for a blanket limited-term certificate in Docket Nos. CI88–119–000 and CI88–140–000. Consolidated, *et al.*, state that the applications which Sunterra filed in Docket Nos. CI88–119–000 and CI88–140–000 set forth in full the facts and support for the requested abandonment. Consolidated, *et al.*, state they will not restate the substance of that pleading; rather Consolidated, *et al.*, subscribe to and incorporate by reference that discussion and justification. Notice of the Sunterra applications was published in the **Federal Register** on January 5, 1988 (53 FR 170). Consolidated, *et al.*, state that four specific matters require amplification herein.

First, Consolidated, *et al.*, state that their obligation under the four contracts to El Paso does not arise directly from the four sales contracts but rather indirectly through Sunterra's gas sales contract with El Paso, and Consolidated, *et al.*, state that contract has been terminated by its terms.

Second, Consolidated, *et al.*, state that El Paso has indicated no opposition to the request for abandonment by Sunterra, and because Consolidated's gas under the four contracts comprises part of the gas committed by Sunterra to El Paso, neither Sunterra nor El Paso can object to permanent abandonment of Consolidated's obligation.

Third, Consolidated, *et al.*, state that when abandonment is granted to Sunterra, delivery of gas to El Paso by Consolidated will become unlawful and physically impossible because Consolidated delivers the gas covered by the four contracts to Sunterra and Sunterra then delivers the gas pursuant to its obligations and opportunities.

Fourth, Consolidated, *et al.*, state that the gas covered by the fourth contracts may be sold to end-users, local distribution companies, intrastate pipelines, and interstate pipelines. Therefore, Consolidated, *et al.*, request pregranted abandonment for sales under Consolidated's small producer certificate. Consolidated, *et al.*, state that they seek such authority for as long as permitted by the Commission, but they are willing to accept a three-year limitation on pregranted abandonment in order to expedite the grant of permanent abandonment as requested. Due to the circumstances described herein and in the Sunterra applications, Consolidated, *et al.*, request that their application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85–1–000, at 18 CFR 2.77.[3]

Consolidated, *et al.*, state that the deliverability is 2,124 Mcf/d and that the gas is NGPA section 104 small producer flowing gas.

Since Consolidated, *et al.*, state that they satisfy the requirements of § 2.77 of the Commission's Regulations and have requested that their application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should, on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Consolidated, *et al.*, to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6213 Filed 3–21–88; 8:45 am]

BILLING CODE 6717–01–M

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[1] Consolidated states the application is submitted on its own behalf and on behalf of other signatory and nonsignatory parties to the subject contracts.

[2] *Southern Union Gathering Company*, 28 FERC ¶ 61,225 at p.61,428 (1984), *reh. denied* 30 FERC ¶ 61,350 at p.61,709 (1985), *affirmed* 806 F.2d 275 (D.C. Cir. 1986).

[3] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

BEST COPY AVAILABLE

[Docket No. CI86-267-001 et al.]

Howell Gas Management Co. et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 17, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI86-267-001: 3-9-88	Howell Gas Management Company, 1011 Lamar, Suite 1800, Houston, Texas 77002.	3 years.
CI86-377-001, CI86-378-001: 3-9-88	Arkla Energy Marketing Company, P.O. Box 21734, Shreveport, Louisiana 71151.	Do.
CI87-703-001: 3-11-88	Western Kentucky Gas Resources Company, d/b/a NRG CORP.[2] c/o Energas Company, P.O. Box 650205, Dallas, Texas 75265-0205.	Unlimited.

[2] Applicant also requests authorization to include sales made on behalf of third parties.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 88-6212 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-12-000]

Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision and Request for Waiver

March 16, 1988.

Take notice that on March 10, 1988, Distrigas Corporation ("Distrigas") tendered for filing 22nd Revised Sheet No. 1 to its FERC Gas Tariff to reflect rate decreases for LNG from five cargoes delivered pursuant to amended import authorization granted by the Economic Regulatory Administration, and Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing 22nd Revised Sheet No. 3A of its FERC Gas Tariff also to reflect rate decreases.

Distrigas' 22nd Revised Sheet No. 1 is being filed pursuant to the Purchased LNG Cost Adjustment provision set forth in its FERC Gas Tariff. The Distrigas rate changes are being filed to reflect decreases in its current sales rates to DOMAC of approximately $.80 for the first three cargoes and approximately $1.30 for the last two cargoes. The first three cargoes are priced at $2.50 plus approximately 6 cents for bunkers and port charges plus approximately .5 cent for custom user and harbor maintenance fee. The last two cargoes are priced at $2.00 plus approximately 6 cents for bunkers and port charges and approximately .4 cent for the custom user and harbor maintenance fee.

DOMAC's 22nd Revised Sheet No. 3A is being filed under Section 15 of the General Terms and Conditions of its FERC Gas Tariff to reflect the Distrigas rate changes in DOMAC's rates for sale to its distribution customers, a losses and uses factor and the GRI surcharge. The resulting sales prices are $2.681199 and $2.160107 respectively per MMBtu. This reflects decreases of approximately $.80 for the first three cargoes and approximately $1.30 for the last two cargoes. No surcharge is filed to recover outstanding balances in DOMAC's unrecovered purchased LNG cost account.

Distrigas and DOMAC request a waiver of all applicable notice requirements so that the proposed tariff sheets become effective on the date of delivery of the first LNG cargo imported from Sonatrach pursuant to Amendment No. 2, which reflects these reduced prices.

A copy of Distrigas' and DOMAC's filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6164 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-291-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 16, 1988.

Take notice that on March 9, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Thirth-seventh Revised Sheet No. 5A
Eighth Revised Sheet No. 8
Fourth Revised Sheet No. 13
First Revised Sheet Nos. 126 through 132
Original Sheet Nos. 157 through 162

Natural states that the purpose of these sheets is to: (1) Institute a Gas Supply Charge provision (section 31) in Natural's Tariff, and (2) change the effective dates for the nomination procedure pursuant to section 22 of the General Terms and Conditions. The Gas Supply Charge provision when accepted and permitted to become effective will apply to Natural's customers purchasing gas under Rate Schedules DMQ-1 and G-1. It will provide a mechanism whereby Natural can recover from these customers the costs of maintaining a gas supply inventory to meet the levels of sales service they nominate. Natural further states that the proposed Gas Supply Charge mechanism submitted adheres to the principles which the Commission outlined in Order No. 500 to be used as a guide in structuring such a charge.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective April 15, 1988, and the charge to go into effect subject to refund on June 1, 1988.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before March 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6165 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-75-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 15, 1988.

Take notice that on March 9, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the tariff sheets were submitted pursuant to § 284.10(3)(A) of the Commission's Regulations. They reflect the changes necessary to effectuate the sales contract conversions to firm transportations as requested by four (4) of Natural's Rate Schedule DMQ-1 sales customers.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the proposed tariff sheets to become effective on their indicated effective dates.

A copy of this filing was mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6166 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-26-025]

Tennessee Gas Pipeline Co.; Filing Revised Tariff Sheets

March 16, 1988.

Take notice that on March 11, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff to be effective August 21, 1987:

Third Substitute First Revised Sheet No. 114
Third Substitute First Revised Sheet No. 346

Tennessee states that the purpose of this filing is to refile tariff sheets with modifications in accord with the Commission's February 25, 1988 Letter Order.

Tennessee states that copies of the filing have been mailed to all affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6167 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-76-000]

Tennessee Gas Pipeline Co.; Filing Revised Tariff Sheets

March 16, 1988.

Take notice that on March 11, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff to be effective as indicated:

Tariff sheet	Effective date
Substitute Original Sheet Nos. 12 through 19.	Dec. 10, 1986
Second Revised Sheet No. 114	Apr. 10, 1988
Second Substitute Second Revised Sheet No. 116.	Aug. 21, 1987
Substitute Original Sheet No. 214	Dec. 10, 1986
Substitute Original Sheet No. 227	Dec. 10, 1986
First Revised Sheet No. 237	Jan. 1, 1988
Second Revised Sheet Nos. 350 through 357.	Apr. 10, 1988
Second Revised Sheet No. 359	Apr. 10, 1988
First Revised Sheet No. 360	Apr. 10, 1988

Tennessee states that the purpose of the filing is to: (1) Revised Rate Schedule FT-A to reflect an increase in reservation and commodity rates if a shipper elects to change receipt points for its firm transportation, (2) conform language in Rate Schedule FT-A to indicate that the reservation charge is made up of two components—R_1 and R_2, (3) correct typographical errors, (4) change headings on the system maps, and (5) update the Index of Purchasers.

Tennessee states that copies of the filing have been mailed to all affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6168 Filed 2-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-007]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 15, 1988.

Take notice that Williams Natural Gas Company (WNG) on March 9, 1988, tendered for filing to become a part of its FERC Gas Tariff to be effective April 15, 1988:

Original Volume No. 1

Revised First Revised Sheet No. 1
First Revised Third Revised No. 7
First Revised Original Sheet Nos. 42, 47 and 48
First Revised Sheet Nos. 143 and 149

Original Volume No. 2

First Revised Sheet Nos. 249, 252–255, 258 and 259

WNG states that these pages comprise a general maintenance filing to update WNG's FERC Gas Tariff, Original Volume Nos. 1 and 2.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6169 Filed 3-21-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3352-1]

Announcement of a Request for Applications for Superfund Research

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: A Request for Applications (RFA), RFA #NPIR-002-88 is available. The purpose of the request is to solicit grant proposals which will result in the development of innovative, cost-effective methods for the treatment of hazardous wastes in situ at Superfund sites. The Agency expects to fund 5 to 10 proposals for two years at a total cost of $1 million.

[Section 209, Superfund Amendments and Reauthorization Act 1986]

DATES: Applications must be received no later than May 1, 1988 to be considered for funding.

ADDRESS: Copies of the RFA may be obtained from: U.S. Environmental Protection Agency, ORD Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 569-7562

FOR FURTHER INFORMATION CONTACT: Questions relating to the RFA may be directed to Mr. Donald Carey at: U.S. Environmental Protection Agency, Research Grants Staff (RD-675), 401 M Street SW., Washington, DC 20460, (202) 382-7445.

George R. Simon,

Acting Director, Research Grants Staff.

Roger S. Cortesi,

Director, Office of Exploratory Research.

March 16, 1988.

[FR Doc. 88-6193 Filed 3-21-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3352-4]

Hazardous Substance Research Centers; Solicitation for Applications

AGENCY: Environmental Protection Agency.

ACTION: Solicitation for Applications.

SUMMARY: This notice sets forth the eligibility and submission requirements, evaluation criteria, and implementation schedule for establishing five university-based hazardous substance research centers, as authorized by section 311(d) of Superfund, as amended by section 209 of the Superfund Amendments and Reauthorization Act of 1986. These centers will be competitively awarded and will be equitably distributed around the United States. The primary purpose of these centers is to perform long-term and short-term research relating to key hazardous substance problems in the geographic area served by the center. An important secondary focus of each center is to provide training, technology transfer, and information dissemination services aimed at local personnel interested in the manufacture use, transportation, or disposal of hazardous substances.

DATE: All applications must be received at the contact point by June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Morehouse, Director, Hazardous Substance Research Centers Program, Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency 401 M Street SW., Washington, DC 20460 (202/382-5750).

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I. Introduction

A. Announcement

The Environmental Protection Agency (EPA) is seeking proposals for the establishment of five university-based Hazardous Substance Research Centers (HSRC). The purpose of these centers is to conduct research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances.

B. The Hazardous Substance Problem

One of the most important environmental issues to emerge in the 1980's is the management of hazardous substances, from manufacture to treatment and disposal. Health and environmental risks associated with hazardous substances have become the concern of environmental managers, regulators of numerous industries, and the public at large. Since 1980, numerous abandoned hazardous waste sites have been discovered, and a National Priorities List for cleanup of many sites has shown that in many cases, air, soils, and ground and surface waters have been contaminated by a wide variety of organic and inorganic compounds which have been improperly disposed of. In many instances, remedial actions are very costly, and conventional cleanup procedures are unsatisfactory. At the same time, there has been a growing recognition of the risks associated with transportations of hazardous materials and of the failure of conventional methods of disposal, such as landfills, container burial, impoundments, and deep well injection to contain and immobilize hazardous wastes. There is also a greater awareness of the need to develop more advanced methods of waste stabilization, incineration, chemical, biological or physical alteration, and waste volume reduction to address the growing inventory of waste disposal problems associated with both historical sites and future waste production. Further, more reliable and efficient methods to assess the degree of risk associated with hazardous substances must be found. Finally, there has been an increasing recognition that the most satisfactory approach to managing hazardous substances is to produce less of them through industrial process changes, alternative materials, and in-plant recycling and recovery.

C. Authorization and Appropriation

In recognition of the fact that current scientific knowledge and existing science-based technologies are inadquate to fully address the identification, remediation, and management of hazardous substance problems, Congress enacted section 209 of the Superfund Amendments and Reauthorization Act (SARA). This section amends the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) to include section 311, entitled Research, *Development and Demonstration.* The broad purpose of section 311 is to establish a comprehensive Federal program of research, development, demonstration, and training to promote alternative and advanced treatment technologies and to improve the scientific capability to detect, assess, and mitigate risks associated with all major aspects of the manufacture, use, and disposal of hazardous substances.

In support of these broad objectives, section 311(d) of Superfund authorizes EPA to provide Federal assistance to at least five university-based centers, equitably distributed throughout the United States, to conduct research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances, and publish and disseminate the results of such research. EPA's 1988 appropriation provides five million dollars of Superfund for the first year of this program with the requirement that no more than five centers be competitively selected and established.

D. Definition of Hazardous Substances

For purposes of this solicitation, "hazardous substances" is defined according to section 101(14) of Superfund, as amended by SARA. This definition is quoted below:

> The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of [Superfund], (c) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synethetic gas).

II. General Description

A. Mission of the Centers

Five hazardous substance research centers will be established in the United States to provide the following services:

- Long-term and short-term research on the manufacture, use, transportation, diposal, and management of hazardous substances.
- Dissemination of research results and coordination of efforts with other institutions active in related areas
- Training, technology transfer, and technical support which would benefit personnel and organization involved in the regulation of hazardous substances or their manufacture, handling, or diposal.

B. Disciplines

Research areas supported by the HSCRs may cover all relevant scientific and technological subjects except health effects research (toxicology, dose-response, epidemiology). Risk assessment studies are not prohibited, provided the HSRC does not perform the health effects research needed to support the risk assessment studies. If health effects data are needed, they

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must be obtained from other sources at no cost to the HSRC. Since other institutions are specifically authorized to perform health effects research on hazardous substances [SARA, section 311(a)(c)] it is the view of EPA that the resources of the HSRCs are best spent on activities other than health effects research.

C. Personnel

Each HSRC will be headed by a center director who will be responsible for management, staffing, and budgeting for the center. He will provide intellectual leadership and guidance for the center, and is responsible for coordinating the efforts of the center with those of other institutions engaged in similar pursuits.

The director will devote at least 50% of his time to the operation of the HSRC, and will be a member of the faculty or a full-time member of the administrative staff of the designated lead institution of an HSRC in the event that it is a consortium arrangement. Other personnel that are associated with the center on a full- or party-time basis are:

- A secretary for the center or an administrative assistant who will report to the center director
- Principal investigators on all research projects supported entirely or partly by HSRC funds. Principal investigators should be full-time staff members of the HSRC institution(s)
- Training staff, who consist of one or more individuals who devote at least 50% of their time to the design, development, and administration of the HSRC training program.

D. Region-Pairs

Two adjoining Federal regions will be served by each center, according to a region pairing plan designed to provide equitable distribution of resources over the United States and to better address the hazardous substance problems experienced in the various sections of the country. Pairings are based on contiguity and, to the extent possible, on a reasonable similarity in regional profiles. The ten EPA regions and the States and territories which comprise them are listed below:

Region 1

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region 2

New Jersey
New York
Puerto Rico
Virgin Islands

Region 3

Delaware
Maryland
Pennsylvania
Virginia
Washington, DC
West Virginia

Region 4

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee

Region 5

Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin

Region 6

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region 7

Iowa
Kansas
Missouri
Nebraska

Region 8

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

Region 9

Arizona
California
Guam
Hawaii
Nevada

Region 10

Alaska
Idaho
Oregon
Washington

Regions are paired in the following way:

Region-Pair 1 and 2
Region-Pair 3 and 5
Region-Pair 4 and 6
Region-Pair 7 and 8
Region-Pair 9 and 10

E. Administrative and Operating Requirements

1. Lead Institution

HSRCs may be either single institutions or consortiums. (See Section III for additional information on consortium arrangements.) If a consortium arrangement is proposed, a lead institution must be identified. The lead institution must be a university, and the center director must be at that institution.

2. Research

At least once per year the center director will solicit for technical proposals for research within all of the institutions of the HSRC, indicating subject areas of interest. Proposals will be evaluated by a science advisory committee (see item 4.a. below) for technical quality and relevance to the HSRC's research plan. The center director will select proposals for funding based on the recommendations of the science advisory committee and the availability of research funds.

3. Training and Technology Transfer

Training courses and technology transfer activities must be conducted by the HSRC. *Training as used here does not include work leading to a baccalaureate or advanced degree.* Training and technology transfer as defined in this solicitation include, but are not limited to: (1) seminars, (2) workshops, (3) demonstrations, (4) handbooks, (5) user manuals, (6) bibliographies, (7) data bases, (8) newsletters, (9) professional exchange programs, (10) information clearinghouses, or (11) non-academic courses of a length less than one academic term. Within the context of this broad definition, the applicant is free to determine whether a proposed activity is training or technology transfer. Courses should be directed toward State and local regulators, manufacturers, disposers, other handlers of hazardous substances, or the public at large.

4. Committees

To ensure that the center continues to fulfill its mission in ensuing years, the following bodies must be established upon initiation of a center and maintained throughout the life of the center:

a. *Science Advisory Committee.* This committee is chaired by the center director, who is also responsible for selecting members, within certain limitations established by this announcement. The membership of this

committee will consist of approximately 15 technical peers drawn from the public and private sectors and academia. Approximately one-third of the membership will consist of appropriate personnel from EPA's regional offices and laboratories. At least one-third of the membership must be drawn from the academic community. The remaining members may come from academia, industry, or Federal, State, or local government. Appointments to this committee are subject to approval by the EPA project officer. Duties include annual development of a list of relevant research topics and recommendations regarding the relevance and technical merit of project proposals, and review of ongoing projects. Meetings will be held twice a year. Members must be chosen from outside of the institutions of the HSRC.

b. *Training and Technology Advisory Committee.* This committee is chaired by the center director. Mandatory membership will include representatives from the relevant EPA regional offices, EPA's Office of Solid Waste and Emergency Response, ORD's Office of Technology Transfer and Regulatory Support, and States or localities. Others may be added by the center director with approval by the EPA project officer. Duties include annual meetings to recommend training, technology transfer, and technical support plans for the next year, review progress, and recommended changes in current year programs.

5. Annual Meeting of Center Directors

All center directors will meet annually with the EPA project officer and other EPA personnel to discuss progress, coordination, and future directions.

6. Annual Report

Not more than 30 days after the end of each fiscal year, the center director must submit an annual report to the project officer in a format to be specified by the project officer. This report will include accomplishments for the fiscal year immediately ending, plans for the next fiscal year, and listings of publications, courses given, workshops, seminars, conferences, and other quantifiable outputs.

7. Regional Liaison

Each regional office in the region-pair will assign a contact person to advise the project officer on center operations and to advise the center in its efforts to address regional needs. The center must agree to work directly and closely with regional personnel in a manner which will be negotiated among the two regional representatives and the center director.

F. Funding Requirements

EPA plans to contribute approximately one million dollars annually to each center to support the center's research and training activities. These funds will be provided through a Federal assistance agreement with the recipient. The amount of funds the recipient may provide is unlimited. However, the Federal share must not exceed 80% of the total budget. Matching funds may be provided by the university, State or local contributions, foundations, individuals, or the private sector. Not less than 10% and not more than 20% of the total resources available to the center must be devoted to training, technical support, and technology transfer.

No Federal funds provided for this program may be used to purchase, build, or renovate any buildings or to purchase land.

III. Eligibility Requirements

U.S. academic institutions with significant research and training programs in areas relating to hazardous substances are invited to submit proposals. Proposals involving consortiums—limited to universities and two and four year colleges—are encouraged.

However, a single institution in a consortium, designated as the lead institution, must accept overall management responsibilities for the center. The lead institutions must be a university. In accordance with requirements established in section 311(d) of SARA, the institution (or the lead institution in the case of a consortium) must meet the following additional requirements in order to be eligible for HSRC status:

Section 311(d)(4)(A):

> The Hazardous Substance Research Center must be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

Section 311(d)(4)(B):

> The recipient shall be located in an area which has experienced problems with hazardous substance management.

For purposes of this solicitation, "region" is defined in the sections quoted above as "region-pair" and "area" is interpreted to mean "State". Each institution which applies may only compete for selection in the region-pair in which it is located. *No member of a center consortium may be located outside the particular region-pair which the applicant is proposing to serve.* Contracts with other institutions to perform research or training tasks are allowed.

However, the total amount of funds contracted for these purposes cannot exceed 10% of the total HSRC budget for any fiscal year. Normal contractual services, such as equipment rental, purchase or supplies, etc., are not subject to this limitation. Contract institutions are not considered part of the HSRC.

Within the constraints imposed by region-pairing, any university may be listed on more than one consortium proposal.

IV. Submission Requirements

A. Where and When to Submit

In order to be considerd for award of an HSRC, an original and 15 copies of a proposal must be submitted to: Karen Morehouse, Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The original proposal and 15 copies are due at this contact point no later than June 27, 1988. Please provide a stamped, self-addressed envelope so that receipt of your proposal can be acknowledged.

B. Format for Submission

Each proposal must adhere to the format and limitations specified below, in order to be construed for funding. *Do not append additional material to the proposal, as it will not be considered and will not be forwarded to reviewers.* Each proposals must be submitted in final form. Requests to add or correct material to a submitted proposal will not be considered, unless the additional material is requested by EPA.

1. Administrative Proposal

Each proposal must contain the following separate items, that will be used primarily in an administrative review of the proposal to determine eligibility of the proposer and compliance with administrative and legislative requirements:

a. A cover letter from the proposer
b. A table of contents
c. A justification of eligibility
d. Proof that administrative requirements will be met
e. Proof that legislative requirements will be met

a. *Cover Letter:* A one to two page cover letter must accompany the proposal. This letter must be signed by the chief executive officer of the institution (or, in the case of a consortium arrangement, the lead institution). This letter must begin by stating that the proposal is submitted in response to the solicitation for Hazardous Substance Research Centers to serve the region-pair in which the institution or consortium is located.

In addition, the letter must indicate the willingness of each institution to provide the necessary resources for successful implementation of the center. Finally, the letter must state that the institution will meet all administrative, management, legislative, and operational requirements and restrictions laid out in this solicitation.

b. *Table of Contents:* To assist in the administrative and technical processing of proposals, a complete table of contents must be included which refers to clearly numbered pages.

c. *Eligibility Requirements:* Each proposal must include a section which addresses the eligibility requirements as specified in section III of this solicitation and which clearly demonstrates the institution's eligibility to compete for an HSRC.

d. *Administrative Requirements:* Each proposal must include a section which addresses the administrative and operational requirements as specified in section 11.E. of this solicitation and which clearly and completely describes how the institution will adhere to these requirements.

e. *Legislative Requirements:* Section 311(d) of Superfund requires that certain conditions must be met for an institution to qualify for funds under the HSRC program. Specific conditions are discussed below.

Section 311(d)(4)(E):

> The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

For a consortium arrangement, the total commitment from all institutions in the consortium need not exceed $100,000 per year. The proposal must explain how this requirement is being met.

Section 311(d)(5):

> MAINTENANCE OF EFFORT.—*No grant* may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

(SARA was enacted in October 1986).

For purposes of this solicitation, a single maintenance of effort justification may be provided to cover all institutions in the consortium.

2. Technical Proposal

In addition to the Administrative Proposal, each proposal must include the following items, which will be used in its technical evaluation:

a. Center director
b. Center staff
c. Region-Pair problems
d. Research plan
e. Training and technology transfer plan
f. Coordination
g. Facilities and equipment
h. Non-Federal support
i. Budget

a. *The Center Director:* The proposal must describe the technical and administrative qualifications of the center director and his plans for developing an administrative structure which will enable the center to operate efficiently and effectively. This description must clearly demonstrate that the center director possesses the necessary expertise to guide such a center's research, training, and information dissemination activities. A resume for the center director, not to exceed two pages in length, must be appended to the proposal.

b. *Center Staff:* The proposal must clearly indicate the skills and abilities of all key personnel who will conduct research or training for the center. This description must clearly demonstrate that the center staff possess the necessary expertise to carry out the duties which they were hired to perform. A resume which does not exceed two pages must be appended for each key member of the research or training staff associated with the center.

c. *Discussion of Hazardous Substance Problems in the Region-Pair:* The proposal must include a comprehensive description of the major hazardous substance problems experienced by each region in the region-pair and provide quantitative as well as qualitative descriptions of problems wherever possible. To the extent that it is possible to specify individual compounds of concern, this should be done.

When the proposal specifies a hazardous substance by chemical or physical class, that substance must be shown to be consistent with the definition of hazardous substances as provided under Section 101(14) of Superfund. Specific reference to the appropriate acts and sections cited under Superfund section 101(14) will be sufficient to establish the consistency of the definition with this solicitation. For example, if a study of benzene is proposed (or benzene-containing mixtures, in any environmental medium) it is sufficient to say that benzene is identified as a hazardous substance under Section 112 of the Clean Air Act. Any mixture or combination of compounds which contains one or more substances so referenced can be established as a hazardous substance according to the procedures outlined above. Refer to Section I. D. of this solicitation for the legal definition of hazardous substances.

d. *Research Plan:* Based on the discussion of the region-pair problems, the proposal must present a plan for the conduct of research, briefly indicating the technical issues, research approach, and expected results. The discussion should indicate how results would address problems of the region-pair. The research plan must cover a three-year period, emphasizing the first year's work. It is understood that since the operation of centers would continually bring in new (and currently unknown) proposals, significant uncertainties are necessarily contained in the initial research plan. For that reason, emphasis should be placed on a description of the specific projects that would be initiated in the first year, the way this work would be conducted, and the expected results. To provide a context for future research, a discussion of the general approach to research should also be included. This section must also address the center's plan for disseminating these results.

e. *Training, Technical Support, and Technology Transfer Plan:* Plans must be presented for the development and dissemination of training courses and technology transfer to be conducted by the HSRC, emphasizing specific activities to be conducted during the first year of operation. To the extent possible, this plan should specify the activity (training course, workshop, handbooks, etc.). For each activity, include subject matter, target audience, recruitment procedures, instructors, and other information of use in evaluating the quality of the training and technology transfer plans. Refer to section II.E.3. of this solicitation for a definition of training and technology transfer.

Do not append copies of proposed course material, syllabuses, etc. Tie the prescribed training and technology transfer plans as closely as possible to the description of the needs of the region-pair.

f. *Coordination:* The proposal must include a plan for coordinating the activities of the center with those of

organizations engaged in similar or related pursuits. This plan must identify other organizations and the ways in which coordination is to be achieved.

g. *Facilities and Equipment:* The proposal must identify the facilities and equipment which will be available to the center and, to the extent possible, the ways in which these items will be used.

h. *Non-Federal Support:* A description of the precise amounts and forms of non-Federal support proposed must be included. This should be categorized as clearly as possible, and must include the sources of support, the kind (cash, salaries, equipment, supplies, etc.), and the amount of each kind of support identified.

i. *Budgetary Justification:* An estimate of expenses and personnel must be provided for the first three years of operation, using the formats shown in Tables 1–3 (appended). As in the case of the research and training plans, more detailed budget information for the research and training programs is requested for the first year of operations (Table 1) than for the out-years (Table 2). Table 3 provides the format for showing estimated personnel allocations for the first three years of the center's operation. Explanations of entries in the tables are given below:

Table 1

- "Direct Costs" refers to estimated costs of salaries, fringe benefits, travel, equipment, supplies, contractual services (except for contracts to institutions outside of the HSRC to conduct research or training tasks (projects) for the HSRC), and miscellaneous costs.
- "Contracts" refers to dollars allocated via agreements with other research or training institutions outside of the HSRC to conduct all or part of an HSRC's project or projects.
- "Indirect Costs" means the total of overhead payments made to all institutions of the HSRC.
- "Project 1, Project 2 . . . Project N" refers to the individual major research or training projects proposed. Identify these by project title. Include here projects conducted outside the HSRC under contract.
- "Unallocated Resources" means all funds reserved for research or training projects in the first year of operation which have not yet been chosen. This category is an indication of the degree to which the first year of the research or training programs have been planned.
- As indicated in section II.E.3. of this solicitation, the proposer may use his own classification system to determine whether a specific activity is training or technology transfer.
- "Tech. Transfer" refers to all costs in the given budget category (direct costs, contracts, etc.) associated with technical transfer activities.
- "Management" refers to those costs strictly associated with day-to-day operation of the center, such as the salaries and benefits of administrative employees and travel strictly associated with administration and management of the center.

Table 2

- "Direct Costs," "Contrasts," and "Indirect Costs" are the same as defined for Table 1.
- "Ongoing Projects" refers to total research costs for all research projects in place that were in place the preceding year.
- "New Projects" refers to total research costs for all research projects initiated in the year under consideration.
- "Design/Development" refers to total costs associated with all training work except the actual conduct of training programs.
- "Delivery" refers to total costs associated with the actual conduct of training.
- "Training", "Technology Transfer", and "Management" have the same meanings as in Table 1.

Table 3

- "% of Time" refers to the percentage of time the person identified is expected to spend on HSRC-related activities for the year indicated. Key investigators on contracted tasks must also be identified.
- "Est. Cost" refers to the estimated amount of salary and fringe benefits for the person identified for the year indicated.
- "Center Director" is self explanatory.
- "Person 1, 2 . . . N" means any administrative employee other than the center director who can be identified or whose function is clearly known.
- "Principal Investigator" signifies that, where possible, each key investigator should be identified by name.
- "T/T Person 1, 2 . . . N" refers to training or technology transfer specialists who will perform key functions for the center.

3. Page Limitation

The body of the proposal, exclusive of cover page, table of contents, cover letter, resume, and budget description, *must not exceed 40 double-spaced, 8½ by 11 inch pages, including graphs, tables, and pictures.* Typeface must be standard 10–12 characters per inch. (Do not reduce.) The cover letter and each resume must not exceed two pages apiece. Response to Items IV.B.2.h. and i. of this solicitation together *cannot* exceed a total of nine pages.

If any of these limitations are exceeded, the proposal will be returned without further consideration.

V. Schedule

The following schedule will be followed for solicitation, review, and selection of the HSRCs.

Event	Date
● Solicitation	3/21/88
● Closing date for proposals received in EPA	5/27/88
● Review of proposals	7/8/88
● Selection of awardees	9/88
● Five HSRCs in place	12/88

VI. Proposal Evaluation

A. Review and Awards Selection Process

The first step in the review and selection process will consist of an administrative review by OER to determine eligibility and compliance with administrative and legislative requirements. Following that, proposals will be divided into five groups corresponding to the five region-pairs identified in Section II.D. of this solicitation. For each region-pair, a panel will be convened, consisting of experts from the fields of engineering, physics, chemistry, hydrology, geology, environmental biology, and related subspecialties. Each panel will also include experts in training and technology transfer. Not more than 20% of the total membership of any panel will consist of training and technology personnel.

All reviewers for a given region-pair competition will come from institutions located outside that region-pair. All proposals in each of the five region-pair competitions will be evaluated for technical merit. Those proposals which pass an initial technical review will be scored. In the case of a run-off, a site visit by the review panel to each of the top scoring institutions may be necessary. Each of the five panel chairmen will make recommendations for funding based on the established scores. These scores and recommendations will be transmitted to EPA. The Assistant Administrator for EPA's Office of Research and Development will make the final selection.

B. Evaluation Criteria

The following criteria will be used to evaluate proposals:

1. Qualifications of Center Director and Staff

This criterion will be used to determine the level of expertise of the center director and staff, and to determine whether the proposed skills mix is appropriate and satisfactory.

2. Quality of Discussion of Region-Pair's Problems

This criterion will be used to judge both the depth and breadth of the applicant's knowledge of the hazardous substance problems associated with his region-pair.

3. Quality of the Research Plan

The research plan will be judged on the basis of its technical merit, innovation, and applicability to regional needs. Ability to disseminate research results will be a factor in evaluating this part of the proposal.

4. Quality of Training, Technical Support, and Technology Transfer Plan

Judgment of the proposal against this criterion will be based on specificity, completeness and quality of the plan, and applicability to the needs of the region-pair.

5. Quality of Plan to Coordinate Research and Training with User Needs and Other Organizations Engaged in Related Activities

Each applicant will be judged on the extent to which the proposal provides for integration and coordination of the center's activities with related efforts, including activities at the same institution, other universities and HSRCs, State and local efforts, or other relevant organizations. Judging will be based both on demonstrated knowledge of the mission and activities of other organizations and on the mechanisms proposed for achieving coordination.

6. Availability and Adequacy of Facilities and Equipment

This criterion relates to the physical adequacy of the institution or institutions to carry out the proposed work. This includes the presence of required buildings and equipment, and the extent to which they are available for use by the center.

7. Amount, Sources, and Kinds of Non-Federal Support Available

While the solicitation requires that at least 20% of the center's total support be provided through non-Federal contributions, proposals will be judged on the specific amount of matching funds which they can provide, the reliability of the sources of those resources, and the kind of support which is being proposed.

8. Budgetary Justification

This criterion will be used to determine the adequacy of the proposed budget and personnel allocation (as indicated in table 1–3) based on the research and training plan and the relative proportion of operating to management costs. EPA believes that management costs for each HSRC should be kept to a minimum.

VII. Mechanism of Support

Support will take the form of a Federal assistance agreement as provided for by the Federal Grant and Cooperative Agreement Act of 1977. Such agreements are subject to provisions of EPA's General Grant Regulations (40 CFR Parts 30 and 40, Research Grants) and to special conditions to be established in each specific agreement. Each of the five winners will be requested to submit a full Application for Federal Assistance (EPA Form 5700–12 rev. 4/78). Application kits with full instructions may be obtained by writing to: U.S. Environmental Protection Agency, Office of Exploratory Research (RD–675), 401 M Street, Southwest, Washington, DC 20460.

It is emphasized that proposals responding to this solicitation do not constitute a formal application to EPA for Federal assistance. Only winners of the competition will be asked to submit formal applications as indicated above.

VIII. Duration of Agreement

EPA plans to support each HSRC for a maximum period of eight years. The project period of the initial agreement will be three years. During the second year of the agreement, a peer review panel, convened by EPA, will conduct a site visit at the center, and report its findings and recommendations to EPA. This review will be used to determine whether support of the center will continue with a five-year agreement following the completion of the three-year agreement. The five-year renewal agreement, if awarded, is provided with the understanding that no further agreements can be awarded without another competition for HSRC status.

Continued support of the HSRCs by EPA is contingent upon the availability of funds to support this activity.

IX. Inquiries

Inquiries about the EPA Hazardous Substance Research Centers Program should be made to:

Karen Morehouse, Office of Exploratory Research (RD–675), U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, DC 20460, (202) 382–5750,

or

Robert Papetti, Office of Exploratory Research (RD–675), U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, DC 20460, (202) 382–7473.

Approved for Publication:

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

March 17, 1988.

BILLING CODE 6560-50-M

TABLE 1
FORMAT FOR FIRST-YEAR BUDGET
(do not exceed 3 pages)

	Direct Costs (within HSRC)	Contract (outside HSRC)	Indirect Costs	Total
A. RESEARCH				
Project 1				
Project 2				
•				
•				
•				
Project N				
Unallocated Resources				
Total				
B. TRAINING				
Project 1				
Project 2				
•				
•				
•				
Project N				
Unallocated Resources				
Total				
C. TECH. TRANSFER				
D. MANAGEMENT				
E. GRAND TOTAL *				

* Should equal total budget for the center from all sources.

TABLE 2
FORMAT FOR OUT-YEAR BUDGETS
(one page per year for years 2 & 3)

Operating year: ____________	Direct Costs (within HSRC)	Contracts (outside HSRC)	Indirect Costs	Total
A. RESEARCH				
Ongoing projects				
New projects				
Total				
B. TRAINING				
Design/Development				
Delivery				
Total				
C. TECHNOLOGY TRANSFER				
D. MANAGEMENT				
E. GRAND TOTAL *				

* Should equal total budget for the center from all sources.

TABLE 3
FORMAT FOR PERSONNEL TABLE
(do not exceed 2 pages)

PERSONNEL ALLOCATIONS

POSITION	YEAR 1 % of time / est. cost	YEAR 2 % of time / est. cost	YEAR 3 % of time / est. cost
A. ADMINISTRATIVE			
Center Director	/	/	/
Person 1	/	/	/
Person 2	/	/	/
•	/	/	/
•	/	/	/
Person N	/	/	/
B. RESEARCH PERSONNEL			
Principal Investigator 1	/	/	/
Principal Investigator 2	/	/	/
•	/	/	/
•	/	/	/
•	/	/	/
Principal Investigator N	/	/	/
C. TRAINING/ TECH TRANSFER			
T/T Person 1	/	/	/
T/T Person 2	/	/	/
•	/	/	/
•	/	/	/
•	/	/	/
T/T Person N	/	/	/

[FR Doc. 88-6194 Filed 3-21-88; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-803-DR]

Federated States of Micronesia; Amendment To Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia (FEMA-802-DR), dated November 25, 1987, and related determinations.

DATED: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Alfred A. Hahn as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-6171 Filed 3-21-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-010960-002

Title: Maryland Port Administration Marine Terminal Agreement

Parties:

Maryland Port Administration (MPA)
Maher Terminals, Inc. (Maher)

Synopsis: The proposed agreement amends the terms of the basic agreement and lease between MPA and Maher to eliminate Farrell Lines' participation thereunder.

By Order of the Federal Maritime Commission.

Dated: March 16, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-6157 Filed 3-21-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice, Acquisition of Shares of Banks or Bank Holding Companies; Elmer H. Austermann, Jr. et al.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St louis, Missouri 63166:

1. *Elmer H. Austermann, Jr.*, Florissant, Missouri; to acquire 100 percent of the voting shares of Mathes Bancshares, Inc., Ellington, Missouri, and thereby indirectly acquire Farmers State Bank of Ellington, Missouri.

Board of Governors of the Federal Reserve System, March 16, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6153 Filed 3-21-88; 8:45 am]

BILLING CODE 6210-01-M

Baer Holding Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under §225.23(a)(2) or (f)) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Baer Holding Ltd.*, Zurich, Switzerland; to acquire Harbor Capital Management Company, Inc., Boston, Massachusetts, and thereby engage in providing portfolio investment advice to investment companies, trusts, estates, religious and other charitable organizations, pension and profit-sharing plans and wealthy individuals pursuant to § 225.25(b)(4) of the Board's Regulation Y. As party of the propsoal, Applicant intends to provide investment advisory services to one or more de novo open-end investment companies through its existing subsidiary, Julius Baer Investment Management, Inc.

Board of Governors of the Federal Reserve System, March 16, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6154 Filed 3-21-88; 8:45 am]

BILLING CODE 6210-01-M

1889 Bankcorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 13, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *1889 Bankcorp*, North Branch, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, North Branch, Michigan.

2. *Waymar Bancorporation*, Spirit Lake, Iowa; to become a bank holding company by acquiring 98.52 percent of the voting shares of First Bank and Trust, Spirit Lake, Iowa. Comments on this application must be received by April 1, 1988.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancorp II, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 97.87 percent of the voting shares of The Citizens Bank of Pilot Grove, Pilot Grove, Missouri.

Board of Governors of the Federal Reserve System, March 16, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6155 Filed 3-21-88; 8:45 am]

BILLING CODE 6210-01-M

Omnibancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increase competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas city, Missouri 64198:

1. *Omnibancorp*, Denver, Colorado; to engage *de novo* in providing management consulting services to depository organizations pursuant to § 225.25(b)(11) of the Board's regulation Y.

Board of Governors of the Federal Reserve System, March 16, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6156 Filed 3-21-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that 30 days advance notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on May 15, 1988 and end on July 31, 1988. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from July 1 to July 31, 1988.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 523-6367.

Dated: March 15, 1988.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88-6173 Filed 3-21-88; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Hearing on Reconsideration of Disapproval of Michigan State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 19, 1988, in Chicago, Illinois to reconsider our decision to partially disapprove Michigan State Plan Amendment 86-7.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Michigan State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of Michigan has submitted a plan amendment which revises its DRG plan for Medicaid reimbursement of inpatient hospital services effective April 1, 1986. One portion of the amendment proposes the elimination of the blending of hospital specific rates with statewide average rates. The issue in this matter is whether the elimination of the blended rate provision violates Federal regulations at 42 CFR 447.250–447.271.

HCFA considers the elimination of the provision for blending hospital specific and statewide rates a significant change to the methods and standards used to determine payment rates. While aggregate State payments may not be affected, the change is significant since it affects the rate of each provider in the State. The Federal regulations at 42 CFR 447.250–250.271 specify the requirements with which a State must comply for approval of significant plan changes. The State has not provided an adequate assurance as required by 42 CFR 447.253(b)(2) that it has made a finding that the payments are not expected to exceed the amount that would have been paid under the Medicare principles of reimbursement. The State's submission dated May 15, 1987, contains an upper limit finding that HCFA believes is not acceptable since it compares the average Medicare rate in the State to the average State Medicaid rate. HCFA believes the finding does not comply with the regulation at 447.253(b)(2) which requires the State to apply, for purposes of cost comparison, the Medicare principles of reimbursement to Medicaid services when making an upper limit determination. In addition, the State did not publish public notice timely as required by 42 CFR 447.253(f). Since the State did not publish public notice until August 11, 1987, the earliest effective date, if the amendment were otherwise approvable, would be August 12, 1987.

The notice to Michigan announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendment reads as follows:

Mr. C. Patrick Babcock,
Director, Department of Social Services, P.O. Box 30037, Lansing, Michigan 48909

Dear Mr. Babcock: This is to advise you that your request for reconsideration of the decision to disapprove Michigan State Plan Amendment 86–7 was received on February 18, 1988.

Michigan SPA 86–7 would amend the Michigan reimbursement plan for payment of inpatient hospital services by eliminating the blending of hospital specific rates with statewide average rates.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are two issues in this matter. The first issue is whether the State has provided an adequate assurance as required by 42 CFR 447.253(b)(2) that it has made a finding that the payments are not expected to exceed the amount that would have been paid under the Medicare principles of reimbursement. The second issue is whether the State published timely public notice as required by 42 CFR 447.253(f).

I am scheduling a hearing on your request to be held on April 19, 1988, at 10:00 a.m. in Room A–824, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4470.

Sincerely,

William L. Roper, M.D.,
Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 15, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 88–6209 Filed 3–21–88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Public Health Service; Program Announcement and Proposed Funding Priority and Proposed Review Criteria for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

The Health Resources and Services Administration announces the acceptance of applications for Fiscal Year 1988 for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 788(e) of the Public Health Service Act, as amended by the Omnibus Health Act of 1986, Pub. L. 99–660 enacted on November 14, 1986, and Pub. L. 100–177, the Public Health Service Amendments of 1987, and invites comments on the proposed funding priority and proposed review criteria set out below.

Section 788(e) authorizes the award of grants to accredited public or private nonprofit schools of medicine or osteopathy, public or private nonprofit teaching hospitals or graduate medical education programs to provide support, including traineeships and fellowships, to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry. One-year retraining programs, one-year fellowship programs and two-year fellowship programs are eligible for support.

Approximately $2.7 million is available for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry in Fiscal Year 1988. It is expected that 15 projects averaging $180,000 will be supported with these funds.

The Public Health Act requires that geriatrics training be provided through one or both of the following training options:

(1) A one-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of denistry or at hospital departments of dentistry; and

(2) A one-year or two-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

The Act further requires each project for which a grant is made under this provision to include the following:

(a) Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

(b) Be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(c) Be based in a graduate medical education program in internal medicine or family medicine, or a department of geriatrics in existence as of December 1, 1987;

(d) Provide participants in the project with exposure to a diversified population of elderly individuals; and

(e) Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

Proposed Review Criteria

The Secretary, after consultation with the National Advisory Council on Health Professions Education will approve or disapprove all applications, taking into consideration the following proposed review criteria:

(1) The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the project requirements including (a) through (e) as set forth above;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the approved project period; and

(5) The extent to which the project will increase the number of training opportunities available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

The proposed general criteria are consistent with other Title VII programs. The criteria specific to the program are designed to meet the legislative intent for increased opportunities for physicians and dentists to acquire skills and knowledge necessary to teach geriatric medicine and dentistry.

Proposed Funding Priority

The Department is proposing to give funding priority in the review process to applicants who propose substantial specific efforts to recruit minority trainees. The need to increase training opportunities for minorities in health professions continues to be a top national priority. This proposed priority is consistent with funding considerations in other Title VII programs.

Interested persons are invited to comment on the proposed funding priority and proposed review criteria. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 21, 1988, will be considered before the final funding priority and review criteria are established. No funds will be allocated or final selections made until a final notice is published indicating whether the funding priority and review criteria will be applied.

Written comments should be addressed to:

Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application materials will not be automatically mailed to prospective applicants. Thus, requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D–31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6880.

Should additional programmatic information be required, please contact:

Multidisciplinary Programs Section, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6817.

The standard application form and general instructions Form PHS 6025–1 HRSA Competing Training Grant Application have been approved by the Office of Management and Budget. The supplemental instructions have been submitted for OMB approval.

To receive consideration, applications must meet the deadline of May 6, 1988, which means they must either be:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.156 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: March 15, 1988.

David N. Sundwall,
Administrator, Assistant Surgeon General.

[FR Doc. 88–6159 Filed 3–21–88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Availability of Grants for Minority Community Health Coalition Demonstration Projects

AGENCY: Office of Minority Health/Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of availability of funds and request for applications under the Office of Minority Health's Program of

Grants for Minority Community Health Coalition Demonstration Projects.

SUMMARY: The Office of Minority Health announces the availability of grants to provide support, for a period which will not exceed two years, for projects which demonstrate methods of developing community health coalitions which can effectively promote disease risk factor reduction within minority populations.

Background

The Report of the Secretary's Task Force on Black and Minority Health identified six health problems that account for 80 percent of the excess deaths among minorities. Excess deaths are the difference between actual minority deaths and the number of deaths which would have been expected if the minority population had the same age- and sex-specific death rates as the white population. Every minority group does not suffer from excess deaths in each category. However, the six health problems became priority issue areas for Task Force study. Listed in alphabetical order, they are:

- Cancer
- Cardiovascular disease and stroke
- Chemical dependency
- Diabetes
- Homicide, Suicide, and Accidents (unintentional injuries)
- Infant mortality.

AIDS

In recognition of the severity of the problem of Acquired Immunodeficiency Syndrome (AIDS) among the minority populations, Congress appropriated funds in Fiscal Year 1988 for the Office of Minority Health to use in ways specifically targeted at AIDS in minority populations. One mechanism by which the Office of Minority Health will target AIDS is to add AIDS as a seventh health problem to the above list of topic areas for this demonstration grants program in Fiscal Year 1988. *For applicant organizations that plan to submit AIDS demonstration applications*, it is important to describe existing efforts in AIDS education and prevention in their local community (e.g., by the local or State health department or community-based organization), and how the applicants' proposed interventions to prevent AIDS or HIV infection would complement those existing efforts.

Please note that these Minority Community Health Coalition Demonstration Projects are but one mechanism by which the Office of Minority Health intends to utilize its Fiscal Year 1988 AIDS appropriation. For more information on the Office of Minority Health AIDS initiative, please call Jacqueline Bowles, M.D., at (202) 245-0020.

The risk factors for these seven priority areas involve behavior or preventable conditions which are potentially modifiable but are in some cases resistant to change. In order to effect health behavior change, an individual must be motivated beyond that typically achieved as the result of health information or media campaigns alone. In addition, conventional health promotion activities are frequently not effective in reaching minority populations. It appears that change can be achieved by community-based information dissemination, awareness, support, and exhortation, particularly if such a community health campaign is carried out using familiar, aas well as influential institutions such as churches and schools, and organized by recognized community leaders.

Moreover, in many cases it may be insufficient to simply pressure individuals to change behavior without offering positive alternatives. For example, if teens are being encouraged to avoid use and abuse of drugs and alcohol, it may also be important to organize and offer constructive alternatives such as career-oriented activities.

The following is a list of the major health problems with their associated modifiable risk factors, some of which are implicated in more than one health problem:

Cancer: Tobacco, Diet, Alcohol, Environment.

Cardiovascular Disease and Stroke: Hypertension, Diet, Tobacco, Sedentary life style, Obesity.

Chemical Dependency: Direct behavioral outcome of alcohol and other drugs of abuse.

Diabetes: Obesity, Diet.

Infant Mortality: Smoking, Alcohol, Drugs, Late or no prental care, Teen pregnancy, Nutrition.

Homicide: Alcohol, Drugs, Poor conflict resolution skills.

Suicide: Alcohol, Drugs, Depression.

Unintentional Injuries: Alcohol, Drugs, Environmental hazards.

AIDS: Intravenous drug use, and High risk sexual practices, (e.g., unprotected intercourse, with multiple partners).

Many of the above noted risk factors are of interest to, and within the purview of, a number of organizations within communities. In addition, community organizations have different and varying levels of influence over the behavior of individuals.

This announcement is the third annual notice for this grant program. In the past Fiscal Year 1987, the Office of Minority Health received 138 applications of which 38 were approved and six (6) grants awarded for a total of $1.15 million. One hundred applications were disapproved because of a variety of deficiencies. Several applications may have been in the approval range with some technical assistance. Others would have required much more work in the pre-application stage. Given the time and resources typically involved in researching, developing, and writing an application, potential applicants should seriously consider whether or not they should apply at this time or wait until they establish stronger linkages with other community organizations and/or develop greater expertise in planning and writing their proposals. Applicants wishing to improve their chances for approval should pay *particular attention to both the Supplemental and General Instructions provided with the grant application* to ensure that their applications are responsive to each of the following concerns under the following headings:

Project Objectives

1. Clearly describe the goals and objectives of the proposed project;

2. Identify, describe, and document health problem areas and related risk factors in the target population;

3. Include realistic timetables for accomplishing the objectives;

Target Population

4. Define the target population(s) and identify which interventions are proposed for which minority groups;

Coalition

5. Provide evidence that a valid community-based coalition exists or that organization, which have worked together in the past, are now proposing to focus their energies on these risk reduction activities;

6. Describe in detail the organization of the coalition and the respective roles of coalition members and other participants;

Intervention

7. Describe plans for implementing the intervension(s), presenting in step-by-step fashion the specific efforts to be undertaken by each key component of the coalition, and how these various efforts will address the problems identified;

8. Provide a detailed description of intervention strategies that address the broad concept of the application rather than just an analysis of medical records of minority individuals, as in a limited clinical trial;

Project Management and Staffing

9. Provide detailed management plans that clearly delineate each coalition member's area of responsibility and how specified key staff of member organizations will be accountable for carrying out their responsibility;

10. Describe the duties and requisite qualifications of current staff, and of any staff and consultant positions to be filled after the grant award; and

11. Identify and provide supporting documentation (e.g., curriculum vitae) for each individual proposed for key staff positions to show appropriate experience and qualifications. Particularly suitable will be experience in community-based programs and/or health promotion programs, as well as related treatment and research experience.

Evaluation

12. In the evaluation section, specify the overall evaluation plans and the particular process and outcome objectives, indicating how each of these will be measured, including the results of the interventions.

Authority: This program is authorized under section 301 of the Public Health Service Act, as amended.

Program Objectives

The objectives of the program are to fund projects which:

(1) Provide epidemiological evidence of the health problem(s) and risk factor(s) of the minority population(s) which are the targets of the applicant's proposal.

(2) Provide detailed and specific methods for risk factor reduction through the use of a community coalition targeted to a specific minority population and to identified risk factors.

(3) Demonstrate a sound organizational scheme for the coalition which assures adequate involvement and representation of both coalition members and community leaders.

(4) Evaluate the process of establishing and operating the coalition and how its activities will impact on the risk factors and health problem areas identified in the target population through the community coalition.

(5) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns.

Definitions

For the purpose of this grant program, the following definitions are provided:

(1) *Health Problem Areas*—One of the seven priority issue areas identified in the Secretary's Task Force report or by the Office of Minority Health. They are: (a) cancer; (b) cardiovascular disease and stroke; (c) chemical dependency; (d) diabetes; (e) homicide, suicide and unintentional injuries; (f) infant mortality; and (g) AIDS.

(2) *Risk Factors*—The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyles and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include use of tobacco, poor dietary habits, obesity, severe emotional stress, depression, poor conflict resolution skills, abuse of alcohol and drugs, intravenous drug use, late or no prenatal care, teen pregnancy, high risk sexual practices, (e.g., unprotected intercourse, with multiple partners), environmental hazards, and others.

(3) *Community*—A defined geographical area in which persons live, work, and recreate and is characterized by: (1) formal and informal communication channels; (2) formal and informal leadership structures for the purpose of maintaining order and improving their conditions; and (3) its capacity to serve as a focal point for addressing societal needs including health needs.

(4) *Community Coalition*—The coming together of individuals from and representatives of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

A community coalition:

- Assumes a variety of interests converging on an agreed upon mission.
- Requires resource participation. Each coalition member organization brings a certain resource to the coalition to enable the coalition to accomplish its mission.
- Requires that each member organization has a specific role within the coalition. This role, defined by the individual member, is distinctive among the other members. Use of resources may be one way of defining each role.
- Requires that each member organization establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship). Members must be able and willing to work with one another. Formalizing these relationships to make explicit the specified roles may be achieved through development of memoranda of understanding/agreement between each member organization and the coalition, and between members as necessary.
- Requires a long term commitment on the part of each member organization since the problem to be addressed is not usually amenable to short term solutions.
- Must document its activities to ensure a written history of and, thus, a continuity to its work that is not dependent upon the active participation of any single person. Such documentation can include the memoranda of understanding/agreement mentioned above.

(5) *Minority Populations*—As defined by the Report of the Secretary's Task Force on Black and Minority Health, they include: Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives (which include Native Hawaiians).

Availability of Funds

The Office of Minority Health intends to make available approximately $1.6 million to be expended by grantees over a two-year project period. It is anticipated that eight individual grants of up to $200,000 (total costs including indirect costs) each for the two-year project period will be awarded from these funds. OMH hopes to award two of the eight grants in the AIDS area, one targeted to the Black population and one targeted to the Hispanic population. Such awards, however, like all award decisions will be based on the types and quality of the applications received.

Applicant Eligibility

Eligible applicants are public and private nonprofit organizations and for-profit organizations *except for all current grantees under this program*, since these grantees are considered not eligible. The applicant organization is the lead agency for the coalition and is responsible for management of the Project and will serve as the fiscal agent for the Federal funds awarded.

Federal demonstration grant support is not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA was to be targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to achieve geographic and ethnic distribution of awards as well as cover the various health problems identified above. There is no lower limit for the size of the population targeted by the applicant, but there must be a reasonable relationship between the level of effort involved in the coalition and the size of the target population and the health problem(s) to be addressed. Similarly, the geographic distribution of the target population must be such that effecting risk factor reduction is feasible.

The target risk factor(s) must be epidemiologically justified on the basis of health problem patterns in the population. It is suggested that applicants limit the number of disease or health problem areas to a primary one with one secondary problem area (with their associated risk factors) on which a coalition plans to focus, as opposed to being all-inclusive, in order to maximally utilize resources to achieve the greatest reduction in the selected risk factor(s).

Applications

1. Copies

The forms used for applying for grants under this program are either Form PHS 5161–1 for State and local governments or Form PHS 398 for all others. Copies of the application kit may be obtained from the Grants Management Branch, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

2. Deadlines

Applications shall be considered meeting the deadline if they are received on or before 5:30 pm on June 8, 1988.

3. Late Applications

Applications which do not meet the criterion in paragraph 2 immediately above will be considered late applications and will be returned to the applicant.

4. Reviews

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Applications for funding will be subject to State review. All comments from a State office must be received by 60 days after the due date by the program grants management office. Applicants should contact State Single Points of Contact (SPOC) early in the application preparation process. A list of addresses of the SPOCs is enclosed with the application material.

5. Project Budget

Funds may be used to cover the cost of personnel to coordinate the coalition's activities, for consultants, support services and materials. Funds may not be used for building construction costs or building alterations and renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project.

6. Cost Participation

It is expected that a portion of the program's costs will be borne by coalition members or by other non-federal sources such as business, labor, local government, or community funds. Cost participation for those grants in FY 1987 ranged between $60,000 and $134,000, and was either in-kind or direct funds contributions.

7. Review Criteria

Applications will be reviewed and evaluated in terms of the evidence presented in the application regarding the ability of the applicant to meet program objectives. Of specific importance will be the following criteria under the listed headings. (An indication of the qualitative weight appears in parentheses after each criterion.):

Project Objectives

(1) The scientific and technical merit of the described proposed project, and the consistency of the project's goals and objectives with those of the Demonstration Grant Program and the Office of Minority Health. (high)

Target Disease(s), Risk Factor(s), and Minority Group

(2) The justification for the choice of disease(s) and risk factor(s) to be targeted, and their direct relationship to the epidemiologic characterization(s) of the target minority population(s). (high)

Coalition

(3) The degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and intervention(s) to be demonstrated. (high)

(4) The degree of commitment of each coalition member to the coalition and to the proposed implementation plan, including the amount or extent of support indicated by coalition members to cover a portion of project needs. (medium)

Intervention

(5) Coherence, feasibility, and realistic approach of the intervention strategy of the implementation methods described. The specificity of the methods to address the target risk factor(s) in the target population(s) will be given significant weight in the review of the application. (high)

Project Management and Staffing

(6) Adequacy of qualifications and time allocations of proposed regular staff, both paid and voluntary, and of the proposed program and technical management of the project. (high)

(7) Relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant. (medium).

(8) Adequacy of medical/scientific/public health technical expertise available to the coalition for its use. (low)

Evaluation

(9) Appropriateness of the process and outcome objectives, and adequacy of the evaluation plan to measure the development of the coalition as well as indicators and trends of outcome changes based on the goals and objectives of the application. (medium)

(10) Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations (medium)

(11) Likelihood that the project will continue beyond the two year funded project period. (medium)

8. Information and Technical Assistance Contacts

Information on application procedures and copies of application forms may be obtained from Ralph Sloat, Grants Management Officer, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (phone (301) 443–4033).

Technical assistance on the programmatic content of the application may be obtained from J. Henry Montes, Office of Minority Health, Room 118–F, HHH Bldg., Washington, D.C. 20201 (telephone /202/ 245–0020). For additional information on the OMH AIDS Program, please contact Jacqueline Bowles, M.D., at the same address and telephone number.

(The Catalog of Federal Domestic Assistance Number for the program is 13.137)

Dated: February 23, 1988.

Herbert W. Nickens,

Director, Office of Minority Health.

[FR Doc. 88–6175 Filed 3–21–88; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Social Security Disability Program Demonstration Projects

SUMMARY: The Commissioner of Social Security announces the following demonstration projects to be conducted under the authority of Pub. L. 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101. Fifteen projects, which will focus on vocational assessment, rehabilitation and placement into competitive employment, will be funded under this section of the law. Section 222(a) of the Social Security Act will be waived to conduct these projects, permitting direct referral of Social Security disability insurance (SSDI) beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to the organizations conducting the demonstration. Each project will develop selection criteria, but participation by beneficiaries is totally voluntary. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the **Federal Register** before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Ph.D., Social Security Administration, Office of Disability, 2223 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 965–0091.

Background Information

The Social Security Disability Amendments of 1980, Pub. L. 96–265, section 505(a), as amended by Pub. L. 99–272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) Encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of Title II of the Social Security Act. Section 505 of Pub. L. 96–265, as amended by Pub. L. 99–272, section 12101, also authorizes the Secretary to waive certain provisions of the Social Security Act as is necessary to conduct these experiments and demonstration projects. This includes waive of section 222(a) of the Act which requires SSA to refer disability beneficiaries to State vocational rehabilitation (VR) agencies unless the State is unwilling or does not have an approved VR plan.

Overall Objectives

SSA wished to assist SSDI beneficiaries in returning to competitive employment. SSA hopes to achieve significantly improved integration and use of VR and other employment program resources providing for more employment opportunities, better mechanisms for identifying and referring candidates for rehabilitation and other employment sevices, more effective incentives for rehabilitation and employment, increased access to employment service system and networks, and more effective and efficient employment intervention for beneficiaries.

Description of the Demonstration Projects

(1) *Ability Information Systems, (AIS) Inc.;* Spokane, Washington; "Rapid Referral Program (RRP) for Individuals Over 50 in the Olympia, Washington, Disability Determination Services (DDS);" Projected duration: 14 months.

The Washington DDS will work with AIS to identify approximately 1000 SSDI applicants over age 50 who have transferable work skills. AIS will then use a computerized job matching system to match applicant skills to jobs that exist in the labor market in significant numbers. Participants will be provided with information about labor market conditions affecting employment, possible employment opportunities, potential employers, vocational training and rehabilitation resources, and adaptive devices. AIS will follow up with participants to find out if they have returned to work, and will use this and other data collected to determine the effectiveness of their RRP.

(2) *Aging in America, (AIA), Inc.;* Bronx, New York; "Placement Outcomes of Aging in America's Employment Program for Older Disabled Adults: A Comparison of Recent and Long-Term SSDI and Non-SSDI Beneficiaries;" Projected duration: 24 months.

AIA will employ aggressive marketing and outreach efforts to identify and recruit 100 SSDI beneficiaries over the age of 45. After an employment assessment interview, all participants will be provided training in job-seeking skills and placement services, utilizing AIA's established network of 400 businesses in the New York area. Client profiles will be developed featuring the sociodemographic, economic, and health characeristics of SSDI beneficiaries who do return to work, and the rate at which they return to work will be compared to that of a sample of 100 "non-beneficiaries" who have received idential services.

Analyses of client characteristics, placement rates, and employment success will be featured in a monograph guide to rehabilitation and re-employment programs targeting older SSDI beneficiaries. Of the beneficiaries served, it is expected that 50 will be placed in employment and that 40 of these will be employed for at least 12 months.

(3) *Baltimore County Economic Development and Rehabilitation Alliance, Inc.; Baltimore, Maryland; "Comprehensive Job Placement Model through Rehabilitation Engineering;" Projected duration: 24 months.*

Using selection criteria that will be established with the assitance of a private-sector rehabiliation consultant, the Maryland Disability Determination Service (DDS) will refer 50 SSDI beneficiaries to the grantee. Project clients will be provided with a variety of VR services, including evaluation, job development and analysis, computerized job matching, counseling, training, and placement. Job sites will be modified with customized low-cost adaptions, all of which will have immediate and practical utility in the workplace. In-home employment opportuntiies will be created for some SSDI beneficiaries having impairments that would ordinarily prevent placement in competitive employment. Seventy-five percent of all clients served will be placed in jobs that will provide gainful employment for at least 6 months.

(4) *Comprehensive Rehabilitation Services (CRS);* Sierra Madre, California; "Cast Management and Placement Project (CMPP);" Projected duration: 24 months.

The Oregon, Minnesota, and Pennsylvania DDSs will each refer 100 SSDI beneficiaries to CRS each month for telemarketing of SSA work incentives which is expected to increase the percentage of referred beneficiaries who accept VR services. CRS will encourage SSDI beneficiaries to apply for and utilize a broad spectrum of VR services, including State VR, private nonprofit VR, independent living services, and any additional services that might expedite a particular beneficiary's return to work. CRS will also use an expert system to idenfity transferable skills, in order to expedite case acceptance and management. Early referrals for job placement and the presence of full-time job developing is expected to promote early return to gainful employment for about 100 clients during the 2 years that CMPP is in operation. Major products will include a replication kit including program procedures and as staff training manual, a protocol for telemarketing work incentives, and a complete project evaluation including tables and graphs summarizing project outcomes, and journal article(s).

(5) *Goodwill Industries of Southeastern Wisconsin, Inc.;* Milwaukee, Wisconsin; "Vocational Options Project (VOP);" Projected duration: 12 months.

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The Wisconsin DDS will refer SSDI beneficiaries to the VOP and at least 100 of these beneficiaries will participate in a 5-day seminar which incorporates vocational testing, self-appraisal exploration, and training in decisionmaking. Goodwill Industries of Southeastern Wisconsin will determine the ability of their VOP to increase as SSDI beneficiary's ability to make appropriate vocational decisions by analyzing the results of tests administered to participants before and after the seminar.

(6) *International Rehabilitation Associates (IRA);* Wayne, Pennsylvania; "Private Insurance Rehabilitation Techniques and the Development of a Predictive Model;" Projected duration: 24 months.

The Florida and Colorado DDSs will refer new SSDI beneficiaries to IRA which will select 100 candidates for intensive VR services, including job skills assessment, training in job seeking skills, couseling, and assistance in job placement. IRA will compare the placement rate and the work activity/history of its test group to the placement rate and the work activity/history of a control group. A 30 percent placement rate is projected for the experimental group. Using descriptive data obtained during this study, IRA will also develop a model predictive of SSDI beneficiaries' probability of returning to work. The early intervention and screening of referrals employed in this project are expected to result in cost-effective rahabilitiation. This project will also enhance SSDI beneficiaries' access to private-sector VR services.

(7) *Jewish Employment and Vocational Service (JEVS);* Philadelphia, Pennsylvania; "Early Vocational Rehabilitation Assessment Prototype (EVRAP);" Projected duration: 20 months.

JEVS will modify its existing Early Vocational Rehabilitation Assessment system to include data on physical and mental capacities and environmental tolerances. JEVS also will add new job titles to its database, so that EVRAP results can be compared to the requirements of those occupations listed in the Department of Labor's *Dictionary of Occupational Titles*, to determine which occupations an individual client might be capable of performing. Clients will then be counseled and encouraged to consider occupations they may not have worked in previously. JEVS will provide a working prototype capable of providing detailed reports quickly enough so that it can, if SAA desires, be incorporated into the disability determination process.

(8) *Karr Rehabilitation Services, Inc.;* Minneapolis, Minnesota; "Alternative VR Resources;" Projected duration: 24 months.

The Minesota DDS will refer to Karr 100 recently entitled SSDI beneficiaries who have been scheduled for medical reexaminations. These beneficiaries will then be evaluated by a rehabilitation specialist and considered for vocational assessment and job placement. Karr expects to place 40 project participants with former employers. Throughout this project, Karr will pursue the development, testing, and refinement of screening criteria to more accurately determine the rehabilitation potential of SSDI beneficiaries and the coordination of medical case management with VR services. Karr will also establish a supplemental funding base through co-payment arrangements with other disability insurance carriers involved with participants in its project.

(9) *Menninger Foundation;* Topeka, Kansas; "Expanding Disabled Worker SSDI Applicant Access to Return-to-Work Services through Independent Case Manager;" Projected duration: 24 months.

Using the Menninger Return-to-Work Scale, SSA field offices and the Menninger Foundation will work together to identify SSDI beneficiaries who have good potential for returning to work and who would be likely to benefit from rehabilitation services. Participants will be assigned randomly for pre- and post-adjudicative referral to case managers, who will provide referrals for various rehabilitation services. The Menninger Foundation will determine any difference in the return-to-work rate of persons who are counseled regarding the availability of VR services and the possibility of returning to work before they are awarded disability benefits and persons who are counseled after they are awarded benefits.

(10) *Set Industries;* Hardwick, Vermont, "Transitional Employment through the Use of a Voucher for SSA Beneficiaries;" Projected duration: 24 months.

Set Industries will develop a voucher system which will permit self-referral of SSDI beneficiaries for a variety of VR services. This system will give beneficiaries greater control over the allocation of the rehabilitation resources that are available to them. Set will provide services to 30 SSDI beneficiaries over the course of the project, and expects to place approximately 65 percent (19) of them in employment. Set will also provide, through public relations and training seminars for employers and line supervisors, the skills and training technologies needed to manage the training of SSDI beneficiaries and maintain them in employment. Support and training team models will be offered to deal with individual problems in returning to work, and should increase the average length of employment of those SSDI beneficiaries who are placed in jobs.

(11) *S.L. Start and Associates, Inc.;* Spokane, Washington; "Rapid Intervention and Employment Project;" Projected duration: 12 months.

The Washington DDS will work with Start to select SSDI beneficiaries for comprehensive vocational assessment. Start will use a computerized labor market survey to identify prospective employers for project participants. All participants will attend a 3 or 4-day job-search workshop and counseling seminar to help them find employment in suitable occupations, as identified through skills analysis and job-search techniques. A job club will be organized for all participants and used to locate and maintain employment.

(12) *Tampa General Rehabilitation Center;* Tampa, Florida; "Job Re-Entry for Traumatically Brain Injured;" Projected duration: 24 months.

The Florida DDS will refer to the grantee SSDI beneficiaries who have sustained brain injuries. The grantee will provide individual assistance through the development of rehabilitation plans and a supported employment system. The usual transitional gaps between disciplines and program components will be reduced by vocational specialists who will work with each individual as he/she moves through the program. Clients will *not* be "passed around" among professionals. This project will integrate medical and vocational information in an evaluation system addressing the cognitive, social/psychological, personality, family support, and functional skills required for job re-entry. Thirty SSDI beneficiaries will be returned to gainful employment over the life of the program.

(13) *University of Cincinnati, Department of Physical Medicine and Rehabilitation;* Cincinnati, Ohio; "Disability Management of Social Security Beneficiaries: A Physical Medicine and Vocational Rehabilitation Work Return Demonstration Project;" Projected duration: 24 months.

This project will demonstrate a medical-allied health-VR team approach in the evaluation, case management, and job-placement of SSDI beneficiaries. Two hundred SSDI beneficiaries will be recruited from lists provided by SSA and will then receive physical

capacities, work capacities, vocational, and psychosocial evaluations followed by individual and group counseling on an as-needed basis. Individualized placement plans will be developed for all participants, and a pilot recruitment effort and job placement plans will be developed with the University of Cincinnati. Referrals will be made also to public and private employment services. The primary criterion for judging the project's success will be effective and sustained job placement.

(14) *Valpar International Corporation;* Tucson, Arizona; "An Early Intervention Assessment Model for the Vocational Rehabilitation of SSDI Beneficiaries;" Projected duration: 17 months.

The Arizona DDS will work with Valpar to select SSDI beneficiaries for vocational assessment. Valpar will conduct comprehensive vocational testing and computerized job searches for all participants in the project, and will cooperate with the State VR agency in constructing rehabilitation plans and providing additional services that might be needed to help SSDI beneficiaries find employment in the occupations to which they have been matched. The data obtained in this study will also be used to identify appropriate vocational assessment procedures for various applicant profiles.

(15) *Vision Center of Central Ohio;* Columbus, Ohio; "Vocational Assessment for Early Rehabilitation Intervention Among SSI/SSDI Applicants;" Projected duration: 24 months.

Three different assessment models (ranging from a simple screening model to an in-depth, comprehensive evaluation) will be developed and tested during the first year. The model which is found to be most predictive of rehabilitation potential will then be applied to the participants and refined based on analyses of data generated from followup and validation periods. Participants will be assigned randomly to one of the three methods of assessment, and each participant will be followed up to assess vocational development. The skills, abilities, and motivation of the participants will be analyzed to identify those variables which are most predictive of future vocational success.

Statutory and Regulatory Provision To Be Waived

Section 222(a) of the Social Security Act is being waived for the purpose of conducting these demonstration projects. This section requires that SSA refer disabled persons to State VR agencies. This waiver authorizes SSA to refer SSDI beneficiaries to the funded organizations.

Authority: Sec. 505(a) of the Social Security Disability Amendments of 1980, Pub. L. 96-265, as amended by Pub. L. 99-272, section 12101.

(Catalogue of Federal Domestic Assistance Programs No. 13.812-Assistance Payment-Research)

Dated: January 25, 1988

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88-6163 Filed 3-21-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-08-4212-11; CA 20237]

California: Realty of Action, Classification of Public Lands for Recreation and Public Purposes in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease of Public Lands for Recreation and Public Purposes, CA 20237.

SUMMARY: The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.) and the regulations thereunder (43 CFR 2912):

Mount Diablo Meridian, California

T. 30 S., R. 41 E.,
Section 6: Lot 87;
Containing .415 acres ±

SUPPLEMENTARY INFORMATION: The County of San Bernardino has filed an application to lease the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for the construction of a community fire station, which will enhance the existing fire protection services for the community of Red Mountain.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR Parts 2410 and 2430. The land is located adjacent to Highway 395 in the town of Red Mountain, California and is physically suitable for the proposed use.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. All mineral deposits in the land so leased, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations as the Secretary of the Interior may proscribe.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

3. A right-of-way for a buried natural gas pipeline granted to Pacific Gas and Electric Company pursuant to Sec. 28 of the Act of February 25, 1920, as amended (30 U.S.C. 185); BLM Serial No. LA-0139393.

4. A right-of-way for a water pipeline granted to Randsburg Water Company pursuant to the Act of February 15, 1901 (43 U.S.C. 959); BLM Serial No. LA-0164135.

Third Party Reservations:

The following public lands are currently encumbered by mining claims:

1. Claim No. CAMC 48442; located by Mines Exploration, Inc. on September 15, 1975 in T. 30 S., R. 41 E., MDM, Section 6: NE¼, San Bernardino County, California.

2. Claim No. CAMC 151475; located by A-Able Plumbing Et. al., on March 25, 1984 in T. 30 S., R. 41 E., MDM, Section 6: NE¼, San Bernardino County, California.

BLM policy requires that public lands encumbered by mining claims upon which a validity determination has not been made may not be leased under the provisions of the R&PP Act. The BLM will not spend any of its funds to undertake a validity determinations for the sole purpose of conveying property under the provisions of the R&PP Act. If the County of San Bernardino wishes to expend funds to undertake validity contests of the above mining claims, they may make a request for such action of the Authorized Officer (BLM) and such contest may proceed if the BLM deems it appropriate after considering all of the issues. The County of San Bernardino will be responsible for the full expense of any contest proceedings.

Until such time as the County of San Bernardino requests validity determinations and contests, the public land encumbered by the above described mining claims will be omitted from any future R&PP lease offering to the County of San Bernardino.

The land is not required for any federal purposes. The lease is consistent with the objectives and recommendations of the California Desert Plan.

Publication of this notice in the **Federal Register** shall segregate the subject public land from appropriation under any other public land laws, including locations under the mining laws. If after 18 months following the publication of this notice in the **Federal Register**, a lease has not been issued for the purpose for which the lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in this notice shall return to their former status without further action by the authorized officer.

Detailed information concerning this action is available for review at the California Desert District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: March 15, 1988.

Dennis B. McLane,

Acting, District Manager.

[FR Doc. 88-6184 Filed 3-21-88; 8:45 am]

BILLING CODE 4310-40-M

Moab District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Moab District Advisory Council Meeting.

SUMMARY: The Moab District Advisory Council will meet Tuesday, April 19, beginning at 6 p.m. in the Tamarisk Inn in Green River. Following a no-host dinner, there will be a briefing on the field trip that will take place the next day. A field trip of the San Rafael Resource Area will take place on Wednesday, April 20. The tour will leave the Tamarisk Inn in Green River at 8 a.m. and arrive in Price, Utah at approximately 5 p.m. The purpose of the field trip is to review part of the area being discussed in the draft San Rafael Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS). Anyone may attend the meeting and field trip, but must provide their own transportation and lunch. On Thursday, April 21, an office meeting will be held at Emery County Courthouse, second floor, room 211. The agenda is as follows:

1. Election of Chairperson and Vice Chairperson for 1988.
2. San Rafael Resource Area Draft Resource Management Plan
3. Selected program updates
4. New Business
5. Opportunity for public comment
6. Finalization of resolutions
7. Adjourn

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council must notify the BLM by April 18. Depending on the number of people desiring to make a statement, a per-person time limit may be established. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259-6111.

Brent Northrup,

Acting District Manager.

[FR Doc. 88-6285 Filed 3-21-88; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

National Register of Historic Places; Pending Nominations; Alaska et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 12, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 6, 1988.

Carol D. Shull

Chief of Registration, National Register.

ALASKA

Anchorage County

Anchorage, *KENI Radio Building*, 1777 Forest Park Dr.

Ketchikan Gateway

Ketchikan, *Grant Street Trestle*, 600 blk. Grant St.

Yukon-Koyukuk County

Nenana vicinity, *Tolovana Roadhouse*, Sled Rd.

ARIZONA

Maricopa County

Phoenix, *Victoria Place Historic District*, 700 blk. E. McKinley St.

INDIANA

Tippecanoe County

Lafayette, *Ward, James H., House*, 1116 Columbia St.

MAINE

Cumberland County

Bridgton, *Cleaves, Benjamin, House*, S. High St.

Gorham, *South Street Historic District*, South St. between Green and Morrill

Franklin County

Wilton, *Bass Boarding House*, Canal St.

Oxford County

Norway, *Norway Historic District*, Roughly bounded by Pearl St., Danforth St. and Greenleaf Ave., Pennesseewassee Stream, and Main and Whitman Sts.

Penobscot County

Bangor, *Bangor Fire Engine House No. 6*, 284 Center St.

Somerset County

Skowhegan, *Bigelow-Page House*, 20 High St.

Waldo County

Stockton Springs, *Hichborn, Nathan G., House*, Church St.

Washington County

Machias, *Washington County Jail*, Court St.

York County

Limington, *Libby-MacArthur House*, ME 11

MISSOURI

Saline County

Marshall vicinity, *Free Will Baptist Church of Pennytown*, Off MO UU 8 mi. SE of Marshall

OKLAHOMA

McIntosh County

Eufaula, *Eufaula Business District*, Main St. between Pine and Grand Sts.

TENNESSEE

Stewart County

Bellwood Furnace (40SW210) (Iron Industry on the Western Highland Rim 1790s—1920s MPS)

LaGrange Furnace (40SW214) (Iron Industry on the Western Highland Rim 1790s—1920s MSP)

UTAH

Box Elder County

Brigham City, *Box Elder County Courthouse*, N. Main St.

Brigham City, *Brigham City Fire Station/City Hall*, 6 N. Main St.

Brigham City, *Compton, Alma, House*, 142 S. 100 East

Deweyville, *Fryer Hotel*, 3274 W. 11300 North

Summit County

Park City, *Rogers, John H. and Margaretta, House (Mining Boom Era Houses TR)*, 455 Park Ave.

Washington County

Toquerville, *Steele, John, House*, 263 N. Toquerville Blvd.

[FR Doc. 88-6151 Filed 3-21-88; 8:45 am]

BILLING CODE 4310-70-M

Recreation Entrance Fees

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of intent to raise entrance fees at two park areas and add vehicle fees at two other park areas of the 127 units of the National Park System currently charging fees. Entrance fees will also be established at an additional 14 parks. A total of 141 of the existing 341 park areas are proposed for the 1988 entrance fee program. Current per person fee rates are $2 and $1 and will increase to $4 per person only in Yellowstone National Park and Grand Teton National Park. Current vehicle fee rates are $3 and $5 and will increase to $10 per vehicle only in Yellowstone National Park and Grand Teton National Park. The single-visit entry permit is reciprocal for these two parks. Single-visit vehicle fees of $3 and $5 will be in effect at Harpers Ferry National Historical Park and Fort Pulaski National Monument, respectively. With the exception of the four identified parks, 1987 entrance fee rates will remain unchanged in 1988 for the other 123 parks. The entrance fee parks are listed below.

List Parks

The cost of a Golden Eagle Pass remains at $25. This annual pass, valid on a calendar-year basis, will admit the permittee (and any accompanying persons in a single, private, noncommercial vehicle, or alternatively, the permittee, accompanying spouse, children, and parents where entry is by any means other than private, noncommercial vehicle to any designated entrance fee park within the National Park System. The pass does not cover recreation use fees, such as camping, or fees for special recreation permits.

The Annual Park-Specific Pass will again be available at each designated entrance fee park for $10 or $15. This pass conveys the same privileges as the Golden Eagle Pass, but only for the specific park for which the Annual Park-Specific Pass is purchased.

The Golden Age Passport (for persons 62 years of age and older) and the Golden Access Passport (for persons blind or permanently disabled) provide for free entrance and a 50 percent discount for user fees (camping, parking, cave tours, etc.) charged by the National Park Service.

There are no entrance fees for children 16 years of age and under or for organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

August 25 is designated annually as a fee-free day when entrance fees will not be charged. This date celebrates the establishment of the National Park Service in 1916. For those parks whose high visitation season does not encompass this date, the respective park Superintendent shall designate a fee-free day during the high visitation season in lieu of August 25.

DATES: The entrance fee rates are effective April 23, 1988.

ADDRESSES: A listing of entrance fee parks may be obtained from: National Park Service, Branch of Resource and Visitor Protection (650), Main Interior Building, P.O. Box 37127, Washington, DC, 20013-7127.

FOR FURTHER INFORMATION CONTACT: Weston P. Kreis, Recreation Fee Coordinator, at the address given above, telephone (202) 343-2205 or FTS 343-2205.

SUPPLEMENTARY INFORMATION: Public Law 100-203, approved December 22, 1987, which amended the Land and Water Conservation Fund Act of 1965 provided the National Park Service authority to charge entrance fees at units of the National Park System until the year 2015. This law supplants the temporary authority granted by Pub. L. 99-591 that expired September 30, 1987, and a series of Continuing Resolutions between that date and enactment of Pub. L. 100-203.

William Penn Mott, Jr.,

Director, National Park Service.

Date: March 17, 1988.

NATIONAL PARK SERVICE—SINGLE VISIT RATES FISCAL YEAR 1987 AND FISCAL YEAR 1988

Park	Fiscal year 1987		Fiscal year 1988	
	Vehicle	Person	Vehicle	Person
1 Acadia NP	$5.00	$2.00	$5.00	$2.00
2 Adams NHS		2.00		2.00
3 Andersonville NHS		1.00		1.00
4 Andrew Johnson NHS		1.00		1.00
5 Antietam NB		1.00		1.00
6 Appomattox Courthouse NHP		1.00		1.00
7 Arches NP	5.00	2.00	3.00	1.00
8 Assateague Island NS	3.00	1.00	3.00	1.00
9 Aztec Ruins NM	3.00	1.00	3.00	1.00
10 Badlands NP	3.00	1.00	3.00	1.00
11 Bandelier NM	5.00	2.00	5.00	2.00
12 Bent's Old Fort NHS	3.00	1.00	3.00	1.00
13 Big Bend NP	5.00	2.00	5.00	2.00
14 Big Hole NB	3.00	1.00	3.00	1.00
15 Black Canyon of the Gunnison NM	3.00	1.00	3.00	1.00
16 Booker T Washington NM				1.00
17 Bryce Canyon NP	5.00	2.00	5.00	2.00
18 Cabrillo NM	3.00	1.00	3.00	1.00
19 Canaveral NS	3.00	1.00		
20 Canyonlands NP	5.00	2.00	3.00	1.00
21 Cape Cod NS	3.00	1.00	3.00	1.00
22 Capitol Reef NP	3.00	1.00	3.00	1.00
23 Capulin Mountain NM	3.00	1.00	3.00	1.00
24 Carl Sandburg NHS		1.00		1.00
25 Casa Grande NM	3.00	1.00	3.00	1.00
26 Castillo De San Marcos NM		1.00		1.00
27 Cedar Breaks NM	3.00	1.00	3.00	1.00

NATIONAL PARK SERVICE—SINGLE VISIT RATES FISCAL YEAR 1987 AND FISCAL YEAR 1988—Continued

Park	Fiscal year 1987		Fiscal year 1988	
	Vehicle	Person	Vehicle	Person
28 Chaco Culture NHP	3.00	1.00	3.00	1.00
29 Chickamauga and Chattanooga NMP		1.00		1.00
30 Chiricahua NM	3.00	1.00	3.00	1.00
31 Christiansted NHS		1.00		1.00
32 Colonial NHP	5.00	2.00	5.00	2.00
33 Colorado NM	3.00	1.00	3.00	1.00
34 Cowpens NB	3.00	1.00	3.00	1.00
35 Crater Lake NP	5.00	2.00	5.00	2.00
36 Craters of the Moon NM	3.00	1.00	3.00	1.00
37 Cumberland Island NS		2.00		
38 Custer Battlefield NM	3.00	1.00	3.00	1.00
39 De Soto NMEM			3.00	1.00
40 Death Valley NM			5.00	2.00
41 Denali NP			5.00	2.00
42 Devils Tower NM	3.00	1.00	3.00	1.00
43 Dinosaur NM	5.00	2.00	5.00	2.00
44 Edison NHS		2.00		2.00
45 Effigy Mounds NM		1.00		1.00
46 Eisenhower NHS		1.00		1.00
47 El Morro NM		1.00		1.00
48 Everglades NP	5.00	2.00	5.00	2.00
49 Florissant Fossil Beds NM		1.00		1.00
50 Ford's Theater NHS		1.00		
51 Fort Clatsop NMEM		1.00		1.00
52 Fort Davis NHS		1.00		1.00
53 Fort Donelson NMP	3.00	1.00	3.00	1.00
54 Fort Frederica NM		1.00		1.00
55 Fort Laramie NHS		1.00		1.00
56 Fort Larned NHS				1.00
57 Fort McHenry NM & Historic Shrine		1.00		1.00
58 Fort Necessity NB		1.00		1.00
59 Fort Pulaski NM		1.00	3.00	1.00
60 Fort Scott NHS		1.00		1.00
61 Fort Smith NHS		1.00		1.00
62 Fort Stanwix NM		1.00		1.00
63 Fort Union NM				1.00
64 Fort Vancouver NHS		1.00		1.00
65 Fort Washington	3.00	1.00	3.00	1.00
66 George Rogers Clark NHP				1.00
67 George Washington Birthplace NM				1.00
68 George Washington Carver NM		1.00		1.00
69 Glacier NP	5.00	2.00	5.00	2.00
70 Golden Spike NHS	3.00	1.00	3.00	1.00
71 Grand Canyon NP	5.00	2.00	5.00	2.00
72 Grand Portage NM		1.00		1.00
73 Grand Teton NP	5.00	2.00	10.00	4.00
74 Grant-Kohrs Ranch NHS		1.00		1.00
75 Great Falls Park (GWMP)	3.00	1.00	3.00	1.00
76 Great Sand Dunes NM	3.00	1.00	3.00	1.00
77 Gulf Islands NS	3.00	1.00	3.00	1.00
78 Haleakala NP	3.00	1.00	3.00	1.00
79 Harpers Ferry NHP		2.00	5.00	2.00
80 Harry S Truman NHS		1.00		1.00
81 Hawaii Volcanoes HP	5.00	2.00	5.00	2.00
82 Herbert Hoover NHS		1.00		1.00
83 Home of Franklin D Roosevelt NHS		2.00		2.00
84 Hopewell Furnace NHS		1.00		1.00
85 Isle Royale NP		2.00		
86 Jefferson Nat'l Expansion Mem NHS				1.00
87 John F Kennedy NHS		1.00		1.00
88 John Muir House NHS		1.00		1.00
89 Joshua Tree NM	5.00	2.00	5.00	2.00
90 Lassen Volcanic NP	5.00	2.00	5.00	2.00
91 Lava Beds NM	3.00	1.00	3.00	1.00
92 Lincoln Boyhood NMEM		1.00		1.00
93 Longfellow NHS		1.00		1.00
94 Manassas NBP		1.00		1.00
95 Martin Van Buren NHS				1.00
96 Mesa Verde NP	5.00	2.00	5.00	2.00
97 Minute Man NHP		1.00		1.00
98 Montezuma Castle NM	3.00	1.00	3.00	1.00
99 Morristown NHP		1.00		1.00
100 Mound City Group NM				1.00
101 Mount Rainier NP	5.00	2.0	5.00	2.00
102 Natural Bridges NM	3.00	1.00	3.00	1.00
103 Ocmulgee NM		1.00		1.00
104 Olympic NP	3.00	1.00	3.00	1.00
105 Organ Pipe Cactus NM	3.00	1.00	3.00	1.00

NATIONAL PARK SERVICE—SINGLE VISIT RATES FISCAL YEAR 1987 AND FISCAL YEAR 1988—Continued

Park	Fiscal year 1987		Fiscal year 1988	
	Vehicle	Person	Vehicle	Person
106 Padre Island NS	3.00	1.00	3.00	1.00
107 Pea Ridge NMP		1.00		1.00
108 Pecos NM		1.00		1.00
109 Perry's Victory & Int'l Peace Mem		1.00		1.00
110 Petersburg NB		1.00		1.00
111 Petrified Forest NP	5.00	2.00	5.00	2.00
112 Pinnacles NM	3.00	1.00	3.00	1.00
113 Pipe Spring NM		1.00		1.00
114 Pipestone NM		1.00		1.00
115 Prince William Forest Park			3.00	1.00
116 Pu'Uhonua O Honaunau NHP		1.00		1.00
117 Rocky Mountain NP	5.00	2.00	5.00	2.00
118 Sagamore Hill NHS		1.00		1.00
119 Saguaro NM	3.00	1.00	3.00	1.00
120 Saint-Gaudens NHS		1.00		1.00
121 Salinas NM		1.00		1.00
122 San Juan NHS		1.00		
123 Saratoga NHP	3.00	1.00	3.00	1.00
124 Scotts Bluff NM	3.00	1.00	3.00	1.00
125 Sequoia Kings Canyon NP	5.00	2.00	5.00	2.00
126 Shenandoah NP	5.00	2.00	5.00	2.00
127 Shiloh NMP		1.00		1.00
128 Statue Of Liberty NM		1.00		
129 Stones River NB		1.00		1.00
129 Sunset Crater NM			3.00	1.00
131 Theodore Roosevelt Birthplace NHS		1.00		1.00
132 Theodore Roosevelt NP	3.00	1.00	3.00	1.00
133 Tonto NM	3.00	1.00	3.00	1.00
134 Tumacacori NM	3.00	1.00	3.00	1.00
135 Tuzigoot NM	3.00	1.00	3.00	1.00
136 Valley Forge NHP	3.00	1.00	3.00	1.00
137 Vanderbilt Mansion NHS		2.00		2.00
138 Vicksburg NMP	3.00	1.00	3.00	1.00
139 Walnut Canyon NM	3.00	1.00	3.00	1.00
140 White Sands NM	3.00	1.00	3.00	1.00
141 Whitman Mission NHS		1.00		1.00
142 Wilson's Creek NB	3.00	1.00	3.00	1.00
143 Wright Brothers NMEM	3.00	1.00	3.00	1.00
144 Wupatki NM			3.00	1.00
145 Yellowstone NP	5.00	2.00	10.00	4.00
146 Yosemite NP	5.00	2.00	5.00	2.00
147 Zion NP	5.00	2.00	5.00	2.00

[FR Doc. 88-6207 Filed 3-21-88; 8:45am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: March 11, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0514.

Type of Submission: Renewal.

Title: Rules and Procedures Applicable to Commodity Transactions.

Purpose: A.I.D. finances transactions under Commodity Import Programs and needs to assure that the transaction complies with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving A.I.D. funds, and banks making payments for A.I.D.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date. March 11, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-6183 Filed 3-21-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31243]

Declaratory Order—Control—Rio Grande Industries, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of procedural schedule.

SUMMARY: The Commission sets a procedural schedule for replies and rebuttal to the Petition for Declaratory Order filed by Morgan Stanley.

DATES: Replies are due on April 11, 1988. Rebuttal is due by April 21, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31243 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Send five additional copies to: Office of Proceedings, Room 2118, Interstate Commerce Commission, Washington, DC 20423
(3) Petitioner's representative: Dennis G. Lyons, Arnold & Porter, 1200 New Hampshire Avenue, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: By petition filed February 26, 1988, the Morgan Stanley Group, Inc., and its affiliates (Morgan Stanley) seek a declaratory order, under 49 CFR 1117.1 and 5 U.S.C. 554(e). They request a declaration that none of them will be in control, under the Interstate Commerce Act (the Act), of Rio Grande Industries or its subsidiaries (Rio Grande) after consummation of the transaction proposed in Finance Docket No. 32000.

By agreement, Morgan Stanley will provide a significant portion of the financing for the acquisition by Rio Grande of the Southern Pacific Transportation Company (SPT). Because some elements of the agreement may give rise to the question of whether Morgan Stanley will have control under the Act, Morgan Stanley seeks assurance that its interest does not constitute control.

We believe the record will benefit by public participation. Consequently, we will establish the schedule below, for replies and rebuttal, on the question of control. Replies must be served on counsel for Morgan Stanley: Dennis G. Lyons, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036. Copies of the petition are available from the same source.

This decision will not significantly affect the quality of the human environment or energy conservation.

It is ordered:

1. Replies to Morgan Stanley's Petition for Declaratory Order must be filed by April 11, 1988.

2. Rebuttal must be filed by April 21, 1988.

3. This decision is effective on the date of service.

Decided: March 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6205 Filed 3-21-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Voluntary Agreement and Plan of Action To Implement The International Energy Program; Amendment

The Assistant Attorney General of the Antitrust Division has amended the Voluntary Agreement and Plan of Action to Implement the International Energy Program to incorporate the approved "Second Plan of Action to Implement the International Energy Program" and to make conforming technical changes to the Voluntary Agreement. The Agreement was amended pursuant to powers granted to the Attorney General by section 252 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, and delegated to the Assistant Attorney General by regulation, 28 CFR 0.41(i). The test of the amendments and notice of our intention to adopt them were published on February 2, 1988 (53 FR 2866). The amendments were effective February 22, 1988. The Voluntary Agreement, prior to amendment, is published at 2 CCH Federal Energy Guidelines, ¶15,845.

Charles F. Rule,

Assistant Attorney General, Antitrust Division.

[FR Doc. 6160 Filed 3-21-88; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS Number: 1104-88]

Direct Mail of Applications and Petitions to the Regional Service Center in San Ysidro, CA.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction in notice.

SUMMARY: This corrects the notice (INS document number 1104-88) published on February 24, 1988, 53 FR 5480, by adding the Immigration and Naturalization Service Form I-129F to the list of forms to be Direct Mailed to the Regional Service Center in San Ysidro, California.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lloyd Sutherland, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

Add the Form I-129F, Petition to Classify Status of Alien Fiance(e) for Issuance of Immigrant Visa, in the list of forms included under the heading "Applications and Petitions included in This Direct Mail Notice."

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-6178 Filed 3-21-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 12, 1988, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 11th day of March 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88-6219 Filed 3-21-88; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; CSX Transportation et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW, Washington, DC 20213.

Signed at Washington, DC, this 14th day of March 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
CSX Transportation (UTU)	Jacksonville, FL	3/14/88	2/28/88	20,519	Transport Coal.
Dieterich Standard (Company)	Boulder, CO	3/14/88	3/3/88	20,520	Flow Measurement.
Hanover Quarry of Bethlehem Mines Corp. (USWA).	Hanover, PA	3/14/88	2/26/88	20,521	Limestone.
Hofmann Industries, Inc. (USWA)	Sinking Spring, PA	3/14/88	2/29/88	20,522	Iron Castings.
Razor Ridge, Inc. (Workers)	Sparta, NC	3/14/88	3/4/88	20,523	Wood Trim for dinette Sets.
Rico Fashions (ILGWU)	Union City, NJ	3/14/88	2/29/88	20,524	Ladies' Suits & Coats.
Sigri Carbon Corp. (OCAW)	Hickman, KY	3/14/88	2/23/88	20,525	Graphite Electrodes.
Smokador, International (Company)	Edison, NJ	3/14/88	3/2/88	20,526	Desk and Office Accessories.
U.S. Steel Mining Co., (UMWA)	Kanawha, WV	3/14/88	3/4/88	20,527	Metallurgical Coal.
U.S. Steel Mining Co.,(UMWA)	Boone Counties WV	3/14/88	3/4/88	20,528	Metallurgical Coal.

[FR Doc. 88-6221 Filed 3-21-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,213]

National Aluminum Corp., Murrysville, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CRF 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at National Aluminum Corporation, Murrysville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,213; National Aluminum Corporated Murrysville, Pennsylvania (March 7, 1988.)

Signed at Washington, DC this 15th Day of March 1988.

Marvin M. Fooks,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-6220 Filed 3-21-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Extension of Advisory Committee Charter

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of extension of Advisory Committee Charter.

SUMMARY: After consultation with the General Services Administration, the Department of Labor has extended the Charter for the Mine Safety and Health Administration's Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines for the period April 27, 1988 through July 17, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Notice is given that, after consultation with the General Services Administration, the Department of Labor has extended the Charter of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines for the period April 27, 1988, through July 17, 1988. The Charter was to expire on April 27, 1988. This action is necessary and in the public interest.

The Committee will provide recommendations on proposed standards for diesel-powered equipment in underground coal mines. The Committee consists of nine members and includes two representatives from labor, and two representatives of the coal mining industry. The Committee's statutorily mandated majority is composed of five individuals who have no economic interests in the coal or other mining industry and who are not operators, miners or officers or employees of the federal government or any state or local government. The Committee's Charter will be filed with the General Services Administration and the appropriate Congressional Committees.

Signed at Washington, DC, this 17th day of March, 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-6218 Filed 3-21-88; 8:45 am]

BILLING CODE 4510-43-M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on The Arts; Music Advisory Panel, Jazz Fellowship Prescreening; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowship Prescreening) to the National Council on the Arts, will be held on April 4–6, 1988 from 9:00 a.m.–5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 14, 1988.

[FR Doc. 88–6162 Filed 3–21–88; 8:45 am]

BILLING CODE 7537-01-M

National Endowment on the Arts; Museum Advisory Panel, Professional Development Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts, will be held on April 7, 1988 from 9:00 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 14, 1988.

[FR Doc. 88–6161 Filed 2–21–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 24, 1988 (53 FR 5482). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Occupational and Environmental Protection Systems, March 22 and 23, 1988, Washington, DC—POSTPONED.

Instrumentation and Control Systems, March 24, 1988, Washington, DC. The Subcommittee will review the NRC Staff's analysis and study to limit the scope of USI A–47, "Safety Implications of Control Systems."

Human Factors, March 28, 1988, Washington, DC. The Subcommittee will review: (1) The Human Factors Research Program Plan, (2) the Fitness for Duty Rule, and (3) Policy Statement on Training and Qualification.

Structural Engineering, March 30, 1988, Culver City, CA. The Subcommittee will review the Piping and Fitting Reliability Program.

Babcock and Wilcox Reactor Plants, March 30 and 31, 1988, Washington, DC—POSTPONED to May 3–4, 1988.

Advanced Pressurized Water Reactors, April 5, 1988, Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives and the NRC Staff regarding the PRA for *W*APWR (RESAR SP/90) design.

Babcock and Wilcox Reactor Plants (Rancho Seco), April 6, 1988, Washington, DC. The Subcommittee will discuss issues relating to the restart of Rancho Seco following its December 1985 shutdown.

Thermal Hydraulic Phenomena, April 19, 1988, Washington, DC. The Subcommittee will review the draft Models and Correlations Document for the RELAP/5 thermal hydraulic code.

Thermal Hydraulic Phenomena, April 20, 1988, Washington, DC. The Subcommittee will discuss a proposed report on thermal hydraulic research for consideration by the ACRS.

Reliability Assurance, April 21, 1988, Washington, DC. The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study. The Subcommittee will review also the final version of Regulatory Guide 1.100, "Seismic Qualification of Electrical and Mechanical Equipment."

Thermal Hydraulic Phenomena, April 21, 1988 (a.m. only), Washington, DC. The Subcommittee will review the final version of the proposed ECCS Rule.

Babcock & Wilcox Reactor Plants, May 3 and 4, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors.

Thermal Hydraulic Phenomena, May 18, 1988, Washington, DC. The Subcommittee will review the *W* revised ECCS Model for 2-loop Upper Plenum Injection (UPI) plants.

Regional Programs, May 24, 1988, Atlanta, GA. The Subcommittee will review the activities under the control of the NRC Region II Office.

Improved LWRs, May 25, 1988, Washington, DC. The Subcommittee will discuss Chapters 3, 4, and 5 of the EPRI ALWR Requirements document.

Metal Components, May 26, 1988, Washington, DC. The Subcommittee will discuss the quality of fasteners in nuclear power plants, and BWR reactor pressure vessel in-service inspections.

Advanced Boiling Water Reactors, June 1, 1988, Washington, DC. The Subcommittee will begin its review of the GE ABWR. This meeting will concentrate on the first review module consisting of SAR Chapters 4, 5, 6, and 15–1.

Waste Management, June 7–8, 1988, Washington, DC. The Subcommittee will review pertinent nuclear waste management topics to be determined conjointly with the NRC Staff during an agenda planning session on April 15, 1988.

Thermal Hydraulic Phenomena, June 21, 1988 (tentative), Location to be determined. The Subcommittee will review the status of ithe MIST Phase III and IV Programs and the proposed OTSG Follow–on Program.

Advanced Pressurized Water Reactors, Date to be determined (April/May), Washington, DC. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Safety Philosophy, Technology and Criteria, Date to be determined (April/May), Washington, DC. The Subcommittee will review the status of NUREG–1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients. The Subcommittee may review also the Staff's final version of a proposed generic letter on USI A–17, "Systems Interactions."

Generic Items, Date to be determined (April/May), Washington, DC. The Subcommittee will discuss: (1) ISAP-II Program and associated Policy Statement, and (2) Integration of Related Generic Issues.

Decay Heat Removal Systems, Date to be determined (mid-May), Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position of USI A–45.

Advanced Pressurized Water Reactors, Date to be determined (May), Washington, DC. The Subcommittee will discuss the comparison of *W*APWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Advanced Pressurized Water Reactors, Date to be determined (May/June), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the *W*APWR RESAR SP/90 design.

Containment Requirements, Date to be determined (May/June), Washington, DC. The Subcommittee will review the NRC Staff's document on interim recommendations for containment performance and improvements (BWR Mark I only).

Occupational and Environmental Protection Systems, Date to be determined (May/June), Washington, DC. The Subcommittee will review: (1) The "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Severe Accidents, Date to be determined (May/June), Washington, DC. The Subcommittee may review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48) (tentative). The Subcommittee will review also the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Decay Heat Removal Systems, Date to be determined (June/July), Washington, DC. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Decay Heat Removal Systems, Date to be determined, Washington DC. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date and location to be determined, Washington, DC. The Subcommittee will review the Diagnostic Evaluation Program and other related staff plant review efforts.

Thermal Hydraulic phenomena, Date to be determined, Washington, DC. The Subcommittee will discuss the status of Industry best-estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary Systems, Date to be determined, Washington, DC. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

ACRS Full Committee Meeting

April 7–9, 1988—Items are tentatively scheduled.

*A. *Beaver Valley Nuclear Power Station (Open)*—Briefing and discussion regarding proposed restart of the Beaver Valley nuclear station.

*B. *Nuclear Power Plant Safety (Open)*—Briefing regarding proposed IAEA General Principles for reactor safety.

*C. *Generic Issues (Open)*—Discuss proposed ACRS comments/recommendations regarding the effectiveness of the NRC Staff process that deals with generic issues and unresolved safety issues.

*D. *Fitness for Duty (Open)*—Briefing regarding proposed NRC's Fitness for duty Rule.

*E. *ACRS Policies and Procedures (Open)*—Discuss ACRS practices regarding activities of ACRS members.

*F. *Important Safety-Related Issues (Open)*—Discuss proposed hierarchical structure for important safety-related issues.

*G. *Advanced Reactors (Open)*—Review proposed key design features for advanced gas-cooled and liquid-metal-cooled nuclear power plants.

*H. *Meeting with NRC Commissioners (Open) (tentative)*—Meeting to discuss the basis for a proposed NRC rule for maintenance of nuclear power plants.

*I. *Training and Qualification of Reactor Operators (Open)*—Review of proposed NRC policy statement regarding training and qualification of nuclear power plant operators.

*J. *Meeting with Director, NRC Office of Reactor Regulation (Open) (tentative)*—Discuss matters of mutual interest.

*K. *Human Factors (Open)*—Review and comment regarding proposed NRC research program.

*L. *Future ACRS Activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*M. *ACRS Subcommittee Activities (Open)*—Reports and discussion regarding designated ACRS subcommittee activities including safety implications of control systems, nuclear radwaste management and disposal, and committee activities related to radwaste management and disposal.

N. *Appointment of New Members (Closed)*—Discuss qualification of persons proposed for appointment to the Committee and the internal allocation of resources.

May 5–7, 1988—Agenda to be announced.

June 2–4, 1988—Agenda to be announced.

Date: March 16, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–6233 Filed 3–21–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on April 14, 1988, from 7:00 p.m. to 10:00 p.m. at the City of Lancaster Council Chambers, 100 South Queen Street, Lancaster, PA. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, General Public Utilities Nuclear Corporation. The licensee will also provide the Panel with current design information describing the accident-generated water evaporator. Members of the Panel will discuss the current offsite radiological monitoring program. Representatives of the NRC will describe the NRC funded research program to obtain and examine test specimens from the bottom of the TMI–2 reactor vessel. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1373.

Dated: March 17, 1988.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 6232 Filed 3–21–88; 8:45 am]

BILLING CODE 7590-01-M

Cleveland Electric Illuminating Co. et al.; Request To Suspend The Perry Nuclear Power Plant Antitrust License Conditions; Time For Filing Comments Extended

On September 18, 1987, the Ohio Edison Company (Ohio Edison) requested the Director of the Office of Nuclear Reactor Regulation to amend the antitrust license conditions that are attached to the Perry Nuclear Power Plant (Perry) operating license, No. NPF–58. Although the Perry operating license was issued to Cleveland Electric Illuminating Co., Toledo Edison Co., Duquesne Light Co. and Ohio Edison, Ohio Edison's amendment requested suspension of the antitrust license conditions only as they apply to Ohio Edison.

Notification of receipt of this amendment request was published in the **Federal Register** (Vol. 52 p. 48473) on December 22, 1987 and comments were sought from the public within 45 days. By motion dated January 29, 1988, American Municipal Power-Ohio, Inc. (AMP-Ohio) requested an extension of time until March 7, 1988 in which to file its comments on Ohio Edison's amendment request. Staff granted AMP-Ohio's initial request for a time extension on February 4, 1988. By letter to the Director of the Office of Nuclear Reactor Regulation dated February 29, 1988, AMP-Ohio has requested another time extension to file its request that its comments in the captioned proceeding. Counsel for AMP-Ohio indicated in its request that its client and Ohio Edison "* * * were close to a comprehensive, long-term power supply and interconnection agreement which would significantly alter the relationship between Ohio Edison and many of AMP-Ohio's municipal electric members (and thus the nature of AMP-Ohio's comments in this docket)." The agreement in question has yet to be finalized and AMP-Ohio has requested a 30-day extension until April 6, 1988, in which to file its comments.

Given the apparent progress in the AMP-Ohio/Ohio Edison negotiations to date and the prospects for resolution of the issues that exist between these two parties if the comment period is extended, staff hereby grants AMP-Ohio's request (which is unopposed by Ohio Edison) and extends the time for comments from the public on Ohio Edison's amendment until April 6, 1988. Staff hopes this time extension will contribute to a timely resolution of the issues that remain outstanding between AMP-Ohio and Ohio Edison.

Any person who wishes to express views pursuant to the antitrust issues raised in this amendment request, should submit said views by April 6, 1988 to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Policy Development and Technical Support Branch Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6201 Filed 3–21–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–302]

Florida Power Corp. et al.; Consideration of Issuance of Amendment To Facility Operating License and Opportunity For Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72, issued to Florida Power Corporation, et al. (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant located in Citrus County, Florida.

The amendment would revise Technical Specification (TS) 3.8.1.1 to provide more appropriate actions to be taken when one of the batteries or battery chargers supplying DC control power to the 230 KV switchyard breakers is inoperable. It would also increase the allowable outage time to allow surveillance testing of the batteries within the Action Statement time interval while Units 1 and 2 (where the battery is located) are shutdown, rather than operating as is presently done. Thus, the DC systems will not have to be removed from service while those units are operating.

The revision to TS 4.8.1.2 would clarify the surveillance and equipment required to be operable in Modes 5 and 6, and would not result in changes from the current surveillance requirements.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 21, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union ast (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Crystal River Public Library, 668 N. W. First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 16th day of March, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6202 Filed 3–21–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses Nos. NPF–14 and NPF–22 issued to Pennsylvania Power and Light Company (the licensee) for operation of the Susquehanna Steam Electric Station Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change Technical Specification Section 4.8.2.1.d.2.b to increase the load profiles for batteries 2D612 and 2D622 and decrease the load profiles for batteries 2D632 and 2D642. These changes are deemed necessary to accommodate the installation of ATWS Alternate Rod Injection solenoid valves, and to recognize increased loads associated with emergency lighting for batteries 2D612 and 2D622 and decreased loads associated with emergency lighting for batteries 2D632 and 2D642. In addition, the licensee requests deletion of page ¾ 8–14 in the Unit 2 Technical Specifications as it represents redundant information presented on page ¾ 8–13a.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 21, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes an additional notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 8, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 15th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-6203 Filed 3-21-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25462; File No. SR-Amex-88-3]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Repeal of the Special Listing Criteria for Real Estate Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to repeal section 114 of the Company Guide which requires that Real Estate Investment Trusts be evaluated against special listing criteria.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1971, the Amex, alone among the major marketplaces, adopted special financial and corporate governance related listing criteria for Real Estate Investment Trusts ("REITs"). REITs were then a relatively new form of business entity, and it was perceived that they posed risks to investors that were not evident in other business entities.

Since these guidelines were adopted, some 17 years ago, the environment has changed significantly. The market today is well acquainted with the REIT format, and industry-wide governance standards have evolved. Moreover, these are now a variety of publicly available real estate investment vehicles, the listing eligiblity of which would be determined by application of the Exchange's basis listing criteria. Given these changes, and since the same fundamental analysis is required for evaluating a real estate entity—whether or not organized as a REIT—there appears little, if any, justification for continuing to require special criteria for REITs.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the Exchange's basis listing criteria are adequate to protect investors and the public interest.

B. Self-Regulatory—Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that no other marketplace has special evaluative criteria for REITs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Time of Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if its find such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 12, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88-6234 Filed 3-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25474; File No. SR-NASD-88-4]

Self-Regulatory Organizations; Proposed Amendment to the Rules of Fair Practice of the National Association of Securities Dealers, Inc.; Testimonial Advertisements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, section 35(d)(2)(D) of its Rules of Fair Practice to limit the application of the NASD's current rule only to testimonials concerning the quality of a member's investment advice and to require disclosure of compensation paid to the person making the testimonial only if it is more than a nominal amount.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is amending Article III, section 35(d)(2)(D) to conform its terms to those of New York Stock Exchange ("NYSE") Rule 472.40(8) (which was amended subsequent to the adoption of the NASD rule), for purposes of consistency and reduction of unnecessary regulatory burdens on dual NASD/NYSE members.

The proposed amendment is consistent with the provisions of section 15A(b)(6) of the Act, in that the amendment will provide information to investors concerning the source of information provided in testimonial advertisements concerning the quality of a member's investment advice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Rule Change Received from Members, Participants, or Others

The proposed amendment was published for comment in NASD Notice to Members 87-40 (June 22, 1987). Four comment letters were received regarding the proposed amendment. One commentator was in favor of the proposed amendment without reservation. The other three commentators favored adopting the amendment but recommended that the amendment's provisions include more explicit standards, e.g., that the term "nominal sum" be defined. The NASD considered the comments received and determined that, in the interest of consistency, the terms of the amendment should conform to those of NYSE Rule 472.40(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–4 and should be submitted by April 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 16, 1988.

[FR Doc. 88–6235 Filed 3–21–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25481; File No. SR–NASD–88–7]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

On February 23, 1988, The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to amend section 4(a)(4) of Appendix A, Article III, Section 30 of the NASD's Rules of Fair Practice to increase the initial and maintenance margin requirements for short positions in market index options.

The NADS's rules to establish a premium-based customer margin system for "short" options positions were approved by the Commission on September 26, 1985 and became effective in January 1986.[3] Filed in conjunction with all the options exchanges, the rules provide for a uniform margin system applicable to all options products based on the option premium plus a specified percentage of the current value of the underlying product. In pertinent part, the current requirements for index option products were based upon volatility studies conducted to determine margin requirements that would be sufficient to cover index option price changes. The NASD's current margin requirement for each short put or call option on a market index is 100% of the current market value of the option contract (*i.e.*, the current option premium value) plus 5% of the aggregate value of the underlying index reduced by the amount the option is out-of-the money, with a minimum of 100% of the current market value of the option contract plus 2% of the aggregate value of the underlying index.

Based upon recent events in the stock markets and volatility studies conducted during the week of October 19, 1987, however, the NASD has determined that these margin requirements should be increased. Therefore, the NASD proposes to increase initial and maintenance customer margin requirements for short options positions in market index options to 100% of the option's premium plus 10% of the underlying index's aggregate value, reduced by the amount the option is out-of-the money, but not less than the premium plus 5% of the aggregate value of the underlying index.

The requirement is designed to protect both investors and firms by assuring that these broad-market index option positions are adequately covered. In addition, the new margin requirements maintain for investors a reasonable cushion of protection in line with increased market volatility.

Because the proposed rule amendments will provide increased margin protection for customer options positions under current market conditions, the proposed rule change is consistent with section 15A(b)(6) under the Act,[4] which provides in pertinent part that the rules of a registered securities association be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to a national securities association, and, in particular, the requirements of section 15A(b)(6),[5] which provides, in pertinent part, that the rules of the association must be designed to protect investors and the public interest. The increased margin requirements for market index options will provide more financial protection to the securities industry at a time of increased market volatility. The 5%/2% margin levels are based on historical volatility levels that are no longer valid in light of the events of the week of October 19, 1987. Hence, at a minimum, higher margin levels are needed to ensure the financial stability of member firms. At this time the NASD has determined to raise the initial margin level for market index options to premium plus 10%. The Commission believes this action is necessary as an interim step in assuring the adequacy of margin levels in light of recent market events. Because of concerns raised in the Commission's Report on the October 1987 Market Break about the effect on market volatility of margin levels on derivative products, however, the Commission reserves judgment both on the sufficiency of the level of margin set by the proposed rule change as well as the method of determining adequate margin.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** in light of the increased stock market volatility during the week of October 19 and its effect on margin adequacy. In addition, the Commission notes that the American, Pacific, Philadelphia, and New York Stock Exchanges and the Chicago Board Options Exchange have adopted identical changes to their margin requirement rules.[6]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 12, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88–6236 Filed 3–21–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25505; File No. SR–NASD–88–1]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Rules of Practice and Procedures for the Small Order Execution System and Part VI, Schedule D to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 9, 1988, the NASD filed a revised **Federal Register** exhibit. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

The NASD is proposing amendments to Part VI, Schedule D to the NASD By-Laws ("Schedule D") and to the Rules of Practice and Procedures for the Small Order Execution System ("SOES or SOES Rules").

II. Self-Regulatory Organization's Statement of The Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

Background

The Small Order Execution System was established to permit small orders in National Association of Securities Dealers Automated Quotation System ("NASDAQ") securities to be executed efficiently at the best price for the public customer. SOES average weekly volume doubled during the week of October 19, 1987. Notwithstanding the extraordinary volume during that and subsequent weeks, SOES remained open and operating and continues to provide investors an effective means for the execution of smaller orders. Problems were experienced, however. As a result, the NASD has concluded that certain improvements should be made to NASDAQ and SOES in particular in relation to the NASDAQ/National Market System ("NASDAQ/NMS") securites to assure that investors have access to an even more efficient and liquid market, especialy during periods of high volume. The Board of Governors believes that the most effective way to assure greater investor access is through enhancements to SOES and NASDAQ that will help alleviate the need for firms to rely on telephone contact.

Therefor, the NASD Board of Governors has approved amendments to Schedule D of the NASD By-Laws and the SOES Rules that would implement these changes. To summarize, the proposed rule change would:

1. Prohibit a firm that withdraws, on a unexcused basis, as a NASDAQ market maker in a security from re-entering NASDAQ as a market maker in that security for 20 business days;
2. Limits the acceptable reasons for an excused withdrawal from NASDAQ;
3. Make SOES participation mandatory for all market makers in NASDAQ/NMS securities;
4. Enable the NASD to establish different levels of maximum order size limits (e.g., 200, 500 and 1,000 shares) for SOES orders in NMS securities, depending on the characteristics of different securities;
5. Provide that SOES executions up to a specified limit will continue in a NASDAQ/NMS security when quotes are locked or crossed, with executions occurring at the best price; and
6. Eliminate preferencing of market makers during an NMS security locked or crossed market situation.

Description of Proposed Rule Changes

Penalty for Withdrawal as a NASDAQ Market Maker—The NASD is proposing to amend Schedule D to the NASD By-Laws (containing rules on the NASDAQ System) to prohibit a firm that withdraws from making a market in any NASDAQ security in an unexcused basis from reentering as a market maker in that security for 20 business days. Currently, market makers may withdraw from and reenter SOES without penalty and as a NASDAQ market maker after a two business day delayed. The NASD has concluded, however, that it is necessary to increase the penalty for unexcused withdrawals from the NASDAQ system from two business days to twenty business days to help assure that investors in those securities have access to a continuous, liquid market supported by as many market makers as possible. Unexcused withdrawal from SOES participation as market makes in a NASDAQ/NMS security shall constitute unexcused withdrawal of quotes from NASDAQ and shall subject market makers to the twenty business day penalty.

As in the past, market makers will continue to be able to obtain excused withdrawals. The conditions under which those withdrawals will be permitted would be limited under the proposal, however, to withdrawals due to physical circumstances beyond the market maker's control but would not include illness (*e.g.* equipment malfunction or relocation) or legal or regulatory considerations (*e.g.* compliance with SEC Rule 10b–6) or, with five business days advance notice to and approval by the NASD, religious holidays. A market maker obtaining an excused withdrawal could reenter NASDAQ according to the conditions of the withdrawal (*e.g.*, withdrawals for purposes of equipment relocation would permit market makers to reenter upon installation at the new location). The withdrawal of quotations because of pending news, a sudden influx of order or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] *See* Securities Exchange Act Release No. 22469 (September 26, 1985), 50 FR 40633.

[4] 15 U.S.C. 78o–3(b)(6) (1982).

[5] *Id.*

[6] *See* Securities Exchange Act Releases No. 25081 (November 2, 1987), 52 FR 42751 and 25178 (December 8, 1987), 52 FR 47064.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1987).

Mandatory Participation in SOES—The SOES Rules and Schedule D are proposed to be amended to require that every market maker in every NASDAQ/NMS security also be a market maker in that security in SOES. SOES participation for market makers in NASDAQ securities that are not NASDAQ/NMS securities would continue to be voluntary. Further, transactions in SOES will be required to be cleared and settled through a registered clearing facility.

This change will facilitate the automatic execution of customers' small orders for every NASDAQ/NMS security without the need for telephone contact between the order entry and executing firm. Every firm making a market in a NASDAQ/NMS security will be participating in the automatic execution system. By mandating wider participation in SOES, the Board believes that the NASD will significantly improve investor access to the NASDAQ/NMS market, particularly in times of high volume.

Tiered Order Limits—The SOES Rules are proposed to be amended to provide that the NASD may establish different maximum order size limits of different NMS securities. As a small order system, SOES is available for retail agency orders of limited size. Most recently, the size limits have been 1,000 shares for NASDAQ/NMS securities and 500 shares for other NASDAQ securities. On the basis of experience, however, the Board of Governors has concluded that the efficiency and liquidity of SOES could be improved by refining order size limits of NMS securities so that different categories of securities having certain trading characteristics would be subject to different size limits. For example, orders in some securities may be restricted to a maximum size of 200 shares, others 500 shares, and still others, 1,000 shares. The NASD is developing a formula for three different ties of NASDAQ/NMS securities based on criteria such as share volume of non-block trading activity, price and number of market makers in the particular security.

SOES Executions in Locked or Crossed Markets—The SOES Rules are proposed to be amended to provide that order in NASDAQ/NMS securities will continue to be executed in a security notwithstanding the fact that NASDAQ/NMS quotations for that security are locked (*i.e.* at least one market maker is willing to buy for the same price as at least one market maker is willing to sell) or crossed (*i.e.* at least one market maker is willing to buy at a higher price than another is willing to sell). Under current procedures, SOES orders are executed in rotation against all market makers offering the "inside" or best quotation,[1] but automatic executions in a security cease if quotations as to that security become locked or crossed. In rapidly changing markets, it is more likely that quotations will be inadvertently locked or crossed as the use of telephones limits access to the market.

Under the proposal, automatic SOES executions in NASDAQ/NMS securities would continue even with locked or crossed quotes. All executions would be made against the firm causing the locked or crossed situation if its price is the best for the customer. In the event the market maker causing the locked or crossed market does not have the best price for the customer, the market maker with the best price will have its price executed. An order entry firm's indication of a preference for a particular market maker would not be recognized so that no other market maker would be required to execute at another dealer's locket or crossed quote. Although this charge may create greater potential exposure for firms and whose quotes are locked or crossed, it will help assure that investors have continuous access to SOES throughout periods of high volume and rapid price movement. The change will also provide an economic incentive for firms to keep their quotations current.

The proposal contains a provision to protect market makers in NASDAQ/NMS issues from open end liability and repeated executions in the event they are unable to respond and update their quotes and eliminate a locked or crossed market. The proposal defines "exposure limit" as the number of shares for which a market maker is willing to be exposed, i.e. have orders executed against it. SOES currently permits each market maker to set an exposure limit, i.e., specify the number of shares of any security on either side of the market that the system will execute against the firm's account. The proposal, however, contains a new concept, a "minimum exposure limit" which is defined as the number of shares equal to five times the maximum permitted order size for a given security. Each SOES market maker will be exposed in SOES for the minimum exposure limit but is free to set a higher limit at any time.

In the case of a locked or crossed market in a NASDAQ/NMS security, SOES will execute orders amounting to either the minimum exposure limit or the firm's then remaining exposure limit, whichever is greater, against the firm locking or crossing the market. Unless the firm's limit is changed, that firm's exposure is restricted, however, to the specified limits. Similarly, in a normal trading environment, the system will execute orders against a market maker in an amount equivalent to its exposure limit or the minimum exposure limit, whichever is greater. In either instance, when a firm's exposure limit has been reached, the firm will be suspended from SOES and subject to being automatically withdrawn by the system.

In view of the fact that withdrawal as a SOES market maker in NASDAQ/NMS securities would now carry a 20-business-day penalty, the Board of Governors concluded that any NASDAQ/NMS market maker subject to automatic removal because its exposure limit has been reached should be given a grace period within which to renew its limit or reenter a quote. The grace period is proposed to be a standard period established by the NASD from time to time depending upon market conditions and other factors.[2] The grace period initially will be five minutes, although under emergency conditions, for example, the Association could specify a different period. If a market maker fails to renew its exposure limit within the grace period, it will be automatically removed from SOES and prohibited from re-entering for 20 business days. Should a market maker be unable to respond because of equipment failure, it normally will be permitted to reenter when the equipment failure is removed.

SOES market makers subject to mandatory withdrawal from SOES and the 20-business-day penalty period discussed above, shall have the right to have their exclusion from SOES reviewed pursuant to the provisions of Article IX of the NASD Code of Procedure. These appeals are currently in place with respect to grievances concerning the NASDAQ system.

The proposed amendments are consistent with the provisions of sections 11A(a)(2) and 15A(b)(6) as the amendments to SOES would result in the fair and orderly handling of customer orders and, in general, would promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule amendments impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

The Association requested comments on the proposed amendments in the NASD Notice to Members, dated November 20, 1987 ("Notice"). In response to the Notice, the Association received 46 comment letters. Seventeen comment letters generally favored the proposed rule amendments, ten commentators favored a limited number (but not all) of the proposed rule amendments, and 19 commentators generally opposed the proposed rule changes, citing various reasons for so doing.

Many of the commentators opposing the rule amendments indicated their belief that the rule changes as proposed would impact negatively on market liquidity and have a disproportionate impact on smaller firms. In discussing specific aspects of the proposed rule amendments, several of the commentators in opposition focused on the proposed rule change that would make participation in SOES mandatory. In part, these commentators believed that mandatory SOES participation may expose market makers to undesirable risk and result in a substantial widening of spread positions to handle the increased risk. A number of commentators in opposition also focused on the proposed 30 day penalty for unexcused withdrawal from NASDAQ discussed in the Notice.[3] For the most part, these commentators argued that the penalty was far too burdensome. Finally, several commentators in opposition to the proposed amendments indicated their belief that the proposed requirement that a market be continuously made during times of illness or vacation places a burden on the resources of the trading desk as it results in the need for increased staffing.

In response to the comments in opposition to the rule amendments, the Board has amended its original proposal to provide for a review procedure under which members could appeal denials of requests for excused withdrawals expeditiously and seek to reenter SOES prior to the expiration of the penalty period. The Association also has established a minimum exposure limit of a market maker in SOES to five times the established trading size of that security (limited size) rather than ten executions (as originally proposed) unless the firm sets a higher limit. The Association has also added the occurrence of religious holidays as an acceptable excused withdrawal under specified circumstances.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–1 and should be submitted by April 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88–6204 Filed 3–21–88; 8:45 am]

BILLING CODE 8010–01–M

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[1] An order entry firm can send an order to the SOES market maker of its choice. This is referred to as "preferencing". If this is done, the order is executed at the best price for that market maker's account even if its quote is not the best.

[2] The NASD must submit a proposed rule change pursuant to section 19(b) of the Act prior to altering the grace period.

[3] A penalty period of 30 calendar days was put forth in the Notice. The Association has determined, however, that a 20 business day period, which is generally equivalent to 30 calendar days, should be imposed instead because other time periods in Schedule D are expressed in business days. The rule filing, thus, proposes a 20 business day penalty period.

[Release No. 34–25471; File No. SR–NSCC–87–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change

On September 30, 1987, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–87–10) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] to authorize a service to reconfirm and reprice fails. On November 18, 1987, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] One comment was received expressing support for the proposed rule change.[3] As discussed below, this order approves the proposal.

I. Description

The proposed rule change will authorize NSCC to provide a new service to members, to be known as the Reconfirmation and Pricing Service ("RECAPS"). RECAPS would enable members to reconfirm and reprice transactions which were originally compared trades, but which did not settle, *i.e.*, failed trades.

RECAPS will be available to all NSCC members and will be offered to NSCC members for municipal, equity, and other securities (such as zero coupon instruments). RECAPS will be offered on a periodic basis, as needed. At this time, NSCC anticipates that RECAPS will be run no more often than quarterly.

In general, RECAPS will operate as follows: Participants will submit RECAPS input on a designated day, currently anticipated to be a Friday; NSCC will compare member trade submissions on the following day, Saturday; and, for compared trades, final contract sheets and settlement instructions will be issued on the next day, Sunday. Securities eligible for Continuous Net Settlement (CNS) will settle through CNS on a day NSCC specifies, currently anticipated to be two days after issuance of settlement instructions, or Tuesday. For non-CNS eligible securities issues, NSCC will issue to members using RECAPS balance orders or receive and deliver tickets designating settlement obligations. Members would settle money differences at NSCC on the same day. RECAPS will not be a guaranteed service and the proposed rule change would authorize NSCC to reverse any money credit given to a participant if the *contra* party fails to pay.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 25113 (November 10, 1987), 52 FR 44256 (November 18, 1987). ("Notice of Filing").

[3] *See* letter from Herbert I. Levitt, General Partner, Spear, Leeds & Kellogg, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, received January 20, 1988.

In calculating payment obligations on RECAPS trade submissions, NSCC will use a variety of pricing sources. NSCC will use its current sources to price equity securities traded on national securities exchanges, through NASDAQ facilities or the over the counter market. Municipal securities will be priced according to information provided to NSCC under contract by Kinney Information Services.

The proposal also establishes fees for member use of the RECAPS service. NSCC has proposed RECAPS fees of $0.25 per submission per CUSIP to price securities and $0.50 per item submitted for recomparison.

II. NSCC's Rationale

NSCC believes the rule change is consistent with the requirements of the Act because RECAPS will help facilitate the resolution of fails, and thus will enhance the national clearance and settlement system.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act, among other things, because RECAPS promotes the prompt and accurate clearance of settlement of trades. As described above, RECAPS is designed to convert failed trades into completed trades. Failed trades which participants submit into the RECAPS system are re-priced and re-submitted to participants on RECAPS contract sheets for settlement.[4]

NSCC has conducted two RECAPS pilot programs to determine the effectiveness of the system. The first pilot program[5] included only municipal bonds. Of the 4,162 sides submitted, 2,126 sides (51%) were matched and 2,036 sides (49%) were unmatched.[6] The second pilot program included equities, municipals, and zero coupon bonds. Of 13,111 sides submitted, during the second pilot, 65% were compared.[7] As the result of both pilot programs, the compared trades were processed for settlement. The pilot programs have shown that RECAPS can successfully convert failed trades into completed trades by bringing the failed trades to the firms' attention and providing a mechanism for firms to work to resolve the failed trades.

The Commission also believes RECAPS promotes prompt and accurate clearance and settlement of securities transactions by reducing broker-dealer financing costs associated with outstanding failed trades. Fails increase broker-dealers' financing costs because when the delivering broker-dealer fails to deliver the securities, the receiving broker-dealer must incur financing costs to borrow stock in order to deliver the securities to its customer.

The Commission also believes that the fees NSCC proposes to charge for its RECAPS service are consistent with section 17A(b)(3)(D) as they provide for the equitable allocation of reasonable dues, fees and other charges among NSCC's participants. The fees consist of a fee per CUSIP number submitted to price the securities and a fee per item submitted for recomparison. As stated in NSCC's filing, these fees are intended to recover NSCC's costs of operating the system.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–87–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 15, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6237 Filed 3–21–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25466; File No. SR-NYSE-88-05]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Opening Price Settlement of Expiring Options on the NYSE Composite Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 13, 1987 the Exchange filed a proposed rule change to change the settlement pricing of expiring stock index options to the opening prices on expiration Friday. (*See* SR–NYSE–87–08 and 3/16/87 Letter to Sharon M. Lawson, Branch Chief, SEC, from Daniel P. Odell, Assistant Secretary, NYSE (collectively, the "Temporary Rule Filing") and Release No. 34–24276 (March 27, 1987).) In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calculated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to the contract specifications for options on both indexes to make clear that trading ceases on the Thrusday before expiration Friday.[1]

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[4] *See generally,* Securities and Exchange Commission *The October 1987 Market Break: A Report by the Division of Market Regulation,* 10-1 to 10-5, February 1988.

[5] RECAPS was approved on a pilot basis and was conducted on June 10–22, 1987. Securities Exchange Act Release No. 24519 (May 27, 1987), 52 FR 21140 (June 4, 1987).

[6] *See* letter from Michael J. Simon, Vice President and Associate General Counsel, NSCC, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, dated July 13, 1987.

[7] *See* letter from Michael J. Simon, Vice President and Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, SEC, dated November 27, 1987. *See also, RECAPS: A Second Pilot Conducted in December,* NSCC Participant Report, No. 35 (Jan. 1988) p. 7.

[1] The NYSE Beta Index was delisted by the Exchange effective December 31, 1987. Therefore, references to the Beta Index in these and subsequent Exchange Filings on the settlement pricing of expiring stock index options are no longer pertinent.

The Temporary Rule Filing was effective only with respect to contracts expiring in June, 1987. On April 3, 1987, the Exchange filed a proposed rule change to make permanent the rule changes proposed in the Temporary Rule filing. (*See,* SR–NYSE–87–11 (the "Permanent Rule Filing").) Thereafter, it became evident that the publication, comment and approval procedures for the permanent Rule Filing would not be completed before the Exchange opened for trading its contracts expiring in July, 1987. Accordingly, on April 10, 1987, the Exchange filed a proposed rule change that extended the Temporary Rule Filing to the July expiration date. (SR–NYSE–87–13.)

On May 15, 1987, the Commission approved the Permanent Rule Filing, but only in relation to contracts expiring in August and September. (Release No. 34–24466.) This was intended to permit the Commission to evaluate the June expiration before deciding on permanent approval. The Exchange subsequently learned that the Commission wished to evaluate the September expiration as well before acting on the Exchange's permanent approval request. Therefore, on August 13, 1987, the Exchange filed another proposed rule change that extended the Permanent Rule Filing to the December expiration date. (SR–NYSE–87–28.) The Commission approved the extension on August 24, 1987. (Release No. 34–24847.) Because the Commission required additional time in which to evaluate the September expiration, on October 16, 1987, the Exchange filed another proposed rule change to extend the Permanent Rule Filing to the March expiration date. (SR–NYSE–87–34.) The Commission approved that extension on October 16, 1987 (Release No. 34–25040).

The Exchange understands that owing to the market break of October, 1987, and the ensuing demands on the Commission staff, the Commission now needs additional time in which to evaluate the Exchange's permanent approval request. Accordingly, the proposed rule change extends to all option contracts on the NYSE Composite Index that are listed on or prior to the September, 1988, expiration date the Commission's approval of the Permanent Rule Filing on a temporary basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule extended by the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

The basis under the 1934 Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance on the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interest parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act. As noted above, the Commission's most recent approval on a temporary basis of the Exchange's Permanent Rule Filing permitted the Exchange to change the settlement pricing of expiring stock index options to opening prices only through March, 1988. The Commission finds that accelerated approval of the proposed rule change will permit the Exchange to continue using expiration valuation based upon the opening prices of the underlying stocks for contracts on the NYSE Composite Index listed on or prior to the September expiration, thus maintaining the continuity and order of the Exchange's marketplace while the Commission further considers the Exchange's permanent request.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 12, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the 1934 Act,[8] that the proposed rule change is approved.

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[8] 15 U.S.C. 78s(b)(2) (1982).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 15, 1988.

[Fr Doc. 88-6239 Filed 3-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25472; File No. SR-PSE-88-03]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc.; Pilot Program for Display of Multiple-Series and Stock/Option Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1988, the Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 under the Securities Exchange Act (the "Act") of 1934, hereby proposes to extend a test of the dissemination of certain indications of market interest through the Autex Trading Information System ("AUTEX"). By Release dated May 29, 1987, (No. 34-24528; SR-PSE-87-07) the Securities and Exchange Commission approved a six-month test of a system by which PSE options members could display certain indications of interest for mutiple options series orders and/or stock/option orders through AUTEX. To complete the test of this program the Exchange requests an extension of three months.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposal is for a continuation of a test to electronically disseminate indications of interest for certain types of options orders. The Exchange believes that three additional months are required to provide for ample input from members and customers as to the desirability of the system. The proposal is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is intended to facilitate transactions in securities and will provide a greater ability to eliminate impediments in the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [2] and the rules and regulations thereunder. The Commission understands that use of the AUTEX system to date has been extremely limited. The three-month pilot program extension requested by the PSE should enable the Exchange to better educate its members as to the availability and advantages of the AUTEX system and guage more closely the potential demand for such a system.

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. The purpose of this rule filing is simply to extend for three months the operation of a pilot program approved previously pursuant to standard notice and comment procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposal relates to a pilot program already published for comment and in operation for nine months. Based on its experience during the three-month pilot extension, the Commission anticipates that by the conclusion of this period (*i.e.,* May 29, 1988), the PSE will be able to make a determination as to whether to seek permanent status for the AUTEX program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions sould refer to the file number in the caption above and should be submitted by April 12, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change is approved. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 15, 1988.

[FR Doc. 88-6240 Filed 3-21-88; 8:45 am]

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[1] For a more detailed description of the AUTEX pilot program, *see* Securities Exchange Act Release No. 24366 (April 20, 1987), 52 FR 13782. The Commission previously approved a three month extension of the pilot program running through February 29, 1988 in Securities Exchange Act Release No. 25237 (January 4, 1988), 53 FR 900.

[2] 15 U.S.C. 78f (1982).

[3] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-25473; File No. PHLX 88-8]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Elimination of Odd-Lot Differentials on the Equity Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act") hereby proposes to abolish most odd-lot differentials charged on it equity floor.

The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicates additions.

Odd-Lot Orders Must be Given to Specialist

Rule 205. (a) Odd-lot orders shall be shown to the regular specialist before being shown to the alternate specialist. [Best execution is to be competitively determined based upon price as well as commissions, allowances, discounts or other fees, if any are charged.] If the regular specialist's offered execution of odd-lot orders, as so determined, will equal or better that of the alternate specialist, he shall purchase or sell for his own account such odd-lot orders in the security in which he is registered in accordance with the Provisions of Rules 225, [and] *227 and 229, as applicable.*

Odd-Lot Orders in Securities for Which Another Exchange is the Primary Market

Orders before opening sale.

Rule 227.(a)—unchanged.

(i) *Market* [O]*orders, including the odd-lot portion of partial round-lot (PRL) orders,* accepted by a specialist before [9:55] *9:25* o'clock a.m. shall be executed on the opening sale *for such* security in the primary market. [, plus or minus the odd-lot differential if any is charged.] *Market* [O]*orders, including the odd-lot portion of partial round-lot (PRL) orders,* accepted after [9:55] *9:25* o'clock a.m., and prior to the opening sale of the security in the primary market, shall be executed on the opening sale, provided such opening sale shall take place at a time which would reasonably effect such orders, otherwise they shall be executed on succeeding sales as the time thereof shall warrant.

Limit orders accepted by a specialist prior to the opening sale for such security in the primary market shall be executed at the limit price when a sale takes place in the primary market through the limit price.

Orders after opening sale.

(ii) After the opening transaction, specialists shall execute odd-lot[s] *market orders* on [the next transaction of such security in the primary market plur or minus the odd-lot differential if any is charged] *the PACE quote as defined in Rule 229.*

After the opening transaction, specialists shall execute the odd-lot portion of PRL orders at the same price as the round-lot portion. In the case of a PRL, the round-lot portions(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed.

After the opening transaction, specialists shall execute odd-lot limit orders at the limit price when a sale takes place in the primary market throughout the limit price. Committee to decide disputed price

(iii) The Committee shall determine the price of executed orders which are in dispute; and in the case of orders dependent on sales in the primary market before [10:10] *9:40* o'clock a.m. and after [3:20] *3:50* o'clock p.m. shall determine a fair and reasonable price for such orders regardless of the time such sales appeared on the tape.

Philadelphia Stock Exchange Automated Communication and Execution (PACE) System

Rule 229.—Unchanged.

. . . Supplementary Material.

General

.01 through and including .07(a)—unchanged.

.07(b) Market orders (round-lots of 600 to 1000 shares and PRL's of 601 to 1099 shares) entered after the opening shall not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Philadelphia Stock Exchange [.]*; provided, however, that the odd-lot portion of PRL's of 601 to 1099 shares shall be executed at the same price as the round-lot portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed.*

.08 Odd-lot market orders entered after the opening will be executed on the [next sale in the New York market plus or minus a differential if any is charged.] *PACE quote.*

.09 Odd-lot limit orders [and the odd-lot portion of PRL limit orders] will be executed at the limit price when a sale takes place on the New York market through the limit price. *The odd-lot portion of PRL limit orders up to 1099 shares will be executed at the same price as the round-lot portion. In the case of a PRL, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed.* An odd-lot stop [or stop limit] order which becomes a market order will be executed on the *PACE quote.* [next sale in the New York market plus or minus a differential if any is charged.] *An odd-lot stop limit order which becomes a limit order will be executed on the next sale in the New York Market at the limit price plus or minus a differential if any is charged.*

.10(a)—unchanged.

(b) Round-lot limit orders of 600 to 1000 shares and PRL's of 601 to 1099 entered after the opening shall not be subject to the execution parameters set forth in rule 229 and shall be executed in accordance with other applicable rules of the Philadelphia Stock Exchange*;* [.] *provided, however, that the odd-lot portion of PRL's of 601 to 1099 shares shall be executed at the same price as the round-lot portion. In the case of a PRL, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the last round-lot portion is executed.*

.11 through and including .15—unchanged

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to abolish all differentials on odd-lot market orders and the odd-lot portion of partial round-lot ("PRL") market orders received by PHLX equity specialists through PHLX's automated execution system PACE or otherwise in any securities for which the PHLX is not the primary market. The rule change also makes clear that such differentials may not be charged for any limit orders received through PACE. Finally, while the rule change abolishes differentials for PACE odd-lot stop orders, differentials may be charged for executing PACE odd-lot stop limit orders.

The proposed rule change will reduce transaction costs of executing odd-lot orders and is, therefore, consistent with Section 6(b)(5) of the Act in that it removes "impediments to and perfect[s] the mechanism of a free and open market and a national market system" and promotes the protection of investors and the public interest. The proposal also is consistent with Section 11A of the Act in that it provides for "economically efficient execution of securities transactions" and assures the "practicability of brokers executing investors' orders in the best market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rules changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whethere the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted by April 12, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 16, 1988.

[FR Doc. 88-6236 Filed 3-21-88; 8:45 am]

BILLING CODE 8010-01M

[Rel. No. IC-16317; 812-5466]

FB MTP Partners; Application

March 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: FB MTP Partners.

Relevant 1940 Act Sections: Exemption requested under sections 6(b), 6(e) and 45(a) from all provisions of the 1940 Act or, in the alternative, from all provisions except section 9, sections 17(a) and 17(d) (with certain exceptions), sections 36(a) and 36(b), and sections 37 through 53.

Summary of Application: Applicant, organized as an employees' security company, seeks an order exempting it from the above enumerated provisions of the 1940 Act to permit it to operate as a tax-advantaged investment program offered to eligible employees of, and certain persons providing services on retainer to, First Boston, Inc.

FILING DATE: The application was filed on March 2, 1983 and amended on April 28, 1984, October 17, 1984, and February 11, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certficate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park Avenue Plaza, 55 East 52nd Street, New York, New York 10055.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representation: 1. Applicant is a general partnership organized under New York partnership law, and was conceived by senior management of First Boston, Inc. ("FBI"), to meet the desire of key employees for an in-house tax oriented investment program. FBI is a publicly-owned holding company whose principal affiliates, including The First Boston Corporation ("FBC"), are engaged in various facets of the investment banking securities business. FBI and its affiliates are collectively referred to as "First Boston".

2. All of Applicant's partners are "accredited investors" as defined under Rule 501 of Regulation D under the Securities Act of 1933, as amended ("1933 Act") and key persons who are employees or persons providing substantial services on retainer to First Boston. Additional partnership interests will be offered in the future only to persons who are employees or persons on retainer to First Boston and who will, at a minimum, meet the present standards of Rule 501(5), (6) or (7) under

Regulation D of the 1933 Act ("Eligible Persons"). Applicant states that it qualifies as an "employees' security company" under section 2(a)(13) of the Act.

3. FB MPT Inc., a Delaware corporation and a wholly-owned subsidiary of FBI, is the Managing Partner ("Managing Partner") of Applicant. Under their partnership agreement management authority is delegated to the Managing Partner, and the other partners may not participate in management except as an officer or director of the Managing Partner. Each director of the Managing Partner must be an investor in Applicant, on at least the same minimum terms and conditions as all other investors.[1] Each of Applicant's partners will have access to the Managing Partner's directors and support staff who will oversee the Applicant's activities.

4. Applicant requests an exemption from section 17(a) and the rules thereunder to the extent necessary to permit Applicant to (a) invest in, sell or resell, as appropriate, securities of companies or investment vehicles and other investment properties offered from or to First Boston or an affiliated entity of First Boston on a principal basis, including interests previously acquired for the account of First Boston of the type which are consistent with the investment objectives of Applicant; (b) purchase interests or property in, or lend money to, a company or other investment vehicle in which First Boston, an affiliated partnership of First Boston, or individual directors, officers, or employees of First Boston already own 5% or more of the voting securities of the company or vehicle, or where such company or vehicle is otherwise affiliated with First Boston or Applicant (including through the Applicant's ownership of 5% or more of the voting securities of such entity); (c) sell, tender, or grant options in securities or interests in a company or investment vehicle back to such entity, where that entity is affiliated with First Boston, a First Boston affiliated partnership or individual directors, officers or employees of First Boston otherwise than as a result of Applicant's ownership of voting securities; and (d) participate as a selling security holder in a public offering that is underwritten by First Boston or in which First Boston acts as a member of the underwriting or selling group.

5. These transactions will only be effected upon a determination of the board of directors of the Managing Partner that the terms of the transaction are reasonable and fair to the partners of the Applicant involved in the transaction and do not involve overreaching of Applicant or its partners on the part of any person concerned. Moreover, in any case where purchases or sales are made to or from an entity affiliated with Applicant's by reason of a 5% or more investment by a First Boston director, officer or employee, such individual will not participate in the Managing Partner's determination of whether or not to effect such purchase or sale.

6. Applicant requests an exemption from section 17(d) and Rule 17d-1 to permit it to engage in transactions in which First Boston or affiliated persons of Applicant may also be participants (arising from coinvestment, the receipt of fees for structuring, negotiating or managing an investment in the manner described in Applicant's application for exemption, or as a result of the participation of a subsidiary providing limited liability or other services to or for the benefit of the Applicant, or otherwise), on the undertaking that the Applicant will not make any joint investment in which First Boston, another First Boston affiliated partnership, or any officer, director or employee of the Managing Partner is a participant, directly or indirectly (otherwise than through an investment in or relationship with the Applicant or in a transaction with a participating subsidiary for the purpose of providing limited liability or sevices), *provided, however,* that this undertaking shall not apply (a) to 40% of the total assets of the Applicant, and (b) as to the remaining 60% of the total assets of the Applicant, to other investments by the Applicant in any other companies, partnerships or investment vehicles or property which are not sponsored, managed or underwritten on a principal basis by First Boston or its affiliates. Compliance with the foregoing will be determined at the time of the investment. Where the coinvestment by Applicant is on terms different than that made by the affiliated co-investor, the board of directors of the Managing Partner will make a determination at the time of such investment that such participation in such investment is not less advantageous than any other participant with respect to the making of such investment, maintaining its investment position or disposing of such position.

7. The undertaking not to make joint investments will not apply, however, to limit or prevent joint investment by Applicant and individual officers, directors or employees of First Boston making their own individual investment decisions apart from First Boston or an affiliated partnership, subject to the following limitations;

(a) the asset limitations on joint investments would apply to situations where one or more directors or principal executive officers of FBI, FBC or the Managing Partner who hold outstanding shares of common stock of FBI, aggregating 15% or more of the outstanding shares of common stock of FBI, make a joint investment with the Applicant (otherwise than through an investment by First Boston or an affiliated partnership); and

(b) in the case of a joint investment by Applicant and (i) any officer, director or employee of the Managing Partner, (ii) directors or principal executive officers of FBI or FBC who hold outstanding shares of common stock of FBI aggregating 15% or more of the outstanding common stock of FBI, or (iii) First Boston officers, directors or employees who hold individually or in the aggregate 15% or more of the equity interest of any joint investment, (in the case of (i), (ii) or (iii) above, otherwise than through an investment in an affiliated partnership) the Managing Partner undertakes to obtain a commitment from each such person that he or she will not dispose of his or her interest in such joint investment without giving sufficient, but not less than one day's, notice to the Managing Partner so that Applicant has the opportunity to dispose of its interest in the joint investment prior to or concurrently with such person.

8. In connection with the exemptions requested under Sections 17(a) and 17(d), the Managing Partner undertakes to use reasonable efforts to ascertain, prior to making any investment, whether First Boston, any Managing Director of First Boston, or any officer, director, or employee of the Managing Partner owns more than 5% of the equity of any entity in which Applicant plans to invest.

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[1] The minimum commitment under the Applicant's 1984 offering obligated each Eligible Person to make payments totalling up to $150,000, plus mandatory overcalls. By letter dated March 9, 1988, Applicant's counsel confirmed that Applicant is not currently making any new investments. Counsel also acknowledged the view of the staff that under the circumstances, Applicant will not be required to file with the Commission a copy of its annual report to its partners as a condition to granting the application and, accordingly, that the requested exemptive relief from section 45(a) of the Act for confidential treatment of such reports is no longer necessary.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6205 Filed 3-21-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1175]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting at 0930 on Tuesday, 5 April 1988 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. The purpose of the meeting is to review the 58th Session of the International Maritime Organization (IMO) Legal Committee held in October 1987, and to consider U.S. positions for the 59th Session scheduled for 25–29 April 1988 in London.

The 59th session of the IMO Legal Committee is an extra regular session agreed to by the IMO Council for the express purpose of considering possible revision of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Additional topics which will be considered after the Athens Convention are: (1) Liability and compensation for damage caused by the maritime carriage of Hazardous and Noxious Substances (HNS); and (2) the legal implications of United Nations work regarding illicit drug trafficking.

With respect to possible revision of the 1974 Athens Convention, this initiative derives from concern in the aftermath of the recent Herald of Free Enterprise disaster over what a number of nations have now come to regard as extremely low limits of liability. Shortly after the March 1987 ferry sinking, the United Kingdom submitted a proposal urging a priority Legal Committee review of the Athens Convention. Given the review mandate transmitted to the Legal Committee by the IMO Council last November, it is expected that the only aspects of the Athens Convention which will be considered are the actual limits of liability and the development of a rapid amendment mechanism.

While the U.S. took an active part in the preparatory work at IMO, the U.S. is not a party to the 1974 Athens Convention. In principle the U.S. supports this revision initiative as consistent with our overall desire to raise international liability limits to acceptable levels.

Work on the Athens Convention is expected to take two or three days at most. The Legal Committee should therefore have sufficient time at its 59th Session to begin deliberations on HNS, and also to give brief consideration to the implications for the Committee of ongoing United Nations work regarding illicit drug trafficking.

By way of background concerning HNS, in 1982 the Legal Committee completed a draft Convention which provided a two-tier regime of strict liability for the carriers and shippers of certain HNS transported in bulk on tank vessels. The proposed scheme, which entailed compulsory insurance coverage for owners and shippers, would have applied to those HNS which presented severe fire and explosion, toxicity, and/or marine pollution hazards.

In May 1984, IMO sponsored a Diplomatic Conference which took up the draft HNS Convention, as well as draft Protocols updating both the 1969 and 1971 Oil Spill Conventions. An HNS Convention was not adopted because no clear consensus could be achieved on the fundamental liability issues.

The starting point for the resumption of HNS negotiations will be an options paper submitted to the Legal Committee last October. The ten-nation submission proposed that the two liability schemes most worth exploring are: (1) Shipowner liability supplemented by compulsory cargo insurance; and (2) shipowner liability in the context of an overall revision of the 1976 International Convention on Limitation of Liability for Maritime Claims. The revision of the 1976 Convention would involve either raising the global limitation amounts to a level adequate to compensate HNS damage, or creating a special layer of HNS liability coverage available only for HNS damage.

Highlights of the Legal Committee's discussion of the HNS options paper at the October 58th Session are as follows:

1. Most delegations expressing views favored further work toward an international system of liability and compensation so that such a system could be in place before any major HNS catastrophe; this majority supported moving to HNS work on a priority basis early in 1988 and thus the subject was placed on the 59th Session agenda after the Athens Convention.

2. Many delegations expressed a preliminary preference for placing liability on the shipowner alone, without involving cargo or shipper interests; a number of these delegations expressed strong interest in using a revision of the 1976 Convention as the framework for an HNS regime.

3. The Committee was divided on the issue of packaged HNS, with the apparent majority in favor of their inclusion.

If an international HNS scheme is developed and implemented, the system would have significant impacts on a wide range of U.S. interests related to industry, government and the environment. These interests include, but are not limited to, owners/operators of vessels transporting bulk or packaged hazardous substances, chemical manufacturers, chemical shippers, marine terminal operators, port authorities, marine insurers, state and local governments, and environmental advocates.

In view of the significant potential impacts on U.S. maritime interests, the Shipping Coordinating Committee has held a series of four special public meetings devoted exclusively to HNS issues. This series of meetings was well attended by the broad spectrum of affected interests, and contributed significantly to the ongoing development of U.S. positions for the 59th Session. The outcome of this special series of HNS meetings will be reviewed at the 5 April 1988 meeting.

With respect to the legal implications of United Nations work regarding illegal drug trafficking, it is expected that the Legal Committee will give brief consideration to two important United Nations documents. The first is a Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control recently adopted by a United Nations Conference in Vienna, Austria, in June 1987. Target 28 of this Outline relates to the specific question of the exercise of control over ships on the high seas. The second document is the Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances being developed by an intergovernmental group of experts convened under the auspices of the United Nations Economic and Social Council. This Convention is intended to promote international cooperation and coordination among national authorities, such as customs, police and judicial bodies, and to provide them with legal mechanisms to enhance their efficiency in interdicting illicit trafficking in all its phases. The Legal Committee has been asked to review both documents, with a view to deciding whether further work is required by the Committee.

The Shipping Coordinating Committee will also discuss the status of the proposed Resolution on Cooperation in Maritime Casualty Investigations first submitted to the IMO Legal Committee by Liberia and the United States at the 56th Session. This proposed Resolution, which is considered an important safety initiative by both the National Transportation Safety Board and the Coast Guard, was debated extensively at the 57th and 58th Sessions, but final action has yet to be taken.

Members of the public are invited to attend the 5 April 1988 Shipping Coordinating Committee meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G–LMI), Washington, DC 20593, telephone (202) 267–1527.

Date: March 4, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-6185 Filed 3-21-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1176]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: June 16, 1988; November 17, 1988; and December 15, 1988. These meetings will be held in room 8230 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and to prepare for the 35th Session of the International Maritime Organization Subcommittee on Radiocommunications which will be held in March of 1989.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Date: March 4, 1988

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-6186 Filed 3-21-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Powerplant Installation and Propulsion System Component Fire Protection Test Methods, Standards, and Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) concerning methods for fire testing of materials and components used in the powerplant fire zone areas of aircraft, as well as the rationale for these methods.

DATE: Comments must be received on or before July 20, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Transport Standards Staff, at the above address, telephone (206) 431–2128.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

Since about 1947 the basic powerplant fire protection compliance guidelines have been Safety Regulation Release (SRR) #259. This document outlined acceptable test methods to be used in showing compliance with the fire prevention requirements in the early Civil Air Regulations. Since that time, additional fire test standards, requirements, and methods have been developed and used with SRR #259. These include applicable Technical Standard Orders (TSOs) and later fire test burners and apparatus for evaluating flexible hoses and fire detectors, etc.

Appendix F to Part 25 of the Federal Aviation Regulations was issued only to provide acceptable fire testing methodology for showing compliance of materials used in passenger, cargo, and baggage compartments and for electrical components and wiring.

Powerplant installation fire test methodology (SRR #259) and other related data were available only in various documents and not very well assimilated and consolidated. This has caused some confusion on the part of the applicants and the FAA certification engineers as to what procedures to use when, and with what apparatus. The purpose of this AC is to provide, in a single document, the information necessary to show compliance with the applicable powerplant fire protection requirements of Parts 23, 25, 27, 29, and 33 of the Federal Aviation Regulations (FAR).

Issued in Seattle, Washington, on March 9, 1988.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 88-6150 Filed 3-21-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Application for Renewal or Modification of Exemptions or Applications To Become Party to An Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for renewal or modification of exemptions or application to become a party to an exemption; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on Friday, March 11, 1988 on page 8021. Footnote for application number 9786–X, Certified Cylinder, Inc. was omitted and should have read as follows: To amend the application for the pending exemption to authorize repair, rebuilding, retesting and recertification of DOT Specification 4E aluminum cylinders.

Issued in Washington, DC, on March 10, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-6158 Filed 3-21-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 18, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0146.

Form Number: IRS Form 2553.

Type of Review: Resubmission.

Title: Election by a Small Business Corporation.

Description: Form 2553 is filed by qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 50,905 hours.

Clearance Officer: Carrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-6210 Filed 3-21-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, March 24, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on issues related to the Compliance Status Report.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

March 17, 1988.

[FR Doc. 88-6284 Filed 3-18-88; 12:33 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

March 17, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 24, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—*Title:* Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services. *Summary:* The Commission will decide whether to initiate a rule making action in this matter.

Common Carrier—1—*Title:* In the Matter of Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post-1988 Period. *Summary:* The Commission will consider whether to adopt a Report and Order concerning worldwide circuit distribution for the post-1988 period.

Common Carrier—2—*Title:* In the Matter of Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons. *Summary:* The Commission will consider further action in this docket.

Common Carrier—3—*Title:* In the Matter of An Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It. *Summary:* The Commission will consider whether to adopt a Report and Order in this proceeding.

Mass Media—1—*Title:* Amendment of Part 74 of the Commission's Rules regarding Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators. *Summary:* The Commission will consider a Report and Order to amend certain rules pertaining to noncommercial educational FM translators.

Mass Media—2—*Title:* Amendment of Part 74 of the Commission's Rules regarding Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators. *Summary:* The Commission will consider a Further Notice of Proposed Rule Making to amend certain rules pertaining to noncommercial FM Translators.

Mass Media—3—*Title:* Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations. *Summary:* The Commission will consider whether to initiate a proceeding to consider FM translator matters including those proposed in several petitions for rule making.

Mass Media—4—*Title:* Amendment of § 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) For Waiver of § 73.658(i). *Summary:* The Commission will consider a *Further Notice of Proposed Rule Making* to seek further comment with respect to possible modifications to the television "network representation rule."

Mass Media—5—*Title:* Amendment of Parts 1, 63, and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984. *Summary:* The Commission will consider a Second Report and Order with respect to possible modifications to the signal availability measures in the cable rate regulation rules.

Mass Media—6—*Title:* Television Signal Availability on Cable Systems. *Summary:* The Commission will consider a Notice of Inquiry regarding the availability of TV signals on cable systems.

Mass Media—7—*Title:* Inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees. *Summary:* The Commission will consider a petition for reconsideration filed by Henry Geller and Donna Lampert concerning fairness doctrine alternatives.

Mass Media—8—*Title:* In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse, New York. *Summary:* The Commission will consider petitions for reconsideration filed by Henry Geler and Donna Lampert and by Freedom of Expression Foundation with respect to its August 4, 1987, order in this proceeding regarding a fairness doctrine complaint against Meredith Corporation.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sara Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-6312 Filed 3-18-88; 3:16 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:20 p.m. on Wednesday, March 16, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 17, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-6269 Filed 3-18-88; 11:17 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:15 a.m.—March 24, 1988.

PLACE: Room 12126—1100 L Street, NW., Washington DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Agreement No. 203-011171: Trans Freight Lines/Nedlloyd/Sea-land Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88-6273 Filed 3-18-88; 11:17 am]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 17, 1988.

TIME AND DATE: 10:00 a.m., Thursday, March 24, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor, MSHA, v. Texasgulf, Inc.*, Docket No. WEST 85-148-M, etc. (Issues include whether the judge erred in finding that Texasgulf's violations of 30 CFR 57.21078 were not significant and substantial.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-6247 Filed 3-18-88; 10:32 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12 Noon, Monday, March 28, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 18, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6328 Filed 3-18-88; 3:31 pm]

BILLING CODE 6210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES, INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94-409) and the regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 9:00 a.m, Friday, April 22, 1988.

STATUS: Open and closed.

ADDRESS: 1100 Pennsylvania Avenue, NW., Room MO-9, Washington, DC 20506, (202) 786-0536.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Forbes, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506, (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of April 22, 1988 will be open to the public from 9:00 a.m. until the closed session portion of item IV, section C and open again to the public from item IV, section D through discussion of item VI. The meeting will be closed to the public for the portion relating to discussion of grant applications in agenda item IV, section C pursuant to paragraphs 6, 9(B), and other relevant provisions of subsection (c) of section 552b of Title 5, United States Code and pursuant to 45 CFR 1180.88, because the Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede implementation of proposed agency actions related to the grant award process.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536, TDD (202) 682-5496 at least seven (7) days prior to the meeting.

National Museum Services Board

April 22, 1988 Meeting Agenda

I. Approval of Minutes of October 21, 1987 Meeting
II. Director's Report
III. Legislative and Regulatory Update
IV. Program Report
  A. Museum Assessment Program
  B. Conservation Support Program
  C. General Operating Support Program—There will be a closed session portion of this agenda item.
  D. Professional Services Program
V. Presentation of Reports
VI. Other Business

Dated: March 18, 1988.

Lois Burke Shepard,

Director.

[FR Doc. 88-6288 Filed 3-18-88; 12:54 pm]

BILLING CODE 7036-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 29, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last two are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Collision of USS RICHARD L. PAGE and the U.S. Fishing Vessel CHICKADEE, Atlantic Ocean, April 21, 1987.

2. Railroad Summary Reports: Southeastern Pennsylvania Transportation Authority (SEPTA) Philadelphia (12/10/86) and Ardmore (1/26/87), Pennsylvania. (Calendered by Vice Chairman Kolstad)

3. Opinion and Order: Administrator v. Connaire, Inc., Docket SE-7973; disposition of the appeals of both parties. (Calendared by Chairman Burnett)

4. Opinion and Order: Administrator v. Swanson, Docket SE-7830; disposition of

respondent's appeal. (Calendered by Member Nall)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 5, 1988.

[FR Doc. 88-6339 Filed 3-18-88; 8:45 am]

BILLING CODE 7533-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 2 p.m.—Wednesday, March 23, 1988.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-2623.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Approval of Minutes, January 27, 1988
III. Approval of Minutes, February 2, 1988
IV. Executive Director's Activity Report
V. Policy Pursuant to Statutory Amendment Governing Board Membership: Proposed Resolution
VI. Budget Committee Report
VII. Treasurer's Report
VIII. Personnel Committee Report

Carol J. McCabe,

Secretary.

[FR Doc. 88-6289 Filed 3-18-88; 1:31 pm]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 21, 28, April 4, and 11, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 21

Monday, March 21

2:00 p.m.
  Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)
4:00 p.m.
  Discussion of Pending Investigations (Closed—Ex. 5 and 7)

Tuesday, March 22

10:00 a.m.
  Discussion/Possible Vote on Rancho Seco Restart (Public Meeting)
2:00 p.m.
  Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)
4:00 p.m.
  Affirmation/Discussion and Vote (Public Meeting—
  a. Sequoyah Restart (Tentative) (*Postponed* from March 17)
  b. Proposed Final Rule Revising Agency Procedures Governing Ex Parte Communications and Separation of Functions

Week of March 28 (Tentative)

Monday, March 28

10:00 a.m.
  Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

Thursday, March 31

10:00 a.m.
  Briefing on Proposed Final Rule on Station Blackout (Public Meeting)
2:00 p.m.
  Briefing on High Priority AEOD Issues (Public Meeting)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 4 (Tentative)

Thursday, April 7

2:00 p.m.
  Discussion/Possible Vote on Full Power Operating License for Braidwood-2 (Public Meeting) (*postponed* from March 17)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 11 (Tentative)

Thursday, April 14

11:00 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "NRC Staff's Application for a Stay of the Effectiveness of Licensing Board Memorandum and Order Concerning Licensee's Discovery Requests and Objections to That Order (In the Matter of Finlay Laboratories, Inc., ASLBP No. 88-559-01-SC)" (Public Meeting) was held on March 17.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

March 17, 1988.

[FR Doc. 88-6332 Filed 3-18-88; 3:36 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant ot the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 21, 1988:

A closed meeting will be held on Tuesday, March 22, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, *one or more* of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

the subject matter of the closed meeting scheduled for Tuesday, March 22, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.
Opinion.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2092.

Jonathan G. Katz,

Secretary.

March 16, 1988.

[FR Doc. 88-6307 Filed 3-18-88; 2:14 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedures

Correction

In proposed rule document 88-3683 beginning on page 5392 in the issue of Wednesday, February 24, 1988, make the following corrections:

1. On page 5395, in the first column, in the second complete paragraph, in the sixth line, "south" should read "sought".

2. On the same page, in the second column, in the fourth complete paragraph, in the third line, "severed" was misspelled.

PART 308—[CORRECTED]

3. On page 5402, in the third column, the section heading for § 308.90 should read "Investigations confidential.".

§ 308.11 [Corrected]

4. On page 5405, in the first column, in § 308.11(a), in the second line, "(a)" should read "(1)".

§ 308.13 [Corrected]

5. On the same page, in the second column, in § 308.13(a)(1), the third line should read "served by the Board or its designee upon any party shall be served by the Executive Secretary or by".

§ 308.24 [Corrected]

6. On page 5408, in the first column, in § 308.24, in the section heading, "severance" was misspelled.

§ 308.25 [Corrected]

7. On the same page, in the same column, in § 308.25(a), in the first line, "of" should read "on".

§ 308.29 [Corrected]

8. On page 5410, in the second column, in § 308.29(a)(2), in the sixth line, "country" should read "county".

§ 308.33 [Corrected]

9. On page 5412, in the first column, in § 308.33, the second paragraph designated "(c)" and "(d)", should read "(d)" and "(e)" respectively.

§ 308.37 [Corrected]

10. On page 5413, in the third column, in § 308.37, in the first line, "(1)" should read "(a)" and in § 308.37(a)(1), in the 15th line, "Administrative" was misspelled.

§ 308.38 [Corrected]

11. On page 5414, in the second column, in § 308.38(e), in the fifth line, "party" should read "party may".

§ 308.95 [Corrected]

12. On page 5424, in the second column, in § 308.95(a)(1)(ii), in the fourth line, "any" should read "may".

§ 308.102 [Corrected]

13. On page 5426, in the first column, in § 308.102(c), the 12th line should read "participate in any further proceedings on the application unless the administrative law judge determines".

§ 308.103 [Corrected]

14. On same page, in the second column, in § 308.103(b)(1), in the first line, "new" should read "net".

BILLING CODE 1505-01-D

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federal register

Tuesday
March 22, 1988

Part II

Department of Education

34 CFR Parts 706, 707, and 708

Regional Educational Laboratories and Research and Development Centers Program; Proposed Rule and Notices

DEPARTMENT OF EDUCATION

34 CFR Parts 706, 707, and 708

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Regional Educational Laboratories and Research and Development Centers Programs. These amendments are needed to implement certain provisions of the General Education Provisions Act (GEPA), as amended by Title XIV of the Higher Education Amendments of 1986, and to improve the operation of the programs.

DATE: Comments must be received on or before May 6, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Lawrence Bussey, Jr., Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208-1633.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Bussey, Jr. (202) 357-6249.

SUPPLEMENTARY INFORMATION: The Regional Educational Laboratories Program makes financial assistance available to regional educational laboratories established by public agencies or private nonprofit institutions. Each laboratory, under the sole guidance of a regionally representative governing board, serves the education needs of a specific geographic region of the Nation. The Research and Development Centers Program provides financial assistance, to conduct educational research and development, to institutions of higher education, institutions of higher education in consort with public agencies or nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary educational research and development.

The Secretary is proposing changes in these regulations to comply with the provisions of GEPA, as amended by the Higher Education Amendments of 1986 and to improve the operation of the program. The major proposed changes are:

Sections 706.1, 706.5(b), and 708.12

A new type of award, special activities, is proposed. Only laboratories or centers that receive an institutional operations award are eligible to apply for an award for special activities. These awards would provide a mechanism for currently funded laboratories or centers to compete for funds to conduct additional educational research and development activities. Selection criteria for the special activities awards are also proposed.

Section 706.3

The Secretary proposes to select funding priorities from a list of biennial research priorities published for public comment in the **Federal Register** in accordance with section 405(b)(4) of GEPA, as amended.

The Secretary also proposes to amend the list of funding priorities to reflect the list of priority research and development needs in section 405(a)(3) of GEPA, as amended. The proposed amendments were also developed in consultation with researchers, practitioners, civic and business leaders, policymakers, interested citizens, and professional associations, some of whom participated in a series of regional forums sponsored by the Department.

Section 706.4(b)

Technical amendments concerning the applicability of these program regulations to contracts are proposed. The current regulations and the Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 apply to contracts under this program. The Secretary proposes to incorporate the sections of these regulations listed in 34 CFR 706.4(b)(2), to the extent they are consistent with the FAR, into any solicitation for a contract under these programs.

Section 706.23

The Secretary proposes additional factors to be considered in selecting applications for institutional operations awards for laboratories and centers.

Section 707.20(a)

The Secretary proposes amendments to clarify the role of the regionally representative governing boards of the laboratories. Section 405(d)(A)(i) of GEPA, as amended, specifies that a governing board shall guide each laboratory and establish the regional agenda of the laboratory, consistent with the priority research and development needs of the Secretary. The Secretary proposes that the regionally representative governing board of each laboratory serve as the sole entity that guides the laboratory's activities and determines the regional agenda of the laboratory.

Section 707.20(g)

A new post award requirement, peer review, is proposed for laboratory awards. The Secretary proposes to require that a laboratory establish a peer review process to evaluate its products, research instruments, and self-evaluation designs.

Section 708.10(b)

The Secretary also proposes a new selection criterion for center planning awards. The purpose of this criterion, potential to influence practice, is to ensure that planning activities will address the needs of practitioners.

Section 708.11(d)

A new selection criterion for institutional operations awards for centers is proposed. The purpose of this criterion, technical soundness, is to ensure that the research design of a center is adequate to carry out the proposed activities.

Section 708.21

The Secretary proposes criteria, in addition to those in the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.253, for continuation awards. The additional criteria address the quality of the project already completed by a center and the proposed activities to be conducted under the continuation award.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the proposed changes will place unnecessary burden on small entities submitting applications. The proposed changes will remove obsolete provisions from the regulations and create greater flexibility in administering the program. These changes will reduce unnecessary burden imposed by existing regulations and will benefit all applicants.

Paperwork Reduction Act of 1980

Sections 706.11, 707.10, 707.11, 707.12, 708.10, 708.11 and 708.12 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 610, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 706

Colleges and universities, Education, Educational research, Grant programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

34 CFR Part 707

Colleges and universities, Education, Educational research, Grant programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

34 CFR Part 708

Colleges and universities, Education, Educational research, Grant programs—education, Local educational agencies, Nonprofit organizations, Reporting and recordkeeping requirements, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.117: Educational Research and Development)

Dated: February 24, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 706, 707 and 708 to read as follows:

PART 706—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAMS: GENERAL PROVISIONS

Subpart A—General

Sec.
706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?
706.2 Who is eligible for an award?
706.3 What priorities may the Secretary establish?
706.4 What regulations apply?
706.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

706.10 What assurances must an applicant make?
706.11 What information is needed for a multi-year project for institutional operations?

Subpart C—How Does the Secretary Make an Award?

706.20 How does the Secretary evaluate an application?
706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?
706.22 What additional factors may the Secretary consider in selecting an application for a planning award?
706.23 What additional factors does the Secretary use to select an application for an institutional operations award?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?

Under the Regional Laboratories and Research and Development Centers Programs, the Secretary provides support for planning, institutional operations, and special activities of regional educational laboratories and research and development centers.

(Authority: 20 U.S.C. 1221e)

§ 706.2 Who is eligible for an award?

(a) The following parties are eligible to apply for awards for the planning of a laboratory or center:

(1) Public or private organizations, institutions or agencies.

(2) Individuals.

(b) The following parties are eligible to apply for awards for institutional operations:

(1) For regional educational laboratories, public agencies or private nonprofit organizations.

(2) For research and development centers, institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations or interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

(c) In any fiscal year, the Secretary may make grants for special activities to regional educational laboratories or research and development centers that receive institutional operations awards in the same fiscal year.

(Authority: 20 U.S.C. 1221e)

§ 706.3 What priorities may the Secretary establish?

(a) The Secretary may select funding priorities from a list of biennial research priorities published in the **Federal Register** for public comment pursuant to section 405(b)(4) of the Act, and published in final form in the **Federal Register**. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities by choosing from the following list of individual priorities or a combination of these priorities:

(1) Learning.

(2) Teaching.

(3) Technology in education.

(4) Instructional processes and materials, including textbooks and computer software for instruction.

(5) Education and staff development for teachers, administrators and other education staff.

(6) Organization and management of schools, including effective education leadership.

(7) Evaluation and indicator measures, including testing, measurement, and standards of performance.

(8) Governance of education, including school board policies and practices.

(9) Educational finance and productivity.

(10) Education and the law.

(11) Dissemination and knowledge utilization in education.

(12) Improvement in education, including State and local reform initiatives.

(13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.

(14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.

(15) Education, work, and careers.

(16) Equity and excellence, including the effects of ability grouping.

(17) Guidance and counseling.

(18) International education.

(19) English literacy, including reading, writing, and language skills.

(20) Mathematics.

(21) Science.

(22) Foreign languages.

(23) Early childhood education.

(24) History and social sciences, including economics, geography, political science, sociology, anthropology, and psychology.

(25) Physical and health education.

(26) Humanities, including music, art, literature and dance.

(27) Citizenship and character education.

(28) Elementary education.

(29) Secondary education.

(30) Early adolescent education.

(31) Adolescent education.

(32) Postsecondary education.

(33) Adult and continuing education.

(34) Teachers.

(35) School professionals and personnel.

(36) Public and private educational institutions.

(37) School discipline and crime in the schools.

(38) Education of special populations, including the educationally disadvantaged or students-at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(Authority: 20 U.S.C. 1221e)

§ 706.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(b) *Contracts.* (1) The following regulations apply to contracts under this program;

(i) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1.

(ii) The Eduction Department Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(2) Requirements substantially similar to the following sections of the regulations in this Part 706 and 34 CFR Parts 707 and 708 will be incorporated into the solicitation for a laboratory or center contract, to the extent that these sections are consistent with applicable regulations in the FAR and EDAR:

(i) *Part 706.* Sections 706.1, 706.5, 706.10, 706.11, 706.22 and 706.23.

(ii) *Part 707.* Sections 707.1, 707.2, 707.10, 707.11, 707.12, and 707.20.

(iii) *Part 708.* Sections 708.1, 708.10, 708.11, 708.12, and 708.20.

(Authority: 20 U.S.C. 1221e)

§ 706.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Grant
Nonprofit
Private
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the General Education Provisions Act, as amended.

"Center" means an educational research and development center authorized under section 405(d)(4)(A)(ii) of the Act.

"Contract" means a procurement contract entered into by the Federal government to purchase, rent, lease or otherwise obtain supplies or services from nonfederal sources.

"Educational research" means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965, as amended.

"Institutional operations" means the activities of a laboratory or center conducted under a long-term plan approved by the Secretary.

"Laboratory" means a regional educational laboratory authorized under section 405(d)(4)(A)(i) of the *Act.*

"Mission" means the priority or priorities for the laboratory or center established by the Department in accordance with § 706.3.

"Planning" means activities related to preparing an application for institutional operations of a laboratory or center.

"Special activities" means activities carried out by a Regional Educational Laboratory or a Research and Develoment Center in addition to those included in its institutional operations award.

(Authority: 20 U.S.C. 1141; 1221e)

Subpart B—How Does One Apply for an Award?

§ 706.10 What assurances must an applicant make?

In its application for an award for institutional operations, an applicant shall make assurnces that the laboratory or center involved will—

(a) Be responsible for the conduct of the research and development activities in its approved application;

(b) Prepare a long-range plan relating to the conduct of those research and development activities;

(c) Ensure that information developed as a result of those research and development activities, including new educational methods, practices, techniques, and products, are appropriately disseminated;

(d) Provide technical assistance to the appropriate educational agencies and institutions; and

(e) To the extent practicable, providing training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques and products developed in connection with those activities.

(Authority: 20 U.S.C. 1221e)

§ 706.11 What information is needed for a multi-year project for institutional operations?

In addition to the information required in 34 CFR 75.117, an application for a multi-year project for institutional operations must contain a mission statement for the proposed laboratory or center as a whole. The mission statement must describe goals and objectives for each year of the proposed project and discuse how they relate to the specific activities described in the application.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Make an Award?

§ 706.20 How does the Secretary evaluate an application?

(a) For each competition the Secretary uses the applicable selection criteria in 34 CFR 707.10, 707.11, 707.12, 708.10, 708.11 or 708.12 to evaluate applications for new awards under this program.

(b) The maximum score for all the criteria in each section is 100 points, including any reserved points to be distributed in accordance with paragraphs (d) and (e) of this section.

(c) Subject to paragraphs (d) and (e) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For any competition for laboratory awards, the Secretary distributes 5 additional points to the criterion on budget and cost effectiveness in the applicable section (34 CFR 707.10, 707.11, or 707.12).

(e) For any competition for center awards, the Secretary assigns 10 additional points to one or more of the criteria described in the applicable section (34 CFR 708.10, 708.11, or 708.12).

(Authority: 20 U.S.C. 1221e)

§ 706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?

In addition to the review procedures in 34 CFR 75.217, the Secretary may use the following procedures to determine which applications will be selected for funding:

(a) After review of applications and preparation of a rank order of the applications in accordance with 34 CFR 75.217(b) and (c) and § 706.20, the Secretary may select applications for further consideration on the basis of the rank order and the factors in 34 CFR 75.217(d). The Secretary informs each applicant whether its application has been chosen for further consideration.

(b)(1) Each applicant chosen for further consideration shall submit any additional information requested by the Secretary.

(2) In requesting additional information of applicants chosen for further consideration, the Secretary—

(i) Provides applicants with a reasonable opportunity to revise and resubmit their applications; and

(ii) Does not provide information to any applicant about the contents of other applications chosen for further consideration, or otherwise provide any information that could give an applicant a competitive advantage over other applicants.

(c) The Secretary may conduct site visits to all or some of the applicants to obtain further information on the activities described in an application and an applicant's capability to perform those activities.

(Authority: 20 U.S.C. 1221e)

§ 706.22 What additional factors may the Secretary consider in selecting an application for a planning award?

In addition to the selection criteria in 34 CFR 707.10 or 708.10 and the additional information in accordance with § 706.21, the Secretary considers the following in making awards for planning of a laboratory or center:

(a) The relationship between the technical merit of the proposed educational research and development program and its cost in comparison to other proposed programs.

(b) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced.

(Authority: 20 U.S.C. 1221e)

§ 706.23 What additional factors does the Secretary use to select an application for an institutional operations award?

In addition to the criteria in 34 CFR 707.11 and 708.11 and the additional information obtained in accordance with § 706.21, the Secretary considers the following in making awards for institutional operations of a laboratory or center:

(a) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced; and

(b) The relationship between the technical merit of the proposed program and its cost in comparison to other proposed programs.

(Authority: 20 U.S.C. 1221e)

PART 707—REGIONAL EDUCATIONAL LABORATORIES

Subpart A—General

Sec.
707.1 What regulations apply?
707.2 What geographic regions do the laboratories serve?

Subpart B—How Does the Secretary Make an Award?

707.10 What are the selection criteria for laboratory awards for planning?
707.11 What are the selection criteria for laboratory awards for institutional operations?
707.12 What are the selection criteria for laboratory awards for special activities?

Subpart C—What Conditions Must Be Met by a Grantee?

707.20 What requirements must be met by a grantee?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 707.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.5 apply to awards for regional educational laboratories.

(Authority: 20 U.S.C. 1221e)

§ 707.2 What geographic regions do the laboratories serve?

(a) A laboratory established under this program serves one of the following geographic regions:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina.

(5) Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(7) Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming.

(8) Arizona, California, Nevada, Utah.

(9) Alaska, Idaho, Montana, Oregon, Washington.

(10) American Samoa, Guam, Hawaii, Palau (only to the extent authorized by section 104 of Pub. L. 99–658 and until the effective date of the Compact of Free Association with the Government of Palau), and, to the extent approved by the Secretary, the Marshall Islands and the Federated States of Micronesia (in accordance with section 228 of the Compact of Free Association as set forth in section 201 of Pub. L. 99–239).

(b) For each competition for a laboratory award, the Secretary announces which one or more of the geographic regions designated in § 707.2(a) will be served.

(c) In the event that funding of a particular laboratory serving a region under this program is discontinued, the Secretary may provide additional funds to another laboratory for continuation of laboratory services to States in that region.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does the Secretary Make an Award?

§ 707.10 What are the selection criteria for laboratory awards for planning?

The Secretary uses the following criteria to evaluate applications for laboratory awards for planning:

(a) *Understanding of the educational settings and issues in the region* (25 points). The Secretary reviews each application to determine the extent to which the applicant—

(1) Understands the educational settings and issues in the region;

(2) Demonstrates knowledge of the strengths and needs of the educational systems—public and private, elementary, secondary, and postsecondary—in the region;

(3) Understands significant trends expected to influence education in the region over the next five years;

(4) Demonstrates knowledge of the capabilities of existing organizations that provide research, dissemination, training, and assistance to educational agencies in the region and how a laboratory can complement their work; and

(5) Understands the barriers and challenges facing a laboratory in the region and ways of overcoming them.

(b) *Organizational ability to conduct planning and design tasks* (20 points). The Secretary reviews each application to determine the organizational ability of the applicant to conduct the required planning and design tasks, including—

(1) The extent to which the applicant has successful experience in planning or conducting multi-State activities related to educational research and development; and

(2) Whether the existing relationships in the region give the applicant access to important groups of clients in the region and contribute to cooperative planning activities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the purpose of the program;

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective; and

(d) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness* (0 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives and activities of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources to be devoted to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 1221e)

§ 707.11 What are the selection criteria for laboratory awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for laboratory awards for institutional operations:

(a) *Understanding of and responsiveness to regional needs* (10 points). The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including—

(1) The degree to which the applicant demonstrates an understanding of current and projected educational conditions and needs in the region;

(2) The extent to which the applicant proposes adequate mechanisms and procedures for assessing the educational research and development needs and capabilities of the region and for determining laboratory priorities; and

(3) The quality of the applicant's analysis of strategic options and a plan for responding to regional needs.

(b) *Strength of relationships with the region* (15 points). The Secretary reviews each application to determine the strength of the applicant's relationship with the region to be served, including—

(1) The extent to which the proposed governing board's membership reflects regional interests and constituencies;

(i) The quality of the applicant's plans for a governing board designed to take an active role in setting policy and determining the regional agenda of the laboratory;

(ii) The extent to which the applicant's plans for a governance structure provide the organizational autonomy necessary for neutrality, balance, and equity in the selection of clients and the delivery of services;

(2) The quality, extent, and feasibility of proposed collaborative relationships with appropriate organizations, such as—

(i) Public education agencies at State, intermediate, and local levels;

(ii) Educational research and development agencies;

(iii) Organizations providing assistance in the use of research outcomes;

(iv) Clearinghouses, including those compromising the Education Resources Information Clearinghouse system;

(v) Professional associations;

(vi) Institutions of higher education;

(vii) Community-based organizations;

(viii) Business and industry; and

(ix) National Diffusion Network: State and Private School Facilitators; and

(3) Evidence of successful work in the past with organizations listed in paragraph (b)(2) of this section.

(c) *Institutional capability* (15 points). The Secretary reviews each application to determine the qualifications of the applicant to sustain a long-term, high-quality, and coherent program of research and services, including—

(1) The extent to which adequate organizational mechanisms and procedures exist for managing work internally and in collaboration with other institutions;

(2) The degree to which there are adequate procedures for quality control and self-evaluation; and

(3) The degree to which there are adequate plans for effecting improvement in organizational performance and staff development during the project period.

(d) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) Quality in the design of the project;

(2) The degree to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the mission of the laboratory;

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective;

(5) The quality of the applicant's plan to provide equitable services to students and teachers in elementary and secondary public and private schools;

(6) The extent to which proposed activities relate logically to statements of regional needs and priorities;

(7) The degree of coherence of work within and among program activities;

(8) The extent to which the proposed activities complement related efforts inside and outside the region;

(9) The extent of the anticipated contribution of the work to educational improvement; and

(10) The appropriateness of provisions for sequencing and pacing work activities.

(e) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost-effectiveness* (0 points). The Secretary reviews each application to determine the adequacy of the budget and cost effectiveness, including the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) A peer review process for evaluating laboratory products, research instruments, and self-evaluation designs;

(2) The participation of the governing board in setting requirements and examining results of laboratory self-evaluation of activities and outcomes;

(3) The methods which document the laboratory's progress in relation to its objectives; and

(4) The methods which document the impact of the laboratory's program on the needs of those served in the designated region.

(h) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1221e)

§ 707.12 What are the selection criteria for laboratory awards for special activities?

The Secretary uses the following criteria to evaluate applications for laboratory awards for special projects:

(a) *Strength of relationships with appropriate organizations and agencies in the region* (15 points). The Secretary reviews each application to determine the quality, extent and feasibility of proposed collaborative relationships of the laboratory with organizations listed in § 707.11(b)(2) to the focus and purpose of the special activity.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the adequacy of the laboratory's organizational capacity for implementing the special activity.

(c) *Plan of operation* (30 points). The Secretary reviews each application to determine the quality of the plan for implementing the special activity.

(d) *Quality of key personnel* (25 points). The Secretary reviews each application to determine the qualifications of the key personnel, including experience and training related to the objectives of the activity.

(e) *Budget and cost-effectiveness* (0 points). The Secretary reviews each application to determine the adequacy and cost effectiveness of the budget for the special activity.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan to document accomplishment of the activity's objectives.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the activity, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1221e)

Subpart C—What Conditions Must Be Met by a Grantee?

§ 707.20 What requirements must be met by a grantee?

An applicant receiving a laboratory award for institutional operations shall meet the following post-award requirements:

(a) Establish a governing board that—

(1) Is the sole entity that—

(i) Guides and directs the laboratory in satisfying the terms and conditions of the award; and

(ii) Determines the regional agenda of the laboratory, consistent with the priority research and development needs established by the Secretary; and

(2) Reflects a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies.

(b) Facilitate communication among educational agencies and individuals in the region.

(c) Identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs.

(d) Conduct applied research, development, and related activities to address regional needs.

(e) Promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory.

(f) Collaborate with centers, other laboratories, the Education Resources Information Clearinghouses, and the National Diffusion Network: State and Private School Facilitators.

(g) Establish a peer review process for evaluating laboratory products, research instruments, and self-evaluation designs.

(Authority: 20 U.S.C. 1221e)

PART 706—RESEARCH AND DEVELOPMENT CENTERS

Subpart A—General

Sec.
706.1 What regulations apply?

Subpart B—How Does the Secretary Make an Award?

706.10 What are the selection criteria for awards for center planning?
706.11 What are the selection criteria for center awards for institutional operations?
706.12 What are the selection criteria for center awards for special activities?

Subparts C—D [Reserved]

Subpart E—What Conditions Must Be Met After an Award?

706.20 What requirements must be met by a grantee?
706.21 What additional factors does the Secretary consider in making continuation awards?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 706.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.4 apply to awards for research and development centers.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does the Secretary Make an Award?

§ 706.10 What are the selection criteria for awards for center planning?

The Secretary uses the following criteria to evaluate applications for awards for center planning:

(a) *Mission and strategy* (40 points). The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice with respect to the problem area and priorities of the center for which the applicant is applying, including the extent to which the applicant shows—

(1) An understanding of the mission of the proposed center;

(2) Knowledge of relevant research and theory;

(3) Knowledge of relevant problems in educational practice;

(4) Familiarity with relevant strategies of research, development, and dissemination; and

(5) Familiarity with strategies for relating to other organizations in educational research, development, and practice.

(b) *Potential to influence practice* (20 points). The Secretary reviews each application to determine if the planning process will address strategies for influencing educational practice, including—

(1) The extent to which the project will address practitioners' needs as identified; and

(2) The extent to which the planning process will result in a design that will yield knowledge that can be used in an educational setting.

(c) *Plan of operation* (10 points). The Secretary reviews each application to determine the qualify of the plan of operation for the project, including—

(1) The quality in the design of the project;

(2) The effectiveness of the management plan; and

(3) The degree to which the research needs of both public and private elementary and secondary schools or institutions of higher education will be addressed.

(d) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the center's key personnel to be involved in the center's planning;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1) (i) and (ii) of this section the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 1221e)

§ 706.11 What are the selection criteria for center awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for center awards for institutional operations:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to the priorities established by the Secretary for the center's mission, including—

(1) The extent of the applicant's understanding of the mission of the proposed center;

(2) How the activities of the proposed center will contribute to the advancement of relevant theory and practice;

(3) The quality of plans to establish effective working relations with other organizations in educational research, development, and practice;

(4) The quality of the plans to address the problems of special populations and of both public and private institutions in terms of the mission of the proposed center; and

(5) The quality of long-range plans for developing an appropriate, coherent, and effective program of educational research, development, and dissemination.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the capabilities of the host institution to sustain a long-term, high-quality, and coherent program of research, development, and dissemination, in the mission area, including the extent to which the application shows evidence of—

(1) An appropriate organizational structure and commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) An appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Past successes of the applicant in collaborating with individuals and organizations to conduct educational research and development;

(4) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(5) Availability of appropriate resources for the effective implementation of research and development activities.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The degree to which the plan for center management ensures proper and efficient administration of the project;

(2) The effectiveness of proposed strategies for providing national leadership within the center's mission;

(3) The extent to which the applicant shows promising strategy for disseminating center products, including the identification of intended audiences and reasonable timelines for dissemination;

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective; and

(d) *Technical soundness* (20 points). The Secretary reviews each application to determine the technical soundness of the proposed research, including—

(1) The extent to which the applicant demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activities and the mission of the center;

(2) The adequacy of the research design and methodologies to address the research questions posed; and

(3) Evidence that, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapped condition.

(2) To determine personnel qualifications under paragraphs (e)(1)(i) and (ii) of this section the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The equipment and supplies that the applicant plans to use are adequate; and

(3) Costs are reasonable in relation to the objectives and activities of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) The peer review process for evaluating research instruments and products;

(2) The plan for advisory board evaluation of center research activities and resources;

(3) The methods which will be used to document the center's progress in relation to its objectives; and

(4) The methods which will be used to document the impact of the center's program on its target audiences.

(Authority: 20 U.S.C. 1221e)

§ 706.12 What are the selection criteria for center awards for special activities?

The Secretary uses the following criteria to evaluate applications for awards for special activities:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the special activity contributes to the current mission of the center, including the extent to which—

(1) The program of work will contribute to the advancement of relevant theory and practice;

(2) The plans to establish working relations, as appropriate, with other organizations in educational research, development, and practice will be effective;

(3) The proposed activities will advance the center's mission;

(4) The proposed activities incorporate plans to address the problems of special populations and of both public and private elementary and secondary schools and institutions of higher education in terms of the mission of the proposed center.

(b) *Capacity of center* (10 points). The Secretary reviews each application to determine whether the institution has the appropriate organization and fiscal resources to complete the special activity, including—

(1) Strong evidence of an effective organizational structure and a commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(4) Adequate allotment of resources and facilities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the adequacy of the plan of operation for the activities and how they complement the center's current plans, including—

(1) The extent to which an effective plan of project management ensures proper and efficient administration of the activities;

(2) The extent to which the applicant plans to use its resources and personnel to achieve each objective; and

(3) The degree to which the research needs of both public and private elementary and secondary schools and institutions of higher education are addressed by the proposed research, if appropriate.

(d) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the proposed activities, including—

(1) The extent to which the application demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates this knowledge to the proposed activity and the mission of the center;

(2) The adequacy, as appropriate, of the research design and methodologies to address the research questions posed; and

(3) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the qualifications of the key personnel assigned to the special activities project, including the adequacy of—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The applicant's policy, as part of its nondiscriminatory employment practices will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) To determine personnel qualifications under paragraphs (e) (1) and (2) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the appropriateness of the budget in relation to the proposed activities, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The facilities' equipment and supplies that the applicant plans to use are adequate; and

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(3) Costs are reasonable in relation to the objectives and activities of the project.

(Authority: 20 U.S.C. 1221(e))

Subparts C—D [Reserved]

Subpart E—What Conditions Must Be Met After an Award

§ 708.20 What requirements must be met by a grantee?

A grantee receiving an award for institutional operations shall—

(a) Provide national research leadership with respect to the mission of its center;

(b) Establish and maintain a nationally representative advisory panel; and

(c) Collaborate with laboratories, other centers, appropriate Education Resources Information Clearinghouses, and National Diffusion Network: State and Private School Facilitators.

(Authority: 20 U.S.C. 1221e)

§ 708.21 What additional factors does the Secretary consider in making continuation awards?

In making continuation awards under 34 CFR 75.253, the Secretary considers, among other factors, whether—

(a) All products and reports that were due during the budget period that is about to end have been received by the Department;

(b) The project's activities have been carried out in a manner consistent with the previously approved application;

(c) The products and reports are of adequate technical quality; and

(d) The project plans for the subsequent budget period are likely to advance the mission of the center, including the extent to which—

(1) The potential of any new or redirected research project or other center activity within the scope of the project plan will advance the mission of the center;

(2) The center's plan of operation for managing these activities is adequate;

(3) Any new research projects or other activities are technically sound;

(4) The center's personnel are qualified to accomplish the proposed activities; and

(5) The budget is appropriate in relation to the scope of the proposed activities.

(Authority: 20 U.S.C. 1221e)

[FR Doc. 88–6139 Filed 3–21–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.117F]

Inviting Applications for New Awards Under the Research and Development Centers Program for Fiscal Year 1988

Purpose: To fund a research and development center to study technology in education, as it affects learning, teaching, evaluation and indicator measures, and organization and management of schools.

Deadline for Transmittal of Applications: June 10, 1988.

Applications Available: March 29, 1988.

Available Funds: $900,000.

Estimated Size of Award: $900,000 (first year).

Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resubmit their applications. (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the list of priorities in proposed 34 CFR 708.3(b) the following as absolute priorities: technology in education; learning; teaching; evaluation and indicator measures, including testing, measurement, and standards of performance; and organization and management of schools, including effective education leadership. Only applications that propose a research and development center addressing all five priority areas will be considered under this competition.

Within this absolute priority the Secretary is interested in research and related activities that will increase school productivity and student achievement by applying advanced technology to problems associated with restructuring of schools, testing and assessment of students, and the teaching and learning of content subjects. However, applications meeting this invitational priority will not receive an absolute or competitive advantage over other applications within the absolute priority.

Weighting for Selection Criteria: The proposed program regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at 34 CFR 708.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 10 points as follows: 5 additional points to the criterion at § 708.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 708.11(b) (Institutional capability), bringing the total for this criterion to 20 points.

For Applications or Information Contact: Dr. Anne E. Sweet, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Mail Stop 1606, Washington, DC 20208 Telephone Number (202) 357–6043.

There will be a briefing for prospective applicants on April 15, 1988 from 9:30 a.m. to 11:30 a.m. in Room 326, 555 New Jersey Avenue NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: March 8, 1988.

Chester E. Finn, Jr,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–6140 Filed 3–21–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.117C–2]

Inviting Applications for New Awards Under the Research and Development Centers Program for Fiscal Year 1988

Purpose: To support a research and development center to study organization and management of schools, including effective education leadership.

Deadline for Transmittal of Applications: June 10, 1988.

Applications Available: March 29, 1988.

Available Funds: $1,000,000.

Estimated Average Size of Awards: $1,000,000 (per year).

Estimated Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be also accepted based on the notice of proposed rulemaking published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resubmit their applications. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantive changes affecting the priority chosen for this competition are made in the final biennial research priorities, applicants will be given an opportunity to revise or resubmit their applications. (c) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625) the following as an absolute priority: Management and organization of schools. This priority includes examining the dynamics of educational organizations, management and leadership strategies and how leadership practices can improve instructional programs, school discipline, and school productivity.

Within this absolute priority the Secretary invites applications proposing research and related activities based on theories and findings from disciplines complementary to education administration, such as sociology, management, and public administration. Further, the Secretary invites applications that will examine short-term as well as long-term improvement of practice in K–12 public and private schools, and the linkage of school leadership practices to increases in student achievement. However, applications that meet these invitational priorities will not receive an absolute or competitive advantage over applications within the absolute priority that do not meet these invitational priorities.

Weighting for Selection Criteria: The proposed program regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at 34 CFR 708.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 10 points as follows: 5 additional points to the criterion at § 708.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 708.11(d) (Technical soundness), bringing the total for this criterion to 25 points.

For Applications or Information Contact: Dr. Robert Slater, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, Room 627E, 555 New Jersey Avenue NW., Washington, DC 20208. Telephone Number (202) 357-6218.

There will be a briefing for prospective applicants on April 15, 1988 from 2:00 p.m. to 4:00 p.m. in Room 326, 555 New Jersey Avenue NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: March 8, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-6141 Filed 3-21-88; 8:45 am]

BILLING CODE 4000-01-M

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federal register

Tuesday
March 22, 1988

Part III

The President

Proclamation 5777—National Agriculture Day, 1988

Executive Order 12631—Working Group on Financial Markets

Federal Register
Vol. 53, No. 55
Tuesday, March 22, 1988

Presidential Documents

Title 3—

The President

Proclamation 5777 of March 18, 1988

National Agriculture Day, 1988

By the President of the United States of America

A Proclamation

As a Nation we are blessed deeply and in many ways. The agriculture that sustains us is truly one of those blessings. We do well to give thanks for our bountiful crops. They are the yield of our fertile fields; of the skills and cooperation of countless Americans, including farmers, ranchers, scientists, farm organizations, commerce, and government; and, surely, of the liberty in which the American people are free to work, create, and produce for their mutual benefit.

Some of the world's best farmland is here in our country; roughly half of the land in the contiguous United States has a capacity for crop production. Our bounty supplies needs both at home and abroad; today, one American farmer produces enough food and fiber for 114 people. Our agricultural production, processing, and marketing provide jobs, generate wealth, and strengthen our economy, our standard of living, and our position in world trade markets. Thanks to our agricultural efficiency, American consumers, on average, spend less of their income on food than do citizens of any other nation.

As we give thanks for our rich harvests, let us be sure to express gratitude to all those in agriculture and its related endeavors who through the years have contributed so much to our Nation and the world and who continue to shape and to share the spirit and the heritage of the American people.

The Congress, by Senate Joint Resolution 265, has designated March 20, 1988, as "National Agriculture Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 20, 1988, as National Agriculture Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-6379
Filed 3-21-88; 11:22 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12631 of March 18, 1988

Working Group on Financial Markets

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

(1) the Secretary of the Treasury, or his designee;

(2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;

(3) the Chairman of the Securities and Exchange Commission, or his designee; and

(4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

Sec. 2. *Purposes and Functions.* (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

Sec. 3. *Administration.* (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the availability of funds therefor, the Department of the Treasury shall provide the Working Group with such administrative and support services as may be necessary for the performance of its functions.

Ronald Reagan

THE WHITE HOUSE,
March 18, 1988.

[FR Doc. 88-6380
Filed 3-21-88; 11:23 am]
Billing code 3195-01-M

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Title 3—

The President

Presidential Determination No. 88-11 of March 7, 1988

Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended—People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United Sates to extend credit in the amount of approximately $151,000,000 to the People's Republic of China in connection with the purchase of equipment and services for the construction of the Shidongkou coal-fired power plant.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, March 7, 1988.

[FR Doc. 88-6489
Filed 3-21-88; 4:34 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5778 of March 21, 1988

Afghanistan Day, 1988

By the President of the United States of America

A Proclamation

March 21 marks the beginning of a new year in a bitter decade for the people of Afghanistan. This may well be a climactic year, and we hope with the Afghan people that it will see the complete withdrawal of Soviet troops and self-determination for the people of Afghanistan. For more than 8 years, the courageous Afghans have suffered and died under the boot of the Soviet Army, which invaded to prop up an illegitimate, unrepresentative, and discredited regime. Let us take this occasion, therefore, to remember the sorrow and to salute the heroism of the Afghan people. They have fought valiantly and against heavy odds to free themselves from the yoke of oppression—from assaults on their liberty, their sovereignty, their dignity, their lives, and their very way of life.

It now appears possible that the tenacity and tremendous sacrifices of the Afghan people will bear fruit in the coming period. The Soviet leadership seems to have finally recognized that the will of the Afghan people to be free cannot be broken. Indications of Soviet willingness to withdraw are an important step forward, though their seriousness can be proven only by the actual, and total, removal of Soviet troops from Afghan soil. To be acceptable, Soviet withdrawal must be complete, irreversible, and verifiable.

Our objectives have been and remain: prompt and complete withdrawal of Soviet forces; restoration of Afghanistan to an independent, nonaligned status; self-determination for the Afghans; and return of refugees in safety and honor. I reiterated this commitment and our support for the brave Afghan Mujahidin in my meeting last November with Afghan Alliance leader Yunis Khalis. I said the same to General Secretary Gorbachev last December.

The United States Government has also repeatedly told the Soviet leadership that any guarantees of noninterference that they and we would undertake must be symmetrical. An agreement at Geneva must not serve as a pretext for continued Soviet military support to the discredited minority Kabul regime. Some 120 members of the United Nations have voted year after year for self-determination in Afghanistan, recognizing that the present government in Kabul does not represent the Afghan people but is a direct result of outside interference. The Mujahidin and the refugees are the true voice of the Afghan people.

I am proud of the strong support provided the Afghan cause over the past 7 years by my Administration, by the United States Congress, and by the American people. Our commitment to the freedom of the Afghan people will not end should the Soviets withdraw. We will join other nations and international organizations to help the Afghans rebuild their country and their institutions; millions of men, women, and children will be returning to a country devastated by Soviet aggression.

The United States has consistently supported the Afghans in their long ordeal. That support will continue. We will rejoice with them when true peace is achieved and Afghanistan once again takes it rightful place in the community of nations. Let us pray and strive to make sure that this moment of liberation will come soon.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 21, 1988, as Afghanistan Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-6491
Filed 3-21-88; 4:50 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Mar. 21 on signing Proclamation 5778, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 12).

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1987–88 Crop Year for Certain Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins from California's 1987 raisin crop production. These percentages are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Raisin Administrative Committee (Committee), the administrative agency responsible for local administration of the federal marketing order regulating the handling of raisins produced from grapes grown in California. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free raisins.

DATE: Interim final rule effective August 1, 1987 through July 31, 1988. Comments which are received by April 22, 1988, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non–major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of California raisins subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amounts of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the projected oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and to be released under the final percentages, the order specifies methods to make available additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, export sales, and school lunch programs.

The U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) specify that 110 percent of recent years' sales be made available to primary markets each season. This requirement will be met by the establishment of final percentages which release 100 percent of the computed trade demand for each varietal type, and the additional release of such raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous sales of reserve pool raisins which are made available to handlers each season. For each such offer, at least 10 percent of the prior year's shipments are made available for free use.

Pursuant to § 989.54(a), the Committee met on August 13, 1987, to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage may be recommended using a formula prescribed in that paragraph. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for the 1987–88 crop year shall be 60,000 tons for Natural Seedless and 1,500 tons for Dipped Seedless and Oleate and Related Seedless raisins. The carryins used for adjusting the trade demands were 91,854, 4,177, and 2,659 tons, respectively, for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins.

In accordance with these provisions, the Committee computed and announced a trade demand of 236,105 tons for Natural (sun-dried) Seedless raisins, 4,501 tons for Dipped Seedless raisins, 994 tons for Oleate and Related Seedless raisins, 12,983 tons for Golden Seedless raisins, 439 tons for Sultanas, −69 tons for Muscat raisins, 3,469 tons for Zante Currant raisins, and 1,210 tons for Monukka raisins.

As required under § 989.54(b), the Committee met on October 5, 1987, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for: Natural (sun-dried) Seedless of 320,836 tons and 48 percent free, 52 percent reserve; Dipped Seedless of 5,531 tons and 53 percent free, 47 percent reserve; and Oleate and Related Seedless of 1,910 tons and 34 percent free, 66 percent reserve. Handlers operate under the preliminary percentages until the industry is able to obtain a more accurate estimate of the raisin production for that year. The field price for all three varietal types had been established. Hence, in accordance with § 989.54(b), the preliminary free and reserve percentages computed and announced by the Committee for the three varietal types released 85 percent of each varietal type's computed trade demand. Preliminary percentages were not announced for the other varietal types; therefore, the total available supply was released for each.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release up to 99 percent of the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. On November 30, 1987, for Oleate and Related Seedless raisins, interim percentages of 90 percent free and 10 percent reserve were adopted. Interim percentages for Natural (sun-dried) Seedless of 66 percent free and 34 percent reserve and for Dipped Seedless of 72 percent free and 28 percent reserve, were computed and announced on January 21, 1988, when final percentages were recommended. The interim percentages for Natural (sun-dried) Seedless and Dipped Seedless released 99 percent of their computed trade demands, while for Oleate and Related Seedless raisins 97 percent of the trade demand was released.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. At that time, the Committee has more information available, including the final crop estimate and other information, on which to base the determination of final free and reserve percentages.

On January 21, 1988, the Committee met and recommended final free and reserve percentages for the 1987–88 crop year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins.

The Committee's final estimate of 1987–88 production of Natural (sun-dried) Seedless raisins totaled 350,630 tons, which includes the 1987 diversion tonnage of 30,000 tons (29,794 tons more than its preliminary estimate). Dividing the computed trade demand of 236,105 tons by the final estimate of production results in a final free percentage of 67.33 percent. The Committee rounded that percentage to 67 percent which results in a final reserve percentage of 33 percent.

For Dipped Seedless raisins, the Committee's final estimate of 1987–88 production totaled 6,150 tons (619 tons more than its preliminary estimate). Dividing the computed trade demand of 4,501 tons by the final estimate of production results in a final free percentage of 73.18 percent. The Committee rounded that percentage to 73 percent which results in a final reserve percentage of 27 percent.

For Oleate and Related Seedless raisins, the Committee's final estimate of 1987–88 production totaled 1,071 tons (839 tons less than its preliminary estimate). Dividing the computed trade demand of 994 tons by the final production estimate results in a free percentage of 92.81 percent. The Committee rounded that percentage to 93 percent which results in a final reserve percentage of 7 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1987–88 crop year apply to all Natural (sun-dried) Seedless, Dipped Seedless and Oleate and Related Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1987–88 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantities computed by the Committee for these varietal types available to handlers; and (3) handlers are aware of this action which was recommended by the Committee at an open meeting and need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.240 is added to Subpart—Supplementary Regulations to read as follows:

(This section will not appear in the annual Code of Federal Regulations):

§ 989.240 Final free and reserve percentages for the 1987–88 crop year.

The final percentages of standard Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins acquired by handlers during the crop year beginning August 1, 1987, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	67	33
Dipped Seedless	73	27
Oleate and Related	93	7

Dated: March 18, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-6340 Filed 3-22-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Reconsideration of Enforcement Policy Provision Involving Reopening Closed Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Modification.

SUMMARY: The NRC is publishing a minor modification to its Enforcement Policy to clarify its policy on reopening closed enforcement actions. This policy is codified as Appendix C to 10 CFR Part 2.

DATES: Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification to the Enforcement Policy is effective March 23, 1988. Comments may be submitted on or before May 23, 1988.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street NW., Washington, DC between 7:30 a.m. to 4:15 p.m.

Copies of comments may be examined at the NRC Public Document, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301-492-0741).

SUPPLEMENTARY INFORMATION: The Commission on September 23, 1987 issued a revised Enforcement Policy (52 FR 36215, September 28, 1987) in which Section V.F. addressed reopening closed enforcement actions. Section V.F. provided that if significant new information is received which indicates that a previous enforcement sanction was incorrectly applied, the action could be reopened. The policy also stated that (1) reopening should occur only if remedial action is necessary to abate a continued harm or if the new information shows that the violation was less serious than originally believed or that the violation did not occur, and (2) normally actions would not be reopened where the only change to the prior action would be to increase the severity level of a violation or to impose or increase a civil penalty.

While comments submitted in response to the September 28, 1987 Policy Statement were generally favorable to the wording of section V.F, the Commission has reconsidered this policy because it implies that an enforcement action would not normally be reopened to increase a sanction even if such action was warranted. For example, reopening may be warranted to increase a sanction such as civil penalty on the basis of new information if the reason NRC did not have the information initially was because the licensee misled the NRC by providing false information or withholding the information from the NRC. In such a case, any prejudice to the licensee is the result of its own action. Reopening would be justified under the terms of the current enforcement policy to impose the appropriate sanction. Not to do so would reward a licensee's failure to cooperate with the NRC, which of course cannot be tolerated.

It should be noted that the issue here is reconsidering the existence of the original violation or the circumstances and severity of the original violation. If the new information supports a different violation, then reopening is not the issue because a new and different enforcement action can be taken.

Whether or not to reopen a completed enforcement action requires the exercise of sound discretion and judgment. It is difficult in the absence of a specific case to establish what action if any should be taken as a result of new information. Considerations in making a determination to reopen a closed case might include: Whether the licensee knew or should have known of the information at the time the original action was closed, whether the doctrine of *res judicata* applies, the opportunities available to learn of the information earlier and the reason for NRC not obtaining it earlier, the significance of the new information, the extent of the charge to the enforcement action warranted by the new information, the resources necessary to reopen the case, the need for an increased sanction to provide additional deterence for the impacted licensee and other similar licensees, whether the licensee acquiesced to the original enforcement action, whether remedial action is needed to abate the effect of the original violation, whether the original violation in fact occurred, and whether the licensee would be severely or unjustly prejudiced by a reopening decision (apart from receiving a more severe sanction).

Recognizing that this is an issue which arises infrequently and that there are many considerations relevant to a reopening decision on the basis of new information, the Commission has determined to modify Section V.F. of the Enforcement Policy to emphasize that the decision to reopen a case is to be made on a case-by-case basis.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following modification to its statement of Enforcement Policy in Appendix C to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552. Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs.

186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section V.F. of Appendix C is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

V. Enforcement Actions * * *

F. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director for Regional Operations.

* * * * *

Dated at Washington, DC, this 17th day of March 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–6333 Filed 3–22–88; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Final Commission Policy Statement on Maintenance of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: The Commission believes safety can be enhanced by improving the effectiveness of maintenance programs throughout the nuclear industry. The Commission is proceeding with rulemaking consistent with this belief. This Policy Statement is being issued to provide guidance to the industry while the rulemaking proceeds.

EFFECTIVE DATE: This Final Policy Statement is effective March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Jack W. Roe, Director, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1004.

Policy

Background

The Commission has a program to continually evaluate the operational performance of nuclear power plants. Analysis of operational events has shown that, in some cases, nuclear power plant equipment is not being maintained at a level which ensures, with a high degree of reliability, that the equipment will perform its intended function when required. A limited NRC examination of nuclear power plant maintenance programs has found a wide variation in the effectiveness of these programs. Inadequate maintenance at some plants has been a significant contributor to plant reliability problems and, hence, is of safety concern. The Commission believes safety can be enhanced by improving the effectiveness of maintenance programs throughout the nuclear industry. The Commission is proceeding with rulemaking consistent with this belief. This Policy Statement is being issued to provide guidance to the industry while the rulemaking proceeds.

Policy Statement

It is the objective of the Commission that all components, systems and structures of nuclear power plants be maintained so that plant equipment will perform its intended function when required. To accomplish this objective, each licensee should develop and implement a maintenance program which provides for the periodic evaluation, and prompt repair of plant components, systems, and structures to ensure their availability.

Definition of Maintenance

The Commission defines maintenance as the aggregate of those functions required to preserve or restore safety, reliability, and availability of plant structures, systems, and components. Maintenance includes not only activities traditionally associated with identifying and correcting actual or potential degraded conditions, i.e., repair, surveillance, diagnostic examinations, and preventive measures; but extends to all supporting functions for the conduct of these activities. These activities and functions are listed below under "Activities Which Form the Basis of a Maintenance Program."

Maintenance Programs

Each commercial nuclear power plant should develop and implement a well-defined and effective program to assure that maintenance activities are conducted to preserve or restore the availability, performance and reliability of plant structures, systems, and components. The program should clearly define the components and activities included, as well as the management systems used to control those activities. Further, the program should include feedback of specific results to ensure corrective actions, provisions for overall program evaluation, and the identification of possible component or system design problems.

Activities Which Form the Basis of a Maintenance Program

An adequate program should consider:

- Technology in the areas of
  —Corrective maintenance,
  —Preventive maintenance,
  —Predictive maintenance,
  —Surveillance;
- Engineering support and plant modifications;
- Quality assurance and quality control;
- Equipment history and trending;
- Maintenance records;
- Management of parts, tools, and facilities;
- Procedures;
- Post-maintenance testing and return-to-service activities;
- Measures of overall program effectiveness;
- Maintenance management and organization in the areas of
  —Planning,
  —Scheduling,
  —Staffing,
  —Shift coverage,
  —Resource allocation;
- Control of contracted maintenance services;
- Radiological exposure control (ALARA);
- Personnel qualification and training;
- Internal communications between the maintenance organization and plant operations and support groups;
- Communications between plant and corporate management and the maintenance organization.

Maintenance recommendations or requirements of individual vendors should receive appropriate attention in the development of the maintenance program.

Future Commission Action

The Commission intends this Policy Statement to provide guidance to the industry in improving maintenance programs for their power reactor facilities. The Commission will continue to enforce existing requirements including those that address maintenance practices and will take whatever action that may be necessary to protect health and safety.

The Commission expects to publish a Notice of Proposed Rulemaking in the near future that will establish basic requirements for plant maintenance programs. We believe that the contents and bounds of the proposed rule will fall within the general framework described in this Policy Statement.

Consideration will also be given to industry-wide efforts that already have been initiated. We encourage interested parties to provide their views on this important subject to the Commission, even at this early stage of the rulemaking process. Any notice of proposed rulemaking that is published will provide, of course, a period for public comment on its contents.

Dated at Washington, DC, this 17th day of March, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–6334 Filed 3–22–88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86–ANE–21; Amdt. 39–5869]

Airworthiness Directives; General Electric (GE) CT7–5A, –5A1, and –5A2 Turbopropeller Engines as Installed in Saab-Fairchild SF340A Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the installation of a second overspeed protection system on certain GE CT7–5A series turbopropeller engines as installed in Saab-Fairchild SF340A aircraft. This AD also supersedes AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986). This AD is needed to prevent engine power turbine (PT) overspeed and resulting uncontained failure caused by reaction of the fuel control to an erroneous PT speed signal during ground operation with the bottoming governor (BG) enabled.

DATES: *Effective*—May 9, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of May 9, 1988.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Dowty Rotol Limited, Cheltenham Road East, Gloucester, England GL2 9QH; General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910; and Saab-Scania AB, S–581 88, Linkoping, Sweden.

A copy of each SB is contained in Rules Docket Number 86–ANE–21, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Garian, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7086.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring the installation of a second overspeed protection system on certain GE CT7–5A series turbopropeller engines as installed in Saab-Fairchild SF340A aircraft was published in the **Federal Register** on October 16, 1987, (52 FR 38458).

The proposal was prompted by an engine PT overspeed and resulting uncontained failure caused by reaction of the fuel control to an erroneous PT speed signal during ground operation with the BG enabled.

Since this condition is likely to exist or develop on other engines of the same type design, a new AD is being issued that requires installation of a second overspeed protection system on GE CT7–5A series turbopropeller engines as installed in Saab-Fairchild SF340A aircraft. This AD also requires incorporation of engine BG deactivation switches in the power lever quadrant to prevent an adverse yaw condition in the aircraft that could occur due to a mismatched aircraft power condition resulting from an uncommanded power increase of one engine. This would also prevent the crew from misinterpreting the uncommanded power increase of one engine as a failure of the other engine. This AD supersedes AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

AD 86–10–51, Amendment 39–5473 (51 FR 44439), issued November 18, 1986, requires that the engine BG be disabled when the aircraft power lever is positioned in the beta range (below flight idle). The AD was needed to prevent PT overspeed and resulting uncontained failure caused by reaction of the fuel control to an erroneous PT speed signal during ground operation with the BG enabled.

AD 86–10–51 provides interim instructions to prevent PT overspeed and uncontained failure. Since these instructions require special aircraft and engine operating procedures which increase crew workload and invalidate the constant torque on takeoff function, the FAA has determined that a second overspeed protection system with an improved level of safety precludes the need for these interim instructions and returns the aircraft and engine to pre-AD 86–10–51 operation.

Conclusion

The FAA has determined that this regulation affects 107 aircraft all of which are in compliance with this AD. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transporation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 86–10–51, Amendment 39–5473 (51 FR 44439; December 9, 1986):

General Electric: Applies to General Electric (GE) CT7–5A, –5A1, and –5A2 turbopropeller engines as installed in Saab-Fairchild SF340A aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent power turbine (PT) overspeed resulting in an uncontained failure or adverse aircraft yaw due to reaction of the fuel control to an erroneous PT speed signal during ground operation with the bottoming governor (BG) enabled, accomplish the following no later than May 16, 1988:

(a) Remove propeller overspeed governor (OSG), Dowty Rotol (DR) Part Number (P/N) 661001001, and replace with OSG, DR P/N 661001002, in accordance with procedures contained in DR Service Bulletin (SB) SF340–61–11, dated October 8, 1986.

(b) Install cable, GE P/N 6068T47P01, between the propeller OSG and the hydromechanical unit in accordance with GE CT7 Turboprop SB 74–09, dated October 10, 1986.

(c) Install engine BG deactivation switches, Mod Kit Saab SF340–76–018–01, in the power lever quadrant in accordance with procedures contained in Saab SB SF340–76–018, dated October 24, 1986.

(d) Upon accomplishment of paragraphs (a) through (c) above:

(1) Remove from the SF340A Aircraft Flight Manual (AFM) the BG disabling procedures required by AD 86–10–51, paragraphs (a)(1) and (a)(2).

(2) Discontinue operating in accordance with the procedures listed in AD 86–10–51, paragraph (b).

Note: Subsequent to compliance with this AD, aircraft operation shall be conducted in accordance with the latest AFM revision.

(e) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FAR) 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(g) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Dowty Rotol SB SF340–61–11, dated October 8, 1986; General Electric CT7 Turboprop SB 74–09, dated October 10, 1986; and Saab SB SF340–76–018, dated October 24, 1986, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552 (a)(1). All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Dowty Rotol Limited, Cheltenham Road East, Gloucester, England GL2 9HQ; General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910; and Saab-Scania AB, S–581 88, Linkoping, Sweden.

This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86–ANE–21, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment supersedes Amendment 39–5473 (51 FR 44439; December 9, 1986), AD 86–10–51.

This amendment becomes effective on May 9, 1988.

Issued in Burlington, Massachusetts, on February 26, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88–6251 Filed 3–22–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ANE–01; Amdt. 39–5865]

Airworthiness Directive; Glasflugel H301 Libelle, H301B Libelle, Standard Libelle (Standard Libelle 201), Standard Libelle 201B, Standard Libelle 203, Kestrel, 604, and BS–1 Model Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Glasflugel Libelle, Kestrel, 604, and BS–1 model gliders which requires inspection and replacement of specified rudder cables. This action was prompted by the findings of certain sleeves not meeting specifications which could result in a reduction of cable strength. This condition, if not corrected, could result in the loss of rudder control.

DATES: *Effective*—March 23, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 23, 1988.

ADDRESSES: The Technical Note referenced in this amendment may be obtained from Hansjorg Streifeneder Glasfiaser Flugzeug Service GmbH, Hofener Weg, 7431, Grabenstetten, Federal Republic of Germany.

A copy of the Technical Note is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m..

FOR FURTHER INFORMATION CONTACT: Munroe Dearing, Brussels Aircraft Certification Office, AEU–100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30, extension 2710, or John J. Maher, New York Aircraft Certification Office, ANE–172, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791–6221.

SUPPLEMENTARY INFORMATION: Hansjorg Streifeneder has determined that on hemp core rudder cables, sleeve installations have not been according to specification, causing a reduction in cable strength which, if not corrected, could result in the loss of rudder control. The manufacturer made this determination from the results of inspections required by German AD 71–10 (FAA AD 71–16–06). The manufacturer has issued Technical Note (TN) No. 201–26, 301–33, 401–20, and 501–4, dated March 15, 1987, which specified inspection and replacement of those cables with a different cable and sleeve installation and also calls for continuation of German AD71–10. The Luftahrt-Bundesamt (LBA), who has responsibility to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Hansjorg Streifeneder TN No. 201–26, 301–33, 401–20, and 501–4, on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Hansjorg Streifender TN No. 201–26, 301–33, 401–20, and 501–4, and the issuance of LBA AD No. 87–83 Glasflugel on Glaflugel Models H301 Libelle, H301B Libelle, Standard Libelle (Standard Libelle 201), Standard Libelle

201B, Standard Libelle 203, Kestrel, 604, and BS–1 model gliders. Based on the foregoing, the FAA has determined that the condition addressed by Hansjorg Streifeneder TN No. 201–26, 301–33, 401–20, and 501–4, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued to require initial and repetitive inspections and replacement of hemp core rudder cables with a different cable and sleeve installation on Glasflugel Models H301 Libelle, H301B Libelle, Standard Libelle (Standard Libelle 201), Standard Libelle 201B, Standard Libelle 203, Kestrel, 604, and BS–1 model gliders. The compliance requirements of existing AD, 71–16–06, remain in effect for those cables not addressed by the compliance requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Glasflugel: Applies to Models H301 Libelle, H301B Libelle, Standard Libelle (Standard Libelle 201), Standard Libelle 201B, Standard Libelle 303, Kestrel, 604, and BS–1 model gliders certificated in any category equipped with DIN specification 655, 6×7 rudder cables with a diameter of 2.5 mm (0.098 in.) having a hemp core.

Compliance is required as indicated, unless already accomplished.

To prevent failures in the ruddar control system, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, unless accomplished within the previous 75 hours' time in service, and thereafter at intervals not to exceed 100 hours' time in service after the last inspection; visually inspect the rudder cables for wear, fraying, corrosion, twisting or other damage.

(b) If damaged cables are found during the inspection required by Paragraph (a) of this AD, before further flight, replace the damaged cables with the cables specified in paragraph (c).

(c) Prior to April 8, 1988, replace any rudder cable not replaced in accordance with paragraph (b) of this AD with a 7×7, ³⁄₃₂ inch cable; manufactured in accordance with MIL–W–83420D or MIL–W–1511A. Thereafter, cables are to be replaced each 500 hours time service. Use only Nicopress sleeves, No. 28–2–G, for cable connections in accordance with Actions 2 of Hansjorg Streifeneder Technical Note No. 201–26, 301–33, 401–20, and 501–4, dated March 15, 1987.

Note: With Nicopress sleeves, No. 28–2–G, use tool No. 51–G–887 (one compression required) or tool No. 64–CGMP (G-groove to be used, one compression required) or tool No. 32VC: VG ("VG"—groove to be used, two overlapping compressions required).

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hansjorg Streifeneder Technical Note No. 201–26, 301–33, 401–20, and 501–4, dated March 15, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Hansjorg Streifeneder Glasfaser-Flugzeug-Service GmbH, Hofener Weg, D–7431 Grabenstetten, Federal Republic of Germany.

These documents also may be examined at the Rules Docket, Office of the Regional Counsel, Room 311, Federal Aviation Administration, Attn: Rules Docket No. 86–ANE–01, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective March 23, 1988.

Issued in Burlington, Massachusetts, on February 23, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88–6252 Filed 3–22–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP–300179A; FRL 3353–9]

Revocation of Food Additive Regulations for Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes human food additive regulations in 21 CFR Part 193 and animal feed additive regulations in 21 CFR Part 561 related to certain pesticide chemicals. EPA is taking this action to remove obsolete and expired residue limitations resulting from use of the specific pesticide under the authorization of an experimental use permit.

EFFECTIVE DATE: Effective on March 23, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP–300179A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 17, 1988 (53 FR 4643), which proposed the revocation of certain food additive regulations, established by EPA in 21 CFR Parts 193 and 561 for pesticide residues in processed food commodities, resulting from use of the pesticides under experimental use permits (EUP's). Because the food additive regulations and their related EUP's expired before 1986, the food additive regulations should be deleted from 21 CFR Parts 193 and 561.

No public comments were received in response to this notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in the February 17, 1988 proposal, EPA is hereby amending the regulations discussed in this rule by revoking the section in its entirety or removing the applicable paragraph containing the expired tolerances, as follows:

In Part 193

§ 193.70 (2-Chloroethyl)trimethylammonium chloride
§ 193.85 Chlorpyrifos
§ 193.100 2,4-D
§ 193.145 3,5-Dimethyl-4-(methylthio) phenyl methylcarbamate
§ 193.215 Fenthion
§ 193.219 Fluridone
§ 193.235 Glyphosate
§ 193.284 Methanearsonic acid
§ 193.301 2-1(1-Methylethoxy)phenol methylcarbamate
§ 193.400 Simazine
§ 193.415 Tebuthiuron

In Part 561

§ 561.20 Acephate
§ 561.55 Butachlor
§ 561.90 (2-Chloroethyl)trimethylammonium chloride
§ 561.98 Chlorpyrfios
§ 561.175 3,5-Dimethyl-4-(methylthio) phenyl methylcarbamate
§ 561.195 Amitraz
§ 561.231 *O*-Ethyl *S,S*-diphenyl phosphorodithioate
§ 561.237 Fenthion
§ 561.253 Glyphosate
§ 561.265 Linuron
§ 561.280 Methanearsonic acid
§ 561.281 2-(1-Methylethoxy)phenol methylcarbamate
§ 561.320 Procyazine
§ 561.330 Propargite
§ 561.371 Tebuthiuron
§ 561.380 Thiabendazole
§ 561.395 Tricyclazole.

Any person adversely affected by this regulation revoking the specified food additive regulations may, within 30 days after the date of publication of the document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Since this regulatory action is intended only to remove obsolete and unnecessary information from the Code of Federal Regulations, it has been determined that this rule is not subject to a review under Executive Order 12291. Likewise, this rule does not require an impact analysis under the Regulatory Flexibility Act.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: March 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Parts 193 and 561 are amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 193.70, 193.145, 193.215, 193.219, 193.284, 193.301, 193.415 [Removed]

b. By removing §§ 193.70, 193.145, 193.215, 193.219, 193.284, 193.301, and 193.415

§ 193.235 [Amended]

c. By removing and reserving paragraph (b) in § 193.235.

§ 193.85 [Amended]

d. By removing paragraph (c) in § 193.85.

e. By revising § 193.100 to read as follows:

§ 193.100 2,4-D.

(a) Tolerances are established for residues of the herbicide 2,4–D (2,4-dichlorophenoxyacetic acid) as follows:

(1) 5 ppm in sugarcane molasses, resulting from application of the herbicide to sugarcane fields.

(2) 2 ppm in the milled fractions (except flour) derived from barley, oats, rye, and wheat to be ingested as food or to be converted to food. Such residues may be present therein only as a result of application to the growing crop of the herbicides identified in 40 CFR 180.142.

(3) 0.1 ppm (negligible residue) in potable water. Such residues may be present therein only:

(i) As a result of the application of the dimethylamine salt of 2,4–D to irrigation ditch banks in the Western United States in programs of the Bureau of Reclamation; cooperating water user organizations; the Bureau of Sport Fisheries, U.S. Department of the Interior; Agricultural Research Service, U.S. Department of Agriculture; and the Corps of Engineers, U.S. Department of Defense.

(ii) As a result of the application of the dimethylamine salt of 2,4–D for water hyacinth control in ponds, lakes, reservoirs, marshes, bayous, drainage ditches, canals, rivers, and streams that are quiescent or slow moving, in programs of the Corps of Engineers or other Federal, State, or local public agencies.

(iii) As a result of application of its dimethylamine salt or its butoxyethanol ester for Eurasian watermilfoil control in programs conducted by the Tennessee Valley Authority in dams and reservoirs of the TVA system.

(b) [Reserved]

f. By revising § 193.400 to read as follows:

§ 193.400 Simazine.

(a) Tolerances are established for residues of the herbicide simazine (2-chloro-4,6-bis(ethylamino)-*s*-triazine) or simazine and its metabolities 2-amino-4-chloro-6-ethylamino-*s*-triazine and 2,4-diamino-6-chloro-*s*-triazine as follows:

(1) 1 ppm for residues of simazine in sugarcane byproducts (molasses and sirup), resulting from application of the herbicide to the growing crop sugarcane.

(2) 0.01 ppm for combined residues of simazine and its metabolities (2-amino-4-chloro-6-ethylamino-*s*-triazine and 2,4-diamino-6-chloro-*s*-triazine) in potable

water when present therein as a result of application of the herbicide to growing aquatic weeds.

(b) [Reserved]

PART 561—[AMENDED]

1. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348

§§ 561.55, 561.90, 561.175, 561.195, 561.231, 561.237, 561.265, 561.281, 561.320, 561.371, and 561.395 [Removed]

b. By removing §§ 561.55, 561.90, 561.175, 561.195, 561.231, 561.237, 561.265, 561.281, 561.320, 561.371, and 561.395

§§ 561.253 and 561.380 [Amended]

c. By removing and reserving paragraph (b) in §§ 561.253 and 561.380.

§§ 561.20, 561.98, and 561.280 [Amended]

d. By removing paragraphs (b), (c), and (d) and reserving paragraph (b) in §§ 561.20, 561.98, and 561.280.

e. By revising § 561.330 to read as follows:

§ 561.330 Propargite.

(a) Tolerances are established for residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in the following processed feeds, when present therein as a result of the application of propargite to growing crops:

Feeds	Parts per million
Apple pomace, dried	80
Citrus pulp, dried	40
Grape pomace, dried	40

(b) [Reserved]

[FR Doc. 88-6381 Filed 3-22-88; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1260–88]

Designation of Federalism Official

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends the regulations of the Department of Justice to designate the Assistant Attorney General of the Office of Legal Counsel as the official responsible for ensuring implementation of Executive Order 12612, entitled "Federalism". The change is being added to the Code of Federal Regulations in order to reflect accurately the agency's internal management structure.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Colborn, Senior Counsel, Office of Legal Counsel (202–633–2048).

SUPPLEMENTARY INFORMATION: This order is being issued in order to comply with Executive Order No. 12612 and is a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 533 and 5 U.S.C. 301, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows.

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.25 is amended by redesignating paragraph (j) as (k) and adding a new paragraph (j) to read as follows:

§ 0.25 [Amended]

* * * * *

(j) Taking actions to ensure implementation of Executive Order 12612 (entitled "Federalism"), including determining which Department policies have sufficient federalism implications to warrant preparation of a Federalism Assessment, reviewing Assessments for adequacy, and executing certifications for the Assessments.

* * * * *

Date: March 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-6248 Filed 3-22-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 291

[DNA Instruction 5400.7B]

Defense Nuclear Agency (DNA) Freedom of Information Act Program

AGENCY: Defense Nuclear Agency.

ACTION: Final rule.

SUMMARY: DNA operates its Freedom of Information Act Program in accordance with DoD Directive 5400.7 and DoD 5400.7–R which provide the policies and procedures for the Department of Defense and the DoD Components. This rule implements the internal procedures for obtaining information from DNA under the provisions of the Freedom of Information Act. It also revises 32 CFR Part 291.

EFFECTIVE DATE: This rule is effective April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Nell M.S. Hayes, Public Affairs Office, Defense Nuclear Agency, Washington, DC 20301–1000, telephone (703) 325–7095.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 291

Freedom of information.

Accordingly, 32 CFR Part 291 is revised as follows:

PART 291—DEFENSE NUCLEAR AGENCY (DNA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
291.1 Purpose.
291.2 Applicability.
291.3 Definitions.
291.4 Policy.
291.5 Responsibilities.
291.6 Procedures.
291.7 Administrative instruction.
291.8 Exemptions.
Appendix A—Freedom of Information Action (DNA Form 524)
Appendix B—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086)

Authority: 5 U.S.C. 552.

§ 291.1 Purpose.

To establish policies and procedures for the DNA Freedom of Information Act (FOIA) program. This part implements the provisions of DoD 5400.7–R[1].

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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Freedom of Information Act Program, dated June 1987.

§ 291.2 Applicability.

This part applies to Headquarters, Defense Nuclear Agency (HQ, DNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

§ 291.3 Definitions.

FOIA Request. A written request for DNA records made by a member of the public who invokes the FOIA (5 U.S.C. 552) in accordance with DoD Directive 5400.7.[2]

Record. (a) The products of data compilation, regardless of physical form or characteristics, made or received by DNA in connection with the transaction of public business and preserved by DNA components primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD component.

(b) The following are not included within the definition of the word "record":

(1) Library and museum material made, acquired and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of DNA.

(ii) Computer software and related software documentation if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of DNA. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.)

(4) Unaltered publications and processed documents, such as regulations or instructions, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout.

(c) A record must exist and be in the possession of and controlled by DNA at the time of the request to be considered subject to this part. There is no obligation to create or compile a record to satisfy a FOIA request. DNA personnel, however, may compile a new record when doing so would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records as long as the requester does not object.

(1) *Initial Denial Authority (IDA).* The Deputy Director (DDIR), DNA, has the authority to withhold records requested under the FOIA for one or more of the nine categories (set forth in § 291.8) of records exempt from mandatory disclosure.

(2) *Appellate Authority.* The Director, DNA.

§ 291.4 Policy.

(a) It is DNA policy to fully and completely respond to public requests for information concerning its operations and activities, consistent with national security objectives.

(b) A request for a record under the FOIA may be denied only upon determining that:

(1) The record is subject to one or more of the nine exemptions set forth in § 291.8 and a significant and legitimate government purpose is served by withholding.

(2) The record cannot be located because it was not sufficiently described to enable DNA personnel to locate the record with a reasonable amount of effort.

(3) The requester has failed to comply with the procedural requirements imposed by the FOIA.

§ 291.5 Responsibilities.

(a) The Director, DNA, as appellate authority, is responsible for reviewing and making the final decision on FOIA appeals.

(b) The DDIR, as IDA, is responsible for reviewing all initial denials to FOIA requests and has sole responsibility for withholding that information.

(c) The DNA FOIA Officer, who is also the Public Affairs Officer, manages and implements the DNA FOIA program. In this regard, the Public Affairs Officer, serves as the FOIA point-of-contact and liaison between DNA and the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), Directorate for Freedom of Information and Security Review (DFOI/SR). The Public Affairs Officer is responsible for:

(1) Advising OASD(PA), DFOI/SR, of any DNA denial of a request for records or appeals that may affect another DoD component.

(2) Ensuring publication of this part in the **Federal Register.**

(3) Ensuring that the Command Services Directorate publishes in the **Federal Register** a notice of where, how and by what authority DNA performs its functions.

(4) Ensuring that the publications officer, Assistant Director for Logistics and Engineering (CSLE), publishes an index of DNA instructions in the **Federal Register.**

(5) Coordinating all FOIA actions, except routine, interim replies indicating initial receipt of a FOIA request through the appropriate DNA offices and the DNA General Counsel (GC).

(6) Forwarding all fees collected under the FOIA to the HQ, DNA Comptroller for further processing.

(7) Coordinating action on FOIA requests that involve other government organizations (e.g., when DNA is not the original classifier for a classified document) with those organizations.

(8) Ensuring FOIA briefings are presented annually for DNA personnel.

(9) Submitting an annual report to OASD(PA), DFOI/SR, in accordance with the requirements of DoD Directive 5400.11 [3].

(d) The Commander, FCDNA, is responsible for determining, based on current directives and instructions, what information in FCDNA custody may be released to FOIA requesters. (This responsibility may be delegated.) The Director, AFRRI, will forward/refer requests for information to the PAO.

(1) The Commander, FCDNA, is responsible for designating a representative to process FOIA requests. The Commander has the authority to release documents in response to the FOIA. When FCDNA releases information under the FOIA, it will forward a copy of the request, the response and the DD 2086 to HQ, DNA, ATTN: PAO (FOIA). FCDNA will not deny requests for information under the FOIA; instead, it will forward to PAO a recommendation and justification for denying the FOIA request.

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[2] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1052, Philadelphia, PA 19120.

[3] See footnote 2 to § 291.3.

(2) The Director, AFRRI, is responsible for designating a representative to process FOIA requests and to forward them to HQ, DNA, for final response.

(e) The DNA GC shall coordinate on all DNA FOIA responses except routine interim letters which acknowledge receipt of the FOIA request. That office shall also ensure uniformity in the legal position and interpretation by DNA of the FOIA, and coordinate with the DoD GC as necessary.

(f) The HQ, DNA, Comptroller will ensure that fees collected under the FOIA are forwarded to the Treasury of the United States.

(g) HQ, DNA, Assistant Director for Intelligence and Security, Classification Management Division (ISCM) will conduct security reviews of classified documents requested under the FOIA. ISCM will determine whether the document—

(1) Contains information that meets requirements for withholding under Exemption 1 (Executive Order 12356),

(2) Has information that meets requirements for withholding under Exemption 3, to include Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 or

(3) Has information that may be declassified or sanitized.

ISCM is also responsible for sanitizing DNA classified information from documents requested under the FOIA (see § 291.6(b)(4)). In addition, ISCM is responsible for advising the Assistant Director for Technical Information (CSTI) to notify the appropriate authorities when information has been reclassified as a result of a DNA FOIA review.

(h) HQ, DNA CSLE will, upon request, ensure that photocopies are made of 50-page or larger documents being processed under the FOIA. (Copies are required only when documents are not available from other sources.)

(i) CSTI, Technical Library Division (TITL) will, upon notification from PAO that a document has been cleared for public release under the FOIA, retain the marked up document in its files, annotate the FOIA case number in the computerized data base and ensure that the document is made available to the public through the National Technical Information Service (NTIS).

(j) Commander, FCDNA; Director, AFRRI; and HQ, DNA, directors and chiefs of staff elements will ensure that personnel are familiar with the procedures and contents of this part prior to acting on FOIA requests. They will also make sure that FOIA actions forwarded to their offices for processing are closely monitored to ensure accountability and that their input to PAO is provided in a timely manner and in accordance with this part (see § 291.7(b)(2)). If the office(s) cannot meet the FOIA suspense, they must request an extension. In addition, they will ensure that, upon request by PAO, appropriate technical personnel sanitize information such as unclassified technical data that is determined to be exempt from disclosure under the FOIA. (See § 291.7(b)(5)).

§ 291.6 Procedures.

(a) If HQ, DNA personnel receive a FOIA request that has not been logged and processed through PAO, they will immediately *handcarry* the request to PAO. TDNM and AFRRI personnel will forward all FOIA requests to HQ, DNA, ATTN: PAO. FCDNA will adhere to paragraph 6d and FCDNA Supplement to DNA Instruction 5400.7A.[4]

(b) When a FOIA request is received by PAO, HQ, DNA, the following procedures apply:

(1) The request will be date stamped, reviewed to determine if it meets the requirements of 5 U.S.C. 552, logged in, assigned an action number, suspensed, and attached to a FOIA cover sheet (Appendix A) with instructions for forwarding to the appropriate personnel. A copy of DD Form 2086 (Appendix B) will also be attached to the FOIA request.

(2) A copy of the request will be *handcarried* by PAO to the designated HQ, DNA, action office(s) or forwarded to AFRRI or FCDNA as appropriate. The office or component providing input for the FOIA request must keep track of the request and meet the PAO suspense. The HQ DNA input, or negative response if there are no records available, will be *handcarried* to PAO. AFRRI will send the recommended response in daily distribution. FCDNA will telefax the proposed response in addition to mailing the original. All FOIA actions must include a completed DD Form 2086 (Appendix B). Each office acting on FOIA requests will indicate on the form the search, review/excise and coordination time spent processing the FOIA action, and provide the number of pages copied.

(3) The DNA PAO will prepare the response to the requester and coordinate it with the offices that provided input, the GC, and if appropriate, ISCM, the IDA, and the Director, DNA. The PAO will maintain files of all FOIA actions per DNA Instruction 5015.4B.[5]

(4) *FOIAs involving classified information:* When ISCM receives a classified document from PAO for processing under the FOIA, it will conduct a FOIA, it will conduct a security review to determine if the document may be sanitized or declassified. Most DNA documents requested under the FOIA are queued on a first-come, first-served basis and shall be reviewed in that order. When ISCM determines that part or all of the information in a classified document may be sanitized or declassified, ISCM will ensure that the appropriate copies are ordered from the Defense Technical Information Center (DTIC). The DTIC copy will be marked up during review. Cases not placed in queue will be suspensed by PAO. They may include documents with less than 10 pages or documents under suspense from other organizations which require a DNA review. All DNA documents reviewed by ISCM will be marked with a special pen that does not permit photocopying of the classified portions.

(i) When Field Command Security Division (FCSS) receives a classified document for processing under the FOIA, it will conduct a security review to determine if the document may be sanitized or declassified. When FCSS determines that part or all of the information in a classified document may be sanitized or declassified, FCSS will make a copy which will be marked up during review. Upon completion of its review, FCSS will provide the marked up document and a sanitized version of the document to PAO.

(ii) When ISCM/FCSS completes its review, ISOM/FCSS will forward the master copy to the appropriate technical office(s) for review. That office will determine whether the information is releasable and provide its response to ISCM/FCSS. If the office recommends that part or all of the information be withheld, then it must forward a detailed response providing the appropriate exemption(s) and justification for withholding. ISCM will forward the results of both reviews to PAO for further processing prior to sanitization of any unclassified information.

(iii) If either ISCM/FCSS or the DNA office reviewing the action recommends additional review by another agency, they will provide the full name and address of that agency with a technical point-of-contact, if known. PAO will forward the action to that organization for further review. When PAO receives that organization's review determination, it will forward the results to ISCM. After all reviews are

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[4] See §291.6 for information on how to obtain copies.

[5] See footnote 4 to §291.6(a).

BEST COPY AVAILABLE

completed, ISCM/FCSS will sanitize the document and handcarry (FCSS will forward) the sanitized as well as the marked up copy to PAO for final processing.

(iv) Upon PAO request, the technical office(s) will sanitize the unclassified information that is being withheld. Sanitization will be done on a photocopy of the document or on a document that has been obtained from DTIC.

(5) *FOIAs involving unclassified information:* The appropriate technical office(s) will review unclassified documents for release under the FOIA. If the office(s) determines that part or all of the document should be withheld, it must provide PAO a written recommendation with the appropriate exemption(s) and detailed reasons for withholding the information.

§291.7 Administrative instruction.

(a) FOIA requesters shall clearly mark their requests as such, both on the envelope and in the body of the letter. Identification of the record desired is the responsibility of the FOIA requester. The requester must provide a description of the desired record that enables DNA to locate it with a reasonable amount of effort. The Act does not authorize "fishing expeditions". FOIA requests should be sent to the following address: Defense Nuclear Agency, Attention: PAO (FOIA), Washington, DC 20305–1000. Requester failure to comply with this section shall not be sole grounds for denial of requested information.

(b) FOIA appeals must be clearly marked as such, both on the envelope and in the body of the letter. Persons appealing DNA denial letters should include a copy of the denial letter, the case number, a statement of the relief sought and the grounds upon which it is brought. Appeals should be sent to the following address: Director, Defense Nuclear Agency, Washington, DC 20305–1000.

(c) The time limitations for responding to legitimate FOIA requests are:

(1) Determinations to release, deny or transfer a record shall be made and the decision reported to the requester within 10 working days after the request is received in PAO.

(2) If additional time is needed to respond to a request, the requester will be notified within the 10-day period. In the event of a backlog of FOIA requests, or unusual circumstances, an interim letter will indicate that requests will be answered in turn.

(3) If a request for a record is denied and the requester appeals the decision of the IDA, the requester must file the appeal so that it reaches DNA no later than 45 calendar days after the date of the initial denial letter. A final determination on the appeal normally shall be made within 20 working days after receipt. If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If an appeal is denied, the Director, DNA, will notify the requester of the right to Judicial review of the decision.

(d) If DNA denies the requested document in whole or in part, the response must include detailed rationale for withholding information and the specific exemption that applies so the requester can make a decision concerning appeal. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. Denial letters must also include the name and title of the IDA, and cite the name and address of the Director, DNA, as the appellate authority.

(e) All final responses will address the status of fees collectable under the FOIA. Fees less than $15 will be waived.

(f) A formal reading room for the public, as defined in DoD 5400.7–R, does not exist at DNA (HQ, FCDNA or AFRRI) because of security requirements for the building. However, the PAO will arrange for a suitable location and escort, if required, for members of the public to review DNA documents released under the FOIA. In addition, documents released under the FOIA are sent to the NTIS.

§ 291.8 Exemptions.

(a) *General.* (1) Records that meet the exemption criteria listed in paragraph (b) of this section may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to a FOIA request.

(2) An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of DNA or higher authority, no jeopardy to the government would be served by release. If DNA determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in the following, DNA shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

(b) *Exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law:

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by issuances, such as DoD 5200.1–R [6] and DNA Instruction 5200.1C [7]. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified.

(2) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of DNA if their release to the public would substantially hinder the effective performance of a significant function of DNA and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines and manuals for DNA investigators, inspectors, auditors, or examiners that must remain privileged in order for DNA to fulfill a legal requirement.

(ii) Personnel and other administration matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Lists of DNA personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public.

(3) *Number 3.* Those containing matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 140c.

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(4) *Number 4.* Those containing trade secrets or commercial or financial information that DNA receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence.

(iv) Financial data provided if confidence by private employers in connection with locality were surveys that are used in fix and adjust pay schedules applicable to the prevailing wage rate of employees within DNA.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with Title 10, U.S.C. 2320–2321. Technical data developed exclusively with federal funds may be withheld under Exemption 3 if it meets the criteria of Title 10, U.S.C. 140c.

(5) *Number 5.* Except as provided in paragraphs (b)(5) (ii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters that are reflected in records pertaining to the decision making process of any agency, whether within or among agencies (as defined in 5 U.S.C. 552 or within or among DoD components).

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the DNA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DNA component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(F) Records that are exchanged among DNA personnel as part of the preparation for anticipated administrative proceedings by DNA, or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of DNA when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

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[6] See footnote 1 to § 291.1.

[7] See footnote 4 to § 291.6(a).

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. (See § 291.8(b)(2)). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Could reasonably be expected to disclose the identity of a confidential source including a source within DNA, a state, local or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose confidential information furnished from a confidential source and obtained by a criminal agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life, or the physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DNA when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within DNA, or a lawful national security intelligence investigation conducted by an authorized agency or office within DNA. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigate records currently available by law (such as the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requestor of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

BILLING CODE 3810-01-M

Appendix A—Freedom of Information Action (DNA Form 524)

CONTROL NO. ____________________
(Refer to this number in all correspondence.)

TO: ____
Directorate/Branch/Staff Section

INFORMATION REQUIRED IN PAO NLT ____________________

DNA SUSPENSE DATE ____________________ IN ACCORDANCE WITH FREEDOM OF INFORMATION ACT (5 USC 552).

CALL PAO, 57095/57306, IF YOU HAVE ANY QUESTIONS.

SPECIAL
INSTRUCTIONS: ____

RECORD TIME SPENT ON REQUEST ON ENCLOSED DD FORM 2086.

DO NOT PLACE IN DISTRIBUTION. CALL 57095/57306 FOR PICKUP, OR HANDCARRY TO PAO, ROOM 111.

DNA FORM 524 (5 JUN 86)
(PREVIOUS EDITION MAY BE USED UNTIL SUPPLY IS EXHAUSTED)

BILLING CODE 3810-01-C

Appendix B—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086)

See Appendix E of § 286.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1988.

[FR Doc. 88-6277 Filed 3-22-88; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Freedom of Information Act; Exemptions From Public Access to Agency Records

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is updating its regulations so that they conform to the statutory language changes made by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), and incorporate the statutory language of 5 U.S.C. 552 (c)(1) and (c)(2) which were added by that Act. The effect of this regulation is simply to make 38 CFR 1.554 consistent with the statutory language.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Steven McPherson, Paperwork Management and Regulations Service (733), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3648.

SUPPLEMENTARY INFORMATION: On November 13, 1987, the VA published on pages 43625-43626 of the **Federal Register** a notice of proposed rulemaking. Interested people were given 30 days to offer comments, recommendations or suggestions. No comments were received. Therefore, the proposed regulations are adopted as final.

The Freedom of Information Act (FOIA) permits records to be withheld under any of nine exemptions. One of these exemptions allows withholding of records compiled for law enforcement purposes. 38 CFR 1.554(a)(7) implements the law enforcement exemption within the VA. The Freedom of Information Reform Act of 1986 revised the language of the law enforcement exemption. For example, exemption (b)(7) of the FOIA statute originally read "investigatory records compiled for law enforcement purposes." The revised statutory wording deletes the qualifying word "investigatory" and adds "or information." Since VA's regulation uses the same wording as the statute, it is necessary to amend the regulation to conform to the revised wording of the statute.

In addition, a new paragraph is added to 38 CFR 1.554 to also incorporate verbatim the statutory language of 5 U.S.C. 552 (c)(1) and (c)(2). This new statutory language authorizes agencies to treat certain law enforcement records and information as not subject to the Freedom of Information Act in certain limited circumstances.

The Administrator hereby certifies that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this final regulation simply repeats, and makes VA regulations consistent with, the language of Pub. L. 99-570; it imposes no new administrative or paperwork burdens. It will have no significant direct impact on small entities (i.e., small businesses, small private and non-profit organizations, and small governmental jurisdictions).

The VA has determined that this final regulation is non-major in accordance with Executive Order 12291, entitled Federal Regulation. This final regulation will not have a $100 million annual impact on the economy; nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Employment, Government employees, Freedom of Information Act, Privacy, Government property.

Approved: March 1, 1988.

Thomas K. Turnage,

Administrator.

PART 1—[AMENDED]

In 38 CFR Part 1, *General,* § 1.554 is amended by revising paragraph (a)(7), adding paragraph (c), and adding citations at the end of paragraphs (a)(7) and (c) to read as follows:

§ 1.554 Exemptions from public access to agency records.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information;

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(Authority: 5 U.S.C. 552(b)(7))

* * * * *

(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and

(i) The investigation or proceeding involves a possible violation of criminal law, and

(ii) There is reason to believe that

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(Authority: 5 U.S.C. 552(c)(1) and (c)(2))

[FR Doc. 88-6278 Filed 3-22-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 33

[OSWER-FRL-3353-4]

Small Purchase Procurement Procedures; Deviation

AGENCY: Environmental Protection Agency.

ACTION: Deviation to rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a class deviation from the provisions of 40 CFR 33.305, 33.310, and 33.250(a) of its Procurement Under Assistance Agreements regulation (40 CFR Part 33). This deviation applies to recipients of financial assistance under EPA's Technical Assistance Grant (TAG) program (Catalog of Federal Domestic Assistance Number 66.807). This deviation allows these recipients to use small purchase procurement procedures if the aggregate amount of any one procurement transaction does not exceed $25,000. Without the deviation, small purchases are limited to those costing $10,000 or less.

EFFECTIVE DATE: March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20560, (202) 382-5296.

Date: March 2, 1988.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

Date: February 25, 1988.

Thaddeus L. Juszczak, Jr.,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-6290 Filed 3-22-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 9E2249/R941; FRL-3353-1]

Pesticide Tolerance for Pentachloronitrobenzene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide pentachloronitrobenzene and its metabolites in or on the raw agricultural commodities collards, kale, and mustard greens. The Interregional Research Project No. 4 IR-4) petitioned for this tolerance.

EFFECTIVE DATE: March 23, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 9E2249/R941], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 20, 1988 (53 FR 1495), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 9E2249 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Georgia.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the fungicide pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA) and methylpentachlorophenyl sulfide (MPCPS) in or on the raw agricultural commodities collards, kale, and mustard greens at 0.1 part per million (ppm). The petition was later amended to propose residues of the fungicide at 0.2 ppm. The petitioner proposed that this use of PCNB and its metabolites on collards, kale, and mustard greens be limited to Georgia based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 11, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.291 is amended by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.291 Pentachloronitrobenzene; tolerances for residues.

* * * * *

(b) Tolerances with regional registration (refer to §180.1 (n)) are established for the combined residues of the fungicides pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA) and methyl pentachlorophenyl sulfide (MPCPS) in or on the following raw agricultural commodities:

Commodities	Parts per million
Collards	0.2
Kale	0.2
Mustard greens	0.2

[FR Doc. 88-6291 Filed 3-22-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3352-5]

40 CFR Part 228

Ocean Dumping; Proposed Site Designation for San Juan, PR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located offshore of San Juan Harbor, Puerto Rico for the disposal of dredged material removed from San Juan Harbor and vicinity. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on April 22, 1988.

ADDRESSES: Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU) Room 2904 (rear) 401 M Street Southwest, Washington, DC 20460;
EPA Region II Library, Room 402, 26 Federal Plaza, New York, NY 10278;
EPA Region II, Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907.

FOR FURTHER INFORMATION CONTACT: Mario Del Vicario, 212-264-5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was extended on August 19, 1985 (50 FR 33338). That list established the San Juan site as an interim site and extended its period of use until July 31, 1988, or until final rulemaking is completed, whichever is sooner. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

The EPA prepared a final EIS entitled "Environmental Impact Statement for the San Juan Harbor, Puerto Rico Dredged Material Site Designation." On August 13, 1982, a notice of availability of the drafts EIS for public review and comment was published in the **Federal Register** (47 FR 35335). The public comment period on this draft EIS closed September 27, 1982. On February 4, 1983, a notice of availabilty of the final EIS for public review and comment was published in the **Federal Register** (48 FR 5308). The public record on the final EIS closed March 7, 1983. Anyone desiring a copy of the EIS may obtain one from the address given above.

The final EIS includes the Agency's assessment of the comments received during the comment period on the draft EIS. Comments correcting facts were incorporated into the text and the changes were noted in the final EIS. Specific comments which could not be appropriately treated as text modifications were addressed point by point. Both comments and responses are found in Appendix D of the final EIS.

Primary commenters on the draft EIS were the U.S. Army Corps of Engineers and the Commonwealth of Puerto Rico's Environmental Quality Board and Department of Natural Resources. The Corps of Engineers noted that the draft referred only to maintenance dredging from existing projects. EPA corrected this oversight in the final EIS. The proposed rule would allow disposal of dredged material from new projects as well as existing ones. Comments received from the Environmental Quality Board and the Department of Natural Resources noted that the endangered West Indian manatee has been sighted off the northeastern coast of Puerto Rico. This observation was included in the final EIS. However, no manatees have recently been seen at the site and their passage through the site, if this were to occur, would be short and infrequent. The Department of Natural Resources expressed concern that dumping at the site would introduce toxic wastes into a commercial fishery area inshore of the dump site. Previous monitoring surveys, together with current data, indicate that as a result of the prevailing coastal current system, migrating pollutants are distributed in an east-west and offshore direction away from inshore fishery areas. In addition, elutriate studies using harbor sediments indicate that trace metal contaminant concentrations, after initial dilution, do not exceed EPA chronic marine Water Quality Criteria (WQC). Therefore, it is unlikely that the dredged material disposal activities in conjunction with the coastal patterns would adversely impact inshore commercial fishing areas.

One comment was received on the final EIS. The Corps of Engineers recommended that the interim site be designated for continuing use. This rule reflects acceptance of this comment.

Dredged material from new projects may be dumped at this site upon completion of an appropriate case-by-case evaluation of the impact of such material on the site. This analysis must demonstrate that the impact would not be unacceptable. EPA plans to monitor ambient water quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Additional monitoring of impacts would be required if dredging volumes or characteristics of the dredged materials change significantly to assure that adverse effects on the ecosystem do not develop. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

Based upon the information reported in the EIS, EPA today designates the existing San Juan Harbor site for continuing use for the ocean disposal of dredged material where applicants have demonstrated compliance with EPA's ocean dumping criteria.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this dredged material disposal site will not affect the endangered species under their jurisdiction.

The action discussed in the EIS is the designation for continuing use of an ocean disposal site for dredged material located in the Atlantic Ocean in the vicinity of San Juan Harbor. The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Port of San Juan and nearby coastal areas. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Site Designation.

The site is a rectangle located approximately 2.2 nautical miles north-northwest of the entrance to San Juan Harbor, with the following coordinates:

18d 30' 10"N, 66d 09' 31"W;
18d 30' 10"N, 66d 08' 29"W;
18d 31' 10"N, 66d 08' 29"W;
18d 31' 10"N, 66d 09' 31"W.

The site occupies an area of approximately one square nautical mile, and water depths within this area range from 200 to 400 meters. Disposal operations at the site began in 1974.

All of the dredged material disposed at the designated site will be from dredging operations in the Port of San Juan, Puerto Rico and coastal areas within 20 miles of the Port entrance. The total amount of dredged material dumped at the site since 1974 has been approximately 4.3 million cubic yards. Maximum quantities of dredged material to be disposed at this site are to be determined by both EPA and the Corps of Engineers. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

General criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, further use of the site will be terminated as soon as suitable alternative disposal sites can be designated. These general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The disposal site's location has been chosen to minimize the interference of disposal activities with other activities in the marine environment. The site is not located in major shipping lanes. While there is potential for oil and gas exploration in the area, no serious conflict with such activities is expected. Coordination with future leasing activities should effectively avoid potential conflicts [§ 228.5(a)]. Temporary perturbations in water quality from dredged material disposal can be expected to return to ambient levels before reaching any beach, shoreline or known geographical limited fishery or shellfishery [§ 228.5(b)]. Based upon disposal site evaluation studies presented in the EIS, the designated site satisfies the criteria for site selection set forth in §§ 228.5–228.6 [§ 228.5(c)]. The disposal site has been limited in size in order to localize, identify and control any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts [§ 228.5(d)]. The location of the site satisfies the statutory preference for sites located off the Continental Shelf, where feasible [§ 228.5(e)]. EPA established the 11 specific factors [§ 228.6] to constitute an environmental assessment of the impact of disposal at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the existing site are are viewed below in terms of these 11 factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast [40 CFR 228.6(a)(1).]

The rectangular site is approximately one square nautical mile in size. Its corner coordinates are given above. Water depth ranges from 200 to 400 meters with an average of 292 meters. The center of the site is 2.2 nautical miles from the Isle de Cabras. The bottom drops off steeply to the north. The Insular Slope in this area to the north is characterized by numerous submarine ridges and swales. The bottom sediments within the area of the site average 48 percent silt and 45 percent clay with the balance being sand and gravel.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2).]

The site does not encompass any known unique breeding, spawning, nursery or passage areas of nekton, marine mammals or birds. The open water of the site may be feeding grounds for some wide ranging pelagic fish such as tuna, jacks, and mackerel. Deep waters at the site are feeding grounds for various snappers (blackfin, silk, and vermillion), but the site is not unique in this regard.

3. Location in Relation to Beaches and Other Amenity Areas [40 CFR 228.6(a)(3).]

The site is centered approximately 2.2 nautical miles due north of San Juan. Palo Seco and Punta Salinas, on the coast immediately west of San Juan, are both approximately 2.5 nautical miles from the center of the site. Both are developed beaches which serve metropolitan San Juan.

El Morro, one of the two fortifications in the San Juan National Historical Site, attracts thousands of visitors every year. It is located on a prominence on the western tip of Isle San Juan overlooking the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles to the north in the Atlantic Ocean and can be seen from the fortification.

4. Types and Quantities of Waste Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any [40 CFR 228.6(a)(4).]

Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged material must satisfy EPA criteria before any permits for ocean dumping are issued. None of the material will be packaged in any way.

The Corps of Engineers will continue to perform dredging using Corps-owned hopper dredges. Additional dredging will also be performed by private contractors using hopper, dragline, clamshell, and dipper dredges.

The total amount of dredged material dumped at the site since 1974 has been 4.3 million cubic yards. Maintenance dredging encompassed 1.5 million cubic yards, and dredged material from harbor improvements encompassed 2.8 million cubic yards. Dumping occurs several times a year.

A deepening project of San Juan Harbor has been proposed by the Corps of Engineers. The proposal under consideration consists of a plan for deepening, widening, and possibly realigning and extending the channels, deepening the turning basins, and easing the channel connecting angles within the authorized existing project. If the deepening project is implemented, the volume of dredged material is estimated to be 12,795,000 cubic yards of soft material and rock. Maintenance dredging would be scheduled every two years, and would involve an increase of approximately 185,000 cubic yards per year.

5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5).]

Surveillance of disposal operations at the proposed site could be achieved by helicopter or shiprider.

Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to assure that adverse impacts do not develop. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any [40 CFR 228.6(a)(6).]

Dredged material characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material dredged from San Juan Harbor is primarily silty clay which would increase turbidity during all phases of disposal.

The current regime off the north coast of Puerto Rico is composed of tidal and non-tidal components. Semidiurnal tidal currents rotate in a clockwise direction, whereas wind-driven non-tidal currents are predominantly along shore in a westerly direction. The resulting net surface currents at the site indicate a general westward drift with frequent reversals and a mean speed of 0.6 km/hr. Generally, subsurface currents off the north coast are along shore but weaker then surface currents.

There is no known upwelling of subsurface water at the site. A well-mixed layer of surface water extends to approximately 20 meters in May and to 75–100 meters in January. Below 100 meters, a permanent thermocline exists and inhibits the mixing of surface and bottom waters.

The frequent reversal of currents at the site indicates that elevated levels of suspended sediments associated with dumping would be dispersed parallel to the coast, but not in a specific direction. Surface turbidity would be dispersed rapidly in the mixed layer. Elevated levels of suspended sediments in mid and bottom waters will remain below the thermocline and will also be dispersed in a westerly direction parallel to the coast until the particles settle to the bottom.

At depths averaging 292 meters, the strength of bottom currents is unknown, but sediment information indicates that the area is a depositional environment since the sea floor is relatively undisturbed. Therefore, horizontal movement of dredged material on the sea floor caused by either surface wave action or bottom current is not expected.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area Including Cumulative Effects) [40 CFR 228.6(a)(7).]

Chemical and biological data suggest that previous dumping has created only minor modifications at the site. Oil and grease levels are higher in site sediments; however, levels of other trace contaminants show no consistent trends. Benthic infaunal communities at the interim site show low abundances and diversities similar to the surrounding area. The benthic community is typical of that found in muddy bottom sediments throughout the area (i.e. dominated by small-bodied invertebrate deposit feeders).

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalinization, Fish and Shellfish Culture, Areas Scientific Importance and Other Legitimate Uses of the Ocean. [40 CFR 228.7(a)(8).]

Heavy shipping and cruise ship traffic passes through or in the vicinity of the site. However, past disposal activities have not interfered with the ship traffic.

A modest commercial fishery operates out of San Juan, but most fishing activity is concentrated in the shallow waters, inshore of the site. However, commercial fishing in this area is hampered by rough seas and strong winds throughout most of the year.

The Bureau of Land Management does not plan to lease any part of the north coast for oil or gas extraction. No other mineral extraction occurs at or near the site.

Disposal at the site would not interfere with the other activities listed above.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data, Trend Assessment, or Baseline Surveys. [40 CFR 228.6(a)(9).]

Environmental surveys of the site were conducted in 1980 by an EPA contractor and in 1984 by EPA. Both of these studies revealed water quality and thermohaline structure to other areas of the tropical Atlantic.

Benthic infaunal populations at the site and surrounding regions of similar depth are extremely low in density and dominated by polychaete and sipunculid worms.

Fish fauna at the site are expected to be sparse and composed of wide-ranging pelagic fish, such as tuna, jacks, and mackerel. Deep waters at the site may be inhabited by various species having wide depth ranges (spiny dogish, snappers, conger eels, and batfishes) and species representative of the abyssal slope such as grenadiers.

10. Potential for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(10).]

Survey work at the site has not indicated the development or recruitment of any nuisance species.

There are no components in the dredged material which would attact or recruit nuisance species to the site.

11. Existence at or in Close Proximity to the Site of any significant Natural or Cultural Feature of Historical Importance. [40 CFR 228.6(a)(11).]

El Morro, one of two fortifications within the San Juan National Historic Site, is located on a prominence on the western tip of Isle San Juan and overlooks the Atlantic Ocean. Disposal activities at the site are 2.5 nautical miles north in the Atlantic Ocean and can be seen from the fortification.

E. Response to Comments

On September 24, 1987 EPA proposed designation of this site in the **Federal Register** [52 FR 185]. The proposed rulemaking contained information regarding the site and the circumstances surrounding the request to dispose of dredged material. The Comment period on this proposed rulemaking closed on November 9, 1987. EPA received no responses to this request for comments.

F. Action

The EIS concludes that the site may appropriately be designated for continuing use. The site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the San Juan Dredged Material Disposal Site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region II.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of material at the site. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate permit applications according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the authority to review the applications and to disapprove of the dumping, if it determines that environmental concerns under the Act have not been satisfied.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water Pollution Control.

Dated: March 14, 1988.

Christopher J. Daggett,

Regional Administrator for Region II.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Secs. 1412 and 1418.

2. Section 228.12 is amended by removing and reserving paragraph (a)(1)(ii)(B), and by adding paragraph (b)(54) to read as follows:

§ 228.12 Delegation of Management Authority for Interim Ocean Dumping Sites.

* * * * *

(b) * * *

(54) San Juan Harbor, PR Dredged Material Site—Region II

Location: 18d 30′10″ N°, 66d 09′31″ W°; 18d 30′10″ N°, 66d 08′29″ W°; 18d 31′10″ N°, 66d 08′29″ W°; 18d 31′10″ N°, 66d 09′31″ W°.

Size: 0.98 square nautical miles.

Depth: Ranges from 200–400 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredge material from the Port of San Juan, Puerto Rico, and coastal areas within 20 miles of said port entrance.

[FR Doc. 88–6202 Filed 3–22–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87–1, FCC No. 88–86]

Private Land Mobile Radio Services, Assignment of Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* that modifies the co-channel assignments standards for 800 MHz trunked Specialized Mobile Radio (SMR) systems located in the Seattle, Washington area. This action will increase the minimum co-channel separation requirement from 70 to 105 miles for these systems that are located on certain, specified mountaintops around Seattle. The new requirements will provide increased interference protection in the Seattle area for co-channel 800 MHz SMRs.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, PR Docket 87–1, adopted February 29, 1988, and released March 18, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This proceeding was initiated to address an interference situation first brought to our attention by a group known as the Western Washington Cooperative Interference Committee (WWCIC). This group reported that the 70 mile co-channel separation requirement for 800 MHz trunked SMR systems was insufficient to prevent interference in Seattle because the terrain of this area does not conform with the model used to develop the 70 mile standard. After this report was confirmed by the Commission's Field Operations Bureau, we proposed to increase the minimum separation requirement to 105 miles.

2. In response to the *Notice*, commenters urged the Commission to find a solution which balances the needs of providing increased interference protection without severely limiting frequency reuse in the area. The commenters noted that the problem is largely caused by transmitters located at high elevations and urged that we focus our attention on this aspect of the problem. The Commission agreed with the commenters on this point and, therefore, chose to apply the increased separations only to certain, specified mountains instead of applying an across-the-board increase.

3. The Commission declined, however, to adopt the commenters' proposal that the new requirements should also be applied to non-SMR trunked systems and conventional systems that have exclusive use of a frequency. The Commission stated that there are regulatory and operational differences between trunked SMRs and these other systems, particularly the presence of frequency coordinators, that warrants different assignment standards. Finally, the Commission grandfathered any existing systems except those with authorizations that were conditioned on the outcome of this proceeding and stated that the new requirements will apply to future 900 MHz systems in the Canadian border area when an agreement is reached with the Canadian government on the use of this spectrum in the Seattle area.

Regulatory Flexibility Act Final Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

5. The Secretary shall cause a copy of this *Report and order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), (1981).

Paperwork Reduction Act Statement

6. The action summarized herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

7. Accordingly, it is ordered that, pursuant to authority contained under section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Part 90 of the Commission's Rules is amended effective May 2, 1988.

It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio services.

Amendatory Text

47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

8. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

9. 47 CFR 90.362 is amended by adding new paragraph (c)(3) to read as follows:

§ 90.362 Selection and assignment of frequencies.

* * * * *

(c) * * *

(3) Trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 168 km (105 miles). Locations within one mile of the geographical coordinates listed in the table will be considered to be at that site.

Site name	North latitude	West longitude
Mont Constitution	48-40-46	122-50-24
Lyman Mountain	48-35-42	122-09-35
Cultus Mountain	48-25-31	122-08-54
Gunsite Ridge	48-03-23	121-51-37
Gold Mountain	47-32-52	122-46-52
Buck Mountain	47-47-06	122-59-30
Cougar Mountain	47-32-40	122-06-30
Squak Mountain	47-30-15	122-03-30
Tiger Mountain	47-30-14	121-58-28
Devils Mountain	48-21-53	122-16-02
McDonald Mountain	47-20-12	122-51-26
Maynard Hill	48-00-59	122-55-31
North Mountain	47-19-06	123-20-44
Green Mountain	47-33-41	122-48-27
Capitol Peak	46-58-22	123-08-17
Rattlesnake Mountain	47-28-10	121-49-13
Three Sisters Mountain	47-07-20	121-53-30
Grass Mountain	47-12-15	121-47-38
Spar Pole Hill	47-02-52	122-08-35

10. 47 CFR 90.615 is revised to read as follows:

§ 90.615 Frequencies available for conventional systems in the 806–809.750/851–854.750 MHz bands.

Channels 1–150 are available to eligible applicants in all services only for conventional system use. The frequencies are available in areas farther than 110 km. (68.4 miles) from the U.S./Mexico border, and farther than 140 km. (87.0 miles) from the U.S.-Canadian border.

11. 47 CFR 90.621 is amended by adding new paragraph (b)(3), and by revising paragraph (c) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(3) SMR trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 168 km (105 miles). Locations within one mile of the geographical coordinates listed in the table will be considered to be at that site.

Site name	North latitude	West longitude
Mount Constitution	48-40-46	122-50-24
Lyman Mountain	48-35-42	122-09-35
Cultus Mountain	48-25-31	122-08-54
Gunsite Ridge	48-03-23	121-51-37
Gold Mountain	47-32-52	122-46-52
Buck Mountain	47-47-06	122-59-30
Cougar Mountain	47-32-40	122-06-30
Squak Mountain	47-30-15	122-03-30
Tiger Mountain	47-30-14	121-58-28
Devils Mountain	48-21-53	122-16-02
McDonald Mountain	47-20-12	122-51-26
Maynard Hill	48-00-59	122-55-31
North Mountain	47-19-06	123-20-44
Green Mountain	47-33-41	122-48-27
Capitol Peak	46-58-22	123-08-17
Rattlesnake Mountain	47-28-10	121-49-13
Three Sisters Mountain	47-07-20	121-53-30
Grass Mountain	47-12-15	121-47-38
Spar Pole Hill	47-02-52	122-08-35

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, and Business categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Applicants should be aware that in some areas, *e.g.*, Seattle, Los Angeles, and northern California, separations greater than 70 miles may be appropriate. Separations will be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed

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system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

* * * * *

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-6314 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 56
Wednesday, March 23, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California and Table Grapes Imported Into the United States; Proposed Change in Minimum Size Requirements for Perlette Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum berry size for California Perlette grapes and imported Perlette grapes from 9/16 to 10/16 of an inch starting with the 1989 crop season. This action is intended to provide fresh markets with Perlette grapes of desirable size and promote consumer acceptance of these grapes.

DATE: Comments must be received by April 22, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes subject to regulation under this marketing order, and approximately 85 desert grape producers. Also, there are approximately 50 grape importers subject to the requirements of the table grape import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California desert grapes and importers of table grapes may be classified as small entities.

The California Desert Grape Administrative Committee's 1987 Annual Report indicated that table grape shipments for 22 pound boxes had totals in the past three seasons of 7,364,853 in 1987, 8,189,994 in 1986, and 7,441,364 in 1985. The decrease in last year's production was due to inclement weather conditions. Bearing acreage of 18,815 in 1987 was 722 acres more than the 18,093 acres reported in 1986. Available forecasts indicate that table grape supplies should be comparable to those in recent seasons.

Table grape producers are improving their cultural practices to remain competitive and to meet the expectations of the consumer. Table grapes compete with over 250 other items in supermarket produce sections. Since table grapes are usually an impulse item, purchases are based on eye appeal.

Total shipments in 1987 of 22 pound boxes of Perlette grapes were 2,693,356 or approximately 36 percent of the total shipments for all varieties.

Based on prices provided by the Federal-State Market News Service and the committee's handling cost figures, it is estimated that the on-vine value of California Perlette grapes approximated $23.1 million in 1987. This represents about 45.4 percent of the total value of all varieties of grapes grown in the production area.

Perlette grapes were the dominant variety shipped out of the production area during the last crop year. The "production area" is Imperial County, California, and part of Riverside County and San Diego County, California.

The proposed rule would change the handling regulation specified at 7 CFR in § 925.304 (50 FR 18851, May 3, 1985; 50 FR 32161, August 8, 1985; 51 FR 12501, April 11, 1986; 51 FR 13209, April 18, 1986; 51 FR 16285, May 2, 1986; 52 FR 8865, March 20, 1987; 52 FR 20382, June 1, 1987; 52 FR 24443, July 1, 1987) to increase the minimum berry size for California Perlette grapes regulated under the marketing order from 9/16 to 10/16 of an inch in diameter.

Changes would be made in §§ 925.304(a) and 944.503(a)(1) to increase the size of California desert grape shipments and table grape imports by increasing the minimum berry size for the Perlette grape variety. This proposal is being issued pursuant to § 925.52 of the order.

Members of the committee believe that increasing the minimum berry size for Perlettes would better meet the demands of the consumer. The larger berries of this variety would tend to produce a more attractive and uniform pack. Requiring handlers to ship only larger size grapes, which are more desirable in the marketplace, would be expected to foster increased consumption and have a positive impact on the industry. Furthermore, the committee believes the proposed increase in the minimum berry size requirement would help consumers identify and distinguish the green-colored, round Perlette grape from other grape varities of similar color.

Quality assurance is very important to the California desert grape industry. Providing the public with acceptable quality fruit which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action increases the quality of Perlette grapes in the marketplace, it would also be of benefit to both California desert grape producers and handlers. This action would not adversely affect marketable supplies of grapes.

This action, if approved, would not become effective until the 1989 crop season. This would afford producers the time necessary to change their cultural practices in order to meet the increased minimum berry size requirement.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Because this proposal would increase the minimum berry size for California Perlette grapes under M.O. 925, this change would be applicable to imported Perlette grapes during the period (April 20 to August 15 each year) that the domestic handling requirements are in effect.

Chile and Mexico are the two main sources of Perlette grape imports to the United States. Imports of Perlette grapes from Chile would be unaffected by this rule because harvesting and shipping of this variety are completed in January, and the domestic handling regulations do not become effective until April 20.

However, the Mexican grape shipping season runs concurrently with that for California desert grapes which are regulated under Marketing Order 925.

During 1987, U.S. imports of Mexican grapes totaled 2,597,926 lugs. Of this total, 28 percent represented grapes of the Perlette variety.

While this proposal would increase the minimum berry size for domestic and imported Perlette grapes for the 1989 crop year, exemptions from requirements under the domestic handling regulation would remain unchanged for shipments of the Emperor, Almeria, Calmeria, and Ribier grape varieties. These varieties are exempt from handling requirements because they are not grown in the production area. Imports of these varieties also are exempt from import regulation requirements (§ 944.503, Table Grape Import Regulation 4; 51 FR 12501, April 11, 1986; 51 FR 13209, April 18, 1986; 52 FR 8865, March 20, 1987).

Organically grown grapes are exempt from the berry size requirements, and the handling of grapes for processing (raisins, crushing, and other by-products) is exempt from size, quality, and container requirements. These exemptions are specified in § 925.304(c) and (d).

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes, California.

7 CFR Part 944

Fruits, Import regulations, Grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 925 and 944 be amended as follows:

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Section 925.304 is amended by revising paragraph (a) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that (1) grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

* * * * *

PART 944—FRUITS, IMPORT REGULATIONS

3. Section 944.503 is amended by revising paragraph (a)(1) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that (1) grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

* * * * *

Dated: March 18, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-6346 Filed 3–22–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1261–88]

Revision of Department of Justice Business Information; FOIA Regulation Implementing Executive Order 12600

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This notice sets forth a proposed revision of a procedural regulation of the Department of Justice, 28 CFR 16.7, setting forth the procedures to be followed in notifying submitters of business information that such information has been requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. It is proposed that this provision be amended to bring it into conformity with the provisions of Executive Order 12600, 52 FR 23781 (1987). Additionally, this proposed revision modifies the language of the provision for purposes of clarity.

DATE: Comments must be received on or before April 22, 1988.

ADDRESS: Comments should be directed to: Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530; ((202) 633-3642).

SUPPLEMENTARY INFORMATION: The major substantive change made in this proposed revision is the elimination of one of the exceptions to the provision's notice requirement. Currently, under § 16.7(g), notice need not be given if "[t]he component is a criminal law enforcement agency that acquired the information in the course of a lawful investigation of a possible violation of criminal law." The elimination of this exception is necessary to bring the provision into conformity with Executive Order 12600. Additionally, the notice provision of § 16.7(c) is proposed to be simplified, in redesignated paragraph (d), in a manner consistent with both Executive Order 12600 and the existing ten-year designation-effectiveness provision carried over into new paragraph (e). Finally, the clarifying language modifications that are proposed, which are entirely procedural in nature and conform to the provisions of Executive Order 12600, include a specific definition subsection and a separate subsection on submitter designation of information.

This proposed rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 9701.

2. Section 16.7 is revised to read as follows:

§ 16.7 Business information.

(a) *In general.* Business information provided to the Department of Justice by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

"Business information" means commercial or financial information provided to the Department by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

"Submitter" means any person or entity who provides business information, directly or indirectly, to the Department. The term includes, but is not limited to, corporations, state governments and foreign governments.

(c) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a Freedom of Information Act request or administrative appeal encompassing its business information wherever required under paragraph (d) of this section, except as is provided for in paragraph (i) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under Exemption 4, or

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Designation of business information.* Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Such designations shall be deemed to have expired ten years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, a component shall afford a submitter a reasonable period of time within which to provide the component with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(h) *Notice of FOIA Lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the component shall promptly notify the submitter.

(i) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous; except that, in such case, the component shall provide the submitter with written notice of any final administrative decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Dated: March 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–6240 Filed 3–22–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI), in cooperation with the USDA, Soil Conservation Service (SCS), previously has published a proposed rule which would amend certain portions of its rules applicable to prime farmland. Among other actions, the proposed rules would have amended the existing water body exemption in consideration of the U.S. District Court's decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C., October 1, 1984) Mem. Op. at 14–24.

OSMRE is now reopening the comment period on the issue of allowing the creation of a water body within a permit area containing prime farmland.

DATES: The comment period on the water body issue of the proposed rule is reopened until April 22, 1988.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Water Body Issue
III. Specific Comments Requested

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, contains special permitting and performance standards governing mining on prime farmland as defined in section 701(20) of the Act. Permit application information and approval requirements are contained in sections 507(b)(16), 508(a)(2)(C), 508(a) (5) and 510(d) of the Act.

Section 507(b)(16) of the Act requires that permit applications include a soil survey for those lands in the application which a reconnaissance inspection suggests may be prime farmland. Section 508(a)(2)(C) of the Act requires that permit applications contain a statement of the productivity of the land prior to mining including the appropriate classification as prime farmland, as well as the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management. Section 508(a)(5) of the Act requires a plan for soil reconstruction, replacement, and stablization pursuant to the prime farmland performance standards of section 515(b)(7) of the Act. Moreover, section 510(d)(1) of the Act provides that the regulatory authority shall grant a permit to mine on prime farmland only after consultation with the Secretary of Agriculture, and if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 515(b)(7).

Statutory performance standards for prime farmland are found in sections 515(b)(7) and (b)(20) of the Act. Section 515(b)(7) sets forth minimum requirements for soil removal, storage, replacement, and reconstruction. Section 515(b)(20) establishes when the period of responsibility for successful revegetation begins and provides an exception to vegetative cover requirements when the regulatory authority makes a written finding approving a long-term, intensive, agricultural postmining land use. In addition, section 519(c)(2) states that performance bonds shall not be released until soil productivity for prime farmland has returned to equivalent levels of yield as unmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey. Rules implementing prime farmland permitting, bonding and performance provisions are found at 30 CFR 785.17, 800.40 and 823.

On March 25, 1987 (52 FR 9644), OSMRE issued a proposed rulemaking which included an exemption for water bodies created on permit areas containing prime farmland. In that notice, OSMRE solicited public comments and made provisions to hold public hearings upon request. During the 70-day comment period, comments were received from industry, government agencies, and citizen/environmental groups. No public meetings or hearings were requested, and non were held.

II. Discussion of Water Body Issue

OSMRE stated in 1979 that "last cut" lakes were acceptable as an alternative post-mining land use on prime farmland (44 FR 15087). However, a specific exemption from the Part 823 performance standards for prime farmland was first added to the rules in 1983 (48 FR 21446). In *In re: Permanent II*, the National Wildlife Federation challenged the 1983 exemption at § 823.11(b), which set forth an exclusion from the prime farmland performance standards for water bodies that had been approved by the regulatory authority as an alternative postmining land use. The district court struck down the exemption and held that it provided a broad and impermissible variance from the postmining use of prime farmland. *In re: Permanent II,* No. 79–1144, pp. 19–21.

On January 29, 1988 the U.S. Court of Appeals, D.C. Circuit, upheld that decision by the U.S. District Court for the District of Columbia on the issue of the construction of water impoundments on Prime Farmland. The Appeals Court's decision comes at a time when the Office of Surface Mining Reclamation and Enforcement (OSMRE) is in the process of preparing a final rule. To ensure that the final rule will be responsive both to the Court decisions and to comments received on the proposed rule, OSMRE is making a careful examination of certain issues involving the restoration of prime farmland and related to the creation of water bodies on permit areas containing prime farmland.

Section 785.17(e)(1), as proposed on March 25, 1987 (52 FR 9644) provided an exemption from the prime farmland standards for water bodies where the total acreage of prime farmland is not decreased in the permit area. Under that proposed rule and subject to the approval of the regulatory authority, an operator would be able to install a water body on an area that prior to mining contained prime farmland soil as long as the prime farmland soils obtained from the excavation of the water body were handled in a manner consistent with Part 823 and the same prime farmland soils were utilized to reconstruct an equal amount of prime farmland on areas which were not prime farmland areas prior to mining. under that proposal §§ 785.17(e)(1) and 823.11(b) would work in tandem to authorize such relocation of prime farmland. OSMRE viewed proposed § 785.17(e)(1) as consistent with the prime farmland provisions of the Act which are meant to maintain the number of prime farmland acres at premining levels as well as maintain the soil productive capacity of those lands.

The district court's decision overturning the exemption for last-cut impoundments on prime farmland was affirmed by the D.C. Court of Appeals, which noted that § 823.11(b) "condones reclaiming land that had been prime farmland prior to mining by constructing a permanent water impoundment * * *." The court then states, "Beyond question, Congress did not intend to allow any mined prime farmland to be left altogether unreclaimed," and SMCRA section 515(b)(7) requires "that *all* prime farmland reclamation *shall* 'as a minimum,' be conducted pursuant to the statutorily enumerated requirements" for reclamation. The court then noted that section 515(b)(7) "plainly supports the district court's conclusion that a general exception for water impoundments authorizes impermissible post-mining uses of prime farmland." Lastly, the appeals court noted that "[t]he district court * * * most plausibly comprehended Congress to have ordered that permanent water impoundments unconnected to prime farmland use not be constructed on prime farmland." *NWF* v. *Hodel,* No. 84–5743 at 46–51. (D.C. Cir., January 29, 1988)

OSMRE no longer believes that an exemption to the prime farmland rules is necessary to allow operators to create water bodies within permit areas containing prime farmland so long as the aggregate premining prime farmland acreage within the permit area is retained. Upon further examination OSMRE believes that with normal permitted relocation of reclaimed soils on sites which are not 100 percent prime farmland, a site on which non-prime farmland soil would otherwise be relocated may be used to create a water body under existing requirements and practices. The shifting of prime farmland soils from a pre-mining location to a post-reclamation location is currently authorized and can properly be considered part of normal practice in restoring prime farmland pursuant to Part 823. This position is not new. Since 1979, OSMRE has authorized the relocation of prime farmland soils within the permit area. OSMRE stated in a brief filed with the Federal District Court that "The Secretary's regulations provide that small or odd-shaped plots (of prime farmland) can be consolidated and relocated in meeting the reclamation standards of the Act. The only limitations on soil placement pertain to restoration of the soil to insure its productive capacity. There is no requirement, however, that the reconstructed prime farmland soil be placed in the same location as before mining. Therefore, so long as the aggregate amount of prime farmland that is restored equals the amount that existed before mining, the Secretary's reconstruction requirements will be satisfied." *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144 (D.D.C. 1979), Memorandum in support of cross-motion for summary judgment filed December 21, 1979, at pp. 100–101. As a specific example, with the encouragement of OSMRE and the SCS, small odd-shaped parcels of prime farmland have been consolidated and relocated in the State of North Dakota, to the benefit of both the mine operator and the landowner/farmer. Documentation of this practice has been placed in the administrative record.

Furthermore, the normal process of mining and reclamation for a typical surface mine in the midwest will relocate prime farmland soils three to four spoil ridges from the original location in situations not requiring soil storage. The mine operator ordinarily will replace the prime farmland soils as close to the original prime farmland location as practicable, to avoid unnecessary costs for transporting soils. When shifting of prime farmland soil location is part of a complete mining and reclamation plan, relocation of prime farmland soil will be kept to a minimum, will be reviewed and concurred in by the USDA, Soil Conservation Services (SCS), and must still meet the prime farmland soil reconstruction and bond release standards.

Viewed in the context of typical soil reclamation practices and applicable restrictions on locations, acreage, and productivity, the placement of prime farmland soils to accommodate the creation of water bodies can be properly considered as being no different than any other normal and routine relocation of prime farmland soils within a permit area during the reclamation and restoration process. Consequently, no exemption need be created to allow this practice so long as the pre-mining prime farmland acreage in the permit area is not decreased, any water body created is located on the post-reclamation non-prime farmland portion of the permit area, and all resulting prime farmland meets the soil reconstruction and productivity standards of Part 823. The ultimate effect of such relocation is that certain non-prime farmland soils will be replaced by the impoundment, and the post-mining prime farmland acreage is maintained and relocated within the permit area in a manner and to a degree which has been approved by regulatory authorities in the past.

Because OSMRE referred in the March 25, 1987 proposed rule to such a change in land use as a proposed "exemption" where the total acreage of prime farmland is not decreased in the permit area, OSMRE now wishes to make clear that no exemption from the prime farmland criteria will be provided in these rules. As stated above, existing rules already allow relocation of prime farmland soils within the permit area. Where non-prime farmland areas are found on permit areas, these areas may be subjected to land use changes, including the creation of water bodies, provided the requirements of 30 CFR 779.22, 780.23, 783.22, 784.15, 816.133, and

817.133 are met. Thus, no prime farmland would be left unreclaimed and no prime farmland would be converted to impoundments. OSMRE believes that this approach fully addresses the concerns expressed by the district court and appeals court in *In re: Permanent II* and *NWF* v. *Hodel* (1988).

Therefore, the rules proposed would no longer treat the creation of water bodies as an "exemption" to the Part 823 rules, but would clarify existing practices. Instead of revising section 785(e)(1), as proposed on March 25, 1987, a new § 785.17(e)(5) would be added to read as follows:

"Where the permit area contains less than 100 percent prime farmland acreage, the aggregate total prime farmland acreage before and after mining shall not be decreased."

In addition, paragraph (b) of § 823.11 had been proposed to read as follows:

(b) The requirements of §§ 823.14 and 823.15 shall not apply to impoundments authorized under § 785.17(e)(1) of this chapter.

Because the construction of water bodies in permit areas containing less than 100 percent prime farmland would no longer be viewed as an exemption from the Part 823 requirements, proposed paragraph (b) is unnecessary and, therefore, is eliminated from the changes proposed for § 823.11.

Although the proposed rule language has been revised to reflect OSMRE's altered rationale for allowing the creation of water bodies within permit areas containing less than 100 percent prime farmland, the end result in terms of on the ground effect has not changed from the March 25, 1987 proposal. This proposal continues to require prime farmland soils removed for water bodies to be separately removed, segregated and stockpiled, but not replaced within the impoundment. These prime farmland soils are to be reconstructed in the same way other prime farmlands are reconstructed within the permit area and with the review and concurrence of the USDA, Soil Conservation Service. OSMRE does not intend to allow the disturbance of prime farmland areas which would not otherwise be disturbed by mining operations in order to create prime farmland.

III. Specific Comments Requested

OSMRE is interested in the views of regulatory authorities, SCS State Conservationists, surface mine operators, and any other interested persons on the circumstances under which impoundments may be created within permit areas containing prime farmland. Of special interest to OSMRE are the experiences of the regulatory authorities, SCS State Conservationists, and surface coal mine operators in relocating prime farmland soils within permit areas.

OSMRE is interested in determining with greater specificity (1) how SCS-approved restoration has proceeded in those situations where permit areas contained less than 100 percent prime farmland prior to mining, (2) the extent to which prime farmland soils have been shifted within the permit area from pre-mining to different post-reclamation locations during the typical process of prime farmland restoration, and (3) the extent to which the creation of water bodies has been allowed by regulatory authorities on post-reclamation non-prime farmland portions of permit areas which contained prime farmland soils prior to mining. OSMRE also solicits comments on other reasons for relocating prime farmland soils.

All comment responses should be sent to the OSMRE Administrative Record at the location specified above under "**ADDRESSES.**"

Date: March 18, 1988.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88–6311 Filed 3–22–88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 838

Air Force Systems Command Contractor Performance Assessment

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed part sets policy, assigns responsibilities, and provides implementing procedures for systematically assessing contractor performance on current contracts. The Contractor Performance Assessment Reporting System (CPARS) will assess contractor performance on current AFSC contracts for use in future contract award decisions. These assessments will be prepared by AFSC program directors and forwarded to the contractor for review and comment. This part is limited in scope to predominantly advance development, full-scale development, or production efforts. Research, exploratory development, service, and operations and maintenance efforts are not included.

DATE: Comments must be submitted on or before April 22, 1988.

ADDRESS: HQ AFSC/PKCP, ANDREWS AFB, DC 20334–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Wright, telephone (301) 981–4022.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A list of contractors in CPAR data base and a copy of AFSC Form 125 can be obtained from Ms. Susan Wright at the address shown above.

List of subjects in 32 CFR Part 838

Government contracts.

Therefore, it is proposed to amend 32 CFR, Chapter C, by adding Part 838 to read as follows:

PART 838—AIR FORCE SYSTEMS COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Subpart A—Air Force Systems Command Policies

Sec.
838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).
838.2 Applicability and scope.

Subpart B—Responsibilities Assigned

838.3 HQ AFSC responsibilities.
838.4 Field activity responsibilities.

Subpart C—CPAR Procedures

838.5 Frequency of performance assessment reporting.
838.6 CPAR processing.
838.7 CPAR focal point.
838.8 AFSC Source Selection Offerors Report.
838.9 CPAR markings and protection.
838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).

Authority: 10 U.S.C. 2305(a)(3).

Note: Part 807 of this chapter states Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities.

Subpart A—Air Force Systems Command Policies

§ 838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).

(a) This part establishes policies and procedures for implementing the CPARS. The sole purpose of CPARS is to provide programmatic input into a command-wide performance data base for use in AFSC source selections (reference AFR 70–15, AFSC Supplement 1). Performance assessments will be used to aid in awarding contracts to contractors that consistently produce quality products conforming to our specifications within the established contract schedule and cost. AFSC Form 125, Contractor Performance Assessment Report (CPAR) can effectively be used as a means to communicate contractor strengths and weaknesses to source selection officials. CPARs will not be used for any other purpose than outlined in this paragraph. Specific guidance concerning the protection of CPAR data is provided in § 838.9.

(b) CPARs assess a contractor's positive and negative performance on a given contract during a specified period of time. Each assessment must be based on objective facts and be supportable by program and contract management data, such as cost performance reports, technical interchange meetings, financial solvency assessments, production management reviews, contractor operations reviews, functional performance evaluations and earned contract incentives. Subjective visibility into the causes or ramifications of the assessed performance should be provided; however, speculation, assertion, or conjecture should not be included.

§ 838.2 Applicability and scope.

(a) This part applies to Air Force Systems Command (AFSC) Armament Division, Aeronautical Systems Division, Air Force Contract Management Division, Ballistic Missile Office, Electronic Systems Division, and Space Division. CPARs are limited to predominantly advance development, full-scale development (FSD), or production efforts. Research, exploratory development, service, and operations and maintenance efforts are not included. CPARs must be completed on all contracts over $5 million (face value, excluding unexercised options) with any division or subsidiary of the contractor. When a single contract instrument requires segregation of costs for combining FSD and production efforts or containing multiple productions lots, individual CPARs may be completed for each segment of work.

(b) AFSC field activities may establish local procedures supplementing this part to broaden the application of CPARs to additional contract efforts and contractors for their own use. Submit such procedures to AFSC Vice Commander (AFSC/CV) for approval prior to implementation.

Subpart B—Responsibilities Assigned

§ 838.3 HQ AFSC responsibilities.

(a) HQ AFSC/SD is responsible for ensuring that the overall management and control of the Contractor Performance Assessment System is consistent with this part. Formulating and updating this part is a joint responsibility between HQ AFSC/SD and HQ AFSC/PK.

(b) HQ AFSC/PK is responsible for updating the list of contractors.

§ 838.4 Field activity responsibilities.

The commander or vice commander of each of the applicable field activities:

(a) Establishes procedures to implement this part locally. (Submit one copy of local supplements to HQ AFSC/PK).

(b) Establishes a focal point for the CPAR reports. This focal point is responsible for the collection, control, storage, and distribution of CPARs prepared at the field activity.

(c) Ensures timely completion of CPARs by program managers or directors.

(d) Ensures timely review of CPARs by local reviewing officials.

(e) Ensures submission of AFSC Source Selection Offerors Report (§ 838.8).

Subpart C—CPAR Procedures

§ 838.5 Frequency of performance assessment reporting.

(a) For new contracts, an initial CPAR will be completed between 180 days and 365 days after contract award. For contracts in existence when this system is initiated, the CPAR will be completed no later than 90 days after the effective date of this part (Note: allow 180 days to transpire for new contracts). The initial CPAR will assess current performance; however, prior significant events may be highlighted.

(b) As a minimum, intermediate CPARs will be completed annually. More frequent reporting is required when the program director is aware of a change in performance that would significantly alter the current assessment of the contractor or just prior to a change in program director(s). Generally, no more than two reports a year should be prepared. To improve the efficiency in preparing the CPARs, it is recommended to complete them in parallel with other reviews (for example, Program Assessment Reviews, Command Assessment Reviews, award fee determinations, major program events, or program milestones).

(c) Final CPARs will be completed upon contract termination or within six months following the delivery of the final major end item on contract.

§ 838.6 CPAR processing.

Each AFSC Form 125, Contractor Performance Assessment Report (CPAR) is completed, reviewed, coordinated, and approved within the government. Contractor organizations will be given an opportunity to review and comment upon the program director assessment. Instructions for completing AFSC Form 125 are in § 838.10. The CPAR review and approval process is outlined below:

(a) The project manager or engineer responsible for the contract being reviewed prepares the initial documentation and assessment in coordination with the project team. This assessment should be based on multifunctional input. Support contractors, such as System Engineering and Technical Assistance (SE/TA) or Federal Contract Research Center (FCRC) contractors, may provide input as a project team member but are not allowed access to completed forms unless specifically authorized in support of a source selection. The project manager or engineer must ensure that all documentation so prepared is marked "For Official Use Only/Source Selection Sensitive."

(b) The program director responsible for the overall program reviews and signs the CPAR at item 14. Program director narrative remarks are limited to the space in item 13 on the CPAR plus one additional single-spaced typewritten page.

(c) The program director will retain a copy of the initial CPAR assessments and transmit the original to his or her counterpart within the contractor's organization. Face-to-face meetings with contractor management to discuss initial CPAR ratings are encouraged. The transmittal letter must provide the following guidance to the contractor.

(1) Protect the draft CPAR as a source selection sensitive document.

(2) Strictly control access to the draft CPAR within the contractor organization.

(3) Do not release the draft CPAR to persons or entities outside contractor control or use the draft CPAR data for input to advertising, preaward surveys, production readiness reviews, or other reviews.

(4) Responses are optional, but if provided, they are due within 30 days of receipt and are limited to the space provided on the CPAR plus one additional single-spaced typewritten page. Contractor comments received after the 30 day response period will be returned to the contractor without action.

(5) Focus comments on the objective portion of the program director's narrative and provide views on causes and ramifications of the assessed performance.

(d) After receipt of contractor comments, the program director may revise his or her initial assessment based on data provided by the contractor. Revised assessments must be captured on a new CPAR form marked in item 3 "Revision to CPAR for period (insert period covered by report)" to be attached to the original. Complete items 1 through 4 and indicate revised ratings in items 11 or 12. Explain the reasons for the changes made in the space provided in item 13.

(e) After receipt of contractor comments or 30 days, whichever occurs first, the program director will obtain the review and signature of a product division reviewing official in accordance with local procedures.

(f) After completion of the CPAR, it will be submitted by the program director to the CPAR focal point for input into the Command-wide data base. No copies of the final CPAR will remain on file at the program office. Working papers associated with CPAR evaluations must be protected as "For Official Use Only/Source Selection Sensitive."

§ 838.7 CPAR focal point.

Each local activity CPAR focal point will keep the original CPAR forms and all attachments in separate files for each corporation. Each corporate file will contain separate files for divisions and subsidiaries, as appropriate. Each CPAR will be retained for 5 years, unless the program manager or director requests a longer retention period. For example, a long development program may necessitate longer retention to reflect contractor performance on the entire program. Distribution of CPARs throughout the command in support of an AFSC source selection will be made from one field activity CPAR focal point to another. Source selection team members must contact their local CPAR focal point for CPARs.

§ 838.8 AFSC Source Selection Offerors Report.

In order to keep the CPAR data base current and reflecting the contractors that AFSC evaluates during source selection, an annual listing of offerors is required. The listing must:

(a) Reflect offerors on predominately advance development, full-scale development, production source selections over $5 million (face value, excluding options) that were completed during the previous fiscal year.

(b) State the contractor's name (including division) and address. State parent corporation, if applicable. State number of times contractor submitted proposals.

(c) Separately identify additional contractors recommended for inclusion to the Command CPAR data base along with a brief justification.

(d) Be submitted to HQ AFSC/PKC annually by October 31.

§ 838.9 CPAR markings and protection.

All CPAR forms and attachments will be marked "For official Use Only/Source Selection Sensitive." CPARs have the unique characteristic of always being pre-decisional in nature. They will always be source selection sensitive because they will constantly be used to support ongoing source selection. This pre-decisional nature of the CPAR is a basis for requiring that the CPAR data base be protected from unauthorized disclosure to personnel or entities outside the source selection process. It must be noted, however, that CPARs may also contain information which is proprietary to the contractor which is the subject of the report. Information contained on the CPAR such as trade secrets and confidential commercial or financial data, obtained from the contractor in confidence, must be protected from unauthorized disclosure. Additionally, CPARs may contain valuable government generated commercial information which will be used in the award of valuable government contracts. Such commercially valuable, government generated information must be protected from unauthorized disclosure. Based on the confidential nature of the CPARs, the following guidance applies to protection both internal and external to the government.

(a) *Internal government protection.* The CPARs must be treated as source selection sensitive at all times. The flow of CPARs throughout AFSC in support of source selections will be controlled by the CPAR focal points and transmitted from one CPAR focal point to another (reference AFR 70–15, AFSC Supplement 1). Outside of use in an instant source selection, information contained on the CPARs must be protected in the same manner as information contained in completed source selection files (see AFR 70–15 paragraph 4–3f). Information contained on the CPAR may not be used to support preaward surveys, debarment proceedings or any other internal government reviews.

(b) *External government protection.* Disclosure of CPAR data to contractors or others outside the government is not authorized. An exception to this rule is for the contractor who is the subject of the CPAR. In this situation, access to review the completed form will be granted by the CPAR focal point if the contractor personnel requesting access has a letter signed by their corporate chief executive officer (CEO) authorizing disclosure to that individual. This individual is not authorized to make or retain copies of the final form. Such limited and controlled access by the contractor's representative will not inhibit candid agency decision making. This access is needed to ensure the accuracy of changes made to the CPAR after the contractor's initial review. (Note: During the source selection discussion process, the contractor will be notified of relevant past performance data, derived from a CPAR or other sources, that requires clarification or could lead to a negative rating. See AFR 70–15, AFSC Supplement 1.) Freedom of Information Act requests for a CPAR must be processed in accordance with Part 806.

§ 838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).

(a) *Item 1:* State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation (no address required).

(b) *Items 2–4:* Initial, intermediate or final report. Period covered by report. Contract Number.

(c) *Item 5:* State current contract period of performance including any authorized extensions, such as options that have been exercised.

(d) *Item 6:* Location of contract performance.

(e) *Item 7:* Current face value of contract. For incentive contracts, state target value.

(f) *Item 8:* Identify the basis of award: Competitive, Follow-on to Competition, or Noncompetitive.

(g) *Item 9:* For mixed contract types, check the predominate contract type and identify the other contract type in the "Mixed" category.

(h) *Item 10:* State the program title and provide a short description of contract requirement and phase of acquisition. The description must identify key technologies, components, and subsystems in sufficient detail in order to assist the source selection team members who will screen the CPARs to determine efforts that are relevant to their source selection.

(i) *Item 11:* Evaluation Areas.

BEST COPY AVAILABLE

(1) *Introduction.* In preparing the CPAR, the program director should strive for consistency between the ratings used for the areas of evaluation on this form and the similar areas used for the Program Assessment Review (PAR) and Command Assessment Review (CAR) system. The major difference is the CPAR assesses a contractor's performance on an individual contract while the PAR and CAR system assesses the overall program. Each area assessment should be based on objective data that will be provided in the narrative section of the form (item 13). Subjective visibility into the causes, severity, or ramifications of the assessed performance should be provided. Facts to support specific areas of evaluation should be obtained from government specialists familiar with the contractor's performance on the contract under review. (For example, from engineering, contracting, contract administration, manufacturing, quality, and logistics). The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor met an extremely tight schedule, a blue (exceptional) assessment may be given in recognition of the inherent schedule risk. The CPAR is designed to assess prime contractor performance. However, in those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, highlight the subcontractor actions in the narrative section of the form (item 13).

(2) *Evaluation colors*—(i) *Blue—Exceptional.* Indicates the contractor's performance within the area of evaluation clearly exceeds contractual requirements. The area of evaluation contains few minor problems for which corrective actions appear highly effective. In the cost performance area, blue indicates a positive cost variance. (Note: This rating is not found in PAR/CAR assessments and has been added since recognition of exceptional ability is important in the source selection process.

(ii) *Green—Satisfactory.* Indicates the contractor's performance within the area of evaluation meets contractual requirements. The area of evaluation contains some minor problems for which the corrective actions appear satisfactory. In the cost performance area, green indicates a negative cost variance greater than zero but less than or equal to 5 percent.

(iii) *Yellow—Marginal.* Indicates the contractor's performance within the area of evaluation meets contractual requirements. The area of evaluation contains a serious problem for which corrective actions have not yet been identified, appear marginally effective, or have not been fully implemented. In the cost performance area, yellow indicates a negative cost variance greater than 5 percent but less than or equal to 15 percent.

(iv) *Red—Unsatisfactory.* Indicates the contractor is in danger of not being able to satisfy contractual requirements and recovery is not likely in a timely manner. The area of evaluation contains serious problems for which the corrective actions appear ineffective. In the cost performance area, red indicates a negative variance greater than 15 percent.

(v) *Arrows.* Upward or downward arrows may be used to indicate an improvement or worsening trend insufficient to change the assessment status.

(vi) *NA.* Areas not applicable to a particular contract.

(3) *Evaluation areas*—(i) *Item 11A: Product/System Performance.* (This item must be separately scored). Evaluate the extent to which the contractor is meeting overall product or system performance as measured against the contract requirements, including but not limited to the statement of work, specifications, CDRLs, and significant special contract clauses.

(A) *Item 11A–1: Engineering Design/Support.* Evaluate the contractor's engineering design capability and engineering resource support. Consider the amount and quality of engineering resources devoted to supporting the contract effort.

(B) *Item 11A–2: Software Development.* Evaluate the extent to which the contractor is meeting the software development, modification, or maintenance contract requirements or a government approved Software Development Plan. Consider the amount and quality of software development resources devoted to support the contract effort.

(C) *Item 11A–3: Subcontract Management.* Evaluate the contractor's effort devoted to managing subcontracts.

(ii) *Item 11B: Schedule*—(A) Evaluate contractor adherence to the contract schedule. For other than a satisfactory assessment, specifically identify in item 13 the major milestones, deliverable items, or significant data items which contribute to the schedule evaluation. The short narrative explanation in item 13 should address significance of item(s), discuss causes, and evaluate effectiveness of contractor corrective actions.

(B) When Cost Performance Reports (CPR) or Cost/ Schedule Status Reports (C/SSR) data is available and the schedule variance exceeds 15 percent (positive or negative), briefly discuss the significance of this condition to the contract effort in item 13. Calculations: Cumulative schedule variance in dollars is defined as budgeted cost of work performed (BCWP) minus budgeted cost of work scheduled (BCWS). Percent schedule variance is defined as ((BCWP—BCWS)/BCWS) x 100.

(iii) *Item 11C: Product Assurance.* Product Assurance is the collection of disciplines needed to design, test, and manufacture systems or equipment meeting specified requirements and suitable for intended use. The product assurance assessment evaluates adequacy of contractor organization, resources planning and design, manufacturing and test actions to meet system or equipment reliability, maintainability cost, and quality requirements with minimum risk.

(iv) *Item 11D: Test and Evaluation.* Evaluate the adequacy of the contractor's performance in planning, supporting, conducting, and assessing both the inhouse and independent test and evaluation programs.

(v) *Item 11E: Contract Performance.* (Only score the subitems below).

(A) *Item 11E–1: Cost Performance*—(*1*) When CPR or C/SSR data is available, evaluate current cost variance if the contract is greater than 10 percent complete. When the evaluation is not green, put the current percent variance and government estimate at completion in item 12 and give a short, factual narrative explanation of causes and contractor proposed solutions in item 13. Calculations: Percent complete is obtained by dividing cumulative BCWP by contract budget base (CBB) (less management reserve) and multiplying by 100. CBB is the sum of negotiated cost plus estimated cost of authorized undefinitized work. Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, Column 6 of the C/SSR) by cumulative BCWP and multiplying by 100. Compute completion cost variance percentage by dividing government's estimate at completion by CBB and multiplying by 100. The CBB should be the current budget base against which the contractor is performing (including formally established overtarget baselines (OTB)).

(*2*) Overtarget Baselines. If an OTB has been established since the last

CPAR, a brief description of the nature and magnitude of the baseline adjustment should be made in item 13. Subsequent CPARs should evaluate cost performance in terms of the revised baseline and reference the CPAR which described the baseline adjustment. For example, "The contract baseline was formally adjusted on (insert date). See CPAR for the period (insert period covered by CPAR) for an explanation."

(*3*) When CPR data or C/SSR data is not available, evaluate contractor cost management. Is the contractor experiencing cost growth? Underrun? For other than a satisfactory assessment, give a short, factual narrative explanation of causes and the contractor's proposed solutions in item 13.

(B) *Item 11E–2. Management Responsiveness.* Evaluate the adequacy of the contractor's responsiveness, including the timeliness and quality of cost and technical proposals and willingness to negotiate fair and reasonable prices, and terms and conditions.

(vi) *Item 11F: ILS Program.* Evaluate the adequacy of the contractor's performance in accomplishing Integrated Logistics Support (ILS) program tasks and in performing Logistics Support Analysis (LSA) activities. The ten ILS element groupings are: Maintenance planning; manpower requirements and personnel; supply support; support equipment; technical data; training equipment and support; computer resources support; facilities, packaging, handling, and transportation; and design interface.

(vii) *Item 11G: Other.* Specify any additional evaluation areas that are unique to the subject contract. If the contract contains an award fee, mark this evaluation area "Award Fee" and list all the award fee percentages earned during the evaluation period in the "N/A" block.

(j) *Item 12: Variances.*

(1) *Cost Variance.* Identify the cumulative cost variance to date (percent) and the government's estimate at completion (percent). See item 11E–1 for further instructions on calculation of cost variance.

(2) *Schedule Variance.* Identify the cumulative schedule variance (percent). See item 11B for further instructions on calculation of schedule variance.

(k) *Item 13: Program Director's Narrative.* A short, factual narrative statement is required to support assessments of blue, green with arrows, yellow, and red. Cross-reference the comments in item 13 to rated evaluation areas in item 11. Each narrative statement in support of the area assessment should contain objective data. For example, an exceptional contracts assessment could cite the current underrun dollar value and estimate at completion. In the case of incentive contracts, the government and contractor savings based on the share ratio could be cited. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include AFOTEC operational, test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations.

(l) *Item 14: Program Director Signature block.*

(m) *Item 15: Contractor Comments (Contractor's option).* Reference paragraph § 638.6(c) for guidance on transmitting the CPAR to the contractor for review and comment.

(n) *Item 16: Contractor Representative signature block.*

(o) *Item 17: Review by Product Division Reviewing Official.* Reviewing official(s), at an appropriate management level, will be designated by local procedures. Reviewing official comments are optional.

(p) *Item 18:* Product Division Reviewing Official signature block.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-6255 Filed 3-22-88; 8:45 am]

BILLING CODE 3910-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 86-10]

Common Carrier Services; WATS-Related and Other Amendments of the Access Charge Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; correction.

SUMMARY: On March 7, 1988 the Commission published a Supplemental Notice of Proposed Rule Making (53 FR 7214 (1988)) in this proceeding concerning the Provision of Access for 800 Service. Inadvertently, the dates by which to file comments and reply comments were missing.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

In FR Doc. 88–4819 published in the **Federal Register** of March 7, 1988, a "**DATES**" caption is added to the preamble on page 7214, second column, between the captions "**SUMMARY**" and "**ADDRESSES**" to read as follows:

DATES: The correct date for filing comments is April 4, 1988 and reply comments may be filed not later than May 3, 1988.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-6315 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-74, RM-6063]

Radio Broadcasting Services; Sheridan, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ainsley Communications Corp., requesting the substitution of Channel 275C2 for Channel 272A at Sheridan, Arkansas, and modification of its license for Station KQLV(FM), accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before April 25, 1988, and reply comments on or before May 10, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James R. Bayes, Merilyn M. Strailman and Edward A. Yorkgitis, Jr., Esqs., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–74, adopted February 5, 1988, and released March 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–6316 Filed 3–22–88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC–61]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time of file comments.

SUMMARY: Notice of the filing of the petition to reopen this proceeding was published in the *ICC Register* and **Federal Register** on February 16, 1988. The due date for comments was set as March 21, 1988. Petitioner, the Movers' and Warehousemen's Association of America, Inc., has requested that the time for filing comments be extended. The Commission has granted a 30-day extension until April 20, 1988.

DATE: Comments may be filed on or before April 20, 1988.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. MC–61, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one additional copy of comments to petitioner's representative: Marshall Kragen, 1919 Pennsylvania Avenue NW., Suite 300, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:
James L. Brown, (202) 275–7898
or
Suzanne O'Malley, (202) 275–7292
[TDD for hearing impaired: (202) 275–1721.]

Decided: March 17, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6360 Filed 3–22–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The Service announces a 90-day finding on a petition to reclassify the chimpanzee from threatened to endangered. Status reviews are initiated both for the chimpanzee and the pygmy chimpanzee.

DATES: The finding announced herein was made on February 4, 1988. Comments and information may be submitted until July 21, 1988.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority, Mail Stop: 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the above address (202–653–5948 or FTS 653–5948).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that within 90 days of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition presents substantial information indicating that the action may be warranted, and that such a finding be promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires prompt commencement of a review of the status of the involved species. The Service now announces a 90-day finding on a recently received petition.

The petition was submitted jointly by the Humane Society of the United States, the World Wildlife Fund, and the Jane Goodall Institute. It is dated November 4, 1987, and was received by the Service on that same date. It requests that the classification of the chimpanzee (*Pan troglodytes*) on the List of Endangered and Threatened Wildlife be changed from threatened to endangered. The petition indicates that the status of the chimpanzee has deteriorated substantially since the species was originally classified as threatened in 1976. Problems are said to include massive habitat destruction, fragmentation of populations and associated vulnerability to disease, excessive hunting and capture by people, and lack of effective national and international controls. International trade in chimpanzee infants for the biomedical market is also considered to have a significant impact on the species in the wild.

The Service has examined the petition and has found it to present substantial information indicating that the requested action may be warranted. Therefore, a review of the status of the chimpanzee is initiated herewith. The Service also initiates a status review of the pygmy chimpanzee (*Pan paniscus*). The latter species is a close relative of the chimpanzee, also occurs in the tropical forests of Africa, and may be subject to the same kinds of problems. Although both species were covered by a 5-year notice of review issued in the **Federal Register** of July 7, 1987 (52 FR 25522–25528), the comment period for that review has expired. New comments and information from all interested parties are now invited and should be submitted to the address given above.

A decision to reclassify the chimpanzee and/or the pygmy chimpanzee as endangered would remove the applicability of the special rule for primates (50 CFR 17.40(c)) to these chimpanzee species. Therefore, the Service would be interested in comments as to what, if any, effect the removal of present trade exemptions might indirectly have on the wild populations of these chimpanzees. If the reclassification were warranted but removal of special rule might inpact the wild population, the Service would consider alternative procedures to alleviate restrictions adversely affecting the wild populations.

The Service will consider the comments received, along with all other

available data, in making a finding, required by section 4(b)(3) within 12 months after receipt of a petition presenting substantial information, as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

Author: Ron Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

Authority: 16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture), Imports, Exports.

Dated: March 17, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–6368 Filed 3–22–88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 53, No. 56

Wednesday, March 23, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 18, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Designated Handler's Report and Application for Refund of Assessment (Potato Research and Promotion Act)
Recordkeeping; Occasion; Monthly
Farms; Businesses or other for-profit; 11,048 responses; 10,450 hours; not applicable under 3504(h)
Richard H. Mathews, (202) 475–3916

Revision

- Farmers Home Administration

7 CFR 2054–W, Employment, Pay and Functions of County and/or Area Committee
FmHA 2054–5
On occasion
Individuals or households; Farms; 6,000 responses; 2,250 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–6347 Filed 3–22–88; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Garrison Creek Watershed, Oklahoma; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Garrison Creek Watershed project, Sequoyah County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: A determination has been made by C. Budd Fountain that the proposed works of improvement for the Garrison Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from C. Budd Fountain, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

C. Budd Fountain,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 88–6272 Filed 3–22–88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m. on April 6, 1988, at the Woolley's Petite Suites, 3211 East Pinchot Street, Phoenix, Arizona 85018. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who attend the meeting and require the services of a sign language interpreter, should contact the Western Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–6262 Filed 3–22–88; 8:45 am]

BILLING CODE 6335-01-M

California Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on April 15, 1988, at the Sheraton Town House, 2961 Wilshire Boulevard, Los Angeles, California 90010. The purpose of the meeting is to plan future projects of the California State Advisory Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Western Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–6263 Filed 3–22–88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on April 14, 1988 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the April 14 combined meeting that will begin at 1:15 p.m. and end at 2:30 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 decennial update; (3) 1987 Economic and Agricultural Censuses update; and (4) twenty-first century census planning.

The agendas for the four committees in their separate and jointly held meetings that will begin at 2:30 p.m. and adjourn at 5:30 p.m. on April 14 are as follows:

The CAC of the AEA: (1) Survey of Income and Program Participation (joint with CAC of the AMA), (2) Characteristics of Business Owners Survey (joint with CAC of the AMA), and (3) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA.

The CAC of the AMA: (1) Survey of Income and Program Participation (joint with CAC of the AEA), (2) Characteristics of Business Owners Survey (joint with CAC of the AEA), (3) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, and (4) 1990 census promotion.

The CAC of the ASA: (1) 1990 sampling issues (joint with CAC on Population Statistics), (2) disclosure avoidance procedures (joint with CAC on Population Statistics), and (3) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA.

The CAC on Populaiton Statistics: (1) 1990 sampling issues (joint with CAC of the ASA), (2) disclosure avoidance procedures (joint with CAC of the ASA), and (3) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics.

The agendas for the April 15 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Investment surveys at Census: future directions, (2) international price indexes (BLS), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC of the AMA: (1) Data dissemination in machine-readable form, (2) promotional aspects of TIGER, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) 1990 Research, Evaluation, Experimental Program and projects (joint with CAC on Population Statistics), (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) 1990 Research, Evaluation, and Experimental Program and projects (joint with CAC of the ASA), (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on April 15 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2428, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763-5410.

Date: March 17, 1988.

C.L. Kincannon,

Deputy Director, Bureau of Census.

[FR Doc. 88-6327 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 6-88]

Foreign-Trade Zone 86, Tacoma, WA; Application for Expansion and Request for Manufacturing of Oil Country Tubular Goods; Extension of Comment Period

The period for comments on the above case, involving the expansion of Foreign-Trade Zone 86 and a request for manufacturing of oil country tubular goods (53 FR 3907, February 10, 1988), is extended to April 23, 1988, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should be mailed to the address below and include 5 copies: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 18, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-6345 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-802]

Initiation of Antidumping Duty Investigation; 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 11, 1988. If that determination is affirmative, we will make a preliminary determination on or before August 4, 1988.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On February 26, 1988, we received a petition in proper form filed by Verbatim Corporation on behalf of the domestic 3.5" microdisk industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on published prices for sales to independent distributors in the United States. Petitioner deducted, where appropriate, discounts, free goods, other price-reducing benefits received by each distributor, U.S. inland freight, U.S. Customs brokerage, U.S. tariff, and ocean freight and insurance. Since ESP sales are involved, petitioner also made adjustments for sales commissions and indirect selling expenses.

Petitioner based foreign market value on the prices paid by the first arm's-length purchasers of 3.5" microdisks in the Japanese domestic market adjusted for home market indirect selling expenses, Japanese inland freight and warehousing, packing, and differences in circumstances of sale.

Based upon a comparison of United States price and foreign market value, petitioner alleges dumping margins of between 36.5 percent and 68.1 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on 3.5" microdisks and coated media thereof from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by August 4, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are 3.5" microdisks and coated media thereof from Japan currently provided for under TSUSA item number 724.4570 and currently classifiable under HS item number 8523.20.0000.

A 3.5" microdisk is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. 3.5" microdisks are used to record and store encoded digital computer information for access by a 3.5" floppy disk drive. They include single-sided, double-sided or high density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. It is intended for use specifically in a 3.5" floppy disk drive.

Coated media produced in Japan and finished into 3.5" microdisks in another country prior to importation into the United States from the other country is tentatively included in the scope of the investigation. In the course of this proceeding we will determine whether to continue to include these indirect imports in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 11, 1988 whether there is a reasonable indication that imports of 3.5" microdisks and coated media thereof from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

March 17, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-6343 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-037]

Certain Cotton Yarn Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain cotton yarn products from Brazil for the period May 18, 1984 through December 31, 1985. The Department has preliminary determined the net subsidy to be zero or *de minimis* for five firms and 2.56 percent *ad valorem* for all other firms in 1984. For 1985, the Department has preliminarily determined the net subsidy to be 14.53 percent *ad valorem* for all firms. We invite interested parties to comment on these preliminary result.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 15250) the final results of its last administrative review of the countervailing duty order on certain cotton yarn products from Brazil (42 FR 14089; March 15, 1977). On March 28, 1986, the petitioner, the American Yarn Spinners Association, requested in accordance with 19 CFR 355.10 that we conduct an administrative review of the order. We published the initiation on April 18, 1986 (51 FR 13273). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. Such merchandise is currently classifiable under items 301.01 through 301.98, inclusive, and it item 302.—with statistical suffixes 20, 22, and 24 of the Tariff Schedules of the United States. These products are currently classified under HS item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, 5206.35.00. We invite comments from all interested parties on these HS classififications.

The review covers the period May 18, 1984 through December 31, 1985 and 20 programs.

Analysis of Programs

(1) CACEX Export Financing

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a duration of up to one year. During the period of review, producers of certain cotton yarn products could obtain CACEX financing based on the value of their previous year's exports. The maximum amount of CACEX financing that could be obtained in Brazil was 20 percent of the value of the previous year's exports.

Resolution 674, which became effective on January 22, 1981, set a maximum interest rate of 40 percent and required two interest payments, one 180 days after the loan was granted and the other at muturity. On June 11, 1983, the maximum interest rate for Resolution 674 loans was changed to 60 percent. Resolution 882, which became effective on January 2, 1984, required the full interest payment at maturity. It also set the maximum interest rate at monetary correction (calculated by the change in the value of readjustable treasury bonds ("ORTN")) plus 3 percentage points.

On August 21, 1984, Resolution 950 superseded Resolution 882 and changed the short-term export financing program substantially. Resolution 950, which was made effective retroactively to January 2, 1984 (the effective date of Resolution 882), made working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution could pass on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

To find the interest differential for Resolution 882 loans, we compared two effective interest rates. The nominal interest rates on Resolution 882, 950, and 1009 loans are the same as the effective rates because there are no other charges, and the full amount of interest is paid at maturity. For our benchmark, we took the national average rate for thirty-day discounts of accounts receivable, as reported in *Analise/Business Trends*. This rate includes the 1.5 percent tax on financial transactions ("IOF"), from which preferential loans are exempt. We then compounded this rate to find the effective annual commercial benchmark.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is now at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF. Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF.

We consider the benefit from loans to occur when the borrower makes the interest payments. For Resolution 674, 882, 950, and 1009 loans on which interest was paid during the period of review, we multiplied the interest differential by the loan principal. We allocated the result over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of this merchandise to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from this program to be 1.30 percent *ad valorem* in 1984 and 3.36 percent *ad valorem* in 1985.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of certain cotton yarn products are eligible for an exemption from income tax on the portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Six firms used this program in 1984, and seven firms used it in 1985.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate. The firms under review invested in the specified companies and funds.

We calculated the effective tax rates by dividing each company's net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the company's effective corporate tax rate and allocating the result over its total exports. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from this program to be 1.17 percent *ad valorem* in 1984 and 1.48 percent *ad valorem* in 1985.

(3) The IPI Export Credit Premium

Exporters of certain cotton yarn products are eligible for the maximum IPI export credit premium. Under this program, the Brazilian government pays exporters in cash a percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction.

Effective June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the IPI premium on exports to the United States. In the final results of our last administrative review (49 FR 15250), we determined that the Brazilian government did not collect the export tax in a timely manner, and we considered this lag in collection to confer a benefit. However, for this review, we have found that the Brazilian government collected the export tax on time. Further, on May 1, 1985, the Brazilian government eliminated the IPI export credit premium for exporters of certain cotton yarn products. For these reasons, we preliminarily determine that exporters of this merchandise received no benefits from this program during the period of review.

Although we preliminary determine that the export tax completely offsets the IPI rebate in this case, we are reconsidering whether these export taxes meet the criteria set forth in section 771(6)(C) of the Tariff Act. We are concerned that these export taxes do not serve the larger purpose of the countervailing duty law, which is to encourage governments to cease subsidizing. Furthermore, such export taxes might not completely offset the subsidy, especially if the money collected from the tax could be refunneled into the same industries in different forms. We may seek further clarification of this program.

(4) CIC–CREGE 14–11 Financing

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. Exporters of certain cotton yarn products participated in this program during the period of review.

There is no maximum interest rate for this program. Interest payments are normally made quarterly or semiannually, with the full principal to be repaid at maturity. We calculated the benefit based on the interest payment date in a manner similar to that used for CACEX export financing, using the same benchmark rate. We allocated the result over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits). We preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* in 1984 and 0.03 percent *ad valorem* in 1985.

(5) BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Program ("BEFIEX") allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an increased IPI export credit premium, and tax exemptions or tax credits. We verified that one firm received import duty reductions during the review period.

To calculate the benefit, we divided the amount of import duty reductions received in each year of the review period by that firm's total sales in the corresponding year of the review period. We then weight-averaged the company's benefit by its share of total exports of the merchandise to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit to be 0.06 percent *ad valorem* in 1984 and 0.12 percent *ad valorem* in 1985.

(6) Price Equalization Program

Under the Price Equalization Program ("the PEP"), which was operated from April 1985 to February 1986, the Companhia de Financiamento da Producao ("CFP"), a government agency, provided a specific quantity of raw cotton to textile exporters at a price that was significantly lower than both the internal market price and the world market price. The Government of Brazil claims that the purpose of this program was to eliminate, in the aggregate, the difference between the world market price and the higher internal market price of raw cotton for textile exporters. The Government of Brazil devised a formula to determine the quantity of raw cotton the exporter was able to purchase at this low price. It claims that the amount paid for this quantity, when combined with the amount paid for cotton purchased at the internal market price, equaled approximately what the exporter would have paid if all of his raw cotton (used for export) were purchased at the world market price.

We preliminarily determine this program to be countervailable because the CFP provided the cotton yarn exporters with a specific quantity of raw cotton on terms more favorable than those commercially available to the exporters. Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), the delivery of goods by governments or their agencies for use in the production of exported goods constitutes an export subsidy when provided on terms more favorable than those commercially available on world markets to their exporters.

If Brazilian exporters of cotton yarn had actually imported raw cotton in commercial quantities during the review period, we could have considered such imports as the commercially available alternative to domestic raw cotton (in which case the PEP might have been consistent with item (d)). However, because of import restrictions imposed by the Government of Brazil, cotton yarn exporters did not import raw cotton during the period of review.

Therefore, although the net effect of the PEP may have been to provide raw cotton used in export production at world market prices, we do not consider the PEP to be consistent with item (d) because purchasing raw cotton at world market prices was not a "commercially available" alternative to Brazilian cotton yarn exporters. Without access to, and actual use of, imported raw cotton, the commercially available alternative to purchasing raw cotton under the PEP was purchasing raw cotton on the internal market. Cotton yarn exporters purchased most of their raw cotton on the internal market, and we have used the internal market price as the benchmark for measuring the benefit from cotton yarn purchased under the PEP.

To calculate the benefit, we multiplied the amount of cotton purchased by each firm at the PEP price by the average internal market price between April and December 1985. The benefit is the difference between this amount and the amount paid for raw cotton under the PEP. We allocated the benefit over each firm's total exports for 1985 and then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 9.53 percent *ad valorem* in 1985.

Since the PEP was eliminated in February 1986, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that there is no current benefit from this program.

(7) FST Financing

During the period of review, three producers of cotton yarn made interest payments on loans obtained under a program called FST financing. The term of the loans was less than one year, and the interest rates were below our commercial benchmark rates. The Government of Brazil claims that these loans are commercial working capital loans and that they are available to all industrial enterprises. However, the Government of Brazil did not produce any documentation showing that these loans are provided to more than the cotton yarn industry. Therefore, based on the best information available, we preliminarily determine that this program is provided to a specific industry. Since the interest rates on the FST loans are below our commercial benchmark rate, we also preliminarily determine that these loans are provided on terms inconsistent with commercial considerations.

We calculated the benefit based on the interest payment date, using the same benchmark rate as we used for CACEX export financing. We allocated the benefit over each firm's total sales and then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem* in 1984 and 0.01 percent *ad valorem* in 1985.

(8) Other Programs

We examined the following programs and preliminarily find that exporters of cotton yarn did not use them during the review period:

a. Incentives for trading companies ("Resolution 883");
b. Accelerated depreciation for Brazilian-made capital goods;
c. Tax reductions on export production equipment ("CIEX");
d. Export financing under Resolution 68 ("FINEX");
e. Duty-free treatment and tax exemption on equipment used in export production ("CDI");
f. Export financing under the Fundo Nacional de Participadoes ("FUNPAR");
g. Exemption from state-administered value-added taxes ("ICM") on domestic sales;
h. Export promotion financing ("PROEX");
i. Benefits from import substitution ("PROSIM");
j. Financing for the storage of merchandise destined for export ("Resolution 330");
k. Green-Yellow drawback;
l. Cotton auctions; and
m. Federal stock (EGF) loans.

Upstream Subsidy Allegations

In letters of June 11, 1986 and November 26, 1986, the petitioner, the American Yarn Spinners Association ("AYSA"), alleged that the following Brazilian subsidy programs provide upstream benefits to Brazilian cotton yarn exporters:

(1) CACEX export financing;
(2) Income tax exemptions for export earnings;
(3) BEFIEX;
(4) CIC-CREGE 14–11 financing;
(5) Incentives for trading companies (Resolution 883);
(6) FINEX export financing;
(7) PROEX financing;
(8) Financing for merchandise destined for export (Resolution 330);
(9) Tax reductions on equipment used in export production ("CIEX");
(10) Export financing under the Fundo Nacional de Paricipadoes ("FINPAR");
(11) Benefits from import substitution ("PROSIM");
(12) Gold draft of exportation;
(13) Fundo de Democratizacao do Capital das Empresas;
(14) Partially indexed long-term loans;
(15) Exemption of IPI and customs duties on imported equipment ("CDI");
(16) Accelerated depreciation for Brazilian-made capital equipment;
(17) Green-Yellow drawback;
(18) Cotton auctions; and
(19) Price Equalization Program.

Of these, programs (1) through (9) are export subsidy programs, which cannot form the basis of an upstream subsidy (see section 771A(a) of the Tariff Act). For programs (10) through (16), AYSA did not provide any information that gives us reasonable grounds to believe or suspect that an upstream subsidy is being paid or bestowed to the cotton yarn exporters, as required by section 701(c) of the Tariff Act.

AYSA did provide specific information on the Green-Yellow drawback program and two new programs, cotton auctions and the Price Equalization Program. We sent a supplemental questionnaire to the Brazilian government regarding these programs. At verification we found that the Green-Yellow drawback allows trading companies to qualify for export incentives. It is therefore not a potential domestic subsidy program. Of the two cotton auction programs, we found that one was designed only for raw cotton exporters, and the other for exporters and domestic producers of textile products. Because the first auction program cannot be used by cotton growers who sell their product in the domestic market, it cannot provide an upstream subsidy to cotton yarn exporters. The second auction program is not available to producers of raw cotton, the major input into cotton yarn. Upstream subsidies deal only with *inputs* (such as raw cotton) into the exported product. Any potential benefit from the second auction program would be direct, rather than upstream, and we verified that cotton yarn exporters did not use the second auction program. Finally, the benefit to the cotton yarn producers from the Price Equalization Program is direct, as opposed to upstream. *See* also, section on Price Equalization Program.

For these reasons, we preliminarily determine that none of these 19 programs provided an upstream subsidy to cotton yarn exporters during the period of review.

Companies With Zero Benefits

We preliminarily determine that the following firms received zero or *de minimis* benefits during the review period:

For 1984:

(1) Unitika do Brazil Industria Textil Ltda;

(2) Cia. Industrial e Agricola Boyes;

(3) Lanficio Amparo Ltda;

(4) Fiacao Amparo S.A; and

(5) Brasital S.A. Para a Industria E.O. Comercio.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be zero or *de minimis* for five firms and 2.56 percent *ad valorem* for all other firms in 1984, and 14.53 percent *ad valorem* for all firms in 1985.

The Department intends to instruct the Customs Service not to assess countervailing duties on shipments of Brazilian carded cotton yarn from the five firms with zero or *de minimis* benefits in 1984, and to assess countervailing duties of 2.56 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after May 18, 1984 and exported on or before December 31, 1984. The Department also intends to instruct the Customs Service to assess countervailing duties of 14.53 percent of the f.o.b. invoice price on shipments from all firms exported on or after January 1, 1985 and on or before December 31, 1985.

The elimination of the Price Equalization Program in February 1986 decreases the total estimated duty deposit rate to 5.00 percent *de ad valorem.* Therefore, the Department intends to instruct the Customs Service to collect 5.00 percent of the f.o.b. invoice price on shipments from all firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 8 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: March 17, 1987.

[FR Doc. 88-6344 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Open Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on March 30, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls available to computer peripherals and related test equipment or technology.

Agenda

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Preparation of a Definition for CAD/CAM Workstations.
5. Development of Unique Parameters for CAD/CAM Workstations.
6. Discussion of Graphic Display Parameters.

This meeting is called on short notice because COCOM has just scheduled a review of the CAD/CAM issue for early April and the Department of Commerce needs input from industry.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Ruth D. Fitts, Technical Support Staff, Office of Technology & Policy Analysis, Room 4066, 14th & Constitution Avenue, NW., Washington, DC 20230.

For further information on copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: March 18, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-6346 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 712567266]

Trade Opportunities Program; Electronic Dissemination

AGENCY: International Trade Administration, U.S. and Foreign Commercial Service, Export Promotion Services, Commerce.

ACTION: Notice.

SUMMARY: As part of the Department's *Export Now* program, the U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is improving the Trade Opportunities Program (TOP) by changing the manner in which TOP leads are distributed to

the U.S. business community. TOP leads identify export and investment opportunities for qualified U.S. suppliers. In general, trade leads include: Location of opportunity; SIC code of product or service; details of the opportunity and brief background data; type of opportunity; contact information; and bid deadline. Trade leads gathered overseas are valuable tools for U.S. exporters if they are received in sufficient time to prepare quality responses. The US&FCS therefore is making TOP leads available electronically to persons, firms, and organizations via the Department's Economic Bulletin Board.

US&FCS will add the full text of daily trade leads to the Economic Bulletin Board each work day at noon eastern time. Fifteen days of historical TOP leads will be available on line at all times. Private sector publishers, trade associations, and other multiplier groups are encouraged to download the complete file, add value, and redistribute the information in printed or electronic form.

Subscriptions to the TOP leads through the Economic Bulletin Board can be made by mail or by calling the National Technical Information Service (NTIS), 5285 Port Royal Rd. Springfield, Virginia 22161, phone: (703) 487-4630. A one-year subscription costs $25 plus connect time. Connect time ranges from $3-$6 per hour depending on the time of call. Users outside the Washington, DC area will incur long-distance telephone charges in addition to the above fees. These will be levied by and paid to the subscriber's long distance telephone company.

The new electronic distribution system compounded by the redistribution efforts of multiplier organizations substantially increases the number of U.S. businesses that will have access to Commerce generated trade leads. The timeliness of the trade leads is also greatly improved, as US&FCS now makes time-sensitive trade leads accessible electronically within one business day after receipt from overseas posts.

Due to declining subscriptions, Commerce-published daily TOP Notice and weekly TOP Bulletin hard copy subscription services have been discontinued. In their place, US&FCS has increased the public's access to TOP leads through a variety of public and private venues. Organizations and individuals without communication capabilities have access to TOP information within 2-3 days through commercial and public newspapers and newsletters. Organizations and individuals with communications capabilities have almost immediate access to TOP leads through a variety of commercial and public databases.

Private sector distribution of TOP leads in both printed and electronic form will serve former subscribers to these publications better by providing daily leads at a comparable or lower cost.

DATE: March 23, 1988.

ADDRESS: Questions may be addressed to Office of Commercial Information Management, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mary C. King at the address given above, telephone (202) 377-4203. To subscribe to TOP leads, call NTIS at (703) 487-4630.

SUPPLEMENTARY INFORMATION:

The dissemination of trade leads to the public is necessary for ITA to properly perform its trade promotion functions. ITA has the authority to disseminate trade information pursuant to 15 U.S.C. 175. Electronic dissemination via the existing Economic Bulletin Board is the quickest and most cost effective means to get this information to the public.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

Alexander H. Good,

Director General, U.S. and Foreign Commercial Service.

[FR Doc. 88-6306 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Listing of Endangered and Threatened Species and Designating Critical Habitat; Petition for the Designation of Critical Habitat for the Right Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of a petition.

SUMMARY: NMFS has received a petition from GreenWorld to designate critical habitat for the right whale (*Eubalaena glacialis*) in two areas along the Atlantic coast.

FOR FURTHER INFORMATION: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, (202/673-5348).

SUPPLEMENTARY INFORMATION: On January 4, 1988, NMFS received a petition from GreenWorld requesting that areas along the outer arm of Cape Cod and areas off the southern Georgia/northern Florida coast be designated as critical habitat for the western Atlantic population of the Right whale. The Service is reviewing the petition and will make a determination in accordance with the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the Administrative Procedures Act (5 U.S.C. 553(e)).

Dated: March 18, 1988.

Nancy Foster,

Director, Office of Protected Resources, and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-6363 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Application for Permit: Harold M. Brundage, III (P298B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. *Applicant:* Mr. Harold M. Brundage III, President, Environmental Research and Consulting, Inc., 320 Bancroft Road, Kennett Square, Pennsylvania 19348
2. *Type of permit:* Scientific research
3. *Name and number of marine mammals:* Shortnose sturgeon (*Acipenser brevirostrum*), 500/year
4. *Type of take:* The applicant is requesting authorization to harass while collecting data and attaching a Carlin dangler tag to 500 animals per year. Of the preceding, 50 animals per year will be radio tagged. The applicant will also collect egg and larvae samples.

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5. *Location of activity:* Delaware River to Delaware Bay; and Potomac River to Chesapeake Bay
6. *Period of activity:* 5 years

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930

Date: March 18, 1988

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-6364 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: California Department of Fish and Game (P191D)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. *Applicant:* California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814.

2. *Type of Permit:* Scientific Research

3. *Name of Marine Mammals:*

California sea lion (*Zalophus californianus*)
Pacific harbor seal (*Phoca vitulina richardii*)
Northern elephant seal (*Mirounga angustirostris*)
Harbor porpoise (*Phocoena phocoena*)
Steller sea lion (*Eumetopias jubatus*)
Gray whale (*Eschrichtius robustus*)
Short-finned pilot whale (*Globicephala macrorhynchus*)
Northern fur seal (*Callorhinus ursinus*)
Killer whale (*Orcinus orca*)
Dall's porpoise (*Phocoenoides dalli*)
Bottlenose dophins (*Tursiops sp.*)
Risso's dophin (*Grampus griseus*)
Minke whale (*Balaenoptera acutorostrata*)
Humpback whale (*Megaptera novaeangliae*)
Common dolphin (*Delphinus delphis*)
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)

4. *Type of take:* An unspecified number of ceteceans and pinnipeds may be incidentally harassed during the course of serial and ground surveys.

5. *Location of Activity:* California.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily refelct the views of the National Marine Fisheries Service. Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: March 18, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-6365 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Wool Textile Products Produced or Manufactured in the Republic of Singapore

March 18, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 24, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Categories 438 and 440 which are in excess of the designated limits.

Background

A directive dated December 24, 1987 (52 FR 49188) established a limit for Group II, including limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31, and June 5, 1986, as amended, between the Governments of the United States and Singapore estabishes designated consultation levels for wool textile products in Categories 438 and 440, produced or manufactured in

Singapore and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988. In addition, Categories 438 and 440 should be included in the previously established Group II limit for 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 18, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 24, 1987 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the agreement year which began on January 1, 1988 and extends through December 31, 1988.

Effective on March 24, 1988, the directive of December 24, 1987 is amended to include the following limits for Categories 438 and 440 for the period January 1, 1988 through December 31, 1988:

Category	12-mo limit [1]
438	10,000 dozen
440	6,250 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Textile products in Categories 438 and 440 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Charges will be made to the limits established in this directive for Categories 438 and 440 as data become available.

Also effective on March 24, 1988, Categories 438 and 440 shall be included as sublevels of Group II. Group II shall consist of Categories 200–229, 300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436, 438, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 637, 642–644, 649, 650, 659–S [1] 659–V [2], 659–O [3] and 665–670, as a group. The limit established for Group II in the December 24, 1987 directive remains unchanged.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-6305 Filed 3-22-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 14, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Hypersonic Test Facilities will meet on 12–14 April 1988, from 8:00 a.m. to 5:00 p.m., at Wright-Patterson AFB, OH.

The purpose of this meeting is to review the status of technology programs and laboratory research efforts dealing with hypersonic technologies and/or their test requirements. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-6282 Filed 3-22-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS).

Dates of Meeting: 13 thru 15 April 1988.

Time: 0900–1700 hours each day.

Place: BDM International, Arlington, VA 22209.

Agenda: The Army Science Board 1988 Summer Study on Technology Insertion in Army Systems will meet for a series of briefings. On 13 April the Process Panel will be briefed by Project Managers of selected Army programs. On 15 April the committee will be breiefed by selected Army agencies. On 14 April the technology panel will be briefed by technical directors of selected AMC MACOMs. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner

Administrative Officer, Army Science Board.

[FR Doc. 88-6336 Filed 3-22-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 April 1988.

Times of Meeting: 0800–1700 hours daily.

Place: ITT Defense Technology Corporation, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet to be briefed by TRADOC and Navy on technological developments and potential applications of directed energy. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5,

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[1] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

[2] In Category 659–V, only TSUSA numbers 381.2806, 381.3332, 381.9224, 381.9837, 384.2250, 384.2251, 384.2663, 384.2664, 384.8777, 384.9472 and 384.9473.

[3] In Category 659–O, all TSUSA numbers except 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8444 and 384.9353 in Category 659–S; 381.2836, 381.3332, 381.9224, 381.9837, 384.2250, 384.2251, 384.2663, 384.2664, 384.8777, 384.9472 and 384.9473 in Category 659–V.

U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–6338 Filed 3–22–88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet April 27–28, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight of Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: March 18, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–6309 Filed 3–22–88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on April 21–22, 1988. The meeting will be held at the Naval Strike Warfare Center, Fallon, Nevada. The meeting will commence at 7:45 a.m. and terminate at 4:30 p.m. on April 21; and commence at 7:30 a.m. and terminate at 1:30 p.m. on April 22, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the committee members on fleet aviation tactical developments. The agenda will include technical briefings, tours and discussions addressing aviation tactical development in support of fleet battle group operations, advanced flight training, and planning, programming and budgeting requirements and priorities for R&D, procurement and training related to strike warfare. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: March 18, 1988.

W. R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–6310 Filed 3–22–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.042]

Notice Inviting Applications for New Awards Under the Student Support Services Program for Fiscal Year 1988

Purpose: Awards grants to institutions of higher education for projects that provide support services to low-income, first-generation or physically handicapped college students to enhance their academic skills, increase their retention and graduation rates, and as appropriate, facilitate entrance into four-year colleges or graduate and professional programs.

Deadline for Transmittal of Applications: May 6, 1988.

Applications Available: May 30, 1988.

Available Funds: $5,000,000.

The estimated range, average size, and number of awards stated in this Notice assumes fiscal year 1988 funds availability at about $5,000,000 for new awards.

Estimated Range of Awards: $70,000–$150,000.

Estimated Average Size of Awards: $110,000.

Estimated Number of Awards: 45.

Project Period: 24 months.

Supplementary Information: The Secretary strongly encourages an applicant to include measurable objectives in its plan of operation and evaluation plan. Specifically, an applicant is encouraged to use clear, specific and measurable objectives in its plan of operation, and use methods of evaluation which are objective and produce data that are quantifiable.

Applicable Regulations: (a) The Student Support Services Regulations, 34 CFR Part 646, as modified on July 24, 1987 (52 FR 27905) and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75 and 77.

For Applications or Information Contact: Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3060, Regional Office Building 3, Washington, DC 20202.

Telephone: (202) 732–4804.

Program Authority: 20 U.S.C. 1070d, 1070d–1b.

Dated: March 14, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–6367 Filed 3–22–88; 8:45 am]

BILLING CODE 4000-01-M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committtee on Student Financial Assistance. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 7, 1988 beginning at 9:00 a.m. and ending 5:00 p.m.; and April 8, 1988 beginning at 9:00 a.m. and ending at 5:00 p.m.

ADDRESS: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB3, 400 Maryland Avenue SW., Washington, DC 20202, (202) 732–3955.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The proposed agenda includes:

Need Analysis Issues
Delivery System Issues
Committee Research Agenda
and
Committee Organization and Administration

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

Dated: March 18, 1988.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–6270 Filed 3–22–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of General Counsel

Inventions Available for License

The Department of Energy hereby announces a number of inventions available for license, in accordance with 35 U.S.C. 207–209, in order to achieve expeditious commercialization of results of federally funded research and development. For further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, Department of Energy, 1000 Independence Avenue SE., Washington, DC 20585.

Copies of specifications of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Issued in Washington, DC, on March 17, 1988.

Eric J. Fygi,

Acting General Counsel.

PATENT APPLICATIONS

Serial No.	Title of invention
634,001	Method and Apparatus for Laser/Plasma Chemical Processing of Substrates.
685,081	Apparatus for Inspecting Fuel Elements.
688,675	Reactor Power Compensating System.
702,766	PLS101 Plasmid Vector.
704,113	System for Exchange of Hydrogen Between Liquid and Solid Phases.
707,359	Protective Interior Wall and Attaching Means for a Fusion Reactor Vacuum Vessel.
707,775	Process for Removing Mercury from Aqueous Solutions.
707,939	Negative Ion Beam Source with Low Temperature Transverse Divergence Optical System.
708,477	Fast Counting Electronics for Neutron, Coincidence Counting.
708,618	Method for the Recovery of Silver from Silver Zeolite.
708,624	Preparation of 1,1'-Dinitro-3,3'-AZO-1,2,4-Triazole.
708,625	Biomedical Silver-109M Isotope Generator.
710,880	Control for Stabilizing the Alignment Position of the Rotor of the Synchronous Motor.
710,881	Process for Preparing Fine Grain Titanium Carbide Power.
712,056	Interlockin Egg-Crate Type Grid Assembly.
713,165	Nuclear Fuel Pin Scanner.
713,352	Electron-Beam-Induced Information Storage in Hydrogenated Amorphous Silicon Devices.
716,059	Liquid Cooled Fiber Thermal Radiation Receiver.
716,060	Electrically Conductive Resinous Bond and Method of Manufacture.
716,397	Method for Fabricating Multi-Strand, Superconducting Cable.
719,653	Process for Making Structure for a MCFC.
719,654	Mixture for Producing Fracture-Resistant, Fiber-Reinforced Ceramic Material by Microwave Heating.
720,326	Atmospheric Pressure Helium Afterglow Discharge Detector for Gas Chromatography.
720,446	Optical Fiber Inspection System.
721,339	Pulsed Helium Ionization Detection System.
721,352	Radiation Detector Spectrum Simulator.
722,674	Transformer Current Sensor for Superconducting Magnetic Coils.
724,431	Low Temperature Aqueous Desulfurization of Coal.
725,562	Fixture for Supporting and Aligning a Sample to be Analyzed in an X-ray Diffraction Apparatus.
725,564	Process for Measuring Degradation of Sulfur Hexafluoride in High Voltage Systems.
725,565	Valve and Dash-Pot Assembly.
728,356	Coal-Water Mixture Fuel Burner.
728,369	Beryllium-7 Labeled Carbon Particles and Method of Making.
728,367	System for Conversion between the Boundary Representation Model and a Constructive Solid Geometry Model of an object.
728,970	Method and Apparatus for Analyzing the Internal Chemistry and Compositional Variations of Materials and Devices.
728,976	Remotely Readable Fiber Optic Compass.
728,977	Process for Producing Chalcogenide Semiconductors.
729,022	Method and Apparatus for Measuring Solar Radiation in a Vegetative Canopy.
730,529	Method for Encryption and Transmission of Digital Keying Data.
735,228	Removal of Arsenic, Vanadium, and/or Nickel Compounds from Petroliferous Liquids.
736,021	Implantable Apparatus for Localized Heating of Tissue.
736,033	Optically Pulsed Electron Accelerator.
736,154	Hydrodesulfurization Catalyst by Chevrel Phase Compounds.

PATENT APPLICATIONS—Continued

Serial No.	Title of invention
736,164	Piezoelectric Shear Wave Resonator and Method of Making Same.
736,168	Serially Connected Solid Oxide Fuel Cells Having Monolithic Cores.
736,575	Steel Refining with an Electrochemical Cell.
736,576	Method of Removing and Detoxifying a Phosphorus-Based Substance.
736,806	Ambient-Pressure Organic Superconductor.
743,544	Natural Chelating Agents for Radionuclide Decorporation.
744,441	Actinide Recovery Process.
746,471	Direct Use of Methane in Coal Liquefaction.
746,476	Positioning and Locking Apparatus.
746,478	Repetitive Resonant Railgun Power Supply.
746,479	Multiple Resonant Railgun Power Supply.
746,496	Ultrafast Neutron Detector.
746,532	Pervaporation Separation of Ethanol-Water Mixtures Using Polyethylenimine Composite Membranes.
746,593	Downhole Steam Quality Measurement.
747,202	Brush Potential Curve Tracer.
747,204	Tube Wall Thickness Measurement Apparatus.
748,375	Planarization of Metal Films for Multi-level Interconnects.
749,373	Die-Target for Dynamic Powder Consolidation.
750,123	Method for the Simultaneous Preparation of Radom-112, Xenon-125, Xenon-123, Astatine-211, Iodine-125, and Iodine-123.
750,124	Continuous Human Cell Lines and Method of Making Same.
751,405	Refractory Oxide Hosts for a High Power, Broadly Tunable Laser with High Quantum Efficiency and Method of Making Same.
751,412	Apparatus for Measuring the Decontamination Factor of a Multiple Filter Air-Cleaning System.
751,413	Superlattice Photoelectrodes for Photoelectrochemical Cells.
751,420	Method for Monitoring Stack Gases for Uranium Activity.
752,688	Soft X-Ray Laser Using Pumping of 3P and 4P Levels of He-like and H-like Ions.
753,406	Electrochemical Devices Utilizing Molten Alkali Metal Electrode-Reactant.
753,515	Thermal Casting Process for the Preparation of Membranes.
756,101	Hydrofluoric Acid-Resistant Composite Window and Method for Its Fabrication.
756,115	Method and Apparatus for Performing In-Situ Vacumm-Assisted Metal to Glass Sealing.
756,126	Plasma Deposition of Amorhous Metal Alloys.
756,127	Gage for Measuring Displacements in Rock Samples.
759,783	140 GHz Pulsed Fourier Transform Microwave Sepctrometer.
760,433	Soluble Silylated Polyacetylene Derivatives, Their Preparation and Their Use as Precursors to Novel Polyacetylene-Type Polymers.
762,368	Flue Gas Desulfurization/Denitrification Using Metal-Chelate Additives.
762,369	Apparatus for Adjusting and Maintaining the Humidity of Gas at a Constant Value Within a Closed System.
762,370	Process and Apparatus for Sensing Defects on a Smooth Cylindrical Surface in Tubing.
762,489	In-Situ Repair of a Failed Compression Fitting.
762,849	Low Voltage Arc Formation in Railguns.
763,585	Process for Producing Ethanol from Plant Biomass Using the Fungus *Paecilomyces sp.*
764,277	Fuel Agglomerates and Method of Agglomeration.
765,780	Pulse Shaping with Transmission Lines.
766,168	Multichannel Optical Sensing Device.
766,169	Method of Synthesizing a Plurality of Reactants and Producing Thin Films of Electro-Optically Active Transition Metal Oxides.
768,080	Readout System for Multi-Crystal Gamma Cameras.
768,590	Planarization of Metal Films for Multilevel Interconnects.
769,210	Method for Forming Glass-to-Metal Seals.
769,519	Osmium-191/Iridium-191m Radionuclide.
770,907	Sewage Slude Dewartering Using Flowing Liquid Metals.
770,908	Radioactive Waste Processing Apparatus.
773,881	Inlet Nozzel Assembly.
775,547	Remote Reset Circuit.
776,731	Energy Conversion System.
781,543	Chemoresistive Gas Sensor.
783,804	Spherical Torus Fusion Reacter.
783,808	Method and Apparatus for the Selective Separation of Gaseous Coal Gasification Products by Pressure Swing Absorption.
783,790	Very High Efficacy Electrodeless High Intensity of Discharge Lamps.
784,148	No-Carrier-Added [^{18} F[-N-Methylspiroperidol.
785,436	Low Density Mocrocellulor Foams.
785,384	Means of Manufacturing Annular Arrays.
786,560	Composition/Bandgap Selective Dry Photochemical Etching of Semiconductor Materials.
786,563	Dopant Type and/or Concentration Selective Dry Photochemical Ethching of Semiconductor Materials.
786,993	CR–39 Tracking Ethching and Blow Up Method.
789,882	Monitoring Transients in Low Inductance Circuits.
790,600	Current-and Lattice-Matched Tandem Solar Cell.
791,235	Nuclear Reactor Fuel Structure Containing Uranium Alloy Wires Embedded in a Metallic Matrix Plate.
791,236	Process for Electrochemically Gasifying Coal.
791,260	Magnetic Refrigeration Apparatus with Heat Pipes.
795,141	Ductile Polyelectrolyte Macromolecule-Complexed Zinc Phosphate Conversion Crystal Pre-Coatings and Topcoatings Embodying a Laminate.
795,291	Method of Removing Oxides of Sulfur and Oxides of Nitrogen from Exhaust Gases.
795,294	Slurry Burner for Mixture of Carbonaceous Material and Water.
795,604	Optical Scanning Apparatus.
795,605	Method for Welding Chromium Molydeum Steels.
796,463	Support Assembly Having Three Dimension Position Adjustment Capabilities.
796,464	Support Mechanism for a Mirrored Surface or Other Arrangement and Method.
796,815	Hydroxypridonate Chelating Agents and Synthesis Thereof.
800,563	Time-Resolved X-Ray Scattering Instrumentation.
800,565	Heat Dissipating Nuclear Reactor with Metal Liner.
800,566	Heat Dissipating Nuclear Reactor.
800,588	Precipitation Process for the Removal of Technetium Values from Nuclear Waste Solutions.

PATENT APPLICATIONS—Continued

Serial No.	Title of invention
800,590	Method for Making Thin Polypropylene Film.
800,630	Wiggler Plane Focusing in a Linear Free Electron Laser.
800,632	A Light Reflecting Apparatus Including a Multi-Aberration Light Reflecting Surface.
801,881	Vacuum Chamber for Containing Particule Beams.
802,874	Method of Beam Welding Metallic Parts Together and Apparatus for Doing Same.
804,413	Liquid-Phase Thermal Diffusion Isotope Separation Apparatus and Method Having Tapered Column.
807,097	Improved High Temperature Refractory.
812,575	Device for Equalizing Molten Electrolyte Content in a Fuel Cell Stack.
812,706	Fiber-Type Dosimeter with Improved Illuminator.
814,935	A Compensated Vibrating Optical Fiber Pressure Measuring Device.
817,934	Laser Sustained Discharge Nozzle Apparatus for the Production of an Intense Beam of High Kinetic Energy Atomic Species.
818,300	Analysis with Electron Microscope of Multielement Samples Using Pure Element Standard.
818,946	Method and Apparatus for Preventing Cyclotron Breakdown in Partially Evacuated Waveguide.
823,544	Fuel Processor for Fuel Cell Power System.
823,718	Method of Preparing a Dimensionally Stable Electrode for Use in a Molten Carbonate Fuel Cell.
824,037	Improved Ion Detector.
827,703	A High Average Power Pockels Cell.
827,704	Double Diameter Boring Tool.
830,811	Relief Device for a Vacuum Vessel.
830,812	A Process for the Chemical Preparation of High-Field ZnO Varistors.
832,817	Solar Solids Reactor.
834,675	Anaerobic Michrobial Dissolution of Lead Production of Organic Acids.
836,882	Gradient Index Retroreflector.
836,883	Foil Changing Apparatus.
838,493	Cermet Insert High Voltage Holdoff Improvement for Cermaic/Metal Vacuum Devices.
838,494	Boron Uptake in Tumors, Cerebrum and Blood From [^{10}B] $Na_4B_{24}H_{22}S_2$.
842,573	Mirror Mount.
844,034	Josephson Junction Q-Spoiler.
844,035	Confined Ion Beam Sputtering Device and Method.
844,043	Optical Sensor of Magnetic Fields.
846,530	Ionized Channel Generation of an Intense Relativistic Electron Beam.
846,783	Liquid Detection Circuit.
848,001	Magnetic Refrigeration Apparatus with Belt of Ferro or Paramagnetic Material.
849,625	Method for Producing Refractory Nitrides.
849,626	Preparation of Catalysts Via Ion-Exchangeable Coating on Supports.
849,913	Improved Hydrous Oxide Ion-Exchange Compound Catalysts.
849,914	Mercury Switch with Non-Wettable Electrodes.
850,301	Method for the Desulfurization of Hot Product Gases from a Coal Gasifier.
850,455	Uniform Insulation Applied-B Ion Diode.
853,104	Electrochemical Cellwith High Conductivity Glass Electrolyte.
853,117	Low Temperature Pyrolysis of Coal or Oil Shale in the Presence of Calcium Compounds.
853,118	Process for Fabrication of Large Titanium Diboride Ceramic Bodies.
853,119	[^{11}C]Clorgyline and [^{11}C]–L-Deprenyl and Their Use in Measuring Functional Monoamine Oxidase Activity in the Brain Using Positron Emission Tomography.
854,831	Method and Apparatus for Optical Temperature Measurements.
855,529	E-Beam Ionized Channel Guiding of an Intense Relativistic Electron Beam.
855,546	Cathode for Molten Carbonate Fuel Cell.
855,568	Anomalous-Viscosity Current Drive.
859,164	Explosive-Driven, High Speed, Arcless Switch.
859,166	Sintered Composite Filter.
859,167	Adapter Plate Assembly for Adjustable Mounting of Objects.
859,949	Method and Apparatus for Transferring and Injecting RF Energy from a Generator to a Resonant Load.
861,380	Digital Time Delay.
861,381	High Resolution Time Interval Meter.
861,383	Improved Plug Valve.
863,331	Source Replenishment Device for Vacuum Deposition.
863,492	Cryogenic Support Member.
863,493	High Power Microwave Generator.
863,494	Step-Wise Supercritical Extraction of Carbonaceous Residua.
863,650	Conditioning of Carbonaceous Material Prior to Physical Beneficiaries.
863,897	Process for Producing Peracids from Aliphatic Hydroxy Carboxylic Acids.
866,001	Spheromak Reactor with Poloidal Flux-Amplifying Transformer.
867,123	Electrolyte Matrix in a Molten Carbonate Fuel Cell Stack.
867,124	Process and Apparatus for Coal Hydrogenation.
867,125	Method for In Situ Heating Hydrocarbonaceous Formations.
867,175	Electrohydrodynamically Driven Large-Area Liquid Ion Sources.
868,075	Lithium Niobate Explosion Monitor.
868,398	Lithium Disulfide Battery.
868,478	Polyphosphazene Semipermeable Membranes.
870,569	Method and Apparatus for Measuring Low Currents in Capacitance Devices.
871,192	Two-Stage Coal Liquefaction Without Gas-Phase Hydrogen.
872,718	Method for Improving Voltage Regulation of Batteries, Particularly Li-FeS$_2$ Thermal Batteries.
872,728	Improved Methods for Achieving the Equilibrium Number of Phases in Mixtures Suitable for Use in Battery Electrodes, E.G., for Lithiating FES$_2$.
877,959	Apparatus and Method for Void/Particulate Detection.
880,628	Photosensitive Dopants for Liquid Noble Gases.
881,176	Pulsed Hydroject.
881,310	Portable System and Method Combining Chromatography and Array of Electrochemical Sensors.
883,216	Bipolar Battery with Array of Sealed Cells.
883,217	Molten Carbonate Fuel Cell.
884,858	Triggered Plasma Opening Switch.

PATENT APPLICATIONS—Continued

Serial No.	Title of invention
885,977	Large Single Crystal Quaternary Alloys of IB-IIIA-Se_2 and Methods of Synthesizing the Same.
886,491	Fluid Relief and Check Valve.
888,311	Polysilicon Photoconductor for Integrated Circuits.
888,313	Method and Apparatus for Controlling Multiple Motors.
890,256	Electrochemical Cell with High Discharge/Charge Rate Capability.
892,990	Analytical Instrument with Apparatus and Method for Sample Concentrating.
893,056	Stabilized Chromium Oxide Film.
894,145	Process for Obtaining Multiple Sheet Resistances for Thin Film Hybrid Microcircuit Resistors.
894,529	X, Y, Z Positioner.
895,642	Clip-On Extensometer Grip.
896,063	Thermal Protection Apparatus.
898,064	Method for Isotope Enrichment of Mercury-196 by Selective Photoionization.
899,122	Profilometer for Tubes.
900,859	Boron Hydride Polymer Coated Substrates.
900,860	Copper Vapor Laser Acoustic Thermometry System.
901,867	Methods of and Apparatus for Radiation Measurement, and Specifically for *In Vivo* Radiation Measurement.

[FR Doc. 88-6329 Filed 3-22-88; 8:45 am]

BILLING CODE 6450-01-M

Intent To Grant Exclusive Patent License; Summit Technology Inc.

Notice is hereby given of an intent to grant to Summit Technology Inc. of Watertown, Massachusetts, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,686,979, entitled "Excimer Laser Phototherapy for the Dissolution of Abnormal Growth." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed exclusive license will be subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with support documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on March 17, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88-6330 Filed 3-22-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-71-NG]

Pepperell Power Associates; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 14, 1987, of an application filed by Pepperell Power Associates (PPA) for authorization to import from TransCanada Pipelines Limited (TransCanada), up to a daily contract quantity of 9,795 Mcf of Canadian natural gas over a 15-year term beginning on or before January 1991. The gas would be imported to fuel a new combined cycle cogeneration facility to be constructed by the applicant in Pepperell, Massachusetts. At the request of the ERA, PPA, on February 9, 1988, filed additional information to support its application for import authority.

The application, as supplemented, is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 22, 1988.

FOR FURTHER INFORMATION:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., (202) 586-6667.

SUPPLEMENTARY INFORMATION: PPA furnished with its application a copy of a long-term gas sales and purchase precedent agreement dated November 25, 1987, between TransCanada and PPA. Under the terms of the agreement, TransCanada will supply the applicant a total contract quantity of 53,627,625 Mcf of natural gas over a 15-year term beginning on or before January 1991. TransCanada agrees to deliver a maximum annual quantity of 3,575,175 Mcf of natural gas to the border point of delivery.

In its supplemental filing, PPA advised that although its precedent gas purchase agreement states that the imported gas will be delivered by TransCanada to the interconnection of TransCanada's facilities with those of Tennessee Gas Pipeline Company (Tennessee) at the Canadian/United States border near Niagara Falls, Ontario, PPA may elect Champlain Gas Pipeline Company (Champlain) as its domestic transporter. If Champlain becomes the transporter, TransCanada would deliver the gas to its point of interconnection with Champlain at Highgate Springs, Vermont. Champlain would transport

the natural gas to a metering station at the project site owned by Colonial Gas Company (Colonial), the local distribution company.

Construction of the cogeneration facilities is scheduled to be completed in the fourth quarter of 1989 at which time the initial delivery of natural gas for test purposes would take place. It is estimated that the facility would begin taking the daily contract quantity on or before January 1991. The facility will be designed to produce about 38 megawatts of electricity that Commonwealth Electric Company has agreed to buy, and a yearly average steam flow of about 41,000 pph to be sold to the James River Corporation for product processing and heating. The cogeneration facility will be located at the James River Corporation plant site in Pepperell.

The purchase contract establishes a two-part border price for the gas. The demand component will be $26.46 Mcf per month or $.87 per Mcf at 100 percent load factor. The commodity component for each month shall be the greater of $1.20 per MMBtu or an amount determined by the following formula that factors in the cost of No. 6 residual fuel oil: commodity charge ($1.20 × AFC divided by $18.05 + TC—ERCA). AFC is the greater of $18.05 or the average of the highest and lowest prices for No. 6 residual 2.2 percent sulphur fuel oil as reported in the *Journal of Commerce* under the heading, "N.Y. Harbor Cargo Prices—Fuel Oil" for all Wednesdays during the immediately preceding month. TC is a transportation credit equal to half the amount, if any, that PPA's domestic transportation costs per MMBtu at 85 percent load factor is less than $1.00; and ERCA represents an Exchange Rate Commodity Adjustment per MMBtu. That factor converts to Canadian dollars the demand charge rate for total heating value of gas delivered each month which under the contract is expressed in U.S. dollars. The ERCA may be a negative amount.

Under other terms of the purchase agreement PPA assumes a take-or-pay obligation that requires PPA to purchase no less than 50 percent of the annual contract quantity (ACQ) for the contract year. If minimum volumes are not taken in any year, PPA shall purchase from TransCanada in the next year 50 percent of the ACQ plus a quantity of gas equal to the difference between the ACQ and the quantity actually taken in the preceding year. If PPA does take less than 50 percent of the ACQ during the year for any reason other than unscheduled outages at its facility, TransCanada may renegotiate for a reduction in the daily contract quantity of 9,759 Mcf per day.

PPA states its estimated dollar cost of transportation per Mcf of its natural gas under offers it has received from Champlain and Tennessee are as follows:

	Champlain	Tennessee
TransCanada (includes commodity charge)	2.29	2.22
U.S. Transportation	.62	.97
Colonial (local)	.14	.09
Total	$3.05	$3.28

PPA asserts that its gas purchase agreement for an imported supply represents the best overall supply arrangement it could secure to meet its needs on a long-term, firm supply basis. PPA states that after an extensive search for a domestic supply, it could not find a long-term supplier offering an economical price for natural gas that was tied to the price of No. 6 fuel oil which, along with a competitive gas price, PPA considers to be a critical factor in the economic viability of its new cogeneration project sited at a plant now served by a boiler facility capable of burning No. 6 fuel oil. Since the natural gas pricing formula tracks the price of the fuel oil, PPA contends its supply arrangement is and will remain competitive for its needs over the term of the contract.

With respect to the security of its supply source for the term of its contract, PPA points out that its supplier, TransCanada, has approximately 2,700 gas purchase contracts with some 700 producers in the Province of Alberta covering 6,700 gas pools and 18,600 gas wells which provide about 26.4 Tcf of gas reserves to TransCanada over an estimated 24 year reserve life.

PPA asserts that its proposed import will have no adverse environmental impacts. According to the application, no environmental impacts will result from construction of its cogeneration facility at an existing industrial site. However, PPA states that the domestic transportation of its gas whether through the Tennessee system or the Champlain system would require either company to construct additional facilities. On January 15, 1988, Tennessee filed with the Federal Energy Regulatory Commission (FERC) in Docket No. CP88-173 for permission to build the facilities it would need to deliver PPA gas to Colonial's system. Similarly, on the same date, Champlain filed with the FERC in Docket No. CP88-169 for permission to build the added new facilities needed to accommodate the transportation of PPA's natural gas to Colonial. If Tennessee becomes PPA's transporter, Colonial will need to upgrade a portion of its system for which it will be required to seek a project authorization from the Massachusetts Energy Siting Council and possibly from the city of Pepperell. No Colonial system upgrade would be needed if Champlain becomes the transporter.

PPA furnished with its amended application a copy of a letter from the Director, Electric Power Division, Department of Public Utilities, the Commonwealth of Massachusetts addressed to the Commonwealth Electric Company approving its contract with PPA to purchase the electricity generated by its proposed cogenetration facility. PPA also furnished a copy of its certificate from the Secretary of Environmental Affairs of the Commonwealth of Massachusetts stating that the Pepperell Power Corporation cogeneration project does not require the preparation of an Environmental Impact Report under its Environmental Policy Act because of its location and levels of NOX emission as described for the facility.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). To the extent there are any issues that are unique to cogeneration facilities, the ERA may consider these in making a public interest determination.

Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make

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the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., April 22, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PPA's application and additional information filed on February 9, 1988, are available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 16, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-6331 Filed 3-22-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP77-8-008, et al.]

Columbia Gulf Transmission Company et al.; Natural Gas Certificate Filings

March 17, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP77-8-008]

Take notice that on March 1, 1988, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP77-8-008, a petition to amend the order issued May 6, 1977, in Docket No. CP77-8, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a reduction in the contract demand (CD) it presently transports for Northern Natural Gas Company, Division of Enron (Northern), all as more fully set forth in the petition which is on file with the Commission and opened to public inspection.

Columbia Gulf states that pursuant to the order issued in Docket No. CP77-8, on May 6, 1977, as amended, it is authorized, among other things, to transport a CD of 130,000 Mcf of natural gas per day for Northern, including Northern's volumes purchased in West Cameron Blocks 606, 668, 637 and 630, which is made available to Northern from a point in Vermilion Block 245, offshore Louisiana, to the terminus of the Blue Water Pipeline System near Egan, Louisiana. Columbia Gulf avers that it performs such transportation service pursuant to the terms of a transportation agreement with Northern dated September 3, 1976, as amended.

Columbia Gulf asserts that in recent years Northern's gas deliverability in the subject blocks has rapidly decreased, and Columbia Gulf is willing to reduce the CD volumes.

Columbia Gulf further states that it requests authorization to reduce the presently authorized CD volumes from 130,000 Mcf of natural gas per day to 35,000 Dt of natural gas per day, pursuant to an amendment to the agreement dated January 12, 1980.

Comment date: April 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. South Georgia Natural Gas Company

[Docket No. CP88-282-000]

Take notice that on March 9, 1988, South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP88-282-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing South Georgia to increase the Maximum Daily Quantities (MDQ) to three of its existing customers by a total of 590 Mcf per day (Mcf/d), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia states that it is authorized to sell gas for resale to the Americus Utility Commission (Americus), to the City of Thomasville, Georgia (Thomasville) and to the City of Tifton, Georgia (Tifton) pursuant to Service Agreements dated November 1, 1973, October 23, 1984 and September 21, 1984 at an MDQ of 3,535 Mcf/d, 3,535 Mcf/d and 2,626 Mcf/d, respectively. South Georgia states that on February 29, 1988, Southern Natural Gas Company (Southern) received authorization in Docket No. CP70-7-056, to reduce the Contract Demand of one of Southern's customers and to reallocate that reduction among those of its other customers who elected to participate in the reallocation. South Georgia states that it sent letters to its customers asking them to determine if they wanted any of the Contract Demand that South Georgia could obtain from Southern's reallocation. Americus, Thomasville and Tifton stated that they would like to increase their MDQ by 265 Mcf, 300 Mcf and 25 Mcf, respectively. South Georgia states that the February 29th order in Docket No. CP70-7-056 authorized Southern to distribute to South Georgia the additional 590 Mcf/d in its Contract Demand. It is stated that no new facilities are required to effect the increases in MDQ requested herein.

Comment date: April 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP83-254-007 and Docket No. CP83-335-000]

Take notice that on February 26, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck,

North Dakota 58501 filed a request for an extension of the certificate authority granted on May 25, 1984, in Montana-Dakota Utilities Co., 27 FERC ¶61,312 (1984), to permit continued natural gas storage and transportation service on behalf of its producer-suppliers, pursuant to its Rate Schedules S-2 and T-3 for a period ending the earlier of May 24, 1989, or the acceptance of "alternative transportation authority," all as more fully set forth in the application, which is on file with the Commission and open for public inspection. Williston Basin states that except for extending the duration of the services under Rate Schedules S-2 and T-3 for those producer suppliers whose four year term is or has expired, all other terms and conditions of the rate schedules and the underlying certificate are to remain in place.

Comment date: April 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP88-284-000]

Take notice that on March 1, 1988, Arkla Energy Resources, a Division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88-284-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three sales taps and related jurisdictional facilities, to establish a new delivery point for an existing customer, and to perform transportation and delivery services associated therewith on behalf of Arkansas Louisiana Gas Company (ALG), Arkla's distribution division, for resale to consumers in Texas, Louisiana, and Kansas, under the certificates issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is explained that AER proposes to construct and operate a 2-inch sales tap and related facilities on its Line AM-129 in Bowie County, Texas, to deliver gas to ALG for service to the Texarkana Waste Water Treatment Plant, a commercial customer. It is stated that the plant would use approximately 15,000 Mcf of natural gas per year and 55 Mcf on a peak day.

It is also explained that AER proposes to establish a new town border station (T.B. #3) and related facilities on its Line CM-14 in Bowie County, Texas, to enable ALG to serve present and future consumers in Wake Village, Texas. AER estimate that the consumers served through the Wake Village T.B. #3 would use approximately 41,300 Mcf of natural gas per year and 300 Mcf on a peak day.

In addition, it is explained that AER proposes to construct and operate a 2-inch sales tap and related facilities on its Line FM-8 in Webster Parish, Louisiana, to deliver gas to ALG for service to International Technology Corporation (ITC), an industrial customer. It is estimated that ITC would consume approximately 132,000 Mcf of natural gas per year and 806 Mcf on a peak day.

Finally, AER explains that it proposes to construct and operate a ¾-inch sales tap and related facilities on its Line 6 in Reno County, Kansas, to deliver gas to Mr. Bill Wiese, a commercial customer. It is estimated that Mr. Wiese would use approximately 400 Mcf of natural gas per year and 10 Mcf on a peak day for irrigation purposes during certain periods of the year.

Comment date: May 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Mountain Fuel Resources, Inc.

[Docket No. CP88-284-000]

Take notice that on March 10, 1988, Mountain Fuel Resources, Inc., (MFR) 79 South State Street, Salt Lake City, Utah, 84111, filed in Docket No. CP88-284-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval authorizing the abandonment by MFR of certain mainline compressor facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MFR proposes to abandon (1) two reciprocating compressor units (each rated at 660-horsepower) located on MFR's Main Line No. 68, at its Piceance Creek Compressor Station in Rio Blanco County, Colorado, (Piceance Creek) and (2) one reciprocating compressor (245-horsepower) located on MFR's Main Line No. 68 at its Northwest Exchange Compressor Station in Rio Blanco County, Colorado, (Northwest Exchange). MFR states that since it acquired the Piceance Creek compressors, free-flow pipeline capacity has proven sufficient to handle deliveries from fields upstream of these compressors. Moreover, MFR asserts, the needs to use the Northwest Exchange compressor to compress gas received from Northwest Pipeline Corporation (Northwest) has not persisted since Northwest's line pressure has consistently been higher than the pressure in MFR's Main Line No. 68. MFR explains that, as a consequences, operation of the Piceance Creek and Northwest Exchange compressors is not required, and that there is no prospect for their future use at their current locations. MFR proposes to abandon the compressors in place until such time as MFR chooses to utilize the compressors at another location on its system or perhaps to sell them.

MFR staes that the proposed abandonment would have no impact upon MFR's customers. Further, MFR reiterates that the receipt of gas from Northwest at the Northwest Exchange point would not be affected by the abandonment of the Northwest Exchange compressor.

Comment date: April 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Pacific Gas Transmission Company

[Docket No. CP88-276-000]

Take notice that on March 7, 1988, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP88-276-000 an application pursuant to Section 7(c) of the Natural gas Act for a certificate of public convenience and necessity authorizing PGT to transport on an interruptible basis up to 31.13 MMcf per day of natural gas for Salmon Resources Ltd. (Salmon) and increase in the capacity of it's Spokane City Tap located near Starr Road, Spokane, Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PGT asserts that the proposal constitutes a refiling for transportation volumes of gas which were part of an application filed in Docket No. CP87-21-000, but for which authority was not granted based upon omission of material information (see order issued December 15, 1987, at 41 FERC ¶ 61,266). PGT alleges that this proposal is a remedial document to correct deficiencies in the prior application.

It is stated that the proposed transportation would be accomplished by delivery of Canadian gas to PGT at Kingsgate, British Columbia of up to 31.13 MMcf per day for the account of Salmon and the redelivery of such natural gas to Salmon at a point of interconnection between the pipeline systems of PGT and The Washington Water Power Company (WWPC) at Starr Road near Spokane, Washington. It is further stated that the capacity of the existing Spokane City Tap would be increased from 30 MMcf per day to 60

MMcf per day to facilitate the proposed deliveries. It is alleged that the interruptible transportation service would be accomplished through the utilization of existing capacity on PGT's system. The term of the agreement would be for a primary term of ninety days, not to exceed one year.

It is asserted that the proposed delivery of natural gas for Salmon's account to the Starr Road delivery point is meant to satisfy the requirement of several customers who are represented by Development Associates, Inc. (DA). DA, acting as agent on behalf of various end-users and a local distribution company (WWPC), has contracted on their behalf for the purchase of Canadian gas to be transported by PGT. PGT states that it has provided specific information (*i.e.*, identities/volumes to be delivered) with regard to such customers. PGT asserts that it has provided copies of contract and/or letters of intent evidencing the underlying purchase transactions which form the basis for the application.

PGT proposes to provide the interruptible transportation service pursuant to its IT-1 Rate Schedule, which it is stated, accords with the transportation rate conditions imposed by the Commission for similar transportation in Docket No. CP87-21-000 (see 41 FERC ¶ 61,019). The cost of increasing the capacity of the delivery facilities is estimated to be $165,300. PGT state the cost of constructing such facilities would be financed by a capital contribution from DA.

Comment date: April 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-274-000]

Take notice that on March 4, 1988, Northern Natural Gas Company, Division of Enron Corporation, (Northern), 2223 Dodge Street, Omaha, Nebraska, 68102, filed in Docket No. CP88-274-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service on behalf of Windward Energy and Marketing Company (Windward Energy), a broker of natural gas, under the certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas for Windward Energy from seven receipt points located in Oklahoma, Texas and Iowa to six points of delivery in Texas, Kansas and Iowa. Northern further states that the maximum daily and annual quantities that it would transport for Windward Energy would be 75 billion Btu equivalent and 27.375 trillion Btu equivalent, respectively. It is stated that construction of facilities would not be required to provide the proposed service.

Comment date: May 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-273-000]

Take notice that on March 3, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-273-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon a natural gas service rendered under an expired service agreement with CNG Transmission Corporation (CNG), and for a certificate of public convenience and necessity authorizing Transco's performance of a sale and/or transportation service for CNG all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it presently renders natural gas service to CNG under a service agreement which provides for the sale for resale of 10 million Mcf of natural gas each contract year, and that the service remain in effect until December 31, 1979, and from year to year thereafter unless terminated by either party. Transco further indicates that Transco and CNG have agreed to the termination of this service, that this service has now expired, and that Transco and CNG have agreed to substitute for such service, the service proposed in Transco's application.

Transco states that under the proposed service agreement it will provide firm annual sales and/or transportation service for CNG up to the dekatherm equivalent of 10 million Mcf for an initial term of ten years, commencing April 1, 1988. During the summer period of April 1 through October 31, Transco indicates that it would deliver or tender for delivery a maximum daily quantity up to the dekatherm equivalent of 41,310 Mcf per day, up to a maximum total summer period quantity up to the dekatherm equivalent of 8,840,000 Mcf. During the winter period, November 1 through March 31, Transco proposes to deliver or tender for delivery a maximum daily quantity up to the dekatherm equivalent of 10,000 Mcf, up to a maximum total winter period dekatherm-equivalent quantity of 1,160,000 Mcf. Transco indicates that subject to the requirements of its other firm service obligations, service to CNG would be tendered on a daily basis and any quantity or capacity tendered for delivery would be credited against the maximum quantity for each period and the annual quantity. It is stated that the proposed agreement also provides that by mutual agreement, additional quantities above the maximum daily delivery quantity could be sold and/or transported and that any such deliveries would be credited against the maximum quantity for the period and the annual quantity.

Transco states that under the proposed agreement, on or before March 1 of each year, CNG would nominate the specific levels of transportation and/or sales service, equal in total to the annual quantity, desired for the next contract year; provided, however, CNG would be responsible for any necessary arrangements (including the construction of any facilities) for the transportation quantities to enter Transco's system. Transco advises that CNG's ability to nominate points of receipt for transportation service in Transco's production area upstream of Compressor Station No. 65 would be subject to available capacity and any other applicable procedures and regulations pertaining to changes in points of receipt on Transco's system. Therefore, Transco proposes to transport to Station No. 65 quantities nominated for transportation service which are located at receipt points upstream of Station No. 65 on an interruptible basis consistent with the general terms and provisions affecting the curtailment of service as specified in Transco's tariff and generally applicable operating conditions. Transco indicates that under the instant proposal, no additional facilities would be required to render the proposed service.

Transco indicates that the demand rate for sales service under the proposed agreement would be the applicable Rate Schedule CD D2 demand rate in effect from time to time. It is further stated that the proposed reservation rate for transportation would be determined in the same manner as sales service, excluding production area costs reflected in the Rate Schedule CD D2 demand rate. Transco states that the commodity rate per dekatherm equivalent of sales would be the same as the applicable Rate Schedule CD commodity rate. It is indicated that the transportation commodity rate per dekatherm equivalent of gas transported downstream of Station No. 65 would be the non-gas cost component of the applicable Rate Schedule CD commodity rate, exclusive of production area costs, the Deferred Adjustment, the DCA Unit Adjustment and, if applicable, the GRI Adjustment. However, Transco states that the ACA charge in effect from time to time would be added to the sales and transportation commodity rates. For the interruptible transportation service upsteam of Station No. 65, Transco proposes to charge initially the currently effective maximum rate applicable to its Part 284 transactions as set forth in Transco's FERC GAS Tariff, Second Revised Volume No. 1.

Comment date: April 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. PennEast Gas Services Company, Texas Eastern Transmission Corporation

[Docket No. CP87-4-001]

Take notice that on March 9, 1988, PennEast Gas Service Company (PennEast) and Texas Eastern Transmission Corporation (Texas Eastern), jointly referred to as Applicants, Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-4-001 an amendment to PennEast's application filed on October 2, 1986 in Docket No. CP87-4-000, pursuant to section 7(c) of the Natural Gas Act, to reflect a modification of the ownership structure of certain proposed facilities for which Commission authorization to construct and operate is requested and relocation of the site for the proposed 3,500 horsepower (HP) compressor station, and to include Texas Eastern as a party applicant requesting authorization to render a compression and metering service to PennEast, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that, in the original application, PennEast requested authorization to provide jurisdictional sales and transportation of gas on a firm basis for a primary term of 20 years to five local distribution companies located in New York and New Jersey pursuant to proposed Rate Schedules SS-1 and T-1 in two phases, Phase I commencing November 15, 1987, of up to 100,000 dt equivalent per day and Phase II commencing November 15, 1988 until termination, of up to 245,000 dt equivalent per day. Further, Applicants state that PennEast proposed to construct and operate facilities, including a 3,500 HP compressor station near mile post 36.25 on Texas Eastern's existing Line No. 24, under Phase I and Phase II. It is indicated that PennEast also sought a Blanket Certificate pursuant to § 284.221 of the Commission's Regulations.

Applicants indicated that, on November 2, 1987, PennEast filed a Notice of Partial Withdrawal of Application, withdrawing its request for Phase II facilities. It is submitted that the request for Phase II facilities authorization is now requested in Docket No. CP87-92-002.

Applicants state that, in the original application, PennEast agreed to reimburse certain costs incurred by Texas Eastern for the upgrade compression facilities at Shermans Dale and Bernville Compressor Stations. Applicants further state that PennEast included these costs in its rate base for the purpose of calculating the PennEast rates. Applicants indicate that a review of the Tax Reform Act of 1986 indicates that certain tax penalties would occur as a result of the ownership arrangement proposed in the original docket. Applicants submit that, under the Tax Reform Act, the contribution proposed to be made by PennEast to Texas Eastern would be treated as taxable income to Texas Eastern, and the resulting additional Federal income tax would impose an additional cost burden on the project. Applicants request a restructuring of the ownership arrangement in order to provide for outright ownership interest by PennEast in the following facilities in the respective percentages pursuant to the Gas Compression and Metering Agreement filed in Exhibit M of the amended application herein:

	PennEast (percentage)
20.01 miles of 36-inch pipeline loop, various counties in Pennsylvania	100
Belleville Compressor Station—3,500 HP (Previously located at Centre Hall)	100
Upgrade compression at Texas Eastern's Shermans Dale and Bernville Compressor Stations—8,600 HP each	81.2

It is indicated that, in the original application, PennEast sought authorization to construct and operate a 3,500 HP compressor station (designated Centre Hall) at mile post 36.25 on Texas Eastern's Line No. 24. As a result of delays encountered in securing siting authorization, PennEast proposes and requests authorization to locate the 3,500 HP compressor facility (now designated Belleville Compressor Station) at mile post 18.50 on Texas Eastern's Line No. 24 in Union Township, Mifflin County Pennsylvania. PennEast indicates that the estimated cost as shown in Exhibit K of the original application would remain unchanged.

It is indicated that Texas Eastern would, on behalf of PennEast, operate the above facilities pursuant to the terms of a Gas Compression and Metering Agreement between PennEast and Texas Eastern. It is further indicated that Texas Eastern would charge PennEast for the incremental operation and maintenance expenses incurred by Texas Eastern. Applicants state that the incremental operating and maintenance expense to be charged PennEast by Texas Eastern are attached in Exhibit P, Schedule 8 of the amended application. Applicants submit that the total PennEast cost of service and initial rates remain unchanged from the Exhibit P filed in the supplement dated September 23, 1987. Texas Eastern requests that the charge shown in Exhibit P, Schedule 8, Line 42, be accepted as initial rates for such compression and metering service.

Applicants also submit a revised Exhibit P which reflects modification to PennEast's proposed FERC Gas Tariff. Applicants indicate that these modifications have been made to reflect current Commission policy on open-access tariff provisions and minor modifications in the tariff to resolve issues raised by the Commission Staff in data requests to PennEast.

Comment date: April 7, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-275-000]

Take notice that on March 4, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-275-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the commission and open to public inspection.

Northern states pursuant to a Gas Transportation Agreement dated February 25, 1988, Northern would transport up to 200,000 MMBtu of gas per day for Enron from 114 points of receipt in states of Oklahoma, Kansas, Texas, New Mexico, Iowa, South Dakota, Minnesota and North Dakota to twelve points of delivery in Texas, Kansas, Wisconsin, Iowa, Illinois and North Dakota. Northern further states that construction of facilities would not be required to provide the proposed service.

Comment date: May 2, 1988, in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6324 Filed 3-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-185-002, et al.]

Malacha Hydro Limited Partnership, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 17, 1988.

Take notice that the following filings have been made with the Commission.

1. Malacha Hydro Limited Partnership

[Docket No. QF86-185-002]

On March 7, 1988, Malacha Hydro Limited Partnership (Applicant), c/o Constellation Development, Inc., 250 West Pratt Street, Baltimore, Maryland 21201-2423 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The instant application for recertification of the hydroelectric facility as a qualifying small power production facility requests changes in the facility's ownership and changes in the name and address of the Applicant as identified above. Qualifying status of the facility as a qualifying small power production facility was previously granted to Malacha Power Project, Inc., c/o Mr. John J. Vestal, P.O. Box 250, Fall River Mills, California 96028, on January 8, 1986, and December 22, 1987 (Docket No. QF86-185-000, 34 FERC ¶62, 070 (1986), and Docket No. QF86-185-001, 41 FERC ¶61,350 (1987), respectively). The facility also had a hydroelectric license issued on December 2, 1986 (Project No. 8296-001, 37 FERC ¶62,172 (1986)). Ownership of the facility was previously held by the General Electric Credit Corporation and/or by other financial institutions with Malacha Power Project, Inc. being the operator lessee of the facility. The instant application for recertification of the facility requests change in the facility's ownership to a limited partnership, consisting of Malacha Power Project, Inc. and CD Malacha I, Inc., a wholly-owned subsidiary of the Baltimore Gas and Electric Company, an electric utility. Applicant states that CD Malacha I, Inc. will not under the limited partnership agreement be entitled to more than a 50 percent ownership interest in the facility. All other aspects of the facility remain unchanged. The facility is exempt from the requirements of section 8, subsection (j) of the Electric Consumers Protection Act of 1986 (ECPA) since the application for license was accepted for filing prior to the enactment of ECPA.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Rockwell International Corporation—Energy Technology Engineering Center

[Docket No. QF84-194-005]

On March 1, 1988, Rockwell International Corporation (Applicant) of P.O. Box 1449, Canoga Park, California 91304 submitted for filing a new application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The bottoming-cycle cogeneration facility will be located at the U. S. Department of Energy's Energy Technology Engineering Center (ETEC) on Woolsey Canyon Road, in Santa Susana, Ventura County, California. The ETEC is a government-owned, contractor-operated laboratory dedicated to the development of emerging energy technologies. The ETEC is currently operated by the Rockwell International Corporation. The facility will consist of a condensing steam turbine generator. The primary energy source of the facility will be reject heat in the form of steam produced during the testing of steam generators (boilers). The net electric power production

capacity of the facility will be 26.9 megawatts. The facility was previously denied certification as a qualifying bottoming-cycle cogeneration facility on May 25, 1984 (Docket No. QF84-194-000, 27 FERC ¶62,190 (1984)). The facility was certified as a qualifying small power production facility on June 18, 1985 (Docket No. QF84-194-002, 31 FERC ¶62,357 (1985)).

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6271 Filed 3-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-305-000]

Cabot Gas Processing Corp.; Application for Amendment of a Certificate and for Blanket Certificate Authority

March 18, 1988.

Take notice that on February 12, 1988, Cabot Gas Processing Corporation (Cabot Processing) of 550 WestLake Park Blvd., Suite 170, Houston, Texas 77079, filed an application for amendment of a certificate of public convenience and necessity and for blanket certificate authority with pregranted abandonment pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717(f) and Part 157 of the Commission's Regulations, 18 CFR Part 157, to make sales of natural gas in interstate commerce, all as more fully set forth in said application which is on file with the Federal Energy Regulatory Commission and open to public inspection.

Cabot Processing states that it is involved in the ongoing reorganization of Cabot Corporation (Cabot) and that Cabot Processing has been and is to be conveyed certain gas processing contracts by Cabot pertaining to sales made at the Walton Plant, Winkler County, Texas, and the Estes Plant, Ward County, Texas. Cabot Processing seeks authorization to continue certain residue sales made by Cabot to El Paso Natural Gas Company from the Walton Plant under Cabot's certificate in Docket No. CI73-767. Cabot Processing also requests redesignation of Cabot's related Rate Schedule No. 107. By assignment dated and effective February 2, 1988, Cabot assigned its interest in the related gas purchase agreement to Cabot Processing.

Cabot Processing also seeks blanket certificate authority to make sales in interstate commerce of other gas from the aforementioned processing plants. Cabot Processing states prior certificated sales to Transwestern Pipeline Corporation from the Walton and Estes Plants have been duly abandoned (*see Kerr-McGee Corp., et al.,* Docket No. G-12235-003, *et al.*); and, subsequently, the Commission granted blanket certificate authority to Cabot for sales from the Walton Plant of residue gas for which abandonment authorization had been obtained (*see Cities Services Oil and Gas Corporation, et al.,* Docket No. CI87-223-000, *et al.*). Cabot Processing seeks authorization to succeed to this blanket certificate issued to Cabot. Cabot Processing also seeks blanket certificate authority for other gas from the Walton and Estes Plans that have been or may be abandoned. Cabot Processing seeks such blanket authorization for the remaining life of the reserves.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 4, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6325 Filed 3-22-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-533-000, CI69-491-001 and CI69-491-002]

Mesa Operating Limited Partnership (Successor to Pioneer Production Corporation) and Amoco Production Co.; Applications

March 18, 1988.

Take notice that on February 2, 1988, Amoco Production Company (Amoco) and Mesa Operating Limited Partnership (Mesa) as operator and as working interest owner on behalf of itself and all other working interest owners (except Amoco)[1] (Applicants) filed as part of a Stipulation and Agreement in Settlement of Proceedings in Docket No. CI87-533-000, *et al.*, applications to abandon their sales of gas to United Gas Pipe Line Company (United) from the Jennings Townsite Field, Jefferson Davis Parish, Louisiana. Amoco requests in Docket No. CI69-491 that its FERC Gas Rate Schedule No. 522 be canceled because Amoco assigned certain interests in the Jennings Townsite Field to Riceland Petroleum Company by assignment executed July 19, 1985, and because Amoco states that the balance of the acreage is either nonproductive of gas-well gas or all such gas-well is depleted. Amoco states that such interests are dedicated to an October 7, 1968, contract with United which is on file with the Commission as Amoco's FERC Gas Rate Schedule No. 522. The primary term of this contract expires on May 1, 1988. Mesa states that the wells have stopped producing commercial quantities of gas-well gas and that the primary term of the subject contract with United dated April 28, 1976, expires on May 1, 1988. Mesa states that such contract is on file with the Commission as Mesa Operating Limited Partnership FERC Gas Rate Schedule No. 262 authorized in Docket No. CI76-603 and Terra Resources, Inc. FERC Gas Rate Schedule No. 49 authorized in Docket No. CI76-670. Mesa states that TXO Production Corp. requests abandonment of its sales of gas-well gas which it made to United under the terms of the April 28, 1976, contract after TXO Production Corp. acquired certain interests in the Jennings Townsite Field. Mesa states that Santa Fe Minerals, Inc., successor to C.F. Braun & Co., and FPCO Oil & Gas Co., successor to Petro-Lewis Corporation, request abandonment of their sales of gas to United under the terms of the April 28, 1976, contract.

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[1] Terra Resources, Inc., TXO Production Corp. (as successor to a portion of the sale made by Terra Resources), Santa Fe Minerals, Inc. (formerly C.F. Braun), and FPCO Oil & Gas Co. (formerly Petro-Lewis Corporation).

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Commission records show that Petro-Lewis Corporation was issued a small producer certification in Docket No. CS72-304 and that Santa Fe Braun Inc. was issued a small producer certificate in Docket No. CS71-1006.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter that 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6326 Filed 3-22-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180768; FRL-3352-9]

Receipt of Applications for Specific Exemptions To Use Clofentezine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Ohio and Pennsylvania Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services (hereafter referred to individually by State or collectively as "Applicants") for use of the unregistered active ingredient clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine) to control European red mites on apples. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before April 7, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180768" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Libby A. Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered active ingredient, clofentezine, available as the pesticide product Apollo, manufactured by Nor-Am Chemical Company, to control European red mites on apples.

Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Pennsylvania and Virginia have requested authorization to make one complete or two "alternate row middle spray" applications with Apollo. A maximum of four ounces of formulated product (0.125 pound active ingredient) is proposed to be applied per acre by ground equipment as a dilute or concentrate spray. The time of treatment extends from "tight cluster" until 45 days before harvest.

Ohio has requested authorization to make one application using up to eight ounces of formulated product (0.25 pound active ingredient) per acre. Ground application is proposed. The times of treatment are from delayed dormant through petal fall as an early season control or before population levels exceed three mites per leaf as a summer mite control. No treatment would be allowed 45 days prior to harvest.

Pennsylvania proposes to treat a maximum of 27,532 acres of apples. A maximum of 860 gallons of product would be needed under the proposed exemption.

Ohio proposes to treat a maximum of 7,500 acres of apples throughout the state. A maximum of 470 gallons of Apollo will be needed.

Virginia proposes to treat a maximum of 18,000 acres of apples in Frederick, Nelson, Clarke, Rockingham, Shenandoah, Albemarle, Rappahannock, Franklin, Smyth, Carroll, Botetourt, Patrick, Bedford, Warren, Madison and Roanoke Counties. A maximum of 562.5 gallons of Apollo will be needed.

Applications would be made through July 1988.

The Applicants claim that European red mites have developed resistance to Plictran (cyhexatin) which historically has been used for control of mites. Similar resistance also exists to the related organo-tin acaricide, Vendex (fenbutatin-oxide). Dicofol has also been used in the past; however, resistance appears to have developed to this pesticide as well. Other acaricides such as formetanate hydrochloride, oxamyl and propargite are not effective, toxic to beneficials or otherwise not appropriate for mite control at various times.

The Applicants state that the result of not having an effective control of the European red mite would be decreased fruit size, loss of fruit set and reduced fruit quality. Virginia estimates that losses of up to $2.7 million in gross revenues for Virginia apple growers will result if Apollo is not available for use in 1988. Pennsylvania apple growers would experience an approximate $3.5 million loss in gross revenue without use of Apollo this year. Ohio estimates that losses of up to $1.9 million in gross revenues if Apollo is not available for use in the 1988 growing season.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on applications involving an unregistered active ingredient. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: March 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6295 Filed 3-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30283A; FRL-3353-2]

Bob McBrayer; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Bob McBrayer, to register the pesticide product Nematrol™, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, Va 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 30, 1987 (52 FR 49199), which announced that Bob McBrayer, 4350 E. Acampo St., Acampo, CA 85220, had submitted an application to register the pesticide product Nematrol™ containing the active ingredient ground sesame plant at 100 percent; an ingredient not included in any previously registered product.

The application was approved on February 17, 1988, as Nematrol™ for general use to control soil nematodes on terrestrial food and non-food products. The product was assigned EPA Registration No. 58246-1.

The Agency has considered all required data on the risks associated with the proposed use of ground sesame plant, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of ground sesame plant, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the ennvironment.

More detailed information on this registration is contained in a Chemical Fact Sheet on ground sesame plant.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136

Dated: March 14, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-6294 Filed 3-22-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180767; FRL-3352-7]

Receipt of Application for an Emergency Exemption From Wisconsin to Use Metolachlor; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the herbicide metolachlor (CAS 51218 45 2) to treat 1,500 acres of dry bulb onions for pre-emergent control of annual grasses.

EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before April 7, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180767," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M Street SW.,
Washington, DC 20460.

Office location and telephone number:
Rm. 716D, Crystal Mall 2, 1921
Jefferson Davis Highway, Arlington,
VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of metolachlor for preemergent control of annual grasses in dry bulb onions.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. According to the Applicant, metolachlor is used for control of annual grasses, yellow nutsedge, and certain broadleaf weeds in corn, peanuts, pod crops, potatoes, safflower, grain or forage sorghum, soybeans, tree nuts, stone fruits, and woody ornamentals.

The Applicant states, that other than early cultivation no alternative exists for preemergent control of annual grasses and certain broadleaf weeds in dry bulb onions grown on muck soil. Cultural practices and growth habitat of onions do not allow for season long mechanical cultivation. The Applicant states that the herbicides that are currently registered on dry bulb onions will not provide satisfactory control for the following reasons: Chlorpropham does not control several of the annual grasses that are a major problem in Wisconsin; dacthal is ineffective on Wisconsin's muck soils; bromoxynil has no activity on grasses; glyphosate is registered prior to crop emergence but does not continue to control weeds during the growing season; oxyflurofen is primarily a broadleaf herbicide and does provide control of grasses; Fluazifop-butyl is registered for post-emergent control on annual and perennial grasses in dry bulb onions.

The economic benefit of allowing this use of metolachlor, according to the Applicant, could most readily be attributed to reduce costs for mechanical cultivation and increased yields attributed to better weed control.

The Applicant proposes to make a single application of the product Dual 8E, EPA Reg. No. 100–597, with ground application equipment at a maximum rate of 4 pounds active ingredient per acre prior to crop emergence.

Specific exemptions were granted for this use of metolachlor on dry bulb onions to the Applicant in 1985, 1986, and 1987. According to the Applicant, a tolerance petition for metolachlor on dry bulb onions is an ongoing IR–4 project but several years of work remain before all data gaps are filled and a third party registration is sought.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a chemical for which an emergency exemption has been requested or granted for the use in any previous three years, and a complete application for the registration of that use and or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: March 11, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–6296 Filed 3–22–88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36153; FRL-3351-2]

Standard Evaluation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the following draft Standard Evaluation Procedures (SEPs) for public comment prior to their publication: Inhalation Toxicity Testing; Metabolism (Qualitative nature of the Residue): Plants; Residues in Meat, Milk, Poultry and Eggs: Dermal Treatments; and Metabolism: Animals. The SEPs are a standard set of guidance documents on how the Hazard Evaluation Division in the Office of Pesticide Programs evaluates studies and scientific data to ensure consistency of scientific reviews of studies submitted by registrants in support of pesticide registrations. This will increase the efficiency of pesticide registration and other regulatory activities.

DATE: Comments, identified by the document control number [OPP–36153] should be received on or before May 23, 1988.

ADDRESS: Submit three copies of written comments, identified with the document control number [OPP–36153,] by mail to:

Information Service Section, Program
Management and Support Division
(TS–757C),Office of Pesticide
Programs, Environmental Protection
Agency, 401 M Street
SW.,Washington, DC 20460.

In person, deliver comments to: Room
236, CM#2, 1921 Jefferson Davis
Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Copies of these draft SEPs are also available at the following address.

FOR FURTHER INFORMATION CONTACT:

By Mail: Orville E. Paynter, Hazard
Evaluation Division (TS–769C), Office
of Pesticide Programs, Environmental
Protection Agency, 401 M Street SW.,
Washington, DC 20460.

Office location and telephone number:
Room #1121, CM#2, 1921 Jefferson
Davis Highway, Arlington, VA 22202,
(703) 557–7695.

SUPPLEMENTARY INFORMATION: The SEPs are a standard set of guidance documents on how HED evaluates studies and scientific data to ensure consistency of scientific reviews. Not only will the SEPs serve as valuable internal reference documents and training aids for new staff, these documents will also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in our science reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. The SEPs also serve as training aids for new staff, and inform the public of the internal review process. Throughout the remainder of this and next fiscal year, HED will be writing additional SEPs on the scientific

disciplines of toxicology, chemistry, exposure assessment, and ecological effects. Thirty-six SEPs have been published thus far and are available from the National Technical Information Service, which is responsible for distribution of all SEPs after they have been finalized. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Office, Intra-Agency, FIFRA Scientific Advisory Panel, and public comment; this announcement serves to solicit public comment on the draft documents.

Dated: March 11, 1988.

Anne L. Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88–5976 Filed 3–22–88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51702A; FRL-3352-8]

Certain Chemical; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) 88–410, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on June 12, 1988.

FOR FURTHER INFORMATION CONTACT: John Nagle, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202–475–8994).

SUPPLEMENTARY INFORMATION: On December 17, 1987, EPA received PMN 88–a410 for a substance generically identified as a reaction product of an alkanolamine and a dicarboxylic acid. The submitter claimed the submitter identity, specific chemical identity, production volume, use information, process information, and other information to be confidential business information. Publishing of the required Notice of Receipt for the PMN in the **Federal Register** is pending. The original 90-day review period is scheduled to expire on March 15, 1988.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to June 12, 1988.

The PMN is available for public inspection in Rm. NE–G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: March 14, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–6297 Filed 3–22–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

March 14, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0107.

Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information.

Form No.: FCC 405–A.

Action: Extension.

Respondents: Individuals, State or local governments, Business (including small business), Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 10,992 Responses; 1,836 Hours.

Needs and Uses: Used by applicants in the Private Land Mobile, Coast and Ground, and General Mobile Radio Services for renewal of existing authority. The data are used to determine eligibility for renewal issuance, and for enforcement.

OMB No.: 3060–0134.

Title: Application for Renewal of Radio Station License.

Form No.: FCC 574–R.

Action: Extension.

Respondents: Individuals, State or local governments, Business (including small business), Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 65,265 Responses; 4,373 Hours.

Needs and Uses: Generated by FCC and mailed to licensees in the Private Land Mobile and General Mobile Radio Services. Used by applicants for renewal of existing authority. The data are used to determine eligibility for renewal issuance, and for enforcement.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–6318 Filed 3–22–88; 8:45 am]

BILLING CODE 6712-01-M

Second Meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service

The second meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held on April 13, 1988, at the Las Vegas Convention Center, Las Vegas, Nevada. The meeting will start at 9:00 am. All interested parties are invited to attend.

The objective of the Systems Subcommittee is to specify the transmission/reception facilities appropriate for providing advanced television service to the United States. Dr. Irwin Dorros, Bellcore is the Chairman of the Systems Subcommittee. The agenda for the second meeting will consist of:

1. Introductory remarks
2. Review of Systems Subcommittee charter, scope and organization
3. Discussion of operating procedures
4. Working Party 1—Systems Analysis
   —Charter
   —Organization
   —Membership
   —Work plan/status
   —Meeting schedule
5. Working Party 2—Systems Evaluation and Testing
   —Charter
   —Organization
   —Membership
   —Work plan/status
   —Meeting schedule
6. Working Party 3—Economic Assessment
   —Charter
   —Organization

- —Membership
- —Work plan/status
- —Meeting schedule

7. Working Party 4—System Standard
    - —Charter
    - —Organization
    - —Membership
    - —Work plan/status
    - —Meeting schedule
8. Subcommittee meeting schedule
9. Open discussion

Any questions regarding this meeting should be directed to Mr. Bruce Franca at (202) 632-7060 or Mr. Dan Collins of Dr. Irwin Dorros Staff at (201) 740-6238.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-6319 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-36]

Window Notice for the Filing of FM Broadcast Applications

Release: March 11, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning March 11, 1988 and ending April 21, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

CHANNEL-221 A

Macon	GA
Peoria	IL
Ft. Wayne	IN
Olathe	KS
Louisa	KY
Coushatta	LA
Allegan [1]	MI
Cameron	MO
Killeen	TX
Victoria	TX
Payson	UT
Wautoma	WI

CHANNEL-222 C2

Jacksonville [2]	NC

CHANNEL-226 A

Wildwood Crest	NJ

CHANNEL-236 A

New Hampton	IA
Carterville	IL
Kankakee	IL
Morrison	IL
Electra	TX
Friona	TX
Midland	TX
Bloomer	WI

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[1] Applicants must protect the FCC Monitoring Station at Allegan, Michigan in accordance with § 73.1030 of the Rules.

[2] The Commission has a proposal pending to substitute Channel 282 C1 in place of Channel 222 C2, MM Docket 88-40. Comments are due by April 8, 1988. In addition, the availability of Channel 222 C2 is the subject of appeal in the DC Circuit Court. *JAMES REEDON VS FCC & USA* Case Number 86-1043.

Federal Communications Commission.

H. Walker Feaster,

Acting Secretary.

[FR Doc. 88-6320 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-86]

Applications for Consolidated Hearing; Great Lakes Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Great Lakes Broadcasting, Inc., Huron, OH.	BPH-870327KA	88-86
B. Susan B. Klaus, Huron, OH.	BPH-870327MC	
C. Huron Broadcasting Corporation, Huron, OH.	BPH-870327MH	
D. Huron Communications Company, Huron, OH.	BPH-8703310B	
E. Beverly Lynn Eckardt, Beatrice Eckardt-Ball, et al, d/b/a/ Radio Voice of Huron, Huron, OH.	BPH-8703310Y	
F. Thomas W. Roberts, Huron Ohio.	BPH-870331PF	
G. Lakeshore Community Radio, a General Partnership of TwoPegs Radio Partners and PrimeMedia Broadcasting, Inc., Huiron, OH.	BPH-870331PG	
H. NCB Enterprises, Inc. Huron, OH.	BPH-870410KC	
I. Firelands Broadcasting Corp., Huron, OH.	BPH-870415MO	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A–I
2. Ultimate, A–I

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6321 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-85]

Applications for Consolidated Hearing; Holmes Beach Broadcasting Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Holmes Beach Broadcasting Ltd., Holmes Beach, FL.	BPH-861205MA	88-85
B. Sandpiper Broadcasting, Inc., Holmes Beach, FL.	BPH-861205MB	
C. Holmes Beach Communications, Inc., Holmes Beach, FL.	BPH-861205MC	
D. Arthur Barnett, Holmes Beach, FL.	BPH-861205MK	
E. Greg Perich and Charley White, Holmes Beach, FL.	BPH-861208MA	
F. B.F.J. Timm, Holmes Beach, FL.	BPH-861208MD	
G. Robert V. Barnes, Holmes Beach, FL.	BPH-861208MF	
H. Tampa Bay Broadcasters, Ltd., Holmes Beach, FL.	BPH-861208MG	
I. Ringling Communications Corporation, A Florida Corporation, Holmes Beach, FL.	BPH-861208MH	
J. Intermart Broadcasting of Holmes Beach, Inc., Holmes Beach, FL.	BPH-861208MI	
K. W. Lynne Dayton, Holmes Beach, FL.	BPH-861208MJ	
L. Roberta Roe Johnson, d/b/a Uri Broadcasting Co., Holmes Beach, FL.	BPH-861208MK	
M. Ms. Sylvia A. Fernandez, Holmes Beach, FL.	BPH-861208MO	
N. Patrick D. McConnell, Holmes Beach, FL.	BPH-861208MQ	
O. Asterisk Broadcasting, Inc., Holmes Beach, FL.	BPH-861208MR	
P. Southmayd Broadcasting Company, Holmes Beach, FL.	BPH-861208MS	
Q. Holmes Beach FM Limited Partnership, Holmes Beach, FL.	BPH-861208MT	
R. Golden Gulf Broadcasters, Holmes Beach, FL.	BPH-861208MV	
S. Cornerstone Communications, Inc., Holmes Beach, FL.	BPH-861208MW	
T. West Coast Broadcasting, Inc., Holmes Beach, FL.	BPH-861208MX	
U. Sara Bay Broadcasting Limited Partnership, Holmes Beach, FL.	BPH-861208MY	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A,B,G,I,J,L,M,N,P,Q,R,S,T
2. Comparative, A–U
3. Ultimate, A–U

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6322 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-88]

Applications for Consolidated Proceeding; Richard L. Plessinger et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Richard L. Plessinger, Berea, KY.	BPH-861121ME	88-88
B. Berea Broadcasting Co., Inc., Berea, KY.	BPH-861125MA	
C. Bradley Scott Park, Berea, KY.	BPH-861125MG	
D. Edgar Wallace d/b/a The Wallace Co., Berea, KY.	BPH-861126MT	
E. Mary R. McGill, Berea, KY.	BPH-861126MU	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Comparative, ALL
3. Ultimate, ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6323 Filed 3-22-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-703; FHLBB No. 0051]

The Mayflower Savings and Loan Co., Cincinnati, OH; Final Action; Approval of Conversion Application

Date: March 18, 1988.

Notice is hereby given that on March 14, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Mayflower Savings and Loan Company, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office fo the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-6299 Filed 3-22-88; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; First Federated Savings Bank, West Palm Beach, FL

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federated Savings Bank, West Palm Beach, FL, on March 11, 1988.

Dated: March 15, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc.88-6298 Filed 2-22-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street

NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-200100

Title: Port of Los Angeles Lease Agreement.

Parties:

City of Los Angeles
Distribution and Auto Service, Inc. (DAS)

Synopsis: The proposed agreement provides DAS the lease and non-exclusive use of certain premises designated as Parcel No. 1 at the Port of Los Angeles.

Agreement No. 224-200022-001

Title: Port of Houston Terminal Agreement.

Parties:

Port of Houston Authority
Lykes Brothers Steamship Company, Inc.

Synopsis: The proposed agreement amendment deletes Transit Shed Number 31 from the terminal facility covered by the basic agreement.

Agreement No. 224-200101

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (GPA)
Zim-American Israeli Shipping Co., Inc. (Zim)

Synopsis: The proposed agreement provides that GPA will provide terminal services to Zim for a consolidated rate based upon an agreed upon rate per container or per loaded twenty-foot equivalent unit.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 18, 1988.

[FR Doc. 88-6275 Filed 3-22-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011179

Title: CarAmerica/NYK Space Charter and Cooperative Working Agreement.

Parties:

CarAmerica
Nippon Yusen Kaisha ("NYK")

Synopsis: The proposed agreement would permit CarAmerica to charter space aboard vehicle carrier vessels owned or chartered by NYK in the trade between West Mediterrranean ports in Spain, France, Italy, Tunisia, Algeria, Morocco, and Malta, and Atlantic Coast ports in Spain, Portugal, and Morocco, including points in Europe served via such ports, and ports on the United States' Atlantic, Gulf and Pacific Coasts, including Puerto Rico, and the Great Lakes.

Agreement No.: 212-011180

Title: Neptuno/CSAV Service Agreement.

Parties:

Naviera Neptuno, S.A.
Compania Sud Americana de Vapores

Synopsis: The proposed agreement would permit the parties to establish a pooling arrangement in the trade between ports of the West Coast of South America, Panama, the Gulf of Mexico and the United States Atlantic Coast. The parties would be authorized to operate up to eight vessels of up to 25,000 DWT each in the trade for an initial period of one year. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March. 18, 1988.

[FR Doc. 88-6276 Filed 3-22-88; 8:45 am]

BILLING CODE 6730-01-M

[c.o. 1, Amdt. No. 12]

Organization and Functions of the Federal Maritime Commission

The following delegation of authority is made to the Director, Bureau of Domestic Regulation, by amending Commission Order 1, section 9.04, as revised, *Specific Authorities Delegated to the Director, Bureau of Domestic Regulation* to read as follows:

9.04 Authority to issue notices of intent to cancel inactive tariffs of carriers (in the foreign and domestic offshore trades) and marine terminal operators, after a diligent effort has been made to locate the carrier/marine terminal operator without success, or if the carrier/marine terminal operator has advised the Commission that it no longer offers a common carrier/marine terminal operator service but refuses to cancel its tariff upon written request; and to cancel such tariff if, within 30 days after publication, the carrier/marine terminal operator does not furnish reasons why such tariff should not be cancelled.

Edward J. Philbin,

Acting Chairman.

Dated: March 18, 1988.

[FR Doc. 88-6274 Filed 3-22-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Departmental Grant Appeals Board; Hearing; State of California Disapproval

AGENCY: Family Support Administration, Department of Health and Human Services.

ACTION: Notice of Hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Departmental Grant Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by the State of California.

DATE: May 10 and 11, 1988.

Place: San Francisco, California

Requests to Participate: Requests to participate as a party or as an amicus curiae must be submitted to the Departmental Grant Appeals Board in the form specified at 45 CFR 213.15 by April 7, 1988, (for a party) or before the commencement of the hearing (for an amicus curiae). A copy of a petition to participate as a party shold be served on each party of record at that time. The petition must explain how the issues to be considered at the hearing have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses. 45 CFR 213.15(b)(2). Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted. A petition to participate as an amicus curiae shall conform to the requirements at 45 CFR 213.15(c).

FOR FURTHER INFORMATION CONTACT: Andrea M. Selzer, Staff Attorney, Departmental Grant Appeals Board, Department of Health and Human Services, Room 451-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 475-0012.

SUPPLEMENTARY INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to the California Department of Social Services.

Washington, DC, March 18, 1988

John Davidson, Supervisory Deputy Attorney General, Office of the Attorney General, 6000 State Building, 350 McAlister Street, San Francisco, California 94102

and

Kenneth Manoff, Attorney, Office of General Counsel, Family Support and Human Development Services Division, Room 411-D, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201

Counsel: This letter is in response to the February 11, 1988 petition for review filed by the California Department of Social Services (State) requesting reconsideration of the Family Support Administration's (FSA) disapproval of California's State Plan Amendment (Transmittal No. 87-01) regarding the Emergency Assistance program under Title IV-A of the Social Security Act (section 406(e)).

On December 14, 1987, the Regional Administrator of the Family Support Administration notified the California Department of Social Services that it disapproved three provisions of the proposed plan amendment. The plan provisions disapproved:

(1) Authorize county social workers to routinely sign applications for emergency assistance without the authorization or request of the family on whose behalf assistance is applied for;

(2) Limit consideration of income and resources to a ten-day period for purposes of determining eligibility; and

(3) Do not state the standard of need and resource limit to be used in determining eligibility.

Pursuant to 45 CFR 213.21, I have designated Cecilia Sparks Ford, member, Departmental Grant Appeals Board, to preside at the hearing, which will be conducted under the procedures in 45 CFR Part 213. Pursuant to 45 CFR 201.4, a hearing has been scheduled to be held on May 10 and 11, 1988 in San Francisco, California. 45 CFR 213.13. The exact time and location for the hearing will be set after further consultation with the counsel. A verbatim transcript will be taken.

This proceeding under 45 CFR Part 213 is not intended to preclude or limit negotiations between FSA and the State; they may negotiate at any time in an effort to resolve the issues to be considered at the hearing.

The issues to be considered at the hearing include: WHETHER COUNTY SOCIAL WORKERS CAN SIGN APPLICATIONS FOR EMERGENCY ASSISTANCE?

1. Whether 45 CFR 234.120(f) and/or 45 CFR 206.10(a)(1) preclude a county social worker from signing an application for emergency assistance?

2. Whether the above regulations clearly contemplate that applications will be submitted by someone "outside the agency"?

3. Whether an approvable state plan can designate a county social worker as an applicant's authorized representative or as a party acting responsibly for the applicant in order to assure that each individual has the opportunity to apply (45 CFR 206. 10(a)(1))?

4. Whether a county social worker can be an authorized representative or responsible party by virtue of either section 306 of the California Welfare and Institutions Code or of the proposed state regulation to so designate the worker?

5. Whether the proposed plan amendment is approvable under 45 CFR 233.120(a)(5) as a more liberal procedure which furthers that regulation's requirement for "emergency assistance * * * forthwith"?

6. Whether the disapproval is inconsistent with a California plan provision, approved under Title IV-A, Aid to Families with Dependent Children, for application by a "representative of a public agency"?

7. Whether the proposed plan amendment is approvable, consistent with the requirements of 45 CFR 233.10(a)(1) (vi) and (vii)?

8. Whether the disapproval results in an arbitrary, unreasonable, or inequitable exclusion from assistance of a child whose parent(s) cannot or will not sign an application (45 CFR 233.10(a)(1) and 233.120(b)(1))?

WHETHER CONSIDERATION OF INCOME AND RESOURCES CAN BE LIMITED TO A TEN-DAY PERIOD IN DETERMINING ELIGIBILITY?

9. Whether eligibility for emergency assistance can be determined considering the applicant's income and resources over a ten-day period?

10. Whether an applicant's need must be determined on a monthly basis, as is done in the other assistance programs under the Social Security Act?

11. Whether the proposed ten-day period is approvable as a more liberal eligibility condition under 45 CFR 233.120(a)(1)?

12. Whether the proposed ten-day period is approvable as a proper implementation of 45 CFR 233.120(b)(1)(ii), which provides for emergency assistance if "[s]uch child is without resources immediately accessible to meet his needs"?

13. Whether it is clear that, by providing for "emergency assistance to needy families with children" (section 406(e)), Congress used the term "needy" as that term is used in other assistance programs and thus intended to reflect a concept of need as determined on a monthly basis.

14. Whether a requirement to consider income and resources on a monthly basis improperly restricts California's ability to implement an emergency assistance program under section 406(e)?

WHETHER AN APPROVED STATE PLAN MUST CONTAIN THE STANDARD OF NEED AND RESOURCE LIMIT?

15. Whether a state plan must itself state the standard of need against which to measure income and a dollar limit on resources in order to meet the requirement at 45 CFR 233.120(a)(1) that the state plan "[s]pecify the eligibility conditions imposed"?

16. Whether an approvable plan provision may use a standard of need/resource limit stated in a state statute or regulation?

FSA and the State are now parties in this matter. 45 CFR 213.15(a). However, a copy of this letter will appear as a Notice in the **Federal Register** and any other individual or group wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Grant Appeals Board within 15 days after that Notice has been published. Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c). This petition should be filed before the hearing, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Ms. Ford at the Departmental Grant Appeals Board, Room 451-F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. 88-42.

Wayne A. Stanton,

Administrator.

March 18, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

[FR Doc. 88-6304 Filed 3-22-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88N-0040]

Sulfamethazine; Availability of NCTR Technical Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a technical report from its National Center for Toxicological Research (NCTR) on sulfamethazine entitled "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in B6C3F₁ Mice."

ADDRESS: Written requests for copies of the technical report to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request). The technical report is available for public examination in the Dockets Management Branch, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Max Crandall, Center for Veterinary Medicine (HFV-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3450.

SUPPLEMENTARY INFORMATION: FDA has received from NCTR and is making available a technical report of a chronic toxicity study conducted by NCTR in which mice were fed a diet containing sulfamethazine over a 24-month period. Sulfamethazine is an animal drug widely used in food-producing species. FDA's Center for Veterinary Medicine (CVM) is reviewing the report, and is performing a risk assessment. Interested parties may receive a copy of the NCTR technical report "Chronic Toxicity and Carcinogenesis Study of Sulfamethazine in B6C3F₁ Mice" by writing to the Dockets Management Branch (address above).

Dated: March 11, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-6205 Filed 3-22-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0391; DESI 6514]

Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Tussionex Tablets and Suspension ("Tussionex") containing hydrocodone and phenyltoloxamine. The basis of the withdrawal is that these combination drug products lack substantial evidence of effectiveness for their labeled indications. A reformulation of the suspension product has been approved as safe and effective.

EFFECTIVE DATE: April 22, 1988.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6514 and directed to the Division of Drug Labeling Compliance (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Hazard, Jr., Center for Drug Evaluation and Research (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 25, 1982 (47 FR 22606), the Director of the Bureau of Drugs (now the Center for Drug Evaluation and Research) evaluated fixed-combination drug products containing hydrocodone and phenyltoloxamine as lacking substantial evidence of effectiveness for their labeled indications. The Director also proposed to withdraw approval of the new drug application for these products and offered an opportunity for a hearing on the proposal.

In response, a hearing request was submitted for NDA 10-768, Tussionex Tablets and Suspension, each containing hydrocodone and phenyltoloxamine dihydrogen sulfate (both as cation exhange resin complexes of sulfonated polystyrene), held by Pennwalt Corp., Pharmaceutical Division, 753 Jefferson Rd., Rochester, NY 14623.

FDA subsequently approved a new drug application (NDA 19-111) submitted by Pennwalt for a reformulation of the suspension product (hydrocodone and chlorpheniramine). The firm has withdrawn its hearing request for the old formulations. Accordingly, the Director of the Center for Drug Evaluation and Research is withdrawing approval of the new drug application (NDA 10-768) for Tussionex Tablets and Suspension.

Any drug product that is identical, related, or similar to these products and is not the subject of an approved new drug application is covered by NDA 10-768 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to these products, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that these products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing findings, approval of NDA 10-768 and all its amendments and supplements is withdrawn effective April 22, 1988.

Shipment in interstate commerce of the above products or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: March 17, 1988.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 88-6308 Filed 3-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-030-08-4410-02]

Dickinson District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: The District Advisory Council for the Bureau of Land Management's Dickinson District will meet April 20, 1988, in Dickinson, North Dakota.

Major topics to be discussed at the council meeting include: (1) Status of the protest on the North Dakota RMP, (2) recent wild horse events, (3) Leasing Reform Act, (4) Fiscal Year 1987 summary, and (5) inclusion of appropriate material in the Dickinson District Advisory Council Charter regarding the Designated Federal Officer.

The Council is chartered by the Secretary of Interior to give citizen

advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

Location, Date, and Time: April 20, 1988, from 8:30 a.m. to approximately 3:00 p.m. Mountain Standard Time, Conference Room, Bureau of Land Management, 202 East Villard, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager, P.O. Box 1229, Dickinson, North Dakota, 58602; Telephone (701) 225-9148.

William F. Krech,

District Manager.

Date: March 11, 1988.

[FR Doc. 88-6283 Filed 3-22-88; 8:45 am]

BILLING CODE 4310-DN-M

[CO-070-08-4212-13; C-46594]

Exchange of Lands in Garfield and Grand Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Exchange of Lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, or the Kremmling Resource Area Office, 116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land—Grand County

Parcel 1—147.69 acres

T. 1 S., R. 78 W.,
  Sec. 17: Lots 1, 2, 4, 6, 8, 11, 12, 13, 14, 16, 17, 18, 20, and 21, NE¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼, N½SW¼SE¼NE¼.

Offered Private Land—Garfield County

Parcel A—22.66 Acres

* T. 7 S., R. 87 W.,
  Sec. 32: Portion of Lots 9 and 17;
  Sec. 33: Portion of Lots 7 and 8.

Note. Asterisk (*) denotes metes and bounds description.

Any adjustments to selected public land to equalize values would be made in T. 1 S., R. 78 W., Sec. 17, NE¼NE¼.

These 147.69 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Shepard & Assoc.

In the proposal, 22.66 acres of offered private land with public values would be exchanged for 147.69 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patent issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

4. A reservation for public access on Grand County Road 34.

5. Reservations for roads and public utilities as shown on the Bureau's 1960 plat for the Williams Fork Small Tract Area on file in the Kremmling Resource Area office.

6. A reservation for 50′ irrigation ditch right-of-way C-0124151.

7. A reservation to the United States for power development purposes under section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 791a, 818).

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws and the mineral leasing laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Richard M. Arcand,

Acting District Manager, Grand Junction District.

[FR Doc. 88-6261 Filed 3-22-88; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-08-4212-11; N-46761]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Lyon County, NV

The following described public land has been identified as suitable for classification for lease under the Recreation and Public Purposes Act as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 13 N., R. 25 E.,
  Sec. 6, W½W½ of Lot 3, Lot 4, Lot 5, W½W½SE¼NW¼.

Containing 68.63 acres.

A 5-year lease with option to renew for the subject 68.63 acres of public land to be used as an archery range will be offered to Lyon County. The land is not required for federal purposes. This lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Right-of-Way Grant NEV-010060.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

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Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

James W. Elliott,

District Manager.

Date: March 11, 1988.

[FR Doc. 88-6260 Filed 3-22-88; 8:45am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Santa Fe International Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Santa Fe International Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 6200 and 6201, Blocks 166 and 167, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 15, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6259 Filed 3-22-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

General Management Plan; Eugene O'Neill National Historic Site, CA; Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, Pub. L. 91-190, the National Park Service, Department of the Interior will prepare an Environmental Impact Statement (EIS) to assess the potential impacts of future development and management options in conjunction with the General Management Plan for the Eugene O'Neill National Historic Site, California.

Scoping for the plan has included extensive public review of a draft General Management Plan and Environmental Assessment which was circulated for public comment in May and June of 1982, meetings with agencies and organizations having an interest in the project, contact with Historic Site visitors, and interdisciplinary team meetings within the Park Service. The scoping indicates that the proposals being considered have the potential for significant impacts and would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an EIS in conjunction with the Plan is appropriate.

The General Management Plan and EIS will investigate alternatives ranging from protection, to a variety of development and management proposals designed to enhance visitor use and resource protection. Federal, state, and local agencies, and other individuals or organziations who may be interested in or affected by the future development and management of Eugene O'Neill National Historic Site, are further invited to participate in refining or identifying issues to be considered. Written comments and suggestions concerning preparation of the EIS should be sent to: Chief, Division of Planning, Grants, and Environmental Quality, Western Regional Office, National Park Service, P.O. Box 36063, San Francisco, CA. 94102, by May 6, 1988. Questions on this matter may be sent to the same address. Stanley T. Albright, Regional Director for the Western Region in San Francisco, California, is the responsible official.

Preparation of the Plan and EIS is expected to take about 8 months. The draft Plan and EIS should be available for public review in mid-summer 1988 with the final Plan and EIS and Record of Decision expected to be completed by the end of 1988.

Stanley T. Albright,

Regional Director, Western Region, National Park Service.

Date: March 15, 1988.

[FR Doc. 88-6369 Filed 3-22-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on the theme: "Cost Effectiveness." This is the final discussion session in a four part series exploring various aspects of PVO Effectiveness delineating cases and strategies for enhancing PVOs' work as agents of development. The meeting will be one day: Wednesday, March 30 from 9:00 a.m. to 4:00 in the Loy Henderson Auditorium at the State Department. To enter the building use C Street (Diplomatic Entrance) between 21st and 23rd Streets, NW., Washington, DC.

The meeting is free and open to the public. However, notification by March 25, 1988 through Advisory Committee Headquarters is required by the Department of State for security reasons.

Theme: PVO Cost Effectiveness

Objectives: To examine PVO Cost Effectiveness from a comprehensive institutional point of view.

PVO Cost Effectiveness

March 30, 1988—9:00 a.m. to 3:45 p.m.,
Loy Henderson Auditorium
The Department of State, Washington, DC.

Purpose: To examine PVO Cost Effectiveness from a comprehensive institutional point of view.

Agenda

Wednesday, March 30, 1988

9:00 a.m.
  Opening Remarks
  Randal Teague, ACVFA Chairman
  Thomas McKay, A.I.D. Deputy Assistant Administrator
  Keynote Speaker
  Edward Bullard, Technoserve
  Panel Discussion: The Donor's Perspective Panel members:
  George Hill—AID/PPC
  Larry Salmen—The World Bank
12:30 p.m.
  Lunch
2:00 p.m.
  Panel Discussion: The U.S. PVO Perspective Panel members:
  John Palmer—Helen Keller International
  (additional speakers to be confirmed).
3:45 p.m.
  Adjournment of Public Session
  Randal Teague, ACVFA Chairman
4:00 p.m.
  Executive Wrap-up Session (Members & Staff only)

There will be A.I.D. representatives at the meeting. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty-five (25) copies.

Persons wishing to attend the meeting must call (703) 875-4407, or write, not later than March 25 to arrange entrance to the Department of State Building. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 250, SA-8, Agency for International Development, Washington, DC 20523.

Date: March 15, 1988

Thomas A. McKay,

Deputy Assistant Administrator, Office of Private and Voluntary Cooperation, Bureau for Food, Peace and Voluntary Assistance.

[FR Doc. 88-6264 Filed 3-22-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination finding a violation of section 337 of the Tariff Act of 1930 and request for submission of written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a, and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On January 29, 1988, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 in the alleged unauthorized importation and sale of certain reclosable plastic bags and tubing with the tendency to destroy or substantially injure industries, efficiently and economically operated, in the United States. No petitions for review or Government agency comments have been received.

Having examined the record, the Commission has concluded that the ID does not warrant review.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on Monday, March 28, 1988. Reply submissions on these issues must be filed no later than the close of business on Monday, April 4, 1988. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on Monday, March 28, 1988. No further submissions will be permitted.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this matter.

Additional Information

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any portion desiring to submit a document (or a person thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on April 29, 1987 (52 FR 15568).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.), in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 16, 1988.

[FR Doc. 88–6342 Filed 3–22–88; 8:45 am]

BILLING CODE 7020-02-M

Natural Bristle Paint Brushes From the People's Republic of China; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission .

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–244 (Final), Natural Bristle Paint Brushes from the People's Republic of China.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731–TA–244 (Final), regarding natural bristle paint brushes from the People's Republic of China. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of natural bristle paint brushes from the People's Republic of China if the antidumping duty order regarding such merchandise were to be modified or revoked. Natural bristle paint brushes are provided for in item 750.65 of the Tariff Schedules of the United States.[1]

FOR FURTHER INFORMATION CONTACT: Jim McClure, (202–252–1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-Impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission issued its determination in investigation No. 731–TA–244 (Final), Natural Bristle Paint Brushes from the People's Republic of China (51 FR. 4662). The Commission determined that an industry in the United States was threatened with material injury by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, which had been found by the Department of Commerce to be sold at less than fair value (LTFV). On February 14, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the **Federal Register** (51 FR 5580).

On February 24, 1988, the Commission received a request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731–TA–244 (Final). This request was filed by counsel on behalf of A. Hirsh, Inc., an importer of natural bristle paint brushes from the People's Republic of China.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practices and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: The domestic industry is currently in strong condition and has not experienced the threatened material injury found by the Commission. Also, as a consequence of the imposition of the antidumping duty order, shipments of natural bristle paint brushes from the People's Republic of China have been brought to a virtual halt and have been replaced by other imports, not by domestic paint brushes. Thus the domestic industry is not vulnerable to injury and would not suffer material injury if the antidumping duty order with respect to the People's Republic of China were revoked.

Written submission:

In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submission must be filed with the Secretary to the Commission, 500 E Street SW.. Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submission will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–252–1000.

By order of the Commission.

Issued: March 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–6341 Filed 3–22–88; 8:45 am]

BILLING CODE 7020-02-M

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[1] The articles covered by the antidumpming duty order are provided for in item 9603.40.40 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

DEPARTMENT OF JUSTICE

[Civil Action No. 86–3359]

Lodging of Consent Decree Pursuant to Clean Air Act; Central Illinois Public Service Co.

In accordance with Departmental policy, 28 CFR 50.57, notice is hereby given that a proposed consent decree in *United States v. Central Illinois Public Service Co.*, Civil Action No. 86–3359, was lodged with the United States District Court for the Central District of Illinois. The Complaint filed by the United States alleged violation of section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Illinois State Implementation Plan ("SIP"), relating to sulfur dioxide emissions, at defendant's Coffeen Generating Station.

The proposed Decree requires defendant to comply with the Clean Air Act by not exceeding the sulfur dioxide emission limitations of the SIP. In addition, defendant must install and operate a system to continuously monitor the sulfur dioxide emission levels of the plant, and also pay a civil penalty of $75,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Central Illinois Public Service Co.*, D.J. Reference No. 90–5–2–1–1044.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of Illinois, U.S. Courthouse, 600 E. Monroe Street, Springfield, Illinois 62705, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6256 Filed 3–22–88; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. H86–295]

Lodging of Consent Order Pursuant to Clean Water Act; Inland Steel Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 9, 1988, a proposed Consent Order in *United States v. Inland Steel Company*, Civil Action No. H86–295, was lodged with the United States District Court for the Northern District of Indiana. The proposed Consent Order concerns laboratory practices at, and the discharge of wastewater from, Inland Steel Company's plant in East Chicago, Indiana, in compliance with the Clean Water Act and Inland's National Pollutant Discharge Elimination System permit issued thereunder.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Inland Steel Company*, D.J. reference # 90–5–1–1–2320.

The proposed Consent Order may be examined at the office of the United States Attorney, Northern District of Indiana, 507 State Street, Hammond, Indiana 46320, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6257 Filed 3–22–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Monday, April 18, 1988, in Room N–5437B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to the reporting and disclosure for employee welfare plans covered by ERISA.

The purpose of the April 18 meeting is to solicit comment from individuals and organizations on the cost and utility of reporting and disclosure requirements, of the Department of Labor and ERISA, with specific emphasis on the following forms:

1. Form 5500
2. Summary Plan Description
3. Summary Annual Report
4. Summary of Material Modification.

The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before April 12, 1988 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 12, 1988.

BEST COPY AVAILABLE

Signed at Washington, DC, this 18th day of March, 1988.

David M. Walker,

CPA, Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 88-6281 Filed 3-22-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before May 9, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifiying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. The Army and Air Force Exchange Service (N1-334-88-2). Records relating to miscellaneous personnel matters, such as testing, promotions and retirement.
2. Department of the Navy, Chief of Naval Operations, Naval Air Forces US Atlantic Fleet (N1-313-86-3). Routine administrative correspondence and housekeeping records of various units of the Naval Air Forces Atlantic Fleet for the period 1951-56.
3. Federal Deposit Insurance Corporation, Division of Liquidation, (N1-34-88-3). Records created by the now defunct Franklin National Bank that became the property of the FDIC as a result of liquidation proceedings in 1974.
4. Federal Deposit Insurance Corporation, Division of Liquidation, (N1-34-88-4). Records created by a closed bank that became the property of the FDIC as a result of liquidation proceedings.
5. Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation (N1-138-88-1). Well Determination Files.
6. Department of Health and Human Services (N1-102-88-1). Facilitative records relating to the activities of the Childrens' Bureau.
7. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-88-6). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.
8. Department of State, Bureau of Personnel (N1-59-88-15 and -16). Automated systems pertaining to routine personnel transactions.

Dated: March 15, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-6286 Filed 3-22-88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 29, 1988 through March 11, 1988. The last biweekly notice was published on March 9, 1988.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the

facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 9, 1988

Description of amendment request: The proposed changes to Technical Specification Table 3.22-2 will: (1) add one Halon storage cylinder in the Switchgear Room; (2) increase the number of smoke detectors in the Switchgear Room from 32 to 35; and 3) require 8 or 9 smoke detectors within the Screenwell Building to be in service. In addition, Table 3.22-2 will be revised to reflect new fire areas in the Primary Auxiliary Building and Screenwell Building that agree with the current Fire Hazards Analysis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated 10 CFR 50.92(c). The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes will have no impact on the probability or consequences of an accident. The proposed changes will increase the required number of operable smoke detectors and Halon bottles for the Switchgear Room and increase the number of operable smoke detectors for the Screenwell Building. The proposed revisions to the Primary Auxiliary Building and Screenwell Building fire areas are an update to the current Fire Hazards Analysis. This will have no affect on any design basis accident. Thus, the addition to the operability requirements for smoke detectors and Halon bottles does not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The hardware modifications in the Switchgear Room and Screenwell Building were implemented to upgrade the fire detection and suppression systems in those fire areas. These changes propose to increase the number of smoke detectors from 32 to 35 in the Switchgear Room, and increase the number of operable smoke detectors in the Screenwell Building from 2/3 to 8/9. Also, an additional Halon storage cylinder has been added to the seven (7) storage cylinders associated with the original system design. The modified Detection System/Halon Suppression System offers more detection coverage [thirty-five (35) detectors versus thirty-two (32) for the Switchgear Room, and 8/9 versus 2/3 operable detectors for the Screenwell Building] and provides additional Halon to extinguish postulated fires. These changes increase CYAPCO's capability to detect, control and extinguish fires. Administrative, testing, and inspection procedures were revised to maintain the modified detection and suppression systems.

In addition, the revisions to Table 3.22-2 will update the Technical Specifications to reflect new fire areas in the Primary Auxiliary Building and Screenwell Building. These revisions will agree with the current Fire Hazards Analysis.

The modifications do not affect safety systems or components and, therefore, do not affect any design basis accident. No other systems or components are affected by the change, thus, there can be no impact on the consequences of any design basis accident.

There are no failure modes introduced by the modifications that can be an initiating event for any design basis accident. The proposed changes have no impact on the probability of occurrence of any design basis accident. Since no safety systems are affected by the proposed changes, there can be no affect on the probability of failure of any safety system. Therefore, the proposed Technical Specification changes so not create the probability of an accident or malfunction of a new or different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Since the proposed changes do not have any impact on any design basis accident, there can be no impact on any protective boundary. Since there is no impact on any protective boundary as a result of the proposed changes, there can be no impact on any safety limit. The proposed changes have no impact on the basis of any Technical Specification. The proposed changes maintain the basis of the Technical Specifications in assuring adequate smoke detection and fire suppression.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 25, 1988

Description of amendment request: The proposed changes renumber the manual high pressure safety injection (HPSI) throttle valves in Specification 3.6.B.2 to be consistent with the plant loop numbering scheme. The applicability statement for Specification 3.6.B.2 has also been changed from "Prior to startup from cold shutdown (MODE 5)" to "On startup prior to entering MODE 4" in order to be more concise and MODE specific. In addition, the Basis for Specification 3.6 has been clarified.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated 10 CFR 50.92(c). The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report is not increased since the proposed changes only renumber the valves and clarify the action statement.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report is not created since the normal operating conditions of the plant are unaffected. The change to the action statement clarifies that the core deluge valve and HPSI throttle valves are properly positioned and secured before they are required to be operable.

Since no physical plant changes are planned and since the ECCS performance will not be adversely affected, there is not adverse effect on plant response. There are not failure modes associated with the proposed changes which could represent a new unanalyzed accident. The proposed changes do not adversely impact the probability of any accident.

3. Involve a significant reduction in a margin of safety. The margin of safety, as defined in the basis for any technical specification is not reduced since the proposed changes do not diminish the ECCS accident mitigation capability and thereby do not impact the consequences to the protective boundaries.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 5, 1988

Description of amendment request: The proposed amendment would delete Specification 3.6.4.3, regarding the hydrogen purge system, from the Technical Specifications. This specification was originally included at the time of licensing, since the licensee expected to employ two portable hydrogen recombiners between Units 1 and 2. If such was indeed the case, there would not be redundancy of hydrogen recombining capability at either unit, and the hydrogen purge system would be required as backup, in accordance with the staff's position as documented in the Standard Westinghouse Technical Specifications. Since that time, the licensee has provided a fully dedicated second recombiner at Unit 1, and has similarly provided Unit 2 with two dedicated recombiners. Thus, there is now full redundancy at each unit, and Specification 3.6.4.3 may be deleted as the hydrogen purge system is no longer needed as backup.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The installed hydrogen recombiners provide the needed capacity and redundancy to handle the hydrogen generated after a LOCA. The elimination of the subject specification would eliminate one post-LOCA radioactivity release route (i.e., hydrogen purge), resulting in a reduced calculated LOCA dose. There is no associated hardware changes. An administrative control will be imposed by the licensee to isolate the hydrogen purge system. Thus, the proposed change would not have any effect on the probability of any accident, and would not increase (actually, it decreases) the consequences of previously analyzed accidents. Since there is no change in design, no modification of plant components or operating procedures, no new accidents can be created. Finally, since post-LOCA hydrogen concentration would be kept low by the fully redundant recombiner system, the proposed amendment would not reduce the margin of safety.

Therefore, the staff proposes to determine the amendment as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: February 11, 1988

Description of amendment request: The proposed amendment would revise the steam generator water level low-low reactor trip setpoint and the steam generator water level low-low auxiliary feedwater actuation setpoint from greater than or equal to 15.5% narrow range level span to greater than or equal to 11.5% narrow range level span. This change removes a 4% environmental allowance that was added in to the steam generator low-low level setpoint calculation to account for radiation effects on the steam generator level transmitters.

The mitigation of the consequences of several postulated accidents (Chapter 15 of the Final Safety Analysis Report) depends on the above setpoints. However, none of these accidents would result in a radiation environment to the transmitters that would need to be accounted for by the 4% environmental allowance. This added value, therefore, is an unnecessary conservatism, does not contribute to added safety and is a potential contributor to unneeded reactor trips and auxiliary feedwater actuations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considera tion if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would eliminate an unnecessary conservatism. There is no hardware or operational procedure change, except resetting of the setpoints as stated above. There is no decrease in the capability of the reactor system to scram, or for engineered safety features to actuate should the needs arise. Thus, the answers to the first two questions are negative.

The proposed change would not affect the assumptions of any safety analysis in the Final Safety Analysis Report. No safety margin is relaxed, and the answer to the third question is also negative.

Therefore, the staff proposes to determine the amendment as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: January 25, 1988

Description of amendment request: The amendments would incorporate the changes to Section 3.0 and 4.0 of the Beaver Valley Unit 1 and Unit 2 Technical Specifications, as recommended in NRC's Generic Letter 87-09. The NRC has determined that specifications 3.0.4, 4.0.3 and 4.0.4 may be modified to clarify the intent and resolve the following three problems associated with these requirements: (1) unnecessary restrictions on mode changes provided by specification 3.0.4; (2) unnecessary shutdowns caused by specification 4.0.3 when surveillance intervals are inadvertently exceeded; and (3) conflicts between specifications 4.0.3 and 4.0.4. Generic Letter 87-09 provides an in-depth discussion of the identified problems and the solutions recommended by the NRC. The licensee's proposed amendments follow those recommendations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As stated above, and as described in detail in Generic Letter 87-09, the current Technical Specifications are overly restrictive on mode changes and on requirements to shutdown. Such restrictions do not enhance safety but do pose problems for plant operation. Removal of these restrictions does not necessitate plant hardware changes, and does not relax all the other Technical Specifications that govern plant parameters and operation. Consequently, the answer to the first question is negative.

In the absence of hardware and operational procedure changes, the answer to the second question is also negative.

The proposed amendment would not necessitate revision of any analysis in the Final Safety Analysis Report. No margins of safety are relaxed. The answer to the third question is similarly negative.

The staff therefore proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: February 5, 1988

Description of amendment request: The Technical Specifications for Beaver Valley Units 1 and 2 would be amended as follows:

(1) Surveillance requirement 4.2.1.2 currently does not specify the lower limit to which the ½T-minute penalty for the axial flux difference is to be applied. The licensee proposed to specify the lower limit as 15% of rated thermal power, thus, conforming Section 4.2.1.2 to 4.2.1.1, and correcting an internal discrepancy between the two sections.

(2) Page 3/4 3-16a (Unit 1 only) would be renumbered to 3/4 3-16, and the current page 3/4 3-16, a blank page, would be deleted. This is an editorial change.

(3) Section 4.4.5.5 would be modified to clearly say that a Special Report will be needed to document steam generator tube inspection results. This is an administrative change.

(4) Section 6.9.2 (Unit 1 only) will be revised by adding Steam Generator Tube Inservice Inspection Report to the list of Special Reports. This is an administrative change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these, Example (i), involving no significant hazards considerations is "A purely administrative change to technical specifications." The requested changes all match this example. On such basis, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendments request: February 22, 1988

Description of amendments request: The proposed amendments would change the general limiting conditions for operation (LCO) Technical Specifications (TS) [TS 3.0] and the general surveillance requirements (SR) TS [TS 4.0]. The changes would be applicable to both St. Lucie units, and are in response to the Commission's Generic Letter 87-09 on this subject entitled "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." Some changes are also proposed for Unit 1 that are not associated with the Generic Letter. These changes upgrade the Unit 1 TS to the content of the standard TS.

Specifically, the Generic Letter suggested changing TS 3.0.4, TS 4.0.3, and TS 4.0.4. TS 3.0.4 deals with entry into an operational mode when the LCO's associated with a particular operational mode are not met. The present specification has caused confusion; the proposed specification of the Generic Letter will end this confusion. The licensee proposes the same TS 3.0.4 changes as suggested in the Generic Letter for both St. Lucie unit TS.

TS 4.0.3 deals with failure to perform a surveillance requirement. Failure to perform a surveillance requirement results in the licensee's failure to demonstrate that a structure, system, or component is operable. A licensee can, on occasion, miss a surveillance requirement and a literal interpretation of this TS would require plant shutdown. If the licensee immediately performs the surveillance to abort a shutdown, the plant could be put into jeopardy. Thus, the Generic Letter provides some flexibility to permit the licensee to perform the surveillance in a reasonable period of time. The flexibility in this case is a 24-hour grace period. The licensee proposes the same TS 4.0.3 changes as suggested in the Generic Letter for both St. Lucie unit TS.

TS 4.0.4 deals with entry into an operational mode and satisfaction of the surveillance requirements associated with the LCOs for a given mode. The present specification has also caused confusion; the proposed specification of the Generic Letter will end this confusion. The licensee proposes the same TS 4.0.4 changes as suggested in the Generic Letter for both St. Lucie unit TS.

The Generic Letter also recommended upgrading the bases statements associated with the general LCO and general SR requirements. The purpose of the upgrade was to end confusion and further delineate the background associated with a particular general

LCO and particular general SR. The licensee proposes the same changes to the bases statements as suggested in the Generic Letter for both St. Lucie unit TS.

The licensee also proposes upgrading a number of general LCO requirements to standard TS content. These changes would also make the Unit 1 TS identical to Unit 2 TS. Specifically, TS 3.0.1, 3.0.2, and 3.0.3 will be deleted and the standard TS/Unit 2 TS 3.0.1, 3.0.2, and 3.0.3 will be added.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

> Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> For the changes intended to achieve consistency with the recommendations of Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," the staff has previously evaluated these changes in the generic letter and determined that the modifications will result in improved technical specifications.
>
> Specification 3.0.4 unduly restricts facility operation when conformance to the ACTION requirements provides an acceptable level of safety for continued operation. For an LCO that has ACTION requirements permitting continued operation for an unlimited period of time, entry into an operational mode or other specified condition of operation should be permitted in accordance with those ACTION requirements. This is consistent with the NRC's regulatory requirements for an LCO.
>
> It is overly conservative to assume that systems or components are inoperable when a surveillance requirement has not been performed. A 24-hour time limit has been included in Specification 4.0.3 allowing a delay of the required actions to permit the performance of the missed surveillance. The NRC has concluded that the 24-hour time limit would balance the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with ACTION requirements before the surveillance can be completed.
>
> The NRC has concluded that the potential for a plant upset and challenge to safety systems is heightened if surveillances are performed during a shutdown to comply with ACTION requirements. Specification 4.0.4 has been modified to note that its provisions shall not prevent passage through or to operational modes as required to comply with ACTION requirements.
>
> For the changes intended to achieve consistency with the Combustion Engineering - Standard Technical Specifications (CE-STS), the intent of the Specifications will not be changed nor will operating limitations of the Technical Specifications be changed.
>
> Therefore, the proposed changes will not significantly affect the probability or consequences of accidents previously analyzed.

In connection with the second standard:

> Use of the modified specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The changes being proposed by FPL to achieve consistency with Generic Letter 87-09 and the CE-STS will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different kind of accident [from any accident previously evaluated].

The licensee provided the following analysis for the third standard.

> Use of the modified specification would not involve a significant reduction in a margin of safety.
>
> For the changes intended to achieve consistency with the recommendations of Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," the staff has previously evaluated these changes in the generic letter and determined that the modifications will result in improved Technical Specifications.
>
> Specification 3.0.4 unduly restricts facility operation when conformance to the ACTION requirements provides an acceptable level of safety for continued operation. For an LCO that has ACTION requirements permitting continued operation for an unlimited period of time, entry into an operational mode or other specified condition of operation should be permitted in accordance with those ACTION requirements. This is consistent with the NRC's regulatory requirements for an LCO.
>
> It is overly conservative to assume that systems or components are inoperable when a surveillance requirement has not been performed. A 24-hour time limit has been included in Specification 4.0.3 allowing a delay of the required actions to permit the performance of the missed surveillance. The NRC has concluded that the 24-hour time limit would balance the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with ACTION requirements before the surveillance can be completed.
>
> The NRC has concluded that the potential for a plant upset and challenge to safety systems is heightened if surveillances are performed during a shutdown to comply with ACTION requirements. Specification 4.0.4 has been modified to note that its provisions shall not prevent passage through or to operational modes as required to comply with ACTION requirements.
>
> For the changes intended to achieve consistency with the Combustion Engineering - Standard Technical Specifications (CE-STS), the intent of the Specifications will not be changed nor will operating limitations of the Technical Specifications be changed.
>
> Therefore, use of the modified specification would not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. The licensee is proposing TS changes consistent with the Generic Letter TS. The licensee is also proposing TS changes for Unit 1 that are identical to the Unit 2 TS and the Standard TS.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendments request: February 22, 1988

Description of amendments request: The proposed amendments would make a number of changes to the administrative controls section of the Technical Specifications (TS). The figures showing the onsite organizational structure and the offsite organizational structure would be deleted. General organizational requirements are proposed to be added to reflect the significant organizational features currently presented in the figures. The figures themselves would be located in a licensee-controlled document, the Topical Quality Assurance Report. A licensee cannot unilaterally change this report if the change reduces the commitments previously accepted by the Commission. The governing regulation in this matter is 10 CFR 50.54(a)(3). Therefore, the figures would remain a controlled document.

The title "Vice President - Nuclear Operations" and "Group Vice President - Nuclear Energy" are used in various locations of the administrative controls section of the TS. The amendments would delete these particular titles, and use the general title "senior corporate nuclear officer" in their place. This change would give the licensee more flexibility in making management changes.

Three title changes to the membership of the Company Nuclear Review Board (CNBR) would be made. Two of the three individuals occupying those positions on the CNBR would also change. There will be no changes in collective talents on the CNBR and the quality and scope of independent review will be maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

> Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

In connection to the second standard, the licensee stated the following.

> Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The changes being proposed are administrative in nature and will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different kind of accident [from any accident previously analyzed].

Lastly, the licensee provides the following analysis to address the third standard.

> Use of the modified specification would not involve a significant reduction in a margin of safety.
>
> The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in and maintained by, the Technical Specifications.
>
> Deletion of the figures displaying offsite and onsite organizational structures and other organizational changes will not decrease the effectiveness of the offsite and onsite organizations to manage the St. Lucie Plant. These organizations will continue to operate, manage and provide technical support to the St. Lucie Plant.
>
> The NRC will continue to be informed of organizational changes through other controlled mechanisms. The Topical Quality Assurance Report provides a detailed description of organization and responsibilities as well as detailed organizational charts. Changes to the Topical Quality Assurance Report are governed by 10 CFR 50.54(a)(3). Changes to the Topical Quality Assurance Report description that reduce commitments previously accepted by the NRC require NRC approval prior to implementation. FPL will continue to inform the NRC of organizational changes affecting St. Lucie Plant.
>
> Changes to the composition of the Company Nuclear Review Board (CNRB) reflect only title changes and are administrative in nature. There is no change in the collective talents on the CNRB and the scope of independent review conducted by the CNRB will be unchanged from the current high quality.
>
> Therefore, the proposed changes do not involve any [significant] reduction in a margin of safety.

The staff reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards.

The figures will remain as controlled documents. The two title changes to "senior corporate nuclear officer" will still require appropriate corporate oversight of all nuclear activities. The CNBR changes will not change the collective talents on the CNBR and the quality and scope of independent review will be maintained.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: February 19, 1988

Description of amendments request: The proposed amendments would make a number of changes to the administrative controls section of the Technical Specifications (TS). The figures showing the onsite organizational structure (Figure 6.2-2) and the offsite organizational structure (Figure 6.2-1) would be deleted. General organizational requirements are proposed to be added to reflect the significant organizational features currently presented in the figures. The figures themselves would be located in a licensee-controlled document, the Topical Quality Assurance Report. A licensee cannot unilaterally change this report if the change reduces the commitments previously accepted by the Commission. The governing regulation in this matter is 10 CFR 50.54(a)(3). Therefore, the figures would remain a controlled document.

Current Figure 6.2-1 entitled "Plant Organization Chart" requires both the Operations Supervisor and the Operations Superintendent to hold Senior Operator Licenses (SROs). A TS is proposed to require the Operations Supervisor to hold an SRO; however, the licensee is requesting the deletion of that requirement for the Operations Superintendent. The licensee does not believe that both individuals need to hold current SRO licenses.

The title "Vice President - Nuclear Operations" and "Group Vice President - Nuclear Energy" are used in various locations of the administrative controls section of the TS. The amendments would delete these particular titles, and use the general title "senior corporate nuclear officer" in their place. This change would give the licensee more flexibility in making management changes.

Three title changes to the membership of the Company Nuclear Review Board (CNBR) would be made. In addition, the Chairman would not be specified. Instead, TS 6.5.2.2 would be modified to require only that the Chairman be a member of the CNRB and that he be specified in writing. There will be no changes in collective talents on the CNBR and the quality and scope of independent review will be maintained.

Finally, the amendments would change the written notification time period that the Plant Nuclear Safety Committee has to notify the CNBR when disagreements arise. The present time is "immediately"; the licensee is requesting 24 hours per the Westinghouse Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazard considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the standards of 10 CFR 50.92 and has determined that operation of Turkey Point Units 3 and 4 in accordance with the proposed amendment would not:

(1)&(2) Involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident than previously evaluated. This change [is] administrative in nature, and does not involve a change in the operation, the physical configuration of the power plant, or affect the accident analysis.

(3) Involve a significant reduction in a margin of safety.

Deletion of Figures 6.2-1 and 6.2-2 and the other organization changes discussed above will not decrease the effectiveness of the onsite and offsite organization to manage the Turkey Point Plant or provide technical support to ensure continued safe operation.

The NRC will continue to be informed of organizational changes through other required controls. The Quality Assurance Program provides detailed descriptions of organization and responsibilities and detailed organization changes. Changes to the Quality Assurance Program description that reduce commitments previously accepted by the NRC require NRC approval prior to implementation. FPL will continue to inform the NRC of organization changes affecting its nuclear facilities.

The proposed change deleting the requirement that the Operations Superintendent hold an SRO is consistent with the requirements of TS 6.3.1. Plant supervisors are directly supervised by the Operations Supervisor who meets the qualifications of the "Operations Manager" in ANSI Standard N18.1 1971. Therefore, not including the SRO requirement for the Operations Superintendent will not impact safe plant operation.

The changes from "Vice President-Nuclear Operation," and/or 'Group Vice President-Nuclear Energy" to "senior corporate nuclear officer" and the changes relating to the CNRB are administrative and do not affect plant operation.

The increase in time allowed to provide written notification (TS 6.5.1.7.c) regarding disagreement between the PNSC and the Plant Manager-Nuclear is consistent with industry practice and allows time for a written report to be prepared. Since the Plant Manager is responsible for resolving such disagreements, and also for safe operation of the plant, no decrease in any margin [of] safety will result.

The staff agrees with the licensee's determination above, and therefore proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 12, 1988 (TSCR No. 180)

Description of amendment request: The proposed amendment would revise Technical Specification 5.4.1 and the corresponding bases and surveillance requirements to allow receipt, storage and transfer of new (unirradiated) fuel assemblies containing as high as 4.3 weight percent U-235 enrichment. Presently, the maximum enrichment provided for is 3.5 weight percent.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

GPU Nuclear has provided an assessment of how the proposed amendment meets the standards of 10 CFR 50.92 in making a determination that an action involves no significant hazards consideration. The discussion of this determination is as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. There are no design basis events in TMI-1 FSAR Chapter 14 or elsewhere which are affected by this proposed amendment. Also, an analysis has been performed and has demonstrated that the NRC criticality requirements for the storage of new fuel would be met under both normal and abnormal conditions.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The only event of concern with respect to storage of new fuel is criticality and as mentioned in item (1) above, an analysis has demonstrated that the proposed amendment would not result in any kind of criticality event.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The safety criteria contained in the Technical Specification Bases are not impacted by this proposed amendment.

The Commission has provided guidelines pertaining to the application of three (3) standards by listing specific examples in (51 FR 7744). The proposed amendment is considered to be in the same category as example (vi) of amendments that are considered not likely to involve significant hazards considerations in that the results of this proposed amendment is clearly within all acceptance criteria with respect to the Standard Review Plan. The staff agrees with this proposed amendment and proposes to determine that the amendment would involve no significant hazards consideration.

Local Public Document Room location: Government Publications

Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: February 4, 1988

Description of amendment request: Technical Specification 4.7.1.2.1, "Auxiliary Feedwater System," requires verification at least once every 31 days that each motor driven auxiliary feedwater pump develops a discharge pressure of greater than or equal to 1605 psig at a flow of greater than or equal to 175 gpm. The proposed change revises the flow criterion to "greater than or equal to 150 gpm."

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. The change does not involve any modification to the auxiliary feedwater pumps and has no effect on operation of the system. Since the auxiliary feedwater system will respond to a manual or automatic actuation and operate in the same manner as before the change, the probability and consequences of previously analyzed accidents would not be affected.

2. The proposed change does not create the the possibility of a new or different kind of accident than any accident previously evaluated. The change does not involve any physical alteration to the auxiliary feedwater system or to any other plant system or structure. The change does not affect the operation of any plant system. The change therefore does not create the possibility of a new failure mode or malfunction and a new or different kind of accident could not result.

3. The proposed change does not significantly reduce a margin of safety. The proposed change assures adequate flow for pump protection during surveillance testing. The proposed surveillance acceptance criterion is equivalent to the existing criterion in terms of demonstrating pump operability, since both criteria show operation on the pump's head vs. flow curve. The Vogtle In-Service Testing program requires that corrective action be taken if quarterly test data exhibit a significant adverse trend. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: Kahtan Jabbour, Acting

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 11, 1986 and November 6, 1987

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the River Bend Station, Unit 1 to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.D of Facility Operating License No. NPF-47 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 11, 1986, with additional information on November 6, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 13, 1988

Description of amendment request: The proposed amendment will revise Technical Specification Table 3.6-2, Containment Isolation Valves, and Table 3.6-1, Containment Leakage Paths.

For the containment isolation valves listed in Table 3.6-2, Technical Specification 3.6.3 ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere or pressurization of the containment, as required by 10 CFR Part 50 Appendix A, GDC 54 through GDC 57. Containment isolation within the time limits specified for isolation valves designed to close

automatically ensures that the release of radioactive material to the environment will be consistent with the LOCA analyses assumptions. The proposed change will add a new containment isolation valve to the automatic isolation section of Table 3.6-2, and move an existing valve from the manual isolation section of Table 3.6-2 to the automatic isolation section while changing its valve identification number.

Similarly, Table 3.6-1 of Technical Specification 3.6.1.2 lists the containment penetrations and valves subject to Type B and C leak rate testing. The proposed change will add a new containment isolation valve for Type C testing to the Table and change the valve identification number of an existing valve.

The Containment Atmosphere Release System (CARS), described in Section 6.2.5.2.3 of the FSAR, serves as a dual train backup to the Hydrogen Recombiner System for post-LOCA hydrogen control. Motor operated containment isolation valves inside containment (valves CAR 201A/B) are presently provided for each train of the CARS exhaust and included in the automatic isolation (CIAS) section of Technical Specification Table 3.6-2. Locked closed manual isolation valves outside containment (valves CAR 202A/B) are included for each exhaust train in the manual isolation valve section of Table 3.6-2.

To provide a means for intermittent containment pressure control, a station modification will be implemented during the upcoming second refueling outage to cross-connect the CARS train B exhaust with the RAB Normal Ventilation System. The tie-in occurs between the CARS outside containment isolation valve and the CARS exhaust fan. In the course of the modification a new inside containment air-operated and fail-closed isolation valve (CAR 200B) will be added in parallel with the existing CAR 201B motor-operated valve; the outside containment isolation valve (CAR 202B) will be changed from a manual valve to an air-operated and fail-closed valve.

Two design constraints are relevant to the proposed Technical specification change: (1) the containment pressure control line must be capable of isolation within 5 seconds following a containment isolation or high radiation signal (and valves must fail in the safe (closed) position), and (2) CARS train B must remain capable of performing its post-LOCA hydrogen removal function. Because air-operated valves are faster acting than motor-operated valves, the first constraint is met by adding the inside containment air-operated isolation valve, CAR 200B, and changing the outside containment isolation valve, CAR 202B, from a manual valve to an air-operator. The second constraint is met by retaining the motor-operated inside containment isolation valve, CAR 201B, so that post-LOCA credit for the instrument air system is not necessary to ensure that CARS train B can be unisolated when needed. In effect, CAR 201B is dedicated for hydrogen removal post-LOCA and CAR 200B is available for containment pressure control.

The proposed change, therefore, involves: (1) the addition of CAR 200B to Tables 3.6-1 and 3.6-2 as a new valve to automatically isolate on CIAS or high containment radiation, and 2) shifting CAR 202B from the manual isolation section of Table 3.6-2 to the automatic isolation section. Both valves must meet a five second closure criterion during testing. Because the actual valve for CAR 202B is being replaced, the valve-specific identification number used internally by Waterford 3 will also be change from 2HV-B192B to 2HV-F229B.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) As a post-accident system, the CARS is not credited in the safety analyses for Waterford 3, but is assumed to function to maintain containment hydrogen concentration below 4%. The proposed change preserves this function. When controlling pressure, five second automatic isolation of the inside (CAR 200B) and outside (CAR 202B) containment isolation valves ensures that the large break LOCA analysis assumption remain bounding. The combination of automatic isolation and the small CARS pipe diameter (4 inches) limits the total volume released from containment to well below that assumed for other analyzed releases. Type C leak rate testing of the valves in question ensures that the total containment leakage volume will not exceed safety analysis assumptions at peak accident pressure. Therefore, the proposed change will not involve an increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change adds a new inside containment automatic isolation valve in parallel with an existing system and changes the existing outside containment manual isolation valve to an automatic valve. The combination of automatic inside/outside containment isolation valves is a standard design implicitly analyzed and accepted over a wide range of systems and conditions. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

(3) The CARs provides added assurance that a hydrogen burn or explosion would not occur following a LOCA. The proposed change will preserve the safety function of the CARS. Similarly, the five second closure criterion for the inside/outside containment isolation valves and appropriate leak rate testing preserves the assumptions of the limiting LOCA evaluation to ensure that off-site dose consequences are not increased. Therefore, the proposed change does not involve a reduction in safety margin.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: March 1, 1988

Description of amendment request: The proposed amendment would modify the Technical Specifications to update Figure 5.2.-1 and Figure 5.2-2 in Technical Specification 5.2 "Organization" to reflect a successional change in the offsite corporate organization and associated changes in the functional reporting structure.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications to reflect a successional change in the offsite corporate organization and associated changes in the functional reporting structure have been evaluated against the standards of 10 CFR 50.92 and have been determined to not involve a significant hazards consideration. These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change to the organizational charts in TS 5.2 are administrative in nature and have no effect on the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Since there are no changes in plant design or operation, inclusion of the proposed changes in the technical specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. For the reasons previously stated, adoption of the proposed change would not involve a significant reduction in safety margin for the plant.

Maine Yankee has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. We have reviewed the licensee's analysis and have agreed with it. Accordingly, the Commission proposes to determine that this change does not involve a significant hazard.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 267, Wiscasset, Maine 04578.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Richard H. Wessman, Acting Director

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 16, 1987, November 3, 1987, and January 18, 1988

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Cooper Nuclear Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.C.3 of Facility Operating License No. NPF-46 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on April 16, 1987, with additional information on November 3, 1987 and January 18, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: September 29, 1987.

Description of amendment request: This amendment to the Technical Specifications will incorporate requirements for a halon system in the control room. This halon system is the fulfillment of a commitment made by the licensee and was documented by the staff in a safety evaluation report issued on November 6, 1985 in support of an exemption to 10 CFR 50, Appendix R.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Operation of the control room halon system is not assumed in any of the design basis accidents, since a fire is not assumed either as an initiating event or as a result of a design basis accident. Thus, adding a specification for operability of the new halon system or changing the required number of fire detectors has no impact on the design basis accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The new halon system may create the possibility of an inadvertent discharge of Halon 1301 due to failure of two smoke detectors or as a result of surveillance of the new halon system. However, even if this were to occur, the design halon concentration is well below toxic limits for halon concentration. Thus, this assures that inadvertent activation does not affect the ability of the control room operators to remain in the control room to take appropriate action for orderly plant shutdown. Hence, there is no significant impact on control room habitability, and this change does not represent a new unanalyzed accident.

3. Involve a significant reduction in a margin of safety. The operational and surveillance requirements of the new halon system represent more restrictive criteria. Hence, the margin of safety is increased.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: December 18, 1987

Description of amendment request: The proposed amendment to the Technical Specifications will revise Section 3.7.A.3, "Primary Containment", and Basis 3.7.A.1 by removing the explicit permission to perform open reactor vessel criticality or low power physics testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The proposed change would in fact reduce the probability of an inadvertent criticality while the reactor vessel is open by removing permission to conduct reactivity tests with the reactor vessel head off..

2. Create the possibility of a new or different kind of accident from any previously analyzed. Making technical specifications more restrictive by discontinuing the performance of open vessel criticality and low power physics testing does not modify plant response to any transient or accident.

3. Involve a significant reduction in a margin of safety. The effects of these changes will not adversely impact plant protective boundaries. Also, the proposed basis revision represents additional conservatism, in that an inadvertent criticality due to criticality or l.p.p. testing will be prevented from occurring without containment integrity. Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Accordingly, the staff has made a proposed determination that the application for amendment invloves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 8, 1988

Description of amendment request: The proposed amendment consists of a number of proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. DPR-40) in Sections 2 and 5. The specification proposed changes are indicated below.

(1) The objective of Section 2.9.1 is changed to relate the criteria for regulatory compliance to annual radiation doses from effluents rather than to radionuclide concentrations in the effluents.

(a) Specification 2.9.1(1)a(i) is changed to correct a typographical error in the units for the concentrations of dissolved or entrained noble gases in liquid effluents.

(b) Specification 2.9.1(2)a(i) is changed to delete the word "instantaneous" in reference to radionuclide concentrations and to use the annual x/Q value for determination of nuclide concentrations.

(c) Specification 2.9.1(2)b the word "cumulative" is changed to "radiation" and the words "to each of the 16 cardinal sectors" are deleted in reference to quarterly calculations to ensure compliance with the annual dose design objectives of Specification 2.9.1 of the Basis.

(d) Section 2.9.1 of the Basis is changed to replace the word "concentration" with the words "annual dose" for consistency with the specification of this section.

(2) Specification 5.9.4a is changed to add a reference to 10 CFR 50.36a for the semi-annual reporting of radioactive effluents and deletes reference to Regulatory Guide 1.21, Revision 1, for the reporting format.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested change does not involve a significant hazards consideration.

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The subject changes do not involve a material alteration of equipment or a change in the method of monitoring routine radioactive gas releases. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for the Fort Calhoun Station. The change in the requirements for report format has no impact on plant safety.

(2) Will the change create the possibility of new or different kind of accident from any accident previously evaluated?

No. The change involves no alteration of equipment, no change in gaseous release quantities and no change in release pathway. The change will simplify the gas releases for the operations staff and, therefore, reduce the possibility of human error. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for the Fort Calhoun Station. The change in the requirements for report format has no impact on plant safety.

(3) Will the change involve a significant reduction in a margin of safety?

No. The annual exposure to a member of the public will not increase because the quantity of gas released annually will not increase. The proposed changes are expected to reduce the overall uncertainty in regulating radioactive gases during routine releases to unrestricted areas. The submittal meets the intent of NUREG-0472 for annual doses from gaseous effluents. The annual dose limits are the doses associated with the concentrations of 10 CFR Part 20, Appendix B, Table II, Column 1. These limits provide reasonable assurance that radioactive material discharged in gaseous effluents will not result in the exposure of a member of the public in an unrestricted area outside the site boundary to annual average concentrations exceeding the limits specified in Appendix B, Table II of 10 CFR Part 20. The specified release rate limits in accordance with NUREG-0472, restrict the corresponding gamma and beta dose rates above background to a member of the public at or beyond the site boundary, to less than or equal to 500 mRem/year to the total body and less than or equal to 3,000 mRem to the skin. These release rate limits also restrict the corresponding thyroid dose rate above background to a child via the inhalation pathway to less than or equal to 1500 mRem/year. The 10 CFR Part 50 annual exposure objectives are more restrictive than the 10 CFR Part 20 annual dose rates. The Fort Calhoun Station has never exceeded the more restrictive 10 CFR Part 50 annual exposure ojectives. Quarterly calculations will be done to track the status of the 10 CFR Part 50 annual exposure objective as per the Technical Specification 2.9.2B (1), (2), and (3).

If the quarterly dose calculation results exceed one-half the design objects, an investigation will be done, action will be taken to reduce the doses to the objectives and a special report will be submitted to the Commission in accordance with Technical

Specification 2.9.1(2)b. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for the Fort Calhoun Station.

The proposed deletion of Regulatory Guide 1.21, Revision 1, from the Technical Specification and the addition of 10 CFR 50.36a does not involve a reduction in the margin of safety. The deletion of the Reg. Guide commitment will allow the report to reflect a comprehensive assessment of compliance to the Radiological Environmental Technical Specification.

The staff has reviewed the licensee's no significant hazards consideration determiniation and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed change to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 19, 1988

Description of amendment request: The proposed amendment revises the thermal shock analysis in the Technical Specifications (Appendix A to Facility Operating License No. DPR-40). The specification proposed changes are in Section 2 and includes the change to the labels of the heatup and cooldown curves (Figures 2-1A and 2-1B) from 15.0 to 14.0 effective full power years (EFPY). Figure 2.3 is corrected to reflect the more conservative shift prediction equation associated with the limiting weld wire heat in the lower longitudinal weld seams. The predicted 40 year integrated flux was revised to be consistent with the fluence prediction equation used in this assessment and using the Draft Regulatory Guide 1.99 Revision 2 methodology Reference to 15.0 EFPY in the Basis Section is revised to 14.0 EFPY and the corresponding change from Cycle 16 to Cycle 15 is also made.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested changes do not involve a significant hazards consideration because the proposed changes would not:

(1) Increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. The proposed revision to the Technical Specification heatup and cooldown limit curves imposes more conservative limits on operation by revising the valid operating life of the existing curves from 15 EFPY to 14 EFPY. There has been no challenge to the reactor coolant system associated with using the previous curves since the Fort Calhoun Station has currently been operating for less than 10 EFPY. Therefore this amendment would not increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report.

(2) Create the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report. This amendment only revises the label defining the lifetime in EFPY of the Technical Specification heatup and cooldown limit curves. These curves are bounded by the existing Safety Analysis Report. There are no anticipated changes to the current operating practices. Therefore, the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report would not be created.

(3) Reduce the margin of safety as defined in the basis for any Technical Specification. The revised operating life for the existing curves was determined using a more conservative chemistry factor along with the shift prediction equation, including the appropriate 2 sigma margin, as presented in Regulatory Guide 1.99, Revision 2. Therefore, the margin of safety as defined in the basis for any Technical Specification is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 15, 1987

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station Units 1 and 2 Technical Specifications to revise Table 3.3.7.10-1, "Radioactive Liquid Effluent Monitoring Instrumentation."

There are two problems being addressed by this proposed change to the Technical Specifications:

1. Technical Specification Table 3.3.7.10-1, footnote *, currently requires that if any discharge valve interlock is in an off-normal condition or is not functioning, the monitor, including the sample pump, must be in operation. As a result, during periods when no releases are being made, the monitor and the sample pump may be required to operate for extended periods without liquid flow to pump. Operation in this mode could jeopardize the operability of the radiation monitoring system.

2. A modification to the Unit 1 and Unit 2 Cooling Tower Blowdown flow instrumentation is being installed during the Unit 2 Second Refueling and Inspection Outage. It revises the operation of the cooling tower blowdown low flow interlocks described in Technical Specification Table 3.3.7.10-1 such that their current description requires clarification.

For item 1 above, the footnoted information is rewritten to associate the blowdown flow interlocks with Instrument 3b (which has been renamed for clarity) instead of Instrument 1a, and revise Actions 100 and 102 to incorporate proper remedial requirements when effluent releases do not occur and discharge valve interlock malfunctions. These actions replace the inappropriate actions previously required via footnote *.

Specifically, the following changes are proposed under item 1.

Item 1a: Cooling tower blowdown low flow interlock should support instrument 3b instead of current interlock with sample pump and radiation monitor. The proposed change would force Action 102 instead of the current Action 100.

Item 1b: Removes a remedial action statement from footnote * to the appropriate locations in Actions 100 and 102.

Item 1c: Makes an editorial change renaming instrument 3b.

Item 1d: Deletes footnote * because the remedial action is being moved to Actions 100 and 102.

For item 2, the reference to "Unit 1 cooling tower blowdown low flow or Unit 2 cooling tower blowdown low flow", previously provided in footnote* is revised to read simply "cooling tower blowdown low flow" under new footnote **.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its December 15, 1987 submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Item 1a: This change couples the blowdown flow interlocks with its associated flow instrumentation rather than with the radiation monitor. This allows Action 102 to be taken instead of Action 100 when the flow interlock is malfunctioning. Given the unmonitored release of liquid effluents as the event of concern, neither its probability nor its consequences will increase significantly because the interlocks on radiation will prevent any unacceptable release from occurring during operation under Action 102 - if any of these interlocks are inoperable, Action 100 must be in affect.

Item 1b: This change removes an inappropriate requirement (i.e., that the sample pump be operated under dry conditions), and replaces it with actions which will provide assurance that an inadvertent release will not occur (based on single failure criteria). This more positive action lessens the probability of an inadvertent release. Any adverse effect on the consequences of the event would have to result from the single failure criterion being violated; this is not considered credible.

Item 1c: This change involves renaming an instrument based on a plant-specific convention. Such an action is wholly editorial in nature and poses no impact on previous safety analyses.

Item 1d: .... This item is directly tied to Item 1b. I.e., it is only required because the operation of the sample pump and monitor is being replaced by the redundant isolation requirement. Therefore, the answer to Item 1b applies here as well.

Item 2: This change is the result of the correction of an overly conservative design deficiency. The requirement to monitor for 5000 gpm dilution flow has not changed, and although the change will describe a single interlock instead of two, monitors on blowdown flow from each unit still exist; their inputs are simply combined to remove unnecessary conservatism. This action will not result in an increase in the probability or consequences of any previous accident evaluation.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Item 1a: This change involves the use of a different action statement for an equipment malfunction. This action will allow effluent releases with this malfunction for a longer time, but will not cause any new events because no hardware changes or new operational actions result (see Item 1b for discussion of revision of operational actions in new actions 100 and 102).

Item 1b: For the cases where effluent releases are not occurring, an operational change is proposed in both Actions 100 and 102. The Actions are revised to ensure redundant isolation rather than continuous monitoring. The redundant isolation is being accomplished by existing valves, and therefore no new events are postulated. The lack of continuous monitoring does not create a new concern because of the redundant isolation; i.e., based on single failure criteria, the redundant valve precludes the need for continuous monitoring to prevent an inadvertent release.

Item 1c: This change involves renaming an instrument based on a plant-specific convention. Such an action is wholly editorial in nature and will not create any new concerns.

Item 1d: As discussed previously, this item is a direct result of the change in 1b; therefore the answer to 1b applies here.

Item 2: This change, which replaces unit specific flow interlocks with a common interlock, does not create any new failure modes because there is no interdependence between the two interlocks now. Therefore, two independent functions are being replaced by a single function with the same potential failure modes.

III. Involve a significant reduction in a margin of safety.

Item 1a: This change allows a less restrictive action to be taken if the flow instrumentation is inoperable. This does not result in a significant reduction in safety margin because:

a. As mentioned previously, evidence exists that Action 102 was intended to be associated with the flow instrumentation, and

b. The flow instrumentation is less important than the radiation instrumentation in guarding against an unacceptable release.

Item 1b: This change improves safety in the following ways:

a. it removes an action requirement from a footnote;

b. it deletes an action that could jeopardize equipment integrity; and

c. it ensures positive protection against an inadvertent release.

Item 1c: This change involves renaming an instrument based on a plant-specific convention. Such an action is wholly editorial in nature and has no impact on safety margin.

Item 1d: As discussed previously, this item is a direct result of the change in 1b; therefore the answer to 1b applies here.

Item 2: The current design of SSES is overly conservative in that it may require greater than the minimum dilution flow necessary to the requirements specified in the ODCM. The ODCM requirement of 5000 gpm ensures all necessary safety margin. This change will continue to provide this safety margin and therefore, no significant reduction is being proposed.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: February 4, 1988

Description of amendment request: The proposed amendment would revise Trojan Technical Specification (TS) Section 3/4.7.3, "Component Cooling Water System (CCW)," and associated bases, to be consistent with the "Split Train" mode of operation of the CCW System. It is proposed that one train solely serve safety-related cooling loads, and be isolated from the other train which will serve nonsafety-related nonseismic loads, as well as safety-related cooling loads. This amendment is proposed in order to assure the operability of the CCW system following a seismic event.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The accident scenario of concern is a loss of all CCW due to a seismic-induced rupture of the non-seismic category I CCW piping. With the CCW flow paths in their original configuration, the probability of loss of all CCW would be higher than with the system in a split-train configuration. Isolating one train of CCW from the non-seismic category I flow path during Modes 1 through 4 provides greater assurance of CCW supply to safe shutdown loads following a seismic event.

Maintaining the spare CCW pump operable in Modes 1 through 4 assures that a CCW loop can be made available even if a single-failure is assumed to occur concurrent with a seismic event. This provides greater assurance of CCW availability than the current Technical Specification requirement.

During Modes 5 and 6, the proposed change will require that at least two CCW trains, or at least one CCW train and the spare CCW pump, be operable. This provision is an enhancement over the current provisions in the Technical Specifications and therefore will provide greater assurance of CCW restoration following a seismic event. Also, because the plant is in at least a cold shutdown condition during these modes and timely recovery actions can be expected, the consequences of a seismically induced failure are bounded by current FSAR accident analyses.

Since the proposed changes enhance the availability of CCW following a seismic event, the probability and consequences of an accident previously evaluated are not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Operating the CCW System in a split-train configuration during Modes 1 through 4, as previously described, ensures that there will be a continuous supply of cooling water to safe shutdown equipment following a seismic event. In the event of an earthquake and single active failure, the spare CCW pump will be available to supply CCW to safe shutdown equipment.

A design basis accident (DBA) is not assumed to occur simultaneously with a seismic event that ruptures the non-seismic category I CCW piping. Therefore, at least one train of ESF equipment would be available to respond to accident demands assuming a single-failure in the other train with the CCW System aligned in a split-train configuration.

During Modes 5 and 6, the proposed change will require that at least two CCW trains, or at least one CCW train and the spare CCW pump, be operable. This provision is an enhancement over the current provisions in the Technical Specifications. Since this change provides greater assurance of CCW System restoration following any seismic-induced failures in the non-seismic category I portion of the system, an accident of a new or different kind from any previously evaluated will not be created.

The changes proposed provide greater assurance that CCW will be available to serve safe shutdown equipment than does operation in the original lineup. Therefore, the proposed changes will not result in the creation of an accident of a new or different kind than previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Changing the operation of the CCW System to a split-train configuration during plant operating modes provides greater assurance that CCW will be available in the event of a seismically induced rupture in the non-seismic category I CCW piping than does operation in the original lineup. Providing additional controls on maintaining operability of the spare CCW pump also provides greater assurance of CCW System availability assuming a single-failure occurs concurrent with the seismic event. Therefore, no margins of safety are reduced.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 2, 1986 and September 4, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Hope Creek Generating Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-57 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and September 4, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 10, 1987 as supplemented by letter dated January 26, 1988

Description of amendment request: The proposed changes incorporate on-line reactor trip breaker testing into the Technical Specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

This change in Technical Specifications is in accordance with the Generic Letter 85-09 testing requirements of the reactor trip breakers within the plant. A possible consequence of this change is that over a period of time, additional plant trips may occur through actions taken during monthly testing of the reactor trip breakers. Occasional trips are considered within the normal operating conditions at a power plant.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire, NW. Washington, DC 20036

NRC Project Director: Richard H. Wessman, Director

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: January 19, 1988

Description of amendment request: The proposed amendment would change the expiration date for the R.E. Ginna Nuclear Power Plant Operating License, DPR-18, from April 25, 2006 to September 18, 2009. The Technical Specifications for the plant would not be affected. The current term of the Operating License is 40 years, commencing with the April 25, 1966 issuance of the Construction Permit. This represents an effective Operating License (OL) term of approximately 37 years and 7 months. Current NRC practice as stated in 10 CFR 50.51 is to issue an Operating License with a term of 40 years from date of OL issuance. This amendment proposes to extend the OL in accordance with current practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the January 19, 1988, letter states the following:

The proposed amendment to the Ginna operating license does not involve any changes in the design, operation or Technical Specifications of the facility, but instead, only requests a change to the expiration date of the current license. This extension is within the range permissible by the Commission's regulations, specifically 10 CFR 50.51. In addition, a finding of no significant hazards consideration is consistent with recent NRC actions on applications of this type. The proposed extension will have no significant impact on the safe operation of the plant or present an undue risk to the health and safety of the public.

The proposed license amendment to permit the 40-year operating life does not constitute a significant hazards consideration as defined in 10 CFR 50.92 for the following reasons:

The R.E. Ginna Nuclear Power Plant was designed and constructed primarily on the basis of 40 years of plant operation. For example, the reactor vessel was designed and fabricated for a 40-year life. A comprehensive vessel materials surveillance program is maintained in accordance with 10 CFR Part 50, Appendix H. Analyses were performed to demonstrate compliance with the NRC pressurized thermal shock screening criteria. All of the RT_{PTS} values remain below the NRC screening values for PTS using the projected fluence exposure through 32 EFPY. At the projected capacity factor of 80% this corresponds to the 40-year life of the plant. This information was contained in WCAP-11028 which was transmitted to the NRC on January 13, 1986 as an attachment to a letter from R. Kober of RG&E to G. Lear.

The analyses contained in the R.E. Ginna Nuclear Power Plant Final Safety Analysis Report were performed on the basis of not less than 40 years of expected plant life.

Analyses and information presented in the R.E. Ginna Nuclear Power Plant Environmental Report, in general, were not dependent on any specific period of plant operation.

Procedures and programs are in place to detect abnormal deterioration and aging of critical plant components. Examples include:

a. Plant pressure retaining vessels, piping, and support systems are inspected in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and 10 CFR Part 50, Section 50.55a(g), except where specific written relief has been granted by the NRC pursuant to 10CFR50, Section 50.55a(g)(6)(i). Safety-related pumps and valves are included in a test program meeting the requirements of Section XI of the Code and the plant Technical Specifications.

b. Safety-related electrical equipment has been environmentally qualified in accordance with the requirements of 10 CFR Part 50, Section 50.49. Aging analyses establish required intervals for equipment replacement. No items would be affected by the extension.

c. A number of special inspections and investigations have been performed by the R.E. Ginna Nuclear Power Plant technical staff providing additional assurance that abnormal or unanticipated degradation will not occur in components required for safe and reliable plant operation. These inspections have included such items as pipe, valve, and fitting wall thickness measurements in steam, feedwater and condensate lines subject to erosion. As an example of this ongoing effort, a motor operated valve diagnostic program is being implemented at Ginna. This program is providing valuable data to insure continued reliability and performance of the motor operated valves. Additional inspections of this nature will be identified as part of the R.E. Ginna plant-specific PLEX Program.

The requested extension on the R.E. Ginna Nuclear Power Plant license will allow the plant to operate for the length of time contemplated during the design process. The station has programs and procedures in place to monitor the power plant to give reasonable assurance that equipment and systems will continue to meet their design parameters. The extension of the licensed operating period, therefore, will not significantly increase the probability or consequences of accidents that have been previously evaluated.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman

Rochester Gas and Electric Corporation, Docket No. 50-244 R.E.Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 8, 1988

Description of Amendment: To correct an inconsistency associated with the monitoring of the containment mini-purge releases, and to clarify actions following inoperability for 31 days of the monitoring instruments.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed revisions clarify the tables associated with the monitoring of the containment purge releases and the action statements following the inoperability for 31 days of the monitoring instruments. The changes are administrative in nature because they do not change the physical aspects of the plant, equipment, or previously approved operations.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station Unit 1, Fairfield County, South Carolina

Dates of amendment request: December 12, 1986, October 14, 1987, November 13, 1987, and December 15, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee has submitted a proposed amendment to the Physical Security Plan for the Virgil C. Summer Nuclear Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-12 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 12, 1986, October 14, 1987, November 13, 1987, and December 15, 1987 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the supplementary materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is [sic] appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7750). One of the examples of actions not likely to involve significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station Unit 1, Fairfield County, South Carolina

Date of amendment request: February 10, 1988

Description of amendment request: On February 10, 1988, an amendment was proposed to revise Section 6.0 of the Technical Specifications (TS). The purpose of the proposed revision is to establish a clear and independent access to senior management regarding matters of nuclear safety. Specifically Section 6.5.2, "NUCLEAR SAFETY REVIEW COMMITTEE", is proposed to be modified to indicate that the Executive Vice President, Operations now has an integral role in the NSRC. Under 6.5.2.2, "COMPOSITION", and 6.5.2.3, "ALTERNATES", it is now proposed that the Executive Vice President, Operations, in consultation with the Vice President, Nuclear Operations shall appoint the Chairman and the other members of the NSRC and their alternates. Presently these individuals are appointed by the Vice President, Nuclear Operations. Under 6.5.2.8, "AUDITS", the Executive Vice President, Operations is proposed to be added to the list of entities with the authority for determining any area of unit operation appropriate for an audit for which NSRC shall have cognizance. Under 6.5.2.9, "AUTHORITY", it is now proposed that the NSRC report to the Executive Vice President, Operations rather than to the Vice President, Nuclear Operations as in the present TS. It is also proposed under 6.6.2.10, "RECORDS", that the records of NSRC activities be forwarded to the Executive Vice President, Operations in addition to the Vice President, Nuclear Operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed amendment does not involve a significant hazards consideration as follows.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the amendment affects administrative controls which do not affect the physical operation of the plant. Clear independent access to senior management will be further established in matters of nuclear safety.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment concerns changes to the management oversight of the Nuclear Safety Review Committee (NSRC) which will not reduce the margin of safety in any way. The level of NSRC member expertise in the designated areas, as specified in Section 6.5.2.1 of the Technical Specifications, will be maintained with the proposed amendment.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: October 15, 1986

Description of amendment request: The proposed amendment would revise the control rod drop time from 2.7 seconds to 2.44 seconds to be consistent with the safety analysis for the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91, the licensee has provided its analysis as to whether or not the proposed amendment involves a significant hazards consideration, as follows:

> The proposed change discussed above shall be deemed to constitute a significant hazards consideration if a positive finding is made in any of the following areas: (1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? *Response:* No. This proposed change would revise the current technical specification acceptance criterion to conform with the design basis for the FSA accident analyses. The acceptance criterion for control rod drop time as used in the previously evaluated accident analyses in the FSA will not be impacted by this proposed change. Therefore, under no circumstances will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated. (2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? *Response:* No. Measurement of control rod drop time provides a mechanism for detection of potential deterioration of function. This proposed change will not impact the ability or the method of performing this task. This change will incorporate the appropriate acceptance criterion into the Technical Specifications, and in doing so, will provide consistent acceptance criterion with the FSA accident analyses. As a result, under no circumstances will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated. (3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety? *Response:* No. The margin of safety for this Technical Specification is defined by the ability to insert negative reactivity into the reactor by control rod insertion in a timely manner. This change will reduce the maximum allowable time for control rod insertion in the technical specifications. In actuality, however, the proposed change will have no impact on the margin of safety since the reduced acceptance criterion will be consistent with the design basis for the FSA accident analyses. Based on this consideration, the proposed specification will

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ensure the ability to insert negative reactivity into the reactor by control rod insertion in a timely manner. Therefore, it is concluded that under no circumstances will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. This proposed change to the specifications is most similar to example (ii) related to a change that constitutes a more stringent surveillance requirement.

The NRC staff has reviewed this analysis and agrees that the criteria appear to be satisfied. The NRC staff therefore proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: May 12, 1987 (Reference PCN-197)

Description of amendment request: The proposed change will revise Technical Specification 3.1.3.6, "Regulating CEA Insertion Limits," 3.1.3.7, "Part Length CEA Insertion Limits," and 3.10.2, "Group Height, Insertion and Power Distribution Limits," as well as Bases 3/4.1.3, "Movable Control Assemblies."

Technical Specification 3.1.3.6 currently provides restrictions on control element assembly (CEA) insertion limits to periods less than or equal to 14 effective full power days (EFPD) per calendar year. The proposed change would replace "calendar year" with "365 EFPD interval."

The part length CEA (PLCEA) insertion limits of Technical Specification 3.1.3.7 are intended to ensure that adverse power shapes and rapid local power changes which affect radial peaking factors and departure from nucleate boiling (DNB) considerations do not occur as a result of a part length CEA group covering the same axial segment of the fuel assemblies for an extended period of time during operation. However, the Specification does not clearly specify the allowable duration within the transient insertion limit nor does it clearly address operation within the long term steady state insertion limit. The long term steady state limit is based on the expected variation of the steady state radial peaking factors with burnup. It serves to limit the behavior of the radial peaking factors within acceptable bounds determined from analyses. The transient insertion limit aids in ensuring that the minimum shutdown margin is maintained and that the potential effects of a CEA ejection accident are limited to acceptable levels. Long term operation at the transient insertion limit is not permitted since such operation could have effects on the core power distribution which could invalidate assumptions used to determine the behavior of the radial peaking factors. The proposed change would restrict the part length CEA group insertion to the insertion limits of Figure 3.1-3 with insertion between the long term steady state insertion limit and the transient insertion limit restricted to intervals less than or equal to 7 EFPD per 30 EFPD interval and intervals less than or equal to 14 EFPD per 365 EFPD interval. The proposed would change also revise the actions to be taken if part length CEA groups are inserted beyond the transient limit or between the long term steady state insertion limit and the transient insertion limit for excessive periods of time. The applicability of Specification 3.1.3.7 has been revised frome Modes 1 and 2 to Mode 1 above 20% of rated power. In addition the proposed change to Specification 4.1.3.7 would revise the Surveillance Requirement so that part length CEA group position is determined every 12 hours to be within the transient insertion limit and the accumulated time for insertion beyond the long term steady state insertion limit but within the transient insertion limit is determined every 24 hours.

The proposed change would also revise Specification 3.10.7 to allow suspension of the insertion limits of Specification 3.1.3.7 during special physics tests.

The proposed change would revise the Bases to Specifications 3.1.3.6 and 3.1.3.7 to clarify the extreme limits of CEA travel (fully withdrawn and fully inserted CEA positions). The terms upper electrical limit and lower electrical limit are used to describe the fully withdrawn and fully inserted CEA positions. Furthermore, the CEA fully withdrawn position would be defined as greater than or equal to 145 inches.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change maintains the required shutdown margins in the facility, thus avoiding any increase in the probability or consequences of an accident previously evaluated. The PLCEA insertion limits are included in the ground rules for the reload analyses for each cycle of operation. This change clarifies the Technical Specification for the plant operators to clearly describe the use of the insertion limits. Therefore, operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would not alter operation of the facility or the manner in which it is operated. The purpose of the proposed change is to clarify the Technical Specifications. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Insertion limits remain unchanged, therefore, operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P. O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 19, 1987

Description of amendment request: The proposed amendment would add a surveillance requirement to include verification of trip setpoints during weekly channel functional tests of the Intermediate Range Neutron Monitors (IRM's). It would also change the frequency for channel calibration of the control rod block function from semi-annual to once per refueling interval.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating licenese for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have stated that the IRM control rod block function is not relied upon in any of the accident or transient analyses of Final Safety Analysis Report Chapter 15. Therefore, changes related to the surveillance frequency for this instrumentation function would not affect any previously evaluated accident.

The licensees have also stated that the extension of the frequency of an existing surveillance requirement would not create the possibility of a new or different kind of accident from any previously evaluated. The staff agrees that the extension of frequency of a surveillance interval cannot, by itself, create the possibility of a new or different kind of accident from any previously evaluated. The addition of a new surveillance requirement to perform weekly trip setpoint checks matches example (ii) of previously published Commission guidance on actions not likely to involve a significant hazards consideration (51 FR 7751).

The licensee has also stated that the proposed amendment would not involve a significant reduction in a margin of safety. This is due to the fact that the safety-related IRM input for the reactor protection system (RPS) is on an approved 18-month calibration frequency and, therefore, extending the calibration frequency from 6 to 18 months for the rod block IRM input should not present a significant reduction in a margin of safety. The staff agrees that, while the acceptability of extending the calibration frequency for the IRM rod block function from 6 to 18 months is dependent on other considerations besides maintaining consistency with the calibration frequency of the RPS input from the same IRM, granting the proposed amendment would not significantly decrease a margin of safety due the peripheral safety significance of the IRM rod block function as compared to the IRM RPS input.

Therefore, the staff proposes to determine that the amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: January 14, 1988 (TS 237)

Description of amendment requests: The proposed amendment involves two changes:

1. The first change is applicable to Browns Ferry Units 1 and 2 only. The proposed change corrects a footnote referenced in Table 3.2.B, Instrumentation that Initiates or Controls the Core and Containment Cooling Systems. The table entry is changed to reference note 18 instead of 14.

2. The second change applies to Browns Ferry Units 1, 2, and 3. The proposed change will delete the reference to footnote 4 in Table 4.2.K, Radioactive Gaseous Effluent Instrumentation Surveillance, for entry number 5.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not result in a change in the current plant configuration. Rather, they correct table entries in the Technical Specifications (TS) consistent with the present plant design and function of the instruments involved.

The proposed changes do not create the possibility of a new or different kind of accident than previously evaluated because they only correct typographical errors and make the technical specifications consistent with industry standards. The proposed amendment will not eliminate or modify any protective functions currently installed at the plant, nor will it permit any new operational conditions.

The proposed changes do not involve a significant reduction in a margin of safety because the changes are administrative in nature and only correct typographical errors and inconsistencies in the TS.

Based on our review of the proposed amendment the Commission proposes to determine that the proposed change to the Browns Ferry TS involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 17, 1985, and letters dated November 22, 1985 and March 20, 1986.

Description of amendment request: The proposed change would revise the Technical Specifications (TS) Action Statement concerning the Limiting Condition for Operation for the main steam line code safety valves. The revision would require the plant to go to Mode 4 (hot shutdown) within 12 hours following Mode 3 (hot standby) rather than to Mode 5 (cold shutdown) during valve inoperability. This change would correct an inconsistency between the

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Applicability requirement and the Action Statement. The safety valves are required to be operable in Modes 1, 2 and 3, and a transition to Mode 5 is required during valve inoperability. Since applicability is not required in Mode 4, the Action Statement should require the plant to go to Mode 4. This notice was previously published July 2, 1986 (51 FR 24264) and is being republished to correct the omission of the time change to reach Mode 4.

Basis for proposed no significant hazards consideration determination: The Commission had provided guidance concerning the application of the standards for determining no significant hazards considerations by providing certain examples (51 FR 7751). Example (i) of amendments not likely to involve significant hazards considerations is an administrative change to technical specifications, such as a change to achieve consistency throughout the TS's, or correction of an error. The proposed amendment meets administrative change standards since the revision corrects an inconsistency within the Limiting Condition for Operation. On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

NRC Project Director: Kenneth E. Perkins.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 4, 1988

Description of amendment request: The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to the Reactor Coolant System boron concentration requirement during refueling conditions as specified in TS Section 3.9.1. Specifically, the proposed amendment would: (1) delete a footnote that specifies that the reactor shall be maintained in Mode 6 whenever the reactor vessel head is unbolted or removed; and (2) delete the opening phrase, "With the reactor vessel head unbolted or removed," from Specification 3.9.1.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the proposed amendment would involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.59, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission has reviewed the licensee's evaluation and agrees with it. The licensee concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not modify the basis for reactivity control nor does it change the requirement to maintain adequate shutdown margin. The proposed change merely clarifies that the boration requirement for the Reactor Coolant System is not applicable when the reactor does not contain any fuel.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect any system, equipment, or procedure, and the requirement to maintain adequate shutdown control remains unchanged. When the reactor does not contain any fuel, there is no reactor core criticality concern, and, therefore, there is no need for boron concentration control in the Reactor Coolant System.

C. The change does not involve a significant reduction in a margin of safety because boron concentration control requirements are still effective when there is fuel in the reactor.

The Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E Perkins.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 3, 1988

Description of amendment request: The proposed changes would modify the Limiting Condition for Operation (LCO) and the surveillance requirements of Technical Specification (TS) 3/4.7.14 as follows:

a. A new action statement "b" would be added which requires the establishment and demonstration of operability of the backup fire suppression system when the diesel-driven fire pump is inoperable for performance of the 18-month inspection. (TS 4.7.14.1.2.c).

b. Surveillance requirement 4.7.14.1.2.c would be changed by deleting the phrase "during shutdown," and adding a reference to the new action statement "b" as specified above.

c. A footnote would be added to surveillance requirements 4.7.14.1.1, 4.7.14.1.2, and 4.7.14.1.3 for Unit 2 which provides clarification that the fire suppression system is common to Unit 1 and therefore the surveillance need only be performed once per defined interval.

d. Correct a typographical error in action statement "a".

The fire suppression system for the North Anna Power Station includes two high pressure fire water pumps, one motor-driven and the other diesel engine-driven. This suppression system is shared by both units. Currently, TS 4.7.14.1.2.c requires that an inspection of the diesel engine be performed at least once per 18 months, during shutdown, in accordance with procedures prepared in conjunction with the engine manufacturer's recommendations. The proposed changes would continue to require an inspection at least once per 18 months, but would eliminate the restriction that the inspection be performed "during shutdown." Instead, the proposed changes would allow the 18-month inspection to be carried out with both units operating, but would require that a backup fire suppression water system be established and demonstrated operable within 24 hours of removing the diesel engine-driven fire pump from service for the purpose of performing this inspection. In the event that the diesel engine is not returned to operable status within 7 days, the proposed changes impose the requirement to submit a Special Report as called for by TS 3.7.14.1 Action "a".

The proposed changes are requested in order to eliminate the ambiguity of the "during shutdown" clause which is not specific as to whether one or both units must be shut down, and to allow flexibility with respect to the timing of the 18-month inspection while retaining the degree of fire suppression system redundancy appropriate for the operational status of the units. Although the 18-month inspection of the fire pump diesel engine will normally be performed during a unit outage, the flexibility afforded by the proposed changes would eliminate the need to (1) extend the surveillance interval beyond that allowed by the TS, or (2) shut down one or both units in the event of unforeseen changes to the outage schedules for both units.

To date, the licensee has interpreted the clause "during shutdown" to mean that only one unit is required to be shut down during the performance of the 18-month diesel engine inspection. This interpretation was based on the licensee's understanding that the purpose of the shutdown clause was to reduce the nuclear safety risk associated with a fire, while the diesel fire pump was unavailable, to the extent practical, given the NRC-approved fire suppression system design. That is, the increased risk associated with removing the diesel-driven fire pump from service for the purpose of performing a comprehensive inspection was balanced by the decrease in risk associated with having one unit in a shutdown condition. Furthermore, when the diesel-driven fire pump was removed from service for the purpose of performing the 18-month inspection, Action Statement "a" of TS 3.7.14.1 was applied. This Action Statement required that the inoperable equipment (in this case, the diesel-driven fire pump) be restored to operable status within 7 days or the licensee would be required to submit a Special Report to the NRC within the next 30 days outlining the plans and procedures to be used to provide the loss of redundancy in this system.

With the proposed changes, the increased risk associated with removing the diesel-driven fire pump from service to perform the 18-month inspection while both units are operating would be offset by requiring the restoration of the same degree of redundancy that exists when both the motor- and diesel-driven fire pumps are operable. This is accomplished by the proposed requirement to have the motor-driven fire pump and a backup fire suppression system (which includes pumps) operable. Also, a Special Report to the Commission would be required if the diesel-driven fire pump is not restored to operable status within 7 days. The proposed changes allow the diesel-driven fire pump to be removed from service for the 18-month surveillance only if the motor-driven fire pump is operable. With the diesel-driven pump removed from service for the 18-month inspection, Action Statement "c" of LCO 3.7.14.1 would apply in the event that the motor-driven fire pump became inoperable.

Footnotes are being added to the surveillance requirements for the Unit 2 Specifications 4.7.14.1.1, 4.7.14.1.2, and 4.7.14.1.3 to clarify that the surveillances need only to be performed once per interval to satisfy both units' surveillance requirements since the fire suppression system is common to both units. Presently, both units' specifications include the same requirements. Finally, a typo is being corrected in Action "a" of 3.7.14.1 for both units.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will maintain the same balance-of-risk associated with removing the diesel-driven fire pump from service for the 18-month engine inspection that is maintained by the current TS 3/4.7.14. Accordingly, the probability of previously evaluated accidents will remain unchanged. Similarly, the consequences of previously evaluated accidents will remain unchanged since the proposed changes result in the same degree of fire suppression system capability as is currently required. Therefore, the proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes deal with the establishment of the degree of fire suppression system redundancy (and therefore capability) appropriate for the operating status of the units during those periods when the diesel-driven fire pump is removed from service for a specific inspection. The proposed changes do not add or delete equipment which could cause a fire or be used to mitigate the effects of a fire. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The existing margin of safety is defined by the current requirement to have at least one unit shutdown and an operable electric motor-driven fire pump when performing the 18-month fire pump diesel engine inspection. The proposed changes would maintain this same margin of safety by requiring that both the motor-driven fire pump and a backup fire suppression system be operable whenever the 18-month diesel engine inspection is performed. Therefore, the proposed changes do not involve any reduction in a margin of safety.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve a significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: March 1, 1988

Description of amendment requests: The proposed amendments would modify Section 4.4, "Containment Tests" of the Surry Units 1 and 2 Technical Specifications to reflect the use of the Mass-Point method for calculating containment leakage rates which is described in ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements." The Mass-Point method is considered to be superior to the other methods used for determining the containment leakage rates. Also, the Bases would be changed to reflect the use of the ANSI 56.8-1981 standard.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Virginia Electric and Power Company (the licensee) has evaluated the change request against the standards provided above and has determined that:

> (1) The proposed amendment [would] not involve an increase in the probability or consequences of an accident previously evaluated. The [Mass-Point] technique for calculation of the containment leakage rate is a newer, more accurate and NRC staff-endorsed method. It, or any other calculated method used to determine containment leakage rates during testing, is not considered to be an initiator of any accident previously evaluated.
>
> The [Mass-Point] technique is judged to be a superior method for calculating containment leakage rates, and thereby a better method of verifying that leakage from the containment is maintained within allowable limits. By employing a more reliable calculational technique, the assessment of containment integrity, through integrated leak rate testing, is enhanced. As such, the consequences of previously evaluated accidents are not negatively impacted.
>
> (2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment provides for the use of a newer, more accurate technique for calculation of the leakage rate during a containment integrated leak rate test. No possibility of a new or different kind of accident is created since the technique used to calculate leak rates in itself is not considered to be an initiator of any accident, transient, incident, or event.
>
> (3) The proposed amendment does not involve a reduction in a margin of safety. The proposed change allows the use of the [Mass-Point] technique to calculate the leakage rate from the containment when performing a containment integrated leak rate test. The [Mass-Point] technique is a newer, more accurate method which has been endorsed by the NRC staff. By adopting this technique, [the licensee] will be able to make a more reliable determination of containment leakage during an integrated leak rate test. As such, the degree of confidence in containment integrity would be enhanced. Therefore, this proposed revision does not impact the margin of safety.

Based on the above evaluation, the licensee has determined that the proposed change involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.

Date of applications of amendments: December 9, 1987

Description of amendments: The amendments change TS 6.9.1.9, Administrative Controls, to amend the Semiannual Radioactive Effluent Release Report requirements to allow the use of historical annual average meteorological data to determine the doses due to the routine release of radioactive gaseous effluents. This is an option that is provided for in NUREG-0133 and is consistent with the TS Bases and the Final Safety Analysis Report. An administrative correction to the spelling of the word "or" is also made in the same paragraph.

Date of issuance: March 8, 1988

Effective date: March 8, 1988

Amendment Nos.: 75 and 67

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Arizona Public Service Company, et al, Docket No. STN 50-528 Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: December 4, 1987

Brief description of amendment: The amendment revises Technical Specification 3/4.5.1, "Safety Injection Tanks", and its associated Bases by (1) raising the lower limit of boron concentration, (2) changing the surveillance requirement for boron concentration, and (3) lowering the RCS pressure at which surveillance is performed for the isolation valve operator.

Date of issuance: March 4, 1988

Effective date: March 4, 1988

Amendment No.: 28

Facility Operating License No. NPF-41: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2306). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: December 4, 1987

Brief description of amendments: The amendments revise Section 6 of the Technical Specifications to incorporate changes reflecting a revised organizational structure.

Date of issuance: March 7, 1988

Effective date: March 7, 1988

Amendment Nos.: 29, 16 and 4

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2308). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: December 22, 1987

Brief description of amendment: The amendments revise Section 6 of the Technical Specifications for each unit by changing the due date for the annual radiological reports.

Date of issuance: March 7, 1988

Effective date: March 7, 1988

Amendment Nos.: 30, 17 and 5

Facility Operating License No. NPF-41, NPF-51 and NPF-74: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2309) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station Plymouth County, Massachusetts

Date of application for amendment: May 22, 1987 supplemented on July 28, September 21 and December 17, 1987.

Brief Description of amendment: Change the Technical Specifications to comply with specific technical provisions of Appendix R to 10 CFR 50; to clarify language, and to correct numbering and references to specific sections of the technical specifications.

Date of issuance: March 8, 1988

Effective date: 30 days from date of issuance

Amendment No.: 114

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32193). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket No. 50-373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: August 25 and November 17, 1987

Brief description of amendment: The amendment revises the LaSalle County Station, Unit 1 Technical Specifications by changing the identification of the compartment in which the normal and emergency supply breakers for the shutdown cooling isolation valve are located.

Date of issuance: March 1, 1988

Effective date: Fifteen days following date of issuance.

Amendment No. 54

Facility Operating License No. NPF-11: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49220). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 24, 1987

Brief description of amendments: These amendments involve administrative changes which clarify the conditions necessary to perform the Technical Specifications jet pump operability surveillance and correct typographical errors.

Date of issuance: March 4, 1988

Effective date: Fifteen days following date of issuance.

Amendment Nos.: 55 and 38

Facility Operating License Nos. NPF-11 and NPF-18: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49220) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1., Oglesby, Illinois 61348.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: September 9, 1987

Brief description of amendment: The license amendment revises Technical Specification 5.4, "Containment," by deleting Section 5.4.B., "Penetrations," which references the design information concerning the containment penetrations and their associated bases. Specific design information concerning penetrations is currently discussed in Section 3.8 and 8.3 of the Haddam Neck Plant Updated Final Safety Analysis Report (UFSAR).

Date of Issuance: February 22, 1988

Effective date: February 22, 1988

Amendment No.: 99

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42360) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 22, 1988.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 1, 1987.

Brief description of amendment: This amendment revised the Technical Specifications to permit movement of heavy loads into the cask laydown area of the spent fuel pool, consolidate Technical Specification requirements regarding heavy loads, and require compliance with the guidelines of NUREG-0612.

Date of issuance: March 1, 1988

Effective date: March 1, 1988

Amendment No.: 111

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37544). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 13, 1987, as supplemented December 11, 1987 and January 15 and 20, 1988.

Brief description of amendments: The amendments modified the Technical Specifications to ensure that plant operation is consistent with the design and safety evaluation conclusions of the Unit 2 cycle 2 reload safety evaluation, and to reflect the addition of the Boron Dilution Mitigation System for Unit 2.

Date of issuance: February 16, 1988

Effective date: February 16, 1988

Amendment Nos. 39 and 31

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49225) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 3, 1987

Brief description of amendments: The amendments modified the Technical Specifications to increase by 50% the allowed containment overall integrated leakage rate.

Date of issuance: February 29, 1988

Effective date: February 29, 1988

Amendment Nos.: 41 and 34

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2311) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of applications of amendment: August 17, 1987 and November 16, 1987, as supplemented December 30, 1987

Brief description of amendment: The amendment upgraded the technical specifications dealing with the inservice inspection of ASME Code Class 1, 2, and 3 components and inservice testing of ASME Code Class 1, 2, and 3 pumps and valves.

Date of Issuance: March 7, 1988

Effective Date: March 7, 1988

Amendment No.: 90

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34005) and January 27, 1988 (53 FR 2312) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 18, 1987

Brief description of amendment: The amendment revises Technical Specification 3.7.B to allow out of service time for the 125 VDC Motor Control Center "DC-2" to 7 days. The current Technical Specification requires that the plant be shut down within 30 hours if the 125 VDC Motor Control Center "DC-2" becomes unavailable.

Date of Issuance: March 7, 1988

Effective date: March 7, 1988

Amendment No.: 119

Provisional Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2316) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 7, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 11, 1987, as supplemented by letter dated December 22, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by changing the method of fire detection in the containment annulus.

Date of issuance: March 4, 1988

Effective date: March 4, 1988

Amendment No.: 31

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2321) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: November 16, 1987

Brief description of amendment: The amendment revises the allowable value and the isolation trip setpoint for the reactor core isolation cooling (RCIC) high steam line flow. The changes are based on system testing during the startup test program.

Date of issuance: February 26, 1988

Effective date: February 26, 1988

Amendment No.: 2

Facility Operating License No. NPF-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 829). The Commission's related evaluation of the amendment is contained in a letter dated February 26, 1988.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 12, 1987 as supplemented on October 20, 1987. The October 20, 1987 letter transmitted additional requested information and did not change the original application.

Brief description of amendments: The amendments revised the Technical Specifications with changes related to implementation of a Hydrogen Water Chemistry (HWC) program to improve reactor water chemistry and thus to reduce the potential for intergranular stress corrosion cracking.

Date of issuance: March 3, 1988

Effective date: March 3, 1988

Amendments Nos.: 129 and 132

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42366) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: October 16, 1987 (TS 236)

Brief description of amendments: The proposed amendment would modify the Technical Specification (TS) of Browns Ferry Nuclear Plant Units 1, 2 and 3 to:

A. Require that primary containment isolation valves be operable whenever primary containment integrity is required to be maintained.

B. Permit a primary containment isolation valve(s) to be inoperable for up to four hours without placing a redundant valve in the isolated position provided that at least one isolation valve in the same line is operable.

C. Revise the definition 1.0.0.3, Primary Containment Integrity, to be consistent with Item B.

Date of issuance: February 29, 1988

Effective date: February 29, 1988, and shall be implemented within 60 days

Amendments Nos.: 145, 141, 116

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2324) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 15, 1987 (TS 229)

Brief description of amendments: The amendments delete the requirement to perform a partial closure test of the main steam isolation valves (MSIVs) denoted in Surveillance Requirement 4.7.D.1.c. Deletion of the test requirement allows the partial closure test to be performed quarterly, consistent with the requirement denoted in Table 4.1.A for the Reactor Protection System (RPS) scram on MSIV closure, rather than the twice per week test currently specified.

Date of issuance: March 1, 1988

Effective date March 1, 1988, and shall be implemented within 60 days

Amendments Nos.: 146, 142, 117

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2324) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: April 3, 1987, as clarified January 22, 1987 (TS 228)

Brief description of amendments: The amendments clarify conflicts between notes in the Technical Specifications (TS) and make various administrative corrections. More specifically, the amendments change the TS as follows:

1. Section 3.5.M, Reporting Requirements, the bases for it, and its reference in the index have been deleted.
2. Note 7.d for Table 3.2.C has been revised.
3. Limiting Condition for Operation (LCO), 3.6.H.1, has been revised to reflect the correct Surveillance Instruction (SI) number for the safety-related snubber list.
4. Section 2.1.C has been revised to show the correct reference of specification 4.5.L for the Surveillance Requirement for Average Power Range Monitor (APRM) setpoints.
5. Table 4.2.A note (14) has been deleted.

Date of Issuance: March 3, 1988

Effective date: March 3, 1988, and shall be implemented within 60 days

Amendments Nos.: 147, 144 and 118

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23107) The January 22, 1988, submittal provided clarifying information. This information made no substantive changes to the original application and did not change the staff's initial no significant hazards consideration determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 20, 1988

Brief description of amendment: The amendment revised the TS's to permit an extension of the next due date for performing the tests and inspections required by Surveillance Requirement 4.8.1.1.1 b from March 1, 1988, to April 1, 1988.

Date of issuance: February 29, 1988

Effective date: February 29, 1988

Amendment No. 107

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2303)

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 27, 1987

Brief description of amendment: The amendment revised TS Section 3/4.3.1, Tables 3.3-1 and 4.3-1, to address Action and Surveillance Requirements relating to reactor trip breaker diverse trip devices.

Date of issuance: March 2, 1988

Effective date: March 2, 1988

Amendment No. 108

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23108) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 22, 1986 (clarified by letters dated August 25, 1987, December 28, 1987, January 15, 1988 and February 17, 1988).

Brief description of amendment: This amendment revises the responsibilities and authority of the Station Review Board and adds a section to the Technical Specifications on Technical Review and Control. This amendment involves Technical Specification Sections 6.5.1.3, 6.5.1.6, 6.5.1.7, 6.5.3, 6.8.2, and 6.8.3. A portion of the amendment request has been denied by the Commission. A Notice of Denial is being published separately in the **Federal Register.**

Date of issuance: March 9, 1988

Effective date: March 9, 1988

Amendment No. 109

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24265) Since the date of the initial notice, the licensee has provided clarifying information, dated August 25, 1987, and December 28, 1987, January 15, 1988, and February 17, 1988, which does not warrant renoticing. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: November 30, 1987, as supplemented January 29 and February 23, 1988

Brief description of amendment: The amendment added a license condition and modified the Kewaunee Technical Specifications to permit sleeving of defective steam generator tubes.

Date of issuance: March 1, 1988

Effective date: March 1, 1988

Amendment No.: 76

Facility Operating License No. NPF-30. Amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2305 at 2326). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 6, 1987, as supplemented by letters dated June 8 and October 16, 1987.

Brief description of amendments: The amendments consist of modifications to Technical Specification Tables 15.3.5-2 and 15.3.5-5 to eliminate ambiguity and to accurately reflect facility configuration.

Date of issuance: March 2, 1988

Effective date: March 2, 1988

Amendment Nos.: 112 and 115

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13353). In a letter dated June 8, 1987, the licensee withdrew the proposed modification to the wording for the setpoints for Items 9, 10a and 10b of Table 15.3.5-1. The licensee's June 8, 1987 letter does not change the staff's proposed no significant hazards consideration determination noticed April 22, 1987, because withdrawal of the proposed modification results in no changes to Items 9, 10a, and 10b of Table 15.3.5-1. Additionally, in a letter dated October 16, 1987, the licensee proposed revising the wording for Item 10 of Table 15.3.5-5 to remove ambiguity. The licensee's October 16, 1987 letter does not change the staff's proposed no significant hazards consideration determination noticed April 22, 1987 because the proposed revised wording was solely submitted to remove inherent ambiguity. No technical changes to the previously noticed action were involved.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: June 12, 1987

Brief description of amendment: The amendment increased the spent fuel pool storage capacity from 728 fuel assemblies to 1706 fuel assemblies.

Date of Issuance: March 11, 1988

Effective Date: March 11, 1988

Amendment No.: 91

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1987 (52 FR 32852)

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 22, 1988 , the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

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should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Dates of application for amendment: February 24, February 26, and March 1, 1988.

Brief description of amendment: The amendment revised the Technical Specifications to permit the plant to be operated with only two safety injection pumps operable. Power level is limited to 1380 MWt.

Date of issuance: March 7, 1988

Effective date: March 7, 1988

Amendment No. 115

Facility Operating License No. DPR-23. The amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 7, 1988.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

NRC Project Director: Elinor G. Adensam

Indiana Michigan Power Company, Docket No. 50-316, D. C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: January 11, 1988

Brief description of amendment: This amendment revises the Technical Specifications to allow a delay in the 18-month surveillances for the residual heat removal auto-closure interlock, steam generator snubbers and the Rod Position Indication System until the end of the next refueling outage currently scheduled to begin during the second quarter of 1988.

Date of Issuance: February 29, 1988

Effective date: February 29, 1988

Amendment No.: 99

Facility Operating License No. DPR-74: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, in the **Federal Register**, February 17, 1988 (53 FR 4796)

Comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 29, 1988.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Maude Preston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

NRC Project Director: Martin J. Virgilio.

Dated at Rockville, Maryland, this 17th day of March, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[Doc. 88-6300 Filed 3-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528, DD 88-02]

Arizona Public Service Co. et al.; Palo Verde Nuclear Generating Station, Unit 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 filed by Mr. Myron L. Scott, on behalf of the Coalition For Responsible Energy Education, and Mr. Jack Kauffman, on behalf of the Valley of the Sun Gray Panthers (Petitioners). The Petitioners asked the Nuclear Regulatory Commission (NRC) to provide relief by issuing an Order to Show Cause why a Notice of Violation (Severity Level III or higher) should not be issued and a Civil Penalty of not less than $100,000 ($50,000 escalated for repetitive nature of concerns) be assessed against the Arizona Public Service Company, et al. (Licensees) because of the Licensees' response to an event at the Palo Verde Nuclear Generating Station, Unit 1 and the number of licensee Event Report incidents at Palo Verde, Units 1 and 2.

The Petitioners' request has been denied for the reason fully described in the "Director's Decision Under 10 CFR 2.206," issued on this date, which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and in the Local Public Document Room for Palo Verde located at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 14th day of March 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6301 Filed 3–22–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–354]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 15 to Facility Operating License No. NPF–57, issued to Public Service Electric and Gas Company (the licensee), which revised the Technical Specifications for operation of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to permit operation for Cycle 2 with the new fuel assemblies that were loaded during the first refueling outage. It also permitted use of extended load line operations and increased core flow operations.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 14, 1988 (53 FR 972). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated December 1984.

For further details with respect to the action see (1) the application for amendment dated December 14, 1987, (2) Amendment No. 15 to License No. NPF–57, and (3) the Commission's related Safety Evaluation and Environmental Assessement. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 15th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulator.

[FR Doc. 88–6302 Filed 3–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to response times for the Main Steam Isolation Valves in TS section 3/4.3.2, Table 3.3–5, Safety Features System Response Times, and Table 3.3–13, Steam and Feedwater Rupture Control System Response Times; section 3/4.6.3, Table 3.6–2, Containment Isolation Valves; and section 3/4.7.1, Surveillance Requirement 4.7.1.5, Main Steam Isolation Valves. The proposed changes would ensure consistent closure response time requirements throughout the Appendix A TS's, would delete redundant response time requirements, and would clarify the meaning of the response time requirement.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 22, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 27, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 16th day of March, 1988.

For The Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-6303 Filed 3-22-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25482; File No. SR-Amex-87-25]

Self-Regulatory Organization; Proposed Rule Change by American Stock Exchange, Inc.; Broad Market Index Option Contract Based on the International Market Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 2, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to introduce a new broad market index option contract based on the International Market Index—a group of 50 foreign stocks and American Depositary Receipts (ADRs) traded on the Amex, the New York Stock Exchange ("NYSE") or through the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex has developed a new broad market international stock index, called the International Market Index ("Index"), based exclusively on the equity stocks of fifty leading foreign issuers located in a number of the major industrialized nations in the non-communist world, but not including any U.S. or Canadian issues. All of the securities to be used in calculating the Index are registered with the Commission under the Securities Exchange Act of 1934 ("the Act"), or are exempt from such registration under SEC Rule 12g3-2 or section 12(f) of the Act, and are traded on the Amex or the NYSE or through NASDAQ. Most of the securities are traded in the form of ADRs in this country and the few which are not traded as ADRs have transfer facilities located in the U.S. The Amex is

proposing to trade standardized European-style options based on this new Index.

The Exchange has joined with the Coffee, Sugar and Cocoa Exchange, Inc. ("CSCE"), a commodity exchange regulated by the Commodity Futures Trading Commission, in developing the Index. It is intended that the Amex trade options and the CSCE trade futures on the newly developed Index.

The Index will be calculated and maintained by the Amex. In maintaining the Index, the Exchange reserves the right to substitute stocks or to increase the number of stocks included in the Index, based on changing international conditions or newly available foreign equity securities traded in United States domestic markets. In selecting securities to be included in the Index, the Exchange will be guided by a number of factors, such as market value of outstanding shares, trading activity in the U.S. markets and, in the case of NASDAQ-traded stocks, the number of market makers making markets in the component stocks.

The proposed Index will be capitalization-weighted. It will be calculated during normal U.S. trading hours using ADR or foreign share prices in U.S. markets and total shares outstanding in the world markets. In calculating the Index, last sale price for exchange-traded securities, and the arithmetic mean between the highest bid price and the lowest offer price for NASDAQ securities, will be used. The Index value will be calculated continuously and displayed in a manner similar to other stock index options published by the Exchange. The information will be disseminated to vendors through the OPRA System. A benchmark Index value of 200.00 has been established for the Index as of January 2, 1987. On December 31, 1987, the Index value was approximately 244. The index multiplier will be 100.

Specific corporate actions or events, such as additional stock issuances or repurchases, stock splits, or stock dividends, will require adjustment to the component weight of affected stocks in the Index. The Exchange will re-adjust component weights of the stocks in the Index in accordance with updated capitalizations in their domestic markets, applying offsetting divisor adjustments to the Index to eliminate discontinuities. The Exchange proposes to use information available to ADR agent banks for this purpose, together with information to be obtained on a regular basis from international news services.

There are several important trading and regulatory advantages to basing the Index exclusively on foreign shares traded in U.S. markets. First, the problem of real-time pricing of a foreign stock index during normal U.S. trading hours is overcome through a vehicle that can be priced continuously, based on trading in U.S. markets.

Second, for an index to be meaningful and useful to investors, the prices used in calculating the index must be stated in a common currency. By using only foreign securities that are traded in the U.S. in U.S. dollars, the need for currency conversions is eliminated.

Third, as noted above, each component stock is a registered security under section 12 of the Act (as a result of which the issuer is subject to the reporting requirements of section 13 of the Act), or is relying on an exemption from such registration pursuant to paragraph (d) of SEC Rule 12g3-2 (in which event the issuer must comply with the information supplying requirements of paragraph (b) of such Rule).

Finally, each of the component stocks can be freely purchased and sold by U.S. investors in the form of foreign shares or ADRs using standard U.S. procedures for clearance and settlement.

Eligibility Standards for Index Components. The Exchange has established minimum criteria for selecting stocks to be included in the Index. Further, if component stocks in the Index should fail to continue to meet these criteria, the Exchange will take steps to select suitable replacements. In maintaining the Index, the Exchange will make an effort to ensure country dispersion within Europe and the Pacific Basin, and industry dispersion across major manufacturing and non-manufacturing sectors.

The criteria for index stocks include the following: 1. Each component security shall be issued by a foreign issuer (non-U.S. and non-Canadian) but shall have an active U.S. market, being traded on either the Amex or the NYSE, or through the NASDAQ system. Each component security will also be registered under section 12 of the Act or be eligible for exemption from such registration as a result of compliance with the information supplying provisions of SEC Rule 12g3-2.

2. The minimum market value in U.S. dollars of the foreign security as measured by total world shares outstanding shall be $100 million.

3. If a NASDAQ security, the minimum number of market makers actively posting markets on the NASDAQ system shall be 8. Moreover, the spreads between the bid and offer prices quoted shall be reasonable in relation to the spreads for other securities traded through the NASDAQ system having similar trading characteristics and selling in the same general price range.

4. Minimum monthly trading volume in the U.S. market for each component stock shall be 5,000 shares (or ADRs).

The above statistical criteria are minimum guidelines only; it is anticipated that the vast majority of the stocks included in the Index will substantially exceed these levels.

Procedures for Settlement. The Index value for purposes of settling specific International Market Index options will be established by the Exchange on the business day prior to the expiration date of such options, normally the Friday preceding expiration Saturday in each month. Trading in expiring options will normally cease at the close of business on the preceding Thursday. Such Index value will be calculated on the basis of opening prices (as defined below) of the component stocks in the U.S. markets on such business day.

A. For foreign shares or ADRs listed and/or traded on U.S. stock exchanges, the opening price on the Exchange which is the primary market for the security will be used.

B. In the case of securities traded through the NASDAQ system, the Exchange will use the arithmetic mean between the highest bid and lowest offer price at 9:30 a.m. New York City time as quoted on the NASDAQ inside market. The Exchange believes that the uncertainty of identifying opening transaction prices in NASDAQ securities (both because of sequencing problems in reporting securities and lack of transaction reporting in other securities) makes use of the mean of the best bid/ask quote at a particular time a more efficient method of pricing for settlement purposes. In addition, one criterion for including securities traded in the OTC market in the Index is that there be at least eight market makers actively making markets in the security, helping ensure competitive market quotes. The Exchange therefore believes that the mean of the best bid/ask quote taken at 9:30 a.m. will be a better determination of the then current market price than the first reported trade of the day.

The Exchange has selected opening market prices rather than closing market prices for establishing the settlement value of the Index for two principal reasons. First, since the principal markets for the Index component stocks are foreign markets, the Exchange believes that settlement prices determined either during active trading in such foreign markets or as soon after the close of trading in those markets as possible, will provide more reliable price determinations for settlement purposes than if a substantial period of time has elapsed since the close of the foreign market.

The home market for most of the component issues is located either in Europe (where the closing of the markets generally occurs shortly before or shortly after the opening of trading in U.S. markets) or in the Far East (where the previous day's trading will have ceased only a few hours prior to the opening of the U.S. markets). In some cases, such as with the markets in the United Kingdom, trading will actually overlap the opening of the U.S. markets. Thus, by selecting the opening of the U.S. markets as the pivotal point for establishing the settlement value of the Index, the Exchange will be minimizing the period between lapse of trading in the home country and the time when such value is calculated.

The second reason for the use of opening prices is that the Exchange believes such procedure will make manipulation of the prices more difficult to accomplish. The more active and liquid the market, the more difficult it is to artificially influence prices. Since the home market in most of the component issues in the Index will normally be the most active, it is less likely to be susceptible to such artificial stimulus. It can also be expected that in most instances the opening prices in the U.S. markets will closely tract the prices in the home market, particularly if the home market is still trading or has only closed shortly prior to the commencement of trading in the U.S. Thus, the Exchange believes that the use of opening prices in the U.S. markets will provide an added measure of protection against attempts to artificially influence prices of component issues as a means of affecting the settlement value of the Index.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to option contracts based on the Index. The Index is deemed to be a Broad Stock Index Group under Rule 900C(b)(1). Options on the Index will be European-style (exercise at expiration only), and, under Rule 903C, the Exchange proposes to list the three near months and two additional cycle months of the March cycle. The position limits applicable to European style options on a broad stock index group are governed by Rule 904C(b). Under this provision, the Exchange proposes to establish a position limit of 15,000 contracts on the same side of the market.

Surveillance Procedures. The Exchange expects to apply its existing index options surveillance procedures to the new International Market Index option. It believes such procedures are adequate to enable the Exchange to fulfill its regulatory responsibilities.

In order to monitor corporate developments affecting shareholder interests, the Exchange will arrange with major ADR-sponsoring banks and various international financial news services to receive on a regular basis information concerning all of the issuers of the component securities.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 17, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6350 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25478; File No. SR-DTC-88-2]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of the Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") notice is hereby given that on February 22, 1988, the Depository Trust Company ("DTC") filed with the Commission a proposed rule change to include medium-term notes [1] as eligible securities in DTC's Same-Day Funds Settlement ("SDFS") service. The proposal also provides that DTC's mandatory book-entry receipt procedure applies to transactions in eligible medium-term notes. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The SDFS service provides full depository and transaction settlement services for certain securities transactions settling in same-day funds.[2] Initially, only transactions involving municipal notes with a maturity of one year more or less were eligible for the SDFS Service. Recently, DTC expanded the SDFS service to include zero-coupon bonds backed by U.S. government securities [3] and variable rate demand obligations.[4] DTC states in its filing that it has not experienced, nor is it aware that SDFS participants and settling banks have experienced, any significant operational problems in using the SDFS service. Based upon initial performance and participant requests, DTC has decided to expand the service to include medium-term corporate notes.

DTC represents in its filing that it has acted to ensure accurate collateralization of medium-term corporate note transactions.[5] DTC will rely primarily on "haircuts" set by its bank lenders, which are obligated under a line of credit to lend DTC funds on SDFS securities. DTC has contracted with a third-party vendor of securities valuation information to obtain daily information on the value of medium-term notes. According to DTC, SDFS settlement prices as well as quotations from SDFS participants would be additional information sources for determining the value of these securities.

The proposal also clarifies that DTC's mandatory book-entry receipt procedure applies to transactions in medium-term corporate notes.[6] Under DTC's book-entry receipt procedure, DTC facilities cannot be used to reclaim a book-entry delivery for the reason that the delivery has been by book-entry, except where the parties to the trade have agreed to settle the trade by a physical delivery and the trade confirmation so specified. According to DTC, this procedure has encouraged DTC participants to accept book-entry delivery of SDFS-eligible securities.

DTC believes the proposed rule change is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions that settle in same-day funds. Furthermore, DTC believes the proposal effects a change in the SDFS service that (1) does not adversely affect the safeguarding of securities or funds in DTC's custody or control and (2) does not significantly affect the respective rights or obligtions of DTC or persons using the SDFS Service.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if is appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-88-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing (SR-DTC-88-2) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 17, 1988.

[FR Doc. 88-6351 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25475; File No. SR-DTC-88-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on February 10, 1987, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith the changes in the fee schedule for major DTC services which are listed on the Annex hereto.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change, which will be effective for services provided after February 29, 1988, is to adjust the fees charged for various services to bring them closer to, or to, their respective estimated service costs for 1988.

Prior to 1985, DTC attempted to relate service fees to their respective service costs at intervals of several years. During these intervals, unit service costs could diverge substantially from current fees, necessitating large changes when service fees were realigned with their costs. To prevent such divergence after adopting major fee changes at its December 1985 meeting which moved toward cost-based fees, the DTC Board then adopted and announced a new procedure, as follows:

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[1] Medium-term notes are corporate debt securities issued with maturities ranging from 9 months to 12 years.

[2] *See* Securities Exchange Act Release No. 24689 (July 9, 1987), 52 FR 26613, which approved the SDFS service on a temporary basis. In Securities Exchange Act Release No. 25308 (February 4, 1988), 53 FR 6900, the Commission extended temporary approval of the SDFS service to June 30, 1988.

[3] *See* Securities Exchange Act Release No. 25031 (October 15, 1987), 52 FR 38982.

[4] *See* Securities Exchange Act Release No. 25317 (February 5, 1988), 53 FR 4249.

[5] DTC requires collateralization of each SDFS service transaction. DTC tracks continuously the value of each Participant's collateral by obtaining market value data from bank lenders, third-party vendors of that information, its participants, and from settlement values of SDFS securities transactions. On each SDFS service transaction, DTC will "haircut" (or discount the value of) SDFS securities coming into a participant's account. A receiving participant must have sufficient collateral to cover the difference between the value paid for the SDFS securities and their discounted value.

[6] DTC's mandatory book-entry receipt procedure applies to all transactions currently eligible for the SDFS service

> In adopting new fees, the Board also declared its belief and intention that DTC should revise its basic fee schedule each year so that, through modest changes gradually over approximately five years, DTC service fees will be based on service cost in the absence of policy considerations which would justify limited exceptions. Large changes in service fees after intervals of several years would thereby be avoided.

The present fee schedule for DTC services, which became effective in early 1987, resulted from the first of those annual revisions. Continuing to follow the procedure enunciated above, the depository's Board recently completed a review of DTC's estimated service costs for 1988 and has adopted modest changes in a number of major service fees designed to move those fees closer to estimated 1988 service costs. *See Exhibit A.*

The proposed rule change is consistent with the requirements of the Securities and Exchange Act of 1934 and the rules and regulations thereunder applicable to DTC because the fees will more equitably be allocated among DTC Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC informed Participants and other users of its services of the proposed rule change by a memorandum dated January 12, 1988 entitled "1988 Revisions of Major Service Fees". Because Participants have supported gradual moves toward cost-based fees in the past and because, overall, the subject fee changes are modest, a formal period for Participant comment was not considered necessary this year.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 16, 1988.

Jonathan G. Katz,
Secretary.

BILLING CODE 8010-01-M

1988 REVISED DTC SERVICE FEES

Service	Present Fee			Revised Fee		
A. Registered Securities						
I. Deposits						
. The fee for deposits of certificates in active issues is determined by the time of receipt by DTC: (1)						
Zone A - 4:00 PM to 8:00 PM (Prior PM)	$ 1.20	$1.35 includes certificate charge*	$1.63*	$ 1.50	$1.67 includes certificate charge*	$1.90*
Zone B - 7:30 AM to 10:00 AM	$ 2.00			$ 2.30		
Zone C - 10:00 AM to 11:00 AM	$ 4.20			$ 4.50		
Zone D - 11:00 AM to 12:00 Noon	$10.00			No Change		
Zone E - 12:00 Noon to 1:00 PM	$40.00			No Change		
. The fee for deposits of certificates in less-active issues** is determined by the time of receipt by DTC: (1)						
Zone A - 4:00 PM to 8:00 PM (Prior PM)	$ 1.90	$2.14 includes certificate charge*		$ 2.20	$2.36 includes certificate charge*	
Zone B - 7:30 AM to 10:00 AM	$ 2.70			$ 3.00		
Zone C - 10:00 AM to 11:00 AM	$ 4.90			$ 5.20		
Zone D - 11:00 AM to 12:00 Noon	$10.60			No Change		
Zone E - 12:00 Noon to 1:00 PM	$40.60			No Change		
. A certificate charge per deposit per group of 10 certificates beyond the first 10 certificates in addition to the Zone fee	$.30 per group of 10 certificates beyond the first 10 certificates			No Change		

All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee
. A record date deposit surcharge for bond interest, cash and stock dividends and proxy	$ 4.00 per record date deposit		No Change
. Rejects For each deposit corrected or returned to a Participant because of error:			
From 0 to 5%	$20.00 per reject	$21.77*	No Change
Over 5%	$30.00 per reject		
II. Withdrawals-by-Transfer (WT's)			
. For each assignment in an active issue submitted on PTS, API or CCF	$ 1.30 per assignment		$1.65 per assignment
. For each separate paper assignment in an active issue	$ 3.00 per assignment		$3.35 per assignment
. For each assignment in an active issue concluding in direct mail	$ .80 per assignment(2)		$1.15 per assignment(2)
. For each assignment in a less-active issue** submitted on PTS, API or CCF	$ 3.10 per assignment		$3.45 per assignment
. For each separate paper assignment in a less-active issue**	$ 4.80 per assignment		$5.15 per assignment
. For each assignment in a less-active issue** concluding in direct mail	$ 2.60 per assignment(2)		$2.95 per assignment(2)

All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

	Service	Present Fee		Revised Fee
	. Rejects For each transfer corrected or returned to a Participant because of error:			
	From 0 to 5%	$20.00 per reject	$20.90*	No Change
	Over 5%	$30.00 per reject		
III.	Urgent Withdrawals (COD's)			
	. For each urgent withdrawal requested on an overnight basis:			
	Submitted by PTS	$ 8.50 per withdrawal		$ 9.25 per withdrawal
	Submitted by paper	$10.00 per withdrawal		$10.75 per withdrawal
	. For each urgent withdrawal by PTS requested on a same-day basis	$14.50 per withdrawal		$15.25 per withdrawal
	. For each urgent withdrawal submitted by paper requested on a same-day basis	$16.00 per withdrawal		$16.75 per withdrawal
	. Rejects For each urgent withdrawal returned to a Participant because of error:			
	From 0 to 5%	$20.00 per reject	$24.28*	No Change
	Over 5%	$30.00 per reject		
IV.	Collateral Loans (Pledges/Releases)			
	. For each security (line item) pledged, released or substituted via PTS	$ .22 per line item payable by both the pledgee and pledgor in each transaction		No Change
	. For each security (line item) pledged, released or substituted via paper	$ .54 per line item payable by both the pledgee and pledgor in each transaction		No Change

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All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee	
. Rejects For each pledge or release corrected or returned to a Participant because of error: From 0 to 5%	$20.00 per reject	$22.59*	No Change	
Over 5%	$30.00 per reject			
V. Deliveries				
. Deliver orders via CNS	$ .09 for each item delivered or received		No Change	
. Deliver orders via ID System	$ .21 for each item delivered or received		No Change	
. Deliver orders via PTS, API or CCF For each deliver item presented Prior PM	$ .25 to the deliverer	$ .40*	$.20 to the deliverer	$.35*
AM opening to 1:15 PM	$ .50 to the deliverer		$.45 to the deliverer	
	$ .35 for each item received (regardless of time)		$.30 for each item received (regardless of time)	

All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee	
VI. ID Service				
. For each confirm distributed by paper, tape, PTS, CCF or dial-in terminal	$.22 to broker (and $.22 for any interested party), $.22 to clearing agent if agent requests confirm; $.22 to investment manager **** for each confirm received, whether or not affirmed	$.36 includes reports*	$.18 to broker (and $.18 for any interested party), $.18 to clearing agent if agent requests confirm; $.18 to investment manager **** for each confirm received, whether or not affirmed	$.27 includes reports*
. For each confirm transmitted in magnetic tape form	$.37 per confirm, plus telephone line costs		$.33 per confirm, plus telephone line costs	
. For each confirm transmitted by facsimile device	$.42 per confirm, plus telephone line costs		$.38 per confirm, plus telephone line costs	
. For each Pre-Authorized Delivery Quantity (PDQ) Delivered/Not Delivered and Received Report line item	$.09 to the deliverer and $.09 to the receiver		$.07 to the deliverer and $.07 to the receiver	
. For each Unaffirmed Report line item	$.09 to the broker		$.07 to the broker	
. For each Cumulative and Daily Eligible Trade Report line item	$.09 to broker and clearing agent		$.07 to broker and clearing agent	
. For each Daily Eligible Trade Report line item	$.09 to broker for reports received by any interested party		$.07 to broker for reports received by any interested party	
. For each Ineligible Trade Report line item	$.09 to broker and clearing agent		$.07 to broker and clearing agent	

All footnotes in this Annex are found on the last page.

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1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee	
VII. Long Position				
. For each active issue monthly (for registered corporate issues when a daily average of more than 15 Participants have position; and for registered municipal issues when a daily average of more than 2 Participants have position)	$ .55 per issue	$.96*	$ .53 per issue	$.94*
. For each less-active registered corporate issue monthly (when a daily average of 15 or fewer Participants have position)	$ .80 per issue		$ .78 per issue	
. For each less-active registered municipal issue monthly (when a daily average of 1 or 2 Participants have position)	$1.30 per issue		$1.28 per issue	
. For each 100 shares or $4,000 bonds (monthly) based on the average daily number of shares or bonds:				
- 0-25 million shares	$ .0052		No Change	
- Excess over 25 million up to 200 million shares	$ .0013		No Change	
- Excess over 200 million up to 300 million shares	$ .000652		No Change	
- Excess over 300 million shares	$ .00005			
. For each book-entry-only issue (monthly)	$ .40 per issue; no per bond/per share charge		No Change	

All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee
VIII. Reorganization			
. Conversions and Warrant Subscriptions For each common stock resulting from the conversion of bonds or preferred stocks/for each instruction submitted - From 1 to 400 common shares - 401 to 2,000 common shares - 2,001 and over common shares	Two 00 fees, plus: $ 20.00 per transaction minimum; $ .05 per share from 401 to 2,000 shares; $100.00 per transaction maximum	$ 63.31*	No Change
. Unit Swingovers	$ 11.00 per swingover instruction plus 3 00 fees		No Change
. Mandatory Exchanges/Redemptions	$ 21.00 per Participant position		$22.00 per Participant position
. Voluntary Exchanges/Tender Offers	$ 28.00 per letter of transmittal		$30.00 per letter of transmittal
IX. Underwritings			
. Corporate issues	$205.00 plus $3.00 per million with a total maximum fee of $2,000 and any unusual expenses	$255.63*	No Change
	Any book-entry-only issue: $205.00 and any unusual expenses		No Change
	Certificates of deposit: $105.00 and any unusual expenses		No Change
. Registered municipal issues	$405.00 plus $ 3.00 per million with a maximum of $2,000 (3) and any unusual expenses		No Change
	Any book-entry-only issue: $405.00 (3) and any unusual expenses		No Change

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All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee	Revised Fee
X. Dividends		
. For each cash dividend or interest payment:		
Corporate issues	$ 1.40 per credit (excluding deduction from monthly dividends refund)	No Change
Registered municipal issues	$ 1.60 per credit	$ 1.70 per credit
. For each stock dividend payment	$8.00 per credit	$13.00 per credit
. For each Dividend Reinvestment Service instruction to receive stock in lieu of a cash dividend	$23.00 per instruction	$28.00 per instruction

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee
XI. PTS Reports			
. Inquiries, Unsolicitated Messages and Messages Participant inquiries about security eligibility, aged WT instructions, and money settlement figures; messages about activities affecting a Participant's securities, etc.	$ .06 per inquiry or message		No Change
. Reports Dropped Deliveries Report Dropped COD's Report Cash Dividend Report	$ 30.00 per month per report series plus $ .06 per line		No Change
. Pre-Updated Edits Allows a Participant to edit a DO or WT instruction prior to update by DTC's system	$ .06 per edit		No Change
. Broadcast To send messages to other Participants in the DTC terminal network	$ .15 per 300 character message per addressee		No Change
XII. Usage Charge			
. For each Participant account	$460.00 per month each account up to 5 $140.00 per month each account over 5	$371.29*	No Change
. For each non-Participant Pledgee Bank account	$320.00 per month		No Change
. For each Pledgee Bank that is also a Participant	$140.00 per month		No Change

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All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee	Revised Fee
XIII. Inter-Depository Interface Fees		
. RIO delivery	$ .30 to NSCC	$ .28 to NSCC
. Third-party delivery	$ .70 surcharge for each item delivered, received or reclaimed on the regular DO fee to a Participant	$ .42 surcharge for each item delivered, received or reclaimed on the regular DO fee to a Participant
XIV. Use of DTC Interface Department		
. Participant usage		
Basic services:		
Settlement	$25.00 per month	$30.00 per month
Sorting	$75.00 per month	$90.00 per month
Shipping	$75.00 per month	No Change
Physical certificate forwarding fees:		
Deposit	$ .22	$ .25
Withdrawal-by-Transfer	$ .22	$ .25
Urgent Withdrawal	$ 1.05	$ 1.25

1988 REVISED DTC SERVICE FEES

Service	Present Fee	Revised Fee
. Depository Facility usage		
Facility usage	To the Facility, $.60 per deposit with a $100 minimum per month plus telephone costs	To the Facility, $.65 per deposit with a $100 minimum per month plus telephone costs
Facility deposit	$.35 per deposit chargeable to the Participant, plus the regular Deposit fee (Zone A) and certificate charge	$.40 per deposit chargeable to the Participant, plus the regular Deposit fee (Zone A) and certificate charge
XV. DTC Eligible Securities Booklets		
Corporate securities	For the primary booklet (corporate or municipal): -$7.50 each for the first 30 booklets -$5.00 each for the next 470 -$3.50 each for quantities over 500	-$7.50 each for the first 30 booklets -$5.00 each for the next 470 -$3.50 each for quantities over 500
Municipal securities	For the secondary booklet: -$5.00 each for the first 30 booklets -$4.00 each for the next 470 -$3.50 each for quantities over 500	-$15.00 each for the first 30 booklets -$10.00 each for the next 470 -$7.00 each for quantities over 500

1988 REVISED DTC SERVICE FEES

Service	Present Fee	Revised Fee
XVI. Charges to DTC Passed Through to Users		
. Transfer agent fee-bearing issues: When the transfer agent fee is $3.50 or less per certificate		
Deposits	$2.15 surcharge per deposit plus a Zone and certificate charges	$3.25 surcharge per deposit plus the Zone and certificate charges
Urgent Withdrawals (COD's)	$7.55 surcharge per withdrawal in addition to COD fee	No Change
Withdrawals-by-Transfer (WT's)	$4.90 surcharge per assignment in addition to WT fee	No Change
When the transfer agent fee is $3.51 or more per certificate		
Deposits	$4.30 surcharge per deposit plus the Zone and certificate charge	$7.50 surcharge per deposit plus the Zone and certificate charge
Urgent Withdrawals (COD's)	$14.15 surcharge per withdrawal in addition to COD fee	$16.20 surcharge per withdrawal in addition to COD fee
Withdrawals-by-Transfer (WT's)	$9.25 surcharge per assignment in addition to WT fee	No Change

1988 REVISED DTC SERVICE FEES

Service	Present Fee	Revised Fee
• Participant Terminal System (PTS)		
PTS Terminal: A basic configuration comprised of 1 CRT and 1 printer at a Participant's site	$865.00 per month, plus line charge and applicable sales tax	$865.00 per month, plus line charge and applicable sales tax
Installation Charges: One-time vendor charges to install telephone lines, ship equipment and provide DTC training:		
Dedicated and dial back-up lines in NYC	$450.00 total	Out-of-pocket expenses
Dedicated and dial back-up lines outside NYC	$300.00 total	Out-of-pocket expenses
Basic PTS configuration	$165.00	Out-of-pocket expenses
Additional CRT	$ 40.00	Out-of-pocket expenses
Additional printer	$ 75.00	Out-of-pocket expenses
Modem	$175.00	Out-of-pocket expenses
Shipping of equipment	Out-of-pocket expenses	No Change
Training by DTC on site	Out-of-pocket travel expenses	No Change
• Mainframe Dual Host	No Charge (pilot program)	Monthly charge of $900.00 for modem and related equipment plus applicable line charges. For CCF, PTS, and Mainframe Dual Host installations, a monthly charge of $85.00 for connection to DTC contingency site in Philadelphia.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee	
B. Bearer Bond Securities				
I. Deposits (by issue)	$ 4.70 plus a charge after the first 10 certificates of $ 2.00 per group of 10 certificates with a maximum total deposit charge of $12.70.*** Deposits between 12:00 noon and 1 p.m. for same day credit $40.00. A bulk deposit is available under certain conditions.	$ 5.82*	$ 4.40 plus a charge after the first 10 certificates of $ 2.00 per group of 10 certificates with a maximum total deposit charge of $12.40.***Deposits between 12:00 noon and 1 p.m. for same day credit $40.00. A bulk deposit is available under certain conditions.	$ 5.69*
. A surcharge per deposit of certificates without CUSIP numbers	$ .65 per deposit		No Change	
. Rejects For each deposit corrected or returned to a Participant because of error:				
. From 0 to 5%	$20.00 per reject	$22.38*	No Change	
Over 5%	$30.00 per reject			
II. Withdrawals (COD's)				
. Overnight COD's submitted by PTS	$ 8.75 plus a charge after the first ten certificates of $ 4.00 per group of 10 certificates with a maximum total withdrawal charge of $24.75.***	$ 9.71*	$ 9.10 plus a charge after the first ten certificates of $ 4.00 per group of 10 certificates with a maximum total withdrawal charge of $25.10.***	$10.10*

All footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

Service	Present Fee		Revised Fee	
• Same-day COD's submitted by PTS	$17.00 plus a charge after the first 10 certificates of $ 4.00 per group of 10 certificates, with a maximum total withdrawal charge of $33.00.***	$17.96*	$17.35 plus a charge after the first 10 certificates of $ 4.00 per group of 10 certificates, with a maximum total withdrawal charge of $33.35.***	$18.35*
III. Long Position				
• For each active issue per month (held by more than 2 Participants)	$ 1.10 per issue	$ 2.41*	$ .96 per issue	$ 2.35*
• For each less-active issue per month (held by 1 or 2 Participants)	$ 1.85 per issue		$ 1.71 per issue	
• Monthly charge on face value				
$0 - $.5 billion	$ .000011		No Change	
Excess over $.5 billion up to $1 billion	$ .00000275		No Change	
Excess over $1 billion up to $8 billion	$ .000001375		No Change	
Excess over $8 billion	$ .0000006875		No Change	
• A monthly surcharge on all positions in Book Bond issues	$ 1.05 per issue		No Change	
• A monthly surcharge on all positions requiring coupon collection from paying agents located outside Metropolitan New York area	$ .25 per issue		No Change	
• A monthly surcharge on all positions in multiple purpose issues	None		$ .50 per issue	
• A monthly surcharge on all positions in issues denominated in units of $1,000	None		$ .50 per issue	

All Footnotes in this Annex are found on the last page.

1988 REVISED DTC SERVICE FEES

	Service	Present Fee		Revised Fee	
IV.	Interest Payments	$ 4.00 per credit plus $ .03 per $1,000	$ 4.17*	$ 4.20 per credit plus $ .03 per $1,000	$ 4.40*
V.	Maturities/Redemptions (Full or Partial)	$25.00 per Participant position plus $ .05 per $1,000 with an $80.00 maximum transaction fee	$28.44*	$26.00 per Participant position plus $ .15 per $1,000 with a $62.00 maximum transaction fee	$36.71*
VI.	Deliver Orders (Bearer Issues)				
	. ID	$ .21 for each item delivered or received		No Change	
	. PTS, API or CCF	$ .45 for each item delivered, $ .35 for each item received		$ .40 for each item delivered, $ .30 for each item received	

Notes to Annex

* Weighted rate based on current mix of transactions in this service.

** A less-active issue fee applies to certain issues each calendar quarter based on prior period of activity averaging 2 or fewer transactions on days when activity occurred.

*** In a deposit or withdrawal of more than 150 certificates, each group of 150 certificates is charged as a separate deposit or withdrawal.

**** This fee is shared equally by the broker and clearing agent for investment manager trades made by other than a trust department of direct and indirect depository Participants.

(1) All deposits shipped to DTC from outside the NYC area are regarded as Zone A deposits.

(2) An additional $1.35 charge is added to this fee for each assignment resulting in direct mail by DTC.

(3) A surcharge of $350.00 applies to issues with a put option feature to cover the costs associated with reviewing the official statement and establishing a data base through which put periods are monitored. Issues requiring consultation and special development efforts will be charged an additional surcharge of $500.00. The impact of these surcharges is not included in the weighted rates.

[FR Doc. 88-6355 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-C

[Release No. 34-25480; File No. SR-MSE-88-1]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange; Listing Fee Schedule in Respect to Stock Purchase Rights ("Poison Pills")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1988, as modified by a letter dated March 16, 1988, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated proposes to amend its Listing Fee Schedule in respect to the listing of purchase rights as follows:

> Any company that lists a purchase right (commonly referred to as a "Poison Pill") will be allowed to apply to $5,000 original listing fees paid in that calendar year and under certain conditions for three (3) years thereafter, for purposes of determining the $7,500 maximum. To the extent a company derives no financial benefit in the year a Poison Pill is listed, then to that extent a carryover shall occur until the earlier to occur of either the realization of the full $5,000 credit or the passing of three (3) years. For the purposes hereof, such three (3) year period shall not include the year in which the Poison Pill is listed. This provision will apply to all Poison Pills listed on or after June 1, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The Midwest Stock Exchange, Incorporated in an attempt to equitably allocate listing fees in respect to Poison Pills, is proposing a modification to its Listing Fee Schedule. The current listing fees are as follows:

1. Original listings are $5,000 regardless of the size of the issue to be listed. This is currently also the amount assessed for the listing of Poison Pills.
2. Additional listings are $.005 per share for the first 100,000 shares, $.0025 per share for the balance, with a $2,500 maximum charge per application and a $250 minimum charge per application, with an annual maximum of $7,500.

Under the current schedule, a company wishing to list two original issues, one Poison Pill and three additional listings of 1,000,000 shares each, would incur the following fees:

2 original listings at $5,000 each	$10,000
1 Poison Pill at $5,000	5,000
3 additional listings at $2,500 each	7,500
	$22,500

The proposed revision to the Listing Fee Schedule in request to Poison Pills would to some degree lessen the burden on companies who regularly list additional shares. The proposal would provide that any company that lists a Poison Pill, would be allowed to have the $5,000 original listing fee assessment added to all additional listing fees paid in a given calendar year, for purposes of determining the $7,500 maximum. The proposal would further provide that to the extent a company derives no financial benefit in the year a Poison Pill is listed, then to that extent a carryover shall occur until such time as the full $5,000 credit is attained within a three-year maximum carryover term. Under the proposal, the fees assessed in the above example would be as follows:

2 original listings	$10,000
1 Poison Pill	5,000
3 additional listings	7,500
	$22,500

($7,500 + $5,000 = $12,500 which exceeds the $7,500 maximum by $5,000)

	−(5,000)
	$17,500

In this example, the company realized the full economic benefit in the same year that the Poison Pill was listed. The following example will show the application of the proposed Fee Schedule where the economic benefit is realized over a three year period:

1987—Company A lists one original listing in 1987, one Poison Pill listing in 1987 and two one-million share additional listings. Under the proposed fee, the company would pay the following:

1 original listing	$5,000
1 Poison Pill listing	5,000
2 additional listings	5,000
	$15,000

($5,000 + $5,000 = $10,000 which exceeds the $7,500 maximum by $2,500)

	−(2,500)
	$12,500

Since a $2,500 benefit only was realized, Company A continues to have a $2,500 carryover for 1988.

1988—Company A lists one original listing in 1988 and one-million share additional listings.

Under the proposed fee the company would pay the following:

1 original listing	$5,000
1 Additional listings	2,500
	$7,500

No economic benefit was realized in 1988 since Company A did not exceed the $7,500 maximum for additional listings. Company A, however, continues to have a $2,500 carryover.

1989—Company A lists one original listing and four additional listings of one-million shares each in 1989. Under the proposed fee the company would pay the following:

1 original listing	$5,000
4 additional listings	10,000
	$15,000
$2,500 carryover from 1988 [1]	−(2,500)
	$12,500

[1] Company A was able to utilize the $2,500 carryover from 1987 and deduct it from its total outstanding listing because fees for the 1989 calendar year because its additional listing fees in 1989 ($10,000) exceeds the annual maximum additional listing fee of $7,500.

Under this example, Company A was able to realize the full economic benefit of the proposed revision within the three-year time period. This enabled Company A to receive the full $5,000 credit for the Poison Pill listing.

The original rule proposal would make the change effective as of June 1, 1987. The MSE has agreed to an effective date of January 1, 1988.[1]

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees and other charges among Exchange members, issuers, and other persons using the Exchange's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Member, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

After careful review, the Commisison has decided that, effective January 1, 1988, the MSE's proposal to provide a $5,000 listing fee credit to companies who list stock purchase rights should be approved. In particular, the Commission believes that the proposal should, as the Exchange anticipates, lessen to some extent the financial burden experience by issuers who, in addition to listing poison pills, lists additional issues on a fairly frequent basis. In addition, the Exchange indicates that the statutory basis for the proposed rule change is section 6(b)(4) of the Act[2] in that the proposal will more equitably allocate purchase rights listing fees among companies who list such rights and additional share on the Exchange.

As noted above, originally the MSE would have made the rule change effective retroactive until June, 1987. The Commission, however, has decided, and the MSE has agreed, to make the change effective as of January 1, 1988. The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and paragraph (e) of Rule 19b-4 thereunder. At any time within 60 days of March 16, 1988, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 17, 1988.

[FR Doc. 88-6356 Filed 3-22-88; 8:45 am]

Billing Code 8010-01-M

[Release No. 34-25483; File No. SR-MSRB-88-1]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of the Municipal Securities Rulemaking Board; Compensation and Expenses for Board Members and Election of Officers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing amendments to Board rules A-3 on compensation and expenses for Board members, and A-5 on the election of officers of the Board. The proposed rule change to rule A-3 codifies the Board's policy to pay a per diem to Board members when participating in additional designated activities of the Board. The proposed rule change to rule A-5 would delete the requirement that the Board elect its officers at the penultimate meeting of the Board and state that the officers will be elected at a meeting of the Board held prior to October 1 of each year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Recently, the Board reviewed certain of its internal procedures. The proposed rule change relates to revised procedures regarding the payment of per diem to Board members and the timing of the election of Board officers.

Board rule A-3(f) contains provisions for the payment of a per diem and a travel allowance to Board members for those days in which the Board meets, and it contains provisions for the reimbursement for actual and necessary expenses incurred in connection with any other official business of the Board. It is the Board's policy to pay a per diem to Board members when participating in additional designated activities of the Board. These designated activities include attendance at committee meetings not held in conjunction with Board meetings and attendance at dealer meetings. Board members who participate in other official Board business are reimbursed for actual and necessary expenses. The proposed rule change codifies this policy.

Board rule A-5(b) contains procedures for the election of officers of the Board. Under the current rule A-5(b), officers of the Board are elected annually from among the Board members at the penultimate meeting of the Board held prior to October 1 of each year according to procedures adopted by the Board.

In the past, the penultimate meeting of the Board generally has been held in the summer and the last meeting of the Board has been held in September just prior to the expiration of the terms of the outgoing Board members. The Board recently revised its meeting schedule. As a result, the last Board meeting of the year will be held in the summer. The Board plans to elect new Board members at the last Board meeting of the year and the election of its officers would be held at the same time. The proposed rule change would delete the requirement that the Board elect its officers at the penultimate meeting of the Board and state that the officers will be elected at a meeting of the Board held prior to October 1 of each year.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is concerned solely with the operation of the Board and does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 17, 1988.

[FR Doc. 88-6357 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25477; File No. SR-NASD-88-5]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Amendment to the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice to Require a Qualified Independent Underwriter When Offering Proceeds Are Directed to Underwriters

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Set forth below is the text of the proposed rule change to the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 ("Corporate Financing Interpretation") of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. The new provision is proposed to follow the section titled "Venture Capital Restrictions" at page 2035 of the *NASD Manual*. New language follows:

Proceeds Directed to a Member

No member shall participate in a public offering of an issuer's securities where more than 10 percent of the net offering proceeds, not including underwriting compensation, are intended to be paid to members participating in the distribution of the offering or associated or affiliated persons of such members, or members of the immediate family of such persons, unless the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter as defined in section 2(k) of Schedule E to the By-Laws, who shall participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto; provided, however, this paragraph shall not apply to (1) an offering of a class of equity securities for which a bona fide independent market as defined in section 2(b) of Schedule E to the By-Laws exists as of the date of the filing of the registration statement and as of the effective date thereof; (2) an offering of a class of securities rated Baa or better by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the Association; (3) an offering otherwise subject to the provisions of Schedule E to the By-Laws; (4) an offering of securities exempt from registration with the Securities and Exchange Commission under section 3(a)(4) of the Securities Act of 1933; (5) an offering of a real estate investment trust as defined in section 856 of the Internal Revenue Code; or (6) an offering of securities subject to Appendix F to Article III, section 34 of the Rules of Fair Practice unless the net proceeds of such offering are intended to be paid to the above persons for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a pre-existing company. For purposes of this paragraph, the term "net offering proceeds" means the gross offering proceeds less all expenses of issuance and distribution and the term "immediate family" has the meaning set

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[1] *See* letter from Pat Conroy, Counsel, MSE, to Sharon Lawson, Branch Chief, SEC, dated March 16, 1988.

[2] 15 U.S.C. section 78f(b)(4).

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forth in the Interpretation of the Board of Governors—"Free-Riding and Withholding", Article III, section 1 of the NASD Rules of Fair Practice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has been engaged in a case-by-case review of public debt offerings where a member firm which assists in structuring a leveraged buy-out transaction has provided a "bridge" loan to facilitate the leveraged buy-out transaction.[1] Subsequently, generally within less than six months, the newly formed entity will make a public offering of long-term high-yield debt securities for the purpose of repaying the member-lender, which also acts as managing or sole underwriter of the debt offering. The NASD and the SEC [2] reviewed the issues surrounding such offerings and have determined that when a portion of the proceeds of a public offering is directed to a member that is responsible for pricing and due diligence, the member is subject to a potential conflict of interest. Particularly in the area of due diligence, the NASD believes that the responsibility of the member to ensure disclosure of material facts adverse to the issuer may be influenced by the significant financial interest of the member in the offering and the incentive for the offering to be successful. In addition, the NASD is concerned regarding the potential conflict of interest faced by a member when establishing an appropriate offering price, since a successful distribution of the issuer's securities directly benefits the member.

The NASD has become concerned that a member may experience a similar conflict of interest where the proceeds of an offering are being directed to the member, or its associated or affiliated persons, in contexts other than that of a leveraged buy-out transaction. In certain cases, all or a substantial portion of the proceeds of an offering may be directed to the managing underwriter to repurchase securities of the issuer owned by the underwriter. In addition, a substantial portion of the proceeds of an offering may be applied to a joint venture with the member that underwrites the issuer's offering of securities. Finally, although leveraged buy-outs were initially structured with a "bridge loan" by a member, a number of transactions have occurred where the member has acquired equity or debt securities of the issuer, which are intended to be repurchased with the proceeds of a subsequent public offering of debt underwritten by the member.

Therefore, the NASD is proposing to amend the Corporate Financing Interpretation to require the participation of a qualified independent underwriter in public offerings in which 10% or more of the net proceeds of the offering will be directed to NASD members participating in the distribution of the offering, or to affiliated or associated persons of such members, or to members of the immediate family of such persons. The proposed rule change states that fees or commissions paid to members for underwriting services performed in connection with the distribution of the offering would not be included within the 10% calculation. Further, the 10% calculation would be based on "net offering proceeds," which is defined as gross offering proceeds less the issuer's and underwriter's expenses of issuance and distribution.

The term "immediate family" is defined by reference to the definition in the Interpretation of the Board of Governors—"Free-Riding and Withholding", Article III, Section 1 of the NASD Rules of Fair Practice ("Free-Riding Interpretation"). The same term is similarly defined in "Venture Capital Restrictions" provision contained in the Corporate Financing Interpretation. The NASD currently has pending at the SEC proposed amendments to Schedule E of the NASD By-Laws ("Schedule E"), which include amendments to the term "immediate family" at current subsection 2(f) thereof. See SR–NASD–87–21. When the SEC approves the pending amendments to Schedule E, the NASD proposes to amend the definition of "immediate family" in the "Venture Capital Restrictions" and in the new provision "Proceeds Directed to a Member" proposed herein to reference the definition of the term in Schedule E.

The proposed rule change would require that the qualified independent underwriter participate in the preparation of the offering document and exercise the usual standards of due diligence in the preparation of the offering document. Further, members would be prohibited from distributing the offering at a yield that is lower (in a debt offering) or at a price that is higher (in an equity offering) than the qualified independent underwriter would recommend.

To act as a qualified independent underwriter, an NASD member must meet the definition of that term contained in section 2(l) of Schedule E to the NASD By-Laws, which is the NASD's conflict-of-interest rule applicable to offerings by a member of its own securities or those of an affiliate.[3] Under the definition, a member must have been, and continue to be, actively engaged in the investment banking and securities business and the underwriting of public offerings for at least five years preceding the offering; must have had net income from operations in at least 3 of the 5 years preceding the offering; and must have had a majority of its board of directors (if a corporation) a majority of its general partners (if a partnership), or its proprietor (if a sole proprietorship) actively engaged in the investment banking or securities business for the 5-year period immediately preceding the offering. In addition, the member must not be an affiliate of the issuer and must have agreed to undertake the legal responsibilities and liabilities of an underwriter under section 11 of the Securities Act of 1933.

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[1] The term "leveraged buy-out" generally refers to an acquisition accomplished primarily with borrowed funds from bank lenders or an investing group, where the acquirer is not an operating entity but is created by a group of lenders and investors solely for the purpose of the acquisition. A "bridge" loan is a short-term loan made to the issuer intended to be repaid from the proceeds of a public offering in less than six months, which is for the purpose of facilitating the speedy closing of the leveraged buyout transaction.

[2] See letter from Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission dated March 10, 1987 to Gordon S. Macklin, then President, National Association of Securities Dealers, Inc.

[3] The NASD has published for comment in Notice to Members 87–87 (December 30, 1987) a proposed amendment to the definition of qualified independent underwriter in Schedule E. The proposed amendment would prohibit a member from acting as qualified independent underwriter if the member owned 5% or more of the equity securities of the issuer or had been or was currently subject to certain disciplinary action. In addition, the proposed amendment would clarify that the member must have been actively engaged as a manager or co-manager of public offerings of a similar type and size to the offering being distributed in the 5-year period immediately preceding the filing of the offering.

The proposed rule change provides exemptions from the requirements of the proposed new provision for: (1) An offering already subject to Schedule E of the NASD By-Laws; (2) an offering of a class of equity securities for which a bona fide independent market exists as of the filing of the offering as defined in section 2(b) of Schedule E; (3) an offering of a class of securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories; (4) an offering of securities by a charitable organization exempt from SEC registration under section 3(a)(4) of the Securities Act of 1933; (5) an offering by a real estate investment trust as defined in section 856 of the Internal Revenue Code; and (6) an offering of securities subject to Appendix F to Article III, section 34 of the NASD Rules of Fair Practice ("Appendix F"), unless the net proceeds of an offering subject to Appendix F are for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a pre-existing company. Appendix F regulates public offerings of securities by a direct participation program, which is defined in section 34 as any entity with flow-through tax characteristics. Thus, Appendix F is most often applied to offerings of limited partnership interests. The exemption would cover traditional offerings subject to Appendix F, such as real estate or oil and gas offerings.

The NASD has historically relied on the participation of a qualified independent underwriter to resolve potential conflicts of interest on behalf of an underwriter of a public offering of securities. Qualified independent underwriters have been used to resolve conflicts of interest in offerings by members of their own securities and of their affiliates since the adoption of Schedule E to the NASD By-Laws in 1972, in the absence of a bona fide independent market for equity securities and in the absence of an investment grade rating for debt securities. In addition, in 1984, the NASD amended the "Venture Capital Restrictions" under the Corporate Financing Interpretation to provide an exemption from the restrictions if a qualified underwriter participated in the offering.[4] The NASD believes that the proposed rule change appropriately addresses the concerns raised by the SEC.

The proposed amendment is consistent with the provisions of section 15A(b)(6) of the Act, which requires *inter alia*, that the rules of registered securities associations promote just and equitable principles of trade, protect investors and the public interest, in that the amendment will provide protection for investors with respect to a member's potential conflict of interest where the proceeds of an offering are directed to a member or members underwriting the offering.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendment was published for comment in NASD Notice to Members 87–52 on August 12, 1987. Nine comment letters were received regarding the proposed amendment. Three commentators, generally opposed to the amendment, questioned whether it would resolve the problem it was designed to address and asserted that regulatory and market safeguards are already in existence that make the amendment unnecessary. The remaining six commentators, while not objecting to the amendment, believed that it was overly broad and encompassed situations it was not intended to address.

Those commentators that objected to the amendment generally indicated that a member's concerns for the statutory liability incurred as a result of participating in the public underwriting makes the amendment unnecessary. It was pointed out that the underwriter has a strong incentive to insulate itself from potential liability under the Securities Act of 1933 by performing a particularly thorough review of the offering document, as the types of offerings that would be affected by the amendment generally involve a high degree of risk for investors. The NASD reviewed this comment and determined that where a member is distributing an offering, the proceeds of which will be directed to the member, the member may experience a significant conflict of interest in evaluating the issuer objectively, since the successful distribution of the issuer's securities directly benefits the member.

Commentators also pointed out that the potential conflict of interest present in pricing the securities to be offered to the public where the proceeds are to be directed to the member is not the same conflict addressed by the pricing recommendations provisions of subsection 3(c)(1) of Schedule E. Specifically, where an issuer and a member are affiliates, the member has an incentive to lower the yield of debt securities or raise the price of equity securities of the issuer to reduce interest costs or raise additional capital. However, where a member is not an affiliate of the issuer, it has a strong incentive to price the securities at a level which will ensure a successful distribution. The NASD believes that the primary function of a qualified independent underwriter in the context of an offering subject to the proposed new provision is to exercise the usual standards of due diligence with respect to the offering document to insure that all material facts regarding the issuer and its relationship with bridge lenders is adequately and accurately disclosed. However, the NASD believes that there may be situations where the price or yield of the security being distributed would be relevant. Therefore, the proposed rule change includes a provision providing that members may not participate in an offering subject to the provision unless the price of an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or a yield no lower than that recommended by a qualified independent underwriter.

The NASD has modified the proposed rule change in response to a number of comments that the proposed new provision should not be applicable to an offering already subject to the provisions of Schedule E to the NASD By-Laws, or where the offering is of equity securities for which a bona fide independent market exists as of the date of the filing of the offering as defined in section 2(b) of Schedule E, or where the offering is of a class of securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

A number of the commentators indicated that the minimum threshold level at which a qualified independent underwriter must be retained was too low a percentage of the net offering proceeds. Commentators also indicated that a 10% threshold might trigger application of the amendment in the ordinary course of corporate restructurings of debt. The NASD has clarified that the language of the proposed rule change to provide that application of the proposed rule change would not be triggered by that amount of the offering proceeds being paid to members as underwriting compensation.

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[4] "The Venture Capital Restrictions" apply to initial public offerings in which members participating in the offering own securities of the issuer.

Further, the NASD believes that the potential conflict of interest intended to be addressed by the rule would exist at the level where 10% of the net offering proceeds were proposed to be directed to NASD member firms participating in the offering.

In this connection, one commentator requested that the proposed rule change be modified to clarify that the application of the amendment was explicitly restricted to repayments of borrowings incurred for the purpose of acquiring an equity interest in another business. The NASD believes, as indicated above, that the proposed rule change should not only be applicable in the context of leveraged buy-outs but also where the proceeds of the offering are being directed to members participating in the underwriting for the purpose of funding a joint venture, to repurchase equity securities of the issuer, to repurchase debt securities of the issuer or to repay a line of credit extended by an NASD member.

Three commentators pointed out that the language of the proposed amendment could be interpreted to include offerings of direct participation programs where the net proceeds from the offering are paid to a limited partnership which is affiliated with the NASD member distributing the offering. It was not the intention of the proposed amendment to encompass traditional direct participation program offerings subject to Appendix F to Article III, section 34 of the NASD Rules of Fair Practice. However, in one instance the proceeds of an offering of master limited partnership interests were directed to the managing underwriter of the distribution to repay bridge financing incurred in a leveraged buy-out transaction. Therefore, the NASD determined to clarify that the proposed rule change would not be applicable to offerings subject to Appendix F to Article III, section 34 of NASD Rules of Fair Practice unless more than 10% of the proceeds of the offering were to be used by the issuer to repay loans, advances, or other types of financing to a member to acquire an interest in a pre-existing company.

Finally, in response to one comment, the proposed rule change has been amended to provide an exemption for church bond and other charitable offerings that qualify for exemption from SEC registration under section 3(a)(4) of the Securities Act of 1933.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-6 and should be submitted by April 13, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 17, 1988.

[FR Doc. 88-6358 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25481; File No. SR-NYSE-87-45]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Permanent Approval of Policy for Reviewing Combinations Among Specialist Units and Proposed Amendment to the Policy and Order Granting Accelerated Approval to That Portion of the Filing Requesting an Extension of the Effectiveness of the Policy

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's specialist concentration policy by: [1]

(A) Amending its sixth "Guideline for Applying Consideration 2(c) to read in full as follows (italics indicates *additions;* brackets indicates [deletions]):

- Efforts to streamline *the efficiency of* its own operations *and its competitive posture* [so as to reduce its own costs, enabling it to pass on savings to its cutomers].

(B) Seeking permanent approval for the policy.

(C) Extending the interim effectiveness of the policy until the earlier of (1) June 30, 1988 or (2) the Commission's approval or disapproval of the request for permanency. The Exchange characterizes the policy as a Rule of the Board of Directors of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) Purpose of the amendment. The purpose of the proposed rule change is (i) to make a minor amendment to the Exchange's specialist concentration policy, (ii) to make the policy permanent and (iii) to extend the interim effectiveness of the policy in order to afford time for the Commission to consider the Exchange's request for permanent approval. The minor amendment is to one of the guidelines for applying the policy's criterion regarding the constituent units' commitment to the Exchange. The amendment forecloses an unintended implication that the guideline mandates a particular method of pricing by specialists of their services. It does so by deleting a specific reference to passing through costs and substituting a generic reference to competitiveness, thereby causing the guidelines to encompass all competitive means and not just pricing.

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[1] *See*, Securities Exchange Act Rel. Nos. 24411 (April 29, 1987), 52 FR 17870 (SR-NYSE-86-37) and 25077 (October 29, 1987) 52 FR 42488 (SR-NYSE-87-39).

(b) *Purpose of the amended policies: Role of the thresholds.* The purpose of the amended policy is to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets. SR-NYSE-86-37 provided a detailed explanation of this purpose. This statement expands on that purpose statement by responding to the statement in the Commission's order approving SR-NYSE-86-37 anticipating that this proposed rule change would:

> [C]ontain a thorough analysis of the basis for the chosen threshold levels and for the use of a presumption against a combination at the higher threshold level.

SR-NYSE-87-39 reiterated the expectation and added that the Commission expected in particular that the Exchange's analysis would take into account "the capital needs of specialists highlighted during [October's] market volatility * * *." [2]

(i) *Policy overview.* The specialist concentration policy requires that, in reviewing a proposed combination among specialist units, the Quality of Markets Committee of the Board of Directors ("QOMC") must analyze the increased concentration resulting from the proposed combination. The significance of the concentration analysis in the review process increases in accordance with the number and volume of the specialty stocks assigned to the combining units as calculated under four "concentration measures".[3] If a proposed combination would result in a unit falling at or below five percent of the concentration measures, the concentration analysis plays no role. If a proposed combination involves or would result in a unit falling above five percent, but at or below ten percent, the concentration analysis becomes one of several factors that the QOMC must consider. Above ten percent, the concentration analysis takes on primary significance. At that level, the constitutent specialist units must carry the burden of showing that the proposed combination:

- Does not create or foster detrimental concentration;
- Does foster specialist competition;
- Does enhance market quality; and
- Is otherwise in the public interest.

Our explanation of the appropriateness of the thresholds and the shift of the burden of proof begins with a brief analysis of the nature of competition in the specialist community.[4]

(ii) Specialist competition. Competition among Exchange specialist units generally occurs not for market share *within* a stock, but rather for market share *of* stocks; *i.e.*, specialists compete for allocations. Thus, central to the Exchange's concern about specialist concentration is the vigor with which units compete for the constant stream of new listings that come to the Exchange (more than 140 common stocks in 1987, which is nearly ten percent of the list). In allocating new listings among units, great weight is given to the quality of the markets in the units' specialty stocks. Thus, today's vigorous competition for new allocations directly benefits public investors by enhancing the quality of the markets that specialist units make. The vigor of that internal competition also promotes vigorous intermarket competition by enhancing the Exchange's competitiveness relative to its long-time competitors in the National Market System and its emerging competitors worldwide.

Undue concentration in the specialist community would sap that vigor. To illustrate this point, imagine a specialist system composed of two units.

Consider now what would happen as new companies list. Even if one unit were markedly superior to the other in terms of the quality of the markets it maintains, the inferior unit's incentives to maintain markets of the highest quality would be reduced. It would know that the Exchange would be in a quandary: with every allocation to the superior unit in recognition of the superior quality of its market making, the Exchange would be reducing the competitive counterweight offered by the weaker firm and enhancing the dominance of the stronger firm in the Exchange's business.

Our hypothetical two-unit system would also increase the barriers to entering the specialist business. Inherent in the specialist business are significant entry barriers—large capital needs and expertise. The second factor has meant that, historically, new entrants have come principally from within the community as individuals left existing units to strike out on their own. A two-unit system would greatly inhibit this source of new competition. Proponents of creating a break-away unit would face the prospect of carrying on an uphill battle against entrenched units for new allocations. Moreover, since it could only expect to receive a portion of new allocations and would soon have its share of delistings as well, it would have no prospect of reaching a comparable market share.

To try to level the playing field, the Exchange could funnel all or a disproportionate number of new listings to the break-away unit or re-allocate stocks to it. But such intervention is far more difficult and disruptive than that which the Exchange proposes, which is to create a mechanism designed to prevent the situation from arising in the first place.

The barriers erected by a two-unit system would also deter new entrants from outside the specialist community. The Exchange's adoption of its functional regulation rules enabling diversified firms to enter the business through subsidiaries enhances the possibility of creating new entrants by tapping expertise developed off the Floor. But these potential entrants, faced with fighting the same uphill battle against entrenched units, might very well determine that making competing markets off the Exchange would be a better use of their capital and expertise. Thus, a two-unit system would likely frustrate the purposes of those rules by driving away sources of additional capital for the specialist system.

Finally, the way in which a two-unit system would deter potential new entrants would also negatively impact public confidence in the Exchange as a market place. It would raise questions in the minds of investors and other members of the public as to the fairness and openness of the Exchange's marketplace.

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[2] *See*, Securities Exchange Act Rel. No. 25077 (October 29, 1987) 52 FR 42488.

[3] The concentration measures determine the specialist units' share of:

- Listed common stocks;
- The 250 most active listed stocks;
- The total share volume of stock trading on the Exchange; and
- The total dollar value of stock trading on the Exchange.

[4] *See*, Securities Exchange Act Release No. 24411 (April 29, 1987) 52 FR 17870, the Exchange's "Statement on Burden on Competition."

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(iii) Thresholds: When to Say "Enough". Obviously, none of these dire consequences attach when the combination of two or more of today's more than 50 units first exceeds either of the two thresholds. Yet, no one would argue that we have to wait until our hypothetical two-unit system emerges before we can intervene. So the question becomes, "When does concentration become 'undue'?"

The Exchange cannot say for sure. That is why the Exchange did not flatly prohibit combinations above a specified level. Rather, the Exchange only assured that it could assess them for their concentration effects.

The numbers do have a basis, however. They derive from the simple recognition that (1) the present, relatively low level of concentration does not generate the adverse effects noted above and (2) as concentration increases, we do not know the point at which such adverse effects will begin to appear. In other words, the appropriateness of the thresholds derives from the goal of the policy: if warranted, to permit the Exchange to intervene *before* concentration in the specialist community increases to a point where it interferes with the vigor of specialist competition and the quality of the Exchange's markets.

As SR–NYSE–86–37 describes at some length, we believe that the stage may have been set for such an increase. Two factors led to the policy: (1) A long-term trend towards concentration in the specialist community and (2) more importantly, the occurrence of several changes in the nature and structure of the markets that may lead to a sudden acceleration of that trend.[5]

The convergence of these two factors caused the Exchange to decide that the time to begin analyzing the concentration effects of proposed combinations was *now*.

"Now" translates into 10 percent simply because, today, market shares array up to 8.5 percent. The Exchange set the thresholds by referring to the current level of concentration and targeting for special scrutiny concentration at a level slightly higher than that with which the Exchange is familiar today.[6] The NYSE reached the conclusion only through a consultative and deliberative process that caused it to carefully balance the desire to leave some room for combinations against the potential for accelerated concentration and the adverse effects that would follow. It is the NYSE's move from certain competitive vigor to uncertainty, coupled with the knowledge that competitive imperfections will begin to be felt at some higher level, that militate for setting the special scrutiny threshold above the current level by a conservative margin.

Conservatism is in order because the Exchange seeks an opportunity to visit the concentration issue at the very moment the structure of the specialist community begins to shift away from its present, relatively low level of concentration.

And that is precisely what the Exchange should be doing. The NYSE is charged with protecting the interest that the public has in maintaining and promoting the quality of its markets. The present market structure serves that public interest by fostering vigorous competition for new allocations and creating real incentives for market quality. Economic theory and common sense indicates that increases in concentration will at some point interfere with that vigor and undermine the perception of fair and open markets.

The NYSE does not know where that point is. The economic literature on industries in which firms compete for a regulatory allocation of market share offers no consensus as to the level of concentration that should be permitted. But it does teach that increasing concentration eventually reaches a level where the imperfections in that competition begin to dominate. The Exchange policy permits it to continually reassess the competitive effects as each combination proposal comes forth.

(iv) Presumptions—(A) A Yellow Light. The Exchange's thresholds may err on the side of caution. But its prudence imposes only a procedural cost: The Exchange has not prohibited combinations above ten percent, but only subjected them to special scrutiny.

This makes the approach elastic. It permits evolutionary change in the specialist system—and abrupt change if a case can be made for it. It scrutinizes, rather than caps, combinations. And it permits the Exchange to assess a proposed combination under the conditions of the time; *e.g.*, to take into account the contemporaneous distribution of market shares across firms.

October's extraordinary volatility underscores the importance of this elasticity. The NYSE formulated the policy with volatility (although not a market break) in mind: as the NYSE noted above, one of the factors that led to the Exchange's adoption of the policy was its recognition that growing capital demands on specialist units from the increasing risk to capital created by increased market volatility would create pressure for combinations.

The NYSE can demonstrate this elasticity by asking how the policy might have worked in October. Suppose a need for an immediate infusion of capital into one or more specialist units had brought forth a combination that fell under the policy. The policy would have permitted the Exchange to give extraordinary weight to the need for capital under the "conditions of the time"—the need to assure that the constituent specialist units could continue to make markets in a fair and orderly way under the unprecedented circumstances. In addressing the concentration effects, the constituent units could have analogized to the well-accepted "failing firm" doctrine of antitrust analysis, which holds that preventing the loss of productive capacity within a market due to insolvency of a competitor justifies a combination that might otherwise be viewed as anticompetitive.

(B) Analytical Rigor. But like all yellow lights, the Exchange's approach risks a crossing when a full stop is necessary. The NYSE addresses this risk by shifting to the proponent of a combination that may lead to detrimental concentration the burden of proving the benefits and the absence of detriment. Just as the elasticity of the Exchange's approach balances the conservatism of the Exchange's thresholds, so too the shifting of the burden balances the risk from that elasticity.

The balance to that risk is created by the rigor of the analysis. By making the analysis a prerequisite for approval, the Exchange harnesses the proponents' strong economic interest in the consummation of the proposed combination: they have a strong economic incentive to rigorously analyze the concentration issues and the countervailing economies of scale in areas such as capital, manpower and operations in order to win approval. Therefore, the NYSE expects that the shift in the burden of proof will yield a more meaningful grappling with the concentration issue then would otherwise be the case. Requiring the proponents to carry the burden of proof allows it to peer into the unknown using all the illumination the NYSE can muster.

(C) A Conventional Approach. Both the Exchange in SR–NYSE–86–37 and the Commission in its approval order have called this shift of burden a "rebuttable presumption". This characterization may obscure the nature of the burden that the proposing units must carry. The NYSE has not created a rebuttable presumption as it is used in the law of evidence, where, absent rebuttal, the trier of fact presumes from the proof of one fact (*e.g.*, the mailing of the letter) that another is true (*e.g.*, the receipt of the letter). Rather, the policy simply requires the constituent units to make affirmative showings that the combination is not harmful and is beneficial—albeit by "clear and convincing" evidence on three of the four points.

Shifting the burden to the proposing units is hardly extraordinary. The NYSE has borrowed our approach from the Act. As the Exchange has shown above, at some point, concentration creates a burden on competition among specialist units. The Act itself creates a rebuttable presumption against burdens on competition: the Commission may not adopt a rule or approve a rule proposal of a self-regulatory organization ("SRO") unless it finds that any burden on competition created by the proposed rule is necessary or appropriate in furtherance of the purposes of the Act. When an SRO proposal raises issues as to competitive burdens, the Commission looks to the SRO to make the showing necessary to support the required finding.

The thresholds and procedures of the specialist concentration policy give the Exchange flexibility to approve a combination that will strengthen the specialist system, yet affords an opportunity to carefully assess concentration if and as it develops at levels low enough to permit us to intervene if intervention is warranted. They enable it to manage evolution, rather than to have to cope with crises. They embody an orderly, deliberative and internally coherent approach to assuring that the specialist community does not drift into concentration so high that it impedes the competition among existing specialist units for new allocations, deters potential new entrants into the business and creates a perception that undermines investor confidence.

(2) Statutory Basis. The basis under the Act for the proposed rule change is section 6(b)(5): the Exchange will be able to monitor tendencies towards concentration in the specialist community and intervene to prevent undue concentration. This serves to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change also comports with section 11A(a)(1)(C), which states Congress's finding that fair competition among brokers and dealers serves and fosters the public interest, investor protection and fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

As more fully described in SR–NYSE–86–37, the Exchange believes that the proposed rule change will not impose any burden on competition and, in fact, creates a mechanism that will help assure competition among specialist units. (See Item 3(a)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. (See SR-NYSE–86–37 as to comments received during the policy's development.)

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the portion of the proposed rule change that extends the amended policy's interim effectiveness be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Exchange believes there is good cause for accelerated effectiveness in order to avoid a hiatus in the effectiveness of the policy during the Commission's consideration of permanent approval.

The Exchange well recognizes that concentration in the specialist community raises important market structure issues, and that the Commission may wish to withhold action on the Exchange's request for permanent approval of the policy until it can consider any new comments that may be elicited by this **Federal Register** notice. Thus, the Exchange is only asking the Commission to grant expedited approval to an extension of its temporary approval. Accelerated effectinvess of the extension will not require the Commission to forego thorough consideration of, and additional public comment on, the request for permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1988.

V. Conclusion

The Commission finds that the portion of the proposed rule change requesting an extension of the interim effectiveness of the Exchange's current concentration policy until such time as the Commission makes a final determination on whether it should approve or disapprove the pilot program on a permanent basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and the requirements of section 6. In particular, the Commission views an extension of the interim effectiveness of the current concentration policy as furthering investor protection and the public interest as the extension will enable the Exchange to continue to monitor tendencies toward concentration in the specialist community while its proposal for permanent approval of the policy is considered by the Commission.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that an extension of the effectiveness of the policy will permit the Exchange to continue to assess proposed combinations between and among specialist units on an uninterrupted basis while the Commission completes its review of the Exchange's request for

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[5] These changes include the increasing capital demands on specialist units from the growing size and continued institutionalization of the market, the increasing risk to capital from increased market volatility, the adoption of rules making it possible for diversified firms to enter the specialist business, and increasing competition from domestic and overseas markets.

[6] Note that simply focusing on the 1.5 percent difference between the 10 perent threshold and the largest firms's market share underestimates the margin for increased concentration, since combinations among smaller firms can increase concentration without exceeding the 10 percent threshold.

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permanent approval. In addition, the Commission has not received any comments criticizing the policy since its interim approval last year. Accordingly, the Commission believes that the portion of the proposed rule change relating to an extension of the effectiveness of the current concentration policy should be approved as submitted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 17, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6359 Filed 3-22-88; 8:45 am]

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[Release No. 34-25479; File No. SR-NYSE-88-06]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Auxiliary Closing Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1988, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds auxiliary closing procedures for assisting in handling the order flow associated with the concurrent expiration of stock index futures, stock index options and options on stock index futures on March 18, 1988. It specifies procedures substantively identical to those used on December 18, 1987, and on several earlier expiration Fridays. Only the dates and the list of pilot stocks (due to name changes and the substitution of stock as a consequence of changes in market weighting) has changed.

Specifically, the auxiliary procedures provide that market-at-the-close stock orders in 50 pilot stocks relating to index arbitrage positions must be received by 3:30 p.m. on March 18. The Exchange will promptly disseminate the size of substantial market order imbalances (50,000 shares or more) as of 3:30 in the pilot stocks. The procedures also ban entry of market-at-the-close orders in the pilot stocks after 3:30 p.m. unless orders (A) offset the imbalances and (B) are not for the purpose of liquidating an index arbitrage position.

The Exchange characterizes the proposed rule change as a Rule of the Board of Directors of the Exchange. The proposed rule change supersedes all other Exchange rules and policies inconsistent with it.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to comply with the request of the Commission that the Exchange repeat the June 19, 1987 closing procedures on subsequent concurrent expirations of stock index futures, stock index options and options on stock index futures. (9/16/87 Letter to Robert J. Birnbaum, President, NYSE, from Richard G. Ketchum, Director, SEC.) The proposed rule change will make the procedures a rule of the Exchange.

2. Statutory Basis

The basis under the 1934 Act for the proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The propsed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act. Confirmation to the industry of the Exchange's intention to comply with the Commission's request that the Exchange repeat the closing procedures specified by the proposed rule change should occur as soon as possible to permit investors and firms to plan accordingly. Moreover, the procedures contain no substantive changes from the procedures used on previous expiration Fridays. Accordingly, the Exchange seeks action by the commission in time to permit notification of interested parties well in advance of the March 18 expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The market-on-close procedures described herein have been utilized on the prior six Expiration Fridays (the quarterly expiration when stock index futures, stock index options and options on stock index futures have simultaneous expirations). These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility that has been associated with certain index arbitrage trading strategies on Expiration Fridays. By requiring submission of market-at-close

orders early and disseminating imbalances, the NYSE could attrract contra-side interest to alleviate imbalances caused by the closing of index arbitrage positions. The procedures have proven to be operational successes, and have significantly contributed to the smooth handling of the increased order flow associated with these expirations.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Commission desires to notify market participants as soon as possible of the Exchange's intention to repeat these procedures on the upcoming March 18, 1988 expiration. Moreover, the procedures contain no substantive changes from the procedures utlized by the NYSE on December 18 and several earlier Expiration Fridays.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to the file number in caption above and should be submitted by April 13, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the 1934 Act,[1] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 17, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6352 Filed 3-22-88; 8:45 am]

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[1] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-25476; File No. SR-NYSE-88-04]

Self-Regulatory Organizations; Filing and Order Granting Limited Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Auxiliary Opening Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice hereby is given that on March 14, 1988, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds auxiliary opening procedures for assisting in handling the order flow on those days on which there is concurrent expiration of stock index futures, stock index options and options on stock index futures ("Expiration Fridays"). It specifies procedures identical to those used on December 18, 1987 (SR-NYSE-87-43; Release No. 34-25202 (December 16, 1987)) and on several previous Expiration Fridays. The procedures now are being proposed as permanent rule changes.

Specifically, the auxiliary procedures provide that stock orders relating to opening-price settling contracts must be received by 9:00 a.m. on an Expiration Friday.[1] The Exchange promptly will disseminate the size of substantial market order imbalances (50,000 shares or more) as of 9:00 in the affected stocks.

The Exchange will make SuperDot available to accept orders at 7:30. The Exchange will also raise the order size eligibility for the Opening Automation Reporting Service ("OARS") to 30,099 shares—in effect, raising SuperDot's pre-opening order size parameters. The procedures confine orders relating to opening-price settling contracts to market orders and require them to be appropriately identified. The procedures also ban "limit-at-the-opening" orders and apply the reduced waiting periods for second and subsequent price indications that the Commission previously approved.

The Exchange characterizes the proposed rule change as a Rule of the Board of Directors of the Exchange. The proposed rule change supersedes all Exchange rules and policies inconsistent with it.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish procedures to augment the NYSE's regular opening procedures on Expiration Fridays. The auxiliary procedures will assist in integrating stock orders relating to expiring contracts into the Exchange's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible.

The Exchange believes that settling index contracts based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's time-tested opening procedures, provides the best mechanism for handling the accompanying stock volume. Previously, the Exchange, the Chicago Mercantile Exchange, Inc. and the New York Futures Exchange, Inc. altered or added index contracts specifying that settlement pricing will occur based upon the opening prices on Expiration Fridays. They also have provided that trading in opening-price settling contracts will cease at the close on the preceding day. The Exchange anticipates that these changes will divert to the opening approximately 75 percent of the stock order flow related to expiring index contracts. The proposed rule change establishes auxiliary procedures to help accommodate the diverted order flow.

The special dissemination of a picture of substantial market order imbalances in the affected stocks as of 9:00 will provide off-Floor participants with a picture of the unique impact of the index-related orders, and will allow ample opportunity for them to react to it. Because the regular opening procedures will otherwise operate, an off-Floor participant will, as always, be able to obtain a minute-to-minute Floor picture through his Floor broker. Similarly, the pre-opening application of the Intermarket Trading System Plan will be in effect. Moreover, if it becomes evident that a significant change from the preceding day's closing price is in the offing, the specialist can, with the approval of a Floor Official, disseminate regular price indications over the tape as needed.

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[1] As to each Expiration Friday, the Exchange will adjust the list of stocks subject to the procedures in response to changes in market weighting.

The particular purposes of several of the procedures deserves elaboration.

9:00 Cut-Off. The 9:00 cut-off for entry of stock orders relating to opening-price settling contracts assures that the upper limit of the order flow created by unwinding index-related positions is known at 9:00. The specialist can retrieve the orders in OARS at 9:00 and combine them with the manual orders, creating a complete picture of all the orders. If the picture shows a substantial imbalance, he will notify off-Floor participants of the imbalance within the first several minutes after 9:00. This allows a half hour or more to react.

Preclusion of Limit-at-the-Opening Orders. Preclusion of limit-at-the-opening orders simplifies the specialist's task in opening his market. These orders cannot be entered into the electronic display book. Consequently, their acceptance would complicate the specialist's task by requiring him to keep a separate, manual tally. Customers are free to enter regular limit orders.

Applicability of Revised Price Indications Waiting Period. SR-NYSE-87-14 (Release No. 34-24880 (September 4, 1987)) describes the purpose of reducing the waiting period following second and subsequent price indications.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange created an ad hoc Expiration procedures Committee consisting of its Floor Directors, other representatives from the Floor, upstairs trades and institutional brokers. The proposed rule change reflects the consensus reached by the committee. The Exchange received no written comments following the previous expirations concerning the procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given limited accelerated effectiveness pursuant to section 19(b)(2) of the Act solely with respect to the March 18, 1988 Expiration Friday. Confirmation to the industry of the Exchange's intention to repeat those procedures should occur as soon as possible to permit investors and firms to plan accordingly. Moreover, the procedures contain no substantive changes from previously-used procedures, on which there has been ample opportunity for comment. Accordingly, the Exchange seeks action by the Commission in time to permit notification of interested parties well in advance of the March 18 expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that basing the settlement of index products on opening, as opposed to closing prices, on March 18 may help to accommodate index-related share volume. The proposed auxiliary procedures are intended to ensure that the Exchange may efficiently process sizeable order flow at the open. The Commission believes that these procedures should work to reduce order imbalances at the open, and thus dampen potential volatility. In this regard, the procedures worked well during the previous three expirations and the March expiration should provide the Commission with another opportunity to assess whether these procedures are sufficient in dampening expiration volatility at the opening, or whether additional measures are necessary.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will enable the Exchange to quickly implement and notify market participants about procedures that it believes will appropriately address any index-related heightened share volume at the open on March 18.

The Exchange, at this time, is not seeking permanent accelerated effectiveness of the proposed rule change as it applies to subsequent Expiration Fridays. This rule filing, in addition, to seeking accelerated approval of the Exchange's opening Expiration Friday procedures for March 18, is designed to provide notice of those procedures for permanent approval.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should

be submitted by April 13, 1988. *It therefore is ordered,* pursuant to section 19(b)(2) of the Act,[2] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 17, 1988.

Exhibit A—Special Notice, Expiration Procedures for [Insert Date of Expiration Friday]

[Notice Date]

The New York Stock Exchange, Inc. ("NYSE"), has altered procedures in accordance with changes in certain index contracts.[1] Settlements in these contracts will be based upon the opening stock prices on expiration Friday ([Insert Date]), and trading in these contracts will cease at the close on the previous day ([Insert Date]). The Exchange has taken these steps because it believes that the volume often associated with the concurrent expiration of futures and options contracts on stock indices can best be accommodated by using NYSE's opening procedures.

The Exchange has created special procedures applicable on [Insert Date]. For convenience, a copy of its special procedures is attached to this notice.

[NYSE Officer Name]
[NYSE Officer Title]

New York Stock Exchange

Expiration Procedures for [Insert Date of Expiration Friday]

Several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into NYSE's opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. The auxiliary opening procedures applicable on [Insert Date] are:

Order Entry

- Stock orders relating to index contracts whose settlement pricing is based upon the [Insert Date] *opening* prices must be received by SuperDot or by the specialist by 9:00 a.m.
  - These orders may be cancelled or reduced in size.[1]
  - Stock orders relating to index contracts whose settlement pricing is *not* based upon the [Insert Date] opening prices may be entered after 9:00 a.m.
- Stock orders relating to opening-price settling contracts may only be entered as market orders.
- To facilitate early order entry, SuperDot (1) will begin accepting orders at 7:30 am.m and (2) will accept orders of 30,099 shares or less.
- No "limit at the opening" ("limit OPG") order are permitted, whether or not they relate to index contracts.
  - Ordinary limit orders may be entered.

Order Identification

- Stock orders relating to opening-price settling contracts must be identified "OPG."
  - Firms entering these orders through SuperDot, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders. The NYSE Market Surveillance Division (11 Wall Street, 11th Floor) must be advised of the branch code or identifier by [Insert Last Date to Notify Exchange Staff, Currently the Following Monday].
  - Firms unable to identify these orders in either way, and firms not using SuperDot, must submit a list of all these orders and related details to the NYSE Market Surveillance Division by [Insert Last Date to Notify Exchange Staff, Currently the Following Monday].

Dissemination of Order Imbalances

- For any fo the affected stocks having a *market* order imbalance of *50,000* shares or more at 9:00 a.m., the NYSE will disseminate the size of the order imbalance via the low-speed ticker and the news services as promptly as practicable after 9:00 a.m.

Except for the auxiliary procedures described above, all stocks are subject to the regular NYSE opening procedures, including price indications where a substantial price change is anticipated. Fifteen minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open (1) five minutes after the last indication when it overlaps the prior indication (e.g., 51–53 overlaps 50–52, but does not over 53–55) and (2) ten minutes after the last indication when it does *not* overlap the prior indication, provided that 15 minutes must have elapsed from the dissemination of the first indication.

Any questions may be directed to [Insert Appropriate NYSE Staff Names and Phone Numbers].

Attachment A—50 Stocks

[Insert Date]—"Expiration Friday"

Symbol	*Stock*
[Insert List of Current Stocks and Appropriate Notes]	

[FR Doc. 88-6353 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24602]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Eastern Utilities Associates et al.

March 17, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 11, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. 70-7287

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and EUA Cogenex Corporation ("EUA

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[2] 15 U.S.C. 78s(b)(2) (1982).

[1] NYSE: NYSE Composite Index Options

CME: S&P 500 Index Futures/S&P 500 Index Futures Options

NYSE: NYSE Composite Index Futures/NYSE Composite Index Futures Options.

[The List of Index Contracts Will be Updated Each Expiration Friday as Necessary.]

[1] Firms cancelling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 410 provides.

Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, its wholly owned subsidiary, have filed a post-effective amendment to EUA's application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45(a) thereunder.

By order dated December 19, 1986 (HCAR No. 24273), EUA was authorized to make capital contributions and/or short-term loans to EUA Cogenex in an aggregate amount not to exceed $7 million and EUA Cogenex was authorized to effect short-term borrowings from lending institutions in an aggregate amount not to exceed $7 million. The interest rate on the borrowings from EUA and the lending institutions was required to be no greater than the commercial base rate of The National Bank of Boston.

EUA proposes to increase the maximum amount of capital contributions and/or short-term loans which EUA is permitted to make to EUA Cogenex ("Obligations") evidenced by notes bearing interest at a rate equal to EUA's effective cost of funds from commercial lenders, as adjusted from time-to-time, the aggregate amount of such capital contributions and notes outstanding to EUA at any one time not to exceed $15 million. EUA proposes to finance these Obligations by short-term borrowings under its existing bank lines of credit. The principal amount outstanding at any one time will not exceed $15 million and will be evidenced by notes which may be issued and renewed from time-to-time during the period ending December 31, 1989. Based on the current prime rate of 8½% and a commitment fee of ¼ of 1% of the credit line, the effective borrowing rate would be 8.75%.

EUA Cogenex proposes to increase the maximum amount of short-term borrowings from lending institutions through December 31, 1989, to be evidenced by notes bearing interest either at the commercial bank base rate as adjusted from time-to-time or at available money market rates, the aggregate amount of such borrowings not to exceed $15 million.

Eastern Utilities Associates, et al. (70-7486)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its electric utility subsidiary, EUA Power Corporation ("EUA Power"), One Eagle Square, P.O. Box 709, Concord, New Hampshire 03002-0709, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 42, 43, 50(a)(5) and 62 thereunder.

By order dated November 21, 1986 (HCAR No. 24245) ("November 21st Order"), EUA Power was authorized to purchase joint ownership interests aggregating 12.1324% in Seabrook Nuclear Power Project ("Seabrook"), a two unit ("Unit 1" and "Unit 2") nuclear facility located in Seabrook, New Hampshire. Construction of Unit No. 1 has been completed, but its commercial operation has been delayed by licensing proceedings before the Nuclear Regulatory Commission. Commencement of commercial operation of Unit No. 1 is not anticipated before 1989 at the earliest. Construction of Unit No. 2 has been cancelled.

Also pursuant to the November 21st Order, EUA Power issued and sold for cash: (1) 10,000 shares of its common stock, $.01 per share, to EUA for a purchase price of $10,000; (2) 449,900 shares of its Class A 25% cumulative Convertible Preferred Stock, par value $100 per share ("Class A Preferred Stock") to EUA for a total purchase price of $44,990,000; and (3) $180 million aggregate principal amount of its 17½% Series A Secured Notes due November 15, 1991 ("Series A Notes"), purchased at their face value by institutional and other investors at private sale.

EUA Power states that it will not have significant amounts of income to meet its expenses, including monthly payments representing its share of the cost of maintianing Unit No. 1 and continuing the licensing process related to Seabrook, and interest payments on the Series A Notes. In order to meet its interest obligations under its Series A Notes and its share of Seabrook Unit 1 costs, EUA Power proposes to issue and sell, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5): (1) Up to $180 million aggregate principal amount of 17½% Series B Secured Notes due 1993 ("Series B Notes"), only in exchange for up to $180 million of 17½% Series A Secured Notes ("Series A Notes") now outstanding, and up to 180,000 Contigent Interest Certificates ("CICs"), one of which will be issued with each $1,000 principal amount of Series B Notes in exchange for Series A Notes; and (2) up to $100 million aggregate principal amount of 17½% Series C Notes ("Series C Notes") to the Series B Noteholders and the Series C Noteholders in lieu of the payment of cash interest on the Series B and Series C Notes.

EUA Power will offer the Series B Notes to Series A Noteholders (together with the CICs) in exchange for their Series A Notes ("Exchange Offer"). The Series B Notes will provide that, at EUA Power's option, interest may, in lieu of payment in cash, be paid "in kind" by the issuance of Series C Notes to each Series B Noteholder in a principal amount which will be a fixed percentage not exceeding 133% of the amount of the cash interest payment to which the Noteholder would otherwise be entitled. Interest on the Series C Notes will similarly be payable in kind, at EUA Power's option, in lieu of payment in cash, by the issuance of additional Series C Notes in a principal amount up to the same percentage not exceeding 133% of the cash otherwise payable.

The Series B Notes and the Series C Notes (as well as the CIDs) will be issued under a supplement to the Indenture. The Series B Notes and the Series C Notes will rank equally with any Series A Notes that may remain outstanding. The terms and provisions of the Series B Notes and the Series C Notes will be identical to those of the Series A Notes to the fullest extent possible except with regard to the redemption provisions and the interest payment provisions (including, in the case of the Series B Notes, the CICs) and: (1) That the Series B Notes and the Series C Notes will mature on May 15, 1993 and November 15, 1992, respectively; (2) the Series B Notes will be non-redeemdable prior to November 15, 1991 and thereafter will be redeemable at par value plus a premium which will be 0.500% during the 6-month period ending May 14, 1992, 0.250% during the 6-month period ending November 14, 1992, and 0.125% during the remaining period to maturity: and (3) that no provision is made for optional redemption of the Series C Notes. The Series B Notes will be issued only upon exchanges of Series A Notes in equal principal amounts pursuant to the Exchange Offer, and Series C Notes will be issued only by delivery to Noteholders, in amounts as stated above, in payment of interest on Series B Notes and Series C Notes.

To encourage exchanges of the existing Series A Notes for the proposed Series B Notes, EUA Power will offer the Series A Noteholders the right to receive additional interest payments on Series B Notes contingent upon the income after interest charges of EUA Power exceeding certain amounts in each of EUA Power's full fiscal years beginning on the first day of the month following the commercial operation date of Unit No. 1 and continuing to and including (but not beyond) the date when the conversion of all of EUA Power's Preferred Stock into common stock is completed. The right to receive such contingent interest payments will be evidenced by CICs.

As soon as possible after commercial operation of Unit No 1 has commenced, EUA Power expects to resume payment of interest on, and eventually payment of principal when due at maturity or upon redemption of, the Series B Notes and Series C Notes from the proceeds of sales of electricity generated by Unit No. 1 and from the sale of additional securities.

EUA Power also seeks authorization, if such authorization is required, under the provisions of Rule 62 to make the Exchange Offer to its Series A Noteholders at the earliest possible time.

EUA Power further proposes to amend its Certificate of Incorporation to increase its capital stock by 250,000 additional shares of Class A Preferred Stock ("Additional Preferred Stock") and to issue and sell, and EUA to acquire, up to 250,000 shares of Additional Preferred Stock at a purchase price of $25 million. The Additional Preferred Stock will be converted into common stock on a schedule which depends upon the rate at which EUA Power refinances (at an interest rate not exceeding 175% of the then existing prime rate) its long-term debt outstanding at the date of commercial operation of Unit No. 1. All Additional Preferred Stock must be converted no later than 12 years after the commercial operation date of Unit No. 1. Under certain conditions, EUA may purchase all or a portion of the Additional Preferred Stock before any Series B Notes are issued. The proceeds from the sale of the Additional Preferred Stock will be applied to the payment of commitments of EUA Power other than interest on its Secured Notes, including expenses related to the proposed Exchange Offer and expenses required for the funding of EUA Power's share of the cost of operating, maintaining and protecting Unit No. 1 and the dismantling of Unit No. 2. EUA seeks authorization to finance its purchase of the Additional Preferred Stock by short-term bank borrowings under its existing bank lines of credit of up to $25 million. EUA may refinance all or part of such borrowings by means of a term loan or other credit arrangement with banks or other financial institutions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6354 Filed 3-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 9:30 a.m. Wednesday, April 27, 1988 at the Holiday Inn, 260 Goddard Boulevard, King of Prussia, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, 475 Allendale Road, Suite 201, King of Prussia, Pennsylvania 19406, (215) 962-3801.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 17, 1988.

[FR Doc. 88-6267 Filed 3-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Lovelock, NV; Closing

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Flight Service Station at Lovelock, Nevada, Notice of closing.

SUMMARY: Notice is hereby given that on or about March 10, 1988, the Flight Service Station at Lovelock, Nevada, will be closed. Services to the general aviation public of Lovelock, formerly provided by this office, will be provided by the Flight Service Station in Reno, Nevada. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Arlene B. Feldman,

Acting Director, Western-Pacific Region.

Issued in Lawndale, California, on March 14, 1988.

[FR Doc. 88-6250 Filed 3-22-88; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

Intent To Prepare an Alternatives Analysis/Environmental Impact Statement on Alternative Transit Improvements in the Atlanta Region of the State of Georgia

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent to prepare an Alternatives Analysis/Environmental Impact Statement.

SUMMARY: This notice announces that the Urban Mass Transportation Administration (UMTA) and the Metropolitan Atlanta Rapid Transit Authority (MARTA) are undertaking the preparation of an Alternatives Analysis/Environmental Impact Statement (AA/EIS) for alternative transit improvements in the North Atlanta Corridor: Northside Hospital area to the vicinity of Spalding Drive and GA. 400 of the Atlanta Region. The AA/EIS is being prepared in conformance with 40 CFR Parts 1500 through 1508, Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; 23 CFR Part 771, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures, Final Rule.

FOR FURTHER INFORMATION CONTACT: Alex McNeil, Transportation Representative, UMTA Region IV Office, 1720 Peachtree Road NW., Suite 400, Atlanta, GA 30309, Telephone (404) 347-7875.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

A public scoping meeting will be held on April 13, 1988 at 7:00 p.m., in the auditorium of the North Fulton Annex, 1741 Roswell Road, NE. (Sandy Springs) to help establish the purpose, scope, framework and approach for the analysis. At the scoping meeting, staff will present a description of the proposed scope of the study using maps and visual aids as well as a plan for an active citizen involvement program, and a projected work schedule. Members of the public and interested Federal, state, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meeting or in writing no later than April 28, 1988 to Metropolitan Atlanta Rapid Transit Authority, Engineering Division, Attention: Gloria Gaines, 4th Floor, 2424 Piedmont Road, NE., Atlanta, GA., 30324, (404) 848-5465.

Corridor Description

The North Atlanta Corridor, Northside Hospital area to the vicinity of Spalding Drive and GA. 400, is a major travel corridor which includes Northside, St. Joseph's and Scottish Rite Hospitals, Perimeter Center mixed use office/retail center (DeKalb County), the North Park mixed use complex, and the North Springs Commercial/residential area. Its boundaries are generally described as the Sandy Springs/Perimeter Mall area and more particularly as Glenridge Drive, Roswell Road, and Trimble Road on the west, Powers Branch Creek on the north, Chamblee Dunwoody Road/Nancy Creek (north fork) on the east and Nancy Creek on the south.

MARTA is presently planning to extend the existing North Rail Line in the vicinity of the Lenox Station north to the Northside Hospital area where a station will be located. This study will analyze transit alternatives north of the Northside Hospital/Medical Center Station.

Description of Alternatives

Transportation alternatives proposed for consideration in the corridor are the following:

Alternative 1: No Build

The no build option includes the existing and committed rail system and the Medical Center (Northside Hospital area) Station as an on-line station, designed with busbays, kiss and ride spaces, and feeder bus service. No on-site parking will be provided. In addition to an expanded Abernathy Road Park and Ride (P&R) lot, additional P&R lots would be located at Mansell Road and State Bridge Road.

Alternative 2: TSM—Minimum

The Transportation System Management (TSM)—Minimum alternative, assumes the Medical Center Station as a permanent end of line station. Service will be improved by providing additional buses, bus routes, busbays, kiss and ride spaces, and increased emergency exiting capacity. Improvements to local roadways would be studied in an effort to mitigate the anticipated increase in transit system related traffic in the area. P&R lot improvements would be the same as the no build option.

Alternative 3: TSM—Maximum

The Transportation System Management (TSM)—Maximum alternative, also assumes the Medical Center Station as a permanent end of line station with the same station improvements proposed in the TSM (minimum) alternatives, except the addition of parking spaces at the station, with a percentage reserved for High Occupancy Vehicle (HOV) users. This alternative also proposes HOV lanes along GA. 400 from Spalding Drive to the Glenridge Connector or other viable locations. Satellite parking would be the same as the TSM (Minimum) with the addition of another P&R lot located at GA. 400/Spalding Drive area. Service will be improved as stated in Alternative 2.

Alternative 4: Busway

The grade separated busway alternative would provide an exclusive or semi-exclusive right of way from the Medical Center Station to an area located approximately at GA. 400/Abernathy Road with stations at Perimeter Center (Dunwoody) and North Park (Sandy Springs). Local bus access would be provided at the Perimeter Center (Dunwoody) Station and Abernathy Road. This proposal calls for the same satellite P&R lots as the TSM (Maximum). Service will be improved as stated in Alternative 2 using the busway as appropriate.

The Busway Alternative would begin with a barrier-free interface with the rail system at Medical Center Station. It would follow generally the same alignment as the rail extension to a station at Perimeter Center (See Alternative 5). Ramps would be located north of the station to allow some bus routes to continue north and east on surface streets to serve the Dunwoody area. The busway would continue northwest to the vicinity of th GA. 400/Abernathy Road interchange. Several design options will be considered in that area:

—Tie into the existing Abernathy Park/Ride Lot
—Direct ramps to GA. 400
—HOV lanes on Ga. 400 north of the connection

Alternative 5: Rail

The rapid rail alternative would be an extension of the currently-committed line beyond Medical Center Station. The line from the Lindbergh junction through Medical Center is currently under preliminary design. The proposed extension would be 3.1 miles long with three stations, Dunwoody, Sandy Springs and North Springs.

The extension would transition from open cut at Medical Center Station to aerial structure just east of the station and turn to the northeast and then north. It would cross over I-285 approximately 0.3 miles west of Ashford-Dunwoody Road. The line would continue on aerial structure to the Dunwoody Station at Hammond Drive.

The Dunwoody Station would be an aerial station located on the west side of Perimeter Mall. The station would have feeder bus access and possibly some parking spaces. The aerial line would continue north of the station and turn to the northwest. As the terrain rises quickly, the line would transition to a cut and cover subway section generally along Perimeter Center West.

The Sandy Springs Station would be located at the intersection of Perimeter Center West, Abernathy Road, and Mount Vernon Highway. The station would include bus access and approximately 1400 parking spaces. The subway line would continue northwest alongside the northbound ramp to GA. 400. It would transition to at grade construction and turn north along the east side of GA. 400.

The North Springs Station would be located ¾ mile north of Abernathy Road. It would be linked to GA. 400 with new ramps; feeder bus access and approximately 3000 parking spaces would be provided. This alternative also provides satellite parking at Mansell Road and State Bridge Road.

Comments at the scoping meeting should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics) changes in the social environmental (land use, development, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal laws and current CEQ and UMTA guidelines.

Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meeting should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decisionmaking should be identified.

Issued on: March 18, 1988.

Peter N. Stowell,

Regional Manager.

[FR Doc. 88-6253 Filed 3-22-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 17, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0295
Form Number: IRS Form 5064, Notice 210
Type of Review: Revision
Title: Prepared Instructions for Media Label
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Payers wishing to file these returns on magnetic media must complete Form 5064 to label their media with pertinent information essential to the processing of their data. Notice 210 provides instructions to the filers for filling out the label
Respondents: State or Local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 5,106 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-6337 Filed 3-22-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Dept. Circ.—Public Debt Series—No. 7-88]

Treasury Notes of March 31, 1990, Series Y–1990

March 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of March 31, 1990, Series Y–1990 (CUSIP) No. 912827 VZ 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securites and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The Notes will be dated March 31, 1988, and will accrue interest from that date, payable on a semiannual basis on September 30, 1988, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, March 23, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 22, 1988, and received no later than Thursday, March 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customer if the names of the customers and the amount for each customers are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders for all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised on the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thrusday, March 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, March 29, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, March 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcment of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-6432 Filed 3-21-88; 2:43 pm]

BILLING CODE 4810-40-M

[Dept. Cir.—Public Debt Series—No. 8-88]

Treasury Notes of March 31, 1992, Series M-1992

March 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of March 31, 1992, Series M-1992 (CUSIP No. 912827 WA 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1988, and will accrue interest from that date, payable on a semiannual basis on September 30, 1988, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exemp from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, and $1,000,000 and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, March 24, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, March 23, 1988, and received no later than Thursday, March 31, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the dead-line for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States hold membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the

Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, March 31, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, March 29, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, March 31, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-6433 Filed 3-21-88; 2:43 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 56

Wednesday, March 23, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.–5:00 p.m., Thursday and Friday, March 31–April 1, 1988.

PLACE: American Chemical Society, 1155 16th Street, NW., Washington, DC 20036. Conference Rooms B and C, First Floor.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of individual grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 457–1700.

Dated: March 20, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88-6416 Filed 3-21-88; 2:15 pm]

BILLING CODE 3155-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.–5:00 p.m., Thursday, March 24, 1988.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC.

STATUS: Open.

PURPOSE AND AGENDA: The Seventh Colloquium of the intellectual mapping project focusing on new approaches to securing and maintaining peace among nations. Invited participants include Dr. Vamik Volkan, Dr. James Laue, Mr. Joseph Montville, Dr. J. David Singer, Dr. Richard Ned Lebow, Dr. Edward Azar.

CONTACT: Mr. Richard N. Smith Telephone: (202) 457–1700.

Dated: March 20, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88-6417 Filed 3-21-88; 2:15 pm]

BILLING CODE 3155-01-M

federal register

Wednesday
March 23, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Vouchers; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1745; FR-2420]

Section 8 Housing Vouchers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of fiscal year 1988 funding authority for HUD's Housing Voucher Program authorized by section 8(o) of the United States Housing Act of 1937. Funding for the Program is provided in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988, and includes carryover funding authority from previous fiscal years. The funding authority is made available, subject to the program requirements set out in Part III of this NOFA. These requirements are based on the program requirements contained in Part III of the NOFA published on February 19, 1987, at 52 FR 5250, as revised to conform to recent statutory amendments to the Housing Voucher Program. This NOFA also advises PHAs that they must implement the Federal preferences for the Housing Voucher Program at the same time that they implement the Federal preferences for the Certificate Program.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Housing Voucher Program

I. Background

II. This Document

A. Fund Availability
B. Applicability of this NOFA
C. Revisions to the Program Requirements Caused by the HCD Act of 1987 and the 1988 Appropriations Act

III. Housing Voucher Program Requirements

A. Definitions
B. Applicability and Purpose
C. Equal Opportunity Requirements
D. Allocations of Funding and Invitations for Applications
E. Submission of Applications
F. Processing of Housing Voucher Applications
G. Annual Contributions Contract
H. [Reserved]
I. Selecting Families and Issuing Housing Vouchers
J. Housing Voucher Payments
K. Finders-Keepers Policy
L. Portability of Housing Vouchers
M. Eligible and Ineligible Housing
N. Approving Units and Executing Leases and Housing Voucher Contracts
O. Maintenance, Operation and Inspections; Security Deposits
P. Termination of Tenancy by Owners
Q. Reexamination of Family Income and Composition
R. Family Obligations
S. Grounds for Denial or Termination of Assistance
T. Informal Review or Hearing
U. Administrative Fees Paid to the PHA
V. Reporting Requirements for the Freestanding Component and the Small/Rural Component
W. Subsequent Use of Housing Voucher Authority Targeted for Specific Uses
X. [Reserved]
Y. Waivers

IV. Findings and Other Matters

I. Background

The purpose of this Notice of Funding Availability (NOFA) is to announce the availability of budget authority for housing vouchers appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1988 (section 1(f) of Pub. L. 100-202, approved December 22, 1987) (the 1988 Appropriations Act).

On October 29, 1987, the Department published a NOFA announcing the availability of fiscal year 1988 funding authority for the Housing Voucher Program provided in Continuing Resolution, Pub. L. 100-120, approved September 30, 1987, including any extensions of that Continuing Resolution. (The Continuing Resolution and extenders [1] were stopgap measures pending enactment of the the 1988 Appropriations Act.) That NOFA also advised the public that, pending completion of the Housing Voucher Program final rule, the Department intended to continue to administer the Program under the policies in effect in fiscal year 1987. (See NOFA published on February 19, 1987, at 52 FR 5250.) The Department is still developing the Housing Voucher Program final rule, including consideration of the 273 public comments received in response to the proposed rule. It remains the Department's policy that, pending publication of an effective rule, the Housing Voucher Program continue to operate under the program requirements that were contained in the February 1987 NOFA. This document revises these requirements, however, to implement certain recent statutory amendments, discussed below.

On February 5, 1988, the President approved the Housing and Community Development Act of 1987 (Pub. L. 100-242) (HCD Act of 1987). The Act made several changes in the Housing Voucher Program that are of immediate effect and require no prior public comment in order to be implemented. Section II.C. of this NOFA describes the revisions made to the program requirements, as they existed in Part III of the February 1987 NOFA, to implement these statutory amendments, as well as the provisions of the 1988 Appropriations Act concerning the use of budget authority for additional housing voucher units.

II. This Document

A. Fund Availability

Accordingly, this NOFA announces the availability of the budget authority for housing vouchers appropriated by the 1988 Appropriations Act, as well as authority carried from previous fiscal years. Pending publication of final effective Housing Voucher Program regulations, the authority must be used for the purposes provided in, and under the requirements of, Part III of this NOFA. This NOFA does not implement any of the policies described in Section II.B.2., *Anticipated Changes in the Housing Voucher Program*, of the February 1987 NOFA. Action on those proposed changes, including modifications set out in the proposed rule, will be dealt with in the Housing Voucher Program final rule.

1. Headquarters Reserve

The Secretary is retaining a number of housing vouchers in a Headquarters reserve, and, subject to the availability of sufficient budget authority, these housing vouchers will be used for emergencies, special housing needs, and for the following specific uses:

(a) A set-aside to assist public housing desegregation, when other methods have failed (see III.D.(c) of this NOFA).

(b) A set-aside to assist families living in one of the following types of "opt-out" or prepayment projects:

(1) For families living in a Section 8 New Construction or Substantial Rehabilitation project, where the owner has sole discretion to "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract and does so;

(2) For families living in a Section 8 Loan Management Set-Aside project, where the project-based housing assistance payments contract ends; or

(3) For families living in a below-market interest rate project insured under section 221(d)(3) of the National Housing Act or in a project insured under section 236 of the National Housing Act, when the owner prepays the mortgage and prior HUD approval is not required.

2. Housing Vouchers Distributed by Formula Allocation

The Department will allocate most of the carryover authority and fiscal year 1988 housing voucher funding authority made available under the 1988 Appropriations Act to its Regional Offices, using an allocation procedure patterned on the "fair share" procedures in 24 CFR Part 791. The Department will, to the extent necessary, allocate additional housing vouchers to a PHA, to ensure that it can provide housing vouchers to eligible applicant families that, as a result of rental rehabilitation activities, are forced to vacate their respective units because of physical construction, housing overcrowding, or a change in use of the units, or that would have to pay more than 50 percent of their respective adjusted income as rent. (See section II.C.5. of this NOFA for a description of the new requirements concerning the use of formula allocation housing vouchers for rental rehabilitation families.)

B. Applicability of this NOFA

The Housing Voucher Program requirements contained in Part III of this NOFA apply to the Housing Voucher Program, including budget authority made available in fiscal year 1988 under this NOFA and the October 29, 1987 NOFA.

C. Revisions to the Program Requirements Caused by the HCD Act of 1987 and the 1988 Appropriations Act

1. Implementation of Section 143(b)(1) of the HCD Act of 1987

Section 143(b)(1) of the HCD Act of 1987 amends section 8(o)(6)(A) (previously section 8(o)(7)(A)) of the United States Housing Act of 1937 (1937 Act) to give PHAs the discretion to make annual affordability adjustments to the payment standard. (This section previously permitted no more than two affordability adjustments in any five-year period.) In order to implement this amendment, section III.J. of this NOFA contains the following revisions: Paragraph (e)(1) has been revised to permit PHAs to make annual affordability adjustments and paragraph (f) has been revised to remove the reference to the two-in-five-year limitation.

2. Implementation of Section 143(b)(2) of the HCD Act of 1987

Section 143(b)(2) of the HCD Act of 1987 strikes section 8(o)(6)(D) (previously section 8(o)(7)(D)) of the 1937 Act, which had required PHAs to consult with the public and units of general local government before making affordability adjustments. Paragraph (e)(4) of section III.J. of the February 1987 NOFA (see 52 FR 5263, column 2), contained the consultation requirement. Paragraph (e)(4) has been omitted from section III.J. of this NOFA. A PHA may adopt an affordability adjustment *without* consulting the public or the unit of general local government in the PHA's jurisdiction concerning the impact of the adjustment on the number of families that can be assisted.

3. Implementation of Section 143(c) of the HCD Act of 1987

Section 143(c) of HCD Act of 1987 amends section 8(o)(7) (previously section 8(o)(8)) of the 1937 Act by striking the five-percent limit on the amount of authority that may be used to provide assistance with respect to cooperative or mutual housing. Paragraph (a)(4) in section III.M. of the February 1987 NOFA (see 52 FR 5266, column 2) contained the five-percent limit; the parallel paragraph (a)(4) of this NOFA does not contain a five-percent limit.

4. Implementation of Section 144 of the HCD Act of 1987

Section 144 of the HCD Act of 1987 added a new section 8(q), which establishes administrative fee requirements for both the Housing Voucher Program and the Certificate Program. Section 8(q)(1) requires the Secretary to establish a monthly fee (ongoing fee) equal to 8.2 percent of the two-bedroom fair market rent (FMR) and authorizes the Secretary to increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas. Section 8(q)(2)(A) requires the Secretary to establish reasonable fees for (1) preliminary expenses (not to exceed $275) incurred by a PHA in connection with a new allocation of assistance, (2) costs incurred in assisting families who experience difficulty in obtaining appropriate housing, and (3) extraordinary costs approved by the Secretary. Section 8(q)(2)(B) requires that the same method be used to calculate fees under the Housing Voucher Program and the Certificate Program. Section 8(q)(3) contains the following overall limitation: "The Secretary may establish or increase a fee in accordance with this subsection only to such extent or in such amounts as are provided in appropriations Acts."

The Department's 1988 appropriation for the Housing Voucher Program, as reflected in the table at page 838 of the Conference Report (H. Rept. No. 198, 100th Cong., 1st Sess., (1987)), is based on an administrative fee structure as provided in Part III.U. of the February 1987 NOFA (see 52 FR 5268). This system includes an ongoing administrative fee equal to 6.5 percent per month of the two-bedroom FMR, a preliminary fee not to exceed $215, and a "hard-to-house" fee of $45 for each qualified family. Because there is a fixed amount of budget authority for the Housing Voucher Program, any increase in the amount of budget authority available for administrative fees necessarily causes a concommitant decrease in the amount of budget authority available for program purposes, including for free-standing housing vouchers, and would decrease the number of housing vouchers available for eligible families below the level reflected in the Conference Report. This NOFA is based on the current Housing Voucher Program administrative fees, as reflected in the revised operating plan submitted to, and accepted by, the Committees on Appropriations of the Senate and House of Representatives.

5. Implementation of the Statutory Amendments Affecting the Relationship Between the Housing Voucher Program and the Rental Rehabilitation Program

Section 143(a)(2) of the HCD Act of 1987 strikes section 8(o)(4) of the 1937 Act, which required that HUD use "substantially all" housing voucher authority for families residing in dwellings to be rehabilitated with assistance under the Rental Rehabilitation Program and for families displaced as a result of rental rehabilitation assisted under that program or under section 533 of the Housing Act of 1949.

Section 149 of the HCD Act of 1987 added a new subsection (u) to section 8 of the 1937 Act, which reads as follows:

> (u) In the case of lower income families living in rental projects rehabilitated under section 17 of this Act or section 533 of the Housing Act of 1949 before rehabilitation—
>
> (1) Certificates or vouchers under this section shall be made [available] for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding; and

---

[1] See, Pub. L. 100-120 (November 10, 1987), Pub. L. 100-193 (December 16, 1987), and Pub. L. 100-197 (December 20, 1987).

> (2) At the discretion of each public housing agency or other agency administering the allocation of assistance, certificates or vouchers under this section may be made [available] for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or move from, the project.

In addition, the 1988 Appropriations Act provides:

> [O]f that portion of such [Housing Voucher Program] budget authority to be used to achieve a net increase in the number of dwelling units for assisted families, highest priority shall be given to assisting families who are involuntarily displaced, or who are or would be displaced in consequence of increased rents, as a result of rental rehabilitation program activities.

It should be noted that while both section 8(u) of the 1937 Act and the above-quoted proviso in HUD's 1988 Appropriations Act concern the interrelationship between the Housing Voucher Program and the Rental Rehabilitation Program, there are several substantive differences. The 1988 Appropriations Act proviso applies only to FY 1988 housing voucher budget authority appropriated in FY 1988 for additional housing voucher units, while section 8(u) is not limited to funding for any fiscal year and applies to both housing vouchers and certificates. The 1988 Appropriations Act proviso *requires* that highest priority in the use of FY 1988 new unit funding be given to families who "are or would be displaced in consequence of increased rent as a result of rental rehabilitation actions." Section 8(u) of the 1937 Act, however, gives the PHA *discretion* to provide housing vouchers or certificates to families "who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or move from, the project."

In this NOFA, the appropriation proviso is met *by directing* the PHA to issue housing vouchers: (1) To eligible families that are forced, by rental rehabilitation activities, to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, and (2) to eligible families that would have to pay more than 50% of their adjusted income for rent after rehabilitation. Since section 8(o)(3) of the 1937 Act requires that families with a rent burden in excess of 50 percent of adjusted income be given a preference, HUD has adopted the 50 percent standard as the threshold of displacement. This approach ensures the availability of housing vouchers for the same class of rent-burdened families that are given a preference to housing vouchers under section 8(o)(3) of the 1937 Act. It also gives effect to section 8(u), by providing PHAs discretionary authority to provide housing vouchers to families with rent burdens between 30 and 50 percent of their adjusted income.

The following briefly describes the changes in the program requirements for use of housing vouchers in connection with the Rental Rehabilitation Program:

- In using its housing vouchers, a PHA must issue a housing voucher to any eligible applicant family that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, or whose rent would exceed 50 percent of its adjusted income, as a result of rental rehabilitation activities. HUD will allocate additional housing vouchers to a PHA, to the extent necessary, to ensure that PHAs can meet this obligation; and
- The PHA, in its discretion, may establish a preference for selecting eligible families whose rent would exceed 30 percent, but would not exceed 50 percent, of their adjusted income as a result of rental rehabilitation activities. A PHA must exercise this discretionary authority in a manner that is consistent with its obligations with respect to the Federal preferences, once it has implemented the Federal preference rule (see 24 CFR 882.219, as added by 53 FR 1122, 1152, January 15, 1988). If a PHA provides a housing voucher to a family that falls within this category, but is not eligible for a Federal preference, the family must be counted as part of the not more than 10 percent of applicants who do not qualify for a Federal preference, but may be issued housing vouchers before other applicants who do. There is no obstacle to a PHA employing its 10 percent exception to adopt a local preference for eligible families who encounter increased rent burdens in their rental rehabilitation units, but whose rent burden doesn't reach the level to qualify the families for a Federal preference.

To implement these policies, the Department is making the following changes in the February 1987 NOFA:

a. Paragraphs III.D.(a), *Invitations for Application for Housing Voucher Assistance in Connection with the Rental Rehabilitation Program,* and III.D.(b), *Procedures for State Rental Rehabilitation Programs* (see 52 FR 5258), have been removed from Part III. of this NOFA and paragraphs (c), (d) and (e) of section III.D. of the February 1987 NOFA have been relettered as paragraphs (a), (b), and (c), respectively, of section III.D. of this NOFA. A new paragraph (e) has been added to section III.E. of this NOFA to give PHAs involved in State-administered rental rehabilitation programs until August 31, 1988 to submit their applications for housing vouchers so that the State rental rehabilitation agencies can have sufficient time to identify the PHAs that need additional housing vouchers and the amount needed.

b. Paragraph (3) in section III.D.(b), *Invitations for Applications for Formula Allocation Housing Vouchers—Contents of Invitation,* of this NOFA is new. It requires HUD field offices to ensure that a PHA is provided sufficient housing vouchers to ensure that the PHA can comply with its obligations to rental rehabilitation families under section III.I.(e)(1)(i) of this NOFA.

c. Sections III.H., *Procedures in Connection with the Rental Rehabilitation Program,* and III.X., *Deobligation of Rental Rehabilitation Grants and Effect on Housing Voucher Budget Authority Provided in Connection with the Rental Rehabilitation Grants,* of the February 1987 NOFA have been removed. These are reserved in this NOFA to keep the lettering of sections consistent with the lettering in the February 1987 NOFA.

d. Section III.I.(e) of this NOFA is a revision of section III.I.(e) of the February 1987 NOFA (see 52 FR 5261–62). It contains the requirements, discussed above, concerning the PHA's obligation to provide housing vouchers to displaced and to 50 percent rent-burdened rental rehabilitation families and also the discretionary authority for PHA's to provide a preference to 30 to 50 percent rent-burdened rental rehabilitation families.

e. Section III.I.(f) has been revised in this NOFA to conform to the policies discussed above. (*Compare* section III.I.(f) of the February 1987 NOFA, 52 FR 5262, columns 1 and 2).

f. Paragraphs (c) and (d) in Section III.F. and paragraph (a) in section III.G. have been revised in this NOFA to conform to the policies discussed above (compare 52 FR 5259, columns 2 and 3 of the February 1987 NOFA).

6. Implementation of Section 103(b) of the HCD Act of 1987

Section 16(b) of the 1937 Act provides that no more than 5 percent of the dwelling units that become available under public housing annual contributions contracts and under Section 8 housing assistance payments contracts may be available for leasing to lower income families other than very low-income families. Section 103(b) of the HCD Act of 1987 amends section 16 to exempt from the percentage limitations in section 16(b) dwelling

units made available under Section 8 housing assistance contracts for the purpose of preventing displacement or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted family income, of lower income families from projects being assisted with rental rehabilitation grants. In order to implement this amendment, paragraphs (a) (2) and (3) and paragraphs (b) (1) and (2) of section III.I. have been revised to conform to this statutory amendment. (*Compare* sections III.I. (a) and (b) of the February 1987 NOFA at 52 FR 5260–62.)

7. Implementation of Federal Preferences Under Section 8(o)(3) of the 1937 Act

On January 15, 1988, the Department published a final rule implementing the statutory Federal preferences for the Public and Indian Housing and Section 8 Programs under the 1937 Act, and the Rent Supplement Program under section 101 of the Housing and Urban Development Act of 1965 (53 FR 1122). That final rule provided that the Department would publish a notice of effective date following expiration of the 30-session-day waiting period and that PHAs and owners must implement that rule for the affected programs no later than July 13, 1988.

The January 15, 1988 final rule did not contain implementing rule text for the Housing Voucher Program. Rather, it noted that the Department was developing a Housing Voucher Program final rule, which would include provisions to implement the Federal preferences that would be substantially similar to the implementation of the Certificate Program. As previously noted, the Department has not completed development of the Housing Voucher Program final rule. Paragraph (d)(1) of section III.I. of both the February 1987 NOFA and this NOFA incorporate 24 CFR 882.209(a). Section 882.209(a) was revised by the Federal Preference rule to require a PHA under the Certificate Program to implement the Federal preferences contained in § 882.216, which was added by the Preference rule. Paragraph (d)(1) of section III.I. of this NOFA, accordingly, has been revised to make it explicit that a PHA, when it implements the Federal preferences under its certificate program, must also implement the Federal preferences under its housing voucher program.

III. Housing Voucher Program Requirements

A. Definitions

For purposes of the Housing Voucher Program, the following definitions apply.

Act (1937 Act). The United States Housing Act of 1937.

Annual Contributions Contract (ACC). A written agreement between HUD and a PHA to provide annual contributions to the PHA for housing assistance payments and administrative fees.

Annual Income. See 24 CFR 813.106.

Congregate Housing. See section III.M.(b) of this Notice.

Decent, Safe, and Sanitary Housing. Housing that meets the housing quality standards of § 882.109.

Demolition/Disposition. The demolition of public housing buildings or disposition of public housing units. The PHA must obtain HUD approval for demolition or disposition under 24 CFR Part 970.

Eligible Family (Family). A family as defined in 24 CFR Part 812 that, at the time it initially receives assistance under the Housing Voucher Program, (1) qualifies as a very low-income family or as a lower income family displaced by rental rehabilitation program activity under 24 CFR Part 511 (see section III.I. of this Notice); or (2) has been continuously assisted under the 1937 Act.

Housing Assistance Payment. The monthly payment by the PHA to an owner on behalf of a family participating in the Housing Voucher Program. Generally, the amount of the housing assistance payment is determined by subtracting 30 percent of a family's monthly adjusted income from the payment standard that applies to the family. For additional details see section III.J. of this NOFA.

Housing Voucher. A document issued by a PHA declaring a family to be eligible for participation in the Housing Voucher Program and stating the terms and conditions for the family's participation.

Housing Voucher Contract (Contract). A written contract between a PHA and an owner, in the form prescribed by HUD for the Housing Voucher Program, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible family.

HUD. The Department of Housing and Urban Development or its designee.

Independent Group Residence (IGR). See section III.M.(b) of this Notice.

Initial PHA. A PHA administering a Housing Voucher Program with a housing voucher holder or housing voucher participant who desires to move, or who has moved, to another area under the portability procedures in section III.L.(d).

Lease. A written agreement between an owner and a family for the leasing of a dwelling unit by the owner to the family, with assistance payments under a housing voucher contract between the owner and the PHA.

Lower Income Family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Occupancy Standards. Standards established by the PHA for determining the appropriate number of bedrooms for families of different sizes and compositions.

Opt Out. (1) A Section 8 New Construction (Part 880) or Substantial Rehabilitation (Part 881) project, where the owner has the sole option to renew for an additional term of assistance under the Section 8 Housing Assistance Payments Program, but elects not to renew; or (2) a Section 8 Loan Management Set-Aside project (Part 886, Subpart A) where the project-based housing assistance payments contract ends.

Owner. Any person or entity having the legal right to lease or sublease decent, safe, and sanitary housing.

Participant. A family becomes a participant in the PHA's Housing Voucher Program when the PHA executes a housing voucher contract with an owner for housing assistance payments on behalf of the family.

Payment Standard. (See section III.J. of this Notice.)

PHA Jurisdiction. The area in which the PHA is not legally barred from entering into housing voucher contracts.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of lower income housing.

Receiving PHA. A PHA administering a Section 8 Certificate or Housing Voucher Program that accepts a housing voucher holder or housing voucher participant from another PHA under the portability procedures of section III.L.(d) of this Notice.

Rent to Owner. The sum of the amount that will be paid by the PHA to

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the owner on behalf of a family under the housing voucher contract and the amount that will be paid by the family to the owner to cover the balance of the rent payable to the owner under the lease.

Single Room Occupancy (SRO) Housing. A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities (as those facilities are defined in 24 CFR 882.109 (a) and (b)), and which is suitable for occupancy by a single eligible individual capable of independent living. (See also section III.M.(c) of this Notice.)

Targeted Housing Voucher. Circumstances in which HUD provides housing voucher funding specifically for families living in certain types of projects. These types of projects include: demolition/disposition projects, opt out projects, rental rehabilitation projects, transitional housing, and public housing units for desegregation purposes.

Unit Size. The number of bedrooms in a dwelling unit.

Utility Allowance. An amount that applies when the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the rent to owner, but is the responsibility of the family. The allowance is an amount equaling the estimate made or approved by the PHA of the monthly costs of a reasonable consumption of these utilities and other services for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility Reimbursement. Concept applies when the rent to the owner does not include some or all of the utilities and the family is responsible for them. The utility reimbursement is the excess of the housing assistance payment over the amount payable to the owner by the PHA.

Very Low-Income Family. A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voucher. See Housing Voucher.

Voucher Contract (Contract). See Housing Voucher Contract.

B. Applicability and Purpose

(a) *Applicability.* The provisions of this Part III apply to the use of budget authority for all housing voucher assistance authorized by Section 8(o) of the 1937 Act. Requirements that apply to some, but not all, Housing Voucher Program components also are contained in Part III, but are distinguished from the generally applicable requirements. By cross reference, provisions of the regulations for the Section 8 Existing Housing (Certificate) Program (24 CFR Parts 812, 813 and 882, Subparts A and B) are incorporated in this Notice and also apply to the Housing Voucher Program. Unless otherwise specified, references to particular section numbers (e.g., § 882.110) are to regulations in Title 24 of the Code of Federal Regulations. Provisions that apply only to a limited number of components of the Housing Voucher Program are noted within the generally applicable provisions.

(b) *Purpose.* The purpose of the Housing Voucher Program is to assist eligible families in affording rents for decent, safe, and sanitary housing.

C. Equal Opportunity Requirements

Participation in the Housing Voucher Program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all related rules, regulations and other requirements. In addition, failure to comply with these equal opportunity requirements will result in the imposition of sanctions under applicable civil rights law.

D. Allocations of Funding and Invitations for Applications

(a) Invitations for Applications for Formula Allocation Housing Vouchers—Allocation of Funding

The Department will allocate a portion of the current year's housing voucher funding to its Regional Offices, using a formula allocation that is patterned after 24 CFR Part 791. Each Regional Office may determine the amounts of housing voucher funding to be used for individual PHAs or it may delegate these decisions to its Field Offices.

(b) Invitations for Applications for Formula Allocation Housing Vouchers—Contents of Invitation

(1) Upon receipt of their funding allocation, the Regional or Field Offices will invite PHAs to submit applications to the appropriate Field Office.

(2) The Department generally considers 50 housing vouchers to be the minimum program size for cost-effective administration of a Housing Voucher Program. For this reason, HUD will not approve an initial application for fewer than 50 housing vouchers, unless a PHA specifically requests fewer housing vouchers. (This initial minimum need only be met once, and does not apply to additional allocations. This minimum does not apply to any of the special use allocations made by Headquarters.) Every effort will be made to provide sufficiently large allocations of housing vouchers to individual PHAs to facilitate program administration and economies of scale.

(3) In determining which PHAs will be invited to submit applications and the number of housing vouchers to be approved, the Field Office must consider the extent to which the PHA has housing vouchers or certificates available for use by rental rehabilitation families. If a PHA does not have sufficient housing vouchers or certificates available for families that will be physically displaced or will have an after-rehabilitation rent burden in excess of 50 percent of adjusted income, the Field Office shall provide sufficient housing vouchers to ensure that the PHA can comply with its obligations under section III.I.(e)(1)(i) of this NOFA.

(c) Allocations for Desegregation of Public Housing

HUD may provide housing voucher funding to a PHA for desegregation of public housing projects. The funding must be used in accordance with the PHA's HUD-approved administrative plan, modified to reflect revisions required by HUD to provide housing vouchers for families living in public housing projects or applicants on the PHA's public housing waiting list. The funding may be provided if HUD determines the following criteria have been met:

(1) The PHA has been found in preliminary noncompliance with Title VI of the Civil Rights Act of 1964 because of discriminatory practices or policies that resulted in segregated public housing projects, and, consistent with that finding—

(i) The PHA has entered into a compliance agreement and has carried out its obligations under the agreement but, because of circumstances beyond the PHA's control, has not succeeded in desegregating its projects; or

(ii) It is determined during the course of compliance agreement negotiations that the PHA could not develop and implement a meaningful plan to desegregate its project(s) without housing vouchers; and

(2) The racial characteristics of the PHA's public housing project occupants and the length and racial composition of the public housing waiting list is such that providing housing vouchers to a limited number of public housing tenants or applicants would facilitate the desegregation of public housing projects.

E. Submission of Applications

(a) The PHA must submit its application for the Housing Voucher Program in accordance with § 882.204, with the following exceptions:

(1) Equal Opportunity Housing Plan

Each PHA must submit an equal opportunity housing plan as required under § 882.204(b)(1), except that it must be a combined plan covering the PHA's entire Certificate Program and Housing Voucher Program. The plan must include any special rules for use of housing vouchers in connection with any program component identified in this Notice.

(2) Administrative Plan

Each PHA must submit an administrative plan as required under § 882.204(b)(3), except it must be a combined plan covering the PHA's Certificate Program and Housing Voucher Program. Applicable special functions related to housing vouchers—such as special procedures for selection of families in connection with the Rental Rehabilitation Program, targeted, freestanding, or small/rural components—must be covered. (Some functions, such as computation of the family rent in accordance with section 3(a) of the 1937 Act, and contract rent adjustments, do not apply to the Housing Voucher Program.)

(b) For all components of the Housing Voucher Program, the application must include estimates of gross family income of families to be assisted.

(c) For targeted housing vouchers only, the application must identify the size and composition of families to be assisted.

(d) If applicable, the PHA must describe its local housing initiatives in support of its Section 8 Certificate and Housing Voucher Programs. The application should specify the size of its combined Section 8 Existing Certificate and Housing Voucher Programs and what local services, facilities, or funding are provided in support of the program. If the PHA operates a Section 8 Program that currently does not receive local support, but there are plans for locally generated support in fiscal year 1988 (and beyond), the PHA should describe these plans, including a schedule for implementation.

(e) A PHA that is submitting an application for housing vouchers, based in whole or part on a need to assist families in a State-administered rental rehabilitation program, must submit its application by August 31, 1988.

F. Processing of Housing Voucher Applications

(a) Processing of Applications

(1) HUD will send applications for more than 12 units to the appropriate chief executive officer of the unit of general local government for review and comment. This submission will be in accordance with 24 CFR Part 791, as required by section 213 of the Housing and Community Development Act of 1974.

(2) HUD will evaluate each application on the basis of the requirements of this Notice and other program requirements, and will consider any comments received from the unit of general local government. HUD also will take into account the PHA's ability to administer the Housing Voucher Program, as evidenced, in part, by its performance in operating the Certificate Program, where applicable.

(b) Application Preferences

(1) Preference will be given to an application from a PHA that demonstrates locally initiated efforts in support of its Section 8 Certificate and Housing Voucher Programs. This preference takes precedence over the other two preferences listed, and Field Offices will attempt to fund applications which demonstrate these locally-generated efforts before evaluating applications indicating eligibility only for the other preferences. Evaluation of a locality's contribution will be measured competitively—that is, by the extent to which a locality is able to provide services or cash contributions, or to demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(2) Preference may be given to applications from PHAs that provide families with the broadest geographical choice of housing, including interjurisdictional and interstate housing choice.

(3) Preference may be given to applications from PHAs whose needs previously have been underfunded in relation to the needs of other localities within the allocation area.

(c) Approval or Disapproval of Applications

HUD will notify the PHA, whether HUD has approved or disapproved the PHA's application. Where HUD has disapproved an application, HUD will include a statement of the reasons and, where applicable, the changes required to make the application approvable.

(d) Processing of Applications: Procedures (Memorandum of Understanding) for the Rental Rehabilitation Program

In processing applications for housing vouchers, HUD requires that the PHA in an area covered by the Rental Rehabilitation Program and the grantee under the Rental Rehabilitation Program execute a memorandum of understanding setting forth the responsibilities of each party and the procedures to be followed in coordinating the use of authority for housing vouchers for eligible applicant families in rental rehabilitation projects. Where a State is distributing the Rental Rehabilitation grant amounts to units of general local government (State recipients), the PHA and the State recipient must execute the memorandum of understanding. Before HUD and the PHA execute an ACC for the housing vouchers, the memorandum must be executed by both parties and the PHA must submit a certification to HUD that both parties have executed the memorandum and it is consistent with the PHA's HUD-approved administrative and equal opportunity plans. If there is any inconsistency between the PHA's administrative plan and the memorandum of understanding, the administrative plan prevails.

G. Annual Contributions Contract

(a) ACC Execution

HUD will execute the ACC with the PHA, in a form prescribed by HUD, in accordance with § 882.208, after HUD approves the application for housing voucher assistance. HUD will not execute the ACC, unless it also has received the PHA certification that the PHA and the grantee under the Rental Rehabilitation Program have executed a memorandum of understanding as required under section III.F.(d) of this Notice.

(b) Term of ACC for Funding Increment

The ACC term for each funding increment under the ACC is five years.

(c) ACC

HUD and the PHA will execute one ACC document covering all of the funding increments for the PHA's Housing Voucher Program. However, where (as in the case of some statewide PHAs) the area for which the PHA may execute housing voucher contracts is within the jurisdiction of more than one

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HUD Field Office, HUD may require one ACC for each Office.

(d) Amount of Annual Contributions

(1) The total amount of annual contributions contracted for in the ACC for the five-year ACC term for each funding increment will be five times the total of (i) the average HUD-estimated annual PHA administrative fee plus (ii) 115 percent of the amount that HUD estimates would be required in the first year of the ACC for housing assistance payments to owners, assuming a full year of occupancy.

(2) The PHA must plan administration of its Housing Voucher Program in a manner that will ensure its operation within the amounts originally contracted for under the ACC, taking into account (i) the amounts available from reserving 15 percent more than the estimated housing assistance payments for the first year and (ii) the number of families that may be assisted (including consideration of the effect of a revised payment standard under section III.J., to assure continued affordability; changes in family income and composition; and portability of housing vouchers). HUD does not intend to make any ACC amendments to provide additional funding for the purpose of maintaining a particular number of assisted families.

H. [Reserved]

I. Selecting Families and Issuing Housing Vouchers

(a) Eligible Families

(1) A family is eligible for assistance under the Housing Voucher Program if, at the time it initially receives assistance under the program, the family:

(i) Qualifies as a very low-income family;

(ii) Qualifies as a lower income family (other than very low-income) and is displaced by rental rehabilitation activity under 24 CFR Part 511; or

(iii) Has been continuously assisted under the U.S. Housing Act of 1937.

(2) In interpreting paragraph (a)(1)(ii) of this section, the following rules apply. A lower income family in a rental rehabilitation project that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, is considered "displaced". A lower income family that lives in a project undergoing rental rehabilitation activities whose post-rehabilitation rent would not be affordable is not considered "displaced" for this reason alone, for purposes of determining housing voucher eligibility. (Such a family may be issued a certificate to assist in paying the higher rent or in finding another unit; unlike housing vouchers, certificates are not subject to the statutory requirement for actual displacement as a condition of eligibility for a lower income family that is not a very low-income family.)

(b) Compliance With Section 16 of the U.S. Housing Act of 1937

Section 16 restricts to five percent nationally the number of lower income families with incomes above 50 percent of median income that may be assisted under the 1937 Act (both Section 8 and public housing). The only families with incomes above 50 percent of median income who are eligible for housing vouchers are: (i) Families that have been continuously assisted under the 1937 Act and (ii) lower income families who are displaced by Rental Rehabilitation activities. All other families must be very low-income families to be eligible for housing vouchers. Section 103(b) of the HCD Act of 1987 amended section 16 of the 1937 Act to exempt from the percentage limitation dwelling units made available under Section 8 housing assistance contracts for the purpose of preventing displacement, or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted income, of lower income families from projects being rehabilitated with assistance under the Rental Rehabilitation Program. Thus, as a result of the section 103(b) amendment to section 16, the only units made available under the Housing Voucher Program that are subject to the section 16 percentage limitation are units made available to families with incomes above 50 percent of median income that are continuously assisted families under the 1937 Act. (Certificates made available under the program for the purpose of preventing displacement, or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted income, of lower income families from projects being rehabilitated with assistance under the Rental Rehabilitation Program are not subject to the section 16 percentage limitation.)

(c) Activities to Encourage Participation by Owners and Others

The PHA must encourage participation by owners and others in the Housing Voucher Program, as required under § 882.208 for the Section 8 Certificate Program.

(d) Selecting Families; Issuing Housing Vouchers: Generally Applicable Procedures

(1) The PHA must select eligible families for participation in accordance with § 882.209(a), except for the provisions in § 882.209(a)(4)(ii), which are specifically modified by paragraphs (e) and (f) of this section. Section 882.209(a)(2), as revised by 53 FR 1122, at 1152, January 15, 1988, requires a PHA to give a Federal preference in selecting applicants for participation in accordance with § 882.219, which was added by the same rulemaking. As noted above, a PHA must implement the Federal preferences for its housing voucher program at the same time that it implements those preferences for its certificate program.

(2) The PHA must verify the sources of income and other information concerning the family necessary to determine eligibility and the amount of the housing assistance payment.

(3) The PHA must issue housing vouchers in accordance with its occupancy standards established under § 882.209(b) and this Notice; however, if a family rents a unit with a larger or smaller number of bedrooms than stated on the housing voucher, section III.N.(c) of this Notice applies. The PHA must issue a housing voucher for a particular number of bedrooms, consistent with its occupancy standards and consistently for all families of like composition.

(4)(i) If an applicant on the PHA's waiting list is offered a housing voucher (except the offer of assistance in paragraph (4)(ii) or (4)(iii) of this section) the family will not lose its place for refusing the housing voucher, if it desires to wait for a certificate. Conversely, the family will not lose its place on the waiting list for refusing a certificate, if it desires to wait for a housing voucher. However, if the family refuses the second form of assistance when it is offered, the family must be taken off the waiting list. If the family so requests, it will be reinstated on the waiting list, but only in conformance with the PHA's HUD-approved administrative plan and equal opportunity housing plan.

(ii) In selecting applicants for participation in the Freestanding Demonstration, the PHA must offer an available certificate and housing voucher to a pair of families on the waiting list that qualify for the same size unit under the PHA's occupancy policy.

(iii) In selecting applicants for participation in the Small/Rural Demonstration, the PHA must offer an available housing voucher to the next family on the waiting list that qualifies for the unit size of the available housing voucher under the PHA's occupancy standards.

(iv) If an applicant is offered a housing voucher on the condition that the applicant initially must use the housing voucher in a Part 511 rental rehabilitation project, the refusal of the applicant to accept the housing voucher will not be counted as refusal to accept one form of assistance under paragraph (d)(4)(i) of this section.

(e) Selecting Families—Targeting Assistance to Applicants Living in Certain Projects

(1) In selecting families for participation:

(i) A PHA must issue a housing voucher to any eligible applicant family that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, or whose rent would exceed 50 percent of its adjusted income, as a result of rental rehabilitation activities under Part 511 of this title; and

(ii) In its discretion, a PHA may provide a selection preference to an eligible family whose rent would be between 30 and 50 percent of its adjusted income as a result of rental rehabilitation activities under Part 511 of this title. A PHA must exercise this discretionary authority in a manner that is consistent with its obligations with respect to the Federal preferences once it has implemented the Federal Preference rule (see 24 CFR 882.219, as added by 53 FR 1122, 1152, January 15, 1988). If a PHA provides a housing voucher to a family who falls within this category but is not eligible for a Federal preference, the family must be counted as part of the not more than 10 percent of applicants that may be issued housing vouchers before applicants who qualify for a Federal preference. After the grantee approves a rental rehabilitation project, the PHA must issue any needed housing vouchers to families living in the project to be rehabilitated. The housing vouchers must be issued so as to give families sufficient time to decide whether to move (where they are not required to move) and to give them time to locate other units (where they are required to move or choose to move).

(2) Except as provided in paragraph (e)(1) of this section and in this paragraph (e)(2), the PHA may not otherwise establish a selection preference based on the identity or location of the housing which is occupied by the applicant. If HUD provides housing voucher funding to a PHA for families living in any of the following types of projects, the PHA must use the housing vouchers initially to assist families living in the projects:

(i) Public housing units that are being demolished or disposed of with HUD approval;

(ii) Section 8 New Construction (Part 880) or Substantial Rehabilitation (Part 881) projects where the owner has sole discretion to opt-out of an additional term of assistant under the Section 8 Housing Assistance Payment Program and does so;

(iii) Section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the project-based housing assistance payments contract ends;

(iv) Section 221(d)(3) below market interest rate insured projects or Section 236 insured projects where the owner prepays the mortgage and prior HUD approval is not required;

(v) Public housing units, where HUD has made a determination under section III.D.(c) of this Notice that housing voucher funding is necessary for the desegregation of the PHA's public housing (but, see also paragraph (f)(1) of this section, which describes a concurrent use authorized for these housing vouchers); and

(vi) Transitional housing developed under the Department's Transitional Housing Demonstration Program involving applications submitted in response to the August 7, 1987 deadline (see 52 FR 21743, June 9, 1987). A PHA may use housing voucher authority for general program purposes provided it can ensure, to the extent of funding provided for this purpose, the availability of housing vouchers to eligible homeless persons upon their departure from transitional housing.

(3) If the PHA issues a housing voucher to a family living in any of the projects identified in paragraph (e)(1) or (e)(2) of this section, the family may use the assistance for an eligible unit located anywhere in the PHA's jurisdiction, consistent with the "finders-keepers" policy described in section III.K. of this Notice.

(f) Selecting Families—Targeting Assistance to Families on the PHA's Waiting List

The following rules also apply to the PHA in selecting families to assist.

(1) If HUD has provided housing voucher assistance based on a determination under section III.D.(c) of this Notice, to assist in the desegregation of the PHA's public housing, the PHA must issue housing vouchers to eligible families on the PHA's public housing waiting list (or to families living in public housing in accordance with paragraph (e)(2)(v) of this section). The family may use the assistance for an eligible unit located anywhere in the PHA's jurisdiction, consistent with the "finders-keepers" policy described in section III.K. of this Notice.

(2) If a rental rehabilitation grantee so requests and subject to its obligation to issue housing vouchers to rental rehabilitation families under section III.I.(e)(1)(i), the PHA may offer housing vouchers to families from its Section 8 waiting list who agree to move initially into a rehabilitated project. The following rules apply:

(i) In using the housing vouchers for the families selected from the PHA's waiting list, the PHA is limited to the total number of housing vouchers allocated in connection with rental rehabilitation in fiscal years 1984, 1985, and 1986. (For example, if the PHA received 15 housing vouchers in connection with a fiscal year 1984 rental rehabilitation project; and 50 in connection with a fiscal year 1986 rental rehabilitation project the PHA may target no more than 65 housing vouchers to families on its waiting list.)

(ii) A family who accepts a housing voucher under this paragraph (f)(2) must first use the housing voucher to occupy a dwelling unit rehabilitated under the Part 511 Rental Rehabilitation Program and specifically identified by the PHA when the housing voucher was offered.

(iii) Any housing vouchers issued under this paragraph must be issued to the families selected from the PHA's waiting list approximately 60 days before the estimated completion date for the rehabilitation work.

(g) PHA Briefing of Families

The PHA must brief each family in accordance with § 882.209(c), and must include information on the range of neighborhoods in which the family may find units meeting program requirements and information on possibilities for participating in available portability programs, as described in section III.L. of this Notice. Section 882.209(c)(7) does not apply. Instead, the PHA must brief the family on the function of the payment standard, determination of the housing assistance payment, the incentive for selecting a unit renting for less than the payment standard, and the minimum rent the family must pay. In jurisdictions in which the PHA is administering both a Section 8 Certificate Program and a Housing Voucher Program, the PHA also must explain how the principal features of the Housing Voucher Program differ from the Section 8 Existing Certificate Program.

(h) Housing Voucher Packet

The PHA must give each family a housing voucher packet in accordance with § 882.209(b)(4), except that instead of information on the Total Tenant Payment and the Tenant Rent, the PHA must give the family information on how the PHA computes the housing assistance payments. The PHA also must provide to the family as complete information as possible about available rental rehabilitation projects as possible places for the family to find housing.

(i) Term of Housing Voucher

Section 882.209(d), Expiration and Extension of Certificate, applies to housing vouchers issued in the Housing Voucher Program.

J. Housing Voucher Payments

(a) Overview

The determination of the amount of assistance provided a family in the Housing Voucher Program is based on the concept of the payment standard. Each PHA adopts a schedule of payment standard amounts, broken down by unit size and Fair Market Rent area. The amount of housing assistance paid on behalf of a family is determined by subtracting 30 percent of a family's monthly adjusted income (as determined under Part 813) from the payment standard amount applicable to the family (and subject to the minimum rent calculation in paragraph (d)(3) of this section.) To assure affordability, the PHA, at its discretion, may revise its payment standard amounts no more frequently than annually. The family's housing assistance payment also may change if the family's income or composition changes. This section J. explains how the housing assistance payments system works.

(b) Definition

(1) *General.* A payment standard is an amount used to calculate the housing assistance a family will receive in the PHA's Housing Voucher Program. The PHA must establish a schedule of payment standard amounts by unit size (single room occupancy, zero-bedroom, one-bedroom, etc.) and Fair Market Rent area. There is only one payment standard schedule in effect at any given time.

(2) *Single Room Occupancy Payment Standard.* Any PHA that wishes to utilize SRO housing must propose for HUD approval an SRO payment standard for the PHA's jurisdiction. The PHA may propose a payment standard amount that is within the range of 75 to 100 percent of the applicable published 0-bedroom Fair Market Rent or the HUD-approved, community-wide exception rent. Within this range, the proposed payment standard must reflect the presence of sanitary facilities or food preparation facilities, or the absence of both and what must be paid to obtain privately owned, existing, decent, safe, and sanitary rental SRO housing of modest (non-luxury) nature with suitable amenities.

(3) *Independent Group Residence Payment Standard.* The payment standard for a participant in an IGR is determined by dividing the dollar amount of the payment standard for the entire residence (for example, the 4-bedroom payment standard for a 4-bedroom residence) by the total number of potential occupants (assisted or unassisted), excluding a resident assistant (if any) occupying no more than one bedroom.

(c) Adoption of Payment Standard

Each PHA administering a Housing Voucher Program must adopt a schedule of payment standard. The following apply:

(1) For a PHA that receives its first increment of funding in fiscal year 1988, or a PHA that had its first increment of funding reserved in a previous year, but does not yet have an executed ACC, the payment standard schedule amounts must be the same as the Fair Market Rents published for effect or the HUD-approved community-wide exception rents at the time the ACC is executed by HUD.

(2) For a PHA that executed an ACC for its first increment of funding in fiscal year 1987 on or after February 19, 1987, the payment standard amounts must be the same as the Fair Market Rents published for effect or the HUD-approved community-wide exception rents at the time the ACC was executed by HUD, as modified by any changes in the payment standard amounts that have been made in accordance with program requirements in effect when the payment standard changes were made.

(3) For a PHA that received a previous increment of funding for which the ACC was executed before February 19, 1987, the payment standard schedule amounts must be amounts that have been adopted by the PHA, which are anywhere between (i) its initial payment standard (*i.e.*, the Fair Market Rents in effect when the ACC was executed for the first funding increment) and (ii) the Fair Market Rents published for effect or the HUD-approved community-wide exception rents at the time of adoption of the payment standard schedule, as modified by any changes in the payment standard amounts made in accordance with program requirements in effect when the payment standard changes were made.

(4) A payment standard may never exceed the applicable Fair Market Rent published for effect or the HUD-approved community-wide exception rent.

(d) How to Use the Payment Standard

(1) The PHA uses the payment standard schedule to determine what payment standard amount applies to a particular family's circumstances. The appropriate amount is determined by the family size and composition and the PHA's occupancy standards. Once the payment standard amount is determined from the schedule, the PHA subtracts 30 percent of the family's monthly adjusted income (as computed under Part 813) to arrive at the amount of assistance the PHA will provide to the owner on behalf of the family. (For example, if a family qualifies for a four-bedroom housing voucher and has a monthly adjusted income of $500, and the payment standard for a four-bedroom housing voucher is $600, the housing assistance payment for the family is the payment standard ($600) minus 30 percent of the family's monthly adjusted income ($150) or $450.) Before entering into a housing voucher contract with the owner for this amount, the PHA must complete the "minimum rent" calculation in paragraph (d)(3) of this section to ensure that the family is paying at least the minimum amount required by law.

(2) If a unit rents for more than the payment standard, the housing assistance payment is not increased, nor, as in the Certificate Program, is the family told it must find another unit. Instead, the family may pay the entire difference between the rent to the owner and the housing voucher assistance. If the unit rents for less than the payment standard, the family benefits by paying less than 30 percent of its monthly adjusted income toward rent, subject to the minimum rent calculation.

(3) The family must contribute at least 10 percent of its monthly gross income for rent. The PHA must ensure that the housing assistance is not greater than the difference between the rent to owner, plus any applicable utility allowance, and 10 percent of the family's monthly gross income, determined in accordance with Part 813. (This is the only time that actual rent for a unit is used to make a housing assistance payment calculation.)

(4) The payment standard schedule adopted by a PHA is the payment standard schedule the PHA uses to determine all housing assistance payments for all families in the PHA's

Housing Voucher Program, until the payment standard schedule is amended by an affordability adjustment under the procedures of paragraph (e) of this section.

(e) Changing the Payment Standard: Affordability Adjustments

(1) *General.* To assure continued affordability, the PHA may, in its discretion adopt annual affordability adjustments for each unit size and each FMR area, using the funds available under the current ACC.

(2) *Previously adopted affordability adjustments.* Affordability adjustments may be adopted for a single unit size. Any previous adjustment standard schedules that adjusted the payment standard amounts for particular unit sizes are counted only as affordability adjustments for the particular unit size(s) for which the payment standard amount was increased, but not as an affordability adjustment for the PHA's entire Housing Voucher Program.

(3) *Affordability cap.* An affordability adjustment may not cause the payment standard amount for the unit size to exceed the dollar amounts of the published FMRs or the HUD-approved community-wide exception rent for the unit size in effect at the time of the adjustment.

(f) Changing the Payment Standard Schedule: Lower FMRs

When FMRs are published for effect in the **Federal Register** and the FMRs are lower than the amounts in the PHA's payment standard schedule (as amended by any affordability adjustments), the PHA must adopt new payment standards, using the lower, effective FMRs or the HUD-approved, community-wide exception rents.

(g) When a Family's Payment Standard May Change

The only times the payment standard that is applied to a family may change are:

(1) At regular reexamination (see rules for regular reexamination in paragraph (h) of this section); or

(2) At the time a family moves to another unit (see paragraph (i) of this section for additional details).

(h) Rules at Regular Reexamination

(1) The payment standard that applied to a family at the time of initial lease approval for the unit or at its most recent regular reexamination continues to be used to determine the amount of housing assistance to be paid on behalf of the family unless one of the following circumstances applies:

(i) The PHA has adopted an affordability adjustment revising the payment standard applicable to the family;

(ii) The PHA has adopted new occupancy standards. In this case, the payment standard for the appropriate unit size under the PHA's new occupancy standards is used;

(iii) The family's size or composition has changed. In this case, the payment standard for the appropriate unit size is used.

(2) Unless there has been a change in family size or composition or a change in the PHA's occupancy standards, the payment standard for a particular family at the time of reexamination may not be determined to be less than the payment standard previously used for the family.

(i) Rule When a Family Moves

The payment standard that applied to a family at the time of initial lease approval for the unit or at its most recent regular reexamination continues to be used to determine the amount of housing assistance to be paid on behalf of the family, unless one of the following circumstances applies:

(1) The PHA has adopted a new payment standard or an affordability adjustment revising the payment standard applicable to the family;

(2) The PHA has adopted new occupancy standards. In this case, the payment standard for the appropriate size under the PHA's new occupancy standards is used;

(3) The family's size or composition has changed. In this case, the payment standard for the appropriate unit size is used.

(j) Request for Interim Reexamination

A family may request an interim reexamination of income, as provided for in section III.Q. of this Notice, which may result in a change in family income or adjusted income, but not in the payment standard applicable to the family.

(k) Prohibition Against Double Subsidy

In no event may any family receive the benefit of housing voucher assistance while receiving one of the following: Other section 8 or section 23 housing assistance; section 101 rent supplements; section 236 rental assistance payments; or other duplicative Federal, State or local housing subsidy, as determined by HUD. In the case of section 236 units having only interest reduction subsidy (insured or noninsured) the duplicative subsidy must be prevented by the owner's setting the unit rent to owner for a housing voucher participant at the lesser of the market rent for the unit, as approved by HUD, or the payment standard, but not less than basic rent.

(l) No Payments for Vacancies

If a family moves from the unit, the owner must notify the PHA promptly, and the PHA may not make any additional housing assistance payments to the owner for any month after the month in which the family moves. The owner may retain the housing assistance payment for the month during which the family moves.

(m) Utility Reimbursement

(1) Where the rent to the owner does not include some or all utilities and the family pays the utility company directly, occasionally the housing assistance payment will exceed the rent to the owner for the unit. In such a case, the PHA must pay to the family as a utility reimbursement the excess of the housing assistance payment over the rent payable to the owner. (Without this reimbursement, the family's housing assistance payment would be less than the amount for which the family is eligible under the subsidy formula.) For example, if the payment standard amount is $500, and $120 is 30 percent of a family's monthly adjusted income, the housing assistance payment would be $380. If the rent to owner is $350, and the utility allowance is $150, the PHA pays $350 to the owner and the remaining $30 of the housing voucher payment to the family as a utility reimbursement.

(2) If the family and the utility company consent, the PHA may pay the utility reimbursement jointly to the family and the utility company or directly to the utility company.

(n) Assisting More Families

If a PHA determines that some or all of the available annual contributions under its ACC are not needed for participating families, including future adjustments of housing assistance payments and portability moves, it may assist more families.

K. Finders-Keepers Policy

Except as described in paragraph K.(c) below, this section sets forth the same policy that applies to the Certificate Program.

(a) A family with a housing voucher is responsible for finding a housing unit suitable to the family's needs and desires in any area where the PHA (including the receiving PHA when the family is participating under the portability procedures in section III.L. of this Notice) determines that it is not legally barred from entering into contracts. A family may select the dwelling unit that it already occupies, if the unit is approvable. Upon request, the PHA must assist a family in finding a unit in circumstances where, because of age, handicap, large family size or other reasons, the family is unable to locate an approvable unit. The PHA also must provide assistance where the family alleges that illegal discrimination on grounds of race, color, religion, sex, national origin, age, or handicap is preventing it from finding a suitable unit, and in appropriate cases must provide the family with a copy of a Form HUD-903 for use in filing a housing discrimination complaint. This assistance must be in accordance with the PHA's approved equal opportunity housing plan.

(b) Neither in assisting a family in finding a unit nor by any other action may the PHA directly or indirectly reduce the family's opportunity to choose among the available units in the housing market.

(c) This section III.K. applies to any family to which a housing voucher is issued by a PHA. The finders-keepers policy does not apply to the first occupancy by a family on the PHA's waiting list that is issued a housing voucher because the family agrees to move initially into a project rehabilitated under the Rental Rehabilitation Program, when applicable (see section III.I.(f)(2) of this Notice). However, after initial use of the housing voucher in the rehabilitated project, the family is free to move to any other approvable unit in the PHA's jurisdiction, consistent with the Finders-Keepers policy, or to move to another PHA's jurisdiction under section III.L. of this Notice.

L. Portability of Housing Vouchers

(a) General Introduction

(1) This section III.L. describes portability procedures for families participating in the Housing Voucher Program. Housing voucher portability procedures are not intended to supplant current voluntary mobility programs for the Section 8 Certificate Program that PHAs may determine to extend to housing voucher participants.

(2) If a PHA is administering a Housing Voucher Program in the location to which a family (housing voucher holder or participant) wishes to move, the PHA must accept the family and provide services to the family as if the family were a participant in its Housing Voucher Program. Where a PHA is not administering a Housing Voucher Program, the PHA is encouraged to administer the housing voucher assistance on behalf of the family or to issue the family one of the receiving PHA's available Section 8 certificates. The details of the housing voucher portability program are discussed in paragraph (d) of this section.

(b) Mobility Under Current Section 8 Procedures

Current § 882.103(c) of the regulations for the Section 8 Certificate Program encourages PHAs to promote greater choice of housing opportunities for eligible families by:

(1) Seeking participation of owners within the PHA's jurisdiction;

(2) Advising families of their opportunities to lease housing throughout the PHA's jurisdiction;

(3) Cooperating with other PHAs by issuing certificates to families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another; and

(4) Entering into administrative arrangements with other PHAs in order to permit certificate holders to seek housing in the broadest range of areas.

(c) Applicability of Current Mobility Procedures

Current procedures for the Section 8 Existing Housing Certificate Program designed to facilitate mobility of assisted families, discussed in paragraph (b) of this section, apply to the Housing Voucher Program, wherever feasible to increase the opportunities of families participating in the Housing Voucher Program. If the family desires to move and can move with the opportunity for continued housing voucher or certificate assistance under a voluntary mobility program described in paragraph (b) of this section, the PHA is not required to use the portability procedures described in paragragh (d) of this section.

(d) Portability Under the Housing Voucher Program

(1) *Scope.* The procedures in this paragraph (d) are to be used only for the Housing Voucher Program.

(2) *General.* The purpose of this paragraph (d) is to establish procedures to be used in the Housing Voucher Program when a family desires to stay in the program, but wishes to move outside its current PHA's jurisdiction.

(i) Portability will provide an opportunity to a housing voucher holder or participant to move to any other housing voucher jurisdiction, by requiring the receiving PHA to accept the family, subject to the limitations identified in this paragraph (d). The receiving PHA may choose to bill the initial PHA for assistance payments made on behalf of the family, or it may decide to provide housing voucher assistance to the family under its own ACC.

(ii) This portability feature also promotes moves of housing voucher holders or participants to non-housing voucher jurisdictions by encouraging PHAs with certificate programs to participate on a voluntary basis. If the family chooses to move to an area without a Housing Voucher Program, the receiving PHA is not required to accept the family. The receiving PHA may administer the housing voucher and bill the initial PHA, or it may issue the family one of its certificates.

(3) *Eligibility for portability.* A family is eligible for portability if it lives in the initial PHA's jurisdiction and holds a current housing voucher, or if the family is a current participant (see § 882.209(a)) in the initial PHA's Housing Voucher Program.

(4) *Determination to deny or terminate assistance.* Either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 882.210, as modified by section III.S. of this Notice.

(5) *Responsibilities of the Initial PHA.* (i) The initial PHA must manage its Housing Voucher Program in a manner that will assure that it has the financial ability to provide continued housing voucher assistance in accordance with these portability procedures.

(ii) The initial PHA may deny the request to move if the number of families assisted under these portability procedures would constitute more than 15 percent of units under lease in the initial PHA's Housing Voucher Program.

(iii) If a family eligible for portability notifies the initial PHA that it wants to move under these procedures and informs the PHA concerning the area to which the family wants to move, the initial PHA must determine whether the PHA in the new area administers a Housing Voucher Program and, if it does not, but operates a Certificate Program, whether the receiving PHA is willing to accept the family under paragraph (d)(ii) of this section III.L.

(iv) If the family is going to move under the portability provisions above, the initial PHA must notify the receiving PHA to expect the family. The initial PHA must verify to the receiving PHA that the family met income-eligibility requirements for admission to the program, and that the initial PHA issued the family a housing voucher consistent with section III.I. of this Notice, and

must state the date (as determined in accordance with § 882.209(d)) by which the family must submit a request for lease approval in the jurisdiction of the receiving PHA.

(v) When the family moves out of the initial PHA's jurisdiction, the initial PHA retains funding for the housing voucher under its ACC.

(vi) The initial PHA must reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA on behalf of the family. The amount of housing assistance is based on the payment standard in effect at the receiving PHA. If the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Certificate or Housing Voucher Program, the initial PHA is not required to reimburse the receiving PHA.

(vii) The initial PHA must reimburse the receiving PHA in the amount of 80 percent of the initial PHA's ongoing administrative fee for each unit month that the family under a housing voucher contract is receiving housing assistance in the receiving PHA's jurisdiction.

(viii) The initial PHA also may receive the preliminary fee for any new unit (limited by cost-justified expenses submitted up to the maximum amount allowed for this purpose), if the portable housing voucher qualified for the preliminary fee and a hard-to-house fee, if the family housed with the portable housing voucher qualified for the hard-to-house fee.

(ix) If the portability family leaves the Housing Voucher Program, or if the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA may use for other families the funding previously needed to support payment of subsidy for the portable housing voucher.

(6) *Responsibility of the Receiving PHA.* (i) A receiving PHA that administers a Housing Voucher Program must issue a housing voucher to a family moving from the Housing Voucher Program of another PHA. (But see paragraphs (c) and (d)(4) of this section L.) A receiving PHA that administers a Housing Voucher Program may not limit the number of housing vouchers issued to such families. The receiving PHA may either bill the initial PHA for the housing assistance payments on behalf of the family or may provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program.

(ii) A receiving PHA that does not administer a Housing Voucher Program, but does administer a Certificate Program may:

(A) Refer the initial PHA to a Statewide or other multi-jurisdictional PHA that administers a Housing Voucher Program in its jurisdiction;

(B) Administer the housing voucher assistance on behalf of the family and bill the initial PHA for amounts authorized in this paragraph (d); or

(C) Issue a certificate to the family, utilizing funding under the ACC for its own Certificate Program.

(iii) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments. The receiving PHA may not deny the family a housing voucher on the ground that the family's income exceeds the income limits for housing voucher eligibility in the receiving PHA's jurisdiction.

(iv) The receiving PHA promptly must notify the initial PHA if a family fails to submit a request for lease approval by the date specified by the initial PHA.

(v) The amount of housing assistance payments to be made on behalf of the family is determined in accordance with section III.J. of this Notice. A non-housing voucher PHA must adopt a payment standard based on the appropriate Fair Market Rent or HUD-approved community-wide exception rent in effect in the receiving PHA's jurisdiction at the time of the family's initial lease approval, and must use all other applicable procedures in section III.J. of this Notice in determining assistance payments.

(vi) The receiving PHA must perform all of the functions normally associated with providing assistance to a family in a Housing Voucher Program, including lease approval, annual recertification of income and annual inspection of the unit.

(vii) The receiving PHA may bill the initial PHA for an amount equal to 80 percent of the initial PHA's administrative fee, unless it elects to provide assistance to the family utilizing funding under the ACC for its own Certificate or Housing Voucher Program. The receiving PHA also may bill the initial PHA for up to the preliminary fee for housing vouchers for cost-justified expenses and for the hard-to-house fee.

(viii) The receiving PHA is responsible for making payments on behalf of the family to the owner. If the receiving PHA does not elect to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the receiving PHA bills the initial PHA for the amount of the housing assistance payments. The receiving PHA should notify the HUD Headquarters' Office of Elderly and Assisted Housing if the initial PHA neglects to respond to timely billing by the receiving PHA.

(ix) The receiving PHA must notify the initial PHA promptly if the family ceases to be a current participant in the initial PHA's Housing Voucher Program.

(7) *Subsequent moves.* (i) A family may move more than once using the portability procedures in this paragraph (d), although the initial PHA may limit family moves to not more than once in any twelve-month period.

(ii) When the family wishes to move from an area in which the receiving PHA has been billing the initial PHA, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA. It then has all of the choices and obligations of a receiving PHA as described in this section. The first receiving PHA is no longer involved, because the initial PHA retains funding authority for the housing voucher.

(iii) When a family wishes to move from an area in which the receiving PHA has elected to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher Program, this receiving PHA becomes the new initial PHA. It has all of the choices and obligations of an initial PHA as described in this section. The PHA in the new jurisdiction to which the family moves becomes the receiving PHA and has all of the choices and obligations of a receiving PHA as described in this section. In this situation, the initial PHA that originally selected the family is no longer involved.

M. Eligible and Ineligible Housing

(a) Housing that is eligible for use in the Housing Voucher Program is any existing dwelling unit determined by the PHA to be decent, safe, and sanitary (meeting the housing quality standards in § 882.109, except § 882.109(q)), except for the following types of housing:

(1) A unit that is owned by the PHA administering the ACC under this Notice, including both the receiving PHA and initial PHA under the portability provisions of section III.L. of this Notice;

(2) A unit that is receiving other assistance under the 1937 Act, other than assistance under section 17;

(3) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, or facilities that provide continual psychiatric, medical, or nursing services;

(4) A housing unit that is occupied by its owner (including the owner of a manufactured home leasing a manufactured home space). However, a

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PHA may use housing voucher authority to provide assistance with respect to cooperative or mutual housing that has a resale structure that maintains affordability for lower income families, if the PHA determines that such assistance will assist in maintaining affordability of such housing for lower income families; and

(5) A housing unit used as transitional housing in the Department's Transitional Housing Demonstration Program.

(b) Elderly, handicapped, disabled, or displaced families and individuals may use congregate housing. Eligible elderly, handicapped, or disabled families and individuals who require a planned program of continual supportive services may use independent group residences. The definitions of and relating to congregate housing and independent group residences in § 882.102 and the housing quality standards for independent group residences and congregate housing under § 882.109 apply to the Housing Voucher Program.

(c) SRO housing may be used only if: (1) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office; (2) the PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and (3) the unit of general local government and the local PHA certify to HUD that the property meets applicable local health and safety standards for SRO housing. Specific housing quality standards for SRO housing are in § 882.109, and they apply to the Housing Voucher Program.

(d) The 40 percent limitation under § 882.110(c) on the number of certain subsidized units in specified types of federally assisted housing shall apply. The PHA must count housing voucher units in determining compliance with the 40 percent limitation.

N. Approving Units and Executing Leases and Housing Voucher Contracts

(a) Information to Owners and Requests to PHA for Lease Approval

(1) The PHA must respond to inquiries from owners who have been approached by housing voucher holders by explaining the major program procedures, including lease provisions, lease approval procedures, housing quality inspections, contract provisions and payment procedures, and by furnishing copies of pertinent forms.

(2) When a family has found a unit it wants and the owner is willing to lease, the family must submit to the PHA a request for lease approval signed by the owner of the unit and the family. At the same time, the family must submit a copy of the proposed lease for the unit, which must include the lease provisions prescribed by HUD for the Housing Voucher Program. At the time of submission of the lease, it must be complete except for execution.

(b) Decent, Safe, and Sanitary Condition of the Unit

In accordance with § 882.209(h), the PHA must inspect a unit to determine whether the unit meets the housing quality standards before the housing voucher contract is executed.

(c) Unit Sizes That Vary From Housing Voucher

(1) Regardless of the number of bedrooms stated on a housing voucher, the PHA may not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family.

(2) The PHA may not prevent a family from renting a unit with fewer bedrooms than stated on the housing voucher. However, the unit must meet the space requirements of the housing quality standards under § 882.109(c), or such variation as HUD may have approved.

(3) If the PHA determines that the assisted unit occupied by a participant family does not meet the space requirements of the housing quality standards under § 882.109(c) because of an increase in family size or a change in family composition, the PHA must issue the participant family a new housing voucher, and the family and the PHA must try to find an acceptable unit as soon as possible.

(4) The policies stated in paragraphs (c)(1)–(3) of this section are similar to policies applied in the Certificate Program (see §§ 882.209(i) and 882.213). References to compliance with maximum rent restrictions are not included, since there are no maximum rents in the Housing Voucher Program.

(d) Lease Requirements

(1) *General.* (i) The lease between the owner and the family must be in accordance with section III.P. of this Notice and any applicable HUD requirements. The lease must include all provisions required by HUD and may not contain any provisions prohibited by HUD.

(ii) In addition to the requirements identified in this paragraph (d), a lease for an independent group residence must comply with § 882.209(j)(2).

(2) *Term of Lease.* (i) The term of the lease begins on a date stated in the lease and continues until:

(A) A termination of the lease by the owner in accordance with section III.P. of this Notice.

(B) A termination of the lease by the family in accordance with the lease or by mutual agreement during the term of the lease. The lease must permit a termination of the lease by the family without cause, at any time after the first year of the term of the lease, on not more than 60 days' written notice by the family to the owner (with a copy to the PHA); or

(C) A termination of the housing voucher contract by the PHA.

(ii) The term of the lease must begin at least one year before the end of the term of the last funding increment under the ACC. The contract and the lease shall end if the PHA determines, in accordance with procedures prescribed by HUD, that funding under the ACC is insufficient to support continued assistance.

(iii) The owner may offer the family a new lease for execution by the family after approval by the PHA for a term beginning at any time after the first year of the term of the lease. The owner must give the tenant written notice of the offer, with a copy to the PHA, at least 60 days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the family.

(e) Approval and Disapproval of Leases and Execution of Housing Voucher Contracts and Related Documents

The PHA must approve or disapprove leases and provide for execution of HUD-prescribed forms of housing voucher contracts and related documents in accordance with § 882.209 (k) and (*l*) and § 882.215(b). References to approving the amount of rent payable to the owner and the rent reasonableness certification under § 882.106(b) do not apply, since there is no maximum rent payable to the owner under the Housing Voucher Program.

O. Maintenance, Operation and Inspections; Security Deposits

(a) Maintenance, Operation, and Inspections

The requirements of § 882.211 concerning maintenance, operation, and inspections of units apply. In addition, the PHA may not make any housing assistance payments for a unit that fails to meet the housing quality standards, unless the owner promptly corrects the defect and the PHA verifies the correction.

(b) Security Deposits and Utility Deposits

(1) If at the time of the initial execution of the lease, the owner wishes to collect a security deposit, the amount

shall be the greater of $50 or 30 percent of the family's monthly adjusted income. The amount of the security deposit also is limited by any applicable limitation under State or local law. If a housing voucher family rents its pre-program unit, a security deposit collected in excess of the maximum amount that was collected before PHA approval of a lease under the Housing Voucher Program does not have to be refunded until the family vacates the unit subject to the lease terms. The family is expected to pay security deposits and utility deposits from its own resources or from other public or private sources.

(2) Subject to State and local law, the owner may use the security deposit, including any interest on the deposit, in accordance with the housing voucher lease, as reimbursement for any unpaid rent payable by the family or for other amounts the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the family.

(3) If the family moves from the unit, the owner may claim reimbursement from the PHA for the amount the family owes under the lease (but not more than one month's rent to the owner), minus the greater of—

(i) The security deposit actually collected, or

(ii) The maximum security deposit the Owner could have collected at initial lease execution in accordance with paragraph (b)(1) of this section.

(4) Any reimbursement under this section must be applied, first, toward any unpaid rent due under the lease, and then to any other amounts owed. No reimbursement may be claimed from the PHA for unpaid rent for the period after the family vacates the unit.

P. Termination of Tenancy by Owners

(a) The owner may not terminate the tenancy except for:

(1) Serious or repeated violation of the terms and conditions of the lease;

(2) Violation of Federal, State, or local law which imposes obligations on a tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(3) Other good cause. However, during the first year of the term of the lease, the owner may not terminate the tenancy for "other good cause", unless the termination is based on malfeasance or nonfeasance by the family.

(b) The following are some examples of "other good cause" for termination of tenancy by the owner:

(1) Failure by the family to accept the offer of a new lease in accordance with section III.N.(d)(iii) of this Notice;

(2) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property;

(3) Criminal activity by family members involving crimes of physical violence to persons or property;

(4) The owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit; or

(5) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to rent the unit at a higher rental).

(c) The list of examples in paragraph (b) of this section is intended as a non-exclusive statement of some situations included in "other good cause", but may in no way be construed as a limitation on the application of "other good cause" to situations not included in the list. The owner may not terminate tenancy during the first year of the term of the lease for "other good cause" (see paragraph (a)(3) of this section) for the grounds stated in paragraph (b)(1), (b)(4), or (b)(5) of this section.

(d) Any notice required under this section III.P. or section III.N.(d) of this Notice may run concurrently with any notice required under State or local law.

Q. Reexamination of Family Income and Composition

(a) The PHA must reexamine family income and family size and composition at least annually, and in accordance with 24 CFR Part 813.

(b) After reexamination, the PHA must adjust the amount of the housing assistance to reflect any changes in family monthly adjusted income or monthly income, using the payment standard provisions in section III.J. of this Notice.

(c) If one year has elapsed since the date of the last housing assistance payment in accordance with section III.J. of this Notice, the housing assistance payments contract will terminate automatically.

(d) At any time, a family may request a redetermination of the housing assistance payment on the basis of a change in family income or adjusted income.

R. Family Obligations

(a) A family must:

(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, including information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice;

(3) Notify the PHA before vacating the dwelling unit; and

(4) Use the dwelling unit solely for residence by the family, and as the family's principal place of residence.

(b) A family may not:

(1) Sublease or assign the lease or transfer the unit;

(2) Own or have any interest in the dwelling unit, except as provided in section III.M.(a)(4) of this Notice;

(3) Commit any fraud in connection with the Housing Voucher Program; or

(4) Receive duplicative assistance under the Housing Voucher Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any other Federal, State, or local housing assistance program (including any Section 8 program).

S. Grounds for Denial or Termination of Assistance

Section 882.210 applies to the Housing Voucher Program. However, the applicable family obligations are covered in section III.R. of this Notice, not in § 882.118.

T. Informal Review or Hearing

(a) The informal review or hearing requirements of § 882.216 apply to applicants and participating families. References to a participant's right to an informal hearing in cases involving the amount of the total tenant payment or tenant rent under § 882.216(b)(i) should be considered to be references to computation of the amount of housing assistance payment for the family. Section 882.216(b)(1)(iii), concerning hearings where the PHA determines a family is residing in a unit with a larger number of bedrooms than appropriate, does not apply.

(b) If the housing voucher holder or participant wants to move with continued assistance under the Housing Voucher Program using the portability procedures in section III.L.(d) of this Notice, the family must be given the opportunity for an informal hearing in accordance with § 882.216(b) if the initial PHA or the receiving PHA decides to deny or terminate such continuing assistance. However, a receiving PHA that does not administer a Housing Voucher Program is not required to give the opportunity for an informal hearing on the PHA's election not to administer housing voucher assistance on behalf of the family.

U. Administrative Fees Paid to the PHA

(a) General

The ACC authorizes three types of fees to be paid to the PHA for HUD-approved costs associated with administering the Housing Voucher Program. The three types of fees are discussed below.

(b) Preliminary Fee: Use

HUD pays the PHA a preliminary fee for cost-certified tasks involved in taking families into the program to lease the number of units that can be supported with a new increment of housing voucher funding authority. This fee is intended to cover expenses incurred in helping families who inquire about or apply for the program (but never receive housing assistance for whatever reason), as well as all of the intake functions associated with achieving utilization of newly authorized funds. Examples of eligible costs include the following:

(1) The PHA's cost of preparing its Section 8 Housing Voucher Program application;
(2) The PHA's administrative overhead during initial lease-up, including rent, staff salaries, equipment, and supplies;
(3) Publicizing the program;
(4) Briefing applicants and landlords;
(5) Reviewing applicants for assistance;
(6) Determining eligibility, including initial determination and verification of income;
(7) Conducting initial unit inspections;
(8) Reviewing leases; and
(9) Preparing housing voucher contracts.

(c) Preliminary Fee: Amount

For each funding increment, a PHA will receive a preliminary fee to cover actual expenses incurred before the housing voucher contract is executed. The preliminary fee equals the lesser of actual expenses approved by HUD or $215 for each housing voucher that results in an initial lease or housing voucher contract.

(d) Preliminary Fee: Portable Housing Vouchers

HUD will pay the initial PHA an additional preliminary fee when the initial PHA is billed for such a fee by a receiving PHA for one of the initial PHA's portable housing vouchers. All requirements of paragraphs (b) and (c) of this section apply. (For procedures on portable housing vouchers, see section III.L. of this Notice.)

(e) Ongoing Administrative Fee: Use

The PHA earns the ongoing fee based on the number of units under housing voucher contracts on the first day of each month. The ongoing administrative fee is designed to cover the PHA's cost of administering assistance on behalf of the program participants. Examples of tasks include the following:

(1) Making housing assistance payments to owners;
(2) Reexamining family income;
(3) Conducting annual and special unit inspections;
(4) Maintaining continued occupancy after initial lease-up; and
(5) The PHA's administrative overhead after initial lease-up.

(f) Ongoing Administrative Fee: Amount

The ongoing administrative fee equals 6.5 percent per month of the current Section 8 Existing Housing Fair Market Rent for the PHA's two-bedroom unit, published in the **Federal Register** in accordance with § 888.115 of this chapter.

(g) Hard-to-House Fee: Use

A hard-to-house fee is provided to cover the cost of special assistance given to a family with three or more minors to enable the family to find suitable housing. Special assistance includes the following:

(1) Maintaining up-to-date lists of owners with large units;
(2) Increasing outreach efforts to owners, real estate organizations, and property management firms;
(3) Taking applications at home; and
(4) Following up weekly with housing voucher holders.

(h) Hard-to-House Fee: Amount

The PHA will receive a hard-to-house fee of $45 for special assistance provided to each family with three or more minors that results in a unit coming under lease in the Section 8 Housing Voucher Program. A family that rents in place does not qualify the PHA to receive a hard-to-house fee. The PHA qualifies for a hard-to-house fee each time an eligible family moves and a new housing voucher contract is signed for a different unit.

(i) Hard-to-House Fee: Portable Housing Vouchers

HUD will pay the initial PHA an additional hard-to-house fee when the initial PHA is billed for such a fee by a receiving PHA for one of the initial PHA's portable housing vouchers. All requirements of paragraphs (g) and (h) of this section apply. (For procedures on portable housing vouchers, see section III.L. of this Notice.)

V. Reporting Requirements for the Freestanding Component and the Small Rural Component

In addition to reporting required for all components of the Housing Voucher Program, a PHA administering the freestanding or small/rural component of the Housing Voucher Program must collect complete and accurate records, as required by HUD, on certificates and housing vouchers issued under the component. The PHA must send such copies of required forms to HUD or its designee, as HUD may specify for each certificate or housing voucher.

W. Subsequent Use of Housing Voucher Authority Targeted for Specific Uses

If HUD provides housing voucher funding for families living in particular kinds of projects (see section III.I.(e)(2) of this Notice for a complete list), or for desegregation of public housing projects (see section III.D.(e) of this Notice), the PHA must use the funding initially for the specified purpose. A housing voucher is considered as initially used for the purpose provided where the PHA has approved a lease and executed a housing voucher contract for that purpose. Once this initial use is achieved, the PHA may use the authority for any purpose in furtherance of its approved Housing Voucher Program.

X. [Reserved]

Y. Waivers

Upon determination of good cause, the Assistant Secretary for Housing-Federal Housing Commissioner may, subject to statutory limitations, waive any provision of this Notice. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds.

IV. Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Certificate Program and the Housing Voucher Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

The information collection requirements contained in this Notice and in the February 1987 NOFA have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502–0123; 2502–0154; 2502–0161; 2502–0185; 2502–0348; 2502–

0350; 2502–0362; 2577–0067; and 2577–0083.

Authority: Sec. 8(o) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: March 14, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-6287 Filed 3-22-88; 8:45 am]

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federal register

Wednesday
March 23, 1988

Part III

Environmental Protection Agency

2,4-D, 2,4-DB, and 2,4-DP; Notice of Proposed Decision Not To Initiate a Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/57; FRL-3353.3]

2,4-D, 2,4-DB, and 2,4-DP; Proposed Decision Not To Initiate a Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Proposed Decision Not To Initiate a Special Review.

SUMMARY: This document announces EPA's proposed decision not to initiate a Special Review of 2,4-D, 2,4-DB, and 2,4-DP based on carcinogenicity. The Agency's decision is based on a consensus of opinion from EPA scientists, national experts on epidemiology, and the FIFRA Scientific Advisory Panel, that existing epidemiologic data are inadequate to assess the carcinogenic potential of 2,4-D. In addition, the Agency has concluded that existing laboratory data provide insufficient evidence of carcinogenicity. Therefore, EPA has determined that a Special Review is not appropriate at this time.

DATE: Comments on this Notice must be received by May 23, 1988.

ADDRESS: Submit three sets of written comments, bearing the document control number [OPP-30000/57] by mail to:

Information Services Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.

In person, bring comments to:

Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. The 2,4-D public docket, which contains all non-CBI written comments and the corresponding index will be available for public inspection in Rm. 236 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

W. Michael McDavit, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St. SW, Washington, DC 20460.

Office location and telephone number:

Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1787).

SUPPLEMENTARY INFORMATION: This Notice announces EPA's proposed decision not to initiate a Special Review of 2,4-dichlorophenoxyacetic (2,4-D), 2-(2,4-dichlorophenoxy) butyric acid (2,4-DB), and 2-(2,4-dichlorophenoxy) propionic acid (2,4-DP), and sets forth the rationale for that proposed decision. In summary, EPA has re-evaluated the concerns raised in the September 22, 1986, and December 3, 1986, preliminary notifications to registrants and applicants in light of other relevant information that, in part, has become available since issuance of the preliminary notifications. Based on this review, EPA has determined that a Special Review of 2,4-D, 2,4-DB, and 2,4-DP is not warranted at this time.

I. Introduction

A. Regulatory Background

The common name for the herbicide 2,4-dichlorophenoxyacetic acid is 2,4-D. The herbicides 2,4-DB or 2-(2,4-dichlorophenoxy) butyric acid and 2,4-DP or 2-(2,4-dichlorophenoxy) propionic acid are structural analogs of 2,4-D. Including the various derivatives of these three chemicals (esters and salts), over 1500 registered pesticide products contain 2,4-D, 2,4-DB, or 2,4-DP as active ingredients.

The active ingredient 2,4-D, first registered in 1948, is a popular, systemic herbicide widely used for controlling broadleaf weeds on a large number of food and non-food crops.

It is also used as a growth regulator on citrus. The majority of 2,4-D is used to control weeds in wheat, field corn, grain sorghum, sugar cane, rice, barley, and range and pastureland. In addition, 2,4-D is used for aquatic weed and forest management, as well as weed control around the home.

The herbicide 2,4-DB is a selective, systemic herbicide used for postemergence weed control. The majority of 2,4-DB is used to control broadleaf weeds in soybeans, alfalfa, and peanuts.

The herbicide 2,4-DP is a selective, systemic herbicide used to control broadleaf weeds, annual grasses, and woody plants. The majority of 2,4-DP is used to control pest plants in turf (ornamental, golf course and lawn areas), non-bearing citrus fruit, rights-of-way (utility, railroads, highways, etc.), and forestry.

On August 28, 1980, after reviewing all available health effects information on 2,4-D and consulting with the Scientific Advisory Panel (SAP), the Agency issued a Data Call-In notice (DCI) pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to the registrants of 2,4-D. This notice required registrants to submit studies on the following areas: acute toxicity, oncogenicity in the rat and mouse, reproductive effects, teratogenicity (birth defects), neurotoxicity, and metabolism. Since that time, all of these required data have been received and reviewed by the Agency.

The Agency has also recently reviewed a number of epidemiology studies relevant to these pesticides, including a new study conducted by the National Cancer Institute and University of Kansas that found an association between farm herbicide use and non-Hodgkin's lymphoma. Published in the Journal of the American Medical Association on September 5, 1986, the authors of this study concluded that the use of phenoxy herbicides, including 2,4-D, was linked to an increased cancer risk among farmers handling such herbicides.

Based on this epidemiological evidence, on September 22, 1986, the Agency issued a preliminary notification of Special Review to the registrants of 2,4-D pursuant to 40 CFR 154.21. On December 3, 1986, the Agency issued a similar preliminary notification of Special Review to the registrants of 2,4-DB and 2,4-DP because the Agency believed that these compounds were toxicologically similar to 2,4-D and should be reviewed at the same time.

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered it must be shown that it can be used without causing "unreasonable adverse effects on the environment," [FIFRA section 3(c)(5)]. The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." The burden of proving that a pesticide meets this standard for registration is, at all times, on the

proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process, which was previously called the Rebuttable Presumption Against Registration (RPAR) process, is described in 40 CFR 154, published in the **Federal Register** of November 25, 1985 (50 FR 49015).

Prior to formal initiation of a Special Review, a preliminary notification is sent to registrants and applicants for registration pursuant to 40 CFR 154.21 announcing that the Agency is considering commencing a Special Review. In this case, that notification was issued on September 22, 1986 for 2,4-D, and on December 3, 1986 for 2,4-DB and 2,4DP. Registrants and applicants for registration were given 30 days to comment on the Agency's proposal to commence a Special Review. Most registrants responded to the notifications by concurring on one particular comment provided in response to the September 22, 1986, 2,4-D notification on behalf of the Industry Task Force on 2,4-D Research Data. A few unique comments were also received in response to the December 3, 1986 notification. These comments will be briefly addressed in Unit IV of this Notice.

If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will not conduct a Special Review, it is required under 40 CFR 154.23 to issue a proposed decision to be published in the **Federal Register**. This Notice is being issued under 40 CFR 154.23. That regulation requires that a period of not less than 30 days be provided for public comment on the Proposed Decision Not To Initiate a Special Review. Subsequent to receipt and evaluation of comments on the Proposed Decision Not To Initiate a Special Review, the Administrator is required by 40 CFR 154.25 to publish in the **Federal Register** his final decision regarding whether or not a Special Review will be conducted.

II. Risk Concerns Underlying 40 CFR 154.21 Notification

A. Epidemiologic Evidence

The preliminary notifications under 40 CFR 154.21 were issued as a result of Agency concerns raised by the findings of a new epidemological study of Kansas farmers. The researchers had found an association between farm herbicide use and non-Hodgkin's lymphomas in farmers based on a population-based case control study (Vol. 25, No. 9, Journal of the American Medical Association, pp. 1141–1147) conducted by the National Cancer Institute and the University of Kansas.

This study was performed to determine if there was any relationship between agricultural herbicide use and soft-tissue sarcoma, Hodgkin's disease, or non-Hodgkin's lymphoma. Newly diagnosed cases of the three diseases were taken from a population-based registry covering the State of Kansas and compared with control groups from the general population of Kansas using Medicare and mortality files. Telephone interviews were then conducted with living individuals (or next-of-kin for deceased individuals) belonging to case and control groups. Numerous questions were asked with respect to farming practices and the use of pesticides. An attempt was made to corrobate information from telephone interviews with records or knowledge of pesticide use by local suppliers of pesticides.

In summary, the study found that Kansas farmers who used certain types of herbicides had an excess risk for developing non-Hodgkin's lymphoma. No association was found between farm herbicide use and soft-tisse sarcoma and Hodgkin's disease. Farmers exposed to the herbicides for more than 20 days each year had six times the risk of developing non-Hodgkin's lymphomas when compared to controls. Among these frequent users, those who mixed or applied the herbicides themselves had eight time the risk. These excess risks were reportedly associated with the use of phenoxyacetic herbicides, including 2,4-D.

EPA scientisits and four epidemiology experts, requested by EPA to review the new evidence, generally agreed that the NCI/Kansas study was well conducted and that the study served as a good basis for a hypothesis of a non-Hodgkin's lymphoma and phenoxy herbicide association. Notwithstanding the lack of specificity for 2,4-D, the study was regarded by the reviewers as the most relevant epidemiological study of its kind that pertains to 2,4-D as a pesticide and provides a sound foundation for further inquiries.

A number of critical problem areas, common to many epidemiology studies, have been noted by reviewers. Some of the key areas of concern are the lack of appropriate controls, exposure to multiple chemicals, and insufficient information on actual exposure to 2,4-D and other pesticides.

In order to evaluate the occurrence of non-Hodgkin's lymphoma cases among farmers with exposure to 2,4-D, appropriate study controls should be used. Farmers have different lifestyles (e.g., diet, exposure to animal viruses) than the general population. Differences in habit and lifestyle may confound results when comparisons are made with controls from the general population. In this case, the study did not choose controls based on occupation and, therefore, it is quite possible that lifestyle factors other than herbicide use may have confounded the results.

Farmers are frequently exposed to other chemicals or potentially tumorigenic agents which could account for some or all of the non-Hodgkin's lymphoma cases. Researchers did report some positive associations with the use of other types of pesticides, such as fungicides and insecticides. In addition, before the phenoxy herbicide, 2,4,5-T, was suspended by the Agency in 1979 based on part on the risk posed by the presence of the carcinogenic impurity, 2,3,7,8-tetrachlorodibenzo-p-dioxin, farmers in Kansas used pesticide products containing 2,4,5-T. Fertilizers, fuel, and other environmental toxicants, as well as biological agents (e.g., viruses) may also present some risk of non-Hodgkin's lymphoma for farmers. Unless exposure variables associated with farming are better controlled, it is difficult to reach conclusions on any contribution of 2,4-D or other specific phenoxy herbicides to the onset of non-Hodgkin's lymphoma in farmers.

The information obtained on 2,4-D use and exposure is incomplete. Reported use, particularly when that use occurred many years previously, is not necessarily a good surrogate measure of exposure. This type of information is useful, but substantially less reliable than some quantitative measure of exposure. Information obtained from next-of-kin should be used with caution. Living farmers and next-of-kin frequently have incomplete recall with respect to specific pesticide names or work practices. Although researchers tried to verify the veracity of the information gathered from telephone interviews by contacting a sample of pesticide suppliers, only about half of the contacted suppliers were able to confirm respondents' answers concerning use of 2,4-D (personal communication, Blondell 1987).

Some reviewers noted an apparent underreporting of all herbicide use. U.S. Department of Agriculture records indicate that significantly more pesticides were used in Kansas than was suggested by the results of the telephone survey. This discrepancy alone introduces substantial uncertainty in the pesticide use information obtained from and relied on in this study.

Taken together, these problem areas or uncertainties make it impossible to pinpoint 2,4-D alone as the causative agent in these particular non-Hodgkin's lymphoma cases. As previously mentioned, uncertainties of these kinds are typically present to some degree in all epidemiology studies. Nonetheless, findings of epidemiology studies are frequently insightful and, on occasion, such insight is sufficient for policymaking and regulation. In this case, the extent and degree of these weaknesses limit the usefulness of the study for regulatory purposes.

A number of other epidemiological studies pertaining to 2,4-D were also evaluated by the Agency. Some of the existing epidemiologic studies on 2,4-D and related compounds indicate an association with cancer in humans and others do not. Those studies finding a relationship with cancer in humans were determined to be inadequate for establishing a specific association between cancer risk and 2,4-D use. As mentioned above, the NCI/Kansas study, while relevant to farmers handling phenoxy herbicides, was also determined to be inadequate for establishing a specific association between 2,4-D and non-Hodgkin's lymphoma.

In addition, a recently published epidemiologic study designed to address the same issue at the NCI/Kansas study, that is, the relationship between occupational exposure to phenoxy herbicides and cancer in humans, did not confirm the NCI/Kansas study's conclusions with respect to non-Hodgkins lymphoma. Woods, *et al.* (Soft Tissue Sarcoma and Non-Hodgkins Lymphoma in Relation to Phenoxyherbicide and Chlorinated Phenol Exposure in Western Washington, *Journal of the National Cancer Institute* 1987; 78: 899–910) studied male farmers handling a variety of phenoxy herbicides and chlorinated phenols, including 2,4-D and found "small but significantly increased risks of developing [non-Hodgkins lymphoma] in association with some occupational activities where phenoxyherbicides have been used in combination with other types of chemicals, particularly for prolonged periods." However, the investigators did not find a positive association between increased cancer risks and exposure to 2,4-D.

B. Laboratory Evidence

In response to the Data Call-In notice issued in 1980, the Industry Task Force on 2,4-D Research Data sponsored, among other things, oncogenicity studies in the rat and mouse. The rat study found equivocal evidence of oncogenicity and the mouse study found no treatment-related oncogenic responses.

In the rat, 2,4-D (97.5 percent purity) was administered in the diet to male and female rats at levels of 0, 1, 5, 15, and 45 mg/kg/day for 24 months. At an interim sacrifice of 53 weeks, an apparent treatment-related increased incidence of brain tumors (astrocytomas) was observed in male animals. No tumor response related to 2,4-D administration was observed in female rats.

The results of the final rat study were subjected to two statistcal evaluations. Using the Fisher-Exact test, the increased incidence of tumors seen in male animals at the high dose level was not statistically significant when compared to control male animals. Using the Cochran-Armitage trend test, 2,4-D administration was found to be associated with a marginally statistically significant positive dose-related trend for astrocytomas in male rats. Thus, neither evaluation found strong statistical evidence of oncogenicity in the rat.

In the mouse, 2,4-D (97.5 percent purity) was administered in the diet to male and female animals at levels of 0, 1, 15, and 45 mg/kg/day for 24 months. No oncogenic effects attributable to 2,4-D administration were found in either male or female mice.

Although there were no oncogenic effects observed in either sex of the mouse and only marginally statistical oncogenic effects observed in the male rat, the Agency still does not believe there are adequate laboratory animal data to unequivocally assess the carcinogenic potential of 2,4-D. This is predicated on the Agency's conclusion that a Maximum Tolerated Dose (MTD) was apparently not achieved in either test animal. (A MTD, usually the highest dose tested in an oncogenicity study, is a level slightly below the level which resulted in significant life-threatening toxicity in a subchronic study. The level should not be selected too far below a life threatening level because the highest dose tested in an oncogenicity study should elicit significant toxicity without substantially altering the normal life-span of the test species from effects other than tumor formation.

Based on the Agency's most current review of the chronic studies and on the results of subchronic studies with 2,4-D, the highest dose tested (45 mg/kg) in both the rat and mouse oncogenicity studies did not achieve a MTD (45 mg/kg is estimated to be only one-third to one-half of the MTD).

In 1985, scientists from NIH's National Toxicology Program (NTP) questioned the dose levels selected for the oncogenicity studies based on their evaluation of tissue slides taken from the subchronic studies and an interim sacrifice of test animals in both two year oncogenicity studies. The NTP pathologists concluded unanimously that the various kidney lesions observed in the subchronic studies, which were used to estimate the MTD and to support the dose levels used in the oncogenicity studies, were minimal in severity and clearly not life-threatening even at the highest dose of 150 mg/kg. They also concluded that the interim sacrifice data from the oncogenicity studies showed only minimal toxicity at the highest dose tested (45 mg/kg). Their overall conclusion was that the oncogenicity studies on 2,4-D were probably not being conducted at a MTD.

Having now evaluated the two year oncogenicity studies and having considered the scientific opinion of the NTP scientists, the Agency has decided to require, under authority of FIFRA section 3(c)(2)(B), additional oncogenicity testing in the rat and mouse to ensure that a MTD is achieved.

Additional toxicological information, including more detailed reviews of the rat and mouse studies, is available in the 2,4-D public docket.

In April 1987 the Agency concluded that the rat evidence provided limited evidence of oncogenicity in animals. Furthermore, the Agency concluded that although the NCI/Kansas study was well conducted, it provided "inadequate" evidence of cancer in humans attributable specifically to 2,4-D. Given these two conclusions, the Agency tentatively classified 2,4-D as Interim Category C (possible human carcinogen), based on the Agency's "Guidelines for Carcinogen Risk Assessment", and subsequently presented its conclusions and all available information regarding 2,4-D's potential to cause cancer to the FIFRA Scientific Advisory Panel for consideration in June 1987.

III. Scientific Advisory Panel Review

On June 25, 1987, the FIFRA Scientific Advisory Panel (SAP) met to review the data base supporting EPA's preliminary decision to classify 2,4-D as an Interim Class C carcinogen. The Panel was asked, "Does the Panel agree with the [Agency's Internal] Peer Review Committee's conclusion concerning the Interim Category C classification of the available 2,4-D oncogenicity data?."

On behalf of the Industry Task Force on 2,4-D Research Data, a number of expert witnesses provided written and oral comments to the Panel in an attempt to rebut the validity of the epidemiological and laboratory evidence. Comments concerning the epidemiological evidence were similar to those discussed in Units II.A. and IV of this notice. Regarding the laboratory evidence, one witness commented that the tumors noted in the rat study were not treatment-related because they failed to display certain commonly associated characteristics of this tumor type. The commentor also argued that the tumors in the high dose group were spontaneous in origin based on the presence of a brain tumor in one control animal.

In conclusion, the Panel issued the following written response on July 8, 1987:

> The SAP does not agree with the [Agency's Internal] Peer Review Committee's conclusion that the available 2,4-D oncogenicity data should be classified as an Interim Category C (Possible Human Carcinogen). The Panel believes that the rat and mouse oncogenicity studies are adequate in design and conduct. The data are negative for oncogenicity in female rats and both sexes of mice. The increased incidence of astrocytomas in male rats exposed to 45 mg/kg 2,4-D was considered equivocal evidence of oncogenicity. The Panel believes that additional testing is required to resolve this issue. This testing should specifically address the astrocytoma issue by repeating an oncogenicity study. The study design should include two male rat control groups of 50 each and two male rat groups of the same size exposed to 45 mg/kg 2,4-D.
>
> The Panel also believes that the human epidemiology studies represent well-designed and conducted investigations that present equivocal data on 2,4-D's oncogenicity for humans. Additional studies are underway that should help clarify the issue.
>
> The Panel notes that equivocal evidence is different from limited evidence and that until additional data are developed it is improper to label 2,4-D as a carcinogen or a noncarcinogen. The Panel therefore concludes that the present data for animals and humans are inadequate for determining oncogenicity and that 2,4-D should be classified in Group D (Not Classifiable as to Human Carcinogenicity).
>
> Dated: July 8, 1987
>
> Stephen L. Johnson,
>
> *Executive Secretary, FIFRA Scientific Advisory Panel.*

The Agency's Peer Review Committee has deliberated on the scientific issues involving 2,4-D since the SAP meeting. The Agency now concurs with SAP's conclusions regarding the classification of 2,4-D with respect to carcinogenicity. The human and animal evidence of carcinogenicity is insufficient and, therefore, 2,4-D should be considered unclassifiable with respect to carcinogenicity (Category D). The Agency agrees with the SAP that the absence of strong statistical evidence in the rat does not support a finding of "limited" evidence of carcinogenicity. The Agency also agrees with SAP that additional testing is necessary in the rat in order to assess accurately 2,4-D's oncogenic potential in that species. This need is further supported by the concern that a MTD was not reached in the rat and mouse studies. For that reason, the Agency will also require additional testing in the mouse.

IV. Comments Received on the Preliminary Notifications

Comments were received in response to the preliminary notifications on 2,4-D, 2,4-DB, and 2,4-DP from most registrants. The majority of these commentors concurred on a detailed comment received from the Industry Task Force on 2,4-D Research Data. In addition, several parties prepared comments on behalf of cetain registrants regarding the benefits of 2,4-D as a growth regulator on citrus crops.

Although the comment received from the Task Force focused primarily on the NCI/Kansas epidemiology study, it also provided comments on existing animal data and other human epidemiology studies. The Task Force's basic position was that, "the Kansas study does not demonstrate an association between 2,4-D and non-Hodgkin's Lymphoma." Criticisms given by the Industry Task Force were for the most part similar to those raised by the Agency and independent reviewers. These included, but were not limited to, limitations in information collection regarding exposure to 2,4-D, limitations on the general accuracy of next-of-kin information, and the fact that the authors did not adequately examine confounding factors or discuss other possible causative agents (such as viruses).

Upon closer examination, the Agency and most reviewers agree that the NCI/Kansas study provides the basis for additional research, but that on its own, it does not provide a conclusive argument for associating farmer exposure to 2,4-D and non-Hodgkin's lymphoma. Some additional research is now underway at NCI. This research will hopefully help resolve this issue and determine whether such an association exists for 2,4-D.

Most commentors on the 2,4-DB and 2,4-DP preliminary notifications generally argued that these compounds should not be included in a review of 2,4-D. They pointed out basic differences in metabolism and the ostensible absence of 2,4-DB and 2,4-DP use in the Kansas study area.

The Agency generally agrees that 2,4-DB and 2,4-DP are sufficiently dissimilar toxicologically from 2,4-D to allow for a chemical-by-chemical type of evaluation. Therefore, the Agency will review these compounds individually and evaluate 2,4-D, 2,4-DB, and 2,4-DP in the reregistration process as separate compounds. Separate guidance documents for the reregistration of these pesticides are scheduled to be issued in 1988. However, within these pending evaluations, the Agency will continue to group the esters and salts of each active ingredient with the parent chemical.

The decision to issue separate guidance documents does not preclude the Agency from conducting a joint review of these compounds if at a later time data suggest metabolic or toxicologic similarities which would warrant such a simultaneous review.

V. Agency's Decision Regarding Special Review

Subsequent to the issuance of the preliminary notifications pursuant to 40 CFR 154.21, the findings of a NCI/Kansas epidemiologic study reporting an association between exposure to 2,4-D and human cancer was reviewed, at the Agency's request, by four National experts on epidemiology. These experts concluded independently that the study did not implicate 2,4-D alone as the causative factor for the Non-Hodgkin's lymphoma observed in this study, but rather indicated an association with phenoxy herbicide use in general. In addition, the FIFRA Scientific Advisory Panel reviewed this study, as well as the entire oncogenicity data base and concluded that 2,4-D should not be classified as a carcinogen or noncarcinogen at this time. Instead, the Panel recommended that 2,4-D be classified in Category D, Not Classifiable as to Human Carcinogenicity.

The Agency agrees with the external reviewers and SAP that the epidemiologic evidence as provided in the NCI/Kansas study does not raise as great a concern regarding 2,4-D as originally thought. The available human evidence, now considered inadequate by EPA on the basis of confounding factors and bias, does not establish a credible, causal relationship between 2,4-D and non-Hodgkin's lymphoma among Kansas farmers. Based on this conclusion, the Agency has determined that it will not conduct a Special Review of 2,4-D, or its structural analogs, 2,4-DB and 2,4-DP at this time.

The Agency now agrees with SAP that 2,4-D should be classified in Category D with respect to carcinogenicity (Not Classifiable as to carcinogenicity) based on the inadequate evidence of cancer in humans and laboratory animals.

Since the Agency is still interested in the results of further epidemiologic and laboratory studies on 2,4-D, the Agency may initiate a Special Review at a later time depending on the findings of such studies. In particular, NCI is currently evaluating human cancer cases and pesticide use in several other states in the U.S., which may have bearing on the continued registration of 2,4-D. In addition, the Agency will require additional testing in the rat and mouse. The Agency will also issue individual reregistration guidance documents on 2,4-D, 2,4-DB, and 2,4-DP in 1988, which will among other things involve intensive scrutiny of the entire available data bases and data deficiencies of these pesticides.

VI. Public Comment Opportunity and Public Docket

The Agency is providing a 60-day period to comment on this Notice. Comments must be submitted by May 23, 1988. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS**. The comments and information should bear the identifying notation OPP–30000/57. After receipt and evaluation of comments on this Notice, the Agency will publish a final decision in the **Federal Register** regarding whether or not a Special Review will be conducted.

The Agency has established a public docket (OPP–30000/57) for this proposal not to initiate a Special Review of 2,4-D, 2,4-DB, and 2,4-DP. This public docket will include this Notice; any other Notices pertinent to the Agency's decision regarding the Special Review of 2,4-D, 2,4-DB, and 2,4-DP; non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the pre-Special Review registrant notifications and this Notice regarding Special Review of 2,4-D, 2,4-DB, and 2,4-DP; and a current index of materials in the public docket.

Dated: March 14, 1988.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88–6293 Filed 3–22–88; 8:45 am]

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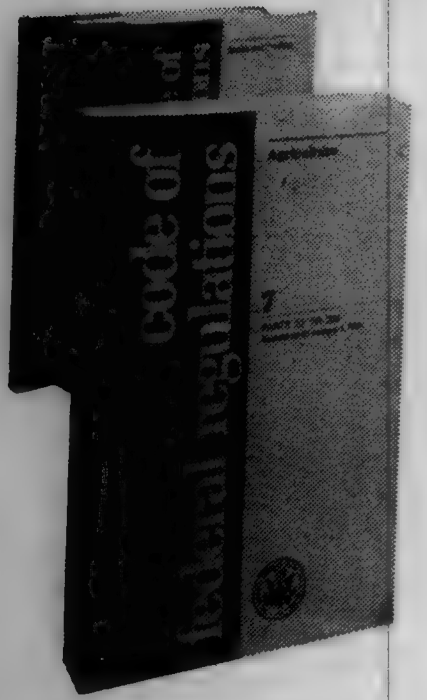
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Thursday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California; Free, Reserve, and Export Percentages for the 1987–88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes a free percentage of 72 percent, a reserve percentage of 28 percent, and an export percentage of 100 percent of the reserve percentage for merchantable California walnuts handled during the 1987–88 season, which began August 1, 1987. This action is taken under the marketing order for walnuts grown in California and is intended to avoid unreasonable fluctuations in supplies and prices in view of a projected large 1987 walnut crop.

EFFECTIVE DATES: August 1, 1987, through July 31, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 984, as amended [7 CFR Part 984], regulating the handling of walnuts grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 59 handlers of walnuts subject to regulation under the walnut marketing order, and approximately 8,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California walnuts may be classified as small entities.

This final rule requires handlers of California walnuts to withhold, as a reserve, from the normal domestic market, 28 percent of walnuts certified as merchantable during the 1987–88 crop year. The remaining 72 percent of walnuts certified as merchantable may be sold by handlers in any market. In preparing recommendations, the Walnut Marketing Board (Board) estimated the 1987 orchard-run production to be at 520 million inshell pounds, which is 44.4 percent larger than last year's 360 million pound crop and 11.2 percent larger than 1982's production of 467.8 million inshell pounds.

Of the 28 percent of the merchantable walnuts required to be withheld in reserve, 100 percent will be available for export outlets and should provide additional supplies to meet both inshell and shelled export demand. Handlers may also obtain reserve credit for disposing of substandard quality walnuts for oil or animal feed.

The United States Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders specify that reserve pool programs must make at least 110 percent of recent years' sales available to primary markets each season. This requirement would be met. The amount to be made available represents 143 percent of 1983's record large shipments.

While this rule may restrict the amount of walnuts which handlers may sell in normal domestic markets, it is intended to lessen the impact of the projected oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

This action establishes a new § 984.231 and is based on recommendations of the Board, two comments received, and other available information.

Notice of a proposal to establish free, reserve, and export percentages for 1987–88 season California walnuts was published in the Federal Register [52 FR 42298] on November 4, 1987. That notice proposed free, reserve, and export percentages of 60 percent, 40 percent, and 65 percent of the reserve percentage, respectively, and was based on a recommendation made by the Board at its September 16, 1987, meeting. The notice also proposed leaving the remaining 35 percent of the reserve unallocated until a later date, requiring handlers to withhold 35 percent of the reserve from the market until that time. Comments on the proposed rule were invited from interested persons until November 19, 1987. Two comments were received.

One comment was from James J. Hughan of Tulare Nut Company, a handler located in Tulare, California. Attached to Mr. Hughan's comment was a list of 12 walnut growers who agreed with Mr. Hughan's comment.

The commenter objects to the establishment of an unallocated reserve for the purpose of withholding walnuts from the export market when the state California Walnut Commission is using Federal government and industry funds to maintain and expand export markets for California walnuts. However, in making its recommendations, the Board develops marketing estimates, including both inshell and shelled export demand. Therefore, any estimated market expansion would be considered in arriving at reserve and export percentages. This final rule changes the November 4 proposals by eliminating the proposed unallocated reserve. While the November 4 proposal would have required handlers to withhold 35 percent of their reserve from all markets to be used as determined by the Board at a future date, this final rule allows handlers to ship 100 percent of their reserve into export markets as agents of the Board.

The commenter also objects to a statement in the proposed rule that the rule was brought about by essentially small entities acting on their own behalf. The commenter states that the Board's September 16 recommendation, upon which the November 4 proposed rule was based, was made by one large processor, who controls one half of the votes on the Board, acting in conjunction with other large handlers. While Sun Diamond Growers of California (a cooperative which handled more than 50 percent of certified merchantable production during the 1984–85 and 1985–86 marketing years) and growers who market their walnuts through Sun Diamond do hold five of the 10 seats on the Board, the Board is, in our view, representative of the industry as a whole. The Board is composed of five grower members, four handler members, and one non-industry member, and the nine industry members are apportioned between cooperative and independent segments of the industry based on each group's percentage of total certified merchantable production. Moreover, the Board's September 16 recommendation was made on an 8 to 1 vote of the Board's ten members, with the non-industry member abstaining.

The commenter also believes that the rule would have a significant impact on small growers and processors because small processors would have difficulty meeting the export reserve requirements because they do not have the volume or equipment to sell walnuts in foreign markets. The commenter also states that foreign buyers and brokers would not be interested in doing business with someone who is only capable of supplying small amounts of walnuts on an irregular basis. Handlers of any size do have options in disposing of their walnuts. For example, the marketing order provides that handlers may meet their export reserve requirements by delivering reserve walnuts to the Board for disposition by the Board. In this case, walnuts would be pooled and sold by the Board in export or other markets at the highest returns obtainable consistent with the ultimate complete disposition of the export reserve. The proceeds from the sale of these pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to the handlers who delivered walnuts to the pool in proportion to each handlers' contribution.

The second comment received was from Albert F. Guerra of Pacific Nut Company, a handler located in Hollister, California. This commenter is against the establishment of a reserve percentage and states that, in spite of the notice of proposed percentages, sales of this year's crop have been slow and at very low prices. The commenter states that the only way to dispose of the 1987 walnut crop is to have it purchased, and that the market will find its own price level to accomplish that objective. However, the marketing of this year's crop without the reserve could result in an oversupply situation, market instability, and a downward spiral in prices, whereby buyers would be reluctant to purchase walnuts until they were convinced that a bottom price had been reached. This could result in both decreased consumption and even lower prices.

The commenter also claims that the 1987 crop is not as large as the Board estimated at its September 16, 1987, meeting. The Board's estimate is based on a crop projection made by USDA's Agricultural Statistics Board (ASB). On January 13, 1988, the ASB issued a revised projection of 490 million inshell pounds. The Board met on February 12, 1988, to consider current crop and marketing conditions. The Board reviewed the crop estimate as revised by the ASB. Based on sales to date and anticipated future demand, the Board felt that the percentages as previously recommended on December 17, 1987, would provide the amount of walnuts necessary to meet the anticipated trade demand and provide an adequate carryout for the next marketing year.

Finally, the commenter states that a reserve percentage will be disadvantageous to handlers who sell most of their walnuts prior to January 1 of each marketing year rather than on a year-round basis because handlers would have to hold back on disposing of 14 percent of their tonnage (the unallocated reserve) beyond January 1, 1988. Establishing or revising free, reserve, and export percentages is intended to avoid unreasonable fluctuations in supplies and prices during the marketing season. In doing so, all handlers including those who may sell most of their walnuts before January 1 would benefit.

On December 17, 1987, the Board met to reconsider its September 16, 1987, recommendation for free, reserve, and export percentages of 60 percent, 40 percent, and 65 percent of the reserve percentage, respectively, and its estimates of supply and inshell and shelled domestic and export trade demands upon which those percentages were based. These trade demands are the amounts of inshell and shelled walnuts expected to be sold in normal domestic or export market outlets, respectively, during the current marketing year. The inshell and shelled domestic trade demands are adjusted to account for walnuts certified as merchantable which are carried in on August 1, 1987, from the 1986–87 marketing year and for the desirable carryout of walnuts on July 31, 1988, for use in both domestic and export markets during the 1988–89 marketing year.

The Board left its September 16, 1987, estimate of supply subject to regulation unchanged at 222.4 million kernelweight pounds. Adjusted inshell demand is increased from 19.5 million kernelweight pounds to 26.2 million kernelweight pounds based on an increase in the desirable carryout on July 31, 1988. The Board believes that additional inshell walnuts will be needed to meet export trade demand, particularly from Japan, during the early months of the 1988–89 marketing year before 1988 crop walnuts are available for market. The Board also increased the adjusted shelled demand from 113.0 million kernelweight pounds to 135.0 million kernelweight pounds by increasing the desirable carryout from 28.0 million kernelweight pounds to 50.0 million kernelweight pounds. The 50.0 million kernelweight pound desirable carryout is more in keeping with actual carryouts in recent years, which averaged 46.6 million kernelweight pounds over the 1982–83 through 1986–87 period and which are trending upward. The Board left its inshell and shelled export demands unchanged at 41.3 million kernelweight pounds and 12.0 million kernelweight pounds, respectively. Based on the changes in adjusted inshell and shelled demands, the Board recalculated its recommended free, reserve, and export percentages at 72 percent, 28 percent, and 100 percent of the reserve percentage, respectively.

The complete estimates used by the Board to revise its recommended percentages for the 1987–88 marketing year are given in the table as follows. Weight figures for inshell walnuts are converted to their equivalent shelled kernelweights. The September 16, 1987, estimates, where different from the December 17, 1987, estimates, are given in parentheses.

	Inshell (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Supply:			
1. Orchard-Run Production	520,000		
2. Less: Miscellaneous Farm Use	2,000		
3. Commercial Production	518,000	40	207,200
4. Plus: Uncertified Carryin Inshell	69	45	31
Uncertified Carryin Shelled			7,208
5. Total Mechantable Supply			214,439
6. Plus: Substandard Creditable for Reserve			8,000
7. Total Supply Subject to Regulation			222,439
Demand:			
8. Inshell Domestic Demand	40,000		
9. Plus: Desirable Carryout	18,751 (4,000)		
10. Less: Certified Carryin	583		
11. Adjusted Inshell Demand	58,168 (43,417)	45	26,176 (19,538)
12. Shelled Domestic Demand			103,000
13. Plus: Desirable Carryout			50,000 (28,000)
14. Less: Certified Carryin			18,020
15. Adjusted Shelled Demand			134,980 (112,980)
16. Total Demand (Item 11 + Item 15)			161,156 (132,518)
17. Free Percentage (Item 16—Item 7 x 100)			(1)
18. Reserve Percentage (100%—Item 17)			(2)
Determination of Export Percentage:			
19. Reserve Available for Export (Item 5—Item 16)			53,283 (81,921)
20. Export Demand:			
Inshell	91,740	45	41,283
Shelled			12,000
Total			53,283
21. Percent of Reserve for Export (Item 20—Item 19 x 100)			(3)

[1] 72 percent (60).

[2] 28 percent (40).

[3] 100 percent (65).

Therefore, for the reasons specified, the percentages established by this final rule are changed from those proposed in the November 4, 1987, notice based on the comments received, the Board's recommendations, and other available information.

After consideration of all relevant matter presented, including the Board's recommendations, the two comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action applies to all walnuts received by handlers during the 1987–88 crop year, which began August 1, 1987; (2) handlers are currently processing 1987–88 crop year walnuts; and (3) handlers are aware of this action, which was recommended by the Board at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 984

Marketing agreements and orders, Walnuts, California.

For reasons set forth in the preamble, 7 CFR Part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 984 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new section consisting of § 984.231 to read as follows:

[Note: This section will not appear in the annual Code of Federal Regulations]:

§ 984.231 Free, reserve, and export percentages for California walnuts during the 1987–88 marketing year.

The free, reserve, and export percentages for California walnuts during the marketing year beginning August 1, 1987, shall be 72 percent, 28 percent, and 100 percent of the reserve percentage, respectively.

Dated: March 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–6424 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA) adopts its proposed rule published February 3, 1988. This action is needed to comply with section 607 of the Agricultural Credit Act of 1987, Pub. L. (Pub. L.) 100–233. The intended effect of this section is to revise the criteria for voting and serving as elected county committee members to permit greater participation by the public in the process.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, USDA, Room 6442, Washington DC 20250, Telephone: (202) 382–1061.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA implemented certain provisions of the Agriculture Credit Act of 1987 (Pub. L. 100–233) upon publication by proposed rule in the **Federal Register** (53 FR 3176) on February 3, 1988. That rule provided for a 30 day comment period ending March 4, 1988. Thirty-one written comments were received. All were considered in developing the final rule. The following is a discussion of comments received:

One respondent commented that the size of FmHA county committees is too small. The Agency reviewed this comment and determined that since the present three member committee is mandated by law, no change in the regulation is required.

One respondent commented on the provision that prohibits members from performing certain functions (i.e., serving as an official or performing administrative functions such as clerical services, maintaining financial or other records, developing operating budgets, etc.), for an FmHA financed association or organization after appointment. The respondent concluded that this provision was in conflict with the change allowing eligible farm borrowers to serve because a farm borrower would continue his/her farm operation after appointment. FmHA reviewed this provision and determined that, as stated, it clearly does not apply to borrower's farming operations. Therefore, the Agency made no change in this provision.

Ten respondents commented that sons and daughters could be excluded from voting because they are not an "owner, tenant, sharecropper, or spouse of a farmer," and suggested that the regulation be changed to include them. The Agency reviewed this comment and determined that spouses are the only specific family members defined as a farmer in Pub. L. 100–233. We believe that the regulation's definition of farmer as owner, tenant or sharecropper is sufficiently broad. Consequently, sons and daughters are not entitled to vote unless they are farmers in their own right.

One respondent commented that individuals who fail to pay their just financial obligations that are either acknowledged, reduced to judgment by a court, or confirmed by a final administrative determination of a unit of the Federal, State, or local government, not be eligible to serve as county committee members. The respondent suggested that a provision be included that would require that to be elected or remain on the committee, members must pay their just debts. FmHA reviewed this comment and determined that the regulation already provides for this by its reference to FmHa Instruction 2045–BB, which includes provisions for paying just debts. Therefore, the Agency does not feel that any additional references in the regulation are necessary.

Three respondents commented that individuals who are ineligible for FmHA services because of a legal or administrative determination that conversion or unaccountability of proceeds from the sale of security property has occurred in an FmHA insured or guaranteed loan, be excluded from nomination and serving as a county committee member. FmHA reviewed the comment and determed that restricting only former or present FmHA borrowers who have converted security property or been found unaccountable for it, from nomination for the county committee would create an inequity by placing an eligibility requirement only on a selected group, specifically those individuals who are current or former FmHA borrowers. This would be particularly inequitable since FmHA does not have access to the loan records of borrowers who have loans not financed through FmHA. However, FmHA does consider conversion or unaccountability of security property to be a potentially serious matter that may constitute personal conduct which adversely affects FmHA or USDA. Therefore, should an FmHA borrower be found to have improperly converted security property or been unaccountable for such property, this can be grounds for possible removal. The same would be true for non-FmHA borrowers on the committee where the Agency receives information that this has occurred with another lending institution. In cases where there is gross negligence and/or deliberate fraud involved, there could be a determination that there is sufficient reason for removal. Removals of county committee members for personal cause will be made only after a full report has been made by the State Director to the Administrator, and a decision is made at that level. No change is made to the regulation since removal for conduct adverse to the Agency is already spelled out in the regulations.

One respondent commented that former or present FmHA delinquent borrowers, or FmHA borrowers who have defaulted on their loans, be prohibited from serving as county committee members. The Agency does not believe that delinquency or default on an FmHA loan, in and of itself, reflects on the character of a present or former borrower. Therefore, we have determined that delinquency or default on an FmHA loan, when viewed alone, is not sufficient cause to justify exclusion from serving as a county committee member.

Four respondents commented that the regulations should clearly define the term "or active in the management or affairs of any political club, organization or committee." The respondent expressed concern that FmHA County Supervisors or State Directors would apply the label of "political" to farm activist groups, regardless of their actual involvement in partisan politics. The regulation specifies that the prohibition on involvement in politically active organizations is limited to those organizations involved in partisan politics. Therefore, this would not include members of non-partisan political action groups. The specific criteria for these determinations are referenced in the regulation, and are contained in FmHA Instruction 2045–CC, which is available in any FmHA office. Consequently, the Agency believes the regulation is sufficiently clear on this point and does not require further elaboration.

One respondent commented that the regulations do not provide guidance on the number of allowable FmHA borrowers serving on the committee in instances where more than one area committee is established in the same county. The Agency reviewed this comment and determined that the regulation provides for the establishment of an area committee to service a part of a county, parts of two or more counties, or a combination of two or more counties, but only in instances where establishing a county committee is not feasible for reasons as provided in the regulation. If an area committee is established, that area committee would provide services to a specific area as does a regular county committee. Although it is possible to have two committees in one county, each county or area committee is independent and therefore would be allowed to have an FmHA borrower as a committee member. This would be consistent with the requirement in the law that limits each committee to one farmer eligible for an FmHA loan. The Agency determined that no change in the provision is necessary.

Seven respondents commented that the language in § 2054.1102 (c)(4) and (d) is not consistent in the definition of a farmer eligible for a loan made or insured by FmHA, and that "qualified applicants" should be changed to "certified applicants." The respondent suggested that the Agency use consistent language throughout the regulation. The Agency reviewed this comment and determined that the language used in both subsections should be consistent and has made appropriate changes throughout the regulations.

Eight respondents commented that the regulations should be written to allow any eligible FmHA borrower to be considered for the county committee. FmHA reviewed this comment and determined that the regulation already provides for this under § 2054.1104. Therefore, the Agency does not feel that any additional requirements are necessary.

One respondent commented that the provision which allows the County Supervisor to designate alternates for absent committee members should be changed to require that the State Director designate alternates for absent committee members. The Agency reviewed this comment and determined that the authority granted to County Supervisors to designate alternates in the absence of committee members is granted only when committee members are not available to attend meetings. The Agency believes that this authority is necessary at the County Office level in order to assure timely meetings. The Agency has no information to suggest that this delegation level has resulted in any problems.

Nine respondents commented the provision which provides that the State Director or his designated staff may solicit nominations during the nominating period be removed because solicitation by FmHA undermines the purpose of the election. The Agency reviewed this comment and disagrees that the solicitation of nominees by FmHA constitutes a conflict of interest. In many parts of the country, it is very difficult to get farmers to run for the county committee. If the Agency personnel did not solicit nominations many committees could not be properly constituted. Also, the regulations are clear that once individuals have been nominated, no further action for or against candidates can be taken by FmHA personnel. The Agency is satisfied that this provision does not limit the freedom of choice of voters.

Ten respondents commented that the 1987 Credit Act provides for the election of one member of the county committee to be a FmHA borrower and that the FmHA regulation does not make it clear that an elected borrower should have precedence over a designated FmHA borrower in the appointment process. Similar comments indicating designated members and alternates should also be FmHA borrowers were received. Since only one individual eligible for an FmHA loan can serve at a time, the respondents further commented that the regulation should be changed to make it clear that an elected FmHA borrower would serve instead of a designated borrower. A similar comment was received that the county committee should have representatives of farm borrowers in order to better serve the farmer. The agency reviewed the comments and determined that the Agriculture Credit Act of 1987 (Pub. L. 100–233) permits FmHA borrowers to serve on county committees. However, the Act is silent on the issue as to whether the FmHA borrower should be an elected or designated member. Likewise, the law is silent on the qualifications of alternate members. In the first instance, the Agency can find no meaningful distinction between the level of service provided by an elected member or a designated member that would justify the preference or distinction suggested in the comments. Furthermore, the law specifically states that individuals eligible for FmHA loans may be elected *or* designated. To deprive eligible borrowers from being designated would therefore be contrary to the law. In the second instance, the Agency does not believe that the administrative burden of limiting alternate members to being FmHA borrowers is feasible or prudent given the difficulty most jurisdictions have in finding individuals to serve. Therefore no change is made to the final regulations on these points.

Nine respondents commented the regulations require that the elections be held in June, and that June is a very busy time for farmers. One respondent further commented that the regulations should be changed to hold the elections in late fall or winter months. Farming seasons vary throughout the country and as a past practice, FmHA has always appointed new county committee members in the month of June. Our experiences have not indicated that this timeframe is unreasonable for farmers. We believe that changing the elections from June to late fall or winter would mean following a later schedule than the Agency feels is optimum; i.e., non-disruptive to normal farm activities. In addition, changing the election schedule at this point would disrupt the current cycle of appointments.

Five respondents commented on the process for absentee ballots and suggested that § 2054.1117 be changed to allow ballots to be hand carried in sealed envelopes to County Offices, and that FmHA verify votes by the same process used for mailed ballots. A similar comment was received and this respondent suggested that the regulation be changed to allow a single individual to hand carry numerous ballots that are hand carried in sealed envelopes to the County Office. The Agency reviewed these comments and determined that allowing numerous ballots to be hand carried by a single individual jeopardizes the concept of each farmer only being entitled to one vote. The Agency believes that requiring that absentee ballots be mailed in separate envelopes, and that only the voter can hand carry his or her own ballot serves as a deterrent to the possibility of undue influence over voters, or even of voter fraud through ballot stuffing. FmHA further determined that the difference in the verification of absentee ballots and regular ballots is the verification of challenged votes. This difference between voting in person and voting by absentee ballot (i.e., voter is not present), requires the difference in the verification of ballot process. FmHA's practice is consistent with nationwide practices in most municipal and public elections.

Six respondents commented that § 2054.1120 be changed to give advance notice to the public as to time and date of ballot counting. The Agency reviewed this comment and determined that the date designated by the County Office for ballot counting is indicated on the Election of County Committee Posters. These Posters are used by all FmHA County Offices to announce the dates of significant events that take place during the election process. If an individual is interested in being present at the ballot counting, he or she can always contact their FmHA County Office for the appropriate date. The Agency determined that no change in the provision is necessary.

One respondent commented that § 2054.1120 be changed to clearly state that witnesses cannot be County Office staff. The Agency reviewed this comment and determined that the presence of members of the general public as witnesses is optional, depending on the availability of persons to serve as witnesses. Should no member of the general public be available, the Agency is satisfied that the County Office staff can serve as trustworthy witnesses. Since interest by the general public in the elections is negligible in a significant number of locations around the country, it would be administratively burdensome to exclude FmHA County Office employees from serving as witnesses and to require public witnesses. Additionally, the Agency is satisfied that its employees are trustworthy to hold elections and verify the results. Therefore, the Agency does not believe that requiring public witnesses should be made mandatory.

One respondent expressed a concern that § 2054.1119 only suggests that the ballot counting process be done in public, and that it also only suggests that it be done in the County Office during regular working hours. The Agency reviewed this comment and determined that the language provided in § 2054.1119 can be strengthened. Therefore, we have changed the regulation to provide that the counting process shall be in public, to the extent that the public wishes to attend, and that it shall take place in the County Offices during regular working hours.

One respondent commented that the requirement that a dishonorable discharge from any branch of the armed forces is an overly broad trigger for disqualification and that this requirement appears to be irrelevant or overly broad. The Agency has always barred persons who received a dishonorable discharge from the military from serving on the county committee. This provision is retained to ensure that county committee members be of good character and have the confidence of the public.

Three respondents commented that § 2054.1111(c) leaves the determination of petition validity and eligibility to hold office solely in the discretion of the county supervisor. The respondent suggested that these determinations may adversely affect the potential nominee and should be subject to review, at least by the sitting county committee. The Agency reviewed this comment and determined that the responsibility for validity of petitions and the nominee's eligibility to hold office is best placed at the County Supervisor level. Placing the responsibility for making decisions on the validity of petitions and eligibility to hold office with the County Supervisor has not proven to be a problem in previous elections. Therefore, the Agency believes that establishing a higher or additional review process is an unnecessary administrative burden.

One respondent commented that § 2054.1127 refers to the County Supervisor verifying committee members' mileage with readings from their "speedometers," and suggested that FmHA make a technical correction by using "odometers." The Agency agrees and adopted the recommendation.

Nine respondents commented that the regulations do not include the most important duties of the county committee, duties that were given to the committee in the Agriculture Credit Act of 1987, and that the FmHA regulations should be changed to include these duties. The Agency reviewed this comment and we have changed the regulation to include the additional duty indentified in the Agriculture Credit Act of 1987.

One respondent commented that the Law requires that county committees are responsible for determining if accelerated borrowers are actively farming in order that they may be eligible for restructuring. The respondent recommended that the provision that specifies the functions performed by county committees be changed to reflect this added responsibility. The Agency reviewed that comment and determined that the Law does require that community committees to make determinations concerning accelerated borrowers and eligibility for restructuring. However, the Law specifies that county committees will make determinations if as of October 30, 1987, a FmHA borrower continued to be actively engaged in farming operations for which the farmer program loan was made. This is a one time determination and therefore, is not a recurring function. The Agency has determined that because it is not a recurring function, it would not be necessary to include this function as a responsibility of the county committees.

Nine respondents commented on the provision of the regulations which permits the designation of a non-farmer to the county committee by the State Director. The respondents stated that the statutory language in 7 U.S.C. 1982(a) makes it clear that all county committee members must be farmers and that the definition in the regulation would mean the inclusion of non-farming landowners. The respondents further state that alternates should be farmers who ran in the election and should be selected based on the number of votes they received. It is the Agency opinion that the law established no criteria whatsoever in determining the qualifications of the non-elected member of the county committee and alternates. The Agency determination that these persons did not have to be farmers was a reasonable one given the fact that the Agency has always permitted one county committee member to be a non-farmer. Thus this provision resulted in no diversion from past practice and did not violate any stated or implied requirement of the law. The law was also silent on the method for selection of alternates. The Agency found that a number of individuals were willing to serve on the county committee if they did not have to stand for election. The Agency believes that if alternates were to be elected that fewer individuals would be willing to serve and that many county committees would not be able to appoint alternates. In view of this, the Agency does not wish to limit its prerogatives in the selection process by requiring that alternates be selected through the election process.

Four respondents commented that there should be a provision for a grievance procedure if a farmer does not believe that a county committee election is being held or was held according to the regulations. The Agency has a provision for retaining ballots for 60 days after the elections to provide for reconstruction of balloting in case a complaint concerning the election is made. All other election materials are retained for a period of three years following the election. It is the Agency's view that this provides an ample opportunity for individuals to challenge the results of elections. Once an election is challenged, the election materials would be retained until a final administrative determination is made regarding the election. To date, the current process has provided sufficient to both the Agency's and the public's needs. Consequently, we do not favor this proposal.

One respondent commented that they are aware of occasions where County Supervisors have not notified all county committee members of prospective meetings. The respondent wishes to make it a requirement of the regulations that all members of the committee be notified of meetings. Although the Agency is unaware of instances where

available committee members were not notified of committee meetings, we believe that adding a provision that such notification be made is appropriate. Consequently, § 2054.1103(c) is amended to state that *all* sitting county committee members must be notified of meetings.

Five respondents commented that the regulation's definition of a farmer is too broad and that it allows individuals to participate in the county committee elections who are not actually farmers, for example landlords. The respondents suggest that the definition be changed to limit it to individuals that actively engage in the production of agricultural products. Pub. L. 100–233 was silent on the definition of who is a farmer. The Agency chose to utilize the definition currently in use by the Agricultural Stabilization and Conservation Services (ASCS). By using the ASCS definition of a farmer, FmHA believes it will reduce confusion of the public over who is eligible to vote, since the two USDA agencies will share the same definition. Additionally, FmHA believes that by interpreting the definition of farmer broadly that it has afforded an opportunity for all persons who could be classified as farmers, within the intent of the law, an opportunity to vote. Restricting eligibility to current producers could exclude, for example, former or retired farmers who retain an interest in farming and whose knowledge and skill would therefore be lost to the committee and the public.

Ten respondents commented that there are insufficient guidelines governing the establishment of area committees by the State Director. The respondent believes that provision for establishing area committees when it has been determined that there are insufficient interested individuals is objectionable since many farmers are still unaware of the opportunity to serve as committee members. The Agency notes that an insufficient number of interested farmers is only one of four examples of cases where the formation of Area Committees should be considered. It has been the Agency's experience over the last two elections that an insufficient number of farmers interested in serving on the county committee generally coincides with a situation where there are few farmers and a low Agency Farmer Program workload. In such instances, good management dictates that consideration be given to forming area committees. The Agency has not received any complaints that area committees were formed when county committees were feasible. The Agency sees no compelling reason to limit State Director discretion in this matter.

Three respondents commented that it is unclear whether the announcement of boundary changes prior to establishment of an area committee must be done for regular or special elections. The respondents also believe the language relating to the State Director's authority to set special elections is unclear. The need to publish boundary changes prior to county committee elections is a requirement for all county committee elections, both regular and special. Since the regulations do not specify a limitation on this requirement, there is no need for further clarification. The Agency also believes that all the circumstances in which State Directors are authorized to call special elections are fully spelled out. The Agency does not believe that further elaboration is necessary.

Two respondents commented that the creation of an area committee should result in the need for a special election since the change in boundaries could result in some counties or parts of counties not being fairly represented. Where the formation of area committees results in permanent vacancies occurring on the newly formed committee, special elections may be necessary. The regulations already provide for that. However, the Agency does not believe that it is feasible to require that every county or part of a county have a representative. Since there are only two elected committee members, and all eligible individuals from within the area can run, it would be impossible to ensure the highest vote getters would not be from the same area. FmHA believes that Congress' intent that the committees be fairly represented of farmers in a given area is met by the regulations.

One respondent commented that when utilizing alternates, the County Supervisor should ensure that alternates replacing elected members be called to duty based on the number of votes the alternate received in the election. As discussed earlier, there is no requirement that alternates stand for election or be appointed with regard to votes received in an election, if any. Consequently, the Agency does not favor adoption of this proposal.

Two respondents commented that permitting alternates to serve out the unexpired terms is contrary to Congressional intent that there be two elected members on the committee at all times. The respondent suggested that permanent vacancies of elected members always be filled through special election. The Agency does not agree that the law requires that there be two elected members at *all* times. Rather the law states that two members shall be elected. It does not speak to the situation of how to fill permanent vacancies caused by elected members leaving. FmHA believes that permitting alternates who succeed elected members to serve out the respective terms of those members is consistent with generally accepted political practices of most jurisdictions. Therefore, no change is made to this provision.

Seven respondents proposed that the regulations be changed to limit county committee members from counseling prospective borrowers to only apply to borrowers from the county or area in which the member serves. FmHA disagrees and believes that it is important to the public's perception of the impartiality of committee members that they refrain from all such activities regardless of the jurisdiction of the prospective borrower. The Agency believes that a blanket prohibition from counseling borrowers is justified on the basis of the administrative burden that would result from having to make a case by case determination that the borrowers are inside or outside the county committee members' own county.

One respondent commented that provision prohibiting county committee members from knowingly making any loan to persons to which they are related within the second degree of consanguinity or affinity is unclear. The Agency agrees and we have changed the provision to cite the specific regulation FmHA Instruction that provides the appropriate definition of consanguinity.

One respondent commented that the intent of Congress in permitting eligible FmHA borrowers to serve on the county committee was meant to apply only to existing borrowers and should not apply to applicants. Hence, the respondent suggested that both borrowers and applicants be permitted to serve on the committee simultaneously. It has always been FmHA's interpretations that individuals were not ineligible to run for or serve on the county committee merely because they were applicants. However, since Congress specifically required that only one individual "eligible" for an FmHA loan may serve on the committee at any one time, FmHA believes that it has no choice but to interpret that as to include individuals who have been certified eligible for a loan insured or guaranteed by FmHA.

Three respondents commented that FmHA Instruction 2045–CC especially § 2045.1407, Prohibited Activities,

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referenced in § 2054.1104(d) be quoted at length or made an attachment to the regulation so that candidates will not exclude themselves from running for the committee. FmHA indicated in the regulation that FmHA Instruction 2045–CC is available in any FmHA office for inspection. In addition, anyone interested in running may refer their questions to the local County Office.

One respondent suggested that county committee members not be made FmHA employees, but rather be independent contractors. The respondent believes that this would be preferable since the prohibition against politically active individuals serving on the committee would no longer be necessary. FmHA believes that it is important to the public's perception of the committees' impartiality that its members not engage in partisan politics.

Three respondents suggested that county committee members be exempt from the requirements of FmHA Instruction 2054–L, Restrictions on Employment of Farmers Home Administration Borrowers and Sons and Daughters of Borrowers. FmHA Instruction 2054–L applies only to full time employees. Since county committee members are intermittent employees, they are exempt from the provisions of FmHA Instruction 2054–L.

Six respondents expressed concern that the regulations barring FmHA employees from performing certain functions for FmHA financed associations or organizations applied to individuals who might be partners or employees or organizations attempting to get a loan from FmHA. The respondent also stated that if it was not the intent to exclude these individuals that the language of the regulation was unclear. FmHA agrees that the language is unclear. Consequently, the regulations are amended to reflect that this prohibition relates to those employees and officials of associations and organizations with FmHA-financed community facility or community business loans.

Five respondents stated that the requirements that an elected county committee member be eligible for Federal employment could result in elected committee members not being able to take office. Further, the respondent stated that this would permit the State Director to appoint an alternate in cases where elected members were later found ineligible for Federal employment. By necessity, the process of determining someone's eligibility for Federal employment is one that can only be accomplished after an individual has completed a variety of appointment documents which need to be verified. It is not the intent, however, of the regulations to permit a State Director to appoint an alternate in cases where an elected member cannot be appointed. In such cases, the next highest vote getter becomes the elected member.

The only time the regulations permit the appointment of alternates to succeed county committee members is when a permanent vacancy exists. This situation is not present until a member is appointed as a Federal employee and is terminated or resigns.

Twenty respondents stated that the requirement that the period for nominations end 20 days before the election is in conflict with the requirement that the period between the notice of election and the election be 30 days. The Agency agrees that this is incorrect. The regulations has been revised to state that the nomination period will be 45 days and will end 12 days prior to the Notice of Election.

One respondent suggested that pro-tem members not be appointed in cases where a full slate of candidates cannot be fielded for the elected county committee vacancies. Instead the respondent recommends leaving the existing committee members on until an election can take place. In practice, the pro-tem members that have been appointed in such cases have almost invariably been members whose terms have expired. However, since the terms of members are set by law, FmHA could not legally extend their appointments. Instead, they had to be reappointed on a pro-tem basis until a special election could be held and new appointments made.

Seven respondents stated that exhibits to the regulation which were not published should have been published in the Federal Register. It is USDA policy not to publish exhibits which are internal administrative guidance and which do not affect the public. The Agency believes that the information published in the Federal Register contained all the pertinent information necessary for the public to comment on.

Four respondents suggested that the regulations be amended to read that there is a presumption that an individual is a farmer if their spouse is an eligible farmer whose name appears on the ASCS producer list. The Agency agrees that this is reasonable, and has amended the regulation accordingly for both ballots voted in person and ballots voted on an absentee basis.

Three respondents commented that the 5 working days given for absentee voters to respond to questioned ballots was too short and recommended giving voters 10 working days to respond. The respondents also stated that it was unclear as to when the 5 day period started. The Agency policy on this is to attempt to contact the individuals telephonically if possible, and only to write if that method fails. It has been our experience that most questioned ballots can be dealt with verbally and do not require the voter to produce documentation. The regulation is clear that the 5 days began after the voter has been contacted. This has proved sufficient, and the Agency does not believe extending this period is necessary.

Three respondents stated that the regulation was unclear as to what "election requirements" ballots were being subjected to by the County Office staff at the time of the ballot count. This provision refers to separating valid from invalid votes. Since this process is described elsewhere in the section, this statement is redundant and is therefore deleted.

Three respondents commented that there is no justification for considering a ballot invalid because it has a write-in candidate. The Agency disagrees. The regulations call for nomination by petition to be the only method for developing slates of candidates. Since write-in candidates, by definition, would not have been nominated by petition their inclusion on a ballot is invalid. As a result the ballot is invalid.

One respondent commented that the provision which requires that designated and alternate committee members reside in the county or area in which the committee operates is inconsistent with eligibility requirements for elected members; i.e., elected members must have their principal farming operation in the county or area in which they serve. The Agency agrees that the criteria for residence for elected and designated members is different. However, this is a function of the different eligibility requirements for these different groups. Since the Agency does not require that designated members or alternates be farmers, it is necessary to ensure that such persons do represent the area where they are serving as committee members. Hence, this is accomplished by requiring that they maintain their residence in that county or area.

Five respondents commented that there is no provision for a grievance procedure for a borrower if he or she perceives there was a conflict of interest on the part of a committee member who is reviewing the person's loan application. Further, the respondent states that there is no provision for an individual to remove themselves from

considering a loan application if they have a conflict of interest. The Agency disagree with these statements. Firstly, loan applicants may appeal decisions of the county committee if they believe that their loan application was not properly considered. Secondly, since county committee members are Federal employees they are covered by applicable conduct regulations governing conflict of interest. Any committee member who believes that he or she has a conflict of interest that would affect their consideration of a loan are required by FmHA Instruction 2045–BB to exclude themselves from the process.

One respondent commented that spouses who are active in the farming operation should have their own vote. The Agency reviewed this comment and determined that the regulation already provides for this under § 2054.1108(a). Therefore, the Agency does not feel that any additional requirements are necessary.

One respondent commented that the Agency omitted a requirement that publications serving women, racial, and ethnic minorities be utilized in the nomination process. The overall requirements relating to notice to the public regarding the election process are contained in § 2054.1105(d) and this section does include a requirement that publications serving women, racial, and ethnic minorities be utilized in the full election process. Consequently, the Agency believes that no further elaboration of this requirement is necessary in other sections of the regulation.

Two respondents commented that the stipulation that designated county committee members be in general agreement with the objectives of FmHA was too vague and stated that the main purpose of FmHA should be quoted in the regulation. One respondent offered the following wording, "FmHA was established for the purpose of insuring tht family farmers keep control of their farms and that FmHA is the lender of last resort." The Agency has reviewed this comment and agrees that inclusion of the Agency's mission statement in the regulation would provide greater clarity. The Agency, however, does not agree with the respondent's definition of the Agency objectives. The Agency has provided the definition of its mission.

Three respondents commented that the provision in § 2054.1103(b) stating that county committee members are not prohibited from making inquiries concerning applicants and borrowers was unclear. The respondents suggested that the nature of the inquiries permitted be clarified in the regulation. The Agency believes that it would be counter productive to attempt to define permissiable contacts since this would lead to placing unnecessary limitations on normal interpersonal contacts. The Agency believes that this section is clear that prohibited contacts, in this context, are confined to counseling prospective borrowers regarding preparation of loan documents. Therefore, the Agency does not believe that it is useful to further define this provision.

One respondent commented that FmHA should use the same elections procedures used by ASCS and with little additional spending. At the time FmHA first defined its election procedures, consideration was given to following the ASCS model, but this ultimately had to be rejected to the irreconcilable differences between the laws the two agencies operate under.

Two respondents commented that the provision requiring that County Supervisors engage in community out reach and information activities designed to educate minorities and women on the nomination, election, or appointment process did not specify the methods to be undertaken or the system of evaluation. The Agency believes that the County Supervisors should have leeway in determining specific courses of action to accomplish this goal. Evaluation of the success of County Supervisors in bringing women and minorities into the county committee election process can be made through the annual performance appraisal process.

Two respondents commented that the regulations be changed to include a provision to require the mailing of nomination forms and ballots to all FmHA borrowers and all farmers who are non FmHA borrowers but listed on the county ASCS producer list. A similar comment was received that when ballots are mailed to the prospective voter that the envelope contain complete voting instructions. The Agency believes that the system of publishing ballots in publications serving the area and mailing ballots to those individuals who request them provides eligible voters with ample opportunity to vote. The Agency also believes that the voting instructions provides adequate information to the prospective voter. No changes in the regulation are necessary.

One respondent commented that the provision in the regulation that provides for the termination of the employment of county committee members by various means allows unilateral removal of county committee members without any explanation of the process or the reasons for removal. The Agency has reviewed this comment and determined that county committee members serve at the will of the Agency. Because county committee members serve at the will of the agency and because they are intermittent temporary employees in the excepted service, they do not have civil service status. Therefore, by law they are not entitled to an official appeal process and are subject to removal. However, the Agency has provided that all terminations for cause be reviewed by the Administrator. All county committee members who are removed through this process are given a letter from the State Director explaining the reason for the removal. The Agency believes that this process is adequate in protecting the rights of county committee members.

One respondent commented that the provision requiring that a nominating petition be signed by three eligible voters be changed to prohibit the nominee from signing the petition. The Agency has reviewed this comment and determined that there is nothing in the Law which prohibits individuals from nominating themselves for election as county committee members. Also, we believe that allowing self nominations is consistent with general election practices. No change is made to the regulation.

One respondent commented that the language in § 2054.1111(b) should be changed to specifically state that the County Supervisor or designated staff shall call for nominations during the nominating period. The Agency reviewed this comment and determined that the language as stated in the regulation is intended to convey that the methods of developing slates will be by the nomination process. We believe that further clarification of this provision is unnecessary.

One respondent commented that § 2054.1115(b) be deleted. The Agency reviewed this comment and determined that the Law does not prohibit FmHA employees from voting, if eligible. The Agency believes that this section is necessary in order to assure that FmHA employees are aware that they are entitled, if eligible, to vote. No change in this provision is necessary.

One respondent commented that it should be mandatory that information concerning elections be published in the ASCS newsletter. The Agency reviewed this comment and determined that the regulation provides for this under § 2054.1105(d). No change in the regulation is necessary.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation Statement

1. For reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Farm Labor Housing Loans and the Soil and Water Loans are subject to the provisions of Executive Order 12374 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404	Emergency Loans
10.406	Farm Operating Loans
10.407	Farm Ownership Loans
10.421	Indian Tribes and Tribal Corporation Loans

List of Subjects in 7 CFR Part 2054

Agriculture, County Committee members.

Therefore, Chapter XVII, Title 7 of the Code of Federal Regulations is amended by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101–2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, And Functions of County And/or Area Committees

Sec.

2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Functions of the county and/or area committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
2054.1106 Voting eligibility.
2054.1107—2054.1110 [Reserved]
2054.1111 Conducting elections.
2054.1112—2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121—2054.1122 [Reserved]
2054.1123 Notifying candidates of election results.
2054.1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130—2054.1149 [Reserved]
2054.1150 OMB control number.

Subpart W—Employment, Pay, And Functions of County And/or Area Committees

§ 2054.1101 General.

This subpart provides instructions for selection of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, or handicap.

§ 2054.1102 Establishment and composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carried out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected by farmers. For this subpart, farmer is defined as any person who has an interest in a farm as owner, tenant, or sharecropper within the county or area. The term "farmer" shall include the spouse of an eligible farmer. One member, who shall reside within the county or area, shall be designated by the State Director. Designation may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the mission of FmHA. The mission of FmHA is to provide supervised credit assistance through various loan and grant programs, to rural Americans by encouraging and supporting family farm ownership and operation to provide an economic and social base, provide adequate housing, install needed community facilities, provide economic support to farmers affected by disaster and foster economic and rural development. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts of two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking steps (2) (paragraph (c)(2) of this section) the County Supervisor should have the members draw lots for the positions.

(4) In combining two county committees to create an area committee, the State Director must ensure that no more than one member of the reconstituted committee is a farmer eligible for a loan made or insured by FmHA. See § 2054.1104 for definition of persons eligible for an FmHA loan.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting. When utilizing alternates, the County Supervisor should ensure that no more than one member of the committee is a farmer eligible for a loan made or insured by FmHA.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. This rule of succession is subject to the requirement that no more than one farmer eligible for an FmHA loan serve at the same time. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county and/or area committee.

(a) The functions which are subject to appropriate program Regulations, Civil Rights Laws, and Subpart E of Part 1901 of this Chapter to be performed by the committees, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans, irrigation and drainage loans to grazing associations;

(2) Classify or reclassify farm real estate property that is being suitable or unsuitable. Also, the county committee will be responsible for subdividing surplus property larger than family size whenever possible into parcels for the purpose of creating one or more suitable farm properties;

(3) Making recommendations on resolving problem cases;

(4) Conferring with the County Supervisor on the servicing of FmHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(5) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(6) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(7) Attending appeal hearing authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearing and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county or area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify all county committee members of meetings. Regardless of the method, all sitting members must be notified of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and are farmers (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. Any farmer eligible for a loan made or insured by FmHA shall be eligible to serve as an elected or appointed county committee member. Not more than one farmer eligible for a loan made or insured by FmHA may serve on a county committee at the same time. Persons will be considered "eligible" for an FmHA loan if they either currently have such a loan, or are certified applicants for such a loan. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2045–CC (available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIS), or agents of these agencies.

(f) Not currently be an employee of a Federal Land Bank, Production Credit Association, or other Farm Credit System institutions, or serve on a committee which make recommendations for approval of loans by these organizations since FmHA may be involved in participation loans with such Farm Credit System loans.

(g) Not perform any of the following functions for an association or organization having FmHA-financed community facilities or community business loans after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(h) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse of or a family member living in the same household with an individual serving on the board of such organizations in the county or area over which the county committee has jurisdication, since FmHA may be involved in participation loans with such banks.

(i) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1128 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the areas, and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving these groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; i.e., persons who have an interest in a farm as owner, tenant, or sharecropper or spouses of such persons, or be duly authorized representatives of a legal entity which has an interest in a farm.

(b) Have their principal farming operation within the county or area for which the election is being held.

§§ 2054.1107—2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Elections calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will be 45 days and end 12 days before publication of the Notice of Election.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletter and through public service announcements on radio and television stations serving the area. In addition, notices whall be posted in all FmHA offices within the area. The Notice of Right to Nominate by Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office.)

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating petition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 12 days before the date of publication before the Notice of Election, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), or (h).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 12 days before publication of the Notice of Election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (available in any FmHA office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If a special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112—2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candidate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 30 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots should be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the producer list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote. Spouses of farmers will be presumed eligible, regardless of whether their name appears on the ASCS list, if their spouses' name appears on the ASCS list. Individuals voting in person may only cast their own vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Spouses of farmers will be presumed eligible, regardless of whether their name appears on the ASCS list, if their spouses' name appears on the ASCS list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 60 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff. Each ballot must be mailed in a separate envelope with the name and address of the voter clearly marked on the outside of the envelope. If more than one ballot is mailed in the same envelope, all ballots contained therein will be invalid, the votes will not be counted, and the ballots will be destroyed 60 days after the election.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted within 7 working days after the election.

(b) The counting process shall be in public, and shall be done in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses, if witnesses are present.

(c) Examine the ballots and separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(d) Call out the votes shown on the ballots.

(e) Review the final vote count and determine the candidate(s) elected.

(f) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

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(g) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§§ 2054.1121–2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify successful candidates of election results in writing. See FmHA Guide Letter No. 2054–2, "Letter to Elected County Committee Members," (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to hold office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.1125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, § 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF–52, "Request for Personnel Action," and AD–350A, "Change Action Notice,") for members. One of the remark codes listed below must be entered in Blocks 37 and 56, respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of the Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.* The State Director will make the necessary determinations in such cases in accordance with Federal Personnel Manual (FPM) Chapter 550, Subchapter 8, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form (SF) 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054–6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD–214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the SF 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review SF 171 for completeness and conformity with requirements and will process Form AD–350A. The State Director will send a copy of Forms AD–350A, AD–349, "Declaration Sheet," SF–61, "Appointment Affidavits," I–9, "Employment Eligibility Verification," Treasury Form W–4, "Employee's Withholding Exemption Certificate," and State Income Tax Withholding form, where applicable, to the County Supervisor. The copy of Form AD–350A will be retained in the County Office committee file. FmHA Instruction 2045–BB and Appendix 1, "Employee Responsibilities and Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing Forms AD–349, SF–61, I–9, Treasury Form W–4, and State Income Tax Withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD–321–3, "Time and Attendance Report," before Form AD–349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the committee member's pay. Form AD–349 must be executed in its entirety. The State Director will forward the "Employee Copy" of the SF 50B "Notification of Personnel Action" printout produced by NFC to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment. Terms of appointments are for three years except in cases where the appointee is completing the unexpired term of a former member.

(6) Elected county committee members will be issued a "Certificate of Election" by the County Supervisor. These certificates can be reordered only the State Offices. When ordering from the warehouse, State Offices should ask for Item No. 410, "Certificate of Election."

(e) County committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B, "Employee Responsibilities and Conduct."

§ 2054.1127 Compensation.

(a) *Commuting time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126(c) (3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the County Office or other place where county committee meetings are normally held, as provided on the following chart:

One-way mileage from residence to meeting place	Salary	Allowance	Total
25 or less	$30	$6	$36
25 to 50	30	9	39
51 and over	30	12	42

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after: the change in residence; or the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendence to training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by § 2054.1128 of this subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has been changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking odometer readings. Otherwise, the certification will be based on actual odometer readings.

(5) The odometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the County Office.

§ 2054.1128 Certification of services.

The County Supervisor will certify biweekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD–350A. The Employee's copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be properly documented. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisor will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning the personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) No member of a county committee shall knowingly make or join in making any certification with respect to a loan to purchase any land in which he or any person related to him within the second degree of consanguinity or affinity has or may acquire any interest or with respect to any applicant related to him within the second degree of consanguinity or affinity. § 2045.1352(f) of FmHA Instruction 2045–BB provides definition of consanguinity or affinity (available in any FmHA office). Should this provision be violated, those FmHA officials having information will take action in accordance with § 2054.1129(b)(4).

(6) Where termination is due to the expiration of appointment, a termination action is not necessary. NFC will automatically drop the county committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§§ 2054.1139—2054.1149 [Reserved]

§ 2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and assigned an OMB control number 0575-0117.

Date: March 15, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-6462 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-07-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

SUMMARY: This amendment revises § 701.20 of NCUA's Regulations—Surety Bond and Insurance Coverage for Federal Credit Unions ("FCU's"). It is issued both pursuant to NCUA's regulatory review process and to conform the regulation to the Competitive Equality Banking Act of 1987. Section 701.20 sets forth the requirements for surety bond coverage for losses caused by Federal credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (e.g., losses due to theft, vandalism). This amendment eliminates the requirement of faithful performance coverage for the financial officer of a Federal credit union. It eliminates the requirement that bonding companies be approved by NCUA. It also eliminates reference to certain bond forms which are no longer in use. Finally, it states that any bond form not previously approved by the NCUA Board, or a rider or endorsement which limits the coverage provided by approved bond forms, must receive the written approval of the NCUA Board before being marketed to credit unions.

EFFECTIVE DATE: March 24, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, or Allan Meltzer, Assistant General Counsel, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: The surety bond regulation was last revised in 1984. Pursuant to its regulatory review program, the NCUA Board has determined that several changes should be made in § 701.20(c). In addition, the Competitive Equality Banking Act of 1987 deleted from the Federal Credit Union Act the statutory requirement of faithful performance coverage for the financial officer.

On November 12, 1987, the NCUA Board requested comment on a proposal to: (1) Eliminate the regulatory requirement of faithful performance coverage for the financial officer; (2) eliminate the requirement that bonding companies be approved by the NCUA Board; (3) eliminate approval of certain bond forms no longer in use by surety companies. The proposal also would require that all riders and changes to basic bond forms be approved by the NCUA Board prior to their use.

A total of 29 comment letters were received. Twenty two were from federal credit unions, three from state chartered, federally insured credit unions, 1 from a credit union league, two from national credit union trade associations, and one from a surety bond company. Essentially three issues were addressed. They are discussed below.

Faithful Performance

The proposed rule noted that while the Competitive Equality Banking Act of 1987 deleted the statutory requirement that the financial officer be covered for faithful performance, the NCUA Board nevertheless had the authority to require the coverage for the financial officer or any other credit union official or employee.

In fact, for many years Federal credit unions were required to maintain faithful performance coverage on all employees. The Federal Credit Union Act required the coverage for the financial officer and NCUA's rules required it for other employees. In 1984, NCUA amended its rules to eliminate the requirement for employees other than the financial officer. There were a number of reasons for this change. Faithful performance bond coverage had been construed by the courts as covering losses caused by simple negligence, or in other words, losses that involved bad management decisions but no fraud or dishonesty. This resulted in bond coverage that was extremely expensive and that in effect duplicated protections that were already provided by credit union capitol and, in more recent years, share insurance. It also resulted in a considerable amount of litigation over what conduct constituted a lack of faithful performance, increasing expenses for both underwriters and credit unions. It also may have contributed to bond underwriters being unwilling to write credit union coverage, with the result that one company now writes over 95 percent of all credit union fidelity bonds. It was to partially address these conditions that the Board amended the rules to eliminate the requirement for employees other than the financial officer.

The requirement of faithful performance coverage for the financial officer was a statutory requirement, outside of NCUA's regulatory discretion until Congress recently amended the Act. When Congress eliminated the statutory requirement, NCUA responded by proposing to eliminate its regulatory requirement. It was made clear at the time, as it should be now, that fraud and dishonesty coverage continue to be required for all officials and employees, and that individual FCU boards of directors are free to purchase additional coverages, including faithful performance, to the extent they are made available.

This proposal to eliminate the faithful performance requirements drew the most comments. The responses were somewhat mixed. Fifteen commenters favored deleting the requirement of faithful performance coverage. Eight objected to deleting it. One concurred with reservations.

Those commenters who support the proposal did so for two basic reasons. First, they agreed that the decision to maintain faithful performance coverage is one for a credit union's board of directors to make, and second, they expressed hope that deleting the coverage would control bond premium costs. Strong feelings were expressed over the increases in surety bond premiums over the last few years.

Those opposing the proposal believed that it would increase the financial risk to credit unions and the NCUSIF. These commenters apparently believe that the increased risk to the NCUSIF outweighs the anticipated savings in bond premiums. But, as one commenter supporting the change stated, there is no evidence that dropping the requirement of faithful performance coverage would subject the NCUSIF to substantial or

undue risk. In this connection it is noted that basic fraud and dishonesty coverage will cover some losses that may have been filed as faithful performance claims in the past. Also, it is expected that many credit unions will continue to purchase faithful performance as an optional coverage for an additional premium. Those credit unions are encouraged to carefully review the coverage received, as new definitions of "faithful performance" may limit the traditional scope of the coverage.

After careful consideration of the comments, the Board has repealed the regulatory requirement of faithful performance coverage. The Board believes this decision provides a desired degree of management discretion to credit union boards of directors. Also, with this change, credit union bond requirements will now be comparable to those currently being met by other underwriters in the banking and savings and loan industries, thus opening the possibility of additional competition for credit union bond business. While the Board is generally satisfied with the condition of credit union fidelity coverage, this change will help to ensure that pricing and claims payment experience remain fair and competitive.

Company Approval

The proposal also would delete the requirement that companies marketing surety bond policies be approved by the NCUA Board, leaving in place the statutory requirement that the companies hold a certificate of authority from the Secretary of the Treasury.

Three commenters concurred with the proposal, generally feeling that approval by the Secretary of the Treasury was sufficient. One objected to the proposal, arguing that the NCUA is in a better position than the Treasury Department to determine which requirements should be met by an insurance company marketing to credit unions. In light of the clear language employed by the Congress in the Federal Credit Union Act, the final rule remains as proposed, and approval of surety bond companies by the NCUA Board will no longer be required.

Bond Forms

The proposal approved Standard Form No. 23 and Blanket Bond Forms 581 and 582. It was proposed that references to several other obsolete bond forms be deleted. The proposal further provided that all other bond forms and riders be approved in writing by the Board prior to being marketed to credit unions.

Three commenters agreed with the deletion of obsolete bond forms. No commenter objected. However, two commenters suggested that the requirement of prior written approval of riders and forms be modified. They noted that several riders currently being marketed to credit unions provide coverage beyond that required as a minimum. Requiring prior written approval of these riders would unnecessarily delay implementation of new optional coverage. It was therefore suggested that prior written approval be required only of riders that limit required coverage.

The Board agrees that requiring prior written approval of *all* bond forms and riders might unnecessarily complicate the process of issuing optional coverages. Accordingly this final rule only requires that any basic bond forms other than those approved, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of NCUA. This limitation balances the needs of the NCUA with the benefits to be derived from the ability to market products to the credit union industry in a timely and responsive fashion. The NCUA however will be the final arbiter in determining whether a particular rider requires such approval.

The change made in the final rule is as follows. The third sentence in § 701.20(c) is changed to read—"Any other basic bond forms, and all riders and endorsements which limit coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board."

Federally-Insured State-Chartered Credit Unions

While § 701.20 applies only to Federal credit unions, § 741.1 establishes the requirements of 701.20 as minimum standards for all federally-insured credit unions. Thus, depending on bonding requirements under state law and regulations, this final rule will affect federally-insured state-chartered credit unions in some states.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. The rule will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The revised regulation does not impose any additional paperwork requirements.

List of Subjects in 12 CFR Part 701

Credit unions, Fidelity bond, Insurance coverage, Bond forms.

By the National Credit Union Administration Board on March 16, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—[AMENDED]

1. The authority citations for Part 701 continue to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.20(c) of the NCUA Rules and Regulations is revised to read as follows:

§ 701.20 [Amended]

* * * * *

(c) *Minimum Coverage; Approved Forms.* Every Federal credit union will maintain bond and insurance coverage with a company holding a certificate of authority from the Secretary of the Treasury. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Forms 581 and 582 are also approved. Any other basic bond forms, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and credit committee members.

[FR Doc. 88-6421 Filed 3-23-88; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

[Amdt. 6]

Display of Office of Management and Budget Control Numbers for Reporting and Recordkeeping Requirements

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its

regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: William Cline, Chief, Administrative Information Branch, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416. Telephone No. 653–8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current listing of OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

Therefore, 13 CFR Part 133 is amended as follows:

PART 133—[AMENDED]

1. The authority for Part 133 continues to read as follows:

Authority: 44 U.S.C. 3512.

2. The table in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

* * * * *

(c) * * *

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0003	SBA 745	13 CFR 125.9	10-31-88
	SBA 745A		
3245-0007	SBA 990	15 U.S.C. 6942, 6946 13 CFR Part 115	5-31-89
	SBA 994		
	SBA 994B		
	SBA 994C		
	SBA 994F		
	SBA 994H		
	SBA 994J		
3245-0012	SBA 770	13 CFR 123.9	10-31-90
3245-0013	SBA 74	13 CFR 125.5	3-31-89
	SBA 74A		
	SBA 74B		
	SBA 183		
3245-0015	SBA 1010 A–E, I	Pub. L. 95-507 Pub. L. 96-481	9-30-90
3245-0016	SBA 4	13 CFR 124.1 13 CFR 122.309	10-31-90
	SBA 4I		
	SBA 4 Sched. A		
3245-0017	SBA 5	13 CFR Part 123	10-31-89
	SBA 739A		
	SBA 1368A, B, C		
3245-0018	SBA 5C	13 CFR 123.1	4-30-90
	SBA 739		
3245-0019	SBA 933	13 CFR 101.2-7	3-31-88
	SBA 1099		
	SBA 1100		
3245-0020	SBA 1136	13 CFR 111.8	6-30-88
	SBA 1136A		
3245-0046	SBA 1174	13 CFR 101.2-7	9-30-89
3245-0062	SBA 415	13 CFR 107.102	7-31-90
	SBA 415A		
3245-0063	SBA 468.1, .2, .3, .4		6-30-88
3245-0071	SBA 1244 A & B	13 CFR 108.503	8-31-88
3245-0072	SBA 1246	13 CFR 108.503	9-30-90
3245-0074	SBA 1253 A & B	13 CFR 108.503	10-31-89
3245-0075	SBA 20	13 CFR 101.2-7	4-30-90
3245-0076	SBA's Nondiscrimination Rules and Regulations and SBA 793	13 CFR 112.9, 113.5	6-31-88
3245-0077	Reporting and Recordkeeping Requirements on Non-Bank Lenders	13 CFR 120.303	10-31-90
3245-0078	SBA 1031	13 CFR 107.1102	4-30-90
3245-0079	SBA 419		10-31-90
3245-0080	SBA 1061		4-30-90
3245-0081	SBA 25		4-30-90
	SBA 26		
	SBA 27		
	SBA 28		
	SBA 33		
	SBA 34		
	SBA 444C		
	SBA 1022		
	SBA 1022A		
	SBA 1065		
3245-0083	SBA 415C	13 CFR 107.1105	9-30-90
3245-0084	SBA 700	13 CFR Part 123	11-30-90

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0090	SBA 59	13 CFR 101.2-7	4-30-90
3245-0091	SBA 641	13 CFR 101.2-7	12-31-90
3245-0092	SBA 610	13 CFR 101.2-7c	8-31-88
3245-0095	SBA 1175		6-30-88
3245-0096	SBA 883	Presidential Proclamation Designating Small Business Week	1-31-90
3245-0101	SBA 355, 1340	13 CFR Part 121	3-31-88
3245-0108	SBA 1062	13 CFR 101.2-7	6-30-88
3245-0109	SBA 857	13 CFR 107.1101	7-31-90
3245-0110	SBA 1366	13 CFR 123.17	4-30-90
	SBA 1391		
3245-0112	SBA 1301	13 CFR 108.503	7-31-90
3245-0114	SBA 1302		7-31-90
3245-0116	SBA 860	13 CFR 107.1101	7-31-90
3245-0117	SBA 266 CO		6-30-89
3245-0118	SBA 856	13 CFR Part 107	6-30-89
3245-0121	Governor's Request for Disaster Declaration	13 CFR 123.1101	7-31-90
3245-0123	SBA 888	13 CFR 101.2-7	10-31-88
3245-0125	SBA 898	Pub. L. 92-463	7-31-89
3245-0129	SBA 1238A		8-31-89
3245-0130	SBA 1238		8-31-89
3245-0131	SBA 172	Agency's Participant Handbook	7-31-89
3245-0132	SBA 1149		11-30-90
3245-0133	SBA 2014A	Pub. L. 95-454	9-30-89
3245-0134	SBA 1369	13 CFR 101.2-7	9-30-89
3245-0135	SBA 1202	13 CFR 101.2-7	8-31-89
3245-0136	SBA 987	13 CFR 123.1	8-31-89
3245-0137	SBA Contract Requirements	OMB Circulars A-110; A-21; A-102; A-122	8-31-89
3245-0140	SBA Grants Management	OMB Circulars A-110; A-102; A-122; SOP 00 11	9-30-88
	Reporting and Recordkeeping Requirements		
	SBA 1222, 1223, 1224		
3245-0143	Request for Eligibility Reconsideration	13 CFR Part 124	1-31-90
3245-0144	SBA 1017	13 CFR Part 124	1-30-90
3245-0145	Notice of Change in Ownership	13 CFR Part 124	1-31-90
3245-0146	SBA Request for Approval of Joint Venture Agreement	13 CFR Part 124	1-31-90
3245-0147	Request for Fixed Program Participation Term (FPPT) Extensions	13 CFR Part 124	1-31-90
3245-0148	Request for Advance Payment and Schedule of Advance Payment Requirements.	13 CFR Part 124	1-31-90
3245-0149	Request for Business Development Expense	13 CFR Part 124	1-31-90
3245-0151	Submission of Business Financial Statement	13 CFR Part 124	1-31-90
3245-0157	SBA 1386	Pub. L. 97-219	11-30-88
3245-0158	SBA 1183		4-30-90
3245-0159	SBA 712		4-30-90
3245-0160	SBA 149	13 CFR 122.15	9-30-90
3245-0164	Liquidation Activities	41 CFR Part 5	4-30-89
3245-0166	Small Business Institute Counseling Case Report	13 CFR 101.2-7	4-30-90
3245-0169	SBDC Quarterly and Financial Reports	13 CFR 101.2-7	2-28-90
3245-0171	Nominate A Small Business Person or Advocate of the Year		11-30-88
3245-0172	SBA 1405	13 CFR 107.1101	2-28-90
3245-0175	SBA 747	13 CFR Parts 112, 113, and 117	5-31-90
3245-0176	SBA 912		5-31-90
3245-0183	SBA 1419	13 CFR 101.2-7	7-31-90
3245-0185	SBA 1085	13 CFR Part 120	8-31-90
	SBA 1086		
	SBA 1502		
3245-0186	Economic Research Project Office of Advocacy, "Informal Investor Survey in the Eastern Great Lakes".	Pub. L. 94-305	8-31-88
3245-0188	SBA 413	15 U.S.C. 631	10-31-89
3245-0189	Business Loan Reconsideration Request	13 CFR Part 122	9-30-90
3245-0190	SBA 1347	13 CFR Part 122	11-30-88
3245-0191	Reporting and Recordkeeping Requirements	13 CFR Parts 120 and 122	10-31-90
3245-0192	Other Development Company Reporting Requirements	13 CFR Part 108	8-30-90
3245-0193	SBA 1429	13 CFR Part 108	4-30-90
3245-0194	SBA 1434	13 CFR 101.2-7	1-31-88
3245-0196	Borrower Reports, Records and Requests	13 CFR Part 122	10-31-90
3245-0199	Information Submitted by the Federal Agencies Participating in the SBIR Program to Small Business Administration for the SBIR Annual Report to Congress.		4-30-89
3245-0200	SBA 1050	13 CFR Parts 120 and 122	11-30-90
3245-0201	SBA 147	13 CFR Parts 120 and 122	11-30-90
	SBA 148		
	SBA 159		
	SBA 160		
	SBA 160A		
	SBA 8299		
	SBA 828		
	SBA 1059		

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Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0202	SBA 1010H	Pub. L. 95-507	1-31-91
3245-0203	SBA 104A		11-30-90
3245-0204	SBA 1449	Pub. L. 95-89	1-31-88
3245-0205	SBA 1450	13 CFR Part 124	8-31-90
3245-0212	SBA 1088	Pub. L. 96-352	9-30-90
3245-0213	SBA 1454 SBA 1455	13 CFR Part 122	12-31-88
3245-0215	SBA 1479		7-31 8
3245-0217	Measuring the Costs of Producing Bank Services in a Deregulated Environment.		3-31 8
3245-0218	SBA 1482	Pub. L. 96-481	10-31 8
3245-0221	SBA 1496	13 CFR 101.2-7	1-31 0
3245-0224	Erroneous Penalties Assessed by IRS Associated with Payroll Taxes.	Pub. L. 94-305	1-31 8
3245-0225	SBA 1531	Pub. L. 98-577 15 U.S.C. 647b	2-29-90
3245-0226	SBA 1536	Pub. L. 95-507	10-31- 8
3245-0227	SBA 1539	Pub. L. 95-507	10-31-88
3245-0228	SBA 1540	Pub. L. 95-507	5-31- 9
3245-0229	For Profit Cosponsored Training Program		6-30-88
3245-0232	SBA 1547	13 CFR 122.5.2 15 U.S.C. 631	7-31-89
3245-0234	Prebusiness Workshop Evaluation	13 CFR 101.2-7c	9-30-88
3245-0235	SBA 1551	13 CFR 129.2	9-30-88
3245-0236	Prompt Payment—Does Government Pay on Time?	Pub. L. 94-305 15 U.S.C. 634(b)(5)	9-30-88
3245-0237	SBA Recruitment Mailing List Survey		4-30-88
3245-0238	SBA 1553	13 CFR 122.5-2 15 U.S.C. 631	10-31-90
3245-0241	Procurement—Related Paperwork: Barriers to Small Business	Pub. L. 94-305 15 U.S.C. 634(b)(5)	8-31-88
3245-0243	SBA 641A	13 CFR 101.2-7c	12-31-90

James Abdnor,

Administrator.

[FR Doc. 88-6268 Filed 3-23-88; 8:45 am]

BILLING CODE 8025-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 601

Statement of Organization

AGENCY: United States Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: The agency is amending the description of its organization and functions to reflect the establishment an Office of Inspector General at the Agency by section 6(a) of the Arms Control and Disarmament Amendments Act of 1987 (Pub. L. 100-213).

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Walter L. Baumann, Assistant General Counsel, Washington, DC 20451, telephone 202-647-3530.

SUPPLEMENTARY INFORMATION: This information is published in compliance with section 552(a)(1) of Title 5, United States Code, and 1 CFR 305.76-2.

List of Subjects in 22 CFR Part 601

Organization and functions (government agencies), Arms control.

Accordingly, 22 CFR Part 601, is amended to read as follows:

PART 601—[AMENDED]

1. The authority citation for Part 601 continues to read as follows:

Authority: Sec. 1, Pub. L. 90-23, 81 Stat. 54 (5 U.S.C. 552(a)(1)); Title II, Pub. L. 87-297, 75 Stat. 632, as amended (22 U.S.C. 2561 et seq.); and sec. 41(h), Pub. L. 87-297, 75 Stat. 636, as amended (22 U.S.C. 2581(i)).

2. In § 601.6 the last sentence of paragraph (d) is revised to read as follows:

§ 601.6 Structure.

* * * * *

(d) * * * Other organizational units with staff responsibilities are the Office of the General Counsel, the Office of Congressional Affairs, the Office of Public Affairs, the Office of Administration, and the Office of the Inspector General.

3. Section 601.19 is added to read as follows:

§ 601.19 Office of the Inspector General (OIG).

This Office is headed by the Inspector General of the Agency who has the duties, responsibilities, and authorities specified in the Inspector General Act of 1978. The Inspector General of the Agency utilizes personnel of the Office of the Inspector General of the Department of State in performing the duties of Inspector General of the Agency.

Dated: March 15, 1988.

William J. Montgomery,

Administrative Director.

[FR Doc. 88-6401 Filed 3-23-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 9

[Order No. 1262-88]

Technical Amendment of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order revises 28 CFR 9.3(a) by adding a procedural requirement that a copy of a petition for remission or mitigation of a judicial forfeiture be submitted to the agency which seized the property for forfeiture. The addition is intended to expedite the processing of petition reports by the seizing agencies and to conform 28 CFR Part 9 to the forfeiture notice procedures used by the seizing agencies for potential petitioners.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, DC 20530. Telephone: (202) 786-4950.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 9

Seizures and forfeitures.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, and 524, Title 28 of the Code of Federal Regulations is hereby amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: 28 U.S.C. 509, 510, and 524; 5 U.S.C. 301; Reorganization Plan No. 1 of 1968.

2. Section 9.3(a) is amended by adding the following sentence to the end to read as follows:

§ 9.3 Procedure relating to petitions is judicial forfeitures.

(a) * * * A copy of the petition shall be submitted also to the local or regional office of the seizing agency that covers the judicial district in which the seizure occurred, except in DEA cases where the petition shall be submitted to DEA headquarters, Office of Chief Counsel.

* * * * *

Date: March 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-6365 Filed 3-23-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule and continuation of stay.

SUMMARY: MSHA is issuing as a final rule amendments to the Safety Standards for Methane in Metal and Nonmetal Mines which were published as an interim final rule on October 27, 1987 (52 FR 41394). MSHA is also continuing until further notice the stay of the standard that requires blasting from the surface in Subcategory I-A mines to permit the completion of research currently underway.

EFFECTIVE DATE: March 24, 1988; § 57.22601 is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances, MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 27, 1987, MSHA published interim amendments to two sections of the Safety Standards for Methane in Metal and Nonmetal Mines: § 57.22228, addressing pre-shift examinations in Subcategory I-A, I-C, II-A, Category III and Subcategory V-A mines; and § 57.22234, addressing actions at 1.0 percent methane in Subcategory I-A, I-B, V-A, V-B and Category III mines. The Agency solicited public comment on these amendments. No comments were received.

The Agency also published additional explanation clarifying the intent of standards which were not amended. Among the standards clarified were §§ 57.22218 and 57.22221 concerning seals and stoppings and overcast and undercast construction. One commenter urged MSHA to be cautious in allowing polyurethane foam as sealants or coatings under these standards because of the risk of ignition and the release of toxic gases. MSHA acknowledges these concerns and will carefully monitor any possible use of these materials in mines.

Finally, the Agency solicited public comment on a stay of § 57.22601 which requires blasting from the surface in Subcategory I-A mines. Comments and information on the stay received from an association of mine operators and the Bureau of Mines requested that the stay continue in effect until cooperative research to develop safe procedures for underground blasting in oil shale mines can be completed. The research is expected to be completed in 1989. MSHA will therefore continue the stay until further notice. Future action to lift the stay or revise § 57.22601 will be subject to public rulemaking procedures.

List of Subjects in 30 CFR Part 57

Chemicals, Fire prevention, Gases, Mine safety and health.

Date: March 17, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22228(e) is revised to read as follows:

§ 57.22228 [Amended]

* * * * *

(e) Except in Subcategory I-C or Category III mines, vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

3. The first sentence of § 57.22234(a) is revised to read as follows:

§ 57.22234 [Amended]

(a) If methane reaches 1.0 percent in the mine atmosphere, ventilation changes shall be made to reduce the methane. * * *

* * * * *

§ 57.225601 [Stayed]

4. Section 57.22601 is stayed until further notice.

[FR Doc. 88-6378 Filed 3-23-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Department of the Treasury Circulars No. 653, Tenth Revision; Public Debt Series No. 3-67, Second Revision; and No. 1-80, Second Revision]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice providing update of tables showing the redemption values and investment yields of United States Savings Bonds/Notes.

SUMMARY: This notice updates the tables set forth in the offering circulars for Series E/EE savings bonds and savings notes. The tables reflect the redemption values and investment yields for accrual dates occurring April 1, 1988 through October 1, 1988, for Series E/EE savings bonds and savings notes.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239-0001, (202) 376-4320.

SUPPLEMENTARY INFORMATION: This notice updates the tables reflecting the investment yields of Series E/EE savings bonds and savings notes. Department of the Treasury Circulars No. 653 (Series E), Public Debt Series No. 1-80 (Series EE) and No. 3-67 (Saving Notes) are hereby supplemented by the addition of tables showing the redemption values and investment yields for accrual dates occurring April 1, 1988 through October 1, 1988. It should be noted that the tables reflect the market-based variable yields described in the offering circulars at 31 CFR 316.8(b)(2)(C)(iii) for Series E savings bonds, 31 CFR 351.2(f)(2) for Series EE savings bonds, and 31 CFR 342.2a(b)(2) for savings notes. The values shown apply only where the securities are actually paid. They do not form the basis for future accruals.

Procedural Requirements

This notice is not considered a "major rule" for purposes of Executive Order 12291. A regulator impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Parts 316, 342, and 351

Banks and banking, Federal Reserve System, Government securities.

Dated: March 10, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

Accordingly, pursuant to the authority of Department of the Treasury Circular No. 653, Tenth Revision (31 CFR, Part 316), Public Debt Series No. 3-67, Second Revision (31 CFR Part 342), and No. 1-80, Second Revision (31 CFR Part 351), the following updated tables are provided:

BILLING CODE 4810-40-M

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$7.50	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00
DENOMINATION	10.00	25.00	50.00	100.00	200.00	500.00	1000.00

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/48 THRU 5/48	5/1/88	52.44	131.09	262.18	524.36	1048.72	2621.80	5243.60	8.50%	8.50%	8.50%
6/48 THRU 10/48	6/1/88	53.29	133.23	266.46	532.92	1065.84	2664.60	5329.20	8.50%	8.50%	8.50%
11/48 THRU 11/48	5/1/88	51.61	129.03	258.06	516.12	1032.24	2580.60	5161.20	8.50%	8.50%	8.50%
12/48 THRU 4/49	6/1/88	52.45	131.12	262.24	524.48	1048.96	2622.40	5244.80	8.50%	8.50%	8.50%
5/49 THRU 5/49	5/1/88	50.80	126.99	253.98	507.96	1015.92	2539.80	5079.60	8.50%	8.50%	8.50%
6/49 THRU 10/49	6/1/88	52.94	132.35	264.70	529.40	1058.80	2647.00	5294.00	8.50%	8.50%	8.50%
11/49 THRU 11/49	5/1/88	51.27	128.18	256.36	512.72	1025.44	2563.60	5127.20	8.50%	8.50%	8.50%
12/49 THRU 4/50	6/1/88	51.92	129.80	259.60	519.20	1038.40	2596.00	5192.00	8.50%	8.50%	8.50%
5/50 THRU 5/50	5/1/88	50.29	125.72	251.44	502.88	1005.76	2514.40	5028.80	8.50%	8.50%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00			

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)						ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/50 THRU 10/50	6/1/88	127.45	254.90	509.80	1019.60	2549.00	5098.00	8.50%	8.50%	8.50%
11/50 THRU 11/50	5/1/88	123.43	246.86	493.72	987.44	2468.60	4937.20	8.50%	8.50%	8.50%
12/50 THRU 12/50	6/1/88	125.27	250.54	501.08	1002.16	2505.40	5010.80	8.50%	8.50%	8.50%
1/51 THRU 4/51	7/1/88	125.27	250.54	501.08	1002.16	2505.40	5010.80	8.50%	8.50%	8.50%
5/51 THRU 5/51	5/1/88	121.33	242.66	485.32	970.64	2426.60	4853.20	8.50%	8.50%	8.50%
6/51 THRU 6/51	6/1/88	123.13	246.26	492.52	985.04	2462.60	4925.20	8.50%	8.50%	8.50%
7/51 THRU 10/51	7/1/88	123.13	246.26	492.52	985.04	2462.60	4925.20	8.50%	8.50%	8.50%
11/51 THRU 11/51	5/1/88	119.24	238.48	476.96	953.92	2384.80	4769.60	8.50%	8.50%	8.50%
12/51 THRU 12/51	6/1/88	120.97	241.94	483.88	967.76	2419.40	4838.80	8.50%	8.50%	8.50%
1/52 THRU 4/52	7/1/88	120.97	241.94	483.88	967.76	2419.40	4838.80	8.50%	8.50%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/52 THRU 5/52	7/1/88	120.51	241.02	482.04	964.08	2410.20	4820.40	48204.	8.50%	8.50%	8.50%
6/52 THRU 8/52	8/1/88	120.78	241.56	483.12	966.24	2415.60	4831.20	48312.	8.50%	8.50%	8.50%
9/52 THRU 9/52	5/1/88	116.98	233.96	467.92	935.84	2339.60	4679.20	46792.	8.50%	8.50%	8.50%
10/52 THRU 10/52	6/1/88	118.45	236.90	473.80	947.60	2369.00	4738.00	47380.	8.50%	8.50%	8.50%
11/52 THRU 11/52	7/1/88	118.45	236.90	473.80	947.60	2369.00	4738.00	47380.	8.50%	8.50%	8.50%
12/52 THRU 2/53	8/1/88	118.76	237.52	475.04	950.08	2375.20	4750.40	47504.	8.50%	8.50%	8.50%
3/53 THRU 3/53	5/1/88	115.01	230.02	460.04	920.08	2300.20	4600.40	46004.	8.50%	8.50%	7.50%
4/53 THRU 4/53	6/1/88	116.43	232.86	465.72	931.44	2328.60	4657.20	46572.	8.50%	8.50%	7.50%
5/53 THRU 5/53	7/1/88	116.43	232.86	465.72	931.44	2328.60	4657.20	46572.	8.50%	8.50%	7.50%
6/53 THRU 8/53	8/1/88	116.72	233.44	466.88	933.76	2334.40	4668.80	46688.	8.50%	8.50%	7.50%
9/53 THRU 9/53	5/1/88	113.03	226.06	452.12	904.24	2260.60	4521.20	45212.	8.50%	8.50%	7.59%
10/53 THRU 10/53	6/1/88	114.47	228.94	457.88	915.76	2289.40	4578.80	45788.	8.50%	8.50%	7.59%
11/53 THRU 11/53	7/1/88	114.47	228.94	457.88	915.76	2289.40	4578.80	45788.	8.50%	8.50%	7.59%
12/53 THRU 2/54	8/1/88	114.77	229.54	459.08	918.16	2295.40	4590.80	45908.	8.50%	8.50%	7.59%
3/54 THRU 3/54	5/1/88	111.17	222.34	444.68	889.36	2223.40	4446.80	44468.	8.50%	8.50%	7.68%
4/54 THRU 4/54	6/1/88	112.57	225.14	450.28	900.56	2251.40	4502.80	45028.	8.50%	8.50%	7.68%
5/54 THRU 5/54	7/1/88	112.57	225.14	450.28	900.56	2251.40	4502.80	45028.	8.50%	8.50%	7.68%
6/54 THRU 8/54	8/1/88	112.87	225.74	451.48	902.96	2257.40	4514.80	45148.	8.50%	8.50%	7.68%
9/54 THRU 9/54	5/1/88	109.32	218.64	437.28	874.56	2186.40	4372.80	43728.	8.50%	8.50%	7.77%
10/54 THRU 10/54	6/1/88	110.77	221.54	443.08	886.16	2215.40	4430.80	44308.	8.50%	8.50%	7.78%
11/54 THRU 11/54	7/1/88	110.77	221.54	443.08	886.16	2215.40	4430.80	44308.	8.50%	8.50%	7.78%
12/54 THRU 2/55	8/1/88	111.04	222.08	444.16	888.32	2220.80	4441.60	44416.	8.50%	8.50%	7.77%
3/55 THRU 3/55	5/1/88	107.52	215.04	430.08	860.16	2150.40	4300.80	43008.	8.50%	8.50%	7.87%
4/55 THRU 4/55	6/1/88	108.92	217.84	435.68	871.36	2178.40	4356.80	43568.	8.50%	8.50%	7.86%
5/55 THRU 5/55	7/1/88	108.92	217.84	435.68	871.36	2178.40	4356.80	43568.	8.50%	8.50%	7.86%
6/55 THRU 8/55	8/1/88	109.21	218.42	436.84	873.68	2184.20	4368.40	43684.	8.50%	8.50%	7.86%
9/55 THRU 9/55	5/1/88	105.78	211.56	423.12	846.24	2115.60	4231.20	42312.	8.50%	8.50%	7.95%
10/55 THRU 10/55	6/1/88	107.20	214.40	428.80	857.60	2144.00	4288.00	42880.	8.50%	8.50%	7.95%
11/55 THRU 11/55	7/1/88	107.20	214.40	428.80	857.60	2144.00	4288.00	42880.	8.50%	8.50%	7.95%
12/55 THRU 2/56	8/1/88	107.47	214.94	429.88	859.76	2149.40	4298.80	42988.	8.50%	8.50%	7.96%
3/56 THRU 3/56	5/1/88	104.09	208.18	416.36	832.72	2081.80	4163.60	41636.	8.50%	8.50%	8.05%
4/56 THRU 4/56	6/1/88	107.01	214.02	428.04	856.08	2140.20	4280.40	42804.	8.50%	8.50%	8.04%
5/56 THRU 5/56	7/1/88	107.01	214.02	428.04	856.08	2140.20	4280.40	42804.	8.50%	8.50%	8.04%
6/56 THRU 8/56	8/1/88	107.25	214.50	429.00	858.00	2145.00	4290.00	42900.	8.50%	8.50%	8.04%
9/56 THRU 9/56	5/1/88	103.86	207.72	415.44	830.88	2077.20	4154.40	41544.	8.50%	8.50%	8.14%
10/56 THRU 10/56	6/1/88	105.07	210.14	420.28	840.56	2101.40	4202.80	42028.	8.50%	8.50%	8.14%
11/56 THRU 11/56	7/1/88	105.07	210.14	420.28	840.56	2101.40	4202.80	42028.	8.50%	8.50%	8.14%
12/56 THRU 1/57	8/1/88	105.68	211.36	422.72	845.44	2113.60	4227.20	42272.	8.50%	8.50%	8.13%
2/57 THRU 5/57	7/1/88	107.12	214.24	428.48	856.96	2142.40	4284.80	42848.	8.50%	8.50%	8.04%

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(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
ISSUE PRICE		$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION		25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
6/57 THRU 6/57	5/1/88	104.20	208.40	416.80	833.60	2084.00	4168.00	41680.	8.50%	8.50%	8.14%
7/57 THRU 7/57	6/1/88	105.40	210.80	421.60	843.20	2108.00	4216.00	42160.	8.50%	8.50%	8.14%
8/57 THRU 11/57	7/1/88	105.40	210.80	421.60	843.20	2108.00	4216.00	42160.	8.50%	8.50%	8.14%
12/57 THRU 12/57	5/1/88	102.52	205.04	410.08	820.16	2050.40	4100.80	41008.	8.50%	8.50%	7.81%
1/58 THRU 1/58	6/1/88	103.74	207.48	414.96	829.92	2074.80	4149.60	41496.	8.50%	8.50%	7.81%
2/58 THRU 5/58	7/1/88	103.74	207.48	414.96	829.92	2074.80	4149.60	41496.	8.50%	8.50%	7.81%
6/58 THRU 6/58	5/1/88	100.89	201.78	403.56	807.12	2017.80	4035.60	40356.	8.50%	8.50%	8.04%
7/58 THRU 7/58	6/1/88	102.06	204.12	408.24	816.48	2041.20	4082.40	40824.	8.50%	8.50%	8.05%
8/58 THRU 11/58	7/1/88	102.06	204.12	408.24	816.48	2041.20	4082.40	40824.	8.50%	8.50%	8.05%
12/58 THRU 12/58	5/1/88	99.28	198.56	397.12	794.24	1985.60	3971.20	39712.	8.50%	8.50%	8.28%
1/59 THRU 1/59	6/1/88	100.47	200.94	401.88	803.76	2009.40	4018.80	40188.	8.50%	8.50%	8.27%
2/59 THRU 5/59	7/1/88	100.47	200.94	401.88	803.76	2009.40	4018.80	40188.	8.50%	8.50%	8.27%
6/59 THRU 7/59	9/1/88	100.18	200.36	400.72	801.44	2003.60	4007.20	40072.	8.50%	8.50%	7.81%
8/59 THRU 8/59	5/1/88	97.02	194.04	388.08	776.16	1940.40	3880.80	38808.	8.50%	8.50%	8.04%
9/59 THRU 9/59	6/1/88	98.11	196.22	392.44	784.88	1962.20	3924.40	39244.	8.50%	8.50%	8.04%
10/59 THRU 11/59	7/1/88	98.11	196.22	392.44	784.88	1962.20	3924.40	39244.	8.50%	8.50%	8.04%
12/59 THRU 1/60	9/1/88	98.32	196.64	393.28	786.56	1966.40	3932.80	39328.	8.50%	8.50%	8.05%
2/60 THRU 2/60	5/1/88	95.23	190.46	380.92	761.84	1904.60	3809.20	38092.	8.50%	8.50%	8.27%
3/60 THRU 3/60	6/1/88	96.33	192.66	385.32	770.64	1926.60	3853.20	38532.	8.50%	8.50%	8.27%
4/60 THRU 5/60	7/1/88	96.33	192.66	385.32	770.64	1926.60	3853.20	38532.	8.50%	8.50%	8.27%
6/60 THRU 7/60	9/1/88	96.48	192.96	385.92	771.84	1929.60	3859.20	38592.	8.50%	8.50%	8.27%
8/60 THRU 8/60	5/1/88	93.46	186.92	373.84	747.68	1869.20	3738.40	37384.	8.50%	8.50%	8.50%
9/60 THRU 9/60	6/1/88	94.54	189.08	378.16	756.32	1890.80	3781.60	37816.	8.50%	8.50%	8.50%
10/60 THRU 11/60	7/1/88	94.54	189.08	378.16	756.32	1890.80	3781.60	37816.	8.50%	8.50%	8.50%
12/60 THRU 1/61	9/1/88	94.72	189.44	378.88	757.76	1894.40	3788.80	37888.	8.50%	8.50%	8.50%
2/61 THRU 2/61	5/1/88	91.73	183.46	366.92	733.84	1834.60	3669.20	36692.	8.50%	8.50%	8.50%
3/61 THRU 3/61	6/1/88	92.78	185.56	371.12	742.24	1855.60	3711.20	37112.	8.50%	8.50%	8.50%
4/61 THRU 5/61	7/1/88	92.78	185.56	371.12	742.24	1855.60	3711.20	37112.	8.50%	8.50%	8.50%
6/61 THRU 7/61	9/1/88	93.06	186.12	372.24	744.48	1861.20	3722.40	37224.	8.50%	8.50%	8.50%
8/61 THRU 8/61	5/1/88	90.14	180.28	360.56	721.12	1802.80	3605.60	36056.	8.50%	8.50%	8.50%
9/61 THRU 9/61	6/1/88	91.14	182.28	364.56	729.12	1822.80	3645.60	36456.	8.50%	8.50%	8.50%
10/61 THRU 11/61	7/1/88	91.14	182.28	364.56	729.12	1822.80	3645.60	36456.	8.50%	8.50%	8.50%
12/61 THRU 1/62	9/1/88	91.40	182.80	365.60	731.20	1828.00	3656.00	36560.	8.50%	8.50%	8.50%
2/62 THRU 2/62	5/1/88	88.52	177.04	354.08	708.16	1770.40	3540.80	35408.	8.50%	8.50%	8.50%
3/62 THRU 3/62	6/1/88	89.15	178.30	356.60	713.20	1783.00	3566.00	35660.	8.50%	8.50%	8.50%
4/62 THRU 5/62	7/1/88	89.15	178.30	356.60	713.20	1783.00	3566.00	35660.	8.50%	8.50%	8.50%
6/62 THRU 7/62	9/1/88	89.39	178.78	357.56	715.12	1787.80	3575.60	35756.	8.50%	8.50%	8.50%
8/62 THRU 8/62	5/1/88	86.56	173.12	346.24	692.48	1731.20	3462.40	34624.	8.50%	8.50%	8.50%
9/62 THRU 9/62	6/1/88	87.17	174.34	348.68	697.36	1743.40	3486.80	34868.	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
10/62 THRU 11/62	7/1/88	87.17	174.34	348.68	697.36	1743.40	3486.80	34868.	8.50%	8.50%	8.50%
12/62 THRU 1/63	9/1/88	87.54	175.08	350.16	700.32	1750.80	3501.60	35016.	8.50%	8.50%	8.50%
2/63 THRU 2/63	5/1/88	84.79	169.58	339.16	678.32	1695.80	3391.60	33916.	8.50%	8.50%	8.50%
3/63 THRU 3/63	6/1/88	85.18	170.36	340.72	681.44	1703.60	3407.20	34072.	8.50%	8.50%	8.50%
4/63 THRU 5/63	7/1/88	85.18	170.36	340.72	681.44	1703.60	3407.20	34072.	8.50%	8.50%	8.50%
6/63 THRU 7/63	9/1/88	85.83	171.66	343.32	686.64	1716.60	3433.20	34332.	8.50%	8.50%	8.50%
8/63 THRU 8/63	5/1/88	83.11	166.22	332.44	664.88	1662.20	3324.40	33244.	8.50%	8.50%	8.50%
9/63 THRU 9/63	6/1/88	83.52	167.04	334.08	668.16	1670.40	3340.80	33408.	8.50%	8.50%	8.50%
10/63 THRU 11/63	7/1/88	83.52	167.04	334.08	668.16	1670.40	3340.80	33408.	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE		$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.			
DENOMINATION		25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
12/63 THRU 1/64	9/1/88	84.04	168.08	252.12	336.16	672.32	1680.80	3361.60	33616.	8.50%	8.50%	8.50%
2/64 THRU 2/64	5/1/88	81.39	162.78	244.17	325.56	651.12	1627.80	3255.60	32556.	8.50%	8.50%	8.50%
3/64 THRU 3/64	6/1/88	81.79	163.58	245.37	327.16	654.32	1635.80	3271.60	32716.	8.50%	8.50%	8.50%
4/64 THRU 5/64	7/1/88	81.79	163.58	245.37	327.16	654.32	1635.80	3271.60	32716.	8.50%	8.50%	8.50%
6/64 THRU 7/64	9/1/88	82.32	164.64	246.96	329.28	658.56	1646.40	3292.80	32928.	8.50%	8.50%	8.50%
8/64 THRU 8/64	5/1/88	79.73	159.46	239.19	318.92	637.84	1594.60	3189.20	31892.	8.50%	8.50%	8.50%
9/64 THRU 9/64	6/1/88	80.12	160.24	240.36	320.48	640.96	1602.40	3204.80	32048.	8.50%	8.50%	8.50%
10/64 THRU 11/64	7/1/88	80.12	160.24	240.36	320.48	640.96	1602.40	3204.80	32048.	8.50%	8.50%	8.50%
12/64 THRU 1/65	9/1/88	80.63	161.26	241.89	322.52	645.04	1612.60	3225.20	32252.	8.50%	8.50%	8.50%
2/65 THRU 2/65	5/1/88	78.08	156.16	234.24	312.32	624.64	1561.60	3123.20	31232.	8.50%	8.50%	7.50%
3/65 THRU 3/65	6/1/88	78.46	156.92	235.38	313.84	627.68	1569.20	3138.40	31384.	8.50%	8.50%	7.50%
4/65 THRU 5/65	7/1/88	78.46	156.92	235.38	313.84	627.68	1569.20	3138.40	31384.	8.50%	8.50%	7.50%
6/65 THRU 7/65	9/1/88	78.89	157.78	236.67	315.56	631.12	1577.80	3155.60	31556.	8.50%	8.50%	7.50%
8/65 THRU 8/65	5/1/88	76.41	152.82	229.23	305.64	611.28	1528.20	3056.40	30564.	8.50%	8.50%	7.59%
9/65 THRU 9/65	6/1/88	76.80	153.60	230.40	307.20	614.40	1536.00	3072.00	30720.	8.50%	8.50%	7.59%
10/65 THRU 11/65	7/1/88	76.80	153.60	230.40	307.20	614.40	1536.00	3072.00	30720.	8.50%	8.50%	7.59%
12/65 THRU 12/65	6/1/88	77.04	154.08	231.12	308.16	616.32	1540.80	3081.60	30816.	8.50%	8.50%	7.50%
1/66 THRU 4/66	7/1/88	77.04	154.08	231.12	308.16	616.32	1540.80	3081.60	30816.	8.50%	8.50%	7.50%
5/66 THRU 5/66	5/1/88	74.62	149.24	223.86	298.48	596.96	1492.40	2984.80	29848.	8.50%	8.50%	7.59%
6/66 THRU 6/66	6/1/88	75.38	150.76	226.14	301.52	603.04	1507.60	3015.20	30152.	8.50%	8.50%	7.59%
7/66 THRU 10/66	7/1/88	75.38	150.76	226.14	301.52	603.04	1507.60	3015.20	30152.	8.50%	8.50%	7.59%
11/66 THRU 11/66	5/1/88	73.01	146.02	219.03	292.04	584.08	1460.20	2920.40	29204.	8.50%	8.50%	7.68%
12/66 THRU 12/66	6/1/88	73.82	147.64	221.46	295.28	590.56	1476.40	2952.80	29528.	8.50%	8.50%	7.68%
1/67 THRU 4/67	7/1/88	73.82	147.64	221.46	295.28	590.56	1476.40	2952.80	29528.	8.50%	8.50%	7.68%
5/67 THRU 5/67	5/1/88	71.48	142.96	214.44	285.92	571.84	1429.60	2859.20	28592.	8.50%	8.50%	7.78%
6/67 THRU 6/67	6/1/88	72.28	144.56	216.84	289.12	578.24	1445.60	2891.20	28912.	8.50%	8.50%	7.77%
7/67 THRU 10/67	7/1/88	72.28	144.56	216.84	289.12	578.24	1445.60	2891.20	28912.	8.50%	8.50%	7.77%
11/67 THRU 11/67	5/1/88	70.02	140.04	210.06	280.08	560.16	1400.40	2800.80	28008.	8.50%	8.50%	7.86%
12/67 THRU 12/67	6/1/88	70.86	141.72	212.58	283.44	566.88	1417.20	2834.40	28344.	8.50%	8.50%	7.86%
1/68 THRU 4/68	7/1/88	70.86	141.72	212.58	283.44	566.88	1417.20	2834.40	28344.	8.50%	8.50%	7.86%
5/68 THRU 5/68	5/1/88	68.63	137.26	205.89	274.52	549.04	1372.60	2745.20	27452.	8.50%	8.50%	7.96%
6/68 THRU 6/68	6/1/88	69.45	138.90	208.35	277.80	555.60	1389.00	2778.00	27780.	8.50%	8.50%	7.95%
7/68 THRU 10/68	7/1/88	69.45	138.90	208.35	277.80	555.60	1389.00	2778.00	27780.	8.50%	8.50%	7.95%
11/68 THRU 11/68	5/1/88	67.26	134.52	201.78	269.04	538.08	1345.20	2690.40	26904.	8.50%	8.50%	8.05%
12/68 THRU 12/68	6/1/88	68.19	136.38	204.57	272.76	545.52	1363.80	2727.60	27276.	8.50%	8.50%	8.04%
1/69 THRU 4/69	7/1/88	68.19	136.38	204.57	272.76	545.52	1363.80	2727.60	27276.	8.50%	8.50%	8.04%
5/69 THRU 5/69	5/1/88	66.04	132.08	198.12	264.16	528.32	1320.80	2641.60	26416.	8.50%	8.50%	8.14%
6/69 THRU 6/69	10/1/88	68.76	137.52	206.28	275.04	550.08	1375.20	2750.40	27504.	8.50%	8.50%	7.86%
7/69 THRU 7/69	5/1/88	66.58	133.16	199.74	266.32	532.64	1331.60	2663.20	26632.	8.50%	8.50%	7.96%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE		$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.			
DENOMINATION		25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
8/69 THRU 8/69	6/1/88	66.75	133.50	200.25	267.00	534.00	1335.00	2670.00	26700.	8.50%	8.50%	7.95%
9/69 THRU 11/69	7/1/88	66.75	133.50	200.25	267.00	534.00	1335.00	2670.00	26700.	8.50%	8.50%	7.95%
12/69 THRU 12/69	10/1/88	67.10	134.20	201.30	268.40	536.80	1342.00	2684.00	26840.	8.50%	8.50%	7.95%
1/70 THRU 1/70	5/1/88	65.00	130.00	195.00	260.00	520.00	1300.00	2600.00	26000.	8.50%	8.50%	8.04%
2/70 THRU 2/70	6/1/88	65.14	130.28	195.42	260.56	521.12	1302.80	2605.60	26056.	8.50%	8.50%	8.04%
3/70 THRU 5/70	7/1/88	65.14	130.28	195.42	260.56	521.12	1302.80	2605.60	26056.	8.50%	8.50%	8.04%
6/70 THRU 6/70	10/1/88	65.44	130.88	196.32	261.76	523.52	1308.80	2617.60	26176.	8.50%	8.50%	8.05%
7/70 THRU 7/70	5/1/88	63.38	126.76	190.14	253.52	507.04	1267.60	2535.20	25352.	8.50%	8.50%	8.14%
8/70 THRU 8/70	6/1/88	63.56	127.12	190.68	254.24	508.48	1271.20	2542.40	25424.	8.50%	8.50%	8.13%
9/70 THRU 11/70	7/1/88	63.56	127.12	190.68	254.24	508.48	1271.20	2542.40	25424.	8.50%	8.50%	8.13%
12/70 THRU 12/70	10/1/88	63.68	127.36	191.04	254.72	509.44	1273.60	2547.20	25472.	8.50%	8.50%	8.14%
1/71 THRU 1/71	5/1/88	61.69	123.38	185.07	246.76	493.52	1233.80	2467.60	24676.	8.50%	8.50%	7.81%
2/71 THRU 2/71	6/1/88	61.84	123.68	185.52	247.36	494.72	1236.80	2473.60	24736.	8.50%	8.50%	7.81%
3/71 THRU 5/71	7/1/88	61.84	123.68	185.52	247.36	494.72	1236.80	2473.60	24736.	8.50%	8.50%	7.81%
6/71 THRU 6/71	10/1/88	62.01	124.02	186.03	248.04	496.08	1240.20	2480.40	24804.	8.50%	8.50%	7.81%
7/71 THRU 7/71	5/1/88	60.05	120.10	180.15	240.20	480.40	1201.00	2402.00	24020.	8.50%	8.50%	8.05%
8/71 THRU 8/71	6/1/88	60.19	120.38	180.57	240.76	481.52	1203.80	2407.60	24076.	8.50%	8.50%	8.04%
9/71 THRU 11/71	7/1/88	60.19	120.38	180.57	240.76	481.52	1203.80	2407.60	24076.	8.50%	8.50%	8.04%
12/71 THRU 12/71	10/1/88	60.33	120.66	180.99	241.32	482.64	1206.60	2413.20	24132.	8.50%	8.50%	8.04%
1/72 THRU 1/72	5/1/88	58.44	116.88	175.32	233.76	467.52	1168.80	2337.60	23376.	8.50%	8.50%	8.27%
2/72 THRU 2/72	6/1/88	58.58	117.16	175.74	234.32	468.64	1171.60	2343.20	23432.	8.50%	8.50%	8.27%
3/72 THRU 5/72	7/1/88	58.58	117.16	175.74	234.32	468.64	1171.60	2343.20	23432.	8.50%	8.50%	8.27%
6/72 THRU 6/72	10/1/88	58.74	117.48	176.22	234.96	469.92	1174.80	2349.60	23496.	8.50%	8.50%	8.27%
7/72 THRU 7/72	5/1/88	56.90	113.80	170.70	227.60	455.20	1138.00	2276.00	22760.	8.50%	8.50%	8.50%
8/72 THRU 8/72	6/1/88	57.03	114.06	171.09	228.12	456.24	1140.60	2281.20	22812.	8.50%	8.50%	8.50%
9/72 THRU 11/72	7/1/88	57.03	114.06	171.09	228.12	456.24	1140.60	2281.20	22812.	8.50%	8.50%	8.50%
12/72 THRU 12/72	10/1/88	57.14	114.28	171.42	228.56	457.12	1142.80	2285.60	22856.	8.50%	8.50%	8.50%
1/73 THRU 1/73	5/1/88	55.34	110.68	166.02	221.36	442.72	1106.80	2213.60	22136.	8.50%	8.50%	8.50%
2/73 THRU 2/73	6/1/88	55.49	110.98	166.47	221.96	443.92	1109.80	2219.60	22196.	8.50%	8.50%	8.50%
3/73 THRU 5/73	7/1/88	55.49	110.98	166.47	221.96	443.92	1109.80	2219.60	22196.	8.50%	8.50%	8.50%
6/73 THRU 6/73	10/1/88	55.60	111.20	166.80	222.40	444.80	1112.00	2224.00	22240.	8.50%	8.50%	8.50%
7/73 THRU 7/73	5/1/88	53.86	107.72	161.58	215.44	430.88	1077.20	2154.40	21544.	8.50%	8.50%	8.50%
8/73 THRU 8/73	6/1/88	53.99	107.98	161.97	215.96	431.92	1079.80	2159.60	21596.	8.50%	8.50%	8.50%
9/73 THRU 11/73	7/1/88	53.99	107.98	161.97	215.96	431.92	1079.80	2159.60	21596.	8.50%	8.50%	8.50%
12/73 THRU 12/73	6/1/88	53.10	106.20	159.30	212.40	424.80	1062.00	2124.00	21240.	8.51%	8.50%	8.51%
1/74 THRU 4/74	7/1/88	53.10	106.20	159.30	212.40	424.80	1062.00	2124.00	21240.	8.51%	8.50%	8.51%
5/74 THRU 5/74	5/1/88	51.42	102.84	154.26	205.68	411.36	1028.40	2056.80	20568.	8.50%	8.50%	8.50%
6/74 THRU 6/74	6/1/88	51.55	103.10	154.65	206.20	412.40	1031.00	2062.00	20620.	8.50%	8.50%	8.49%
7/74 THRU 10/74	7/1/88	51.55	103.10	154.65	206.20	412.40	1031.00	2062.00	20620.	8.50%	8.50%	8.49%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
11/74 THRU 11/74	5/1/88	49.92	99.84	149.76	199.68	399.36	998.40	1996.80	19968.	8.50%	8.50%	8.50%
12/74 THRU 12/74	6/1/88	50.04	100.08	150.12	200.16	400.32	1000.80	2001.60	20016.	8.50%	8.50%	8.50%
1/75 THRU 4/75	7/1/88	50.04	100.08	150.12	200.16	400.32	1000.80	2001.60	20016.	8.50%	8.50%	8.50%
5/75 THRU 5/75	5/1/88	48.46	96.92	145.38	193.84	387.68	969.20	1938.40	19384.	8.50%	8.50%	8.50%
6/75 THRU 6/75	6/1/88	48.57	97.14	145.71	194.28	388.56	971.40	1942.80	19428.	8.50%	8.50%	8.50%
7/75 THRU 10/75	7/1/88	48.57	97.14	145.71	194.28	388.56	971.40	1942.80	19428.	8.50%	8.50%	8.50%
11/75 THRU 11/75	5/1/88	47.06	94.12	141.18	188.24	376.48	941.20	1882.40	18824.	8.50%	8.50%	8.49%
12/75 THRU 12/75	6/1/88	47.16	94.32	141.48	188.64	377.28	943.20	1886.40	18864.	8.50%	8.50%	8.50%
1/76 THRU 4/76	7/1/88	47.16	94.32	141.48	188.64	377.28	943.20	1886.40	18864.	8.50%	8.50%	8.50%
5/76 THRU 5/76	5/1/88	45.67	91.34	137.01	182.68	365.36	913.40	1826.80	18268.	8.50%	8.50%	8.50%
6/76 THRU 6/76	6/1/88	45.78	91.56	137.34	183.12	366.24	915.60	1831.20	18312.	8.51%	8.50%	8.51%
7/76 THRU 10/76	7/1/88	45.78	91.56	137.34	183.12	366.24	915.60	1831.20	18312.	8.51%	8.50%	8.51%
11/76 THRU 11/76	5/1/88	44.32	88.64	132.96	177.28	354.56	886.40	1772.80	17728.	8.50%	8.50%	8.50%
12/76 THRU 12/76	6/1/88	44.45	88.90	133.35	177.80	355.60	889.00	1778.00	17780.	8.50%	8.50%	8.50%
1/77 THRU 4/77	7/1/88	44.45	88.90	133.35	177.80	355.60	889.00	1778.00	17780.	8.50%	8.50%	8.50%
5/77 THRU 5/77	5/1/88	43.04	86.08	129.12	172.16	344.32	860.80	1721.60	17216.	8.50%	8.50%	8.50%
6/77 THRU 6/77	6/1/88	43.16	86.32	129.48	172.64	345.28	863.20	1726.40	17264.	8.50%	8.50%	8.50%
7/77 THRU 10/77	7/1/88	43.16	86.32	129.48	172.64	345.28	863.20	1726.40	17264.	8.50%	8.50%	8.50%
11/77 THRU 11/77	5/1/88	41.78	83.56	125.34	167.12	334.24	835.60	1671.20	16712.	8.50%	8.50%	7.50%
12/77 THRU 12/77	6/1/88	41.89	83.78	125.67	167.56	335.12	837.80	1675.60	16756.	8.50%	8.50%	7.50%
1/78 THRU 4/78	7/1/88	41.89	83.78	125.67	167.56	335.12	837.80	1675.60	16756.	8.50%	8.50%	7.50%
5/78 THRU 5/78	5/1/88	38.69	77.38	116.07	154.76	309.52	773.80	1547.60	15476.	8.50%	8.50%	8.48%
6/78 THRU 6/78	6/1/88	38.76	77.52	116.28	155.04	310.08	775.20	1550.40	15504.	8.53%	8.50%	8.53%
7/78 THRU 10/78	7/1/88	38.76	77.52	116.28	155.04	310.08	775.20	1550.40	15504.	8.53%	8.50%	8.53%
11/78 THRU 11/78	5/1/88	37.72	75.44	113.16	150.88	301.76	754.40	1508.80	15088.	8.58%	8.50%	8.58%
12/78 THRU 12/78	6/1/88	37.81	75.62	113.43	151.24	302.48	756.20	1512.40	15124.	8.63%	8.50%	8.63%
1/79 THRU 4/79	7/1/88	37.81	75.62	113.43	151.24	302.48	756.20	1512.40	15124.	8.63%	8.50%	8.63%
5/79 THRU 5/79	5/1/88	36.81	73.62	110.43	147.24	294.48	736.20	1472.40	14724.	8.67%	8.50%	8.67%
6/79 THRU 6/79	6/1/88	36.89	73.78	110.67	147.56	295.12	737.80	1475.60	14756.	8.71%	8.50%	8.71%
7/79 THRU 10/79	7/1/88	36.89	73.78	110.67	147.56	295.12	737.80	1475.60	14756.	8.71%	8.50%	8.71%
11/79 THRU 11/79	5/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
12/79 THRU 12/79	6/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
1/80 THRU 4/80	7/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
5/80 THRU 5/80	5/1/88	34.95	69.90	104.85	139.80	279.60	699.00	1398.00	13980.	8.70%	8.50%	8.70%
6/80 THRU 6/80	6/1/88	34.95	69.90	104.85	139.80	279.60	699.00	1398.00	13980.	8.70%	8.50%	8.70%

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(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

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U.S. SAVINGS BONDS, NOTES - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE		$20.25	$40.50	$60.75	$81.00			
DENOMINATION		25.00	50.00	75.00	100.00			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)				ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/67 THRU 5/67	5/1/88	78.53	157.06	235.59	314.12	8.50%	8.50%	8.50%
6/67 THRU 6/67	6/1/88	78.89	157.78	236.67	315.56	8.50%	8.50%	8.50%
7/67 THRU 10/67	7/1/88	78.89	157.78	236.67	315.56	8.50%	8.50%	8.50%
11/67 THRU 11/67	5/1/88	76.39	152.78	229.17	305.56	8.50%	8.50%	8.50%
12/67 THRU 12/67	6/1/88	76.77	153.54	230.31	307.08	8.50%	8.50%	8.50%
1/68 THRU 4/68	7/1/88	76.77	153.54	230.31	307.08	8.50%	8.50%	8.50%
5/68 THRU 5/68	5/1/88	74.35	148.70	223.05	297.40	8.50%	8.50%	7.50%
6/68 THRU 6/68	6/1/88	75.56	151.12	226.68	302.24	8.50%	8.50%	7.50%
7/68 THRU 10/68	7/1/88	75.56	151.12	226.68	302.24	8.50%	8.50%	7.50%
11/68 THRU 11/68	5/1/88	73.18	146.36	219.54	292.72	8.50%	8.50%	7.59%
12/68 THRU 12/68	6/1/88	73.58	147.16	220.74	294.32	8.50%	8.50%	7.59%
1/69 THRU 4/69	7/1/88	73.58	147.16	220.74	294.32	8.50%	8.50%	7.59%
5/69 THRU 5/69	5/1/88	71.26	142.52	213.78	285.04	8.50%	8.50%	7.68%
6/69 THRU 6/69	6/1/88	71.59	143.18	214.77	286.36	8.50%	8.50%	7.69%
7/69 THRU 10/69	7/1/88	71.59	143.18	214.77	286.36	8.50%	8.50%	7.69%
11/69 THRU 11/69	5/1/88	69.36	138.72	208.08	277.44	8.50%	8.50%	7.77%
12/69 THRU 12/69	6/1/88	69.68	139.36	209.04	278.72	8.50%	8.50%	7.77%
1/70 THRU 4/70	7/1/88	69.68	139.36	209.04	278.72	8.50%	8.50%	7.77%
5/70 THRU 5/70	5/1/88	67.49	134.98	202.47	269.96	8.50%	8.50%	7.86%
6/70 THRU 6/70	6/1/88	67.79	135.58	203.37	271.16	8.50%	8.50%	7.87%
7/70 THRU 10/70	7/1/88	67.79	135.58	203.37	271.16	8.50%	8.50%	7.87%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES EE - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
ISSUE PRICE		$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$5000.			
DENOMINATION		50.00	75.00	100.00	200.00	500.00	1000.00	5000.00	10000.			
1/80 THRU 4/80	7/1/88	51.54	77.31	103.08	206.16	515.40	1030.80	5154.00	10308.	9.82%	8.50%	9.82%
5/80 THRU 10/80	5/1/88	49.82	74.73	99.64	199.28	498.20	996.40	4982.00	9964.	9.80%	8.50%	9.80%
11/80 THRU 4/81	5/1/88	47.62	71.43	95.24	190.48	476.20	952.40	4762.00	9524.	9.51%	8.50%	9.51%
5/81 THRU 10/81	5/1/88	45.86	68.79	91.72	183.44	458.60	917.20	4586.00	9172.	9.57%	8.50%	9.57%
11/81 THRU 4/82	5/1/88	43.70	65.55	87.40	174.80	437.00	874.00	4370.00	8740.	9.29%	8.50%	9.29%
5/82 THRU 10/82	5/1/88	41.66	62.49	83.32	166.64	416.60	833.20	4166.00	8332.	9.13%	8.50%	9.13%
11/82 THRU 4/83	5/1/88	39.52	59.28	79.04	158.08	395.20	790.40	3952.00	7904.	8.50%	8.50%	7.51%
5/83 THRU 10/83	5/1/88	37.46	56.19	74.92	149.84	374.60	749.20	3746.00	7492.	8.25%	8.25%	7.51%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

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NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

[FR Doc. 88-6445 Filed 3-23-88; 8:45 am]

BILLING CODE 4810-40-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD5-88-004]

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of CONRAIL, the Coast Guard is changing the regulations governing the operation of the vertical lift railroad bridge across the Anacostia River, at mile 3.4, in Washington, DC. The change is being made in order to eliminate the need to have a person constantly available to open the draw during times of the year when few vessels transit the river. This action provides for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804)-398-6222.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Coast Guard published a notice of proposed rulemaking (52 FR 49031) regarding this bridge. The Commander, Fifth Coast Guard District, also published the proposal in a Public Notice, dated July 16, 1987. In the Federal Register notice, interested persons were given until February 12, 1988, to submit comments. Interested persons were given until August 17, 1987, to submit comments in the Public Notice.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Comments

In December 1986, CONRAIL requested that the regulations for the railroad bridge be amended to restrict the openings of the bridge at all times between October 1 through March 31 and between 11:00 p.m. and 7:00 p.m. between April 1 through September 30. During these timeframes the bridge would only open if eight hours advance notice was given.

The requested change increases the hours on weekdays during the boating season when the bridge is required to open on signal.

No comments were received as a result of the notice of proposed rulemaking nor the public notice. The proposal is being adopted with minor editorial changes. The current provision in 33 CFR 117.253(b)(5) relating to clearance gages that was erroneously left out of the notice of proposed rulemaking have been retained in the final rule as paragraph (b)(2).

Economic Assessment and certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Because of the infrequent bridge openings during the winter months and the evening hours of the boating season, the economic impact should be minimal. The Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.253(b) is revised to read as follows:

§ 117.253 Anacostia River.

* * * * *

(b) CONRAIL bridge, mile 3.4.

(1) The draw of the shall open on signal:

(i) At all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property.

(ii) On Saturdays, Sundays, and Federal Holidays from April 1 through September 30.

(iii) On weekdays, which are not Federal Holidays, between 7:00 a.m. and 11:00 p.m., from April 1 through September 30.

(iv) At all other times, if at least eight hours notice is given.

(2) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of tide. The gages shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: March 14, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-6467 Filed 3-24-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Eligibility for Medical Benefits; Evidence of Inability To Defray Necessary Medical Expenses

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: On pages 25061–25068 Federal Register of July 10, 1986 (51 FR 25061), the Veterans Administration (VA) published a final rule amending its medical series to conform with changes to several sections of Title 38, United States Code, enacted with passage of Title XIX of Pub. L. 99–272, "The Veterans' Health Care Amendments of 1986," significantly affecting veterans eligibility for health care benefits. In the process of amending § 17.47 introductory text language was inadvertently left in paragraph (e). This notice corrects that error; the proper language for § 17.47(e) is set forth below.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart E. Mount, Acting Chief, Policies and Procedures Division (136F), Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20402, (202) 233-2143.

SUPPLEMENTARY INFORMATION:

List of Subjects in 38 CFR Part 17

Health care, Health care facilities, nursing homes, Veterans.

38 CFR Part 17 is amended as follows:

PART 17—[AMENDED]

1. The authority citation for § 17.47(e) continues to read as follows:

Authority: 38 U.S.C. 610(b), 621.

§ 17.47 [Amended]

2. In § 17.47, paragraph (e) is amended by removing the introductory text.

BEST COPY AVAILABLE

Dated: March 17, 1988.

Priscilla Carey,

Chief, Directives Management Division.

[FR Doc. 88–6280 Filed 3–23–88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6667

[OR–943–07–4220–10–GP–07–293; OR–36236]

Withdrawal of Public Land for John Day Administrative Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the John Day Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management administrative site:

Willamette Meridian

T. 16 S., R. 27 E.,
  Sec. 29, S½.SE¼SW¼NW¼.

The area described contains 5 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f), of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88–6415 Filed 3–23–88; 8:45 am]

BILLING CODE 4310-33-M

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43 CFR Public Land Order 6668

[ID–943–08–4220–10; I–22814]

Withdrawal of Public Land for the Dworshak Dam and Reservoir Project, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 764.61 acres of public land from surface entry and mining for a period of 84 years for the U.S. Army Corps of Engineers and transfers jurisdiction of the land to the Corps to protect big game habitat that was lost by filling the Dworshak Dam and Reservoir. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws:

Boise Meridian

T. 41 N., R. 5 E.,
  Sec. 19, NW¼SE¼NE¼;
  Sec. 25, lots 3, 4, S½SW¼NW¼;
  Sec. 26, lot 2 except NW¼, lot 9, SE¼SE¼NE¼, NW¼NE¼SW¼, S½NE¼SW¼;
  Sec. 27, S½N½SW¼;
  Sec. 28, S½SE¼SW¼;
  Sec. 31, S½SE¼SE¼;
  Sec. 32, lots 2, 3, E½NE¼NE¼, SE¼SW¼NE¼, SE¼NE¼, S½NE¼SW¼, SW¼SW¼, NW¼SE¼;
  Sec. 33, lots 6 and 7;
  Sec. 34, N½N½NE¼, NE¼SW¼NW¼, W½SW¼NW¼, NW¼SE¼NW¼;
  Sec. 35, N½NW¼NE¼, SW¼NW¼NE¼, N½N½NW¼, SE¼NE¼NW¼.

The areas described aggregate 764.61 acres in Clearwater County.

2. Jurisdiction of the lands described in this order is hereby transferred to the U.S. Army Corps of Engineers.

3. This withdrawal will expire 84 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: March 15, 1988.

J. Steven Griles,

Assistant Secretary of the Intrerior.

[FR Doc. 88–6402 Filed 3–23–88; 8:45 am]

BILLING CODE 4310-GG-M

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43 CFR Public Land Order 6669

[MT–930–08–4220–10; M–21943]

Withdrawal of National Forest Land for Lincoln Gulch Historic Site; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 90 acres of national forest land from mining for 20 years to protect the Lincoln Gulch Historical Site. The lands have been and remain open to appropriate forms of surface entry and to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2151; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) to protect the Lincoln Gulch Historical Site.

Principal Meridian

T. 14 N., R. 9 W.,
  Sec. 8, W½SE¼NW¼, W½NE¼SW¼, SE¼SW¼, and SW¼SW¼SE¼.

The area described contains 90 acres in Lewis and Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal

Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

March 15, 1988.

[FR Doc. 88–6414 Filed 3–23–88; 8:45 am]

BILLING CODE 4310-DN-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85–19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Final rule; extension of effective date.

SUMMARY: In response to requests from affected conferences, the Federal Maritime Commission has determined to extend the effective date of the final rule in Docket No. 85–19.

DATE: Effective June 26, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission served a final rule in this proceeding on February 18, 1988, with an effective date 30 days after publication in the Federal Register. The notice appeared on February 26, 1988 (53 FR 5770) with an effective date of March 28, 1988.

Various conferences have filed requests for a 90-day stay of the effective date. The conferences stress the magnitude of complying with the new filing requirements imposed by the rule and indicate that the current 30-day period is insufficient to achieve compliance.

Upon consideration of the requests, the Commission has determined to grant a 90-day extension of the effective date of the final rule in Docket No. 85–19. The date the rule will become effective is established as June 26, 1988. By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–6439 Filed 3–23–88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[APD 2800.12 CHGE 53]

General Services Administration Acquisition Regulation; Buy American Act Construction Materials

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSAR) Chapter 5, is amended by adding section 525.202 to provide specific policy concerning the use and approval of foreign construction materials; to add section 525.203 to provide a method to evaluate offers when foreign construction materials are proposed; to add section 525.204 to provide for the documentation of the contractor's failure to comply with the Buy American Act; to add section 525.205 to prescribe a provision entitled "Buy American Act Notice—Construction Materials;" and by adding section 552.225–75 to provide the text of the provision entitled "Buy American Act Notice—Construction Materials." The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration published GSAR Notice 5–131 in the Federal Register (52 FR 42125) on November 3, 1987, inviting comments from interested parties. No comments were received from the public. Comments received from various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. A final regulatory flexibility analysis has been prepared, in accordance with the Regulatory Flexibility Act (5 U.S.C. 604), and provided to the Chief Counsel for Advocacy, Small Business Administration. Copies of the final regulatory flexibility analysis may be obtained by contacting Marjorie Ashby on (202) 523–3822 or writing the Office of GSA Acquisition Policy and Regulations (VP), 18th & F Streets NW., Washington, DC 20405. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control Number 3090–0240.

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 525 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 525—FOREIGN ACQUISITION

2. The table of contents for Part 525 is amended by adding Subpart 525.2 and related sections to read as follows:

Subpart 525.2—Buy American Act—Construction Materials

Sec.
525.202 Policy.
525.203 Evaluation of offers.
525.204 Violations.
525.205 Solicitation provision.

3. Subpart 525.2 is added to read as follows:

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.

The HCA is authorized to make determinations required by FAR 25.202(a). The HCA may not redelegate authority to make determinations under FAR 25.202(a)(3) when the cost of the materials is estimated to exceed $100,000. Authority to make other determinations may be redelegated.

525.203 Evaluation of offers.

(a) The HCA or a designee may authorize the use of a particular foreign construction material when the use of a comparable domestic construction material would unreasonably increase the cost of the contract. The cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. The cost of construction material includes all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(b) The evaluation process described in paragraph (a) above, does not apply to excepted materials listed in FAR 25.108 or in the solicitation. (See paragraph (a) of the provision at

552.225–75). See FAR 25.201 for computing cost of components.

(c) The provision at 552.225–75, Buy American Act Notice—Construction Materials, requires offerors proposing to use foreign construction materials provide adequate information for Government evaluation under paragraph (a) above, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) above, evaluation of the offer must be based on the stated price, if any, for comparable domestic construction material. If an offer proposing to use foreign construction material does not furnish data on the cost of comparable domestic construction material, and use of the foreign construction material is not authorized, the offer of foreign material must be rejected, unless the contracting officer is able to obtain prices on comparable domestic material which verifies that domestic prices are unreasonable.

(d) The contracting officer shall add 6 percent of the cost of all foreign construction materials authorized for use in accordance with paragraph (a) above, to price(s) offered, if applicable, for evaluation purposes only.

525.204 Violations.

If a contractor fails to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, the contracting officer shall document the failure in a report and forward the report to the debarring official for consideration for debarment action in accordance with Subpart 509.4.

525.205 Solicitation provision.

The contracting officer shall insert the provision at 552.225–75, Buy American Act Notice—Construction Materials, in solicitations for construction inside the United States. This provision supplements the Buy American Act—Construction Materials clause at FAR 52.225–5.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The Table of Contents for Part 552 is amended by adding section 552.225–75 to read as follows:

Subpart 552.2—Text of Provisions and Clauses

Sec.
552.225–75 Buy American Act Notice—Construction Materials.

5. Section 552.225–75 is added to read as follows:

552.225–75 Buy American Act Notice—Construction Materials.

As prescribed in 525.205, insert the following provision in solicitations and contracts:

Buy American Act Notice—Construction Materials (Mar 1988)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (See the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the excepted construction material or components listed either below or in FAR 25.108:

(List applicable excepted materials not listed in FAR 25.108 or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost of this contract.

(c) Any offer based on the use of one or more other foreign construction materials shall include current data, based on a reasonable canvass of suppliers, in the format listed in paragraph (h) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government will add to the offer, 6 percent of the cost of foreign construction material that qualifies for acceptance under paragraph (c) above.

(e) When offering foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a foreign construction material to be acceptable, under (c) above, will cause rejection of the entire offer.

(f) If any foreign construction material does not qualify for acceptance under paragraph (c) above, the Government will evaluate the offer on the basis of the stated price for comparable domestic construction material, and the Offeror shall be required to furnish such domestic construction material at that price. Therefore, if the Offeror does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) above, the offer will be rejected in sealed bid procurements and may be rejected in negotiated procurements.

(g) If the foregoing procedure results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. In such case, offers proposing to use any foreign construction material will be considered to be foreign offers.

(h) For evaluation purposes under paragraph (c) above, the following information and any applicable supporting data based on the canvass of suppliers shall be included in the offer for the use of one or more foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars) [1]
Item 1:			
Foreign construction material			
Comparable domestic construction material			$
Item 2:			
Foreign construction material			$
Comparable domestic construction material			$

[1] Include all delivery costs to the construction site and any applicable duty.

(End of Provision)

Dated: March 11, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–6368 Filed 3–23–88; 8:45 am]

BILLING CODE 6820-61-M

VETERANS ADMINISTRATION

48 CFR Part 836

Acquisition Regulations; Specifications

AGENCY: Veterans Administration.

ACTION: Correction; final rule.

SUMMARY: On page 7755 of the **Federal Register** of March 10, 1988 (53 FR 7755), the Veterans Administration (VA) published a final rule amending the VA Acquisition Regulations (VAAR) to provide Agency guidance on the use of specifications, standards, and other purchase descriptions in the acquisition process. In section 836.202(b) a series of words was inadvertently omitted. This notice corrects that error by setting forth the language below.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Acquisition Policy (93), Office of Acquisition and Materiel Management, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3784.

Dated: March 17, 1988.

Priscilla Carey,

Chief, Directives Management Division.

Section 836.202 is amended by correctly revising paragraph (b) to read as follows:

836.202 Specifications.

* * * * *

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of contract for design.

* * * * *

[FR Doc. 88–6279 Filed 3–23–88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in 1987 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This document announces final findings by the Scientific Authority and the Management Authority of the United States on the export of bobcats harvested in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe. This document also stipulates that monitoring procedures previously established for other States and Indian Nations be extended to include Kentucky and the White Mountain Apache Tribe. The Service intends these findings to span a period not limited to a single harvest season.

In the January 5, 1984, **Federal Register** (49 FR 590), the Service published a rule granting export approval for bobcats (*Lynx rufus*) and certain other Convention-listed species from specified States and Indian Nations for the 1983–84 and subsequent harvest seasons. This document adds the State of Kentucky and the White Mountain Indian Tribe to the list of States and Indian Nations for which the export of bobcats is approved.

DATES: This rule is effective March 24, 1988.

ADDRESSES: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Matomic Building, Room 527; U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street NW., Washington, DC or at the Office of Management Authority, U.S. Fish and Wildlife Service Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948

Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4955

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4963

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

In the January 5, 1984, and the August 18, 1983 (48 FR 37494) **Federal Register** documents, the Service announced the decision from a review of listed species concluded at the Fourth Meeting of the Conference of the Parties in Botswana that each of the species or geographically separate populations addressed in those export findings, including the bobcat, should be regarded as listed in Appendix II because of its similarity in appearance to other listed species or populations. As indicated in those documents, the Conference of the Parties adopted a resolution accepting the report of the Central Committee on the 10-year review of species listed in Appendices I and II. The report included recommendations that these populations or species should be considered as listed in Appendix II only because of similarity in appearance, if they were to be retained in that appendix.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor the status of these species and their trade on an annual basis so that it could detect any significant downward trends in populations and, where necessary, institute more restrictive export controls in response to them. The document also described how the Service, as Management Authority, would determine if specimens had been lawfully acquired on the basis of tagging requirements.

This is the second **Federal Register** document concerning the Service's findings on export of bobcats taken in Kentucky and on the Fort Apache Indian Reservation in 1987 and subsequent seasons. The first document (52 FR 45469; November 30, 1987) announced the Service's intention to develop findings on export of 1987 and subsequent seasons' harvest of bobcats taken in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe.

The purpose of this rule is to add Kentucky and the White Mountain Apache Tribe to those States and Indian Tribes and Nations from which the Service has approved the export of bobcats in the 1983–84 and subsequent seasons. This list was identified in the January 5, 1984, **Federal Register** (49 FR 590) and is listed in 50 CFR 23.52.

Comments and Information Received

The Service received comments on the proposed findings and rule from the Defenders of Wildlife and from the Wildlife Legislative Fund of America.

The Wildlife Legislative Fund supported a decision to approve export of bobcats harvested in the 1987 and subsequent seasons in Kentucky and the Fort Apache Indian Reservation. The Defenders of Wildlife, while not commenting specifically on bobcat status and harvest programs in Kentucky or the Fort Apache Indian Reservation, recommended to the Service "that it: (1) Make the 'no detriment' finding required by CITES prior to authorizing export of bobcats; and (2) describe specifically how it 'monitors' that status of the bobcat and bobcat exports."

The issue that the Defenders of Wildlife appears to raise is that the language of the Convention does not specifically provide different criteria to be used in determining no detriment for those species listed in Appendix II under the rationale of Article II paragraph 2(a), as opposed to those listed in Appendix II under Article II paragraph 2(b) because of their similarity of appearance to those listed based on paragraph 2(a).

In the August 18, 1983, **Federal Register** document (48 FR 37494), the Service indicated that when a species is listed only to enable trade in other species to be effectively controlled, the Scientific Authority should focus on this control aspect when advising on nondetriment. The marking of pelts with tags bearing the name of the species and the issuance of export permits naming the species being traded should suffice to address problems of identification due to similarity of appearance between any of these furbearers and the other species they were listed to protect. The States and the Service have continued to implement improvements in this marking system.

Although the Service did not adopt the view that the export standard for species listed in Appendix II under Article II paragraph 2(b) should be the same as if listed under paragraph 2(a), the Service in the January 4, 1984, **Federal Register** document did provide information that helped to illustrate that export under State programs at the time was not detrimental to the survival of the species involved. The Service also established a procedure for monitoring and review to establish if the determination that the bobcat is properly listed under Article II paragraph 2(b) remains correct.

Furthermore, as part of this monitoring program, the States that have been approved for export of bobcats have annually certified that the harvest of bobcats will not be detrimental to survival of the species and have provided information and/or the basis for support of this assessment. In addition to the Service's annual request for the above certification from each State, the Service indicated that it would continue to monitor export trade and would conduct more comprehensive reviews of accumulated information whenever available information from the States or other sources indicates a possible problem. The review procedure includes a provision for limiting trade where necessary to avoid detriment to the species involved.

The Service has recorded the annual export of bobcat specimens and has recorded the number of bobcat pelt tags issued by State programs. However, inasmuch as these parameters do not indicate the total harvest, the Scientific Authority has considered the information from the States to be the most meaningful for determining whether the species remains correctly listed. These States have professionally-run management and research programs for the bobcat and information from these programs serves to indicate whether similarity in appearance treatment remains suitable.

Management Authority Determinations

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of wildlife or plants. The Service, therefore, must be satisfied that the pelts, hides, or products of the furbearer in question were not obtained in violation of State or Federal law, in order to allow export. A system to determine whether specimens have been lawfully acquired on the basis of tagging requirements was stipulated in the January 5, 1984, **Federal Register** (49 FR 590). The Service has continued to monitor the implementation of these regulations, and considers that these programs provide reasonable assurance that bobcat specimens being exported were not obtained in violation of laws established for their protection.

Scientific Authority Advice

The State of Kentucky provided current information on population density based on home range studies conducted in these portions of the State in which the taking of bobcats will be permitted, an evaluation of available habitat with regard to distribution of the bobcat, and possible trends in habitat conditions. The State also informed the Service that they had contracted for the analysis of age structure, sex ratio, placental scar counts, food habits, body size and condition measurements and that this information would be incorporated into the bobcat simulation model being developed.

The White Mountain Indian Tribe provided information on bobcat populations based on density in the various habitat types and harvest. The tribe reported a total harvest of only 34 bobcats in the 1986–87 season. Nevertheless, it is important to address the White Mountain Indian Tribe separately in order to document all entities involved in tagging programs. The area of the Fort Apache Indian Reservation is relatively small, and information on the status of bobcats throughout Arizona provides a more comprehensive assessment of harvest effects on State-wide survival of the species. The State of Arizona prior to the 1987–88 trapping season stipulated that "there is no reason to believe that the 1987–88 bobcat harvest will be detrimental to the survival of the bobcat in Arizona," and provided information on bobcat harvest (both from trapping and hunting), population age structure data, number of trappers, and trapping success.

The Service continues to believe that the bobcat is properly listed for reasons of similarity of appearance, and that with the tagging of pelts as described in Management Authority Determinations (49 FR 590), the export of those animals will not reduce the effectiveness of the Convention in controlling trade in other listed species. The State of Kentucky and the White Mountain Apache Tribe have established programs to properly mark the specimens so the export will not be detrimental to the species that the bobcat is listed to protect, and to provide information to indicate whether harvest will not threaten the survival of the species.

Export Approval

The Service approves exports of bobcats harvested in the 1987 and subsequent seasons in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe on the basis that both the Scientific Authority and the Management Authority criteria have been satisfied.

This approval is subject to revision prior to any subsequent taking season in any particular State or Indian Nation if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of specimens of this species originating in any State or Indian Nation not named for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State or Indian Nation, or (3) the Service does not have current information needed for Scientific Authority and Management Authority findings.

The Department has determined, within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, to make these findings and rule effective immediately. By making this rule effective immediately, a restriction on international trade will be lifted from individual trappers and fur dealers within Kentucky and the Indian Reservation. Furthermore, this document represents the final administrative step in authorizing the export of bobcats from the approved State and Indian Nations in accordance with the Convention. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that already has begun in the State and Indian Reservation. It could also adversely affect the species by reducing compliance with State tagging requirements. Furthermore, good cause exists for making these findings effective as soon as possible to avoid economic injury to individual trappers, dealers, or other small entities that are directly affected by the findings. It should be noted that making this finding and rule effective immediately wll not adversely affect the species involved, in view of the findings on nondetriment contained herein.

Note.—The Department has determined that final findings on the export of certain Appendix II animals taken in the 1983–84 and subsequent harvest seasons are not a major Federal action that would significantly effect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and therefore, the preparation of an Environmental Impact Statement is not required (48 FR 37494). The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The findings will allow export of specimens taken in accordance with other State budget programs that have operated for several years without adversely affecting the resource. The findings do not contain any information collection or recordkeeping requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Mr. S. Ronald Singer, Office of Management Authority, and Dr. Charles W. Dane, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, and Endangered Species Act of 1973, 87 Stat 884, 16 U.S.C. 1531 *et seq.*

2. Amend § 23.52 by revising paragraph (h) to read as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * * *

(h)(1) *1983–84 and subsequent harvests (in addition to those listed above):* Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Klamath Tribe, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Navajo Nation, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Penobscot Nation, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

(2) *1987 and subsequent harvests (in addition to those listed above):* Kentucky, White Mountain Apache Tribe.

Condition on export: Each pelt must be clearly identified as to species, State or Indian Nation of origin and season of taking by a permanently attached, serially numbered tag of a type approved by and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the United States when accompanied by the State or Indian Nation export tags removed in a manner described by the Service from pelts contained in the products; such tags must be removed by cutting the tag strap on the female side next to the locking socket of the tag so that the locking socket and locking tip remain joined, and such tags must be surrendered to the Service prior to export.

Date: February 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–6371 Filed 3–23–88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 53, No. 57

Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in the State of California; Amendment to the Direct Sales Exemption Regulations for Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change in the direct home use sales exemption regulations established under the pear, plum, and peach marketing order. The change would bring the quantity of pears that can be handled free of certain program requirements under that exemption more in line with the quantity that would normally be used for home use.

DATE: Comments must be received by April 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2065–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulations under the marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

Section 917.143 of the regulations for pears, plums, and peaches specifies conditions which must be followed to handle pears, plums, and peaches exempt from certain requirements, including grade, size, inspection, container, marking, and assessment regulations. Among other things, maximum weight limitations are specified. For pears, plums, and peaches, the quantity shipped cannot exceed 200 pounds to any one person during any one day. These purchases also must be for home use and cannot be resold.

Under these exemption requirements, a handler could sell a family of four 800 pounds of pears in any one day. The Pear Commodity Committee asserts that that amount of pears is excessive for home use sales in view of the intent of these exemption provisions. The intent is to help small growers by permitting them to sell such fruit directly to the consumers at the premises where the fruit is grown, at a nearby packing house, retail stand, or at certified farmers' markets.

Under the committee's recommendation, the poundage limitation would be determined on a per vehicle basis rather than on a per person basis. Hence, a family of four using the family car could purchase only 200 pounds of pears in a day, rather than 800 pounds each under the current exemption requirements.

For perspective concerning the adequacy of the recommended poundage limitation, it should be noted that the annual per capita consumption in 1985 of fresh pears was 2.84 pounds. Hence, according to the committee, the recommendation would still provide more than enough fruit to meet the home use needs of local consumers and would not have an adverse impact on those growers who find handling fruit for home use under this exemption attractive. The proposed change to a poundage limitation of 200 pounds based on one vehicle per day is consistent with the intent of the minimum quantity exemption authority.

Therefore, the Department's view is that the proposed quantity limitation for pears is more than adequate for home usage, it would not lessen the use of the roadside sales exemption by local consumers and growers, and that the proposal would have little, if any, impact on industry operations. Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A similar proposal concerning such sales of nectarines under Marketing Order No. 916 (7 CFR Part 916), and plums and peaches under Marketing Order No. 917 (7 CFR Part 917) was published in the **Federal Register** on February 26, 1988 (53 FR 5776), with a comment period ending March 28. This proposed rule would amend § 917.143(b)(3) and reflects the proposed changes in the February 26, 1988 **Federal Register** publication. It is anticipated that any changes, if adopted, would be in place when the 1988 shipping season for each of these commodities begins. Shipments of peaches are expected to start in mid-April. Shipments of nectarines are expected to start in late April and shipments of plums in early

May. Pear shipments are not expected to start until late June.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is proposed to be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.143 is amended by revising paragraph (b)(3) to read as follows:

§ 917.143 Exemption.

* * * * *

(b) * * *

(3) The shipment does not exceed 200 pounds of pears, 200 pounds of plums, and 200 pounds of peaches to any one vehicle during any one day.

* * * * *

Dated: March 21, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–6423 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1007

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: The proposed suspension would make inoperative for the months of March through August 1988 the order's base and excess plan for paying producers for their milk. Southern Milk Sales, Inc., has requested the suspension action due to a substantial increase in Class I sales by a plant supplied by the cooperative. The bulk of the Class I sales increase occurred after the start of the base-making period. As a consequence, the members of the cooperative have not earned enough base to cover the increased fluid milk requirements of the plant.

DATE: Comments are due on or before March 31, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of March through August 1988:

1. Section 1007.32(a)
2. In § 1007.61(a) the words "September through January".
3. In § 1007.61(a)(5) the words "for the months of September through January".
4. Section 1007.61(b)
5. In § 1007.73(a)(2) the words "or base milk and excess milk".
6. In § 1007.75(a) the words "and the uniform price for base milk".
7. Sections 1007.90 through 1007.93.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of March through August 1988 the order's base and excess plan for paying producers for their milk.

Suspension of the base-excess plan was requested by Southern Milk Sales, Inc. The cooperative indicates that continuation of the base-excess plan for 1988 will impose a severe hardship on its dairy farmer members.

Southern Milk Sales supplies the Heritage Farms plant at Murfreesboro, Tennessee. In November of 1987, the plant began supplying fluid milk products to the Kroger stores in Florida. Such sales by the Kroger stores have increased each succeeding month through January 1988. Because these increased sales occurred during the latter part of the base-building period of September through January, the member producers currently supplying the fluid milk requirements of the Kroger plant have not earned sufficient base to cover the increased demand for fluid milk during the base-paying months. Unless the suspension action is granted, member producers of Southern Milk Sales will receive the excess price for the milk supplied for the new Class I sales while other producers receive the benefit of the increased Class I distribution.

A further reason advanced by the cooperative as a basis for the suspension is that the vast majority, if not all, of the member producers of cooperative associations supplying plants regulated by the Georgia order are not now being paid on a base-excess plan. Southern Milk Sales contends that cooperative associations pool the base-excess returns of their members and pay individual producers of their association a uniform price for their milk. The cooperative requests that the base-excess plan be suspended since it is not being utilized to achieve its primary purpose of providing a better balance in the seasonal variation of milk production.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: March 18 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–6425 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Notice of Proposed Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to continue to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of April through August 1988 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than March 31, 1988.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090–6456, (202) 447–7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of April through August 1988.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1988 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of April through August 1988. The specific revisions would increase the diversion limitation percentages for the months of April through August 1988 by 15 percentage points from the present 50 percent to 65 percent. The order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, from 50 to 60 percent for the months of July and August 1987, and from 40 percent to 55 percent for the months of September 1987 through March 1988.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefitrs that accrue from such pricing.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1988, the percentage of allowable diversions be increased 15 percentage points.

The cooperative states that the percentage of producer milk used in Class I sales under the Nebraska-Western Iowa order during January 1988 declined to 35 percent from a January 1987 level of 42 percent. During the same time period, according to NFO, the amount of producer milk pooled under the order increased 13 percent. The cooperative predicts that this pattern of increasing production and the resulting decline in the percentage of producer milk used in Class I is likely to continue in 1988. NFO states that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III useage is quite appropriate.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk must be unloaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO states that such uneconomic milk shipments will be necessary for the months of April through August 1988 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the proposed temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of April through August 1988 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on March 21, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88–6426 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1210

[WRPA Docket No. 1]

Proposed Watermelon Research and Promotion Plan; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written exceptions to a proposed Watermelon Research and Promotion Plan (Plan). The proposed Plan is designed to improve the position of watermelons in the marketplace through coordinated programs of research and promotion. The proposal was submitted by the National Watermelon Association, Inc. The proposed Plan would provide for a national research and promotion program for watermelons financed by assessments paid by producers who grow five or more acres of watermelons annually and by handlers who first handle such watermelons. The proposed Plan would establish a maximum assessment rate of two cents per hundredweight of watermelons for both producers and handlers. A 29 member board composed of watermelon producers, handlers and a representative from the general public would administer the program.

DATE: Written exceptions must be received by May 23, 1988.

ADDRESSES: Four of comments should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC, 20250. The copies will be available for public inspection during regular business hours. Comments on the proposed Plan's information and recordkeeping requirements should be submitted to Lisa Grove, Desk Officer for the Agricultural Marketing Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, P.O. Box 96456, Room 2531–S, Washington, DC 20090–6456; telephone 202–475–3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. The Notice of Hearing was published in the February 4, 1987, issue of the **Federal Register** (52 FR 3568). A correction to the Notice was published on February 17, 1987 (52 FR 4783). A seven day Extension of Time for Receipt of Post Hearing Briefs was requested by proponents and granted on April 17, 1987. Notice of the extension was published on April 21, 1987 (52 FR 13086).

Preliminary Statement

This action is governed by the provisions of sections 556 and 557 of Title 5 of the U.S. Code, and therefore is excluded from the requirements of Executive Order 12291.

This notice is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (Plan) (7 CFR Part 1200). Any Plan that may result from this proceeding would be effective pursuant to the provisions of the Watermelon Research and Promotion Act, hereafter referred to as the "Act," (Pub. L. 99–198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901–4916).

The proposed Plan was formulated on the record of a public hearing with sessions in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987.

The national Plan would authorize the collection of equal assessments on producers and handlers of watermelons. Handlers would be responsible for collecting assessments from producers and submitting the assessments, and for maintaining appropriate records. Refunds of collected assessments could be obtained by producers and handlers who do not support the Plan. Assessment funds would be used to promote watermelons through a variety of market research and product promotion programs. These programs would be developed and administered by a Board composed of watermelon producers and handlers by their peers throughout the country. Daily administration of the Plan would be carried out by a staff of employees directly responsible to the Board. All administrative rules and regulations as well as research and promotion programs developed by the Board must be submitted to the Secretary of Agriculture for approval.

Small Business

In accordance with the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 *et seq.*), the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to persons covered under the proposed Plan. Promotion plans and their administering rules are unique because they are normally brought about through group action of essentially small businesses for their mutual benefit. Therefore, both the RFA and the Act are compatible with respect to small business entities.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed Plan, are defined as those with gross annual revenues of less than $3.5 million.

The majority of watermelon producers and handlers may be classified as small entities. Testimony indicates that the industry is composed mostly of small entities engaged in the production and marketing of watermelons. Hearing evidence also indicates that watermelons are produced on almost 12,000 farms in the United States. There are a significant number of small farms, particularly in the northern States, where less than five acres of watermelons are produced for sale. Producers of less than five acres would not have to pay assessments under the Plan because the term "producer" would be defined as any person engaged in the growing of five or more acres of watermelons. The industry also includes a few large farms in excess of 400 acres.

The proposed Plan would assess both producers and handlers at equal rates, not to exceed two cents per hundredweight. The record indicates a unanimous agreement by those testifying that this amount would be relatively insignificant and should not impose a financial burden on large or small producers and handlers. The benefits of the proposed program are expected to exceed the costs. Based upon 1981 production of watermelons, it is estimated that collection of assessments could be as much as $1,122,000 if the maximum assessment rate of two cents per hundredweight of watermelons were implemented for both producers and handlers. This would represent less than 1 percent of producer income and less than 1 percent of handler income if watermelons were selling at 6 cents a pound (based upon 1979–81 average prices). Both producers and handlers have the right to request a refund of assessments.

While the proposed Plan imposes certain recordkeeping requirements on handlers, information required to be reported under the proposed Plan could be compiled from records currently maintained by the handlers. Thus, the record indicates that any added burden resulting from increased recordkeeping would not be significant when compared to benefits that should accrue to such businesses. All businesses, large and small, would be treated equally under the proposed Plan. The Plan would impose no disproportionate recordkeeping burdens on any group of small businesses within the industry. There are no reporting or recordkeeping requirements for producers in the proposed Plan.

Based on the above, the Administrator, Agricultural Marketing Service, has determined that the proposed Plan should have no significant adverse economic effect on small businesses in the industry.

In determining that the proposed Plan will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The Plan's provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although the Plan would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the programs under the proposed Plan would help to increase demand for watermelons. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed provisions of the Plan would not have a significant impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this proposed Plan have been submitted to OMB for review. Comments concerning these requirements should be directed to Lisa Grove, Desk Officer, Agricultural Marketing Service, Office of Management and Budget.

Material Issues

The material issues of record are as follows:

1. The movement of watermelons in the channels of interstate commerce;

2. The need for the proposed research and promotion Plan as a means of effectuating the declared policy of the Act;

3. The specific terms and provisions of the proposed Plan including:

(a) Definitions of the commodity, the persons to be assessed, and the other terms set forth in the Notice of Hearing, which are applicable to the provisions of the proposed Plan;

(b) The establishment, composition, maintenance, powers, duties and operation of a "National Watermelon Promotion Board" which shall serve as the administrative agency of the proposed Plan;

(c) The authority to establish research and promotion programs for watermelons;

(d) The authority for the National Watermelon Promotion Board to incur expenses and for the Secretary of Agriculture to levy assessments on watermelon producers and handlers who first handle watermelons;

(e) The authority to exempt from assessments a producer who produces watermelons for non-food uses;

(f) The procedure for making refunds of assessments to producers and handlers who request them;

(g) The authority to establish an operating monetary reserve and to set aside funds in the reserve to defray any authorized expenses;

(h) The authority to establish reporting, record keeping and confidentiality requirements, and

(i) The establishment of other miscellaneous provisions which are set forth in the Notice of Hearing as §§ 1210.360 through 1210.367.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the Record of Hearing.

1. The 1982 Census of Agriculture, the most recent census with watermelon statistics, shows that watermelons were grown in 44 of the 48 contiguous States in 1981. That census tallied nearly 12,000 farms producing approximately 28 million hundredweight of watermelon. Florida alone produced about 30 percent of the annual crop. Florida and three other States, Texas, Georgia and California, produced almost 63 percent of the nation's annual watermelon crop.

The record indicates that similar varieties of watermelons grown throughout the United States are generally uniform in appearance. Consumers cannot generally distinguished between, for instance, a watermelon from Georgia and one of the same variety from north Texas or Oklahoma. Thus, watermelons are homogeneous products competing for similar national markets. At peak periods in mid-summer, it is not unusual for handlers across most of the southern States to compete for the same markets in northern cities.

Watermelons are a warm weather crop. The season runs from late May to mid-September. For instance, Florida and south Texas producers begin harvesting watermelons in late spring and are more than halfway through their crops' harvest as States further north begin harvests later in June.

The relatively few, small producers in the Northeast, Midwest, West and Northwest meet only a portion of their local demand. The large volume of interstate commerce of watermelons is from the southern producing rgions to the metropolitan areas in the northern States. Highest consumption periods fall around the major summer holidays of Memorial Day, the Fourth of July and Labor Day.

Watermelons are put into the current of commerce in several different ways. Small producers may utilize roadside stand and local farmers' markets, usually performing all of the handling and marketing themselves. On a larger scale, watermelons are collected in the field, sorted, graded and weighed before being shipped to market. Contract carriers are often used for distant hauling.

Handlers, or "shippers" as they are called in the industry, usually carry out these functions, purchasing truckloads at a per-pound price. They add costs and a commission before selling to large buyers such as food store chains, usually outside the local market area. While most all producers have a choice of handlers to whom to sell their watermelons, testimony indicates that most producers use the same handler from season to season.

There are also watermelon "brokers" who do not take possession or ownership of the watermelons. "Pure" brokers, according to the record, act simply as sales agents for producers, finding buyers and arranging sales in distant markets. They do not arrange transportation for the watermelons or carry out monetary transactions. These brokers would not be considered handlers under the Plan. According to the record, "buying" brokers who arrange sales, ship and handle the monetary transaction between the producer and the buyer would be considered handlers.

Testimony indicates that watermelons are sold at the retail level by the piece and by the pound. Piece pricing is generally used for smaller production amounts and for sales in local markets. Truckload shipments to distant markets are generally priced by weight.

Imports come almost exclusively from Mexico. Record evidence indicates imports in 1981 were less than three percent of the national watermelon producion. The record shows that from 1975 to 1985, less than half of annual watermelon imports arrived during the summer production season in the United States. Therefore, imports do not appear to present a competitive challenge to the industry.

U.S. exports of watermelons are mostly to Canada. However, this market is relatively small compared to the corresponding summer market in the United States. Approximately 2 percent of U.S. watermelon production in 1981 was exported.

There is ample evidence in the record to show that watermelons produced in the United States are shipped in intrastate, interstate and foreign commerce, and that the intrastate and interstate handling is so inextricably intermingled that all such handling burdens, obstructs or affects the handling of watermelons in interstate or foreign commerce. In addition, Congress has found that watermelons move in the channels of interstate commerce, and those watermelons that do not move in such channels directly affect interstate commerce.

2. The majority of watermelons are produced for fresh market sales, with only a small percentage being used for processed products or for non-human use such as seed production or animal feed.

At the hearing, proponents of the proposed Plan testified that the watermelon industry is in serious trouble because of an apparent decrease in demand. Record exhibits indicate a significant and steady decline in per capita consumption of watermelons between 1960 and 1981. During that period total production declined 16 percent from 31 million hundredweight in 1960 to 26 million hundredweight in 1981 while population increased 27 percent. Record evidence shows the U.S. per-capita consumption was 17.2 pounds in 1960 and 12.3 pounds in 1981, a 30 percent decline. The record also shows that this per capita consumption pattern has not changed in recent years.

No testimony was provided that would explain the decline in per capita consumption of watermelons. However, proponents testified that under the proposed research and promotion Plan, this issue would be studied, possible causes identified, and corrective programs initiated.

Although watermelons production declined during the 1960's and 1970's, total value of the crop increased from $38.1 million in 1960 to $158.9 million in 1981. Most of this increase in value reflected inflationary changes rather than rises in real dollar income. In adjusted, constant 1977 dollars, the total crop value of watermelons increased from $102.4 million in 1960 to $117.7 million in 1981. This is an increase in crop value of only 15 percent for the entire 21 year period. The comparable value of 28 vegetables and melons increased three and a half times over the same period. Fresh fruit market prices increased threefold during the same period, as did fresh vegetable prices and the consumer price index for all foods.

As objective of the Plan is to increase industry revenue by increasing sales of watermelons. The record indicates that producers could respond to such increases in demand by putting more acreage into watermelons. Because most watermelon producers raise other crops, production resources could be shifted to meet increases in demand.

The record identifies five general categories of watermelon producers. The first is home gardeners whom raise small garden patches for personal consumption. The second category is small acreage producers who sell their watermelons retail at roadside stands. The third category is composed of small acreage producers who market their watermelons through farmers' markets. Many producers in these latter two categories are part-time farmers who hold other jobs. A fourth category is the medium volume, full-time producers who normally sell their field-run watermelons through handlers. Finally, there are large volume producers, many of whom act as their own handler and market the watermelons they produce. They are often handlers for smaller producers in the area.

Acreage planted on individual farms may vary from season to season depending on the producers' projected needs for a ready cash crop and on their projections of the demand and supply of the product for the next growing season.

Watermelons are a second, third or even fourth crop for almost all producers. It is considered a "cash crop" in that most sales are direct from producers to handlers and often entail an immediate cash payment. Testimony indicates that watermelons are a favorite crop for producers in some areas because they are reliable, relatively easy to produce and usually provide a quick cash return.

The record indicates that the national average f.o.b. shipping point price, as reported by the USDA's Agricultural Statistical Board in 1981, was $6.09 a hundredweight. The three-year average from 1979 to 1981 was $5.74 per hundredweight and has not varied significantly since them. Thus, the average price would be approximately six cents a pound.

Testimony indicates that price has very little to do with the quality of watermelons in a shipment. Rather, prices are very sensitive to supply, and vary on a daily basis during the entire summer production season. Prices early in the season, when suppy is low, are considerably higher than prices later in the summer. Record evidence indicates that May prices for Florida and south Texas watermelons can be almost double the amount that watermelons from those two areas will bring in July when other areas are harvesting. Prices also increase prior to the three-day summer holiday weekends.

According to the record, special varieties such as seedless or orange-skinned watermelons often demand double the price of common watermelon varieties, and can bring 10 to 15 cents a pound on the market.

Hearing witnesses were unanimous in their belief that coordinated, national, promotion programs, including paid advertising and public relations, would eventually result in an increase in demand and thus an increase in per capita watermelon consumption. Cooperative advertising with compatible products would also be a possibility. In addition, several possible market research programs were mentioned that could result from such an effort. For example, research might develop new handling or packaging methods that could improve distribution efficiency and save marketing costs. Improvements in protective packaging and containerization could improve the product's condition on arrival at retail outlets, thus presenting a more favorable image to improve its competitive position.

It is also recognized that over the last 25 years, changes have taken place in consumer eating habits, as well as in the marketing of food products. Witnesses suggested that market research and consumer preference studies could be conducted to determine what these changes are and what the industry and its individual producers and handlers might do to improve their product in the eyes of consumers. Efforts could be made to increase the consumer's confidence in judging the quality and ripeness of watermelons. The record indicates that much research could be done to improve the product's presentation at the point of purchase with attractive displays coordinated with national promotional campaigns. Nutritional values and the variety of uses for fresh watermelons would be likely focal points of national promotional efforts. Menus showing creative new ways to serve watermelons could be developed and distributed nationally. Testimony indicates that programs such as these would increase the demand for watermelons throughout the summer production season, thus raising demand and increasing per capita consumption. Testimony indicates that promotional campaigns would benefit both the industry and the consuming public.

The watermelon industry has never attempted a national effort to promote its product. The proposed Plan appears to be the only practical method for individual producers or handlers, or groups of producers or handlers, to sponsor such a national program. No watermelon association has a broad enough membership base, or sufficient financial resources, to carry out its own program. Testimony indicates that only through the combined efforts of all watermelon producers and handlers can such a program be developed and carried out.

The Act requires that in such a national program, promotional material would be generic in nature and would not feature individual producers, handlers, States or regional production areas. However, there should be no limitation on individual producers and handlers who want to promote their own watermelons through additional promotional efforts.

The record indicates that a national program could also be very helpful in counteracting negative publicity that might be damaging to the industry. Given that demand is so dependent on consumer attitudes, it could be beneficial for the watermelon industry to have a central organization to represent it to the news media and to consumers.

The National Watermelon Association (NWA) is the only industry association that is national in scope. In addition, there are State watermelon associations in Florida, Georgia, South Carolina, North Carolina, Mississippi, Missouri and Virginia. Producers and handlers in Maryland and Delaware and in Texas and Oklahoma have formed two bi-State organizations. Producers and handlers in California, one of the largest watermelon producing States, are in the process of organizing a State association. All State associations are voluntary in nature and most carry out limited Statewide and regional promotional activities usually centered around the watermelon queen tours and point of purchase materials. None of the voluntary associations have the resources to carry out extensive market research and promotion activities and none have mandatory assessments on watermelon production.

In addition to the voluntary association which exists in South Carolina, South Carolina has the only State government statute authorizing a State watermelon board. Its expressed purpose is to promote watermelon consumption in the State and in regional markets. The South Carolina Watermelon Board is unique in the watermelon industry in that it has State government authority to collect mandatory assessments from watermelon producers in South Carolina.

Under the proposed Plan, a great deal of statistical information on watermelon production and marketing would be accumulated through handler reports to the Board. Handler testimony is unanimous that such reporting requirements would not impose undue burdens on their operations. Testimony indicates that individual producers could find this information very helpful in determining the next year's production level and handlers could use marketing information to expand or redefine their marketing efforts. In general, the industry would be in a better position to operate efficiently and serve consumers if it had a recent data base of information on which to evaluate its current performance. Because annual production figures are no longer compiled by USDA, there is no other systematic collection of such national statistical information.

The record indicates unanimous agreement of those testifying at the hearing that the proposed maximum assessment rate of two cents per hundredweight would be acceptable to producers and handlers. At an average selling price of six cents per pound, the maximum assessment rate would be less than 1 percent of the producers' and handlers' incomes from watermelons. An assessment of two cents per hundredweight on both producers and handlers could result in the collection of over $1 million, based on 1981 production figures. This amount would be the Board's annual budget.

Testimony was unanimous that the watermelon industry needs one unified, representative body to carry out research and promotion programs across the country. Not one witness testified in opposition to the proposed Plan. The record supports the proposed research and promotion Plan as a means of providing a method of increasing U.S. per capita consumption of watermelons and for improving the watermelon industry's position in the marketplace. The proposed Plan would provide a means of effectuating the declared policy of the Act.

3(a) Definitions

Certain terms are used frequently throughout the plan. These terms are defined as follows to clarify their meaning and to simplify the subsequent provisions in which they are used:

"Secretary" should be defined to include not only the Secretary of Agriculture of the United States, but also, any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to act for the Secretary.

The definition of "Act" refers to the Watermelon Research and Promotion Act of 1985 (7 U.S.C. 4901–4916), the statute pursuant to which the proposed Plan may be put into effect and operated. The use of the word "Act" avoids the need to refer to the full citation each time it is used.

"Plan" should be defined as the Watermelon Research and Promotion Plan issued by the Secretary pursuant to the Act.

The term "Board" should be synonymous with "National Watermelon Promotion Board" and should be defined to identify the administrative agency established under the Plan. The Board is authorized by the Act.

"Watermelon" should be defined as all varieties of watermelons of the Family Curcubitaceae, Genus and Species; Citrullus Lanatus, grown by producers in the 48 contiguous States of the United States. The term has been revised to include a reference to varieties. Delegates from the South Carolina Watermelon Board testified at the hearing and submitted a brief that added "or handled by handlers" to the definition of watermelon. This proposed change would apply to all watermelons that are handled in the United States but are not produced in this country. It was intended to make imported watermelons subject to the assessment provisions of the Plan. It was noted that since generic promotional activities will apply to all watermelons, imported watermelons would also benefit from such promotion, and should thus be assessed. However, the Act specifically defines watermelons as all varieties of watermelons grown by producers in the 48 contiguous States. Since this definition does not include imported watermelons, such imports are not subject to provisions of the proposed Plan.

The term "watermelon products" has been deleted from the definitions which appeared in the Notice of Hearing. The proposed Plan would apply to only watermelons in order to conform with the provisions of the Act.

"Producer" should be defined to mean any person engaged in the growing of five acres or more of watermelons, and should include any person who owns or shares in the ownership and risk of loss of such watermelon crop such as a land owner, landlord, tenant or sharecropper. The record indicates that the person who owns and farms land resulting in the ownership of the watermelons produced on such land should be considered a producer. The same is true with respect to the person who rents and farms land resulting in ownership of all or part of the watermelons produced on that land. Likewise, a person who owns land and does not farm it, but may obtain ownership of a portion of the watermelons produced on the land as all or part of the rental agreement, should be regarded as the producer of that portion of watermelon production specified in the rental agreement. A person who receives only a fixed sum of rent on land which is used to produce watermelons should not be considered a producer.

"Handle" should be defined in the Plan to mean those activities which place, or cause to be placed, watermelons in the current of commerce. It is not meant to apply to a harvest crew operation, or a common carrier who simply collects and transports watermelons from the field to a handler. It is also not meant to apply to the activities of a broker or commission agent who has not taken title to, or possession of, the watermelons.

The term "handler" should be defined in the Plan to mean any person who places or causes watermelons to be placed in the current of commerce. For the purposes of assessment payments and reporting and recordkeeping, the handler who first introduces watermelons into the current of commerce is responsible for the payment of assessments and for the reporting and recordkeeping requirements of the Plan.

Buying brokers, a term commonly used in the industary to refer to those who purchase watermelons and make arrangements with others for resale, should be considered handlers, according to record evidence. The term should also apply to auction market buyers and farmers' market wholesalers who purchase watermelons from producers and sell to the retail trade.

Any producer who handles all or part of this or her own watermelon production should be considered a handler of that production and should pay both the producer and handler assessments and meet all reporting requirements. A producer who also acts as a handler, when taking part in the Board's nomination process, should be considered a handler and can serve on the Board only in the capacity of a handler. The term "handler" should apply to any individual, group of individuals, partnership, corporation, association, cooperative or any other business unit which receives watermelons from producers or causes watermelons to be handled for the first time.

"Person" is defined in the Plan to mean any individual, group of individuals, partnership, corporation, association, cooperative or other entity. Such an entity defined in the Plan as a "person" should be considered as one producer or one handler for the purposes of nominating and voting on members as part of the Board selection process.

"Processor" is a term that is not used in the proposed Plan and has been deleted.

The terms "fiscal period" and "marketing year" should be defined to mean the twelve month period beginning on January 1 and ending on December 31 of the same year, or any other such period which may be approved by the Secretary.

"Programs and projects" should be defined to mean those activities established pursuant to § 1210.331 of the proposed Plan. These programs and projects refer to, but are not limited to, research, development, advertising or promotion activities developed by the Board.

"Promotion" should be defined as any action taken by the Board, pursuant to the Act, to present a favorable image of watermelons to the public with the expressed intent of improving the competitive position and stimulting the sale of watermelons. This would encompass all promotional activities, including paid advertising. The Plan permits only generic advertising carried out using assessment funds. In addition, cooperative advertising with compatible products must make only generic reference to watermelons.

"Research" should be defined as any type of systematic study or investigation and/or evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons. While scientific or varietal "research" can be included within the scope of the Plan, the main focus of the program would be market research.

3(b) National Watermelon Promotion Board

An administrative agency known as the "National Watermelon Promotion Board" is authorized by the Act. The Board would administer the Plan, recommend rules and regulations to carry out terms and conditions of the Plan, ensure its compliance, and recommend amendments of the Plan to the Secretary.

As provided for in the Plan, the Board should be composed of 28 members from the watermelon industry and one representative from the general public. The 28 members should be selected by the Secretary from nominations submitted by separate nominating conventions, meetings, or caucuses held in seven districts in the contiguous 48 States. The public representative should be nominated by the Board and approved by the Secretary of Agriculture. Composition of the Board should reflect the fact that watermelons could be grown commercially in all 48 contiguous States.

The size of the Board should be large enough to assure adequate representation of the nationwide industry and yet small enough to keep costs to a minimum. This would be accomplished through a district representation plan that should be based on watermelon production volume. Based upon production volume of the States, seven districts should be created in this Plan, each with an annual production volume of approximately 400 million pounds. Each district should have two producer and two handler representatives on the Board.

To establish the initial district alignment, production statistics were taken from the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981—the latest such statistics available. The districts should be aligned as follows:

District #1—South Florida including all areas south of State Highway 50.
District #2—North Florida including all areas north of State Highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
Disctrict #7—The States of Arizona, California, Nevada, Utah, Oregon,

Idaho, Wyoming, Washington, and Montana.

Florida should be divided into two districts because it produces nearly one third of the total national production. The east-west dividing line along State Highway 50 is recommended by the Florida Watermelon Association because it would divide, as closely as possible, the production volume of the State in half. Texas produces enough watermelons to stand alone as one district. The remaining four districts are multi-State districts and together produced just over half of the total national volume based on the USDA Crop Production Annual Summary Reports of 1979, 1980, and 1981.

Testimony of representatives of the South Carolina Watermelon Board suggested changing the time period from five years to two years for reviewing this initial district alignment. Because the above district alignment plan is based on statistics that are already six to nine years old, it should be subject to review and realignment by the Board two years after its implementation, rather than waiting five years as proposed in the original Plan published in the Notice of Hearing. Section 1210.320(c) has been changed to reflect this earlier district realignment review. Review of subsequent district alignments should be carried out by the Board at least every five years thereafter.

In making its recommendation to the Secretary for district realignment, the Board should use production statistics compiled from reports submitted to it by handlers as part of their reporting requirements under the Plan. The Board should also use any other recent, verifiable production reports from USDA, and if available, other documented shifts and trends in quantities of watermelons produced, or other relevant information.

In order to help ensure that district realignments are as fair, equitable and timely as possible, any realignment must be submitted to the Secretary at least six months prior to the "call for nominations" for new Board members. The Secretary must approve such realignment at least 30 days prior to the call for nominations. The original Plan, as published in the Notice of Hearing, proposed that realignment recommendations should be made six months prior to the start of new Board member terms. However, this sequence of events would not take into account the nominations process which would begin at least five months earlier. As originally provided in the Notice of Hearing, district realignment would have been made after the nominations process using the old alignment had already begun, and thus would not have been timely. As part of its responsibilities, the Board should clearly define the time frames, schedules and procedures for district realignment in the Plan's rules and regulations.

Only watermelon producers and handlers who pay assessments should be eligible to serve as members of the Board. Watermelon producers, as defined in the Plan, should be the only ones to take part in the nomination process to select producer members on the Board. In like manner, watermelon handlers, as defined in the Plan, should take part in the nomination process to select handler members to the Board. In cases where producers are also handlers, those producers should be considered as handlers and should participate in the nomination process as handlers and serve as handler members on the Board.

The Act mandates that there should be an equal number of watermelon producers and handlers on the Board. The term of office for Board members should be three years beginning on January 1. Normally, the term of office would begin the year after they were nominated and appointed by the Secretary. The Plan provides that no Board member may serve more than two consecutive terms of office. Testimony indicates that limiting the number of consecutive terms should permit a regular rotation of members with different points of view and should facilitate the infusion of new ideas in the administration of Board activities.

It would be in the interest of the industry that the Board be appointed by the Secretary as soon as possible after the Plan is issued. Thus, it is possible that the initial Board would be appointed several months before January 1 as prescribed above. The term of office of the initial Board members should begin immediately upon appointment by the Secretary and should continue until the scheduled end of their term of office. Any interim period between their appointment and the following January 1 should not be considered part of their prescribed term of office. Testimony at the hearing and briefs filed after the hearing included changes to § 1210.322(b) to this effect.

The 29 initial Board members (including the public member) should serve staggered terms of office so that continuity of the Board will be ensured. According to the Plan as published in the Notice of Hearing, staggered terms of office should be determined by lot. However, the Secretary must appoint Board members for specified terms of office, which, under the lot system, would not be determined until after their appointment by the Secretary. In addition, a random determination of staggered terms could mean that some or all districts would have members whose terms would expire in each of the three years, and those districts would be obligated to hold district conventions every year thereafter. This would be time consuming, difficult to administer and financially burdensome on watermelon producers and handlers in those districts.

A practical method for determining staggered term lengths would be as follows. The two producers and two handlers from District 1 (south Florida) and the two producers and two handlers from District 6 (Texas) would serve initial terms of one year. The two producers and two handlers from District 2 (north Florida) and District 3 (Alabama and Georgia) would serve initial terms of two years. Initial Board members in the remaining three districts (4, 5 and 7) would serve three year terms of office. Thus, § 1210.322(a) of the proposed Plan as published in the Notice of Hearing should be revised to reflect this change.

Consistent with testimony presented at the hearing, the four producer and four handler initial Board members from south Florida and Texas who serve only one-year first terms should be eligible to serve two additional terms if so nominated in their districts and appointed by the Secretary. All other initial members would be eligible for only one additional term of office.

The Act and the Plan do not provide for alternate Board members. Section 1210.322(d) of the Plan published in the Notice of Hearing referred to "alternates" on the Board. This reference has been removed.

Definitions written in the proposed Plan should be used to determine eligibility of producers and handlers. Only producers and handlers of watermelons may take part in the selection process and serve on the Board. Producers of less than five acres are not considered producers under the Act and therefore do not pay assessments and cannot participate in the nomination process or sit on the Board.

Testimony was received on § 1210.321 concerning nominations and selection of Board members. The principal vehicle for such nominations should be nomination conventions. In the Notice of Hearing, § 1210.321 only contained provisions for nominations by the Board. A new paragraph should be added to

that section to provide that the nomination of the initial Board members should be conducted by the Secretary. In addition, the terms meetings and caucuses have been removed as unnecessary.

The nomination process for Board members would follow procedures described below.

The Board should issue a call for nominations by February 1 of each year in which an election is to be held. The call should include at a minimum, the following information:

(1) A list of the vacancies and qualification as to producers and handlers by district for which nominees may be submitted;

(2) The date by which the nominees should be submitted to the Secretary for consideration;

(3) A list by district of those States entitled to participate in the nomination process; and

(4) The date, time, and location of any known next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

Nominations for positions that will become vacant should be made by district convention in the district entitled to nominate. Notice of such convention should be publicized to all producers and handlers within such district, and to the Secretary at least ten days prior to said event. The notice should have the call for nominations from the Board attached to it. The responsibility for convening and publicizing the district convention should be that of the then members of the Board from that district.

All producers and handlers within the district may participate in the convention. However, if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler should participate within the State or district in which the producer or handler so elects in writing to the Board. Such election should remain controlling until revoked in writing to the Board.

The district convention should conduct the selections process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There should be two individuals nominated for each vacant position. Each nominee should meet the qualifications set forth in the call and in § 1210.323.

(2) No single State in multi-State districts (currently Districts 3, 4, 5 and 7) should have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention should have one vote which should be determined by the producers and handlers from that State by majority vote. Each State should further have an additional vote for each 500,000 hundredweight volume as determined by the three-year average annual crop production summary reports of the USDA. If such reports are not published, the three year average of the Board assessment reports should be used. For the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 should be used.

Vacancies that may occur on the Board should be filled through the procedures for nominations. The Plan uses the term "category of members" to distinguish between producer Board members and handler Board members. A vacancy on the Board should only be filled by a person qualifying in the same producer or handler category as the departing member. As suggested in record testimony, if a vacancy occurs within six months of the scheduled end of the term, then a replacement Board member does not have to be named for the remaining period of the term.

Witnesses suggested that fifteen members of the Board should constitute a quorum at an assembled meeting of the Board. In accordance with testimony, the Plan should provide that action taken by the Board requires the concurrence of a majority of the votes cast, and all such votes should be cast in person. No proxy voting should be allowed. The Board should be authorized to vote by mail, telephone, telegraph or other means of communication when a matter to be considered is so routine that it would be unnecessary or not cost-effective to call an assembled meeting, or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast.

The Act requires that Board members serve without compensation. However, they should be reimbursed for reasonable expenses incurred in performance of their duties as members of the Board.

The Act lists certain powers and responsibilities of the Board. The Board should have the authority to develop and recommend to the Secretary rules and regulations needed to implement and carry out the terms of the Plan. The Board's authority should be broad and flexible, providing it with efficient and effective management tools to administer the program. Such administration should include the development and recommendation to the Secretary of all fiscal matters, programs or projects, rules and regulations, reports and other substantive actions.

The rules and regulations issued under the Plan should include procedures on how assessment provisions would be administered and how violations of such provisions of the Plan would be handled. It is the responsibility of the Board to promptly investigate alleged violations of the Plan. In cases where the Board cannot attain payment of assessments, it should report those violations to the Secretary for appropriate action.

Finally, the Board should have the power to make, and recommend to the Secretary, amendments to the Plan and to the rules and regulations issued under its authority. Such amendments or changes may be brought before the Board during its meetings. Amendments may reflect refinements to existing provisions of the Plan that are necessitated by changing conditions in the industry.

The duties of the Board should be set forth in the Plan to enable it to discharge its responsibilities. They should be reasonable and necessary if the Board is to function in the manner prescribed under the Act.

The Board should meet, organize and select from among its members a president and such other officers as may be necessary to conduct its business. The Board should be authorized to appoint ad hoc committees and subcommittees as it may deem necessary. Only Board members may serve on such ad hoc committees. The creation of ad hoc committees should allow the Board to ask for help and seek the advice of knowledgeable persons or consultants in all segments of the industry. The record indicates that the term "working committee" should be substituted for the term "advisory committee" used in Notice of Hearing § 1210.328(a). The term "working committee" more accurately describes the nature and authority of such committees. Any actions taken by committees and subcommittees should be subject to the approval of the Board.

Since day-to-day administration of the Plan cannot be performed by the Board, another duty of the Board should be to employ such persons as necessary to administer the daily operations of the program. The Board should establish the duties of these employees and the compensation for each person on the staff. The record indicates that designated employees of the Board will have access to assessment information that would not be distributed to the Board members for confidentiality reasons, as provided for under § 1210.352. The employees of the Board should also be bonded to ensure that the Board would be protected against loss of funds through wrongful action by its employees:

In order to plan and conduct activities, it should be the Board's duty to prepare a fiscal budget that would cover anticipated administrative and program expenses. This budget would have to be approved by the Secretary and should include a recommended rate of assessment.

The Board should have the duty to develop programs and projects, and to enter into contracts for conducting market research, development, advertising or promotion campaigns. Such programs, projects and contracts must be approved by the Secretary and should be paid for with assessment funds collected under the proposed Plan.

The Board should ensure that minutes, books and records are kept that clearly reflect all acts and transactions of the board. "Minutes" should include points of discussion, motions, results of vote taking and resolutions adopted. Copies of such minutes should be provided to the Secretary and to all Board members as soon as practical after each meeting. "Books" refers pricipally to financial records. Such financial records must account for the receipt and disbursement of funds and should be audited by a certified public accountant at least once each fiscal period and at other times as may be necessary. Such financial records should be reported to the Secretary at least on an annual basis, and from time to time, as may be required for the appropriate accounting of funds entrusted to the Board. The audit report should also be submitted to the Secretary and made available to the producers and handlers in the industry, except that information on assessments paid and amounts refunded to individual producers and handlers would be maintained in a confidential manner. "Records" refers to all other transactions engaged in by the Board.

The Board should have the authority to enter into contracts or agreements, with the Secretary's approval, for the development and execution of programs and projects of research and promotion. Payment of contract costs should be made with assessment funds collected under the Plan.

It was pointed out in the hearing that under the provisions of § 1210.328 on Duties, as published in the Notice of Hearing, paragraph (p) essentially repeats the second half of paragraph (d). Both paragraphs authorize the Board to enter into contracts in order to carry out research and promotion projects as authorized by the Act. Therefore, paragraph (p) is deleted in this recommended decision.

3(c) Program Authorities

The Board should have the authority to determine the types of research and promotion programs to be carried out under the Plan, and to administer such programs. These programs should include market research and product promotion activities designed to strengthen watermelons' competitive position in the marketplace, maintain and expand existing markets and develop new markets. The Board should have the responsibility of recommending all such programs to the Secretary of Agriculture for approval.

The record indicates many areas for market research activities. One research effort could try to improve conventional methods of handling, distributing and packaging watermelons. Improved handling methods might reduce product bruising and therefore the loss of product and profits. Other market research might indicate more efficient market distribution and ways of getting the product to the marketplace. Market research might lead to technological improvements in protective shipping containers.

A second market research effort could determine why the per capita consumption of watermelon has declined over the last 20 to 25 years. Studies of consumer buying habits regarding watermelons have never been conducted. Such studies could help identify changes in consumer tastes and buying habits and could explore how watermelon promotion efforts might adjust to changing market conditions. Market research might determine segments of the market that need to be strengthened. Such research could lead to more competitive point of purchase displays or packaging of watermelons to meet new consumer preferences for ease of handling and gourmet product lines.

Promotional efforts could also be made to educate the consumer on the desirability of eating fresh watermelons. Consumer education campaigns could be conducted on how to judge the quality and ripeness of watermelons. Watermelons could be promoted for their nutritional value and natural wholesomeness. Nationwide promotional campaigns could be developed giving new recipes and ways to use watermelon in traditional recipes.

Both the Act and the proposed Plan provide for expansion of sales to foreign markets for watermelons produced in the United States. While watermelons are currently exported to Canada, additional marketing opportunities exist in that country and in other countries.

As noted above, there are no noticeable variations in watermelons of the same variety grown in different regions of the United States. Consumers are not able to distinguish between similar varieties of watermelons grown in the Southeast from watermelons grown in the West. The Board should be able to conduct national promotion and advertising campaigns featuring major watermelon varieties without favoring one production region against another. However, because watermelon is a distinctly warm weather crop, each State's peak production period varies with the summer heat. Therefore, timing and geographic focus of promotional and advertising campaigns must be carefully considered and controlled by the Board to insure fairness and equity for all production regions.

Both the Act and the proposed Plan give contractual authority to the Board so that it may carry out promotional and advertising programs. Prior to such contracting, the approval of the Secretary should be obtained to ensure that the programs are consistent with the terms and conditions of the Plan.

The Act prohibits the use of false or unwarranted promotional or advertising claims on behalf of watermelons. It also prohibits false or unwarranted statements about the attributes or use of any products that compete with watermelons in the marketplace.

All such promotion and advertising programs and their projected budgets should be submitted by the Board to the Secretary for approval. The costs for such promotion programs should be paid for with assessment funds, as authorized by the Act. After a program has been initiated, it should be evaluated periodically by the Board to ensure that it continues to be effective. If the Board or the Secretary finds that a program does not further the purposes of the Act, that program should be terminated.

This Plan deals exclusively with research and promotion programs and does not authorize any grade standards, supply management or other programs that limit the right of the individual watermelon producer to produce or sell watermelons.

The Board should have a wide choice of different market researh and promotion programs to use in its promotion efforts. The use of various research and promotional techniques, including paid advertising and public relations activities, should stimulate sales, increase consumption, and enhance returns to producers and handlers. Therefore, the use of these program activities, as contemplated under the Plan, should be authorized. Such authority should be broad and flexible to the extent permitted under the Act. However, the record indicates that the Board, in its advertising or other promotion efforts, should treat all watermelon production fairly and equitably. Since references to private brand or trade names could serve to further the interest of individual producers, handlers, States or production regions, such references are prohibited by the Plan.

3(d) Assessments

The Board should have the authority to incur expenses in the process of developing and administering the program. The primary source of funds to cover these expenses should come from assessments collected from the watermelon producers and handlers required by the Act.

It is the Board's responsibility to prepare a fiscal budget that carefully details anticipated administrative and program funding needs. The budget should include a rate of assessment that would provide adequate funds to meet these expenses, finance operations and provide for reserve funds. The rate of assessment would thus be reviewed and established on an annual basis. The Secretary would have the responsibility for approving the rate of assessment based on the Board's recommendation.

The assessment would be paid on all fresh market watermelons and watermelons intended for watermelon products as defined in the Plan. If exempted, assessments would not be collected on watermelons produced for non-human ue such as animal feed and for watermelons produced as seed stock. Producers and handlers should pay equal assessments based on the volume of watermelons produced by producers and first handled by handlers. Through its authority to establish rules and regulations, the Board should issue, and the Secretary approve, provisions outlining how and when the assessments would be paid.

The Plan provides that the same assessment rate should be paid by both producers and handlers. The assessment should not exceed two cents per hundredwight for each party. This assessment rate could be increased above two cents per hundredweight by an amendment to the Plan. As proposed in the Plan, the total maximum assessment collected by the Board may be four cents per hundredweight on any quantity of watermelons. This maximum rate was recommended in testimony at the hearing and was entered in the proposed Plan after considerable deliberation in the industry. The hearing record indicates a unanimous agreement by those testifying that this amount is relatively insignificant compared to total production costs, and should not present a financial burden on large and small producers or on handlers. However, the record also indicates that two cents a hundredweight is about as high a rate as could be assessed without meeting opposition from the average producer. Thus, a two cent assessment applied to a trailer loaded with 40,000 to 45,000 pounds of watermelons would mean a $8.00 or $9.00 payment by the producer.

The record indicates that, based on a national average selling price of $8.00 per hundredweight of watermelon, the maximum assessment rate would be less than one half of one percent for each producer. The record indicates that this assessment rate would be adequate to collect funds needed by the program. Such funds would be used for research, development, advertising and promotion of watermelons. The assessment funds would also pay for the administrative expenses incurred by the Board and for administrative and referenda costs incurred by the Department of Agriculture in its oversight capacity. In order to assure the continuance of the Board, the payment of assessments should continue even if particular provisions of the Plan are suspended or otherwise become inoperative.

The handler should be responsible for the collection of producer assessments. The handler should remit to the Board the producer's assessment along with the handler's assessment for the same watermelon. The handler may collect the producer's assessment, or deduct the producer's assessment from the amount paid to the producer. The timing of such payments to the Board should be included in the rules and regulations that should be developed by the Board. Separate records for each producer should be kept by the handler.

In cases where a producer is also the handler of watermelons, the producer would pay both the producer and the handler assessment on those watermelons. Any producer who is a handler of watermelons produced by others, would pay the handler assessments on such watermelons handled. Testimony gathered at the hearing of producers who also acted as handlers indicates that paying the full four cent per hundredweight assessment would not impose a financial burden on their businesses. Regardless of the selling price or the variety, the assessment rate on watermelons should not exceed the maximum provided for in the proposed Plan.

Marketing practices for watermelons differ across the United States. Testimony shows that differences depend upon several things: the producer's individual production volume and local marketing traditions; the number and types of handlers operating in an area; and the proximity to major markets outside the producing area. Some producers may utilize two or three different marketing methods during the same crop year. The Board should recommend, subject to approval by the Secretary, rules and regulations concerning the collection of assessments to account for such differences when appropriate.

The record shows that there are two categories of watermelon "brokers" who are involved in the transaction of watermelons between the producer and the marketplace. Witnesses indicated that the "pure" broker simply arranges sale of watermelons between the producer and a buyer. The producer then deals with the buyer, handles the transfer of the watermelons and pays a small fee to the pure broker. In this case, the producer carried out the transaction and benefitted from a delivered price on the watermelons. In such cases, the producer should be considered both a producer and a handler and should pay both the producer and the handler assessments.

A "buying" broker, on the other hand, takes possession of the watermelons, does the invoicing and handling of money and remits payment to the producer. Such a buying broker would be considered a handler and should pay the appropriate handler assessment fee and meet handler recordkeeping requirements of the proposed Plan.

In those cases where producers sell their watermelons by the piece, the weight of watermelons sold should be estimated and assessments paid by the producers and handlers based on that estimate.

If a producer sells watermelons to a sales agent already operating in the market, or auctions them off to an agent at an auction market, then that producer would be responsible for the producer's assessment. The agent purchasing such watermelons would assume the handler responsibilities for collection of the producer's assessment and for paying the handler's assessment fee on those watermelons.

If a group of producers organize a farmers' cooperative to market the group's watermelons, then that cooperative entity should be considered the handler and should pay the handler assessment fees and abide by all recordkeeping and reporting requirements required of handlers.

Section 1210.341(e) in the Notice of Hearing provided that the Board could authorize other organizations to collect assessments on its behalf. However, the Act provides for collection of assessments by the Board. Accordingly, § 1210.341(e) has been removed from the proposed Plan.

An amendment to the Plan was offered by representatives from the South Carolina Watermelon Association. In testimony they proposed that those States with existing State marketing orders for watermelons be allowed to collect both the producer and handler assessment fees in their States on behalf of the national Board. Such State boards would be paid, or would retain as a collection fee, up to 50 percent of the amount of assessment the State boards could collect. However, this proposed amendment is not consistent with the Act because it would allow for collection agents other than the Board. The South Carolina amendment is therefore denied.

It is possible that violations of the proposed Plan's assessment provisions may occur. The Board should promptly investigate any suspected violations and should report all violations to the Secretary for appropriate action.

The Board may charge: (1) Late payment charges imposed on handlers who are delinquent in paying their assessment fees; and (2) interest charges on such outstanding assessments. Such charges should only be levied on handlers since they are mandated under the Act to be the ones to send both producer and handler assessment fees to the Board. All such funds should be made available to pay Board expenses, and should be subject to the same fiscal, audit and accountability requirements that are placed on assessment funds under the control of the Board. The Board should recommend, subject to the approval of the Secretary, such rates and payment or repayment periods as part of its rules and regulations.

There will be an initial period, when the Board's administrative employees are being hired or when the office is being established. Since assessments may not be collected in time to cover such start-up expenses, according to the record evidence, the Board may: (1) Accept advance payment of assessments from producers and handlers, and (2) borrow money from commercial institutions to pay for initial administrative expenses. Such voluntarily advanced assessment payments from producers and handlers should be based on their best estimates of future quantities to be produced and handled, and should, for accounting purposes, be limited to one season's assessment. These funds should only be used for administrative expenses and should not be used to pay for research, promotion or advertising programs.

All such funds should be subject to the same fiscal, audit and accountability requirements that are placed on assessment funds under the control of the Board. Accepting advanced payment of assessments and borrowing from commercial institutions should not be limited to the first fiscal period of operation of the proposed Plan. However, the Board may not borrow an amount greater than one year's fiscal budget.

The Board should prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the Plan during that period. Each such budget should be submitted to the Secretary with a written analysis of its components. The record evidence shows that the Board should reimburse the Secretary for administrative costs incurred by the Department for administering the Plan and for the conduct of the referendum.

3(e) Exemptions

Watermelons are usually marketed as fresh fruit. Very little production is sent to the processed market. The Act and the Plan provide for exemption from assessments for all watermelons produced for non-human consumption such as animal feed and seed stocks. The Board may, with the approval of the Secretary, exempt such watermelons from the provisions of the Plan.

It is the responsibility of the Board to ensure that all valid exemption requests are acted on in a timely manner. The Board should establish, as part of its rules and regulations, detailed guidelines on how this exemption procedure would work. In recommending exemption rules and regulations, the Board should ensure that procedures do not unfairly treat or burden those producers entitled to and seeking exemptions. It should be the handler's responsibility to verify the exemption status of all watermelons they handle, and to collect the producer's assessment from any producers of five or more acres who do not have exemptions.

The record indicates that producers should be assessed only on watermelons marketed and not on watermelons that are not harvested. If a producer cannot market a field of watermelons, and therefore plows that field under or opens it up to foraging cattle, those watermelons should not be assessed.

The proposed Plan, as published in the Notice of Hearing, stated that producers of less than five acres of watermelons would be subject to assessments, unless they first applied to the Board for exemption prior to the beginning of the production season. However, the term "producer," as defined by the Act, automatically excludes producers of less than five acres of watermelons. Therefore, watermelon producers of less than five acres are not subject to the Act or the Plan, and are not required to pay assessments under the Plan.

3(f) Refunds

Provisions for making refunds of assessments to producers and handlers who request them should be included in the proposed Plan. The Act provides for refunds to producers and handlers who are not in favor of supporting the research and promotional activities carried out under the Plan. Producers are eligible for a full refund on any quantity of watermelons on which the producer either paid an assessment or had an assessment deducted from the proceeds of sale. Handlers are eligible for a full refund on any quantity of watermelons on which the handler handled and paid assessments.

A refund request should be made to the Board by individual producers and handlers in accordance with regulations and on a form prescribed by the Board. Proof of the producer's or handler's assessment payment should accompany the refund request and should be mailed to the Board. The receipt of sales provided by the handler to the producer should contain sufficient information so that the producer may use it to verify assessments paid and thus qualify for refunds, if so desired.

Rules and regulations recommended by the Board, and approved by the Secretary, should establish procedures for those seeking refunds. The Board should ensure that these procedures are not unduly burdensome. Producers and handlers seeking refunds should be able to easily request necessary forms and complete them with information that is available on sales receipts commonly used in the industry.

In accordance with the Act, a refund request must be made within 90 days of the date of assessment payment. The Board must pay documented refund requests within 60 days of the receipt of the request. The proposed Plan in the Notice of Hearing specified the refund period as 45 days, instead of the 60 days

specified in the Act. The proposed Plan has been changed accordingly.

The proposed Plan mandates that refund applications may be made by any watermelon producer or handler who paid watermelon assessments. A producer may request refunds only for the producer's portion of assessments on any quantity of watermelons. Likewise, a handler may request refunds only for the handler's portion of the assessments. A handler may not make refund applications on behalf of the producers that the handler represents. State associations, cooperatives, or other groups that may represent several watermelon producers may not make joint application for group or corporate refunds on behalf of the producers or handlers that the organizations may represent. Thus, the evidence does not support that portion of the South Carolina representatives' testimony and brief which proposed that its State board apply for and keep one cent per hundredweight of its State's assessments on behalf of all the producers and handlers in the State.

Furthermore, it should be the Board's responsibility to ensure that confidentiality of all refund information is maintained.

3(g) Monetary Reserves

The Board should have the authority to establish an operating monetary reserve and set aside funds in the reserve to defray expenses authorized by the Plan. The purpose of these funds is to add stability to long term program operations by having funds available for periods when actual assessments are lower than the amount projected in the budget. It is also recognized that research and promotion activities in any given year will be financed, at least in part, by funds collected in the previous year. The operating reserve should provide the funds necessary for such financing.

Assessment shortages could be caused by unforseen production failure due to bad weather or to unforseen circumstances. Reserve funds may be used in such emergency situations to carry out promotional and consumer awareness activities that would strengthen watermelons' competitive position in the marketplace.

The Board should include an item in its budget to set aside funds for the operating reserve. In addition, any unexpended funds at the end of the fiscal period should be included in the operating reserve. However, reserves should not be accumulated in excess of approximately two fiscal period budgets, as required by the Act. If the reserve exceeds this amount, even while meeting regular program and administrative costs, the Board should lower the assessment rate until the reserve is again at or below the two fiscal year period.

3(h) Reports and Records

The Board should have the authority, with the approval of the Secretary, to require each handler to submit to the Board such reports and information as the Board may need for the performance of its duties under the Plan. While it is difficult to anticipate every type of report or kind of information the Board may need, there was general agreement in testimony at the hearing that the information should include data on the quantity and dates of watermelons handled, the amount of assessment collected, the names and addresses of the producers involved, including those that claim exemptions. This information can be gathered from invoices, field records, scale tickets, bills of lading or other business records currently used in the industry. Most handlers already provide such data in their receipts to the producers they represent. As part of its rules and regulations, the Board should develop a simple report format that identifies the needed information.

In order for the Board to effectively investigate and verify compliance to this Plan, each handler should be required to maintain, by fiscal period, complete records on that handler's acquisition and disposition of fresh watermelons. Producers who also act as handlers should maintain such records. Such records should be kept for two years beyond the production season, as required by the Act. A two-year period should afford the Board's employees adequate and reasonable time for examination of such records. This requirement should not impose an undue burden on handlers since testimony indicates such records are generally retained for a similar period under current business practices. Record evidence indicates that the Board's staff should have the authority during this period to audit handler books to determine compliance with provisions of the Plan. The Board should report the results of such reviews to the Secretary for necessary action.

The Plan should require that the handlers submit both the producer's assessment and the handler's assessment to the Board. The record indicates that the producer's assessment would, in most instances, be deducted from the purchase price and should be recorded on the sales receipt provided by the handler to the producer.

In cases where a producer is also the handler, the producer acting as a handler would submit the required reports to the Board and would thus be responsible for payment of both the producer's and handler's assessment.

The Board and its employees would have the responsibility for safeguarding the confidentiality of producer and handler records submitted as part of this proposed Plan. Such reports and records would remain confidential and would be disclosed to no person other than the Secretary or persons authorized by the Secretary to review such records unless disclosure is required by law. This restriction is necessary to prevent the disclosure of information that may affect the trade, financial position or business operations of individual producers and first handlers. Under certain circumstances, the release of composite information compiled from reports may be helpful to the Board and the industry in planning operations under the Plan. However, such composite information should not disclose the identities of the persons referred to or their separate business operations.

The Act and the Plan provide that the Secretary may direct publication of the name of any person violating the Plan and the provision or provisions violated by such person.

3(i) Miscellaneous Provisions

The proposed Plan should require the submission to the Secretary for approval of all fiscal matters, programs or projects, rules or regulations, reports or other substantive actions proposed and prepared by the Board. These submissions to the Secretary are necessary and appropriate because the Secretary is charged with oversight of the proposed Plan's administration to assure that it is in accordance with the policies and provisions of the Act.

Board members and employees should not be held personally responsible for honest mistakes or errors of judgment that were unintentionally committed during the time of their service to the Board. However, Board members and employees should be accountable for intentional acts of willful misconduct. The record shows that the Board should report any known, willful misconduct of Board members or employees to the Secretary for appropriate action.

Consistent with the Act, the Plan should prohibit the use of assessment funds to influence government policy or action at any level of government. Funds collected under the Plan may be used in recommending to the Secretary amendments to the proposed Plan. The Board cannot enter into contracts with organizations that engage in efforts to influence government action or policy.

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Both the Act and the Plan provide that the Secretary may conduct a national referendum at any time to determine if all known, affected watermelon producers and handlers continue to support the Plan or favor termination of the Plan. The Secretary should hold such a referendum at the request of 10 percent or more of the watermelon producers and handlers. A favorable vote of a majority of those voting and at least 50 percent of the volume of watermelons represented by those voting would be needed to continue the Plan.

The provisions §§ 1210.363 through 1210.367 which involve program suspension, termination, separability, patents and copyrights are usually included in research and promotion programs of this type. The provision concerning patents and copyrights has been modified for clarity and to eliminate unnecessary language. These provisions set forth certain rights, obligations, privileges and procedures that are necessary and appropriate for the effective operation of the proposed Plan. All provisions are incidental to and consistent with the terms and conditions of the Act; and they are necessary to effectuate the other provisions of the proposed Plan. Testimony at the hearing supported these provisions, and they should be included in the proposed Plan.

Miscellaneous changes have been made to the provisions of the proposed Plan for clarity.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed April 20, 1987, as the final date for interested parties to file proposed findings, conclusions, and written arguments or briefs based upon the evidence received at the hearing. At the request of the National Watermelon Association the filing deadline was extended to April 30, 1987, and notice of the extension was published in the **Federal Register** (52 FR 13086, April 21, 1987).

Four briefs were received. Every point in each of the briefs was carefully considered in making the findings and reaching the conclusions set forth in this Recommended Decision. These briefs, proposed findings and conclusions, and the testimony in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that any suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

One brief was from the proponents of the Plan, the National Watermelon Association. It contained clarifications of several provisions that were discussed during the hearing. The brief also included a formal resolution in support of the proposed Plan which was passed unanimously by the Executive Committee of the association.

A second brief was submitted by the South Carolina Watermelon Board. This brief also supported the proposed Plan but advanced several modifications to the proposed Plan. These amendments are noted and discussed in appropriate provisions above.

A brief was received from the Central Valley Watermelon Growers Association, of Lathrop, California, which opposed South Carolina's proposed amendment to permit chartered State watermelon entities to receive a collection fee of up to 50 percent of the assessment fees collected in the State. The association otherwise gives full support to the proposed Plan as it was presented and modified during the hearing.

A final brief was received from the Georgia Watermelon Association, Inc. which expressed support for the proposed Plan as presented and modified during the hearing.

General Findings

Based upon evidence introduced at the hearing, and on the record of the hearing, it is found that:

(1) The proposed Plan, and all of its terms and conditions as now written, will tend to effectuate the declared policy of the Act;

(2) The proposed Plan regulates the marketing of fresh watermelons and watermelon products in the contiguous 48 States in the same manner as proposed in the hearing, and as such, is limited in its application only to the marketing area which is practicable and consistent with carrying out the declared purposes of the Act;

(3) The handling of fresh watermelons and watermelon products as defined in the proposed Plan is in the current of interstate and foreign commerce, or directly burdens, obstructs or affects such commerce, and

(4) The proposed Plan is applicable only to persons in the production of and first handling of watermelons as specified in the Act.

List of Subjects in 7 CFR Part 1210

Watermelon, Agricultural research, Agricultural promotion, Market development.

Recommended Plan

The following Plan is recommended as the detailed means by which the foregoing conclusions may be carried out:

It is proposed that Chapter XI of Title 7 be amended by adding Part 1210 to read as follows:

PART 1210—NATIONAL WATERMELON RESEARCH AND PROMOTION PLAN

Definitions

Sec.
1210.301 Secretary.
1210.302 Act.
1210.303 Plan.
1210.304 Board.
1210.305 Watermelon.
1210.306 Producer.
1210.307 Handle.
1210.308 Handler.
1210.309 Person.
1210.310 Fiscal period and marketing year.
1210.311 Programs and projects.
1210.312 Promotion.
1210.313 Research.

National Watermelon Promotion Board

1210.320 Establishment and membership.
1210.321 Nominations and selection.
1210.322 Term of office.
1210.323 Acceptance.
1210.324 Vacancies.
1210.325 Procedure.
1210.326 Compensation and reimbursement.
1210.327 Powers.
1210.328 Duties.

Research and Promotion

1210.330 Policy and objectives.
1210.331 Programs and projects.

Expenses and Assessments

1210.340 Budget and expenses.
1210.341 Assessments.
1210.342 Exemption from assessment.
1210.343 Producer and handler refunds.
1210.344 Operating reserve.

Reports, Books, and Records

1210.350 Reports.
1210.351 Books and records.
1210.352 Confidential treatment.

Miscellaneous

1210.360 Right of the Secretary.
1210.361 Personal liability.
1210.362 Influencing governmental action.
1210.363 Suspension or termination.
1210.364 Proceedings after termination.
1210.365 Effect of termination or amendment.
1210.366 Separability.
1210.367 Patents, copyrights, inventions, and publications.

Authority: 7 U.S.C. 4901–4916.

Definitions

§ 1210.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985, (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of regulation and statute, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12-month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

National Watermelon Promotion Board

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board." The Board shall be composed of producers and handers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.
District #2—North Florida including all areas north of State Highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, the Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States by district entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention: *Provided,* That, if a producer or handler is engaged in the production or handling of watermelons in more than one State, or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call.

(2) No State in Districts 3, 4, 5 and 7 as currently constituted shall have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention shall have one vote which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports: *Provided,* That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: the four producers and four handlers from districts 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5 and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided,* That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication: *Provided,* That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions ot this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with § 1647(f), of the Act: *Provided,* That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personnally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefore.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing governmental action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder, or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Signed at Washington, DC, on March 18, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-6422 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 45529; Notice No. 88-5]

Uniform System of Accounts and Reports for Large Certificated Air Carriers; Updating the Accounting Provisions for Changes in GAAP

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule solicits comments on certain modifications to the accounting provisions applicable to large certificated air carriers that are contained in Part 241 of the Department's Economic Regulations (14 CFR Part 241). The Department proposes to revise its accounting provisions in accordance with generally accepted accounting principles.This will relieve an air carrier from the burden of maintaining its accounting system so as to differentiate between two sets of principles—generally accepted and regulatory.

DATE: Comments on the proposed rule must be received on or before May 23, 1988.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 45529, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following

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statement is made: Comments on Docket No. 45529. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4385 and 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

In adopting Economic Regulation ER-980 (42 FR 19 January 3, 1977), the Civil Aeronautics Board (CAB) announced its intention to reduce the time lag for incorporating generally accepted accounting principles (GAAP) in Part 241, *Uniform System of Accounts and Reports* (USAR) of its Economic Regulations, which applied to certificated air carriers. Prior to ER-980, the air carrier uniform system of accounts (USOA) provisions in Part 241 had been modified, from time to time to include changes in GAAP to assure compatibility of the CAB's accounting requirements with the numerous policy pronouncements being issued by professional organizations and governmental bodies responsible for molding accounting principles and disclosure standards for American business. This action was designed to make it easier for the CAB and the air carriers to maintain a single accounting system, based on generally accepted accounting principles, that could be used for both managerial and regulatory reporting purposes.

Under ER-980, updates of the USOA for changes in GAAP were to be accomplished as expeditiously as possible by appropriate regulatory action, except to the extent such action might be precluded by the CAB's statutory duties. The goal of this policy was to minimize the carrier burden associated with maintaining different accounting records needed to reflect any difference between the USOA and generally accepted accounting principles. As a result, the CAB began issuing periodic rulemaking proposals (and subsequent final rules) to revise the accounting provisions contained in the USAR. Several of these actions were initiated and completed by the CAB between 1977 and 1979.

The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, caused the CAB to reorder its regulatory agenda to provide for the orderly transition of the airline industry to a deregulated environment and for transfer of the CAB's remaining regulatory functions to the Department of Transportation. This revised agenda effectively suspended the routine use of the regulatory process to modify the USOA for changes in GAAP.

The ADA, as amended by the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, October 4, 1984, transferred to the Secretary of Transportation the authority of the former Civil Aeronautics Board to prescribe the forms of any and all accounts, records and memoranda to be kept by air carriers. Since the assumption of this authority on January 1, 1985, the Department has been comprehensively reviewing the uniform system of accounting and reporting requirements that are applicable to large certificated air carriers (Part 241 of the Department's Economic Regulations, 14 CFR Part 241) in order to identify what information the Department requires to administer its aviation responsibilities as well as any potential burden reduction areas. "Large certificated air carriers" include all section 401 carriers that either: (1) Operate aircraft designed to have a maximum payload capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds or (2) conduct operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands. To date, the Department has focused its attention on air carrier reporting burden and now turns its attention to the air carrier accounting provisions contained in Part 241.

Need for Uniform Accounting System

Before addressing the issue of a GAAP-based uniform accounting system, the Department conducted a comprehensive policy level review to determine if there was a need for an air carrier uniform accounting system. This review disclosed that a regulatory need does exist which requires the continuation of the USOA to enable the Department to effectively and efficiently administer its mandated aviation responsibilities. These responsibilities include, but are not limited to, the following Departmental programs: air carrier fitness; international fares and rates; international routes; safety surveillance and inspection; and airline industry status evaluations.

Air Carrier Fitness

One component of the initial fitness evaluation that is conducted before a carrier can commence operations is a test of the reasonableness of the applicant's financial operating plan. In analyzing a proposed operating plan, the Department compares the forecasted level of expenses with those of air carriers currently conducting a similar type of operation (average length of haul/same or similar type(s) of aircraft).

In monitoring continuing air carrier fitness the Department uses various balance sheet and profit and loss accounts to determine the financial status of specific air carriers. For example, the specific accounts included in the ratio of current assets to current liabilities (working capital ratio) provide a measurement of the degree of carrier solvency. Other examples of the use of air carrier accounting information include computing carrier net worth and aircraft inventory book value.

International Fares and Rates

The Department is legislatively charged with (1) determining the fair and reasonable rates of compensation to be paid by the United States Postal Service for the transportation of mail by aircraft in both intra-Alaska and foreign services; and (2) establishing and updating the cost-based Standard Foreign Fare Level (SFFL) and Standard Foreign Rate Level (SFRL). SFFL and SFRL form the basis for zones of fare and rate flexibility in international markets. The regulatory process for establishing and updating fares and rates involves significant usage of the system of air carrier accounts in solving equations which detail the precise cost/volume relationships upon which the Department's cost of service methodology and cost updating technique are based. Specific accounts are used to determine amounts of the various operating revenues, operating expenses, cost trends, and in the case of setting mail rates, investments upon which a carrier is entitled to receive a rate of return.

International fares for passengers and rates for cargo and mail are adjusted according to cost trends for each of several designated air carrier operating entities. For example, a passenger fare cost index is calculated for each of four ratemaking entities: Atlantic, Pacific, Latin American and Canadian. It should be noted that financial data from the domestic entity are used to adjust fares and rates for Canadian operations.

Determining the adjustment factor for fares and rates requires the use of the system of accounts to allocate revenues and expenses among the various ratemaking entities as well as calculating the costs of service applicable to each product: Passenger, cargo, and/or mail. The allocation of costs to the products utilizes the functional account classification system contained in Part 241 of the Department's Economic Regulations. Each functional account describes a basic area of financial activity or functional operation of the air carrier. Some examples of functional accounts (activities) are: 5100, "Flying Operations," 5400, "Maintenance," 5500, "Passenger Service," and 6400, "Aircraft and Traffic Servicing." Each function includes those expenses which are incurred in pursuit of the specific financial activity. An example would be the charges to the "Flying Operations" functional account for the salaries recorded in objective account 23, "Pilots and Copilots." Objective accounts are two digit accounts that denote the nature of the specific revenue or expense objective recorded in the functional account. The account numbering system is based on a four digit account; the first two digits identify the functional activity to which the recorded item is related and the second two digits identify the nature (objective) of revenue or cost item. Using the above accounts, account 5123 would be used to record the salaries of pilots and copilots that are charged to "Flying Operations."

This system of accounts has served the former CAB and now the Department well in administering its aviation program responsibilities.

International Routes

The uniform air carrier accounting system facilitates the evaluation of applications for international route authority. This use includes verifying air carrier operating revenue and cost estimates by individual entity as well as cost estimates for each aircraft type proposed for use in providing the service in question. The system of functional accounts allows the analyst to group expenses by functional operation. Thus, aircraft operating expenses can be compared by reviewing the various objective accounts summarized by functional account—Flying Operations (5100), Direct Maintenance (5200), and Depreciation (7000).

Safety Surveillance and Inspection

The Department is responsible for evaluating the adequacy of aviation safety regulations, standards, policies, and procedures; and identifying aviation safety problem areas and recommending/developing appropriate solutions. In order to effectively and efficiently administer this responsibility, the Department has established and used indicators for monitoring the safety of the National Airspace System, including the individual air carriers operating within the system. The Department also has a statutory responsibility to make findings concerning the effects of airline deregulation on safety and submit periodic reports of those findings to Congress.

The Department uses certain specific accounts, in conjunction with a variety of other nonfinancial information, to carry out the above regulatory functions. The accounts are utilized in calculating a set of financial ratios that give an indication of carrier financial status. Taken as a whole, the use of both financial and nonfinancial indicators enables the Department to better allocate its safety inspection resources.

Airline Industry Status Evaluations

One of the functions of this program is to keep senior Departmental officials fully informed as to the status of the airline industry. One phase of this includes analyzing the financial health of the industry. These evaluations require certain accounts reported on the Form 41 financial schedules for use in individual and comparative financial analyses. It should be noted that this program, as well as the overwhelming majority of the Department's aviation programs, requires accounting and statistical data about carrier operations that are reliable and uniform, and comparable from period to period and from carrier to carrier. This is extremely important in the current deregulated environment due to the rapid changes taking place within the industry. The USOA contributes significantly to the level of reliability, uniformity and consistency of the financial data underlying the decision-making process.

Alternatives To Uniform Accounting System

Before concluding that the continuation of the USOA is necessary for administering its aviation programs, the Department did explore possible alternatives to maintaining the current accounting system. Among these alternatives was the elimination of the USOA. This alternative was rejected due to the nature of the aviation programs being administered. As explained above, the Department's aviation programs require a uniform data base that facilitates data comparisons between air carriers on both a current and historical basis.

If the USOA was eliminated, the Department would be forced to develop highly detailed reporting instructions for each and every financial data element reported on the thirteen RSPA Form 41 balance sheet (B) and profit and loss (P) schedules. This would be especially true for describing the reporting of air carrier operating expenses on Form 41 Schedules P-5.2, "Aircraft Operating Expenses," P-6, "Operating Expenses by Objective Groupings," and P-7, "Operating Expenses by Functional Groupings—Group III Air Carriers." These schedules require the extensive use of cost allocations in computing the reportable data elements. The Department believes that establishing, updating and maintaining such a detailed reporting system would be very burdensome for both the Department and the carriers. Every change in accounting standards would normally require a change in reportable data element definitions. These changes could be very voluminous and require a considerable commitment of both Federal and air transportation industry resources to implement.

Changes in the data element definitions would also require the use of time consuming rulemaking procedures to maintain an up-to-date financial reporting system. This alternative would result in a significant increase in the Department's rulemaking workload. Consequently, this alternative would also increase the burden on the air transportation industry by expanding the amount of time the industry must spend to review proposed rules and implement final rules.

USOA and GAAP-Based Accounting

As mentioned above, the CAB, prior to airline deregulation, had established a policy whereby the pronouncements of professional accounting standards setting bodies, such as the Financial Accounting Standards Board, were reviewed and, as appropriate, transformed into a rulemaking proposal to modify the uniform air carrier accounting provisions. With the enactment of the Airline Deregulation Act and the revision of the CAB's regulatory agenda, this policy was effectively suspended. The last rulemaking proceeding that updated the accounting provisions for a change in GAAP was Economic Regulation ER-1076 (43 FR 46295, October 6, 1978), which became effective November 6, 1978. This regulation updated the USOA to be in accordance with generally accepted accounting principles on troubled debt restructurings, prior period adjustments and forward exchange contracts.

Based on the Department's continued need for uniform air carrier accounting, the USOA has been evaluated to determine if any air carrier burden reductions are possible without adversely affecting the level of uniform, comparative financial information required for decision-making purposes. The Department has concluded that the current level of air carrier burden could be reduced by adopting the concept that the Part 241 accounting provisions will be based on GAAP. It is anticipated that such a system would be beneficial to both the carriers and the Federal government. The carriers would benefit because they would be able to operate accounting systems which yield information acceptable for both financial and governmental reporting purposes. The government would benefit from the degree of comparability of accounting practice among large certificated air carriers.

Given the fact one of the founding principles of deregulation is competition based on free market entry and exit, the Department's experience has shown that the introduction and assimilation of new entrants in the marketplace has been made easier through the beneficial use of the USOA, which has proven to be a useful accounting tool in helping new entrants establish a reliable financial reporting system. This benefit should be further enhanced by a GAAP-based USOA.

Another benefit of GAAP is to reduce the Department's need for on-site accounting classification audits. These audits evaluate the accuracy and reliability of data that are used for regulatory decision-making. A GAAP-based system should save audit time that would otherwise be spent reviewing the application of regulatory accounting provisions that may depart from GAAP.

Alternatives for Updating the USOA for Changes in GAAP

After deciding to propose the adoption of a GAAP-based accounting system, the Department has analyzed several alternative methodologies for updating the accounting provisions for changes in GAAP. To date, all revisions of the accounting provisions have been accomplished through formal rulemaking proceedings. The Department has tentatively determined that the continued use of this approach to GAAP-based accounting may be too burdensome on the affected air carriers and the Federal government. It is estimated, based on prior regulatory proceedings, that the time required to develop and issue a proposed rule, solicit and analyze public comments, and develop and issue a final rule is about eight to twelve months.

The promulgation of a new financial accounting standard normally requires the development of a proposed rule to incorporate the change in Part 241 of the Department's Economic Regulations. Depending on the specific GAAP pronouncement, changes to Part 241 usually include one, several, or all of the following types of changes: (1) Expansion of the definitions or glossary section to include new or revised terminologies, (2) revision and/or expansion of the section containing the accounting provisions, (3) revision of the reporting instructions for each affected Form 41 schedule, and (4) revision of the format of each affected Form 41 schedule. This last element includes changing the graphic composition of each revised schedule as well as printing a supply of the schedule for distribution and inventory.

Economic Regulation ER–1013, adopted by the CAB in July 1977, provides an example of the extent of the modification required to update the USOA for a change in GAAP. This regulation amended the USOA to include certain accounting and disclosure standards for lease transactions that were issued by the Financial Accounting Standards Board (FASB) as Statement of Financial Accounting Standards No. 13 "Accounting for Leases." ER–1013 included nine new definitions, fifteen new accounts, revisions of several existing accounts, a new accounting provisions section, six Form 41 schedules that required revisions to their reporting instructions, and twelve Form 41 schedules that required revisions for changes in graphics.

A review of the current body of generally accepted accounting principles reveals that the FASB has issued, since its 1973 inception, over ninety statements of financial accounting standards. This represents an average promulgation of over six revisions to GAAP each year. The Department is concerned that continuation of this level of activity would severely overburden its staff and cause a substantial reordering of workload priorities as expressed in the Department's Semiannual Regulatory Agenda (52 FR 14548; April 27, 1987).

After considering: (1) The amount of time required to complete a rulemaking proceeding, (2) the volume of FASB statements being issued annually, and (3) the limited staff resources available to process a large volume of rules, the Department decided to consider various alternative methodologies to updating the accounting provisions for changes in GAAP.

One method considered is the initiation of periodic rulemaking proposals. For example, updates could be performed on annual basis so as to include all GAAP revisions that occurred within a given calendar year. This alternative would significantly reduce the total number of rules required to maintain conformity with GAAP. However, a significant drawback with this method is the delay between the effective date of a GAAP pronouncement and the effective date of the USOA revision to reflect the change. Thus, if the FASB issues a Statement of Financial Accounting Standards that is effective early in the 1987 calendar year, the relevant changes may not be included in a notice of proposed rulemaking until some time in 1988, resulting in a delay of about 24 months before the change in GAAP would be incorporated in the Department's uniform accounting provisions. The Department feels this alternative may be significantly burdensome to the carriers who would be required to maintain two accounting systems until the Department made its change. This approach is counter to the purpose of this proposal which is to eliminate the carriers' need for maintaining two accounting systems.

In an attempt to minimize the degree of burden, the Department is proposing to adopt a policy of relying on GAAP, as promulgated by the FASB, as the recognized body of accounting principles for recording air carrier financial information. The Department believes this would be, for the affected air carriers, the most cost effective method of adopting and maintaining a GAAP-based accounting system.

While the Department proposes to base its air carrier accounting requirements on GAAP to the maximum extent possible, it also recognizes the possibility that a situation may arise where a change in GAAP could adversely impact the Department's ability to administer its aviation responsibilities. In this circumstance, the proposed rule provides that the Department's Office of Aviation Information Management would issue an Accounting Directive fully explaining why the application of the accounting principle in question would negatively impact administration of the Department's aviation programs. The directive would also provide the necessary accounting guidance required to maintain the accounting integrity of the USAR.

This methodology would enable the Department to communicate its position on a given accounting principle in a very timely fashion. The Department believes this approach would be the least burdensome to the air carriers since all affected carriers would be informed of the Department's position at the earliest possible moment and thereby spared the burden of implementing any unnecessary accounting system revisions.

While the function of the directive would be to inform the carriers of the Department's accounting provision requirements, the Department recognizes the fact there may be some objection to its decision not to implement a particular accounting principle. If significant objections are raised by any concerned party or parties, the Department plans to address such objections in the public forum by issuing a notice of proposed rulemaking. Air carriers and any other concerned parties would be encouraged to submit their views and comments on the issues raised. After due deliberation of all comments received, the Department would issue a final rule, stating its conclusions.

Proposed Changes to Part 241

In order to more closely align the current air carrier accounting system with GAAP and to place a greater reliance on GAAP for the recording of financial information, the Department proposes to revise Part 241 as follows:

Definitions

Section 03 of Part 241 contains a list of definitions that define terms that are used in the remaining sections of the part. Certain of these definitions have been tentatively identified as being either already defined by GAAP or no longer required in the current air transportation environment. These definitions, which are being proposed for elimination, include: Air Carrier, Route; Air Transportation, Supplemental; Exposed Net Asset Position; Exposed Net Liability Position; Express; Foreign Currency Transactions; Foreign Currency Translation; Forward Exchange Contract (Forward Contract); Interest Rate Implicit in the Lease; Lease, Capital; Lease, Direct Financing; Lease, Leveraged; Lease, Operating; Lease, Sales-Type; Lessee's Incremental Borrowing Rate; Marketable (as Applied to an Equity Security); Market Price; Market Value (Equity Security); Minimum Lease Payments; Net Unrealized Gain or Loss, Marketable Equity Securities Portfolio; Realized Gain or Loss, Marketable Equity Security; Schedule, Published; Service, Irregular (Excluding Charter and Special); Service, Special; Service, Tourist; Stop, Fuel; and Valuation Allowance, Marketable Equity Securities Portfolio.

The following definitions would be editorially revised to enhance clarity and eliminate incorrect references: Agent, Cargo; Air Carrier, Charter; Airport-to-Airport Distance; Certificate of Public Convenience and Necessity; Flight, Developmental; Freight; Mail, Nonpriority; Mail, Priority; Person Controlling an Air Carrier; Route, Certificated; Section 418 Cargo Operations; Service, Charter; Service, Mixed; Service, Nonscheduled; Stop, Flag; Tariff, Published; Traffic, Enplaned; Traffic, Deplaned; and Weight, Passenger.

The following definitions are proposed for inclusion in Section 03: "Department" and "DOT."

General Accounting Provisions

The Department has tentatively identified the following sections as not relevant or no longer being required since the accounting policies related to each of the subject headings are already covered by GAAP pronouncements.

1. 1–9, Conversion to This System of Accounts and Reports
2. 2–3, Foreign Currency Transactions
3. 2–5, Liability Accruals
4. 2–6, Income Tax Accruals
5. 2–7, Extraordinary Items, Discontinued Operations, Prior Period Adjustments and Accounting Changes
6. 2–8, Unaudited Items
7. 2–9, Improvements, Additions and Betterments
8. 2–10, Capitalization of Interest
9. 2–11, Accounting for Transactions in Gross Amounts
10. 2–12, Acquisition and Valuation of Assets
11. 2–13, Establishment of Allowances
12. 2–14, Depreciation and Amortization
13. 2–15, Contingent Assets and Contingent Liabilities
14. 2–16, Notes to Financial Statements
15. 2–18, Transactions Between Members of an Affiliated Group
16. 2–20, Accounting for Leases
17. 2–21, Accounting for Troubled Debt Restructurings
18. 5–1, Current Assets
19. 5–2, Investments and Special Funds
20. 5–3, Property and Equipment
21. 5–4, Property and Equipment Depreciation
22. 5–5, Other Assets
23. 5–6, Current Liabilities
24. 5–7, Noncurrent Liabilities
25. 5–8, Deferred Credits and Commitments and Contingent Liabilities
26. 5–9, Stockholders' Equity

Balance Sheet Accounts

The Department has tentatively decided to eliminate the following balance sheet accounts because each of the following accounts has either already been eliminated from the applicable Form 41 schedule or represents an account that is no longer required.

1. 2860, Subscribed and Unissued Stock
2. 2950, Net Unrealized Loss on Noncurrent Marketable Equity Securities

Profit and Loss Accounts

The following accounts are proposed for elimination. These accounts were tentatively identified as being no longer required.

1. 15, Mutual Aid
2. 15.1, Mutual Aid Receipts
3. 15.2, Mutual Aid Payments

Department Regulatory Policies and Procedures

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291a, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would result in a reduction in reporting burden for large certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The proposed amendments would affect only large certificated air carriers.

The accounting requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the accounting requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket. It is anticipated that this rule would result in a 400-hour reduction in the Department's fiscal year 1988 Information Collection Budget for OMB No. 2138–0013, Report of Financial and Operating Statistics for Large Certificated Air Carriers.

List of Subjects in 14 CFR Part 241

Air carriers and Uniform System of Accounts and Reports.

Proposed Rule

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, as follows:

PART 241—[AMENDED]

1. The authority for Part 241 would continue to read as follows:

Authority: Sections 204, 401, 407, 416, 417, 901, 902, 1002 of the Federal Aviation Act of 1958, as amended: 49 U.S.C. 106, 1324, 1371, 1377, 1386, 1387, 1471, 1472 and 1482.

2. The Table of Contents of the Uniform System of Accounts and Reports for Large Certificated Air Carriers would be amended by:

A. Removing sections 1–9, 2–5, 2–6, 2–7, 2–8, 2–9, 2–10, 2–11, 2–12, 2–13, 2–14, 2–15, 2–16, 2–17, 2–18, 2–19, 2–20, 2–21, 5–1, 5–2, 5–3, 5–4, 5–5, 5–6, 5–7, 5–8 and 5–9.

B. Revising the title of Section 2–3 to read:

Sec. 2–3 Revenue and accounting practices.

C. Removing and reserving the title of Section 5, *Balance Sheet Account Groupings.*

3. Section 03, *Definitions for Purposes of This System of Accounts and Reports*, would be amended by:

A. Removing the definitions of Air Carrier, Route; Air Transportation, Supplemental; Exposed Net Asset Position; Exposed Net Liability Position; Express; Foreign Currency Transactions; Foreign Currency Translation; Forward Exchange Contract (Forward Contract); Interest Rate Implicit in the Lease; Lease, Capital; Lease, Direct Financing; Lease, Leveraged; Lease, Operating; Lease, Sales-Type; Lessee's Incremental Borrowing Rate; Marketable (as Applied to an Equity Security); Market Price; Market Value (Equity Security); Minimum Lease Payments; Net Unrealized Gain or Loss, Marketable Equity Securities Portfolio; Realized Gain or Loss, Marketable Equity Security; Schedule, Published; Service, Irregular (Excluding Charter and Special); Service, Special; Service, Tourist; Stop, Fuel; and Valuation Allowance, Marketable Equity Securities Portfolio.

B. Revising the definitions of Agent, Cargo; Air Carrier, Charter; Airport-to-Airport Distance; Certificate of Public Convenience and Necessity; Flight, Developmental; Freight; Mail, Nonpriority; Mail, Priority; Person Controlling an Air Carrier; Route, Certificated; Section 418 Cargo Operations; Service, Charter; Service, Mixed; Service, Nonscheduled; Stop, Flag; Tariff, Published; Traffic, Enplaned; Traffic, Deplaned; and Weight, Passenger; and adding new definitions Department and DOT to read:

* * * * *

Agent, cargo. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Department) who for compensation or profit: (1) Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

* * * * *

Air carrier, charter. An air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958, as amended.

* * * * *

Airport-to-airport distance. The great circle distance, measured in statute miles, between airports as compiled by the Department's Office of Aviation Information Management, RSPA.

* * * * *

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under section 401, of the Act, by the Department of Transportation authorizing the carrier to engage in air transportation.

* * * * *

Department. Department of Transportation.

* * * * *

DOT. Department of Transportation.

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Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Department of Transportation; (2) the extension of an existing route; and (3) the integration of a new type of aircraft or service.

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Freight. Property transported by air.

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Mail, nonpriority. All mail for which transportation by air is provided on a space available basis.

Mail, priority. All mail for which transportation by air is provided on a priority basis.

* * * * *

Person controlling an air carrier. Any person, as defined in section 101 (32) of the Act, whom the Department has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Department that he or she does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling.

* * * * *

Route, certificated. The route(s) over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Department of Transportation pursuant to section 401(d)(1) or (2) of the Act.

* * * * *

Section 418 cargo operations. The carriage, pursuant to section 418 of the Act, by aircraft of property and/or mail as a common carrier for compensation or hire in commerce between a place in any State of the United States, or the District of Columbia; or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands: This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

* * * * *

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an agreed upon portion of the total capacity of an aircraft with the remuneration paid by the party receiving transportation accruing directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

* * * * *

Service, mixed. Transport service for the carriage of both first-class and coach passengers on the same aircraft.

* * * * *

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Department of Transportation to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

* * * * *

Stop, flag. A point on an air carrier's operating system that is scheduled to be served only when traffic is to be picked up or discharged.

* * * * *

Tariff, published. A publication containing fares and rates applicable to the transportation of persons or cargo and rules relating to or affecting such fares or rates of transportation, filed with the Department of Transportation.

* * * * *

Traffic, deplaned. A count of the number of passengers getting off and tons of cargo unloaded from an aircraft. For this purpose, passengers and cargo on aircraft leaving a carrier's system on interchange flights are considered as deplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are renuired by the Department of Transportation, are considered as deplaning at the junction point.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier's system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as enplaning at the junction point.

* * * * *

Weight, passenger. For the purposes of this part, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Department of Transportation or upon a factually supported request by an air carrier.

4. Section 1, *Introduction to System of Accounts and Reports*, would be amended by eliminating Section 1–9, *Conversion to This System of Accounts and Reports;* and revising Section 1–7 and 1–8 to read:

Sec. 1–7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Office of Aviation Information Management, Research and Special Programs Administration, for explanation, interpretation, or resolution.

Sec. 1–8 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Office of Aviation Information Management, DAI–1, Room 4125, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

5. Section 2, *General Accounting Policies*, would be amended by:

A. Removing Sections 2–3, *Foreign Currency Transactions;* 2–5, *Liability Accruals;* 2–6, *Income Tax Accruals;* 2–7, *Extraordinary Items, Discontinued Operations, Prior Period Adjustments and Accounting changes;* 2–8, *Unaudited Items;* 2–9, *Improvements, Additions and Betterments;* 2–10, *Capitalization of Interest;* 2–11, *Accounting for Transactions in Gross Amounts;* 2–12, *Acquisition and Valuation of Assets;* 2–13, *Establishment of Allowances;* 2–14, *Depreciation and Amortization;* 2–15, *Contingent Assets and Contingent Liabilities;* 2–16, *Notes to Financial Statements;* 2–18, *Transactions Between Members of an Affiliated Group;* 2–19, *[Reserved];* 2–20, *Accounting for Leases;* and 2–21, *Accounting for Troubled Debt Restructurings.*

Section 2–17 [Redesignated as Section 2–3]

B. Redesignating section 2–17 as section 2–3.

6. Section 4, *General*, would be amended by revising paragraph (b) to read:

(a) * * *

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 3, Chart of Balance Sheet Accounts. The balance sheet elements to be included in each account are presented in section 6.

7. Section 5, *Balance Sheet Account Groupings*, in its entirety, would be removed and reserved.

8. Section 6, *Objective Classification of Balance Sheet Elements*, would be amended by:

A. Revising the description of accounts 1510.1, 1510.2 and 1530 to read:

1510.1 Investments in Investor Controlled Companies.

Record here the cost of investments in investor controlled companies except that permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net. This account shall also include the equity in undistributed earnings or losses since acquisition. In the event dividends are declared by such companies, the air carrier shall credit this account for its share in dividends declared and debit balance sheet account 1270 Accounts Receivable. This account shall separately state: (a) The cost of such investments at date of acquisition and (b) the equity in undistributed earnings or losses since acquisition.

1510.2 Investments in Other Associated Companies.

Record here the cost of investments in associated companies other than investor controlled companies. Cost shall represent the amount paid at the date of acquisition without regard to subsequent changes in the net assets through earnings or losses of such associated companies. However, permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net.

1510.3

* * * * *

1530 Other Investments and Receivables.

Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

B. Inserting a paragraph immediately following the center heading, *Operating Property and Equipment* to read:

Operating Property and Equipment

"Operating Property and Equipment" shall encompass items used in air transportation services and services related thereto.

C. Revising paragraph (a) of account 1601 to read:

1601 Airframes.

(a) Record here the total cost to the air carrier of airframes of all types and classes together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts the costs of airframe overhauls accounted for on a deferral and amortization basis.

* * * * *

D. Revising paragraph (a) of account 1602 to read:

1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes together with a full complement of accessories, appurtenances, parts and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis.

* * * * *

E. Revising the description of account 1607 to read:

1607 Improvements to Leased Flight Equipment.

Record here the total cost to the air carrier incurred in connection with modification, conversion or other improvements to leased flight equipment. Also record here, in separate subaccounts, the costs of airframe and aircraft engine overhauls of leased aircraft accounted for on a deferral and amortization basis.

F. Revising paragraph (a) of account 1608 to read:

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive. This account shall include all parts and assemblies of material value which are rotable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall not be charged to operating expense as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales, and parts sold shall be removed from this account at full cost irrespective of any allowance for depreciation which has been provided.

* * * * *

G. Revising paragraph (a) and the note following paragraph (b) of account 1629 to read:

1629 Flight Equipment Airworthiness Allowances.

(a) Record here accumulated provisions for overhauls of flight equipment.

(b) * * *

Note: At the option of the air carrier, the number "2629" may be assigned to this account for accounting purposes. However, for purposes of reporting on RSPA Form 41, the balance in this account shall be reported under account "1629."

H. Revising paragraphs (a) through (h) of account 1630 to read:

1630 Equipment.

* * * * *

(a) Equipment assigned to aircraft or active line operations as opposed to items held in stock for servicing passengers such as broilers, bottleware, dishes, food boxes, thermos jugs, blankets, first aid kits, etc. Spare items shall be carried in balance sheet account 1300 Spare Parts and Supplies and shall be charged directly to expense upon withdrawal from stock for replacing original complements.

(b) Equipment used in restaurants and kitchens.

(c) Equipment of all types and classes used in enplaning and handling traffic and in handling aircraft while on ramps, including motorized vehicles used in ramp service. Classes of equipment used interchangeably between handling aircraft on ramps and in maintaining aircraft may be classified in accordance with normal predominant use.

(d) Nonairborne equipment of all types and classes used in meteorological and communication services which is not a part of buildings.

(e) Equipment of all types and classes including motorized vehicles used in engineering and drafting services and in maintaining, overhauling, repairing and testing other classes of property and equipment.

(f) Property and equipment of all types and classes used in ground and marine transportation services.

(g) Property and equipment of all types and classes used in storing and distributing fuel, oil and water, such as fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all types and classes such as medical, photographic, employees' training equipment, and airport and airway lighting equipment.

I. Revising the description of account 1636, 1640 and 1679 to read:

1636 Furniture, Fixtures, and Office Equipment.

Record here the total cost to the air carrier of furniture, fixtures and office equipment of all types and classes wherever used or located.

* * * * *

1640 Buildings.

Record here the total cost to the air carrier of owned buildings, structures and equipment and related improvements. Each air carrier shall maintain the following subaccounts in which the values fairly assignable to maintenance and other operations shall be separately recorded:

1640.1 Maintenance Buildings and Improvements.

1640.9 Other Buildings and Improvements.

* * * * *

1679 Land.

Record here the initial cost and the cost of improving land.

J. Revising paragraph (a) of account 1689 to read:

1689 Construction Work in Progress.

(a) Record here all direct and indirect costs of the air carrier that are expended for constructing and readying property and equipment of all types and classes for installation in operations. The amount reported shall reflect all such expenses that are accumulated to the balance sheet date. Where properly includable in the property and equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

* * * * *

K. Revising paragraph (a) of account 1695 to read:

1695 Leased Property Under Capital Leases.

(a) Record here the total cost to the air carrier for all property obtained under capital leases.

* * * * *

L. Revising paragraph (a) of account 1696 to read:

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases.

* * * * *

M. Adding a paragraph after the center heading *Nonoperating Property and Equipment* to read:

Nonoperating Property and Equipment

"Nonoperating Property and Equipment" shall encompass investments in property and equipment not separately accounted for within a nontransport division but assigned to other than air transportation and transport-related services, and property and equipment held for future use.

N. Revising the description of accounts 1797, 1798 and 2080 to read:

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease.

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease.

2080 Current Obligations Under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases.

O. Revising paragraph (b) of account 2120 to read:

2120 Accrued Vacation Liability.

* * * * *

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts.

P. Revising the description of accounts 2130, 2210, 2280, 2340 and 2345 to read:

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others.

(b) Each air carrier shall disclose in the footnotes of its RSPA Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

2210 Long-Term Debt.

(a) Record here the face value of principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payable within 12 months of the balance sheet date.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this account. In addition, this account shall include short-term debt obligations when both the intent to refinance the short-term obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

2280 Noncurrent Obligations Under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases.

2340 Deferred Income Taxes.

Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period, giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision.

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment.

2860 and 2950 [Removed].

Q. Removing accounts 2860, *Subscribed and Unissued Stock*, and 2950, *Net Unrealized Loss on Non-current Marketing Equity Securities.*

R. Revising paragraph (a) of account 2990 to read:

2990 Treasury Stock.

(a) Record here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled.

* * * * *

9. Section 7, *Chart of Profit and Loss Accounts*, would be amended by removing accounts 15, *Mutual Aid;* 15.1, *Receipts;* and 15.2, *Payments.*

10. Section 8, *General*, would be amended by revising paragraphs (d)(1)(i), (d)(2)(i), (d)(5), (d)(6), and (d)(7) to read:

* * * * *

(d) * * *

(1) *Operating revenues.* (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature applicable to services performed in prior accounting years.

(ii) * * *

(2) *Operating expenses.* (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance

of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurring nature attributable to services performed in prior accounting years.

* * * * *

(5) *Discontinued operations.* This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2.

(6) *Extraordinary items.* This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence.

(7) *Cumulative effect of changes in accounting principles.* This primary classification (9800) shall include the cumulative effect of material changes in accounting principles.

11. Section 10, *Functional Classification—Operating Expenses of Group I Air Carriers,* would be amended by:

A. Revising Paragraph (c) of account 5300 to read:

5300 Maintenance Burden.

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

12. Section 11, *Functional Classification—Operating Expenses of Group II and Group III Air Carriers,* would be amended by:

A. Revising paragraph (c) of account 5300 to read:

5300 Maintenance Burden.

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenace burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under such circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See section 6–1696, 1830 and 1890.)

13. Section 12, *Objective Classification—Operating Revenues and Expenses,* would be amended by:

A. Revising paragraphs (a) and (c) of account 05 to read:

05 Mail.

(a) Record here revenue from the transportation by air of both United States and foreign mail.

* * * * *

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 Priority.

Record here revenue from United States mail for which transportation by air is provided on a priority basis.

05.2 Nonpriority.

Record here revenue from United States mail for which transportation by air is provided on a space available basis.

05.3 Foreign.

Record here revenue from the transportation by air of mail other than United States mail.

B. Revising the description of account 08 to read:

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Department of Transportation for the provision of essential air service to small communities.

C. Removing the account title and description of account 15, *Mutual Aid.*

D. Revising paragraph (a) of account 39 to read:

39 Traffic Commissions.

(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general agency services, as opposed to commissions arising from sales of transportation, shall not be included in this account but in profit and loss account 43 General Services Purchased.

* * * * *

E. Revising the description of account 58 to read:

58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined in balance sheet account 1890 Other Assets and Deferred Charges. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

F. Revising the description of account 61 to read:

61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in profit and loss account 85, Foreign Exchange Gains and Losses.

G. Revising paragraph (b) of account 74 to read:

74 Amortization.

* * * * *

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 Developmental and Preoperating Expenses.

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

74.2 Other Intangibles.

Record here amortization of the cost of intangibles not provided for otherwise.

14. Section 14, *Objective Classification—Nonoperating Income and Expense,* would be amended by revising the description of accounts 83.1, 83.2, 83.3, 83.4, 85, 88.1, 88.3, 88.4 and 89.1 to read:

* * * * *

83.1 Imputed Interest Capitalized—Credit

Record here credits related to imputed interest capitalized and recorded in asset accounts.

83.2 Imputed Interest Deferred—Debit.

Record here debits related to imputed interest deferred in balance sheet account 2390, Other deferred credits.

83.3 Imputed Interest Deferred—Credit.

Record here periodic credits for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 Interest Capitalized—Credit.

Record here interest which is capitalized and recorded in asset accounts.

* * * * *

85 Foreign Exchange Gains and Losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions.

* * * * *

88.1 Intercompany Transaction Adjustment—Credit.

Record here all intercompany credits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

88.3 Net Unrealized Gain or Loss on Marketable Equity Securities.

Record here the net unrealized gain or loss on the valuation of marketable equity securities.

88.4 Net Realized Gain or Loss on Marketable Equity Securities.

Record here the net realized gain or loss on the valuation of marketable equity securities.

* * * * *

89.1 Intercompany Transaction Adjustment—Debit.

Record here all intercompany debits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

15. Section 15, *Objective Classification—Income Taxes for Current Period,* would be amended by revising the description of account 91 to read:

91 Provision for Income Taxes.

(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes.

(b) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and

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the amount at which settlement is to be made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.

(c) This account shall be subdivided as follows by all carrier groups:

91.1 Income Taxes Before Investment Tax Credits.

Record here accruals of income taxes based upon taxable income of the period.

91.2 Investment Tax Credits Utilized.

Record here investment tax credits utilized to reduce the accrued liability for income taxes.

16. Section 17, *Objective Classification—Extraordinary Items,* would be amended by revising the description of account 98 to read:

98 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence. Events or transactions which are material and either unusual or nonrecurring, but not both, shall not be recorded in this account but should be disclosed on RSPA Form 41 Schedule P–2 and identified both as to their nature and financial effects.

SECTION 24—[AMENDED]

17. Section 24, *Profit and Loss Elements,* would be amended by:

A. Revising the title and paragraph (e), and removing paragraphs (f) through (p) to Schedule P–2 to read:

Schedule P–2—Notes to RSPA Form 41 Report

* * * * *

(e) Each scheduled air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable; (2) for each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and (3) for the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

B. Revising paragraph (f) of Schedule P–5.2 to read:

Schedule P–5.2—Aircraft Operating Expenses

* * * * *

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment. The allocation of subfunction 5300 (maintenance burden) shall include the net effect of charges and credits to profit and loss account 5272 Flight Equipment Airworthiness Provisions.

* * * * *

18. RSPA Form 41 Report (which will not appear in the Code of Federal Regulations) would be revised by removing Account No. 2800 under Stockholders' Equity as shown in Exhibit A to this document.

Issued in Washington, DC, on March 10, 1988.

M. Cynthia Douglass,

Administration, Research and Special Programs Administration, DOT.

BILLING CODE 4910-62-M

Exhibit A

BALANCE SHEET

AS AT:

Air Carrier:

ASSETS	Account No.	AMOUNT
CURRENT ASSETS:		
Cash	1010	
Short-term investments	1100	
Notes receivable	1200	
Accounts receivable	1270	
Less: Allowance for uncollectible accounts	1290	
Notes and accounts receivable—net	1299	
Spare parts and supplies—net	1399	
Prepaid items	1410	
Other current assets	1420	
Total current assets	1499	
INVESTMENTS AND SPECIAL FUNDS:		
Investments in associated companies	1510	
Other investments and receivables	1530	
Special funds	1550	
Total investments and special funds	1599	
OPERATING PROPERTY AND EQUIPMENT:		
Flight equipment	1609	
Ground-property and equipment	1649	
Less: Allowances for depreciation	1668	
Property and equipment—net	1675	
Land	1679	
Equipment purchase deposits and advance payments	1685	
Construction work in progress	1689	
Leased property under capital leases	1695	
Leased property under capital leases—accumulated amortization	1696	
Total operating property and equipment	1699	
NON-OPERATING PROPERTY AND EQUIPMENT:	1791	
Less: Allowance for depreciation/accumulated amortization	1792	
Nonoperating property and equipment	1799	
OTHER ASSETS:		
Long-term prepayments	1820	
Unamortized development and preoperating costs	1830	
Other assets and deferred charges	1890	
Total other assets	1895	
TOTAL ASSETS	1899	

LIABILITIES AND STOCKHOLDERS' EQUITY	Account No.	AMOUNT
CURRENT LIABILITIES:		
Current maturities of long-term debt	2000	
Notes Payable—Banks	2005	
Notes Payable—Others	2015	
Trade accounts payable	2021	
Accounts payable—Others	2025	
Current obligations under capital leases	2080	
Accrued salaries, wages	2110	
Accrued vacation liability	2120	
Accrued interest	2125	
Accrued taxes	2130	
Dividends declared	2140	
Air traffic liability	2160	
Other current liabilities	2190	
Total current liabilities	2199	
NONCURRENT LIABILITIES:		
Long-term debt	2210	
Advances from associated companies	2240	
Pension liability	2250	
Noncurrent obligations under capital leases	2280	
Other noncurrent liabilities	2290	
Total noncurrent liabilities	2299	
DEFERRED CREDITS:		
Deferred income taxes	2340	
Deferred investment tax credits	2345	
Other deferred credits	2390	
Total deferred credits	2399	
STOCKHOLDERS' EQUITY:		
Capital stock:		
Preferred shares issued ______________	2820	
Common shares issued ______________	2840	
Total capital stock	2869	
Additional capital invested	2890	
Total paid-in capital	2899	
Retained earnings	2900	
Total stockholders' equity	2959	
Less: Treasury stock shares ______________	2990	
Net stockholders' equity	2995	
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	2999	

*Denotes inverse amount

RSPA Form 41 Schedule B-1 (1-88)
Formerly CAB Form 41 Schedule B-1

[FR Doc. 88-6254 Filed 3-23-88; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9175]

General Nutrition, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, from making false claims for products, unless it possesses reliable and competent scientific evidence that substantiates such claims. The consent order would also require respondent to pay a total of $600,000 to certain organizations for scientific research in the fields of nutrition, obesity, or physical fitness.

DATE: Comments must be received on or before May 23, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S–4002, Washington, DC 20580, (202) 326–3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between General Nutrition, Inc., a corporation, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. General Nutrition, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 921 Penn Avenue, in the City of Pittsburgh, Commonwealth of Pennsylvania.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission on March 20, 1984, charging respondent with violations of Sections 5 and 12 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges. After a trial, an Administrative Law Judge issued an initial decision on February 24, 1986, ruling that counsel for the Federal Trade Commission proved all of the allegations contained in the complaint. Respondent subsequently filed an appeal to the Commission. The Federal Trade Commission staff, on January 4, 1984, initiated a separate investigation of certain other acts and practices of respondent. The consent order contained herein is intended to resolve both matters.

3. Respondent admits all the jurisdictional facts set forth in the Commission's proposed amended complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the proposed amended complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its amended complaint corresponding in form and substance with the draft of the amended complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the amended complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the proposed amended complaint and the order contemplated hereby. It understands that once the order has been issued. It will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent General Nutrition Incorporated, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Healthy Greens," or any substantially comparable product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

representing, directly or by implication, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society, or U.S. Government, or any finding contained in the Report entitled *Diet, Nutrition, and Cancer*, supports the claim that use of such product is associated with a reduction in incidence of any type of cancer.

II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data, with respect to such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," or "24 Hour Diet Plan," or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane or a combination thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such nutrient supplement will stimulate greater production or release of human growth hormone in users than in non-users;

B. Any such nutrient supplement will aid a user in achieving greater or faster muscular development than a non-user or will aid a user in achieving muscular development similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, e.g., rapid or substantial muscular development;

C. Any such nutrient supplement will burn away fat or otherwise alter human metabolism to use up or "burn" stored fat, rather than stored carbohydrates, or will aid a user in attaining greater weight loss during sleep than a non-user; or

D. Any such nutrient supplement will expand, extend, or prolong life, or retard aging.

IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from using the expression "Growth Hormone Releaser," or other expressions of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such expression, respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation. "Reliable and competent scientific evidence" shall mean for purposes of paragraphs IV and V of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

V

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

A. Concerning such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans;

B. That such product assists or enables a user to lose or control weight or fat, or suppress appetite;

C. That such product expands, extends, or prolongs life or retards aging; or

D. That such product aids a user in achieving greater or faster muscular development than a non-user or aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user

unless, at the time of making such representation (V A–D above), respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation.

Provided however, that respondent shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondent;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondent and does not contain respondent's name or logo;

4. The product was not developed or manufactured at the instigation or with the assistance of respondent; and

5. The product representation is not otherwise advertised or promoted by respondent.

VI

It is further ordered that respondent shall pay, in lieu of redress, the aggregate sum of six hundred thousand dollars ($600,000.00) divided in three equal parts to the American Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds shall be designated for the support of research or fellowships in the fields of nutrition, obesity or physical fitness. Respondent shall make payment in three installments, each installment to be divided equally among the recipients: the first installment in the amount of $300,000.00 within 30 days of the date of service of this order; the second in the amount of $200,000.00 within one year and 30 days of the date of service of this order; and, the third in the amount of $100,000.00 within two years and 30 days of the date of service of this order. In the event any default in payment occurs and continues for 10 days beyond the due date of payment and the giving of notice of such default, the entire remaining amount shall then become due and payable.

VII

It is further ordered that for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and upon request

BEST COPY AVAILABLE

make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

2. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this order.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IX

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to all distributors of products manufactured or marketed by respondent.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement containing a Consent Order from General Nutrition, Inc., a Pennsylvania corporation (the "respondent"). Under this Agreement, the respondent is prohibited from making certain false claims and will cease and desist from making certain other claims for products, unless it possesses reliable and competent scientific evidence that substantiates such claims. The consent Order also requires the respondent to pay a total of $600,000 to certain organizations for scientific research.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during the period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw its acceptance of the Agreement and take other appropriate action, or make final the proposed Order contained in the Agreement.

The proposed Consent Order is intended to settle two separate matters involving the respondent. The Commission issued an administrative Complaint (D. 9175) against the respondent on March 20, 1984, alleging that the respondent made false and unsubstantiated claims that its "Healthy Greens" food supplement and the ingredients in "Healthy Greens" were effective in reducing the risk of cancer. After a trial on the merits before an Administrative Law Judge ("ALJ"), the ALJ ruled that complaint counsel (attorneys from the FTC's Division of Advertising Practices) had proved all the allegations of the Complaint. Respondent appealed this ruling to the Commission. After post-trial appeal briefs were filed by the respondent and complaint counsel, but before oral argument, a proposed Amended Complaint and Consent Agreement were proferred to the Secretary of the Federal Trade Commission together with a Joint Motion to Withdraw from Litigation. The Commission withdrew the matter from litigation on February 4, 1987.

In addition to this litigated matter, the FTC's Chicago Regional Office has conducted an investigation of the respondent concerning advertisements for six food supplements: "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," the "24 Hour Diet Plan," "L-Ornithine" and "L-Arginine."

The Amended Complaint accompanying the proposed Consent Order alleges that in connection with promoting "Healthy Greens" and the six products that were the subject of the Chicago Regional Office investigation, the respondent engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act and that the respondent disseminated false advertisements in violation of Section 12 of the Federal Trade Commission Act. According to the Amended Complaint, the respondent falsely represented that: (1) A 1982 Report of the National Academy of Sciences/National Research Council, entitled, *Diet, Nutrition and Cancer*, supported the claim that use of food supplements such as "Healthy Greens" was associated with a reduction in the incidence of certain cancers in humans; (2) research indicated that Vitamin E plays an important role in reducing the risk of cancer; (3) use of Healthy Greens is associated with a reduction in the incidence of certain cancers in humans; and (4) Vitamin E plays an important role in reducing the risk of cancer. The Complaint alleges that these first two claims were false and that the last two claims were unsubstantiated.

The Amended Complaint also alleges that respondent's advertisements were deceptive because respondent's claims that one or more of the other six products—"Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," the "24 Hour Diet Plan," "L-Ornithine" and "L-Arginine"—could increase muscularity and strength, "burn" fat or "expand" life were false and unsubstantiated.

The Consent Order contains provisions designed to prevent the respondent from engaging in similar allegedly illegal acts and practices in the future.

Part I of the Order prohibits the respondent from representing, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society or the United States Government or any finding contained in the report entitled, *Diet, Nutrition and Cancer*, supports the claim that use of "Healthy Greens" or a substantially comparable product is associated with a reduction in incidence of any type of cancer.

Part II of the Order prohibits the respondent from misrepresenting the purpose, content, sample reliability, results or conclusions of any scientific test, research article or any data with respect to any product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

Part III of the Order prohibits the respondent from misrepresenting that "Challange Growth and Training Vita-Pak," "Challange Free Form Amino Acids," "Life Expander Growth Hormone Releaser" and the "24 Hour Diet Plan," or any free form amino acid nutrient supplement containing one of three specified amino acids, will: (1) Stimulate greater production or release of human growth hormone in users than in non-users; (2) aid a user in achieving greater or faster muscular development than a non-user; (3) "burn" away fat or otherwise alter human metabolism to use up or "burn" stored fat rather than carbohydrates, or aid a user in attaining greater weight loss during sleep than a non-user; or (4) expand, extend or prolong life, or retard aging.

Part IV of the Order prohibits the respondent from using the brand name or description "Growth Hormone Releaser" unless the respondent can substantiate the claim inherent in use of that name or description.

Part V of the Order prohibits the respondent from representing, without adequate substantiation, that any product will: (1) Cure, treat, prevent or reduce ~~the risk of developing~~ any disease in humans; (2) assist or enable a user to lose or control weight or fat, or suppress appetite; (3) expand, extend or prolong life or retard aging; or (4) aid a user in achieving greater or faster muscular development than a non-user or aid a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user. Part V of the Order, however, does not apply to label or package representations contained on the products sold by respondent that are manufactured or distributed by other companies.

Part VI of the Order requires the respondent to pay a total of $600,000 over approximately a two-year period equally to the American Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds are to be used for research or fellowships in the fields of nutrition, obesity, or physical fitness.

Part VII of the Order requires the respondent to: (1) Retain records that respondent contends support any future advertising representation covered by the Consent Order; and (2) retain records that contradict any such representation.

Part VIII of the Order requires the respondent to give the Federal Trade Commission prior notification of any changes in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect its compliance obligations under the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order, or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 88-6438 Filed 3-23-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on and Amendment to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of amendments submitted by the State of Kansas to amend its permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments to Kansas' regulations are intended to render Kansas' regulations consistent with the revised Federal regulations contained in 30 CFR Chapter VII. The proposed regulation changes are in the areas of definitions, hydrology, coal exploration, approximate original contour, coal waste disposal, revegetation success, land use, protection of cultural resources and lands unsuitable for surface mining.

This notice sets forth the times and locations that the Kansas program and proposed amendments to that program are available for public inspection, the comment during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Kansas' proposed modification of its program not received on or before 4:00 p.m. c.s.t. on April 25, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on April 18, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of the business on or before April 8, 1988. If no one has contacted Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106. Copies of the Kansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. c.s.t., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamtion and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762; Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 **Federal Register** (46 FR 5892). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 916.10, 916.12, 916.15, 916.16, and 916.20.

II. Submission of Amendments

On January 28, 1988 (Administrative Record No. KS-407) the State of Kansas submitted to OSMRE amendments to its approved regulatory program. The proposed regulations would amend the Kansas Administrative Regulations

(K.A.R.) of the Kansas Mined Land Conservation and Reclamation Board (MLCRB).

The Kansas MLCRB has incorporated by reference certain Federal regulations set out in 30 CFR Parts 701 through 817 as they existed on July 1, 1987. The list of amendments proposed to OSMRE contains the following regulations: K.A.R. 47–2–75 Definitions, K.A.R. 47–3–42 Application for mining permit, K.A.R. 47–7–2 Coal exploration, K.A.R. 47–9–1 Performance standards, K.A.R. 47–10–1 Underground mining, and K.A.R. 47–12–4 Land unsuitable for surface mining.

These revisions are proposed by the State of Kansas in response to 14 required program amendments placed on the Kansas program at 30 CFR 916.16 in the **Federal Register** (52 FR 19502) dated May 26, 1987. The revisions are also in response to a letter (Administrative Record No. KS–395) under 30 CFR Part 732 from OSMRE dated June 9, 1987 concerning the protection of historic properties during coal exploration as required in the final rule published by OSMRE in the **Federal Register** dated February 10, 1987 (52 FR 4244).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Kansas satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "Dates" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. c.s.t. April 8, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons present in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: March 9, 1988.

[FR Doc. 88–6470 Filed 3–23–88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–88–02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Port of Miami, the Coast Guard is considering a change to the regulations governing the Dodge Island drawbridges at Miami, Florida by permitting an extension of the existing regulation and allowing the draw to remain closed during certain periods. This proposal is being made because periods of peak vehicular traffic have been identified. The proposed regulations would be in effect only until the newly permitted high-level fixed bridge between the mainland and Dodge Island is constructed and opened to vehicular traffic. Construction of this new bridge is scheduled to begin in approximately two to three months and completion is expected to be accomplished by March 25, 1991. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Brodie Rich, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Dodge Island drawbridges presently open on signal, except that, from 7:15 a.m. to 5:45 p.m. Monday through Saturday, except federal holidays, the drawbridges need open only on the quarter-hour and three quarter hour. Highway traffic data shows that two peak periods of vehicular traffic occur during the arrival and departure of passenger cruise vessels. The Port of Miami wants closed periods on Saturdays and Sundays to accommodate these peak vehicular traffic movements. The vehicular traffic counts support closed periods during morning and afternoon peak periods on Saturdays. Therefore, the Coast Guard is proposing specific closed periods on Saturdays. During these closed periods, vessels would have the option of diverting around Dodge Island via Government Cut, a distance of 5.85 statute miles. Drawbridge openings and highway traffic data do not justify similar closed periods on Sundays. Vehicular traffic is approximately one-half of that experienced on Saturdays and the number of vessels transiting the ICW requiring draw openings is much greater.

However, to eliminate back-to-back draw openings, the Coast Guard is proposing to extend the existing weekday regulations to include the peak traffic periods on sundays. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261(pp) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St Marys River to Key Largo.

* * * * *

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that from 7:15 a.m. to 5:45 p.m. Monday through Saturday except federal holidays and from 9:15 a.m. to 2:15 p.m. on sundays, the draws need open only on the quarter-hour and three quarter-hour. From 9:20 a.m. to 11:10 a.m. and from 12:20 p.m. to 2:10 p.m. on Saturdays, the draws need not open.

* * * * *

Dated: March 9, 1988.

M. J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 88–6469 Filed 3–23–88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone; Pacific Ocean Between Point Sal and Point Conception, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which established a danger zone in the waters of the Pacific Ocean near Vandenberg Air Force Base, California, by deleting the requirement for periodic review of the regulations. These proposed amendments will, if approved, establish the danger zones for an infinite period of time without scheduled reviews.

DATE: Written comments must be submitted on or before April 25, 1988.

ADDRESS: HQDA, CECW-OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Rader at (213) 894–5606 or Mr. Sam Collinson at (202) 272–1782.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her address, identify this notice and give the reasons for the comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and the Corps of Engineers determines that the opportunity to make oral presentations will aid the rulemaking process.

In accordance with regulations presently promulgated in 33 CFR 334.1130(b)(11), the danger zone regulations shall be in effect until further notice, but a 5-year review was required during September 1987. The Corps of Engineers and the Air Force have completed the required 5-year review of the regulations. The danger zones continue to be essential for Air Force operations and the regulations are presently adequate. We do not however, see a continuing need for specific dates to review the regulations. The Corps of Engineers periodically reviews these regulations as part of its normal maintenance program. The Air Force is also required to notify the Corps if conditions change sufficiently to warrant amending the regulations or deleting the regulations when appropriate.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and provisions of Executive Order 12291 do not apply. The Corps of Engineers certifies that if adopted, this proposal will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

Accordingly, the Corps of Engineers proposes to amend § 334.1130(b)(11) by deleting the 2nd sentence which reads "They shall be reviewed again during September 1987" as set forth below.

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 STAT. 266; (33 U.S.C. 1) and 40 STAT. 892; (33 U.S.C. 3)

2. Section 334.1130 (b)(11) is revised to read as follows:

§ 334.1130 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.

* * * * *

(b) * * *

(11) The regulations in this section shall be in effect until further notice.

Date: March 2, 1988.

Approved:

C. Hilton Dunn, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 88-6389 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 24)]

Rail General Exemption Authority; Miscellaneous Manufactured Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments.

SUMMARY: The Commission issued a Notice of Proposed Rulemaking in this proceeding at 53 FR 3900 (February 10, 1988), seeking comments on various aspects of whether the rail transportation of listed commodities should be exempt from regulation. Comments were due March 28, 1988. At the request of certain parties the comment due date is extended to May 16, 1988.

DATE: Comments are now due May 16, 1988.

ADDRESS: An original and 10 copies of any comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert Lundy, (202) 275-6653, [TDD for Hearing Impaired: (202) 275-1721].

Decided. March 17, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6361 Filed 3-23-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing on the Proposed Endangered Status for the Independent Valley Speckled Dace and the Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of Public Hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held for the proposed determination of endangered status for the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*). The former is known from only two small springs in northwestern Nevada and the latter from only one spring in the same area. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. The public hearing will allow comments on this proposal to be submitted from all interested parties.

DATE: The public hearing will be held from 7:00 to 9:00 p.m. on Thursday, April 7, 1988.

ADDRESSES: The public hearing will be held at the Wells High School, 115 Lake Avenue, Wells, Nevada 89835. Written comments and materials will still be accepted until April 25, 1988, and should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503-231-6150 or FTS 429-6150).

SUPPLEMENTARY INFORMATION:

Background

The Independence Valley speckled dace and Clover Valley speckled dace are very limited in distribution in northwestern Nevada. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. A proposal of endangered status for both fish was published in the **Federal Register** (52 FR 35282) on September 18, 1987. Extensions of the comment period were published in the **Federal Register** (52 FR 45976) on December 3, 1987, and (53 FR 5434) on February 24, 1988. The comment period now closes April 25, 1988.

On December 15, 1987, and January 15, 1988, a public hearing on this proposal was requested by Mr. Norman Sholes and Mr. Robert Wright, both residents in the area that the dace occur.

The U.S. Fish and Wildlife Service will hold a public hearing on proposed endangered status for the Independence Valley speckled dace and Clover Valley speckled dace from 7:00 to 9:00 p.m., on Thursday, April 7, 1988, at the Wells High School, Wells, Nevada.

Author

The primary author of this notice is Mr. Wayne S. White, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503-231-6150 or FTS 429-6150).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq;* Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 18, 1988.

Wally Steuke,

Acting Regional Director.

[FR Doc. 88-6405 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Regulation of the Administrative Conference of the United States. The committee will meet to discuss consultants Clayton P. Gillette and Thomas D. Hopkins' project on "Federal Agency Valuations of Human Life."

DATE: Friday, April 15, 1988 at 10:00 a.m.

Location: Steptoe and Johnson, 4th Floor Large Conference Room, 1330 Connecticut Avenue, NW., Washington, DC.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, Staff Attorney, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers,

Research Director.

March 21, 1988.

[FR Doc. 88-6437 Filed 3-23-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agriculture Commodities To Be Made Available for Donation Overseas

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice increases the quantities of agricultural commodities owned by the Commodity Credit Corporation to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1988.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 447-3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)) ("Section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986-1990, not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress that there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or the Secretary determines that the restrictions in furnishing commodities under section 416(b)(3) prevent making available commodities in such quantities.

I have previously determined that a total of 1,600,000 metric tons of grains and oilseeds shall be made available for donation under section 416(b) during fiscal year 1988. This determination was published in the **Federal Register** on November 12, 1987 (52 FR 43375). The purpose of this notice is to inform the public that such previous determination is revised by increasing the quantity of corn and sorghum to be made available to 1 million metric tons and 500,000 metric tons, respectively. This increase is intended to enable CCC to meet additional commodity donation requests.

Determination

Accordingly, I have determined that 2,550,000 metric tons of grains and oilseeds shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1988. The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains and oilseeds:	
Wheat	1,000,000
Corn	1,000,000
Sorghum	500,000
Soybeans	50,000
Total	2,550,000

Done at Washington, DC, this 18th day of March 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-6418 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

Tobacco Inspection; Grower's Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period March 28-April 1, 1988, for producers of flue-cured tobacco who sell their tobacco at auction in Carthage and Aberdeen, North Carolina, to determine producer approval of the designation of the Carthage and Aberdeen tobacco markets as one consolidated auction market.

DATE: The referendum will be held March 28-April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250; Telephone Number (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated Carthage and Aberdeen, North Carolina, auction market. Carthage and Aberdeen, North Carolina, were separately designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On September 8, 1987, an application was made to the Secretary of Agriculture to consolidate the designated markets of Carthage and Aberdeen. This application, filed by the warehousemen in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*, 7 CFR Part 29). On October 28, 1987, a public hearing was held in Aberdeen, North Carolina, pursuant to applicable provisions of the regulations under the Tobacco Inspection Act. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, together with other available information which was officially noticed at the hearing relating to the application filed. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 18, 1988.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of March 28–April 1, 1988. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Carthage and Aberdeen are in favor of or opposed to the designation of the consolidation market for the 1988 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Carthage-Aberdeen.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Carthage or Aberdeen auction markets during the 1987 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by March 28, 1988, should immediately contact Lioniel S. Edwards at (202) 447–2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: March 22, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88–6575 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Environmental Impact Statement; Oil and Gas Leasing in Teton-Bridger East Study Area

AGENCY: Forest Service, USDA.

ACTION: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for oil and gas leasing in the Teton-Bridger East Study Area of the Bridger-Teton National Forest located in Fremont, Park, Teton, Sublette, and Lincoln Counties, Wyoming.

SUMMARY: The National Environmental Policy Act requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action will be invited to participate in the process (scoping). Input gathered during scoping will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying the potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

J.S. Tixier, Regional Forester, Intermountain Region, U.S. Forest Service, Ogden, Utah 84401 is the responsible official. The Bureau of Land Management (BLM), Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts for issuance of the oil and gas leases.

The Draft EIS will be available for review by March 1, 1989. Public meetings on the draft document will be held following distribution, and an announced review period. Notice of the date, time, and place for the public meetings will be announced in the local media. The Final EIS is scheduled to be completed by December 22, 1989.

Written comments and suggestions concerning the analysis questions about the proposed action and environmental impact statement, or information about public meeting dates and places should be directed to Al Koschmann, Forest Engineer, Bridger-Teton National Forest, Box 1888, Jackson, Wyoming 83001, Phone (307) 733–2752.

Date: March 9, 1988.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 88–6480 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Dixon High School Flood Prevention Measure, Illinois

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dixon High School Measure, Lee County, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph Street, Champaign, Illinois, 61820, Telephone (217) 398–5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns flooding of the Dixon High School, a National Guard Armory, and adjacent recreation facilities at Page Park. The planned works of improvement include 2100 linear feet of dike and pumping facilities.

The Notice of a Finding of No Significant Impact (FONSI) has been forward to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by by contacting John J. Eckes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Harry D. Slawter,

Assistant State Conservationist.

March 16, 1988.

[FR Doc. 88–6406 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Oregon Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 6:00 p.m., on April 21, 1988, at the Hilton Hotel, 921 Southwest Sixth Avenue, Portland, Oregon 97204. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Philip Montez, Director of the Western Regional Division (213) 894–3497, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–6391 Filed 3–23–88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on April 18, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place:

Presidential Board of Advisors on Private Sector Initiatives.

Full Board Meeting

Monday, April 18, 1988, 3:15 p.m., at the United Way of America Headquarters, 701 North Fairfax Street, Alexandria, Virginia. Board Room.

Committee Meetings

Monday, April 18, 1988, 2:00 p.m., at the United Way of America Headquarters, 701 North Fairfax Street, Alexandria, Virginia. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Robert H. Brumley,

Deputy General Counsel.

Date: March 18, 1988.

[FR Doc. 88–6431 Filed 3–23–88; 8:45 am]

BILLING CODE 3510-BP-M

International Trade Administration

[A–307–701 and C–307–702]

Postponement of Final Antidumping and Countervailing Duty Determinations and Postponement of Antidumping Duty Public Hearing; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from Suramericana de Aleaciones Laminadas, C.A. (SURAL) in the antidumping investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on the request, we are postponing our final antidumping and countervailing duty determinations on certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela until not later than June 22, 1988. We are also postponing our public hearing in the antidumping duty investigation until May 20, 1988.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Martin (202–377–2830) or Roy Malmrose (202–377–2815), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 8, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 3614, February 8, 1988). This notice stated that if the investigation proceeded normally, we would make our final determination by April 18, 1988.

On February 9, 1988, SURAL requested a postponement of the final determination for 60 days pursuant to section 735(a)(2)(A) of the Act. In a letter dated March 1, 1988, SURAL stated that it was its intention to request the maximum extension for the final determination until June 22, 1988. This respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty determination until not later than June 22, 1988.

On November 2, 1987, (52 FR 42703, November 6, 1987) we granted the request of petitioner, Southwire Company, to extend the deadline date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product pursuant to section 705(a)(1) of the Act, as amended, [19 U.S.C. 1671d(a)(1)]. Accordingly, we are also postponing the date of the final countervailing duty determination until not later than June 22, 1988.

Public Comment

In accordance with 19 CFR 353.47, we will hold a public hearing in the antidumping duty investigation to afford interested parties an opportunity to comment on the preliminary determination at 10:00 a.m. on May 20, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit prehearing briefs in at least 10 copies to the Assistant Secretary for Import Administration, Room B-099, at the above address by May 13, 1988. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 353.46 and 19 CFR 355.34 not less than 30 days before the final determinations or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of these postponements, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 21, 1988.

[FR Doc. 88-6462 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Rescheduling of Public Hearing; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is rescheduling the public hearing in the countervailing duty investigation of carbon steel wire rod from Malaysia. The hearing will now be held at 10:00 a.m. on March 28, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who have requested the opportunity to participate in the hearing must submit 10 copies of the proprietary version and five copies of the nonproprietary version of the prehearing briefs to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address by 12:00 noon on March 24, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 353.46, additional written views will be considered for the final determination only if received within seven days after the hearing transcript becomes available.

FOR FURTHER INFORMATION CONTACT: Steve Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0189 or 202/377-0161.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 18, 1988.

[FR Doc. 88-6461 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held April 19 and 20, 1988, in the Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC. The April 19 meeting will convene in Room 1092 at 9:30 a.m. on April 20, the meeting will reconvene at 9:30 a.m. and continue to its conclusion in Room 1092 in the Herbert C. Hoover Building. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are especially invited on Commodity Control List entries 1584A —Oscilloscopes and 1533A —Spectrum Analyzers.
4. Public discussion on any other matters related to activities of the Electronic Instrumentation Technical Advisory Committee.

Comments should consider the need for revision (strengthening relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

5. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 21, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-6450 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DT-M

Joint Meeting of the Electronic Instrumentation Technical Advisory Committee and the Semiconductor Technical Advisory Committee; Partially Closed Meeting

A joint meeting of the Electronic Instrumentation Technical Advisory Committee and Semiconductor Technical Advisory Committee will be held on April 21, 1988, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC. The meeting will convene in Room 4830 at 9:30 a.m.

General Session

1. Opening remarks by the Chairmen.
2. Public comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1529A—Microprocessor and Microcomputer Development Instruments or Systems;
CCL 1355A—Automated Test Equipment.

3. Any other matters of mutual interest to the Semiconductor Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committees. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 21, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-6451 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Application for the U.S. Army Health Professions Scholarship Program; DA Form 4628; and OMB Control number 0702-0028.

Type of Request: Extension.

Annual Burden Hours: 2,000.

Annual Responses: 2,000.

Needs and Uses: Applicants for the U.S. Health Professions Scholarship Program must submit information requested so that in the selection process all pertinent information can be reviewed and selection for scholarship support made on a competitive basis.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88-6463 Filed 3-23-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Civilian Marksmanship Program; DA Forms 1271, 1271-1, 1271-2, 1272, 1273 & 1274; and OMB Control Number 0702-0043.

Type of Request: Extension.

Annual Burden Hours: 100.

Annual Responses: 100.

Needs and Uses: This data is used to screen applications and provide a record as required by Title 10 U.S.C. sections 4307 and 4308. The information is for congressional and internal use only to justify the support to Civilian Rifle Clubs from the Director of Civilian Marksmanship (DCM).

Affected Public: Non-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should sent to Mr. Edward Springer at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Byrum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88-6464 Filed 3-23-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Marksmanship Competition Rifle and Pistol (Individual & Team) Entry and Score Cards; DA Forms 1342, 1343, 1344, & 1345; and OMB Control Number 0702-0068.

Type of Request: Extension.

Annual Burden Hours: 216.

Annual Responses: 3,820.

Needs and Uses: DA Forms are used to record individual and team competitor scores for the annual conduct of Excellence-in-Competition (EIC) and National Matches competition. These scores are required by the Office of the Director of Civilian Marksmanship for computation and recording purposes.

Affected Public: Non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to

Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88-6465 Filed 3-23-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19 and 20 April 1988.

Times of Meeting: 0830-1630 Hours, each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on U.S. Army Aeromedical Research Laboratory; Fort Rucker, Alabama, will meet to examine the efficiency and effectiveness of the U.S. Army Aeromedical Research Laboratory. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-6476 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 21 April 1988.

Time of Meeting: 0800-1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to draft its report and make recommendations on its findings. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-6477 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property; Domestic Program

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense (DOD).

ACTION: The Department of Defense is proposing to strengthen the current qualification program for motor carriers seeking participation in the Department of Defense Domestic Household Goods Program.

SUMMARY: MTMC will require any new motor carrier seeking approval and entry into the Department of Defense Domestic Household Goods Program to certify and provide evidence to MTMC that they are capable of providing managed transportation services which will meet established standards. Motor Carriers seeking approval must submit proof of registration and insurance of their vehicles and material handling equipment, addresses of their terminal facilities, and other resources required in the movement of household goods. A change to Appendix A, the Tender of Service, of DOD 4500.34R is pending.

DATE: Comments submitted on or before April 25, 1988.

ADDRESS: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTEN: MT-PPQ-Q, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

FOR FURTHER INFORMATION CONTACT: LT Marcial B. Dumlao, SC, USN, HQMTMC, ATTN: MT-PPQ-Q, 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (703) 756-1784.

Robert F. Waldman,

Deputy Director of Personal Property.

[FR Doc. 88-6390 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Volume 57 ITGBL Rate Solicitation.

SUMMARY: For Volume 57, effective 1 October 1988, MTMC will test a new method of filing rates for household goods and unaccompanied baggage. Instead of filing a rate for the traffic channel US66 (Texas North) to GE37 (Germany North), carriers will file a rate from each personal property shipping office in US66 to GE37. The rate solicitation will contain special rate filing instructions for this traffic channel.

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT-PPC (Ms. Barbara Scott or Naomi King), Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-2385.

Joseph R. Marotta,

Colonel, U.S. Army, Director of Personal Property.

[FR Doc. 88-6382 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command MTMC), DOE.

ACTION: Volume 57 ITGBL Rate Soliciation.

SUMMARY: During Volume 57, which will be effective 1 October 1988, we will test a new procedure for filing Letters of Intent (LOI). Only those carriers who intend to set the rates or file other than administrative high rates would be required to have LOIs at all installations within a rate area by the initial filing (IF) deadline date. In addition those carriers who me-too the rate setter would be required to have full LOI rate area coverage by the me-too filing deadline. The participating carriers would not need to have full LOI rate area coverage.

Testing will be done in two rate areas, US38 (Illinois) and US64 (Louisana). The following installations would be utilized:

Barksdale AFB, LA; England AFB, LA; Naval Support Activity, New Orleans, LA; Ft Polk, LA; Chanute AFB, IL; Scott AFB, IL: Naval Training Station, Great Lakes, IL: St Louis Area Support Center, Granite City, IL; Rock Island, IL; and Ft Sheridan, IL.

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT-PPC (Mrs. Mary Sullivan or Mrs. Naomi King), Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050 (703) 756-2383.

Joseph R. Marotta,

Colonel, U.S. Army, Director of Personal Property.

[FR Doc. 88-6383 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Research Announcement; Solicitation for Laser Fusion Research Proposals

The Nevada Operations Office, Department of Energy (DOE), invites any university or other institutions of higher education, not-for-profit or for-profit organizations, or other entity to submit competitive proposals for a contract for the conduct of basic research experiments in high-energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics. The project period for which DOE expects to provide funding for an approved project is one year.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments in areas such as plasma physics, spectroscopy of high ionized atoms, laboratory astrophysics, inertial fusion, fundamental physics, materials science, and biology and chemistry.

The Laboratory for Laser Energetics was established in 1970 to investigate the interaction of high power lasers with matter. It is the home of: OMEGA, a 2.5 trillion watt, 24-beam laser system (at 0.35 um) and the Glass Development Laser (GDL) a 250 billion watt, single-beam prototype for OMEGA (at 0.35 um).

DOE has designated these elements of the Laboratory as the National Laser User's Facility, with the aim of making this unique research tool available to qualified researchers nationwide. The NLUF is funded by DOE and maintains and operates the facility which is available for scientific collaboration and for assistance with user experiments. Outside researchers are encouraged to collaborate with staff members.

The NLUF offers to the scientific community its capabilities for laser matter interaction experiments or for using the short, 100 picosecond, pulses of laser light, x-rays, or neutrons for probing the structure of matter.

For more technical information about the facilities and potential collaboration at the NLUF please contact: James Knauer, Manager, National Laser User's Facility, Laboratory for Laser Energetics, University of Rochester, 250 East River Road, Rochester, NY 14623, Telephone No. 716-275-2074.

I. Definitions

Basic Research: Basic research means research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any immediate application of that knowledge.

II. Proposals

An original and 12 copies of an initial proposal for new work must be submitted to Robert Clemensen, Contracting Officer Representative, Nevada Operations Office, P.O. Box 98518, Las Vegas, Nevada, 89193-8518 (Phone: 702-295-1070).

III. Information To Be Provided in Proposals

Each proposal should include the following information:

A. Basic Information

- Name and address of the offeror.
- If an organization, indicate type, e.g., profit, not-for-profit, educational institution, small business, minority owned, etc.
- Name(s) and telephone number(s) of the offeror's technical and business personnel whom the Department may contact for negotiation purposes;
- Names of any other Federal agencies or other parties who have received (or will be receiving) a proposal for the same effort or activity and/or who are (or will be) providing or receiving funds for the effort or activity;
- Date of submission; and
- Signature of a responsible official or authorized representative of the organization or a person authorized to contractually obligate the organization.

B. Detailed Information

- A detailed description of the proposed project, including the objectives of the project, its relationship to and significance within its field of research and proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.C. below.
- Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the proposer, and the cost-sharing arrangements, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)
- A budget with supporting justification sufficient to evaluate the costs of the proposed project. (Standard Form 1411 may be used.) This item should be submitted with the proposal, but as a detached part.
- The proposal must be signed by the individual who is applying or by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

C. Other Information for Proposers

Proposals may be submitted to DOE at the address specified in Section III of this Announcement at any time. Prior to the closing date of 2:00 p.m. local prevailing time, December 15, 1988. Proposals received after the closing date shall not be considered for funding during fiscal year 1989.

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

Approximately $600,000 will be allocated to this program and multiple awards are anticipated. However, DOE reserves the right to fund, in whole, or in part, any, all, or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

D. Continuation/Renewal Proposals

Proposals for a continuation or a renewal award must be submitted in an original and seven copies to the DOE office cited in Section III above. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. The renewal proposal should describe the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

IV. Proposal Evaluation and Selection

A. DOE shall evaluate the proposals using scientific peer review against the criteria set forth in C. below. DOE will use this external peer review as the basis of the Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available. Selections for award will be made by a designated DOE official (with due regard for conflict of interest and protection of proposal information).

B. Evaluators shall be selected on the basis of their professional qualifications and expertise in the field of research.

C. DOE shall evaluate new and renewal proposals based on the following criteria which are approximately of equal weight:

- The overall scientific and technical merit of the project;
- The relevance of the stated objectives to the field of research;
- The appropriateness of the proposed method or approach;
- The competence and experience and known past performance of the proposer, principal investigator and/or key personnel;
- The adequacy of any necessary equipment which is to be provided by the proposer;
- The appropriateness and adequacy of the proposed budget; and
- Other appropriate factors, which may be established and set forth by DOE by a modification to this Research Announcement or in a superseding Research Announcement.

D. In addition to the evaluation criteria set forth in paragraph C., if a proposer is currently under an NLUF contract, DOE shall consider the proposer's performance under the existing contract during the evaluation of a renewal or continuation proposal.

E. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a proposer. Such negotiations are not a commitment that DOE will make an award. DOE may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

Dated: March 10, 1988.

Nick C. Aquilina,

Manager, Nevada Operations Office.

[FR Doc. 88-6460 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, April 28, 1988, 9 am.

Place: Windsor Court Hotel, Board Room, 300 Gravier Street, New Orleans, Louisiana.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Discuss study assignment.
—Review task group assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88-6454 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order; Salomon Inc

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Salomon Inc (Salomon) executed on January 22, 1988, and published for comment in 53 FR 3237 on February 4, 1988.

As required by 10 CFR 205.199J DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Laurence J. Hyman, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 586-8900.

The full text of the Consent Order was published in the **Federal Register** in Vol. 53 commencing at 3238. Copies may also be obtained in person at DOE's Freedom of Information Reading Room, Room IE-190, Forrestal Building 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On February 4, 1988, DOE published notice in the **Federal Register**, Vol. 53 at page 3237, announcing the execution of a Proposed Consent Order between Salomon and DOE. The text of the Proposed Consent Order accompanied that Notice, which also summarized the relevant facts, and a Press Release issued at the same time summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of Salomon's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) tentatively concluded that Salomon had overcharged in certain crude oil resale transactions during the period August 19, 1973 through December 31, 1977. Salomon disputed ERA's audit findings and denied any overcharge liability. No formal allegations of violations were issued against Salomon and the Consent Order resolves these matters.

As consideration, Salomon has agreed to pay $16.25 million within 30 days of the effective date of the Consent Order. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the amounts so paid.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the

Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on March 18, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88-6458 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-288-000 et al.]

Southern California Edison Co. et al., Electric Rate and Corporate Regulation Filings

March 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER88-288-000]

Take notice that on March 14, 1988, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following contract, which has been executed by Edison and the Valley Electric Association, Inc. (VEA):

Contract for Exchange of Electric Service

Under the terms and conditions of the Contract, Edison will deliver to VEA and VEA will deliver to Edison capacity and energy to serve certain portions of each utilities' isolated service areas along the state boundary between California and Nevada which are relatively close to the lines of the other utility.

The Contract was to become effective September 30, 1978, and inasmuch as service has been provided under the conditions of this contract for the mutual benefit of both utilities' ratepayers, Edison requests waiver of notice requirements and an effective date of September 30, 1978.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Valley Electric Association, Inc.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power and Light Company

[Docket No. ER88-287-000]

Take notice that on March 14, 1988, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Twenty-One to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light and Fort Pierce Utilities Authority (Fort Pierce) (Rate Schedule FERC No. 68).

FPL states that under Amendment Number Twenty-One, FPL will transmit power and energy for Fort Pierce as is required in the implementation of its interchange agreement with the Utility Board of the City of Key West, Florida.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served upon Fort Pierce.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Company

[Docket No. ER88-291-000]

Take notice that on March 14, 1988, Central Hudson Gas & Electric Company (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 17, 1988 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $6,060.58 to $5,354.75 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $6,036.82 to $3,976.77 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $3,572.66 to $3,706.63 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice of requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1988.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East Binghamton, NY 13902.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Alabama Power Company

[Docket No. ER88-290-000]

Take notice that on March 14, 1988, Alabama Power Company tendered for filing five Transmission Service Delivery Point Agreements specifying fifty-one additional delivery points to be covered by the Agreement between Alabama Power Company and Alabama Electric Cooperative, Inc., for Transmission Service to Distribution Cooperative Members of AEC which was dated August 28, 1980 (Agreement). This Agreement has been designated Rate Schedule FERC No. 147 by the FERC. The purpose of these agreements is to provide for the commencing of transmission service at these delivery points under the Agreement. Transmission Service will commence under the Agreement on June 1, 1988 for Central Alabama Electric Cooperative Inc.'s Bradford, East Chilton, Enterprise, Evergreen, Friendship, Kingston, Maplesville, Rockford, Speigner, Statesville, Stewartville, Thorsby, Titus, Union Grove, Wallsboro, and Wetumpka delivery points; for Coosa Valley Electric Cooperative, Inc.'s Childersburg, Eureka, Lincoln, New London, Ohatchee, Stewarts Crossroads, Stockdale, and Talladega delivery points; for Dixie Electric Cooperative, Inc.'s Arrowhead, Cecil, Halstead, LeGrand, Notasulga, Pintlalla, Union Springs, Woodley and "Y" Community delivery points; and for Tallapoosa River Electric Cooperative, Inc.'s Blackwater, Browns-Uchee, Cheaha Mountain, Cottonton, Elias, Ft. Mitchell, Hurtsboro, LaFayette, Mellow Valley, New Site, Opelika, Penton, Providence, Pyriton, Randolph, Sturkie and Tallapoosa River delivery points. Also, transmission service will commence under the Agreement on July 1, 1988 for Clarke-Washington Electric Membership Corporation's Camden delivery point. Effective June 1, 1988, Alabama Power Company filed Twenty-Fifth Revised Sheet No. 37 and Twenty-First Revised Sheet No. 38 to its FERC Electric Tariff, Original Volume No. 2 and withdrew, effective July 1, 1988, Twenty-First Revised Sheet No. 38 to reflect the termination of wholesale service at the above listed delivery points concurrent with the commencement of transmission service as outlined above.

Copies of the filing were served upon Alabama Electric Cooperative, Inc.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Detroit Edison Company

[Docket No. ER88-289-000]

Take notice that on March 14, 1988, Detroit Edison Company (Detroit Edison) tendered for filing a letter agreement dated January 13, 1988, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers

Power Company, the Detroit Edison Company, and the Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as the Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 14.035% for service rendered on and after January 1, 1988, and is subject to redetermination during the term of Amendment No. 6 in accordance with section 7.12. Detroit Edison stated the redetermination reflects the reduction of the effective corporate income tax rate from 40% to 34% for 1988; the effect being a reduction of 1.835% in the fixed charge rate from that used in the initial agreement. This determination will decrease the monthly demand charge to $427,023 in accordance with sections 7.11 and 7.12 of Service Schedule G.

Detroit Edison states that copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company (Centerior Energy), General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service Commission.

Detroit Edison requests waiver of the notice requirements to permit a retroactive effective date of January 1, 1988 for the 14.035% fixed charge rate.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6466 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM88-4-000 and RM88-5-000]

Intent To Prepare Environmental Impact Statement and to Hold Scoping Session

Issued March 18, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of intent to prepare environmental impact statement and to hold scoping session.

SUMMARY: This notice informs the public that the Federal Energy Regulatory Commission (Commission) intends to hold a scoping session on Monday, April 18, 1988, in order to prepare an environment impact statements (EIS) for two notices of proposed rulemakings (NOPRs) issued by the Commission on March 16, 1988. This scoping session is being held to discuss the environmental impact of the issues associated with two NOPRs. One NOPR proposes regulations to govern a class of non-traditional utility suppliers, called independent power producers (IPPs) and the second NOPR proposes regulations to govern bidding programs under the Public Utility Regulatory Policies Act of 1978 (PURPA). Interested persons and agencies are encouraged to attend these meetings and provide comments that will assist Commission's staff with the determination of issues to be addressed in the EIS.

EFFECTIVE DATE: March 18, 1988.

DATE AND LOCATION: The scoping session will be held on Monday, April 18, 1988, and will be comprised of two meetings to be held in two separate locations—Baltimore, Maryland, and Albuquerque, New Mexico. The Commission will issue a second notice in the near future detailing the exact time and location for each meeting in both cities.

FOR FURTHER INFORMATION CONTACT:

Michael Schopf, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8002

Bernard W. Tenebaum, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8100.

SUPPLEMENTARY INFORMATION:

In the matter of Regulations Governing Independent Power Producers; Docket No. RM88-4-000 and Regulations Governing Bidding Programs; Docket No. RM88-5-000.

Notice of Intent To Prepare Environmental Impact Statement and to Hold Scoping Sessions

March 18, 1988.

On March 16, 1988, the Federal Energy Regulatory Commission (Commission) issued two notice of proposed rulemaking (NOPRs). One NOPR proposes regulations to govern a class of non-traditional utility suppliers, called independent power producers (IPPs). A second NOPR proposes regulations to govern bidding programs under the Public Utility Regulatory Policies Act of 1978 (PURPA). The bidding NOPR would authorize state regulatory authorities and nonregulated electric utilities to implement bidding procedures as a means of establishing rates for power purchases from qualifying facilities (QFs) under section 210 of PURPA.

The Commission has determined that these proposals may constitute a major Federal action significantly affecting the quality of the human environment. The Commission therefore intends to prepare a single environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss the environmental impact of the issues associated with both NOPRs. The scoping session will be comprised of two meetings to be held in two separate locations on Monday, April 18, 1988. One scoping meeting will be held in Baltimore, Maryland. Another scoping meeting will be held in Albuquerque, New Mexico. The Commission will issue a second notice containing the exact time and location for each meeting in both cities in the near future.

Scoping sessions are utilized by Commission staff to: (1) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement; (2) present those environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the project; (3) receive input from the public and experts on the issues presented; and (4) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS.

Participants in the scoping sessions may give their comments orally or in writing. Written comments regarding the environmental effects of the NOPRs will be accepted during the scoping sessions or may be filed with the Commission on or before Tuesday, May 3, 1988. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The scoping sessions will be recorded by a stenographer and all statements (oral or written) will become part of the public record.

A participant that wishes to reserve time to speak at the meetings or obtain information about the scoping process should contact Michael Schopf, Office of the General Counsel (202) 357-8002 or Bernard W. Tenenbaum, Office of Economic Policy (202) 357-8100.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6468 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-344-001]

Central Phosphates, Inc.; Application for Commission Recertification of Qualifying Status as a Cogeneration Facility

March 18, 1988.

On February 1, 1988, Central Phosphates, Inc. (Applicant), of P.O. Drawer L, Plant City, Florida 33566 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the phosphate fertilizer facility in Plant City, Florida. The facility will consist of four sulfuric acid plant heat recovery units and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used to produce concentrated phosphoric acid and in the fertilizer manufacturing processes such as reactor heating, steam line tracing and storage tank heating. The net electric power production capacity of the facility will be 34,945 kW. The primary energy source is waste heat produced from the exothermic process in the production of sulfuric acid. The installation of the facility was expected to commence on or about April 1, 1987.

By order issued July 16, 1987, the Commission granted certification of the facility as a cogeneration facility (40 FERC ¶ 62,038).

The recertification is requested due to the change of ownership from CF Industries, Inc. to Central Phosphates, Inc. All other facility characteristics remain the same.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6482 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-286-000]

Cascade Natural Gas Corp. (Complainant) v. Northwest Pipeline Corp., Chevron Chemical Co., and Intermountain Gas Co. (Respondents); Complaint

March 21, 1988.

Take notice that on March 9, 1988, Cascade Natural Gas Corporation (Cascade), P.O. Box 24464, Seattle, Washington 98124, filed in Docket No. CP88-286-000 pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure and sections 7, 14 and 16 of the Natural Gas Act, a complaint and motion for restraining order.

Cascade complains that Northwest Pipeline Corporation (Northwest), Chevron Chemical Company (Chevron), and Intermountain Gas Company (Intermountain) are engaging in the unlawful transportation of natural gas in interstate commerce and that Chevron is bypassing natural gas service historically rendered to Chevron by Cascade. Cascade requests that the Commission order Northwest and Cascade to cease and desist from the transportation of natural gas in interstate commerce for which they do not have requisite authority. Cascade also requests an order restraining the unlawful conduct pending a formal hearing on the issues raised by Cascade.

Cascade states that Northwest has informed Cascade that Northwest is performing transportation service pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) for Chevron, which is an end-user connected directly to Northwest's system at an ammonia plant located near Finley, Washington (Finley plant). Cascade states that Northwest is authorized to sell and deliver gas to Chevron at the Finley plant, but has no certificate authorization under the Natural Gas Act to transport and deliver third-party gas to Chevron at the Finley plant.

Cascade further states that Chevron also owns another industrial facility near Kennewick, Washington (Kennewick Plant) which Cascade has served since 1959. The gas supply for the Kennewick Plant has historically been purchased by Cascade from Northwest and been resold to Chevron; more recently, Cascade has purchased alternate, lower-cost supplies for Chevron and has transported to the Kennewick plant gas supplies obtained by Chevron on its own, it is explained.

Cascade asserts that Chevron has recently constructed a high-pressure gas transmission pipeline to transport gas from the Finley plant to the Kennewick plant. The pipeline is constructed on right-of-way along the Columbia River that is not owned by Chevron; the two industrial plants are not contiguous, nor are they operated as part of the same manufacturing operation, it is explained.

Cascade also states that on February 5, 1988, Northwest announced that it would begin performing transportation of natural gas on its system under NGPA Section 311 commencing February 10, 1988. Further, Cascade states that Northwest sent Cascade two letters dated February 19, 1988, stating that Northwest would provide self-implementing transportation of gas to Chevron under Part 284, Subpart B of the Commission's Regulations, with the gas being delivered to the Finley plant. Both letters indicated that transportation would be provided by Northwest on behalf of Intermountain, it is explained. Cascade states, further, that its field personnel have verified that gas is now flowing from the Finley plant through Chevron's newly constructed high-pressure pipeline to the Kennewick plant. Moreover, Cascade states, Chevron has terminated purchasing gas at the Kennewick plant. Cascade states that the loss of this sale results in the loss of approximately $24,400 per month in net revenues to Cascade.

Cascade alleges that the transportation by Northwest does not qualify as self-implementing transportation service under NGPA

Section 311, since Intermountain, a local distribution company in the State of Idaho, has to Cascade's information and belief no physical or legal connection to the transportation being provided to Chevron purportedly "on behalf of" Intermountain, nor is Intermountain receiving any benefit from the transportation. Since the "on behalf of" test of section 311 of the NGPA has not been met, Cascade argues that the transportation is not exempt from the jurisdictional requirement of the NGPA. Cascade argues that both Northwest and Chevron are transporting gas in interstate commerce within the meaning of the Natural Gas Act, without having certificates of public convenience and necessity that authorize such transportation. Cascade, therefore, requests the Commission to order Northwest and Chevron to cease such transportation and requests a restraining order of directing them to cease transportation pending a hearing on Cascade's Complaint.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before April 8, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the Complaint are also due on or before April 8, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6481 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2333-000]

George Cameron Creel; Notice of Filing

March 17, 1988.

Take notice that on March 10, 1988, George Cameron Creel filed an application pursuant to section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission for Commission authorization to hold concurrently the following positions:

Position	Name of corporation
Vice President	Baltimore Gas and Electric Company.
Director	Safe Harbor Water Power Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6487 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-125-008]

Distrigas of Massachusetts Corp.; Amended Compliance Filing

March 18, 1988.

Take notice that on March 15, 1988, Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing the below listed tariff sheets to amend its compliance filing in this docket and to include in its FERC Gas Tariff, First Revised Volume No. 1 the following:

Third Revised Sheet No. 17A
Substitute First Revised Sheet No. 23

DOMAC states that the tariff sheets are submitted as an amendment to the TS-1 compliance filing made on February 18, 1988 to comply with Commission Opinion No. 291-A. DOMAC also states that the submission of the tariff sheets is without prejudice to DOMAC's positions on judicial review of Opinion Nos. 291 and 291-A.

A copy of the filing was mailed to DOMAC's jurisdictional customers and all parties set out on the office service list in Docket No. RP85-125-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6427 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 18, 1988.

Take notice that on March 15, 1988, MIGC, Inc. tendered for filing copies of Forty-Sixth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's Rules and Regulations under the Natural Gas Act.

MIGC states that Forty-Sixth Revised Sheet No. 32 provides for a Purchased Gas Adjustment rate increase of 77.16 cents per MMBtu effective May 1, 1988 in order (1) to provide a current gas cost adjustment reflecting a 5.59 cents per MMBtu increase which is designed to permit MIGC to reflect the higher cost of gas purchases which it is currently incurring; (2) to provide an adjustment to MIGC's Unrecovered Purchased Gas Cost Account which produces a 74.23 cents per MMBtu increase over MIGC's present surcharge adjustment; and (3) to recover carrying charges on the Unrecovered Purchased Gas Cost Account. MIGC states that the single largest contributing factor to the proposed rate increase is the elimination of a large supplier refund from its unrecovered purchased gas cost account balance, which refund will have been returned to MIGC's sales customers prior to the May 1, 1988 proposed effective date of the instant PGA filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6430 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-77-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

March 18, 1988.

Take notice that on March 11, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet Nos. 21, 23, 24, 26, 27, 32, 33 and 35 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective June 1, 1988.

Natural states that the proposed sheets revise the provisions of Rate Schedule FTS to provide shippers with additional flexibility to reserve mainline capacity by allowing each shipper the option of selecting up to five secondary receipt points and five secondary delivery points. The proposed provision provides that the secondary points must be along and within the requested transportation paths established by the primary points. The Secondary receipt and delivery points shall be allowed only to the extent that they do not require additional capacity on any portion of Natural's system. Natural also states that volumes may be nominated in any mix of primary and secondary receipt and delivery points along and within the transportation paths established by the primary points. Shipper cannot use secondary points to increase the Maximum Daily Quantity levels along and within the transportation paths established by the primary points. Natural further states that the reservation charge, commodity charge and the fuel percentage will be based on the primary receipt and delivery points specified in the transportation agreement.

Natural also submitted for informational purposes only a study which indicates the amount of spare capacity and the segments on Natural's system where such spare capacity will become available if Natural's existing sales customers converted their sales contract quantities by a total of 200 MMcf per day and 500 MMcf per day to firm transportation.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective June 1, 1988, a date coincident with the proposed effective date of its Gas Supply Charge.

A copy of this filing was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6428 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-018]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 21, 1988.

Take notice that on March 14, 1988, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff Sheets:

Sixth Revised Sheet No. 1
Sixth Revised Sheet No. 14
Sixth Revised Sheet No. 84

Northwest states that these tariff sheets provide for the cancellation of Rate Schedule IS-1 as allowed by Commission order of May 31, 1985 at Docket No. RP85-13-000 *et al.* Rate Schedule IS-1 made gas available at an incentive rate to Northwest's ODL-1, PL-1 and DS-1 customers for gas purchase volumes on a monthly basis that were between a test period quantity and their contract demand on a customer by customer basis. Rate Schedule IS-1 expired by its terms on April 30, 1986. Northwest requests an effective date of April 13, 1988 with respect to the tendered tariff sheets.

A copy of the filing has been mailed to all affected customers under Rate Schedule IS-1 and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6484 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-005]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 21, 1988.

Take notice that on March 16, 1988, Southern Natural Gas Company (Southern) tendered for filing the followong tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Second Revised Sheet No. 30S
Second Revised Sheet Nos. 30U-30V
Second Revised Sheet Nos. 30X-30Z
Original Sheet No. 30Z.1
Second Revised Sheet No. 30KK
Second Revised Sheet Nos. 30MM-30NN
Second Revised Sheet Nos. 30PP-30RR
Original Sheet No. 30RR.1
Second Revised Sheet No. 30SS
Second Revised Sheet Nos. 45.23-45R.24
Second Revised Sheet No. 45R.27
First Revised Sheet No. 531.34
First Revised Sheet No. 531.41
First Revised Sheet No. 531.50
First Revised Sheet No. 531.57

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedule FT and IT. The Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Convening Technical Conference and Granting Late Interventions on November 27, 1987, pursuant to which Southern filed revised tariff sheets on December 14, 1987. On March 1, 1988, the Commission issued its Order Accepting Partially Granting Rehearing, Accepting Compliance Filing Subject to Conditions, and Establishing Hearing (Order). Ordering Paragraph (C) required Southern to file within 15 days of the date of the issuance of the Order to make revisions prescribed by the Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6483 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-75-000]

Transwestern Pipeline Co.; Tariff Changes

March 21, 1988.

Take notice that on March 15, 1988, Transwestern Pipeline Company (Transwestern) filed revised tariff sheets listed on the attached sheet. Such changes are designed to clarify and ease the administration of Transwestern's tariff provisions relative to non-discriminatory transportation services under its FTS-1 and ITS-1 Rate Schedules. Transwestern states that its filing also includes a revised form of service agreements for such services. Transwestern seeks a May 1, 1988 effective date for its proposed changes. Copies of Transwestern's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to become a party to this proceeding should on or before March 28, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix—F.E.R.C. Gas Tariff Second Revised Volume No. 1

2nd Revised Sheet No. 29
3rd Revised Sheet No. 30
3rd Revised Sheet No. 31
3rd Revised Sheet No. 32
3rd Revised Sheet No. 33
3rd Revised Sheet No. 34
3rd Revised Sheet No. 34A
1st Revised Sheet No. 34D
1st Revised Sheet No. 68A
3rd Revised Sheet No. 126
3rd Revised Sheet No. 127
3rd Revised Sheet No. 128
1st Revised Sheet No. 129
Original Sheet No. 129A
1st Revised Sheet No. 130
1st Revised Sheet No. 131
Original Sheet No. 132
4th Revised Sheet No. 133–137
Original Sheet No. 138
Original Sheet No. 139
Original Sheet No. 140
Original Sheet No. 141
Original Sheet No. 142
Original Sheet No. 143
Original Sheet No. 144
Original Sheet No. 145
4th Revised Sheet No. 146
5th Revised Sheet No. 147

[FR Doc. 88-6485 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-55-037 and RP87-7-031]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

March 18, 1988.

Take notice that on March 11, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revise Volume No. 1, copies of certain tariff sheets to revise the rates for Transco's G and OG Rate Schedules for the period commencing April 1, 1987. Transco states that the tariff sheets are intended to comply with the terms of the Commission's January 29, 1988 order in this proceeding.

Transco states that Transco made a similar filing on February 16, 1988 but included only the tariff sheets pertaining to Transco existing rates, *i.e.*, tariff sheets to be effective as of January 1, 1988. Transco states that by Letter Order dated March 2, 1988, the Commission rejected Transco's February 16 filing, based on the concern that Transco had not calculated for each appropriate period the changes to Transco's G and OG rates for the period commencing April 1, 1987.

Transco states that in the instant filing, Transco has corrected the foregoing omission in its February 16 filing by including herein tariff sheets for each appropriate date commencing April 1, 1987 when rate filings required a change to Transco's rates.

Transco states further that Transco made refunds to its G and OG customers and filed a report of such refunds with the Commission on March 2, 1988. Transco states that Transco calculated the refunds to G and OG customers based on the difference between the rates actually billed to such customers and the rates at an imputed 80 percent load factor.

Transco states that copies of this filing are available at Transco's offices in Houston, Texas, and have been mailed to Transco's jurisdictional sales customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6429 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. WH-006]

Energy Conservation Program for Consumer Products, Decision and Order Granting Waiver From Water Heater Test Procedures to Aero Environmental Limited

AGENCY: Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. WH-006] granting Aero Environmental Limited a Waiver for its models CF-32T, CF-40S, and CF-50T oil-fired water heaters from the existing DOE water heater test procedures.

FOR FURTHER INFORMATION CONTACT:

Esher R. Kweller, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9513.

SUPPLEMENTAL INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Aero Environmental Limited has been granted a waiver for its Models CF-32T, CF-40S and CF-50T oil-fired water heaters, permitting the company to use a "simulated use" test method in lieu of the "cold-start recovery" test method in the existing test procedure.

Issued in Washington, DC, March 10, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, and the National Appliance Energy Conservation Act of 1987, Pub. L. 100-12, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Section 430.27 allows the Department of Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(g), the Department shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Aero Environmental Limited (AERO) filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Aero petition and solicited comments, data, and information respecting the petition. 52 FR 46528 (December 8, 1987). No comments were received. DOE consulted with the Federal Trade Commission on January 29, 1988, concerning the Aero petition.

Assertions and Determinations

Aero filed a petition for waiver from the DOE test procedure for oil-fired water heaters. The Aero petition essentially asks for the allowance to rate its heaters in the same manner allowed to previous petitioners, Bock Water Heaters, Inc. (Bock), Ford Products Corporation (Ford), and Lochinvar Water Heater Corporation (Lochinvar).

Aero offers that its models CF-32T, CF-40S, and CF-50T oil-fired water heaters have a high termal mass which leads to unrepresentative values of recovery efficiency, and consequently, Aero seeks relief from the DOE "cold-start" recovery efficiency test methodology.

In the Bock, Ford, and Lochnivar Decision and Orders, DOE allowed the petitioners to determine the recovery efficiency of their oil-fired water heaters by use of a "simulated use" test method (50 FR 47106, November 14, 1985, 50 FR 50678, December 11, 1985, and 52 FR 46526, December 8, 1987, respectively). Accordingly, in the interest of consistency, and since DOE determined that the existing test method is inappropriate with regard to high thermal mass water heaters, today's Decision and Order allows Aero the use of the "simulated use" test method for its models CF-32T, CF-40S, and CF- 50T oil-fired water heaters.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Aero Environmental Limited (Case No. WH-006) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions, Aero Environmental Limited shall comply in all respects with the test procedures in Appendix E of 10 CFR Part 430, Subpart B. Aero shall be permitted to test its models CF-32T, CF-40S, and CF-50T oil-fired water heaters for recovery efficiency on the basis of the test procedures set forth below:

(i) Recovery Efficiency for Oil Water Heaters by the Simulated Use Method

The simulated use test involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws. For both the first and second water draws, 21.4 gallons ± 0.5 gallon of water shall be withdrawn from the water heater. The third water draw shall be of a sufficient volume to bring the total volume of water withdrawn from the water heater by means of these three water draws to 64.3 gallons ± 0.5 gallon. Water shall be withdrawn at a rate of 3.0 ± 0.25 gallons per minute for each of the three water draws. All water volume measurements shall be made using the water flow meter specified in section 2 of Appendix E of 10 CFR Part 430.

Begin the simulated use test at the time a thermal equilibrium is achieved at the maximum mean tank temperature by recording the mean tank temperature in degrees F, recording the time, recording the water meter reading, commencing measurement of electrical and fossil fuel energy consumption by the water heater and starting the first water draw. During this draw and during all subsequent draws measure the temperature of the inlet and outlet water every minute commencing one minute after the start of the draw until the draw is complete. Immediately upon the conclusion of the first water draw record the water meter reading. Determine the first draw average inlet and outlet water temperatures T_{ID1} and T_{TD1} respectively) by averaging the measured temperature during the first draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the first water draw, begin the second water draw. Immediately upon the conclusion of the second water draw, record the water meter reading. Determining the second draw average inlet and outlet water

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temperatures (T_{ID2} and T_{TD2} respectively) by averaging the measured temperatures during the second draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the second of the second water draw, begin the third water draw. Immediately upon the conclusion of the third draw, record the water meter reading and determine the third draw average inlet and outlet water temperatures (T_{ID3} and T_{TD3} respectively) by averaging the measured temperatures during the third draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of third draw, record the total amount of energy consumed by the water heater since the start of the test (Z_R), in Btu's (where 3,412 Btu equals 1 kilowatt-hour). Determine the mean of the three outlet water temperature averages (T_{TWD} and the mean of the three inlet water temperature averages (T_{IWD}), in degrees F. Determine the total amount of water withdrawn from the water heater over all three water draws (V_{WD}), in gallons, from the appropriate recorded water meter readings.

(ii) Calculation of Recovery Efficiency Using the Results of the Simulated Use Test Method

Calculate the recovery efficiency (E_R) expressed as a dimensionless quantity and defined as:

$$E_R = \frac{(k)\,(V_{WD})(T_{TWD} - T_{IWD})}{(Z_R)}$$

where:

k = 0.25 Btu per gallon °F, the nominal specific heat of water

V_{WD} = volume of water withdrawn from the water heater over all three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in gallons

T_{TWD} = mean of the outlet water temperature recordings made over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in degrees F

T_{IWD} = mean of the inlet water temperature recordings made over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in degrees F

Z_R = total amount of energy consumed by the water heater over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in Btu's.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes a final rule with regard to the testing of oil-fired water heaters with high thermal mass.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, March 10, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-6450 Filed 3-23-88; 8:45 am]

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Office of Hearings and Appeals

Cases Filed; Week of November 13 Through November 20, 1987

During the Week of November 13 through November 20, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 13 through Nov. 20, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 13, 1987	Hilt Truck Lines, Inc., Washington, DC	RR270-6	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The November 2, 1987 Decision and Order (Case No. RF 270-1464) issued to Hilt Truck Lines, Inc. would be modified regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.
Nov. 16, 1987	Centran, Inc., Sterling Heights, MI	RR270-27	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The October 26, 1987, Decision and Order issued to Centra, Inc. (Case No. RF270-1196) would be modified regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.
Do	Coline, Pennzoil & Perry Gas/New York, Albany, New York.	RM2-92, RM10-93 & RM183-94.	Request for Modification/Rescission in the Second Stage Refund Proceedings. If granted: The June 5, 1987, Decision and Order issued to New York (Case Nos. RO2-283, RO10-282, & RO183-290) would be modified regarding the State's application for refund in the Coline, Pennzoil and Perry Gas refund proceedings.
Do	Senco Marketing, Irving, Texas	KEE-0157	Exception to the Reporting Requirements. If granted: Senco Marketing would no longer be required to file certain EIA reporting forms.
Nov. 17, 1987	Environmental Task Force, Portland, Oregon	KFA-0142	Appeal of an Information Request Denial. If granted: The October 5, 1987 Freedom of Information Request Denial issued by the Chief of FOI and Privacy Act Branch would be rescinded and the Environmental Task Force would receive access to documents regarding the creation of a group to assess the current and future status of nuclear power in America.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Nov. 13 through Nov. 20, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Do	Iowa, Des Moines, Iowa	KEG-0024	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

REFUND APPLICATIONS RECEIVED

[Week of Nov. 13 to Nov. 20, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/16/87	A.P. Green Refractories Corp	RF 299-40.
11/20/87	Emerson Electric Company	RF 225-10918.
11/20/87	Emerson Electric Company	RF 250-2742.
11/19/87	Luci Petroleum, Inc	RF 299-42.
11/19/87	Lucy Vitale	RF 276-295.
11/18/87	Southland Corporation	RF 293-9.
11/13/87	Toms River Chemical Corp	RF 299-37.
11/13/87	Leach Camper Sales, Inc	RF 299-38.
11/13/87	Sealright Co., Inc	RF 299-39.
11/16/87	Charles E. Smith Companies	RD 272-219.
11/16/87	Publicker Industries	RD 272-432.
11/16/87	Bethlehem Steel Corp	RD 272-436.
11/16/87	Lukens Steel Company	RD 272-462.
11/16/87	Alcan Rolled Products Co	RD 272-472.
11/16/87	R. R. Donnelly & Sons, Co	RD 272-479.
11/16/87	Florida Steel Corp	RD 272-486.
11/16/87	Alumax Aluminum Corp	RD 272-498.
11/16/87	Reynolds Elect. & Engineering	RD 272-507.
11/16/87	Buffalo Color Corp.	RD 272-1581.
11/16/87	Abitibi-Price Corp	RD 272-1697.
11/16/87	Norton Company	RD 272-1768.
11/16/87	Hibbing Taconite Mining Co	RD 272-2233.
11/6/87	Hite Oil Company	RF 265-2585.
06/24/87	Rees Oil Company, Inc	RF 265-2586.
12/02/87	Fletcher Oil Company	RF 301-2.
11/13/87 thru 11/20/87	Crude Oil Refund Applications Received	RF 272-10205 thru RF 272-10953.
11/13/87 thru 11/20/87	Gulf Refund Applications Received	RF 300-3607 thru RF 300-3866.

[FR Doc. 88-6455 Filed 3-23-88; 8:45 am]

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Issuance of Decisions and Orders; Week of February 1 Through February 5, 1988

During the week of February 1 through February 5, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Storage Technology Corporation, 02/04/88; KFA-0157

The Storage Technology Coporation filed an Appeal from a partial denial by the Manager of the Schenectady Naval Reactors Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). The DOE found that the Manager properly withheld the sought material under Exemption 4 of the FOIA. An important issue that was considered in the Decision and Order was whether Federal Acquisition Regulation § 15.1001(c)(1)(IV) mandates the disclosure of unit prices in a contract between a government contractor and a private firm.

USA Petroleum Corp., 02/02/88; KFA-0155

USA Petroleum Corp. (USAP) filed an Appeal challenging the extent to which the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) complied with an OHA order directing that ERA release certain documents to USAP pursuant to the Freedom of Information Act. In its appeal, USAP questioned the adequacy of the ERA's search. The DOE found that the ERA's search for responsive documents was not adequate and therefore remanded the matter to the ERA for further consideration.

Interlocutory Order

Economic Regulatory Administration, 02/04/88; KRZ-0075

The Economic Regulatory Administration (ERA) filed a submission entitled "Motion for an Order Which Accords No Weight to the Affidavits of B.B. Fox and Robert E. Way or, In the Alternative, Motion for Further Discovery." The ERA's motion related to a prior OHA decision approving discovery in connection with an enforcement proceeding involving Texaco, Inc. In its motion, ERA claimed that certain affidavits provided by Texaco pursuant to the discovery decision were without factual basis and should therefore be accorded no weight in the underlying enforcement proceeding. In the alternative, the ERA sought to depose the affiants, Fox and Way. After considering the motion, the OHA determined that the affidavits of Fox and Way would be most efficiently tested through cross-examination in the context of an evidentiary hearing. Accordingly, OHA directed that an evidentiary hearing be convened to receive the testimony of Fox and Way. In all other respects, the motion was denied.

Supplemental Order

Ernest E. Allerkamp, et al., 02/04/88; KFX-0033, et al.

The DOE issued a Decision and Order implementing procedures for the distribution of $130.5 million (plus accrued interest) in crude oil overcharge funds obtained from 111 separate settlements, consent orders or remedial orders. The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the money in these cases was divided equally between the state and federal governments. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. All applications must be submitted by June 30, 1988.

Refund Applications

Beacon Oil Company/Frost Oil Company, 02/03/88; RF238-47

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the Frost Oil Company (Frost) in the Beacon Oil Company (Beacon) special refund proceeding. The DOE concluded that Frost was injured with respect to the 119,829 gallons of diesel fuel, kerosene, and solvents that the firm purchased from Beacon during the period August 19, 1973 through October 31, 1973. Accordingly, Frost was granted a refund or $3,802, representing $1,831 in principal and $1,971 in accrued interest.

Carl Broweleit, et al., 02/04/88; RF272-1355, et al.

The DOE issued a Decision and Order approving the applicatons for crude oil overcharge refunds submitted by 22 claimants. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated refined petroleum product purchase volumes for their agricultural activities. The DOE granted the claimants a total refund of $775 based on purchases of 3,869,394 gallons of refined petroleum products from August 19, 1973 through January 27, 1981

Chattanooga Area Regional Transportation Authority, et al., 02/05/88; RF272-2, et al.

The DOE issued a Decision and Order granting refunds to 19 transit authorities and municipal governments that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As a transit authority or governmental entity end-user, each applicant was found to have been injured as a result of the crude oil overcharges on the basis of the end-user presumption of injury. The refund granted was $22,034.

Chet's Cedarville Quicki Stop, 2/5/88; RF272-2047

The DOE issued a Decision and Order denying an application for crude oil overcharge refunds filed by Chet's Cedarville Quicki Stop. Chet's was a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Chet's did not demonstrate that it was injured due to the crude oil overchanges, it was ineligible for a crude oil refund.

Clouse Brothers, et al., 02/05/88; RF272-4136, et al.

The DOE issued a Decision and Order granting refunds to 50 claimants that filed Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. All claimants were agricultural end-users of petroleum products. Each claimant was found to have been injured as a result of the crude oil overcharges on the basis of the end-user presumption of injury. The refunds totaled $1,549.

Cranston Oil Service Company, Inc./Pasco La Fazia, et al., 02/05/88; RF276-31, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by purchasers of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc. Each applicant's refund was based on estimated usage of 2,500 gallons of heating oil during the consent order period. Since each applicant was an end-user of that product, each was presumed injured as a result of its Cranston purchases. The sum of the refunds approved in this Decision is $754, representing $650 in principal and $104 in interest.

Earnest Lawson, et al., 02/04/88; RF272-2160, et al.

The DOE issued a Decision and Order approving thirty-two Applications for Refund from crude oil overcharge funds. The thirty-two claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they purchased during the period August 19, 1973 through January 27, 1981. Because the claimants were end-users, they were not required to demonstrate injury. A total refund of $346 was approved in this Decision and Order.

Hartsville Oil Mill, 02/02/88; RF272-1361

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order approving the Application for Refund submitted by Hartsville Oil Mill from crude oil overcharge funds. The OHA determined that each of four petroleum products purchased by Hartsville could properly form the basis for a refund. In particular, the DOE determined that Hartsville was eligible for a refund for purchases of hexane, a hydrocarbon used by Hartsville to extract vegetable oil from soybeans. The DOE fund the hexane purchases could form the basis for a refund because that product was covered by Agency regulations. The OHA granted the claimant a total refund of $2,809 based on purchases of 14,046,895 gallons of refined petroleum products.

Howard Oil Co., Inc./Chevron U.S.A., Inc., 02/01/88; RF286-7

The DOE isued a Decision and Order granting a refund to Chevron U.S.A., Inc. from the fund which Howard Oil Co., Inc. remitted to the DOE pursuant to a Settlement Agreement. The DOE found that Chevron, a reseller of Howard middle distillates, demonstrated that it was unable to pass through Howard overcharges and was, accordingly, injured as a result of its Howard purchases. The total refund approved in this Decision was $37,106 representing $31,170 in principal and $5,936 in interest.

Husky Oil Company/Dave's Husky Service, 02/02/88; RF161-106

The DOE issued a Decision and Order concerning an Application for Refund filed by Dave's Husky Service in the Husky Oil Company special refund proceeding. Dave's, a retailer of Husky motor gasoline and diesel fuel, demonstrated that it was eligible for a refund based on the $5,000 small claims presumption. Accordingly, the firm was granted a refund of $1,861, representing $1,274 in principal and $587 in accrued interest.

Mobil Oil Corporation/A-Z Service Station, Inc., et al., 02/05/88, RF225-6318, et al.

The DOE issued a Decision granting 56 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $48,650 ($39,274 in principal plus $9,376 in interest).

Mobil Oil Corporation/Adeeb Bathish, et al., 01/04/88, RF225-1350, et al.

The DOE issued a Decision granting 42 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $42,911 ($34,638 in principal plus $8,273 in interest).

Mobil Oil Corporation/Alfred A. Rose, et al., 02/05/88, RF225-5776, et al.

The DOE issued a Decision granting 22 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $31,176 ($25,167 in principal plus $6,009 in interest).

Mobil Oil Corporation/Manor Fuel Oil Company, Inc., 02/04/88 RF225-5012, RF225-5013

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account to Manor Fuel Oil Company, Inc. Since Manor was unable to provide data demonstrating injury, its refund was limited to the small claims threshold of $5,000. The refund amount approved in this Decision and Order totalled $6,194, representing $5,000 in principal plus $1,194 in interest.

Mobil Oil Corporation/Perry Oil Company, 02/03/88, RF225-9258, RF225-9259, RF225-9260

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation escrow account filed by Perry Oil Company, a reseller of Mobil refined Petroleum products. In its refund application based on motor gasoline purchases, Perry elected to submit documentation that it was injured by Mobil's pricing practices. The DOE found that the firm's negative gasoline banks through December 1, 1974 indicated that the firm had passed through any motor gasoline overcharges incurred prior to that date. The DOE concluded that Perry was therefore eligible to receive the full volumetric refund amount only for its purchases of Mobil motor gasoline made after December 1, 1974. That refund amount was $4,284. Because this amount was less than the $5,000 small claims level and because the firm had not attempted to demonstrate injury concerning its Mobil middle distillate and motor oil purchases, the DOE also granted Perry a refund based on its purchases of those products sufficient to raise its refund principal to $5,000. The DOE further granted the firm interest of $1,194.

Saber Agency, Inc./NGL Supply, Inc., 02/05/88, RF192-22

NGL Supply, Inc. filed an Application for Refund in the Saber Energy, Inc. special refund proceeding. The DOE found that NGL Supply purchased Saber products in only four quarters of the eight-year consent order period and therefore the firm was a spot purchaser. Because NGL Supply neither demonstrated that its purchases were not spot purchases, nor rebutted the presumption that as a spot purchaser it suffered no injury, its Application for Refund was denied.

Dismissals

The following submissions were dismissed:

Name	Case No.
Bonus International, Inc	RF225-10252.
Crowley Maritime Corp	RF225-6168.
Depere Service Center	RF225-9543.
Oklahoma	KEG-0026.
Wither Oil Corp	RF225-6622, RF225-6623.
Wooleyhan Transport Co	RF225-3650.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-6453 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $860,896 obtained as a result of a Consent Order that the DOE entered into with E.D.G., Inc. (Case No. KEF-0003), a reseller-retailer of petroleum products located in Long Beach, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before April 25, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF-0003.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a December 17, 1979 consent order between the DOE and E.D.G., Inc. (EDG). That consent order settled certain disputes between the firm and the DOE concerning EDG's possible violations of DOE regulations in its sales of gasoline and No. 2 distillates. The consent order covers the period August 19, 1973 through September 24, 1976.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $860,896, funded by EDG pursuant to the consent order. The DOE has proposed that the consent order fund be disbursed to 28 purchasers identified in the Consent Order that were allegedly overcharged by EDG in its sales of gasoline and No. 2 distillates. These customers and their respective overcharge amounts are listed in the Appendix of the Proposed Decision. Under the proposed procedures, the OHA will consider refund applications only from these 28 identified EDG customers. The amount of the refund available to an applicant will be limited to the amount it was allegedly overcharged by EDG according to the Consent Order. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered product from EDG. The specific requirements for proving injury are set forth in the Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 16, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order

March 16, 1988.

Name of Firm: E.D.G., Inc.
Date of Filing: October 16, 1985.
Case Number: KEF–0003.

On October 16, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving E.D.G., Inc. (EDG). 10 CFR Part 205, Subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of EDG refund applications is authorized.

I. Background

EDG was a "reseller-retailer" of gasoline and No. 2 distillates as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period August 19, 1973 through September 24, 1976 (the consent order period), the ERA alleged that EDG overcharged its customers in sales of gasoline and No. 2 distillates.[1] In order to settle all claims and disputes between EDG and the DOE, the two parties entered into a consent order that became final on December 17, 1979. The Consent Order covers EDG's sales of motor gasoline and No. 2 distillates during the consent order period.

This Proposed Decision and Order concerns the distribution of $945,524, plus accrued interest, that EDG remitted to the DOE for direct restitution to 29 of its identified reseller-retailer customers. *See* EDG Consent Order, 44 FR 73140 (December 17, 1979).[2] Appendix D of the EDG Consent Order, which is attached as an Appendix to this Proposed Decision, sets forth the names of these EDG purchasers and the amount that each customer was allegedly overcharged by EDG.[3] Accordingly, the protential refund claimants in this proceeding are the reseller-retailer customers listed in the Appendix of this Proposed Decision.[4]

II. Proposed Refund Procedures

As indicated above, the EDG customers listed in the Appendix of this Proposed Decision constitute a finite set of potential refund claimants. We therefore propose to consider refund applications *only* from these customers. We further propose that each claimant's refund in this proceeding be limited to the amount it was allegedly overcharged by EDG. These amounts are listed next to each potential claimant's name in the Appendix. We recognize that any eligible firm could have been overcharged in amounts greater than the overcharges specified in the appendix of this Proposed Decision. Nonetheless, an eligible firm may not receive a refund in excess of the amount specified in the Appendix. It would simply be illogical to permit an applicant to receive a refund that exceeds the amount that the ERA collected with respect to the consent order firm's transactions with that applicant. Moreover, it would be inequitable to permit such a refund, because it would deplete the consent order fund at the expense of other parties entitled to direct and indirect restitution from the fund. Accordingly, on the grounds of both logic and equity, an eligible firm's maximum refund will be limited to the amount specified for that firm in the Appendix.

The allocation of potential refund amounts to claimants is only the first step in the distribution process. We propose that in order to receive a refund, an applicant must demonstrate that it did not pass on the alleged overcharges to its customers during the consent order period. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396 (1981). As we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by EDG's alleged overcharges. We will discuss these presumptions in Section II(A) below.

(A) Refund Claimants

(1) Reseller-Retailer Applicants Seeking Refunds of $5,000 or Less. We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by EDG's pricing practices. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,224–25 (1982). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of EDG products it purchased during the consent order period. *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,210 (1984). We propose that applicants seeking refunds in excess of $5,000 must follow the procedures that are outlined below.

(2) Reseller-Retailer Applicants Seeking Larger Refunds. We propose that if a firm's claim exceeds $5,000, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *See Panhandle Eastern Pipeline Co./I. V. Cole Petroleum Co.,* 10 DOE ¶ 85,051 at 88,265 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, we propose that a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from EDG. *American Pacific International,* 14 DOE ¶ 85,158 at 88,295 (1986). If a reseller-retailer that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000, plus accrued interest.

(3) Other Applicants. If any one of the firms listed in the Appendix of this Proposed Decision is not a reseller-retailer, it is still eligible to apply for a refund in this proceeding. We propose to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry where injured by EDG's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., Dorchester Gas Corp.,* 14 DOE ¶ 85,240 at 88,450 (1986). We propose, therefore, that if any EDG purchaser listed in the Appendix of this Proposed Decision is an end-user, it need only establish that it was an ultimate consumer of EDG gasoline and/or No. 2 distillates during the consent order period to receive its maximum refund amount.

(B) Distribution of the Remainder of the Consent Order Funds Attributable to EDG's Sales of Gasoline and No. 2 Distillates

In the event that money remains after all refund claims from the EDG fund have been analyzed, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986).

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any potential claimants to file a claim. In addition to publishing copies of the proposed and final decision in the **Federal Register**, copies will be provided to the EDG customers listed in the Appendix of this Proposed Decision.[5] Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Order in the **Federal Register**.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by E.D.G., Inc., pursuant to the Consent Order executed on December 17, 1979, will be distributed in accordance with the foregoing decision.

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[1] EDG ceased its petroleum operations on September 24, 1976 and was therefore subject to the regulations only until that date.

[2] On January 9, 1980, EDG remitted $945,524 in principal and $360,859 in interest to the DOE. According to our records, this total of $1,306,383 ($945,524 + $360,859 = $1,306,383), which includes principal and interest accrued theron, should be treated as principal. *See* March 21, 1988 Memo from the Office of Hearings and Appeals to the Office of the Controller at 1. Any successful claimants in this proceeding will be awarded a pro-rata share of the $1,306, 383, plus a pro-rata share of the interest that has accrued on this amount since the date of remittance.

[3] World Oil Company, Inc., one of the 29 EDG customers identified in Appendix D of the EDG Consent Order, waived its right to a refund in the EDG proceeding under a consent order it entered into with the DOE on January 19, 1984. *See* World Consent Order, 49 FR 2290, 2291 (January 19, 1984). Consequently, the DOE transferred the amount designated to World in the EDG proceeding, $445,487 in principal and $412,216 in interest, from the EDG Escrow Account to the World Account. World Oil Company is therefore not eligible to apply for a refund in this proceeding.

[4] The Consent Order states that EDG agreed to refund an additional $54,476 plus accrued interest to 34 of its end-user customers. *See* Appendix C of EDG Consent Order for a list of these end-user customers and the amounts that they were allegedly overcharged by EDG. These funds have already been distributed pursuant to the Consent Order and therefore are not subject to the present Subpart V proceeding.

APPENDIX

Identified purchasers	Potential refund [1]
Al-Sal Oil	$46,512
Anco Oil Company	12,268
Brokers Petroleum Inc	84,541
J.E. Dewitt	78,123
Dunbar Texaco	752
Dytron Development Company	36,258
Fletcher Oil Co	170
Fisher Motor Company	35,713
Golden Arrow Dairy	98,303
H.E. Graham	156,430
Greinke Petroleum Corp	1,511
Archie Jacobs	686
Jessups Drive-In Dairy	602
Keen, Inc	29,081
L&S Service	2,165
Lockmann Farms	422
Mag Oil Company	2,296
Marlex Petroleum Company	65,724
William L. Martin II	3,818
Nickey Petroleum Company	2,792
Payless Oil Company	3,897
Pesky	635
Petromar Distributors	111,645
Quick Save	5,673
Reliance Dairy	8,619
Rocky Home Dairy	61,701
Santa Fe Service	346
Bob Smith Oil Company	10,213
Total	860,896

[1] Each identified purchaser's potential refund was calculated by adding the amount it was allegedly overcharged by EDG to its prorated share of the interest that had accrued up until the date of remittance. This amount does *not* include a prorated share of the interest that has accured on the escrow account since the date of remittance.

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[5] The addresses of the EDG customers listed in the Appendix were obtained from DOE audit files.

[FR Doc. 88–6456 Filed 3–23–88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $163.3 million, plus accrued interest, in alleged crude oil violation amounts obtained from Shell Oil Company. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by June 30, 1988, and should reference Case Number KFX–0048 and be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 20 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute the portion of the funds obtained from Shell Oil Company that are attributable to alleged crude oil overcharges. These funds were obtained from Shell as a result of a consent order entered into by the DOE and Shell on March 26, 1987. The funds are being held in an interest-bearing escrow account pending distribution by the DOE. Procedures for distribution of the refined product pool of the Shell consent order funds will be established at a future time.

The OHA has decided to distribute the crude oil overcharge funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds of eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for crude oil refunds must be filed by June 30, 1988, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again. Applications for refund from the refined product pool should not be submitted at this time.

Date: March 15, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

March 15, 1988.

Name of Case: Shell Oil Company.
Date of Filing: April 29, 1987.
Case Number: KFX–0048.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR section 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On April 29, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Shell Oil Company under the terms of a March 26, 1987 consent order with Shell. Pursuant to the terms of the consent order, Shell remitted a total of $183,667,955.78 to the DOE for distribution in accordance with 10 CFR Part 205, Subpart V.[1] An additional $9,461,960.10 in interest had accrued on that amount as of February 29, 1988. This Decision and Order establishes procedures for distributing the portion of those funds attributable to alleged crude oil violations.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Shell and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued its Modified Statement of Restitutionary Policy concerning crude oil overcharges. 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, which was issued as a result of a court-approved Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), provides that crude oil overcharge monies will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of crude oil and refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the MDL 378 escrow at the time of the settlement.

These procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, 3 Fed. Energy Guidelines ¶ 26,587 at 26,826 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 26,827. The States have appealed the latter ruling. *In Re: The Department of Energy Stripper Well Exemption Litigation*, No. 10–76 (Temp. Emer. Ct. App. filed Nov. 5, 1987).

II. The Proposed Decision and Order

On December 10, 1987, the OHA issued a Proposed Decision and Order tentatively establishing procedures for the distribution of the $183,667,955.78 received from Shell, plus accrued interest. *Shell Oil Company*, 52 FR 47967 (December 17, 1987). In that Decision, we proposed to divide the consent order funds into two pools: a refined product pool consisting of $20,407,550.64 plus interest, and a crude oil pool of $163,260,405.14 plus interest. The refined product pool would be made available for distribution to purchasers of Shell refined petroleum products who demonstrate that they were injured as a result of Shell's alleged regulatory violations. We further proposed that the crude oil pool would be distributed in accordance with the MSRP and the April 1987 Notice. In this Decision, we will establish procedures for distributing the Shell crude oil pool only. Procedures for distributing the refined product pool will be issued at a future time.

Pursuant to the MSRP, the OHA proposed in *Shell* to reserve initially 20 percent of the crude oil pool for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds, would be distributed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided equally between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In *Shell*, the OHA proposed to require applicants for refunds from the crude oil pool to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The Proposed Decision stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the amount of funds in the crude oil pool by the total consumption of petroleum products in the United States during the period of price controls. Finally, the OHA proposed to combine the Shell crude oil volumetric refund amount with all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decision.

III. Discussion of the Comments Received

In response to the *Shell* Proposed Decision, the OHA received comments from the following: a group of 29 States and Territories of the United States ("the States"); a group of 43 ocean carriers and foreign air carriers; Philip P. Kalodner as counsel for six electric utilities, 14 shipping companies and five pulp and paper manufacturers; and the Controller of California ("the Controller").[2] The comments received from the various parties are nearly identical to those received and discussed in *Ernest E Allerkamp*, 17 DOE ¶ 85,079 (1988); *Berry Holding Company*, 16 DOE ¶ 85,405 (1987); and *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). Our discussion of the comments will therefore be brief.

The States and the Controller have submitted comments concerning the presumption of injury for end-users proposed in *Shell* and established in all crude oil proceedings implemented under the MSRP. These commenters correctly point out that the end-user presumption is rebuttable, and they request that the OHA emphasize in this Decision the rebuttable nature of the presumption. However, the States' argument that the presumption of injury can be rebutted merely by the presentation of any evidence which bears upon the presumption is erroneous. As we stated in *Allerkamp*, the claimants' burden of proof is eased by the presumption. If an interested party submits evidence to rebut the presumption of injury, we must first determine whether the evidence submitted is relevant to the issue. If the evidence is relevant and sufficient to rebut the presumption, the claimant has the burden of coming forward with further evidence of injury. However, if we find the evidence submitted to rebut the presumption to be insufficient, a refund to the end-user can be approved, based upon the weight of the presumption, without requiring the end-user to submit further evidence of injury. *Allerkamp*, 17 DOE at 88,173.

We are similarly unpersuaded by the States' contention that econometric evidence should be used to calculate the percentage of alleged crude oil overcharges that were absorbed by refiner, resellers and retailers, and that any refunds to end-users should be reduced by that amount. As we noted in *Allerkamp*, this plan would unnecessarily delay the Subpart V refund process for an extended period of time and needlessly complicate the calculation of refunds. *Id.* at 88,173. In contrast, the "full parity" approach set forth in the April 1987 Notice and in *Allerkamp* provides a simple, balanced and fair method for calculating refunds. Under the "full parity" method, the numerator of the volumetric formula includes only $985 million of the $1.4 billion in the MDL escrow at the time of the Settlement Agreement. The $415 millon refunded to refiners, resellers and retailers, which represents the total amount of upstream absorption for all crude oil overcharges, is not included. Thus, the numerator excludes the amount of injury attributed to those intermediaries in the distribution chain. No further reductions of refunds to qualified end-users will be necessary.

None of the comments received challenges the manner in which the volumetric for the Shell crude oil pool was calculated. However, a number of the commenters again discussed the volumetric calculations made in *Allerkamp*. In their comments on the *Shell* Proposed Decision, the States do not contest the OHA's addition of $985 million to the numerator of the volumetric formula made in *Allerkamp* except to note that they have appealed to the Temporary Emergency Court of Appeals that part of the district court's opinion denying the States' motion on this issue. The States also recommend that the OHA "refrain from distributing any refunds based on a formula which includes monies not in the custody of the DOE until the issue of the proper volumetric refund formula is finally decided." Comments of States at 9. However, as we have stated previously, the OHA is not required to delay granting refunds to qualified claimants while the States, who already have obtained sizeable payments of crude oil violation amounts under Subpart V, carry on a potentially lengthy appellate process. *Allerkamp*, 17 DOE at 88,173 n. 5

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[1] This amount consists of the principal consent order amount of $180,000,000 plus $3,667,955.78 in interest which accrued prior to Shell's payment to the DOE. For accounting purposes, the interest remitted by Shell shall shall be considered as additional principal and shall be divided proportionately between the crude oil and refined product pools discussed below.

[2] Both the ocean and air carriers and Mr. Kalodner's clients are potential recipients of crude oil refunds. They will be referred to collectively as the "claimant commenters."

The claimant commenters endorse and approve of the use of the full parity approach to calculating crude oil refunds. However, Mr. Kalodner suggests that the numerator of the volumetric formula be increased to reflect certain additional amounts of crude oil monies. Theses amounts include the following: $100 million in crude oil overcharge funds distributed to the states and territories by the DOE in February 1983 pursuant to Section 155 of the Further Continuing Appropriations Act of 1982, Pub. L. No. 99–377 (the Warner Amendment); $100 million in crude oil overcharge funds distributed to the states and federal government pursuant to the stipulation and order of dismissal in *Diamond Shamrock Refining & Marketing Co. v. Standard Oil Co.*, No. C2–84–1482 (D. Ohio May 30, 1986); and certain other funds previously recovered by the United States, even if those funds had been distributed to the federal government prior to the Settlement Agreement. We previously discussed and rejected Mr. Kalodner's arguments in support of an upward adjustment to the numerator of the volumetric formula in *Allerkamp*. As we noted in that Decision, the remedy fashioned in *Diamond Shamrock* was distinct from that embodied in the Settlement Agreement. *Allerkamp*, 17 DOE at 88,175. In addition, both the MSRP and the Settlement Agreement apply prospectively only and therefore cannot govern funds distributed prior to the court's approval of the Settlement Agreement and the promulgation of the MSRP, as Mr. Kalodner suggests.

The commenting parties make a number of other recommendations concerning the size of the reserve for crude oil claimants and the process of analyzing and paying refund claims. These comments appear to reflect a concern on the part of the claimant commenters that there may not be sufficient funds to pay all valid claims. The ocean and air carriers recommend that the OHA retain the entire Shell crude oil pool "until such time as it is mathematically certain that full refunds to claimants can be made," and that the OHA use "whatever portion of the total Shell crude oil pool proves necessary to assure complete restitution." Comments of ocean and air carriers at 4. We will not reserve more than 20 percent of the Shell crude oil pool for payment of claims. This amount will be sufficient for that purpose, and the claimant commenters' concern that additional funds will be needed to pay all valid claims is unwarranted. Furthermore, the Settlement Agreement permits only downward adjustment of the reserve from the initial 20 percent figure. *Settlement Agreement* at IV.B.6.

We are similarly unpersuaded by Mr. Kalodner's recommendation that the analysis of individual claims filed by the states and federal government as end-users be deferred until "full parity" refunds are made to successful, non-governmental claimants. Kalodner comments at 4. The OHA will not unnecessarily delay a refund proceeding, 10 CFR 205.288, and we see no reason to give priority to one refund applicant over another. Even if Mr. Kalodner were to show that the delay is necessary, the present proceeding is not the proper forum for his argument. If Mr. Kalodner wishes to object to a specific applicant's claim, he may file comments in the case which considers that claim. 10 C.F.R. § 205.284(b).

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $163.3 million in alleged crude oil violation amounts covered by this Decision, plus the $9.5 million in interest which had accrued on that amount as of February 29, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed.[3] As noted in the *Shell* Proposed Decision, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $32.7 million plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to Subpart V. *MAPCO Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. *See id.* Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. End-users or ultimate consumers of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *Id.* The end-user presumption of injury is rebuttable, however. *Berry*, 16 DOE at 88,797. If an interested party submits evidence which is of sufficient weight to rebut the end-user presumption, the applicant will be required to produce further evidence of injury.

Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by the OHA in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, Fed. Energy Guidelines ¶ 90,507 (June 19, 1985), and the OHA intends to utilize the final and April 1, 1985 draft reports in evaluating refund applications submitted under Subpart V. *See* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, section 3003(b)(2). The presumption used in refined product cases that spot purchasers were not injured by their purchases will not be used in the crude oil overcharge area. *Tarricone*, 15 DOE at 88,897 (1987). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 (1987). *See In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. opinion issued December 7, 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts by the total consumption of petroleum products in the United States during the

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[3] This Decision makes no determination regarding the distribution of the refined product pool. Applications for Refund from the refined product pool based on purchases of Shell products therefore should *not* be submitted at this time.

period of price controls.[4] In paying claims, we will combine all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. The volumetric refund amount calculated prior to addition of the *Shell* crude oil funds was $0.0007634495. *Allerkamp*, 17 DOE at 88,176 n. 10. The volumetric refund amount calculated from the Shell crude oil pool is $0.000080782. The total per-gallon refund amount is therefore $0.0008442315. Successful applicants will also receive an appropriate portion of the interest which accrues of the crude oil funds.

A crude oil refund applicant will be required to submit only one application for all crude oil overcharge amounts for which procedures have been implemented to date. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. To apply for a crude oil refund, applicants claiming a refund based on a purchase volume of less than 300,000 gallons should submit the information in the suggested format attached as an Appendix to this Decision. Applicants claiming a refund based on a volume of 300,000 gallons or more should submit all of the information in the suggested format of the Appendix and include all of the information outlined below:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. that it has not filed for a refund from any of the escrow accounts established pursuant to the Settlement Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass the overcharges through to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed, clearly labelled "Application for Crude Oil Refund," submitted in duplicate and mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue S.W., Washington DC 20585.

The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for present or future amounts. Notice of additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $163.3 million plus interest in alleged crude oil violation amounts subject to this Decision, or $130.6 million plus interest, should be disbursed equally to the states and federal government for indirect restituion. The accrued interest on the 80 percent portion of the crude oil pool comes to approximately $6.8 million. The total amount to be disbursed to the states and federal government pursuant to this determination is therefore $137.4 million.

Accordingly, we will direct the DOE's Office of the Controller to segregate the $137.4 million available for disbursement to the states and federal government and transfer one-half of that amount, or $68.7 million into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Each individual state's percentage share of the funds to be disbursed is set forth in Exhibit H to the Settlement Agreement and is based on each state's consumption of petroleum products during the period of price controls. When disbursed, these funds will be subject to the same use limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Shell Oil Company pursuant to the Consent Order executed on March 26, 1987 may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than June 30, 1988.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $171,752,989.57 from the Shell Oil Company subaccount, Consent Order Number RSHA00001Z, pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $68,701,195.83 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $68,701,195.83 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Federal,' Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $34,350,597.91 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants," Number 999DOE007Z.

Dated: March 15, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

BILLING CODE 6450-01-M

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[4] We will use the estimate that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Moutain Fuel*, 14 DOE at 88,868 n.4 (1986).

Appendix

RF272-______

DOE Use Only

Suggested Format For End-users
SUBPART V CRUDE OIL REFUND APPLICATION

1. Name of Applicant Firm: ______

   Address: ______

   ______

   Name(s) under which Firm did business between August 19, 1973 and January 27, 1981: ______

   ______

2. To whom should refund check be made out? ______

   Address to which check should be sent: ______

   ______

   Contact Person: ______

   Daytime Telephone: (______) ______

3. Describe the nature of your business. How did you use the petroleum products? ______

   ______

   ______

4. (a) Total gallonage for which refund is requested (from page 2): ______

   (b) Please identify the source of records used to compute this figure (e.g. invoices, tax records). ______

   If you estimated your purchases, please explain how you arrived at the estimates. Use additional sheets if necessary.

   ______

   ______

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief, and that neither I, my parent firm, nor any affiliates have elsewhere waived their right to a refund.

______ Date

______ Signature of Applicant

______ Title

SCHEDULE OF YEARLY PURCHASES OF REFINED PETROLEUM PRODUCTS (IN GALLONS)

NAME OF APPLICANT: ____________________

	GASOLINE	MIDDLE DISTILLATES	RESIDUAL FUEL	PROPANE	MOTOR OIL/ GREASE	OTHER (SPECIFY)
Aug. 19 through Dec. 1973						
1974						
1975						
1976						
1977						
1978						
1979						
1980						
Jan. 1981						
TOTALS:						

GRAND TOTAL FOR ALL PRODUCTS (record on page 1 of Application) ____________________

[FR Doc. 88-6457 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3353-7]

Approvals of PSD Permits; Region VI

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD–TX–701—CSX Oil and Gas Corporation: This permit, issued on October 9, 1987, authorizes the modification of the existing natural gas processing plant located on Ranch Road 1962, approximately 20 miles southeast of Tilden, McMillen County, Texas.

2. PSD–TX–670—Hansa Manufacturing Company: This permit, issued on October 28, 1987, authorizes the construction of hydrocarbon processing facilities to be located on FM Road 1405, approximately 1500 feet north of Sulton Gully in Baytown, Chambers Country, Texas.

3. PSD–TX–657—Southwest Texas State University: This permit, issued on November 6, 1987, authorizes the construction of a new central heating and utility plant at the State University located at Live Oak and Guadalupe Streets in San Marcos, Hays County, Texas.

4. PSD–TX–724—Harmon Operating Company, Inc.: This permit, issued on December 22, 1987, authorizes the construction of a gas treating plant to be located on FM Road 429, approximately 6.5 miles northeast of Terrell, Kaufman County, Texas.

5. PSD–TX–688—Fina Oil and Chemical: This permit, issued on December 22, 1987, authorizes the construction of two gas-fired turbine cogenerations units at the existing refinery located at the intersection of Highway 366 and 32nd Street in Port Authur, Jefferson County, Texas.

6. PSD–TX–716—Encogen One Partners, Ltd.: This permit, issued on December 31, 1987, authorizes the construction of a 200 MW gas turbine cogeneration facility at the U.S. Gypsum plant located off Highway 20, approximately one mile northeast of Sweetwater, Nolan County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. A petition for review of Encogen One Partners (PSD–TX–716) was received by the Region VI Administrator on February 3, 1988. It was withdrawn on February 17, 1988. No other petition for review of these permits has been filed with the Administrator.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of March 24, 1988. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or crimimal proceedings brought by EPA to enforce the requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: March 3, 1988.

Robert E. Layton Jr.,

Regional Administrator, Region VI.

[FR Doc. 88–6444 Filed 3–23–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3353-6]

Proposed Administrative Settlement at Pollution Abatement Services Site; Veterans Administration Medical Center, Canandaigua, NY, et al.

AGENCY: Environmental Protection Agency.

ACTION: Proposed administrative settlement at pollution abatement services site.

SUMMARY: The United States Environmental Protection Agency ("EPA") Region II Office and the State of New York have entered into a proposed Administrative Settlement with two parties at the Pollution Abatement Services ("PAS") site in Oswego, New York. The proposed settlement provides that the Veterans Administration Medical Center at Canandaigua, New York ("V.A.") and Griffiss Air Froce Base ("Griffiss"), reimburse EPA and the State of New York for certain response hazardous substances at the PAS site. The purpose of this notice is to announce the proposed settlement and to announce that EPA's Region II office will receive comments relating to the proposed settlement for a 30-day period following the date of this publication.

DATE: Comments relating to the proposed settlement should be submitted in writing to the EPA Region II Office at the address below on or before April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory C. Snyder, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, Room 437, New York, New York 10278, (212) 264–4928.

SUPPLEMENTAL INFORMATION: Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative settlements at hazardous waste sites. As of April 1, 1987, EPA and the State of New York have incurred a total of $12,319,551.04 in responding to conditions created by the presence of hazardous substances at the PAS site. Both V.A. and Griffiss are generators of hazardous substances to the PAS site. The proposed settlement provides for the reimbursement by V.A. and Griffiss for response costs incurred by the federal and state governments at the PAS site. The proposed settlement provides that V.A. shall reimburse the two governments $8,746.88 and that Griffiss shall reimburse the two governments $6,283.06.

The proposed settlement may be examined at the Office of Regional Counsel, EPA Region II, 26 Federal Plaza, Room 437, New York, New York, 10278. A copy of the proposed settlement can be obtained by mail from the same address.

Pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), EPA Region II will receive written comments relating to the proposed settlement for 30 days following the date of this publication. Comments should be sent to Gregory C. Snyder, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, Room 437, New York, New York 10278.

Dated: March 9, 1988.

William J. Muszynski,

Acting Regional Administrator, United States Environmental Protection Agency.

[FR Doc. 88–6442 Filed 3–23–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 86–336; FCC 88–67]

Inquiry Into the Scrambling of Satellite Television Signals and Access to Those Signals by Owners of Home Satellite Dish Antennas

AGENCY: Federal Communications Commission (FCC).

ACTION: Second report.

SUMMARY: This item, part of a Congressionally-requested investigation of the home satellite dish (HSD) programming market, describes and analyzes developments in that market during the past year. The Second Report, which is being transmitted to the Congress, recommends that it consider increasing the penalties for satellite signal "piracy." No additional government regulatory intervention in the HSD market is recommended.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, tele: (202) 653–5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report* in General Docket 86–336, FCC 88–67, Adopted February 25, 1988 and Released March 11, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Summary of Second Report

1. The Commission's *Second Report* on satellite TV signal scrambling, reviews the public interest benefits of scrambling, describes the progress of the home satellite dish (HSD) programming market during the past year, and notes the existence of a serious problem with signal "piracy"—the use of altered decoders to descramble satellite programming without payment or authorization. While criminal and civil sanctions against piracy are available (and being utilized), the penalties are relatively light. Because unchecked piracy threatens the viability of direct-to-home program distribution, the Commission recommends that the Congress consider increasing the penalties for piracy.

2. The *Second Report* points out that scrambling protects programmers from commercial theft of their services and allows them to recover compensation from all who view their copyrighted product. This is not only equitable, but also efficient, since HSD households are provided with the means to convey their preferences to programmers and to acquire the services that they desire. Scrambling thus serves the public interest by improving the operation of the market for programming and maintaining proper program production incentives.

3. Substantial progress has been made in the HSD market during the past year. Many additional programmers have scrambled their signals, all of them with the Videocipher II (VC II) system. The status of that system as the market-determined *de facto* industry standard has been confirmed. Hence, a government-mandated standard, which would also have the undesirable effect of limiting incentive to improve the technology, is unnecessary.

4. VC II decoders apparently are widely available now, in the wake of a substantial expansion of production capacity in 1987. That expansion was a market response by General Instrument Corporation (GIC), the primary VC II manufacturer, to a decoder shortage in the spring and summer of 1987.

5. As more services have scrambled their signals over the past year, a wide variety of discount program packages have been assembled. Many of them are sold on a nationwide basis, and may be ordered via toll free telephone numbers. Thus, it appeas that viewers wishing to subscribe to satellite program services can do so easily.

6. The *Second Report* analyses HSD program prices both by examining the structure of the market and by comparing those prices with cable subscriber rates. With respect to premium services, there is vigorous rivalry among satellite cable programmers such as HBO and Showtime, SelecTV (a non-cable service), and cassette rental outlets. Also, under the current regime, entry into superstation distribution is extremely easy, so existing distributors are constrained by potential entry as well as rivalry with each other.

7. The *Second Report* reviews allegations that cable multiple system operators have exercised market power to force programmers to keep their HSD prices artificially high. While the cable market power hypothesis cannot be conclusively rejected, the Commission's investigation revealed no specific evidence to support it. The Department of Justice has an ongoing investigation of the provision of satellite programming to cable-competitive distribution systems. Furthermore, it is not clear that HSD price regulation, be it direct or indirect (*e.g.*, a prohibition of "discrimination" by programmers among alternative distributors), will be effective in checking whatever underlying cable market power that may be present. Price regulation can only address a manifestation of market power. For that reason, measures to allow entry by new competitors are likely to be more efficacious than price regulation in dealing with market power. These considerations lead to a recommendation against regulation of HSD program prices.

8. HSD households have access to virtually every satellite-delivered program service (HBO's Ku band "Festival" service is currently an exception), but certain legal and policy questions remain unresolved with respect to the provision of television broadcast programming to those households. The applicability of the cable compulsory license to HSD sales is unclear. While most superstation carriers are behaving as if the license does apply (and superstations are widely marketed to HSD households), this issue is before the courts and the Congress. Voluntary arrangements to bring network programming to unserved areas appear to be developing.

9. When the Commission adopted the initial *Report* in this proceeding (published at 52 FR 10136, Mar. 30, 1987), it directed its staff to monitor the HSD industry for one year. Pursuant to that direction, the staff prepared progress reports on the industry for the Commission in May and September of 1987 and in January of this year. The *Second Report* draws on material in the three progress reports, which are available for inspection and copying in the FCC Dockets Branch and available for purchase from the Commission's copy contractor (see above). In fulfillment of a commitment made by the Commission in the initial *Report*, this *Second Report* will be transmitted to the Congress. Although it is terminating this satellite television signal scrambling proceeding, the Commission declares its willingness to re-examine HSD market conditions if future developments warrant it.

Ordering Clauses

10. Accordingly, it is ordered, that this proceeding on satellite television signal scrambling is terminated.

11. It is further ordered, that the Secretary shall forward copies of this *Second Report* to the appropriate Committees and Subcommittees of the House of Representatives and the Senate.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-6317 Filed 3-23-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-030.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the parties to maintain rates previously established by Independent Action, in lieu of having such rates increased as part of a conference-wide General Rate Increase ("GRI"), by giving the conference manager 10 days' notice of such action prior to the effective date of the GRI. It would also restate the agreement.

Agreement No.: 202-010776-026.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would add a new agreement provision dealing with breaches of confidentiality by agreement members.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: March 21, 1988.

[FR Doc. 88-6440 Filed 3-23-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Aagreement No: 224-200102.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (GPA)
Ocean Star Container Line (Ocean)

Synopsis: The proposed agreement provides that GPA will provide Ocean with terminal services for a consolidated rate based upon an agreed upon rate per container.

By Order of the Federal Maritime Commission.

Dated: March 21, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-6441 Filed 3-23-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Bruce Bockelmann

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bruce Bockelmann;* to acquire 15 percent of the voting shares of Beecher Bancorp, Beecher, Illinois, and thereby indirectly acquire Farmers State Bank of Beecher, Beecher, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Diane M. Bricco,* to acquire 4.6 percent; Lawrence J. Gentine, to acquire 2.3 percent; Thomas J. Grasse, to acquire 11.3 percent; C. Reed Harvey, to acquire 5.7 percent; Michael J. Harvey, to acquire 11.3 percent; Anthony L. Jovanovich, to acquire 5.7 percent; Larry LeMahieu, to acquire 3.4 percent; Walter H. Miller, Jr., to acquire 2.3 percent; D. Tod Pauly, to acquire 11.3 percent; Charles E. Rohde, to acquire 4.6 percent; Schabo Materials, Inc., William D. Murphy, to acquire 22.7 percent; Larry Van Akkeren, to acquire 3.4 percent; Gordon Veldboom, Jr., to acquire 5.7 percent; and Neil H. VanDerJagt and Don G. VanDerJagt to acquire 5.7 percent of the voting shares of Cameron Investment Company, Inc., Cameron, Wisconsin, and thereby indirectly acquire Bank of Cameron, Cameron, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ralph and Bill Ball,* to acquire 3 percent; James S. Brock, to acquire 3 percent; Marvin Moore, to acquire 3 percent; Gary Proffitt, to acquire 3 percent; Larry Sankey, to acquire 3 percent; and Russell Wilkey, to acquire 3 percent of the voting shares of Quivira Banc Shares, Inc., Sterling, Kansas, and thereby indirectly acquire First National Bank, Sterling, Kansas. All of the notificants reside in Sterling, Kansas.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6372 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

CommunityBanc, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CommunityBanc, Inc.;* Crooksville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Crooksville Bank, Crooksville, Ohio.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FS BancShares, Inc.,* Markesan, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers State Bank, Markesan, Wisconsin.

2. *Vogel Bancshares, Inc.,* Orange City, Iowa; to become a bank holding company by acquiring 90.33 percent of the voting shares of Sioux County State Bank, Orange City, Iowa.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Porter Bancorp, Inc.,* Pleasureville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Central Bank of North Pleasureville, Pleasureville, Kentucky.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.,* Kansas City, Missouri; to acquire 100 percent of the voting shares of Commerce Bank-Nixa, N.A., Nixa, Missouri.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6373 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

CoreStates Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.,* Philadelphia, Pennsylvania; to engage through Signal Financial Corporation, Pittsburgh, Pennsylvania, in acting as agent for the sale of insurance, directly related to an extension credit by Signal and its finance subsidiaries, that is limited to ensuring the repayment of the outstanding balance due on extensions of credit in the event of loss or damage to any property used as collateral for the extension of credit pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. In addition, Applicant proposes to expand the geographical service area to include Florida, New Jersey and Delaware.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6374 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Review Criteria and Program Announcement for Grants for Centers for Excellence

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Centers for Excellence are being accepted under the authority of section 788A of the Public Health Service Act, as established by Pub. L. 100-97, the Excellence in Minority Health Education and Care Act, and amended by the Department of Health and Human Services Appropriation Act, 1988, and invites comments on the proposed review criteria.

The Department of Health and Human Services Appropriations Act, 1988, as contained in Pub. L. 100–202, specifies that any university which awards a graduate degree in the health professions and which has a majority enrollment of minority students is eligible to apply and compete for a grant. It is estimated that there are 15 universities which meet these eligibility requirements and are eligible to apply for a grant. The legislative history clarifies that the intent of this program is not to duplicate support for schools which are directly funded by Federal appropriation, such as Howard University.

As used in this notice, "graduate degree in the health professions" means a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of optometry, doctor of podiatry or an equivalent degree, doctor of veterinary medicine or an equivalent degree, a masters or doctoral degree in public health or an equivalent degree, a doctor of chiropractic or an equivalent degree, or a masters or doctoral degree in health administration or an equivalent degree, awarded, respectively, by an accredited public or nonprofit school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health or chiropractic or an accredited graduate program in a public or nonprofit private institution.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaska Native, Asian or Pacific Islander, Black, or Hispanic.

"Majority enrollment of minority students" means an enrollment of minority students exceeding 50 percent of the total number of students enrolled in the university.

Section 788A specifies that Grants for Centers for excellence may be used by a grantee school for the following purposes:

(1) To develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals;

(2) To improve the capacity of the school to recruit and retain faculty;

(3) To provide improved access to the library and information resources of the school;

(4) To establish, strengthen, or expand programs to enhance the academic performance of students in the school;

(5) To establish, strengthen, or expand programs to increase the number and quality of applicants for admission to the school; and

(6) To develop curricula and carry out faculty training programs in order to enable the school to become, for the nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome (AIDS).

The Health Resources and Services Administration proposes to use the criteria listed below to evaluate the relative merit of applications.

(1) The degree to which the applicant can arrange to continue the proposed project beyond the Federally funded project period.

(2) The degree to which the proposed project meets three or more of the purposes stated in the legislative authorization (see above);

(3) The relationship of the objectives to the implementation plan to achieve institutional improvements;

(4) The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effective utilization of grant funds;

(7) The technical merit of the project as determined by the following elements;

a. Delineation of specific objectives which are consistent with the legislative purposes; where applicable, objectives should be measurable (e.g. improvement in student and faculty attrition rate);

b. Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives; time frame for implementing the activities, projects or services; target population; responsibile staff; and facilities which will be used to accomplish the objectives;

c. Description of a comprehensive evaluation plan inclusive of all objectives and activities;

(8) The number of individuals who can be expected to benefit from the project; and

(9) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

Approximately $9.5 million is expected to be available for competing grants in Fiscal Year 1988. It is expected that 4–6 grants averaging $1.0 to $2.0 million will be supported with these funds.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6880.

Questions regarding programmatic information should be directed to: Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, Maryland 20857, Telephone: (301) 443–2100.

A technical assistance conference will be held on April 11 and 12 at the following location: Health Resources and Services Administration, Parklawn Building, Conference Room C, 5600 Fishers Lane, Rockville, Maryland 20857.

To receive consideration, applications must meet the deadline of May 4, 1988, which means they must either be:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form, PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget. The supplemental instructions have been submitted for OMB approval.

This program is not yet listed in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergrovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Interested persons are invited to comment on the proposed review criteria. Normally, the comment period would be 60 days, however, due to the need to implement this new program in Fiscal Year 1988, this comment period has been reduced to 30 days. All comments received on or before April 25, 1988, will be considered before the final review criteria are established. No funds will be allocated or final selections made until a final notice including the final criteria is published.

Written comments should be addressed to: Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and coying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the address above weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: February 23, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–6452 Filed 3–23–88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of the National Cancer Advisory Board Subcommittee on Cancer Centers

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Cancer Centers, National Cancer Institute, April 26, 1988 at the Hyatt Regency O'Hare, Chicago, Illinois 60666.

The entire meeting will be open to the public from approximately 8:45 a.m. to 6 p.m. to continue the Subcommittee's review of the Cancer Centers Program and to develop plans for a workshop to be held at a later date. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Subcommittee members, upon request.

Ms. Judith Whalen, Executive Secretary, Subcommittee on Cancer Centers, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 11A–19, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5515) will furnish substantive program information, upon request.

Dated: March 14, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6497 Filed 3–23–88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 6, 1988, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9 a.m. to adjournment on May 6 to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6496 Filed 3–23–88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, May 6–7, 1988, at the Hilton Hotel, Grand and Royal Salons, 300 Paradise Road, Las Vegas, Nevada, 89109.

The entire meeting, from 1:00 p.m. to 4:00 p.m. on May 6, and from 8:30 a.m. to adjournment on May 7, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1989. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: March 16, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6494 Filed 3–23–88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, June 7–8, 1988, in Building 30, Room 117, National Institutes of Health, Bethesda, Maryland, from 9:00 a.m. to recess on June 7 and from 9:00 a.m. to adjournment on June 8, 1988.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845—Dental Research Institutes, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6493 Filed 3–23–88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-08-4410-08]

Burley District Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on June 23, 1988. The meeting will convene at 10:00 am in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) BLM/State land exchange program; and (2) hazardous waste sites. Information items are: (1) City of Rocks update; (2) RNA's/ACEC's update; (3) isolated tracts update; (4) drought situation.

This meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will start at 11:45 am. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for the public inspection during regular business hours.

DATE: June 23, 1988.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318.

FOR FURTHER INFORMATION CONTACT: John Davis, Burley District Manager, (208) 678-5514.

Dated: March 18, 1988.

John S. Davis,

District Manager.

[FR Doc. 88-6478 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-060-08-4410-11]

Coeur d'Alene District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92-463, that a meeting of the Coeur d'Alene District Advisory Council will be held on Monday, April 25, 1988. The meeting will begin at 9:00 a.m. and will be held at Templin's Hotel, 414 E. 1st Avenue, Post Falls, Idaho

The agenda items are: Election of officers; general briefings on the Kellogg gondola project; the Potlatch/BLM/Fish and Wildlife Service land exchange; proposed Areas of Critical Environmental concern; timber trespass; land tenure adjustment planning guidelines; and anadromous fish habitat.

The meeting is open to the public. Interested persons may make oral statements to the Council betweeen 11:30 a.m. and 12:00 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District manager, Coeur d'Alene District Office, 1808 N. 3rd Street, Coeur d'Arlene, Idaho 83814 by April 20, 1988.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

Date: March 16, 1988.

Fritz U. Rennebaum,

District manager.

[FR Doc. 88-6397 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[OR-030-08-4322-02-GP8-089]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting; Vale District Grazing Advisory Board.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that a meeting of the Vale District Grazing Advisory Board will be held April 29, 1988.

The agenda for the meeting will include: Recent changes in grazing regulations; consideration and recommendation on the use of Range Improvement Funds (8100) for project maintenance inspections; noxious weed control; status report on wild horse gatherings in Vale District; report on recent livestock impoundment actions; policy guidelines for addressing drought conditions on range lands; report on riparian management program: status report on actions relating to the Whitehorse Allotment Management Plan; proposed name changes for Northern and Southern Resource Areas and proposed administrative boundary adjustments between these two Resource Areas.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1:00 p.m. the day of the meeting.

Summary minutes of the Board's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The meeting will begin at 9:00 a.m. April 29, 1988.

ADDRESS: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 88-6399 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-33-M

[U-61271]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-61271 for lands in Uintah County, Utah, was timely filed and required rentals and royalties accruing from October 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-61271 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 88-6407 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-940-08-4212-13; PHX-080572]

Reconveyed Land Opened to Private Exchange Application; Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 160 acres of reconveyed land in Maricopa County to Private Exchange application.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 2, 1949, as authorized under section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 2 W.;
  Sec. 32, SE¼

The area described contains 160 acres in Maricopa County.

The land described above has been determined suitable for disposal by private exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from appropriation under all other public land laws. The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-6413 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-32-M

[CO-050-4212-11; C-42676]

Reality Action; Public Lands, Boulder County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes classification and application for patent of public lands in Boulder County, Co.

SUMMARY: The following public land has been examined and found suitable for classification and sale under the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869):

Sixth Principal Meridian, Colorado

T. 1 N., R. 71 W.;
  Sec. 9: Lot 16.
  Containing 39.29 acres.

Boulder County has applied for patent to this land so that it can be included in their Fourmile Canyon Park. The land has been and will continue to be used for hiking and dispersed recreation. The land is physically suited to the proposed use and is not of national significance. Since the land is valuable for a local government program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the R&PP Act. This action is consistent with local and Federal government plans, programs and policies. Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of non compliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the R&PP Act. If patent does not issue, segregation will terminate eighteen (18) months from the date of this notice, or upon publication of a notice of termination, whichever occurs first.

DATE: For a period of up to and including May 9, 1988, interested parties may submit comments to: District Manager, Canon City District Office, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, CO 81212. Any adverse comments will be evaluated by the District Manager who may modify or vacate this classification.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Canon City District Office listed above; or at the Northeast Resource Area Office, Bldg. 41, Denver Federal Center, Denver, CO 80225; or by calling the Northeast Area Realty Specialist, Priscilla McLain, at (303) 236-4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-6479 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-11; C-45647]

Realty Action; Sunshine Cemetery, Boulder County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose classification, C-45647 (Sunshine Cemetery, Boulder County, CO).

SUMMARY: The following public land has been examined and found to be suitable for public use. It is hereby classified for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869), and the regulations thereunder (43 CFR 2740).

Sixth Principal Meridian, Colorado

T. 1 N., R. 71 W.;
  Sec. 8: Lot 184.
  Containing 1.28 acres.

Sunshine Cemetery Association, a non-profit organization, has applied for the land. They propose to manage it as a public cemetery for the local community of Sunshine. The land has been used as a cemetery for over 100 years without any authorization. Transferring it to the Association will legalize this use and provide for maintenance of the cemetery, thus preserving its local historical values. The land is physically suitable for this use and is not of national significance. This action is consistent with local and Federal plans, programs and policies. Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of non-compliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. If lease or patent does not issue, segregation will terminate eighteen (18) months from the date of this notice, or upon publication of a notice of termination, whichever occurs first.

DATES: For a period of up to and including May 9, 1988, interested parties may submit comments to the District Manager, Bureau of Land Management, 3170 East Main Street, P.O. Box 311, Canon City, CO 81212. Any adverse comments will be evaluated by the District Manager, who may modify or vacate this classification.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Canon City District Office (address above) or the Northeast Resource Area Office, P.O. Box 25047, Bldg. 41, Denver, CO 80225 (303) 236-4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-6480 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-JB-M

BEST COPY AVAILABLE

[ID-943-08-4220-11; I-22300]

Realty Action; Issuance of Land Exchange Conveyance Documents; Idaho

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Fay H. Andrews of Salmon, Idaho 83467, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 20 N., R. 24 E.
  Sec. 29, S½SW¼NW¼;
  Sec. 30, SE¼SE¼NE¼, SW¼SW¼SW¼NE¼, SW¼NE¼NW¼.

Comprising 42.50 acres of public land.

In exchange for these lands, the United States acqired the following-described lands:

Boise, Meridian, Idaho

T. 19 N., R. 23 E.
  Sec. 24, SE¼SW¼.

Comprising 40.00 acres of private land.

The purpose of the exchange was to acquire private land that contains valuable wildlife habitat, a one-quarter mile stretch of riparian habitat as well as excellent rangeland with potential for good water developments.

The values of the Federal public land and the non-federal land in the exchange was appraised at $4611.25 and $4140.00 respectively. An equalization payment of $471.25 was paid to the United States by Fay H. Andrews.

Date: March 17, 1988.

Charles J. Haszier,

Deputy State Director for Operations.

[FR Doc. 88-6395 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-08-4212-13; N-48171]

Realty Action; Exchange; Lyon County, NV

AGENCY: Bureau of Land Management, Interior,

ACTION: Notice of realty action on proposed exchange.

SUMMARY: The following described federal land comprising 320 acres in Lyon County, Nevada, has been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 11 N., R. 23 E.,
  Sec. 1, S½, SE¼,
  Sec. 12, W½, NE¼, SE¼.

The federal government is offered the following described 408.49 acres of non-federal land in Carson City, Nevada, by the Trust for Public Land:

Mount Diablo Meridian, Nevada

T. 15 N., R. 19 E.,
  Sec. 3, Lots 1 and 2 of the NE¼, Lot 1 of the NW¼, SW¼.

The purpose of this exchange is to acquire non-federal land within and adjacent to the boundary of the Toiyabe National Forest. This proposed exchange will be based on equal value determined by fair market value appraisals and may ultimately involve less than the total acreage described for either federal or non-federal land.

This exchange is consistent with Bureau of Land Management land use planning. The federal land is not needed for any federal program. The land has previously been identified for transfer from federal ownership via public sale. Two unsuccessful sales were held.

There is no known value for minerals in the federal land. It is expected that the mineral estate will be conveyed with the surface estate.

Patent, if and when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Patent will also be subject to the following depending upon which parcels of federal land are conveyed:

1. A right-of-way, approximately 150 feet in width along the north boundary of section 12 and the south boundary of section 1, granted to Nevada Highway Department for public access (Nev-054978).
2. A right-of-way for a material site granted to Nevada Highway Department (Nev-055377).
3. A right-of-way 50 feet in width for an access road granted to Ralph T. Casebolt, Inc. (N-31384).
4. A right-of-way 10 feet in width for a buried telephone cable granted to Continental Telephone Company (N-37513).
5. A right-of-way 10 feet in width for a buried telephone cable granted to Continental Telephone Company (N-39943).

Upon publication of this Notice of Realty Action in the **Federal Register**, the federal land will be segregated from all appropriations under the public land laws, including the mining laws, except exchanges. The segregative effect of the notice shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. After acquisition, the non-federal land will become a part of the National Forest System.

Detailed information concerning the exchange is available for review at the Forest Supervisor's Office, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada, and at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, at the aforementioned address. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated this 18th day of March, 1988.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 88-6398 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-08-4220-10; CA 3613]

Proposed Withdrawal and Opportunity for Public Meeting; California

March 11, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has amended application CA 3613 to include an additional 5 acres of National Forest System lands to protect a fire lookout site and communication facilities. The original application was published at 41 FR 27404 and 27405 on July 2, 1976, and republished at 42 FR 37256 on July 20, 1977. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, but will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before June 22, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On December 23, 1986, the U.S. Department of Agriculture amended its application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Eldorado National Forest

T. 12 N., R. 11 E.,
  Sec. 12, N½NE¼NW¼SW¼.

The area described contains 5 acres in El Dorado County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No temporary uses will be permitted during this segregative period except for those uses now under permit.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-6392 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4220-10; CA 3613]

Partial Termination of Proposed Withdrawal and Opening of Land; California

March 11, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 60 acres of land requested by the Forest Service, U.S. Department of Agriculture. This action will open 60 acres of land to surface entry and mining location. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On July 2, 1976, a notice of proposed withdrawal and reservation of land for the Forest Service, U.S. Department of Agriculture, was published in the **Federal Register** at 41 FR 27404 and 27405, and republished on July 20, 1977, at 42 FR 37256. The purpose of the application was to protect a fire lookout site and communication facilities. The land is no longer needed for this purpose.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian, El Dorado National Forest

T. 12 N., R. 11 E.,
  Sec. 12, NE¼SW¼NW¼,
    SW¼SW¼NW¼, S½SE¼NW¼,
    and N½NE¼SW¼.

The area described contains 60 acres in El Dorado County.

2. At 10 a.m. on April 20, 1988, the lands shall be opened to such forms of disposition as may bylaw be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes betweeen rival locators over possessory rights since Congress has provided for such determinations in local courts.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-6393 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-08-4220-11; I-04381, I-016372]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management. Interior

ACTION: Notice.

SUMMARY: The Corps of Engineers proposes that two withdrawals for the Lucky Peak Dam and Reservoir Project continue for an additional 68 years, which is the estimated remaining life of the project. The lands involved, which consist of a total of 2,652.81 acres, would remain closed to surface entry and mining, but would be opened to the mineral leasing laws.

EFFECTIVE DATE: Comments on the proposal must be received by June 22, 1988.

ADDRESS: Comments should be sent to the Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

The Corps of Engineers proposes that the existing land withdrawals made by Public Land Order Nos. 1021 and 3892, be continued for a period of 68 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is located in the following-described townships and sections:

Boise Meridian

T. 2 N., R. 3 E.
  Secs. 12, 13 and 14.
T. 2 N., R. 4 E.
  Secs. 4, 5, 6, and 7.
T. 3 N., R. 4 E.
  Secs. 8, 9, 11, 12, 14, 15, 17, 21, 22, 28, 29, 31 and 32.

The areas involved aggregate 2,652.81 acres in Ada, Boise, and Elmore Counties.

The purpose of the withdrawals is to protect the Lucky Peak Dam and

Reservoir Project. The withdrawals presently segregate the lands from operation of the public land laws, including the mining and mineral leasing laws, except for 51.04 acres withdrawn under public land order 3892, which remain open to the mineral leasing laws. Under the continuation proposal, all of the lands would be opened to the mineral leasing laws, but would remain segregated from surface entry and the mining laws.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the Preisident, and Congress, who will determine whether the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Date: March 14, 1988.

[FR Doc. 88-6394 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-DG-M

[NM-940-08-4220-11; NM NM 52389]

Proposed Withdrawal Continuation, Correction; New Mexico

Notice of Proposed Withdrawal Continuation under Serial No. NM NM 52389, 50 FR 25632, June 20, 1985, is hereby corrected as follows:

1. In the summary, second column, lines 4 and 5 read "Reclamation continue for an additional 75 years" is hereby corrected to read "Reclamation continue until December 31, 2060."

2. Third column, lines 8 and 9 read "of February 13, 1919, be continued for a period of 75 years" is hereby corrected to read "of February 19, 1919, be continued through December 31, 2060."

Larry L. Woodard,

State Director.

Dated: March 11, 1988.

[FR Doc. 88-6403 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 094367]

Proposed Withdrawal Continuation, Correction; New Mexico

Notice of Proposed Withdrawal Continuation under Serial No. NM NM 094367, 50 FR 1638–1639, January 11, 1985, is hereby corrected as follows:

1. In the summary, on page 1638, third column, lines 4 and 5 read "Reclamation continue for an additional 20 years" is hereby corrected to read "Reclamation continue until December 31, 2060."

2. Under Supplemental Information, on page 1639, first column, line 8 reads "be continued for a period of 20 years" is hereby corrected to read "be continued until December 31, 2060."

Dated: March 11, 1988.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-6404 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Development Operations Coordination Document; Mobil Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4428, Block 326, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 16, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6408 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5009, Block 128, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to

be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6409 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Santa Fe International Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Santa Fe International Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5068 and 7846, Blocks 870 and 914, respectively, Mobile Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pascagoula, Mississippi.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6410 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Santa Fe International Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Santa Fe International Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7870, 7871, and 7878, Blocks 31, 32, and 74, respectively, Viosca Knoll Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pascagoula, Mississippi.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6411 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sonat Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sonat Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4100, Block 239, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 17, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6412 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-289 (Final) and 731-TA-381 and 382 (Final)]

Certain Granite From Italy and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations and with countervailing duty investigation No. 701-TA-289 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations No. 731-TA-381 and 382 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Spain of certain granite,[1] provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LIFV). The Commission also gives notice of the scheduling of a hearing in connection with these investigations and with countervailing duty investigation No. 701-TA-289 (Final), Certain Granite from Spain, which the Commission instituted on December 24, 1987. The schedules for the countervailing duty and antidumping investigations regarding imports from Spain will be identical, pursuant to Commerce's extension of the countervailing duty investigation (53 FR 2521). Commerce will make its final LTFV determinations regarding imports from Italy on or before June 20, 1988. Commerce's final countervailing duty and LTFV determinations regarding imports from Spain will be on or before June 21, 1988. The Commission will make its final injury determinations within forty-five days after receipt of Commerce's final determinations (see sections 705(a), 705(b), 735(a), and 735(b) of the act (19 U.S.C. 1671d(a), 1671d(b)), 1673d(a), and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1152), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain granite from Italy and Spain are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on July 28, 1987, by the Ad Hoc Granite Committee. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 35771, September 23, 1987).

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report—A public version of the perhearing staff report in this investigation will be placed in the public record on June 13, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 30, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 17, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 22, 1988, in room 101 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 23, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 FR 207.24) and must be submitted not later than the close of business on July 7, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 7, 1988.

A signed original and fourteen (14) copies of each submisson must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By the order of the Commission.

Issued: March 18, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-6419 Filed 3-23-88; 8:45 am]

BILLING CODE 7020-02-M

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[1] For purposes of these investigations, "certain granite" is ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and includes the following: rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing. The articles covered by these investigations are provided for in subheading 2516.11.00, 2516.12.00, 6801.00.00, 6802.23.00, and 6802.93.00 in the proposed Harmonized Tariff Schedule of the United States (USITC) Pub. 2030).

[Investigation No. 731-TA-376 (Final)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, provided for in item 610.89 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective September 16, 1987, following a preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe and tube fittings from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 19, 1987 (52 FR 38819). Subsequently, Commerce extended the date for its final determination from November 24, 1987, to January 29, 1988 (52 FR 37615, October 9, 1987). The Commission, therefore, revised its schedule and published the revised schedule in the **Federal Register** (52 FR 39292, October 21, 1987). The hearing was held in Washington, DC, on February 9, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 14, 1988. The views of the Commission are contained in USITC Publication 2067 (March 1988), entitled "Certain Stainless Steel Butt-Weld Pipe Fittings from Japan: Determination of the Commission in Investigation No. 731-TA-376 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 14, 1988.

[FR Doc. 88-6420 Filed 3-23-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 467]

Exemption of Water Carrier Operations; Availability of Environmental Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: An environmental assessment has been prepared for this proceeding in which the Commission revises 49 CFR Part 1071 and removes 49 CFR Part 1072, to exempt from regulation: Water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier. The environmental assessment concludes that the adoption of this exemption rulemaking will not significantly affect the quality to the human environment or energy conservation. The effect of the addition of these categories to categorias already exempt from Commission jurisdiction, would be minimal. The environmental assessment will be served on all parties of record. Other interested parties may receive copies of the environmental assessment from the contact person listed below.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler did not participate in the final determination.

[3] Commerce determined that dumping margins on exports by Fuji Acetylene Industries Co., Ltd., were de minimis.

DATE: Comments are requested and should be filed by April 22, 1988.

ADDRESS: Send an original and one copy of pleadings addressed to: (1) Ex Parte No. 467—Environmental Assessment, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Dana G. White, Telephone: (202) 275–6569.

Assistance for the hearing-impaired is available through TDD services (202) 275–1721.

Authority: 42 U.S.C. 4321, et seq.

Dated: March 18, 1988.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6362 Filed 3–23–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Central Illinois Public Service Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Central Illinois Public Service Co.*, Civil Action No. 88–3359, was lodged on March 11, 1988, with the United States District Court for the Central District of Illinois. The Complaint filed by the United States alleged violation of section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Illinois State Implementation Plan ("SIP"), relating to sulfur dioxide emissions, at defendant's Coffeen Generating Station.

The proposed Decree requires defendant to comply with the Clean Air Act by not exceeding the sulfur dioxide emission limitations of the SIP. In addition, defendant must install and operate a system to continuously monitor the sulfur dioxide emission levels of the plant, and also pay a civil penalty of $75,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Central Illinois Public Service Co.*, D.J. Reference No. 90–5–1–1044.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of Illinois, U.S. Courthouse, 600 E. Monroe Street, Springfield, Illinois 62705, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6386 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act, Indiana Department of Mental Health et al.

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Indiana Department of Mental Health, et al.*, Civil Action No. IP87–213–C, was lodged with the United States District Court for the Southern District of Indiana, on March 15, 1988. The complaint filed by the United States alleged that the defendants violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Indiana State Implementation Plan ("SIP") pertaining to the control of opacity and particulate emissions.

The proposed Decree establishes deadlines for achieving compliance with Indiana Administrative Code Regulations APC–3 and 325 IAC 6–1–12 (parts of the Indiana SIP relating to opacity and particulate emissions) by replacing defendants' offending coal-fired boilers with clean-burning oil and gas-fired boilers.

In addition, the proposed Consent Decree requires defendants to pay a civil penalty of $28,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Indiana Department of Mental Health*, et al., D.J. Reference No. 90–5–2–1–1039.

The proposed Consent Decree may be examined at the office of the United States Attorney, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6387 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Harry J. Smith, Jr., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Harry J. Smith, Jr., et al.*, Civil No. 86–0088–B, was lodged with the United States District Court for the District of Maine on March 18, 1988.

The proposed consent decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*, for the defendants' alleged failure to respond to requests for information requested by the United States Environmental Protection Agency.

The proposed decree requires the defendants to comply with the Clean Air Act and the asbestos NESHAP requirements. The proposed decree also requires payment of a $2,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Harry J. Smith, Jr. et al.*, D.J. Ref. No. 90–5–2–1–893.

The consent decree may be examined at the office of the United States Attorney, District of Maine, Rm. 321, 202 Harlow Street, Bangor, Maine 04401; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–6384 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Declaration of Intention Filing Requirement

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that the declaration of intention filing requirement contained in section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b(a)(3)(B)) is satisfied as long as the declaration is completed and filed with the Immigration and Naturalization Service before a charge of citizenship status discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices.

DATES: This notice is effective immediately and will be given retroactive effect.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (800) 255–7688 (toll free) or (202) 653–8121 (Voice) or (202) 653–5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (800) 255–7688 (toll free) or (202) 653–8248 (Voice) or (202) 653–5710 (TDD).

SUPPLEMENTARY INFORMATION: The filing of the Immigration and Naturalization Service (INS) Form I–772 Declaration of Intending Citizen has caused some concern among those who deal with the Office of Special Counsel for Immigration Related Unfair Employment Practices. Questions have been raised about the timing of the filing of the I–772 and its availability. This notice is to address those concerns and to dispel any confusion that may have arisen.

Under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), protection from citizenship status discrimination is afforded to citizens, nationals, and intending citizens. Among other definitional requirements, an intending citizen is an alien who "evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." (8 U.S.C. 1324b(a)(3)(B)). When IRCA was passed, the only form in existence suited to that requirement was INS Form N–315. That Form, however, had fallen into disuse and could be executed only by permanent residents. IRCA permits temporary residents under the new legalization program, refugees, and asylees, as well as permanent residents, to qualify for intending citizen status. A new form was needed. The Immigration and Naturalization Service created the I–772 to meet that need.

Confusion has arisen over the timing of the filing of the I–772. Neither the statute nor the regulations specifically address the question of when the Declaration of Intention must be filed. The preamble to the regulations published on October 6, 1987 (52 FR 37402) states that the declaration must be completed prior to the occurrence of the alleged discrimination. *Id.* at 37407. The instructions to the I–772 itself, however, state that filing the I–772 is a prerequisite only "to assert a claim," not to qualify for protection.

To dispel any confusion on this question, this notice announces that the Justice Department views the declaration of intention filing requirement as satisfied as long as the declaration is completed and filed before the charge of discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices. It is not necessary to complete and file the declaration before the occurrence of the alleged discrimination.

This notice will also serve as a reminder that the original I–772 must be filed with the Immigration and Naturalization Service. A copy of the fully completed I–772, showing that the form has been received and filed by an INS officer, should accompany any citizenship status discrimination charges filed with this Office by or on behalf of intending citizens. For permanent residents, filing a Form N–315 with any court exercising naturalization jurisdiction remains an alternative. The same timing requirements for filing apply.

Lawrence J. Siskind,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 88–6375 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Richard A. Conley, M.D.; Revocation of Registration

On January 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard A. Conley, M.D. (Respondent) of Dalton Family Practice, P.C., 1114 Professional Boulevard, Dalton, Georgia 30720, proposing to revoke his DEA Certificate of Registration, AC2133142 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). In addition, the Order to Show Cause alleged that Respondent materially falsified his applications for renewal of his Certificate of Registration thereby providing a second statutory basis for the revocation of his registration pursuant to 21 U.S.C. 824(a)(1).

In a letter dated January 31, 1988, Respondent failed to request a hearing and instead submitted a written statement regarding his position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator hereby enters his final order in this matter based upon the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that effective June 30, 1983, the Oklahoma State Board of Medical Examiners suspended Respondent's license to practice medicine in the State of Oklahoma for one year. As a result of this suspension, Respondent voluntarily surrendered his DEA Certificate of Registration

AC2133142, on June 29, 1983. Even though Respondent surrendered this registration, he continued to submit applications for its renewal. On these renewal applications, Respondent answered no to a question asking whether the applicant has ever surrendered a Controlled Substances Act registration. Therefore, Respondent materially falsified his applications for renewal of his DEA Certificate of Registration and consequently lawful grounds exist for the revocation of his registration. 21 U.S.C. 824(a)(1).

Respondent subsequently moved from Oklahoma to Georgia. Pursuant to a Consent Order dated December 3, 1986, the Composite State Board of Medical Examiners for the State of Georgia issued Respondent a license to practice medicine in the State of Georgia subject to various conditions. One condition of Respondent's licensure is that for a period of five years from the effective date of the Consent Order, December 3, 1986, Respondent shall not prescribe, administer or dispense any controlled substance in the course of his office practice. During the course of another investigation, DEA investigators discovered that on at least 81 occasions, Respondent continued either to write prescriptions for, or authorize the dispensing of, controlled substances even after the Composite State Board of Medical Examiners for the State of Georgia specifically ordered him not to do so. In his written statement dated January 31, 1988, Respondent stated, "[i]f I have written any prescriptions for controlled substances, it was an honest mistake and was not done in a knowingly, repeated, habitual manner." The Administrator finds however, that Respondent repeatedly violated the Consent Order under which he is licensed to practice medicine in the State of Georgia. A prescription survey conducted at 13 of the 18 pharmacies in Dalton, Georgia revealed a total of 81 prescriptions either written or authorized by Respondent between December 7, 1986 and April 1, 1987. This does not indicate an oversight by Respondent but rather it demonstrates an habitual pattern of disregard for the responsibilities which accompany the handling of controlled substances. Accordingly, the Administrator concludes that Respondent's continued registration is inconsistent with the public interest.

Additionally in his January 31, 1988 written statement, Respondent stated that it was not his intent to falsify his application for registration. Respondent, in referring to the surrender of his registration, further stated that, "[i]t was my understanding that this was not a punitive action and that once my Medical License was reinstated my DEA license would be restored." The Administrator does not find Respondent's argument persuasive. Whether or not DEA ever reinstated Respondent's registration, the fact remains that on June 29, 1983, Respondent did surrender his DEA registration. The question on the application specifically asks whether an applicant has ever surrendered a Controlled Substances Act registration. Respondent answered no to this question on more than one renewal application when in fact he had surrendered such a registration. The Administrator further doubts the accuracy of Respondent's position as stated in his written statement based on Respondent's additional material falsification of his renewal application dated December 22, 1986. A question on the application asks the applicant, "[a]re you currently authorized to prescribe, distribute, dispense, conduct research or otherwise handle controlled substances in the schedules for which you are applying, under the laws of the State or jurisdiction in which you are operating or proposing to operate." In response to this question, Respondent answered yes. However, this is not the case. Pursuant to the Consent Order of the Composite State Board of Medical Examiners for the State of Georgia, as of December 3, 1986, Respondent was not authorized to prescribe, dispense or administer controlled substances in the course of his office practice, yet he was permitted to write orders for medication for institutionalized patients. This restriction is in effect for five years from the date of the Order. Therefore, Respondent was less than truthful when executing his application. Respondent was clearly not authorized to handle controlled substances in an unrestricted manner in the State of Georgia at the time he signed his application for registration.

The Administrator concludes that Respondent's DEA registration must be revoked. Respondent materially falsified his renewal applications and has committed various acts which render his continued registration inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AC2133142, previously issued to Richard A. Conley, M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective April 25, 1988.

John C. Lawn,

Administrator.

Date: March 17, 1988.

[FR Doc. 88–6376 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1110–88]

Certification of State Governments as Qualified Designated Entities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service is exercising its option, relating to the INS cooperative agreement with qualified designated entities (QDEs) participating in the Service's legalization program, to request additional QDE applications from State governments and other certain similar entities. This action is being taken by the INS in an effort to reach more potential aliens seeking temporary residence under the Immigration Reform and Control Act of 1986 (IRCA), before the May 4, 1988 deadline.

DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: E.B. Duarte, Director, Office of Outreach at 425 "I" Street NW., Room 6230, Washington, DC 20536; telephone number (202) 633–4123.

SUPPLEMENTARY INFORMATION: Section 245A(c)(2) of the Immigration and Nationality Act (Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99–603, provides for the designation by the Attorney General of qualified entities to assist aliens in the preparation and submittal of applications for legalization status. In an effort to provide all potentially eligible aliens every opportunity to apply for legalization by May 4, 1988, the INS is exercising its option to request additional QDE applications from state governments and other certain similar entities. The option procedures are detailed in the cooperative agreement application instructions, revised and distributed March 25, 1987. The Service will limit the application process to State governments because it is felt that these agencies and their subdivisions possess extensive networks and resources that can readily assist eligible aliens. Due to the approaching deadline, the Service has determined to expedite the process by preliminary certifying as QDEs all 50 State governments of the United States and the governments of Puerto Rico, Guam, the United States Virgin Islands and the District of Columbia. To enable these entities to immediately process legalization applications, they are being issued QDE identification numbers which can be affixed to legalization applications filed with INS legalization offices.

The INS will send information packets concerning the cooperative agreement and regulations and procedures pertaining to the QDEs to the State governments and other certain similar entities. The information will explain how the entities can formalize the cooperative agreement relationship with the Service.

The following QDE I.D. numbers are issued:

Eastern Region

Connecticut	00–600–00
Delaware	00–601–00
District of Columbia	00–606–00
Maine	00–607–00
Maryland	00–608–00
Massachusetts	00–609–00
New Hampshire	00–610–00
New Jersey	00–602–00
New York	00–611–00
Pennsylvania	00–612–00
Puerto Rico	00–613–00
Rhode Island	00–614–00
Vermont	00–615–00
Virginia	00–616–00
Virgin Islands (U.S.)	00–617–00
West Virginia	00–618–00

Southern Region

Alabama	00–619–00
Arkansas	00–620–00
Florida	00–621–00
Georgia	00–622–00
Kentucky	00–623–00
Louisiana	00–626–00
Mississippi	00–624–00
New Mexico	00–625–00
North Carolina	00–627–00
Oklahoma	00–628–00
South Carolina	00–629—00
Tennessee	00–630–00
Texas	00–655–00

Northern Region

Alaska	00–631–00
Colorado	00–632–00
Idaho	00–633–00
Illinois	00–634–00
Indiana	00–635–00
Iowa	00–636–00
Kansas	00–637–00
Michigan	00–638–00
Minnesota	00–639–00
Missouri	00–640–00
Montana	00–641–00
Nebraska	00–642–00
North Dakota	00–643–00
Ohio	00–644–00
Oregon	00–645–00
South Dakota	00–646–00
Utah	00–647–00
Washington	00–603–00
Wisconsin	00–648–00
Wyoming	00–649–00

Western Region

Arizona	00–650–00
California	00–651–00
Guam	00–652–00
Hawaii	00–653–00
Nevada	00–654–00

Richard E. Norton,

Associate Commissioner, Examinations.

Date: March 17, 1988.

[FR Doc. 88–6377 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The panel will convene to consult and advise the NEH on reading and discussion programs in the nation's libraries. The meeting will be held on April 15–16, 1988 from 9:00 a.m. to 5:30 p.m. on April 15th and 9:00 a.m. to 1:00 p.m. on April 16th in Room M–07. This meeting will be open to the public.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88–6438 Filed 3–23–88; 8:45 am]

BILLING CODE 7536-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photography Fellowships) to the National Council on the Arts, will be held on April 11–14, 1988 from 9:00 a.m.–8:00 p.m. and on April 15, 1988 from 9:00 a.m.–5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 18, 1988.

[FR Doc. 88–6396 Filed 3–23–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 7–9, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on February 24, 1988.

Thursday, April 7, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–9:45 a.m.: Fitness for Duty (Open)—Review and discuss proposed NRC rule regarding fitness for duty of nuclear power plant operators.

9:45 a.m.–11:00 a.m.: Advanced Reactors (Open)—Discuss regulatory requirements for advanced DOE reactors.

11:15 a.m.–12:15 p.m.: Human Factors (Open)—Review proposed NRC research program regarding human factors.

1:15 p.m.–2:15 p.m.: Meeting with Director, NRR (Open)—Discuss items of mutual interest.

2:15 p.m.–5:15 p.m.: Rancho Seco Nuclear Power Plant (Open)—Briefing and discussion regarding proposed restart of the Rancho Seco Nuclear Power Station.

5:30 p.m.–5:45 p.m.: Anticipated ACRS Activities (Open)—Discuss anticipated ACRS Subcommittee Activities and topics proposed for consideration by the full Committee.

5:45 p.m.–6:15 p.m.: ACRS Activities (Open)—Discuss proposed change in ACRS Bylaws regarding activities of ACRS members.

Friday, April 8, 1988

8:30 a.m.–9:45 a.m.: Operator Training and Qualification (Open)—Review proposed NRC policy statement regarding training and qualification of nuclear power plant operators.

10:00 a.m.–11:00 a.m.: Training of NRC Technical Personnel (Open)—Briefing regarding proposed changes in NRC program for training and qualification as required of NRC technical personnel.

11:00 a.m.–12:30 p.m.: Generic Issues (Open)—Discuss proposed ACRS comments regarding effectiveness of NRC Staff activities to deal with generic issues and unresolved safety issues.

1:30 p.m.–3:00 p.m.: IAEA Safety Principles (Open)—Briefing regarding proposed IAEA safety principles for nuclear power plants.

3:15 p.m.–4:00 p.m.: Generic Issues (Open)—Discuss proposed comments regarding effectiveness of NRC staff activities to deal with generic issues and unresolved safety issues.

4:00 p.m.–6:00 p.m.: Important Safety Related Issues (Open)—Discuss proposed hierarchical structure for important safety-related issues.

Saturday, April 9, 1988

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports regarding items considered during this meeting, proposed comments on a program to study the bottom head of the TMI-2 reactor pressure vessel, proposed comments on program to implement the safety goal policy, and ACRS comments regarding regulatory requirements for key features of DOE advanced reactor designs.

1:00 p.m.–1:45 p.m.: Appointment of New Members (Closed)—Discuss qualifications of candidates proposed for appointment to the Committee and internal agency allocation of resources to provide technical advice regarding nuclear power plant safety and the handling of nuclear radwaste.

This session will be closed to discuss information, the release of which would represent a clearly unwarranted invasion of personal privacy, and information that involves the internal personnel rules and practices of the agency.

1:45 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information that involves the internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)] and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: March 21, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–[illegible] Filed 3–23–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-160, License No. R-97, EA 88-32]

Georgia Institute of Technology, Atlanta, Georgia; Confirmatory Order Modifying License, Effective Immediately

I

The Georgia Institute of Technology (Georgia Tech) is the holder of Operating License No. R–97 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 29, 1964, and subsequently amended. The license, as amended, authorizes Georgia Tech to operate its modified research reactor located on its campus in Atlanta, Georgia, at power levels up to 5 megawatts (thermal) for research and development activities in accordance with the conditions specified therein.

II

As a result of safety concerns identified during NRC inspections conducted on December 18, 1987, and January 4–5, 1988, and raised as a result of an August 1987 contamination event, an order modifying license, effective immediately was issued to Georgia Tech by the NRC on January 20, 1988. That order required that (a) the licensee cease utilization of the reactor facility for irradiation experiments until certain listed conditions were met and the NRC approves, in writing, the resumption of irradiation experiments, and (b) the results of the licensee's survey of the house of the individual involved in the August 1987 contamination event be provided in writing to the NRC within 10 days of the Order.

Subsequent to issuing the Order of January 20, 1988, the NRC initiated an investigation of alleged improper safety-related activities associated with the operation of the Georgia Tech Research Reactor (GTRR). That investigation is continuing.

On February 15, 1988, the President of the Georgia Institute of Technology directed the immediate suspension of all reactor operations at the Neely Nuclear Research Center which includes operation of the GTRR. He also announced that an independent evaluation of Georgia Tech's program and procedures would be performed by an outside expert.

During an Enforcement Conference on February 23, 1988, the NRC discussed a number of preliminary safety concerns that have come out of its investigation to date. These concerns, together with previously known events over the past year, give the NRC substantial concerns about the operation of the reactor. The President stated that, as evidenced by his suspension of all reactor operations, he was also concerned. He then stated that Georgia Tech would not resume any reactor operations until the independent evaluation was completed, appropriate actions were taken on recommendations from that evaluation and from an internal investigation which he has initiated, the President was assured that all safety questions were adequately resolved, and the NRC concurred in the resumption of operations.

III

Due to NRC's concerns regarding the adequacy of management of the operation of the GTRR and the ongoing investigation of safety-related matters, I have determined that these commitments are required in the interest of the public health and safety and, therefore, should be confirmed by an immediately effective order.

Accordingly, pursuant to sections 104, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effectively immediately, that:

License No. R–97 is modified to prohibit resumption of operation of the GTRR until:

A. The licensee has identified, based on its reviews as well as the review of its independent evaluator, the root causes of the problems that may impact on the safe operations of the reactor and provided a listing of these issues to the Regional Administrator, Region II;

B. The President of the licensee has provided in writing to the Regional Administrator, Region II, a description of the actions taken to resolve the issues that may impact on the safe operation of the reactor and the reasons why he has determined that the suspension of reactor operations should be lifted; and

C. The Regional Administrator, Region II, has approved in writing the resumption of reactor operations.

The Regional Administrator, Region II, may in writing relax or rescind any of the above conditions upon written request and demonstration of good cause by the licensee.

The licensee or any other person adversely affected by this Order may request a hearing on this Order within twenty days of its issuance. Any request for hearing shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta St., NW., Suite 2900, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or any person who has an interest adversely affected by the Order, the Commission will issue an Order designating the time and place of any such hearing. If the Licensee fails to request a hearing within 20 days of the date of this Order, the provisions of this Order shall be final without further proceedings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 17th day of March 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88–6435 Filed 3–23–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

The Illinois Power Company et al.; (Clinton Power Station, Unit 1); Exemption

I

The Illinois Power Company[1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) are the holders of Facility Operating License No. NPF–62 which authorizes operation of the Clinton Power Station, Unit 1 (the facility) at steady-state reactor power levels not in excess of 2894 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensees' site in DeWitt County, Illinois.

II

10 CFR Part 50, Appendix J, Section III.D.3, states:

> Type C tests. Type C tests should be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

These tests would become due at the Clinton Power Station, Unit 1, for certain containment isolation valves which are the subject of this Exemption, by October 21, 1988. The tests necessary to meet this section of Appendix J to 10 CFR Part 50 are required by Technical Specification 4.6.1.2 of the Clinton Power Station, Unit 1, Technical Specifications.

On January 13, 1988, the licensees submitted a request for exemption from Section III.D.3 of Appendix J to 10 CFR Part 50 for the Clinton Power Station, Unit 1, for eight containment isolation valves. The licensees proposed to perform Type C local leak rate tests (LLRTs) of these valves prior to startup from the first refueling outage for Unit No. 1 (scheduled to be initiated in January of 1989) in lieu of the 2-year interval required by Section III.D.3. The licensees also submitted by separate correspondence dated December 10, 1987, a related Technical Specification change request to the Clinton Power Station, Unit 1 license which would revise Technical Specification 4.6.1.2 to be consistent with the requested exemption. The licensees also responded to the Commission's staff request for additional information related to the exemption and amendment request by letter dated January 29, 1988.

In accourdance with 10 CFR 50.12(a)(2), the licensees have stated that special circumstances are present which support the requested exemption. Particularly, with respect to 10 CFR 50.12(a)(2)(ii) and (v), the licensees state that the following special circumstances exist:

> *Section 50.12(a)(2)(ii)*—The purpose of 10 CFR Part 50 Appendix J testing is to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the Technical Specifications or associated bases and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment.
>
> The containment leakage rate is primarily affected by equipment wear and maintenance. Isolation valves typically see little usage (especially test connections, vents and drain valves) except for periodic operability testing. This leads to little degradation of equipment or increase in the leakage rate. From October 21, 1988 to the first refueling outage, which must be initiated by no later than Febreury 28, 1989, these valves will be subject to minimal wear. These

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[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility

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valves were last tested on October 21, 1986, shortly after the fuel was initially loaded into the core.

Redundancy regarding primary containment isolation is provided by two isolation valves in series or one isolation valve bounded by a closed loop outside containment. Consequently, a reduction in the effectiveness of one valve to provide a seal would not itself compromise containment integrity. Deterioration of the overall integrity of the containment penetrations is normally a gradual process. Considering the redundancy of the isolation barriers, the short duration of the requested extension of the testing interval and the limited number of valves affected, any reduction in the containment integrity during the extension period would be negligible.

These valves have not required maintenance since last tested on October 21, 1986. These valves are tested during cold shutdown, and to date, data from past testing shows leakage to be well within acceptable limits. Similar valves will be tested during the spring 1988 maintenance outage, and any excessive leakage or other degraded valve conditions indicative of a generic condition will be evaluated at that time.

Section 50.12(a)(2)(v)—IP is requesting a temporary exemption to the requirements of 10 CFR Part 50 Appendix J paragraph III.D.3 for a limited number (eight) of Containment Isolation Valves. All other Containment Isolation Valves at CPS are in compliance with these requirements. IP will be in complete compliance with 10 CFR Part 50 Appendix J paragraph III.D.3 after startup from the first refueling outage.

III

The Commission's staff has determined that the licensees' request for extension of the requested containment isolation valve Type C LLRTs until the first refueling outage is acceptable based on the following considerations:

1. The affordable results of previous leakage tests performed at the Clinton Power Station, Unit 1, on these valves, coupled with their small contribution to allowable leakage, confirmatory industry experience and expected gradual deterioration of valves of these types provide reasonable assurance and confidence that granting the requested schedular exemption will not result in a significant decrease in the integrity of the containment boundary.

2. Similar valves will be tested during the spring 1988 maintenance outage and any excessive leakage or other degraded valve conditions indicative of a generic condition will be evaluated by IP at that time.

3. Leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some valves, because of their intended functions, cannot be tested during power operations. For valves that cannot be tested during power operations or those that, if tested during power operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity and reactor coolant pressure boundary integrity following a successful test is not significant enough to justify either extending the 1988 maintenance outage by about one week or having a plant shutdown specifically to perform the LLRTs within the 2-year period, as long as the valves are in compliance with items 1 and 2 above. The drywell head has not been removed since it was initially bolted down in October 21, 1986; thus there has not been a ready opportunity to perform these tests to date.

For details with respect to the staff's evaluation see the Safety Evaluation Supporting Amendment to Facility Operating License No. NPF-62 dated March 18, 1988.

The Commission's staff has reviewed the licensee's description of the special circumstances relative to this exception request and has determined that there are special circumstances in this instance which satisfy 10 CFR 50.12(a)(2)(ii) in that application of the regulation for the circumstances requested is not necessary to achieve the underlying purpose of the rule. The 2-year interval testing requirement for Type B and C penetrations is intended to be often enough to prevent significant deterioration from occurring and long enough to permit LLRTs to be performed during plant outages. In this case the penetrations at issue were last tested in October 1986 shortly after initial fuel loading. A full power license was issued in April 1987 and the reactor reached 100% power during September 1987. As a result of delays in attaining full power, an occurrence common to initial startup activities, the first refueling outage for the Clinton facility is scheduled to be initiated by no later than February 28, 1989, approximately four months longer than two years since the last type B and C tests on these penetrations. However, the plant will not have accumulated two full years of power operations by the end of the first refueling outage, and the integrated temperature/pressure profiles experienced by the valves considered in this one-time limited extension of the test interval will not be significantly greater than that expected for subsequent refueling cycle test intervals. Moreover, initial tests on these valves showed very little leakage and since the facility has just commenced operation, little deterioration of the valves is expected during these early years of operating life. Accordingly, in these circumstances the staff concludes that conducting the type B and C tests of these valves before the end of the two year interval is not necessary to provide assurance of adequate leakage integrity of the affected penetrations. Moreover, delaying the tests until shutdown, a matter of up to four months, will help to limit occupational radiation exposure.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present in that the requested exemption is temporary in nature, the application of the regulation during this limited period is not necessary to achieve the underlying purpose of the rule, and the licensees have made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the following Exemption from the requirements of Section III.D.3 of Appendix J to 10 CFR Part 50:

The 2-year limit on the Type C testing interval for the eight valves identified in the licensees' January 13, 1988, request for exemption is extended on a one-time basis until prior to startup from the first refueling outage for the Clinton Power Station, Unit 1, provided the licensees conduct these tests prior to when containment integrity must be assured following the refueling operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 8825 dated March 17, 1988).

A copy of the Commission's Safety Evaluation referred to in this Exemption is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of March 1988.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-6434 Filed 3-23-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Certain Industry Advisory Committees; Determination of Closing of Meetings

The Industry Advisory Committees for Trade Policy Matters (including the Industry Policy Advisory Committee, the Committee of Chairman of Industry Advisory Committees, the Industry Sector Advisory Committees, and the Industry Functional Advisory Committees) (the Advisory Committees) have been established to advise the United States Trade Representative and the Secretary of Commerce, in accordance with subsection 135(a) of the Trade Act of 1974, as amended (the Act), on trade matters referred to in section 102 of the Act; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the administration of the trade policy of the United States.

I, therefore, determine that meetings of the Advisory Committees will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions and with matters listed in section 552b(c) of Title 5 of the United States Code. Therefore, meetings of the Advisory Committees will be closed to the public unless otherwise determined by the United States Trade Representative or his designee.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-6400 Filed 3-23-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25487; File No. SR-Amex-88-1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On January 13, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend until June 30, 1988 the pilot plan for equity (stock) options during emergency or unusual market conditions.

The proposed rule change was noticed in Securities and Exchange Act Release No. 25380 (February 22, 1988), 53 FR 6044 (February 29, 1988). No comments were received on the proposed rule change.

In November, 1985, the Amex implemented a pilot program to be used during short periods of extremely high order flow for the execution of options orders automatically routed to the Exchange through the Amex's routing system, AUTOAMOS.[3] Under the pilot program, the implementation of emergency procedures could be authorized by the concurrence of two Floor Governors when, in their opinion, the Exchange received an extremely large influx of both system and non-system orders, such that the affected specialist(s) could not expose each AUTOAMOS order to the crowd. Under these circumstances, the specialist in the affected option was permitted to execute incoming AUTOAMOS orders either as agent against the book or as principal, without exposing them to the crowd.

In January, 1987, the pilot plan for equity options was extended and enhanced by the utilization of AUTO-EX.[4] AUTO-EX is an automatic system that permits member firms to route public customer market and marketable limit orders of up to 20 contracts[5] through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order. It the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned to one of the Amex Registered Options Traders ("ROTs") who have signed on the system or to the specialist who participates in the rotation.

AUTO-EX is implemented when two floor officials have determined that an emergency situation involving high order flow is occurring. AUTO-EX has been activated on twenty-eight occasions in response to various different "emergency" or "breakout" situations since January 1987. The AUTO-EX pilot plan for equity options has been highly successful in enhancing execution and operational efficiencies during these emergency situations. The Amex believes that it is important to continue to have available the most efficient means of dealing with emergency, high volume situations. Accordingly, the Exchange proposed to extend the AUTO-EX pilot program pending Commission approval of Amex's proposal seeking permanent approval of AUTO-EX's use in all equity options,[6] so that it can continue to be activated in equity options when emergency situations occur.

The Commission believes that the proposed rule change will benefit public customers, member firms, and Amex floor brokers by ensuring that orders routed to the Exchange through AUTOAMOS will be handled efficiently during periods of peak volume. By utilizing the AUTO-EX system during these periods, AMEX ROTs who elect to participate in the pilot will be able to participate more fully in trading during fast markets. In addition, the proposed procedures should allow Amex specialists more time to handle non-system orders during these periods.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [7] and the rules and regulations thereunder. The Commission believes that extending the AUTO-EX pilot plan will enhance the execution of orders during emergency situations and will facilitate transactions in securities and protect the investing pulblic.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: March 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6448 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] This pilot was approved by the Commission in Securities Exchange Act Release No. 22447 (September 24, 1985), 50 FR 40083.

[4] *See Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR 9601.*

[5] The Amex's proposal to increase the size of eligible orders in the AUTO-EX system from 10 to 20 contracts was approved in Securities Exchange Act Release No. 24899 (September 10, 1987), 52 FR 35012.

[6] *See* Securities Exchange Act Release No. 25056 (October 23, 1987).

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 C.F.R.. 200.30-3(a) (1987).

[Release No. 34-25485; File No. SR-PHLX 88-09]

Self-Regulatory Organizations; Partial Accelerated Approval of Rule Change By the Philadelphia Stock Exchange, Inc.; Value Line Arithmetic Average Computation

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 26, 1988, a proposed rule change to revise the method of computation of the Value Line Composite Stock Average Index ("XVL Index") underlying index option contracts to an arithmetic average from a geometric average.

The proposed rule change was published for comment in Securities Exchange Act release No. 25442 (March 10, 1988).

The Phlx has traded the XVL index utilizing a geometric average computation since January 11, 1985.[3] Currently, the XVL Index contracts traded at the PHLX are American style option contracts, although the Commission also has approved the trading of European style options on the Value Line Index.[4]

The proposed rule change would revise the method of computation of the XVL Index to an arithmetic average from a geometric average. The XVL Index is the only index that currently is calculated on a geometric average. Geometric averaging tends to underperform an arithmetic average and the geometric averaging of the XVL Index has resulted at times in substantial disparities between prices of the XVL futures and options contracts and the level of the underlying cash index.

The Exchange notes that geometric averaging of the XVL Index has created investor confusion and impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks.

The PHLX has requested that, pending final approval of the rule change, the Exchange be allowed to add series of arithmetically averaged XVL Index Index contracts to complement such series of XVL Index contracts that are currently listed for trading calculated on a geometric average.[5] Accordingly, pending final approval of the rule change, there may be some arithmetic and geometric series open simultaneously.[6]

The Commission finds good cause for approving the proposed rule change as it relates solely to the addition of these new arithmetically averaged contracts prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** for several reasons. First, the Commodities Futures Trading Commission recently has approved a Kansas City Board of Trade ("KCBT") proposal to revise the method of computation of the XVL future to an arithmetic average from a geometric average. The Commission believes that adopting a corresponding change for near term index options contracts trading on the Phlx will facilitate market participants' ability to hedge their respective options and futures positions with index products that are based on a uniformly calulated index. By permitting the PHLX to introduce option series that will be calculated in a similar manner and correspond to the index futures trading on the KCBT, market participant's hedging strategies will not be disrupted. At the same time, the Commission believes that investor confusion will be minimal since the PHLX will disseminate information concerning the different index calculations. Consequently, the Commission finds that the portion of the rule change receiving accelerated approval is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commision, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1980.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change referenced above be, and hereby is, approved, as it related to the addition of near term arithmetically average Value Line Index contracts.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,
Secretary.

Dated: March 18, 1988.

[FR Doc. 88-6447 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b) (1) (1982).

[2] 17 CFR 240.19-4 (1987).

[3] Trading the XVL index utilizing a geometric average computation was approved in Securities Exchange Release No. 34-21392 (October 10, 1984) 49 FR 40987.

[4] *See* Securities Exchange Release No. 34-24506 (May 22, 1987) 52 FR 20858. An American style option may be exercised by its holder anytime before expiration. A European style option, however, can be exercised only on the last trading day prior to its expiration.

[5] Telephone conversation between Richard R. Chase, Executive Vice President, PHLX, and Howard Kramer, Assistant Director, Division of Market Regulation, March 14, 1988.

[6] The Exchange will disseminate information to minimize any confusion between the products during this overlay period.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] CFR 200.30-3(a)(12) (1986).

[Release No. 34-25486; File Nos. SR-PHLX-88-01, SR-PSE-87-21]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Changes

On January 27, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX") and the Pacific Stock Exchange, Inc. ("PSE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] proposed rule changes to extend the market index option escrow receipt pilot program until June 30, 1988.

In August 1985, the Commission approvaed a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[3] The pilot was to

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439 for a description of the pilot.

end on August 19, 1986 but was initially extended until February 20, 1987 to provide sufficient time for the CBOE to review the data complied during the original pilot period.[4]

On February 6, 1987 the CBOE submitted a report to the Commission and requested that the pilot be extended until June 30, 1987 in order to give the Commission sufficient time to review and evaluate the report. The pilot was subsequently extended until December 31, 1987 to allow additional time for Commission review of the CBOE report.[5]

The Commission has determined to extend the pilot until June 30, 1988 in order that the options exchanges and the Options Clearing Corporation may review the format of the receipt. The proposed rule changes will extend the operation of the pilot program and thereby provide a workable mechanism through which index call options can be written in a cash account.

The Commission finds that the proposed rule changes to extend the operation of the index option escrow receipt program through June 30, 1988, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The pilot program extension is consistent with the Act because it will enable continuation of a program designed to reduce operational difficulties of banks and trust companies while the Commission evaluates the program's effectiveness. In addition, the Commission will have the opportunity to assess the program's operation during the October 1987 market break before determining whether to make the program permanent.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the pilot was previously approved by the Commission, no adverse comments have been received regarding its operation, and the extension will allow for uninterrupted continuation of the program. Furthermore, the Commission recently approved identical proposals to extend the pilot submitted by the Chicago Board Options Exchange, Inc. and the American Stock Exchange, Inc.[6]

Interested persons are invitied to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communicaitons relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by April 14, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7] that the proposal to extend the operation of the pilot through June 30, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,
Secretary.

Dated: March 18, 1988.

[FR Doc. 88-6449 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

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[4] *See* Securities Exchange Act Release No. 23552 (August 25, 1986), 51 FR 31183.

[5] *See* Securities Exchange Act Release No. 24708 (July 15, 1987), 52 FR 27604

[6] *See* Securities Exchange ACt Release No. 25242 (January 5, 1988) 53 FR 648.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1986).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

First Fidelity Bancorporation
  Series C, $4.00 Convertible Voting Preferred Stock, $1.00 Par Value (File No. 7-3151)
Morgan Products, Ltd.
  Common Stock, $.10 Par Value (File No. 7-3152)
Systems Integrators, Inc.
  Common Stock, No Par Value (File No. 7-3153)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-6473 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Guardsman Products, Inc.
  Common Stock, $1.00 Par Value (File No. 7-3154)
Dean Witter Government Income Trust
  Shares of Beneficial Interest, $.01 Par Value (File No. 7-3155)
First Fidelity Corporation
  Common Stock, $1.00 Par Value (File No. 7-3156)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-6474 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Stride Rite Corporation
  Common Stock, $1.00 Par Value (File No. 7-3157)
Carteret Bancorp, Inc. (Holding Company)
  Common Stock, $0.01 Par Value (File No. 7-3158)
Solitron Devices, Inc.
  Common Stock, $0.01 Par Value (File No. 7-3159)
TPA of America, Inc.
  Common Stock, $0.01 Par Value (File No. 7-3160)
Wean Incorporated
  Common Stock, $0.01 Par Value (File No. 7-3161)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-6475 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant number	Grant amount	Obligation date
Section 3 grants:			
Metropolitan Transit Authority, Houston, TX	TX-03-0119	$15,604,265	Feb. 12, 1988.
City of Dallas, Dallas, TX	TX-03-0121	1,201,449	Feb. 24, 1988.
Metropolitan Transit Commission, Minneapolis, MN	MN-03-0037	8,397,000	Mar. 2, 1988.
Section 9 grants:			
Utica Transit Authority, Utica, NY	NY-90-X105-01	140,000	Feb. 16, 1988.
New Jersey Transit Corporation, Northeastern, NJ	NJ-90-X024	9,300,000	Mar. 4, 1988.

Issued on March 18, 1988.

Alfred A. DelliBovi,
Administrator.

[FR Doc. 88-6495 Filed 3-23-88; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 29, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,186
  Stockmen's Bank and Trust Company, Gillette, Wyoming

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Discussion re: Application of the Corporation's Guidelines for Real Estate Appraisal Policies and Review Procedures.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 88-6590 Filed 3-22-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 29, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

Seoul Bank of California, a proposed new bank to be located at 3000 West Olympic Boulevard, Los Angeles, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 88-6591 Filed 3-22-88; 8:45 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Alaska, et al.

Correction

In notice document 88-5631 appearing on page 8483 in the issue of Tuesday, March 15, 1988, make the following corrections:

1. In the second column, under the entry for "Docket Number 88-075", in the ninth complete paragraph, in the first line, "Commission" should read "Commissioner".

2. In the same column, under "Docket Number 88-064", in the fifth line from the bottom, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

Correction

In notice document 88-5724 beginning on page 8683 in the issue of Wednesday, March 16, 1988, make the following correction:

On page 8683, in the third column, in the first complete paragraph, in the eighth line, "Category 343" should read "Category 342".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DAR Case 87-305]

Department of Defense Federal Acquisition Regulation Supplement; Special Tooling and Special Test Equipment

Correction

In proposed rule document 88-4320 beginning on page 6015 in the issue of Monday, February 29, 1988, make the following correction:

On page 6015, in the first column, under SUPPLEMENTARY INFORMATION, in the sixth line from the bottom "2339" should read "2329".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

Correction

In rule document 88-4371 beginning on page 6151 in the issue of Tuesday, March 1, 1988, make the following corrections:

1. On page 6152, in the third column, in the fourth paragraph, in the second line, "institutions" should read "institution".

2. On page 6153, in the third column, in amendatory instruction 5, in the second line, remove the semicolon before "and".

§ 1602.13 [Corrected]

3. On page 6154, in the second column, in § 1602.13(e)(7), in the first line, insert a colon after "mail".

4. On the same page, in the third column, in § 1602.13(h)(1), in the seventh line, after "not" insert "be".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 25117; Amdt. No. 150-1]

Expansion of Applicability of Part 150 to Heliports

Correction

In rule document 88-5677 beginning on page 8722 in the issue of Wednesday, March 16, 1988, make the following corrections:

1. On page 8723, in the first column, in the first complete paragraph, in the 25th line, "date" should read "data".

2. On page 8724, in the first column, in amendatory instruction 3, in the last line, "helicopters" should read "heliports".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8184]

Income Taxes; Special Rules Relating to Nuclear Decommissioning Costs

Correction

In rule document 88-4445 beginning on page 6800 in the issue of Thursday, March 3, 1988, make the following correction:

§ 1.468A-8 [Corrected]

On page 6819, in the third column, in § 1.468A-8(b)(6), in the seventh line, after "begins" insert "before".

BILLING CODE 1505-01-D

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federal register

Thursday
March 24, 1988

Part II

Department of the Treasury

31 CFR Part 25

Prepayment of Foreign Military Sales Loans Made by the Department of Defense and the Federal Financing Bank and Guaranteed by the Department of Defense; Interim Rule With Request for Comments

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

31 CFR Part 25

Interim Rule Governing Prepayment of Foreign Military Sales Loans Made by the Department of Defense and the Federal Financing Bank and Guaranteed by the Department of Defense

AGENCY: Department of the Treasury.

ACTION: Interim rule; request for comments.

SUMMARY: The regulations which follow implement the provisions relating to the prepayment of loans by foreign governments contained in paragraph (a), Refinancing, under the heading, Foreign Military Sales Debt Reform, of Title III, Military Assistance, of the Act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Public Law No. 100–202), enacted December 22, 1987 (the "Act"). The Act specified that the President may, during fiscal years 1988 through 1991, transfer existing United States guarantees of outstanding Foreign Military Sales ("FMS") loans, or issue new guarantees, either of which may be attached to new loans made by United States financial institutions to finance the prepayment at par of the principal amounts maturing after September 30, 1989 of existing FMS loans. The proceeds of the new loans so obtained shall be used to prepay existing FMS loans with interest rates of ten percent or higher, interest accrued on the FMS loans prepaid, and arrearages on FMS loans. The guarantees that are authorized to be attached to such new loans shall cover no more and no less than 90 percent of the principal of the new loans, plus 90 percent of the interest thereon. Nothing in this regulation is intended to authorize any private United States financial institution to engage in any activity not otherwise authorized or permitted for such institution under any applicable laws of the United States, any territory or possession of the United States, any State or the District of Columbia.

DATE: This Interim Rule is effective on March 24, 1988. However, before issuing the Final Rule, the Department will consider comments submitted by the public. Comments must be received in writing on or before April 25, 1988. This Interim Rule is effective upon publication, thereby enabling Borrowers to proceed with the application procedure.

ADDRESS: Send comments to the Office of the Assistant Secretary for Domestic Finance, Room 3054, Main Treasury Building, Washington, DC 20220. Attention: Gene Holland.

FOR FURTHER INFORMATION CONTACT: Gene Holland, Office of the Assistant Secretary for Domestic Finance, Department of the Treasury. (202) 566–2468.

Interim Rule With Request for Public Comment

The Act requires that implementing regulations be issued within 90 days after the date of enactment, which was December 22, 1987. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an opportunity to comment on the regulations, the Treasury is issuing an Interim Rule with request for public comment. The Treasury finds that good cause exists to make the Interim Rule effective upon publication, thereby enabling those borrowers that wish to proceed with application to seek a guarantee for the refinancing loans to do so.

Procedural Requirements

Because the Interim Rule involves foreign and military affairs functions of the United States, it is not subject to Executive Order 12291 or the public notice and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553). Moreover, since the Act requires that these regulations be published and effective within ninety days of December 22, 1987, the Department finds that good cause exists to dispense with the public notice and delayed effective date requirements of 5 U.S.C. 553.

As no notice of proposed rulemaking is required, this Interim Rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The requirements to collect information contained in this Interim Rule have been reviewed and approved by the Office of Management and Budget pursuant to section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Comments on these requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Departmental Offices, Washington, DC 20503, and to the Department of the Treasury at the address previously specified.

List of Subjects in 31 CFR Part 25

Banks and banking, Loan programs—national defense, Reporting and recordkeeping requirements.

Subtitle A of Title 31, Code of Federal Regulations, is amended by adding Part 25 to read as follows:

PART 25—PREPAYMENT OF FOREIGN MILITARY SALES LOANS MADE BY THE DEPARTMENT OF DEFENSE AND FOREIGN MILITARY SALES LOANS MADE BY THE FEDERAL FINANCING BANK AND GUARANTEED BY THE DEPARTMENT OF DEFENSE

Subpart A—General

Sec.
25.100 Definitions.
25.101 OMB control number.

Subpart B—Qualifications for Prepayment

25.200 General rule.

Subpart C—Procedures

25.300 Application procedure.
25.301 Approval procedure.
25.302 Closing procedure.

Subpart D—Form of Private Loan

25.400 Loan provisions.
25.401 Fees.
25.402 Transferability.
25.403 Registration.
25.404 Non-separability.
25.405 Collateralization of unguaranteed portion.
25.406 Form of guarantee.
25.407 Savings clause.

Authority: Title III, Pub. L. 100–202; 31 U.S.C. 321.

Subpart A—General

§ 25.100 Definitions.

In this part, unless the context indicates otherwise:

(a) "Act" means paragraph (a), Refinancing, under the heading, Foreign Military Sales Debt Reform, of Title III, Military Assistance, of the Act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Public Law No. 100–202), enacted December 22, 1987.

(b) "AECA" means the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*).

(c) "Borrower" means the obligor on an FMS Advance.

(d) "Closing Date" means (1) with respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by DSAA, the date designated by the agreement of both the Borrower and DSAA on which the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid; and (2) with respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by the FFB and guaranteed by DSAA, the date designated by the unanimous agreement of the Borrower, the FFB, and DSAA on which the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or portion thereof which the Borrower has selected to prepay, will be prepaid.

(e) "DSAA" means the Defense Security Assistance Agency, an agency within the Department of Defense.

(f) "Eligible FMS Advance" means any FMS Advance which (1) was outstanding on December 22, 1987; (2) has principal amounts becoming due and payable after September 30, 1989; and (3) bears interest at a rate equal to or greater than ten percentum per annum. "Eligible FMS Advance" may include FMS Advances meeting the criteria of Eligible FMS Advance which are made on account of FMS Loans even when such FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loan.

(g) "Eligible FMS Loan" means any FMS Loan which (1) was outstanding on December 22, 1987; (2) has principal amounts becoming due and payable after September 30, 1989; and (3) bears interest pursuant to the terms of the loan agreement relating thereto at a consolidated rate equal to or greater than ten percentum per annum. "Eligible FMS Loan" may include FMS Advances which are made on account of FMS Loans meeting the criteria of Eligible FMS Loan even when such FMS Advances do not, in themselves, meet the criteria of Eligible FMS Advance.

(h) "FFB" means the Federal Financing Bank, an instrumentality and wholly-owned corporation of the United States.

(i) "FMS" means Foreign Military Sales.

(j) "FMS Advance" means (1) a disbursement of funds made pursuant to a loan agreement between the Borrower and DSAA, which loan agreement provides for the making of an FMS Loan, or (2) a disbursement of funds made pursuant to a loan agreement between the Borrower and the FFB, which loan agreement provides for the making of an FMS Loan.

(k) "FMS Loan" means either (1) a loan made directly by the Secretary of Defense pursuant to Section 23 of AECA, or (2) a loan made by the FFB and guaranteed by the Secretary of Defense pursuant to Section 24 of AECA; and "FMS Loans" mean the aggregate of such loans made to or for the account of a Borrower.

(l) "Guarantee" means either a new guarantee of the United States issued by DSAA or an existing guarantee of the United States transferred by DSAA, in the form of guarantee set forth in § 25.406 of this part, which guarantee will be attached to a Private Loan Note.

(m) "Non-Registered Obligation" means a bearer obligation which does not comply with all of the registration requirements of the Internal Revenue Code.

(n) "Permitted P&I Prepayment Amount" means, with respect to each Eligible FMS Loan or Eligible FMS Advance, as the case may be, the sum of (1) all principal amounts which become due and payable after September 30, 1989, on the respective Eligible FMS Loan or Eligible FMS Advance; and (2) all unpaid interest, if any, on the respective Eligible FMS Loan or Eligible FMS Advance accrued as of the Closing Date.

(o) "Permitted Arrears Prepayment Amount" means the sum of all arrears, if any, on all FMS Loans, which arrears are outstanding on the Closing Date.

(p) "Private Lender" means either (1) any of the following entities: (i) Any banking, savings, or lending institution chartered or otherwise lawfully organized under the laws of any State, the District of Columbia, the United States or any territory or possession of the United States, including, but not limited to, any bank, trust company, industrial bank, savings association, savings and loan association, building and loan association, savings bank, credit union, or finance company, which is doing business in the United States; (ii) any broker or dealer registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934; (iii) any company lawfully organized as an insurance company, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or (iv) any United States pension fund; or (2) any trust or other special purpose financing entity which is wholly owned initially by an entity or entities of the type described in clause (1) of this definition.

(q) "Private Loan" means, collectively, the loan or loans that is or are obtained by the Borrower from a Private Lender to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay.

(r) "Private Loan Note" means, collectively, the note or notes executed and delivered by the Borrower to evidence the Private Loan.

(s) "Total Permitted Prepayment Amount" means the sum of (1) the aggregate of the respective Permitted P&I Prepayment Amount for all Eligible FMS Loans and all Eligible FMS Advances on account of FMS Loans which FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loans; and (2) the Permitted Arrears Prepayment Amount.

§ 25.101 OMB control number.

The reporting requirements in this part have been approved under OMB Control Number 1505–0109.

Subpart B—Qualifications for Prepayment

§ 25.200 General rule.

(a) To qualify for a loan prepayment at par pursuant to the Act, a Borrower must have Eligible FMS Loans or Eligible FMS Advances.

(b) A Borrower may prepay the Total Permitted Payment Amount in portions using more than one closing; however, all prepayments of the Total Permitted Prepayment Amount must have a Closing Date that is not later than September 30, 1991.

(c) A Borrower may prepay all or a portion of the Total Permitted Prepayment Amount; however, if a Borrower selects to prepay any Permitted P&I Prepayment Amount of an FMS Advance, the Borrower must prepay the entire Permitted P&I Prepayment Amount of such FMS Advance.

Subpart C—Procedures

§ 25.300 Application procedure.

(a) Each Borrower that wishes to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, must submit a written application which shall contain the following information and materials:

(1) An identification of each Eligible FMS Loan or Eligible FMS Advance, as the case may be, with respect to which the Borrower has selected to prepay the amount thereof permitted by this part to be prepaid, setting forth with respect to each such Eligible FMS Loan or Eligible FMS Advance: (i) The date on which the Eligible FMS Loan or Eligible FMS Advance was made, (ii) the original amount of the Eligible FMS Loan or Eligible FMS Advance, (iii) the principal and interest payment schedule of the Eligible FMS Loan or Eligible FMS Advance, and (iv) the maturity of the Eligible FMS Loan or Eligible FMS Advance;

(2) A description of the Permitted Arrears Prepayment Amount calculated by the Borrower as of the date of the application;

(3) A description of each Private Loan, 90 percent of which the Borrower seeks to have guaranteed, setting forth with respect to each Private Loan: (i) The total amount of the Private Loan, (ii) the proposed principal and interest payment schedule of the Private Loan, (iii) the proposed maturity of the Private Loan, and (iv) the identity of each Eligible FMS Loan or Eligible FMS Advance with respect to which amount thereof permitted by this part to be prepaid is to be prepaid with the proceeds of the Private Loan;

(4) All material transaction documents, in substantially final form, relating to the prepayment of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, with the proceeds of the Private Loan; and

(5) The name, address, and telephone number of a Borrower contact person with whom the FFB or DSAA will communicate to arrange for prepayment and closing.

(b) Each application shall be submitted to DSAA at the following address:

Defense Security Assistance Agency
Room 4B659
The Pentagon
Washington, DC 20301
Attention: Deputy Controller

§ 25.301 Approval procedure.

(a) *Review by the Defense Department.* (1) Each application will be reviewed by the Defense Department to ensure that the Private Loan complies with the requirements of this part, including without limitation the requirement that the payment schedule and maturity of each Private Loan are substantially the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, with respect to which the amounts thereof permitted by this part to be prepaid are to be prepaid with the proceeds of the Private Loan. Each application will also be reviewed by the Defense Department to ensure that the provisions of subsection (d) of the Act, Purposes and Reports, are considered.

(2) After each application has been reviewed, by the Defense Department, the Defense Department will either (i) return the application to the Borrower, or (ii) forward the application to the State Department.

(b) *Review by the State Department.* (1) Each application received by the State Department from the Defense Department will be reviewed by the State Department to ensure that the provisions of subsection (d) of the Act, Purposes and Reports, are considered.

(2) After each application has been reviewed by the State Department, the State Department will either (i) return the application to the Defense Department for return to the Borrower, or (ii) forward the application to the Treasury Department.

(c) *Processing by the Treasury Department.* (1) FMS Loans held by DSAA.

(i) Each prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, will be processed by the Treasury Department within 10 days after receipt by the Treasury Department of the application from the State Department.

(ii) After the application has been processed by the Treasury Department, the Treasury Department will return the application to the Defense Department and the Defense Department will commence the Closing Procedures described in § 25.302(a) of this part.

(2) FMS Loans held by the FFB.

(i) Each prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, will be processed by the Treasury Department within 30 days after receipt by the Treasury Department of the application from the State Department.

(ii) After the application has been processed by the Treasury Department, the Treasury Department will commence the Closing Procedures described in § 25.302(b) of this part.

§ 25.302 Closing procedure.

(a) *FMS Loans held by DSAA.* (1) After the Treasury has processed a prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, DSAA will communicate with the Borrower's contact person identified in the prepayment application to establish a Closing Date. DSAA will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by DSAA of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guarantee will be attached to the Private Loan Note, the Private Loan shall be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guarantee to the Private Loan Note will take place at such location as may be determined by the unanimous agreement of the Borrower, the Private Lender, and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to DSAA at the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury
New York, New York
021030004
TREAS NYC/ (5037)
For credit to the Defense Security
Assistance Agency
Room 4B 659, The Pentagon
Washington, DC 20301–2800

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the DSAA. Checks, drafts, and other orders for payment will not be accepted.

(b) *FMS Loans held by the FFB.* (1) After the Treasury Department has processed a prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, the FFB will communicate with the Borrower's contact person identified in the prepayment application to establish a Closing Date. The FFB will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by the FFB of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion

thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guarantee to the Private Loan Note will take place at such location as may be designated by the unanimous agreement of the Borrower, the Private Lender, and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay at par the Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury
New York, New York
021030004
TREAS NYC/ (20180006)
For credit to the Federal Financing Bank
Room 143
Liberty Center Building
401 14th Street SW
Washington, D.C. 20227

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the FFB. Checks, drafts, and other orders for payment will not be accepted.

Subpart D—Form of Private Loan

§ 25.400 Loan provisions.

The principal and interest payment schedule and maturity of the Private Loan must be substantially the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, with respect to which the amounts thereof permitted by this part to be prepaid are to be prepaid with the proceeds of the Private Loan. A Private Lender which proposes to make a Private Loan, the proceeds of which will be used to prepay the amounts permitted by this part to be prepaid of Eligible FMS Loans or Eligible FMS Advances, as the case may be, having differing payment structures and maturities, may consolidate those differing payment structures and maturities into a single payment structure having substantially equal semi-annual payments, one set of semi-annual payment dates, and a final maturity date the same as the approximate weighted average of the maturities of the Eligible FMS Loans or Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid.

§ 25.401 Fees.

The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Private Lender selected by the Borrower.

§ 25.402 Transferability.

Each Private Loan Note, with the Guarantee attached, shall be fully and freely transferable.

§ 25.403 Registration.

The Guarantee shall cease to be effective to the extent that the Private Loan, or any portion or derivative thereof, is to be used to provide significant support for a Non-Registered Obligation.

§ 25.404 Non-separability.

The Guarantee shall cease to be effective if the 90 percent guaranteed portion of the Private Loan (or any portion thereof) is at any time separated from the ten percent unguaranteed portion of the Private Loan (or any portion thereof) in any way, directly or through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the Private Loan (or any portion thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the Private Loan (or any portion thereof). The 90 percent guaranteed portion of the Private Loan (or any portion or derivative thereof) may not at any time be separated from the ten percent unguaranteed portion of the Private Loan (or any portion or derivative thereof) in any way, directly or indirectly, including without limitation through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the Private Loan (or any portion or derivative thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest on the guaranteed portion of the Private Loan (or any portion or derivative thereof), such that any holder of the Private Loan Note, or any portion thereof, or any derivative thereof representing a direct or indirect claim to payment made from payments on the Private Loan Note, would receive more than 90 percent of any payment due to such holder from payments made under the Guarantee at any time during the term of the Private Loan.

§ 25.405 Collateralization of unguaranteed portion.

The Guarantee shall cease to be effective if the ten percent unguaranteed portion of the Private Loan becomes collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly, by an obligation or obligations of the United States Government or any of its agencies.

§ 25.406 Form of guarantee.

(a) The Guarantee that will be attached to the Private Loan Note on the Closing Date shall be in the following form:

FOR VALUE RECEIVED, the Defense Security Assistance Agency of the Department of Defense ("DSAA"), hereby guarantees to *(Name of Lender)* ("Lender"), incorporated under the laws of (*U.S. State or other jurisdiction*) or if not so incorporated or organized, then the principal place of doing business is (*U.S. location, address, and zip code*), under the authority of Section 24 of the Arms Export Control Act, as amended ("Act"), the due and punctual payment of ninety percent (90%) of amounts due: (1) On the promissory note ("Note") in the principal amount of up to $_____ dated _____ issued to the Lender by the Government of *(Name of Borrower)* ("Borrower") pursuant to the Loan Agreement between the Lender and the Borrower dated the __th day of _____ ("Agreement"); and (2) the Lender from the Borrower pursuant to the Agreement.

This Guaranty is a guaranty of payment covering all political and credit risks of nonpayment, including any nonpayments arising out of any claim which the Borrower may now or hereafter have against any person, corporation, or other entity (including without limitation, the United States, the Lender, and any supplier of defense items) in connection with any transaction, for any reason whatsoever. This Guaranty shall inure to the benefit of and shall be enforceable by the Lender, its successors or assigns. This Guaranty shall not be impaired by any law, regulation or decree of the Borrower now or hereafter in effect which might in any manner change any of the terms of the Note or Agreement. The obligation of DSAA hereunder shall be binding irrespective of the irregularity, invalidity or unenforceability under any laws, regulations or decrees of the Borrower of the Note, the Agreement or other instruments related thereto.

DSAA hereby waives diligence, demand, protest, presentment and any requirement that the Lender exhaust any right or power to take any action against the Borrower and any

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notice of any kind whatsoever other than the demand for payment required to be given to DSAA hereunder in the event of default on a payment due under the Note.

In the event of failure of the Borrower to make payment, when and as due, of any installment of principal or interest under the Note, the DSAA shall make payment immediately to the Lender upon demand to the DSAA after the Borrower's failure to pay has continued for 10 calendar days. The amount payable under this Guaranty shall be ninety percent (90%) of the amount of the overdue installment of principal and interest, plus ninety percent (90%) of any and all late charges and interest thereon as provided in the Agreement. Upon payment by DSAA to the Lender, the Lender will assign to DSAA, without recourse or warranty, ninety percent (90%) of all of its rights in the Note and the Agreement with respect to such payment.

In the event of a default under the Agreement or the Note by the Borrower and so long as this Guaranty is in effect and the DSAA is not in default hereunder:

(i) The Lender or other holder of the Note shall not accelerate or reschedule payment of the principal or interest on the Note or any other note of the Borrower guaranteed by DSAA except with the written approval of DSAA; and

(ii) The Lender shall, if so directed by DSAA, invoke the default provisions of the Agreement.

Subject to the limitations set forth below, the Lender's rights under this Guaranty may be assigned to any individual, corporation, partnership, or other association doing business in the United States of America. In the event of such assignment DSAA shall be promptly notified. The Lender will not agree to any material amendment of the Agreement or Note or consent to any material deviation from the provisions thereof without the prior written consent of DSAA.

The successors and assigns of the Lender under this Guaranty ("Beneficiaries") shall be severally bound by, and shall be severally entitled to, the rights and obligations of the Lender under the Note, the Agreement, and this Guaranty. The Lender shall maintain a current, accurate written record of the names, addresses, amount of financial interest in the Note and Agreement, and date of acquisition of such interest of each Beneficiary, and shall furnish DSAA a copy of such record on its demand without charge. No assignment by the Lender or by any Beneficiary shall be effective for purposes of this Guaranty unless and until so recorded by the Lender.

The total amount of this Guaranty shall not at any time exceed ninety percent (90%) of the outstanding principal, unpaid accrued interest and arrearages, if any, under the Note and Agreement, including any portion or derivative thereof.

This Guaranty shall cease to be effective if the ninety percent guaranteed portion of the total amount of the Note (or any portion thereof) is at any time separated from the ten percent unguaranteed portion of the total amount of the Note (or any portion thereof) in any way, directly or through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the total amount of the Note (or any portion thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the total amount of the Note (or any portion thereof). The ninety percent guaranteed portion of the total amount of the Note (or any portion or derivative thereof) may not at any time be separated from the ten percent unguaranteed portion of the total amount of the Note (or any portion or derivative thereof) in any way, directly or indirectly, including without limitation through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the total amount of the Note (or any portion or derivative thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the total amount of the Note (or any portion or derivative thereof), such that any holder of the Note, or any portion thereof, or any derivative thereof representing a direct or indirect claim to payment made from payments on the Note, would receive more than ninety percent of any payment due to such holder from payments made under this Guaranty at any time during the term of the Note or the Agreement.

This Guaranty is fully and freely transferable to the eligible assignees set forth above, except that it shall cease to be effective to the extent that the Note or the Agreement or any portion or derivative thereof is used to provide significant support for any non-registered obligation.

This Guaranty shall cease to be effective if the ten percent unguaranteed portion of the total amount of the Note becomes collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly, by an obligation or obligations of the United States Government or any of its agencies.

The full faith and credit of the United States is pledged to the performance of this Guaranty. No claim which the United States may now or hereafter have against the Lender or any Beneficiary for any reason whatsoever shall affect in any way the right of the Lender or any Beneficiary to receive full and prompt payment of any amount otherwise due under this Guaranty. The United States represents and warrants that (a) it has full power, authority and legal right to execute, deliver and perform this Guaranty, (b) this Guaranty has been executed in accordance with and pursuant to the terms and provisions of Section 24 of the Act and the provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, under the heading "Foreign Military Sales Debt Reform," (c) this Guaranty has been duly executed and delivered by a duly authorized representative of DSAA, and (d) this Guaranty constitutes the valid and legally binding obligations of the United States, enforceable in accordance with the terms hereof.

Any notice, demand, or other communication hereunder shall be deemed to have been given if in writing and actually delivered to the Comptroller, DSAA, the Pentagon, Washington, DC 20301, or the successor, or such other place as may be designated in writing by the Comptroller, DSAA or the successor thereof.

By acceptance of the Note, the Lender agrees to the terms and conditions of this Guaranty.

Dated:____________________

By: ____________________

DIRECTOR, DSAA

(b) The obligations of DSAA under the Guarantee are expressly limited to those obligations contained in the form of Guarantee set forth in paragraph (a) of this section. Any provisions of any agreement relating to the Private Loan purporting to create obligations on the part of DSAA which are inconsistent with the terms of the Guarantee or any other provision of this part shall be unenforceable against DSAA.

§ 25.407 Savings clause.

Nothing in this regulation is intended to authorize any private United States financial institution to engage in any activity not otherwise authorized or permitted for such institution under any applicable laws of the United States, any territory or possession of the United States, any State, or the District of Columbia.

Date: March 18, 1988.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 88-6370 Filed 3-21-88; 8:45 am]

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federal register

Thursday
March 24, 1988

Part III

Environmental Protection Agency

40 CFR Ch. I

Technical Assistance Grants (Superfund Program); Interim Final Rule, Advance Notice of Rulemaking, and Notice

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ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

40 CFR Part 35

[FRL-3318-4]

Technical Assistance Grants to Groups at National Priorities List Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Rule with Request for Comments.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), the Environmental Protection Agency (EPA or the Agency) published in the **Federal Register** on June 10, 1987 (52 FR 22244) an Advance Notice of Rulemaking (ANRM). This notice discussed and solicited comments on several issues and various approaches that EPA was considering for accepting and evaluating applications, and for awarding and managing technical assistance grants. EPA stated that it would consider those comments in formulating an Interim Final Rule (IFR). Today EPA is publishing the IFR regarding the Technical Assistance Grant Program. Publication of this rule as an IFR with an immediate effective date allows EPA to begin accepting applications from citizens' groups for financial assistance without further delay, while simultaneously accepting comments on, and developing the Final Rule.

Elsewhere in today's **Federal Register**, EPA is also publishing an Advance Notice of Rulemaking (ANRM) to solicit comments from the public on a proposal to provide technical assistance grant applicants and/or recipients with the services of an Administrative Services Contractor (ASC). These services could include both assistance in preparing grant applications and the procurement of technical assistance, and contract management.

DATES: March 24, 1988.

Comments: Written comments must be submitted on or before June 22, 1988.

ADDRESSES: *Written comments must be submitted to:* Superfund Docket Clerk, Office of Emergency and Remedial Response (WH-548D), Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments on today's Interim Final Rule must identify the regulatory docket as follows: "Docket CERCLA 117(e), Technical Assistance Grant Regulation."

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund docket located in the Lower Garage (Room LG-100) at the U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, WH-548E, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 382-2460 or the RCRA/Superfund Hotline from 9:00 a.m. to 4:30 p.m., Monday-Friday, toll free at 1-(800)-424-9436 or in Washington, DC at 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Introduction

A. Authority

This rule is issued under the authority of section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, hereinafter cited as CERCLA, 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order No. 12580 delegated to EPA the authority to implement section 117(e) in consultation with the Attorney General.

B. Background of the Rulemaking

The process of cleaning up a Superfund site requires detailed technical study of site conditions and wastes, analysis of methods and techniques for remediation, and decisions based upon statutory and regulatory factors. In carrying out these cleanups, EPA and States seek informed comment from citizens living near these sites. Recognizing the importance of such comment and the need for citizens to be well-informed at the sites, Congress authorized technical assistance grants under section 117(e) of CERCLA.

This IFR details the specific requirements for obtaining technical assistance grants. To qualify for a grant, an applicant must demonstrate its ability to meet the requirements set forth in the Code of Federal Regulations (CFR) at 40 CFR Part 30 and 40 CFR Part 33, which are EPA's grant and procurement under assistance agreement regulations, respectively. EPA will review and evaluate all applications that demonstrate an ability to meet these requirements, applying the criteria set forth in the IFR for the Technical Assistance Grant Program published today.

The IFR enables EPA to issue grants while continuing to receive comments that will be considered in the

development of the Final Rule. On the effective date of this rule, EPA may begin accepting applications from citizens' groups for financial assistance in hiring technical experts to assess site information independently. To assist potential applicants and other interested citizens in understanding the Technical Assistance Grant Program, EPA will be providing guidance materials such as EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program," as well as training, workshops, and fact sheets on various aspects of the program.

EPA's policy is to involve the States in administering the Technical Assistance Grant Program. Throughout the regulation, the term "EPA" is used. Where the EPA Regional Administrator authorizes the State to administer the Technical Assistance Grant Program under a cooperative agreement, the term "EPA" may mean a State agency. Where States administer the Technical Assistance Grant Program, EPA will have an oversight role.

It should be noted that section 117(e) also applies to Federal facilities, which is defined in the IFR as "a facility that is owned or operated by a department, agency, or instrumentality of the United States," on the National Priorities List (NPL). A technical assistance grant to a group of individuals who may be affected by a release or threatened release at a Federal facility will be governed by this regulation. (See § 35.4125 of the regulation.)

Because this rule relates to public grants, benefits, or contracts, it is exempt from the requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553) including notice and opportunity for comment and delayed effective date. However, EPA is interested in receiving public comments. EPA sought public comments on the major issues addressed in this IFR by publishing an ANRM and is seeking comments on this IFR as well in order to develop the Final Rule.

II. Responses to Major Public Comments on Issues Raised in the ANRM and Description of the Rule

A total of 83 written comments were received in response to the ANRM published by EPA on June 10, 1987 (52 FR 22244). Approximately one-third of the comments were received from environmental and community groups; one-third from local and State government agencies; and the final one-third from other commenters such as lawyers, consultants, and academicians. The written comments and a document entitled "Summary Document: Response to Comments on the Advance Notice of Rulemaking on Technical Assistance Grants to Groups at National Priorities List Sites," which summarizes the comments and responses to all the public comments, are available in the public docket for the Technical Assistance Grant ANRM. The major issues addressed by the commenters and EPA's responses to them, as well as a description of the rule, are described below.

A. Groups Capable of Assuming Grant Responsibilities

Under EPA's grant regulations codified at 40 CFR 30.301, EPA can award grants only to groups who can meet minimum administrative and management requirements. Consequently, before EPA can evaluate whether a group is otherwise eligible for a grant under section 117(e) of CERCLA, it must first determine that the group is capable of meeting those administrative and management requirements.

Each applicant must demonstrate that it has established, or has plans for establishing, reliable procedures for recordkeeping and financial accountability related to the management of the grant (e.g., the group has established a separate bank account for the management of the grant funds, has described sound plans for fulfilling the reporting requirements, and has provided any other pertinent information showing its commitment to effective accounting procedures for managing the grant, etc.). Each applicant will be required to provide this information to the Agency in the "Applicant Qualifications" section of Part IV of the grant application, EPA Form 5700-33, "State and Local Nonconstruction Programs," or the appropriate State form. If EPA concludes that the applicant is not capable of meeting the minimum administrative and management capability requirements set forth at 40 CFR 30.301, the application will be rejected.

Additionally, EPA has determined that each grant recipient must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant. An applicant may meet this requirement by stating that the group, if it is not incorporated, has plans for incorporating if it is awarded a grant. Once declared a recipient, the group must affirm that it has filed the necessary papers for incorporation with the State. Furthermore, on or before the first request for reimbursement, the recipient must submit documentation (e.g., letter from the State) that the group has been incorporated officially by the State. Absent such documentation, the grant agreement may be annulled. This issue is discussed further in section II.B.3, "Ineligibility," of this Preamble.

B. Groups Eligible for Grants

Section 117(e) of CERCLA specifically provides that: "the President may make grants available to any group of individuals which may be affected by a release or a threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan * * *" and that, "[n]ot more than one grant may be made under this subsection with respect to a single facility * * *."

This language raises four issues regarding grant eligibility: (1) Defining "affected" groups; (2) determining whether groups can apply individually or must consolidate their applications; (3) determining whether certain groups should be ineligible to receive grants; and (4) determining whether certain community representation should be required of the grantee organization to ensure that broad community interests are represented adquately.

1. Defining "Affected" Groups

The first issue in defining the scope of eligibility is interpreting the phrase "group of individuals which may be affected." The ANRM presented two options:

> Option a. * * * (EPA should) accept applications only from those groups of individuals who can demonstrate direct ties to the site (e.g., individuals who are directly threatened by the site from a health or economic standpoint); or
>
> Option b. * * * (EPA should) allow the involvement of groups with more distant connections to the site (e.g., the same watershed use), in addition to those groups next to the site.

The vast majority of public comments favored defining "affected" groups as those groups of individuals with direct ties to the site, particularly those facing actual or potential health and/or economic impacts. Several commenters suggested that groups with more distant geographic connections to the site should be eligible, provided that no groups in close proximity to the site applied for a technical assistance grant.

EPA, as set forth at § 35.4010 of the regulation, defines "affected" groups as those groups of individuals who can demonstrate that they are threatened by the site from a health, economic, or environmental standpoint. EPA will use evaluation criteria to measure whether, and to what extent, an applicant meets this standard.

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Evaluation Criteria. Applicants will describe in a short narrative in the "Applicant Qualifications" section of the grant application how they will meet each of the criteria described below. Applicants, however, will not be required initially to submit documentation. They may be required to supply it later if a pre-award review or an audit is initiated.

EPA will evaluate the strengths and weaknesses of each application. In the event of competing applications, EPA will rank each application relative to other applications since only one grant may be awarded for any eligible site. EPA will do this utilizing five criteria. Each criterion is assigned a weight showing the relative importance of that criterion. The primary purpose of CERCLA is the protection of human health; therefore, the health criteria has the most weight. Since the purpose of section 117(e) is the furthering of public participation, broad representation of affected groups, the ability to use technical assistance grants effectively, and information dissemination have the second highest weights. The last criterion includes two other concerns of the public, economic and environmental impacts.

The extent to which an applicant meets each criterion will be assigned a score ranging from zero (totally deficient) to four (excellent). After evaluating individual criterion, the scores will be multiplied by the assigned weight. Finally, the scores for each criterion will be added to determine the total score for the application. The maximum score that an application can receive is 400 points (5 criteria which total 100 points × a perfect score of 4 on each criterion = 400 total points). For example, the maximum score that an application can receive on the health criterion discussed below would be 120 points (4 × 30 points = 120).

In general, each criterion will be evaluated according to the scoring plan outlined below:

Value	Description
0	Not addressed or totally deficient.
1	Poor.
2	Fair.
3	Good.
4	Excellent.

EPA will review applications based on the following criteria (see § 35.4035 of the regulation):

(a) The presence of an actual or potential health threat posed to group members by the site. (30 points)

To help ensure that groups receiving grants are those most directly affected by a site, an applicant group must include a statement of no more than one page describing the actual or potential health threats posed to group members by the site, the number of group members facing such threats, and, where appropriate, any past actions taken by group members to resolve or to make known their health concerns through letters to local, State, or Federal officials, petitions for health assessments, etc.

A group may meet this criterion by establishing that its members are subject to a demonstrable health threat, whether actual or potential, or a threat that is reasonably believed to be substantial. Not all health concerns will be assigned equal value. Thus, for example, an applicant claiming the presence of a demonstrable health threat ordinarily will receive a higher score than one whose claims are based solely on a potential threat. An applicant's inability to provide documentation of health problems related to the site will not necessarily prevent that applicant from receiving a grant provided the other criteria are met.

(b) The applicant best represents groups and individuals affected by the site. (20 points)

To help ensure that an applicant is representative of groups and individuals affected by the site, this criterion considers the number and diversity of affected organizations and individuals represented within an applicant group (e.g., site neighborhood groups, community groups, local chapters of national or State public interest groups, local health awareness groups, nearby property owners, etc.) in relation to the number of affected groups in the community. An applicant must document in no more than one page the extent to which it represents affected groups and individuals in the community and explain how it plans to involve other affected community groups and individuals who express an interest in joining the coalition after the award of the grant.

Additionally, where appropriate, an applicant may discuss as part of the narrative past activities (e.g., letters, attendance at meetings, conferences, and hearings) conducted by the group or by individual group members that are directly related to the site for which the group is applying for a grant. Broad representation, the intent and the ability to involve other affected groups and individuals in the community, and a history of involvement at the site would be awarded a high score, while very narrow representation, the inability or unwillingness to involve others, and no history of involvement would receive a low score.

(c) The identification of how the group plans to use the services of a technical advisor throughout the Superfund response action, which includes all activities from preliminary planning and investigation through operation and maintenance. (20 points)

To help ensure that a technical assistance grant goes to the community group that is in greatest need of the services of a technical advisor and will use grant funds most effectively to assist citizens in understanding the Superfund cleanup process, an applicant must identify in no more than one page how the group intends to use grant funds. An applicant must also submit a schedule that the technical advisor will use to complete certain tasks.

If the applicant establishes that technical assistance is needed to interpret information throughout the Superfund cleanup process, and that the group has plans to use the funds effectively and efficiently to accomplish the intent of the technical assistance grant, the application would be awarded a high score. Conversely, if an applicant is unable to identify a significant or substantial need, or show that the group will use grant funds effectively and efficiently, the application would receive a low score.

(d) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor. (20 points)

To help ensure that a technical assistance grant goes to the community group that will disseminate the information most effectively to the broader community, an applicant must describe or outline the activities the group plans to use to inform other interested community groups and individuals of the technical advisor's findings or interpretations of technical documents. EPA will evaluate an applicant according to its ability and willingness to disseminate information provided by the technical advisor to the broader community. A plan which indicates an inadequate method for disseminating information would be given a low score while one indicating a clear plan for disseminating information to the broader community would be awarded a high score.

(e) The presence of an actual or potential economic threat or threat of impaired use or enjoyment of the environment to group members that is caused by the site. (10 points)

To help ensure that a group receiving a grant is most directly affected by a site, an applicant must include a statement of no more than one page describing the presence of an actual or potential economic threat posed to group members by the site (e.g., decrease in property value or diminished economic use of property, such as farming, or recreational use). If appropriate, an applicant should also include a discussion of how conditions at the site have adversely affected members' use or enjoyment of the surrounding environment (e.g., aesthetic or recreational value). In addition, the applicant must include the number of group members affected, and a discussion of the actions taken by them to resolve or to make known their economic and/or environmental concerns through letters to local, State, or Federal officials, meetings with real estate agents, etc.

A group may meet this criterion by establishing that its members are subject to a demonstrable economic threat, or impairment of their use and enjoyment of the environment, whether actual or potential, or a threat that is reasonably believed to be substantial. Not all economic or environmental concerns will be assigned equal value. Thus, for example, an applicant claiming the presence of a demonstrable economic or environmental threat ordinarily will receive a higher score than one whose claims are based solely on a potential threat. An applicant's inability to provide documentation of economic or environmental problems related to the site will not necessarily prevent that applicant from receiving a grant provided other criteria are met.

2. Consolidation

Section 117(e)(2) states that, "[n]ot more than one grant may be made under this subsection with respect to a single facility * * *." Thus, only one group can receive a technical assistance grant at any particular site although a variety of divergent groups potentially could apply for the single available grant. Consequently, the ANRM sought public comments on various alternatives to encourage the consolidation of applications. The alternatives posed were:

> Option a. * * * (EPA should) accept only one grant application from each site. If more than one were received, then no grant would be awarded until the groups had combined their applications;
>
> Option b. * * * (EPA should place) a public notice of receipt of an application, e.g., in a local newspaper. The notice would inform others in the community that they have an opportunity to join the original applicant to prepare a single application; or
>
> Option c. * * * (EPA should) accept multiple applications and then fund one that best meets certain eligibility criteria.

Most of the commenters believed that EPA should encourage but not require consolidation, and several stated that EPA should publish a public notice after an application has been received so that other potential applicants could consolidate with the first applicant. Several commenters believed that if consolidation proved impossible, then EPA should accept multiple applications and choose one based solely on the merits of each application. Several commenters suggested that EPA should promote the consolidation of groups by providing facilitators.

(a) Forming coalitions. EPA agrees with the public comments on consolidation and therefore, through the use of the five criteria described above, will encourage but not require consolidation. Thus, an applicant's ability to make technical assistance available to a larger number of interested individuals in an affected community, broad representation of groups and individuals affected by the site, and plans for establishing procedures for disseminating a technical advisor's findings or interpretations of technical documents to the community are all important factors in the evaluation of applications. Ordinarily, consolidated applications will be evaluated more favorably than applications from unconsolidated groups. As for the use of facilitators, EPA, at its discretion, may provide facilitators under certain limited circumstances. Generally, it shall be the responsibility of the groups to form their own coalition.

(b) Notification process. EPA agrees with the commenters that a notification process is essential to provide equal access to technical assistance, and to encourage consolidation. By utilizing a formal notification process, EPA intends to ensure that all eligible groups have equal access to technical assistance and an equal opportunity to compete for the single available grant if consolidation proves to be impossible. EPA believes that a notification process will help identify interested groups enabling them to form coalitions, thereby avoiding delays in the award of a grant which could result from the review of competing applications.

Groups wishing to apply for a technical assistance grant must first submit a letter of intent to EPA. The purpose of the letter of intent is to advise EPA of the group's interest in applying for a technical assistance grant and to trigger a formal process for notifying other interested parties of the fact that an application will soon be filed. EPA will respond in writing to a letter of intent. A formal grant application from an affected group that has not submitted a letter of intent will be considered a letter of intent for the purposes of this regulation.

Upon receipt of the first letter of intent, EPA will undertake certain activities depending on the schedule for response activities at the site. If commencement of the remedial investigation or a removal action is not underway or scheduled to begin for several years, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received a letter of intent.

If a response action is already underway or scheduled to begin, EPA will conduct one or more of the following activities—mailings, meetings, and public notices—to provide formal notice to other interested parties that a grant for the site soon may be awarded. While no scheduled or actual site work will be delayed or interrupted, EPA will make every effort to initiate these activities far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a technical advisor before work commences at the site.

Once EPA receives a letter of intent and begins the formal notification process, other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within this time period. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for an extension of this time. A technical assistance grant will be awarded to a qualified applicant from among the competing applications based on the criteria described above. The schedule for response activities at a site will not be affected by the technical assistance grant application process.

3. Ineligibility

The ANRM provided the following issues for consideration under the subcategory "Ineligibility."

> Issue a. EPA questions whether municipalities meet the definition of group of individuals, and therefore would be eligible to receive a grant under this section;
>
> Issue b. There are other groups which EPA believes may not be appropriate grant applicants. For example, should a party who

is potentially responsible for cleanup costs at the site be considered in the award of a grant? Similarly, national or State associations, with broad policy interests rather than local concerns, might be ineligible. Other possible exclusions might be academic institutions, profit-making organizations, local government advisory groups or citizen advisory groups; and

Issue c. * * * EPA is seeking comment on whether a group's organization status is a good indicator of which groups will be able to manage better the financial and other obligations associated with an EPA assistance agreement. If EPA requires its grantees to be incorporated, does the entire coalition have to incorporate or can one of the coalition member groups, which is incorporated, be the grant recipient?

Nearly all of those commenting agreed that potentially responsible parties (PRPs) should not be eligible for grants. The public commenters diverged, however, on the role of municipalities. Many of those commenting, primarily representatives from State and local governments, believed that municipalities should be eligible because they could provide financial management assistance. A greater number of those commenting, however, believed that municipalities should be ineligible. Many commenters stated that profit-making organizations, academic institutions, and the headquarters offices of national and State public interest groups, particularly those without local affiliates or chapters at the site, also should be ineligible.

EPA, as set forth at § 35.4030 of the regulation, agrees with the public comments regarding PRPs and has determined that PRPs should be ineligible to receive technical assistance grants. EPA also notes that section 117(e) of CERCLA authorizes a technical assistance grant only to a "group of individuals * * * affected by a release" at a Superfund site. It is EPA's view that this language authorizes the award of a technical assistance grant only to an organization formed for the specific purpose of representing these affected individuals. This interpretation is supported by the legislative history of CERCLA, as amended, and serves to exclude from eligibility, organizations formed for purposes other than representing the interests of affected individuals, such as academic institutions, political subdivisions, groups established and/or sustained by political subdivisions, or corporations that are not incorporated for the sole purpose of representing affected individuals at the site.

Moreover, individuals functioning as representatives of ineligible entities cannot be members of recipient groups. However, nothing in this regulation precludes an individual from participating as a member of a recipient group while acting solely in the capacity of an "affected" individual.

In the ANRM, EPA also sought comments on whether a technical assistance grant recipient should be required to incorporate. EPA stated that "[e]xisting regulations allow grant funds to be awarded to both incorporated and unincorporated entities." Several commenters stated that incorporation should be required, while a few disagreed.

EPA's analysis concluded that incorporation offers advantages to both recipients and EPA, and does so at relatively little cost to both. Incorporation protects individual group members from potentially serious personal liability problems that may result if the technical assistance grant is awarded to a group or organization that is not incorporated. It also reduces or eliminates problems that might otherwise arise from the departure of any individual from the recipient group, if it lacked the structure created by incorporation. EPA also benefits from awarding every grant to a group with the same legal status: a corporation with by-laws, officers, and official purposes.

EPA, as set forth at § 35.4020(b) in the regulation, has therefore determined that the group receiving a technical assistance grant must be a non-profit corporation that includes all the individuals and groups that joined in applying for the grant and is incorporated for the purpose of addressing the Superfund site for which the grant is to be awarded. At the time of the award, a recipient must either be incorporated or demonstrate that it has taken all necessary and appropriate actions to incorporate. Thus, applicants are not required to be incorporated at the time that the application is submitted; only recipients of technical assistance grant awards must be incorporated. However, the recipient must submit proof that the group has been incorporated by the State no later than the time of the group's first request for reimbursement for costs incurred.

Based upon a survey of several States, EPA has established that the process of incorporation is relatively quick, easy, and inexpensive. Nevertheless, to reduce even these minimal burdens, EPA has decided that when a recipient has incorporated for the sole purpose of receiving a technical assistance grant, necessary and reasonable costs of incorporation will be considered an eligible pre-award cost and may be charged to the grant as set forth in § 35.4075(b) of the regulation or counted towards the matching funds requirement which is discussed later in Section F, "Waivers of the Matching Funds Requirement," of this Preamble.

4. Representation

The ANRM also raised for discussion what action EPA should take to ensure that a broad-based representation of affected groups is achieved when groups consolidate to apply for a grant. The specific issues raised by the ANRM were:

Issue a. Should coalitions or groups include individuals, who are otherwise excluded from receiving grants? For example, should representatives of the municipal or county governments or potentially responsible parties (PRPs) be routinely included or should inclusion be by invitation only of the grant recipient?

Issue b. EPA specifically seeks comments on possible roles for local government in this program. For example, should a local government routinely, or at only the recipient's request, participate in management of the grant including monitoring fiscal aspects of the grant? Other potential roles for involving local governments may include helping citizen groups coalesce to prepare a single application, and providing expert advice; and

Issue c. * * * (W)hether to ensure that groups receiving grants should be representative of a broad range of community interests, and, if so, how this can be achieved.

The public comments emphasized that achieving broad representation should be encouraged, but not required. EPA concurs with those comments, and reiterates its desire to encourage broad representation of affected groups whenever possible. EPA believes further that given the finite nature of the financial assistance provided, technical assistance should be available to as broad a range of affected groups as possible. To encourage this process, EPA will favor coalitions of affected citizens' groups and community residents through the use of the criteria previously outlined.

EPA has determined that groups that are ineligible to receive technical assistance grants directly should also be ineligible to participate in coalitions that receive grants. Similarly, representatives of ineligible entities may not participate in coalitions. As noted above, individuals who are "affected" by a site may join a coalition, so long as they are acting only as individuals and not as representatives of ineligible entities.

C. When Grants May Be Available

Section 117(e) of CERCLA authorizes technical assistance grants for sites listed on the NPL under the National Contingency Plan (NCP). For many sites

on the NPL, the Agency has not yet begun remedial investigations, raising the question whether technical assistance grants should be awarded at such sites.

The purpose of a technical assistance grant as stated in section 117(e) is to provide recipients with "information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility." Thus, the commencement of a remedial investigation or a removal action at a site could be viewed as a prerequisite for a technical assistance grant.

The ANRM provided two alternatives for public comment concerning when grants should be made available during the Superfund cleanup process:

Option a. * * * (EPA should) accept applications only for sites where a remedial investigation or feasibility study and/or design and remedial action are underway, or are planned to begin within one year on EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP) (an annual plan of site work scheduled to be undertaken during the coming fiscal year); or

Option b. * * * (EPA should) accept applications at any time after a site has been listed on the final NPL.

The vast majority of those commenting recommended that groups should be allowed to submit a technical assistance grant application as soon as a site is listed on the NPL. Most of the commenters believed that such timing was needed to allow sufficient time for groups to attempt to consolidate with other groups, to prepare applications, and to obtain a technical advisor before work at the site commences. Many commenters suggested that technical assistance grant monies should be available only after the remedial investigation (RI) has begun or is scheduled to begin, or within a year prior to the commencement of the RI. Several commenters suggested that, while applications should be accepted as soon as the site is listed on the NPL, grant funds should not be made available until the RI has begun.

EPA, as reflected at § 35.4050 of the regulation, agrees with the commenters and has determined that groups may submit letters of intent at any time after a site is listed on the NPL or proposed for listing where a response action has begun. The earliest technical assistance grant monies would be available for these sites, however, is at the start of the response action. Therefore, the earliest a formal grant application will be accepted is just prior to the start of the response action. The phrase "start of the response action" means the guarantee or set aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin the remedial investigation, or other response activities at a site, such as a removal. EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP) identifies the sites where project work is planned during the coming year.

EPA believes this approach ensures sufficient time for interested groups to consolidate and to apply formally because several months usually pass between the guarantee or set aside of the funds and the development of a work plan and commencement of work at the site. Such a schedule gives EPA an opportunity to process the grant application carefully and the grant recipient sufficient time to obtain the services of a technical advisor before work at the site actually begins. Technical work at a site will not be delayed pending the award of a technical assistance grant.

The Superfund cleanup process typically involves the remedial investigation and feasibility study, the selection and construction of remedial action, the operation and maintenance of the remedy, or removal action at a remedial site. The RI/FS is the most important point in the process for public participation. Therefore, EPA believes it should establish priorities for processing grant applications in light of key decision points in a cleanup process and the immediate need for technical assistance in some instances. Accordingly, applications from sites where RI/FS work is already underway or scheduled to begin in the near future will have priority over other applications. These applications will be considered first so that the citizens with the most immediate need for technical assistance at the most significant point in the process are given first consideration.

Technical assistance grants will be awarded depending upon the availability of funds within the Superfund program. The Technical Assistance Grant Program is discretionary and may be affected by requirements of higher priority activities. When funds are limited, EPA will set priorities among sites where grants will be awarded. Factors that EPA may use in ranking the sites include, but are not limited to: the risk to citizens' health or welfare presented by the site; the stage in the Superfund cleanup process; the history of public involvement at the site; and the environmental threat presented by the site. For example, EPA may give priority consideration to funding a grant at a site where the community has already been required to use bottled water or residents have been temporarily relocated, where the RI/FS is beginning, where there is a history of community concerns, and where site work is technically complex and is divided into numerous operable units.

There are other criteria that could be considered in setting priorities among sites for a technical assistance grant award when funds are limited, such as the use of a grant applicant's financial need. Elements that could be considered in calculating financial need include: below average per capita income, high unemployment rate in the area, and below average median household income. Comments are invited on the use of these and other priority-setting mechanisms in determining a technical assistance grant award when funds are limited.

Commenters did not distinguish between "proposed" and "final" listings on the NPL. Under CERCLA section 117(e), a technical assistance grant may be made available to a group affected by a release or threatened release "at any facility which is listed on the National Priorities List under the National Contingency Plan." A possible reading of this language is that it constitutes an absolute bar to a technical assistance grant at any site not formally included on the final NPL. This would preclude a technical assistance grant at a site that has met the rigorous eligibility criteria established in the NCP (40 CFR Part 300) and has been only formally proposed for inclusion on the NPL even if work were actually underway at the site under the authority of CERCLA section 104(b).

Such a result would frustrate the expressed intent of Congress that technical assistance grants be used to help recipients become "involved *from the beginning* in determining the actions which will be necessary to complete the cleanup" of the facility. (H. Rep. 99–253, 99th Cong., 1st Sess. (1985) (Part III) (Report from Committee on Judiciary) (adopting language of report of Energy and Commerce Committee) (emphasis added.)) A 1987 Senate Committee report confirms that section 117(e) was intended to authorize grants at both "proposed and final (NPL) sites" (Senate Report to accompany H.R. 2783, Department of Housing and Urban Development—Independent Agencies Appropriations Bill, 1988; October 6, 1987, p. 49.).

Rather than construing section 117(e) in a manner that would permit results inconsistent with this unequivocal expression of Congressional intent, EPA has concluded that technical assistance grants may be made available at sites formally proposed for inclusion on the NPL where a response action actually is underway.

D. Activities Eligible for Grants

EPA must determine the specific activities that are eligible for technical assistance grants. CERCLA section 117(e)(1) states that "[s]uch grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility." The ANRM provided the following three alternatives for public comment:

> Option a. * * * (EPA should) fund only the costs of technical advisors hired to interpret publicly available technical information at National Priorities List sites developed by Federal or State agencies (or their contractors) or potentially responsible parties:
>
> Option b. * * * (EPA should) fund activities, in addition to interpreting Agency documents, that would contribute to the public's understanding of overall site activities and decision-making; and
>
> Option c. * * * (EPA should consider) other options for activities that should be eligible for funding and which ones, if any, should be limited or excluded.

The majority of commenters agreed that EPA should use the Technical Assistance Grant Program to fund the broadest range of activities that would contribute to the public's ability to participate in the decisionmaking process by understanding site conditions and activities. Some commenters suggested that eligible expenses for the technical advisor include costs for meetings, travel, and overhead costs. Other commenters suggested that testing, sampling, and monitoring also be included as eligible activities. (See further discussion in Section E, "Activities Ineligible for Grants," of this Preamble.)

EPA, as set forth at § 35.4060 of the regulation, agrees with the position favored by the public that technical assistance grants should be used to interpret site-related documents and other activities that would contribute to the public's understanding of overall site conditions and activities. Examples of technical advisor activities eligible for funding include:

(a) Reviewing site-related documents, whether produced by EPA or others;

(b) Meeting with the recipient group to explain technical information;

(c) Providing assistance to the grant recipient in communicating the group's site-related concerns;

(d) Disseminating interpretations of technical information to the community;

(e) Participating in site visits, when possible, to gain a better understanding of site conditions and activities; and

(f) Traveling to meetings and hearings directly related to the situation at the site.

E. Activities Ineligible for Grants

EPA also must determine the specific activities that are ineligible for technical assistance grants. The ANRM provided this point of clarification regarding restricting the use of grant funds for public comment:

> * * * Technical assistance grants are not intended to be used to underwrite legal actions. EPA believes it would be inappropriate to allow costs incurred by a community group in preparing for or participating in any adjudicatory proceeding to be paid from a technical assistance grant.

All of those who commented on ineligible activities agreed that grant funds should not be used to "underwrite legal actions." Several commenters suggested that the collection of background information and site visits or travel by a technical advisor also should be considered ineligible.

The legislative history of section 117(e) provides that technical assistance grants "are not intended to be used to underwrite legal actions. However, any information developed through grant assistance may be used in any legal action affecting the facility, including any legal action in a court of law." (H. Rept. No. 99–962, 99th Cong., 2d Sess. (1986), p. 231.) Thus, technical assistance grant funds may not be used to pay for attorney's fees or for time the technical advisor may spend assisting an attorney in preparing a legal action (e.g., citizen suit) or preparing for and serving as an expert witness at any legal proceeding (public meetings scheduled by EPA or a State are not considered legal proceedings). Moreover, technical assistance grant funds may not be used in preparation for or participation in any legal proceeding. For example, an attorney's costs for locating, interviewing, or preparing a witness to testify, or the time that any witness spends preparing for any such legal proceeding may not be paid for with technical assistance grant funds. However, these prohibitions on the use of technical assistance grant funds do not preclude a technical advisor from participating in a legal proceeding so long as none of the costs of participation are charged to the technical assistance grant.

In addition, other activities, as set forth at § 35.4055 of this regulation, that are ineligible for technical assistance grant funding include: activities inconsistent with the cost principles stated in the Office of Management and Budget (OMB) Circular A–122 including lobbying and related activities; tuition of other expenses for recipient group members or technical advisors to attend training, seminars or courses; any activities or expenditures for recipient group members' travel; and generation of new primary data such as well drilling and testing (including split sampling). EPA also has determined that while technical assistance grant funds may be used for interpreting site-related technical documents and studies, they may not be used to challenge final Agency decisions (e.g., Records of Decision). Finally, technical assistance grant funds may not be used to underwrite disputes with EPA.

EPA calls particular attention to the prohibition on the use of technical assistance grant funds for lobbying and political activities (see 40 CFR 30.601). Briefly summarized, this prohibition means that technical assistance grant funds cannot be used to participate in or attempt to influence the outcome of any election or to influence the introduction, enactment, or modification of any legislation. Similarly, technical assistance grants funds may not be associated with any partisan or non-partisan political activity. The prohibition against political activities and lobbying is discussed more fully in OMB Circular A–122, the key sections of which appear in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program" that has been developed for this program.

Costs associated with tuition or other expenses for recipient group members or technical advisors to attend training, seminars or courses, and any activities or expenditures for recipient group members' travel are not allowable. EPA believes that the primary purpose of the technical assistance grant is to assist citizens' groups in obtaining technical assistance and not to fund ancillary activities of the grant recipient such as travel and training, which, by reducing available funds, would detract from or limit the recipient's ability to obtain technical advice regarding remedial actions.

Costs associated with the generation of new primary data are not allowable because this would be inconsistent with Congressional intent of "interpreting information." In addition, developing new primary data, such as sampling data, would be so costly as to diminish

the recipient's ability to obtain technical assistance throughout the entire cleanup process.

Cost associated with disputes with the Agency or challenges to final Agency decisions (e.g., Records or Decision) are not allowable since this also would be inconsistent with Congressional intent or "interpreting information." In order to ensure the best use of limited technical assistance grant funds, costs of administering the grant are allowable to the extent that they do not exceed 15 percent of total project costs.

F. Waivers of the Matching Funds Requirement

Section 117(e)(2) of GERCLA states that "[e]ach grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility."

This language clearly expresses the intent of Congress that the affected community's ability to pay should affect the size of the match for the technical assistance grant. In today's regulation, EPA is setting the matching funds requirement at a figure of 35 percent of total project costs. EPA invites comments on how to develop a workable system for determining the matching share based on financial need and other factors for inclusion in the Final Rule. As discussed later in the Preamble, this IFR provides for a total waiver of the matching funds requirement in exceptional circumstances.

Thus, each grant recipient must contribute 35 percent of the total project costs. For example, if total project costs will be $20,000, then the group would have to provide at least $7,000 (35 percent of $20,000) to "match" the Agency's grant of $13,000. Absent specific statutory authority, recipients may not use other Federal funds to meet the "match" requirement.

The ANRM requested comment on whether EPA should consider, and under what circumstances provide, waivers of the matching funds requirement. The Agency considered four options. First, if the Agency allows in-kind contributions to be used, waivers of the match might not be appropriate at all. If waivers are used, EPA will develop criteria to determine the basis on which waivers of the matching fund requirement may be provided. One option for doing so is for the Agency to establish a single waiver standard, such as per capita income, to identify recipients with financial need. A second option would be for the Agency to use a set of criteria, instead of a single measure, to determine financial need. Possible criteria might include a combination of such measures as per capita income, median household income, and demonstrated efforts to raise funds and in-kind contributions from State and local governments as well as private citizens. A third option might be simply to allow groups the opportunity to present whatever evidence of financial need they deem relevant in their waiver application. Finally, EPA could decide to grant partial waivers to groups able to raise part, but not all, of the match contribution.

A majority of commenters suggested that EPA grant waivers of the matching funds requirement, and allow in-kind contributions to meet the matching funds requirement. Many of these suggested that the financial need of the grant recipient was an appropriate criterion for determining whether a waiver of the "match" is justified. A small number of commenters felt that no waivers should be granted.

In-kind contributions are the recipient's non-cash contributions, such as the value of donated goods (e.g., office space) and services (e.g., an accountant's time or management of the technical advisor contract) that are properly allocable to and allowable under the given project. In-kind contributions can reduce the need for groups to raise money in order to receive assistance and therefore reduce and probably eliminate the need for waivers.

EPA, as set forth at § 35.4085(a)(2) of the regulation, agrees with the commenters and notes that in-kind contributions may be used as a "match" in accordance with 40 CFR 30.307(b). EPA will count toward the matching funds requirement any allowable in-kind contributions which are necessary to implement the technical assistance grant project, such as the recipient's project manager's time for managing the technical advisor contract; or the professional services of an accountant for maintaining the group's books and producing financial reports; or telephone calls; or copying.

Because in-kind contributions can be counted toward the "match," waivers of the 35 percent matching funds requirement will be granted only in exceptional cases. A waiver should be requested in writing only when it becomes apparent that the grant recipient cannot meet the matching funds requirement. The Agency may waive part or all of the recipient's 35 percent matching funds requirement only after a finding by the Agency that (1) there is a need for a waiver because providing the "match" would constitute an unusual financial hardship, (2) a good faith effort at raising the "match," including obtaining in-kind services, has failed; and (3) the waiver is necessary to facilitate public participation in the selection of a remedial action at the facility. Financial need may be demonstrated by such measures as below average per capita income, below average median household income, or a higher unemployment rate in the area.

Once a group has been awarded a technical assistance grant and signed a grant agreement promising to contribute a specific "match," if it subsequently receives a waiver it is reducing its contribution. Consequently, the total resources available for technical assistance will be less than the amount specified in the grant agreement. This constitutes a substantial change in the technical assistance grant project, and the grant agreement must be amended as required by 40 CFR Part 30, Subpart G.

Finally, CERCLA section 117(e) authorizes a waiver of the matching funds requirement only where it is needed to ensure the public's "participation in the selection of a remedial action at the facility." Meaningful participation in the selection of a remedial action is not possible, and therefore no waivers will be approved once the Record of Decision (ROD) has been issued for the last operable unit at the site. (An "operable unit" is a term that means an action taken as one part of an overall site response. A number of operable units may occur in the course of a site response.)

G. Waivers of the $50,000 Limit on Grants

Section 117(e) states that "[t]he amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection." The Agency must determine under what circumstances a waiver of the $50,000 limit on grants may be given, recognizing that the language and legislative history of CERCLA strongly suggests that waivers are to be granted as an exception rather than as a rule.

The ANRM discussed circumstances under which the Agency would give a waiver of the $50,000 limit on grants.

The ANRM presented these alternatives for public comment:

Option a. * * * (EPA should) issue waivers only for sites that are deemed significantly more technologically complex than a 'typical' remedial action. Indicators of complexity might include unusual waste type or hydrogeology;

Option b. * * * (EPA should) issue waivers only at sites where unanticipated changes in the remedial action justify a need for additional technical assistance;

Option c. * * * (EPA should) issue waivers to single grant applicants representing groups from several NPL sites in close proximity. The technical assistance grant award could not exceed the sum of the maximum allowable amount for the individual sites involved; and

Option d. * * * (EPA should consider) other criteria that would provide reasonable guidelines for determining when and on what basis to grant waivers of the $50,000 limit.

The majority of commenters suggested that the Agency issue waivers of the $50,000 limit on grants only for sites that are significantly more technologically complex than "typical" sites. Other commenters suggested that the Agency issue waivers of the $50,000 limit (a) when unanticipated changes occur, (b) when the length of the cleanup process is extended, or (c) where groups apply for a grant to provide technical assistance at multiple NPL sites in close proximity to each other.

EPA notes that CERCLA constitutes a broad mandate to clean up hazardous waste sites and provides finite resources for doing so. EPA believes that with careful planning and reasonable management, the maximum $76,923 ($50,000 grant plus the recipient's $26,923 "match") will be sufficient to provide meaningful technical assistance. Consequently, EPA has determined that a waiver of the $50,000 limit at the time that an award is made is appropriate only where a single grant is addressing multiple sites.

Thus, as set forth at § 35.4090(a) of the regulation, where there are several NPL sites in close geographic proximity to each other and an affected group desires to reduce its administrative burden by submitting one application and awarding one set of contracts, the Agency will consider awarding a single technical assistance grant for a sum not exceeding the maximum allowable amount for each of the individual sites involved (e.g., 3 sites × $50,000 = grant of $150,000). In this case, the Agency may waive the limitation that a single recipient cannot receive more than $50,000. The recipient, however, must provide the 35 percent matching funds and is still limited to spending no more than $50,000 of Federal grant funds at any site. Moreover, the application must be based on site specific information for each site involved.

EPA has determined that no other waivers to the technical assistance grant ceiling shall be granted during the period of the IFR. EPA believes that it needs to develop some experience with the Technical Assistance Grant Program in order to determine whether there are circumstances in which it is appropriate to grant waivers. Grant recipients are required to plan and manage the funds to last throughout the Superfund cleanup process so that waivers will not be needed. Waivers will be needed and granted only in the most exceptional circumstances.

H. Conflict of Interest and Disclosure Procedures.

In the ANRM, EPA also solicited comments regarding disclosure and avoidance of potential conflicts of interest. Given the pool of technically qualified individuals or firms available to interpret information concerning Superfund actions, some may have worked for PRPs or have been or can anticipate becoming involved in litigation against EPA. Title 40 CFR 30.613 and 33.270 presently contain regulations pertaining to conflicts of interest on the part of persons selecting a technical advisor. EPA was concerned about what requirements the Technical Assistance Grant Program should impose on technical advisors themselves to ensure that advisors do not have conflicting loyalties that might undermine public confidence in the integrity of their advice. EPA asked:

Option a. * * * Should EPA require prospective technical advisors to disclose in their proposals all financial and business relationships with any potentially responsible parties at Superfund sites so that the grantee can determine if it wants to select the technical advisor? and

Option b. * * * Should the technical advisors be required to inform the citizen group responsible for the grant, EPA, the State, and other interested parties, if they are invited to provide services related to any proposed or pending litigation concerning or arising from the site after award of the grant?

The comments regarding the issue of conflicts of interest in working for a PRP and a community group at the same site generally favored requiring the technical advisor to disclose any potential conflicts of interest by acknowledging activities or relationships, including business or financial, with PRPs.

EPA, as set forth at § 35.4130 of the regulation, agrees with the commenters who suggested that the citizens' groups must have the opportunity to assure themselves of the objectivity, as well as the expertise, of their technical advisors. The regulations, therefore, requires that technical advisors disclose to grant recipients all of their financial and business relationships with all PRPs that are involved at the site for which the grant has been awarded. This disclosure requirement encompasses past and anticipated financial and business relationships (including services related to any proposed or pending litigation) with the PRPs for the subject site, and with their parent companies, subsidiaries, affiliates, subcontractors, and current clients, attorneys, and agents. At any time an undisclosed past or anticipated business relationship is discovered, it must be reported immediately. Technical advisors must certify that, to the best of their knowledge and belief, they have disclosed such information or no such information exists. Technical advisors must also submit a statement that they shall disclose immediately any such information whether discovered after submission of its bid or proposal, or after award.

Disclosure of such a relationship does not automatically preclude the technical advisor from being hired by the recipient. Once full disclosure occurs, the recipient must determine if there is an actual conflict of interest. Where the recipient concludes that there is such a conflict that is significant and cannot be resolved or otherwise avoided, the recipient must reject the prospective contractor. (The issue of conflict of interest and disclosure requirements is discussed further in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program.")

In an effort to reduce further any conflict of interest problems, EPA has determined that contractors and subcontractors may not apply for positions as technical advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity, since they otherwise would be reviewing their own work.

I. State Involvement in Administering the Technical Assistance Grant Program

The ANRM provided three alternatives for State involvement:

Option a. * * * (EPA should) allow the States to administer the program. Under this option, a participating State would receive and evaluate grant applications from its citizens and administer all aspects of grant management. States also would monitor fiscal management of the grant. The States would consult with EPA prior to awarding a grant; or

Option b. * * * (EPA should allow the) States to administer the program by

cooperative agreement for all State-lead NPL sites, that is, sites at which the State is administering similar elements of the Superfund program such as remedial design and construction activities. EPA would then administer the technical assistance program for all Federal-lead sites. However, a State could volunteer to administer the program for Federal-lead sites. Again, the State would consult with EPA prior to awarding the grant; or

Option c. * * * (EPA should) administer the program entirely at the Federal level during the period that the IFR is effective, i.e., from the promulgation of the IFR to the publication of the Final Rule. After this initial period, the States could administer the program as outlined in the above options.

A majority of the commenters offered suggestions regarding State involvement with the Technical Assistance Grant Program. Most commenters favored EPA control of the program, but with State consultation.

Several commenters suggested that EPA and the States share administration of the program. A small number of commenters recommended that EPA retain full responsibility for the program through the issuance of the Final Rule and then EPA or the State, whichever is administering all elements of the Superfund program at a given NPL site, should administer the technical assistance grant for that site.

Section 121(f) of CERCLA, as amended, mandates that EPA provide for "substantial and meaningful" State involvement in the Superfund process. In keeping with this mandate, EPA has concluded that a State can administer all aspects of the Technical Assistance Grant Program, except for the waiver provisions. Based on the statutory language, the Agency must make all decisions whether to waive either the 35 percent matching funds requirement or the $50,000 limit to the technical assistance grant.

EPA will allow the States to determine for themselves their level of involvement in the Technical Assistance Grant Program. EPA is confident that State governments: are well able to manage the technical assistance grant program; understand the needs of their citizens; and can aid in identifying which groups most accurately reflect community desires, can disseminate most effectively the technical advisor's conclusions to the community, and can best represent the broadest set of local interests among affected citizens.

EPA, as set forth at § 35.4015(a) of the regulation, will initiate the Technical Assistance Grant Program immediately and begin accepting applications for, and awarding technical assistance grants in consultation with the States. Technical assistance grants will be available at an NPL site where (1) a State response action either funded by State dollar or by responsible parties under agreement with the State is scheduled to begin or is underway, and (2) a CERCLA-funded cooperative agreement or other written agreement which exists between the Agency and the State for the site for which the technical assistance grant will be awarded.

At a few NPL sites, States have elected to have work begin absent a written agreement with the Agency and Federal funding from the Trust Fund. Technical assistance grants may be available for these non-Fund financed State response actions at NPL sites where there is no response agreement between EPA and the State. The State, however, must enter into either a cooperative or other written agreement with the Agency for the overall technical activities at the site or for administration of the Technical Assistance Grant Program.

States wishing to be involved in administering the Technical Assistance Grant Program must inform the appropriate EPA Regional Administrator. If a State administers a technical assistance grant, it must do so in conformity with the regulation published today.

Following the guidance in EPA's "State Participation in the Superfund Program" (Vol. 1, OSWER Directive 9375.1–04A, February 1984 with Addendum, May 1987), a State may receive technical assistance grant funds plus administrative costs from EPA under a cooperative agreement. A State will receive $10,000 for administrative costs for the first technical assistance grant. Due to economies of scale, for each subsequent technical assistance grant, a State will receive an amount equal to 8 percent of the grant. Administrative costs include reviewing applications, awarding grants, and reviewing subagreements and financial and progress reports.

The State may provide technical assistance to a recipient group in either of two ways. A State will pass through technical assistance grant funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4060 of this regulation. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with applicable regulations, e.g., 40 CFR Parts 30 and 33.

Alternatively, if a recipient group agrees, a State will use technical assistance grant funds to obtain the services of a technical advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a technical advisor, and managing the technical advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical advisor contracts, submitting financial and progress reports, and for disbursing all technical assistance grant funds in compliance with applicable EPA regulations and requirements.

In addition to the three options in the ANRM, EPA considered two other options for State involvement, i.e., that (1) a State wishing to participate in the Technical Assistance Grant Program must elect to administer the Technical Assistance Grant Program for all sites within its borders or for none, and (2) the agency undertaking the technical activities at any given site, either EPA or the State, would administer the Technical Assistance Grant Program as part of its responsibility at that site. EPA invites comment on these options for State involvement described above in developing the Final Rule.

J. Other

EPA also solicited comments regarding other aspects of the Technical Assistance Grant Program not identified in the ANRM and appreciates the numerous comments offered.

1. Assistance to Communities

Twelve commenters requested that EPA provide guidance materials (such as a citizens' training manual) to communities and prospective applicants. EPA agrees with the commenters and will issue a comprehensive "Citizens' Guidance Manual for the Technical Assistance Grant Program" to assist citizens' groups in applying for and managing the technical assistance grants. It will be available to the public upon publication of this IFR.

EPA also intends to train Superfund/RCRA "hotline" staff on EPA technical assistance grant and procurement issues so that citizens will have a toll-free or local number (1–800–424–9436 or, in Washington, DC, 382–3000) to call for answers to their questions. In addition, EPA Headquarters will provide training and guidance to Regional and State personnel so that they will be fully prepared to implement this program.

2. Qualifications of Technical Advisors

EPA received several comments related to the qualifications of technical advisors. Among the comments received were: (a) technical advisors should be required to provide credentials and prove qualifications of their ability to perform the work, (b) EPA should impose minimum qualifications for technical advisors, and (c) EPA should impose a certification requirement for technical advisors and require previous Superfund experience as a qualification.

Consistent with EPA procurement regulations set forth at 40 CFR Part 33, EPA believes that grant recipients must determine the standards and criteria appropriate for choosing their technical advisors. The regulation at § 35.4065 identifies the following credentials a technical advisor must possess:

(a) Demonstrated knowledge of hazardous or toxic waste issues;

(b) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(c) Ability to translate technical information into terms understandable to lay persons.

The regulation also identifies the following credentials a technical advisor should possess:

(a) Experience working on hazardous or toxic waste problems;

(b) Experience in making technical presentations;

(c) Demonstrated writing skills; and

(d) Previous experience working with citizens' or community groups or other groups of individuals.

3. Grant and Procurement Procedures

Nine commenters requested that EPA streamline the grant and procurement process. Though the Agency is constrained by grant and procurement regulations, EPA is investigating several ways to streamline the process, such as increasing the small purchase order limitation from $10,000 to $25,000, which will reduce some of the administrative work associated with hiring a technical advisor by simplifying the procurement process.

4. Cost Recovery

Cost-recovery is an effort by EPA to recover all costs related to the cleanup at a Superfund site from any individual(s) or company(ies) (such as owners, operators, transporters, or generators) potentially responsible for, or contributing to, the contamination problems at the site.

One commenter stated that "The $50,000 award should not be cost-recoverable from PRPs; it should be considered part of the cost of EPA's Superfund community relations program." EPA does not agree. Superfund community relations costs are recoverable, and technical assistance grants as well as the administrative costs will likewise be subject to cost-recovery from the PRPs.

5. Prior Awards

One commenter stated that "Prior technical assistance provided by public agencies to community groups should be counted as part of the $50,000 award limit." EPA recognizes that technical assistance provided previously was not under the authority of section 117(e) and will not count such assistance as part of the $50,000 award limit under this authority.

6. Indemnification

One commenter stated that "EPA should indemnify a technical expert for non-negligent conduct based upon recommendations made by the expert to the community group. The indemnification would protect technical advisors against all liabilities, State or Federal, unless there is clear evidence of gross negligence or intentional misconduct." Section 119 of CERCLA, as amended, provides EPA's exclusive authority to indemnify persons engaged in CERCLA response activities. Consultants hired by recipients of technical assistance grants are not within the definition of those who can be indemnified by EPA. Moreover, liability claims against technical advisors seem remote in view of their role. Technical advisors will be reviewing and commenting only on site-specific documents. Their recommendations and citizen recommendations based on their work will be considered by EPA or the PRPs as any other public comment would be. Public comments are part of the administrative process. Final decisionmaking authority rests with EPA, however, which ultimately is responsible for actions taken at a Superfund site.

K. Sanctions

If the recipient fails to comply with any of the terms of the grant agreement, EPA may take any of the following measures, as set forth in 40 CFR Part 30, Subpart I, based on the severity of the recipient's misconduct:

(a) Issue a stop-work order;

(b) Withhold payment;

(c) Suspend or terminate the grant agreement for cause;

(d) Annul the grant agreement and secure the return of all grant funds;

(e) Request that the Director, Grants Administration Division, debar or suspend the recipient as an eligible grant recipient;

(f) Take other appropriate administrative action; or

(g) Institute judicial proceedings.

Where States administer the program. EPA will hold them accountable for proper administration of technical assistance grant funds.

See § 35.4070 of this regulation.

L. Disputes

The Agency shall review appeals of EPA or State decisions by the applicant or recipient. An appeal of an EPA decision will be resolved according to EPA regulations at 40 CFR Part 30, Subpart L. EPA can only review a State decision that is final. An appeal of a final State decision will be resolved as prescribed at § 35.4100 of this regulation. Before appealing a State decision, an applicant or recipient must first submit a petition for review to the State agency that made the initial decision.

M. Record Retention

In accordance with 40 CFR 30.501, all records must be maintained by the recipient and the technical advisor for three years or until any audits, litigation, cost-recovery, or disputes initiated before the end of the three-year retention period are settled, whichever is longer. After three years if the recipient intends to dispose of the records, the Agency must be notified in writing and the records must be held until the Agency notifies the recipient as to their disposition. See § 35.4105 of this regulation.

N. Budget Period

The budget period may not exceed three years. A technical assistance grant project period may be comprised of more than one three-year budget period. Certain procedures as described in 40 CFR 30.306 must be followed if the recipient wants to continue the project beyond the initial three-year budget period. The process also is discussed in the "Citizens' Guidance Manual for the Technical Assistance Grant Program."

O. Reimbursement

The Agency is authorized to make payments to grant recipients by (1) letter of credit, (2) by advance, or (3) by reimbursement pursuant to 40 CFR 30.400(b). EPA has determined that the appropriate method of distributing technical assistance grant funds is to reimburse recipients for grant-related costs which have been incurred and which the recipient legally is obligated to pay.

The letter of credit, according to the Treasury Department's criteria contained in Treasury Circular No. 1075, as revised, requires a longstanding relationship with the Agency in addition to the grant recipient receiving financial

assistance of at least $120,000 annually. Technical assistance grant recipients clearly cannot meet these requirements. Also, EPA had concluded that the advance method of payment is more administratively cumbersome than reimbursement. This method of payment was considered not be be suitable for the Technical Assistance Grant Program.

All costs related to the Technical Assistance Grant Program must be determined to be necessary, reasonable, allowable, and allocable to the project. The recipient, as set forth at § 35.4080 of this regulation, may submit quarterly requests for any reimbursements. Costs incurred over $500 may be submitted monthly. Normally, the Agency will reimburse the recipient within 10 to 20 days of receipt and approval of the eligible costs incurred. Recipients therefore will not need to pay any costs out-of-pocket. States administering the Technical Assistance Grant Program should adhere to this timetable. See § 35.4080 of this regulation.

P. Subagreement Review

Although the choice of a technical advisor is within the province of the recipient, the procedures used in procuring the services of a technical advisor must be consistent with 40 CFR Part 33. Since the majority of grant recipients will not be familiar with EPA procurement regulations, EPA believes that many problems of noncompliance can be avoided by EPA reviewing the content of the subagreements before they are awarded. Therefore, to ensure compliance with EPA's procurement regulations, the recipient must inform EPA of any proposed subagreement with the technical advisor and must provide EPA the opportunity to review the subagreement before it is awarded. See § 35.4095 of this regulation. However, the recipient is responsible for compliance with the procurement regulations even if EPA has reviewed the subagreement.

Q. Grant and Procurement Process

The process for the review and evaluation of technical assistance grant applications and the procurement of a technical advisor must follow certain steps as described in this regulation and EPA's grant and procurement regulations (40 CFR Parts 30 and 33, respectively). The key steps of the process may be summarized as follows:

Step 1. Group submits a letter of intent.

Step 2. If site work is not scheduled to begin nor is underway, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA will formally notify the community if site work is scheduled to begin or is underway. The groups have 30 days to form a coalition and submit an application. If groups cannot form a single coalition, applicants have an additional 30 days if they want to file competing applications.

Step 3. Group or groups submits a grant application.

Step 4. EPA evaluates the applications and may make an award to a qualified applicant.

Step. 5. Recipient of the grant selects an approporiate procurement method, evaluates bids or proposals, and selects a technical advisor.

Step 6. Prior to selecting a technical advisor, EPA has the opportunity to review the group's subagreement.

Step 7. Group files quarterly request for reimbursement and progress reports and annual financial reports.

Step 8. Group prepares a draft and final report to EPA at the end of the technical assistance grant project.

The "Citizen's Guidance Manual for the Technical Assistance Grant Program" lays out in detail the grant and procurement process as well as the applicants and recipients' responsibilities. The Manual is designed to help citizens understand the process, complete the necessary forms correctly, and meet all their obligations to the Government.

III. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

(3) Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Technical Assistance Grant Program described here, which involves grants of up to $50,000 at sites listed on the NPL or proposed for listing where site work has begun, is a "non-major" rule. It would have no significant annual adverse effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

There are approximately 951 sites currently on the NPL and if each site were awarded a maximum grant of $50,000, this would amount to less than $50 million. Also, EPA anticipates awarding approximately 50 technical assistance grants in 1988, the first year of the program and these would not amount to more than $2.5 million. Therefore, it would not have the requisite annual financial effect on the economy. This rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that Agencies evaluate the effects of a proposed rule for three types of small entities:

(1) Small businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, nondominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 5,000 people).

EPA has consistently considered the interests of small non-profit entities in designing the Technical Assistance Grant Program. EPA was careful not to impose additional reporting requirements on the public and to stay within the reporting requirement quota for grants and procurements. In addition, section 117(e) only applies to small non-profit organizations. There is even a limited number of small non-profit organizations involved in this program since this rule affects only those non-profit organizations located near the approximately 951 Superfund sites.

Moreover, EPA has undertaken several activities to help small organizations. EPA specifically developed the "Citizens' Guidance Manual for the Technical Assistance Grant Program" in order to assist small organizations through the grant and procurement process. The Agency has sought to increase the amount of small purchase orders to simplify the procurement process. EPA has deliberately written the regulations to encourage small entities to apply. And, for some applicants the Agency may waive the matching funds requirement.

Since today's rule is not expected to have a significant impact on small non-

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profit entities. EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980, the reporting and recordkeeping provisions of today's IFR have been submitted to the Office of Management and Budget (OMB), approved, and have been assigned OMB control numbers 2030–0020 and 2050–0083, for those information collection activities involving the general grant application process and for all other information collection activities associated with this rule.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." When EPA promulgates the Final Rule, EPA will respond to comments by OMB or the public regarding the information collection provisions and recordkeeping requirements of the rule.

IV. Supporting Information

List of Subjects in 40 CFR Part 35

Grant programs, Matching funds, Public involvement, Reporting and recordkeeping requirements, Hazardous wastes, Superfund.

Dated: March 10, 1988.

Lee M. Thomas,
Administrator.

Accordingly, the Administrator amends 40 CFR Part 35 by adding a new Subpart M to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart M—Grants for Technical Assistance

Sec.
35.4000 Authority.
35.4005 Purpose.
35.4010 Definitions.
35.4015 Administration of the Program.
35.4020 Responsibility requirements.
35.4025 Eligible applicants.
35.4030 Ineligible applicants.
35.4035 Evaluation criteria.
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35.4065 Technical advisor's qualifications.
35.4070 Sanctions.
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35.4085 Grant limitations.
35.4090 Waivers.
Sec.
35.4095 Subagreement review.
35.4100 Disputers.
35.4105 Audits.
35.4110 Reports.
35.4115 Availability of information.
35.4120 Budget period.
35.4125 Federal facilities.
35.4130 Conflict of interest and disclosure requirements.

Subpart M—Grants for Technical Assistance

Authority. 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580.

§ 35.4000 Authority.

This regulation is issued under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 Purpose.

This regulation codifies policies and procedures for technical assistance grants awarded by EPA to groups of individuals. This regulation establishes the procedures for accepting and evaluating applications, and for awarding and managing technical assistance grants. These provisions supplement the EPA general assistance regulations and procedures at 40 CFR Part 30 and are applicable to all applicants/recipients of technical assistance grants.

§ 35.4010 Definitions.

As used in this regulation, the following words and terms shall have the meaning set forth below:

"Affected" means subject to an actual or potential health, economic or environmental threat arising from a release or a threatened release at a facility listed on the National Priorities List (NPL) or proposed for listing under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) where a response action under CERCLA has begun. Examples of "affected" parties include individuals who live in areas adjacent to NPL facilities, who depend on water sources endangered by releases of hazardous substances at the facility, or whose economic interests are directly threatened or harmed.

"Applicant" means any group of individuals that files an appplication for a technical assistance grant.

"Application" means a completed formal written request for a technical assistance grant that is submitted to the Agency on EPA Form 5700–33—State and Local Nonconstruction Program, or to a State on its appropriate form.

"Award" means the technical assistance grant agreement signed by both EPA and the recipient.

"Award Official" means the official delegated the authority to sign grant agreements.

"Budget" means the financial plan for the spending of all Federal and matching funds (including in-kind contributions) for a technical assistance grant project as proposed by the applicant, and negotiated with and approved by the Award Official.

"Budget Period" means the length of time specified in a grant agreement during which the recipient may spend or obligate Federal funds. The budget period may not exceed 3 years. A technical assistance grant project period may be comprised of several budget periods.

"Cash Contribution" means actual non-Federal dollars, or Federal dollars if expressly authorized by statute to do so, that a recipient spends for goods and services and real or personal property used to satisfy the matching funds requirement.

"Contractor" means any party (i.e., technical advisor) to whom a recipient awards a subagreement.

"EPA" means the Environmental Protection Agency. Where a State administers the Technical Assistance Grant Program, the term "EPA" may mean a State agency.

"Federal Facility" means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

"Grant Agreement" means the legal document that transfers money, or anything of value, to a recipient to accomplish the purpose of the technical assistance grant project. It specifies budget and project periods, the Federal share of eligible project costs, a description of the work to be accomplished, and any special conditions.

"In-Kind Contribution" means the value of a non-cash contribution used to meet a recipient's matching funds requirement in accordance with 40 CFR 30.307(b). An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to and directly benefiting the EPA-funded project.

"Matching Funds" means the portion of allowable project costs that a recipient contributes toward completing the technical assistance grant project using non-Federal funds or Federal funds if expressly authorized by statute. The match may include in-kind as well as cash contributions.

"Operable Unit" means a response action taken as one part of an overall site response. A number of operable units may occur in the course of a site response.

"Potentially Responsible Party" (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters, or generators) potentially responsible under sections 106 or 107 of CERCLA for the contamination problems at a Superfund site.

"Recipient" means any group of individuals that has been awarded a technical assistance grant.

"Recipient's Project Manager" means the person legally authorized to obligate the organization to the terms and conditions of EPA's regulations and the grant agreement, and designated by the recipient to serve as its principal contact with EPA.

"Response Action" means all activities undertaken to address the problems created by hazardous substances at a National Priorities List site.

"Start of Response Action" means the point in time when there is a guarantee or set-aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin response activities at a site. The document which reflects the set-aside of, or formally guarantees, funding during the coming fiscal year, is EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP).

"Subagreement" means a written agreement between the technical assistance grant recipient and another party (a contractor other than a public agency) for services or supplies necessary to complete the technical assistance grant project. Subagreements include contracts and subcontracts for personal and professional services or supplies necessary to complete the technical assistance grant project, and agreements with consultants, and purchase orders.

§ 35.4015 Administration of the Program.

(a) Upon publication of this regulation, the Agency will begin accepting applications for and awarding technical assistance grants in consultation with the States.

(b) The Technical Assistance Grant Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the Technical Assistance Grant Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this regulation. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the Technical Assistance Grant Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive $10,000 for administrative costs for the first technical assistance grant. For each subsequent technical assistance grant, the State will receive an amount equal to 8 percent of the technical assistance grant. Using the criteria established under this regulation, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 30.4080 of this regulation. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR Parts 30 and 33; or

(2) If a recipient group agrees, a State will use technical assistance grant funds to obtain the services of a technical advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a technical advisor, and managing the technical advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all technical assistance grant funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements set forth at 40 CFR 30.301. Thus, each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for recordkeeping and financial accountability related to the management of the technical assistance grant. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a technical assistance grant must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof that the group has been incorporated by the State.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that (a) is listed on the National Priorities List (NPL) under the National Contingency Plan (NCP) is proposed for listing and a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Groups and organizations which are ineligible to receive or to be represented in groups receiving technical assistance grants are:

(1) Potentially responsible parties (PRPs);

(2) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site;

(3) Academic institutions;

(4) Political subdivisions (e.g., townships and municipalities); and

(5) Groups established and/or sustained by governmental entities (including emergency planning committees and some citizen advisory groups).

(b) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual.

§ 35.4035 Evaluation criteria.

EPA will award a technical assistance grant only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. If the Agency is administering the technical assistance grant program, the "Applicant Qualifications" section is Part IV of EPA Form 5700.33, "State and Local Nonconstruction Programs." The following factors will be evaluated and weighted as indicated:

(a) The presence of an actual or potential health threat posed to group members by the site. This criterion can be met by establishing a demonstrable threat to members' health or a reasonable belief that the site poses a substantial threat to their health. (30 points);

(b) The applicant best represents groups and individuals affected by the site (20 points);

(c) The identification of how the group plans to use the services of a technical advisor throughout the Superfund response action (20 points);

(d) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor (20 points); and

(e) The presence of an actual or potential economic threat or threat of an impaired use or enjoyment of the environment to group members that is caused by the site. This criterion can be met by establishing a demonstrable economic or environmental threat to group members or a reasonable belief that the site poses a substantial economic or environmental threat. (10 points).

§ 35.4040 Notification process.

(a) Groups wishing to apply for a technical assistance grant shall first submit a letter of intent to EPA. EPA will respond in writing to a letter of intent.

(b) Upon receipt of the first letter of intent, EPA will undertake certain activities depending on the schedule for work at the site:

(1) If commencement of the remedial investigation or a removal action is not underway or scheduled to begin, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received a letter of intent; or

(2) If a response action is already underway or scheduled to begin, EPA will conduct one or more of the following activities—mailings, meetings, and public notices—to provide formal notice to other interested parties that a grant for the site soon may be awarded. These formal notification activities will generally be conducted far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a technical advisor before work commences at the site.

(c) Other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within the 30 days. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for extensions of this time. If there is a qualified applicant, a grant will be awarded from among the competing applications based on the evaluation criteria described in § 35.4035 of this regulation. The schedule for response activities at a site will not be affected by the technical assistance grant application process.

(d) A formal grant application from a group which has not first submitted a letter of intent to EPA will be considered a letter of intent for the purposes of this subsection.

§ 35.4045 Submission of application.

(a) After an applicant submits a letter of intent, it must submit to the Agency its request for a technical assistance grant on EPA Form 5700–33, "State and Local Nonconstruction Programs." Each applicant must submit the original and two copies of the application to the Agency. At least one application must have the original signature (i.e.; not a photocopy of the signature) of the Recipient's Project Manager. If the State is administering the program, an applicant must submit a request for a technical assistance grant to a State on the appropriate State form;

(b) An applicant must submit a proposed budget clearly showing the proposed expenditure of funds, how it will provide the cash and/or in-kind contributions to meet the "match" requirement, and how the funds and other resources, including the "match," will be used to complete the technical assistance grant project;

(c) An applicant must submit to the Agency or the State on the appropriate form a short narrative justification to show compliance with the evaluation criteria in § 35.4035. Instructions for filing an application with the Agency are contained in the application kit and explained in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program." Application kits are available from EPA Regional Offices upon request.

Instructions for filing an application with a State will be provided by the State.

§ 35.4050 Timing of award.

An award of a technical assistance grant will be made no earlier than the start of the response action. Grants to qualified applicants could be delayed depending upon the availability of funds for the Superfund program.

§ 35.4055 Ineligible activities.

(a) The following activities are ineligible for assistance under this program:

(1) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the technical advisor to assist an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding;

(2) Political activity and lobbying in accordance with 40 CFR 30.601 which incorporates OMB Circular A–122;

(3) Other activities inconsistent with the cost principles stated in OMB Circular A–122, "Cost Principles for Non-Profit Organizations";

(4) Tuition or other expenses for recipient group members or technical advisors to attend training, seminars or courses;

(5) Any activities or expenditures for recipient group members' travel;

(6) Generation of new primary data such as well drilling and testing, including split sampling; and

(7) Reopening final Agency decisions or conducting disputes with the Agency.

§ 35.4060 Eligible activities.

Technical assistance grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is (a) listed on the NPL or (b) proposed for listing and at which a response action has begun. Technical assistance grants shall be used to fund activities that will contribute to the public's ability to participate in the decisionmaking process by improving the public's understanding of overall conditions and activities.

§ 30.4065 Technical advisor's qualifications.

(a) A technical advisor must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues;

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical advisor should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems;

(2) Experience in making technical presentations;

(3) Demonstrated writing skills; and

(4) Previous experience working with citizens' or community groups or other groups of individuals.

§ 35.4070 Sanctions.

If EPA determines that the recipient has failed to comply with any terms of the grant agreement, EPA will initiate an appropriate measure as set forth at 40 CFR Part 30, Subpart L

§ 35.4075 Pre-award costs.

(a) Grant funds may not be used to pay costs incurred prior to award of the technical assistance grant, except as provided in paragraph (b) of this section.

(b) Necessary and reasonable costs of incorporation, if incurred for the sole purpose of complying with this regulation, will be eligible pre-award costs and may be charged to the technical assistance grant or count toward the matching funds requirement described in § 35.4085(a)(2).

§ 35.4080 Method of payment.

All grant recipients shall be reimbursed for grant-related eligible, allocable, allowable, necessary, and reasonable costs up to the amount of the technical assistance grant which have been incurred and which the recipients are currently and legally obligated to pay. Recipients may submit quarterly requests for reimbursement to the Agency on SF 270—Request for Advance or Reimbursement, or the appropriate State form if the State is administering the technical assistance grant program. Costs incurred greater than $500 may be submitted monthly.

§ 35.4085 Grant limitations.

Technical assistance grants will be awarded subject to the following limitations:

(a) The recipient must contribute 35 percent of the total costs of the technical assistance grant project, except as provided in § 35.4090(b) of this regulation.

(1) Absent specific statutory authority, no Federal funds may be included in the matching share.

(2) To meet the matching funds requirement, the recipient may use cash and/or in-kind contributions.

(b) The technical assistance grant award will not exceed $50,000 for a single grant recipient, except as provided in § 35.4090(a) of this regulation.

(c) Not more than one technical assistance grant may be awarded for any eligible site.

(d) Unless a waiver is granted, the technical assistance grant award of $50,000 will cover the entire Superfund cleanup process.

(e) Costs of administering the technical assistance grant are allowable to the extent that they do not exceed 15 percent of the total project costs.

§ 35.4090 Waivers.

(a) Waivers of the $50,000 limit may be granted only in the case of a single application covering multiple sites. In order to reduce the administrative burden to a recipient, the limitation that a single recipient cannot receive more than $50,000 may be waived by the Agency where there are several eligible sites in close geographic proximity to each other (e.g., 3 sites × $50,000=grant of $150,000).

(b) Waivers of the matching funds requirement will be granted only in exceptional cases. At any point in the process, the Agency may approve a waiver when it is established that the grant recipient cannot meet the matching funds requirement. The Agency may waive all or part of the recipient's matching funds requirement only after a finding by the Agency that:

(1) There is a need for a waiver because providing the "match" would constitute an unusual financial hardship,

(2) A good faith effort at raising the "match," including obtaining in-kind services, has failed, and

(3) The waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

(c) Where a recipient who has obtained a grant subsequently obtains a waiver of the matching funds requirement, the grant agreement must be amended. (See 40 CFR Part 30, Subpart G.)

(d) No waivers will be granted by the Agency once the Record of Decision (ROD) has been issued at the last operable unit at the site.

§ 35.4095 Subagreement review.

Each applicant must inform EPA of any proposed subagreement between the recipient and the technical advisor and must provide EPA the opportunity to review the subagreement before it is awarded.

§ 35.4100 Disputes.

(a) If the Agency administers the Technical Assistance Grant Program, the Agency shall review disputes between Agency officials and the applicant or recipient in accordance with its dispute resolution procedures set forth at 40 CFR Part 30, Subpart L.

(b) If the State administers the Technical Assistance Grant Program, any applicant or recipient who has been adversely affected by a State's action or omission may request Agency review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or recipient, must include notice of the right to request Agency review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Agency review.

(1) Requests for Agency review must include:

(i) A copy of any written State decision.

(ii) A statement of the amount in dispute.

(iii) A description of the issues involved, and

(iv) A concise statement of the objections to the State decision.

(2) The request must be filed by registered mail, return receipt requested, within 30 days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Agency shall determine whether the State's review is comparable to a dispute decision official's (DDO) review pursuant to 40 CFR Part 30, Subpart L. If the State's review is comparable, the Regional Administrator will conduct the Agency's review of the State's decision. If the State's review is not comparable, an Agency DDO will review the State's decision and issue a written decision. If the Agency DDO issues a decision, the applicant or recipient may request a Regional Administrator's review of the decision. The applicant or recipient may request an EPA Assistant Administrator review of a Regional Administrator's decision pursuant to Subpart L.

§ 35.4105 Audits.

(a) *Records and audit—recipient.* (1) Each recipient shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the technical assistance grant project, and shall comply with the terms and conditions of the grant agreement.

(2) Such records shall be retained for three years from the date of the final Financial Status Report, or until any audit, litigation, cost-recovery, and/or any disputes initiated before the end of the three-year retention period are settled, whichever is longer. A recipient

must obtain EPA's prior written approval to destroy records after the record retention period.

(b) *Records and audit—contractor(s).* (1) The recipient shall require its contractor(s) to keep and preserve detailed records in connection with the subagreement, reflecting acquisitions, work progress, reports, expenditures, and commitments and indicating their relationship to established costs and schedules.

(2) The recipient shall require its contractor(s) to keep such full written financial records to adequately establish compliance with the terms and conditions of the subagreement. Such records shall be retained for three years from closeout of the subagreement, unless audit, litigation, cost-recovery, and/or any disputes are initiated before the end of the three-year retention period. The recipient shall require its contractor(s) to obtain its prior written approval before the contractor(s) destroys any records after the record retention period. The recipient shall not give such approval without first obtaining EPA's approval.

(Approved by the Office of Management and Budget under control numbers 2030–0020 and 2050 0083).

§ 35.4110 Reports.

(a) *Progress reports.* Each recipient shall submit quarterly progress reports to EPA for the technical assistance grant project 45 days after the end of each calendar quarter. Progress reports shall fully describe in chart or narrative format the progress achieved in relationship to the approved schedule, budget, and the technical assistance grant project milestones. Special problems encountered must be explained.

(b) *Financial status report.* Each recipient shall submit to EPA a financial status report annually, within 90 days after the anniversary date of the start of the technical assistance grant project, and within 90 days after the end of the grant budget period and project. A recipient shall submit to the Agency a financial status report on SF–269 or on the appropriate State form if the State is administering the Technical Assistance Grant Program.

(c) *Final report.* Each recipient shall submit to EPA a draft of the final report for review no later than 90 days prior to the end of the technical assistance grant project and a final report within 90 days of the end of the project. The report shall document technical assistance grant project activities over the entire period of grant support and shall describe the recipient's achievements with respect to stated technical assistance grant project purposes and objectives.

(Approved by the Office of Management and Budget under control numbers 2030–0020 and 2050–0083)

§ 35.4115 Availability of information.)

Each recipient shall ensure that all final written products developed by a contractor for the recipient under its grant are disseminated by providing copies of such documents to EPA for the local Superfund information repository.

§ 35.4120 Budget period.

The budget period may not exceed three years. A technical assistance grant project period may be comprised of more than one three-year budget period.

§ 35.4125 Federal facilities.

EPA will determine the eligibility of any group of individuals who may be affected by a release or a threatened release at a Federal facility for a technical assistance grant under this regulation.

§ 35.4130 Conflict of interest and disclosure requirements.

(a) The recipient shall require each prospective contractor on any subagreement to provide, with its bid or proposal:

(1) Information on its financial and business relationship with all PRPs at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, and current clients or attorneys and agents (this disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(2) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(3) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and shall exclude any prospective contractor if the recipient determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved.

(b) Contractors and subcontractors may not be technical advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity.

[FR Doc. 88–6501 Filed 3–23–88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

40 CFR Ch. I

[FRL 3307–1]

Technical Assistance Grant Program Administrative Services Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of rulemaking; request for comments.

SUMMARY: Elsewhere in today's Federal Register, the Environmental Protection Agency (EPA) is publishing the Interim Final Rule (IFR) for the Superfund Technical Assistance Grant Program. This Advance Notice of Rulemaking (ANRM) solicits comments regarding a proposal to provide technical assistance grant applicants and recipients with the services of an Administrative Services Contractor (ASC). These services could include both assistance in preparing grant applications and the procurement of technical assistance, and contract management. To implement the ASC, EPA would acquire contractors on a State, Regional, or National basis to provide services to grant recipients in lieu of cash. The ASC concept is based on EPA's desire to make the Technical Assistance Grant Program easier for groups to use and for EPA to administer.

DATE: Written comments must be received on or before April 25, 1988.

ADDRESSES: Comments: Written comments must be submitted to: Superfund Docket Clerk, Office of Emergency and Remedial Response (WH–548D), Room LG–100; U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20450. Comments on today's ANRM must identify the document as follows: "Docket CERCLA 117(e), Technical Assistance Grant Program Administrative Services Contractor." Copies of materials relevant to this ANRM are contained in the Superfund docket located in the Lower Garage (Room LG–100) at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays, by appointment only. The docket phone number in Washington, DC is (202) 382–3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, WH–548E, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (202) 382–2460 or the RCRA/Superfund Hotline from 9:00 a.m. to 4:30 p.m., Monday–Friday, toll free at 1–(800)–424–9436 or in Washington, DC at 382–3000.

SUPPLEMENTARY INFORMATION: Today's ANRM hs the following sections:

I. Introduction
II. Discussion of the ASC Concept
III. Benefits of the ASC
IV. Request for Comments

I. Introduction

Section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting technical material related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these technical assistance grants before processing any grant applications. Executive Order No. 12580 delegated to EPA the authority to develop the Interim Final Rule (IFR) published elsewhere in today's Federal Register and award these technical assistance grants.

This ANRM is being published today to solicit comments on EPA providing technical assistance grant applicants and recipients with the services of an ASC. These comments will be considered in developing the Final Rule for the Technical Assistance Grant Program and in determining whether to include the ASC approach in that Final Rule.

II. Discussion of the ASC Concept

EPA recognizes that technical assistance grant applicants and recipients may have little experience in applying for Federal grants or meeting the various recordkeeping, accounting, and contracting, and other requirements established in the EPA grant and procurement under assistance agreement regulations codified at 40 CFR Parts 30 and 33. The IFR published elsewhere in today's Federal Register ensures, as it must, that technical assistance grants will go only to citizens' groups that can and will comply with those regulations. However, EPA recognizes that technical assistance grant recipients may have to devote some of their limited resources to managing the grants in compliance with EPA regulations, rather than focusing on using the technical assistance grant for interpreting site-related documents. It also recognizes that there may be other citizens' groups with the potential ability to use technical assistance grants very productively, but who are precluded from receiving technical assistance grants by their inability to meet EPA's responsibility requirements for administrative and financial management of the grant.

An ASC could benefit such citizens' groups by offering assistance to grant applicants in completing all of the forms, by procuring technical assistance for grant recipients, and by assuming responsibility for managing and disbursing all Federal funds in compliance with EPA regulations. This would leave technical assistance grant recipients free to devote their time to making the most effective use of the technical assistance itself.

EPA also recognizes that administering the Technical Assistance Grant Program may place heavy demands on the resources of the lead agency (i.e., EPA or the State agency administering the technical assistance grant program). For every technical assistance grant, the lead agency must screen applicants, select a grant recipient, negotiate a grant agreement, and monitor the grant recipient's management of the technical assistance grant for compliance with the grant agreement itself and with EPA's grant and procurement under assistance agreement regulations. An ASC that contractually assumed responsibility for ensuring that all Federal funds were used in compliance with the technical assistance grant agreement and with applicable EPA regulations could reduce the lead agency's workload in fulfilling its oversight responsibilities.

In addition, some technical assistance grant applicants may be unfamiliar with the EPA grant process. If such citizens' groups have questions and difficulties while preparing their applications, they may ultimately look to the lead agency for information, advice, or assistance. An ASC whose services were available to grant applicants could reduce the lead agency's workload, both directly, by helping applicants who would otherwise seek help from the lead agency, and indirectly, by facilitating the submission of more accurate and informative applications.

EPA, therefore, is considering establishing one or more ASC(s) either on a State, Regional, or National basis, to provide services to grant applicants and recipients. The contractor(s) would procure such technical services and disburse funds as needed to pay for them. The ASC would also assume full responsibility for ensuring (1) that the services provided in the technical assistance grant award are delivered in a timely and effective manner, and (2) that all funds are managed and disbursed in full compliance with appropriate EPA regulations. The ASC would be subject to audit and liable for any costs disallowed as a result of an audit. The ASC would also be responsible for ensuring that use of the funds was consistent with each site budget and scope of work.

The ASC would not, however, play any role in deciding which citizens' group receives the technical assistance. Nor would it participate in determining the amount of technical assistance a grant recipient would receive. In addition, the grant recipient, and not the ASC, must provide the "match" of 35 percent.

After a technical assistance grant is awarded to a group of individuals, the grant recipient could consult with the ASC and help it to develop a request for proposal (RFP) for use in procuring a technical advisor. The grant recipient could also assist the ASC in reviewing bids received from prospective technical advisors. The grant recipient could then recommend a choice of technical advisor, but could not make the formal selection of the advisor. As the contractor for the project, the ASC would have the ultimate responsibility for selecting and contracting with all subcontractors, including the technical advisor, in accordance with EPA procurement regulations.

Thus, the community group would receive the full benefits of the technical assistance, while the ASC would be responsible for manageing and disbursing EPA funds in compliance with appropriate regulations and recordkeeping requirements. To ensure this, EPA's contract with the ASC would specify that the ASC was to provide the recipient group with the full amount of technical assistance specified in the grant agreement. Thus, if a technical assistance grant were awarded for $20,000, the grant recipient could receive $20,000 worth of technical assistance services, while EPA itself would fund, through the contract with the ASC, the costs of the ASC's services.

The following depicts one model for how this process could flow:

1. ASC is selected.
2. ASC provides information and assistance to citizens' groups applying for technical assistance grants.
3. Citizens' groups submit applications to lead agency.
4. Lead agency awards technical assistance grant to citizen's group.
5. Grant recipient assists ASC in developing the scope of work for the technical advisor.
6. ASC solicits subcontractors.
7. Grant recipient recommends to the ASC the selection of the subcontractor.
8. ASC selects subcontractor, negotiates and manages subcontract which specifies that the technical advisor will provide information and meet with the recipient as appropriate, and receives information concerning site from technical advisor.
9. Grant recipient receives reports directly from the technical advisor, consults with ASC, and recommends contract changes as appropriate.
10. ASC makes contract changes, as needed, and monitors contract to ensure technical advisor compliance;
11. ASC keeps records and reports to the lead agency.

III. Benefits of the ASC

The most obvious benefit of the ASC concept is that it permits citizens' groups to receive technical assistance without the administrative burden of managing and disbursing grant funds in compliance with EPA regulations. The ASC can benefit citizens' groups by providing a wide range of services and assistance which would not otherwise be available. An ASC can offer information and assistance to citizens' groups interested in applying for technical assistance grants. After the technical assistance grant has been awarded, the ASC, with assistance from the grant recipient, can identify precisely what services are needed at a site, and what contractors are capable of providing those services. In addition, the ASC can develop requests for proposal to provide those services. The technical assistance grant recipient can then review the proposals and recommend a technical advisor. The ASC will select and contract with the advisor, oversee the technical advisor's performance to ensure compliance with the terms of the contrct, manage and disburse funds to pay for the goods and services received, and prepare and ratain financial reports and records. Finally, it would be the ASC, rather than the citizens' groups, who would be accountable for compliance with applicable Federal procurement, and financial management requirements.

Conversely, if there is no ASC, technical assistance grant applicants who need assistance will have to rely on the lead agency for help. After the technical assistance grant is awarded, grant recipients will be responsible for identifying what technical services are needed, obtaining information regarding which contractors are available to provide those services, and developing requests for proposals. The grant recipient will be responsible for soliciting and evaluating responses to its request for proposal, selecting and negotiating a contract with the technical advisor, and monitoring the technical advisor's performance to ensure compliance with the contract. In addition, the grant recipient will be responsible for sound financial management involving the disbursement of funds and preparing financial reports. Finally, the grant recipient will be responsible for complying with all applicable Federal regulations and requirements in performing these tasks.

IV. Requests for Comments

Today, EPA solicits comments on the ASC concept. It frankly notes that this plan involves a number of trade-offs. On the one hand, grant recipients are freed from responsibility for securing the technical advisor and managing and disbursing grant funds in compliance with EPA grant and procurement under assistance agreement regulations and the recordkeeping and management responsibilities those regulations entail. On the other hand, although grant recipients can recommend the selection of a technical advisor, contract law requires that, as the contractor, the ASC must select subcontractors, including the technical advisor. EPA is interested in determining whether citizens' groups would be willing to exchange ultimate control over the selection of a technical advisor for the range of services and expertise an ASC can provide.

In addition, the ASC would oversee delivery of all technical assistance services and grant recipients would have an advisory role in managing the technical assistance grant. This might limit some opportunities grant recipients would otherwise have to contribute in-kind services to meet the 35 percent matching funds requirement. EPA invites comments on whether this would significantly affect a citizens' group's ability to meet the "match" and, if so, how EPA could treat the "match" requirement if it adopts some form of the ASC proposal.

EPA notes that the ASC concept is feasible only if it provides a cost-effective method of both assisting grant recipients and reducing the administrative burdens of the lead agency. Thus, a sufficient number of grant recipients would have to use the ASC to reduce EPA's administrative burden as well as to justify the expense in establishing such a system. EPA,

therefore, requests comments on whether citizens' groups would utilize the services of an ASC if they were available. In addition, EPA solicits comments on whether grant recipients should be required to utilize the services of the ASC as a condition of receiving their technical assistance grants.

EPA also solicits comments on whether the ASC should provide assistance only to those selected as grant recipients or should instead be available to assist all applicants. If it should assist applicants, EPA requests comments on how far the ASC should go beyond simply providing information and assistance as requested. EPA notes that any role that puts the ASC in the position of appearing to provide more assistance to one applicant than it provides to a competing applicant may be inappropriate. Such an arrangement could raise questions of favoritism and could make it difficult for the ASC to work productively with a grant recipient that believed the ASC had provided undue help to a competing applicant.

EPA also desires public comments on whether an ASC should be chosen on a State, Regional, or National basis. A single National contract may be easier and quicker to award than a series of Regional ones: typically, a Regional contract is easier and quicker to award than passing money to the States who, in turn, contract for such services. Citizens' groups may, however, perceive a State contractor to be more readily available and responsive than a National contractor. A way to incorporate the advantages of the two approaches may be to have a more distant contractor establish a toll-free number and to be available for at least one site meeting with each grant recipient; should it prove necessary, the ASC also could be available to meet once with an applicant group.

Finally, EPA desires public comment on whether EPA or the State, if they are administering the Technical Assistance Grant Program for a site, should be responsible for providing the ASC for that site. This would lead to the establishment of separate State and EPA ASC's in some States. EPA requests comments as to whether such an arrangement would be cost-effective or whether it would be confusing to the public.

Dated: March 18, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-6502 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

[FRL-3354-7]

Financial Assistance Program Eligible for Review Under 40 CFR Part 29; Superfund Site Cleanups

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Review.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), the Environmental Protection Agency (EPA or the Agency) is announcing the availability of a new financial assistance program, the "Technical Assistance Grant Program" (Catalog of Federal Domestic Assistance Number 66.807). This program will make technical assistance grants (TAGs) of up to $50,000 available to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Funds are available starting in fiscal year (FY) 1988 for technical assistance grants to citizens' groups.

DATE: States choosing to include this program in their intergovernmental review process must notify EPA on or before April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2460.

SUPPLEMENTARY INFORMATION: Section 117(e) of CERCLA authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order (E.O.) No. 12580 delegated to EPA the authority to implement section 117(e) in consultation with the Attorney General.

Under the authority of section 117(e) of CERCLA, EPA will award grants to any group of individuals that may be affected by a release or a threatened release at any facility that (a) is listed on the National Priorities List (NPL) under the National Contingency Plan (NCP) or (b) is proposed for listing and a response action has begun.

The Technical Assistance Grant Program is eligible for intergovernmental review under E.O. No. 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, as amended; section 401 of the Intergovernmental Cooperation Act of 1968, as amended; and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended. States must notify the following office in writing within 30 days of this publication whether their State's official E.O. No. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants for technical assistance grants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to determine if the Technical Assistance Grant Program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications that include activities to be implemented within a metropolitan area must be sent for review to the areawide/Regional/local planning agency designated to perform metropolitan or Regional planning for the area.

SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Office no later than sixty days after receiving the technical assistance grant application or other material required for review.

Applications for technical assistance grants will undergo administrative review for adequacy, content, completeness, and other criteria set by EPA. The EPA Regional Offices will have both award and approval authority.

Dated: March 21, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-6503 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

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federal register

Thursday
March 24, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Transponder with Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor; Notice of Proposed Rulemaking; Extension of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Docket No. 25531; Notice No. 88-2]

Transponder with Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: On February 12, 1988, the FAA published Notice No. 88-2 which proposes to require that all aircraft be equipped with a transponder and automatic altitude reporting equipment (Mode C transponder) when operating in terminal airspace where air traffic control (ATC) radar service is provided, and when operating at and above 6,000 feet above the surface in controlled airspace, and proposes to establish a common floor for controlled airspace over the U.S. This notice announces an extension of the comment period of the NPRM (Notice No. 88-2) for an additional 45 days.

DATE: Comments must be received on or before May 12, 1988.

ADDRESSES: Mail comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGD-204) (Docket No. 25531), 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of these comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25531." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

Docket No. 25531 published on February 12, 1988 (53 FR 4306) proposed to require a Mode C transponder on all aircraft operating within 40 miles of an airport for which terminal radar approach control service was established, and on all aircraft operating in controlled airspace at or above 6,000 feet above the surface or 12,500 feet mean sea level (MSL) whichever is lower. Additionally, Docket No. 25531 contained a proposal to replace the Continental Control Area with the U.S. Control Area and described this new area as the airspace beginning at or below the level established for the use of Mode C transponders over the U.S. which includes the 50 States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters.

The Experimental Aircraft Association (EAA) and the Aircraft Owners and Pilots Association have requested that the comment period be extended from 45 days to as long as 120 days to enable those persons impacted by the proposal to obtain knowledge of the proposal and formulate meaningful comments. The FAA has received similar requests from a number of other commentors, including members of Congress. The FAA is aware that many general aviation pilots and others associated with the aviation industry receive notification of proposed rulemaking actions only through user organizations. In addition, it is apparent from many of the comments already received that this rulemaking involves complex issues with a broad impact on the flying public. For the above reasons, I believe that an extension of the comment period is necessary in order to guarantee that all interested parties, including pilots and aircraft owners who receive notification of proposals primarily through user organizations, will have an opportunity to respond to the NPRM. Accordingly, I have decided to extend the comment period for this rulemaking. The Department of Transportation concurs with this decision.

EAA and various other commentors who have already responded to the notice have requested extension periods of up to 75 additional days. Due to the statutory requirement to issue a final rule by June 30, 1988, however, an extension of the original comment period beyond an additional 45 days is not feasible. A comment period of 90 days will be sufficient for the agency to receive informed and representative comments from the public and to reach a timely final rule action.

For the reasons stated, I am extending the comment period on Docket No. 25531 to May 12, 1988, to allow for a 90-day comment period instead of the original 45-day comment period.

Issued in Washington, DC, on March 21, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-6514 Filed 3-22-88; 11:04 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 606]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 606 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 315,000 cartons during the period March 27 through April 2, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 606 (§ 910.906) is effective for the period March 27 through April 2, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on March 22, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.906 is revised to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.906 Lemon Regulation 606

The quantity of lemons grown in California and Arizona which may be handled during the period March 27, 1988, through April 2, 1988, is established at 315,000 cartons.

Dated: March 23, 1988.

Charles R. Brader,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–6096 Filed 3–24–88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1216

Environmental Quality

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1216, "Environmental Quality," by revising NASA organizational titles and making certain technical corrections throughout this regulation. Subpart 1216.1 establishes NASA policy on environmental quality and control and the responsibilities of NASA officials in carrying out these policies; Subpart 1216.2 prescribes procedures for floodplain and wetlands management; and Subpart 1216.3 sets forth NASA procedures for implementing provisions of the National Environmental Policy Act (NEPA).

EFFECTIVE DATE: March 25, 1988.

ADDRESS: Facilities Management Office, Code NX, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: G. Ted Ankrum, (202) 453–1865.

SUPPLEMENTARY INFORMATION: NASA organizational titles and changes in technical designations are being corrected in the following sections: 1216.103, 1216.202, 1216.204, 1216.205, 1216.301, 1216.302, 1216.303, 1216.304, 1216.305, 1216.306, 1216.308, 1216.309, 1216.310, 1216.311, 1216.313, 1216.315, 1216.316, 1216.318, 1216.319, 1216.320, and 1216.321. Since these changes are internal and administrative in nature and do not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1216

Environmental impact statements, Floodplains, Wetlands.

For reasons set out in the Preamble, 14 CFR Part 1216 is amended as follows:

PART 1216—ENVIRONMENTAL QUALITY

1. The authority citation for 14 CFR Part 1216 following the table of contents is removed.

Subparts 1216.1 and 1216.3—[Amended]

2. The authority citation for 14 CFR Part 1216 Subparts 1216.1 and 1216.3 is added to read as follows:

Authority: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500–1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

Subparts 1216.2—[Amended]

2. The authority citation for 14 CFR Part 1216 Subpart 1216.2 is added to read as follows:

Authority: E.O. 11988 and E.O. 11990, as amended; 42 U.S.C. 2473(c)(1).

3. Section 1216.103 is amended by revising the introductory text of paragraph (a), and paragraph (b)(2) and (3), and (c)(2) to read as follows:

§ 1216.103 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee shall: * * *

(b) * * *

(2) Coordinating environmental quality-related activities under their cognizance with the Associate Administrator for Management; and

(3) Supporting and assisting the Associate Administrator for Management on request.

(c) * * *

(2) In coordination with the Associate Administrator for Management, making available to other parties, both governmental and nongovernmental, advice and information useful in protecting and enhancing the quality of the environment.

* * * * *

4. Section 1216.202 is revised to read as follows:

§ 1216.202 Responsibility of NASA officials.

(a) Directors of Field Installations and, as appropriate, the Associate Administrator for Management at NASA Headquarters, are responsible for implementing the requirements and procedures prescribed in § 1216.204 and § 1216.205.

(b) The Assistant Associate Administrator for Facilities Management, NASA Headquarters, is responsible for overall coordination of floodplain and wetlands management activities, and for conducting periodic on-site reviews of each installation's floodplain and wetlands management activities to assure compliance with the Executive Orders.

5. Section 1216.204(a), (e)(2) and (f) are revised to read as follows:

§ 1216.204 General implementation requirements.

(a) Each NASA field installation shall prepare, if not already available, an installation base floodplain map based on the latest information and advice of the appropriate District Engineer, Corps of Engineers, or, as appropriate, the Director of the Federal Emergency Management Agency. The map shall delineate the limits of both the 100-year and 500-year floodplains. A copy of the map, approved by the Field Installation Director, will be provided to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, by February 28, 1979. The map will conform to the definitions and requirements specified in the Floodplain Management Guidelines for Implementing Executive Order 11988.

* * * * *

(e) * * *

(2) Submit evidence of the successful completion of this consultation to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, prior to the start of project construction.

(f) If NASA property used or visited by the general public is located in an identified flood hazard area, the installation shall provide on structures, in this area and other places where appropriate (such as where roads enter the flood hazard area), conspicuous delineation of the 100-year and 500-year flood levels, flood of record, and probable flood height in order to enhance public awareness of flood hazards. In addition, field installations shall review their storm control and disaster plans to assure that adequate provision is made to warn and evacuate the general public as well as employees. These plans will include the integration of adequate warning time into such plans. The results of this review shall be submitted to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, by February 28, 1979.

* * * * *

6. Section 1216.205 is amended by revising paragraph (b)(9) to read as follows:

§ 1216.205 Procedures for evaluating NASA actions impacting floodplains and wetlands.

* * * * *

(b) * * *

(9) In accordance with § 1216.202(b), the Assistant Associate Administrator for Facilities Management, NASA Headquarters, will conduct periodic on-site reviews to assure that the action is carried out in accordance with the stated findings and plans for the proposed action, in compliance with the Executive Orders.

7. Section 1216.301 is amended by revising paragraph (b) to read as follows:

§ 1216.301 Applicability.

* * * * *

(b) The procedures established by this subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the four NASA budget categories: Research and Development (R&D), Construction of Facilities (CoF), Research and Program Management (R&PM), and Space Flight Control and Data Communications (SFCDC), or, if not involving budget authority or other congressional approval, may be separate from the categories.

8. Section 1216.302 is amended by revising paragraph (a) introductory text and adding paragraphs (a)(4) and (f) as follows:

§ 1216.302 Definition of key terms.

* * * * *

(a) *Budget line items.* The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The four main budget line items are:

* * * * *

(4) *Space Flight, Control and Data Communications (SFCDC).* Has similar scope to R&D but covers activities which are primarily of a production and operational nature related to space flight. The content includes the national fleet of Space Shuttle orbiters, including main engines, launch site and mission operations, initial spares, production tooling and supporting activities, launch operations and tracking and data acquisition.

* * * * *

(f) *SFCDC project.* R&D type projects authorized under the SFCDC budget line item.

9. Section 1216.303 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee, who is responsible for developing the procedures of this subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

* * * * *

(c) The Assistant Administrator for Congressional Relations Office is responsible for ensuring the legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for Management, the NASA Comptroller, and the General Counsel will provide guidance as required.

10. Section 1216.304 is amended by revising the introductory text and paragraphs (a)(1) and (b)(1) as follows:

§ 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D (or SFCDC) and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) * * *

(1) Proposal of an R&D (or SFCDC) project for detailed planning and project definition;

(b) * * *

(1) Proposal of an R&D (or SFCDC) project for development/construction;

* * * * *

11. Section 1216.305 is amended by revising paragraphs (d)(1), (d)(4), and (d)(5) as follows:

§ 1216.305 Criteria for actions requiring environmental assessments.

* * * * *

(d) * * *

(1) R&D (or SFCDC) activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

* * * * *

(4) R&D (or SFCDC) activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

* * * * *

(5) R&D (or SFCDC) activities in space tracking and data systems.

* * * * *

12. Section 1216.306 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1216.306 Preparation of environmental assessments.

(a) For each NASA action meeting the criteria of 14 CFR 1216.305(b) and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (40 CFR 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required; except where action meeting the criteria is strictly of a local nature under the purview of the Field Installation Director.

(b) If the determination is that no environmental impact statement is required, the Headquarters official or Field Installation Director, shall, in coordination with the Associate Administrator for Management, prepare a "Finding of No Significant Impact." (See 40 CFR 1508.13 of the CEQ Regulations.) The "Finding of No Significant Impact" shall be made available to the affected public through direct distribution and publication in the **Federal Register**, or coordinated with the State Single Point of Contact pursuant to E.O. 12372, as amended, "Intergovernmental Review of Federal Programs," as appropriate.

(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the "notice of intent to prepare an EIS" (see 40 CFR 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for Management for review and subsequent publication in the **Federal Register** (see 40 CFR 1507.3(e) of the CEQ Regulations). The Headquarters official shall then apply procedures set forth in 14 CFR 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this subpart.

* * * * *

13. Section 1216.308 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1216.308 Preparation of draft statement.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in 40 CFR Part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for Management for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, State, and local officials (40 CFR Part 1503 of the CEQ Regulations) and a list of other interested parties (40 CFR 1506.6 of the CEQ Regulations) from whom comments should be requested.

(b) After the NASA review is completed, the Associate Administrator for Management shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Federal Activities, and shall seek the views of appropriate agencies and individuals in accordance with 40 CFR Part 1503 and § 1506.6 of the CEQ Regulations.

* * * * *

14. Section 1216.309 is revised to read as follows:

§ 1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Assistant Associate Administrator for Facilities Management, Code NX, NASA Headquarters, Washington, DC 20546, 202–453–1965. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for Management at the same time they submit:

(1) A recommendation regarding a "Finding of No Significant Impact,"

(2) A "Notice of Intent to Prepare an EIS,"

(3) A recommendation for public hearings,

(4) A preliminary draft EIS,

(5) A preliminary final EIS,

(6) Other preliminary environmental documents (14 CFR 1216.321(d)).

(c) The Associate Administrator for Management may modify such lists referred to in paragraph (b) of this section as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with 40 CFR 1506.6 of the CEQ Regulations and § 2–4(d) of Executive Order 12114.

(d) The decision whether to hold public hearings shall be made by the Associate Administrator for Management in consultation with the General Counsel.

15. Section 1216.310 is amended by revising paragraph (a) to read as follows:

§ 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, State, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for Management. The Associate Administrator for Management shall submit the approved final statement to the EPA Office of Federal Activities, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

* * * * *

16. Section 1216.311 is revised to read as follows:

§ 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for Management and prepare a concise public record of the decision. (See 40 CFR 1505.2 of the CEQ Regulations.)

17. Section 1216.313 is amended by revising paragraph (b) and designating the text following paragraph (b) as paragraph (c) and revising it to read as follows:

§ 1216.313 Implementing and monitoring the decision.

* * * * *

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associate Administrator for Management.

(c) If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for Management to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see 40 CFR 1502.9 of the CEQ Regulations).

18. Sections 1216.315 and 1216.316 are revised to read as follows:

§ 1216.315 Processing legislative environmental impact statements.

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of 40 CFR 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for Management, shall identify those NASA recommendations or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in 14 CFR 1216.305.

(b) For the purposes of this provision, "legislation" not only excludes requests for appropriations (40 CFR 1508.17 of the CEQ Regulations), but also excludes the annual authorization bill submitted to the Congress.

§ 1216.316 Cooperating with other agencies and individuals.

(a) The Associate Administrator for Management, in coordination with the Associate Administrator for External Relations, shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see 40 CFR 1508.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for Management, Headquarters officials shall initiate discussions with another Federal agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for Management, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of the NASA's aerospace activities, it is unlikely that NASA will have the opportunity to "adopt" environmental statements prepared by other agencies (40 CFR 1506.3 of the CEQ Regulations). However, should the responsible NASA offical wish to adopt a Federal draft or final environmental impact statement or portion thereof, he/she shall consult with the Associate Administrator for Management to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the Associate Administrator for Management to resolve such questions in accordance with 40 CFR 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for Management for advice on the type of environmental information needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation.

19. Sections 1216.318 and 1216.319 are revised and the undesignated center heading is republished to read as follows:

§ 1216.318 Deviations.

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the Associate Administrator for Management. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures.

Other Requirements

§ 1216.319 Environmental resources document.

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (see 14 CFR 1216.307). This document shall be coordinated with the Associate Administrator for Management and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter.

20. Section 1216.320 is amended by revising paragraphs (a)(3) and (b) as follows:

§ 1216.320 Environmental review and consultation requirements.

(a) * * *

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as amended, and implemented by 14 CFR Subpart 1216.2—*Floodplains and Wetlands Management*, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to appropriate State Single Point of Contact for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, may be identified in the NASA environmental impact implementation handbook.

21. Section 1216.321 is amended by revising paragraphs (a)(3) and (5), (c), (d), (e), and (f) to read as follows:

§ 1216.321 Environmental effects abroad of major Federal actions.

(a) * * *

(3) The export of products or facilities producing products (or emission/effluents) which in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for Management will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

* * * * *

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Associate Administrator for Management.

* * * * *

(c) If the Headquarters official determines that the action will not have a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for Management. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2–5(d)).

(d) If the Headquarters official determines that an action may have a significant environmental effect abroad, he/she shall consult with the Associate Administrator for Management and the Director, International Relations Division. The Associate Administrator for Management, in coordination with the Director, International Relations Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement,

(2) Bilateral or multilateral environmental studies, or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for Management, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for Management shall, in coordination with the Associate Administrator for External Relations, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) of this section and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114.

James C. Fletcher,
Administrator.

March 16, 1988.

[FR Doc. 88–6518 Filed 3–24–88; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–6781; 34–25484; 35–24603; 39–2151; IC–16322; IA–1109]

Approved Information Collections; Current OMB Expiration Dates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Subpart N of Part 200 relating to collection requirements under the Paperwork Reduction Act to reflect current OMB expiration dates for approved information collections.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fogash, Deputy Executive Director, SEC, 450 Fifth Street, NW., Washington, DC 20549 (202) 272–2142.

SUPPLEMENTARY INFORMATION: The Commission will amend Subpart N periodically to reflect current information.

The Commission finds that this amendment, concerning the display of the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act, pertains only to procedural matters; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq., requiring advance notice and opportunity for comment. Accordingly, it is effective upon publication in the Federal Register.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Nos. and Expiration Dates

1. The authority citation for Part 200, Subpart N continues to read as follows:

Authority: 44 U.S.C. 3507(f); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 902, 904, 905, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54, Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a–37.

2. Section 200.800 is amended by adding Rule 22d–1, Rule 6c–9, Rule 206(4)–4, Rule 34b–1, Rule 701, Rule 702, Rule 703, Form 701, Rule 24f–3, Rule 15Ca1–1, Rule 15Ca2–2, Rule 19b–1 and Rule 10b–6; by deleting Rule 19d–2, Rule 48(b), 22d–4; and revising certain entries in paragraph (b) as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Information Collection Requirement	17 CFR Part or Section Where Identified and Described	Current OMB Control No.	Expiration date
Revise:			
* * *	* * *		*
Rule 236	§ 230.236	3235-0095	Mar. 31, 1990.
* * *	* * *		*
Regulation B	§§ 230.300 through 230.345	3235-0093	Mar. 31, 1990.
Regulation C	§§ 230.400 through 230.494	3235-0074	Apr. 30, 1990.
Regulation D	§§ 230.501 through 230.506	3235-0076	Aug. 31, 1989.
Rule 604	§ 230.604	3235-0232	July 31, 1990.
Rule 605	§ 230.605	3235-0232	July 31, 1990.
Rule 606	§ 230.606	3235-0232	July 31, 1990.
Rule 607	§ 230.607	3235-0232	July 31, 1990.
Rule 609	§ 230.609	3235-0232	July 31, 1990.
Regulation F	§§ 230.651 through 230.656	3235-0094	Nov. 30, 1990.
* * *	* * *		*
Form N-1A	§ 239.15A	3235-0307	Oct. 31, 1990.
Form S-6	§ 239.16	3235-0184	Sept. 30, 1990.
Form N-7	§ 239.16A	3235-0338	Apr. 30, 1990.
* * *	* * *		*
Form S-4	§ 239.25	3235-0324	July 31, 1990.
Form S-18	§ 239.28	3235-0096	Nov. 30, 1989.
* * *	* * *		*
Form F-4	§ 239.34	3235-0325	July 31, 1990.
* * *	* * *		*
Form SR	§ 239.61	3235-0124	Nov. 30, 1990.
Form ET	§ 239.62	3235-0329	Oct. 31, 1989.
Form ID	§ 239.63	3235-0326	Oct. 31, 1989.
Form SE	§ 239.64	3235-0327	Oct. 31, 1989.
* * *	* * *		*
Schedules A, B, C, D	§ 239.101	3235-0093	Mar. 31, 1990.
Form 1-G	§ 239.101	3235-0093	Mar. 31, 1990.
Form 3-G	§ 239.101	3235-0093	Mar. 31, 1990.
Form 144	§ 239.144	3235-0101	Feb. 28, 1990.
Form 1-E	§ 239.200	3235-0232	July 31, 1990.
Form 2-E	§ 239.201	3235-0233	Feb. 28, 1991.
Form 1-F	§ 239.300	3235-0094	Nov. 30, 1990.
Form D	§ 239.500	3235-0076	Aug. 31, 1989.
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Rule 6e-3	§ 240.6e-3	3235-0021	Apr. 30, 1990.
Rule 10b-7	§ 240.10b-7	3235-0201	Dec. 31, 1989.
Rule 11Ab2-1	§ 240.11Ab2-1	3235-0043	Oct. 31, 1990.
Rule 12a-5	§ 240.12a-5	3235-0079	Dec. 31, 1990.
Regulation 12B	§§ 240.12b-1 through 240.12b-36	3235-0062	Nov. 30, 1990.
Rule 12d1-3	§ 240.12d1-3	3235-0109	Nov. 30, 1989.
Rule 12d2-1	§ 240.12d2-1	3235-0081	Dec. 31, 1990.
Rule 12d2-2	§ 240.12d2-2	3235-0080	Dec. 31, 1990.
Rule 12f-1	§ 240.12f-1	3235-0128	Dec. 31, 1990.
Rule 12f-2	§ 240.12f-2	3235-0248	Jan. 31, 1991.
Rule 12f-3	§ 240.12f-3	3235-0249	Jan. 31, 1991.
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Rule 13e-3	§ 240.13e-3	3235-0007	June 30, 1989.
Rule 13e-4	§ 240.13e-4	3235-0203	Sept. 30, 1990.
Schedule 13e3	§ 240.13e-100	3235-0007	June 30, 1989.
Schedule 13e-4	§ 240.13e-101	3235-0203	Sept. 30, 1990.
Regulation 14A	§§ 240.14a-1 through 240.14a-12	3235-0059	July 31, 1990.

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Schedule 14A	§ 240.14a-101	3235-0059	July 31, 1990.
Schedule 14B	§ 240.14a-102	3235-0059	July 31, 1990.
Regulation 14C	§ 240.14c-1	3235-0057	July 31, 1990.
Schedule 14C	§ 240.14c-101	3235-0057	July 31, 1990.
Regulation 14D	§§ 240.14d-1 through 240.14d-9	3235-0102	Sept. 30, 1990.
Schedule 14d-1	§ 240.14d-100	3235-0102	Sept. 30, 1990.
Schedule 14d-9	§ 240.14d-101	3235-0102	Sept. 30, 1990.
Regulation 14E	§§ 240.14e-1 through 240.14e-2	3235-0102	Sept. 30, 1990.
Rule 14f-1	§ 240.14f-1	3235-0108	Nov. 30, 1990.
Rule 15a-4(a)	§ 240.15a-4(a)	3235-0010	Aug. 31, 1989.
Rule 15Aa-1	§ 240.15Aa-1	3235-0030	Oct. 31, 1990.
Rule 15Aj-1	§ 240.15Aj-1	3235-0044	Oct. 31, 1990.
Rule 15b1-1	§ 240.15b1-1	3235-0012	May 31, 1990.
Rule 15b1-2	§ 240.15b1-2	3235-0012	Aug. 31, 1989.
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Rule 15b1-4	§ 240.15b1-4	3235-0016	Aug. 31, 1989.
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Rule 15b3-1	§ 240.15b3-1	3235-0013	Oct. 31, 1990.
Rule 15b6-1(a)	§ 240.15b6-1(a)	3235-0018	Nov. 30, 1989.
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Rule 15Ba2-2	§ 240.15Ba2-2	3235-0080	Dec. 31, 1990.
Rule 15Ba2-4	§ 240.15Ba2-4	3235-0089	Dec. 31, 1990.
Rule 15Ba2-5	§ 240.15Ba2-5	3235-0088	Oct. 31, 1990.
Rule 15Ba2-6	§ 240.15Ba2-6	3235-0086	Dec. 31, 1990
Rule 15Bc3-1	§ 240.15Bc3-1	3235-0087	Nov. 30, 1990.
Rule 15c2-5	§ 240.15c2-5	3235-0198	Jan. 31, 1991.
Rule 15c2-11	§ 240.15c2-11	3235-0202	Mar. 31, 1989.
Rule 15c3-1	§ 240.15c3-1	3235-0200	June 30, 1990
Rule 15c3-3	§ 240.15c3-3	3235-0078	Aug. 31, 1990.
Rule 15c1-7	§ 240.15c1-7	3235-0134	Dec. 31, 1990
Rule 17a-1	§ 240.17a-1	3235-0208	Oct. 31, 1989.
Rule 17a-2	§ 240.17a-2	3235-0201	Dec. 31, 1989.
Rule 17a-3	§ 240.17a-3	3235-0033	Sept. 30, 1989
Rule 17a-4	§ 240.17a-4	3235-0279	Sept. 30,1989.
Rule 17a-5	§ 240.17a-5	3235-0123	Oct. 31, 1989.
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Rule 17a-7	§ 240.17a-7	3235-0131	Oct. 31, 1989.
Rule 17a-8	§ 240.17a-8	3235-0092	Jan. 31, 1991.
Rule 17a-10	§ 240.17a-10	3235-0122	Dec. 31, 1990.
Rule 17a-11	§ 240.17a-11	3235-0085	Oct. 31, 1990.
Rule 17a-13	§ 240.17a-13	3235-0035	Oct. 31, 1990.
Rule 17a-19	§ 240.17a-19	3235-0133	Dec. 31, 1990.
Rule 17a-22	§ 240.17a-22	3235-0196	Dec. 31, 1990.
Rule 17Ab2-1 (a) and (e)	§ 240.17Ab2-1 (a) and (e)	3235-0195	Jan. 31, 1991.
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Rule 17Ac3-1(a)	§ 240.17Ac3-1	3235-0151	Nov. 30, 1990.
Rule 1Ad2 (c), (d) and (h)	§ 240.17Ad2 (c), (d) and (h)	3235-0130	Dec. 31,1990.
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Rule 17Ad-6	§ 240.17Ad-6	3235-0291	Aug. 31, 1989.
Rule 17Ad-7	§ 240.17Ad-7	3235-0136	Aug. 31, 1989.
Rule 17Ad-10	§ 240.17Ad-10	3235-0273	July 31, 1990.
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Rule 17f-1(g)	§ 240.17f-1-(g)	3235-0290	Nov. 30, 1989.
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Rule 17f-2(c)	§ 240.17f-2(c)	3235-0029	Oct. 31, 1990.
Rule 17f-2(d)	§ 240.17f-2(d)	3235-0028	Oct. 31, 1990.
Rule 17f-2(e)	§ 240.17f-2(e)	3235-0031	Nov. 30, 1990.
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Rule 19b-4	§ 240.19b-4	3235-0045	Oct. 31, 1990.
Rule 19d-1(b)(i)	§ 240.19d-1(b)(i)	3235-0206	Aug. 31, 1989.
Rule 19d-3(b)	§ 240.19d-3(b)	3235-0240	Jan. 31, 1989.
Rule 19h-1(a), (c)-(e), (g)	§ 240.19h-1(a), (c)-(e), (g)	3235-0259	Oct. 31, 1989.
Rule 24b-1	§ 240.24b-1	3235-0194	Jan. 31, 1991.
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Form 25	§ 249.25	3235-0080	Dec. 31, 1990.
Form 26	§ 249.26	3235-0079	Dec. 31, 1990.
Form 27	§ 249.27	3235-0248	Jan. 31, 1991.
Form 28	§ 249.28	3235-0249	Jan. 31, 1991.
Form 3	§ 249.103	3235-0104	Nov. 30, 1990.
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Form 8-A	§ 249.208a	3235-0056	Nov. 30, 1990.
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Form 20-F	§ 249.220f	3235-0288	May 31, 1990.
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Form 8-K	§ 249.308	3235-0060	Aug. 31, 1990.
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Form 10-C	§ 249.310c	3235-0191	Dec. 31, 1990.
Form 11-K	§ 249.311	3235-0082	Mar. 31, 1990

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Form 12b-25	§ 249.322	3235-0058	Mar. 31, 1991.
Form 15	§ 249.323	3235-0167	Nov. 30, 1990.
Form 13F	§ 249.325	3235-0006	Feb. 28, 1991.
Form N-SAR	§ 249.330	3235-0330	Aug. 31, 1990.
Form SE	§ 249.444	3235-0327	Oct. 31, 1989.
Form ET	§ 249.445	3235-0329	Oct. 31, 1989.
Form ID	§ 249.446	3235-0328	Oct. 31, 1989.
Form [illegible]	§ 249.480	3235-0528	Oct. 31, 1989.
Form BD	§ 249.501	3235-0141	Mar. 31, 1989.
Form BDW	§ 249.501a	3235-0012	Mar. 31, 1991.
Form X-17A-5	§ 249.617	3235-0018	Nov. 30, 1990.
Form X-17A-19	§ 249.635	3235-0123	Oct. 31, 1989.
Form X-17A-1	§ 249.717	3235-0133	Dec. 31, 1989.
Form X-15AA-1	§ 249.801	3235-0208	Oct. 31, 1989.
Form X-15AJ-1	§ 249.802	3235-0030	Oct. 31, 1990.
Form X-15AJ-2	§ 249.803	3235-0044	Oct. 31, 1990.
Form 19b-4	§ 249.819	3235-0044	Oct. 31, 1990.
Form SIP	§ 249.1001	3235-0046	Oct. 31, 1990.
		3235-0043	Oct. 31, 1990.
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Form MSDW	§ 249.1110	3235-0087	Nov. 30, 1990.
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Form TA-W	§ 249b.101	3235-0151	Nov. 30, 1990.
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Form CA-1	§ 249b.300	3235-0195	Jan. 31, 1991.
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Rule 1(c)	§ 250.1(c)	3235-0164	Nov. 30, 1989.
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Rule 45	§ 250.45	3235-0154	July 31, 1990.
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	Part 257	3235-0008	Nov. 30, 1989.
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Form ET	§ 259.601	3235-0329	Oct. 31, 1989.
Form ID	§ 259.602	3235-0328	Oct. 31, 1989.
Form SE	§ 259.603	3235-0327	Oct. 31, 1989.
Rules 7a-15 through 7a-37	§§ 260.7a-15 through 260.7a-37	3235-0132	Nov. 30, 1989.
Form T-1	§ 269.1	3235-0110	Nov. 30, 1989.
Form T-2	§ 269.2	3235-0111	Nov. 30, 1989.
Form T-3	§ 269.3	3235-0105	Nov. 30, 1989.
Form T-4	§ 269.4	3235-0107	Dec. 31, 1989.
Form ET	§ 269.5	3235-0329	Oct. 31, 1989.
Form ID	§ 269.6	3235-0328	Oct. 31, 1989.
Form SE	§ 269.7	3235-0327	Oct. 31, 1989.
Rule 2a-7	§ 270.2a-7	3235-0268	Sept. 30, 1990.
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Rule 6e-2	§ 270.6e-2	3235-0248	Nov. 30, 1989.
Rule 6c7	§ 270.6c-7	3235-0276	Jan. 31, 1990.
Rule 8a	§ 270.8a-8(b)(6)	3235-0177	Feb. 28, 1991.
Rule 7d	§ 270.7d-1(b)(8)(ii) & (vi)	3235-0176	May 31, 1990.
Rule 8b-11	§ 270.8b-11	3235-0176	Jan. 31, 1990.
Rule 8b-16	§ 270.8b-16	3235-0176	Jan. 31, 1990.
Rule 8b-20	§ 270.8b-20	3235-0176	Jan. 31, 1990.
Rule 8b-21(b)	§ 270.8b-21(b)	3235-0176	Jan. 31, 1990.
Rule 8b-25	§ 270.8b-25	3235-0176	Jan. 31, 1990.
Rule 8b-32(b)	§ 270.8b-32(b)	3235-0176	Jan. 31, 1990.
Rule 10f-3	§ 270.10f-3	3235-0226	Nov. 30, 1989.
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Rule 12b-1	§ 270.12b-1	3235-0212	Nov. 30, 1990.
Rule 17a-7	§ 270.17a-7	3235-0214	Feb. 28, 1991.
Rule 17a-8	§ 270.17a-8	3235-0235	Feb. 28, 1991.
Rule 17e-1	§ 270.17e-1	3235-0217	Oct. 31, 1990.
Rule 17f-1	§ 270.17f-1	3235-0222	Feb. 28, 1991.
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Rule 17f-4	§ 270.17f-4	3235-0225	July 31, 1990.
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Rule 17j-1	§ 270.17j-1	3235-0224	Nov. 30, 1989.
Rule 18f-1	§ 270.18f-1	3235-0211	Feb. 28, 1991.
Rule 19a-1	§ 270.19a-1	3235-0216	Feb. 28, 1991.
Rule 20a-1(b)	§ 270.20a-1(b)	3235-0158	Sept. 30, 1990.
Rule 20a-2	§ 270.20a-2	3235-0158	Sept. 30, 1988.
Rule 20a-3	§ 270.20a-3	3235-0158	Sept. 30, 1988.
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Rule 24f-1	§ 270.24f-1	3235-0155	Feb. 28, 1991.
Rule 24f-2	§ 270.24f-2	3235-0159	Feb. 28, 1991.
Rule [illegible]	§ [illegible]	3235-0330	Apr. 30, 1990.
Rule 30a-1	§ 270.30a-1	3235-0219	Feb. 28, 1991.
Rule 30b2-1	§ 270.30b2-1	3235-0220	Feb. 28, 1991.
Rule 30d-1	§ 270.30d-1	3235-0025	Dec. 31, 1990

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Rule 31a-1	§ 270.31a-1	3235-0178	July 31, 1990.
Rule 31a-2	§ 270.31a-2	3235-0179	June 30, 1990.
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Form N-8A	§ 274.10	3235-0175	Jan. 31, 1991.
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Form N-1A	§ 274.11a	3235-0307	Oct. 31, 1990.
Form N-2	§ 274.11a-1	3235-0026	Dec. 31, 1990.
Form N-3	§ 274.11b	3235-0316	Apr. 30, 1990.
Form N-4	§ 274.11c	3235-0318	Apr. 30, 1990.
Form N-8B-2	§ 274.12	3235-0186	Apr. 30, 1990.
Form N-7	§ 274.12a	3235-0338	Apr. 30, 1990.
Form N-8B-3	§ 274.13	3235-0166	Dec. 31, 1990.
Form N-8B-4	§ 274.14	3235-0247	Dec. 31, 1990.
Form N-6F	§ 274.15	3235-0238	Feb. 28, 1991.
Form N-18f	§ 274.51	3235-0211	Feb. 28, 1991.
Form N-SAR	§ 274.101	3235-0330	Aug. 31, 1990.
Form N-17d-1	§ 274.200	3235-0229	Feb. 28, 1991.
Form N-23C-1	§ 274.201	3235-0230	Feb. 28, 1991.
Form N-8F	§ 274.218	3235-0157	Feb. 28, 1991.
Form N-8EI-1	§ 274.301	3235-0177	Feb. 28, 1991.
Form ET	§ 274.401	3235-0329	Oct. 31, 1989.
Form ID	§ 274.402	3235-0328	Oct. 31, 1989.
Form SE	§ 274.403	3235-0327	Oct. 31, 1989.
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Form N-54A	§ 2745.53	3235-0237	Feb. 28, 1991.
Form N-54C	§ 275.54	3235-0236	Feb. 28, 1991.
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Rule 203-2	§ 275.203-2	3235-0313	Jan. 31, 1989.
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Rule 204-2	§ 275.204-2	3235-0278	Jan. 31, 1991.
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Rule 206(3)-2	§ 275.206(3)-2	3235-0243	June 30, 1989.
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Form ADV-S	§ 279.3	3235-0046	Sept. 30, 1990.
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Add:			
Rule 701	§ 230.701	3235-0347	Mar. 31, 1990.
Rule 702	§ 230.702	3235-0347	Mar. 31, 1990.
Rule 703	§ 230.703	3235-0347	Mar. 31, 1990.
Rule 701	§ 239.701	3235-0347	Mar. 31, 1990.
Rule 10b-6	§ 240.10b-6	3235-0355	Sept. 30, 1990.
Rule 15Cal-1	§ 240.15Cal-1	3235-0351	Jan. 31, 1990.
Rule 15Ca2-2	§ 240.15Ca2-2	3235-0352	Apr. 30, 1990.
Rule 19b-1	§ 240.19b-1	3235-0354	July 31, 1990.
Rule 6c-9	§ 270.6c-9	3235-0344	Oct. 31, 1989.
Rule 22d-1	§ 270.22d-1	3235-0310	May 31, 1988.
Rule 24f-3	§ 270.24f-3	3235-0348	Apr. 30, 1990.
Rule 34b-1	§ 270.34b-1	3235-0346	Nov. 30, 1989.
Rule 206(4)-4	§ 275.206(4)-4	3235-0345	Sept. 30, 1989.
Remove:			
Rule 19d-2	§ 240.19d-2	3235-0205	Nov. 30, 1987.
Rule 48(b)	§ 250.48(b)	3235-0156	Sept. 30, 1988.
Rule 22d-4	§ 270.22d-4	3235-0234	Jan. 31, 1988.

Jonathan G. Katz,

Secretary.

March 18, 1988.

[FR Doc. 0446 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 228, 230, 239, 240, and 270

[Release Nos. 34-25217A; IC-16161A; File No. S7-19-87 and 33-6714B; IC-15752B; File No. S7-28-86]

Proxy Rules; Amendments to Eliminate Filing Requirements for Certain Preliminary Proxy Material; Amendments With Regard to Rule 14a-8, Shareholder Proposals and Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects the amendatory language in two final rules published on December 29, 1987 and June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy or Alexander G. Shtofman, Office of Disclosure Policy, Division of Corporation Finance (202) 272-2589.

In FR Doc 87-29707 appearing in the Federal Register of Tuesday, December 29, 1987 (52 FR 48977) the amendatory language for number 7 on page 48984 column 1 should be corrected as follows:

"7. By amending § 240.14a-101 by adding a second sentence to paragraph (a)(2) of Item 4 and revising paragraph (a)(2), the first sentence of (a)(3), and

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paragraphs (b)(2)(ii)(C) and (G) of Item 10 as follows:".

In FR Doc. 87–12707 appearing in the Federal Register of Friday, June 5, 1987 (52 FR 21252) the amendatory language for number 6 on page 21282 column 1 should be corrected as follows:

"6. Paragraph (a)(4) of § 230.482 is revised to read as follows:".

Jonathan G. Katz,

Secretary.

Dated: March 21, 1988.

[FR Doc. 88-6539 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-269; Ref: Notice No. 641]

Cayuga Lake Viticultural Area, NY

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in New York State, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: April 25, 1988.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as an appellation of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Knapp Farms, Inc. and Plane's Cayuga Vineyard, Inc. petitioned ATF for the establishment of a viticultural area in west central New York State, to be known as "Cayuga Lake."

In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 641) in the Federal Register on September 16, 1987 (52 FR 34927), proposing the establishment of the Cayuga Lake viticultural area.

General Description

The Cayuga Lake viticultural area is located in New York State, within the counties of Seneca, Tompkins, and Cayuga. It surrounds and is adjacent to Cayuga Lake, between Seneca Lake and Owasco Lake, and is situated within the approved Finger Lakes viticultural area. It includes eight bonded wineries and 18 vineyards, with approximately 400 acres of grapes.

Historical and current evidence regarding the name as well as the boundaries of the viticultural area includes:

(a) The body of water called Cayuga Lake received its name from the Cayuga Indians, who originally inhabited the region bordering the lake.

(b) The name figures prominently in identifying the area in the diaries of General Sullivan during his campaign to open land in upstate New York to settlers in the 1700's.

(c) Cayuga Lake is the name used by the first permanent settlers in Seneca County in 1789, and has remained the same to the present time.

(d) The large state park located in the northern section of the viticultural area is named Cayuga Lake State Park.

(e) State Route 89, which runs the length of the viticultural area, is also known as Cayuga Lake Boulevard.

Geographical features of the Cayuga Lake viticultural area include the following:

(a) Bedrock of different kinds is the main source of soil material in New York State. Within the Cayuga Lake viticultural area, the bedrock is predominantly shale. To the north of the viticultural area, it is alternating limestone and slate formations; and to the south, it is interbedded sandstone and shale.

(b) The maximum elevation within the viticultural area is no more than 800 feet above the surface of Cayuga Lake. The elevation of the areas to the east, west and south of the viticultural area, however, is 1,800–2,000 feet.

(c) The Cayuga Lake basin is one of two major land formations in the Finger Lakes that resulted from glacial activity in the Pleistocene epoch. As consistently stated in O.D. von Engeln's *The Finger Lakes Region: Its Origin and Nature*, the Cayuga Lake basin is seperated from the second major basin, Seneca Lake (west of Cayuga Lake), by both topography and soil type.

(d) The micro-climate of the viticultural area is created by both Cayuga Lake and its adjacent hills. This is discussed in an article that appeared in the July 1986 issue of *Geographical Review*, entitled "Vines, Wines, and Regional Identity in the Finger Lakes Region." As mentioned in the article, due to the cold air drainage down the valley slopes in summer, and the release of heat stored in Cayuga Lake, the risk of an early frost is reduced. This results in an extended growing season on the slopes, from an average of 145 days for much of the Finger Lakes region, to between 165 and 170 days for the Cayuga Lake viticultural area.

(e) The moderating effects of Cayuga Lake and its adjacent hills have resulted in the viticultural area having an extended heat summation period, from 2,200–2,300 degree days for much of the Finger Lakes area, to 2,400–2,500 degree days for the Cayuga Lake viticultural area.

Boundaries of the Area

The boundaries of the Cayuga Lake viticultural area may be found on one United States Geological Survey (U.S.G.S.) map (Elmira, New York; Pennsylvania).

The boundaries, as proposed by the petitioners, are described in § 9.127.

Public Comment

In response to Notice No. 641, 23 comments were received, all in support of the proposed viticultural area.

Miscellaneous

ATF does not want to give the impression that, by approving "Cayuga Lake" as a viticultural area, it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct, but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Cayuga Lake" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605 (b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, the Bureau has determined that this regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and the comments received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4412, Office of Public Affairs and Disclosure, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the heading of § 9.127 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.127 Cayuga Lake.

Par. 3. Subpart C is amended by adding § 9.127 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.127 Cayuga Lake.

(a) *Name.* The name of the viticultural area described in this section is "Cayuga Lake."

(b) *Approved maps.* The appropriate map for determining the boundaries of the Cayuga Lake viticultural area is one U.S.G.S. map scaled 1:250,000, titled "Elmira, New York; Pennsylvania," 1962 (revised 1978).

(c) *Boundaries.* The Cayuga Lake viticultural area is located within the counties of Seneca, Tompkins, and Cayuga, in the State of New York, within the Finger Lakes viticultural area. The boundaries are as follows:

(1) Commencing at the intersection of State Route 90 with State Route 5 in Cayuga County, north of Cayuga Lake.

(2) Then south along State Route 90 to a point approximately one mile past the intersection of State Route 90 with State Route 326.

(3) Then south along the primary, all-weather, hard surface road, approximately ¾ mile, until it becomes State Route 90 again at Union Springs.

(4) Then south/southeast along State Route 90 until it intersects the light-duty, all-weather, hard or improved surface road, approximately 1.5 miles west of King Ferry.

(5) Then south along another light-duty, all-weather, hard or improved surface road, approximately 4 miles, until it intersects State Route 34B, just south of Lake Ridge.

(6) Then follow State Route 34B in a generally southeast direction until it intersects State Route 34, at South Lansing.

(7) Then south along State Route 34, until it meets State Route 13 in Ithaca.

(8) Then southwest along State Routes 34/13, approximately 1.5 miles, until it intersects State Route 79, in Ithaca.

(9) Then west along State Route 79, approximately ½ mile, until it intersects State Route 96.

(10) Then along State Route 96, in a generally northwest direction, until it intersects State Routes 414 and 96A in Ovid.

(11) Then north along State Routes 96/414, until they divide, approximately 2.5 miles north of Ovid.

(12) Then along State Route 414, in a generally northeast direction, until it meets U.S. Route 20 in the town of Seneca Falls.

(13) Then along U.S. Route 20, in a northeast direction, until it intersects State Routes 318, 89, and 5.

(14) Then along U.S. Route 20/State Route 5, in a northeast direction, to the beginning point, at the intersection with State Route 90.

Signed: February 29, 1988.

Stephen E. Higgins,

Director.

Approved: March 7, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 88-6515 Filed 3-24-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Final rule; correction.

SUMMARY: On March 20, 1987 (52 FR 9042), the Department of the Interior (the Department) published a final "type A" natural resource damage assessment rule, codified at 43 CFR Part 11. The type A rule established simplified procedures for assessing damages to natural resources in coastal and marine environments where those damages result from a discharge of oil or a release of a hazardous substance and

are compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or under the Clean Water Act (CWA, also known as the Federal Water Pollution Control Act). The type A rule incorporated by reference a technical document entitled "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document). The NRDAM/CME technical document contained a computer model that must be used then a type A assessment of damages is conducted pursuant to Subpart D of 43 CFR Part 11 for coastal and marine environments. This rule amends the citations in the type A rule to effect technical corrections to the NRDAM/CME technical document incorporated by reference in the type A rule and explains the technical corrections to the source code of the NRDAM/CME computer model.

DATE: The effective date of this final rule is March 25, 1988. The incorporation by reference of certain technical corrections to the publication listed in § 11.18 of this rule was approved by the Director of the Federal Register and is effective March 25, 1988.

ADDRESS: Office of Environmental Project Review, Room 4239, Department of the Interior, 1801 C Street NW., Washington, DC 20240 (regular business hours are 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington, (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the CWA. Two types of procedures have been developed consistent with the requirements of section 301(c)(2) of CERCLA. The type B procedures, published August 1, 1986, at 51 FR 27674, included alternative methodologies for conducting assessments in individual cases. Type A procedures, published March 20, 1987, at 52 FR 9042, provided standard procedures for simplified assessments requiring minimal field observation.

The type A rule established simplified procedures that may be used to assess damages for injuries to natural resources in coastal and marine environments where those damages result from either a discharge of oil or a release of a hazardous substance. The procedures in the type A rule use a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). A general overview of the NRDAM/CME, its interactive submodels, data bases, and user inputs was published in the preamble to the final type A rule (see 52 FR 9045). A detailed description of the NRDAM/CME can be found in the NRDAM/CME technical document. A hard copy of the source code for the NRDAM/CME is listed in Appendix H of the NRDAM/CME technical document. Also, four computer diskettes containing the operational NRDAM/CME are provided in Appendix I of the NRDAM/CME technical document.

The type A rule incorporated by reference the NRDAM/CME technical document, including the source code listing of Appendix H (43 CFR § 11.18(a)(4)). The rule also identified at § 11.41(g)(1)(i), that version 1.1 of the NRDAM/CME is to be used for the simplified assessment of damages in coastal and marine environments. This final rule amends the type A rule citation of incorporation by reference and the version designation of the NRDAM/CME that may be used for simplified natural resource damage assessments in coastal and marine environments. These amendments are based upon the technical correction of errors in the NRDAM/CME source code listing of Appendix H. The rule now designates that version 1.2 of the NRDAM/CME is to be used in place of version 1.1.

A separate Notice in this issue of the **Federal Register** announces the availability of the errata sheet for the NRDAM/CME technical document. That Notice is applicable to those individuals currently in possession of the NRDAM/CME technical document of March 20, 1987, containing version 1.1 of the NRDAM/CME. The Notice also provides instructions for returning version 1.1 diskettes to the Department for reformatting to version 1.2.

All new requests for version 1.2 of the NRDAM/CME and the NRDAM/CME technical document should continue to be made directly to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; ph: (703) 487–4650. Orders to NTIS should specify document number PB87–142485, and the document title: "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments."

II. Summary of the Technical Corrections

As part of its ongoing responsibilities to promulgate the natural resource damage assessment regulations called for under section 301(c) of CERCLA, the Department is continuing to review and evaluate the regulations currently promulgated. As a result, several computer coding errors have been identified in version 1.1 of the NRDAM/CME. These coding errors are reflected in the source code listing of Appendix H to the NRDAM/CME technical document. As a result of these coding errors, version 1.1 of the NRDAM/CME may not, under certain user input conditions, perform correct mathematical computations consistent with the algorithms and the functional operations of the computer model described in the preamble to the final type A rule and in the NRDAM/CME technical document. Several of the coding errors in version 1.1 can, in some instances, result in incorrect computations of the losses and damages resulting from injury to waterfowl and beaches. Other errors pertain to specific operations of the NRDAM/CME and the graphics routines. Finally, two lines of code were inadvertently omitted from one page of the hard copy of the source code found in Appendix H of the NRDAM/CME technical document. These lines have been added. These technical corrections of coding errors have not altered the algorithms and functional operations of the NRDAM/CME, but have simply made those operations consistent with the descriptions in the final type A rule and the NRDAM/CME technical document. These coding errors and the technical corrections that have been made within version 1.2 of the NRDAM/CME are explained below.

Version Number

A new NRDAM/CME version number (1.2) has been assigned to this corrected code. Since the result of a simplified natural resource damage assessment for coastal and marine environments conducted pursuant to this rule is given the benefit of a rebuttable presumption in a court action or administrative proceeding, the Department must ensure that such assessments are performed using the corrected version. In order to do so, the Department has renumbered this corrected version of the NRDAM/CME as version 1.2 and has amended the rule at § 11.41(g)(1)(i) to reflect the renumbered version.

Physical Fates Submodel

The physical fates submodel contained an error in the graphics routine that at times provided an erroneous printout of the graphical plot of the sediment contamination levels. This graph is printed after the final mass balance output. For substances that sink to the sea floor, version 1.1 can incorrectly display sediment contamination levels within the pictorial boundary of land. The NRDAM/CME version 1.2 corrects this graphical plotting error. Changes in this plotting routine do not affect the numerical computations of the NRDAM/CME.

The physical fates submodel contains a coding routine that is used to identify the locations of a surface slick as that slick moves within the boundaries of a study area. A portion of that coding routine also detects the movement of the slick across a one-kilometer distance from a shoreline in those instances where a land boundary has been specified to occur at a study area limit. This information is used by the biological effects submodel to determine the presence or absence of waterfowl.

The biological data base, listed in Appendix B of the NRDAM/CME technical document, specifies that waterfowl are located only within one kilometer of a shoreline. Under version 1.1, of the NRDAM/CME, the coding routine did not, under some user input conditions, properly signify the movement of the slick crossing the one-kilometer distance from shoreline. As a result, a surface slick that moves beyond the one-kilometer distance from a shoreline incorrectly continued to recognize the presence of waterfowl. Also, a slick that came within the one-kilometer distance from a shoreline, under such conditions as a rapidly moving slick, was identified to have come ashore without first signifying that it had crossed the one-kilometer distance. Version 1.2 of the NRDAM/CME has corrected the coding routine to properly denote the movement of the slick crossing the one-kilometer distance from a shoreline. To effect this correction an additional "check slick location" has been added to the fates submodel. If the check signifies the movement of the slick crossing the one-kilometer distance, the frequency of write statements to the phys_bio.lnk file file is increased. (The phys_bio.lnk file is described in the section that follows.) This increased frequency of write statements is to ensure that the biological effects submodel records the slick crossing the one-kilometer distance. This additional check may result in slight changes in the estimates of losses in fish and shellfish in cases where a surface slick crosses the one-kilometer distance from a shoreline.

Physical Fates/Biological Effects Submodel Interactions

The physical fates and biological effects submodels are linked and exchange information through an internal data file called "phys_bio.lnk." This file is created within the NRDAM/CME to hold information developed by the physical fates submodel for use in the biological effects submodel. For each timestep of the physical fates submodel information is computed relating to time, location, and concentration of the substance discharged or released and sent (written) to the "phys_bio.lnk" file. At the end of the computations of the physical fates submodel, the biological effects submodel then obtains (reads) the information in that file for use in determining the effect of the discharge or release on biological organisms. The effect of the substance on biological organisms is determined based on the time, location, and concentration written to the "phys_bio.lnk" file by the physical fates submodel.

In version 1.1 of the NRDAM/CME, an inconsistent application of format coding occurred in the size of a number that was written to the "phys_bio.lnk" file by the physical fates submodel versus the size of the same number expected to be read by the biological effects submodel (i.e., a write-read mismatch). This write-read mismatch occurred in that portion of the coding that signified the movement of a slick across a one-kilometer distance from a shoreline. This write-read mismatch affected, under certain user input conditions, the proper identification of the presence or absence of waterfowl. Version 1.2 has corrected this write-read mismatch. In addition, new lines of computer code were added to ensure that the "phys_bio.lnk" file can always be located and properly accessed by the biological effects submodel. This latter correction does not affect the mathematical calculations performed by the NRDAM/CME.

Biological Effects/Economic Damages Submodel Interactions

The biological effects and economic damages submodel are linked by an internal data file called "bio_econ.lnk." This file performs functions comparable to those of the "phys_bio.lnk" file described above. New lines of code were added to ensure that the "bio_econ.lnk" file can always be located and properly accessed by the economic damages submodel. This correction does not affect the mathematical calculations performed by the NRDAM/CME.

Economic Damages Submodel

The economic damages submodel contained three coding errors. These errors relate to the computations pertaining to public beaches and waterfowl hunting losses. In computing the damages due for waterfowl, the economic damages submodel contains several routines that perform arithmetic rounding of numbers. The correct routine requires multiplication of each dollar value by 100, addition of these values, and division of this sum by 100. For waterfowl hunting losses, version 1.1 of the NRDAM/CME did not include the multiplication by 100 in the rounding routine. This error has been corrected in version 1.2 of the NRDAM/CME.

In computing damages for closure of public beaches, the economic damages submodel multiplies the length of beach closed, the number of days closed, and the monthly damage coefficient (i.e., the lost value per day per meter of beach) for the province and season of the incident. The submodel contains a coding routine that assigns an index number to each month of the year. These index numbers are cross-indexed in the code to both the number of days and damage coefficient for each month of the year. A coding error occurred in version 1.1 that assigned the index number "0" to the month of December rather than the correct index number, "12." As a result, the submodel was unable to correctly cross-index and identify the number of days and damage coefficient for the month of December. This index number has been corrected in version 1.2 of the NRDAM/CME. The discounting of beach damages was also inadvertently omitted from version 1.1 of the NRDAM/CME. This error has also been corrected in version 1.2 of the NRDAM/CME.

III. Good Cause for Immediate Effective Date

The technical computer coding corrections discussed in Section II of this preamble are necessary to ensure that the mathematical computations performed by the NRDAM/CME comply with the descriptions in the type A rule and the NRDAM/CME technical document. The type A rule was published as a proposed rule on May 5, 1986 (at 51 FR 16636), and both the draft NRDAM/CME and NRDAM/CME technical document were also made available at that time. In response to that proposed rule, the draft NRDAM/CME technical document, and the draft NRDAM/CME, over a thousand pages of

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comments were received by the Department. Upon review of these comments, revisions were made to the type A rule, the NRDAM/CME technical document, and to the draft NRDAM/CME. In the final type A rule, published on March 20, 1987 (at 52 FR 9042), the Department responded to the comments received on the proposed type A rule, the draft NRDAM/CME technical document, and to the draft NRDAM/CME. Because of this extensive review, the areas covered by the type A rule and the technical workings of the NRDAM/CME were given full and careful consideration. The technical corrections discussed in the preamble to this final rule do not introduce new issues or factors into that final rule, nor does it change the algorithms or data bases in the NRDAM/CME technical document. A delay in the implementation of these technical corrections in order to afford the opportunity for further public comment is, therefore, unnecessary since no new regulatory provisions or requirements are created in this final rule.

Further, section 301(c) of CERCLA called for the type A procedure to be a simplified procedure requiring minimal field observation. The type A procedure that is the subject of today's action meets this requirement by use of the computer model known as the NRDAM/CME. A reproposal of this procedure to effect corrections in the technical computations performed by the NRDAM/CME could deprive natural resource trustees of the use of this simplified method of assessing damages in the coastal and marine environments. If the type A rule were reproposed, trustees might be precluded from performing simplified assessments of damages for those incidents and having those assessments receive a rebuttable presumption for their assessments, the major advantage bestowed by Congress to the trustees. Thus, until version 1.2 could be codified in a final rule, trustees would only have version 1.1 available to perform the simplified assessments. However, version 1.1 contains technical errors that, under certain user input conditions, may result in incorrect computations. Therefore, use of version 1.1 for simplified assessments could call into question the validity of those assessments. Since it might not be generally cost-effective to perform the type B procedures, found at 43 CFR Part 11, in the type of incident for which the NRDAM/CME was designed, the trustees might not have a means to assess natural resource damages and receive a rebuttable presumption. This inability to perform an assessment and receive a rebuttable presumption for that assessment is contrary to the public interest.

Reproposing the type A rule to effect the technical corrections discussed in Section II of this preamble is unnecessary and contrary to the public interest. For these reasons, the Department finds that there is good cause under sections 553(b)(B) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) to make the corrections in a final rule without first issuing a notice of proposed rulemaking and to make the final rule immediately effective.

List of Subjects in 43 CFR Part 11

Continental shelf, Environmental protection, Fish, Forests and forest products, Grazing land, Incorporation by reference, Indian lands, Hazardous substances, Mineral resources, National forest, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, and for the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as set forth below.

Dated: January 30, 1988.

Rick Venture,

Assistant Secretary, Policy, Budget and Administration.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for 43 CFR Part 11 continues to read:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.18 is amended to revise paragraph (a)(4) to read as follows:

§ 11.18 Incorporation by reference

(a) * * *

(4) Volume I and Appendices A–H of Volume II, as revised November 1987, of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document), prepared for the U.S. Department of the Interior by Economics Analysis, Inc., Wakefield, RI, and Applied Sciences Associates, Narragansett, RI, DOI 14–01–0001–85–C–20, January 1987, revised November 1987, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87–142485; ph: (703) 487–4650. Reference is made to this publication in §§ 11.33(b)(1) (i), (ii), (vi), and (xi), 11.41(a)(1), (c)(1)(i), and (g)(1)(i) of this part.

* * * * *

Subpart D—Type A Assessments

3. Section 11.41 is amended to revise paragraph (g)(1)(i) to read as follows:

§ 11.41 Coastal and marine environments.

* * * * *

(g) *Coastal and marine environments—NRDAM/CME availability, security, and verification—(1) General.* (i) The NRDAM/CME that may be used for assessment of damages to coastal and marine environments under this subpart is version 1.2 of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18).

* * * * *

[FR Doc. 88-6512 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-RG-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80333-8033]

Groundfish of the Gulf of Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects an error under "Definitions" in the regulatory text of the emergency interim

rule for the Goundfish of the Gulf of Alaska which was published March 11, 1988 (53 FR 7938).

DATE: Effective March 9, 1988, until June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

In FR Doc. 88–5427, in the issue of March 11, 1988, beginning on page 7938, the following correction is made:

§ 672.2 [Corrected]

In § 672.2, paragraph (2), page 7940, column 3, the words "sablefish" which appear in lines 4 and 5 from the bottom of the page are corrected to read "groundfish".

(16 U.S.C. 1801 *et seq.*)

Dated: March 21, 1988.

Carmen J. Blondin,

Director, Office of Trade and Industry Services.

[FR Doc. 88-6596 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 53, No. 58
Friday, March 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revision of User Fees for Cotton Classification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would revise the cotton classification fees charged to cotton producers. The revision would decrease fees for cotton classification services under the Smith–Doxey amendment to the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The Uniform Cotton Classing Fees Act provides a formula for setting the classification fee based on the estimated number of bales that will be produced in a given year and the projected operating reserve of the Cotton Division of the Agricultural Marketing Service. Reflected in the fee is an adjustment for inflation (Implicit Price Deflator for Gross National Product). The operating reserve for the 1988 season is estimated to be at a level that would warrant the addition of a surcharge which is authorized by the Uniform Cotton Classing Fees Act. No other adjustments would be warranted under the formula. The new fee would be $1.03 per sample.

DATE: Comments must be received by April 25, 1988.

ADDRESS: Fred S. Mullins, Cotton Division, AMS, USDA Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, (202) 447–2145.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS, has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fees would be decreased, thereby, lessening any impact on the affected persons; (2) the cost decrease would not affect competition in the marketplace; (3) the use of classification services is voluntary. The proposed user fee revisions reflect the Secretary's authority under the Cotton Statistics and Estimated Act (7 U.S.C. 473a) to recover the costs, as nearly as practicable, of providing classification services under the provisions of the Uniform Cotton Classing Fees Act of 1987.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Fees for Classification Under the Smith-Doxey Amendment to the Cotton Statistics and Estimates Act

The user fee charged to cotton producers for manual cotton classification services under the Smith–Doxey amendment to the Cotton Statistics and Estimates Act was $1.20 per sample during the 1987 harvest season (52 FR 35219), as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The changes cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This proposed rule would decrease the fee for manual classification charged to producers from $1.20 to $1.03. This new fee would be calculated by using the 1987 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1987 base fee is $1.11. A 3.3 percent increase due to the implicit price deflator amounting to an increase of four cents would be added to the $1.11 resulting in a 1988 base fee of $1.15. The 1988 crop is currently estimated at 13,944,720 bales. The base fee would be decreased by 15 percent based on the estimated size of the 1988 crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor would amount to 17 cents and would be subtracted from the base fee of $1.15 resulting in a fee of $0.98. There would be a surcharge of 5 cents added to the $0.98 fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 13.94 percent. This would establish the fee at $1.03. No further adjustments would be warranted under the formula.

Therefore, the fee for this service during the 1988 harvest season would be $1.03. The additional fee for High Volume Instrument (HVI) classification is 50 cents per sample (resulting in a total fee of $1.70 for 1987). Under this proposal, the fee for HVI classification would be revised to $1.53 per sample. As provided for in the Uniform Cotton Classing Fees Act of 1987, a five cent per sample discount would continue to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 would also be decreased from $1.20 to $1.03 per sample since this fee has been the same as the original classification fee. For the same reason the fee for HVI review classification would be decreased from $1.70 to $1.53 per sample.

List of Subjects in 7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

PART 28—[AMENDED]

1. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50) Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

2. Paragraph (b) of § 28.909 would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b)The cost of manual cotton classification service to producers is $1.03 per sample.

* * * * *

3. Section 28.911 would be revised to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.03 per sample. The fee for HVI review classification is $1.53 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

Dated: March 22, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-6557 Filed 3-24-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 656]

Alcoholic Content Statements on Labels of Wine, and the Related Type Size Requirements

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations in 27 CFR Part 4, by providing that statements of alcoholic content on labels of wine may appear in a form other than that currently prescribed. The Bureau is also proposing to increase the maximum allowable type size for such alcoholic content statements from two millimeters to three millimeters. ATF believes the proposed regulations, if adopted, will facilitate trade between domestic and foreign markets, particularly with the European Economic Community (EEC), by promoting harmonization of labeling requirements. In addition, the proposed regulations will continue to provide the consumer with adequate information as to the alcoholic content of the wine product.

DATE: Written comments must be received on or before April 25, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, *Attn: Notice No. 656.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

Section 5 (e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205 (e) and (f), provides, in general terms, that wine labeling and advertising shall not contain any statement which is false, deceptive, misleading, or is likely to mislead the consumer regarding the product. In addition, section 5 (e) and (f) authorizes the Secretary to prescribe such regulations as will provide the consumer with adequate information as to the identity and quality of the product except that, as specified in section 5(e), statements of alcoholic content on labels of wine are required only for products containing more than 14 percent of alcohol by volume. Section 5(f) *prohibits* statements of, or statements likely to be considered as statements of, alcoholic content of wines in advertising.

Regulations which implement the provisions of section 5 (e) and (f), as they relate to wine, are set forth in Title 27, Code of Federal Regulations (CFR), Part 4. Requirements for statements of alcoholic content on wine labels are prescribed in § 4.36(b). In essence, if a specific alcoholic content is to be disclosed, it shall appear as "Alcohol ____% by volume." If a range is to be utilized, the alcoholic content statement must read as "Alcohol ____% to ____% by volume."

The size of type requirements for the alcoholic content statements mentioned above are prescribed in § 4.38(b). Specifically, § 4.38(b)(3) reads as follows:

> Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 2 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

Petition

ATF has received a petition, dated January 29, 1988, filed by the Wine Institute, requesting that §§ 4.36(b) and 4.38(b) be amended. The Wine Institute is an industry association of California wineries representing 538 California winery members.

Specifically, the petitioners have requested that § 4.36(b)(1) be amended to permit the alcoholic content statement to appear in an abbreviated form as "Alc. ____% vol," as an alternative to "Alcohol ____% by volume." Similarly, they have requested that § 4.36(b)(2) be amended to permit the alcoholic content statement, when given as a range, to appear as "Alc. ____% to ____% vol," as an alternative to "Alcohol ____% to ____% by volume."

The Wine Institute has also requested that § 4.38(b)(3) be amended, increasing the maximum allowable type size for alcoholic content statements from two millimeters to three millimeters.

According to the petitioners, the European Economic Community (EEC), which presently includes 12 Member States, recently established regulations prescribing the form, and type size, in which alcoholic content statements may be made on wine labels. A previous EEC regulation makes the disclosure of alcoholic content on wine labels mandatory as of May 1, 1986.

Under the new EEC regulations, the alcoholic content figure must be followed by "% vol." and may be preceded by, among other alternatives, the abbreviation "alc." The petitioners note that "[T]his requirement renders wine containers labeled in compliance with BATF regulations unacceptable for shipment to the EEC without relabeling. The necessity of relabeling would be obviated by amending the regulation (§ 4.36(b)) to accommodate EEC language."

Regarding the type size of alcoholic content statements, the EEC would require such statements to appear in printing no smaller than three millimeters. Current Federal regulations (§ 4.38(b)) require that the alcoholic content statement appear in printing *not larger* than two millimeters. Again, wine containers labeled in compliance with Federal regulations would be unacceptable for shipment to the EEC, and would have to be relabeled.

VOL
53
ISS
58
MR
25
988
MI

The petitioners state that adoption of their proposed amendments would result in cost savings to U.S. wineries, since wines for export would not have to be relabeled in order to comply with EEC requirements. Further, wineries would not have to design new labels solely for products intended for sale in the EEC.

Subsequent to the filing of the Wine Institute petition, the Bureau received a letter (dated February 23, 1988) on behalf of the National Association of Beverage Importers, Inc. (NABI), supporting the Wine Institute petition. NABI is an industry association representing over 100 member companies, that import over 90% of all alcoholic beverages brought into the U.S.

Alcoholic Content Statements (§ 4.36(b))

As mentioned, the FAA Act holds that statements of alcoholic content are required only for wines containing more than 14 percent of alcohol by volume. Whether required or optional, the wording for the alcoholic content statement, as currently prescribed in §§ 4.36(b) (1) and (2), has remained unchanged since the first wine regulations under the FAA Act were approved on December 30, 1935. However, it is the Bureau's position that § 4.36(b) was not intended to be used as an inflexible standard for statements of alcoholic content, precluding the alcoholic content from being disclosed in an abbreviated form.

Thus, over the years, the Bureau has permitted the alcoholic content of wine to be disclosed on labels in an abbreviated form. Examples of such statements include, "Alcohol ___% by vol.," "alc. ___% by volume," "alc. ___% by vol.," and "alc. ___% to ___% by vol."

ATF believes that the examples mentioned above are consistent with the intent of the law, in that they provide the consumer with adequate information as to the alcoholic content of the wine, and are not misleading. Further, they afford industry members, both domestic and foreign, additional flexibility in designing their labels.

Therefore, the Bureau is proposing to amend § 4.36(b) by providing that the alcoholic content statement may appear in an abbreviated form. However, the words "alcohol" and/or "volume," if abbreviated, shall be shown as "alc." (alc) and/or "vol." (vol), respectively. ATF believes that consumers can easily recognize the words that these abbreviations represent.

The Bureau is also proposing to amend § 4.36(b) to provide for the alcoholic content to be disclosed on the label in a form other than that currently prescribed. Examples of such statements include, "___% alcohol by volume," "___% alcohol/volume," "alcohol ___% volume," and "alcohol ___% to ___% volume." Again, if the words "alcohol" and/or "volume" are to be abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively.

Type Size Requirements (§ 4.38(b))

Under existing § 4.38(b)(3), statements of alcoholic content appearing on labels of containers having a capacity of five liters or less, may not appear in printing larger than two millimeters nor smaller than one millimeter, and shall not be set off with a border or otherwise accentuated.

There are no provisions in the FAA Act as to specific type size requirements for alcoholic content statements on labels of wine. Regulations first issued under the FAA *Act* (Regs. No. 4, Article III, Sec. 38(b), approved 12/30/35) provided, basically, that on containers having a capacity of one-half pint or more, all mandatory information (including alcoholic content) had to be in printing not smaller than 8-point gothic caps (approximately 2 millimeters).

Sec. 38(b) (27 CFR 4.38(b)) was subsequently amended by T.D. 5010, published in the Federal Register on June 5, 1948. As amended, 27 CFR 4.38(b) held that alcoholic content statements on labels of containers having a capacity of 1 gallon or less could not appear in printing *larger* than 8-point gothic caps. The rationale for having this regulation more restrictive than previous section 38(b) can best be illustrated by a comment given at the January 1947 hearings which resulted in T.D. 5010. "[T]he purpose of this [proposed regulation] seems to be a generally beneficial one in that in connection with the sale of wines we should not, and have not for many years, tried to emphasize the alcoholic content of the product."

In order to further prevent any emphasis on the alcoholic content of wine, as well as to provide for a minimum size of type for alcoholic content statements, § 4.38(b) was subsequently amended by T.D. 6319, published in the Federal Register on October 4, 1958. As amended, § 4.38(b) provided that, on containers of 1 gallon or less, alcoholic content statements shall appear in printing not smaller than 6-point gothic caps (approximately 1 millimeter), nor larger than 8-point gothic caps, and shall not be set off with a border or otherwise accentuated. From the publication of T.D. 6319, up through to the present time, § 4.38(b) has remained basically unchanged.

ATF believes that the intent of § 4.38(b) is as valid today as it was when it was first amended in June 1948, with the publication of T.D. 5010, and subsequent revisions. Namely, that the alcoholic content of wine should not be emphasized, either in size of type, or how it appears on the label (e.g., set off with a border).

However, the Bureau does not believe that raising the maximum allowable type size for alcoholic content statements one millimeter, from two millimeters to three millimeters, can be viewed as emphasizing alcoholic content. It should be noted that other mandatory information, e.g., brand name, class and type designation, etc., must appear in printing *no smaller* than two millimeters. Oftentimes, such information appears in a type size much larger than that. On the other hand, the amendment, as proposed by the petitioners, would still provide a *maximum* allowable type size for alcoholic content statements, i.e., three millimeters. Further, the Bureau continues to adhere to its position that statements of alcoholic content may not be set off with a border or otherwise accentuated.

Therefore, with the above in mind, the Bureau is proposing that § 4.38(b)(3) be amended, raising the maximum allowable type size for statements of alcoholic content from two millimeters to three millimeters.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirement to collect information proposed in this notice has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice, the petition, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

27 CFR PART 4—LABELING AND ADVERTISING OF WINE is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.36 is amended by revising the first sentence of paragraphs (b)(1) and (b)(2) as follows:

§ 4.36 Alcoholic content.

* * * * *

(b) * * *

(1) "Alcohol ___% by volume," or a similar appropriate phrase: *Provided,* that if the words "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. * * *

(2) "Alcohol ___% to ___% by volume," or a similar appropriate phrase: *Provided,* that if the words "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. * * *

* * * * *

Par. 3. Section 4.38(b)(3) is revised to read as follows:

§ 4.38 General requirements.

* * * * *

(b) * * *

(3) Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

* * * * *

Signed: March 1, 1988.

Stephen E. Higgins,

Director.

Approved: March 7, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-6510 Filed 3-24-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 702

Surface Coal Mining and Reclamation Operations; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) published a proposed rule on June 1, 1987, relating to the exemption contained in section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act). The exemption concerns the extraction of coal incidental to the extraction of other minerals. The comment period on the proposed rule was reopened and is scheduled to close March 25, 1988. OSMRE is now extending the comment period.

DATE: *Written Comments:* OSMRE will accept written comments on the proposed rule until 5 p.m., Eastern time on April 4, 1988.

ADDRESSES: *Written Comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James Fary, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5384 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: Section 701(28) of the Act, 30 U.S.C. 1291, excludes from the definition of surface coal mining operations the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Operations which qualify for the exemption are not subject as surface coal mining operations to certain provisions of the Act such as bonding, permitting and abandoned mine reclamation fee payments. The proposed rule would provide guidance to the coal and noncoal mining industry and coal ragulatory authorities concerning the implementation of the exemption and would establish criteria that must be meet in order for mining operations to qualify for the exemption. The rule would also establish procedures for approval and revocation of exemptions.

OSMRE published the proposed rule concerning the exemption on June 1, 1987 (52 FR 20546). The public comment period was open until August 10, 1987. In consideration of comments submitted on the proposed rule, OSMRE reopened the comment period on February 24, 1988 (53 FR 5430). The notice to reopen the comment period also solicited comments on modifications to certain features of the proposed rule. The comment period under the reopening notice closes March 25, 1988. In response to a request by the public for additional time to submit comments, OSMRE is extending the comment period to April 4, 1988.

List of Subjects in 30 CFR Part 702

Administrative practice and procedures, Surface mining, Underground mining.

Date: March 21, 1988.

Robert Gentile,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-6499 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 17

Community Residential Care

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its medical regulations (38 CFR Part 17) to incorporate new sections to provide for the community residential care program. The Veterans Health Care Amendments of 1983 requires the VA to provide standards for VA approval of community residential care facilities, including health and safety criteria and criteria for the establishment of reasonable charges for care; to clarify eligibility for the program; and, to establish due process standards to govern a VA determination that a facility fails to meet those standards and that the VA, therefore, should cease to assist in referring veterans to that facility, and should offer to assist veterans in leaving the facility.

DATES: Comments must be received by April 25, 1988. Comments will be available for public inspection until May 9, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until May 9, 1988.

FOR FURTHER INFORMATION CONTACT: James R. Kelly, Acting Director, Patient Treatment Service (181), Office of Geriatrics and Extended Care, Department of Medicine and Surgery, Veterans Administration, (202) 233-3692.

SUPPLEMENTARY INFORMATION: The proposed regulations set forth in 38 CFR 17.51h through 17.51r implement the VA's authority to publish regulations for the community residential care program. Under this program, private and public facilities provide food, shelter, personal assistance and supervision in such matters as diet, medications, personal hygiene, and therapeutic and recreational activities to veterans at the veteran's expense. Prior to VA approval, facilities are to be inspected by an interdisciplinary team consisting of a physician, nurse, social worker, dietician, and fire and safety officer. The duration of the VA approval is to be dependent on continued compliance with standards.

In 1951, the Social Work Service of the VA's Department of Medicine and Surgery (DM&S) initiated a program to provide a protected living situation in the community to certain veterans who do not require institutional care but who are not able to live independently because of a physical or mental disability. Since that time, it has been variously called the foster home, the residential care home, and now, the community residential care program. At present, 125 medical centers administer a program of community residential care, with approximately 11,800 veterans in the community in 3,200 locations on any given day.

Section 104(a) of Pub. L. 98-160 (Veterans Health Care Amendments of 1983) requires VA to publish regulations in order to refer veterans to the community residential care program and, in addition, clarifies eligibility for the program. The proposed regulations reflect facility standards which have, for the most part, been informally utilized for many years and, as such, do not create new expectations for facility operators.

Regulatory Flexibility Act (RFA): The Administrator has certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 and 612. The proposed regulations reflect standards which have, for the most part, been informally utilized for many years and do not create new expectations for the facility operators which would have a significant economic impact. Also, the regulations do not directly impose any administrative or regulatory burdens on small entities. They concern only the standards which will be used in determining whether the VA will refer veterans to, or aid veterans in obtaining placement in, a particular facility.

Executive Order 12291: These new proposed regulations are considered non-major under the criteria of Executive Order 12291, Federal Regulation. The regulations will not have an annual effect on the economy of $100 million or more; they will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The collection of information requirements contained in paragraph 17.51j(i) of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act, Pub. L. 96-511. Comments on the collection of information should be forwarded to the Office of Information and Regulatory Affairs of OMB, Attn: Elaine Norden, Desk Officer for the Veterans Administration, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Comments should be received within 60 days of this notice.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: July 22, 1987.

Thomas K. Turnage,

Administrator.

PART 38—[AMENDED]

38 CFR Part 17, *Medical*, is amended by adding a new undesignated center heading and §§ 17.51h, 17.51i, 17.51j, 17.51k, 17.51l, 17.51m, 17.51n, 17.51o, 17.51p, 17.51q, and 17.51r to read as follows:

Community Residential Care

Sec.
17.51h Eligibility.
17.51i Definitions.
17.51j Approval of community residential care facilities.
17.51k Duration of approval.
17.51l Notice of noncompliance with VA standards.
17.51m Request for a hearing.
17.51n Notice and conduct of hearing.
17.51o Waiver of opportunity for hearing.
17.51p Written decision following a hearing.
17.51q Revocation of VA approval.
17.51r Availability of information.

Community Residential Care

§ 17.51h Eligibility.

VA health care personnel may assist a veteran by referring such veteran for placement in a privately or publicly-owned community residential care facility if:

(a) At the time of initiating the assistance,

(1) The veteran is receiving VA medical services on an outpatient basis or VA hospital, domiciliary, or nursing home care; or

(2) Such care or services were furnished the veteran within the preceding 12 months;

(b) The veteran does not need hospital or nursing home care but is unable to live independently because of medical (including psychiatric) conditions and has no suitable family resources to provide needed monitoring, supervision, and any necessary assistance in the veterans daily living activities; and

(c) The facility has been approved in accordance with § 17.51j.

(Authority: 38 U.S.C. 630)

§ 17.51i Definitions.

For the purposes of §§ 17.51h through 17.51r:

(a) The term "community residential care" means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.

(b) The term "statement of needed care" means a written description of needed assistance in daily living activities devised by the VA for each referred veteran in the community residential care program.

(c) The term "daily living activities" includes:

(1) Walking;

(2) Bathing, shaving, brushing teeth, combing hair;

(3) Dressing;

(4) Eating;

(5) Getting in or getting out of bed;

(6) Laundry;

(7) Cleaning room;

(8) Managing money;

(9) Shopping;

(10) Using public transportation;

(11) Writing letters;

(12) Making telephone calls;

(13) Obtaining appointments;

(14) Self-administration of medications;

(15) Recreational and leisure activities; and

(16) Other similar activities.

(d) The term "paper hearing" means a review of the written evidence of record by the hearing official.

(e) The term "oral hearing" means the in person testimony of representatives of a community residential care facility and of the VA before the hearing official and the review of the written evidence of record by that official.

(f) The term "approving official" means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Veterans Administration Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(g) The term "hearing official" means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Veterans Administration Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(Authority: 38 U.S.C. 630)

§ 17.51j Approval of community residential care facilities.

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) *Health and safety standards.* The facility must:

(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;

(2) Meet the applicable provisions of the 1985 edition of the National Fire Protection Association's Life Safety Code (which is incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation of the 1985 edition of the Life Safety Code was approved by the Director of the Federal Register on ________. The Code is available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register; and

(3) Have safe and functioning systems for heating, hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(b) *Health services.* The facility must agree to assist residents in implementing the statement of needed care of daily living activities developed by the Veterans Administration.

(c) *Interior plan.* The facility must:

(1) Have comfortable dining areas, adequate in size for the number of residents;

(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents;

(3) Maintain at least one functional toilet, lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) *Laundry service.* The facility must provide or arrange for laundry service.

(e) *Residents' bedrooms.* Residents' bedrooms must:

(1) Contain no more than four beds;

(2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multi-resident room; and

(3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) *Nutrition.* The facility must:

(1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' perferences;

(2) Plan menus to meet currently-recommended dietary allowances;

(g) *Activities.* The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs specified in the statement of needed care.

(h) *Residents' rights.* The facility must have written policies and procedures that ensure the following rights for each resident:

(1) Each resident has the right to:

(i) Be informed of the rights described in this section;

(ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;

(iii) Be able to inspect the residents' own records kept by the community residential care facility;

(iv) Exercise rights as a citizen; and

(v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

(2) *Financial affairs.* Each resident must be allowed to manage their own personal financial affairs. If a resident requests assistance from the facility in managing personal financial affairs, the request must be documented.

(3) *Privacy.* Each resident must:

(i) Be treated with respect, consideration, and dignity;

(ii) Have access, in reasonable privacy, to a telephone within the facility;

(iii) Be able to send and receive mail unopened and uncensored; and

(iv) Have privacy of self and possessions.

(4) *Work.* No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) *Freedom of association.* Each resident has the right to:

(i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;

(ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;

(iii) Leave and return freely to the facility, and

(iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) *Transfer.* Each resident has the right to transfer to another facility or to an independent living situation.

(i) *Records.*

(1) The facility must maintain records on each resident in a secure place.

(2) Facility records must include:

(i) A copy of the statement of needed care;

(ii) Emergency notification procedures; and

(iii) A copy of all signed agreements with the resident.

(3) Records may only be disclosed with the resident's permission, or when required by law.

(j) *Staff requirements.* (1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) *Cost of community residential care.* (1) Payment for the charges of community residential care is not the responsibility of the United States Government or the Veterans Administration.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of the effective date of this regulation, the rates charged for care are pegged to the facility's basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National CPI (Consumer Price Index) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of July 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National CPI for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3) (i) through (ii) of this section for an individual's charge upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency.

(Authority: 38 U.S.C. 630)

§ 17.51k Duration of approval.

(a) Approval may be valid for up to 24 months if the facility complies with all standards during each VA inspection and any necessary interim monitoring for a period of two years.

(b) Approval may be valid for up to 15 months if the facility complies with all standards except § 17.51j(i) during each VA inspection and any necessary interim monitoring.

(c) Approval may be valid for up to 12 months if the facility complies with all standards except §§ 17.51j(d) and 17.51j(i) during each VA inspection and any necessary interim monitoring.

(d) Approval may be valid for up to 9 months if the facility complies with all standards except §§ 17.51j(d), 17.51j(e), 17.51j(g), and 17.5.1j(i) during each VA inspection and any necessary interim monitoring.

(Authority: 38 U.S.C. 630)

§ 17.51l Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in § 17.51j, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility's opportunity to request an oral or paper hearing under § 17.51l before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of the VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of the VA notice.

(Authority: 38 U.S.C. 630)

§ 17.51m Request for a hearing.

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility's compliance with VA standards. The hearing official may accept a request for a hearing received after the time limit, if the community residential care facility operator shows that the failure of the request to be received by the hearing official's office by the required date was due to circumstances beyond the operator's control.

(Authority: 38 U.S.C. 630)

§ 17.51n Notice and conduct of hearing.

(a) Upon receipt of a request for an oral hearing, the hearing official shall:

(1) Notify the community residential care facility operator of the date, time, and location for the hearing and

(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility's request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

(c) In all hearings, the community residential care facility operator and the VA may be represented by counsel.

(Authority: 38 U.S.C. 630)

§ 17.51o Waiver of opportunity for hearing.

If representatives of a community residential care facility which receive a notice of noncompliance under § 17.51m fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with § 17.51n, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:

(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and,

(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

(Authority: 38 U.S.C. 630)

§ 17.51p Written decision following a hearing.

(a) The hearing official shall issue a written decision within 20 days of the completion of the hearing. An oral hearing shall be considered completed when the hearing ceases to receive in person testimony. A paper hearing shall be considered complete on the date by which written statements must be submitted to the hearing official in order to be considered as part of the record.

(b) The hearing official's determination of a community residential care facility's noncompliance with VA standards shall be based on the preponderance of the evidence.

(c) Written decision shall include:

(1) A statement of the facts;

(2) A determination whether the community residential care facility complies with the standards set forth in § 17.51j; and

(3) A determination of the time period if any the community residential care facility shall have to remedy any noncompliance with VA standards before revocation of VA approval occurs.

(d) The hearing official's determination of any time period under § 17.51p(c)(3) shall consider the safety and health of the residents of the community residential care facility and the length of time since the community residential care facility received notice of the noncompliance.

(Authority: 38 U.S.C. 630)

§ 17.51q Revocation of VA approval.

(a) If a hearing official determines under § 17.51p that a community residential care facility does not comply with the standards set forth in § 17.51j and determines that the community residential care facility shall not have further time to remedy the noncompliance, the hearing official shall revoke approval of the community residential care facility and notify the community residential care facility of this revocation.

(b) Upon revocation of VA approval under § 17.51o of this section, VA health care personnel shall:

(1) Cease referring veterans to the community residential care facility; and,

(2) Notify any veteran residing in the community residential care facility of the facility's disapproval and request permission to assist in the veteran's removal from the facility. If a veteran has a person or entity authorized by law to give permission on behalf of the veteran, VA health care personnel shall notify that person or entity of the community residential care facility's disapproval and request permission to assist in removing the veteran from the community residential care facility.

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in § 17.51j and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§ 17.51l–17.51r shall be followed.

(Authority: 38 U.S.C. 630)

§ 17.51r Availability of information.

VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities.

(Authority: 38 U.S.C. 630)

Editorial Note: This document was received by the Office of the Federal Register on March 22, 1988.

[FR Doc. 88–6014 Filed 3–24–88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Migratory Bird Permits; Exceptions for Captive-reared Mallards

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Proposed rule; clarification, correction and comment period reopening.

SUMMARY: The Service is correcting the punctuation of the last proviso of 50 CFR 21.13 published on Monday, December 14, 1987 (52 FR 47428), adding information to clarify the intent of the proposed change and reopening the comment period.

DATE: Comments on the permit exceptions for captive-reared mallards part of the proposed rule published in the **Federal Register** on December 14, 1987, will be accepted until April 25, 1988.

ADDRESSES: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Keith A. Morehouse or Rollin D. Sparrowe at (202) 254–3207.

SUPPLEMENTARY INFORMATION: On Monday, December 14, 1987, the Service published a proposed rule titled "Zones in which lead shot will be prohibited for the taking of waterfowl, coots and certain other species in the 1988–89 season." This rule also proposed changes for other sections of Part 20 and one change for Part 21, Permit exceptions for captive-reared mallards.

The purpose of the proposed rule change in Part 21 (§ 21.13) was simply to correct an anomaly existing under the current regulations relating to nontoxic shot requirements (§ 20.108). The taking of *wild* waterfowl on "game farms" has been, and will continue to be, subject to the nontoxic shot requirement of the county(s) of which it is a part and other regulations of Part 20, which traditionally focus upon bag limits, season lengths, etc. Likewise, any taking of *wild* waterfowl during dog training activities or during field trial operations remains subject to Part 20 regulations. However, taking of one species of *captive-reared waterfowl*, captive-reared mallards, on "game farms," or during bona fide dog training or field trial activities, has long been specifically exempt from the Service's Part 20 hunting regulations despite the fact that all other captive-reared migratory waterfowl have traditionally been covered by the Part 20 regulations (50 CFR 21.14(d)). With the Service's adoption of the plan to phase-in nationwide nontoxic shot requirements, however, this exemption for captive-reared mallards from otherwise applicable taking requirements would have exempted "game farms," bona fide dog training activities and field trials from nontoxic shot rules as well. The Service has reason to believe that lead shot deposited or embedded on such "game farms," in bona fide dog training activities and in field trial operations is just as harmful to wild waterfowl and bald eagles as lead shot deposited or embedded at other times and places, within a county covered by nontoxic shot requirements. It is accordingly necessary to change the existing blanket exemption for all hunting regulations for captive-reared mallards to one which requires nontoxic shot rules to be applied pursuant to the phase-in, as with other captive-reared migratory waterfowl.

In context of the above, the Service wishes to emphasize the following:

- *The section proposed to be revised deals only with captive-reared mallards that are taken under the permit requirements of the Federal regulations.*
- *This proposal would not change the existing regulations restricting hunting of any other captive-reared species, or use of other captive-reared species in dog trials or dog training. The subsection to which this amendment will be added begins "Captive-reared and properly marked mallard ducks . . . may be acquired . . . and disposed of by any person without a permit, subject to the following conditions. . ."* (50 CFR 21.13, Permit exceptions for captive-reared mallards)
- *This regulation is not aimed at bona fide dog training or trials where it is apparent that no one is attempting to take migratory birds. While the words being amended might appear to relate to such trials, the section into which they fit relates only to the taking of captive-reared mallards.*
- *The proposed revision is aimed at establishing a uniform zone requirement for requiring nontoxic shot to take waterfowl, thus, eliminating the potential for wild waterfowl and bald eagles to be lead-poisoned from ingestion of lead shot. This regulatory change will ensure that when a county is phased in for nontoxic shot use the "game farms" or bona fide dog training or field trial operations within that county that are shooting captive-reared mallards are phased in at the same time.*
- *Among these other objectives, this proposal would provide regulatory consistency across nontoxic shot zones and, therefore, consistency in enforcement.*

Also, in the Part 21, § 21.13 proposed change, a comma was inadvertently misplaced that makes the last proviso language of subsection (d) read incorrectly. The selected portion of that subsection should read (and, if promulgated, will read) "(d) . . . Provided further, That the provisions of the hunting regulations (Part 20 of this subchapter), with the exception of § 20.108 (Nontoxic shot zones), and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply * * *" Thus, this portion of the regulations language should clearly indicate that the traditional regulations of Part 20, bag limits, season length, etc., and a Migratory Bird Hunting Stamp are not and will not be required to hunt *captive-reared mallards* on shooting preserves or to take *captive-reared mallards* by shooting in the course of conducting field trials or during bona fide dog training activities. However, a Migratory Bird Hunting Stamp and the traditional Part 20 regulations are applicable to the taking of *wild waterfowl*, or all other captive-reared migratory waterfowl, when done either apart from or in conjunction with the taking of captive-reared mallards on shooting preserves, in field trials or during any dog training activities.

The comment period on the permit exceptions for captive-reared mallards portion of the proposed rule published on December 14, 1987, is being reopened upon publication of this notice in the Federal Register; the reopened comment period will close 30 days thereafter.

Dated: March 11, 1988.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-6574 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 58
Friday, March 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Literacy Corps Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Literacy Corps Projects.

ACTION announces the availability of funds for fiscal year 1988 for new VISTA Literacy Corps grants authorized by section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99-551) in the States of New York, Pennsylvania, Georgia, and California, and the Commonwealth of Puerto Rico. VISTA Literacy Corps grants will be awarded for up to a twelve month period. No requests for renewals or continuations may be sought by grantees under this announcement.

Application packages and technical assistance on grant preparation are available from: New York and Puerto Rico—Joe Gallick, ACTION Region 2, 6 World Trade Center, Room 758, New York, NY 10048-0206, (212) 466-2936; Pennsylvania—Helen Griffin, ACTION Region 3, U.S. Customs House, 2d & Chestnut Street, Room 108, Philadelphia, PA (215) 597-0741; Georgia—Kareemah Rasheed, ACTION, Region 4, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323, (404) 331-2859; California—Patrick Twohig, ACTION, Region 9, 211 Main Street, Room 530, San Francisco, CA 94105, (415) 974-0675.

A. Background and Purpose

Volunteers In Service to America (VISTA) is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113). The statutory mandate of the VISTA program is to eliminate and alleviate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy, particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

Objectives

ACTION will be awarding grants for the placement of VISTA Literacy Corps Volunteers in the following States:

New York and Commonwealth of Puerto Rico (Region 2)
Pennsylvania (Region 3)
Georgia (Region 4)
California (Region 9)

The grants will utilize VISTA Volunteers in the following emphasis areas:

1. Literacy projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within low-income families by instructing parents and children together. In particular VISTA will seek literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income families in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.
2. Literacy projects that provide special programs that will benefit unemployed parents. Cooperative arrangements with social services offices and job training partnership sites will receive priority consideration.
3. Literacy projects to concentrate on preventive educational training for potential school dropouts and other low-income young adults who may be "educationally at risk" as well as programs that offer retraining and remedial skills enhancement, particularly to inner-city youth.
4. Literacy projects that assist migrant and immigrant families who are seeking permanent resident status under the Immigration Control and Reform Act or other low-income individuals who would achieve literacy in English through such training.

B. Eligible Applicants

Eligible applicants for the VISTA Literacy Corps grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and state agencies administering adult basic education programs; educational institutions; libraries; anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

C. Scope of Grant

Each grant will support 10-15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Literacy Corps Volunteer upon completion of his/her service.

The average Federal cost of one volunteer service year, i.e. total Federal cost divided by total number of VISTA volunteers, cannot exceed $8,000 nor will the amount of Federal funding for a single grant exceed $120,000. Grants of 10–15 volunteers may range from $80,000—$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, there must be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on a full-time basis.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps program.

D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies;
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government;
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project;
- Outline specific plans for the continuation of program activities upon the completion of ACTION funding;
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project's efforts);
- Have a permanent mechanism of self-evaluation;
- Provide frequent and effective supervision of the volunteers;
- Identify resources needed and make them available to volunteers to perform their tasks;
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at zero to fourth grade levels;
- Those that focus on providing literacy services to high risk populations;
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and
- Statewide programs and projects that encourage the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

E. Application Review Process

ACTION Regions 2, 3, 4 and 9 will review and evaluate all eligible applications from the State/Commonwealth within their jurisdiction prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION Regional Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5 PM local time, Friday, May 13, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. List of the members of the Board of Directors including their professional affiliations and/or literacy-related activities.

Signed at Washington, DC this 22d day of March, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88-6544 Filed 3-24-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: April 15, 1988.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20024.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) A report from the Scientific Orientation Group; (2) financial matters; (3) updates on such items as wheat classification, oil and protein content in soybeans, CuSum, and Grain Quality Improvement Act of 1986 implementation; (4) use of independent surveyors; and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-0219.

Dated: March 17, 1988.

W. Kirk Miller,

Administration.

[FR Doc. 88-6555 Filed 3-24-88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain hot-rolled sheet and strip used to manufacture bi-metal band saws.

DATE: Comments must be submitted on or before April 4, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.–EC Arrangement on Certain Steel Products provides that if the U.S." * * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *."

We have received a short-supply request for certain D6A hot-rolled alloy steel sheet and strip, ranging from 0.080 to 0.125 inch in thickness and from 10 to 16 inches in width. This material is used to produce cold-rolled steel strip for bi-metal band saws.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 4, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a nonproprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 22, 1988.

[FR Doc. 88-6682 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A–427–098]

Anhydrous Sodium Metasilicate From France, Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 19, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the U.S., Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

FOR FURTHER INFORMATION CONTACT: Marquita Banner or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2923.

EFFECTIVE DATE: March 25, 1988.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 1392) the preliminary results of its administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1677, January 7, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na2Si03) which is alkaline and readily soluble in water. Applications include waste paper de-inking ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under TSUSA number 421.3400 and HS item numbers 2839.11.00 and 2839.19.00.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period and there are no known unliquidated entries.

Final Results

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of our review are the same as those presented in the preliminary results of the review. Because there were no shipments during this review we based our margin determination on the last margin found in this proceeding, and we determined that the following margin exists:

Manufacturer/Exporter	Time Period	Margin (Percent)
Rhone Poulenc	1/86–12/86	[1] 60

[1] No shipments during the period.

As provided for in section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for this firm. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 60 percent shall be required. This deposit requirement is effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of

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publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: March 21, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-6582 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-016]

Choline Chloride From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 8, 1988, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd. and the period November 1, 1985 through November 16, 1986.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 548) the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on choline chloride from Canada (49 FR 45469, November 16, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of choline chloride, currently classifiable under item 439.5055 of the Tariff Schedules of the United States Annotated and item number 2923.10.00 of the Harmonized System. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier.

The review covers Chinook Chemicals Co., Ltd. and the period November 1, 1985 through November 16, 1986.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results, and we determine that a *de minimis* weighted-average margin of 0.06 percent exists for Chinook Chemicals Co., Ltd. for the period November 1, 1985 through November 16, 1986.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, because the margin for Chinook is *de minimis*, the Department waives the estimated antidumping duty cash deposit required under section 751(a)(1) of the Tariff Act for that firm. For any shipments of this merchandise from an exporter whose first shipments occurred after November 16, 1986 and who is unrelated to Chinook Chemicals Co., Ltd., no cash deposit shall be required.

These cash deposit requirements and waiver are effective for all shipments of choline chloride entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: March 21, 1988.

[FR Doc. 88-6583 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

Scripps Clinic and Research Foundation et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-027. *Applicant:* Scripps Clinic and Research Foundation, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 52 FR 46813, December 10, 1987. *Instrument Ordered:* August 19, 1987.

Docket Number: 88-030. *Applicant:* University of Southwestern Louisiana, Lafayette, LA 70504. *Instrument:* Electron Microscope, Model H-7000-3. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 52 FR 46814, December 10, 1987. *Instrument Ordered:* July 1, 1987.

Docket Number: 88-034. *Applicant:* Bethesda Eye Institute, St. Louis University School of Medicine, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 52 FR 48557, December 23, 1987. *Instrument Ordered:* July 16, 1987.

Docket Number: 88-037. *Applicant:* California State University, Chico, Chico, CA 95929. *Instrument:* Electron Microscope, Model H-300. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 52 FR 48557, December 23, 1987. *Instrument Ordered:* June 30, 1987.

Docket Number: 88-045. *Applicant:* University of Virginia, Charlottesville, VA 22908. *Instrument:* Electron Microscope, Model JEM-100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 52 FR 48651, December 28, 1987. *Application Received by Commissioner of Customs:* November 25, 1987.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-6593 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Antidumping Duty Order of Sales at Less Than Fair Value; Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice

SUMMARY: In separate investigations concerning stainless steel butt-weld pipe and tube fittings (SSPF) from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that SSPF from Japan are being sold at less than fair value and that sales of SSPF from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of SSPF, for consumption from Japan, excluding those entries of Fuji Acetylene Industrials, Co., Ltd. (Fuji), made on or after September 16, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumpint duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Judith Nehring (202)— 377-0160 or Michael Ready (202) 377-2613, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this order are SSPF, whether finished or unfinished, including as-formed tubular blanks (blanks), under 14 inches in inside diameter, as provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item 610.8940. The corresponding Harmonized System (HS) number is 7307.23.00.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on January 29, 1988, the Department made its final determination that SSPF from Japan were being sold at less than fair value (53 FR 3227, February 4, 1988). On March 14, 1988, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673(a)(1), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of SSPF from Japan. These antidumping duties will be assessed on all unliquidated entries of SSPF entered, or withdrawn from warehouse, excluding those entries of Fuji, for consumption on or after September 16, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (52 FR 34873).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/producers/exporters	Weighted-average margin percentage
Nippon Benkan Kogyo, K.K.	37.24
Fuji Acetylene Industries, Co., Ltd	[1] 0.08
Mie Horo	65.06
All others	49.31

[1] *De minimis.*

This determination constitutes an antidumping duty order with respect to SSPF from Japan, pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 20, 1988.

[FR Doc. 88-6585 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-068]

Steel Wire Strand for Prestressed Concrete From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 8, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers seven manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1985 through November 30, 1986.

We have interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 551) the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan (43 FR 57599, December 8, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of steel wire strand, other than alloy steel, not galvanized, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under item 642.1120 of the Tariff Schedules of the United States Annotated and item number 7312.10.30.15 of the Harmonized System.

The review covers seven manufacturers and/or exporters of Japanese steel wire strand for prestressed concrete to the United States and the period December 1, 1985 through November 30, 1986. We deferred review of Mitsui & Co., Ltd. We will cover that firm in a separate review. We could not locate Freyssinet International, and we have no record of shipments from that firm; therefore, we did not include Freyssinet in this administrative review. Should Freyssinet begin exporting the covered merchandise to the United States, we shall treat that company as a new exporter.

There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results, and we determine that the following weighted-average margins exist for the period December 1, 1985 through November 30, 1986:

Manufacturer/exporter	Margin (percent)
Kokoku Steel Wire, Ltd.	(*)
Mitsubishi Corp.	(*)
Nissho Iwai Co., Ltd.	(*)
Shinko Wire Co., Ltd.	(*)
Suzuki Metal Industry Co., Ltd.	(*)
Teikoku Sangyo Co., Ltd.	(*)
Tokyo Rope Mfg. Co., Ltd.	(*)

*No shipments during the period. Margins were obtained from the last review where there were shipments.

As provided for in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for each firm based upon the above margins. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any shipments from a new exporter, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, or previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese steel wire strand for prestressed concrete entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: March 21, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-6584 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce (the Department) published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with § 353.53a(a)(2), (a)(3), and § 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than March 31, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Racing plates from Canada: Niagara Forging	2/1/87-1/31/88
Steel wire strand for prestressed concrete from Japan: Mitsui	12/1/85-11/30/87

Countervailing duty proceedings	Periods to be reviewed
Unprocessed float glass from Mexico	1/1/87-12/31/87
Carbon steel wire rod from Saudi Arabia	1/1/87-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: March 21, 1988.

[FR Doc. 88-6587 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-565-001]

Canned Tuna From the Philippines; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of countervailing duty order.

SUMMARY: On January 20, 1988, the Department of Commerce published the preliminary results of its changed circumstances administrative review of the countervailing duty order on canned tuna from the Philippines and announced its tentative determinaion to revoke the order. The review covers the period from January 1, 1986.

We gave interested parties an opportunity to comment. We received no comments. We determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order on merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1504) the preliminary results of its changed circumstances administrative review of the countervailing duty order on canned tuna from the Philippines (48 FR 50133, October 31, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under TSUSA item numbers 112.3020, 112.3040, and 112.3460. These imports are currently classifiable under HS item numbers 1604.14.20 and 1604.14.30. The review covers the period from January 1, 1986.

Final Results of Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that domestic interested parties are no longer interested in continuation of the countervailing duty order on canned tuna from the Philippines and that the order should be revoked on this basis.

Therefore, we are revoking the order on canned tuna from the Philippines effective January 1, 1986. We will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1986, and to refund with interest any estimated countervailing duties collected with respect to those parties.

This administrative review, revocation, and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and 19 CFR 355.41, 355.42.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: March 21, 1988.

[FR Doc. 88-6586 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-004]

Stainless Steel Wire Rod From Spain; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on stainless steel wire rod from Spain. The review covers the period January 1, 1986 through December 31, 1986 and six programs.

As a result of our review, we preliminarily determine the net subsidy to be 1.28 percent *ad valorem* during the period of review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52) a countervailing duty order on stainless steel wire rod from Spain. On January 30, 1987, a Spanish exporter, Roldan, S.A., requested in accordance with 19 CFR 355.10 an administrative review of this order. We published the initiation of the administrative review on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Spanish stainless steel wire rod which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered or treated, not partly manufactured, and valued over 4 cents per pound. Such merchandise is currently classifiable under TSUSA item number 607.2600. This product is currently classifiable under HS item numbers 7221.00.00.20 and 7221.00.00.40. We invite comments from all interested parties on this HS classification.

The review covers the period January 1, 1986 through December 31, 1986 and six programs. Roldan, S.A., was the only known Spanish exporter of stainless steel wire rod to the United States during the period of review.

Analysis of Programs

(1) Long-Term Loans

Under the Concerted Action Program established by Royal Decree 669/74, the Spanish government directs banks to make long-term loans to steel companies at below market rates. Such loans are provided for approximately ten years. Roldan received a long-term loan for financing new plant and equipment that had an outstanding balance during the

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review period. The loan was received in multiple disbursements from 1977 to 1981. Because loans under the Concerted Action Program are provided to a specific industry at rates and terms inconsistent with commercial considerations, we preliminarily determine that this loan confers a countervailable domestic subsidy.

To calculate the benefit, we treated the multiple disbursements as individual loans. We used the long-term loan methodology in the Subsidies Appendix attached to the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order on Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* (49 FR 18006, April 26, 1984). Roldan did not obtain any comparable commercial loans in the year in which it received the preferential long-term loan. Therefore, we used as our long-term commercial benchmark the "free" long-term (three or more years) lending rate published by the Bank of Spain in its *Boletin Estadistico.* Because we were unable to obtain the national average rate of return on equity to calculate the weighted cost of capital, we used the long-term commercial benchmark rate as the discount rate.

Since these loans benefit a company's total production, we allocated the benefit over the company's total sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.33 percent *ad valorem* during the review period.

(2) Operating Capital Loans

Until January 1, 1986, the Spanish government required banks to set aside funds for short-term operating capital loans as part of its Privileged Circuit Exporter Credit program, which provided short-term financing to exporters at preferential rates. The operating capital loans were granted for a period of up to one year. This program was phased out, pursuant to a Treasury Order of Aprl 14, 1982, and terminated effective January 1, 1986. Roldan received two loans from this program in 1985 on which interest was due during the review period. Because this program is contingent upon export performance, we preliminarily determine that it confers a countervailable benefit on exports.

To calculate the benefit, we used our short-term loan methodology as described in the Subsidies Appendix. We used as our commercial benchmark the "free" one-to-three year lending rate published in the *Boletin Estadistico*, the only available benchmark for short-term loans of up to one year.

Since operating capital loans are not tied to specific export transactions, we allocated the benefit over Roldan's total exports during the review period. On this basis, we preliminarily determine the benefit to be 0.18 percent *ad valorem.*

Because this program has been terminated effective January 1, 1986, we preliminarily determine that for this program the cash deposit of estimated countervailing duties will be zero.

(3) Prefinancing of Exports

As part of its Privileged Circuit Exporter Credit program, the Spanish government, under Royal Decree 2254/85 of November 20, 1985, required banks to set aside a specific percent of lendable funds for prefinancing exports. The maximum amount of allowable funds for prefinancing of exports was 85 percent of the invoice value until July 1, 1986, when it was reduced to 68 percent. The maximum term of these loans was 90 days and the interest rate ranged between 10 and 10.5 percent. Because this program is contingent upon export performance, we preliminarily determine that it confers a countervailable benefit on exports.

To calculate the benefit, we used our short-term loan methodology described in the Subsidies Appendix and applied the interest differential to the principal amounts of the loans. We used as our commercial benchmark the "free" three-month leading rate published in the *Boletin Estadistico.* Since Roldan was able to tie these loans to specific shipments, we allocated the benefit from loans for U.S. shipments over Roldan's exports of wire rod to the United States during the review period. We preliminarily determine the benefit from this program to be 0.75 percent *ad valorem.*

Because this program was terminated effective March 5, 1987, pursuant to Royal Decrees 321/1987 and 322/1987, we preliminarily determine that for this program the cash deposit of estimated countervailing duties will be zero.

(4) Employment Grant

Under a Ministerial Order of February 21, 1985, the Ministary of Labor and Social Security provides employment funds from the solidarity Fund for Employment. These funds are provided for "Actions that help begin employment generating projects." Roldan received a grant for investment in new plant and equipment that generated new jobs.

Eligibility for this program is not contingent upon export performance nor limited to any specific region, industry or groups of industries. The Government of Spain has provided information showing that a wide variety of industries and sectors in all regions and provinces have received employment grants from the Solidarity Fund. Therefore, because this program is not limited to a specific enterprise or industry or group of enterprises or industries, we preliminarily determine that this program does not confer a countervailable subsidy.

(5) Other Programs

We also examined the following programs and preliminarily determine that Roldan did not use them during the review period:

A. Capital Grants.

B. Regional Incentives Program.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 1.26 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 1.26 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

The termination of two programs, operating capital loans and prefinancing of exports under the Privileged Circuit Exporter Credit program, reduces the total estimated net subsidy to 0.33 percent *ad valorem*, a rate we consider *de minimis.* Therefore, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This waiver will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday afterward. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: March 21, 1988.

[FR Doc. 88-6589 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-502]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On December 15, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain welded carbon steel pipe and tube products from Turkey. We have now completed that review and determine the net subsidy to be 1.43 percent *ad valorem* for Bant Boru and 12.67 percent *ad valorem* for all other firms during the period October 28, 1985 through December 31, 1986.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 47621) the preliminary results of its administrative review of the countervailing duty order on certain welded carbon steel pipe and tube products from Turkey (51 FR 7984; March 7, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Imports covered by the review are shipments of certain Turkish welded carbon steel pipe and tube products ("pipe and tube") having an outside diameter of 0.375 inch but not over 16 inches, currently classifiable under TSUSA items 610.3208, 610.3209, 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 620.4925. TSUSA items 610.3208 and 610.3209 are commonly referred to by the industry as line pipe meeting American petroleum Institute (API) specifications for 5L. TSUSA items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 620.4925 are commonly referred to by the industry as standard pipe or tube or structural tubing. Standard pipe or tube is produced to various American Society for Testing Materials (ASTM) specifications, most notably A-53, A-120 or A-135. Structural tubing is produced to various specifications most notably ASTM specifications A-500 and A-501.

Line pipe and standard pipe and tube are currently classifiable under item numbers 7306.10.10.10, 7306.10.10.50, 7306.30.10.00, 7306.30.50.25, 7306.30.50.30, 7306.30.50.40, 7306.30.50.45, 7306.30.50.50, 7306.30.50.60, 7306.30.50.65, 7306.30.50.70 and 7306.30.50.75 of the Harmonized System.

The review covers the period October 28, 1985 through December 31, 1986 and seven programs: (1) Export and supplemental tax rebates; (2) the Resource Utilization Support Fund ("RUSF"); (3) export revenue tax deductions; (4) the General Incentives Program; (5) the Support Price Stability Fund; (6) preferential export financing under Decree 84/8861; and (7) export credits under Communique No. 1.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely written comments from the standard line pipe subcommittees of the Committee on Pipe and Tube Imports and the individual members of these subcommittees ("the petitioners"), the Government of Turkey ("the Government"), and three respondents: Bant Boru Sanayi ve Ticaret A.S. ("Bant Boru"), the Borusan Group ("Borusan"), and Erkboru Profil Sanayi ve Ticaret A.S. ("Erkboru").

Comment 1: The Government claims that the Department overstated that weighted-average country-wide assessment rate by mistakenly including in its calculations export tax rebates and RUSF payments that Yucel Boru applied for in 1986 but received in 1987.

Department's Position: We agree. Accordingly, we have revised our calculations and have determined the weighted-average country-wide assessment rate to be 12.67 percent *ad valorem.*

Comment 2: Borusan claims the variance between company rates in the preliminary results is so substantial that the Department should establish company-specific assessment rates rather than a weighted-average country-wide assessment rate.

Bant Boru also requests a company-specific assessment rate because the difference between its company rate and the weighted-average country-wide rate is greater than 10 percentage points and is, thus, significantly different according to the Department's proposed regulations.

Department's Position: The Department's policy is to treat as a significant differential between a company rate and the weighted-average country-wide rate a difference of 10 percentage points or 25 percent, whichever is greater. In this case, a significant differential does exist between the weighted-average country-wide rate and Bant Boru's company rate, and we have established a company-specific assessment rate of 1.43 perecent *ad valorem.* There is no significant differential between the weighted-average country-wide rate and any other company rates.

Comment 3: Bant Boru, Borusan, Erkboru and the Government argue that the Department should establish company-specific duty deposit rates. The proposed countervailing duty regulations of June 12, 1985 (50 FR 24207) provide that a company-specific rate is appropriate where there is a significant differential between the greater of at least 10 percentage points or 25 percent from the weighted-average net subsidy calculated on a country-wide basis.

The duty deposit rate is based on only one program, the export revenue tax deduction, where company benefits during the review period ranged from 0.45 to 9.76 percent *ad valorem.* With a weighted-average country-wide rate in the preliminary results of 6.78 percent *ad valorem*, the differential between this weighted-average rate and the rates for Bant Boru, Borusan, and Erkboru is more than 25 percent. Therefore, these companies argue that their company rates fit the circumstances described in the proposed regulations. They further argue that, with only five companies involved in this review, establishing company-specific deposit rates imposes no administrative burden on the Department.

Department's Position: Section 607 of the Tariff and Trade Act of 1984 established a statutory presumption in favor of country-wide countervailing duty rates without requiring any company-specific justification for the use of such rates. The statute provides for the possibility of company-specific rates if the Department determines that a significant differential exists. The Department's policy is to use a single

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weighted-average country-wide rate unless there is a significant differential between a company-specific rate and the weighted-average country-wide rate, i.e., 10 percentage points or 25 percent, *whichever is greater*. The Department considers Erkboru's benefit of 0.45 percent *ad valorem* to be *de minimis* and, by definition, significantly different.

Although the company rates for Bant Boru and Borusan are more than 25 percent different from the weighted-average country-wide rate, their rates are less than 10 percentage points different from that rate. Therefore, there is no significant differential between the company rates for Bant Boru and Borusan and the weighted-average country-wide rate. After excluding Erkboru from the calculation of the weighted-average, we have revised the duty deposit rate for all other firms to 7.26 percent *ad valorem*.

Comment 4: The petitioners claim that despite the elimination of the export tax rebate program on exports of iron and steel products to the United States, effective January 1, 1987, the program may still provide an incentive for Turkish pipe and tube exporters to export to the United States. The petitioners contend that an incentive to export to the United States would exist if the Turkish government determines the amount of the rebates based on total exports (including exports to the U.S.), even if rebates paid on a shipment-specific basis have been eliminated on pipe and tube exports to the United States. The Department should not adjust the duty deposit rate for this program to zero until it can be certain that pipe and tube exports to the United States are not receiving benefits through a change in the method of granting the rebate.

The Turkish government states that export tax rebates are always paid on a shipment-specific basis, not on total exports. In order to be eligible for benefits, exporters must present documentation showing the product to be exported and the country of destination. Since rebates were eliminated on pipe and tube exports to the United States, there is no benefit conferred on these exports. Borusan adds that the petitioners' allegation is based upon pure speculation and that the Turkish government is phasing out the program on all exports, as evidenced by the decline in nominal rebate rates on third country exports during 1987 as compared with 1986 rebate rates.

Department's Position: Whenever possible, we calculate the benefit from export subsidies based on shipments only to the United States. Where export subsidies are not shipment-specific, or cannot otherwise be segregated according to country of destination, we calculate the benefit based on shipments to all markets. *See, Final Results of Countervailing Duty Administrative Review on Roses and Other Cut Flowers from Columbia* (52 FR 48847, December 28, 1987).

We verified that export tax rebates are shipment-specific and that they are paid as a percentage of the value of each shipment; total exports never were and are not now a factor in calculating the amount of the export tax rebate received. These rebates would provide an incentive to export pipe and tube to the United States only if they were paid on such shipments, and we verified that they have been eliminated.

Comment 5: The petitioners claim that the Department does not know whether pipe and tube exports to the United States are included in the export revenue levels used to calculate supplemental export tax rebates. If these exports are included, this may allow exporters to receive a higher rate of supplemental rebate and provide an incentive to export to the United States. The Department should be certain that the exporters are not including pipe and tube exports to the United States in the calculation of supplemental export tax rebates before setting the duty deposit rate for the supplemental export tax rebate at zero.

The Government states that, under Article 4 of Decree No. 86/11237, a supplemental tax rebate is given on the export of an eligible product only when annual export revenue from all eligible products exceeds U.S. $2 million. Pipe and tube exports to the United States are not eligible to receive supplemental tax rebates and are not included when determining eligibility for receipt of supplemental rebates on other products. The Government further points out that, as a matter of practice, the basic and supplemental export tax rebates are applied for together. Consequently, if an export shipment is not eligible for the basic rebate, it will not be eligible for the supplemental rebate, nor will it be aggregated with other eligible exports when determining supplemental rebate levels.

Department's Position: We verified that pipe and tube exports to the United States are no longer eligible for basic or supplemental export tax rebates and that these exports cannot be counted when determining the supplemental rebate on other eligible products.

Comment 6: The petitioners express their concern that the recalculation of the rate of assessment for the review period, coupled with the change in the deposit rate to reflect the elimination of the export tax rebate and RUSF programs for exports of pipe and tube to the United States, may allow Turkish pipe and tube exports to escape countervailing duties on the export tax rebates and RUSF payments earned by Yucel Boru on 1986 exports but received in 1987. The petitioners point out that if Yucel Boru did not export in 1987 these benefits cannot be captured with countervailing duties, and they suggest that an accrual method to capture these benefits in the 1986 review may be more appropriate. The petitioners also claim that if a review for the 1987 period is not requested, these benefits will not be captured because the 1987 entires will be liquidated at the deposit rate set by this review, which is based on the elimination of benefits from these two programs. Therefore petitioners suggest that the benefits from these two programs be included in the calculation of the deposit rate.

Department's Position: We consider the benefit from these programs to occur when the payments are received, rather than accrued. If Yucel Boru did not export pipe and tube to the United States in 1987, the firm will not have received benefits subject to countervailing duties.

If we conduct a review for the 1987 period, we will calculate countervailing duties based on benefits received by the companies that exported. If a review is not requested, entries will be liquidated at the deposit rate in effect at the time of entry, in this case the deposit rate set by the countervailing duty order. The duty deposit set by this review, which reflects the termination of the export tax rebate and RUSF programs, will affect only future entries.

Final Results of Review

After considering all of the comments received, we determine the net subsidy to be 1.43 percent *ad valorem* for Bant Boru and 12.67 pescent *ad valorem* for all other firms during the period October 28, 1985 through December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 1.43 percent of the f.o.b. invoice price on shipments of this merchandise from Bant Boru and 12.67 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after October 28, 1985 and exported on or before December 31, 1986.

Because of the termination of the export tax rebate and RUSF programs, the Department will instruct the Customs Service to waive cash deposits

of estimated countervailing duties on shipments of this merchandise from Erkboru and to collect a cash deposit of estimated countervailing duties of 7.26 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Dated: March 21, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

[FR Doc. 88-6588 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant ot the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington DC 20230. Information submitted by any person is exempt from disclosure udner the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00003." A summary of the application follows:

Applicant: TradeNet International of Washington, Inc. (TradeNet) 920 Pennsylvania Avenue SE., Washington, DC 20003, Telephone: (202) 544-8794.

Application #: 88-00003.

Date Deemed Submitted: March 10, 1988.

Members (in addition to applicant): none.

Summary of the Application:

Export Trade:

Products: All products.

Related Services: Consulting, product research and design, marketing via specialized promotional mailings in conjunction with trade shows and catalog and video exhibits, international market research and statistics, transportation, trade documentation and freight forwarding, communiication and processing of foreign orders to and for exporters and foreign purchasers, insurance, legal assistance, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

TradeNet seeks certification to:

1. Enter into agreements with Suppliers, whereby TradeNet agrees to act as the Supplier's exclusive Export Intermediary for the export of Products and the provision of Related Services. These agreements may include the following provisions:

a. The Supplier may agree not to sell, directly or indirectly, through any other Export Intermediary, and/or

b. TradeNet will have the exclusive right to choose whether to respond to bids, invitations, or requests for bids, or other sales opportunities, on a joint or individual basis.

2. Enter into exclusive agreements with other Export Intermediaries, wherein:

a. The Export Intermediary agrees not to represent TradeNet's competitors in the sale of Products or the provision of Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products or obtain Related Services from TradeNet's competitors.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services, whereby the customer agrees not to purchase the Products and Related Services from TradeNet's competitors.

4. Maintain the exclusive right to specify the following for agreements outlined in paragraphs (1), (2), and (3) above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms for any export sale, including the quantities, territories, and customers, regardless of whether a joint or individual bidding process is used.

5. Meet and negotiate with individual Suppliers or groups of Suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market. During the course of these negotiations, the following may be exchanged:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market,

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing),

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular export market, and

e. Information on TradeNet's activities in the Export Markets, including, but not

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limited to, customer complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contract between TradeNet and its Suppliers.

Date: March 21, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–6587 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–DR–M

Mercy Hospital and Medical Center et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 87–164R. *Applicant:* Mercy Hospital and Medical Center, Chicago, IL 60616. *Instrument:* Electron Microscope, Model H-300. *Manufacturer:* Nissei Sangyo America, Ltd., Japan. *Intended use:* See notice at 52 FR 18262, May 14, 1987. *Instrument ordered:* November 13, 1986.

Docket No.: 88–053. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* Electron Microscope, Model JEM–100CX. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 53 FR 1811, January 22, 1988. *Instrument ordered:* September 29, 1987.

Docket No.: 88–057. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294. *Instrument:* Electron Microscope, Model JEM–2000FX. *Manufacturer:* JEOL Ltd., Japan. *Intended use:* See notice at 53 FR 1811, January 22, 1988. *Application Received by Commissioner of Customs:* December 10, 1987.

Docket No.: 88–060. *Applicant:* Morehouse School of Medicine, Atlanta, GA 30310–1495. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 53 FR 1811, January 22, 1988. *Instrument ordered:* September 4, 1987.

Docket No.: 88–065. *Applicant:* University of Michigan, Ann Arbor, MI 48109. *Instrument:* Electron Microscope, Model CM12S. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* See notice at 53 FR 1812, January 22, 1988. *Instrument ordered:* September 29, 1987.

Docket No.: 88–069. *Applicant:* University of South Carolina, Columbia, SC 29208. *Instrument:* Electron Microscope, Model JEM–100CX. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 532 FR 1812, January 22, 1988. *Instrument ordered:* June 15, 1987.

Docket No.: 88–071. *Applicant:* Arizona State University, Tempe, AZ 85287–1704. *Instrument:* Electron Microscope, Model JEM–2000FX. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 53 FR 1812, January 22, 1988. *Instrument ordered:* August 13, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–6594 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–DS–M

University of Texas at Austin et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. Law. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 87–105R. *Applicant:* University of Texas at Austin, Austin, TX 78716. *Instrument:* CD and LD Spectropolarimeter, Model J–600. *Manufacturer:* Jasco Inc., Japan. *Intended Use:* See notice at 52 FR 7916, March 13, 1987. *Reasons for This Decision:* The Foreign instrument provides simultaneous measurement of linear and circular dichroism spectra. *Advice Submitted by:* National Institutes of Health, February 9, 1988.

Docket No. 87–110R. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Stopped-Flow Scpectrophotometer, Model SF–51 with Accessories. *Manufacturer:* Hi-Tech Scientific Instrument Division, United Kingdom. *Intended Use:* See notice at 53 FR 1812, January 22, 1988. *Reasons for This Decision:* The foreign instrument employs acid resistant materials for all parts that contact reagent solutions. *Advice Submitted by:* National Institutes of Health, February 9, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–6595 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

Announcement of Workshops for Users and Implementors of Integrated Services Digital Network

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces two workshops of a continuing workshop series to discuss issues related to the use and implementation of Integrated Services Digital Network (ISDN) technology. These workshops are part of the North American ISDN Forum (NIU–FORUM) which was formed recently under the auspices of NBS to create a strong user voice in the implementation of ISDN and ISDN applications and to ensure that the emerging ISDN meets users' application needs.

DATES: An ISDN Users Workshop will be held in Atlantic City on June 8, 9, and 10, 1988. This workshop will start to identify, define and prioritize user applications of ISDN. Organizations primarily engaged in the manufacture, supply or vending of automated data processing or telecommunications products and/or services may not be members of the Users Workshop.

An ISDN Implementors Workshop will be held at NBS in Gaithersburg, MD on July 19, 20, and 21, 1988. This workshop will start to define implementation agreements for ISDN and sponsor multivendor demonstrations and trials. Manufacturers and service providers are invited to participate in this workshop.

ADDRESS: To obtain registration forms for the workshops, companies may contact: ISDN Workshop Series, Attn: Trudy Johnson, National Bureau of Standards, Building 225, Room A224, Gaithersburg, MD 20899, Telephone: (301) 975–2985.

Upon receipt of the completed registration form, additional registration information for the appropriate workshop(s) will then be mailed to the registrant. An NBS representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT: Steve Recicar (301) 975–2937.

SUPPLEMENTARY INFORMATION: Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

Ernest Ambler,

Director.

Date: March 18, 1988.

[FR Doc. 88–6517 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Scoping/Planning Meeting for the Development of an Environmental Impact Statement Governing the Incidental Take of Marine Mammals During Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to prepare an EIS and hold a scoping meeting.

SUMMARY: The National Marine Fisheries Service (NMFS) intends to prepare an Environmental Impact Statement (EIS) governing the incidental taking of marine mammals during commercial fishing operations within the U.S. exclusive economic zone. The NMFS is convening a scoping meeting to ensure that all interested parties have an opportunity to advise NMFS on the issues which need to be considered in developing the EIS.

DATE: The scoping meeting will be held in San Francisco, CA on April 8, 1988; 12:30 p.m.–3:00 p.m.

ADDRESS: Clarion Hotel, San Francisco Airport, San Bruno Room, 401 E. Millbrae Avenue, Millbrae, CA.

FOR FURTHER INFORMATION CONTACT: James H. Lecky or Rodney R. McInnis (213/514–6196).

SUPPLEMENTARY INFORMATION: The general permits issued under section 104 of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq*; MMPA) for 1984–1988 to domestic commercial fishermen (except yellowfin tuna purse seine fishermen) will expire on December 31, 1988. In anticipation of receiving new applications during 1988, NMFS is initiating the consultation process under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) to consider reissuance of five-year domestic general permits and annual foreign general permits for the period January 1, 1988–December 31, 1993.

An EIS will be prepared to present information on the status of marine mammal species involved, the impact of various commercial fisheries on marine mammals, and the impact of any alternatives to issuing permits on the impacted marine mammal stocks. The public scoping meeting will be held to ensure full opportunity for interested members of the public and government agencies to advise NMFS on the issues, alternatives, and impacts which should be addressed in the DEIS.

Date: March 22, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–6598 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–22–M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Committee will convene separate public meetings as follows:

Council

On March 28, 1988, from 7:30 p.m. to 10 p.m., will hold a scoping meeting to obtain comments and recommendations regarding development of a fishery management plan, and preparation of an environmental impact statement for the queen conch (*Strombus gigas*) fishery within the Council's area of jurisdiction. The public meeting will take place at the Legislature Building, Conference Room, St. Croix, U.S. Virgin Islands.

Administrative Committee

On March 28 from 2 p.m. to 5 p.m., will hold a meeting to consider the Council's budget and other regular administrative activities. After discussion of regular administrative activities, the Committee will convene a closed session (not open to the public), to discuss personnel matters. The public meeting will take place at the Customs House Building, U.S. Park Service, Conference Room, St. Croix, U.S. Virgin Islands.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; (809) 753–4926.

Date: March 18, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6534 Filed 3–24–88; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, April 13, 1988, at 10 a.m. at the Radisson, Hotel Hampton, 700 Settlers Landing Road, Hampton, VA 23669, (telephone: 804–727–9700), to discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP) Amendment #8, Bluefish and Summer Flounder FMPs, and other fishery management and administrative matters. The meeting may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters. The public meeting will adjourn on April 14.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: March 18, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-6535 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, April 7, 1988, at 9 a.m., at the Ramada Inn, Mystic, CT, to discuss reports of the Groundfish, Scallop, Surf Clam and Ocean Quahog, Large Pelagics and Environmental Affairs Committees; a report by the ad hoc committee on salt water licenses and user fees, as well as discuss other fishery management business. The public meeting will adjourn at approximately 5 p.m.

For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone (617) 231-0422.

Dated: March 22, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-6597 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, April 4-8, 1988, at the Clarion Hotel near the San Francisco Airport, 401 East Millbrae Avenue, Millbrae, CA, as follows:

Council

On April 5 the Council will convene at 8 a.m., with a closed session (not open to the public), to discuss litigation, and other appropriate matters. At 9 a.m., the Council will convene its open session to consider administrative and salmon management issues. After receiving comments from its advisory entities and the public, the Council will adopt 1988 ocean salmon management measures in tentative form for technical analysis. The Salmon Plan Development Team (SPDT) will report back to the Council with its impact analysis on April 7. Also on April 5 the Council will comment on the proposed National Recreational Fishery Policy drafted by the U.S. Fish and Wildlife Service.

There will be a public comment period April 5 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On April 6 the Council will convene at 9 a.m., to address groundfish management issues. The Council will consider recommendations from the advisory entities on a number of groundfish issues, including alternative management approaches given insufficient funding of data programs; adjustment of rockfish and sablefish trip limits if necessary; Pacific whiting joint venture codend limitations; experimental fishery applications; enforcement issues, and other matters.

On April 7 the Council will continue consideration of salmon management issues. After receiving the SPDT's analysis, the Council will adopt final 1988 ocean salmon management measures. It will also address 1989 salmon plan amendment issues; habitat matters; the form and function of the Indian Affairs Committee, and other matters.

The Council will reconvene at 8 a.m., April 8 if necessary, to complete unfinished business.

Scientific and Statistical Committee (SCC)—will convene at 11 a.m., April 4 to consider matters on the Council's agenda, and will reconvene at 8 a.m., April 5. The SSC will meet jointly with the Groundfish Management Team, Groundfish Select Group (GSG), and Groundfish Advisory Subpanel, (GAP) at 1:30 p.m., April 4 to address research needs and alternative management approaches. The GSG will convene following this review to address trip limit adjustments for rockfish an sablefish.

SPDT—will meet as necessary April 4-8 to analyze the impacts of the 1988 management measures.

Salmon Advisory Subpanel—will convene at 1 p.m., April 4 to address salmon management issues on the Council's agenda, and will reconvene as necessary at 8 a.m., April 5, 6, and 7 to complete its business.

Budget Committee—will convene at 3 p.m., April 4 to consider Pacific Coast Fisheries Information Network funding, and the Council's calendar year 1988 budget.

GAP—will meet at 8 a.m., April 5 to address groundfish management issues on the Council's agenda.

Habitat Committee—will meet at 5 p.m., April 6 to address current, relevant habitat matters affecting fisheries under Council jurisdiction.

Detailed agendas for all of the above meetings will be made available to the public after March 21. For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: March 18, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-6536 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 80332-8032]

Information Relating to Bowhead Whales; U.S. Implementation of Strike Quota for 1988

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NOAA for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice, NOAA is soliciting public comment on the proposed allocation of the IWC bowhead whale catch limit in 1988.

DATE: Comments must be submitted on or before April 25, 1988.

ADDRESS: Written comments may be mailed to the Office of International Affairs, 1825 Connecticut Avenue NW., Room 919, National Marine Fisheries Service, Washington, DC, 20235. A list of documents reviewed for this action may be obtained on request, and the documents examined during business hours (9 a.m. to 5:00 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, (202) 673-5281.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the Endangered Species Act (16 U.S.C. 1531-1543) and the Whaling Convention Act (16 U.S.C. 916-916l). In addition, it provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, the Agency develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under Paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948). In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1988; (2) a summary of available bowhead scientific information including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits which could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Administrator of NOAA in making his findings on the range of harvest limits. By this notice, NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit for 1988.

1. Catch Level

At the 39th Annual Meeting of the IWC, Bournemouth, U.K., June 22-26, 1987, the following catch limit was established for aboriginal/subsistence whaling: "the taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: * * * For the year 1988, 35 whales may be struck." (Schedule to the Convention, Paragraph 13(b)(1).)

2. Scientific Information

The IWC Scientific Committee agreed at the 1987 IWC meeting on an estimate of 7,200 (standard error of 2,400) as the current size of the bowhead whale population (from data collected in 1985). Based on a simulation analysis conducted by scientists at the 1987 IWC meeting, estimates were made of the number of animals that can be removed which will keep the population at its current level. This is known as the replacement yield (RY) which defines the number of whales annually recruited into the population that balances the number of deaths that occur. RY values of 39 to 184 animals were estimated for the range of population estimates of 4,800 and 9,600 based on one standard error (7,200 ± 2,400). The view of the IWC Scientific Committee was that estimates of replacement yield would be most appropriate for the population size of 7,200 resulting in a replacement yield of 55 to 173 bowheads.

3. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted the last major analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983. The Department of Interior has contracted a new study on the quantification of subsistence and cultural need for bowhead whales which is not yet completed. The 1983 analysis provided the basis for the U.S. submissions to the IWC concerning aboriginal/subsistence need for 1983-87. The conclusions drawn by DOI in the 1983 report are as follows:

(1) Need based on historical catch per crew, 1960-1983 = 26 landed whales;

(2) Village need based on per capita returns = 24 landed whales; and

(3) Need based on participation = 26 landed whales.

The DOI conclusion was that the Alaskan Eskimos' need would be satisfied by 26 landed whales, and, using the best estimate then available of hunting efficiency, 52 strikes. Given the Alaska Eskimo Whaling Commission (AEWC) commitment to improve hunting efficiency, the final assessment by DOI was that the Alaskan Eskimos' need could be met with 35 strikes to land 26 whales. Until the new study contracted by DOI is submitted, the best information concerning Eskimo need continues to be for 35 strikes.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides in (Schedule paragraph 13(a)(2)): "For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level." Given the above stated estimates of 55-173 whales recruited into the population annually, the aboriginal/subsistence catch can be permitted so long as it is set at a level that allows the whale stock to move to the MSY level.

The catch limit for bowhead whales for 1988, established by the IWC, is 35 strikes. The number under consideration for the 1988 catch limit is 35 strikes.

5. Documents Reviewed

A list of the documents reviewed for this action may be obtained on request from the address above. The documents are available for public inspection during the 30-day public comment period at the same address.

Authority: 16 U.S.C. 1361-1407, 1531-43, 916.

Dated: March 21, 1988.

Carmen Blondin,

Special Associate for Trade, NMFS.

[FR Doc. 88-6533 Filed 3-24-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 25, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 6, and December 28, 1987, The Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 42704 and 48861) of proposed addition to and deletion from Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77, and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping, or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988:

Service

Janitorial Service
Bonneville Power Administration
710 NE Hassalo Street
5804 NE Hassalo Street
5840 NE Hassalo Street
Portland, Oregon

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Service

Pallet Repair
Naval Supply Center
Cheatham Annex
Williamsburg, Virginia

C.W. Fletcher,

Executive Director.

[FR Doc. 88–6580 Filed 3–24–88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The committee has received proposals to add to Procurement List 1988 commodities and services produced or provided by workshops for the blind or other severely handicapped.

DATES: Comments must be received on or before April 25, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926):

Commodities

Tarpaulin
  1440-01-126-8966
Card Set, Guide File
  7530-00-249-5909
  7530-00-261-3604
  7530-00-261-3618
  7530-00-861-1272
  7530-00-861-1263
  7530-00-861-1270
  7530-00-261-3601
  7530-00-261-3613
  7530-00-261-3610
  7530-00-861-1275
  7530-00-574-7172
  7530-01-175-1553
Bag, Plastic
  8105-00-837-7753
  8105-00-837-7754
  8105-00-837-7755

Services

Computer Tape Verification
Tinker Air Force Base, Oklahoma
Janitorial Service
  Phillips Buildings Complex
  7900 and 7920 Norfolk Avenue
  4915 St. Elmo Avenue
  Bethesda, Maryland
Janitorial Services
  AAFES Distribution Center
  Newport News, Virginia
Removal of Tool Identification Numbers
  Tinker Air Force Base, Oklahoma

C.W. Fletcher,

Executive Director.

[FR Doc. 88–6581 Filed 3–24–88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) stock index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before April 11, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On September 11, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the EAFE Stock Index futures contract (52 FR 34404). On January 4, 1988, the Commission republished in the **Federal Register**, for a 30-day comment period, a notice of availability of this contract's proposed terms and conditions (53 FR 64). In a March 17, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581, by the specified date.

Issued in Washington, DC on March 22, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–6545 Filed 3–24–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant a Limited Exclusive Patent License to Sidney Weiser

The Department of the Army announces its intention to grant Sidney Weiser, 8502 Dakota Drive, Gaithersburg, MD 20877–4136, a limited exclusive license under U.S. Patent Appliction No. 089,893, filed August 27, 1987, entitled "Method of and Apparatus for Real Time Crystallographic Axis Orientation," by Sidney Weiser.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Lieutenant Colonel William V. Adams, Office of The Judge Advocate General, Attention: JALS–PC, Nassif Building, Room 332A, Falls Church, VA 22041–5013, Telephone No. (Area Code 202) 756–2822.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–6510 Filed 3–24–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 25, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 22, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Secondary Education and Rehabilitation Services

Type of Review: Extension
Title: Annual Report on State Agency Independent Living Rehabilitation Services
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
  Responses: 79
  Burden Hours: 632
Recordkeeping:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: State agencies that have participated in the Independent Living Rehabilitation Program submit this report to the Department. The Department uses the information to assess the accomplishments of program goals and objectives, and to prepare the Annual Report to Congress.

Office of Postsecondary Education

Type of Review: New
Title: Fiscal Operations Report for the Income Contingent Direct Loan Demonstration Project
Frequency: Annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
  Responses: 10
  Burden Hours: 100
Recordkeeping:
  Recordkeepers: 10
  Burden Hours: 0.2

Abstract: Postsecondary institutions that have participated in the Income Contigent Direct Loan Program submit this report to the Department. The Department uses the information to monitor assets and liabilities of the fund and to ensure that funds have been properly managed.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Feedback on Training Activity for Student Financial Assistance Programs
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden:
  Responses: 42,420
  Burden Hours: 6,363
Recordkeeping:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: This form will be used to obtain feedback from postsecondary and high school personnel who have participated in training activities on the student financial assistance programs conducted by the Department. The Department uses the information to assess the effectiveness of training activities.

[FR Doc. 88–6560 Filed 3–24–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Albuquerque Operations Office

AGENCY: Albuquerque Operations Office, DOE.

ACTION: Notice of Restricted Eligibility for Cooperative Agreement Award.

NOTICE: The Department of Energy (DOE), Albuquerque Operations Office, in accordance with 10 CFR 600.7(b), gives notice of its intent to restrict eligibility for the award of a cooperative agreement to the State of New Mexico. This agreement will provide for funding and technical assistance to the State to assist the State in enhancing its emergency response capability as a result of planned shipments of radioactive waste to the Waste Isolation Pilot Plant (WIPP) site near Carlsbad, New Mexico. This Cooperative Agreement is being entered into in accordance with the Supplemental Stripulated Agreement Dated December 27, 1982, between DOE and the State.

FOR FURTHER INFORMATION CONTACT: James L. Robbins, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Industrial Relations Division, P.O. Box 5400, Albuquerque, New Mexico 87115, (505) 846–4320.

Issued in Albuquerque, New Mexico, on March 8, 1988.

James G. Hoyal, Jr.,

Director, Contracts and Industrial Relations Division.

[FR Doc. 88–6576 Filed 3–24–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88–292–000 et al.]

Iowa Electric Light and Power Co., et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Iowa Electric Light and Power Company

[Docket No. ER88–292–000]

March 21, 1988.

Take notice that on March 15, 1988, Iowa Electric Light and Power Company (Iowa Electric) tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume I. The proposed changes would increase revenues from jurisidictional sales and service by $875,074 based on the 12-month period ending December 31, 1986. Filing requirements are submitted under § 35.13(a)(2) of the Commission's Rule and Regulations.

Iowa Electric states that, under rates currently in effect, its overall rate of return realized from service to its resale customers is inadequate and below the level of the FERC generic bench mark. The proposed rates are designed to enable Iowa Electric to increase revenues by $875,084 in two phases. In Phase I existing rates would be increased by $290,767 per annum on March 1, 1988; and in Phase II rates would be increased by an additional $584,317 per annum on March 1, 1989.

Copies of the filings were served upon the public utility's jurisdictional customers, the Iowa State Utilities Board, and Iowa Office of Consumer Advocate.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ER88–160–000]

March 21, 1988.

Take notice that on March 16, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amendment to its filing in the above-referenced docket. The filing was made in response to an information request from the Division of Electric Power Application and Review. Rate sheets detailing the specific charges applicable for Transactions No. 1 and 2 of the assigned power sales agreement between Wisconsin Electric and Public Power Inc. SYSTEM (WPPI SYSTEM) were provided.

Wisconsin Electric renews its request for an effective date of January 1, 1988.

Copies of the filing have been served on WPPI SYSTEM, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Fitchburg Gas and Electric Light Company

[Docket No. ER88–191–000]

March 22, 1988.

Take notice that on March 10, 1988, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing an amendment to the initial rate schedule filed by Fitchburg on January 12, 1988, as amended February 24, 1988.

Fitchburg states that the purpose of the amendment is to adjust the rate for a change to the income tax factor. The revision results in a maximum rate of $9.55 per kilowatt-year for generation and $16.02 per kilowatt-year for transmission. There is no change in the filed energy charges.

Comment date: April 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining appropriate action to be taken, but will not seved to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6607 Filed 3–24–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88–280–000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88–280-000]

March 18, 1988.

Take notice that on March 9, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–280–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Tenngasco Exchange Corporation (Tenngasco), a marketer of natural gas, under the certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 150,000 dt of natural gas per day and up to 14,000,000 dt of gas per year for Tenngasco. It is stated that Trunkline would receive the gas from Tenngasco at various existing points of interconnection on Trunkline's system in Illinois, Louisiana, offshore Louisiana and Texas. Trunkline states that it would deliver the volumes for Tenngasco's account to Midwestern Gas Transmission Company (Midwestern) in Vermilion, Illinois for Midwestern's system supply. It is indicated that the transportation service would have a primary term of one month and would continue on a monthly basis thereafter.

Trunkline states that it filed an initial report in Docket No. ST88–2075–000, reporting that the service commenced January 4, 1988, under the automatic authorization provisions of § 284.223(a) of the Commission's Regulations. It is also stated that no construction of facilities would be required to effect the transportation service. Trunkline proposes to charge Tenngasco the applicable rate under Trunkline's currently effective Rate Schedule PT.

Comment date: May 2, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP88–271–000]

March 21, 1988.

Take notice that on March 3, 1988, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP88–271–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a delivery point to one of its existing firm sales customers, Arkansas Louisiana Gas Company (ALG), under the certificate issued in Docket No. CP82–489–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request filed with the Commission and open to public inspection.

MRT proposes to establish the new delivery point by installing a tap and appurtenant facilities including a 2" meter and regulator station to be located within MRT's right-of-way on its mainline system in the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section 25, T7N, R6W, White County, Arkansas. ALG requires the delivery of gas at the proposed location to serve the City of West Point, Arkansas. MRT states that it would supply no more than 120 Mcf of natural gas on a peak day and an estimated 8,600 Mcf of natural gas on an annual basis at the proposed delivery point. It is estimated that the total for all costs associated with the installation of the proposed facilities will be $40,000. MRT states that ALG would reimburse it for all costs associated with the installation of these facilities and the application filing fee.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to ALG.

Comment date: May 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP88–290–000]

March 21, 1988.

Take notice that on March 11, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–290–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of Intercon Gas, Inc. (Intercon), under the authorization issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline would perform the proposed interruptible transportation service for Intercon, a gas marketer, for the system supply of four interstate pipeline companies, pursuant to a gas transportation agreement dated January 6, 1988. The term of the transportation agreement is from the initial date of service under § 284.223(a) of the regulations and would continue in effect month-to-month thereafter unless terminated by either party upon 30 days prior written notice. Trunkline proposes to transport on a peak day 80,000 dakatherm; on an average date 30,000 dakatherm; and on an annual basis 29,200,000 dekatherm of natural gas for Intercon. Trunkline proposes to receive the subject gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Trunkline would then transport and redeliver the subject gas, less 0.7 percent fuel and unaccounted for line loss, to an existing point of interconnection with: (1) United Gas Pipeline Company in St. Mary Parish, Louisiana; (2) Tennessee Gas Pipeline Company in St. Mary Parish, Louisiana; (3) Texas Eastern Transmission Company in Beauregard Parish, Louisiana; and (4) Transcontinental Gas Pipe Line Corporation in Beauregard Parish, Louisiana for the system supply of each of the Interstate pipeline companies.

Trunkline states that it would perform such transportation service for Intercom pursuant to its Rate Schedule PT. The current rate for the proposed transportation service is 14.56 cents per dekatherm received at the point of receipt, pursuant to Rate Schedule PT and the Commissions order issued April 30, 1987, in Docket No. RP87–15–006 (39 FERC § 61,100) and May 29, 1987, in Docket No. RP87–67–000 (39 FERC § 61,234). In addition to the above mentioned rate, Trunkline would charge the unit amount for the transportation of liquid and liquefiables as prescribed in its settlement in Docket No. RP80–106–010.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Trunkline commenced such self-implementing service on January 8, 1988, in Docket No. ST88–2103–000.

Comment date: May 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Midwestern Gas Transmission Company

[Docket No. CP88–266–000]

March 21, 1988.

Take notice that on March 2, 1988, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas, 77252, filed an application pursuant to section 7(c) of the Natural Gas Act seeking a certificate of public convenience and necessity amending its authority to render firm transportation service for Northern States Power Company (Minnesota) a Minnesota corporation, and Northern States Power Company (Wisconsin), a Wisconsin Corporation (jointly referred to as NSP), all as more fully set forth in this application, which is on file with the Commission and open to public inspection.

Midwestern seeks authority to amend the transportation agreement comprising Rate Schedule T–9 to allow expanded service during five months of the year. Midwestern purposes for service during the Winter Season (November 1, to March 31): (1) To increase NSP's Winter Season Firm Transportation Quantity to 78,200 Dth/day; (2) to increase the Winter Season maximum receipt quantity at the Emerson Input Point to 50,360 Dth/day; and (3) to increase the firm transportation quantity downstream of the North Branch Input Point from 12,185 Dth/day to 22,200 Dth/day. It is stated that the receipt quantity at the Downstream Receipt Points would only be limited by the Firm Transportation Quantity and the aggregate deliveries from the Midwestern system downstream of these Downstream Input Points. Midwestern states that the current Annual Quantity Entitlements, and the daily quantity limits during the remainder of the year would remain unchanged.

Midwestern's proposed receipt quantities are premised upon the authorization of the transportation service proposed in Docket No. CP87-106-000, according to Midwestern. Midwestern states that if its pending application in Docket No. CP87-106-000 is not approved, it requests alternative authority to increase the maximum receipt quantity at the Emerson Input Point during the Winter Season to 45,337 Dth/day. Midwestern adds that if its application in Docket No. CP87-106-000 is later approved, that it may have pregranted authority to, at that time, increase the maximum winter season Emerson Input Point receipt quantity from 45,337 Dth/day to 50,360 Dth/day.

Midwestern states that expansion of the T-9 service is feasible due to winter operating conditions and the pattern of system deliveries. Midwestern further states that NSP needs the expanded service to meet firm demand obligations and to replace propane peak shaving facilities.

Comment date: April 11, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Columbia LNG Corporation

[Docket No. CP86-304-002]

March 21, 1988.

Take notice that on March 7, 1988, Columbia LNG Corporation ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, filed in Docket No. CP86-304-002, an amendment to its application for the certificate of public convenience and necessity issued under section 7(c) of the Natural Gas Act, as amended, in Docket No. CP86-304-000, 35 FERC ¶ 62,185 (1986) to provide for a new point of delivery to Washington Gas Light Company ("Washington") and for authorization to construct and operate subject point of delivery and to modify Columbia's Rate Schedule X-2, all as more fully set forth in the application on file with the Commission and open for public inspection.

It is stated that Applicant seeks authorization to construct a tap facility on its existing pipeline facilities to provide a new point of delivery to Washington and to transport and redeliver quantities of natural gas to Washington at the tap pursuant to the terms and conditions of Columbia's Rate Schedule X-2, which is a gas transportation agreement between Columbia and Washington dated January 31, 1986. It is further stated that the proposed 12-inch tap will be located near Centreville, Fairfax County, Virginia, and would permit delivery by Columbia directly into Washington's facilities located in Fairfax County.

Applicant states that Washington will reimburse Columbia for all expenses incurred in the construction and installation of the tap facility and for remote supervisory control at Columbia's Loudoun measuring station.

Comment date: April 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. El Paso Natural Gas Company

[Docket No CP88-270-000]

March 21, 1988.

Take notice that on March 3, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-270-000 an application pursuant to section 7 of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the revision and reinstitution of certain standby charges under its existing sales rate schedules, all as more fully set forth in the application which is on file with the commission and open to public inspection.

El Paso states that on December 31, 1987, El Paso filed, pursuant to section 4 of the NGA and Part 154 of the Commission's regulations, its notice of change of rates for natural gas service rendered to its jurisdictional customers for all rate schedules contained in its FERC Gas Tariff, Volume Nos. 1 and 1-A and certain rate schedules in Volume Nos. 2 and 2-A. El Paso states that as a part of this notice of change, it proposed *inter alia*, to reclassify certain costs from production to transmission for rate design purposes and otherwise to revise its existing rate design as reflected in its current rates established through the settlements in Docket Nos. RP85-58-000 and RP86-45-000. El Paso asserts that of particular relevance herein, as a direct consequence of the cost classification and revised rate design reflected in new rates proposed in Docket No. RP88-44-000, which is currently pending before the Commission, the existing standby charges in the existing sales rate schedules (Rate Schedules ABD-1, ABD-S,G,A-1-X and X-1) were proposed to be deleted.

El Paso States further that in a Commission order issued January 29, 1988, in Docket Nos. RP88-44-000 and CP88-203-000, the Commission accepted and suspended the effectiveness of El Paso's revised rates for five months until July 1, 1988, at which time these rates would be made effective subject to refund and certain conditions. It is stated that the Commission required that El Paso reclassify certain production area costs and revenues from transmission back to production area costs and revenues from proposed Capacity Reservation Changes and that it eliminate the differentiation in its proposed rates for interruptible transportation in its proposed rates for interruptible transportation under Rate Schedule T-1 and firm transportation under Rate Schedule T-3 between Capacity Reservation Charge Related and Non-Capacity Reservation Charge Related transportation. El Paso asserts that in doing so the Commission recognized that the requested changes might make it appropriate for El Paso to propose to add or waive certain charges through a "properly designed standby charge." El Paso feels that the Commission held that reinstatement of standby charges would require certificate authorization pursuant to Section 7 of the NGA.

El Paso further states that similar to the standby charges initially established in Docket No. RP86-45-000, the sales standby charges proposed in the instant application would be applicable to sales customers who elect to swing to transportation services while retaining their current call on sales gas. El Paso states that its customers have access to such service currently and consequently no new service is being proposed herein. El Paso believes that the standby charge would serve the necessary function of appropriately allocating the costs of providing previously authorized sales services and would provide El Paso with a means whereby those costs may be recovered from the customers on whose behalf they are incurred. El Paso asserts that the standby charge is simply a mechanism through which El Paso could be compensated for continuing to stand ready to provide sales service on demand during periods when customers are otherwise availing themselves of the opportunity to switch to transportation gas sources to meet requirements which would otherwise be served with El Paso sales gas.

El Paso explains that a customer who contracts for transportation service under Rate Schedule T-1 while retaining the current call on sales service would be billed a standby charge under the appropriate sales rate schedule on a quantity equivalent to the volume of transportation gas taken in lieu of sales gas subject to certain exceptions more fully set forth in the application. Production area charges and field transportation charges otherwise payable under El Paso Rate Schedule T-1 would not apply with respect to volumes to which the standby charge is applicable.

El Paso explains, with respect to Rate Schedule T-3, a customer who elects to reserve the right to receive either sales gas or firm transportation, the standby charge would be billed based on 95 percent of the firm transportation contract demand quantity. Further, the customer would not be subject to the standby charge if and to the extent it elects to reduce its existing entitlement to receive El Paso's sales gas and when a customer has paid a standby charge the associated production area charges and field transportation charges would not be payable.

Comment date: April 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP88-272-000]

March 21, 1988.

Take notice that on March 3, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, pursuant to section 7(b) of the Natural Gas Act, as amended, filed in Docket No. CP88-272-000 an application requesting an order permitting and approving abandonment of facilities located within its gas gathering system located in Brooken Field in Haskell County, Oklahoma.

United states in its Application that it has released from contract its reserves connected to the Brooken Field System since it no longer has, or foresees, a need for this gas. United also states that the Brooken Field System is located some distance from and is not connected to United's main system, and that it would be economically more efficient for United to dispose of the system rather than to continue to incur the attendant operation and maintenance expense. United has entered into an agreement of sale of the Brooken Field System to Stellar Gas Company, a Texas corporation, and submits that the present and future public interest is best served by allowing United to abandon the certificated facilities located within the Brooken Field System and thereby remove them from United's rate base, as is more fully set forth in the Application which is on file with the Commission and open for public inspection.

Comment date: April 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Shenandoah Gas Company

[Docket No. CP88-278-000]

March 21, 1988.

Take notice that on March 7, 1988, Shenandoah Gas Company (Shenandoah), P.O. Box 2400, Winchester, Virginia 22601 filed in Docket No. CP88-278-000 an application pursuant to section 7 of the Natural Gas Act (NGA) and § 284.224 of the Commission's regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Shenandoah requests authority to use its jurisdictional transmission system to engage in self-implementing interruptible transportation of customer-owned volumes of gas to end-users located in its section 7(f) of the NGA service area in the states of Virginia and West Virginia. Shenandoah also requests that the Commission declare that it is eligible to be treated as a local distribution company for the purposes of section 311 of the Natural Gas Policy Act of 1978

Comment date: April 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure , a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a format hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6609 Filed 3-24-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-274-000 et al.]

C-E Huntington Limited Partnership et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment Date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 22, 1988.

Take notice that the following filings have been made with the Commission.

1. C-E Huntington Limited Partnership

[Docket No. QF88-274-000]

On March 2, 1988, C-E Huntington Limited Partnership (Applicant), of 7 Waterside Crossing, Windsor, Connecticut 06095 submitted for filing an application for certification of a facility

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as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Huntington, New York. The facility will consist of three stoker-fired waterwall steam generators and a steam turbine generator. The maximum net electric power production capacity of the facility will be 22 megawatts. The primary energy source will be Biomass in the form of municipal solid waste. Natural gas will be used for start-up, shut-down and temperature control, however, such fossil fuel usage will not exceed 15% of the total energy input to the facility during any calendar year period.

2. American REF–FUEL Company of Lehigh Valley

[Docket No. QF86–289–001]

On February 25, 1988, American REF–FUEL Company of Lehigh Valley (Applicant), of P.O. Box 3151, Houston, Texas 77253 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility as originally proposed was to consist of two solid waste-fired steam generators with a combined capacity of 750 tons per day and net electric power production capacity of 19.4 MW.

By order issued January 28, 1986, the Commission granted certification of the facility as a small power production facility (34 FERC ¶ 62,239).

The recertification is requested due to an increase in the steam generator's capacity and the net electric power production capacity to 1000 tons per day and 32 MW respectively.

3. A. Johnson Energy Development, Inc.

[Docket No. QF88–282–000]

On March 1, 1988, A. Johnson Energy Development, Inc. (Applicant), of 110 East 59th Street, New York, New York 10022 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Monterey County, California. The facility will consist of a fluidized bed steam generator and an extraction/condensing turbine generator. The net electric power production capacity will be approximately 16 megawatts. The primary energy source will be biomass in the form of wood waste. Natural gas will be used for start-up purposes, however, such fossil fuel usage will not exceed 1.01% of the total energy input to the facility during any calendar year period.

4. Hanover Energy Associates

[Docket No. QF88–278–000]

On February 26, 1988, Hanover Energy Associates, a Massachusetts Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Route 738, Doswell, Virginia. The facility will consist of four combustion turbine generators, four waste heat recovery steam generators and two extraction/condensing steam turbine generators. The thermal output of the facility, in the form of steam, will be used by National Energetics Company in the production of carbon dioxide. The primary energy source for the facility will be coal and natural gas. A coal gasification facility, to be located at the site, will consist of twenty-four to twenty-eight Wellman-Galusha gasifiers. The electric power production capacity of the facility will be 698 MW. The facility is expected to be operational by July 1, 1990.

5. Killingly Energy Limited Partnership

[Docket No. QF88–287–000]

On March 9, 1988, Killingly Energy Limited Partnership (Applicant), of 100 Clinton Square, Suite 400, Syracuse, New York 13202, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at Louisa Viens Drive, Killingly, Connecticut. The Plant will consist of a boiler, condensing steam turbine generators, and cooling towers. The primary energy source will be biomass in the form of wood waste. The net electric power production capacity of the facility will be 32.2 MW. Startup of the new facility is expected to begin in January 1992.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6608 Filed 3–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2260–001]

James J. Howard; Filing

March 22, 1988.

Take notice that on March 16, 1988, James J. Howard filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of corporation
Chairman, President and Chief Executive Officer.	
Director	Northern States Power Company—Minnesota.
Director	Equitable Life Assurance Society of the United States.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6612 Filed 3–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–265–001]

Mesa Operating Limited Partnership; Application for Extension of Blanket Limited-Term Abandonment and Certificate With Pregranted Abandonment

March 22, 1988.

Take notice that on January 14, 1988, Mesa Operating Limited Partnership, One Mesa Square, Amarillo, Texas 79189, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for a three year term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–6543 Filed 3–24–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–357–000 et al.]

N–Gas, Inc., et al.; Applications for Blanket Limited-Term Certificates With Pregranted Abandonment[1]

March 22, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 7, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI88–357–000, Mar. 11, 1988	N-Gas, Inc., 104 South Broadway, Wichita, Kansas 67202	Unlimited.
CI88–363–000, Mar. 16, 1988	Woodward Marketing, Inc., 5300 Hollister, Suite 350, Houston, Texas 77040	3 years.

[FR Doc. 88–6610 Filed 3–24–88; 8:45 am]

BILLING CODE 6717–01–M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. CI88–74–001]

Panhandle Trading Co.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

March 21, 1988.

Take notice that on March 17, 1988, Panhandle Trading Company (PTC), P.O. Box 1354, Houston, Texas 77251–1354, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for an unlimited term and to authorize sales by others to PTC, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6611 Filed 3-24-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3355-2]

Environmental Impact Statements; Availability

Availability of Environmental Impact Statements Filed March 14, 1988 Through March 18, 1988 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 880082, Final, COE, CO, Metropolitan Denver Water Supply Project, Two Forks Dam and Reservoir and Williams Fork Gravity Collection System Construction, 404 Permit and Approvals, Douglas, Jefferson and Grand Counties, CO, Due: May 5, 1988, Contact: Steven G. West (402) 221-3900

EIS No. 880083, FSuppl, FHW, NC, US 74/Independence Boulevard Corridor Improvements, Mecklenburg County to Uptown Charlotte, Additional Alternatives, Funding, Mecklenburg County, NC, Due: April 15, 1988, Contact: Kenneth L. Bellamy (919) 856-4346

Federal Highway Administration and the Urban Mass Transportation Administration are Joint Lead Agencies on this project.

EIS No. 880084, Final, AFS, CA, Los Padres national forest, Land and Resource Management Plan, Implementation, Monterey, San Luis Obispo, Santa Barbara, Ventura and Los Angeles Counties, CA, Due: April 25, 1988, Contact: Gerald Little (805) 683-6711

EIS No. 880085, Draft, FHW, GA, US 411 Relocation, US 411/GA-20 Interchange with US 41 to US 411 Interchange with I-75, Funding and 404 Permit, Bartow County, GA, Due: May 9, 1988, Contact: Louis Papet (404) 347-4751

EIS No. 880086, FSuppl, COE, CA, Oakland Outer and Inner Harbor, Deep Draft Navigation Improvements, Alcatraz Dredged Material Disposal Site, Changed Conditions, Implementation, Alameda County, CA, Due: April 25, 1988, Contact: Patricia Duff (415) 974-0441

EIS No. 880087, Final, EPA, GA, Brunswick Ocean Dredged Material Disposal Site Designation for Material Dredged from the Brunswick Harbor, GA, Due: April 25, 1988, Contact: Sally Turner (404) 347-2126

EIS No. 880088, Final, FHW, MN, US 10/US MN Trunk Highway 10 Improvements, CSAH-77 near Bluffton to CSAH-53 south Motley, Funding and 404 Permit, Otter Tail, Wadena, Todd and Morrison Counties, MN, Due: April 25, 1988, Contact: Charles E. Foslien (612) 290-3232

EIS No. 880089, Draft, AFS, OR, Silver Fire Recovery Project Area, August thru November 1987 Silver Complex Fire Land Management Plan, Implementation, Siskiyou National Forest, Josephine and Curry Counties, OR, Due: May 9, 1988, Contact: Richard Stem (503) 479-5301

EIS No. 880090, Final, BLM, CA, Arcata Resource Area Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, King Range and Chemise Mountain WSAs, Ukiah District, Humboldt and Mendocino Counties, CA, Due: April 25, 1988, Contact: Bob Barney (916) 978-4722

Amended Notices

EIS No. 870462, Draft, AFS, Mount Baker-Snoqualmie National Forest, Land and Resource Management Plan, Implementation, King, Pierce, Skagit, Snohomish and Whatcom Counties, WA, Due: May 2, 1988, Contact: Lyle E. Jack (206) 442-4888 Published FR 01-08-88—Review period extended.

EIS No. 880032, Draft, USA, Dugway Proving Ground, Biological Aerosol Test Facility (BATF), Construction and Operation, Baker Laboratory, Tooele and Juab Counties, UT, Due: April 1, 1988, Contact: Kenneth C. Kirkman (801) 831-3417. Published FR 02-12-88—Review period extended

EIS No. 880069, Final, COE, Saw Mill River Basin Flood Control Plan, Old Nepperan Avenue Bridge to near the former Tompkins Avenue Bridge, Nepara Park, City of Yonkers, Westchester County, NY Contact: Peter Doukas (212) 264-4662

Published FR 3-11-88—Retracted due to noncompliance of distribution (1506.9).

Dated: March 22, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-6633 Filed 3-24-88; 8:45 am]

BILLING CODE 6560-50-M

[(DR-FRL-3354-8)]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 7, 1988 through March 11, 1988 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-K61091-CA, Rating LO. Shasta and Trinity Units, Revised Operation and Development Plan, Whiskeytown-Shasta-Trinity National Recreational Area, Implemenation, Shasta and Trinity National Forests, Shasta and Trinity Counties, CA

Summary:

EPA expressed a lack of objections to this project, but requests that the Forest Service record of decision commit to the DEIS mitigation measures to protect and improve water quality on the lakes and surface waters of the NRA.

Final EISs.

ERP No. F-BLM-G61031-NM, New Mexico Statewide Wilderness Study Areas, Wilderness Recommendtaions, Designation or Nondesignation, several Counties, NM. Summary:

EPA feels this project satisfactorily responds to previous concerns. EPA has no objections to the project as proposed.

ERP No. F-IBR-L39044-OR, Umatilla Basin Water Supply Project, Umatilla River Streamflows Improvement and Salmon and Steelhead Fish Runs Restoration, Implementation and Funding, Umatilla and Morrow Counties, OR.

Summary:

EPA's review of this project was not deemed necessary. No formal comments were made to the agency.

ERP No. F-SFW-L64036-AK, Yukon Delta National Wildlife Refuge, Long Term Management Plan and Wilderness Review, Implementation.

Summary:

EPA continues to have environmental concerns with the preferred alternative. EPA suggested that activities with impacts that require monitoring should be delayed until adequate funding and staff levels are assured.

Regulations

ERP No. R-ASC-A99182-00, 7 CFR Part 704; Conservation Reserve Program Interim Rule to Amend Regulation (53 FR 733).

Summary:

EPA commends ASC on the amendments authorizing filter strips and encouraging free planting on lands enrolled in the Conservation Reserve Program Program. EPA suggests additional changes to increase environmental benefits.

Dated: March 22, 1988.

William D. Dickerson,

Deputy Director Office of Federal Activities.

[FR Doc. 88-6634 Filed 3-24-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3354-6]

Proposed Administrative Settlement and Opportunity to Comment; Harold Dellett et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: EPA is providing notice of a proposed administrative settlement for recovery of EPA's response and oversight costs pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. Public Comment is also solicited by this notice.

Under 42 U.S.C. 9606, EPA is authorized to enter into and to issue Orders requiring among other things, investigation and cleanup of facilities where hazardous substances may or have been released. 42 U.S.C. 9607 provides that a party responsible for the release is liable for costs expended by the United States in its response to the problem. 42 U.S.C. 122(h) provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the case has not been referred to the Department of Justice. Because this case is one in which the United States has incurred costs less than $500,000, EPA may compromise and settle the claim without the prior written approval of the Attorney General. This Notice pertains to the settlement of a case which has not been referred to the Department of Justice.

Three responsible parties have completed cleanup of PCB contamination at the facility which is located in Escondido, California. The responsible parties are: Harold Dellett, owner of the facility, ATI Inc, lessee, and CSI, Inc. sublessee. Cleanup activities included: demolition and off-site disposal of contaminated buildings; removal and off-site disposal of PCB-contaminated soil; and post-cleanup soil sampling to confirm that established cleanup levels were achieved.

EPA expended $179,193 over a three-year period to conduct initial soil sampling and to oversee the responsible parties' cleanup. The responsible parties have agreed to reimburse $144,000 of the total costs expended by EPA in settlement of this case. EPA believes that the settlement is fair and in the public interest.

EFFECTIVE DATE: April 25, 1988. Comments will be considered if received before the effective date.

ADDRESS: Comments may be mailed to: Betsy Curnow, United States Environmental Protection Agency, 215 Fremont Street, T-4, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Betsy Curnow, (415) 974-8364.

Dated: February 29, 1988.

Jeff Zelikson,

Director, Toxics and Waste Management Division, EPA Region 9.

[FR Doc. 88-6549 Filed 3-24-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59841); FRL-3354-4]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of thirteen such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-104 and 88-105	Feb. 18, 1988.
Y 88-106 and 88-107	Feb. 21, 1988.
Y 88-108 and 88-109	Feb. 22, 1988.
Y 88-110 and 88-111	Feb. 23, 1988.
Y 88-112	Feb. 24, 1988.
Y 88-113 and 88-115	Feb. 28, 1988.
Y 88-116 and 88-117	Mar. 2, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 88-104

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyisocyanate polymer.

Use/Production. (G) Resin solution for coatings. Prod. range: conf

Y 88-105.

Importer. BASF Corporation Engineering Plastics.

Chemical. (G) Polyethersulfone.

Use/Import. (S) Polymer. Import range: Conf

Y 88-106

Manufacturer. Confidential.

Chemical. (S) 2-Methylpentamethylene diamine; zinc oxide; isoph-thalic acid; othophosphorous acid; high molecular wt aliphatic primary alcohol.

Use/Production. (G) Pigment. Prod. range: 375,000 kg/yr.

Y 88-107

Importer. Confidential.

Chemical. (G) Polyester.

Use/Import. (G) Coating. Import range: Conf

Y 88-108

Manufacturer. C.J. Osborn Div of Suvar Corporation.

Chemical. (G) Water dispersible epoxy.

Use/Production. (S) Pigmented and clear finishes. Prod range: Conf

Y 88-109

Manufacturer. Confidential.

Chemical. (G) Modified polyester.

Use/Production. (G) Resin. Prod range: Conf

Y 88-110

Manufacturer. Confidential.

Chemical. (G) Phenolic modified alkyd resin.

Use/Production. (S) Protective coatings. Prod range: 16,000 kg/yr.

Y 88-111

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Resin used to manufacture Industrial coatings. Prod range: Conf

Y 88-112

Importer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Import. (G) Coatings. Import range: Conf

Y 88-113

Importer. UNI-NYF, Inc.

Chemical. (S) Methyl ethyl ketoxine; diphenyl methane diisocyanate.

Use/Import. (S) Resin. Import range: 23,000 kg/yr.

Y 88-115

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (S) Protective coatings. Prod range: 3,000 kg/yr.

Y 88-116

Importer. Hitachi Chemical Co. America, LTD.

Chemical. (G) Methyl methacrylate polymer.

Use/Import. (G) Circuit board imagery. Prod. range: Confidential.

Y 88-117

Importer. Hitachi Chemical Co. America, LTD.

Chemical. (G) Methyl methacrylate polymer.

Use/Import. (G) Circuit Board Imagery. Prod. range: Confidential.

Date: March 17, 1988.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-6553 Filed 3-24-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0120.

Title: Implementation of Coastal Barriers Resources Act.

Abstract: Section II of the Coastal Barriers Resources Act prohibits the sale of National Flood Insurance Program policies for new construction and substantial improvements of structures on undeveloped coastal barriers on or after October 1, 1983. The information collection is used by FEMA to determine that a structure is neither new construction or a substantial improvement, and, therefore, is eligible for flood insurance.

Type of Respondents: Individuals or households, State or local governments, farms, businesses or other for profit, Federal agencies or employees, nonprofit institutions, small businesses or organizations.

Number of Respondents: 25.

Burden Hours: 38.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 325 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 18, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-6540 Filed 3-24-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

L. A. Express, Inc., dba Team International, 161 Prescott St., East Boston, MA 02128, Officers: Leo Lyons, President/Director, Donald Lombardi, Treasurer/Director

Margaret Lacock Bennett, dba Pacific Rim Export Services, 127 Esplanade, San Clemente, CA 92672, Officer: Margaret Lacock Bennett, Sole Proprietor

Marvin L. Nelson, 7500 212th SW., Suite 116 S/T, Edmonds, WA 98020, Officer: Marvin L. Nelson, Sole Proprietor

BWI Transworld IL, Inc., 9400 W. Foster, Chicago, IL 60656, Officers: George Wellander, President/Director, Mary Ann Wellander, Secretary

Florida National Brokers, Inc., 6917 N.W. 50th St., Miami, Florida 33166, Officers: Victor Llarena, President/Stockholder, Emilio P. Leon, Director/Stockholder, Peter Jacobs, Director/Stockholder

P. Malinbaum Inc., dba Euro Transport Connections, 423 Hindry Avenue #C, Inglewood, CA 90301, Officers: Patrice Malinbaum, President, Lori Malinbaum, Vice President, Frank Miya, Secretary

P.T.L. Air Freight Inc., 145 Hook Creek Blvd., Valley Stream, New York, 11581, Officers: Jay C. McQuillen, President/Secretary, Joan McQuillen, Vice President/Treasurer.

Dated: March 22, 1988.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-6573 Filed 3-24-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Algemene Bank Nederland, N.V., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statment of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 8, 1988.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland, N.V.*, Amsterdam, The Netherlands; A.B.N.—Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; and LaSalle National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Lane Data Services, Inc., Northbrook, Illinois, and thereby engage in the provision of courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y.

2. *R & J Financial Corporation* Elma, Iowa; to engage in general insurance agency activities pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted in the State of Iowa and any state or states immediately adjacent thereto plus any state in which specific insurance agency activity was conducted or approved to be conducted prior to May 1, 1982. Applicant will acquire the insurance activities from its subsidiary, Peoples Savings Bank, Elma, Iowa. Comments on this application must be received by April 15, 1988.

Board of Governors of the Federal Reserve System, March 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6505 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Auckland Pension Funds Ltd. et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Auckland Pension Funds Limited*, Wellington, New Zealand; Industrial Equity (Pacific) Limited, Hong Kong; Brierley Investments Limited, Wellington, New Zealand; Citizens & Glaziers Life Assurance Co., Limited, Sydney, Australia; Wilbur Enterprises Limited, Hong Kong; Industrial Equity Limited, Sydney, Australia; and Zorzan Investments Limited, Hong Kong; to acquire 12.03 percent of the voting shares of Whitney Holding Corporation, New Orleans, Louisiana, and thereby indirectly acquire Whitney National Bank, New Orleans, Louisiana.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles Travis Henderson*, Oklahoma City, Oklahoma; to acquire 81.84 percent of the voting shares of Choctaw Bancorp, Inc., Choctaw, Oklahoma, and thereby indirectly acquire Choctaw State Bank, Choctaw, Oklahoma.

Board of Governors of the Federal Reserve System, March 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6506 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

Corestates Financial Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act 12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Signal

Financial Corporation, Pittsburgh, Pennsylvania, in acting as agent for the sale of insurance that is limited to ensuring the repayment of the outstanding balance due on extensions of credit in the event of involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(B) of the Board's Regulation Y. These activities will be conducted in the states of Florida, Maryland, Ohio, Pennsylvania, and Virginia.

Board of Governors of the Federal Reserve System, March 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6507 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

ENB Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *ENB Financial Corporation*, Elkridge, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Elkridge National Bank, Elkridge, Maryland.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Moundville Bancshares*, Moundville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Moundville, Moundville, Alabama.

Board of Governors of the Federal Reserve System, March 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6508 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

The Sanwa Bank, Ltd., Osaka, Japan; Application To Engage in Various Securities and Financial Advisory Activities

The Sanwa Bank, Limited, Osaka, Japan, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a)(2) and (3)), to acquire Brophy, Gestal, Knight & Co., L.P., New York, New York ("Company"), a primary dealer in U.S. government securities, and thereby engage in:

(1) Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("bank-eligible securities") pursuant to 12 CFR 225.25(b)(16) and engaging in activities incidental thereto including repurchase and reverse repurchase transactions and the provision of clearing, settling, accounting, record keeping and other ancillary services to those counterparties with which it deals that do not maintain accounts with clearing agencies;

(2) Engaging in futures, forward and options contracts on bank-eligible securities for hedging purposes in accordance with 12 CFR 225.142;

(3) Providing discount brokerage services in accordance with 12 CFR 225.25(b)(15);

(4) Providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to 12 CFR 225.25(b)(4) (iii) and (iv) in connection with and as an incident to the proposed bank-eligible securities activities but not in connection with its brokerage activities;

(5) Providing advice in connection with financing transactions to nonaffiliated institutional customers in accordance with the limitations set forth in *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); and

(6) Acting as a futures commission merchant ("FCM") for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account; and providing investment advice to institutional Customers in conjunction therewith as permitted by 12 CFR 225.25(b)(18) and (19) respectively (until Company becomes a registered FCM, Applicant proposes that Company continue to receive customer orders to purchase and sell financial contracts and pass them on to FCM's for execution, clearing and settlement for a fee; Company would not take a position as principal in such contracts).

Applicant has also applied for approval to acquire indirectly through the Company 1 percent of the voting shares of Liberty Brokerage, Inc., New York, New York, an inter-dealer blind broker of government securities.

Applicant contends that its proposed acquisition of Company will be procompetitive, will provide Company with a stronger capital base and access to broader customer base and will not result in adverse effects.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 15, 1988. Any request for a hearing must, as required by 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, March 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6509 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

Bancorp New Jersey, Inc., et al.; Formation of; Acquisition by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-2860) published at page 4074 of the issue for Thursday, February 11, 1988.

Under the Federal Reserve Bank of New York, the entry for Bancorp New Jersey, Inc. is revised to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bancorp New Jersey, Inc.*, Somerville, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of New Jersey Savings Bank, Somerville, New Jersey. Bancorp thereby will acquire indirectly High Acre Realty Corporation, NJS Advisory Services, Inc., and NJS Realty Corporation, and engage in real estate brokerage and real estate property appraisal services.

Comments on this application must be received by April 11, 1988.

Board of Governors of the Federal Reserve System, March 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6504 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

Beverly Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 7, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beverly Bancorporation, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Martinsville State Bank, Martinsville, Illinois, and thereby relocate its office to Lockport, Illinois, and change its name to Beverly Bank of Lockport.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6650 Filed 3-24-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 26, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package.)

1. Application for Retirement Insurance Benefits —0960-0007— The information is needed to determine an applicant's eligibility to retirement insurance benefits. Respondents: Individuals or households. Number of Respondents: 1,560,000; Frequency of Response: One-time *Estimated Annual Burden:* 273,000 hours.

2. Letter to Employer Requesting Wage Information —0960-0184— This form is used by SSA to verify the wages paid to an SSI claimant or recipient to determine to what extent that person can be entitled to SSI payments. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 259,100; Frequency of Response: Occasionally; Estimated Annual Burden: 23,750 hours.

3. Report to U.S. Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to Handle Funds (and) Report to U.S. Social Security Administration—0960-0049—These forms are used by SSA to determine the continuing entitlement and benefit amounts of social security beneficiaries who live outside the United States. Respondents: Individuals or households. Number of Respondents: 325,000; Frequency of Response: Annually; Estimated Annual Burden: 32,500 hours.

4. Disability Return to Work Mailer—NEW—The information collected will test the effectiveness of using a mailer to identify title II disability beneficiaries who have returned to work. Respondents: Individuals or households. Number of Respondents: 23,600; Frequency of Response: One-time; Estimated Annual Burden: 4,074 hours.

OMB Desk Officer: Elaina Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package.)

1. Intermediary's Request to Hospital for Medical Information on Inpatient Claims for Statutorily Excluded Services—0938-0224—This information collection is to enable intermediaries to obtain hospital medical records for inpatient claims involving statutorily excluded services. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 116; Frequency of Response: Occassionally; Estimated Annual Burden: 29 hours.

2. Intermediary Request to Skilled Nursing Facilities for Medical Information on Claims to be processed—0938-0223—This information is collected and used by fiscal intermediaries to determine medical coverage for skilled nursing facilities. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 7,381; Frequency of Response: Occasionally; Estimated Annual Burden: 176,663 hours.

3. HMO/CMP Disenrollment Survey Form—NEW—The purpose of the survey is to determine whether medicare beneficiaries disenroll for the HMO/CMP for reasons related to health care needs and their ability to get care. Respondents: Individuals or households. Number of Respondents: 13,931; Frequency of Response: One-time; Estimated Annual Burden: 3,483 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package.)

1. State Long-Term Care Ombudsman Report—0980–0121—The Older Americans Act requires State Agencies on Aging to establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long term care facilities for the purpose of identifying and resolving significant problems, with provisions for submission of such data to the agency of the State responsible for licensing or certifying long term care facilities. Respondents: State or local governments. Number of Respondents: 52; Frequency of Response: One-time; Estimated Annual Burden: 832 hours.

2. Programs Performance Report for Title III of the Older Americans Act—0980–0004—The Program Performance Report monitors program operations of State Agencies to allow AoA to respond to Congress, the Department and the public; establish policy direction, and measure program impact. Respondents: State or local governments. Number of Respondents: 57; Frequency of Response: One-time; Estimated Annual Burden: 1,157 hours.

3. Child Welfare Services State Plan (Title IV–B)—0980–0142—State Plan is jointly developed by Federal and State staff as required by Title IV–B of the Social Security Act (45 USC 622). States assure compliance with law and regulation, analyze needs, develop goals and objectives, and summarize services and expenditures. States may choose format and submission period for 1, 2 or 3 years. Respondents: State or local governments; Federal agencies or employees. Number of Respondents: 55; Frequency of Response: One-time; Estimated Annual Burden: 10,000 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package.)

1. Program Announcement, OCS–88–2 Availability of Funds and Request for Applications Under OCS Demonstration Partnership Program—NEW—The information obtained through the submission of this grant announcement will be used as the basis for awarding nine to twelve grants not exceed $250,000. The grants will test and evaluate new approaches to lessening dependency on public assistance among low income families and individuals. Respondents: State or local governments, Non-profit institutions. Number of Respondents: 120; Frequency of Response: One-time; Estimated Annual Burden: 120 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package.)

1. Audit of SSA's Use of the Form SSA–721, Statement of Death and Burial Expenses by Funeral Directors—NEW—The Office of the Inspector General needs information from funeral directors concerning their use of Form SSA–721, which provides notice of death to SSA. Respondents: Businesses or other for-profits, Small businesses or organizations. Number of Respondents: 100; Frequency of Response: Single-time; Estimated Annual Burden: 17 hours.

OMB Desk Officer: Elaina Norden.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package.)

Health Resources Services Administration

1. HRSA Competing Training Grants Application, Supplements and Regulations—0915–0060—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. Respondents: State or local governments, Non-profit institutions. Number of Respondents: 1,964; Frequency of Response: Occasionally; Estimated Annual Burden: 123,850 hours.

Centers for Disease Control

1. Congenital Syphilis Followup—0920–0128—This data collection will provide surveillance data on the extent and trend of congenital syphilis (Under 1 year of age) in the U.S. It will serve as an epidemiologic aid in the diagnosis and followup of cases and will provide local areas with a standardized collection method to assure accurate diagnosis of early congenital syphilis. Respondents: State or local governments. Number of Respondents: 59; Frequency of Response: Occasionally; Estimated Annual Burden: 350 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HDS: 202–472–4415
SSA: 301–965–4149
HCFA: 301–594–1238
FSA: 202–245–0652
OS: 202–245–6511

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer)

Date: March 22, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–6578 Filed 3–24–88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88N–0106]

Animal Drug Export; Baytril® (Enrofloxacin) Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mobay Corp. has filed an application requesting approval for the export of the animal drug Baytril® (enrofloxacin) Tablets for dogs to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4500.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Mobay Corp., Box 390, Shawnee Mission, KS 66201, has filed an application requesting approval for the export of the animal drug Baytril® (enrofloxacin) Tablets for dogs, to Canada. The drug is indicted for treatment of susceptible bacterial pathogens. The application was received and filed in the Center for Veterinary Medicine on March 14, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 4, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: March 21, 1988.

Richard A. Carnevale,

Deputy Associate Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88–6522 Filed 3–24–88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Three Programs: Advanced Nurse Education Grants, Nurse Practitioner and Nurse Midwifery Grants, and Nursing Special Project Grants, and Proposed Special Consideration for Nursing Special Project Grants (Purpose 2)

The Health Resources and Services Administration announces that applications for the following nursing programs will be accepted in Fiscal Year 1988 and invites comments on the proposed special consideration set forth below for Nursing Special Project Grants, Purpose 2.

(1) Advanced Nurse Education Grants

(2) Nurse Practitioner and Nurse Midwifery Grants

(3) Nursing Special Project Grants

1. Advanced Nurse Education Grants

Section 821 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Z, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) significantly expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialities determied by the Secretary of Health and Human Services to require advanced education.

Eligible Applicants: Public and nonprofit private collegiate schools of nursing.

Section 821(a), requires that the Secretary give priority in geriatric and gerontological nursing.

Special considerations

Applicant institutions that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available, and have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national avarage or have proposed new projects aimed at attracting minority students will receive special consideration. The current national average of graduate minority students in nursing is four percent.

Approximately $16.5 million is being made available by the Department of Health and Human Services appropriations for Fiscal Year 1988, (Pub. L. 100–202). In addition to funding noncompeting continuations, it is estimated that 45 competing projects averaging $150,000 will be supported.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education,

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of program offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which the education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act; and

(6) The capability of the applicant to carry out the proposed project.

This program is listed at 13.299 in the *Catalog of Federal Domestic Assistance.*

2. Nurse Practitioner and Nurse Midwifery Grants

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Y, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) expand, or (c) maintain programs for the education of nurse practitioners and/or nurse midwives.

In accordance with the statute, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health manpower shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long-term care (including home health care and institutional care)) to such patients and education to meet the particular

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needs of nursing home patients and patients who are confined to their homes.

Eligible Applicants: Public or nonprofit private schools of nursing and public health, public or nonprofit private schools of medicine which received grants or contracts and under section 882(a) prior to October 1, 1985, public or nonprofit private hospitals, and other public or nonprofit private entities.

Review Critreria

The review of applications will take into consideration the following criteria:

(1) The adequacy of the qualifications and experience of the program director, staff and faculty to carry out the program;

(2) The administrative and managerial ability of the applicant to carry out the proposed project; and

(3) The extent to which the applicant will recruit trainees who are residents of health manpower shortage areas.

Special Considerations

Applicants that indicate a clear, financial need, and plan to sustain programs beyond the period during which Federal assistance is available, and have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or have proposed new projects aimed at attracting minority students will receive special consideration.

Approximately $11.3 million is being made available by the Department of Health and Human Services appropriations for Fiscal Year 1988, (Pub. L. 100–202). In addition to funding noncompeting continuations, it is estimated that 23 competing projects averaging $185,000 will be supported. This program is listed at 13.298 in the Catalog of Federal Domestic Assistance.

3. Nursing Special Project Grants

Section 820 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart T, authorizes assistance in meeting the costs of special projects to carry out the following designated purposes:

(1) To increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary of Health and Human Services, by:

(A) Identifying, recruiting, and selecting such individuals,

Facilitating the entry of such individuals into schools of nursing,

(C) Providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

(D) Providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

(E) Paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education, and

(F) Publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools;

(2) To provide continuing education for nurses;

(3) To provide appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession;

(4) To demonstrate improved geriatric training in preventive care, acute care and long term care (including home health care and institutional care);

(5) To help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care; or

(6) To provide training and education to upgrade the skills of licensed vocational practical or vocational nurses, nursing assistants, and other paraprofessional nursing personnel.

(7) To demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities and ambulatory care facilities.

(8) To demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities.

(9) To demonstrate methods to encurage nursing graduates to practice in health manpower shortage areas (designated under Section 332 of the PHS Act) in order to improve the specialty and geographical distribution of nurses in the United States.

Under section 820(d)(1) funds for special projects under purposes (1) through (6) above must be obligated as follows: not less than 20 percent of the appropriated funds for projects to increase education opportunities for individuals from disadvantaged backgrounds (which may include stipends) (purpose 1); not less than 20 percent of the appropriated funds to demonstrate improved geriatric training (purpose 4); and not less than 10 percent of the appropriated funds to help increase the supply or improve the distribution by geographic area or by specialty groups of adequately trained nursing personnel (purpose 5). The remaining appropriated funds will be awarded for purposes (2), (3) and (6).

Section 820(d)(2) requires that in making grants from funds appropriated for purposes (7) through (9), the Secretary shall give priority to applications for purpose (8).

Eligible Applicants: Public or nonprofit private schools of nursing or other public or nonprofit private entities.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The national or special local need which the particular project proposes to serve;

(2) The potential effectiveness of the proposed project in carrying out such purposes;

(3) The administrative and managerial capability of the applicant to carry out the proposed project;

(4) The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

(5) The qualifications of the project director and proposed staff;

(6) The reasonableness of the proposed budget in relation to the proposed project; and

(7) The potential of the project to continue on a self-sustaining basis after the period of grant support.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance.*

Special Considerations

Special consideration will be given to those projects under purpose 1 (to increase nursing education opportunities for individuals from disadvantaged backgrounds) that propose to use at least 20 percent of grant funding as stipends given directly to nursing students.

Special consideration will be given to special projects under purposes 1 through 6 that plan to continue beyond the period in which Federal funding is available and meet a clear, financial need.

For purposes 7, 8 and 9, special consideration will be given to:

(1) Projects which include a target population of minority or disadvantaged persons.

(2) Projects that plan to continue beyond the period in which Federal funding is available and meet a clear financial need.

(3) Projects which demonstrate efforts to recruit and retain minority nurses.

The reasons for these special considerations are:

(1) To help ensure that grant funds are awarded to educational institutions with a demonstrated need for them;

(2) To encourage grantee institutions to continue grant supported programs after grant support ends; and

(3) To increase the percentage of minority enrollment of students in graduate nursing programs. Minority students are currently underrepresented in these programs.

Approximately $9.0 million is being made available for purposes 1 through 6 by the Department of Health and Human Services appropriations for Fiscal year 1988, (Pub. L. 100-202). In addition to funding noncompeting continuations, it is estimated that 41 competing projects averaging $112,804 will be supported.

Approximately $2.5 million is being made available for purposes 7 through 9. In addition to funding noncompeting continuations, it is estimated that 5 competing projects averaging $145,000 will be supported.

Proposed Special Consideration for Special Project Grants, Purpose 2

Special consideration is being proposed for Purpose 2 for those approved applications with projects which provide expansion of current or development and implementation of new curriculum concerning the prevention of HIV-infection and the care of HIV-infected persons, including AIDS patients. Nursing personnel are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients in both inpatient and outpatient settings. However, organized formal curricular offerings for these personnel are not in place. The proposed priority is designed to encourage new offerings.

Interested persons are invited to comment on the proposed special consideration for Special Project Grants, Purpose 2. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, the comment period has been reduced to 30 days. All comments received on or before April 25, 1988 will be considered before the final special consideration is established. No funds will be allocated or final selections made until a final notice is published indicating whether the special consideration will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Deadlines

Three review cycles are held annually for Advanced Nurse Education Grants, Nurse Practitioner and Nurse Midwifery Grants, and Nursing Special Project Grants.

To receive consideration, applications must meet a deadline of July 1, 1988. Any application not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline date, and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form and general instructions Form PHS 6025-1 HRSA Competing Training Grant Application and Supplements for each of the above grant programs have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

For specific guidelines and information regarding these programs, contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5786.

Questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 19, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-6621 Filed 3-24-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notification of an amendment of an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to expand a routine use of system 09–10–0002, Regulated Industry Employee Enforcements Records, HHS/FDA/OMO.

DATES: PHS invites interested parties to submit comments on the amended routine use on or before April 25, 1988. The amendment will become effective 30 days after publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Comments should be addressed to: FDA Privacy Act Coordinator, Food and Drug Administration, 5600 Fishers Lane, HFI–30, Rockville, MD 20857.

Comments will be available for inspection in room 12A–30 at the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gerald H. Deighton, Privacy Act Coordinator, Food and Drug Administration, 5600 Fishers Lane, HFI–30, Rockville, MD 20857, Telephone: (301) 443–1813.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to expand the first routine use of system 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO, to show that, in addition to the Department of Justice, FDA is also required to disclose records from this system to other appropriate Federal agencies. FDA has also made other minor alterations to this system

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notice to update system locations, system managers and addresses including Appendix A which lists the addresses and working hours of FDA Field/District Offices. For convenience and clarity, FDA is publishing the entire text of this notice.

Dated: March 17, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations, and Director, Office of Management.

09-10-0002

SYSTEM NAME:

Regulated Industry Employee Enforcement Records. HHS/FDA/OMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857
Investigations Operations Branch (HFC-132), 5600 Fishers Lane, Rockville, MD 20857

Administrative, Investigations, and Compliance Branches at Field/District Offices. For the location of Field/District Offices, see Appendix A.

For the location of Federal Archives and Records Centers, see Appendix B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of enterprises regulated by the Food and Drug Administration (FDA) and other individuals subject to FDA enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes correspondence, memoranda, inspection reports, and related documents that are investigatory material compiled for law enforcement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq.), the Public Health Service Act (42 U.S.C. 201 et seq.), and authority delegated to the Commissioner, 21 CFR Part 5.

PURPOSE(S):

To provide records used by FDA employees in investigations of possible violation of the law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records that indicate violation or potential violation of law may be: (1) Referred for investigation and possible enforcement action under the applicable Federal, State, or foreign laws to the Department of Justice and other appropriate Federal agencies; an appropriate State food and drug enforcement health agency or licensing authority; or, the government of a foreign country; or (2) disclosed in administrative or court proceeding in determining whether a record is relevant to an Agency decision concerning documents of investigatory materials.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from that congressional office at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files are maintained in letter-size folders. Automated files are maintained on computer discs and tapes stored in a locked safe.

RETRIEVABILITY:

Indexed by company or subject, sometimes with individual name in a cross-index on an automated index system.

SAFEGUARDS:

1. *Authorized users:* Administrative Services Branch and Office of Regulatory Affairs personnel.

2. *Physical safeguards:* Records are kept in locked cabinets in a secured area, locked rooms, locked buildings and limited access to authorized personnel. Computer tapes and discs are stored in a locked safe.

3. *Procedural (or technical) safeguards:* Computer software providing restricted commands.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45–13 and PHS hf: 45–13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinating official for this system of records is also the system manager for the Office of Regulatory Affairs.

Chief, Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857
Assistant to the Director, Investigations Operations Branch (HFC-132), Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857

Administrative, Investigative and Compliance Branches at Field/District Offices, see Appendix A.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the system manager. If access is denied to requested records, an appeal may be made to:

Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the official at the address specified under notification procedures and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, from third parties such as consumers, scientists, representatives of other companies, state agencies; or developed by FDA during investigations for law enforcement purposes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act (5 U.S.C. 552a (c)(3), (d)(1) to (4), (e)(3), (e)(4)(G) to (H) and (f), to the extent that it includes investigatory material compiled for law enforcement purposes, including criminal law enforcement purposes, where access would be likely to prejudice the conduct of the investigation.

Appendix A—Addresses and working hours of the Food and Drug Administration Field Offices

The following is a list of the Food and Drug Administration Field Offices, their addresses and working hours where individuals may have access to records in Food and Drug Administration Privacy Act Record Systems:

Northeast Region

Regional Office

850 Third Avenue, Brooklyn, NY 11232, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

District Offices

585 Commercial Street, Boston, MA 02109, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
850 Third Avenue, 4th Floor, Brooklyn, NY 11232, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
599 Delaware Avenue, Buffalo, NY 14202, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
Fernandez Juncos Ave., Stop 8½, Puerta de Tierra, San Juan, PR 00906-5719, Office hours: 8:00 a.m. to 4:30 p.m. (a.t.)

Regional Laboratory

850 Third Avenue, 4th Floor, Brooklyn, NY 11232, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
Winchester Engineering and Analytical Center (WEAC), 109 Holton Street, Winchester, MA 01890

Mid-Atlantic Region

Regional Office

900 US Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

District Offices

900 U.S. Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
61 Main Street, West Orange, NJ 07052, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
900 Madison Avenue, Baltimore, MD 21201, Office hours: 7:45 a.m. to 4:15 p.m. (e.s.t.)
1141 Central Parkway, Cincinnati, OH 45202-1097, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Southeast Region

Regional Office

60 Eighth Street NE., Atlanta, GA 30309; Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

District Offices

60 Eighth Street, NE., Atlanta, GA 30309, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
297 Plus Park Boulevard, Nashville, TN 37217, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)
7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
4298 Elysian Fields Avenue, New Orleans, LA 70122, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Regional Laboratory

60 Eighth Street, NE., Atlanta, GA 30309, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Midwest Region

Regional Office

20 N. Michigan Avenue, Room 580, Chicago, IL 60602; Working hours: 8:00 a.m. to 4:30 p.m. (c.s.t.)

District Offices

1222 PO Building, 433 W. Van Buren Street, Chicago, IL 60607; Working hours: 8:00 a.m. to 4:30 p.m. (c.s.t.)
1560 East Jefferson Avenue, Detroit, MI 48207, Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
240 Hennepin Avenue, Minneapolis, MN 55401, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Southwest Region

Regional Office

3032 Bryan Street, Dallas, TX 75204; Office hours: 8:00 a.m. to 4:30 (c.t.)

District Offices

3032 Bryan Street, Dallas, TX 75204; Office hours: 8:00 a.m. to 4:30 (c.t.)
1009 Cherry Street, Kansas City, MO 64106, Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)
Denver Federal Center, Building 20, P.O. Box 25087 Denver, CO 80225-0087; Working hours: 8:00 a.m. to 4:30 p.m. (m.t.)

Pacific Region

Regional Office

Federal Office Building, Room 506, 50 U.N. Plaza, San Francisco, CA 94102, Working hours: 8:00 a.m. to 4:30 p.m. (p.t.)

District Offices

Federal Office Building, Room 506, 50 U.N. Plaza, San Francisco, CA 94102, Working hours: 8:00 a.m. to 4:30 p.m. (p.t.)
1521 W. Pico Boulevard, Los Angeles, CA 90015-2486, Office hours: 8:00 a.m. to 4:30 p.m. (p.t.)
909 1st Avenue, Seattle, WA 98174, Office hours: 8:00 a.m. to 4:30 p.m. (p.t.)

Appendix B—General Services Administration, Federal Archives, and Records Centers

National Centers

District of Columbia, Maryland, Virginia, and West Virginia except for U.S. Court records for Maryland, Virginia, and West Virginia: Washington National Records Center, Washington, DC 20409
National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.
National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132

Regional Centers

GSA Region 1, Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island, Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154
GSA Region 2, New York, New Jersey, Puerto Rico, the Virgin Islands and the Panama Canal Zone, Federal Archives and Records Center, Military Ocean Terminal, Building 22, Bayonne, NJ 07002
GSA Region 3, Delaware, Pennsylvania east of Lancaster, and U.S. Court records for Maryland, Virginia, and West Virginia Federal Archives and Records Center, 9th and Market Streets, Room 1330, Philadelphia, PA 19107
Pennsylvania except areas east of Lancaster, Federal Records Center, Defense Activities Building 308, Mechanicsburg, PA 17055
GSA Region 4, North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344
GSA Region 5, Illinois, Wisconsin, Minnesota, and U.S. Court records for Indiana, Michigan and Ohio, Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, IL 60629
Indiana, Michigan, and Ohio except for U.S. Court records, Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439
GSA Region 6, Kansas, Iowa, Nebraska, and Missouri except Greater St. Louis area, Federal Archives and Records Center, 2306 East Bannister Road, Kansas City, MO 64131
GSA Region 7, Texas, Oklahoma, Arkansas, Louisiana, and New Mexico Federal Archives and Records Center, P.O. Box 6216, Fort Worth, TX 76115.
Shipping address only (do not use for mail), 4900 Hemphill Street, Building 1, Dock 1, Fort Worth, TX
GSA Region 8, Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota, Federal Archives and Records Center,

Building 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225
GSA Region 9, American Samoa, California, except Southern California, and Nevada, except Clark County, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066
Arizona; Clark County, Nevada; and Southern California (counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego), Federal Archives and Records Center, 2400 Avila Road, Laguna Niguel, CA 9267,
GSA Region 10, Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean areas (except American Samoa), Federal Archives and Records Center, 6125 Sand Point Way, N.E., Seattle, WA 98115

[FR Doc. 88-6523 Filed 3-24-88; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Study of Payment Process

AGENCY: Social Security Administration, HHS.

ACTION: Notice of study.

SUMMARY: This notice is to advise the general public that the Social Security Administration's (SSA) Office of Hearings and Appeals (OHA) is conducting a study of the attorney fee payment process as directed by recent legislation. Through this notice, we are soliciting the views of anyone who wishes to offer comments.

DATE: Comments will be accepted through April 22, 1988. Any comments received after that date will not be considered for inclusion in the study.

ADDRESS: Comments should be addressed to Jean H. Hinckley, Director, Office of Policy and Procedures, Office of Hearings and Appeals, 101 Webb, P.O. Box 3200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Jean Hinckley, (703) 235-8489.

SUPPLEMENTARY INFORMATION: Section 9021 of Pub. L. 100-203 requires the Secretary of Health and Human Services to conduct a study of the attorney fee payment process under Title II of the Social Security Act. Specifically, the law requires that the study shall:

- Assess levels of reimbursement to attorneys taking into account the contingent nature of most agreements between claimants and their legal representatives;
- Propose alternative methods for establishing fees which take into account the nature of these contingent agreements; and
- Suggest changes which simplify and streamline the fee payment process.

In addition, the law directs us to consult with individuals who represent the views of attorneys and with others who represent the views of claimants and to report our findings, together with any recommendations, to Congress by July 1, 1988.

To ensure that our study and report is comprehensive and complete, we are particularly interested in receiving public comments on the areas listed below. However, all comments on matters relating to the attorney fee payment process will be considered.

1. Under both the American Bar Association (ABA) Model Code of Professional Responsibilities and Model Rules of Professional Conduct, contingent fee arrangements are subject to a reasonableness standard. To what degree should an attorney be required to show that a fee based on a contingency arrangement is reasonable?

How would your proposal differ from the standards for evaluating a request for approval of a fee presently published in the Secretary's regulations at 20 CFR 404.1725(b)?

2. As a matter of public policy, the ethics rules of the various unified bars prohibit entering into contingent fee arrangements in domestic relations matters and criminal cases (cf. ABA Model Code and Model Rules). On the other hand, contingent fee arrangements are accepted in other types of cases because they often provide the only practical means by which an individual can afford to hire an attorney. Should contingent fee arrangements based upon a percentage of past-due benefits payable upon successful resolution of a claim be permitted in Social Security programs, the purpose of which is to provide economic security for beneficiaries?

If so, how can an individual claimant's interest in paying a reasonable fee for services be balanced with the broader purpose of contingency fee arrangements to encourage access to representation generally? Can the risks and burdens of litigation be equitably apportioned in Social Security cases without resorting to contingent fee arrangements based on a percentage of past-due benefits payable to a claimant?

3. In Social Security adjudication or litigation, the fund produced by successful prosecution of the claim is the amount of past-due benefits payable. Since the amount of past-due benefits payable, and consequently the contingent fee, are determined in part by the length of time it takes to process a case, is there potential for a conflict of interest between an attorney and a client in vigorously expediting final resolution of a claim? If so, should the past-due benefits subject to the contingent agreement be limited?

4. Should there be a dollar limitation on the amount of attorney fees payable on an individual claim for benefits?

If so, how should such a limitation be established and at what amount should the limitation be set?

5. Should there be a sliding precentage schedule for contingent fee arrangements, such as 25% of the first $5,000 of past-due benefits payable, 15% of the next $5,000 and 10% of any amount over $10,000?

If so, what sort of percentage scale would be appropriate?

6. Would it be appropriate to establish a flat rate or rate schedule for legal services provided to claimants, such as $400.00 for any case decided on the record and $750.00 for any case involving a hearing?

If so, how should such a rate be established and at what amounts should the rate or rate schedule be set?

7. Should attorney fees determined by application of dollar limitations, percentage schedule or flat rate be subject to approval by any administrative official or to challenge by the claimant and the attorney? If so, should the approving administrative official be authorized to exceed or reduce the amount so established in exceptional circumstances?

Would it be appropriate for the agency to forego the supervision traditionally exercised by the courts in contingent fees in view of the remedial intent of social security legislation?

8. Many fee shifting statutes base attorney fees on an hourly rate established by law or the hourly rate customarily charged for the same or similar services by attorneys with similar levels of skill and competence. Would it be equitable to establish a "lodestar" hourly amount for represenatation in Social Security cases and then to enhance the attorney fee payable to take into account the contingent fee arrangement or other exceptional circumstances?

If so, how should an appropriate "lodestar" hourly amount be established, what should it be, and how should it be enhanced?

9. Would you favor no longer having the Agency authorize attorney fees if, as a concomitant result, attorney fees were no longer withheld from past-due benefits payable to a claimant?

10. Would it be appropriate to establish special admittance or certification procedures for these individuals (both attorneys and persons other than attorneys) who wish to represent claimants for a fee before the Social Security Administration?

If so, what sort of qualifications or requirements should be satisfied prior to an individual's recognition as a claimant's representative?

11. Can the present procedures for requesting approval of an attorney fee be simplified? If so, what steps should be undertaken to modify the process?

Can the information required in the written request for approval be simplified? If so, in what manner?

Does the present procedure for obtaining review of a fee determination provide a satisfactory remedy to both the attorney and the client? If not, how can it be improved?

Dated: March 22, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88-6643 Filed 3-24-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Elsewhere in this issue the Department of the Interior (the Department) published a final rule making technical corrections in a technical document and computer model that were incorporated by reference in the "type A" natural resource damage assessment rule, published March 20, 1987 (52 FR 9042), and codified at 43 CFR Part II. That rule as codified established simplified type A procedures for assessing damages to natural resources in coastal and marine environments where those damages result from a discharge of oil or a release of a hazardous substance and are compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or under the Clean Water Act (CWA) (also known as the Federal Water Pollution Control Act). The technical document incorporated by reference in the rule is entitled "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document). The NRDAM/CME technical document also contained a computer model on four diskettes that must be used when conducting a type A assessment of damages in coastal and marine environments. This Notice announces the availability of and the procedures for obtaining the errata sheet to this technical document and the revised computer diskettes containing the model.

DATE: This action is effective April 25, 1988.

ADDRESS: Office of Environmental Project Review, Room 4239, Department of the Interior, 1801 C Street NW, Washington, DC 20240 (regular business hours are 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343-1301.

SUPPLEMENTARY INFORMATION:

Background

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f)(4) and (5) of the CWA. Section 301(c)(2) of CERCLA specifies two types of procedures to be developed. The type A procedures are to be standard procedures for simplified assessments requiring minimal field observation. The type B procedures are to include alternative methodologies for conducting assessments in individual cases.

The type A rule was published March 20, 1987, at 52 FR 9045 and codified at 43 CFR Part 11. That rule may be used to assess damages for injuries to natural resources in coastal and marine environments where those damages result from either a discharge of oil or a release of a hazardous substance. Assessments performed under that rule require the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). A general overview of the NRDAM/CME, its interactive submodels, data bases, and user inputs was published in the preamble tothe final type A rule (see 52 FR 9045). A detailed description of the NRDAM/CME was published in the NRDAM/CME technical document. A hard copy of the source code for the NRDAM/CME was listed in apendix H of the NRDAM/CME technical document.

A final rule published elsewhere in this issue of the **Federal Register** amends the type A rule incorporation by reference citation and the version designation of the NRDAM/CME that is to be used for natural resource damage assessments. These amendments are based upon the correction of technical errors in the NRDAM/CME source code listing of Appendix H of the NRDAM/CME technical document. A discussion of the technical corrections is provided in the preamble to the final rule published elsewhere in this issue of the **Federal Register.**

Availability

This Notice is to inform the public that anyone who received from the Department or NTIS the original NRDAM/CME technical document and version 1.1 of the NRDAM/CME published March 20, 1987, may return the four computer diskettes containing the NRDAM/CME to the address given at the front of this Notice. The Department will reformat those diskettes and copy version 1.2 of the NRDAM/CME onto the diskettes. The diskettes will then be returned to the owner, at no charge. Please ensure that a correct return address is enclosed with the diskettes.

Do not return the NRDAM/CME technical document. The Department cannot accept and return that technical document. The Department will also enclose a copy of the errata sheet for the NRDAM/CME technical document with the returned computer diskettes. If only the errata sheet for the NRDAM/CME technical document is desired, written requests should be made to the same Department address. The Department will accept requests for an errata sheet for the NRDAM/CME technical document and for version 1.2 of the NRDAM/CME until [90 days from date of publication].

All *new* requests for the NRDAM/CME technical document and version 1.2 of the NRDAM/CME should continue to be made directly to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; ph: (703) 487-4650. Orders to NTIS should specify document number PB87-142485, and the document title: "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments." Orders to NTIS will receive the errata sheet and the four diskettes containing version 1.2 of the NRDAM/CME.

In the preamble to the type A rule published on March 20, 1987, the Department stated, at 52 FR 9061, that the final source code for version 1.1 of the NRDAM/CME was available on diskette upon request and payment of a reasonable duplication fee. Anyone currently in possession of the source code for version 1.1 of the NRDAM/CME on diskette may return that diskette to the address given at the front of this Notice. The Department will reformat that diskette and copy the corrected version of the source code for version 1.2 of the NRDAM/CME onto the diskette. The diskette will then be returned to the owner, at no charge. Any *new* requests for version 1.2 of the source code on diskette should be made, in writing, to the address given at the front of this Notice. Again, a reasonable duplication fee will be charged for each new request.

Because of the nature and importance of the damage assessment procedure, the Department wants to ensure that all those who may have need of the NRDAM/CME will be working only with the corrected version 1.2. If there are any questions concerning this Notice, please contact the Office at the address given at the front of this Notice.

Dated: December 11, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-6611 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[CA-930-08-4332-13; FES 88-9]

Availability of Final Environmental Impact Statement; Arcata Resource Area Wilderness, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the King Range and Chemise Mountain WSAs in California.

SUMMARY: This EIS assesses the environmental consequences of managing two Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA and (3) two "partial wilderness" alternatives for one of the WSAs.

The total acreage, and the proposed actions for the two WSAs are as follows:

King Range—32,900 acres; 20,620 acres suitable, 12,280 acres nonsuitable.

Chemise Mountain—4,340 acres; 4,340 suitable, 0 acres nonsuitable.

The Bureau of Land Management wilderness proposal will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.1b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Arcata Resource Area, P.O. Box 1112, Arcata, California 95521. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW., Washington, D.C. 20240
or
Bureau of Land Management, California State Office, 2800 Cottage Way, Room E-2841, Sacramento, CA 95825
or
Bureau of Land Management, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Area Manager, Arcata Resource Area, P.O. Box 1112, Arcata, CA 95521, (707) 822-7648.

Bruce Blanchard,

Director, Office of Environmental Project Review.

Date: March 10, 1988.

[FR Doc. 88-6300 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Final Supplement to the Final Environmental Statement, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Sale, CO

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final supplement environmental statement to the final environmental statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final supplement to the final environmental impact statement for the Colorado-Big Thompson, Windy Gap Project (INT FES 81-20) on a proposed water sale from Green Mountain Reservoir that would provide for future water demands that include industrial (primarily snowmaking and oil shale), municipal, recreation, wildlife, and fisheries.

FOR FURTHER INFORMATION CONTACT: This final supplement was prepared from a draft supplement filed with the Environmental Protection Agency in September 1985 that evaluated an array of water sale level scenarios for Green Mountain Reservoir.

ADDRESSES: Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7425 Washington, DC 20240, Telephone: (202) 343-4991;
Management Operation Center, Document Systems Management Branch, Library Section, Code 822, Engineering and Research Center, Denver Federal Center, Denver CO 80225, Telephone: (303) 236-6763;
Regional Director, Bureau of Reclamation, P.O. Box 36900, Federal Office Building, Billings, MT 59107-6900, Telephone: (406) 657-6214;
Eastern Colorado Projects, Office, Bureau of Reclamation, 855 Wilson Avenue, P.O. Box 449, Loveland, CO 80539, Telephone: (303) 667-4410.

Single copies of the final supplement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, the Eastern Colorado Projects Office, or the Regional Director, at the above addresses. Copies will also be available for inspection at the following libraries in the project vicinity:

Colorado State University Library, Fort Collins, CO 80521;
Glenwood Springs Branch Library, 413 9th Street, Glenwood Springs, CO 81601;
University of Colorado, Library, Boulder Campus, Boulder, CO 80302.

Date: March 18, 1988.

C. Dale Duvall,

Commission.

[FR Doc. 88-6486 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Intention To Negotiate Concession Permit; Adventure Bound, Inc., et al.

Public notice as given on February 3, 1988 (52 FR 3083), stated that sixty (60) days thereafter the Department of Interior, through the Director of the National Park Service proposes to negotiate permits with sixteen (16) existing river running operators authorizing them to continue to provide guided white water interpretive river trips for the public at Canyonlands National Park, Utah for period of five (5) years from January 1, 1987, through December 31, 1991. The Secretary has amended the Statement of Requirements whereas the premit five (5) year term is extended to seven (7) years from

January 1, 1987, through December 31, 1993.

The earlier public notice provisions remain in full effect. Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado for information as to the amended requirements of the proposed permit.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

Date: March 16, 1988.

[FR Doc. 88-6565 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-70-M

Martin Luther King, Jr., National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: April 20, 1988.

ADDRESS: The Southern Bell Center, Room 512, 675 West Peachtree Street, Atlanta, Georgia 30375.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE., Atlanta, Georgia 30312, Telephone (404) 331-4979.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. John H. Calhoun
Mr. Arthur J. Clement
Mr. John Cox
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Mr. Daniel H. Nall
Rev. Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Offico Member

The matters to be discussed at this meeting will include: (1) The status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Frank Cattroppa,

Acting Regional Director, Southeast Region.

Date: March 15, 1988.

[FR Doc. 88-6566 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-70-M

Management Policies

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of proposed revised management policies with request for review and comments.

SUMMARY: The National Park Service is proposing revised policies for management of areas of the national park system. These policies will provide guidance to NPS managers, planners and others in areas concerning preservation and use of park system areas.

DATE: Written comments will be accepted until May 10, 1988.

ADDRESS: Comments should be directed to: Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB-MS1226, Washington, DC 20013-7127.

Single copies of the draft management policies may be requested from National Park Service, Office of Policy, 18th and C Streets NW., MIB-MS1226, Washington, DC 20013-7127. Copies are available for review in the National Park Service Washington Office, regional offices all units of the National Park System, and GPO repository libraries. Addresses of the Washington Office and regional offices are:

National Park Service, 18th and C Streets NW., Main Interior Building, Room 1226, Washington, DC 20013-7127
Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503
Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, PA 19106
Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102
National Capital Parks, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242
North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109-3572
Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle, WA 98104
Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, CO 80225
Southeast Regional Office, National Park Service, 75 Spring Street SW., Atlanta, GA 30303
Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504-0728
Western Regional Office, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102

FOR FURTHER INFORMATION CONTACT: Office of Policy, 202/343-4298 or 7456.

SUPPLEMENTARY INFORMATION: The National Park Service has completed a comprehensive review and revision of policies on management of the national park system—something that has not been done since 1978. Changes which resulted are primarily due to new legislation, revisions of regulations, shifts in program emphasis and new concerns and responsibilities. Nevertheless, for the most part, this document represents an update more so than a revision.

Management policies address the role of the National Park Service as legislatively mandated in preserving the Nation's natural and cultural resources, park planning, park facilities, natural resource management, cultural resource management, wilderness preservation, use of the parks, concessions management and land protection. The management policies provide guidance to National Park Service managers, superintendents, planners, and others concerning preservation and use of park system areas.

The Service is hereby soliciting comment from any and all interested groups or individuals on these policies. We urge you to be specific as to how the policy might be changed or strengthened. All comments will be reviewed and, where appropriate, incorporated. The policies will remain on review for 45 days. The revised final policy an an explanation of how comments were addressed will be available to the public. Notice of availability of the final document will appear in the **Federal Register**. These policies, in final form, will become the

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National Park Service Management Policies.

William Penn Mott,

Director.

[FR Doc. 88-6572 Filed 3-24-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intention To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent Corporation: Commercial Metals Company, 7800 Stemmons Freeway (75247), Post Office Box 1046 (75221), Dallas, Texas, State of Incorporation: Delaware.

The following 100% wholly-owned or controlled subsidiaries will participate in the operation:

CMC Process Products, Inc., 7800 Stemmons Freeway, Dallas, Texas 75247, State of Incorporation: Texas
CMC Oil Company, 7800 Stemmons Freeway, Dallas, Texas 75247
CMC Steel, Inc., Mill Road, Seguin, Texas 78155, State of Incorporation: Texas
Capitol City Steel Company, 6717 Circle S Road, Austin, Texas 78745, State of Incorporation: Texas
Cometals, Inc., One Penn Plaza, Room 3401, New York, New York 10001, State of Incorporation: New York
Commercial Metals-Austin, Inc., 710 Industrial, P.O. Box 19169, Austin Texas 78760-9169
Commercial Metals Railroad Salvage Company, 7800 Stemmons Freeway, Dallas, Texas 75221, State of Incorporation: Texas
Commonwealth Metal Corporation, 500 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, State of Incorporation: New Jersey
Enterprise Metal Corporation, 175 Great Neck Road, Room 408, Great Neck, New York 10021, State of Incorporation: New York
Howell Metal Company, State Route 728, P.O. Box 218, New Market, Virginia 22844
SMI Steel, Inc., P.O. Box 2875 A, Birmingham, Alabama 35212
Structural Metals, Inc., Mill Road, Seguin, Texas 78155, State of Incorporation: Texas
Texas Cold Finished Steel, Inc., 1300 Baker, Houston, Texas 77002, State of Incorporation: Texas
CMC Steel Fabricators, Inc., State of Incorporation: Texas, Doing business under the following names:
SMI Steel-Arkansas, Kerlin Road, Box 1147, Magnolia, Arkansas 71753
Alamo Steel, Inc., Old Dallas Road, P.O. Box 86, Waco, Texas 76703
Capitol Steel, Inc., 2655 North Foster Drive, P.O. Box 80636, Baton Rouge, Louisiana 70898
CoMet Steel, Inc., 4846 Singleton Boulevard, Dallas, Texas 75212
Houston Steel Service Company of Texas, Inc., 5321 Westpark Drive, Houston, Texas 77065
Houston Steel Service Company—Rebar Division, 5321 Westpark Drive, Houston, Texas 77065
Safety Railway Service Company, Aloe Field, P.O. Box 2298, Victoria, Texas 77901
Safety Steel Service, Inc., Rodd Field, P.O. Box 6546, Corpus Christi, Texas 78411
Safety Steel Service, Inc., 201 East Crestwood Drive, Victoria, Texas 77901
Safety Steel Construction, Inc., 201 East Crestwood Drive, P.O. Box 2298, Victoria, Texas 77901
Southern States Steel Company, 9675 Walden Road, Beaumont, Texas 77706
Southern Farm Supply Company, 1318 Buschong Road, Houston, Texas 77093
Southern Fence Post Company, 1318 Buschong Road, Houston, Texas 77093
Southern Post Company, 1318 Buschong Road, Houston, Texas 77093
Southern Post Company, 1960 Benchmark Drive, Roundrock, Texas 78664
Safety Detention Systems, Inc., Victoria, Texas 77901
Southern Post Company, Kerlin Road, P.O. Box 409, Magnolia, Arkansas 71753
Sterling Steel Company, 5600 Braxton, Suite 12, Houston, Texas 77036

B.1. Parent corporation and address of principal office: Montgomery Ward & Co., Incorporated, One Montgomery Ward Plaza, Chicago, Illinois 60671.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(a) American Delivery Service Company, Delaware.

(b) Continental Transportation, Inc., Delaware.

(c) Standard T Chemical Company, Inc., Delaware.

C.1. Parent corporation and address of principal office: Oklahoma Steel & Wire Company, Inc., P.O. Box 229, Madill, OK 73446.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

a. Cyclone Trucking Company, Inc., Incorporated—Oklahoma.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6546 Filed 3-24-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 236X)]

CSX Transportation, Inc.; Exemption for Abandonment and Discontinuance of Trackage Rights in Wilmington, DE

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* (1) to abandon its .9-mile line of railroad between milepost 2.0 and milepost 2.9, and (2) to discontinue its trackage rights over Conrail between milepost 2.9 and milepost 3.0, in Wilmington, DE, a total distance of 1 mile.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 24, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 4, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 14, 1988 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201,

and

Charles M. Rosenberger, Senior Counsel, Patricia Vail, Counsel, CSX Transportation, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by March 30, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 15, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6244 Filed 3-24-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See Exemption of Rail Line Abandonments or Discontinuances—Offers of Financial Assistance*, —— I.C.C.2d ——, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48460).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Inmar Associates, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Inmar Associates, Inc.* has been lodged with the United States District Court for the District of New Jersey. The consent decree addresses claims under sections 106(b) and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for violations alleged of an Administrative Order, Index No. II CERCLA—50115, issued to Inmar Associates, Inc. by the United States Environmental Protection Agency, and for federal response costs associated with implementation and oversight of that administrative order. The consent decree provides that Inmar Associates, Inc. will pay $545,000 in settlement of those claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Inmar Associates, Inc.*, D.J. Ref. 90-11-2-162.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, 502 Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, Rm. 437, New York, New York 10278. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to *United States v. Inmar Associates, Inc.*, D.J. Reference #90-11-2-162 and enclose a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6613 Filed 3-24-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-76]

Ralph J. Bertolino d/b/a Ralph J. Bertolino Pharmacy, Philadelphia, PA; Hearing

Notice is hereby given that on October 27, 1987, the Drug Enforcement Administration, Department of Justice, issued to Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke the pharmacy's DEA Certificate of Registration, AB2343503, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, April 6, 1988, commencing at 10:00 a.m., in the U.S. Claims Court, 717 Madison Place NW., Washington, DC.

Dated: March 18, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-6524 Filed 3-24-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-82]

Elliott Brender, M.D. Huntington Beach, CA; Hearing

Notice is hereby given that on December 3, 1987, the Drug Enforcement Administration, Department of Justice, issued to Elliott Brender, M.D., an Order to Show Cause as to why the Drug Enforcement Administration Should not deny your applications for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, March 30, 1988, commencing at 9:30 a.m., in the U.S. Court if Appeals for the 9th Circuit, Courtroom 2, 7th and Mission Streets, San Francisco, California.

Dated: March 18, 1988.

John C. Lawn,

Administrator Drug Enforcement Administration.

[FR Doc. 88-6525 Filed 3-24-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-77]

Jerome Pittman, M.D., Los Angeles, CA; Hearing

Notice is hereby given that on October 1, 1987, the Drug Enforcement Administration, Department of Justice, issued to Jerome Pittman, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP2286501, and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, March 29, 1988, commencing at 9:30 a.m., in the U.S. Court of Appeals for the 9th Circuit, Courtroom 2, 7th and Mission Streets, San Francisco, California.

Dated: March 18, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-6526 Filed 3-24-88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS Number: 1107-88]

Immigration and Naturalization Service User Fee Advisory Committee; Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and Time: April 14, 1988 at 10:00 a.m.

Place: Washington Dulles Ramada Renaissance Hotel, 13869 Park Center Road (At Rte. 28 and McClearen Drive) Herndon, Virginia [Tel. 703/478-2900]

Status: Open. First meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act of 1952, as amended, [8 U.S.C. 1356(k)] and the Federal Advisory Committee Act [5 U.S.C. App. 2].

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of purpose and scope of responsibilities.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of relevant written statements submitted in advance by members of the public.
6. Scheduling of next meeting.

Public Participation: The meeting is open to the public, but advance notice of attendance is requested to assure adequate seating. Persons planning to attend should notify the Contact Person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the Contact Person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the Contact Person will be considered for discussion at the meeting.

Contact Person: Sharon L. Isenberg, Program Analyst, Office of the Asst. Comm. for Inspections, Immigration and Naturalization Service, Room 7123, Chester Arthur Bldg., 425 I Street NW., Washington, DC 20536, Telephone (202) 633-2880.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

Dated: March 18, 1988.

[FR Doc. 88-6554 Filed 3-24-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Fletcher Paper Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 7, 1988—March 11, 1988 and March 14, 1988—March 18, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,391; Fletcher Paper Co., Alpina, MI

TA-W-20,398; Sealed Power Div., Sealed Power Corp., Muskegon, MI

TA-W-20,397; Eyelet Specialty Co., Inc., Subsidiary of Risdon Corp., Wallingford, CT

TA-W-20,351; Steven Knitting Mills, Inc., New York, NY

TA-W-20,405; Excel Handbag Co., Miami, FL

TA-W-20,339; Beaumont Co., Morgantown, WV

TA-W-20,428; Camphill Manufacturing, Camphill, AL

TA-W-20,349; Reichert Stamping Co., Toldeo, OH

TA-W-20,409; Heraeus Amersil, Inc., Sayreville, NJ

TA-W-20,420; Allison Abrasive Co., Shelton, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,481; The Wiser Oil Co., Leeco, KY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,387; Bethlehem Steel Corp., Sparrows Point Plant, Sparrows Point, MD

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,400; Gregory and Cook, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,365; Wean Industries, Inc., Henricks Road Plant, Youngstown, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,465; Maine Guide, Bath, ME

U.S. imports of womens, misses and childrens coats and jackets decreased absolutely in Jan-Sept 1987 compared to the same period in 1986.

TA-W-20,358; International Paper Co., Androscoggin Mill, Jay, ME

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,386; Apache Corporation, Denver, CO

A certification was issued covering all workers of the firm separated on or after December 10, 1986.

TA-W-20,410; Inmos Corporation, Colorado Springs, CO

A certification was issued covering all workers of the firm separated on or after January 14, 1987 and before March 31, 1988.

TA-W-20,385; The Okonite Co., Phillipsdale, RI

A certification was issued covering all workers of the firm separated on or after January 4, 1987.

TA-W-20,491; Muller Manufacturing Co., Syracuse, NY

A certification was issued covering all workers of the firm separated on or after February 12, 1987.

TA-W-20,380; Ciba-Geigy Corp., Glens Falls, NY

A certification was issued covering all workers of the firm separated on or after March 30, 1988.

TA-W-20,364; Baxter Travenol, Kingstree, SC

A certification was issued covering all workers of the firm separated on or after December 17, 1986.

TA-W-20,382; General Motors Corp., Fisher Guide Div., Trenton, NJ

A certification was issued covering all workers of the firm separated on or after January 10, 1987.

TA-W-20,431; Ladd Petroleum Corporation, Mid-Continent Region

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431A; Ladd Petroleum Corporation, Corporate Office, Denver, CO

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431B; Ladd Petroleum Corporation, Tulsa, OK

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431C; Ladd Petroleum Corporation, Enid, OK

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431D; Ladd Petroleum Corporation, Bethany, OK

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431E; Ladd Petroleum Corporation, Ballas, OK

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,431F; Ladd Petroleum Corporation, Magnolia, AR

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432; Ladd Petroleum Corporation, Rocky Mountain Region

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432A; Ladd Petroleum Corporation, Denver, CO

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432B; Ladd Petroleum Corporation, Dickinson, ND

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432C; Ladd Petroleum Corporation, Dagmar, MT

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432D; Ladd Petroleum Corporation, Farmington, NM

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432E; Ladd Petroleum Corporation, Midland, TX

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,432F; Ladd Petroleum Corporation, Ozona, TX

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,433; Ladd Petroleum Corporation, Gulf Coast Region

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,433A; Ladd Petroleum Corporation, Houston, TX

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,433B; Ladd Petroleum Corporation, Carlton, AL

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,433C; Ladd Petroleum Corporation, Bayou Boeuf, LA

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

TA-W-20,433D; Ladd Petroleum Corporation, Springtown, TX

A certification was issued covering all workers of the firm separated on or after January 20, 1987.

I hereby certify that the aforementioned determinations were issued during the period March 7-11, 1988 and March 14-18, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: March 22, 1988.

[FR Doc. 88-6606 Filed 3-24-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-275-C]

Kelly Energy Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kelly Energy Company, Inc., P.O. Box 478, Clintwood, Virginia 24228-0478 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 5 Mine (I.D. No. 44-06406) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requriement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 5 mine was 72 plus inches in height when first established. Canopies were installed on the equipment at that time, however, as mining progressed the mine height decreased. The mine now ranges from 43 to 53 inches in height, and has a soft bottom that tears up on occasion causing a very uneven bottom with an up an down effect.

3. Petitioner states that the canopies shear off roof bolts and tear down check or line curtains, thereby disrupting ventilation, limiting visibility and causing cramped conditions for the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April

25, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 16, 1988.

[FR Doc. 88-6605 Filed 3-24-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-19; Exemption Application No. D-6762 et al.]

Grant of Individual Exemptions; Philip Specialty Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applicants have been available for public inspection at the Department of Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries, and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Philip Specialty Company restated Profit Sharing Plan (the Plan)

[Prohibited Transaction Exemption 88-19; Exemption Application No. D-6762]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of improved real property located in Dallas County, Texas, by the Plan to Philip Specialty Company for $119,000 in cash, provided that all of the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 28, 1988 at 53 FR 2104.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Individual Retirement Account of Robert R. Black (the IRA) Located in Dallas, Texas.

[Prohibited Transaction Exemption 88-20; Exemption Application No. D-6866]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of real property (the Property) located in Keller, Texas, by the IRA to Mr. Robert R. Black for $333,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 28, 1988 at 53 FR 2106.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Central States, Southeast and Southwest Areas Pension Fund (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 88-21; Exemption Application No. D-6978]

Amendments to Exemption

The Department hereby modifies a portion of Prohibited Transaction Exemption (PTE) 85-211 (50 FR 53222, December 30, 1985) issued to Morgan Stanley Group Inc., the Named Fiduciary (the Named Fiduciary) on behalf of the Plan. Authority to grant the amendments to the exemption is given the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Accordingly, paragraph (A) of PTE 85-211 is restated so that the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply until January 21, 1992 to the adjustment, disposition, and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property (as described in Part VIII of PTE 77-11 (42 FR 54041, October 7, 1977) and PTE 84-114 (49 FR 30809, July 31, 1984)), but only to the extent that PTE 84-14 (49 FR 9494, March 13, 1984) is not applicable with respect to such transactions by reason of any of the following: (1) The assets of the Plan represent more than 20 percent of the total client assets under the management of the investment manager at the time of the transaction; (2) the investment manager does not satisfy the definition contained in Part V(a)(4) of PTE 84-14; or (3) the transaction is between the Plan and the Central States, Southeast and Southwest Areas Health and Welfare Fund, or the transaction is between the Plan and a person which is a party in interest and at the time of the transaction (as defined in Part V(i) of PTE 84-14) either such party in interest or its "affiliate" (as defined in Part V(c) of PTE 84-14) has the authority or, during the preceding one year, has exercised the authority: (a) To appoint or terminate the Named Fiduciary of the Plan or (b) to otherwise alter the terms under which a person serves as the Named Fiduciary of the Plan.

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[1] Because the IRA does not meet the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant the amendments to this exemption refer to the proposed amendments to the exemption that were published on January 13, 1988 at 53 FR 811.

Effective Date: The amendments are effective January 1, 1985. They will expire on January 21, 1992.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

William H. Kimball, Inc. Profit Sharing Plan (the Plan) Located in Orinda, California

[Prohibited Transaction Exemption 88-22; Exemption Application No. D-7238]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by the Plan for cash of certain real property (the Real Property) from William H. Kimball, a disqualified person with respect to the Plan, provided that the price paid is no more than the fair market value of the Real Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 28, 1988 at 53 FR 2107.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of March 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-6616 Filed 3-24-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-28)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: April 12, 1988, 8 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Barks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

April 12, 1988

8 a.m.—Review of Action Groups Assignments.
1 p.m.—Continued Review of Action Groups Assignments.
2 p.m.—Presentation of Contractor Technology Assessment.
3 p.m.—Summary By Chairman and Task Assignments.
4:30 p.m.—Adjourn.

March 17, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-6519 Filed 3-24-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-27)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATE AND TIME: April 13, 1988, 8:30 a.m. to 4:30 p.m. **ADDRESS:** National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space

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Administration, Washington, DC 20546, 292/453–2775.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the committee members and other participants).

Type of Meeting: Open.

Agenda

April 13, 1988
8:30 a.m.—Aeronautics Overview: Budget Strategy, Plans and Issues.
9:45 a.m.—Technology Development & Validation Plan.
10:15 a.m.—Discussion of FY 90–92 Program Requirements.
11:15 a.m.—Actions from AAC/ARTS Meeting.
1 p.m.—Reports of Ad Hoc Teams.
3:15 p.m.—Committee New Business.
4:30 p.m.—Adjourn.

March 16, 1988.

Ann Bradley,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 88-6520 Filed 3-24-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552 of Title 5, United States Code.

1. *Date:* April 14–15, 1988.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1988.

2. *Date:* April 21–22, 1988.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1988.

3. *Date:* April 26–27, 1988.
Time: 7:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1988.

4. *Date:* April 28, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review Summer Seminars for College Teachers applications in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after October 1, 1988.

5. *Date:* April 29, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review Summer Seminars for College Teachers applications in Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after October 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer

[FR Doc. 88-6600 Filed 3-24-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeometry; Meeting

Name: Advisory Panel for Archaeometry.

Date and Time: April 15, 1988, 9:00 AM-5:00 PM each day.

Place: National Science Foundation, 1800 G Street NW. Room 642, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in archaeometry.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 88-6527 Filed 3-24-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Economics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date/Time:

Thursday, April 14, 1988—9:00 a.m. to 5:00 p.m.
Friday, April 15, 1988—9:00 a.m. to 5:00 p.m.
Saturday, April 16, 1988—9:00 a.m. to 1:00 p.m.

Place: National Science Foundation, Room 543, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Daniel H. Newlon or Dr. Lynn A. Pollnow, Program Directors, Division of Social and Economic Science, Room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357-9674.

Summary Minutes: May be obtained from the Contact Persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in economics.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-6528 Filed 3-24-88; 8:45 am]

BILLING CODE 7555-01-M

Directorate for Engineering, Division of Mechanics, Structures, and Materials Engineering Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Committee for the Division of Mechanics, Structures, and Materials Engineering.

Date & Time

April 11, 1988 8:30 a.m. to 5:00 p.m.
April 12, 1988 8:30 a.m. to 4:00 p.m.

Type of Meeting: Open.

Contact Person: Ms. Hope Duckett, National Science Foundation, Room 1110, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person.

Agenda:

Monday, April 11, 1988

8:30–9:15 a.m.	Call to Order and Welcoming Remarks.
9:15–10:00 a.m.	Status of Program Plans.
10:00–10:30 a.m.	Remarks by Acting Assistant Director for Engineering.
10:45–12:00 NOON.	Status of Program Plans.
12:00–1:30 p.m.	Lunch.
1:30–5:00 p.m.	Discussion of Program Status and Plans.

Tuesday, April 12, 1988

8:30–10:00 a.m.	Task Group Reports.
10:30–NOON.	Discussion and Closing Remarks by Acting Assistant Director for Engineering.
1:00–4:00 p.m.	Drafting of Meeting Report and Summary Remarks.
4:00 p.m.	Adjourn.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-6529 Filed 3-24-88; 8:45 am]

BILLING CODE 7555-01-M

Metabolic Biology Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Metabolic Biology Panel.

Date: April 13, 14 and 15, 1988.

Place: National Science Foundation, Rm 1243, Washington, DC 20550.

Type of Meeting: Closed.

Time

Wednesday, 9:00 a.m. to 5:00 p.m.
Thursday, 8:30 a.m. to 5:00 p.m.
Friday, 8:00 a.m. to 1:00 p.m.

Contact Person: Carter Kimsey, Metabolic Biology Program, Rm 325-I, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7987.

Summary of Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-6530 Filed 3-24-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Psychobiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.

Date and Time: April 13–15, 1988, 8:30 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1242, Washington, DC.

Type of Meeting

Part Open

Open 4/13/88—9:00 a.m. to 11:00 a.m.
Closed 4/13/88—11:00 a.m. to 5:00 p.m.
Closed 4/14/88—8:30 a.m. to 5:00 p.m.
Closed 4/15/88—8:30 a.m. to 5:00 p.m.

Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, DC 20050, Telephone (202) 357-7949.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in psychobiology.

Agenda

Open—General discussion of research trends and opportunities in psychobiology.
Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-6531 Filed 3-24-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-424]

Georgia Power Co. et al., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of § 50.71(e)(3)(i) to 10 CFR Part 50 to the

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Georgia Power Company, et al. (the licensee) for the Vogtle Electric Generating Plant, Units 1 located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Unit 1 of the Vogtle Electric Generating Plant (VEGP) within 24 months of the issuance of the operating license. A low power operating license was issued for VEGP Unit 1 on January 16, 1987. By letter dated January 15, 1988, the licensee requested an exemption to 10 CFR 50.71(e), which would defer submittal of the UFSAR for VEGP Unit 1 until one year following issuance of a full power operating license for VEGP Unit 2 on the basis that the present Final Safety Analysis Report (FSAR) applies to both units. The FSAR has been updated on May 6, 1987, and August 31, 1987, and will continue to be updated to support the licensing of VEGP Unit 2 and to provide updated information on VEGP Unit 1.

The Need for the Proposed Action

10 CFR 50.34 requires that, until VEGP Unit 2 receives an operating license, the information contained in the FSAR docketed with the operating license application be maintained current. Therefore, if an extension to the submittal date for the UFSAR is not granted, the licensee would be required to maintain current both the present FSAR as well as the UFSAR until VEGP Unit 2 is licensed. Maintaining two versions of the same document for the two VEGP units would cause a hardship, could lead to ambiguities and confusion and would serve no useful purpose if the existing FSAR is maintained up-to-date until VEGP Unit 2 is licensed. Therfore, an extension is needed to eliminate the hardship of maintaining two versions of the same document.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the require date for submitting the UFSAR and does not affect plant operation or the risk of facility accidents. Accordingly, the exemption will not increase the probability or consequences of any dominate reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associate with the proposed exemption.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The prinicpal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant, Units 1 and 2" dated March 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated January 15, 1988, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the Burke County Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 21st day of March 1988.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II.

[FR Doc. 88-6558 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498 OL]

Houston Lighting and Power Co.; South Texas Project, Unit 1

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 (DD-88-3) filed by Ms. Billie P. Garde and Mr. Richard E. Condit on behalf of the Government Accountability Project (GAP or Petitioner). The Petitioner asked the Nuclear Regulatory Commission (NRC) to delay the Commission's consideration of a full-power license for the South Texas Project, Unit 1. The Petitioner alleged that insufficient review had been performed of concerns which had been provided to GAP by workers associated with the South Texas Project.

The Petitioner's request has been denied for the reasons fully described in the "Director's Decision Under 10 CFR 2.206," issued on this date, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and the Local Public Document Rooms for the South Texas Nuclear Project located at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701 and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Bowling Highway, Wharton, Texas 77488.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 18th day of March 1988.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88-6559 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos.: STN 50-454, STN 50-455, STN 50-456 and STN 50-457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity For Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-75, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments would change Technical Specification 4.6.1.6.1.d. to reduce the containment tendon design stresses.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petitions for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine wtinesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 2, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 18th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-6560 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated November 20, 1987, the amendment would revise the provisions in the Technical Specifications to correct an error in Table 3.3.7.12-1, "Radioactive Gaseous Effluent Monitoring Instrumentation," by deleting Item 3.d, Effluent System Flow Rate Monitor for the Standby Gas Treatment System (SGTS). The correction would make Table 3.3.7.12-1 consistent with the Surveillance Requirements of Technical Specification Table 4.3.7.12-1.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 25, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 20, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 S. Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 15th day of March 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Manager, Project Directorate III–1, Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88-6561 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-282 and 50-306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-42 and DPR-60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue, Minnesota.

In accordance with the licensee's application for amendments dated November 3, 1987, the amendments would change the protective instrumentation setting for the automatic reactor trip associated with high flux, power range (low setpoint) from equal to or less than 25% of rated power to equal to or less than 40% of rated power. This instrumentation setting applies only for reactor startup protection.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing or petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an

Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio:

Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 3, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 15th day of March 1988.

For the Nuclear Regulatory Commission.

Dominic Dilanni,

Project Manager, Project Directorate III–1, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 88-6562 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3;) Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating Licenses No. DPR–33, DPR–52, and DPR–68 which authorize operation of the Browns Ferry Nuclear Plants, Units 1, 2, and 3, respectively. These licenses provide that, among other things, the facility is subject to all rules, regulations, and orders of the commission now or hereafter in effect.

II

10 CFR 50.55a(g)(4)(ii) requires that in-service examinations of components, in-service tests to verify operational readiness of pumps and valves whose function is required for safety, and system pressure tests, conducted during the successive 120-month inspection intervals shall comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of the applicable section.

The Licensee would be required to update its Browns Ferry ASME Section XI pump and valve program to a later edition of the code at the end of the initial 120-month inspection interval which would be no later than March 1, 1988. However, as a result of discussions between TVA and the NRC, TVA agreed to revise and update its pump and valve (IST) program to the later code edition earlier than was required. This revised program was submitted to the NRC on August 31, 1982, which was 5 years into the initial 10-year IST inspection interval.

By letter dated April 6, 1983, TVA requested an exemption to allow Browns Ferry to utilize the updated IST program for a full 10-year interval beginning on August 31, 1982, the date of the revised program submittal. The Licensee revised its exemption request on February 17, 1988 in accordance with the requirements of 10 CFR 50.12(a)(2) pertaining to special circumstances.

With regard to this exemption request, the staff concludes that permitting the 120-month interval for pumps and valves to be extended for all units until August 31, 1992 is acceptable since the Browns Ferry program would not exceed a ten-year period without updating to a more recent edition of the code as required by the rule. The Licensee's revised IST program was submitted on August 31, 1982, mid-way through the first ten-years IST interval. The revised program was

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based upon the most recent edition of the ASME Code which was the 1980 edition of the Code through the Winter Addenda. Granting the exemption results in updating to a revised ASME Code Edition two times in a 180-months period compared to two times in a 240-months period permitted under the rule. Therefore, granting the exemption would not result in the IST program exceeding the 10-year interval without receiving an ASME code update. In addition, the staff has compared the requirements of the 1980 edition of the Code requirements which would apply in March 1987 if the exemption were not granted (i.e., the 1983 Edition and Addenda through the Summer 1983 Addenda) and has determined that there is no significant difference in the testing requirements for pumps and valves. Therefore, the staff finds that an exemption from the requirements of 10 CFR 50.55a(g)(4) is justified.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present and justify the exemptions—namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that at no point would granting the exemption result in the IST program exceeding ten years without receiving an ASME code update.

The Commission hereby grants an exemption from the requirements of 10 CFR 50.55a(g)(4)(ii) to the Licensee for the operation of the Browns Ferry Plant, Units 1, 2, and 3, in that the revised IST program of August 31, 1982 complied with the requirements of the latest edition and agenda of the Code and, therefore, the Browns Ferry IST program will not exceed the 120-month interval without an update to a more recent ASME Code update.

Pursuant to 10 CFR 51.21, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (53 FR 8521, March 15, 1988).

For further details with respect to this action, see the request for exemption dated April 6, 1983, as supplemented February 17, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Athens Public Library, South Street, Athens, Alabama 35611.

This exemption is effective upon issuance.

Dated at Bethesda, this 18th day of March 1988.

For The Nuclear Regulatory Commission.

Stewart D. Ebneter,

Director, Office of Special Projects.

[FR Doc. 88-6503 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

Toledo Edison Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's), relating to once through steam generator (OTSG) tube sample selection and inspection requirements. Specifically, the proposed amendment would revise TS Surveillance Requirement 4.4.5.2 by adding an additional special interest tube group. The new special interest group would consist of the tubes near the center of each OTSG.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 25, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may

be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 11, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 18th day of March, 1988.

For The Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects

[FR Doc. 88-6504 Filed 3-24-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities; Revision to Circular No. A-76

AGENCY: Office of Management and Budget.

ACTION: Revisions to Circular No. A-76, "Performance of Commercial Activities".

SUMMARY: This notice contains Transmittal Memorandum No. 6, dated March 7, 1988, to Circular No. A-76, "Performance of Commercial Activities."

The transmittal memorandum updates the retirement cost factors and inflation factors for personnel and non-pay costs used by Executive Branch agencies in cost comparison studies under OMB Circular No. A-76.

The revised retirement cost factors represent the amount the Government contributes to the basic defined benefit fund of the retirement system. The rate excludes the Government's contribution to Social Security (OASDI) and thrift plan costs in the Federal Employees Retirement System (FERS) as required by the FERS Act of 1986.

This change reflects composite factors that are derived from the six (1988–1993) yearly dynamic normal cost rates developed by the Office of Personnel Management actuary.

This change uses the same rates and percentage of payroll assumptions included in OMB Bulletin No. 88-08 of December 24, 1987.

The revised employee pay and non-pay factors reflect the same economic assumptions contained in the President's Fiscal Year 1989 Budget of the U.S. Government.

The revision does not require any agency to (1) create or maintain a duplicative control/monitoring/reporting system or (2) adopt any additional controls if presently in compliance with the Federal Acquisition Regulations (FAR).

FOR FURTHER INFORMATION CONTACT: Sandra Popham, Office of Federal Procurement Policy, Office of Management and Budget, (202) 395-6810.

James C. Miller III,

Director.

March 4, 1988.

CIRCULAR NO. A-76

Revised Transmittal Memorandum No. 6

TO THE HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

SUBJECT: Revised Retirement Cost Factors

This transmittal memorandum updates the standard retirement cost factor and inflation factors used for computing Government personnel and non-pay costs under OMB Circular No. A-76, dated August 4, 1983.

The revised standard retirement cost factor to be used is 19.1 percent for all agencies except the Department of Medicine and Surgery (DM&S) within the Veterans Administration (VA). The factor for DM&S is 8.8 percent. The composite factors are derived from the six (1988–1993) yearly dynamic normal cost rates developed by the Office of Personnel Management. The standard factor represents the Government's share of the full dynamic normal costs of the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). The factors do not include the Government's contributions to Social Security (OASDI) and thrift savings plan costs. The DM&S factor reflects only the actual costs the VA contributes to the two retirement funds.

The revised standard retirement cost factors for cost comparisons which contain special class employees are 23.5 percent for air traffic controllers and 25.5 percent for law enforcement and fire protection employees.

The President's FY 1989 Budget contains revised economic assumptions for Federal employee pay and non-pay cost increases covering FY 1988 through FY 1993. The following factors should be applied per paragraph C of the Supplement to Circular No. A-76 on pages IV-6 and 7:

Federal pay raise assumptions	Inflation factors	
Effective date	Military	Civilian
January 1988	2.0	2.0
January 1989	4.3	2.0
January 1990	4.6	3.0
January 1991	4.5	3.0
January 1992	4.2	3.0
January 1993	4.0	3.0

Non-Pay Categories (supplies, equipment, etc.)	
FY 1988	3.3
FY 1989	3.9
FY 1990	3.6
FY 1991	3.3
FY 1992	2.8
FY 1993	2.3

The wage base to compute the medicare benefit factor (1.45 percent) will increase on a fiscal year basis as shown below. This factor should be applied per paragraph D.3.g. of the Supplement on page IV-10.

FICA wage base	
FY 1988	$44,700
FY 1989	$46,125
FY 1990	$48,525
FY 1991	$51,450
FY 1992	$54,450
FY 1993	$57,450

These revisions are effective upon publication and shall apply to all studies in process where the bids or proposals have not been opened.

James C. Miller III,

Director.

[FR Doc. 88-6258 Filed 3-24-88; 8:45 am]

BILLING CODE 3110-01-M

POSTAL SERVICE

Postal Service Owned Invention; Availability for Licensing

AGENCY: Postal Service.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the Postal Service and is made available for licensing. A postal industry technical briefing was given to potential users on January 29, 1988 at which time the compression methodology covered by the patent was disclosed.

It is the policy of the Postal Service to make available royalty-free licenses for this patent to contractors that directly provide the Postal Service with equipment or services. Requests for such royalty-free licenses should be made to: David F. Letts, Contracting Officer, Office of Procurement, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-6234.

It is also the policy of the Postal Service to make available royalty-bearing licenses to any others who may be interested. Such persons or firms are invited to purchase a license or enter into a royalty agreement. Inquiries should be made to Arthur D. Little Enterprises, Inc., 25 Acorn Park, Cambridge Massachuetts, 02140-2390, which will act as agent for the Postal Service.

DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. W. J. Maloney, Jr., Program Director, Office of Operations Research & Systems Requirements, Technology Resources Department, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington DC, 20260-8112, Telephone (202)- 268 3861.

Patent Application #144380: "Method and System for Storing and Retrieving Compressed Data" January 15, 1988.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-6500 Filed 3-24-88; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25493; File No. SR-MSE-88-2]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Midwest Stock Exchange, Incorporated Relating to the Extension of the Portfolio Execution System Pilot Program

On February 18, 1988, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the approval of the portfolio execution system pilot program until such time as the Commission makes a final determination on whether or not approval of the pilot program should be granted on a permanent basis.

On February 12, 1986, the Commission approved on a one-year pilot basis four proposed changes to the Midwest's Automatic Execution System ("MAX") (see SR-MSE-85-11; Release No. 34-22896).

The pilot program, as approved on February 12, 1986, consists of four changes to MAX procedures. These changes apply only to portfolio executions. The MSE's current proposal seeks the extension of these four changes until such time as a filing for permanent approval of the pilot is made by the Exchange and considered by the Commission. The first of the four changes will allow principal orders for portfolio executions to be sent over MAX. This change will enable member firms to execute more efficiently a portfolio for the firm's own account as well as for customers.

Second, the time frame between the time a market order is entered into MAX and the time it is automatically executed will be reduced from 15 seconds to 0 seconds.[3] According to the MSE, the need for a timely execution is significantly more important to the customer and the firm in this type of transaction than the possibility that a better fill may be obtained in a particular issue in a portfolio by exposing the order for 15 seconds.

The third change clarifies that specialist participation in a portfolio execution is voluntary for principal orders or agency orders above 1,099 shares. The MSE notes that this is consistent with the current MAX requirements. Portfolio executions over MAX beyond the existing MAX requirements only will be executed in accordance with arrangements agreed upon in advance by the specialist and the order entry firm.

The fourth change precludes the use of the MAX System for portfolio executions before 9:00 a.m. and after 2:45 p.m. (Central Standard Time).[4] According to the MSE, this restriction will avoid creating any problems at the opening or closing in periods of heavy volume.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and 11A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval will enable the Exchange to continue the use of the portfolio execution system while the Commission continues to examine the appropriateness of the proposed modifications to MAX. Extension of the pilot program will permit the MSE to assess and develop further its procedures under the program.

As the Commission noted in the initial approval of the pilot program, however, the reduction of order exposure time through MAX from 15 seconds to zero seconds for portfolio executions represents an exception from procedures for executing orders in individual securities based on the need by member firms for timely execution of portfolios. The Commission recognizes the pricing benefits that may adhere to the exposure of orders in individual securities are significantly reduced in the context of the simultaneous execution of a number of securities

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] We note that the current order exposure time for MAX orders is based on a pilot program that reduces order exposure from 30 seconds to 15 seconds. *See* SR-MSE-85-6, Release No. 22357, 52 FR 35080 (Aug. 20, 1985).

[4] The Commissions February 12, 1986 approval of the pilot program provided that the MAX system could not be used before 9:30 am. The Exchange, however, amended its rules to commence trading one-half hour earlier, at 8:30 a.m. instead of 9:00 a.m. central time. [*See* MSE-85-9, Release No. 22474, 50 FR 41280, (Sept. 28, 1985)]. In light of this change, the Exchange proposes that the use of the MAX system for portfolio executions be precluded before 9:00 a.m. instead of 9:30 a.m. as originally approved in the pilot. This will maintain the 30 minute delay from the opening of trading in which portfolio executions through MAX are currently prohibited.

comprising a portfolio. In this regard, the Commission will continue to examine the appropriateness of eliminating any exposure time for portfolio executions.[5]

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 15, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: March 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6590 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

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[5] In this regard, the Commission is also currently considering whether order exposure for MAX order should be reduced from 30 to 15 second on a permanent basis. *See* SR-MSE-86-9, Release No. 24047, 52 FR 4648 (Feb. 12, 1987).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1986).

[Release No. 34-25489; File No. SR-MSRB-87-12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

On October , 1987, the Municipal Securities Rulemaking Board ("MSRB") filed with the Commission, pursuant to section 19 of the Securities Exchange Act of 1934 ("Act"), a proposed rule change that amends MSRB rules concerning the delivery of interchangeable municipal securities ("interchangeables")[1] and the confirmation of transactions for those securities. The proposal would permit a delivery of municipal securities to be in either registered or bearer form unless the parties to the transaction specifically agree to a particular form. The Commission published notice of the Proposal on December 10, 1987.[2] No comments were received. This Order approves the proposal.

I. Description

Currently, MSRB rules provide that certain deliveries of interchangeables must be in bearer form unless the parties agree to registered form certificates.[3] The proposal would eliminate that presumption in favor of bearer certificates and permit deliveries of interchangeables to be in bearer or registered form, unless there is an agreement between parties on a specific form of delivery. The proposal provides that it will become effective six months from the date of approval, on September 18, 1988. The proposal also would eliminate a reclamation provision that currently allows a receiving party to return registered securities to the delivering party if registered securities were not specified at the time of the trade.[4] Finally, the proposal would eliminate an MSRB requirement that confirmations disclose whether interchangeables are in registered form.[5]

II. Rationale

The MSRB believes that its proposal should benefit depositories, brokers, dealers, and customers. The MSRB states in its filing that the proposal would facilitate depository conversion of bearer certificates to registered certificates, which would reduce depository costs associated with housing and processing bearer certificates. The MSRB also believes dealers would experience a reduction in the number of failed transactions and missed call notices. Customers, according to the MSRB, would benefit from better call notification, prompt interest payments, and reduced risk of certificate theft or loss offered by registered certificates. Accordingly, the MSRB believes that the proposal is consistent with section 15B(b)(2)(c) of the Act.

The MSRB solicited comments on the proposals in an exposure draft published in June 1987. The MSRB states in its filing that 18 comment letters were received. Thirteen commentators supported the proposal, and five opposed the proposal. Supporting commentators believed the proposal would promote the efficiencies of registered-form municipal securities. Opposing commenters believed the proposal would restrict their ability to service customers who prefer bearer securities. As noted above, however, no comments were received by the Commission.

III. Discussion

The Commission is approving the proposal because it believes the proposal is consistent with the Act, and Sections 15B and 17A in particular. As discussed below, the Commission believes that the proposal is designed to promote efficiencies and reduced risk associated with the use of registered-form municipal securities. The Commission believes that those efficiencies benefit depositories, dealers, and customers. The Commission also believes that the proposal should reduce the number of failed transaction settlements that result from current rules that create a presumption in favor of delivery of bearer certificates.

Since the enactment of TEFRA, most municipal securities have been issued in registered rather than bearer form. Moreover, the majority of municipal securities deliveries in primary distributions and in secondary-market transactions currently are effected by book-entry deliveries at depositories.[6] Although brokers and dealers that use depositories must accept book-entry deliveries of interchangeable issues, not all municipal securities brokers and dealers use depositories and many interchangeable issues are not eligible for depository services. Current MSRB rules that presume deliveries of interchangeables must be in bearer form, unless specified otherwise, have hampered centralized automated processing of municipal securities transactions. Those rules effectively prevent depositories from converting interchangeable bearer securities on deposit to registered form, because many depository participants now need the ability to withdraw bearer certificates to satisfy delivery obligations to other dealers.[7] Moreover, those deliveries often are made physically and not by book-entry movements at depositories. As discussed below, current procedures create unnecessary cost and risk to depositories, brokers and dealers, and customers.

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[1] Interchangeables are municipal securities issues that may be held in registered or bearer form and converted from one form to the other.

[2] *See* Securities Exchange Act Release No. 25172 (December 4, 1987), 52 FR 46875.

[3] *See* MSRB Rules G-12(e)(vi)(a) and G-15(c)(iv)(A). Since July 1, 1983, the Tax Equity and fiscal Responsibility Act of 1982 ("TEFRA") has made the tax-exempt status of new municipal bond issues contingent, in part, upon issuance of the securities in registered form. According to the MSRB, almost all municipal securities issued since that date have been in registered form. Current MSRB rules that would be amended by the proposal were adopted before TEFRA.

[4] *See* MSRB Rule G-12(g)(iii)(4).

[5] *See* MSRB Rules G-12(c)(vi)(B) and G-15(a)(iii)(B). Under the proposal, if parties do agree on a specific form of delivery, it would have to be noted on the confirmation as a special condition to the trade.

[6] In 1983, the Commission approved an MSRB proposal requiring dealers, brokers, and customers that participate in registered clearing agencies to use automated clearing agency facilities to process their municipal securities transactions. The proposal was intended to bring more municipal securities transactions into the National Clearance and Settlement System. *See* Securities Exchange Act Release No. 20465 (November 14, 1983), 48 FR 52531 corrected at 48 FR 54310.

Depository costs and risk from maintaining interchangeables in bearer form are significant. Each bearer certificate must be individually maintained in the depository's vault, because bearer certificates cannot be consolidated into large-denomination certificates. Prior to interest payment dates, depositories must manually retrieve each bearer bond, physically "clip" the interest coupon, and physically deliver coupons to appropriate paying agents. Depositories also must monitor hundreds of newspapers and financial periodicals to determine which bearer bonds in their custody have been called for redemption by issuers. Depositories often incur significant interest costs when a call is missed.[8] In contrast, depositories can consolidate registered certificates into "jumbo" certificates and bond trustees send interest payments and call notices directly to depositories.

The proposal should benefit brokers and dealers by lowering depository costs,[9] which participants pay through depository fees, and reducing costs and risk resulting from physical deliveries. Currently, brokers and dealers that discover they have sold interchangeables,[10] without specifying registered-form delivery, must withdraw bearer certificates (and pay withdrawal fees) and physically deliver certificates to a receiving party that does not use a depository.[11] Bearer certificates are readily negotiable and present risk from loss or theft. If those brokers or dealers attempt to deliver registered certificates, they face reclamation under MSRB rules by the receiving party and must finance the position until physical delivery of bearer certificates can be made.

Although the Commission understand that some customers continue to prefer bearer certificates, registered certificates offer lower costs and risk to customers without any discernible detriment.[12] Like depositories, individual holders of registered certificates receive interest payments and call notices directly from bond trustees. The Commission understands that individual holders of bearer certificates are the most likely holders to miss call notices and often absorb resulting interest loss. Moreover, when individuals lose bearer certificates, trustees often require that the investor pay the cost of new printing plates in addition to a replacement bond, which together can exceed the face amount of the lost bond. The cost of printing plates is not incurred in replacement of registered bonds, because transfer agents maintain blank certificates for transfer or replacement purposes.

In commenting on an exposure draft published by the MSRB in June 1987, commentators opposing the proposal believed it would restrict their ability to service customers preferring bearer securities. Those commentators cited the ease of transferring bearer securities and the possibility of transfer fees as reasons for customer preferences for bearer securities. The Commission believes that registered certificates can be negotiated easily and with less risk of improper negotiation and resulting loss to investors. The Commission believes the efficiencies promoted by the proposal outweigh any burden the proposal may place on customers preferring bearer securities or parties servicing those customers.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Sections 15B and 17A.

It is therefore ordered, pursuant to section 19 of the Act, that the proposed rule change (SR–MSRB–87–12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

Dated: March 18, 1988.

[FR Doc. 88–6538 Filed 3–24–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16328(812–6966)]

AIM Convertible Securities, Inc., et al.; Application

March 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: AIM Convertible Securities, Inc., AIM Government Funds, Inc., AIM Tax-Exempt Funds, Inc., The Constellation Growth Fund, Inc., Cortland Trust, The Greenway Fund, Inc., High Yield Securities, Inc., Short-Term Investments Co., Summit Investors Fund, Inc., Tax-Free Investments Trust and Weingarten Equity Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 32(a)(1).

Summary of Application: Applications seek an order to permit them and any open-end management investment company and any series, class or portfolio thereof that are sponsored, advised or administered now or in the future by AIM Advisors, Inc., AIM Capital Management, Inc. or their affiliates and are not required by law to hold annual shareholder meetings to file with the SEC financial statements signed or certified by an independent

public accountant selected at a board of directors or trustees meeting held more than thirty but not more than ninety days before or after the beginning of their respective fiscal years.

Filing Date: The application was filed on January 25, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 14, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Eleven Greenway Plaza, Suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney, (202) 272–3082 or Brion R. Thompson, Special Counsel, (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231–3282 (in Maryland, (301 258–4300).

Applicants' Representations

1. Applicants are open-end management investment companies registered under the 1940 Act. All of the Applicants are Maryland corporations except for Tax-Free Ivestments Trust, Short-Term Investments Co. and Cortland Trust, which are Massachusetts business trusts. Each Applicant is advised by AIM Advisors, Inc. or AIM Capital Management, Inc. Applicants' fiscal years range from March 31 to December 31.

2. The Boards of Directors or Trustees (hereinafter, the "Boards") of each Applicant currently select an independent public accountant at a meeting held prior to mailing the proxy soliciting material for those Applicants that held annual meetings, and within thirty days before or after the beginning of the fiscal year for those Applicants that do not hold annual meetings. Applicants (other than Tax-Free Investments Trust, Short-Term Investments Co. and Cortland Trust) have in the past generally held an annual meeting of shareholders.

3. Tax-Free Investments Trust, Short-Term Investments Co. and Cortland Trust, as Massachusetts business trusts, are not required to hold annual shareholder meetings. Recently, Maryland State law has been changed so that it no longer requires annual meetings if the charter or by-laws of a Maryland corporation registered under the 1940 Act provides that such corporation need not hold annual meetings except when required in certain specific circumstances. At their most recent meetings, the Boards of Applicants that are incorporated in Maryland took such action as was necessary so that such Applicants need no longer hold annual meetings. Therefore, unless shareholder action is required under the 1940 Act for (i) election of directors, (ii) approval of the investment advisory agreement, (iii) ratification of the selection of independent public accountants or (iv) approval of the distribution agreement, annual meetings will not be held for any of the Applicants.

4. The procedures which have been followed by Applicants for the selection of independent public accountants rely on the work of the Audit Committee which is comprised of the same directors for all Applicants, except Cortland Trust and Tax-Free Investments Trust which have their own Audit Committees. Each of their Audit Committees is composed of "distinterested" directors (as contemplated in section 2(a)(19) of the 1940 Act) who meet with the independent public accountants at least twice a year.

5. The Audit Committees meet to discuss the scope of the audits, the significant audit procedures to be applied and the estimated costs. The Audit Committees also review the results of the annual audits, including such factors as the cooperation given by the investment manager's personnel, any changes in accounting practices and principles, and questions about the independent public accountant's qualifications or independence and the actual fees. Based on its work, the Audit Committee makes its recommendation to the respective Board of each Applicant regarding the selection of the independent public accountant.

6. Under the provisions of section 32(a)(1) of the 1940 Act, Applicants which do not hold regular annual meetings will now be required to select their independent public accountant within thirty days before or after the beginning of each Applicant's fiscal year. This would require a meeting of the Boards almost monthly due to the range of fiscal year-ends from March 31 to December 31.

7. Typically, the Boards of all of the Applicants meet at the same time which is more convenient for the board members and officers of the Applicants and which results in a substantial savings in meeting costs. To select the independent public accountant within thirty days before or after the beginning of each Applicant's fiscal year as required under section 32(a)(1) would require a change in the existing procedures of the Applicants, would be more inconvenient and costly and would not change the results.

8. Accordingly, to assure that the purposes expressed in the language of the 1940 Act are met while at the same time making an effective use of each Boards' time, it is proposed that the time frame in which meetings of the Boards could consider the selection of an independent public accountant be expanded from thirty days to ninety days before or after the beginning of the fiscal year. By so doing, the Board meetings on a complex-wide basis could be arranged so that the selection of an independent public accountant need be considered only twice each year.

Applicants' Legal Analysis

1. Each Applicant submits that it would be desirable for it to consider the selection of its independent public accountant at a regularly scheduled Board meeting during its fiscal year. Expanding the thirty day window under section 32(a)(1) to ninety days will permit a regular and structural consideration of the independent public accountant for complexes at a meaningful interval of time. This is preferable to the almost monthly selection which would be required if the interval is not expanded.

2. By permitting the scheduling of the selection of the independent public accountant through expanding the window from thirty to ninety days, the SEC will allow a member of each Board to review procedures to be put in place that will ensure the selection of the Applicants' independent public accountants is considered on a systematic basis that will (i) provide detailed review of the services furnished by the independent public accountants and (ii) result in the Boards' consideration of all information developed by the Audit Committees. Further, the process will more accurately reflect the reality of doing business in complexes having a substantial number of investment companies, which is different from the

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[7] The Commission understands that after this proposal takes effect, depositories likely will begin comprehensive conversion of interchangeables to registered form, a process that could take several years. The effect of such a conversion would be to reduce the available supply of bearer certificates. Because that conversion could change a depository participant's current ability to withdraw interchangeables in bearer form, the Commission expects depositories to file any such policy change with the Commission under section 19 of the Act and Rule 19b–4.

[8] Recently, the improvement of municipal bond call notification has been of concern to the Commission. *See* Securities Exchange Act Release No. 23856 (December 3, 1986), 51 FR 44398. In that release, the Commission endorsed standards aimed at improving the processing of muncipal securities redemptions. The standards were endorsed at a meeting of industry organizations, self-regulatory organizations, and Federal regulatory agencies.

[9] One estimate indicates that a depository that currently holds over 15 million interchangeable bearer certificates could save $1.00 per certificate per year if those certificates were converted to registered form. Letter from Robert N. Downey, Chairman, Public Securities Association, Municipal Securities Division, to Angela Desmond, General Counsel, MSRB, dated March 31, 1987 ("PSA letter").

[10] The Commission understands that over 50% of municipal bonds issued prior to TEFRA are interchangeable, but that there is no readily available source to determine whether a particular bond is interchangeable.

[11] Estimates indicate that physical deliveries cost $10 to $15 more per trade to process than book-entry deliveries at depositories. *See, e.g.*, SEC, Division of Market Regulation, *Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems*, Draft Staff Report (June 14, 1985).

[12] The Commission notes that the Public Securities Association and Depository Trust Company have committed to take steps to inform brokers, dealers, and investors of the implications of the proposal before the proposal's effective date. *See* PSA letter.

time the 1940 Act was passed when investment companies were operated on an individual basis or in small investment company groups.

For the Commission, by the Division of Investment Management, under developed authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6601 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16325; 812-6960]

The Chase Manhattan Bank, N.A.; Application

March 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Chase Manhattan Bank, N.A.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 17(f).

Summary of Application: Applicant seeks an order to permit it to continue to deposit the securities and assets of U.S. registered management investment companies with Nederlandse Credietbank N.V. ("NCB") in The Netherlands, in accordance with prior orders, notwithstanding the fact that Applicant has transferred its interest in NCB.

Filing Date: The application was filed on January 20, 1988 and amended on March 9, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Chase Manhattan Plaza, New York, NY 10081.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3028, or Curtis R. Hilliard, Special Councel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. In Investment Company Act Release No. 12053 (November 20, 1981), the SEC granted an order exempting Applicant, any subcustodian of Applicant, any custodian for which Applicant acts as subcustodian and any management, investment company registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Company") from the provisions of section 17(f) of the 1940 Act and Rule 17f-4 thereunder to the extent necessary to permit Applicant, as the custodian of securities and other assets of a Company ("Securities") or as the subcustodian of such Securities as to which any other entity is acting as custodian, and such other entity for which Applicant so acts, to deposit or to cause or permit the deposit of such Securities in certain foreign banks and foreign securities depositories under certain conditions. The term "Securities" does not include securities issued by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidences of indebtedness and other securities, issued or guranteed by an entity so organized which have been issued and sold outside the United States). In Investment Company Act Release No. 14184 (October 9, 1984), the SEC amended the order so that it would confrom to certain conditions in Rule 17f-5 under the 1940 Act which was adopted by the SEC in Investment Company Act Release No. 14132 (September 7, 1984) (the orders collectively referred to as "Existing Orders"). The Existing Orders provide, among other things, that any Company relying on the Existing Orders may maintain its Securities in the custody of only eligible foreign custodians as defined therein, which include: (i) a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of $200 million (U.S. $ or U.S. $ equivalent) and (ii) a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorpoated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100 million (U.S. $ or U.S. $ equivalent).

2. In Investment Company Act Release No. 14687 (August 28, 1985), the SEC granted an order ("NCB Order") under section 6(c) of the 1940 Act exempting Applicant, any Company and NCB from the provisions of section 17(f) to the extent necessary to permit Applicant to deposit, or to cause or permit the deposit of, Securities of any Company with NCB in The Netherlands. At that time, NCB was an indirect, wholly-owned subsidiary of Applicant and regulated as a banking institution by the Central Bank of The Netherlands. However, NCB had shareholders' equity of less than U.S. $100 million, and thus, did not satisfy the maximum requirement to qualify as an "eligible foreign custodian" under the existing Orders, as modified by Rule 17f-5 under the 1940 Act. Pursuant to the terms of the NCB Order, Applicant can make deposits with NCB only in accordance with an agreement, which agreement is required to remain in effect at all times during which NCB does not meet the requirements of the Existing Orders relating to shareholders' equity, among (a) the Company or a custodian of the Securities of the Company for which Applicant acts as subcustodian, (b) Applicant and (c) NCB, pursuant to the terms of which Applicant would act as the custodian or subcustodian, as the case may be, of the Securities of the Company and NCB would be delegated such duties and obligations of Applicant thereunder as would be necessary to permit NCB to hold in custody the Securities of the Company in The Netherlands, provided that such delegation would not relieve Applicant of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of NCB) for which neither Applicant nor NCB would be liable under the Existing Orders (*e.g.*, despite the exercise of reasonable care, loss due to Act of God, nuclear incident and the like).

3. In Investment Company Act Release No. 14711 (September 11, 1985), the SEC adopted amendments to Rule 17f-5 under the 1940 Act to clarify

certain aspects of the Rule. The release stated that the clarifications are equally applicable to the Existing Orders which incorporate the rule requirements.

4. On December 31, 1987, Applicant transferred its entire interest in NCB to Credit Lyonnais Bank Nederland N.V., a majority-owned direct subsidiary of Credit Lyonnais S.A. ("Credit Lyonnais"). Credit Lyonnais, a banking organization formed under the laws of France in 1863, is the second largest commercial bank in France and is regulated as a banking institution by the French government. Nothwithstanding the sale of Applicant's interest in NCB, Applicant requests an order to permit it to continue to deposit Securities of any Company in The Netherlands with NCB so long as such deposit is made in accordance with the terms of the Existing Orders as modified by the NCB Order.

Applicant's Legal Conclusions

The exemption requested should be granted because it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In support thereof, the proposed foreign custodian arrangements with NCB would continue to comply with the requirements of the Existing Orders as modified by Rule 17f-5 under the 1940 Act and the NCB Order.

Applicant's Conditions

Applicant agrees that the requested order may be expressly conditioned on the following:

Applicant will comply with all the terms of the Existing Orders, as modified by Rule 17f-5 under the 1940 Act, except those relating to shareholders' equity and those which would have to be modified to accommodate the requirements of the NCB Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6602 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16326; File No. 812-7093]

Robert A. Katz; Filing of Application

March 21, 1988.

Notice is hereby given that Robert A. Katz ("Katz" or "Applicant") 200 East 56th Street, New York, New York 10022, has filed an application ("Application") and amendment thereto requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), that would grant a permanent exemption from the prohibitions of section 9(a)(2) of the Act, applicable to him by virtue of an injunction entered in 1977. Katz requests relief only to the extent necessary to serve as a trustee of the Eclispe Financial Asset Trust.

The application states that Katz is an attorney who has been in private practice in New York City and, before that, in Chicago, for more than 22 years. He received an A.B. degree in 1946 from Harvard University where he also did post-graduate work from 1947 to 1948, and he received an LL.B. degree from the Boston University School of Law in 1954. The Application further states that Katz has been a member in good standing of the Illinois bar since 1954, the Connecticut bar since 1960 and the New York bar since 1966. In addition to practicing law, Applicant was an officer of Jospeh E. Seagram & Sons in New York City from 1965 to 1969. He served as chairman of the executive committee and director of Bevis Industries, Inc., in Providence, Rhode Island from 1969 to 1972, and as chairman of McGrath Services Corp. from 1973 to 1974. He served in the United States National Reserve from 1944 to 1946. In addition to maintaining his private legal practice, Applicant currently serves as an officer and director of Opportunity Press, Inc., in Chicago, Illinois.

From January to June 1987, Applicant served as a disinterested trustee of Eclipse Financial Asset Trust (the "Trust"), an open-end management investmenet company registered under the Act. Applicant resigned as a trustee of the Trust upon learning that he is prohibited, for the reasons discussed below, from serving in such capacity under section 9(a) of the Act.

In 1972, Applicant was named as one of approximately 20 defendants in an action commenced in the United States District Court for the District of Columbia entitled *SEC v. National Student Marketing Corporation,* Civ. Action No. 225-72 (D.D.C. filed Feb. 3, 1972) (the "Action"). In its complaint the Commission alleged, among other things, that Applicant violated and aided and abetted in the violation of the antifraud and reporting provisions of the Federal securities laws by issuing legal opinions which he knew or should have known were materially false and misleading and would be relief upon by third parties.

In April 1977, Applicant executed a stipulation in which he consented, without admitting or denying the allegations of the complaint except as to jurisdiction, to entry of a Final Judgment of Permanent Injunction (the "Final Judgment"). The Final Judgment, which was entered on April 28, 1977, permanently enjoined Applicant from

> making materially false and misleading statements, or omitting to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including but not limited to issuing any legal opinion, in the form of a letter or otherwise, which he knows or reasonably should know is materially false or misleading in whole or part, to any company registered with the Commission or to any officer, director, employee, agent, accountant or attorney for such a company; or
>
> engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, including but not limited to, issuing to any accountant, attorney, firm, company or any other person any proposed or actual contract, purchase and/or sale agreement, promissory note, management agreement or other legal instrument which he knows or reasonably should know is wholly or partially designed to or will likely be used to conceal the true nature of, or to materially promote, a transaction which is a sham or illusory in commercial or economic substance and which transaction he knows or reasonably should know could be misleading to stockholders of any company involved in the transaction or to the investing public.

In the Final Judgment, it was further ordered that any written legal opinion issued by Applicant to any issuer registered with the Commission (or to certain persons connected with such an issuer) and relied on in connection with the filing with the Commission of any required information clearly describe (i) the identity of any person or entity to whom and for whose benefit such opinion is rendered, (ii) the purpose for which such opinion is designed to be utilized, and (iii) any restriction on the use to which such opinion is put. In addition, pursuant to the Final Judgment, Applicant, who represents that he has not practiced law before the Commission since 1971, agreed to notify the Commission in writing prior to resuming such practice.

No evidence against Applicant was received in the Action and the Court did not make any findings of fact or conclusions of law regarding Katz in entering the Final Judgment.

Section 9(a) of the Act provides, in relevant part, that it is unlawful for any person to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser or depositor of any registered investment company is such person, by reason of any misconduct, is permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) of the Act provides that upon application, the Commission shall be order grant an exemption, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.

The provisions of section 9(a) would preclude Applicant from serving as trustee for the Trust unless the relief requested pursuant to section 9(c) of the Act in this Application is granted. Applicant submits that the prohibitions of section 9(a) of the Act would be unduly and disproportionately severe as applied to him, and that his conduct has been such as to make it not against the public interest or the protection of investors to grant him an exemption from its provisions.

In support of this contention, Applicant submits that:

1. There were no factual findings or admissions of misconduct by Applicant in the Action. Moreover, the complaint filed by the Commission contained no allegations of self-dealing by Applicant.

2. More than 10 years have elapsed since Applicant consented to entry of the Final Judgment, and he has complied in all respects with its terms since its imposition. Applicant has taken all steps necessary to ensure that his legal practice is conducted in accordance with the terms of the Final Judgment.

3. At no time other than in the Action has Applicant been the subject of any federal or state enforcement or other administrative or judicial disciplinary proceeding, nor has he been named as a defendant in any other action relating to the securities laws. Applicant has not previously filed an application for relief pursuant to section 9(c) of the Act.

4. Applicant's participation as a disinterested trustee of the Trust would be in the best interests of investors in the Trust, and in the public interest, since his experience and expertise in the areas of law and business, and his personal integrity and commitment, make him especially well-suited to serve as trustee to the Trust. If Applicant is not permitted to serve as trustee for the Trust pursuant to an exemption under section 9(c) of the Act, investors will be deprived of the benefit of his experience and expertise.

5. The allegations in the Commission's complaint against Applicant, and the actions enjoined in the Final Judgment, involve Applicant's legal practice. Applicant will not be retained to render legal counsel to the Trust, nor will he resume practice before the Commission in connection with his position as trustee. To prohibit him from serving as trustee for the Trust would place an undue and disproportionate limitation on his activities.

6. Applying the prohibitions of section 9(a) to Applicant would result in detriment to investors in the Trust and deprive Applicant of his ability to serve as trustee for the Trust even though Applicant's contemplated activities as trustee of the Trust are completely unrelated to the activities and capacity in connection with which he was enjoined and he has complied fully with the terms of the Final Judgment.

Based upon the foregoing, Applicant states that the prohibitions of section 9(a) would be unduly and disproportionately severe as applied to him, and that it is not against the public interest or the protection of investors to grant the order of exemption requested in this Application. Applicant therefore requests that the Commission, pursuant to section 9(c) of the Act, grant him a permanent exemption from the provisions of section 9(a) operative as a result of the injunction entered against him in 1977, to the extent necessary to permit him to serve as a trustee of the Trust.

Applicant represents that he acknowledges, understands, and agrees that the Commission's issuance of the order requested by the Application shall not prejudice nor limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Investment Company Act, based, in whole or in part, upon conduct other than that giving rise to the Application.

Notice is further given that any interested person may, not later than April 20, 1988, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the Application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6602 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16324; (812-6956)]

USAA Mutual Fund, Inc., et al.; Application

March 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: USAA Mutual Fund, Inc. (consisting of: USAA Growth Fund, USAA Sunbelt Era Fund, USAA Income Stock Fund, USAA Income Fund and USAA Money Market Fund), USAA Tax Exempt Fund, Inc. (consisting of: USAA High Yield Fund, USAA Intermediate-Term Fund, USAA Short-term Fund and USAA Tax Exempt Money Market Fund), and USAA Investment Trust (consisting of: USAA Cornerstone Fund and USAA Gold Fund).

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 32(a)(1).

Summary of Application: Applicants seek an order to permit them and any future funds, trusts or series which become part of the USAA Group of Funds to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors or trustees meeting held within sixty days after their respective fiscal years.

Filing Date: The application was filed on February 4, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, USAA Building, 9800 Fredericksburg Road, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney, (202) 272-3022 or Brion R. Thompson, Special Counsel, (202) 272-3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. Each Applicant is a registered open-end management investment company under the 1940 Act incorporated under the laws of Maryland, except USAA Investment Trust which is organized as a Massachusetts business trust. Each Applicant is a series company which is advised by USAA Management Company, an affiliate of United Services Automobile Association, a major property and casualty insurer.

2. Each of the Applicants has a Board of Directors or Board of Trustees (hereinafter "Board" or "directors"). Traditionally, Applicants have held concurrent quarterly meetings of their Boards and selected independent public accountants at the first quarterly meeting held subsequent to each Applicant's fiscal year end. Neither the corporate laws of Maryland nor applicable business trust law of Massachusetts require Applicants to hold annual shareholders' meetings.

3. Therefore, unless shareholder action is required for some other reason, it is the intention of Applicants that annual meetings not be held. Accordingly, under the provisions of section 32(a)(1) of the 1940 Act, Applicants are required to select their independent public accountant within thirty days before or after the beginning of each Applicant's fiscal year.

4. According to the application, the thirty day period for the selection of an independent public accountant mandated by section 32(a)(1) does not provide adequate time for Applicants' Combined Audit Committee (the "Committee") to review the audit findings in detail and formulate recommendations for the Boards. The selection of an independent public accountant for each Applicant is predicated on the recommendations of the Committee, which is composed of "disinterested directors" (as contemplated in section 2(a)(19) of the 1940 Act) serving on the Board of each Applicant. The Committee meets at least twice a year with the independent public accountant to discuss the audit plan, significant audit procedures to be implemented and projected costs. Upon completing the audits of the Applicants, the Committee reviews the results and formulates recommendations for consideration by the Boards. The Committee's recommendations are based on such criteria as: accountant's qualifications, ability to meet deadlines, suggested changes in accounting practices and principles, and actual fees.

5. Accordingly, to ensure that the purpose expressed in the language of section 32(a)(1) of the 1940 Act is met while at the same time ensuring that each Applicant's Board has the benefit of the Committee's recommendations prior to their selection of an independent public accountant, Applicants propose to allow the thirty day period in which meetings of directors could consider the selection of an independent public accountant be expanded to sixty days after the end of their respective fiscal years.

6. The fiscal year-ends of Applicants are March 31 for USAA Tax Exempt Fund, Inc., and September 30 for USAA Mutual Fund, Inc. and USAA Investment Trust. The expanded period for selection would enable Board meetings on a complex-wide basis to be arranged so that the selection of an independent public accountant need be considered only twice each year at a time sufficient to provide for a detailed review by the Committee and the Boards of the previous year's audit results.

Applicants' Legal Analysis

1. Each Applicant submits that it would be desirable for it to consider the selection of its independent public accountant at a regularly scheduled Board meeting during its fiscal year. Applicants believe that the exemption is appropriate and in the public interest, is consistent with the protection of investors, and is consistent with the purposes intended by the policy and provisions of the 1940 Act.

2. By permitting the scheduling of the selection of the independent public accountant through expanding the window form thirty to sixty days, the SEC will allow review procedures that would (i) provide the Committee with a more realistic timeframe for a detailed review of the services and results furnished by the independent public accountant to Applicants and (ii) enable each Board to give sufficient consideration to all of the information submitted by the Committee prior to making their selection. Further, the process will more accurately reflect the practicalities of doing business in complexes having a substantial number of investment companies, as opposed to investment companies operated on an individual basis or in small investment company groups.

For the Commission, by the Division of Investment Mangement, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6604 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8940]

Issuer Delisting; Application To Withdraw From Listing and Registration; USR Industries, Inc.

March 21, 1988.

USR Industries, Inc. ("Company") (Common Stock, $1.00 par value), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company concluded that, given its relatively small size and the additional costs required for compliance with Amex requirements, the Company should not continue its listing on the Amex. In addition, the Company does not fully satisfy all of the Amex's financial guidelines for continued listing. The Company has listed its common stock on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Trading in the Company's common stock over NASDAQ commenced on January 25, 1988.

Any interested person may, on or before April 11, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order

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granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6537 Filed 3-24-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP 88-02; Notice 01]

Goodyear Tire and Rubber Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Goodyear Tire and Rubber Company (Goodyear), of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(e) of Federal Motor Vehicle Safety Standard No. 109 requires that the actual number of plies in the sidewall, and the actual number of plies in the tread area if different, be permanently molded into or onto both sidewalls. Goodyear produced and labeled 17,894 P195/60HR15 Eagle GT+4 tires with the incorrect number of plies in tread.

The tires in question were marked as follows:

Tread 6 Plies: 2 Polyester cord + 2 Steel Cord + 2 Nylon Cord Sidewall 2 Plies Polyester Cord.

The correct marking should be:

Tread 5 Plies: 2 Polyester Cord + 2 Steel Cord + 1 Nylon Cord Sidewall 2 Plies Polyester Cord.

Goodyear believes that the incorrect stamping has no effect on the tire performance or safety. The company supports the petition for inconsequential noncompliance "because the tires meet all test requirements of FMVSS No. 109, including tire strength, tire endurance, high speed performance, tubeless tire resistance to bead unseating, and physical dimensions." In addition, "the tires meet the temperature resistance requirement of § 575.14 of Title 49 Code of Federal Regulation, Uniform Tire Quality Grading Standard."

Interested persons are invited to submit written data, views and arguments on the petition of Goodyear Tire and Rubber Company, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: April 25, 1988.

(Sec. 102 Pub.L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-6541 Filed 3-24-88; 8:45 am]

BILLING CODE 4910-59-M

[Docket 79-17; Notice 37]

New Car Assessment Program (NCAP); Review of Studies Which Compare NCAP Crash Test Results and Real-World Crash Data

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: Over the past few years, several studies have been conducted in an attempt to compare the experimental New Car Assessment Program (NCAP) crash test results with real-world crash injury/fatality data. These studies reflect divergent views on whether NCAP results show a positive correlation to the real world. In an effort to assess the validity of these studies, the methodologies and conclusions of each study were reviewed and documented.

From a purely analytical perspective, the agency believes that the real-world crash data necessary to conduct a statistically valid real-world correlation should match the NCAP crash test conditions as closely as possible in terms of vehicle parameters (i.e., model year, make, model, and body style), impact direction and speed, safety belt usage, and injury descriptions to the head, chest and femurs. However, it is recognized that perfect real-world crash data are not available in sufficient amounts to conduct an ideal correlation. Thus, any study of the relationship between NCAP crash test results and real-world crash data must apply certain assumptions and adjustments to the two data sets in an effort to develop sufficient data that are as similar as possible for legitimate correlation analyses. It is within this context that the seven studies known to the agency were reviewed.

The agency seeks written comments on its review of the various studies. Additionally, the agency seeks comments and suggestions on the best method(s) and assumptions for conducting a real-world correlation analysis of NCAP which will provide statistically valid conclusions based on a logical, defendable methodology.

Copies of the individual studies and the agency's review of them are contained in a report titled, "Comparison of New Car Assessment Program Crash Test Results With Real-World Crash Data—Summary and Analysis of Existing Studies." The report is available for review in the NHTSA Docket Section, at the following address, under Docket Number 79-17-GR, item number 080. Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

DATE: Written comments on this notice must be submitted no later than May 24, 1988.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Market Incentives, National Highway Traffic Safety Administration (NRM-22), 400

Seventh Street SW., Washington, DC 20590 (202-366-4805).

SUPPLEMENTARY INFORMATION: Title II of the Motor Vehicle Information and Cost Savings Act requires the development and dissemination of comparative information on the crashworthiness, damage susceptibility, and ease of diagnosis and repair of motor vehicles. The foundation of Title II is the belief that, if consumers have valid comparative information on important motor vehicle characteristics, they will use that information in their vehicle purchasing decisions, thereby encouraging motor vehicle manufacturers to improve the safety and reliability of their products. The experimental NCAP addresses the crashworthiness aspect of Title II by providing comparative frontal crashworthiness safety performance information, in the form of dummy injury measurements, on selected vehicles which are crashed head-on into a fixed barrier at 35 mph.

Since its inception in 1979, NCAP has been not only an important information dissemination tool, but also an important crashworthiness improvement mechanism. Many manufacturers have voluntarily made changes (oftentimes small but significant) to their vehicles in an effort to improve the vehicle's NCAP performance. Additionally, NCAP has been the catalyst for many improvements in crash testing and related test procedures, e.g., instrumentation accuracy and dummy placement. NCAP has made it possible to examine a variety of issues, such as crash test repeatability and instrumentation accuracy through the waveform signal generator, and was the motivation for exploring alternative crash test configurations—frontal deformable moving barrier testing. Although NCAP remains an "experimental" program, it has provided significant benefits to consumers and the agency.

NCAP is termed "experimental" in that it is unclear whether the program will provide a long-term basis for comparing the crashworthiness and safety performance built into new production vehicles. As a result, NCAP is more properly characterized as a program which provides consumers with comparative information on a limited aspect of vehicle crashworthiness—high-speed frontal impacts. And while NCAP has led to vehicle improvements and enhanced consumer information, the agency recognizes the limitations on the data it presents (e.g., comparisons should be made only with comparable weight vehicles, only one car per model tested, etc.) and so informs the public in its news releases.

There are several reasons why NCAP by itself cannot be used as a "ratings" program to compare the crashworthiness of all vehicles in all crash modes. These are the appropriateness of the test configuration (frontal impact, fixed barrier, one test speed); the ability of the test dummies to measure only certain types of injury (e.g., abdominal injuries cannot be replicated with the current test dummies); and the running of only one test per vehicle type (i.e., repeat tests might give slightly different results). Thus, NCAP only measures the performance of vehicles in one type of crash (frontal), at one speed (35 mph barrier equivalent velocity), in terms of reducing certain types of injuries (head, chest, and femurs). It does not attempt to measure performance in other crash configurations or in ameliorating other types of injuries. (Of course, the speed and configuration in which NCAP is conducted represent the single crash situation which causes the most serious injuries and fatalities.) Also of concern is the relationship of test results to real-world accidents, which inherently involves the other concerns to various degrees. The agency believes the real-world relevancy of NCAP is an important question to be resolved. Thus, the agency has undertaken a review of the various studies that have assessed the NCAP/real-world correlation.

From a purely analytical perspective, the agency believes that the real-world crash data necessary to conduct a statistically valid real-world correlation should match the NCAP crash test conditions as closely as possible, including:

- Vehicle model year
- Vehicle make
- Vehicle model/body style
- Impact direction
- Impact speed and/or delta-V
- Occupant protection device (use of belts, automatic belts, or air bags at the driver and passenger seating positions)
- Specific injury data (head, chest, femurs)

However, it is recognized that perfect real-world crash data are not available in sufficient amounts to conduct an ideal correlation. Thus, any study of the relationship between NCAP crash test results and real-world crash data must apply certian assumptions and adjustments to the two data sets in an effort to develop sufficient data that are as similar as possible for legitimate correlation analyses. For example, precise impact speed information is rarely available, and reported use of occupant protection devices is sparse or questionable. In reviewing any study, one of the major issues to be assessed is the reasonableness of the assumptions made by the authors in their efforts to obtain sufficient data for analysis.

Over the past five years, several studies have been conducted which attempt to determine whether a relationship exists between NCAP test results and real-world crash injuries and/or fatalities. The agency is aware of seven studies in this area and these are reviewed in the report, "Comparison of New Car Assessment Program Crash Test Results With Real-World Crash Data—Summary and Analysis of Existing Studies."

The report concludes that each study contains some element in its statistical approach or data compilations which prevents direct comparisons between NCAP crash test results and real-world crash data. The primary issue and the agency has found which affects all of the studies is the lack of an adequate crash data source for drawing comparisons. Such a source should, ideally, include sufficient data on injuries and fatalities for front seat occupants using the available occupant protection devices in high-speed frontal accidents for the various years/makes/models tested in NCAP.

The agency is continuing its efforts to establish a correlation between NCAP crash test results and real-world accidents. With the increase in safety belt usage in the United States as a result of safety belt use laws and the number of vehicles on the road with automatic crash protection systems, the amount of crash data on belted occupants and occupants protected by automatic crash protection should increase substantially over the next few years. The agency is planning further work on the relationship between NCAP and real-world crashes using these data. Any comments on the conduct of such analyses would be welcome.

Interested persons are invited to submit comments. It is requested, but not required, that 10 copies be submitted. A 60-day comment period is provided.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies, from which the purportedly confidential information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the public docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on March 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-6542 Filed 3-24-88; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 58
Friday, March 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 30, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

FY 90 Planning Issues

The staff will brief the Commission on Fiscal Year 1990 Planning Issues.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

March 23, 1988.

[FR Doc. 6687 Filed 3-23-88; 1:46 pm]

BILLING CODE 6355-01-M

Corrections

Federal Register
Vol. 53, No. 58
Friday, March 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Special Studies Program; Proposed Annual Evaluation Priorities

Correction

In notice document 88-4807 beginning on page 7294 in the issue of Monday, March 7, 1988, make the following corrections:

1. "Existing" should read "exiting" in the following places on page 7294:

a. In the second column, in the "Priority 2" heading, in the second line;

b. In the second column, in the last paragraph, in the fifth line;

c. In the third column, in the sixth line;

d. In the third column, in the first complete paragraph, in the 23rd line.

2. On the same page, in the third column, in the 23rd line after "school", insert a period.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81014; FRL-3215-6]

Intent To Remove Forty-Nine Incorrectly Reported Chemical Substances From the TSCA Inventory

Correction

In notice document 88-636 beginning on page 949 in the issue of Thursday, January 14, 1988, make the following corrections on page 951, in the second column:

1. In the first entry, in the fourth line, "dioxo" was misspelled.

2. In the third entry, in the 4th and 5th lines, "terephthalic" was misspelled.

3. In the eighth entry, in the 3rd and 4th lines, "methyl-2-propenoate" should read "methyl 2-methyl-2-propenoate".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-830024H; FRL-3326-4]

Toxic and Hazardous Substances Control; Decision on Exclusion/Waiver Applications of Seven Companies; Aldrich Chemical Co., et al.

Correction

In notice document 88-2807 beginning on page 3938 in the issue of Wednesday, February 10, 1988, make the following correction:

On page 3940, in the third column, in the next to the last paragraph, in the third line, "766.32(1)2(ii)" should read "766.32(a)(2)(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4212-13; A 18270]

Realty Action; Exchange of Public Land; Pima County, AZ

Correction

In notice document 88-4561 appearing on page 6877 in the issue of Thursday, March 3, 1988, make the following correction:

In the second column, after the second paragraph, the land description should read

"T. 12 S., R. 11 E., Gila and Salt River Meridian, Arizona

Sec. 25, SE¼SE¼NE¼, E½SE¼.".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 1

Parking Fees at VA Medical Facilities

Correction

In proposed rule document 88-5996 beginning on page 8934 in the issue of Friday, March 18, 1988, make the following correction:

§ 1.302 [Corrected]

On page 8935, in the second column, in § 1.302(a), in the 14th line "related" should read "altered".

BILLING CODE 1505-01-D

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federal register

Friday
March 25, 1988

Part II

The President

Proclamation 5779—Modifying the Implementation of the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act

Executive Order 12632—Exclusions From the Federal Labor-Management Relations Program

Federal Register
Vol. 53, No. 58
Friday, March 25, 1988

Presidential Documents

Title 3—

The President

Proclamation 5779 of March 23, 1988

Modifying the Implementation of the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. I have determined that, under section 802(b) of the Trade Act of 1974 (the Act) (19 U.S.C. 2492(b)), as amended by the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, 100 Stat. 3207), during the previous year Panama has not cooperated fully with the United States, and has not taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in Panama or transported through Panama, from being sold illegally within the jurisdiction of Panama to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States, and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies.

2. Pursuant to section 802(a) of the Act (19 U.S.C. 2492(a)), I have decided to deny until further notice the preferential tariff treatment under the Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA) now being afforded to articles that are currently eligible for such treatment and that are imported from Panama.

3. Section 604 of the Act (19 U.S.C. 2483) confers authority upon the President to embody in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including but not limited to sections 604 and 802 of the Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS is modified by striking out "Panama" from the enumeration of independent countries whose products are eligible for benefits under the GSP.

(2) General headnote 3(e)(vii)(A) to the TSUS is modified by striking out "Panama" from the enumeration of designated beneficiary countries whose products are eligible for preferential treatment under the CBERA.

(3) No article the product of Panama and entered, or withdrawn from warehouse for consumption, into the United States on or after the effective date of this Proclamation shall be eligible for preferential tariff treatment under the GSP or under the CBERA.

(4) This Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the fifteenth day following the date of the publication of this Proclamation in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. [illegible]
Filed 3-24-88; 10:25 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12632 of March 23, 1988

Exclusions From the Federal Labor-Management Relations Program

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows:

Section 1. *Determinations.* The agencies or subdivisions thereof set forth in Section 3 of this Order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of Title 5 of the United States Code cannot be applied to these agencies or subdivisions in a manner consistent with national security requirements and considerations. These agencies or subdivisions thereof are hereby excluded from coverage under Chapter 71 of Title 5 of the United States Code.

Sec. 2. *Relationship to Executive Order No. 12559.* The determinations set forth in Section 1 of this Order are the same determinations that I made at the time of and as a predicate to my issuance on May 20, 1986, of Executive Order No. 12559, which was issued for the same purpose as this Order. On July 10, 1987, Executive Order No. 12559 was held by a United States District Court to be incomplete as a matter of form, and therefore invalid, because it did not expressly set forth these determinations. *AFGE* v. *Reagan,* Civil No. 86-1587 (D.D.C.). These determinations were not expressly set forth in the text of Executive Order No. 12559 because all that Order did was amend Executive Order No. 12171 by adding the agencies or subdivisions referred to in Section 1 of this Order to the list in Executive Order No. 12171 of entities excluded from coverage of the Federal Labor-Management Relations Program, and these determinations were already expressly set forth in the text of Executive Order No. 12171, which remains in effect (as amended). This Order is not intended to reflect any belief that the form of Executive Order No. 12559 was invalid, but is intended solely to accomplish the purpose of that Order.

Sec. 3. *Amendment of Executive Order No. 12171.* Executive Order No. 12171 is amended by deleting Section 1-209 and inserting in its place:

Sec. 1-209. *Agencies or subdivisions of the Department of Justice.* (a) The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.

(b) The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.

Ronald Reagan

THE WHITE HOUSE,
March 23, 1988.

[FR Doc. 88-6731
Filed 3-24-88; 10:28 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 53, No. 59
Monday, March 28, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action for the Southwest Plains market suspends, for the months of March through August 1988, the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The action was requested by Mid-America Dairymen, Inc., a cooperative association that represents producers who supply milk for the market. The action is necessary to assure the efficient disposition of an increasing supply of milk produced by dairy farmers who have historically supplied the market's fluid milk requirements.

EFFECTIVE DATE: Upon publication of this document in the **Federal Register** for the months of March through August 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 25, 1988; published March 1, 1988 (53 FR 6158). The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 1, 1988 (53 FR 6158). Such notice invited comments on a proposal to suspend certain provisions of the Southwest Plains order. Interested parties were given seven days after the notice was published in the **Federal Register** to file comments on the proposed action. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of March-August 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified. A plant that was a pool supply plant under the Neosho Valley, Wichita, Red River Valley or Oklahoma Metropolitan orders (or any combination thereof) during the months of September through December 1982 shall qualify as a pool plant in each of the months of February through August 1983 until any month of such period in which the plant fails to meet the 20 percent shipping requirement".

3. In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This action for the Southwest Plains market suspends, for the months of March through August 1988, the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants.

The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that a supply plant which was pooled under the order during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of the plant's receipts are shipped to distributing plants. The order also provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that supplies a substantial portion of the milk for this market. The action is supported by Kraft, Inc., the operator of a pool supply plant at Bentonville, Arkansas and a nonpool manufacturing plant at Springfield, Missouri.

The action is needed because the market's milk production has increased dramatically since the termination of the whole-herd buyout program. Ample supplies of direct-ship milk, which are produced near the market's distributing plants, are available to supply the milk needs of such plants during the months of March-August this year and supplemental shipments from supply plants will not be necessary. Thus, no purpose would be served by requiring that supply plants make shipments to distributing plants in such months or that the milk of distant dairy farmers be delivered to a pool plant at least once during each month. The milk of producers can be marketed more

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economically during this six-month period by supplying the needs of distributing plants regularly with direct-ship milk from producers who are favorably located near such plants and by continuously moving the milk of distant producers directly from the farm to manufacturing plants situated in the procurement area.

A suspension of these requirements is needed to give market suppliers the necessary additional flexibility to efficiently handle the market's increasing milk production. If the requirements are not suspended, costly and inefficient movements of milk will have to be made to assure the continued pooling of milk produced by dairy farmers who historically have been supplying the market's fluid needs.

Mid-Am asked that the requirements be suspended for the months of February–August. Although comments were invited on a proposal to suspend the provisions for such seven-month period, it was not possible to complete the required procedures and include February in the suspension period. Therefore, the suspension would apply for the months of March–August 1988.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that such action will eliminate unnecessary milk movements and will insure that dairy farmers who regularly have supplied the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for the months of March–August 1988.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in §§ 1106.6, 1106.7(b)(1) and 1106.13(d)(1) are hereby suspended for the months of March–August 1988.

PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.6 [Amended]

2. In § 1106.6, the words "during the month" are suspended.

§ 1106.7 [Amended]

3. In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified. A plant that was a pool supply plant under the Neosho Valley, Wichita, Red River Valley or Oklahoma Metropolitan orders (or any combination thereof) during the months of September through December 1982 shall qualify as a pool plant in each of the months of February through August 1983 until any month of such period in which the plant fails to meet the 20 percent shipping requirement" are suspended.

§ 1106.13 [Amended]

4. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Signed at Washington, DC, on March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-6656 Filed 3-25-88; 8:45 am]

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7 CFR Part 1260

Beef Promotion and Research Program; Procedures for Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule, with some changes, a proposed rule which was published in the **Federal Register** on January 8, 1988 (53 FR 509). Pursuant to the Beef Promotion and Research Act of 1985, a referendum among cattle producers and cattle and beef importers will be conducted by the Secretary to determine whether the Beef Promotion and Research Order which was implemented July 18, 1986 should be continued. The Act requires the Secretary to conduct such referendum not later than 22 months after the issuance of the Order. This final rule establishes the procedures for conducting the required initial referendum which will be held on May 10, 1988, in all locations except for the State of West Virginia where the referendum will be held on May 9, 1988.

DATE: March 28, 1988.

ADDRESS: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a non-major rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule establishes procedures for the conduct of a referendum to determine whether the Beef Promotion and Research Order (Order) should be continued. It permits all eligible cattle producers and importers of cattle, beef, and beef products to register and vote. Participation in the referendun is voluntary. In addition, the referendum is required by statute; therefore, a regulatory flexibility analysis was not prepared. The Administrator of the Agricultural Marketing Service (AMS), has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. The program is financed by a $1-per-head assessment on domestic and imported cattle and an equivalent amount on imported beef and beef products. Pursuant to the Act, an Order was made effective July 18, 1986, and the collection of assessments began on October 1, 1986.

The Act requires that a referendum be conducted not later than 22 months after the issuance of the Order to determine whether the Order should be continued. The initial referendum is to be conducted among persons who were producers of cattle or importers of cattle, beef, or beef products during a representative period specified by the Secretary for the purpose of determining whether the initial Order should be continued. The Secretary has established the representative period as October 1, 1986, to March 31, 1988, and announced those dates in an official Department press release dated February 8, 1988. The Order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the Order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the Order. This will be done within 6 months after the Secretary determines that the continuance of the Order is not favored by a majority of those persons voting in the referendum and the Secretary shall terminate the Order in an orderly manner as soon as practicable after such determination.

The Act specifies that the referendum shall be held on a date established by the Secretary and that eligible persons must register and vote on the same day. The Secretary has established that date as May 10, 1988. That date was announced in an official Department press release dated February 8, 1988. The Act also provides that the referendum shall be conducted at county offices of the U.S. Department of Agriculture's Extension Service.

On January 8, 1988, the (Agricultural Marketing Service) AMS published in the **Federal Register** (53 FR 509) a proposed rule which set forth procedures for the conduct of an initial referendum including provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting the referendum results, disposition of the ballots and records, and the participation of the Agricultural Stabilization and Conservation Service (ASCS) of the Department, in the conduct of the referendum by: (1) Counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

The proposed rule was published with a request for comments to be submitted by February 8, 1988. The Department of Agriculture received 41 written comments. Five commentors, including two cattle producer associations, one breed association, one national farm organization, and one individual supported the referendum procedures as proposed. Twenty-one commentors expressed support for or opposition to the Beef Promotion and Research Order, but did not comment on the proposed procedures for the conduct of the referendum. The remaining 15 commentors, which included 10 individuals, the Cattlemen's Beef Promotion and Research Board, a State department of agriculture, a milk marketing cooperative, an importer association, and a State beef council, generally supported the proposed procedures for the conduct of the referendum with certain qualifications.

The substantive changes suggested by the commentors are discussed below. Several commentors expressed concern about the established date of May 10, 1988, for the referendum. They were primarily concerned that this date was during a very busy time of the year for many cattle producers and pointed out that it would not be convenient for them to take time out from their farming and ranching activities to vote. They believed an earlier date would be more convenient. The date of the referendum was recommended by the Cattlemen's Beef Promotion and Research Board and approved by the Secretary and announced in an official Department press release dated February 8, 1988. However, since that time, information has come to the Department's attention that the county Extension offices in the State of West Virginia will be closed on May 10, 1988. Accordingly, the referendum will be conducted in the State of West Virginia on May 9, 1988. In all other locations, the referendum will be conducted as announced on May 10, 1988. Conducting a referendum requires advanced preparations including printing of ballots, notifying those persons who will conduct the referendum and those who are eligible to vote in sufficient time to permit participation in the referendum process. In addition, the provision for mail-in absentee ballots as required by the Act and contained in this final rule will provide an opportunity for any cattle producer or importer to participate in the referendum even though they may not be able to personally visit the county extension office to register and cast their ballots.

Numerous commentors expressed the opinion that the period for the conduct of the referendum should be longer than 1 day to afford more persons the opportunity to vote. The length of the period for the referendum is established by the Act. Section 7 of the Act which states in part "Any referendum conducted under this section shall be conducted on a date established by the Secretary * * *." Based on this language, it is clear that the Act contemplates that the referendum should be conducted in any given location in a single day. The Act does not provide the Secretary with the latitude to extend the period beyond 1 day. Accordingly, the 1-day period for the conduct of the referendum is adopted as proposed. In related comments, four commentors proposed that the referendum be conducted by mail rather than in person. The commentors suggested that it would be more convenient to register and vote by mail thus increasing voter participation in the referendum. However, the Act clearly contemplates an in-person vote. Section 7 of the Act states that "Each referendum shall be conducted at county extension offices and there shall be provision for an absentee mail ballot on request." If the Act had not contemplated voting in person it would not have provided for a designated polling place or provided for an absentee mail ballot. Absentee ballots and registration forms will be available upon written request from the State Extension Service Office during the period beginning April 1, 1988, and continuing until close of business April 29, 1988. Accordingly, this proposed change has not been adopted.

Three commentors requested a clarification of voter eligibility. One commentor inquired as to whether all members of a partnership could vote in the referendum. One commentor questioned whether a wife in a family farming operation in which all cattle were sold in the husband's name could vote in the husband's absence and suggested that if a wife could vote in such a situation, it could increase producer participation in the referendum.

The Act contemplates that each producer or importer shall be entitled to only one vote, regardless of whether such producer or importer is an individual or a corporation, partnership, or other entity. Section 3 of the Act defines a producer, in part, as "any person who owns or acquires ownership of cattle * * *" and an importer as "any person who imports cattle, beef, or beef products from outside the United States."

A person is defined in the Act as "any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity." As established by these definitions, a partnership is considered to be a producer entity as is an individual producer or importer and thus is entitled to only one vote in the referendum as provided in § 1260.428 of this final rule. Any members of the partnership may vote as an individual if they are eligible producers or importers separate from the partnership. Likewise, other forms of joint interest groups such as a family-farming operation are entitled to only one vote. In the case of the family-farming operation, either spouse or any other family member who is a part of the family-farming operation may vote as an authorized representative on behalf of the family farm. However, both husband and wife may not register to vote on behalf of the family farm. Individual family members who own cattle in their own right separate from the family-farming operation would be individual producers and would be eligible to vote.

One commentor suggested that the definition of importer in § 1260.414 be changed so that it references the definition of importer contained in U.S. Customs regulation at 19 CFR 101.1 (1). The definition of importer as published in the proposed rule in § 1260.414 is the same definition contained in the Act and the Order. That definition has been used to identify persons, who as importers, have been subject to assessments since the issuance of the Order on July 18, 1986. It is the intent of the Act and Order that those persons who are subject to assessments shall be eligible to register and vote in the referendum. Accordingly, there is no justification for changing the definition of importers for purposes of the referendum. The Agency does not anticipate that the definition of importer in the Act, and as adopted in the Order, will raise any questions concerning the eligibility of persons who may vote as importers in the referendum. Therefore, the term importer as set forth in the proposed rule is adopted in this final rule. A similar suggestion of using the U.S. Customs definition of importer was made in response to the proposed Order which was published for comment on March 14, 1986. That suggestion was not adopted at that time. The Agency's reasons for not adopting that suggestion are discussed in the supplementary information section of the Order at 51 FR 26134. Those reasons are still valid.

One commentor believed that all dairy cattle farmers should be allowed to vote. The Act provides that any person who owns or acquires ownership of cattle may register and vote as an eligible producer. Since cattle are defined in the Act as "live, domesticated, bovine animals of any age " dairy animals are considered cattle. Consequently, dairy cattle farmers would be eligible to register and vote.

One commentor recommended that all referendum documents (i.e., registration forms and ballots) which request a person to certify that he or she is a "producer" pursuant to the referendum rules include a statement that that person has met all of the requirements of being a "producer" as set forth in §§ 1260.417 and 1260.116. In the commentor's opinion, it is important to make clear that the definition of "producer" for purposes of the referendum is the same as the definition of "producer" under the Order. The definition of producer in § 1260.417 of these rules on *Procedures for Conduct of the Referendum* is the identical definition contained in § 1260.116 of the Order. This same definition has identified producers for purposes of assessments since the Order's issuance on July 18, 1986. The publication of this same definition in both the Order and in these procedures for conducting the referendum is sufficient for purposes of identifying persons who are eligible producers. The Act and the Order make clear that persons who are defined as producers therein and subject to assessments shall be eligible to register and vote in the referendum. Accordingly, documents used in connection with the registration process will require persons to certify that they are producers. However, including references to §§ 1260.417 and 1260.116 on such documents would unnecessarily complicate the registration and certification process without providing additional control over producer self-certification. The provision for challenging the eligibility of persons to register and vote as producers during and immediately following the referendum will help assure that only eligible producers as defined in the Act, Order, and this rule governing the procedure of the referendum are permitted to vote.

One commentor recommended that the representative period to be established by the Secretary be for a period which ends at least 1 month (30 days) prior to the date of the referendum. The commentor believed that establishing the ending date for the representative period well in advance of the referendum would prevent the creation of "producers" solely for the purpose of voting. The inclusive dates of the representative period are established at the discretion of the Secretary. Concurrent with the establishment of May 10 as the date of the referendum, the Secretary established the representative period as October 1, 1986, the date assessments began under the Order, to March 31, 1988. These inclusive dates for the representative period were published together with the date of the referendum in the previously mentioned official Department press release dated February 8, 1988. The dates of the representative period will be included on documents used in connection with registration and certification. The March 31, 1988, ending date is over 1 month prior to date of the referendum.

Two commentors expressed concern that all counties may not have county extension offices and recommended that a county extension office be opened, and staffed in the county seat of every county on the day of the referendum to assure that all producers have easy access to the designated polling place.

The Act requires that the referendum be conducted at county extension offices. The referendum will be conducted at county extension offices in existence and fully operational at the time of the referendum. Despite the fact that there are some counties which do not have a county extension office within the county, such counties are served by county extension offices in adjacent or neighboring counties. Therefore, persons desiring to vote in the referendum will have a polling place for in-person voting. For those persons who are unable to vote in person there are provisions contained in this final rule for voting by absentee ballot.

In a related comment, it was suggested that persons be allowed to vote in the county extension office nearest their residence. The commentor pointed out that in some instances a person's residence may be closer to a county extension office located in a county other than the person's county of residence and it would be more convenient for the person to vote at the nearest county extension office. While such a provision for in-person voting might be more convenient, the entire referendum process including registration, voting, ballot verification, challenging of voter eligibility, and resolution of challenges for both in-person and absentee voting is based on registering and voting in a person's county of residence. To permit persons to vote at the county extension office nearest their residence would create major recordkeeping problems and impair the Department's ability to conduct the referendum in a manner that will ensure the integrity of the vote. For these reasons this suggestion is not adopted in this final rule.

One commentor suggested that the "normal business hours" of county extension offices referenced in § 1260.429 be defined as the time from which the county extension office opens to the time it closes on a normal daily basis and all hours in-between to ensure that all offices would be open during the lunch hour (12 noon to 1 p.m.). The commentor believes that it is necessary to keep offices open during the lunch hour so that producers may take advantage of the time to travel to the offices and vote. While the Agency believes that this suggestion could serve to facilitate voting, the normal business hours of each county extension office and the staffing of the office are regulated by the county or State Extension Service director. All county extension offices are being encouraged to remain open during the lunch hour on the day of the referendum. Additionally, the hours during which a county extension office will be open on the day of the referendum will be included along with other pertinent information in public notices on the referendum. For the above reason this suggestion is not being adopted.

One commentor recommended that § 1260.432(b) be amended to require that an extra envelope pre-addressed with the appropriate county extension office address be provided for mailing the absentee ballots to the county ES office and suggested amendatory language. The commentor contended that providing pre-addressed envelopes would be beneficial by: (1) Eliminating confusion among absentee voters as to which county extension office to mail the absentee ballot, (2) preventing illegible or mis-addressed envelopes, and (3) facilitating the receipt and processing of absentee ballots by the county extension office personnel. There is merit in this suggestion and it is being adopted with certain modifications. In developing the proposed referendum procedures, the envelope marked "Beef Referendum" was intended to be the outer mailing envelope for the completed ballot. Section 1260.432(b) will be revised to indicate that the envelopes marked "Beef Referendum" shall be pre-addressed with the address of the appropriate county extension office if: (1) The person requesting the absentee ballot provides the State ES office with his or her county of residence or location of its main office, if a corporation or other entity, or (2) such county can otherwise be determined. In a related suggestion, this same commentor also recommended that persons requesting absentee ballots be requested to include in their address the county in which they reside. While individuals and corporations or other entities are encouraged to include the county of their residence or location of their main office, as appropriate, it is unnecessary to require such information by regulation.

One commentor pointed out an inconsistency in the procedures for transmitting to the county ASCS office the completed Absentee Voter Request List prepared by the State ES office and suggested that a technical correction was required. The commentor cited § 1260.436(a) which provides that a copy of the applicable Absentee Voter Request List (Form LS–39–3) prepared by the State ES office shall be provided to each ASCS county for absentee voter verification. Additionally, § 1260.436 requires the county ES agent to deliver the Absentee Voter Request List to the ASCS county office. The commentor is concerned that the proposed rules do not specify that the Absentee Voter Request List will be provided to the county ES agent by the State ES office. Section 1260.436(a) is revised in this final rule to reflect that the State ES office will provide to the county ES agent, a copy of the Absentee Voter Request List.

Two commentors suggested changes in the dates absentee ballots are due in county extension offices. One commentor suggested that the proposed due date of 5 working days before the date of the referendum be changed to a postmarked date of May 3, 1988. The other commentor also suggested that the required date be expanded to include: (1) A postmarked date of at least 8 days in advance of the date of the referendum and received by the date of the referendum, and (2) the date mailed by certified or registered mail but no less than 6 business days prior to the date of the referendum and received by the date of the referendum. Both commentors were concerned that delays in mail over which voters have no control would cause absentee ballots to be delivered after the date on which they were due in the county extension office thus making them invalid. Such concern is understandable. However, it is necessary that absentee ballots be received not later than 5 business days before the date of the referendum so that county ES agents will have sufficient time to properly record the names of absentee voters so that they can be reviewed on the day of the referendum and again on the second business day after the referendum at the ASCS county office for purposes of an eligibility challenge and voter verification. Accordingly, this suggestion is not adopted in this final rule.

One commentor suggested that § 1260.432 be modified to provide eligible producers an opportunity to vote in instances where they did not receive an absentee ballot in a timely manner or were not included on the list of absentee voters. The Procedures for the Conduct of the Referendum as proposed do not prevent a person who requests an absentee ballot, but who does not file it for whatever reason, from casting a ballot in person on the day of the referendum. Likewise, if there is no record of a person's absentee ballot being received by the county ES office, in accordance with applicable sections of this final rule, such person, if otherwise eligible, may vote in person on the day of the referendum. Section 1260.432 provides that each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person. Consequently, it is clear that a person who has requested, but not used an absentee ballot is entitled to vote in person. However, it is not clear that a person who casts an absentee ballot that is not recorded as being received or that is not received in the county extension office by the specified date is entitled to vote in person. Accordingly, that section is being clarified in this final rule.

One commentor raised a question about an inconsistency in § 1260.437 "ASCS County Office Report" and cited two sentences in that section. The commentor pointed out that the first sentence states that the results of the referendum in each county *may* be made available to the public. However, the next sentence states that a copy of the report of the results *shall* be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public.

The intent of this section as proposed was that the referendum results in each county could be released immediately upon completion of the counting of ballots and any required review for the verification for accuracy. Additionally, such results would be posted thereafter for a 30 day period. Accordingly, the applicable sentences in § 1260.437 are revised in this final rule to clarify their intent.

Two comments were received concerning the requirements for reporting of the referendum results in each county by the ASCS county office. Both commentors were concerned that no time period had been specified to ensure the prompt compilation and reporting of referendum results by county offices. It was one commentor's belief that without such specified time periods, there could be market disruptions, numerous compliance problems, and general confusion with the program. That commentor suggested that the results of the referendum in each county be reported by the county ASCS office to the State ASCS office as soon as possible after the ballots have been counted. The other commentor suggested that county ASCS offices be required to report referendum results in each county to the State ASCS office no later than the 11th day following the referendum. The Department acknowledges the importance of timely and accurate reporting of the referendum results and recognizes the potentially disrupting influence which any delay in the reporting of results could have in the marketplace and shares the commentor's concern. It was the Department's intent in setting forth the reporting requirements in §§ 1260.437, 1260.438, and 1260.439 that the results of the referendum in each county would be reported promptly to the State ASCS office by the county ASCS office after the counting of ballots on the 10th business day following the date of the referendum. The Department anticipates that most county ASCS offices will be able to report the referendum results to State ASCS offices by the close of business on the day the ballots are counted. Detailed, written instructions are being provided to all county offices which contain specific reporting requirements and which emphasize the necessity for timely and accurate reporting of results. However, to require absolute time limits in these rules for reporting would impose unreasonable and unduly restrictive limitations on each county's ability to compile, verify, and report accurate results, particularly in view of the magnitude of the reporting process. Over 2900 county ASCS offices will be reporting results to the 50 State ASCS offices, which in turn will compile and report State results to area ASCS offices. Area results will be reported to the ASCS Administrator's office in Washington, DC. For the above stated reason, this suggestion is not being adopted in this final rule.

In order to carry out the statutory timetable for the conduct of the referendum, it is necessary that this final rule be effective on the date of publication in the Federal Register. Accordingly, pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Marketing Agreements, Meat and Meat Products, Beef and Beef Products.

For the reasons set forth in the preamble, Title 7 of the CFR, Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. Subpart C, consisting of §§ 1260.500 through 1260.640 is redesignated as Subpart D.

3. Add new "Subpart C" to read as follows:

Subpart C—Procedure for the Conduct of Referendum

Definitions

Sec.
1260.401 Act.
1260.402 Administrator.
1260.403 Agricultural Stabilization and Conservation County Committee.
1260.404 Agricultural Stabilization and Conservation Service.
1260.405 Agricultural Stabilization and Conservation Service County Executive Director.
1260.406 Beef.
1260.407 Beef Products.
1260.408 Cattle.
1260.409 Department.
1260.410 Deputy Administrator.
1260.411 Extension Service.
1260.412 Extension Service Agent.
1260.413 Imported Beef and Beef Products.
1260.414 Importer.
1260.415 Order.
1260.416 Person.
1260.417 Producer.
1260.418 Public notice.
1260.419 Referendum.
1260.420 Registration period.
1260.421 Representative period.
1260.422 Secretary.
1260.423 State.
1260.424 United States.
1260.425 Voting period.

Referendum

1260.426 General.
1260.427 Supervision of referendum.
1260.428 Eligibility.
1260.429 Time and place of registration and voting.
1260.430 Facilities for registering and voting.
1260.431 Registration form and ballot.
1260.432 Registration and voting procedure.
1260.433 List of registered producers and importers.
1260.434 Challenge of eligibility.
1260.435 Receiving ballots.
1260.436 Canvassing ballots.
1260.437 ASCS county office report.
1260.438 ASCS State office report.

Sec.
1260.439 Results of the referendum.
1260.440 Disposition of ballots and records.
1260.441 Instructions and forms.

Subpart C—Procedure for the Conduct of Referendum

Definitions

§ 1260.401 Act.

"Act" means the Beef Promotion and Research Act of 1985 set forth in Title XVI, Subtitle A of the Food Security Act of 1985 (Pub. L. 99–198) and any amendments thereto.

§ 1260.402 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1260.403 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC County Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1260.404 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1260.405 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS county Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1260.406 Beef.

"Beef" means flesh of cattle.

§ 1260.407 Beef Products.

"Beef Products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.408 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

§ 1260.409 Department.

"Department" means the United States Department of Agriculture.

§ 1260.410 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1260.411 Extension Service.

"Extension Service" also referred to as "ES" means the Extension Service of the Department.

§ 1260.412 Extension Service Agent.

"Extension Service Agent" also referred to as "ES Agent" or designee means an employee of the Extension Service of the Department.

§ 1260.413 Imported Beef and Beef Products.

"Imported Beef and Beef Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.414 Importer.

"Importer" means any person who imports cattle, beef or beef products from outside the United States.

§ 1260.415 Order.

"Order" means the Beef Promotion and Research Order.

§ 1260.416 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.417 Producer.

"Producer" means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.418 Public Notice.

"Public Notice" means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county ES offices and county ASCS offices, by means of newspapers, television, radio, county newsletters, and the like. Such notice shall contain the referendum date, registration and voting requirements, and other pertinent information.

§ 1260.419 Referendum.

"Referendum" means the initial referendum to be conducted pursuant to the Act by the Secretary not later than 22 months after issuance of an Order whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of the Order is favored by a majority of producers and importers voting.

§ 1260.420 Registration period.

"Registration period" means a 1-day period to be announced by the Secretary for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1260.421 Representative period.

"Representative period" means the period designated by the Secretary pursuant to section 7(a) of the Act.

§ 1260.422 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.423 State.

"State" means each of the 50 States.

§ 1260.424 United States.

"United States" means the 50 States and the District of Columbia.

§ 1260.425 Voting period.

"Voting period" means a 1-day period to be announced by the Secretary for voting in a referendum.

Referendum

§ 1260.426 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the Order shall be conducted in accordance with this subpart.

(b) The Order shall continue only if the Secretary determines that the Order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Departmemt shall assist in the conduct of the referendum.

§ 1260.427 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1260.428 Eligibility.

(a) *Eligible Producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Eligible Importers.* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer entity shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer entity or eligible importer entity (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity or in the importation of cattle, beef, or beef products into the United States as an importer entity shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

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§ 1260.429 Time and place of registration and voting.

The referendum shall be held for 1 day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1260.432. Except for absentee ballots, the registration and voting shall take place during the normal business hours of each county ES office.

§ 1260.430 Facilities for registering and voting.

Each county ES office shall provide: (1) Adequate facilities and space to permit producers and importers to register and to mark their ballots in secret and (2) a sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during office hours and secured at all times. Copies of the Order shall be available for review.

§ 1260.431 Registration form and ballot.

A registration form/envelope marked "Beef Referendum" (Form LS–40–2) and ballot (Form LS–40) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1260.432(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS–39) shall be used for absentee voting.

§ 1260.432 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the day of voting at the county ES office in which the producer's or importer's residence is located or at the county ES office serving the county in which the producer's or importer's residence is located. Producer or importer entities other than individuals shall register at the county ES office in the county in which their headquarters office or business is located or at the county ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS–40–3) prior to receiving a registration form and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that: (1) They or the entity they represent were producers or importers during the specified representative period and (2) if voting on behalf of an entity referred to in § 1260.428, they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1260.429 and on a date to be announced by the Secretary. Eligible persons who enter their names on the voter registration list (Form LS–40–3) will receive a registration form/envelope (Form LS–40–2) and a ballot (Form LS–40). Voting shall be by secret ballot under the supervision of the local county ES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in an envelope marked "Beef Ballot", seal it and place it in the completed and signed registration form/envelope, seal that envelope and personally place it in a box marked "Ballot Box" or other suitable receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS–39) and two envelopes—one marked "BEEF BALLOT" and the other marked "BEEF REFERENDUM" by mail from the State ES office of the State in which they reside if individuals, or where their main office is located, if a corporation or other entity. To facilitate mailing of absentee ballots the "BEEF REFERENDUM" envelope will be preaddressed with the address of the county ES office in which the person requesting the absentee ballot resides or has its main office, or the county ES office serving the county in which the person requesting the absentee ballot resides or has its main office if: (1) The person requesting the absentee ballot includes in the address his or her county of residence or the county where its main office is located or (2) if such county can be otherwise determined. Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS–39 must be requested in writing and will be available from State ES offices during a specified time period which will be announced by the Secretary. The State ES office shall enter on the absentee voter request list (Form LS–39–3) the name and address of each person or entity requesting an absentee ballot, and the date the Form LS–39 was mailed. A copy of the applicable absentee voter request list (Form LS–39–3) prepared by the State ES office shall be provided to the appropriate county ES agent who shall deliver it to each ASCS county office as provided for in § 1260.436 for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS–39), and certify that (1) they or the entity they represent were producers or importers during the specified representative period and (2) if voting on behalf of an entity referred to in § 1260.428, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–39 and seal the completed ballot in a separate envelope marked "BEEF BALLOT" and place it in a second envelope marked "BEEF REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "BEEF REFERENDUM" and mail it to the local county ES office of the county in which they reside or the county ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed to the county ES office in the county in which its main office is located or the county ES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county ES office by the close of business, 5 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "BEEF REFERENDUM" envelope containing the registration form and ballot, the county ES agent or designee shall place it, unopened in a secure ballot box. The county ES agent or designee shall enter the names of absentee voters on the voter registration list (Form LS–40–3).

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate county ES office on the day of the referendum.

§ 1260.433 List of registered producers and importers.

The voter registration list (Form LS–40–3) shall be available for inspection on the day of the referendum at the county ES office and subsequently at the ASCS county office. It shall be posted during regular office hours in a conspicuous public location at the ASCS county office on the second business day following the date of the referendum.

§ 1260.434 Challenge of eligibility.

(a) *Challenge period.* On the day of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on the second business day after the date of the referendum.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the date of the referendum. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as tax returns, sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS–40–2) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes containing absentee voter registration forms and absentee ballots (Form LS–39) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as tax returns, sales documents, or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1260.435 Receiving ballots.

A ballot shall be considered to have been received during the voting period if: (a) It was cast in the county ES office prior to the close of business on the day of the referendum or (b) an absentee ballot was received in the county ES office not later than close of business 5 business days before the date of the referendum.

§ 1260.436 Canvassing ballots.

(a) *Counting the ballots.* The county ES agent or designee shall deliver: (1) The sealed ballot box, (2) the voter registration list (Form LS–40–3) and (3) the absentee voter request list (Form LS–39–3) to the ASCS county office by the close of business on the first business day following the date of the referendum. ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–40–3) and the absentee voter request list (Form LS–39–3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS–40–3) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS–39–3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on the 10th business day after the referendum date. ASCS county office employees shall remove the sealed "BEEF BALLOT" envelopes from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "BEEF BALLOT" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "BEEF BALLOT" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers and importers casting valid ballots, (2) number of producers and importers favoring the order, (3) number of producers and importers not favoring the order, (4) the number of challenged ballots, (5) the number of challenged ballots deemed ineligible, (6) number of invalid ballots, and (7) the number of spoiled ballots.

(b) *Invalid Ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS–40–3), or an absentee voter's name is not on the absentee voter request list (Form LS–39–3), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1260.437 ASCS county office report.

The ASCS county office shall notify the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1260.436(a). The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any verification for accuracy has been completed. A copy of the report of those results shall be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1260.438 ASCS State office report.

Each ASCS State office shall transmit to the Deputy Administrator, ASCS, a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1260.439 Results of the referendum.

(a) The Deputy Administrator, ASCS, shall submit to the Administrator, AMS, the results of the referendum. The Administrator shall prepare and submit

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to the Secretary a report of the results of the referendum. The results of the referendun shall be issued by the Department in an official press release and published in the Federal Register. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons that may be designated by the Deputy Administrator, ASCS, or the Secretary.

§ 1260.440 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator, ASCS, by the end of such time, the records shall be destroyed.

§ 1260.441 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Done at Washington, DC, on March 22, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-6556 Filed 3-25-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1052-88]

Definitions of Felony and Misdemeanor

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule defines the terms "felony" and "misdemeanor" that are set forth at 8 CFR 245a.1(o) and 8 CFR 245a.1(p), respectively. The purpose of this rule is to alleviate the harsh effect that the prior definition had on certain otherwise eligible aliens who apply for temporary resident status under section 245A of the Immigration and Nationality Act.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Lori Scialabba, 202-633-2895, 425 I Street., NW., Room 7048, Washington, DC 20536.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA) established a program whereby certain aliens who have been residing unlawfully in the United States since January 1, 1982, can legalize their status. IRCA set forth a number of statutory criteria that an alien has to meet in order to legalize his or her status. One of these criteria is that the alien must establish that he or she "has not been convicted of any felony or of three or more misdemeanors committed in the United States." (8 U.S.C. 1255a(a)(4)(B)). After a notice and comment period the Immigration and Naturalization Service (Service) promulgated final regulations implementing the legalization program and defining the terms "felony" and "misdemeanor." (See 52 FR 16205–16216 (May 1, 1987)).

The term "felony" was defined as "a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any." (8 CFR 245a.1(p)). The term "misdemeanor" was defined as "a crime committed in the United States punishable by imprisonment for a term of one year or less but more than five days, regardless of the term such alien actually served, if any." (8 CFR 245a.1(o)).

Since May 5, 1987, aliens have been applying for temporary resident status under the legalization program. During this time the Service has had an opportunity to review the effect of the regulations implementing this provision. Based on that review the Service proposed, on September 30, 1987, 52 FR 36582, that the definitions of "felony" and "misdemeanor" be amended. INS Legalization Offices and the Regional Processing Facilities were informed of the proposed change and instructed to hold the final adjudication of applications that would be affected by the proposed change to the regulations.

Comments on the proposed change were received and are discussed below. Several suggestions from commenters have been incorporated into the final rule.

Comments

Some commenters suggested that the "sentence actually imposed" should determine whether the conviction is to be treated as a "misdemeanor" or "felony" for purposes of legalization. One commenter suggested that the definitions of "misdemeanor" and "felony" follow the guidelines in section 212(a)(9) of the Immigration and Nationality Act ("INA"), in order to address the problem of varying maximum sentences among the states for identical crimes.

The Service has considered and rejected this suggestion based upon the legislative history relating to section 245a(a)(4)(B) of IRCA which provided the definitions of "felony" and "misdemeanor" which were published in the May 1, 1987 regulations, 52 FR 16205. The Senate report on S.1200, dated August 28, 1985 clearly indicates that Congress did not want the Service to consider the term actually served when determining whether an applicant had been convicted of a "felony" or "misdemeanor."

> * * * He must show * * *; that he has not been convicted of any felony (crime punishable at the time of conviction by imprisonment for a term of more than 1 year, regardless of the term such alien actually served, if any) or three or more misdemeanors (crimes each of which was punishable at the time of conviction by imprisonment for a term of 1 year or less, regardless of the term such alien actually served, if any) * * *.

S. Rept. No. 132, 99th Cong., 1st Sess. at 45–46 (1985). The definitions contained in the regulation reflect the intent of Congress. For this reason the Service has rejected the suggestion. However, the term "sentence imposed" which is used in the exception contained in the proposed "felony" definition will be amended to read "sentence actually imposed."

The Service is concerned that certain States' criminal statutes have maximum terms of imprisonment for more than one year, while other States have a maximum term of imprisonment for less than one year for the same offenses. This discrepancy is particularly unfair for purposes of determining whether a crime is a felony, since one felony will render an applicant ineligible for legalization. The regulation proposed on September 30, 1987, which provided an exception to the "felony" definition, was

the Service's response to the effect the May 1, 1987 regulations were having on legalization applicants.

Several commenters also suggested that the exception contained in the definition of felony be amended to read "sentence served" rather than "sentence imposed." The commenters suggested this change because the term "sentence imposed" is difficult to interpret, particularly when a defendant is granted probation. The Service has rejected this suggestion, since it is also contrary to legislative intent. However, the following discussion addresses the issues raised by these commenters.

"Sentence Actually Imposed"

Under U.S. law, courts may do the following regarding sentencing persons convicted of crimes: The court may (1) impose a sentence, or (2) suspend imposition of the sentence. If the court imposes a sentence, it may suspend execution of that sentence.

It is the Service's position that when imposition of the sentence is suspended, no sentence has been actually imposed. When a sentencing court issues such an order, the defendant is generally placed on probation. In this situation the alien will not have had a sentence of more than one year actually imposed. Therefore, assuming the offense is defined as a misdemeanor by the state, the offense would be a misdemeanor for purposes of legalization eligibility. However, if the crime renders the alien excludable under 212(a) (9), (10) or (23) of the INA, the classification of the crime as a "misdemeanor" or "felony" will be irrelevant.

In a case where the execution of the sentence is suspended, a sentence has actually been imposed, even though probation may also be granted. In this situation, the sentence that was suspended would have to be one year or less for the crime to be considered "misdemeanor" under the felony exception.

The reason for this distinction is that when imposition of the sentence is suspended, the trial court may, on revocation of probation, impose any sentence it might originally have imposed. However, if the sentence is imposed and its execution is suspended, the sentence may not be increased when probation is revoked.

Another aspect of this issue is whether probation itself is a "sentence." There may be instances in which probation is the actual sentence imposed, rather than the court suspending the imposition of the sentence or suspending the execution of the sentence. The Circuit Courts are split on this point. However, for purposes of interpreting the term "sentence actually imposed" in the felony exception, the Service will not consider probation to be a sentence. Therefore, an alien who is sentenced to probation, as opposed to having the execution of the sentence suspended and being granted a period of probation, will not have been sentenced to more than one year and may qualify for legalization under the felony exception.

Comments: "Felony" Definition

One commenter pointed out that the exception to the proposed "felony" definition is inconsistent with the proposed definition of "misdemeanor." The exception to the proposed "felony" definition provided that any offense that carried a possible sentence of more than one year would not be considered a felony for purposes of legalization if the state defined the offense as a misdemeanor and the sentence imposed was less than one year. This exception is inconsistent with the proposed definition of "misdemeanor," which provided that any crime punishable by imprisonment for a term of one year or less but more than five days, regardless of the term such alien actually served, if any, is a misdemeanor for purposes of legalization. The commenter suggested that the exception to the "felony" definition be worded the same as the definition for "misdemeanor." The Service has accepted this suggestion in part.

The exception to the "felony" definition in the proposed rule provided that the sentence imposed must be less than one year. The exception to the "felony" definition has been amended to provide that the crime committed shall be considered a misdemeanor if the state defines the offense as a misdemeanor and the sentence actually imposed is one year or less. This change clarifies that the exception includes a sentence of one year.

The exception to the "felony" definition will not, however, include the language in the proposed "misdemeanor" definition that relates to the five-day petty offense provision. The purpose of the felony exception is to alleviate the harsh effect of the "felony" definition on the eligibility of an alien for legalization. The inclusion of the five-day petty offense provision in the felony exception would allow an applicant, who has been convicted of a crime punishable by a term of imprisonment of more than one year, a "felony," to have that conviction reduced to a petty offense. For this reason the exception to the felony definition will not include the five-day petty offense provision contained in the proposed "misdemeanor" definition.

Comments: "Misdemeanor" Definition

The Service received no comments directly related to the proposed "misdemeanor" definition. However, it was apparent from the comments received that the proposed "misdemeanor" definition did not clearly indicate the policy of the Service with regard to the five-day petty offense provision. The policy of the Service is that any crime which carries a maximum sentence of five days will not be considered a misdemeanor for purposes of legalization. In order to clarify this policy the "misdemeanor" definition has been amended.

Conclusion

Accordingly, consistent with the spirit of the legalization program, the Service is amending the definition of "felony" by creating an exception to the definition when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less. The definition of "misdemeanor" is amended to include any crime which meets the requirements of the exception under the "felony" definition and to clarify the five-day petty offense exception.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule would not, if promulgated, have a significant impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

PART 245a—[AMENDED]

1. The authority citation for Part 245a continues to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. In § 245a.1, paragraphs (o) and (p) are revised to read as follows:

§ 245a.1 Definitions.

* * * * *

(o) "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 CFR 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

(p) "Felony" means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception, for purposes of 8 CFR Part 245a, the crime shall be treated as a misdemeanor.

Dated: March 17, 1988.

Mark W. Everson,

Deputy Commissioner, INS.

[FR Doc. 88-6707 Filed 3-25-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-149-AD; Amdt. 39-5884]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model 737-300 series airplanes, which requires modification of the escape slide, packing method, and installation on the forward doors. This amendment is prompted by reports of slide girt material interfering with the girt bar stowage brackets during door opening, arresting the door opening motion. This condition, if not corrected, could cause delay during an emergency evacuation.

EFFECTIVE DATE: May 9, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the forward escape slides and containers of certain Model 737-300 series airplanes, was published in the **Federal Register** on December 14, 1987 (52 FR 47399).

In the preamble to the Notice of Proposed Rulemaking (NPRM), it was stated that The Boeing Company was developing a service bulletin which would contain specific instructions for the accomplishment of the proposed modifications. The FAA has now reviewed and approved Boeing Alert Service Bulletin 737-25A1221, dated December 17, 1987, which references Air Cruisers Service Bulletin 103-25-11, and contains instructions for installing the required modifications. Paragraph A. of the final rule has been revised to reflect this particular modification as an acceptable means of compliance.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter directed its comments at the content of Boeing Alert Service Bulletin 737-25A1221. The commenter questioned the effectiveness of the modification described in that service bulletin as a remedy for the problem and proposed a different modification. The operator also objected to the use of a placard (depicting the proper stowed configuration of the girt) described in the Boeing service bulletin, believing this will require inspection by the flight crew prior to each flight. While there may be other modifications which would effectively correct the girt retention problem, and which, therefore, may be used in accordance with paragraph B. of the AD, the FAA finds that Boeing Alert Service Bulletin 737-25A1221 describes a satisfactory modification. With respect to operational impact of the modification, it is not intended that flight crewmembers be required to maintain the escape slide in its modified configuration. The service bulletin does describe provisions for a placard that is visible to crewmembers; however, the placard illustrates the proper configuration should the slide be inadvertently altered.

The second commenter noted that the proposed modifications might require more manhours than stated in the NPRM, and requested an extension of the compliance time from 6 months to 15 months to allow the work to be done at more convenient "C" check intervals. The FAA agrees that more manhours would be required to accomplish the modification in accordance with Boeing Alert Service Bulletin 737-25A1221. Accordingly, the estimated economic impact, as discussed below, has been revised to reflect an increase from 4 manhours to 9 manhours per airplane to accomplish the required actions.

With respect to the compliance time, the FAA has determined that a 6-month compliance time is appropriate for accomplishing this modification. Parts are readily available and the required modifications allow flexibility in how they are accomplished. Spares can be rotated into the fleet to avoid down time. Therefore, the compliance time remains at 6 months, as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 175 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts is estimated to be $76 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $76,300.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737-300 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737-300 series airplanes, as listed in Boeing Alert Service Bulletin 737-25A1221, dated December 17, 1987, certificated in any category. Compliance required within 6 months after the effective date of this amendment, unless previously accomplished.

To prevent failure or interference of opening of the forward doors during an emergency evacuation, accomplish the following:

A. Modify escape slide packing and slide containers in accordance with Boeing Alert Service Bulletin 737-25A1221, dated December 17, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 9, 1988.

Issued in Seattle, Washington, on March 21, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-6823 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ASW-42; Amdt. 39-5875]

Airworthiness Directives; Robinson Helicopter Model R22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Robinson Model R22 series helicopters, certificated in any category, by individual priority letters. The AD requires visual inspection and checks to determine if cracks are present in components of each main rotor pitch link assembly with immediate replacement of any component found to contain a crack. Additionally, the AD requires replacement of a particular pitch link component within 10 hours' time in service, regardless of condition. The AD is needed to prevent loss of control of the helicopter.

DATES: *Effective Date:* April 25, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87-18-03, issued August 28, 1987, which contained this amendment.

Compliance: As stated in the body of the AD.

ADDRESSES: The applicable Service Bulletin No. 57 and the maintenance manual information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505. A copy of this Service Bulletin is contained in the Rules Docket at the Office of Regional Counsel, Federal Aviation Administration, Southwest Region, Fort Worth, Texas, 76193-0007.

FOR FURTHER INFORMATION CONTACT: Charles W. Matheis, Airframe Section, ANM-172W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1358.

SUPPLEMENTARY INFORMATION: On August 28, 1987, priority letter AD No. 87-18-03 was issued and made effective immediately to all known U.S. owners and operators of certain Robinson Model R22 series helicopters. The AD requires inspection and checks of components of the main rotor pitch link assembly to determine if cracks are present and immediate replacement of any component found to contain a crack. The AD was prompted by a report of the discovery of cracks or material flaws in bar stock from a metal heat from which the components were manufactured. Failure of the pitch link assembly could lead to loss of control and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, it was determined that notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued August 28, 1987, to all known U.S. owners and operators of Robinson Model R22 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register**, with minor editorial changes in paragraphs (a), (a)(1), (a)(4) and its note, and (a)(4) (i) and (v), as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BEST COPY AVAILABLE

Robinson Helicopter Company: Applies to Model R22 series helicopters, certificated in any category, Serial Numbers 0680 through 0644, and helicopters which have had the A258–1 main rotor pitch link assembly, A258–2 fitting, A258–3 link, or A258–4 link assembly replaced between August 15, 1986, and May 7, 1987.

Compliance is required as indicated, unless already accomplished.

(a) Prior to further flight after the effective date of this AD, visually inspect main rotor pitch link assembly A258–1 (two per aircraft) as follows:

(1) Remove paint and visually inspect the A258–1 pitch link assembly using a 3X or greater magnifying glass.

(2) If a crack is found in the A258–2 upper fitting, replace it with a like serviceable part, prior to further flight.

(3) If a crack is found in the A258–3 lower link, replace the A258–1 pitch link assembly with a like serviceable part, prior to further flight.

Note: The A258–3 lower link and the B163–1 rod end make up the lower end A258–4 link assembly, as shown in Figure 2 of Robinson Helicopter Company Service Bulletin No. 57, dated May 11, 1987.

(4) Replace the A258–2 upper fitting in the pitch link assembly using the following steps:

Note: Reference the procedure given in Part B of Robinson Helicopter Company, Service Bulletin No. 57, dated May 11, 1987.

(i) Color code swashplate arms, pitch horns, and both pitch control link rod ends. If matching color marks are lost or length of pitch link assembly changes, track and balance the main rotor blades per Section 10.280, Track and Balance, dated May 22, 1987, of Robinson Helicopter Company maintenance manual or an approved equivalent.

(ii) Remove pitch links and measure overall length using a caliper or large micrometer. Record length to nearest 0.001 inch.

(iii) Disassemble pitch link. Do not remove rod end attached to A258–3 link assembly. Replace A258–2 fitting with like serviceable part.

(iv) Reassemble pitch link(s), keeping overall length to within ±0.005 of length measured before disassembly.

(v) Install on helicopter and torque attaching bolts to 160 inch-lbs., plus nut drag per Section 8.412, Swashplate Installation, dated May 22, 1987, of Robinson Helicopter Company maintenance manual or an approved equivalent.

(vi) Touch up paint using an epoxy primer and grey exterior paint. Mark all joints with a torque stripe.

(b) If no cracks are found in a link assembly, upper fitting or lower link, after visual inspection in paragraph (a)(1), the helicopter may be returned to service for an interval of time not to exceed 10 hours' time in service.

(c) Prior to each flight during the time interval specified in paragraph (b), visually check for cracks in the link assembly. The checks required by this AD may be performed by the pilot and must be recorded in accordance with FAR Section 43.9.

(d) Within the next 10 hours' time in service after receipt of this AD, remove and replace A258–2 fittings with serviceable parts. Conduct a dye penetrant or equivalent inspection for crack indications in the A258–3 link. Install airworthy parts in accordance with paragraph (a)(4).

(e) Replacement of all A258–2 fittings specified in this AD with serviceable fittings and inspection of the A258–3 links terminate action for the repetitive checks required by this AD.

(f) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

This amendment becomes effective on April 25, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87–18–03, issued August 28, 1987, which contained this amendment.

Issued in Fort Worth, Texas, on March 3, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88–6622 Filed 3–25–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87–ANE–46; Amdt. 39–5862]

Airworthiness Directives; Teledyne Continental Motors IO–520BA, BB, IO–550B, and TSIO–520BE, LB, UB, and WB Series Engines Equipped With Air Conditioners

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Teledyne Continental Motors IO–520BA, BB, IO–550B, and TSIO–520BE, LB, UB, and WB series engines by individual priority letter. The AD requires the removal of the air conditioner compressor drive belt on those engine installations so equipped. The AD is needed to prevent possible starter adapter shaftgear assembly failure which could result in loss of lubricating oil and complete loss of engine power.

DATES: Effective April 17, 1988, as to all persons except those to whom it was made immediately effective by individual priority letter AD 87–26–01, issued December 16, 1987, which contained this amendment.

Compliance is required before further flight, unless already accomplished.

ADDRESSES: The applicable Service Bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. A copy of the Service Bulletin is contained in the Rules Docket Number 87–ANE–46, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On December 16, 1987, priority letter AD 87–26–01, was issued and made effective immediately as to all known U.S. owners and operators of certain Teledyne Continental Motors IO–520, IO–550, and TSIO–520 series engines. The AD requires the removal of the air conditioner compressor drive belt on those engine installations so equipped. There have been four failures of the starter adapter shaftgear resulting in forced landings. The shaftgear failures are partially due to loads imposed by the air conditioner drive belt. AD action was necessary to prevent possible starter adapter shaftgear assembly failure with resultant loss of lubrication oil and complete loss of engine power.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter, issued December 16, 1987, as to all known U.S. owners and operators of certain Teledyne Continental Motors IO–520, IO–550, and TSIO–520 series engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to IO–520BA, BB, IO–550B, and TSIO–520BE, LB, UB, and WB series engines equipped with an air conditioner.

Compliance is required before further flight, unless already accomplished.

To prevent possible starter adapter shaftgear assembly failure, accomplish the following:

(a) Remove the top engine cowl and gain access to the air conditioner (freon compressor) drive pulley.

(b) With a light and mirror, determine if the sheave attach nut is a steel locking type. (Reference paragraph II of TCM Service Bulletin (SB) M87–24, dated December 15, 1987.)

(1) If the nut is a steel locking type, remove the freon compressor drive belt.

(2) If the nut is castellated, determine via log books and maintenance records that the castellated nut is the original nut and has not been substituted for a steel locking type nut.

(i) If the castellated nut is the original, no further action is required, proceed to paragraph (c).

(ii) If the castellated nut is not the original, but a substitution for the original installed steel locking type nut, remove the freon compressor drive belt.

(iii) If it cannot be determined that the castellated nut is the original, remove the freon compressor drive belt.

(c) Replace top engine cowl.

(d) Make appropriate log book entry showing compliance with this AD.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Notes: 1. This action is an interim measure. Additional instructions to restore use of the air conditioner will be promulgated as soon as possible.

2. TCM SB No. M87–24, dated December 15, 1987, refers to this subject.

3. Compliance with this AD is required independently of those requirements of AD 87–14–02, (52 FR 36755; October 1, 1987).

This amendment becomes effective April 17, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD, issued December 16, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on March 17, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88–6624 Filed 3–25–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ASO–13]

Designation of Transition Area, Jackson, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action amends the description of the transition area centered on the Julian Carroll Airport by correcting the geographical coordinates. This is a typographical correction.

EFFECTIVE DATE: 0901 UTC, April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Earnest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, January 21, 1988, the FAA adopted an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Jackson, Kentucky, transition area (53 FR 1614). Inadvertently, there was a typographical error made in the description of the transition area. The final rule provides controlled airspace for aircraft executing a new instrument approach procedure to Julian Carroll Airport. The operating status of the airport was changed to IFR. Interested parties were invited to participate in this rulemaking proceeding (52 FR 44138) by submitting written comments on the proposal to the FAA. This amendment conforms the final rule to that contained in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This correction to the amendment to Part 71 of the Federal Aviation Regulations correctly designates the Jackson, Kentucky, transition area and lowers the base of controlled airspace in the vicinity of Julian Carroll Airport from 1200′ to 700′ above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In consideration of the safety need to lower the base of controlled airspace, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic in that area.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Jackson, Kentucky (New)

That airspace extending upward from 700′ above the surface within a 6.5 mile radius of the Julian Carroll Airport (Lat. 37°35′19″N., Long. 83°19′03″W.); within 2.5 miles either side of the 348° radial from Hazard VOR (Lat. 37°23′23″N., Long. 83°15′59″W.), extending from the 6.5 mile radius to 7.5 miles south of the airport.

Issued in East Point, Georgia, on March 8, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-6621 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 87-AGL-26]

Alteration of VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of Federal Airway V-181 and Jet Routes J-107, J-515 and J-532 by changing the name Pembina, ND, to Humboldt, MN. Also, the name of the Pembina, ND, High and Low Altitude Compulsory Reporting Points have been changed to Humboldt, MN. These actions are the result of the name change of the Pembina VORTAC to Humboldt and an error in the state location of the VORTAC.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations amend the descriptions of VOR Federal Airway V-181 and Jet Routes J-107, J-515 and J-532 by changing the name Pembina to Humboldt wherever the name appears in the descriptions. In addition, the name of the High and Low Altitude Compulsory Reporting Points have been changed from Pembina, ND, to Humboldt, MN. Because this only involves a name change, I find that notice and public procedure under 5 U.S.C. 533(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Sections 71.123, 71.203, 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Compulsory reporting points and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-181 [Amended]

By removing the words "Pembina, ND; INT Pembina 356° radial" and substituting the words "Humboldt, MN; INT Humboldt 356° radial"

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Pembina, ND [Removed]

Humboldt, MN [New]

§ 71.207 [Amended]

4. Section 71.207 is amended as follows:

Pembina, ND [Removed]

Humboldt, MN [New]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

5. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

6. Section 75.100 is amended as follows:

J-107, J-515 and J-532 [Amended]

Wherever the words "Pembina, ND" appear substitute the words "Humboldt, MN"

Wherever the word "Pembina" appears substitute the word "Humboldt"

Issued in Washington, DC, on March 10, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-6620 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-88-796]

Fair Housing Assistance Program; Program Description and Eligibility Criteria

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Technical amendment.

SUMMARY: This document amends 24 CFR Part 111 of HUD regulations to include OMB control numbers at the end of §§ 111.106 and 111.108 where current information collection requirements are described.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State and Local Programs Division, Office of the Deputy Assistant Secretary for Enforcement and Compliance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-0455. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number listed below.

Text of the Amendments

Accordingly, following the text at the end of §§ 111.106(f) and 111.108(d) of Title 24, add the following statement:

(Approved by the Office of Management and Budget under OMB control number 2529-0005)

Date: March 23, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-6710 Filed 3-25-88; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 235, 237, and 240

[Docket No. R-88-1367; FR-2382]

Mortgage Insurance for the Allegany Reservation of the Seneca Nation of Indians; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of announcement of effective date for interim rule.

SUMMARY: This notice announces the effective date for an interim rule published in the Federal Register on December 21, 1987 (52 FR 48197). The rule explained the conditions under which the Secretary will insure mortgages on certain leased property in Salamanca, New York, within the Allegany Reservation of the Seneca Nation of Indians, as authorized by section 203(q) of the National Housing Act. The effective date section of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the Federal Register.

Thirty calendar days of continuous session of Congress have expired in the present Congress since the rule was published.

EFFECTIVE DATE: The effective date for the interim rule published December 21, 1987 (52 FR 48197) is March 28, 1988.

FOR FURTHER INFORMATION CONTACT: John Coonts, Deputy Director, Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-3046. (This is not a toll-free number.)

Dated: March 23, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-6711 Filed 3-25-88; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 201, 203, and 234

[Docket No. N-88-1788; FR-2498]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding the mortgage limits for Rensselaer County, New York. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755-5210; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710-1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On March 3, 1988 (53 FR 6822), the Department published its most recent annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area.

This Document

Today's document adds high-cost mortgage amounts for Rensselaer County, New York.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Rensselaer County (New York) has a one-family limit of $75,900. The combination home and lot loan limit for Rensselaer County is $75,900 x .80, or $60,720.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Rensselaer County (New York) has a one-family limit of $75,900. The lot-only loan limit for Rensselaer County is $75,900 x .20, or $15,180.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 X 140%).
2. For combination manufactured homes and lots: 75,600. ($54,000 X 140%).
3. For lots only: $18,900. (13,500 X 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION II.—HUD FIELD OFFICE—ALBANY OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Rensselaer County	$75,900	$85,450	$105,050	$119,850

Date: March 21, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-6709 Filed 3-25-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8188]

Income Tax; Consolidated Return Regulations; Adjustment on Disposition of Stock of Subsidiary; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the Federal Register on Thursday, March 17, 1988 (53 FR 8747) as Treasury Decision 8188. The rules relate to the addition of new § 1.1502-32T to the consolidated return regulations and supplement the adjustment under § 1.1502-32(g) on the disposition by a member of stock of a subsidiary.

FOR FURTHER INFORMATION CONTACT: Judith Winkler, at 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections reflect the addition of temporary regulations § 1.1502-32T to Part 1 of Title 26 of the Code of Federal Regulations.

Need For Corrections

As published, Treasury Decision 8188 contains three omissions. This document corrects those omissions.

Corrections of Publication

Accordingly, the publication of temporary regulations (T.D. 8188), which was the subject of FR. Doc. 88-5907, is corrected as follows:

Paragraph 1. On page 8749, first column, the following language should be inserted after the fourth line to read:

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Par. 2. On page 8749, first column, current lines 7 and 8, the language "Accordingly, 26 CFR Part 1 is amended as follows:" is corrected to read "Accordingly, 26 CFR Parts 1 and 602 are amended as follows:"

Par. 3. On page 8750, first column, immediately following the second paragraph which ends with the language "made to the basis reduction account." The following should be inserted:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate places in the table

"§ 1.1502-32T.............................. 1545-1021",

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 88-6689 Filed 3-25-88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8189]

Income Taxes; 2-percent Floor on Miscellaneous Itemized Deductions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document provides temporary regulations under new section 67 of the Internal Revenue Code relating to the 2-percent floor on miscellaneous itemized deductions. The text to the temporary regulations set forth in this document also serves as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The regulations apply to taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3287, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations under section 132 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2113). That section added new section 67 to the Internal Revenue Code. Section 67(c) directs that regulations be issued relating to the indirect deduction through pass-through entities of amounts for expenses that would be subject to the 2-percent floor on miscellaneous itemized deductions if paid or incurred directly by an individual. In addition section 67(c) directs that regulations be issued relating to the reporting requirements that are necessary to carry out the purposes of the section.

These temporary regulations are issued under the authority contained in Internal Revenue Code sections 67(c) and 7805 (100 Stat. 2114, 26 U.S.C. 67(c); 68A Stat. 917, 26 U.S.C. 7805, respectively).

2-Percent Floor on Miscellaneous Itemized Deductions

Pursuant to section 67 of the Code, § 1.67-1T(a)(1) of the temporary regulations disallows deductions for miscellaneous itemized deductions in computing the taxable income of individuals (*i.e.*, so-called "below-the-line" deductions) to the extent that the aggregate of such expenses does not exceed 2 percent of the individual's adjusted gross income. Examples of expenses that, if otherwise deductible, are subject to the 2-percent floor include unreimbursed employee business expenses, expenses for the production or collection of income such as investment advisory fees and the cost of safe deposit boxes, and expenses for tax advice. To the extent that any other limitation is placed on the amount of a miscellaneous deduction, that limitation generally applies prior to the application of the 2-percent floor. For example, pursuant to section 274(n) the amount allowable as a deduction for meal and entertainment expenses cannot exceed 80 percent of the amount of such expense that is otherwise deductible. The 2-percent floor is applied to the amount allowable after application of the 80-percent limitation.

The term "miscellaneous itemized deduction" means the deductions alowable from adjusted gross income in determining taxable income other than the deductions listed in § 1.67-1T(b) of the temporary regulations, such as the deductions under sections 163, 164, and 217 relating to interest, taxes, and moving expenses, respectively.

Temporary § 1.67-1T(c) provides that, if a taxpayer incurs expenses that relate to both a trade or business activity and a production of income or tax preparation activity, the taxpayer shall allocate such expense between the activities on a reasonable basis.

Members of Congress

Section 1.67-1T(d) of the temporary regulations provides that the 2-percent floor is applied prior to the application of the $3,000 limitation on deductions for living expenses of Members of Congress referred to in section 162(a). The amount of miscellaneous itemized deductions of a Member of Congress that is disallowed because of the 2-percent floor is allocated between deductions for living expenses (within the meaning of section 162(a)) and other miscellaneous itemized deductions of a Member of Congress.

Reimbursed and Unreimbursed Employee Expenses

Temporary § 1.62-1T(e)(1) provides that expenses paid or incurred by an employee that are otherwise deductible from gross income in computing taxable income and for which the employee is reimbursed by the employer, its agent, or third party (for whom the employee performs a benefit as an employee of the employer) under an express agreement for reimbursement or pursuant to an express expense allowance arrangement may be deducted from gross income in computing adjusted gross income (*i.e.*, so-called "above-the-line" deductions). The same rules apply with respect to amounts allowable as a deduction under section 162(h)(1)(B) to state legislators that are reimbursed by the State.

Section 1.62-1T(e)(1) of the temporary regulations provides generally that, if an employee is reimbursed by his or her employer, its agent, or a third party in an amount less than the total expenses paid or incurred by the employee, the determination of to which of the employee's business expenses the reimbursement applies and the amount of each expense that is covered by the reimbursement is made on the basis of all of the facts and circumstances of the particular case. Section 1.62-1T(e)(2) of the temporary regulations provides rules for allocating reimbursements between meal and entertainment expenses and other business expenses when the facts and circumstances are not clear and the employee pays or incurs meal or entertainment expenses. Section 274(a)(2) excepts from the 80-percent limitation contained in section 274(n), by cross-reference to section 274(e)(3), expenses paid or incurred by an employee, in connection with the performance by the employee of services for the employer, under a reimbursement or other expense allowance arrangement with the employer, but only to the extent the employer does not treat such expenses under section 274(e)(2) as compensation to the employee and as wages for purposes of withholding. In this situation the 80-percent limitation applies to the employer.

For taxable years beginning after December 31, 1986, any portion of the amount allowable to state legislators as a deduction pursuant to section 162(h)(1)(B) that is not reimbursed by the state or a third party is allocated among expenses for lodging, meals, and incidental expenses in the manner described in § 1.62-1T(e)(4) of the temporary regulations.

Temporary § 1.62-1T(f) defines the phrase "reimbursement or other expense allowance arrangement." In addition, a payment under a reimbursement or other expense allowance arrangement must be identified either by making a separate payment or by specifically indicating the separate amount if both wages and the reimbursement or expense allowance are combined in a single payment. It shall be presumed that any amounts treated as compensation to an employee by an employer on the employer's return of tax under chapter 1 of the Code and as wages to such employee for purposes of chapter 24 of the Code (relating to withholding of income tax at source of wages) do not constitute reimbursements or other expense allowances for purposes of section 62. This presumption may be rebutted by clear and convincing evidence to the contrary that includes evidence of an obligation by the employee to make an adequate accounting to the employer for the employee's business expenses.

Treatment of Pass-Through Entities

Temporary § 1.67-2T provides rules for the application of section 67 to holders of interests in pass-through entities. In general, an "affected investor" in a pass-through entity is required to separately take into account as an item of both income and expense an amount equal to his or her allocable share of the "affected expenses" of the pass-through entity for purposes of determining his or her taxable income. In general, the expenses so taken into account are treated as paid or incurred by the affected investor in the same manner as paid or incurred by the pass-through entity.

A pass-through entity includes, pursuant to temporary § 1.67-2T(g), a grantor trust, a partnership, an S corporation, a common trust fund, a nonpublicly offered regulated investment company, and a real estate mortgage investment conduit (REMIC). It does not include an estate, a nongrantor trust, a cooperative, a real estate investment trust, or other entities such as a qualified pension plan, an individual retirement account, or an insurance company holding assets in a separate asset account to fund certain variable contracts.

Section 1.67-2T(b) of the temporary regulations provides rules for the application of section 67 to affected investors in partnerships, S corporations, and grantor trusts and temporary § 1.67-2T(d) provides such rules for affected investors in common trust funds. In addition, section 1.67-2T(c) of the temporary regulations cross-references temporary § 1.67-3T for rules regarding the application of section 67 to holders of interests in REMICs. Temporary § 1.67-2T(p) reserves on the rules regarding publicly offered regulated investment companies. The rules for the application of section 67 to REMICs, estates, and nongrantor trusts are the subject of separate regulations projects. The application of section 67 to estates and trusts and their beneficiaries is the subject of pending technical corrections legislation. Guidance on this issue will be published separately.

The application of section 67 to affected investors that are shareholders in a nonpublicly offered regulated investment company is described in temporary § 1.67-2T(e). In general, an affected investor shall be treated both as having received or accrued a dividend and as having paid or incurred an expense described in section 212. The amount of the dividend and the amount of the expense are each equal to the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company. The affected investor shall take into account such amounts in the affected investor's taxable year with which (or within which) the calendar year with respect to which the expenses are allocated ends. A shareholder of a nonpublicly offered regulated investment company that is

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not an affected investor does not take into account in computing its taxable income any amount of its allocable share of affected RIC expenses.

Definitions of Certain Terms

The term "affected investor" generally means a partner, shareholder, beneficiary, participant (or other interest holder in a pass-through entity), that is (a) an individual (other than certain nonresident aliens), (b) a person that computes its taxable income in the same manner as in the case of an individual, or (c) a pass-through entity, interests in which are owned by affected investors.

In general, the term "affected expenses" means expenses that, if paid or incurred by an individual, would be deductible, if at all, as miscellaneous itemized deductions. In the case of a nonpublicly offered regulated investment company, the term "affected expenses" means only affected RIC expenses. Temporary § 1.67–2T(j)(1) generally defines the term "affected RIC expenses" as the excess of (a) the aggregate amount of the expenses paid or incurred in the calendar year that are allowable as a deduction in determining the investment company taxable income (without regard to section 852(b)(2)(D)) of the nonpublicly offered regulated investment company for a taxable year that begins or ends with or within the calendar year, over (b) certain expenses, such as registration fees, directors' or trustees' fees, transfer agent fees, and certain legal and accounting fees. For this purpose deductions described in section 62(a)(3) and § 1.67–1T(b) (*e.g.*, losses from the sale or exchange of property, taxes, and interest) are excluded. A nonpublicly offered regulated investment company must determine the amount of the affected RIC expenses on a calendar year basis regardless of whether its taxable year is the calendar year.

Section 1.67–2T(j)(2) of the temporary regulations provides an elective safe harbor under which a nonpublicity offered regulated investment company may treat 40 percent of certain deductions for the calendar year as its affected RIC expenses for that year. The election once made remains in effect for each succeeding calendar year unless revoked with the consent of the Commissioner.

Allocation of Expenses by Nonpublicly Offered Regulated Investment Companies

A nonpublicly offered regulated investment company is required to allocate to each of its affected investors that is a shareholder at any time during the calendar year the affected investor's allocable share of the affected RIC expenses of the nonpublic offered regulated investment company for that calendar year. (This allocable share is the amount that the affected shareholder is treated as having received or accrued as a dividend and paid or incurred as an expense described in section 212.) A nonpublicly offered regulated investment company may use any reasonable method to make the allocation. Temporary § 1.67–2T(k)(1) provides that an allocation method shall not be reasonable if, for example, it can be expected to have the effect (a) of allocating to the shareholders an amount of affected RIC expenses that is less than the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year or (b) of allocating a disproportionately high share of the affected RIC expenses of the nonpublicly offered regulated investment company to either (1) shareholders that are not affected investors, or (2) affected investors, the amount of whose miscellaneous itemized deductions exceed the 2-percent floor described in section 67.

Section 1.67–2T(k)(2) of the temporary regulations describes a reasonable allocation method. In general, under this method an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company is the amount that bears the same ratio to the amount of affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year as the amount of dividends paid to the affected investor during the calendar year bears to the sum of (a) the aggregate amount of dividends paid by the nonpublicly offered regulated investment company during the calendar year to all shareholders and (b) any amount on which tax is imposed under section 852(b)(1) for any taxable year of the nonpublicly offered regulated investment company ending within or with the calendar year. If a nonpublicly offered regulated investment company does not make a reasonable allocation of affected RIC expenses to its affected investors, a reasonable allocation shall be made by an appropriate District Director.

Special Rules

The amount of dividend income that an affected investor is treated as receiving as a result of an allocation of affected RIC expenses is not subject to backup withholding under section 3406.

Temporary § 1.67–2T(m) describes persons who may, for certain purposes, treat an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company as being an amount determined on the basis of a reasonable estimate published by the nonpublicly offered regulated investment company in a widely available financial publication (*e.g.*, *Wall Street Journal* or *Standard and Poor's Weekly Dividend Record*). For example, a nominee who is required to report dividends paid by a nonpublicly offered regulated investment company to the Internal Revenue Service and to the person to whom the payment is made may rely on the estimate for purposes of such reporting. In addition, the affected investor to which the nominee reports may rely on the estimate for purposes of calculating its taxable income and the amount of its affected expenses.

Reporting Requirements

If a nonpublicly offered regulated investment company is required to make an information return to the Internal Revenue Service pursuant to section 6042 (or would be required to make such a return but for the $10 threshold described in section 6042(a)(1) (A) and (B)) with respect to an affected investor to which an allocation of affected RIC expenses is required to be made, the nonpublicly offered regulated investment shall report to the Internal Revenue Service the amount of affected RIC expenses required to be allocated to the affected investor for the calendar year, as well as certain other information. Temporary § 1.67–2T(n)(1)(ii) requires a nonpublicly offered regulated investment company to provide to each affected investor for each calendar year (whether or not the nonpublicly offered regulated investment company is required to make an information return with respect to the affected investor pursuant to section 6042), a written statement that includes the amount of affected RIC expenses required to be allocated to the affected investor for the calendar year and certain other information. If an affected investor's shares in a nonpublicly offered regulated investment company are held in the name of a nominee, the nonpublicly offered regulated investment company may make the information return with respect to the nominee and provide the written statement to the nominee. Section 1.67–2T(n)(2) of the temporary regulations provides reporting requirements for nominees to which a nonpublicly offered regulated investment company provides a written statement. These requirements are similar to the ones with which regulated investment companies must comply.

Pursuant to temporary § 1.67–2T(n)(5), a nonpublicly offered regulated investment company or a nominee fulfills its reporting obligations with respect to an affected investor (a) by the timely filing with the Internal Revenue Service of an information return pursuant to section 6042 (*i.e.*, Form 1099–DIV) that contains the required information and (b) by furnishing the affected investor with a copy of such information return. Thus, a nonpublicly offered regulated investment company or a nominee is not required to file more than one Form 1099–DIV with respect to an affected investor.

With respect to each affected investor, temporary § 1.67–2T(o) requires a common trust fund to state on the return it is required to make pursuant to section 6032 the amount of the affected investor's proportionate share of the affected expenses for the taxable year as well as certain other information.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.67–2T and 1. 67–3T also issued under 26 U.S.C. 67 (c).

§ 1.62–1 [Removed]

Par. 2. Section 1.62–1 is removed and a new § 1.62–1T is added in its place to read as follows:

§ 1.62–1T Adjusted gross income (temporary).

(a) *Basis for determining the amount of certain deductions.* The term "adjusted gross income" means the gross income computed under section 61 minus such of the deductions allowed by chapter 1 of the Code as are specified in section 62(a). Adjusted gross income is used as the basis for determining the following:

(1) The limitation on the amount of miscellaneous itemized deductions (under section 67).

(2) The limitation on the amount of the deduction for casualty losses (under section 165(h)(2)).

(3) The limitation on the amount of the deduction for charitable contributions (under section 170(b)(1)).

(4) The limitation on the amount of the deduction for medical and dental expenses (under section 213).

(5) The limitation on the amount of the deduction for qualified retirement contributions for active participants in certain pension plans (under section 219(g)), and

(6) The phase-out of the exemption from the disallowance of passive activity losses and credits (under section 469(i)(3)).

(b) *Double deduction not permitted.* Section 62 (a) merely specifies which of the deductions provided in chapter 1 of the Code shall be allowed in computing adjusted gross income. It does not create any new deductions. The fact that a particular item may be described in more than one of the paragraphs under section 62(a) does not permit the item to be deducted twice in computing adjusted gross income or taxable income.

(c) *Deductions allowable in computing adjusted gross income.* The deductions specified in section 62(a) for purposes of computing adjusted gross income are:

(1) Deductions allowable under chapter 1 of the Code (other than by part VII (section 211 and folllowing), subchapter B of such chapter) that are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee;

(2) Deductions allowable under part VI (section 161 and following), subchapter B, chapter 1 of the Code, that consist of exprenses paid or incurred by the taxpayer in connection with the performances of services by him or her as an employee under an express reimbursement or other expense allowance arrangement (as defined in paragraph (f) of this section) with his or her employer;

(3) For taxable years beginning after December 31, 1986, deductions allowable under section 162 that consist of expenses paid or incurred by a qualified performing artist (as defined in section 62(b)) in connection with the performance by him or her of services in the performing arts as an employee;

(4) Deductions allowable under part VI as losses from the sale or exchange of property;

(5) Deductions allowable under part VI, section 212, or section 611 that are attributable to property held for the production of rents or royalties;

(6) Deductions for depreciation or depletion allowable under sections 167 or 611 to a life tenant of property or to an income beneficiary of property held in trust or to an heir, legatee, or devisee of an estate;

(7) Deductions allowed by section 404 for contributions on behalf of a self-employed individual;

(8) Deductions allowed by section 219 for contributions to an individual retirement account described in section 408(a), or for an individual retirement annuity described in section 408(b);

(9) Deductions allowed by section 402(e)(3) with respect to a lump-sum distribution;

(10) For taxable years beginning after December 31, 1972, deductions allowed by section 165 for losses incurred in any transaction entered into for profit though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit;

(11) For taxable years beginning after December 31, 1976, deductions for

alimony and separate maintenance payments allowed by section 215;

(12) Deductions allowed by section 194 for the amortization of reforestation expenditures; and

(13) Deductions allowed by section 165 for the repayment (made in a taxable year beginning after December 28, 1980) to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(d) *Expenses directly related to a trade or business.* For the purpose of the deductions specified in section 62, the performance of personal services as an employee does not constitute the carrying on of a trade or business, except as otherwise expressly provided. The practice of a profession, not as an employee, is considered the conduct of a trade or business within the meaning of such section. To be deductible for the purposes of determining adjusted gross income, expenses must be those directly, and not those merely remotely, connected with the conduct of a trade or business. For example, taxes are deductible in arriving at adjusted gross income only if they constitute expenditures directly attributable to a trade or business or to property from which rents or royalties are derived. Thus, property taxes paid or incurred on real property used in a trade or business are deductible, but state taxes on net income are not deductible even though the taxpayer's income is derived from the conduct of a trade or business.

(e) *Reimbursed and unreimbursed employee expenses*—(1) *In general.* Expenses paid or incurred by an employee that are deductible from gross income under part VI in computing taxable income (determined without regard to section 67) and for which the employee is reimbursed by the employer, its agent, or third party (for whom the employee performs a benefit as an employee of the employer) under an express agreement for reimbursement or pursuant to an *express* expense allowance arrangement may be deducted from gross income in computing adjusted gross income. Except as provided in paragraphs (e)(2) and (e)(4) of this section, for taxable years beginning after December 31, 1986, if the amount of a reimbursement (as defined in paragraph (f) of this section) made by an employer, its agent, or third party to an employee is less than the total amount of the business expenses paid or incurred by the employee, the determination of to which of the employee's business expenses the reimbursement applies and the amount of each expense that is covered by the reimbursement is made on the basis of all of the facts and circumstances of the particular case.

(2) *Facts and circumstances unclear on business expenses for meals and entertainment.* If—

(i) The facts and circumstances do not make clear—

(A) That a reimbursement does not apply to business expenses for meals or entertainment, or

(B) The amount of business expenses for meals or entertainment that is covered by the reimbursement, and

(ii) The employee pays or incurs business expenses for meals or entertainment,

the amount of the reimbursement that applies to such expenses (or portion thereof with respect to which the facts and circumstances are unclear) shall be determined by multiplying the amount of the employee's business expenses for meals and entertainment (or portion thereof with respect to which the facts and circumstances are unclear) by a fraction, the numerator of which is the total amount of the reimbursement (or portion thereof with respect to which the facts and circumstances are unclear) and the denominator of which is the aggregate amount of all the business expenses of the employee (or portion thereof with respect to which the facts and circumstances are unclear).

(3) *Deductibility of unreimbursed expenses.* The amount of expenses that is determined not to be reimbursed pursuant to paragraph (e) (1) or (2) of this section is deductible from adjusted gross income in determining the employee's taxable income subject to the limitations applicable to such expenses (*e.g.*, the 2-percent floor of section 67 and the 80-percent limitation on meal and entertainment expenses provided for in section 274(n)).

(4) *Unreimbursed expenses of State legislators.* For taxable years beginning after December 31, 1986, any portion of the amount allowed as a deduction to State legislators pursuant to section 162(h)1)(B) that is not reimbursed by the State or a third party shall be allocated between lodging and meals in the same ratio as the amounts allowable for lodging and meals under the Federal per diem applicable to the legislator's State capital at the end of the legislator's taxable year (see Appendix 1–A of the Federal Travel Regulations (FTR), which as of March 28, 1988, are contained in GSA Bulletin FPMR A–40, Supplement 20). For purposes of this paragraph (e)(4), the amount allowable for meals under the Federal per diem shall be the amount of the Federal per diem allowable for meals and incidental expenses reduced by $2 per legislative day (or other amount allocated to incidental expenses in 1–7.5(a)(2) of the FTR). The unreimbursed portion of each type of expense is deductible from adjusted gross income in determining the State legislator's taxable income subject to the limitations applicable to such expenses. For example, the unreimbursed portion allocable to meals shall be reduced by 20 percent pursuant to section 274(n) before being subjected to the 2-percent floor of section 67 for purposes of computing the taxable income of a State legislator. See § 1.67–1T(a)(2).

(5) *Expenses paid directly by an employer, its agent, or third party.* In the case of an employer, its agent, or a third party who provides property or services to an employee or who pays an employee's expenses directly instead of reimbursing the employee, see section 132 and the regulations thereunder for the income tax treatment of such expenses.

(6) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). During 1987, A, an employee, while on business trips away from home pays $300 for travel fares, $200 for lodging and $100 for meals. In addition, A pays $50 for business meals in the area of his place of employment ("local meals"), $250 for continuing education courses, and $100 for business-related entertainment (other than meals). The total amount of the reimbursements received by A for his employee expenses from his employer is $750, and it is assumed that A's expenses meet the deductibility requirements of sections 162 and 274. A includes the amount of the reimbursement in his gross income. A's employer designates the reimbursement to cover in full A's expenses for travel fares, lodging, and meals while away from home, local meals, and entertainment, and no facts or circumstances indicate a contrary intention of the employer. Because the facts and circumstances make clear the amount of A's business expenses for meals and entertainment that is covered by the reimbursement, the reimbursement will be allocated to these expenses. In determining his adjusted gross income under section 62, A may deduct the full amount of the reimbursement for travel fares, lodging, and meals while away from home, local meals, and entertainment. In determining his taxable income under section 63, A may deduct his expenses for continuing education courses to the extent allowable by sections 67 and 162.

Example (2). Assume the facts are the same as in example (1) except that the facts and circumstances make clear that the reimbursement covers all types of deductible expenses but they do not make clear the amount of each type of expense that is covered by the reimbursement. The amount of the reimbursement that is allocated to A's business expenses for meals and entertainment is $187.50. This amount is determined by multiplying the total amount of A's business expenses for meals and entertainment ($250) by the ratio of A's total reimbursement to A's total business expenses ($750/$1,000). The remaining amount of the reimbursement, $562.50 ($750−$187.50), is allocated to A's business expenses other than meal and entertainment expenses. Therefore, in determining his adjusted gross income under section 62, A may deduct $750 for reimbursed business expenses (including meals and entertainment). In determining his taxable income under section 63, A may deduct (subject to the limitations and conditions of sections 67, 162, and 274) the unreimbursed portion of his expenses for meals and entertainment ($62.50 ($250−$187.50)), and other employee business expenses ($187.50 ($750−$562.50)).

Example (3). Assume the facts are the same as in example (1) except that the amount of the reimbursement is $500. Assume further that the facts and circumstances make clear that the reimbursement covers $100 of expenses for meals and that the remaining $400 of the reimbursement covers all types of deductible expenses (including any expenses for meals in excess of the $100 already designated) other than expenses for entertainment. The amount of the reimbursement that is allocated to A's business expenses for meals and entertainment is $125. This amount is equal to the sum of the amount of the reimbursement that clearly applies to meals ($100) and the amount of the reimbursement with respect to which the facts are unclear that is allocated to meals ($25). The latter amount is determined by multiplying the total amount of A's business expenses for meals and entertainment with respect to which the facts are unclear ($50) by the ratio of A's total reimbursement with respect to which the facts are unclear to A's total business expenses with respect to which the facts are unclear ($400/$800). The remaining amount of the reimbursement, $375 ($500−$125) is allocated to A's business expenses other than meals and entertainment. Therefore, in determining his adjusted gross income under section 62, A may deduct $500 for reimbursed business expenses (including meals). In determining his taxable income under section 63, A may deduct (subject to the limitations and conditions of sections 67, 162, and 274) the unreimbursed portion of his expenses for meals ($25 ($150−$125)), entertainment ($100), and other employee business expenses ($375 ($750−$375)).

Example (4). During 1987 B, a research scientist, is employed by Corporation X. B gives a speech before members of Association Y, a professional organization of scientists, describing her most recent research findings. Pursuant to a reimbursement arrangement, Y reimburses B for the full amount of her travel fares to the site of the speech and for the full amount of her expenses for lodging and meals while there. B includes the amount of the reimbursement in her gross income. B may deduct the full amount of her travel expenses pursuant to section 62(a)(2)(A) in computing her adjusted gross income.

(f) *Reimbursement or other expense allowance arrangement.* For purposes of this section, the phrase "reimbursement or other expense allowance arrangement" means advances, allowances (including per diem allowances and mileage allowances), or reimbursements received by a taxpayer for business expenses that are allowable as deductions by part VI and paid or incurred by the taxpayer in connection with the performance of services by him or her as an employee under a reimbursement or other expense allowance arrangement with the employer (whether the reimbursement is actually received from the employer, its agent, or a third party for whom the employee performs a benefit as an employee of the employer), as well as amounts charged directly or indirectly to the employer through credit card systems or otherwise. In addition, the reimbursement or other expense allowance arrangement must be identified either by making a separate payment or by specifically indicating the separate amount if both wages and the reimbursement or expense allowance are combined in a single payment. It shall be presumed that any amounts treated as compensation to an employee by an employer on the employer's return of tax under chapter 1 of the Code and as wages to such employee for purposes of chapter 24 of the Code (relating to withholding of income tax at source on wages) do not constitute reimbursements or other expense allowances for purposes of section 62 and this section. This presumption may be rebutted by clear and convincing evidence to the contrary that includes evidence of an obligation by the employee to make an adequate accounting (as defined in § 1.274–5(e)(4)) to the employer for the employee's business expenses.

(g) *Moving expenses.* For taxable years beginning after December 31, 1986, a taxpayer described in section 217(a) shall not take into account the deduction described in section 217 relating to moving expenses in computing adjusted gross income under section 62 even if the taxpayer is reimbursed for his or her moving expenses. Such a taxpayer shall include the amount of any reimbursement for moving expenses in income pursuant to section 82. The deduction described in section 217 shall be taken into account in computing the taxable income of the taxpayer under section 63. Pursuant to section 67(b)(6), the 2-percent floor described in section 67(a) does not apply to moving expenses.

(h) *Cross-reference.* See 26 CFR 1.62–1 (Rev. as of April 1, 1986) with respect to pre-1987 deductions for travel, meal, lodging, transportation, and other trade or business expenses of an employee, reimbursed expenses of an employee, expenses of an outside salesperson, long-term capital gains, contributions described in section 405(c) to a bond purchase plan on behalf of a self-employed individual, moving expenses, amounts not received as benefits pursuant to section 1379(b)(3), and retirement bonds described in section 409 (allowed by section 219).

Par. 3. Immediately after § 1.63–2, new §§ 1.67–1T and 1.67–2T are added, and a heading for § 1.67–4T is added. The added provisions read as follows:

§ 1.67–1T 2-percent floor on miscellaneous itemized deductions (temporary).

(a) *Type of expenses subject to the floor*—(1) *In general.* With respect to individuals, section 67 disallows deductions for miscellaneous itemized deductions (as defined in paragraph (b) of this section) in computing taxable income (*i.e.*, so-called "below-the-line" deductions) to the extent that such otherwise allowable deductions do not exceed 2 percent of the individual's adjusted gross income (as defined in section 62 and the regulations thereunder). Examples of expenses that, if otherwise deductible, are subject to the 2-percent floor include but are not limited to—

(i) Unreimbursed employee expenses, such as expenses for transportation, travel fares and lodging while away from home, business meals and entertainment, continuing education courses, subscriptions to professional journals, union or professional dues, professional uniforms, job hunting, and the business use of the employee's home.

(ii) Expenses for the production or collection of income for which a deduction is otherwise allowable under section 212 (1) and (2), such as investment advisory fees, subscriptions to investment advisory publications, certain attorneys' fees, and the cost of safe deposit boxes.

(iii) Expenses for the determination of any tax for which a deduction is otherwise allowable under section 212(3), such as tax counsel fees and appraisal fees, and

(iv) Expenses for an activity for which a deduction is otherwise allowable under section 183.

See section 62 with respect to deductions that are allowable in computing adjusted gross income (*i.e.*, so-called "above-the-line" deductions).

(2) *Other limitations.* Except as otherwise provided in paragraph (d) of this section, to the extent that any limitation or restriction is placed on the amount of a miscellaneous itemized deduction, that limitation shall apply prior to the application of the 2-percent floor. For example, in the case of an expense for food or beverages, only 80 percent of which is allowable as a deduction because of the limitations provided in section 274(n), the otherwise deductible 80 percent of the expense is treated as a miscellaneous itemized deduction and is subject to the 2-percent limitation of section 67.

(b) *Definition of miscellaneous itemized deductions.* For purposes of this section, the term "miscellaneous itemized deductions" means the deductions allowable from adjusted gross income in determining taxable income, as defined in section 63, other than—

(1) The standard deduction as defined in section 63(c),

(2) Any deduction allowable for impairment-related work expenses as defined in section 67(d),

(3) The deduction under section 72(b)(3) (relating to deductions if annuity payments cease before the investment is recovered),

(4) The deductions allowable under section 151 for personal exemptions,

(5) The deduction under section 163 (relating to interest),

(6) The deduction under section 164 (relating to taxes),

(7) The deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165,

(8) The deduction under section 170 (relating to charitable contributions and gifts),

(9) The deduction under section 171 (relating to deductions for amortizable bond premiums),

(10) The deduction under section 213 (relating to medical and dental expenses),

(11) The deduction under section 216 (relating to deductions in connection with cooperative housing corporations),

(12) The deduction under section 217 (relating to moving expenses),

(13) The deduction under section 691(c) (relating to the deduction for estate taxes in the case of income in respect of the decedent),

(14) The deduction under 1341 (relating to the computation of tax if a taxpayer restores a substantial amount held under claim of right), and

(15) Any deduction allowable in connection with personal property used in a short sale.

(c) *Allocation of expenses.* If a taxpayer incurs expenses that relate to both a trade or business activity (within the meaning of section 162) and a production of income or tax preparation activity (within the meaning of section 212), the taxpayer shall allocate such expenses between the activities on a reasonable basis.

(d) *Members of Congress*—(1) *In general.* With respect to the deduction for living expenses of Members of Congress referred to in section 162(a), the 2-percent floor described in section 67 and paragraph (a) of this section shall be applied to the deduction before the application of the $3,000 limitation on deductions for living expenses referred to in section 162(a). (For purposes of this paragraph (d), the term "Member(s) of Congress" include any Delegate or Resident Commissioner.) The amount of miscellaneous itemized deductions of a Member of Congress that is disallowed pursuant to section 67 and paragraph (a) of this section shall be allocated between deductions for living expenses (within the meaning of section 162(a)) and other miscellaneous itemized deductions. The amount of deductions for living expenses of a Member of Congress that is disallowed pursuant to section 67 and paragraph (a) of this section is determined by multiplying the aggregate amount of such living expenses (determined without regard to the $3,000 limitation of section 162(a) but with regard to any other limitations) by a fraction, the numerator of which is the aggregate amount disallowed pursuant to section 67 and paragraph (a) of this section with respect to miscellaneous itemized deductions of the Member of Congress and the denominator of which is the amount of miscellaneous itemized deductions (including deductions for living expenses) of the Member of Congress (determined without regard to the $3,000 limitation of section 162(a) but without regard to any other limitations). The amount of deductions for miscellaneous itemized deductions (other than deductions for living expenses) of a Member of Congress that are disallowed pursuant to section 67 and paragraph (a) of this section is determined by multiplying the amount of miscellaneous itemized deductions (other than deductions for living expenses) of the Member of Congress (determined with regard to any limitations) by the fraction described in the preceding sentence.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Example. For 1987 A, a Member of Congress, has adjusted gross income of $100,000, and miscellaneous itemized deductions of $10,750 of which $3,750 is for meals, $3,000 is for other living expenses, and $4,000 is for other miscellaneous itemized deductions (none of which is subject to any percentage limitations other than the 2-percent floor of section 67). The amount of A's business meal expenses that are disallowed under section 274(n) is $750 ($3,750×20%). The amount of A's miscellaneous itemized deductions that are disallowed under section 67 is $2,000 ($100,000×2%). The portion of the amount disallowed under section 67 that is allocated to A's living expenses is $1,200. This portion is equal to the amount of A's deductions for living expenses allowable after the application of section 274(n) and before the application of section 67 ($6,000) multiplied by the ratio of A's total miscellaneous itemized deductions disallowed under section 67 to A's total miscellaneous itemized deductions, determined without regard to the $3,000 limitation of section 162(a) ($2,000/$10,000). Thus, after application of section 274(n) and section 67, A's deduction for living expenses is $4,800 ($6,750−$750−$1,200). However, pursuant to section 162(a), A may deduct only $3,000 of such expenses. The amount of A's other miscellaneous itemized deductions that are disallowed under section 67 is $800 ($4,000×$2,000/$10,000). Thus, $3,200 ($4,000−$800) of A's miscellaneous itemized deductions (other than deductions for living expenses) are allowable after application of section 67. A's total allowable miscellaneous itemized deductions are $6,200 ($3,000+$3,200).

(e) *State legislators.* See § 1.62–1T(e)(4) with respect to rules regarding state legislator's expenses.

§ 1.67–2T Treatment of pass-through entities (temporary).

(a) *Application of section 67.* This section provides rules for the application of section 67 to partners, shareholders, beneficiaries, participants, and others with respect to their interests in pass-through entities (as defined in paragraph (g) of this section). In general, an affected investor (as defined in paragraph (h) of this section) in a pass-through entity shall separately take into account as an item of income and as an item of expense an amount equal to his or her allocable share of the affected expenses (as defined in paragraph (i) of this section) of the pass-through entity for purposes of determining his or her taxable income. Except as provided in paragraph (e)(1)(ii)(B) of this section, the expenses so taken into account shall be treated as paid or incurred by the affected investor in the same manner as paid or incurred by the pass-through entity. For rules regarding the application of section 67 to affected investors in—

(1) Partnerships, S corporations, and grantor trusts, see paragraph (b) of this section,

(2) Real estate mortgage investment conduits, see paragraph (c) of this section,

(3) Common trust funds, see paragraph (d) of this section,

(4) Nonpublicly offered regulated investment companies, see paragraph (e) of this section, and

(5) Publicly offered regulated investment companies, see paragraph (p) of this section.

(b) *Partnerships, S corporations, and grantor trusts*—(1) *In general.* Pursuant to section 702(a) and 1366(a) of the Code and the regulations thereunder, each partner of a partnership or shareholder of an S corporation shall take into account separately his or her distributive or pro rata share of any items of deduction of such partnership or corporation that are defined as miscellaneous itemized deductions pursuant to section 67(b). The 2-percent limitation described in section 67 does not apply to the partnership or corporation with respect to such deductions, but such deductions shall be included in the deductions of the partner or shareholder to which that limitation applies. Similarly, the limitation applies to the grantor or other person treated as the owner of a grantor trust with respect to items that are paid or incurred by a grantor trust and are treated as miscellaneous itemized deductions of the grantor or other person pursuant to subpart E, part 1, subchapter J, chapter 1 of the Code, but not to the trust itself. The 2-percent limitation applies to amounts otherwise deductible in taxable years of partners, shareholders, or grantors beginning after December 31, 1986, regardless of the taxable year of the partnership, corporation, or trust.

(2) *Example.* The provisions of this paragraph (b) may be illustrated by the following example:

Example. P, a partnership, incurs $1,000 in expenses to which section 212 applies during its taxable year. A, an individual, is a partner in P. A's distributive share of the expenses to which section 212 applies is $20, determined without regard to the 2-percent limitation of section 67. Pursuant to section 702(a), A must take $20 of expenses to which section 212 applies into account in determining his income tax. Pursuant to section 67, in determining his taxable income A may deduct his miscellaneous itemized deductions (including his $20 distributive share of deductions from P) to the extent the total amount exceeds 2 percent of his adjusted gross income.

(c) *Real estate mortgage investment conduit.* See § 1.67–3T for rules regarding the application of section 67 to holders of interests in REMICs.

(d) *Common trust funds*—(1) *In general.* For purposes of determining the taxable income of an affected investor that is a participant in a common trust fund—

(i) The ordinary taxable income and ordinary net loss of the common trust fund shall be computed under section 584(d)(2) without taking into account any affected expenses, and

(ii) Each affected investor shall be treated as having paid or incurred an expense described in section 212 in an amount equal to the affected investor's proportionate share of the affected expenses.

The 2-percent limitation described in section 67 applies to amounts otherwise deductible in taxable years of participants beginning after December 31, 1986, regardless of the taxable year of the common trust fund.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Example. During 1987, the gross income and deductions of common trust fund C, a calendar year taxpayer, consist of the following items: (i) $50,000 of short-term capital gains; (ii) $150,000 of long-term capital gains; (iii) $1,000,000 of dividend income; (iv) $10,000 of deductions that are not affected expenses; and (v) $80,000 of deductions that are affected expenses. The proportionate share of Trust T in the income and losses of C is one percent. In computing its taxable income for 1987, T, a calendar year taxpayer, shall take into account the following items: (A) $500 of short-term capital gains (one percent of $50,000, C's short-term capital gains); (B) $1,500 of long-term capital gains (one percent of $150,000, C's long-term capital gains); (C) $9,900 of ordinary taxable income (one percent of $990,000, the excess of $100,000, C's gross income after excluding capital gains and losses, over $10,000, C's deductions that are not affected expenses); (D) $800 of expenses described in section 212 (one percent of $80,000, C's affected expenses).

(e) *Nonpublicly offered regulated investment companies*—(1) *In general.* For purposes of determining the taxable income of an affected investor that is a shareholder of a nonpublicly offered regulated investment company (as defined in paragraph (g)(3) of this section) during a calendar year—

(i) The current earnings and profits of the nonpublicly offered regulated investment company shall be computed without taking into account any affected RIC expenses that are allocated among affected investors, and

(ii) The affected investor shall be treated—

(A) As having received or accrued a dividend in an amount equal to the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year, and

(B) As having paid or incurred an expense described in section 212 (or section 162 in the case of an affected investor that is a nonpublicly offered regulated investment company) in an amount equal to the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year

in the affected investor's taxable year with which (or within which) the calendar year with respect to which the expenses are allocated ends. An affected investor's allocable share of the affected RIC expenses is the amount allocated to that affected investor pursuant to paragraph (k) of this section.

(2) *Shareholders that are not affected investors.* A shareholder of a nonpublicly offered regulated investment company that is not an affected investor shall not take into account in computing its taxable income any amount of income or expense with respect to its allocable share of affected RIC expenses.

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example. During calendar year 1987, nonpublicly offered regulated investment company M distributes to individual shareholder A, a calendar year taxpayer, capital gain dividends of $1,000 and other dividends of $5,000. A's allocable share of the affected RIC expenses of M is $200. In computing A's taxable income for 1987, A shall take into account the following items: (i) $1,000 of long-term capital gains (the capital gain dividends received by A); (ii) $5,200 of dividend income (the sum of the other dividends received by A and A's allocable share of the affected RIC expenses of M); and (iii) $200 of expenses described in section 212 (A's allocable share of the affected RIC expenses of M). A is allowed a deduction for miscellaneous itemized deductions (including A's $200 allocable share of the affected RIC expenses of M, which is treated as an expense described in section 212) for 1987 only to the extent the aggregate of such deductions exceeds 2 percent of A's adjusted gross income for 1987.

(f) *Cross-reference.* See § 1.67–1T with respect to limitations on deductions for expenses described in section 212 (including amounts treated as such expenses under this section).

(g) *Pass-through entity*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, for purposes of section 67(c) and this section, a pass-through entity is—

(i) A trust (or any portion thereof) to which subpart E, part 1, subchapter J, chapter 1 of the Code applies,

(ii) A partnership,

(iii) An S corporation,

(iv) A common trust fund described in section 584,

(v) A nonpublicly offered regulated investment company,

(vi) A real estate mortgage investment conduit, and

(vii) Any other person—

(A) Which is not subject to the income tax imposed by subtitle A, chapter 1, or which is allowed a deduction in computing such tax for distributions to owners or beneficiaries, and

(B) The character of the income of which may affect the character of the income recognized with respect to that person by its owners or beneficiaries.

Entities that do not meet the requirements of paragraph (g)(1)(vii) (A) and (B) of this section, such as qualified pension plans, individual retirement accounts, and insurance companies holding assets in separate asset accounts to fund variable contracts defined in section 817(d), are not described in this paragraph (g)(1).

(2) *Exception.* For purposes of section 67(c) and this section, a pass-through entity does not include:

(i) An estate;

(ii) A trust (or any portion thereof) not described in paragraph (g)(1)(i) of this section,

(iii) A cooperative described in section 1381(a)(2), determined without regard to subparagraphs (A) and (C) thereof, or

(iv) A real estate investment trust.

(3) *Nonpublicly offered regulated investment company—(i) In general.* For purposes of this section, the term "nonpublicly offered regulated investment company" means a regulated investment company to which Part I of Subchapter M of the Code applies that is not a publicly offered regulated investment company.

(ii) *Publicly offered regulated investment company.* For purposes of this section, the term "publicly offered regulated investment company" means a regulated investment company to which Part I of Subchapter M of the Code applies the shares of which are—

(A) Continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(B) Regularly traded on an established securities market, or

(C) Held by or for no fewer than 500 persons at all times during the taxable year.

(h) *Affected investor*—(1) *In general.* For purposes of this section, the term "affected investor" means a partner, shareholder, beneficiary, participant, or other interest holder in a pass-through entity at any time during the pass-through entity's taxable year that is—

(i) An individual (other than a nonresident alien whose income with respect to his or her interest in the pass-through entity is not effectively connected with the conduct of a trade or business within the United States),

(ii) A person, including a trust or estate, that computes its taxable income in the same manner as in the case of an individual; or

(iii) A pass-through entity if one or more of its partners, shareholders, beneficiaries, participants, or other interest holders is (A) a pass-through entity or (B) a person described in paragraph (h)(1) (i) or (ii) of this section.

(2) *Examples.* The provisions of this paragraph (h) may be illustrated by the following examples:

Example (1). Corporation X holds shares of nonpublicly offered regulated investment company R in its capacity as a nominee or custodian for individual A, the beneficial owner of the shares. Because the owner of the shares for Federal income tax purposes is an individual, the shares are owned by an affected investor.

Example (2). Individual retirement account I owns shares of a nonpublicly offered regulated investment company. Because an individual retirement account is not a person described in paragraph (h)(1) of this section, the shares are not owned by an affected investor.

(i) *Affected expenses— (1) In general.* In general, for purposes of this section, the term "affected expenses" means expenses that, if paid or incurred by an individual, would be deductible, if at all, as miscellaneous itemized deductions as defined in section 67(b).

(2) *Special rule for nonpublicly offered regulated investment companies.* In the case of a nonpublicly offered regulated investment company, the term "affected expenses" means only affected RIC expenses.

(j) *Affected RIC expenses*—(1) *In general.* In general, for purposes of this section the term "affected RIC expenses" means the excess of—

(i) The aggregate amount of the expenses (other than expenses described in sections 62(a)(3) and 67(b) and § 1.67–1T(b)) paid or incurred in the calendar year that are allowable as a deduction in determining the investment company taxable income (without regard to section 852(b)(2)(D)) of the nonpublicly offered regulated investment company for a taxable year that begins or ends with or within the calendar year, over

(ii) The amount of expenses taken into account under paragraph (j)(1)(i) of this section that are allocable to the following items (whether paid separately or included as part of a fee paid to an investment advisor or other person for a variety of services):

(A) Registration fees;

(B) Directors' or trustees' fees;

(C) Periodic meetings of directors, trustees, or shareholders;

(D) Transfer agent fees;

(E) Legal and accounting fees (other than fees for income tax return preparation or income tax advice); and

(F) Shareholder communications required by law (*e.g.* the preparation and mailing of prospectuses and proxy statements).

Expenses described in paragraph (j)(1)(ii) (A) through (F) of this section do not include, for example, expenses allocable to investment advice, marketing activities, shareholder communications and other services not specifically described in paragraph (j)(1)(ii) (A) through (F) of this section, and custodian fees.

(2) *Safe harbor.* If a nonpublicly offered regulated investment company makes an election under this paragraph (j)(2), the affected RIC expenses for a calendar year shall be treated as equal to 40 percent of the amount determined under paragraph (j)(1)(i) of this section for that calendar year. The nonpublicly offered regulated investment company shall make the election by attaching to its income tax return for the taxable year that includes the last day of the first calendar year for which the nonpublicly offered regulated investment company makes the election a statement that it is making an election under paragraph (j)(2) of this section. An election made pursuant to this paragraph (j)(2) shall remain in effect for all subsequent calendar years unless revoked with the consent of the Commissioner.

(3) *Reduction for unused RIC expenses.* The amount determined under paragraph (j)(1)(i) of this section shall be reduced by the nonpublicly offered regulated investment company's net operating loss, if any, for the taxable year ending with or within the calendar year. In computing the nonpublicly offered regulated investment company's net operating loss for purposes of this section, the deduction for dividends paid shall not be allowed and any net capital gain for the taxable year shall be excluded.

(4) *Exception.* The affected RIC expenses of a nonpublicly offered regulated investment company will be treated as zero if the amount of its gross income for the calendar year (determined without regard to capital gain net income) is not greater than 1 percent of the sum of (i) such gross income and (ii) the amount of its interest income for the calendar year that is not includible in gross income pursuant to section 103.

(k) *Allocation of expenses among nonpublicly offered regulated investment company shareholders*—(1) *General rule.* A nonpublicly offered regulated investment company shall allocate to each of its affected investors that is a shareholder at any time during the calendar year, the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for that calendar year. (See paragraph (m) of this section for rules regarding estimates with respect to the amount of an affected investor's share of affected RIC expenses upon which certain persons can rely for certain purposes.) A nonpublicly offered regulated investment company may use any reasonable method to make the allocation. A method of allocation shall not be reasonable if—

(i) The method can be expected to have the effect, if applied to all affected RIC expenses and all shareholders (whether or not affected investors), of allocating to the shareholders an amount of affected RIC expenses that is less than the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year,

(ii) The method can be expected to have the effect of allocating a disproportionately high share of the affected RIC expenses of the nonpublicly offered regulated investment company to shareholders that are not affected investors or affected investors, the amount of whose miscellaneous itemized deductions (including their allocable share of affected RIC expenses) exceeds the 2-percent floor described in section 67, or

(iii) A principal purpose of the method of allocation is to avoid allocating affected RIC expenses to persons described in paragraph (h)(1) (i) or (ii) of this section whose miscellaneous itemized deductions (inclusive of their allocable share of affected RIC expenses) may not exceed the 2-percent floor described in section 67.

(2) *Reasonable allocation method described*—(i) *In general.* The allocation method described in this paragraph (k)(2) shall be treated as a reasonable allocation method. Under the method described in this paragraph, an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company is the amount that bears the same ratio to the amount of affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year as—

(A) The amount of dividends paid to the affected investor during the calendar year, bears to

(B) The sum of—

(*1*) The aggregate amount of dividends paid by the nonpublicly offered regulated investment company during the calendar year to all shareholders, and

(*2*) Any amount on which tax is imposed under section 852(b)(1) for any taxable year of the nonpublicly offered regulated investment company ending within or with the calendar year.

(ii) *Exception.* Paragraph (k)(2)(i) of this section does not apply if the amount of the deduction for dividends paid during the calendar year is zero.

(iii) *Dividends paid.* For purposes of this paragraph (k)(2)—

(A) Dividends that are treated as paid during a calendar year pursuant to section 852(b)(7) are treated as paid during that calendar year and not during the succeeding calendar year.

(B) The term "dividends paid" does not include capital gain dividends (as defined in section 852(b)(3)(C)), exempt-interest dividends (as defined in section 852(b)(5)(A)), or any amount to which section 302(a) applies.

(C) The dividends paid during a calendar year is determined without regard to section 855(a).

(3) *Reasonable allocation made by District Director.* If a nonpublicly offered regulated investment company does not make a reasonable allocation of affected RIC expenses to its affected investors as required by paragraph (k)(1) of this section, a reasonable allocation shall be made by the District Director of the internal revenue district in which the principal place of business or principal office or agency of the nonpublicly offered regulated investment company is located.

(4) *Examples.* The provisions of this paragraph (k) may be illustrated by the following examples:

Example (1). Nonpublicly offered regulated investment company M, in calculating its investment company taxable income, claims a dividends paid deduction for a portion of redemption distributions (to which section 302(a) applies) to shareholders, as well as for nonredemption distributions. M allocates affected expenses among shareholders who have received nonredemption distributions by multiplying the amount of nonredemption distributions distributed to each shareholder by a fraction, the numerator of which is the affected RIC expenses of M and the denominator of which is M's investment company taxable income, determined on a calendar year basis and without regard to deductions described in section 852(b)(2)(D). No affected RIC expenses are allocated with respect to the redemption distributions. This allocation method can be expected to have the effect of allocating among the shareholders an amount of expenses that is less then the total amount of affected RIC expenses of M. Accordingly, the allocation method is not reasonable.

Example (2). Nonpublicly offered regulated investment company N has two classes of stock, a "capital" class and an "income" class. Owners of the capital class receive the benefit of all capital appreciation on the stocks owned by N, and bear the burden of certain capital expenditures of N; owners of the income class receive the benefit of all other income of N, and bear the burden of all expenses of N that are deductible under section 162. M allocates all affected RIC expenses among shareholders of the income class shares under a method that would be reasonable if the income class were the only class of N stock. Corporations and other shareholders that are not affected investors own a higher proportion of income class shares than of capital class shares. The affected RIC expenses of N are properly allocated among the shareholders who bear the burden of those expenses. Accordingly, the allocation method does not have the effect of allocating a disproportionately high share of the affected RIC expenses of N to shareholders that are not affected investors merely because a disproportionate share of income class shares are owned by shareholders that are not affected investors. The allocation method is reasonable.

Example (3). Nonpublicly offered regulated investment company O has two classes of stock, Class A and Class B. Shares of Class A, which may be purchased without payment of a sales or brokerage commission, are charged with the expenses of a Rule 12b–1 distribution plan of O. Shares of Class B, which may be purchased only upon payment of a sales or brokerage commission, are not charged with the expenses of the Rule 12b–1 distribution plan of O. O allocates all affected RIC expenses among shareholders of Class A and Class B shares under a method that would be reasonable if Class A or Class B shares, respectively, were the only class of O stock. The affected RIC expenses attributable to the Rule 12b–1 plan are allocated to the shareholders of Class A shares. Shareholders that are not affected investors own a higher proportion of Class A shares than of Class B shares. The affected RIC expenses of O are properly allocated among the shareholders who bear the burden of those expenses. Accordingly, the allocation method does not have the affect of allocating a disproportionately high share of the affected RIC expenses of O to shareholders that are not affected investors merely because a disproportionately high share of Class A shares are owned by persons that are not affected investors. The allocation method is reasonable.

Example (4). Assume the facts are the same as in example (3) except that a portion of the affected RIC expenses attributable to the Rule 12b–1 plan are allocated to the shareholders of Class B shares, and shareholders that are not affected investors own a higher proportion of Class B shares than of Class A shares. Thus, the affected RIC expenses are not allocated among the class of shareholders that bear the burden of the expenses. Accordingly, the allocation method has the effect of allocating a disproportionate share of the affected RIC expenses of O to the shareholders of Class B shares. Because shareholders that are not affected investors own a higher proportion of Class B shares than Class A shares, the method can be expected to allocate a disproportionately high share of the affected RIC expenses of O to shareholders that are not affected investors. Accordingly, the allocation method is not reasonable.

(l) *Affected RIC expenses not subject to backup withholding.* The amount of dividend income that an affected investor in a nonpublicly offered regulated investment company is treated as having received or accrued under paragraph (e)(1)(ii) of this section is not subject to backup withholding under section 3406.

(m) *Reliance by nominees and pass-through investors on notices*—(1) *General Rule.* Persons described in paragraph (m)(3) of this section may, for the purposes described in that paragraph (m)(3), treat an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company as being equal to an amount determined by the nonpublicly offered regulated investment company on the basis of a reasonable estimate (*e.g.*, of allocable expenses as a percentage of dividend distributions or allocable expenses per share) that is (i) reported in writing by the nonpublicly offered regulated investment company to the person or (ii) reported in a newspaper or financial publication having a nationwide circulation (*e.g.*, the *Wall Street Journal* or *Standard and Poor's Weekly Dividend Record*).

(2) *Estimates must be reasonable.* In general, for purposes of paragraph (m)(1) of this section, estimates of affected RIC expenses of a nonpublicly offered regulated investment company will be treated as reasonable only if the nonpublicly offered regulated investment company makes a reasonable effort to offset material understatements (or overstatements) of affected RIC expenses for a period by increasing (or decreasing) estimates of affected RIC expenses for a subsequent period. Understatements or overstatements of affected RIC expenses that are not material may be corrected by making offsetting adjustments in future periods, provided that understatements and overstatements are treated consistently.

(3) *Application.* Paragraph (m)(1) of this section shall apply to the following persons for the following purposes:

(i) A nominee who, pursuant to section 6042(a)(1)(B) and paragraph (n)(2) of this section, is required to report dividends paid by a nonpublicly offered regulated investment company to the Internal Revenue Service and to the person to whom the payment is made, for purposes of reporting to the Internal Revenue Service and the person to whom the payment is made the amount of affected RIC expenses allocated to such person.

(ii) An affected investor to whom a nominee (to which paragraph (m)(3)(i) of this section applies) reports, for purposes of calculating the affected investor's taxable income and the amount of its affected expenses.

(iii) A shareholder that is a pass-through entity, for purposes of calculating its taxable income and the amount of its affected expenses.

(n) *Return of information and reporting to affected investors by a nonpublicly offered regulated investment company.*—(1) *In general*—(i) *Return of information.* A nonpublicly offered regulated investment company shall make an information return (*e.g.*, Form 1099–DIV, Dividends and Distributions, for 1987) with respect to each affected investor to which an allocation of affected RIC expenses is required to be made pursuant to paragraph (k) of this section and for which the nonpublicly offered regulated investment company is required to make an information return to the Internal Revenue Service pursuant to section 6042 (or would be required to make such information return but for the $10 threshold described in section 6042 (a)(1) (A) and (B). The nonpublicly offered regulated investment company shall make the information return for each calendar year and shall state separately on such return—

(A) The amount of affected RIC expenses required to be allocated to the affected investor for the calendar year pursuant to paragraph (k) of this section,

(B) The sum of—

(*1*) The aggregate amount of the dividends paid to the affected investor during the calendar year, and

(*2*) The amount of the affected RIC expenses required to be allocated to the affected investor for the calendar year pursuant to paragraph (k) of this section, and

(C) Such other information as may be specified by the form or its instructions.

(ii) *Statement to be furnished to affected investors.* A nonpublicly offered regulated investment company shall provide to each affected investor for each calendar year (whether or not the nonpublicly offered regulated investment company is required to make an information return with respect to the affected investor pursuant to section 6042), a written statement showing the following information:

(A) The information described in paragraph (n)(1)(i) of this section with respect to the affected investor;

(B) The name and address of the nonpublicly offered regulated investment company;

(C) The name and address of the affected investor; and

(D) If the nonpublicly offered regulated investment company is required to report the amount of the affected investor's allocation of affected RIC expense to the Internal Revenue Service pursuant to paragraph (n)(1)(i) of this section a statement to that effect.

(iii) *Affected investor's shares held by a nominee.* If an affected investor's shares in a nonpublicly offered regulated investment company are held in the name of a nominee, the nonpublicly offered regulated investment company may make the information return described in paragraph (n)(1)(i) of this section with respect to the nominee in lieu of the affected investor and may provide the written statement described in paragraph (n)(1)(ii) of this section to such nominee in lieu of the affected investor.

(2) *By a nominee*—(i) *In general.* Except as otherwise provided for in paragraph (n)(2)(iii) of this section, in any case in which a nonpublicly offered regulated investment company provides, pursuant to paragraph (n)(1)(iii) of this section, a written statement to the nominee of an affected investor for a calendar year, the nominee shall—

(A) If the nominee is required to make an information return pursuant to section 6042 (or would be required to make an information return but for the $10 threshold described in section 6042(a)(1) (A) and (B), make an information return (*e.g.*, Form 1099–DIV, Dividends and Distributions, for 1987) for the calendar year with respect to each affected investor and state separately on such information return the information described in paragraph (n)(1)(i) of this section, and

(B) Furnish each affected investor with a written statement for the calendar year showing the information required by paragraph (n)(2)(ii) of this section (whether or not the nominee is required to make an information return with respect to the affected investor pursuant to section 6042).

(ii) *Form of statement.* The written statement required to be furnished for a calendar year pursuant to paragraph (n)(2)(i)(B) of this section shall show the following information:

(A) The affected investor's proportionate share of the items described in paragraph (n)(1)(i) of this section for the calendar year,

(B) The name and address of the nominee,

(C) The name and address of the affected investor, and

(D) If the nominee is required to report the affected investor's share of the allocable investment expenses to the Internal Revenue Service pursuant to paragraph (n)(2)(i)(A) of this section, a statement to that effect.

(iii) *Return not required.* A nominee is not required to make an information return with respect to an affected investor pursuant to paragraph (n)(2)(i)(A) of this section if the nominee is excluded from the requirements of section 6042 pursuant to § 1.6042–2(a)(1)(ii) or (iii).

(iv) *Statement not required.* A nominee is not required to furnish a written statement to an affected investor pursuant to paragraph (n)(2)(i)(B) of this section if the nonpublicly offered regulated investment company furnishes the written statement to the affected investor pursuant to an agreement with the nominee described in § 1.6042–2(a)(1)(iii).

(v) *Special rule.* Paragraph (n)(1)(i) and (ii) of this section applies to a nonpublicly offered regulated investment company that agrees with the nominee to satisfy the requirements of section 6042 as described in § 1.6042–2(a)(1)(iii) with respect to the affected investor.

(3) *Time and place for furnishing returns.* The returns required by paragraph (n)(1)(i) and (2)(i)(A) of this section for any calendar year shall be filed at the time and place that a return required under section 6042 is required to be filed. See § 1.6042–2(c) .

(4) *Time for furnishing statements.* The statements required by paragraph (n)(1)(ii) and (2)(i)(B) of this section to be furnished by a nonpublicly offered regulated investment company and a nominee, respectively, to an affected investor for a calendar year shall be furnished to such affected investor on or before January 31 of the following year.

(5) *Duplicative returns and statements not required*—(i) *Information return.* The requirements of paragraph (n)(1)(i) and (2)(i)(A) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6042 that contains the information required by paragraph (n)(1)(i).

(ii) *Written statement.* The requirements of paragraph (n)(1)(ii) and (2)(i)(B) of this section for the furnishing of a written statement (including the statement required by paragraph (n)(1)(ii)(D) and (2)(ii)(D) of this section) shall be met by furnishing the affected investor a copy of the information return to which section 6042 applies (whether or not the nonpublicly offered regulated investment company or nominee is required to file an information return with respect to the affected investor pursuant to section 6042) that contains the information required by paragraph (n)(1)(ii) or (2)(ii), whichever is applicable, of this section. Nonpublicly offered regulated investment companies and nominees may use a substitute form that contains provisions substantially similar to those of the prescribed form if the nonpublicly offered regulated investment company or nominee complies with all revenue procedures relating to substitute forms in effect at the time. The statement shall be furnished either in person or in a statement mailed by first-class mail that includes adequate notice that the statement is enclosed. A statement shall be considered to be furnished to an affected investor within the meaning of this section if it is mailed to such affected investor at its last known address.

(o) *Return of information by a common trust fund.* With respect to each affected investor to which paragraph (d) of this section applies, the common trust fund shall state on the return it is required to make pursuant to section 6032 for its taxable year, the following information:

(1) The amount of the affected investor's proportionate share of the affected expenses for the taxable year as described in paragraph (d)(1)(ii) of this section.

(2) The amount of the affected investor's proportionate share of ordinary taxable income or ordinary net loss for the taxable year determined pursuant to paragraph (d)(1)(i) of this section, and

(3) Such information as may be specified by the form or its instructions.

(p) *Publicly offered regulated investment companies.* [Reserved]

§ 1.67–4T Allocation of expenses by nongrantor trusts and estates (temporary). [Reserved]

Par. 4. Section 1.162–1 is amended by adding a new paragraph (b)(7) to read as set forth below.

§ 1.162–1 Business expenses.

* * * * *

(b) *Cross references.* * * *

(7) For limitations on the deductibility of miscellaneous itemized deductions, see section 67 and §§ 1.67–1T through 1.67–4T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Paragraph (c) of § 602.101 is amended by inserting in the appropriate place in the table

"§ 1.67–2T .... 1545–0110".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

March 8, 1988.

[FR Doc. 88–6471 Filed 3–25–88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Approval of Permanent Regulatory Program Amendments for the State of Arkansas

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of proposed amendments submitted by the State of Arkansas as modifications to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments contain additions and/or revisions to parts of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC)

Subchapter A, General; Subchapter F, Areas Unsuitable for Mining; Subchapter G, Surface Coal Mining and Reclamation Operations, Permits and Coal Exploration Procedures Systems; Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; and Subchapter K, State Program Performance Standards that includes the inspection, enforcement, and civil penalty provisions of the Arkansas program.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Arkansas program on November 21, 1980. Information pertinent to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions approval, can be found in the November 21, 1980 Federal Register (45 FR 77003). Subsequent actions concerning program amendments are identified at 30 CFR 904.10 and 904.15.

II. Submission of Program Amendments

On April 17, 1985, in accordance with the provisions of 30 CFR 732.17 (d), (e) and (f), OSMRE notified Arkansas of the changes necessary to ensure that the approved regulatory program was in accordance with SMCRA and no less effective than its implementing regulations, as revised since November 21, 1980, when the Arkansas program was originally approved. To comply with this letter, the State of Arkansas submitted proposed program amendments to OSMRE on March 18, 1986 (Administrative Record AR–302).

OSMRE announced receipt of the amendments in the April 15, 1986, Federal Register (51 FR 12713) and in the same notice, initiated a 30-day public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendments. No public comments were received by May 15, 1986, the close of comment period, and because no one requested an opportunity to testify, no public hearing was held. During review of these amendments, OSMRE identified several concerns. A letter dated September 3, 1986, was sent to the State identifying substantive changes that were required for the Director to approve the amendments. In response to the letter, the State submitted a revised amendment to OSMRE on October 17, 1986 (Administrative Record No. AR–312). Because the resubmission contained several differences from the initial set of rules that were submitted on March 18, 1986, OSMRE reopened the public comment period on November 24, 1986 (51 FR 41128). No public comments were received by December 9, 1986, the close of the extended comment period.

Following a review of the Arkansas amendments, OSMRE notified the State on February 23, 1987, of its concerns regarding its amendments. A number of OSMRE concerns were based on the U.S. District Court for the District of Columbia decisions in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144 (hereinafter referred to as PSMRL II).

Arkansas, in a letter (Administrative Record AR–318) dated May 1, 1987, submitted the necessary changes, and additional changes in three sections. Due to the submission of the new sections, OSMRE again reopened a 30-day public comment period and provided opportunity for a public hearing on the new sections on July 21, 1987 (FR 27419). No public comments were received by August 20, 1987, the close of the comment period, and since no one requested to testify, no public hearing was held.

The amendment contains additions and/or revisions to the ASCMRC at the following Parts:

701	State program
761	Areas designated by Act of Congress
762	Criteria for designating areas as unsuitable for surface coal mining operations
764	State processes for designating areas unsuitable for surface coal mining operations
771	General requirements for permits and applications
772	Surface coal mining and reclamation operations affecting two acres or less
776	General requirements for coal exploration operations
779	Surface mining permit applications—minimum requirements for information on environmental resources
780	Surface mining permit applications—minimum requirement for reclamation and operation plan
784	Underground mining permit applications—minimum requirements for reclamation and operation plan
785	Requirements for permits for special categories of mining
786	Review, public participation, and approval or disapproval of permit applications and permit terms and conditions
788	Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits
795	Small operator assistance
800	General requirements for bonding of surface coal mining and reclamation operations under the State program
805	Amount and duration of performance bond
806	Form, conditions, and terms of performance bonds and liability insurance
807	Procedures, criteria, and schedule for release of performance bond
808	Performance bond forfeiture criteria and procedures
815	State program performance standards—coal exploration and operations affecting 2 acres or less
816	Permanent program performance standards
819	Special State program performance standards—auger mining
823	Special State program performance standards—operations on prime farmland
826	Special State program performance standards—operations on steep slopes
827	Special State program performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine
842	Inspections
843	Enforcement
845	Civil penalties
1000	Suspension notices

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments submitted by Arkansas on May 1, 1987. Only those revisions of particular interest are discussed. Any amendments not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal rules. Amendments that are not discussed contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or involve provisions that lack a Federal counterpart and that do not adversely affect other aspects of the program. In the future, the Director may require further changes to these rules, or any other rules in the program, as a result of Federal regulatory revisions and court

decisions, and OSMRE's ongoing review of the Arkansas program.

Finding No. 1: ASCMRC Part 772, 2-Acre Exemption

The Arkansas regulations at ASCMRC Part 772 established the minimum general criteria for permits and permit application requirements for operations affecting 2 acres or less. On November 26, 1985, in accordance with the provisions of 30 CFR 732.17(f)(1), OSMRE notified Arkansas of changes necessary to ensure ASCMRC 772.2 was no less effective than the then current Federal requirements at 30 CFR 700.11 (b) and (c), regarding operations under the 2-acre exemption in section 528 of SMCRA. Arkansas made the required changes in its October 17, 1986 submission of proposed program amendments. Thereafter, Public Law 100–34 was signed into law on May 7, 1987, repealing the 2-acre exemption of section 528 of SMCRA, thereby pre-empting the Federal 2-acre exemption regulation and any State law or regulation that permits surface coal mining operations for commercial purposes on sites of 2 acres or less without satisfying the requirements of SMCRA. The Arkansas regulations addressing the 2-acre exemption were pre-empted by Pub. L. 100–34 and may no longer be enforced. Therefore, the Director is disapproving the amendments to ASCMRC 772.

Finding No. 2: ASCMRC Section 816.116(b)(3)(ii), Trees and Shrubs

Both Arkansas and OSMRE programs require that the period of responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, except approved normal husbandry practices.

The District Court ruled (PSMRL II), that the administrative record did not show that the replanting of trees and shrubs is a normal husbandry practice. Consequently, replanting would either restart the period of responsibility for successful revegetation, or trees and shrubs replanted during the period could not be counted in determining the success of revegetation. In response to the court ruling, OSMRE suspended 30 CFR 816.116(b)(3)(ii) and 817.117(b)(3)(ii) on November 20, 1986, insofar as they authorized the counting of trees and shrubs which have been in place less than the full period of responsibility in determining the success of revegetation (51 FR 41952).

ASCMRC section 816.116(b)(3)(ii) provided, in part, that trees and shrubs in place for less than the full 5 year period of revegetation responsibility may be counted in determining success of tree and shrub stocking. The Director finds the Arkansas regulation ASCMRC section 816.116(b)(3)(ii) less effective than the Federal requirements and is disapproving the regulation. Arkansas must amend its regulations to be consistent with the Court's decision and subsequent actions taken by OSMRE, or resubmit the regulation with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in Arkansas.

Finding No. 3: ASCMRC section 816.116(c)(4), Rills and Gullies

ASCMRC section 816.116(c)(4) allows approval of selective husbandry practices on reclaimed land without extending the period of responsibility for revegetation success or bond liability. Along with other requirements in the rule, the practices must be normal conservation practices for unmined lands of similar use in the region. The wording of the Arkansas regulation closely parallels the wording of OSMRE regulation 30 CFR 816.116(c)(4) and the Arkansas regulation is as effective as the OSMRE regulation.

OSMRE promulgated 30 CFR 816.116(c)(4) on September 2, 1983 (48 FR 40160). The preamble to the final rule explained that the practice of repair of rills and gullies, including reseeding or transplanting, could be approved under the rule without extending the period of responsibility for revegetation success. The practice could be approved only if it met applicable requirements in the regulation, including the requirement that it be a normal conservation practice in the region. The regulation was challenged and the District Court ruled in PSMRL II, that the record did not support the proposition that repair of rills and gullies is a normal conservation practice in any region of the country. In response to the court action, OSMRE suspended 30 CFR 816.116(c)(4) insofar as it permits the repair of rills and gullies without restarting the period of responsibility (51 FR 41962).

The Director is approving ASCMRC 816.116(c)(4) with the understanding that Arkansas will implement the rule with the same interpretation as the corresponding Federal regulation and prohibit the repair of rills and gullies without restarting the responsibility period. Therefore, the State of Arkansas cannot allow the repair of rills and gullies without restarting the responsibility period and the Director finds the Arkansas rule at ASCMRC 816.116(c)(4) is no less effective than the Federal rule.

Finding No. 4: ASCMRC 1000, Removal of Affirmative Disapprovals

On November 21, 1980 the Secretary gave conditional approval to the Arkansas program (FR 45 7703). In accordance with the decision of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation I* (Civil Action No. 79–1144) date May 16, 1980, the Secretary affirmatively disapproved, to some extent, Arkansas regulations at ASCMRC 761.11(c), 761.12(f)(1), 779.20, 780.16, 783.20 and 784.21. The affirmative disapproval was codified at 30 CFR 904.10(b) 5, 7, and 30.

ASCMRC 1000(6) originally suspended those provisions of ASCMRC 761.11(c) and 761.12(f)(1) that limit or prohibit mining that would adversely affect publicly owned parks and privately owned sites listed on the National Register of Historic Places. To be no less effective than the Federal rules at 30 CFR 761.11(c) and 761.12(f)(1), which extend protection to these areas, Arkansas reinstated the suspended provisions. Specifically, Arkansas deleted ASCMRC 1000(6). The Director finds the regulations to now be no less effective than 30 CFR 761.11(c) and 761.12(f)(1). OSMRE will revise 30 CFR 904.10(b)(5) to remove the affirmative disapproval originally placed on these State provisions.

On February 21, 1985, OSMRE reinstated its permitting requirements for fish and wildlife resource information and protection plans (50 FR 7278). To be no less effective than the reinstated Federal rules at 30 CFR 779.20, 780.16, 783.20, and 784.21, Arkansas revised ASCMRC Part 1000 to remove its suspension of the corresponding State rules, ASCMRC 779.20, 780.16, 783.20, and 784.21. Specifically, Arkansas deleted ASCMRC 1000(10), (13), (16), and (19). The Director finds the regulations now to be no less effective than 30 CFR 779.20, 780.16, 783.20, and 784.21. OSMRE will revise 30 CFR 904.10(b)(7) to remove the affirmative disapproval originally placed on these rules.

Finding No. 5: ASCMRC 1000, Crop Production

ASCMRC 1000(50) and (51) suspend ASCMRC 823.11(c) and 823.15 (b) and (c) insofar as they require actual crop production from reclaimed prime farmlands. However, the Federal regulations at 30 CFR 785.17(e)(1) allow the issuance of a permit for the mining and reclamation of prime farmland only if the approved postmining land use is cropland. Furthermore, revised 30 CFR

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823.15(b) requires that prime farmland soil productivity restoration be measured on all or a representative sample of the reclaimed lands using actual crop yields. Therefore, to be no less effective that the Federal rules, Arkansas was required to remove the suspension of ASCMRC 823.11(c), 823.15 (b) and (c) described in ASCMRC 1000(50) and (51).

In preparation of the issue letter of September 3, 1986 (AR-332), OSMRE inadvertently overlooked the requirement to remove ASCMRC 1000(50). Arkansas did remove ASCMRC 1000(51) and that action is approved in this final rule. However, the Director finds the ASCMRC 1000(50) suspension of Arkansas regulation ASCMRC 823.11(c) less effective than the Federal requirements and Arkansas must remove the rule suspension at ASCMRC 1000(50) as well. OSMRE will then revise 30 CFR 904.10(b)(30) to reflect the deletion of ASCMRC 1000(51) and remove the affirmative disapproval originally placed on these Arkansas provisions.

IV. Public Comment

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various State and Federal agencies. No comments were received.

V. EPA Concurrence

OSMRE requested the concurrence of Environmental Protection Agency (EPA) on those aspects of the amendments submitted by Arkansas which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq*). In accordance with section 503(b) of SMCRA, OSMRE is required to obtain the concurrence of the EPA. OSMRE received EPA's letter of concurrence dated June 15, 1987 and has entered it in the Administrative Record as AR-322.

VI. Director's Decision

Based on the above findings, and with the exception of those provisions determined to be inconsistent with SMCRA or the Federal regulations, the Director is approving the proposed amendments submitted to OSMRE by Arkansas on May 1, 1987, provided that Arkansas promulgates these regulations in a form identical, with the exception of typographical errors, to that May 1, 1987 submission.

The Director is disapproving the following provisions of the proposed amendments:

(1) As discussed in finding number 1, ASCMRC Part 772, concerning the 2-acre exemption rule.

(2) As discussed in finding number 2, ASCMRC section 816.116(b)(3)(ii), concerning the counting of trees and shrubs in determining revegetation success.

The Director is requiring the following amendments:

(1) Arkansas must amend its regulations at ASCMRC section 816.116(b)(3)(ii) to be consistent with OSMRE's actions, or resubmit the regulation at ASCMRC 816.116(b)(3)(ii) with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in the State of Arkansas.

(2) Arkansas must amend its regulations at ASCMRC 1000(51) to remove the suspension of ASCMRC 823.11(c).

The Director is amending Part 904 of 30 CFR Chapter VII to implement this decision.

VII. Procedural Requirements

1. *Compliance with the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 17, 1988.

Brent Walquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq*).

2. Section 904.10 is amended by revising paragraphs (a) (1), (2) and (3), and (b)(30) and by removing and reserving paragraphs (b)(5) and (b)(7) as follows:

§ 904.10 State regulatory program approval.

(a) * * *

(1) Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72209, Telephone (501) 562-7444.

(2) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone (918) 581-6430.

(3) Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240, telephone (202) 343-5447.

(b) * * *

(30) Section 823.11(c) to the extent it requires an operator on prime farmland to actually return the land to crop production.

* * * * *

3. Section 904.12 is added to read as follows:

§ 904.12 State program provisions and amendments disapproved.

The following amendments to the Arkansas Surface Coal Mining and Reclamation Code as submitted to OSMRE on May 1, 1987, are hereby disapproved:

(a) ASCMRC Part 772, all revisions and additions which address surface coal mining and reclamation operations previously exempted under the 2-acre exemption rule of section 528 of SMCRA.

(b) ASCMRC section 816.116(b)(3)(ii), revisions to the extent that they allow trees and shrubs in place for less than the liability period to be used in determining the success of stocking and the adequacy of plant arrangement.

4. Section 904.15 is amended by adding a new paragraph (d) as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(d) The following amendments to the Arkansas Surface Mining and Reclamation Code, as submitted to OSMRE on May 1, 1987, are approved effective March 28, 1988. Revisions to Arkansas regulations at Sections:

701.5
761.12(b)(2)
761.12(e) (1) and (2)
761.12(e)(3) (i) and (ii)
761.15
762.5
764.13
764.15(a)(1)
771.23(c)(4)
776.12
778.12(a)(3)(vi)
778.14(a)
778.14(c)
779.14(a)
779.14(b)(1)
779.17
780.18(b)(4)
780.21
785.13(e)
785.13(e)(5)
785.13 (i), (j), and (k)
785.17(b)(1)(ii)
786.1(d)
786.11(a)
786.15(a)(4)
786.16(a)
786.17(a)(1)
786.19(d)(6)
786.29(c)
788.18(d)
795.13
795.14(d)(4)
795.19(a)(5)
800.11(h)
800.13(g)
805.13(b)
805.14(a)
806.11(b)
808.11(d)(2)(v)
808.14(c)
815.15(a)
816.41(d)
816.42(a)(7)
816.43
816.44(b)(3)
816.46
816.49
816.52(a)(4)
816.53
816.55(d)
816.57(a)(2)
816.71
816.72
816.73
816.74
816.79
816.81
816.83
816.84
816.87
816.89
816.97(b)
816.97(d)(10)
816.102(a)(2)
816.102 (b) and (f)
816.107
816.111
816.116
816.126-U (a), (e), and (f)
816.133(b)(1)
816.150
816.151
819.11(c)(1)
819.11(c)(2)
823.12(a)(1)
823.15
826.12(c)
827.11
842.16(a)
843.11(a) (2) and (3)
845.12(b)
1000 (6), (10), (13), (16), (19), and (51).

This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSMRE's review and approval with the exception of typographical errors.

5. Section 904.16 is amended by removing the reserved status and adding the following:

§ 904.16 Required program amendments.

Pursuant to 30 CFR 732.17 Arkansas is required to make the following program amendments:

(a) By May 27, 1988, Arkansas shall amend its regulations at ASCMRC section 816.116(b)(3)(ii) to be consistent with OSMRE's actions, or resubmit the proposed regulation at ASCMRC 816.116(b)(3)(ii) with sufficient documentation in the record to show the replanting of trees and shrubs is a normal husbandry practice in the State of Arkansas.

(b) By May 27, 1988, Arkansas shall revise its regulations at ASCMRC 1000(51) to remove the suspension of ASCMRC 823.11(c).

6. Section 904.20 is revised as follows:

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Arkansas Reclamation Plan, as submitted on July 7, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation
and Enforcement, 5100 E. Skelly Drive,
Suite 550, Tulsa, Oklahoma 74135

State of Arkansas Department of
Pollution Control and Ecology,
Division of Surface Mining
Reclamation, 8001 National Drive,
Little Rock, Arkansas 72209

Office of Surface Mining Reclamation
and Enforcement, Administrative
Record, Room 5315, 1100 L Street NW.,
Washington, DC 20240.

[FR Doc. 88-6093 Filed 3-25-88; 8:45 am]
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30 CFR Part 944

Approval of Amendment to Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). The amendment pertains to civil penalty assessments.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102 (Telephone (505) 766-1486).

SUPPLEMENTARY INFORMATION:

I. Background

The Utah program was conditionally approved by the Secretary of the Interior, effective January 21, 1981, by notice published in the **Federal Register** (46 FR 5913). Information regarding the general background, revisions, modifications, and amendments to the Utah program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program, can also be found in the January 21, 1981 **Federal Register**. Actions taken subsequent to the approval of the Utah program may be found at 30 CFR 944.15 and 944.16.

II. Discussion of the Amendments

On February 17, 1987, Utah submitted a proposed amendment to the Utah regulations for OSMRE's review and approval (Administrative Record No. UT-436). The amendment would add a paragraph at SMC/UMC 845.15(b)(2) providing that a penalty for failure to abate a violation shall not be assessed

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for more than 30 days for each violation and that, if the permittee has not abated a violation within the 30-day period, the Division of Oil, Gas and Mining (Division) will, within 30 days, appeal such noncompliance to the Board of Oil, Gas and Mining ("the Board") for resolution under Utah H.B. 138, Chapter 10, Sections 40–10–20(5) (criminal penalties), 40–10–20(6) (individual civil penalties), 40–10–22(1)(d) (permit suspension or revocation), 40–10–22(2) (civil action), or by other appropriate means.

On March 27, 1987, OSMRE published a notice in the **Federal Register** announcing receipt of the proposed amendment and inviting public comment (52 FR 9891, Administrative Record No. UT–445). The notice stated that a public hearing would be held on April 21, 1987, only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on April 27, 1987. After reviewing the proposed amendment and all comments received, OSMRE notified Utah on June 10, 1987, of a provision that appeared to be inconsistent with the Federal regulations (Administrative Record No. UT–453). By letter dated July 7, 1987, Utah provided clarification (Administrative Record No. UT–455). OSMRE requested additional clarification by letter to Utah dated August 7, 1987 (Administrative Record No. UT–456). Utah responded to this request by letter dated August 31, 1987, by proposing revised language and providing further clarification of the amendment provisions (Administrative Record No. UT–457).

OSMRE therefore reopened and extended the comment period to allow the public an opportunity to comment on the additional material (52 FR 41738, October 30, 1987). The comment period closed on November 16, 1987. No substantive comments were received. On January 8, 1988, Utah submitted final rules SMC/UMC 845.15(b)(2) for review (Administrative Record No. UT–480). The final rule was not substantially different from the proposed rule (Administrative Record No. UT–457).

III. Director's Findings

The Director finds, in accordance with SMCRA, 30 CFR 732.15, and 30 CFR 732.17, that the program amendment submitted by Utah on February 17, 1987, subsequently revised and clarified on August 31, 1987, and submitted in final form on January 8, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the rules with the provision that they be implemented in a manner that is no less effective than the Federal regulations and no less stringent than SMCRA.

Utah proposes to amend section SMC/UMC 845.15 of its regulations by redesignating the current contents of paragraph (b)(2) as (b)(1)(ii) and adding a new paragraph (b)(2). As amended, SMC/UMC 845.15(b)(2) provides that any daily penalty for failure to abate a violation shall not be assessed for more than 30 days for each violation. The proposed amendment further provides that, if the violation remains unabated after 30 days, the Division of Oil, Gas and Mining will be required within 30 days thereafter to appeal such noncompliance to the Board of Oil, Gas and Mining for resolution under Utah H. B. 136, Chapter 10, Sections 40–10–20(5) (criminal penalties), 40–10–20(6) (individual civil penalties), 40–10–22(1)(d) (permit suspension or revocation), 40–10–22(2) (civil action), or by other appropriate means.

The corresponding Federal regulations at 30 CFR 845.15(b)(2) also provides a 30-day cap on civil penalties and requires, if the violation remains unabated after 30 days, that alternative enforcement action be initiated within 30 days. The Federal regulation specifies that such action is to be taken pursuant to section 518(e) (criminal penalties), 518(f) (individual civil penalties), 521(a)(4) (permit suspension or revocation), or 521(c) (civil action) of SMCRA.

The requirements of the Utah and Federal rules are the same with one exception. The Federal rule limits alternative enforcement actions or remedies to those enumerated, while the Utah rule allows the use of other appropriate means. By letter dated August 31, 1987, Utah provided a written opinion dated August 28, 1987, from the Office of the Utah Attorney General (Administrative Record No. UT–457) to support its inclusion of the phrase "or by other appropriate means." This opinion: (1) Reiterates the statutory provisions of section 518(i) of the Act that allows States to implement additional enforcement rights or procedures that are not specifically enumerated in the Act; (2) states that the proposed language does not allow Utah the latitude to select alternative remedies that are less effective than the Federal regulations, and that, "* * * since Utah may apply the rule in an 'as effective as' manner, the rule should stand as written unless it is later determined that it has been applied less effectively;" and (3) identifies two additional unenumerated remedies available to the State as being no less effective than the Federal rule.

OSMRE agrees with the Assistant Attorney General that States may implement additional enforcement rights or procedures that are not specifically enumerated in the State or Federal program. Utah may, without program amendment, adopt additional enforcement rights and procedures, such as the two discussed in the Assistant Attorney General's opinion, beyond the four statutory remedies enumerated in the State and Federal programs. On the other hand, Utah cannot adopt enforcement rights and procedures in lieu of the enumerated statutory remedies without program amendment. Any approved alternative to these statutory remedies must be no less stringent than the statutory sanctions and must be no less effective in achieving the purpose of 30 CFR 845.15(b)(2), namely, ensuring abatement of the violation or that there will not be a recurrence of the failure to abate. Therefore, the Director finds that the amendment is no less effective than the Federal requirements, provided that Utah submits any alternative enforcement remedies in lieu of those specifically enumerated in the State and Federal programs, for OSMRE review and approval prior to implementation.

IV. Public Comments

No public comments were received and all agencies responding to these proposed regulations had no comment. Acknowledgements were received from the following Federal agencies: The Fish and Wildlife Service, the Bureau of Mines, the Soil Conservation Service, and the Environmental Protection Agency. This disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10(i).

V. Director's Decision

The Director, based on the above findings, is approving the amendments as submitted by Utah on February 17, 1987, revised and clarified on August 31, 1987, and submitted in final form on January 8, 1988. The Director is amending Part 944 of Chapter VII to reflect approval of the State program amendments. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface Mining, Underground Mining.

Date: March 17, 1988.

Brent Walquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for Part 944 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (l) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(l) The following amendment is approved effective March 28, 1988: Modification to the Utah State Program regulations submitted to OSMRE by Utah on January 8, 1988. The modification was as follows: redesignation of the existing SMC/UMC 845.15 (b)(2) as (b)(1)(ii) and adding a new paragraph (b)(2) to provide for a 30-day cap on civil penalty assessments.

[FR Doc. 88-6682 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-87-055]

Drawbridge Operations Regulations; Kent Island Narrows, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maryland Congressional Delegation, the Governor of Maryland, and the Maryland Department of Transportation, the Coast Guard is changing the regulations governing operation of the drawbridge on U.S. Route 50/301 across Kent Island Narrows near Grasonville, Maryland, by eliminating bridge openings during peak vehicular traffic periods on weekends during the summer months. This amendment also adds one afternoon opening on Sundays and Monday holidays, and extends the Saturday opening schedule to Fridays, when Friday is a holiday. The Friday schedule will be in effect on the Thursdays before Friday holidays. This action will relieve some of the serious traffic conditions that result on summer weekends, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On May 8, 1987, a notice of proposed rulemaking was published in the **Federal Register** (52 FR 17413) concerning this bridge. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated May 1, 1987.

On July 7, 1987, a supplemental notice of proposed rulemaking was published in the **Federal Register** (52 FR 25386). The Commander, Fifth Coast Guard District, also published the supplemental proposal as a Public Notice dated July 10, 1987. In both notices, interested persons were given until November 30, 1987, to submit comments. On June 4, 1987, a public hearing was held in Stevensville, Maryland, to receive additional public comments.

Temporary regulations were issued in response to both the original notice of proposed rulemaking and the supplemental notice of proposed rulemaking in order to evaluate the proposals and alternative schedules. These temporary rules were published in the **Federal Register** on May 14, 1987 (52 FR 18229) and July 14, 1987 (52 FR 26341), respectively.

Drafting Information

The drafters of these regulations are Ann B. Deaton, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Comments

The Coast Guard received 52 written comments in response to the notice of proposed rulemaking. These comments and the results of the public hearing were discussed in the supplemental notice of proposed rulemaking published.

Three comments were received in response to the supplemental notice of proposed rulemaking. One was from a private boat owner applauding the addition of the 3:30 p.m. opening on Sundays, stating that this opening will be of substantial assistance to boaters. Another comment was from a motorist who believes that the change will substantially improve highway traffic conditions on U.S. 50/301 during the summer. The final comment from the Boat Owners Association of the United States objected to any further restrictions on the opening of this bridge. Their position was that the elimination of a few openings will do little to improve weekend traffic jams that are simply caused by too many cars on an inadequate roadway.

The results of our contacts with marine-related businesses in the area and boat owners who routinely transit Kent Narrows show that the majority of these interests accept the elimination of the 9:00 a.m. opening on Saturdays, and are pleased with the 3:30 p.m. opening on Sunday, as compared to no opening on Sunday afternoons or evenings as originally proposed by the State of Maryland. In addition, all of our data showed that highway traffic along U.S. 50/301 is particularly heavy at 9:00 a.m. on Saturdays and 8:00 p.m. on Sundays. Openings at these times are being eliminated. The data further showed that highway traffic counts on Sundays were lower at 3:30 p.m., than at other times that would provide meaningful access to boaters. The results of tests

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run during the summer of 1987 show that the schedule being adopted does show some improvement in highway traffic flow over the previous opening schedule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulations will have no effect on commercial navigation or on any industries that depend on waterborne transportation. The economic impact on marinas and other small, water-related businesses in the Kent Island area has been found not to be significant. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.561, the introductory paragraph, paragraphs (b) (1) through (4) and the introductory text of paragraph (b), and paragraph (c) are revised to read as follows:

§ 117.561 Kent Island Narrows

The draw of the U.S. Route 50/301 bridge, mile 1.0, Kent Island Narrows, operates as follows:

* * * * *

(b) From May 1 through October 31:

(1) On Monday (except when Monday is a holiday) through Thursday (except when Thursday is the day before a Friday holiday), the draw shall open on signal on the hour from 7 a.m. to 7 p.m., but need not be opened at any other time.

(2) On Friday (except when Friday is a holiday) and on Thursday when it is the day before a Friday holiday, the draw shall open on signal on the hour from 6 a.m. to 3 p.m. and at 8 p.m., but need not be opened at any other time.

(3) On Saturday and on a Friday holiday, the draw shall open on signal at 6 a.m. and 12 noon and on signal on the hour from 3 p.m. to 8 p.m., but need not be opened at any other time.

(4) On Sunday and on a Monday holiday, the draw shall open on signal on the hour from 6 a.m. to 1 p.m. and at 3:30 p.m., but need not be opened at any other time.

* * * * *

(c) The draw shall open on signal for public vessels of the United States, State, or local government vessels used for public safety purposes, commercial vessels, and vessels in distress.

Dated: March 18, 1988.

R.M. Polant,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 88-6687 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

New Domestic Mail Manual Regulations To Implement Changes in Rates, Fees and Classifications

AGENCY: Postal Service.

ACTION: Final rule and request for comments.

SUMMARY: As announced elsewhere in today's issue of the **Federal Register**, new domestic postal rates, fees, and classifications are scheduled to take effect on April 3, 1988, at 12:01 a.m. Implementing regulations for these rate, fee, and classification changes have been developed and are set forth below. Although they are to take effect on April 3, 1988, except for regulations on the computation of nonsubscriber and nonrequester copy limits, which are effective on January 1, 1989, comments on these regulations are solicited, and any proposed changes will be considered and acted upon as appropriate. In addition, the interim regulations that became effective October 25, 1987, allowing registered mail service and merchandise return service to be used with each other, and allowing special handling and merchandise return service to be used with each other are adopted in final form without change.

EFFECTIVE DATES: April 3, 1988, except the regulations on the computation of nonsubscriber and nonrequester copy limits, which become effective January 1, 1989. *Comment Date:* Written comments on these implementing regulations should be received on or before May 3, 1988.

ADDRESS: Written comments should be directed to the Director, Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, 475 L'Enfant Plaza West SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268-5176.

SUPPLEMENTARY INFORMATION: In addition to incorporating in the Domestic Mail Manual the new rates and fees approved by the Governors of the Postal Service, these implementing regulations also include new provisions that are necessary to implement the various mail classification changes also approved by the Governors. The following is a summary of the changes made to the Domestic Mail Manual as a result of the rate, fee, and classification changes.

A. First-Class Mail

1. *General.* All rates, except Priority Mail, will change.

NOTE: All rates in the Domestic Mail Manual (DMM) are now expressed in dollars (as opposed to being expressed in cents). Do NOT Move the decimal two places to the left before computing postage.

2. *Single Piece Rate First-Class Mail (Other than Cards).* There is a change in the rate structure. These rates will apply only to pieces weighing 11 ounces or less.

3. *Presorted First-Class Rate.* There is a change in the rate structure. For pieces weighing over two ounces, a lower rate for the first ounce is prescribed. See Exhibit 310.

4. *ZIP + 4 Presort Rate.* The tolerance for the placement of the barcode in the barcode clear zone, for those wishing to barcode as an option in a ZIP + 4 Presort mailing, has been relaxed.

5. *ZIP + 4 Barcoded Rate.* A new ZIP + 4 Barcoded rate is established. See DMM 325.

6. *Carrier Route First-Class Rate.* There is a change in the rate structure. For pieces weighing over two ounces, a lower rate for the first ounce is prescribed. See Exhibit 310.

7. *Priority Mail Nonmenclature.* The name "Zone Rate (Priority) First-Class Mail" is changed to "Priority Mail." Priority Mail rates will now apply to all single piece First-Class pieces weighing more than 11 ounces. (Pieces at lower

weights may also be mailed at Priority Mail rates at the mailer's option.)

8. *Nonstandard Surcharge.* A lower surcharge of $0.05 per piece has been established for nonstandard pieces mailed at the Presorted First-Class and Carrier Route First-Class rates. The surcharge remains at $0.10 for nonstandard size pieces at the single piece rates.

B. Express mail

1. *General.* All rates change.

2. *Rate Structure Changes.* a. A new lower letter rate for up to ½ pound is now available for all service options. The Post Office to Addressee letter rate is $8.75.

b. Zones are eliminated for all weights.

c. Custom Designed Service rates are lowered.

3. *Pick-up Service.* On-call pickup service may be provided in addition to scheduled pickup at designated postal facilities. A new pickup fee of $4.00 per stop is available for all service options.

4. *Second-Day Service Added.* A Second-Day Express Mail Service to resolve off-net problems is added.

5. *Noon Delivery.* Postage refund guarantee is extended to include noon delivery within the major market network.

C. Second-Class Mail

1. *General.* All rates change.

Note: All rates in the DMM are now expressed in dollars (as opposed to being expressed in cents). To compute second-class postage, multiply the applicable postage (which is in dollars) times the appropriate number of pounds or pieces. DO NOT move the decimal two places to the left before computing postage.

2. *Rate Structure Change.* The outside county per piece discount for the nonadvertising portion of publications (the nonadvertising adjustment) is increased for regular rate and science-of-agriculture rate publications, and a nonadvertising adjustment is added for special nonprofit and classroom rate publications.

3. *Mailing Statement Submission for Combined Mailings.* For mailings that include more than one second-class publication and/or edition, separate mailing statements for each publication and/or edition in the mailing will be required. See 468.4.

4. *Computation of Nonsubscriber and Nonrequester Copy Limits.* Effective January 1, 1989, the 10 percent limits on (a) the number of nonsubscriber copies eligible for preferred rates, and (b) the number of nonsubscriber/nonrequester copies eligible for subscriber/requester rates without being commingled with subscriber or requester copies, will be applied to the number of copies, as opposed to the weight of copies, mailed to subscribers/requesters during the calendar year.

D. Third-Class Mail

1. *General.* All rates change.

Note: All rates in the DMM are now expressed in dollars (as opposed to being expressed in cents). DO NOT move the decimal two places to the left before computing postage.

2. *Sorting Requirements for 5-Digit Presort Level Rate.* Third-class 5-digit presort level rate sorting requirements are revised to eliminate the requirement that there be at least 10 pounds or 50 pieces for any 5-digit ZIP Code separation in non-unique 3-digit sacks. Packages of 10 or more pieces to a 5-digit ZIP Code in a 3-digit sack will qualify for this rate in accordance with 667.42.

3. *New Basic ZIP + 4 Rate.* A new basic ZIP + 4 rate is established. See DMM 622.14 and 662.4.

4. *New 5-Digit ZIP + 4 Rate.* A new 5-digit ZIP + 4 rate is established. See DMM 622.15 and 662.5.

5. *New ZIP + 4 Barcoded Rate.* A new ZIP + 4 barcoded rate is established. See DMM 622.16 and 662.6.

6. *Required Marking for Special Bulk Third-Class Rates.* The option to show the Marking "Nonprofit" instead of "Nonprofit Org." on pieces mailed by organizations authorized the special bulk third-class rates has been added to DMM 662.2b.

E. Fourth-Class Mail

1. *General.* All rates change.

Note: All rates in the DMM are now expressed in dollars (as opposed to being expressed in cents). DO NOT move the decimal two places to the left before computing postage.

F. Special Services

1. *General.* All fees are increased except for: Merchandise Return Service fees which are reduced, Money Order Fees (see also change noted in item 5), corrections to mailing lists (including lists corrected in conjunction with sequencing of address cards), and address changes provided to election boards and registration commissions, which remain the same.

2. *New Business Reply Mail Discount Category (BRMAS).* A new discount category is available for ZIP + 4 prebarcoded business reply mail paid for through a business reply account (requires payment of a permit and accounting fee). See 917.14, 917.213, 917.343a, 917.525, 917.528, and 917.6.

3. *Merchandise Return Service.* Temporary changes adding registry service and special handling as service options in conjunction with merchandise return service are made permanent. Interim regulations implementing these new service options were put into effect on October 25, 1987 (52 FR 38407). These interim regulations are adopted without change as final regulations. Since they are already in the Domestic Mail Manual, they are not being republished here.

4. *Insured Mail.* The fee structure is changed. A $0.70 fee will insure items valued at $50 or less.

5. *Money Orders.* The upper dollar value limit for the first category of money order fees changes from $25 to $35.

6. *New Return Receipt for Merchandise Service.* A new return receipt service, that may be obtained without any other special service, is added for merchandise mailed at Priority Mail, third-class, and fourth-class parcel post rates.

H. Stamped Envelopes

1. *Sizes.* Additional sizes are added to all product lines.

2. *New Double Window Envelopes.*

3. *Envelopes in "Household Quantities."* Printed envelopes (both regular and window) will be available in quantities of 50. A double window envelope will also be available in quantities of 50.

I. Annual Fees

1. *General.* All annual fees increase.

2. *Fee Payment Structure.* The fee payment structure for all annual fees changes from once each calendar year to once each year effective with the month and day of payment. The following fees are affected by this change.

a. Annual Presort Fee (First-Class).

b. Annual Bulk Mailing Fee (Third Class).

c. Annual Presorted Special Fourth-Class Mailing Fee.

d. Annual Business Reply Mail Permit Renewal Fee.

e. Annual Business Reply Mail Accounting Fee.

f. Annual Merchandise Return Service Permit Fee.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service ordinarily invites comment from the public whenever it proposes a new or amended regulation which might have a substantive effect on the public. In this instance, however, the Governor's decision approving the underlying mail classification changes reflected in the new or amended regulations set forth below followed ten months of on-the-record hearings at the Postal Rate Commission (Docket No. R87–1, see 39 U.S.C. 3624). Interested parties had a full opportunity to comment on those changes during the course of those hearings.

Accordingly, the Postal Service finds it unnecessary to follow its customary practice of publishing the rules set forth below as proposed rules for comment before they become effective. See 5 U.S.C. 553(d). However, we reiterate that comments are welcomed on the published rules, and that any proposed changes will be considered and acted upon as appropriate.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the Federal Register as provided in 39 CFR 111.3.

In view of the considerations discussed above, the Postal Service hereby adopts the following revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. The Domestic Mail Manual is amended to read as follows:

BILLING CODE 7710-12-M

Chapter 1
Domestic Mail Services

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137 Official Mail

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137.2 Penalty Mail - Executive and Judicial Officers

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.26 Services, Classes, Rates and Preparation Requirements

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.263 Mail Preparation

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b. Bulk Rate Mailings

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(3) Rate Eligibility and Presort. Mailings at the First-Class ZIP + 4 nonpresort rate; Presort First-Class rates (ZIP + 4 Presort, ZIP + 4 Barcoded, First-Class carrier route, Presorted First-Class); second-class rates; bulk third-class rates (basic, 5-digit, carrier route presort, basic ZIP + 4, 5-digit ZIP + 4, ZIP + 4 Barcoded); presorted special fourth-class rates, bulk bound printed matter rates, and carrier route bulk bound printed matter rates must meet the same eligibility requirements for these rates as mail of other mailers (see 323, 324, 325, 420, 622, 723, and 724) and must be prepared under 360, 460, 660, or 760, respectively. The postmaster will furnish appropriate sack or tray labels with which to identify the various types of mail. Penalty mail must be presented for acceptance and verification at the entry post office in accordance with the same instructions and requirements as for other mailers. (See 137.42.)

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(5) Rate Documentation. In accordance with the same requirements other mailers must meet, agencies or their contractors must provide the appropriate documentation for pieces mailed at First-Class carrier route, ZIP + 4 presort, and ZIP + 4 barcoded rates; and third-class carrier route, 5-digit presort, basic ZIP + 4, 5-digit ZIP + 4, and ZIP + 4 barcoded rates. (See the specific requirements applicable to the respective classes of mail.)

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.27 Penalty Mail Indicia Formats

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.276 Penalty Reply Mail

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g. Penalty Business Reply

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(3) Payment of Postage and Fees. Agencies will be charged a permit fee once each 12-month period in accordance with 917.22 and 917.33. In addition, the business reply mail permit and accounting fee will be charged once each 12-month period for each permit issued, as described in 917.343b. However, post offices will not collect money from agencies in connection with the issuance of penalty business reply permits, accounting fees, or for postage and fees due on such mail. Agencies will pay permit fees, accounting fees, postage, and business reply fees in accordance with the reimbursement procedures of 137.22.

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h. Penalty Merchandise Return

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(c) The agency must review the license by the expiration date of the permit by providing the post office with a renewal request letter that contains up-to-date local contact information for the agency and the annual fee payment in accordance with 137.276h(8)(c).

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(8) Payment of Postage and Fees

(a) Agencies will be charged a merchandise return permit fee of $60 once each 12-month period for each post office to which merchandise return matter is returned.

(b) The amount to be paid for penalty mail merchandise return matter is the appropriate postage for the class of service requested plus a fee of $0.20 per parcel. The registered fee, special handling fee, or insurance fee is additional, where applicable.

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140 Postage

141 Stamped Envelopes, Postal Cards, Aerogrammes

141.1 Plain Stamped Envelopes

141.11 Envelopes Available at Post Offices

			Price		
Kind	Size	Denomination	Each (less than 500)	500	1,000
Regular Regular	6-3/4 10 [1]	$0.25 0.25	$0.30 0.30	$131.40 133.40	$262.80 266.80
Window Window	6-3/4 10 [1]	$0.25 0.25		$132.00 134.00	$264.00 268.00
Double Window	10 [1]	$0.25		$137.00	$274.00
Nonprofit Regular Nonprofit Regular	6-3/4 10 [1]	$0.09 .09		51.40 53.40	102.80 106.80
Nonprofit Window Nonprofit Window	6-3/4 10 [1]	$0.09 .09		52.00 54.00	104.00 108.00

[1] Applies to all intermediate sizes up to and including 10.

141.12 Sales at Post Offices. Only sizes 6-3/4 and 10 regular are sold in less than full box lots. Boxes contain 500 envelopes.

141.13 Nonprofit Envelopes. Only nonprofit organizations and political committees that have obtained authorizations to mail at the special bulk third-class rates (see 623) may purchase nonprofit envelopes. Sales are made in full box lots only, except at philatelic outlets (see 141.15). Nonprofit envelopes are precanceled.

141.14 Window Envelopes.

141.141 Sale. Window envelopes are sold in full box lots only, except at philatelic outlets (see 141.15).

141.142 Standard Window Sizes. Standard windows are 1-1/8 inches high and 4-3/4 inches wide and are located 1/2 inch from the bottom of the envelope. In size 6-3/4 envelopes, the window is located 7/8 inch from the left edge; in size 10 envelopes, it is 3/4 inch from the left edge. On double window envelopes, the second window (designed for a return address) is located 1/2 inch from the top and left edges, and measures 3/4 inch high and 2-1/2 inches wide.

141.143 Other Window Sizes. Other window sizes and locations occasionally may be produced. Window sizes cannot exceed 1-1/2 inches high and 5 inches wide, window location cannot be nearer than 3/8 inch to any edge of the envelope, and must conform to general Postal Service mail addressing guidelines.

141.15 Envelope Sales at Philatelic Centers. Window and nonprofit stamped envelopes may be sold at philatelic outlets in less than full box lots of 500. The selling price of a single window or nonprofit stamped envelope will be the price listed for each appropriate size and type on the current issue of Form 3300, *Philatelic Catalog.* Philatelic outlets will not sell full box lots of window and nonprofit stamped envelopes.

141.16 Envelope Dimensions

141.161 Regular Sizes. Dimensions may vary 1/16 inch, as follows:

a. Size 6-3/4: 3-5/8 by 6-1/2 inches.

b. Size 10: 4-1/8 by 9-1/2 inches.

141.162 Intermediate Sizes. Intermediate sizes are those between 6-3/4 and 10 (as determined by surface area in square inches). Guidelines include:

a. Length: No greater than 9-1/2 inches nor less than 6-1/2 inches;

b. Height: No greater than 5 inches nor less than 3-5/8 inches;

c. Surface Area: No greater than 39 square inches; and

d. Length divided by height: Between 1.3 and 2.5, inclusive.

141.17 Private Printing of Return Addresses. Stamped envelopes may be privately printed in any style, provided there is at least 3-1/2 inches of clear space left at the right end of the address side of the envelope.

141.2 Printed Stamped Envelopes (Special Request)

141.21 Printed Stamped Envelopes Available (by Mail Order)

Kind	Size	Denomination	Price 50	Price 500	Price 1,000
Regular	6-3/4	$0.25	$15.00	$134.90	$269.80
Regular	10[1]	.25	15.20	136.80	273.50
Window	6-3/4	$0.25	$15.10	$135.50	$271.00
Window	10[1]	.25	15.30	137.50	275.00
Nonprofit Regular	6-3/4	$0.09	--	$54.90	$109.80
Nonprofit Regular	10[1]	.09	--	56.90	113.80
Nonprofit Window	6-3/4	$0.09	--	$55.50	$111.00
Nonprofit Window	10[1]	.09	--	57.50	115.00

[1] Applies to all intermediate sizes up to and including 10.

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141.23 Style of Printing Return Addresses. All lines of the return address will be printed in capital and lower case letters with flush left margin, using 8-point Helvetica type, with the firm or main line(s) printed in bold type, as shown in this sample.

Mr. and Mrs. John Doe (bold sanserif)
475 L'Enfant Plaza, SW (light
Washington, DC 20260-9998 sanserif)

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141.3 Postal Cards Available

Denomination	Description
$0.15	Domestic regular or commemorative cut single cards.
0.15	Domestic regular, sheet of 40. (See note below.)
0.30	Domestic regular double reply-paid cards.
0.28	International surface rate cut single cards.
0.36	International airmail rate cut single cards.

Note: Postal cards in sheets for use in printing must be cut to regulation size, 3-1/2 x 5-1/2 inches, so that the stamp appears in the upper right corner. Cases of sheet postal cards may be broken for sale. Each sheet sells for $6. Return addresses are not printed on postal cards by the Postal Service.

141.4 Aerogrammes: See the *International Mail Manual* (IMM). Aerogrammes, also known as air letter sheets, sell for face value at $0.39 each.

142 Adhesive Stamps

142.1 Availability and Use

142.11 Types

Purpose	Form	Denominations
Regular Postage	Single or Sheet (panes of 100)	$0.01, .02, .03, .04, .05, .06, .07, .08, .09, .10, .11, .14, .15, .17, .18 .19, .20, .21, .22, .23 .25, .28, .30, .40, .45, .50, .56; $1.00, 2.00
Regular Postage	Panes of 20	$5.00, 8.75, 12.00
Airmail	Panes of 50	$0.36 and .45 (for international airmail use)
Commemorative	Panes of up to 50	$0.25 or other denominations, including airmail, as announced
Regular postage	6-, 12-, or 20-stamp booklets	$0.25 ($1.50, 3.00 or 5.00 booklets)
Commemorative	20-stamp booklet	$0.25 ($5.00 booklets)
Regular Postage	Coils of 3000	$0.01, .02, .03, .04, .05, .06, .08, .10, .11, .12, .14, .15, .17, .18, .20, .21, .22, .25; $1.00
Regular Postage	Coils of 500	$0.01, .02, .03, .04, .05, .06, .08, .10, .11, .12, .14, .15, .17, .18, .20, .21, .22, .25; $1.00
Regular Postage	Coils of 100	$0.17, .20, .22, .25 (Dispensers and stamp affixers for use with these coils are also available.)
Precanceled Postage	Single or sheet coils of 500 & 3000	Various denominations, available only to permit holders (see 143).

142.12 Use. Affix stamps firmly in the upper right corner of the address side of the mail cover. Any stamp partly concealed by an overlapping stamp may not be counted as postage. Postal employees (other than rural carriers as prescribed in 156.41) are not required to affix stamps to mail.

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142.14 Reuse Prohibited. Reuse of stamps with intent to cause loss to the Government or the Postal Service is punishable by fine and imprisonment.

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143 Precanceled Stamps

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143.2 Philatelic Sales

143.21 Nonpermit Holders

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143.212 Precanceled stamps are available at post offices which have them on hand or have a handstamp for precanceling purposes. Post offices may not acquire a precancel handstamp solely to meet philatelic demand. Precancelations may be applied only to regular-issue stamps, not commemoratives, and only to those denominations which see legitimate use by local mailers. The creation of philatelic oddities, or the precanceling of issues or denominations which would not otherwise see legitimate mail use, is not permitted. Handstamps, once acquired, may be retained by post offices to fill requests from philatelists.

143.213 Postmasters will comply with requests for imprints of a precanceling device on their own stamp stock, but not for imprints on blank sheets of paper or on stamps submitted by a collector or other individual. Care should be exercised when precanceling stamps for collectors to ensure legible and well-centered impressions. Permanent ink must be used for precanceling.

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143.4 Stamps Precanceled by Postal Service

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143.42 Required Format

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143.424 Stamps Precanceled with Presorted First-Class Legend

a. Endorsement. Precanceled stamps can be requisitioned with the "Presorted First-Class" legend preprinted as the precancellation device. Precancellation is accomplished by the printed legend as opposed to the legend and parallel horizontal lines as in the past. These stamps can be used only for the first ounce presort rate with postcards and mail of letter size mailed as part of a qualifying Presort First-Class mailing. Mailpieces bearing the "Presorted First-Class" precancellation legend must include the return address. If the return address is not within the delivery area of the post office of mailing, the mailer must place a cancellation endorsement on the piece or submit information to the post office shown in the return address as required by 143.421.

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143.441 Small Quantities Precanceled by Handstamp. Small quantities of regular-issue stamps may be precanceled by handstamp designed to precancel 10 stamps at each impression.

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144 Postage Meters and Meter Stamps

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144.3 Setting Meters

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144.36 On-Site Meter-Setting Program

144.361 General

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c. Fees for on-site meter settings are:

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On a scheduled basis:	$25 for the first meter, plus $4 for each additional meter. OR
On an unscheduled basis:	$28 for the first meter, plus $4 for each additional meter - PLUS -
For each meter checked in or out of service: $5	

d. The on-site meter setting fees listed in 144.351c apply to meters set either at a customer's place of business or at a meter company's offices.

e. The $5 surcharge must be paid for each meter checked in or out of service, *in addition* to the on-site fee.

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144.355 Setting Meters at Meter Company Branch Offices

a. Installation of New Meter

(1) If the customer has no postage meter license, a license may be issued after telephoning the licensing post office to confirm the approval. Ensure that the customer does not already have a postage meter license at that post office and that no postage meter license has been previously revoked. See 144.351 for the applicable fees to be collected.

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b. Checking Meters Out of Service

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(8) See 144.351 for the applicable fees to be collected.

c. Transferring Postage from One Meter to a New Meter.

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(6) See 144.351 for the applicable fees to be collected.

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144.4 Meter Stamps

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144.49 Ad Plates

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144.492 Postal markings related to the class or category of mail such as "First-Class," "Presorted First-Class," "Priority Mail," "ZIP + 4," "ZIP + 4 Presort," "ZIP + 4 Barcoded," "Third-Class," "Blk. Rt.," "Nonprofit Org.," "Carrier Route Presort," "Basic ZIP + 4," "5-Digit ZIP + 4," "Fourth-Class," "Fourth-Class Bulk Rates," "Special Fourth-Class Rate," "Presorted Special Fourth-Class Rate," "Bound Printed Matter," and "Library Rate," are permissible. If a postal marking is to appear in the ad plate area, no other matter is to be printed. The marking must fill the entire ad plate area to the extent practicable. All words must be in bold capital letters which are at least 1/4 inch in height or 18-point type, and legible at 2 feet. Exceptions for small ad plates which will not accommodate any of the above markings will not be considered.

* * * * *

145 Permit Imprints (Mail Without Affixed Postage)

* * * * *

145.2 Permit

145.21 Application. A permit to use permit imprints and pay postage in cash at the time of, or in advance of, mailing may be obtained by submitting Form 3601, *Application to Mail Without Affixing Postage Stamps*, with a fee of $60, to the post office where mailings will be made. The postmaster will give the applicant a receipt for the fee on Form 3544. There is no other fee for the use of permit imprints, as long as the permit remains active.

Note: The applicant must also pay an annual bulk mailing fee if matter will be mailed at Presort First-Class rates, third-class bulk rates, or Presorted Special Fourth-Class rates. (See Exhibit 310, D through H, 341, 512.1, 641, and 712.1.)

* * * * *

145.4 Content of Permit Imprints

145.41 First-Class Mail. Permit imprints must show city and state; "First-Class Mail," or "Priority," or "Priority Mail"; "U.S. Postage Paid;" and permit number. They may show the mailing date, amount of postage paid, or the number of ounces for which postage is paid. (See Exhibit 145.5a.) The ZIP Code of the permit holder may be shown immediately following the name of the state or in a separate inscription reading *ZIP Code 00800*, when it is possible to include the ZIP Code without creating uncertainty as to the permit holder's correct address or permit number. Instead of printing the city and state of mailing in the permit imprint, mailers may print the endorsement *Mailed from ZIP Code* followed by the 5-digit ZIP Code assigned to the postmaster at the office of mailing. The permit imprint indicia may also include the markings required by 362.

Note: Only the postmaster's ZIP Code listed in Publication 65, *National Five-Digit ZIP Code and Post Office Directory*, may be printed in the permit imprint.

145.42 Second-Class Mail. There is no permit imprint for second-class mail. Second-class publications mailed by publishers or news agents must be prepared with the second-class imprint and other markings as prescribed in 453.2 and 455. The second-class imprint is not a permit imprint. Copies of second-class publications not mailed by publishers or news agents or otherwise not eligible for the publisher's second-class rates in 411.2 and/or 411.3 must be mailed at applicable rates other than second-class (Express Mail, or First-, third-, or fourth-class). (See 411.4.)

* * * * *

(Renumber present 145.43 and 145.44 as 145.44 and 145.45, respectively; add new 145.43 as follows:)

145.43 Third- and Fourth-Class Mail. Third- and fourth-class mail permit imprints must contain the same information as required in First-Class Mail imprints, except the date and the words "First-Class," or "Priority," or "Priority Mail," must be omitted. Permit indicia may include the amount of postage paid, weight of piece, and markings required by 662, 725.1, or 760.

* * * * *

145.5 Format of Permit Imprints Permit imprints must be prepared in one of the following formats. Any of the formats may be used to display the information prescribed by 145.4. The addition of extraneous matter is not permitted. See Exhibits 145.5a through 145.5i.

f. Format for Western Union Mailgram Message (See 145.93)

MAILGRAM
Postage Charges
PAID
Western Union

g. Formats for Official Mail (First-Class)

FIRST-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

PRESORTED
FIRST-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

FIRST-CLASS
CARRIER ROUTE PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

ZIP+4
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

ZIP+4 PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

h. Formats for Official Mail (Third-Class)

THIRD-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

BULK RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

BULK RATE
CARRIER ROUTE PRESORT
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

i. Formats for Official Mail (Fourth-Class)

FOURTH-CLASS MAIL
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

SPECIAL FOURTH-CLASS RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

PRESORTED
SPECIAL FOURTH-CLASS RATE
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

BOUND PRINTED MATTER
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

BULK RATE
BOUND PRINTED MATTER
POSTAGE & FEES PAID
Agency Name
Permit No. G-__

145.6 Mailings with Permit Imprints

145.61 Minimum Quantity. Permit imprint mailings must consist of a minimum of 200 pieces or 50 pounds, except as provided in 145.62. Minimum quantities of mail necessary to mail at the nonpresort ZIP + 4 rate, or at any of the First-Class presort rates, the fourth-class bulk zone rate, the special fourth-class presort rate and the bulk bound printed matter rates, are higher. See the appropriate chapter for the class of mail in question.

* * * * *

145.63 Preparation of Mailing. The mailer must arrange all pieces with the address side facing the same way. It is recommended that the mailer separate the pieces to the finest extent possible in the manner prescribed in 360, 460, 660, and 724, and 760. Each class of mail must be presented with a separate Form 3602, *Statement of Mailing with Permit Imprints*, or Form 3605, *Statement of Mailing - Bulk Zone Rates*. Pieces in fourth-class mailings on which postage is paid at different zone rates must be separated by zone.

* * * * *

145.65 Mailing Statement. A Form 3602 or 3605 must be prepared and signed by the mailer for each mailing. The statement must be prepared by typewriter, ink, or indelible pencil to show the mailer's address, permit number, class of mail, number of pieces in the mailing, weight of a single piece, and any additional information required by the respective mailing statements. If a receipt is desired, the mailer must present a duplicate copy of Form 3602 or 3605, which will be initialed by the accepting employee after verification and returned to the mailer.

145.66 Prepayment of Postage Required. The mailer must pay for each mailing when it is presented at the post office, or make an advance deposit sufficient to cover more than one mailing. Payments for postage or deposits must be made at points designated by the postmaster. These payments will not be accepted by employees handling the mail. When the deposit becomes less than enough to pay for an entire mailing, an additional amount must be deposited before any mailings are made. Credit for postage is not allowed. Postage may not be paid partly in money and partly by postage stamps, except as provided in 681.221d. Whenever the computation of postage results in a fraction of a cent in the total, the total must be rounded up to the next whole cent.

* * * * *

VOL
53
ISS
59
MR
28
1988
UMI

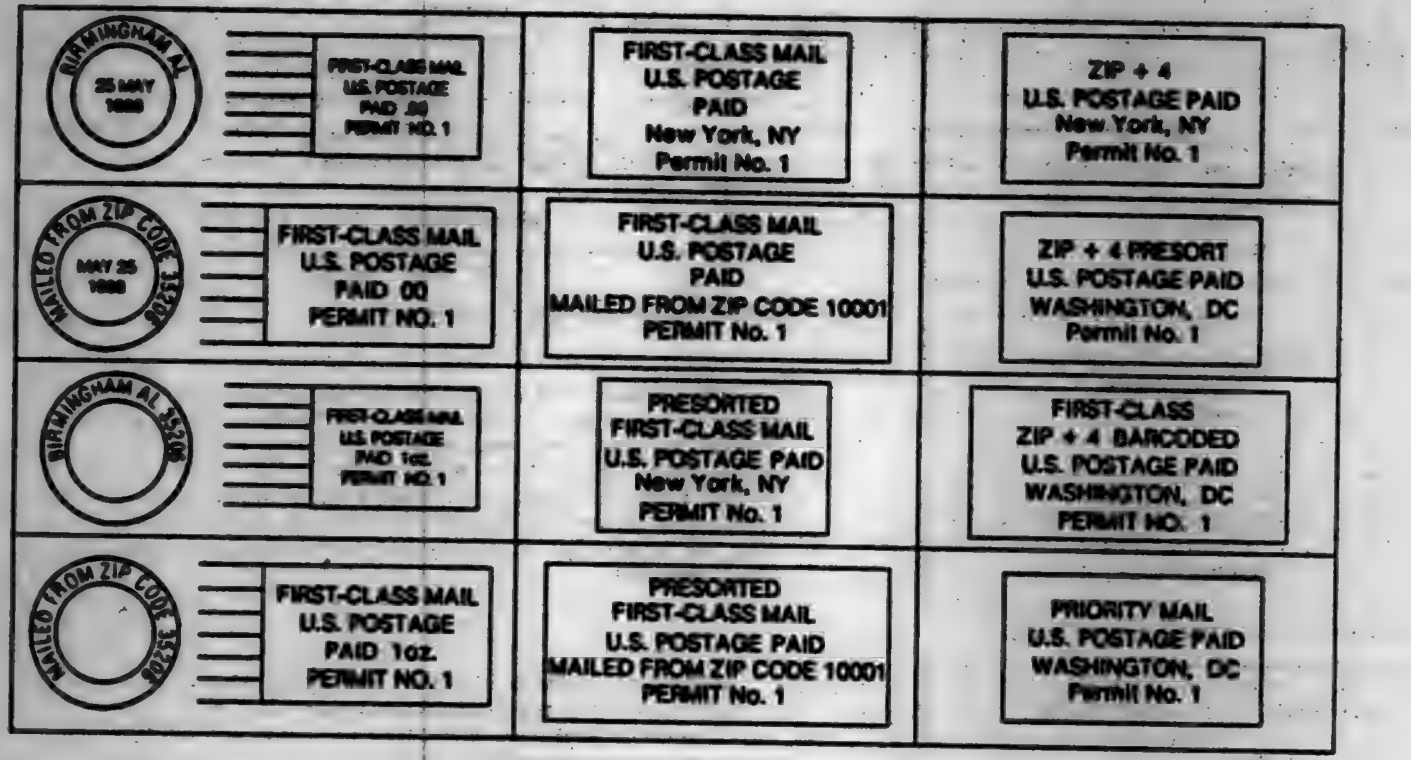
BIRMINGHAM AL
25 MAY
1988
FIRST-CLASS MAIL
U.S. POSTAGE
PAID .00
PERMIT NO. 1
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
New York, NY
Permit No. 1
ZIP + 4
U.S. POSTAGE PAID
New York, NY
Permit No. 1
MAILED FROM ZIP CODE 35208
MAY 25
1988
FIRST-CLASS MAIL
U.S. POSTAGE
PAID 00
PERMIT NO. 1
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
MAILED FROM ZIP CODE 10001
PERMIT No. 1
ZIP + 4 PRESORT
U.S. POSTAGE PAID
WASHINGTON, DC
Permit No. 1
BIRMINGHAM AL 35208
FIRST-CLASS MAIL
U.S. POSTAGE
PAID 1oz.
PERMIT NO. 1
PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
New York, NY
PERMIT No. 1
FIRST-CLASS
ZIP + 4 BARCODED
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. 1
MAILED FROM ZIP CODE 35208
FIRST-CLASS MAIL
U.S. POSTAGE
PAID 1oz.
PERMIT NO. 1
PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
MAILED FROM ZIP CODE 10001
PERMIT No. 1
PRIORITY MAIL
U.S. POSTAGE PAID
WASHINGTON, DC
Permit No. 1

Exhibit 145.5a, Formats for First-Class Mail

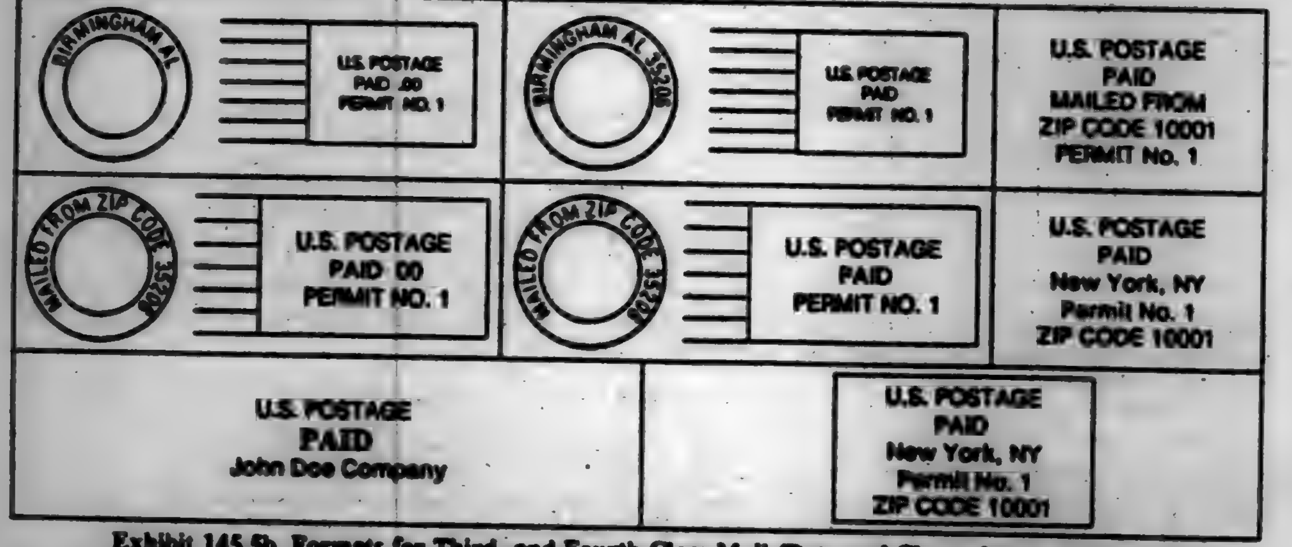
BIRMINGHAM AL
U.S. POSTAGE
PAID .00
PERMIT NO. 1
BIRMINGHAM AL 35208
U.S. POSTAGE
PAID
PERMIT NO. 1
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 10001
PERMIT No. 1
MAILED FROM ZIP CODE 35208
U.S. POSTAGE
PAID 00
PERMIT NO. 1
MAILED FROM ZIP CODE 35208
U.S. POSTAGE
PAID
PERMIT NO. 1
U.S. POSTAGE
PAID
New York, NY
Permit No. 1
ZIP CODE 10001
U.S. POSTAGE
PAID
John Doe Company
U.S. POSTAGE
PAID
New York, NY
Permit No. 1
ZIP CODE 10001

Exhibit 145.5b, Formats for Third- and Fourth-Class Mail (Date and Class of Mail Omitted).

Note: When this form of permit imprint is used, the markings required by 622, 725.1 or 760 must appear below or to the left of the permit imprint on the mailpieces or as otherwise specified.

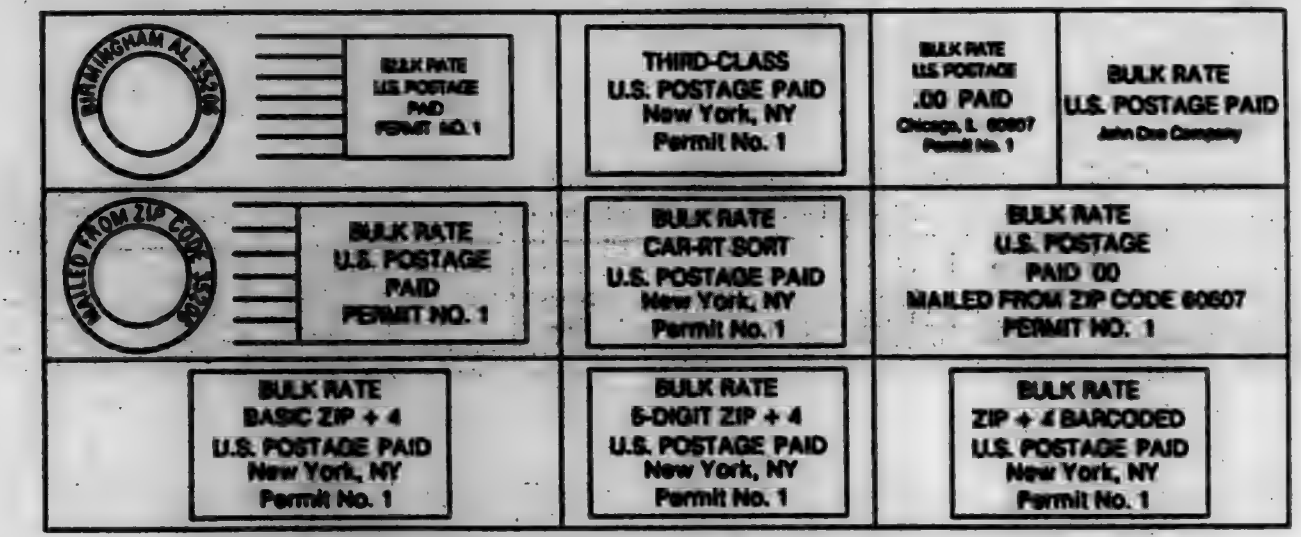
BIRMINGHAM AL 35208
BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 1
THIRD-CLASS
U.S. POSTAGE PAID
New York, NY
Permit No. 1
BULK RATE
U.S. POSTAGE
.00 PAID
Chicago, IL 60607
Permit No. 1
BULK RATE
U.S. POSTAGE PAID
John Doe Company
MAILED FROM ZIP CODE 35208
BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 1
BULK RATE
CAR-RT SORT
U.S. POSTAGE PAID
New York, NY
Permit No. 1
BULK RATE
U.S. POSTAGE
PAID 00
MAILED FROM ZIP CODE 60607
PERMIT NO. 1
BULK RATE
BASIC ZIP + 4
U.S. POSTAGE PAID
New York, NY
Permit No. 1
BULK RATE
5-DIGIT ZIP + 4
U.S. POSTAGE PAID
New York, NY
Permit No. 1
BULK RATE
ZIP + 4 BARCODED
U.S. POSTAGE PAID
New York, NY
Permit No. 1

Exhibit 145.5c, Formats for Third-Class Mail (Regular Single-Piece and Bulk Rates)

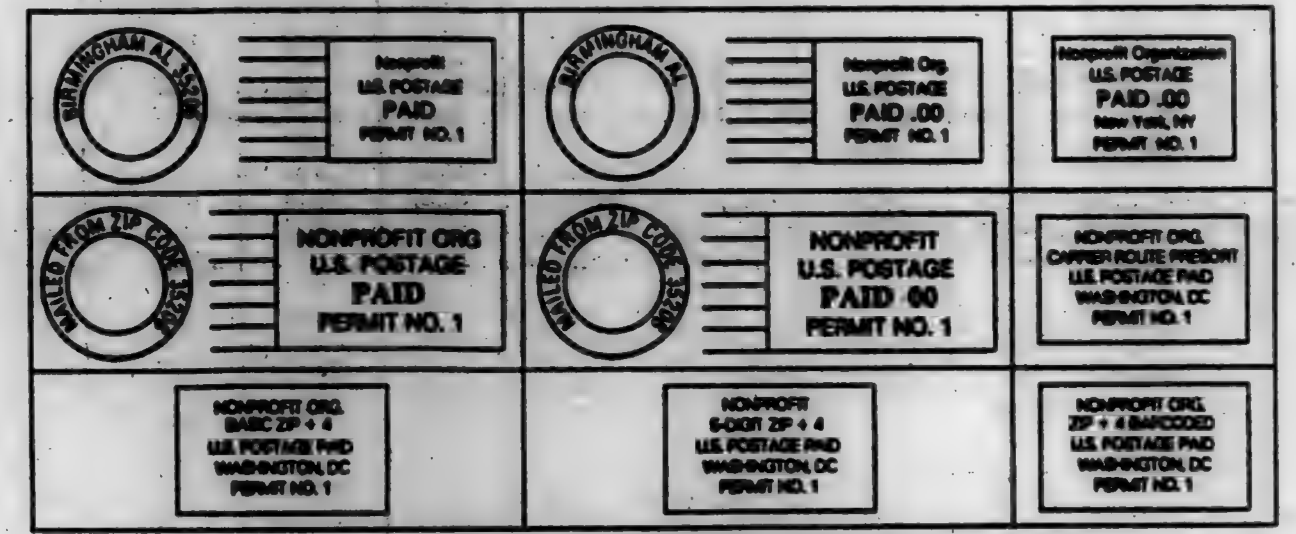
BIRMINGHAM AL 35208
Nonprofit
U.S. POSTAGE
PAID
PERMIT NO. 1
BIRMINGHAM AL
Nonprofit Org.
U.S. POSTAGE
PAID .00
PERMIT NO. 1
Nonprofit Organization
U.S. POSTAGE
PAID .00
New York, NY
PERMIT NO. 1
MAILED FROM ZIP CODE 35208
NONPROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO. 1
MAILED FROM ZIP CODE 35208
NONPROFIT
U.S. POSTAGE
PAID 00
PERMIT NO. 1
NONPROFIT ORG.
CARRIER ROUTE PRESORT
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. 1
NONPROFIT ORG.
BASIC ZIP + 4
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. 1
NONPROFIT
5-DIGIT ZIP + 4
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. 1
NONPROFIT ORG.
ZIP + 4 BARCODED
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. 1

Exhibit 145.51d, Formats for Third-Class Mail (Special Single-Piece and Bulk Rates)
(Authorized Organizations Only)

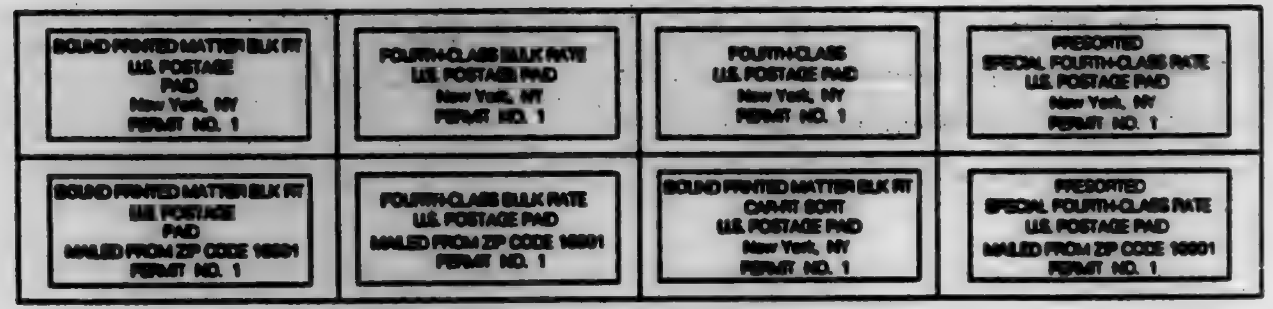
BOUND PRINTED MATTER BLK RT
U.S. POSTAGE
PAID
New York, NY
PERMIT NO. 1
FOURTH-CLASS BULK RATE
U.S. POSTAGE PAID
New York, NY
PERMIT NO. 1
FOURTH-CLASS
U.S. POSTAGE PAID
New York, NY
PERMIT NO. 1
PRESORTED
SPECIAL FOURTH-CLASS RATE
U.S. POSTAGE PAID
New York, NY
PERMIT NO. 1
BOUND PRINTED MATTER BLK RT
U.S. POSTAGE
PAID
MAILED FROM ZIP CODE 10001
PERMIT NO. 1
FOURTH-CLASS BULK RATE
U.S. POSTAGE PAID
MAILED FROM ZIP CODE 10001
PERMIT NO. 1
BOUND PRINTED MATTER BLK RT
CAR-RT SORT
U.S. POSTAGE PAID
New York, NY
PERMIT NO. 1
PRESORTED
SPECIAL FOURTH-CLASS RATE
U.S. POSTAGE PAID
MAILED FROM ZIP CODE 10001
PERMIT NO. 1

Exhibit 145.5e, Formats for Fourth-Class Bulk Rate Mail

Chapter 2
Express Mail

210 Rates and Fees

Exhibit 210
Express Mail Rates

Postage Rate Unit (Lbs.)	Same Day Airport Service	Custom Designed	Next Day & Second Day PO To Addressee	Next Day & Second Day PO to PO
1/2	$8.35	$ 7.75	$ 8.75	$ 8.50
1	9.70	11.00	12.00	9.85
2	9.70	11.00	12.00	9.85
3	12.40	14.25	15.25	13.10
4	12.40	14.25	15.25	13.10
5	12.40	14.25	15.25	13.10
6	13.60	16.75	17.75	15.60
7	14.25	17.45	18.45	16.30
8	14.95	18.15	19.15	17.00
9	15.60	18.85	19.85	17.70
10	16.25	19.55	20.55	18.40
11	16.95	20.25	21.25	19.10
12	17.60	20.95	21.95	19.80
13	18.25	21.65	22.65	20.50
14	18.95	22.35	23.35	21.20
15	19.60	23.05	24.05	21.90
16	20.25	24.10	25.10	22.95
17	20.95	25.45	26.45	24.30
18	21.60	26.80	27.80	25.65
19	22.25	28.20	29.20	27.05
20	22.95	29.55	30.55	28.40
21	23.60	30.90	31.90	29.75
22	24.25	32.30	33.30	31.15
23	24.95	33.65	34.65	32.50
24	25.60	35.00	36.00	33.85
25	26.25	36.40	37.40	35.25
26	26.95	37.75	38.75	36.60
27	27.60	39.10	40.10	37.95
28	28.25	40.45	41.45	39.30
29	28.95	41.85	42.85	40.70
30	29.60	43.20	44.20	42.05
31	30.25	44.55	45.55	43.40
32	30.95	45.95	46.95	44.80
33	31.60	47.30	48.30	46.15
34	32.25	48.65	49.65	47.50
35	32.95	49.90	50.90	48.75
36	33.60	51.00	52.00	49.85
37	34.25	52.10	53.10	50.95
38	34.95	53.15	54.15	52.00
39	35.60	54.25	55.25	53.10
40	36.25	55.35	56.35	54.20
41	36.95	56.45	57.45	55.30
42	37.60	57.50	58.50	56.35
43	38.25	58.60	59.60	57.45
44	38.95	59.70	60.70	58.55
45	39.60	60.80	61.80	59.65
46	40.25	61.85	62.85	60.70
47	40.95	62.95	63.95	61.80
48	41.60	64.05	65.05	62.90
49	42.25	65.15	66.15	64.00
50	42.95	66.20	67.20	65.05
51	43.60	67.30	68.30	66.15
52	44.25	68.40	69.40	67.25
53	44.95	69.55	70.55	68.40
54	45.60	70.55	71.55	69.40
55	46.30	71.65	72.65	70.50
56	46.95	72.80	73.80	71.65
57	47.60	73.90	74.90	72.75
58	48.30	74.90	75.90	73.75
59	48.95	76.05	77.05	74.90
60	49.60	77.15	78.15	76.00
61	50.30	78.25	79.25	77.10
62	50.95	79.35	80.35	78.20
63	51.60	80.40	81.40	79.25
64	52.30	81.50	82.50	80.35
65	52.95	82.60	83.60	81.45
66	53.60	83.70	84.70	82.55
67	54.30	84.75	85.75	83.60
68	54.95	85.85	86.85	84.70
69	55.60	86.95	87.95	85.80
70	56.30	88.05	89.05	86.90

Note: Add: $4.00 for each pickup stop. $4.00 for each Custom Designed delivery stop.

211 General Rate Information

* * * * *

211.2 Express Mail postage rates are applied to each piece according to weight and service option utilized.

211.3 Express Mail Military Service postage rates are the rates for the appropriate type of service requested (see Exhibit 210) and are determined in accordance with 211.2.

211.4 For each pickup stop, charge the customer $4.00 no matter how many items from the same customer are picked up, or how many of the same customer's post office boxes are checked in the same post office box unit at the same time. If the pickup is scheduled (see 224.33), there is no pickup charge if the mailer notifies the originating office not to make the pickup stop prior to the dispatch of the postal employee making the pickup.

212 Express Mail Same Day Airport Service Rates

This service was formerly called Airport to Airport Service. (See Exhibit 210 for rates.)

213 Express Mail Custom Designed Service Rates

213.1 This service was formerly called Programmed Service. (See Exhibit 210 for rates.)

213.2 The rates for Express Mail Custom Designed Service are set forth in Exhibit 210. These rates are subject to the following:

a. Add $4.00 for each delivery stop for item(s) tendered for delivery to addressee.

b. For each pickup stop, add $4.00 per occurrence.

214 Express Mail Next Day and Second Day Services Rates

The rates for Express Mail Next Day and Second Day Services are set forth in Exhibit 210. They are subject to the following: For each pickup stop, add $4.00 per occurrence.

* * * * *

220 Classification

221 Description

221.1 Availability of Service

221.11 Express Mail is a service available to mailers for shipment of any mailable matter (see 123, 124, and 127) that is tendered to the Postal Service properly prepared and in accordance with the terms of this chapter. In addition, Express Mail Custom Designed Service, Express Mail Next Day Service, or Express Mail Second Day Service may be used to expedite movement of any other class of mail from one domestic postal facility to another in accordance with the Express Mail drop-ship procedures in 136.7.

* * * * *

221.2 Service Offerings. Express Mail provides a high-speed, high-reliability service. Five basic service offerings are available:

a. Express Mail Same Day Airport Service (see 222);

b. Express Mail Custom Designed Service (see 223);

c. Express Mail Next Day Service (see 224);

d. Express Mail Second Day Service (see 225);

e. Express Mail Military Service (see 226).

* * * * *

224 Express Mail Next Day Service

224.1 Availability of Service

224.11 Acceptance. Next Day Service is available at designated postal facilities, designated Express Mail collection boxes, or by picking up the item, for overnight service to designated destination three-digit ZIP Code delivery areas, facilities, or locations.

* * * * *

224.13 Next Day Service Directories. Each designated facility provided for in 224.11 must maintain an Express Mail Next Day Service directory showing, for the three-digit ZIP Code area in which the facility is located, the following information:

a. The five-digit ZIP Code areas to which next-day delivery service by noon is offered;

b. The three-digit ZIP Codes areas to which next-day delivery service by 3:00 p.m. is offered;

c. The Express Mail zone from the origin to each destination three-digit ZIP Code area;

d. The retail facilities at which Next Day Service mail may be tendered;

e. The acceptance times for each such facility;

f. A list of facilities at which Next Day Service mail may be claimed; and

g. The locations of Express Mail collection boxes.

224.14 Service Limitation. Service to or from three-digit ZIP Code areas, facilities, or offices, or at times not listed in the Next Day Service directory for a designated facility provided for in 224.11 is prohibited. See 255.1 if a destination is not listed.

224.2 Types of Service Available

* * * * *

224.22 Post Office to Addressee Service

224.221 Description. Items tendered in accordance with 224.1 will be delivered to an addressee within the designated delivery area of the destination facility by noon or 3:00 p.m. of the next day. See 224.13a and b.

224.222 Second Attempt Delivery.

* * * * *

b. Form 3849, *Delivery Notice/Reminder/Receipt*, or Form 3849-C, *Express Mail--Notice of Attempted Delivery* (card), will be left at the address, indicating that the shipment is being held awaiting pickup.The name and telephone number of the delivery facility where the shipment is held must be entered on the form. If the shipment is transferred to another facility, the initial delivery facility must be prepared to answer an inquiry by supplying the customer with the appropriate information, such as the name and telephone number of the facility to which the shipment has been transferred. If Form 3849 or Form 3849-C cannot be left, (no mail receptacle, slot, etc.), the addressee should be telephoned and informed (1) that a delivery was attempted, (2) where the shipment may be picked up, and (3) when the next regular delivery trip will be made. The date of the telephone attempt or contact must be entered on Label 11-B or 11-F.

* * * * *

224.3 Pickup Service.

224.31 General. Pickup service is available at designated postal facilities by requesting an On-Call pickup or by Scheduled Pickup Service on a regular basis.

224.32 On-Call Pickup Service. Pickup service is available by contacting the facility listed in the Next Day Service directory by the call cut-off time for pickup the same day.

224.33 Scheduled Pickup Service. Pickup service is available on a scheduled basis pursuant to a service agreement (Form 5631, *Express Mail Service Agreement,*) between the Postal Service and the mailer. The service agreement must specify the time, place, day or date, and frequency of such service.

* * * * *

(Renumber existing section 225 as 227; add new 225 as follows:)

225 Express Mail Second Day Service

225.1 Availability of Service

225.11 Acceptance. Express Mail Second Day Service is accepted at designated postal facilities, at Express Mail collection boxes, and by picking up the item.

225.12 Acceptance Times. Express Mail Second Day Service shipments must be tendered by 5:00 p.m., or such later time or times as authorized by the postmaster.

225.13 Second Day Service Directories. Express Mail Second Day Service is available to any three- or five-digit ZIP Code destination that is not listed in the Next Day Service directory provided for in 224.13.

225.2 Types of Service Available

225.21 Post Office-to-Post Office Service. Items tendered in accordance with 225.12 will be available for claim by the addressee at the destination facility by 10:00 a.m. of the second day that the destination office is open for retail business.

225.22 Post Office-to-Addressee Service. Items tendered in accordance with 225.12 will be delivered to an addressee within the designated delivery area of the destination facility by noon or 3:00 p.m. of the second day. See 224.222 for second attempt delivery.

225.3 Pickup Service. See 224.3.

225.4 Refund of Postage. The Postal Service will refund postage under the provisions in 296 for an item not available for claim or for which delivery was not attempted (see 230), in accordance with 225.2, unless the item was delayed by strike or work stoppage, or if the item was available for claim, or delivery was attempted within the specified times in 224.2, and then the item was delayed because forwarding or return service was provided.

226 Express Mail Military Service

* * * * *

(Renumber existing 226.3 as 226.4 and add new 226.3 as follows:)

226.3 Pickup Service. See 224.3.

* * * * *

227 Express Mail Reship Service

* * * * *

b. (Replace $5.60 with $4.00.)

* * * * *

e. (Replace *reshipment* with *reship service*.)

* * * * *

230 Service Guarantee

(In the first sentence, change the references to read 222.2, 223.3, 224.4, 225.4, and 226.4. In the last sentence, change the references to read 221.1, 223.2 (see individual service agreement), 224.2, and 226.2.)

* * * * *

240 Authorizations and Permits

241 Service Agreements

A service agreement is required before mailings may be made under Express Mail Custom Designed Service (see 223.2). Prior authorization or prearrangement is not required for other types of Express Mail Service.

242 Express Mail Corporate Accounts

A written application is required before mailings are made under an Express Mail Corporate Account, as described in 280.

* * * * *

260 Preparation Requirements

* * * * *

263 Express Mail Next Day, Second Day, and Military Services

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263.2 Customers sending Express Mail shipments may instruct the Postal Service to deliver Express Mail Next Day, Second Day, or Military Service shipments without obtaining the signature of the addressee or the addressee's agent by signing a waiver on Label 11-B/F, *Express Mail Next Day Service Post Office to Addressee*. Completion of the waiver authorizes the delivery employee to sign for the delivery of the article. If, in the judgement of the delivery employee, the article can be left in a secure location, the signature of the delivery employee will constitute valid proof of delivery. Waiver of signature is not available for Express Mail COD shipments or Express Mail Military Service shipments.

263.3 Next Day Service Pickup

263.31 On-Call Pickup Service. For items picked up pursuant to 224.32, the customer must complete the appropriate Label 11 for each article. If two or more articles are picked up, the customer must, in addition, complete Form 5625-BX, *Express Mail Service Pickup Statement*, Form 5625-B, *Mailing Statement for Next Day and Same Day Airport Express Mail Service*, or Form 3877 (see 263.6) for each pickup.

263.32 Scheduled Pickup Service. For items picked up pursuant to 224.33, other than Express Mail reship service, the customer must complete Form 5625-B, or Form 3877 (see 263.6), for each pickup. Customers must also complete the appropriate Label 11 for each article, enter the service agreement number in the "Customer Number" or "Account Number" block, and affix Label 11 to each article. Volume mailers must tender the mail in containers provided or approved by the Postal Service.

263.4 For Next Day Service items deposited in accordance with 273.22, in addition to complying with 263.1 and 263.3, the customer must determine that the item is destined to a three-digit ZIP Code area to which Next Day or Military Service is offered from the point of origin. (See 224.14 and 226.13.) If the destination is not listed, the customer must use Second Day Service.

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270 Mailing

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273 Express Mail Next Day and Second Day Services

273.1 General. Express Mail Next Day and Second Day Service items must be deposited at locations and times designated by the Postmaster. (See 224.1.)

273.2 Locations

273.21 Express Mail Next Day and Second Day Services items may be deposited at designated post offices, branches, or stations.

273.22 Prepaid shipments, with the completed mailing label and postage affixed, may be deposited in Express Mail collection boxes, handed to delivery and collection personnel in the course of their normal delivery and collection duties, or picked up in accordance with 224.3, 225.3, or 226.3.

273.3 Time of Mailing

273.31 Express Mail Next Day and Second Day Service items must be tendered at the time or times authorized by the postmaster.

273.32 The time and date of mailing for Express Mail Next Day and Second Day Service items deposited at designated post offices, branches, or stations is the time and date the item is tendered and accepted.

273.33 The time and date of mailing for Express Mail Next Day and Second Day Service items deposited in accordance with 273.22 is the time and date the item is brought to the Express Mail acceptance unit. Items deposited in Express Mail collection boxes by the time posted will be available for claim or delivered the next day in accordance with 224.2, or the second day in accordance with 225.2. Items handed to delivery or collection personnel or picked up in accordance with 273.22 must be collected or picked up in time so that they can be brought to the acceptance unit by the authorized acceptance time. Items so deposited will be available for claim or delivered the next day in accordance with 224.2, or the second day in accordance with 225.2.

273.34 Next Day Service items mailed after the time or times authorized by the postmaster will be accepted and delivered on the second day after mailing, in accordance with 224.2 and 224.4.

(Renumber 273.35 as 273.36 and add new 273.35 as follows:)

273.35 Second Day Service items mailed after the time or times authorized by the postmaster will be accepted and delivered on the third day after mailing, in accordance with 225.2 and 225.4.

273.4 Verification

273.41 All Express Mail Next Day and Second Day Services items (Remainder of section is unchanged.)

273.42 All Express Mail Next Day and Second Day Services items (Remainder of section is unchanged.)

280 Payment of Postage

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285 Pickup Charges

The appropriate charge will be made for all pickups scheduled in a service agreement (see 223.2 and 224.33), unless the scheduled service is not required and the customer notifies the Postal Service prior to the dispatch of the pickup employee. The appropriate charge will be made for all pickups requested pursuant to 224.32.

286 Insufficient Prepayment

286.1 Express Mail Next Day, Second Day, Military, and Same Day Airport Services. If an Express Mail Next Day, Second Day, Military, or Same Day Airport Service item is received at the office of mailing without sufficient postage, the item will be handled as follows:

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290 Ancillary Services

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294 Evidence of Mailing

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(In the third sentence, replace *Form 5625-B* with *Form 5625-B or 5625-BX.*)

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Chapter 3
First-Class Mail

310 Rates and Fees

A. Single Pieces 11 ounces or less (Other Than Postal Cards or Postcards):

This applies to First-Class pieces other than postal or post cards that do not exceed 11 ounces:

First ounce or fraction of an ounce	$0.25
Each additional ounce or fraction of an ounce	0.20

Weight Not Exceeding (Ounces)	Rate
1	$0.25
2	0.45
3	0.65
4	0.85
5	1.05
6	1.25
7	1.45
8	1.65
9	1.85
10	2.05
11	2.25

B. Cards:

Postal cards are stamped cards sold by the USPS. Postcards are sold commercially and need to have stamps added. Rates:

Postal cards:

Single	$.15 each
Double	$.30 ($.15 each part)

Postcards:

Single	$.15 each
Double	$.30 ($.15 each part)

(Reply part does not have to bear postage when originally mailed.)

C. Nonpresorted ZIP + 4 First-Class Mail:

Rates for matter other than cards: $0.241 for the first ounce, and $0.20 for each additional ounce or fraction.

Rates for Cards: $0.141 each.

D. Presorted First-Class Mail:

To mail at Presorted First-Class rates, the annual presort fee of $60 must first be paid. (Payment of one $60 fee allows the mailer to mail qualifying matter at all First-Class presort rates including Carrier Route First-Class, ZIP + 4 Presort, and ZIP + 4 Barcoded.)

Rates Per Piece for Matter Other than Cards:

Pieces weighing two ounces or less: $0.21 for the first ounce or fraction and $0.20 for the second ounce or fraction.

Pieces weighing over two ounces: $0.17 for the first ounce or fraction and $0.20 for each additional ounce or fraction.

Rates Per Piece for Cards: $0.13

E. ZIP + 4 Presort First-Class Mail

To mail at the ZIP + 4 Presort rate, the annual presort fee of $60 must be paid. (Payment of one $60 fee allows the mailer to mail qualifying matter at all First-Class presort rates including Presorted First-Class, Carrier Route First-Class, and ZIP + 4 Barcoded.)

Rates Per Piece for Matter Other than Cards:

First Ounce or Fraction: $0.205

Each Additional Ounce or Fraction: $0.20

Rate Per Piece for Cards: $0.125

F. ZIP + 4 Barcoded First-Class Mail:

To mail at the ZIP + 4 Barcoded rate, the annual presort fee of $60 must be paid. (Payment of one $60 fee allows the mailer to mail qualifying matter at all First-Class presort rates including Presorted First-Class, Carrier Route First-Class, and ZIP + 4 Presort.)

Rates Per Piece for Matter Other than Cards:

First Ounce or Fraction: $0.20

Each Additional Ounce or Fraction: $0.20

Rate Per Piece for Cards: $0.12

G. Carrier Route First-Class Mail

To mail at the Carrier Route First-Class rate, the annual presort fee of $60 must first be paid. (Payment of one $60 fee allows the mailer to mail qualifying matter at all First-Class presort rates including Presorted First-Class, ZIP + 4 Presort, and ZIP + 4 Barcoded.)

Rates Per Piece for Matter Other than Cards:

Pieces weighing two ounces or less: $0.195 for the first ounce or fraction and $0.20 for the second ounce or fraction.

Pieces weighing over two ounces: $0.155 for the first ounce or fraction and $0.20 for each additional ounce or fraction.

Rate for Cards: $0.115

H. Nonstandard Surcharge

This applies to all First-Class Mail pieces weighing 1 ounce or less that exceed the size limits in 353.3, except for pieces mailed at the nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded rates.

Rates: A surcharge of $0.10 is assessed on each piece of nonstandard First-Class Mail which is mailed at the single-piece rates for cards or for matter other than cards. A surcharge of $0.05 is assessed on each piece of nonstandard mail which is mailed at the Presorted First-Class or Carrier Route First-Class Rates.

I. Address Correction Service Fee:

The fee for address correction service is $0.30 per notice issued.

Exhibit 310 (p. 1), First-Class Rates and Fees

J. Priority Mail

Weight, not exceeding pound(s)	Zone/Rate					
	1, 2, & 3	4	5	6	7	8
1	2.40	2.40	2.40	2.40	2.40	2.40
2	2.40	2.40	2.40	2.40	2.40	2.40
3	2.74	3.16	3.45	3.74	3.96	4.32
4	3.18	3.75	4.13	4.53	4.82	5.33
5	3.61	4.32	4.86	5.27	5.61	6.37
6	4.15	5.08	5.71	6.31	6.91	7.66
7	4.58	5.65	6.39	7.09	7.80	8.67
8	5.00	6.23	7.07	7.87	8.68	9.68
9	5.43	6.81	7.76	8.66	9.57	10.69
10	5.85	7.39	8.44	9.44	10.45	11.70
11	6.27	7.97	9.12	10.22	11.33	12.71
12	6.70	8.55	9.81	11.01	12.22	13.72
13	7.12	9.12	10.49	11.79	13.10	14.73
14	7.55	9.70	11.17	12.57	13.99	15.74
15	7.97	10.28	11.86	13.36	14.87	16.75
16	8.39	10.86	12.54	14.14	15.75	17.75
17	8.82	11.44	13.22	14.92	16.64	18.76
18	9.24	12.01	13.90	15.70	17.52	19.77
19	9.67	12.59	14.59	16.49	18.41	20.78
20	10.09	13.17	15.27	17.27	19.29	21.79
21	10.51	13.75	15.95	18.05	20.17	22.80
22	10.94	14.33	16.64	18.84	21.06	23.81
23	11.36	14.90	17.32	19.62	21.94	24.82
24	11.78	15.48	18.00	20.40	22.83	25.83
25	12.21	16.06	18.69	21.19	23.71	26.84
26	12.63	16.64	19.37	21.97	24.59	27.84
27	13.06	17.22	20.05	22.75	25.48	28.85
28	13.48	17.79	20.73	23.53	26.36	29.86
29	13.91	18.37	21.42	24.32	27.25	30.87
30	14.33	18.95	22.10	25.10	28.13	31.88
31	14.75	19.53	22.78	25.88	29.01	32.89
32	15.18	20.11	23.47	26.67	29.90	33.90
33	15.60	20.68	24.15	27.45	30.78	34.91
34	16.03	21.26	24.83	28.23	31.67	35.92
35	16.45	21.84	25.52	29.02	32.55	36.93
36	16.87	22.42	26.20	29.80	33.43	37.93
37	17.30	23.00	26.88	30.58	34.32	38.94
38	17.72	23.57	27.56	31.36	35.20	39.95
39	18.15	24.15	28.25	32.15	36.09	40.96
40	18.57	24.73	28.93	32.93	36.97	41.97
41	18.99	25.31	29.61	33.71	37.85	42.98
42	19.42	25.89	30.30	34.50	38.74	43.99
43	19.84	26.46	30.98	35.28	39.62	45.00
44	20.27	27.04	31.66	36.06	40.51	46.01
45	20.69	27.62	32.35	36.85	41.39	47.02
46	21.11	28.20	33.03	37.63	42.27	48.02
47	21.54	28.78	33.71	38.41	43.16	49.03
48	21.96	29.35	34.39	39.19	44.04	50.04
49	22.39	29.93	35.08	39.98	44.93	51.05
50	22.81	30.51	35.76	40.76	45.81	52.06
51	23.23	31.09	36.44	41.54	46.69	53.07
52	23.66	31.67	37.13	42.33	47.58	54.08
53	24.08	32.24	37.81	43.11	48.46	55.09
54	24.51	32.82	38.49	43.89	49.35	56.10
55	24.93	33.40	39.18	44.68	50.23	57.11
56	25.35	33.98	39.86	45.46	51.11	58.11
57	25.78	34.56	40.54	46.24	52.00	59.12
58	26.20	35.13	41.22	47.02	52.88	60.13
59	26.63	35.71	41.91	47.81	53.77	61.14
60	27.05	36.29	42.59	48.59	54.65	62.15
61	27.47	36.87	43.27	49.37	55.53	63.16
62	27.90	37.45	43.96	50.16	56.42	64.17
63	28.32	38.02	44.64	50.94	57.30	65.18
64	28.75	38.60	45.32	51.72	58.19	66.19
65	29.17	39.18	46.01	52.51	59.07	67.20
66	29.59	39.76	46.69	53.29	59.95	68.20
67	30.02	40.34	47.37	54.07	60.84	69.21
68	30.44	40.91	48.05	54.85	61.72	70.22
69	30.87	41.49	48.74	55.64	62.61	71.23
70	31.29	42.07	49.42	56.42	63.49	72.24

Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15 pound parcel for the zone to which addressed.

Exhibit 310 (p. 2), First-Class Rates and Fees

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320 Classification

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323 Presorted First-Class Mail and Carrier Route First-Class Mail

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324 ZIP + 4 First-Class Mail

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324.7 Pre-Barcoded Mail

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324.73 Barcode Location. The location of the barcode must be on the address side of the mailpiece and within a clear space known as the "barcode read area," which must be free of any printing other than the barcode. The read area extends 5/8 inch from the bottom and at least 4-1/2 inches from the right edge of the mailpiece. Within the read area, the left-most bar of the barcode must be located between 3-1/4 inches and 4 inches from the right edge of the mailpiece. The bottom of the bars must be positioned 1/4 inch (plus or minus 1/16 inch) from the bottom edge of the mailpiece (see Exhibit 324.73), and the barcode must be completely contained within the solid rectangle shown in Exhibit 324.73.

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(Renumber 325 as 326 and insert new 325 as follows.)

325 ZIP + 4 Barcoded Rate

325.1 General.

325.11 Description. First-Class ZIP + 4 Barcoded rate mailings must meet the requirements in 325.2 through 325.4. Only pieces that:

a. Bear a correct ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b;

b. Meet the size requirements in 324.3 or 324.4;

c. Are sorted in accordance with 364.1 (are part of a group of 10 or more pieces for the same 5-digit ZIP Code destination); and

d. Are documented in accordance with 364.4;

may qualify for the First-Class ZIP + 4 Barcoded rate.

Pieces bearing a 5-digit barcode must not be included in a ZIP + 4 Barcoded rate mailing. Carrier Route First-Class Mail may not be included in a First-Class ZIP + 4 Barcoded rate mailing. To qualify for any of the rates listed in 325.12, the pieces must be documented in accordance with 364.4.

325.12 Applicable Rates by Sortation Category.

325.121 5-Digit Sortation. Pieces in a ZIP + 4 Barcoded mailing that are sorted in accordance with 364.1 (5-digit packages) may qualify for:

a. The ZIP + 4 Barcoded rate if they bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b.

READING THE ZIP + 4 BARCODE

The ZIP + 4 barcode consists of the nine digits plus a correction character used by the barcode reader to identify reading errors. The barcode consists of 52 bars as illustrated. Each of the 10 digits contained between the frame bars consists of 2 long bars (read as 1's) and 3 short bars (read as 0's).

Reading and understanding the bar code is simple. There are 10 combinations of 5 bars, each consisting of 2 long (1's) and 3 short (0's) bars. The digits 0 through 9 have been assigned to these combinations:

0=11000 1=00011 2=00101 3=00110 4=01001 5=01010 6=01100 7=10001 8=10010 9=10100

Within the group of 5 bars, each position has a different value: from left to right 7, 4, 2, 1, and 0. Addition of the values in the two positions occupied by 1 bars gives the value of the combination, except in the case of 11000 which totals 11 and has been assigned as zero.

In addition to the ZIP + 4 Code, each barcode contains a correction digit. This digit appears in the last position of the barcode. Its purpose is to ensure that the machine applying the barcode is working properly. The sum of the 10 digits in the barcode (the 9-digit ZIP + 4 Code plus the correction digit) must always be a multiple of 10. The value of the correction digit is therefore determined by adding the numbers in the 9-digit ZIP + 4 Code, and then determining what single-digit number must be added to that sum to make the total a multiple of 10 (end with a zero). In the Example, the sum of the nine digits of the ZIP + 4 Code is 45. Using a correction character of 5 makes the sum of all 10 characters 50, a multiple of 10. If the sum of the digits is not a multiple of 10, an error has been made and the barcode must not be used.

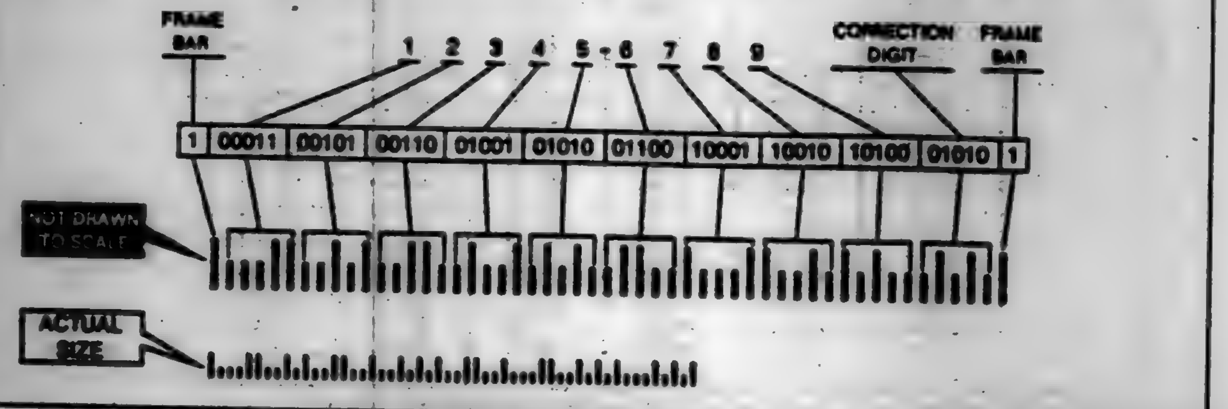

Exhibit 324.72, ZIP + 4 Barcode

b. The ZIP + 4 Presort rate if they do not bear a barcode but contain a correct ZIP + 4 code in the address and meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6.

c. The Presorted First-Class rate if they do not bear a ZIP + 4 barcode and:

(1) They contain the 5-digit ZIP Code in the address; or

(2) They contain a ZIP + 4 code in the address, but do not meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6 necessary to qualify for the ZIP + 4 presort rate.

325.122 3-Digit Sortation. Pieces in the mailing sorted in accordance with 364.2 (3-digit packages) may qualify for:

a. The ZIP + 4 Presort rate if they bear a correct ZIP + 4 code in the address and meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6, or if they bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b.

b. The Presorted First-Class rate if they do not bear a ZIP + 4 barcode and contain the 5-digit ZIP Code in the address. The Presorted First-Class rate also applies to pieces containing a ZIP + 4 code in the address but which do not meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6.

325.123 Residual Sortation. Pieces in the mailing sorted in accordance with 364.3 (residual pieces) may qualify for:

a. The nonpresorted ZIP + 4 rate if they bear a correct ZIP + 4 code in the address and meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6, or if they bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b.

b. The single-piece First-Class rate.

325.2 Minimum Quantity. Each mailing must consist of at least 500 pieces that bear a correct ZIP + 4 barcode and otherwise qualify for the First-Class ZIP + 4 Barcode rate.

325.3 Requirements for at Least 85 Percent of the Pieces in Each Mailing.

325.31 General. At least 85 percent of the total pieces in each mailing must bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b. This 85 percent requirement is applied to the total number of pieces in all presort levels in the mailing, regardless of the rate claimed for an individual piece.

Exception: The 85 percent ZIP + 4 barcode requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 364.44.

Note: In all mailings there must be at least 500 pieces that bear a ZIP + 4 barcode prepared in accordance with 324.32, and that otherwise qualify for the ZIP + 4 Barcoded rate as required in 325.2.

325.32 Barcode Requirements.

a. General. Barcodes must be prepared in accordance with 324.71c through 324.77. The ZIP + 4 barcode must accurately represent the correct 5-digit and sector segment codes for the address on the mailpiece. Pieces bearing default or fictitious add-on codes, e.g., 0000, 5000, 9999, etc., must not be included in a ZIP + 4 Barcoded rate mailing. Pieces bearing a 5-digit barcode must not be included in a ZIP + 4 Barcoded rate mailing (see 325.44). Barcodes may be printed on inserts that will appear through a window on an envelope provided the window on the envelope and the barcode on the insert meet the specifications that follow in 325.32b. An envelope with a window for a barcode insert may only be used when the insert actually contains the ZIP + 4 barcode.

b. Inserts. The barcode may be printed on an insert and appear through a barcode window on an envelope under the following conditions:

(1) Barcode Window Specifications:

(a) Windows must be covered with a clear plastic material, securely glued on all sides;

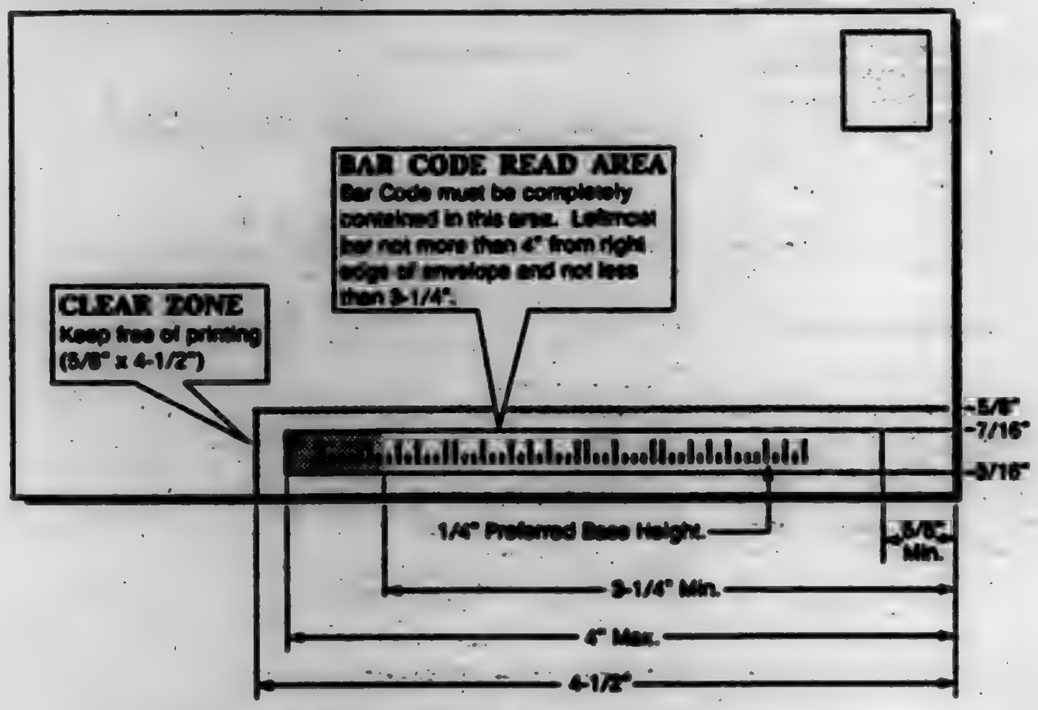
BAR CODE READ AREA
Bar Code must be completely contained in this area. Leftmost bar not more than 4" from right edge of envelope and not less than 3-1/4".
CLEAR ZONE
Keep free of printing (5/8" x 4-1/2")
5/8"
7/16"
3/16"
1/4" Preferred Base Height.
5/8" Min.
3-1/4" Min.
4" Max.
4-1/2"

Exhibit 324.73, Barcode Read Area

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(b) Envelopes with barcode windows may be used only when the ZIP + 4 barcode will be visible through the barcode window;

(c) Windows must extend fully to the lower edge of the envelopes and must be of wrap-around construction;

(d) The right edge of the window must be not less than 1/4 inch from the right edge of the envelope;

(e) The left edge of the window must be not less than 4 1/2 inches from the right edge of the envelope.

(2) Barcode Location Specifications. The barcode, as it shows through the window when inserted in the envelope, must meet all of the following specifications:

(a) The ZIP + 4 barcode must be located within the barcode clear zone which extends 5/8 inch from the bottom of the envelope and 4-1/2 inches from the right edge of the envelope;

(b) The barcode shall be at least 1/5 inch from the right edge of the window and 1/5 inch from the left edge of the window;

(c) No printing other than the ZIP + 4 barcode is permitted in the barcode clear zone;

(d) The left-most bar must be located 3-5/8 inches ± 3/8 inch from the right edge of the mailpiece, and from 3/16 inch to 7/16 inch from the bottom of the envelope. The baseline of all bars must be 1/4 inch ± 1/16 inch from the bottom edge of the mailpiece.

325.4 Requirements for All Pieces in the Mailing.

325.41 Size Requirements. Each piece in the mailing must meet the size requirements in 324.3 or 324.4.

325.42 ZIP Codes. Each piece, whether or not it bears a ZIP + 4 barcode, must bear either the correct ZIP + 4 code or the correct 5-digit ZIP Code in the address.

325.43 Markings. Each piece must bear an identifying marking as required in 362.5.

325.44 5-Digit Barcodes Prohibited. Pieces bearing a 5-digit barcode must not be included in a ZIP + 4 Barcoded mailing.

325.45 Presort. All the pieces in the mailing (ZIP + 4 barcoded and non-barcoded pieces) must be presorted together to the finest extent possible in accordance with 364.1. Pieces remaining after being sorted in accordance with 364.1 must be sorted in accordance with 364.2. This means all possible packages of 10 or more pieces to the same 5-digit ZIP Code destination must be prepared and trayed in accordance with 364.1 before preparing and traying 3-digit packages in accordance with 364.2. Pieces remaining after being sorted in accordance with 364.1 and 364.2 must be prepared in accordance with 364.3.

325.46 Documentation. Documentation must accompany each mailing as required by 364.4.

326 Priority Mail

326.1 Description. Priority Mail consists of First-Class Mail weighing more than 11 ounces and, at the option of the mailer, any other mail matter (including regular First-Class Mail) weighing 11 ounces or less. There is no minimum weight limitation for Priority Mail. The maximum weight limit is set forth in 351.

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340 Authorizations and Permits

341 Annual Presort Fee

A Presort First-Class mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at Presorted First-Class, Carrier Route First-Class, ZIP + 4 Presort, and/or ZIP + 4 Barcoded First-Class rates. Payment of one fee allows a mailer to enter mail at all of the Presort rates. Persons or organizations paying this fee may enter mail of their clients as well as their own mail.

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353 Nonstandard First-Class Mail

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353.3 Surcharge. A surcharge of $0.10 is assessed on each piece of nonstandard First-Class Mail that is mailed at the single-piece rate for cards or the single-piece rates for matter other than cards. A surcharge of $0.05 per piece is assessed on each nonstandard piece mailed at the Presorted First-Class or Carrier Route First-Class rates.

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360 Preparation Requirements

361 Addressing

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361.2 Priority Mail. The return address must be shown on the address side of each piece of Priority Mail.

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361.5 ZIP + 4 Barcoded First-Class Mail. The address of all pieces in a ZIP + 4 Barcoded mailing must contain either the correct 5-digit ZIP Code or the correct ZIP + 4 code. In addition, at least 85 percent of the pieces in ZIP + 4 Barcoded mailings must also contain a barcode prepared in accordance with 324.71c through 324.77, and 325.32b, that represents the correct ZIP + 4 code of the delivery address. Pieces bearing a 5-digit barcode must not be included in a ZIP + 4 Barcoded rate mailing (see 325.44).

362 Marking Requirements

362.1 Priority Mail. The words "Priority" or "Priority Mail" must be placed prominently on the address side of each piece of Priority Mail.

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362.5 ZIP + 4 Barcoded First-Class Mail. The words "First-Class" and "ZIP + 4 Barcoded" must be printed or rubberstamped by the mailer either as part of or immediately adjacent to permit imprints, meter stamps, or precanceled stamps. Alternatively, the "ZIP + 4 Barcoded" endorsement may be located in the address area on either the line above the address or two lines above the address. (The preferred position is two lines above the address.) If the "ZIP + 4 Barcoded" endorsement is located in the address area, no other information may appear on the endorsement line other than carrier route information. The "First-Class" and "ZIP + 4 Barcoded" endorsements may be printed by a postage meter, special slug, ad plate, or other suitable means, including computer, which will ensure a legible endorsement.

Note: Pieces at the Carrier Route First-Class rates may not be included in a ZIP + 4 Barcoded rate mailing.

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364 ZIP + 4 Barcoded First-Class Mail.

364.1 5-Digit Package Presort Requirements—Pieces Qualifying for the ZIP + 4 Barcoded, ZIP + 4 Presort, and Presorted First-Class rates. Only pieces in 5-digit packages containing at least 10 pieces may qualify for the ZIP + 4 Barcoded rate. See 325.1.

364.11 Packaging Requirements—5-Digit Packages Only. When there are 10 or more pieces addressed to the same 5-digit ZIP Code delivery unit, they must be prepared by the mailer in packages of 10 or more pieces. The pieces in the packages must be faced in the same direction and secured with one or two rubberbands around each package, as prescribed in 367.112, or physically separated by visible index tabs or separator cards to delineate each package. A package must not be more than 4 inches thick. A red Label D must be affixed to the lower left corner on the address side of the top piece in each package.

Exception: Pieces in 5-digit trays need not be prepared in packages.

364.12 Traying Requirements.

364.121 5-Digit Trays. When there are 500 pieces or at least 3/4 of a tray for the same 5-digit ZIP Code delivery unit, a direct 5-digit tray must be prepared. A tray label must be firmly affixed to the end of the tray. Direct 5-digit trays must be labeled in the following manner:

Line 1: City, State, 5-Digit ZIP Code
Line 2: FCM ZIP + 4 Barcoded
Line 3: Mailer, Mailer Location

Sample:

PHILADELPHIA PA 19118
FCM ZIP + 4 BARCODED
FR JC COMPANY BOSTON MA

It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of the tray label before inserting it into the label holder.

Note: Trays that are less than 3/4 full must not be prepared.

364.122 Unique 3-Digit City Trays. When, after all possible 3/4-full to full 5-digit trays have been prepared, there are enough 5-digit packages remaining for a city with a unique 3-digit ZIP Code prefix to fill at least 3/4 of a tray, a unique 3-digit city tray must be prepared. Cities with unique 3-digit ZIP Codes are listed in Exhibit 122.63b. Unique 3-digit city trays must be labeled in the following manner:

Line 1: City, State, Unique 3-Digit ZIP Code Prefix
Line 2: FCM Z+4 BARCODED MXD 5-DG
Line 3: Mailer, Mailer Location

Sample:

PHILADELPHIA PA 191
FCM Z+4 BARCODED MXD 5-DG
FR JC COMPANY BOSTON MA

It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of the tray label before inserting it into the label holder.

Note: Trays that are less than 3/4 full must not be prepared.

364.123 SCF Trays. When, after traying in accordance with 364.121 and 364.122, there are enough 5-digit packages remaining for the same SCF area to fill at least 3/4 of a tray, an SCF tray must be prepared. A list of SCFs serving one 3-digit ZIP Code area is in Exhibit 122.63c. A list of SCFs serving more than one 3-digit area and the 3-digit areas they each serve is in Exhibit 122.63d. SCF trays must be labeled in the following manner:

Line 1: Letters "SCF" followed by the city, two-letter state abbreviation, and SCF code for the SCF as shown in Exhibits 122.63c and 122.63d.
Line 2: FCM Z+4 BARCODED MXD 5-DG
Line 3: Mailer Name, Mailer Location

Sample:

SCF PHILADELPHIA PA 190
FCM Z+4 BARCODED MXD 5-DG
FR JC COMPANY BOSTON MA

It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of the tray label before inserting it into the label holder.

Note: Trays that are less than 3/4 full must not be prepared.

364.124 Area Distribution Center Trays. When, after traying in accordance with 364.121 through 364.123, there are enough 5-digit packages remaining for the same Area Distribution Center (ADC) to fill at least 3/4 of a tray, an ADC tray must be prepared. A list of ADCs and the areas they serve is in Exhibit 122.63e. A tray label in the format shown below must be firmly affixed to the end of the tray:

Line 1: The letters "DIS", followed by the city, two-letter state abbreviation, and ADC code for the ADC as shown in Exhibit 122.63e.
Line 2: FCM Z+4 BARCODED MXD 5-DG
Line 3: Mailer, Mailer Location

Sample:

DIS PHILADELPHIA PA 190
FCM Z+4 BARCODED MXD 5-DG
FR JC COMPANY BOSTON MA

It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of the tray label before inserting it into the label holder.

Note: Trays that are less than 3/4 full must not be prepared.

364.125 Mixed ADC Trays. 5-digit packages remaining after traying in accordance with 364.121, 364.122, 364.123, and 364.124 must be prepared in mixed ADC trays. A mixed ADC tray label in the following format must be firmly affixed to the end of the tray:

Line 1: The letters "DIS" followed by the city, two-letter state abbreviation, and code of the ADC that serves the entry post office as shown in Exhibit 122.63e.
Line 2: MXD ADC FCM BRCDED MXD 5-D
Line 3: Mailer, Mailer Location

Sample:

DIS BOSTON MA 021
MXD ADC FCM BRCDED MXD 5-D
FR JC COMPANY BOSTON MA

It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of the tray label before inserting it into the label holder.

364.2 3-Digit Package Presort Requirements – Pieces Qualifying for ZIP + 4 Presort and Presorted First-Class Rates.

364.21 General. Pieces remaining after packages and trays have been prepared in accordance with 364.1 must be sorted in accordance with 364.22. These pieces will qualify for the ZIP + 4 Presort rate if the pieces:

1) bear a ZIP + 4 code and meet the requirements in 324.5 and 324.6; or

2) bear a ZIP + 4 barcode in accordance with 324.71c through 324.77, and 325.32b.

Pieces in this portion of the mailing that do not meet the requirements for ZIP + 4 Presort rates will qualify for the Presorted First-Class rate. The pieces must be documented in accordance with 364.4.

364.22 Sortation. After all 5-digit packages are prepared and trayed in accordance with 364.1, remaining pieces must be packaged into groups of 50 or more pieces for the same 3-digit

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ZIP Code prefix in accordance with 307.221 and 307.231. The one exception is that visible index tabs or separator cards may be used to delineate each package, instead of rubberbands. The 3-digit packages must then be trayed in accordance with 364.122 through 364.125, except that "MXD 5-DG" must be deleted from the contents line. This portion of the mailing must be completely separated from the 5-digit packaged portion of the mailing (sorted in accordance with 364.1) to facilitate verification.

Exception: When there are enough pieces for a unique 3-digit ZIP Code city to fill at least 3/4 of a tray, packages need not be prepared.

364.3 Preparation Requirements for the Residual Portion. Pieces remaining after all 5-digit packages have been trayed in accordance with 364.1 and all nonqualifying 3-digit packages have been trayed in accordance with 364.2 are residual pieces and are subject to either the nonpresorted ZIP + 4 rates or the full single-piece First-Class rate. At a minimum, the residual pieces must be sequenced by 5-digit ZIP Code or 3-digit ZIP Code prefix. Trays must bear a label that states "FCM ZIP + 4 BARCODED." The range of 5-digit or 3-digit ZIP Codes contained in each tray must also appear on each tray label. It is recommended, however, that residual pieces be additionally sorted by ADC. If there is a full tray to an ADC, the residual pieces should be placed in a tray marked to the ADC as follows:

Line 1:	The letters "DIS" followed by the name of the ADC and the code (see Exhibit 122.63a.)
Line 2:	FCM ZIP + 4 BARCODED RESID
Line 3:	Mailer, Mailer Location

When there is less that a full tray to an ADC, separator tabs should be used to identify groups of pieces in the tray to the same ADC.

Note: To qualify for the nonpresorted ZIP + 4 rates, pieces in the residual portion must bear a ZIP + 4 code and meet the requirements of 324.5 and 324.6, or bear a ZIP + 4 barcode.

364.4 Documentation and Postage Payment Requirements.

364.41 Required Documentation for Metered and Precanceled Stamp Mailings.

364.411 Correct Postage Affixed to Each Piece. Mailers who affix the appropriate postage to each piece in the mailing must submit, with each mailing, documentation that shows that the 85 percent commingling requirement in 325.3 has been met. The documentation must list the number of pieces that bear a ZIP + 4 barcode, and the number of pieces that do not contain a ZIP + 4 barcode by:

a. 5-digit separation,

b. 3-digit separation, and

c. for the residual portion, by 5-digit or 3-digit ZIP Code (see 364.3).

The total number of pieces with a ZIP + 4 barcode, and the total number of pieces not containing a ZIP + 4 barcode, for the entire mailing, must also be shown.

Exception: When all the pieces in the mailing bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b, documentation is not required.

364.412 Postage at ZIP + 4 Barcoded Rate Affixed to All Pieces. Mailers may affix postage at the ZIP + 4 Barcoded rate to all pieces in the mailing provided they submit with each mailing the following lists and summaries documenting that the 85 percent commingling requirement has been met, and the amount of postage owed:

a. Documentation for Pieces Sorted in Accordance with 364.1 (5-Digit Packages). List, for each 5-digit ZIP Code destination in the portion of the mailing sorted in accordance with 364.1, the:

(1) Number of Barcoded Pieces Qualifying for the ZIP + 4 Barcoded Rate. This is the number of ZIP + 4 barcoded pieces qualifying for the ZIP + 4 Barcoded rate (pieces bearing a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b);

(2) Number of Non-Barcoded Pieces Qualifying for the ZIP + 4 Presort Rate. This is the number of non-barcoded pieces qualifying for the ZIP + 4 Presort rate (non-barcoded pieces that bear a ZIP + 4 code, and that meet the bar code clear zone and OCR readability requirements of 324.5 and 324.6);

(3) Number of Non-Barcoded Pieces Qualifying for the Presorted First-Class Rate. This is the number of non-barcoded pieces that bear a ZIP + 4 code, but do not meet the requirements of 324.5 and 324.6, plus the number of non-barcoded pieces bearing a 5-digit ZIP Code;

(4) Cumulative Total. This is the total of all pieces listed on preceding lines for the 5-digit portion of the mailing plus the pieces for that 5-digit ZIP Code.

Total each of categories (1) through (3) to provide: (1)the total number of barcoded pieces qualifying for the ZIP + 4 Barcoded rate; (2) the total number of non-barcoded pieces qualifying for the ZIP + 4 Presort Rate; and (3) the total number of non-barcoded pieces qualifying for the Presorted First-Class rate.

The last entry in category (4) will show the total number of pieces in the 5-digit portion of the mailing.

b. Documentation for Pieces Sorted in Accordance with 364.2 (3-Digit Packages). List for each 3-digit separation in the portion of the mailing sorted in accordance with 364.2, the:

(1) Number of Barcoded Pieces Qualifying for the ZIP + 4 Presort Rate. This is the number of pieces bearing a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b;

(2) Number of Non-Barcoded Pieces Qualifying for the ZIP + 4 Presort Rate. This is the number of non-barcoded pieces bearing a ZIP + 4 code, that meet the barcode clear zone and OCR readability requirements of 324.5 and 324.6;

(3) Number of Non-Barcoded Pieces Qualifying for Presorted First-Class Rate. This is the number of non-barcoded pieces that bear a ZIP + 4 code, but do not meet the requirements of 324.5 and 324.6, plus the number of non-barcoded pieces that bear a 5-digit ZIP Code;

(4) Cumulative Total. This is the total of all pieces listed on preceding lines for the 3-digit portion of the mailing plus the pieces for that 3-digit ZIP Code.

Total each of categories (1) through (3) to provide: (1) the total number of barcoded pieces qualifying for the ZIP + 4 Presort rate; (2) the total number of non-barcoded pieces qualifying for the ZIP + 4 Presort rate; and (3) the total number of non-barcoded pieces qualifying for Presorted First-Class Rates. The last entry in category (4) will show the total number of pieces in the 3-digit portion of the mailing.

c. Documentation for Pieces Sorted in Accordance with 364.3 (Residual Portion). By 5-digit or 3-digit ZIP Code (see 364.3), list the:

(1) Number of Barcoded Pieces Qualifying for the Nonpresorted ZIP + 4 Rate. This is the number of pieces bearing a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b;

(2) Number of Non-Barcoded Pieces Qualifying for the Nonpresorted ZIP + 4 Rate. This is the number of non-barcoded pieces with a ZIP + 4 code, that meet the barcode clear zone and OCR readability requirements in 324.5 and 324.6;

(3) Number of Non-Barcoded Pieces Subject to the Single-Piece First-Class Rate. This is the number of non-barcoded pieces that bear a ZIP + 4 code, but do not meet

the requirements in 324.5 and 324.6, plus the number of non-barcoded pieces that bear a 5-digit ZIP Code.

(4) Cumulative Total. This is the total of all pieces listed on preceding lines for the residual portion of the mailing plus the pieces for that line entry.

Total each of categories (1) through (3) to provide: (1) the total number of barcoded pieces qualifying for the nonpresorted ZIP + 4 rate; (2) the total number of non-barcoded pieces qualifying for the nonpresorted ZIP + 4 rate; (3) the total number of non-barcoded pieces subject to single-piece first-class rates.

The last entry in category (4) will show the total number of pieces in the residual portion of the mailing.

d. Totals. Summarize the total number of pieces in each rate category in the mailing. For each category other than pieces qualifying for the ZIP + 4 Barcoded rate, multiply the total number of pieces in the rate category by the additional postage due per piece for that rate category. For example, multiply the total number of pieces eligible for the ZIP + 4 Presort rate by $0.005 (the difference between the ZIP + 4 Barcoded rate and the ZIP + 4 Presort rate). This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP + 4 barcode and the total number of pieces that do not.

364.42 Required Documentation for Permit Imprint Mailings.

a. Documentation. For identical-weight permit imprint mailings, the lists and summaries indicated in 364.412a through 364.412c must be submitted with each mailing. A summary of the listings must be included as part of the required documentation as follows:

(1) Summarize the total number of pieces in each rate category in the mailing;

(2) For each rate category shown in 364.42a(1), above, compute the postage charges at that rate. (Multiply the number of pieces qualifying for each rate category times the applicable rate for that rate category);

(3) Add the total amounts of postage charges for each rate category to show the total amount of postage to be deducted from the permit imprint account;

(4) Summarize, for the entire mailing, the number of pieces that bear a properly prepared ZIP + 4 barcode (364.412a(1), 364.412b(1), and 364.412c(1)). Also show the total number of pieces that do not bear a properly prepared ZIP + 4 barcode.

Note: Mailings of nonidentical-weight permit imprint pieces may be made only if optional or alternative postage payment procedures have been authorized in accordance with 145.

b. Exception to Documentation. When all pieces in an identical-weight permit imprint mailing bear a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b, and the pieces in each of the sortation levels (364.1, 364.2 and 364.3) are physically separated from each other upon presentation to the post office, as required in 364, no documentation is required.

364.43 Summary Listing Documentation Option

364.431 General. Mailers may obtain authorization to submit only summary listings, rather than both summaries and listings by ZIP Code sortation as required in 364.41 and 364.42. The summary listing must show, by category of sortation (5-digit sorted pieces in accordance with 364.1, 3-digit sorted pieces in accordance with 364.2, and residual pieces in accordance with 364.3):

(1) the number of pieces with a ZIP + 4 barcode prepared in accordance with 324.71c through 324.77, and 325.32b;

(2) the number of non-barcoded pieces that bear a ZIP + 4 code and that meet the requirements of 324.5 and 324.6; and,

(3) the total of: the number of non-barcoded pieces that bear a ZIP + 4 code, but do not meet the requirements of 324.5 and 324.6; and the number of non-barcoded pieces bearing a 5-digit ZIP Code.

The mailer must also provide a summarized total, by presort level rate, of the amount of postage due when all pieces are metered at the lower rate, or, when permit imprint is used, the summarized total by presort level rate of the total postage charges for the mailing. The total number of pieces that bear a properly prepared ZIP + 4 barcode and the number of pieces that do not must also be provided.

364.432 Authorization. The General Manager, Rates and Classification Center, for the area where mailings will be submitted, may authorize summary listing documentation in accordance with the approval procedures in 364.434.

364.433 Application. The mailer must submit a request to the postmaster, at each post office of mailing, that must include:

a. the mailer's name, address, and telephone number;

b. the name of the post office where mailings will be presented;

c. the frequency of mailing;

d. the estimated volume per mailing;

e. an explanation of the reason the mailer is unable to comply with the listing requirements in 364.41 or 364.42;

f. an explanation of the procedures that will be used to develop the summary listing;

g. sample copies of documents such as computer print-outs and records of postage meter readings that can be reviewed to substantiate the mailer's claim;

h. a copy of any previous approval(s) by one or more Rates and Classification Centers.

364.434 Approval Process. The mailer's application, and the postmaster's recommendation and supporting documentation, will in turn be forwarded to the Management Sectional Center (MSC) Manager, Mailing Requirements, who will review the file, request additional documentation, and/or make an onsite visit, if necessary, before recommending approval or disapproval. The file will be forwarded to the General Manager, Rates and Classification Center (RCC) who will approve the application if it is determined that the summary listing will accurately reflect the composition of the mailing. If necessary, the General Manager, RCC, may request further evidence of documentation. When the General Manager, RCC, is satisfied that the documentation will accurately show the summary listing information required in 364.431, the mailer may be authorized to prepare a summary listing for each mailing. The authorization will be sent directly to the mailer, and copies will be sent to the MSC Manager, Mailing Requirements, and the postmaster of the office of mailing, as applicable. The authorization will remain valid for a period of 90 days.

364.435 Quarterly Inspections. The postmaster or designated representative will visit the mailer's premises on a quarterly basis to determine whether the mailer is following the approved procedures for determining the percentage of ZIP + 4 barcoded pieces in the mailing, and proper postage, and will submit a report to the RCC through the MSC. If the mailer is following the approved procedures, the authorization will be renewed for a period of 90 days.

364.436 New Application Upon Change in Mailer's Operation. The mailer must submit a new application, in accordance with 364.433, anytime there is a change in the method used to determine the percentage of qualifying ZIP + 4 barcoded pieces in mailings and the proper postage.

364.44 Exception to Submitting Documentation With Each Mailing (Documentation Based on a Mailing List or Cycle). When pieces for a mailing list or mailing cycle, as defined by the mailer, are mailed over a period of more than one day, but not exceeding one week (seven consecutive days), the mailer

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may submit documentation based on the mailing list or mailing cycle to prove that the 85 percent requirement has been met, and to show either the amount of postage due for mail metered at the ZIP + 4 Barcoded rate, or the total amount of postage to be deducted from the mailer's permit imprint account. The documentation for the entire list or cycle must, however, accompany the mailing statement submitted with the first mailing made from the list or cycle. Under this procedure, the mailer must indicate, on each mailing statement submitted, the mailing list or mailing cycle to which the pieces belong. The final mailing statement for the mailing list or cycle must accurately account for the full list or cycle. (The sum of the pieces reported on all the mailing statements submitted for the mailing list or cycle must equal the totals shown on the documentation submitted.) Under this procedure, a mailing may contain only pieces for a single mailing list or mailing cycle (i.e., a mailing may not contain pieces from more than one mailing list or cycle). If pieces from two different lists or cycles are submitted on the same day, separate mailings must be prepared, corresponding separate mailing statements must be submitted for the pieces for each list, and the mailing from the new list or cycle must be accompanied by the documentation for that list or cycle.

364.45 Mailing Statements. The mailer must submit a mailing statement with each mailing in accordance with 382.4. The Form 3602-PC must be submitted in duplicate if all pieces in a mailing are metered at the ZIP + 4 Barcoded rate and additional postage is paid through an advance deposit account in accordance with 382.31d or 382.33b.

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370 Mailing

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372 Matter Mailed at Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded Rates

372.1 Deposit of Mail. Matter mailed at the Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded rates must be deposited at locations and times designated by the postmaster. Deposit of metered mail at other than those locations is considered a sufficient basis for revocation of postage meter licenses in accordance with 144.23. The Postal Service may collect Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded mail at the customer's facility when one of the following conditions is met:

a. Acceptance and verification are accomplished at the customer's facility;

b. Postage is paid under an optional procedure;

c. Postage is paid by meter strips;

d. Postage is paid by precanceled stamps.

Note: Presort mailings paid by permit imprint, and not covered by optional procedures, are not to be collected from the customer's facility.

372.2 Approved Collection Service. In addition to the above requirements, the collection of Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded mail, must be part of an approved collection service for other classes of mail, and space must be available on the transportation required for those classes. Separate or additional collection service for Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded mail will not be established.

373 Priority Mail

Priority Mail must be deposited at a post office, branch, or station, or handed to a rural or highway contract route carrier.

Exception: A Priority Mail piece in a weight category for which the rates do not vary by zones may be deposited in any street collection box or other authorized mail collection receptacle. Mail that has postage paid by means of permit imprint may only be deposited where authorized by 145.

374 Presort Verification

374.1 Where Verified

374.11 Mailings Presented to the Accepting Post Office by the Customer

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c. Nonpresorted ZIP + 4 and ZIP + 4 Presort mailings will be verified at the post office of acceptance to establish that each mailing is properly prepared, and, if mailed at the ZIP + 4 Presort rate, properly presorted in accordance with either 365 and 368.2, or 366 (optional sortation).

d. ZIP + 4 Barcoded mailings will be verified at the post office of acceptance to establish that each mailing at the ZIP + 4 Barcoded rate is properly prepared and presorted and qualifies for that rate.

374.12 Collected at Customer's Facility. Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded mailings collected at the customer's facility (see 372.1) will be verified at a post office acceptance unit, unless complete acceptance and verification is accomplished at the customer's facility. If such a mailing, which has been collected at the customer's facility and brought to the appropriate acceptance unit, is found not to qualify due to makeup irregularities, improper postage, or other reasons, the mailer must come to the acceptance unit to resolve the discrepancies.

374.2 When a Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded Mailing is Disqualified

374.21 Options

a. When a Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded mailing is found not to qualify at the acceptance unit (or detached mail unit), the mailer has the option of taking corrective action or paying the full regular single-piece rate. When necessary, the return of such mailings to the customer's facility is the responsibility of the mailer. The mailer must correct discrepancies or pay the full single-piece First-Class postage before the mailing will be accepted.

b. When a Carrier Route First-Class mailing is found, through reports from the delivery unit, to have more than 5 percent error in the makeup to carrier routes in a 5-digit ZIP Code area, the pieces in the mailing to that 5-digit ZIP Code area do not qualify for the Carrier Route First-Class rate. Postage will be recalculated at the Presorted First-Class rate of postage on all pieces within that 5-digit ZIP Code area, providing the pieces meet the Presort First-Class Mail preparation requirements.

374.22 Correcting Preparation and Presort Problems. Mailers who elect to correct presort or preparation problems which resulted in disqualification of the mailing at the place where the mailing was presented for acceptance, will generally be unable to return metered mail to the acceptance unit (or detached mail unit) on the same day as it was originally presented. The date in the meter stamp or precanceled postmark will thus reflect an incorrect mailing date. If the mailing is presented on the day immediately following its initial presentation, and if it then meets all other acceptance requirements, the mailing will be accepted on a one-time-only basis when:

a. Its initial presort or other preparation deficiencies resulted from mailing equipment problems beyond the mailer's control, or

b. It is the customer's first mailing at the Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded rate, and the improper presort or preparation resulted from misinformation or misunderstanding of the presort or preparation requirements.

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380 Payment of Postage

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382 Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, and ZIP + 4 Barcoded Rates

382.1 Method of Payment. Postage on mailings made at Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort and ZIP + 4 Barcoded rates, must be paid by meter stamps, permit imprints, or precanceled postage. Permit imprints may be used on mailings of nonidentical weight only under the provisions of 145.8 or 145.9

382.2 Exact Postage on Each Piece

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382.23 ZIP + 4 Barcoded Rate. When precanceled postage or meter stamps are used, pieces must bear postage at the appropriate ZIP + 4 Barcoded, ZIP + 4 Presort, Presorted First-Class, nonpresorted ZIP + 4, or single-piece First-Class rate as appropriate, except as provided in 382.3 and 364.412.

382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces in the Mailing

382.31 Identical Pieces

a. Presorted First-Class Mailings. When all pieces in a Presorted First-Class mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the Presorted First-Class rate. Additional postage for residual pieces must be paid by means of a meter strip affixed to the back of the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

b. Carrier Route First-Class Mailings. When all pieces in a Carrier Route First-Class mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the Carrier Route First-Class rate. Additional postage for pieces subject to the Presorted First-Class and full single piece First-Class rates must be paid by means of a meter strip affixed to the back of the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

c. ZIP + 4 Presort Mailings. When all pieces in a ZIP + 4 Presort mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the ZIP + 4 Presort rate provided the requirements in 365.33 are met. The additional postage for pieces subject to Presorted First-Class, nonpresorted ZIP + 4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

d. ZIP + 4 Barcoded Mailings. When all pieces in a ZIP + 4 Barcoded mailing paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the ZIP + 4 Barcoded rate provided the requirements in 364.412 are met. Additional postage, in the amount documented in accordance with 364.412d, for pieces subject to the ZIP + 4 Presort, Presort First-Class, nonpresorted ZIP + 4 and single-piece First-Class rates, must be paid by means of a meter strip affixed to the back of the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

382.32 Nonidentical Pieces at Presorted First-Class or Carrier Route First-Class Rates.

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382.33 Nonidentical Pieces at ZIP + 4 Presort and ZIP + 4 Barcoded Rates.

a. ZIP + 4 Presort Mailings. ZIP + 4 Presort mailings of nonidentical-weight pieces may have postage at the ZIP + 4 Presort rate affixed to all pieces in the mailing provided the requirements in 365.33 are met. The additional postage for pieces subject to Presorted First-Class, nonpresorted ZIP + 4, and single-piece First-Class rates, must be paid by means of a meter strip affixed to the back of the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that must accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

b. ZIP + 4 Barcoded Mailings. ZIP + 4 Barcoded First-Class mailings of nonidentical-weight pieces may have postage at the ZIP + 4 Barcoded rate affixed to all pieces in the mailing provided the documentation requirements in 364.412 are met. Additional postage in the amount documented in accordance with 364.412d for pieces subject to the ZIP + 4 Presort, Presort First-Class, nonpresorted ZIP + 4 and single-piece First-Class rates must be paid by means of a meter strip affixed to the back of the Form 3602-PC, *Statement of Mailing -- Bulk Rates*, that must accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

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382.4 Mailing Statement. Mailers who qualify for Carrier Route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded rates, must complete and submit one of the following mailing statements (signed by the mailer or an authorized agent) with each mailing:

a. Form 3602, *Statement of Mailing With Permit Imprints*, for mail with permit imprints. Editions of the form earlier than April 1985 must not be used.

b. Form 3602-PC, *Statement of Mailing -- Bulk Rates*, for mail bearing meter stamps or precanceled stamps. Editions of the form earlier than April 1985 must not be used.

Note: Form 3602-PC must be submitted in duplicate for mailings metered at the lowest rate for which the difference between postage affixed and the applicable rate is paid through an advance deposit account, as provided in Handbook F-1, *Post Office Accounting Procedures*, 524.

383 Priority Mail Rates (See Exhibit 310)

Mailers of Priority Mail may pay postage by adhesive stamps, meter stamps (see 144), or permit imprint (see 145).

390 Ancillary Services

391 Forwarding

All First-Class Mail, including Priority Mail, and postal and post cards, is forwarded at no charge for a period of one year when the new address is known.

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Chapter 4
Second-Class Mail

410 Rates and Fees

411 Rates

411.1 Rate Elements. The postage charged for mailing second-class matter is based on the application of the following rate elements to the mailing:

411.11 Per-Pound Charges. The total weight of the mailing in pounds is multiplied by the applicable per-pound rates. There are outside county pound rates that are zoned for the advertising portion of a publication and an unzoned rate for the nonadvertising portion. There is also an in-county pound rate.

411.12 Per-Piece Charges. Each piece in the mailing is multiplied by the applicable per-piece rate. There are different per-piece rates for outside county pieces and for in-county pieces based on level of presort. An individually addressed copy or package of unaddressed copies is considered a piece. A firm package, consisting of individually addressed copies or unaddressed copies for the same address is also considered one piece. A firm package must bear a blue Label F or the optional endorsement line "FIRM" followed by the five-digit ZIP Code as prescribed in 464.242.

411.13 Piece Charge Adjustments.

a. A nonadvertising adjustment is deducted from the outside county per-piece rate charges.

b. An SCF adjustment, when applicable, is deducted from the outside county per-piece charges.

Note: The postage to be paid for a mailing is the sum of the charges determined by applying the applicable per-pound rates and the charges determined by applying the applicable per-piece rates, less the applicable adjustments.

411.2 Regular Rates.

411.21 General. The rates in 411.22 through 411.25 apply to all presorted copies of publications mailed by publishers or news agents except for:

a. Copies that qualify for one of the preferred rates contained in 411.3; and

b. Nonrequester and nonsubscriber copies that exceed the 10 percent allowance in 411.411 and 411.412, and that are not presorted and commingled in a mailing that contains requester or subscriber copies. (See 411.422 for applicable rates for noncommingled nonrequester and noncommingled nonsubscriber copies exceeding the 10 percent allowance.)

411.22 Per-Pound Rates. Rates per pound or fraction of a pound:

	Dollars
Nonadvertising portion	$0.124
Advertising portion:	
Zones 1 and 2	$0.165
Zone 3	$0.174
Zone 4	$0.191
Zone 5	$0.216
Zone 6	$0.243
Zone 7	$0.275
Zone 8	$0.302

411.23 Per-Piece Rates. The three per-piece rates reflect the levels of presort. The sortations which must be accomplished, and the documentation requirements to qualify for the rates, are prescribed in 468.

	Dollars
Level A--Basic. Pieces not qualifying for Level B, (5-Digit), or Level C, (Carrier route) rates. (Pieces in 3-digit sacks that are not for unique 3-digit cities, or in SCF, SDC, State, or Mixed States sacks.)	$0.160
Level B--5-Digit. Pieces in 5-digit, optional city, or unique 3-digit packages that contain at least six pieces and that are placed in 5-digit, optional city, or unique 3-digit sacks. See Exhibits 122.63a and 122.63b.	$0.124
Level C--Carrier-route. Pieces in carrier-route packages of six or more pieces that are placed in carrier-route or carrier-routes sacks.	$0.099

411.24 Intra-SCF Rate. Pieces for delivery within the SCF of mailing may qualify for the intra-SCF rate. This rate equals the applicable per-piece rate, minus $0.01 per addressed piece. SCFs and the areas served by each are listed in Exhibits 122.63c and 122.63d.

411.25 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-county per-piece charges. It is determined in the following manner:

a. Divide the nonadvertising percent by 100;

b. Multiply the decimal thus obtained by $0.04 and round the result up to four decimal places;

c. Multiply this rounded nonadvertising factor by the number of addressed pieces mailed at the outside-county per-piece rates in 411.24, and round the result up to two decimal places. This nonadvertising adjustment amount is subtracted from the subtotal of the outside-county piece charges to determine the total outside-county per-piece postage charge.

411.3 Preferred Rates

411.31 General. There are four preferred rates. They are:

a. In-County

b. Special Nonprofit

c. Classroom

d. Science-of-Agriculture

411.32 In-County Rates

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411.322 Nonsubscriber Copies. (Effective January 1, 1989, the note at the end of this section will read: The number of nonsubscriber copies mailed at in-county rates must be included in the determination of the overall 10 percent nonsubscriber allowance in 411.413 and 411.414.)

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411.325 Rates. In-County rates are:

	Dollars
Per Pound	$0.094
Per Piece:	
Level J--Not Presorted to Carrier Route.	$0.057
Level K--Presorted to Carrier Route. Pieces in carrier-route packages of six or more pieces that are placed in carrier-route or carrier-routes sacks	$0.032

411.33 Special Nonprofit Rates

411.331 Per-Pound Rates. Rates per pound or fraction of a pound:

	Dollars
Nonadvertising portion	$0.086
Advertising portion:	
Zones 1 and 2	$0.114
Zone 3	$0.120
Zone 4	$0.133
Zone 5	$0.153
Zone 6	$0.174
Zone 7	$0.199
Zone 8	$0.221

Note: The advertising zone rates are applicable to issues in which the advertising portion exceeds 10 percent. Issues containing 10 percent or less advertising will be computed at the nonadvertising rate.

411.332 Per-Piece Rates. The three per-piece rates reflect the levels of presort. The sortations that must be accomplished to qualify for these rates are prescribed in 468.

	Dollars
Level G--Basic. Pieces not qualifying for Level H (5-Digit) or Level I (Carrier-route) rates. (Pieces in 3-digit sacks that are not for unique 3-digit cities, or in SCF, SDC, State or Mixed States sacks.)	$0.125
Level H--5-Digit. Pieces in 5-digit, optional city, or unique 3-digit packages that contain at least six pieces, and that are placed in 5-digit, optional city or unique 3-digit sacks. See Exhibits 122.63a and 122.63b.	$0.089
Level I--Carrier-route. Pieces in carrier-route packages of six or more pieces that are placed in carrier-route or carrier-routes sacks.	$0.068

411.333 Intra-SCF Rate. Pieces for delivery within the SCF of mailing may qualify for the intra-SCF rate. This rate equals the applicable per-piece rate, minus $0.01 per addressed piece. SCFs and the areas served by each are in Exhibits 122.63c and 122.63d.

411.334 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-county per-piece charges. It is determined in the following manner:

a. Divide the nonadvertising percent by 100;

b. Multiply the decimal thus obtained by $0.02 and round the result up to four decimal places;

c. Multiply this rounded nonadvertising factor by the number of addressed pieces mailed at the outside-county per-piece rates in 411.332 and round the result up to two decimal places. For issues or editions in which the nonadvertising portion is 90 percent or greater, it is determined by multiplying $0.02 times the number of addressed pieces mailed at the outside-county per-piece rates in 411.332. This nonadvertising adjustment amount is subtracted from the subtotal of the outside-county per-piece charges to determine the total outside county per-piece postage charge.

411.34 Classroom

411.341 Per-Pound Rates. Rates per pound or fraction of a pound:

	Dollars
Nonadvertising portion	$0.087
Advertising portion:	
Zones 1 and 2	$0.089
Zone 3	$0.094
Zone 4	$0.102
Zone 5	$0.114
Zone 6	$0.126
Zone 7	$0.141
Zone 8	$0.154

411.342 Per-Piece Rate. The per-piece rate is $0.123.

411.343 Intra-SCF Rate. Pieces for delivery within the SCF of mailing may qualify for the intra-SCF rate. This rate equals the applicable per piece rate, minus $0.01 per addressed piece. SCFs and the areas served by each are in Exhibits 122.63c and 122.63d.

411.344 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-county per-piece charges. It is determined in the following manner:

a. Divide the nonadvertising percent by 100;

b. Multiply the decimal thus obtained by $0.04 and round the result up to four decimal places;

c. Multiply this rounded nonadvertising factor by the number of addressed pieces mailed at the outside-county per-piece rates in 411.342, and round the result up to two decimal places. This nonadvertising adjustment amount is subtracted from the subtotal of the outside-county per-piece charges to determine the total outside county per-piece postage charge.

411.35 Science-of-Agriculture

411.351 General. The science-of-agriculture rates apply to copies of publications which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of copies furnished during any 12-month period to subscribers residing in rural areas consists of at least 70 percent of the total number of copies distributed by any means for any purpose.

411.352 Per Pound Rates. Rates per pound or fraction of a pound:

	Dollars
Nonadvertising portion	$0.124
Advertising portion:	
Zones 1 and 2	$0.114
Zone 3	$0.174
Zone 4	$0.191
Zone 5	$0.216
Zone 6	$0.243
Zone 7	$0.275
Zone 8	$0.302

411.353 Per-Piece Rates. The three per-piece rates reflect the levels of presort. The sortations that must be accomplished to qualify for these rates are prescribed in 468.

	Dollars
Level A--Basic. Pieces not qualifying for Level B, (5-Digit) or Level C,(Carrier-route) rates. (Pieces in 3-digit sacks that are not for unique 3-digit cities, or in SCF, SDC, State, or Mixed States sacks.)	$0.160
Level B--5-Digit. Pieces in 5-digit, optional city, or unique 3-digit packages that contain at least six pieces, and that are placed in 5-digit, optional city, or unique 3-digit sacks. See Exhibits 122.63a and 122.63b.	$0.124
Level C--Carrier-route. Pieces in carrier-route packages of six or more pieces that are placed in carrier-route or carrier-routes sacks.	$0.099

411.354 Intra-SCF Rate. Pieces for delivery within the SCF of mailing may qualify for the intra-SCF rate. This rate equals the applicable per-piece rate minus $0.01 per addressed piece. SCFs and the areas served by each are in Exhibits 122.63c and 122.63d.

411.355 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-county per-piece charges. It is determined in the following manner:

a. Divide the nonadvertising percent by 100;

b. Multiply the decimal thus obtained by $0.04 and round the result up to four decimal places;

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c. Multiply this rounded nonadvertising factor by the number of addressed pieces mailed at the outside-county per-piece rates in 411.353, and round the result up to two decimal places. This nonadvertising adjustment amount is subtracted from the subtotal of the outside-county per-piece charges to determine the total outside county per-piece postage charge.

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411.4 Nonsubscriber and Nonrequester Copies Mailed by Publishers and Newsagents

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Note: Effective January 1, 1988, the 10 percent limit on nonsubscriber or nonrequester copies will be computed based upon the total number of copies mailed to subscribers or requesters during the calendar year as opposed to the total weight of copies mailed to subscribers or requesters during the calendar year.

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412 Fees

412.1 Application Fees for Second-Class Privileges. The fees to accompany applications for second-class original entry, reentry, additional entry, or for registration as a newsagent, are:

Kind of Application	Amount
a. Original Entry	$265.00
b. Newsagent Registry	$40.00
c. Reentry (because of change in title, qualification category, frequency of issuance, office of publication, modification or cancellation of an additional entry (see 412.1d) or other reason)	$40.00
d. Additional Entry (Only one fee is collectable for an application for additional entry, even if the additional entry for which application is made modifies another previously approved additional entry.)	$70.00

Note: If an application is not approved, no part of the fee is returned to the applicant. No fee is required to accompany applications for special nonprofit, classroom, or science-of-agriculture rates.

412.2 Fee for Address Correction Service. The fee for address correction service is $0.30 cents per notice issued.

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468 Special Preparation Requirements or Options for Presort-Level Discount-Rated Pieces (Levels B, C, H, I, and K)

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468.4 Combining More Than One Second-Class Publication or Edition.

468.41 Definition. A combined mailing is a mailing in which two or more second-class publications or editions are merged into a single mailing stream, either during production or after finished copies have been produced, and all copies of all the publications or editions are presorted together into packages that achieve the finest level of presort possible for the combined mailing. For example, when three second-class publications will be prepared as a combined mailing and there are two copies of each publication for a single 5-digit ZIP Code destination, a single 5-digit package containing six pieces must be prepared.

468.42 Rate Qualification. More than one second-class publication, or edition of a publication, may be combined to meet the volume per sack or bundle requirement for the presort-level discount piece rates. To qualify for levels B and C piece rates, the copies of each issue or edition in the combined mailing must be mailed to destinations outside the county of publication or be a requester publication. To qualify for the levels H (5-digit) and I (carrier-route) rates, each publication or edition must be authorized the special nonprofit rate. To qualify for the level K (carrier-route) rate, the copies of each publication in the mailing must be eligible for the in-county rates at the post office of mailing.

468.43 Presort Level Documentation. The lists and records provided by publishers in accordance with 468.3 must also declare the total number of addressed pieces and copies of each publication or edition mailed to each carrier route, 5-digit, optional city (see Exhibit 122.63a), and unique three-digit ZIP-Coded city (see Exhibit 122.63b) destination. The publisher must also provide a list, by three-digit ZIP Code prefix, of the number of copies (and pieces) of each publication or edition which qualify for the intra-SCF rate.

Note: For mailings presented on pallets in accordance with 467.2, it is recommended that the above listings be broken down by pallet, and that subtotals by pallet of the number of pieces qualifying for each presort-level rate and the intra-SCF rate be given, in addition to a summary listing of such information for the entire mailing.

468.44 Mailing Statements. Separate mailing statements must be prepared for each publication or edition which is part of the combined mailing. The name and issue date of the publications with which each publication or edition was combined must be noted on, or attached to, the mailing statements. Postal employees must note the publication with which the documentation was filed.

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483 Marked Copy

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483.2 Payment of Advertising Rates on Reading Portions. If desired, the publisher may pay postage at the advertising zone rates on both the advertising and the nonadvertising portions of the publication and waive the nonadvertising adjustment, instead of marking a copy of each issue to show the advertising and nonadvertising portions. When the amount of advertising exceeds 75 percent, the copies submitted to the postmaster must be marked "Advertising over 75 percent." When the amount of advertising does not exceed 75 percent, the copies submitted to the postmaster must be marked, "Advertising not over 75 percent" on the first page. The words "Over 75 percent" or "Not over 75 percent," whichever are applicable, must be entered on the Form 3541 or 3541-A. The word "Waived" must be written in the space provided for the weight of the nonadvertising portion and in the space provided for the nonadvertising adjustment on Forms 3541 or 3541-A.

Note: Requester publications with a notation of "Over 75 percent advertising" are not eligible for second-class rates. Appropriate First-, third-, or fourth-class postage must be paid for copies of such publications.

Exception: This option does not apply if the advertising rate is lower than the rate for nonadvertising.

Chapter 6
Third-Class Mail

610 Rates and Fees

611 Rates

611.1 Single-Piece Rates

611.11 General. The single-piece rates are applied to each piece according to its weight. The single-piece rates are:

0 to 1 oz.	$0.25
Over 1 to 2 ozs.	0.45
Over 2 to 3 ozs.	0.65
Over 3 to 4 ozs.	0.85
Over 4 to 6 ozs.	1.00
Over 6 to 8 ozs.	1.10
Over 8 to 10 ozs.	1.20
Over 10 to 12 ozs.	1.30
Over 12 to 14 ozs.	1.40
Over 14 but less than 16 ozs.	1.50

611.12 Exception. When the postage rate computed at the single-piece third-class rate is higher than *any* fourth-class rate, for which the matter and mailing could qualify except for *weight*, the lower fourth-class rate should be paid.

Example 1: A third-class parcel containing merchandise weighing between 14 and 16 ounces may be mailed at the parcel post rate if that rate is lower.

Example 2: A catalog weighing less than 1 pound, which otherwise meets all prescribed requirements of fourth-class bound printed matter except for weight, may be mailed at the applicable fourth-class bound printed matter rate.

611.2 Bulk Rates. (See Exhibits 611.21a-b and 611.22a-b.)

611.21 Regular Rates. (See Exhibits 611.21a and b.)

611.211 Minimum Per-piece Rate. Pieces which weigh 3.3667 ounces (.21042 pound, 95.446 grams) or less must be paid at the prescribed minimum per-piece rate for the applicable presort level.

611.212 Per-Pound Rate. Pieces which weigh more than 3.3667 ounces (.21042 pound, 95.446 grams) must be paid at the per-pound rate for the applicable presort level. If such pieces are mailed at the basic or 5-digit presort level rates, an additional per-piece charge must also be paid.

611.22 Special Rates for Authorized Nonprofit Organizations. (See Exhibits 611.22a and b.)

611.221 Minimum Per-piece Rate. Pieces which weigh 3.3920 ounces (.21200 pound, 96.163 grams) or less must be paid at the prescribed minimum per-piece rate for the applicable presort level.

611.222 Per-Pound Rate. Pieces which weigh more than 3.3920 ounces (.21200 pound, 96.163 grams) must be paid at the per-pound rate for the applicable presort level. If such pieces are mailed at the basic or 5-digit presort level rates, an additional per-piece charge must also be paid.

611.223 Use. Organizations wishing to use the special rates must be specifically authorized by the Postal Service based on the requirements in 623.

611.3 Computation of Postage—Bulk Rates.

611.31 Minimum Bulk-Rate Postage. The total postage paid on any bulk mailing may not be lower than the amount determined by multiplying the appropriate minimum per-piece rate by the total number of pieces in the mailing. If the total postage computed at pound rates, after adding any adjustment for presort level, is less than the minimum postage charge, postage must be computed at the minimum per-piece rate.

611.32 Individually Metered Pieces—Bulk Rate Postage. To compute postage at the third-class bulk rates for pieces subject to the pound rates of postage:

a. Multiply the weight of the piece (in pounds) by the applicable per-pound rate;

b. Add the applicable per-piece charge (if subject to basic level or 5-digit presort level rates); and

c. Round the sum upward to the next tenth of a cent (or next whole cent if the meter cannot print fractional amounts). The result must be higher than the minimum per-piece charge for the appropriate presort level rate. If the result is lower than the minimum per-piece charge, the minimum per-piece charge must be paid.

611.4 Keys and Identification Devices. Keys and identification devices, such as identification cards or identification tags which are without cover, may be mailed at third-class rates if they bear, contain, or have securely attached, the name and complete post office address of a person, organization, or concern, with instructions to return to such address, and a statement guaranteeing the payment of the postage due upon delivery. The charge is $0.85 for the first 2 ounces or fraction and $0.47 for each additional 2 ounces or fraction thereof.

611.5 Exception. When the postage computed at the bulk third-class rates is higher than a fourth-class rate, for which the matter and the mailing could qualify, except for *weight*, the fourth-class rate may be paid without the necessity of adding needless additional weight. For example, a catalog weighing less than 1 pound which meets all prescribed requirements of fourth-class bound printed matter, except for weight, may be mailed at the fourth-class bound printed-matter rate. All other requirements for bulk third-class mail remain applicable.

612 Fees

612.1 Annual Bulk Mailing Fee. The annual bulk mailing fee is $60.

612.2 Address Correction Service Fee. The fee for address correction service is $0.30 per notice issued.

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Regular Bulk Rates

Presort level:	Per pound or fraction (dollars)	Minimum rate per piece (dollars)
Basic	$0.48 Plus $0.086 per piece	$0.167
Basic ZIP + 4		$0.162
5-digit	$0.48 Plus 0.031 per piece	$0.132
5-digit ZIP + 4		$0.127
ZIP + 4 Barcoded		$0.122
Carrier route	$0.48	$0.101

Pieces which weigh more than 3.3667 ounces, (or 0.21042 pound, or 95.446 grams), and are mailed at the 5-digit or basic rate, are subject to both the per-pound rate and the applicable per-piece rate. Pieces which are equal to or weigh less than 3.3667 ounces, (or 0.21042 pound, or 95.446 grams), must be paid at the prescribed minimum per-piece rate for each presort level.

Exception: When the postage computed at the bulk third-class rate is higher than a fourth-class rate for which the matter and the mailing could qualify except for weight, the fourth-class rate may be paid without the necessity of adding needless additional weight. Example: A catalog weighing less than 1 pound, which meets all prescribed requirements for fourth-class bound printed matter, except for weight, may be mailed at the fourth-class bound printed matter rate. All other requirements of bulk third-class remain applicable.

Exhibit 611.21a, Third-Class (Regular Bulk Rates)

Special Bulk Rates for Authorized Nonprofit Organization Only–See 623.

Presort Level	Rate Per Pound or Fraction (dollars)	Minimum Rate Per Piece (dollars)
Basic	$0.25 Plus 0.031 per piece	$0.084
Basic ZIP + 4		$0.079
5-digit	$0.25 Plus $0.023 per piece	$0.076
5-digit ZIP + 4		$0.071
ZIP + 4 Barcoded		$0.066
Carrier Route	$0.25	$0.053

Pieces which weigh more than 3.3920 ounces (or 0.21200 pound, or 96.163 grams), and are mailed at the 5-digit or basic rate, are subject to both the per-pound rate and the applicable per-piece rate. Pieces which are equal to or weigh less than 3.3920 ounces, (or 0.21200 pound, or 96.163 grams), must be paid at the prescribed minimum per-piece rate for each presort level.

Exception: When the postage computed at the bulk third-class rate is higher than a fourth-class rate for which the matter and the mailing could qualify except for weight, the fourth-class rate may be paid without the necessity of adding needless additional weight. Example: A catalog weighing less than 1 pound, which meets all prescribed requirements for fourth-class bound printed matter, except for weight, may be mailed at the fourth-class bound printed matter rate. All other requirements for bulk third-class mail remain applicable.

Exhibit 611.22a, Third-Class (Special Bulk Rates)

Weight (Oz.)	Basic Rate	5-Digit Rate	CAR-RT Rate
(All Weights) 0 - 3.3667	$.167	$.132	$.101
3.4	$.168	$.133	$.102
3.5	.171	.136	.105
3.6	.174	.139	.108
3.7	.177	.142	.111
3.8	.180	.145	.114
3.9	.183	.148	.117
4.0	.186	.151	.120
4.1	.189	.154	.123
4.2	.192	.157	.126
4.3	.195	.160	.129
4.4	.198	.163	.132
4.5	.201	.166	.135
4.6	.204	.169	.138
4.7	.207	.172	.141
4.8	.210	.175	.144
4.9	.213	.178	.147
5.0	.216	.181	.150
5.1	.219	.184	.153
5.2	.222	.187	.156
5.3	.225	.190	.159
5.4	.228	.193	.162
5.5	.231	.196	.165
5.6	.234	.199	.168
5.7	.237	.202	.171
5.8	.240	.205	.174
5.9	.243	.208	.177
6.0	.246	.211	.180
6.1	.249	.214	.183
6.2	.252	.217	.186
6.3	.255	.220	.189
6.4	.258	.223	.192
6.5	.261	.226	.195
6.6	.264	.229	.198
6.7	.267	.232	.201
6.8	.270	.235	.204
6.9	.273	.238	.207
7.0	.276	.241	.210
7.1	.279	.244	.213
7.2	.282	.247	.216
7.3	.285	.250	.219
7.4	.288	.253	.222
7.5	.291	.256	.225
7.6	.294	.259	.228
7.7	.297	.262	.231
7.8	.300	.265	.234
7.9	.303	.268	.237
8.0	.306	.271	.240
8.1	.309	.274	.243
8.2	.312	.277	.246
8.3	.315	.280	.249
8.4	.318	.283	.252
8.5	.321	.286	.255
8.6	.324	.289	.258
8.7	.327	.292	.261
8.8	.330	.295	.264
8.9	.333	.298	.267
9.0	.336	.301	.270
9.1	.339	.304	.273
9.2	.342	.307	.276
9.3	.345	.310	.279
9.4	.348	.313	.282
9.5	.351	.316	.285
9.6	$.354	$.319	$.288
9.7	.357	.322	.291
9.8	.360	.325	.294
9.9	.363	.328	.297
10.0	.366	.331	.300
10.1	.369	.334	.303
10.2	.372	.337	.306
10.3	.375	.340	.309
10.4	.378	.343	.312
10.5	.381	.346	.315
10.6	.384	.349	.318
10.7	.387	.352	.321
10.8	.390	.355	.324
10.9	.393	.358	.327
11.0	.396	.361	.330
11.1	.399	.364	.333
11.2	.402	.367	.336
11.3	.405	.370	.339
11.4	.408	.373	.342
11.5	.411	.376	.345
11.6	.414	.379	.348
11.7	.417	.382	.351
11.8	.420	.385	.354
11.9	.423	.388	.357
12.0	.426	.391	.360
12.1	.429	.394	.363
12.2	.432	.397	.366
12.3	.435	.400	.369
12.4	.438	.403	.372
12.5	.441	.406	.375
12.6	.444	.409	.378
12.7	.447	.412	.381
12.8	.450	.415	.384
12.9	.453	.418	.387
13.0	.456	.421	.390
13.1	.459	.424	.393
13.2	.462	.427	.396
13.3	.465	.430	.399
13.4	.468	.433	.402
13.5	.471	.436	.405
13.6	.474	.439	.408
13.7	.477	.442	.411
13.8	.480	.445	.414
13.9	.483	.448	.417
14.0	.486	.451	.420
14.1	.489	.454	.423
14.2	.492	.457	.426
14.3	.495	.460	.429
14.4	.498	.463	.432
14.5	.501	.466	.435
14.6	.504	.469	.438
14.7	.507	.472	.441
14.8	.510	.475	.444
14.9	.513	.478	.447
15.0	.516	.481	.450
15.1	.519	.484	.453
15.2	.522	.487	.456
15.3	.525	.490	.459
15.4	.528	.493	.462
15.5	.531	.496	.465
15.6	.534	.499	.468
15.7	.537	.502	.471
15.8	.540	.505	.474
15.9	.543	.508	.477

Exhibit 611.31b, Sample Postage Charges for Individually Metered Mail–Regular Bulk Third-Class Rates
(Postage for pieces of intermediate weights not listed may be computed as described in 611.32.)

Weight (Oz.)	Basic Rate	5-Digit Rate	CAR-RT Rate
(All Weights) 0 - 3.3920	$.084	$.076	$.053
3.4	$.085	$.077	$.054
3.5	.086	.078	.055
3.6	.088	.080	.057
3.7	.089	.081	.058
3.8	.091	.083	.060
3.9	.092	.084	.061
4.0	.094	.086	.063
4.1	.095	.088	.065
4.2	.097	.089	.066
4.3	.099	.091	.068
4.4	.100	.092	.069
4.5	.102	.094	.071
4.6	.103	.095	.072
4.7	.105	.097	.074
4.8	.106	.098	.075
4.9	.108	.100	.077
5.0	.110	.102	.079
5.1	.111	.103	.080
5.2	.113	.105	.082
5.3	.114	.106	.083
5.4	.116	.108	.085
5.5	.117	.109	.086
5.6	.119	.111	.088
5.7	.121	.113	.090
5.8	.122	.114	.091
5.9	.124	.116	.093
6.0	.125	.117	.094
6.1	.127	.119	.096
6.2	.128	.120	.097
6.3	.130	.122	.099
6.4	.131	.123	.100
6.5	.133	.125	.102
6.6	.135	.127	.104
6.7	.136	.128	.105
6.8	.138	.130	.107
6.9	.139	.131	.108
7.0	.141	.133	.110
7.1	.142	.134	.111
7.2	.144	.136	.113
7.3	.146	.138	.115
7.4	.147	.139	.116
7.5	.149	.141	.118
7.6	.150	.142	.119
7.7	.152	.144	.121
7.8	.153	.145	.122
7.9	.155	.147	.124
8.0	.156	.148	.125
8.1	.158	.150	.127
8.2	.160	.152	.129
8.3	.161	.153	.130
8.4	.163	.155	.132
8.5	.164	.156	.133
8.6	.166	.158	.135
8.7	.167	.159	.136
8.8	.169	.161	.138
8.9	.171	.163	.140
9.0	.172	.164	.141
9.1	.174	.166	.143
9.2	.175	.167	.144
9.3	.177	.169	.146
9.4	.178	.170	.147
9.5	.180	.172	.149
9.6	$.181	$.173	$.150
9.7	.183	.175	.152
9.8	.185	.177	.154
9.9	.186	.178	.155
10.0	.188	.180	.157
10.1	.189	.181	.158
10.2	.191	.183	.160
10.3	.192	.184	.161
10.4	.194	.186	.163
10.5	.196	.188	.165
10.6	.197	.189	.166
10.7	.199	.191	.168
10.8	.200	.192	.169
10.9	.202	.194	.171
11.0	.203	.195	.172
11.1	.205	.197	.174
11.2	.206	.198	.175
11.3	.208	.200	.177
11.4	.210	.202	.179
11.5	.211	.203	.180
11.6	.213	.205	.182
11.7	.214	.206	.183
11.8	.216	.208	.185
11.9	.217	.209	.186
12.0	.219	.211	.188
12.1	.221	.213	.190
12.2	.222	.214	.191
12.3	.224	.216	.193
12.4	.225	.217	.194
12.5	.227	.219	.196
12.6	.228	.220	.197
12.7	.230	.222	.199
12.8	.231	.223	.200
12.9	.233	.225	.202
13.0	.235	.227	.204
13.1	.236	.228	.205
13.2	.238	.230	.207
13.3	.239	.231	.208
13.4	.241	.233	.210
13.5	.242	.234	.211
13.6	.244	.236	.213
13.7	.246	.238	.215
13.8	.247	.239	.216
13.9	.249	.241	.218
14.0	.250	.242	.219
14.1	.252	.244	.221
14.2	.253	.245	.222
14.3	.255	.247	.224
14.4	.256	.248	.225
14.5	.258	.250	.227
14.6	.260	.252	.229
14.7	.261	.253	.230
14.8	.263	.255	.232
14.9	.264	.256	.233
15.0	.266	.258	.235
15.1	.267	.259	.236
15.2	.269	.261	.238
15.3	.271	.263	.240
15.4	.272	.264	.241
15.5	.274	.266	.243
15.6	.275	.267	.244
15.7	.277	.269	.246
15.8	.278	.270	.247
15.9	.280	.272	.249

Exhibit 611.22b—Sample Postage Charges for Individually Metered Mail Special Bulk Third-Class Rates

(Postage for pieces of intermediate weights not listed may be computed as described in 611.32.)

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622 Third-Class Bulk Mail

622.1 Eligibility

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622.12 5-Digit Presort Level

a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50 pounds of qualifying mail presorted to 5-digit destinations. Each piece must be part of a package of 10 or more pieces to the same 5-digit ZIP Code destination and the packages must be placed in a 5-digit, unique 3-digit city or 3-digit sack as follows:

(1) 5-digit sacks must contain a minimum of 125 pieces or 15 pounds of mail.

Exception: 5-digit sacks containing 10 or more pounds of mail which are part of a machinable parcel mailing prepared in accordance with 667.2, will qualify for the 5-digit presort level rate.

(2) For 3-digit sacks (both unique and non-unique), mailers must place packages of 10 or more pieces for a 5-digit destination in a 3-digit sack containing only 5-digit packages of pieces having the same 3-digit ZIP Code prefix, under the following criteria:

(a) Each sack must contain at least 125 pieces or 15 pounds of qualifying mail, (5-digit packages of 10 or more pieces);

(b) 3-digit packages must NOT be included in the sack; and

(c) 125 pieces or 15 pounds of mail for a single 5-digit ZIP Code within the 3-digit ZIP Code area must be sacked separately.

Note.—Sacks containing fewer than 125 pieces or less than 15 pounds of mail will NOT be accepted.

b. Residual. Residual pieces (those not part of a group of 10 or more pieces to a particular 5-digit ZIP Code or not placed in a 5-digit or 3-digit sack that contains at least 125 pieces or 15 pounds of 5-digit packages) may be included in a 5-digit presort level rate mailing, subject to the following provisions:

(1) Residual pieces do not count toward the minimum quantity requirements for the 5-digit presort level rate;

(2) Residual pieces are not eligible for the 5-digit presort level rate and must have postage paid at the appropriate third-class basic level bulk rate; and

(3) Residual pieces must be prepared in accordance with the applicable provisions of 667.12 and 667.13.

c. Listing Required

(1) When a third-class 5-digit presort level rate mailing includes pieces to be mailed at the basic level rate, the mailer is required to provide the post office with a list of the number of qualifying pieces to each 5-digit ZIP Code destination, except as found in 622.12c(2).

(2) A list of the number of qualifying pieces mailed to each 5-digit ZIP Code destination is not required when all sacks containing identical-weight third-class 5-digit presort level rate pieces are physically separated at the time of mailing from all sacks containing identical-weight pieces to be mailed at the basic level rate.

READING THE ZIP + 4 BARCODE

The ZIP + 4 barcode consists of the nine digits plus a correction character used by the barcode reader to identify reading errors. The barcode consists of 52 bars as illustrated. Each of the 10 digits contained between the frame bars consists of 2 long bars (read as 1's) and 3 short bars (read as 0's).

Reading and understanding the bar code is simple. There are 10 combinations of 5 bars, each consisting of 2 long (1's) and 3 short (0's) bars. The digits 0 through 9 have been assigned to these combinations:

0=11000 1=00011 2=00101 3=00110 4=01001 5=01010 6=01100 7=10001 8=10010 9=10100

Within the group of 5 bars, each position has a different value: from left to right 7, 4, 2, 1, and 0. Addition of the values in the two positions occupied by 1 bars gives the value of the combination, except in the case of 11000 which totals 11 and has been assigned as zero.

In addition to the ZIP + 4 Code, each barcode contains a correction digit. This digit appears in the last position of the barcode. Its purpose is to ensure that the machine applying the barcode is working properly. The sum of the 10 digits in the barcode (the 9-digit ZIP + 4 Code plus the correction digit) must always be a multiple of 10. The value of the correction digit is therefore determined by adding the numbers in the 9-digit ZIP + 4 Code, and then determining what single-digit number must be added to that sum to make the total a multiple of 10 (and with a zero). In the Example, the sum of the nine digits of the ZIP + 4 Code is 45. Using a correction character of 5 makes the sum of all 10 characters 50, a multiple of 10. If the sum of the digits is not a multiple of 10, an error has been made and the barcode must not be used.

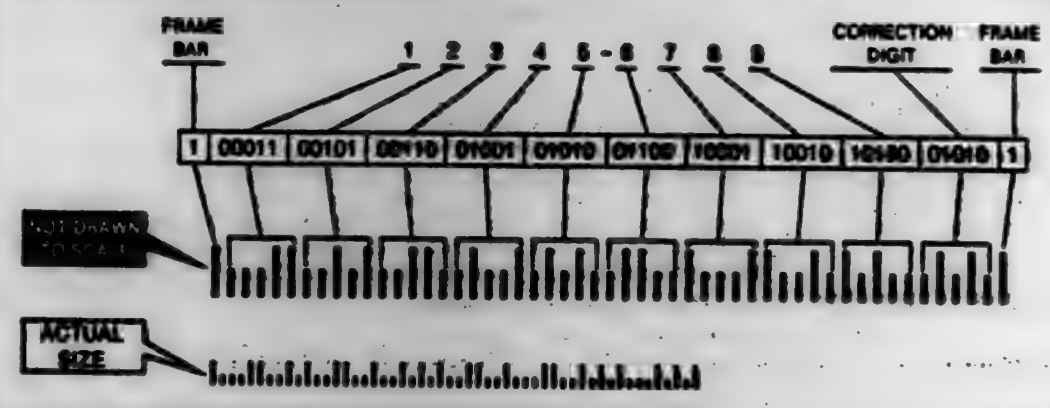

Exhibit 622.163b, ZIP + 4 Barcode

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622.13 Basic Level. Mailings of at least 200 pieces or 50 pounds, presorted in accordance with 667.1 or 667.2 are eligible for the third-class basic level bulk rates.

622.14 Basic ZIP + 4 Rate.

622.141 General. Basic ZIP + 4 rate mailings must meet the requirements in 622.142 through 622.145. Only letter-size pieces that bear a correct ZIP + 4 code and meet the requirements of 622.144 may qualify for the basic ZIP + 4 rate. Pieces in a basic ZIP + 4 mailing that bear only a correct 5-digit ZIP code are subject to the basic level rate.

Note: Carrier-route presort level rate pieces must not be included in a basic ZIP + 4 rate mailing.

622.142 Minimum Quantity. Each basic ZIP + 4 rate mailing must consist of at least 200 letter-size pieces or 50 pounds of letter-size pieces that each bear a correct ZIP + 4 code and otherwise qualify for the basic ZIP + 4 rate.

622.143 Requirements for at least 85 Percent of the Pieces in Each Mailing. At least 85 percent of the total pieces in the mailing must bear a correct ZIP + 4 code. Pieces not bearing a correct ZIP + 4 code must bear a correct 5-digit ZIP Code. Only pieces that bear a correct ZIP + 4 code in the address qualify for the basic ZIP + 4 rate.

Exception: The 85 percent ZIP + 4 code requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 622.144f(2).

Note: In all cases, a mailing must include at least 200 pieces or 50 pounds of pieces that contain a correct ZIP + 4 code and otherwise qualify for the third-class basic ZIP + 4 rate as required in 622.142.

622.144 Requirements for All Pieces in the Mailing (Qualifying and Nonqualifying).

a. Size Requirements. Each piece in the mailing must meet the following size requirements:

(1) Its length must be at least 5 inches and not more than 11-1/2 inches;

(2) Its height must be at least 3-1/2 inches and not more than 6-1/8 inches;

(3) Its thickness must be at least .007 inch and not more than 1/4 inch; and

(4) Its length divided by height must fall between 1.3 and 2.5.

b. Barcode Clear Zone. Each piece must contain a barcode clear zone according to the following specifications. No printing or markings whatsoever, except for a properly prepared barcode in accordance with 622.165, can be placed within an imaginary rectangle on the front of the mailpiece formed by the following boundaries:

(1) 5/8 inch from the bottom edge;

(2) 4-1/2 inches from the right edge;

(3) The bottom edge; and

(4) The right edge.

Note: Envelopes with a window through which a barcode printed on the insert will show, may be used only when the insert actually contains the ZIP + 4 barcode and the envelope and the barcode are prepared in accordance with 622.165h(1)(b). If a properly prepared barcode does not show through the window insert placed in such envelopes, the piece will not be eligible for ZIP + 4 rates.

c. OCR Readability.

(1) Mandatory Requirements. Each piece in the mailing must meet the following requirements:

(a) The entire city/state/ZIP + 4 code line of the address must be visible and must be located within an imaginary rectangle, (the OCR Read area), on the front of the mailpiece, formed by the following boundaries:

1) 1 inch from the left edge;

2) 1 inch from the right edge;

3) 5/8 inch from the bottom edge (bottom line of rectangle); and

4) 2-1/4 inches from the bottom edge (top line of rectangle).

(b) No extraneous printing or markings (other than the address) shall be placed within the OCR read area below the delivery address line (e.g. the street address or post office box number);

(c) The address must be machine-printed with uniform character size and line spacing; and

(d) A reasonable degree of color contrast must be maintained between the address and the background of the mailpiece: Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colors and reverse printing are not permitted.

Note: The Postal Service may treat as unacceptable any mailpiece with color combinations which do not provide a print reflectance difference of at least 40 percent, measured at a wavelength of 650 nanometers.

(2) Nonmandatory Guidelines. In order to ensure the highest degree of address readability, mailers are encouraged to conform with as many of the following guidelines as possible:

(a) Maintain a uniform left margin for the name and address;

(b) Use the standard two-letter state abbreviation;

(c) Do not use italic, artistic, cyrillic, and script-like fonts. Characters or numbers should not touch or overlap within a word or the ZIP + 4 code;

(d) Use uppercase characters;

(e) Use line spacing of six lines per inch;

(f) Use a character pitch in the range of 7 to 12 characters per inch; (**Note:** Total character space may be conserved by eliminating punctuation in the address);

(g) Use a uniform character height in the range of .08 (or 1.28/16 or 2.56/32 or 5.12/64) of an inch to .20 (or 3.2/16 or 6.4/32 or 12.8/64) of an inch;

(h) Use a character height-to-width ratio of 1.1:1 to 1.7:1;

(i) Use one to two character spaces between words and between the last character of the state name or abbreviation and the first digit of the ZIP + 4 code;

(j) Use a space between address lines no less than .025 of an inch (1 millimeter). The space is the vertical distance from the bottom-most point of either an uppercase or lowercase character to the highest point reached by the tallest character in the line below; and

(k) Maintain a character and line skew of the address relative to the bottom edge of the mailpiece of no more than ± 5 degrees.

(3) Exception. Pieces prepared with a ZIP + 4 barcode in accordance with 622.145 and 622.165 need not meet the OCR readability requirements in this section.

d. Presort. All pieces in the mailing (basic ZIP + 4 rate and basic presort level rate) must be presorted together to the finest extent possible in accordance with 667.1, except that, on the contents line of each sack label, the characters "3C" followed by the processing category must be replaced with "3C ZIP + 4."

Note: The state must also be shown on the contents line of SDC and state sacks, and the words MIXED STATES must also be shown on the contents line of mixed states sacks, as required by 667.132e, f, and g.

e. Marking. Each piece in the mailing must bear an identifying marking as required in 662.4.

f. Documentation.

(1) Documentation Submitted With Each Mailing. Except as provided in 622.144f(2), anytime less than 100 percent of the pieces in a mailing bear a ZIP + 4 code in the address, the mailing must be accompanied by a list of the number of pieces containing a ZIP + 4 code and the number of pieces without a ZIP + 4 code, by:

(a) 5-digit ZIP Code for pieces packaged to 5-digits and pieces packaged to optional city destinations; and

(b) 3-digit ZIP Code for other separations.

In addition, for each ZIP Code line entry on the list, a cumulative total of the number of pieces in the mailing must be shown. This is the total of all pieces listed on preceding lines plus the pieces for that line entry. A summary showing the total number of pieces with a ZIP + 4 code and the total number of pieces with a 5-digit ZIP Code must also be shown on the list. The last entry in the cumulative total column will show the total number of pieces in the mailing. If all pieces are metered at the basic ZIP + 4 rate, the total amount of postage due for pieces not containing a ZIP + 4 code must also be shown. (Multiply the number of pieces by the difference between the basic ZIP + 4 rate of postage and the basic level rate of postage). If the mailing is paid by permit imprint, show the the postage charges for the basic ZIP + 4 qualifying pieces and the postage charges for the basic level rate pieces.

(2) Documentation Submitted Based on a Mailing List or Cycle. When pieces for a mailing list or mailing cycle, as defined by the mailer, are mailed over a period of more than one day, but not exceeding one week (seven consecutive days), the mailer may submit documentation based on the mailing list or mailing cycle to prove that the 85 percent requirement has been met, and to show either the amount of postage due for mail metered at the basic ZIP + 4 rate, or the total amount of postage to be deducted from the mailer's permit imprint account. The documentation for the entire list or cycle must, however, accompany the mailing statement submitted with the first mailing made from the list or cycle. Under this procedure, the mailer must indicate, on each mailing statement submitted, the mailing list or mailing cycle to which the pieces belong. The final mailing statement for the mailing list or cycle must accurately account for the full list or cycle. (The sum of the pieces reported on all the mailing statements submitted for the mailing list or cycle must equal the totals shown on the documentation submitted.) Under this procedure, a mailing may contain only pieces for a single mailing list or mailing cycle. If pieces from two different lists or cycles are submitted on the same day, separate mailings must be prepared, corresponding separate mailing statements must be submitted for the pieces for each list, and the mailing from the new list or cycle must be accompanied by the documentation for that list or cycle.

622.145 Pieces Prepared With ZIP + 4 Barcodes. Barcodes representing the correct ZIP + 4 code for the address shown on each piece, prepared in accordance with 622.165, may appear on pieces in a basic ZIP + 4 mailing. Pieces bearing a ZIP + 4 barcode need not meet the OCR readability requirements in 622.144c to qualify for basic ZIP + 4 rates. Pieces bearing a ZIP + 4 barcode must however, bear a numeric ZIP + 4 code in the address to qualify for the basic ZIP + 4 rates. Pieces that bear a ZIP + 4 barcode but not a numeric ZIP + 4 code must bear a correct 5-digit ZIP Code in the address.

622.146 5-Digit Barcodes Prohibited. Pieces bearing a 5-digit barcode must not be included in a third-class Basic ZIP + 4 rate mailing.

622.15 5-Digit ZIP + 4 Rates.

622.151 General. 5-digit ZIP + 4 rate mailings must meet the requirements in 622.152 through 622.155. Only letter-size pieces that bear a correct ZIP + 4 code, and meet the sortation requirements of 622.154d(1) (are part of a package of 10 or more pieces to the same 5-digit ZIP Code destination, and are placed in a 5-digit or 3-digit sack that contains at least 125 pieces or 15 pounds of mail), may qualify for the 5-digit ZIP + 4 rate. Pieces that bear a 5-digit ZIP Code, and are sorted in accordance with 622.154d(1), may qualify for the 5-digit presort level rate. Residual pieces (see 622.154d(2)) that bear a ZIP + 4 code may qualify for the basic ZIP + 4 rate. Residual pieces that bear a 5-digit ZIP Code may qualify for the basic presort level rate.

Note: Carrier-route presort level rate pieces may not be included in a 5-digit ZIP + 4 rate mailing.

622.152 Minimum Quantity. Each mailing must consist of at least 200 letter-size pieces or 50 pounds of letter-size pieces that bear a correct ZIP + 4 code and otherwise qualify for the 5-digit ZIP + 4 rate.

622.153 Requirements for at Least 85 Percent of the Pieces in Each Mailing. At least 85 percent of the total pieces in the mailing must bear a correct ZIP + 4 code. Pieces not bearing a correct ZIP + 4 code must bear a 5-digit ZIP Code.

Exception: The 85 percent ZIP + 4 code requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 622.154f(3).

Note: In all mailings, there must be at least 200 pieces or 50 pounds of pieces that contain the correct ZIP + 4 code and otherwise qualify for the 5-digit ZIP + 4 rate as required in 622.152.

622.154 Requirements for All Pieces in the Mailing.

a. Size Requirements. Each piece in the mailing must meet the size requirements in 622.144a.

b. Barcode Clear Zone. Each piece in the mailing must contain a barcode clear zone in accordance with the requirements in 622.144b.

c. OCR Readability. Each piece in the mailing must meet the OCR readability requirements prescribed in 622.144c, except for pieces bearing ZIP + 4 barcodes in accordance with 622.155 and 622.165.

d. Presort.

(1) Pieces Qualifying for 5-Digit ZIP + 4 and 5-Digit Presort Level Rates. All pieces in the mailing (with and without a ZIP + 4 code) must be presorted together to the finest extent possible in accordance with 667.4, except that, the contents line of 5-digit sacks must show "3C ZIP + 4"; and the contents line of 3-digit sacks must show "3C Z+4 MXD 5-DG PKGS". Pieces remaining after sortation in accordance with 667.4 has been performed are residual pieces and do not qualify for 5-digit ZIP + 4 or 5-digit presort level rates. They may, however, be included in a 5-digit ZIP + 4 mailing in accordance with 622.154d(2) below. Alternatively, they may be presented as a separate basic ZIP + 4 or basic presort level rate mailing.

(2) Residual pieces. All pieces remaining after sortation in accordance with 622.154d(1) has been performed (residual pieces) must be sorted in accordance with 667.1, except that, on the contents line of each sack label, the letters "3C" followed by the description of processing category, must be replaced with "3C ZIP + 4."

Note: Residual pieces do not count towards the minimum quantity requirements in 622.152. However, residual pieces bearing a correct ZIP + 4 code do count towards the 85 percent ZIP + 4 Code requirement in 622.153. Residual pieces may qualify for the basic ZIP + 4 or basic level presort rate, as appropriate.

e. Marking. Each piece must bear identifying markings as required in 662.5.

f. Documentation for 5-Digit ZIP + 4 Rate Mailings.

(1) Documentation Submitted With Each Mailing. Except as provided in 622.154f(2) or (3), each mailing must be accompanied by the following documentation:

(a) Pieces Qualifying for 5-Digit ZIP + 4 and 5-Digit Presort Level Rates. The mailer must list, for each 5-digit ZIP Code destination, how many pieces bear a correct ZIP + 4 code and how many bear only a correct 5-digit ZIP Code. In addition, for each 5-digit ZIP Code line entry on the list, a cumulative total of the number of pieces in the mailing must be shown. This is the total of all the pieces listed on preceding lines plus the

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pieces for that 5-digit line entry. A summary of the total number of ZIP + 4 coded pieces, the total number of 5-digit coded pieces, and the total number of all pieces in the 5-digit rated portion of the mailing, must be shown. (The last entry in the cumulative total section will show the total number of pieces in the 5-digit rated portion of the mailing.)

(b) Pieces Qualifying for Basic ZIP + 4 and Basic Level Rates. The mailer must list the number of pieces bearing a correct ZIP + 4 code and the number of pieces without a ZIP + 4 code by 5-digit ZIP Code destinations for pieces packaged to 5-digit and optional city destinations, and by 3-digit ZIP Code prefix for pieces packaged to other destinations. In addition, for each ZIP Code line entry on this portion of the list, a cumulative total of the number of pieces in the mailing, must be shown. This is the total of all pieces listed on preceding lines plus the pieces for that line entry. A summary of the total number of ZIP + 4 coded pieces, the total number of 5-digit ZIP Coded pieces, and the total number of all pieces in the residual portion, must be shown. (The last entry in the cumulative total column will show the total number of pieces in the residual portion.)

(c) Totals. Summarize the total number of pieces in each rate category in the mailing. If metered postage at the 5-Digit ZIP + 4 rate is affixed to each piece in the mailing, also show the additional postage due for each rate category (except for the 5-Digit ZIP + 4 pieces), and the total postage due for the mailing. If postage is paid by permit imprint, show the total postage charges for the pieces in each rate category in the mailing, and the total postage charges. Also summarize, for the entire mailing, the total number of pieces that bear a ZIP + 4 code, the total number of pieces that bear a 5-digit ZIP Code, and the total number of all pieces in the mailing.

(2) Mailings Requiring No Documentation. The documentation required in 622.154f(1) is not required if:

(a) All pieces in the mailing bear a ZIP + 4 code, and each piece in the mailing has postage affixed at the rate for which it qualifies; or

(b) All pieces in the mailing bear a ZIP + 4 code, all the pieces in the mailing are of identical size and weight, and the residual portion of the mailing (if any) is physically separated from pieces qualifying for the 5-digit ZIP + 4 rate.

Note: Documentation is required any time that fewer than 100 percent of the pieces bear a ZIP + 4 code, regardless of the method of postage payment.

(3) Documentation Submitted Based on a Mailing List or Cycle. When pieces for a mailing list or mailing cycle, as defined by the mailer, are mailed over a period of more than one day, but not exceeding one week (seven consecutive days), the mailer may submit documentation based on the mailing list or mailing cycle to prove that the 85 percent requirement has been met, and to show either the amount of postage due for mail metered at the 5-Digit ZIP + 4 rate, or the total amount of postage to be deducted from the mailer's permit imprint account. The documentation for the entire list or cycle must, however, accompany the mailing statement submitted with the first mailing made from the list or cycle. Under this procedure, the mailer must indicate, on each mailing statement submitted, the mailing list or mailing cycle to which the pieces belong. The final mailing statement for the mailing list or cycle must accurately account for the full list or cycle. (The sum of the pieces reported on all the mailing statements submitted for the mailing list or cycle must equal the totals shown on the documentation submitted.) Under this procedure, a mailing may contain only pieces for a single mailing list or mailing cycle. If pieces from two different lists or cycles are submitted on the same day, separate mailings must be prepared, corresponding separate mailing statements must be submitted for the pieces for each list, and the mailing from the new list or cycle must be accompanied by the documentation for that list or cycle.

622.155 Pieces Prepared With ZIP + 4 Barcodes. Barcodes representing the correct ZIP + 4 code for the address shown on each piece, prepared in accordance with 622.165, may appear on pieces in a 5-digit ZIP + 4 mailing. Pieces bearing a ZIP + 4 barcode need not meet the OCR readability requirements in 622.154c to qualify for the 5-digit ZIP + 4 or basic ZIP + 4 rates. Pieces bearing a ZIP + 4 barcode must however, bear a numeric ZIP + 4 code in the address to qualify for the 5-digit or basic ZIP + 4 rates.

622.156 5-Digit Barcodes Prohibited. Pieces bearing a 5-digit barcode must not be included in a third-class 5-digit ZIP + 4 rate mailing.

622.16 ZIP + 4 Barcoded Rate.

622.161 General. Third-class ZIP + 4 Barcoded rate mailings must meet the requirements in 622.162 through 622.165. Only letter-size pieces that bear a correct ZIP + 4 barcode prepared in accordance with 622.165, and meet the sortation requirements of 622.164d(1) (are part of a package of 10 or more pieces to the same 5-digit ZIP Code destination, and are placed in a 5-digit or 3-digit sack that contains at least 125 pieces or 15 pounds of mail), may qualify for the third-class ZIP + 4 Barcoded rate. Pieces sorted in accordance with 622.164d(1), may qualify for:

a. The ZIP + 4 Barcoded rate if they bear a ZIP + 4 barcode prepared in accordance with 622.165;

b. The 5-digit ZIP + 4 rate if the pieces do not bear a ZIP + 4 barcode but contain a correct ZIP + 4 code in the address and meet the barcode clear zone and OCR readability requirements of 622.144b and 622.144c;

c. The 5-digit presort level rate if the pieces do not bear a ZIP + 4 barcode and:

(1) They contain the 5-digit ZIP Code in the address; or

(2) They contain a correct ZIP + 4 code in the address but do not meet the OCR readability and barcode clear zone requirements of 622.144b and 622.144c necessary to qualify for the 5-Digit ZIP + 4 rate.

Residual pieces sorted in accordance with 622.164d(2), may qualify for:

a. The basic ZIP + 4 rate if they bear a ZIP + 4 barcode prepared in accordance with 622.165, or if they bear a correct ZIP + 4 code and meet the barcode clear zone and OCR readability requirements in 622.144b and 622.144c; or.

b. The basic presort level rate if they do not bear a ZIP + 4 barcode and:

(1) They bear only a 5-digit ZIP Code; or,

(2) They bear a ZIP + 4 code, but do not meet the OCR readability and barcode clear zone requirements in 622.144b and 622.144c that are necessary to qualify for the basic ZIP + 4 rates.

Note: Carrier-route presort level rate pieces must not be included in a third-class ZIP + 4 barcoded rate mailing.

622.162 Minimum Quantity. Each mailing must consist of at least 200 letter-size pieces or 50 pounds of letter-size pieces that bear a correct ZIP + 4 barcode and otherwise qualify for the third-class ZIP + 4 Barcode rate.

622.163 Requirements for at Least 85 Percent of the Pieces in Each Mailing. At least 85 percent of the total pieces in the mailing must bear a correct ZIP + 4 barcode in accordance with 622.165. All pieces in the mailing must also bear either a correct ZIP + 4 code or correct 5-digit ZIP Code in the address. This 85 percent requirement is applied to the total number of pieces in all presort levels in the mailing, regardless of the rate claimed for an individual piece.

Exception: The 85 percent ZIP + 4 barcode requirement may be applied to a mailing list or cycle rather than an individual mailing under the conditions in 622.164f(5).

Note: All mailings must include at least 200 pieces or 50 pounds of pieces that bear a correct ZIP + 4 barcode and otherwise qualify for the ZIP + 4 barcode rate as required in 622.162.

622.164 Requirements for All Pieces in the Mailing.

a. Size Requirements. Each piece in the mailing must meet the size requirements in 622.144a.

b. ZIP Codes. Each piece, whether or not it bears a ZIP + 4 barcode, must bear either the correct ZIP + 4 code or the correct 5-digit ZIP Code in the address.

c. 5-Digit Barcodes Prohibited. Pieces bearing a 5-digit barcode must not be included in a ZIP + 4 Barcoded rate mailing.

d. Presort.

(1) Pieces Qualifying for ZIP + 4 Barcode, 5-Digit ZIP + 4 and 5-Digit Presort Level Rates. All pieces in the mailing (ZIP + 4 barcoded, ZIP + 4 coded, 5-digit ZIP Coded, and permissible combinations) must be presorted together to the finest extent possible in accordance with 667.4, except that, the contents line of 5-digit sacks must show "3C ZIP + 4 BARCODED"; and the contents line of 3-digit sacks must show "3C Z+4 BRCDED MXD 5-DG PKG." In addition, it is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of each sack label. The red Label 9 should be affixed in a manner that will not interfere with the ability to read the destination or contents lines of the sack label.

Pieces remaining after sortation in accordance with 667.4 has been performed are residual pieces and do not qualify for ZIP + 4 Barcoded, 5-digit ZIP + 4, or 5-digit presort level rates. They may however, be included in a ZIP + 4 Barcoded mailing in accordance with 622.154d(2). Alternatively, they may be prepared as a separate mailing.

(2) Residual pieces. All pieces remaining after sortation in accordance with 622.164d(1) has been performed (residual pieces) must be sorted in accordance with 667.1, except that, on the contents line of sack labels, the characters "3C" followed by the processing category, must be replaced with "3C ZIP + 4 BARCODED." It is recommended that a pressure sensitive red Label 9 be affixed to the lower right portion of each sack label in a manner that will not interfere with the ability to read the destination or contents lines. The contents line for Mixed States sacks may be shown as 3C Z+4 BARCODED-MXD STS.

Note: Residual pieces do not count towards the minimum quantity requirements in 622.162. However, residual pieces bearing a correct ZIP + 4 barcode prepared in accordance with 622.165, do count towards the 85 percent ZIP + 4 barcode requirement in 622.163. Residual pieces may qualify for the basic ZIP + 4 or basic level presort rate, as appropriate.

e. Marking. Each piece must bear an identifying marking as required in 662.6.

f. Documentation. Except as described in 622.164f(4) or (5), the documentation described in 622.164f(1) through (3) must be submitted with each mailing.

(1) Pieces Qualifying for the ZIP + 4 Barcoded, 5-Digit ZIP + 4, and 5-Digit Presort Level Rates. Except as provided in 622.164f(4) or (5), the mailer must submit a list with each mailing that shows, for each 5-digit ZIP Code destination, the:

(a) Number of Pieces Qualifying for the ZIP + 4 Barcode rate. This is the number of pieces that bear a correct ZIP + 4 barcode in accordance with 622.165;

(b) Number of Pieces Qualifying for the 5-Digit ZIP + 4 Rate. This is the number of non-barcoded pieces that bear a correct ZIP + 4 code and meet the OCR readability and barcode clear zone requirements of 622.144b and 622.144c;

(c) Number of Pieces Qualifying for the 5-Digit Presort Level Rate. This is the total of: (1) The number of non-barcoded pieces that bear a correct ZIP + 4 code but do not meet the the OCR readability and barcode clear zone requirements of 622.144b and 622.144c; and (2) The number of non-barcoded pieces that bear a correct 5-digit ZIP Code.

(d) Cumulative Total. This is the total of all pieces listed on preceding lines for the 5-digit portion of the mailing plus the pieces for that 5-digit ZIP Code.

Total each of the above categories to provide: (a) the total number of pieces qualifying for the ZIP + 4 Barcode rate; (b) the total number of pieces qualifying for the 5-Digit ZIP + 4 rate; and (c) the total number of pieces qualifying for the 5-digit presort level rate. The last entry in category (d) will show the total number of pieces in the 5-digit portion of the mailing.

(2) Pieces Qualifying for the Basic ZIP + 4 and Basic Level Rates. Except as provided in 622.164f(4) or (5) below, the mailer must submit documentation with each mailing that lists by 5-digit ZIP Code, for pieces packaged to 5-digit and optional city destinations, and by 3-digit ZIP Code, for pieces packaged to other destinations, the:

(a) Number of Barcoded Pieces Qualifying for the Basic ZIP + 4 Rate. This is the number of correctly barcoded pieces that bear either a correct ZIP + 4 code in the address or a correct 5-digit ZIP Code in the address;

(b) Number of Non-Barcoded Pieces Qualifying for the Basic ZIP + 4 Rate. This is the number of non-barcoded pieces that bear a correct ZIP + 4 code in the address and meet the OCR readability and barcode clear zone requirements in 622.144b and c;

(c) Number of Pieces Qualifying for the Basic Level Rate. This is the total of: (1) The number of non-barcoded pieces that bear a correct ZIP + 4 code but do not meet the the OCR readability and barcode clear zone requirements of 622.144b and 622.144c; and (2) The number of non-barcoded pieces that bear a correct 5-digit ZIP Code.

(d) Cumulative Total. This is the total of all pieces listed on preceding lines plus the pieces for that entry.

Total each of the above categories to provide: (a) the total number of barcoded pieces qualifying for Basic ZIP + 4 rates; (b) the total number of non-barcoded pieces qualifying for the Basic ZIP + 4 rate; and (c) the total number of pieces qualifying for the basic level rate. The last entry in category (d) will be the total number of pieces in this portion of the mailing (sorted in accordance with the basic level rate requirements).

(3) Totals. Summarize the total number of pieces in each rate category in the mailing. If metered postage at the ZIP + 4 Barcoded rate is affixed to each piece in the mailing, also show the additional postage due for each rate category (except for the ZIP + 4 Barcoded rate pieces) and the total postage due for the mailing. If postage is paid by permit imprint, show the total postage charges for the pieces in each rate category in the mailing, and the total postage charges. Also summarize, for the entire mailing, the total number of pieces that bear a ZIP + 4 barcode, the total number of pieces that do not bear a ZIP + 4 barcode, and the total number of all pieces in the mailing.

(4) Mailings Requiring No Documentation. The documentation in 622.164f(1) through (3) is not required if:

(a) All pieces in the mailing bear a ZIP + 4 barcode prepared in accordance with 622.165 and each piece in the mailing has postage affixed at the rate for which it qualifies.

(b) All pieces in the mailing bear a ZIP + 4 barcode prepared in accordance with 622.165, and all the pieces in the mailing are of identical size and weight, and the residual portion of the mailing (if any) is physically separated from pieces qualifying for the ZIP + 4 barcoded rate.

Note: Documentation is required any time that fewer than 100 percent of the pieces bear a ZIP + 4 barcode, regardless of the method of postage payment.

(5) Documentation Submitted Based on a Mailing List or Cycle. When pieces for a mailing list or mailing cycle, as defined by the mailer, are mailed over a period of more than one day, but not exceeding one week (seven consecutive days), the mailer may submit documentation based on the mailing list or

mailing cycle to prove that the 85 percent requirement has been met, and to show either the amount of postage due for mail metered at the ZIP + 4 Barcoded rate, or the total amount of postage to be deducted from the mailers permit imprint account. The documentation for the entire list or cycle must, however, accompany the mailing statement submitted with the first mailing made from the list or cycle. Under this procedure, the mailer must indicate, on each mailing statement submitted, the mailing list or mailing cycle to which the pieces belong. The final mailing statement for the mailing list or cycle must accurately account for the full list or cycle. (The sum of the pieces reported on all the mailing statements submitted for the mailing list or cycle must equal the totals shown on the documentation submitted.) Under this procedure, a mailing may contain only pieces for a single mailing list or mailing cycle. If pieces from two different lists or cycles are submitted on the same day, separate mailings must be prepared, corresponding separate mailing statements must be submitted for the pieces for each list, and the mailing from the new list or cycle must be accompanied by the documentation for that list or cycle.

622.165 Barcode Requirements.

a. Correct ZIP + 4 Barcode. The barcode must accurately represent the correct 5-digit and sector-segment codes for the address on the mailpiece. Pieces bearing default or fictitious add-on codes, e.g., 0000, 5000, 9999, etc., must not be included in a ZIP + 4 Barcoded rate mailing.

b. General Preparation. A ZIP + 4 barcode is made up of a single field of 52 bars. The information content of the barcode is distinguished by the height of the bars, either tall (full) or short (half) bars, which represent a "one" or a "zero" to a USPS barcode sorter. These bars, when separated into groups of five, represent each of the nine digits of a ZIP + 4 code, plus a tenth digit designated as the "correction digit." The first and last bars of the barcode are "frame bars" and must always be full bars. (See Exhibit 622.165b.) The sequence of bars must represent the ZIP + 4 code (including the appropriate correction character) in the address of the piece, according to the code defined in Exhibit 622.165b.

c. Barcode Location. The location of the barcode must be on the address side of the mailpiece and within a clear space known as the "barcode read area," which must be free of any printing other than the barcode. The read area extends 5/8 inch from the bottom and at least 4-1/2 inches from the right edge of the mailpiece. Within the read area, the left-most bar of the barcode must be located between 3-1/4 inches and 4 inches from the right edge of the mailpiece. The bottom of the bars must be positioned 1/4 inch (± 1/16 inch) from the bottom edge of the mailpiece (see Exhibit 622.165c), and the barcode must be completely contained within the solid rectangle shown in Exhibit 622.165c.

d. Barcode Dimensions and Spacing. A full bar must be .125 ± .010 inch in height. A half bar must be .050 ± .010 inch in height. The width of all bars must be equal and must be .020 ± .005 inch. Horizontal spacing of the bars must be 21 ± 1 bar per inch. Pitch (a bar and a space) must be limited to .045 inch minimum and .050 inch maximum.

e. Background Contrast. A print reflectance difference (envelope reflectance minus print reflectance) of at least .30 is required between the background material of the mailpiece and the bar code, when measured in the red portion of the spectrum at 660 nanometers.

f. Skew and Baseline Shift. The combined effects of positional and rotational skew (slant) of the bar code must be limited to a maximum rotation of the bars of ± 5 degrees from a perpendicular to the bottom edge of the mailpiece. The bottom of any bar must not be more than .005 inch from the bottom of each adjacent bar.

g. Printing Irregularities. Attached extraneous ink (connected to a bar) must not cause any bar to exceed the maximum height or width dimensions. Detached extraneous ink (not connected to any bar or bars) in the bar code read area must not exceed .003 inch in any dimension or cause the space-to-background print reflectance difference to exceed 10 percent. Individual bars must not contain ink voids which reduce bar width to less than .010 inch or remove more than .010 inch along the bar height.

h. Inserts. The barcode may be printed on an insert and appear through a barcode window on an envelope under the following conditions:

(1) Barcode Window Specifications.

(a) Windows must be covered with a clear plastic material, securely glued on all sides;

(b) Envelopes with barcode windows may be used only when the ZIP + 4 barcode will be visible through the barcode window;

(c) Windows must extend fully to the lower edge of the envelopes and must be of wrap-around construction;

(d) The right edge of the window must be not less than 1/4 inch from the right edge of the envelope; and

(e) The left edge of the window must be not less than 4 1/2 inches from the right edge of the envelope.

(2) Barcode Location Specifications. The barcode, as it shows through the window when inserted in the envelope, must meet all of the following specifications:

(a) The ZIP + 4 barcode must be located within the barcode clear zone which extends 5/8 inch from the bottom of the envelope and 4-1/2 inches from the right edge of the envelope;

(b) The barcode must be at least 1/5 inch from the right edge of the window and 1/5 inch from the left edge of the window;

(c) No printing other than the ZIP + 4 barcode is permitted in the barcode clear zone; and

(d) The left-most bar must be located 3-5/8 inches ± 3/8 inch from the right edge of the mailpiece and from 3/16 inch to 7/16 inch from the bottom edge of the envelope. The baseline of all bars must be 1/4 inch ± 1/16 inch from the bottom edge of the mailpiece.

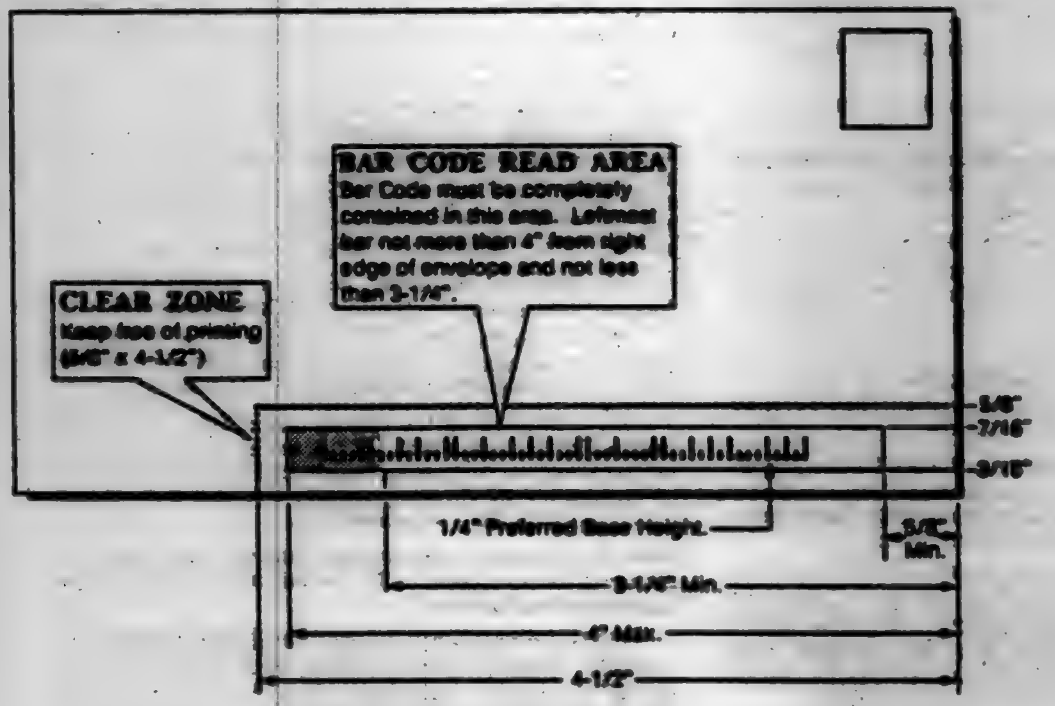
BAR CODE READ AREA
Bar Code must be completely contained in this area. Leftmost bar not more than 4" from right edge of envelope and not less than 3-1/4".
CLEAR ZONE
Keep free of printing (5/8" x 4-1/2")
5/8"
7/16"
3/16"
1/4" Preferred Base Height
5/8" Min.
3-1/4" Min.
4" Max.
4-1/2"

Exhibit 622.165c, Barcode Read Area

622.17 Processing Category. Irregular and machinable mail may be commingled in 5-digit and optional city sacks. All other pieces in a bulk rate mailing must be of the same characteristic type as defined in 128 (i.e., letter-size, flats, machinable parcels, or irregular parcels). Not all processing categories may qualify for every bulk third-class rate.

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640 Authorizations and Permits

641 Annual Fee—Bulk Rates

Except when a third-class bulk mailing is made under the permit imprint system, each person or organization that enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee once each 12-month period, at each post office of mailing (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. When a third-class bulk mailing is made under the permit imprint system, the person or organization whose permit imprint is on the mailpiece must put that permit number on the mailing statement and must pay the annual bulk mailing fee once each 12-month period for that permit.

Note: This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2).

* * * * *

662 Marking

662.1 Single-Piece Rate. Each sealed piece mailed at the single-piece third-class postage rate provided for by 611.1 must be legibly marked on the address side, preferably below the postage and above the name of the addressee, with the words "Third-Class." The marking may be included as part of a permit imprint, and it may be printed adjacent to the meter stamp by a postage meter. The marking will not be considered adequate if it is included as part of a decorative design or advertisement.

662.2 Bulk Rates. The following identifying words must be printed or rubberstamped by the mailer either as part of or immediately adjacent to the permit imprint, meter stamps, or precanceled stamps:

a. "Bulk Rate" or the abbreviation "Blk. Rt." (by mailers other than authorized special-rate organizations); or

b. "Nonprofit Organization" or one of the shorter forms, "Nonprofit" or "Nonprofit Org." (by authorized special-rate organizations).

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662.4 Basic ZIP + 4 Mail. In addition to the endorsement required in 662.2, the identifying endorsement "ZIP + 4" must be printed or rubberstamped by the mailer either as a part of or immediately adjacent to the permit imprint, meter stamps, or precanceled stamps on pieces entered at the third-class basic ZIP + 4 rate. Alternatively, the "ZIP + 4" endorsement may be located in the address area on the line either immediately above the address or two lines above the address. (The preferred position is two lines above the address.) If the "ZIP + 4" endorsement is located in the address area, no other information may appear on the endorsement line except for carrier route information.

Note: Carrier-route presort level rate pieces must not be included in a basic ZIP + 4 rate mailing.

662.5 5-Digit ZIP + 4 Mail. All pieces in a 5-digit ZIP + 4 mailing must bear one of the endorsements required in 662.2 to identify it as a regular rate or special rate mailing. In addition to the endorsement in 662.2, all pieces sorted in accordance with 622.154d(1) must bear the identifying endorsement "5-Digit ZIP + 4." The "5-Digit ZIP + 4" endorsement must be printed or rubberstamped by the mailer either as part of or immediately adjacent to the permit imprint, meter stamps, or precanceled stamps. Alternatively, the "5-Digit ZIP + 4" endorsement may be located in the address area on the line either immediately above the address or two lines above the address. (The preferred position is two lines above the address.) If the "5-Digit ZIP + 4" endorsement is located in the address area, no other information may appear on the endorsement line except for carrier route information.

Note: Carrier-route presort level rate pieces must not be included in a 5-digit ZIP + 4 mailing.

662.6 ZIP + 4 Barcoded Rate. All pieces in a third-class ZIP + 4 Barcoded rate mailing must bear one of the endorsements required in 662.2 to identify it as a regular rate or special rate mailing. In addition to the endorsement in 662.2, all pieces sorted in accordance with 622.164d(1) must bear the identifying endorsement "ZIP + 4 Barcoded." The "ZIP + 4 Barcoded" endorsement must be printed or rubberstamped by the mailer either as a part of or immediately adjacent to the permit imprint, meter stamps, or precanceled stamps. Alternatively, the "ZIP + 4 Barcoded" endorsement may be located in the address area on the line either immediately above the address or two lines above the address. (The preferred position is two lines above the address.) If the "ZIP + 4 Barcoded" endorsement is located in the address area, no other information may appear on the endorsement line except for carrier route information.

Note: Carrier-route presort level rate pieces must not be included in a ZIP + 4 Barcoded rate mailing.

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667.4 Preparation Requirements for 5-Digit Presort-Level Rate

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667.42 Sacking

a. Sack Preparation. All packages of 10 or more pieces to the same 5-digit ZIP Code destination must be placed in sacks containing a minimum of 125 pieces or 15 pounds of mail and must be prepared in accordance with 667.421 through 667.422. Mailers must note on the mailing statement submitted with the mailing whether the 125 piece or 15 pounds minimum, or both

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(for nonidentical-weight mailings), were used as the basis for preparation of the entire mailing in sacks. (The remainder of 667.42 is unchanged.)

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(Delete current 667.422 and 667.423 and add new 667.422)

667.422 3-Digit Sacks. When, after preparing all required 5-digit sacks, there are 125 pieces or 15 pounds of qualifying 5-digit mail to different 5-digit ZIP Code destinations within a 3-digit ZIP Code area, it MUST be placed in a 3-digit sack and meet the following criteria:

a. Each sack must contain at least 125 pieces or 15 pounds of mail;

b. 3-digit packages must NOT be included in the sack; and

c. 125 pieces or 15 pounds of mail for a single 5-digit ZIP Code (within the 3-digit ZIP Code area) must be sacked separately.

3-digit sacks containing fewer than 125 pieces and less than 15 pounds of qualifying mail will not be accepted. Each 3-digit sack must be labeled in the following manner:

Line 1: City, 2-letter state abbreviation, and 3-digit ZIP Code prefix.
Line 2: Contents followed by the words "MIXED 5-DIGIT PKGS".
Line 3: Office of Mailing.

Sample:

BINGHAMTON NY 137
3C LTRS MXD 5-DG PKGS
PHILADELPHIA PA

Note: The following abbreviations may be used on the contents line of sack and pallet labels for 5-digit presort level rate mailings.

LETTERS	LTRS
FLATS	FLTS
MIXED	MXD
DIGIT	DG

680 Payment of Postage

681 Method of Payment

• • • • •

681.2 Bulk Mailings at Basic Presort Level, 5-Digit Presort Level, and Carrier Route Presort Level Rates

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681.3 Bulk Mailings at Basic ZIP + 4, 5-Digit ZIP + 4, and ZIP + 4 Barcoded Rates.

.31 Permit Imprint. (See 145).

.311 Identical-Weight Pieces. Identical-weight mailings may have postage paid by means of permit imprint. Mailings at the basic ZIP + 4, 5-Digit ZIP + 4, and ZIP + 4 Barcoded rates must be accompanied by the documentation required in 622.144f, 622.154f, and 622.164f, respectively.

.312 Nonidentical-Weight Pieces. Nonidentical-weight pieces may be paid by permit imprint only under an optional or alternative postage payment procedure authorized by the General Manager, Rates and Classification Center (see 145.8 and 145.9).

.32 Meter Stamps. (See 144). Meters may be used to pay postage for mailings of both nonidentical-weight pieces and identical-weight pieces. Postage may be paid by any of the following methods:

a. Correct Postage Affixed to Each Piece.

(1) Basic ZIP + 4 Rate. Pieces qualifying for the basic ZIP + 4 rate are metered at that rate, while other pieces are metered at the basic presort level rate. See also 622.144f for documentation requirements.

(2) 5-Digit ZIP + 4 Rate. Pieces qualifying for the basic ZIP + 4 rate are metered at that rate, pieces qualifying for the 5-digit presort level rate are metered at that rate, pieces qualifying for the basic ZIP + 4 rate are metered at that rate, and pieces qualifying for the basic presort level rate are metered at that rate. See 622.154f for documentation requirements.

(3) ZIP + 4 Barcoded Rate. Pieces qualifying for the the ZIP + 4 Barcoded rate are metered at that rate, pieces qualifying for the 5-Digit ZIP + 4 rate are metered at that rate, pieces qualifying for the 5-digit presort level rate are metered at that rate, pieces qualifying for the basic ZIP + 4 rate are metered at that rate, and pieces qualifying for the basic presort level rate are metered at that rate. See 622.164f for documentation requirements.

b. Lowest Rate in the Mailing Affixed to Each Piece.

(1) Basic ZIP + 4 Rate. Basic ZIP + 4 rate mailings of identical weight may have metered postage affixed at the basic ZIP + 4 rate to each piece in the mailing. Additional postage for pieces subject to the basic presort level rate must be determined from the documentation required by 622.144f to be submitted with such mailings, and paid by means of a meter strip affixed to the back of Form 3602-PC, *Statement of Mailing--Bulk Rates*, or paid through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

(2) 5-Digit ZIP + 4 Rate. 5-Digit ZIP + 4 rate mailings of identical weight may have metered postage affixed at the 5-Digit ZIP + 4 rate to each piece in the mailing. Additional postage for pieces subject to the 5-digit presort level rate, the basic ZIP + 4 rate, and the basic presort level rate, must be determined from the documentation required by 622.154f to be submitted with such mailings, and paid by means of a meter strip affixed to the back of Form 3602-PC, *Statement of Mailing--Bulk Rates*, or paid through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

(3) ZIP + 4 Barcoded Rate. ZIP + 4 barcoded rate mailings of identical weight may have metered postage affixed at the ZIP + 4 Barcoded rate to each piece in the mailing. Additional postage for pieces subject to the 5-digit ZIP + 4 rate, the 5-digit presort level rate, the basic ZIP + 4 rate, and the basic presort level rate, must be determined from the documentation required by 622.164f, and paid by means of a meter strip affixed to the back of Form 3602-PC, *Statement of Mailing--Bulk Rates*, or paid through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

.33 Precanceled Stamps or Precanceled Stamped Envelopes. (See 143.) Requirements prescribed for meter stamps in 681.32a and b also apply to mailings with precanceled postage.

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682 Mailing Statement for Bulk Mailings

682.1 Type of Mailing Statement Required. The mailer must complete and submit the appropriate mailing statement with each mailing.

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Note: All mailing statements are subject to verification by the Postal Service. Form 3602-PC must be submitted in duplicate for mailings metered at the lowest rate for which the difference between postage affixed and the applicable rate is paid through an advance deposit account, as provided Handbook F-1, *Post Office Accounting Procedures*, 524.

Chapter 7
Fourth-Class Mail

710 Rates and Fees

711 Rates

711.1 Parcel Post Rates.

711.11 Inter-BMC Rates - Machinable Parcels. (See Exhibit 711.11.) These rates apply to all parcel post mail that weighs 35 pounds or less or is not otherwise nonmachinable based on the criteria in 753, and which originates in the service area of a BMC/ASF (see Exhibit 722.1), Alaska, Hawaii, or Puerto Rico, and destinates outside that area.

711.12 Inter-BMC Rates - Nonmachinable Parcels. (See Exhibit 711.12.) These rates include the $1.15 nonmachinable surcharge and apply to all inter-BMC/ASF parcel post mail that weighs over 35 pounds or otherwise is nonmachinable as defined in 753.

711.13 Intra-BMC Rates - All Parcels. (See Exhibit 711.13.) These rates include the $0.20 discount and apply to all parcel post mail that originates in the service area of a BMC/ASF (see Exhibit 722.1), Alaska, Hawaii, or Puerto Rico, and destinates within the same area.

711.14 Bulk Parcel Post Rates. The rate applicable to each piece in a bulk parcel post rate mailing is the single piece rate for that zone for an item equal to the average weight per piece for all parcels in the mailing going to that zone, rounded up to the next whole pound, using Exhibit 711.11, 711.12 or 711.13, as appropriate.

711.2 Bound Printed Matter Rates.

711.21 Qualification. Pieces paid at the bound printed matter rates must meet the requirements of 721.1 and 723. Pieces paid at the bulk bound printed matter rates must also meet the requirements of 723.2.

711.22 Single Piece Zone Rates. (See Exhibit 711.22.)

711.23 Bulk Bound Printed Matter Rates. (See Exhibit 711.23.) The postage for bulk bound printed matter includes both a per-piece charge and a per pound charge.

711.24 Individually Metered Pieces - Bulk Bound Printed Matter Rates. (See Exhibit 711.24.) If the applicable piece rate is affixed to each piece, pieces of nonidentical weight may be mailed at the applicable bulk rates if the mailing meets all applicable bulk rate requirements. To compute the postage at the basic or carrier-route bulk bound printed matter rate for individual pieces to be paid by postage meter, multiply the weight of the piece by the applicable per-pound charge, add the applicable per-piece charge, and round the sum upward to the next tenth of a cent (or next whole cent if the meter being used cannot print fractional amounts). The per-pound postage for each piece cannot be less than the one-pound rate for that zone. Exhibit 711.24 illustrates the computed postage amounts for selected weight increments; the correct postage for pieces of other weights must be computed as described above.

711.3 Special Fourth-Class Rates.

711.31 Qualification. Pieces paid at special fourth-class rates must meet the requirements of 721.1 and 724. Pieces paid at the Level A or Level B presort rates must also meet the requirements of 724.2.

711.32 Rates. (See Exhibit 711.32.) Special fourth-class rates are based solely on weight without regard to zone.

711.4 Library Rate.

711.41 Qualification. Pieces paid at the library rate must meet the requirements of 721.1 and 725.

711.42 Rates. (See Exhibit 711.42.) The library rate is based solely on weight without regard to zone.

711.5 Addressed Pieces. Apply the rates shown in exhibits 711.11 through 711.42 to each individually addressed piece.

712 Fees

712.1 Special Fourth-Class Presort Mailing Fee. The special fourth-class presort mailing fee is $60 for each 12-month period (see 742).

712.2 Address Correction Fee. The fee for address correction service is $0.30 per notice issued.

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Exhibit 722.1 – Within BMC (Intra-BMC/ASF) Rate ZIP Code Service Areas

(Change the footnote to read as follows:)

Note: Intra-BMC/ASF rates (see Exhibit 711.13) apply to parcel post mail that both originates within one of the BMC or ASF service areas described above, or within Alaska, Hawaii, or Puerto Rico, and destinates within the same area.

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723.2 Bulk Bound Printed Matter

723.21 Requirements. The bulk bound printed matter rates are applied to mailings of 300 or more pieces of fourth-class bound printed matter of identical weight and size. Mailings may contain pieces of nonidentical weight only if postage is affixed to each piece (using the instructions in 711.24), or if the Rates and Classification Center, serving the office of mailing, has authorized payment of postage by permit imprint, in accordance with 145.8 or 145.9.

(Renumber existing 723.22 as 723.23; add new 723.22 as follows.)

723.22 Nonidentical-Weight Pieces with Postage Affixed. To determine the correct postage to be affixed to nonidentical-weight pieces paid at the bulk bound printed matter rates, see the instructions in 711.24.

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742 Special Fourth-Class Presort Mailing Fee

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A presort mailing fee (see 712.1) must be paid once each 12-month period at each office of mailing by or for any person who mails presorted special fourth-class mail, and by any person who engages a business concern or other individuals to mail presorted special fourth-class mail.

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753 Nonmachinable Surcharge

753.1 General. The nonmachinable surcharge (see 711.12) applies only to the items listed in 753.2 if mailed at the inter-BMC/ASF parcel post rates. It is not applicable to those items or any other matter mailed at the intra-BMC/ASF parcel post rates, or at any other fourth-class rates, or if the mailer has paid the special delivery fee (see 915) or the special handling fee (see 916).

753.2 Applicable Items. Except as provided by 753.1, the nonmachinable surcharge applies to items that meet any of the following criteria:

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(Delete existing 753.3.)

Parcel Post Rates—Inter BMC/ASF ZIP Codes Only, Machinable Parcels Only, No Discount, No Surcharge							
Weight	Zones						
Not Exceeding (pounds)	1 & 2	3	4	5	6	7	8
2	$1.69	$1.81	$1.97	$2.24	$2.35	$2.35	$2.35
3	1.78	1.95	2.20	2.59	2.98	3.42	4.25
4	1.86	2.10	2.42	2.94	3.46	4.05	5.25
5	1.95	2.24	2.65	3.29	3.94	4.67	6.25
6	2.04	2.39	2.87	3.64	4.43	5.30	7.24
7	2.12	2.53	3.10	4.00	4.91	5.92	8.30
8	2.21	2.68	3.32	4.35	5.39	6.55	9.26
9	2.30	2.82	3.55	4.70	5.87	7.17	10.22
10	2.38	2.97	3.78	5.05	6.35	7.79	11.18
11	2.47	3.11	4.00	5.40	6.83	8.42	12.14
12	2.56	3.25	4.22	5.75	7.30	9.03	13.09
13	2.64	3.40	4.44	6.10	7.78	9.65	14.03
14	2.69	3.48	4.56	6.27	8.02	9.96	14.50
15	2.75	3.55	4.67	6.44	8.24	10.24	14.94
16	2.79	3.63	4.78	6.60	8.45	10.52	15.35
17	2.84	3.70	4.88	6.75	8.66	10.77	15.74
18	2.89	3.76	4.98	6.90	8.85	11.02	16.11
19	2.93	3.83	5.07	7.03	9.03	11.25	16.45
20	2.98	3.89	5.16	7.16	9.20	11.47	16.79
21	3.02	3.95	5.25	7.29	9.37	11.68	17.10
22	3.06	4.01	5.33	7.41	9.53	11.88	17.41
23	3.10	4.07	5.41	7.53	9.68	12.08	17.70
24	3.14	4.12	5.49	7.64	9.83	12.26	17.97
25	3.18	4.18	5.56	7.75	9.97	12.44	18.24
26	3.22	4.23	5.64	7.85	10.11	12.62	18.50
27	3.26	4.28	5.71	7.96	10.24	12.79	18.75
28	3.29	4.33	5.78	8.05	10.37	12.95	18.99
29	3.33	4.38	5.85	8.15	10.50	13.11	19.23
30	3.37	4.43	5.91	8.25	10.62	13.26	19.45
31	3.40	4.48	5.98	8.34	10.74	13.41	19.67
32	3.44	4.53	6.04	8.43	10.85	13.56	19.89
33	3.47	4.58	6.10	8.51	10.97	13.70	20.10
34	3.51	4.62	6.16	8.60	11.08	13.83	20.30
35	3.54	4.67	6.22	8.68	11.18	13.97	20.50
For Pieces weighing over 35 pounds, see Exhibit 711.12							

Exhibit 711.11 - Inter-BMC/ASF Parcel Post Rates

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Parcel Post Rates—Inter BMC/ASF ZIP Codes Only, Nonmachinable Parcels, Surcharge Included							
Weight	Zones						
Not Exceeding (pounds)	1 & 2	3	4	5	6	7	8
2	$2.84	$2.96	$3.12	$3.39	$3.50	$3.50	$3.50
3	2.93	3.10	3.35	3.74	4.13	4.57	5.40
4	3.01	3.25	3.57	4.09	4.61	5.20	6.40
5	3.10	3.39	3.80	4.44	5.09	5.82	7.40
6	3.19	3.54	4.02	4.79	5.58	6.45	8.49
7	3.27	3.68	4.25	5.15	6.06	7.07	9.45
8	3.36	3.83	4.47	5.50	6.54	7.70	10.41
9	3.45	3.97	4.70	5.85	7.02	8.32	11.37
10	3.53	4.12	4.93	6.20	7.50	8.94	12.33
11	3.62	4.26	5.15	6.55	7.98	9.57	13.29
12	3.71	4.40	5.37	6.90	8.45	10.18	14.24
13	3.79	4.55	5.59	7.25	8.93	10.80	15.18
14	3.84	4.63	5.71	7.42	9.17	11.11	15.65
15	3.90	4.70	5.82	7.59	9.39	11.39	16.09
16	3.94	4.78	5.93	7.75	9.60	11.67	16.50
17	3.99	4.85	6.03	7.90	9.81	11.92	16.89
18	4.04	4.91	6.13	8.05	10.00	12.17	17.26
19	4.08	4.98	6.22	8.18	10.18	12.40	17.60
20	4.13	5.04	6.31	8.31	10.35	12.62	17.94
21	4.17	5.10	6.40	8.44	10.52	12.83	18.25
22	4.21	5.16	6.48	8.56	10.68	13.03	18.56
23	4.25	5.22	6.56	8.68	10.83	13.23	18.85
24	4.29	5.27	6.64	8.79	10.98	13.41	19.12
25	4.33	5.33	6.71	8.90	11.12	13.59	19.39
26	4.37	5.38	6.79	9.00	11.26	13.77	19.65
27	4.41	5.43	6.86	9.11	11.39	13.94	19.90
28	4.44	5.48	6.93	9.20	11.52	14.10	20.14
29	4.48	5.53	7.00	9.30	11.65	14.26	20.38
30	4.52	5.58	7.06	9.40	11.77	14.41	20.60
31	4.55	5.63	7.13	9.49	11.89	14.56	20.82
32	4.59	5.68	7.19	9.58	12.00	14.71	21.04
33	4.62	5.73	7.25	9.66	12.12	14.85	21.25
34	4.66	5.77	7.31	9.75	12.23	14.98	21.45
35	4.69	5.82	7.37	9.83	12.33	15.12	21.65
36	4.73	5.86	7.43	9.92	12.44	15.25	21.84
37	4.76	5.91	7.49	10.00	12.54	15.38	22.03
38	4.79	5.95	7.55	10.07	12.64	15.50	22.21
39	4.83	5.99	7.61	10.15	12.74	15.63	22.39
40	4.86	6.03	7.66	10.23	12.84	15.75	22.56
41	4.89	6.08	7.72	10.30	12.94	15.87	22.73
42	4.93	6.12	7.77	10.38	13.03	15.98	22.90
43	4.96	6.16	7.82	10.45	13.12	16.09	23.07
44	4.99	6.20	7.87	10.52	13.21	16.21	23.23
45	5.02	6.24	7.93	10.59	13.30	16.31	23.39
46	5.05	6.28	7.98	10.66	13.39	16.42	23.54
47	5.08	6.32	8.03	10.73	13.47	16.53	23.69
48	5.11	6.36	8.08	10.79	13.56	16.63	23.84
49	5.15	6.39	8.13	10.86	13.64	16.73	23.99
50	5.18	6.43	8.18	10.92	13.72	16.83	24.13
51	5.21	6.47	8.22	10.99	13.80	16.93	24.27
52	5.24	6.51	8.27	11.05	13.88	17.03	24.41
53	5.27	6.55	8.32	11.12	13.96	17.13	24.55
54	5.30	6.58	8.36	11.18	14.04	17.22	24.69
55	5.33	6.62	8.41	11.24	14.11	17.31	24.82
56	5.36	6.66	8.46	11.30	14.19	17.41	24.95
57	5.39	6.69	8.50	11.36	14.26	17.50	25.08
58	5.42	6.73	8.55	11.42	14.34	17.59	25.21
59	5.45	6.76	8.59	11.48	14.41	17.68	25.33
60	5.48	6.80	8.64	11.53	14.48	17.76	25.46
61	5.51	6.84	8.68	11.59	14.55	17.85	25.58
62	5.53	6.87	8.72	11.65	14.62	17.93	25.70
63	5.56	6.91	8.77	11.70	14.69	18.02	25.82
64	5.59	6.94	8.81	11.76	14.76	18.10	25.93
65	5.62	6.98	8.85	11.82	14.83	18.18	26.05
66	5.65	7.01	8.89	11.87	14.90	18.27	26.17
67	5.68	7.04	8.94	11.92	14.96	18.35	26.28
68	5.71	7.08	8.98	11.98	15.03	18.43	26.39
69	5.74	7.11	9.02	12.03	15.10	18.51	26.50
70	5.76	7.15	9.06	12.08	15.16	18.58	26.61

Exhibit 711.12 - Inter-BMC/ASF Parcel Post Rates

Parcel Post Rates--Local and Intra-BMC/ASF ZIP Codes Only, All Parcels, Discount already included					
Weight	Zones				
Not Exceeding (pounds)	Local	1 & 2	3	4	5
2	$1.43	$1.49	$1.61	$1.77	$2.04
3	1.48	1.58	1.75	2.00	2.39
4	1.54	1.66	1.90	2.22	2.74
5	1.59	1.75	2.04	2.45	3.09
6	1.65	1.84	2.19	2.67	3.44
7	1.71	1.92	2.33	2.90	3.80
8	1.76	2.01	2.48	3.12	4.15
9	1.82	2.10	2.62	3.35	4.50
10	1.87	2.18	2.77	3.58	4.85
11	1.93	2.27	2.91	3.80	5.20
12	1.99	2.36	3.05	4.02	5.55
13	2.04	2.44	3.20	4.24	5.90
14	2.08	2.49	3.28	4.36	6.07
15	2.12	2.56	3.35	4.47	6.24
16	2.15	2.59	3.43	4.58	6.40
17	2.19	2.64	3.50	4.68	6.55
18	2.22	2.69	3.56	4.78	6.70
19	2.26	2.73	3.63	4.87	6.83
20	2.29	2.78	3.69	4.96	6.96
21	2.32	2.82	3.75	5.05	7.09
22	2.36	2.86	3.81	5.13	7.21
23	2.39	2.90	3.87	5.21	7.33
24	2.42	2.94	3.92	5.29	7.44
25	2.45	2.98	3.98	5.36	7.55
26	2.48	3.02	4.03	5.44	7.65
27	2.51	3.06	4.08	5.51	7.76
28	2.54	3.09	4.13	5.58	7.86
29	2.57	3.13	4.18	5.65	7.95
30	2.60	3.17	4.23	5.71	8.05
31	2.63	3.20	4.28	5.78	8.14
32	2.66	3.24	4.33	5.84	8.23
33	2.69	3.27	4.38	5.90	8.31
34	2.72	3.31	4.42	5.96	8.40
35	2.75	3.34	4.47	6.02	8.48
36	2.78	3.38	4.51	6.08	8.57
37	2.80	3.41	4.56	6.14	8.65
38	2.83	3.44	4.60	6.20	8.72
39	2.86	3.48	4.64	6.26	8.80
40	2.89	3.51	4.68	6.31	8.88
41	2.92	3.54	4.73	6.37	8.95
42	2.94	3.58	4.77	6.42	9.03
43	2.97	3.61	4.81	6.47	9.10
44	3.00	3.64	4.85	6.52	9.17
45	3.03	3.67	4.89	6.58	9.24
46	3.05	3.70	4.93	6.63	9.31
47	3.08	3.73	4.97	6.68	9.38
48	3.11	3.76	5.01	6.73	9.44
49	3.13	3.80	5.04	6.78	9.51
50	3.16	3.83	5.08	6.83	9.57
51	3.19	3.86	5.12	6.87	9.64
52	3.21	3.89	5.16	6.92	9.70
53	3.24	3.92	5.20	6.97	9.77
54	3.27	3.95	5.23	7.01	9.83
55	3.29	3.98	5.27	7.06	9.89
56	3.32	4.01	5.31	7.11	9.95
57	3.35	4.04	5.34	7.15	10.01
58	3.37	4.07	5.38	7.20	10.07
59	3.40	4.10	5.41	7.24	10.13
60	3.42	4.13	5.45	7.28	10.18
61	3.45	4.16	5.49	7.33	10.24
62	3.48	4.18	5.52	7.37	10.30
63	3.50	4.21	5.56	7.42	10.36
64	3.53	4.24	5.59	7.46	10.41
65	3.55	4.27	5.63	7.50	10.47
66	3.58	4.30	5.66	7.54	10.52
67	3.61	4.33	5.69	7.58	10.57
68	3.63	4.36	5.73	7.63	10.63
69	3.66	4.39	5.76	7.67	10.68
70	3.68	4.41	5.80	7.71	10.73

Exhibit 711.13 - Intra-BMC/ASF Parcel Post Rates

Weight (Pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
1.5	$0.67	$0.92	$.95	$1.04	$1.16	$1.28	$1.43	$1.56
2.0	.69	.96	1.02	1.12	1.28	1.44	1.64	1.81
2.5	.71	.99	1.07	1.20	1.39	1.60	1.85	2.06
3.0	.73	1.03	1.12	1.27	1.51	1.76	2.06	2.31
3.5	.75	1.07	1.17	1.35	1.63	1.91	2.26	2.56
4.0	.77	1.10	1.22	1.43	1.74	2.07	2.47	2.81
4.5	.79	1.14	1.27	1.50	1.86	2.23	2.68	3.06
5.0	.81	1.18	1.33	1.58	1.98	2.39	2.89	3.31
6.0	.85	1.25	1.43	1.73	2.21	2.70	3.30	3.80
7.0	.89	1.32	1.53	1.88	2.44	3.02	3.72	4.30
8.0	.93	1.39	1.63	2.04	2.67	3.33	4.13	4.80
9.0	.97	1.47	1.74	2.20	2.91	3.65	4.55	5.30
10.0	1.01	1.54	1.84	2.35	3.14	3.96	4.96	5.80

Note: Compute postage at the above rates for each addressed piece.

Exhibit 711.22 Single-Piece Bound Printed Matter Rates

Rate[1]	Zones							
	LOCAL	1 & 2	3	4	5	6	7	8
Per Piece - Basic - Car. Rt.	 $.32 .27	 $.43 .38	 $.43 .38	 $.43 .38	 $.43 .38	 $.43 .38	 $.43 .38	 $.43 .38
Per Pound	.028	.058	.087	.139	.217	.300	.399	.484

[1] Postage for bulk rate mailings includes both a per-piece and a per-pound charge.

Exhibit 711.23 Bulk Bound Printed Matter Rates

Weight (pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
1.0	$.348	$.488	$.517	$.569	$.647	$.730	$.829	$.914
1.5	.362	.517	.561	.639	.756	.880	1.029	1.156
2.0	.376	.546	.604	.708	.864	1.030	1.228	1.398
2.5	.390	.575	.648	.778	.973	1.180	1.428	1.640
3.0	.404	.604	.691	.847	1.081	1.330	1.627	1.882
3.5	.418	.633	.735	.917	1.190	1.480	1.827	2.124
4.0	.432	.662	.778	.986	1.298	1.630	2.026	2.366
4.5	.446	.691	.822	1.056	1.407	1.780	2.226	2.608
5.0	.460	.720	.865	1.125	1.515	1.930	2.425	2.850
6.0	.488	.778	.952	1.264	1.732	2.230	2.824	3.334
7.0	.516	.836	1.039	1.403	1.949	2.530	3.223	3.818
8.0	.544	.894	1.126	1.542	2.166	2.830	3.622	4.302
9.0	.572	.952	1.213	1.681	2.383	3.130	4.021	4.786
10.0	.600	1.010	1.300	1.820	2.600	3.430	4.420	5.270

Exhibit 711.24a Basic Bulk Bound Printed Matter Rates

Weight (pounds)	Zones Local	1 & 2	3	4	5	6	7	8
1.0....	$.298	$.438	$.467	$.519	$.597	$.680	$.779	$.864
1.5....	.312	.467	.511	.589	.706	.830	.979	1.106
2.0....	.326	.496	.554	.658	.814	.980	1.178	1.348
2.5....	.340	.525	.598	.728	.923	1.130	1.378	1.590
3.0....	.354	.554	.641	.797	1.031	1.280	1.577	1.832
3.5....	.368	.583	.685	.867	1.140	1.430	1.777	2.074
4.0....	.382	.612	.728	.936	1.248	1.580	1.976	2.316
4.5....	.396	.641	.772	1.006	1.357	1.730	2.176	2.558
5.0....	.410	.670	.815	1.075	1.465	1.880	2.375	2.800
6.0....	.438	.728	.902	1.214	1.682	2.180	2.774	3.284
7.0....	.466	.786	.989	1.353	1.899	2.480	3.173	3.768
8.0....	.494	.844	1.076	1.492	2.116	2.780	3.572	4.252
9.0....	.522	.902	1.163	1.631	2.333	3.080	3.971	4.736
10.0....	.550	.960	1.250	1.770	2.550	3.380	4.370	5.220

Exhibit 711.24b, Carrier Route Bulk Bound Printed Matter Rate

Exhibit 711.24, Bulk Bound Printed Matter Rates

(Representative Computed Postage Amounts-Pieces with Postage Affixed)

Note: These amounts are correct for the corresponding weights. Compute postage exactly for items of other intermediate weights (See 711.24). If fractional postage in the exact amount shown above is not available, apply postage in the amount equal to the exact amount shown rounded upward to the next whole cent.

Weight Not Exceeding (Lbs.)	Single Piece Rate	Level A Presort	Level B Presort	Weight Not Exceeding (Lbs.)	Single Piece Rate	Level A Presort	Level B Presort
1	$.90	$.65	$.83	36	$8.80	$8.55	$8.73
2	1.25	1.00	1.18	37	9.00	8.75	8.93
3	1.60	1.35	1.53	38	9.20	8.95	9.13
4	1.95	1.70	1.88	39	9.40	9.15	9.33
5	2.30	2.05	2.23	40	9.60	9.35	9.53
6	2.65	2.40	2.58	41	9.80	9.55	9.73
7	3.00	2.75	2.93	42	10.00	9.75	9.93
8	3.20	2.95	3.13	43	10.20	9.95	10.13
9	3.40	3.15	3.33	44	10.40	10.15	10.33
10	3.60	3.35	3.53	45	10.60	10.35	10.53
11	3.80	3.55	3.73	46	10.80	10.55	10.73
12	4.00	3.75	3.93	47	11.00	10.75	10.93
13	4.20	3.95	4.13	48	11.20	10.95	11.13
14	4.40	4.15	4.33	49	11.40	11.15	11.33
15	4.60	4.35	4.53	50	11.60	11.35	11.53
16	4.80	4.55	4.73	51	11.80	11.55	11.73
17	5.00	4.75	4.93	52	12.00	11.75	11.93
18	5.20	4.95	5.13	53	12.20	11.95	12.13
19	5.40	5.15	5.33	54	12.40	12.15	12.33
20	5.60	5.35	5.53	55	12.60	12.35	12.53
21	5.80	5.55	5.73	56	12.80	12.55	12.73
22	6.00	5.75	5.93	57	13.00	12.75	12.93
23	6.20	5.95	6.13	58	13.20	12.95	13.13
24	6.40	6.15	6.33	59	13.40	13.15	13.33
25	6.60	6.35	6.53	60	13.60	13.35	13.53
26	6.80	6.55	6.73	61	13.80	13.55	13.73
27	7.00	6.75	6.93	62	14.00	13.75	13.93
28	7.20	6.95	7.13	63	14.20	13.95	14.13
29	7.40	7.15	7.33	64	14.40	14.15	14.33
30	7.60	7.35	7.53	65	14.60	14.35	14.53
31	7.80	7.55	7.73	66	14.80	14.55	14.73
32	8.00	7.75	7.93	67	15.00	14.75	14.93
33	8.20	7.95	8.13	68	15.20	14.95	15.13
34	8.40	8.15	8.33	69	15.40	15.15	15.33
35	8.60	8.35	8.53	70	15.60	15.35	15.53

Exhibit 711.32 Special Fourth-Class Rates

Note: Compute postage at the above rates for each addressed piece.

Library Rate

Weight Not Exceeding (Lbs.)	Single Piece Rate	Weight Not Exceeding (Lbs.)	Single Piece Rate	Weight Not Exceeding (Pounds)	Single Piece Rate
1	$.64	24	$4.06	47	$6.82
2	.87	25	4.18	48	6.94
3	1.10	26	4.30	49	7.06
4	1.33	27	4.42	50	7.18
5	1.56	28	4.54	51	7.30
6	1.79	29	4.66	52	7.42
7	2.02	30	4.78	53	7.54
8	2.14	31	4.90	54	7.66
9	2.26	32	5.02	55	7.78
10	2.38	33	5.14	56	7.90
11	2.50	34	5.26	57	8.02
12	2.62	35	5.38	58	8.14
13	2.74	36	5.50	59	8.26
14	2.86	37	5.62	60	8.38
15	2.98	38	5.74	61	8.50
16	3.10	39	5.86	62	8.62
17	3.22	40	5.98	63	8.74
18	3.34	41	6.10	64	8.86
19	3.46	42	6.22	65	8.98
20	3.58	43	6.34	66	9.10
21	3.70	44	6.46	67	9.22
22	3.82	45	6.58	68	9.34
23	3.94	46	6.70	69	9.46
				70	9.58

Exhibit 711.42-Library Rate

Note: Compute postage at the above rates for each addressed piece.

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Chapter 9
Special Services

910 Special Mail Services

911 Registered Mail

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911.2 Fees and Liability

911.21 Fees. (See Exhibit 911.21.)

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911.23 Postal Insurance Liability

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911.232 With Commercial Insurance Containing a Deductible Amount.

(In the fifth sentence, replace *"25 cents"* with *"$0.35".)*

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Certified Mail

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912.3 Fees (in addition to postage.) The fees for certified mail are:

Fee	$ .85
Restricted delivery	2.00
Return receipts	
Requested at time of mailing:	
Showing to whom and date delivered	$0.90
Showing to whom, date, and address where delivered	1.20
Requested after mailing:	
Showing to whom and date delivered	$5.00

913 Insured Mail

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913.2 Fees and Liability

913.21 Fees (in Addition to Postage). The fees for insuring mail are:

Liability	Fee
$0.01 to $50	$0.70
50.01 to 100	1.50
100.01 to 150	1.90
150.01 to 200	2.20
200.01 to 300	3.15
300.01 to 400	4.30
400.01 to 500	5.00

Liability for insured mail is limited to $500.

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913.4 Mailing

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913.43 Individual Receipts for Mailing. For each insured parcel mailed, the mailer is issued a receipt on one of the following forms:

a. Form 3813, *Receipt for Domestic Insured Parcel,* when the package is insured for $50 or less; or

b. Form 3813-P, *Receipt For Insured Mail Domestic/International,* when the package is insured for more than $50.

Note: The post office keeps no record of the mailing of insured packages. Mailers must enter the name and address of the addressee on the receipt and retain it. Mailers must exhibit the receipt if claim for loss is made. The receipt must be shown if an inquiry is filed. A temporary receipt showing only the total number of parcels accepted may be issued when a large number of articles are mailed. The permanent receipt will be issued as soon as possible.

(In sections 913.441a, 913.441b, 913.442, 913.461a, 913.461b, and 913.51, replace the figure *$25* with *$50.).*

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914 Collect on Delivery (COD) Mail

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914.2 Fees

Value	Fees (in addition to postage)	
	For articles with Postal insurance	For articles without Postal insurance
	Column A	Column B
$0.00 to $100	$4.50	4.40
$100.01 to $500	4.85	4.70
$500.01 to $1,000	5.25	5.05
$1,000.01 to $2,000	5.65	5.35
$2,000.01 to $3,000	6.05	5.70
$3,000.01 to $4,000	6.45	6.00
$4,000.01 to $5,000	6.85	6.35
$5,000.01 to $6,000	7.25	6.65
$6,000.01 to $7,000	7.65	7.00
$7,000.01 to $8,000	8.10	7.30
$8,000.01 to $9,000	8.55	7.65
$9,000.01 to $10,000	9.00	7.95
$10,000.01 to $11,000	9.50	8.30
$11,000.01 to $12,000	9.95	8.60
$12,000.01 to $13,000	10.45	8.95
$13,000.01 to $14,000	10.90	9.25
$14,000.01 to $15,000	11.40	9.60
$15,000.01 to $16,000	11.85	9.90
$16,000.01 to $17,000	12.35	10.25
$17,000.01 to $18,000	12.85	10.55
$18,000.01 to $19,000	13.25	10.90
$19,000.01 to $20,000	13.75	11.20
$20,000.01 to $21,000	14.25	11.55
$21,000.01 to $22,000	14.75	11.85
$22,000.01 to $23,000	15.25	12.20
$23,000.01 to $24,000	15.75	12.30
$24,000.01 to $25,000	16.25	12.85
$25,000 to $1,000,000	$16.25 plus handling charge of $0.35 per $1,000 or fraction over first $25,000.	$12.85 plus handling charge of $0.35 per $1,000 or fraction over first $25,000.
$1,000,000 to $15,000,000	$357.50 plus handling charge of $0.25 per $1,000 or fraction over first $1,000,000.	$353.90 plus handling charge of $0.25 per $1,000 or fraction over first $1,000,000.
Over $15,000,000	Additional charges may be made based on considerations of weight, space and value.	

ADDITIONAL SERVICES

	Extra Fee
COD COLLECTION CHARGE (Maximum amount collectible is $500)	$2.00
RESTRICTED DELIVERY	$2.00
RETURN RECEIPTS:	
Requested at time of mailing:	
Showing to whom and date delivered	$0.90
Showing to whom, when and address where delivered	$1.20
Requested after mailing:	
Showing to whom and date delivered	$5.00

Exhibit 911.21, Registry Fees

914.21 In Addition to Postage. Collect-on-delivery (COD) fees are:

Amount to be collected, or insurance coverage desired [1]	COD Fees
$ 0.01 to 25	2.00
25.01 to 50	2.50
50.01 to 100	3.00
100.01 to 200	3.40
200.01 to 300	4.25
300.01 to 400	5.25
400.01 to 500	5.50
Restricted delivery	2.00
Notice of nondelivery	1.75
Alteration of COD charges or designation of new addressee	1.75
Registered COD	2.00

[1] For Express Mail COD shipments, collect the fee for the amount to be collected only. Express Mail insurance covers up to $500 merchandise insurance.

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915 Special Delivery

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915.3 Fees (in addition to postage).The special delivery fees are:

Class of mail	2 lbs. and under	10 lbs. and less, but over 2 lbs.	Over 10 lbs.
First-Class (including Priority)	$5.35	$5.75	$7.25
All others	5.85	6.50	8.10

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916 Special Handling

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916.4 Fees (in addition to postage.) The fees for special handling are:

Weight	Fee
10 pounds and less	$1.55
More than 10 pounds	2.25

917 Business Reply Mail (BRM)

917.1 General

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917.14 Business Reply Mail Accounting System (BRMAS). Mailers may obtain a reduced fee for the return of their BRM cards and letters under the Business Reply Mail Accounting System (BRMAS). BRMAS provides an automated method of processing and rating BRM. The requirements for entry into the BRMAS system are as follows:

a. Mailers must pay for BRM through a business reply account as specified in 917.343 or 137.276g.

b. Mailers must obtain an authorization in accordance with 917.213. During the authorization process mailers will be assigned a unique ZIP + 4 code for each rate category of BRM that will be returned to them under the system (one for cards, one for letter-size pieces weighing one ounce or less, one for letter size pieces weighing over 1 ounce and up to and including 2 ounces).

c. The unique ZIP + 4 code assigned during the application process must appear in the address of each BRM piece distributed for return under this system. The ZIP + 4 code on each BRM piece must be the proper one assigned for the rate category of the piece upon its return. The ZIP + 4 codes assigned for this program must be used only on the appropriate BRM pieces of the organization.

d. A barcode, prepared in accordance with 917.528b, that corresponds to the unique ZIP + 4 code that appears in the address as described in 917.14c, must appear on each BRM piece distributed under the BRMAS system.

e. Each BRM card or letter under the BRMAS system must contain a FIM C.

f. Each BRM card or letter must meet the automation size and paper stock requirements of 917.6.

g. All other requirements for BRM must also be met.

917.2 Permits

917.21 Application

* * * * *

917.213 Business Reply Mail Accounting System. A mailer who wants to participate in the BRMAS system must submit a letter of request to the Postmaster or to the Manager, Mailing Requirements, at the post office to which the pieces will be returned, so that an account can be opened on the BRMAS system. The mailer will be provided with detailed instructions on how to correctly prepare BRM, including the ZIP + 4 codes to be used. The mailer is encouraged to provide for approval, pre-production sample BRM pieces that properly show the ZIP + 4 codes, barcodes, and other BRMAS and BRM requirements. A letter of authorization will be issued to the mailer.

Note: The mailer must have a valid business reply permit as required in 917.211 and 917.22, or 137.276g, and must pay the annual BRM permit and accounting fee as described in 917.343b for entry into the BRMAS system.

917.22 Annual Permit Renewals. An annual renewal notice will be furnished to each BRM permit holder. The permit holder must return the renewal notice and payment to the post office that issued the permit by the expiration date of the permit. Management sectional centers (MSCs) will provide renewal notices for use by their associate offices.

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917.241 Acceptance Conditions

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c. A separate permit and accounting fee must be paid at each post office where a business reply account is desired (see 917.343b).

917.242 Return Through More Than One Post Office

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b. Exceptions:

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(3) A separate permit and accounting fee must be paid at each post office where a business reply account is desired (see 917.343b).

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917.3 Postage and Fees

917.31 General. There is an annual BRM permit fee charged once each 12-month period. First-Class postage and a BRM per-piece charge will be collected from the addressee upon delivery. An annual permit and accounting fee is required for establishment of a business reply account (see 917.343b).

* * * * *

917.33 Fees

a. The BRM annual permit and renewal fee is $60 (for mailers not maintaining a BRM account as described in 917.343).

b. The BRM annual permit and accounting fee is $260 (for mailers maintaining a business reply account as described in 917.343).

c. The applicable and full BRM fee(s) must be paid once each 12-month period.

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917.34 Payment of Postage and Fees

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917.342 Cash or Postage-Due Account. Payment may be paid in cash or through a regular postage-due account, as follows:

a. Amount Collected. The amount to be collected for cash or use of regular postage-due account transactions is the appropriate First-Class postage, plus a charge of $0.40 per piece.

* * * * *

917.343 Business Reply Account. A business reply account must only be used for payment of postage and fees on BRM as follows:

a. Amount Collected. The amount to be collected for business reply account transactions is the appropriate First-Class postage, plus a charge of $0.08 per piece. The amount to be collected for business reply account transactions for pieces prepared under the BRMAS system (see 917.14) is the appropriate First-Class postage, plus a charge of $0.05 per piece.

Exception: Business reply cards and letters returned under the BRMAS system that are rejected by USPS barcode sorters and are found not to meet the machinability, barcode, or other preparation requirements necessary for the BRMAS system will be charged the appropriate First-Class postage plus a charge of $0.08 per piece. In addition, if improper barcodes appear on BRM pieces returned under the BRMAS system (for example, if a barcode representing the card rate appears on a letter-size piece) the pieces will be subject to the appropriate First-Class postage plus a charge of $0.08 per piece.

b. Permit and Accounting Fee. An annual permit and accounting fee is charged for each business reply account at each post office where the mail is to be returned. The full permit and accounting fee must be paid once each 12-month period.

Note: BRM permit holders who want to begin using a business reply account at a time other than the anniversary date of their existing permit must pay the full $260 permit and accounting fee. However, such permit holders may apply (under the provisions of 147) for a refund of the unused portion of the current permit fee. Such refunds will be given based on a prorated schedule of $5 for each whole month the permit was not used.

Example: A mailer paid the $60 permit fee on January 1, and, on July 5 of that same year, decided to open a business reply account. On July 5, this permit holder would be required to pay the $260 annual business reply permit and accounting fee. However, the permit holder could apply for a refund of the unused portion of the original permit fee (paid on January 1) for the period from August through December. Since the refund is based upon whole months not used, a refund for the month of July is not given. The mailer would be eligible for a $25 refund for the months of August, September, October, November, and December ($5 per month times 5 months).

c. The following conditions apply to business reply accounts:

* * * * *

(3) When a permit holder with a business reply account desires a separation of charges, payment of a business reply permit and accounting fee is required for each billing prepared for each separation. If a business reply permit and accounting fee is not paid for each separation, the permit holder pays the appropriate First-Class postage, plus a charge of $0.40 per piece for each separation.

* * * * *

d. Insufficient Funds. When a business reply account contains insufficient funds to cover the amount due for postage and fees, the BRM is held and the permit holder notified by certified mail that the BRM is being held. If funds are not deposited within 3 days, the BRM is treated as a cash or postage-due account transaction, and the permit holder pays the appropriate First-Class postage, plus a charge of $0.40 per piece. If funds are deposited within 3 days, all BRM held during the 3 days will be charged First-Class postage, plus $0.08 per piece or, if under the BRMAS system, First-Class postage, plus $0.05 per piece.

e. BRM Addressed to Different Firms. BRM addressed to several different firms at the same delivery unit may be delivered to an agent authorized by a valid business reply permit holder. The agent will pay one business reply account fee for all the firms represented by the agent in the same delivery unit. If the agent, or any of the firms represented by the agent, desires a separation of charges then the conditions in 917.343c(3) are applicable.

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917.35 BRM Bearing Stamps

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917.352 Refunds

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b. The $0.05 (for BRMAS), $0.08, or $0.40 per BRM piece charges are not refundable. * * * * *

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917.5 Format

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917.52 Format Elements.

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917.525 Address. The complete address, including the name of the permit holder, street address, and/or post office box number, city, state, and ZIP Code must be printed directly on the mailpiece. For pieces distributed under BRMAS (see 917.14) the address must include a unique ZIP + 4 code that is preassigned for the BRM piece and which identifies the type of BRM, the applicable rate, and the individual permit holder.

Exception: * * * * *

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917.528 Prebarcoded BRM.

a. Optional Use of Barcodes. Barcoding permits highly reliable sortation of mail through automated barcode sorters instead of manual or mechanized methods. Prebarcoding of BRM is optional. If BRM is prebarcoded, these requirements must be followed:

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Renumber existing 917.528 a-e as 917.528a (1)-(5);)

* * * * *

(2) Each full bar must be .125 inch, ± .1 inch. Each half bar must be .05 inch high, ± .01 inch. All bars printed must be .02 inch wide, ± .005 inch. The horizontal spacing of all bars must be 21 bars per inch, ± 1 bar. (See Exhibit 917.528a(2).)

* * * * *

b. Required use of Barcodes for BRMAS System. (Free camera-ready Postnet barcodes are provided by the Postal Service.)

(1) FIM C. FIM C must be used for prebarcoded BRM under the BRMAS system (see 917.527).

(2) ZIP + 4 Barcodes. A ZIP + 4 barcode is made up of a single field of 52 bars. The information content of the barcode is distinguished by the height of the bars, either tall (full) or short (half) bars, which represent a "one" or a "zero" to a USPS barcode sorter. These bars, when separated into groups of five, represent each of the nine digits of a ZIP + 4 code, plus a tenth digit designated as a "correction digit." The first and last bars of the barcode are "frame bars" and must always be full bars. (See Exhibit 917.528a(2).) The sequence of bars must represent the ZIP + 4 code (including the appropriate correction character) in the address of the piece, according to the code defined in Exhibit 917.528a(2).

(3) Barcode Location. The location of the barcode must be on the address side of the mailpiece and within a clear space known as the "bar code read area," which must be free of any printing other than the barcode. The read area extends 5/8 inch from the bottom and at least 4-1/2 inches from the right edge of the mailpiece. Within the read area, the leftmost bar of the barcode must be located between 3-1/4 inches and 4 inches from the right edge of the mailpiece. The bottom of the bars must be positioned 1/4 inch (± 1/16 inch) from the bottom edge of the mailpiece (see Exhibit 917.528b(3)), and the barcode must be completely contained within the solid rectangle shown in Exhibit 917.528b(3).

(4) Barcode Dimensions and Spacing. A full bar must be .125 ± .01 inch in height. A half bar must be .05 ± .01 inch in height. The width of all bars must be equal and must be .02 ± .005 inch. Horizontal spacing of the bars must be 21 ± 1 bar per inch. Pitch (a bar and a space) must be limited to .045 inch minimum and .05 inch maximum.

(5) Background Contrast. A print reflectance difference (envelope reflectance minus print reflectance) of at least .3 (30% percent) is required between the background material of the mailpiece and the barcode when measured in the red portion of the spectrum at 650 nanometers.

(6) Skew and Baseline Shift. The combined effects of positional and rotational skew (slant) of the barcode must be limited to a maximum rotation of the bars of ± 5 degrees from a perpendicular to the bottom edge of the mailpiece. The bottom of any bar must not be more than .005 inch from the bottom of each adjacent bar.

(7) Printing Irregularities. Attached extraneous ink (connected to a bar) must not cause any bar to exceed the maximum height or width dimensions. Detached extraneous ink (not connected to any bar or bars) in the barcode read area must not exceed .003 inch in any dimension or cause the space-to-background print reflectance difference to exceed 10 percent. Individual bars must not contain ink voids which reduce bar width to less than .01 inch or remove more than .01 inch along the bar height.

(8) Inserts. The barcode may be printed on an insert and appear through a barcode window on an envelope under the following conditions:

(a) Barcode Window Specifications.

(i) Windows must be covered with a clear plastic material, securely glued on all sides.

(ii) Envelopes with barcode windows may be used only when the ZIP + 4 barcode will be visible through the barcode window.

(iii) Windows must extend fully to the lower edge of the envelopes and must be of wrap-around construction.

(iv) The right edge of the window must be not less than 1/4 inch from the right edge of the envelope.

(v) The left edge of the window must be not less than 4-1/2 inches from the right edge of the envelope.

(b) Barcode Location Specifications.

(i) The ZIP + 4 barcode must be located within the barcode clear zone which extends 5/8 inch from the bottom of the envelope and 4-1/2 inches from the right edge of the envelope.

(ii) The barcode must be at least 1/5 inch from the right edge of the window and 1/5 inch from the left edge of the window.

(iii) No printing other than the ZIP + 4 barcode is permitted in the barcode clear zone.

(iv) The leftmost bar must be located 3-5/8 inches ± 3/8 inch from the right edge of the mail piece and from 3/16 inch to 7/16 inch from the bottom of the envelope.

(Renumber existing 917.53 as 917.528b(9), and revise as follows:)

(9) BRM Format Review. Postal inspection of BRM before printing is desirable but not mandatory. Permit holders receiving written postal approval of BRM before printing could avoid the cost of either reprinting and distribution in the event of a nonmailable ruling, or being ineligible for the BRMAS rate. (Remainder of section unchanged.)

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917.57 Self-Mailers.

(Add the following sentence to the end of the section:) See 917.6 for additional requirements for pieces entered under the BRMAS system.

917.58 BRM Cards.

(Add the following sentence to the end of the section:) See 917.6 for additional requirements for pieces entered under the BRMAS system.

917.59 Business Reply Labels

917.591 The minimum size of a label with the legend "Business Reply Label" is 2 inches x 3 inches. It is not necessary to print FIM or bar codes on BR labels; however, all other BRM format requirements must be met.

917.592 The series of horizontal bars on business reply labels must be at least 3/4 inch high.

917.593 Business reply labels must not be used on standard-size BRM cards and envelopes.

917.594 Business reply labels may not be distributed under BRMAS.

* * * * *

(Delete existing section 917.6 and replace with the following:)

917.6 BRMAS Automation Requirements.

917.61 Size Requirements.

917.611 Letter-Size Pieces. Each letter-size BRM piece must meet the following size requirements:

a. Its length must be at least 5 inches and not more than 11-1/2 inches;

b. Its height must be at least 3-1/2 inches and not more than 6-1/8 inches;

c. Its thickness must be at least .007 inch and not more than 1/4 inch;

d. Its length divided by height must fall between 1.3 and 2.5.

917.612 Postcards. Each business reply card must meet the following size requirements:

a. Its length must be at least 5 inches and not more than 6 inches;

READING THE ZIP + 4 BARCODE

The ZIP + 4 barcode consists of the nine digits plus a correction character used by the barcode reader to identify reading errors. The barcode consists of 52 bars as illustrated. Each of the 10 digits contained between the frame bars consists of 2 long bars (read as 1's) and 3 short bars (read as 0's).

Reading and understanding the bar code is simple. There are 10 combinations of 5 bars, each consisting of 2 long (1's) and 3 short (0's) bars. The digits 0 through 9 have been assigned to these combinations:

0=11000 1=00011 2=00101 3=00110 4=01001 5=01010 6=01100 7=10001 8=10010 9=10100

Within the group of 5 bars, each position has a different value: from left to right 7, 4, 2, 1, and 0. Addition of the values in the two positions occupied by 1 bars gives the value of the combination, except in the case of 11000 which totals 11 and has been assigned as zero.

In addition to the ZIP + 4 Code, each barcode contains a correction digit. This digit appears in the last position of the barcode. Its purpose is to ensure that the machine applying the barcode is working properly. The sum of the 10 digits in the barcode (the 9-digit ZIP + 4 Code plus the correction digit) must always be a multiple of 10. The value of the correction digit is therefore determined by adding the numbers in the 9-digit ZIP + 4 Code, and then determining what single-digit number must be added to that sum to make the total a multiple of 10 (end with a zero). In the Example, the sum of the nine digits of the ZIP + 4 Code is 45. Using a correction character of 5 makes the sum of all 10 characters 50, a multiple of 10. If the sum of the digits is not a multiple of 10, an error has been made and the barcode must not be used.

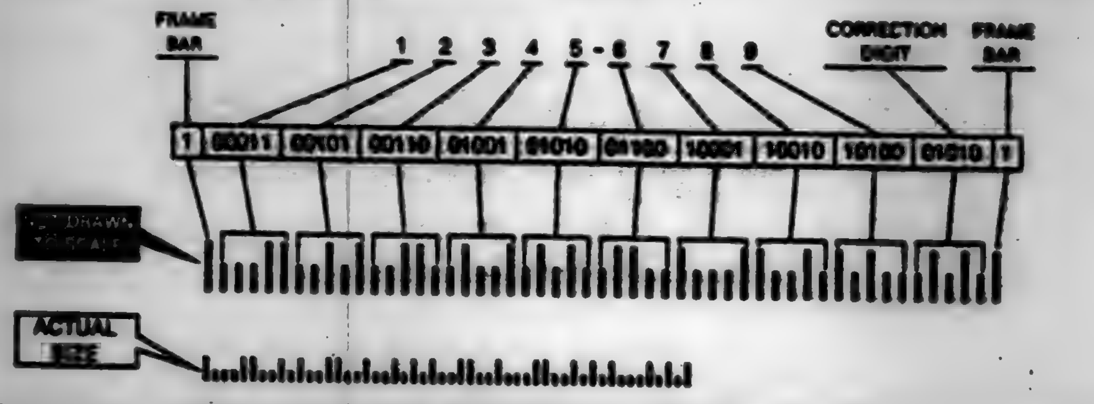

Exhibit 917.528a(2), ZIP + 4 Barcode

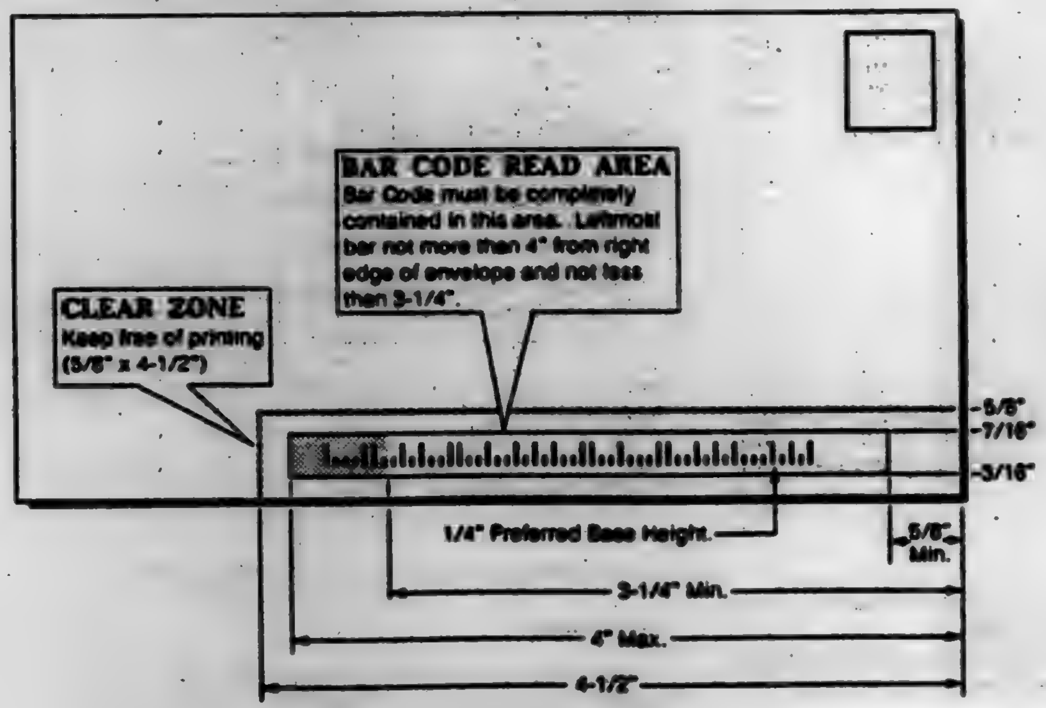
BAR CODE READ AREA
Bar Code must be completely contained in this area. Leftmost bar not more than 4" from right edge of envelope and not less than 3-1/4".
CLEAR ZONE
Keep free of printing (5/8" x 4-1/2")
5/8"
7/16"
3/16"
1/4" Preferred Base Height.
5/8" Min.
3-1/4" Min.
4" Max.
4-1/2"

Exhibit 917.528b(3), Barcode Read Area

b. Its height must be at least 3-1/2 inches and not more than 4-1/4 inches:

c. Its thickness must be at least .007 inch and not more than .0095 inch.

917.62 Additional Physical Requirements.

917.621 Self-Mailers. Self-mailers prepared under the BRMAS system must be fabricated from paper having a minimum base weight of 20 pounds, using a 17 inch by 22 inch sheet size and 500 sheets, in addition to meeting all other requirements for BRM.

917.622 Cards. Business reply cards prepared under the BRMAS system must be printed on paper stock with a minimum basis weight of 75 pounds for 500 sheets measuring 25 inches by 38 inches, and have a thickness of at least .007 inch and not more than .011 inch.

Note: Cards exceeding 4-1/4 inches in height, 6 inches in length, or .0095 inch in thickness, are subject to postage at the regular single-piece rate for matter other than cards in Exhibit 310A (see 322.2 and 322.4).

918 Parcel Airlift

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918.4 Fees. In addition to the regular surface rate of postage, the fees for parcel airlift are:

Weight	Fee
Up to 2 pounds	$ 0.30
Over 2 up to 3 pounds	0.60
Over 3 up to 4 pounds	0.90
Over 4 pounds	1.20

* * * * *

919 Merchandise Return

919.1 Description

919.11 General. Merchandise return service allows authorized permit holders to pay the postage and fees on single-piece rate First-Class, Priority, third-class, and fourth-class (parcel post, special fourth-class, library rate, or bound printed matter) mail to be returned by their customers.

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919.2 Permits

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919.23 Processing Applications.

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919.232 Annual Permit Renewals. The permit holder must renew the permit by sending the annual fee to the post office issuing the permit by the expiration date of the permit.

* * * * *

919.3 Postage and Fees

919.31 Annual Fee. A fee of $60 will be charged once each 12-month period for each permit issued.

919.32 Transaction Fee. The fee for each item returned is $0.20 per parcel, in addition to the postage and other applicable fees.

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930 Supplemental Mail Services

931 Certificates of Mailing

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931.2 Fees

* * * * *

931.23 Bulk Mailings. Identical pieces of First-Class and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps, are subject to the following fees:

Up to 1,000 pieces (1 certificate for total number)	$2.00
For each additional 1,000 pieces or fraction	.25
Duplicate Copy	.45

* * * * *

932 Return Receipts

932.1 Description.

932.11 Return Receipt with Special Service. Return receipt service furnishes a mailer with evidence of delivery. The service may only be obtained for mail that is sent COD or Express Mail, is insured for more than $50, or is registered or certified. After delivery, the Postal Service mails the return receipt to the sender. Return receipts may be requested either before or after mailing.

932.12 Return Receipt for Merchandise Service. Return receipt for merchandise service is available only for merchandise sent at Priority Mail, third-class, or parcel post rates of postage. See 934.

Note: For information about international return receipt service, see *International Mail Manual,* 340.

932.2 Fees (in addition to postage and other fees.) The fees for return receipts are:

REQUESTED AT TIME OF MAILING:	
Showing to whom (signature) and date delivered	$0.90
Showing to whom (signature), date, and address where delivered	$1.20
REQUESTED AFTER MAILING:	
Showing to whom and date delivered	$5.00
RETURN RECEIPT FOR MERCHANDISE (See 934)	
Showing to whom (signature) and date of delivery	$1.00
Showing to whom (signature), date, and address where delivered	$1.35

Note: The fee for a return receipt does not insure the article against loss or damage.

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932.32 After Mailing

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c. Mailer's may not request a return receipt after mailing for return receipt for merchandise mailings. See 934.1.

932.5 Duplicates

932.51 Failure to Receive Return Receipt. After a reasonable period of time, not longer than one year after the date of mailing, a mailer who did not receive return receipt service for which the mailer had paid, may request a duplicate.

a. The mailer must complete a Form 3811-A, *Request for Return Receipt (After Mailing),* at any post office. The clerk will assist the mailer in completing Form 3811-A, postmark it and mail it to the delivering post office. Or, the mailer may request in writing a copy of the actual delivery record for mail sent COD, numbered insured, Express or registered mail. Waive the fee if the mailer can produce a receipt showing the applicable return receipt fee was paid. Requests for duplicate return receipts or copies of delivery records for Express Mail must be filed within 90 days of the date of mailing.

b. A request for a duplicate receipt for certified mail may be filed without additional charge only if the original Form 3800, *Receipt for Certified Mail,* was date-stamped by a post office at the time of mailing. If the original Form 3800 was not date-stamped, the post office must charge the fee for a return receipt after mailing.

932.52 Request for Duplicate or Return Receipt After Mailing Form 3811-A. Procedures for a request for a duplicate of a return receipt after mailing a Form 3811-A, are as follows:

a. Records of delivery must be checked, and the date of delivery and the name of the individual or organization to whom delivered must be entered on the Form 3811-A.

b. If a signed receipt is not found for certified mail, send the addressee Form 1510, *Mail Loss/Rifling Report.* If the reply indicates that the addressee has received the certified mail, file the completed Form 1510 with the delivery records as a receipt. The delivery information contained on the Form 1510 will be used to complete the Form 3811-A. If the addressee does not return a completed Form 1510 within 14 days, the Form 3811-A must be completed to show no record of delivery and returned to the mailer.

c. Form 3811-A must be postmarked and the postage for receipt after mailing canceled. Draw a line through the address of the delivery post office on the front of the Form 3811-A and mail the form back to the mailer.

* * * * *

933 Restricted Delivery

933.1 Description. Restricted delivery service permits a mailer to direct delivery only to the addressee or the addressee's authorized agent. The addressee must be an individual (or natural person) specified by name. The service may only be obtained for COD mail, mail insured for more than $50, and for registered or certified mail.

933.2 Fee (in addition to postage and other fee.) The fee for restricted delivery fee is $2.00.

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934 Return Receipt for Merchandise

934.1 Description

a. Return receipt for merchandise service is a form of return receipt service which provides the sender with a mailing receipt, a return receipt, and a record of delivery at the office of address. No record is kept at the office of mailing. Mail using this service will be dispatched and handled in transit as ordinary mail. No insurance coverage is provided. Restricted Delivery service is not available. No return receipt can be requested after mailing. This service may not be used on international mail.

b. Mailers may be authorized to use specially designed and privately printed Form 3804, *Return Receipt For Merchandise.* The return receipt for merchandise endorsement block must be printed in brown using the same size and format. The return receipt for merchandise number must begin with the letter N. Proposed labels must be submitted to the Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service Headquarters, Washington, D.C. 20260-5360, through the local postmaster.

c. The proper placement of the return receipt for merchandise endorsement is described in 121.44 and illustrated in Exhibit 121.4.

934.2 What May Be Sent With Return Receipt For Merchandise Service. Return receipt for merchandise service is available only for merchandise sent at the Priority, third-class or parcel post rates of postage. All articles must be mailable in accordance with postal regulations. Special Delivery service is available upon payment of the prescribed fees (except for bulk third-class). Special handling is available for third-class and parcel post.

934.3 Fees:

Showing to whom (signature) and date of delivery	$1.00
Showing to whom (signature), date, and address where delivered	$1.35

934.4 Mailing

934.41 Payment of Fee and Postage. The fee and postage may be paid by stamps, meter stamps, or by permit imprint. The fee and postage on official mail of federal government agencies and departments are collected under the reimbursement procedures in 137.

934.42 Points to Which Mailable. Return receipt for merchandise mail may be addressed for delivery only:

a. In the United States and its territories and possessions;

b. Through Army, Air Force (APO), and Navy (FPO) post offices; and

c. Through the United Nations, New York, Post Office.

934.43 Where To Mail. Mailers must mail articles at a post office, branch, or station, or give them to a rural carrier. They must not be deposited in mail drops at post offices nor in or on street mailboxes. They may be placed in, but not on, rural mailboxes.

934.44 How To Mail. Obtain both a Form 3804, *Return Receipt For Merchandise,* and a Form 3811, *Domestic Return Receipt,* at the post office or from rural mail carriers. Observe the following procedures:

a. Enter on the receipt portion of the return receipt for merchandise, the name and complete address of the person or firm to whom the mail is addressed;

b. Affix the numbered portion of the gummed label from Form 3804 to the mailpiece;

c. Endorse the mailpiece on the address side (near the return receipt for merchandise label) "Return Receipt Requested" or "Return Receipt Requested Showing Address Where Delivered." Enter the return receipt for merchandise number on the Form 3811, address it to yourself, and attach it to the front of the mailpiece -- if it will not cover the address. Otherwise, attach it to the back of the mailpiece. The name of the person to whom the return receipt is to be furnished must be the same as that of the sender. If the return receipt is to show the address where the article was delivered, check the block at the top of Form 3811;

d. Attach to the article, sufficient postage to pay for the rate of postage desired, the return receipt for merchandise fee, and the special delivery or special handling fee, as appropriate;

e. Attach the return receipt for merchandise label to the address side of the article and present the completed receipt to a postal employee. If asked to do so, the postal employee will show on the receipt the time the article was accepted for mailing. If given to a rural carrier, the carrier will return the postmarked receipt to the customer;

f. Customers may instruct the Postal Service to deliver without obtaining a signature by signing the waiver on Form 3804. This option allows the delivery employee to sign for the article on the first delivery attempt to the listed address, if the addressee or the addressee's agent is not available to accept the shipment. Customers who elect to waive the addressee's or the addressee's agent's signature must accept the delivery employee's signature and date of delivery as proof of delivery. To waive the signature, detach both portions of the gummed label and attach to the mailpiece.

934.5 Firm Mailing Books. If three or more articles are mailed at one time, the sender may use mailing books, Form 3877, which are furnished by the Postal Service without charge, or privately printed firm mailing bills. A series of numbers will be furnished to the sender by the local postmaster. The sheets of the book become the sender's receipts. The mailer must present the books with the articles to be mailed at a post office. Mailers must also obtain, at their expense, stamps to endorse the articles with the endorsement "return receipt for merchandise". The endorsement must be a facsimile or proportionate enlargement of the official endorsement shown in 934.1. Following are instructions for the use of firm mailing bills:

a. Write in "return receipt for merchandise";

b. The mailer must endorse and number the articles "Return Receipt Requested," "Return Receipt Requested Showing Address Where Delivered," or "Special Delivery," as appropriate. Prepare and attach the return receipt to the envelopes with the receipt side showing;

c. Show on the bill the number of each article and the name and address of addressee;

d. Enter only the amount of fees paid in the proper columns;

e. Affix necessary postage to the articles;

f. The accepting employee will count the items, postmark and receipt the bill for the total number, indicate time of mailing, if requested, and return the bill to the sender;

g. A postmarked receipt marked "Bulk Receipt" will be issued if the quantity mailings do not check out, or if they are not listed and arranged to permit issuance of a verified receipt.

934.6 Delivery

934.61 Procedures. Return receipt for merchandise mail for delivery by carriers will be taken out on the first trip after it is received, unless the addressee has requested that the postmaster hold the mail at the post office. Return receipt for merchandise mail will be delivered to the addressee or authorized representative. A signature must be obtained on Form 3849. If the mailer has indicated on the mailing label that the delivery is to be made without obtaining the signature of the addressee or the addressee's agent, sign the return receipt in the "Signature - Agent" block, sign Form 3849 in the "Received By" block and leave the article. Form 3849 should be initialed and dated in the "Delivered By" block. Similarly, when the addressee has properly authorized unprotected delivery, articles should be delivered in accordance with 153.82. The carrier should complete Form 3849 and the return receipt as above.

934.62 Rural Delivery. For delivery by rural carriers or at personnel and nonpersonnel rural units, see 156.

934.63 Highway Contract Route Delivery. Highway contract route carriers will deliver return receipt for merchandise mail, if required by the contract, but delivery will be made only at the customer's box or along the route.

934.64 Delivery Records. The delivery records will be held for 2 years. At the end of that period, the records will be destroyed.

934.65 Notice of Arrival. The carrier will leave a notice of arrival on Form 3849, *Delivery Notice Reminder/Receipt,* if he cannot deliver the return receipt for merchandise article for any reason. The article will be brought back to the post office and held for the addressee. If the article is not called for within 5 days, a second and final notice on Form 3849 will be issued. If the article is not called for or its redelivery requested, it will be returned at the expiration of the period stated by the sender, or after 15 days if no period is stated.

934.66 Delivery at Post Office. Hold return receipt for merchandise mail at a place convenient for the public to call, if addressed for box or general delivery or for firm callers or if a Form 3849 had been left for addressee to call. Place Form 3849 in post office boxes for box service customers. Use Form 3883 for firm or other customers who receive an average of three or more return receipt for merchandise articles at one delivery.

934.7 Carrier Controls

934.71 Assignment. Send return receipt for merchandise mail, including that for firms, to a unit or employee designated to assign it for delivery. Assign as follows:

a. Individual Pieces. Offices with 190 or more revenue units must use Form 3867, *Registered, Express Mail and Certified Matter Received for Delivery,* to show the total number of pieces given to each carrier. Use Form 3850, Record of Delivered Registered, Numbered Insured, Certified, and COD Mail, as the chargeout record at post offices with 189 or fewer revenue units. Obtain the signature of the carrier on Form 3867 or 3850.

b. Firm Mail. Prepare Form 3883, *Firm Delivery Book--Registered, Certified and Numbered Insured Mail,* in duplicate for addressees who receive an average of three or more pieces at one time.

c. Specials. Assign special delivery return receipt for merchandise separately for special delivery service, following the rules in 934.71a and b.

934.72 Clearance. The clearing clerk must clear carriers and messengers in the following manner:

a. Have carriers or messengers account in bulk for all return receipts for merchandise articles charged to them, either by signed receipts or returned articles. If any article or return receipt is not accounted for, make an immediate report to the supervisor. Endorse the chargeout record when clearing is complete.

b. Sign and give back to the carrier or messenger Form 3821, *Clearance Receipt,* which is prepared and submitted when accounting for certified and return receipt for merchandise articles and return receipts assigned for delivery.

c. If return receipt for merchandise articles returned undeliverable by a carrier or messenger are forwarded or returned, show disposition on Form 3867 and prepare a disposition record on Form 3849 including the name of the addressee. File the Form 3849 with the delivery receipts.

d. Examine all return receipts. Make sure that they are properly signed and that the date of delivery has been entered. If delivery was improper, have the carrier or messenger obtain the addressee's signature on another receipt card and destroy the original after the duplicate has been signed. Mail the receipts no later than the next working day.

e. It is the supervisor's responsibility to take prompt corrective action with the delivering employee if return receipts or delivery receipts have not been obtained or have been improperly completed.

f. If the mail is not delivered in 5 days, issue a second and final notice to the addressee on Form 3849 marked "FINAL NOTICE." Send it through regular channels with the addressee's ordinary mail.

934.73 Delivery to Military Installations. Return receipt for merchandise mail addressed for delivery at military installations within the continental United States must be delivered to the military installations in the same manner as numbered insured mail.

934.74 Filing Delivery Receipts. See 913.72 for instructions on filing delivery receipts.

934.75 Undeliverable. Handle return receipt for merchandise mail which is undeliverable or is to be forwarded in accordance with 159.3 and 159.4.

934.8 Acceptance Procedures

934.81 Individual Mailings. The window clerk should verify as follows:

a. Compare name and address of addressee on the article and on Form 3804, *Return Receipt for Merchandise;*

b. Make sure the article bears the proper endorsement;

c. Examine the return receipt card to determine whether appropriate blocks in instructions to delivering employee have been checked, and that the card is securely attached. Make sure address is properly completed by the sender;

d. Make certain that proper postal charges have been paid by stamps or meter strip affixed; endorse mail, if special delivery;

e. Postmark receipt portion and give to mailer. Initial by the entry on the receipt, in ink, the time the article was mailed, if requested to do so by sender;

f. Deposit article in mail. Do not return to the mailer.

934.82 Quantity Mailings. If the return receipt for merchandise mail numbers are listed on firm mailing bills in consecutive order and the mail is similarly arranged, verify quantity mailings as follows:

a. Count the pieces of mail and listings on the bill. They must agree;

b. Compare return receipt for merchandise mail numbers on first and last articles with the first and last numbers listed on the bill. They must agree;

c. Make a spot-check to determine that mailings are properly prepared and that postal charges have been fully prepaid;

d. Postmark receipt and give to mailer. Enter time articles were mailed, if requested to do so by the sender, placing your initials by the entry. Use ink to enter time and initials in the space for the name of accepting employee;

e. Deposit articles in mail. Do not return to mailer.

934.83 Verification of Delivery. Mailers may obtain a copy of the delivery record by sending a written request to the post office of address for a copy of the delivery record. The fee is $5 for each copy requested and must be sent with the request. Mailers may not obtain a return receipt after mailing.

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940 Nonmail Services

941 Money Orders

941.1 Issuance

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941.12 Amounts, Fees, and Payments

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941.122 Fees

a. The fee for a postal military money order is $0.25. They are issued by military facilities authorized by the Department of Defense.

b. Fees for domestic money orders issued at other post offices, including those with branches or stations on military installations, are as follows:

Amount of money order	Amount of Fee
$0.01 to $35	$0.75
$35.01 to $700	1.00

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941.4 Inquiries

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941.43 Fee. The customer must pay a $2.00 fee for each money order inquiry submitted on a Form 6401. Each Form 6401 covers only one money order.

Exceptions: The $2.00 fee does not have to be paid by banks, other financial institutions, and Government agencies that process money orders directly with the Federal Reserve Bank, and for official post office business.

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945 Mailing List Services

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945.2 Sortation of Mailing Lists on Cards by Five-Digit ZIP Code

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945.23 Multi-Five-Digit ZIP Code Post Offices

945.231 General. Under the following conditions, post offices will sort mailing lists consisting of addresses for the multi-five-digit ZIP Code post offices described in 122.632 (see also 122.633), according to five-digit ZIP Codes, at a charge of $42 per thousand addresses or fraction thereof, payable to the local postmaster upon submission of the list.

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950 Alternate Delivery Services

951 Post Office Box (P.O. Box) Service

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951.2 Fees

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951.26 Fee Schedule

951.261 Fees are:

Group	Box size 1	2	3	4	5
	Per semiannual period				
1	$14.00	$19.50	$36.00	$60.00	$100.00
2	3.25	5.00	8.50	14.00	22.00
	Per annual period				
3	$2.00	2.00	2.00	2.00	2.00

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952 Caller Service

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952.2 Fees

952.21 Reserved Number Fee. The fee for each number reserved by a customer for future use is $20 per postal calendar year or any part of such a calendar year.

952.22 Caller Service Fees

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952.222 Basic Caller Service Fee

a. General Rule. The basic fee for caller service is $170.00 for a semiannual period, to be applied to each caller number or separation used.

* * * * *

[FR Doc. 88–6701 Filed 3–25–88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[FRL-3355-3]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of clarification.

SUMMARY: The Environmental Protection Agency is today clarifying the broad interpretation of the term "soil" in the preamble to regulations promulgated on March 19, 1987. These regulations provide conforming changes to the interim status requirements for closure of hazardous waste surface impoundments, to be equivalent to the requirements for permitted hazardous waste surface impoundments. The conforming regulation is found at 40 CFR 265.228, and was published at 52 FR 8704.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at (800) 424-9346 (in Washington, DC, call 382-3000) or for technical information contact James T. Bachmaier, Office of Solid Waste [WH-565-E], U.S. Environmental Protection Agency, Washington, DC 20406, (202) 475-8859.

SUPPLEMENTARY INFORMATION: EPA published a final regulation on March 19, 1987, amending the interim status requirements in 40 CFR 265.228 for closure of hazardous waste surface impoundments (52 FR 8704, March 19, 1987). This amendment conformed the closure requirements for interim status surface impoundments to those requirements already in existence for permitted surface impoundments (40 CFR 264.228). The amendment specifies that all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated subsoils, and structures and equipment contaminated with waste and leachate, must be removed or decontaminated to achieve "clean closure" and avoid the need to perform post-closure care. The removal or decontamination of contaminated ground water to achieve clean closure of interim status surface impoundments was discussed in the preamble to the final rule. In that preamble, the Agency stated that the term "soil" includes both unsaturated and saturated soil, and therefore, that "uncontaminated ground water is * * * a requirement for 'clean closure' * * *". The Agency also stated that uncontaminated ground water had been a requirement for clean closure under previous regulations.

Subsequent to publication of this preamble, questions have been raised regarding the above statements that the Agency would now like to address. Such questions relate to the broad interpretation of the term "soil" to include ground water, and whether this interpretation has implications on use of "soil" elsewhere in the Part 264 or 265 regulations. The purpose of this notice is to clarify the Agency's position on the interpretations and policy statements made in the March 19, 1987, preamble, and to articulate the policy the Agency intends to follow in implementing closures of surface impoundments under 40 CFR 264.228(a)(1) and 265.228(a)(1). The Agency notes that these policies are also applicable to waste piles that close under 40 CFR 264.258(a) and 265.258(a).

First, the preamble discussion on cleanup of ground water at closure should have referred to EPA's use of the phrase "contaminated subsoils" in §§ 264.228(a)(1) and 265.228(a)(1) rather than to the phrase "underlying and surrounding soils," since the former term replaced the latter term as a result of the March 19, 1987 rulemaking. The term "contaminated suboils," in the context of closure of surface impoundments and waste piles by removal or decontamination, is interpreted to refer to any materials that may have been contaminated by hazardous wastes managed in the unit. Such contamination is evidenced by the presence of hazardous constituents at the time of closure. EPA does not now intend to interpret the term "soil" or "subsoil" to include the ground water contained in saturated or unsaturated soil or subsoil at any other place in the regulations where these terms may appear. At this time, the Agency's interpretation is limited to closure requirements for hazardous waste management units.

Second, the Agency's policy is that post-closure care is unnecessary if no hazardous wastes or waste residues remain at the site of the unit after closure (see §§ 264.228(a)(1) and 265.228(a)(1)). The term "waste residues" refers to any hazardous constituents derived from hazardous wastes that are present in the environment at or above levels of human health or environmental concern. Such levels are discussed in the March 19, 1987 preamble. The Agency has used the term "waste residue" in its closure regulations to cover any hazardous constituents released from a unit to the subsoils, for example, through escape from a liner, spills, over-topping at a surface impoundment, run-off, volatilization, or wind-blown releases to the atmosphere from a surface impoundment or waste pile. The term "waste residue" also includes any decomposition products of hazardous waste that contain hazardous constituents that are present in the environment at or above levels of human health or environmental concern, as discussed in the March 19, 1987 preamble. To remove or decontaminate these residues, the unit owner or operator must remove or decontaminate all contaminated materials, including liners and leachate collection devices, unsaturated soils, saturated soils, ground water, surface water, surface water sediments, and any other material containing hazardous constituents released from a hazardous waste management unit prior to completion of closure. Post-closure care is necessary where any of these or other waste residues, including any waste residues located in the ground water, remain at the site of the unit at or above levels of human health or environmental concern following completion of closure activities.

Third, it is the Agency's policy that in order to achieve clean closure of a hazardous waste management unit, the owner or operator must remove only those hazardous wastes or waste residues that are in the unit or have migrated from it, as shown by the factual circumstances in each case.

List of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-6872 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: NHTSA denies a petition for rulemaking from BMW of North America, Inc. requesting an amendment of the Federal motor vehicle safety standard on lighting. The petition asked that the definition of replaceable bulb headlamp be amended so that the lens reflector assembly need not be bonded, or alternatively to exclude ellipsoidal headlamps from the definition. The agency is denying the petition, consistent with its previous position with respect to the desirability for safety reasons of a bonded lens reflector assembly, because the petitioner presented no new information to justify its request.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Marian Ulman, Office of Rulemaking, NHTSA (202-366-5890).

SUPPLEMENTARY INFORMATION: On December 4, 1987, BMW of North America, Inc., submitted a petition for rulemaking requesting that NHTSA amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Paragraph S3 of the standard defines a "replaceable bulb headlamp" in pertinent part as "a headlamp comprising a bonded lens and reflector assembly * * *." BMW asked that the word "bonded" be deleted, or alternatively, that ellipsoidal-type headlamps now appearing on its cars, be excluded from the definition.

The effect of an amendment of this nature would be to allow separate lens and reflector components. In support of its petition, BMW argued that this would reduce costs so that broken headlamp lenses would be replaced in a timely manner. BMW recognized that the agency had previously denied a petition from General Motors to delete the bonding requirement (See 48 FR 44815) on the grounds that removable lenses introduce additional opportunities for aiming problems due to alignment inaccuracy; further, the opportunity exists for substitution of lenses designed for off-road vehicles and other U.S. beam patterns. In BMW's opinion, replaceable bulb headlamps can be designed so that these problems will not occur, citing features of its own ellipsoidal headlamp in support. As a general argument, it submitted that replaceable bulb headlamps are both left/right specific, and vehicle-specific, and that it was therefore unlikely that outside suppliers would introduce off-road lenses that would fit vehicles with on-road lamps. In addition, lenses for replaceable bulb headlamps would most likely be produced by the original manufacturer and available primarily through dealerships, where they most likely would be installed. BMW cites the statutory proscription against rendering inoperative original safety equipment (15 U.S.C. 1397(a)(2)(A) as a legal tool available for enforcement, mitigating against the likelihood of mismatched parts.

Both BMW and the agency agree on the importance of lens integrity to headlighting safety. A cracked lens can allow water to enter the chamber of a headlamp, dirtying the lens and reflector, eventually eroding the latter. As a result, the beam is altered. If the lens is separate from the reflector, there is less likelihood that the dirty or corroded reflector will be replaced or even cleaned when the lens is replaced. BMW, however, has not presented any information in support of its primary argument that lower replacement costs will lead to more frequent replacements. One could just as easily argue that for appearance reasons, or to avoid a possible legal citation, or to pass an upcoming annual inspection a vehicle owner will seek to replace a broken lens at the earliest feasible time. Given the lack of data related to the number of incidences where only the lens might be replaced and the numerical relationship between price and frequency of replacement, the petitioner cannot balance a possible increased frequency of replacement—a safety plus—against the possibility of increased misaim—a safety minus. Thus, the reason for the agency's denial of General Motors' petition remains.

Currently Standard No. 108 contains no performance requirements for lenses and reflectors, only that a replaceable bulb headlamp meet photometric and environmental requirements with the appropriate light source. It would be difficult and time-consuming for NHTSA to develop separate requirements covering aftermarket lenses and reflectors because there is no industry standard, such as an SAE Recommended Practice, available as a model. The attachment of the two pieces would have to be regulated in some fashion to ensure that lenses fit only one way to minimize misaim. A requirement would have to be adopted for providing DOT certification on the reflector. This would require additional regulations, at a time when the policy of the agency is to reduce regulation consistent with safety. For the same reason, the agency does not view with approbation the exclusion of ellipsoidal headlamps with replaceable bulbs from the bonding requirements applicable to all replaceable bulb headlamps; it would result in additional regulations, necessitating further Figures to a standard that already devotes 43 pages of the Code of Federal Regulations to them.

The agency has completed its technical review of BMW's petition, and has determined pursuant to 49 CFR 552.8 that there is not a reasonable possibility that the amendment requested in the petition will be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

(15 U.S.C 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-6715 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Procedural Change in Requesting Comments on Species Listings in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain species of animals and plants. Appendices I, II, and III to the Convention list those species for which trade is controlled. Appendix II includes species that any Party nation identifies as being subject to regulation within its jurisdiction for the purposes of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade. In certain situations, the U.S. Fish and Wildlife Service (Service) has decided to announce additions to Appendix II as final rules without first requesting comments on the issue of entering a reservation.

Any Party may enter reservations on any species added to the Appendices. The effect of a reservation is to exempt that Party from implementing the Convention for a particular species. There is no time limit for entering reservations on species added to Appendix II. Public comments on the issue of entering a reservation will still

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be considered after publication of the final rule, and reservations could be entered if appropriate.

DATES: This procedural change is effective April 27, 1988, and will apply to future additions to Appendix III as determined appropriate on a case by case basis.

ADDRESSES: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday in Room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION:

Background

The Covnention regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Apppendix II includes species that although not necessarily now threatend with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties, or by postal procedures between meetings. Amendments are adopted by a two-thirds majority of the Parties voting at meetings or voting when necessary by the postal procedures. Species can be added to Appendix III by any Party nation that unilaterally makes such a request of the Convention's Secretariat, and identifies them as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation.

Under the Convention, trade in specimens of species included in Appendix III requires the issuance of either an export permit, a re-export certificate or a certificate of origin. Export permits are required if the shipment originates from the nation that has included the species in Appendix III. The export of specimens of these species from other nations requires the presentation of "certificates of origin," or in the case of re-export, "certificates from the nation of re-export," which are required to show that the specimen was processed in that nation and/or is being re-exported. Trade in any specimen of these species, whether alive or dead, will be covered by the provision of the Convention, as will trade in any readily recognizable part or derivative (unless an exemption for any part or derivative is specified in the listing).

As a Party to the Convention, the United States has an opportunity to reserve on amendments to the Appendices. Articles XV and XVI of the Convention enable any Party to exempt itself from implementing the Convention for any particular species or part or derivative if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment to Appendix I or II is adopted, a reservation may be entered only during the period of 90 days (1) after the meeting at which Parties voted to place the species in Appendix I or II or (2) in the case of votes by postal procedures, after the date of notification by the Secretariat of the species' acceptance. In the case of a nation that is a Party at the time an amendment to Appendix III is requested, a reservation may be entered at any time after the Secretariat notifies the Parties of the amendment placing the species in Appendix III.

The limitations on the effect of reserving in alleviating importers and exporters from permit requirements were discussed in the previous Federal Register document (52 FR 43924; November 17, 1987) proposing this procedural change. Further, the entering of a reservation could interfere with one of the major U.S. goals under the Convention, which is full and active compliance with the spirit of this treaty by all countries. The U.S. Department of State, as a matter of general policy, does not favor the United States taking reservations under any treaty except in those cases where, absent a reservation, the treaty would conflict with U.S. law or be impracticable to implement. Service interest in bilateral cooperation with foreign governments in support of conservation efforts and preservation of endangered and threatened species, the fact that trade in Appendix III species not native to the United States is not prohibited under the Convention in any way, and the fact that paperwork processing associated with certificates for re-exports or indicating country of origin is already minimal, make it even less likely that the Service would recommend that a reservation be entered for an Appendix III listing.

Comments Received

The Wildlife Legislative Fund of America commented in support of this proposed procedural change. No other comments were received in response to the Service's solicitation for comments on the proposed procedural change (52 FR 43924). Furthermore, no comments with regard to entering reservations on previous Appendix III listings, at least in recent years, have been submitted.

Decision on Procedural Change

The Service has decided not to request public comments on whether to enter a reservation for any species added to Appendix III prior to the issuance of a final rule announcing the additions to Appendix III as determined appropriate on a case by case basis. The Service has made this decision based on (1) the lack of comments on previous Appendix III listings, (2) the Service's and U.S. Department of State's policies disfavoring reservations, (3) the opportunity provided in the Convention to enter reservations on Appendix III species at any time, and (4) the absence of any objection to this proposed procedural change. The main effect of this decision will be to reduce the Federal paperwork burden, thereby saving time and money.

In certain situations, the Service will submit future Appendix III species listings as final rules for immediate inclusion in the Code of Federal Regulations (50 CFR 23.23). Such final rules would contain a statement of reasons supporting the Service's finding that good cause exists to omit the proposed rule notice and public procedure thereon, because they would be "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b) (1982)).

While the Service proposes not to routinely request comments as to amending the list of Appendix III species in the Code of Federal Regulations, the Service may request public comments with regard to reservations in a proposed rule if a significant biological, trade, or legal issue exists. In any event, public

comments will be welcomed after any final rule amending the list of Appendix III species is published in the **Federal Register**. Inasmuch as reservations on Appendix III species can be entered *at any time*, any comment requesting a reservation could be addressed, and reservations entered if warranted even after publication of the final rule in the **Federal Register**.

If the United States considered it appropriate to initiate adding a species to Appendix III (which it has not done thus far), the Service would propose the species in the **Federal Register** and seek public comment in the usual way. This new procedure only applies to Appendix III listings by other Parties.

Note.—The Department has determined that amendments to the Convention Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321-4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601). Rules on Appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The document was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: March 17, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-6867 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 59
Monday, March 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees and Other Administrative Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing comments relative to the proposed rule.

SUMMARY: This notice extends the time for filing comments to a proposed rule issued February 11, 1988, concerning increases in fees and other administrative changes. The American Dairy Products Institute and the National Milk Producers Federation requested additional time to prepare and file comments.

DATE: Comments now are due on or before April 1, 1988.

ADDRESS: Comments should be sent to: USDA/AMS/Dairy Division, Office of the Director, Room 2968-S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, Room 2750-S, P.O. Box 96456, Washington, DC 20090–6456, (202) 382–9381.

SUPPLEMENTARY INFORMATION: Prior documents:

Proposed Rule: Issued February 11, 1988; published February 17, 1988 (53 FR 4639).

Notice is hereby given that the time for filing comments to the proposed rule, issued February 11, 1988, is hereby extended to April 1, 1988.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

The authority citation for 7 CFR Part 58, continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621–1627, unless otherwise noted.

Signed at Washington, DC on March 18, 1988.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 88–6653 Filed 3–25–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88–ASO–3]

Proposed Amendment to Control Zone; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Jacksonville, North Carolina, control zone by changing the published hours during which the control zone is effective. This action will extend the effective hours to include periods of increased instrument flight activity at the MCAS New River (McCutcheon) Airport.

DATES: Comments must be received on or before May 1, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 88–ASO–3, P. O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ASO–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P. O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Jacksonville, North Carolina, control zone. This action will extend the current effective hours for the control zone to accommodate increased instrument flight activity at the MCAS New River

(McCucheon) Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Jacksonville, NC [Amended]

By deleting the last sentence which begins with the words, "This control zone is effective from 0700 hours, ..." and by adding the following sentence to the end of the description: "This control zone is effective from 0700–2300 hours, local time, Monday through Friday; 0900–1500 hours, local time, Saturday; 1500–1900 hours, local time, Sunday, and closed on holidays."

Issued in East Point, Georgia, on March 14, 1988.

James L. Wright,
Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–6626 Filed 3–25–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AGL–21]

Proposed Alteration of VOR Federal Airways; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal Airways V–10, V–100, V–173, V–227, V–233 and V–429 located in the State of Illinois. These airway changes are the recommendations of a study group to improve the use of airspace in the Chicago, IL, metropolitan area. This action would improve the arrival/departure traffic flow in the O'Hare terminal area.

DATES: Comments must be received on or before May 5, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87–AGL–21, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of V–10, V–100, V–173, V–227, V–233 and V–429 located in the State of Illinois. This proposal is the culmination of an airspace utilization improvement study for the Chicago, IL, area. These requested changes are adjustments to O'Hare approach control arrival and departure routes. In conjunction with these airspace changes, resectorization at the O'Hare Air Traffic Control Tower and the Air Route Traffic Control Center will be completed so that the airway changes and resectorization will be simultaneous. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–10 [Amended]

By removing the words "INT Bradford 056° and Joliet, IL, 261° radials." and substituting the words "INT Bradford 058°T(054°M) and Joliet, IL, 287°T(285°M) radials."

V–100 [Amended]

By removing the words "INT Rockford 080° and Northbrook, IL, 293° radials;" and substituting the words "INT Rockford 074°T(073°M) and Janesville, WI, 112°T(109°M) radials; INT Janesville 112°T(109°M) and Northbrook, IL, 290°T(286°M) radials;"

V–172 [Revised]

From Capital, IL; to Peotone, IL.

V–227 [Revised]

From Boiler, IN; Roberts, IL; Pontiac, IL; INT Pontiac 005°T(003°M) and Bradford, IL, 058°T(054°M) radials.

V–233 [Amended]

By removing the words "From Capital, IL, via Roberts, IL;" and substituting the words "From Capital, IL; INT Capital 083°T(080°M) and Roberts, IL, 235°T(231°M) radials; Roberts;"

V–429 [Amended]

By removing the words "Joliet, IL; INT Joliet 351° and Chicago O'Hare, IL, 237° radials." and substituting the words "to Joliet, IL."

Issued in Washington, DC, on March 10, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-6625 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-88-1776; FR-2485]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Rome, GA; Special Revision

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed Fair Market Rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document proposes to amend the Fiscal Year 1986 Fair Market Rent Schedule to establish new Fair Market Rents for the Rome market area in the State of Georgia. These rents are necessary to provide fair market rents more comparable to market rents for new construction in this market area.

DATE: Comment Due Date: April 27, 1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500, telephone (202) 426-7684. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. In addition, for the FY 1986 Fair Market Rents previously promulgated by the Department (see the August 7, 1986 Federal Register, 51 FR 28486), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document proposes a special revision to the entire Fiscal Year 1986 Fair Market Rent schedule applicable to the Rome, Georgia market area. The 1986 FMRs reflected data submitted by the Atlanta Office, as well as the cost containment efforts implemented for all 1988 New Construction and Substantial Rehabilitation Rents. While the data submitted by the field office was proper, it reflected comparables all built during the early 1970s because there has been no construction of modestly designed rental housing in the Rome market area for the past several years. (Moreover, the Rome market area experienced an economic decline during 1983 and 1984.) HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables, which are then adjusted for all variables, including age. Further, where comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The HUD Field Office hs requested that the Department propose new rents for the Rome, Georgia market area. Careful analysis of this request and reanalysis of the 1986 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the 1986 FMRs for this market area is needed. Accordingly, the Department is proposing a revision of the entire 1986 schedule applicable to the Rome, Georgia market area. It is intended that when this schedule is published for effect, its applicability will be the same as set forth in the preamble to the original Fiscal Year 1986 schedule, published on August 7, 1986, at 51 FR 28486.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs proposed in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendment to the 1986 Fair Market Rent schedule is proposed for the Rome, Georgia market area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

[Region 4—Atlanta Regional Office Market: Rome]

Structure type	Number of bedrooms				
	0	1	2	3	4+
Detached			442	515	555
Semi-detached/row	307	333	384	455	510
Walkup	295	320	379	443	496
Elevator 2–4 STY	320	345	404		
Elevator 5+ STY	381	400	480		

Dated: March 21, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-6712 Filed 3-25-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revneue Service

26 CFR Part 1

[LR-97-86]

2-Percent Floor on Miscellaneous Itemized Deductions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary income tax regulations relating to the 2-percent floor on miscellaneous itemized deductions. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

Proposed Effective Date

The regulations are proposed to be effective for taxable years beginning after December 31, 1986.

Dates for Comments and Requests For a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by May 27, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commission of Internal Revenue, Attention: CC:LR:T (LR-97-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Income Tax Regulations (26 CFR Part 1) to provide rules under section 67.

For the text of the temporary regulations, see T.D. [8189], published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the addition to the regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted for OMB review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, ATTN: Desk Office for Internal Revenue Service, New Executive Office Bldg., Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.67–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

These amendments are necessary because of the addition of section 67 to the Code by section 132 of Pub. L. 99–514 (100 Stat. 2113). These regulations are proposed to be issued under the authority contained in section 67(c) and 7805 of the Internal Revenue Code 1986 (100 Stat. 2114, 26 U.S.C. 67(c); 68A Stat. 917, 26 U.S.C. 7805, respectively).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–6472 Filed 3–25–88 8:45 am]

BILLING CODE 4830-01-M

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31 CFR Part 10

Tax Practitioners; Enrolled Agent

AGENCY: Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Director of Practice, Internal Revenue Service, has been asked to consider replacing the designation "Enrolled Agent," wherever it appears in 31 CFR Part 10 (Treasury Department Circular No. 230) to describe those who are enrolled to practice before the Internal Revenue Service. The request is based on the belief that another designation for those individuals will be more meaningful to the general public. Members of the tax practitioner community and other members of the public are invited to submit comments on the need and desirability of such revision. Those who believe a change is warranted are encouraged to propose new designations they consider suitable. Upon receipt of comments, the matter will be reviewed and evaluated.

DATES: Comments must be submitted on or before June 27, 1988.

ADDRESSES: Mail comments to Director of Practice, Internal Revenue Service, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marcus Farbenblum, (202) 535–6787 or 535–6796.

SUPPLEMENTARY INFORMATION: The designation "Enrolled Agent" is generally used to describe those who have been enrolled to practice before the Internal Revenue Service, pursuant to the regulations governing practice before the Internal Revenue Service, 31 CFR Part 10 (Treasury Department Circular No. 230). The designation is not based on statutory mandate. Rather, it has evolved as a matter of customary use in the tax practitioner community. Such use has resulted in its reference in Treasury Department Circular No. 230. An observation made by members of the tax practitioner community is that the designation may not be sufficiently descriptive to be meaningful to the general public. Among the reasons for this observation are that the designation does not indicate any relationship to Federal taxation and does not specify the nature of the activity which the individual is enrolled to perform. Further, it may not be clear to some that an "Enrolled Agent" is the employing taxpayer's representative rather than an agent of the Government. In this connection, the similarity between the designation "Enrolled Agent" and the titles of positions within the Internal Revenue Service, such as "Revenue Agent" and "Special Agent," may confuse some taxpayers and deter them from seeking the assistance of "Enrolled Agents." It therefore has been suggested that the "Enrolled Agent" designation may be the unintended cause of significant disservice to the public and to the profession. Consequently, the Director of Practice and others in the Department of the Treasury have been urged to consider replacing the designation "Enrolled Agent" with a more descriptive term, such as "Enrolled Tax Practitioner" or "Enrolled Taxpayer Representative."

Contrary views also have been received. Such views generally suggest that many "Enrolled Agents" have established reputations for themselves and their profession which would be adversely affected by a change in designation. They argue that any change would create greater confusion and have more adverse consequences than benefits.

To fully assess the matter and to best serve the public and the tax practitioner community, the Director of Practice requests that interested persons make their views and experiences known. Comments on the need and desirability of a change, proposals for a suitable designation and expressions of contrary views are invited so as to determine if a consensus or any overwhelmingly convincing argument for or against a name change exists.

Authority: 5 U.S.C. 301; 31 U.S.C. 330.

Dated: March 23, 1988.

Leslie S. Shapiro,

Director of Practice.

[FR Doc. 88–6690 Filed 3–25–88; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 88–57; FCC88–38]

Review of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network; and Petition for Modification of the Commission's Rules Filed by the Electronic Industries Association

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action is being taken to determine whether some of the regulatory restrictions on subscriber installation of simple inside wiring and access to carrier-installed facilities may be more restrictive than necessary and should be modified or removed. The objective of the item is to eliminate restrictions in the Commission's inside wiring program which are unnecessary or inimical to the public interest, while at the same time clarifying and strengthening certain Part 68 regulations essential to the program. The proposed amendment of the rules also offers for public comment the petition of Electronic Industries Association (EIA) who asks the Commission to require that all plugs and jacks used in simple inside wiring conform to certain technical specifications.

DATES: Interested parties may file comments on or before April 29, 1988 and reply comments on or before May 16, 1988. For general information on how to file comments, inquire of the Commission's Consumer Assistance and Small Business Division, telephone (202) 632–7000.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Services Branch, Common Bureau, telephone (202) 634–1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 88–57 (RM–5643), FCC 88–38, adopted January 29, 1988 and released March 8, 1988. The complete document may be inspected and copied during the weekday hours (excluding federal holidays) of 9 a.m. to 4:40 p.m. in the Commission's Public Reference Room, Room 239, 1919 M St., NW., Washington, DC; or a transcript may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rulemaking

Part 68 of the Commission's rules, 47 CFR Part 68, contains the conditions under which telephone subscribers or their agents may connect subscriber-owned equipment to the telephone network without causing harm. Rule § 68.104 provides that all connections to the network be made through the standard plugs and standard telephone company provided-jacks defined in Subpart F of Part 68. The Commission is concerned that requiring telephone company installed jacks may be causing consumers unnecessary costs as they install, modify and use wiring and other equipment in ways that may be privately beneficial. Simply prohibiting access to the protector and its associated grounding combined with carrier-sponsored consumer education programs might be adequate to assure that consumers will not access the protector. By this NPRM, therefore, the Commission seeks to determine whether its rules should continue to require that a telephone carrier's installed jack be present before a subscriber may install simple inside wiring. In effect, the NPRM proposes that § 68.104 be modified to provide for subscriber connection to the network by directly accessing carrier-installed wiring and installing (up to and including the network interface or demaraction point) the type of jack defined in Subpart F of Rule Part 68. Moreover, the NPRM requests reevaluation of the Commission's previous determination that access to the protector poses potential harm to the network that justifies reserving access to the protector (on the telephone company side of the demarcation point) to the telephone company alone.

Section 68.213 of the Commission's Rules governs simple inside wiring, i.e., one and two-line wiring connected to the telephone network. The Commission is of the view that some of the originally adopted regulatory requirements for installation of simple inside wiring by the customer or his agent may be more restrictive than necessary to assure network protection. All of the requirements of § 68.213 are reviewed in the NPRM, and the Commission proposes that for the most part they be eliminated or modified to be less restrictive. However, the Commission proposes to retain some requirements such as technial standards for telephone wire.

The NPRM also considers the petition of EIA who requests that the Commission initiate a rulemaking proceeding to make plain the requirement that both plugs and jacks used in simple inside wiring conform to Subpart F of Part 68 of the rules which defines the technical specifications for plugs and jacks used as standard connectors.

For the reasons set forth in the NPRM, the Petition for Rulemaking, RM–5643, filed by EIA is granted. Moreover, Notice of Proposed Rulemaking is provided to amend Part 68 of the Commission's Rules as provided in the "Proposed Rule Amendments" contained below.

Public evaluation is invited on all issues raised in the NPRM.

(Note: Since this Federal Register publication is only a brief summary of the NPRM, parties interested in the proceeding are urged to examine the complete document which, as stated above, may be copied at the Commission's Public Reference Room or purchased from International Transcription Services).

Legal Basis

Authority for this action is contained in the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, amended.

Ex Parte Presentations

This is a non-restricted notice and comment rulemaking proceeding. For rules governing permissible *ex parte* contacts, *see* § 1.1200, *et seq.*, of the Commission's Rules, 47 CFR 1.1200 *et seq*, as amended by the Commission's Report and Order in Gen. Docket No. 86–225 released May 22, 1987 [FCC 87–94], 2 FCC Rcd 3011, 52 FR 21051 (June 4, 1987); *partial reconsideration pending*, 2 FCC Rcd 4264, *Erratum*, 2 FCC Rcd 4265 (1987). A synopsis of regulations governing *ex parte* presentations is contained in the NPRM.

Initial Regulatory Flexibility Analysis

The purpose of this NPRM is to eliminate potentially unnecessary regulatory requirements covering premises wiring and jacks installed by telephone subscribers or their agents. The objective of the NPRM is to provide an opportunity for public comment so that a Commission decision may be based on that record. Elimination of current requirements on the installation of telephone wiring and jacks by telephone subscribers and their agents will reduce regulatory requirements on telephone subscribers and small entities employed by them to perform such installations.

Written comments are requested on the Initial Regulatory Flexibility Analysis. Such comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 68

Connections to the telephone network, Premises wiring, Plugs and jacks, Interference, Data equipment, Unprotected premises wiring, Telephone tariffs.

Proposed Rule Amendments

It is proposed to amend Part 68 of the Commission's Rules and Regulations (Chapter I, Title 47 of the Code of Federal Regulations, Part 68), as follows:

PART 68—[AMENDED]

1. The authority citation for Part 68 continues to read:

Authority: Sec. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204; 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.104, 47 CFR 68.104, is amended to revise paragraph (a) to read as follows:

§ 68.104 Means of connection.

(a) *General.* Except for telephone company-provided ringers and except as provided in paragraph (c) of this section, all connections to the telephone network shall be made through the standard plugs and jacks, or equivalent, described in Subpart F, in such a manner as to allow for easy and immediate disconnection of the terminal equipment or wiring. Standard jacks shall be so arranged that, if the plug connected thereto is withdrawn, no interference to the operation of the equipment at the customer's premises which remains connected to the telephone network shall occur by reason of such withdrawal.

* * * * *

3. Section 68108, 47 CFR 68.108, is revised to read as follows:

§ 68.108 Incidence of harm.

Should terminal equipment, inside wiring, plugs and jacks, or protective circuitry cause harm to the telephone network, the telephone company shall, where practicable, notify the customer that temporary discontinuance of service may be required; however, wherever prior notice is not practicable, the telephone company may temporarily discontinue service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance, the telephone company shall (a) promptly notify the customer of such temporary discontinuance, (b) afford the customer the opportunity to correct the situation which gave rise to the temporary discontinuance and (c) inform the customer of his right to bring a complaint to the Commission pursuant to the procedures set forth in Subpart E of this part.

4. Section 68.213, 47 CFR 68.213, is amended to revise paragraphs (a) and (b) to read as follows, and to remove paragraphs (f) and (g):

§ 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

(a) *Scope.* Provisions of this rule are limited to "unprotected" premises wiring used with simple installations of wiring for one and two-line residential and business telephone service. Unprotected premises wiring is wiring which is not located electrically behind apparatus which protects against hazardous voltages and imbalance. More complex installations of wiring for multiple line services, for use with systems such as PBX and key telephone systems, are controlled by § 68.215 of these rules.

(b) *Wiring authorized.* (1) Unprotected premises wiring may be used to connect units of terminal equipment or protective circuitry to one another, and to the network interface (or demarcation point), if installed in accordance with these rules. Telephone customers and/or premises owners, and their agents, may additionally directly access, mechanically and electrically, carrier-installed wiring up to and including the demarcation point and install standard jacks described in Subpart F. Responsibility for wiring on the subscriber's side of the demarcation point, including any wire or jacks that may have been installed by the carrier and may continue to be owned by the carrier, rests with the subscriber and/or premises owner. Responsibility for carrier facilities and wiring to which the customer is not permitted access rests with the carrier. The customer or premises owner may not access carrier wiring and facilities on the carrier's side of the demarcation point except that access to the protector and associated grounding is permitted in accordance with the carrier's reasonable and nondiscriminatory standard operating practices.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-4491 Filed 3-25-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 59
Monday, March 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1987–88 marketing policy for Valencia oranges grown in California and Arizona. The marketing policy was submitted by the Valencia Orange Administrative Committee, which locally administers the marketing order covering California-Arizona Valencia oranges. The marketing policy contains information on crop and market prospects for the 1987–88 season.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1987–88 California-Arizona Valencia orange crop will be considered if received by April 7, 1988.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456. Such submissions should reference the date and page number of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–2491. Growers and handlers of Valencia oranges may obtain a copy of the marketing policy directly from the Valencia Orange Administrative Committee. Copies of the marketing policy are also available from Ms. Schlatter.

SUPPLEMENTARY INFORMATION: Pursuant to § 908.50 of the marketing order covering Valencia oranges grown in Arizona and designated part of California, the Valencia Orange Administrative Committee, hereinafter referred to as the "committee", is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, authorizes volume and size regulations applicable to fresh shipments of Valencia oranges to domestic markets which are defined by the order to include Canada. Regulation of export shipments of Valencia oranges and Valencia oranges utilized in the production of processed orange products are not authorized under the order.

Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of the competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and during of prorate and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

The committee adopted its marketing policy for the 1987–88 marketing season at its February 16, 1988, meeting. Various meetings to develop, duscuss and review the committee's marketing policy were held throughout the production area on February 2 and 16 in Los Angeles, California; February 19 in Yuma, Arizona; March 1 in Ventura, California; and March 8 in Visalia, California. Substantial numbers of industry representatives were present at these meetings. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefore. The committee evaluates prospective market conditions and makes recommendations to the Secretary as to the quantity of Valencia oranges that can be shipped each week to domestic outlets during the season without disrupting markets. However, during the season each weekly recommendation may vary from the schedule depending on prevailing market conditions. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and supplies a view of the anticipated economic environment in which the total crop will be marketed.

In its marketing policy, the committee discussed the general classification by the public of the Valencia orange as a "juice orange". This year, 34 to 36 percent of the crop will be accounted for in processed and other use markets. This compares to a three year average of 31 percent. Domestic fresh and fresh export utilization will account for approximately 64 percent of the crop this year compared to a three year average of 69 percent.

The committee also discussed the competition which the Valencia orange faces as a summer fruit. This is one of the foremost factors affecting the development of the policy for the season and it impacts heavily in the decisions which are made weekly by the committee and daily by the individual handlers in their own operations.

The committee stated that many of the summer fruits (apricots, peaches, plums, grapes, cherries, etc.) enjoy distinct advantages over the Valencia orange in

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marketing and promotion. All are classified as "seasonal" crops. This gives them a novelty value at the start of their respective seasons and thereby supplies marketers with built-in promotional potential as each becomes available in increasingly heavy volume.

This seasonal characteristic, according to the committee, also permits a pricing pattern which is advantageous. "First-of-the-season" supplies are often sold at premium prices. As the volume of shipments increases, prices are reduced even though they may still cost more than oranges or other non-seasonal commodities.

In its 1987–88 marketing policy, the committee projected a range of production for the California-Arizona Valencia orange crop of 48,000 to 53,500 cars (1,000 cartons at 37½ pounds net weight each equals one car). This compares with last year's estimated total production of 50,990 cars. The USDA's National Agricultural Statistics Service (NASS) estimate for the California-Arizona 1987–88 crop is 52,800 cars. The current committee/NASS forecast places the crop within the most recent five year average crop size of 52,840 cars.

The committee estimates District 1, Central California, 1987–88 production to range from 18,00 to 20,000 cars, compared to 23,300 cars produced in 1986–87. While freezing temperatures were experienced in this district during December 13–15, 1987, and again during December 23–29, it is not believed at this time that crop losses of any magnitude will be experienced in the district. There may be some unforeseen losses in isolated areas, but they would not be expected to cause the crop to fall below the lower end of the range.

In District 2, Southern California, the crop is expected to range from 26,500 to 29,500 cars, compared to 23,300 cars produced last year. As in the other California-Arizona production areas, freezing temperatures were experienced in this district in the mid and latter part of December. In addition to the cold weather, severe winds were experienced in the eastern portion of the district on December 23 and 24. It is possible that the adverse weather experienced in District 2 during December may result in a crop out-turn at the lower end of the range, but this will not become known until the season gets underway.

In District 3, the Arizona-California desert valley, production is expected to be in a range of 3,500 to 4,000 cars, compared to 4,400 cars in 1986–87. Cold weather experienced in this district was more severe in the Phoenix area than in the area surrounding Yuma, but that weather is not expected to result in any actual crop losses except, perhaps, in isolated areas.

The committee estimated that shipments to domestic fresh outlets, including Canada, during the 1987–88 season will account for approximately 20,000 to 21,000 cars. Last year a total of 20,239 cars were shipped to fresh domestic markets. Fresh export shipments are expected to total approximately 11,000 to 12,000 cars compared to 12,315 cars last year. Processing usage is forecast at approximately 16,100 cars to 19,400 cars compared to 17,548 cars last year. The committee believes that the fresh domestic market will absorb all the fruit that meets quality standards and is economically feasible to ship.

In terms of total crop utilization, the committee expects 39 to 42 percent of the 1987–88 crop to be accounted for in domestic fresh markets compared with 40 percent in 1986–87; fresh exports are projected to require 22 to 23 percent of total 1987–88 utilization compared with 24 percent in 1986–87; processed and other uses would account for the residual 36 to 38 percent compared with 36 percent in the last season.

The projected size composition of the total crop indicates an average orange size for the industry at the mid-point of the season of 123 oranges per carton, nearly the same as last year's average of 125 oranges. However, there are distinct differences between districts in both the average of sizes and in the size patterns of oranges grown in each district.

At their February 16 meetings, the committee discussed the need for a size regulation for the elimination of 180's and smaller for the 1987–88 season. A motion was made but failed as the committee generally agreed that it was too early in the season to consider size regulation. However, size regulation may be recommended as the season progresses.

Limited shipments of Valencia oranges began in mid-February. Based on current projections, shipments are expected to finish in early November. The committee has developed a schedule of estimated weekly shipments covering the 1987–88 season.

The committee reports that Florida round orange production is expected to be 270,000 cars, consisting of 150,000 cars of the early and mid-season type oranges and 120,000 cars of Valencia oranges. Total Florida round orange production is expected to be 13 percent greater than last year. In Texas, orange production is continuing to improve following the freeze of 1983. Total Texas orange production for the 1987–88 season is expected to be 2,800 cars, an increase of more than 65 percent from last season. Production of apples nationwide is estimated at 229.25 million bushels in 1987–88 compared to 188.27 million bushels in 1986–87. Winter pear fresh pack is estimated at 12.24 million bushels in 1987–88 compared to 9.82 million bushels last year. Of the domestic summer fruits, grapes have an average annual production of 5.7 million tons followed by peaches and pears at approximately 0.17 million tons. The annual supply of strawberries is 0.5 million tons followed by nectarines, cherries, apricots and plums at very significant, but lesser amounts. Annual average melon production, other than watermelons for which information is not available, approximates 0.8 million tons.

Of increasing importance in the supply of competitive non-citrus fruit are "summer fruit" importations from Chile (nectarines, plums, peaches, grapes and apples), and it is expected that this upward trend will continue for some time. General economic conditions are expected to be favorable.

The 1986–87 season average fresh equivalent on-tree grower returns for California-Arizona Valencia oranges as reported by the NASS were $4.30 per carton. This was about 70 percent of the equivalent season average parity of $6.13 per carton. The 1987–88 equivalent seasonal parity is projected to be $6.04 per carton.

In discussing the possibe need for prorate regulation early in the season, the marketing policy indicated that neither calendar dates nor specific levels of shipments in past years can be definitive as to the recommended onset of regulation. Rather, volume regulation recommendations to the Secretary will begin when they are deemed necessary by the committee to achieve conditions of orderly marketing.

Section 908.51(b) of the marketing order identifies areas the committee should consider in recommending prorate regulation.

In making its recommendations, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and enroute to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of other competitive fruits; (5) trends and level in consumer income; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of regulation for the 1987–88 season. Comments are invited on the appropriate levels of fresh oranges which can be made available to the fresh domestic market and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. The notice provides a 10-day period for the receipt of comments. This period is considered to be adequate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and discussed by industry representatives and interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 23, 1988.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 88-6790 Filed 3-25-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 376]

Resolution and Order Approving the Application of the City of New Bedford, MA for Foreign-Trade Subzones for Codman & Shurtleff, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of New Bedford, Massachusetts, grantee of FTZ 28, filed with the Foreign-Trade Zones Board (the Board) on May 30, 1985, requesting special-purpose subzone status for the testing, repair, and distribution facilities of Codman & Shurtleff, Inc., in New Bedford, Avon and Randolph, Massachusetts, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish Foreign-Trade Subzones for Codman & Shurtleff, Inc., in New Bedford, Avon and Randolph, Massachusetts.

Whereas, by an Act of Congress approved June 18, 1934, and Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzone when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of New Bedford, Massachusetts, grantee of Foreign-Trade Zones No. 28, has made application (filed May 30, 1985, Docket 16–85, 50 FR 24551) in due and proper form to the Board for authority to estblish special-purpose subzones at the surgical instruments storage, testing and repair facilities of Codman & Shurtleff, Inc., in New Bedford, Avon and Randolph, Massachusetts;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed May 30, 1985, as amended on September 28, 1987, the Board hereby authorizes the establishment of subzones at New Bedford, Avon and Randolph, Massachusetts, designated on the records of the Board as Foreign-Trade Subzone Nos. 28A, 28B, and 28C at the locations mentioned above and more particularly described on the maps and drawings accompanying the applcation, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations;

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the subzones.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facitities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 22nd day of March, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

[FR Doc. 88-6700 Filed 3-25-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Short-Supply Review on Certain Steel Products; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply

determination under Article 8 of the U.S.-Brazil Arrangement on Certain Steel Products and the U.S.-EC Arrangement on Certain Steel Products with respect to certain manganese bars.

DATE: Comments must be submitted on or before April 7, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement on Certain Steel Products and the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors], an additional tonnage shall be allowed for such product.

We have received a short-supply request for certain round, square, and flat steel bars, fully austenitized, of 11.5–14.0 percent manganese. Round bars range from 0.50 to 6.125 inches in diameter; square bars range from 0.5 to 2.0 inches on each side; and flat bars range from 0.375 to 2.0 inches in thickness and from 1.0 to 4.0 inches in width. These bars will be used in applications where heavy impact and friction are involved.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 7, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file.

The public file will be maintained in the Central Records Unit, Import Administration, U.S Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 22, 1988.

[FR Doc. 88–6690 Filed 3–25–88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of North Carolina et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–092. *Applicant:* University of North Carolina, Marine Science Program, CB 3300 12–5 Venable Hall, Chapel Hill, NC 27514. *Instrument:* Radon Gas Detector with Accessories, Model PMT–TEL. *Manufacturer:* Pylon Electronics, Canada. *Intended use:* The instrument will be used to measure radon fluxes in a variety of environments, and to study fluxes of reduced gases through plants. *Application received by Commissioner of Customs:* January 26, 1988.

Docket Number: 88–093. *Applicant:* National Bureau of Standards, 325 Broadway, Boulder, CO 80303. *Instrument:* Admittance Bridge, Model MkIII. *Manufacturer:* NORE Microwave, Ltd., United Kingdom. *Intended use:* The instrument will be used to measure such admittance items as capacitors, inductors and resistors in the frequency range from 1 kHz to 100 MHz. These items will then become the national standards which the National Bureau of Standards will maintain and disseminate to the nation. *Application received by Commissioner of Customs:* January 26, 1988.

Docket Number: 88–094. *Applicant:* U.S. Department of the Interior, National Fisheries Contaminant Research Center, Fish and Wildlife Service, Route 1, Columbia, MO 65201. *Instrument:* Gas Chromatograph/Mass Spectrometer/Data System, Model VG 70–250S. *Manufacturer:* VG Instruments, United Kingdom. *Intended use:* The instrument will be used to study a variety of organic chemical contaminants present in the nation's aquatic environment, usually at very low but toxicologically significant concentrations (parts per billion, parts per trillion, or even parts per quadrillion). Thorough gas chromatographic/mass spectrometric investigations will be conducted of complex extracts from a variety of environmental matrices (fish, sediment, water, soil). *Application received by Commissioner of Customs:* February 8, 1988.

Docket Number: 88–096. *Applicant:* U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Northeast Fisheries Center, Woods Hole, MA 02543. *Instrument:* Height/Temperature Sensor, Model S40–HJ60–T303. *Manufacturer:* SCANMAR, Norway. *Intended use:* The instrument will be used to monitor trawl gear. Experiments conducted will be evaluating gear performance such as bottom type, currents and changes in gear configuration during vessel fishing power using a variety of scopes, towing speeds and turning maneuvers. The objective of the experiments is to get statistics from the tow in real time indicating whether trawl gear performance was within standards. *Application received by Commissioner of Customs:* February 5, 1988.

Docket Number: 88–097. *Applicant:* Kansas State University, Department of Chemistry, Willard Hall, Manhattan, KS 66506. *Instrument:* Fourier Transform Interferometric Spectrophotometer System, Model D A2. *Manufacturer:* BOMEN, Canada. *Intended use:* The instrument will be used to study many ranges and systems. Some of the systems that can be investigated are environmental such as toxic waste sites, dumpsites and chemical spill sites. In addition, the instrument will be useful in the attainment of high resolution spectra of unknown or new compounds to characterize their primary and secondary frequencies. *Application received by Commissioner of Customs:* February 5, 1988.

Docket Number: 88–098. *Applicant:* The University of Texas at Dallas, 2601 N. Floyd Road, Richardson, TX 75083–0688. *Instrument:* Mass Spectrometer, Model MAT 261V. *Manufacturer:* Finnigan MAT GmbH, West Germany. *Intended use:* The instrument will be used to study the isotopic composition and trace element content of natural materials, especially rocks. Rock samples will include the full range of igneous, sedimentary, and metamorphic varieties. Mineral components of rocks, fossilized shells of marine invertebrates and samples of human and animal components such as blood, bones, nerves and waste will also be studied with the instrument. In addition, the instrument will be used as a teaching tool in the folling graduate courses:

GEOS 5454 Instrumental Techniques in Geosciences
GEOS 5355 Introductory Geochronology
GEOS 5356 Isotope Geochemistry

Application received by Commissioner of Customs: February 8, 1988.

Docket Number: 88–099. *Applicant:* Miami University, 213 Roudebush Hall, Oxford, OH 45056. *Instrument:* Spectrophotometer, Model RA–401. *Manufacturer:* Otsuka Electronics Co., Ltd., Japan. *Intended use:* The instrument will be used for studies of the reactions of chlorine and sodium chlorite, hypochlorous acid and sodium chlorite, chlorite ion and chlorate ion as a function of pH, along with other chlorine-containing, oxidizing agents. The objectives of the experiments are to understand the microscopic details of the chemical reactions between dissolved species such as hypochlorous acid and sodium chlorite or the reactions between sodium chlorite and acid in the formation of chlorine dioxide. *Application received by Commissioner of Customs:* February 10, 1988.

Docket Number: 88–100. *Applicant:* USDA–ARS, Appalachian Soil and Water Conservation Research Lab, P.O. Box 867, Airport Road, Beckley, WV 25801–0867. *Instrument:* Root Length Scanner. *Manufacturer:* Hawker de Havilland Victoria Limited, Australia. *Intended use:* The instrument will be used to measure the length of plant roots in order to identify the best combinations of plows, disks etc. which can be used to maximize the length of crop roots in soil and thereby increase crop production. *Application received by Commissioner of Customs:* February 10, 1988.

Docket Number: 88–101. *Applicant:* The University of Texas at Arlington, Room B–24 Life Science Building, 501 Campus Drive, Arlington, TX 76019. *Instrument:* Electron Microscope, Model JEM–1200 EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* The instrument will be used for the investigation of biological materials such as the nature of cells and organelles, how they change through time, the manner in which stored foods are deposited and/or used, the relationship of cells to biomineralization, etc. There is also interest in polymer materials, e.g. polymer thickness, growth nature of its surface and change from one electrod to another. In addition, the instrument will be used on a one-to-one basis in the training of undergraduate and graduate students and other faculty. *Application received by Commissioner of Customs:* February 11, 1988.

Docket Number: 88–102. *Applicant:* Georgia State University, Department of Chemistry, University Plaza, Atlanta, GA 30303. *Instrument:* Stopped-Flow Dual-Beam and Scanning Spectrophotometer/Spectrofluorimeter, Model SF–51. *Manufacturer:* Hi-Tech Scientific Lt., United Kingdom. *Intended use:* The instrument will be used for studies of nucleic acids, oligonucleotides, natural and synthetic membranes, anticancer drugs, potential-sensitive dyes and organic molecules. Projects will be conducted to: (1) Develop new anticancer drugs, (2) better understand nucleic acid interactions and struture, (3) develop a molecular model for mitochondrial electron transport, (4) develop new bleomycin amplifiers as a potential new therapeutic method, and (5) better understand the molecular basis for organic molecule-oxygen chemistry and individual tuminescence. *Application received by Commissioner of Customs:* February 11, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–6686 Filed 3–25–88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Transmittal No. 06–10–88016–01; Project I.D. No. 06–10–88016–01]

Lubbock/Midland-Odessa Minority Business Development Center (MBDC); Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of September 1, 1988 to August 31, 1989. The MBDC will operate in the Lubbock/Midland-Odessa Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Lubbock/Midland-Odessa SMSA	$165,000	[1] $29,105	$194,118

[1] Can be combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Application will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firms's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that application have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factor as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is May 6, 1988.

Address: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

For Further Information Contact: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767–8001.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development.

Project Name: Lubbock/Midland-Odessa MBDC.

Project Identification Number: 06-10-88018-01

Project Start and End Dates: 09/01/88 to 08/31/89.

Project Duration: 12 months.

Total Federal Funding (85%): $165,000.

Minimum Non-Federal Share (15%): $29,118.

Total Project Cost (100%): $194,118.

Closing Date for Submission of this Application: May 6, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Lubbock/Midland-Odessa, Texas SMSA.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort:
Financial packages: $2,747,000
Billable M&TA: $84,000
Number of Professional Staff: 3
Procurements: $5,493,000
M&TA Hours: 1,680
Number of Clients: 76

[FR Doc. 88-6657 Filed 3-25-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Ocean Salmon Fisheries Off the Coast of Washington, Oregon, and California; Public Hearings and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings to receive comments on the proposed 1988 ocean salmon fishery management options off the coasts of Washington, Oregon, and California.

DATES: Tuesday, March 29, 1988; Wednesday, March 30, 1988; and Monday, April 4, 1988. All hearings will begin at 7:00 p.m.

Written comments will be accepted until March 31, 1988. After March 31, to assure adequate review by Council members, comments should be provided in person at the April 4 public hearing or during the regular Council meeting in April, both of which are in Millbrae, California.

ADDRESSES: See "**SUPPLEMENTARY INFORMATION**" for locations of the hearings.

Written comments should be sent to the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION: The hearings will take place at the following locations:

March 29—Thunderbird Motor Inn, North and South Umpqua Rooms, 1313 North Bayshore Drive, Coos Bay, Oregon
March 29—Seattle Airport Hilton, Alpine Room, 17620 Pacific Highway S., Seattle, Washington
March 30—Astoria Middle School, Cafeteria, 1100 Klaskanine Avenue, Astoria, Oregon
March 30—Red Lion Inn, Redwood Ballroom, 1929 Fourth Street, Eureka, California
April 4—Clarion Hotel, Golden Gate Ballroom, 401 East Millbrae Avenue, Millbrae, California

The Council will meet on April 5-8 at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, California, to consider input from the public hearings and written comments, and hear additional comments from its advisors and the public. By April 8, the Council will adopt its final recommendations for the 1988 ocean salmon management measures for submission to the Secretary of Commerce.

(16 U.S.C. 1801 *et seq.*)

Dated: March 23, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-6648 Filed 3-25-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Staged Entry for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

March 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling staged entry.

EFFECTIVE DATE: April 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: It has been determined by the Committee for the Implementation of Textile Agreements that the remaining staged entry periods for Category 359-C are no longer needed.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49060, published in the **Federal Register** on December 29, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated February 2, 1988, between the Governments of the United States and the People's Republic of China, I request that effective on April 1, 1988, you cancel the staged entry periods established in the directive of December 21, 1987 for cotton textile products in Category 359-C.[1]

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[1] In Category 359-C, only TSUSA numbers 361.0622, 361.8510, 384.0623 and 384.5222.

produced or manufactured in the People's Republic of China and exported during 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-6665 Filed 3-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

March 21, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 28, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated Febraury 23, 1984 (49 FR 7269), as further amended on December 24, 1987 (52 FR 49189) and December 30, 1987 (53 FR 54), established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988 between the Governments of the United States and the People's Republic of China, and the exchange of letters dated January 28, 1988 amending the export licensing system, agreement was reached to further amend the existing export licensing system to include the use of export licenses for shipments of cotton and man-made fiber down-filled coats in Categories 353, 354, 653 and 654, produced or manufactured in China and exported on or after March 28, 1988. Shipments classified in these categories and exported from China on or after March 28, 1988 for which the Government of the People's Republic of China has not issued an appropriate export license will be denied entry.

The two Governments also agreed that properly marked commercial samples valued at $250 or less, which are exported from China on or after January 1, 1988, will not be charged to the limits established under the agreement. The export licensing system is amended to read as follows:

> Properly marked commercial samples, valued at $250 or less, and items for the personal use of the importer and not for resale, need not be accompanied by an export visa and shall not be subject to the limits established under this agreement.

Commercial shipments, regardless of value, other than (1) properly marked samples, valued at $250 or less, and (2) items for the personal use of the importer, regardless of value, shall be subject to visa and quota requirements.

As clarification to the directive of December 24, 1987 concerning visa requirements (see 52 FR 49189), Category 340-Y is valid for import quota purposes only for shipments exported on and after January 1, 1988 and until further notice. Category 340-Y is not valid for visa purposes.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 21, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends but does not cancel, the directive issued to you on February 23, 1984, as further amended on December 24, 1987 and December 30, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China.

Effective on March 28, 1988 and until further notice, you are directed to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawl from warehouse for consumption of cotton and man-made fiber textile products in Categories 353, 354, 653, and 654, produced or manufactured in China and exported on or after March 28, 1988 for which the Government of the People's Republic of China has not issued an appropriate export license. Shipments of merchandise in the foregoing categories exported before March 28, 1988 will not be denied entry for lack of an appropriate export license.

In addition, shipments of properly marked commercial samples, valued at $250 or less, and items for the personal use of the importer, regardless of value, and not for resale, which are exported from Chine on or after January 1, 1988, need not be accompanied by an export license and shall not be subject to limits established by the agreement.

Commercial shipments, regardless of value, other than (1) properly marked samples, valued at $250 or less, and (2) items for the personal use of the importer, regardless of value, shall be subject to visa and quota requirements.

As clarification to the directive of December 24, 1987 concerning visa requirements (see 52 FR 49189), Category 340-Y is valid for import quota purposes only for shipments imported on and after January 1, 1988 and until further notice. Category 340-Y is not valid for visa purposes.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 6663 Filed 3-25-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations with the Government of India

March 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of request for consultations.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Government of the United States requested consultations with the Government of India with respect to imports of cotton and man-

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made fiber textiles in Categories 219 and 300/301.

According to the terms of the bilateral agreement between the United States and India, dated February 6, 1987, the United States reserves the right to establish limits at levels of 10,983,635 square yards for Category 219 and 1,781,664 pounds for Categories 300/301 for the ninety-day consultation period which began on January 28, 1988 and extends through April 26, 1988.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

Summary market statements for Categories 219 and 300/301 follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

Anyone wishing to comment or provide data or information regading the treatment of Categories 219 and 300/301 under the agreement with India, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

India—Market Statement

Category 219—Duck Fabric

January 1988.

Summary and Conclusions

United States imports of duck fabric—Category 219—from India were 31.4 million square yards during the year ending October 1987. This is more than five times the amount imported during the same period one year earlier. During the first ten months of 1987, imports of duck fabric from India reached 30.2 million square yards, five and a half times the 5.4 million square yards imported during January–October 1986 and four and a half times the total shipped in calendar year 1986. India is the largest supplier of duck fabrics, accounting for 28 percent of total January–October 1987 imports.

This sharp and substantial increase in duck fabric imports from India is posing a real risk of market disruption in the U.S.

Production and Market Share

Although U.S. duck fabric production increased in the first three quarters of 1987, U.S. producers continued to lose market share. The U.S. producers' share of the market dropped from 54 percent in calendar year 1986 to 49 percent during the first three quarters of 1987.

Imports

U.S. imports of Category 219, duck fabrics, reached 121.8 million square yards in the year ending October 1987, 47 percent above the level for the same period in 1986. Imports were 106 million square yards during the first ten months of 1987, up 46 percent from the 72.7 million square yards imported in the first ten months of 1986.

The ratio of imports to domestic production increased from 84 percent in calendar year 1986 to 105 percent during the first three quarters of 1987.

Import Values

Approximately 87 percent of India's Category 219 imports are entered under TSUSA 320.1963. This is a lightweight cotton duck fabric not fancy or figured, of 10 yarn count. This fabric is entered at duty-paid values well below the U.S. producer price for comparable fabrics.

India—Market Statement

Category 300/301—Cotton Yarns

January 1988.

Summary and Conclusion

U.S. imports of cotton yarns—Categories 300/301 from India were 5,090,468 pounds during the year ending October 1987, 45 times higher than the 113,033 pounds imported a year earlier. During the first ten months of 1987, imports of Categories 300/301 cotton yarns from India reached 5,018,690 pounds, more than 44 times the level reached in the first ten months of 1986 and 27 times the 184,811 pounds imported in calender year 1986. Imports of Categories 300/301 from India were non-existent in calendar year 1985.

This sharp and substantial increase in cotton yarn imports from India is posing a real risk of market disruption in the U.S.

Production and Market Share

U.S. production of cotton yarns dropped 14 percent between 1983 and 1985. Although U.S. producers regained their 1983–1985 production loss in 1986, their loss of market share accelerated. The U.S. producers' share of the market fell from 95.1 percent in 1983 to 92.6 percent in 1985, a 2.5 percentage point drop. In 1986 alone the U.S. producers' share of the cotton yarn market fell 4 percentage points to 88.6 percent. Indications are that cotton yarn production will be up in 1987, however, it is expected that the U.S. producers' share of the market will continue to decline due to the substantial increase in 1987 imports.

Imports and Import Penetration

U.S. imports of Categories 300/301, cotton yarns, from all sources increased 34 percent between 1983 and 1985 then surged in 1986 reaching 93.5 million pounds, double its 1985 level. These import increases have resulted in a substantially higher level of import penetration. The ratio of imports to domestic production of cotton yarns increased nearly two and a half times, from 5.2 percent in 1983 to 12.9 percent in 1986. Imports continue to increase at a substantial rate in 1987, increasing 13 percent in January–October 1987 over the same period in 1986. The ratio of imports to domestic production is expected to increase in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 51 percent of total Categories 300/301 imports from India during the first ten months of 1987

entered under TSUSA numbers 301.1000—wholly cotton single, 10–19 count yarns, not bleached, mercerized, colored or combed and 302.1026—wholly cotton single, combed, bleached, mercerized, colored yarns. These cotton yarns entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable yarns.

[FR Doc. 88-6664 Filed 3–25–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices, Working Group B (Microelectronics); Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 13 April 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

March 23, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-6665 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 5, 1988; April 12, 1988; Tuesday, April 19, 1988; and Tuesday, April 26, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employes pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 88-6666 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Assured Military Use of Space; Change in Date and Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board 1988 Summer Study on Assured Military Use of Space scheduled for April 6–7, May 11–12, and June 8–9, 1988 at the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 53, No. 35, Page 5293, Tuesday, February 23, 1988, FR Doc. 88–3771) will be held on April 5–6, May 12–13, and June 9–10, 1988 at SAIC, McLean, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

[FR Doc. 88-6659 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Change in Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for March 23–24, 1988 as published in the **Federal Register** (Vol. 53, No. 13, page 1658, Thursday, January 21, 1988, FR Doc. 88–1124) will be held at the Pentagon, Arlington, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

[FR Doc. 88-6660 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for March 30, 1988 as published in the

Federal Register (Vol. 53, No. 22, Page 3067, Wednesday, February 3, 1988, FR Doc. 88–2251) will be held on April 27, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

[FR Doc. 88–6661 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Subgroup to the Strategic Air Defense; Cancellation of Meeting

SUMMARY: The meeting notice for the Defense Science Board Task Force on Subgroup to the Strategic Air Defense for March 8, 1988 as published in the **Federal Register** (Vol. 53, No. 30, Page 4441, Tuesday, February 16, 1988, FR Doc. 88–3218) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

[FR Doc. 88–6663 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Notice of a New Ongoing Computer Matching Program Between the Department of Defense (DoD) and the Small Business Administration (SBA).

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: This action constitutes notice for public comment on a proposed new ongoing computer matching program between the Department of Defense (DoD) and the Small Business Administration (SBA) to identify and locate individuals for debt collection purposes.

SUMMARY: The Department of Defense, under an interagency agreement with the Office of Management and Budget, Department of the Treasury and the Office of Personnel Management (OPM), announces a proposal to match by computer DoD employment records of active and retired military members, including the Reserve and Guard; the OPM Government-wide Federal civilian employed and retired records with the computer records of individuals who are delinquent debtors under various programs administered by SBA. The purpose of the computer match is to identify and locate SBA delinquent debtors who are receiving any Federal salary or benefit payments so as to permit the SBA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

DATE: This proposed action will be effective without further notice on April 27, 1988 unless comments are received which would result in a contrary determination. Send any comments to the individual identified below.

ADDRESS: Send any written comments to Mr. Robert J. Brandewie, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940–3231. Telephone: (408) 646–4131; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 permits Federal creditor agencies to pursue collection and to offset delinquent debts against salary or other financial benefits which the debtor may otherwise be due from the U.S. Government.

The Office of Management and Budget (OMB) has designated Financial Management Service of the Department of the Treasury as the Lead Agency to coordinate and monitor the implementation of the U.S. Government's Federal Salary Offset Program. An interagency agreement, restricted exclusively to the implementation of the Debt Collection Act of 1982 (Pub. L. 97–365), established an Interagency Working Group to facilitate computer matching and subsequent salary offset procedures throughout the Federal government under the auspices and oversight of the OMB. The Interagency Agreement for implementation of the Federal Salary Offset Initiative and assigning specific roles and agency responsibilities was set forth in **Federal Register** at 52 FR 37492 on October 7, 1987. As a result, a centralized computer data base for computer matching consisting of Department of Defense and Office of Personnel Management records has been established for debt collection purposes in order to have a data bank record of active and retired military members, including the Reserve and Guard, and the OPM Government-wide employed and retired civilian personnel that are receiving salaries or other Federal benefit payments. This established data bank is hosted and maintained by the Defense Manpower Data Center, Defense Logistics Agency, Department of Defense, for use by any Federal creditor agency that desires to participate in a computer matching program to identify and locate debtors for debt collection by the creditor agency under the Debt Collection Act of 1982 (Pub. L. 97–365) provided the creditor agency meets the requirements of the OMB matching guidelines identified below.

Set forth is the information for a proposed computer matching program required by the paragraph 5.f.(1) of the "Revised Supplemental Guidance for Conducting Computerized Matching Programs" issued by the Office of Management and Budget dated May 11, 1982 (47 FR 21656, May 19, 1982).

A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget on March 17, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

Report of a Continuing Computer Matching Program Between the Department of Defense (DoD) and the Small Business Administration (SBA)

a. *Authority.* The legal authority under which this computer match is being conducted is the Debt Collection Act of 1982 (Pub. L. 97–365); 5 U.S.C. 5514 (Installment deduction for indebtedness) the Privacy Act of 1974 (5 U.S.C. 552a); 10 U.S.C. 136; 4 CFR Chapter II (Federal Claims Collection Standards); 13 CFR Part 140 (Debt Collection—SBA); and the Office of Management and Budget: "Revised Supplemental Guidance for Conducting Matching Programs" dated May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982" dated March 30, 1983 (48 FR 15556, April 11, 1983).

b. *Program Description.* The purpose of this computer matching program is to identify and locate individuals who are receiving Federal salaries or benefit payments that are indebted and delinquent in the their repayment of debts to the United States Government under certain programs administered by the SBA in order to collect the debts by voluntary repayment or by administrative or salary offset procedures under the provisons of the Debt Collection Act of 1982.

The SBA, as the source agency, will provide the Defense Manpower Data Center (DMDC) of the DoD, the matching agency, a computer tape of all the individual delinquent debt records of those indebted to the U.S. Government under certain SBA programs.

Upon receipt of the computer tape file of debtor accounts, the DMDC will perform a computer match using all nine digits of social security numbers of delinquents against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement, consists of records of active duty and retired military members including the Reserve and Guard and the OPM Government-wide employed civilian and retired civilian records.

Matching records, "hits" based on the SSN, will be furnished to the SBA consisting of the member's name, service or agency, category of employee, salary or benefit, and current work or home address from DMDC's data base records.

The SBA will be responsible for reviewing the "hit" records to assure that each individual is positively identified in the match as the debtor; to assure that the debtor is afforded proper due process under GAO regulation (4 CFR Chapter II) "Federal Claims Collection Standards" and that a proper accounting of any further disclosures outside the SBA shall be maintained by in accordance with 5 U.S.C. 552a(c) of the Privacy Act. The SBA will insure that the debt is valid and the information is accurate, complete, timely and relevant. Hard copy match records will be used by the SBA to determine any continued benefit entitlement level, if any, and to contact the debtor if necessary. The notification to the debtor shall include information concerning the amount to be collected, the amount of the proposed monthly deductions, and the debtor shall be given an opportunity to enter into voluntary agreement to repay the debt before any administrative or salary offset measures are initiated. The debtor shall further be given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. If no collection action is needed, the DoD record will not be used by the SBA for any other purposes.

c. *Records to be Matched.* The systems of records, subject to the Privacy Act of 1974 (5 U.S.C. 552a), to be matched are as follows:

SMALL BUSINESS ADMINISTRATION (Source Agency)

(1) System identification: SBA 250
  System Name: Loan Master Files
  Federal Register citation: 47 FR 7908, February 23, 1982
  Amended: 48 FR 55663, December 14, 1983
  Amended: 52 FR 7360, March 10, 1987
  Amended: 52 FR 47477, December 14, 1987

DEPARTMENT OF DEFENSE (Matching Agency)

(1) System identification: S322.11 DLA–LZ
  System name: Federal Creditor Agency Debt Collection Data Base
  Federal Register citation: 52 FR 37495, October 7, 1987
(2) System identification: OPM/GOVT–1
  System name: General Personnel Records
  Federal Register citation: 49 FR 36954, September 20, 1984
(3) System identification: OPM/CENTRAL–1
  System name: Civil Service Retirement and Insurance Records
  Federal Register citation: 49 FR 36950, September 20, 1984

d. *Period of the Match.* The initial match will begin as soon as possible after this public notice becomes effective as set forth under "DATE" in the preamble of this notice and then conducted no more often than semiannually thereafter.

e. *Security Safeguards.* Automated records are stored in limited access computer facilities and accessible only by password. Access to the computer center is by key or picture identification. Hard copy records are maintained in Federal office buildings in lockable file cabinets and accessed only by authorized Federal employees on a need-to-know basis.

f. *Retention and Disposition of Records.* Under a written Memorandum of Understanding (MOU) agreement between the DoD/DMDC and the SBA, signed May 18, 1987, it is agreed that tapes provided by the SBA for the matches shall be destroyed or returned to the SBA upon successful completion of each match and shall be used only for debt collection purposes. Non-hit records will not be used for any purposes. Hard copy matched records (hits) will be used by SBA to conduct individual reviews and to contact the debtor for payment pursuant to the Debt Collection Act of 1982. The SBA will maintain a disclosure accounting, as required by 5 U.S.C. 552a(c) of the Privacy Act as a result of the match information received from DMDC when contacting other agencies pursuing debtors.

DMDC will insure that an accounting of the disclosures pursuant to Section (c) of the Privacy Act is maintained. DMDC will within 30 days of a completed match, as standard practice, either erase or return to the SBA the magnetic tape file of delinquent debt records unless contrary specific instructions are furnished by the SBA.

[FR Doc. 88–6664 Filed 3–25–88; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amendment of Record System Notice

AGENCY: Defense Logistics Agency, (DoD).

ACTION: Notice of an amendment of a record system.

SUMMARY: The Defense Logistics Agency is amending a system of records subject to the Privacy Act of 1974. The specific changes to the amended system is set forth below followed by the amended notice published in its entirety.

DATES: This proposed action shall be effective without further notice on April 27, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Any comments may be submitted to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, Administrative Management Branch (DLA–XAM), Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6100. Telephone: (202) 274–6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR. Doc. 85–10237 (50 FR 22897) May 29, 1985 (DoD Compilation)
FR. Doc. 85–30123 (50 FR 51898) December 20, 1985
FR. Doc. 86–17259 (51 FR 27443) July 31, 1986
FR. Doc. 86–19035 (51 FR 30104) August 22, 1986
FR. Doc. 87–21654 (52 FR 35304) September 18, 1987
FR. Doc. 87–22481 (52 FR 37495) October 7, 1987
FR. Doc. 88–03220 (53 FR 04442) February 16, 1988

This proposed amendment is not within the purview of subsection (o) of the Privacy Act (5 U.S.C. 552a) which requires the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1988.

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Amendment

S322.50 DLA-LZ

System name:

Defense Enrollment/Eligibility Reporting System (DEERS) (50 FR 22920, May 29, 1985).

Changes:

Categories of records in the system:

Add: "Information on individual records may extend to blood test results, dental care premium codes and dental x-rays."

Authority:

Add: E.O. 9397.

Purpose(s):

Add: (after "CHAMPUS and before "to monitor"), "to support DoD health care management programs, to provide indentification of deceased members,"

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add: "To private dental care providers to assure treatment eligibility."

S322.50DLA-LZ

SYSTEM NAME:

Defense Enrollment/Eligibility Reporting System (DEERS).

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Navy Postgraduate School Monterey, CA 93940.

Decentralized segments—A support center and an eligibility center are maintained and operated by a contractor in Monterey, CA and Alexandria, VA; two data processing centers in Sacramento, CA and Camp Hill, PA and the Processing Center for Automation of DoD Forms 1171 in Monterey, CA.

Back-up files maintained at the Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940-3231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their depednents, retired Armed Forces personnel and their dependents; surviving dependents of deceased active duty no retired personnel; active duty and retired Coast Guard personnel; active duty and retired Public Health Service (PHS) personnel (Commissioned Corps) and their dependents; and active duty and retired National Oceanic and Atmospheric Administration (NOAA) employees (Commissioned Corps) and their dependents; and State Department employees employed in a foreign country and their dependents and any other individuals entitled to care under the health care program; providers and potential providers of health care; and any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number of sponsor, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of service of sponsor, dates of beginning and ending eligibility, number of dependents of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of beneficiary, rank/pay grade of sponsor, and claim records of CHAMPUS claims containing enrollee, patient and provider data such as cause of treatment, amount of payment, name and Social Security or tax ID number of providers of care. Information on individual records may extend to blood test results, dental care premium codes of dental x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; 1969 Pub. L. 91-121, Section 404(A)(2), "Establishment of the Assistant Secretary of Defense for Health Affairs; the Presidentially Commissioned Department of Defense, Department of Health, Education and Welfare, Office of Management and Budget Report of the Health Care Study (completed December 1975)": DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System, October 14, 1981; DoD Instruction 1341.2, DEERS Procedures; E.O. 9397.

PURPOSE(S):

The purpose of the system is to provide a data base for determining eligibility to receive health care benefits under the Uniformed Health Services Delivery System and CHAMPUS, to support DoD health care management programs, to provide identification of deceased members, to monitor the accuracy of payments and to identify and collect overpaid amounts and to detect fraud and abuse of the benefit program by claiments and providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Health and Human Services; Veterans Administration; Federal Preparedness Agency; Commerce Department and Transportation Department for the conduct of health care studies, for the planning and allocation of medical resources, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes data on ages, sex, residence and other domographic parameters. To other federal agencies to identify fraud and abuse of the federal agency's programs and to identify debtors and collect debts and overpayments in the DoD health care programs. State, local and territorial governments to help eliminate fraud and abuse in their benefits programs. To provide dental care providers to assure treatment eligibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm determined by contractor which uses name, enrollment number, Social Security Number, date of birth, rank and duty location as possible inputs. Retrievals are made on a summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in such summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution of health care information may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations). Exits used solely for emergency situations is secured to prevent unauthorized intrusion.

Personal data stored at a separate location for backup purposes is protected at least comparably to the protection provided at the primary location.

Requirements for protection of information are binding on contractors of their representative and are subject to the following minimum standards:

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjected of the record or their authorized representative. Access to personal information is further restricted by the use of passwords which are changed periodically.

All those officials whose duties require access to, or processing and maintenance of personal information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Computerized records on an individual are maintained as long as the individual is legally eligible to receive health care benefits from the Uniformed Health Sciences Delivery System. The records are maintained for two (2) years after termination of eligibility.

Records may be disposed of or destroyed in accordance with DoD Component record mangement regulations which conform to the controlling disposition of such material as set forth in 44 U.S.C. 3301-3314. Non-record material containing personal information and other material of similar temporary nature is destroyed as soon as it's intended purpose has been served under procedures established by the Head of the DoD Component consistent with the following requirement. Such material shall be destroyed by tearing, burning, melting, chemical deposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the information.

SYSTEM MANAGER(S) AND ADDRESS:

Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940.

NOTIFICATION PROCEDURES:

Information may be obtained from: Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940. Telephone: (408) 646-2126, Autovon: 878-2126.

Written requests for the information should contain full name of individual and sponsor, if applicable, and other attributes required by previously mentioned search algorithm.

For personal visits the individual should be able to provide a data element required to satisfy the previously mentioned algorithm.

Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting and appealing initial determinations are contained in DLA Regulation 5400.21 (32 CFR Part 1286).

RECORD SOURCE CATEGORIES:

Personnel and financial pay systems of the Military Departments, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration, other Federal agencies having employees eligible for military medical care.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-6658 Filed 3-25-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

DATES: April 12-13, 1988, 9:00 a.m. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 202/732-1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202, (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education on carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92-318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business each day, approximately 5:00 p.m. The agenda includes reviewing applications submitted under the (1) Title IV, Indian Fellowship Program of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under this program and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of proposed agency action. Financial information obtained from a person which is privileged or confidential is contained in and related to these proposals and will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: March 17, 1988. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-6765 Filed 3-25-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Natural Gas Publications; Statistical Tables

AGENCY: Energy Information Administration, DOE.

ACTION: Natural gas publications; solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicits comments concerning the publication of statistical tables in the *Natural Gas Monthly* (*NGM*) and *Natural Gas Annual* (*NGA*) publications.

DATE: Written comments must be received on or before April 27, 1988.

ADDRESS: Send comments to Margaret R. McDonald, at the address listed immediately below:

Margaret R. McDonald, Reserves and Natural Gas Division, Energy Information Administration, EI-441, Department of Energy, Mail Stop BE-064, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6303.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Action
III. Comment Procedure

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), EIA is obligated to publish, and otherwise make available to the public, high-quality statistical data that reflect national and regional natural gas supply and consumption as accurately as possible. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass significant natural gas supply and consumption activities in the United States.

II. Current Actions

Through disclosure avoidance procedures, EIA seeks to maintain the confidentiality of its respondents and their data when releasing collected survey information. These disclosure avoidance procedures are applied to tables which present aggregates of individual respondents' survey data which are considered proprietary.

EIA's disclosure avoidance standard (EIA 84-03-04) addresses statistical confidentiality and describes a method for determining whether individual cell data are sensitive or not by application of prescribed rules. Cell data are considered sensitive if one of the following occures:

1. The non-zero value for a cell is based on the information from one or two respondents, or
2. The value for a cell is based on information from three or more respondents but the calculation of a sensitivity measure indicates that the cell should be withheld because one or two large companies dominate the cell.

Several of the detail tables in the *NGM* and *MGA* do not conform to the EIA standard. The application of the disclosure avoidance procedures for these tables is complicated by the fact that data from some respondents are considered publicly available, while data from other respondents are proprietary. The State level of detail provided in these tables has remained essentially unchanged from the level of detail provided in publications released since the inception of DOE. However, additional data cells have been introduced. To date, EIA has not withheld any data from publication.

Special requests for unpublished data, except for data deemed public information, are subjected to disclosure avoidance procedures. Individual company data are considered proprietary and are not available to the public.

III. Comment Procedures

Written Comments

Conformance with the EIA standard would require the discontinuation of some State level information in the *NGM* and *NGA*. It would require withholding publication of sensitive cells together with a sufficient number of additional cells to protect the sensitive cells. In view of the mixture of public and private data presented in aggregate in these cells, the required suppression would be extensive. This would significantly reduce the level of information which EIA believes is useful to accurately reflect regional natural gas activities. Therefore, EIA plans to continue publishing the data as in the past. This will continue the statistical disclosure in the tables of the *NGM* and the *NGA*, and will permit a knowledgeable person to estimate some individual respondent data.

As in the past, EIA will continue to consider individual company data proprietary unless they are publicly available. EIA will apply disclosure avoidance procedures to aggregates of proprietary data prepared in response to special requests.

Objections to this course of action should be provided in writing.

Statutory Authority: Sec. 5(a), 5(b), 13(b) and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, on March 22, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-6714 Filed 3-5-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-294-000 et al.]

Colorado Interstate Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP88-294-000]

March 22, 1988.

Take notice that on March 14, 1988, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP88-294-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the purchase of natural gas from Northwest Pipeline Corporation (Northwest), and further to abandon the transportation and exchange of natural gas with Northwest, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that it is proposing to abandon the transportation and exchange of volumes of natural gas received by CIG for the account of Northwest which Northwest has heretofore owned or controlled in the Barrel Springs area of Carbon County, Wyoming, and currently owns or controls in the Creston Nose area of Carbon County, Wyoming, and the abandonment of the option to purchase up to 25 percent of the gas delivered by Northwest to CIG.

CIG states that the purchase, transportation, and exchange were made pursuant to a gas transportation and exchange agreement between CIG and Northwest dated April 7, 1976, as amended, which is on file with the Commission as CIG's special Rate Schedule X-13 to CIG's FERC Gas Tariff, Original Volume No. 2. CIG states that, pursuant to the agreement, as amended, Northwest gathered volumes of natural gas under contract to CIG in the Barrel Springs and Creston Nose areas of Carbon County, Wyoming, and CIG gathers volumes of natural gas under contract to Northwest in the Creston Nose area of Carbon County, Wyoming. CIG states that it has notified

Northwest that, pursuant to the terms of the April 7, 1976 agreement, it has elected to terminate such agreement effective February 28, 1988. CIG further states that no volumes of natural gas will be lost to the interstate market as a result of the abandonment as other methods of transportation are presently available or will be made available.

Comment date: April 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

Canyon Creek Compression Company

[Docket No. CP88-283-000]

March 23, 1988.

Take notice that on March 10, 1988, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP88-283-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a 22,000 horsepower compression station and related facilities and the firm and interruptible compression service that is being provided by the compressor station that is located in Uinta County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Canyon Creek provides a firm compression service of natural gas for Colorado Interstate Gas Company (CIG), MFR Energy Systems, Inc. (MFR) and Natural Gas Pipeline Company of America (Natural) and also provides an interruptible compression service of natural gas for Columbia Gas Transmission Corporation (Columbia Gas) by means of the subject 22,000 horsepower compressor station.

Canyon Creek alleges that under the present jurisdictional climate the role of interstate pipelines has changed from purchaser-wholesaler to that of a transporter of natural gas. Therefore, Canyon Creek claims the primary function of the compressor station is no longer properly classified as a jursidictional facility as the compression service provided is now production-related in nature and therefore no longer subject to the jurisdiction of the Federal Energy Regulatory Commission. It is for these reasons that Canyon Creek requests permission for the abandonment of the 22,000 horsepower compressor station and the related compression service provided to others.

Comment date: April 13,1988, in accordance withStandard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-292-000]

March 23, 1988.

Take notice that on March 14, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-292-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for an existing firm sales customers, the City of Portland, Tennessee (Portland), under the certificate issued in Docket No. CP82-413-000 purusant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposed to install the facilities, to be located in Robertson County, Tennessee, at a cost of $37,000, for the delivery of up to 240 dt of natural gas per day to Portland. It is stated that Portland needs the additional delivery point to serve the growing requirements of its existing service area. It is asserted that the establishment of the additional delivery point would not affect Portland's daily or annual purchases from Tennessee. It is further asserted that the addition of the deilvery point is not prohibited by any of Tennessee's existing tariffs and that Tennessee has sufficient capacity to make the deliveries without any impact on Tennessee's other customers.

Comment date: May 9, 1988, in accordance with Standard paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6704 Filed 3-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-289-000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-289-000]

March 21, 1988.

Take notice that on March 11, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-289-000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Tejas Power Corporation (Tejas), a marketer, under Trunkline's blanket certificate issued in

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Docket No. CP88-388-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas on behalf of Tejas pursuant to a January 8, 1988, transportation agreement. In accordance with the agreement, Trunkline would receive the gas from various receipt points on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas and transport such gas to Mississippi River Transmission Corporation (MRT) at their interconnection in Clay County, Illinois, for MRT's system supply.

Trunkline cites that the maximum daily and annual quantities would be 50,000 dt and 9,125,000 dt equivalent of natural gas, respectively.

Trunkline further states that initial service commenced on January 9, 1988, as reported in Docket No. ST88-2128-000.

Comment date: May 5, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP88-229-000]

March 22, 1988.

Take notice that on February 8, 1988, as supplemented on March 10, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101 filed in Docket No. CP88-229-000, an emergency application for temporary and permanent certificates for a transportation service and for abandonment of sales service under the provisions of sections 7(c) and 7(b), respectively, of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams indicates it is submitting the application not voluntarily, but solely as a result of an order issued on February 5, 1988, by the United States District Court for the District of Kansas in Cities of Chanute, Kansas, *et al.*, v. Williams Natural Gas Company, Case No. 87-1463-K. Williams states that the court order granted a mandatory preliminary injunction against Williams that requires Williams to transport, on a firm and/or interruptible basis, certain gas in lieu of full requirements sales service for the cities of Chanute, Auburn, Garnett, Humboldt, Iola, Neodesha, and Osage City, Kansas and the City of Cleveland, Oklahoma (Cities). Williams asserts that it has been placed in an untenable dilemma. Williams indicates that if it performs such court-ordered transportation in lieu of full requirements and other sales service, the Commission could determine that Williams is in violation of the Natural Gas Act because it does not have the necessary section 7 authorization to perform transportation service in lieu of sales services, as required by the court's order. Williams also asserts that to discontinue sales service as provided by the court's order could also be construed as a violation of section 7(b) of the Natural Gas Act. Williams concludes that it is required to submit this application to comply with both the Commission's Regulations and the court order.

Specifically, in the supplement filed March 10, 1988, Williams included unexecuted contracts for each of Cities reflecting proposed receipt and delivery points. Appendix A attached here shows the proposed receipt points, which are the same for all of the Cities, and Appendix B lists proposed delivery points to each. Williams indicated that the contracts were being provided to the Cities for execution on March 10, 1988. Further information regarding volumes by individual delivery points and intermediate transporters will be provided to the Commission upon receipt by Williams from the Cities.

Comment date: April 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

Appendix A

Receipt Point(s)	Meter	SEC-TWN-RGE	County	ST	Assumed Atmos Pres (PSIA)	Max. Daily Qty-(MCF)	Status of Facility
1. MESA-Tenneco	5577	27-T29S-R35W	Grant	KS	13.2	1,500	Existing.
2. Arkansas Louisiana Gas Company	6493	31-T23S-R05W	Reno	KS	14.4	1,500	Do.
3. Maysville Plant	7158	13-T04M-R02W	Garvin	OK	14.4	1,500	Do.
4. Phillips Petro (Fox PLT)	7961	26-T02S-R03W	Carter	OK	14.4	1,500	Do.
5. Natural Gas P.L. Co. of America	8895	39-B6-I&GN	Carson	TX	13.2	1,500	Do.
6. ONG Ringwood	9847	25-T22M-R06W	Garfield	OK	14.4	1,500	Do.
7. Champlin Petro. (Enid PLT)	9963	34-T23M-R06W	Garfield	OK	14.4	1,500	Do.
8. Cities Service (Ambrose PLT)	10296	09-T27M-R01W	Kay	OK	14.4	1,500	Do.
9. Sun Exploration (Wakita PLT)	10745	32-T28M-R07W	Grant	OK	14.4	1,500	Do.
10. Arkansas Louisiana Gas Company	10997	22-T21M-R32W	McDonald	MO	14.4	1,500	Do.
11. Oxy Cities Service NGL, Inc	11435	27-T20M-R08W	Garfield	OK	14.4	1,500	Do.
12. M.J.D. Cattle Company	12501	11-T20M-R06E	Pawnee	OK	14.4	1,500	Do.
13. Phillips Petro (Kingfisher PLT)	12729	09-T15M-R05W	Kingfisher	OK	14.4	1,500	Do.
14. Oklahoma Natural Gas Company	12905	33-T06M-R07W	Grady	OK	14.4	1,500	Do.
15. East Ctrl. Gas & P.L. Corp	12945	02-T28M-R14E	Mowata	OK	14.4	1,500	Do.
16. Okam Gas Company	12986	07-T25M-R14E	Washington	OK	14.4	1,500	Do.
17. Oklahoma Natural Gas Company	13011	02-T20M-R17W	Woodward	OK	14.4	1,500	Do.
18. El Paso Natural Gas Company	13104	28-B042-H&TC	Hemphill	TX	13.2	1,500	Do.
19. Sun Exploration (Carney PLT)	13194	06-T16M-R02E	Lincoln	OK	14.4	1,500	Do.
20. Beard Oil Co. (Paradise PLT)	13257	15-T18M-R01E	Payne	OK	14.4	1,500	Do.
21. Arco (Drumright PLT)	13339	16-T18M-R07E	Creek	OK	14.4	1,500	Do.
22. Union Texas (Lamont PLT)	13344	36-T27M-R03W	Grant	OK	14.4	1,500	Do.
23. Champlin Petro. (W. Edmond PLT)	13544	27-T15M-R04W	Logan	OK	14.4	1,500	Do.
24. Motz Oil Company (Blunk No. 2)	13616	17-T34S-R13W	Barber	KS	14.4	1,500	Do.
25. T. Mayfield (Mannford PLD)	13628	06-T19M-R08E	Creek	OK	14.4	1,500	Do.
26. Mid-America Gas Line Corp	13699	09-T19M-R08E	Creek	OK	14.4	1,500	Do.
27. Alkan Petroleum	14155	15-T19S-R07E	Chase	KS	14.4	1,500	Do.
28. ONG-Enid	14226	25-T22N-R06W	Garfield	OK	14.4	1,500	Do.
29. Gulf Energy Gathering (W. Guth.)	14340	30-T15M-R02W	Logan	OK	14.4	1,500	Do.
30. MMGC (Bushton-Receipt)	14356	32-T18S-R11W	Barton	KS	14.4	1,500	Do.
31. Southeast Kansas Gas	14372	30-T34S-R11E	Chautauqua	KS	14.4	1,500	Do.
32. ARCO (Mannford)	14382	01-T18M-R07E	Creek	OK	14.4	1,500	Do.
33. TAG Petroleum, Inc	14505	27-T20M-R08E	Pawnee	OK	14.4	1,500	Do.
34. Highwood Gas Co. (Kessler)	14530	28-T33S-R19E	Labette	KS	14.4	1,500	Do.
35. Union Texas (Clyde PLT)	14546	35-T26M-R06W	Grant	OK	14.4	1,500	Do.
36. TAG Petroleum, Inc. No. 2	14684	17-T19M-R03E	Payne	OK	14.4	1,500	Do.
37. Medallion Petroleum	14808	29-T05M-R24E	Beaver	OK	13.2	1,500	Do.
38. Associated Natural Gas, Inc	14809	11-T03M-R09W	Comanche	OK	14.4	1,500	Do.
39. Kansas Gas Supply	14850	14-T29S-R01W	Sedgwick	KS	14.4	1,500	Do.
40. Golden Gas Energies, Inc. (MOLZ)	14851	33-T34S-R12W	Barber	KS	14.4	1,500	Do.
41. Goldsby Central	14860	27-T10M-R03W	Cleveland	OK	14.4	1,500	Do.
42. Sunflower Gas Company	14893	34-T34S-R10E	Chautauqua	KS	14.4	1,500	Do.

Appendix B

Delivery points	Meter	County	ST	Status
City of Humbolt, KS:				
City of Humbolt (South TB)	8764	Allen	KS	Existing.
City of Humbolt (North TB)	10070	do	KS	Do.
City of Humbolt (West TB)	10388	do	KS	Do.
Total Volumes, 1,500 MCfd				
City of Auburn, KS:				
KPL Gas Service (Auburn TB)	10683	Shawnee	KS	Do.
Total Volumes, 1,000 Mcfd				
City of Garnett, KS:				
City of Garnett	5262	Anderson	KS	Do.
City of Garnett (West TB)	9510	do	KS	Do.
City of Garnett (Electric Power)	6276	do	KS	Do.
Total Volumes, 2,000 Mcfd				
City of Neodesha, KS:				
City of Neodesha (Electric Plt)	555	Wilson	KS	Do.
City of Neodesha (North 11th)	8745	do	KS	Do.
City of Neodesha (South 4th)	8746	do	KS	Do.
City of Neodesha (West Main TB)	8767	do	KS	Do.
City of Neodesha (Maine 212th)	8770	do	KS	Do.
City of Neodesha (Water Works)	8845	do	KS	Do.
City of Neodesha (Northeast TB)	12696	do	KS	Do.
Total Volumes, 2,200 Mcfd				
City of Chanute, KS:				
City of Chanute	6172	Neosho	KS	Do.
City of Chanute (Power Plt)	8739	do	KS	Do.
City of Chanute (South 14 TB)	8740	do	KS	Do.
City of Chanute (South TB)	9121	do	KS	Do.
City of Chanute (Mun Pwr Plt)	10253	do	KS	Do.
City of Chanute (Custom Camper)	10695	do	KS	Do.
City of Chanute (Alcorn Fab)	10735	do	KS	Do.
City of Chanute (Erie TB)	14350	do	KS	Do.
City of Chanute	14804	do	KS	Do.
Total Volumes, 5,000 Mcfd				
Cleveland Municipal Authority:				
The Cleveland Municipal Authority	92	Pawnee	OK	Do.
Total Volumes, 1,500 Mcfd				
City of Iola, KS:				
City of Iola	1217	do	KS	Do.
City of Iola (West TB)	7529	do	KS	Do.
City of Iola (South TB)	10382	do	KS	Do.
City of Iola	14281	do	KS	Do.
City of Iola (East TB)	14009	do	KS	Do.
Total Volumes, 5,000 Mcfd				
City of Osage City, KS:				
City of Osage (Osage City TB)	5685	do	KS	Do.
City of Osage (Elect Plt)	9223	do	KS	Do.
Do.	9224	do	KS	Do.
Do.	9225	do	KS	Do.
Do.	10623	do	KS	Do.
Do.	11277	do	KS	Do.
City of Osage (Power Plt)	14215	do	KS	Do.
Do.	14216	do	KS	Do.
Total Volumes, 3,000 Mcfd				

3. Williams Natural Gas Company

[Docket No. CP88-287-000]

March 22, 1988.

Take notice that on March 10, 1988, Williams Natural Gas Company (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP88-287-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline tap, measuring, regulating and appurtenant facilities and the sale of gas to the City of Wheaton, Missouri for resale in and about Wheaton, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed facilities would cost approximately $30,220, which would be paid from treasury cash. Applicant further estimates that the gas required would be approximately 50,500 Mcf the first year increasing to 101,000 Mcf by the fifth year. Applicant states that such sale would not significantly affect its overall gas supply and that the proposed sale would not adversely affect any of its existing customers.

Comment date: April 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Border Pipeline Company

[Docket No. CP88-285-000]

March 22, 1988.

Take notice that on March 10, 1988, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-285-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authority to provide an interruptible transportation service for Encor Energy (America) Inc. (Encor), a producer, under Northern Border's blanket certificate issued in Docket No. CP86-395-000 and Docket No. CP86-395-001 pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern Border proposes to transport pursuant to its IT-1 Rate Schedule at the Maximum Rate, on an interruptible basis for Encore, up to 20,000 MMbtu of natural gas per day or an annual amount of 7,040,000 MMBtu from a receipt point on the international boundary near Port of Morgan, Montana, for ultimate delivery at Aberdeen, South Dakota, Welcome, Minnesota and Ventura, Iowa. It is indicated that Northern Border has been informed by Encor that it is selling the gas to Hadson Gas Systems Inc. (Hadson) and that the dockets under which Hadson transports the gas are ST87-1069-000, ST87-0748-000 and ST87-0573-000 which were filed by Northern Natural Gas Company, Natural Gas Pipeline Company of America and El Paso Natural Gas Company, respectively.

It is stated that Northern Border commenced the transportation service February 9, 1988, as reported in Docket No. ST88-2416-000 on February 24, 1988.

Comment date: May 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP88-277-000 and CP88-277-001]

March 22, 1988.

Take notice that on March 7, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP88-277-000, as amended by its filing on March 10, 1988, in CP88-277-001, a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain sales taps, lateral lines and appurtenant facilities, under the authorization issued in Docket No. CP83-59-000, as amended pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request, and amendment thereto, which are on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following customers:

Customer	Location	Line
Rutler & Wilbanks	Stephens County, OK.	GDHB (portion).
Granite Oil Trust No. 2.	Wichita County, TX	A18-5 (all of the remaining portion).

Lone Star states that it has not obtained letters of consent from Rutler & Wilbanks or Granite Oil Trust No. 2 (Granite). Rutler & Wilbanks, and oil field drilling company, did not provide Lone Star with written notice when it terminated its purchases of gas in 1973 or 1974, it is asserted. It is stated that Granite, a lease operator, converted to an alternate fuel (electricity) and sold its oil wells in 1986 to Grover Investment Company, which did not request service from Lonc Star. Lone Star states that no other customers are served from these facilities and that sales to these customers have heretofore been made at the appropriate rate as provided by state authorities. Lone Star proposes to remove these sales taps, lateral lines and appurtenant facilities, which are located in Stephens County, Oklahoma and Wichita County, Texas.

Comment date: May 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Arkla Energy Resources a Division of Arkla, Inc.

[Docket No. CP88-279-000]

March 22, 1988.

Take notice that on March 8, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88-279-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a tap and related jurisdictional facilities necessary to deliver gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER would construct and operate a sales tap on its Line 6 in Sedgwick County, Kansas, to deliver gas to ALG for service to David D. Cranmer, a small commercial customer who would use approximately 2,930 Mcf per year.

AER states that the gas would be delivered from its general system sypply, which it is stated is adequate to provide the service.

Comment date: May 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP88-281-000]

March 22, 1988.

Take notice that on March 9, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-281-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a portion of its sales service to four of its jurisdictional sales customers, Iowa Electric Light and Power Company (Iowa Electric), Iowa-Illinois Gas and Electric Company (Iowa-Illinois), Iowa Southern Utilities Company (Iowa Southern) and Northern Indiana Public Service Company (NIPSCO), all as more fully set forth in the application which is

on file with the Commission and open for public inspection.

Natural indicates that Iowa-Illinois, Iowa Southern, NIPSCO, and Iowa Electric gave notice on December 31, 1987, February 18, 1988, December 30, 1987, and January 4, 1987, respectively, of their election to convert fifteen percent of their daily contract demand to firm transportation service pursuant section 284.10 of the Commission's regulations. Natural proposes to partially abandon sales service for the four customers converting to firm transportation service. It is alleged that the resulting firm transportation service would be performed in accordance with the terms and conditions in Natural's Rate Schedule FTS or successor tariff. Natural avers that the following table [1] sets forth each customer's current Daily Contract Quantity (DCQ), the DCQ to be converted to firm transportation, the effective date of the requested conversion and each customer's new DCQ.

Customer	Current DCQ (Mcf)	Amount to be Converted (Mcf)	Effective Date Of Requested Conversion	New DCQ (Mcf)
Iowa Electric	48,541	7,281	3-1-88	41,260
Iowa-Illinois	266,048	39,907	4-4-88	226,141
Iowa Southern	10,497	1,575	5-1-88	8,922
NIPSCO	468,795	70,320	4-1-88	398,475

It is stated that the four customers elected to convert a portion (fifteen percent or less) of their daily contract quantity (DCQ) of the effective dates listed above. The DCQ changes were reflected in proforma tariff sheets for Iowa Electric, Iowa-Illinois, Iowa Southern, and NIPSCO on Ninth Revised Sheet No. 502, Tenth Revised Sheet No. 503, Eleventh Revised Sheet No. 503, and Third Revised Sheet No. 508, respectively. It is further stated that the DCQ level was used in the determination of basic annual quantities (BAQ) which are described on the proforma tariff sheet, Third Revised Sheet No. 137 of Natural's FERC Gas Tariff, Volume 1. It is alleged that the BAQ is utilized in the allocation of available gas supplies under section 22 of the General Terms and Conditions of Natural's Tariff. Natural has lowered proportionately the BAQ's of the four customers electing contract conversion to maintain the pre-existing relationship between DCQ and BAQ. It is further alleged that otherwise these customers would be entitled to receive the same supply allocation as previously notwithstandig the reduction of DCQ's.

It is stated that one of the customers, Iowa-Illinois, participated in a load switch with Wisconsin Southern Gas Utilities (Wisconsin Southern) which took effect January 1, 1988. However, changes were not made to their BAQ's at that time. It is further stated that this contract exchange was authorized by the Commission in Docket No. CP85-774. Natural has revised the BAQ for Wisconsin Southern and Iowa-Illinois to reflect this change.

It is alleged that the five customers discussed here and Natural's other 11 DMQ-1 customers were sent the current and proposed changes to the BAQ's in a letter dated January 26, 1988, and none voiced opposition to the proposed action. It is alleged that the current and revised BAQ levels are shown below:

Customer	Current BAQ (Mcf)	Revised BAQ (Mcf)
Iowa Electric	15,946,000	13,554,100
Iowa-Illinois	84,000,000	69,825,278
Iowa Southern	2,240,000	1,903,000
NIPSCO	154,000,000	130,900,000
Wisconsin Southern	7,080,064	8,525,682

Natural asserts that the change for Iowa-Illinois was effectuated in two steps. The customer exchanged 6,000 Mcf of daily contract quantity with Wisconsin Southern effective January 1, 1988. Such a change would have reduced the BAQ to 82,147,386 Mcf. It is alleged that the current requested conversion reduced the BAQ to the 69,825,278 Mcf level.

Comment date: April 12, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in deteminin the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6705 Filed 3-25-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This table does not reflect any reductions currently pending in Docket No. CP87-206-000.

[Docket No. CI86-56-003 et al.]

Citizens Energy Corp. et al., Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

March 22, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandoment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 30, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of extension
CI86-56-003, 3-18-88.	Citizens Energy Corp. and Citizens Gas Supply Corp., 530 Atlantic Avenue, Boston, MA 02210.	10 yr.
CI87-847-001 3-18-88.	Texas Eastern Gas Services Co., c/o Vinson & Elkins, 3300 First City Tower, 1001 Fannin, Houston, TX 77002-6760.	2 yr.

[FR Doc. 88-6703 Filed 3-25-88; 8:45 am]

BILLING CODE 6717-01-M

Cases Filed; Office of Hearings and Appeals; Week of December 24, 1987 Through January 1, 1988

During the Week of December 24, 1987 through January 1, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural requlations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director of Hearings and Appeals.

March 21, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 24, 1987 through Jan. 1, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 28, 1987	Amoco *et al.* /Texas, Austin, Texas.	RM21-96, RM8-97,RM5-98, RM31-99, RM33-100, RM35-101, RM21-102, RM34-10.	Request for Modification/Rescission. *If granted:* The August 13, 1987 Decision and Order issued to Texas would be modified regarding the state's refund applications in the Amoco, Belridge, Palo Pinto, World Wide, Loveladdy, Fagadeau, Gas Engine, and Ada Resources second stage refund proceedings.
Dec. 28, 1987	National Helium/Ohio, Columbus, Ohio.	RM3-104	Request for Modification/Rescission. *If granted:* The March 25, 1987 Decision and Order issued to Ohio (Case No. RQ3-258) would be modified regarding the state's application for refund in the National Helium second stage refund proceeding.
Dec. 29, 1987	Washington, Olympia, Washington.	KEG-0027	Petition for Special Redress. *If granted:* The Office of Hearings and Appeals would review and approve the State of Washington's proposed expenditure for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Dec. 31, 1987	Cities Service Oil & Gas Corporation, Washington, DC.	KFA-0154	Appeal of an Information Request Denial. *If granted:* The November 30, 1987 Freedom of Information Request Denial issued by the Office of Management and Information Systems, Economic Regulatory Administration, would be rescinded and Cities Service Oil & Gas Corporation would receive access to certain information involving Chevron, U.S.A. and Gulf Oil Corporation.
Dec. 31, 1987	Little America Refining Company, Washington, DC.	KES-0008, KET-0008	Request for Stay and Request for Temporary Stay. *If granted:* Little America Refining Company would receive a stay and a temporary stay of the distribution of refunds in The True Companies special refund proceeding (Case No. HEF-0557).

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 24, 1987 through Jan. 1, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 31, 1987	U.S.A. Petroleum Corporation, Cincinnati, Ohio.	KFA-0155	Appeal of an Information Request Denial. *If granted:* U.S.A. Petroleum Corp. would receive access to certain Energy Information Administration reporting forms filed on behalf of Atlantic Richfield Company.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 24, 1987 to Jan. 1, 1988]

Date received	name of refund proceeding/Name of refund applicant	Case No.
Dec. 28, 1987	Southwest Gas Equipment Company	RF253-43
Dec. 28, 1987	Amoco II/Texas	RQ251-420
	Charter/Texas	RQ23-421
	National Helium/Texas	RQ3-422
	Vickers/Texas	RQ1-423
	Pennzoil/Texas	RQ10-424
	OKC/Texas	RQ13-425
	Coline/Texas	RQ2-426
	Perry Gas/Texas	RQ163-427
Dec. 14, 1987 thru Jan. 1, 1988	Crude Oil Refund Applications Received	RF272-23341 thru RF272-30033
Dec. 24, 1987 thru Jan. 1, 1988	Gulf Oil Refund Applications Received	RF300-4507 thru RF300-4589

[FR Doc. 88-6631 Filed 3-25-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[ER-FRL-3354-9]

Intent To Prepare Environmental Impact Statements (EIS's); Designation of Ocean Dredged Material Disposal Sites (ODMDS's) for Three Navigation Channels in Coastal Louisiana

AGENCIES: U.S. Environmental Protection Agency (EPA), Region VI and U.S. Army Corps of Engineers (COE), New Orleans District.

ACTION: Notice of intent to prepare draft EIS's on the final designation of ODMDS's off coastal Louisiana.

Purpose: In accordance with section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), EPA and the COE will jointly prepare draft EIS's on EPA's designation of ODMDS's off coastal Louisiana.

FOR FURTHER INFORMATION CONTACT:

Norm Thomas, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-2260

Suzanne Hawes, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160-0267, (504) 862-2510.

SUMMARY: The proposed DEIS's will provide information regarding the environmental impacts and final designation for continued use of ocean dredged material disposal sites (ODMDS's) for three navigation channels in coastal Louisiana—the Mississippi River-Gulf Outlet in St. Bernard Parish, the Barataria Bay Waterway in Jefferson Parish, and the Houma Navigation Canal in Terrebonne Parish. Material dredged from the navigation channels is proposed for disposal. Without dredging, operating depths would decrease and limit economically important ship traffic utilizing the channel. Each of the above navigation channels extends into the Gulf of Mexico until it reaches a depth equal to the authorized channel depth. During maintenance dredging of the channels, material is placed in a narrow disposal site westward of and parallel to each channel. All three sites proposed for designation have been in use for over 25 years. All three of these sites received a 3-year interim designation from EPA in 1977, based on historical use. In January 1980, the interim designation of each site was extended indefinitely. The EPA has now determined that it will voluntarily prepare a draft and final EIS for each designation action. The COE and EPA will function as joint lead agencies in preparing these draft EIS's.

Alternatives: Alternatives to be considered in the draft EIS's include no action, final designation of the interim designated ODMDS's, relocation of the ODMDS's to alternate ocean areas, and land disposal and beach nourishment. Other alternatives may be identified during the scoping process.

Scoping: No formal scoping meetings are planned to receive input on these documents. A Scoping Input Request will be distributed in March 1988 to allow Federal, state, and local agencies; environmental groups; and other interested parties an opportunity to provide input and assist in identification of significant issues and alternatives to be addressed in the draft EIS's. Comments received as a result of the Scoping Input Request will be compiled and analyzed. A scoping document summarizing the results will be made available to all respondents.

Estimated Date of Release: The draft EIS's are currently scheduled to be available for public review as follows:

Houma Navigation Canal—Summer 1988
Mississippi River-Gulf Outlet—Summer 1988
Barataria Bay Waterway—Fall 1988

Responsible Officials:

Robert E. Layton, Jr., P.E., Regional Administrator, EPA, Region VI
Lloyd K. Brown, Colonel, Corps of Engineers, District Engineer.

Dated: March 3, 1988.

Lloyd K. Brown,

Colonel, Corps of Engineer, District Engineer.

Dated: March 22, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-6636 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3355-6]

Agency Paperwork Reduction Act Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces Office of Management and Budget (OMB) actions on the Information Collection Requests (ICRs) submitted by EPA.

Approved

EPA ICA #0309; Registration of Fuels and Fuels Additives; OMB action date: 3/3/88; OMB #2060–0150; expires 3/31/91. Revision of existing regulation.

EPA ICR #1078; Information Collection Requirements for Phosphate Rock Plants (NSPS Subpart NN); OMB action date: 2/19/88; OMB #2060–0111; expires 2/29/91. Revision of existing regulation.

EPA ICR #1397; Survey of Municipal Waste Combustors; OMB action date: 2/19/88; OMB #2060–0160; expires 12/31/88. New Collection.

EPA ICR #0276; Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only/Final Reports on EUP'S; OMB action date: 2/23/88; OMB #2070–0040; expires 8/31/90. Revision of existing regulation.

EPA ICR #0857; Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, and Distribution in Commerce Exemptions; OMB action date: 2/23/88; OMB #2070–0021; expires 2/29/91. Reinstatement.

EPA ICR #0976; Hazardous Waste Biennial Reporting System; OMB action date: 2/23/88; OMB #2050–0024; expires 12/31/88. Revision of existing regulation.

EPA ICR #1437; Letter to Governors of 50 States Requesting Review of Summaries of State Mining Waste Regulations; OMB action date 2/19/88; OMB #2050–0082; expires 12/31/88. New Collection.

EPA ICR #1427; Wastewater Permit Compliance Assessment Information; OMB action date: 2/23/88; OMB #2040–0110; expires 2/29/90. New Collection.

Not Approved

EPA ICR #1432; Protection of Stratospheric Ozone. New Collection.

Discontinued

EPA ICR #1233; Asbestos School Hazard Abatement Act Grant and Loan Program; OMB #2070–0062.

FOR FURTHER INFORMATION CONTACT:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460, Telephone No. (202) 382–2840.

or

Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, Telephone No. (202) 395–3084.

Dated: March 10, 1988.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-6673 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3355-1]

Intent to Prepare an Environmental Impact Statement (EIS); Designation of Ocean Dredged Material Disposal Site (ODMDS) Off Port Aransas, TX

AGENCY: Region VI, Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement on the final designation of an ODMDS off Port Aransas, Texas.

Purpose: The U.S. Environmental Protection Agency (EPA), Region VI, in accordance with its voluntary EIS policy for ocean dumping site designation, will prepare a Draft EIS on the designation of an ODMDS off Port Aransas, Texas. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and to be Placed on the ODMDS Project Mailing List Contact: Norm Thomas, (6E–F), EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2260 or (FTS) 255–2260.

SUMMARY: The Corps of Engineers, Galveston District is responsible for maintaining the Corpus Christi Ship Channel. This requires the removal of approximately 955,000 cubic yards of maintenance material per year with a maintenance cycle at approximately 18-month intervals. The Corps has requested that EPA designate an ODMDS offshore Port Aransas, Texas for the continuing disposal of dredged material from the Corpus Christi Ship Channel when ocean disposal is the preferred alternative.

Alternatives: Alternatives to be evaluated include no action (defined as not designating an ODMDS), upland disposal and several offshore disposal site alternatives.

Scoping: A scoping meeting is not contemplated. Scoping with affected federal, state and local agencies and with interested parties is being accomplished by correspondence.

Estimated Date of Release: The Draft EIS will be made available in May 1988.

Responsible Official: Mr. Robert E. Layton Jr., P.E., Regional Administrator, Region VI.

Dated: March 22, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-6635 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3355-4]

Availability of Report to Congress on Wastes From the Combustion of Coal by Electric Utility Power Plants; Public Hearings

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of availability of report to Congress and announcement of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) recently submitted to the Congress its report entitled "Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants." The report was compiled in response to section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). In the report, EPA provides information on: (1) The scope of the exemption for coal-fired utility wastes, (2) sources and volumes of waste, (3) current waste management practices, (4) cases of documented damage, (5) assessment of risk to human health and the environment, (6) potential costs of alternative waste management practices, (7) economic impact on industry of these alternative waste management practices on the use of coal and other natural resources, and (8) current and potential utilization of

waste materials. The report includes conclusions and recommendations. The purpose of this notice is to solicit public comment on the accuracy of the information and findings and the appropriateness of the recommendations. Public comment is especially invited on: 1. The scope of the exemption and 2. whether low-volume utility wastes should be regulated under Subtitle C of RCRA.

DATES: Public comments on this report must be received on or before May 16, 1988. EPA will conduct two public hearings on this report: April 26, 1988 in Denver, Colorado; and April 28, 1988 in Cincinnati, Ohio. Registration for all hearings will start at 8:00 a.m. The hearings will begin at 9:00 a.m. and will end at approximately 5:00 p.m.

ADDRESSES: The locations of the public hearings are:

The Regency, 3900 Elati Street, Denver, Colorado 80216

U.S. Environmental Protection Agency, Andrew W. Breidenbach Auditorium, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline (800) 424–9346 or (202) 382–3000. For technical information, contact Mr. Patrick Pesacreta at (202) 382–7915.

SUPPLEMENTARY INFORMATION: A block of hotel rooms for public hearing attendants will be set aside up to two weeks prior to the hearings. Attendants should make their hotel reservations in advance. Request for additional details on the hearings or to preregister to present testimony at a hearing should be addressed in writing to Hearing Clerk, Office of Solid Waste, WH–565, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Preregistration is not required to speak at a hearing, but is highly recommended.

The public must send an original and two copies of their comments on the report to: Docket Clerk, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the docket number F–88–PATA–FFFFF on your comments.

Copies of the full report to Congress will be available for purchase through the National Technical Information Service (NTIS). Information on how to purchase this report is available from: U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487–4650. Please use the full title of the document when ordering. The report to Congress is available for viewing at all EPA Regional libraries and in the EPA RCRA Docket. Also, major supporting documents cited in the report to Congress are available for public review beginning March 31, 1988 in the RCRA Docket (sub-basement), Office of Solid Waste, WH–565–E, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:00 to 4:00, Monday through Friday except Federal holidays, by appointment only. Appointments can be made by calling (202) 475–9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

Dated: March 10, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-6674 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-3353-5]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Air Pollution Control Techniques Advisory Committee will be held at the Sheraton Imperial Hotel and Towers, Empire Ballroom, I–40 Exit 282 at Page Road, Research Triangle Park, North Carolina 27709. The commercial telephone number is (919) 941–5050.

DATES: May 18 and 19, 1988.

FOR FURTHER INFORMATION CONTACT: All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by May 10, 1988. The commercial telephone number is (919) 541–5571, and the FTS number is 629–5571.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

May 18 (Wednesday)—9:00 a.m.

Asphalt Roofing, Review of Standards of Performance for New Stationary Sources (section 111 of the Clean Air Act)

Volatile Organic Compounds (VOC's) Capture Efficiency, Test Methods and Procedures (sections 110 and 111 of the Clean Air Act)

Municipal Waste Combustion, Status Report to the Committee on Regulatory Development (sections 111 and 111(d) of the Clean Air Act)

Municipal Solid Waste Landfills, Background Information and Regulatory Alternatives (sections 111 and 111(d) of the Clean Air Act)

Treatment, Storage, and Disposal Facilities (TSDF), Background Information and Regulatory Alternatives (Resource Conservation and Recovery Act)

Perchloroethylene Dry Cleaning, Background Information and Regulatory Alternatives (section 112 of the Clean Air Act)

May 19 (Thursday)—9:00 a.m.

Continuation of May 18—as Required

Ethylene Oxide Commercial Sterilizers, Background Information and Regulatory Alternatives (section 112 of the Clean Air Act)

Small Steam Generating Units, Status Report to the Committee on Regulatory Development (section 111 of the Clean Air Act)

The dockets containing material relevant to asphalt roofing (A–87–02), capture efficiency (A–87–13), municipal waste combustion (A–86–16), municipal landfills (A–88–09), perchloroethylene dry cleaning (A–86–11), ethylene oxide commercial sterilizers (A–88–03), and small steam generating units (A–86–02) are located in the U.S. Environmental Protection Agency, Central Docket Section, South Conference Center—Room 4, 401 M Street SW., Washington, DC 20460. The docket for treatment, storage, and disposal facilities (F–86–CESP–FFFFF) is located in the U.S. Environmental Protection Agency, RCRA Docket Section, Sub-Basement (Room S–212), 401 M Street SW., Washington, DC 20460. The dockets may be inspected between 8:00 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

(Public Law 92–463)

Dated: March 17, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88-6443 Filed 3-25-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3354-4]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee will meet April 14–15, 1988 in the Administrator's Conference Room 1101 West Tower, 401 M Street SW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and adjourn no later than 2:30 p.m. on Friday.

The Committee will discuss final changes to the Underground Storage

Tank report and hear the report of the Unsaturated Zone Code Subcommittee. The Committee will discuss a draft resolution on modeling and receive an update on a potential Science Advisory Board review of issues related to the disposal of Municipal Combustion Ash. The Committee will be briefed on a number of other EPA activities related to engineering.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Mrs. Kathleen Conway, or Marie Miller at 202/382–2552 by April 11, 1988.

Dated: March 18, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-6675 Filed 3–25–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Act of 1980.

Title of Information Collection: Criminal Referral Reporting (OMB No. 3064–0077).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for the review and approval of the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

SUMMARY: The FDIC is requesting OMB approval to revise the forms used in the Report of Apparent Crime. FDIC regulation 12 CFR Part 353 requires insured nonmember banks to use prescribed forms (short form, FDIC 6710/06, or long form, FDIC 6710/06A) to report suspected criminal activity. The purpose of the reporting requirement is to assure that the specific information needed by investigators and prosecutors for effective law enforcement is provided in an orderly and timely fashion. The FDIC and other Federal financial institutions regulatory agencies are revising the criminal reporting forms to:

(1) Reduce the reporting burden;

(2) Incorporate additional criminal statutes; and

(3) Standardize the reporting basis.

The aggregate annual reporting burden imposed on insured nonmember banks in using the revised forms is 2,850 hours.

Dated: March 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-6721 Filed 3–25–88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-812-DR]

Amendment to Notice of a Major-Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–812–DR), dated February 5, 1988, and related determinations.

DATED: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of John D. Swanson as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-6644 Filed 3–25–88; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Welfare Dependency; Solicitation of Applications for Grants

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States, public, non-profit, and for-profit organizations. This grant announcement is the result of substantial interagency cooperation and the funds available from the Assistant Secretary may be supplemented by additional funds from other government agencies.

I. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research relating to national policy concerns in the area of welfare dependency. The Assistant Secretary has recently received two syntheses of research in this area that are available to potential applicants; these syntheses have helped determine our areas of interest.[1] The following paragraphs describe this general area of interest in greater detail by enumerating high priority areas of research. The questions they contain are intended as illustrations of specific concerns. Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general areas of interest.

A broad range of methodologies is acceptable for the purpose of this grant competition. However, all proposed projects should embody a sound theoretical base upon which new and original empirical work, employing the most useful and relevant data bases, is built. Demonstration projects will not be

funded, though funds may be requested to carry out or supplement evaluation of carefully designed existing demonstrations. Applicants must demonstrate knowledge of past and current research relating to the priority area under consideration, and they must also demonstrate access to data adequate to conduct a proposed study. With the exception of priority area B below, new data collection is inappropriate.

1. *The high priority research areas* for which applications for the proposed program of research are most desired are as follows:

A. Empirical Analysis of Welfare Dependency and Multiple Program Participation Using Monthly Longitudinal Data

Despite the well-known limitations of annual data provided by such longitudinal surveys as the Panel Study of Income Dynamics and the National Longitudinal Surveys in understanding welfare dependency (including underestimation of the prevalence of short spells), little analysis of monthly data has been done. Analysis of other longitudinal data sets providing monthly data (such as State administrative case records linked across assistance programs, the Survey of Income and Program Participation [SIPP], etc.) would be quite useful, though researchers must be aware of the difficulties involved in dealing with household and family composition changes over time. Are the answers we get from administrative data sources consistent with those we get from survey data? Such investigations should not be limited solely to nonelderly female-headed families.

A number of issues related to the Aid to Families with Dependent Children (AFDC) and the Food Stamps programs can be addressed by such an investigation.

- What are the facts regarding administrative churning versus true short-term dependency and what does that tell us about biases in annual measurement? Have the 1981 AFDC amendments changed average spell length? What is the relationship between AFDC benefit levels and spell length?
- What are the reasons for most entrances to and exists from the AFDC and Food Stamps rolls? Which type of former recipient is most likely to return to the rolls (those that leave due to earnings, marriage, or ineligibility)? Are earnings exits and returns gradual or abrupt? Are there correlations between spell length, means of exit, subgroup membership, and recidivism? Does having additional children while an AFDC recipient affect spell length or the probability of an exit?
- Is there a "welfare trap," that is, does an initial spell increase the likelihood of subsequent spells or is the variation in spell length due entirely to differences in individual characteristics? If there is a trap, through which mechanism(s) does it operate—e.g., does an initial spell make welfare receipt more acceptable; does being on welfare act to constrain the choices aveilable to a potential welfare recipient (that is, does the time out of the labor market reduce skill acquisition so that future labor market opportunities are reduced); does being on welfare reduce marriage prospects? Do AFDC recipients have lower returns to schooling and other human capital investments than other women, and is that a cause or a result of their dependency? How does recidivism fit into the entire life cycle analysis of welfare participation, work, marital decisions?

Further, little has been done with any of the longitudinal data sets to examine multiple transfer program benefit receipt over time. In particular, examination of the longitudinal nature of Food Stamp and AFDC receipt would be useful. What happens to Food Stamp receipt when a household leaves AFDC? Controlling for income, are former AFDC recipients more likely to return to AFDC if they continue to receive Food Stamps after they leave AFDC, that is, is return to dependency facilitated by continued contact with the welfare system? More broadly, what is the relationship over time of the receipt of cash assistance (including AFDC, Supplemental Security Income, general assistance) to the receipt of in-kind transfers (e.g. Food Stamps, housing assistance)? Why do some individuals who are eligible for AFDC or Food Stamps choose not to participate and is this affected by the benefit reduction rate ("marginal tax rate") on earnings? What is the relative importance of stigma, lack of knowledge, attitudes toward welfare, short-run adversity, hassle, supply factors, etc. on participation? Are non-participants active in the underground economy and do not need welfare benefits?

B. Investigating Exists and Recidivism With Qualitative Data

Recent research has focused on national data sets, such as the Panel Study of Income Dynamics and the National Longitudinal Surveys. Supplementing empirical analysis with qualitative, ethnographic interviews, possibly involving new data collection, could be quite instructive. Such analysis should focus on life cycle patterns of welfare receipt, work effort, earnings, marital status and conjugal relationships, childbearing, health status and Medicaid use, and so forth for a substantial sample of former welfare recipients.

For example, studying individuals who have recently left the AFDC rolls is of particular importance. Supplementing current cross-sectional findings with longitudinal analyses may yield new insights into exist patterns. For example, we can learn more about recidivism—why those who we thought successful home "failures" and return to the welfare rolls—by following former recipients over time. What are the characteristics of those who successfully leave AFDC through earnings? Do these women have prior labor market experience? Do they have superior labor market opportunities? Is the process of an earnings exist gradual or abrupt? Why do some mothers work part-time when the income gains are small at best? Are the part-time workers of this period those that leave with full-time jobs next period? How do day care, medical, or other problems get in the way of finding or keeping a job? What mechanisms are used to finance health care in the absence of Medicaid coverage and do significant health care problems lead to a return to dependency on Medicaid alone (in "medically needy" states) or on welfare plus Medicaid?

C. AFDC-Unemployed Parent Program

Assertions have been made that mandating the AFDC-UP program for all states would increase family stability by removing the incentive for unemployed parents to abandon their families. While there is some evidence that the AFDC-Basic program increases the likelihood of divorce, there is no evidence to date whether or not the AFDC-UP program decreases that likelihood. Moreover, the participation rate of eligible families in the UP program is believed to be substantially less than for the Basic program. What are the determinants of participation in AFDC-UP and why is the participation rate in AFDC-UP for eligible families below the participation rate for the AFDC-Basic program? Do eligible non-participants get benefits from other income transfer programs such as Food Stamps? Is there any evidence that AFDC-UP affects family stability and work effort in ways different from AFDC-Basic? What do we know about the interaction of AFDC-Basic and AFDC-UP in states that have both, that is, what is the pattern of movement of families between the two programs? What can we learn when states change their programs to cover or end coverage of UP families? Is participation in UP related to changes in the Unemployment insurance extended benefits program?

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[1] These syntheses are available from the Grants Officer (see section I):

1. Ellwood, David T. "Understanding Dependency: Choices, Confidence or Culture?" Brandeis University, November 1987.

2. Kevin R. Hopkins. "Welfare Dependency: Behavior, Culture and Public Policy." Hudson Institute, September 1987.

D. Problems of the Underclass

The recent widespread interest in problems of an underclass in American cities has served to highlight our lack of knowledge about welfare use at the neighborhood level. Clearly, one central issue involves defining the underclass. Almost universally, extant definitions involve geographic concentrations of poverty and/or welfare use.

Two methods can be used to shed light on the problems of the underclass—analysis of both nationally-representative data and geographically-concentrated data. Currently, census tract data are being linked to the Panel Study of Income Dynamics. With these data, one can experiment with alternative definitions of an underclass including aspects of both economic marginality and geographically concentrated poverty. As a consequence, employment and unemployment rates, underemployment, welfare use, and dependency can now be investigated as they differ among neighborhoods. For example, does the fact that a particuarly high proportion of a neighborhood's population uses welfare have any effect on marriage and welfare use or on the intergenerational transmission of dependency in that neighborhood? What is the distribubtion of welfare recipients, long-term welfare recipients, and the long-term poor (as opposed to all poor persons) by neighborhood proverty rate? What is the work history of those living in high poverty areas and how many are receiving Unemployment Insurance? What are the characteristics of the non-poor and non-dependent populations living in high poverty areas? Are these people more at risk of dependency than those with similar characteristics that live in better-off neighborhoods? Are the near-poor in any one year future or past poor? What is known about the relationship between residence in public housing areas and the use of public assistance? Can information from criminal justice statistics for local areas be used to determine whether there is a link between criminality and welfare dependency?

At the neighborhood level, systematic assessment of the characteristics of neighborhoods and their evolution through time can be used to develop and assess hypotheses about the origins and likely future of economically deprived populations. For example, William Julius Wilson, in a recent paper for the Rockefeller Foundation, has investigated neighborhoods in Chicago in the detail necessary to examine these issues. Questions that might be addressed include the following: Is it lack of jobs or lack of skills that leads to low employment rates in underclass areas? Are employment and training programs (such as the Job Training Partnership Act) serving inner city populations? Is there any evidence that local self-help programs (such as the Kenilworth-Parkside Resident Management Corporation in Washington, DC) have any effect on welfare use, transition to self-sufficiency, neighborhood quality, or related issues? Do the attitudes of males or females toward welfare in areas with relatively low proportions of the population receiving welfare differ from those areas with relatively high receipt?

Finally, a systematic assessment of ethnographic findings to abstract lower class subculture characteristics may be informative. Currently, researchers include "race" as an explanatory variable in their welfare and poverty regression models with little explanation. Can we understood what this term stands for? Can we explain the significant differences between blacks and whites in these models through differences in educational opportunities, housing quality, etc., or are there underlying cultural differences between races that cannot be explained even when neighborhood influences are taken into account?

E. Topics Related to Teenage Pregnancy

Unmarried women entering welfare as teenagers are often long-term dependent. This series of proposed projects focuses on the antecedent behavior—teenage pregnancy.

1. Examining the "Opportunity Costs" Hypothesis

Teenagers from disadvantaged families and neighborhoods are considerably more likely to become parents during their teen years. One explanation for this pattern is the "nothing to lose" hypothesis. That is, these teens perceive that they lack opportunities for personal advancement and believe they have limited options. Because early parenthood may appear to entail little in the way of lost opportunities, teens lack the motivation to avoid becoming parents as adolescents. We would like to test the validity of this hypothesis. Does it apply equally well to males and females? Are there other important variables which affect young people's attitudes and perceptions about the future?

2. Child Support, Male Responsibility, and Family Involvement

Child support payments can affect the duration and depth of welfare dependency. Yet, 70% of all AFDC recipients have not been awarded any child support. How might increased child support enforcement, paternity establishment, and provision of male and/or female employment opportunities change the patterns of child support payment, employment, and family structure?

Even on a descriptive level, the attitudes, values and concerns of teenage males are not well-documented. Can the rigorous enforcement of existing child support laws affect the behavior of young males? Would widespread imposition of uniform child support awards on fathers change behavior (e.g. reduce illegitimacy or divorce) by increasing the financial risk to males? How might the work effort of both mothers and fathers be affected? How might increased mandatory payments affect informal payments by fathers? Would child support collections increase if fathers were allowed to make in-kind contributions in lieu of cash payments due and thus have greater control over how their payments are used? Would increased child support payments affect the chance that the mothers marry or remarry?

There is some evidence that efforts to establish paternity around the time of birth frequently result in voluntary acknowledgement of paternity. Does such an approach lead to greater involvement of the father in the care and support of his child? Would job counseling of the father at the time of paternity establishment increase the likelihood of child support? Many of the fathers of AFDC children are unemployed or underemployed. They often are not given high priority by child support enforcement officials for paternity establishment or child support enforcement. Furthermore, they are not given any priority in human capital development programs, perhaps because that might create perverse incentives to father children out-of-wedlock. Can integrated child support enforcement and work programs for the fathers increase their support for their children without increasing birth rates? To what extent do welfare, workfare, employment and training rules/regulations and practices discourage rather than encourage father support of children and/or family dissolution. To what extent have job training programs or other human capital investments (e.g.

schooling) on the part of males affected the likelihood that they will marry?

Variations in State child support enforcement practice toward young absent fathers create "natural experiments"—some AFDC recipients are in a "strict enforcement" group while others are in a "no enforcement" group. Do states or particular communities differ in measurable ways in their child support enforcement or employment practices (e.g. workfare for the fathers) so that meaningful comparisons about outcomes can be made?

F. Influence of Child Care on the Capacity for Independence

Several attitudinal surveys have indicated that lack of affordable, available child care is a significant barrier to the labor force participation of low-income women. On the other hand, several studies indicate that child care is less significant an impediment than charged. Ellwood in his previously-cited synthesis of the welfare dependency literature says, "One of the most talked about but least understood strategies to help people move toward independence involves day care." He adds, "There are surveys of day care arrangements (including SIPP) which could be examined. Some may even have a useful longitudinal component. Moreover, there is already considerable variation in the provision of day care across States. Work-welfare programs are a potentially rich source of information on the role of day care in influencing work decisions."

What types of child care do welfare recipients that work currently use? What are the relative roles of (1) private procurement of services covered, the AFDC child care disregard and (2) provision of day care services by government programs (including both work programs for welfare recipients and Title XX programs)? Can government target fiscal resources to appropriate families for day care in a way to encourage cost-effective labor force participation by welfare recipients? We are also interested in studies that will help us understand whether an inadequate supply of affordable child care is a major barrier to low income women's labor force participation in general. If there is a problem, is it pervasive across the country or are there only pockets where supply, quality, or costs are the problem? Does the demand for child care services differ in type (e.g. family vs. center-based) or quantity among regions?

G. Effects of Child Support Enforcement on AFDC and of Financing Arrangements on Program Effectiveness and Efficiency

Federal financing arrangements for child support enforcement (CSE) activities are very generous—a 68 percent administrative cost match rate, a 90 percent match for ADP systems, an incentive payment of 6 to 10 percent of all child support collections, plus the return to the State of its share of all collections made on behalf of AFDC recipients (an average of about 36% when the $50 per month pass-through and other payments to families have been excluded). These monies flow into the State's general revenues. Consequently, there is no need for a State to link the generosity of its AFDC program to the effectiveness of its CSE program. Nevertheless, State legislators may make such a link in setting the AFDC benefit level or in determining some other aspect of the AFDC program. Is there any evidence of such a link? (The effectiveness of CSE is not to be construed simply as the total amount of collections or the ratio of collections to administrative cost, but also the degree to which paternity and support awards are established, the proportion of support awards which are in collection status, the degree to which States concentrate on current collections versus arrears, and the extent to which States have backlogs of unworked or inactive cases.)

It has not been documented that the current financing arrangements have any effect on the CSE program's effectiveness or efficiency. Further, because of the complex nature of the program, administrative and financial interactions between AFDC and CSE may make it difficult for States and counties to determine the long-run benefit of increasing CSE activities, especially for the AFDC population. It is also suggested that there may be conflict between the State-level view of how child support and AFDC should interact and how this interacting is perceived at the county level, especially where one or both of the CSE and AFDC programs are county-administered or operated. Consequently, we are interested in an examination of how the administrative structures for AFDC and CSE within States and the particular Federal and State financing arrangements may be affecting the effectiveness of the CSE program.

2. Products

The applicant should present a schedule for delivery of interim progress reports and a final report. For any project that significantly enhances a data base or creates a new data base in the course of the work, a well-documented public use file should also be prepared.

3. Potential Users

Potential users of the research include policy makers at Federal, State, and local levels of government, as well as professionals in social services, demography, economics, sociology, social work, and related fields. Because many of those who will be interested in this research lack advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. This may involve the submission of a separate, non-technical executive summary.

4. Types of Projects Excluded

In consideration of the intent of this announcement, applications concentrating on a narrow programmatic or policy focus, or on one that is not directed to concerns of national interest, will not be considered for funding.

In addition, this announcement seeks empirical analysis of the individual issues founded on a sound theoretical base. Applications that are limited to theoretical development or involve new demonstrations will not be considered. In addition, applications that include new data collection efforts are unlikely to be approved, except in priority area B.

5. Content and Organization of the Applications.

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

II. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), Code of Federal Regulations on June 9, 1981.

III. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about July 1, 1988; however some may be made subsequent to this date (see Section D below).

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. It is expected that most projects will be completed within a twelve- or an eighteen-month period. Longer projects, particularly those addressing priority area B, can be considered but will be subject to the availability of funds.

IV. Statement of Funds Available

1. $450,000 has been set aside for grants to be awarded in Fiscal Year 1988 as a result of this announcement. Applications may be for any amount, but it is expected that most awards will be for single projects of no more than $100,000. Up to $500,000 of additional funds in both Fiscal Years 1988 and 1989 may be made available for unfunded proposals which are of exceptional quality.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on complete demonstration of that outside funding.

2. Funds may be obligated fully at the time of award of these grants or incrementally.

3. The government reserves the right to select for funding more than one application in a given priority area. Further, the selection of the priority areas from the entire set, for which awards will be made, will be made in accordance with the quality of proposals received. However, nothing in this application should be construed as committing the Assistant Secretary to make any award.

V. Application Processing

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included. Applicants should clearly indicate on their cover sheet into which of the priority topics listed above their application falls, or if none, indicate "OTHER".

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 25 double-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in Section A above with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of science. (25 points)

b. *Clarity and Understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. *Research Design.* The appropriateness and soundness of methodology (which may include an interdisciplinary approach), including overall research design, statistical techniques, modeling strategies, choice of data, and other proposed procedures. Probability of successful completion of the study. (30 points)

d. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (30 points)

VI. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than May 19, 1988, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than May 19, 1988, as evidenced by a receipt from the commercial carrier.

VII. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 a.m. and 4:30 p.m., Washington, DC, time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on May 20, 1988.

VIII. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contract person listed in block 4 of the application to notify the applicant of the approved application.

IX. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after April 15, 1988.

X. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

XI. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

Date: March 22, 1988.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 88-6841 Filed 3-25-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 81P–0361 et al.]

Approved Variances For Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 17 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 17 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date termination date
81P–0361 (renewal).	Siegfried and Roy Entertainment, Incorporated d.b.a. Beyond Belief, Frontier Hotel, 3120 Las Vegas Boulevard, South Las Vegas, Nevada 89109.	Siegfried and Roy Entertainment, Incorporated "Beyond Belief" laser light show incorporating the Laser Media LMS projector.	January 22, 1988—February 1, 1990.
82P–0095 (renewal).	Hill Development Services Company, 18160 Old Monte Rio Road, Guernewood Park, California 95446.	Laser light shows assembled and produced by Hill Development Services, Company incorporating the Class IV Laserscape II Krypton, the ABP–1 argon, and the CP–1 argon/krypton laser projectors.	Jan. 22, 1988—March 17, 1990.
83V–0412 (renewal).	Western Michigan University, Dalton Center, Kalamazoo, Michigan 49008–5155.	INNOVA 90K Laser Light Shows and the Class IV ion laser projection systems and display devices assembled and produced by Western Michigan University.	Jan. 12, 1988—Jan. 26, 1990.
84V–0336 (renewal).	La Mama Experimental Theatre Club, Incorporated, 74A East 4th Street, New York, New York 10003.	Importation of the Campagnia Teatrale Krypton laser projector and laser light show for a two-week presentation in the La Mama Theatre. The projector is a Class IV argon projector.	Dec. 31, 1987—Sept. 28, 1988.
86V–0239 (amendment).	Laser Dreams, 7345 Healdsburg Avenue, Suite 11, Sebastopol, California 95472.	Laser Dreams laser light shows incorporating the Laser Dream Machine Model 1 laser projector with argon, helium-neon, and/or helium-cadmium lasers.	Jan. 20, 1988—May 30, 1988.
85V–0298 (renewal).	Laser Light Systems, Incorporated, 1414 Tilia, San Mateo, California 94402.	Laser Light Systems' laser light shows and the incorporated laser projection system consisting of Laser Systems Development Corporation Model R8, C3, or C8 optics modules and Class IV argon or krypton lasers such as Spectra-Physics' Models 164 or 171 or Laser Light System's Model LLI.	Jan. 5, 1988—Jan. 9, 1990.
85V–0305 (renewal).	Sea World, 1720 South Shores Road, San Diego, California 92109.	Class IV Sea World Model SW–1 ion laser projector and the Sea World laser light shows, such as "Summer Nights" or "Starlight Spectacular" incorporating Laser Media LMS Series and Sea World Model SW–1 laser projectors.	Jan. 5, 1988—Jan. 5, 1989.
86V–0194 (amendment).	Lasertainment, 428 B West County Road D, New Brighton, Minnesota 55112.	Lasertainment laser light show using the Laser Fantasy Class IIIb or IV Rainbow Model Series Ar/HeNe laser projection systems.	Jan. 5, 1988—Oct. 16, 1988.
87V–0308	Laser Entertainment and Display Incorporated, 2939 Arden Way, Sacramento, California 95825.	Class IV argon/krypton Model LED 1 laser projection system and laser light shows produced and assembled by Laser Entertainment and Display, Incorporated incorporating this projection system.	Dec. 6, 1987—Dec. 6, 1989.
87V–0342	Allen County Memorial Coliseum, 4000 Parnell Avenue, Fort Wayne, Indiana 46805.	Allen County Memorial Coliseum laser fiber optic scoreboard	Dec. 1, 1987—Dec. 1, 1989.
87V–0359	Diego's Incorporated, 860 Garnet Avenue, San Diego, California 92109.	Club Diego's laser light show using the Entertainment Technology Industries Class IV Beam Master Model Three argon laser projection system.	Nov. 25, 1987—Nov. 25, 1989.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date termination date
87V-0377	NASA Ames Research Center, MS 247-2, Moffett Field, California 94035.	NASA Ames Research Center Wind Tunnel laser display using the Class IV argon Model LRVL laser product modified by NASA/ARC for this display.	Dec. 4, 1987—Dec. 4, 1988.
87V-0385	The Bailey Controls Company, 29801 Euclid Avenue, Wickliffe, Ohio 44092.	Bailey Controls Company laser light displays using the Centrak Laser Corporation Model CK-2 laser projector.	Dec. 24, 1987—Dec. 24, 1989.
87V-0388	Benedum Natural Science Theater, Ogle Bay Park, Wheeling, West Virginia 26003.	Benedum Natural Science Theater Laser Light Show incorporating the Laser Fantasy Rainbow 2000 laser projector.	Jan. 21, 1988—Jan. 21, 1990.
87V-0394	Spectra Laser Systems, 10292 Lurline Drive, Huntington Beach, California 92646.	Laser light shows assembled and produced by Spectra Laser Systems and for the firm's Model Series 6000 Computer Controlled Laser Projectors which are incorporated into these shows.	Dec. 16, 1987—Dec. 16, 1989.
87V-0400	Hyperion, 2810 Hyperion Avenue, Los Angeles, California 90027.	Hyperion laser light shows, incorporating an Entertainment Technology Industries Beam Master laser projector.	Dec. 29, 1987—Dec. 29, 1989.
87V-0401	Chameleon Productions, 500 E. Concord Street, Orlando, Florida 32803.	Chameleon Productions laser light shows, such as "Out of the Darkness," incorporating the Model TL24D laser projection system manufactured by Precision Projection Systems, Incorporated.	Jan. 21, 1988—Jan. 21, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: March 17, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

FR Doc. 88-6638 Filed 3-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0066]

IOPTEX, Inc.; Premarket Approval of the Model 304-01 Ultra C-Loop Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOPTEX, Inc., Azusa, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model 304-01 Ultra C-Loop Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 27, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8258.

SUPPLEMENTARY INFORMATION: On April 6, 1987, IOPTEX, Inc., Azusa, CA 91702, submitted to CDRH an application for premarket approval of the Model 304-01 Ultra C-Loop Posterior Chamber Intraocular Lens. The device is indicated for primary implantations in patients 60 years of age and over where a cataractous lens has been removed by extracapsular cataract extraction methods. The device is available in a range of powers from 5 diopters (D) to 33 D in 0.5 D increments.

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 12, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), (address above).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 27, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 18, 1988.

John C. Villforth, Director,

Center for Devices and Radiological Health.

[FR Doc. 88-6639 Filed 3-25-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a Pennsylvania State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA, HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on May 11, 1988 in Philadelphia, Pennsylvania to reconsider our decision to disapprove Pennsylvania State Plan Amendment 87.-11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk (within 15 days after publication).

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, MD 21207, Telephone: (301) 966-4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State Plan Amendment 87-11.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Pennsylvania SPA 87-11 violates section 1902(a)(10) (A) and (C) and 1902(a)(17) of the Social Security Act, and Federal regulations at 42 CFR 435.725(c)(4) and 42 CFR 435.726(c)(4).

Pennsylvania SPA 87-11 includes 13 policies the State believes to be more liberal than permitted under the Medicaid statue and the State believes to be protected under the moratorium provision contained in section 237(c) of the Deficit Reduction Act (DRA) of 1984 as clarified by section 9 of the Medicare and Medicaid Protection Act (Pub. L. 100-93) of 1987.

Section 2373(c) of the DRA imposes a moratorium which prohibits the Secretary from taking certain adverse actions against States because they are applying more liberal financial eligibility standards and methods other than those required by certain portions of section 1902(a)(10) of the Social Security Act (the Act). Therefore, during the moratorium period (October 1, 1981–February 17, 1989) no disallowance, compliance, penalty or other regulatory action will be taken against States because a plan (or its operation) employs eligibility standards and methods the Secretary finds to be more liberal than required under sections 1902(a)(10)(A)(ii) (IV), (V) or (VI) or 1902(a)(10)(C)(III) of the Act. The Congress made clear, however, that application of more liberal policies that result in income exceeding FFP limits is not within the scope of the moratorium. For purposes of this provision, we do not interpret "other regulatory action" to encompass disapproval of moratorium plan amendments as part of the official State plan. The moratorium was not intended to confer on States an unlimited right to use more liberal criteria (which would result if the moratorium approval of State plan amendments) but to permit States, without fiscal penalties, to use more liberal eligibility criteria during the moratorium period.

HCFA disapproved the 13 policies included in SPA 87-11 because it concluded that they violate the Medicaid statute as specifically described below. HCFA also determined that certain of these policies are not protected by the moratorium for a variety of reasons: (a) certain policies are not within the scope of the moratorium because they are more restrictive than permitted under section 1902(a)(10); (b) certain policies apply to eligibility groups which are not within the scope of the moratorium; (c) certain policies are not within the scope of the moratorium because they are not eligibility policies under section 1902(a)(10); (d) application of such policies would result in income exceeding FFP limits; or (e) the proposed policy is not sufficiently descriptive to make a finding of whether the policy is protected by the moratorium or not.

The following sets forth the reasons for HCFA's disapproval and specifies the extent of protection HCFA concluded is afforded under the moratorium contained in section 2373(c) of the DRA. HCFA has determined the following proposed policies for AFDC-related individuals violate section 1902(a)(10) (A) and (C) of the Act.

A. The State proposes to count, in determinations of eligibility for both categorically needy and medically needy, lump-sum nonrecurring income in 1 month (or budget period) rather than in the manner such income is applied under the AFDC program; thus, HCFA determined it violates sections 1902(a)(10)(A)(C) of the Act. Because this policy can result in a more liberal *or more restrictive policy* than would result in application of AFDC policy for counting lump-sum nonrecurring income, HCFA found that it was not protected by the moratorium. Additionally, the policy would be applied to AFDC-related categorically needy eligibility groups not included within the scope of the moratorium.

Under AFDC, when the family's income exceeds the need standard because of receipt of nonrecurring lump-sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump-sum income and any other income by the applicable monthly need standard. (See 45 CFR 233.20(a)(3)(ii)(F.)

Applying this rule under the "same methodology requirement" without undercutting the requirement of a "spenddown" under section 1902(a)(17) results in a methodology which does not make an individual ineligible during the months in which the prorated lump sum amounts are considered to be his income. The State may use the medically needy income level to determine the amount of months over which the lump sum is to be prorated. During those months, the individual's monthly income would be added to the prorated amount in order to determine the spenddown amount.

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Pennsylvania's proposal to not apply AFDC lump-sum rules is more liberal than AFDC policy because the lump-sum payment is counted as income only in the month received which results in potentially no more than one month of ineligibility rather than up to several months as may be the case under the AFDC rule. Additionally, the Pennsylvania proposal to not apply the AFDC lump-sum income policy can have the result of treating families in a more restrictive manner, depending on the individual family circumstances. For example, application of the AFDC lump-sum policy in a manner consistent with Medicaid may still permit families with low recurring monthly income to establish medically needy eligibility through spenddown.

However, as Pennsylvania proposes to count the entire lump-sum amount in 1 month (or budget period), the entire lump-sum amount could raise the family's income (and thus the family's spenddown liability) so far above the monthly need standard that the family would be unable to spenddown enough to attain medically needy eligibility.

B. The State proposes to deduct actual amounts incurred for work and personal expenses for both AFDC-related categorically needy and medically needy instead of deducting the $75 standard work expense used under the AFDC program (See 45 CFR 233.20(a)(11)(i)(B)). The proposed policy can result in a more liberal or more restrictive policy than application of the AFDC rule. Because the proposed policy differs from AFDC, HCFA determined that it violates sections 1902(a)(10) (A) and (C) of the Act. Because the policy can result in a more liberal *or more restrictive* policy than that used under the AFDC program. HCFA also concluded that it is not protected under the moratorium. Additionally, the policy would be applied to AFDC-related categorically needy groups not included under the scope of the moratorium.

The Pennsylvania proposal is more liberal than AFDC policy because it permits the disregard of actual amounts for work and personal expenses rather than limiting the disregarded to $75 as required under AFDC. The Pennsylvania proposal is also more restrictive than AFDC policy. In cases where the individual's actual work expenses are less than $75, Pennsylvania would disregard the actual amount rather than apply the required $75 disregard.

C. The State proposes not to apply (in determinations of eligibility for AFDC-related categorically needy) the AFDC gross income test which is based on 185 percent of the State's AFDC need standard (see 45 CFR 233 20(a)(3)(xiii)). Because the proposed policy is more liberal than AFDC program policy, HCFA determined that it violates section 1902(a)(10)(A) of the Act. HCFA also concluded that the proposed policy is not protected by the moratorium as these categorically needy eligibility groups are not within the scope of the moratorium. Since the 185 percent test is a necessary component of determining eligibility for an AFDC payment, that test must also apply to categorically needy individuals who are eligible for Medicaid by virtue of being individuals "who would be eligible for an AFDC payment." Pennsylvania's proposal to not apply the 185 percent gross income test to categorically needy individuals is more liberal than AFDC policy because under Pennsylvania's proposal eligibility could be established even though the family's income exceeds the 185 percent amount.

D. The state proposes to deduct, from self-employment income, depreciation, personal business and entertainment expenses, personal transportation expenses, purchase of capital equipment, and payment on principal of loans for capital assets or durable goods. The proposed policy is more liberal than AFDC program policy and on that basis, HCFA determined it violates section 1902(a)(10)(C)(i)(III) of the Act. HCFA concluded that the proposed policy is protected under the moratorium, but only to the extent application of the more liberal disregards of income (after statutory deductions described in 42 CFR 435.831) is below the FFP limit for the medically needy established in section 1903(f) of the Act. For example, if your FFP limit were $400 and your MNIL were $375, you could disregard an additional $25 when an individual's or family's income (after the AFDC deductions) is below $400. (The State proposes an effective date under the moratorium of October 1, 1986. In order to approve a retroactive effective date HCFA concluded that the State must provide documentation that the policy was included in its Medicaid operations or program manual from October 1, 1986 to present.)

- HCFA determined the following proposed policies for SSI related individuals violate sections 1902(a)(10)(A) and (C) of the Act—

A. The State proposes not to count support and maintenance in-kind. HCFA determined the proposed policy is more liberal than SSI program policy and concluded that it violates sections 1902(a)(10) (A) and (C) of the Act. HCFA found the proposed policy protected under the moratorium, but only to the extent it is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii) (IV), (V) or (VI) or 1902(a)(10)(C) of the Act and to the extend that application of the disregards does not result in exceeding the FFP limits set forth in section 1903(f).

Under SSI one type of unearned income which is counted in determining eligibility for an SSI payment is in-kind support and maintenance (food, clothing, and shelter). The way SSI values (i.e., the amount it counts) in-kind support depends on the individual's living arrangement (see 20 CFR 416.1120 through 416.1124). HCFA found that the Pennsylvania proposal which does not count support and maintenance in-kind as income is more liberal than SSI criteria which require that in-kind support and maintenance count as income in determining eligibility.

B. The State proposes not to apply SSI life insurance provisions. HCFA believes this policy is more liberal than SSI program policies, and determined that it violates sections 1902(a)(10) (A) and (C) of the Act.

HCFA found the proposed policy protected by the moratorium, but only to the extent it is used to determine eligibility for individuals described under section 1902(a)(10)(A)(ii)(IV)(V) or (VI) or 1902(a)(10)(C) of the Act.

The State's proposed plan indicates that the SSI life insurance provision are not being applied to categorically and medically needy individuals. Based on information from the regional office, it appears that Pennsylvania disregards the cash value of life insurance if the face value of all policies on the individual does not exceed $1,500. Additionally, where the face value of all policies on the individual exceeds $1,500, Pennsylvania counts the cash value over $1,000. (Effectively, where the face value exceeds $1,500 Pennsylvania disregards the first $1,000 of cash value of the policies.) This policy is more liberal than SSI policy which requires that if the face value of all life insurance policies on the individual exceeds $1,500, all cash value of the policies will be counted in determining eligibility (see 20 CFR 416.1230).

HCFA concluded that this policy would be protected under the moratorium, but the language of the amendment itself does not make clear that the policy described is indeed the policy envisioned under the amendment. Moreover, HCFA concluded it could not approve the proposed effective date of October 1, 1986 in the absence of documentation that the policy was included in its Medicaid operations or program manual or a previously submitted plan amendment from October 1, 1986 to present.

C. The State proposes to exclude property used in a trade or business essential to self-support which produces an annual net return of at least 6 percent of the excludable equity value. The State proposes to exclude a person's equity up to an amount not to exceed $15,000. HCFA concluded that the proposed policy is more liberal than SSI program policy and thus determined that it violates sections 1902(a)(10)(A) and (C). HCFA found that, effective January 1, 1987, to the extent the proposed policy is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii)(IV),(V) or (VI) or 1902(a)(10)(C) of the Act, it is protected by the moratorium. Under SSI policy, the value of property used in a trade or business essential for self-support is excluded provided that the equity value of the property is less than $6,000 and the property produces at least a 6 percent return on the equity value. If the equity value of the property is greater than $6,000, the excess over $6,000 is counted as a resource.

D. The State proposes not to apply joint bank account provisions. This policy is not described in enough detail to be able to determine how it differs from SSI program policy. HCFA found that it violates section 1902(a)(10)(A) and (C) of the Act because it does differ from SSI policy and is thus disapprovable, but we cannot conclude that it is protected under the moratorium without evidence that the policy is more liberal than SSI program policy and cannot result in a more restrictive policy.

Under SSI policy, when an eligible spouse enters a medical institution and an ineligible spouse remains at home, the income and resources of the ineligible spouse are not considered to be available to the eligible spouse in the institution because they are not living together. However, where a resource such as a bank account is held jointly by both parties, the full value of the resource is considered to be available to either the spouse at home or the spouse in the institution. This is because when an account is held jointly, either party has the legal right to all of the funds in the acount. Thus, the full value of the account is considered to be a resource of the institutionalized spouse in determining eligibility.

E. The State proposes to exclude one automobile regardless of value. HCFA found that this policy is more liberal than SSI program policy and concluded that it violates sections 1902(a)(10)(A) and (C) of the Act. HCFA advised Pennsylvania that effective January 1, 1987 the proposed policy is protected by the moratorium, but only to the extent it is used to determine eligibility for individuals described under sections 1902(a)(10)(A)(ii)(IV),(V) or (VI) or 1901(a)(10)(C) of the Act. Under SSI policy (20 CFR 415.1218), the value of one automobile is totally excluded as a resource in determining eligibility if the automobile is used for employment, is necessary for medical treatment of a specific or regular medical problem, is modified for operation by, or transportation of, a handicapped person, or is necessary because of the climate, terrain, distance, or similar factors to provide needed transportation to perform essential daily activities. If no exclusion can be made under these rules, the value of one automobile is excluded up to a limit of $4,500. Any value in excess of $4,500 is counted as a resource in determining eligibility. The value of any other automobile is counted as a resource against the individual's resource limit.

In medically needy determinations, the State proposes to deduct from income expenses for medical and remedial care regardless of whether such expenses are ultimately incurred by an individual or family. (The State explicitly refers to this as projection of incurred expenses.) HCFA concluded that the proposed policy violates section 1902(a)(17) of the Act and thus is not approvable. It also found that the proposed policy is not protected by the moratorium as it violates section 1902(a)(17) of the Act not section 1902(a)(10) of the Act.

Income eligibility determinations for the medically needy must provide for the deduction from income the amounts required under the most closely related cash assistance programs (AFDC or SSI). (See section 1902(a)(10)(C)(i)(III) of the Act.) After these cash program deductions are applied, deductions are made for incurred medical and remedial care expenses. (See section 1902(a)(17) of the Act.) Except for certain institutional care expenses, States may not project medical and remedial care expenses for purposes of determining eligibility under spenddown.

The State proposes to deduct, in the post-eligibility treatment of income, Veteran's Aid and Attendance and Housebound Allowances. HCFA believes the proposed policy violates section 1902(a)(17) and thus disapproved it. HCFA concluded that the proposed policy is not protected by the moratorium because it is not an eligibility requirement under section 1902(a)(10), but a post-eligibility policy.

The Medicaid post-eligibility process is distinct and separate from the eligibility process. The authority flows from section 1902(a)(17) of the Act. The purpose of the post-eligibility process is to count income which is clearly available to the individual to offset the costs of institutional care and alternative care provided under a home and community based waiver program (including concomitant attendant care). Therefore, unless the post-eligibility provisions specify a particular payment to be unavailable to the individual or to be unavailable for a specific and protected other purpose, the payment must be considered and applied to the costs of institutional care or home and community-based services, thus reducing the Medicaid payment. In this context, HCFA concluded that Veteran's Aid and Attendance and Housebound Allowance is considered to be income and available for application in the post-eligibility process. Under regulations at 42 CFR 435.725(c)(4) and 435.726(c)(4) amounts of individuals' income which are used for incurred medical or remedical care which are not subject to payment by a third party are protected (i.e., not counted as income available to be contributed towards the cost of care) in the post-eligibility process. Thus, if a VA A&A or homebound payment is used for such expenses, it would be protected and not applied to the cost of care. Otherwise, the VA A&A payment is available for use by the individual and must be applied to the cost of institutional or alternative care.

March 22, 1988.

Mr. John F. White, Jr.,
Secretary of Public Welfare, P.O. Box 2675,
Harrisburg, PA 17105.

Dear Mr. White: This is to advise you that your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment 87–11 was received on February 23, 1988.

Pennsylvania SPA 87–11 contains 13 policies you believe to be more liberal than allowed under the Medicaid statute and you seek protection of these proposed policies under section 2373(c) of the Deficit Reduction Act (DRA) of 1984 as clarified by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (P.L. 100–93).

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

There are three issues in this matter. The first issue concerns the need to determine whether section 1902(a)(10) (A) and (C) and 1902(a)(17) of the Social Security Act permit the use of financial eligibility rules like those proposed by Pennyslvania which differ from the rules applied under the appropriate cash assistance programs. The second issue is whether section 1902(a)(17) of the Social Security Act and Federal regulations at 42

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CFR 435.725(c)(4) and 435.726(c)(4) allow deduction of Veterans Aid and Attendance and Housebound Allowances in the post-eligibility treatment of income. The third issue is Whether Pennsylvania's proposed rules are protected by the moratorium provisions of the Deficit Reduction Act of 1984 and as amended by the recently enacted Medicare and Medicaid Patient and Program Protection Act of 1987.

I am scheduling a hearing on your request to be held on May 11, 1988 at 10:00 a.m. in Room 4030, 4th floor Gateway Building, 36th and Market Streets, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agareeable to the parties.

I am designating Mr. Stanley Kroster as the presiding officer. If these arrangements present any problems, plese contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4470.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 22, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-6686 Filed 3-25-88; 8:45 am]

BILLING CODE 4120-03-M

[BDM-043-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATE: The meeting will be held on Thursday, April 14, 1988, beginning at 9:00 a.m. to 5:00 p.m. Eastern Daylight Saving Time.

ADDRESS: The meeting will be held in Room 503A Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jan Niessing, (301) 594-8954.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is cmposed entirely of representatives from various Federal agencies interested in the International Classification of Disease (ICD) and its modification, updating, and use for Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss: endoscopic procedures of the gastrointestinal system; transtracheal intubation; dilation of the large intestine; occlusion of the vena cava; gastrointestinal procedures; destruction of lesions of stomach and intestine; insertion/removal of voice box; and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated March 11, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-6645 Filed 3-25-88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301-496-5708) will provide summaries of the meeting and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892-4200 (301-427-8630).

Name of Committee: Cancer Prevention Research Program Subcommittee
Date of Meeting: April 20, 1988, 8:30 a.m.—adjournment
Place of Meeting: Building 41, Conference Room, First Floor, 9000 Rockville Pike, Bethesda, Maryland 20892-3100
Agenda: Discuss current and future programs of the Prevention Program

Name of Committee: Cancer Control Science Program Subcommittee
Date of Meeting: April 27, 1988, 9 a.m.-3 p.m.
Place of Meeting: Building 31, Conference Room 8, C Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100
Agenda: Discuss current and future programs of the Cancer Control Science Program

Name of Committee: Centers and Community Oncology Program Subcommittee
Date of Meeting: May 4, 1988, 7 p.m.—adjournment
Place of Meeting: Building 31, Conference Room 2, A Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100
Agenda: Discuss current and future programs of the Centers and Community Oncology Program

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Date of Meeting: May 5-6, 1988, 8:30 a.m.—adjournment
Place of Meeting: Building 31, Conference Room 10, C Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Dated: March 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-6661 Filed 3-25-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, May 17, 1988, at The

Clinical Science Center, University of Wisconsin Hospital and Clinics, Room G5/119, 600 Highland Avenue, Madison, WI 53792.

This meeting will be open to the public on May 17 from 8:30 a.m. to 1 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; and a number of Wisconsin area researchers dealing with Innovations in Cancer Treatment.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: March 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-6662 Filed 3-25-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1791]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 22, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 312 Loan Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The section 312 Rehabilitation Loan Program, created by Pub. L. 88-56, makes loans to property owners for the rehabilitation of their property. Loans are made in targeted areas in need of rehabilitation as part of an overall community development strategy. The information collected is used as reporting and recordkeeping requirements to help operate the program
Form Number: HUD-6230, 6230C, 6237, 6243, 40023, 40024, 40025, 40026, and 40027
Respondents: Individuals or Households, State or Local Governments, Federal Agencies or Employees, and Non-Profit Institutions
Frequency of Respondants: Other
Estimated Burden Hours: 5,656
Status: Revision
Contact: William D. Hanson, Jr., HUD, (202) 755-0367 John Allison, OMB, (202) 395-6880

Date: March 21, 1988.

Proposal: Mortgagee's Certification and Application for Interest Reduction Payments
Office: Administration
Description of the Need for the Information and its Proposed Use: The information is needed and used by HUD to verify and disburse interest reduction payments to HUD approved mortgagees servicing non-insured multifamily mortgages.
Form Number: HUD-3111
Respondents: State or Local Governments and Businesses or Other For-Profit
Frequency of Respondents: Monthly
Estimated Burden Hours: 115
Status: Reinstatement
Contact: William J. Schnick, HUD, (202) 755-6706; John Allison, OMB, (202) 395-6880

Date: March 11, 1988.

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report
Office: Housing
Description of the Need for the Information and its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 *et seq.*, authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses these forms to calculate and collect monitoring inspection fees for manufacturing housing units.
Form Number: NCSBCS Forms 301 and 302
Respondents: Businesses or Other For-Profit
Frequency of Respondents: Monthly and On Occasion
Estimated Burden Hours: 8,888
Status: Extension
Contact: Stuart I. Margulies, HUD, (202) 755-6584; John Allison, OMB, (202) 395-6880

Date: March 15, 1988.

Proposal: Owner Certification Concerning Low-Income Housing Tax Credit
Office: Housing
Description of the Need for the Information and its Proposed Use: The Tax Reform Act of 1986 amended the Internal Revenue Code to create a new federal income tax credit for owners of low-income residential rental housing. This certification will be required by all owners seeking mortgage insurance under HUD's sections 207, 221, 223(f), and 231 multifamily rental housing programs. It will enable HUD and coinsuring

lenders to determine which insured or coinsured rental projects will be subject to low-income housing tax credit restrictions warranting special underwriting treatment.

Form Number: None

Respondents: Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Respondents: On Occasion

Estimated Burden Hours: 580

Status: New

Contact: Robert W. Shean, HUD, (202) 755-6223; John Allison, OMB, (202) 395-6880

Date: March 15, 1988.

Proposal: Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan Application

Office: Housing

Description of the Need for the Information and its Proposed Use: This form is needed and used as an application for a section 106(b) "seed money" loan by nonprofit corporations participating in HUD's section 202 program for housing the elderly and handicapped. The loan is used to help the borrower's preconstruction costs of developing housing projects under section 202.

Form Number: HUD-92290

Respondents: Non-Profit Institutions

Frequency of Respondents: Recordkeeping and On Occasion

Estimated Burden Hours: 150

Status: Extension

Contact: Evelyn F. Berry, HUD, (202) 755-5866; John Allison, OMB, (202) 395-6880

Date: March 14, 1988.

[FR Doc. 88-6713 Filed 3-25-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Section 810 Analysis; Bering Land Bridge National Preserve, AK; Public Hearings and Public Meetings

ACTION: In the Federal Register of Monday, March 7, 1988, Vol. 53, No. 44, page 7246, a Notice of Availability of the Draft Environmental Impact Statement (DEIS); Wilderness Recommendation Bering Land Bridge, AK was published along with dates for Public Hearings and Public Meetings on the DEIS. The section 810 analysis is included in the DEIS.

The Notice should have indicated that the public is invited to review and comment on the section 810 analysis separately at the public hearings and public meetings to be held on the dates and at locations noted in the March 7, 1988, notice.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654.

Date: March 23, 1988.

Gerald D. Patten,

Associate Director, Planning and Development.

[FR Doc. 88-6717 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-70-M

Section 810 Analysis; Kenai Fjords National Park, AK; Public Hearings and Public Meeting

ACTION: In the Federal Register of Tuesday, March 8, 1988, Vol. 53, No. 45, page 7406, a Notice of Availability of the Draft Environmental Impact Statement (DEIS); Wilderness Recommendation Kenai Fjords, AK was published along with dates for Public Hearings and a Public Meeting on the DEIS. The Section 810 analysis is included in the DEIS.

The Notice should have indicated that the public is invited to review and comment on the section 810 analysis separately at the public hearings and public meeting to be held on the dates and at locations noted in the March 8, 1988, notice.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654.

Date: March 23, 1988.

Gerald D. Patten,

Associate Director, Planning and Development.

[FR Doc. 88-6719 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-70-M

Section 810 Analysis; Yukon-Charley Rivers National Preserve, AK; Public Hearings and Public Meetings

ACTION: In the Federal Register of Tuesday, March 8, 1988, Vol. 53, No. 45, pages 7406-7407, a Notice of Availability of the Draft Environmental Impact Statement (DEIS); Wilderness Recommendation Yukon-Charley Rivers, AK was published along with dates for Public Hearings and Public Meetings on the DEIS. The section 810 analysis is included in the DEIS.

The Notice should have indicated that the public is invited to review and comment on the section 810 analysis separately at the public hearings and public meetings to be held on the dates and at locations noted in the March 8, 1988, notice.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654.

Date: March 23, 1988.

Gerald D. Patten,

Associate Director, Planning and Development.

[FR Doc. 88-6718 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area; Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Commission will be held at 7:30 p.m. (PDT) on Thursday, April 28, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commision was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item is a San Francisco Committee Report on the proposal to convert the existing Post Cafeteria at Building 211 at the Presidio of San Francisco into a franchised food facility to include drive-up windows and additional parking. Plans for preservation and improvement of landscaping and for traffic circulation are to be presented. This agenda item will be followed by a Superintendent's Report.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on these items. Statements will be accepted until May 17, 1988.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contract the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, telephone (415) 556-4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after June 14, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: March 18, 1988.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 88-6716 Filed 3-25-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 45 (Amdt. No. 10) and Section 5a Application No. 60 (Amdt. No. 7)]

Niagara Frontier Tariff Bureau, Inc. and Rocky Mountain Carriers; Agreements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of joint application for approval of amendments to rate bureau agreements, and request for comments.

SUMMARY: Niagara Frontier Tariff Bureau, Inc. (Niagara) and Rocky Mountain Motor Tariff Bureau, Inc. (RMB) have filed a joint application seeking approval of an amendment to their respective rate bureau agreements. The application proposes an Interterritorial Agreement and Interterritorial Rules of Procedure (Agreement and Rules). The Agreement and Rules are related to a single-factor joint agency tariff proposed to be issued by Niagara and RMB. The tariff would be applicable to joint-line traffic moving between points in Canada, on the one hand, and, on the other, points in Arizona California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The proposed Agreement and Rules are virtually identical (except as to territorial scope) to the Agreement and Rules between Niagara and Southern Motor Carriers Rate Conference, Inc. that were provisionally approved by the Commission in Section 5a Application No. 45 (Amendment No. 8), *Niagara Frontier Tariff Bureau, Inc.—Agreement* (not printed), served October 5, 1987, and Section 5a Application No. 46 (Amendment No. 18), *Southern Motor Carriers Rate Conference, Inc., Agreement* (not printed), served February 12, 1985, May 27, 1987, and December 15, 1987. The proposed Agreement and Rules would permit joint collective ratemaking activity wholly within the previously authorized territorial scope of Niagara's and RMB's collective ratemaking authority.

No Commission decision accompanies this notice. Copies of the proposed amendment are available for public inspection and copying at the Office of the Secretary, Rm. 1221, Interstate Commerce Commission, Washington, DC 20423, and from the applicants' representatives: Robert G. Gawley (for Niagara), P.O. Box 184, Buffalo, NY 14221, and Don R. Devine (for RMB), 4045 Pecos St., P.O. Box 5746, Denver, CO 80217.

DATES: Comments from interested persons are due by April 27, 1988. Replies are due by May 12, 1988.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 45 (Amendment No. 10)/Section 5a Application No. 60 (Amendment No. 7) should be sent to: Office of the Secretary, Case Control Branch, Rm. 1324, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicants' representatives.

FOR FURTHER INFORMATION CONTACT: Paul Grossman, (202) 275-7976, or Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: March 18, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6742 Filed 3-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 112)]

The Baltimore and Ohio Railroad Co., Metropolitan Southern Railroad Co. and Washington and Western Maryland Railway Co.; Abandonment and Discontinuance of Service in Montgomery County, MD, and the District of Columbia; Findings

The Commission has found that the environmental effects resulting from abandonment will not be significant and that the public convenience and necessity permit CSX to abandon its 10.75-mile line of railroad between Georgetown Junction, MD (milepost 0.23) and Georgetown, District of Columbia (milepost 10.98) in Montgomery County, MD and the District of Columbia, subject to certain conditions.

The Commission has also found that the National Trails System Act, 16 U.S.C. 1247(d) which provides for interim trail use and rail banking is applicable here for the entire line. If, within 10 days from publication of this Notice, CSX agrees to negotiate an interim trail use/rail banking agreement, a Certificate of Interim Trail Use or Abandonment will be issued for the portion of the right-of-way covered by the agreement, authorizing CSX to discontinue service (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached). If CSX refuses to negotiate an Interim Trail Use Agreement, a regular abandonment certificate will be issued.

The appropriate certificate will be issued unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Commissioner Sterrett has recused himself in this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6739 Filed 3-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31229]

Cape Cod and Hyannis Railroad, Inc.; Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Cape Cod and Hyannis Railroad, Inc. from 49 U.S.C. Subtitle IV.

DATES: This exemption is effective April 27, 1988. Petitions to stay must be filed by April 7, 1988, and petitions for reconsideration must be filed by April 18,1988.

ADDRESSES: Send pleadings addressed Finance Docket No. 31229 to:

(1) Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Mary E. O'Neal, Cargill, Masterman & Culbert, One Lewis Wharf, Boston, MA 02110

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245). (TDD for hearing impaired (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commissioner's decision. To purchase a copy of the full decision, write to Dynamics Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6740 Filed 3-25-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31167]

Wisconsin Central Ltd.; Control Exemption; Sault Ste. Marie Bridge Co.

AGENCY: The Interstate Commerce Commission.

ACTION: Modification and substitution of proper party.

SUMMARY: The Commission grants a petition to modify its December 23, 1987, decision to designate Wisconsin Corporation as the proper recipient of the exemption authority to acquire control of Sault St. Marie Bridge Company.

DATES: This exemption is effective *nunc pro tunc* to December 31, 1987. Petitions for reconsideration must be filed by April 18, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31167 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: William C. Sippel, Oppenheimer, Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services, (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6741 Filed 3-25-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Carefree Homes, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 8, 1988, a proposed consent decree in *United States* v. *Carefree Homes, Inc.*, Civil Action No. IP-84-397-C was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Carefree Homes, Inc., for violation of the Safe Drinking Water Act, 42 U.S.C. 300f. *et seq.*

The proposed consent decree requires the defendant to make certain improvements to its water system that it operates at its mobil home park in Pendleton, Indiana, and to pay the sum of seven thousand, five hundred dollars ($7,500,00) over a twelve month period.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Carefree Homes, Inc.*, D.J. Ref. 90-5-1-1-2104.

The proposed consent decree may be examined at the office of the United States Attorney, 274 Federal Building, 46 East Ohio Street, Indianapolis 46204, and at the Office of Regional Counsel, U.S. Environmental Protection Agency Region V, Third Floor, 111 W. Jackson Street, Chicago, IL 60604.

Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 88-6628 Filed 3-25-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Du-Wel Hartford, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 12, 1988, a proposed consent decree in *United States* v. *Du-Wel Hartford, Inc.*, Civil Action No. K86-453 CA8 was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree resolves a judicial enforcement action brought by the United States against Du-Wel Hartford, Inc. for violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 9601 *et seq.*

The proposed consent decree requires the defendant to pay over the period of one year the sum of twenty-one thousand, four hundred and two dollars ($21,402.00) to the United States government as a civil penalty. The decree further requires the defendant not to treat, store or dispose of hazardous wastes in the surface impoundments located on its property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Du-Wel Hartford, Inc.*, D.J. Ref. 90-7-1-364.

The proposed consent decree may be examined at the office of the United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Thomas E. Hookano,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6629 Filed 3-25-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. Edward Hines Lumber Co. and Mid-South Wood Products of Mena, Inc.

In accordance with Department policy, 28 CFR 50.7 and section 122(i) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat 1613 (1986), notice is hereby given that on March 18, 1988, a proposed Consent Decree in *United States* v. *Edward Hines Lumber Co. and Mid-South Wood Products of Mena, Inc.*, Civil Action No. *88-2049* was lodged with the United States District Court for the Western District of Arkansas (Fort Smith Division).

The complaint in this enforcement action was filed on March 17, 1988, against Edward Hines Lumber Co. and Mid-South Wood Products of Mena, Inc. under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act, Pub. L. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), 42 US.C. 106 and 107, for injunctive and other equitable relief to remedy a condition that presents, or may present an imminent and substantial endangerment to the human health, welfare or the environment at a site located in Mena, Arkansas ("the site") and for the recovery of monies expended by the United States for investigation, response, and enforcement at the site.

The proposed Consent Decree ("Decree") requires the defendants to implement the remedial action approved by the Environmental Protection Agency; to design an Operation, Maintenance and Monitoring Plan designed to detect any failures in the implemented remedy; to remedy any failures detected while monitoring the remedy; to establish a trust fund sufficient to reimburse the United States for its oversight costs and for necessary operation and maintenance of the remedy; and to pay the United States the sum of $780,332.00 for its past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Edward Hines Lumber Company, Inc. and Mid-South Wood Products of Mena, Inc.*, D.J. No. 90-11-3-151.

The proposed Consent Decree may be examined at the office of the United States Attorney, 6th & Rogers, U.S. Post Office & Courthouse Bldg., Fort Smith, Arkansas and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $11.40 payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6627 Filed 3-25-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Weiss, et al

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Weiss, et al.*, was lodged with the United States District Court for the Northern District of Illinois. The proposed partial consent decree partially resolves a judicial enforcement action brought by the United States to compel compliance with regulations promulgated by the United States Environmental Protection Agency requiring advance notice of any building renovation operation where asbestos may be emitted and certain work practices governing the removal and disposal of asbestos. The decree also requires defendant Weiss to pay a civil penalty for past violations of the regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Weiss, et al.*, D.J. Ref. 90-5-2-1-1054.

The proposed consent decree may be examined at the office of the United States Attorney, Room 1500, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, IL 60604, and at the office of Regional Counsel, U.S. Environmental Protection Agency Region V, Third Floor, 111 W. Jackson Street, Chicago, IL 60604.

Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States. In requesting a copy, please refer to the referenced case name and Department of Justice reference number.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-6630 Filed 3-25-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Competitive Impact Statement; United States v. BNS Inc.; and Gifford-Hill & Co., Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalities Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the Central District of California in *United States of America v. BNS Ins.; and Gifford-Hill & Company, Inc.*, Civil Action No. 88-1452 MRP (Bx).

The Compliant in this case alleges that the proposed acquisition by BNS Inc. of Koppers Company, Inc. is a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the effect of the merger may be substantially to lessen competition in the market for the extraction, processing and sale of aggregate in portions of Los Angeles County and Orange County.

The proposed Final Judgment requires BNS and Gifford-Hill & Company, Inc., an affiliate of BNS, to divest, by January 1, 1989, certain assets of the Irwindale, California Blue Diamond Materials aggregate facility it proposes to acquire from Koppers. If the defendants cannot accomplish the divestiture during this time, then a trustee will be appointed to do so.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 367046, San Francisco, California 94102 (telephone: 415-556-6300).

Joseph H. Widmar,
Director of Operations Antitrust Division.

Howard J. Parker,
Phillip R. Malone,
James E. Figenshaw,
Attorneys for the United States, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300.

United States District Court for the Central District of California

United States of America, Plaintiff, v. *BNS Inc.; and Gifford-Hill & Company, Inc.,* Defendants.

[Civil No. 88-1452 MRP(Bx)]

Filed: March 18, 1988.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the final Judgment; and

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Date: ———

For the Plainfiff United States of America.

Charles F. Rule,
Assistant Attorney General.

Judy Whalley,
John W. Clark,
Gary R. Spratling,
Howard J. Parker,
Phillip R. Malone,
James E. Figenshaw,
Attorneys, Department of Justice, Antitrust Divison, 450 Golden Gate Avenue, San Francisco, Ca 94102, Telephone: (415) 556-6300.

for the Defendants BNS Inc. and Gifford-Hill & Company, Inc.:

Cleary, Gottlieb, Steen & Hamilton, (By) Mark Leddy, 1752 N. Street, NW., Washington, DC, 20036-2806, Telephone: (202) 728-2700.

Stipulation Approved for Filing.

Dated: ———

United States District Judge.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on March 18, 1988, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court:

And Whereas, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II Definitions

As used in this Final Judgment:

A. "Aggregate" means rock, sand and gravel suitable for mixture in asphalt concrete, Portland cement concrete, or other paving compounds or mixtures, or for other civil construction purposes.

B. "Assets to be Divested" means all the assets identified in Section IV.A below.

C. "Blue Diamond" means Blue Diamond Materials, a division of Sully-Miller Contracting Co., a California corporation and a wholly-owned subsidiary of Koppers Company, Inc., with its principal place of business in Long Beach, California.

D. The "Irwindale Aggregate District" means that area of Los Angeles County and Orange County with the following boundaries: on the west and southwest, the Pacific Ocean: on the northwest, a line connecting the city centers of the City of Topanga Beach and the City of Altadena; on the north, the crest of the San Gabriel Mountain Range: and on the east and southeast, a line connecting the city centers of the City of San Dimas, the City of Santa Ana, and the City of Newport Beach.

E. "Koppers" means Koppers Company, Inc., a Delaware corporation, with its principal place of business in Pittsburgh, Pennsylvania.

III Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets in the Irwindale Aggregate District involved in the extraction, processing and sale of aggregate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV Divestiture of Assets

A. Defendants are hereby ordered and directed to divest, to an eligible purchaser or eligible purchasers, any and all interest that they have or shall acquire in all of the real and personal property used in the extraction, processing and sale of aggregate at Blue Diamond's aggregate property located at Irwindale, California.

B. Unless plaintiff otherwise consents, divestiture under section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Assets to be Divested can and will be operated by the purchaser or purchasers as a viable ongoing business, engaged in the extraction, processing and sale of aggregate. Divestiture under Section IV.A, or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the extraction, processing and sale of aggregate and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in the extraction, processing and sale of aggregate.

C. Nothing in this Final Judgment shall preclude defendants from entering into one or more contracts with the purchaser or purchasers for the purpose of supplying aggregate from the Assets to be Divested to defendants for the production of asphalt conrete, Portland cement concrete, or other aggregate-based products, provided, however, that defendants shall not enter into any such supply contracts, or into any discussion or negotiations, preliminary or otherwise, relating to such supply contracts, with the purchaser or purchasers, until after the divestiture required by this Final Judgment has been completed, unless the plaintiff otherwise consents.

D. Defendants shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

V Appointment of Trustee

A. In the event that defendants have not divested all of their interest required by Section IV.A by January 1, 1989, the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided the notice required under section VI.

B. If defendants have not divested all of their interest required by Section IV.A by December 1, 1988, plaintiff and defendants shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and defendants shall develop financial or other information relevant to such assets as the trustee may request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI Notification

A. Defendants or the trustee, whichever is then responsible for

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effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in any of the Assets to be Divested, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.A. Upon objection by the plaintiff or by defendants under Section V.A. the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, defendants shall deliver to plaintiff a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in any of the Assets to be Divested, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to divest the Assets to be Divested.

VII Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior consent of the plaintiff.

VIII Preservation of Assets

A. Defendants shall preserve, hold, and continue to operate as a going business the Assets to be Divested, with its assets, management, and operations separate, distinct, and apart from those of defendants, unless plaintiff otherwise consents. Defendants shall use all reasonable efforts to maintain the Assets to be Divested as a viable and active competitor in the market for aggregate in the Irwindale Aggregate District.

B. Defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), the Assets to be Divested, except that such component as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for an Asset to be Divested.

C. The provisions of Section VIII.A and VIII.B include but are not limited to: preserving all plants and equipment used for the extraction and processing of aggregate and their right and ability to operate at the site(s) where they are located; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew such permits or make permanent any temporary permits); and preserving all administrative and support facilities. These provisions do not preclude the sale in the ordinary course of business of the aggregate as may be produced by the Assets to be Divested.

D. Defendants shall provide and maintain sufficient working capital to maintain the Assets to be Divested as a viable, ongoing business.

E. Defendants shall provide and maintain sufficient lines and sources of credit to maintain the Assets to be Divested as a viable, ongoing business.

F. Defendants shall preserve the Assets to be Divested, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of defendants' acquisition of control of Koppers.

G. Defendants shall identify separately all assets or replacements for or proceeds therefrom that were used in the extraction, processing and sale of aggregate at the Assets to be Divested prior to defendants' acquisition of control of Koppers.

H. Defendants shall maintain on behalf of the Assets to be Divested, in accordance with sound accounting practice, separate, true, and complete financial ledgers, books, and records reporting the profit and loss and liabilities of the Assets to be Divested on a monthly and quarterly basis.

I. Defendants shall refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel employed in connection with the Assets to be Divested, except in the ordinary course of business, without the prior approval of plaintiff.

J. Defendants shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the Assets to be Divested and other producers of aggregate in the Irwindale Aggregate District, without the prior approval of plaintiff.

K. Defendants shall refrain from taking any action that would jeopardize the sale of the Assets to be Divested as a viable going concern.

IX Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants

shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure;" then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

X Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI Termination

This Final Judgment will expire on the second anniversary of the completion of the divestiture required herein.

XII Public Interest

Entry of this Final Judgment is in the public interest.

Dated: ———

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

Howard J. Parker,

Phillip R. Malone,

James E. Figenshaw,

Attorneys for the United States, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I Nature and Purpose of the Proceeding

On March 18, 1988, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the propose acquisition of Koppers Company, Inc. ("Koppers") by BNS Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint names as defendants BNS Inc. and Gifford-Hill & Company, Inc.

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in portions of Los Angeles and Orange Counties in the market for the extraction, processing and sale of aggregate. Both Koppers and affiliates of BNS extract, process and sell aggregate in the relevant area. The Complaint seeks, among other relief, the preservation and divestiture of assets sufficient to prevent the anticompetitive effects of the unlawful acts alleged in the Complaint and to maintain competitive conditions in the relevant market.

On March 18, 1988, the United States and defendants filed a stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, defendants would be required to sell, by January 1, 1989, the aggregate facility in the relevant area acquired from Koppers. If they do not do so, a trustee appointed by the Circuit would be empowered to sell this operation. The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II Events Giving Rise to the Alleged Violation

On March 3, 1988, BNS announced a cash tender offer for all of the outstanding stock of Koppers. The stated purpose of BNS in commencing the offer was to acquire control of, and the entire equity interest in, Koppers. BNS also announced that it intended, as soon as practicable after consummation of the tender offer, to merge or similarly combine Koppers with BNS or an affilate. The acquisition would, in effect, give BNS control over Koppers.

BNS is controlled by Bright Aggregates, Inc., which is itself an indirect, wholly-owned subsidiary of Beazer PLC. Beazer currently engages in the extraction, processing and sale of aggregate in Southern California through its indirect, wholly-owned subsidiary Gifford-Hill & Company, Inc., which in turn wholly owns Livingston-Graham, Inc. Livingston-Graham owns and operates an aggregate facility in Irwindale, California. Koppers also currently engages in the extraction, processing and sale of aggregate in Southern California through its wholly-owned subsidiary Blue Diamond Materials, which owns and operates an aggregate facility in Irwindale (hereinafter "Blue Diamond facility") as well as facilities at other locations.

Aggregate is an essential material for building and construction. It is used principally as an ingredient in asphalt, concrete and Portland cement concrete, and for road base. Aggregate is a natural resource often found in stream channel, floodplain, and alluvial fan deposits, such as the San Gabriel River alluvial fan deposit in the Irwindale area. Aggregate is extracted from the ground and processed, which may include crushing, sizing and washing, prior to sale.

The Complaint alleges that the extraction, processing and sale of aggregate is a relevant product market for antitrust purposes. There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and nontransitory price increase in aggregate. The Complaint also alleges that certain specifically-identified portions of Los Angeles County and Orange County, defined as the Irwindale Aggregate District, constitute a relevant geographic market for antitrust purposes.

Entry into the extraction, processing and sale of aggregate in the relevant geographic market is difficult and, under any circumstances, time-consuming. To enter the aggregate market, a firm must, among other things, locate a site with available aggregate deposits, develop the site and an aggregate extraction and processing operation on it, and obtain a variety of state and local regulatory approvals and permits. Currently, however, there are virtually no undeveloped aggregate deposits within the Irwindale Aggregate District that are economically available for aggregate extraction.

Gifford-Hill and Koppers are direct competitors in the Irwindale aggregate market and are two of the four largest firms that extract, process and sell aggregate in that market. The Complaint alleges that the market is highly concentrated and would become substantially more concentrated, and that the Herfindahl-Hirschman Index,[1] a measure of market concentration, would increase by over 500 to over 3400, as a result of the proposed acquisition of Koppers by BNS.

III Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the acquisition may be substantially to lessen competition in the market for the extraction, processing and sale of aggregate in the Irwindale Aggregate District in violation of section 7 of the Clayton Act. The risk to competition posed by this acquisition substantially would be eliminated by the sale by BNS of the Blue Diamond aggregate facility to a purchaser that would continue to operate the facility as an active and independent competitor in the aggregate business.

To this end, the proposed Final Judgment requires defendants to divest any and all interest that they own or acquire in the Blue Diamond aggregate facility by January 1, 1989. If defendants cannot accomplish the required divestiture within that period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee to sell the facility.

The proposed Final Judgment expressly permits the defendants to enter into supply contracts with the purchaser of the Blue Diamond aggregate facility for the supply of aggregate to defendants' concrete plants or other operations. The Judgment prohibits the negotiation of such contracts by defendants, however, until after the divestiture ordered by the Judgment has been completed, unless the United States otherwise consents. This provision ensures that any such contract will be the result of arms-length bargaining. The Judgment's mandate of separate negotiations returns the purchaser and the defendants to the positions they would have occupied absent the acquisition: an independent customer that retains no control over the aggregate facility from which some of its supply will come who is negotiating with an independent aggregate producer that owns the facility.

The Blue Diamond aggregate facility must be divested to a purchaser or purchasers who can and will operate it as a viable, ongoing business that can compete effectively in the relevant market for aggregate. The defendants shall take all reasonable steps necessary to accomplish divestiture quickly and, if a trustee is appointed, shall use their best efforts to assist the trustee.

If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After its appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. Within six (6) months after the trustee's appointment become effective, if the trustee has not accomplished the divestiture required by the proposed Final Judgment, the trustee and the parties shall make recommendations to the Court, and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides the United States an opportunity to review any proposed divestiture before it occurs. If the United States were to request information from defendants to assess a proposed sale, the sale could not be consummated until at least 15 days after defendants supplied the information. If the United States were to object to a proposed divestiture, the sale could not be completed.

Until the required divestiture has been accomplished, the defendants must preserve and maintain as an active and viable competitor the Blue Diamond aggregate facility, including both the physical facilities and all permits and rights to operate. The proposed Final Judgment provides that defendants must hold the Blue Diamond facility separate and apart from their other assets and businesses. Defendants must keep separate bookkeeping records for the facility. Defendants also are required to maintain the Blue Diamond aggregate facility as a saleable and economically viable, ongoing business.

The proposed Final Judgment will expire on the second anniversary of the divestiture of the Blue Diamond facility.

IV Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

The proposed Final Judgment provides that the Court retains jurisdiction over this matter for the purpose of enabling any party to apply to the Court for such further orders or directions as may be necessary or appropriate for the implementation, modification, interpretation, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI Alternatives to the Proposed Final Judgment

The United States considered including in the Judgment a provision enjoining defendants from acquiring or merging with any other aggregate producer in the Irwindale Aggregate District for ten (10) years, without the approval of the government or the Court. The United States rejected this alternative because it was satisfied that the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a, would ensure that the United States would have an opportunity to evaluate carefully any such proposed acquisition or merger before consummation to determine whether it was a violation of section 7 of the Clayton Act.

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek a preliminary injunction to enjoin the acquisition of Koppers by BNS. The United States rejected this alternative because the sale required under the Final judgment should establish a viable, independent competitor in the Irwindale Aggregate District market and prevent the acquisition from having a significant anticompetitive effect in that market. The government is satisfied that the proposed Final Judgment provides substantially all the relief it could expect to obtain if it were to litigate the case in a full trial on the merits.

Under the circumstances, the government determined that the public interest in preserving competition in the Irwindale Aggregate District market would be served best by obtaining an enforceable consent decree requiring the sale of the Blue Diamond facility and by filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VIII Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: March 18, 1988.

Respectfully submitted,

Howard J. Parker,

Phillip R. Malone,

James E. Figenshaw,

Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, Telephone: (415) 556–6300.

[FR Doc. 88–6706 Filed 3–25–88; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984, Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S. C. 4301 *et seq.* ("The Act"), the Portland Cement Association ("PCA") has filed additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 18, 1988 disclosing changes in its membership; March 9, 1988 disclosing a company name change and March 11, 1988 disclosing a change in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the February 18, 1988 notice lists the following additional members in the United States and Mexico, affiliate members and a new member identified as Participating Associate, Manufacturing Process Subcommittee, General Technical Committee:

United States

Alamo Cement Company

Mexico

Instituto Mexicano del Cemento y del
    Concreto (IMCYC)
  Cementos Acapulco, S.A.
  Cementos Apasco, S.A.
  Cementos de Chihuahua, S.A.
  Cementos Mexicanos, S.A.
  Cementos Moctezuma, S.A.
  Cooperative de Cementos Cruz Azul
  Cooperativa de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion
  Council of Texas Florida Concrete
  and Products Association
Mississippi Concrete Industries
  Association
North Central Cement Promotion
  Association
Northern California Cement Promotion
  Group
South Central Cement Promotion
  Association

Participating Associates, Manufacturing Process Subcommittee, General Technical Committee

W.R. Grace & Company

The March 9, 1988, notice reflects the following company name change: Canada Cement Lafarge is now known as Lafarge Canada.

The March 11, 1988, notice reflects two additional members in the United Staes:

RMC Lonestar
Lone Star Northwest

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Gove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation

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[1] The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

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Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corportion
Missouri Portland Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
  Cementos Acapulco, S.A.
  Cementos Apasco, S.A.
  Cementos de Chihuahua, S.A.
  Cementos Mexicanos, S.A.
  Cementos Moctezuma, S.A.
  Cooperativa de Cementos Cruz Azul
  Cooperativa de Cementos Hidalgo

Affiliate Members

  Cement and Concrete Promotion Council of Texas
  Florida Concrete and Products Association
  Mississippi Concrete Industries Association
  North Central Cement Promotion Association
  Northern California Cement Promotion Group
  South Central Cement Promotion Association

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C–E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company
W.R. Grace & Company.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (The "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987 and October 9, 1987, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), respectively.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Co. 88-6668 Filed 3–25–88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described clases of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractice and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further, information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

NEW YORK:
  NY88-7 (Jan. 8, 1988)—pp. 741–742
  NY88-13 (Jan. 8, 1988)—pp. 802–804

Volume II

MISSOURI:
  MO88-2 (Jan. 8, 1988)—p. 601
OHIO:
  OH88-29 (Jan. 8, 1988)—p. 820

Volume III

MONTANA:
  MT88-1 (Jan. 8, 1988)—p. 168
South Dakota:
  SD88-2 (Jan. 8, 1988)—pp. 326–327
Utah:
  UT88-3 (Jan. 8, 1988)—pp. 348–349

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from : Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of March 1988.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-6335 Filed 3–25–88; 8:45 am]
BILLING CODE 4510-27-M

MERIT SYSTEMS PROTECTION BOARD

Information Collection To Obtain Information From Users of MSPB Decisions

AGENCY: Merit Systems Protection Board.

ACTION: Solicitation of comments from users of MSPB decisions.

SUMMARY: Under the provisions of 5 U.S.C. 552(a)(2)(A), each agency, in accordance with published rules, shall make available for public inspection and copying "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;". The Merit Systems Protection Board (MSPB) wishes to determine if it is reasonably satisfying this requirement. The MSPB is therefore inviting any interested party to respond to the following questions concerning accessibility of MSPB decisions.

DATE: Responses to these questions should be submitted on or before April 27, 1988.

ADDRESS: Responses to these questions should be addressed to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, Attn: Assistant to the Executive Director for Management, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: C.P. Handly, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419; (202) 653-8900.

March 23, 1988.

Robert E. Taylor,
Clerk of the Board.

Accessibility of Merit Systems Protection Board Decisions and Orders, March 1988

1. Please check the block below that best describes you:
   - ☐ Current or former appellant.
   - ☐ Attorney in private practice.
   - ☐ Representative of union, association, or special interest group.
   - ☐ Agency representative.
   - ☐ Other (arbitrator, judge, academician, co-worker, friend). Please specify.
2. Over a year's time, how frequently do you require access to MSPB decisions and orders?
   - ☐ Weekly
   - ☐ Monthly
   - ☐ Quarterly
   - ☐ Once or twice each year
   - ☐ Never
3. If you need to refer to MSPB decisions, please indicate your preferred sources for obtaining this information. Please use "1" to indicate the source you would most prefer to use, if available, a "2" for the second most preferred source and so forth. If you have no opinion concerning a given source, leave the space corresponding to that source blank.

Rating and Sources

——Labor Relations Press-Federal Merit Systems Reporter (Potomac Systems)
——West's Merit Systems Protection Board Reporter (WESTLAW)
——Information Handling Services
——LEXIS
——Copying Originals at MSPB library
——Copying Originals at MSPB Regional Offices
——Other (Please Specify)

4. Based on your experience with MSPB decisions, do you think that the Board's current method for citing past cases is sufficient for your needs?

   YES ☐
   NO ☐

5. If your answer to 4 is "no" what additional or alternate method of citation would you prefer?

[FR Doc. 88-6668 Filed 3–25–88; 8:45 am]
BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-29]

Intent To Grant an Exclusive Patent License; Planar Systems, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Planar Systems, Inc., of Beaverton, Oregon, an exclusive license to practice the invention protected by U.S. Patent No. 4,689,522, entitled "Flat Panel, Full Color, Electroluminescent Display," which issued on August 25, 1987, to the Untied States of America as represented by the Administrator of the

National Aeronautics and Space Adminstration. The exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR Part 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written reponses to the Notice and then recommend to the Associate General Counsel for Intellectual Property whether to grant the license.

DATE: Comments to the Notice must be received by May 27, 1988.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA Director of Patent Licensing, (202) 453–2430.

Dated: March 22, 1988.

John E. O'Brien,

General Counsel.

[FR Doc. 88–6649 Filed 3–25–88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by April 27, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202 682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired. Each entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Basic State Grant Application Narrative Format.

Frequency of Collection: Average of one response per 1.27 years.

Respondents: State or local governments.

Use: Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and criteria and to provide the Endowment with information on past performance of applicant agencies.

Estimated Number of Respondents: 25

Estimated Hours for Respondents to Provide Information: 342.

Vera K. Yancey,

Assistant Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–6690 Filed 3–25–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric & Power Co. et al., North Anna Power Station, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.47 and Appendix E to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for the North Anna Power Station, Units 1 and 2 (NA–1&2), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

By letter dated October 9, 1987, the licensee requested an exemption from the requirements of 10 CFR 50.47 and Appendix E to conduct an annual exercise of the North Anna Emergency Plan in 1987. The licensee had planned to conduct an exercise of its emergency plan on August 4, 1987 with the partial participation of State and local emergency response organizations. The scheduled exercise was an annual licensee off-year exercise and the Federal Emergency Management Agency (FEMA) was not scheduled to observe the exercise. The previous emergency preparedness exercise at the North Anna Power Station, conducted on June 18, 1986, was a full participation biennial exercise. The licensee requests that an exemption be granted because the requirement to perform an exercise of the North Anna Emergency Plan in 1987 is not necessary to achieve the underlying purpose of the emergency planning rule in that the emergency plan was adequately exercised and demonstrated in 1987 in the licensee's response to the Unit 1 steam generator tube rupture (SGTR) event that occurred on July 15, 1987. The schedule for future exercises will not be affected by this one-time exemption.

The Need for the Proposed Action

The proposed exemption is needed to avoid the duplication of conducting another exercise, and to avoid the unnecessary use of Company, State and local resources, that would only confirm the adequacy of the plan, as well as the Company's capability to implement the plan. These capabilities were demonstrated during the July 15, 1987 SGTR event.

Environmental Impacts of the Proposed Action

A 1987 annual emergency plan exercise would not be conducted for the North Anna Power Station if the requested exemption is granted by the NRC. Whether or not an exercise is conducted, the environment is not impacted since neither case involves the release of radioactive or nonradioactive effluents. Furthermore, the NRC had determined that an environmental impact statement for 10 CFR 50.47, "Emergency Plans," and 10 CFR Part 50 Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," in which the requirement for an annual emergency plan exercise is contained, was not required (45 FR 55402, August 19, 1980). Specifically, the NRC's "Draft Negative Declaration; Finding of No Significant Impact" (45 FR 3913, January 21, 1980), states that "* * * the impacts on the human environment of the proposed rule will be insignificant * * *." Similarly, not conducting an annual emergency plan exercise as required by the rule will have no impact on the human environment.

Alternatives to the Proposed Action

Since we have concluded that the environmental impacts of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Since the staff has determined that granting this exemption would not result in any environmental impacts, denial of this request would only result in requiring the licensee to demonstrate certain capabilities under "drill" conditions that were already successfully demonstrated under "actual" conditions. Also, denial of this request would result in the additional expenditure of State and local emergency response agencies' and Company resources over that which has already been expended in responding to the SGTR event.

Alternative Use of Resources

The proposed action does not involve the use of environmental resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Unit Nos. 1 and 2.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from the requirement of 10 CFR 50.47 and Appendix E dated October 9, 1987, as well as previous submittals dated August 3, 1987 and September 11, 1987, which are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 22nd day of March, 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6676 Filed 3–25–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–334]

Duquesne Light Co., Ohio Edison Co. and Pennsylvania Power Co.; Beaver Valley Power Station, Unit No. 1; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by Duquesne Light Company, an amendment to Facility Operating License No. DPR–66, issued to the licensee for operation of the Beaver Valley Power Station, Unit No. 1, located in Beaver County, Pennsylvania. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 12, 1987 (52 FR 29915).

The purpose of the licensee's amendment request was to incorporate revised Technical Specification (TS) requirements for operability and surveillance for the station batteries. The revisions were requested due to replacement of two of the four station batteries by two batteries of a different design. Included in this request was a proposed change to lower individual cell electrolyte specific gravity from 1.20 to 1.195.

The staff has denied that proposal to change the specific gravity limit to 1.195. The current specific gravity value of 1.20 for each cell is based on the Standard Technical Specifications value of 1.20, which in turn was derived from a consensus of utilities and battery vendors. This value is considered necessary to assure adequate capacity and has been uniformly applied to all plant batteries for years without incurring much operational problem. In the absence of technical information regarding specific characteristics of the licensee's new lead-calcium batteries, the value of 1.20 should be retained to assure an adequate reserve capacity to power essential equipment.

The other provision of the amendment relating to Section 4.8.2.3.2.a.2 request has been approved by Amendment No. 122 dated March 21, 1988. Notice of Issuance of that amendment will be published in the Commission's biweekly **Federal Register** notice.

The licensee was notified of the Commission's denial of the proposed TS change by the letter transmitting Amendment No. 122.

By April 27, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 1, 1987, (2) the Commission's letter to the licensee dated September 10, 1987, and (3) the Commission's Safety Evaluation dated March 21, 1988, issued with Amendment No. 122 to DPR–66.

These documents are available for public inspection at the Commission's Public Document Room 1717 H Street, Washington, DC 20555 and at B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001. A copy of item (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 21st day of March, 1988.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6677 Filed 3–25–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for

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operation of the Surry Power Station, Units No. 1 and No. 2 located in Surry County, Virginia.

The amendments would revise the Surry 1 and 2 Technical Specifications (TS), Section 6 as follows: (1) Delete the organization charts and replace them with a more general description of organizational requirements, (2) replace certain corporate-level position titles with more general position descriptions, and (3) revise certain administrative requirements in order to bring them into closer conformance with the corresponding requirements currently specified in the NRC-approved TS for Westinghouse plants (NUREG–0452, Revision, 4, 1981).

On March 8, 1988, the licensee announced Company-wide organizational changes which will become effective in April 1988. Specifically, nuclear operations will be strengthened by bringing the Engineering and Power Operations Departments within a single organization headed by a Senior Vice President. Nuclear Site Services and Nuclear Training will be included in the Nuclear Operations Department. A single group responsible for nuclear transient and fuel analysis will be created within the Engineering Department. Also within the Engineering Department, Inservice Inspector and Non-Destructive Examination services will be combined under a single manager. In addition, the number of system engineers assigned to Surry 1 and 2 will be increased.

The licensee has concluded that organization charts and/or titles by themselves play little or no role in assessing the safety significance of changes for Surry 1 and 2. Conversely, specific operational requirements that bear more directly on safety matters of concern than the organization charts and titles are explicitly provided elsewhere in the Surry 1 and 2 TS. For example, the organizational element responsible for control room command function is identified separately in the TS, as are the requirements for minimum staffing under various operating modes. The organizational management functions for independent reviews and audits, onsite safety review committee, and independent safety engineering group, while revised by this change request to conform more closely with the current acceptable TS for Westinghouse plants, are also specified in other parts of the Surry 1 and 2 TS. Therefore, the organization charts and certain position titles themselves are not needed to support any future finding that the licensee's organization will operate Surry 1 and 2 in a safe manner.

In addition to being required by the Surry 1 and 2 TS, the important organizational features illustrated by organization charts and certain position titles are also required or controlled by other mechanisms subject to NRC control. Specifically, the chapter entitled "Conduct of Operations" of the Surry 1 and 2 Updated Final Safety Analysis Reports (UFSAR) contains a detailed organizational structure and a description of the conduct of operations. The information in this chapter is required by 10 CFR 50.71(e) to be maintained and updated annually. In addition, the licensee's Topical Report, "Quality Assurance Program Operation Phase," is required by 10 CFR Part 50, Appendix R, to include similar information relating to the organizational structure, and is required by 10 CFR 50.54 to be maintained in a current status.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has stated that the proposed changes to the Surry 1 and 2 TS involve no significant hazards considerations because operation of Surry 1 and 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes merely reflect administrative considerations and do not change the plant design or operations. As in the past, the Commission will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, Title 10, § 50.34(b)(6)(i) requires that the licensee's organizational structure be included in the UFSAR. Accordingly, the "Conduct of Operations" chapter of the UFSAR provides a descriptioin of the organization and detailed organization charts. As required by 10 CFR 50.71(e), the Company submits annual updates to the UFSAR. Finally, Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organizations described in the Quality Assurance Topical Report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because as noted above, neither the plant design nor operation is affected by these changes.

(3) Involve a significant reduction in a margin of safety. These changes do not alter the functions, responsibilities, or minimum shift crew composition of the staff as defined by the Administrative Controls of the Surry 1 and 2 TS. Through strong quality assurance programs and commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the on-site and the corporate organizations will continue to be performed at a high level of competence.

The NRC staff agrees that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By April 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of one or both of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number) of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hutton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 17, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 23rd day of March, 1988.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6678 Filed 3–25–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) located in Louisa County, Virginia.

The amendments would revise the NA–1&2 Technical Specifications (TS), Section 6 as follows: (1) Delete the organization charts and replace them with a more general description of

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organizational requirements, (2) replace certain corporate-level position titles with more general position descriptions, and (3) revise certain administrative requirements in order to bring them into closer conformance with the corresponding requirements currently specified in the NRC-approved TS for Westinghouse Plants (NUREG–0452, Revision 4, 1981).

On March 8, 1988, the licensee announced Company-wide organizational changes which will become effective in April 1988. Specifically, nuclear operations will be strengthened by bringing the Engineering and Power Operations Departments within a single organization headed by a Senior Vice President. Nuclear Site Services and Nuclear Training will be included in the Nuclear Operations Department. A single group responsible for nuclear transient and fuel analysis will be created within the Engineering Department. Also within the Engineering Department, Inservice Inspection and Non-Destructive Examination services will be combined under a single manager. In addition, the number of system engineers assigned to NA–1&2 will be increased.

The licensee has concluded that organization charts and/or titles by themselves play little or no role in assessing the safety significance of changes for NA–1&2. Conversely, specific operational requirements that bear more directly on safety matters of concern than the organization charts and titles are explicitly provided elsewhere in the NA–1&2 TS. For example, the organizational element responsible for control room command function is identified separately in the TS, as are the requirements for minimum staffing under various operating modes. The organizational management functions for independent reviews and audits, onsite safety review committee, and independent safety engineering group, while revised by this change request to conform more closely with the current acceptable TS for Westinghouse plants, are also specified in other parts of the NA–1&2 TS. Therefore, the organization charts and certain position titles themselves are not needed to support any future finding that the licensee's organization will operate NA–1&2 in a safe manner.

In addition to being required by the NA–1&2 TS, the important organizational features illustrated by organization charts and certain position titles are also required or controlled by other mechanisms subject to NRC control. Specifically, the chapter entitled "Conduct of Operations" of the NA–1&2 Udated Final Safety Analysis Reports (UFSAR) contains a detailed organizational structure and a description of the conduct of operations. The information in this chapter is required by 10 CFR 50.71(e) to be maintained and updated annually. In addition, the licensee's Topical Report, "Quality Assurance Program Operations Phase," is required by 10 CFR Part 50, Appendix B, to include similar information relating to the organizational structure, and is required by 10 CFR 50.54 to be maintained in a current status.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has stated that the proposed changes changes to the NA–1&2 TS involve no significant hazards considerations because operation of NA–1&2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes merely reflect administrative considerations and do not change the plant design or operations. As in the past, the Commission will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, Title 10, 50.34(b)(6)(i) requires that the licensee's organizational structure be included in the UFSAR. Accordingly, the "Conduct of Operations" chapter of the UFSAR provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), the Company submit annual updates to the UFSAR. Finally, Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Topical Report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because as noted above, neither the plant design nor operation is affected by these changes.

(3) Involve a significant reduction in a margin of safety. These changes do not alter the functions, responsibilities, or minimum shift crew composition of the staff as defined by the Administrative Controls of the NA–1&2 TS. Through strong quality assurance programs and commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the on-site and the corporate organizations will continue to be performed at a high level of competence.

The NRC staff agrees that the proposed changes to the Technical Specifications meet the criteria specified in 120 CFR 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By April 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestice Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of one or both of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take action will occur very infrequently.

A request for hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresed to Herbert N. Berkow: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hutton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 17, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 22nd day of March, 1988.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6679 Filed 3–25–88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

International Rates and Fees; Modification and Implementation of Increases on an Interim Basis

AGENCY: Postal Service.

ACTION: Notice of implementation of amended rates and fees for international mail on an interim basis.

SUMMARY: The Postal Service announces that new international rates and fees are being implemented on an interim basis at 12:01 a.m. on April 3, 1988, the same time that domestic rate changes are implemented. The Postal Service also announces an amended rate for post and postal cards to Mexico and amended fees for international special services.

EFFECTIVE DATE: 12:01 a.m., April 3, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–2684.

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SUPPLEMENTARY INFORMATION: Proposed international rates and fees were published in the March 3, 1988, issue of the **Federal Register** (53 FR 6892). In that issue, it was announced that the proposed effective date for new international postal rates and fees would be the same as that for new domestic rates and fees. The implementation date for domestic rates and fees has now been established by the Board of Governors of the Postal Service as April 3, 1988. The March 3 notice, however, set April 1, 1988, as the last date for interested parties to submit comments on the proposed changes in international rates and fees. Accordingly, it will not be possible to evaluate all comments and publish a final document in time for final international rates and fees to become effective on April 3. Therefore, international rates and fees, as amended herein, are adopted on an interim basis pending full consideration of all comments received. A final document providing notice of final international rates and fees will be published as soon as practicable thereafter.

It was also proposed in the March 3 notice that the fees for certain international services, listed in Part B, New Special Mail Services, and marked with asterisks, would be the same as the fees for comparable domestic services. since the Rate Commission's recommended decision, approved now by the Governors, changed some of these domestic fees, the international fees are being changed here to be consistent with the corresponding domestic fees.

In the special mail services fees published on March 3 there was reflected a proposed fee for money orders for payment in Canada that was larger than the fee for other international money orders issued on the domestic form. The Postal Service has decided not to make this change at this time. Accordingly, in the revised schedule, money orders for payment in Canada will continue to be issued for the same fee as other international money orders issued on the domestic form.

In addition, the Rate Commission recommended, and the Governors approved, a domestic rate for post and postal cards of 15 cents. The Postal Service had proposed a rate of 16 cents and in the March 3 notice had proposed a 16 cent rate for Mexico. In order to maintain the post and postal card rate comparability between domestic rates and rates to Mexico, the post and postal card rate for Mexico is changed to 15 cents.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

I. International Postal Rates and Fees

A. New Rates

1. Letters and letter packages.

Weight steps not over		Canada [1]	Mexico
Lbs.	Ozs.		
0	1	$0.30	$0.25
0	2	.52	.45
0	3	.74	.65
0	4	.96	.85
0	5	1.18	1.05
0	6	1.40	1.25
0	7	1.62	1.45
0	8	1.84	1.65
0	9	2.06	1.85
0	10	2.28	2.05
0	11	2.50	2.25
0	12	2.72	2.45
1	0	3.08	3.25
1	8	3.70	4.05
2	0	4.32	4.85
2	8	4.94	5.65
3	0	5.56	6.45
3	8	6.18	7.25
4	0	6.80	8.05

[1] Registered letters to Canada may weigh up to 66 pounds. For these items, the rate for each additional pound or fraction over 4 pounds is $1.24.

2. Letters and letter packages (surface).

Weight steps not over		All countries (other than Canada/Mexico)
Lbs.	Ozs.	
0	1	$0.40
0	2	.63
0	3	.86
0	4	1.09
0	5	1.32
0	6	1.55
0	7	1.78
0	8	2.01
1	0	3.80
1	8	5.20
2	0	6.60
2	8	7.60
3	0	8.60
3	8	9.60
4	0	10.60

3. Letters and letter packages (air).

a. Canada and Mexico: refer to rates listed under A.1. Mail paid at this rate receives First-Class service in the United States and air service in Canada and Mexico.

b. All other Countries: 45 cents per half ounce up to and including 2 ounces; 42 cents each additional half ounce up to and including 32 ounces; 42 cents per additional ounce over 32 ounces.

4. Post and Postal Cards.

a. Surface.

(1) Canada: 21 cents each.

(2) Mexico: 15 cents each.

(3) All other countries: 28 cents each.

b. Air.

(1) Canada: 21 cents each.

(2) Mexico: 15 cents each.

(3) All countries (except Canada and Mexico): 36 cents each.

5. Aerogrammes: 39 cents each.

6. Other Articles (AO).

a. Surface.

(1) Regular Printed Matter.

Weight steps, not over	Canada	Mexico	All other countries
1 oz	$0.30	$0.25	$0.40
2	.52	.45	.60
3	.74	.65	.80
4	.96	.85	1.00
6	1.21	1.05	1.28
8	1.46	1.25	1.56
10	1.71	1.45	1.84
12	1.96	1.65	2.12
14	2.21	1.85	2.40
16	2.39	2.05	2.68
18	2.57	2.25	2.92
20	2.75	2.45	3.16
22	2.93	2.65	3.40
24	3.11	2.85	3.64
26	3.29	3.05	3.88
28	3.47	3.25	4.12
30	3.65	3.45	4.36
32	3.83	3.65	4.60
3 lbs	5.03	5.15	6.10
4 lbs	6.23	6.65	7.60
Each additional 1 lb	1.20	1.50	1.50
Direct sacks to one addressee (M-Bag): Minimum 15 lbs. Maximum 66 lbs. Per pound or fraction	.96	1.20	1.20

(2) Publishers Periodicals.

Weight steps, not over	All countries
1 oz	$0.20
2	.30
3	.40
4	.50
6	.64
8	.78
10	.92
12	1.06
14	1.20
16	1.34
18	1.46
20	1.58
22	1.70
24	1.82
26	1.94
28	2.06
30	2.18
32	2.30
3 lbs	3.20
4 lbs	4.10
Each additional 1 lb	.90
Direct sacks to one addressee (M-Bag): Minimum 15 lbs. Maximum 66 lbs. Per pound or fraction	.72

(3) Books and Sheet Music

Weight steps, not over	All countries
1 lb	$1.34
2	2.30
3	3.20
4	4.10
5	5.00
6	5.90
7	6.80
8	7.70
9	8.60
10	9.50
11	10.40
Each additional 1 lb	.90
Direct sacks to one addressee (M-Bag): Minimum 15 lbs. Maximum 66 lbs. Per pound or fraction	.72

(4) Small Packets.

Weight steps, not over	Canada	Mexico	All other countries
1 oz	$0.30	$0.25	$0.40
2	.52	.45	.60
3	.74	.65	.80
4	.96	.85	1.00
6	1.21	1.05	1.28
8	1.46	1.25	1.56
10	1.71	1.45	1.84
12	1.96	1.65	2.12
14	2.21	1.85	2.40
16	2.39	2.05	2.68
18	2.57	2.25	2.92
20	2.75	2.45	3.16
22	2.93	2.65	3.40
24	3.11	2.85	3.64
26	3.29	3.05	3.88
28	3.47	3.25	4.12
30	3.65	3.45	4.36
32	3.83	3.65	4.60
3 pounds			6.10
4			7.60

b. AIR (ENCOMPASSES ALL PRINTED MATTER, MATTER FOR THE BLIND AND SMALL PACKETS)

Weight steps, not over (ounces)	Canada and Mexico	Colombia, Venezuela, Central America, Caribbean Islands, Bahamas, Bermuda, & St. Pierre & Miquelon (Also, from American Samoa to Western Samoa, & from Guam to the Philippines	South America (except Colombia & Venezuela), Europe (except Estonia, Latvia, Lithuania, & U.S.S.R.), & North Africa	Estonia, Latvia, Lithuania, U.S.S.R., Asia, Pacific Ocean Islands, Africa (other than North Africa) the Indian Ocean Islands & the Middle East
1	([1])	$0.69	$0.83	$0.90
2		1.06	1.32	1.54
3		1.43	1.81	2.16
4		1.80	2.30	2.82
6		2.17	2.94	3.73
8		2.54	3.58	4.64
10		2.91	4.22	5.55
12		3.28	4.86	6.46
14		3.65	5.50	7.37
16		4.02	6.14	8.28
18		4.39	6.78	9.19
20		4.76	7.42	10.10
22		5.13	8.06	11.01
24		5.50	8.70	11.92
26		5.87	9.34	12.83
28		6.24	9.98	13.74
30		6.61	10.62	14.65
32		6.98	11.26	15.56
2.5 pounds	8.38	13.76	19.11	
3.0 pounds	9.78	16.26	22.66	
3.5 pounds	11.18	18.76	25.21	
4.0 pounds	12.58	21.26	29.76	
Each additional ½ pound		1.40	2.50	3.55
Direct sack to one addressee (M-Bag), Minimum 15 lbs., Maximum 66 lbs., Per Pound or Fraction		2.24	4.00	5.68

[1] See Section C.

c. AIR AO—CANADA/MEXICO (ENCOMPASSES ALL PRINTED MATTER, MATTER FOR THE BLIND AND SMALL PACKETS)

Weight steps, not over	Canada	Mexico
1 oz	$0.30	$0.25
2	.52	.45
3	.74	.65
4	.96	.85
5	1.18	1.05
6	1.40	1.25
7	1.62	1.45
8	1.84	1.65
9	2.06	1.85
10	2.28	2.05
11	2.50	2.25

c. AIR AO—CANADA/MEXICO (ENCOMPASSES ALL PRINTED MATTER, MATTER FOR THE BLIND AND SMALL PACKETS)—Continued

Weight steps, not over	Canada	Mexico
12	2.72	2.45
16	3.08	3.25
24	3.70	4.05
32	4.32	4.85
2.5 pounds	4.94	5.65
3.0 pounds	5.56	6.45
3.5 pounds	6.18	7.25
4.0 pounds	6.80	8.05
Each additional ½ pound over 4 pounds	.62	.80

c. AIR AO—CANADA/MEXICO (ENCOMPASSES ALL PRINTED MATTER, MATTER FOR THE BLIND AND SMALL PACKETS)—Continued

Weight steps, not over	Canada	Mexico
Direct sack to one addressee (M-Bag): Minimum 15 pounds, Maximum 66 pounds or fraction	.96	1.28

7. Parcel Post.

a. Surface.

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(1) Canada: $3.95 for over 1 pound and up to 2 pounds, and $1.20 for each additional pound or fraction.

(2) Mexico, Central America, the Caribbean Islands, Bahamas, Bermuda, St. Pierre and Miquelon: $4.40 for the first 2 pounds and $1.40 for each additional pound or fraction.

(3) All other countries: $4.60 for the first 2 pounds and $1.50 for each additional pound or fraction.

b. Air—Air Parcel Post Rates:

(1) CANADA

Weight steps, not over (pounds)	Rates
1-2	$4.32
3	5.56
4	6.80
5	8.04
6	9.28
7	10.52
8	11.76
9	13.00
10	14.24
11	15.48
12	16.72
13	17.96
14	19.20
15	20.44
16	21.68
17	22.92
18	24.16
19	25.40
20	26.64
21	27.88
22	29.12
23	30.36
24	31.60
25	32.84
26	34.08
27	35.32
28	36.56
29	37.80
30	39.04
31	40.28
32	41.52
33	42.76
34	44.00
35	45.24
36	46.48
37	47.72
38	48.96
39	50.20
40	51.44
41	52.68
42	53.92
43	55.16
44	56.40
45	57.64
46	58.88
47	60.12
48	61.36
49	62.60
50	63.84
51	65.08
52	66.32
53	67.56
54	68.80
55	70.04
56	71.28
57	72.52
58	73.76
59	75.00
60	76.24
61	77.48
62	78.72
63	79.96
64	81.20
65	82.44
66	83.68

(2) ALL OTHER COUNTRIES

Weight steps	Country groups				
	A	B	C	D	E
First pound	$6.50	$7.15	$8.70	$10.35	$11.95
Each additional pound or fraction up to 5 pounds	2.50	4.00	4.50	5.50	6.50
Each additional pound or fraction over 5 pounds	2.00	3.00	4.00	5.00	6.00

Note.—Air Parcel Post Rate Groups: See list.

AIR PARCEL POST RATE GROUPS

Country	Rate group	Maximum weight limits for air parcel post
Afghanistan	D	44
Albania	C	44
Algeria	D	44
Andorra	B	44
Angola	E	22
Anguilla	A	22
Antigua and Barbuda	A	22
Argentina	D	44
Aruba	A	44
Ascension	(1)	(1)
Australia	D	44
Austria	B	44
Azores	C	22
Bahamas	A	22
Bahrain	D	22
Bangladesh	E	22
Barbados	B	22
Belgium	D	44
Belize	A	44
Benin	C	44
Bermuda	A	44
Bhutan	E	22
Bolivia	B	44
Botswana	E	22
Brazil	E	44
British Virgin Islands	A	44
Brunei	D	22
Bulgaria	D	44
Burkina Faso	D	22
Burma	D	22
Burundi	E	44
Cameroon	D	44
Canada	(2)	66
Cape Verde	D	22
Cayman Islands	A	44
Central African Republic	E	44
Chad	D	44
Chile	D	22
China (Peoples Republic of)	D	44
Colombia	B	44
Comoros	E	44
Congo	D	44
Corsica	E	44
Costa Rica	A	66
Cote d'Ivoire (Ivory Coast)	D	44
Cuba	(3)	(3)
Cyprus	C	44
Czechoslovakia	C	33
Denmark	C	44
Djibouti	D	44
Dominica	A	22
Dominican Republic	A	44
East Timor	(3)	(3)
Ecuador	C	44
Egypt	D	44
El Salvador	B	44
Equatorial Guinea	D	44
Estonia	E	22
Ethiopia	D	44
Falkland Islands	D	44
Faroe Islands	C	44
Fiji	B	44
Finland	D	44
France (including Monaco)	E	44
French Guiana	C	44
French Polynesia	D	44
Gabon	D	44
Gambia	B	22
German Democratic Republic (East Germany).	C	44
Germany, Federal Rep. of (West Germany).	C	44
Ghana	D	22
Gibraltar	C	44
Great Britain and Northern Ireland.	C	50
Greece	C	44
Greenland	D	44
Grenada	A	22
Guadeloupe	A	44
Guatemala	A	44
Guinea	B	44
Guinea-Bissau	B	22
Guyana	B	44
Haiti	A	44
Honduras	B	44
Hong Kong	C	44
Hungary	C	44
Iceland	C	44
India	D	44
Indonesia	E	22
Iran	D	44
Iraq	D	44
Ireland (Eire)	C	22
Israel	C	33
Italy (including San Marino)	C	44
Jamaica	A	22
Japan	E	22
Jordan	C	44
Kampuchea	(3)	(3)
Kenya	D	44
Kiribati	B	44
Korea, Democratic People's Republic.	(3)	(3)
Korea, Republic of	C	44
Kuwait	C	44
Lao	E	44
Latvia	E	22
Lebanon	C	11
Lesotho	E	22
Liberia	C	22
Libya	D	44
Lithuania	E	22
Luxembourg	B	44
Macao	C	22
Madagascar	E	44
Madeira Islands	B	22
Malawi	D	22
Malaysia	D	22
Maldives	D	22
Mali	C	44
Malta	C	44
Martinique	A	44
Mauritania	D	44
Mauritius	E	22
Mexico	A	4
Mongolia	(3)	(3)
Montserrat	A	44
Morocco	C	44
Mozambique	E	22
Nauru	C	44
Nepal	D	44
Netherlands	C	44
Netherlands Antilles	A	44
New Caledonia	D	44
New Zealand	D	22
Nicaragua	B	44
Niger	D	44
Nigeria	C	22
Norway	D	44
Oman	D	22
Pakistan	D	22
Panama	A	44
Papua New Guinea	D	44
Paraguay	D	44
Peru	B	44
Philippines	D	44
Pitcairn Islands	B	22
Poland	B	44
Portugal	C	22
Qatar	C	44
Reunion	E	44
Romania	C	44
Rwanda	D	44
Saint Christopher & Nevis	A	44
Saint Helena	C	44
Saint Lucia	A	44
Saint Pierre & Miquelon	A	44
Saint Vincent & the Grenadines.	A	22
Sao Tome & Principe	D	44
Saudia Arabia	D	22
Senegal	D	44
Seychelles	D	22
Sierre Leone	D	44
Singapore	D	22
Solomon Islands	C	44
Somalia	D	44
South Africa (including South West Africa & Namibia).	D	22
Spain	C	44
Sri Lanka	D	44
Sudan	D	44
Suriname	B	44
Swaziland	D	44
Sweden	D	44
Switzerland (including Leichtenstein).	B	44
Syria	C	44
Taiwan	C	44
Tanzania	E	22
Thailand	D	44
Togo	D	44
Tonga	B	22
Trinidad & Tobago	B	22
Tristan da Cunha	E	22
Tunisia	C	44
Turkey	C	44
Turks & Caicos Islands	A	22
Tuvalu	B	44
Uganda	D	22
Union of Soviet Socialist Republics.	E	22
United Arab Emirates	D	44
Uruguay	B	44
Vanuatu	B	44
Vatican City State	C	44
Venezuela	B	44
Vietnam	(3)	(3)
Wallis & Futuna Islands	D	44
Western Samoa	B	22
Yemen Arab Republic	D	22
Yemen, Peoples Democratic Rep. of.	E	44
Yugoslavia	C	22
Zaire	E	44
Zambia	E	44
Zimbabwe	E	44

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[1] No Air Service.
[2] Separate Rate Group.
[3] No Parcel Post Service.

8. Express Mail International Service for Countries by Rate Group, See List.

Pounds (up to and including)	Rates
a. Custom Designed Service [1] [2] [3]	
(1) Group 1:	
1–2	$31.20
3	33.40
4	35.60
5	37.80
6	40.00
7	42.20
8	44.40
9	46.60
10	48.80
11	51.00
12	53.20
13	55.40
14	57.60
15	59.80
16	62.00
17	64.20
18	66.40
19	68.60
20	70.80
21	73.00
22	75.20
23	77.40
24	79.60
25	81.80
26	84.00
27	86.20
28	88.40
29	90.60
30	92.80
31	95.00
32	97.20
33	99.40
34	101.60
35	103.80
36	106.00
37	108.20
38	110.40
39	112.60
40	114.80
41	117.00
42	119.20
43	121.40
44	123.60
45	125.80
46	128.00
47	130.20
48	132.40
49	134.60
50	136.80
51	139.00
52	141.20
53	143.40
54	145.60
55	147.80
56	150.00
57	152.20
58	154.40
59	156.60
60	158.80
61	161.00
62	163.20
63	165.40
64	167.60
65	169.80
66	172.00
(2) Group 2:	
1–2	33.50
3	38.00
4	42.50
5	47.00
6	51.50
7	56.00
8	60.50
9	65.00
10	69.50
11	74.00
12	78.50
13	83.00
14	87.50
15	92.00
16	96.50
17	101.00
18	105.50
19	110.00
20	114.50
21	119.00
22	123.50
23	128.00
24	132.50
25	137.00
26	141.50
27	146.00
28	150.50
29	155.00
30	159.50
31	164.00
32	168.50
33	173.00
34	177.50
35	182.00
36	186.50
37	191.00
38	195.50
39	200.00
40	204.50
41	209.00
42	213.50
43	218.00
44	222.50
(3) Group 3:	
1–2	34.70
3	40.40
4	46.10
5	51.80
6	57.50
7	63.20
8	68.90
9	74.60
10	80.30
11	86.00
12	91.70
13	97.40
14	103.10
15	108.80
16	114.50
17	120.20
18	125.90
19	131.60
20	137.30
21	143.00
22	148.70
23	154.40
24	160.10
25	165.80
26	171.50
27	177.20
28	182.90
29	188.60
30	194.30

Pounds (up to and including)	Rates
31	200.00
32	205.70
33	211.40
34	217.10
35	222.80
36	228.50
37	234.20
38	239.90
39	245.60
40	251.30
41	257.00
42	262.70
43	268.40
44	274.10
(4) Group 4:	
1–2	36.00
3	43.00
4	50.00
5	57.00
6	64.00
7	71.00
8	78.00
9	85.00
10	92.00
11	99.00
12	106.00
13	113.00
14	120.00
15	127.00
16	134.00
17	141.00
18	148.00
19	155.00
20	162.00
21	169.00
22	176.00
23	183.00
24	190.00
25	197.00
26	204.00
27	211.00
28	218.00
29	225.00
30	232.00
31	239.00
32	246.00
33	253.00
34	260.00
35	267.00
36	274.00
37	281.00
38	288.00
39	295.00
40	302.00
41	309.00
42	316.00
43	323.00
44	330.00
45	337.00
46	344.00
47	351.00
48	358.00
49	365.00
50	372.00
b. On Demand Service [1] [3]	
(1) Group 1:	
1–2	23.20
3	25.40
4	27.60
5	29.80
6	32.00
7	34.20
8	36.40
9	38.60
10	40.80
11	43.00
12	45.20
13	47.40
14	49.60
15	51.80
16	54.00
17	56.20
18	58.40
19	60.60
20	62.80
21	65.00
22	67.20
23	69.40
24	71.60
25	73.80
26	76.00
27	78.20
28	80.40
29	82.60
30	84.80
31	87.00
32	89.20
33	91.40
34	93.60
35	95.80
36	98.00
37	100.20
38	102.40
39	104.60
40	106.80
41	109.00
42	111.20
43	113.40
44	115.60
45	117.80
46	120.00
47	122.20
48	124.40
49	126.60
50	128.80
51	131.00
52	133.20
53	135.40
54	137.60
55	139.80
56	142.00
57	144.20
58	146.40
59	148.60
60	150.80
61	153.00
62	155.20
63	157.40
64	159.60
65	161.80
66	164.00
(2) Group 2:	
1–2	25.50
3	30.00
4	34.50
5	39.00
6	43.50
7	48.00
8	52.50
9	57.00
10	61.50
11	66.00
12	70.50
13	75.00
14	79.50
15	84.00
16	88.50
17	93.00
18	97.50
19	102.00
20	106.50
21	111.00
22	115.50
23	120.00
24	124.50
25	129.00
26	133.50
27	138.00
28	142.50
29	147.00
30	151.50
31	156.00
32	160.50
33	165.00
34	169.50
35	174.00
36	178.50
37	183.00
38	187.50
39	192.00
40	196.50
41	201.00
42	205.50
43	210.00
44	214.50
(3) Group 3:	
1–2	26.70
3	32.40
4	38.10
5	43.80
6	49.50
7	55.20
8	60.90
9	66.60
10	72.30
11	78.00
12	83.70
13	89.40
14	95.10
15	100.80
16	106.50
17	112.20
18	117.90
19	123.60
20	129.30
21	135.00
22	140.70
23	146.40
24	152.10
25	157.80
26	163.50
27	169.20
28	174.90
29	180.60
30	186.30
31	192.00
32	197.70
33	203.40
34	209.10
35	214.80
36	220.50
37	226.20
38	231.90
39	237.60
40	243.30
41	249.00
42	254.70
43	260.40
44	266.10
(4) Group 4:	
1–2	28.00
3	35.00
4	42.00
5	49.00
6	56.00
7	63.00
8	70.00
9	77.00
10	84.00
11	91.00
12	98.00
13	105.00
14	112.00
15	119.00
16	126.00
17	133.00
18	140.00
19	147.00
20	154.00
21	161.00
22	168.00
23	175.00
24	182.00
25	189.00
26	196.00

Pounds (up to and including)	Rates
27	203.00
28	210.00
29	217.00
30	224.00
31	231.00
32	238.00
33	245.00
34	252.00
35	259.00
36	266.00
37	273.00
38	280.00
39	287.00
40	294.00
41	301.00
42	308.00
43	315.00
44	322.00
45	329.00
46	336.00
47	343.00
48	350.00
49	357.00
50	364.00

[1] Rates for pieces 1 pound and under published in November 12, 1987, Federal Register Notice.

[2] Rates in these tables are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[3] Pickup is available under a Service Agreement for an added charge of $4.00 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

INTERNATIONAL EXPRESS MAIL

[Rate groups and maximum weight limits]

Country	Rate group	Maximum weight (lbs.)
Argentina	3	44
Australia	4	44
Austria	2	44
Bahamas	2	44
Bahrain	3	44
Bangladesh	4	44
Barbados	2	44
Belgium	3	44
Bermuda	1	44
Brazil	4	33
Burkina Faso	3	44
Canada	1	66
Cayman Islands	2	44
Chad	3	44
Chile	3	33
China, Peoples Republic of	4	33
Colombia	2	44
Cote d'Ivoire (Ivory Coast)	3	44
Cyprus	3	44
Denmark (incl. Faroe Islands)	3	44
Djibouti	4	44
Egypt	3	44
Finland	3	44
France (incl. Corsica & Monaco)	3	44
Germany, Federal Republic of	2	44
Great Britain/Northern Ireland	2	44
Greece	3	44
Guinea	3	44
Guyana	2	44
Hong Kong	3	44
Hungary	2	44
Iceland	3	44
India	4	44
Indonesia	4	22

INTERNATIONAL EXPRESS MAIL—Continued

[Rate groups and maximum weight limits]

Country	Rate group	Maximum weight (lbs.)
Ireland	2	44
Israel	3	33
Italy	3	44
Japan	4	44
Jordan	3	44
Korea, Republic of	3	44
Kuwait	3	44
Luxembourg	2	44
Macao	3	44
Malaysia	4	33
Mali	3	44
Mexico	1	44
Netherlands	3	44
Netherlands Antilles	2	44
New Zealand	4	44
Niger	3	44
Nigeria	3	44
Norway	3	44
Oman	3	44
Pakistan	3	22
Panama	2	44
Portugal (incl. Madeira Islands & Azores)	2	44
Qatar	3	44
Rwanda	4	44
Saudi Arabia	3	22
Senegal	3	44
Singapore	4	44
South Africa	4	44
Spain	2	44
Sweden	3	44
Switzerland (incl. Liechtenstein)	3	33
Taiwan	3	33
Tanzania	4	22
Thailand	4	44
Tunisia	3	44
Turkey	3	44
United Arab Emirates	3	44
Uruguay	3	44
Venezuela	2	44

B. New Special Mail Services Fees

1. Nonstandard Surcharge:

a. Letters (weighing one ounce or less): 10 cents

b. Regular Printed Matter (weighing one ounce or less): 10 cents

2. Customs Clearance and Delivery Fee: $3.25

3. Inquiry Fee: $5.00

4. Return receipt requested at time of mailing: 90 cents

5. Registered Mail

Limit of Indemnity	Fee
1. Canada:	
$000.00 to $100	$4.50
$100.01 to $500	4.85
$500.01 to $1,000	5.25
2. All other countries: $24.60	4.40

6. Insured Mail

Limit of indemnity [1] not over—	Fees	
	Canada	All other countries
50	$0.70	$1.55
100	1.50	1.90
150	1.90	3.15
200	2.20	3.15
300	3.15	4.30
400	4.30	5.00
500	5.00	5.70
600		6.40
700		7.10
800		7.80
900		8.50
1,000		9.20
1,100		9.90
1,200		10.60

[1] Limits very by country.

7. Money Orders

a. Orders Issued on Domestic Form:

Amount of Money Order	Fee
$0.01 to $35	$0.75
$35.01 to $700	1.00

Note: Service is not available to all countries. See IMM for service availability. When service is available each order is limited to $700, except $200 to Great Britain and $400 to Norway.

b. Orders Issued on International Form (including Japan): $3.00 per money order.

c. Charge for a photostat of a paid money order issued on a domestic form or pursuant to an international authorization form: $2.00.

Weight	Fee
8. Special Handling:	
Not More than 10 pounds	$1.55
More than 10 pounds	2.25

Class of Mail	Not over 2 pounds	Over 2 pounds
9. Special Delivery:		
Letters, letter packages, post and postal cards	$5.35	$5.75
Other articles	5.85	6.50
10. Restricted Delivery	2.00	

	Fee
11. Certificates of Mailing:	
Individual listed pieces: Original or Copy of original Certificate of mailing or receipt for registered or insured mail (per piece) (Form 3817)	**$0.45**
Firm mailing books (per piece) (Form 3877)	**0.15**
Identical pieces: Up to 1,000 pieces	**2.00**
For each additional 1,000 pieces, or fraction	**0.25**
Duplicate copy	**0.45**

12. Return charges for returned publishers' periodicals mailed to Canada by publishers or registered news agents (781.5a, International Mail Manual).

Weight not over:	*Charge*
1 oz	$0.25
2	.45
3	.65
4	.85
6	1.00
8	1.10
10	1.20
12	1.30
14	1.40
16	1.50

For weights over 1 pound, use the domestic 8th zone fourth-class rate.

13. International Reply Coupons
Selling price for U.S. issued coupons: 95 cents

[FR Doc. 88-6617 Filed 3-25-88; 8:45 am]

BILLING CODE 7710-12-M

Changes in Certain Postal Rates, Fees and Mail Classifications

AGENCY: Postal Service.

ACTION: Changes in domestic rates, fees and mail classifications.

SUMMARY: Pursuant to its authority under 39 U.S.C. 3625, the Postal Service is implementing the changes in domestic postage rates, fees, and mail classification indicated below.

EFFECTIVE DATES: April 3, 1988, except that the changes to sections 200.0107, 200.0201b, 200.0216, and 200.093 of the Domestic Mail Classification Schedule, concerning the change in the basis for determining the 10 percent sample copy allowance for second-class publications, shall become effective at 12:01 a.m. on January 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Alepa, (202) 268-2650.

SUPPLEMENTARY INFORMATION: On May 7, 1987, the Postal Service filed, pursuant to Chapter 36, Title 39, United States Code, a request with the Postal Rate Commission for recommended decisions on changes in rates of postage and fees for postal services, and changes in the Domestic Mail Classification Schedule. An explanation of the Postal Service proposals and an invitation to participate in Commission Docket No. R87-1 was published in the **Federal Register** by the Postal Rate Commission on May 15, 1987 (52 FR 18498-533).

On March 4, 1988, the Postal Rate Commission issued an Opinion and Recommended Decision in Docket No. R87-1. In its Recommended Decision, the Commission recommended changes in permanent rates of postage and fees for domestic postal services, and changes in mail classification.

In a decision adopted on March 22, 1988, the Governors of the Postal Service approved the Commission's recommended changes in rates and fees and certain of the Commission's recommended classification changes. The Governors ordered these approved changes into effect on a permanent basis, pursuant to 39 U.S.C. 3625. Also on March 22, 1988, the Board of Governors determined that these approved changes would become effective at 12:01 a.m. on April 3, 1988. (The Governors' decision, the record of the Commission's hearings, and the Commission's Opinion and Recommended Decision may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Governors' decision and the Commission's Opinion and Recommended Decision are available for inspection in the Library at Headquarters, United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-1641).

In accordance with these actions by the Governors and the Board of Governors, the Postal Service hereby gives notice that the rates, fees, and classification changes listed below become effective at 12:01 a.m. on April 3, 1988, except as noted above. (39 U.S.C. 101(d), 401, 403, 404, 3621, 3625, 3626)

Fred Eggleston,
Assistant General Counsel, Legislative Division.

RATE SCHEDULE 100.—FIRST-CLASS MAIL

Mail type	Postage rate unit	Rate		
		Regular (cents)	Presorted [1] (cents)	
			5-digit	Carrier route
Letters	First ounce	25	21	19.5
	Each add'l. ounce [2]	20	[5] 20	[5] 20
Cards	Piece	15	13	11.5
ZIP+4 mail: [3]				
Letters	First ounce	24.1	20.5	
	Pre-barcoded		20	
	Each add'l ounce [2]	20	20	
Cards	Piece	14.1	12.5	
	Pre-barcoded		12	
Nonstandard surcharge [4]		10	5	5

[1] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $60 must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Rate applies through 11 ounces. Heavier pieces are subject to priority mail rates.

[3] ZIP+4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP+4 rates are not available for carrier route presort mail.

[4] Applies to the first ounce only. Not applicable to ZIP+4 mail.

[5] For presorted weighing more than 2 ounces, subtract 4¢ per piece.

RATE SCHEDULE 103.

Weight not exceeding (pounds)	Priority mail [1]					
	L.1.2.3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	2.40	2.40	2.40	2.40	2.40	2.40
2	2.40	2.40	2.40	2.40	2.40	2.40
3	2.74	3.16	3.45	3.74	3.96	4.32
4	3.18	3.75	4.13	4.53	4.92	5.30
5	3.61	4.32	4.86	5.27	5.81	6.37
6	4.15	5.08	5.71	6.31	6.91	7.66
7	4.58	5.66	6.39	7.09	7.80	8.67
8	5.00	6.23	7.07	7.87	8.68	9.68
9	5.43	6.81	7.76	8.66	9.57	10.69
10	5.85	7.39	8.44	9.44	10.45	11.70
11	6.27	7.97	9.12	10.22	11.33	12.71
12	6.70	8.55	9.81	11.01	12.22	13.72
13	7.12	9.12	10.49	11.79	13.10	14.73
14	7.55	9.70	11.17	12.57	13.99	15.74
15	7.97	10.28	11.86	13.36	14.87	16.75
16	8.39	10.86	12.54	14.14	15.75	17.75
17	8.82	11.44	13.22	14.92	16.64	18.76
18	9.24	12.01	13.90	15.70	17.52	19.77
19	9.67	12.59	14.59	16.49	18.41	20.78
20	10.09	13.17	15.27	17.27	19.29	21.79
21	10.51	13.75	15.95	18.05	20.17	22.80
22	10.94	14.33	16.64	18.84	21.06	23.81
23	11.36	14.90	17.32	19.62	21.94	24.82
24	11.79	15.48	18.00	20.40	22.83	25.83
25	12.21	16.06	18.69	21.19	23.71	26.84
26	12.63	16.64	19.37	21.97	24.59	27.84
27	13.06	17.22	20.05	22.75	25.48	28.85
28	13.48	17.79	20.73	23.53	26.36	29.86
29	13.91	18.37	21.42	24.32	27.25	30.87
30	14.33	18.95	22.10	25.10	28.13	31.88
31	14.75	19.53	22.78	25.88	29.01	32.89
32	15.18	20.11	23.47	26.67	29.90	33.90
33	15.60	20.69	24.15	27.45	30.78	34.91
34	16.03	21.26	24.83	28.23	31.67	35.92
35	16.45	21.84	25.52	29.02	32.55	36.93
36	16.87	22.42	26.20	29.80	33.43	37.93
37	17.30	23.00	26.88	30.58	34.32	38.94
38	17.72	23.57	27.56	31.36	35.20	39.95
39	18.15	24.15	28.25	32.15	36.09	40.96
40	18.57	24.73	28.93	32.93	36.97	41.97
41	18.99	25.31	29.61	33.71	37.85	42.98
42	19.42	25.89	30.30	34.50	38.74	43.99
43	19.84	26.46	30.98	35.28	39.62	45.00
44	20.27	27.04	31.66	36.06	40.51	46.01
45	20.69	27.62	32.35	36.85	41.39	47.02
46	21.11	28.20	33.03	37.63	42.27	48.02
47	21.54	28.78	33.71	38.41	43.16	49.03
48	21.96	29.35	34.39	39.19	44.04	50.04
49	22.39	29.93	35.08	39.98	44.93	51.05
50	22.81	30.51	35.76	40.76	45.81	52.06
51	23.23	31.09	36.44	41.54	46.69	53.07
52	23.66	31.67	37.13	42.33	47.58	54.08
53	24.08	32.24	37.81	43.11	48.46	55.09
54	24.51	32.82	38.49	43.89	49.35	56.10
55	24.93	33.40	39.18	44.68	50.23	57.11
56	25.35	33.98	39.86	45.46	51.11	58.11
57	25.78	34.56	40.54	46.24	52.00	59.12
58	26.20	35.13	41.22	47.02	52.88	60.13
59	26.63	35.71	41.91	47.81	53.77	61.14
60	27.05	36.29	42.59	48.59	54.65	62.15
61	27.47	36.87	43.27	49.37	55.53	63.16
62	27.90	37.45	43.96	50.16	56.42	64.17
63	28.32	38.02	44.64	50.94	57.30	65.18
64	28.75	38.60	45.32	51.72	58.19	66.19
65	29.17	39.18	46.01	52.51	59.07	67.20
66	29.59	39.76	46.69	53.29	59.95	68.20
67	30.02	40.34	47.37	54.07	60.84	69.21
68	30.44	40.91	48.05	54.85	61.72	70.22
69	30.87	41.49	48.74	55.64	62.61	71.23
70	31.29	42.07	49.42	56.42	63.49	72.24

[1] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rates [1] (cents)
Per Pound:		
Non-advertising portion:	Pound	12.4
Advertising portion:		
Zone:		
1 & 2	Pound	16.5
3	Pound	17.4
4	Pound	19.1
5	Pound	21.6
6	Pound	24.3
7	Pound	27.5
8	Pound	30.2
Science of Agriculture:		
Zone: 1 & 2	Pound	11.4
Per Piece: Less Editorial Factor of 0.04¢ per each 1% Editorial Content [2]		
A—Prepared [3]	Piece	16.0
B—Presorted to 3-digit city/5-digit	Piece	12.4
C—Carrier route Presort	Piece	9.9
SCF Discount [4]		(1.0)

[1] Charges for second-class regular rate mail are computed by adding the appropriate per-piece charge, including editorial factor, to the sum of the non-advertising portion and the advertising portion charge, as applicable.

[2] For postage calculation, multiply the editorial percent content by 0.04 and subtract from the applicable piece rate.

[3] Presorted to 3-digit (other than 3-digit city), States, Mixed States.

[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece rate.

RATE SCHEDULE 201—FULL RATE—SECOND-CLASS MAIL: IN-COUNTY

	Rate (cents)
Pound-rate matter:	
Per-pound	9.4
Per-piece:	
Presorted to carrier route	3.2
Not presorted to carrier route	5.7

RATE SCHEDULE 202—FULL RATES—SECOND-CLASS MAIL: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate (cents)
Per Pound:		
Non-advertising portion	Pound	8.6
Advertising portion:		
Zone:		
1 & 2	Pound	11.4
3	Pound	12.0
4	Pound	13.3
5	Pound	15.3
6	Pound	17.4
7	Pound	19.9
8	Pound	22.1
Per Piece: Less Editorial Factor of 0.02 per each 1% Editorial Content		
Category A:		
Prepared i.e. Presorted to 3-digits (except 3-digit city), States, mixed States		12.5
Category B:		
Presorted to 3-digit city/5-digit		8.9
Category C:		
Carrier Route Presort		6.8
SCF Discount		(1.0)

RATE SCHEDULE 203—FULL RATES—SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate (cents)
Per Pound:		
Non-advertising portion	Pound	6.7
Advertising portion:		
Zone:		
1 & 2	Pound	8.9
3	Pound	9.4
4	Pound	10.2
5	Pound	11.4
6	Pound	12.6
7	Pound	14.1
8	Pound	15.4
Per Piece: Less Editorial Factor of 0.04 per each 1% Editorial Content	Piece	12.3
SCF Discount	Piece	(1.0)

RATE SCHEDULE 300—THIRD-CLASS MAIL: SINGLE PIECE

	Full rates[1] (cents)
Single Piece:	
One ounce	25
Two ounces	45
Three ounces	65
Four ounces	85
Five and six ounces	100
Each additional 2 ounces	10
Nonstandard Surcharge [2]	10
Keys and Identification Devices:	
First 2 ounces	85
Each additional 2 ounces	47

[1] When the postage rate computed at the single piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate is charged. (*See* DMM § 611.12).

[2] Applies only to pieces weighing one ounce or less.

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK

	Full rate (cents)
Regular Bulk [1]:	
Minimum per piece:	
Required presortation	16.7
Presorted to five-digits	13.2
Presorted to carrier route	10.1
Pound rate:	
Carrier route pieces	[2] 48.0
Required presortation 48¢ per pound plus	[3] 6.5
Presorted to five-digits 48¢ per pound plus	[3] 3.1
ZIP+4 Mail:	
Minimum per piece:	
Required presortation	16.2
Presorted to five-digits	12.7
Prebarcoded and presorted to five-digits	12.2

[1] A fee of $60.00 must be paid once each year for each bulk mailing permit.

[2] Per pound.

[3] Per piece.

RATE SCHEDULE 302—FULL RATES—THIRD-CLASS: NONPROFIT-BULK MAIL

	Full rates (cents)
Nonprofit Bulk [1]:	
Minimum per piece:	
Required presortation	8.4
Presorted to five-digits	7.6
Presorted to carrier route	5.3
Pound rate:	
Carrier route pieces	[2] 25.0
Required presortation 25¢ per pound plus	[3] 3.1
Presorted to five-digits 25¢ per pound plus	[3] 2.3
ZIP+4 Mail:	
Minimum per piece:	
Required presortation	7.9
Presorted to five-digits	7.1
Prebarcoded and presorted to five-digits	6.6

[1] A fee of $60.00 must be paid once each year for each bulk mailing permit.

[2] Per pound.

[3] Per piece.

RATE SCHEDULE 400 PARCEL POST RATES

Weight up to (lbs.)	Local	1 & 2	3	4	5	6	7	8
2	1.63	1.69	1.81	1.97	2.24	2.35	2.35	2.35
3	1.68	1.78	1.95	2.20	2.59	2.98	3.42	4.25
4	1.74	1.86	2.10	2.42	2.94	3.46	4.05	5.25
5	1.79	1.95	2.24	2.65	3.29	3.94	4.67	6.25
6	1.85	2.04	2.39	2.87	3.64	4.43	5.30	7.34
7	1.91	2.12	2.53	3.10	4.00	4.91	5.92	8.30
8	1.96	2.21	2.68	3.32	4.35	5.39	6.55	9.26
9	2.02	2.30	2.82	3.55	4.70	5.87	7.17	10.22
10	2.07	2.38	2.97	3.78	5.05	6.35	7.79	11.18
11	2.13	2.47	3.11	4.00	5.40	6.83	8.42	12.14
12	2.19	2.56	3.25	4.22	5.75	7.30	9.03	13.09
13	2.24	2.64	3.40	4.44	6.10	7.78	9.65	14.03
14	2.28	2.69	3.48	4.56	6.27	8.02	9.90	14.50
15	2.32	2.75	3.55	4.67	6.44	8.24	10.24	14.94
16	2.35	2.79	3.63	4.78	6.60	8.45	10.52	15.35
17	2.39	2.84	3.70	4.88	6.75	8.66	10.77	15.74
18	2.42	2.89	3.76	4.98	6.90	8.85	11.02	16.11
19	2.46	2.93	3.83	5.07	7.03	9.03	11.25	16.45
20	2.49	2.98	3.89	5.16	7.16	9.20	11.47	16.79
21	2.52	3.02	3.95	5.25	7.29	9.37	11.68	17.10
22	2.56	3.06	4.01	5.33	7.41	9.53	11.88	17.41
23	2.59	3.10	4.07	5.41	7.53	9.68	12.08	17.70
24	2.62	3.14	4.12	5.49	7.64	9.83	12.26	17.97
25	2.65	3.18	4.18	5.56	7.75	9.97	12.44	18.24
26	2.68	3.22	4.23	5.64	7.85	10.11	12.62	18.50
27	2.71	3.26	4.28	5.71	7.96	10.24	12.79	18.75
28	2.74	3.29	4.33	5.78	8.05	10.37	12.95	18.99
29	2.77	3.33	4.38	5.85	8.15	10.50	13.11	19.23
30	2.80	3.37	4.43	5.91	8.25	10.62	13.26	19.45
31	2.83	3.40	4.48	5.98	8.34	10.74	13.41	19.67
32	2.86	3.44	4.53	6.04	8.43	10.85	13.56	19.89
33	2.89	3.47	4.58	6.10	8.51	10.97	13.70	20.10
34	2.92	3.51	4.62	6.16	8.60	11.08	13.83	20.30
35	2.95	3.54	4.67	6.22	8.68	11.18	13.97	20.50
36	2.98	3.58	4.71	6.28	8.77	11.29	14.10	20.69
37	3.00	3.61	4.76	6.34	8.85	11.39	14.23	20.88
38	3.03	3.64	4.80	6.40	8.92	11.49	14.35	21.06
39	3.06	3.68	4.84	6.46	9.00	11.59	14.48	21.24
40	3.09	3.71	4.88	6.51	9.08	11.69	14.60	21.41
41	3.12	3.74	4.93	6.57	9.15	11.79	14.72	21.58
42	3.14	3.78	4.97	6.62	9.23	11.88	14.83	21.75
43	3.17	3.81	5.01	6.67	9.30	11.97	14.94	21.92
44	3.20	3.84	5.05	6.72	9.37	12.06	15.06	22.08
45	3.23	3.87	5.09	6.78	9.44	12.15	15.16	22.24
46	3.25	3.90	5.13	6.83	9.51	12.24	15.27	22.39
47	3.28	3.93	5.17	6.88	9.58	12.32	15.38	22.54
48	3.31	3.96	5.21	6.93	9.64	12.41	15.48	22.69
49	3.33	4.00	5.24	6.98	9.71	12.49	15.58	22.84
50	3.36	4.03	5.28	7.03	9.77	12.57	15.68	22.98
51	3.39	4.06	5.32	7.07	9.84	12.65	15.78	23.12
52	3.41	4.09	5.36	7.12	9.90	12.73	15.88	23.26
53	3.44	4.12	5.40	7.17	9.97	12.81	15.98	23.40
54	3.47	4.15	5.43	7.21	10.03	12.89	16.07	23.54
55	3.49	4.18	5.47	7.26	10.09	12.98	16.16	23.67
56	3.52	4.21	5.51	7.31	10.15	13.04	16.26	23.80
57	3.55	4.24	5.54	7.35	10.21	13.11	16.35	23.93
58	3.57	4.27	5.58	7.40	10.27	13.19	16.44	24.06
59	3.60	4.30	5.61	7.44	10.33	13.26	16.53	24.18
60	3.62	4.33	5.65	7.49	10.38	13.33	16.61	24.31
61	3.65	4.36	5.69	7.53	10.44	13.40	16.70	24.43
62	3.68	4.38	5.72	7.57	10.50	13.47	16.78	24.55
63	3.70	4.41	5.76	7.62	10.55	13.54	16.87	24.67
64	3.73	4.44	5.79	7.66	10.61	13.61	16.95	24.78
65	3.75	4.47	5.83	7.70	10.67	13.68	17.03	24.90
66	3.78	4.50	5.86	7.74	10.72	13.75	17.12	25.02
67	3.81	4.53	5.89	7.79	10.77	13.81	17.20	25.13
68	3.83	4.56	5.93	7.83	10.83	13.88	17.28	25.24
69	3.86	4.59	5.96	7.87	10.88	13.95	17.36	25.35
70	3.88	4.61	6.00	7.91	10.93	14.01	17.43	25.46

NOTES: For intra-BMC parcels, deduct 20¢. For nonmachinable inter-BMC parcels, add $1.15.

RATE SCHEDULE 402.—SPECIAL AND LIBRARY RATES

	Rates (cents)
Special:	
First Pound	
Not presorted	90
Presorted to 5-digits [1] [2]	85
Presorted to BMC [1] [3]	83
Each additional pound through 7 pounds	35
Each additional pound over 7 pounds	20
Library:	
First pound	[4] 64
Each additional pound through 7 pounds	[4] 23
Each additional pound over 7 pounds	[4] 12

[1] A fee of $60.00 must be paid once each year for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.
[4] Full rates (cents).

RATE SCHEDULE 405.—FOURTH-CLASS MAIL: SINGLE PIECE BOUND PRINTED MATTER [1]

[Dollars]

Rates for pieces weighing up to (Pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
1.5	0.67	0.92	0.96	1.04	1.16	1.28	1.43	1.56
2	0.69	0.96	1.02	1.12	1.28	1.44	1.64	1.81
2.5	0.71	0.99	1.07	1.20	1.39	1.60	1.85	2.06
3	0.73	1.03	1.12	1.27	1.51	1.76	2.06	2.31
3.5	0.75	1.07	1.17	1.35	1.63	1.91	2.26	2.56
4	0.77	1.10	1.22	1.43	1.74	2.07	2.47	2.81
4.5	0.79	1.14	1.27	1.50	1.86	2.23	2.68	3.06
5	0.81	1.18	1.33	1.58	1.98	2.39	2.89	3.31
6	0.85	1.25	1.43	1.73	2.21	2.70	3.30	3.80
7	0.89	1.32	1.53	1.89	2.44	3.02	3.72	4.30
8	0.93	1.39	1.63	2.04	2.67	3.33	4.13	4.80
9	0.97	1.47	1.74	2.20	2.91	3.65	4.55	5.30
10	1.01	1.54	1.84	2.35	3.14	3.96	4.96	5.80
Per Piece (Dollars)	0.61	0.61	0.61	0.61	0.61	0.61	0.61	0.61
Per Pound (Dollars)	.040	.073	.103	.154	.233	.315	.415	.499

[1] Includes both catalogs and similar bound printed matter.

RATE SCHEDULE 406.—FOURTH-CLASS MAIL: BULK BOUND PRINTED MATTER [1]

[Dollars]

Zones	Per-piece	Carrier route [2]	Per-pound
Local	0.32	0.27	0.028
1 & 2	0.43	0.38	0.056
3	0.43	0.38	0.067
4	0.43	0.38	0.139
5	0.43	0.38	0.217
6	0.43	0.38	0.300
7	0.43	0.38	0.399
8	0.43	0.38	0.464

[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as prescribed by the Postal Service.

RATE SCHEDULES 500, 501, 502, and 503.—EXPRESS MAIL RATES

(Dollars)

Postage rate unit (pounds)	Schedule 500.—Same day airport service	Schedule 501.—Custom designed	Schedule 503.—Next day and second day PO to addressee	Schedule 502.—Next day and second day PO to PO
½	8.35	7.75	8.75	8.50
1	9.70	11.00	12.00	9.85
2	9.70	11.00	12.00	9.85
3	12.40	14.25	15.25	13.10
4	12.40	14.25	15.25	13.10
5	12.40	14.25	15.25	13.10

RATE SCHEDULES 500, 501, 502, and 503.—EXPRESS MAIL RATES—Continued

(Dollars)

Postage rate unit (pounds)	Schedule 500.—Same day airport service	Schedule 501.—Custom designed	Schedule 503.—Next day and second day PO to addressee	Schedule 502.—Next day and second day PO to PO
6	13.60	16.75	17.75	15.60
7	14.25	17.45	18.45	16.30
8	14.95	18.15	19.15	17.00
9	15.60	18.85	19.85	17.70
10	16.25	19.55	20.55	18.40
11	16.95	20.25	21.25	19.10
12	17.60	20.95	21.95	19.80
13	18.25	21.65	22.65	20.50
14	18.95	22.35	23.35	21.20
15	19.60	23.05	24.05	21.90
16	20.25	24.10	25.10	22.95
17	20.95	25.45	26.45	24.30
18	21.60	26.80	27.80	25.65
19	22.25	28.20	29.20	27.05
20	22.95	29.55	30.55	28.40
21	23.60	30.90	31.90	29.75
22	24.25	32.30	33.30	31.15
23	24.95	33.65	34.65	32.50
24	25.60	35.00	36.00	33.85
25	26.25	36.40	37.40	35.25
26	26.95	37.75	38.75	36.60
27	27.60	39.10	40.10	37.95
28	28.25	40.45	41.45	39.30
29	28.95	41.85	42.85	40.70
30	29.60	43.20	44.20	42.05
31	30.25	44.55	45.55	43.40
32	30.95	45.95	46.95	44.80
33	31.60	47.30	48.30	46.15
34	32.25	48.65	49.65	47.50
35	32.95	49.90	50.90	48.75
36	33.60	51.00	52.00	49.85
37	34.25	52.10	53.10	50.95
38	34.95	53.15	54.15	52.00
39	35.60	54.25	55.25	53.10
40	36.25	55.35	56.35	54.20
41	36.95	56.45	57.45	55.30
42	37.60	57.50	58.50	56.35
43	38.25	58.60	59.60	57.45
44	38.95	59.70	60.70	58.55
45	39.60	60.80	61.80	59.65
46	40.25	61.85	62.85	60.70
47	40.95	62.95	63.95	61.80
48	41.60	64.05	65.05	62.90
49	42.25	65.15	66.15	64.00
50	42.95	66.20	67.20	65.05
51	43.60	67.30	68.30	66.15
52	44.25	68.40	69.40	67.25
53	44.95	69.55	70.55	68.40
54	45.60	70.55	71.55	69.40
55	46.30	71.65	72.65	70.50
56	46.95	72.80	73.80	71.65
57	47.60	73.90	74.90	72.75
58	48.30	74.90	75.90	73.75
59	48.95	76.05	77.05	74.90
60	49.60	77.15	78.15	76.00
61	50.30	78.25	79.25	77.10
62	50.95	79.35	80.35	78.20
63	51.60	80.40	81.40	79.25
64	52.30	81.50	82.50	80.35
65	52.95	82.60	83.60	81.45
66	53.60	83.70	84.70	82.55
67	54.30	84.75	85.75	83.60
68	54.95	85.85	86.85	84.70
69	55.60	86.95	87.95	85.80
70	56.30	88.05	89.05	86.90

Add. $4.00 for each pickup stop; $4.00 for each custom designed delivery stop.

SCHEDULE SS-1.—SPECIAL SERVICES: ADDRESS CORRECTIONS

Description	Fee
Per correction	$0.30

SCHEDULE SS-2.—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Pre-barcoded, per piece	$.05
Other, per piece	.08
Payment of postage due charges if active business reply mail advance deposit account not used: Per piece	.40
Annual licenses and accounting fees:	
With advance deposit account	250.00
Without advance deposit account	60.00

SCHEDULE SS-4.—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	$0.45
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.15
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy)	0.45

SCHEDULE SS-4.—SPECIAL SERVICES: CERTIFICATES OF MAILING—Continued

Description	Fee (in addition to postage)
Bulk pieces:	
Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	2.00
Each additional 1,000 pieces or fraction	0.25
Duplicate copy	0.45

SCHEDULE SS-5—SPECIAL SERVICES: CERTIFIED MAIL

Description	Fee (in addition to postage)
Per piece	$0.85

SCHEDULE SS-6—SPECIAL SERVICES: COLLECT ON DELIVERY

Amount to be collected, or insurance coverage desired	Fee (in addition to postage)
$0.01 to $25	$2.00
$25.01 to $50	$2.50
$50.01 to $100	3.00
$100.01 to $200	3.40
$200.01 to $300	4.25

SCHEDULE SS-6—SPECIAL SERVICES: COLLECT ON DELIVERY—Continued

Amount to be collected, or insurance coverage desired	Fee (in addition to postage)
$300.01 to $400	5.25
$400.01 to $500	6.50
Notice of nondelivery of c.o.d.	1.75
Alteration of c.o.d. charges or designation of new addressee	1.75
Registered c.o.d.	2.00

SCHEDULE SS-8—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
Domestic:	
$0.01 to $35	$0.75
$35.01 to $700	1.00
APO-FPO: $0.01 to $700	.25
Inquiry fee, which includes the issuance of copy of a paid money order	2.00

SCHEDULE SS-9.—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $50	$0.70
50.01 to 100	1.50
100.01 to 150	1.90
150.01 to 200	2.20
200.01 to 300	3.15
300.01 to 400	4.30
400.01 to 500	5.00

SCHEDULE SS-10.—SPECIAL SERVICES: POST OFFICE BOXES AND CALLER SERVICE

A. Semi-annual rental rates for post office boxes:					
Capacity of post office box (in cubic inches)	To 296	296 to 499	500 to 999	1,000 to 1,999	Over 2,000.
Box size	1	2	3	4	5
Group I	$14.00	$19.50	$36.00	$60.00	$100.00.
Group II	3.25	5.00	8.50	14.00	22.00.
Gorup III [1]	1.00	1.00	1.00	1.00	1.00.

Description	Fee
Caller service:	
For caller service (semi-annual)	$170
For each reserved call number (annual)	20

[1] Payment on annual basis.

SCHEDULE SS-11A.—SPECIAL SERVICES: ZIP CODING OF MAILING LISTS

Description	Fee
Per thousand addresses	$42.00

SCHEDULE SS-11B.—SPECIAL SERVICES: CORRECTION OF MAILING LISTS

Description	Fee
Per submitted address	$0.15
Minimum charge per list corrected	1.00

SCHEDULE SS-11C.—ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS

Description	Fee
Per change of address	$0.15

SCHEDULE SS-11D.—SPECIAL SERVICES: SEQUENCING OF ADDRESS CARDS

Description	Fee
Corrections Associated with Arrangement of Address Cards in Sequence of Carrier Delivery:	
Per Correction	$0.15

Note.—When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

SCHEDULE SS-12.—SPECIAL SERVICES: ON-SITE METER SETTING

Description	Fee
On-site Meter Settings	
First Meter	
By Appointment	$25.00
Unscheduled Request	28.00
Additional Meters	4.00
Checking meter in or out of service:	
Per meter	5.00

SCHEDULE SS-13.—SPECIAL SERVICES: PARCEL AIR LIFT

Description	Fee (in addition to parcel post postage)
Up to 2 pounds	$0.30
Over 2 up to 3 pounds	0.60
Over 3 up to 4 pounds	0.90
Over 4 pounds	1.20

SCHEDULE SS-14.—SPECIAL SERVICES: REGISTERED MAIL

Value	(Fees in addition to postage)	
	For articles covered by insurance fees	For articles not covered by insurance fees
$0.00 to $100	$4.50	$4.40
100.01 to $500	4.85	4.70
500.01 to $1,000	5.25	5.05
1,000.01 to $2,000	5.65	5.35
2,000.01 to $3,000	6.05	5.70
3,000.01 to $4,000	6.45	6.00
4,000.01 to $5,000	6.85	6.35
5,000.01 to $6,000	7.25	6.65
6,000.01 to $7,000	7.65	7.00
7,000.01 to $8,000	8.10	7.30
8,000.01 to $9,000	8.55	7.65
9,000.01 to $10,000	9.00	7.95
10,000.01 to $11,000	9.50	8.30
11,000.01 to $12,000	9.95	8.60
12,000.01 to $13,000	10.45	8.95
13,000.01 to $14,000	10.90	9.25
14,000.01 to $15,000	11.40	9.60
15,000.01 to $16,000	11.85	9.90
16,000.01 to $17,000	12.35	10.25
17,000.01 to $18,000	12.85	10.55
18,000.01 to $19,000	13.25	10.90
19,000.01 to $20,000	13.75	11.20
20,000.01 to $21,000	14.25	11.55
21,000.01 to $22,000	14.75	11.85
22,000.01 to $23,000	15.25	12.20
23,000.01 to $24,000	15.75	12.30
24,000.01 to $25,000	16.25	12.65
25,000.01 to $1,000,000	[1] 16.25	[1] 12.65
1,000,000 to $15,000,000	[2] 357.50	[2] 353.90
Over $15,000,000	[3]	[3]

[1] Plus handling charge of 35 cents per $1,000 or fraction over first $25,000

[2] Plus handling charge of 25 cents per $1,000 or fraction over first $1,000,000.

[3] Additional charges may be based on consideration of weight,space and value.

SCHEDULE SS-15.—SPECIAL SERVICES: RESTRICTED DELIVERY

Description	Fee (in addition to postage)
Per Piece	$2.00

SCHEDULE SS-16.—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fee (in addition to postage)
Requested at time of mailing:	
Showing to whom (signature) and date delivered	$0.90
Without another special service-merchandise only	1.00
Showing to whom (signature) and date and address where delivered	1.20
Without another special service-merchandise only	1.35
Requested after mailing:	
Showing to whom and date delivered	5.00

SCHEDULE SS-17.—SPECIAL SERVICES: SPECIAL DELIVERY

Class/Weight	Fee (in addition to postage)
First-Class and Priority Mail:	
Not more than 2 pounds	$5.35
Over 2 but not over 10 pounds	5.75
Over 10 pounds	7.25
All Other Classes:	
Not more than 2 pounds	5.65
Over 2 but not over 10 pounds	6.50
Over 10 pounds	8.10

SCHEDULE SS-18.—SPECIAL SERVICES: SPECIAL HANDLING

Weight	Fee (in addition to postage)
Not more than 10 pounds	$1.55
Over 10 pounds	2.25

SCHEDULE SS-19.—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale	$0.05
Bulk (500) No. 6¾ size:	
Regular	6.40
Window	7.00
Bulk (500) No. 10 size [1]:	
Regular	8.40
Window	9.00
Multi-color printing (500):	
No. 6¾ size	8.00
No. 10 size [1]	11.00
Printing charge per 500 envelopes [2]:	
Minimum order (500 envelopes)	3.50
Order for 1,000 or more envelopes	3.50
Double window (500) No. 10 size [1]	12.00
Household (50) No. 6¾ size:	
Regular	2.50
Window	2.60
Household (50) No. 10 size [1]:	
Regular	2.70
Window	2.80

[1] Fee for precancelled envelopes is the same.

[2] Printing charge for each type of printed envelope.

SCHEDULE SS-20.—SPECIAL SERVICES: MERCHANDISE RETURN

Description	Fee
Per transaction	$0.20
Shipper must have an advance deposit account [1]	

[1] See DMCS Schedule 1000.

SCHEDULE 1000.—FEES

Description	Dollars
First-class presorted mailing fee	$60.00
Second-class mailing fees:	
A. Original entry	265.00
B. Additional entry (all zones)	70.00
Second-class re-entry fee	40.00
Second-class registration for news agents	40.00
Third-class bulk mailing fee	60.00
Fourth-class special mail presorted mailing fee	60.00
Authorization to use permit imprint	60.00

SCHEDULE 1000.—FEES—Continued

Description	Dollars
Merchandise return (per facility receiving merchandise return labels)	60.00

Changes in the Domestic Mail Classification Schedule

The italicized language denotes additions to the Domestic Mail Classification Schedule. That which is bracketed denotes delections.

100.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as [f]*F*irst–[c]*C*lass [m]*M*ail.

100.020 Regular Mail.

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing [12]*11* ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

100.0202 Presorted Mail.

Presorted First-Class Mail is First-Class Mail other than [zone rated (priority mail)] *Priority Mail* which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

100.0203 Pre-barcoded ZIP + 4 Presorted Mail.

Pre-barcoded ZIP + 4 presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to five-digit ZIP Codes, which meets the machinability, address readability and barcoding specifications of the Postal Service and which meets the preparation requirements in section 100.047.

100.023 [Zone Rated (Priority) Mail] *Priority Mail.*

[Zone rated (priority) first-class mail] *Priority Mail* consists of (1) [f]*F*irst-[c]*C*lass [m]*M*ail weighing more than the maximum weight established for *regular* [f]*F*irst-[c]*C*lass [regular m] *M*ail and (2) other mail matter *(including First Class)* which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority [m]*M*ail may weigh up to and including 70 pounds.

100.032 First-[c]*C*lass [m]*M*ail which weighs one ounce or less is nonstandard mail if:

a. its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive, or

b. [if] it exceeds any of the following dimensions:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

100.041 First-[c]*C*lass [m]*M*ail mailed under section [100.022] *100.0202* must be presorted in accordance with regulations prescribed by the Postal Service.

100.042 First-[c]*C*lass [m]*M*ail mailed under section [100.022] *100.0202* must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted [f]*F*irst-[c]*C*lass [m]*M*ail, as required by the Postal Service.

100.047 Pieces mailed under sections 100.0201, *100.0202, 100.0203, and* 100.0211 [and 100.0221] must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed [as] *at* ZIP + 4 rate category *or prebarcoded ZIP + 4 presorted* mail *rates* only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP + 4 rate category *or pre-barcoded ZIP + 4 presorted mail* rates must be properly prepared and presorted as prescribed by the Postal Service.

100.050 *F*irst-[c]*C*lass [m]*M*ail must be deposited at places designated by the Postal Service.

100.060 *F*irst-[c]*C*lass [m]*M*ail receives expeditious handling and transportation, except that when [f]*F*irst-[c]*C*lass [m]*M*ail is attached to or enclosed with mail of another class, the service of that class applies.

100.070 First-[c]*C*lass [m]*M*ail is forwarded without additional charge.

100.071 [Zone rated (priority) mail is forwarded without additional charge.]

First-[c]*C*lass [m]*M*ail that is undeliverable as addressed is returned to the sender, without additional charge.

100.08 ANCILLARY SERVICES.

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of appropriate fees:

	Classification schedule
a. Address correction	SS-1
b. Business reply mail (except ZIP + 4 rate category mail).	SS-2
c. Certificates of mailing	SS-4
d. Certified mail	SS-5
e. C.O.D.	SS-6
f. Insured mail	SS-9
g. Registered mail (except ZIP + 4 rate category mail).	SS-14
h. Special delivery	SS-17
i. Return receipt (Priority only).	*SS-16*
[i] *j.* Merchandise return	[SS-17] *SS-20*

100.090 The rates and fees for [f]*F*irst-[c]*C*lass [m]*M*ail are set forth in the following rate schedules:

	Rate schedule
a. Regular	100
b. Postal and post cards	[101] *100*
c. Presorted	[102] *100*
d. [Zone rated (priority)] *Priority Mail*	103
e. Fees	1000

100.091 Postage on [f] *F*irst-[c]*C*lass [m]*M*ail is computed separately on each piece of mail.

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each [calendar] year at each office of mailing by any person who mails presorted mail, including presorted ZIP + 4 rate category mail *and pre-barcoded ZIP + 4 presorted mail.*

200.0107 Second-class matter published by an institution or society identified in sections 200.0106h through k, may contain advertising of other persons, institutions, or concerns, only under the following conditions:

a. The publication must be originated and published to further the objectives and purposes of the society;

b. Circulation must be limited to:

i. Copies mailed to members who pay either as part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers;

iii. Exchange. [; and.]

[iv. 10 percent of the total above as sample copies.]

c. The circulation of nonsubscriber copies, including sample and complimentary copies, is limited to 10 percent of the total number of copies referred to in b.

200.0110 Notwithstanding section 200.0101 through 200.0109, publications which meet all the following criteria are second-class mailable matter.

* * * * *

f. Must have a legitimate list of persons who request the publication; 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration[. This subsection will not be effective prior to March 20, 1982];

200.0201 Regular.

Regular second-class mail is all second-class mail except that to which section 200.021 applies.

a. Regular second-class may be mailed only by publishers or registered news agents.

b. Nonsubscriber and nonrequester copies, *including sample and complimentary copies,* mailed at any time during the calendar year up to 10 percent of the total [weight] *number* of copies mailed to subscribers and requesters during the calendar year are regular second-class mail provided that the nonsubscriber and nonrequester copies would have been regular second-class mail if mailed to subscribers or requesters. See Section 200.093 for mailings in excess of the 10 percent limitation.

200.0211 Within County

Within-county mail is second-class mail, other than matter mailed under section 200.0110, mailed in, and addressed for, delivery within the county where published and originally entered, from either the office of original entry or additional entry.

200.02111 To qualify as within-county second class, one of the following conditions must be met:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

[200.02111] *200.02112* For the purpose of the application of section 200.0211, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

[200.0215 Limited Circulation.

Limited Circulation mail is second-class mail; other than matter mailed under sections 200.0212, and 200.0213 or 200.0110, consisting of a mailing of fewer than five thousand copies per issue outside the county of publication.]

[200.0216] *200.0215* Second-class preferred mail (200.021) may be mailed only by publishers or registered news agents.

[200.0217] *200.0216* Nonsubscriber copies, *including sample and complimentary copies,* mailed at any time during the calendar year up to 10 percent of the total [weight] *number* of copies mailed to subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See Section 200.093 for mailings in excess of the 10 percent limitation.

For §§ 200.0211, 200.0212, and 200.0213, [and 200.0215,] expedited second-class mail is available without additional charge, but only to publications that issue weekly, or more frequently, and consist of news of general interest.

200.044 Nonsubscriber and nonrequester copies, *including sample and complimentary copies,* must be identified as required by the Postal Service.

OL
53
SS
59
MR
28
988
MI

200.090 The rates and fees for second-class mail are set forth as follows:

	Rate Schedule
a. Regular	200
b. Within County	201
c. Nonprofit	202
d. Classroom	203
e. Science of Agriculture	[204] *200*
[f. Limited Circulation	205]
[g. Science of Agriculture Limited Circulation	206]
[h. Commingled non-subscriber and non-requester	207]
[i.] *f.* Fees	1000

200.093 Nonsubscriber and nonrequester copies, *including sample and complimentary copies,* of any second-class mail mailed at any time during the calendar year, in excess of 10 percent of the total [weight] *number* of copies mailed to subscribers or requesters during the calendar year which are presorted and commingled with subscriber or requester copies are charged the full rates for regular second-class shown in Rate Schedule 200. The 10 percent limitation for a publication shall be *based* [determined] on the [combined] total [weight] *number* of all copies of that publication mailed to subscribers and requesters during the calendar year, subject to section [200.0217] *200.0216.*

200.094 Copies of any second-class mail which are destined for delivery within the sectional center area in which they are entered qualify for the applicable SCF discount as set forth in Rate Schedules 200, 202, *and* 203 [, 204, 205, 206 and 207]. The sectional center areas will be prescribed by the Postal Service.

300.0231 Required Sortation, ZIP + 4 Coded Mail.

Required sortation, ZIP + 4 coded mail mailed under section 300.0230 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

[300.0231 *300.0232* Five-Digit Presort Level.

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces prior to incoming secondary distribution.

300.0233 Five-Digit Presort Level, ZIP + 4 Coded Mail.

Five-digit presort level, ZIP + 4 coded mail is mail mailed under section 300.0232 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

300.0234 Five-Digit Presort Level, ZIP + 4 Pre-barcoded Mail.

Five-digit presort level, ZIP + 4 pre-barcoded mail is mail mailed under section 300.0232 which is ZIP + 4 pre-barcoded and which meets the machinability and other preparation requirements prescribed by the Postal Service.

[300.0232] *300.0235* Carrier Route Presort Level.

300.080 Third-class single-piece mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS-1.
b. Certificates of mailing	SS-4.
c. C.O.D.	SS-6.
d. Insured mail	SS-9.
e. Special delivery	SS-17.
f. Special handling	SS-18.
g. Return receipt (merchandise only).	*SS-16.*
[g] *h.* Merchandise return	SS-20.

300.100 A mailing fee as set forth in Rate Schedule 1000 must be paid once each [calendar] year by mailers of third-class bulk mail.

400.0203 Intra-BMC Parcel Post Mail.

Parcel post mail is eligible for the intra-BMC rate described in rate schedule[s] 400 [and 401] if it originates and destinates in the same BMC or ASF service area, Alaska, Hawaii or Puerto Rico.

400.021 Special.

Special mail is fourth-class mail consisting of:

* * *

h. Printed educational reference charts, including but not limited to (i) mathematical tables, (ii) botanical tables, (iii) zoological tables, and (iv) maps produced primarily for educational reference purposes. [Matter not entitled to be mailed at special fourth-class rates under section 400.021g, shall not be admitted to the special fourth-class category under section 400.021h, until such time as the expiration of rate phasing as now provided pursuant to § 3626 of title 39 United States Code, for materials enumerated in former § 4554(a) of title 39 United States Code.]

400.0232 Bulk.

Bulk bound printed matter mail is fourth-class bound printed matter mail consisting of properly prepared and presorted mailings of not less than 300 pieces [of identical size and weight, each piece of which is addressed to a different address] *prepared and presented in accordance with Postal Service regulations.*

400.046 Fourth-class pieces which are not identical in size and weight may be mailed in accordance with sections 400.0202, [and] 400.0212 *and 400.0232* only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

400.080 Fourth-class mail will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS-1.
b. Certificates of mailing	SS-4.
c. C.O.D.	SS-6.
d. Insured mail	SS-9.
e. Special delivery	SS-17.
f. Special handling	SS-18.
g. Return receipts (parcel post only).	SS-16.
[g.] *h.* Merchandise return	SS-20.

400.09 Rates and fees.

400.090 The rates and fees for fourth-class mail are set forth as follows:

	Rate schedule
a. Single-piece parcel post mail	400
b. Bulk parcel post mail	[400] *400*
c. Single-piece special fourth-class mail	402
d. Special fourth-class presorted mail:	
[i. Level A]	[403] *402*
[ii. Level B]	[403]
e. Library mail	[404] *402*
f. Single-piece bound printed matter	405
g. Bulk bound printed matter	406
h. Fees	1000

400.100 A presort mailing fee as set forth in Rate Schedule 1000 must be paid once each [calendar] year at each office of mailing by or for any person who mails presorted special *fourth-class* mail. Any person who engages a business concern or other individuals to mail presorted special *fourth-class* mail must pay the fee.

500.0212 Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided [only on a scheduled basis pursuant to the terms of a service agreement] *under terms and conditions as prescribed by the Postal Service.*

500.022 Next Day Service *and Second Day Service.*

500.0221 Next Day [service is] *and Second Day Services are* available at designated retail postal facilities [for overnight service] to designated destination facilities or locations for items tendered by the time or times prescribed by the Postal Service.

500.0222 Next Day Service is available for overnight delivery.

500.0223 Second Day Service is available for second day delivery.

[500.0221] *500.0224* Pickup service is available for Next Day [service] *and Second Day Services* [only on a scheduled basis pursuant to a service agreement between the Postal Service and the mailer] *under terms and conditions as prescribed by the Postal Service.* [The service agreement shall specify the time, place, day, or date, and frequency of such service.] Service [under a service agreement] shall be offered in a manner consistent with 39 U.S.C. § 403(c).

500.047 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. by *10:00* a.m., *or earlier time(s) prescribed by the Postal Service,* of the next delivery day in the case of Post Office-to-Post Office service;

b. by *3:00* p.m., *or earlier time(s) prescribed by the Postal Service,* of the next delivery day in the case of Post Office-to-Addressee service.

500.048 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. by 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. by 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

500.08 RATES AND FEES

500.080 The rates for Express Mail are set forth in the following rate schedules:

	Rate schedule
a. Same Day Airport	500
b. Custom Designed	501
c. Next Day Post Office-to-Post Office	502
d. Second Day Post Office-to-Post Office	*502*
[d.] *e.* Next Day Post Office-to-Addressee	503
f. Second Day Post Office-to-Addressee	*503*

Classification Schedule SS-1.—Address Correction Service

1.020 Address correction service is available to mailers of postage prepaid mail of all classes. Second-class [and controlled circulation] mail will receive address correction service.

1.030 Mail, other than second class [and controlled circulation], sent under this classification schedule[,] must bear a request for address correction service.

Classification Schedule SS-2.—Business Reply Mail

2.042 An accounting fee as set forth in Rate Schedule SS-2 must be paid each [calendar] year [or portion] for each advance deposit business reply account at each facility where the mail is to be returned.

Classification Schedule SS-3.—Caller Service

3.030 Fees for caller service are set forth in Rate Schedule [SS-3] *SS-10.*

Classification Schedule SS-10—*POST OFFICE BOX* [LOCKBOX] SERVICE

10.01 Definition.

10.010 *Post office box* [Lockbox] service is a service which provides the customer with a private, locked receptacle for the receipt of his mail during the hours when the lobby of a postal facility is open.

10.02 Description of Service.

10.020 The Postal Service may limit the number of *post office boxes.* [lockboxes] occupied by any one customer.

10.021 A *post office boxes.* [lockbox] holder may request the Postal Service to deliver all mail properly addressed to him through the *post office box.* [lockbox]. If the *post office box.* [lockbox] is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

10.022 *Post office box.* [Lockbox] service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

10.03 Fees.

10.030 Fees for *post office box.* [lockbox] service are set forth in Rate Schedule SS-10.

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, periods of rental and fees for *post office boxes* [lockboxes] are:

Period for box rentals	Fee
95 days or less	½ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
272 days to full year	Full annual fee.

Classification Schedule SS-14—REGISTERED MAIL

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS-6
b. Restricted delivery	SS-15
c. Return receipt	SS-16
d. Special delivery	SS-17
e. Merchandise return (shippers only)	SS-20

Classification Schedule SS-16—RETURN RECEIPTS

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS-5
b. C.O.D. mail	SS-6
c. Insured mail if insured for more than [$20] *$50.*	SS-9
d. Registered mail	SS-14
e. Express mail	*500* [SS-16]
f. First Class (Priority Mail only)	*100*
g. Third class (merchandise only)	*300*
h. Fourth class (parcel post only)	*400*

Classification Schedule SS-18—SPECIAL HANDLING

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. C.O.D. mail	SS-6
b. Insured mail	SS-9
c. Parcel airlift	SS-13
d. Merchandise return (shippers only)	SS-20

Classification Schedule SS-19—STAMPED ENVELOPES

19.01 DEFINITION

19.010 Plain stamped enveloped and printed stamped enveloped are enveloped with postage [embossed] thereon offered for sale by the Postal Service.

Classification Schedule SS-20—MERCHANDISE RETURN

20.040 The following services may be purchased in conjunction with Merchandise Return Service:

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	Classification schedule
a. Certificates of mailing	SS-4
b. Insured Mail	SS-9
c. Registered mail	*SS-14*
d. Special handling	*SS-18*

1000.010. The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule [SS-3] *SS-10.*

* * * * *

6000.011 [Not before November 30, 1978, present regulations on the minimum sizes for mail matter shall be expanded to all classes of mail and types fo service, and shall be amended to prohibit (1) all items which are less than .007 inches thick, and (2) all items, other than keys and identification devices, which are .25 inch thich or less and (a) are not rectangular, and/or (b) are less than 3.5 inches in width, and/or (c) are less than 5 inches in length.] *The following minimum size standards apply to all mailable matter: (1) all items must be at least 0.007 inches thick, and (2) all items, other than keys and identification devices, which are 0.25 inch thick or less must be (a) rectangular in shape, (b) at least 3.5 inches in width, and (c) at least 5 inches in length.*

[FR Doc. 88-6702 Filed 3-25-88; 8:45 am]

BILLING CODE 7715-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25499; File No. SR-Amex-88-5]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On January 28, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its policy to allow the inclusion of stocks traded over-the-counter (through the facilities of the National Association of Securities Dealers' Automatic Quotation ("NASDAQ") system) as components of stock index industry groups.

The proposed rule change was noticed in Securities Exchange Act Release No. 25320 (February 5, 1988), 53 FR 4252 (February 12, 1988). No comments were received on the proposed rule change.

In 1983, the Exchange began trading options on select stock index industry groups.[3] Currently, the Exchange trades options on two such industry groups: the Computer Technology Index ("XCI") and the Oil Index ("XOI"). XCI is composed of 30 stocks of widely-held corporations involved in various phases of the computer technology industry and XOI represents 15 stocks of widely-held corporations involved in the oil industry.

When the stock index industry groups were first developed, stock options on over-the-counter ("OTC") stocks were not traded. Consequently, the component stocks of the industry indexes were limited to listed stocks. Subsequently, in 1985, the Exchange began trading options on OTC stocks.[4] Each OTC stock selected by the Exchange for option trading must be traded through the facilities of NASDAQ and designated as a national market system ("NMS") security as defined in Rule 11Aa2-1 under the Act.[5] In addition, two OTC stocks (NMS securities) recently were added to Amex's broad-based Institutional Index option.[6] The Exchange now proposes to allow the inclusion of OTC stocks (NMS Securities) as components of the stock index industry groups.

Stock index industry groups were designed to reflect the character and price movement of the underlying industry. In order for the current industry indexes (and any future indexes that may be developed) to continue to maintain the character of the underlying industry, the Exchange believes companies whose stocks are traded over-the-counter should be eligible to be included in the indexes. A number of OTC-traded stocks are major corporations that have a significant impact on various industries. Accordingly, an industry index that is designed to represent a cross-section of corporations in various phases of an industry should include all major corporations in that industry, whether the stock is exchange-traded or traded over-the-counter.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[7] and the rules and regulations thereunder. The Commission believes that allowing the Amex to include OTC-traded stocks as components of stock index industry groups will permit the Exchange to develop and continue industry indexes that closely reflect an industry's current character. The availability of OTC stocks should enhance the Amex's ability to find adequate replacement stocks for its indexes should the need arise. Furthermore, the Amex will include in the indexes only OTC-traded stocks that are NMS Securities. Because real-time, last sale reports are available for transactions in these securities, the Commission believes that efficient and accurate calculation of the indexes' values should be possible.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: March 21, 1988.

Jonathan G. Katz,

Secretary.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] The listing and trading of options on the Amex Computer Technology and Oil and Gas Indexes were approved by the Commission in Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37558.

[4] *See* Securities Exchange Act Release No. 22028 (May 8, 1985), 50 FR 20310.

[5] 17 CFR 240.11Aa2-1 (1987).

[6] In this connection, the Philadelphia Stock Exchange trades an option on the National Over-the-Counter Index, which is composed of only OTC stocks. *See* Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532.

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25500; File No. SR-CBOE-87-56]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On January 4, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend certain membership requirements in the CBOE's constitution.

The proposed rule change was noticed in Securities Exchange Act Release No. 25319 (February 5, 1988), 53 FR 4253 (February 12, 1988). No comments were received on the proposed rule change.

The proposed rule change would update the Exchange's membership rules.[3] The first change would eliminate the requirement in section 2.2 of the CBOE constitution (Eligibility for Membership; Good Standing) that Exchange member partnerships have at least two general partners. This requirement also would be deleted from Exchange Rule 3.3 (Qualifications of Member Organizations). Originally, two general partners appear to have been required for continuity of the partnership in the event of the incapacity or death of one partner. However, while a similar discontinuity can occur in connection with the incapacity or death of a sole proprietor, individuals are allowed to become Exchange members. In either case, an adjustment period is provided for in Rule 3.17 (Death, Retirement, Withdrawal and Registration), and the Exchange retains control because it can sell the membership pursuant to Rule 3.14(b) (Sale and Transfer of Membership: Sale or Cancellation by Exchange).

The second change would amend section 2.4 of the CBOE's constitution (Registration of Individual memberships for Member Organizations) to eliminate the requirement that an executive officer, director, principal shareholder or general partner of a member organization must register his membership for that organization. The word "shall" would be replaced with the word "may," since there is no reason to make such registration mandatory.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[4] and the rules and regulations thereunder. The Commission believes that the proposed amendments will enable the CBOE to reflect more accurately current Exchange policies and procedures. In addition, the Commission believes that the amendments will allow the Exchange to eliminate outdated language from its membership rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6696 Filed 3-25-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] The purpose of these two constitutional amendments is to complete the changes in the Exchange's membership rules that were begun in File No. SR-CBOE-87-23, approved in Securities Exchange Act Release No. 24996 (October 5, 1987).

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25497; File No. SR-MCC-87-3]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1987 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Clearing Corporation (MCC) proposes to establish a service, and promulgate procedures, for an automated procedure for the order entry, confirmation, settlement and registration of mutual fund transactions, hereinafter called Fund/Serv. The proposed rule change would also create a new category of membership for the Fund/Serv Service and set standards for admisison and administration, as well as make conforming technical changes to the rules where necessary.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit MCC to (i) establish a service and procedures for the Fund/Serv Service, (ii) create a new category of membership for the Fund/Serv Service ("Fund/Serv-only Participant"), (iii) set standards and guidelines for the admission and administration of the Fund/Serv Service, and (iv) establish fees for the Fund/Serv Service.

The Fund/Serv Service will enable Participants to submit purchase and redemption orders involving mutual fund transactions to MCC. The proposed rule also authorizes MCC to establish procedures and guidelines and time frames for, among other things, submission of order data. On settlement date, MCC will debit and credit the appropriate parties' account for the value of the orders.

A Participants desiring to submit mutual fund orders (purchases, redemptions and exchanges) to another Participant (Mutual Fund Processor), does so by submitting the order to MCC for processing. Assuming that the order data contains the required information as established in MCC's procedures for Fund/Serv, MCC will thereupon transmit the information to the Mutual Fund Processor or Fund/Serv-only Participant. The Mutual Fund Processor or Fund/Serv Participant may then confirm or input the mutual fund order.

The proposed rule change also provides for the processing of confirmed orders to and from Participants and the submission of acceptances and rejections of mutual fund orders. All confirmed or reconfirmed orders that have not been deleted or rejected will settle in accordance with MCC's established time frames and procedures. On settlement date, MCC will debit and credit the appropriate Participants', Mutual Fund Processors' or Fund/Serv-only Participants' account for the value of the orders and money only related charges.

MCC disclaims responsibility for the completeness or accuracy of any order data or money only related charges processed through the Fund/Serv Service. In addition, MCC is not responsible for any errors, omissions or delays occurring without gross negligence on MCC's part, in the transmission of order data, money only related charge data or registration data to or from a Participant, Mutual Fund Processor or Fund/Serv-only Participant.

An accompanying interpretation and policy statement to the proposed rule specifically provides that MCC will not guarantee settlement of orders through the Fund/Serv Service. Accordingly, to the extent that one side fails to pay for a transaction, MCC retains the right to reverse credit entries or require a contra-side Participant to return to MCC any funds received. MCC will also revise its recently adopted Trade Guarantee Policy (the guarantee of CNS trades on the day trades are reported to members, as compared) to reflect that MCC will not guarantee Fund/Serv Service settlement obligations.

MCC proposes to create a new category of Participants for mutual funds desiring to utilize the Fund/Serv Service (Fund/Serv-only Participants). Fund/Serv-only Participants are required to either be (i) a principal underwriter defined in section 2(a)(29) of the Investment Company Act of 1940, as amended, that is a broker/dealer registered under the Securities Exchange Act of 1934, or (ii) an applicant that has demonstrated to MCC's Board of Directors that its business and capabilities indicate that it will materially benefit from access to the Fund/Serv Service.

MCC will require Fund/Serv-only Participants to enter into a Fund/Serv Participants Agreement with MCC. In addition, any Fund/Serv-only Participant who is required to make a Participant's Fund deposit, in accordance with the rules, will be required to enter into an applicable Participants Fund agreement.

MCC has not yet determined the amount of deposit required for a Fund/Serv-only Participants. Until resolution of these and other matters, MCC will delay filing, until a later date, other documents related to such Fund/Serv-only Participants, including the Fund/Serv Participants Agreement, Fund/Serv Participant's Fund Agreement and the Fund/Serv Participant's Questionnaire.

In addition to these standards of qualification applicable to MCC Participants, Fund/Serv-only Participants are required to meet certain minimum standards of financial responsibility and operational capability. Fund/Serv-only Participants are also required, among other things, to have a previous business history, capable personnel and sufficient financial ability to meet its obligations to MCC. Fund/Serv-only Participants are also required to manage one or more investment companies that have in the aggregate assets under management of at least $100 million.

National Securities Clearing Corporation (NSCC) will provide certain processing services to MCC for both Intra-Participant and Inter-Participant transactions. It is expected that NSCC will charge MCC such monthly fees as will be agreed upon at a later date and incorporated in a written agreement between the parties.

MCC proposes to implement the Fund/Serv Service on a pilot basis with no more than eight Participants (excluding Fund/Serv-only Participants). MCC requests that the pilot period run for a period of six months from the date of the approval order.

The proposed rule change is consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of mutual fund transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received. MCC will notify the Commission of any comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to *SR-MCC-87-5* and should be submitted by April 18, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6807 Filed 3-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16329/File No. 811-[illegible]]

Application for Deregistration; Metropolitan Life Variable Account C

DATE: March 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Metropolitan Life Variable Account C.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 14, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1 Madison Avenue, New York, N.Y. 10010.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Cindy Rose (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800) 231-3262 (in Maryland (301) 258-4300).

Applicant's Representations

1. On February 7, 1974, Applicant, a separate account of Metropolitan Life Insurance Company ("Metropolitan"), filed a notification of registration on Form N-8A, a Registration Statement on Form N-8B-1, and a Registration Statement on Form S-5. The 1933 Act Registration Statement was declared effective on February 28, 1975, and the initial public offering began on the same day. On April 24, 1987, pursuant to authorization of its Committee on July 22, 1986 and of persons entitled to vote in respect of Applicant on April 21, 1987, all of Applicant's assets were transferred in a reorganization to an investment division in Metropolitan Life Separate Account E (File No. 811-4001, a registered unit investment trust. Immediately after completion of this transfer, Separate Account E transferred the assets received from Applicant to the Growth Portfolio of Metropolitan Series Fund, Inc. (File No. 811-3618) in exchange for shares of the Growth Portfolio equal in value to the assets received. The purpose of the reorganization was to provide a larger, more viable investment vehicle for funding of variable annuities supported by Applicant. The economic interests of Applicant's contract owners in the new investment division were not adversely affected by the transaction.

2. Applicant has retained no assets, it has no debts or other liabilities outstanding, and it is not to its knowledge a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding up to its affairs. On April 24, 1987, immediately preceding the transfer, Applicant had issued and outstanding 80,012,917 units of its securities and total assets of $7,632,425.00.

3. Proxy materials regarding the proposed reorganization were distributed to Applicant's Contract Owners and filed with the Commission. Applicant was granted on order of the Commission on January 20, 1987 (Investment Company Act Release No. 15549), pursuant to section 17(b) and 17(d) of the Act and Rule 17d-1 hereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by Metropolitan.

For the Commission, by the Division of Investment Management, pursuant to delegate authority.

Jonathan Katz,

Secretary.

[FR Doc. 88-6808 Filed 3-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16330; 811-2017]

Application for an Order; Metropolitan Variable Account B of Metropolitan Life Insurance Co.

March 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Metropolitan Variable Account B of Metropolitan Life Insurance Company.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 14, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1 Madison Avenue, New York, N.Y. 10010.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa (202) 272-2622 or Special Counsel Lewis B. Reich (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3262 (in Maryland (301) 258-4300).

Applicant's Representations

1. On February 3, 1970, Applicant, a separate account of Metropolitan Life Insurance Company ("Metropolitan") filed a notice of registration on Form N-8A, a registration statement on Form N-8B-1, and a registration statement on Form S-5. The 1933 Act registration statement was declared effective on September 4, 1970, and the initial public offering began on the same day. On April 24, 1987, pursuant to authorization of its Committee on July 22, 1986 and of persons entitled to vote in respect of Applicant on April 21, 1987, all of Applicant's assets were transferred in a reorganization to an investment division in Metropolitan Life Separate Account E (File No. 811-4001) a registered unit investment trust. Immediately after completion of this transfer, Separate Account E transferred the assets received from Applicant to the Growth Portfolio of Metropolitan Series Fund, Inc. (File No. 811-3618), in exchange for shares of the Growth Portfolio equal in value to the assets received. The purpose of the reorganization was to provide a larger, more viable investment vehicle for funding of variable annuities supported by Applicant. The economic interests of Applicant's contract owners in the new investment division were not adversely affected by the transaction.

2. Applicant has retained no assets, has no debts or other liabilities outstanding, and it is not to its knowledge a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs. On April 24, 1987 immediately preceding the transfer, Applicant had total assets of $61,918,065.95.

3. Proxy materials regarding the proposed reorganization were distributed to Applicant's contract owners and filed with the Commission. Applicant was granted an order of the Commission on January 20, 1987 (Investment Company Act Release No. 15549), pursuant to sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by Metropolitan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6670 Filed 3-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16333; 811-2443]

Application for an Order; Metropolitan Variable Account D of Metropolitan Life Insurance Co.

Date: March 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Metropolitan Variable Account D of Metropolitan Life Insurance Company.

Relevent 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 14, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1 Madison Avenue, New York, N.Y. 10010.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Wendell Faria (202) 272-3450 or Special Counsel Lewis B. Reich (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch is person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On February 7, 1974, Applicant, a separate account of Metropolitan Life Insurance Company ("Metropolitan") filed a notice of registration on Form N-8A, a registration statement on Form N-8B-1, and registration statement on Form S-5. The 1933 Act registration statement was declared effective on February 28, 1975, and the initial public offering began on the same day. On April 24, 1987, pursuant to authorization of its Committee on July 22, 1986 and of persons entitled to vote in respect of Applicant on April 21, 1987, all of Applicant's assets were transferred in a reorganization to an investment division in Metropolitan Life Separate Account E (File No. 811-4001), a registered unit investment trust. Immediately after completion of this transfer, Separate Account E transferred the assets received from Applicant to the Growth Portfolio of Metropolitan Series Fund, Inc. (File No. 811-3618—in exchange for shares of the Growth Portfolio equal in value to the assets received. The purpose of the reorganization was to provide a larger, more viable investment vehicle for funding of variable annuities supported by Applicant. The economic interests of Applicant's contract owners in the new investment division were not adversely affected by the transaction.

2. Applicant has retained no assets, has no debts or other liabilities outstanding, and it is not to its knowledge a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On April 24, 1987, immediately preceding the transfer, Applicant had total assets of $690,466.00.

3. Proxy materials regarding the proposed reorganization were distributed to Applicant's contract owners along with a ballot and filed with the Commission. Applicant was granted an order of the Commission on January 20, 1987 (Investment Company Act Release No. 15549), pursuant to sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by Metropolitan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6671 Filed 3-25-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending March 18, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45489

Date Filed: March 16, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 13, 1988.

Description: Amendment No. 1 to the Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations revises and restates the extent of the Route authority being sought in its March 3, 1988 application as follows; "United hereby makes application for a new certificate of public convenience and necessity to provide roundtrip foreign air transportation of passengers, property and mail between Los Angeles, California, and Mexico City, Mexico."

Phyllis T. Kaylor,

Chief, Documentary Serivces Division.

[FR Doc. 88-6723 Filed 3-25-88;8:45am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment; 11th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a joint meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment and EUROCAE Working Group 14 to be held on April 26-29, 1988 in Paris, France. The address is:

EUROCAE Office, Sper Building, 11 Rue Hamelin 75783, Paris, France CEDEX 16.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) introduction of attendees; (3) approval of SC-135's 10th meeting's minutes; (4) review status of RF susceptibility problems and proposed changes to section 20 "RF Susceptibility;" (5) review status of Section 22 "Lightning Induced Transient Susceptibility; " (6) review progress on Section 23 "Lightning Direct Effects"; (7) review section 24 "Icing;" (8) review 2nd draft of DO-160C; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 21, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-6619 Filed 3-25-88; 8:45 am]

BILLING Code 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160, 406 MHz Emergency Locator Transmitters (ELT); Eighth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given for the 8th meeting of the RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on April 20-22, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of 7th meeting minutes; (3) review and discuss EUROCAE WG 29 activities; (4) report on problems of frequency interference in 406 MHz band; (5) review of task assignments from last meeting; (6) review of 4th draft of MOPS; (7) task assignments; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 21, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-6618 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Global Positioning System Equipment Tests

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of GPS Block II signal testing availability.

SUMMARY: Global Positioning System (GPS) signals will be made available to test GPS equipment in a selected availability (SA) environment. The testing location will be in the general vicinity of Cape Canaveral Air Force Station (AFS) in Florida. Signals from a GPS block II satellite will be transmitted from the AFS and will be used in conjunction with existing block I satellite signals to verify operation of government GPS receiver equipment. SA will be induced on the GPS signal at unannounced times and no information will be given prior to SA being applied. Any organization or manufacturer desiring to participate in the equipment testing program is encouraged to contact RSPA for more detailed information.

Date and Place: Scheduled for early July 1988 at Cape Canaveral Air Force Station, Florida.

FOR FURTHER INFORMATION CONTACT: Larry V. Grant, Office of Budget and Programs, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, DC, 20590, (202) 366-4354.

SUPPLEMENTARY INFORMATION: Civil participation in the test program is encouraged. There will be no formal registration conditions imposed for participation in the signal testing program. Civil participants are responsible for providing for their own logistics and equipment testing requirements. A government Civil Test Program Director will be located at the AFS to answer telephone inquiries during the test. The GPS block II satellite will radiate a low power and high power signal. The low power signal will be used to prevent interference with Block I satellites. A National Geodetic Survey benchmark has been located adjacent to the AFS where the Block II signal has adequate signal strength for testing.

Issued in Washington, DC, on March 18, 1988.

M. Cynthia Douglass,

Administrator, RSPA.

[FR Doc. 88-6722 Filed 3-25-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 21, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0250.

Form Number: ATF REC 5110/5.

Type of Review: Extension.

Title: Distilled Spirits Plants (DSP) Transaction and Supporting Data.

Description: Transaction Records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by ATF personnel to verify those accounts and consequent tax liabilities.

Respondents: Businesses or other-for profit, Small businesses or organizations.

Estimated Burden: 5,820 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-6640 Filed 3-25-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 23, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8644.

Type of Review: New Collection.

Title: Election To Be a Qualified Electing Fund.

Description: Form 8644 is used by foreign corporations whose main source of income is from investments. These corporations may elect on Form 8644 to elect to be a "qualified electing fund." A qualified electing fund must submit certain information to the IRS and its U.S. shareholders. The IRS uses this information to determine if U.S. persons have reported the correct amount of income from the fund.

Respondents: Businesses or other for-profit.

Estimated Burden: 3,200 hours.

OMB Number: 1545-0668.

Form Number: Letter Form 1284, (DO/SC/CG), 1284(C) Letter Form 1671C, 1671(DO), and 1671(SC).

Type of Review: Revision.

Title: Problem Resolution Program Acknowledgement Letter (Letter 1284); Second Request for Information to Handle Problem Resolution Case (Letter 1671).

Description: Taxpayers ask Problem Resolution offices for help when normal channels fail. Letter 1284 is a selective paragraph computer generated form that notifies taxpayers that the Problem Resolution Office is working on their case. It is also used to ask for information needed to resolve their problem, or to tell them that the problem has been resolved. Letter 1671 is a follow-up request for information when there has been no reply from a taxpayer by a specified date.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Burden: 125,500 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-6641 Filed 3-25-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Art in the Old Country

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Art in the Old Country" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at The American Swedish Institute, Minneapolis, Minnesota, beginning on or about April 25, 1988 to on or about June 12, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: March 24, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88-6851 Filed 3-25-88; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 59
Monday, March 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 1, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6750 Filed 3-24-88; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 1, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6751 Filed 3-24-88; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 8, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6752 Filed 3-24-88; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 8, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6753 Filed 3-24-88; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 15, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6754 Filed 3-24-88; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 15, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6755 Filed 3-24-88; 11:48 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6756 Filed 3-24-88; 11:48 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6757 Filed 3-24-88; 11:48 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6758 Filed 3-24-88; 11:48 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-6759 Filed 3-24-88; 11:48 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is schedule to be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 5, 1988 from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, McLean, Virginia 22102–5090, (703) 883–4003, (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Implementation of the Agricultural Credit Act of 1987

- Proposed Revisions to Regulations Governing FCA's Examination Process, 12 CFR Parts 611 and 617
- Proposed Revisions to Civil Money Penalty Regulations, 12 CFR Part 622, Subpart B, and FCA Policy Governing Civil Money Penalties, and related technical changes
- Proposed Revisions to Regulations Governing Regulatory Accounting Practices, 12 CFR Part 624
- Proposed Revisions to Regulations Governing Receivers, 12 CFR Part 611
- Proposed Revisions to Regulations Governing the Farm Credit Banks Funding Corporation, 12 CFR Part 615, Subparts A, B, C and O
- Repeal of 12 CFR 611.1140–1142, Concerning the Farm Credit System Capital Corporation
- Final Regulations Governing Book-Entry Procedures for the Financial Assistance Corporation Securities, 12 CFR Part 615
- Proposed Revisions to Regulations Governing Borrower Rights, 12 CFR Parts 614, 615, and 618
- Proposed Regulations Establishing Minimum Permanent Capital Standards for Farm Credit System Institutions, 12 CFR Part 615

[1] Closed Session

2. Examination and Enforcement Matters

David A. Hill,
Farm Credit Administration Board.

[FR Doc. 88-6829 Filed 3-24-88; 3:51 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:33 p.m. on Tuesday, March 22, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,191–L
Alaska National Bank of the North
Fairbanks, Alaska

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 23, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Assistant Executive Secretary (Operations).

[FR Doc. 88-6724 Filed 3-23-88; 5:07 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 23, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: March 30, 1988. Approximately 2:00 p.m. (Following Open Meeting).

PLACE: 825 North Capitol Street NE., Washington, DC 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Natural Gas Pipeline Company of America.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357–8400.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-6748 Filed 3-24-88; 11:46 am]

BILLING CODE 6717-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, April 6, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of March, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel. (202) 523–5920.

Date of Notice: March 21, 1988.

E.B. Meredith,
Acting Executive Director, National Mediation Board.

[FR Doc. 88-6726 Filed 3-24-88; 9:22 am]

BILLING CODE 7550-01-M

POSTAL SERVICE

Vote To Close Meeting

At its meeting on March 22, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation a meeting scheduled for April 4, 1988, at the Northern Virginia Management Sectional Center in Merrifield, Virginia. The members will consider certain mail classification matters that were deferred in the March 22, 1988, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes [pages 12–13], Docket No. R87–1.

The meeting is expected to be attended by the following persons: Governors Griesemer, Hall, Nevin, Peters, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5 and section 410(c)(4) of Title 39, United States Code; and § 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.

[FR Doc. 88-6792 Filed 3-24-88; 12:52 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:15 p.m. on Monday, April 4, 1988, at the Northern Virginia Management Sectional Center in Merrifield, Virginia, and at 8:30 a.m. on Tuesday, April 5, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the April 4 meeting is closed to the public. The April 5 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on March 22, 1988, the Board voted to close to public observation its meeting scheduled for April 4, 1988, to consider certain mail classification matters that were deferred in the March 22, 1988, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes [pages 12–13], Docket No. R87–1.

Agenda

Monday Session

April 4, 1988—1:15 p.m. (Closed)

1. Consideration of certain mail classification matters.

Tuesday Session

April 5, 1988—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 7–8, 1988.
2. Remarks of the Postmaster General.
3. Briefing on Field Reorganization. (Mr. Charters)
4. Briefing on Productivity Measurement. (Mr. Coppie)
5. Tentative Agenda for May 2–3, 1988, meeting in Washington, DC.

David F. Harris,
Secretary.

[FR Doc. 88-6793 Filed 3-24-88; 12:52 pm]

BILLING CODE 7710-12-M

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[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

VOL
53
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59
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Corrections

Federal Register
Vol. 53, No. 59
Monday, March 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80334-8034]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

Correction

In proposed rule document 88-5457 beginning on page 8234 in the issue of Monday, March 14, 1988, make the following corrections:

1. On page 8236, in the third column, the first paragraph after the first italicized heading should read: "The following allocation goal would be included in the framework FMP for the interim period and serve as introductory language to the allocation schedule:"

2. On page 8237, in the table, in the first column, the first entry should read "<300,000" and the second entry should read " >300,000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In rule document 88-5729 beginning on page 8752 in the issue of Thursday, March 17, 1988, make the following corrections:

1. On page 8752, in the third column, in the next to last paragraph, in the 10th line, "propose" should read "proposed".

2. In the same column, in the last paragraph, in the second line, "initiate" was misspelled.

3. On page 8753, in the first column, in the seventh line, "later" should read "latter".

4. On the same page, in the same column and paragraph, in the 13th line, after "*Pressentin*", remove the comma.

5. On the same page, in the same column, in the first complete paragraph, in the seventh line "document" should read "documents".

PART 4—[CORRECTED]

6. On page 8754, in the third column, in the center heading, in the third line, "581(f)" should read "518(f)".

S 4.1302 [Corrected]

7. On the same page, in the same column, in S 4.1302(a)(2), in the first line, "proposal" should read "proposed".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

Correction

In rule document 88-5118 beginning on page 7325 in the issue of Tuesday, March 8, 1988, make the following correction:

§ 630.906 [Corrected]

On page 7327, in the first column, in § 630.906(b), in the fifth line, "§ 630.909" should read "§ 630.907".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

[Public Notice CM-8/1176]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

Correction

In notice document 88-6186 appearing on page 9401 in the issue of Tuesday, March 22, 1988, make the following correction:

In the first column, the first paragraph should read:

"The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: June 16, 1988; August 18, 1988; September 15, 1988; October 20, 1988; November 17, 1988; and December 15, 1988. These meetings will be held in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001."

BILLING CODE 1505-01-D

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federal register

Monday
March 28, 1988

Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1620

Thrift Savings Plan; Eligibility; Interim Rule With Request for Comments

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan; Thrift Savings Plan Eligibility

March 15, 1988

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335, June 6, 1986) did not provide clear authority for certain employees to participate in the Thrift Savings Plan on a tax-deferred basis. Public Law 100–238 (January 8, 1988), which made technical amendments to the Federal Employees' Retirement System Act, provides that these employees will be entitled to participate in the Thrift Savings Plan under regulations issued by the Executive Director of the Federal Retirement Thrift Investment Board. The employees covered by this Pub. L. and these regulations are individuals on approved leave without pay to serve as full-time officers or employees of employee organizations, individuals assigned from a Federal agency to a State or local government under Subchapter VI of Chapter 33 of Title 5, United States Code (IPA mobility assignments), individuals appointed or otherwise assigned to one of the cooperative extension services (as defined by section 1404(5) of the National Agriculture Research, Extension, and Teaching Policy Act of 1977), and any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in 5 U.S.C. 8347(o). Section 8347(o) covers individuals who are not employed by the Federal Government, but who nevertheless are covered by the Federal Civil Service Retirement System.

DATES: Interim rules effective January 1, 1987. Comments must be received by May 15, 1988.

ADDRESS: Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION: These regulations are being given retroactive effect to January 1, 1987, in order to provide each of these affected individuals an opportunity to contribute make-up payments for the period of time that they were precluded from participation. Employer contributions on behalf of these individuals may be made solely at the discretion of the employing authority; however, each such authority must treat all of its employees who are eligible to receive employer contributions in the same manner.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employing authorities and those Federal employees who are not receiving salaries from the Federal Government and their employing authorities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary for these regulations to be effective as of January 1, 1987, in order for the affected individuals to be able to participate by means of make-up contributions in the Thrift Savings Plan from its commencement.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Accordingly, 5 CFR Part 1620 is amended as follows:

1. The authority citation for Part 1620 is added to read as follows:

Authority: 5 U.S.C. 8474, Pub. L. 100–238, Pub. L. 99–591.

2. Part 1620 is amended by designating § 1620.1 as Subpart A, and adding a Subpart heading, and adding Subparts B, C, and D, to read as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

Subpart A—House Cafeteria Employees

Sec.
1620.1 Continuation of eligibility to participate in the Thrift Savings Plan.

Subpart B—Cooperative Extension Service Employees

1620.10 Scope.
1620.11 Definitions.
1620.12 Contributions by employing authority.
1620.13 Prior employer contributions.
1620.14 Deadline for employing authority to begin employee contributions.
1620.15 Initial election period for employees.
1620.16 Computing percentage of basic pay.
1620.17 Retroactive employer and employee contributions.
1620.18 Payment to the recordkeeper; notice.
1620.19 Other regulations.

Subpart C—Union Employees and Intergovernmental Personnel Act Employees

1620.30 Scope.
1620.31 Definitions.
1620.32 Contributions by employing authority.
1620.33 Deadline for employing authority to begin employee contributions.
1620.34 Initial election period for employees.
1620.35 Computing percentage of basic pay.
1620.36 Employee make-up contributions.
1620.37 Make-up contributions by employing authority.
1620.38 Payment to the recordkeeper.
1620.39 Notices.
1620.40 Other regulations.

Subpart D—Certain Civil Service Retirement System Employees

1620.50 Scope.
1620.51 Definitions.
1620.52 Deadline for employing authority to begin employee contributions; notice to Board.
1620.53 Initial election period for employees.
1620.54 Retroactive employee contributions.
1620.55 Computing percentage of basic pay.
1620.56 Payment to the recordkeeper.
1620.57 Other regulations.

Subpart A—House Cafeteria Employees

* * * * *

Subpart B—Cooperative Extension Service Employees

§ 1620.10 Scope.

This subpart applies to any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System who has been appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)).

§ 1620.11 Definitions.

(a) As used in this subpart, the term "employing authority" means that organization within a State which employs an individual covered by § 1620.10 of this part and which has authority to make personnel

compensation decisions for such employees.

(b) As used in this subpart, the term "participating" means paying contributions to the basic annuity under either the Civil Service Retirement System or the Federal Employees' Retirement System.

§ 1620.12 Contributions by employing authority.

(a) An employing authority, at its sole discretion, may choose to make employer contributions for individuals in its employ who are participating in the Federal Employees' Retirement System as if that authority were the individual's employing Federal agency under the provisions of 5 U.S.C. 8432(c).

(b) If an employing authority chooses to make employer contributions, such contributions may be made for any period of eligible service since January 1, 1984. These contributions consist of the automatic one percent contribution (5 U.S.C. 8432(c)(1)(A)) and the employer matching contribution (5 U.S.C. 8432(c)(2)), as well as contributions for periods of eligible service after April 1, 1987 and contributions for eligible service prior to April 1, 1987 (5 U.S.C. 8432(c)(1)(B) and (C), and 8432(c)(3)).

(c) An employing authority may only commence employer contributions or terminate employer contributions during a Thrift Savings Plan election period. The employing authority must provide all affected employees with a notice of this decision to commence or terminate employer contributions at least 45 days before the beginning of the applicable election period.

(d) An employing authority that has chosen to make employer contributions must treat all of its employees who are eligible to receive employer contributions in the same manner.

(e) The employing authority must not make any employer contributions on behalf of individuals who are subject to the Civil Service Retirement System.

§ 1620.13 Prior employer contributions.

Any employing authority that has made employer contributions before the publication date of this subpart will not be deemed to have chosen to make these contributions by virtue of these payments. However, if such an authority fails to choose to make employer contributions, contributions previously made on behalf of an eligible employee may not be retrieved.

§ 1620.14 Deadline for employing authority to begin employee contributions.

An employing authority must allow employees participating in the Federal Employees' Retirement System or the Civil Service Retirement System to make contributions to the Thrift Savings Plan no later than the pay period following its acceptance of the employee's election form.

§ 1620.15 Initial election period for employees.

Employees who are participating in the Civil Service Retirement System or the Federal Employees' Retirement System must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time within 60 days of the date of publication of this subpart. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which he or she could have otherwise made in 1987 or 1988.

§ 1620.16 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

§ 1620.17 Retroactive employer and employee contributions.

(a) *Retroactive employer contributions.* An employing authority that has chosen to make employer contributions may make the employer contributions described in § 1620.12(b) on behalf of employees participating in the Federal Employees' Retirement System to the extent that neither the employing authority nor the Federal Government has already made these contributions. The employing authority must make these retroactive employer contributions in accordance with the procedure described in § 1620.37 of this part.

(b) *Retroactive employee contributions.* Employees participating in the Civil Service Retirement System or the Federal Employees' Retirement System shall be allowed to make, on a retroactive basis, all employee contributions for eligible periods of service with the employing authority unless these employees have already had the opportunity to make contributions for these periods of service. Retroactive employee contributions shall be made in accordance with the procedures described in § 1620.36 of this part.

§ 1620.18 Payment to the recordkeeper; notice.

(a) *Payment.* Employing authorities will make applicable employer contributions, if any, and employee contributions (deducted from the employee's actual pay) to the Board's Recordkeeper. At this time, the Recordkeeper is the National Finance Center, Department of Agriculture, New Orleans, Louisiana.

(b) *Notice.* Within 30 days from the date of the publication of this part, the Department of Agriculture must notify each employing authority concerning the applicability of these regulations to employees covered by § 1620.10 of this part.

§ 1620.19 Other regulations.

Employing authorities and individuals covered by § 1620.10 of this part are governed by the regulations in Chapter VI, title 5, Code of Federal Regulations to the extent that those regulations are not inconsistent with this subpart.

Subpart C—Union Employees and Intergovernmental Personnel Act Employees

§ 1620.30 Scope

This subpart applies to any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System who—

(a) Has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) or 8401(11) of Title 5, United States Code; or

(b) Has been assigned, on an approved leave without pay basis, from a Federal agency to a State or local government under subchapter VI of Chapter 33, title 5, United States Code.

§ 1620.31 Definitions.

As used in this subpart, the terms—

(a) "Employing authority" means any entity that employs an individual covered by § 1620.30 of this part and which has authority to make personnel compensation decisions for such employees; and

(b) "Participating" means that the employee (or employing authority on behalf of the employee) is paying contributions to the basic annuity under either the Civil Service Retirement System or the Federal Employees' Retirement System.

§ 1620.32 Contributions by employing authority.

(a) An employing authority, at its sole discretion, may choose to make employer contributions for individuals in its employ who are participating in the Federal Employees' Retirement System as if that authority were the individual's employing Federal agency under the provisions of 5 U.S.C. 8432(c).

(b) If an employing authority chooses to make employer contributions, such contributions may be made for any period of eligible service since January 1, 1984. These contributions consist of the automatic one percent contribution (5 U.S.C. 8432(c)(1)(A)) and the employer matching contribution (5 U.S.C. 8432(c)(2)) as well as contributions for periods of eligible service dating from April 1, 1987 and contributions for eligible service prior to April 1, 1987 (5 U.S.C. 8432(c)(1) (B) and (C), and 8432(c)(3)).

(c) An employing authority may only commence employer contributions or terminate employer contributions during a Thrift Savings Plan election period. The employing authority must provide all affected employees with a notice of this decision to commence or terminate employer contributions at least 45 days before the beginning of the applicable election period.

(d) An employing authority that has chosen to make employer contributions must treat all of its employees who are eligible to receive employer contributions in the same manner. If an employing authority chooses to provide employer make-up contributions, it must provide those contributions on behalf of an employee who has returned to his or her agency of record or transferred to another Federal agency without a break in service to the extent that they relate to his or her past service with such authority.

§ 1620.33 Deadline for employing authority to begin employee contributions.

An employing authority must allow an employee participating in the Civil Service Retirement System or the Federal Employees' Retirement System to begin making contributions no later than the pay period following its acceptance of the employee's election form.

§ 1620.34 Initial election period for employees.

Employees who are participating in the Civil Service Retirement System or the Federal Employees' Retirement System must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time within 60 days of the date of publication of this subpart. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which he or she could have otherwise made in 1987 or 1988.

§ 1620.35 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount that the individual involved is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

§ 1620.36 Employee make-up contributions.

(a) If the employee chooses, the employing authority must compute the amount of employee contributions for which the employee would have been eligible to make after April 1, 1987, from the employee's net payable salary according to a schedule of equal payments that the employee has agreed to. The employee must make this election within 30 days of the date that he or she is notified by the employing authority of the opportunity to schedule make-up payments, or forfeit the opportunity to do so. The employing authority may set a ceiling on the number of pay periods over which the make-up payments may be made; however, this ceiling may not be less than two times the number of pay periods in which the payments could have been made. The payment schedule must begin no later than the pay period following the date of the agreed-upon schedule and it may not contain more than four times the number of pay periods in which the payments could have been made.

(b) If the agreed-upon payment schedule cannot be met because the employee has insufficient net pay or because the employee has reached an annual ceiling for tax-deferred contributions under 26 U.S.C. 402(g) or 415, the payment schedule will be suspended until the employee is again able to make full payments through payroll deductions. Pay periods that are prescribed in the payment schedule, and for which an employee is unable to make payments because of insufficient net pay or a ceiling on tax-deferred contributions, will not be counted against the maximum number of pay periods applicable to the schedule and the maximum number of applicable pay periods must be extended accordingly. Employees may not make partial payments under a payment schedule.

(c) If an employee chooses to contribute the make-up amount, he or she may terminate that decision and that termination shall be irrevocable. If an employee separates from employment in such a way as to become ineligible to participate in the Thrift Savings Plan, the employee may terminate the retroactive contribution or accelerate the contribution by lump sum payment from the final salary payment (not including any lump sum annual leave payment). If the employee dies, the retroactive contribution of the deceased employee will be terminated as of the final salary payment.

(d) The retroactive payment amount is not subject to the maximum pay period contribution limitations; however, these amounts must be included when determining amounts subject to annual ceilings on contributions under 26 U.S.C. 402(g) or 415.

(e) In the event an employee does not have sufficient net pay to make all of the Thrift Savings Plan deductions, the employee's regular Thrift Savings Plan deduction shall take precedence over the employee's payment schedule contribution.

§ 1620.37 Make-up contributions by employing authority.

Make-up contributions by the employing authority are not subject to the limitations on maximum pay period contributions; however, these amounts must be included when determining amounts subject to any applicable annual ceiling described in 26 U.S.C. 415.

§ 1620.38 Payment to the recordkeeper.

The employing authority is responsible for transmitting employer and employee contributions to the employee's Federal agency of record. Employee contributions will be deducted from the employee's actual pay. The employee's agency of record is responsible for transmitting the employer and employee contributions to the Board's Recordkeeper. The employee's election form (TSP–1) will be filed in the employee's official personnel folder.

§ 1620.39 Notices.

(a) Federal agencies who are employers of record of any individuals covered by § 1620.30 of this part must notify employing authorities and

affected employees of the application of these regulations no later than 30 days from their publication date.

(b) Each employing authority must notify the Board no later than 60 days from the publication date of these regulations that it employs individuals covered by § 1620.30 of this part. Entities which become employing authorities after the publication date of these regulations must provide the Board with this notice within 60 days of employing an individual covered by § 1620.30 of this part.

§ 1620.40 Other regulations.

Employing authorities and individuals covered by § 1620.30 of this part are governed by the regulations in Chapter VI, title 5, Code of Federal Regulations, to the extent that those regulations are not inconsistent with this subpart.

Subpart D—Certain Civil Service Retirement System Employees

§ 1620.50 Scope.

This subpart applies to any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(o) of Title 5, United States Code.

§ 1620.51 Definitions.

As used in this subpart the terms—

(a) "Employing authority" means that organization that employs an individual covered by § 1620.50 of this part and which has authority to make personnel compensation decisions for such employees; and

(b) "Participating" means paying contributions to the basic annuity under the Civil Service Retirement System.

§ 1620.52 Deadline for employing authority to begin employee contributions; notice to Board.

An employing authority must begin making contributions from an employee covered by § 1620.50 of this part no later than the pay period following its acceptance of the employee's election form. These contributions must be made to the Board's Recordkeeper. The employing authority must notify the Board no later than 60 days from the publication date of these regulations that it employs individuals covered by § 1620.50 of this part.

§ 1620.53 Initial election period for employees.

Employees who are covered by § 1620.50 of this part must be permitted to file an election form with the employing authority identifying the amount, if any, of their contribution to the Thrift Savings Plan at any time before the expiration of 60 days after the publication date of this subpart. Any employee who was eligible to participate in a prior election period, but was denied the opportunity to do so, must be given the opportunity to make any election which he or she could have otherwise made in 1987 or 1988.

§ 1620.54 Retroactive employee contributions.

Employees participating in the Civil Service Retirement System shall be allowed to make, on a retroactive basis, all employee contributions for eligible periods of service with the employing authority unless these employees have already had the opportunity to make contributions to the Thrift Savings Plan for these periods of service. Retroactive employee contributions shall be made in accordance with the procedures described in § 1620.36 of this part.

§ 1620.55 Computing percentage of basic pay.

When the employing authority computes a percentage of basic pay to determine the amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used must be the same as that used in computing any amount that the individual involved is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System.

§ 1620.56 Payment to the recordkeeper.

Employing authorities will make applicable employee contributions (deducted from the employee's actual pay) to the Board's Recordkeeper. At this time, the Recordkeeper is the National Finance Center, Department of Agriculture, New Orleans, Louisiana.

§ 1620.57 Other regulations.

Employing authorities and individuals covered by § 1620.50 of this part are governed by the regulations in Chapter VI, Title 5, Code of Federal Regulations, to the extent that those regulations are not inconsistent with this subpart.

[FR Doc. 88-6615 Filed 3-25-88; 8:45 am]

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March 28, 1988

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Availability of Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry; Notice

VOL
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 80229-8029]

Availability of Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For FY 88, Saltonstall-Kennedy (S–K) funds are available to assist persons in carrying out research and development projects which address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting, processing, and associated infrastructures. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications it will fund.

DATE: Applications must be received by May 27, 1988.

ADDRESSES: Applications should be sent to the applicable regional or Washington Office of the National Marine Fisheries Service. (For addresses, see Section III. E.2.)

FOR FURTHER INFORMATION CONTACT: Phyllis S. Bentz, S–K Program Manager, National Marine Fisheries Service, Washington, DC 20235, Telephone: 202–673–5371.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c-3–713c-3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects which address aspects of United States fisheries, including, but not limited to, harvesting, processing, and associated infrastructures. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

B. Funding

There is no guarantee that sufficient funds will be available to make awards for all approved projects. For FY 88 about $9.3 million was appropriated for the S–K program. Approximately $1.4 million has been committed to fund the second and third years of previously approved multi-year projects. Therefore, about $7.9 million may be used to fund new fisheries research and development projects, subject to availability.

II. FY 88 Funding Priorities

Consistent with authorizing legislation, NOAA will emphasize the use of current and future S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity within the fishing industry to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; (2) the potential benefits are too widely dispersed; and (3) the time frame for resolution of the problem or issue is long or unknown. While multi-year approaches to address priority research areas are encouraged, the funding of short term proposals is not precluded.

Fisheries research, development, and utilization proposals should relate to one or more of the priority areas in the Regional and National sections. Primary consideration for funding will be given to proposals addressing the specific priorities. However, NMFS will also consider proposals that address other significant industry problems or opportunities (note exceptions which follow).

Except for the Western Pacific, Puerto Rico, and the U.S Virgin Islands, funding will not be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) resource enhancement; (4) research evaluating the ability or extent to which fish are attracted to fish aggregating devices; (5) extension activities such as newsletters; and (6) aquaculture research and development.

Rather than the S–K program, programs administered by NMFS authorized by the Fish and Seafood Promotion Act of 1986 (FSPA), will be the mechanism to conduct promotional and consumer education activities related to fish and seafood. The National Fish and Seafood Promotional Council established in December 1987, will conduct generic seafood promotion. This Council is authorized to conduct both domestic and export marketing. The product-specific councils, authorized by the FSPA, will market specific species or groups of species. However, for species or products which are not widely available commercially, S–K funds may be used for end use research, i.e., non-proprietary product concept testing, technical development, and consumer acceptance evaluation where these activities are a logical component of a comprehensive research or development project.

The NMFS has identified fisheries and funding priorities in consultation with a wide cross section of the U.S. fishing industry. The priorities are identified on a regional basis according to specific fisheries. Some priorities were found to relate to several, and in a few instances, all fisheries or regions and are listed as national priorities. In these cases, the application should state the extent to which multiple fisheries resources would be addressed.

Priorities for FY 88 funding within specific fisheries are listed below, along with a summary of activities funded in FY 87. Proposals addressing the priorities should build upon or take into account any past and current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from the applicable regional or Washington office. (For addresses, see Section III. E.2.)

A. Northeast Region

1. *Squid, Mackerel and Butterfish.* Projects funded in FY 87 focused on developing and demonstrating fishing gear which conserves juveniles and non-target species; continued support of a towed underwater gear observation system; and developing degradable materials for fishing pots and traps.

For FY 88, projects are solicited which will complement these activities or address other developmental impediments. Priority for funding will be given to projects that:

a. Conduct technical and economic feasibility studies on harvesting and processing of non-traditional species. High priority will be placed on situations where a shift in effort results in reduced fishing pressure on over-harvested stocks.

b. Demonstrate the use of high fat fish, such as mackerel, in surimi and minced fish products.

c. Design, test, and/or demonstrate various types of fishing gear which will enhance conservation measures by reducing by-catch of juveniles and non-target species and expand existing conservation engineering efforts.

2. *Atlantic Demersal Finfish.* Projects funded in FY 87 focused on developing equipment for processing spiny dogfish offshore and analyzing the feasibility for developing a new product from sea urchins.

In FY 88, priority will be given to projects which:

a. Evaluate the technical and economic feasibility of shifting fishing efforts to other species, such as the hakes and mackerel, and resolving associated problems.

b. Develop gear and/or techniques which will contribute to the conservation and management of fish stocks. Develop/demonstrate gear to replace other gear types deemed to be inconsistent with conservation and management goals. This may include analyses of the costs to the industry associated with changing to new gear.

3. *Coastal, Estuarine and Great Lakes Fisheries.* Projects funded in FY 87 focused on evaluation of Omega-3 fatty acids from 12 Lake Superior fishes; continued investigations in characteristics and utilization of wastes from ocean quahog and surf clam processing plants; developing the carp fishery; and developing a program to redirect recreational effort to underutilized species.

Priorities for FY 88 funding will focus on projects which:

a. Develop and/or demonstrate fishing gear which increases survival of fish taken in catch-and-release marine recreational fisheries; this effort may include possible educational materials.

4. *General.* Projects funded in FY 87 include development of a fishing vessel training center; developing a grade A specification for extending the shelf-life of selected Mid-Atlantic species; and improving the safety and quality of raw bivalve shellfish. In addition, continued support was given for research involving fish waste resource recovery.

The following FY 88 priorities pertain to all Northeast fisheries:

a. Conduct analyses to evaluate foreign trade barriers which effectively impede U.S. companies from penetrating the export market for fishery products, particularly underutilized species. Trade analyses should also address demand for underutilized species, such as the hakes, ocean pout, skate and mackerel.

b. Develop uniform testing and reporting standards for contaminants in fish and shellfish in the Northeast Region.

c. Develop Grade A standards for important seafood products where those standards are currently lacking.

d. Continue development of vessel safety education courses for fishermen, including accident prevention as well as what to do when an emergency occurs. Provisions for bringing the training to the fishing ports should be included to assure maximum educational opportunities.

B. Southeast Region

Both commercial and recreational projects should be concentrated on shifting current harvesting activity from fully or over utilized fisheries to alternate fisheries, or should contribute to solutions for the specific problem areas identified in the following sections. Proposals should contain appropriate economic analysis where the output's applicability and priority depend upon the product, process, or concept being economically viable.

1. *Latent/Underutilized Southeast Resources.* Projects funded in FY 87 focused on gear education and safety; handling techniques for stone crabs; evaluation of catfish lipid content and properties; resolving user conflicts between recreational and commercial users; evaluation of processing technology; development of the butterfish fishery; analysis of tariff and non-tariff trade barriers; evaluation of foreign shrimp aquaculture impacts; development of product quality guidelines; evaluation of the international competitiveness of the fish meal and oil industry with respect to foreign trade barriers; development of a program to increase demand for underutilized species; analysis of commercial/recreational user conflicts in Puerto Rico and the U.S. Virgin Islands; and evaluation of pelagic fishing practices in the U.S. Virgin Islands.

For FY 88, the priority areas of consideration include the following. (Priorities b. and c. may include menhaden to the extent projects address the use of menhaden for human consumption.)

a. Proposals which lead to the development of the coastal herrings complex or other underutilized demersal or pelagic species. Emphasis can be on production, processing, distribution or some combination of these.

b. On-board care of seafood. Studies in this area can address improved handling, sorting and storage of seafood. The studies can address quality, cost-savings, overall efficiency, methods for live release of unwanted sizes or species or other worthy objectives.

c. Develop and/or adapt processing technology to improve product value or reduce processing costs.

d. Program to identify or encourage the development of underutilized recreational species. This work should expand and build upon existing and ongoing research.

2. *Shrimp.* A project was funded in FY 87 to address the problems associated with adoption of trawl efficiency devices by shrimp vessels.

In FY 88 funding priority will be given to proposals designed to provide for the testing and evaluation of alternative trawl efficiency devices (TED's) or to accelerate their rate of adoption. Proposals should complement and not duplicate current efforts in this area, (e.g. those of the Gulf and South Atlantic Fisheries Development Foundation, NMFS and Sea Grant).

3. *Molluscan Shellfish.* Funded in FY 87 were projects to evaluate shellfish sanitation indicators; develop a shellfish sanitation program, evaluate systems for removal (depuration) of Hepatitis A virus in shellfish; and develop a system to classify Louisiana shellfish growing areas.

In FY 88 priority will be given to proposals which address quality and safety issues in molluscan shellfish. All proposals in this area must demonstrate knowledge of relevant past and current research. Specifically, proposals should:

a. Provide for more uniformity in regulations and practices among States.

b. Improve sampling protocols.

c. Identify critical control points during handling and/or address problems related to the recreational harvesting of shellfish and crustaceans.

d. Improve handling of shellstock by examining current practices (e.g., depuration) and the extent of shell breakage/contamination.

e. Study application of nucleic acid probes and various immunological techniques to measure and detect pathogenic viruses.

f. Study improved microbiological standards by defining the relationship between *Escherichia coli* concentrations in shellfish and their growing waters and which would also evaluate the conditions for and rate of growth of *E. coli* in shellfish and their harvest waters.

4. *General.* The following priorities pertain to all Southeast fisheries:

a. Gear selectivity. Proposals will be entertained for gear development and/or fishing strategies to eliminate unwanted by-catch, including unwanted

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[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

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sizes or species. The proposals can be for any fishing gear including various trawls, nets, pelagic or bottom or longlines and traps.

b. Studies to resolve user conflicts. A current barrier to orderly development of commercial and recreational fisheries is a growing set of user conflicts, technological, biological and ecological, involving access to and use of the fishery resources of the Gulf and South Atlantic. Proposals are encouraged which provide innovative approaches to the resolution of such conflicts. Proposals must demonstrate knowledge of past and ongoing research in this area.

c. Trade barrier identification. Proposals should either identify existing tariff and non-tariff trade barriers to the export of fisheries products or provide for methodologies to discover such barriers affecting commercial and recreational fisheries. Proposals can also include an analysis of the impact of trade barriers.

C. Southwest Region

The Southwest Region is comprised of two distinct geographic areas—the U.S. Pacific Islands and three mainland states (California, Nevada, and Arizona). The island fisheries differ significantly in many instances from the mainland fisheries. Accordingly, we have established a list of proposed funding priorities for each of these geographic areas.

1. Pacific Islands

Projects funded in FY 87 provide for development of infrastructure in Kosrae State, investigation of the causes and detection of fish poisons in the Federated States of Micronesia (FSM), experimental fishing for tuna in the FSM and the Commonwealth of the Northern Marianas Islands, development of an educational program for reseeding of giant clams in Guam and the FSM, feasibility of developing sport-fishing in Guam and the FSM, development of an alternative product from out-graded tuna in Hawaii, and development of the sea cucumber fishery in the FSM.

In the Pacific Islands, priority consideration will be given in FY 88 to projects which contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau. High priority will be given to proposals with regional benefits. All proposals should be consistent with the cultural and social values of Pacific island communities.

Proposals which address problems in the following areas will be given priority for funding in FY 88.

a. *Tuna.* Investigate techniques for improving the yield of sashimi-quality tuna in Pacific Island areas. Particular attention should be given to product quality control and trade requirements and opportunities.

b. *Other Pelagic Species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus on trade opportunities and requirements in local and foreign markets. Proposals that will investigate product quality, improved handling, processing and storage methods will be given consideration.

c. *Recreational Fisheries.* Proposals designed to inventory key resources, assess the feasibility, opportunities and identify strategies for the development of sport fishing in the Western Pacific will be given strong consideration. Such development should be consistent with local economic development priorities.

d. *Vessel Support Services and Facilities.* Proposals for feasibility studies and for the design, engineering and construction of needed fishing vessel support services and facilities (e.g., launch ramps) will be considered. Proposals should demonstrate a need by local fishermen.

e. *Bottomfish.* Proposals to analyze trade patterns of local and domestic markets and to expand trade opportunities will be given high priority. In addition, further work on the detection, prevention, characterization and understanding of fish toxicity, such as ciguatoxin and scombratoxins will be given strong consideration. Proposals that involve the assessment of the economic and production feasibility of deep water shrimp fisheries will also be given consideration.

f. *Fishing Vessel Safety.* The use of small-scale fishing vessels in the Island areas involves several unique fishing vessel and crew safety considerations. Proposals that analyze, assess and seek to find ways to improve fishing vessel and crew safety will be given consideration.

g. *Fish Aggregation Devices (FADs).* New information and data on FADs indicate that improvements in cost effectiveness can be made over earlier mooring design and deployment strategies. Therefore, proposals related to FAD's will be considered, particularly those that will investigate FAD material, design and productivity.

2. Mainland (California, Nevada, and Arizona)

a. *General.* In FY 87 in this category the NMFS funded a proposal to investigate improved fishing vessel safety and productivity through remote sensing.

In 1988, general emphasis will be given to research and development activities which will support the continued growth and or maintenance of the region's industry. Priority will be given to proposals that:

(1) Analyze and assess the projected and real effects of the implementation of the Safe Drinking Water and Toxics Enforcement Act of 1986 (otherwise known as Proposition 65), and develop methods to comply and ameliorate any impacts on the West Coast seafood industry;

(2) Determine the economic impact of trade barriers and foreign subsidies on the competitiveness of specific regional seafood products in U.S. domestic and world markets;

(3) Investigate methods and technology to utilize or dispose of the byproducts of seafood processing;

(4) Develop strategies to improve the safety of fishing vessel and crew safety, as well as shoreside processing workers;

(5) Investigate improved processing technology for species of commercial importance;

(6) Investigate methods to improve product quality assurance and control technologies from the net to the table;

(7) Analyze the design, placement, habitat value and productivity of artificial reefs.

b. *West Coast Groundfish.* In FY 87 the NMFS funded proposals to complete an economic assessment of commercial fisheries; and investigate alternative fishing gears and strategies to reduce the incidental mortality of marine mammals, endangered species and seabirds.

In FY 88 priority consideration will be given to projects which:

(1) Evaluate trade opportunities for key species and identify impediments to trade expansion;

(2) Investigate technologies for using underutilized West Coast species commercially, such as Pacific whiting and short belly rockfish;

(3) Develop, demonstrate and evaluate innovative fishing techniques that minimize conflict between fisheries, reduce mortality of fully utilized species and reduce incidental mortality of seabirds and marine mammals;

(4) Examine methods and techniques to improve product quality.

c. *Tuna.* Priority in FY 88 will be given to proposals that:

(1) Demonstrate factors (seasonality, quality, regulations, trade barriers, etc.) that influence or impede the flow of

fresh (including sashimi-quality) tuna in export and domestic trade;

(2) Investigate and identify cost-effective technology for producing alternatives to canned tuna;

(3) Develop effective utilization of sport-caught tuna.

d. *West Coast Pelagics.* In FY 87 the NMFS funded proposals to improve the use of sport-caught marine fishes and to conduct an economic assessment of recreational fisheries.

Priority in FY 88 will be given to projects that:

(1) Develop technology for new or improved product forms, such as surimi, for species such as sardines and mackerel.

(2) Develop or expand recreational fisheries for underutilized pelagic species.

D. Northwest Region

The Northwest fishing industry requires a research and development program which focuses on fully utilizing groundfish found in the Exclusive Economic Zone (EEZ) off Oregon, Washington and Alaska. The Region's industry is heavily dependent on the resources found in the EEZ off Alaska, and therefore will also invest in projects of high quality which support this segment of the industry.

1. *West Coast Groundfish (Oregon, Washington and Alaska).* The NMFS funded projects in FY 87 that were to: Evaluate the feasibility of surimi production from whiting; analyze Pacific whiting parasite problems; demonstrate processing technology of North Pacific flatfish; evaluate the international competitiveness of the Northwest fishing industry; analyze the options for controlling fishing effort in the Northeast Pacific; evaluate the effectiveness of a voluntary safety program; and conduct vessel and plant safety training for a factory trawler.

The FY 88 priorities outlined below will focus on research and development activities which will support the continued growth of the Region's industry. Groundfish species in need of further development include the following: pollock, whiting, shortbelly rockfish, and assorted flatfish found in the EEZ.

a. Develop new or improved processing and harvesting technologies which increase efficiency, productivity, and competitiveness of the Region's industry. Specific projects may:

(1) Develop improved technology to more efficiently process flatfish.

(2) Develop and evaluate new gear technology and selectivity strategies which reduce the bycatch of prohibited and incidental species and improve gear efficiency.

(3) Continue development of technology to detect and remove bone and parasites found in groundfish.

(4) Research the incidence, location, and transmission of various parasites found in groundfish and develop fishing strategies to avoid heavily infested stocks.

(5) Develop and adapt harvesting, processing, and packaging technologies to improve quality of fresh and frozen seafood.

(6) Demonstrate and refine technologies required to develop surimi from Pacific whiting.

(7) Continue collection and analysis of data describing the current progress in achieving full utilization of groundfish resources in the North Pacific EEZ for the purpose of assisting capital investment decisions by American harvesters, processors, and marketers.

b. Develop and evaluate waste utilization technologies which process fish waste into marketable products for both shoreside and at-sea operations. Taking into account the work that has been done to date under the S–K program, specific proposals may:

(1) Review present waste utilization operations to determine potential research and development needs.

(2) Demonstrate technologies or systems which have practical application for individual plants or at-sea operations.

(3) Investigate the potential uses of groundfish as a hydrolyzate or aquaculture feed. (Proposals must build on past and on-going work in this area.)

c. Continue data collection and analysis which assists industry in overcoming trade barriers and provides useful information in formulating trade strategies. Specific proposals may:

(1) Determine the volume and impact of foreign processed EEZ species on the competitiveness of the Northwest industry in domestic and world markets;

(2) Determine the economic impact of trade barriers and foreign subsidies on U.S. competitiveness in domestic and world markets.

d. Continue development of a safety training program for fishing vessels and processing plants that assists in reducing accidents, injuries, and insurance costs.

2. *Marine Recreational Fisheries.* In FY 87 the NMFS funded a project to inventory the marine recreational fishing industry in the Northwest.

The following priorities for FY 88 apply to the range of fisheries utilized by the marine recreational fisheries community. Specific projects may:

a. Examine the levels of mortality related to hook design and release practices.

b. Develop and analyze primary data on demand for marine recreational fishing services, facilities, and resources to further develop the MRF industry.

E. Alaska Region

1. *Alaska Groundfish.* Projects funded in FY 87 address surimi processing efficiency and product quality; efficiency of processing with respect to by-products and alternative uses of processing by-products; development of flatfish harvesting and processing technology; expansion of marine safety training for the Alaska groundfish small boat fleet; and methods to minimize incidental catch of cod trawls.

Proposals which address impediments to full use of Alaska groundfish in the following areas will be given priority for funding in FY 88.

a. By-catch utilization and/or avoidance is an area of extensive and growing importance as the fisheries off Alaska become more domestic. Specific requirements in this area include:

(1) Development of new or application of existing technology for the avoidance of taking unwanted or prohibited species.

(2) Development of handling and processing technology for improved utilization of by-catch.

(3) Establishment of quality guidelines for products evolving from by-catch.

(4) Conduct of education and technology transfer activities for by-catch information.

b. Projects that continue the education and training of vessel operators and crew members in on-board safety.

c. Product quality and processing line efficiency projects designed to reduce operating costs and improve product quality. Examples of specific problem areas for which proposals are solicited include:

(1) The application of existing, or development of new technology for the detection and removal of parasites in finished products.

(2) Refinements to inplant handling of flatfish, including sorting and grading of mixed species deliveries.

(3) Improvement in the number and quality of products evolving from the waste streams of floating and shoreside processing plants.

(4) Understanding seasonal variations in the flesh characteristics and quality of various groundfish species.

d. Projects that develop resource profile information and analyze the commercial potential of underutilized species. Non-target species, such as capelin or arrowtooth flounder, are the focus of this priority.

e. Studies that identify and analyze barriers to the expansion of trade within specific markets for domestically produced fisheries products.

F. National

In FY 87, the NMFS funded national projects which address issues cross-cutting a number of fisheries and regions. Specifically, NMFS funded projects which address strategies to reduce fishing vessel insurance costs and improve vessel safety; conduct feasibility studies for marketing councils for: (1) Clams, oysters and mussels, (2) Atlantic mackerel, and (3) West-Coast species; estimate and forecast economic activity associated with commercial fishing; assess the chemical, physical and magnetic techniques available for marking fishing gear; evaluate a waterjet system for efficiency in removing fish flesh from the fish frame; evaluate the use of potassium sorbate and lactic acid bacteria to reduce the sodium chloride requirements for inhibition of botulism toxin production in smoked fish; analyze the worldwide effect of salmon farming on U.S. domestic and export markets; describe the movement of fresh and frozen seafood products from domestic harvesting through processing, identifying critical control points as a part of a continuing program to establish a comprehensive seafood surveillance system for the U.S. industry; conduct investigations to determine the nutritional equivalency of surimi with natural seafood products; survey the current and potential use of recreational and commercial fishing vessels for wildlife and habitat observations.

In FY 88 consideration will be given to proposals which address the following areas:

1. Develop cost effective methods to comply with prohibition of at-sea disposal of plastics and other wastes.

2. The safety of shellfish has been identified by industry as a primary consumer concern. Shellfish products pose a special health risk because the harvest areas are subject to contamination from viruses, pathogenic microorganisms, chemical and other toxic materials; and many are eaten raw. To address this problem, there is a need for research in the following areas:

a. Determine acceptable irradiation levels to ensure safe production and use of shellfish products. Research should include development of necessary data required by FDA to establish new irradiation standards.

b. Determine the operating parameters for the depuration of shellfish focusing on viruses, but not excluding chemicals.

c. Develop rapid methods to identify the presence of rotovirus contamination of shellfish.

d. Conduct a survey to determine the incidence and/or levels of *Listeria monocytogenes* contamination in shellfish.

3. In the interest of maintaining product safety and integrity, the means need to be established by which to identify geographic origin of fishery products and maintain their identity from point of harvest through the distribution chain to the consumer. To address this problem, an evaluation of existing of and potential techniques to identify the origin of fish and shellfish in the U.S. market is required. Proposals should include an analysis of the techniques and economic feasibility of each system.

4. Coordinate the development of regional vessel safety and insurance programs. Efforts should focus on expanding existing safety programs to Atlantic and Gulf coast fisheries. The collection of casualty data should be incorporated in all proposals.

5. The development of a model seafood surveillance program based on Hazard Analysis Critical Control Points (HACCP) was initiated in 1987 and focused on the processing of seafood products. To complete this program, research is needed in the following areas:

a. Identify critical control points and recommend methods and tolerances to ensure the production and distribution of safe, wholesome, and properly labeled fishery products with primary focus on harvesting, importing, distribution, and retail operations. Technical research needed to develop associated methods and tolerances should reflect recommendations identified in HACCP industry workshops. Information on ongoing efforts and quality and safety issues identified at HACCP workshops on processing operations to date will be provided by NMFS to interested parties.

b. Design, conduct, and document a total economic analysis of the results of a model seafood surveillance program as developed and supplied by the National Marine Fisheries Service that is based throughout on the HACCP concept. The analysis is to address those controllable processes, from harvesting to retailing, in which seafoods may be subjected to hazards that compromise their safeness, quality, and wholesomeness, or that may be associated with economic malpractices.

6. Undertake an evaluation of the available methodologies and literature on the valuation of sport and commercial fisheries. If needed, develop a concensus, and prepare guidelines for adoption by NMFS of the applicable methodologies to allocate fishery resources between user groups. Prepare a demonstration project using the agreed upon method.

7. Identify marine recreational fishing industry concerns in international trade negotiations, in particular for the Uruguay round of GATT negotiations; and to specifically identify products and services that are sensitive to import competition. Information on recent efforts will be provided by NMFS to interested parties.

8. Considering that the U.S. is becoming the world's leading exporter, evaluate the suitability of using the recommended Codex standards for seafood commodities as a basis for settling trade issues related to standards at the Uruguay round of GATT negotiations. Statistically sample domestically produced and imported products marketed in the U.S. and test such products for conformance with the Codex standards; develop a technical data base that may be used to support positions to adopt, modify or reject such standards for purposes of trade.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[8]

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Successful applicants for S–K funding, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first time applicant for Federal grant funds may be subject to a preaward accounting survey by the Department of Commerce prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For FY 88, the NMFS may have an estimated $7.9 million available to fund new fishery research and development projects. Grants or cooperative agreements will be awarded for a period of one to three years.

To qualify as a multi-year award, a project must, in addition to the criteria elaborated under "Administrative Requirements" and other applicable sections, meet the following criteria: (1) The technology to be developed must require more than a single year to research, develop and demonstrate; (2) The products or services to be developed require more than a single year to research, design and demonstrate and/or market; (3) Single year funding would otherwise result in *significant* discontinuity in project implementation; (4) Projects must indicate complete objectives, tasks, or products for the end of each funding cycle. The burden of proof for meeting these criteria rests with the applicant. No projects will be funded beyond three consecutive years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives were met during the prior year.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be approved by September 30, 1988.

C. Cost-Sharing Requirements

The NMFS must provide at least 50 percent, but will provide no more than 80 percent of total project costs. Total project costs are defined as those approved by NMFS in the project award. The non-Federal share may include funds received from private sources or from State or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the costs of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to a non-profit, public interest organization which demonstrates in its application that it lacks financial ability to meet cost-sharing requirements, and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Puerto Rico and the U.S. Virgin Islands. In the case of American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands, under the provisions of 48 U.S.C. 1469a.(d), any requirement for local matching funds under $200,000 (including in-kind contributions) shall be waived. The total project costs and the percentage of cost-sharing required will be determined as described below.

1. Determining Total Project Costs

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant, cooperative agreement, or contract award between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circulars. In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

2. Determining the Level of Cost Sharing Required

The percentage of the total project costs that must be provided from non-Federal sources follows.

a. *20 percent:* For projects that would benefit the general public as well as the fishing industry but offer no unique advantage to specific industry sectors, the non-Federal cost share will be no less than 20 percent of the total project cost. These projects would ordinarily involve research on the safety of fishery products or other activities for which members of the fishing industry would not necessarily receive direct benefits.

b. *30 percent:* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share will be no less than 30 percent of the

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[8] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States,

Continued

Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) The title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

total project cost. Most applications will be in this category.

c. *40 percent:* For projects which involve significant fishing industry participation, entail a limited risk, and in which the prospects for immediate future gain for the project are significant, the non-Federal cost share will be no less then 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Applications must identify the specific priorities to which they are responding. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be clearly and completely submitted in the following format:

1. *Cover Sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices, NMFS Washington Office or Department of Commerce Regional Administrative Support Centers (RASC); addresses are listed under the "Application Submission and Deadline" section which follows.

2. *Project Summary.* Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing)

c. Project duration: (proposed beginning and ending dates)

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Specific priority(ies) to which project responds.

g. Project objective.

h. Summary of work to be performed. For continuing projects the applicant will briefly describe progress to date in addition to work proposed with the additional funds.

i. Total Federal funds requested (initial and total amount and percentage of total project costs).

j. Project costs to be provided from non-Federal Government sources (initial and total amount and percentage of total project costs).

k. Total project costs.

3. *Project Description.* Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. *Identification of Problem(s).* For new projects, identify and completely describe the problem(s) the project addresses. In this description, include: (1) The fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, (4) the specific priorities to which the proposal responds, and, (5) how the problem(s) prevent the fishing industry from developing a fishery or using existing fishery resources. If the application is for the continuation of an existing S–K funded project, describe progress to date and explain why continued funding is necessary.

b. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe (1) the level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* This section requires the applicant to prepare a general narrative fully describing the work to be performed which will achieve the previously articulated goals and objectives. A chart which outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included.

The narrative should include information which responds to the following questions:

(1) How will the project be structured?

(2) What major products, (e.g., research, services, or activities) will be produced and what is the specific nature of these products?

(3) What supporting work activities (be as specific as possible) will be undertaken to produce major products, services?

(4) Who will be responsible for carrying out various work activities? (Highlight work which will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evaluate final products or services, and how will it be integrated into the project?

The milestone chart should:

(1) Graphically illustrate the major products, research, services and/or activities,

(2) Supporting work activities and associated timeline; and

(3) The individual responsible for various work activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide as much detail as possible. Applications lacking sufficient detail may be eliminated from further consideration.

g. *Project Management.* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any tasks will be conducted through subcontracts, applicants must follow procurement standards guidance in OMB Circular A–102 for State and Local Governments, Indian Tribes, and Attachment O to OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. If a subcontractor is chosen prior to application submission, the process used must be documented.

h. *Project Impacts.* Describe the impact of the project in terms of

anticipated increased landings, production, sales, exports, product, quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products, services and results of the project will be made available to the fishing industry.

i. *Evaluation of Project Impacts.* The procedures for evaluating the relative success or failure of a project in achieving its goals should be clearly delineated within each proposal. It is the responsibility of applicants to identify the best methodology for evaluating project effectiveness.

Evaluation procedures in each proposal should at a minimum contain the following:

(1) The project objectives should be stated in a substantive, measurable way.

(2) Specific methods should be defined that will be used to (a) monitor the progress of the project according to dated milestones, and (b) evaluate the accomplishments of the project in terms of its original goals and objectives.

(3) The benefits of the project should be clearly defined. Depending on the nature of the benefits, the evaluation methodology should be able to accurately assess the benefits. For example, if statistical procedures are to be used, their specific application and use in the project evaluation should be described.

(4) Where benefits might be termed "intangible," methods should be defined to measure results. For example, in the case of safety programs will follow-up surveys be conducted to correlate potential reductions in accident rates?

j. *Project costs.* The applicants must submit cost estimates showing total project costs as well as the Federal and non-Federal shares. No cost sharing can come from another Federal source. Applicant's matching costs are to be divided into cash and in-kind contributions. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, an applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual outyear costs) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. To support its budget the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of direct costs must be specified in the categories listed below. The budget may also include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government. Estimated indirect costs may be included pending approval of a negotiated Federal indirect cost rate. The applicable Grants Officer listed in Section E will assist prospective applicants in obtaining a negotiated Federal indirect cost rate, if appropriate.

(1) *Personnel.* (a) Salaries (by position title) of recipient employees and amount for the project. Also, identify percent of person's time spent on the project.

(b) Fringe Benefits (amount only). This entry should be the proportionate cost of fringe benefits paid for amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

(2) *Consultants.* Identify specific tasks and work to be performed by consultants.

(3) *Contracts.* Identify all work to be completed by contract. If a commitment has been made prior to application for funding to contract with a particular vendor, explain how the vendor was selected, type of contract, deliverables expected, time frame, and cost. All contracts must meet the standards established in OMB Circulars.

(4) *Travel and Per Diem.* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. Registration fees should be included.

(5) *Equipment and Furniture.* Identify items of equipment/furniture purchases or rental costs with the intended use.

(6) *Supplies.* Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies may be included under Indirect Costs unless purchased in a large quantity to be specifically used for the project.

(7) *Indirect Costs.* This entry should be based on the applicant's established indirect cost rate with the Federal Government. Estimates may be included pending approval of a negotiated Federal indirect cost rate.

(8) *Other Costs.* Identify any specific costs that are only applicable to the project.

4. *Project Consolidation.* Applicants may submit two or more projects under one proposal but must identify estimated project costs and budgets separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline.* The NMFS will accept applications for funding under this program between March 28, 1988 and May 27, 1988. An application will be accepted if the application is received by any of the offices listed below on or before May 27, 1988.

2. *Submission of Applications to NMFS Reviewing Offices.* Applicants must submit one signed original and two (2) copies of the complete application. *Applications are not to be bound in any manner.*

a. Applications relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):

Regional Director, National Marine
Fisheries Service, P.O. Box 1109,
Gloucester, MA 01930, Telephone No:
(617) 281–3600.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands):

Regional Director, National Marine
Fisheries Service, Duval Bldg., 9450

Koger Blvd., St. Petersburg, Florida
33702, Telephone No: (813) 893–3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands, Northern Mariana Islands):

Regional Director, National Marine
Fisheries Service, 300 South Ferry
Street, Terminal Island, CA 90731,
Telephone No: (213) 548–2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):

Regional Director, National Marine
Fisheries Service, Bin C15700, 7600
Sand Point Way, NE., Seattle,
Washington 98115, Telephone No:
(206) 527–6150.

Alaska Region (Alaska):

Regional Director, National Marine
Fisheries Service, P.O. Box 1668, 709
West Ninth Street, Juneau, AK 99802,
Telephone No: (907) 586–7221.

b. Applications addressing national priorities should be sent to:

Director, Office of Trade and Industry
Services, National Marine Fisheries
Service, 1825 Connecticut Avenue,
NW., Room 814, Washington, DC
20235, Telephone: (202) 673–5371.

c. Questions of an administrative nature should be referred to the NOAA Grants Offices listed below.

Northeast:

Eastern Administrative Support Center
(EC32), 253 Monticello Avenue,
Norfolk, Virginia 23510, Telephone:
(804) 441–6646.

Southeast:

Central Administrative Support Center
(CC31), Federal Bldg. Room 1758, 601
East 12th Street, Kansas City,
Missouri 64106, Telephone: (816) 426–
7267.

Northwest/Southwest/Alaska:

Western Administrative Support Center
(WC33), BIN C15700, 7600 Sandpoint
Way, NE, Seattle, Washington 98115,
Telephone: (206) 526–6036.

Washington:

National Capital Administrative Support
Center (DC33), NBOC1 Room 106,
11420 Rockville Pike, Rockville,
Maryland 20852, Telephone: (301) 443–
8574.

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which office should evaluate the proposed work. This will normally be the office where the application is filed.

1. *Consultation with Interested Parties.* The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. The regional and Washington Offices of NMFS will make project descriptions available in the following manner:

a. *Public review and comment.* Regional applications may be inspected at the office to which they are submitted. All applications will be available for inspection at the NMFS Office of Trade and Industry Services, 1825 Connecticut Avenue NW., Room 814, Washington, DC from June 3, 1988 to June 17, 1988. Written comments will be accepted at a regional or the Washington office until June 17, 1988.

b. *Consultation with members of the fishing industry.* The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

c. *Consultation with Government agencies.* Applications will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other Federal agencies. The Regional Fishery Management Councils will be asked to review proposals which could impact a managed fishery, the by-catch of a managed fishery, or a fishery management issue.

2. *Technical Evaluation.* The NMFS, in consultation with appropriate private and public sector authorities, will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following evaluation criteria:

a. *Problem Description and Project Conceptual Approach Toward Resolution.* Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (20 points).

b. *Soundness of Project Design/Technical Approach.* Evaluated will be whether or not the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points).

c. *Project Management and Experience and Qualifications of Personnel.* Evaluated will be the organization and management of the project, the project's personnel in terms of related experience, qualifications, and extent of cooperation with the fishing industry and government throughout the various phases of the project. (15 points).

d. *Project Monitoring and Evaluation.* Evaluated will be the effectiveness of the applicant's proposed methods to track project progress and evaluate the final accomplishments of the project in terms of its original goals and objectives and contribution to fisheries development. (20 points).

e. *Project Costs.* Evaluated will be the justification and allocation of the budget in terms of the work to be performed. Taken into account will be unreasonably high or low project costs, as well as funds requested from S–K which should more appropriately be provided by the applicant. (20 points).

3. *Formal Industry Review.* After the technical evaluation, each reviewing office will solicit comments from the fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. This review may be carried out by correspondence or involve formal meetings of industry representatives.

Considered in the review, along with the technical evaluation, will be the significance of the problem addressed in the project. The reviewers will rank each project in terms of importance or need for funding, and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated, the reviewing offices will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries, who will determine the number of projects to be funded based on the recommendations provided, consistency of projects with the identified fisheries objectives, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined

by NOAA Grants Officers. Projects may not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligations of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller General of the United States, or their authorized representatives.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports will be submitted to the individual specified as the Program Officer in the funding agreement. The content of these reports will include, at a minimum, a summary of progress and expenditures to date, including:

a. Description of tasks scheduled and accomplished;

b. Description of actual and scheduled expenditures;

c. Explanation of any differences between actual and scheduled work or expenditures; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is awarded, submit an orginal and two copies of a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. The content of the evaluation should include, at a minimum:

a. Description of the original project goals and objectives, and the context in which the project was to benefit the fishing industry. This description should address the following questions:

(1) What were the original project goals and objectives?

(2) To what extent were goals measurable or quantifiable?

(3) Were modifications made to project goals and objectives and, if so, what was the cause for the modifications?

(4) Were the goals and objectives attained? How? If not, why?

b. Description of the specific accomplishments (information, products, or services) of the project and the relationship of these to the project's goals and objectives.

(1) List the specific information, products, or services produced by the project.

(2) Describe the relationship of the products and services to the original project goals and objectives.

(3) Describe the extent to which the products or services meet the needs of the fishing industry.

(4) Describe the value of the products or services by themselves or in concert with other activities.

c. Description of how the project benefited the fishing industry. This description should address the following questions:

(1) To what extent did the industry have access to the products or services produced by the project?

(2) To what extent have the fishing industry and associated infrastructure (universities, financial institutions, etc.) used the project's products or services to satisfy a need or lessen business or other risks?

(3) To what extent are the project's results likely to be used by the industry in the future?

(4) To what extent are project results likely to be used by others in the future to provide benefits to the fishing industry?

d. Description of the specific economic or other benefits the fishing industry received as a result of its use of the products or services of the project or as a result of others using the products or services. This description should address the following questions:

(1) Are clear economic benefits demonstrable?

(a) If economic benefits are demonstrable, how? (e.g. increased landings, production, sale and/or value of fishery products, increased exports, greater vessel or gear efficiency, etc.)

(b) If not, why? (Were the results too intangible? A function of greater elapsed time interval? Other?)

(2) Nature of benefits:

(a) What were the benefits of the project?

(b) Are benefits one-time or continuing?

(c) To what extent are benefits measurable vs. intangible?

(d) Are benefits direct or indirect?

(e) Are the benefits the result of a "negative" finding?

e. Description of the actual need for Federal assistance in the project.

7. If a project is funded by grant or cooperative agreement, an applicant must comply with applicable Office of Management and Budget (OMB) Circulars, and Treasury Circulars. Copies are available from the NOAA Grants Offices listed above.

8. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications (in addition to the Final Report in 6. above) printed with grant funds to the Office of Trade and Industry Services, NMFS, Washington, DC 20235.

9. Any state agency submitting an application for funding is required to complete item 22 on Standard Form 424 regarding clearance by the State Point Of Contact (SPOC) established as a result of Executive Order 12372.

B. Obligations of the National Marine Fisheries Service

The NMFS will:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Washington or Regional Offices for clarification or explanation of any information appearing in this notice.

3. Monitor all projects after award to ascertain their effectiveness in achieving objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the FY 88 solicitation at the time it is published in the **Federal Register**.

C. Responsibility of the Grants Officer

The Grants Officer is responsible for the administrative processing of NOAA Federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Officer. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

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D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable Federal, State and local laws.

VI. Classification

NOAA reviewed this notice in accordance with Executive Order 12291. This notice is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned OMB #0648-0135.

This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily.*

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: March 23, 1988.

Carmen J. Blondin,

Director, Office of Trade and Industry Services.

[FR Doc. 88-6637 Filed 3-25-88; 8:45 am]

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LIST OF PUBLIC LAWS

Last List March 17, 1988

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S. 557/Pub. L. 100–259

Civil Rights Restoration Act of 1987. (Mar. 22, 1988; 102 Stat. 28; 5 pages) Price: $1.00

S.J. Res. 126/Pub. L. 100–260

To designate March 16, 1988, as "Freedom of Information Day." (Mar. 23, 1988; 102 Stat. 33; 1 page) Price: $1.00

S.J. Res. 252/Pub. L. 100–261

Designating June 5–11, 1988, as "National NHS—NeighborWorks Week." (Mar. 23, 1988; 102 Stat. 34; 2 pages) Price: $1.00

S.J. Res. 265/Pub. L. 100–262

To designate March 20, 1988, as "National Agriculture Day." (Mar. 23, 1988; 102 Stat. 36; 1 page) Price: $1.00

CFR CHECKLIST

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
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*700–1199	15.00	Jan. 1, 1988
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11	11.00	July 1, 1987
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Vol. 53 No. 60

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Tuesday
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Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Civil Service Retirement System; Coverage

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting rules on the continuation of civil service retirement coverage and benefits for career civilian employees of (1) the Federal Aviation Administration permanently assigned to Washington National Airport and Dulles International Airport following the lease of the airports to the Metropolitan Washington Airport Authority and (2) the United States House of Representatives permanently assigned to the food service operations of the House of Representatives after those operations have been transferred to a private contractor.

EFFECTIVE DATE: April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202)-632-5560.

SUPPLEMENTARY INFORMATION: Pub. L. 99-591, enacted October 30, 1986, which authorized the Secretary of Transportation to lease Washington National Airport and Dulles International Airport to the Metropolitan Washington Airport Authority, also permitted the continuation of civil service retirement coverage and benefits for career civilian employees of the Federal Aviation Administration permanently assigned to the two airports. On May 21, 1987, OPM published and requested comments on interim rules (52 FR 19125) to provide continued civil service retirement coverage for these workers.

Pub. L. 99-500, enacted October 18, 1986, permitted food service employees of the House of Representatives to retain their civil service retirement coverage and benefits following the transfer of the food service operation to a private contractor. On February 19, 1987, OPM published and requested comments on interim rules (52 FR 5069) to provide continued civil service retirement coverage for these workers.

No comments were received on either set of interim rules.

Both sets of interim rules were mistakenly placed in Subpart C of Part 831. Subpart C regulates credit for service. Subpart B regulates coverage. Since the rules concern coverage under the Civil Service Retirement System, they should have been placed in Subpart B of Part 831. The final rules correct this erroneous placement.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 831—RETIREMENT

Accordingly, OPM is adopting its interim rules published on February 19, 1987, at 52 FR 5069, and on May 21, 1987, at 52 FR 19125, as final rules, with the changes set forth below:

Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§§ 831.307 and 831.308 [Redesignated as §§ 831.202 and 831.203]

2. Sections 831.307 and 831.308 are redesignated §§ 831.202 and 831.203, respectively, and the heading of each section is revised to read as follows:

§ 831.202 Continuation of coverage for food service employees of the House of Representatives.

* * * * *

§ 831.203 Continuation of coverage for employees of the Metropolitan Washington Airports Authority.

* * * * *

[FR Doc. 88-6732 Filed 3-28-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-018]

Importation of Apples, Peaches, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by specifying definite areas in Sonora, Mexico, which the Administrator of the Animal and Plant Health Inspection Service has determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches, and tangerines may be imported without treatment for these pests. This action will allow the importation in accordance with the regulations of these fruits from the specified definite areas.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States.

On December 29, 1987, we published in the **Federal Register** (52 FR 49026–49028, Docket Number 87–176), a document proposing to amend Part 319 of the regulations by allowing apples, grapefruit, oranges, peaches, and tangerines to be imported from certain municipalities in Sonora, Mexico (Altar, Atil, Caborca, Carbo, Empalme, Guaymas, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel), without treatment for five fruit flies known to occur in Mexico. The fruit would be imported in accordance with § 319.56–2(e), which contains provisions for importation of fruits and vegetables that come from definite areas free from insect pests when the fruits and vegetables, and the definite areas, meet certain conditions contained in § 319.56–2.

The Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined that definite areas in the state of Sonora, Mexico, meet all the criteria contained in §§ 319.56–2(e)(4) and 319.56–2(f) for importation of fruit from definite areas and districts free from certain injurious insects, specifically five types of fruit flies (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus*), which are known to occur in Mexico and attack apples, grapefruit, oranges, peaches, and/or tangerines.

Comments

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before January 28, 1988. We received 42 comments from fruit growers and shippers, other individuals and associations, and state agencies. Of these comments, 37 supported the proposal and five did not support the proposal.

Four commenters asserted that the proposal could not be adequately reviewed because it did not contain detailed procedures of the surveys and pest exclusion activities the Mexican Ministry of Agriculture is using to ensure that the definite areas in Mexico are free from fruit flies.

The Mexican Ministry of Agriculture has submitted written detailed procedures for surveys and pest exclusion activities to the Administrator of APHIS, and the Administrator has reviewed these procedures and found them to meet the requirements of § 319.56–2. These procedures were placed in the rulemaking record and were available on request. We do not believe it was necessary to include these procedures in the proposed rulemaking docket published in the **Federal Register**. It was only necessary to determine that the procedures met the requirements of the regulations and to make them available to interested persons. This was done. For those who wish to examine the detailed procedures, a copy of them may be obtained by writing to the contact person listed in the preamble of this rule.

One commenter maintained that the rule would not have an impact on the economy of less than $100 million, as stated in the Executive Order 12291 section of the proposal, because the California orange industry alone represents over one billion dollars, and will be affected by the rule.

Our evaluation for Executive Order 12291 concerned economic effects, not merely the size of affected industries. We believe that the effects of allowing fruit from Sonora to enter in accordance with this rule will be far less than $100 million for the reasons stated in the proposal and later in this docket. Also, the Agricultural Counselor of the Mexican Embassy has informed us that the value of Sonoran oranges, apples and peaches available annually for export to the United States is approximately $20 million. The value of tangerines and grapefruit available for export from Sonora is not more than $20 million.

One commenter asked how long controls have been in place to exclude fruit flies and fruit fly-infested materials from entering the definite areas. A fruit fly program has been in effect in the definite areas in Sonora since 1982.

Several commenters requested that a public hearing be held to provide more details on the proposal and the procedures implemented by the Mexican Ministry of Agriculture to exclude fruit flies from the definite areas.

The purpose of a public hearing on a rule is not to provide further details on a proposed rule, but to accept comments from the public. We have made our reasoning and the basis for the rule available through publication in the **Federal Register**, and the detailed enforcement procedures of the Mexican Ministry of Agriculture were and are available upon request, as noted above. We have accepted and considered written comments on the proposed rule, and have not received any requests to extend the comment period. Therefore, we do not plan to hold a public hearing.

Miscellaneous

Due to changes in agency operating procedures, we are changing the term "Deputy Administrator" to "Administrator" throughout § 319.56–2.

Based on the rationale set forth in this document and in the proposal, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The primary effect of adoption of this proposal will be to allow the importation of apples, grapefruit, oranges, peaches, and tangerines, from the listed definite areas without treatment for the five listed fruit flies. This should increase imports of these articles, by lowering the import costs through eliminating the cost of treatments, and would result in increased competition for United States growers of these articles. Adoption of this proposal may have economic effects on importers of these articles, on fumigators at the Mexican border, and on domestic growers, distributors, and retailers of these fruits.

The scale of these effects should be very small. Less than 1% of the citrus, apples, and peaches consumed in the United States comes from Sonora. While the amount imported should increase slightly after adoption of this proposal, Sonora is not a major production area for these articles and cannot supply much more than is currently being imported; we therefore believe that Sonora will continue to supply much less than 1% of United States citrus, apple, and peach consumption.

Furthermore, imported Sonoran fruit may be marketed in all parts of the United States, and the effects of this importation would be distributed over hundreds of thousands of small fruit growers, distributors, and retailers. With such a dispersed market, and such a

large number of small entities involved, we do not expect a significant economic impact on a substantial number of small entities.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

The Acting Administrator, Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making it effective upon signature. Importers in the United States have expressed interest in importing peaches and citrus from Sonora this season, and the shipping season for this fruit has begun. Delaying the effective date of this rule could cause economic losses for importers.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants agriculture, Quarantine, Transportation.

Accordingly, 7 CFR Part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–2, the term "Deputy Administrator" is changed to read "Administrator" each time it appears.

3. In § 319.56–2, paragraph (g) is redesignated as (i).

4. In § 319.56–2, new paragraphs (g) and (h) are added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(g) Each box of fruit or vegetables imported into the United States in accordance with § 319.56–2(e) (3) or (4) and § 319.56–2(f) must be clearly labelled with:

(1) The name of the orchard or grove of origin, or the name of the grower, and

(2) The name of the municipality and state in which it was produced, and

(3) The type and amount of fruit it contains.

(h) The Administrator has determined that the following municipalities in Sonora, Mexico, meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Altar; Atil; Caborca; Carbo; Empalme; Guaymas; Hermosillo; Pitiquito; Puerto Penasco, and San Miguel. Apples, grapefruit, oranges, peaches, and tangerines may be imported from these areas without treatment for the pests named in this paragraph.

* * * * *

Done in Washington, DC, on this 24th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–6649 Filed 3–28–88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A36]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Southern Illinois order by expanding the marketing area to include the City of St. Louis, 12 eastern Missouri counties, and part of St. Clair County, Illinois. The amended order is redesignated as the "Southern Illinois-Eastern Missouri" order. Other major changes pertain to the pricing of milk in the vicinity of Quincy, Illinois, the standards for regulating plants and the amount and manner in which milk of dairy farmers may be shipped to manufacturing plants and still be priced under the order. All of the changes are based on industry proposals considered at a public hearing held on December 9–11, 1986 and are necessary to reflect structural changes in the market and to promote the orderly and efficient marketing of milk by producers and handlers.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 18, 1986; published November 21, 1986 (51 FR 42109).

Emergency Partial Decision: Issued January 20, 1987; published January 23, 1987 (52 FR 2537).

Order Amending Order: Issued January 28, 1987; published February 3, 1987 (52 FR 3215).

Recommended Decision: Issued November 9, 1987; published November 13, 1987 (52 FR 43590).

Final Decision: Issued February 18, 1988; published February 26, 1988 (53 FR 5777).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Illinois marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended and redesignated as the Southern Illinois-Eastern Missouri order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Southern Illinois-Eastern Missouri marketing area; and the minimum prices specified in the Southern Illinois-Eastern Missouri order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

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(3) The Southern Illinois-Eastern Missouri order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the Southern Illinois-Eastern Missouri order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the Southern Illinois-Eastern Missouri marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of the Southern Illinois-Eastern Missouri order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the Southern Illinois-Eastern Missouri order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Illinois marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby redesignated and amended, as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The term "Southern Illinois" is changed to "Southern Illinois-Eastern Missouri" in: (a) The heading for Part 1032 and (b) in two places in § 1032.7(d)(3).

3. Section 1032.2 is revised to read as follows:

§ 1032.2 Southern Illinois-Eastern Missouri marketing area.

"Southern Illinois-Eastern Missouri marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties and the city of St. Louis, including all municipal corporations therein and all institutions owned or operated by the Federal, State, county or municipal governments located wholly or partially within such territory:

Base Zone—In the State of Illinois

Bond
Calhoun
Christian
Clark
Clay
Clinton
Coles
Crawford
Cumberland
Edwards
Effingham
Fayette
Greene
Jasper
Jefferson
Jersey
Lawrence
Macoupin
Madison (Alton Township only)
Marion
Montgomery
Richland
Shelby
Wabash
Washington
Wayne

Northern Zone—In the State of Illinois

Champaign
DeWitt
Douglas
Edgar
Logan
Macon
McLean
Menard
Morgan
Moultrie
Piatt
Sangamon
Vermilion

Southern Zone—In the State of Illinois

Franklin
Hamilton
Jackson
Madison (except Alton Township)
Monroe
Perry
Randolph
Saline
St. Clair
White
Williamson

In the State of Missouri

Bollinger
Cape Girardeau
Crawford
Franklin
Jefferson
Perry
St. Charles
St. Francois
St. Louis (City)
St. Louis
Ste. Genevieve
Warren
Washington

4. Section 1032.3 is revised to read as follows:

§ 1032.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility of a fluid milk product classified as Class I milk.

§ 1032.6 [Amended]

5. Section 1032.6 is amended by changing the word "moved" to "transferred".

6. In § 1032.7, the introductory text and paragraphs (a), (b) and (d)(2) are revised to read as follows:

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which:

(1) Route disposition, except filled milk, in the marketing area during the month is at least the lesser of a daily average of 7,000 pounds or 10 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13; and

(2) Total route disposition, except filled milk, is at least 50 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13 during the months of August through February and 40 percent during the other months.

(b) A supply plant from which during December at least 40 percent, and at least 50 percent in all other months, of the total receipts of milk from dairy farmers (including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c) is transferred to and physically received at plants described in paragraph (a) of this section, except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk during each of the immediately preceding months of September through August and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered to and physically received at plants described in paragraph (a) of this section.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area covered by the other order than in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such plant's total route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its maintaining pool status under this order on the basis of the proviso of this paragraph;

* * * * *

7. Section 1032.13 is revised to read as follows:

§ 1032.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from a producer or a handler described in § 1032.9(c);

(b) Received by a handler described in § 1032.9(c) in excess of the quantity delivered to a pool plant(s);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1032.9 (a) or (b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during the months of August through April unless such producer's milk is delivered to and physically received at a pool plant at least once during each such month;

(2) The total amount of milk diverted by a cooperative association during each of the months of September through November and January through April, shall not exceed 35 percent of the producer milk that such cooperative caused to be delivered to and diverted from pool plants in each such month and 45 percent of such producer milk deliveries and diversions by the cooperative in each of the months of August and December;

(3) The operator of a pool plant (other than a cooperative association) may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to (d)(2) of this section. The total amount of milk diverted during each of the months of September through November and January through April shall not exceed 35 percent of such plant operator's producer milk received at and diverted from such pool plant and 45 percent of such plant operator's producer milk receipts and diversions in each of the months of August and December;

(4) The quantity of milk diverted in excess of the applicable percentage limit prescribed in paragraph (d) (2) or (3) of this section shall not be producer milk. In such event, the handler diverting such milk may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to be a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1032.19 [Removed and Reserved]

8. Section 1032.19 is removed and reserved.

§ 1032.51 [Amended]

9. Section 1032.51 is amended by removing the last sentence.

10. In § 1032.52, the introductory text of paragraph (a) is amended by removing the word "pool" and paragraph (a)(2) is revised to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Minus 17 cents.* In counties of Adams, Brown, Cass, Pike, Schuyler and Scott in the State of Illinois or in the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(ii) *No adjustment.* In the State of Missouri south and east of Interstate Highway 44.

* * * * *

§ 1032.75 [Amended]

11. In § 1032.75, paragraph (a) is amended by removing the word "pool" in the two places it appears.

Signed at Washington, DC, on: March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-6655 Filed 3-28-88; 8:45 am]

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7 CFR Part 1050

Milk in the Central Illinois Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be moved directly from the farms of producers to nonpool plants for manufacturing and still be pooled and priced under the Central Illinois order. The action was requested by Prairie Farms Dairy, Inc., a cooperative association that represents producers who supply milk to the market. The action is necessary to assure the efficient disposition of an increasing supply of milk by producers who have been furnishing the market's fluid requirements.

EFFECTIVE DATE: March 29, 1988, for the months of March and April 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 19, 1988; published February 24, 1988 (53 FR 5386). The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers by promoting hauling efficiencies and tends to ensure that dairy farmers supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Central Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 24, 1988 (53 FR 5386). Such notice invited comments on a proposal to suspend certain provisions of the order. Interested persons were given seven days after the publication of the notice in the **Federal Register** to comment on the proposal to suspend. No opposing views were received.

After consideration of all relevant material, including the proposal set forth in the notice and other available information, it is hereby found and determined that for the months of March

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and April 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(1), the words "During May, June and July".

In § 1050.13, paragraphs (d) (2), (3), (4) and (5) in their entirety

Statement of Consideration

This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be diverted (moved directly from farms of producers to manufacturing plants) and still be pooled and priced under the Central Illinois order. Under the order a handler (cooperative association or pool plant operator) may not divert more days of an individual dairy farmer's milk production than is physically received at a pool plant during each such month. Also, the total quantity of milk diverted by such handler may not exceed 35 percent of the milk that the cooperative association or pool plant operator caused to be physically received at pool plants during the month.

The suspension was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that supplies milk for the market. Another cooperative association (Associated Milk Producers, Inc.), which also supplies milk for this market, supports the suspension. The action is needed to assure the efficient disposition of the market's increasing reserve milk supplies that must be processed into manufactured dairy products.

Prairie Farms presented data to support its suspension request. The information shows that during 1987 the Peoria distributing plant, operated by Prairie Farms, packaged 12 percent more milk than in 1986. However, the handler's receipts from dairy farmers who were associated with such plant during the last three months of 1987 were almost 20 percent above such receipts for the same three-month period of 1986. In addition, distant producers supplying milk to the Peoria distributing plant through a reload station at Preston, Iowa, are increasing production at a much greater rate than nearby producers.

A suspension of the diversion limitations for March and April is needed to enable the proponent cooperative and other handlers to dispose of their excess milk supplies in an orderly manner. Unless the diversion limits are suspended, Prairie Farms would have to receive the Iowa milk at its Peoria distributing plant and then reload the milk and transport it back to a manufacturing plant located near the area where the milk was produced to qualify such milk for pool participation. Such milk handling procedures would represent costly and inefficient marketing practices that can be avoided by a suspension of the diversion limitations as requested.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that such action promotes hauling efficiencies and ensures that dairy farmers who are supplying the market's fluid requirements will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were given an opportunity to file written data, views or arguments concerning this suspension. No views opposing this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for the months of March and April 1988.

List of Subjects in 7 CFR Part 1050

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of the Central Illinois order are hereby suspended for the months of March and April 1988.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1050.13 [Amended]

2. In § 1050.13(d)(1), the words "During May, June and July" are suspended.

3. In § 1050.13, paragraphs (d) (2), (3), (4), and (5) are suspended in their entirety.

Signed at Washington, DC, on: March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-[illegible] Filed 3-28-88; 8:45 am]

BILLING CODE [illegible]

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. This rule will: (1) Permit CCC to charge a fee for voluntary warehouse examinations that are requested by a warehouseman; and (2) require that CCC publish in the **Federal Register** a Schedule of Contract Fees only when there is a change in the amount of annual contract fees to be collected. The provision of the proposed rule requiring bonding from warehousemen in any State where the State law does not guarantee every depositor a pro rata share of the commodities or proceeds from warehouse liquidation or bankruptcy is not adopted.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: This rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not

applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, State warehousing laws, and federal contracting requirements during the past few years necessitate updating the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

A notice of proposed rulemaking was published by the Department in the **Federal Register** on October 8, 1987, 52 FR 37619, requesting comments with respect to proposals regarding changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and expired on November 9, 1987.

Amendments to the regulations were proposed which would: (1) Require bonding from warehousemen in any State where the State law does not guarantee every depositor a pro rata share of the commodities or proceeds from warehouse liquidations or bankruptcy; (2) provide that CCC would charge a fee for voluntary examinations requested by a warehouseman; and (3) provide that CCC would publish in the **Federal Register** a Schedule of Contract Fees only when there is change in the amount of annual contract fees to be collected.

Several State warehouse licensing authorities expressed concern about the proposed rule and requested additional time to respond. Accordingly, a notice was published in the **Federal Register** on November 16, 1987, which extended the comment period for the proposed rule from November 9, 1987, to January 8, 1988. In addition, several State warehousing authorities requested that a meeting be held in Washington, DC, to permit them to further clarify and explain these comments and concerns. The Commodity Credit Corporation agreed and by a notice in the **Federal Register** (53 FR 2037) announced that the meeting would be held February 2, 1988, in the South Agriculture Building in Washington, DC. The comment period was reopened to February 12, 1988, (53 FR 2759) to allow further written comments to be submitted after the meeting.

Thirty comments were received concerning the proposed rule. All of the comments addressed the bonding provision with 29 of the commenters stating their opposition. These objections were as follows: States having indemnity funds believe that they afford CCC as much, and in some cases more, financial protection than the proposed bonding requirement. They pointed out that CCC now receives its full pro rata share of the grain or proceeds from the grain sold during warehouse liquidation. If the proceeds from the sale of the grain are not sufficient to cover all losses, payments are then made from the indemnity funds. They believe that payments from indemnity funds give greater financial protection to CCC than would the proposed bonding requirement. As stated by a number of commenters, one of the main reasons for establishing their indemnity fund was that warehouse bonds were becoming increasingly difficult to obtain. Comments received from State licensing authorities that do not have indemnity funds likewise opposed the proposed bonding requirement on grounds that their State laws provided each depositor its pro rata share. Most of those commenting indicated that it is difficult to obtain bonds since several surety companies no longer issue warehouse bonds. Warehousemen who commented also opposed the bonding proposal. They stated that the cost of warehouse bonds has increased significantly over the past few years, and the bonding provision, if adopted, would impose additional financial hardships on the warehousemen.

One comment from the State of Missouri favored the proposed rule stating that limits on the amount paid for claims under the State indemnity funds jeopardize the integrity of warehouse receipts, which for years have provided a basis for financing the industry.

A meeting was held in Washington, DC, on February 2, 1988, to permit representatives from States with indemnity funds to further explain their objections and concerns over the bonding provision. Objections to the bonding provisions which were voiced were similar to the objections in the written comments. Representatives from several States stated that their indemnity fund adequately protected CCC during warehouse bankruptcies and liquidations. Iowa State officials pointed out that since the enactment of their indemnity fund, 14 warehouses have been liquidated. In each case, CCC has received payment for 100 percent of the loss.

The CCC has carefully reviewed the comments received and the case histories of recent bankruptcies in States where CCC could be at risk of not receiving its full pro rata share of the proceeds in the event of a warehouse bankruptcy and liquidation. It appears at the present time that CCC is adequately protected under most State indemnity funds and State laws in cases involving warehouse bankruptcies and liquidations. In the one State where CCC is not protected by payment from the indemnity fund (Oklahoma) the fund is financed by a fee from every depositor of grain in the warehouse. CCC does not pay the fee. However, CCC is protected by bonds under the Oklahoma State Warehouse Act. Accordingly, the bonding provision will not be adopted in the final rule.

No comments were received concerning the provision that CCC would charge a fee for voluntary examinations requested by the warehousemen and changes in the procedure for publishing a Schedule of Contract Fees in the **Federal Register**.

These provisions will be adopted in the final rule.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs: Agriculture, Oilseeds, Peanuts, Price support programs: Soybeans, Surety bonds, Tobacco, Warehouses.

Final Rule

Accordingly, 7 CFR Part 1421 is amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421, *Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed* continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99-198, unless otherwise noted.

2. In § 1421.5558, a new paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 1421.5558 Contract and application and inspection fees.

(a) * * *

(4) CCC may, upon the request of a warehouseman, conduct an examination of a warehouse for the sole benefit of the warehouseman and such warehouseman shall pay to CCC a fee equal to 1½ times the amount of the warehouseman's annual contract fee for such examination.

(b) Any subsequent changes in the contract and application fees shall be announced in the Federal Register.

Signed at Washington, DC, on March 23, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-6780 Filed 3-28-88; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 210, and 242

[INS No. 1101-88]

Powers and Duties of Service Officers; Special Agricultural Workers Appeals

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On December 22, 1987, the President signed into law a bill containing an amendment to the provisions of section 210 of the Immigration and Nationality Act (INA). Section 210 of the INA was established by Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA). This rule implements the new amendment to section 210 by deleting the entry cut-off date for eligibility to file applications under section 210 in the United States; and establishing standards and procedures for processing "preliminary applications" at designated ports of entry on the southern land border. This rule also clarifies and makes various grammatical and technical amendments to the regulations governing the Special Agricultural Worker Program including changes necessitated by the new amendment to section 210. The rule defines the term "preliminary application"; deletes the limitation on the authority of District Directors to deny applications at legalization offices; deletes the filing date requirement for eligible aliens apprehended prior to the application period; clarifies the provision concerning where appeals under Part 210 are to be filed; deletes the references to issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney declines prosecution; clarifies the provision requiring notification of decisions to the applicant's representative; confirms that Special Agricultural Worker (SAW) applicants are permitted to travel outside the United States and reenter upon the presentation of a valid unexpired Form I-688A; provides for eligible applicants to be issued the Temporary Resident Card at any Legalization Office; and, deletes the provisions relating to the transitional admission standard.

DATES: The interim final rule is effective March 29, 1988. Comments must be received on or before April 28, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Special Agricultural Worker Program, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin (Deputy Assistant Commissioner, Special Agricultural Workers (SAW)) (202) 786-3658.

SUPPLEMENTARY INFORMATION: Section 103.1(n)(2) has been amended to remove the restriction on the authority of district directors to deny applications at legalization offices. The Service has found that limiting local denial authority to cases in which the applicant is statutorily ineligible or admits fraud has resulted in the issuance of employment authorization to applicants who are clearly ineligible.

Since application fees are not refundable, it is the policy of the Service to screen applications before the fee is taken and to advise applicants who are clearly ineligible of that fact. However, every person who wishes to file an application may do so and if after that advice the applicant wishes to file, the application is taken. Unless the application is denied at the legalization office it is forwarded to a Regional Processing Facility for adjudication. To speed determinations on frivolous applications district directors will now have the authority to adjudicate and deny an application at the legalization office when the applicant is determined to be ineligible. Such applicants will be advised of the right to appeal the decision but employment authorization will not be issued.

Section 210.1 is amended to add the term "preliminary application" as that term is defined in the December 22, 1987 amendment to section 210 of the Immigration and Nationality Act.

Section 210.1(d) is amended to delete the reference to issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney has declined to prosecute an individual for false statements in the application process. The Service after a careful further review of the confidentiality provisions of IRCA has determined that the information furnished pursuant to an application under section 210 or 245a may not be used to institute deportation proceedings. There are only two uses for the information obtained during the application process: To process the application or to prosecute an applicant who has made false statements.

Section 210.1(n) is redesignated § 210.1(o) and is amended to delete the note regarding publication by the Immigration and Naturalization Service (INS) of the Department of Agriculture's definition of "seasonal agricultural services". On June 1, 1987, the Department of Agriculture issued a final rule at 7 CFR 1d.9 defining terms used in the statutory definition of "seasonal agricultural services". Since this rule has been widely disseminated, there is no need to reprint those definitions in this part.

Sections 210.2(b)(2) and 210.3(d)(2) and a portion of § 210.2(a)(1) are

deleted. These provisions required that an alien who, subsequent to the enactment of IRCA on November 6, 1986, and prior to the beginning of the application period on June 1, 1987, was apprehended and released from Service custody based on a nonfrivolous claim to SAW eligibility must file an application during the first 30 days of the application period, and that those who did not do so would be ineligible to file for temporary resident status in the United States. The Service after a careful review of these provisions has determined that section 210(d)(1) of the Immigration and Nationality Act provides for a stay of exclusion and deportation with work authorization for such aliens through the first thirty days of the application period, but does not require a deadline for filing. Any such alien who has not filed a nonfrivolous application is, after June 30, 1987, subject to issuance of an order to show cause and warrant of arrest or to the execution of any outstanding warrant of arrest or order of deportation. Failure to file an application by July 1, 1987, however, does not render the alien ineligible to apply for SAW status either in the United States or overseas.

Section 210.2(c)(1) deletes the reference to the transitional admission standard and deletes reference to the June 28, 1987, entry cut-off date. The reference to the transitional admission standard is removed because the temporary transitional procedures authorized at section 210.6 terminated on November 1, 1987. Reference to the June 28, 1987, entry cut-off date has been deleted in order to conform with the recent amendment to section 210 which provides that any alien may file a nonfrivolous application as defined in section 210.1(j) in the United States at any time during the application period which ends on November 30, 1988.

Section 210.2(c)(2)(iii) is clarified by deletion of the last sentence relative to the applicant's scheduled appearance at a legalization office. INS is removing this sentence because the first sentence of the following § 210.2(c)(2)(iv) describes in sufficient detail the applicant's required appearance at a legalization office.

Section 210.2(c)(4) is added to establish procedures for processing preliminary applications at designated ports of entry. On December 22, 1987, the President signed into law a bill containing an amendment to the provisions of section 210 of the INA which provides for the admission of SAW applicants who present preliminary applications at designated ports of entry on the southern land border. Application fees for border processing applications are required to be submitted in United States currency. The ports of entry at Calexico, California, Otay Mesa, California, and Laredo, Texas have been designated to conduct preliminary application processing. Additional ports of entry may be so designated dependent upon applicant response and the availability of resources. The amendment also provides that any alien in the United States who has not filed a nonfrivolous application or who has failed to enter through a designated port of entry as provided in § 210.2(c)(4), shall be subject to deportation and removal as provided by the INA.

Section 210.2(c)(4)(i) sets the admission standard for preliminary SAW applicants. A SAW application completely filled out and signed must be presented with the required fee and photographs. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

Section 210.2(c)(4)(ii) establishes procedures for processing preliminary applications. An application fee will not be accepted until a determination has been made that the alien is admissible as a SAW applicant.

Section 210.2(c)(4)(iii) provides that a preliminary applicant may be admitted to the United States for a period of ninety days with employment authorization. During this period the applicant is expected to gather evidence of eligibility, complete a medical examination, and submit a complete application to a legalization office. An extension of the ninety-day admission period may be authorized by a district director upon a showing of good cause by the applicant. The original Form I-700 SAW application will be returned to the applicant to be presented to a legalization office. A preliminary application is subject to denial for lack of prosecution if the applicant fails to submit a complete application to a legalization office within the ninety-day admission period or any extension thereof.

Section 210.2(e)(4) is amended to delete the reference to the issuance of an Order to Show Cause and Warrant of Arrest in cases where the United States Attorney declines prosecution. See the discussion of section § 210.1(d) above.

Section 210.2(f) is clarified with respect to notification of decisions to an applicant's representative and to provide more specific information as to the filing of appeals under Part 210. The mention of qualified designated entities in the first sentence of this section was only meant to indicate the possibility of formal representation by a qualified designated entity under the provisions of 8 CFR Part 292. It has been misinterpreted to imply, that any qualified designated entity who assisted an applicant with preparation of the application was entitled to receive notification of decisions. Representation in immigration proceedings is governed by regulations at 8 CFR Part 292 and it was not the intent of the Service to waive those requirements in § 210.2(f).

Section 210.3(b)(3) is amended by removing the words "Affidavits and other" from the first sentence. It is not necessary to specify affidavits as a form of personal testimony by an applicant and the inclusion of that term here has been misinterpreted.

Section 210.3(d)(2) is removed for the reasons given in the discussion of § 210.2(b)(2), and § 210.3(d)(3) is redesignated as § 210.3(d)(2).

Section 210.4 is amended at the title by changing the word "of" to "and".

Section 210.4(b)(2) is amended to provide for issuance of Employment Authorization Form I-688A to certain nonimmigrant aliens who apply for special agricultural worker (SAW) status upon expiration of their previously issued work authorization. The heading and fourth sentence is also amended by adding the term "and travel" before the word "authorization".

Section 210(a)(1) of the Immigration and Nationality Act provides that the Attorney General shall grant authorization to engage in employment in the United States and provide an employment authorized endorsement or other appropriate work permit to an alien who presents a nonfrivolous application for adjustment of status during the application period. Because some SAW-eligible applicants will have already been authorized employment incident to their admission as nonimmigrants, those applicants will have already received an appropriate work permit as directed by the statute. This class of aliens is identified at § 274a.12(b) and includes (H-1, H-2A, H-2B, H-3) temporary workers or trainees and (L-1) intra-company transferees. In establishing those classifications, Congress intended aliens to be admitted for specific employment purposes; therefore, applicants who apply for SAW status who currently have work authorization incident to their current status shall be granted work authorization by INS effective the date the alien's prior work authorization

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expires. This section has also been amended to clarify that a valid Form I–688A may be used as an entry document for applicants under this section.

Section 210.4(b)(3) is amended to allow for issuance of the Temporary Resident Card by any legalization office in cases where the applicant relocates after the temporary residence interview date but prior to issuance of the Temporary Resident Card.

Section 210.6, Temporary Transitional Procedures has been deleted in its entirety since those procedures were terminated on November 1, 1987, as scheduled and are no longer in effect.

Finally, § 242.21(b) is amended by removing the reference to prohibit appeals by special agricultural workers who failed to submit an application prior to July 1, 1987. See the discussion of § 210.2(b)(2).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of § 1(b) of E.O. 12291.

This rule contains information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

8 CFR Part 242

Administrative practice and procedure, Deportation proceedings.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; EO 12356; 3 CFR 1982 Comp., p. 166.

§ 103.1 [Amended]

2. Section 103.1(n)(2) is amended by inserting a period after the word "jurisdiction" in the last sentence of the paragraph and removing the remaining language.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1252, 1254, 1362; E.O. 12356; Title I of Pub. L. 99–603; 100 Stat. 3359.

§ 242.21 [Amended]

4. Section 242.21(b) is amended by removing from the heading the term "special agricultural worker", and by removing from the first sentence the citation "210.2(d)(3) or".

5. Part 210 is revised to read as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

Sec.
210.1 Definition of terms used in this part.
210.2 Application for temporary resident status.
210.3 Eligibility.
210.4 Status and benefits.
210.5 Adjustment to permanent resident status.

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 210.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(b) *Application period.* The 18-month period during which an application for adjustment of status to that of a temporary resident may be accepted, begins on June 1, 1987, and ends on November 30, 1988.

(c) *Complete application.* A complete application consists of an executed Form I–700, Application for Temporary Resident Status as a Special Agricultural Worker, evidence of qualifying agricultural employment and residence, a report of medical examination, and the prescribed number of photographs. An application is not complete until the required fee has been paid and recorded.

(d) *Determination process.* Determination process as used in this part means reviewing and evaluating all information provided pursuant to an application for the benefit sought and making a determination thereon. If fraud, willful misrepresentation of a material fact, a false writing or document, or any other activity prohibited by section 210(b)(7) of the Act is discovered during the determination process the Service shall refer the case to a U.S. Attorney for possible prosecution.

(e) *Family unity.* The term "family unity" as used in section 210(c)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children who are not members of some other household, and parents who reside regularly in the household of the family group.

(f) *Group 1.* Special agricultural workers who have performed qualifying agricultural employment in the United States for at least 90 man-days in the aggregate in each of the twelve-month periods ending on May 1, 1984, 1985, and 1986, and who have resided in the United States for six months in the aggregate in each of those twelve-month periods.

(g) *Group 2.* Special agricultural workers who during the twelve-month period ending on May 1, 1986 have performed at least 90 man-days in the aggregate of qualifying agricultural employment in the United States.

(h) *Legalization Office.* Legalization offices are local offices of the Immigration and Naturalization Service which accept and process applications for legalization or special agricultural worker status, under the authority of the district directors in whose districts such offices are located.

(i) *Man-day.* The term "man-day" means the performance during any day of not less than one hour of qualifying agricultural employment for wages paid. If employment records relating to an alien applicant show only piece rate units completed, then any day in which piece rate work was performed shall be counted as a man-day. Work for more than one employer in a single day shall be counted as no more than one man-day for the purposes of this part.

(j) *Nonfrivolous application.* A complete application will be determined to be nonfrivolous at the time the applicant appears for an interview at a legalization or overseas processing office if it contains:

(1) Evidence or information which shows on its face that the applicant is admissible to the United States or, if inadmissible, that the applicable grounds of excludability may be waived under the provisions of section 210(c)(2)(i) of the Act,

(2) Evidence or information which shows on its face that the applicant performed at least 90 man-days of

qualifying employment in seasonal agricultural services during the twelve-month period from May 1, 1985 through May 1, 1986, and

(3) Documentation which establishes a reasonable inference of the performance of the seasonal agricultural services claimed by the applicant.

(k) *Overseas processing office.* Overseas processing offices are offices outside the United States at which applications for adjustment to temporary resident status as a special agricultural worker are received, processed, referred to the Service for adjudication or denied. The Secretary of State has designated for this purpose the United States Embassy at Mexico City, and in all other countries the immigrant visa issuing of office at which the alien, if an applicant for an immigrant visa, would make such application. Consular officers assigned to such offices are authorized to recommend approval of an application for special agricultural worker status to the Service if the alien establishes eligibility for approval and to deny such an application if the alien fails to establish eligibility for approval or is found to have committed fraud or misrepresented facts in the application process.

(l) *Preliminary application.* A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States, and identifies documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(m) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance. This includes but is not limited to supplemental security income received by the alien or his immediate family members through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(n) *Qualified designated entity.* A qualified designated entity is any state, local, church, community, or voluntary agency, farm labor organization, association of agricultural employers or individual designated by the Service to assist aliens in the preparation of applications for Legalization and/or Special Agricultural Worker status.

(o) *Qualifying agricultural employment.* Qualifying agricultural employment means the performance of "seasonal agricultural services" described at section 210(h) of the Act as that term is defined in regulations by the Secretary of Agriculture at 7 CFR Part 1d.

(p) *Regional processing facility.* Regional Processing Facilities are Service offices established in each of the four Service regions to adjudicate, under the authority of the Directors of the Regional Processing Facilities, applications for adjustment of status under sections 210 and 245a of the Act.

(q) *Service.* The Immigration and Naturalization Service (INS).

(r) *Special agricultural worker.* Any individual granted temporary resident status in the Group 1 or Group 2 classification or permanent resident status under section 210(a) of the Act.

§ 210.2 Application for temporary resident status.

(a)(1) *Application for temporary resident status.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of § 210.3 of this part may file an application for such adjustment at a qualified designated entity, at a legalization office, or at an overseas processing office outside the United States. Such application must be filed within the application period.

(2) *Application for Group 1 status.* An alien who believes that he or she qualifies for Group 1 status as defined in § 210.1(f) of this part and who desires to apply for that classification must so endorse his or her application at the time of filing. Applications not so endorsed will be regarded as applications for Group 2 status as defined in § 210.1(g) of this part.

(3) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful temporary or permanent resident status under section 210 of the Act. No more than 350,000 aliens may be granted temporary resident status in the Group 1 classification. If more than 350,000 aliens are determined to be eligible for Group 1 classification, the first 350,000 applicants (in chronological order by date the application is filed at a legalization or overseas processing office) whose applications are approved for Group 1 status shall be accorded that classification. Aliens admitted to the United States under the transitional admission standard placed in effect between July 1, 1987, and November 1, 1987, and under the preliminary application standard at § 210.2(c)(4) who claim eligibility for Group 1 classification shall be registered as applicants for that classification on the date of submission to a legalization office of a complete application as defined in § 210.1(c) of this part. Other applicants who may be eligible for Group 1 classification shall be classified as Group 2 aliens. There is no limitation on the number of aliens whose resident status may be adjusted from temporary to permanent in Group 2 classification.

(b) *Filing date of application*—(1) *General.* The date the alien submits an application to a qualified designated entity, legalization office or overseas processing office shall be considered the filing date of the application, provided that in the case of an application filed at a qualified designated entity the alien has consented to have the entity forward the application to a legalization office. Qualified designated entities are required to forward completed applications to the appropriate legalization office within 60 days after the applicant gives consent for such forwarding.

(c) *Filing of application*—(1) *General.* The application must be filed on Form I–700 at a qualified designated entity, at a legalization office, at a designated port of entry, or at an overseas processing office within the eighteen-month period beginning on June 1, 1987 and ending on November 30, 1988.

(2) *Applications in the United States.* (i) The application must be filed on Form I–700 with the required fee and, if the applicant is 14 years or older, the application must be accompanied by a completed Form FD–258 (Fingerprint Card).

(ii) All fees for applications filed in the United States, other than those within the provisions of § 210.2(c)(4), must be submitted in the exact amount in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(iii) In the case of an application filed at a legalization office, including an application received from a qualified designated entity, the district director may, at his or her discretion, require filing either by mail or in person, or may permit filing in either manner.

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(iv) Each applicant, regardless of age, must appear at the appropriate Service legalization office and must be fingerprinted for the purpose of issuance of Form I-688A. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived when it is impractical because of the health of the applicant.

(3) *Filing at overseas processing offices.* (i) The application must be filed on Form I-700 and must include a completed State Department Form OF-179 (Biographic Data for Visa Purposes).

(ii) Every applicant must appear at the appropriate overseas processing office to be interviewed by a consular officer. The overseas processing office will inform each applicant of the date and time of the interview. At the time of the interview every applicant shall submit the required fee.

(iii) All fees for applications submitted to an overseas processing office shall be submitted in United States currency, or in the currency of the country in which the overseas processing office is located. Fees will not be waived or refunded under any circumstances.

(iv) An applicant at an overseas processing office whose application is recommended for approval shall be provided with an entry document attached to the applicant's file. Upon admission to the United States, the applicant shall proceed to a legalization office for presentation or completion of Form FD-258 (Fingerprint Card), presentation of the applicant's file and issuance of the employment authorization Form I-688A.

(4) *Border processing.* The Commissioner will designate specific ports of entry located on the southern land border to accept and process applications under this part. Ports of entry so designated will process preliminary applications as defined at § 210.1(l) under the authority of the district directors in whose districts they are located. The ports of entry at Calexico, California, Otay Mesa, California, and Laredo, Texas have been designated to conduct preliminary application processing. Designated ports of entry may be closed or added at the discretion of the Commissioner.

(i) *Admission standard.* The applicant must present a fully completed and signed Form I-700, Application for Temporary Resident Status with the required fee and photographs at a designated port of entry. The application must contain specific information concerning the performance of qualifying employment in the United States and identify documentary evidence which the applicant intends to submit as proof of such employment. The applicant must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agricultural worker classification is credible, and that he or she is otherwise admissible to the United States under the provisions of § 210.3(e) of this part including, if required, approval of an application for waiver of grounds of excludability.

(ii) *Procedures.* The fee for any application under this paragraph including applications for waivers of grounds of excludability, must be submitted in United States currency. Application fees shall not be collected until the examining immigration officer has determined that the applicant has presented a preliminary application and is admissible to the United States including, if required, approval of an application for waiver of grounds of excludability as provided in this paragraph. Applicants at designated ports of entry must present proof of identity in the form of a valid passport, a "cartilla" (Mexican military service registration booklet), a Form 13 ("Forma trece"—Mexican lieu passport identity document), or a certified copy of a birth certificate accompanied by additional evidence of identity bearing a photograph and/or fingerprint of the applicant. Upon a determination by an immigration officer at a designated port of entry that an applicant has presented a preliminary application, the applicant shall be admitted to the United States as an applicant for special agricultural worker status. All preliminary applicants shall be considered as prospective applicants for the Group 2 classification. However, such applicants may later submit a complete application for either the Group 1 or Group 2 classification to a legalization office. Preliminary applicants are not required to pay the application fee a second time when submitting the complete application to a legalization office.

(iii) *Conditions of admission.* Aliens who present a preliminary application shall be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if they are determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to submit evidence of eligibility which meets the provisions of § 210.3 of this part; to complete Form FD-258 (Fingerprint Card); to obtain a report of medical examination in accordance with § 210.2(d) of this part; and to submit to a legalization office a complete application as defined at § 210.1(c) of this part. A district director may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to a legalization office within ninety days or within such additional period as may have been authorized, his or her application may be denied for lack of prosecution, without prejudice.

(iv) Deportation is not stayed for an alien subject to deportation and removal under the INA, notwithstanding a claim to eligibility for SAW status, unless that alien has filed a nonfrivolous application.

(d) *Medical examination.* An applicant under this part must be examined at no expense to the government by a designated civil surgeon or, in the case of an applicant abroad, by a physician or clinic designated to perform medical examinations of immigrant visa applicants. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record. Any applicant certified under paragraph (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(e) *Limitation on access to information and confidentiality.* (1) Except for consular officials engaged in the processing of applications overseas and employees of a qualified designated entity where an application is filed with that entity, no person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, or contract personnel employed by the Service to work in connection with the legalization program, will be permitted to examine individual applications.

(2) Files and records prepared by qualified designated entities under this section are confidential. The Attorney General and the Service shall not have access to these files and records without the consent of the alien.

(3) All information furnished pursuant to an application for temporary resident status under this part including documentary evidence filed with the application shall be used only in the determination process or to enforce the provisions of section 210(b)(7) of the Act, relating to prosecutions for fraud and false statements made in connection with applications, as

provided in paragraph (e)(4) of this section.

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 210(b)(7) of the Act, the Service shall refer the matter to the U.S. Attorney for prosecution of the alien or any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(f) *Decision.* The applicant shall be notified in writing of the decision and, if the application is denied, of the reason(s) therefor. An adverse decision under this part including an overseas application may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) on Form I-694. The appeal with the required fee shall be filed with the Regional Processing Facility in accordance with the provisions of § 103.3(a)(2) of this chapter. An applicant for Group 1 status as defined in § 210.1(f) of this part who is determined to be ineligible for that status may be classified as a temporary resident under Group 2 as defined in § 210.1(g) of this part if otherwise eligible for Group 2 status. In such a case the applicant shall be notified of the decision to accord him or her Group 2 status and to deny Group 1 status. He or she is entitled to file an appeal in accordance with the provisions of § 103.3(a)(2) of this chapter from that portion of the decision denying Group 1 status. In the case of an applicant who is represented in the application process in accordance with 8 CFR Part 292, the applicant's representative shall also receive notification of decision specified in this section.

(g) *Motions.* In accordance with the provisions of § 103.5(b) of this chapter, the director of a regional processing facility or a consular officer at an overseas processing office may *sua sponte* reopen any proceeding under this part under his or her jurisdiction and reverse any adverse decision in such proceeding when appeal is taken under § 103.3(a)(2) of this part from such adverse decision; the Associate Commissioner, Examinations, and the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under this part and reconsider any decision rendered in such proceeding. The decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(h) *Certifications.* The regional processing facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations when the case involves an unusually complex or novel question of law or fact. A consular officer assigned to an overseas processing office is authorized to certify a decision in the same manner and upon the same basis.

§ 210.3 Eligibility.

(a) *General.* An alien who, during the twelve-month period ending on May 1, 1986, has engaged in qualifying agricultural employment in the United States for at least 90 man-days is eligible for status as an alien lawfully admitted for temporary residence if otherwise admissible under the provisions of section 210(c) of the Act and if he or she is not ineligible under the provisions of paragraph (d) of this section.

(b) *Proof of eligibility*—(1) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has worked the requisite number of man-days, is admissible to the United States under the provisions of section 210(c) of the Act, is otherwise eligible for adjustment of status under this section and in the case of a Group 1 applicant, has resided in the United States for the requisite periods. If the applicant cannot provide documentation which shows qualifying employment for each of the requisite man-days, or in the case of a Group 1 applicant, which meets the residence requirement, the applicant may meet his or her burden of proof by providing documentation sufficient to establish the requisite employment or residence as a matter of just and reasonable inference. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraphs (b) (2) and (3) of this section. If an applicant establishes that he or she has in fact performed the requisite qualifying agricultural employment by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference, the burden then shifts to the Service to disprove the applicant's evidence by showing that the inference drawn from the evidence is not reasonable.

(2) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Original documents will be given greater weight than copies. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. Analysis of evidence submitted will include consideration of the fact that work performed by minors and spouses is sometimes credited to a principal member of a family.

(3) *Verification.* Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony of persons other than the applicant) will not serve to meet an applicant's burden of proof. All evidence of identity, qualifying employment, admissibility, and eligibility submitted by an applicant for adjustment of status under this part will be subject to verification by the Service. Failure by an applicant to release information protected by the Privacy Act or related laws when such information is essential to the proper adjudication of an application may result in denial of the benefit sought. The Service may solicit from agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, lists of workers against which evidence of qualifying employment can be checked. If such corroborating evidence is not available and the evidence provided is deemed insufficient, the application may be denied.

(c) *Documents.* A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with requirements specified in this part. At the time of filing, certified copies of documents may be submitted in lieu of originals. However, at the time of the interview, wherever possible, the original documents must be presented except for the following: Official government records; employment or employment related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained

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by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director or consular officer, original documents, even if accompanied by certified copies, may be temporarily retained for further examination.

(1) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from a foreign country bearing a photo and/or fingerprint (e.g., "cedula", "cartilla", "carte d'identite," etc.);

(iv) Driver's license or similar document issued by a state if it contains a photo;

(v) Baptismal record or marriage certificate;

(vi) Affidavits, or

(vii) Such other documentation which may establish the identity of the applicant.

(2) *Assumed names*—(i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail.

(3) *Proof of employment.* The applicant may establish qualifying employment through government employment records, or records maintained by agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment, or such other evidence as worker identification issued by employers or collective bargaining organizations, union membership cards or other union records such as dues receipts or records of the applicant's involvement or that of his or her immediate family with organizations providing services to farmworkers, or work records such as pay stubs, piece work receipts, W-2 Forms or certification of the filing of Federal income tax returns on IRS Form 6166, or state verification of the filing of state income tax returns. Affidavits may be submitted under oath, by agricultural producers, foremen, farm labor contractors, union officials, fellow employees, or other persons with specific knowledge of the applicant's employment. The affiant must be identified by name and address; the name of the applicant and the relationship of the affiant to the applicant must be stated; and the source of the information in the affidavit (e.g. personal knowledge, reliance on information provided by others, etc.) must be indicated. The affidavit must also provide information regarding the crop and the type of work performed by the applicant and the period during which such work was performed. The affiant must provide a certified copy of corroborating records or state the affiant's willingness to personally verify the information provided. The weight and probative value of any affidavit accepted will be determined on the basis of the substance of the affidavit and any documents which may be affixed thereto which may corroborate the information provided.

(4) *Proof of residence.* Evidence to establish residence in the United States during the requisite period(s) includes: Employment records as described in paragraph (c)(3) of this section; utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service; school records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing the name of school, name and, if available, address of student, and periods of attendance, and hospital or medical records showing similar information; attestations by churches, unions, or other organizations to the applicant's residence by letter which: Identify applicant by name, are signed by an official (whose title is shown), show inclusive dates of membership, state the address where applicant resided during the membership period, include the seal of the organization impressed on the letter, establish how the author knows the applicant, and the origin of the information; and additional documents that could show that the applicant was in the United States at a specific time, such as: Money order receipts for money sent out of the country; passport entries; birth certificates of children born in the United States; bank books with dated transactions; letters of correspondence between the applicant and another person or organization; Social Security card; Selective Service card; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, contracts to which applicant has been a party; tax receipts; insurance policies, receipts, or letters; and any other document that will show that applicant was in the United States at a specific time. For Group 2 eligibility, evidence of performance of the required 90 man-days of seasonal agricultural services shall constitute evidence of qualifying residence.

(5) *Proof of financial responsibility.* Generally, the evidence of employment submitted under paragraph (c)(3) of this section will serve to demonstrate the alien's financial responsibility. If it appears that the applicant may be inadmissible under section 212(a)(15) of the Act, he or she may be required to submit documentation showing a history of employment without reliance on public cash assistance for all periods of residence in the United States.

(d) *Ineligible classes.* The following classes of aliens are ineligible for temporary residence under this part:

(1) An alien who at any time was a nonimmigrant exchange visitor under section 101(a)(15)(J) of the Act who is subject to the two-year foreign residence requirement unless the alien has complied with that requirement or the requirement has been waived pursuant to the provisions of section 212(e) of the Act;

(2) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived, pursuant to section 210(c)(2)(B)(ii) of the Act.

(e) *Exclusion grounds*—(1) *Grounds of exclusion not to be applied.* Section (14), (20), (21), (25), and (32) of section 212(a) of the Act shall not apply to applicants applying for temporary resident status.

(2) *Waiver of grounds for exclusion.* Except as provided in paragraph (e)(3) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690. When an application for waiver of grounds of excludability is submitted in conjunction with an application for temporary residence under this section, it shall be accepted for processing at the legalization office, overseas processing office, or designated port of entry. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the legalization office it shall be forwarded to the appropriate regional processing facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States other than those within the provisions of § 210.2(c)(4) must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees for waiver applications filed at the designated port of entry under the preliminary application standard must be submitted in United States currency. Fees will not be waived or refunded under any circumstances. Generally, an application for waiver of grounds of excludability under this part submitted at a legalization office or overseas processing office will be approved or denied by the director of the regional processing facility in whose jurisdiction the applicant's application for adjustment of status was filed. However, in cases involving clear statutory ineligibility or admitted fraud, such application for a waiver may be denied by the district director in whose jurisdiction the application is filed; in cases filed at overseas processing offices, such application for a waiver may be denied by a consular officer; or, in cases returned to a legalization office for reinterview, such application may be approved at the discretion of the district director. Waiver applications filed at the port of entry under the preliminary application standard will be approved or denied by the district director having jurisdiction over the port of entry. The applicant shall be notified of the decision and, if the application is denied, of the reason(s) therefor. The applicant may appeal the decision within 30 days after the service of the notice pursuant to the provisions of § 103.3(a)(2) of this chapter.

(3) *Grounds of exclusion that may not be waived.* The following provisions of section 212(a) of the Act may not be waived:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except as provided in paragraph (c)(4) of this section.

(iii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana.

(iv) Paragraphs (27), (prejudicial to the public interest), (28), (communists), and (29) (subversive);

(v) Paragraph (33) (nazi persecution).

(4) *Special Rule for determination of public charge.* An applicant who has a consistent employment history which shows the ability to support himself and his or her family, even though his income may be below the poverty level, is not excludable under paragraph (e)(3)(ii) of this section. The applicant's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the applicant shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without reliance on public cash assistance. This regulation is prospective in that the Service shall determine, based on the applicant's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

§ 210.4 Status and benefits.

(a) *Date of adjustment.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date on which the fee was paid at a legalization office, except that the status of an alien who applied for such status at an overseas processing office whose application has been recommended for approval by that office shall be adjusted as of the date of his or her admission into the United States.

(b) *Employment and travel authorization*—(1) *General.* Authorization for employment and travel abroad for temporary resident status applicants under section 210 of the Act may only be granted by a Service legalization office. In the case of an application which has been filed with a qualified designated entity, employment authorization may only be granted after a nonfrivolous application has been received at a legalization office, and receipt of the fee has been recorded.

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant, after an interview has been conducted in connection with a nonfrivolous application at a legalization office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a legalization office, authorization to accept employment will be granted valid to the scheduled appointment date. The appointnent letter will be endorsed with the temporary employment authorization. Employment and travel authorization subsequent to an interview will be granted on Service Form I-688A, and will be restricted to six months duration, pending final determination on the application for temporary resident status. If a final determination has not been made on the application prior to the expiration date of the I-688A, that date may be extended upon return of the I-688A by the applicant to the legalization office where it was obtained. Applications submitted under this part by persons who currently have work authorization incident to status as identified at § 274a.12(b) shall be granted work authorization by INS effective the date the alien's prior work authorization expires.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the Regional Processing Facility will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any legalization office, and upon surrender of the previously issued Form I-688A will be issued Form I-688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence.

(c) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary

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resident under section 210 of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence, except as provided in paragraph (b)(3) of this section.

(d) *Termination of temporary resident status*—(1) *General.* The temporary resident status of a special agricultural worker is terminated automatically and without notice under section 210(a)(3) of the Act upon entry of a final order of deportation by an immigration judge based on a determination that the alien is deportable under section 241 of the Act.

(2) *Surrender of Form I-688.* An alien whose status as a temporary resident has been terminated under this section shall, upon demand, promptly surrender Form I-688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence or, in the case of a commuter, employment.

§ 210.5 Adjustment to permanent resident status.

(a) *Eligibility and date of adjustment to permanent resident status.* The status of an alien lawfully admitted to the United States for temporary residence under section 210(a)(1) of the Act, if the alien has otherwise maintained such status as required by the Act, shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the following dates:

(1) *Group 1.* Aliens determined to be eligible for Group 1 classification, whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1989. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence one year from the date of the adjustment to temporary residence.

(2) *Group 2.* Aliens determined to be eligible for Group 2 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1990. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence two years from the date of the adjustment to temporary residence.

(b) *Maintenance of temporary resident status; ADIT processing*—(1) *General.* Before the status of an alien lawfully admitted for temporary residence under section 210(a)(1) of the Act can be adjusted to that of an alien lawfully admitted for permanent residence, the alien must appear at a legalization office or such other Service office as is designated for this purpose for a determination that he or she has maintained temporary resident status, and for completion of processing for issuance of Form I-551, Alien Registration Receipt Card.

(2) *Maintenance of status.* Information provided by the alien concerning his or her maintenance of status will be subject to Service verification. The status of an alien described in paragraph (b)(1) of this section who has maintained temporary resident status will be adjusted to that of an alien lawfully admitted for permanent residence effective on the date appropriate for his or her group as provided in paragraph (a) of this section. The alien must execute an affidavit stating that he or she has maintained status as a temporary resident. An alien who the examining officer believes to be deportable under section 241 of the Act is subject to issuance of an order to show cause and warrant of arrest and, if found to be deportable by an immigration judge, to termination of temporary resident status as provided in § 210.4(d) of this part. An alien who is excludable under section 210(c) of the Act who is not deportable under section 241 of the Act is not subject to termination of temporary resident status if the ground of excludability arose subsequent to the adjustment of the alien's status to that of a temporary resident. If the alien is deportable under section 241(a) of the Act because he or she was excludable at the time his or her status was adjusted to that of a lawful temporary resident, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability if a waiver is available under section 210(c) of the Act. If the alien applies for such a waiver, and the waiver is granted after the dates of adjustment set in paragraph (a) of this section, the adjustment of the alien's status to that of an alien lawfully admitted for permanent residence shall be recorded as of the date of adjustment appropriate for his or her group.

(3) *ADIT Processing.* An alien described in paragraph (b)(1) of this section must provide suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I-89.

Dated: March 11, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-6708 Filed 3-28-88; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80339-8039]

General License G-COM; Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: In the November 17, 1987 Federal Register, Export Administration published a final rule establishing a new General License GFW for exports of certain low level dual use items to most free world countries and expanding General License G-COM to allow shipments of additional low level dual use items to the COCOM allies and certain other countries (52 FR 43851). In revising General License G-COM, Export Administration inadvertently defined computers eligible for export under General License G-COM more restrictively than those eligible for export under General License GFW. This final rule corrects that error by adding a Special G-COM Note for Advisory Note 9 to ECCN 1565A stating that certain limitations imposed by Advisory Note 9 are waived for the purposes of determining G-COM eligibility.

EFFECTIVE DATE: This rule is effective March 29, 1988.

FOR FURTHER INFORMATION CONTACT: Will Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations is amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by adding a "Special G-COM Note for Advisory Note 9" between Advisory Note 8 and Advisory Note 9 to read as follows:

"Special G-COM Note for Advisory Note 9: For the purposes of General License G-COM, the limitations imposed in Advisory Note 9 by paragraphs (a)(3), (b)(5) (i), (iii) and (iv), (b)(6)(iii), (b)(7) (iv), (v) and (vi), (b)(8)(i), (b)(9)(iii), and (c) are waived."

Dated: March 24, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-6852 Filed 3-28-88; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251 and 255

[Docket No. R-88-1378; FR-2448]

Miscellaneous Revisions to FHA Single Family and Multifamily Mortgage Insuring Authorities; Section 202 Per Unit Cost Limits; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects §§ 251.203(a) and 255.203(a) of a final rule published in the Federal Register, March 18, 1988 (53 FR 8874) that implemented a number of the amendments to HUD's single family and multifamily mortgage insurance authorities made by the Housing and Community Development Act of 1987.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6500. (This is not a toll-free number.)

Accordingly, in FR Doc. 88-5894, published in the Federal Register issue of Friday, March 18, 1988 (53 FR 8874), §§ 251.203(a) and 255.203(a) are corrected as follows:

PART 251—[CORRECTED]

§ 251.203 [Corrected]

1. In § 251.203(a), on page 8887, in the middle of the second column, the first portion of the sentence that reads, "However, in any case that involves projects purchased or to be purchased * * *" is corrected to read, "However, in any case that involves project mortgages purchased or to be purchased * * *".

PART 255—[CORRECTED]

§ 255.203 [Corrected]

(2) In § 255.203(a), on page 8887, near the end of the third column, the first portion of the sentence that reads, "However, in cases involving projects to be purchased by * * *" is corrected to read, "However, in cases involving project mortgages purchased or to be purchased by * * *".

Authority: Secs. 211, 246, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 24, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-6867 Filed 3-28-88; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to Bank Secrecy Act Regulations Regarding Reporting of Transactions With Foreign Financial Agencies

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: By Federal Register Notice dated October 28, 1987 (52 FR 39922), Treasury proposed two amendments to 31 CFR 103.25, which provides for reporting under the Bank Secrecy Act by designated financial institutions of prescribed transactions with foreign financial agencies. The first proposal would permit the Secretary to require the reporting of completed as well as future transactions. Reporting of completed transactions would be limited to information that financial institutions are required by law to maintain, or that they otherwise maintain in the ordinary course of business. The second proposal would permit the Secretary to direct financial institutions not to inform customers or any other parties of the existence of a reporting requirement imposed under § 103.25. After consideration of the comments Treasury received in response to the Notice, the amendments are being adopted as proposed.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, at the address listed above, or at (202) 566-8022.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1985 (50 FR 27821), the Department of the Treasury published a final rule which added § 103.25 to 31 CFR Part 103, the regulations implementing the Bank Secrecy Act, 31 U.S.C. 5311–5324. Pursuant to the authority set forth in 31 U.S.C. 5314, 31 CFR 103.25 established a procedure under which the Secretary may issue a regulation requiring designated financial institutions to report limited numbers of financial transactions with designated foreign financial agencies. Notice of such reporting requirements may be published in the Federal Register or may be served personally upon the affected financial institutions in accordance with 5 U.S.C. 553(b). The purpose of this limited reporting procedure is to enhance the government's ability to monitor international transactions for tax, regulatory, and law enforcement purposes.

In the Federal Register Notice dated October 26, 1987 (52 FR 39922), Treasury proposed to amend § 103.25 in two respects. First, Treasury proposed to amend § 103.25(e)(3) to provide that financial institutions may be required to report on completed transactions with foreign financial agencies. With respect to completed transactions, however, the financial institution would be required to provide only information from records that it otherwise is required to maintain under Subpart C of Part 103 or any other provision of State or Federal law, or that it otherwise keeps in the normal course of business, thus imposing no new recordkeeping requirement on any financial institution. Section 103.25(e)(3) currently provides that the Secretary shall not issue a regulation requiring a financial institution to report transactions completed before it received notice of a reporting regulation under § 103.25(a). This provision prevents Treasury from obtaining information on completed transactions that would be useful for tax, regulatory and law enforcement purposes.

Second, Treasury proposed that in cases where the regulation requiring reporting under § 103.25 is not published in the Federal Register, Treasury may require a financial institution subject to reporting not to disclose the existence or provisions of the regulation to any party, including the foreign financial agency to which the reporting is related. Notice of the reporting requirement to the foreign financial agency or its customers can seriously impair its usefulness by allowing a person or institution to alter its pattern of transactions, thus distorting the information reported under § 103.25. The delay in disclosure is authorized by 31 U.S.C. 5314, which provides that the Secretary may prescribe "other matters * * * necessary to carry out" section 5314 or the regulations thereunder. 31 U.S.C. 5314(b)(5). It also is not prohibited by the Right to Financial Privacy Act of 1978, Pub. L. 95-630 (Nov. 10, 1978), as amended (12 U.S.C. 3401 *et seq.*), which does not require that notice of § 103.25 reporting be given to any party. This is because the information is "required to be reported in accordance with any Federal statute or rule promulgated thereunder." 12 U.S.C. 3413(d).

Discussion of Comments

Ten comments were received in response to the Notice of Proposed Rulemaking. The major comments focused on the authority of Treasury to require reporting on completed transactions, and to prohibit disclosure of the reporting requirement to any party.

On the issue of requiring reports of completed transactions, several commenters noted that the term "report" implies something which is compiled contemporaneously with the collection of the information. These commenters felt that reports reflecting information on completed transactions constituted information obtained from customer "records," which section 5314(c) says can be produced "only as required by law." Commenters were worried that normal recourse to subpoenas, summons and the like could be bypassed by this requirement.

In response, Treasury notes that section 5314 permits it to require, among other things, "reports when [a] resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency." The statute gives broad authority to the Secretary of the Treasury to impose reporting requirements covering a broad spectrum of persons, financial institutions, and foreign financial agencies. There are no restrictions on the timing of these reports, so Treasury could impose annual, semiannual, quarterly or monthly reports under this statutory provision if it desired to do so. Treasury already has imposed a yearly reporting requirement with respect to persons holding interests in foreign financial accounts. *See* 31 CFR 103.24. Therefore, there is sufficient authority to require reporting on completed transactions.

On the issue of nondisclosure to the parties of the reporting requirements, it was noted that in the initial promulgation of § 103.25 in 1985, Treasury stated in the accompanying supplementary information that "[E]ven if internal privacy guidelines require notice to customers of these reporting requirements, such notice should not reach customers until well into the short periods covered by the reporting requirements." 50 FR 27821, 27823 (1985), thus acknowledging that disclosure to customers would not be improper. Based on its experience in using § 103.25, Treasury has determined that notice to parties poses a problem in that the parties may alter their normal patterns of business in reaction to a notice of a reporting requirement, thus distorting the data reported. Nondisclosure of the existence of the reporting requirements is necessary to achieve the purposes of § 103.25.

Several comments reflected a misunderstanding of the applicability of the Right to Financial Privacy Act. Treasury notes again that the nondisclosure provision is necessary to preserve the utility of the information received under § 103.25, and is authorized under 31 U.S.C. 5314(b)(5), which permits the Secretary to prescribe "other matters * * * necessary to carry out this section or a regulation under this section." As for the Right to Financial Privacy Act, 12 U.S.C. 3412(d) exempts from the Act "information required to be reported in accordance with any Federal statute or rule promulgated thereunder." Because § 103.25 is derived from section 5314, and is information required to be reported by law or regulation, the notice provisions of the Right to Financial Privacy Act are inapplicable, and thus, notice to parties may be prohibited.

As has been noted above, § 103.25 is used to gather gross financial data about the international flow of financial transactions in order to aid in law enforcement. Section 103.25 and these proposed amendments are not designed or intended to obtain information for an existing investigation focused on a particular individual or organization. In such cases, there are established information collection procedures that strike a more appropriate balance

between the rights to be afforded an individual who is under investigation or involved in a dispute with the government and the legitimate needs of law enforcement and demands of society. Examples include the use of search warrants, judicial subpoenas, and administrative subpoenas and summonses. Accordingly, the existing restriction in § 103.25 prohibiting the use of reporting requirements in such circumstances shall also restrict these proposed amendments. However, information reported under these amendments will be treated the same as any other information collected under the Bank Secrecy Act, and may serve as the basis for initiating an investigation.

Other comments on the proposals also were made, for the most part dealing with the practicalities of an actual reporting requirement, such as the allowance of reasonable amounts of time to search for and retrieve needed information, and the difficulty of retrieving information by reference to particular transactions or foreign financial agencies when the records of the financial institution are not kept in that manner. Treasury notes that in issuing a reporting requirement, it anticipates requiring reporting of discrete amounts of information over a fairly limited period of time. The reporting requirement will describe, fully and clearly, any categories of information to be reported, and it will give ample time to the financial institution to make the report. The reporting requirement will identify a Treasury official to contact to work out any problems in complying with the reporting requirement.

Conclusion

For the reasons discussed above, the amendments are adopted as proposed.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Analysis

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and approved under OMB number 1505-0063.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement), Department of the Treasury.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigation, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

31 CFR Part 103 is amended as set forth below:

PART 103—[AMENDED]

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. Section 103.25(a) is amended by adding a sentence at the end to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

(a) * * * If a financial institution is given notice of a reporting requirement under this section by means other than publication in the Federal Register, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

* * * * *

3. Section 103.25(e)(3) is revised to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

* * * * *

(e) * * *

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to Subpart C of this Part, or any other provision of state or federal law, or otherwise maintained in the regular course of business.

(Approved by the Office of Management and Budget under control number 1505-0063)

Dated: March 16, 1988.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 88-6817 Filed 3-28-88; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This amendment authorizes the Department of the Treasury to defer for up to fourteen (14) calendar days the transfer from, or within, the TREASURY DIRECT Book-Entry Securities System (TREASURY DIRECT) of a bond or note purchased on original issue, or on the additional issue of an outstanding issue. The amendment enables the Treasury to immobilize such a security until a sufficient period of time has elapsed to assure payment therefor has been duly credited.

EFFECTIVE DATE: March 29, 1988.

FOR FURTHER INFORMATION CONTACT: John E. Logue, Assistant Chief Counsel, Washington, DC, Office of the Chief Counsel, Bureau of the Public Debt (202) 447-9859.

SUPPLEMENTARY INFORMATION: The TREASURY DIRECT Book-Entry Securities System is designed for investors who ordinarily intend to retain their securities from issue date to maturity. While requests for transfers of securities either to the book-entry system maintained for despository institutions through Federal Reserve Banks, as fiscal agents of the United States, i.e., the commercial book-entry system, or to another TREASURY DIRECT account, are likely to be infrequent, such transfers are not only

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permissible, but the TREASURY DIRECT system is capable of handling them almost as soon as the requests have been made. Where the payment of new bonds and notes is made by check, or other authorized forms of remittance, there is the possibility that the securities could be transferred before the funds are actually credited to the Treasury's account. The Department, therefore, bears the risk that the check, or other form of payment, will not be honored upon presentation. Accordingly, provision has been made to place a temporary hold on the transfer of bonds and notes securities newly-entered in a TREASURY DIRECT account, for a period of up to fourteen (14) calendar days. This provides a reasonable interval of time to assure that the Treasury will actually receive the payment without imposing an unreasonable burden on owners.

Special Analyses

Because this amendment relates to the terms and conditions of marketable Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act, (5 U.S.C. 553(a)(2)) are inapplicable. Moreover, since this rule is designed to prevent losses to the Government that could result from dishonored payments, its notice and public procedures would be inappropriate. It has been determined that the rule does not constitute a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to this rule.

List of Subjects in 31 CFR Part 357

Banks, Banking, Bonds, Electronic fund transfer, Government securities, Reporting and reissuing requirements.

Accordingly, Part 357 is amended, as follows:

PART 357—[AMENDED]

1. Authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391.

2. Section 357.22(a) introductory text is amended by inserting a sentence at the end to read as follows:

§ 357.22 Transfers

(a) *General.* * * * Notwithstanding the above, for Treasury bonds and notes purchased on original issue or on the additional issue of an outstanding issue, the Department may defer transfer from, or within, TREASURY DIRECT for a period not to exceed fourteen (14) calendar days from the date of issue to assure that payment therefor has been received and credited to the Treasury's account.

* * * * *

Dated: March 23, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-6629 Filed 3-28-88; 8:45 am]

BILLING CODE 4810-40-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-011; FRL-3350-2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving some of the revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on August 12, 1983, January 4, 1984, and June 13, 1984. EPA will take action in a separate notice on the revisions to Rule 17–2.510 (New Source Review for Nonattainment Areas). In addition, on November 30, 1983, FDER withdrew from consideration a portion of the revisions to 17–2.500 (Prevention of Significant Deterioration), specifically Section (2)(e)4.a. (i) and (ii), due to an error in wording. The State agreed to make the needed correction (by changing "or" to "and") and resubmit this revision. On November 19, 1986, FDER submitted the correction, and this revision is being acted on in a separate notice.

These revisions were considered for approval, along with two redesignation requests, on November 28, 1984 (49 FR 46767). The submittals amend regulations contained in the Florida Administrative Code (FAC), Chapter 17–2 (Air Pollution). These revisions include: the revision of an existing definition; the rewording of text describing the purpose of setting ambient air quality standards and revisions to the section which provides restrictions and prohibitions related to new sources which could cause violations of the ambient air standards; expanded procedures providing for the designation and redesignation of areas; a provision which states that the nonattainment designations for ozone and sulfur dioxide areas will remain in effect until such date as EPA makes effective the redesignation of these areas to attainment; and provisions for subjecting new or modified sources locating in air quality maintenance areas to the Reasonably Available Control Technology rules.

DATES: This rule will become effective on April 28, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301–8241

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 12, 1983, January 4, 1984, and June 13, 1984, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today approving most of the changes. Also, EPA will take action on the revisions to rule 17–2.510 (New Source Review for Nonattainment Areas) in a separate notice which will discuss the approvability of the entire rule. Up until this time, approval action on this rule has been on hold pending an EPA policy decision regarding the plantwide definition of a source. EPA has recently outlined procedures for approving regulations which use the plantwide definition of a source, and is in the process of reviewing Florida's rule for agreement with the new policy.

These revisions were proposed for approval, along with two redesignation requests, on November 28, 1984 (49 FR 46767). By the time the proposal notice was published, several changes had been made by the State which EPA was able to incorporate in the notice. The January 4, 1984, and June 13, 1984, submittals consisted of revisions affecting Rules 17–2.410 (Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas)) and 17–2.460 (Designation of Air Quality Maintenance Areas). The June 13, 1984, submittal amended the January 4, 1984,

version of these rules. The January 4, 1984, revision, in turn, updated the SIP submittal and request for area redesignations of August 12, 1983. The June 1984 submittal of the revised Rules 17–2.410 and 17–2.460 makes just one change to the State's regulations: it provides that the State-level effective date of the redesignation of each nonattainment area is to coincide with the effective date of the redesignation under Federal law. Previously, the state-level effective dates were specific dates tied to the schedule the State thought EPA would be able to meet in processing the redesignation requests.

These submittals contained certification that adoption of the revisions had been preceded by adequate notice and public hearing. A discussion of these revisions now follows:

- Rule 17–2.100 (Definitions) was amended by replacing the existing definition of "Redesignation of an Area" with the following: "A change in the designation or a redefinition of the boundaries of an area for any of the designations listed under Part IV of this chapter." Previously, "Redesignation of an Area" was defined as "the reclassification of an area to a different deterioration class or the redefinition of the boundaries of an area." By eliminating the reference to a "deterioration class" (refers to the class designations in prevention of significant deterioration areas), the State can reference a change in the designation of an area from nonattainment to attainment, or a change in the deterioration class of an area from the original designation (i.e., change from Class II to a Class I area).
- Rule 17–2.300 (Ambient Air Quality Standards) was amended as follows: Section (1), previously untitled, is now titled "General." In addition, section (1), which explains the need for establishing ambient air quality standards, has been rewritten in an effort to simplify the section. In section (2), the title has been changed to "Prohibitions and Restrictions." Also, section (2) has been rearranged and rewritten. However, the overall intent of the Section remains the same.
- Rule 17–2.400 (Procedure for Designation and Reclassification of Areas) has been amended by changing its title to "Procedures for Designation and Redesignation of Areas." In addition, the following changes were included. (1) The title of section (1) (Designation or Redesignation of Attainment, Nonattainment and Unclassifiable Areas. (Reserved)) was amended by changing the title to "General." (2) Paragraphs (a), (b), (c), and (d) have been added to section (1). Paragraph (a) provides that all areas of the state shall be designated as nonattainment, attainment, or unclassifiable with respect to each air pollutant for which an ambient air quality standard is established under Rule 17–2.300, and that this designation determines which emission standards, new and modified facility review requirements, and other pollution control measures shall apply to sources and activities which emit the pollutant or the precursor of the pollutant for which the area is designated. Paragraph (b) provides that under Rule 17–2.440, all areas that are designated as attainment or unclassifiable with respect to sulfur dioxide or total suspended particulate shall be further designated as a prevention of significant deterioration (PSD) areas. Paragraph (c) provides that under Rule 17–2.440, all areas of the State shall be designated as Class I, Class II, or Class III. For an area that is designated as a PSD area, the designation of the area determines which set of maximum allowable increases in sulfur dioxide or total suspended particulate concentrations established under Rule 17–2.310 shall apply in the area after a PSD baseline date is established. Paragraph (d) provides that under Rule 17–2.460 (new rule established in this submittal which will be discussed later in this notice) certain areas of the State shall be designated as air quality maintenance areas. Areas that have been redesignated from nonattainment to attainment or unclassifiable may be designated as air quality maintenance areas, with the effect that all previous emission limiting standards and permit limitations shall remain in effect. (3) The old title from section (1) has been moved and renumbered as section (2). (4) The old section (2) has been renumbered as section (3) and retitled as "Redesignation of Class I, Class II, and Class III Areas." There are also some minor revisions to the text in this section. (5) The old section (3) (Designation or Redesignation of Prevention of Significant Deterioration (PSD) Areas) has been renumbered as section (4). Again, some minor revisions occurred in this section. (6) A new section (section (5)) has been created entitled "Designation or Redesignation of Air Quality Maintenance Areas. (Reserved)."
- Rule 17–2.410 (Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas)) was revised to remove the specified dates of attainment for the listed ozone and sulfur dioxide nonattainment areas and replace these dates with the provision that these areas will remain nonattainment areas "Until such date as the U.S. Environmental Protection Agency makes effective the redesignation of the area to attainment."
- Rule 17–2.460 (Designation of Air Quality Maintenance Areas) is a new regulation established by FDER which lists the ozone and sulfur dioxide nonattainment areas (same list appears in Rule 17–2.410) and provides that effective on such date as the U.S. Environmental Protection Agency makes effective the redesignation of the area(s) to attainment, the area(s) will be designated as an air quality maintenance area(s). As an air quality maintenance area, all emission limiting standards and permit limitations that were established pursuant to Rules 17–2.17 (repealed), 17–2.510, and 17–2.650, or otherwise as a result of the SIP or nonattainment corrective plan, and all other air pollution control measures that were required under the SIP or nonattainment corrective plan, shall remain in effect in such areas. This provision ensures that the more restrictive requirements on existing sources remain in effect. However, new and modified facilities in the air quality maintenance areas will no longer be subject to nonattainment new source review requirements, but will be subject to the prevention of significant deterioration (PSD) or reasonably available control technology (RACT) requirements if applicable.

In conjunction with the development of this regulation, the State requested that the Pinellas County sulfur dioxide and Duval County ozone nonattainment areas be redesignated to attainment. In review of the particulate matter nonattainment areas, the State felt that these areas were likely to remain nonattainment for some time. Therefore, they opted not to list these areas in Rule 17–2.460. However, the State provided in Rule 17–2.400(1)(d) that when an area nonattainment for any pollutant (not just ozone and sulfur dioxide) is redesignated to attainment, the State may designate the area as an air quality maintenance area.

On July 1, 1987, EPA promulgated the PM_{10} National Ambient Air Quality Standards (NAAQS) which replaced the existing total suspended particulate (TSP) standards. As a result, the EPA particulate matter (PM) nonattainment areas, which were so designated based on TSP data, are eliminated. However, before EPA can approve a state's request to remove any state PM nonattainment designations, the state will have to have in place regulations which provide that conditions required of an existing source prior to the redesignation will remain in effect. This ensures that any existing TSP control measures will remain active to assist with attaining the PM_{10} standards. Florida has agreed to make such a change, and will most likely designate the two particulate matter nonattainment areas (based on TSP data) (Hillsborough and Duval Counties) as air quality maintenance areas while making other changes to address the new PM_{10} NAAQS.

- Rule 17–2.500 (Prevention of Significant Deterioration) was amended as follows. (1) Section (2)(e)3. (Contemporaneous Emission changes) was amended by replacing the word "commits" with "is committed." (2) Sections (2)(e)4.a. (i) and (ii) were amended. However, FDER withdrew these revisions from consideration on November 30, 1983, due to an error in wording. (3) Section (2)(e)4.c.(i) was revised to include the phrase "or the old level of allowable emissions under Rule 17–2.650", and to replace the word "lower" with "lowest." The sentence now reads, "The old level of actual emissions, the old level of federally enforceable allowable emissions, or the old level of allowable emissions under Rule 17–2.650, whichever is lowest, exceeds the new level of actual emissions." This is a condition necessary to determine if a decrease in the actual emissions or in the quantifiable fugitive emissions of a facility is creditable. (4) Section (4)(b) was amended by replacing any reference to "Section" or "Subsection" with "Rule." (5) Section (4)(b)2.d. was renumbered as section (4)(b)2.e. and a new paragraph d was put in its place. Also paragraphs e and f were relabeled as f and g. (6) The new section (4)(b)2.d. provides that any decrease in actual emissions which was relied on in demonstrating attainment, defining reasonable further progress, or issuing a permit under the nonattainment new source review or RACT rules shall be included in the baseline emissions and shall not be considered in calculating the amount of any maximum allowable increases remaining available.
- Rule 17–2.650 (Reasonably Available Control Technology (RACT)) was revised to include that for section (1) (Volatile Organic Compounds), the emission limiting standards and other requirements of this section shall apply to new, modified, and existing sources of volatile organic compounds in designated ozone air quality maintenance areas (nonattainment areas that have been redesignated to attainment are considered maintenance areas). However, these provisions will not apply to those new or modified sources of volatile organic compounds subject to review pursuant to Rule 17–2.500 (PSD).

Final Action: EPA is approving the regulation revisions which were submitted to EPA on August 12, 1983, January 4, 1984, and June 13, 1984, as detailed in this notice, except for the revisions to Rule 17–2.500(2)(e)4.a. (i) and (ii), which were withdrawn on November 30, 1983. In addition, the revisions to Rule 17–2.510 (New Source Review for Nonattainment Areas) will be acted on in a separate notice discussing the approvability on the entire rule, which up until this time has not been proposed for approval.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the director of the Federal Register on July 1, 1982.

Date: March 7, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(53) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(53) Changes to Florida Administrative Code (FAC), Chapter 17–2, submitted on August 12, 1983, and June 13, 1984, by the Florida Department of Environmental Regulation (FDER).

(i) Incorporation by reference.

(A) August 12, 1983, letter and April 17, 1984, certification of Administrative Rules filed with the Department of State, from the Florida Department of Environmental Regulation.

(B) Amendments to Florida Administrative Code Rules 17–2.100(132), 17–2.300 (1) and (2), 17–2.400 (1) through (5), 17–2.500(2)(e)3, 17–2.500(2)(e)4.c.(i), 17–2.500(4)(b), 17–2.650(1)(a). These revisions were adopted on July 1, 1983, by the State of Florida Department of Environmental Regulation.

(C) Amendments to Florida Administrative Code Rules 17–2.410 (1) and (3), and 17–2.460, approved on April 17, 1984, by the State of Florida Department of Environmental Regulation.

(ii) Additional material—none.

[FR Doc. 88-6167 Filed 3-28-88; 8:45 am]

BILLING CODE [illegible]

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temporary Regulation A-30, Supp.2]

Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to June 30, 1988, the expiration date of FPMR Temporary Regulation A-30.

DATES:

Effective date: February 1, 1988.
Expiration date: June 30, 1988, unless sooner revised or canceled.

FOR FURTHER INFORMATION CONTACT: Phyllis M. Hickman, Travel and Transportation Management Division on (703) 557-1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-7

Government property management, Motor vehicles, travel.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following Supplement 2 to FPMR Temporary Regulation A-30 is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A-30 Supplement 2

To: Heads of Federal agencies
Subject: Use of contract airline/rail passenger service between selected cities/airports

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A-30.

2. *Effective date.* This regulation is effective February 1, 1988.

3. *Expiration date.* This supplement expires June 30, 1988, unless sooner revised or canceled.

4. *Explanation of change.* The expiration date in par. 3 of FPMR Temporary Regulation A-30 is revised to June 30, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88-6725 Filed 3-28-88; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-270-F]

Medicare Program; Changes to the Lesser of Costs or Charges Provisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the regulations governing application of the lesser of costs or charges provision, which is used for computing Medicare payment for certain providers of covered health care services, to reflect certain provisions of the Deficit Reduction Act of 1984.

- Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method of calculating the lesser of costs or charges, which compares total reasonable cost and customary charges for services without regard to whether the services were furnished under Part A or Part B of Medicare, is eliminated.
- Effective with services furnished to Medicare beneficiaries on or after July 18, 1984, home health agencies are to be paid the lesser of the reasonable cost of durable medical equipment or the customary charges (less a 20 percent coinsurance), but not more than 80 percent of the reasonable cost of the equipment.
- Effective with cost reporting periods beginning on or after October 1, 1984, the regulations that govern payment for providers that furnish services either free of charge or at a nominal charge are revised.

In addition, we are providing that, effective with cost reporting periods beginning on or after April 28, 1988, the carryover provisions, which permit a provider to accumulate and carry forward (to subsequent cost reporting periods) costs that previously went unreimbursed because the provider's charges were lower than its costs, are eliminated.

DATES: This final rule is effective on April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Anthony Coates, (301) 966–4515.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, inpatient services furnished by providers such as hospitals or skilled nursing facilities (SNFs) are covered and paid for under Part A (Hospital Insurance) of the program. Outpatient services furnished by providers such as hospital outpatient departments or outpatient physical therapy and speech pathology clinics (OPTs) are covered and reimbursed under Part B (Supplementary Medical Insurance) of Medicare.

Effective with cost reporting periods beginning on or after January 1, 1974, payment for both Part A and Part B services furnished by most providers was based (under sections 1814(b) and 1833(a)(2) of the Social Security Act (the Act), as amended by section 233 of the Social Security Amendments of 1972 (Pub. L. 92–603) (the 1972 Amendments)) on the lesser of the reasonable cost of the services, as determined under section 1861(v) of the Act, or the provider's customary charges for the services. This reimbursement method is generally known as the "lesser of costs or charges (LCC) principle", and is set forth in regulations at 42 CFR 413.13. The LCC principle was established to reduce Medicare costs by ensuring that the program would not pay more for services than the provider charges to the general public (S. Rep. No. 1230, 92nd Cong., 2d Sess. 202 (1972)). This principle was applied to all covered services of the following providers—

- Hospitals;
- SNFs;
- Home health agencies (HHAs); and
- OPTs.

As a result of the rate-of-increase limits (section 1886(b) of the Act) and the prospective payment system (section 1886(d) of the Act), most hospital services are no longer subject to the LCC principle. Specifically, the LCC provisions are not applicable to Part A inpatient hospital services for cost reporting periods that are subject to either the ceiling on the rate of hospital cost increases (see § 413.40) or payment under the prospective payment system (see 42 CFR Part 412). Consequently, effective with cost reporting periods beginning on or after October 1, 1982, the LCC principle has applied only to covered services furnished by SNFs, HHAs and OPTs, and to all covered—

- Hospital outpatient services and certain inpatient ancillary services reimbursable under Part B only; and
- Inpatient and outpatient services furnished by hospitals (or units of hospitals) that would otherwise be subject to the target rate of increase limits when the services are furnished during the period in which the hospital or unit is temporarily exempt from the rate-of-increase limits as a new hospital or unit under § 413.40(f)(1).

A. Application of the Aggregation Method in Calculating the LCC

The method for calculating the LCC amounts is based on an aggregation of the cost and charges for services covered under Part A and Part B. The current § 413.13(c) provides that total costs and charges are compared *without regard* to whether the services were furnished under Part A or Part B of Medicare. After comparing the reasonable costs to the customary charges, the provider is reimbursed based on the lesser of the two amounts. Under the current regulations (§ 413.13(d)), if application of the aggregation method of computing LCC results in a provider's customary charges being lower than its reasonable costs in a reporting period, the provider may, in general, carry forward the unreimbursed costs for the two succeeding cost reporting periods.

On July 18, 1984, the President signed into law the Deficit Reduction Act of 1984 (Pub. L. 98–369). Title III of Division B of Pub. L. 98–369 (that is, the Medicare and Medicaid Budget Reconciliation Amendments of 1984) contains several changes relating to the LCC provisions.

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Section 2308(a) of Pub. L. 98–369 directs the Secretary to issue regulations, applicable to cost reporting periods beginning on or after October 1, 1984, eliminating the aggregation method of calculating LCC and requiring that LCC be calculated and reported separately for services furnished under Part A or Part B, with the exception of clinical diagnostic laboratory tests paid under section 1833(h) of the Act (which are excluded from the LCC calculation). Also, the regulations must provide for payment on the basis of separate determinations of LCC for services furnished under Part A or Part B.

B. The Carryover Provisions

Under the current regulations (§ 413.13(d)), if application of the aggregation method of computing LCC described above results in a provider's customary charges for covered services being lower than the reasonable cost of the services in a cost reporting period, the provider may carry forward the unreimbursed costs for the two succeeding cost reporting periods. Moreover, if the two succeeding cost reporting periods combined are less than 24 full calendar months, the unreimbursed costs may be carried forward for three succeeding cost reporting periods. The provider may add its unreimbursed costs (identified as Part A costs or Part B costs, and limited to the excess of charges over costs for the respective parts, in order to maintain the integrity of the trust funds) from the previous cost reporting period to the allowable program reimbursement for the current cost reporting period. The total allowable program reimbursement in any cost reporting period cannot exceed the customary charges for that period.

There are two exceptions to this accounting procedure. First, new providers of services (see § 413.13(d)(2)) are permitted to carry forward the unreimbursed costs for five succeeding cost reporting periods or, if the five succeeding cost reporting periods combined are less than 60 full calendar months, for six cost reporting periods. Second, any recovery of unreimbursed Part A costs (or costs of Part B services furnished by HHAs) is prohibited in any cost reporting period if the costs were not reimbursed because the provider exceeded the cost limitations as specified in § 413.30 or § 413.40.

C. Durable Medical Equipment Furnished by HHAs

Under § 413.13(a), payments to HHAs for durable medical equipment (DME) furnished to Medicare beneficiaries are subject to the LCC principle. Prior to enactment of section 2321 of Pub. L. 98–369, if a beneficiary was under a home health plan of treatment, the use of medical appliances furnished by an HHA was a covered home health service under either Part A or Part B (with no deductible or coinsurance charge). In addition, an HHA could furnish DME under Part B as a "medical and other health service" (subject to the Part B annual deductible and 20 percent coinsurance).

Section 2321 of Pub. L. 98–369 amended the definition of covered "home health services" in section 1861(m)(5) of the Act to delete the reference to "medical appliances" and to refer specifically to the furnishing of DME to a beneficiary while under a home health plan. Section 2321 also added section 1814(k) of the Act to provide for the following. First, HHAs are to be reimbursed the lesser of the reasonable cost of this equipment or the customary charges (less 20 percent of the reasonable charges as provided in section 1866(a)(2)(A)(ii) of the Act). Second, the payment may not exceed 80 percent of the reasonable cost for the equipment regardless of whether the item is furnished under Part A or Part B. Section 2321(g) of Pub. L. 98–369 makes these provisions applicable to DME furnished on or after July 18, 1984.

Section 3(b)(1) and (c) of Pub. L. 98–617 (enacted on November 8, 1984) amended section 1814(k) of the Act to provide that, effective July 18, 1984, payment to HHAs with respect to DME, is to be 80 percent of fair compensation, as determined by the Secretary, if the DME is furnished by a public HHA or an HHA with a significant portion of its clientele who are low-income patients.

D. Nominal Charges

As an exception to the LCC principle, § 413.13(a) provides that public providers furnishing services either free of charge or at a nominal charge are to be reimbursed fair compensation for those services. Under § 413.13(b)(4), a public provider's charges are considered nominal if the aggregate charges are less than one-half of the reasonable cost of services or items represented by these charges. According to § 413.13(e), fair compensation for these services is defined as the full reasonable cost of the services.

Section 2308(b)(1) of Pub. L. 98–369 requires the Secretary to revise the definition of nominal charges and to provide that charges would be considered nominal if they are 60 percent or less of the reasonable cost of services or items represented by the charges (rather than less than 50 percent as previously provided). Section 2308(b)(1) also requires that the determination of nominal charges is to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests paid under section 1833(h) of the Act) or with respect to inpatient and outpatient services. Section 2308(b)(1) further provides that, for services furnished by HHAs, the Secretary may allow the determination of nominal charges to be made on an aggregate basis for Part A and Part B services if the Secretary finds that a separate determination is not appropriate.

Section 2308(b)(2) of Pub. L. 98–369 amended sections 1814(b) and 1833(a)(2)(B)(ii) of the Act to provide that the nominal charge provisions, which currently apply to public providers only, are applicable to other providers that demonstrate to the Secretary's satisfaction that a significant portion of their patients are low-income. The providers would have to request that Medicare reimbursement be subject to the nominal charge provisions.

In the conference report accompanying Pub. L. 98–369, Congress expressed the intent that providers that use a sliding scale or a discounted schedule of charges that differentiates among patients on the basis of their ability to pay be allowed to use a sliding scale of charges (that is, charges less than the provider's established charges) or a discounted schedule of charges rather than to deem the charges to be full customary charges as actually billed for all patients (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1344 (1984)). For this purpose, the Secretary is instructed to aggregate charge data for all Medicare patients and for all non-Medicare patients who are liable for payment on a charge basis. For example, if a provider appropriately applies a sliding scale of charges based on patients' ability to pay, we are to determine the ratio of sliding scale charges to the provider's customary schedule of full charges. This ratio would then be applied to the Medicare charges in order to equate the Medicare charges to the customary charges for purposes of the nominality test.

II. Summary of Proposed Rule

On September 16, 1986, we published a notice of proposed rulemaking (NPRM) (51 FR 33074) in which we proposed to reorganize the entirety of § 405.455 (subsequently redesignated as § 413.13) to accommodate the statutory changes discussed above and to update the regulations text, as follows:

- In accordance with section 2308(a) of Pub. L. 98–369, we proposed to revise § 413.13 by—

—Prohibiting, effective with cost reporting periods beginning on or after October 1, 1984, the use of the aggregation method for computing LCC; and

—Providing that total customary charges are to be compared, separately for Part A and for Part B, with total reasonable costs for covered items and services.

- We proposed to revise § 413.13 to prohibit providers from carrying forward to succeeding cost reporting periods any reasonable costs that were not reimbursed because they exceeded the provider's customary charges. Unlike the other proposals, this change was to apply to cost reporting periods beginning on or after the effective date of the final rule.

- As required by sections 2321 (a) and (b) of Pub. L. 98–369, we proposed to reimburse HHAs that furnish DME as a home health service the lesser of the reasonable cost of the equipment or the customary charges (subject to the 20 percent coinsurance imposed by section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost for the equipment (see proposed § 413.13(c)(2)(ii)). Payment is 80 percent of fair compensation for HHAs meeting the nominality test. We proposed that this determination for DME furnished in an HHA would be computed separately from all other services furnished by an HHA.

- In accordance with section 2308(b) of Pub. L. 98–369, we proposed to revise § 413.13 in the following manner:

—We proposed to change the definition of nominal charges from charges that are less than 50 percent of reasonable costs to charges that are 60 percent or less of the reasonable cost of the services or items represented by the charges. Section 2308(b)(1) of Pub. L. 98–369 also directs that the charges used in making nominality determinations be the charges actually billed to charge-paying patients who are not entitled to Medicare benefits. We proposed to add this provision to § 413.13(f)(2)(ii).

—The determination of nominal charges was to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act) unless the intermediary decides that the determination is to be made separately with respect to inpatient and outpatient services. We proposed that Medicare's fiscal intermediaries would make this decision on an individual provider basis.

—For providers that use a sliding scale or discounted charges based on their patients' ability to pay, we proposed that nominal charges would be determined by using a sliding scale or discounted schedule of charges, and on the basis of charges billed to non-Medicare charge-paying patients. We further proposed that the intermediary would make this determination in the same manner as described above, that is, separately with respect to Part A and Part B services or with respect to inpatient and outpatient services.

—For HHAs, we proposed that the determination of nominal charges would be computed on an aggregate basis; that is, Part A and Part B charges would be totalled and compared with reasonable costs of the items and services without regard to whether the items or services are reimbursed under Part A or Part B of Medicare. Under our proposal, the determination of nominal charges for DME furnished by HHAs would be made separately from the determination of nominal charges with respect to other HHA services, as authorized under section 2308(b)(1) of Pub. L. 98–369.

- Section 2308(b)(2) of Pub. L. 98–369 amended sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Act to provide that the nominal charge provisions be extended to nonpublic providers that furnish a significant portion of their services to low-income patients. Therefore, we proposed to revise § 413.13 to allow providers with a significant portion of low-income patients to apply the nominal charges provisions. If a nonpublic provider's customary charges are 60 percent or less of the reasonable cost represented by the charges, and the provider can demonstrate that its charges are low because its customary practice is to charge patients based on their ability to pay, we stated that we would deem the provider to be furnishing services to a significant portion of low-income patients. We also proposed that the charges would be accounted for on a separate basis for inpatient and outpatient services in determining whether the nominality provisions are met.

- For HHAs that meet the nominal charge provisions, we proposed, in accordance with section 1814(k)(2) of the Act as amended by section 3(b)(1) of Pub. L. 98–617, to revise § 413.13 to provide that payment for DME, furnished by public HHAs or HHAs furnishing services to a significant portion of low-income patients, is 80 percent of fair compensation for that equipment. All items and services (other than DME) furnished by providers that meet the nominal charge provisions are reimbursed on a reasonable cost basis (fair compensation), rather than the lesser of reasonable costs or customary charges.

III. Provisions of This Final Rule

In this final rule, we are adopting the main provisions of the proposed rule as final. With the exception of the elimination of the carryover provisions, the changes to the regulations conform to the clear intent of the pertinent provisions of Pub. L. 98–369 and Pub. L. 98–617.

The proposal to eliminate the carryover provisions, which enable providers to carry forward, for two succeeding cost reporting periods (or for five succeeding cost reporting periods in the case of new providers), any reasonable costs that were not reimbursed because they exceeded the provider's customary charges, is also adopted as final. Although this proposed change was not mandated by law, and despite public comments in opposition to this particular change (which are addressed in the "Comments and Responses" section below), we believe that the carryover provisions are no longer necessary.

Section 2308(b)(1) of Pub. L. 98–369 requires that the determination of nominal charges is to be made separately with respect to Part A and Part B services (other than clinical diagnostic laboratory tests paid under section 1833(h) of the Act) or with respect to inpatient and outpatient services. The proposed rule provided that Part A and Part B services were to be used separately to determine nominal charges unless the intermediary decides that the determination is to be made separately with respect to inpatient and outpatient services. We agree with those comments that stated that the distinction between Part A and Part B services is a unique Medicare distinction designed to ensure that payment for services is made from the correct Medicare Trust Funds. That distinction is not necessary, used, or applicable for charge-paying non-Medicare patients. We agree that Medicare fiscal intermediaries would be able to make a nominal charge determination for charge-paying non-Medicare patients only by distinguishing between inpatient and outpatient services. Accordingly, we are revising the proposed § 413.13(f)(2)(ii) to state that the determination of nominal charges will be made separately solely for inpatient and outpatient services.

On October 1, 1987, a final rule was issued to implement section 1833(i)(3) of the Act concerning payment for facility services related to covered ambulatory surgical center surgical procedures performed in hospitals on an outpatient basis (52 FR 36765). In that document, § 413.13(c) was revised to incorporate a conforming change on payment for those facility services. In this document, we are redesignating § 413.13(c)(2) as § 413.13(c)(2)(ii) as part of the overall reformatting of § 413.13.

IV. Comments and Responses

A total of 84 items of correspondence were received timely during the comment period, of which 49 items were form letters from Medicare beneficiaries. A summary of the public comments, and our responses to the comments, are presented below:

A. Aggregation Method

Comment: Several commenters stated that the elimination of the aggregation method of calculating the LCC would prevent providers from furnishing low-volume (but high cost) Part B ancillary services, not available elsewhere in a community, that under the aggregation method were previously subsidized by the excess of Part A charges over costs.

Response: Section 2308(a) of Pub. L. 98–369 required the Secretary to issue regulations eliminating the aggregation method of calculating LCC. Generally, we believe that it is in the best interest of the Medicare program for charges to be related to the costs of providing the services. We believe that elimination of the aggregation method will promote the proper allocation of Part A and Part B costs, thereby improving the accuracy of Medicare payments for covered services. In any event, we are implementing the law as directed by Congress.

Comment: Several commenters opposed retroactive application of the elimination of the aggregation method.

Response: The regulatory changes concerning the aggregation method made by this final rule apply, as required by section 2308(a) of Pub. L. 98–369, to cost reporting periods beginning on or after October 1, 1984. While we are issuing a final rule at this time to change the regulations to reflect the provisions of section 2308 of Pub. L. 98–369, we notified the public and the health care industry in September 1986 that the aggregation method would be eliminated for those cost reporting periods, as mandated by Congress. (See Part II of the Provider Reimbursement Manual (Provider Cost Reporting Forms and Instructions) (HCFA Pub. 15–II), Transmittal No. 22, September 1986.)

B. Carryover Provisions

Comment: Many commenters opposed the elimination of the carryover provisions, stating that its elimination was not mandated by law and taking issue with the assertion in the NPRM that the elimination of the carryover provisions is within the Secretary's discretionary authority. The commenters view the proposal as representing a major change in Medicare reimbursement principles that requires new statutory authority, and as a violation of Congressional intent that the carryover provisions be promulgated and maintained.

Response: The carryover provisions were not mandated by statute. Rather, they resulted from the exercise of administrative discretion in response to the Congressional committee reports accompanying the enactment of the LCC principle in Pub. L. 92–603. In these reports, Congress did not mandate inclusion of the carryover provisions in the regulations. Rather, Congress merely recognized the desirability of including a carryover provision at that time so that providers would not be penalized for discrepancies between costs and charges arising from miscalculation of anticipated costs and charges under the LCC principle. See H.R. Rep. No. 231, 92d Cong., 2d Sess., reprinted in 1992 U.S. Code Cong. and Ad. News 4989, 5088. As we stated in the NPRM (51 FR 33077), we believe that, in the subsequent period of more than a decade, the health care industry has had sufficient experience and adequate time to make necessary adjustments, and to establish a proper relationship between costs and charges. For reasons of greater administrative efficiency and long-term provider experience with the cost-to-charge relationship, we believe it is appropriate to eliminate the carryover provisions.

Comment: One commenter suggested that it is incorrect to view the carryover provisions as independent of the LCC provisions, and that eliminating the carryover provisions undermines the logic of the LCC provisions. As such, the traditional annual cost reporting period might, in some instances, not give a provider sufficient time to establish a proper cost-to-charge relationship. Therefore, a period of time longer than a single cost reporting period is necessary to recover costs previously unreimbursed under LCC.

Response: As explained above, while the LCC principle is mandated by sections 1814(b) and 1833(a)(2) of the Act, the specific inclusion of the carryover provisions in the regulations resulted solely from administrative discretion guided by indicated Congressional intent. The original basis for inclusion of the carryover provisions in the regulations is no longer applicable. While we have decided to exercise our administrative discretion again and eliminate the carryover provisions, the LCC principle is still mandated by statute. In any event, elimination of the carryover provisions will not detract from "the logic" of the LCC principle because providers have had many years of experience in adjusting charges to the level of costs.

Comment: Some commenters viewed the elimination of the carryover provisions as a measure that will penalize a provider that, due to unforeseen circumstances, ends its year with costs considerably higher than charges. The commenters stated that, in such a situation, the provider could unfairly shift the payment burden to other payors. Also, with increased pressure on providers to raise charges, Medicare expenditures may rise, and coinsurance for Medicare beneficiaries may increase.

In addition, one commenter believes that the elimination of the carryover provisions will cause undue financial hardship to many SNFs, ultimately increasing program costs as providers are forced to set charges for the general public at substantially higher levels than estimated costs in order to avoid being penalized.

Response: We recognize the possibility that providers may raise charges to match (or exceed) costs with the intent of minimizing or eliminating the disallowance of costs under the LCC provisions, which could result in increased program expenditures for the current period. Nevertheless, we do not expect providers to raise charges unnecessarily for the following reasons, as we stated in the NPRM (51 FR 33077):

- Providers that continually incur unreimbursed costs from year to year do not have the opportunity to recover the disallowed costs with or without these changes because, in order to recover unreimbursed costs, charges must exceed costs in subsequent years.
- Providers that incur unreimbursed costs on a nonrecurrent basis may be able to reduce or eliminate these costs through sound financial practices such as—
  - —Anticipating capital expenditures and building them into their charge structure; or
  - —Creating allowances within their charge structure for unanticipated expenditures.

Section 1861(v)(1)(A) of the Act states that regulations defining reasonable cost should provide that the costs of covered services furnished to beneficiaries are not to be borne by non-Medicare patients; conversely, the costs of services provided to non-Medicare patients are not to be borne by Medicare beneficiaries. We expect that there will be no unfair shifting of the payment burden to non-Medicare patients.

Comment: Some commenters believe that the elimination of the carryover provisions should be imposed on a prospective basis. They recommend that the carryover provisions continue for SNFs until such time as the unreimbursed costs, which existed as of each facility's most recently filed cost report, have been recovered, or that recovery of disallowances be permitted based on the policy in effect when the cost report was filed.

Response: The elimination of the carryover provisions is effective on a prospective basis. That is, only costs disallowed under the LCC principle during cost reporting periods beginning on or after the effective date of the final rule (that is, April 28, 1988) may not be carried over to successive years. However, this change will not preclude providers from recovering previously disallowed costs in completing the carryover period specified in regulations.

Comment: Some commenters stated that small providers without sophisticated automated cost reporting capabilities will not be able to adjust charge levels quickly to accommodate changes in costs and utilization. These providers will be forced either to incur additional administrative expenditures to develop the capability of continuously monitoring and changing charge schedules or simply to decrease participation in Medicare to protect against possible financial losses.

Response: The LCC principle has always caused providers to monitor charge schedules to avoid LCC disallowances and to attempt to establish charge levels sufficient to recover disallowances carried over from prior years. Under principles of sound business practice, in addition to the provisions of this rule, providers should monitor their charges on an ongoing basis. Moreover, necessary costs incurred for monitoring charge schedules continue to be includable as allowable administrative costs. Thus, the elimination of the carryover provisions under this rule should not significantly affect the reimbursement of a provider's administrative costs even if such costs eventually increase.

If a provider's total charges are less than its total costs, then the provider will realize an LCC disallowance. Although a reduction in the provider's Medicare participation would decrease the total amount of the LCC disallowance, this would not detract from Congress' intent that the LCC provisions will ensure that the Medicare program pay no more than the provider charges to the general public.

Moreover, a reduced LCC disallowance under Medicare, as a result of a reduction in the provider's Medicare utilization, would not protect a provider against financial losses from non-Medicare charge-paying patients. These "losses" are not a function of the Medicare program, but rather such losses occur when a provider's charges are established at a level insufficient for the provider to recover its costs from non-Medical patients. Thus, the elimination of the carryover provisions contributes to the purpose of the LCC provisions, which is to ensure that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis.

Comment: Some commenters stated that many providers do not know the impact of the LCC provisions until after the end of their fiscal year. At that time, it is too late to make retroactive changes and the provider can only make financial adjustments for the following year. The commenters believe that it is only fair, therefore, to give HHAs at least one year to carry forward costs in excess of charges. They asserted that, with the implementation of the inpatient hospital prospective payment system, HHA and OPT patients are requiring services that are more intensive and of a longer duration, resulting in increased personnel costs. Furthermore, firm knowledge of allowed costs sometimes is not available until six to nine months after the end of the cost reporting period. Therefore, the ongoing matching of charges to increasing costs is very difficult at best.

Response: We believe that sound business practices require that providers generally know with relative accuracy their actual costs incurred during the year, and certainly know with equal accuracy their charges as they are imposed regardless of whether costs remain constant or increase due to higher personnel costs or for some other reason. Thus, a provider is in a position during the year to monitor both its charges and costs to assess the potential impact of the LCC provisions.

We disagree with the commenters' suggestion that fairness requires that HHAs should have at least one year to carry forward costs in excess of charges. To do so would be contrary to ensuring Congress' intent in enacting the LCC principle, which was that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis. Justification existed in the past to permit the carryover of disallowed costs because providers needed the opportunity to adjust their charges to avoid LCC disallowances when the provisions were first enacted. But now that providers have had long-term experience in adjusting the relationship between costs and charges, the continuation of the carryover provisions could result in the program paying more than the provider charges the general public in derogation of the express purposes of the LCC principle.

Comment: Some commenters stated that the proposed changes will necessitate monitoring the cost to charge relationship on an ongoing basis, which is becoming more difficult to do because HHA administrative costs may, and often are, unexpectedly increased by factors beyond an HHA's control. The commenters identified those factors as being primarily in the form of policy changes or interpretive changes by the fiscal intermediaries and HCFA itself, such as new requirements in claims processing and fewer covered visits due to new interpretations of coverage criteria.

Response: As stated above, we agree that it is necessary to monitor on an ongoing basis the cost to charge relationship due to increasing costs whether such increases are due to higher administrative costs (regardless of the source of the increase), higher salaries, supplies, or any other items of cost. The necessary costs incurred for monitoring charge schedules continue to be includable as allowable costs.

Comment: One commenter stated that while the cost to Medicare of retaining the carryover provisions is minimal, the cost of the elimination of the provisions would be considerable for small HHAs. The commenter explained that if an HHA's charges are less than costs, it is suffering a twofold loss, that is—

- It is not securing from the patient the coinsurance (20 percent of cost); and
- Medicare reimburses only 80 percent of its charges, which is less than the HHA's actual cost of providing the service.

The commenter believes that Congress clearly intended that HHAs be allowed to carry forward unreimbursed costs to the following year so that

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providers would be reimbursed the actual costs of delivering care.

Response: Congress did not envisage reimbursement of a provider's actual costs without qualifications. Rather, under section 1861(v)(1)(A) of the Act, reimbursement is limited to those of a provider's actual costs that are necessary in the efficient delivery of services as determined by the Secretary's "reasonable cost" regulations (42 CFR Part 413).

As explained above, while we exercised discretion in the past by including the carryover provisions in the regulations, there is no further need for them. In any event, providers can avoid the twofold loss by closely monitoring their charges and costs.

Comment: One commenter stated that, if HHAs are not reimbursed their reasonable costs because of the elimination of the carryover provisions, there would be an adverse effect on HHAs and Medicare beneficiaries in terms of maintaining and improving the quality of patient care.

Response: Providers can be ensured of full Medicare reimbursement of their reasonable costs under the LCC principle if their charges are maintained at a level at least equal to their costs. Moreover, elimination of the carryover provisions is consistent with the purpose of the LCC principle, which is to ensure that Medicare pay no more than the provider charges non-Medicare patients. As we stated above, although justification for the carryover provisions existed in the past (that is, during the early years of the Medicare program, providers needed the opportunity to adjust their charges to avoid LCC disallowances), that need no longer exists. Moreover, the continuation of the carryover provisions could result in the program paying more than the provider charges non-Medicare patients.

Comment: One commenter stated that if DME costs exceeded charges in future periods, then all costs would not be reimbursed. Therefore, providers will find it necessary to increase their borrowed capital. Furthermore, the commenter stated that saving money in one cost center will end up costing money in other cost centers due to increased interest expense.

Response: We do not believe that the elimination of the carryover provisions creates the need to borrow capital on an ongoing basis. Consequently, there would be no need to shift costs from one cost center to another. In adjusting its cost to charge relationship, a provider can anticipate capital needs and generally build them into its charge structure.

Comment: One commenter took exception to a statement in the NPRM that if providers increase charges, beneficiaries may obtain their care at other facilities. The commenter pointed out that in many rural areas, there is no other means of obtaining medical care, and by increasing charges and coinsurance, we are placing an unfair burden on the poor and the elderly. In addition, many beneficiaries who are unable to qualify for Medicaid cannot afford supplemental insurance policies. Also, increased coinsurance amounts will result in increased Medicare-reimbursable bad debts.

Response: As a result of the effects of the provisions of this final rule, we believe that, in a few instances, beneficiaries may seek other facilities for medical care. (We acknowledge that if other facilities are not available, then the imposition of higher charges would result in a higher coinsurance amount imposed on Medicare beneficiaries.) We also believe, however, that there may be instances in which providers can avoid an increase in charges by reducing their costs. Thus, beneficiaries would not incur increased charges and coinsurance, and reimbursable bad debts would not increase. Nevertheless, in either case, the program must fulfill the intent of the LCC provisions to pay no more than the level of charge imposed on non-Medicare patients responsible for payment on a charge basis.

Comment: One commenter stated that while HCFA encourages competition among health care providers, the elimination of the carryover provisions will diminish such competition.

Response: We do not agree that the elimination of the carryover provisions will diminish competition among providers. To the contrary, we believe that providers will be even more motivated to adjust their charges and to control their costs in a manner consistent with greater economic efficiency and enhanced competition. Thus, the elimination of the carryover provisions rule should increase competition.

Comment: Two commenters said that eliminating the carryover provisions for a new institution or distinct unit is unrealistic, because new providers offer services knowing that the initial years will result in losses since Medicare pays only costs. The commenters suggested that we consider continuing the carryover provisions for only new providers having cost reporting periods beginning after October 1, 1984, thus, affording them ample opportunity to recover their start-up costs.

Response: We recognize that eliminating the carryover provisions for new providers makes circumstances less favorable for some of them because costs disallowed under the LCC provisions can no longer be carried forward. However, the "losses" represented by these disallowed costs are not merely a function of participation in the Medicare program. Rather, they stem from a new provider's establishment of charges at a level insufficient to cover its costs from all patients, non-Medicare and Medicare. We believe that the elimination of the carryover provision is appropriate for all providers because it will establish an incentive to set charges high enough to cover costs.

Comment: One commenter said that the elimination of the carryover provisions will impact significantly on newly constructed facilities to the extent that, in order to avoid the LCC "penalty" of disallowed costs, new providers will be forced to establish initial charges at excessively high levels that are noncompetitive and unrelated to the ongoing cost of operating the facility at normal occupancy levels. In addition, Medicare will be required to reimburse higher costs in the current year instead of deferring reimbursement to subsequent years.

Response: The commenter believes that the elimination of the carryover provisions will force new providers to establish charges at excessively high levels to compensate for higher costs resulting from low occupancy. As such, the provider would have to pass on the high levels of charges to non-Medicare patients as well. The intent of LCC is that Medicare pay no more than the provider charges non-Medicare patients responsible for payment on a charge basis. The burden of ensuring an occupancy level sufficient to avoid the imposition of excessive charges rests with the provider. Thus, we believe that the elimination of the carryover provisions is appropriate because it will result in new providers either minimizing or avoiding LCC disallowances.

The comment that Medicare will be required to reimburse higher costs in the current year is correct if, as a result of the elimination of the carryover provisions, a provider increases its charges to a level in excess of costs to avoid LCC disallowances. In such cases, however, reasonable cost reimbursement still could not exceed the cost limits and other regulatory constraints on reasonable costs imposed pursuant to section 1861(v)(1)(A) of the Act and the regulations under 42 CFR

Part 413. In any event, the elimination of the carryover provisions would, consistently with Congressional intent, place Medicare patients in the same position as non-Medicare patients responsible for payment on a charge basis.

Comment: One commenter expressed opposition to the elimination of the carryover provisions for new facilities because it would discourage HHAs from entering the Medicare program, and thereby negatively affect beneficiaries' access to services. Also, the commenter stated that this change would affect Medicaid cost reporting and rates in those States adopting Medicare payment principles.

Response: As discussed in detail below in the Regulatory Impact Statement, HHAs represent the most rapidly growing provider type, having increased in number from 2,500 to approximately 6,000 since 1978. We do not believe that the elimination of the carryover provisions will significantly affect the number of new HHAs that choose to enter the Medicare program or indirectly limit beneficiaries' access to services. Therefore, we can see no compelling reason, even given the adoption by Medicaid of Medicare principles, to afford new providers a preferred reimbursement status. In addition, we believe this decision is consistent with our decision to eliminate the exception to the HHA cost limits for new agencies effective with cost reporting periods beginning on or after July 6, 1987. (See the June 4, 1987 final rule with comment period (52 FR 21216)).

Comment: Some commenters said that in a new provider or "new service" situation, a single year is not necessarily the appropriate period for measuring the level of cost and charges. They said that new providers have no history for accurately predicting their costs, are in a high-cost phase of their business life cycle, and yet, are limited in their charge structure by competitive forces in their service area. Therefore, it is common for new providers to have costs disallowed for the first several years since patient load is the element that brings the unit cost below the unit charge dictated by competition.

Response: The carryover provisions for new providers were established some time ago, when it was reasonable to believe the carryover period might lead to improved access to care as new providers entered the program. At this time, we do not believe it is necessary to give new providers preferred status because provider participation in the program has grown steadily through the years. Recognition of costs in excess of charges merely because a provider is "new" gives new providers an unnecessary competitive advantage, especially among HHAs, which require less initial expenditure then other providers and are greatly increasing their program participation.

Comment: One commenter stated that elimination of the carryover provisions discourages new providers and, in particular, small providers from participation in Medicare. The commenter claims that this policy has been undertaken to save money by reducing the number of HHAs.

Response: The provision of this final rule to eliminate the carryover provisions is applicable to all Medicare providers subject to LCC. No part of this provision discriminates against new providers, small providers, or any other specific type of provider.

C. Durable Medical Equipment Furnished by HHAs

Comment: A number of beneficiaries objected to our increasing their out-of-pocket expenses by charging coinsurance for DME furnished by HHAs.

Response: Sections 2321 (a), (b), and (c) of Pub. L. 98–369 amended sections 1814, 1833(a)(2), and 1866(a)(2)(A)(ii) of the Act, respectively, to require that the 20 percent coinsurance provisions apply to DME furnished as home health services. We are implementing the law as it was passed by the Congress.

D. Nominal Charges

Comment: One commenter asserted that the option permitted under section 2308(b)(1) of Pub. L. 98–369 to determine nominal charges separately for Part A and Part B services based on charges actually billed to charge-paying non-Medicare patients is impractical. The commenter stated that the nominal charges determination should be made separately solely for "inpatient and outpatient" services, as allowed under section 2308(b)(1), rather than for Part A and Part B services, because non-Medicare patients are not charged on the Part A and Part B basis.

Response: We agree with the commenter that the nominal charges determination should be made separately for inpatient and outpatient services based on charges actually billed to charge-paying non-Medicare patients rather than on a Part A and Part B basis (which would be impractical). However, if a provider fails to meet the nominal charge criteria for either the inpatient services component or the outpatient services component, the provider must apply an LCC determination for each category. In this situation, the intermediary will consider the inpatient and outpatient services used in the nominal charge determination by attributing inpatient services to represent Part A services and outpatient services to represent Part B services in determining the appropriate component subject to the LCC provisions.

Comment: One commenter requested that we provide information about the documentation, data, and frequency of requests that a provider is required to submit for determinations of nominal charges.

Response: We believe it is impractical and unnecessary to list such information in these regulations. Rather, we intend to notify providers and intermediaries through our administrative issuances system of the information we need to make a determination of nominal charges. Generally, a provider would be required to submit documentation each year to show that it qualifies for an exemption from the LCC provisions in § 413.13 because its customary charges are nominal. Furthermore, a nonpublic provider would need to demonstrate that it furnishes a significant portion of its services to low-income patients.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all Medicare providers of health care services as small entities.

The provisions contained in this rule are not expected to result in an annual economic impact of $100 million or more. However, it will affect a number of small and new providers. Those providers that would find it difficult to compete under the final rule may view our final rule as having a significant adverse effect on competition. Therefore, we have prepared the following analysis, which is intended to conform to the objectives of E.O. 12291 and the RFA.

In the proposed rule published September 10, 1986 (51 FR 33078), we explained that while the elimination of the aggregation method would result in the greatest impact of all the proposed changes, the primary impact of the proposal would result from the requirements of section 2306(a) of Pub. L. 98–369 rather than the proposed rule. However, because the proposed elimination of the carryover provisions and the criteria for identifying nonpublic providers under the nominality provisions were not prescribed by statute and could have significantly affected a substantial number of small entities, we performed an initial regulatory flexibility analysis and a voluntary regulatory impact analysis. The effects of the changes to the DME and nominal charges provisions on Medicare program expenditures, and hence on providers, are negligible.

The proposed rule estimated savings from the elimination of the carryover provisions through FY 1989 (See 51 FR 33081). Those figures reflected savings from hospital services only and did not include HHAs or other providers. We have reestimated the savings effect, with the same limitations, as follows:

Fiscal year	Savings (in millions)
1988	-$10
1989	-30
1990	-35
1991	-30
1992	-30

We have determined that since these savings will help to ensure the integrity of the trust funds in future years, and at the same time encourage more responsible financial fiscal policies from providers, it is in the best interest of the Medicare program to eliminate the carryover provisions.

B. Entities Affected

Effective on or after October 1, 1982, the LCC principle is no longer applied to Part A (Hospital Insurance) coverage under the Medicare program. Under Part B, the hospitals with their comparatively large size and complex mix of services, are able to initiate changes to further reduce or avoid LCC disallowances for their outpatient services. Congress initially stated that it wanted to ensure against introducing "any incentive for providers to set charges for the general public at a level substantially higher than estimated costs merely to avoid being penalized by this (that is, the LCC) provision" H. Rep. No. 231, *SUPRA*. However, this concern is unwarranted because the LCC principle does not apply to hospitals subject to the ceiling on rate of hospital cost increases or hospitals subject to the prospective payment system, and such providers would have no incentive to artificially raise their charges. A consensus of the comments indicates that for these reasons hospitals would not be significantly affected by this final rule.

Comments were also in general agreement with our analysis in the proposed regulations stating that SNFs would not be affected significantly (see 51 FR 33080). We had stated that SNFs as a group have *few* LCC disallowances, and this was not contested.

The major area of concern for commenters was that the removal of the carryover provisions would have an adverse effect on HHAs and OPTs. In response to comments on this issue (see below), we have suggested that the data indicate that HHAs apparently have peaked in growth with more than half of all HHAs entering the Medicare program since 1978. Financial barriers for new HHAs entering the market are already limited because of the small capital investment needed for start up costs and recent adoption of more lenient licensure requirements for proprietary HHAs. On average, capital-related costs for an HHA represent less than three percent of its total operating costs.

As discussed below, we continue to believe that OPTs as a group also will not be affected significantly, although our basis for this has changed with further research prompted by commenters. OPTs traditionally maintain annual LCC disallowances, thereby disqualifying them for any reimbursement as a result of the carryover provisions. Their main problem is the inability to align cost and charge structures, and not the elimination of the carryover provisions.

C. Comments and Responses

Comment: One commenter stated that half of all HHAs nationally (more than 3,000) entered the program in 1982 or later. They are new providers that may be affected by elimination of the carryover provisions. The commenter characterized the estimate in Appendix II to the proposed rule as a four-year-old review of five-year-old cost reports of a 10 percent sample of HHAs then in existence. In that estimate, HCFA adjusted findings downward by 50 percent and concluded that total annual HHA carryover amounts ranged between $900,000 to $1.5 million. The commenter argued that this may underestimate current annual carryovers by $10 million to $15 million. Program reimbursement of HHAs more than doubled between fiscal year 1981 and fiscal year 1985.

Another commenter asked that we reconsider the elimination of the carryover provisions for HHAs because the small size of HHAs and the narrower mix of services do not give them the same level of opportunity to initiate changes to reduce or avoid LCC disallowances as hospitals, with their comparatively greater size and mix of services. Pointing out that both the preamble and Appendix II of the proposed rule stated that the data available were inadequate to predict with any confidence the estimated impact of the elimination of carryovers for HHAs, the commenter expressed the belief that the empirical evidence should be more substantial than that presented in the proposed rule before the carryover provisions are eliminated.

Response: In fact, more than half of all HHAs entered the Medicare program since 1978—nine years ago. The proposed rule indicated that the number of HHAs participating in the Medicare program grew from 2,500 in 1978 to over 5,000 HHAs in 1986. However, more recent data indicate that HHAs apparently have peaked at around 6,000, as indicated in the following chart:

Medicare-Certified HHAs

Dec. 1984	5,274
Sept. 1985	5,755
Jan. 1986	5,964
Mar. 1986	6,005
Apr. 1986	6,012
May, 1986	5,993

For the fiscal year ending with September 1985, 992 new HHAs had signed Medicare agreements and there were 382 voluntary terminations and one involuntary termination. Another 459 new agreements with 414 voluntary terminations and four involuntary terminations occurred in fiscal year 1986.

With respect to the latter comment, while it is true that HHAs and other providers do not have as great a variety of services as hospitals, it is also true that their startup costs are substantially less, and do not necessitate the level of capital investment that must be made by even a small hospital.

We agree that the 1982 sample selected was not scientifically chosen and therefore we were unable to generalize the findings. However, the rationale for adjusting the findings downward by 50 percent was based on other program data that were used as part of a program validation initiative and that suggested that the original sample was overstated. We are confident based on this supplemental data that our findings are reflective of the general magnitude of the impact on HHAs of this final rule. That magnitude would now be even less than at the time this rule was proposed, since we subsequently ended the exception to our cost limits for new HHAs. As a result, LCC disallowances will not be as large as heretofore.

Comment: Commenters stated that HCFA apparently does not have good data on what effect the elimination of the carryover provisions would have on providers other than hospitals and HHAs. Whereas HCFA's proposed rule stated that few SNFs and outpatient rehabilitation agencies experience LCC disallowances, more than 50 percent of the outpatient rehabilitation agencies (outpatient physical therapy and speech pathology clinics (OPTs) that are independent entities) serviced by a Medicare intermediary in Florida are reimbursed 100 percent of charges. This would appear to indicate that many rehabilitation agencies have LCC disallowances and would be severely affected by the elimination of the carryover provisions.

Response: Further investigation indicates that it is true that more than 50 percent of rehabilitation agencies in certain areas of Florida are reimbursed 100 percent of charges as stated by the commenter. However, these agencies have an historical pattern of recurring LCC disallowances that precludes them from being eligible for reimbursement under the carryover provisions. We believe this to be a problem of aligning cost and charge structures. Our information does not indicate that their situation would be significantly worsened by the elimination of the carryover provisions.

D. Conclusion

The majority of the commenters recommended that we not eliminate the carryover provision because it will have a significant impact on small providers, specifically new HHAs. The majority of these comments were based on the claim that small providers would experience more difficulties because of their narrower mix of services, relatively large capital expenditures, difficulty in competing with larger entities (hospitals), and the difficulty of financial startup costs. However, we are not dissuaded by the commenters.

As we noted in a final rule published June 4, 1987 (52 FR 21223) concerning elimination of the exception for newly established HHAs from the cost limits, evidence acquired during the past few years concerning the changing composition of HHAs suggests that obtaining financing for start-up costs may no longer be a significant obstacle to entering the market place. This is supported by the fact that by the end of FY 1985, 81.1 percent of all new HHAs certified by the Medicare program were either hospital-based or proprietary, which strongly suggests that these agencies have access to alternative sources of financing that are not available to the nonprofit agencies that previously dominated the industry. It is expected that eight out of ten agencies will continue to be hospital-based or proprietary in the future. Entry of new HHAs into the industry is also easier now because the slight capital investment required for start-up costs makes it easier for new freestanding and nonprofit agencies to begin operations. We believe that the nature of home health services enables HHAs to adopt flexible staffing and maintain minimal fixed assets, resulting in more control over their costs in the early years than is possible for hospitals. We do not believe that there is a substantial obstacle preventing HHAs from better aligning their costs and charge structures and thereby avoiding LCC disallowances. We also note that providers, including HHAs, will be exempt from the LCC principle, and thus will experience no disallowances, if they meet the nominal charge provision by providing services to a significant portion of low-income patients.

As stated above, our most recent data on HHAs indicate that, during FY 1986, there were 459 new Medicare HHA agreements and 414 voluntary terminations. These data suggest that the carryover provisions, which were then in effect, and the perpetuation of a new HHA are not necessarily related. New HHAs frequently fail, perhaps as a result of competition or adverse conditions in the marketplace, but apparently not because the carryover provisions may or may not be applicable.

VI. Other Required Information

Paperwork Reduction Act

This rule would not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are amending 42 CFR Part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.13 is revised to read as follows:

§ 413.13 Amount of payment if customary charges for services furnished are less than reasonable costs.

(a) *Definitions.* As used in this section—

"Fair compensation" means, for the purpose of providers that meet the nominal charge provisions in paragraph (f) of this section, the reasonable cost of covered services furnished to beneficiaries.

"New provider" means a provider that has operated as the type of facility for which it has been approved for participation in the Medicare program (for example, as a SNF or an HHA) under present and previous ownership for less than three full years.

"Provider with a significant portion of low-income patients" means a nonpublic provider whose charges are 60 percent or less of the reasonable cost represented by the charges, and that demonstrates, as required under paragraph (c)(1)(iii) of this section, that its charges are less than costs because its customary practice is to charge patients based on their ability to pay.

"Public provider" means a provider operated by a Federal, State, county, city, or other local government agency or instrumentality.

(b) *Application of the principle of lesser of costs or charges*—(1) *General rule.* Except as provided in paragraph (c) of this section, effective with cost reporting periods beginning on or after January 1, 1974, hospitals, SNFs, HHAs, and OPTs are paid the lesser of the reasonable cost (as described in paragaraph (d) of this section) of covered services furnished to

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beneficiaries or the customary charges (as defined in paragraph (e) of this section) made by the provider for the same services. The carryover of unreimbursed reasonable costs from previous cost reporting periods is recognized, in accordance with the provisions of paragraph (h) of this section.

(2) *Example.* A provider's reasonable cost for covered services furnished to Medicare beneficiaries during a cost reporting period is $125,000. The customary charges to those beneficiaries for these services is $110,000. The provider is to be reimbursed $110,000 less deductible and coinsurance amounts that the beneficiaries are charged.

(c) *Providers and services not subject to the principle*—(1) *Providers.*—(i) *CORFs.* Payment to CORFs is based on the reasonable cost of the services.

(ii) *Public providers.* Public providers furnishing services free of charge or at a nominal charge (as specified in paragraph (f) of this section) are paid fair compensation for services furnished to beneficiaries.

(iii) *Providers furnishing services to a significant portion of low-income patients.* Effective with cost reporting periods beginning on or after October 1, 1984, a provider furnishing services at a nominal charge (as specified in paragraph (f) of this section) is paid fair compensation, upon request, for services furnished to beneficiaries if the provider can demonstrate to its intermediary that a significant portion of its patients are low income and that its customary practice is to charge patients based on their ability to pay.

(2) *Services*—(i) *Part A inpatient hospital services.* The lesser of costs or charges principle does not apply to Part A inpatient hospital services subject to—

(A) The rate-of-increase limits under § 413.40, effective with cost reporting periods beginning on or after October 1, 1982; or

(B) The prospective payment system under Part 412 of this chapter, effective with cost reporting periods beginning on or after October 1, 1983.

(ii) *Special rule for facility services related to ambulatory surgical procedures performed in outpatient hospital departments.* Effective for hospitals with cost reporting periods beginning on or after October 1, 1987, reasonable costs and customary charges for those services relating to ambulatory surgical procedures that are subject to the payment methodology described in § 413.118 are aggregated and treated separately from all other hospital costs and charges incurred during the cost reporting period.

(iii) *Durable medical equipment furnished by HHAs*—(A) *General.* Except as provided in paragraph (c)(2)(iii)(B) of this section, for durable medical equipment furnished by an HHA as a home health service on or after July 18, 1984, the HHA is paid the lesser of the reasonable cost of the equipment or the customary charges (less a 20 percent coinsurance as provided in section 1866(a)(2)(A)(ii) of the Act), not to exceed 80 percent of the reasonable cost of the equipment. The lesser of cost or charges determination for durable medical equipment is made separately from all other items or services furnished in an HHA regardless of whether the equipment is furnished under Part A or Part B.

(B) *HHAs meeting the nominal charge provisions.* A public HHA, or an HHA that demonstrates that a significant portion of its patients are low-income patients under the nominal charge provisions, as provided in paragraph (f)(2) of this section, are paid 80 percent of fair compensation for durable medical equipment furnished as a home health service on or after July 18, 1984.

(d) *Exclusions from reasonable cost.* For purposes of comparison with customary charges under this section, reasonable cost does not include—(1) Payments made to a provider as reimbursment for bad debts arising from noncollection of Medicare deductible and coinsurance amounts (§ 413.80);

(2) Amounts that represent the recovery of excess depreciation resulting from termination in the Medicare program or a decrease in Medicare utilization (§ 413.134(d)(3)) applicable to prior cost reporting periods;

(3) Amounts that result from a disposition of depreciable assets (§ 413.134(f)) applicable to prior cost reporting periods; and

(4) Payments to funds for the donated services of teaching physicians (§ 413.85).

(e) *Customary charges*—(1) *General.* As used in this paragraph (e), customary charges means the charges for services, as defined in § 413.53(b), furnished to beneficiaries. These charges must be recorded on all bills submitted for program reimbursement.

(2) *Special situations in which customary charges are reduced.* Customary charges are reduced in proportion to the ratio of the aggregate amount actually collected from charge-paying non-Medicare patients to the amount that would have been realized had customary charges been paid and the provider—

(i) Did not actually impose charges in the case of most patients liable for payment for its services on a charge basis; or

(ii) Failed to make a reasonable effort to collect those charges.

(f) *Nominal charges.*—(1) *Cost reporting periods beginning before October 1, 1984.* Except for durable medical equipment furnished by HHAs as provided in paragraph (c)(2)(iii) of this section, if a public provider's total charges, for cost reporting periods beginning before October 1, 1984, are less than one-half of the reasonable cost of services or items represented by these charges, then the provider is reimbursed fair compensation.

(2) *Cost reporting periods beginning on or after October 1, 1984.* For cost reporting periods beginning on or after October 1, 1984, the following provisions apply in determining nominal charges:

(i) *Reimbursement of fair compensation.* Except for the limitations on reimbursement for durable medical equipment furnished by HHAs as provided in paragraph (c)(2)(iii) of this section, public providers, and providers with a significant portion of low-income patients that request payment under this paragraph are reimbursed fair compensation if total charges are 60 percent or less of the reasonable cost of services or items represented by these charges.

(ii) *Separate determination of nominal charges.* Except as provided in paragraph (f)(2)(iii) of this section, the determination of nominal charges, which is based on charges actually billed to charge-paying, non-Medicare patients, is made separately with respect to inpatient and outpatient services (other than clinical diagnostic laboratory tests that are paid under section 1833(h) of the Act).

(iii) *Determination of nominal charges in special situations.* (A) For providers that have a sliding scale or discounted schedule of charges based on patients' ability to pay, the determination of nominal charges is based on charges billed to all charge-paying patients. This determination is made using the ratio of sliding scale or discounted charges to the provider's full customary charges. For determining nominal charges, the ratio is applied to the provider's Medicare charges to equate those charges to customary charges.

(B) For HHAs, the determination of nominal charges for all items and services other than durable medical equipment is made on an aggregate basis. The nominal charge determination for durable medical equipment is made separately from other items or services furnished by HHAs.

(g) *The aggregation method*—(1) *Cost reporting periods beginning before October 1, 1984—Application.* In comparing costs and charges under the lesser of costs or charges principle for cost reporting periods beginning before October 1, 1984, the reasonable cost for items and services and the customary charges for those same items and services are to be aggregated (that is, totalled and compared) without regard to whether the services are reimbursable under Part A or Part B of Medicare. This aggregation method is to be applied after the provider's charges and costs have been adjusted to exclude the amounts described in paragraph (d) of this section and to exclude—

(i) Any amounts attributable to physican services not reimbursable to the provider on a reasonable cost basis as described in §§ 405.480 through 405.482 of this chapter; and

(ii) All costs and charges for noncovered provider services.

(2) *Cost reporting periods beginning on or after October 1, 1984.* Effective with cost reporting periods beginning on or after October 1, 1984, the aggregation method used for computing the lesser of costs or charges, as set forth in paragraph (g)(1) of this section, may not be used. For covered items and services furnished during these periods, total reasonable cost of covered items and services is compared with total customary charges for those items and services, separately for Part A and for Part B.

(h) *Accumulation of unreimbursed costs and carryover to subsequent periods*—(1) *General rule.* A provider whose charges are lower than its reasonable cost for those services in any cost reporting period beginning on or after January 1, 1974 but before April 28, 1988, may carry forward costs that are unreimbursed under paragraph (b) of this section for the two succeeding cost reporting periods. However, no recovery may be made in any period in which costs are unreimbursed because a provider's costs exceed the limitations on reimbursable costs (§ 413.30) or the ceiling on the rate of hospital cost increases (§ 413.40).

(2) *Reimbursement as a result of carryover.* The provider is reimbursed for the costs that are carried forward to a succeeding cost reporting period—

(i) If total charges for services provided in that subsequent period exceed the total reasonable cost of the services; and

(ii) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period do not exceed the customary charges for those services.

(3) *Two succeeding periods less than 24 months.* If the two succeeding cost reporting periods are less than 24 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(4) *Example.* In the cost reporting period ending September 30, 1982, a provider's reasonable costs were $100,000. The provider's customary charges for those services were $90,000. The provider is reimbursed $90,000 less any deductible and coinsurance amounts but is permitted to carry forward the unreimbursed reasonable costs of $10,000 for the next two succeeding cost reporting periods. If, in the cost reporting period ending September 30, 1983, customary charges to beneficiaries exceeded the reasonable costs for those services by $10,000 or more, and the provider had no costs unreimbursed under § 413.30 or § 413.40, the provider would recover the entire $10,000 previously not reimbursed. If, however, beneficiary charges for that cost reporting period exceeded costs by only $8,000, this amount ($8,000) would be added to the provider's reimbursable costs for this period. The balance of the unreimbursed amount ($2,000) would be carried forward to the next cost reporting period.

(5) *New providers*—(i) *General rule.* A new provider whose cost reporting period begins before April 28, 1988, may carry forward costs that are unreimbursed from previous periods, as described in paragraph (b) of this section, during a provider's base period. The base period includes any cost reporting period beginning on or after January 1, 1974, and ending on or before the last day of its third year of operation. The unreimbursed costs may be carried forward for the five succeeding cost reporting periods. However, no recovery may be made in any period in which costs are unreimbursed because a provider's costs exceed the limitations on reimbursable costs (§ 413.30) or the ceiling on the rate of hospital cost increases (§ 413.40).

(ii) *Reimbursement as a result of carryover.* The new provider is reimbursed for the costs that are carried forward to a succeeding cost reporting period—

(A) If total charges for the services provided in that subsequent period exceed the total reasonable cost of the services; and

(B) To the extent that accumulation of the costs being carried forward and the costs for the services provided in that subsequent period do not exceed the customary charges for those services.

(iii) *Five succeeding periods less than 60 months.* If the five succeeding cost reporting periods are less than 60 full calendar months, the provider may carry forward the unreimbursed costs for one additional cost reporting period.

(iv) *Example.* A provider begins its operations on March 5, 1972. However, it begins to participate in the Medicare program as of January 1, 1973, and reports on a calendar year basis. Because the provider would be subject to the lesser of cost or charges principle for its cost reporting period beginning with January 1, 1974, it would be permitted to accumulate any unreimbursed costs (excess of costs over its charges) incurred during this reporting period. Therefore, because this cost reporting period ends before the end of the third year of operation, its carryover period would be the succeeding five cost reporting periods ending with December 31, 1979. If this provider had begun its operation on July 1, 1973, and become a participating provider as of the same date (with a fiscal year ending June 30), it would have been able to accumulate any unreimbursed costs for the two cost reporting periods ending June 30, 1975, and June 30, 1976. Its carryover period would then be the five cost reporting periods ending no later than June 30, 1981, in the case of costs unreimbursed in either of the reporting periods ending June 30, 1975, or June 30, 1976.

(Catalog of Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: December 21, 1987.

William L. Roper

Administrator, Health Care Financing Administration.

Approved: January 25, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-6833 Filed 3-28-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6782]

List of Communities Eligible for the Sale of Flood Insurance; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

BEST COPY AVAILABLE

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1.The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Arkansas: Sedgwick, town of Lawrence County	050576	Feb. 1, 1988, Emerg.	
Oklahoma: Washington County, unincorporated areas	400459	Do. Emerg.	
Pennsylvania:			
Conneautville, borough of Crawford County	420349	May 28, 1975, Emerg.; Sept. 18, 1987, Reg.; Sept. 18, 1987, Susp.; Feb. 8, 1988, Rein.	Sept. 18, 1987.
Foxburg, borough of Clarion County	421502	Feb. 28, 1977, Emerg.; Sept. 30, 1987; Reg.; Sept. 30, 1987, Susp.; Feb. 8, 1988, Rein.	Sept. 30, 1987
Rouseville, borough of Venango County	420839	July 11, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp.; Feb. 8, 1988, Rein.	June 19, 1987.
Tennessee: Gordonsville, town of, Smith County [1]	470395	Feb. 10, 1988, Emerg.; Feb. 10, 1988, Reg.	
California: Orinda, city of, Contra Costa County	060722	Feb. 10, 1988, Emerg.; Feb. 10, 1988, Reg.	Jan. 6, 1988.
Iowa: Donahue, city of, Scott County	190505	Feb. 10, 1988, Emerg.	Mar. 19, 1976.
Massachusetts: Middlefield, town of, Hampshire County.	250166	Jan. 22, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Feb. 10, 1988, Rein.	Jan. 3, 1986.
Pennsylvania:			
Washington, township of, Dauphin County	421596	Jan. 20, 1976, Emerg.; Dec. 17, 1987, Reg.; Dec. 17, 1987, Susp.; Feb. 10, 1988, Rein.	Dec. 17, 1987.
Upper Uwchlan, township of, Chester County	421491	Mar. 10, 1976, Emerg.; Aug. 19, 1985, Reg.; Aug. 19, 1985, Susp.; Feb. 16, 1988, Rein.	Aug. 19, 1985.
Kentucky: Milton, city of, Trimble County	210215	May 29, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.; Feb. 16, 1988, Rein.	Sept. 18, 1986.
Michigan: Port Huron, township of, St. Clair County	260672	Feb. 22, 1988, Emerg.	Oct. 29, 1976.
Oregon: Culver, city of, Jefferson County	410290	Feb. 18, 1988, Emerg.; Feb. 18, 1988, Reg.	Sept. 4, 1987.
Texas:			
Cut and Shoot, town of, Montgomery County	481279	Feb. 22, 1988, Emerg.; Feb. 22, 1988, Reg.	Feb. 1, 1984.
Lakeway, village of, Travis County	481303	June 27, 1977, Emerg.; Nov. 5, 1980, Reg.; Nov. 5, 1980, Susp.; Feb. 22, 1988, Rein.	Nov. 5, 1980
New York: *Edmeston, town of, Otsego County	361270	Sept. 30, 1987, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; Feb. 18, 1988, Rein.	June 1, 1987.
Kentucky: Grayson, city of, Carter County	210051	July 10, 1975, Emerg.; Aug. 16, 1982, Reg.; Feb. 4, 1988, Susp.; Feb. 22, 1988, Rein.	Aug. 16, 1982
Florida: Coconut Creek, city of, Broward County	120031	Apr. 17, 1974, Emerg.; Apr. 2, 1979, Reg.; Feb. 4, 1988, Susp.; Feb. 24, 1988, Rein.	Apr. 2, 1979.
North Carolina: *Edenton, town of, Chowan County	370062	Nov. 14, 1973, Emerg.; Sept. 15, 1977, Reg.; Feb. 4, 1988, Susp.; Feb. 26, 1988, Rein.	July 3, 1985.
Michigan: Logan, township of, Mason County	260611	Feb. 29, 1988, Emerg.	
New Jersey: Barrington, borough of, Camden County	340579-New	Do. Emerg.	

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Arkansas: Maumelle, city of, Pulaski County [2]	050577-New	Mar. 6, 1979, Emerg.; July 16, 1981, Reg.	
Florida: Clewiston, city of, Hendry County	120106	Sept. 29, 1972, Emerg.; Mar. 15, 1977, Reg.; Feb. 4, 1988, Susp.; Feb. 29, 1988, Rein.	Mar. 15, 1977
Region III—Regular Conversions			
Pennsylvania: Hatfield, township of, Montgomery County	420699	February 4, 1988, suspension withdrawn	Feb 4, 1988.
Region IV			
Georgia: Jesup, city of, Wayne County	130188	do	Do.
Region V			
Ohio:			
Belmont County, unincorporated areas	390762	do	Do.
Brookside, village of, Belton County	390027	do	Do.
Region VI			
Louisiana: Iowa, town of, Calcasieu Parish	220039	do	Do.
Texas: Arlington, city of, Tarrant County	485454	do	Do.
Region VII			
Kansas: Geary County, unincorporated areas	200579	do	Do.
Nebraska: Saline County, unincorporated areas	310472	do	Do.
Region VIII			
Utah: Duchesne, city of, Duchesne County	490055	do	Do.
Region IX			
California:			
Stockton, city of, San Joaquin County	060302	do	Do.
Sacramento, city of, Sacramento County	060266	do	Do.
Region VIII—Minimal Conversions			
Utah: Myton, city of, Duchesne County	490056	do	Do.
Region I—Regular Conversions			
Maine:			
Fairfield, town of, Somerset County	230125	Feb. 17, 1988, suspension withdrawn	Feb 17, 1988.
Waterville, city of, Kennebec County	230070	do	Do.
Massachusetts: Marion, town of, Plymouth County	255213	do	Do.
Region III			
Pennsylvania: Chestnuthill, township of, Monroe County	421885	do	Do.
Region IV			
South Carolina: Clemson, city of, Anderson County	456238	do	Do.
Tennessee:			
Fayetteville, city of, Lincoln County	470105	do	Do.
Lewisburg, city of, Marshall County	470121	do	Do.
Marshall County, unincorporated areas	470119	do	Do.
Mount Pleasant, city of, Maury County	470125	do	Do.
Region V			
Michigan: Blissfield, village of, Lenawee County	260339	do	Do.
Region VII			
Kansas: Pottawatomie County, unincorporated areas	200021	do	Do.
Region IX			
Nevada: Lincoln County, unincorporated areas	320014	do	Do.
Oregon:			
Enterprise, city of, Wallowa County	410225	do	Do.
Joseph, city of, Wallowa County	410226	do	Do.
Wallowa, city of, Wallowa County	410228	do	Do.
Wallowa County, unincorporated areas	410224	do	Do.
Jefferson County, unincorporated areas	160214	do	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IX—Minimal Conversions			
Oregon: Lostine, city of, Wallowa County	410227	......do	Do.

[1] The Town of Gordonsville has adopted by reference Smith County's FIRM for floodplain management and insurance purposes. Smith County's FIRM date is April 15, 1981.

[2] The City of Maumelle (Pulaski County) is a newly incorporated community that was participating in the Regular Program as an unincorporated area of Pulaski County. The City has adopted by reference the county's FIRM for floodplain management and insurance purposes. Pulaski County's current FIRM effective date is 11-16-86.

[3] Minimal Conversions.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
Federal Insurance Administration.

Issued: March 23, 1988.

[FR Doc. 88-6760 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 6784]

Suspension of Community Eligibility; North Carolina

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: April 5, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Washington, DC, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting live and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Offie or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, heareby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

Lists of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 40001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
North Carolina	Unincorporated areas	Burke	370034	Apr. 5, 1988.
Do	Charlotte, city of	Mecklenburg	370159	Do.
Do	Gastonia, city of	Gaston	370100	Do.
Do	Harrisburg, town of	Cabarrus	370038	Do.
Do	Indian Trail, town of	Union	370235	Do.
Do	Kings Mountain, city of	Cleveland	370304	Do.
Do	Long View, town of	Catawba	370055	Do.
Do	Maiden, town of	Catawba	370056	Do.
Do	Unincorporated areas	Mecklenburg	370158	Do.
Do	Mount Holly, city of	Gaston	370102	Do.
Do	Spencer, town of	Rowan	370216	Do.
Do	Wingate, town of	Union	370365	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: March 23, 1988.

[FR Doc. 88-6762 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA 6781]

Suspension of Community Eligibility; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster

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Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows.

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date ¹
Region III—Minimal Conversions				
Pennsylvania:				
Dallas, township of, Luzerne County	420802	Sept. 5, 1973, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Larimer, township of, Somerset County	422515	Sept. 8, 1983, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
West Virginia:				
Capon Bridge, town of, Hampshire County	540046	May 13, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Hundred, town of, Wetzel County	540256	July 10, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Lester, town of, Raleigh County	540171	May 13, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Pine Grove, town of, Wetzel County	540210	July 16, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Smithfield, town of, Wetzel County	540258	Nov. 5, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
West Milford, town of, Harrison County	540062	Sept. 25, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Virginia: Berryville, town of, Clarke County	510037	Mar. 17, 1975, Emerg.; Apr. 1, 1988, Reg.; Apr. 1, 1988, Susp.	4-1-88	Do.
Region II—Regular Program Conversions				
New York: Annsville, town of, Oneida County	360516	June 9, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Apr. 5, 1988.
Region III				
Pennsylvania:				
Cranberry, township of, Venango County	422109	July 7, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
East Franklin, township of, Armstrong County	421305	Apr. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Londonderry, township of, Chester County	421484	Feb. 11, 1983, Emerg.; Sept. 24, 1984, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Kiskiminetas, township of, Armstrong County	421209	Feb. 28, 1977, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Parks, township of, Armstrong County	421311	Feb. 13, 1976, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Upper Frankford, township of, Cumberland County	421588	Aug. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Honaker, town of, Russell County	510321	Feb. 21, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region IV				
Alabama: Cottonwood, town of, Houston County	010102	Dec. 24, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region V				
Illinois: Ogle County, Unincorporated areas	170525	Aug. 17, 1979, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region VI				
Louisiana:				
Catahoula Parish, Unincorporated areas	220047	Apr. 26, 1979, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Harrisonburg, village of, Catahoula Parish	220048	Apr. 25, 1973, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region VIII				
North Dakota: Tioga, city of, Williams County	380147	June 25, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region IX				
California:				
Solano County, Unincorporated areas	060631	Mar. 23, 1979, Emerg.; Aug. 2, 1982, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Sutter County, Unincorporated areas	060394	Oct. 9, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region X				
Idaho:				
Boise County, Unincorporated areas	160205	Oct. 14, 1982, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Idaho City, city of, Boise County	160222	Mar. 29, 1978, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Oregon:				
Dallas, city of, Polk County	410187	June 18, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Independence, city of, Polk County	410189	June 21, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Monmouth, city of, Polk County	410190	Oct. 15, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Polk County, Unincorporated areas	410186	Dec. 10, 1971, Emerg.; Feb. 15, 1978, Reg.; Apr. 5, 1988, Susp.	4-5-88	Do.
Region II—Regular Program Conversions				
New York: Vernon, village of, Oneida County	360560	Oct. 6, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Apr. 15, 1988.
Region III				
Delaware: Newark, city of, New Castle County	100025	June 5, 1970, Emerg.; Mar. 29, 1974, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region V				
Illinois:				
Amboy, city of, Lee County	170414	Apr. 8, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Dixon, city of, Lee County	170417	Mar. 3, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Evansville, village of, Randolph County	170577	June 25, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Lee County, Unincorporated areas	170413	June 6, 1975, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Nelson, village of, Lee County	170418	Sept. 30, 1976, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region VIII				
Wyoming: Ranchester, town of, Sheridan County	560046	May 8, 1976, Emerg.; Apr. 15, 1988, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Region IX				
Arizona:				
Avondale, city of, Maricopa County	040038	Aug. 25, 1975, Emerg.; June 15, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Carefree, city of, Maricopa County	040126	Dec. 31, 1970, Emerg.; July 2, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
El Mirage, town of, Maricopa County	040041	Aug. 8, 1975, Emerg.; Dec. 1, 1978, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Gila Bend, town of, Maricopa County	040043	May 16, 1975, Emerg.; Dec. 4, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Glendale, city of, Maricopa County	040045	Mar. 20, 1975, Emerg.; Apr. 16, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Good Year, town of, Maricopa County	040046	Aug. 8, 1975, Emerg.; July 16, 1979, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.
Mesa, city of, Maricopa County	040048	Sept. 29, 1972, Emerg.; May 15, 1980, Reg.; Apr. 15, 1988, Susp.	4-15-88	Do.

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[1] Date certain Federal assistance no longer available in special flood hazard areas.

Code for reading column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-6761 Filed 3-28-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-203; RM-5799]

Radio Broadcasting Services; Folly Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Charleston County Wireless Company, substitutes Channel 251C2 for Channel 249A at Folly Beach, South Carolina, and modifies its permit for Station WCCG to specify operation on the higher powered channel. Channel 251C2 can be allocated to Folly Beach in compliance with the Commission's minimum distance separation requirements and can be used at Station WCCG's present transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-203, adopted February 23, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Folly Beach, South Carolina, is amended by removing Channel 249A and adding Channel 251C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6772 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-363; RM-5836]

Radio Broadcasting Services; Hampton, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harold A. Jahnke, allocates Channel 255A to Hampton, Iowa, as the community's second local FM service. Channel 255A can be allocated to Hampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATE: Effective May 2, 1988. The window period for filing applications will open on May 3, 1988, and close on June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-363, adopted February 11, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Hampton, Iowa, by adding Channel 255A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6770 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-80; RM-5583; RM-5942]

Radio Broadcasting Services; Kingstree and McClellanville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Joseph Papp, III, allocates Channel 255C2 to McClellanville, South Carolina, as the community's first local FM service. Channel 255C2 can be allocated to McClellanville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. This document also denies the request of Davidson Communications, Inc. to substitute Channel 255C2 for Channel 252A at Kingstree, South Carolina, and the modification of its license for Station WWKT-FM to specify the higher powered channel. The Commission found that the allocation of a first local channel to McClellanville would better serve the public interest than the upgrading of a second local service at Kingstree. With this action, this proceeding is terminated.

DATES: Effective May 5, 1988. The window period for filing applications will open on May 6, 1988, and close on June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-80, adopted February 23, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding McClellanville, Channel 255C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6771 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1104, 1111, 1113, 1118, 1130, 1131, 1132, 1136, 1137, 1139, 1143, 1150, 1152, 1154, 1161, 1162, 1169, 1170, 1182, 1183, 1185, 1186, and 1331

[Ex Parte No. 471]

Commission Proceedings; Filings of Pleadings, Applications, etc.; Copy Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts rules to specify a uniform number of copies of pleadings and other documents to be filed in Commission proceedings. The number of required copies now ranges from 1 to 24. The Commission has determined that in most proceedings it requires an original and 10 copies of each pleading, application, or other document to ensure that sufficient copies are available for its use. Therefore, we are revising our rules at 49 CFR Part 1104 governing pleadings to provide that, unless otherwise specified with respect to particular types of documents, an original and 10 copies of every pleading, application, or document should be filed with the Commission. No comments are required or sought because these amendments to our rules are ministerial in nature.

EFFECTIVE DATE: May 27, 1988.

FOR FURTHER INFORMATION CONTACT:
Suzanne Higgins O'Malley, (202) 275-7292
or
Richard B. Felder, (202) 275-7691
[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428, (assistance for the hearing impaired is available through TDD services (202) 275-1721).

Environmental and Energy Considerations

These rule revisions will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that these rule revisions will not have a significant economic impact on a substantial number of small entities. The involved changes are ministerial only and do not impose additional substantive requirements on any entity. To a limited extent, the increased number of copies required could entail additional effort and expense by parties before the Commission. However, the alternative—that the government absorb this expense—is not satisfactory.

List of Subjects

49 CFR Parts 1104, 1113, 1118, 1130, and 1132

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1131

Administrative practice and procedure, Investigations, Railroads.

49 CFR Part 1136

Administrative practice and procedure, Buses, Motor carriers, Railroads.

49 CFR Parts 1137 and 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts, Abandonments and discontinuances, Investigations, Public use conditions.

49 CFR Part 1154

Administrative practice and procedure, Railroads.
Reporting and recordkeeping requirements.

49 CFR Part 1161, 1182, and 1183

Administrative practice and procedure, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1169

Administrative practice and procedure, Buses.

49 CFR Part 1170

Administrative practice and procedure, Buses, Employment.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, Railroads.

49 CFR Part 1186

Administrative practice and procedure, Freight, Motor carriers.

49 CFR Part 1331

Buses, Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads.

Decided: January 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1104—[AMENDED]

1. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1104.3 [Amended]

2. In § 1104.3 the numeral "6" in paragraph (a) is revised to read "10."

3. In § 1104.3 the words "one copy" in paragraph (b) are revised to read "10 copies."

PART 1111—[AMENDED]

4. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

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§ 1111.3 [Amended]

5. In § 1111.3 the numeral "0" is revised to read "10."

§ 1111.4 [Amended]

6. In § 1111.4 the word "six" in paragraph (b) is revised to read "10."

PART 1113—[AMENDED]

7. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C 559.

§ 1113.7 [Amended]

8. In § 1113.7 the words "one additional copy" and "three copies" in paragraph (e) are revised to read "10 copies."

§ 1113.12 [Amended]

9. In § 1113.12 the words "one copy" in paragraph (a) are revised to read "10 copies."

§ 1113.13 [Amended]

10. In § 1113.13 the words "one copy" are revised to read "10 copies."

PART 1118—[AMENDED]

11. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.4 [Amended]

12. In § 1118.4 the word "six" in paragraph (b) is revised to read "10."

PART 1130—[AMENDED]

13. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.2 [Amended]

14. In § 1130.2 the word "six" in the last sentence of paragraph (f) is revised to read "10."

PART 1131—[AMENDED]

15. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

§ 1131.8 [Amended]

16. In § 1131.8 the word "six" is revised to read "10."

§ 1131.9 [Amended]

17. In § 1131.9 the word "six" in paragraph (b) is revised to read "10."

PART 1132—[AMENDED]

18. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10707, 10708, and 10728; 5 U.S.C. 553 and 559.

§ 1132.1 [Amended]

19. In § 1132.1 the numeral "11" and the word "six" in paragraph (d) are revised to read "10."

§ 1132.2 [Amended]

20. In § 1132.2 the numeral "15" and the word "six" in paragraph (b) are revised to read "10."

PART 1136—[AMENDED]

21. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.2 [Amended]

22. In § 1136.2 the numeral "24" is revised to read "10."

PART 1137—[AMENDED]

23. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 553, 559.

§ 1137.1 [Amended]

24. In § 1137.1 the numeral "15" in paragraphs (a)(1) and (d) is revised to read "10."

PART 1139—[AMENDED]

25. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10708; 5 U.S.C. 553 and 559.

§ 1139.7 [Amended]

26. In § 1139.7 the numeral "16" is revised to read "10."

PART 1143—[AMENDED]

27. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10501(e), and 5 U.S.C. 553.

§ 1143.5 [Amended]

28. In § 1143.5 the numeral "12" and the word "six" are revised to read "10."

PART 1150—[AMENDED]

29. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10326, 10901, and 10505; 5 U.S.C. 553.

§ 1150.10 [Amended]

30. In § 1150.10 the word "five" in paragraphs (b) and (g) is revised to read "10."

PART 1152—[AMENDED]

31. The authority citation in this part continues to read:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

§ 1152.24 [Amended]

32. In § 1152.24 the word "six" in paragraph (a) is revised to read "10."

§ 1152.25 [Amended]

33. In § 1152.25 the numeral "2" in paragraphs (c)(2) and (4) is revised to read "10."

§ 1152.40 [Amended]

34. In § 1152.40 the word "six" in paragraph (b) is revised to read "10."

§ 1152.42 [Amended]

35. In § 1152.42 the word "six" in paragraph (a) is revised to read "10."

PART 1154—[AMENDED]

36. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

§ 1154.6 [Amended]

37. In § 1154.6 the numeral "15" in paragraph (a) is revised to read "10."

PART 1161—[AMENDED]

38. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 10931; 5 U.S.C. 559.

§ 1161.5 [Amended]

39. In § 1161.5 the word "six" is revised to read "10" in both places it appears.

PART 1162—[AMENDED]

40. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

§ 1162.2 [Amended]

41. In § 1162.2 the word "two" in paragraph (b) is revised to read "10" in both places it appears.

§ 1162.3 [Amended]

42. In § 1162.3 the word "two" in paragraph (a)(2) is revised to read "10."

§ 1162.6 [Amended]

43. In § 1162.6 the word "two" in paragraph (c) is revised to read "10."

PART 1169—[AMENDED]

44. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.6 [Amended]

45. In § 1169.6 the word "two" in paragraph (b) is revised to read "10."

§ 1169.23 [Amended]

46. In § 1169.23 the word "two" in paragraph (a) is revised to read "10."

§ 1169.32 [Amended]

47. In § 1169.32 the word "two" is revised to read "10."

PART 1170—[AMENDED]

48. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321, 5 U.S.C. 553 and Pub. L. 97–261, sec. 27.

§ 1170.3 [Amended]

49. In § 1170.3 the words "one copy" in paragraph (e) are revised to read "10 copies."

§ 1170.7 [Amended]

50. In § 1170.7 the words "one copy" in paragraph (c) are revised to read "10 copies."

PART 1182—[AMENDED]

51. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11343, 11344 and 11345(a); 5 U.S.C. 559.

§ 1182.1 [Amended]

52. In § 1182.1 the word "two (2)" in paragraph (e)(1) is revised to read "10."

§ 1182.2 [Amended]

53. In § 1182.2 the words "one copy" in paragraph (c) are revised to read "10 copies."

§ 1182.4 [Amended]

54. In § 1182.4 the word "two" in paragraph (c)(1) is revised to read "10" and in paragraph (c)(2), the word "one" is revised to read "10."

§ 1182.5 [Amended]

55. In § 1182.5 the word "two" in paragraph (e) is revised to read "10."

PART 1183—[AMENDED]

56. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11341, 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1183.1 [Amended]

57. In § 1183.1 the word "three" in paragraph (b) is revised to read "10."

§ 1183.4 [Amended]

58. In § 1183.4 the word "three" in paragraph (b) is revised to read "10."

§ 1183.5 [Amended]

59. In § 1183.5 the word "three" in paragraph (b) is revised to read "10."

PART 1185—[AMENDED]

60. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

§ 1185.7 [Amended]

61. In § 1185.7 the word "six" is revised to read "10."

PART 1186—[AMENDED]

62. The authority citation in this part continues to read:

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

§ 1186.3 [Amended]

63. In § 1186.3 introductory text, the word "four" is revised to read "10."

PART 1331—[AMENDED]

64. The authority citation in part 1331 is revised to read:

Authority: 49 U.S.C. 10321, 10721.

§ 1331.3 [Amended]

65. In § 1331.3(b) the word "twenty" is revised to read "10."

[FR Doc. 88-6851 Filed 3-28-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Analyzing Credit Needs and Graduation of Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations to: (1) Permit FmHA to enter into contracts with contractors to perform graduation functions on Single Family Housing (SFH) loans for refinancing to other credit; (2) remove the number of years a SFH borrower is indebted to FmHA before being considered for graduation; and (3) clarify reviews and subsequent requests for borrower's graduation. This action is being taken to strengthen the graduation program and its effectiveness. The intended effect is to raise revenue and reduce cost and outlays to the Govenment.

DATE: Comments must be submitted on or before May 31, 1988.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Neddie R. Winters, Senior Loan Specialist, or William M. Toney, Chief, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309 South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1521–1 which implements Executive Order 12291 and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local govenrment agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The proposed changes are internally imposed on a pilot basis and will, therefore, not have an impact on small entities.

Contracting for Borrower Graduation

The basic purpose of FmHA credit is to supplement credit from private and cooperative lenders. FmHA credit programs are administered in a manner to assure they do not compete or replace other credit available to rural families and groups. FmHA makes rural housing loans only to applicants who are unable to secure the necessary financing from other sources on terms and conditions which they can reasonably be expected to meet. One of the conditions of the loan is that if a borrower makes sufficient financial progress to be able to refinance his/her FmHA debt, he/she will be expected to do so. This is required by Title V of the Housing Act of 1949, the law authorizing rural housing loans.

The Omnibus Budget Reconciliation Act of 1986 directed FmHA to sell sufficient rural housing loans to raise revenue to be used to reduce federal outlays. In an effort to ensure that such revenues are raised in the most efficient manner possible, FmHA has determined that for each loan which can be successfully refinanced in full, FmHA would realize more proceeds than if the loans were made marketable to the public by selling them at a discount.

The Farmers Home Administration proposes to contract with a firm or firms to provide for refinancing of SFH borrowers who have been identified to be eligible for possible refinancing to other credit. The States of California, Michigan, New Jersey, New York, and North Carolina will be pilot locations. Proposals will be solicited from private sector firms to perform borrower refinancing in accordance with FmHA regulations and the requirements of the contract.

FmHA plans to test the feasibility of providing SFH borrower refinancing functions through private firms on a pilot basis to strengthen the graduation program and its effectiveness, and at the same time, raise revenue and reduce costs and outlays to the Government. This pilot project will enable FmHA to evaluate the cost effectiveness and efficiency of providing these services through the private sector within different geographical regions of the country.

Remove the Number of Years a SFH Borrower is Indebted To Be Considered for Graduation

At present, FmHA regulations require that a SFH borrower be indebted for at least 6 years prior to being considered for graduation review. By removing this limitation, it gives FmHA the opportunity to review those borrowers with the greatest capabilities of being

successful in the graduation process. As a result, the graduation program is strengthened and has a greater opportunity for success. It is proposed to remove the 6 years limitation and review only nonsubsidized borrowers regardless of years indebted. This approach would potentially increase the number of borrowers that would actually refinance.

Clarify Reviews and Subsequent Requests for Graduation

FmHA proposes to amend its graduation regulations to assure requests are based on the "borrower's" ability to obtain credit from other sources and not that of another household member such as a spouse who is not indebted to FmHA. It is also proposed to amend FmHA regulations to give proper guidance and instructions to the field staff to accomplish this objective. This will prevent the risk of borrowers being requested to graduate based on unsupportable conditions and facts.

As proposed,

1. Section 1951.254(e) is added to permit FmHA to enter into contracts with contractors to perform graduation functions on Single Family Housing loans for refinancing to other credit.

2. Section 1951.261 is amended to:

A. Remove the number of years a single family housing borrower is indebted to FmHA before being considered for graduation and to review only nonsubsidized borrowers regardless of years indebted.

B. Clarify reviews and subsequent requests for borrower's graduation and to a ssure requests are made based on the borrower's ability to obtain credit from other source and not that of nonborrowers.

C. Include the borrower's name, address and current information under the trial referral and to remove the requirement for coding and establishing an operational file on each prospectus.

3. Section 1951.262 is amended to require written concurrence from OGC prior to accelerating a Single Family Housing account for failure to graduate.

List of Subjects in 7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

2. Section 1951.254 is amended to add a new paragraph (e) to read as follows:

§ 1951.254 Responsibility

* * * * *

(e) FmHA may enter into contracts whereby the contractors will contact Single Family Housing borrowers referred to them by FmHA to attempt to have the borrowers refinance their FmHA loans with private credit. See FmHA Instruction 2024–A (available in any FmHA Office) for contracting guidance.

3. In § 1951.261, paragraph (f)(2) is removed, paragraph (f)(1) is added to the end of the introductory text of paragraph (f) and paragraphs (f)(1)(i) through (f)(1)(iv) are redesignated as (f)(1) through (f)(4) respectively; and paragraphs (b)(1)(i)(A), (d)(1)(iv), introductory text of paragraph (e)(4) and the introductory text of paragraph (f) are revised; and paragraphs (b)(1)(i)(A)(*1*) and (b)(1)(i)(A)(*2*) are added to read as follows:

§ 1951.261 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) The list will contain borrowers who have been indebted for at least 3 years for Emergency (EM) and Economic Emergency (EE) loans; 4 years for Operating Loans (OL); 6 years for Farm Ownership (FO), Soil and Water (SW) and Softwood Timber (ST). For Single Family Housing loans, the list will contain borrowers who meet the following conditions:

(*1*) Nonsubsidized borrowers.

(*2*) Borrowers with outstanding balances (principal and interest) in excess of $5,000.

* * * * *

(d) * * *

(1) * * *

(iv) Rural Housing borrowers under an Additional Payment Agreement (APA).

* * * * *

(e) * * *

(4) The servicing official, with the assistance of the County Committee when applicable, will conduct a thorough review of the borrower's financial and repayment position. This review will be based only on the "borrower's" financial ability to obtain other credit and not that of another household member such as a spouse who is not indebted to FmHA. "Borrowers" in this instance means persons indebted to FmHA as evidenced by their signature on the Promissory Note, Mortgage and/or other appropriate security instrument.

* * * * *

(f) *Trial referral.* The servicing official, prior to actually requesting a borrower to graduate as described in paragraph (g) of this section, may make a trial referral. This trial referral can be either verbal or written which individual lenders or by group method and could include all or part of those borrowers selected for graduation in accordance with paragraph (e)(7) of this section. Prospectus information will be obtained from the borrower's file and will be submitted to the lender using FmHA Guide Letter No. 1951–3 for Farm Program borrowers, FmHA Guide Letter No. 1951–4 for Rural Housing borrowers, or letters of similar format. Other data may be added if requested by lenders The prospectus will contain the borrower's name, address, original loan amount, date of the loan, the interest rate, and the unpaid loan balance. For borrowers selected for a trial referral, a prospectus will be prepared and provided to each lender who chooses to participate, whose lending areas include the borrower's location and whose criteria the borrower appears to meet. Lenders following receipt and review of a prospectus, will be encouraged to indicate their willingness to contact the borrower and accept an application for further consideration. If one or more lenders does express interest in a particular borrower, the borrower will be provided the names of such lenders as possible sources of other credit when the servicing official requests the borrower to gradute. If the lenders participating in the trial referral represent the most likely sources of other credit in a given lending area, and if these lenders fail to show interest in a particular borrower, this is evidence that there is no credit available for that particular borrower and no further effort needs to be made to effect graduation at this time. This information will be noted next to the borrower's name on the graduation review list and the name will be removed from Form FmHA 1951–24 by the servicing official. The lender's participation in the trial referral provision of this paragraph will be optional. Normally, the lender's interest will be determined at the time of the servicing official's survey of lender criteria and policies [see paragraph (c) of this section]. If one or more lenders indicate a willingness to participate, the servicing official should use the trial referral provision if one or more of the following factors exists:

* * * * *

4. In § 1951.262, paragraphs (a)(1) and (b)(2) are revised to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information receipt of both FmHA Guide Letters No. 1951-1 and 1951-2, and letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the official authorized in § 1955.15 of Subpart A of Part 1955 of this chapter to approve foreclosure of the loan type involved (approval official) with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any other date pertinent to the case. The approval official may, with the concurrence of the Regional Attorney, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments. For Single Family Housing loans, written concurrence of the Regional Attorney is required before accelerating the account.

(b) * * *

(2) If the approving official determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii) of Subpart A of Part 1955 of this chapter. If the borrower's account(s) is accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this chapter. The advice of the Regional Attorney is required before accelerating the account. For Single Family Housing Loans, written concurrence of the Regional Attorney is required before accelerating the account.

* * * * *

Date: February 23, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-6845 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1980

Streamlining of Business and Industry Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations to streamline the Business and Indusry (B&I) Guaranteed Loan Program, to reduce borrower participation costs, reduce Federal costs per job created or saved, increase the number of jobs created and better direct the program toward displaced farmers and small communities with higher rates of unemployment. This action is being taken to improve program operations and eliminate unnecessary burdens on borrowers.

DATE: Written comments must be received on or before April 28, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321-S, Farmers Home Administration, USDA, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 475-3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Proposed Rule

FmHA proposes to streamline the Business and Industrial (B&I) Guaranteed Loan Program by removing barriers to participation by relatively smaller enterprises (loans of $2 million or less) and reducing such borrowers' costs. The proposal also seeks wider distribution and better utilization of program funds to generate more jobs through greater incentives for smaller enterprises by allowing higher percentages of guarantee for smaller loans, and by adopting a uniform $10 million limit on guaranteed loans. The proposal also seeks to permit guarantees of variable rate loans with interest floors and ceilings and more specifically direct the program toward meeting the needs of displaced farm families and rural communities with higher levels of unemployment. The proposal generally seeks to place a higher priority on loans having a lower cost per job created or preserved, with an emphasis on saving jobs in those rural areas that have higher unemployment rates and more displaced farm families.

All amendments, and all section references, herein are to Subpart E of 7 CFR Part 1980, except for amendments 1 and 2, which are to Subpart A of 7 CFR Part 1980.

A new section, 1980.420, would be added, limiting percentage of guarantee to 90 percent on loans of $2 million or less, 80 percent on loans over $2 million but not over $5 million, and 70 percent on loans over $5 million. In this section, it is emphasized that the percentage of guarantee, up to the maximum allowed, is a matter of negotiation between the lender and FmHA. FmHA proposes this change in an effort to achieve two important objectives. First, FmHA seeks to emphasize assistance to relatively smaller enterprises which on the basis of program experience are generally more labor intensive and are most frequently locally owned and locally financed. The most effective way to carry out the program goal of expanding and maintaining job opportunities in rural areas and small communities is to direct benefits to where they will generate the most jobs. Second, FmHA seeks to preserve those newly created jobs by reducing financial risks. Recent experience has shown a higher rate of delinquency on large loans which would have a larger job loss should the business fail. By providing for greater risk-sharing by the lenders who, after all, receive 100 percent of the interest paid on these loans, FmHA seeks to enforce the highest of standards in both loan production and loan documentation and servicing by guaranteed lenders. A conforming change is made to § 1980.20, which is rewritten to reflect editorial changes made to distinguish between the maximum percentage of guarantee and the maximum loss guaranteed and to conform the section to the forms cited in it.

On any loan, there are costs to borrowers in addition to the payment of principal and interest. FmHA seeks to minimize these costs, such as those for professional services and document preparation. Such ancilliary costs inevitably reduce the borrower's funds available for investments which create and maintain jobs. Often these costs will have the highest relative impact on relatively smaller projects for the simple reason that often professionals providing the services charge the same amount for the same service to a small enterprise as to a large one. This may drive up the real cost of money to the smaller enterprise and this can mean the pool of potential program participants includes a higher percentage of higher risk borrowers willing to pay almost any price. The statutory objectives of the program are most effectively met by maximizing participation by quality borrowers who require FmHA assistance for reasons other than credit worthiness. The proposal seeks to remove disincentives to participate by financially sound smaller enterprises (those borrowing $2 million or less) by permitting State Directors, in certain cases, to waive or modify:

(1) The requirement for feasibility studies by recognized independent consultants (§ 1980.442),

(2) The requirement for an appraisal by an independent fee appraiser (§ 1980.442), and

(3) The requirement of annual audited financial statements from all borrowers (§ 1980.451(i)(13));

(4) And by pemitting the use of local, regional, or national credit reports to verfiy "Statements of Personal History" (Form FmHA 449-4) (§ 1980.451(f)(3)).

Objective standards would govern decisions to waive or modify. For example, only in the case of seasoned loans would a waiver of audits of financial statements be permitted. The proposal would permit State Directors to leave in place the more stringent requirement of present regulations in cases where he determines a need for that more stringent requirement. FmHA concludes that such authority in the State Director will provide flexibility to deal with unusual cases and circumstances.

This proposal would end a preference for one industry as to permissible loan amounts. Presently, FmHA may guarantee loan amounts up to $10 million, except for alcohol production facilities for which loans up to $20 million may be guaranteed. In a program established to create and preserve jobs, there is no sound reason to create a preference for one industry over another. The test needs to be the creation and/or preservation of jobs, all other factors being equal. Thus, FmHA proposes a uniform "cap" of $10 million for loans eligible for guarantee (§ 1980.413(a)).

FmHA's regulations have contained provisions indicating priorities by which applications would be judged, but provided that applicatons would be considered in the order received (§ 1980.451(d)). In addition to clarifying the order of consideration, the proposal changes the priority system by creating a point system for determining priority and permitting loans to be judged in comparison to others. The point system emphasizes assistance which generates the most jobs at the least cost where they are most needed. The formula will create a score which can be compared to scores for other proposals. This system eliminates the problem of viewing each proposal in isolation.

Section 1980.423(a)(i) now contains a prohibition against variable rate loans having floors and/or ceilings on interest rates. The proposal would eliminate that prohibition. It can be of obvious value to program participants to be able to negotiate such terms and FmHA concludes there is no sound reason to prevent them from negotiating to a conclusion that includes interest rate floors and/or ceilings.

The proposal defines "area of high unemployment," as used in the new priority rankings and makes necessary conforming changes in the administrative sections of Subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

For the reasons set out in the preamble, Title 7, Chapter XVIII of the Code of Fedeal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 CFR 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.20 is amended by revising the introductory text to read as follows:

§ 1980.20 Loan guarantee limits.

The maximum loss covered by the Loan Note Guarantee, Form FmHA 449-34, or Form 1980-27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of: the percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or the percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be informed in writing on Form FmHA 449-14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of this part. FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

* * * * *

Subpart E—Business and Industrial Loan Program

3. Section 1980.402 is amended by redesignating paragraphs (a) through (k) as (b) through (l) and adding a new paragraph (a) as follows:

§ 1980.402 Definitions.

* * * * *

(a) *Area of high unemployment.* An area in which a B&I Loan Guarantee can be issued, consisting of a subdivision or group of contiguous subdivisions of a State which, on the basis of the best available data from Federal or State sources has a seasonally-adjusted level of unemployment 150 percent or more of the national level, as most recently published by the U.S. Department of Labor.

* * * * *

§ 1980.413 [Amended]

4. Section 1980.413 is amended by removing paragraph (a)(4).

5. Section 1980.420 is added to read as follows:

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA.

(a) For loans of $2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over $2 million but not over $5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of $5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA informs lenders and borrowers in writing on Form FmHA 449–14 of any percentage of guarantee less than proposed by the lender and borrowers, and the reasons therefore. FmHA determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management.* The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of borrower or borrower's principals, if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority.

(5) *Trends and conditions.* Current trends and economic conditions.

6. Section 1980.423 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.423 Interest rates.

(a) * * *

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate, and changes can be made no more often than quarterly. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

* * * * *

7. The introductory text of § 1980.442 is revised to read as follows:

§ 1980.442 Feasibility studies.

Feasibility studies by recognized independent consultants are required. In the case of loans of $2 million or less, the State Director may waive this requirement when the cost of such study would be excessive and the borrower's principals are experienced in the type of business or industry involved. The cost of feasibility studies shall be borne by the applicant and may be paid from funds included in the loan. The feasibility study outline will be approved by FmHA. FmHA personnel may not recommend consultants, but may provide the borrower with a list of consultants who have performed satisfactorily on previous projects. An acceptable feasibility study should include, but not be limited to:

* * * * *

8. Section 1980.444 is amended by revising paragraph (a) to read as follows:

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral. In the case of loans of $2 million or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

* * * * *

9. Section 1980.451 is amended by revising the introductory text of paragraph (d), paragraphs (d)(3) and (f)(3), and the introductory text of (i)(13), and Administrative paragraph A.6.(c) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(d) *Loan Priorities.* Applications and preapplications received by FmHA will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA will compare an application to other pending applications.

* * * * *

(3) Priorities will be assigned by FmHA to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part time job impact, and leveraging of FmHA assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds. The priorities described in this paragraph will be used by FmHA to score projects. A copy of the calculations of the score should be placed in the case file for future reference.

(i) *Location Priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, it receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (30 points).

(ii) *Jobs Priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points).

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First divide the amount of the FmHA guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only the number of year-round, full time jobs. Part time jobs may be reduced to a fraction of a full time job and counted. For example, a 20 hour per week job, or a job that is full time for six months per year, is one half of a job. Second, determined the State's nonmetropolitan median income as described in § 1980.451 (d)(3)(vi). Third, determine a percentage by dividing the indexed State nonmetropolitan median income by the cost per job. The categories, and their point scores are:

(A) Loan(s) on which the percentage is greater than 150 percent, but less than 200 percent (5 points).

(B) Loan(s) on which the percentage is greater than 100 percent, but not more than 150 percent (15 points).

(C) Loan(s) on which the percentage is 100 percent or less (25 points).

(D) If the percentage exceeds 200 percent, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA guaranteed loan(s) is/are less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full time jobs, create a significant number of part time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under § 1980.451(d)(3)(i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA-assisted projects (including the limiting of financial risks affecting FmHA loans and loan guarantees) or the loss of financing if FmHA funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic develoment strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to twenty points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs.

(vi) *Indexation.* When current, annual data are not available to determine a State's nonmetropolitan median income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of Census data is necessary. The State Director will use the figure from the most recent decennial Census of the United States, increased by a factor representing the increase since the year of that Census in the Consumer Price Index ("CPI–U"). That factor shall be furnished annually by the National Office, FmHA.

* * * * *

(f) * * *

(3) Form FmHA 449–4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by FmHA. Forms FmHA 449–4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA's not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA 449–4.

* * * * *

(i) * * *

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449–35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449–14, including the requirements for periodic financial statements and record keeping. There must be a requirement for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. In the case of seasoned loans of two million dollars or less, the State Director may modify this audit requirement by permitting the use of compilation financial statements or

reviews to satify the audit requirement if prior audits were satisfactory and the cost of an audit would be excessive. The loan agreement must also include, but is not limited to, the following:

* * * * *

Administrative

A. * * *

6. * * *

(c) A local, national or regional credit report and Form FmHA 449-4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

* * * * *

10. Section 1980.469 is amended by revising paragraph "*Administrative*" C(1) to read as follows:

§ 1980.469 Loan servicing.

* * * * *

Administrative

C. * * *

1. The lender understands upon initial contact during loan application and in particular at loan closing that the lender is responsible for loan servicing and that annual audited financial statements are required, but that in the case of seasoned loans of two million dollars or less, compilation financial statements or reviews may satisfy the audit requirement.

* * * * *

Appendix C of Subpart E—[Amended]

15. Appendix C of Subpart E of Part 1980 is proposed to be amended by removing paragraph (4) and redesignating paragraphs (5) through (14) as (4) through (13).

Dated: February 24, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-6644 Filed 3-28-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-14-88]

Limitations on Passive Activity Losses and Credits; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the limitations on passive activity losses and passive activity credits. Changes to the applicable tax law were made by the Tax Reform Act of 1986.

DATES: The public hearing will be held on Tuesday, June 28, and (if necessary) Wednesday, June 29, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, June 14, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-14-88) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marcia Evans of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the limitations on passive activity losses and credits. The Income Tax Regulations (26 CFR Part 1) provide temporary rules relating to the limitations on passive activity losses and passive activity credits. The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2233 and 2241), which added section 469. Section 469 disallows the passive activity loss and the passive activity credit for the taxable year.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than June 14, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Donald E. Osteen,

Director, Legislation and Regulation Division.

[FR Doc. 88-6807 Filed 3-28-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Safety Standards for Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment for the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75.

DATE: Written comments on the proposed rule for ventilation standards must be received on or before April 28, 1988.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the Federal Register (53 FR 2382) proposed rules to revise existing ventilation standards for underground coal mines. The comment period for the ventilation proposal was scheduled to end on march 28, 1988. Due to requests from the public, MSHA is extending the comment period for the proposed rule to April 28, 1988. All interested parties are encouraged to submit comments prior to that date.

Since publication, the Agency has re-evaluated certain aspects of the proposal in light of Agency experience and believes that the proposal may not appropriately address mining practices and conditions in anthracite mines. The pitch of the coal seam, the mining conditions, mining equipment, and mining methods in anthracite coal mines vary dramatically form bituminous coal mines. These differences may therefore require that anthracite mines be addressed in a different manner than bituminous mines. Accordingly, MSHA solicits comments on whether certain provisions of the ventilation proposal adequately address anthracite mines. These provisions include those for escapeways, main mine fans, and weekly examinations. The Agency also solicits comment on whether there are additional issues which should be considered relative to ventilation in anthracite mines.

In the proposal, § 75.350 would allow belt haulage entries to be used as intake air courses to ventilate working faces, provided that an early warning fire detection system is used. Under the existing standards belt haulage entries may be used as intake air courses to ventilate a working face in mines opened prior to 1970 under certain conditions. The proposal would apply equally to pre-1970 and post 1970 mines. MSHA solicits comments on the safety benefits as well as the impact of the proposal.

The proposal also includes a provision in § 75.383 which would generally require a travelway off the tailgate side of a longwall face for use by miners in the event of an emergency. At this stage in the rulemaking process, the Agency is interested in comments on procedures to be followed if a roof fall or other blockage in the tailgate impedes travel.

Date: March 25, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-6891 Filed 3-25-88; 11:32 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3355-8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Plantwide Definition

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision will replace the existing dual definition of stationary source with the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The intended effect of this action is to approve a state's request to amend its SIP in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 28, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, J.F.K. Federal Building, Boston, MA 02203. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, J.F.K. Federal Building, Boston, MA 02203 and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne Hamjian, (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: On August 22, 1982, and June 22, 1987, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a revision to its State Implementation Plan (SIP). This revision includes a change from the existing dual definition of stationary source to the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The preconstruction permitting process is commonly referred to as new source review (NSR).

Background

On October 14, 1981 (46 FR 50766) EPA revised the NSR regulations in 40 CFR Part 51 to allow adoption and use of the "plantwide" definition of stationary source in nonattainment areas. In this rulemaking, EPA defined stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. The reason this is a "plantwide" definition is that the four terms, *building, structure, facility* or *installation* are defined as a single term, meaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e. same two digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person.

The so-called "dual" definition also defines stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. Under this definition, the three terms *building, structure,* or *facility* are defined, like the plantwide definition, as a single term neaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e. same two digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person. However, the fourth term, *installation,* has a separate definition meaning an identifiable piece of process equipment. Therefore, under the dual definition a stationary source is all of the buildings, structures, or facilities (plantwide), and also each installation (piece of equipment). That is, the whole plant and each identifiable piece of process equipment are stationary sources.

The difference between these two definitions largely comes into play in determining to what extent netting may be used for defining whether a modification is major. Netting is a trading activity whereby contemporaneous actual emission increases and decreases are combined with actual emissions of a proposed modification to an existing major stationary source. (For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.) If this calculation results in a net emissions increase which is below the significance levels, the modification is *not* a major modification for NSR purposes. The key factor to consider is that the actual emissions increases and decreases considered in a netting transaction must all occur at the very same *major* stationary source being modified. For this reason, the definition of stationary source is critical for defining the universe of increases and decreases eligible for netting.

Under the plantwide definition, quantifiable increases and decreases occurring anywhere on plant property from emission units with the same first two digit SIC code are eligible for netting. Under the dual definition of stationary source, when any existing individual piece of equipment in and of itself is large enough in terms of potential emissions to be defined as a *major* stationary source, only increases and decreases in actual emissions from that individual emission unit are eligible to net any modification to it below the levels which would define it as major. Further, when the modification consists of an addition of a new piece of process equipment which in and of itself is a

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major stationary source, no netting may occur as a result of reductions at the existing major stationary source. While the plantwide definition clearly provides a greater opportunity for netting in general, it should be noted that some netting is allowed under the dual definition as well. In fact, where no individual piece of pollutant emitting equipment in and of itself is a *major* stationary source, the dual definition allows much the same opportunity to net as the plantwide definition.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventual,ly would have adequate SIPs in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D (46 FR 50767 col. 2).

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at best the potential for air quality improvements driven by the marketplace.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one condition on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the state would have to revise its attainment strategy as necessary to accommodate reduced NSR permitting of major modifications under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Clean Air Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Clean Air Act's environmental objectives as well (see 104 S.Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision. Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

Massachusetts' Revision

On August 27, 1982, the Commonwealth of Massachusetts submitted revisions to its preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The revisions included a change to the plantwide definition of stationary source from the existing dual definition. On January 10, 1984, EPA published a final rulemaking notice (FRN) which approved the revisions with one exception. EPA took no action on the request to revise the definitions of "source" and "building, structure, facility, or installation" to the plantwide definition and stated that the existing dual definition of stationary source would remain in the SIP. EPA's decision to take no action on the revised definition in the January 10, 1983 rulemaking was based on a then pending court case, *Natural Resources Defense Council* v. *Gorsuch*, 685 F.2d 718. In 1984, the Supreme Court upheld the use of the plantwide definition of stationary source in nonattainment area new source review. *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S.Ct. 2778.

On February 26, 1987, EPA issued guidance for approving the plantwide definition of stationary source in state new source review regulations for nonattainment areas. The guidance lists specific criteria for approving the plantwide definition. According to that guidance if a state has a fully adopted and approved Part D SIP for each primary nonattainment area and is not subject to a call by EPA for a SIP revision, the plantwide definition is approvable so long as the state did not rely on a dual or similar definition in its attainment demonstration(s). The February 26, 1987 guidance requires additional criteria for a state that does not have a fully-approved Part D plan(s), that is subject to a SIP call by EPA, or that did rely on the use of dual definition in its attainment demonstration(s).

On June 22, 1987 the Commonwealth of Massachusetts resubmitted its request to revise its SIP to substitute a plantwide definition of stationary source for the existing dual definition in the nonattainment NSR regulations. EPA has previously approved the Commonwealth's Part D plans for relevant nonattainment areas including attainment demonstrations. The Massachusetts DEQE has certified that it did not rely on any reductions from the operation of the existing NSR program in those demonstrations, and EPA's examination of the demonstrations confirms the Commonwealth's certifications. Therefore, EPA proposes to approve the switch to a plantwide definition in the Massachusetts SIP's NSR regulations for nonattainment areas.

On November 24, 1987 (52 FR 45044), EPA proposed a policy for approving post-1987 ozone and carbon monoxide SIP revisions for areas not attaining the national ambient air quality standards (NAAQS). Appendix A of the proposed policy lists "potential 1988 SIP call areas," i.e., areas which could be subject to an EPA-required revision of the SIP for those areas. Included in the list are the metropolitan areas of Boston, Springfield, New Bedford, and

Worcester for ozone and carbon monoxide.

However, since the post-1987 policy is a proposal rather than a final policy, and the Massachusetts areas listed in Appendix A of the proposed policy are "potential" rather than definite SIP call areas, EPA at this time intends to continue to treat the Massachusetts SIP as an approved SIP. If, prior to the time of final rulemaking Massachusetts is subject to a SIP call (or other criteria are no longer being met), then the Commonwealth will have to meet the additional criteria for such States as outlined in the February 27, 1987, guidance. Specifically, the Commonwealth would be required to submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development stated in the submission or previously forwarded to EPA.

Proposed Action

EPA is proposing to approve a revision to use the plantwide definition of stationary source instead of the existing dual definition currently in place in Massachusetts' nonattainment NSR SIP regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: September 28, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88–6814 Filed 3–28–88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321, 1326 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes and Organizations Service Older Hawaiians for Supportive and Nutrition Services

AGENCY: Administration on Aging (AoA), Human Development Services Office, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration on Aging (AoA) proposes new and revised regulations for Part 1321 for grants to State and Community programs on aging redesignates Part 1328 for grants to Indian Tribes and organizations as Part 1326, and adds a new Part 1328 for grants to Native Hawaiians. The basis for these changes is the passage of Pub. L. 100–175 (the Older Americans Act Amendments of 1987) and the Department's commitment to regulatory reform.

These proposed rules implement Titles III and VI of the Older Americans Act, including the amendments to the Act which modify the current program. The changes emphasize the strengthened roles of the State and area agencies on aging in the development of community-based systems of services.

DATE: Comments must be received on or before May 31, 1988.

ADDRESS: Please address comments to: Carol Fraser Fisk, Commissioner, Administration on Aging, Room 4760, 330 Independence Avenue, SW., Washington, DC 20201. Beginning April 12, 1988, copies of the comments will be available for public inspection in Room 4739, 330 Independence Avenue, SW., Washington, DC 20201, between the hours of 9:00 am and 4:00 pm.

FOR FURTHER INFORMATION CONTACT: Frederick Luhmann, Office of State and Tribal Programs, Administration on Aging, Room 4739, 330 Independence Ave., SW., Washington, DC 20201, (202) 245–0011.

SUPPLEMENTARY INFORMATION

Background

The Older Americans Act was first enacted in 1965. The President signed the Older Americans Act Amendments of 1987 (Pub. L. 100–175) on November 29, 1987. The Act was amended eleven times between 1965 and 1987.

As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons.

In 1972, a new Title VII was enacted which authorized funds for local community projects to provide nutrition services to the elderly. The projects were designed to provide older persons aged 60 and older with at least one hot nutritious meal five or more days a week. In 1973, the amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and service areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alteration, or initial staffing of facilities for use as multipurpose senior centers.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a single focal point for service delivery within each community. The 1978 amendments enacted a new Title VI, a direct grant program to Indian tribal organizations for older Indians. The 1981 amendments made several technical amendments to the Act and reinforced the basic direction established under the 1978 amendments. Most of the changes expanded the capacity of State agencies, area agencies and tribal organizations through increased administrative flexibility.

The 1984 amendments included a number of changes in the various service programs under Title III, including provisions to increase further the ability of States to transfer funds between their separate allotments for supportive and nutrition services; to specify particular attention to the needs of low-income minority older persons; to require area agencies to conduct activities to facilitate coordination of community-based long-term care services; and to strengthen the long-term care ombudsman program. In addition, the 1984 amendments modified the

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manner in which funds for State administration are allocated to State agencies on aging, specified a statutory limitation on the amount of funds which could be used for administration of Title V, and created a new title for health education and training activities for older persons.

In 1986, legilation increased the authorization of appropriations for the USDA cash and commodity subsidy program for fiscal years 1985–87 and set the level of reimbursement at 56.76 cents for each meal served under Title III for each of those years. The 1987 amendments removed the former provision under which the USDA reimbursement rate was related to changes in the Consumer Price Index. A new fixed reimbursement rate was established for the four year authorization created by the 1987 amendments.

The 1987 amendments provide a strong basis for Older Americans Act supported activities that are responsive to the complex and changing environment which is emerging with the aging of American society. With enactment of these amendments, the Act continues to underscore the collaborative efforts that are needed to ensure that every community in this nation provides the opportunity for individuals to live and mature with dignity and independence. The reauthorized Act reaffirms expectations that AoA, State agencies on aging and area agencies on aging provide leadership at their respective levels and work to establish strong partnerships with other public, private and voluntary sector organizations to assure that the nation is responding to the challenge of an aging society. The role of the State agency on aging is reinforced as the developer of policies and procedures to guide and direct area agencies. The amendments also further enhance the role of the area agency on aging as an advocate on behalf of the elderly and catalyst for ensuring the existence of community-based systems of services for older persons in every community in the planning and service area.

The 1987 amendments authorize the initiation of a number of activities including the establishment in the Administration on Aging of an Office for American Indian, Alaskan Native and Hawaiian Native Programs headed by an Associate Commissioner who would be responsible for Title VI and for chairing an interagency task force related to older Indians. The amendments also establish a separate Title VI–B program of grants for supportive and nutritional services to older Hawaiian Natives. Under Title III, the amendments create: a new Part D to support non-medical in-home services for frail older persons; a new Part E providing grants to States to assist them in meeting special needs of older persons; a new Part F supporting preventive health services for the elderly; and a new Part G providing grants to States for programs to prevent abuse, neglect and exploitation of older individuals. The new amendments require each State to establish an Office of State Long-Term Care Ombudsman. The Commissioner on Aging is required to conduct a study of the ombudsman program and report to Congress on the findings and recommendations of the study.

Regulation Development

In conjunction with the Administration's effort to reduce regulatory burden and to provide States and area agencies with greater flexibility to respond to the needs of their respective populations, the Department established several rulemaking principles to be applied in the development of regulations.

These principles are to:

(1) Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

(2) Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

(3) Provide maximum flexibility to State and local governments.

(4) Minimize Federal, State, local and private costs.

(5) Prevent fraud, abuse, waste and inefficiency.

(6) Eliminate regulations not serving a compelling Federal interest or reform those not implemented in the least intrusive means available.

These principles provided the framework used by the Administration on Aging in developing the proposed rules to implement the 1987 Amendments to the Act.

In developing these proposed regulations, the framework was changed to improve their logic and readability. However, these structural changes are primarily intended to clarify provisions in the Act or in current regulations. Virtually all of the content of the current regulations has been retained. These new regulations include the following sections with content unchanged from the current regulations: § 1321.25, § 1321.27, § 1321.29, § 1321.31, § 1321.33, § 1321.41, § 1321.43, § 1321.45, § 1321.59, § 1321.69, § 1321.75, § 1321.77, § 1321.79, § 1321.81 and § 1321.83. Although the content is unchanged, the section number may differ from current regulations.

The changes proposed fall into three clusters:

1. Changes to reaffirm the intent of the Older Americans Act.

Given the growth in the number of older persons and increased interest in aging issues, there is a need to reaffirm the nature of the partnerships and the leadership roles of those who have responsibilities under the Act to develop a range of options for all older persons in our nation. Such clarifications were made in the types of proposed regulations: § 1321.7 Mission of the State agency; § 1321.53 Mission of the area agency; and § 1321.63 Purpose of services allotments under Title III.

2. Changes to implement provisions of the 1987 reauthorization of the Act.

The 1987 amendments to the Act greatly expand the challenges and responsibilities of all partners in the aging network. In order to assure that legislative intent is fulfilled in the most efficient and coordinated manner, guidance is necessary in a number of areas. Examples of the types of changes proposed to properly guide implementation of the 1987 amendments include the following: § 1321.11 State agency policies, § 1321.37 Intrastate funding formula, and § 1321.55 Organization and staffing of the area agency.

3. Changes to make technical corrections in current regulations.

Minor technical corrections in the current regulations are necessary to properly reflect the intent of the regulations or to cite cross–references more precisely. Examples of the technical changes proposed include the following: § 1321.19 Amendments to the State plan, § 1321.35 Withdrawal of area agency designation, and § 1321.67 Service contributions.

We are soliciting comments only on those sections of the regulations noted below which discuss new or revised regulatory provisions. Opportunity for public comment previously was provided on all of the other content of the regulations which remain unchanged. In the explanation given below, discussion is focused on the nature of and reasons for proposing the changes from current regulations.

Part 1321—Grants to State and Community Programs on Aging

Section 1321.1 Basis and purpose of this part.

Paragraphs 1321.1 (b) and (c) are revised to clarify and better characterize

the expected result and further emphasize the need to target efforts towards older individuals with the greatest social or economic need, with particular emphasis on low income minority elderly persons.

Section 1321.3 Definitions.

All of the definitions in the current regulations are retained and additional definitions for the following terms are provided: frail, in-home service, official duties, periodic, service, and significant population.

"Frail" and "in-home service" are defined in Title III, Part D, of the Act and are added to make these terms applicable to all programs under this Part.

The Act in section 307(a)(12)(J) requires the Commissioner to define "official duties," and this definition is proposed to carry out this requirement.

"Periodic" is defined to mean at one year intervals, at minimum, so that evaluation and public hearing requirements at the area and State levels can be coordinated with a required annual report on targeting to the President and the Congress.

"Significant population" with respect to required outreach to older Indians is defined in section 306(a)(6)(N) as at least 50 eligible persons because it seems reasonable to use the same population threshold the Act prescribes for a tribe to qualify for a Title VI grant.

Section 1321.5 Applicability of other regulations.

A cross-reference to 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration, has been added as these standards apply to State and Community Programs on Aging.

Section 1321.7 Mission of the State agency.

A general statement is included on the mission of the State agency to emphasize Congressional interest in its leadership role in fostering the development of comprehensive and coordinated community based systems throughout the State. The role in designating area agencies on aging is also clarified.

Section 1321.9 Organization and staffing of the State agency.

The amendments to the Act place significant importance on advocacy, particularly with regard to the ombudsman program. Thus, requirements in this section emphasize the advocacy role of the State agency and the requirement regarding staffing of the State agency, including the State Long-Term Care Ombudsman Office.

Some States have enacted laws creating ombudsman agencies and functions. In some cases the State prescribed functions differ from those required in the Older Americans Act. We are proposing in § 1321.9(d) to require the Governor in these cases to include a State plan assurance that the requirements of the Act will be met in addition to those of the State statute.

The Act in section 307(a)(12) requires that the Office of the State Long-Term Care Ombudsman be free of conflict of interest. If the Office is established by contract or other arrangement outside of the State agency on aging, the Act prohibits it from being part of an agency or organization which is responsible for licensing or certifying long-term care services. However, if the State agency on aging has the function of licensing or certifying long-term care services, the Department has determined that the State agency is not prohibited by the Act from operating the Office of the State Long-Term Care Ombudsman directly. In the latter case, the State would have to promulgate specific policies and procedures to assure that no conflict of interest will occur. The Act in section 307(a)(12)(A) also requires that the ombudsman for each State serve on a full time basis.

Section 1321.11 State agency policies.

A State agency shall develop policies governing all aspects of the operation of Title III programs.

Major changes in the Act with respect to the statewide ombudsman program will necessitate the development of new State policies and procedures. The specificity of the Act and the varying circumstances in each State make it necessary that each State develop written policies and procedures on the ombudsman program, including the relationship of the State obmudsman program at the local level to the area agency.

The current regulations include in § 1321.56 a prohibition on the State agency requiring an area agency to submit for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations. This requirement is being deleted in the proposed regulations because State policies govern the operational aspects of this part.

Section 1321.13 Advocacy responsibilities.

This new section is taken in large part from § 1321.33 of the current regulations. The list of advocacy functions in the new § 1321.13(a)(1) has been expanded to conform to the expanded list of such functions in the Act. Also, portions of this section which are repetitive of other provisions have been deleted.

Section 1321.15 Duration, format and effective date of the State plan.

This section is a modified version of § 1321.8 in the current regulations.

Section 1321.17 Content of State plan.

The current regulations in § 1321.9(e)(5) permit the State agency to fund program development and coordination activities as a cost of supportive services after the State agency has spent 8.5 percent of the total of its combined allotments for supportive and nutrition services on the administration of area plans. This provision is not included in the proposed regulations because the level of funds available for the administration of area plans is increased by the 1987 amendments to the Act from 8.5 percent to 10 percent of a State's Title III funds. Therefore, program development and coordination activities may no longer be funded as a cost of supportive services.

In paragraph (e), prior Federal fiscal year information on efforts to assist low income minority and rural elderly people is included as an annual State plan requirement. In sections 307(a) (23) and (29) of the Act, the Congress identified this information as a priority requirement.

In paragraph (f)(1), State plan assurance is proposed to emphasize that the State agency shall monitor each area agency to be certain that all of the activities in which the area agency engages are appropriate to its statutory mission.

In paragraph (f)(7), State plan assurance is added requiring each State to develop policies and procedures to facilitate management of the program at all levels.

In paragraph (f)(8), because of the concern of Congress and multiple references in the Act to older persons in greatest economic or social need, a State plan assurance is added requiring an assurance that each area agency will arrange for outreach with special emphasis on this category of older persons, with particular attention to low-income minority individuals.

In paragraph (f)(9), the Act contains many explicit new requirements for the Commissioner to collect data. The new data collection requirements can only be met with the full and timely cooperation of all States, area agencies and service providers. Thus, a new State plan assurance is included concerning the State agency's responsibilities for data collection from area agencies.

In paragraph (f)(11), we have implemented a new provision in section

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306(a)(6) to require that area agencies make information available to elderly individuals about low or no cost opportunities for post-secondary education.

In paragraph (f)(12), we are proposing to implement section 307(a)(13)(I) to permit disabled individuals living in a household with and accompanying a person eligible for congregate meals to receive a meal funded under Title III–C. The conference committee report includes a statement that this eligibility does not extend to individuals who live together in an institutional setting (H.R. Conf. Rep. 100–427, 100th Cong. 1st Sess. 75 (1987)).

Section 1321.19 Amendments to the State plan.

This section replaces § 1321.11 of the current regulations. Under subsection (a)(3) a requirement is included that in any year in which a new State plan is not submitted, the State plan shall be amended to update information related to prior year services to minority and rural persons. States also are required to adhere to guidelines that the Commissioner will provide specifying how the information is to be presented. This provision will enable the Commissioner to meaningfully aggregate and analyze the information for reports that are required by the Act.

Section 1321.21 Submission of the State plan or plan amendments to the Commissioner for approval.

This section is based on § 1321.13 of the current regulations. A clarification is proposed requiring that amendments to the State plan as well as the State plan itself be signed by the Governor or the Governor's designee. This is the usual practice for most States and is proposed because amendments are only required in areas of substantial importance.

Section 1321.23 Notification of State plan or plan amendment approval.

Notification of the approval of State plan amendments will follow the same procedures as are used for approval of State plans. This is consistent with our rationale for changes proposed in § 1321.21.

Section 1321.35 Withdrawal of area agency designation.

This section is based on § 1321.39 of the current regulations. Congress has added new language to the Act in section 305(c) specifying that an area agency is "to function only" for the purpose of serving as an area agency. Language to enable States to withdraw area agency designation where their activities create a conflict of interest with their statutory mission has been added. This section also adds language to assure that the State agency has policies and procedures regarding withdrawal of area agency designation.

Section 1321.37 Intrastate funding formula.

The Act has been amended in section 361 to provide for a program of preventive health services in a new Part F. The new program will require special accommodations in intrastate funding formulas based upon the requirement in section 362 of the Act that, in carrying out this part, the State agency give priority to areas of the State that are medically underserviced and have a large number of individuals who have the greatest economic need. Paragraph (b) proposes a separate allocation to area agencies based on new criteria in section 362 of the Act.

Section 1321.47 Statewide non-Federal share requirements.

The intent of the Act is reflected in considering the ombudsman program and all other services as supportive services for purposes of determining the matching funds required to qualify for Federal funds under this part. The Act in section 304(d)(1) requires that the Federal share for the cost of administration of area plans will not exceed 75 percent and that the Federal share for the cost of supportive services, senior centers and nutrition services shall not exceed 85 percent of the cost. This regulation points out that the matching requirements apply on a statewide basis for each allotment which the State receives.

Section 1321.49 State agency maintenance of effort.

The amendments to the Act change the time period used in calculating the State agency maintenance of effort from one year to three years. Therefore, this section is changed to conform to the Act. It is important to note that the requirements of this section also apply to the ombudsman program. This means that any funds which a State receives for the ombudsman program from Title III may not replace State funding for the program.

Section 1321.51 Confidentiality and disclosure of information.

The current regulations in § 1321.19 require that the States have procedures to protect the confidentiality of information about older persons collected, "in the delivery of services." This requirement is expanded in paragraph (a) to include any information collected, "in the conduct of its responsibilities." This change is made to ensure the privacy of elderly clients in all activities funded under this Part.

The Act contains a new requirement in section 306(d) that an area agency may not require any provider of legal assistance under Title III to reveal any information which is protected under attorney-client privilege. Paragraph (c) extends this prohibition to the State.

Section 307(a)(12) of the Act requires an assurance from the State agency that it shall "establish and operate" the ombudsman program regardless of whether the program is operated directly or through contract. Consistent with this provision of the Act, clarification is provided in paragraph (d) that the State agency on aging has the right of access to the files of the Office of the State Long-Term Care Ombudsman, notwithstanding the confidentiality requirements of section 307(a)(12)(D).

Section 1321.52 Evaluation of unmet need.

The Commissioner is required by September 30, 1989 to submit a report to the Congress summarizing in detail for each State the results of State evaluations of the unmet need for supportive services, nutrition services, and multipurpose senior services. The report to the Congress shall include recommendations of the Secretary with respect to the need for administrative action and legislation relating to satisfying the unsatisfied demand for supportive services provided at public or privately funded senior centers. The Commissioner is required under the Act to issue regulations to assure that the evaluations from the States include objective and statistical data.

Section 1321.53 Mission of the area agency.

In paragraph (a) we propose a mission statement of the area agencies to reaffirm Congressional intent concerning the fundamental responsibility of the area agency in providing leadership on all aging issues in the planning and service area. In keeping with this intent, the area agency, under the leadership and direction of the State agency on aging, is expected to initiate actions to carry out a wide range of activities which increase the capacity and foster the development or enhancement of comprehensive and coordinated community based services systems for older persons.

The characteristics or elements that a comprehensive and coordinated community based system shall exhibit

are proposed in paragraph (b). These characteristics or elements have been previously published and shared with all State agencies on aging and area agencies on aging and have received broad acceptance.

A clarification is included in paragraph (c) that expenditures of Older Americans Act funds are for activities which contribute to comprehensive and coordinated community based systems. In addition, in keeping with section 306(a)(3) of the Act, this section clarifies the responsibility of the area agency to designate community focal points, giving special consideration to designating multipurpose senior centers as such focal points. Focal point as used in this part is defined in section 302(12) of the Act to mean a facility established to encourage the maximum collocation and coordination of services for older individuals at the community level. This use of the term is distinct from its usage in section 306(a)(6)(D) of the Act which refers to the area agency as the advocate and focal point representing the interest of older individuals at the area level by reviewing, monitoring, evaluating, and commenting on Federal, State and local plans, budgets, regulations, programs, laws, etc.

Section 1321.55 Organization and staffing of the area agency.

Current rules at § 1321.57 regarding organization and staffing of the area agency are expanded to clarify that the area agency may be placed within an "umbrella" agency, such as a city or county human services department, council of governments, regional planning commission, or regional planning district.

If included under such a multipurpose agency, the area agency shall remain an identifiable unit that functions only for the purpose of serving as the area agency on aging.

Section 1321.57 Area agency advisory council.

The language of current § 1321.61 is modified to add a statement in paragraph (a) to emphasize that the advisory council's role is to assist the area agency in the development and coordination of community based systems of services for older persons. The role of the advisory council is also enhanced by requiring that the area plan and amendments be transmitted to the council for review before it is transmitted to the State agency for approval. In keeping with Congressional intent, individuals representative of supportive services organizations and health care organizations, including veterans' health care (if appropriate), shall be included as members, as well as persons with leadership experience in the private and voluntary sectors.

The council also should involve individuals and representatives of organizations from the community who will directly contribute to enhancing the leadership role of the area agency.

Section 1321.61 Advocacy responsibilities of the area agency.

Additional language in paragraph (b)(5) of this section on the advocacy responsibilities of area agencies is included to reinforce the mission of the area agency to provide leadership in coordinating plans and activities with other organizations in the planning and service area concerned with the well-being of older persons. The revised policy language reflects the particular concern of Congress that the area agency assure that services provided throughout the planning and service area meet the needs of low income and minority older persons. Current rules in this area are found at § 1321.65.

Section 1321.63 Purpose of service allotments under Title III.

A new section is proposed related to service allotments under Title III to emphasize that services funded under Title III are intended to assist in the development or enhancement of comprehensive and coordinated service systems throughout each State. Each category of service listed in paragraph (a), except for ombudsman services, is subject to the requirement of allocation of funds through an intrastate formula that takes into account the geographical distribution of individuals aged 60 or older in the State and the proportion of older persons in greatest economic and social need with particular attention to low-income minority individuals. The intrastate formula shall also provide that for funds received for preventive health services, the State give priority to planning and service areas which are medically underserved as well as have large numbers of individuals who have the greatest economic and social need for such services. These categories of service are also subject to the requirement of a non-federal contribution of not less than 15 percent in matching funds.

Sectin 1321.65 Responsibilities of service providers under area plans.

This section proposes to add an assurance from area agencies, as required by section 13(a) of the 1987 Amendments, to define what a service provider shall provide to the area agency before the area agency awards Title III funds. The provider shall assure that its services will contribute to the goal of developing responsive community-based systems and assure the timely submission of statistical and other information necessary for the area agency to plan, coordinate and evaluate its programs, and meet reporting requirements to the State. The service provider is further required to specify the outreach efforts that it will undertake to assure that it serves low income minority individuals in proportion to their numbers in the older population of the service area, and that services provided under Title III will be coordinated with other services in the area, and will not unnecessarily duplicate services available from other sources.

Section 1321.67 Service contributions.

This section clarifies the provision in current § 1321.69 that, as with other services under Title III, no means test may be used to determine the eligibility of older persons for the new in-home services program under section 343 of the Act.

Section 1321.69 Service priority for frail, homebound or isolated elderly.

This section reaffirms expectations that area agencies and service providers give priority to providing services to frail, homebound or isolated older persons. It reiterates § 1321.71 in the current regulations which, under criteria established by the area agency, also authorizes home-delivered meals for the spouse of the homebound older person.

Section 1321.71 Legal assistance.

Section 307(a)(15)(A) of the Act requires that the State plan contain an assurance that any recipient of funds for legal assistance "* * * will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act * * * as determined appropriate by the Commissioner." This provision was first included in the Act in the 1978 amendments. Accordingly, the Title III regulations which were issued in 1980 drew upon the regulations of the Legal Services Corporation (LSC) in covering the provision of legal services under the Older Americans Act. However, based on the Commissioner's statutory responsibility to determine which LSC regulations were appropriate to Title III, the treatment of legal services in the 1980 regulations was limited so as to be proportionate to the coverage of other services provided under Title III. In 1985, when the current Title III regulations were issued, a different approach to the teatment of legal services was adopted. At that time,

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the coverage of legal services was significantly expanded with the result that legal assistance regulations constituted approximately one-quarter of the entire Title III regulations. This extensive coverage was disproportionate to the coverage of other services provided under Title III. It should be stated that even in this extended discussion of legal assistance, many of the LSC regulations were not included in the Title III regulations.

After reasessing the current regulations in preparation for revisions to accommodate the 1987 amendments to the Act, it was concluded that the extensive discussion of legal assistance was inappropriate for the following reasons: (1) Under regulatory reform unnecessary regulations in other areas of the Title III program have been reduced; (2) While legal assistance is important, it is one among many services which are provided with Title III funds; and (3) The detailed definitions of lobbying activities set forth in current LSC regulations (issued July 29, 1987 at 52 FR 28434) are not needed to carry out the purposes of Title III.

Since the States are provided the greatest possible flexibility in the manner in which other services are provided, the extent of regulatory detail in the treatment of legal assistance has been reviewed and commensurately reduced. The revised regulation seeks to assure that Title III legal assistance funds are used solely to carry out the purposes of the Act and not for extraneous activities, such as lobbying and other political activities. Thus, the intent of these regulations is the same as that of the LSC regulations but offered without the same level of detail.

Section 1321.73 Grant related income under Title III–C.

A new section is added which clarifies the use of grant related income. In general, use of grant related income is governed by 45 CFR Part 74, Subpart F, § 74.42, except that the use of program income as discussed in § 74.42(c), the deductive alternative, is not permitted. The Department has determined that the Act does not permit the use of the deductive alternative for utilizing program income from nutrition services because section 307(a)(13)(C)(ii) of the Act requires program income to be used to expand the services of Title III Part C projects.

Part 1326—Grants to Indian Tribes for Support and Nutritional Services

There are only two changes to the current regulations for this Part. The first is to change the number for this Part from 1328 to 1326. This was done to make the Part number for the American Indian program precede the Part number for the program for older Native Hawaiians. This reflects the prior existence of the Indian program and its placement in the Act. The second change, which is in § 1326.19(d)(1), decreases from 60 to 50 the number of Indians aged 60 or older needed by a tribe to apply for a grant under this Part. This latter change is required by section 612(a)(1) of the amended Act. *For this part, we are soliciting comments only on this decrease in the number of Indians needed by a tribe to apply for a grant.*

Part 1328—Grants for Supportive and Nutritional Services to Older Hawaiian Natives

The regulations for this Part are nearly identical to the current regulations in Part 1328 for Grants To Indian Tribes. This is because the amendments to the Act creating the program for older Hawaiian Natives are similar to the existing program for American Indian elders. *Part 1328 is for an entirely new program, and we will, therefore, accept comments on all sections of this part.*

Section 1328.3 Definitions.

The definition of "Hawaiian Native" is taken from section 625 of the Act and the definition of "Older Hawaiian" is taken from sections 622 of the Act.

Section 1328.21 Application approval.

This section stipulates that the Commissioner approves grants for specific amounts and time periods without any implied obligation to renew, extend, or supplement the grant at any time in the future. The Commissioner also stipulates that preference may be given to eligible applicant organizations that have prior experience in serving Hawaiian Natives. These provisions are proposed to help assure successful development and implementation of the program.

Impact Analysis

Executive Order 12291

The Secretary has determined, in accordance with Exeuctive Order 12291, that these rules do not constitute a major rule because they will not have an annual effect on the economy of $100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. We do not believe that there will be any additional costs under these rules since the types of statutorily mandated data we will collect are ordinarily utilized by States for efficient program management.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of these regulations is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a subsantial number of small entities.

Executive Order 12606

The Secretary has determined, in accordance with Executive Order 12606, that these rules have been assessed in light of the family policymaking criteria of the Order and these rules have no significant potential negative impact on family well-being and will enhance family well-being. A certification to this effect will be transmitted to the Office of Management and Budget.

Recordkeeping and Reporting Requirements

Sections 202, 305, 306, 307, 614, and 623 of the Act require collection of data, area and State plans and Native American organization applications. These rules at §§ 1321.17, 1326.19 and 1328.19 contain revised information collection requirements. The Act requires the Commissioner each fiscal year to collect from States statistical data on programs and activities carried out with funds provided under the Act. The data must include for each type of

service: the aggregate amount of funds expended, the number of individuals served, and the number of units of service provided. Additionally, the data must indicate the number of senior centers funded and the extent to which area agencies satisfied their statutory requirements concerning expenditure of adequate funds on specified services and targeted services to older persons in greatest need. In responding to new statutory data collection requirements, AoA will be sensitive to avoiding any needless burden on State and area agencies. AoA will provide States with an opportunity to comment on revised information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of these revised information collection requirements to the Office of Management and Budget (OMB) for its review.

OMB has not approved the revised information collection requirements contained in these rules. The new information collection requirements contained in §§ 1321.17, 1326.19 and 1328.19 will not go into effect until OMB approval has been obtained. Although OMB has not approved the sections of these regulations associated with the development of State and area plans and Native American organization applications, those statutory activities required to maintain eligibility for funding remain in effect. When OMB assigns information collection approval numbers, we will publish a notice in the **Federal Register.**

List of Subjects

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant program/social programs, Nutrition, Reporting requirements.

45 CFR Part 1326

Administrative practice and procedures, Aged, Grant programs Indians, Reporting requirements.

45 CFR Part 1328

Administrative practice and procedures, Aged, Grant programs Hawaiian Natives, Reporting requirements.

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Part A and B-Grants on Aging; 13.635 Special Programs for Aging, Title III Part C-Nutrition Services); (13.655 Special Programs for Aging-Title VI-Grants for Indian Tribes)

Dated: February 26, 1988.

Carol Fraser Fisk,

Commissioner on Aging.

Approved: March 3, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set forth in the Preamble, Chapter XIII, Subchapter C, of Title 45, Subtitle B, Code of Federal Regulations is proposed to be amended as follows:

1. Part 1321 is revised as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.
1321.1 Basis and purpose of this part.
1321.3 Definitions.
1321.5 Applicability of other regulations.

Subpart B—State Agency Responsibilities

1321.7 Mission of the State agency.
1321.9 Organization and staffing of the State agency.
1321.11 State agency policies.
1321.13 Advocacy responsibilities.
1321.15 Duration, format and effective date of the State plan.
1321.17 Content of State plan.
1321.19 Amendments to the State plan.
1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.
1321.23 Notification of State plan or plan amendment approval.
1321.25 Restriction of delegation of authority to other agencies.
1321.27 Public participation.
1321.29 Designation of planning and service areas.
1321.31 Appeal to Commissioner.
1321.33 Designation of area agencies.
1321.35 Withdrawal of area agency designation.
1321.37 Intrastate funding formula.
1321.41 Single State planning and service area.
1321.43 Interstate planning and service area.
1321.45 Transfer between congregate and home-delivered nutrition service allotments.
1321.47 Statewide non-Federal share requirements.
1321.49 State agency maintenance of effort.
1321.51 Confidentiality and disclosure of information.
1321.52 Evaluation of unmet need.

Subpart C—Area Agency Responsibilities

1321.53 Mission of the area agency.
1321.55 Organization and staffing of the area agency.
1321.57 Area agency advisory council.
1321.59 Submission of an area plan and plan amendments to the State for approval.
1321.61 Advocacy responsibilities of the area agency.

Subpart D—Service Requirements

1321.63 Purpose of services allotments under Title III.
1321.65 Responsibilities of service providers under area plans.
1321.67 Service contributions.
1321.69 Service priority for frail, homebound or isolated elderly.
1321.71 Legal assistance.
1321.73 Grant related income under Title III–C.
1321.75 Licenses and safety.

Subpart E—Hearing Procedures for State Agencies

1321.77 Scope.
1321.9 When a decision is effective.
1321.81 How the State may appeal.
1321.83 How the Commissioner may reallot the State's withheld payments.

Authority: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act.

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with greatest economic or social need, with particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use Title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area to serve as its agent in building comprehensive systems for older people throughout the State. Area agencies in

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turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Administrative action," as used in section 307(a)(12)(A) of the Act with respect to the investigation and resolution of complaints under long-term care ombudsman programs, means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a government agency, which affects the provisions of service to residents covered under the long term care program.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department" means the Department of Health and Human Services.

"Direct services," as used in this Part, means any activity performed to benefit an older individual by the staff of an area agency or by staff of a State agency in a single planning and service area State.

"Fiscal year," as used in this Part, means the Federal Fiscal Year.

"Frail," as used in this Part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal tasks or which threatens the capacity of an individual to live independently.

"Human services," as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"In-home service," as used in this Part, includes: (A) Homemaker and home health aides; (B) visiting and telephone reassurance; (C) chore maintenance; (D) in-home respite care for families, including adult day care as a respite service for families; and (E) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this Part for such modification.

"Means test," as used in the provision of services, means the use of an older person's income or resources to deny or limit that person's receipt of services under this Part.

"Official duties," as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

"Periodic," as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

"Reservation," as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 State. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Act with respect to the provision of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"Severe Disability," means a severe chronic disability of an individual that—(a) is likely to continue indefinitely; and (b) results in substantial functional limitation in 3 or more of the following major life activities: (1) Self-care, (2) Receptive and expressive language, (3) Learning, (4) Mobility, (5) Self-direction, (6) Capacity for independent living, and (7) Economic self-sufficiency.

"Significant population," as used in section 306(a)(6)(N) of the Act with respect to older Indians in the planning and service area, means that at least 50 persons eligible for services under the Act in the area are older Indians.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) 45 CFR Part 74—*Administration of Grants,* except Subpart N;

(c) 45 CFR Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(d) 45 CFR Part 81—*Practice and Procedures for Hearings Under Part 80 of this Title;*

(e) 45 CFR Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Participation;*

(f) 45 CFR Part 91—*Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;*

(g) 45 CFR Part 100—*Intergovernmental Review of Department of Health and Human Services Programs and Activities;* and

(h) 5 CFR Part 900, Subpart F, *Standards for a Merit System of Personnel Administration.*

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging to be the principal agents of the State to carry out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those local agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in § 1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State Plan required under this Part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this Part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

§ 1321.11 State agency policies.

The State agency shall develop policies governing all aspects of programs operated under this Part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies. The State agency is responsible for enforcement of these policies.

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organization, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as identified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) An agency may not make expenditures under a new plan or amendment, as identified in § 1321.17, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the single State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a)(23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this Part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages solely in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this Part are provided without use of any means tests;

(4) All services provided under Title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to contribute voluntarily to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals;

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities that reside in a non-institutional household with and accompany a person eligible for congregate meals under this Part shall be provided a meal on the same

basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a)(23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under § 1321.17(a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17(b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart E.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice of the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner upholds the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this Part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180 day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c);

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

§ 1321.41 Single State planning and service area.

(a) The Commissioner approves the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this Part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) of this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, all applicable requirements and procedures in § 1321.29 and § 1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency shall:

(1) Specify the percent which a State agency proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a portion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds used under this part. All services statewide, including ombudsman services and services funded under Title III–B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-Federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for

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supportive and nutrition services under this Part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this Part to reveal any information that is protected by attorney client privilege.

(d) The director of the State agency, or other legitimately authorized superior of the State ombudsman and of representatives of the Ombudsman Office, as specified in State policies under § 1321.17(f)(6), shall have access to the files of the State ombudsman or representatives of the Office in order to carry out the State's responsibilities for the ombudsman program.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objective and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989, and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options;

(3) Assure that these options are readily accessible to all older persons: the independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve vollaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency shall work with community leadership in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define "community" for the purposes of this section. Since the Older Americans Act defines focal point as a "facility" established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A single organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency, or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officals; and

(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policy manual prescribed by § 1321.17.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake activities on a regular basis designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this Part to employ a means test.

(d) No requirements of this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

Subpart D—Service Requirements

§ 1321.63 Purpose of service allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;
(2) Congregate meals services;
(3) Home delivered meals services;
(4) In-home services;
(5) Ombudsman services;
(6) Special needs services;
(7) Elder abuse services;
(8) Preventive health services.

Funds authorized under these categories are for the purpose of assisting the State agency to develop or enhance comprehensive and coordinated community based systems for older persons described in 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging award the funds made available under paragraph (a) above to designated area agencies on aging in keeping with the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this Part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population served by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this Part are coordinated with other appropriate services in the

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community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that:

(a) Each service provider shall:

(1) Provide each older person with an opportunity to contribute voluntarily to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions only to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(C)(ii) of the Act.

(b) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(c) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement from out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity:

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by an nonjudicial Federal, State or local individual or body.

(1) Nothing in this section is intended to prohibit an employee from:

(i) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(ii) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraph (k) of this section:

(iii) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(iv) Making direct contact with the area agency for any purpose.

(2) A provider may use funds provided by private sources to:

(i) Engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act.

(ii) Pay reasonable annual dues to organizations which are tax exempt under section 501(c) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto.

(j) While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be directly used.

§ 1321.73 Grant related income under Title III-C.

The use of grant related income under section 307(a)(13)(c)(ii) of the Act is governed by Title 45 Code of Federal Regulations Part 74 Subpart F, § 74.42, except that the use of program income as discussed in § 74.42(c), deductive alternative, is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for State Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the provisions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 231.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), hearing procedures described in this subpart apply to nature and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including the failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first date of the Commissioner's decision or later than the first day of the next calender quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appear, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State the final decision of the Commissioner disapproving the State plan or amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit organization or agency, or political subdivision of the State agency and submits a State plan which meets the requirements of this Part and which contains an agreement to meet the non-federal share requirements.

2. Part 1328 is redesignated as Part 1326 and revised to read as follows:

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITIONAL SERVICES

Sec.

1326.1 Basis and purpose of this part.
1326.3 Definitions.
1326.5 Applicability of other regulations
1326.7 Confidentiality and disclosure of information.
1326.9 Contributions.
1326.11 Prohibition against supplantation.
1326.13 Supportive services.
1326.15 Nutrition services.
1326.17 Access to information.
1326.19 Application requirements.
1326.21 Application approval.
1326.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations.

This Part implements Title VI (Part A) of the Older American Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III This part also prescribes application and hearing requirements and procedures for these grants.

§ 1326.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Altering" or "renovating" as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with alloted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 State. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of the status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation any portion of a county or counties which have a common boundary with the reservation. A service area may also include a non-contiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is a democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequiste to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) Part 74—*Administration of Grants;*

(c) Part 75—*Informal Grant Appeals Procedures;*

(d) Part 80—*Nondiscriminatin Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(e) Part 81—*Practice and Procedure for Hearings Under Part 80 of This Title;*

(f) Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and*

(g) Part 91—*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS.*

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indians a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the actives provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under Title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to non-elderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided; and

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement to be a distributing agency with the U.S. Department of Agriculture's Food and Nutrition Service (FNS).

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area.

(b) Maintain a lost of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoke by a predominant number of older Indians;

(4) Procedures to ensure that all services under this Part are provided without use of any means tests; and

(5) A tribal organization shall comply with all requirements set forth in §§ 1326.7 through 1326.17.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated offical conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

3. A new Part 1328 is added to read as follows:

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

1328.1 Basis and purpose of this part.
1328.3 Definitions.
1328.5 Applicability of other regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Supportive services.
1328.15 Nutrition services.
1328.17 Access to information.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

Authority: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

§ 1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives.

This part implements Title VI (Part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1328.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Act," means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budgeting period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

"Department," means the Department of Health and Human Services.

"Eligible organization," means a public or nonprofit private organization having the capacity to provide services under this Part for older Hawaiian Natives.

"Grantee," as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

"Hawaiian Native," as used in this part, means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

"Means test," as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person's receipt of services under this part.

"Older Hawaiian," means any individual, age 60 or over, who is an Hawaiian Native.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this Part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1328.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) Part 16—*Procedures of the Departmental Grant Appeals Board;*

(b) Part 74—*Administration of Grants;*

(c) Part 75—*Informal Grant Appeals Procedures;*

(d) Part 80—*Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;*

(e) Part 81—*Practice and Procedures for Hearings Under Part 80;*

(f) Part 84—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits From Federal Financial Participation;* and

(g) Part 91—*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS.*

§ 1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Supportive services.

(a) A grantee may provide any of the supportive services mentioned under Title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this Part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.75 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the non-elderly spouses of older Hawaiian Natives;

(2) Provide nutrition services to non-elderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided; and

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement to be a distributing agency with the U.S. Department of Agriculture's Food and Nutrition Service (FNS).

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State Agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this Part are provided without use of any means tests; and

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In meeting the requirements of section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designate official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

[FR Doc. 88-6577 Filed 3-28-88; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 74, and 90

[Gen. Docket No. 85-171; FCC 88-65]

Revisions of the Rules Regarding Equipment Authorization Procedures; Public Mobile Service; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; and Private Land Mobile Radio Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rules.

SUMMARY: Changes are proposed in Parts 2, 22, 74, and 90 of the Rules to allow use of radio technologies in the land mobile radio bands that do not meet the conventional technical standards of existing mobile radio rules.

The Notice of Inquiry and Proposed Rule Making solicited public comment on an equipment testing and authorization procedure called alternative type acceptance (ATA). By making tests with a "standard" receiver, the compatibility of a new radio technology with existing FM land mobile radio would be assured. While generally agreeing with the concept of ATA, the commenters thought that the "standard" receiver and frequency coordination constituted significant problems.

The present action proposes a different methodology for ATA to deal with the problems raised. This methodology uses characteristics of existing FM land mobile transmitters to define the power and bandwidth of new radio technologies.

DATES: Comments must be received on or before June 20, 1988, and Reply Comments must be received on or before July 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hector Davis, Engineering Evaluation Branch, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in Gen. Docket No. 85-171, FCC 88-65, Adopted February 25, 1988, and Released on March 22, 1988.

The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making

1. The objective of this proposal is to add alternative type acceptance (ATA) procedures for equipment authorized in the mobile communications services. This action will permit the introduction of new technologies into the existing mobile radio bands without time-consuming rule making proceedings. Applicants using ATA will not have to disclose the technical details of the application to competitors prior to grant as would be the case in a rule making proceeding. The Commission believes that the proposed rules preclude any more interference from new technologies than results from existing mobile services.

2. It should be noted that the use of ATA is optional. Existing type acceptance procedures are retained. Amendments are proposed for Part 2 to include the optional ATA procedures. Parts 22, 74, and 90 are amended to allow the use in the mobile services of equipment authorized under ATA. We believe that the matter of interference to land mobile services has been satisfactorily addressed. Interference to other authorized services should not occur. ATA equipment will not be permitted in UHF television channels shared by land mobile radio services. This restriction is necessary due to the limited testing in this environment.

3. In order to incorporate the above proposals into the rules, a new § 2.990 is added. Changes are required for the following rule sections: 22.120, 74.451, 90.203, 90.217, and 90.231. Comments are requested on the proposed changes to the rules.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities bacause it relaxes the Commission's rules and reduces the Commission's application burden. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no additional information collection requirement on the public. Implementation of a modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

List of Subjects

47 CFR Part 2

Type acceptance.

47 CFR Part 22

Technical standards.

47 CFR Part 74

Remote pickup broadcast stations.

47 CFR Part 90

General technical standards.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-6768 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-106; RM-4997]

Radio Broadcasting Services; Blythe, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a proposal to allot Channel 219A to Blythe, California, as requested by the Escuela de la Raza Unida, based on the Commission's recent amendment of its Rules to provide for a "demand" system for NCE-FM services located within 199 miles of the United States-Mexico border area. As a result, the Blythe proposal may be considered in the application context rather than the rule making process. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-106, adopted February 11, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6777 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-108, RM-6085]

Radio Broadcasting Services; Yreka, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dalmatian Enterprises Inc. licensee of Station KYRE(FM) (Channel 249A), Yreka CA, proposing the substitution of FM Channel 249C1 for Channel 249A and modification of its Class A license accordingly, to provide that community with its first wide coverage area FM service.

DATES: Comments must be filed on or before May 9, 1988, and reply comments on or before May 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., Arent, Fox, Kintner Plotkin & Kahn, 1050 Conn. Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-108, adopted February 25, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6776 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-109, RM-5957]

Radio Broadcasting Services; Basalt, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Basalt Communications Company, seeking the allotment of FM Channel 291A to Basalt, Colorado, as that community's first local broadcast service.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Basalt Communications Company, Attn: Dan and Caren Lacy, 1885 Ponder Heights Drive, Colorado Springs, CO 80906.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-109, adopted February 25, 1988, and released March 21, 1988. The full text of this Commission is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6778 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-111, RM-5359]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Treasure Coast Broadcasting Company, licensee of Station

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WGYL(FM) Vero Beach, Florida, which seeks to substitute Channel 229C2 for Channel 228A at Vero Beach, and to modify its Class A license accordingly.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–111, adopted February 16, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–6780 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-99, RM-6074]

Radio Broadcasting Services; Cornelia and Chatsworth, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Habersham Broadcasting Co., licensee of Station WCON–FM, Cornelia, Georgia, which seeks to substitute Channel 257C2 for Channel 257A, and to modify its license to the new channel (coordinates 34–30–57—83-32–20). In order to permit the proposed modification, petitioner has requested that Channel 255A be substituted for Channel 257A at Chatsworth, Georgia, and the license for Station WQMT(FM), modified to specific Channel 255A (coordinates 34–45–29—84–43–59). In order to obtain the consent of Station WQMT to change from Channel 257A to Channel 255A, we are issuing the licensee an *Order to Show Cause.*

DATES: Comments must be filed on or before May 9, 1988, and reply comments on or before May 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Edward W. Hummers, Jr., Frank R. Jazzo, Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–99, adopted February 11, 1988 and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–6775 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–110, RM–6134]

Radio Broadcasting Services; Los Ybanez, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Israel Ybanez proposing the allocation of Channel 300C2 to Los Ybanez, Texas, as that community's first local FM service. Additional information has been requested from the petitioner as to the community status of Los Ybanez. Concurrence of the Mexican government is required. The coordinates used for the proposal are 32–44–06 and 102–00–00.

DATES: Comments must be filed on or before May 10, 1988, and reply comments on or before May 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant as follows: James K. Edmundson, Esquire, Kenkel, Barnard & Edmundson, 1220 Nineteenth Street NW., Suite 202, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–110, adopted February 24, 1988, and released March 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–6779 Filed 3–28–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 252

Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

AGENCY: Department of Defense (DoD)

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering adding a new subpart 208.79 to the Defense Federal Acquisition Regulation Supplement to restrict procurement of antifriction bearings and bearing components for use by the DoD to domestic sources. This restriction was deemed necessary to protect and strengthen the domestic industrial base for an industry critical to National security.

DATE: Comments on the proposed addition should be submitted in writing to the Executive Secretary, DAR Council at the address shown below, on or before April 28, 1988, to be considered in the formulation of the final rule. Please cite the DAR Case number 88–35 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, OUSD(A) (M&RS) Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory E. Saunders, Assistant for Commerical Acquisition, OASD(P&L)PS/SDM, Room 2A318, Pentagon, Washington DC 20301–8000, telephone (202) 695–7915.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed restriction to domestic sources of procurement of antifriction bearings for DoD use has been determined to be necessary to protect an industry that is critical to National security. In response to a House Appropriation Committee Report request in 1985, the Joint Logistics Commanders (JLD) were asked to conduct a study of the antifriction bearing industry. The report, published in June 1986, documented a number of disturbing trends. The foreign share of ball and roller bearings was between 30% and 40% and increasing. The commercial segment of the bearing industry was deteriorating, thereby placing a larger cost burden on the military market and depleting the capacity of the industry to respond to surges in demand. Defense production was becoming the major market for many domestic producers and foreign competition was eroding that last bastion. A DoD Bearing Action Plan was developed and sent to Congress in March 1987, that proposed solutions to many of the problems identified in the JLC study. Both the House and Senate Appropriations Reports for 1988 (100-410 and 100–235) and the Continuing Appropriations Report (100–498) indicated that DoD should implement the plan expeditiously, with certain exemptions. The Secretary of Defense has received numerous letters of concern over the continuing decline of the bearing industry, from members of the Congressional Bearing Caucus. The Caucus consists of members of the House of Representatives who represent states with interests in the bearing industry such as Connecticut, Michigan, New York, Ohio, Pennsyalvania and South Carolina. In letters dated December 10 and 21 1987, and February 11, 1988, members expressed concern regarding the slow progress of the implementation of the Bearing Action Plan, and especially the proposed procurement restriction. They recently requested the Department's support for a Department of Commerce "section 232" petition filed by the domestic bearing industry to seek even further relief than that provided by the DoD's activities.

The essence of the proposed procurement restriction is to restrict the procurement of all antifriction bearings for DoD use, over the next three years, to domestic sources. At the end of that period, the restriction may be extended an additional two years if the progress of the domestic bearing industry toward becoming competitive appears to warrant such consideration. This restriction will apply to bearings as end items and end items containing bearings. The restriction will be applied to all new contracts and to the exercise of options in existing contracts. The following exemptions will apply:

1. Commercial-off-the-shelf products.
2. Products for Government to Government co-production, or co-development projects.
3. Existing contracts with NATO/MOU countries, which will be phased in over an eighteen month period.
4. Situations where cost or schedule impact is sufficiently severe to require the use of foreign bearings.
5. Certain situations where a manufacturer has a corporate headquarters in a NATO nation and a United States subsidiary which exports bearings.
6. Purchases of foreign products overseas for overseas use.
7. Small purchases using simplified purchase procedures.

B. Regulatory Flexibility Act

The proposed coverage at Subpart 208.79 is not expected to have a significant impact on small businesses. It will impact only those small businesses that (1) manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a sub-contract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. Therefore an Initial Regulatory Act Analysis has not been prepared. Comments on this determination are solicited.

C. Paperwork Burden

It is expected that the proposed coverage will impose an additional burden on contractors. A paperwork burden clearance is being prepared for submission to OMB.

The burden to be placed on contractors is in the form of contractors developing and maintaining records for three years showing compliance with the clause at 252.208–7006. It is estimated that approximately 100,000 contracts will be affected, and that the requirement should increase the paperwork burden by approximately 4 hours per contract. This is the time it should take contractors to ensure that sub-contractors are complying with the clause. Additionally, approximately 350 contractors may be required to submit plans for phasing in the purchase of domestic manufacture bearings to replace those of other than domestic manufacture. This requirement will increase the paperwork burden by approximately 110 hours per contractor.

List of Subjects in 48 CFR Parts 208 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 208 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. A new Subpart 208.79, consisting of sections 208.7901 through 208.7903, is added to read as follows:

Subpart 208.79—ANTIFRICTION BEARINGS

Sec.
208.7901 Definitions.
208.7902 Policy.
208.7903 Procedures.

Subpart 208.79—Antifriction Bearings

208.7901 Definitions.

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada;

"Commercial product" as used in this subpart, means a product, such as an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for explanation of terms);

"Commercial-type product" as used in this subpart, means a commercial product (a) modified to meet some Government-peculiar physical requirement or (b) otherwise identified differently from its normal commercial counterparts;

"Other authorized manufacture" as used in this subpart, means wholly manufactured by a company with its corporate headquarters in a NATO participating country (see DFARS 225.001) and which has a US subsidiary which exports domestic manufactured bearings. However a manufacturer's bearings are included within this term only to the extent that: (a) The total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the value of bearings exported by its U.S. subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/specialty bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987; and "Super-precision Bearings" as used in this subpart means bearings having a precision classification of ABEC/RBEC 5 or higher.

"Custom/specialty Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

208.7902 Policy.

(a) It has been determined that the ability of the U.S. bearing industry to meet industrial surge and mobilization requirements for bearings is in serious jeopardy. In view of the national security significance of bearings, the DoD has determined that except as provided in paragraph (b) below, all bearings or components of bearings procured directly or indirectly (installed in defense end-items and subassemblies) shall be wholly manufactured by the domestic industrial base as specified below:

(b) The restriction applies to all sizes and grades of bearings and bearing components procured for, but not limited to:

(1) all military end-items and components

(2) weapon systems in the development stage and

(3) spare parts, Government Furnished Material, and repair or refurbishment.

(c) The restriction in paragraph (a) above does not apply to:

(1) Miniature and instrument bearings which are restricted by DFARS SUBPART 208.73;

(2) Rod-end and spherical bearings for contracts entered into prior to (DATE—24 months from the effective date of the clause);

(3) Bearings and bearing components manufactured by a company in a qualifying country (see DFARS 225.001) for contracts entered into prior to (DATE—six months from the effective date of the clause).

208.7903 Procedures.

(a) The clause set forth at 252.208–7006, Required Sources for Antifriction Bearings, shall be inserted in all solicitations and contracts and in the exercise of options for existing contracts, except:

(1) Those contracts awarded on or after (DATE—three years from the effective date of this clause)

(2) Where the contracting officer knows that the item being procured does not contain bearings;

(3) When purchasing commercial or commerical-type items;

(4) When purchasing other than domestic manufacture items overseas for use overseas;

(5) When the contracting officer determines in writing that inclusion of the clause would not be in the best interest of the U.S. because qualifying a new domestic source would:

(i) Cause unreasonable costs or delays to be incurred;

(ii) Jeopardize the safety and welfare of using personnel;

(iii) Seriously degrade the performance of the item or component; or

(iv) Jeopardize satisfying an urgent military requirement.

(6) When the purchase is from an other-authorized manufacturer;

(7) When for government-to-government co-production and co-development projects;

(8) Small purchases using simplified purchase procedures, other than in purchases of bearings as the end item.

(b) After contract award, the restriction may be waived on a case-by-case basis after a determination by the head of the contracting office:

(1) That any of the conditions of paragraph (a) above are met; or

(2) That lead-times quoted by domestic manufacturers are substantially longer than the most recent average lead-time for the bearing;

(c) Notwithstanding the case-by-case exclusions or waivers in paragraphs (a) and (b) above, the contracting officer shall require the apparently successful offeror to submit a written plan for transitioning from the use of non-domestic manufacture bearings to bearings of domestic or other authorized manufacture. Such plan shall be incorporated as a requirement in the contract and shall identify:

(1) The bearings, application, and source of supply;

(2) The reason for non-conformance to the clause at 52.208–7006; and

(3) A plan and timetable for providing a domestic manufacture bearing.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.208–7006 is added to read as follows:

252.208–7006 Required Sources for Antifriction Bearings.

As prescribed at 208.7903 insert the following clause:

Required Sources for Antifriction Bearings (1988)

(a) For the purpose of this clause:

"Domestic manufacture" means wholly manufactured in the United States or Canada. When an antifriction bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada;

"Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804–3(c) for an explanation of terms);

"Commercial-type product" means a commercial product (a) modified to meet some Government-peculiar physical requirement or (b) otherwise identified differently from its normal commercial counterparts;

"Other authorized manufacture" means wholly manufactured by a company with its corporate headquarters in a NATO participating country (see DFARS 225.001) and which has a U.S. subsidiary which exports domestic manufactured antifriction bearings. However, a manufacturer's antifriction bearings are included within this term only to the extent that: (a) The total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the value of antifriction bearings exported by its U.S. subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/speciality bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987;

"Super-precision Bearings" means antifriction bearings having a precision classification of ABEC/RBEC 5 or higher; and

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

(b) By submission of its offer, the offeror certifies and agrees that, if awarded a contract, no end item or component thereof delivered under the contract will contain other than antifriction bearings and bearing assemblies that are of domestic manufacture or other authorized manufacture. However this certification and agreement shall not extend to those end items or components thereof which the offeror identifies in its offer as containing bearings that are of other than domestic manufacture provided that the offeror also submits a written plan for transitioning to domestic or other authorized manufacture and identifying how and when this will occur. Such plan will be incorporated into, and made a part of the resulting contract.

(c) The restriction in (b) above may be waived on a case-by-case basis in whole or in part by the head of the contracting office when he determines that no qualified domestic manufacturer is available or that no domestic manufacturer can meet the required delivery date.

(d) The restriction does not apply to end items and components that are commercial or commercial-type items.

(e) The restriction does not apply to the following specific antifriction bearings and components rod-end and spherical bearings for which a contract was signed prior to (DATE—24 months after the effective date):

(f) The contractor agrees to retain for three years from the date of final payment under this contract and to make available during such period, upon request of the contracting officer, records showing compliance with this clause.

(g) The contractor agrees to insert this clause including this paragraph in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no antifriction bearings.

[End of clause.]

[FR Doc. 88–6872 Filed 3–28–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 2 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce. Comments from the public are invited.

DATE: Comments will be accepted until Saturday, May 21, 1988.

ADDRESSES: Send comments to William R. Turner, Fishery Operations Branch, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Limited copies of the FMP are available at this address.

Copies of Amendment 2 and its supporting documents may be obtained from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609, telephone 813–228–2815.

FOR FURTHER INFORMATION CONTACT: William R. Turner (Plan Coordinator) at 813–893–3722.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receipt of an FMP amendment, immediately publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the amendment.

Amendment 2 proposes to continue the prohibition of harvest or possession of red drum in or from the exclusive economic zone of the Gulf of Mexico which was implemented by emergency rule on January 1, 1988 (53 FR 244, January 6, 1988). The emergency rule expires on June 28, 1988. The purposes of Amendment 2 are (1) to continue protection of the red drum spawning stock from overfishing, (2) to revise the management objectives concerning escapement of juvenile red drum from nearshore/inshore areas to the offshore spawning stock, and (3) to modify the procedure for specifying total allowable catch. Proposed regulations to implement this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: March 23, 1988.

Ann D. Terbush,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–6827 Filed 3–24–88; 3:54 pm]

BILLING CODE 3510–22–M

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50 CFR Part 680

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

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ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public on the amendment and its environmental assessment. Copies of the amendment may be obtained from the Council at the address below.

DATE: Comments on the plan amendment should be submitted on or before May 23, 1988.

ADDRESS: Send comments to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and its environmental assessment are available upon request from the Council at 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808–523–1368.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act, which requires that the Secretary, upon receiving a plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 1 proposes the following measures: (1) Include the U.S. Possessions under the FMP as a combined single exploratory area with a 1,000 kg annual harvest quota for all species of precious corals combined (2) place all species of *Corallium* within the management unit species and (3) create an experimental fishing permit system to stimulate domestic development of the coral fishery.

Regulations proposed by the Council that are based on this amendment are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 24, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-6788 Filed 3-24-88; 12:44 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 60

Tuesday, March 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The Committee has scheduled this meeting to develop proposed recommendations dealing with Implementation of the Bank Holding Company Act: The Adjudicatory Procedures of the Federal Reserve Board, based upon a study by Professor Alfred C. Aman, Jr., of Cornell University. The Committee also expects to discuss a draft report on Federal Home Loan Bank Board Procedures for Determining Claims in Savings Association Liquidations, by Professor Lawrence G. Baxter, of Duke University School of Law. Copies of the Committee's reports may be obtained from the contact person named in this notice.

DATE: Friday, April 8, 1988 at 2:00 p.m.

Location: Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., (202) 254–7020.

Jeffrey S. Lubbers

Research Director.

March 22, 1988.

[FR Doc. 88-6786 Filed 3-28-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-028]

Availability of Environmental Assessment and Finding of No Significant Impact Concerning the Licensure of a Recombinant Derived Modified Live Virus Pseudorabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning the issuance of a veterinary biological product license to SyntroVet Incorporated for a recombinant derived modified live virus pseudorabies vaccine. The assessment indicates that the use of the recombinant derived pseudorabies vaccine will not cause any significant impact on the environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service had determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Chief Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its issuance of a U.S. Veterinary Biological Product License (hereinafter, product license) to SyntroVet, Inc., of Lenexa, Kansas. The product license will be issued for a recombinant derived modified live virus pseudorabies vaccine, in accordance with the provisions of the Virus-Serum Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*).

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. In order to permit the manufacturer to gather data intended to satisfy vaccine safety requirements as a prerequisite to product licensure, APHIS previously approved the field testing of the pseudorabies virus vaccine. In the course of approving the protocol for field testing, APHIS assessed the impact on the human environment resulting from such testing in a limited number of States. The APHIS notice of availability of the environmental assessment and finding of no significant impact for limited field testing was published in the **Federal Register** on September 9, 1987 (see 52 FR 33982–83).

The environmental assessment and finding of no significant impact concerning the issuance of the product license provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with general distribution and use of the pseudorabies vaccine.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. In the development of the SyntroVet pseudorabies virus vaccine, modified live virus (S–PRV–013), genetic engineering procedures were employed to facilitate three gene deletions and one gene insertion in the pseudorabies virus genome. The gene deletions consist of the deletion of the thymidine kinase gene and the gene coding for viral glycoprotein, and a deletion resulting in a nonspecific reduction in virulence. The gene insertion codes for an enzyme, lactase, commonly found in nature and

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mammalian cells. The gene deletions and insertion do not increase virulence or the ability of the virus to survive in the environment.

2. The S–PRV–013 vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from pseudorabies virus. It did not elicit antibodies to glycoprotein (gpX). The addition of the lactase gene serves to distinguish between S–PRV–013 and wild or other vaccine viruses.

3.

Transmission of S–PRV–013 could not be demonstrated from inoculated pigs.

4. The gene deletions are stable characteristics of the vaccine virus with a probability of reversion being essentially zero. The lactase gene insertion likewise remains stable through repeated passes in culture and in swine.

5. The wild-type pseudorabies virus is found widely distributed in nature, and it does not contain an oncogene or cancer-causing substance. There is no likelihood that S–PRV–013 is oncogenic.

6. The wild-type pseudorabies virus is not considered pathogenic to man. The recombinant vaccine virus differs from the wild-type pseudorabies virus in that it contains the three deletions and insertion on an innocuous gene. The vaccine virus is considered nonpathogenic in man.

7. The recombinant derived modified live virus vaccine was shown to be safe in a variety of field tests.

8. Field safety testing was satisfactorily conducted in 158 baby pigs. Attempts to reisolate the virus from 86 pigs were negative.

9. Field safety tests were also satisfactorily completed in 222 weaned pigs. Average daily gains of vaccinates were slightly higher than those of unvaccinated cohort controls.

10. The vaccine was administered to 22 sows. Concurrently, a licensed inactivated pseudorabies vaccine was administered to a control group on the same farm. No adverse reactions were noted to the SyntroVet vaccine and litter viability and weight gain at weaning were similar between the two test groups.

11. The results from an additional safety and efficacy test conducted in containment facilities showed that the vaccine was safe and efficacious when administered to 6 to 8 weeks old piglets by intramuscular inoculation. The challenge virus was a highly virulent pneumotropic, strain administred by the intranasal route.

Based on the foregoing, APHIS has determined that the general distribution and use of the recombinant derived modified live virus pseudorabies vaccine pursunt to a product license would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–6650 Filed 3–28–88; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Klamath National Forest Environmental Impact Statement and Land and Resource Management Plan

In the matter of Klamath National Forest, Siskiyou County, California and Jackson County, Oregon; revised notice of intent to prepare an environmental impact statement.

SUMMARY: As a result of large wildfires in the fall of 1987, the Forest Service will revise the Environmental Impact Statement and Land and Resource Management Plan for the Klamath National Forest, Yreka, California. The agency invites written comments and suggestions on the scope of the analysis in addition to that already received as a result of previous public participation activities. In addition, the Forest Service will hold a public meeting at the U.S. Forest Service Building, 1312 Fairlane Road, Yreka, Ca. 96097, on April 25, 1988, at 7:00 pm.

The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by June 24, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Robert J. Anderson, Land Management Planning Officer, Klamath National Forest, Yreka California 96097; phone (916) 842–6131.

SUPPLEMENTARY INFORMATION: In revising the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives. One of these is no action. Other alternatives will consider various intensities for management of the Klamath National Forest. The Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process [40 CFR 1501.7]. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed plan. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the plan and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November, 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

It is very important that those interested in the Land and Resource Management Plan participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act as 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the plan so that it is meaningful and will alert an agency to the reviewers' position and contentions [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978)], and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement [Wisconsin Heritages, Inc. v. Harris, 490 F. Supp 1334 (E.D. Wis. 1980)]. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in the final.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement and Land and Resource Management Plan. The Final EIS is scheduled to be completed by November 1990. In the Final EIS and Land and Resource Management Plan, the Forest Service is required to respond to the comments, responses, environmental consequences discussed in the DEIS and Plan, and applicable laws, regulations, and policies in making a decision regarding this Plan. The responsible offical will document the decision and reasons for the decision; in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Barbara Holder,

Deputy Forest Supervisor.

Date: March 16, 1988.

[FR Doc. 88–6791 Filed 3–28–88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Soil, Water, and Related Resources

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Soil and Water Resources Conservation Act of 1977 (RCA), 16 U.S.C. 2001–2009, requires the Secretary of Agriculture to develop and periodically update a program for furthering the conservation, protection, and enhancement of soil, water, and related resources consistent with the roles and program responsibilities of the United States Department of Agriculture (USDA), and of other Federal agencies and State and local governments. The public review draft of "A National Program for Soil and Water Conservation: The 1988–97 Update" has been completed and is available for public review and comment.

DATES: The RCA public review period begins April 4, 1988 and will extend for 60 days. Comments should be submitted by June 4, 1988.

ADDRESS: Comments should be in written form and addressed to the appropriate State Conservationist, Soil Conservation Service, as set forth in the SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: The appropriate State Conservationist, shown below, or Peter M. Tidd, Acting Director, Strategic Planning and Policy Analysis Staff, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, telephone: (202) 447–8368.

SUPPLEMENTARY INFORMATION: Section 6 of the Soil and Water Resources Conservation Act of 1977 (RCA), 16 U.S.C. 2005, authorizes and directs the Secretary of Agriculture to develop, in cooperation with and participation by the public through conservation districts, State and national organizations and agencies, and other appropriate means, a national soil and water conservation program to assist landowners and land users in furthering soil and water conservation on the private and non-Federal lands of the Nation.

The draft program document, titled "A National Program for Soil and Water Conservation: The 1988–97 Update," sets forth the proposed direction for future soil and water efforts of the Department of Agriculture based on the current soil, water, and related resource appraisal developed in accordance with section 5 of the RCA, 16 U.S.C. 2004. See notice of appraisal availability in 52 FR 26168 (July 13, 1987). Both the long- and short-term needs of the Nation, including the landowners and the land users, are considered in the program in identifying the roles and responsibilities of Federal, State and local governments involved in conservation activities. The program sets forth natural resource conservation and environmental goals, objectives, priorities and program emphasis for the next 10 years. Program components include: focusing on critical problems; strengthening the Federal, State and local conservation partnership; and increasing program consistency and cost efficiency.

The USDA is asking for comments on any part of the proposed program, but would especially like public views on:

1. The National Conservation Program priorities.

2. The balance of Federal, State, local and private conservation responsibilities.

3. The programs and activities of the USDA as they relate to:

(a) Increasing assistance to small-scale, limited-resource, and minority farmers.

(b) Research and analysis on alternative farming systems.

(c) USDA benefits to soil and water conservation programs.

Although the national program does not propose or direct any specific Federal actions that would affect the human environment so as to require an analysis under section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), an environmental assessment was conducted by the Department of Agriculture in the development of the program. The environmental assessment is available from Peter M. Tidd, Acting Director, Strategic Planning and Policy Analysis Staff, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013.

Each State Conservationist of the Soil Conservation Service, in coordination with the State Food and Agricultural Council, is conducting the public review of the draft program document in each state. Copies of the program and further information can be obtained by contacting the appropriate State Conservationist at the following locations:

Ernest V. Todd, 665 Opelika Road, P.O. Box 311, Auburn, Alabama 36830
Burton L. Clifford, 201 East 9th Avenue, Suite 300, Anchorage, Alaska 99501–3687
Verne M. Bathurst, Suite 200, 201 East Indianola Avenue, Phoenix, Arizona 85012
Albert E. Sullivan, Room 5423, Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201
Eugene E. Andreuccetti, 2121–C Second Street, Suite 102, Davis, California 95616
Richard N. Duncan, 300 Ala Moana Boulevard, Room 4316, Honolulu, Hawaii 96850
Paul H. Calverley, 304 North 8th Street, Room 345, Boise, Idaho 83702
John J. Eckes, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820
Robert L. Eddleman, Corporate Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224
Sheldon G. Boone, Diamond Hill, Building A, 3rd Floor, 2490 West 26th Avenue, Denver, Colorado 80211
Philip H. Christensen, 16 Professional Park Road, Storrs, Connecticut 06268–1299
Douglas E. Hawkins, Treadway Towers, Suite 207, 9 East Loockerman Street, Dover, Delaware 19901–7377

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James W. Mitchell, Federal Building, Room 248, 401 SE., 1st Avenue, Gainesville, Florida 32601
B. Clayton Graham, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601
Homer R. Hilner, Room 101, 1405 South Harrison Road, East Lansing, Michigan 48823–5202
Gary R. Nordstrom, 200 Federal Building and U.S Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101
Louise P. Heard, Federal Building, Suite 1321, 100 West Capitol Street, Jackson, Mississippi 39269
Russell C. Mills, 555 Vandiver Drive, Columbia, Missouri 65202
Michael Nethery, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309
James N. Habiger, 760 South Broadway, Salina, Kansas 67401
Randal W. Giessler, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504
Horace J. Austin, 3737 Government Street, Alexandria, Louisiana 71302
Charles Whitmore, USDA Building, University of Maine, Orono, Maine 04473
Pearlie S. Reed, Harwick Building, Room 522, 4321 Hartwick Road, College Park, Maryland 20740
Rex O. Tracy, 451 West Street, Amherst, Massachusetts 01002
Bobby Jack Jones, Federal Office Building, Room 535, 310 New Bern Avenue, Raleigh, North Carolina 27601
Ronnie Clark, Federal Building, Rosser Avenue & Third Street, P.O. Box 1458, Bismarck, North Dakota 58502–1458
Joseph C. Branco, 200 North High Street, Room 522, Columbus, Ohio 43215
Glen Loomis, Federal Building, Room 443, 10 East Babcock Street, Bozeman, Montana 59715
Ronald E. Hendricks, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866
Charles R. Adams, 1201 Terminal Way, Room 219, Reno, Nevada 89502
David L. Mussulman, Federal Building, Durham, New Hampshire 03824
Carlos H. Henning (acting), 1370 Hamilton Street, Somerset, New Jersey 08873
Ray T. Margo, 517 Gold Avenue, SW., Room 3301, Albuquerque, New Mexico 87102–3157
Paul A. Todd, James Hanley Federal Building, Room 771, 100 South Clinton Street, Syracuse, New York 13260
Jerry S. Lee, 675 Estes Kefauver, FB–USCH, 801 Broadway, Nashville, Tennessee 37203
Billy W. Milliken, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350–2475
Harry W. Oneth, W.R. Poage Federal Building, 101 S. Main Street, Temple, Texas 76501–7682
Bud Fountain, USDA Agricultural Office Bldg., Stillwater, Oklahoma 74074
Jack P. Kanalz, Federal Building, Room 1640, 1220 S.W. Third Avenue, Portland, Oregon 97204
James H. Olson, 228 Walnut Street, Federal Square Station, Room 820, Harrisburg, PA 17108–0985
Jeffrey Vonk, USDA–SCS, GPO Box 4868, San Juan, Puerto Rico 00936
Robert J. Klumpe, 46 Quaker Lane, West Warwick, RI 02893
Billy R. Abercrombie, 1835 Assembly Street, Rm 950, Strom Thurmond Federal Bldg., Columbia, South Carolina 29201
Francis T. Holt, P.O. 11350, Salt Lake City Utah 84147–0350
John C. Titchner, 69 Union Street, Winooski, Vermont 95404
George S. Norris, Federal Building, Room 9201, 400 North 8th Street, Richmond, Virginia 23240
Lynn A. Brown, West 920 Riverside Avenue, Room 360, Spokane, Washington 99201–1080
Rollin N. Shank, 75 High Street, Room 301, Morgantown, West Virginia 26505
Cliffton A. Maguire, 4601 Hammersley Road, Madison, Wisconsin 53711
Frank S. Dickson, Jr., Federal Office Building, 100 East "B" Street, Room 3124, Casper, Wyoming 82601

Wilson Scaling,

Chief.

[FR Doc. 88–6749 Filed 3–28–88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 30–87]

Proposed Foreign-Trade Zone; Natrona County International Airport, Casper, WY; Amendment of Application

Notice is hereby given that the application submitted by the Natrona County International Airport Board of Trustees, requesting authority to establish a general-purpose foreign-trade zone at the Natrona County International Airport near Casper, Wyoming (52 FR 43780, November 18, 1987), has been amended to include two additional sites (485 acres) within the airport complex. One site, to be used for covered and open storage (10 acres), is located in the 7300 block of Morgan Street. The second site would cover 475 acres within the Industrial Air Cargo Park located along U.S. Highway Nos. 20 and 26 near Runway 3–21. The application remains otherwise unchanged.

The comment period is reopened until April 28, 1988.

The application and amendment material are available for public inspection at the following locations:

Casper Area Economic Development Alliance, Suite 615, 111 West Second Street, Casper, Wyoming 82601;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

John J. Da Ponte, Jr.,

Executive Secretary.

Dated: March 22, 1988.

[FR Doc. 88–6830 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

University of California et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–232. Applicant: University of California, Berkeley, CA 94720. Instrument: Mass Spectrometer, Model VG ZABEQ with VG 11–250J Data System, Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 52 FR 30939, August 18, 1987. Reasons for this decision: The foreign instrument provides: (1) mass range to 10,000 amu at 8 kV accelerating potential, (2) resolution to 125,000, and (3) FAB capability. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–236. Applicant: University of South Carolina, Columbia, SC 29208. Instrument: Gas Chromatograph Mass Spectrometer, Model VG–70–SQ with Model VG 11–250J Data System. Manufacturer: VG Instruments, United Kingdom. Intended use: See notice at 52 FR 30940, August 18, 1987. Reasons for this decision: The foreign instrument provides MS/MS analysis with mass range to 3000 and an alternating FAB probe. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–237. Applicant: Hospital of the University of Pennsylvania, Philadelphia, PA 19104. Instrument: Cerebrograph for Measuring Blood Flow. Manufacturer: Scan-Delectronics, Denmark. Intended use: See notice at 52 FR 30940, August 18, 1987. Reasons for this decision: The foreign instrument provides non-invasive delivery of 133 xenon tracer and spatial resolution of 2.0 cm. Advice submitted by: National Institutes of Health, February 18, 1987.

Docket Number: 87–248. Applicant: Shriners Hospital for Crippled Children, Boston, MA 02114. Instrument: Mass Spectrometer, SIRA 10. Manufacturer: VG Isogas, United Kingdom. Intended use: See notice at 52 FR 37356, October 6, 1987. Reasons for this decision: The foreign instrument provides an internal precision of 0.015 ‰ for 10 microliter samples of CO_2 and interfaces to an automatic elemental analyzer and an automated combustible GC inlet. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–249. Applicant: University of California, Santa Cruz, CA 95064. Instrument: Gas Chromatograph Mass Spectrometer/ Data System, Model MAT 90. Manufacturer: Finnigan MAT GmbH, West Germany. Intended Use: See notice at 52 FR 30941, August 18, 1987. Reasons for this decision: The foreign instrument provides: (1) Resolution to 50,000, (2) mass range to 17,500 amu, and (3) scan speeds to 0.1 second per decade. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–258. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Photomicroscope III. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 52 FR 32824, August 31, 1987. Reasons for this decision: The foreign instrument provides multiple operating modes such as transmitted and incident light microscopy, fluorescence activation, flash and metered photometry, and polarizing microscopy. Advice submitted by: National Institutes of Health, February 18, 1988.

Docket Number: 87–279. Applicant: University of Washington, Seattle, WA 98195. Instrument: Emittance Monitor. Manufacturer: Danfysik A/S, Demark. Intended use: See notice at 52 FR 37356, October 6, 1987. Reasons for this decision: The foreign instrument provides a movable slit type detector with a combined slit step and angle resolution of 0.08 mm mrad. Advice submitted by: National Bureau of Standards, January 28, 1988.

Docket Number: 88–083. Applicant: Saint Louis University, St. Louis MO 63156. Instrument: Seismograph System, Model STS–IV/STS–IH. Manufacturer: G. Streckeisen AG, Switzerland. Intended use: See notice at 53 FR 1812, January 22, 1988. Reasons for this decision: The foreign instrument is capable of broad-band recording providing a resolution from 3 Hz to 0.3 mHz. Advice submitted by: The U.S. Geological Survey.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards and U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–6831 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-DS-M

Importers' and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers, and Retailers' Textile Advisory Committee will be held on Tuesday, April 19, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377–5761.

Dated: March 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–6815 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of Management-Labor Textile Advisory Committee will be held on Wednesday, April 20, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 16, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 10:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executiuve Session: 2:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377–5761.

Dated: March 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–6816 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 71151-7251]

Research Grants Program Center for Manufacturing Engineering

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing research grants program of Center for Manufacturing Engineering.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Manufacturing Engineering, National Bureau of Standards, which conducts a program of basic and applied research in computer automated manufacturing, also administers a program of research grants in highly selected areas of research related to the mission of the Center. The mission of the Center for Manufacturing Engineering is to bring the resources of this laboratory to bear on the standards and measurements problems associated with America's discrete parts manufacturing. Funding available for grants is variable depending upon levels of external support for Center research. During fiscal year 1987 the Center awarded grants totaling approximately $1.9 million. The grant program is limited to unsolicited proposals and is highly competitive. Previous notices of this research grant program were published in the **Federal Register** on May 10, 1985 (46 FR 11331) and October 7, 1986 (46 FR 23079). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

DATE: *Closing Date for Applications:* Applications will be accepted until May 31, 1988.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A–110 to: Office of the Director, Center for Manufacturing Engineering, National Bureau of Standards, Building 220, Room B–332, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Barbara Horner at (301) 975–3400.

SUPPLEMENTARY INFORMATION: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 272), the NBS Center for Manufacturing Engineering conducts a program of basic and applied research in computer automated manufacturing. In fulfillment of its mission, the Center for Manufacturing Engineering conducts active programs of research in the areas of:

(a) High precision dimensional measurement.

(b) Sensing and measurement of force, sound, vibration, and surface finish characteristics.

(c) Application of advanced control and sensing techniques to automated machines, manufacturing systems, and robot manipulators.

During fiscal year 1987 approximately $1.9 million was made available for grants and cooperative research under this program. Grants made under this research program are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the Center. Areas of active research include:

(a) Real-Time Control. Real-Time control of robots, clusters of robots and machine tools (workstations), material handling systems, supporting devices, and aggregations of workstations.

(b) Automated Systems Integration. Architectural issues for large computer automated systems, initialization, restart, orderly shutdown, error detection and recovery.

(c) Sensory Systems and Adaptive Control. Sensors and applications of sensors to closed-loop control of major systems.

(d) Factory Floor Communications. Development and testing of factory floor communications networks.

(e) Data Management. Development and testing of architectures for distributed data management on the factory floor.

(f) Robot Metrology. Characterization and measurement of errors in robot motion and development of techniques to accommodate those errors.

(9) Robot Vision and Sensory World Modeling. Study of models for processing and inference from vision and other complex source sensory systems.

(h) Machine Tool Metrology. Application of software and hardware techniques for improvement of machine tool accuracy and evaluation of machine tool performance.

(i) Automated Process Planning. Development of systematic approach to computer aided process planning leading to fully generative systems.

(j) Organization and Processing of Manufacturing Geometry Data. CAD-directed inspection, common domain data formats, integration of vision data, automated feature selection, automated generation of machining sequences from geometry.

(k) Expert Systems and Artificial Intelligence. Application to automated manufacturing systems.

(l) Software Engineering Tools Applied to Real-Time Control Systems. Development of tools for specification, design, testing, and verification of software for automated manufacturing.

(m) Quality Control Issues in an Automated Factory. Development of tools and procedures for measuring quality control during manufacturing operations.

(n) Scheduling in an Automated Factory. Development of algorithms and simulation/emulation techniques for planning factory scheduling.

The Center for Manufacturing Engineering Research Grant Program does not involve the payment of any matching funds from a state or local government and does not directly affect any state or local government. Accordingly, NBS has determined that Executive Order 12372 is not applicable to the Center for Manufacturing Engineering Research Grant Program.

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Eligibility: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

Proposal Review Process

All proposals will be reviewed first for suitability of the topic to the mission of the Center. Proposals on topics outside the mission of the Center will be returned. Proposals on topics within the mission of the Center will be reviewed further in accordance with the following process and criteria:

(a) Uniqueness. (20 points) Proposals for research which builds upon or makes direct use of Center results or which addresses identifiable problems being investigated in the Center will receive favorable consideration over proposals for general research that could be supported by other grant programs, such as those of the National Science Foundation.

(b) Applicability. (20 points) Proposals for research which will be conducted at NBS or which will be implemented or tested in facilities of the Center will receive favorable consideration over research to be conducted apart from the Center. It is generally expected that senior workers on the project will find it appropriate to conduct a major portion of their effort on-site at NBS in Gaithersburg, Maryland.

(c) Technical Merit of Proposal. (30 points) Proposals should identify a clearly defined research problem, set forth a technically feasible line of attack, and demonstrate knowledge of the state-of-the-art. Ratings in this category will be based on these criteria.

(d) Technical Qualifications of Proposer. (30 points) Qualifications of the Principal Investigator and availability of suitable laboratory support will be reviewed under this criterion.

Each proposal reviewed will be considered by a panel consisting of professionals from NBS and experts from other government agencies, universities, or industries. The proposal, with evaluation, will be transmitted to the relevant Division Chief within the Center for Manufacturing Engineering for his or her consideration with respect to availability of funding.

Applicants should allow 60 days processing time.

Paperwork Reduction Act

The reporting requirements will be those contained in OMB Circular A–110. The Standard Form references in this notice is subject to the Paperwork Reduction Act and is cleared under OMB Control # 0348–0006.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements are made to pay the debt.

Dated: March 23, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–6735 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: The Maritime Center of Norwalk (P417)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: The Maritime Center of Norwalk, 112 Washington Street, South Norwalk, Connecticut 06854.

2. Type of Permit: Public display.

3. Name and Number of Marine Mammals: Harbor Seal (*Phoca vitulina*), 5.

4. Type of Take: The applicant is requesting authorization to maintain captive born or beached/stranded harbor seals.

5. Period of Activity: One year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: March 24, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–6825 Filed 3–28–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: North Gulf Oceanic Society (P351C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mr. Craig O. Matkin, Director, North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Killer whales (*Orcinus orca*), 350.

4. Type of Take: The applicant proposes to take killer whales by harassment, over a 3-year period, during long-term photo-identification studies in Prince William Sound, Alaska. The animals will be approached up to three (3) times. The studies will determine long-term population trends and parameters and the resulting information will be compared with data from other regions where killer whale populations are monitored.

5. Location of Activity: Prince William Sound, Alaska Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: March 23, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-6826 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Sea Life Park, Inc. (P10D)

On December 21, 1987, Notice was published in the Federal Register (52 FR 48315) that an application had been filed by Sea Life Park, Inc., Makapuu Point, Waimanalo, Honolulu, Hawaii 96795 to import four (4) Pacific false killer whales (*Pseudorca crassidens*) for public display.

Notice is hereby given that on March 23, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 301 South Ferry St., Terminal Island, California 90731.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: March 23, 1988.

[FR Doc. 88-6787 Filed 3-28-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Termination of Group Application; Civilian Employees of the U.S. Army and U.S. Navy Who Participated in the Defense of Bataan and Corregidor

Under the provisions of Section 401, Pub. L. 95–202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has terminated the consideration of the application on behalf of the group known as: "Civilian Employees of the U.S. Army and U.S. Navy who Participated in the Defense of Bataan and Corregidor during the Period December 7, 1941 through May 6, 1942." Consideration of this group application was terminated by the board due to lack of sufficient evidence in the group application and the historical documentation on which to base a determination as to whether the service of the group was equivalent to "active duty" to the Armed Forces of the United States. The group application has been returned to the applicant.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-6785 Filed 3-28-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.094B]

Invitation for Applications From Consortium Arrangements for a New Award Under Part B of Title IX of the Patricia Roberts Harris Fellowships Program for Fiscal Year 1988

Purpose: Provides, under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships, a grant to a consortium of historically black colleges and doctoral degree-granting institutions of higher education to provide supplemental need-based financial aid to students and faculty from historically black colleges who are pursuing doctoral studies.

Deadline for Transmittal of Applications: May 13, 1988.

Applications Available: March 31, 1988.

Available Funds: $239,000.

Size of Award: $239,000.

Number of Awards: 1.

Project Period: 12 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships Program, 34 CFR Part 649, and (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78, as provided in 34 CFR 649.3.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395 or Mrs. Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue SW., Room 3022, ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d–1134g.

Dated: March 23, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-6822 Filed 3-28-88; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Education.

ACTION: Notice of Emergency Telephone Conference Meeting of the National Advisory and Coordinating Council on Bilingual Education.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 29, 1988, 12:00 Noon.

The telephone conference meeting will be conducted at Reporters' Building, 300 7th Street SW., Room 421, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202 (202) 732–5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I Roll Call

II Vote on 12th Annual Report due to Congress on March 31, 1988.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room, 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.–5:30 p.m.

Dated: March 24, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88-6834 Filed 3-28-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-09-NG]

Bonus Gas Processors, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 11, 1988, of an application filed by Bonus Gas Processors, Inc. (Bonus), for blanket authorization to import up to 219 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. Bonus would be acting as a marketer of natural gas for its own account as well as on behalf of U.S. purchasers and Canadian suppliers. Bonus intends to purchase natural gas primarily from its affiliate, Bonus Petroleum Corporation, but may depend as well on other Western Canadian suppliers, including Diamond Shamrock. The gas would be sold on a short-term or spot market basis to a wide range of purchasers in the U.S. including, but not limited to pipelines, local distribution companies, commercial and industrial end-users. Bonus intends to utilize existing facilities. Bonus also proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than April 28, 1988.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478;

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Bonus requests that its authorization be granted on an expedited basis. Section 590.205(a) of ERA administrative procedures generally requires a notice to extend a 30-day comment period except in emergency circumstances. Bonus has failed to identify any emergency circumstances that would justify expedited consideration. Therefore, a decision on the application will not be made until all responses to this notice have been received and evaluated.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., April 28, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Bonus' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 22, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-6810 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-69-NG]

Development Associates, Inc.; Order Extending Blanket Import Authorization and Increasing Volumes of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket import authorization and increasing volumes of natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued to Development Associates, Inc. (DA), an order extending for two years its blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 87-69-NG increases the volume of gas DA is authorized to import from 20 Bcf to 30 Bcf and extends its existing authorization from March 30, 1988, to March 30, 1989.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 22, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-6811 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-70-NG]

Dynasty Gas Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Dynasty Gas Marketing, Inc. (DGM), blanket authorization to import natural gas. The order issued in ERA Docket No. 87-70-NG authorizes DGM to import up to 73 Bcf of natural gas over two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-6812 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, New Production Reactor Technology Assessment Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: New Production Reactor Technology Assessment Panel of the Energy Research Board (ERAB).

Date and Time: April 19, 1988—2:00 p.m.–5:00 p.m.

Place: Holiday Inn—Crowne Plaza, 5985 Century Boulevard, Los Angeles, CA 90045, (213) 642-7500.

Contact: Philip M. Stone, Executive Assistant, Office of Energy Research, Department of Energy, Washington, DC 20585, (202) 586-5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The New Production Reactor Technology Assessment Panel is a subgroup of ERAB and reports to the parent Board. The Panel will review and assess four reactor types as candidate technologies for the New Production Reactor (NPR): the Low Temperature Heavy Water Reactor; the Light Water Reactor; the High Temperature Gas-Cooled Reactor; and the Liquid Metal Reactor. Specifically, the Panel will review and assess the Department's proposed evaluation criteria for the NPR; assess the adequacy of each of the four candidate reactor technologies to meet the criteria; and assess schedule and technical risks, benefits, and costs in implementing a NPR program with each technology.

Tentative Agenda:

2:00 pm—Summary of Subpanel Activities: Low Temperature Heavy Water Reactor; Light Water Reactor; High Temperature Gas-Cooled Reactor; and Liquid Metal Reactor
4:50 pm—Public Comment (10 minute rule)
5:00 pm—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Philip Stone at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on March 22, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research

[FR Doc. 88-6813 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed

March 25, 1988

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No.: 8324-005

c. Date Filed: February 2, 1988.

d. Applicant: Marshall Saunders and Dee Anthony.

e. Name of Project: M. D. Hydro Hydroelectric Project.

f. Location: On unnamed tributary to Sheridan Creek, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Marshall Saunders, P.O. Box 373, Shingletown, CA 96088, (916) 474-3230.

i. FERC Contact: Mr. Ahmad Mushtaq (202) 376-1900.

j. Comment Date: May 9, 1988.

k. Description of the Proposed Surrender: The project would have consisted of: (1) A 2-foot-high, 13-foot-long rock and concrete diversion dam at elevation 2,200 feet m.s.l.; (2) a 12-inch-diameter, 950-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 65 kW, operating under a head of 81 feet; (4) a 100-foot-long, 12.7-kV tap connecting the powerhouse with a Pacific Gas and Electric Company line at the project site; and (5) appurtenate facilities. The licensee states that they are experiencing serious problems on water rights and insufficiency of funds for the project.

l. This notice also consists of the following standard paragraphs: B, C and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6854 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-800-001]

Amalgamated Pipeline Co.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

March 24, 1988.

Take notice that on March 22, 1988, Amalgamated Pipeline Company (Amalgamated), 1000 Louisiana Street, Suite 4900, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1988, to extend such authorization for a three-year term and to grant such authorization on behalf of producer-suppliers selling to or through Amalgamated as agent, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6842 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-34-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 23, 1988.

Take notice that on March 18, 1988 ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission ("Commission") Second Substitute Fourth Revised Sheet No. 570 under Rate Schedule X-64 of Original Volume No. 2 of its FERC Gas Tariff, to become effective January 1, 1988.

ANR states that this filing has been made to: (1) Reflect a reduction in the depreciation rate effective January 1, 1987; (2) revise Grand Chenier's depreciation reserve at December 31, 1987 due to the application of a 6% depreciation rate effective January 1, 1987; and (3) apply a "Reverse South Georgia" adjustment to the tax base, all in accordance with the Commission's February 19, 1988 acceptance in the subject docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6834 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3909-000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company et al.; Applications for Abandonment of Service and To Amend Certificates[1]

March 24, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3009-000 D, Mar. 2, 1988	ARCO Oil and Gas Company, Divison of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	United Gas Pipe Line Company, Dulac Field, Terrbonne Parish, Louisiana.	(1)
G-3284-001, D, Mar. 1, 1988	...do...	Texas Eastern Transmission Corporation, North Hostetter Field, McMullen County, Texas.	(2)
G-12719-000, D, Mar. 11, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(3)
G-18303-005, D, Mar. 3, 1988.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880,.	El Paso Natural Gas Company, Justis, et al Fields, Lea Company, New Mexico.	(4)
CI61-1425-007, D, Mar. 3, 1988.	...do...	Langlie-Mattix Field, Lee County New Mexico.	(5)
CI61-1425-008, D, Mar. 3, 1988.	...do...	...do...	(6)
CI170-654-002, D, Feb. 4, 1988.	Sun Exploration and Production Company	Trancontinental Gas Pipe Line Corporation, Garica, et al Fields, Starr & Jim Hogg Counties, Texas.	(7)
CI88-348-000, (CI68-1204), D, Mar. 3, 1988.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	K N Energy, Inc., E.L. Miller Unit, Texas County Oklahoma.	(8)
CI88-350-000 (CI79-281), B, Mar. 4, 1988.	Case-Pomeroy Oil Corporation, 12600 Northborough—Suite 155, Houston, TX 77067.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Marsh Island 257, Offshore Lousiana.	(10)
CI88-352-000 (CI61-125), D, Mar. 4, 1988.	Texaco Producing Inc.	ANR Pipeline Company, Holly Ridge Field, Tensas Parish, Lousiana.	(11)
CI88-353-000 (G-2584), D, Mar. 7, 1988.	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Wiliston Basin Interstate, Pipeline Company, Manderson Unit, Muddy Sand, Big Horn County, Wyoming.	(12)

Footnotes

[1] By Assignment dated 6-2-86, ARCO assigned its interest in certain acreage to Pennzoil Producing Company.

[2] ARCO has leased all its producing rights (working interests) in lease ATX-MD-833, which is included in the Stella Penn Operating Area, to Petrus Oil Company, Inc., effective 5-1-86.

[3] Farmout Agreement dated 10-1-84 of Sohio's working interest in the McGee Barby Unit, Sec. 2, T5N-R23ECM to Donald C. Slawson.

[4] Effective 1-2-86, Sun assigned its interest in Property No. 418137, Carlson A (partial interest); Property No. 418138, Carlson B; Property No. 703949, Stuart Langlie Mattix (partial interest), to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[5] Effective 1-2-86, Sun assigned its interest in Property No. 569458, Myers Langlie-Mattix, to Doyle Hartman. James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[6] Effective 1-2-86, Sun assigned its interest in Property No. 418141, Carlson Federal; No. 456684, Farnsworth 4; No. 569458, Myers Langlie-Mattix (partial interest); and No. 588345, Eva Owens, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

[7] Leases have expired.

[8] TPI assigned to Durango Energy Inc., all its rights to the E.L. Miller Unit, Sec. 5-T1N-R18ECM, Texas County. Oklahoma. effective 10-1-87

[9] Not used.

[10] Ceased production due to depletion.

[11] TPI assigned to John W. McGowan all its rights to certain leases in the Holly Ridge Field, Tensas Parish. Lousana. effective 12-1-86.

[12] Effective 12-31-86, Mobil assigned certain productive acreage to Natural Gas Processing Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-6835 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-103-007]

Panhandle Eastern Pipe Line Co.; Notice of Compliance Filing

March 23, 1988.

Take notice that on March 15, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing certain revised tariff sheets.

Panhandle states that these revised tariff sheets to be effective March 1, 1988 reflects the changes required by the Commission's Letter Order dated March 2, 1988. Also, Panhandle submits herewith First Substitute Sixty-Third Revised Sheet No. 3-A and First Substitute Fortieth Revised Sheet No. 3-B, which reflect the base tariff rates establishes herein as adjusted by the PGA filing permitted to become effective March 1, 1988 pursuant to the Commission's Order dated February 26, 1988 in Docket No. TA88-3-28-000.

Panhandle states that this filing reflects the requirements of the Commission's Letter Order dated March 2, 1988 in Docket No. RP87-103-005, the Commission's Orders dated September 30, 1987 and December 31, 1987 in Docket Nos. RP87-103-000 and RP87-103-004, respectively, and the Commission's Order dated November 16, 1987 in Docket No. RP87-95-002, and is without prejudice to Panhandle's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

Copies of this letter and enclosures are being served on all jurisdiction customers, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6836 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-299-000]

Southern Natural Gas Company.; Notice of Application

March 24, 1988.

Take notice that on March 15, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-299-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, for permission and approval to abandon a portion of the contract demand allocated to the City of Vicksburg, Mississippi (Vicksburg), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern stated that it provides service to Vicksburg pursuant to a service agreement dated October 23, 1987, for the sale and purchase of natural gas in quantities of up to 15,000 Mcf per day. It is stated that the agreement superceded a service agreement dated August 28, 1967, which expired by its own terms on November 1, 1987. The Exhibit A to the 1967 service agreement stated that Southern would provide Vicksburg with a contract demand of 18,000 Mcf per day, it is asserted. Since Southern is obligated to serve Vicksburg with less contract demand under the new agreement, Southern requests authority to abandon the 3,000 Mcf per day of firm sales service relinquished by Vicksburg.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashwell,

Acting Secretary.

[FR Doc. 88-6837 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-424-007 et al. and ER 86-506-004 et al.]

Southwestern Electric Power Co.; Filing

March 24, 1988.

Take notice that on March 21, 1988, Southwestern Electric Power Company tendered for filing pursuant to the Commission's letter order of January 21, 1988, as modified on March 4, 1988, in these consolidated proceedings, Southwestern Electric Power Company (SWEPCO) submitted a compliance refund report. As required by the Commission, the report contained a table showing, by customer, monthly billing determinants, revenue receipt dates, revenues under rates reflecting the filed returns on common equity, revenues under rates reflecting the settlement returns on common equity, the monthly refunds due and the interest calculated thereon.

Copies of the filing were served on the affected wholesale customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6838 Filed 3-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-29-004]

Tarpon Transmission Co.; Compliance Filing

March 23, 1988.

Take notice that on March 17, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1987:

Revised Alternate Substitute Original Sheet No. 33
Revised Substitute Original Sheet No. 34
Original Sheet No. 34A
Revised Substitute Original Sheet No. 35
Alternate Revised Substitute Original Sheet No. 35[1]
Revised Substitute Original Sheet No. 36
Revised Substitute Original Sheet No. 37
Revised Alternate Substitute Original Sheet No. 38
Substitute Original Sheet No. 39
Revised Alternate Substitute Original Sheet No. 40
Revised Alternate Substitute Original Sheet No. 48
Revised Substitute Original Sheet No. 49
Revised Substitute Original Sheet No. 50
Alternate Revised Substitute Original Sheet No. 50[1]
Revised Substitute Original Sheet No. 52
Revised Alternate Substitute Original Sheet No. 53
Substitute Original Sheet No. 54
Revised Alternate Substitute Original Sheet No. 55
Revised Alternate Substitute Original Sheet No. 80
Revised Alternate Original Sheet No. 81
Revised Alternate Substitute Original Sheet No. 89

Tarpon states that it has filed these revised tariff sheets in compliance with the Commission's "Order Partially Granting Request for Rehearing and Accepting Compliance Filing Subject to Conditions," issued on March 2, 1988, in the above-captioned dockets. These tariff sheets relate to the implementation by Tarpon of transportation service pursuant to section 311 of the Natural

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[1] Tarpon has requested that the Commission make Alternate Revised Substitute Original Sheet Nos. 35 and 50 effective in lieu of Revised Substitute Original Sheet Nos. 35 and 50. *See* "Request of Tarpon Transmission Company for Rehearing," filed in Docket Nos. RP88-29-000, *et al.* on March 17, 1988.

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Gas Policy Act and Part 284 of the Commission's regulations. Tarpon requests the Commission to waive all applicable regulations in order to permit these revised tariff sheets to become effective on December 1, 1987.

Tarpon also tendered for filing on March 17, 1988, Second Revised Sheet No. 19 to its FERC Gas Tariff, Original Volume No. 1. Tarpon states that it filed this revised tariff sheet to incorporate the terms of Amendment No. 4 to the Transportation Agreement dated February 15, 1977, between Tarpon and Trunkline Gas Company. Amendment No. 4 describes the procedure for assessing and billing Tarpon's charges for Part 284 transportation services. A copy of Amendment No. 4 is included in Tarpon's filing. Tarpon requests that the Commission waive all applicable regulations in order to permit Second Revised Sheet No. 19 to be effective on March 17, 1988, the date of filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426; in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such motions or protests should be filed on or before March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-6839 Filed 3-28-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-8-006]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 23, 1988.

Take Notice that on March 16, 1988, United Gas Pipe Line Company ("United") tendered for filing, pursuant to section 311 of the Natural Gas Policy Act of 1978 and section 4 of the Natural Gas Act, the following revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987.

Rate Schedule FTS

Substitute Revised Substitute First Revised Sheet No. 48-C9
Substitute First Revised Sheet No. 48-C11
Substitute First Revised Sheet No. 48-C12
Substitute Original Sheet No. 48-C15

Rate Schedule ITS

Revised Substitute Original Sheet No. 48-E12

Transportation General Terms and Conditions

Substitute First Revised Sheet No. 74-Y2
Substitute First Revised sheet No. 74-Y4

United States that these tariff sheets, consisting of revised tariff sheets in Rate Schedules FTS and ITS and the Transportation General Terms and Conditions, are intended to comply with the Commission's March 1, 1988 "Order Granting in Part and Denying in Part Rehearing" in Docket No. RP88-8, et.al. and the Director, Office of Pipeline and Producer Regulation, letter order dated February 19, 1988 in Docket No. RP88-8-004.

Any person desiring to be heard or to protest with said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before March 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-6840 Filed 3-28-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-79-000]

Valley Gas Transmission, Inc.; Request For Waiver of Certain Purchased Gas Adjustment Filing Requirements

March 24, 1988.

Take notice that on March 18, 1988, Valley Gas Transmission, Inc. (Valley) requested waiver of certain Purchased Gas Adjustment (PGA) filing requirements set forth in the regulations of the Federal Energy Regulatory Commission (FERC). Specifically, Valley seeks waiver of (1) the requirement that its PGA filings be made on 9-track magnetic computer tape as set forth at FERC Form 542-PGA (Revised); (2) the requirement that Schedule B2 of FERC From 542-PGA (Revised) be reported in MMBtus rather than in Mcfs; (3) the requirement that Valley file an Annual Assessment of Past Performance report as set forth at 18 CFR 154.308; and (4) the requirement that Valley make a June 1, 1988 transition filing and an August 1, 1988 quarterly filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-6843 Filed 3-28-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-115-004]

Williston Basin Interstate Pipeline Co.; Filing

March 24, 1988.

Take notice that on March 17, 1988, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to effect revised pagination and for service commencement dates from those reflected in its February 29, 1988 filing:

First Revised Volume No. 1

Eighth Revised Sheet No. 10

Original Volume No. 1-A

Fifth Revised Sheet No. 11
Eighth Revised Sheet No. 12

Original Volume No. 2

Tenth Revised Sheet No. 10
Fourth Revised Sheet No. 11B
Substitute First Revised Sheet Nos. 80 and 90

Williston Basin requests that these tariff sheets be substituted for the corresponding sheets included in the February 29, 1988, filing so that they may become effective March 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 385.211 (1987)). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-6841 Filed 3-28-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 20 Through November 27, 1987

During the Week of November 20 through November 27, 1987, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedureal regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,
Director, Office of Hearing and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 20 through 27, 1987]

Date	Name and location of applicant	Case No.	Type of Submission
Nov. 23, 1987	Cowles Publishing Co. Spokane, WA	KFA-0145	Appeal of an Information Request Denial. If granted: The Oct. 10, 1987, Freedom of Information Request Denial issued by Richland Operations Office would be rescinded and Cowles Publishing Co. would receive access to report, HW173881 dated Dec. 2, 1949, on the experimental "Green Run."
Do	do	KFA-0144	Appeal of an Information Request Denial. If granted: The Nov. 3, 1987, Freedom of Information Request Denial issued by Richland Operations Office would be rescinded and Cowles Publishing Company would receive access to information regarding thyroid counts of two children taken on October 19, 1963.
Do	Mid-America Dairymen, Inc., Kansas City, MO	RR272-5	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The Oct. 28, 1987, Decision and Order issued to Mid-America Dairymen, Inc. (Case No. RF272-443) would be rescinded, regarding the firm's application for refund in the Crude Oil Refund Proceeding.
Do	The Seattle Times, Seattle, WA	KFA-0143	Appeal of an Information Request Denial. If granted: The Oct. 23, 1987, Freedom of Information Request Denial issued by Bonneville Power Administration (BPA) would be rescinded and the Seattle Times would receive access to complete copies of the last two DOE Procurement Management Assistance Reviews (PMAR) of BPA Procurement Activities.
Nov. 24, 1987	The National Security Archive, Washington, DC	KFA-0146	Appeal of an Information Request Denial. If granted: The Oct. 22, 1987, Freedom of Information Request Denial issued by the Oak Ridge Office of Scientific and Technical Information would be rescinded and the National Security Archive would receive access to certain Oak Ridge Operations Information.
Do	Williams and Connolly, Washington, DC	KFA-0147	Appeal of an Information Request Denial. If granted: The Oct. 23, 1987, Freedom of Information Request Denial issued by the Office of Field Operations, Dallas Regional Office would be rescinded and Williams and Connolly would receive access to a copy of a draft report dated June 30, 1980.

Date received	Name of refund proceeding/name of refund applicant	Case No.
3/11/86	Ashby Oil Company	RF225-10921
3/11/86	B.P. Newman Oil Co., Ltd.	RF225-10926
3/11/86	do	RF225-10927
4/17/86	Carrier Mills Oil Company.	RF225-10920
6/16/86	Olear's Inc.	RF225-10922
7/21/86	Miller Oil Company	RF225-10923
8/26/86	Gray's Automotive	RF225-10919
11/6/86	Astroline Corporation	RF265-2588
5/12/87	Herb Brown's Friendly Service.	RF225-10924
5/12/87	do	RF225-10925
6/29/87	Hy-Grade Oil Company	RF265-2589
6/29/87	do	RF265-2590
11/20/87 thru 11/27/87.	Crude Oil Refund, applications received.	RF272-10954 thru RF272-11986
11/20/87 thru 11/27/87.	Gulf Oil Refund, applications received.	RF300-3867 thru RF300-4032
11/23/87	Amoco I/Iowa	RQ251-408
11/23/87	Vickers/Iowa	RQ1-409

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Date received	Name of refund proceeding/name of refund applicant	Case No
11/23/87	Permian Petroleum Company.	RF299-43
11/24/87	OKC Corp./Arkansas.	RO13-415
11/24/87	Shamrock Wholesale	RF253-42
11/24/87	Eastern Rulane Sales Corp.	RF299-44
11/24/87	Mondenhall Oil Company.	RF253-39
11/24/87	Gruver Oil & Gas Company.	RF253-40
11/25/87	Central Soya	RF270-2500
11/27/87	Mike Junker	RF265-2584
11/27/87	Steele Rulane Service, Inc.	RF299-45

[FR Doc. 88-6782 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of November 28 Through December 4, 1987

During the Week of November 28 through December 4, 1987, the appeal and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 28 through Dec. 4, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 30, 1987	Hanford Education Action League, Spokane, WA	KFA-0148	Appeal of an Information Request Denial. If Granted: The Nov. 18, 1987, Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded and the Hanford Education Action League would receive access to documents pertaining to the proposed acquisition of the Washington Nuclear Project Number 1 plant.
Dec. 4, 1987	The Southland Corp., Washington, DC	RR270-28	Request for Modification/Rescission. If Granted: The Sept. 25, 1987, determination issued to Southland Corp. (Case No. RF270-2174) would be rescinded regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/19/86	Steam Sales & Service Co.	RF225-10920
6/24/87	Rees Oil Co., Inc.	RF265-2586
11/6/87	Hite Oil Co	RF265-2585
11/28/87 thru 12/4/87.	Crude Oil Refund Applications Received.	RF272-11986 thru RF272-12800
11/28/87 thru 12/4/87.	Gulf Oil Refund Applications Received.	RF300-4033 thru RF300-4130
11/30/87	Terminal Freight Handling Co.	RF225-10928
11/30/87	Joseph A. Pelli	RF276-296
11/30/87	Yankee Bottle Gas Service.	RF299-46
12/1/87	Summit Gas & Appliance Co.	RF299-47
12/2/87	Fletcher Oil Co	RF301-2
12/3/87	Blanchard Fuel	RF299-48
12/3/87	Carl Johnson	RF225-10929
12/3/87	Raymond Pare	RF265-2587
12/3/87	Melton Truck Lines, Inc.	RF270-2501
12/3/87	Groendyke Transport, Inc.	RF270-2502
12/3/87	S.R.T. Motor Freight, Inc	RF270-2503
12/3/87	Schilli Motor Lines, Inc	RF270-2504
12/3/87	Evans Transportation Co.	RF270-2505
12/3/87	Scott Truck Line, Inc.	RF270-2506
12/3/87	Jenkins Truck Line, Inc.	RF270-2507
12/3/87	Greenleaf Motor Express, Inc.	RF270-2508
12/3/87	Wootan Transports, Inc	RF270-2509
12/3/87	Selland Auto Transport, Inc.	RF270-2510
12/3/87	Smith's Bakery, Inc.	RF270-2511
12/3/87	Garden State Taxi Co. Inc.	RF270-2512
12/4/87	Colonial Metals Co.	RF299-49
12/4/87	The Southland Corp.	RF270-28

[FR Doc. 88-6784 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of December 11 Through December 18, 1987

During the Week of December 11 through December 18, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 11 through 18, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 30, 1987	J.D. Streett & Co., Inc., Washington, DC	KRR-0036	Request for Modification/Rescission. If granted: The Aug. 14, 1987, Decision and Order issued to J.D. Streett & Co., Inc. (Streett) in Case No. KRX-0040 would be modified and the ERA would be required to alter its treatment of Streett's gasoline sales when it revises the Proposed Remedial Order issued to Streett.
Dec. 18, 1987	National Helium/Washington, Olympia, WA	RM5-95	Request for Modification/Rescission. If granted: The Jan. 13, 1987, Decision and Order (Case No. RQ3-234) issued to the State of Washington would be modified regarding the State's application for refund in the National Helium refund proceeding.
Dec. 15, 1987	Carl Sperling, Woodland Hills, CA	KFA-0152	Appeal of an Information Request Denial. If granted: The Nov. 30, 1987, Freedom of Information Request Denial issued by the Office of FOI and Privacy Acts would be rescinded and Carl Sperling would receive access to information regarding his wife, Muriel Sperling.
Dec. 16, 1987	Oklahoma, Oklahoma City, OK	KEG-0025	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
09/09/87	Colorado	RQ251-417
12/11/87 thru 12/18/87	Crude Oil Refund Applications Received.	RF272-15527 thru RF272-16427
12/11/87 thru 12/18/87	Gulf Oil Refund Applications Received.	RF300-4319 thru RF300-4424
12/15/87	Dairymen	RF270-2513
12/18/87	Superior Gas and Chemical.	RF273-5
12/16/87	Anderson Clayton Foods.	RD272-00390
12/16/87	Campbell Soup Co	RD272-00499
12/16/87	Oscar Mayer Foods Corp.	RD272-00500
12/16/87	American Crystal Sugar Co.	RD272-00502
12/16/87	Hibbing-Taconite Mining Co.	RD272-02233
12/16/87	Riceland Foods, Inc.	RD272-02325
12/16/87	Coca-Cola Foods Co	RF272-03748
12/16/87	Tilcon Delaware, Inc	RF272-03976
12/16/87	Allied Bendix Aerospace.	RF272-04750
12/16/87	Bates Fabrics, Inc	RD272-04836
12/16/87	American Redball Transit Co.	RD272-04842
12/16/87	The 3M Corporation	RD272-05110
12/16/87	Gilman Realty Corp	RD272-05317
12/16/87	Cessford Construction Corp.	RD272-05427
12/16/87	Great Lakes Carbon Corp.	RD272-05971
12/16/87	Shupe Bros. Co	RD272-05984
12/16/87	Emerson Electric	RD272-05989
12/16/87	White Star Trucking, Inc.	RD272-06115
12/16/87	Lakeside Industries	RD272-06120
12/16/87	The Balf Co	RD272-06685
12/16/87	Granite Construction Co	RD272-06686
12/16/87	Western Contracting Corp.	RD272-07133
12/16/87	Rosebud Coal Sales Co.	RD272-7403
12/16/87	Black Butte Coal Co	RD272-7404
12/16/87	Decker Coal Co	RD272-7405
12/16/87	Interstate Coal Co, Inc	RD272-7412
12/16/87	Trade and Transport, Inc.	RD272-7644
12/16/87	Washington Irrigation & Devel.	RD272-7645
12/16/87	North Shore Towers	RD272-7654
12/16/87	Reeves Brothers, Inc	RD272-7714
12/16/87	Olin Chemicals	RD272-7746
12/16/87	The Boeing Co	RD272-7937
12/16/87	Cranston Print Works Co.	RD272-7980
12/16/87	Warrensburg Bd. & Paper Corp.	RD272-8003
12/16/87	British Airways, Plc	RD272-8082
12/16/87	Cook Motor Lines, Inc	RD272-07133
12/16/87	Ritchie Corp	RD272-07225
12/16/87	Gabor Trucking, Inc	RD272-07288
12/16/87	Lancaster Stone Products.	RD272-07349
12/16/87	Rinker Materials Corp	RD272-07409
12/16/87	Lane Construction Corp	RD272-07583
12/16/87	W.C. McQuide, Inc	RD272-07696
12/16/87	H.B. Zachry Co	RD272-07229
12/16/87	Crouse-Hinds Electrical	RD272-05111
12/16/87	Central Soya	RD272-00115
12/16/87	Winn-Dixie Stores, Inc	RD272-00197
12/16/87	Globe Transport & Trading Co.	RD272-0273
12/16/87	Mid-America Dairymen, Inc.	RD272-00443
12/16/87	MacAndrews Forbes Co	RD272-00556
12/16/87	American Home Products Corp.	RD272-00656
12/16/87	Hoffman-LaRoche, Inc	RD272-01038
12/16/87	R.J. Reynolds Tobacco Co.	RD272-02603
12/16/87	Jeddo-Highland Coal Co.	RD272-04104
12/16/87	Jefferson Smurfit Corp	RD272-04309
12/16/87	Almi Maritime Agency, Inc.	RD272-04528
12/16/87	J.P. Stevens & Co Inc	RD272-04531
12/16/87	Esleeck Manufacturing Co..	RD272-4760
12/15/87	A/S Iverans Rederi	RD272-5328
12/16/87	Bradford Dyeing Association.	RD272-5346
12/16/87	Inland Container Corp	RD272-5966
12/16/87	Schwan's Sales Enterprises, Inc.	RD272-06111
12/16/87	Willamette Industries, Inc.	RD272-06112
12/16/87	The Hammerdinger Corp.	RD272-06133
12/16/87	The Bank Line Limited	RD272-06236
12/16/87	Linee Aeree Italiane, SPA.	RD272-06228

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 11 to 18, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/87	Olympic Airways S.A.	RD272-06229
12/16/87	Chesapeake Paperboard Co.	RD272-06301
12/16/87	International Paper Co	RD272-06448
12/16/87	Fieldcrest Cannon, Inc.	RD272-06468
12/16/87	The Magee Carpet Co.	RF272-06676
12/16/87	American Jet Aviation	RF272-06647
12/16/87	A/S Bulkhandling	RD272-6996
12/16/87	C.H. Dexter Corp	RD272-7119
12/16/87	Sun State Marine, Inc	RD272-7141
12/16/87	MacMillan Bloedel, Inc	RD272-7154
12/16/87	Pakistan Internt'l Airline	RD272-7213
12/16/87	British Caledonian Airways	RD272-7357
12/16/87	El Al Israel Airlines, Ltd	RD272-7398
12/16/87	Big Horn Coal Co	RD272-7401
12/16/87	Merck & Co, Inc	RD272-05216
12/16/87	The Coastal Corp	RF229-52
03/24/87	Look Oil Co, Inc	RF40-3704
05/05/88	J.J. Wright Oldsmobile, Inc.	RF225-10830
12/09/87	Pilot Oil Corp	RF40-2743
12/11/87	Consolidated Rail Corp	RF229-51
11/30/87	Mont La Salle Vineyards	RF238-84
10/26/87	Padgetts Gulf Service	RF300-2827
10/26/87	Town of Bloomfield	RF300-2828
10/26/87	Keith Speer	RF300-2829
10/26/87	R.O. Turner	RF300-2830
10/26/87	Bill Gandy	RF300-2831
10/26/87	Riggs Garage	RF300-2832
10/26/87	Natali's Gulf Service	RF300-2833
10/26/87	Joseph Genetin	RF300-2834
10/26/87	Shaffer Oil Co	RF300-2835
10/26/87	Bells Mills Trading Post	RF300-2836
10/26/87	Southwestern Electric Power Co.	RF300-2837
10/26/87	Southend Gulf Service	RF300-2838
10/26/87	Horne Bros.	RF300-2839
10/26/87	George W. Keller Gulf Service	RF300-2840
10/26/87	Gene Sullivan	RF300-2841
10/26/87	Winn-Dixie Raleigh, Inc	RF300-2842

[FR Doc. 88-6783 Filed 3-28-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO-R-160; FRL-3356-1]

Acid Aerosols Issue Paper

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: At a time to be announced in a subsequent Federal Register notice, the Clean Air Scientific Advisory Committee (CASAC) will consider a draft report entitled "Acid Aerosols Issue Paper" (EPA/600/8-88/005A). A thirty-day public comment period will also be announced when the date of the CASAC meeting is set. In advance of the meeting, EPA is making available the draft report.

ADDRESS: Copies of the draft may be obtained by writing or calling the Office of Research and Development Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569-7562. Please provide your name, mailing address, the title of the draft, Acid Aerosols Issue Paper, and the draft's report number, EPA/600/8-88/005A.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Kotchmar, U.S. Environmental Protection Agency, MD-52, Research Triangle Park, NC 27711, (919) 541-4158, (FTS) 629-4158.

SUPPLEMENTARY INFORMATION: The Clean Air Act, 42 U.S.C. 7401 et seq., requires the U.S. Environmental Protection Agency to periodically review criteria for National Ambient Air Quality Standards (NAAQS) and NAAQS themselves and revise such criteria and standards as appropriate. This process led to: (1) the 1982 publication of the EPA document Air Quality Criteria for Particulate Matter and Sulfur Oxides (EPA/600/8-82/029F) and an addendum bound in with volume I of that criteria document addressing further information on health effects (EPA/600/8-82/029F, volume I); and (2) the 1986 publication of a second addendum to the criteria document which updated the earlier document by evaluating new studies and their implications for determination of health-related criteria for the PM and SO_2 NAAQS (EPA/600/8-82/020F). In this process of reviewing new scientific studies concerning PM and SO_x health effects, it became apparent that the researchers had identified acid aerosols as one type of constituent of the PM/SO_x aerometric mix that may be associated with observed PM/SO_x health effects. In December, 1985, the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board recommended that an issue paper be prepared to evaluate newly emerging literature concerning health effects directly associated with acid aerosols and to address the issue of possible listing of acid aerosols as a separate criteria pollutant for potential regulation by means of National Ambient Air Quality Standards (NAAQS).

A peer-review workshop on the draft issue paper was held in June, 1987. Since then the draft has been revised based upon the comments from the workshop and updated with other newly available material.

Date: March 16, 1988.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88-6806 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00256; FRL-3356-3]

Biotechnology Science Advisory Committee; Partially Closed Meeting of Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of a subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) to review an application submitted pursuant to section 5 of FIFRA by Crop Genetics International for an experimental use permit (EUP) for a genetically engineered microbial pesticide. The meeting will be closed to the public from 9 to 11:00 a.m. and open to the public from 11:00 a.m. to 4 p.m.

DATE: Monday, April 18, 1988.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Acting Executive Secretary, Biotechnology Science Advisory Committee, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460.,

Office location and telephone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION:

I. Notification of Meeting

The Federal Advisory Committee Act (FACA) (5 U.S.C. App. I (1982)) requires that timely notice of each meeting of an advisory committee be published in the **Federal Register**. The interim regulations of the General Services Administration (GSA) (41 CFR Parts 101 through 106) implementing FACA generally require 15 days notice of the meeting. The subcommittee is to meet in order to review an application submitted pursuant to section 5 of FIFRA by Crop Genetics International for an EUP for a genetically engineered microbial pesticide. This application proposes small scale field testing in Maryland of *Clavibacter xyli cynodontis* (Cxc) genetically engineered to contain the insecticidal delta endotoxin gene from *Bacillus thuringiensis* var. *kursaki*. The parental strain or Cxc (Crop Genetics isolate number MD69a) was isolated from Bermuda grass in Westover, Maryland. The purpose of the EUP is to assess the efficacy of the product on the European corn borer, and to obtain further knowledge of the behavior of this microorganism in the environment. This microbial pesticide is unique because it actually lives within the treated crop plants.

II. Reasons For Closed Meeting

Section 10(d) of FACA provides that an advisory committee meeting may be closed to the public "in accordance with subsection (c) of section 552b of Title 5, United States Code." Subsection (c)(4) of 5 U.S.C. 552b provides that an advisory committee meeting may be close to the public when it is determined that material to be considered at the meeting consists of trade secrets and commercial or financial information obtained from a person and privilege or confidential (hereafter "CBI"). Crop Genetics has claimed that its application contains"trade secret" or otherwise confidential information. We have reviewed the Crop Genetic's application and determined that the submission does contain information that is CBI. Therefore, insofar as the subcommittee will review CBI in the April 18, 1988 meeting, provision must be made for a portion of the meeting of the subcommittee to be conducted in executive session. A written determination that the meeting shall be close from 9 to 11 a.m. was made by the Administrator on March 15, 1988, pursuant to section 10(d) of FACA for the following reasons:

1. The Crop Genetics International submission contains CBI.

2. Making the submission public would disclose information that could do substantial harm to Crop Genetics International's competitive position.

3. Crop Genetics' product is at an early stage of development, i.e., 1 to 3 years before the company would normally request a registration from EPA. Thus, Crop Genetics is anxious to protect its product for as long as possible, in order to prevent competitors from unfairly bnefitting from its research and development efforts.

The Agency intends to make a verbatim transcript of the subcommittee meeting, which will be available to the public from the portion of the open meeting. If, upon review of that portion of the transcript from the executive session, EPA should determine that any portions of the transcript do not contain exempt material, EPA will make those portions of the transcript also available to the public.

The agenda for this meeting is:

1. Review of an application by Crop Genetics International for an EUP for a genetically engineered microbial pesticide.

2. Consideration of EPA's scientific assessment and issues in response to the EUP.

Copies of documents pertaining to the above agenda items may be obtained by contacting:

By mail: Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA., 703-557-2805.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed under **FOR FURTHER INFORMATION CONTACT.** Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Acting Executive Secretary, present oral statements to the subcommittee. There is no limit on written comments for consideration by the subcommittee, but oral statements before the subcommittee are limited to approximately 5 minutes. Persons wishing to make oral and/or written statements should notify the Acting Executive Secretary and submit 10 copies of written comments and oral written testimony no later than April 6, 1988; in order to ensure appropriate consideration by the subcommittee. Information submitted in any comment concerning this notice may be claimed confidential by marking any part of that information as "Confidential Business Information." Information so marked will not be discolsed except in accordance with procedures set forth in 40 CFR Part 2. Those comments which do not contain CBI will be included in the public record. Comments submitted not marked CBI may be disclosed publicly by EPA without prior notice to the submitter.

Dated: March 23, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-6797 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00089; FRL-3355-7]

Asbestos-Containing Materials in Schools; Laboratory Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of deadline for enrollment of new laboratories in second round of EPA interim asbestos bulk sample analysis quality assurance program.

SUMMARY: EPA will conduct the second round of the "Interim Asbestos Bulk Sample Anaylsis Quality Assurance Program" in April 1988. The deadline for enrollment of new laboratories in the program is April 12, 1988. Laboratories currently not participating in the interim EPA program but who wish to be included in the laboratory listing of accredited laboratories and plan to perform analyses of bulk samples for schools must apply to the following address: Research Triangle Institute, Box 12194, Research Triangle Park, North Carolina 27709, Attention: Steve Westbrook. Letters of application will be accepted from new laboratories for the April 1988 round of samples until April 12, 1988. Letters, received after April 12, 1988, will not be accepted.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 3, 1987 (52 FR 33470), the EPA announced the establishment of the "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." At that time, EPA stated that a second round of the program would be offered in April

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1988. Laboratories which intend to conduct analyses of bulk samples of asbestos-containing materials for schools must first be accredited under the interim EPA program, and subsequently under the National Bureau of Standards (NBS) National Voluntary Laboratory Accreditation Program (NVLAP).

II. Enrollment in EPA's Second Round

All laboratories which participated in the November 1987 round are automatically enrolled in the second round. Additionally, any laboratories which have requested enrollment in the April 1988 round by contacting Research Triangle Institute in writing will be included in the second round. Interested laboratories which have not yet enrolled in the program must notify Research Triangle Institute by April 12, 1988. Letters must be directed to Steve Westbrook, Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709.

III. Future Accreditation

The second round of the EPA Interim Asbestos Bulk Sample Analysis Quality Assurance Program is the last planned round of EPA accreditation. Laboratories which intend to perform analyses for schools must enter the second round of the EPA program at this time. Laboratories which do not enter the round by April 12, 1988 will not be accommodated within the second round of the EPA program. NBS will begin its accreditation program for polarized light microscopy (PLM) laboratories in October 1988. On October 28, 1987, NBS announced the inception of the National Voluntary Laboratory Accreditation Program (NVLAP) for PLM laboratories (52 FR 39977). The NBS NVLAP program accepted applications for the first round of laboratories desiring accreditation through December 28, 1987. At the time, approximately four hundred (400) laboratories entered the program by providing application and an initial deposit. NBS continues to accept applications from laboratories which intend to conduct analyses of bulk samples from schools. Laboratories entering the NVLAP program after the initial application date will be processed on a "first come, first served" basis after the initial group of 400 laboratories has been evaluated.

IV. Expiration Date of EPA Accreditation

Laboratories which were accredited by EPA in the first round of the EPA program will maintain that accreditation until July 12, 1988. These laboratories must perform successfully in the second round in order to continue the accredited status past July 12, 1988. If a laboratory fails to perform satisfactorily, that laboratory will lose its accredited status.

Laboratories which have been accredited in the second round (April 1988) of the EPA program and have applied for accreditation in the NBS PLM program by September 30, 1988, will be considered accredited by EPA until NBS provides formal accreditation for that laboratory. If a laboratory, on the basis of the NBS NVLAP on-site assessment and first round of proficiency testing, fails to perform satisfactorily so that the laboratory does not receive accreditation from NBS, EPA will not consider that laboratory to be accredited. Laboratories accredited by EPA in the April 1988 round which have not made application to NBS for entrance into the program by September 30, 1988, will not be considered accredited by EPA past January 12, 1989. These laboratories will be considered unaccredited until the laboratory has received NBS accreditation.

Laboratories which do not receive accreditation from EPA in the April 1988 round and laboratories which do not participate in the April 1988 round will not be considered accredited until the laboratory successfully participates in the NBS program and receives NBS accreditation. EPA will make no interim arrangements for accreditation of these laboratories. EPA feels that all laboratories have had adequate opportunity to enroll in either of the two rounds of the EPA Interim Bulk Sample Analysis Quality Assurance Program. Laboratories which desire to analyze bulk samples from schools must ensure that they are now (1) entered in the second round of the interim EPA program and (2) entered in the NBS program.

Dated: March 18, 1988.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 88-6803 Filed 3-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 88-87]

Applications for Consolidated Hearing; Evangel Christian School, Inc. and Goforth Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Evangel Christian School, Inc.; Mobile, AL	BPED-860815MB	88-87
B. Goforth Media, Inc.; Mobile, AL	BPED-[illegible]	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, B
2. Comparative-Noncommercial Educational FM, A,B
3. Ultimate, A, B

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6773 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-38]

Applications for Consolidated Hearing; Mountain Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Mountain Media, Inc.; Warren, VT.	BPH-851018MC	88-38
B. Selectronics Corp.; Warren, VT.	BPH-[illegible]	
C. Radio Vermont, Inc.; Warren, VT	BPH-851018ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, A
2. (a) Site Availability, C
   (b) Section 1.65, C
   (c) Misrepresentation, C
   (d) Basic Qualifications, C
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-6774 Filed 3-28-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204-010064-015

Title: U.S. Gulf/Colombia Equal Access Agreement

Parties: Lykes Bros. Steamship Co., Inc.; Crowley Caribbean Transport; New York Navigation Company, Inc.; Flota Mercante Grancolombiana, S.A.; CTMT, Inc.; Dock Express Contractors, Inc.

Synopsis: The proposed amendment would delete O S & L of Louisiana, Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 232-011181

Title: Hyundai Merchant Marine Co., Ltd./The EAC Lines Transpacific Service, Ltd., Space Charter and Sailing Agreement

Parties: Hyundai Merchant Marine Co., Ltd. ("HMM"); The EAC Lines Transpacific Service, Ltd. ("EAC")

Synopsis: The proposed agreement would permit the parties to charter space to one another and to rationalize their respective services in the trade between U.S. and Canadian West Coast ports and inland points via such ports, and ports and inland points in the Far East, as well as other Pacific Basin ports and points via transshipment. HMM would designate three to six vessels under the agreement and EAC would designate one to three, each vessel with a capacity of between 1,000 and 3,000 TEU's. The agreement would have an initial term of two years. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 24, 1988.

[FR Doc. 88-6821 Filed 3-28-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

F and M National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 18, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *F & M National Corporation,* Winchester, Virginia; to acquire 100 percent of the voting shares of Merchants and Farmers Bank, Martinsburg, West Virginia.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *S. Y. Bancorp, Inc.,* Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Stock Yards Bank and Trust Company, Louisville, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Mondovi, Inc.,* Mondovi, Wisconsin, and GEBCO, Inc., Cochrane, Wisconsin; to acquire the successor by merger of First National Bank of Mondovi, Mondovi, Wisconsin, and Mondovi State Bank, Mondovi, Wisconsin, which will operate under the name of Bank of Mondovi, Mondovi, Wisconsin.

Comments on this application must be received by April 20, 1988.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6743 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

James Heike; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James Heike,* Mondovi, Wisconsin; to acquire 25 percent of the voting shares of First Mondovi, Inc., Mondovi, Wisconsin, and thereby indirectly acquire the successor by merger of First National Bank of Mondovi, Mondovi, Wisconsin, and Mondovi State Bank, Mondovi, Wisconsin, which will operate under the name of Bank of Mondovi, Mondovi, Wisconsin.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6744 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

National City Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation,* Cleveland, Ohio, and NC Acquisition Corp., Cleveland, Ohio; to acquire 100 percent of the voting shares of First Kentucky National Corporation, Louisville, Kentucky, and thereby indirectly acquire First Kentucky Trust Company, Louisville, Kentucky; First National Bank of Louisville, Louisville, Kentucky; First National Bank of Louisville, Henrico County, Virginia; The Third National Bank of Ashland, Ashland, Kentucky; The American National Bank and Trust Company, Bowling Green, Kentucky; Central Bank and Trust Company, Owensboro, Kentucky; Mutual Trust Bank, New Albany, Indiana; and Commerce National Bank, Lexington, Kentucky. In addition, NC Acquisition Corp. proposes to become a bank holding company.

In connection with this application, National City Corporation, proposes to acquire First Kentucky Company, Louisville, Kentucky, and thereby engage in providing investment advisory activities primarily to pension and profit sharing accounts pursuant to § 225.25(b)(4); First Kentucky Investment Advisors, Inc., Louisville, Kentucky, and thereby engage in providing investment advice to individuals and institutions pursuant to § 225.25(b)(4); Churchill Insurance Agency, Inc., Louisville, Kentucky, and thereby engage in acting as agent and broker for credit life, accident, and health insurance that is related to extensions of credit by affilated banks pursuant to § 225.25(b)(8); National Processing Company, Inc., Louisville, Kentucky; Irving, Texas; Phoenix, Arizona; Homewood, Illinois; and Atlanta, Georgia; and thereby engage in nationwide processing and settlement of consumer-to-corporate financial transactions including processing of bank card sales slips, airline tickets and lockbox remittances pursuant to § 225.25(b)(7) of the Board's Regulation Y; and First Kentucky National Trading Company, directly and indirectly through its ⅓ interest in CDI of Kentucky, Inc., Louisville, Kentucky, and thereby engage in export of domestic goods and services and import of foreign goods; and facilitate third-party barter trade pursuant to section 4(c)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6745 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Health Promotion and Disease Prevention; Establishment

Pursuant to Pub. L. 92-463, the Federal Advisory Committee Act, the Office of the Secretary, Department of Health and Human Services announces the establishment by the Secretary of the Secretary's Council on Health Promotion and Disease Prevention.

The Council shall advise the Secretary on programs and policies related to health promotion and disease prevention. Specifically, it shall be charged to provide links with the private sector to ensure their involvement in the process of developing health promotion and disease prevention objectives for the Nation; enhance the prospects of tying together similar health promotion and disease prevention efforts throughout the private and public sectors; provide advice and consultation on directions and course corrections for the process of developing health promotion and disease prevention objectives; and review and make recommendations on the final set of health promotion and disease prevention objectives developed for accomplishment by the year 2000.

The Council shall terminate on September 30, 1990.

Dated: March 22, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-6746 Filed 3-28-88; 8:45 am]

BILLING CODE 4160-15-M

Food and Drug Administration

[Docket No. 88N-0124]

Drug Export; Hepatitis B Vaccine (Recombinant, Yeast)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck Sharp & Dohme Research Laboratories has filed an application requesting approval for the export of the biological product Hepatitis B Vaccine (Recombinant, Yeast) to Japan.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendment Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN-322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires taht the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To facilitate such participation, the agency is providing notice that Merck Sharp & Dohme Research Laboratories, West Point, PA 19486, has filed an application requesting approval for the export of the biological product Hepatitis B Vaccine (Recombinant, Yeast), to Japan. Although FDA has not been able to publish this notice within the prescribed 10-day period, the agency hereby invites public comment on the application. FDA has not yet approved the application but intends to do so when applicable statutory requirements have been met.

The application was received and filed in the Center for Biologics Evaluation and Research on February 17, 1988, which shall be considered the filing date for purposes of the Act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so promptly, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: March 24, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 88-6932 Filed 3-25-88; 3:04 pm]

BILLING CODE 4160-01-M

[Docket No. 88N-0090]

International Drug Scheduling; 1971 Convention on Psychotropic Substances; Delta-9-Tetrahydrocannabinol

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and traffickiing of delta-9-tetrahydrocannabinol (delta-9-THC). This information will be considered in preparing a response from the United States to the United Nations and ultimately the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of delta-9-THC. WHO will use the information submitted in response to this notice to assist it in the evaluation of a United States proposal to transfer delta-9-THC from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances (the Convention). This notice requesting information is required by the Controlled Substances Act (CSA) (21 U.S.C. 811 et seq.).

DATE: Comments by April 28, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea Chamblee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention. Article 2 of the Convention provides that if a party to that Convention or WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. In December 1987 the United States Government transmitted a notification to the Secretary-General of the United Nations requesting the transfer of delta-9-THC from Schedule I to Schedule II of the Convention. This notification, along with supporting information, ws ultimately transmitted by the Secretary-General to WHO.

The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when the Secretary-General of the United Nations notifies the United States under Article 2 of the Convention that information has been transmitted by or to WHO that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the

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notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of HHS has received note NAR/CL.3/1988 dated January 28, 1988. This notice, which is reproduced below, proposes to transfer the drug substance delta-9-THC from Schedule I of the Convention to Schedule II of the same Convention. The contents of the notice are as follows:

Reference: NAR/CL.3/1988. DND 411/1(2)
WHO/ECDD 26

The Secretary-General of the United Nations present his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, the Government of the United States of America has informed him that it is of the opinion that delta-9-tetrahydrocannabinol (hereinafter referred to as Δ-^{9}THC), which is presently in Schedule I of the Convention, should be transferred from that Schedule to Schedule II of the same Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the notification in question as annex I to the present note. The information submitted by the Government of the United States in support of that notification is reproduced as annex II.

The present notification has also been transmitted to the World Health Organization pursuant to article 2, paragraph 2, of the Convention, for consideration by the 26th WHO Expert Committee on Drug Dependence which is expected to examine this proposed amendment in April 1989. Under the new review procedures adopted by WHO, the WHO Expert Committee on Drug Dependence is responsible for making scheduling recommendations to the Director-General of WHO.

Any recommendation made by the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist WHO in the examination of this proposal, WHO would be greatly helped in its task if it had available certain additional data concerning Δ-^{9}-THC. In this connection the Secretary-General would appreciate it if the Government would submit data on Δ-^{9}-THC following the outline contained in the questionnare attached to the present note as annex III.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a review document in October 1988, it would be very much appreciated if any comments which the Government may wish to make with respect to the proposed amendment could be sent to the Secretary-General before 15 May 1988. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

28 January 1988.

Annex I—Notification Under Article 2, Paragraph 1, of the 1971 Convention on Psychotropic Substances

Subject: Transfer of a Substance From One Schedule to Another Schedule Annexed to the Convention

The Government of the United States of America, being a Party to the 1971 Convention on Psychotropic Substances, refers to the following substance which is at present listed in Schedule I of the 1971 Convention on Psychotropic Substances:

Delta ^{9}-Tetrahydrocannabinol (Delta-9-THC)

The United States Government has information relating to the above substance which, in the Government's opinion, may require the transfer of that substance from the Schedule in which it is at present listed, Schedule I, to Schedule II.

The Government of the United States of America transmits this notification to the Secretary General of the United Nations, in accordance with paragraph 1, of article 2 of the 1971 Convention on Psychotropic Substances, in order to initiate the procedure provided for under that article.

The relevant information in support of this notification is annexed hereto.

United States of America

December 1, 1987

Otis R. Bowen, M.D.,
Secretary, Department of Health and Human Services.

Annex II—Information in Support of Article 2, Paragraph 1, Notification

In support of its notification to transfer delta-9-tetrahydrocannabinol (delta-9-THC) from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances, the Government of the United States of America adds the following:

1. After a substantial period of clinical investigation, delta-9-THC has been demonstrated to be safe and effective in the treatment of nausea and vomiting experienced by certain patients receiving cancer chemotherapy. In recognition of that demonstrated therapeutic usefulness, the United States Food and Drug Administration (FDA) on May 31, 1985 approved for marketing a drug product whose active ingredient is delta-9-THC. On May 13, 1986, the United States Drug Enforcement Administration (DEA) completed a rescheduling action which resulted in the inclusion of a certain formulation of delta-9-THC in Schedule II of the United States Controlled Substances Act. This action permitted a formulation containing delta-9-THC in sesame oil to be marketed as an antiemetic agent in the medical treatment of cancer patients receiving chemotherapy.

2. Currently, delta-9-THC is controlled internationally in Schedule I of the 1971 Convention on Psychotropic Substances because tetrahydrocannabinol and several identified isomers, including the delta-9 isomer, are subject to Schedule I control under that Convention. This is the most restrictive schedule of the 1971 Convention, and it has been traditionally reserved for substances with a high abuse liability and with very limited, if any, therapeutic usefulness. The Commentary on the 1971 Convention clearly indicates that when a determination to place a substance in Schedule I is made, a strong presumption exists that the substance has very little, if any, therapeutic value. The approval of delta-9-THC by the United States Government for administration as an antiemetic to patients receiving cancer chemotherapy demonstrates that this substance now has been recognized as having therapeutic usefulness. By virtue of that event, delta-9-THC now differs significantly from substances placed in Schedule I of the 1971 Convention because it no longer conforms with the

established criterion that Schedule I substances have very limited, if any, therapeutic usefulness.

3. The United States Government believes that delta-9-THC has a high potential for abuse although available data fail to demonstrate widespread actual abuse. Because delta-9-THC has now demonstrated therapeutic usefulness, we believe that continued international control of delta-9-THC in Schedule I of the 1971 Convention is no longer appropriate. Moreover, the United States believes that delta-9-THC should be transferred to Schedule II of the 1971 Convention because Schedule II provides the most reasonable level of control for this substance which now has accepted therapeutic usefulness.

4. The United States Government wishes to emphasize that although delta-9-THC is the principal psychotropic ingredient in the cannabis plant, delta-9-THC and cannabis are not the same. Cannabis, cannabis resin, cannabis extracts, and tinctures of cannabis are regulated under the Single Convention. The United States reaffirms the differences between these substances which are regulated under the Single Convention and the substance, delta-9-THC. Our request relates only to the substance delta-9-THC and does not apply in any manner to cannabis or the derivatives of cannabis specified in the Single Convention.

5. The United States Government notes that it submitted a proposal to WHO in 1982 seeking to have delta-9-THC transferred from Schedule I to Schedule II of the 1971 Convention on Psychotropic Substances. The Director-General of WHO, based upon the findings of the 6th Review of Psychoactive Substances for International Control, responded to that proposal by recommending to the Secretary-General that delta-9-THC should remain in Schedule I for the present time "pending review of the activities and consequences of tetrahydrocannabinols." That review by WHO concluded that insufficient information was available to adequately judge the "degree of medical usefulness and the potential seriousness of the public health and social problems" that might result from transferring delta-9-THC to Schedule II of the 1971 Convention. The thirtieth session of the Commission on Narcotic Drugs noted that in view of WHO'S recommendation, it need not take any further action. (See paragraph 190 of U.N. document E/CN.7/1983/18.)

6. The United States Government believes that sufficient information is now available on which to judge the degree of therapeutic usefulness and the potential seriousness of public health and social problems which might arise as a result of the medical use of delta-9-THC. Accordingly, the United States now affirms the following:

a. The formal marketing approval of delta-9-THC for administration to patients in the United States conclusively demonstrates the degree of usefulness of delta-9-THC in medical therapy as that phrase is applied in the 1971 Convention. Delta-9-THC is currently under evaluation in several other countries.

b. Both during the clinical investigative period which began in 1981 and since the approval to market delta-9-THC in the United States, there has been no evidence of a public health or social problem associated with the therapeutic use of the approved delta-9-THC product. To the contrary, the epidemiological tracking systems (i.e., the National Institute on Drug Abuse's DAWN system [1], FDA's Adverse Drug Reaction Reporting System, and DEA's STRIDE [2]) customarily relied upon to demonstrate the existence of such problems in the United States have, to date, shown no evidence that delta-9-THC poses a public health or social problem. (See WHO document MNH/82.44 paragraph 11-3.)

7. The United States Government now believes that sufficient information exists to judge the merits of transferring delta-9-THC from Schedule I to Schedule II according to the criteria of the Convention and articulated by WHO 6th Review of Psychoactive Substances. However, we are making no such statement, and we are seeking no such action with respect to any other substance within the class of tetrahydrocannabinoids.

Annex III—United Nations Division of Narcotic Drugs

Vienna International Centre, A-1400
Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

SUBSTANCE REPORTED ON: Δ-^{9}-THC

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. Extent of abuse of the substance.
3. Degree of seriousness of the public health and social problems[1] associated with abuse of the substance.
4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
5. Identification of the seized substance as a local or foreign manufacture and indication of any commercial markings.
6. Existence of clandestine laboratories manufacturing the substance.

Data and information received by FDA on behalf of HHS in response to this notice will be used to prepare supplemental scientific and medical information concerning delta-^{9}-THC in addition to that previously provided by the United States to the United Nations. HHS will forward that information to the Secretary-General of the United Nations, through the Secretary of State, for WHO's consideration in evaluating the petition to transfer delta-^{9}-THC from Schedule I to Schedule II of the Convention.

Upon receipt of the information HHS will not make any recommendation concerning the proposed action. Rather, HHS will defer such consideration until WHO has made an official recommendation to the Commission on Narcotic Drugs concerning the future schedule status of delta-^{9}-THC. Any HHS position regarding international control of this substance will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before April 28, 1988, submit to the Dockets Management Branch (address above), written comments regarding this action Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should provide data and/or information in the format described in WHO questionnaire for data collection found above. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information

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[1] Drug Abuse Warning Network.

[2] System to Retrieve Information from Drug Evidence.

[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in WHO Technical Report Series) and Chapter 7 of WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances"

collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0220.

Dated: March 24, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–6933, Filed 3–25–88; 3:06 pm]

BILLING CODE 4160-01-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation

Time and Date: Executive Committee, Sunday, May 1, 1988, 1:00 p.m.–5:00 p.m.; Full Committee, May 2–3, 1988, 9:00 a.m.–5:00 p.m., May 2, 1988, 9:00 a.m.–5:00 p.m., May 3, 1988

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Vivian B. Levin, 330 Independence Ave., SW., Room 4725–North Building, Washington, DC 20201, (202) 245–7634.

Vivian B. Levin,

Executive Director, PCMR.

Date: March 22, 1988.

[FR Doc. 88–6747 Filed 3–28–88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2127, Block 33, East Cameron Area, offshore Louisiana. Proposed plans for the above area provice for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amenements of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 21, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–6781 Filed 3–28–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations; Alaska et al.

Nominations for the following properties being considered for listing in the National Register were received by National Park Service before March 19, 1988. Pursuant to § 60.13 of CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 13, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALASKA

Nome Borough

Nome, *Fort Davis Guardhouse,* Front St.

ARKANSAS

Poinsett County

Marked Tree vicinity, *Marked Tree Lock and Siphons,* On the St. Francis River

Pulaski County

Little Rock, *Buhler House,* 1820 Fair Park Blvd.

CALIFORNIA

San Mateo County

San Mateo, *US Post Main Office—San Mateo,* 210 S. Ellsworth St.

MASSACHUSETTS

Middlesex County

Weston, *Wellington Farm Historic District,* 487–500 Wellesley St.

Norfolk County

Milton, *Milton Centre Historic District,* Canton Ave. between Readsdale Rd. and Thacher and Highland Sts.

Wellesley, *Hunnewell Estates Historic District,* Washington, St. and Pond Rd.

Suffolk County

Boston, *Dorchester Lower Mills Branch Library,* 1110 Washington St.

Boston, *Temple Place Historic District,* 11–55, 26–58 Temple Pl.

Worcester County

Huguenot Fort

Sterling, *Sterling Center Historic District,* Roughly bounded by Meetinghouse Hill and Main, Maple and Kendall Hill, Boulding, Worcester and Princeton

Worcester, *Aurora Hotel (Worcester MRA),* 652–660 Main St.

MICHIGAN

Mackinac County

St. Ignace vicinity, *St Helena Island Light Station,* St. Helena Island, Lake Michigan

MISSOURI

St. Louis (Independent City)

Sheiley House, 4600 Labadie Ave.

MONTANA

Carbon County

Red Lodge vicinity, *Camp Senia Historic District,* Custer National Forest

Lewis and Clark County

Helena, *Algeria Shrine Temple,* Neill and Park Aves.

Powell County

Deer Lodge vicinity, *Prison Brickyard Historic District,* Gravel Rd. off I–90 ¼ mi. S of Deer Lodge

NEW MEXICO

Grant County

Silver City, *Bullard Hotel,* 105 S. Bullard St.

Santa Fee County

Santa Fe, *Camino del Monte Sol Historic District,* Roughly bounded by Acequia Madre, Camino del Monte Sol, El Caminito, and Garcia St.

NORTH CAROLINA

Granville County

Amis, Rufus, House and Mill (Granville County MRA)

Ellixson, William, House (Granville County MRA)

Elmwood (Granville County MRA)

Locust Lawn (Granville County MRA)

Oak Lawn (Granville County MRA)

Bullock vicinity, *Smith, William G., House (Granville County MRA),* NC 1527

Cornwall vicinity, *Blackwell, James, House (Granville County MRA),* NC 1411

Grassy Creek vicinity, *Brookland (Granville County MRA),* NC 1443

Grassy Creek vicinity, *Edgewood (Granville County MRA),* NC 1437

Grassy Creek vicinity, *Rose Hill (Granville County MRA),* NC 1442

Grassy Creek vicinity, *Sycamore Valley (Granville County MRA),* NC 1400

Grassy Creek vicinity, *Wimbish, Lewis, Plantation (Granville County MRA),* NC 1443

Grissom vicinity *Allen-Mangum House (Granville County MRA),* NC 1700

Huntsboro vicinity, *Taylor, Col. Richard P., House (Granville County MRA),* NC 1524

Oxford, *Oxford Historic District (Granville County MRA),* Roughly bounded by College, New College and Gilliam and Raleigh, Front, Broad and Goshen and Hayes

Oxford, *Thorndale (Granville County MRA),* 213 W. Thorndale Dr.

Satterwhite vicinity, *Puckett Family Farm (Granville County MRA),* NC 1333

Stovall vicinity, *Hart, Maurice, House (Granville County MRA),* NC 1430

Wilbourns vicinity, *Royster, Marcus, Plantation (Granville County MRA),* NC 96

Wilton vicinity, *Freeman, James W., House (Granville County MRA),* NC 1623

Wilton vicinity, *Peace, John Jr., House (Granville County MRA),* NC 1627

OHIO

Cuyahoga County

Cleveland, *Murray Hill School,* 2026 Murray Hill Rd. and 2043 Random Rd.

TEXAS

Johnson County

Cleburne, *Johnson County Courthouse,* 1 Public Sq.

[FR Doc. 88–6727 Filed 3–28–88; 8:46 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290; Sub-No. 5; 88–2]

Approval of Quarterly Rail Cost Adjustment Factor and Decision

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a restated version of the second quarter 1988 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 1988 RCAF is 1.043. Maximum RCAF rate levels may be increased by up to 3.5 percent. The bank of credits established by a decision served October 17, 1986 is now totally exhausted. In the future maximum RCAF rate levels will rise and fall with the quarterly RCAF.

DATE: Effective April 1, 1988.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354 or Robert C. Hasek (202) 275–0938. TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or telephone (202) 289–4357.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: March 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioner Simmons concurred. Commissioner Lamboley did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6738 Filed 3–28–88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub No. 7)]

Intrastate Rail Rate Authority, Illinois; Certification

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final (5-year unconditional) certification to the Illinois Commerce Commission (Illinois) under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to the condition precedent that Illinois notifies the Commission that it will revise its contract rules in accordance with the Commission's new final contract rules by September 26, 1988.

DATES: Certification will begin April 28, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley

Noreta R. McGee,

Secretary.

[FR Doc. 88–6737 Filed 3–28–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"),

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Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of MCC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985, 50 FR 2633. MCC and its shaeholders filed additional notifications on March 29, 1985, October 21, 1986, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, and December 23, 1987. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8861), and January 22, 1988 (53 FR 1858), respectively.

Effective January 1, 1988, Hughes Aircraft Company, a subsidiary of General Motors Corporation, acquired the MCC share owned by Unisys Corporation. Accordingly, General Motors Corporation and each of its subsidiaries, including Hughes Aircraft Company, are parties to MCC; Unisys Corporation and each of its subsidiaries are no longer parties to MCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-6862 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Application; McNeilab Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 22, 1988, McNeilab Inc., DBA First State Chemical Company, Inc., 808 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 28, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-6734 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Penick Corp.

Pusuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 20, 1988, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 28, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-6733 Filed 3-28-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Airco Carbon, et al

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 8, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of March 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Airco Carbon (OCAW)	Niagara Falls, NY	3/21/88	3/10/88	20,529	Graphite Electrodes.
Baxter Healthcare, Corp. (Workers)	Eaton, OH	3/21/88	2/8/88	20,530	Vinyl Gloves.
Energy Data Search, Inc. (Workers)	Oklahoma City, OK	3/21/88	2/15/88	20,531	Oil & Gas.
Hammen Oil & Refining Co. (Workers)	Houston, TX	3/21/88	3/1/88	20,532	Crude Oil & Gas.
J.A. Friedburg (Company)	Brooklyn, NY	3/21/88	3/4/88	20,533	Handbags & Tote Bags.
J-Von (Workers)	Leonminster, MA	3/21/88	3/9/88	20,534	United Soles & Thermoplastic.
M.H. Fine Company (ILGWU)	Allston, MA	3/21/88	3/9/88	20,535	Maternity Wear.
P.B.M. Machining, Inc. (Teamsters)	Muncie, IN	3/21/88	3/9/88	20,536	Automotive Parts.
Parsons Footwear (UFW)	Parsons, WV	3/21/88	3/7/88	20,537	Men's & Women's Footwear.
S.L. Waber, Inc. (IUE)	Westville, NJ	3/21/88	3/7/88	20,538	Electrical Outlet Strips.
Sterling Engineered Products (UPIU)	Wisconsin Rapids, WI	3/21/88	3/8/88	20,539	High Pressure Laminate.
Sunbury Dress (Workers)	Cranston, RI	3/21/88	3/7/88	20,540	Ladies' Skirts & Slacks.
Transpetco I (Workers)	Spearman, TX	3/21/88	2/11/88	20,541	Crude Oil.
Toland & Johnston, Inc. (Workers)	Oklahoma City, OK	3/21/88	3/11/88	20,542	Oil & Gas.
Washington Manufacturing Company (Workers)	McMinnville, TN	3/21/88	3/10/88	20,543	Men's & Ladie's Sports Wear.
Windsor Records (Workers)	Paterson, NJ	3/21/88	2/22/88	20,544	Records.

[FR Doc. 88-6858 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 22, 1988.

Affirmative Decisions on Petitions for Modification

Docket No.: M–84–164–C.

FR Notice: 49 FR 35051.

Petitioner: Freeman United Coal Mining Company.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to course intake air through the belt haulage entry of the south mains from the number 3 portal to ventilate active working places and to install an MSHA approved carbon monoxide fire detection system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–84–223–C.

FR Notice: 49 FR 47443.

Petitioner: Colorado Westmoreland, Inc.

Reg. Affected: 30 CFR 75.1714–2(e)(3).

Summary of Findings: Petitioner's proposal to cache SCSR's at intervals not to exceed 2,000 feet along the mantrip routes, to check the cached SCSR's once every seven days and to check any unit carried or worn every shift considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–49–C.

FR Notice: 50 FR 32124.

Petitioner: Emery Mining Corporation.

Reg. Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–77–C.

FR Notice: 50 FR 35615.

Petitioner: Plateau Mining Company.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to develop the mine with a two-entry longwall development system and use the belt entry as a separate intake split of air to the longwall face and to provide the belt/intake entry with an environmental monitoring system for low-level carbon monoxide monitoring considered acceptable alternate method. Granted with conditions.

Docket No.: M85–98–C.

FR Notice: 51 FR 36612.

Petitioner: S. & T. Coal Company.

Reg. Affected: 30 CFR 75.1714.

Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–126–C.

FR Notice: 51 FR 36490.

Petitioner: Buck Mountain Coal Company.

Reg. Affected: 30 CFR 75.1714.

Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered acceptable alternate method. Granted with conditions.

Docket No.: M–85–155–C.

FR Notice: 50 FR 47293.

Petitioner: National Mines Corporation.

Reg. Affected: 30 CFR 75.1710.

Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–85–206–C.

FR Notice: 51 FR 10690.

Petitioner: Eastern Coal Corporation.

Reg. Affected: 30 CFR 75.305.

Summary of Findings: Petitioner's proposal to establish two evaluation points where methane, and direction and velocity of airflow will be checked by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–1–C.

FR Notice: 51 FR 12945.

Petitioner: Kaiser Coal Corporation.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to use a two-entry longwall panel development in which the belt haulage entry would serve as a return aircourse and longwall panel retreat mining in which the belt haulage entry would serve as an intake aircourse for longwall face ventilation, and to install an early warning fire detection system utilizing low-level carbon monoxide detectors at specific locations with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–38–C.

FR Notice: 51 FR 12946.

Petitioner: Pyro Mining Company.

Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to install a monitoring system, with carbon monoxide monitors at each belt drive and at intervals not to exceed 2,000 feet along each belt entry with specific safeguards considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–48–C.

FR Notice: 51 FR 25931.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to use the air in the belt entry to ventilate active working places and planned longwall panels and to install a low-level carbon monoxide detection system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–73–C.

FR Notice: 51 FR 33280.

Petitioner: Drummond Company, Inc.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to utilize the belt entries as intake entries and to install a carbon monoxide monitoring system in all belt entries used as intake entries with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–89–C.

FR Notice: 51 FR 30142.

Petitioner: A. & D. Coal Company.

Reg. Affected: 30 CFR 75.1400

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–97–C.

FR Notice: 51 FR 31968.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to use as early-warning fire detection system using a low-level carbon monoxide detection system installed and operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–98–C.

FR Notice: 51 FR 33819.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.1105.

Summary of Findings: Petitioner's proposal to locate the transformers and vacuum breakers in the belt entry splits of air, and to maintain the carbon monoxide detection system in the belt entries with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–166–C.

FR Notice: 51 FR 44388.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed and operated with specific conditions in all belt entries used as intake aircourse considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–169–C.

FR Notice: 51 FR 44389.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to install an early warning fire detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–170–C.

FR Notice: 51 FR 44389.

Petitioner: Clinchfield Coal Company.

Reg. Affected: 30 CFR 75.1105.

Summary of Findings: Petitioner's proposal to locate the transformers and vacuum breakers in the belt entry splits of air, and to maintain the carbon monoxide detection system in the belt

entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–171–C.

FR Notice: 51 FR 45568.

Petitioner: Blue Diamond Coal Company.

Reg. Affected: 30 CFR 75.326.

Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed and operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–172–C.

FR Notice: 51 FR 45565.

Petitioner: Blue Diamond Coal Company.

Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–173–C.

FR Notice: 51 FR 45567.

Petitioner: Blue Diamond Coal Company.

Reg. Affected: 30 CFR 75.1105.

Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps and rectifiers by ventilated with intake air and be housed in a fire-proof structure equipped with fireproof doors and an automatic fire suppression system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–177–C.

FR Notice: 51 FR 45960.

Petitioner: Mountain Top Coal Company.

Reg. Affected: 30 CFR 75.301.

Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–178–C.

FR Notice: 51 FR 45568.

Petitioner: S and M Coal Company.

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–182–C.

FR Notice: 52 FR 1400.

Petitioner: Mid-Continent Resources, Inc.

Reg. Affected: 30 CFR 75.1105.

Summary of Findings: Petitioner's proposal; that a dry-type transformer, not more than 750 KVA, be ventilated with intake air and be housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–183–C.

FR Notice: 51 FR 45567.

Petitioner: Hickory Coal Company.

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting hope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–186–C.

FR Notice: 52 FR 1395.

Petitioner: Eastern Associated Coal Corporation.

Reg. Affected: 30 CFR 75.305.

Summary of Findings: Due to adverse roof conditions certain areas of the mine are unsafe for travel. Petitioner's proposal to check the entry inby the adverse roof and outby on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–187–C.

FR Notice: 51 FR 47319.

Petitioner: Barnhart Coal Company.

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting hope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–188–C.

FR Notice: 52 FR 1956.

Petitioner: Bull Run Mining Company, Inc.

Reg. Affected: 30 CFR 75.503.

Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–189–C.

FR Notice: 51 FR 47322.

Petitioner: Southern Ohio Coal Company.

Reg. Affected: 30 CFR 75.503.

Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–190–C.

FR Notice: 52 FR 1967.

Petitioner: H. L. and W. Coal Company.

Reg. Affected: 30 CFR 75.1714.

Summary of Findings: Petitioner's proposal to use filtertype self-rescuers in lieu of self-contained self-rescuers considered, acceptable alternate method. Granted with conditions.

Docket No.: M–86–192–C.

FR Notice: 52 FR 1967.

Petitioner: Island Creek Coal Company.

Reg. Affected: 30 CFR 75.305.

Summary of Findings: Petitioner's proposal to establish check points to monitor airflow at specific locations and check stoppings in neutral airways on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–193–C.

FR Notice: 52 FR 1401.

Petitioner: S. and T. Coal Company.

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–194–C.

FR Notice: 52 FR 1396.

Petitioner: Ash Coal Company.

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–197–C.

FR Notice: 52 FR 1400

Petitioner: Mountain Top Coal Company

Reg. Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–204–C.
FR Notice: 51 FR 47320.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide detection system installed and operated with specific conditions in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–205–C.
FR Notice: 51 FR 47320.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air and be housed in a fireproof structure equipped with fire-proof doors and an automatic fire suppression system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–206–C.
FR Notice: 51 FR 47321.
Petitioner: Blue Diamond Coal Company.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–207–C.
FR Notice: 52 FR 4683.
Petitioner: Monterey Coal Company.
Reg. Affected: 30 CFR 77.216.3(a).
Summary of Findings: Petitioner's proposal to inspect the impoundments and monitor instruments on a monthly basis in lieu of every seven days and to supplement the monthly inspections with additional inspections should major precipitation or run off occur considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–209–C.
FR Notice: 52 FR 1988.
Petitioner: Red Bone Mining Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–212–C.
FR Notice: 52 FR 1988.
Petitioner: Liberty Coal Company.
Reg. Affected: 30 CFR 75.305.
Summary of Findings: Due to a roof fall certain areas of the return are unsafe to travel. Petitioner's proposal to establish check points on both sides of the fall considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–213–C.
FR Notice: 51 FR 47321.
Petitioner: Clinchfield Coal Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–86–215–C.
FR Notice: 52 FR 1399.
Petitioner: Jeff Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–216–C.
FR Notice: 51 FR 46958.
Petitioner: South Ridge Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–217–C.
FR Notice: 52 FR 1988.
Petitioner: South Ridge Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate methods. Granted with conditions.

Docket No.: M–86–218–C.
FR Notice: 52 FR 1400.
Petitioner: MEPCO, Inc.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–219–C.
FR Notice: 51 FR 47322.
Petitioner: Consolidation Coal Company.
Reg. Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air and be housed in a fireproof structure equipped with an automatic fire suppression system with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86 224–C.
FR Notice: 52 FR 1401.
Petitioner: Pammlid Coal Company.
Reg. Affected: 30 CFR 75.503.
Summary of Findings: Use of a spring-loaded locking device in lieu of a padlock for the purpose of locking batter plugs to machine-mounted battery-powered machines, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–231–C.
FR Notice: 52 FR 12096.
Petitioner: Carbon Black Mining Company, Inc.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part.

Docket No.: M–86–232–C.
FR Notice: 52 FR 4205.
Petitioner: Kanawha Coal Company.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Use of an early warning fire detection system using a low-level carbon monoxide (CO) detection system installed an operated with specific conditions in all belt entries used as intake aircourses, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–235–C.
FR Notice: 52 FR 4203.
Petitioner: Kentucky Carbon Corporation.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to install a computer aided carbon monoxide mine monitoring system at intervals not to exceed two thousand lineal feet, and at each belt drive and tailpiece with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–236–C.
FR Notice: 52 FR 4203.
Petitioner: Kentucky Carbon Corporation.
Reg. Affected: 30 CFR 75.1103–4(a).

Summary of Findings: Petitioner's proposal to install an early warning fire detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–237–C.
FR Notice: 52 FR [illegible].
Petitioner: Kerr-McGee Coal Corporation.
Reg. Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a carbon monoxide detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–242–C.
FR Notice: 52 FR 6210.
Petitioner: Old Ben Coal Company.
Reg. Affected: 30 CFR 77.900.
Summary of Findings: Petitioner's proposal to dewater the mining pits using pontoon-mounted pumps, fed electrically from mobile substations transforming the pit distribution voltage to 480 volt, 3 phase, installed with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–245–C.
FR Notice: 52 FR [illegible].
Petitioner: 12 Vein Coal Company.
Reg. Affected: 30 CFR 75.301.
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–247–C.
FR Notice: 52 FR 4204.
Petitioner: Drummond Company, Inc.
Reg. Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to install low level carbon monoxide detectors with specific conditions, considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–250–C.
FR Notice: 52 FR 4681.
Petitioner: Kintzel Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–251–C.
FR Notice: 52 FR 4083.
Petitioner: Plateau Mining Company.
Reg. Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–252–C.
FR Notice: 52 FR 4602.
Petitioner: Big Hill Coal Company.
Reg. Affected: 30 CFR 75.1710.
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–86–254–C.
FR Notice: 52 FR 7045.
Petitioner: Ronald Deaton Coal Company.
Reg. Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–4–M.
FR Notice: 51 FR 12944.
Petitioner: Demar Boren Mining, Inc.
Reg. Affected: 30 CFR 57.21078.
Summary of Findings: Petitioner's proposal to install a nonpermissible pump inside a steel casing, which is capable of dewatering the mine with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–9–M.
FR Notice: 51 FR 39437.
Petitioner: Pathfinder Mines Corporation.
Reg. Affected: 30 CFR 56.18020.
Summary of Findings: Petitioner's proposal to allow the operator of the SK35 Reed hydraulic drill to work alone on weekends with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–16–M.
FR Notice: 52 FR 5219.
Petitioner: Sunnyside Gold Corporation.
Reg. Affected: 30 CFR 57.11059.
Summary of Findings: Petitioner's proposal that a separate and independent exhalation valve assembly be installed into the exhalation tube of the Dreager breathing hose and a positive automatic shutoff quick connect coupler be installed to the installation hose of the Dreager breathing tubes considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–18–M.
FR Notice: 52 FR 5216.
Petitioner: Harrod Concrete and Stone Company.
Reg. Affected: 30 CFR 57.15030.
Summary of Findings: Petitioner's proposal to allow employees entering the underground mine to park and retrieve diesel powered vehicles, without having a self-rescue device during cold weather with specific conditions, considered acceptable alternate method. Granted with conditions.

[FR Doc. 88–[illegible] Filed 3–28–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–40–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to extremely poor roof conditions and a roof fall certain areas of the mine are unsafe to travel. Further rehabilitation of these areas would expose miners to hazardous conditions.

3. Petitioner further states that the existing fall has had little or no effect on the quantity of air passing. The fall is of limited extent and can be visually examined from both sides in its entirety. Also, the aircourse is not designated as an escapeway.

4. As an alternate method, petitioner states that—

(a) A certified person will make a weekly examination of the return at specific locations;

(b) Air readings will be taken as part of the weekly examination. The date, time, and results of the examination will be recorded in a book on the surface; and

(c) If at any time air quantity indicates a weekly difference of ten percent, an immediate investigation will be conducted by the mine foreman and appropriate actions will be taken.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Dated: March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6859 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-13-C]

Cyprus Empire Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the installation requirements of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt conveyor drives. In support of this request, petitioner states that—

(a) Automatic sprinklers will be maintained at a distance of not more than ten feet apart with actuation temperatures between 200 degrees F., and 230 degrees F., and will be located so that the discharge of water will extend over the belt drive;

(b) During operation of the system, water pressure will not be less than 10 psi;

(c) The sprinkler line will be a minimum length of 50 feet of belt at the drive;

(d) A test to insure proper operation will be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part thereof; and

(e) In areas where freezing conditions exist, the sprinkler system would be charged with a 50/50 mixture of anti-freeze (Ethylene-Glycol).

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1999. Copies of the petition are available for inspection at the address.

Dated: March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6860 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-32-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 4 Mine (I.D. No. 44-06417) and its Dominion No. 5 Mine (I.D. No. 44-06051) both located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes will be drilled to a distance of at least 20 feet in advance of the working place and will be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they will be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes will also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees. Such rib holes will be drilled on one or both ribs of such working place as may be necessary for adequate protection of miners in such place.

2. Petitioner requests a modification of the standard to allow for a 20 foot cut to be taken in the face. In further support of this request, petitioner states that—

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the conrer of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of +/− 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the mines affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April

28, 1988. Copies of the petition are available for inspection at that address.

Date March 21, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-6861 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-16-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.902 (low—and medium-voltage ground check monitor circuits) to its Crown Mine No. II (I.D. No. 11-02236) located in Macoupin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low—and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check will cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480 volt, three phase, power distribution in the underground surge bin feeder system without the need of a ground check circuit.

3. In support of this request, petitioner states that—

(a) The surge bin feeder system consisting of R.O.M. feeder, buffer, belt, rotary grizzly, crusher, and magnet is housed in a steel and reinforced concrete structure;

(b) The electrical circuits serving the system are carried in galvanized rigid steel conduit which is assembled with threaded connections and is supported by steel strut. The steel strut is welded to the steel structure, anchored to the concrete walls, or suspended from the roof with anchor bolts;

(c) The 480 volt, three phase motors are stationary and are mounted on a common steel frame structure;

(d) Grounding for the 480 volt, three phase equipment is provided by a continuous copper ground conductor interconnecting the ground lugs of the 480 volt, three phase transformer and other pieces of stationary equipment; and

(e) Grounding is also provided by the rigid conduit and the common steel frame structure.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6862 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-36-C]

H.L. & W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.L. & W. Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its H.L. & W. Slope (I.D. No. 36-07825) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Petitioner states that installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6863 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-14-C]

Rockbridge Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Rockbridge Coal Corporation, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.1107 (fire suppression devices) to its No. 1 Mine (I.D. No. 15-06243) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire suppression devices be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids be used in the hydraulic systems of such equipment.

2. As an alternate method, petitioner proposes to place a 10 pound fire extinguisher on the front and back of the Galis 3510 roof drill in lieu of automatic fire sensors and hydraulic oil that is fire retardant.

3. In support of this request, petitioner states that the fire extinguishers will be within reach of the operator at all times and the machine will be required to be checked for compliance before and after each shift to ensure the fire extinguishers are working properly.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6864 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-88-33-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, Hampton Division, Route 1, Box 39, Clothier, West Virginia 2507 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hampton No. 4 Mine (I.D. No. 46-01282) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A Summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that application of the standard would result in a diminution of safety because of adverse roof conditions in the area of the 1 South return aircourse at the mine. Further rehabiliatation of such area of that return aircourse would expose miners to extremely hazardous conditions.

3. As an alternate method, petitioner proposes to establish air-monitoring check points at the inby end and outby end of the adverse roof conditions in the 1 South return aircourse a distance of approximately five hundred feet.

4. In support of this request, petitioner states that air measurements and gas readings will be made weekly at each check point, and a record of such measurements and readings will be recorded in a book kept on the surface at the mine.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 21, 1988.

[FR Doc. 88-6665 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

New Mexico State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.
2. Public hearing conducted by the Environmental Improvement Board.
3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated June 4, 1987, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the Plan, the State submitted State standards identical to 29 CFR Part 1910, General Industry Standards unless otherwise noted. New Mexico's re-adoption of 29 CFR Part 1910 applies to both the private and public sectors, with the exception of OSHR 200, 1910.156, which applies to the private sector only. New Mexico has a separate public sector fire protection standard, OSHR 202.

These standards, contained in New Mexico Occupational Health and Safety Regulation 200, General Industry Standards, revised as of July 1, 1986, were promulgated on May 8, 1987, in accordance with applicable State law with the following four exceptions.

(1) Omit 1910.1;

(2) Omit 1910.2(c), (d), and (e);

(3) Omit 1910.4;

(4) Omit 1910.5 (a) and (f). Six amendments and one addition were also adopted. These are found at Occupational Health and Safety Regulation 200(B)(5), (6), (7), (8), (9), (10), and (11) as follows.

(5) References in 1910.20 to 29 CFR 1913 shall be construed as references to the appropriate Division regulation or policy;

(6) Amend 1910.1047, Ethylene Oxide, as contained in 51 FR 25053 (July 10, 1986);

(7) Amend 1910.430, Commercial Diving, as contained in 51 FR 34597 (September 18, 1986);

(8) Amend 1910.145; Accident Prevention Signs and Tags, as contained in 51 FR 33260-33261 (Sepember 19, 1986);

(9) Amend 1910.1200, Hazard Communication, as contained in 51 FR 34597 (September 30, 1986);

(10) Amend 1910.120, Hazardous Waste Operations and Emergency Response; Interim Final Rule, as contained in 51 FR 45663-45675 (December 19, 1986); and

(11) Amend 29 CFR Part 1910, Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks, as contained in 51 FR 34560-34562 (September 29, 1986).

The subject standards became effective July 1, 1987, pursuant to New Mexico State Law, Section 50-9-1 through 50-9-25.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and accordingly are approved. The four omissions noted in Section 1 were omitted because they are not pertinent to the New Mexico State Plan and deal only with Federal OSHA authority.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, Room 2200, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Avenue NW., Room N3700 Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposals and making the Regional Administrator's approval effective upon publication for the following reasons:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.
2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be necessary.

The decision is effective March 29, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Dallas, Texas, this thirtieth day of September, 1987.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 88-6867 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated June 22, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards amendment comparable to the Federal standards amendment to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide, as published in the **Federal Register** (49 FR 25796) on June 22, 1984. The State standards amendment is contained in WAC 296-62-07353. The State Standards Amendment was originally adopted on December 11, 1984, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 84-24. Corrections were adopted on April 19, 1985 under Washington Administrative Order No. 85-09. The State's standard was reviewed by the Regional Office and returned for correction of editorial errors on May 12, 1986. These corrections were adopted on March 12, 1987 and became effective April 11, 1987 under Washington Administrative Order No. 87-01.

The Ethylene Oxide labeling requirements, published in the **Federal Register** on October 11, 1985 (50 FR 41491), were adopted by the State on July 25, 1986, effective August 25, 1986, and are contained in WAC 296-62-07353(10)(a)(i). The State standard amendment was submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator. Approval of this State standard amendment was withheld until the corrections to the original standard were adopted.

2. Decision

The above State standards amendment has been reviewed and compared with the relevant Federal standards amendment and OSHA has determined that the State standards amendment is identical to the Federal standards amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.
2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 29, 1988.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Seattle, Washington, this 1st day of September, 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 88-6868 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-7068]

Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit purchases and sales by certain "individual retirement accounts," as defined in Code section 408(a) ("IRAs"), of American Eagle bullion coins ("Coins") in principal transactions from or to broker-dealers in Coins which are "authorized purchasers" of Coins in bulk

quantities from the United States Mint (the "Mint") and which are also "disqualified persons," within the meaning of Code section 4975(e)(2), with respect to the IRAs. The proposed exemption would also permit the interest-free extension of credit in connection with such purchases and sales. The proposed exemption would, if granted, affect persons with an interest in the investments of IRAs, including IRA depositors and their beneficiaries, as well as persons who provide custodial services to IRAs.

DATES: Written comments should be submitted to the Department before May 31, 1988. If granted, the exemption would be effective January 1, 1987.

ADDRESSES: All written comments (preferably 3 copies) should be sent to: Pension and Welfare Benefits Administration, Room N–5669, 200 Constitution Avenue NW., Washington, DC 20210, Attn: American Eagle Exemption. The application for exemption, as well as all comments, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Pension and Welfare Benefits Administration, Mark Greenstein, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, Washington, DC 20210, (202) 523–8671 (not a toll-free number) or Daniel J. Maguire, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9596 (not a toll-free number).

SUPPLEMENTARY INFORMATION: this document contains a notice of pendency before the Department of a proposed class exemption from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A), (B), and (D) of the Code. In part, this proposal is the Department's response to an application filed on behalf of Prudential Bache Securities, Inc. (Pru-Bache), which functions as a broker-dealer in Coins. Pru-Bache represents that industry practices have developed which are standard for the market in gold bullion coins. Accordingly, the Department is treating the application as a request for a class exemption. The application was filed under section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), by a letter dated March 4, 1987. The application was clarified by supplemental letters dated March 19, June 2, and October 30, 1987. In addition, the document contains proposals the Department is making on its own motion pursuant to the authority described above.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Description of the Requested Exemption

The applicant requests a retroactive and prospective exemption from the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) and (B) of the Code for purchases and sales of Coins,[1] as well as extensions of credit related thereto,[2] between certain IRAs (herein referred to as Title II IRAs) [3] and disqualified persons with respect to such IRAs which are authorized purchasers of Coins from the Mint and which act as broker-dealers in Coins. Under the requested exemption, such disqualified persons must be banks or other approved persons referenced in Code sections 408(a)(2) and 408(h).[4]

Section 4975(c)(1)(A) of the Code prohibits, among other things, the sale or exchange of any property between a plan and a disqualified person. Section 4975(c)(1)(B) of the Code prohibits the lending of money or other extension of credit between a plan and a disqualified person.[5] Code section 4975(e)(1) states that an individual retirement account described in Code section 408(a) is included within the definition of the term "plan" for purposes of section 4975. The term "disqualified person", as defined in Code section 4975(e)(2), includes persons which provide services to a plan. In the absence of an exemption, any sale or exchange of assets or extension of credit between such a person and a plan would be a prohibited transaction. Additionally, any furnishing of goods, services, or facilities between such a person and a plan, or any transfer to, or use by or for the benefit of, such a person of the income or assets of a plan would be a prohibited transaction in the absence of an exemption. Section 408(m) of the Code treats the acquisition by IRAs of collectibles, including any coin, as a distribution. Section 1144 of the Tax Reform Act of 1986 added Code section 408(m)(3), which provides an exception from the general rule for investments in Coins.

Pru-Bache represents that it and a number of similarly situated broker-dealers in Coins serve as nonbank trustees or custodians of IRAs under Code section 408(a)(2) and 408(h).[6] In this capacity, the broker-dealers are service providers to plans, and therefore are disqualified persons with respect to the IRAs under Code section 4975(e)(2)(B). Accordingly, in the absence of an exemption, any sale or exchange of assets or extension of credit between a broker-dealer and an IRA to which it provides services would be prohibited.

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[1] The Coins are American Eagle United States gold or silver bullion coins which are further described in section 5112(a) (7), (8), (9), and (10) and section (e) of Title 31 of the United States Code.

[2] The applicant is concerned that, for purposes of the prohibited transaction rules, an extension of credit may exist during the period between the execution of a Coin order and settlement. The applicant represents that the exchange of funds for Coin(s) on the books of the authorized purchaser at settlement is simultaneous.

[3] The exemption requested by the applicant would apply only to IRAs which are not "employee benefit plans" covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In this regard, 29 CFR 2510.3–2(d) explains that IRAs described in Code section 408(a) will not be considered pension plans subject to Title I of ERISA, provided that: (1) No contributions are made by an employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is to permit the sponsor to publicize the program without endorsement to employees or members, to collect contributions through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

[4] Section 408(a)(2) requires that the trustee of an IRA be a bank or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of that section. See Treasury Regulations 1.408–2(b)(2) and 1.401–12(n). The regulations prescribe criteria which are designed to ensure that nonbank trustees will be responsible fiduciaries.

[5] The applicant did not request an exemption from the restrictions of section 4975(c)(1) (C) through (F) of the Code. Section 4975(c)(1)(C) prohibits the furnishing of goods, services, or facilities between a plan and a disqualified person. Code section 4975(d)(2) provides an exemption for the provision of services by a disqualified person if the conditions of that exemption are met. See 26 CFR 54.4975–6. Section 4975(c)(1)(D) prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. Section 4975(c)(1)(E) prohibits any act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account. Section 4975(c)(1)(F) prohibits the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

[6] Pru-Bache states that it, Merrill Lynch, Pierce, Fenner & Smith Inc. and Shearson Lehman Brothers Inc., each of which is an authorized purchaser, are three of the largest nonbank custodians in terms of the number of IRAs sponsored. The applicant estimates that the three firms together are custodians for far in excess of 1,000,000 IRAs.

2. The Coins

The Coins are American Eagle gold and silver bullion coins which Public Laws 99–61 and 99–185 directed the Mint to produce and sell. The gold Coins are produced in four denominations: $50, $25, $10 and $5 and contain 1 oz., ½ oz., ¼ oz. and ⅒ oz. of gold respectively. The silver Coin has a denomination of $1 and contains 1 oz. of silver. The Mint is interested in ensuring that the Coins be competitive with the bullion products produced by others. In order to be competitive, the Mint has determined that the Coins must be as widely available to the public as possible and priced in line with comparable gold and silver bullion products. The Mint has determined that this can best be accomplished by using the already well-established distribution network in the private sector by selling the Coins in bulk directly to business firms having appropriate resources and expertise and which act as dealers in gold and silver bullion coins.

3. Authorized Purchasers

The Mint has established stringent criteria which must be met in order to be eligible to purchase Coins directly from the Mint in bulk quantities. A firm qualifies to be such a purchaser ("authorized purchaser") only if it: (1) Is an experienced and substantial marketmaker in gold bullion coins, with respect to the purchase of gold Coins and in silver coins, bars and/or rounds, with respect to the purchase of silver Coins; (2) has a tangible net worth in excess of $50,000,000, with liquid assets of at least $10,000,000 for gold Coins and has a tangible net worth in excess of $5,000,000, with liquid assets of at least $1,000,000 for silver Coins;[7] (3) in the case of gold Coins, sold an average of 75,000 or more ounces of such coins per year in 1984 and 1985 through its client network; and (4) submits to the Mint a letter from an independent and internationally accepted accounting firm concerning its books and policy of being substantially hedged in its precious metals transactions.[8]

As of March 4, 1987, only 28 firms have qualified as authorized purchasers of gold Coins and only 31 firms have qualified as authorized purchasers of silver Coins. The continued qualification of the firms as authorized purchasers depends on their continuing to abide by standards of conduct which are intended to protect customers, including IRAs, dealing with the firms.

4. Pricing of Coins

The Mint currently sells the Coins to authorized purchasers at a price based on the Coins' bullion content established by the applicable London Fix on the day following the orders plus a set premium which covers the Mint's manufacturing and marketing expenses. An authorized purchaser incurs additional related costs including shipping, hedge transactions to protect against market fluctuations, financing, and storage. The retail market for the Coins is highly competitive, and it it represented that, as of the time of the application, the one ounce gold Coins retailed at between 5 percent and 7 percent above their bullion value. Other factors which will influence the final prices at which Coins are ultimately sold and purchased in transactions between authorized purchasers and retail customers, including IRAs, are the size of the order involved, commissions to sales personnel, overhead expenses, profit margins, and the price currently being charged by competitors.

Transactions involving an authorized purchaser and a customer are similar to transactions in over-the-counter stocks where the broker-dealer acts as a principal in buying and selling shares of stock. The customer pays an asked price when purchasing and is paid the bid price on a sale.

The applicant contends that an agency transaction, in which a disqualified person would act as an agent for an IRA in the purchase and sale of Coins rather than as a principal, could come within the statutory exemption provided by Code section 4975(d)(2) from the application of certain of the prohibited transaction restrictions of Code section 4975(c)(1). In this regard, the applicant represents that any such agency arrangement would be less advantageous to IRAs than a principal transaction between an IRA and an authorized purchaser because of the higher transaction costs and/or the lack of flexibility which would be involved in an agency arrangement. An authorized purchaser acting as agent for an IRA in the purchase of Coins would, if only to meet its overhead costs in the transaction, add to the price a commission to compensate it for acting as agent.

Any third party, non-disqualified person which is an authorized purchaser and from which an IRA could purchase Coins would, the applicant states, price Coins similarly to the applicant and other authorized purchasers which are disqualified persons due to similar overhead costs and competitive pressures. In the event the third party dealer is not itself an authorized purchaser, the net price to an IRA would also reflect overhead costs and possible additional expenses incurred by such intermediary dealer in acquiring Coins from an authorized purchaser, or on the secondary market.

The applicant represents that an arrangement where an IRA purchases Coins from the Mint, with the applicant or other authorized purchaser acting as its agent, would also be less advantageous for the IRA. As the Mint sells only in minimum orders of 5,000 ounces of gold Coins and 50,000 ounces of silver Coins, IRA orders would have to be aggregated with other orders or purchases for the authorized purchaser's own inventory and executed only when the number of Coins equaled these significant minimum quantities. According to the applicant, this would leave the IRA subject to market fluctuations during the potentially substantial period of time between the placing of the order and its execution.

The applicant represents that independent sources exist that can be used by the person directing the IRA to verify that the purchase or sale of Coins between the IRA and an authorized purchaser is at an arm's-length price. In the case of the one ounce American Eagle Coin, prices are regularly listed in the financial sections of major newspapers, along with other gold cash prices and prices for the Maple Leaf, Krugerrand and other foreign gold coins. Pru-Bache understands that at least one major dealer in Coins, Manfra, Tordella and Brooks, Inc., maintains publicly available hourly price quotes for Coins and that price quotes are also readily available from many other dealers.

The IRA market would represent only a portion of the Coin business handled by authorized purchasers. According to the applicant, transactions are executed by Pru-Bache, as well as each other authorized purchaser that is also a broker-dealer, on a continuous basis. The applicant further represents that transactions in Coins between authorized purchasers and unrelated parties generally provide an objective benchmark against which transactions between IRAs and disqualified persons can be measured. Relatively small quantities of Coins of a given denomination may be minted in certain years. Under these circumstances, transactions between authorized purchasers and unrelated parties may be too infrequent to provide a meaningful basis for price comparisons against which transactions in Coins between IRAs and disqualified persons can be tested. In this regard, the exemption requested by the applicant provides that all Coins of a given denomination must be priced by the authorized purchaser at the same price, regardless of the year in which the Coins were minted.

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[7] The applicant understands that the Mint may permit the use of an irrevocable letter of credit meeting specified conditions and drawn on an "FDIC" insured bank in satisfaction of a portion of the net worth test. It further understands that the Mint may waive the liquid asset requirements under certain circumstances.

[8] United States Mint release dated July 28, 1986.

5. The IRAs

A characteristic of the IRAs with respect to which relief is requested is that the person directing the IRA investments is not the authorized purchaser or its affiliate and could choose from a wide variety of permissible IRA investments, only one of which is Coins. Moreover, most of the IRAs with respect to which relief is requested are "self-directed." In this context, the IRA depositor has complete control over all the investment decisions with respect to the assets in his or her account, and no assets can be purchased or sold except at his or her direction. However, the applicant also requests relief with respect to transactions in Coins involving IRAs with respect to which the IRA depositor has given investment discretion over assets in the IRA to an independent third person who is unrelated to the authorized purchaser or any affiliate thereof with which the IRA effects transactions in Coins.

6. Conditions Contained in the Requested Exemption

The applicant asks that the requested exemptive relief be based upon the following conditions:

(1) The disqualified person selling Coins to or purchasing Coins from an IRA pursuant to the requested exemption must be an authorized purchaser of Coins which regularly and in a material amount engages in Coin transactions with persons other than IRAs in each Coin denomination which such disqualified person offers to sell to or purchase from IRAs.

(2) Any such disqualified person must also be a bank or other approved person referred to in Code section 408(a)(2) and 408(h).

(3) The IRA must offer a wide range of investment alternatives.

(4) Each Coin transaction covered by the requested exemption must be at least as favorable to the IRA as an arm's length transaction with an unrelated party would be.

(5) Neither the disqualified person nor any affiliate thereof can be a "fiduciary" within the meaning of Code section 4975(e)(3) [9] with respect to the IRA assets involved in the transaction. The applicant requests that, for purposes of this paragraph, a disqualified person not be deemed to be a fiduciary with respect to IRA assets solely by reason of providing custodial services to the IRA. In this connection, the applicant also emphasizes that, under the requested exemption, the IRA depositor would have to know the exact price at which the depositor's Coin order will be executed before authorizing the transaction.

(6) A separate written confirmation must be issued with respect to each transaction involving the purchase or sale of Coins. The number and price of the Coins bought or sold and date of the transaction must be clearly indicated on each confirmation, as well as the fact that the disqualified person acted as principal in the transaction. The confirmation of a Coin transaction must be issued at least within the same period of time as would a confirmation for a securities transaction in the over-the-counter market executed on the same date as the Coin transaction, but in no event must more than 10 days elapse between the execution of the transaction and issuance of the confirmation.

(7) Payments in settlement of Coin transactions must be made promptly, but in no event more than 10 days after the execution of the transaction.

(8) The disqualified person entering into Coin transactions with IRAs pursuant to the requested exemption must prepare for distribution to customers disclosure information regarding material information concerning Coins, their storage and transactions therein (including a general description of the manner in which coins are priced in the market). This information must indicate any minimum requirement for the number of Coins which may be bought or sold and must include a reference to any additional fees or special or minimum transaction costs that will be incurred as a result of the purchase or sale of Coins by an IRA. Such material must be made available to IRA depositors prior to the placing of any purchase or sale orders for Coins.

(9) All fees charged by the disqualified person with respect to services involving the Coins, including but not limited to fees for the storage of Coins, must be reasonable.

(10) No interest may be charged on any outstanding extension of credit with respect to transactions in Coins covered by the requested exemption.

(11) To permit verification that a Coin transaction has been consummated on a basis at least as favorable as an arms-length transaction with an unrelated party, the disqualified person must maintain or cause to be maintained for a period of at least six years from the date of the transaction such records as are necessary for the appropriate governmental entity and the IRA depositor involved to determine that the conditions of the exemption have been met. These records must be available for examination during normal business hours and must include daily information indicating each customer (including each IRA and each other client) with whom a Coin transaction was consummated, the price and number of Coins involved and the date and time of day at which the transaction was consummated. Notwithstanding these recordkeeping requirements, a prohibited transaction should not be deemed to have occurred if, due to circumstances beyond the control of the disqualified person, such records are lost or destroyed prior to the end of the six-year period.

7. Hardship or Economic Loss if the Requested Relief is Denied

According to the applicant, if the requested relief is not granted, the purpose of Code section 408(m)(3), which was added to the Code by section 1144(a) of the Tax Reform Act of 1986 to permit IRAs to invest in Coins commencing in 1987, will be frustrated, and the Mint's publicly expressed desire that the Coins be as widely available to the public as possible without sizable transaction costs will be thwarted. The applicant further represents that the ability of authorized purchasers to maintain an orderly, uninterrupted and two-way market for Coins, as is required pursuant to the agreement each authorized purchaser enters into with the Mint, will be impeded.

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[9] Section 4975(e)(3) defines a fiduciary as any person who (A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition or its assets, (B) renders investment advice for a fee or other compensation direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so or (C) has any discretionary authority or discretionary responsibility in the administration of such plan. This term includes any person designated by a named fiduciary to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan pursuant to ERISA section 405(c)(1)(B).

The applicant contends that, because of the significant portion of the IRA market which Pru-Bache and certain other authorized purchasers represent, a large number of IRA depositors will be disadvantaged if direct purchases and sales are not permissible. In this regard, the applicant notes that for a firm such as Pru-Bache, not only IRAs of its own customers are involved, but also those IRAs of the customers of its correspondent firms for which it serves as custodian.

Discussion of the Proposed Exemption

1. Scope

The exemption proposed herein by the Department would provide relief from the restrictions of Code section 4975(c)(1) (A), (B) and (D) for the purchase and sale of Coins between Title II IRAs and disqualified persons with respect to such IRAs which are authorized purchasers of Coins from the Mint,[10] which act as broker-dealers in Coins, and which are banks or other approved persons referenced in Code section 408(a)(2) and 408(h) with respect to such IRAs. Under the proposal, relief would be provided only for purchases and sales of Coins between such disqualified persons and IRAs with respect to which the IRA depositor either self-directs the IRA investments or delegates investment discretion over assets in the IRA to a third person who is independent of and unrelated to the disqualified person or any affiliate thereof. The proposed exemption would also permit the extension of credit on an interest-free basis in connection with such purchases and sales. Although the applicant requested relief only from the restrictions of Code section 4975(c)(1) (A) and (B), the transactions contemplated by the exemption may be prohibited by section 4975(c)(1)(D). Accordingly, the Department has expanded the scope of the proposed exemption to cover transactions described in Code section 4975(c)(1)(D). The proposed exemption does not include relief from the restrictions of Code section 4975(c)(1)(C). The Department believes that any relief from the restrictions of that section that may be appropriate in connection with the services contemplated by the application is available in accordance with the conditions contained in Code section 4975(d)(2). See 26 CFR 54.4975-6. Consistent with this approach, the Department does not believe that it is necessary to specify in the proposed exemption, as suggested by the applicant, that all fees for services involving the Coins must be reasonable, as one of the conditions of the statutory exemptions for services described in 26 CFR 54.4975-6 is that compensation for the provision of services by a party in interest must be reasonable.

The applicant did not request relief from the self-dealing restrictions of Code section 4975(c)(1) (E) or (F), explaining in this regard that a disqualified person should not, for purposes of the exemption, be deemed to be a fiduciary solely by reason of providing custodial services to IRAs. In this connection, the Department is not providing any relief from the restrictions of Code section 4975(c)(1) (E) or (F).

Therefore, no relief would be provided under the proposal for any fiduciary self-dealing, including that of independent third parties who are authorized to direct transactions in Coins on behalf of an IRA. The Department notes, however, that if a fiduciary does not exercise any of the authority or control that makes him a fiduciary under Code section 4975(e)(3) in connection with a transaction covered by this proposal, that fiduciary has not engaged in a transaction described in Code section 4975(c)(1)(E).

The proposed exemption limits relief to transactions where neither the authorized purchaser nor any affiliate has any discretionary authority or control respecting the management or disposition of the IRA assets involved in the transaction or renders investment advice respecting those assets. For example, no relief would be provided where general investment instructions are received by an authorized purchaser or affiliate which has discretion to choose between the purchase of gold or silver coins.

2. Proposed Conditions

The proposed exemption contains no special rules with respect to the kinds of investments which must be available to Title II IRAs which invest in Coins. However, the proposed exemption incorporates an arm's-length standard which is more comprehensive than the standard suggested by the applicant. Under the applicant's suggested standard, each covered Coin transaction would have to be at least as favorable to the IRA as an arm's-length transaction with an unrelated party would be. Under the Department's proposed retroactive and prospective exemption, covered Coin transactions would be required to meet both a "general" and a "particular" arm's-length test. Under the "general" arm's length test, at the time the transaction is entered into, the terms of the transaction must be not less favorable to the IRA than the terms generally available in comparable Coin transactions between unrelated parties. Under the "particular" arm's-length test, at the time the transaction is entered into, the terms of the transaction must be not less favorable to the IRA than the terms afforded by the authorized purchaser or any affiliate thereof in comparable Coin transactions involving unrelated parties.[11]

Under the proposed exemption, payment for and delivery of Coins in settlement of covered transactions must be made simultaneously, and in no event more than 10 business days after the execution [12] of a transaction. An extension of credit in connection with a covered purchase or sale of Coins qualifies for relief under the proposal only if no interest is charged for the period of time between execution and settlement.

The proposed exemption also would require that the person directing a covered transaction is provided with current price quotations so that he or she will know the exact price at which the purchase or sale will occur. In addition, the proposed exemption would require, with respect to transactions entered into subsequent to the date 90 days after grant of the final exemption, that an authorized purchaser provide to the person directing investments of the IRA, prior to engaging in a covered transaction with the IRA, certain timely and material written information concerning transactions in Coins. The information would include a discussion of the final class exemption granted by the Department with respect to transactions in Coins, an explanation of arrangements for the storage of Coins and a general description of the manner in which Coins are priced in the market.

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[10] Under the proposed exemption, IRA transactions in Coins would be eligible for relief under the proposal only if they are effected with authorized purchasers which also regularly engage in Coin transactions with persons other than IRAs.

[11] For example, where a disqualified person provides a price quote to an IRA for the purchase of a Coin from an IRA, whether the price should include any numismatic premium will depend upon the applicable facts and circumstances, e.g. where the price paid for a Coin in a transaction between unrelated parties would reflect a numismatic premium, an equivalent premium must be reflected in the price which a disqualified person pays for a Coin in a comparable transaction with an IRA.

[12] The proposed exemption clarifies the term "execution" by defining it as the acceptance of an offer to purchase or sell a Coin in a covered transaction such that both the IRA and the authorized purchaser are legally obligated to complete the transaction as directed. For example, it is the Department's understanding that the terms of the transaction are binding on both the IRA and the disqualified person at the time the quoted price is accepted by the party directing transactions on behalf of the IRA.

This information must explain that the disqualified person will act as a principal in Coin transactions with IRAs and include a description of any minimum requirement for the number of Coins which can be purchased or sold, as well as an explanation of any fees or special or minimum transaction costs that would be incurred as the result of the purchase or sale of Coins by an IRA. Although such information would have to be provided to IRA customers prior to the placing of any purchase or sale orders for Coins, it should be noted that this basic requirement can be satisfied by one-time, "up-front" disclosure to both new an existing IRA customers. However, supplemental information must be furnished to the person directing investments of IRAs which have invested in Coins by the authorized purchaser within a reasonable time if the market, or the basis on which the disqualified person purchases, sells or holds Coins, changes materially.

The proposal also provides that the authorized purchaser must promptly (but in no event later than ten days after the execution of a transaction) issue a separate written confirmation statement with respect to each of the transactions covered by the exemption, indicating the price and number of Coins involved, the date of the transaction and the status of the authorized purchaser as a principal in the transaction. Finally, the authorized purchaser must retain records which are necessary to determine that the conditions of the exemption have been met, including relevant information concerning each transaction in Coins between the authorized purchaser and all IRA and non-IRA customers. Such data must include the price and number of Coins involved, and the date and time at which each transaction was executed. These records are designed to enable the appropriate governmental entity or persons directing the covered transactions to determine whether the conditions of the exemption have been met.

3. Notice to Interested Parties

Because all those with an interest in the investments of IRAs could conceivably be considered interested persons, the Department has determined that the only practical form of notice is publication in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the exemption affect the requirement of section 408(a) of the Code that the IRA must operate for the exclusive benefit of the individual for whose benefit the IRA is maintained and his or her beneficiaries.

(2) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and of the individuals for whose benefit the IRAs are maintained and protective of the rights of those individuals and their beneficiaries.

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) If granted, the pending class exemption will not extend to the restrictions pertaining to fiduciaries described in section 4975(c)(1) (E) or (F) of the Code.

Written Comments

All persons are invited to submit written comments to the address and within the time period set forth above. All comments will be made part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting provisions that are included in this proposed class exemption are being submitted to the Office of Management and Budget for its review and approval.

Proposed Exemption

On the basis of the facts and representations set forth in the application and this document, the Department proposes the following exemption under the authority of section 4975(c)(2) of the Code, pursuant to ERISA Procedure 75–1:

Section I: Definitions and Special Rules

The following definitions apply to this exemption.

(a) "Authorized purchasers" are banks or other persons referenced in section 408(a)(2) or (h)— of the Internal Revenue Code of 1986 (Code) that are approved by the United States Mint (the Mint), for eligibility to purchase the American Eagle U.S. gold or silver bullion coins which are described in section 5112(a) (7), (8) and (10) or section (e) of Title 31 of the United States Code (Coins), directly from the Mint in bulk quantities.

(b) The term "covered transaction" means a transaction described in section II of this exemption.

(c) "IRA" means an individual retirement account described in Code section 408(a) with respect to which the authorized purchaser is a disqualified person. For purposes of this exemption, the term "IRA" shall not include an IRA which is an employee benefit plan covered by Title I of the Employee Retirement Income Security Act of 1974.

(d) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, member of the family (as defined in Code section 4975(e)(6)), brother, sister, or spouse of a brother or sister, of the person;

(3) Any corporation or partnership of which the person is an officer, director or partner.

The term "control" means the power or exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "execution"means the acceptance of an offer to purchase or sell a Coin in a covered transaction such that both the IRA and the authorized purchaser are legally obligated to complete the transaction as directed.

(f) The term "accredited person" means any duly authorized employee of the Department of Labor or the Internal Revenue Service or the person directing the investments of an IRA.

(g) The term "independent third party" excludes the authorized purchaser and any person affiliated therewith.

Section II. Covered Transactions

Effective January 1, 1987, if each condition of section III of this exemption is satisfied, the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) [illegible] or (D) of the Code shall not apply to—

(a) The purchase of Coins by an IRA from an authorized purchaser;

(b) The sale by an IRA of Coins to an authorized purchaser; or

(c) The extension of credit in connection with the settlement of transactions described in (a) or (b).

Section III. Conditions

(a) The transaction is directed either by the individual for whose benefit the IRA is maintained or by an independent third party appointed by such individual.

(b) Neither the authorized purchaser nor any affiliate thereof has any discretionary authority or control respecting the management or disposition of the IRA assets involved in the transaction, or renders investment advice (within the meaning of 26 CFR 54.4975–9(c)) respecting those assets.

(c) Each denomination of Coins offered by IRAs pursuant to this exemption is purchased and sold by the authorized purchaser in transactions with unrelated parties in the ordinary course of its business.

(d) At the time the transaction is executed, the terms of the transaction must be not less favorable to the IRA than (i) the terms generally available in comparable Coin transactions between unrelated parties, and (ii) the terms afforded by the disqualified person or any affiliate thereof in comparable Coin transactions involving unrelated parties.

(e) Payment for, and delivery of, Coins in settlement of a covered transaction is made simultaneously and in no event more than 10 business days after execution of the transaction involved, and no interest is charged for the period of time between execution and settlement.

(f) The disqualified person provides current price quotations to the person directing the investments of the IRA immediately prior to the time a covered transaction is executed so that such person will know the exact price at which the purchase or sale will occur.

(g) A separate written confirmation statement is issued with respect to each covered transaction to the person who directs the transaction for the IRA. The confirmation shall disclose the date, quantity, and price of the Coins bought or sold as well as the fact that the disqualified person acted as a principal in the transaction. The confirmation shall be issued in no event more than 10 business days after the execution of the transaction.

(h) With regard to transactions entered into subsequent to [enter date 90 days after grant of the final exemption], prior to its engaging in covered transactions the disqualified person prepares and provides to the person directing the investments of the IRA material information regarding transactions in Coins, and furnishes supplemental information to the person directing the investments of IRAs which have invested in Coins if material changes occur. This information must include:

(1) A general description of the manner in which Coins are priced in the market.

(2) Disclosure of any fees for services or special or minimum transaction costs that will be incurred as the result of the purchase or sale of Coins by an IRA.

(3) Any minimum quantity of Coins which must be bought or sold.

(4) Disclosure of the role of the disqualified person as a principal in the transaction.

(5) An explanention that the purchase or sale of Coins between the IRA and the authorized purchaser would be prohibited in the absence of an exemption, a discussion of the arm's-length pricing standards of this exemption and disclosure that records are accessible which would enable the person directing investments of the IRA to determine whether the conditions of this exemption have been met.

(i) The disqualified person maintains or causes to be maintained for a period of at least six years from the date of settlement of a covered transaction such records as are necessary to allow accredited persons to determine whether the conditions of the exemption have been met. The records shall include daily information indicating each customer (including each IRA and each other client) with whom a transaction involving Coins was consummated, the price and number of Coins involved, and the date and time at which the transaction was executed. The persons directing the investments of an IRA are not authorized to examine a disqualified person's trade secrets or financial information which is privileged or confidential. The records must be reasonably accessible and must be available for examination during normal business hours. Notwithstanding these recordkeeping requirements, a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the disqualified person, such records are lost or destroyed prior to the end of the six year period.

Signed at Washington, DC, this 23rd day of March, 1988.

David M. Walker,

CPA, Assistant Secretary of Labor Pension ansd Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 88-6869 Filed 3-28-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-30]

NASA Advisory Council (NAC) Aeronautics Advisory Committee (AAC); Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

DATE AND TIME: April 18, 1988, 8:30 a.m. to 4:30 p.m.; and April 19, 1988, 8:30 a.m. to 11:30 a.m.

ADDRESS: Florida State University, Education Building, Room 202, Tallahassee, FL 32306.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph A. Graves, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

April 18, 1988

8:30 a.m.—Discussion of Initial Draft of Final Report Recommendations.

4:30 p.m.—Adjourn.

April 19, 1988

8:30 a.m.—Summary of Final Report.
11:30 a.m.—Adjourn.

March 22, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–6795 Filed 3–28–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88–31]

NASA Advisory Council (NAC) Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATE AND TIME: April 20, 1988, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2775.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda:

April 20, 1988

8:30 a.m.—Opening Remarks by Chairman.
8:45 a.m.—Overview—Space Technology.
9:15 a.m.—Long Range Program Planning—Space Technology/Civil Space Technology Initiative/Pathfinder.
1:30 p.m.—Ad Hoc Review Team Reports.
3 p.m.—Action Summary from SSTAC/Aerospace Research and Technology Subcommittee Meeting.
4 p.m.—Summary Session.
4:30 p.m.—Adjourn.

March 22, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–6796 Filed 3–28–88; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498]

Issuance of Facility Operating License; Houston Lighting and Power Co. et al.

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–76 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas, (the licensees) which authorizes operation of the South Texas Project, Unit 1 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

On August 21, 1987, the Commission issued Facility Operating License No. NPF–71 to the licensees which authorized operation of South Texas Project, Unit 1, to five percent of reactor power (190 megawatts thermal). License NPF–767 supersedes NPF–71.

The South Texas Project, Unit 1 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on June 18, 1987 (52 FR 23217), July 2, 1987 (52 FR 25094) and December 16, 1987 (52 FR 47805).

For further details with respect to this section, see (1) Facility Operating License No. NPF–76, with Technical Specifications (NUREG–1305) and the Environmental Protection Plan; (2) the Commission's Safety Evaluation Report, dated April 1986 (NUREG–0781), and Supplements 1, thru 5; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement, dated August 1986 (NUREG–1711).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway , Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF–76 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects–III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1, thru 5 (NUREG–0781) and the Final Environmental Statement (NUREG–1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982 or by calling (202) 275–2060 or (202) 275–2171. All orders should clearly identify the NRC publication number and requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland this 22nd day of March, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate–IV, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–6808 Filed 3–28–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: U.S Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S. Code, Chapter 35) this notice announces a proposed revision of forms which collect information from the public. Standard Form 171, Application for Federal Employment, Standard Form 171–A, Continuation Sheet for SF 171, and the SF 172, Amendment to Application for Federal Employment—SF 171, comprise the major application forms used by applicants for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service, in accordance with section 3302, Title 5, United States Code. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 20 working days of the date of this publication.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CALL: Laurence T. Lorenz, (202) 653–8076.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–6809 Filed 3–28–88; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on February 23, 1988 (53 FR 5333). Individual authorities established or revoked under Schedule A, B, or C between February 1, 1988, and February 29, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during February.

Schedule B

No Schedule B exceptions were established or revoked during February.

Schedule C

Department of Agriculture

One Staff Assistant to the Special Assistant to the Secretary. Effective February 3, 1988.

One Confidential Assistant to the Assistant Secretary for Economics. Effective February 3, 1988.

One Private Secretary to the Deputy Assistant Secretary for Administration. Effective February 24, 1988.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective February 24, 1988.

One Confidential Assistant (Congressional Relations) to the Assistant Secretary for Governmental and Public Affairs. Effective February 29, 1988.

One Secretary (Stenography) to the Administrator for Federal Grain Inspection Service. Effective February 29, 1988.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective February 29, 1988.

Department of Air Force

One Secretary (Stenography) to the Assistant to the Vice President for National Security Affairs. Effective February 29, 1988.

Department of Commerce

One Confidential Aide to the Special Assistant to the Secretary. Effective February 10, 1988.

One Special Assistant to the Director for Office of Public Affairs. Effective February 12, 1988.

One Confidential Assistant to the Deputy Assistant Secretary for Export Enforcement. Effective February 12, 1988.

One Director, Office of Public Affairs to the Under Secretary. Effective February 22, 1988.

One Director, Congressional Affairs Staff to the Under Secretary. Effective February 24, 1988.

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective February 29, 1988.

Department of Defense

One Special Assistant to the Assistant Secretary of Defense, Legislative Affairs for Foreign Policy. Effective February 2, 1988.

One Private Secretary to the Assistant Secretary for Reserve Affairs. Effective February 3, 1988.

One Special Assistant to the Director for Strategic Defense Initiative Organization. Effective February 10, 1988.

One Special Assistant to the Assistant Secretary of Defense for International Security Policy. Effective February 25, 1988.

Department of Education

One Special Assistant to the Executive Assistant for Private Education. Effective February 9, 1988.

One Confidential Assistant to the Under Secretary. Effective February 12, 1988.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective February 12, 1988.

One Director to the Deputy Assistant Secretary for Legislation Liaison. Effective February 16, 1988.

One Staff Assistant to the Deputy Under Secretary for Management. Effective February 22, 1988.

One Deputy Secretary's Regional Representative to the Secretary's Regional Representative. Effective February 26, 1988.

Department of Energy

One Staff Assistant to the Administrator for Economic Regulatory Administration. Effective February 12, 1988.

One Special Assistant to the Director for Office of Policy, Planning and Analysis. Effective February 16, 1988.

One Staff Assistant, Programs and Policy to the Assistant Secretary for Management and Administration. Effective February 19, 1988.

One Staff Assistant to the Director for Office of External Affairs. Effective February 26, 1988.

One Special Project Liaison Specialist to the Director for Division of Public Liaison. Effective February 26, 1988.

Department of Health and Human Services

Two Special Assistants to the Commissioner for Social Security. Effective February 4, 1988.

One Confidential Assistant to the Commissioner for Social Security. Effective February 5, 1988.

One Congressional Relations Specialist to the Deputy Commissioner for Policy and External Affairs. Effective February 11, 1988.

One Special Assistant to the Assistant Secretary for Human Development Services. Effective February 12, 1988.

Department of Housing and Urban Development

One Special Assistant to the Secretary for Executive Secretariat Operations. Effective February 12, 1988.

One Executive Assistant to the Regional Administrator. Effective February 24, 1988.

One Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs. Effective February 26, 1988.

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective February 29, 1988.

One Special Assistant to the Deputy Assistant Secretary for Program Development. Effective February 29, 1988.

Department of the Interior

One Congressional Affairs Officer to the Assistant to the Director/Director for Office of External Affairs. Effective February 16, 1988.

One Confidential Assistant to the Deputy Solicitor. Effective February 25, 1988.

Department of Justice

One Special Assistant to the Deputy Assistant Attorney General. Effective February 18, 1988.

Department of Labor

One Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective February 16, 1988.

One Director to the Assistant Secretary for Public and Intergovernmental Affairs. Effective February 22, 1988.

Department of State

One Protocol Officer (Visits), to the Chief of Protocol. Effective February 12, 1988.

Department of Transportation

One Staff Assistant to the Secretary. Effective February 16, 1988.

One director, Office of Speechwriting and Research to the Assistant Secretary for Public Affairs. Effective February 18, 1988.

Department of the Treasury

One Special Assistaant to the Assistant Secretary for Public Affairs and Public Liaison. Effective February 16, 1988.

ACTION

One Director of Public Affairs to the Director. Effective February 29, 1988.

Agency for International Development

One Public Affairs Specialist to the Director for Office of Public Liaison. Effective February 24, 1988.

One Congressional Liaison Officer to the Deputy Director for Office of Legislative Affairs. Effective February 26, 1988.

Arms Control and Disarmament

One Secretary (Steno) to the Director. Effective February 16, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective February 5, 1988.

One Special Assistant to the Commissioner. Effective February 19, 1988.

Equal Employment Opportunity Commission

One Confidential Assistant to the Director for Office of Communication and Legislative Affairs. Effective February 12, 1988.

Federal Communications Commission

One Confidential Staff Assistant to the Director for Office of Legislative Affairs. Effective February 9, 1988.

Federal Deposit Insurance Corporation

One Legislative Advisor to the Director for Legislative Affairs. Effective February 4, 1988.

General Services Administration

One Director, Office of Business and Industry Affairs to the Associate Administrator for Congressional and Industry Relations. Effective February 19, 1988.

One Confidential Assistant to the Associate Administrator for Congressional and Industry Relations. Effective February 26, 1988.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective February 22, 1988.

Office of Management and Budget

One Secretary to the Director. Effective February 26, 1988.

Office of Personnel Management

One Deputy Director to the Director for Office of Congressional Relations. Effective February 1, 1988.

Small Business Administration

One Special Assistant to the Assistant Administrator for Public Communications. Effective February 24, 1988.

Securities and Exchange Commission

One Confidential Assistant to the Commissioner. Effective February 19, 1988.

One Confidential Assistant to the Regional Administrator. Effective February 22, 1988.

United States Tax Court

One Trial Clerk to the Judge. Effective February 12, 1988.

One Trial Clerk to the Judge. Effective February 24, 1988.

U.S. Office of Personnel Management.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Constance Horner,

Director.

[FR Doc. 88–6632 Filed 3–28–88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 23, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the

Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Global Government Plus Fund, Inc.
  Common Stock, $0.01 Par Value (File No. 7–3162)
Owens & Minor, Inc.
  Common Stock, $2.00 Par Value (File No. 7–3163)
Total Petroleum (North America) Ltd.
  $2.88 Preferred Stock (File No. 7–3164)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 13, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extentions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6855 Filed 3–28–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16334; 812–5643]

Freedom Investment Trust (Formerly Filed Under Freedom Telecommunications Fund) et al.; Application

March 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Freedom Investment Trust ("Trust"), Tucker, Anthony & R.L. Day, Inc. ("Tucker Anthony") and Tucker Anthony Management Corporation ("Adviser") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under section 11(a) for approval of an exchange offer and under section 6(c) for an exemption from section 22(d).

Summary of Application: Applicants seek an order (i) approving the exchange of shares of a new portfolio of the Trust, an open-end, management investment company, for securities of a registered unit investment trust, and (ii) amending prior orders to permit the waiver of a contingent deferred sales charge ("CDSL") in certain instances and to delay application of existing exchange privileges to the new portfolio.

Filing Dates: The application was filed on March 6, 1987, and amended on May 26, 1987, under the name of Freedom Telecommunications Fund, and amended thereafter under the name of Freedom Investment Trust on January 13, and March 21, 1988.

Hearing of Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Alan C. Porter, Esq., Sullivan & Worcester, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–3026 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations: 1. The Trust is a Massachusetts business trust organized on March 29, 1984, and is registered under the 1940 Act of an open-end, management investment company. The Trust consists of seven separate portfolios which are currently being offered to the public ("Funds"). The Adviser serves as investment adviser to each of the Funds. The Adviser is a Massachusetts corporation and is an indirect, wholly-owned subsidiary of John Hancock Mutual Life Insurance Company ("John Hancock"). Tucker Anthony, a brokerage firm which is a member of the New York Stock Exchange, is also a subsidiary of John Hancock. Tucker Anthony serves as a principal underwriter for the Funds pursuant to a distribution agreement, adopted in accordance with Rule 12b–1 under the 1940 Act, with the Trust.

2. The Telephone Exchange Fund—AT&T Shares ("UIT"), created under New York law, is registered as a unit investment trust under the 1940 Act. Tucker Anthony is one of its sponsors and the United States Trust Company of New York ("U.S. Trust") is its trustee. The UIT's objective is to permit investors holding common stock of American Telephone and Telegraph Company ("AT&T") to continue to hold the common stocks of AT&T and the seven regional telephone companies distributed to AT&T shareholders in 1983 pursuant to a court ordered reorganization of AT&T in the convenient form of units of the UIT. The UIT will terminate according to the terms of its Trust Indenture and Agreement ("Indenture") on October 1, 2008. Under such terms, the sponsors, in their discretion, may jointly agree to terminate the UIT prior to that time if its aggregate net asset value is less than approximately $40 million. The Indenture also provides that the UIT shall terminate if its aggregate net asset value is less than $1 million. As of December 30, 1987, the aggregate net asset value of the UIT was approximately $120,342,537.

3. Applicants propose to offer to exchange the shares of a new portfolio of the Trust, the Freedom Telecommunications Fund ("New Fund"), for units of the UIT of the basis of the relative new asset values of such shares and units ("Exchange Offer") on the date the exchange is consumated ("Exchange Data"). The Trust will enter into a dealer manager agreement with Tucker Anthony, and Tucker Anthony will agree to use its best efforts to form and manage a group of soliciting dealers, including itself ("Soliciting Dealers"), to solicit deposits of units of the UIT to be exchanged for shares of the New Fund.

4. All tendered units of the UIT that have been accepted for deposit under the Exchange Offer will be held in escrow by U.S. Trust, as exchange agent, until the Exchange Date, subject to the satisfaction of the conditions of the Exchange Offer. The unitholder will have the right to withdraw or redeem his units, and will remain the beneficial owner of such units until the Exchange Offer is consummated. Dividends payable to unitholders of the UIT prior

to consummation of the Exchange Offer will be forwarded in full to tendering unitholders. It is a condition of the Exchange Offer that UIT units having an aggregate net asset value of at least $25 million shall have been accepted for deposit prior to the Exchange Date. If the Exchange Offer is not consummated, U.S. Trust will return all units promptly without expense to tendering unitholders. If the Exchange Offer is consummated, then on the Exchange Date, units of the UIT accepted for deposit will be redeemed in kind and U.S. Trust, as exchange agent, will deliver the underlying common stocks of AT&T and the seven regional telephone companies to the Trust. Upon receipt of such common stocks, the Trust will issue shares of the New Fund at their net asset value in an aggregate amount equal to the aggregate redemption price (i.e., net asset value) of the units of the UIT redeemed, and the New Fund will commence operations.

5. Under the terms of the Exchange Offer, tendering unitholders of the UIT will not be charged a sales load, selling commission or administrative charge for exchanging their units for shares of the New Fund. Tucker Anthony will pay fees to Soliciting Dealers in connection with tender of UIT units. No other fees will be charged by Tucker Anthony or the Soliciting Dealers in respect of such solicitations. The New Fund will pay its organizational expenses and certain offering expenses in connection with the Exchange Offer, but it will not pay Soliciting Dealers' fees.

6. Consummation of the Exchange Offer is also conditioned upon favorable rulings from the Internal Revenue Service ("IRS") to the effect that, for federal income tax purposes, the Exchange Offer will be treated as a tax-free reorganization. To obtain this ruling, the Trust has represented to the IRS that for a period of six months after consummation of the Exchange Offer it will only issue shares of the New Fund to those UIT unitholders who become shareholders of the New Fund under the Exchange Offer. Thereafter, shares of the New Fund will be continuously offered to the public and distributed in the manner described below.

7. In Investment Company Act Release No. 15118 (May 20, 1986), Investment Company Act Release No. 15455 (December 4, 1986) and Investment Company Act Release No. 15745 (May 19, 1987) (collectively, "Prior Orders"), the Trust obtained orders of the SEC which permit the Trust to impose, defer and waive, in certain instances, a CDSL on redemptions of shares of existing and future Funds of the Trust. Pursuant to the Prior Orders, the New Fund will impose, defer and waive, in certain instances, a CDSL upon redemption of shares of the New Fund. The New Fund also proposes to waive the CDSL upon redemption of those shares of the New Funds acquired under the Exchange Offer. The Prior Orders also permit certain exchange privileges among the present and future Funds of the Trust and certain other mutual funds in the Freedom Family of Funds and Tucker Anthony Family of Funds. The Applicants propose to delay application of such exchange privileges with respect to the shareholders of the New Fund until shares of the New Fund are offered to the public generally (i.e., six months after consummation of the Exchange Offer). Thereafter, Applicants propose to implement the exchange privileges with respect to the New Fund pursuant to the Prior Orders. Also, shareholders of other Funds of the Trust and the other mutual funds referred to above will only be able to exchange their shares for shares of the New Fund when shares of the New Fund are offered to the public generally. In addition, if shares of the New Fund that were issued upon consummation of the Exchange Offer are exchanged for shares of any of the mutual funds covered by the Prior Orders, it is proposed that any CDSL payable upon redemption of such shares be waived. Finally, it is expected that the New Fund will adopt a distribution plan under Rule 12b–1 under the 1940 Act comparable to those adopted by the Funds other than Freedom Money Market Fund, a Fund of the Trust which has no such plan. All of these transactions are and will be subject to the conditions of the Prior Orders which require compliance with the provisions of Rule 22d–1 under the 1940 Act, Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future, and proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

Applicants' Legal Conclusions: 1. The terms and conditions of the Exchange Offer are reasonable and fair and are consistent with the policy and purposes of sections 11(a) and 11(c) of the 1940 Act. Further, the Exchange Offer will not have inequitable results to the shareholders of the New Fund or unitholders of the UIT, and the advantages which will accrue to Tucker Anthony and the Adviser as a result of the Exchange Offer will not constitute overreaching. Since it was not feasible to reorganize the UIT into a management investment company, the Applicants proposed the Exchange Offer on the basis of the relative net asset values of the New Fund and the UIT without any sales charge, selling commission or administrative fee. The New Fund will not pay Soliciting Dealers' fees, but will pay its organizational expenses and certain offering expenses in connection with the Exchange Offer which will be comparable in type and amount to those paid by other newly-organized, open-end, management investment companies. Applicants believe it is fair for the New Fund to bear its reasonable organizational and offering expenses. In addition, as a result of the $25 million minimum deposit requirement of the Exchange Offer and in light of the Adviser's commitment to limit expenses of the New Fund prior to commencement of a public offering of the New Fund's shares, the New Fund will have sufficient net assets to commence operations as an economically viable fund. While it is not possible for Applicants to predict whether the New Fund will experience net redemptions thereafter, redemptions of the New Fund shares may be offset, in whole or in part, by sales of additional shares of the New Fund.

2. Although the New Fund shareholders will incur certain ongoing operating expenses, some of which will be materially higher than the level of ongoing operating expenses incurred by the UIT and others which are not incurred by the UIT, such expenses will be necessary, customary, reasonable and fair, and comparable in amount to the expenses incurred by other open-end, management investment companies. In addition, the New Fund shareholders will experience benefits attributable to management of the New Fund's portfolio which will outweigh the higher level of costs and expenses. Any management fee will be subject to approval by the New Fund's trustees and shareholders and to the fiduciary obligations imposed by the 1940 Act. In addition, the Adviser has agreed to condition the order on certain undertakings described below designed to limit the New Fund's expenses prior to commencement of a public offering of the New Fund's shares. Furthermore, no amounts paid to Tucker Anthony pursuant to the Rule 12b–1 plan will be used to pay expenses of the Exchange Offer.

3. The New Fund's expected level of portfolio turnover will not be excessive, will be reasonable and fair, and will compare favorably with the portfolio turnover rates of other management investment companies. Also, the New Fund will incur brokerage commissions on its portfolio transactions which will

be reasonable and fair, will be comparable in the amount to those paid by other other-end, management investment companies, will not be excessive, and on the whole will be more than offset by the gains from the purchases and sales of portfolio securities resulting in such commissions.

4. In sum, additional expenses which will result from operation of the New Fund as a management investment company should not preclude unitholders of the UIT from making an informed decision to exchange their units of the UIT for shares of the New Fund. Applicants have agreed to condition the order on certain undertakings designed to ensure that the UIT unitholders will receive disclosure documents which will prominently disclose the higher expenses of the New Fund compared to the UIT. Also, the operation of the New Fund as a separate portfolio of the Trust will result in certain significant operational economies which might not otherwise be available to the New Fund if it were operated as a separate entity. The New Fund will be a separable portfolio of the Trust and all expenses of the New Fund will be charged solely to the assets of the New Fund. Any expenses not identifiable solely to the New Fund will be allocated among the portfolios of the Trust in such manner as the Trustees of the Trust, in their sole discretion, deem to be fair and equitable. Currently, the Trustees of the Trust allocate such expenses on the basis of relative net asset values and intend to do so in the future.

5. The Exchange Offer will not adversely affect unitholders of the UIT who determine not to exchange their units. The redemption of units of the UIT in connection with the Exchange Offer is not expected to increase materially the UIT's expenses on a per unit basis, nor is it expected to result in the premature termination of the UIT, especially in light of the $25 million minimum deposit requirement of the Exchange Offer and the agreement by Tucker Anthony and the Adviser to condition the order on certain undertakings designed to prevent such events. Furthermore, the termination of the UIT, either prematurely or pursuant to its terms, will not result in unfairness to remaining unitholders since they would receive a liquidating distribution in kind of the underlying stock of the UIT and any undistributed cash dividends.

6. Although IRS qualifications may result in the generation of some capital gains to the New Fund and its shareholders, the tax-free exchange will postpone realization of capital gains on all the New Fund's portfolio securities and, in any case, will minimize such gains, transaction costs and brokerage commissions. In addition, the New Fund's prospectus will prominently disclose the tax consequences to permit UIT unitholders to consider whether to participate in the Exchange Offer in light of their particular tax situation.

7. The requested order pursuant to section 6(c) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

The waiver of the CDSL upon redemption of New Fund shares issued upon consummation of the Exchange Offer will not result in the occurrence of any of the abuses intended to be covered by section 22(d) of the 1940 Act. Such waiver will not harm the New Fund, the other mutual funds covered by the Prior Orders or their shareholders, nor will it unfairly discriminate among shareholders or investors. In addition, the CDSL and waiver thereof will be done subject to the conditions set forth in the Prior Orders.

8. Furthermore, it is necessary and appropriate to amend the Prior Orders to the extent necessary to delay application of the exchange privilege described in such Prior Orders with respect to the New Fund in order to maintain the tax-free status of the Exchange Offer.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. In order to assure that UIT unitholders will be fully informed of the potential disadvantages (as well as the potential advantages) of the Exchange Offer, Applicants will prepare and distribute promotional material in connection with the Exchange Offer which prominently discloses that the New Fund expects to incur management fees, brokerage commissions, 12b–1 plan payments, transfer agent fees and expenses, custody fees and expenses, and other ongoing operating expenses which, in the aggregate, will be materially higher than the expenses incurred by the UIT. This promotional material will be in addition to the disclosure documents required by the Securities Act of 1933 and the 1940 Act. Also, these and other material differences between the New Fund and the UIT will be prominently disclosed in the New Fund's prospectus included in the Trust's registration statement relating to the Exchange Offer.

2. The Adviser will reduce or waive its fee in order to limit total expenses of the New Fund (exclusive of interest, taxes, brokerage items, 12b–1 plan payments and extraordinary expenses) during the first six months of its operations to the lower of (i) 1.25% annually of the monthly average net assets of the New Fund or (ii) 10 basis points below the lowest expense limitation imposed in any jurisdiction in which the New Fund is making sales of its shares or has qualified its shares for sale.

3. Tucker Anthony will not, jointly with the other sponsors, exercise its discretion to terminate the UIT unless the net asset value of the UIT is reduced below $20 million or unless it is required pursuant to its legal obligations as managing sponsor of the UIT to recommend such action as being in the best interests of unitholders. In addition, prior to recommending discretionary termination of the UIT to the other sponsors, Tucker Anthony will waive its managing sponsor's fee and take such other actions within its control to maintain the level of the UIT's expenses at an economically viable level.

4. Applicants will comply with the provisions of proposed Rule llc–1 under the 1940 Act.

5. Concerning operation of the general exchange privilege for which an amended order is requested, in the event that Freedom Money Market Fund adopts a plan of distribution under Rule 12b–1 under the 1940 Act, the time during which shares of Freedom Money Market Fund that are received in an exchange effected in reliance upon the Prior Orders are held by the exchanging shareholder will be included in determining whether the CDSL will be imposed upon a redemption of either such shares of shares received in a subsequent exchange effected in reliance upon the Prior Orders.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6656 Filed 3–28–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 38]

New Car Assessment Program; Deformable Moving Barrier Crash Test Results and Analysis

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for Comments on NHTSA's Deformable Moving Barrier (DMB) Tests.

SUMMARY: This notice announces the availability of crash test reports, test films, and a technical report for nine frontal DMB crash tests conducted at 35 mph as a part of the New Car Assessment Program (NCAP). The DMB tests were designed to explore the mass effect and stiffness characteristics of different size and weight vehicles in multi-vehicle frontal accidents, and to examine the feasibility of using a DMB as a surrogate vehicle in vehicle-to-vehicle crash tests that can produce repeatable test results. The 3,000-pound DMB used in this test series was developed to illustrate the DMB tests concept and should not be considered a final test structure. The DMB tests were conducted using the NCAP test procedures and dummy injury measures. The technical report concludes that the DMB tests appear to reflect the effects of vehicle mass differences and structural crashworthiness on dummy injury measures, based on the statistical relationship demonstrated between vehicle weight and the NCAP injury measures for the head and chest. As a result, it appears that the DMB concept offers the potential for providing consumers with comparative test data on vehicles of different size and weight.

However, before additional DMB developmental activities are undertaken, the agency is interested in obtaining comments on the results of the work already completed. While all views and opinions are invited, the agency is particularly interested in obtaining data which would assist it in evaluating the DMB concept as a means of comparing the crashworthiness of vehicles of different size and weight. The agency seeks written comments on the DMB technical report and its conclusions, on the barrier used in the tests and its repeatability, and on other test data and analyses where a DMB was used in frontal crash tests.

DATE: Written comments on this notice must be submitted no later than May 31, 1988.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and can be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: John M. Machey, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4798).

SUPPLEMENTARY INFORMATION: In November 15, 1984, press release, the agency announced the experimental testing of some 1985 model vehicles in a frontal collision with a DMB to better assess the role of vehicle weight and structure in occupant crash protecting. These DMB tests were conducted as part of the agency's continuing effort to provide more useful crashworthiness information to consumers and to insure that the information presented was not misinterpreted for vehicles of different size and weight. There are many instances in which consumers have misinterpreted NCAP data by mistakenly assuming that small, light vehicles are more crashworthy than large, heavy vehicles based solely on lower injury numbers listed in NHTSA's press releases. However, real-world crash data indicate that the relative risk of fatality in multi-vehicle crashes decreases as vehicle mass increases. The DMB program was initiated to examine the effect of vehicle mass, structure, and resultant dalta V on occupant injury levels. The program was purely experimental and designed to test the concept of frontal DMB testing. The program consisted of head-on impacts between two moving vehicles, a DMB and a model year 1985 vehicle, each moving at 35 miles per hour (mph), a closing velocity of 70 mph. The mass of the DMB was 3,000 pounds and the mass of the nine vehicles involved in the program varied from 2,020 to 3,750 pounds.

The DMB test data and the NCAP test data of indentical vehicles were analyzed to examine the relationships that may exist between the two crash test modes and to compare the test results with real-world crash data.

The DMB technical report reached three conclusions: (1) Statistical analyses demonstrated a weak relationship between test vehicle weight and dummy injury measures; (2) The DMB concept appears to assess the effects of vehicle mass differences and structural crashworthiness; and (3) The DMB appears to offer a repeatable structure for use as a surrogate vehicle in vehicle-to-vehicle crash tests.

This initial experimental DMB program was undertaken to explore the reasonableness of the DMB concept for assessing comparative crashworthiness for vehicles of different size and weight. Therefore, this series of tests is not intended to provide conclusive results on all aspects of a DMB test configuration. Issues concerning the details of the design of the DMB energy-absorbing face, its impact speed, its mass, etc., would need to be addressed in future testing programs if the concept is pursued as a means of examining comparative crashworthiness information on vehicles both within and among vehicle size and weight classes. These two types of comparisons cannot be made in the agency's NCAP tests, where the frontal collision into a fixed rigid barrier represents a head-on collision between two identical vehicles. The agency emphasizes that the DMB tests are experimental and that too little data are available to determine the feasibility of the DMB test configuration in the current or future structure of NCAP.

The agency seeks written comments on the DMB technical report and its conclusions. Comments on the DMB concept, as well as the design of such a barrier and its repeatability, are especially solicited. The DMB test reports, test films, and technical report are available for review in the NHTSA Docket Section, at the above address, under Docket Number 79–17–GR.

The agency also seeks information on other test data and analyses where a DMB was used in frontal crash tests. In particular, the agency is interested in obtaining comments on the information submitted to the agency by General Motors Corporation (GM) on April 16, 1985, concerning their activities in developing an energy absorbing frontal moving barrier as an alternative to the fixed rigid barrier currently used in NCAP. Copies of the GM material are available for review in the NHTSA Docket Section, at the above address, under Docket Number 79–17–GR, item number 047.

Interested persons are invited to submit comments on the experimental DMB test program results and analyses. It is requested but not required that 10 copies of comments be submitted. A 60-day comment period is provided. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies, from which the purportedly confidential information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments in the public docket should enclose in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on March 24, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–6766 Filed 3–28–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Commercial Operations Advisory Committee

AGENCY: Departmental Offices, Treasury.

ACTION: Announcement of advisory committee and solicitation of committee members.

SUMMARY: In accordance with section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), and the Federal Advisory Committee Act, the Department of the Treasury has established an Advisory Committee on Commercial Operations of the United States Customs Service. This notice is to inform members of the public of the establishment of this Committee, provide information on its objective, solicit interested members of the public to serve as members of the Advisory Committee and outline the procedures to follow in making application for membership.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary (Enforcement), Office of Trade and Tariff Affairs, (202) 566–8435.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), established an Advisory Committee on Commercial Operations of the United States Customs Service. At the same time, it repealed the statutory mandate for a Customs User Fee Advisory Committee which had been established by the Consolidated Omnibus Budget Reconciliation Act of 1985. The new Committee's mandate has been expanded to cover all matters involving the commercial operations of the U.S. Customs Service. This area of interest is much larger than that of the previous Committee, which was limited to issues relating to services performed by Customs for which a fee or charge was assessed.

Objectives, Scope and Description of Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is anticipated that the Committee will consider such issues as the time periods during which Customs commercial operations services should be performed; the proper number and deployment of Customs officers necessary to provide adequate and expeditious service; existing, new, or proposed commercial operations programs; and user fees or other charges for services provided by Customs.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a 2-year period before renewal or abolishment and will meet no more than 12 times during that period. The Committee will consist of 20 members (not including the Chairman), selected by the Secretary of the Treasury from representatives of the trade or transportation community served by Customs, the general public, or others who are directly affected by the Customs commercial operations. In addition, members shall represent major regions of the country and no political party may be in the majority. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purposes. Travel and per diem are authorized as necessary.

Application for Advisory Committee Apppointment

Any interested person wishing to serve on the Advisory Committee on Commercial Operations of the United States Customs Service must provide the following:

—Statement of interest and reasons for application;

—Complete biographical information; and

—Political affiliation.

In addition, applicants must agree to submit to preappointment and annual security and tax checks.

The application period for interested candidates will extend to May 31, 1988. Applications should be submitted to the Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Department of Treasury, 1500 Pennsylvania Ave., NW., Room 4004, Washington, DC 20220.

Date: March 24, 1988.

Francis A. Keating, II,

Assistant Secretary of Treasury (Enforcement).

[FR Doc. 88–6816 Filed 3–28–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 60

Tuesday, March 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 9171, March 21, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, March 25, 1988.

CHANGES IN THE MEETING: Determination by the Board to *close* the following previously announced open item(s):

Proposed funding and commissioning of portraits of former Board chairmen.

CONTACT PERSON FOR MORE INFORMATION: MR. JOSEPH R. COYNE, ASSISTANT TO THE BOARD; (202) 452-3204.

Date: March 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6927 Filed 3-25-88; 2:20 pm]

BILLING CODE 6210-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 23, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: March 30, 1988. 12:00 p.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC. 20426

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing for all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 874th Meeting—March 30, 1988, Regular Meeting (12:00 p.m.)

CAP-1.
  Project No. 5146-004, The City of Allentown, Pennsylvania
CAP-2.
  Project No. 1417-004, The Central Nebraska Public Power and Irrigation District
  Project No. 1835-016, Nebraska Public Power District
CAP-3.
  Project No. 9838-002, Catalyst Energy Development Corporation
CAP-4.
  Project No. 9812-001, Clifton Corporation
  Project No. 9977-012, City of Augusta, Georgia
CAP-5.
  Project No. 3194-007, Joseph Martin Keating
CAP-6.
  Project No. 7163-003, Lynchburg Hydro Associates
CAP-7.
  Project No. 2756-007, City of Burlington Electric Department
  Project No. 3101-002, City of Winooski
  Project No. 9413-003, Winooski One Partnership
CAP-8.
  Project Nos. 6727-003 and 008, Northwest Power Company, Inc.
CAP-9.
  Docket Nos. UL87-3-001 and UL87-9-001, Fairfax County Water Authority
CAP-10.
  Project Nos. 10405-001 and 002, Craig W. Scott
CAP-11.
  Project No. 8193-002, William F. Munch
CAP-12.
  Project No. 8875-001, Armstrong-Keta, Inc.
CAP-13.
  Project No. 6944-002, Douglas Water Power Company
  Project No. 10406-000, Craig W. Scott
CAP-14.
  Project Nos. 4685-003 and 10470-001, Long Lake Energy Corporation
  Project No. 2474-001, Niagara Mohawk Power Corporation
CAP-15
  Project No. 9088-000, Northwest Power Company
CAP-16.
  Docket No. ER88-77-000, Duke Power Company
CAP-17.
  Docket No. ER88-224-000, Carolina Power & Light Company
CAP-18.
  Docket No. ER83-657-001, Houston Lighting & Power Company
CAP-19.
  Docket Nos. ER84-604-000 and ER85-477-002, Southwestern Public Service Company
CAP-20.
  Docket No. EL87-45-001, The Cities of Marshall, Blue Earth, Mountain Lake, St. James, and Sauk Centre, Minneosta and Hillsboro, North Dakota v. Northern States Power Company-Minnesota
CAP-21.
  Docket No. ER87-486-002, Consolidated Edison Company of New York, Inc.
CAP-22.
  Docket No. ER88-209-001, Metropolitan Edison Company and Pennsylvania Electric Company
CAP-23.
  Docket No. QF87-616-001, J. W. Gathering Company
CAP-24.
  Docket Nos. ER82-553-002, 003, ER82-554-002 and 003, Ohio Power Company
CAP-25.
  Docket Nos. ER86-368-017, ER86-368-005, ER86-638-001, ER86-638-002 and ER86-709-002, El Paso Electric Company
CAP-26.
  Docket No. ER88-81-001, West Texas Utilities Company
CAP-27.
  Docket Nos. QF86-1025-002, QF86-1026-002, QF86-1027-002, QF86-1028-002, QF86-1029-003, QF86-1030-002, QF86-1031-002, QF86-1032-003 and QF86-1033-002, Turbo Power Systems
CAP-28.
  Docket No. E-7777 (Phase II), Project Nos. 2735-001, 1988-003 and 233-006, Pacific Gas & Electric Company
CAP-29.
  Docket No. ER88-172-000, Pennsylvania Power & Light Company
CAP-30.
  Docket No. EC88-1-000, Duke Power Company and Nantahala Power and Light Company
CAP-31.
  Docket No. EL86-43-000, City of Gallup, New Mexico v. Public Service Company of New Mexico

Consent Miscellaneous Agenda

CAM-1.
  Docket No. RM87-35-001, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
  Docket No. RM87-26-000, Filing Fees Under The Independent Offices Appropriations Act of 1952
CAM-3.
  Docket No. RM87-25-000, Regulations Delegating Authority
CAM-4.
  Docket No. RM86-10-000, Revision of Definition For Natural Gas Projected From Devonian Shale
CAM-5.
  Docket No. RM87-17-000, Natural Gas Data Collection System
CAM-6.
  Docket No. RM87-16-001, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts
CAM-7.
  Docket No. GP87-32-000, Oklahoma Corporation Commission, Section 102(c) NGPA Determination, Fox No. 1 Well, FERC No. JD86-30785

CAM-8.
  Docket No. GP87-23-000, Royal Resources Exploration, Inc. v. Pacific Gas and Electric Company
CAM-9.
  Docket No. GP-11-001, ANR Pipeline Company v. Conoco, Inc.
CAM-10.
  Docket No. SA80-40-007, RJB Gas Pipeline Company
CAM-11.
  Docket No. RO87-11-000, National Distillers and Chemical Corporation

Consent Gas Agenda

CAG-1.
  Docket No. RP88-69-000, Stringray Pipeline Company
CAG-2.
  Docket No. RP88-67-000, Texas Eastern Transmission Corporation
CAG-3.
  Docket Nos. RP86-83-009 and RP86-114-004, Southern Natural Gas Company
CAG-4.
  Docket No. RP88-66-000, Pacific Interstate Offshore Company
CAG-5.
  Docket No. RP88-17-004, Southern Natural Gas Company
CAG-6.
  Docket No. RP88-71-000, El Paso Natural Gas Company
CAG-7.
  Docket No. RP84-53-007 and 008, Ozark Gas Transmission System
CAG-8.
  Omitted
CAG-9.
  Docket No. RP88-68-000, Transcontinental Gas Pipe Line Corporation
CAG-10.
  Docket No. RP88-2-000, Natural Gas Pipeline Company of America
CAG-11.
  Docket No. TA88-6-5-000, Midwestern Gas Transmission Company
CAG-12.
  Docket No. TA88-4-42-000, Transwestern Pipeline Company
CAG-13.
  Docket Nos. TA88-4-37-000 and 001, Northwest Pipeline Corporation
CAG-14.
  Omitted
CAG-15.
  Docket No. TA88-3-33-000, El Paso Natural Gas Company
CAG-16.
  Docket No. TA88-3-7-000, Southern Natural Gas Company
CAG-17.
  Docket No. TA88-2-31-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-18.
  Docket No. TA88-2-38-000, Ringwood Gathering Company
CAG-19.
  Docket No. TA87-4-49-000, Williston Basin Interstate Pipeline Company
CAG-20.
  Docket No. TA87-1-37-013, Northwest Pipeline Corporation
CAG-21.
  Docket Nos. RP88-119-000, TA84-2-9-007 and TA85-1-9-004, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-22.
  Docket No. RP88-43-001, Columbia Gas Transmission Corporation
CAG-23.
  Docket Nos. RP82-55-036 and RP87-7-020, Transcontinental Gas Pipe Line Corporation
CAG-24.
  Docket No. RP88-47-001, Northwest Pipeline Corporation
CAG-25.
  Docket Nos. RP88-10-004 and RP85-169-033, Consolidated Gas Transmission Corporation
CAG-26.
  Docket No. CP87-393-002, Southern Natural Gas Company
CAG-27.
  Docket Nos. TA87-2-2-002 and TA88-1-2-000, East Tennessee Natural Gas Company
CAG-28.
  Docket Nos. RP88-45-002 and RP88-46-001, Arkla Energy Resources, A Division of Arkla, Inc.
CAG-29.
  Docket No. RP85-125-007, Distrigas Corporation
  Docket No. TA88-1-12-001, Distrigas of Massachusetts Corporation
CAG-30.
  Docket No. IS88-13-000, Point Arguello Pipeline Company
CAG-31.
  Omitted
CAG-32.
  Docket Nos. TA85-1-33-004, TA84-1-33-011 and TA84-2-33-013, El Paso Natural Gas Company
CAG-33.
  Docket No. RP85-178-024, *et al.*, Tennessee Gas Pipeline Company
CAG-34.
  Docket Nos. RP88-27-002 and RP85-209-012, United Gas Pipe Line Company
CAG-35.
  Docket No. RP86-170-000, Mississippi River Transmission Corporation
CAG-36.
  Docket No. RP87-24-000, U-T Offshore System
CAG-37.
  Docket No. RP88-65-000, Texas Gas Transmission Corporation
CAG-38.
  Docket No. RP87-78-000, Penn-York Energy Corporation
CAG-39.
  Docket No. RP87-70-000, East Tennessee Natural Gas Company
CAG-40.
  Docket No. RP86-35-000, *et al.*, Great Lakes Gas Transmission Company
CAG-41.
  Docket No. CI84-10-007, Felmont Oil Corporation and Essex Offshore Inc.
CAG-42.
  Docket No. CI85-613-000, Tenngasco Gas Supply Company, *et al.*, v. Southland Royalty Company, *et al.*
CAG-43.
  Docket No. CI86-388-001, Tenngasco Corporation and Tenngasco Exchange Corporation
  Docket No. CI85-673-004, UER Marketing Company
  Docket No. CI86-7-004, Seagull Marketing Services Inc.
  Docket No. CI86-27-005, Transco Energy Marketing Company
  Docket Nos. CI86-377-001 and CI86-378-001, Arkla Energy Marketing Company
  Docket No. CI86-413-002, ANR Gathering Company
  Docket No. CI86-419-002, ANR Supply Company
  Docket No. CI86-421-002, Coastal States Industrial Sales Company (formerly Texcol Industrial Sales Company)
  Docket No. CI86-503-002, Sonat Marketing Company (formerly SNG Trading Inc.)
  Docket No. CI87-295-001, Gulf Energy Marketing Company
  Docket No. CI87-307-001, MidCon Marketing Corporation
  Docket No. CI87-476-001, TXG Gas Marketing Company
  Docket No. CI87-547-001, Enron Gas Marketing, Inc.
  Docket No. CI87-621-001, Mountain Industrial Gas Company
  Docket No. CI87-734-001, Northwest Marketing Company
  Docket No. CI87-738-002, Williams Gas Marketing Company
  Docket No. CI87-786-001, Val Gas, L. P.
  Docket No. CI87-825-001, V.H.C. Gas Systems, L.P.
  Docket No. CI87-847-001, Texas Eastern Gas Services Company
  Docket No. CI87-883-001, Meridian Oil Trading Inc.
  Docket No. CI88-1-001, CSX NGL Corporation
  Docket No. CI88-74-001, Panhandle Trading Company
  Docket No. CI88-274-000, Coastal States Gas Transmission Company
  Docket No. CI88-328-000, Ringwood Marketing Company
  Docket No. CI88-348-000, Cabot Energy Marketing Corporation
CAG-44.
  Docket No. CI87-433-001, Texaco Gas Marketing Inc.
  Docket No. CI87-729-001, Phillips Gas Marketing Company
  Docket No. CI87-747-001, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
  Docket No. CI87-785-001, Phillips 66 Natural Gas Company
  Docket No. CI87-324-001, Natural Gas Clearinghouse Inc.
  Docket No. CI87-353-001, Kenrell Petroleum Resources, Inc.
  Docket No. CI87-481-001, Colony Natural Gas Corporation
  Docket No. CI87-681-001, Prior Energy Corporation
  Docket No. CI87-806-001, Shell Gas Trading Company
  Docket No. CI86-83-001, LOUTEX Energy Inc.

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Docket No. CI87-751-001, Pennzoil Gas Marketing Company
Docket No. CI88-30-001, Brandywine Industrial Gas Inc.
Docket No. CI86-255-001, Hadson Gas Systems, Inc.
Docket No. CI87-89-002, EnTrade Corporation
Docket No. CI87-398-001, Tejas Power Corporation
Docket No. CI87-702-002, Kogas, Inc.
Docket No. CI87-854-001, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CI87-429-001, Vesta Energy Company
Docket No. CI87-578-001, Continental Natural Gas, Inc.
Docket No. CI87-910-001, Catamount Natural Gas, Inc.
Docket No. CI87-497-001, Reliance Gas Marketing Company
Docket No. CI87-254-002, Salmon Resources, Ltd.
Docket No. CI87-498-001, PSI, Inc. (formerly People-Service, Inc.)
Docket No. CI87-764-001, BHP Gas Marketing Company
Docket No. CI88-70-001, Richardson Products Company
Docket No. CI88-95-001, Houston Gas Exchange Corporation
Docket No. CI87-386-001, American Central Gas Pipeline Company
Docket No. CI87-736-001, Chevron Natural Gas Services, Inc.
Docket No. CI87-889-001, Associated Natural Gas, Inc.
Docket No. CI88-17-001, Tejas Hydrocarbons Company
Docket No. CI87-848-001, Victoria Gas Corporation
Docket No. CI86-26-006, Access Energy Corporation
Docket No. CI87-559-001, The Resource Group
Docket No. CI87-700-001, Nagasco Marketing, Inc.
Docket No. CI87-826-001, Standard Gas Marketing Company
Docket No. CI86-287-001, Howell Gas Management Company
Docket No. CI87-703-001, Western Kentucky Gas Resources Company d/b/a NRG Corporation
Docket No. CI86-56-003, Citizens Energy Corporation and Citizens Gas Supply Corporation
Docket No. CI87-809-001, Amalgamated Pipeline Company
Docket No. CI88-145-000, Anadarko Trading Company
Docket No. CI88-162-000, Grand Valley Gas Company
Docket No. CI88-188-000, GasMark, Inc.
Docket No. CI88-291-000, Sun Gas Transmission Limited Partnership, Sun Gas Transmission Company, Inc. and Sun Gas Marketing
Docket No. CI88-304-000, Parker Gas Transmission, Inc.
Docket No. CI88-306-000, Golden Natural Gas Company
Docket No. CI88-307-000, Mobil Natural Gas Inc.
Docket No. CI88-308-000, Corpus Christi Gas Marketing, Inc. and Corpus Christi Gas Gathering, Inc.

CAG-45.
Docket No. CI86-641-002, Northwest Pipeline Corporation and Northwest Marketing Company

CAG-46.
Docket No. RI87-2-000, Plains Petroleum Company and Plains Petroleum Operating Company
Docket No. RP87-49-000, KN Energy, Inc.

CAG-47.
Docket No. CP86-492-001, Moraine Pipeline Company
Docket No. CP86-494-001, Moraine Pipeline Company
Docket No. CP86-493-001, Natural Gas Pipeline Company of America

CAG-48.
Docket No. CP86-337-003, Algonquin Gas Transmission Company

CAG-49.
Docket No. CP85-621-007, ANR Pipeline Company

CAG-50.
Docket No. CP85-183-004, Transcontinental Gas Pipe Line Corporatioin

CAG-51.
Docket No. CP87-474-001, Great Lakes Gas Transmission Company

CAG-52.
Docket Nos. CP83-254-295, CP83-335-210, CP83-254-296 and CP83-335-211, Williston Basin Interstate Pipeline Company

CAG-53.
Docket No. CP87-112-001, Transwestern Pipeline Company and H. L. Brown, Jr.

CAG-54.
Docket No. CP87-14-001, Natural Gas Pipeline Company of America

CAG-55.
Docket No. CP87-122-002, Williston Basin Interstate Pipeline Company

CAG-56.
Docket No. CP88-17-001, Natural Gas Pipeline Company of America

CAG-57.
Docket No. RP86-14-017, Columbia Gulf Transmission Company
Docket No. RP86-15-017, Columbia Gas Transmission Corporation

CAG-58.
Docket No. CP86-627-000, Tri-Energy Pipeline Company

CAG-59.
Docket No. CP77-216-009, Distrigas of Massachusetts Corporation
Docket No. CP77-217-001, Distrigas Corporation

CAG-60.
Docket No. CP86-732-000, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

CAG-61.
Docket No. CP88-187-000, Trunkline Gas Company

CAG-62.
Docket No. CP83-211-001, Columbia Gulf Transmission Company

CAG-63.
Docket No. CP87-441-000, Trunkline Gas Company

CAG-64.
Omitted

CAG-65.
Docket No. CP86-380-002, Northern Natural Gas Company, Division of Enron Corporation

CAG-66.
Docket No. CP87-405-000, Philips Petroleum Company

CAG-67.
Docket No. CP88-90-000, Shell Western E&P Inc.

CAG-68.
Docket No. CP88-83-000, Texas Eastern Transmission Corporation

CAG-69.
Docket No. GP88-6-000, Volkswagen of America, Inc.

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1.
Docket No. EL86-53-001, Southern Company Services, Inc.
Docket No. EL86-57-001, Gulf States Utilities Company v. Southern Company Services, Inc., *et al.* Order concerning unit power sales agreement and interchange contract.

ER-2.
Docket No. ER88-219-000, Pacific Gas and Electric Company. Order concerning rate change application.

ER-3.
Docket No. EF87-2011-001, United States Department of Energy—Bonneville Power Administration. Order concerning long-term power rates.

Miscellaneous

M-1.
Reserved

M-2.
Reserved

M-3.
(A) Docket No. RM88-13-000, Brokering of Interstate Pipeline Capacity

M-3.
(B) Docket Nos. RP86-105-000, RP86-169-000, 027 and CP86-485-000, ANR Pipeline Company
Docket Nos. RP86-15-018 thru 029 and 033, Columbia Gas Transmission Corporation
Docket No. RP86-168-000, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation
Docket Nos. RP86-14-018 thru 029 and 033, Columbia Gulf Transmission Company
Docket No. RP85-169-027, Consolidated Gas Transmission Corporation
Docket Nos. RP86-45-000, 002 thru 015, El Paso Natural Gas Company
Docket Nos. CP86-582-002, 004 thru 013 and 015, Natural Gas Pipeline Company
Docket Nos. CP86-325-000, 001, 003, 007 thru 010, Northern Border Pipeline Company
Docket Nos. RP85-206-011 thru 027, Northern Natural Gas Company
Docket No. CP86-578-000, Northwest Pipeline Corporation
Docket Nos. RP87-103-000, 001 and 002, Panhandle Eastern Pipeline Company
Docket No. RP87-47-000, Phillips Gas Pipeline Company

Docket No. RP88-17-000, Southern Natural Gas Company
Docket No. RP88-20-000, Tarpon Transmission Company
Docket Nos. CP88-245-001, CP75-23-027 CP75-120-020 and RP87-26-010, Tennessee Gas Pipeline Company
Docket Nos. RP85-177-019 thru 042, Texas Eastern Transmission Corporation
Docket Nos. RP88-5-000, 002 and RP88-37-000, Transcontinental Gas Pipeline Company
Docket Nos. RP85-175-008 thru 012, Transwestern Pipeline Company
Docket Nos. CP86-426-000, CP86-552-001, CP86-586-004, CP87-334-001, CP87-457-001, 002, RP86-115-011, 012 and RP87-15-020, Trunkline Gas Company
Docket Nos. CP79-22-004, CP88-9-000, CP88-196-000, CP88-210-000, RP88-5-000, RP88-8-000, 002 and RP88-37-000, United Gas Pipe Line Company Order on pending filings seeking or advocating authority to broker capacity in interstate pipelines.

M-3.
(C) Docket No. CP86-250-002, Ozark Gas Transmission System. Order on request for rehearing of an order issuing a Part 284 blanket transportation certificate

(D) Docket No. CP86-720-001 through 003, Trailblazer Pipeline Company. Order on requests for rehearing of an order issuing a Part 284 blanket transportation certificate.

M-4.
Docket No. RM88-14-000, Implementation of Section 5 of the Outer Continental Shelf Lands Act

M-5.
Docket No. GP83-34-000, Westar Transmission Company, A Division of Pioneer Corporation. Petition for a declaratory order concerning National Gas Act Jurisdiction.

I. Pipeline Rate Matters

RP-1.
Omitted

RP-2.
Docket No. RP83-58-001, Southern Natural Gas Company. Order on initial decision on cost classification, allocation rate design of sales rates, and allocation of Account 858 and storage costs to transportation rates.

II Producer Matters

CI-1.
Reserved

III Pipeline Certificate Matters

CP-1.
Docket Nos. CP81-482-004, CP84-49-001, CP85-586-000, CP86-396-001, CP86-536-000, CP86-537-000, CP86-647-000, 001, CP86-662-000, CP86-736-000, CP86-741-000, CP87-47-000, CP87-71-000, CP87-81-000, CP87-87-000 and CP87-130-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CP84-668-002, CP87-324-000, CP87-325-000, CP87-404-000, CP87-538-000, and CP86-713-000, Northern Natural Gas Company, Division of Enron Corporation
Docket Nos. CP86-136-010, CP86-436-002, CP86-542-000, CP86-728-000, CP87-412-000 and CP88-20-000, Natural Gas Pipeline Company of America
Docket Nos. CP88-39-000, CP88-41-000, CP88-49-000, Northern Border Pipeline Company
Docket No. CP87-212-000, Panhandle Eastern Pipe Line Company
Docket Nos. CP82-211-003, CP86-365-000 and CP87-397-000, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Docket No. CP83-364-002, Columbia Gas Transmission Corporation
Docket No. CP86-502-000, MIGC, Inc.
Docket No. CP87-27-000 and CP87-518-000, Trunkline Gas Company. Order on requests by interstate pipelines holding Part 284 blanket transportation certificates for individual transaction NGA section 7(c) transportation certificates.

Lois D. Cashell,
Acting Secretary

[FR Doc. 88-6853 Filed 3-24-88; 4:30 pm]

BILLING CODE 6717-01-M

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Corrections

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 88-5023 beginning on page 7383 in the issue of Tuesday, March 8, 1988, make the following correction:

On page 7389, in the third column, in the table, under "Countervailing duty proceeding", in the second entry, "Cargon" should read "Carbon".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA No.: 84.042]

Notice Inviting Applications for New Awards Under the Student Support Services Program for Fiscal Year 1988

Correction

In notice document 88-6367 appearing on page 9472 in the issue of Wednesday, March 23, 1988, make the following correction:

In the third column, the date on the fifth line should read "March 30, 1988"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No., 87-NM-109-AD; Amdt. 39-5813]

Airworthiness Directives; Boeing Model 737 Series Airplanes

Correction

In rule document 88-4547 beginning on page 6794 in the issue of Thursday, March 3, 1988, make the following corrections:

§ 39.13 [Corrected]

On page 6795, in the second column, in § 39.13, paragraph E., in the sixth line, begin a new paragraph with "Boeing Supplemental"; and in the last line "552(a)(10)" should read "552(a)(1)"

BILLING CODE 1505-01-D

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federal register

**Tuesday
March 29, 1988**

Part II

Department of the Interior

National Park Service

National Registry of Natural Landmarks; Annual Supplemental Listing of Natural Landmarks; Notice

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DEPARTMENT OF THE INTERIOR

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This notice lists all natural landmarks designated by the Secretary of the Interior between October 1, 1986, and September 30, 1987, and included on the National Registry of Natural Landmarks. The listing published in the **Federal Register** on March 1, 1983 (48 FR 8682) contains all natural landmarks designated prior to that date and should be retained for reference purposes. The listing published in the **Federal Register** on February 7, 1984 (49 FR 4605) contains all natural landmarks designated between March 1, 1983, and September 30, 1983. The listing published in the **Federal Register** on March 5, 1985 (50 FR 8846) contains all natural landmarks designated between October 1, 1983, and September 30, 1984. The listing published in the **Federal Register** on February 25, 1986 (51 FR 6622) contains all natural landmarks designated between October 1, 1984, and September 30, 1985. The listing published in the **Federal Register** on March 4, 1987 (52 FR 6686) contains all natural landmarks designated between October 1, 1985 and September 30, 1986. All listings provide information on each landmark's location, natural values, designation date, ownership, and the owner's voluntary commitment to protect the landmark's natural resources. Federal agencies should consider the existence and location of natural landmarks when assessing the impact of their actions on the environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 42 U.S.C. 4321).

FOR FURTHER INFORMATION CONTACT: Mr. Hardy L. Pearce, Chief, Natural Landmarks Branch, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–9525.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the National Natural Landmarks program in 1962 to identify and encourage the preservation of nationally significant examples of the full array of ecological and geological features that represent the Nation's natural heritage. Potential natural landmarks are identified through studies conducted by the National Park Service, evaluated by natural scientists, and, if judged nationally significant, designated as National Natural Landmarks by the Secretary of the Interior. Areas so designated are included on the National Registry of Natural Landmarks. Through October 30, 1987 there were 586 sites listed on the National Registry of Natural Landmarks. The National Natural Landmarks program is administered by the National Park Service.

Natural landmarks designation is not a land withdrawal and affects neither the ownership nor management and use of a site. Natural landmark preservation is often ensured through cooperative commitment of public and private owners toward protection of the area's nationally significant features. This commitment is voluntary and is exercised through a nonbinding agreement with the National Park Service to protect the National Natural Landmark. Owners who elect to enter into such an agreement are eligible to receive a certificate signed by the Secretary of the Interior which recognizes the special status of the area. A bronze plaque may also be presented for appropriate display on the site.

In addition, Federal agencies must consider the existence and location of National Natural Landmarks when they assess the effects of their actions on the environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321).

The Secretary of the Interior transmits annually to the Congress a report on those National Natural Landmarks with known damage or threats to the integrity of their nationally significant features (90 Stat. 1940; 16 U.S.C. 1a–5). This report is prepared for the Secretary by the National Park Service.

National Registry of Natural Landmarks

The National Registry of Natural Landmarks is the Nation's official list of those nationally significant natural areas representative of the ecological and geological heritage of this country. Of the 586 sites listed on the National Registry of Natural Landmarks, over one-half are administered solely by public agencies at the Federal, State, county, or municipal government levels. Almost one-third of the National Natural Landmarks are owned entirely by private parties. The remaining National Natural Landmarks are owned or administered by a mixture of public and private owners.

The following list contains all National Natural Landmarks added to the National Registry of Natural Landmarks between October 1, 1986, and October 30, 1987. The sites are arranged alphabetically by State and county. A description of each landmark's location, significance, designation date and ownership is provided. Designation dates are enclosed in parentheses. Ownership data are arranged in the following arbitrary order and do not reflect the relative amount of land owned by any party: Federal, State, County, Municipal, Private. An asterisk (*) indicates that the owner(s) of a landmark have voluntarily agreed to protect the nationally significant features.

Because many natural landmarks are privately owned and/or not managed for public access, landowner permission must first be obtained before visits are planned to those areas. The specific locations of certain landmarks are not provided because of owner requests for minimum publicity and/or because of the fragility of the natural features.

Dated: February 12, 1988.

Denis P. Galvin,

Acting Director, National Park Service

Alabama

Jefferson County

Red Mountain Expressway Cut—This 23-acre site, located along the road cut where U.S. Highway 280 traverses Red Mountain in Birmingham, exhibits an unusual combination of stratigraphic and structural features that record the geological development of this part of the Southern Appalachian fold belt during Paleozoic time. In one location, rocks representing a 150 million-year geological record are exposed along a distance of only about 650 feet, because the strata are tilted. Structural features clearly displayed include unconformities and normal faults. Sedimentary strata represent a range of depositional environments, from intertidal beach and mud flat to offshore, open marine conditions. In addition, the rocks exposed contain a rare Silurian trilobite species. Excellent public interpretation of this site is provided by the Red Mountain Museum. (November 1987) Owner: State

California

Solano County

Dixon Vernal Pools—This 15,200 acre site, located approximately 15 miles south of Dixon, represents the best example of the Valley Needlegrass Grassland in the Great Central Valley of the South Pacific Border Natural Region. There are only three sites of Valley Needlegrass Grassland remaining today. The site contains extensive stands of perennial needlegrasses in a mosiac with claypan vernal pools, another critically rare natural community. The rolling, hummocky topography results in a complex patchwork of grasses and native wildflowers. (May 1987) Owner: Private

Florida

Highlands County

Archibold Biological Station—This 4,250-acre site, located approximately 7 miles south of Lake Placid, encompasses the largest known tract of contiguous natural communities characteristics of the Lake Wales Ridge still in a relatively natural condition. The full range of moisture conditions (xeric-mesic-hydric-aquatic), and most stages of plant succession, are represented by high quality examples. Lake Annie is the highest quality water supply left in the system of valley sink lakes that extends northward from the Station. A large number of endemic and rare species of plants and animals are located here. (May 1987) Owner: Private

Illinois

Cook County

* Markham Prairie—Located in the town of Markham about 20 miles south of the Loop is a 190-acre site representing the largest and highest quality prairie in Illinois and in large parts of adjacent states. As a mesic prairie intergrading between sand prairie and typical tall-grass prairie on loamy soil, it is a remnant of a distinct and formerly widespread biotic community type of the Central Lowlands Natural Region. Mesic prairie has been nearly eliminated along the south edge of Lake Michigan where most remnants occur. In the Chicago Lake Plain of Illinois, for example, only about one-hundredth of one percent remain of the original prairie. Much of it occurs within a nature preserve, located close to a very large metropolitan area, surrounded by suburban development. The site is also an excellent example of undeveloped lakebed and beach ridge topography. (November 1987) Owner: Private

Iowa

Winnesheik County

Cold Water Cave—Located in the glaciated portion of the upper Midwest, where caves are rare and cave formations (speleothems) are generally minor, Cold Water Cave is exceptional as an extensive cave system that is well decorated with speleothems. It contains numerous vertical shafts and an unusually large, active, meandering underground stream that courses along most of the approximately 7.3 miles of cave passageways. Because the cave is locked and not accessible to the general public, it remains in unimpaired natural condition. Having formed probably within the last 200,000 years in a limestone formation of Ordovician age, the cave system is also relatively young in geologic terms, and appears to be enlarging more rapidly than most caves in the United States. The cave atmosphere is also unusual for its typically low oxygen content and extremely high carbon dioxide content. (November 1987) Owner: Private

Kentucky

Russell County

Creelsboro Natural Bridge—This 8.2-acre site, located 14 miles southwest of Jamestown, is the longest natural bridge, or natural tunnel, in the Highland Rim Section of the Interior Low Plateaus Natural Region. Whereas most of the natural bridges and arches of Kentucky are formed in sandstone or conglomerate, Creelsboro Natural Bridge is composed of limestone of Ordovician age. The occasional diversion of Jim Creek through the tunnel into the adjacent Cumberland River during high water is an outstanding illustration of subterranean stream diversion, a process by which the bridge formed and which continues today. In addition, the occasional reverse flow of the Cumberland River flood waters back through the tunnel into the Jim Creek valley is highly unusual. The bridge spans 75 feet over a tunnel 100 feet long, with a height of 15 feet on the upstream side and about 40 feet on the downstream side. (November 1987) Owner: Private

Massachusetts

Berkshire County

*Mt. Greylock Old Growth Spruce—This 21.3-acre site contains three separate stands (9.4, 5.7, and 6.2 acres) of undisturbed old growth red spruce on the northwest slopes of Mt. Greylock, the highest mountain in Massachusetts. These stands have been undisturbed for at least 150–180 years, and may be virgin. No other old growth red spruce stands are known in Southern New England, while only a few comparable or better sites occur in Northern New England. (November 1987) Owner: State

Nebraska

Lincoln County

*Dissected Loess Plains—Located 17 miles south-southwest of Brady, loess (wind blown silt) deposits at this site are among the thickest (200+ feet) in the Great Plains Natural Region and in North America. Eroded canyons and deep valleys that occur here reveal the geological history of the Loess Plains better than any other place in the Great Plains. It has been well studied by geologists and described in the scientific literature, and also contains good examples of native vegetation. This 26,680-acre site is located near the Nebraska Sand Hills, the origin of much of the loess found in the Loess Plains. The 10,420-acre Loess Hills National Natural Landmark, in Monona and Harrison Counties, Iowa, complements this site as an exceptional illustration of constructional topography, in contrast to the erosional topography found here. (November 1987) Owner: Private

New Hampshire

Cheshire County

*Mount Monadnock—This 4,578-acre site, located within the towns of Jaffrey and Dublin about 80 miles northwest of Boston, is the type locality of a monadnock, or isolated mountain remnant. In addition, the mountain exhibits the conspicuous effects of Pleistocene glacial erosion, including striations, roche moutonnees or whalebacks, and an oversteepened profile resulting from glacial plucking. (May 1987) Owner: State Private

Grafton and Carroll Counties

*Nancy Brook Virgin Spruce Forest and Scenic Area—This 1,590-acre site, located approximately 6 miles northwest of Barlett, is probably the largest virgin montane spruce forest in New England. Additionally, the diversity of the landscape is enhanced by landslides, steep valley walls, waterfalls, boulder streams, ponds, beaver clearings, mountain slopes, ridges, summits and distant views. (May 1987) Owner: Federal

Oregon

Benton County

Williamette Floodplain—This 682-acre site, located approximately 15 miles south of Corvallis, represents the largest remaining native unplowed example of bottomland interior valley grassland in the North Pacific Border Natural Region. All of these grasslands and shrubland communities have become exceedingly rare as most have been cultivated or converted to pastureland. (May 1987) Owner: Federal

Virginia

Orange County

Montpelier Forest—This 200-acre site is located within Montpelier, the estate of President James Madison, approximately five miles southwest of Orange on both sides of State Route 20. This site represents the best example of old growth Eastern deciduous the Virginia-Maryland portion ot the Piedmont Natural Region in terms of age and lack of human disturbance. The forest is composed of mainly oak, hickory, and poplar, many of which are believed to be between 200 and 300 years old. The site is high in natural diversity and possesses an extraordinarily high value to science and education. (November 1987) Owner: Private

Wisconsin

Dane County

*Cave of the Mounds—Located approximately 2 miles east of Blue Mounds State Park and directly below Brigham Farms, this cave provides an exceptional illustration of two principal modes of limestone cave formations (speleogenesis): the solution of cave passageways by "vadose" water flowing above and also by "phreatic" groundwater flowing below the water table. The original portion of the cave was formed by phreatic flow along two intersecting joints, and later was enlarged by vadose flow along an underlying fracture. Because these different processes thus occurred in separate joint systems, the cave also illustrates the importance of fracture patterns in controlling speleogenesis. In addition, Cave of the Mounds is richly decorated with cave formations (speleothems) of most known varieties, including stalagmites measuring 18 feet in height, and exhibits many colorful displays of mineral deposits, including pure calcite. The cave is formed in a 300-foot thick formation of Ordovician dolomite, and is located within the unglaciated area of Wisconsin 15 miles west of the Wisconsinan terminal moraine. It is managed for educational and commercial purposes and is used extensively as a living laboratory by local secondary schools, regional speleological societies, and various universities and museums from throughout the Nation. (November 1987) Owner: Private

The following is a correction to the list of natural landmarks included on the National Registry of Natural Landmarks and published in the **Federal Register**, Part III, March 1, 1983 on pages 8699 and 8702:

Puerto Rico

Cabo Rojo—Owner: Federal—(previously listed as Owner: Federal Commonwealth of Puerto Rico)

Virgin Islands

St. Croix

Sandy Point—Owner: Federal—(previously listed as Owner: Virgin Islands Government, Private)

West Virginia

Greenbrier County

Organ Cave System—(previously listed as Greenbrier Caverns)

[FR Doc. 88-4146 Filed 3-28-88; 8:45 am]

BILLING CODE 4310-70-M

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federal register

Tuesday
March 29, 1988

Part III

Department of Transportation

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, *Automotive Fuel Economy Program, Twelfth Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator for Rulemaking.

March 24, 1988.

AUTOMOTIVE FUEL ECONOMY PROGRAM—TWELFTH ANNUAL REPORT TO THE CONGRESS, JANUARY 1988

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Section I: Introduction

The Federal government got into the business of regulating fuel economy in the aftermath of the 1973–74 Arab oil embargo. We have largely met the goals that were set at that time of energy crisis, and the average fuel economy of new cars in the U.S. has nearly doubled from model years 1975 to 1987.

This report shows that overall fleet fuel economy improved for new U.S. passenger cars from 28.0 mpg in model year 1986 to 28.2 mpg 28.2 mpg in model year 1987, exceeding the legislative goal of 27.5 mpg.

The law, unfortunately, provides strong incentives for domestic manufacturers to import parts or to build the entire automobile outside U.S. borders. Consumer choice is being limited in the new car showrooms of domestic manufacturers, while foreign manufacturers who build only small, high mileage cars are free to ignore CAFE considerations entirely.

The CAFE regulation is now not an energy conservation issue; it's a jobs preservation issue. The greatest contribution we can make to keeping jobs in the United States and to making the domestic auto industry competitive on a worldwide basis is to repeal the CAFE rules. Thousands of American jobs are threatened because of an anachronistic law that is doing substantial harm to our economy and our trade balance.

This Twelfth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1987 regarding implementation of applicable Section of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report by January 15th of each year. Included in this report are sections summarizing rulemaking activities during 1987 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub.L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the fuel economy program; (5) enforcing fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for Model Years (MY's) 1987 through 1980 and for 1985 and thereafter, and by NHTSA for MY's 1981 through 1984. In addition, during 1985 and 1986, NHTSA amended passenger car standards for MY's 1986 through 1988. Standards for light trucks have been established by NHTSA for MY's 1979 through 1989. All current standards are listed in Table I–1.

On August 5, 1987, the Secretary of Transportation submitted to the Congress a draft bill to repeal the provisions for fuel economy standards established in Title V of the Motor Vehicle Information and Cost Savings Act. The bill (S.1764) was referred to the Senate Commerce Committee where it awaits action. The fuel economy standards required by this law have now put U.S. manufacturers at a competitive disadvantage with foreign importers and threaten thousands of American jobs. This is due largely to the domestic content requirement of the statute. Continuing the corporate average fuel economy (CAFE) requirements may encourage U.S. manufacturers to build large cars overseas to comply with the fuel economy standards for their domestic fleet, give foreign importers a growing competitive advantage in the largecar segment of the market, and reduce the range of American-built cars available to consumers.

TABLE I–1.— FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1989 (IN MPG)

Light Trucks [1]	Model year	Passenger cars		
		Two-wheel drive	Four-wheel drive	Composite [2, 3]
1978	[4] 18.0			
1979	[4] 19.0	17.2	15.8	17.2
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[8] 26.0	21.0	19.5	20.5
1988	[8] 26.0	21.0	19.5	20.5
1989	[4] 27.5	21.5	19.0	20.5

TABLE I–1.— FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1989 (IN MPG)—Continued

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980–1989 are for light trucks with a GVWR of 8,500 lbs. or less.

[2] For MY 1979, light truck manufacturers may comply seperately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MY's 1982–1989, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.

[4] Established by Congress in Title V of the Act.

[5] Manufacturers whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in MY's 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for composite.

[8] Title V provided the Department of Transportation with the authority to amend the standard of 27.5 mpg for 1985 and subsequent model years. NHTSA lowered the standard to 26.0 for MY 1986 in October 1985 and to 26.0 mpg for MY's 1987 and 1988 in October 1986.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1986 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the *Eleventh Annual Report to the Congress* and, together with current data for MY 1987, are listed in Tables II–1 and II–2.

Overall fleet fuel economy improved for passenger cars from 28.0 mpg in MY 1986 to 28.2 mpg in MY 1987. Continued lower fuel prices contributed to the low demand for diesel engines (0.3 percent for both MY 1986 and MY 1987). For MY 1987, Corporate Average Fuel Economy (CAFE) values increased over MY 1986 levels for only 7 of 27 passenger car manufacturers which produced cars in both MY's 1986 and 1987. (See Table II–1.) However, these 8 companies accounted for about 56 percent of the total MY 1987 production. Manufacturers did continue to introduce new technologies and more fuel-efficient models. For MY 1987, one domestic manufacturer raised its passenger car CAFE 0.2 mpg from its MY 1986 level, one did not change, and one fill 0.2 mpg below its MY 1986 CAFE level. Overall, the three domestic manufacturers *increased* their CAFE by 0.1 mpg. The average CAFE for imported cars *declined* 0.7 mpg in MY 1987 from the MY 1986 CAFE level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER,[1] MODEL YEARS 1986 AND 1987

Manufacturer	Model Year—CAFE (mpg)	
	1986	1987
Domestic:		
Chrysler	27.6	27.6
Ford	25.8	25.8
GM	26.2	26.4
Sales Weighted Average	26.6	26.7
Imported:		
Alfa Romeo	27.9	25.1
AMC/Renault	33.5	33.0
Bertone	29.4	29.2
BMW	25.7	24.9
Chrysler Imports	36.8	33.9
Ford Imports	24.3	23.8
GM Imports	41.2	39.7
Honda	33.7	34.0
Hyundai	35.1	34.0
Imported:		
Isuzu	35.5	37.9
Jaguar	18.0	19.1
Mazda	29.7	29.0
Mercedes-Benz	21.3	22.3
Mitsubishi	30.7	31.2
Nissan	30.2	29.4
Peugeot	24.6	23.8
Porsche	25.5	25.3
Saab	26.3	26.1
Sterling		22.7
Subaru	31.9	30.7
Suzuki	52.5	50.4
Toyota	32.7	32.9
Volvo	26.0	26.4
VW [2]	29.8	29.8
Yugo	32.1	33.9
Sales Weighted Average	31.7	31.0
Total Fleet Average	28.0	28.2
Fuel Economy Standards	26.0	26.0

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER,[1] MODEL YEARS 1986 AND 1987—Continued

[1] Manufacturers of fewer than 10,000 passenger cars annually that have requested alternative fuel economy standards are not listed.

[2] Includes VW domestic production and VW and Audi imports.

Note: Some MY 1986 CAFE values differ from those used in the Eleventh Annual Report to the Congress due to inclusion of final EPA calculations.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER, MODEL YEARS 1986 AND 1987

Manufacturer	Model Year—CAFE (mpg)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1986	1987	1986	1987	1986	1987
Domestic:						
AMC	23.7	23.9	20.7	20.7		
Chrysler					19.7	21.0
Ford					20.2	20.4
GM	20.0	20.5	18.6	18.7		
Sales Weighted Average	20.1	20.6	19.3	19.3	20.1	20.6
Imported:						
Chrysler Imports					23.0	22.2
Ford Imports	27.9	26.8		21.0		
Isuzu	29.9	30.5	23.1	22.3		

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER, MODEL YEARS 1986 AND 1987—Continued

Manufacturer	Model Year—CAFE (mpg)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1986	1987	1986	1987	1986	1987
Mazda	27.7					26.5
Mitsubishi	26.4	26.2	23.0	22.1		
Nissan	25.8		22.4			23.4
Range Rover				16.4		
Subaru			26.2	27.6		
Suzuki			30.1	33.1		
Toyota	27.4	27.6	24.2	23.6		
VW					19.1	18.9
Sales Weighted Average	27.2	28.1	24.8	25.5	22.8	23.8
Total Fleet Average	22.8	22.2	21.6	21.4	20.2	21.0
Fuel Economy Standard	20.5	21.0	19.5	19.5	20.0	20.5

[1] In MY's 1986 and 1987, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.

Note: Some MY 1986 CAFE values differ from those used in the Eleventh Annual Report to Congress due to the use of final EPA calculations.

For light trucks, fleet average MY 1987 CAFE decreased from MY 1986 levels by 0.6 mpg for manufacturers using the two-wheel drive standard and by 0.2 mpg for manufacturers using the four-wheel drive standard, and increased by 0.6 mpg for manufacturers using the composite standard. CAFE levels for imported light truck manufacturers increased by 0.9 mpg for two-wheel drive trucks, 0.7 mpg for four-wheel drive trucks, and 1.2 mpg for manufacturers using the composite standard. CAFE levels for domestic light truck manufacturers increased by 0.5 mpg for manufacturers using the two-wheel drive or composite standards, and remained the same for manufacturers using the four-wheel drive standards.

Two domestic and two imported light truck manufacturers are not projected to achieve the level of the MY 1987 CAFE standards. Also, a number of European manufacturers with limited model offerings are not likely to meet the level of the MY 1987 passenger car CAFE standard. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1987 CAFE projects may change when final MY 1987 CAFE figures are provided to NHTSA by EPA, in mid-1988. In addition, many manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to eliminate current deficits.

Fleet average fuel economy for all MY 1987 passenger cars exceeded both the MY 1987 standard and the higher 27.5 mpg standard originally set by the Congress of MY's 1985 and beyond, Thus, even though NHTSA lowered the original MY 1987 standard in accordance with statutory criteria, overall CAFE continued to rise. Fleet average fuel economy for MY 1987 light trucks also exceeded the MY 1987 standards for either the separate two- and four-wheel drive fleets or on the composite basis.

NHTSA estimates that by the year 2000 the projected cumulative passenger car and light truck fuel savings due to manufacturers' achievements through calendar year 1987 will amount to approximately 595 billion gallons, when compared to the consumption projected at MY 1976 new vehicle fuel economy levels. This calculation assumes that manufacturers will continue to achieve the fuel economy levels of existing standards for the post-1989 period and that on-road fuel economy averages 15 percent below EPA ratings, which is consistent with current EPA labeling requirements.

The characteristics of the MY 1987 passenger car fleet reflect a continuing trend toward slightly heavier and higher performance cars. (See Table II–3.) Since MY 1986, the average curb weight increased 5 pounds for the domestic fleet and 49 pounds for the import fleet, but the total new passenger car fleet is 16 pounds lighter because of the large share of relatively lighter imports. From MY 1986 to MY 1987, horsepower per 100 pounds increased from 91 to 4.03 for domestic cars and from 3.84 to 3.91 for imported cars in MY 1987. Average engine size is smaller for domestic and slightly larger for import cars. The size class breakdown shows a slight trend away from large, mid-size and subcompact cars to compacts for the overall fleet. The shift of import cars to compact size is particularly pronounced. The import share of the passenger car market increased by almost 8 percentage points in MY 1987. These trends toward larger, more powerful imports underscore the Department's concerns over the potentially adverse effects of CAFE standards on domestic manufacturers.

TABLE II-3—PASSENGER CAR FLEET CHARACTERISTICS FOR MODEL YEARS 1986 AND 1987

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1986	1987	1986	1987	1986	1987
Fleet average fuel economy (mpg)	28.0	28.2	26.6	26.7	31.7	31.0
Fleet average curb weight (lbs.)	2,821	2,805	2,977	2,982	2,473	2,522
Fleet average engine displacement (in.^{3})	169	162	192	190	116	117
Fleet average horsepower/weight ratio, HP/100 lbs	3.89	3.98	3.91	4.03	3.84	3.91
Percent of fleet	100	100	69.0	31.4	31.0	38.6
Segmentation by EPA size class (percent):						
Two-seater	3.3	2.6	1.9	1.5	6.4	4.4
Minicompact	0.5	1.0	0.0	0.0	1.8	2.7
Subcompact [1]	23.8	20.0	10.3	7.8	54.7	39.2
Compact [1]	31.6	40.1	31.2	33.7	32.6	50.0
Midsize [1]	27.8	23.9	36.1	36.8	4.2	3.4
Large [1]	13.0	12.5	18.6	20.1	0.3	0.4
Percent diesel engines	0.3	0.3	0.1	0.1	0.7	0.6
Percent turbocharged engines	3.6	3.8	3.2	3.5	4.6	4.8
Percent fuel injection	65.6	72.0	70.2	82.4	55.1	56.0
Percent front-wheel drive	71.1	74.6	67.9	66.8	78.4	84.0
Percent automatic transmissions	75.6	75.0	87.8	89.7	46.3	51.7
Percent of automatic transmissions with lockup clutches or split torque features	84.4	83.0	89.2	84.6	65.0	76.5

[1] Includes associated station wagons.

The 0.1 mpg passenger car fuel economy improvement for the MY 1987 domestic fleet may be attributed primarily to technology changes in two areas: increased use of front-wheel drive (to reduce driveline losses) and a pronounced increase in the use of fuel injection.

The 0.7 mpg passenger car fuel economy decline for the MY 1987 import fleet is attributed to the shift from subcompact to compact size cars, increases in average weight and engine size, and the shift to higher performance cars as indicated by the higher ratio of horsepower to weight. These changes more than offset gains due to increased application of front-wheel drive and lockup torque converter clutches on automatic transmissions. However, passenger car CAFE for the MY 1987 import fleet continued to exceed 30.0 mpg for the seventh consecutive model year.

The characteristics of the MY 1987 light truck fleet (see Table II–4) show a slight average weight reduction of 16 pounds and higher performance as reflected by the increase in the average horsepower to weight ratio. Increased popularity of small pickups and compact vans contributed to the 0.1 mpg fleet fuel economy improvement for MY 1987 as did the 25 percentage point increase in the use of fuel injection and the 5 percentage point increase in the use of lockup torque converter clutches on automatic transmissions. Diesel engine usage declined in light trucks to 0.6 percent in MY 1987 from 1.1 percent in MY 1986.

The impact share of the MY 1987 light truck fleet declined to 28.6 percent, 2.4 percent lower than MY 1986.

TABLE II-4—LIGHT TRUCK FLEET CHARACTERISTICS FOR MODEL YEARS 1986 AND 1987

Characteristics	Total fleet		2WD fleet		4WD fleet	
	1986	1987	1986	1987	1986	1987
Fleet average fuel economy (mpg)	21.5	21.6	22.8	22.2	21.5	21.5
Fleet average equivalent test weight (lbs.)	3,813	3,797	3,760	3,745	3,929	3,902
Fleet average engine displacement (in.^{3})	213	210	215	212	207	207
Fleet average horsepower/equivalent test weight ratio, HP/100 lbs	3.27	3.36	3.30	3.39	3.21	3.36
Percent of fleet	100	100	68.7	67.2	31.3	32.9
Import share (percent)	31.0	28.6	27.8	25.0	32.2	36.1
Segmentation by type (percent):						
Passenger van:						
Compact	11.1	14.6	15.6	21.1	1.0	1.5
Large	1.2	1.1	1.8	1.7		
Cargo Van:						
Compact	3.3	3.0	4.6	4.4		0.2
Large	7.9	7.6	11.5	11.3		
Small pickup	28.5	29.0	36.9	35.6	10.2	15.1
Large pickup	28.8	21.9	25.2	20.4	36.6	25.1
Special purpose	18.7	22.5	3.5	5.0	52.1	58.1
Cab chassis	0.5	0.3	0.7	0.4		
Percent diesel engines	1.1	0.6	0.9	0.7	1.4	0.4
Percent fuel injection	41.9	66.8	38.1	65.9	50.2	68.6
Percent automatic transmissions	58.2	60.3	62.7	65.7	48.3	49.4
Percent of automatic transmissions with lockup clutches	72.4	77.6	69.4	76.8	81.0	79.6

Section III: 1987 Activities

A. Petitions to Amend Passenger Car CAFE Standards

During 1987, the agency received two petitions to amend the passenger car CAFE standards. On August 3, 1987, Mercedes-Benz of North America, Inc., petitioned the agency to amend the CAFE standards for MY's 1984 and 1985 to 26.0 mpg or lower. On November 10, 1987, General Mortors Corporation (GM) petitioned the agency to amend the MY 1985 passenger car CAFE standard to no higher than 26.0 mpg.

Mercedes' petition contends that the 1984 and 1985 Model Year CAFE standards exceed the statutorily mandated "maximum feasible" average fuel economy level, and, accordingly, must be lowered to the actual maximum feasible level. Mercedes also indicates that they believe that the agency has misinterpreted the statutory criterion of "maximum feasible" level, by excluding significant segments of the automobile industry, such as European manufacturers and limited-line manufacturers.

GM states that the MY 1985 CAFE level exceeds the "maximum feasible" criterion in the Motor Vehicle Information and Cost Savings Act and requests the agency to conform the standard to that criterion. GM contends that NHTSA's analysis in amending the MY 1986 CAFE standard to 26.0 mpg demonstrates that the standard for MY 1985 also should be amended, and that neither the provisions of the Cost Savings Act nor general principles of administrative law preclude the agency from taking such action.

Both petitions are under review by the agency.

B. Light Truck Standards

NHTSA published a final rule establishing MY 1989 light truck fuel economy standards on March 4, 1987 (52 FR 6564). The agency set a composite standard of 20.5 mpg, with optional standards of 21.5 mpg for two-wheel drive (2WD) trucks and 19.0 mpg for four-wheel drive (4WD) trucks.

In the final rule for MY 1989 trucks, the agency determined that Ford and GM were the "least capable" manufacturers with substantial shares of combined light truck sales and 2WD sales. Also, the agency determined that GM was the least capable manufacturer with a substantial share of 4WD sales.

The agency concluded, upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above Ford's and GM's capability would not justify the economic harm to the companies and economy as a whole. The agency projected that Ford could achieve a combined MY 1989 fuel economy level no higher than 21.0 mpg and GM no higher than 20.5 mpg. In contrast, the agency concluded that Chrysler could achieve 21.8–23.3 mpg. The 20.4 to 21.3 mpg figures projected by Ford were subject to a potential loss of 0.4 to 0.6 mpg due to sales shifts towards larger engines and vehicles (primarily due to possible declines in fuel prices and subsequent increased consumer demand for larger trucks and engines), as well as a potential loss of 0.5 mpg due to technological risks. The agency believed that it was likely that some, but not all, of these risks would occur and that Ford's MY 1989 capability did not exceed 21.0 mpg. The 20.9 mpg figure projected by GM was subject to a potential loss of 0.4 mpg due to mix-shift risk resulting from lower gas prices and shifts towards larger trucks and engines for MY 1989.

The agency selected 20.5 mpg as the final composite standard to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against Ford's and GM's opportunities as the "least capable" manufacturer with a substantial share of sales. Since Ford and GM produce more than 52 percent of all light trucks subject to the fuel economy standards, their capabilities have a significant effect on the level of the industry's capability and, therefore, on the level of the standards.

Proposed standards for MY's 1990 and 1991 light trucks were published on November 12, 1987 (52 FR 43366). That rule proposed that final composite standards be set within a range of 20.0 mpg to 21.0 mpg for MY's 1990 and 1991. A final rule is expected to be issued in early 1988.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year before the affected model year.

The agency has pending petitions for alternative standards from Lamborghini, Lotus, Maserati, LondonCoach, Ferrari, Bitter, Shelby, Dutcher Motors, and Rolls-Royce. Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions or marketing arrangements with larger manufacturers.

D. Carryback Plans

Section 502(1) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for the model year.

Already earned fuel economy credits are carried forward by the agency, (with opportunity to comment by the manufacturer) and allocated to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1983 have been used to offset deficiencies in MY 1985. A manufacturer also may submit to the agency a carryback plan, which demonstrates it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE.

GM, Ford, and Saab submitted carryback plans in 1987 to respond to 1985 CAFE levels that were below the prescribed standard. GM's plan for MY 1985 domestic cars was approved, as were Saab's plan for MY 1985 import cars and Ford's plans for MY 1985 domestic and import cars and MY's 1986–1987 import cars.

E. Enforcement

With completion by EPA of final CAFE computations for MY 1985 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard. GM, Ford, and Saab submitted carryback plans as discussed above, BMW, Peugeot, and Volvo each had sufficient CAFE credits earned within the three preceding model years to cover their shortfall in MY 1985. Aston Martin Lagonda, Jaguar, and Porsche paid CAFE penalties totalling $10,005,140. Mercedes-Benz petitioned the agency for a reduction in the MY 1985 standard as discussed above.

In December 1987, EPA published a final rule disallowing any fuel economy test procedure adjustment credits for light trucks. This decision will enable NHTSA to resolve light truck fuel economy compliance issues for earlier model years during 1988.

Section IV: Impact of Domestic Content Amendment

The Automobile Fuel Efficiency Act of 1980 (Act of 1980) modified several provisions of the Motor Vehicle Information and Cost Savings Act. One modification concerned the domestic content provision in Section 503 of Title V. Section 503 specifies that passenger cars having less than 75 percent of the cost to the manufacturer attributable to the value added in the United States or Canada are considered to be foreign manufactured. Conversely, vehicles with at least 75 percent value added in the U.S. or Canada are considered to be domestically manufactured for the purposes of complying with fuel

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economy regulations. Section 503 also requires that domestically and foreign produced passenger automobiles not be grouped together for the purpose of complying with fuel economy standards. Therefore, highly fuel-efficient vehicles with less than 75 percent value added in the United States or Canada may not be used by a manufacturer to offset the lower fuel economy of its domestically produced cars.

The domestic content provision was included in Title V to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of such cars which they produced or purchased abroad. However, foreign manufacturers choosing to build their most fuel-efficient vehicles in the U.S. or Canada, with at least 75 percent domestic content, would not, under the original domestic provision, be permitted to average such cars with their less fuel-efficient foreign-produced models. Thus, there existed a disincentive for foreign manufacturers to initiate U.S. production and to achieve high levels of domestic content. The Act of 1980 permits manufacturers completing their first year of production in the period 1975–85 to petition NHTSA for exemption from the separate compliance provisions of Section 503 of Title V. Such a petition must be granted unless the agency finds that doing so would result in reduced employment in the U.S. automobile industry.

Volkswagen of America, Inc., (VWoA) was the only manufacturer to petition NHTSA for an exemption from the separate compliance provision. The agency granted the petition for relief on October 23, 1981. The agency concluded that granting the petition would not result in adverse effects on employment in the U.S. automobile industry.

During 1987, as required by the Act of 1980 (section 512(c)(1) of Title V), the Secretaries of Transportation and Labor made their sixth annual examination of the impact of the domestic content amendment to Title V. During 1987, employment in the domestic auto industry shrank as production declined. Through October 1987 (the latest figures available when this report was prepared), domestic passenger car production declined 9.5 percent compared to the same period in 1986. VWoA car production declined 28.3 percent; however, VWoA accounts for only 0.9 percent of total domestic car production. According to the U.S. Department of Labor, total employment in SIC (Standard Industrial Classification) 371 (Motor Vehicles and Equipment) declined from an average of 865,000 for January through October 1986 to 842,000 for the same period in 1987.

On November 20, 1987, VWoA announced that it will discontinue assembly of automobiles in the U.S. at the end of the 1988 model year. This is due to economic considerations unrelated to the domestic content provision. Coincidentally with the phase-out of U.S. production, VWoA estimates that the MY 1988 U.S. produced Golf and Jetta, its only models assembled in the U.S. during MY 1988, will contain less than 75 percent domestic content. These models will thus be treated as "imported" cars for fuel economy compliance purposes as are the other VWoA passenger cars sold in the U.S.

There is no reason to change the 1981 findings of NHTSA that granting VWoA's petition will promote employment in the U.S. automobile industry without causing undue harm to domestic manufacturers. There is no evidence that the application of the exemption during MY's 1983–1987 has hurt U.S. employment or the domestic automobile industry. The domestic content of VWoA's U.S.-produced models will decline to less than 75 percent for MY 1988, but that is due to outsourcing of components in connection with closing U.S. manufacturing operations at the end of this model year.

Another provision of the Act of 1980 permitted any manufacturer to apply for an exemption from the domestic content requirement if it plans to phase in domestic production of a new vehicle by gradually increasing its domestic content to at least 75 percent. A manufacturer which satisfies the statutory requirements is permitted to include up to 150,000 passenger automobiles in its domestic fuel economy compliance fleets if the cars have at least 50 percent domestic content initially and if the manufacturer submits and the agency approves a plan for achieving 75 percent domestic content by the fourth year of the exemption. In 1982 American Motors Corporation (AMC) petitioned the agency to be permitted to take advantage of this amendment to Title V. The agency granted this petition for AMC to include U.S.-assembled Renault Alliance and Encore models in its domestic fleet for calculation of CAFE, provided these vehicles had at least 50 percent domestic content in MY 1983 and at least 75 percent in MY 1986.

In December 1986, AMC informed the agency that the domestic content of MY 1986 U.S.-assembled Renault Alliance and Encore models was less than 75 percent. Thus, in failing to meet the provisions of the exemption, AMC's entire production of Renault Alliance and Encore models during MY's 1983–1986 reverted to import status for CAFE compliance purposes. For MY 1987, AMC classified the Renault Alliance, its only U.S.-assembled passenger car, as an import. U.S. production of the model ended permanently in June 1987.

Section V: Use of Advanced Technology

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238) which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1987.

New Models

In 1987, manufacturers produced a number of new lighter-weight, front-wheel-drive passenger cars and some new lighter-weight truck models.

Some of the domestic newcomers include Chevrolet's Corsica and Beretta cars, Pontiac's large H-body Bonneville and Chrysler's J-body LeBaron mid-size car. The compact Beretta two-door and Corsica 4-door models share the L-body platform and incorporate aerodynamic styling. The front-wheel-drive Bonneville replaces the old rear-wheel-drive 4-door sedan and expands the use of GM's H-body to the Pontiac line. The J-body mid-size LeBaron has lightweight bumper parts and aerodynamic styling to improve fuel economy.

Some import newcomers include the compact Pontiac LeMans and the subcompact Ford Festiva and Mitsubishi Precis from South Korea; the subcompact Subaru Justy from Japan; the subcompact Volkswagen Fox from Brazil; and the compact Mexican-built Mercury Tracer.

In the domestic light truck area, GM introduced in Spring 1987, an all new line of full-size MY 1988 pickups. These new models are built on GM's GMT400 platform and feature lighter-weight, better aerodynamic styling, and electronic anti-lock rear brakes. Competition continued to increase in the compact van area with new entries from Mitsubishi and Nissan.

New Material Applications

For the 1987 model year, automakers chose aluminum, plastics material, high strength steel, and stainless steel for a number of significant new component applications in their cars, vans, and pickup trucks.

GM's Generation II 2.8-liter V-6 and 2.0-liter 4-cylinder engines entered the market with redesigned cylinder heads made of aluminum instead of cast iron. The rocker cover for the 2.0-liter engine also is made of aluminum. The rocker cover and heads together shave 13 pounds of weight from the 4-cylinder engine.

In the V–6 powerplants, aluminum also is being used in a number of other redesigned components, including the front cover, plenum, and certain brackets. These applications save an estimated 35 pounds according to GM engineers.

GM also specified the light metal for important body applications including several major body panels on the Cadillac Allante, the removable hardtop roof (which weighs only 58 pounds), the truck lid, and the hood.

Another new aluminum application involves the drive shafts for GM's redesigned standard-size pickup trucks. The new shafts which weigh about 15 pounds are one-piece units coated with graphite fiber for added stiffness and strength. They are about 20 pounds lighter and have fewer imbalance and vibration problems than conventional two-piece steel shafts. Ford, which was already using aluminum drive shafts on its small vans, expanded the applications of such units to the 1987 model F-Series large pickup truck and Econoline large vans.

Chrysler's new aluminum applications in MY 1987 include cylinder heads, rocker arms, and intake manifolds on 3.0-liter V-6 engines (imported from Japan's Mitsubishi Motor Corporation for use in Chrysler's Dodge Caravan/Plymouth Voyager minivans) and bumper reinforcements for the soft front ends on the new J-body LeBaron models.

A new application for plastic materials in 1987 models involves the fenders on the Buick LeSabre T-Type coupe. These thermoplastic fenders are made of polyphenylene oxide (PPO), and are the first on a production car in the U.S. Currently, the only other thermoplastic body panels of substantial size employed on a U.S.-built car are the rear quarter panels on the Pontiac Fiero. Because the thermoplastics can withstand the heat of the auto industry's existing paint ovens and require few or no post-mold curing and secondary processing operations, their use is expected to grow in the future.

Another new application for plastic composites in MY 1987 is the glass fiber reinforced polyester hood, formed from sheet molding compound (SMC), on Chevrolet's Cavalier Z24. Chrysler's J-body LeBaron coupes have urethane bumper fascias in the front and rear. The front bumper fascia retainers on the Chevrolet Beretta and Corsica models also are made of SMC, and the fascias are soft urethane.

Applications for both high strength (HS) steel and stainless steel grew again in MY 1987. In both cases, manufacturers switched from conventional to HS steel to reduce weight, but impact strength also was a consideration. Major uses of HS steel include the following: (1) Side frame members in the front of new 4-door Civic models from Honda, (2) cargo box sides on the new mid-size Dodge Dakota pickup truck and the galvanized beds for those same cargo boxes, and (3) reinforcements behind both front and rear bumpers on the Dodge Shadow and Plymouth Sundance.

Stainless steel applications can be found in many new exhaust systems. For example, GM developed a new second generation stamped and fabricated stainless exhaust manifold for use in the 2.0-liter 4-cylinder and 2.8 liter V–6 engines. These manifolds replaced heavier tubular units that did not dissipate heat as quickly, according to GM engineers.

Electronics

Application of electronic components that increase fuel economy in vehicles continues to rise. Market projections call for an average value of $1,700 in electronics per car by 1995, although the MY 1987 Cadillac Allante already has well over $2,000 in electronics as standard equipment. The use of carburetors has greatly declined in passenger cars, being replaced by more complicated and precise sequential, multiport, digital systems. Cars with feedback carburetors were featured in 33.8 percent of the U.S. production, according to the 1987 *Ward's Automotive Report's* survey of electronic equipment, while almost half (46.9 percent) had single-point fuel injection and 19.3 percent had multipoint injection.

Summary

Due to the stabilization of oil prices, consumer demand has shifted slightly to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted production mix causing an increase in average roominess of MY 1987 passenger cars. Still, there were some considerable technical gains, particularly in lightweight material usage, that contributed to improvements in fuel economy in MY 1987.

[FR Doc. 88-6764 Filed 3-28-88; 8:45 am]

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federal register

Tuesday
March 29, 1988

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Minimum Standards for Administration, Interpretation, and Use of Education Tests

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on minimum standards for the administration, interpretation, and use of education tests to coincide with a change in the Bureau of Prisons rule on the Adult Basic Education (ABE) Program which raised the minimum academic achievement level from a 6.0 to an 8.0 grade level.

EFFECTIVE DATE: March 29, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on minimum standards for the administration, interpretation, and use of education tests. A final rule on this subject was published in the **Federal Register** March 19, 1986 (at 51 FR 9614). The present amendment is intended to more effectively implement the Bureau's rule on the Adult Basic Education (ABE) Program, published in the **Federal Register** June 10, 1986 (at 51 FR 21114 et seq.).

In addition to the previously published proposed amendments, the Bureau is making non-substantive rules changes and has decided to republish the entire rule to allow ease of review.

Based on the implementation of the sentencing provisions of the Comprehensive Crime Control Act of 1984, § 544.11(a)(2) is revised to reference 18 U.S.C. 3552(b). That section became effective November 1, 1987, and provides for studies by the Bureau of Prisons. 18 U.S.C. 4205(c) was repealed as of November 1, 1987.

The final rule on the ABE program requires that an inmate who cannot read, write, or do mathematics at the 8.0 academic grade level shall be required to attend an adult basic education program for a minimum of 90 calendar days. The SAT (or another standardized test) is the means by which the Bureau determines whether an inmate's academic achievement is at the 8.0 grade level. Since the present amendment is intended to more effectively implement a specific existing requirement of the ABE program, the Bureau of Prisons finds good cause under 5 U.S.C. 533(d) to make this amendment effective immediately, without notice of proposed rulemaking, opportunity for public comment, or delay in the effective date. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. In §§ 544.12(a)(2) and 544.13, the reference to a 6.0 grade level is changed to read an 8.0 grade level.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR Chapter V is amended by revising Subchapter C, Part 544, Subpart B as set forth below.

Dated: March 16, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter C, Part 544, Subpart B is revised to read as follows:

Subchapter C—Institution Management

PART 544—EDUCATION

1. The authority citation for Part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 4001, 4042, 4081, 4082, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Part 544, Subpart B, is revised to read as follows:

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests

Sec.
544.10 Purpose and scope.
544.11 Applicability.
544.12 Procedures.
544.13 Refusal to take the Stanford Achievement or other standardized test.

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests

§ 544.10 Purpose and scope.

The Bureau of Prisons administers appropriate educational tests to inmates confined within its institutions.

§ 544.11 Applicability.

(a) The provisions of this subpart on minimum standards for administration, interpretation, and use of education tests apply to all inmates in Federal institutions except:

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer; and

(4) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule (for example, temporary medical transfers, holdovers).

(b) Staff shall document in the inmate's educational file the specific reasons for not requiring the inmate to take educational tests.

§ 544.12 Procedures.

(a) Staff shall administer the Stanford Achievement Test (SAT) to an inmate who meets the following criteria.

(1) Except as specified in § 544.11, a newly committed inmate shall be required to take the SAT within 30 days of the inmate's arrival at the institution. For the non-English-speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement.

(2) An inmate returning or transferring to a federal institution who has not taken the SAT within the last two years (verified by the Supervisor of Education or designee), and whose previous SAT scores in the Reading, Mathematics, and Language subtests were below the 8.0 academic grade level shall be required to take the SAT or, for the non-English-speaking inmate, another standardized test.

(b) Staff may administer other appropriate aptitude and achievement tests, as needed, to measure specific achievement or aptitude.

(c) Staff may not allow inmates to administer, score, record, or interpret tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

§ 544.13 Refusal to take the Stanford Achievement or other standardized test.

An inmate who refuses to take the SAT (or other standardized test) to determine if the inmate has achieved a test score equivalent to the 8.0 academic grade level shall be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days (see Part 544, Subpart H).

[FR Doc. 88–6728 Filed 3–28–88; 8:45 am]

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Occupational Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Occupational Education Programs. The Bureau's final rule is intended to combine several Bureau policies describing the types of Occupational Education Programs available to inmates interested in obtaining a marketable skill while incarcerated.

EFFECTIVE DATE: May 2, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Occupational Education Programs. The final rule is intended to allow interested inmates the opportunity to obtain marketable skills through a variety of Occupational Education Programs. The final rule combines the Bureau's proposed rule on Vocational Training Programs, published in the **Federal Register** October 1, 1985 (at 50 FR 40116 et seq.) with the Bureau's final rule on Apprentice Training in Institutions, previously published in 28 CFR, Part 544, Subpart F.

The final rule also incorporates several new sections. The Bureau's rule now contains a general section describing the types of Occupational Education Programs. Included in this list is the Bureau's policy on On-the-Job Training (OJT). Although not previously published as a proposed rule, OJT places no new restrictions on inmates, but is intended to provide organized training and instruction under actual working conditions. The rule requires OJT content to parallel, to the extent practicable, the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor. The final rule also includes a section on Exploratory Training which is intended to provide interested inmates general knowledge of the world of work, rather than specific skill development. Because these additions do not pose any new restrictions on inmates, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to publish this document without notice of proposed rule making, or an opportunity for public comment.

The Bureau received no public comment on its proposed rule on Vocational Training, and is renumbering its existing final rule on Apprenticeship Training without any substantive change. The new final rule is intended to place into one consolidated document the Bureau's long-standing practice of providing work and job experience that may benefit inmates upon release to the community. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 544.50:* This section is new and describes the Bureau's intent to provide Occupational Education Programs that allow interested inmates the opportunity to obtain marketable skills. Existing § 544.50, setting forth the rule on "Apprentice Training in Institutions", is renamed "Apprentice Training", and becomes new § 544.54.

2. *Section 544.51:* Section 544.51 is new and describes the types of Occupational Education Programs available to interested inmates in Bureau institutions. These programs are established to provide inmates the opportunity to obtain marketable skills.

3. *Section 544.52:* In this section, the Bureau is combining proposed §§ 544.120 through 544.122 into new § 544.52, entitled "Vocational Training". The wording of this section has changed, but the general intent remains the same. Section 544.122 (a) and (c) becomes new § 544.52(b). The provisions of proposed § 544.122(b) are now included within the scope of § 544.56, Exploratory Training. Section 544.123(c) now becomes new § 544.52(c).

4. *Section 544.53:* Section 544.53 is new and places into rule language the Bureau's long-standing policy of providing On-the-Job Training as an additional method to provide inmates marketable skills. Although On-the-Job Training is not sanctioned at the state or national levels, the Bureau has required the program content, to the extent practicable, to parallel the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

5. *Section 544.54:* Existing § 544.50 entitled "Apprenticeship Training in Institutions" is renamed "Apprentice Training" and now becomes new § 544.54. The intent of this paragraph is unchanged.

6. *Section 544.55:* In this section the Bureau expands to all Occupational Education Programs the requirements published in § 544.123 (a) and (b) of its proposed rule on Vocational Training Programs. The final rule requires that a specified portion of all Occupational Education Programs consist of "live work", and that duplication of services among training programs, other departments, and UNICOR (Prison Industries), be eliminated.

7. *Section 544.56:* In this section the Bureau requires institutions to offer, where practicable, Exploratory Training (a study of occupations and industries for the purpose of providing a general knowledge of the world of work) to interested inmates. Exploratory Training Programs (of 100 hours or less in duration) were briefly mentioned in § 544.122(b) of the Bureau's proposed rule on Vocational Training Programs. It was the Bureau's intent, at the time of the proposed rule, to exclude exploratory training programs of 100 hours or less because the program did not include "live work". In the current rule, the Bureau is offering exploratory training as a separate program designed to educate inmates about the world of work in addition to the marketable skill training provided in all Occupational Education Programs.

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List of Subjects in 28 CFR Part 544

Education, Libraries, Recreation, Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by revising Subchapter C, Part 544, Subpart F as set forth below.

Dated: March 16, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter C, Part 544, Subpart F is revised to read as follows:

Subchapter C—Institutional Management

PART 544—EDUCATION

1. The authority citation for Part 544, continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 4001, 4042, 4081, 4082, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Part 544, Subpart F is revised to read as follows:

Subpart F—Occupational Education Programs

Sec.
544.50 Purpose and scope.
544.51 Types of occupational education programs.
544.52 Vocational training.
544.53 On-the-job training.
544.54 Apprentice training.
544.55 Procedures for occupational education programs.
544.56 Exploratory training.

SUBPART F—OCCUPATIONAL EDUCATION PROGRAMS

§ 544.50 Purpose and scope.

Each Bureau of Prisons institution provides occupational education programs which allow interested inmates the opportunity to obtain marketable skills.

§ 544.51 Types of occupational education programs.

Occupational education programs include the following:

(a) *Pre-industrial training.* Entry level skills training for employment in prison industries.

(b) *Vocational training.* Instruction in specific entry-level or advanced skills.

(c) *On-the-job-training.* Organized instruction and training under actual working conditions, either in the performance of a service through institution maintenance or in Federal Prison Industries, Inc. (UNICOR).

(d) *Apprentice training.* Training through structured apprenticeship programs approved at the state and national levels by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

§ 544.52 Vocational training.

Vocational Training programs will be combined, where opportunities exist, with pre-industrial programs of the same general skill area, and with "live work" provided by UNICOR. Similar cooperative training efforts, to include "live work," shall also be developed for nonindustrial areas.

(a) "Live work" is to be included within each vocational education program. As used in this rule, the term "live work" refers to a product or service produced by the student for actual use by the institution, UNICOR, or another agency. It is characterized by a specific end-product or service goal, as opposed to repetitive classroom work done for training purposes.

(b). The provisions of this rule apply to all vocational education programs, regardless of funding source, except:

(1) Programs granted an exception by the Regional Director; and

(2) Vocational assessment programs.

(c) Vocational training programs shall be combined with pre-industrial training programs offering similar or related training.

§ 544.53 On-the-job-training.

On-the-job-training (OJT) provides a marketable skill through the use of institution resources and facilities with a potential for training inmates in various trades and occupations. The programs are distinctly separate and apart from formalized vocational training programs and approved apprenticeship programs. Completion of OJT does not preclude future placement of an inmate in a formal vocational training program or approved apprenticeship program. To the extent practicable, OJT content is to parallel the standards required for registered apprenticeship programs by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

§ 544.54 Apprentice training.

Apprentice training provides an inmate the opportunity to participate in training which prepares the inmate for employment in various trades. Apprenticeship programs for inmates will be established in those areas of the institution which have the potential to meet the requirements and standards of the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor.

§ 544.55 Procedures for occupational education programs.

(a) A specified portion of all occupational education programs is to consist of "live work."

(b) Duplication of services should be eliminated within the institution among training programs, other departments, and UNICOR.

§ 544.56 Exploratory training.

In addition to the occupational education programs listed in this rule, each Bureau of Prisons institution shall, where practicable, provide Exploratory Training to interested inmates. Exploratory Training is a study of occupations and industries for the purpose of providing the student with a general knowledge of the world of work, rather than specific skill development.

[FR Doc. 88-6729 Filed 3-28-88; 8:45 am]

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federal register

Tuesday
March 29, 1988

Part V

Environmental Protection Agency

40 CFR Part 749

Proposed Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 749

[OPTS-61012; AD-FRL-3246-8]

Proposed Prohibition of Hexavalent Chromium Chemicals in Comfort Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed rule would prohibit the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCT's) and the distribution in commerce of these chemicals for use in CCT's. Persons who distribute in commerce water treatment chemicals containing Cr^{+6} compounds for industrial cooling tower use would be required to label the containers of these chemicals. They also would be required to keep records of water treatment chemical shipments to CCT users and Cr^{+6}-based water treatment chemical shipments to industrial cooling tower users for a period of 2 years from the date of the shipment. The proposed rule is under authority of section 6 of the Toxic Substances Control Act (TSCA). This rule is based on the Administrator's determination that use of Cr^{+6} chemicals in CCT's presents an unreasonable risk of injury to human health and that TSCA is the most effective means to control this risk. The EPA has determined that Cr^{+6} compounds are potent human carcinogens.

DATES: Written comments in response to this notice must be postmarked on or before May 31, 1988. A public hearing will be held on this proposed rule June 13, 1988, beginning at 10:00 a.m. only if a written request for such a hearing is received by May 13, 1988. In addition, persons making a request for a public hearing should call Ms. Ann Eleanor at (919) 541-5578 by May 13, 1988. Requests to participate in the public hearing must be postmarked by May 23, 1988. For further information regarding the public hearing, see Unit XI of this preample.

ADDRESSES: *Comments.* Written comments should be submitted in triplicate to: OTS Document Control Officer (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: Document Processing Center.

Comments should include the Docket Control Number OPTS-61012. For further information regarding the submission of comments containing confidential business information, see Unit XII of this preamble.

Public Hearing. Requests to hold a public hearing must be submitted in writing to the address identified above. In addition, persons making such a request should call Ms. Ann Eleanor at (919) 541-5578 and inform her of the request. Requests to participate in the public hearing also must be submitted in writing to the address identified above. If a public hearing is requested, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. For further information regarding the public hearing, see Unit XI of this preamble.

Background Information. The "Health Assessment Document for Chromium" (EPA 600/8-83-014F) and the "Background Information Document for Chromium Emissions From Comfort Cooling Towers" (EPA-450/3-87-010a) may be viewed in the docket or obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

Docket. Docket Number OPTS 61012 contains supporting information used in developing the proposed rule, and will include comments on the proposed rule and additional supporting information. A public version of the docket is available for inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. G004, NE Mall, at the Washington, DC, address given above. A reasonable fee may be charged for copying. (See Unit XIII for a description of information currently in the rulemaking record.)

FOR FURTHER INFORMATION CONTACT: For information concerning the policy aspects of the proposed rule, contact Ms. Debbie W. Stackhouse, Standards Development Branch, Emission Standards Division (ESD) (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5258. For information regarding the technical basis and the background information document, contact Mr. Ronald E. Myers, Industrial Studies Branch, ESD, telephone number (919) 541-5407, at the same address. For information concerning the public hearing, contact Ms. Ann Eleanor, Standards Development Branch, ESD, telephone number (919) 541-5578, at the same address. For information concerning the health and exposure analyses associated with the rule, contact Ms. Karen L. Blanchard, Pollutant Assessment Branch, ESD (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5503.

SUPPLEMENTARY INFORMATION: This preamble first summarizes the proposed rule to control Cr^{+6} emissions from CCT's. Next, the preamble describes the regulatory authority and history of the project. The preamble also summarizes the relevant comments on notices published in the **Federal Register** and EPA's responses. It then presents the basis for EPA's decision to regulate Cr^{+6} emissions from CCT's, the decision to regulate under TSCA, and the impacts on other relevant regulations. The language of the proposed rule is described briefly; information on the public hearing and handling of confidential documents is presented; the information in the rulemaking record is described; and administrative considerations including Executive Order (E.O.) 12291, the Regulatory Flexibility Act (RFA), and the Paperwork Reduction Act are discussed.

I. Summary of Proposed Rule

A. Prohibitions Against Distribution and Use

The proposd rule would prohibit the commercial use of Cr^{+6}-based water treatment chemicals in existing and new CCT's. The rule also would prohibit the distribution of Cr^{+6}-based water treatment chemicals for use in CCT's. In addition, water treatment chemical vendors (i.e., persons who distribute in commerce Cr^{+6}-based water treatment chemicals for use in cooling towers) would be required to label those chemicals with a warning that Cr^{+6} increases the risk of lung cancer when inhaled and that use in CCT's is prohibited.

Typically, the distribution cycle for Cr^{+6} water treatment chemicals begins with the production or mining of the chromite ore. The ore is sold to processors who use the ore to produce chromium for use in a variety of processes such as making chromium chemicals, stainless steel, and refractory bricks. Water treatment chemical vendors purchase sodium dichromate from processors for use as a corrosion inhibitor. The water treatment vendors typically formulate their own water treatment programs, which, in turn, are sold to cooling tower users and others (e.g., industrial boiler users). Some small water treatment vendors may purchase formulated chemicals from processors or blenders or, occasionally, from other vendors and then sell the packages to cooling tower users and others.

The Agency believes that an alternative means of eliminating the

risks from a Cr^{+6}-based product would be to prohibit processors from including Cr^{+6} in the product. Therefore, in addition to the regulatory measures mentioned above, EPA is also considering a requirement that would prohibit the processing of Cr^{+6} into water treatment products that may be used in CCT's. The EPA does not expect that this requirement would significantly affect the business operations of processors/vendors who produce Cr^{+6}-based water treatment packages for uses other than in cooling towers. The EPA believes that the markets for these products are distinct and processors/vendors who prepare the products can comply with this requirement by making appropriate adjustments in their market involving CCT users. Also, these processors/vendors would be required to label their products that contain chromium to indicate that use of Cr^{+6}-based water treatment chemicals in CCT's is prohibited.

The EPA solicits comments on these approaches. Comments that address the three following areas would be particularly useful: (1) The impact of these requirements on vendors/processors with respect to producing Cr^{+6}-based water treatment products for cooling tower users, (2) typical preparation and distribution processes of Cr^{+6}-based water treatment chemicals, and (3) alternative methods for EPA to prohibit the introduction of Cr^{+6} into products that could be used in CCT's.

B. Labeling, Recordkeeping, and Reporting

The labeling requirement being proposed today would apply only to water treatment chemical vendors. It would not apply to the producers and processors of chromium ore provided they do not sell water treatment chemicals directly to cooling tower owners/operators. The water treatment vendors would be required to retain records of all shipments of water treatment chemicals for use in CCT's and all shipments of Cr^{+6}-based water treatment chemicals for use in industrial cooling towers for a period of 2 years from the date of shipment. The water treatment vendors would be required to keep the records at their company's headquarters location. In addition, the water treatment vendors would be required to provide an initial report identifying their headquarters and shipment office locations through which their water treatment chemicals are sold. An updated list would be required when changes in the headquarters or shipment office information occur. The rule would be effective 45 days after promulgation for water treatment chemical vendors and 135 days after promulgation for CCT owners/operators to allow them to exhaust any existing inventories of Cr^{+6}-based water treatment chemicals.

II. Authority

Under section 6(a) of TSCA, EPA is authorized to impose regulatory controls if the Agency finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs to society of placing restrictions on the substance.

If the EPA Administrator determines that an unreasonable risk exists, one or more of several regulatory measures may be applied to the extent necessary to protect adequately against the risk. Those measures include: prohibiting or limiting the manufacture, processing, or distribution in commerce; labeling; prohibiting or otherwise regulating any manner or method of commercial use or disposal; requiring the revision of quality control procedures; and requiring that chemical manufacturers notify the public of unreasonable risk associated with a chemical substance. The EPA Administrator is required by TSCA to apply the least burdensome requirements to protect adequately against the risk. Section 9 of TSCA requires EPA to review other authorities administered by EPA or by other agencies to determine whether the unreasonable risk could be eliminated or reduced to a sufficient extent by action under those authorities.

The Agency understands that some water treatment chemical products sold for use in CCT's are registered pesticide formulations that contain Cr^{+6}. The Cr^{+6} is considered an "inert" ingredient in the pesticide mixture because it has no intended pesticidal functions in cooling tower water. These water treatment chemical products are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which requires, among other things, that they be registered with EPA. Under FIFRA, EPA has authority to take action to cancel a pesticide registration if EPA finds that use of the pesticide causes unreasonable adverse effects on the environment.

The EPA proposes to take actions under FIFRA, as an adjunct to the proposed TSCA rule, to eliminate any unreasonable adverse effects caused by the use of Cr^{+6} in CCT's. The Agency will ask pesticide registrants who manufacture Cr^{+6}-based water treatment products to remove the Cr^{+6} or to amend the labels to include language prohibiting the product's use in CCT's. Registrants who fail to comply with these requests voluntarily could have their registrations canceled by EPA. Also, to address future registrations involving Cr^{+6} as an inert ingredient, the Agency is considering including Cr^{+6} in category No. 1 on EPA's list of inert ingredients of concern. Sodium dichromate (Chemical Abstract Service [CAS] No. 10588-01-9) is already included in category No. 1. (See 52 FR 13305 et seq., April 22, 1987.)

As discussed above, this proposed rule would impose limited recordkeeping and reporting requirements on persons who distribute in commerce any water treatment chemicals for use in CCT's and on persons who distribute in commerce hexavalent chromium-based water treatment chemicals for use in industrial cooling towers. Many of these distributors are likely to be persons who manufacture or process the water treatment chemicals in question, i.e., produce the individual ingredients and/or formulate them into a mixture which is sold as a water treatment chemical. Others may be strictly engaged in distribution of the water treatment chemicals without any manufacturing or processing activities. The EPA is proposing these requirements to ensure compliance with the prohibition on distribution of hexavalent chromium-based water treatment chemicals for use in CCT's, the labeling requirements for those chemicals, and the prohibition on use of such chemicals in CCT's. These requirements will be necessary for effective enforcement of the rule.

Section 8(a) of TSCA gives EPA authority to require persons who manufacture or process chemical substances and mixtures to maintain records and submit reports for many purposes, including records and reports necessary for effective enforcement of TSCA requirements. Small manufacturers and processors are generally exempt from recordkeeping and reporting under section 8(a). However, section 8(a)(3)(ii)(I) provides that, when, as here, the chemical substance or mixture involved is the subject of a rule proposed or promulgated under section 6, small manufacturers and processors also can be required to report and keep records.

The EPA also has authority under section 6 of TSCA to require reporting

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and recordkeeping related to the other regulatory requirements imposed by EPA under section 6. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule and would apply to persons who are not covered by section 8(a), i.e., those who are not manufacturers or processors. In this case, section 6 provides the authority to apply the recordkeeping and reporting requirements to distributors of water treatment chemicals who are not also manufacturers or processors of such chemicals subject to section 8(a). The EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl and asbestos rules promulgated under TSCA section 6 in 40 CFR Parts 761 and 763.

III. Regulatory History

Chromium compounds are prevalent in the environment in two oxidation states. Trivalent chromium (Cr^{+3}) is a natural constituent of the earth's crust and is a key component of the human glucose tolerance factor, which is a necessary complex for metabolizing glucose in the body. Hexavalent chromium is usually manmade and is considered the more toxic of the two forms.

Because of the potential adverse health effects associated with Cr^{+6} exposure, EPA initiated a review to determine the risks to public health from exposure to chromium in the ambient air. As part of this review, a comprehensive "Health Assessment Document for Chromium" (HAD) was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's Science Advisory Board (SAB) on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic in humans. A final HAD was published in August 1984.

Numerous epidemiological studies of workers have shown an association between inhalation of Cr^{+6} and lung cancer. The findings of these studies alone do not permit a determination of which oxidation state resulted in an increased risk of cancer because the workers usually were exposed to mixtures of both Cr^{+3} and Cr^{+6}. The HAD notes that Cr^{+6} is believed to be the form responsible for the carcinogenic responses because of its generally positive results in a number of animal bioassays and mutagenicity tests. More specifically, the HAD concluded that (using the International Agency for Research on Cancer Scheme) "the level of carcinogenic evidence available for the combined animal and human data would place Cr^{+6} compounds into Group 1, meaning that there is decisive evidence for the human carcinogenicity of those compounds." Under the recently adopted EPA guidelines (51 FR 33992, September 24, 1986) for carcinogenic risk assessment, Cr^{+6} compounds would be classified as Group A, meaning that they would be classified as human carcinogens because there is sufficient evidence to support a causal association between exposure to the agents and cancer. The HAD included an estimate of potency called a "unit risk factor" for Cr^{+6} of 1.2×10^{-2}. This means that if a person were continuously exposed to 1 microgram of Cr^{+6} per cubic meter of air ($\mu g/m^3$) for 70 years, the probability of getting cancer would not exceed 1.2 in 100.

The HAD also concluded that the data are inadequate to classify the carcinogenicity of Cr^{+3} compounds. The Cr^{+3} compounds have not been studied as extensively, and the studies that have been done are inadequate to judge the carcinogenic potential. The EPA's Office of Research and Development is engaged in an ongoing evaluation of epidemiological data to examine further the potential carcinogenicity of Cr^{+3} compounds.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a hazardous air pollutant under section 112 of the Clean Air Act (CAA) (50 FR 24317). This notice presented a summary of the HAD findings and described the preliminary estimated risks from exposure to chromium air emissions. The notice indicated that EPA would decide whether to add either total chromium or Cr^{+6} to the list of hazardous air pollutants only after studying possible techniques that might be used to control emissions of chromium compounds and assessing the public health risks to determine if Federal standards are warranted. As further discussed below, this proposal does not affect that decision.

Since the notice of intent to list was published in the **Federal Register**, EPA has been conducting in-depth studies of the quantity of Cr^{+6} and total chromium being emitted, possible control techniques, and the possible cancer risk reduction those control techniques could achieve for various source categories. The source categories under investigation are: chromium plating, refractory production, chromium chemicals production, specialty steel production, municipal solid waste incineration, sewage sludge incineration, ferrochrome production, cement production, chromite ore refining, coal and oil combustion, and cooling towers. As stated in the notice of intent to list, EPA is continuing its evaluation of the need for listing chromium (either hexavalent or total) and for subsequent national emission standards for hazardous air pollutants for electroplating and for industrial cooling towers (as described elsewhere in this proposed rule). The results of EPA's investigation of the need for regulating Cr^{+6} emissions from CCT's are the subject of this proposed rule. Decisions on whether to proceed further with the standards development process for the other source categories identified above, and any decisions under section 112 of the CAA, will be made after further in-depth studies of the source categories are available.

In further investigations of cooling towers, EPA identified CCT's as a class of cooling towers with a potentially high annual incidence of lung cancer for which there is sufficient information available to make a determination on appropriate control techniques. The CCT source category is defined to include cooling towers that exclusively serve and are an integral part of heating, ventilation, and air conditioning (HVAC) or refrigeration systems. Cooling towers that are used to cool water for removal of heat from an industrial process are not included in this source category. The industrial process cooling tower systems are different from CCT systems in size, operating parameters such as cooling range and inlet water temperature, and heat exchanger construction materials. The higher temperatures in industrial processes promote more corrosion, and the most common heat exchanger construction material, carbon steel, is less resistant to corrosion than the copper used in heat exchangers in CCT systems. Thus, the Agency determined that it was appropriate to treat CCT's and industrial process cooling towers as separate source categories. The Agency is continuing to investigate industrial cooling towers in a separate study.

On September 15, 1986, EPA issued a notice of solicitation of information on potential standards to reduce public exposure to Cr^{+6} air emissions from CCT's (51 FR 32868). The notice presented preliminary information and solicited information on the potential standards for CCT's. The preliminary information also was presented at a public meeting of the National Air Pollution Control Techniques Advisory Committee on September 17, 1986.

In addition to EPA's effort on Cr^{+6} air emissions from CCT's and industrial cooling towers described above, EPA published final water effluent guidelines for chromium discharged from cooling towers at steam electric power plants (47 FR 52290, November 19, 1982) and petroleum refineries (47 FR 46434, October 18, 1982). The power plant regulations limit the discharge of pollutants into navigable waters and into publicly owned treatment works (POTW's) by existing and new sources at steam electric power plants under authority of the Clean Water Act (CWA). The regulations relate to the discharge of toxic and other chemical pollutants. The refinery regulations limit the discharge of pollutants into navigable waters and into POTW's by existing and new sources in the petroleum refining industry under authority of the CWA. These guidelines and general environment concerns have encouraged all but two electric utility plants to discontinue use of Cr^{+6}-based water treatment chemicals in cooling towers. Most refineries continue to use Cr^{+6} in industrial process towers and CCT's.

Many States have wastewater discharge regulations that limit the amount of chromium that may be discharged to surface waters from any type of source, and many POTW's also regulate discharges of chromium to the POTW. Although some of these State regulations are fairly stringent, none totally prohibit the discharge of chromium-laden wastewater. No State regulations directly affect air emissions of Cr^{+6} from cooling towers although there are States that have ambient air quality standards for chromium (e.g., Maine) or hazardous air pollutant regulations for some chromium compounds (e.g., Connecticut).

At the present time, no information has been found on chromium environmental regulations in countries other than the United States.

IV. Issues Raised in Relevant Comments Received on Intent to List Chromium as a Hazardous Air Pollutant

The EPA received a number of public comments on the intent to list **Federal Register** notice (50 FR 24317) described in Unit III of this preamble. All of the comments received in response to the intent to list notice that are relevant to this rulemaking pertain to the health basis upon which EPA's conclusions were drawn. Discussion of these relevant comments below is for purposes of this section 6 rulemaking only. The EPA intends to respond to all of the comments on the intent to list notice when a final listing decision is made.

Some commenters indicated that, based on data from animal studies, only slightly soluble to insoluble Cr^{+6} compounds should be considered carcinogenic. Sodium dichromate, the most commonly used chromium compound for corrosion inhibition, is soluble. The EPA's response to these comments is that evidence is available showing that sodium dichromate produced lung tumors in Sprague-Dawley rats via intratracheal application, as reported in the HAD (Steinhoff et al., "Experimental Pathology," 1986. V. 30, p. 129–141). Thus, the hypothesis cannot be substantiated that only slightly soluble chromates produce a carcinogenic effect and that highly soluble chromates do not.

Another commenter stated that there is a threshold for the carcinogenic action of chromium, and, thus, EPA should not have applied the no threshold or "one-hit" theory of carcinogenesis in estimating the potency. The commenter's argument about a threshold is based on an intratracheal study (Steinhoff, et al.) in which a single administration of sodium dichromate induced a carcinogenic response in rats but failed to induce a response when the same weekly dose was given over 5 days. Although it is possible that the difference in tumor response under the two exposure patterns may suggest the existence of a threshold, it could also suggest that the difference in tumor response is due to the difference in pharmacokinetics such as rate of distribution to lung tissue. For these animal data to be useful in risk assessment, information on pharmacokinetic parameters relating inhalation and intratracheal routes of exposure are required. The EPA did not find that the data are strong enough to establish that the mechanism of action is via a threshold. The fact that the Cr^{+6} compounds are highly mutagenic supports the Agency's position.

An estimate of the relative potency of chromium in comparison to other suspected carcinogens was derived from an occupational study by Mancuso ("International Conference on Heavy Metals in the Environment," Toronto, Ontario, Canada. October 27–31, 1975. pp. 343–356). Several commenters indicated that EPA vastly overestimated the potency of Cr^{+6} by its assumptions on exposure in the Mancuso study, which was used to derive the unit risk estimate. Other commenters suggested that the Mancuso study is not appropriate to use for a number of different reasons. The Agency determined that the Mancuso study is the most appropriate for quantitative risk estimation because it presents lung cancer incidence by both dose and age. The risk estimate calculated from other studies generally supports that calculated from the Mancuso study. Concerning the estimation of exposure, the information used by Mancuso was derived from an industrial hygiene study conducted in 1949. In this study, time-weighted averages of exposure to insoluble, soluble, and total chromium per cubic meter were calculated for each worker and for each worker in every department. Mancuso then calculated an estimate of exposure by duration for each member of the 1931 to 1937 cohort. In 1949, after the study had been conducted, the company initiated a program to reduce exposure. Although there is some information to suggest exposures to chromium may have been somewhat higher prior to 1949, no concerted effort was made to reduce employee exposure until late in 1949. The EPA considers Mancuso's data to be a reasonable approximation of the chromium to which the workers in the study cohort were exposed during their entire working history. Although there is the possibility of a slight underestimation of exposure prior to 1949, which would decrease somewhat the potency factor, there are other factors that may have resulted in an increased potency estimate.

For more detailed information on EPA's response to the intent to list public comments, see docket number A–84–43 located at: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

V. Summary of and Response to Comments Received on Notice of Solicitation of Information for Chromium Emissions From Comfort Cooling Towers

Three commenters responded to the notice of solicitation of information (51 FR 32868) described in Unit III of this preamble. The points made in these comments are organized by topic.

One commenter suggested that EPA take affirmative action to examine environmental and health impacts of nonchromium corrosion inhibitors. Another commenter stated that nonchromium alternative chemicals and required biocides may be more hazardous than CR^{+6}-based water treatment chemicals.

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The EPA has reviewed the literature concerning the hazardous nature of nonchromate water treatment chemical programs. The results of this review are summarized in Unit VI.C.2. below. In all cases, the nonchromate substitutes are considered to be less hazardous than the chromates.

One commenter stated that the cost of nonchromate water treatment programs may be understated. This commenter also stated that, if biocides that are compatible with nonchromates are too costly, biocide use will cease, and disease will increase.

As described in Unit VI.E.1.a. below, EPA has obtained additional cost information from water treatment chemical vendors and from CCT owners/operators. These sources indicate that the preliminary cost estimates presented in the notice of solicitation of information are high. The cost of non-CR^{+6}-based water treatment programs, which include corrosion inhibitors, dispersants, antiscalants, and biocides, are reasonable. Biocides are included to prevent excessive growth of algae and other microorganisms on the internal tower and heat exchanger surfaces. Such growth can result in decreased cooling efficiency and increased corrosion, both of which cannot be tolerated in most CCT systems. In addition, an increase in microbiological growth caused by discontinuing the use of biocides could also result in health problems. Thus, it is unlikely that CCT owners/operators would discontinue biocide use because such an action could result in liability claims for any resulting health problems.

One commenter stated that the requirements for CCT's should not be prescribed automatically for industrial cooling towers because there are differences in the cooling system conditions.

As explained in Unit VI.A.1., EPA is aware of differences between CCT's and industrial process cooling towers. As a result, this proposed rule does not cover industrial cooling towers. The Agency has instituted a separate standards development project for industrial towers.

One commenter supported a prohibition on chromium use in cooling towers. This commenter believes molybdenum-based alternatives provide equivalent or superior corrosion inhibition with significantly less environmental harm.

The EPA has determined that there are many nonchromate water treatment chemical programs (including molybdates) that provide good corrosion protection and are less hazardous than chromate-based programs. The basis for this determination is described in Unit VI.C.2.

VI. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors in determining whether a chemical substance or mixture presents an unreasonable risk:

1. The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture;
2. The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;
3. The benefits of such substance or mixture for various uses and the availability of substitutes for such uses; and
4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

In the following presentation, Unit VI.A. is a discussion of the uses and benefits of Cr^{+6}-based water treatment chemicals in CCT's and possible substitutes. Unit VI.B. covers the health effects, exposure estimates, and risk estimates related to the use of Cr^{+6} in CCT's. Unit VI.C. is an analysis of the availability and hazards of substitutes. Unit VI.D. discusses other environmental impacts of the proposed rule. Unit VI.E. presents an analysis of regulatory options (including their costs), describes EPA's proposed course of action, and discusses the economic consequences of adopting the proposed action. Finally, Unit VII is a summary of the findings for each of the factors described above that must be considered under section 6(c)(1) of TSCA.

A. Use and Benefits of Chromium in CCT's

1. Emission Source

Cooling towers are devices that use fans (mechanical draft) or natural draft to draw or force ambient air through the tower to cool warm water. For most cooling towers, approximately 80 percent of the cooling occurs from evaporation of water as the air flowing through the tower contacts water cascading from the top to the bottom of the tower. Comfort cooling towers, which exclusively serve HVAC and refrigeration systems, are mechanical-draft towers designed with induced- or forced-draft airflow. The direction of the airflow through a mechanical-draft tower is either crossflow or counterflow. The major CCT components include the fan(s) to create airflow, the fill to break up the water to increase the surface area for evaporation, a water distribution deck or header, a drift eliminator to reduce drift (which is water droplets entrained in the air and emitted from the fan stack), the structural frame, and a cold water basin. The HVAC system usually includes the CCT and a heat exchanger and/or chiller.

Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), or other corrosion inhibitors often are added to cooling tower water to protect the metal components of the heat exchanger, chiller, and cooling tower from corrosion. Corrosion is the oxidation of a metal by some oxidizing agent in the environment. Conditions that increase the conductivity of the water (e.g., high dissolved solids content or high temperature) increase the rate of corrosion. Corrosion can be retarded but not totally prevented, and the rate of corrosion that is acceptable varies among systems. Inhibitors are added primarily to protect the heat transfer surfaces from corrosion by retarding the rate at which corrosion occurs. These surfaces are the most critical metal components in the system.

Chemicals added to the cooling tower water are either discharged into a wastewater system as blowdown or emitted into the air in droplets of water called "drift" or as dry salt particles. In addition to the corrosion inhibitors, other chemicals are added to the recirculating cooling water in a tower to control the rate of scaling and fouling and to control the growth of microorganisms in both the cooling tower and the heat exchangers. As evaporation occurs during cooling, the chemical constitutents of the water become concentrated, and the concentrations of suspended and dissolved solids rise. A percentage of the recirculating water is intentionally discharged (blowdown) to maintain acceptable concentrations of suspended and dissolved solids. Fresh water is added to make up for the losses resulting from drift, evaporation, and blowdown.

There are two broad categories of cooling towers, comfort and industrial. Comfort cooling towers are used primarily for air conditioning or refrigeration. Industrial process cooling towers are used to cool process fluids in industrial production units. The EPA is evaluating industrial towers separately because the conditions under which industrial towers operate make the

control of corrosion in an industrial cooling tower system more complex and difficult. The following conditions distinguish these towers and make the control of Cr^{+6} emissions from CCT's less difficult:

a. A lower potential for corrosion exists in CCT's because lower water temperatures typically are encountered;

b. The utilization rate of CCT's is lower, which results in fewer air emissions;

c. The CCT heat exchangers are constructed of copper, which is less susceptible to corrosive attack than the mild steel typically used in industrial cooling tower heat exchangers; and

d. Little opportunity exists in CCT's for upsets in the chemical treatment programs from contamination of the cooling water in contrast to industrial towers, which may be contaminated with process fluids by heat exchanger leakage.

As noted previously, an assessment of the magnitude of chromium air emissions from industrial towers and an evaluation of possible methods of controlling chromium emissions from these towers is being performed in a separate study.

2. Need for Chromate Use

Hexavalent chromium-based water treatment chemicals, generally in the form of sodium dichromate, are effective and relatively inexpensive corrosion inhibitors that are added to the cooling water in 10 to 25 percent of the CCT's and, thus, are emitted as drift/particular or lost in the blowdown. These CCT's continue to use sodium dichromate because chromates historically have provided the best protection against corrosion for the least amount of money and effort. Minimal monitoring and control of pH and corrosion inhibitor concentration are required when Cr^{+6}-based water treatment chemicals are used. However, nonchromium water treatment chemical substitutes such as phosphates (which are the most prevalent and least expensive), triazoles, and molybdates (which are the most expensive) are effective as corrosion inhibitors and are readily available. In fact, several nonchromium water treatment programs that provide adequate corrosion protection are marketed currently for CCT's by the same vendors that sell the Cr^{+6}-based water treatment programs. Furthermore, as discussed in Unit VI.A.4.c. below, nonchromium alternatives are used currently in 75 to 90 percent of all CCT's.

3. Source Category Population

Major users of CCT's include hospitals, hotels, educational facilities, office buildings, and retail shopping malls. Estimates from the 2 largest manufacturers of cooling towers (each represents a 40 percent market share) indicate that the nationwide population of CCT's is 250,000. Of these towers, 10 to 25 percent or 25,000 to 62,500 towers are estimated by water treatment vendors to use Cr^{+6}-based water treatment chemicals. For the purposes of the impact analyses, 15 percent or 37,500 are estimated to use Cr^{+6}-based chemicals. Comfort cooling towers are used in all States in the United States, primarily in urban areas. Hexavalent chromium use in CCT's occurs throughout the nation.

4. Control Options

The following techniques for reducing Cr^{+6} emissions from CTT's were considered: (a) Eliminating Cr^{+6}-based chemicals from water treatment programs and (b) using high-efficiency drift eliminators.

a. *Nonchromate water treatment chemicals.* Cooling tower water treatment programs can include corrosion inhibitors, biocides, antiscalants, and dispersants. To obtain the best results, nonchromate corrosion inhibitors usually require automated monitoring and control of pH and corrosion inhibitor concentration. Nonchromate programs currently in use include phosphates (which are the type of nonchromate inhibitor used most often), molybdates, and various organic formulations. When phosphates are used, microbiological control requires more care, primarily because phosphates are microbiological nutrients. Removal of biocides could result in increased microbiological growth that could also lead to health problems. In addition, some of the other nonchromate inhibitors are not compatible with chlorine and must be used with nonchlorine biocides that require more careful monitoring than usually is required with chlorine. Thus, microbilogical control should be automated also when using nonchromate treatment programs.

Although Cr^{+6}-based programs traditionally have provided the best corrosion protection, the nonchromate formulations currently can provide at least equivalent corrosion protection. Actual experience with CCT's at a large research center indicates that equal or better corrosion protection is provided when the control parameters of a phosphate-based program are automatically monitored and maintained. Also, switching from chromates to phosphates at this research center did not require a change in the preventive maintenance schedule for the towers.

At other CCT sites where chromates have been discontinued in favor of nonchromates, quantitative cost and preventive maintenance information has not been available. In general, CCT operators have stated that equivalent protection from corrosion has been achieved. However, some comments have been received that mention increased chemical cost; increased monitoring including automatic controllers for chemical feed, makeup water, and blowdown; and increased use of biocides, antiscalants, and dispersants. It should be noted that switching to nonchromate programs will not inhibit technological innovation in treatment programs, tower construction, or internal tower components.

b. *Drift eliminators.* Historically, the purpose of drift reduction has been to alleviate nuisance problems related to deposition of drift on nearby buildings or personal property such as automobiles. Installation of drift eliminators is the most common way to reduce drift. Low-efficiency drift eliminators include herringbone, waveform (sinusoidal), and some cellular designs. High-efficiency drift eliminators include some cellular and sinusodial designs. All drift eliminators work on the principle of inducing impaction to reduce the escape of water droplets. The cellular designs that achieve the higher efficiencies use complex configurations and are constructed with numerous, closely spaced airflow passages. Regardless of the drift eliminator design, droplet impaction is a function of droplet size such that smaller droplets are not caught as effectively as larger droplets.

Drift eliminator manufacturers indicate that higher efficiency drift eliminators can remove up to 80 to 90 percent of the drift discharged from lower efficiency drift eliminators. These drift eliminator efficiencies are based on pilot-scale cooling tower tests using test methods that have not been verified by EPA. Emission tests of drift eliminators performed by EPA at three facilities indicate that the average nationwide control achieved by high-efficiency drift eliminators is 80 percent more effective than that achieved by low-efficiency drift eliminators. Of the two cooling towers tested by EPA with high-efficiency drift eliminators, the average emission rate from the tower with the highest average emissions was 0.3×10^{-3} milligram of Cr^{+6} per milligram of recirculating Cr^{+6} (mg Cr^{+6}/mg Cr^{+6}) (0.3×10^{-3} pound of Cr^{+6} per pound of recirculating Cr^{+6} [lb Cr^{+6}/lb Cr^{+6}]). The

EPA emission tests of the two cooling towers with lower efficiency herringbone-design drift eliminators provide an estimate of average national emissions of 1.5×10^{-3} mg Cr^{+6}/mg Cr^{+6} (1.5×10^{-3} lb Cr^{+6}/lb Cr^{+6}). The individual emission test runs used to determine the average emissions for both high- and low-efficiency drift eliminators were highly variable, which indicates uncertainty in the calculated difference between the two average levels of emissions.

Vendors have indicated that most existing CCT's are not equipped with high-efficiency drift eliminators. One cooling tower manufacturer with 40 percent of the market indicates that its older towers do not include high-efficiency drift eliminators, although they are used in new CCT's. Other manufacturers do not routinely install high-efficiency eliminators.

Colling tower manufacturers have indicated that high-efficiency drift eliminators can be retrofitted in all counterflow towers and in about 50 percent of the crossflow towers. These manufacturers also have indicated that about 50 percent of all CCT's are counterflow towers and about 50 percent are crossflow towers. It is not possible to replace the low-efficieny drift eliminator in the 50 percent of the crossflow towers because the fill and drift eliminator sections are constructed as a unit from a continuous piece of polyvinyl chloride (PVC). A second drift eliminator, however, could be installed above the existing drift eliminator in about 90 percent of these towers. This procedure would increase the electricity requirements by about 15 percent if the same airflow is maintained. Also, extensive electrical and mechanical modifications including installation of a larger motor may be required by 50 to 75 percent of the towers to accommodate the increased electrical load. The remaining 10 percent of the towers constructed with integral fill and drift eliminators (2.5 percent of all towers) do not have the necessary clearance to have a second drift eliminator installed, and these towers would have to be rebuilt. Rather than retrofit, the owners/operators with towers that would require extensive modification or rebuilding (25 percent of all CCT's presently using Cr^{+6}-based water treatment chemicals) probably would switch to nonchromate treatment.

c. *Comparison of control option effectiveness.* Based on an analysis of the nonchromium control option, it was determined that prohibiting the use of Cr^{+6}-based corrosion inhibitors in CCT's is reasonable. Substitute water treatment chemicals are effective corrosion inhibitors and are readily available. This option results in the maximum level of environmental protection. At best, to require installation of high-efficiency drift eliminators would not achieve the same level of environmental protection as would the prohibition of Cr^{+6} use. Thus, prohibiting the use of Cr^{+6}-based water treatment chemicals in CCT's is the most effective control option.

Although some CCT's may use no corrosion inhibitors, the majority (75 to 90 percent) of CCT's use nonchromium alternatives. Present infomation indicates that these nonchromium systems do not experience significant adverse impacts from corrosion. Also, cooling tower and water treatment vendors have stated that switching from chromium to nonchromium corrosion inhibitors is not expected to cause any operation or maintenance problems with the chiller components (heat exchanger) of the cooling system. Automated monitoring and control systems are readily available to control chemical feed (including corrosion inhibitors, biocides, antiscalants, and dispersants), makeup, and blowdown.

As discussed in Unit VI.A.4.b., a high-efficiency drift eliminator could achieve an average 80 percent reduction in airborne emissions of chromium from cooling towers over a low-efficiency design. Furthermore, to implement an effective standard based on the use of high-efficiency drift eliminators, it would be necessary to establish some combination of equipment specifications, performance testing, periodic equipment inspection, and product certification in addition to an annual inspection of the drift eliminator.

At the present time, there is no standard high-efficiency drift eliminator design, and it is unclear how emission rates or efficiencies of these drift eliminators are related to their design. Therefore, the information is not available currently to specify design requirements for a high-efficiency drift eliminator.

Performance testing of individual CCT's is not considered reasonable because of the cost of testing, which is estimated to be $10,000 to $20,000 per tower. This cost is high relative to the installed cost of high-efficiency drift eliminators. In addition, further work is needed to determine the precision and accuracy of a test method to use for performance testing.

Development and implementation of an inspection and/or certification program for CCT's would be costly to EPA and industry and would be time consuming because of the large number of sources that are estimated to use Cr^{+6}. The Agency also would need to develop a reference test method, develop a standard set of certification testing conditions related to actual operating conditions of a variety of types of cooling towers, and identify critical installation criteria to be specified in the installation instructions of the drift eliminator.

For these reasons, development of a rule based on the use of high-efficiency drift eliminators is not technically feasible at this time. The EPA solicits information on the effectiveness of high-efficiency drift eliminators, design criteria, test methods, and certification procedures that could be used to determine the performance of drift eliminators and to differentiate between designs and applications that achieve high-efficiency and those that do not.

In conclusion, the elimination of Cr^{+6} use in CCT's is a more feasible control technique than the installation of high-efficiency drift eliminators. Such an approach would eliminate CCT chromium air emissions. It also would provide additional environmental benefits over high-efficiency drift eliminators because Cr^{+6} (a water pollutant) would be eliminated in the blowdown from CCT's.

5. Emission reductions

Based on model building sizes and numbers in the United States, six model towers were developed to characterize the existing population of CCT's. Because office buildings are the most prevalent type of commercial building with CCT's, it was assumed that the model towers require a design heat load value comparable to that required for office buildings. Thus, a value of 142 watts per square meter (W/m^2) (45 British thermal units per square foot per hour [Btu/ft^2/h]) was used. This represents the heat load for the building plus the energy load for the compressor.

To estimate CCT Cr^{+6} emissions, typical recirculation, evaporation, and blowdown rates were developed for the model towers. It was assumed that the cooling range is 5.6°C (10°F), which is a typical temperature range for CCT's. A uniform assumption of five cycles of concentration, also typical for CCT's, was assumed for all six model towers. The number of cycles of concentration is defined as the ratio of conductivity or calcium hardness of the recirculating water to that of the makeup water. The chromate concentration in the cooling water is assumed to be 10 parts per million (ppm), the midpoint of the range of data collected. (Unless otherwise

stated, ppm is by mass.) This level of chromate corresponds to 4.5 ppm Cr^{+6}.

Preliminary data from EPA emission tests indicate that the Cr^{+6} control efficiency of high-efficiency drift eliminators over low-efficiency drift eliminators may average 80 percent for individual cooling towers. The number of CCT's using high-efficiency drift eliminators is unknown, but information from manufacturers and case studies indicates that the number is small (perhaps less than 5 percent). Therefore, Cr^{+6} emissions for the model CCT's were estimated using emission factors developed from emission tests on towers equipped with low-efficiency drift eliminators to provide a reasonable approximation of nationwide Cr^{+6} emissions. There is uncertainty associated with the representativeness of these Cr^{+6} emission factors. Therefore, the emissions are presented as a range rather than as an average value.

The actual CCT utilization rate depends on the climate at the CCT site. Emissions are produced only when the CCT fan is operating. The tower is assumed to operate on days when the average temperature is 15.6°C (60°F) or above. Utilization and emission rates were estimated by State for each of the six model towers. This resulted in a nationwide average tower utilization rate of 46 percent.

The approximately 37,500 chromate-using CCT's were distributed among the States based on population. The number of CCT's of each model unit in a given State was then multiplied by the estimated emission rate from each model unit in that State to determine the statewide Cr^{+6} emission rate. By summing emissions for all States, nationwide chromium emissions were estimated to be 7 to 206 megagrams per year (Mg/yr) (8 to 227 tons per year [tons/yr]).

B. Risk Analysis

1. Health Effects of Cr^{+6}

The HAD describes several adverse health effects associated with chromium exposure and notes that adverse effects are more often associated with Cr^{+6} than Cr^{+3} because Cr^{+6} compounds tend to cross biological membranes fairly easily and, thus, are usually absorbed more readily than Cr^{+3} compounds. Hexavalent chromium is a very potent lung carcinogen when the exposure route is by inhalation. The EPA currently believes that a level cannot be identified below which there is no increased risk of cancer. Therefore, any exposure is associated with some finite increased health risk. In addition to cancer, a number of adverse respiratory effects have been associated with inhalation of Cr^{+6} . These effects increase in severity with increasing exposure duration and concentration, starting at concentrations as low as about 1 to 2 micrograms per cubic meter (μg/m^3) for chromic acid. Many Cr^{+6} compounds are strong oxidizers, which explains their toxic properties and their role as an irritant. These additional effects include perforation of the nasal septum, irritation of the mucosa of the respiratory tract, pneumoconiosis, bronchitis, and asthma-like symptoms, although none are expected to occur at Cr^{+6} concentrations to which people are exposed from CCT's. The HAD notes that both Cr^{+6} and Cr^{+3} have been reported to result in birth defects such as cleft palate, hydrocephaly, and skeletal malformations in laboratory animals; however, these effects were observed only when the dose was so high that maternal toxicity was present also. Studies in laboratory animals also reported testicular degeneration when Cr^{+6} and Cr^{+3} were administered intraperitoneally. The routes of exposure in the reproductivity and teratological studies are unnatural; thus, relevance to environmental exposure is highly uncertain.

Because of the seriousness of lung cancer and the strength of the health evidence, lung cancer via the inhalation route of exposure is the health effect of most concern to EPA at this time. The EPA believes that the maximum Cr^{+6} concentrations to which the public would be exposed from CCT emissions are several orders of magnitude below the concentrations at which noncancer health effects are expected.

The HAD documents a number of epidemiological studies that have demonstrated an association between exposure to chromium compounds and lung cancer. Whether the association implicates Cr^{+6} alone or Cr^{+3} as well is not definitively addressed by these studies. However, these studies are convincing because a very high incidence of lung cancer was observed, the results by different investigators in different countries were consistent, a clear dose-response relationship was evident, and the tumor site (i.e., the lung) was specific. It should be noted that although chromium exposure by inhalation has been associated with an increased incidence of lung cancer, there is no direct evidence that associates exposure via ingestion with an increased risk of cancer.

2. Magnitude of Exposure to Cr^{+6}

a. *Exposure by inhalation.* Hexavalent chromium is a potent human carcinogen when the exposure occurs by inhalation. The typical annual average concentration of Cr^{+6} to which people are exposed from CCT emissions in the U.S. is estimated to range from 1.0 × 10^{-4} to 2.9 × 10^{-3} μg/m^3.

b. *Dermal exposure.* Hexavalent chromium is also a powerful dermal irritant and, at lower concentrations, is a sensitizer resulting in allergic dermatitis with varying degrees of eczema. Worker exposure primarily involves dermal contact. Little inhalation exposure occurs because the chromate generally remains in solution as a dissociated salt, and ingestion is unlikely. Acute systemic poisoning from Cr^{+6} compounds is rare although it may result from absorption through broken skin. The kidney may be a target organ for toxicity when dermal exposures to Cr^{+6} are high.

A worst-case scenario for worker exposure to chromate solution used in CCT's would be for an operator who is not wearing gloves to open a valve connected to a drum of solution, fill a pail with solution, and then pour the contents of the pail directly into the tower basin. The worker could be exposed by incidental contact with the solution. Assuming a concentration of chromate in the solution of 5 to 65 percent, the dermal exposure to chromate could range from 65 mg per day (d) (1.4 × 10^{-4} lb/d) to 2,500 mg/d (55 × 10^{-4} lb/d). However, because the trend in recent years has been to switch from manual to automated control of the feed pumps, little or no dermal exposure has resulted. Because the concentration of chromate in the water is low, worker exposure to chromate during sampling is negligible.

3. Human Risk

a. *Risk management.* Section 6 of TSCA requires that if the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of these activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator must regulate such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirement. Section 2 of TSCA directs the Administrator to consider the environmental, economic, and social impacts of any regulation under TSCA.

At present, EPA has taken the position, shared by other Federal regulatory agencies, that there is no threshold level below which a carcinogen poses no risk to public health. Consequently, to control a carcinogen so that it poses absolutely no health risk would require a rule permitting no emissions. Implementation of such a rule, in many cases, may be beyond the technological or financial capacity of the affected industry. However, in regulating Cr^{+6} emissions from CCT's, it is technologically and economically feasible to reduce to zero Cr^{+6} emissions to air and Cr^{+6} discharge to sewage treatment facilities or surface water.

The EPA developed the proposed section 6 rule prohibiting the use of Cr^{+6} in CCT's or distribution in commerce of Cr^{+6} for use in CCT's based on risk assessment and risk management techniques. The Agency evaluated the health risks posed by the source category, taking into account future or ongoing emission reductions from other regulatory actions. Next, EPA determined the availability of further reductions and estimated the risk reductions and economic costs of each of the regulatory options. Finally, the least burdensome alternative that protects adequately against the risk was selected from among the options on the basis of weight of evidence of carcinogenicity; the magnitude of exposure of people and the environment; the availability of control technology and/or substitutes; the impact on existing regulations; the residual risks remaining after the application of a control option; the costs of further control; and the societal, economic, environmental impacts of regulation.

b. *Modeling.* The Agency selected the Human Exposure Model (HEM) to estimate the risk to public health from Cr^{+6} emissions from CCT's. The HEM is capable of producing quantitative estimates of public exposure to ambient air concentrations of pollutants emitted from stationary sources. The HEM contains an atmospheric dispersion model, which includes meteorological data, and a population distribution estimate based on Bureau of Census data. From source data, the model estimates the magnitude and distribution of ambient air concentrations of the pollutant in the vicinity of a source.

The HEM also contains an area source model. This area source model is used for those sources that cannot be specified in detail. The allocation of emissions from such sources must be inferred by relating them to a correlated parameter such as population. For these sources, the dispersion of emissions is then modeled by a dispersion algorithm to estimate concentration patterns.

The HEM area source model was selected to assess exposure and the carcinogenic risks from CCT's on a nationwide basis for several reasons.

1. The nationwide population of CCT's is estimated to be about 250,000. Of these, about 37,500 are estimated to use Cr^{+6}-based water treatment chemicals, and it is impractical to model this large number of facilities site-by-site.

2. The specific locations of CCT's and the specific design and operating parameters of each CCT are largely unknown.

3. The majority of Cr^{+6} emissions from CCT's is expected to remain airborne and be dispersed over a large area.

4. Comfort cooling towers are most likely to be located in urban areas, which the area source model is well suited to address.

c. *Risk.* Annual incidence of lung cancer attributable to Cr^{+6} emissions from CCT's was estimated based on the population of each State and then totaled to obtain the nationwide incidence. Alaska was assumed to have no CCT's that emit Cr^{+6} because of the reduced need for cooling in the State. Based on the emission factors developed by EPA and the potency factor which was developed using the maximum likelihood estimate method, the total nationwide annual incidence attributable to Cr^{+6} from CCT's was estimated to range from 4 to 112 cases of lung cancer.

In developing the exposure-risk relationship for Cr^{+6}, EPA has assumed that a linear no-threshold relationship exists at and below the levels of exposure reported in the epidemiological studies of occupational exposure. This means that any exposure to Cr^{+6} is assumed to pose some risk of lung cancer and that the linear relationship between cancer risks and levels of public exposure is the same as that between cancer risks and levels of occupational exposure. The EPA believes that this assumption is reasonable for public health protection in light of presently available information. The exposure-risk relationship used by EPA represents a plausible upper-limit risk estimate in the sense that the risk is probably not higher than the calculated level but could be lower.

Maximum individual risk (MIR) from Cr^{+6} emissions from CCT's is the probability that individuals will develop lung cancer if continuously exposed to such emissions over their lifetime (70 years). To estimate MIR, the largest model CCT was assumed to operate continuously and to be located at ground level with a release height of 7.5 meters (m) (24.6 feet [ft]). This tower was then placed in a large city in each State and in Washington, DC. (Alaska was excluded from the analysis because CCT utilization was assumed to be negligible.) The range of the highest MIR was 2.3×10^{-6} to 6.6×10^{-5}. This means that if a person were exposed continuously for 70 years to the maximum concentration predicted, the probability of that person developing lung cancer is estimated to be less than 2.3 to 66 in 1,000,000.

C. Substitutes

1. Types and Availability

Typical nonchromate water treatment formulations currently used in CCT's for corrosion inhibition are based on phosphates, molybdates, and organics. Combinations of polyphosphates and orthophosphates can be used alone at concentrations of 10 to 30 ppm. However, it is more common to add phosphonate and/or polymeric dispersants with the phosphates to reduce scaling. With these combinations, effective corrosion control can be achieved. Water treatment chemical vendors state that molybdates are not a commonly used treatment program primarily because of their high cost and because they are not as effective at providing corrosion protection for copper (of which most CCT heat exchangers are made) as they are for mild steel. However, a combination of up to 15 ppm molybdates with an azole and phosphate can provide better corrosion protection than is offered by the other nonchromate treatment programs. A number of organic compounds can be used alone as corrosion inhibitors. Polyamines, phosphonides, and phosphonium compounds have been used, but the most common are the azoles. Zinc may be used also but must be used with combinations of phosphates, phosphonates, organics, or polymeric dispersants to be most effective. All of these nonchromate water treatment chemicals are readily available, usually from the same vendors who sell chromate treatment chemicals.

2. Health Effects and Environmental Effects

The amount of information in the scientific literature on the health effects of the substitutes for chromium in CCT's is limited for some of the pollutants, especially specific triazole compounds, polyphosphates, and polyacrylates. However, the information available indicates that the health risk is less

(and, in most cases, much less) from exposure to the substitutes than to Cr^{+6}.

There is no clear evidence of carcinogenicity for any of the compounds studied. The triazoles are mutagenic in several assays; but this alone is not enough to consider the compounds to be carcinogenic, and the results of animal studies were inconclusive. One animal study with molybdenum salts reported an increased number of lung tumors among mice exposed by intraperitoneal injection. However, this particular test system has not been demonstrated to be predictive of cancer, and, therefore, the results should be given little weight.

For noncancer health effects of the substitutes, the triazoles appear to be the most toxic. At high concentrations, a number of toxic effects have been reported including respiratory and neurological symptoms, chronic liver morphological and functional changes, and alteration of female reproductive function. One of the triazoles, benzotriazole, is considered to be a severe acute respiratory hazard as defined by the Federal Hazardous Substances Act because of one study that reported an LC value (lethal concentration required to kill 50 percent of the test animals) below 2,000 μg/m³ (1,910 μg/m³ for benzotriazole). Information derived from a Russian study suggests a value of 10 μg/m³ as that level below which no adverse health effects would be observed. Because the maximum hourly value of benzotriazole predicted from CCT emissions is estimated to be in the range of 0.006 to 0.2 μg/m³, it is unlikely that anyone exposed to this concentration would suffer significant adverse health effects although the risks are difficult to predict accurately.

Molybdenum compounds appear to be the next most toxic of the alternative water treatment chemicals. The primary health effects of these compounds are acute respiratory system changes and anemia. The threshold limit value (TLV) for molybdenum compounds has been established at 5 mg/m³, a concentration to which industrial hygienists believe workers may be exposed continuously for 8 hours per day without adverse health effects. The maximum hourly value estimated for molybdates from CCT's is 5 μg/m³, a value 1,000 times lower than the TLV.

There is little information available on polyacrylic acid; however, for acrylic acid monomer and methylacrylate, the TLV's are 30 mg/m³ and 35 mg/m³, respectively. The maximum hourly value estimated for polyacrylate from CCT's is 0.5 μg/m³, about four orders of magnitude lower than the TLV's.

Polyphosphates and phosphate esters are rapidly hydrolyzed to orthophosphates (some are insoluble), and toxic effects in animals are rarely reported. Some relatively nontoxic diphosphonates are used as pharmacologic agents for diagnosis and treatment of bone disease.

The prohibition against using Cr^{+6} in CCT's will eliminate one source of human carcinogenic risk. In the evaluation of the health effects of the Cr^{+6} substitutes, data indicative of carcinogenic risk are mostly negative. Additional studies are in progress on inhalation of molybdates and exposure to triazoles to determine carcinogenic potency.

D. Other Environmental Impacts

Prohibiting Cr^{+6} use in CCT's would eliminate environmental pollution and health risks from Cr^{+6} air emissions from CCT's. As chromate users switch to nonchromate programs such as phosphates, which are the most popular, phosphate discharges to sewage treatment plants are estimated to increase by less than 0.1 percent of the phosphate currently discharged. It is estimated that prohibiting the use of Cr^{+6} would increase the use of nonchromium treatment chemicals by up to 18 percent, assuming 15 percent of the CCT's currently use Cr^{+6} (15 percent/85 percent).

Solid waste disposal will not be affected by the proposed rule. Typically, CCT wastewater discharges are not treated onsite to remove Cr^{+6}. In cases where sewage treatment plants are receiving chromium in quantities large enough to treat, it is likely that sources other than CCT's contribute most of the Cr^{+6}; thus, the effect of reducing Cr^{+6} in CCT's would be negligible.

E. Reasonably Ascertainable Economic Consequences of the Potential Regulation

1. Control Option Costs

a. *No chromium.* Alternative treatment programs have been estimated by vendors to cost from 10 to 360 percent more than Cr^{+6}-based water treatment programs (which cost approximately $132/million kilograms (kg) [$60/million lb] of blowdown). Phosphate-based programs typically cost 10 to 100 percent more than Cr^{+6}-based treatment, and molybdate-based treatment is the most costly alternative to Cr^{+6}-based treatment. These costs include the corrosion inhibitor and the other chemicals such as biocides, antiscalants, and dispersants that are necessary for a complete water treatment program. Actual data from several CCT's were obtained that indicate the cost of phosphate-based treatment programs is about twice that of the baseline chromium-based treatment program. The highest chemical unit costs obtained were used to estimate the cost of the phosphate-based and molybdate-based treatment programs at $264 and $608/million kg ($120 and $276/million lb) of blowdown, respectively, to ensure that the economic impacts were not underestimated. The percentages of the CCT market that use the various alternative treatment chemicals are not known; but phosphate programs are the most prevalent, and molybdate use is rare. The CCT systems using chromates are expected to switch to these alternatives in the same proportion. Phosphate-based treatment programs were used to develop the individual and nationwide annualized costs incurred by switching to nonchromium-based chemical treatments because phosphates currently are the most commonly used treatment chemical. No situations have been identified where phosphate treatment programs cannot be used, and they are the least expensive nonchromate program.

To obtain the best results with alternative chemical programs, the chemical feed for corrosion inhibitors, biocides, dispersants, and antiscalants and the blowdown must be controlled automatically based on conductivity of the water; and pH must be controlled in the narrow ranges that are typically recommended by vendors. The purchase and installation cost of these automatic feed and monitoring systems would be about $500 per tower. Although many of the CCT's using chromium-based programs may have automatic feed systems, to ensure that the economic impacts of the proposed rule were not underestimated, EPA's analysis assumes that all towers currently using chromate need these systems when they are switched to an alternative treatment.

The capital cost of automatic feed and monitoring equipment has been annualized over 15 years, which is the estimated useful life of the feed equipment. The interest rate used in the calculation of the annualized cost was 10 percent. The approximately 37,500 CCT's using Cr^{+6}-based treatment also would incur an increase in annual costs to switch to nonchromium-based treatment. The total annualized cost of switching, including the cost for automatic feed and monitoring equipment, would be about $9.4 million. Based on this cost and the reduction in the incidence of lung cancer to zero, the cost effectiveness of eliminating chromium-based treatment programs is estimated to be $83,000 to $2,400,000 per cancer case avoided.

b. *High-efficiency drift eliminators.* Assuming that all CCT's have low-efficiency drift eliminators, the nationwide annualized cost to industry for the drift eliminator retrofit option including certification and inspection would be about $22 million. Only 75 percent of the CCT's that use chromium-based water treatment are assumed to incur the cost of a drift eliminator retrofit emission control technique. It is assumed that the remaining 25 percent of CCT's would switch to nonchromate treatments. If the Cr^{+6} emissions are reduced by 85 percent, the incidence of lung cancer would be reduced by about 3 to 96 cases per year (based on the range of emissions), and the cost of the control technique would be about $229,000 to $6,500,000 per cancer case avoided.

2. Projected Impacts

Comfort cooling tower manufacturers have indicated that CCT sales will depend on the level of building construction activity. The manufacturers estimate that CCT growth for the next 5 years will be approximately 3,700 CCT's in 1987; 3,400 in 1988; 4,300 in 1989; 4,600 in 1990; and 4,800 in 1991. Approximately 20,800 CCT's will be sold in the next 5 years for use in new applications. Sales in the first 2 years will be slower because of the present building slowdown in many parts of the nation. In the following 3 years, sales growth is projected to increase gradually. For new CCT's that begin operation before the effective date of this proposed rule, the nationwide annualized costs for switching 15 percent of the projected towers to phosphate-based treatment would be $780,000.

3. Economic Impacts

It is expected that switching to nonchromate water treatment programs will not have a significant economic impact upon owners/operators of CCT's or those that rent properties equipped with a CCT. The average annual rental rate is about $\$129/\text{m}^2$ ($\$12/\text{ft}^2$), and the incremental annualized costs of the nonchromate programs would add less than $\$0.11/\text{m}^2$ ($\$0.01/\text{ft}^2$) to rental rates if all costs were passed through in the form of increased rental rates. This cost would represent a rent increase of about 0.1 percent. Even those properties that are rented at the lowest rate observed, $\$22/\text{m}^2$ ($\$2/\text{ft}^2$), would incur increases of less than 1 percent if nonchromate programs were used.

No adverse economic impact is expected to occur for the water treatment vendors because these same vendors supply the nonchromium substitute chemicals. The producers and processors of chromium may be subject to a slight decrease in sales, but the economic impact is not expected to be significant. These conclusions are based on the facts that most water treatment chemical vendors supply nonchromate as well as chromate corrosion inhibitors and that sodium dichromate use in comfort cooling systems is insignificant relative to all other uses. Seven percent of all sodium dichromate produced is used for corrosion inhibition. Five percent of the sodium dichromate used for corrosion inhibition is used in CCT's. Thus, less than 0.35 percent of the sodium dichromate produced is used in CCT's.

The installation of high-efficiency drift eliminators is expected to have no significant economic impacts except possibly for buildings being rented for $\$22/\text{m}^2$ ($\$2/\text{ft}^2$). A full pass through of costs may increase rents of these buildings by 4 percent.

The total annual nationwide costs of substituting nonchromate corrosion inhibitors for chromates is estimated to be about $9.4 million. The use of high-efficiency drift eliminators could entail annual nationwide costs of about $22 million.

4. Energy Impacts of Proposed Option

A nonchromium option will have only negligible impacts on energy consumption from increased power requirements for automated control systems.

5. Enforcement Burden

Prohibiting chromium-based chemical use in CCT's is estimated to require about 1,850 person-hours per year to enforce. Enforcement personnel would need to check the contents of water treatment chemical containers, labels, and shipment records at 400 water treatment chemical vendors and to spot check a portion of CCT facilities to determine compliance with the rule.

The enforcement burden of requiring retrofit of high-efficiency drift eliminators would be excessive because of the large population of CCT's. Enforcement personnel would need to visit a portion of the approximately 250,000 CCT's to ensure compliance with a regulation requiring retrofit of high-efficiency drift eliminators. The complexity of implementing and enforcing a high-efficiency drift eliminator standard would be significant. At least three manufacturers produce what they claim are high-efficiency drift eliminators, but the designs and physical parameters of the devices are different. Each retrofit would have to be inspected, permitted, and certified initially for correct installation and proper sealing and then reinspected annually to verify continued compliance. It is unlikely that one set of installation criteria could be developed to include all possible situations.

6. Least Burdensome Control Option

The elimination of Cr^{+6}-based water treatment chemical use in CCT's appears to be a technically and economically feasible control technique. The costs of the alternative treatment programs are reasonable, and the nationwide impacts of switching to nonchromate treatment on building rental costs are negligible (less than 1 percent in all cases). The health risks from Cr^{+6} exposure from CCT's would be reduced to zero.

The high-efficiency drift eliminator option plus certification and annual inspection by industry (which would be required for all CCT's with high-efficiency drift eliminators) ($22 million) would be more costly than the nonchromium option ($9.4 million) and could increase building rental rates by as much as 4 percent. Furthermore, this option would only reduce the health risk from Cr^{+6} by about 85 percent.

Because of the costs to retrofit, difficulties in implementation, and the smaller emission reduction potential, high-efficiency drift eliminators are not considered a feasible control option for CCT's at this time. Thus, the nonchromate control option is considered to be the only feasible alternative.

VII. Finding of Unreasonable Risk

To make a finding of unreasonable risk of injury to health from exposure to Cr^{+6} emissions from CCT's, the Agency weighed the probability that health effects will occur from continued use of chromium corrosion inhibitors in cooling water in CCT's against the social and economic costs to society of placing restrictions on their use. The Agency considered each of the factors in section 6(c)(1) of TSCA.

Based on the information and assessments in the rulemaking, which are summarized in this preamble, the Agency has concluded that the avoidance of a potential cancer risk to the public exposed to Cr^{+6} air emissions from CCT's outweighs the social and economic costs of the proposed rule. Therefore, EPA finds that the continued use of Cr^{+6}-based water treatment chemicals in CCT's presents an unreasonable risk of injury to human health. In brief, this finding is based on the following:

1. The effects of Cr^{+6} on health and the magnitude of the exposure of human beings to Cr^{+6} are serious. Hexavalent chromium has been determined to be a potent human carcinogen. The average annual exposure to Cr^{+6} emissions from CCT's is estimated to be 31 to 886 mg/person (6.9×10^{-5} to 2.0×10^{-3} lb/person). Based on the emission factors developed by EPA and the potency factor, the range of annual incidence of lung cancer that could occur is estimated to be 4 to 112 cases.

2. The benefits of Cr^{+6} use in CCT's are outweighed by the health risk. Effective substitutes are readily available and are already in use at 75 to 90 percent of CCT's. The available information indicates that the public health risk from exposure to substitutes for Cr^{+6} is lower (and in most cases much lower) than that from Cr^{+6}.

Compared to a nonchromate rule, a rule based on high-efficiency drift eliminators would be less effective and would require retrofit of a large number of CCT's at greater expense. Thus, EPA has concluded that a prohibition of use of Cr^{+6}-based water treatment chemicals is appropriate because substitutes are available and prohibition is cost-effective.

Based on currently available information, EPA also believes that the cost effectiveness is reasonable to eliminate Cr^{+6} chemical use when the high-efficiency drift eliminators are already used. The EPA solicits comments on whether, as an option, those CCT's which currently have high-efficiency drift eliminators should be exempted from the prohibition against using Cr^{+6} chemicals if such an exemption were feasible. As described in the discussion of control options, development and implementation of a rule based in part on high-efficiency drift eliminators is not technically feasible at this time because the effectiveness of individual existing high-efficiency drift eliminators is unknown and the design criteria and test measures on which a certification or compliance program would be based are not available. The EPA solicits data on the effectiveness and number of high-efficiency drift eliminators in use, the certification procedures, test methods, and technical specifications that could be used in defining high-efficiency drift eliminators, and the potential impacts on labeling, reporting, and recordkeeping requirements. Information submitted in response to this notice would be considered in the final decision.

3. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health, are reasonable and not unduly burdensome for the 10 to 25 percent of CCT's that will be affected.

4. The proposed prohibition on use of Cr^{+6}-based water treatment chemicals will not eliminate all Cr^{+6} in the environment because Cr^{+6} chemicals are used in a variety of sources. However, the elimination of this major source will eliminate the significant risks attributed to Cr^{+6} air emissions from CCT's.

VIII. Analysis Under Section 9 of TSCA (Other Authorities)

Section 9(a) of TSCA provides that, if the Administrator of EPA determines that an unreasonable risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. If the other agency responds by declaring that the activities described to not present an unreasonable risk or if that agency initiates action under its own law to protect against the risk, EPA is precluded from acting against the risk under TSCA. Section 9(b) of TSCA requires EPA to review other Federal authorities administered in whole or in part by EPA to determine whether action under those authorities may prevent or sufficiently reduce unreasonable risk. If this is the case, EPA is directed to use these other statutes unless the Administrator determines in the Administrator's discretion, that it is in the public interest to protect against such risk under TSCA. In making such a public interest finding, section 6(c) of TSCA states: "the Adminstrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this Act and under such law (or laws), and (iii) the relative efficiency of actions under this Act and under such law (or laws) to protect against such risk of injury." Section 9(d) of TSCA requires the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements.

The TSCA allows regulation of a chemical substance based on all of its risk and, thereby, allows EPA to remedy the deficencies in other statutes that can deal with only parts of the risk. (Statement of the President on signing S. 3149 into law, October 12, 1976, Weekly Compilation of Presidential Documents, Vol. 12, No. 42, October 18, 1976, at 1460, S. Rep. No. 94–698, 94th Congress, 2d Session at 2.) The need for a total exposure approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early congressional hearings on TSCA. See, e.g., 1973 Senate Hearings at 212–214; 1972 House Hearings at 65–67. No other single law provides the authority to deal comprehensively with multimedia hazards. In particular, Congress designed TSCA to deal with chemical substances for which the most appropriate remedy would be a total ban on their production and distribution in commerce.

Laws administered by other Federal agencies could not address the risks covered by this proposed rule. The general public is the predominant population that is affected by exposure to Cr^{+6} air emissions. Risk to public health from Cr^{+6} air emissions from CCT's typically would be addressed under the CAA. Consequently, EPA compared the potential requirements for regulating Cr^{+6} emissions from CCT's under TSCA and the CAA and evaluated their impacts to determine the authority that is more appropriate. Section 6 of TSCA provides the authority not only to prohibit the use of Cr^{+6}-based water treatment chemicals in CCT's but also to prohibit the sales of such chemicals for use in CCT's. Under section 112 of the CAA, it would not be possible to prohibit the sales of a chemical. However, it would be possible to prohibit the use of Cr^{+6} chemicals in CCT's by setting a zero emissions rule.

Although TSCA and the CAA could require equally stringent control limitations, TSCA provides a better mechanism for enforcement. The number of distributors or vendors that sell corrosion inhibitors constitutes a much smaller population than the estimated number of CCT's (approximately 40 vendors vs. 250,000 CCT's). In the majority of cases, the chemical vendors are actually servicing the CCT's. By prohibiting the sales of a chemical for a specific use under TSCA, the vendors would be required to comply with recordkeeping and chemical labeling requirements. The records would identify CCT owners or operators to whom the water treatment chemicals are being distributed and whether Cr^{+6}-based chemicals are being provided for industrial tower use at the same location. Thus, enforcement personnel could concentrate on examining the vendor records and selecting individual sites to visit where water treatment chemicals are being sold for industrial tower and CCT use. Regulations under TSCA could require vendors to maintain records of shipments and consignees and assess penalties for noncompliance. Under the CAA, however, the recordkeeping requirements would extend only to "any person who owns or operates any emission source or who is subject to any requirements of this chapter." The primary thrust of regulations under the CAA would be to ensure compliance with the emission limitations by the CCT owners and operators. This information and the analyses discussed above indicate that TSCA is the appropriate authority for this rulemaking and that it is in the public interest to protect against this risk under TSCA. A rulemaking that prohibits Cr^{+6} use in or distribution in commerce for use in CCT's is consistent with regulatory actions previously taken under TSCA section 6.

The EPA has reviewed the options for limiting exposure to Cr^{+6} emissions from CCT's and has concluded that the reduction in risk to the public and enforcement of the rule for this substance cannot be satisfactorily accomplished in any way other than by prohibiting the use of Cr^{+6}-based chemicals in CCT's and the distribution in commerce for use in CCT's. The EPA finds that, based on currently available health information, the public health risk from exposure to substitutes for Cr^{+6} use in CCT's is lower than that from Cr^{+6}. Compared to a nonchromate rule, a rule based on high-efficiency drift eliminators would be less effective and would require retrofit of a large number of CCT's at greater expense. Thus, EPA has concluded that a prohibition of the use of Cr^{+6}-based water treatment chemicals in CCT's is appropriate because substitutes are available and a prohibition is cost effective.

IX. Impact on Other Relevant Regulations

Other relevant existing regulations include effluent guidelines established under the Clean Water Act and State limitations on chromium discharge. These regulations would not be affected adversely by this proposed rule.

X. Language of Proposed Rule

A. Structure of the Proposed Rule

This proposed rule is structured as follows: the chemical substance to be regulated is described in paragraph (a) of proposed § 749.68. The purpose of the rule is described in paragraph (b). Paragraph (c) discusses the applicability of the rule. Paragraph (d) contains definitions. Paragraph (e) contains prohibitions on distribution in commerce and use of Cr^{+6}-based water treatment chemicals in CCT's. Paragraph (f) contains the effective dates for the prohibitions described in paragraph (e). Paragraph (g) describes labeling requirements. Paragraph (h) describes recordkeeping requirments. Paragraph (i) describes the reporting requirements. Paragraph (j) describes the consequences of failure to comply with the requirements of this rule, and paragraph (k) provides reference to the authority under which inspections for this rule would be conducted.

B. Discussion of Major Provisions

1. Substance Subject of This Section

This section applies to Cr^{+6}.

2. Purpose

The purpose of this proposed rule is to prevent unreasonable cancer risk associated with public exposure to Cr^{+6} emissions from CCT's.

3. Applicability

The rule would apply to any person who distributes in commerce Cr^{+6}-based water treatment chemicals to CCT users or who presently uses Cr^{+6}-based water treatment chemicals in CCT's.

4. Prohibitions

The rule would prohibit the use of Cr^{+6}-based water treatment chemicals in CCT's and the distribution in commerce for use in CCT's. The prohibition on distribution in commerce would become effective 45 days after publication of the final rule in the **Federal Register**. This would allow vendors adequate time to become familiar with the final rule. Those who distribute in commerce Cr^{+6}-based water treatment chemicals for use in CCT's have other markets readily available where such chemicals may be used.

The prohibition on use of Cr^{+6}-based water treatment chemicals would become effective 135 days after publication of the final rule. Data obtained during development of this proposed rule indicate that users stockpile little or no water treatment chemicals. However, water treatment chemical vendors suggest that a 3-month supply of the chemicals should be kept on hand at all times. The 135-day period covers the unlikely event that CCT users will buy a 3-month supply of chemicals on the last day that vendors are permitted to sell Cr^{+6}-based chemicals to CCT users. Thus, 135 days after promulgation will allow ample time for users to exhaust existing inventories of any Cr^{+6}-based water treatment chemicals.

5. Labeling

Forty-five days after publication of the final rule, all water treatment vendors (including blenders) of Cr^{+6}-based chemicals that distribute these chemicals for cooling tower use would be required to label containers with a warning that inhaling Cr^{+6} increases the risk of lung cancer and that use in CCT's is prohibited. The labeling requirement would apply only to persons who distribute in commerce water treatment chemicals for cooling tower use. It would not apply to producers and processors (persons who mine or initially process chromium ore) who do not sell water treatment chemicals to cooling tower owners/operators. Labeling of Cr^{+6}-based chemicals that are sold for use in cooling towers would be required so that cooling tower owners/operators would know that Cr^{+6} use in CCT's is unlawful.

6. Reporting/Recordkeeping

The proposed rule would require an initial report from water treatment chemical vendors that distribute chemicals for use in cooling towers that identifies their headquarters and shipment locations. The report would be filed within 45 days of publication of the final rule or, for new vendors after the rule is in effect, within 30 days of first distributing water treatment chemicals in commerce. An updated list would be required when changes in office locations occur. Reporting of office locations by water treatment chemical companies would be required so that EPA enforcement personnel may identify sites where records are kept and sites for inspection. Recordkeeping by vendors would be required. The records would contain the company name, address, telephone number, and contact name of any CCT user to whom water treatment chemicals are shipped and any industrial cooling tower users to whom Cr^{+6}-based chemicals are shipped and the locations of chemical use. These records would be retained for 2 years and be available for copying.

Recordkeeping is proposed so that enforcement personnel may check records to determine compliance with the proposed rule by the vendors and to identify CCT locations. The recordkeeping also will aid in determining sites where Cr^{+6} is being used in industrial cooling towers. A site

where both industrial towers and CCT's are located may be an area on which inspection activities should be focused. Once a problem or violation is identified, the records will be used to assess the extent of the problem.

Any recordkeeping requirement is subject to the Paperwork Reduction Act of 1980. It is expected that 400 companies would be affected by these requirements. The resulting cost to industry of the required labeling, reporting, and recordkeeping would be an average of $169,900 per year for the first 3 years the rule is in effect. Existing records kept already by affected facilities probably would meet the requirements with only slight modifications.

XI. Public Hearing

A public hearing will be held to receive oral comments on this proposed rule only if such a hearing is requested in writing and the request is received by EPA at the address in the ADDRESSES section of this preamble by May 13, 1988. Such a request must be received by this date to enable EPA to make appropriate arrangements for the hearing. If requested, the public hearing will be held June 13, 1988, at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10 a.m. Attendance at the hearing will be open to anyone though space may be limited. However, only persons who request in writing an opportunity to speak will be allowed to present oral comments. Such a request must be made in writing to the address in the ADDRESSES section of this preamble and must be postmarked no later than May 23, 1988. The request must include a statement of the person's interest in this rulemaking, a brief outline of points to be addressed, an estimate of the time required, and, for requests from an organization, a nonbinding list of persons to take part in the presentation. The EPA will make the hearing schedule publicly available and send it to each person who has requested an opportunity to present oral comments.

A verbatim transcript of the hearing and copies of any written statements will be placed in the public file and will be available for inspection and copying at the address in the ADDRESSES section of this preamble.

XII. Written Comments and Confidential Business Information

In accordance with 40 CFR 750.4(a), all comments must be postmarked no later than the end of the public comment period specified in this notice and must contain all comments on this notice regarding information reasonably available to the commenter at the time. Section 750.4(b) requires that reply comments must be postmarked no later than 2 weeks after the close of the hearing and are restricted to comments on other comments, material in the hearing record, or material that was not reasonably available to a commenter in sufficient time before the main comments were due. Section 750.4(c) provides procedures for obtaining an extension of the time to file the main and reply comments. Comments submitted after the comment period or after all extensions have expired are not required to be added to the rulemaking record or to be considered. Four copies of all comments are required to be submitted. Written comments should be sent to the address given in the ADDRESSES section of this preamble and should refer to docket number OPTS 61012.

Any person who submits comments on this proposed rule which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. The EPA requests that any person submitting confidential comments prepare and submit a nonconfidential version of the comments for inclusion in the public file. Comments not marked confidential at the time of submission will be placed in the public file.

XIII. Rulemaking Record

The EPA has established a record for this rulemaking [docket number OPTS 61012]. This record includes basic information considered by the Agency in developing this proposed rule and appropriate **Federal Register** notices. The record now includes the following categories of information:

Subcategory II–A. EPA Studies or Contractor Reports,

Subcategory II–B. EPA Factual Memoranda,

Subcategory II–C. EPA Correspondence to Persons Outside the Agency,

Subcategory II–D. Correspondence Received from Persons Outside the Agency,

Subcategory II–E. EPA Memoranda of Meetings and Telephone Conversations with Outside Persons,

Subcategory II–I. References Not Readily Available to the Public Elsewhere,

Subcategory II–J. Miscellaneous Federal Register Notices Published During Proposal Development,

Subcategory IV–D. Additional Comments Received.

Confidential business information, while part of the record, is not available for public review. A public version of the record, without any confidential business information, is available for inspection and copying at the address in the ADDRESSES section of this preamble.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under E.O. 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it would not result in any of the adverse impacts set forth in section 1 of E.O. 12291 as grounds for finding a rule to be major. The industry-wide annualized cost would be less than $9.4 million, which is considerably less than the $100 million established as the criterion for a major rule in the Order. The proposed rule would not cause any significant increase in costs or prices for any sector of the economy or for any geographic region. The economic analysis of the effect on the industry as a result of the proposed rule did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the public file at the docket location listed under the ADDRESSES section of this preamble.

B. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping provisions in this proposed rule will be submitted to OMB for approval under the Paperwork Reduction Act. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB and marked Attention: Desk Officer for EPA. The final rule will explain EPA's response to OMB and public comments on the proposed labeling, recordkeeping, and reporting requirements.

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List of Subjects in 40 CFR Part 749

Chemicals, Chromium, Cooling towers, Environmental protection, Hazardous substances, Hexavalent chromium, Labeling, recordkeeping, and reporting requirements.

Date: March 22, 1988.

Lee M. Thomas,
Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended by adding Part 749, consisting at this time of § 749.68 under Subpart D, to read as follows:

PART 749—WATER TREATMENT CHEMICALS

Authority: 15 U.S.C. 2605 and 2607.

Subparts A-C—[Reserved]

Subpart D—Air Conditioning and Cooling Systems

§ 749.68 Hexavalent chromium chemicals in comfort cooling towers.

(a) *Chemical substance subject to this section.* Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), is subject to this section.

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to hexavalent chromium use in, and distribution in commerce of hexavalent chromium-based water treatment chemicals for use in, comfort cooling towers.

(d) *Definitions.* Definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this paragraph. In addition, the following definitions apply:

(1) "Act" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

(2) "Hexavalent chromium-based water treatment chemicals" means any hexavalent chromium, alone or in combination with other water treatment chemicals used to treat water.

(3) "Comfort cooling towers" means cooling towers that are dedicated exclusively to and are an integral part of heating, ventilation, and air conditioning or refrigeration systems.

(4) "Container" means any bag, barrel, bottle, box, can, cylinder, drum, or the like that holds hexavalent chromium-based water treatment chemicals for use in cooling tower systems.

(5) "Cooling tower" means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

(6) "Industrial cooling tower" means all cooling towers used to remove heat from industrial processes, chemical reactions, or plants producing electrical power.

(7) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hexavalent chromium-base water treatment chemicals that are to be used in cooling tower systems.

(8) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(9) "Shipment" means the act or process of shipping goods by any form of conveyance.

(10) "Water treatment chemicals" means any combination of chemicals used to treat water in cooling towers and can include corrosion inhibitors, antiscalants, dispersants, biocides, and other chemicals.

(e) *Prohibition of distribution in commerce and commercial use.*

(1) All persons are prohibited from distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers.

(2) All persons are prohibited from commercial use of hexavalent chromium-based water treatment chemicals in comfort cooling towers.

(f) *Effective dates.* (1) The prohibition described in paragraph (e)(1) of this section against distributing in commerce hexavalent chromium-based water treatment chemicals for use in comfort cooling towers is effective (45 calendar days after the date of publication of the final rule).

(2) The prohibition described in paragraph (e)(2) of this section against using hexavalent chromium-based water treatment chemicals in comfort cooling towers is effective (135 calendar days after the date of publication of the final rule).

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after (45 calendar days after the date of publication of the final rule) shall affix a label or keep an existing label affixed to each container of the chemicals. The label shall consist of the following language:

> Warning: This product contains hexavalent chromium. Hexavalent chromium when inhaled increases the risk of lung cancer in humans. Federal law prohibits use of this substance in comfort cooling towers, which are towers that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

(2) The first word of the warning statement shall be capitalized, and the type size for the first word shall be no smaller than 10-point type for a label up to 10 square inches in area, 12-point type for a label above 10 but less than or equal to 15 square inches in area, 14-point type for a label above 15 but less than or equal to 30 square inches in area, or 18-point type for a label over 30 square inches in area. The type size of the remainder of the warning statement shall be no smaller than 6-point type. All required label text shall be in English and of sufficient prominence and shall be placed with such conspicuousness, relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(h) *Recordkeeping.* (1) Any person who distributes in commerce any water treatment chemicals for use in comfort cooling towers or any hexavalent chromium-based water treatment chemicals for use in industrial cooling towers after (45 calendar days after the date of publication of the final rule) must retain at the headquarters of the company in one location documentation of information showing:

(i) The name, address, contact, and telephone number of any cooling tower owners/operators to whom the chemicals were shipped.

(ii) The chemicals included in the shipment, the amount of each chemical shipped, and the location(s) at which the chemicals will be used.

(2) This information must be retained for 2 years from the date of shipment.

(i) *Reporting.* (1) Any person indentified in paragraph (h)(1) of this section must report to the Regional Administrator of the EPA Region in which the company headquarters is located. The report must be postmarked no later than (45 calendar days after the date of publication of the final rule), or 30 days after the person first begins the activities described in paragraph (h)(1) of this section, whichever is later, and must include:

(i) For the headquarters, the company name, address, telephone number, and the name of a contact.

(ii) For the shipment offices through which water treatment chemicals are sold for use in cooling towers, the company name, address, telephone number, and the name of a contact.

(iii) A statement of whether the company distributes in commerce any hexavalent chromium-based water treatment chemicals for use in cooling towers.

(2) The report identified in paragraph (i)(1) of this section must be updated as changes occur in the company headquarters or shipment office information. The updated report must be submitted to the Regional Administrator and must be postmarked no later than 10 calendar days after the change occurs.

(j) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(k) *Inspections.* EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this section.

[FR Doc. 88–6806 Filed 3–28–88; 8:45 am]

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Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 4100
Grazing Administration; Final Rulemaking

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2604; AA-220-88-4322-02]

Grazing Administration, Exclusive of Alaska; Amendments to the Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations for the management of grazing on the public lands under the jurisdiction of the Bureau of Land Management. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on May 20, 1987 (52 FR 19032) with an initial public comment period of 60 days. In order to correct omissions from, and an inadvertent editing error in, the proposed amendments, the comment period was extended an additional 30 days (52 FR 27321) ending on August 19, 1987, to allow the public a reasonable opportunity to review the corrections. Two thousand one hundred eighty-six comments were received and considered during the development of this final rulemaking. This final rulemaking revises the regulations in 43 CFR Group 4100 to clarify the role of land use plans as they relate to the authorization and modification of grazing use of the public lands, clarifies the way in which livestock will be managed in cooperation with permittees and lessees, and also clarifies the provisions of the regulations on unauthorized grazing.

EFFECTIVE DATE: April 28, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wilton A. Peterson or Dee R. Ritchie, (202) 653-9195 or Mark E. Lawrence, (202) 343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends the existing regulations for managing livestock grazing as one of the multiple uses of the public lands by: Adding provisions for cancellation, suspension, and modification of Allotment Management Plans; requiring allotment management plans to prescribe livestock grazing practices that meet multiple use objectives; clarifying the relationship between the land use planning process and the livestock grazing program to ensure that land use plan objectives are achieved; adding provisions for late payment of grazing fees; reaffirming the position of the Department of the Interior on enforcement of environmental protection and conservation laws; and emphasizing that provisions prohibiting supplemental feeding will continue to require authorization in accordance with the decision in *Natural Resources, Defense Council, Inc. et al. v. Hodel, et al.*, 618 F. Supp. 848 (E.D. Cal. 1985). This final rulemaking also amends the provisions on base property and transfer of grazing preference and adds provisions suggested in the decisions of the Office of Hearings and Appeals in the cases of *George Fasselin v. Bureau of Land Management, et al.*, and *Marius Henry Mills v. Bureau of Land Management, et al.*. The proposed rulemaking included provisions for Cooperative Management Agreements (CMAs) with livestock grazing permittees/lesses. Those provisions have been withdrawn and are not included in this final rulemaking.

The proposed rulemaking was published in the **Federal Register** on May 20, 1987 (52 FR 19032), with a 60 day comment period. A notice correcting omissions from, and an inadvertent editing error in, the proposed amendments, was published in the **Federal Register** on July 20, 1987 (52 FR 27321), extending the comment period to August 19, 1987, to allow the public a reasonable opportunity to review the corrections. During the 90 day comment period, 2,186 comments were received; 1,907 from individuals; 82 from associations; 11 from state and local governments; 3 from other federal agencies; 181 from businesses and 2 from congressional offices.

Most of the public comments supported the proposed regulations with some modifications. Most commenters expressed the view that selective management, relying on good monitoring data, cooperative management, and managing livestock grazing on public rangelands according to the principles of multiple use and sustained yield, will strengthen the Bureau of Land Management's (BLM) ability to manage the public lands. The comments also supported cost effective range improvements; changing the use of the term "undue and unnecessary degradation" where used in the proposed rulemaking and moving away from the term and concept of "grazing capacity". The comments generally supported permittees signing an actual use form but objected to permittees having to certify actual use, and expressed support regarding base property, preference, and permit/lease relationships; generally supported allotment management planning, but wanted the concept expanded to include coordinated resource management planning and other cooperative efforts; generally supported billing procedures that require prompt payment of fees, but were concerned that late fee penalties were excessive; and suggested that compensation to the Government for nonwillful unauthorized grazing use should be at the current public land grazing fee rate charged for an animal unit month (AUM).

Commenters opposing the proposed regulations expressed views that the proposed rules would eliminate many of the policies and procedures controlling grazing and protecting wildlife habitats; elimination of the concept of "grazing capacity" would allow overgrazing; the proposed regulations weakened the land use planning requirement for allocation of forage to multiple uses, especially wildlife and watershed, and would allow all forage to be given to livestock; the penalties against livestock operators for violation of the Wild Horse and Burro Act and other federal and state environmental laws should not be removed; the trespass regulations should be strengthened and not reduced as proposed; CMAs should not be implemented; an environmental impact statement with full public disclosure should be prepared on the proposed grazing regulations. Several other opposing comments suggested that livestock grazing be eliminated from the public lands.

In reviewing all comments it became evident that many commenters did not fully understand the procedures in the proposed rulemaking. Moreover, it is clear that some commenters did not fully understand the concept of "multiple use." The BLM manages the public rangelands by statutory authority i.e., the Taylor Grazing Act, Federal Land Policy and Management Act, Public Rangelands Improvement Act and others. These statutes give the BLM authority and responsibility to establish policy, provide for land use planning, and manage all uses and activities on public lands. The Federal Land Policy and Management Act (FLPMA) defines multiple use as "the management of the public lands and the various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." It further defines multiple use as "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and

nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." Those who advocate arbitrarily removing some of these uses and activities from the public lands are suggesting that the BLM take a position of not fulfilling its multiple use mandates in areas where, through land use planning, livestock grazing has been determined to be compatible with other uses and land use planning objectives. In order to allocate the public lands for these competing uses, FLPMA provides for "the development and revision of land use plans." Some of the principles prescribed in FLPMA (section 202(c)/ 43 U.S.C. 1712(c) and followed by BLM in the development of these land use plans are to "use and observe the principles of multiple use and sustained yield" and "use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences." Once objectives are identified and decisions as to resource uses have been made through the land use planning process, site specific management plans are developed to manage the resources. In the range management/livestock grazing resource program the site specific planning is accomplished by allotment management plans (a term defined in section 103(k) of FLPMA), coordinated resource management, and other cooperative management efforts, as provided for in section 2 of the Taylor Grazing Act and section 302(b) of FLPMA. Under these statutes the BLM is required to develop regulations to manage these resources on a multiple use-sustained yield basis. The purpose of the grazing regulations is to manage the livestock grazing program as an integral part of the overall multiple use of the public lands.

As to the suggestion in the comments that the BLM prepare an environmental impact statement on the final rulemaking, the Department of the Interior has determined that this is unnecessary. The final rulemaking will not result in new or significant impacts; it does not constitute a major Federal action significantly affecting the quality of the human environment. This is further supported by an environmental assessment completed on the rulemaking. In addition, 137 site-specific environmental impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands that are subject to the grazing program encompassed by this rulemaking. By the end of 1988, five additional environmental impact statements will have been completed on grazing use involving another 4,042,000 acres, for a total of 142 area specific environmental impact statements on 173,851,000 acres. These environmental impact statements discuss the effects of livestock grazing and provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands.

Comments on specific provisions of the rulemaking follow.

Section 4100.0-5 Definitions.

Many comments were received concerning the modification or deletion of some of the definitions. Several commenters opposed the definition of "actual use" in the regulations. After consideration of these comments, the final rulemaking has modified the definition of "actual use" to read "where, how many, what kind or class of livestock and how long livestock graze on an allotment." This information is necessary to determine how the vegetation resource is responding to the current grazing prescription and whether the management objectives are being achieved.

Several comments suggested it is not necessary to require the permittee/lessee to certify the accuracy of the "actual use report". Others commented that users cannot be trusted to give an accurate report. After consideration of the comments, it was determined that the definition of "actual use report" should be modified to indicate that the actual use report is a report of the actual livestock use submitted by the permittee/lessee. In actual practice, the livestock permittee/lessee certifies the accuracy of the actual use information when he/she signs the actual use forms and the inclusion of the word "certified" provides no additional benefit to the agency or the operator. Where problems occur, and it is necessary, the BLM will make livestock counts to verify the actual use.

The definition of "cooperative management agreements" has been removed because the provisions in § 4120.1 have been removed from this final rulemaking. This is discussed later in this preamble.

Several comments regarding "land use plan" expressed concern that the definition and process would be diluted under the proposed rulemaking. The definition has been modified in the final rulemaking to read "a resource management plan or a management framework plan which is being followed until replaced by a resource management plan." Management framework plans, as well as Resource Management plans do meet the land use plan requirements of the Federal Land Policy and Management Act and establish management direction for resource uses of public lands.

Many comments expressed concern over the deletion from the proposed rulemaking of the definition of the term "Livestock Grazing Capacity". Many comments requested that the term be retained, while several concurred in the removal of the definition. After careful consideration and review, the final rulemaking has adopted the "livestock carrying capacity" definition proposed by the Society for Range Management and others. Livestock Carrying Capacity is the maximum stocking rate possible without damage to vegetation or related resources. Carrying capacity may vary from year to year on the same area due to fluctuating forage production. The term "carrying capacity" reflects more clearly the intention to tie actual use to capability of land than does the term "grazing capacity." This definition connotes flexibility to adjust stocking rates as, through monitoring, these changes are determined to be needed to meet land use plan objectives. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to change "livestock grazing capacity" to "livestock carrying capacity."

Many comments were received concerning the definition of the term "monitoring" and expressed concern regarding use of the phrase "periodic observation" in the definition. After careful consideration, it was determined that the first sentence in the definition of "monitoring" in the proposed rulemaking should be modified by reinserting the word "orderly" as it exists in the present regulations. The reinsertion of this word in the final rulemaking connotes a planned and scheduled system of monitoring. Also, the word "or" in the proposed rulemaking is replaced by the word "and" to indicate that monitoring is both periodic observation and orderly collection of data to evaluate grazing management actions and their effectiveness in meeting management objectives. This will allow for flexibility in monitoring custodial or category "C" allotments, and yet provide some observed and recorded responses by the range professional to grazing use. These category ("C") allotments, and some allotments in the maintain ("M") category, do not require detailed monitoring because a determination has been made on the basis of previous monitoring that these allotments are doing well and will continue to do so under existing grazing management practices. The use of periodic (usually yearly) observation can detect subtle changes that may suggest that more intensive monitoring is needed.

Several commenters expressed the view that the present language in the definition of the term "range improvement" be retained but that some modification be made by adding wording to include stabilization of soil and watershed conditions. The proposed definition of range improvement is broad and would encompass these concepts. It has been determined that the definition contained in the proposed rulemaking is adequate and accurate. The language of the proposed rulemaking is retained in the final rulemaking. It is, with one modification, the definition cited in the Public Rangelands Improvement Act.

A few comments were received concerning the inclusion in the proposed rulemaking of the definition of the term "rangeland studies" and suggested modification to ensure consistency and credibility with other agencies and scientific communities regarding accepted rangeland study methods. The definition of "rangeland studies" in the final rulemaking has been modified to recognize that they include any study method accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met. There are several accepted methods to obtain this study data and developing a laundry list of accepted methods is unnecessary in this final rulemaking.

A few comments were received concerning the addition of the definition of the term "trend" and how it will be used by the agency. The final rulemaking modifies the definition in response to the comments, to indicate that "trend" is the directional change over time, either toward or away from desired management objectives. This change will be measured, over time, in kind, proportion or the amount of desired plant species.

A few comments were received concerning the definition of the term "utilization" and suggested that utilization should be determined at the end of the growing season instead of at the end of a grazing period. After careful consideration of the comments, the definition has been modified to provide that "utilization" is both the percentage of the forage consumed by livestock during a specified period, and the livestock grazing utilization pattern on the allotment. The suggestion that utilization be measured at the end of the plant growing season has not been adopted because it is not feasible in that it will not allow for a determination of use levels due to plant regrowth. In order for utilization monitoring to be useful for management of rangelands, it must measure the amount of forage consumed by livestock during their use of an allotment or part of an allotment over a specified period of time. The definition adopted in the final rulemaking would indicate more effectively livestock use levels and grazing patterns.

Section 4100.0–8 Land use plans.

Many comments were received concerning land use planning. Most comments suggested that the proposed rulemaking indicated that land use planning was only a guide for livestock grazing management and consequently weakened the land use planning process in the BLM. They urged that all grazing be managed under the multiple use-sustained yield concept. Many other comments supported this section as proposed because they felt that it now clearly ties the livestock grazing regulations and policies to the land use planning process. They felt this relationship must be strengthened to make clear that the land use plan allocates vegetation for livestock forage and competing resource uses. They also suggested that the land use plan needs to identify the current level of livestock grazing use, establish the objectives for grazing management, and outline how the objectives will be met. After careful consideration of all comments regarding land use plans, the Department of the Interior reaffirms that, with respect to livestock grazing, land use plans will establish allowable resource uses (these may be single uses or combinations of uses), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. The livestock grazing element of the land use plan is developed in coordination with all interested parties and in consultation and cooperation with grazing permittees. Livestock grazing activities and management actions will be in conformance with the land use plan. ("Conformance" is as defined in 43 CFR 1601.0–5(b)). Existing livestock grazing management practices may be adjusted during plan implementation as the result of monitoring and other management actions that are consistent with the land use plan.

Section 4110.2–1 Base property.

Many comments were received concerning base property. Many of the comments stated that loss of ownership or control of base property should not result in the automatic termination of a person's grazing preference and took the position that the preference right belongs to the permittee. Several comments were in favor of the base property requirement in the existing regulations because this provides safety to the livestock industry from sale of preference rights and permits outside the livestock industry. Other commenters suggested a 90-day grace period after loss of base property during which a person can transfer the grazing preference and permits before losing them. Finally, several commenters advocated the reestablishment of the base property commensurability requirements. Many of these comments may have resulted from an error in the proposed rulemaking. Section 4110.2–1(d), refers to termination of the "grazing preference" upon loss of ownership or control of base property. This provision should have stated only that the permit or lease shall be terminated upon loss of ownership or control of base property. The permit or lease must be terminated because the permittee/lessee no longer meets the mandatory qualification requirements. It should be clearly understood that the grazing preference is attached to the base property. This is a long-standing rule supported by court decisions and consistent with statutory language. The final rulemaking has been modified, however, in paragraph (d) of this section by adding the phrase "or control" after the word ownership, in the first line. The Department has determined that this is the only change necessary in the final rulemaking and that the provision, as modified, is consistent with the intent of the Taylor Grazing Act.

Section 4110.2–2 Specifying grazing preference.

Many comments were received concerning this section of the proposed rulemaking. In the existing regulations this section is titled "grazing preference allocation." Some commenters suggested that the word "allocation" not be deleted, because without it the regulation would allow for all the available forage to be given to livestock and not be shared with wild horses and burros and other uses. After studying this issue it has been decided that the word "specified" is more accurate than "allocation." Allocation of forage is accomplished during the land use

planning process, and consists of a determination of how much of the forage will go to satisfaction of the grazing preference and will be allotted as either active use or suspended use. Section 4110.2–2 then provides for specifying or restating in the permit or lease the amount of the grazing preference, including what portion of the preference is active use and what portion is suspended use. The level of active use is based on the availability of forage as determined in the land use plan and through monitoring.

Many commenters also questioned deleting paragraph (d), "Allotments". During review of the comments, it was determined that reviewers may have been confused about this subject. In the proposed rulemaking, item 6 stated that §.4110.2–2 was revised and contained paragraphs (a) through (c). No reference was made to paragraph (d). Item 9 on the same page, stated that § 4110.2–4 was added in the proposed rulemaking and its title was "Allotments." However, there was no specific statement that paragraph (d) in § 4110.2–2 had been moved to become the new § 4110.2–4. It was determined that the separate § 4110.2–4 would more effectively highlight the importance and intent of this section than keeping the provision as a subsection with no change in the wording. Further, to better emphasize both the importance of land use planning and its original intent to strengthen the process in the grazing regulations, as suggested by the comments, the wording in § 4110.2–2(a) has been modified in the final rulemaking by adding a third sentence to indicate that active use shall be based upon the amount of forage available for livestock grazing established in the land use plan.

Section 4110.2–3 Transfer of grazing preference.

Many comments were received concerning the proposed provisions for transfer of the grazing preference. Several suggested that persons with an encumbrance against the base property would not get by regulation any right that they would not already have under law; therefore, this provision should not be adopted in the final rulemaking. Others suggested that in cases of transfer, where portions of the original base property become the new base property, and where the security is held by a lienholder, the lienholder does not need to give consent. Some commenters suggested that the authorized officer be able to grant extensions of time to qualify for a transfer if the delay is due to the operation of law, not just probate proceedings. After careful consideration of the comments received, it was determined that the provisions of the proposed rulemaking are adequate to protect the lienholders of record because a base property pledged as security for a loan by a permittee has the grazing preference attached to it. By operation of law, the permittee cannot change the status of the property without the concurrence of the lienholder. The concern regarding transfers, where only a portion of the original base property is involved, is adequately covered in existing regulations under § 4110.2–3(c). Where extensions of time are required in transfers through operation of law, adequate provisions are provided to the authorized officer in § 4110.2–3(e). During review of the comments, and consideration of modifications for this section, it was discovered that there was an error in the proposed regulations. Instead of using the word "transferor," or the seller of the property, the proposed rulemaking used "transferee," or the buyer of the property, which is incorrect. In order to correct this error and further help clarify the intent of § 4110.2–3 regarding transfer of grazing preferences from one base property to another, an addition to the final rulemaking has been made in § 4110.2–3(c) because of public comments. The first sentence of the section in the final rulemaking has been corrected to provide that if a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred, and file a properly completed transfer application with the BLM for approval. This section was intended to give the authorized officer the flexibility necessary to allow for prudent action regarding the interaction between lenders, court actions, government actions, and permittee/lessee obligations.

Section 4110.2–4 Allotments.

This is a new section that was added in the proposed rulemaking by moving paragraph (d) in its entirety from § 4110.2–2. It was moved because it does not apply to specifying grazing preference. The change will be retained in the final rulemaking. Specific reasons for moving paragraph (d) and adding this section are discussed in § 4110.2–2 above.

Section 4110.3 Changes in grazing preference.

Several comments were received concerning changes in this section. A few commenters suggested removing the phrase "grazing preference" because they felt that it implied that livestock grazing would be preferred over other uses and that BLM would not allocate forage to uses other than livestock. Some commenters also felt the existing regulations are sufficient. The commenters also suggested that the title of the section be changed to "Changes in forage allocation." A few commenters also wanted to amend the section so that changes in active use could only be made following coordination, consultation, and cooperation with the affected grazing permittees. Finally, some commenters objected to the phrase "undue or unnecessary degradation" as applied to grazing use because it implied that grazing tends to cause "due and necessary degradation" and that grazing is accordingly, a destructive activity. It was also suggested that the phrase is not well defined and could lead to legal action to require clarification of the use of the phrase. It was suggested the phrase "undue or unnecessary degradation" be deleted and replaced with a different phrase. After consideration of all the above comments, it was decided, that the title of the section should be changed from "changes in grazing preference" to "changes in grazing preference status" in the final rule. There has been some confusion over the term "grazing preference." Grazing preference consists of both active use and suspended use. Grazing preference on particular allotments was established pursuant to the Taylor Grazing Act (43 U.S.C. 315 *et seq.*) based on historic use. It does not change. However, through land use planning and or monitoring the authorized officer may identify the need for changes in the preference status or mix of active versus suspended use. In response to the concerns regarding the requirement to coordinate, consult, and cooperate with permittees prior to any change in active use, it was concluded that § 4110.3–1(c) of the existing regulation sufficiently provides for this.

The recommendation of the commenters to delete the phrase "undue or unnecessary degradation" has been adopted and the phrase has been replaced with the phrase: * * * "unless the change is required in an applicable land use plan or is necessary to manage, maintain or improve rangeland productivity," as provided by sections 2(b)(2) and 4(b) of PRIA. The phrase "undue and unnecessary degradation" is used in FLPMA sections 302(b) and 602(c). It is a legal standard applicable in certain situations, for example, where grandfathered grazing or mining activities occur in wilderness study

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areas. Used out of context in this rulemaking, it apparently has caused confusion and created the possible implication that normal grazing activity causes degradation of the range. The term is being deleted because its use here may be misleading. BLM of course remains subject to the provisions of sections 302(b) and 602(c) of FLPMA. At times, accordingly, the applicable legal standard may be one based on accordance of "undue and unnecessary degradation." However, the phrase has been replaced with language that more clearly indicated that changes in active use may be triggered by various management objectivies.

Section 4110.3–1 Increasing active use.

A few commenters were concerned about the use of the word "apportioned" rather than "allocation" in paragraphs (a), (b), and (c) of this section of the proposed rulemaking. They concluded that additional forage should be equally shared with all other uses. Some felt that paragraph (a) should be changed to allow only for nonrenewable allocation of forage, while others felt paragraph (c)(1) is unclear as to the order of priority for allocating additional forage. After reviewing these comments, it has been concluded that the word "apportioned" is proper in this instance because the "allocation" of land and uses is accomplished in the land use plan, and forage available to livestock grazing must then be apportioned or divided among competing permittees in an allotment. The forage available for livestock grazing is forage that was allocated to livestock in the land use plan.

The concern regarding whether an authorization should be renewable or nonrenewable should not be a problem if, in fact, the forage is available. It would not be used by the permittee, or lessee, and a secondary user would not be allowed to use that resource for an indefinite period of time. Therefore, the forage available could only be authorized for a short period of time on a nonrenewable basis. It also has been concluded that paragraph (a) of this section is adequate and the language in the proposed rulemaking has been adopted in the final rulemaking. After careful consideration of the comments expressing concern regarding paragraph (c)(1), it was concluded that the wording is clear. The intent of this paragraph is to give the first priority to those permittees/lessees who invest in rangeland improvements which result in additional livestock forage, according to their proportional share in providing for the improvement.

Section 4110.3–2 Modifying or suspending grazing preference.

Many comments were received concerning the modification or suspension of grazing preference made by the proposed rulemaking. Several suggested that the 1984 regulations should be retained with the additional language of the proposed rulemaking. Some commenters suggested that the change in the section's title does not reflect the need to reduce actual livestock numbers, and the title in the existing regulation is more concise and specific. Many believed that a permittee/lessee should be given the option of taking voluntary nonuse in the amount and period of time deemed necessary by all parties involved. A few commenters suggested retaining the section in the existing regulations, especially paragraph (b) pertaining to achieving multiple use management, because elimination of this section would make it more difficult for the Bureau to effect an actual reduction in livestock grazing. Other commenters were of the view that paragraph (c) is unnecessary. Finally, a few commenters fully supported the changes made by the proposed rulemaking, but recommended several minor modifications in the wording to provide for monitoring livestock grazing use before decreasing active use. They suggested that the BLM must use more than one monitoring element prior to effecting a decrease.

After careful consideration of the comments, it was determined that the final rulemaking will adopt a change in the title of this section by replacing the phrase "modifying or suspending grazing preference" with the phrase "decreasing active use". The title of the section, as modified, will more effectively explain the purpose of the section. It has also been determined that the concerns expressed by many of the comments regarding the elimination of multiple use management in the proposed rulemaking are ill-founded. It is the policy and intent of the Department of the Interior to strengthen the concepts of multiple use as provided for in the Federal Land Policy and Management Act. This policy is reflected in the land use planning process which provides for the management of livestock grazing along with all other uses on the public lands. However, as suggested by commenters, the final rulemaking has modified the section to clarify the policy. Paragraph (a) of the proposed rulemaking is adopted without change in the final rulemaking. Paragraph (b) has been modified in the final rulemaking to provide that when monitoring shows active use is causing an unacceptable level or pattern of utilization, or exceeds the livestock carrying capacity as determined through monitoring, active use shall be reduced, or management practices changed as necessary, to maintain or improve rangeland productivity. Paragraph (c) is modified in the final rulemaking to provide the flexibility needed to make adjustments in use levels on a timely basis. It will now indicate that, where active use is reduced the balance may be held in suspension or in nonuse for conservation purposes until it is determined that active use may resume.

Section 4110.3–3 Implementing changes in grazing preference.

A few comments concerning changes in grazing preference suggested that the existing regulations be retained, and objected to the concept of graduated reductions for livestock use regardless of existing resource conditions. Some commenters suggested changing the phrase "grazing preference" to "active use". After consideration of the comments, it was decided that the final rulemaking would change the title of this section from "implementing changes in grazing preference" to "implementing changes in active use." This change will make this title consistent with §§ 4110.3, 4110.3–1 and 4110.3–2. Further, in response to the comments, it was concluded that unless there is an emergency which will cause irreparable damage to the resource, the concept of gradually implementing changes in active use is prudent in light of needed flexibility for the livestock industry and lending institutions, and the likely difficulties that permittees might have in making rapid changes in operations.

Section 4110.4–1 Additional land acreage.

Several comments concerned the provisions of this section of the proposed rulemaking. Most suggested that the language of the existing regulations be retained but modified to give specific mention to "critical wildlife habitat and wild horses/burros." Others commented on the word, "apportioned" versus "allocated." These comments have been considered and it has been decided that the language of the proposed rulemaking should be modified to make clear that this section is discussing active use. This paragraph of the proposed rulemaking provides consistency with current policy and legislative guidance indicated in § 4130.1–2. The word "apportioned" is used in the final rulemaking to differentiate from the allocation process that occurs during the land use planning process. The matter of wildlife and wild horses/burros habitat is also considered during the land use planning process.

Section 4120.1 Cooperative management agreement.

More comments were received concerning the cooperative management agreement than any other portion of the proposed rulemaking. Most favored the concept of cooperative management as being necessary to accomplish the goals and objectives of overall multiple use management and sustained yield by using livestock as one of the tools to manage vegetation resources. Most of the commenters favoring cooperative management did not specifically state that successful range management had to be accomplished by a cooperative management agreement, but felt cooperation is always superior to being in opposing and adversarial roles. Those commenters opposing the cooperative management agreement concept were concerned that the agency was relinquishing its authority and responsibility to manage the public lands. Most of those opposed also thought that the agreements gave too much discretion to private livestock interests and should not be used. It has been decided not to go forward at this time with a program of cooperative management agreements. Accordingly, the final rulemaking will remove from § 4120.1 the provision of the proposed rulemaking pertaining to cooperative management agreements. In order to bring the provisions of other sections into conformance with this change, those sections are being amended to remove all reference to cooperative management agreements. It should be noted that cooperative management agreements are used in other resource programs. Since the BLM began implementing its cooperative management policy, cooperative management agreements have been developed and implemented in cooperation with many user groups to manage other resources on the public lands, including wild horses and burros, wildlife, recreation, wilderness, and cultural values. Each of these agreements is a formal, written agreement between the Bureau of Land Management and the land user or user group for sharing management responsibilities of a resource.

Cooperative management with rangeland users has been a longstanding effort since it was first provided for under the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*). Under section 2 of the Taylor Grazing Act, the Secretary of the Interior was directed to "make provisions for the protection, administration, regulation, and improvement of such grazing districts and * * * enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement and development of the range." Cooperation with public land users was further reaffirmed in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*). Section 307(b) of the Act authorizes the Secretary, subject to the provisions of applicable law, to enter into contracts and cooperative. agreements involving the management, protection and development of the public lands.

In accordance with these laws, cooperative management will continue to be a necessary and important part of BLM's range management program as well as other resource programs. It will be reflected in BLM's consultation and coordination with the affected parties. There are other established processes, and interagency agreements to facilitate coordinated management of livestock grazing and other resource activities, that do not reflect the confusion that has evolved with the cooperative management agreement initiative. Since the major objective of cooperative management can be achieved by other, better understood and accepted methods, it is not necessary to retain their use as described in the proposed rulemaking.

The provisions pertaining to cooperative management agreements have been removed from § 4120.1 and this section number is reserved in the final rulemaking.

Section 4120.2–3 Allotment management plans.

Several comments concerned allotment management plans (AMP); most favored their use. Some commenters objected to the AMP being featured as the only vehicle through which the land use planning and management objectives are achieved, and suggested that cooperative management agreements, experimental stewardship, coordinated resource management, and other cooperative efforts are equally important to achieve multiple use management objectives. After considering the comments, it was determined that allotment management plans meet the intent of section 402 (d) and (f) of FLPMA and the final rulemaking will adopt, without change, this section of the proposed rulemaking.

Section 4120.3–5 Assignment of range improvements.

The few commenters on this section of the proposed rulemaking approved the deletion of the phrase "fair market value" and the last sentence of the existing regulation. The commenters generally felt that the phrases were antiquated and unnecessary because the parties involved reach agreement on the value of the range improvements while contracting for the transfer of the grazing preference, and the authorized officer should not be a referee in a private business transaction. Without such an agreement there would not be a transfer or assignment. The final rulemaking has adopted without change the provisions of the proposed rulemaking.

Section 4130.1–2 Conflicting applications.

Most of the commenters on this section opposed the changes in the proposed rulemaking. Several of the commenters stated that although the changes were shown in the text of the proposed rulemaking, they had not been discussed in the preamble or supplementary information sections. The commenters also stated that deletion of the word "livestock" before the word "forage", and adding the phrase "for livestock" after "forage" made no sense. Objections were also made to deleting the word "allocate" and replacing it with the word "authorize". Other comments expressed the view that the amendments in the proposed rulemaking substituted a new definition for the phrase "historical use of the lands" and that deleting the current subparagraphs (b) through (f) would have far-reaching implications, and be subject to varying interpretations. They opposed these changes because they felt that such changes could lead to the exclusion of the public from the public lands. Another commenter stated that in other parts of the proposed rulemaking, the word "allocate" had been replaced with the word "apportion" and felt that it would be consistent to make the same change in this section rather than using the word "authorize".

After reviewing the comments, the Department of the Interior regrets the failure to discuss the change under the Supplementary Information section of the proposed rulemaking. It was an oversight. However, since the change was made in the body of the proposed rulemaking and did receive comments, it will be explained here as will changes made by the final rulemaking based on

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the comments. In the proposed rulemaking the purpose of changing the phrase "livestock forage" to "forage for livestock" was to correct a misnomer. Forage is food for all grazing animals using the land, not just livestock. However, as used in these rulemakings it indicates that a determination has been made that additional forage is available, with some of it available for livestock. To utilize this additional forage for livestock grazing, the BLM accepts applications from grazing permittees who are qualified to use the forage for their livestock. This may result in competing applications. In that case the authorized officer must then determine how much forage to "authorize" to either one or all of the permittees. The word "authorize" is used instead of "allocate" or "apportion" because the latter are used for providing for or allocating forage to all grazing animals during the land use planning process. Paragraph (a) was revised by the proposed rulemaking because the section and paragraph citation in the 1984 regulations were incorrect. Instead of § 4130.2(1)(d), which doesn't exist, the citation should have been § 4130.2(d), which provides for permittees or lessees holding expiring grazing permits or leases to be given first priority for new permits or leases.

Section 4130.6 Terms and conditions.

Only a few comments were received on this section. They recommended that the phrase "control identified in land use plans" in the 1984 regulations be retained. After consideration of these comments, it was decided that the final rulemaking would retain the word "administration" used in the proposed rulemaking, because BLM also administers grazing on lands for which it does not have complete management responsibility, i.e., national recreation areas, national parks, and national wildlife refuges. The word "administration" is needed to give the flexibility necessary to manage the grazing program on these other lands.

Section 4130.6–1 Mandatory terms and conditions.

Numerous comments were received on this section, most of them opposing the proposed rulemaking for the same reasons as discussed previously in §§ 4100.0–5 and 4110.3 regarding the phrases "livestock grazing capacity" and "undue and unnecessary degradation." After consideration of the comments, it has been decided that the final rulemaking will adopt the phrase "livestock carrying capacity" as used and defined by the Society for Range Management, and delete the reference to "undue and unnecessary degradation" for the reasons discussed previously with reference to section 4110.3. The final rulemaking will indicate that the authorized livestock grazing use shall not exceed the livestock carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2 of this Title.

A few commenters were concerned about the removal of §§ 4120.2–1(c) and 4130.2(d)(3) of the grazing regulations as they existed prior to the effective date of the final rulemaking of March 22, 1984. Section 4120.2–1(c) provided that "all permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law. Section 4130.2(d)(3) provided that "Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions." The commenters expressed concerns that by removing these sections Interior intended to eliminate authority to cancel or suspend permits when required by land use planning, and intended to make consistency between land use plans and grazing permits discretionary rather than mandatory. The Interior Department does not, by removing these sections, intend to undermine consistency between land use planning and livestock grazing programs and activities.

It is not always necessary, however, to cancel, suspend or modify a permit or lease to achieve land use plan objectives. In actual practice, changes in grazing management practices and actions such as land treatments, water developments, fencing or other practices may achieve land use plan objectives without requiring a change in the status of the grazing preference or in terms and conditions of the permit or lease. The authorized officer retains authority under § 4130.6–1(b) to cancel, suspend or modify a grazing permit or lease where such action is needed to achieve land use plan objectives. Moreover, § 4100.0–8 of this final rulemaking provides that grazing program activities and management actions approved by the authorized officer "shall be in conformance with the land use plan." These provisions, taken together, effectively require consistency between the land use plan and the grazing activities. Accordingly, §§ 4120.2–1(c) and 4130.2(d)(3) continue to be deleted from the grazing regulations.

Section 4130.7–1 Payment of fees.

Many comments were received regarding the payment of fees. They suggested that the wording in paragraph (e) be changed to read "failure to pay the grazing bill within 30 days of the receipt of the bill or date of turnout, whichever is latest, shall result in a late fee assessment of $25 or 10% of the bill, whichever is greater. Failure to make payment within 30 days may result in action by the authorized officer under § 4160.1–2". Several other commenters suggested that $25 or 10% of the bill is not enough penalty for late payment, while others believed that the trespass/late fee provisions of the existing regulations are sufficient to deter the late payment of grazing fees.

This section was designed to reaffirm the longstanding policy of the BLM, and provisions in section 315(b) of the Taylor Grazing Act, which require the grazing bill be paid upon issuance, even under actual use procedures. The payment of grazing fees at the opening of the grazing season or period, unless otherwise provided for, is due on or before the due date specified in the grazing bill. The user owes the United States for the privilege of using the forage which is apportioned to the user by the date specified in the permit/lease. This payment authorizes forage to be used only by a particular user, and is obligated to that use unless changed either on the application of the permittee/lessee, or by the authorized officer for emergency conditions. Therefore, the final rulemaking will specify in paragraph (d) that the payment is due on the due date specified in the grazing bill. Further, the reference to cooperative management agreements in paragraph (d) is removed because of the removal of provisions pertaining to cooperative management agreements from § 4120.1 of the final rulemaking.

The new paragraph (e) added by the proposed rulemaking has been adopted by the final rulemaking, with some modification as suggested by the comments. The new paragraph (e) will provide that if payment is not made within 15 days of the due date specified in the bill, the late fee assessment will be $25 or 10% of the grazing bill, which ever is greater, not to exceed $250. Payments made more than 15 days after the due date shall include the appropriate late fee assessment. Both the grazing fee and the late fee assessment must be paid within 30 days from the due date shown on the original bill. Failure to do so may be a violation of § 4140.1(b)(1), and result in action by the authorized officer under § 4150.1 and 4160.1–2. These provisions are in accordance with financial management procedures of the Federal Government.

The late fee is a penalty based on administrative costs of auditing the late payment by grazing operators, notifying the operator that payment is late and tracking the progress of late payments. This procedure is designed to be an incentive to livestock operators to make payment of their grazing bill when due. It further provides for a penalty that is less cumbersome to administer than the present Bureau procedure of canceling the grazing bill and initiating unauthorized livestock use actions. This procedure will accommodate extenuating circumstances associated with turn-out dates, climate changes, and personal problems inherent in the livestock industry. Program reviews by the General Accounting Office and Office of Inspector General in 1986 indicated a need to strengthen the provisions for late payments.

Section 4140.1 Acts prohibited on public lands.

Several comments were received concerning acts prohibited on public lands under paragraph (a)(3) regarding supplemental feeding. Most of the commenters objected to any supplemental feeding on the public lands because they felt it would provide for the continued presence of livestock on ranges where the vegetation was already overutilized. A few commenters agreed with this viewpoint, but did feel it might be necessary in emergencies. Another commenter expressed concern over the requirement for approval prior to supplemental feeding because prior approval is not practical when harsh weather conditions demand immediate feeding. In reviewing all of the comments, it was determined that there is much confusion concerning the term "supplemental feeding", and the difference between "supplemental feeding" and "maintenance feeding." To overcome this confusion, the final rulemaking clarifies these terms in order to provide an understanding that maintenance feeding is not allowed on public lands, and supplemental feeding will only be allowed at the discretion of the authorized officer. The use of rangeland during certain times of the year can result in vitamin, mineral, and protein deficiencies in the grazing animal because the existing forage or plants (forage species) may not provide these elements during the nongrowing season. The rangelands are generally capable of supplying all the fiber and roughage material necessary for a subsistence diet, but some supplement may be needed to help maintain an animal's health just as humans may need mineral supplements and vitamins to maintain their health. Examples of supplements for grazing animals are salt, minerals, vitamins and some forms of protein which are usually provided to them in block or liquid form to correct deficiencies observed in the animal's diet.

In contrast to supplemental feeding, maintenance feeding is supplying feed or additional forage such as hay, grains, and straw to range animals when available forage is too limited to meet their minimum daily requirement. BLM has always considered maintenance feeding damaging to rangelands that results in over-utilization of existing vegetation, soil compaction, and poor use patterns due to concentration of animals in a specific area. BLM has prohibited maintenance feeding and concurs with commenters that this practice should not be allowed on public rangelands except during emergencies. This final rulemaking does not amend the language of the existing regulations.

Paragraphs (b)(7) and (b)(8) of the existing regulations have been deleted from § 4140.1 of the final rulemaking as discussed in the Notice published in the Federal Register on July 20, 1987, (52 FR 27321). These paragraphs provided that permittees who violate laws concerning the management of wild free-roaming horses and burros or who violate other federal or state environmental laws may be subject to civil and criminal penalties under §§ 4170.1 and 4170.2. Many comments were received suggesting these provisions should not be deleted because, ranchers who violate environmental laws should not be allowed to retain their grazing permits/leases. The commenters took the view that BLM must have the authority, and is required by section 302(c) of the Federal Land Policy and Management Act, to revoke grazing privileges for violations of all environmental laws. The commenters further contended that the government agency which regulates use of the public lands should institute such control. They expressed concern that these provisions were deleted, while similar provisions pertaining to penalties for violations under the Bald Eagle Protection Act and the Endangered Species Act are retained at § 4170.1–3. Many other commenters took the position that paragraphs (b)(7) and (b)(8) should be removed because they discriminated against the livestock industry. These commenters contended that, in effect, these provisions single out the grazing permittees/lessees for double penalties in that this group is subject to possible revocation of the grazing permit or lease in addition to the penalties applicable to anyone who violates these environmental laws.

In reviewing the comments, it was noted that some commenters concluded that removing the specific references at paragraphs (b)(7) and (b)(8) to the wild horse and other environmental laws was intended to suggest that public land permittees and lessees are not subject to penalties under the environmental laws. This is not the case. Removing these paragraphs was not intended to shield permittees and lessees from penalties under laws other than those specified at § 4170.1–3. Rather, it was determined that it is not necessary to include specific grazing penalties for violations of the Wild Horse and Burro Protection Act and Federal and State environmental laws. Enforcement or penalties against grazing permittees or lessees would be premised on the provisions of those laws just as with any other person who violated them. However, the Bald Eagle Protection Act and the Endangered Species Act have specific provisions concerning violations by grazing permittees and it is therefore appropriate to include a specific reference to those laws in the regulations. The final rulemaking deletes paragraphs (b)(7) and (b)(8) of this section. Section 402(a) of the Federal Land Policy and Management Act provides authority for inclusion in permits and leases of such terms and conditions as the Secretary deems appropriate. Therefore, when conditions warrant protection of the land or resources from livestock grazing, appropriate protection provisions will be included in the terms and conditions of the grazing lease or permit. Violating the special protective terms and conditions of a permit/lease is prohibited by § 4140.1(a)(1) and is subject to penalty under § 4170.1. In addition, interfering with lawful uses or users is prohibited by §4140.1(b)(7) and may result in the civil and criminal penalties under §§ 4170.1 and 4170.2. FLPMA provides flexibility to the authorized officer on a case-by-case basis to include provisions for suspension, revocation or cancellation in grazing or other permits. The Department also concluded that the inclusion of paragraphs (b)(7) and (b)(8) in § 4140.1 is unnecessary because there is statutory authority provided to the Secretary of the Interior, not only in section 402(a) of FLPMA, but also in section 302(c), to include special terms and conditions in permits and leases to provide for the management and protection of any environmental element. Consequently, § 4130.6 can be used as necessary to regulate livestock grazing for protection of any environmental values. These provisions are fully adequate to protect against or to remedy violations of the wild horse or other environmental laws that would have particular harm in the context of grazing or would undermine range management objectives or the purposes of the various range management statues. To the extent that violations unrelated to grazing or range management occur, these violations should be subject to the penalties provided in the environmental laws and applicable to anyone who violates them. And finally, it should be clearly understood that BLM does not have jurisdiction for the enforcement of State laws.

Section 4150.3 Settlement.

Many commenters on settlement of unauthorized grazing use expressed concern that the proposed penalties were too low, when based on the fee for grazing, and would encourage unauthorized use rather than stop it. Others felt that penalties are too high, especially for nonwillful violations, which they said should be the value of forage consumed based on the grazing fee rate. Still others suggested that the word "shall" should be used in place of the word "may" as proposed. After careful consideration of all comments received, it was determined that the settlement section of the proposed rulemaking should be modified in the final rulemaking to use essentially the same wording used in § 4150.3 of the existing regulations. However, the final rulemaking does remove the "repeated nonwillful" provisions because nonwillful violations are often beyond the control of the livestock operator, and additional penalties would be inappropriate in most cases. If nonwillful unauthorized use is attributable to negligence by the livestock operator, it may be considered willful. The final rulemaking also adopts the word "shall" instead of "may" as suggested by the commenters, and the penalty for nonwillful violations will be the value of the forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture. This change continues the language of the existing regulation. The penalties for willful and repeated willful violations will be two and three times, respectively, the penalty for nonwillful violations.

Section 4170.1–3 Federal or State laws or regulations.

As discussed previously under section § 4140.1 the final rulemaking will remove paragraphs (b)(7) and (b)(8) pertaining to revocation or termination of livestock grazing leases, permits or other agreements for violations of the Wild Free Roaming Horse and Burro Protection Act and Federal and State environmental laws. Section 402(a) of FLPMA provides that permits and leases shall be subject to such terms and conditions as the Secretary deems appropriate. Section 4130.6–2 of the existing regulations currently provides authority for the authorized officer to include whatever terms and conditions are necessary in a permit/lease for achieving management objectives, proper range management, or the orderly administration of the public rangelands. If specific provisions for management are required to protect wild horses and burros or other environmental enhancements, the specific management standards and stipulations can be included as terms and conditions of a permit or lease. Violation of the terms and conditions of a permit or lease is a prohibited act in § 4140.1(a)(1) and is subject to civil penalties under § 4170.1.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Wilton A. Peterson and Dee R. Ritchie, Division of Rangeland Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this final rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned clearance numbers: Grazing Application 1004–0005, Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,
Assistant Secretary of the Interior
March 4, 1988.

PART 4100—[AMENDED]

1. The authority citation for Part 4100 is revised to read.

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 et seq., 43 U.S.C. 1181d, unless otherwise noted.

2. Section 4100.0–5, is amended by removing the definition of "cooperative management agreement" and revising the definitions of "actual use", "land use plan", "monitoring", and "range improvement" to read

§ 4100.0–5 Definitions.

* * * * *

"Actual use report" means a report of the actual livestock grazing use submitted by the permittee or lessee.

* * * * *

"Land use plan" means a resource management plan or management framework plan which is being followed until replaced by a resource management plan. These plans are developed in accordance with the provisions of the Federal Land Policy and Management Act and establishes management direction for resource uses of public lands.

* * * * *

"Monitoring" means the periodic observation and orderly collection of data to evaluate:

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(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

"Range improvement" means an authorized activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock, wild horses and burros, and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

* * * * *

3. Section 4100.0–5 is further amended by removing the definition for "livestock grazing capacity," and adding, in alphabetical order, the following definitions:

"'Active use" means the current authorized livestock grazing use.

"Actual use" means where, how many, what kind or class of livestock, and how long livestock graze on an allotment.

"Livestock Carrying Capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

"Rangeland studies" means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

"Trend" means the direction of change over time, either toward or away from desired management objectives.

"Utilization" means the percentage of forage that has been consumed by livestock during a specified period and the livestock grazing utilization pattern on the allotment.

4. Section 4100.0–8 is added to read as follows:

§ 4100.0–8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).

5. Section 4110.2–1 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 4110.2–1 Base property.

* * * * *

(d) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2–3, to the new owner or person in control of that base property.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

6. Section 4110.2–2 is revised to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) Grazing preference shall be specified in all grazing permits or grazing leases. It shall include both active use and suspended use. Active use shall be based upon the amount of forage available for livestock grazing established in the land use plan as defined in 43 CFR 1601.0–5(k).

(b) The grazing preference specified shall attach to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§ 4110.2–3 [Amended]

7. Section 4110.2–3 is amended by revising paragraph (c) to read:

* * * * *

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

* * * * *

8. Section 4110.2–3 is further amended in the first sentence of paragraph (e) by changing the word "deposition" to "disposition."

9. Section 4110.2–4 is added to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with permittees or lessees, the authorized officer may designate and adjust allotment boundaries.

10. In § 4110.3 the section heading is revised and text is added to read as follows:

§ 4110.3 Changes in grazing preference status.

The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity.

11. Section 4110.3–1 is revised to read as follows:

§ 4110.3–1 Increasing active use.

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use, including forage which is temporarily available within an allotment because of a change in grazing use under § 4130.1–1, may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of grazing preferences to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination, additional forage on a sustained yield basis available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be apportioned in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to the contribution or efforts which resulted in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and/or

(3) Other qualified applicants under § 4130.1–2 of this title.

12. Section 4110.3–2 is revised to read as follows:

§ 4110.3–2 Decreasing active use.

(a) Active use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring shows active use is causing an unacceptable level or pattern of utilization or exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce active use if necessary to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve the management objectives.

(c) Where active use is reduced it shall be held in suspension or in nonuse for conservation/protection purposes, until the authorized officer determines that active use may resume.

13. Section 4110.3–3(a) is revised to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a) Changes in active use in excess of 10 percent shall be implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or decrease in less than 5 years.

* * * * *

14. Section 4110.4–1 is revised to read as follows:

§ 4110.4–1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

15. Section 4120.1 is removed and reserved.

§ 4120.1 [Reserved]

§ 4120.2 [Amended]

16. Section 4120.2, as amended on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

17. Sections 4120.2–1(c) and 4130.2(d)(3) are removed in their entirety. These sections had read as follows:

§ 4120.2–1 Mandatory terms and conditions.

* * * * *

(c) All permits and leases shall be made subject to cancellation, suspension, or modification, as required by land use plans, and subject to applicable law.

* * * * *

§ 4130.2 Grazing permits or leases.

* * * * *

(d) * * *

(3) Grazing permits or leases shall be modified, suspended, or canceled as required by land use planning decisions.

18. A new § 4120.2 is added to read:

§4120.2–3 Allotment management plans.

When allotment management plans are developed, the following provisions apply:

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and other affected interests. The allotment management plan shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3 of this title, and shall prescribe the livestock grazing practices necessary to meet specific multiple-use management objectives. The plan shall specify the limits of flexibility within which the permittee or lessee may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific multiple-use management objectives of the plan.

(b) Private and State lands shall be included in allotment management plans with the consent or at the request of the parties who own or control those lands.

(c) Completed allotment management plans shall be incorporated into the terms and conditions of the affected grazing permits and leases.

19. Section 4120.3–5 is revised to read as follows:

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

20. Section 4130.1–2 introducing text is amended by removing from where it appears in the first sentence the phrase "livestock forage" and replacing it with "forage for livestock", by removing from where it appears in the first sentence the work "allocate" and replacing it with "authorize," and by revising paragraph (a) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(a) Historical use of the public lands (see § 4130.2(d)).

* * * * *

§ 4130.4–1 [Amended]

21. Section 4130.4–1, paragraph (b) is amended by removing from where it appears in the fourth line of the first sentence the work "grazing" and replacing it with the word "carrying"

§ 4130.6 [Amended]

22. Section 4130.6 is amended by removing from where it appears the phrase "control identified in land use plans" and replacing it with the word "administration."

§ 4130.6–1 [Amended]

23. Section 4130.6-1(a) is amended by removing from where it appears in the second sentence the phrase "grazing capacity and may be limited or excluded to the extent necessary to achieve the objectives established for the allotment." and replacing it with the phrase "carrying capacity as determined through monitoring and adjusted as necessary under §§ 4110.3, 4110.3–1 and 4110.3–2.

24. Section 4130.6–3, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986

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edition of the Code of Federal Regulations, is retained.

§ 4130.7–1 [Amended]

25. Section 4130.7–1, paragraph (d) is amended by removing from where it appears in the first and second sentences the phrases "upon issuance of billings. When billings are issued prior to the grazing season" and replacing it with the words "on the due date specified on the grazing fee bill. Payment", and by removing from where it appears in the third sentence the phrase "or cooperative management agreements".

26. In § 4130.7–1, paragraph (e) is added to read as follows:

§ 4130.7–1 Payment of fees.

* * * * *

(c) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed $250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within this 30 days may be a violation of § 4140.1(b)(1) and shall result in action by the authorized officer under §§ 4150.1 and 4160.1–2.

27. Section 4140.1 is amended by removing paragraphs (b)(7) and (b)(8), which had read as set forth below, and by revising paragraph (a)(3) to read:

§ 4140.1 [Amended]

(a) * * *

(3) Placing supplemental feed on these lands without authorization.

(b) * * *

(7) Violating any provision of Part 4700 of this subchapter concerning the protection and management of wild free-roaming horses and burros;

(8) Violating any Federal or State laws or regulations concerning conservation or protection of natural resources and cultural resources or the environment including, but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants;

28. Section 4150.3 is amended by revising the introductory paragraph and paragraphs (a), (b), and (c) to read as follows:

§ 4150.3 Settlement.

The authorized officer shall determine whether the violation is nonwillful, willful, or repeated willful. Where violations are repeated willful, the authorized officer shall take action under § 4170.1–1(b) of this title. The amount due for all settlements shall include the value of forage consumed as determined by paragraphs (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violation: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section."; and

* * * * *

29. A new § 4170.1–3 is revised to read as follows:

§ 4170.1–3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1–1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or leessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

30. Section 4170.1–4, as added on February 21, 1984 (49 FR 6453), which was enjoined as stated in a notice published December 18, 1985 (50 FR 51522), and which appears in the 1986 edition of the Code of Federal Regulations, is removed.

[FR Doc. 88–6819 Filed 3–28–88; 8:45 am]

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federal register

Tuesday
March 29, 1988

Part VII

The President

Proclamation 5780—Greek Independence Day: A National Day of Celebration of Greek and American Democracy

Federal Register
Vol. 53, No. 60
Tuesday, March 29, 1988

Presidential Documents

Title 3—

The President

Proclamation 5780 of March 25, 1988

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1988

By the President of the United States of America

A Proclamation

The United States and Greece are old allies and friends. Our nations and peoples are bound by interests, kinship, values, and a record of common achievement. Ancient Greek ideals of freedom fueled our own struggle for independence, and American friends supported Greece's effort to forge a modern nation in 1821.

Over the years, millions of Americans of Greek ancestry have enriched and strengthened the United States. In this century, Americans and Greeks fought and died together in three wars. The Truman Doctrine, which helped Greeks preserve their independence and launch Greece toward prosperity, is a proud achievement of American foreign policy. Today, Greece and the United States are partners in the NATO alliance, which has kept the peace and preserved freedom for nearly 40 years.

The democracy we so cherish began in Greece millennia ago. The grandeur the ancient Greeks left has endowed modern Americans and modern Greeks with democracy's promise of liberty. Today, the world is still inspired by the eternal values and aspirations for which modern Greeks reached when they began their quest for independence on March 25, 1821.

Saluting our common fealty to democracy and its defense, and recognizing the bonds between the United States and Greece, the Congress, by Senate Joint Resolution 218, has designated March 25, 1988, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 25, 1988, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy, and I urge all Americans to join in appropriate ceremonies and activities to salute the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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S.J. Res. 125/Pub. L. 100-263

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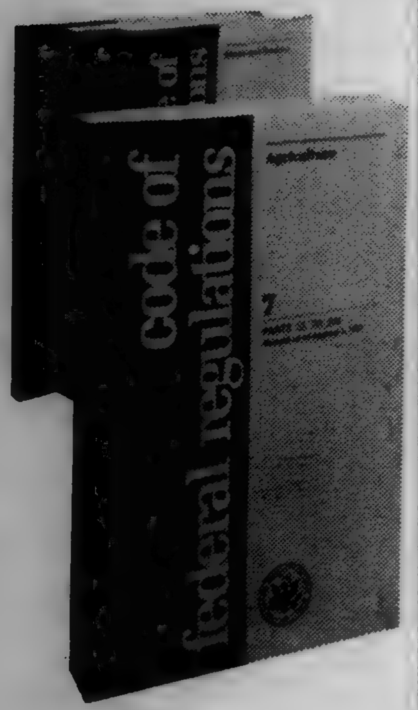

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Wednesday
March 30, 1988

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Federal Register
Vol. 53, No. 61
Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Famers Home Administration

7 CFR Part 1944 and 1980

Single Family Housing Fund Analysis

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Single Family Housing regulations by revising and renumbering Form FmHA 444–2. The change is required so that the form may accurately reflect the current regulations, terminology, and data needs of the agency. This action will provide an accurate and more complete database for use of funds information.

EFFECTIVE DATE: March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Karen A. Savoie, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5338, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–0099.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves internal Agency management and has no adverse impact on the government. Form FmHA 444–2 is now being submitted to the Finance Office by the State Offices, in many cases adding an extra processing step. There is no reporting requirement for Section 504 Grants, and no database exists to demonstrate use of funds. The form does not reflect type of subsequent loan, income category, grant funds, type of assistance, or current terminology used in FmHA regulations. This action will remove obsolete reporting fields, insert missing information, and renumber the form to reflect its reference to Subparts A and J of Parts 1944. An additional change is made in 7 CFR Part 1980, Subpart D to correct references to Form FmHA 440–1. The Correct reference is to Form FmHA 1940–1.

It is the policy of this department to publish for comment rules relating to public property, loans, grants, benefits, or contracts not withstanding the exemption on 5 U.S.C. 553 with respect to such rules. This action, however is not published for proposed rulemaking since it involves only internal Agency management with no increased cost to the government. Therefore, publication for comment is unnecessary.

Programs Affected

This activity impacts two programs listed in the Catalog of Federal Domestic Assistance under numbers 10.410, Low Income Housing Loans, and 10.417, Very Low Income Housing Repair Loans and Grants, both of which are excluded from the scope of Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1944

Aged, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and Community development, Low and moderate income housing-Manufactured Housing, Mortgages, Rural Housing, Subsidies.

7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural Areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

§ 1944.30 [Amended]

2. Section 1944.30(a) is amended in the listing of forms by changing the reference "444–2" to read "1944–2."

§ 1944.31 [Amended]

3. In § 1944.31, paragraph (e) is removed.

Subpart J—Section 504 Rural Housing Loans and Grants

4. In § 1944.468, paragraph (d) is removed and paragraph (c) is revised to read as follows:

§ 1944.468 Loan or grant approval.

* * * * *

(c) When a loan is approved, the approval official will prepare Forms FmHA 1940–1, "Request for Obligation of Funds," and FmHA 1944–2, "Single Family Housing Fund Analysis."

PART 1980—GENERAL

5. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

1980.33 [Amended]

6. In § 1980.331, Administrative paragraph is amended by changing the reference "Form FmHA 444–2" to read "Form FmHA 1944–2."

§ 1980.332 [Amended]

7. In § 1980.332, Administrative paragraph A is amended by changing the references "Form FmHA 440–1" to read Form FmHA 1940–1."

Dated: February 25, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-6968 Filed 3–29–88; 8:45 am]

BILLING CODE 3410-70-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amendment 17]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Final and interim final rules.

SUMMARY: The interim final rules published on July 23, 1987 at 52 **Federal Register** 27672–27680 are now promulgated as final, with the changes discussed below. In addition, two interim final rules are published, and comments thereon invited. One rule liberalizes the "alter ego" rule relative to the right of space rental, to bring it into conformity with a parallel rule governing the same subject. The other interim final rule permits the contribution of land to a project at appraisal value if the land has been held more than two years.

DATES: *Effective date:* March 30, 1988. Comments on the regulations identified as interim final should be submitted on or before May 31, 1988.

ADDRESS: Written comments in duplicate on the Regulations identified herein as interim final for comment may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, 202–653–6416.

SUPPLEMENTARY INFORMATION: On July 23, 1987, SBA published (at 52 FR 27672) Amendment 16 to Revision 4 of the captioned regulations as an interim final rule and invited comment. Two (2) timely comments were received. The comment period expired September 21, 1987. SBA is now promulgating Amendment 17 as a final rule, with changes that are responsive to the comments received on the July 23 publication. In addition, SBA invites comments on two interim final provisions which are identified as such, with an invitation for comment within 60 days, for future consideration.

The following is a description of the changes made in the rules promulgated in interim final form in the July 23 publication, and the reasons therefor. Those sections which are being adopted without change are not discussed here.

The authority citation failed to reflect the legislation which amended the Small Business Investment Act, to permit the pooling and sale of development company debentures, viz the Consolidated Omnibus Reconciliation Act of 1985, section 18009 (100 Stat. 366), adding sections 504 and 505 to that Act, 15 U.S.C. 697 a and b.

The amendment to § 108.5(d) revises the reference to the definition section, § 108.2, to reflect the reorganization of that latter section.

Section 108.503–3(f) Reporting Requirements is amended by removing the language related to the mandatory regulatory compliance audit performed by the 503 company's independent public accountant. Review of this requirement has shown that it is neither cost effect nor efficient, given the nature of 503 companies' involvement with cash flows and their public service (non-profit) purpose. SBA's Inspector General will have the right to perform a compliance audit (or to cause such audit to be performed) of any 503 company at any time without charge to the 503 company. Comments on this amendment are invited.

In line with the removal of language requiring compliance reports from the independent public accountants of the 503 companies, discussed above, § 108.503–15(b) *Periodic Compliance Audit* published as interim final on June 6, 1986, (51 **Federal Register** 20764, 20780), is revised for the reason stated above, to omit the description of a periodic compliance audit; and the discussion thereof in paragraph (c) and (d), which are repealed and reserved for future use.

A new amendment is promulgated as interim final, without prior notice and comment, in reliance on 5 U.S.C. 553(b). The amendment brings § 108.8(d) *Eligibility of passive small concerns ("alter ego")* into line with another regulation, § 108.503–4(a), insofar as both regulations deal with the right of a small concern to lease a portion of newly acquired space to third parties. Section 108.8(d), amended herein, will now permit a small concern which has obtained a facility from an eligible passive borrower under the specified conditions of this rule, to lease up to 15% of newly constructed space or up to 49% of an existing facility, either financed with debenture proceeds, to a third party or parties. It has come to SBA's attention that the prior prohibition of such leasing, not applied to direct borrowers, has caused hardships to small concerns otherwise eligible for the benefits of this rule, and in some cases has made projects uneconomical. Since it would be contrary to the public interest to let these hardships persist, the relaxation of the prohibition is adopted as an interim final rule, and comments are invited thereon.

Another new amendment is likewise promulgated as interim final, without prior notice and comment, in reliance on 5 U.S.C. 553(b). This amendment to § 108.503–5(d) *Expenditures made in anticipation of a 503 loan* permits the valuation of land contributed to a 503 project to be made pursuant to an independent appraisal satisfactory to SBA, if the land was acquired more than two years before the submission of the related loan application to SBA. The appraisal must be accompanied by a title report covering the history of sales of the land in question over the five-year period before the independent appraisal. (OMB approval number #3245–0192). The purpose of this requirement is to afford SBA a basis of comparison of prices paid for land in the recent past, with the independent appraisal. Before this new rule, land had always to be contributed at the lower of cost or market value, without regard to any increase in value over the years as a result of population or economic growth, inflation or other time-related factors. SBA has been advised by a comment on the July 23, 1987 publication that this restriction, in many situations, has prevented desirable real estate from being used in economic development projects. It is not in the public interest to let this restriction persist. Accordingly, the alternative valuation rule for long-held land is promulgated as interim final, and comments are invited thereon.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

SBA considers this final amendment of regulations taken as a whole to be both a major rule for the purposes of Executive Order 12291 and a rule which will have a significant economic impact on a substantial number of small entities for the purpose of the Regulatory Flexibility Act. It is a major rule because it makes final our interim final regulations published July 23, 1987 (52 FR 27672 *et. seq.*). These interim final regulations, implementing our public loan sales authority granted under Title XVIII of Pub. L. 99–272, authorize loan sales well in excess of $100,000,000 ($450,000,000 in fiscal 1988). It will save a significant economic impact on all small concerns assisted under this program, averaging 1,200 each year, because the funding for the Federal share of their loans will be obtained at market rates from these public sales, with their attendant underwriting and legal costs. Therefore, we offer the following Regulatory Impact Analysis/Regulatory Flexibility Analysis for the purpose of compliance with the pertinent requirements of those two measures.

1. *Description of potential benefits of the rule:* This amendment taken as a whole will provide both SBA and the participants in its Development Company Program with clearer guidance as to the process by which participation in the program is achieved, and once that participation is achieved, how the participants and SBA are to conduct their mutual roles in the administration of the program. It is our belief that this amendment will benefit SBA since its purpose is to clarify the regulatory framework governing the program and thus provide for more efficient administration. In addition, program applicants and participants should benefit from the amendment because it should clarify for them the procedure by which participation in the program is attained and participation in the program is governed.

2. *Description of potential costs of the rule:* There should be no increase in costs inherent in the amendment which are not presently involved in the administration of the Development Company Program. This amendment merely establishes the regulatory framework upon which the program is administered, it does not increase monetary or other types of costs upon SBA or program participants.

3. *Description of the net benefits of amendment:* This amendment taken as a whole, provides for more efficient program management.

4. *Description of reasons why this action is being considered:* This action is being considered as part of normal periodic Agency revisions of its regulations. As such, the amendment is based upon general experience with administration of the regulations as they presently exist.

5. *Statement of objectives and legal basis for the final rule:* The purpose of this regulation is to amend the regulations governing the Development Company Program and reflects statutory changes occurring since the initial program regulations were promulgated and administrative application of those regulations. The legal basis for the final rule is Title V of the Small Business Investment Act.

6. *Description of entities to which the final rule will apply:* This amendment will apply to all small businesses seeking assistance under the program and all development companies participating in the program.

7. *Description of the reporting, recordkeeping and compliance requirements of the proposed rule:* Reporting requirements subject to OMB approval are discussed under § 108.503–3(f) and 108.503–5(d) above. None of the other provisions of the final rule imposes significant reporting requirements.

8. *Federal rules:* There are no relevant Federal rules which duplicate or overlap the amendment.

9. *Analysis of public participation:* SBA submits that it has rejected no significant alternative to this amendment which would minimize any significant economic impact of the proposed rule upon small entities.

In this regard, only two comments were received within the comment period which ended September 21, 1987. One comment generally praised the interim final rule. The other comment, as noted above, suggested the change in the valuation of land, § 108.503–5(d) which is carried out by this rule. The same comment expressed approval of § 108.503–6(d), permitting an assumption fee where a 503 loan is assumed by a substitute small concern, but proposed further that the same fee be permitted where a major change in the collateral securing a 503 loan is effected. SBA rejects this latter suggestion on the grounds that such change of collateral is a servicing action covered by the periodic servicing fee permitted under § 108.503–6(a)(3). In preparing these rules, we have sought to adhere closely to the statutory framework in establishing the eligibility and participation requirements for the program. We feel that no alternatives which might in some way minimize economic impact on applicants or participants accomplish the stated objectives of the applicable statutes in a manner more consistent than that provided in the amendment.

These regulations contain no reporting requirements which have not been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Ch. 35).

In addition, SBA certifies pursuant to 5 U.S.C. 553(d) that good cause exists for immediate effectiveness of these regulations. The public interest requires the immediate repeal of both the leasing provision and the amendment of the provision limiting the valuation of land to the lower of cost or market value, because both provisions have had a detrimental effect on small concerns and the program as set forth above. However, comments are invited on the two regulations promulgated herein as interim final, and will be considered for possible amendment of these two provisions.

List of Subjects in 13 CFR Part 108

Loan programs—Business, Reporting and recordkeeping requirements, Small business.

The interim final rule amending 13 CFR Part 108 which was published at 52 FR 2762–27680 on July 23, 1987, is adopted as final with the following changes.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for Part 108 is revised to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b.

§ 108.5 [Amended]

2. Section 108.5(d) is amended by revising the parenthetical phrase "(see §§ 108.2(d) and 108.503–1 as the case may be)" to read "(see definition of 'development company' in § 108.2)".

§ 108.503–3 [Amended]

3. Section 108.503–3 is amended by revising the introductory text of paragraph (f) and removing and reserving paragraph (f)(3) to read as follows:

* * * * *

(f) *Reporting requirements.* In addition to the requirements of §§ 108.4(c), 108.5 (c) and (d) and 108.503(d), each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial statements, operational and management information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA Form 1253).

* * * * *

(3) [reserved]

* * * * *

§ 108.503–15 [Amended]

4. Additionally, a regulation published as interim final on June 6, 1986 at 51 FR 20764, 20780 is now promulgated as final in revised form. Section 108.503–15 *Oversight and evaluation; suspension and revocation* is amended by revising paragraph (b) thereof and repealing and reserving paragraphs (c) and (d) thereof, as follows:

(b) *Compliance audit.* Each 503 company shall be subject to compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General pursuant to the Inspector General Act (5 U.S.C. App. section 1, et seq.).

(c) [reserved]

(d) [reserved]

* * * * *

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The following rule is promulgated as interim final:

§ 108.8 [Amended]

5. Section 108.8 *Borrower requirements and prohibitions* is amended by adding to the beginning of paragraph (d)(3) thereof the phrase "subject to paragraph (d)(7) of this section" and by striking the words "the exclusive" in paragraph (d)(3) thereof. Section 108.8(d) is further amended by revising paragraph (d)(7) to read as follows:

* * * * *

(d) * * *

(7) The operating small concern must lease the entire facility from the applicant and may sublease a part thereof under the same conditions and to the same extent as set forth in § 108.503–4(a) for projects directly financed by a 503 loan.

§ 108.503–5 [Amended]

6. Section 108.503–5 *Eligible and ineligible uses of 503 loan proceeds* is hereby amended as interim final by revising paragraph (d)(2) therof and adding an OMB approval citation to read as follows:

* * * * *

(d) *Expenditures made in anticipation of a 503 loan.* * * *

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in a project involving new construction. The value of the contribution shall be the contributor's equity in such land. If the land was acquired within two years before the submission of the related application for development company assistance to SBA, it shall be valued at the lesser of cost or market. If the land was acquired before such two-year period, its value may be determined by independent appraisal satisfactory to SBA. With such independent appraisal shall also be submitted a title report setting forth the purchase history of the land for the last five years before the date of such appraisal. None of the loan proceeds shall be used for reimbursement of the acquisition cost of the land.

* * * * *

(Reporting and recordkeeping requirements contained in paragraph (d)(2) have been approved by the Office of Management and Budget under control number 3245–0178.)

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).)

Dated: February 3, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–6763 Filed 3–29–88; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 121

Small Business Size Standards; Modification of Size Standards for Research and Development on Aircraft; Aircraft Parts; Aircraft Engines; Guided Missiles and Space Vehicles, Their Parts, Auxiliary Equipment, Propulsion Units and Propulsion Unit Parts

AGENCY: Small Business Administration (SBA).

ACTION: Emergency interim final rule.

SUMMARY: The SBA is modifying, on an emergency interim basis, the size standards applicable to firms engaged in research and development (R&D) for aircraft; aircraft parts; aircraft engines; guided missiles and space vehicles, their parts. propulsion units and propulsion unit parts, and their auxiliary equipment to conform with the size standards for these services in existence prior to January 1, 1987. Due to a reassignment in the Standard Industrial Classification (SIC) System by the Office of Management and Budget (OMB), these services became subject to a much lower size standard. The size standards are being temporarily reinstated by this rule, in part, because those firms affected by this change were not provided with an adequate opportunity to comment on the effects of the lower standard.

This interim rule establishes a size standard of 1,500 employees for aircraft research and development, and a size standard of 1,000 employees for all other aforementioned research and development within SIC code 8731 (Physical and Biological Research). These size standard are the same standards for similar R&D activities within the manufacturing SIC codes 3731, 3724, 3728, 3761, 3764, and 3769.

Interested parties are invited to comment on the suitability of these emergency interim size standards or the suitability of adopting a size standard of 500 employees for these services, the same as applicable to R&D contracts for other services within SIC code 8731.

DATE: Effective March 30, 1988. Comments to be submitted on or before May 31, 1988.

ADDRESS COMMENTS TO: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street NW.—Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Salenger, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: Effective January 1, 1987, the Office of Management and Budget (OMB) revised the Standard Industrial Classification (SIC) System and, at that time, published the industry titles with a limited description for most industries. The SBA issued an emergency interim rule, effective January 1, 1987, to set size standards for the revised SIC system.

In its notice of January 6, 1987, SBA stated that the modification was "to make its size standards compatible with the new SIC system, not to initiate any size standard changes" (FR Vol. 52, No. 3, January 6, 1987, page 397). In September 1987, the SIC Manual was published, describing each SIC classification in greater detail. At this time, it first became generally known that research and development (R&D) on aircraft; aircraft engines; aircraft parts; guided missiles and space vehicles, their propulsion units, parts and auxiliary equipment had been partially reclassified. When such R&D is performed by firms not owned by the manufacturer of these items, those firms would no longer be classified under the manufacturing SIC codes 3721, 3724, 3728, 3761, 3764, and 3769 (which had a 1,500-employee size standard for aircraft (SIC code 3721) and a 1,000-employee size standard for the others), but would be classified under SIC code 8731, Commercial Physical and Biological Research, which has a 500 employee size standard.

This reassignment by OMB of these activities effectively changed the size standard on small business set-aside contracts for the aforementioned R&D services. Under § 121.5(b)(1) of the SBA's size regulations, a size standard for a procurement is selected from the SIC industry category most closely associated with the product or service being procured. Consequently, the reclassification of nonmanufacturing aircraft, guided missiles and space vehicles R&D firms to a service industry division, also changed the SIC designation for such R&D contracts to the service SIC code 8731 with its lower size standard of 500 employees. The lower size standard applies to any firm bidding on such R&D contracts, irrespective of whether the firm is primarily a manufacturer or nonmanufacturer. Firms experience other impacts, also. The reclassification of nonmanufacturing firms to a service

industry with a lower size standard than the previously applicable manufacturing industry also affects their eligibility for assistance through other SBA programs, such as the financial and guarantee assistance program. Since the comment period for the January 6, 1987, Emergency Interim Rule ended on March 9, 1987, and the SIC Manual indicating the reclassification of firms engaged in R&D activities from their former SIC codes was first published in September 1987, the affected firms did not have adequate opportunity to comment on the new size standard.

The SBA has received numerous complaints from affected firms and Federal agencies concerning the adverse effect of the lowering of the size standard for these activities. The size of many firms active in Federal procurement of R&D on aircraft, guided missiles, space vehicles, and related equipments fall between the current and previous size standards. Firms above the 500-employee size standard were not given an opportunity to provide SBA with information on the appropriateness of retaining higher size standards. Federal agencies are particularly concerned about the feasibility of continuing to set aside these types of R&D procurements at the 500-employee size standard.

The SBA certifies that this interim final rule is being published pursuant to an emergency for the reasons indicated above, and the SBA is, therefore, waiving the requirements of section 603 of the Regulatory Flexibility Act. The SBA will publish a final regulatory analysis when this rule is promulgated in final form. This rule imposes no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Recording and recordkeeping requirement, Small business.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

2. Section 121.2 is amended by changing footnote 19 to read as follows:

[19] *SIC–8731:* For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation and Research (SBIR) program, a different definition has been established by law. See § 121.7 of these regulations.

For research and development for aircraft, a size standard of 1,500 employees shall apply.

For research and development for guided missiles and space vehicles; aircraft engines; aircraft parts; guided missile and space vehicle propulsion units and propulsion unit parts; guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified, a size standard of 1,000 employees shall apply. Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete guided missiles and space craft.

James Abdnor,

Administrator, U.S. Small Business Administration.

Dated: February 10, 1988.

[FR Doc. 88–6692 Filed 3–29–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–114–AD; Amdt. 39–5885]

Airworthiness Directives; Boeing Model 767 Series Airplanes and Boeing Model 757 Series Airplanes Equipped With Rolls-Royce RB211 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Model 767 series airplanes and those Model 757 series airplanes equipped with Rolls-Royce RB211 engines, that currently requires installation of a guard on the fuel shut off panel. This action requires relocation of the electronic engine control (EEC) switches and the engine limiter control (ELC) switches (Model 757 only) from the control stand to the overhead panel. This amendment is prompted by reports of dual engine shutdowns in flight on the Model 767 airplane. These shutdowns occurred when the flight crews were reported to have inadvertently shut off the fuel control switches to each engine while intending to operate the EEC switches. The EEC switches on the Model 767 are located on the control stand just aft of the fuel control switches. Since the EEC switches or ELC switches on the Rolls-Royce RB211-powered Model 757 airplanes are located in a similar position on the control stand, the potential exists for the same inadvertent crew action to be taken on these airplanes. This condition, if not corrected, could lead to inadvertent engine shutdowns.

DATES: Effective May 11, 1988.

ADDRESSES: The applicable service information, when available, may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bernie Gonzalez, Propulsion Branch, ANM–140S; telephone (206) 431–1964. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires relocation of the electronic engine control (EEC) switches and the engine limiter control (ELC) switches from the control stand to the overhead panel on Boeing Model 767 and certain Model 757 airplanes, was published in the **Federal Register** on November 16, 1987 (52 FR 43770).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two airlines, commenting directly, and five others, commenting through the Air Transport Association (ATA) of America, objected to the proposed compliance time of 2,000 hours time-in-service or 1 year, whichever occurs first. Three commenters suggested the compliance time be revised to 3,000 hours or 1 year; another suggested 3,000 hours or 2 years; and the rest of the commenters requested 4,000 hours or from 1 to 2 years. The ATA requested a 2-year compliance time. The underlying concern prompting these objections was uncertainty regarding the availability of kits required to accomplish the EEC and ELC switch relocations, and a desire to modify the airplanes during regularly scheduled maintenance. Since issuance of the Notice, improved kit availability and service bulletins have been identified by the Boeing Commercial Airplane Company. Boeing Service Bulletin Nos. 767–73–0024 (for the Model 767) and 757–73–0018 (for the Model 757), which provide instructions for EEC switch relocation, are scheduled for release April 21, 1988, and July 14, 1988, respectively. Boeing Service Bulletin No. 757–73–0019, which provides instructions for ELC switch relocation, is also scheduled to be released July 14, 1988. These service bulletins, when reviewed and approved by the FAA, will be considered a means of compliance with this AD. Regarding kit availability, Boeing has advised FAA that the last kits for the Model 767 and the Model 757 airplanes are now scheduled to be shipped in November 1988. In light of the foregoing, the FAA has determined that extending the compliance time cannot be justified.

The ATA indicated that its member airlines have installed the switch guards between the fuel control switches, as required by AD T87–13–51, and questioned why the switch guard installation is considered only as an "interim" action, as explained in the preamble to the existing AD. The ATA requested that FAA show why the present switch guard installation is now considered to be "unsafe;" if this cannot be shown, the ATA requested that the rule be withdrawn. Further, if the switch guard is considered by FAA to be safe only for an "interim" period, then the ATA's request to extend the proposed compliance time during this "interim" safe period should be considered justified. The FAA does not concur that the proposal should be withdrawn. Telegraphic AD T87–13–51, identified as interim action upon its issuance, requires installation of a guard intended to impede simultaneous activation of both fuel control switches. Information disclosed following issuance of AD T87–13–51 indicates that the reported dual engine shutdowns, however, were methodically accomplished one engine at a time, not simultaneously. Since the fuel control switch guard does not hinder single engine shutdown, it can serve only as a "reminder" to the flight crew. The "interim" safe period, as described by the ATA, is therefore, a function of flight crew "awareness" and will vary from crew to crew. The FAA has determined that relocation of the EEC and ELC switches from the control stand to the overhead panel is the most effective method of eliminating the addressed unsafe condition resulting from dual engine shutdown. Further, this relocation modification must be done in the minimum amount of time needed to accomplish the task; in consideration of the number of airplanes affected, the cost of required parts and labor, and the availability of parts, the FAA has determined that 2,000 hours time-in-service or one year, whichever occurs first, is the appropriate amount of time that the interim requirements of AD T87–13–51 may be followed before the modification must be accomplished.

Another comment provided by the ATA dealt with the ELC switch and its associated flight deck procedures in which only the failed ELC is turned off after throttle retard, as opposed to both for the EEC switches. The ATA has, therefore, proposed that the Model 757 airplanes with ELC switches be removed from the applicability of the final rule. The FAA considered this aspect in proposing the rule. It is noted that both engine throttles are retarded when one ELC fails and that this motion of throttle retard is considered to contribute to the engine shutdown. The FAA has determined that the applicability of the rule is appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 32 Model 757 airplanes and 97 Model 767 airplanes will be affected by this AD; that it will take approximately 24 manhours per Model 757 airplane and 28 manhours per Model 767 series airplanes to accomplish the required actions; and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $139,360.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Boeing Model 757 and 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 87–13–51, Amendment 39–5718 (52 FR 33917); September 9, 1987), with the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes and to those Model 757 series airplanes equipped with Rolls-Royce RB211 engines, certificated in any category. Compliance required within the next 2,000 hours time-in-service or 1 year after the effective date of this AD, whichever occurs first, unless previously accomplished.

To minimize the potential for inadvertent engine shutdown when using the electronic engine control (EEC) or engine limiter control (ELC) switches, accomplish the following:

A. Relocate the electronic engine control switches or engine limiter control switches, as applicable, from the control stand to the overhead panel in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. The fuel control switch guard installation made in compliance with AD T87–13–51, Amendment 39–5718, may be removed following accomplishment of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

This amendment becomes effective May 11, 1988.

Issued in Seattle, Washington, on March 23, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–6979 Filed 3–29–88; 8:45 am]

BILLING CODE 4910-13-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Parts 602 and 603

The Freedom of Information Reform Act of 1986; Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: On July 27, 1987, at 52 FR 27998, the Arms Control and Disarmament Agency published a proposed rule to amend its Freedom of Information Act regulations, 22 CFR Parts 602 and 603, to implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) regarding fees, fee waivers, and law enforcement records and information. The proposed rule affected not only fees for requests under the Freedom of Information Act, but as well requests under the Privacy Act and Executive Order 12356.

DATE: This rule is effective March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., Information/Privacy Officer, (202) 647–3442.

SUPPLEMENTARY INFORMATION: Comments were received from two organizations suggesting changes. In light of those comments and a review of the proposed regulations: (1) The definitions of "educational institution" and "noncommercial scientific institution" have been eliminated from paragraph (b) of § 602.20; (2) the requirement in paragraph (c) of § 602.20 that requesters who are representatives of the news media show that their request is not made for a commercial use has been eliminated.

List of Subjects

22 CFR Part 602

Freedom of Information.

22 CFR Part 603

Privacy.

Title 22, Chapter VI, Parts 602 and 603 are amended to read as follows:

PART 602—[AMENDED]

1. The authority citation for 22 CFR Part 602 continues to read as follows:

Authority: Sec. 1, 81 Stat. 54, as amended by sec. 1, 88 Stat. 1561 (5 U.S.C. 552); sec. 41, 75 Stat. 635 (22 U.S.C. 2581), and sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

2. Section 602.20 is revised to read as follows:

§ 602.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review and copying services for Agency records under the Freedom of Information Act or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs for searching for, reviewing for release, and duplicating the records sought. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only the cost of reproduction.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of reproduction.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for and reproducing records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of reproduction or the first two hours of search time. Commercial use requesters will not be entitled to these free services. All requesters must reasonably describe the records sought.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be $.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed $25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250. Requesters who have previously failed to pay a fee in a timely fashion (i.e. within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request if processed.

3. Section 602.21 is revised to read as follows:

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(a) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(b) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: whether disclosure of the information will contribute to the "public understanding";

(d) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(e) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 602.22 [Removed and reserved]

4. Section 602.22 is removed and reserved.

5. Section 602.31 (g) is revised to read as follows:

§ 602.31 Exemptions.

* * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (1) could reasonably be expected to interfere with enforcement proceedings; (2) would deprive a person of a right to a fair trial or impartial adjudication; (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (4) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (5) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (6) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

PART 603—[AMENDED]

6. The authority citation for 22 CFR Part 603 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552a; 5 U.S.C. 553; 22 U.S.C. 2581; and 31 U.S.C. 483a.

§ 603.5 [Amended]

7. Section 603.5 (c)(3)(iii) is removed.

8. Section 603.10 is added to read as follows:

§ 603.10 Fees.

Fees to be charged in responding to requests under the Privacy Act shall be, to the extent permitted by paragraph (f)(5) of the Act, the rates established in Title 22 CFR 602.20 for responding to requests under the Freedom of Information Act.

Dated: March 22, 1988.

William J. Montgomery,

Administrative Director.

[FR Doc. 88-6870 Filed 3-29-88; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3576/R948; FRL-3354-1]

Poly-N-Acetyl-D-Glucosamine; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biochemical nematicide poly-*N*-acetyl-*D*-glucosamine or chitin (hereater called Clandosan™). This exemption was requested by Igene Biotechnology, Inc.

EFFECTIVE DATE: Effective on March 17, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: By Mail.

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 16, 1987 (52 FR 47754), which announced that Igene Biotechnology, Inc., 9110 Red Branch Rd., Columbia, MD, had submitted pesticide petition (PP) 6F3576 to EPA. The petition proposed that an exemption from the requirement of a tolerance be established for residues of the chitin-protein complex (poly-*D*-glucosamine) and urea, used as nematicides, on a wide variety of raw agricultural commodities. The petition was amended to clarify the active ingredient as chitin (poly-*N*-acetyl-*D*-glucosamine)-protein complex at 25 percent and delete urea as an active ingredient. This amendment was published in the Federal Register of February 17, 1988 (53 FR 4713).

Clandosan™ is a naturally occurring water-insoluble chitin-protein complex isolated from the polymer matrix of crustacean exoskeletons. The product is intended to act in the soil as a biological control agent to stimulate the growth of beneficial saprophytic nematodes and of other normal soil microorganisms, such as funguslike actinomyces bacteria, which produce chitinase, urease, other enzymes, and otherwise act to protect plants by suppressing gall-forming and other pathological effects of plant pathogenic nematodes that parasitize and destroy crops.

A similar active ingredient, Poly-*D*-glucosamine, has previously been exempted from the requirement of tolerances and was registered under the trade name of chitosan (51 FR 34973; October 1, 1986). Chitosan is registered for use as a seed treatment of wheat seeds to stimulate plant root growth and enhance the strength of wheat stems. In its exemption from the requirement of a tolerance for residues of chitosan on the raw agricultural commodity wheat, EPA noted that chitosan (1) is not toxic to humans and animals; (2) is naturally occurring in the environment in large concentrations; (3) has been exempted from regulation by the Food and Drug Administration (FDA) when used as a food or feed additive; and (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

Like chitosan, Clandosan™ is entirely composed of naturally occurring, nontoxic ingredients. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loaf volume of bread.

In support of its request, the applicant noted that chitosan, which is the deacetylated form of chitin, differs from unblended Clandosan™ materials by lacking the native protein component of the crustacean shell. Clandosan™ materials contain both the native protein of crustacean shells and the native form of chitin, which consists of unbranched chains of *N*-acetyl-*D*-glucosamine residues joined by beta-1,4 links.

The Agency has determined that poly-*N*-acetyl-*D*-glucosamine has such low toxicologic potential that it may be considered as an essentially inert or inactive material and no toxicologic testing of this substance is required.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biochemical nematicide.

Clandosan™ is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: March 17, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1069 is added, to read as follows:

§ 180.1069 Poly-N-acetyl-D-glucosamine; exemption from the requirement of tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical nematicide poly-*N*-acetyl-*D*-glucosamine on a variety of agricultural crops.

[FR Doc. 88-6548 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-282; RM-5569]

Radio Broadcasting Services; Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Fort Bragg, California, as that community's third local FM service, in response to a petition for rule making filed on behalf of Charles W. and Josephine R. Stone, d/b/a Fort Bragg Broadcasting Company. With this action, the proceeding is terminated.

DATES: Effective May 2, 1988. The window period for filing applications on Channel 244A at Fort Bragg, California, will open on May 3, 1988, and close on June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-282, adopted February 25, 1988, and released March 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by revising the entry for Fort Bragg, California, to add Channel 244A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-6709 Filed 3-29-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 205 and 252

Federal Acquisition Regulation Supplement; Release of Information

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new section 205.470 and clause 252.205-7000 which require defense contractors awarded a contract in excess of $500,000 to provide entities holding Cooperative Agreements with the Defense Logistics Agency, upon their request, a list of appropriate employees, their business addresses, telephone numbers, and areas of responsibility, who have responsibility for awarding subcontracts under defense contracts. The change is required to implement section 957 of the 1987 DoD Appropriations Act, Pub. L. 99-500.

EFFECTIVE DATE: March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, OASD (P&L), DASD(P)/DARS, c/o Room 3D139, The Pentagon, Washington, DC 20301-3062; (202) 697-7266.

SUPPLEMENTARY INFORMATION

A. Background

(a) The Defense Logistics Agency enters into Cooperative Agreements with state and local governments and private, nonprofit organizations to support funding of technical assistance centers for the purpose of furnishing procurement technical assistance to business entities. Pub. L. 99-500 requires defense contractors to provide Cooperative Agreement Holders with information on points of contact for subcontract opportunities.

(b) *Public comment.* The DAR Council published an interim rule on April 16, 1987 (52 FR 12386) and solicited public comment. Only two such comments were received. The DAR Council has considered the comments and made a slight change in the clause to add "or offices" after "employees" in the first sentence of paragraph (b).

B. Regulatory Flexibility Act

This final rule to amend Subpart 205.4 and to add a new clause at 252.205–7000 will have a beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because small businesses will be furnished with points of contact who will provide them with information needed to obtain additional subcontracts. A Final Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Final Regulatory Flexibility Analysis may be obtained from the individual listed above.

C. Paperwork Reduction Act

The Office of Management and Budget has approved a paperwork burden of 16,250 hours under Account No. 0704–0286.

List of Subjects in 48 CFR Parts 205 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, 48 CFR Parts 205 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 205 and 252 continues to read as follows.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 205—PUBLICIZING CONTRACT ACTIONS

2. The interim rule published at 52 FR 12386 is adopted as final without change.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The interim rule published at 52 FR 12386 is adopted as final with the following changes:

252.205–7000 [Amended]

Section 252.205–7000 is amended by changing the date of the clause from "April 1987" to read "MAR 1988"; by enclosing in commas the words "upon request" in the first sentence of paragraph (b) of the clause; and by adding in the first sentence of paragraph (b) of the clause between the word "employees" and the word "responsible" the words "or offices".

[FR Doc. 88-6874 Filed 3-29-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 225 and 252

Federal Acquisition Regulation Supplement; Restriction on Procurement From Toshiba Corporation and From Kongsberg Vapenfabrikk

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment; correction.

SUMMARY: This document corrects an interim rule on Restriction on Procurement from Toshiba Corporation and from Kongsberg Vapenfabrikk which was published in the **Federal Register** on Monday, March 21, 1988 (53 FR 9118). The action is necessary to make editorial corrections to the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Parts 225 and 252 as follows:

PART 225—FOREIGN ACQUISITION

225.7011 [Corrected]

1. On page 9119, Section 225.7011 is corrected by changing in paragraph (d) the references "252.225–7023" and "252.225–7024" to read "252.225–7026" and "252.225–7027" respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. On page 9119, the amendatory language in paragraph 3. is corrected to read:

"3. Sections 252.225–7024 through 252.225–7027 are added to read as follows:

252.225–7024 [Reserved]

252.225–7025 [Reserved]

252.225–7023 [Correctly Added as 252.225–7026]

252.225–7024 [Correctly Added as 252.225–7027]

3. On page 9119, Sections 252.225–7023 and 252.225–7024 are corrected to read: "252.225–7026" and "252.225–7027" respectively.

[FR Doc. 88-6875 Filed 3-29-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–223]

Organization and Delegation of Powers and Duties; Smoking on Airline Flights

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates authority to the Federal Aviation Administrator to take actions under section 404(d) of the Federal Aviation Act (49 U.S.C. 1374(d), as amended by section 328(a) of the Department of Transportation and Related Agencies Appropriations Act of 1988 (Pub. L. 100–202), concerning smoking on airline flights.

DATE: The effective date of this amendment is March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**. The Secretary has determined that the authority to take certain actions under section 328(a) of the Department of Transportation and Related Agencies Appropriations Act of 1988 (Pub. L. 100–202), should be delegated to the Federal Aviation Administrator. Under section 328(a), which created a new section 404(d) of the Federal Aviation Act (49 U.S.C. 1374(d)), it is unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation if the scheduled duration of the flight is two hours or less. The Secretary is authorized to issue implementing regulations.

Under 49 U.S.C. 322, the Secretary has the authority to delegate responsibilities to other Departmental officials and offices. Therefore, the Secretary has

determined that the Federal Aviation Administrator should carry out the statutory responsibilities under section 328, including promulgation of regulations and enforcement.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

In consideration of the foregoing, 49 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.47 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding paragraph (q) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(q) Carry out all of the functions vested in the Secretary under section 404(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1374(d)), as amended by section 328(a) of the Department of Transportation and Related Agencies Appropriations Act of 1988 (Pub. L. 100–202).

Issued in Washington, DC, on March 23, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-6948 Filed 3-29-88; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1–224]

Organization and Delegation of Powers and Duties; Relocation Assistance

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Section 402(e) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100–17, 101 Stat. 247, amended the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. 4601–4655 (1982) to specifically designate the Department of Transportation as the Federal government's lead agency for implementing the Uniform Act, as amended. This document delegates the lead agency authority, vested in the Department of Transportation by the 1987 Amendments, to the Federal Highway Administrator, and simplifies previous delegations to the Federal Highway Administrator involving the Uniform Act.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel Whitehorn, Office of the General Counsel, C–50, (202) 366–9307, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In 1982, the Office of Management and Budget began an effort to make all Federal agency regulations implementing the Uniform Act consistent. The Department of Transportation was named as lead agency for implementing the Uniform Act by a February 27, 1985 Presidential Memorandum (50 FR 8953). One responsibility was the development of a model regulation at 49 CFR Part 25 which served as the basis for a common verbatim regulation which was published as a final rule for all affected Federal agencies on February 27, 1986 (51 FR 7000). The functions vested in the Department of Transportation by the Presidential Memorandum, as well as other relocation functions, were subsequently delegated by the Secretary of Transportation to the Federal Highway Administrator (51 FR 29234). The Secretary has determined that the additional functions and responsibilities conferred by the 1987 Amendments should also be delegated to the Federal Highway Administrator. The 1987 Amendments call for a single government-wide regulation to be promulgated by the lead agency. The Office of the Federal Register has determined that the single government-wide regulation should be issued as Part 24 of this title.

This amendment specifically authorizes the Federal Highway Administrator to prescribe Uniform Act regulations at Part 24 of this Title. This would enable the Federal Highway Administrator to fully implement the lead agency functions prescribed in the 1987 Amendments. As was the case with the previous delegation, the Federal Highway Administrator would develop Uniform Act regulations "in coordination with the Assistant Secretary for Policy and International Affairs." This amendment would also simplify other provisions of the previous Uniform Act delegation.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective prior to publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.48 is amended by revising paragraph (cc) and removing and reserving paragraphs (dd) and (ee) as set forth below:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(cc) Prescribe regulations, as necessary, at Parts 24 and 25 of this title, to implement Pub. L. 91–646, 84 Stat. 1894, and any amendments thereto, as appropriate in coordination with the Assistant Secretary for Policy and International Affairs, and carry out all other functions vested in the Secretary by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894, and any amendments thereto.

(dd) [Reserved]

(ee) [Reserved]

* * * * *

Issued on: March 24, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88-6949 Filed 3-29-88; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register

Vol. 53, No. 61

Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM-40-25]

The State of Alabama; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking, withdrawal.

SUMMARY: The Commission is withdrawing, at the petitioner's request, a petition for rulemaking that was filed by the State of Alabama. In the petition, dated August 26, 1985, the State of Alabama had requested that the Commission review the exemption from licensing requirements for products or parts containing tungsten or magnesium-thorium alloys whose thorium content does not exceed 4% by weight, and either remove the prohibition on processing the parts or set out the prohibition as part of a general license.

ADDRESSES: Copies of the petitioner's letters of request and withdrawal are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Single copies of these letters may be obtained by writing to the Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Sterling W. Bell, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-0617.

SUPPLEMENTARY INFORMATION: Section 40.13(c)(4) of 10 CFR Part 40, "Domestic Licensing of Source Material," provides an exemption from licensing requirements for any person who possesses finished products or parts containing tungsten or magnesium-thorium alloys up to 4% thorium by weight. However, the exemption does not authorize chemical, physical, or metallurgical treatment or processing of the products. Therefore, an unlicensed person may possess and use the products as long as the person does not treat or process them.

On August 26, 1985, the State of Alabama, Department of Public Health, submitted a petition for rulemaking which requested NRC to review the exemption and make certain amendments to its regulations. A notice of receipt of the petition was published in the **Federal Register** on December 31, 1985 (50 FR 53335). Public comments were requested by March 3, 1986.

The petitioner stated the prohibition on treatment and processing of the products containing thorium is unenforceable for unlicensed persons. The State of Alabama said that it had identified thorium products in scrap which were being melted or cut by unlicensed persons. The petitioner requested that NRC review the restriction on processing, and delete the restriction if it is unnecessary to protect the public health and safety. The petitioner believed that the restriction was necessary and, therefore, recommended that the exemption be deleted and replaced by a general license. The general license would be similar to the existing general license provided in 10 CFR 40.25, "General license for use of certain industrial products or devices." The petitioner requested that the general license require that the product be obtained from a licensed manufacturer, be labeled, and be authorized for distribution only if the manufacturer demonstrates that its use will not result in radiation doses to persons above certain specified limits.

Only one comment was received on the petition. Covington and Burling, Counsel for North American Philips Lighting Corporation, opposed the petition on the basis that the petitioner did not demonstrate any significant health risks resulting from the current regulatory approach, or demonstrate that any health and safety benefit would result which would justify imposing additional regulatory burden on licensees.

After reviewing the original reasons for the petition and the availability of sufficient supporting data at this time, the petitioner believes that the best approach is to have the requested changes retained by the NRC staff for its considerations when the NRC next considers general revision to this portion of its regulations. Therefore, by letter dated January 15, 1988, the petitioner requested that the petition be withdrawn.

The NRC concurs with the State of Alabama. The NRC staff believes that 10 CFR Part 40, including the exemption questioned by the petition, provides adequate protection of the public health and safety. However, the NRC staff also believes that, in light of the many exemptions which currently exist in Part 40, a general revision of that portion of the regulations would provide consistency and clarity to the regulatory framework.

The NRC accepts the State of Alabama's request that the petition be withdrawn.

Dated: at Bethesda, Maryland, this 17th day of March 1988.

For The Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-6921 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-07-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which would require repetitive inspection of the trim system, and repair or parts replacement, if necessary; a preflight procedure check of the trim system; a modification of the crew warning system; installation of a spike suppression modification in the air conditioning system; and installation of an elevator monitoring and alarm system. This proposal is prompted by reports of several cases of pitch trim motor failures and a re-evaluation of the flight controls system. This condition, if not corrected, could result in excessive loads in the fixed vertical stabilizer from dual hidden failures in the elevator trim system, which could jeopardize safe flight and landing of the airplane.

DATES: Comments must be received no later than May 27, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-07-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-07-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition in the elevator trim synchronization system on certain Aerospatiale Model ATR-42 series airplanes. A re-evaluation of the flight control system has revealed a potential for desynchronization of the elevator trim tabs following a combination of two hidden failures: (1) Breakage of the actuator synchronization flexible shaft, and (2) non-operation of a trim actuator. This double failure could cause tab desynchronization, resulting in excessive loads in the fixed vertical stabilizer. This condition, if not corrected, could jeopardize safe flight and landing of the airplane.

Aerospatiale issued Service Bulletin ATR42-27-0010, dated March 20, 1987, which describes procedures for repetitive checks of the trim system; Operational Engineering Bulletin Number 17, dated January 28, 1987, which describes preflight procedure checks of the trim system; Service Bulletin ATR42-27-0015, Revision 3, dated February 29, 1988, which describes a modification of the crew warning system; Service Bulletin ATR42-30-0010, Revision 2, dated July 7, 1987, which describes the addition of two diodes in the de-icing system and the installation of a new crew alerting computer to eliminate inadvertent warning when the ice protection controllers are energized; and Service Bulletin ATR42-21-0009, Revision 4, dated February 22, 1988, which describes a modification to suppress interference on the electrical power system caused by spikes on the pneumatic electrical system (this modification must be accomplished prior to installation of the modification described in Service Bulletin ATR42-27-0015, Revision 3).

The procedures described in Service Bulletin ATR42-27-0010 and Operations Engineering Bulletin (OEB) Number 17 are interim measures to detect any hidden failures in the trim system. Service Bulletins ATR42-27-0009, ATR42-27-0015, and ATR42-30-0010 describe modifications which, if installed, will eliminate the need for the interim action of Service Bulletin ATR42-27-0010 and OEB Number 17, and upgrade the crew warning system to detect trim system malfunctions and eliminate sources of electrical transients that could cause the crew warning system to malfunction or provide misinformation concerning the condition of the trim system.

The DGAC has classified all of the service bulletins described above as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspection of the trim system, preflight procedure checks of the trim system, modification of the crew warning system, installation of an elevator monitoring and alarm system, and installation of certain spike suppression circuits, in accordance with the service bulletins previously mentioned.

It is estimated that 23 airplanes of U.S. registry would be affected by this AD. It would take approximately 2 manhours per airplane to accomplish the required inspections, 5 manhours per airplane to accomplish the modifications, 25 manhours to install spike suppression circuits, and 80 manhours per airplane to install the elevator monitoring and alarm system. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $103,040.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model ATR-42 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

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the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42 series airplanes, as listed in the following Aerospatiale Service Bulletins: ATR42–27–0010, dated March 20, 1987; Operational Engineering Bulletin, dated January 28, 1987, ATR42–27–0015, Revision 3, dated February 29, 1988; ATR42–30–0010, Revision 2, dated July 7, 1987; and ATR42–21–0009, Revision 4, dated February 22, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent excessive loads on the vertical stabilizer in the event of dual hidden failures in the elevator trim system, accomplish the following:

A. For airplanes listed in Aerospatiale Service Bulletin ATR42–27–0010, dated March 20, 1987, within 100 hours time-in-service after the effective date of this AD, accomplish the following:

1. Inspect the trim system in accordance with Aerospatiale Service Bulletin ATR42–27–0010, dated March 20, 1987. Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service. If defective parts are identified during this inspection, repair or replace with airworthy parts prior to further flight, in accordance with the service bulletin.

2. Insert the following in the Model ATR–42 Airplane Flight Manual, Limitations Section: "Prior to each taxi, perform the following procedure check: Prior to setting takeoff trim adjustment, run elevator trim to full up stop and full down stop to detect trim malfunction described in Operations Engineering Bulletin Number 17, dated January 28, 1987."

B. Within 1,500 hours time-in-service after the effective date of this AD:

1. For airplanes listed in Service Bulletin ATR42–21–0009, Revision 4, dated February 22, 1988: Install spike supression circuits in the air conditioning system, in accordance with this service bulletin.

2. For airplanes listed in Aerospatiale Service Buletin ATR42–27–0015, Revision 3, dated February 29, 1988: Subsequent to the installation of the spike suppression circuits requried by paragraph B.1., above, install an elevator trim dissymmetry monitoring system and associted alarm, in accordance with this service bulletin.

3. For airplanes listed in Aerospatiale Service Bulletin ATR42–30–0010, Revision 2, dated July 7, 1987: Modify the crew warning system, in accordance with this service bulletin.

C. The accomplishment of the requirements of paragraph B., above, constitutes terminating action for the requirements of paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountian Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspectors and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 23, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–6977 Filed 3–29–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–11–AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, that would require inspection of the main landing gear main fitting for defects, and repair, if necessary. This proposal is prompted by results of the manufacturer's fatigue testing and static strength tests. This condition, if not corrected, could lead to collapse of the main landing gear.

DATES: Comments must be received no later than May 27, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–11–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–11–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 146 series airplanes. Fatigue testing and static strength tests conducted by the manufacturer have revealed that defects may be present on the main fitting and on the barrel section of the main fitting of the main landing gear (MLG). These defective parts of the MLG main fitting, if not repaired, could lead to collapse of the MLG.

British Aerospace has issued Model BAe 146 Inspection Service Bulletin 32–73, dated March 13, 1987, which describes procedures for inspection of the MLG main fitting to detect defective parts. The service bulletin refers to Dowty Rotol Service Bulletin 146–32–23, Revision 1, dated May 20, 1987, for procedures to identify the MLG assembly and main fitting serial number, and for specific procedures for inspection of affected parts; and to Dowty Rotol Service Bulletin 146–32–56, dated October 29, 1986, for procedures to repair defective parts. The CAA has declared the BAe service bulletin mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection for defects of the main landing gear main fitting, and repair, if necessary, in accordance with the British Aerospace service bulletin previously mentioned.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all British Aerospace (BAe) Model 146 series airplanes as listed in BAe 146 Service Bulletin 32–73, dated March 13, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG) due to defective main fittings, accomplish the following:

A. Prior to the accumulation of 12,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later,inspect the main fitting and barrel section of the main fitting in accordance with British Aerospace BAe 146 Service Bulletin 32–73, dated March 13, 1987. If defective parts are identified during the inspection, repair prior to further flight, in accordance with the service bulletin.

Note: British Aerospace BAe 146 Service Bulletin 32–73 references Dowty Rotol Service Bulletin 146–32–23, Revision 1, dated May 20, 1987, for specific procedures for identification and inspection of the affected MLG parts; and Dowty Rotol Service Bulletin 146–32–56, dated October 29, 1986, for specific procedures for repair of defective parts.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 23, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–6978 Filed 3–29–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 88–ANM–1]

Proposed Alteration of Jet Routes; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of J–64 and J–197 located in the vicinity of Pueblo, CO. Air traffic congestion in the Lamar, CO, and Gunnison, CO, terminal areas has caused significant delays due to the location of J–64 and J–197. This action would move J–64 and J–197 to an area that would distribute the workload among other air traffic control (ATC) sectors, thereby reducing controller work and reducing ATC delays.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88–ANM–1, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ANM–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–64 and J–197. The FAA has identified the need for reducing air traffic congestion in the vicinity of Lamar, CO, and Gunnison, CO. These terminal areas have critical arrival/departure problems during peak traffic periods. This action would distribute the workload among several ATC sectors thereby reducing delays. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet Routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–64 [Amended]

By removing the words "Farmington, NM; Alamosa, CO; Hill City, KS;" and substituting the words "Farmington, NM; Pueblo, CO; Hill City, KS;"

J–197 [Revised]

From Dove Creek, CO; Hugo, CO; Goodland, KS; Wolbach, NE; to Sioux Falls, SD.

Issued in Washington, DC, on March 16, 1988.

Shalomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-6870 Filed 3–29–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4b

[Docket No. [illegible]]

Privacy Act of 1974

AGENCY: Department of Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Commerce is proposing to amend 15 CFR Part 4b titled, Privacy Act, which implements the Privacy Act of 1974 (5 U.S.C. 552a) (1982 & Supp. II 1984) within Commerce. The purpose of the amendment is to centralize the appeals process into the Office of the General Counsel in order to provide maximum efficiency, uniformity in decisions, and continuity to Privacy Act appeals.

DATE: Comments must be submitted on or before April 29, 1988.

ADDRESS: Send written comments to: Geraldine LeBoo, Department of Commerce, Room H–6628, Washington, DC 20230; Telephone (202) 377–3271.

FOR FURTHER INFORMATION CONTACT: Geraldine P. LeBoo, (202) 377–3271.

SUPPLEMENTARY INFORMATION: The Commerce Department's policies and procedures for handling requests for information under the Privacy Act appear in 15 CFR Part 4b. The Department proposes to amend the regulation which was promulgated at 40 FR 45619, Oct. 2, 1975; 40 FR 50662, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975.

Under the original regulation, Appendix A designated the "Privacy Officer" who was authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment. Appendix B designated the "Privacy Appeals Officer" authorized to receive and act upon appeals from an initial denial of a request. The regulation is proposing to end the handling of appeals by the "Privacy Appeals Officer" in the various Departmental units and centralize the appeals process into the Office of the General Counsel.

Other proposed changes throughout the regulations are editorial and/or reflect necessary organizational designations.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4b

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, it is proposed that 15 CFR Part 4b be amended as follows:

PART 4b—PRIVACY ACT

1. The authority citation for 15 CFR continues to read as follows:

Authority: 5 U.S.C. 552a; 5 U.S.C. 553; 5 U.S.C. 552; 5 U.S.C. 301; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. Section 4b.1 is amended by revising paragraphs (d)(1) and (e)(3) as follows:

§ 4b.1 Purpose and scope.

* * * * *

(d) * * *

(1) Requests solely under the Freedom of Information Act (5 U.S.C. 552) and Part 4 of this title;

* * * * *

(e) * * *

(3) Requester is the individual to whom the record pertains and the requester expressly states that the request is under both the Act and the Freedom of Information Act—The request will be processed concurrently under both statutes and the Department's respective implementing regulations. For such dual requests the Department will follow the fee provisions under the Act and this part, and follow the time limits under the Freedom of Information Act and Part 4 of this title.

* * * * *

§ 4b.2 [Amended]

3. Section 4b.2 is amended by removing paragraph (b)(6) which defined the term "Privacy Appeals Officer." Paragraphs (b)(7) through (10) should be renumbered as paragraphs (b)(6) through (9).

§§ 4b.3 and 4b.4 [Amended]

4. In the list below, for each section and paragraph indicated remove the language set forth from wherever it appears, and add in its place the language indicated.

Section/Paragraph	Remove	Add
§ 4b.3(c)	Appendix D	Appendix C
§ 4b.3(h)	Appendix C	Appendix B
§ 4b.4(b)	Appendix D	Appendix C

§ 4b.3 [Amended]

5. Section 4b.3(f)(2) is amended by removing the words "Privacy Appeals Officers, identified in Appendix B to this part," and adding the words "General Counsel" in their place.

§§ 4b.5 and 4b.8 [Amended]

6. The following sections are amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix B to this part," wherever they appear, and adding the words "General Counsel" in their place: § 4b.5(a)(2), (g)(3)(ii); § 4b.8(a)(1)(ii).

§ 4b.8 [Amended]

7. Section 4b.8(a)(2)(ii)(D) is amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix C to this part" and adding the words "General Counsel" in their place.

§ 4b.9 [Amended]

8. Section 4b.9(b) is amended by removing the words "Privacy Appeals Officer identified in the initial denial (that official is authorized to make final determinations)" and adding the words "General Counsel, Department of Commerce, Room 5882, Washington, DC 20230" in their place. The words "responsible Privacy Appeals Officer" should also be removed, and the words "General Counsel" added in their place. Finally, wherever the words "Privacy Appeals Officer" appear in § 4b.9(b) or the rest of § 4b.9, they should be removed and the words "General Counsel" should be added in their place. The paragraphs of § 4b.9 affected are as follows: (b), (c), (e), (g)(1), (h), (i).

Appendix A [Amended]

9. Appendix A is amended by adding the following to the list of officials authorized to receive inquiries, requests for access and requests for correction or amendment: Bureau of Export Administration, Privacy Act Officer, Office of Security and Management Support, Bureau of Export Administration, Room 3888, Herbert C. Hoover Building, Washington, DC 20230.

Appendix B [Removed] Appendix C and Appendix D [Redesignated as Appendix B and Appendix C]

10. Appendix B is removed. Appendix C and Appendix D are redesignated as Appendix B and Appendix C.

Dated: March 17, 1988.

Alan P. Balutis,

Director for Budget, Planning, and Organization.

[FR Doc. 88-6862 Filed 3–29–88; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Ch. I

Hazard Communication

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing a hazard communication standard to reduce the incidence of chemically-related illnesses and injuries in mining. MSHA will use the Occupational Safety and Health Administration (OSHA) hazard communication standard, 29 CFR 1910.1200, as the basis for a standard for the mining industry. The OSHA standard requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs. To avoid duplicate or conflicting requirements, MSHA intends to follow the principles of the OSHA standard. This notice is seeking comment and information on how the hazard communication provisions outlined below could be applied to mining. Also, there may be instances where additional provisions are needed in order to address the unique conditions of the mining environment.

DATE: All comments and information should be submitted by May 31, 1988.

ADDRESS: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: Current MSHA standards require all operators to train miners in hazard recognition and avoidance, including the hazards of handling chemical products. Additionally, MSHA requires metal and nonmetal operators to post warning signs at hazardous areas in order to warn miners, and to label toxic substances both in a manner which identifies the hazard involved and the protective action required.

Although OSHA has established a hazard communication standard for the manufacturing and non-manufacturing sectors, no similar comprehensive standard exists for the mining sector. The United Mine Workers of America and the United Steelworkers of America jointly have petitioned MSHA to propose the OSHA hazard communication standard, and adapt the rule to both coal and metal and nonmetal mines during the rulemaking process. MSHA is reviewing available information to develop a standard applicable to mining. Among the information to be considered is OSHA's experience with its hazard communication standard and information collected by the National Institute for Occupational Safety and Health pursuant to their national occupational health survey in mining.

The purpose of the OSHA hazard communication standard is to ensure that the hazards of all chemicals produced or imported are evaluated by the producers of those chemicals, and that information concerning their hazards is transmitted to employers and employees of chemical producers and users. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training. OSHA's standard is intended to address comprehensively the issues of evaluating the potential hazards of chemicals and communicating information concerning hazards and appropriate protective measures to employees. Communicating information concerning chemical hazards and appropriate protective measures to employees may include provisions for developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures.

Specific Issues Identified for Comment

In this advance notice of proposed rulemaking, MSHA is seeking comments and data on a number of issues raised by provisions of the OSHA standard, including how they could be adapted to mining. Since an MSHA standard would affect all of the mining industry, commenters should provide a rationale, including specifics, to support their respective positions based upon particular mining methods, practices and operational conditions. MSHA requests comment on all relevant aspects of a hazard communication standard and on the following issues in particular:

General Approach and Scope of an MSHA Standard

—For industries which include mines as well as OSHA regulated properties, how should the MSHA standard avoid duplication?

—Should mine operators assess hazards associated with mine products, develop labels, material safety data sheets (MSDS), and forward such information to users of mining property?

—How should independent contractors be regulated under an MSHA standard?

—How should the MSHA standard provide for special needs of small mine operators?

Hazard Determination

The OSHA hazard communication standard defines "hazardous chemical" as "any chemical which is a physical hazard or health hazard." In addition, "health hazard" means "a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees."

—How should MSHA assist mine operators in evaluating materials produced in a mine or imported by the operator to determine if they are hazardous?

—Are there some situations where exposure to a hazardous chemical may be remote, and therefore not trigger the requirements of the complete standard? Would both a hazard evaluation and MSDS be needed in such situations?

Written Hazard Communication Program

The OSHA standard requires employers to develop in writing and implement a hazard communication program for their workplaces which describes how the provisions on labeling, material safety data sheets and employee information and training will be met.

—Should an MSHA standard require any different elements in a written hazard communication program?

—What impact would a written hazard communication program have upon small mining operators?

—Are there ways in which compliance burdens could be reduced for operators, especially small ones?

—What technical assistance, such as step-by-step instructions, model programs or certification of private programs should MSHA provide to operators in developing a hazard communication program to comply with the MSHA standard?

Labeling and Other Forms of Warnings

OSHA requires that every container of a hazardous chemical leaving the workplace be labeled, tagged, or marked with the identity of the material, an appropriate hazard warning and the name and address of the chemical manufacturer, importer or distributor. The rule also requires that every container in the workplace be labeled, tagged, or marked with the identity of the chemical and appropriate hazard warning. MSHA has existing labeling standards for metal and nonmetal mines at 30 CFR 56/57.16004, which require hazardous materials to be stored in appropriately labeled containers approved for such use; and 30 CFR 56/57.20012, which require labeling of toxic materials. There are no comparable labeling standards for coal mines.

—How should the MSHA standard address hazards associated with the raw material being mined?

Material Safety Data Sheet (MSDS)

MSDS's are generally published by manufacturers for users to alert them to hazards associated with their products. The OSHA standard requires that these sheets include the identity of the material, its hazardous properties, and appropriate protective measures.

OSHA's standard has detailed requirements with respect to the development and distribution of MSDS's for each hazardous chemical. Users of hazardous chemicals receive an MSDS automatically at the time the chemical is purchased. Copies of MSDS's are required to be maintained by employers and accessible to employees during the work shift.

—What, if any, changes from the OSHA standard should apply to mining?

—To what extent are mine operators currently obtaining and keeping copies of MSDS's for hazardous chemicals entering mine property?

—To what extent are mine operators developing MSDS's for hazardous chemicals that are produced or exist on mine property?

Trade Secrets

OSHA currently defines "trade secret" as "any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it." This definition does not protect chemical identity information that is readily discoverable through reverse engineering. Additionally, OSHA permits occupational doctors and health nurses access to trade secret information. The chemical manufacturer, importer or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical from the material safety data sheet, provided that the trade secret claim can be supported, the information on the MSDS concerning the properties and effects of the hazardous chemical is disclosed, the MSDS indicates that the chemical identity is being withheld as a trade secret, and the specific chemical identity is made available to health professionals, employees and their designated representatives under certain conditions.

—Should MSHA treat trade secrets differently?

Employee Information and Training

OSHA requires employers to train employees on hazards associated with chemicals to which they are exposed. MSHA's training regulations in 30 CFR Part 48 require miners to be trained on health and safety hazards.

—Should hazard communication training requirements be incorporated into 30 CFR Part 48, or treated as a separate standard?

—To what extent do operators currently include chemical hazard communication in Part 48 training?

Economic Impact

—What costs do mine operators currently incur for hazard communication programs or elements of such programs? What are the costs associated with MSHA-required labels and training? What additional costs would be incurred if an OSHA-based hazard communication standard were extended to mining? Where possible, provide such costs on a per firm or per employee basis.

—What benefits are likely to occur (for example, reduction in illnesses, non-lost workday injuries, lost workday injuries, chronic disabilities) from implementation of a hazard communication program?

—What experiences have mine operators had under State right-to-know standards? What have been the costs associated with such standards?

—What costs have been incurred by employers voluntarily implementing hazard communication programs.

Date: March 24, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–6907 Filed 3–29–88; 8:45 am]

BILLING CODE 4510–43–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–144; FCC 88–87]

Broadcast Services; Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: Further Notice of Proposed Rule Making.

SUMMARY: The Commission proposes to adjust its domestic intermediate frequency (IF) distance separation requirements to provide a uniform level of protection from IF interference. The proposed distances would preclude channel allocations and assignments likely to cause interference, and would also provide increased flexibility in antenna site selection for most classes of FM stations. The Commission believes that adoption of the proposal would further its objective of promoting efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

DATES: Comments are due by May 9, 1988, and reply comments on or before May 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Further Notice of Proposed Rule Making,* MM Docket 86–144, adopted March 1, 1988 and released March 18, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Initial Regulatory Flexibility Analysis

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), an Initial Regulatory Flexibility Analysis is not required because the proposal herein, if ultimately adopted, would not have a significant economic impact on a substantial number of small entities.

Summary of the Notice of Proposed Rule Making

1. The Commission gives further notice of its proposal to amend Part 73 of its Rules governing the FM Broadcast Service. Specifically, the Commission proposed to adjust its domestic intermediate frequency (IF) distance separation requirements to provide a uniform level of protection from IF interference. The current requirements provide different levels of protection depending on the classification of the stations involved. However, there is no technical justification for this disparate treatment. The proposed requirements constitute a reasonable standard that would continue to preclude channel allocations and assignments likely to cause interference. The revised separation distances would also provide for increased flexibility in antenna site selection for most classes of FM stations. Therefore, the Commission believes that the adoption of these requirements would further its objective of promoting efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

2. The Commission issued a *Notice of Proposed Rule Making ("Notice")* in this

docket in April 1986. In this *Notice*, the Commission proposed to reduce IF distance separation requirements for the additional FM station classes created in BC Docket 80–90. Its proposal specified distances for the Docket 80–90 station classes that would provide a level of protection comparable to that provided by the requirements for the existing station classes. As there are not widespread IF interference problems, the Commission reasoned that the IF distance separation requirements for the existing station classes are at least adequate to avoid IF interference problems. Also, the Commission invited new test measurements and updated information about the extent of IF interference.

3. The record established thus far (in response to the *Notice*) is inconclusive with regard to the IF distance separation issue, neither clearly supporting nor opposing the Commission's proposal. In its *Second Report and Order*, the Commission concluded that its adoption then of the separation distances proposed in the *Notice* for the new classes would have been premature. The Commission stated its intention to issue this *Further Notice of Proposed Rule Making ("Further Notice")* to develop a more complete and comprehensive record, enabling it to set an appropriate uniform standard for all station classes.

4. Recent tests of commercial FM broadcast receivers by the Commission's laboratory indicate that some models are indeed susceptible to IF interference while other models are relatively immune. From the laboratory report, it appears that a minor overall relaxation in the protection level may be feasible, depending on the trade-off between risk of increased interference and the opportunity for additional broadcast service. However, the laboratory report also indicates that IF distance separation requirements continue to be useful in reducing the probability of IF interference and that a major reduction in the required distances would not be advisable at this time.

5. The Commission is proposing to revise minimum IF distance separation requirements in § 73.207 of its rules. The proposed distances were calculated to prevent overlap of the predicted 36 mV/m (91 dBμ) contours of IF-related stations, regardless of the station classes. This level of protection is equivalent to that provided by the least stringent of the current requirements. The proposed distances are either the same as or less than those under the current rule. Because there have been few, if any, problems with this protection level in the past, the Commission anticipates that no appreciable increase in IF interference would result from the proposed adjustments to these distances.

6. Because the measurement data in the record at this time does not conclusively support the choice of one particular protection level over another solely on technical grounds, the Commission is proposing the least restrictive level (*i.e.* 36 mV/m) with which it has long-term experience. The Commission welcomes, however, data or test results, particularly from receiver manufacturers or organizations representing receiver manufacturers, which support or oppose, on technical grounds, the 36 mV/m level upon which this proposal is based, or an alternative level such as 50 mV/m.

7. The Commission is also proposing, an additional distance separation requirement for proposed allotments and assignments on FM Channel 253 (98.5 MHz) in the vicinity of an existing TV Channel 6 allotment or assignment, and vice versa. The audio transmission from a TV station on Channel 6 (at 87.75 MHz) is IF-related to FM Channel 253 (98.5 MHz). A typical Channel 6 TV aural transmitter can operate with as much as 22 kilowatts effective radiated power with an antenna height above average terrain of 300 meters (TV Zone I) or 600 meters (TV Zones II and III). This is roughly equivalent to a Class C1 FM station. The proposed additional requirement is also based on the 36 mV/m protection level. There are nationwide in the range of 65 allotments each of TV Channel 6 and FM Channel 253, but probably only a few instances where the two are geographically close enough to each other to cause IF interference. Although the same justification exsists for this requirement as for the purely FM requirements, the Commission is reluctant to introduce any new regulation in the absence of serious problems. The Commission requests information on cases where this has been a problem and comment as to whether this additional requirement is necessary.

8. The Commission is not proposing changes to the international IF distance separation requirements in Tables B and C of § 73.207(b). These requirements are contained in the Mexican and Canadian agreements affecting FM stations near the borders.

9. Under procedures set out in Section 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before May 9, 1988, and reply comments on or before May 24, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

10. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

Ex Parte Considerations

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission: (1) Releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

12. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person

who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a memorandum to the Secretary (with a copy to the commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

13. The Commission has determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this rule making proceeding because if promulgated, it will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–654, 94 Stat. 1164, 50 U.S.C. 602 *et seq.*) (1962).

14. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

15. It is proposed, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, That Part 73 of the Commission's Rules be *amended* as set forth below.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

It is proposed to amend 47 CFR Part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 would be amended by revising TABLE A in paragraph (b)(1), and by adding a new paragraph (c). In TABLE A, the first three columns, entitled "Co-channel", "200 kHz", and "400/600 kHz" would remain unchanged. The fourth column, entitled "10.6/10.8 MHz", would be revised to read as follows:

§ 73.207 Minimum distance separation between stations.

*   *   *   *   *

(b) * * *

(1) * * *

TABLE A.—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	Co-channel [1]	200 kHz [1]	400/600 kHz [1]	10.6/10.8 MHz
A to A				8(5)
A to B1				11(6)
A to B				14(9)
A to C2				14(9)
A to C1				21(13)
A to C				28(17)
B1 to B1				14(9)
B1 to B				17(11)
B1 to C2				17(11)
B1 to C1				24(15)
B1 to C				31(19)
B to B				20(12)
B to C2				20(12)
B to C1				27(17)
B to C				35(22)
C2 to C2				20(12)
C2 to C1				27(17)
C2 to C				35(22)
C1 to C1				34(21)
C1 to C				41(25)
C to C				48(30)

[1] No changes to these columns.

*   *   *   *   *

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz), after ———, 1988, the Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82–88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C2	22	26
C1	29	33
C	36	41

3. 47 CFR 73.610 would be amended by adding a new paragraph (f) to read as follows:

§ 73.610 Minimum distance separations between stations.

*   *   *   *   *

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82–88 MHz), after ———, 1988. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C2	22	26
C1	29	33
C	36	41

[FR Doc. 88-6767 Filed 3-29-88; 8:45 am]

BILLING CODE 6712-01—M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NOAA), NMFS, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has resubmitted Amendment 2 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) for review and approval by the Secretary of Commerce (Secretary) and is requesting comments from the public. A resubmitted amendment follows an accelerated review schedule established by the Magnuson Fishery Conservation and Act Management (Magnuson Act), which provides a shortened public comment period. Copies of Amendment 2 may be obtained from the Council.

DATE: Comments on Amendment 2 should be submitted on or before April 22, 1988.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Amendment 2 to the Sea Scallop FMP."

Copies of Amendment 2 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi (Atlantic Sea Scallop FMP Coordinator), 617-281-3600, ext. 232.

Amendment 2 to the FMP was originally submitted to the Secretary for review in September 1987 and a notice of availability was published (52 FR 35464, September 21, 1987). Amendment 2 was returned to the Council because it did not meet all legal requirements of the Magnuson Act. A second notice was published (52 FR 37487, October 7, 1987) announcing withdrawal of Amendment 2 and stating that, if it were resubmitted by the Council, another notice of availability would be published, affording the public a 30-day comment period. The Council has addressed the deficiencies and has resubmitted Amendment 2 under the accelerated review schedule provided by section 304(b)(3)(B)(ii) of the Magnuson Act. The public may submit comments on the resubmitted Amendment 2 and its proposed rule until April 22, 1988, and the Secretary, after considering the public comments must approve or disapprove Amendment 2 by May 20, 1988.

Amendment 2 specifies adjusted values for the 30 meat count management standard during the months of October through January that are more consistent with the actual, average meat weights, which decrease during the spawning season. These adjusted values would serve as better threshold criteria for focusing mortality primarily on the entering and all older year classes. The purpose of Amendment 2 is to restore the benefits to the industry that would otherwise temporarily be withheld under the current management program, and thereby provide regulatory relief. The Council recommended what it considers to be a conservative adjustment of a ten percent increase in the meat count from October through January based upon the best scientific information currently available. Accordingly, the meat count management standard would be redefined as the number of scallops in a one-pint sample (on average) of 30 or less during February through September and 33 or less during October through January. Additionally, the Council intends that the duration and timing of the adjustment be based on the best information available. Accordingly, as new information is developed that might affect either the duration or the magnitude of the adjustment, the Council may recommend an adjustment of the standard to be implemented by the Regional Director.

Regulations proposed by the Council to implement this Amendment are scheduled to be published within 10 days.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: March 25, 1988.

Richard H. Schaefer,

Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-6957 Filed 3-25-88; 4:12 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 61
Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 25, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

9 CFR 77—Tuberculosis
VS Form 6-38
On occasion
State or local governments; Farms; 110 responses; 88 hours; not applicable under 3504(h)
R.L. Hosker (301) 436-8715

- Animal and Plant Health Inspection Service

Application for Veterinary Accreditation and Veterinary Accreditation Examination
VS Form 1-36A
Each respondent usually takes the test once
Individuals or households; 6,250 responses; 6,941 hours; not applicable under 3504(h)
Richard Hobbs (301) 436-5861

- Agricultural Stabilization and Conservation Service

Application for Disaster Credit
ASCS-574
On occasion
Farms; 90,000 responses; 15,000 hours; not applicable under 3504(h)
Raymond K. Aldrich (202) 447-6688

- National Agricultural Statistics Service
- Aquaculture Surveys

Monthly; Quarterly; Semi-annually; Annually

- Farms; 4,230 responses; 1,440 hours; not applicable under 3504(h)

Larry Gambrell (202) 447-7737

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-6961 Filed 3-29-88; 8:45 am]

BILLING CODE 3410-01-M

Rural Electrification Administration, Alabama Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of a 115 kV transmission facility in Chambers, Lee, Macon, Bullock, and Montgomery Counties, Alabama.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 97-mile, 115 kV transmission line on wood H-frame support structures, a 115 kV switching station, four 115/12.5 kV distribution substations, and six microwave additions. Alabama Electric Cooperative, Inc. (AEC), of Andalusia, Alabama, has requested approval of financing assistance from REA.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Director, Southeast Area Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from AEC for approval of financing assistance to enable AEC to construct the project, required that AEC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project and that the impact are acceptable.

AEC has requested REA loan guarantee financing assistance to enable AEC to construct a 97-mile, 115 kV transmission line, a 115 kV switching station, four distribution substations, and six microwave additions. The transmission line will originate at the existing SEPA's West Point hydroelectric facility in Chambers County, cross Lee, Macon and Bullock Counties and terminate at the proposed 115 vK Dublin Switching Station in Montgomery County. The termination facilities at West Point will be provided by the U.S. Corps of Engineers.

The West Point—Dublin project will strengthen AEC's transmission system, improve service at five distribution substation, enhance AEC's ability to receive Southeastern Power Administration (SEPA) power and provide AEC with wheeling income from transmitting SEPA power to South Mississippi Electric Power Association.

The transmission line will require a 100-foot wide right-of-way for the length of the line. The proposed 115 kV Dublin Switching Station will require less than two acres of ground clearing, the 115/12.5 kV Union Springs and Opelika substations will require approximately five acres of clearing. The 46/12.5 kV Providence Substation will be upgraded to accommodate 115 kV operation without additional ground clearing. New microwave facilities, including either a microwave tower or satellite dish, will be included within the boundaries or adjacent to the Opelika, Y, Union Springs, and Kyzac substations. Associated with these new microwave facilities will be an upgrade of microwave equipment at the existing Brundidge Substation, which is not part of the West Point project.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains of numerous streams, wetlands, and prime farmlands are located in the preferred right-of-way. Some transmission line support structures may be located within these areas; however, neither the substation expansion or new substation construction will be located in the 100-year floodplain, wetlands or prime farmland. There is no practicable alternative action that would avoid or reduce the amount of impact to 100-year floodplain or wetlands. The prime farmland crossed by the transmission line can be used for agricultural purposes. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, alternative line routes and alternative structure types. REA determined that constructing the project within the preferred right-of-way is an environmentally acceptable project to meet the needs of AEC. AEC has demonstrated to REA that there are economic benefits to AEC and its members resulting from construction of the project.

REA has reviewed the BER and believes it represents a fair and accurate evaluation of the proposed project and its potential impacts. As a result of its independent evaluation, REA has adopted AEC's BER as its Environmental Assessment (EA) and has concluded that REA approval of financing assistance to AEC to enable it to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project.

Copies of REA's EA and FONSI can be obtained from the offices of REA in the South Agiculture Building, Room 0256, 14th Street and Independence Avenue SW., Washington, DC 20250, or at the office of AEC, P.O. Box 550, Andalusia, Alabama 36420.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, AEC published notices in newspapers with a general circulation in the counties where the project will be located. The notices advised the public of potential impacts to wetlands and floodplains and announced the availability of the BER. The public was given at least 30 days to respond to the notice. One telephone response to the notices was received by AEC from a property owner asking if the proposed transmission line will cross his land; no environmental issues were raised. AEC has responded to the landowner.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8500—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: March 24, 1988.

Frank W. Bennett,

Acting Assistant Administrator—Electric Rural Electrification Administration.

[FR Doc. 88-6860 Filed 3-29-88; 8:45 am]

BILLING CODE 3410-15-M

AVIATION SAFETY COMMISSION

Meeting

AGENCY: Aviation Safety Commission.

ACTION: Notice of Meeting.

Time and dates: 9:30 a.m. to 12:00 p.m., March 31, 1988.

Place: 1310 Longworth House Office Building, Washington, DC 20515.

Status: Meeting is completely open to the public as required under Section 10(a)(2) of the Federal Advisory Committee Act of 1972.

Matters to be considered: Selected witnesses are invited to provide statements to the Aviation Safety Commission.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Aviation Safety Commission, Premier Building, Room 1008, 1725 I Street NW., Washington, DC 20006, (202) 634-4677 or (202) 634-4860.

John M. Albertine,

Chairman.

[FR Doc 88-7118 Filed 3-29-88; 10:28 am]

BILLING CODE [illegible]

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-029]

Fishnetting of Man-Made Fibers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On May 11, 1987, the Department of Commerce published the preliminary results of its administrative review, a tentative determination to revoke in part, and intent to revoke in part the antidumping finding on fishnetting of man-made fibers from Japan. The review covers nineteen manufacturers and/or exporters and one third-country reseller of this merchandise to the U.S. and generally the period June 1, 1980 through May 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. We received comments from the petitioner, several importers, and two respondents. Based on our analysis of the comments received and the correction of certain mathematical and clerical errors, we have changed the margins for five firms. For all other firms the margins remain the same as those presented in the preliminary results of review.

EFFECTIVE DATE: March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1987, the Department of Commerce ("the Department")

published in the Federal Register (52 FR 17619) the preliminary results of its administrative review, a tentative determination to revoke in part, and intent to revoke in part the antidumping finding on fishnetting of man-made fibers from Japan. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, currently classifiable under item numbers 355.4520 and 355.4530 of the Tariff Schedules of the United States Annotated and Harmonized System numbers 5608.11.00 and 5608.90.10.

The review covers nineteen manufacturers and/or exporters and one third-country reseller of Japanese fishnetting of man-made fibers to the U.S. and generally the period June 1, 1980 through May 31, 1986.

We are deferring final revocation of Amikan Fishing Net and Hakodate pending verification of their questionnaire responses in our review of a subsequent period.

On December 29, 1986, the International Trade Commission ("ITC") published its determination that an industry in the United States would not be materially injured or threatened with material injury nor would the establishment of an industry in the United States be materially retarded by reason of imports of salmon gill fishnetting of man-made fibers from Japan covered by the antidumping finding if that portion of the finding concerning salmon gill fishnetting were to be revoked (51 FR 46947). The ITC found that the U.S. industry consisted of two companies, one of which ceased production of salmon gill fishnetting in November 1984.

For purposes of this final determination we have determined that the effective date of the revocation of the portion of the finding applicable to salmon gill fishnetting is December 29, 1986. For a discussion of this issue see *Comment 14.*

Analysis of Comments Received

We invited interested parties to comment on the preliminary results, the tentative determination to revoke in part, and intent to revoke in part. We received comments from the petitioner, American Cordage & Netting Manufacturers, two respondents, Mitsui & Co., Ltd. and Toyama Fishing Net Manufacturing Co., Ltd., and several importers.

Comment 1: The petitioner contends that the questionnaire responses submitted by several respondents provided an insufficient basis for making cost comparisons and for calculating margins. The petitioner suggests that the Department use the best information available based upon the cost adjustments of domestic manufacturers of fishnetting.

The petitioner also argues that the Department should not revoke the finding for certain companies with tentative revocations because their responses show that margins exist and because the Department did not verify their responses as required prior to revocation.

Department's Position: Respondents provided adequate responses to the questionnaires we sent. Where information was insufficient, we relied on the best information available. In noting certain deficiencies in respondents' submissions, the petitioner relied upon a more recent questionnaire dated 12/85 (requesting more detailed cost information), which we provided to the petitioner as a sample of the questions we asked, but which was not, in fact, the actual questionnaire sent to the respondents.

As noted above, we are deferring final revocation of Amikan Fishing Net and Hakodate until we verify their responses.

Finally, we agree that margins exist for one year (6/1/82–5/31/83) for one firm, Nippon Kenmo, which has a tentative revocation. However, we note that, since there were no margins for Nippon Kenmo for the next three years (6/1/83–5/31/86), its tentative revocation is still valid.

Comment 2: The petitioner argues that, based on the sample calculation it received from the Department, in calculating Mitsui's margin the Department should have made adjustments for credit, warehousing, differences in packing between markets, and differences in manufacturing processes or conditions of sale, that Mistsui had claimed in its response. The petitioner also claims that the Department should have used Mitsui's home market sales for comparison purposes.

Department's Position: We disagree. We disallowed Mitsui's claimed adjustments because Mitsui's response to our request for supporting information was inadequate. The home market sales submitted in Mitusi's questionnaire response were those of its supplier, and, for the reasons discussed in our position on *Comment 3,* we did not use these sales for comparison purposes.

Comment 3: Mitsui argues that the Department erred in using Mitsui Canada's price to Trans Pacific Trading Company ("TP") to establish U.S. price, and its Canadian sales to establish foreign market value. Further, Mitsui argues that the Department should use Hakodate's sales price to Mitsui to establish U.S. price and Hakodate's sales in the home market to establish foreign market value. Mitsui claims that, despite a small degree of common stock relationship between Hakodate and Mitsui, Mitsui's price is at arms length. Since Mitsui Canada acts as an agent and has no authority to set prices, its prices cannot be used to establish U.S. price and foreign market value.

Mitsui further contends that the Department's change in methodology without notice was unfair. The Department used the price from Hakodate to Mitsui to establish U.S. price during its review of the 1980–82 period, and Mitsui assumed the Department would continue to use that price in future reviews.

Department's Position: The Department used Mitsui's price in Canada for foreign market value because Mitsui had no sales of such or similar merchandise in the home market. We used Mitsui Canada's price to TP for U.S. price because TP was the first unrelated U.S. purchaser. We decided to change our previous method of determining Mitsui's foreign market value because we discovered that the common stock ownership shared by Hakodate and Mitsui was, in fact, significant, and this fact did not surface until this review. In calculating U.S. price and foreign market value both the law and our regulations express a preference for arms-length transaction prices. Because Mitsui failed to demonstrate that the prices between Mitsui and Hakodate were arms-length transactions, we used Mitsui's third-country price to the first unrelated purchaser.

Comment 4: The petitioner notes that although Momoi's worksheets show margins on a number of sales, the Department indicated no margins for Momoi in its preliminary results of review.

Department's Position: We have included any margins for Momoi in these final results of review.

Comment 5: Momoi contends that the Department erred in using the domestic sale of a "complete hung net," since the complete hung net is not identical or even similar to the U.S. product.

Department's Position: We agree and for comparison purposes we have used a domestic sale of merchandise similar to the U.S. product.

Comment 6: The petitioner argues that a margin on the Department's worksheet for Maruhei during the 6/1/82 to 5/31/83 period was overlooked when determining the weighted-average margin for Maruhei.

Department's Position: We agree and have corrected this mathematical error in the final results of review.

Comment 7: The petitioner argues that although the calculation worksheet for Yamaji showed a margin of 0.54 percent, this margin was not included in the preliminary results of review.

Department's Position: We agree and have corrected this typographical error in the final results of review.

Comment 8: Toyama argues that the Department erred in using the Japanese prime lending rate to calculate credit expenses on its sales to Iceland, which were used as the basis of foreign market value. The Department should use either the lending rate listed on the letters of credit on its third-country sales or, alternatively, the U.S. prime rate, since the sales were invoiced in U.S. dollars and the interest cost Toyama incurred was in U.S. dollars.

Department's Position: We rejected Toyama's claims for calculating credit expenses based on interest rates in letters of credit for the following reasons: (1) Claimed credit expenses were significantly overstated because the firm applied the interest rate charged by its bank to the total number of days between the contract and the eventual date of payment; and (2) Toyama did not indicate whether, when, or to what extent the bank may have discounted these letters of credit. Therefore, as best information available we calculated Toyama's credit expenses using the Japanese prime rate.

Comment 9: The petitioner argues that a margin on the Department's worksheet for Osada/Nichimen was overlooked when determining the weighted-average margin for Osada/Nichimen. It also contends that unrepresentative third-country sales with high freight charges were used in some instances, despite the fact that there were other third-country sales with lower freight charges which could have been used for comparison purposes.

Department's Position: We agree in part. In its preliminary results the Department in fact did omit a margin for Osada/Nichimen, and we have included it in our revised calculations. In certain instances we used home market sales with higher freight rates because they were more contemporaneous with U.S. sales for comparison purposes than other sales with lower freight rates.

Comment 10: The petitioner alleges that it did not receive or review data submitted by Hirata Spinning, Inagaki/Nichimen, Moririn, Morishita, Morishita/Mitsui, Taito Seiko, and Taito Seiko/Nakamura Suisan.

Department's Position: The Department permits access to proprietary information only under the strick limitations of an administrative protective order (APO).

Under its APO the petitioner did not request any information for the 7 firms mentioned above. Information for these 7 firms was not proprietary and is avilable in our public files for review.

Comment 11: The petitioner contends that the Department's worksheet shows a number of U.S. sales that have no comparable FMV data. Also, although the calculations for Nippon Kenmo indicate the existence of margins, the preliminary results notice did not reflect this.

Department's Position: We agree in part and have incorporated the margins in the final results of review. The sales referenced by the petitioner as having no comparable FMV data were Canadian sales which we did not use in our calculations.

Comment 12: The petitioner contends that the preliminary results showed no sales for Inagaki/Moribun Shoten, although company files released to the petitioner showed sales during the review.

Department's Position: There were no sales for Inagaki/Moribun Shoten during the 1982–1983 review period. The one sale we thought had occurred during this period actually occurred in a prior review period. Since we did not require from Inagaki/Moribun Shoten a response to our questionnaire for the 1983–1984 review period, we are deferring our review of Inagaki/Moribun Shoten for that period until the next review.

Comment 13: The petitioner maintains that the Department should have found margins with respect to Hakodate, because the Department overstated Hakodate's U.S. price by not subtracting the appropriate costs (such as credit, warehousing, U.S. duty, etc.) and by incorrectly deducting ocean freight from Hakodate's foreign market sales.

Department's Position: We disagree. Hakodate's U.S. sales were on a c.i.f. basis, from which we deducted all charges including ocean freight, marine insurance, f.o.b. charges, and Japanese inland freight. The Department used third-country sales for foreign market value when there were no home market sales of such or similar merchandise. In making adjustments to these foreign market values the Department deducted ocean freight charges which were included in the sales prices to arrive at appropriate ex-factory, packed prices.

Comment 14: Various importers have requested that the Department make the revocation of salmon gill fishnetting retroactive as of November 1984, since significant domestic production of salmon gill fishnetting had ended by that date.

Department's Position: We believe that December 29, 1986 is the appropriate date for revocation of the finding with respect to salmon gill fishnetting, since that was the date of the ITC's negative injury determination. The ITC's decision was based on current and prospective market conditions for salmon gill fishnetting. Its decision was that an industry in the United States would not be injured, threatened with injury, or its establishment materially retarded were that portion of the order revoked. Given the prospective nature of the ITC's decision, the Department has selected December 29, 1986, the date that the ITC's decision was published in the **Federal Register**, as the appropriate date of revocation.

Final Results of the Review

As a result of our review of the comments received and the correction of mathematical and clerical errors, we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amikan	06/01/82–05/31/86	
Fukui	06/01/82–05/31/83	.12
	06/01/83–05/31/86	
Hakodate	06/01/82–04/30/86	
Hakodate/Mitsui	06/01/82–05/31/83	12.41
Hirata Spinning	10/01/83–05/31/85	[1] 9.83
Inagaki/Moribun Shoten	06/01/82–04/30/83	
Inagaki/Nichimen	06/01/82–09/30/83	(1)
Maruhei	06/01/82–05/31/83	.83
	06/01/83–05/31/84	.42
	06/01/84–05/31/85	
Momoi	10/01/83–05/31/84	.06
	06/01/84–05/31/85	
	06/01/85–05/31/86	.40
Moririn	06/01/82–05/31/83	
	06/01/83–05/31/85	(1)
Morishita	10/01/83–05/31/85	12.66
	06/01/85–05/31/86	[1] 12.66
Morishita/Mitsui	10/01/83–05/31/86	[1] 18.30
Nippon Kenmo	06/01/82–05/31/83	2.54
	06/01/83–05/31/86	
Osada/Moribun Shoten	06/01/82–04/30/84	
Osada/Nichimen	06/01/82–05/31/83	.008
	06/01/83–04/30/84	.004
Sanyo Enterprise	04/01/81–06/30/82	18.30
Taito Seiko	05/01/84–05/31/85	[1] 18.30
Taito Seiko/Nakamura Suisan	06/01/82–05/31/85	[1] 18.30
Toyama	06/01/80–05/31/81	7.17
	06/01/81–05/31/82	4.05
	06/01/82–05/31/83	4.05
Yamaji	06/01/82–05/31/83	
	06/01/83–05/31/84	.54
Third-Country Reseller/(Country): Puretic Fishing Gear/(Canada)	06/01/82–05/31/86	18.30

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the most recent margins for Osada/Nichimen and Momoi are less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Osada/Nichimen or Momoi. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms (49 FR 18339, April 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments of Japanese fishnetting of man-made fibers occurred after May 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Japanese fishnetting of man-made fibers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: March 22, 1988.

[FR Doc. 88-6963 Filed 3-29-88; 8:45 am]

BILLING CODE 3510-DS-M

[Application #87-A0001]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Export Trade Certificate of Review, Department of Commerce.

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application #87–A0001.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of American Film Marketing Association ("AFMA") granted on April 10, 1987 (52 FR 12578, April 17, 1987). This notice summarizes the amendment.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Conduct

1. The following companies have been added to AFMA's certificate as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1): A.I.P. Distribution, Inc., CA: Cineplex Odeon Films Int'l., CA; Cinevest Entertainment Group, Inc., NY; Double Helix Films, Inc., NY; Ferde Grofe Films, Inc., CA; Filmtrust Motion Picture Licensing, CA; Image Organization, CA; Imperial Entertainment, CA; J & M Film Sales, CA; The Movie Group, CA; Nova International Films, CA; Paul International, Inc., CA; Virgin Vision Ltd., CA; Vision International, CA; and Weintraub Entertainment Group, CA;

2. The following companies have been deleted as a "Member" of AFMA's certificate: Embassy Films, Inc.; Granat Releasing Corp.; International Video Entertainment; JAD Films Int'l Inc.; RKO Programmes International; and UAA Films, Inc.

3. The company name for each current "Member" cited in this paragraph has been changed as follows: Inter Planetary Pictures to American First Run; F/M Entertainment Int'l./Inc. to F/M Entertainment Int'l./Inc./The Norkat Co. Ltd.; Interaccess Film Dist. to Vestron International Group; International Film Representatives to Marshall Entertainment; Shapiro Entertainment Corp. to Shapiro/Glickenhaus Ent.; Showtime/The Move Channel to Viacom International, Inc; and Manson International to M.C.E.G./Manson Int'l.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: March 25, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-6936 Filed 3-29-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Colombia

March 25, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing directives to the Commissioner of Customs establishing new limits.

EFFECTIVE DATE: April 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the current limit, refer to the Quota Status Reports, posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and Colombia established a new Bilateral Textile Agreement, effected by exchange of notes dated January 6, 1988 and March 3, 1988, on cotton sateen fabric in Category 326. The limit agreed upon for the first agreement period, April 1, 1987 through March 31, 1988, has been amended for two separate periods at levels of 3,750,000 square yards for the April 1, 1987 through December 31, 1987 period; and 1,250,000 square yards for the January 1, 1988 through March 31, 1988 period. (Prior to January 1, 1988, Category 326 was Category 317–S.) Carryover and carryforward of 100 percent will be available between the first and second periods. Missing charges for goods imported during the April 1, 1987 through December 31, 1987 period amount to 3,085,787 square yards.

A copy of the Bilateral Textile Agreement between the Governments of the United States and Colombia is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 51 FR 12232, published in the **Federal Register** on April 15, 1987.

The letters to the Commissioner of Customs and the actions taken pursuant to them are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Bilateral Textile Agreement, effected by exchange of notes dated January 6 and March 3, 1988, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 326, produced or manufactured in Colombia and exported during the three-month period began on January 1, 1988 and extends through March 31, 1988, in excess of 1,250,000 square yards.[1]

To the extent that trade which now falls in Category 326 is within a category limit for the period April 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balance, shall be charged against the level of restraint established for such goods during that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this directive.

This limit may be adjusted in the future under the provisions of the bilateral agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Textile Agreement, effected by exchange of notes dated January 6 and March 3, 1988, between the Governments of the United States and Colombia, I request that, effective on April 1, 1988, you establish a restraint limit of 3,750,000 square yards for cotton textile products in Category 317–S,[1] produced or manufactured in Colombia and exported during the period which began on April 1, 1987 and extended through December 31, 1987.

Also effective on April 1, 1988, you are directed to charge 3,085,787 square yards to the limit established in this directive for Category 317–S. These charges are for goods imported during the period April 1, 1987 through December 31, 1987.

This letter will be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–6934 Filed 3–29–88; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

[1] In Category 317–S, only TSUSA items 320. through 331.____, with statistical suffixes 50, 87 and 93.

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Colombia

March 25, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a new limit.

EFFECTIVE DATE: April 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports, posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Bilateral Textile Agreement, effected by exchange of notes dated January 6 and March 3, 1988, between the Governments of the United States and Colombia establishes a specific limit for cotton sateen fabrics in Category 326 for the period April 1, 1988 through March 31, 1989.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (See **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Bilateral Textile

Agreement, effected by exchange of notes dated January 6 and March 3, 1988, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 326, produced or manufactured in Colombia and exported during the twelve-month period which begins on April 1, 1988 and extends through March 31, 1989, in excess of 5,300,000 square yards.

To the extent that trade which now falls in Category 326 is within a category limit for the periods April 1, 1987 through December 31, 1987 and January 1, 1988 through March 31, 1988, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limit set forth in this directive.

This limit may be adjusted in the future under the provisions of the bilateral agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–6935 Filed 3–29–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: DOD FAR Supplements, Part 22 and Related Clauses in Part 52.222; DD Forms 879, 1565, and 1567; and OMB Control Number 0704–0213.

Type of Request: Extension.

Annual Burden Hours: 10,243.

Annual Responses: 40,300.

Needs and Uses: Information concerns certain data required to ensure compliance with various labor laws. Reporting is necessary for compliance with the requirements of various labor laws.

Affected Public: Businesses or others for profit/small businesses or organizations.

Frequency: Recordkeeping—On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1988.

[FR Doc. 88–6894 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Arrears of Pay Designation and/or Annuity Beneficiary Changes; AF Form 114; and OMB Control Number 0701–0082.

Type of Request: Reinstatement.

Annual Burden Hours: 150.

Annual Responses: 3,000.

Needs and Uses: The Air Force uses AF Form 114 to collect information to pay the arrears of retired pay and annuities due to beneficiaries of deceased Air Force retirees. The form also allows retirees to update beneficiary information as changes in family status occur. The Air Force uses the information on the form to process any monies due the beneficiary more quickly and efficiently.

Affected Public: Beneficiaries of Air Force Annuitants.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1988.

[FR Doc. 88–6895 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-021-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill or C.W. Mathews Office of Federal Acquisition and Regulatory Policy (202) 523–3847.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Rights in Data is a regulation which concerns the rights of the Government and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to ensure that data

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developed with public funds is available to the public.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 1,100; responses per respondent, 1; total annual responses, 1,100; preparation hours per response, 2.7; and total response burden hours, 2,970.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 9,000; hours per recordkeeper, 3; and total recordkeeping burden hours, 27,000.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0900, Rights in Data and Copyrights.

Dated: March 18, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–6879 Filed 3–29–88; 8:45 am]

BILLING CODE 6820-61-M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of Meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the DoDDS coordinator.

DATE: April 22, 1988, 9 a.m. to 5:30 p.m.; April 23, 1988, 9 a.m. to 12 noon.

ADDRESS: April 22–23, 1988, Seehotel Gelterswoog, 6750 Kaiserslautern-Hohenecken, Am Gelterswoog 20, Federal Republic of Germany.

FOR FURTHER INFORMATION CONTACT: In the United States, Mr. Nicholas Fice, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, (202/325–0867); in the Federal Republic of Germany, Dr. Frederick Killian, Superintendent of Schools, DoDDS Kaiserslautern District, APO New York 09012–0005, (49–631–55097).

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on the substance abuse policy, staff development, and responses to the recommendations made by the Council in its Jaunary meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1988.

[FR Doc. 88–6974 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 27 April 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Publ. L. No. 92–463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1988.

[FR Doc. 88–6972 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-01-M

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 4–5 May 1988.

ADDRESS: The meeting will be held at the Center for Night Vision and Electro Optics, Fort Belvoir, Virginia, in the Conference Room of Bldg. 309, on 4 May and the Main Conference Room, 4th Floor, Bldg 305, on 5 May.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers.

The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1988.

[FR Doc. 88–6973 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-01-M

Availability of News Releases

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Assistant Secretary of Defense for Public Affairs now provides access to DOD news releases through an electronic bulletin board service. The bulletin board includes, News Releases, Memorandums for Correspondents, Press Advisories, News Conference/Briefing Transcripts, Speech Texts and Contract Awards. The service is available directly through Dialcom, Inc. Please contact Mr. Michael McLaughlin of Dialcom at (202) 488–0550 for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Falatko, Office of the Assistant Secretary of Defense (Public Affairs), The Pentagon, Room 2E773, Washington, DC 20301–1400, (202) 695–3886 or 697–4162.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1988.

[FR Doc. 88–6693 Filed 3–29–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement for Proposed Master Plan for the Presidio, San Francisco

AGENCY: Department of the Army, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement for proposed Master Plan for the Presidio, San Francisco.

SUMMARY: An update of the Presidio of San Francisco Master Plan is proposed to direct future land-use, facility management, development, and resource management policies. The projected long-range missions of PSF will not significantly change. DOD and non-DOD tenants will continue to be accommodated on post. Special conditions include the PSF being a National Historic Landmark, containing a National Historic District, and National Historic Register eligible properties, and portions of the installation being within the boundaries of the Golden Gate National Recreation Area (U.S. Department of the Interior, National Park Service).

Alternatives: Alternatives to be considered include:

A. No Action

B. Conversion of existing facilities and relocation of land use areas (preferred alternative)

C. Redevelopment of existing land use areas (primarily new construction)

D. Retention of primary and secondary cantonment area (with conversion and new construction)

Scoping Process: Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the environment. Resources of concern and conditions that may be affected by the implementation of the Master Plan identifies to date include: historic resources; traffic; recreation and open space; and aesthetics. Individuals, organizations, and agencies may participate in the scoping process by written comment, telephone call, or by attending a scoping meeting on April 13, 1988, at 7:30 P.M. at the Golden Gate Community Club, Building 135, on the Presidio, San Francisco. Written comments or questions regarding the NOI should be directed to: Commander, Presidio of San Francisco; Attention: Mr. Alex Macievich, AFZM–DEH–EE, San Francisco, California 94129, phone: (415) 561–5176. Comments and suggestions should be received not later than 15 days following the scoping meeting. For information concerning the public meetings, please contact Mr. James Symmonds, Office of Public Affairs, (415) 561–5187.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 88–6684 Filed 3–29–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Liquids Transportation Task Group; Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the Natioinal Petroleum Council.

Date and Time: Wednesday, April 13, 1988, 1:00 pm.

(Please Note: This meeting replaces the one scheduled for March 24, 1988, which had to be canceled.)

Place: National Petroleum Council, 1625 K Street, NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of The Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of The Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman.

—Discuss the pipeline survey.

—Review progress on individual assignments.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

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Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 am and 4:00 pm Monday through Friday, except Federal holidays.

Richard D. Furiga,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 88-6975 Filed 3-29-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-72-NG]

Colony Natural Gas Corp.; Input of Natural Gas from Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Colony Natural Gas Corporation (Colony) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-72-NG authorizes Colony to import up to 73 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Room, GA-076, Forrestal Building, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-6950 Filed 3-29-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, April 28, 1988, 1:30 p.m.-5:00 p.m. Friday, April 29, 1988, 9:00 a.m.-3:00 p.m.

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72, Washington, DC 20585, Telephone: (202) 586-2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, Aril 28, 1988

A. Opening Remarks

B. Major Topics:

1. Crude Oil Production Volumes.
2. Methodology to Estimate Weekly Coal Production.
3. Continuation of Analysis of Nuclear Power Plant Operating Costs and Performance.

(Public Comments).

Friday, April 29, 1988

4. Life Extension Prospects for Electric Generating Capacity.
5. EIA Standards of Data Presentation.
6. Analysis of Data on Nonrespondents to Marketing Frame Survey.
7. Application of PC's to Data Collectiion.
8. Electronic Dissemination of Data.

(Public Comments).

C. Topics for Future Meetings.

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202-586-2222.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E-190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 25, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-6951 Filed 3-29-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

New Docket Prefix System, TA, TQ, TF and TM

March 25, 1988.

Notice is hereby given that a new docket prefix system has been established for the various rate adjustments permitted pursuant to the purchased Gas Adjustment Provisions of FERC Gas Pipeline Tariffs.

On November 10, 1987, the Commission issued a final rule (Order No. 483) amending its Regulations governing the procedures by which a natural gas pipeline company may recover the cost of purchased gas from their customers. Under the rule, new filing procedures will commence on May 1, 1988. The rule also provides for the establishment of individualized filing fees for each of the rate adjustments permitted thereunder. Such filings will be made pursuant to the Purchased Gas Adjustment Provisions of the General Terms and Conditions of each pipeline's FERC Gas Tariff.

Interstate gas pipelines currently track changes in purchased gas costs under the TA docketing procedures whereby each pipeline is assigned an identification number and filings are docketed sequentially within each fiscal year. For example, TA88-1-1-000 identifies Alabama-Tennessee Natural Gas Company's (Alabama-Tennessee) first PGA filing of FY 1988.

In order to accurately identify and assess commission resources applicable to each type of adjustment it is necessary to modify and expand our current TA prefix docketing system as follows:

TA	Annual PGA filing and any revisions thereto
TQ	Quarterly rate filings and out-of-cycle PGA filings tendered in this format
TF	Flexible rate adjustments
TM	Miscellaneous tracking adjustments (i.e. GRI's, ACA's, transportation and storage trackers, etc.) when not accompanied by the quarterly or annual PGA filings

Since this is an expansion of our current TA system, the Company identifications and numerical

sequencing should remain the same except for the substitution of the appropriate docket prefix. For example, the following filings made by Alabama-Tennessee during FY 88 would be docketed as:

Annual PGA filing: TA88-1-1-000
A revision thereto: TA88-1-1-001
Third quarterly filing: TQ88-3-1-000
Fourth flexible filing: TF88-4-1-000
First miscellaneous filing: TM88-1-1-000

The applicable filing fees for filings designated *TA*, *TQ*, *TF* and *TM* are the fees set forth in Section 381.205 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6943 Filed 3-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS71-625-000 et al.]

General Producing Co. (Entex Petroleum, Inc.), et al.; Applications For Small Producer Certificates[1]

March 25, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and Section 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more full set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 14, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or to protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS71-625-000	[1] 11-16-87	General Producing Company (Entex Petroleum, Inc.), 1201 Louisiana, Suite 900, Houston, TX 77002
CS72-950	[2] 2-4-88	Petroleum Production Management, Inc. (Maurice L. Brown Company), P.O. Box 11320, Kansas City, MO 64112
CS86-36-000	[3] 3-9-88	Horseshoe Operating, Inc., and Cache Creek Corporation (Horseshoe Operating, Inc.), 511 West Texas, Midland, TX 79701
CS88-42-000	2-11-88	MLC Company, 2912 Maple, Suite A, Dallas, TX 75201
CS88-43-000	2-17-88	Riceland Petroleum Company, P.O. Box 792, Eunice, LA 70535
CS88-44-000	2-22-88	Richey Operating, Inc., P.O. Box 2005, Tyler, TX 75710
CS88-45-000	2-24-88	Atlantic Energy (USA) Corporation, P.O. Box 2036, Parkersburg, WV 26102
CS88-46-000	2-29-88	Bois d'Arc Resources, P.O. Box 796713, Dallas, TX 75299
CS88-47-000	2-29-88	Striker Petroleum Corporation, 5690 DTC Boulevard, Suite 410, Englewood, CO 80111
CS88-48-000	3-2-88	Spectrum Gas Systems, Inc., 401 S. Boston Ave., Suite 730, Tulsa, OK 74103
CS88-49-000	3-9-88	MacLane Gas Company Limited Partnership, 6053 S. Quebec Street, Creekside 202, Englewood, CO 80111
CS88-50-000	3-9-88	Doug Grimes, dba DG-21 Production Company, P.O. Box 796, Monahans, TX 79756
CS88-52-000	3-16-88	EnAq, Inc., 8552 Katy Freeway, Suite 300, Houston, TX 77024

[1] Letter dated November 12, 1987, as supplemented by letters dated January 4, 1988, received January 6, 1988, and dated January 18, 1988, received January 21, 1988, advising that on August 10, 1987, Entex Petroleum, Inc., holder of the small producer certificate in Docket No. CS71-625, changed its name to General Producing Company (GPC). Additionally, GPC advises that Entex Energy Company, Ltd., a Texas limited partnership, changed its name to General Energy Operating, Ltd. (GEO). GPC covers sales of GEO under the small producer certificate in Docket No. CS71-625-000 as the general partner of GEO.

[2] Letter dated January 29, 1988, advising that effective June 1, 1987, Maurice L. Brown Company changed its name to Petroleum Production Management, Inc.

[3] Letter dated March 3, 1988, as supplemented by letter dated March 14, 1988, Applicant requests that its small producer certificate in Docket No. CS86-36-000 also cover sales by its affiliate, Cache Creek Corporation, as a small producer certificate co-holder.

[FR Doc. 88-6944 Filed 3-29-88; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. GP88-15-000]

ANR Pipeline Co. et al.

In the matter of ANR Pipeline Company, Complainant v. Maguire Oil Company, Maguire Energy Management, Cary M. Maguire, Individually and as Manager of the Oil Fund U/I/D 9/1/76, Stephen B. Kahn, Robert E. Glaze, and Daniel B. Stuart, Respondents; Notice of Complaint.

Issued March 25, 1988.

Take notice that on February 23, 1988, ANR Pipeline Company (ANR) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Maguire Oil Company, Maguire Energy Management, Cary M. Maguire, individually and as manager of the Oil Fund U/I/D 9/1/76, Stephen B. Kahn, Robert E. Glaze, and Daniel B. Stuart (Maguire *et al.*) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure. ANR requests the Commission to (1) find that Maguire *et al.*'s demand for take-or-pay prepayment under certain gas purchase contracts constitutes an unlawful demand for payments in excess of the maximum lawful prices under Title I of the Natural Gas Policy Act of 1978 (NGPA); or (2) determine that to the extent the provisions of Maguire *et al.*'s contracts may require the payment of unrecoupable take-or-pay charges, these provisions are unjust and unreasonable pursuant to sections 4 and 5 of the Natural Gas Act (NGA).

ANR asserts that it purchases gas from Maguire *et al.* under a number of gas purchase contracts, and that gas produced and sold by Maguire *et al.* under the contracts, is or was subject to maximum lawful prices established by sections 102, 103, and 104 of the NGPA. ANR further assets that gas produced and sold by Maguire to ANR under a number of these contracts, and the terms and conditions of those contracts, are also subject to the NGA including sections 4 and 5 thereof.

ANR states that each of these gas purchase contracts has a take-or-pay clause and that Maguire *et al.* claims that ANR owes it take-or-pay payments for the years 1982 through 1987 for volumes of gas not taken by ANR. ANR further states that in mid-1985, ANR

BEST COPY AVAILABLE

informed Maguire *et al.*, among other producers, that certain events constituted *force majeure* pursuant to the contracts, reducing and/or suspending the parties' obligations thereunder. ANR asserts that it has already paid the appropriate NGPA maximum lawful prices for all the gas actually delivered by Maguire *et al.* under these contracts for the year 1985 and there after.

ANR argues that, in light of its inability to recoup take-or-pay payments, making such take-or-pay payments would result in Maguire *et al.* receiving payments in excess of the lawful price for the volumes of gas actually delivered, as provided in the NGPA. ANR further argues that even if it were able to fully recoup these prepayments, the interest free use of such monies violates the maximum lawful price ceiling of the NGPA.

In addition, ANR argues that if the Commission does not conclude the Title I of the NGPA has been violated, then to the extent the take-or-pay provisions of the contracts require unreasonable under sections 4 and 5 of the NGA and not in the public interest, since ANR will be paying for a service which it will not receive.

Any persons desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commissions's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, not later that 30 days after pubication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection. Answers to the Complaint are also due 30 days after **Federal Register** publication.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6945 Filed 3-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-150-000 and CI88-151-000]

Conoco Inc.; Applications

March 25, 1988.

Take notice that on November 25, 1987, Conoco Inc. (Conoco), P.O. Box 21297, Houston, Texas 77252, filed applications pursuant to Parts 154 and 157 of the Commission's Regulations requesting in Docket No. CI88-150-000 that the Commission amend its certificate in Docket No. CI86-142-000 to cover all properties previously covered by the twenty nine other certificates listed in Appendix A and the twenty nine certificates be terminated and in Docket No. CI88-151-000 that the Commission amend its certificate in Docket No. CI72-660 to cover all properties previously covered by the four other certificates listed in Appendix B and that the four certificates be terminated, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Conoco states that it has a settlement agreement with Tennessee Gas Pipeline Company (Tennessee) which terminates the Offshore Louisiana contracts listed in Appendix A and the Texas contracts listed in Appendix B. Conoco states that it has entered into two new contracts with Tennessee dated November 1, 1987; one which covers the sale of gas committed under the Offshore Louisiana contracts and another which covers the sale of gas committed under the Texas Contracts. Conoco requests that the new Offshore Louisiana contract be accepted as a supplement to its FERC Gas Rate Schedule No. 503 and supresede the other twenty nine Rate Schedules listed in Appendix A and that the new Texas contract be accepted as a supplement to its FERC Gas Rate Schedule No. 378 and supersede the other four rate schedules listed in Appendix B.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 12, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Conoco to appear or to be represented at the hearings.

Lois D. Cashell,

Acting Secretary.

APPENDIX A.—OFFSHORE, LOUISIANA

[New Orleans area]

RS No.	Docket No.	Conoco contract No.	Contract date	Field	NGPA categories
136	G-10122	4246	1-31-56	West Delta (Various Blocks) Grand Isle Blocks 43 & 32 (S/2)	104 ('73-'74). 104 (Post '74). 104 (Rep./Rec.).
163	G-19836	4451	9-25-59	Bay Marchand Block 2 (Grand Isle & So. Timbalier Areas)	104 (Flowing). 104 (Post '74). 104 Rep./Rec.).
350	CI69-1009	7526	4-22-69	West Delta Blocks 95 & 96	104 (Flowing). 104 ('73-'74). 104 (Post '74). 104 Rep./Rec.).
356	CI70-719	7559	1-05-70	Grand Isle Block 41 (42)	104 (Flowing). 104 Rep./Rec.).
365	CI70-605	7574	12-19-69	Bay Marchand Block 2 (So. Timbalier Block 23 S/2)	104 (Flowing). 104 (Rep./Rec.).
364	CI71-444	7621	10-29-70	Grand Isle Block 72 (63 SW)	104 (Flowing). 104 Rep./Rec.). 102.

APPENDIX A.—OFFSHORE, LOUISIANA—Continued

[New Orleans area]

RS No.	Docket No.	Conoco contract No.	Contract date	Field	NGPA categories
399	CI73-467	7797	12-22-72	Grand Isle Block 43 (32 N/2)	104 ('73-'74). 104 (Post '74). 104 Rep./Rec.).
425	CI76-194	7917	9-17-75	Grand Isle Block 45	104 (Post '74).
431	CI77-08	8066	9-16-76	Grand Isle Block 47 (48 W/2)	104 (Post '74) 102.
154	G-11024	4262 8237	8-17-56 [1] 11-01-77	East & West Cameron Areas (Various Blocks)	104 (Flowing). 104 (Post '74). 104 Rep./Rec.)
213	G-03680	4267	1-31-62 [2] 9-06-63	East Cameron Block 64 Vermillion Block 46 (N/2)	104 (Post '74). 106(a).
165	G-17649	4406	12-31-58 [1] 11-01-77	East Cameron Block 62 (66 N/2)	104 (Rep./Rec.)
201	CI62-147	4725	8-01-61 [2] 3-11-63	East Cameron Block 64 (47 & 48)	104(Post '74). 106(a).
338	CI67-861	7308	6-30-66 [3] 12-15-71	Ship Shoal Block 169 (145 & 158)	104 (Flowing). 104 (Post '74). 104 Rep./Rec.). 102.
341	CI69-062	7484	7-2-68	East Cameron Block 71 (71 & 72) West Cameron Block 192 (193)	104 (Flowing). 102.
363	CI70-1002	7534	5-01-70	Ship Shoal Block 176 (198) (S/2 NESW, S/2 SW, & SE)	104 (Flowing). 104 (Post '74). 104 Rep./Rec.). 102.
401	CI73-744	7792	11-14-72	East Cameron Block 33 (S/2 & NW)	104 ('73-'74). 104 (Post '74). 104 Rep./Rec.).
426	CI76-804	7704	6-24-75	West Cameron Block 68 (69 N/2)	104 ('73-'74). 104 (Post '74). 104 Rep./Rec.).
421	CI76-041	7921	1-01-75	East Cameron Block 64 (WC 177)	104 ('73-'74). 104 Rep./Rec.).
418	CI75-479	7967	02-07-75	West Cameron Block 110 (135)	104 (Rep./Rec.).
440	CI77-719	8135	6-24-77	East Cameron Block 33 (42)	104 (Post '74). 102.
490	CI84-047	8178	9-06-83	West Cameron Block 68 (34, 35, 66, 67)	109, 102.
460	CI79-355	8322	3-14-79	East Cameron Block 96 (97)	109.
463	CI79-659	8392	6-26-79	Eugene Island Block 258 (257)	109, 102.
467	CI80-370	8383	6-30-80	Vermillion Block 120 (119)	102.
474	CI81-238	8425	12-17-80	East Cameron Block 64 (47J)	104 (Post '74). 102.
486	CI83-274	8574	5-25-83	West Cameron Block 66(E) (S/2 SW & NW SW)	102.
503	CI86-142	8648	12-02-85	East Cameron Block 33(D) W/2	102.
499	CI80-361-001	8664	5-07-80	West Cameron Block 66(65)	109, 102.
498	CI78-864-003	8665	5-01-78	East Cameron Block 96	109.

[1] Replacement.

[2] Rollover.

[3] Extension.

APPENDIX B.—TEXAS CONTRACTS

RS No.	Docket No.	Conoco contract No.	Contract date	Field	County	NGPA categories
003	G-6588	4011	2-21-47 [1] 12-31-71 [3] 4-30-82	Carthage	Panola	104 ('73-'74). 104 (Post '74). 106(a), 108.
004	G-6591	4110	11-3-53 [1] 9-14-71 [2] 7-10-85	Rincon	Starr	104 ('73-'74). 104 (Post '74). 106(a), 108.
133	G-8658	4198	12-1-46 [3] 5-12-75	Chesterville	Colorado	104 (Post '74). 104 (Replace/Recomp). 108.
378	CI72-660	7030	3-1-49 [1] 3-15-72 [2] 1-1-81	Sarco Creek	Goliad	104 ('73-'74). 106(a), 108.
258	CI64-1287	7116	4-25-56	San Ramon	Hidalgo	106(a).

APPENDIX B.—TEXAS CONTRACTS—Continued

RS No.	Docket No.	Con-oco con-tract No.	Contract date	Field	County	NGPA categories
			[3] 4-30-82	(McAllen Ranch)		

[1] Term extended.
[2] Rollover.
[3] Replacement.

[FR Doc. 88-6946 Filed 3-29-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 18 through December 24, 1987

During the Week of December 18 through December 24, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 23, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 18 through 24, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 22, 1987	Glen Milner, Seattle, WA	KFA-0153	Appeal of an Information Request Denial. If granted: The November 24, 1987, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to records regarding the shipment of nuclear warheads for the Trident system.
Do	New York, Albany, NY	KEG-0026	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Dec. 23, 1987	Kenco Refining Co., Washington, DC.	KRD-0541	Motion for Discovery. If granted: Discovery would be granted to Kenco Refining Company in connection with its statement of objections submitted in response to a Proposed Remedial Order issued to Kenco Refining/Tesoro Petroleum Corp. (Case No. KRO-0540).
Do	Tesoro Petroleum Corp., Washington, DC	KRD-0540	Motion for Discovery. If granted: Discovery would be granted to Tesoro Petroleum Corp. in connection with a Proposed Remedial Order issued to Kenco Refining and Tesoro Petroleum Corporation, (Case No. KRD-0540).

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/21/87	Amoco I/Utah	RF21-418
12/21/87	Amoco II/Utah	RF251-419
12/18/87-12/24/87	Crude Oil Refund Applications Received.	RF272-18428-RF272-23340
12/18/87-12/24/87	Gulf Oil Refund Applications Received.	RF300-4425-RF300-4506

[FR Doc. 88-6952 Filed 3-29-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 25 Through January 29, 1988

During the week of January 25 through January 29, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cities Service Oil & Gas Corp., 1/29/88, KFA-1054

Cities Service Oil & Gas Corp. (Cities) appealed from a partial denial by the Economic Regulatory Administration (ERA) of a Request for Information filed under the Freedom of Information Act (FOIA). Cities sought materials pertaining to a Proposed Consent Order between the ERA and Chevron, U.S.A., Inc., successor to Gulf Oil Corp. The DOE found that, with two exceptions, the ERA properly withheld the documents sought on the grounds that they contain deliberative material or attorney work-product which is exempt from mandatory disclosure under Exemption 5 of the FOIA. The remaining two documents, except for one sentence, contained no privileged information and were ordered released. Finally, the DOE remanded the matter of the ERA for

consideration of Cities' challenges to the adequacy of the search for responsive documents.

In considering Cities' Appeal, the DOE clarified the extent to which Exemption 5 incorporates the civil attorney work-product privilege. Cities argued that purely factual material is not shielded by the attorney work-product privilege. Relying on *Martin v. Office of Special Counsel,* 819 F.2d 1181 (D.C.Cir. 1987), the DOE rejected the distinction between deliberative and factual material under the attorney work-product privilege as incorporated in Exemption 5. Accordingly, Cities' request for factual attorney work-product was denied.

William R. Bowling II, 1/27/88, KFA-0156

William R. Bowling, II filed an Appeal from a denial by the Office of the Executive Secretariat of the Department of Energy of a request for information which he submitted under the Freedom of Information Act. In considering the Appeal, the OHA found that an adequate search had been conducted in response to Bowling's request and that the documents Bowling requested were no longer in existence. Accordingly, the Appeal was denied.

Petitions for Special Redess

New York, 1/25/88, KEG-0026

The DOE issued a Decision and Order concerning the Petition for Special Redress filed by the State of New York. The State sought approval to use Stripper Well funds for two projects found by the DOE's Assistant Secretary for Conservation and Renewable Energy to by inconsistent with the terms of the Stripper Well Settlement. After considering New York's Petition, the DOE decided to disapprove both the Radon Diagnosis Financial Assistance Program and the Not-for-Profit Energy Conservation Financing Fund. The DOE found that the radon program, which would use $2,750,000 to provide radon diagnosis and mitigation services, focused on environmental concerns rather than on reducing energy use. The DOE found that the not-for-profit program, which would allocate $5 million as loan guarantees to secure bonds used to provide energy conservation loans for not-for-profit organizations, did not meet the criteria of timely restitution because the Stripper Well funds would not be spent for 15 years or more. Accordingly, New York's Petition was denied.

Washington, 1/28/88, KEG-0027

The DOE issued a Decision and Order concerning the Petition for Special Redress filed by the State of Washington. The State sought approval to use Stripper Well funds for a project component found by the DOE's Assistant Secretary for Conservation and Renewable Energy to be inconsistent with the terms of the Stripper Well Settlement. After considering Washington's Petition, the DOE decided to approve the use of a portion of the $100,000 allocated to the Oil Help program for asbestos removal, when the asbestos removal is required in order to replace an old, energy-inefficient furnace with an energy-efficient one. The DOE found that, in this situation, the asbestos removal was sufficiently related to energy conservation efforts. Accordingly, Washington's Petition was granted.

Implementation of Special Refund Procedures

Atlantic Richfield Company, 1/28/88, HEF-0591

The DOE issued a Decision and Order implementing special refund procedures under 10 CFR Part 205, Subpart V, for $68,035,515.62 obtained through a Consent Order entered with the Atlantic Richfield Company (ARCO). The funds associated with ARCO's alleged crude oil violations, $21,647,540.36, plus accrued interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, *see* 51 F.R. 27899 (August 4, 1987), using the procedures described in *A. Tarricone, Inc., et el.,* 15 DOE ¶ 85,495 (1987). The funds associated with ARCO's alleged refined product violations, $46,387,975.26, plus accrued interest, will be available for distribution to individuals and firms that purchased refined covered products sold by ARCO during the period March 6, 1973, through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision.

Plaquemines Oil Sales Corp., 1/28/88, KEF-0039

The DOE issued a Decision and Order establishing procedures for the distribution of funds obtained as a result of a consent order with Plaquemines Oil Sales Corporation. The decision discusses presumptions that will be applied in evaluating refund claims and sets forth refund application procedures for customers referenced in the Appendix to the Decision who purchased No. 2 diesel fuel from the firm during the consent order period.

Refund Applications

Cecil O. Hensley, et al., 1/29/88, RF72-3079, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 41 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the claimants used the products for various agricultural activities, and determined its eligible fuel consumption by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,068.

Conoco Inc./Enterprise Products Co., 1/25/88, RF220-6

Enterprise Products Co., a processor and reseller of natural gas liquids, filed an Application for Refund seeking a portion of funds remitted pursuant to a consent order that Conoco, Inc. entered into with the DOE. The DOE determined that the application should be granted in part. The DOE found that Enterprise had banks of unrecovered increased product costs for four of the five products for which it sought a refund, and that, during most months of the audit period, the prices that Conoco charged Enterprise for these products exceeded average market prices. The DOE concluded that Enterprise incurred a competitive injury during these months. Accordingly, the DOE granted Enterprise a refund of $9,245 ($6,604) in principal and $2,641 in interest).

Gulf Oil Corporation/T.F. Burke, Inc., 1/27/88, RF40-3379

The DOE issued a Decision granting a refund from the Gulf Oil Corporation escrow account to T.F. Burke, Inc., a purchaser of Gulf heating oil. The applicant demonstrated its purchase volume and that as a purchaser of Gulf product it had been injured. A refund was granted on the full volumetric amount. The total refund approved was $3,773, representing $2,951 in principal and $822 in interest.

Marathon Petroleum Co./Savings Oil Company, 1/29/88, RF250-2365, RF250-2366

This Decision and Order concerns Applications for Refund filed by Savings Oil Company in the Marathon Petroleum Company refund proceeding. Savings claimed that it purchased 5,399,497 gallons of refined products from Marathon during the consent order period. Since the applicant did not claim a refund in excess of $5,000, the DOE granted its request without requiring a showing of injury. The refund granted in this Decision was $2,268 in principal plus $324 in accrued interest.

Mobil Oil Corporation/Cornhusker Petroleum Corp., 1/25/88, RF225-10044, RF225–10045

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Cornhusker Petroleum Corporation (Cornhusker), a reseller of Mobil refined petroleum products. In its refund application, Cornhusker elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the data submitted by Cornhusker, the DOE determined that the firm purchased 49,952,764 gallons of Mobil motor gasoline at prices higher than the average market prices. The DOE concluded that Cornhusker was therefore eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline. The DOE denied Cornhusker's application for refund based on the firm's purchases of 243,634 gallons of middle distillates, citing the small claims presumption which requires a detailed demonstration of injury in cases where a total refund is greater than $5,000. The total refund granted to Cornhusker was $24,876, representing $20,081 in principal plus $4,795 in interest.

Mobil Oil Corporation/Hedrick Bros. Oil Company, 1/28/88, RF225-10046, RF225–10047

The DOE issued a Decision and Order granting an application for Refund from the Mobil Oil Corporation escrow account filed by Hedrick Bros. Oil Company (Hedrick), a reseller of Mobil refined petroleum products. In its refund application, Hedrick elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumption set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the data submitted by Hedrick, the DOE determined that the firm purchased its motor gasoline from Mobil at prices higher than the average market prices. The DOE concluded that Hedrick was therefore eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline as well as for its purchases of middle distillates and lubricants. However, the Hedrick's refund was limited to the gallons purchased after March 1, 1975, the date when firm's banks of unrecouped product costs became positive. The total refund granted to Hedrick was $2,285, representing $1,845 in principal plus $440 in interest.

Mobil Oil Corporation/J.S. Eledge Oil Company, 1/25/88, RF225–9230

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by J.S. Eledge Oil Company (Eledge), a reseller of Mobil refined petroleum products. In its refund application, Eledge elected to submit documentation that it was injured by Mobil's pricing practices rather than to rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Eledge, the DOE determined that the 5,300,118 gallons of Mobil motor gasoline purchased by the firm during the consent order were purchased at prices higher than the market average price. The DOE concluded that Eledge was therefore eligible to receive the full volumetric refund amount it purchased from Mobil. The total refund granted to Eledge was $2,640, representing $2,131 in principal plus $509 in interest.

Mobil Oil Corporation/Puritan Oil Company, 1/29/88, RF225–216

The DOE issued a Decision regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Puritan Oil Company, a retailer of refund petroleum products. After completing a preliminary review of Puritan's application, the DOE tentatively concluded that Puritan's purchases of Mobil products has been made on the spot market. The DOE subsequently provided the firm with several opportunities to rebut the spot purchaser presumption established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Because Puritan did not submit information rebutting the DOE's conclusion that Puritan's purchases had been made on the spot market, the DOE denied Puritan's refund claim.

Mobil Oil Corp./The Flying Tiger Line, Inc. et al., 1/28/88; RF225–4291 et al.

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation consent order fund filed by the Flying Tiger Line, Inc., Ozark Air Lines, Inc., Sunkist Growers, Inc., and the Ketchikan Pulp Company, end-users of Mobil refined petroleum products during the consent order period. Each applicant presented evidence that it purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds granted in this Decision totalled $20,587 ($16,618 principal plus $3,969 interest).

Mobil Oil Corporation/York Street Mobil, Bailey's Mobil Service, Penn Mar Mobil, 1/29/88, *RF225–3013, RF225–8163, RF225–8877*

The DOE issued a Decision regarding Applications for Refund from the Mobil Oil Corporation escrow account filed by three retailers of Mobil refined petroleum products. In analyzing the applications, the DOE found that none of the applicants had included sufficient information regarding their purchase volumes of Mobil products and had not responded to requests for such information. The DOE therefore concluded that the applicants had failed to meet the requirements for Applications for Refund established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Accordingly, the firms' applications were denied.

Model Coverall Service, et al., 1/28/88, RF272–1417, et al.

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order approving the Applications for Refunds submitted by nine claimants from crude oil overcharge funds collected by the DOE. *Statement of Modified Restitutionary Policy to be Implemented in Crude Oil Cases*, 51 FR 27899 (August 4, 1986). The OHA found that the claimants, all end-users, met the eligibility requirements by supplying actual or estimated purchase volume information for their commercial activities. The OHA granted the claimants a total refund amount of $8,869 based on 34,041,673 gallons of refined petroleum products purchased from August 19, 1973 through January 27, 1981.

Pennzoil Co./West Virginia, 1/29/88, RQ10–392

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of West Virginia in the Pennzoil Co. refund proceeding. West Virginia requested the disbursement of its Pennzoil funds for traffic light synchronization in Clarksburg and its interstate highway logo program. The DOE had previously authorized the use of Pennzoil funds for these programs. Because the litigation

involving the Pennzoil funds has been resolved, the DOE can now disburse the Pennzoil funds for those programs it previously approved. Accordingly, West Virginia will receive a total of $132,943 from Pennzoil escrow fund.

Pyrofax Gas Corporation/Flame-Rite Gas, Inc./Carlos R. Leffler, Inc., Flame-Rite Gas, Inc./Lonnie R. Boyd, 1/26/88, RF277–30, RF277–82

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Flame-Rite, a retailer of propane, claiming a refund of less than $5,000, excluding interest. Both applicants claim refunds based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. The applications were submitted by the current owner of Flame-Rite, Carlos R. Leffler, Inc., and by the owner during the consent order period, Mr. Lonnie R. Boyd. Because Flame-Rite is a corporation that Leffler acquired through the unqualified purchase from Mr. Boyd of all its common stock, the DOE concluded that Leffler was the proper party to file a claim on behalf of Flame-Rite. In view of the documentation of Flame-Rite's purchases supplied by Leffler, under the small purchaser limitation established in *Pyrofax*, the DOE granted a total refund of $7,202 representing $4,502 in principal and $3,150 in interest.

Pyrofax Gas Corporation/Public Service Gas & Electric, 1/29/88, RF277–82

The DOE issued a Decision and Order to Public Service Gas & Electric (PSG&E) of Newark, NJ, in response to an application for Refund which the firm had filed in the Pyrofax Special Refund proceeding. In its Application, PSG&E documented the volumes of propane that it had purchased from Pyrofax and stated that it will pass any refund through to its customers on a dollar-for-dollar basis. Based upon this material and the presumption adopted in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) that public utilities such as PSG&E were injured by the alleged overcharges, the DOE granted a refund of $275,012, representing $150,280 in principal and $124,732 in interest.

Standard Oil Co. (Indiana)/Standing Rock Sioux Tribe, 1/27/88, RQ251–324, RQ21–430

The DOE issued a Decision and Order regarding a second-stage refund plan filed by the Standing Rock Sioux Tribe in the Standard Oil Co. (Indiana) (Amoco) second-stage refund proceeding. In its application, the Standing Rock Sioux Tribe proposed to spend its entire allocable share of Amoco monies to supplement its Low Income Home Energy Assistance Program. The DOE determined that the Tribe's proposed plan would provide restitution to tribal members who were injured in their purchases of refined petroleum products during the period of price controls. Accordingly, the plan was approved.

Tenneco Oil Company/Kelso Oil Company, 1/25/8, RF7–137

The Department of Energy issued a Decision and Order granting an Application for Refund from the Tenneco consent order fund to the Kelso Oil Company. In its application, Kelso submitted a volume schedule for covered products which exceeded the threshold level of 50,000 gallons per month for each month of the consent order period. Therefore, Kelso was required to demonstrate that it was injured by the alleged overcharges. Kelso submitted costs banks for the entire consent order period which substantially exceeded the refund requested. Also, Kelso demonstrated that it was placed at a competitive disadvantage by the prices it paid to Tenneco. However, Kelso did not receive a refund for the gallons of covered product that it purchased from Tenneco at prices equal to or below the average market price. The total refund approved in this Decision and Order was $12,727, representing $10,266 in principal and $2,461 in interest.

Dismissals

The following submissions were dismissed:

Name	Case No.
Champion International Corp	RF272–12281.
Environmental Policy Inst	KFA–0159.
W.C. Herdman, Jr	RF225–8063, RF225–8064.

March 24, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88–6953 Filed 3–29–88; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed During the Period of November 9, 1987, Through January 29, 1988

During the period of November 9, 1987, through January 29, 1988, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 23, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Carbonit Houston, Inc./Richard W. Johnson, Wilmington, Delaware, The Woodlands, Texas, KRO–0620, Crude Oil

On January 28, 1988, Carbonit Houston, Inc. (Carbonit), c/o Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, and Richard W. Johnson, 14 Wild Ginger, The Woodlands, Texas 77380, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to Carbonit and Mr. Johnson on November 13, 1987. In the PRO, the ERA alleges that during the period January 1978 through December 1978, Carbonit committed overcharges in resales of crude oil, in violation of 10 CFR 212.186, 10 CFR 205.202 and 10 CFR 210.62(c). According to the PRO, the violations resulted in $8,344,644.03 in overcharges.

[FR Doc. 88–6954 Filed 3–29–88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $22,355 obtained as a

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result of a Consent Order which the DOE entered into with Harrell A. Musco, the owner of Clean Machine, Inc. (Clean Machine). Clean Machine was a "retailer" of motor gasoline and operated two retail outlets/car washes in Fairfield, and San Jose, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund from the Clean Machine consent order fund must be filed in duplicate and must be received within 90 days of publication of this notice in the Federal Register. All applications should refer to Case Number KEF-0097 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Laurie Breslin or Richard Dugan, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4921.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by the DOE and Harrell A. Musco and Clean Machine which settled all claims and disputes between Clean Machine and the DOE regarding the manner in which the firm applied the Mandatory Petroleum Price Regulations with respect to its sales or motor gasoline during the period August 8, 1979 through January 31, 1980 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Clean Machine consent order fund was issued on February 9, 1988. 53 FR 4453 (February 16, 1988).

The Decision sets forth procedures and standards which the DOE has formulated to distribute the contents of the escrow account funded by Clean Machine pursuant to the Consent Order. The DOE has decided to accept Applications for Refund for firms and individuals that purchased motor gasoline sold by Clean Machine during the consent order period. As previously stated, Clean Machine sold motor gasoline to retail customers. Therefore, only end-users, or ultimate consumers, of Clean Machine motor gasoline who were injured by the alleged overcharges will be eligible for refunds in this proceeding. In order to demonstrate injury, end-user applicants will be required to document the volume of motor gasoline that they purchased from Clean Machine during the consent order period.

As the Decision and Order indicates, Applications for Refund may now be filed by customers that purchased motor gasoline sold by Clean Machine during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: March 24, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

March 24, 1988.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Clean Machine, Inc.
Date of Filing: September 3, 1987
Case Number: KEF-0097

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 3, 1987. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Harrell A. Musco (Musco), the owner of Clean Machine, Inc. (Clean Machine).

I. Background

Clean Machine was a "retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and operated two retail outlets/car washes in Fairfield, and San Jose, California during the period of price controls. An ERA audit of Clean Machine's records revealed that from August 8, 1979 through January 31, 1980, Clean Machine committed possible price violations with respect to its retail sales of motor gasoline. On April 15, 1982, the ERA issued two Proposed Remedial Orders to Musco d/b/a Clean Machine alleging that the firm had overcharged its customers in violation of 10 CFR 212.93 and that Musco was personally liable for the violations.

In order to settle all claims and disputes between Musco, Clean Machine and the DOE regarding the firm's compliance with the Mandatory Petroleum Price and Allocation Regulations during the period August 8, 1979 through January 31, 1980, Musco and the DOE entered into a Consent Order on July 6, 1987. The Consent Order refers to the ERA's allegations of regulatory violations, but states that Musco denies that any such infractions were committed or that he is individually responsible for the activities of Clean Machine.

Under the terms of the Consent Order, Musco was required to deposit $22,355 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. The consent order monies were paid in full on July 22, 1987 into an escrow account in the name of Clean Machine. As of February 29, 1988, the Clean Machine escrow account had earned $849.42 in interest. This Decision concerns the distribution of the funds in the Clean Machine escrow account, plus accrued interest.

On February 9, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Clean Machine consent order fund. 53 FR 4453 (February 16, 1988). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Clean Machine's pricing practices during the August 8, 1979–January 3, 1980 consent order period. A copy of the PD&O was published in the **Federal Register** on February 16, 1988, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982), and *Office of*

Enforcement, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Clean Machine consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Final Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

A. *Showing of Injury*. In order to be eligible for a refund, an applicant must establish that it was injured as a result of Clean Machine's alleged overcharges. *See* 10 CFR 205.280. As previously stated, Clean Machine sold motor gasoline on the retail level to consumers. Therefore, only end-users, or ultimate consumers, of Clean Machine motor gasoline who were injured by the alleged overcharges will be eligible for refunds in this proceeding. In order to demonstrate injury, end-user applicants will be required to document the volume of motor gasoline that they purchased from Clean Machine during the consent order period (August 8, 1979 through January 31, 1980). Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. They were therefore not required to keep records which would show whether they passed through cost increases in sales of other products. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. Consequently, end-users of Clean Machine's motor gasoline will not be required to make a detailed demonstration of injury in order to establish eligibility for a refund. They will only be required to document their purchase volumes from Clean Machine.

B. *Calculation of Refund Amounts*. In order to determine the potential refund amounts for applicants in this proceeding, we will adopt a volumetric refund presumption. The volumetric refund presumption assumes that Clean Machine's alleged overcharges were spread equally over all gallons of motor gasoline that Clean Machine sold during the consent order period.

Under the volumetric method, a claimant that adequately demonstrates injury will be eligible to receive a refund equal to the number of gallons of motor gasoline that it purchased from Clean Machine during the consent order period times the volumetric factor. The volumetric factor in this case equals $0.01731 per gallon.[1] In addition, successful claimants will receive proportionate shares of the interest that has accrued in the Clean Machine escrow account.

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, a claimant may submit evidence detailing the specific overcharge that it allegedly incurred in order to be eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

As in previous cases, we propose to establish a minimum amount of $15 for refund claims.[2] We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR ¶ 205.286(b).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Clean Machine consent order fund. Accordingly, we shall now accept applications for refund from eligible customers who purchased Clean Machine motor gasoline during the consent order period. There is no official application form. Applications for refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund.

1. The name of the consent order firm: Clean Machine, Inc., the case number: HEF-0097, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The volume of Clean Machine motor gasoline that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges.

4. A statement of whether the applicant was in any way affiliated with Clean Machine. If so, the applicant should state the nature of the affiliation.

5. A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. See 10 CFR 205.9(d).

6. The following signed statement:

> I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All Applications should be sent to:
Office of Hearings and Appeals,
Department of Energy, 1000
Independence Avenue SW.,
Washington, DC 20585.

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[1] We computed this figure by dividing the $22,355 consent order amount by the 1,291,580 gallons of motor gasoline sold by Clean Machine during the consent order period.

[2] Under the volumetric method for making refunds proposed in this proceeding, we calculate that an applicant must have purchased at least 867 gallons of motor gasoline from Clean Machine during the six-month consent order period in order to qualify for the minimum $15 refund. In contrast, according to Energy Information Administration data, the average motorist consumed approximately 301 gallons of motor gasoline per car during the consent order period. *Consumption Patterns of Household Vehicles, June 1979 to December 1980*, DOE/EIA-0319 at 12. Accordingly, we anticipate that although many individual motorists who purchased motor gasoline from Clean Machine may have legitimate claims, most of those claims will fall below the $15 threshold. However, it is possible that there are governmental entities or businesses with multiple vehicles that purchased motor gasoline from Clean Machine on a regular basis and in sufficient quantities to qualify for a refund.

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V. Distribution of Funds After First Stage Claims

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribuition and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determines annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA section 3003(c) and (d). The Secretary has delegated these responsibilities to the OHA, and any funds in the Clean Machine consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Clean Machine customers will be distribuited in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Clean Machine, Inc. pursuant to the Consent Order executed on July 6, 1987 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Date: March 24, 1988.

[FR Doc. 88–6955 Filed 3–29–88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 5G3207/T554; FRL–3356–5]

Mycogen Corp.; Renewal of Exemptions From Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed exemptions from the requirement of tolerances for residues of the fungus *Alternaria cassiae* to evaluate control of sicklepod and coffee senna in or on certain commodities.

DATE: These temporary exemptions from the requirement of tolerances expire January 12, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice which was published in the **Federal Register** of June 11, 1986 (51 FR 21233) that temporary exemptions from the requirement of tolerances were renewed for residues of the fungus *Alternaria cassiae* to evaluate control of sicklepod and coffee senna in or on the raw agricultural commodities soybeans, peanuts, and cotton. These exemptions from the requirement of tolerances were renewed in response to pesticide petition (PP) 5G3207, submitted by Mycogen Corp., P.O. Box 5126, Valdosta, GA 31603–5126.

The company requested a renewal of the temporary exemptions from the requirement of tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 53219–EUP–1, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Mycogen Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire January 12, 1989. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 CFR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 18, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–6800 Filed 3–29–88; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3268/T555; FRL–33567]

E.I. du Pont de Nemours and Co., Inc.; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the herbicide methyl 2[[[[[(4,6-dimethoxy-pyrimidin-2-yl)-amino] carbonyl]amino]sulfonyl] methyl]benzoate in or on the raw agricultural commodity rice.

DATE: This temporary tolerance expires February 1, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of December 11, 1985 (50 FR 50681), stating that a temporary tolerance had been established for residues of the herbicide

methyl 2[[[[[(4,6-dimethoxy-pyrimidin-2-yl)-amino] carbonyl]amino]sulfonyl] methyl]benzoate in or on the raw agricultural commodity rice at 0.02 part per million (ppm). This tolerance was issued in response to pesticide petition PP 5G3268, submitted by E.I. du Pont de Nemours and Co., Inc., Agricultural Chemicals Dept., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 352-EUP-129, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires February 1, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 18, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–6801 Filed 3–29–88; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3156/T550; FRL–3356–6]

Hoechst Celanese Corp.; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide monoammonium and its metabolite in or on certain raw agriculture commodities.

DATE: These temporary tolerances expire January 12, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of November 28, 1986 (51 FR 42930), announcing the establishment of temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate and its metabolite of 3-methylphosphinicopropionic acid in or on the raw agricultural commodities soybean seed, citrus, pome fruit, grapes, and stone fruit at 0.05 part per million (ppm). These tolerances were issued in response to pesticide petition (PP) 4G3156, submitted by Hoechst Celanese Corp.; Route 202–206 North, Somerville, NJ 08876.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 8340–EUP–10, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst Celanese Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 12, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 18, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6802 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30285A; FRL-3356-8]

Ecogen Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Ecogen Inc., to conditionally register the pesticide product Dagger™ G Biofungicide, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 17, 1988 (53 FR 4713), which announced that Ecogen Inc., 2005 Cabot Blvd., West Longhorne, PA 19047-1810, had submitted an application to conditionally register the pesticide product Dagger™ G Biofungicide, containing the active ingredient *pseudomonas fluorescens* EG1053 at 20 percent; an active ingredient not included in any previously registered product.

The application was approved on March 3, 1988, as Dagger™ G Biofungicide, for general use in-furrowed soil applied at planting time on cotton. The product was assigned EPA Registration No. 55638-5.

The Agency has consolidated the available data on the risks associated with the proposed use of *pseudomonas fluorescens* EG1053 information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *pseudomonas fluorescens* EG1053 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on *pseudomonas fluorescens* EG1053.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: March 18, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-6798 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30287; FRL-3356-4]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by April 29, 1988.

ADDRESS: By mail submit comments identified by the document control number [OPP-30287] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

ADDRESSES:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Environmental Protection Agency, Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 15, George LaRocca.	Rm. 204, CM#2 (703-557-2400).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 21, Lois Rossi.	Rm. 227, CM#2 (703-557-1900).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Product

1. File Symbol: 2724-URN. Applicant: Zoecon Corp., a Sandoz Co., 12200 Denton Drive, Dallas, TX 75234. Product name: Zoecon RF-339 Fogger. Insecticide. Active ingredient: Ethofenprox [2-(4-ethoxyphenyl)-2-methylpropyl-3-phenoxybenzylether] 1.00%. Proposed classification/Use: General. Controls cockroaches, ants, flies, fleas, and ticks on contact. Type registration: Conditional. (PM 15)

2. File Symbol: 2724-URR. Applicant: Zoecon Corp., a Sandoz Co., 12200 Denton Drive, Dallas, TX 75234. Product name: Zoecon RF-340 Aerosol. Insecticide. Active ingredient: Ethofenprox [2-(4-ethoxyphenyl)-2-methlpropyl-3-phenoxybenzylether] 0.50%. Proposed classification/Use: General. Controls cockroaches, ants, flies, ticks, and fleas on contact. Type registration: Conditional. (PM 15)

3. File Symbol: 2724-UNO. Applicant: Zoecon Corp., a Sandoz Co. Product name: Zoecon RF-338 Aerosol. Insecticide. Active ingredient: Ethofenprox [2-(4-ethoxyphenyl)-2-methylpropyl-3-phenoxybenzylether] 1.00%. Proposed classification/Use: General. Controls cockroaches, ants, flies, ticks, and fleas on contact. Type registration: Conditional. (PM 15)

4. File Symbol: 2724-URE. Applicant: Zoecon Corp., a Sandoz Co. Product name: Zoecon RF-341 Fogger. Insecticide. Active ingredient: Ethofenprox [2-(4-ethoxyphenyl)-2-methylpropyl-3-phenoxybenzylether] 0.50%. Proposed classification/Use: General. Controls cockroaches, ants, flies, ticks, and fleas on contact. Type registration: Conditional. (PM 15)

5. File Symbol: 2724-URO. Applicant: Zoecon Corp., a Sandoz Co. Product name: Zoecon Ethofenprox Technical. Insecticide. Active ingredient: Ethofenprox [2-(4-ethophenyl)-2-methylpropyl-3-phenoxybenzylether] 90.0%. Proposed classification/Use: General. For manufacturing use only. Type registration: Conditional. (PM 15)

6. File Symbol: 612-L. Applicant: Unocal Chemicals Division, Unocal Corp., 1201 W. 5th St., Los Angeles, Ca 90017. Product name: GY-81. Nematicide/Fungicide. Active ingredient: Sodium tetrathiocarbonate 31.8%. Proposed classification/Use: General. For use on terrestrial food crops (grapes, grapefruits, oranges, lemons, potatoes, and tomatoes). (PM 21)

7. File Symbol: 352-LNU. Applicant: E. I. du Pont de Nemours and Co., Wilmington, DE 19898. Produce name: Nustar®. Fungicide. Active ingredient: 1-[[Bis(4-fluorophenyl)methylsilyl]-methyl]-*H*-1,2,4-triazole 20%. Proposed classification/Use: General. For use on terrestrial food crops (apples and grapes). (PM 21)

II. Product Involving a Changed Use Pattern

File Symbol: 000499-EOU. Applicant: Whitmire Research Laboratories, Inc., 3568 Tree Court Blvd., St. Louis, MO 63122. Product name: Whitmire Avert PT 310 Abamectin Dust. Insecticide. Active ingredient: Abamectin B_1 [a mixture of avermectins containing 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a} and 20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl) avermectin A_{1a})] 0.05%. Proposed classification/Use: General. To include in its presentlyregistered use, a new use indoors to kill insects in garages, homes, hospitals, motels, nursing homes, transportation equipment, utilities, warehouses, and other commercial and industrial buildings. Type registration: Conditional. (PM 15)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6799 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-493; FRL-3357-3]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Att'n.: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
Lois Rossi (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3606.* BASF Corp., 100 Cherry Hill Road, Parsippany, NJ 07054, proposes amending 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety in or on citrus fruits at 0.5 part per million (ppm) and blueberries at 4.0 ppm. The proposed analytical method for determining residues is gas chromatography using sulfur-specific flame photometric detection. (PM 25)

2. *PP 8F3609.* E.I. DuPont DeNemours & Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the fungicide carbendazim (methyl 2-benzimidazole carbamate) and its metabolites containing the benzimidazole moiety (calculated as carbendazim) in or on wheat grain at 0.2 ppm; wheat straw at 10.0 ppm; meat, meat byproducts, milk, and eggs at 0.1 ppm; and poultry liver at 0.2 ppm. The proposed analytical method for determining residues is high-speed cation exchange liquid chromatography. (PM 21)

3. *FAP 8H5553.* BASF Corp., 100 Cherry Hill Road, Parsippany, NJ 07054, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety in or on (citrus) molasses at 1.5 ppm and (citrus) dry pulp at 1.5 ppm. (PM-25)

Amended Petition

1. *PP 6F3318.* EPA issued a notice published in the **Federal Register** of January 15, 1986 (51 FR 1844), that announced that ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Road., Wilmington, DE 19897, had submitted pesticide petition 6F3318 to the Agency proposing to amend 40 CFR Part 180 by establishing a tolerance for the residues of the insecticide (R+S)-alpha-cyano-3-phenoxyphenyl (1S+R)-cis-3-(1-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodity cottonseed at 0.01 part per million. ICI Americas, Inc., has amended the petition by increasing the tolerance in or on cottonseed from 0.01 ppm to 0.05 ppm. The proposed analytical method for determining residues is by liquid chromatography. (PM 15)

Authority: 21 U.S.C. 346a.

Dated: March 22, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6915 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-496; FRL-3358-2]

FMC Corp.; Amended Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition (pp 0F2369) by FMC Corp. for the insecticide permethrin.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Divison (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be availabe for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmntal Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of October 8, 1980 (45 FR 66863), that announced that FMC Corp., 2000 Market St., Philadelphia, PA 19103, had submitted pesticide petition 0P2369 to the Agency proposing to amend 40 CFR 180.378 by establishing tolerances for the combined residues of the insecticide permethrin [3-phenoxyphenyl] methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcylcopropanecarboxylate and its metabolites *cis* and *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcylcopropanecarboxylate acid, 3-phenoxybenzyl alcohol, and 3-phenoxybenzoic acid in or on the following raw agricultural commodities: alfalfa, fresh at 20.0 parts per million (ppm); alfalfa, hay at 65 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milk at 0.5 ppm; poultry at 0.1 ppm; eggs at 1.0 ppm; and potatoes at 0.05 ppm.

FMC Corp. has amended the petition by increasing the tolerances on alfalfa, fresh from 20 ppm to 25 ppm; fat of cattle and horses at 2.5 ppm; fat of goats and sheep at 3.0 ppm; meat of cattle, horses, sheep, and goats at 0.25 ppm; meat byproducts of cattle, goats, horses, and sheep at 2.0 ppm; milk fat at 6.25 ppm, reflecting 0.25 ppm in whole milk. The proposed analytical method for determining residues is by liquid chromatography. The proposed tolerance in or on potatoes at 0.05 ppm was withdrawn in October 1982. The proposed tolerance for residues of permethrin in or on alfalfa, hay has been decreased from 65 ppm to 55 ppm.

Authority: 21 U.S.C. 346a.

Dated: March 23, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-7069 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30276A; FRL-3354-3]

Approval of Pesticide Product Registrations; Safer, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Safer Inc., to conditionally register the pesticide product Safer™ Sharpshooter Weed and Grass Killer Ready to Use, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 11, 1987 (52 FR 7484), which announced that Safer Inc., 60 William St., Wellesley, MA 02181, had submitted an application to conditionally register the pesticide product Safer™ Spot Weed and Grass Killer Ready To Use, containing the active ingredient saturated fatty acids at 3 percent; an active ingredient not included in any previously registered product.

The application was approved on January 29, 1988, as Safer™ Sharpshooter Weed Grass Killer Ready To Use, for general use to control weeds in walks, dirveways, parking areas, and other similar areas. The product was assigned EPA Registration No. 42697-22.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: March 17, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-6550 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180770; FRL-3354-2]

Receipt of Applications for Specific Exemptions to Use Clofentezine and Hexythiazox; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Delaware Department of Agriculture (hereafter referred to as "Applicant") for use of the unregistered active ingredients clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine) and hexythiazox (*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) to control European red mites on apples. In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before April 14, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180770," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4. p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby A. Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of the unregistered active ingredients, clofentezine, available as the pesticide product Apollo, manufactured by Nor-Am Chemical Company, and hexythiazox, manufactured by E.I. du Pont de Nemours Chemical Company, to control European red mites on apples.

Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

The Applicant has requested authorization to make one complete or two "alternate row middle spray" applications with Apollo or Savey. A maximum of four ounces of formulated Apollo (0.125 pound active ingredient) or 5 ounces (0.156 pound active ingredient) of formulated Savey is proposed to be applied per acre by ground equipment as a dilute or concentrate spray. The time of treatment extends from "tight cluster" until 45 days before harvest for Apollo and until 100 days before harvest for Savey.

The Applicant proposes to treat a maximum of 750 acres of apples. A maximum of 23.4 gallons of Apollo and 29.3 gallons of Savey would be needed under the proposed exemptions.

Applications of Savey would be made through May 20, 1988 and through July 15, 1988 for Apollo.

The Applicant claims that European red mites have developed resistance to Plictran (cyhexatin) which historically has been used for control of mites.

Similar resistance also exists to the related organo-tin acaricide, Vendex (fenbutatin-oxide). Dicofol has also been used in the past, however, resistance appears to have developed to this pesticide as well. Other acaricides such as formetanate hydrochloride, oxamyl and propargite are not effective, toxic to beneficials or otherwise not appropriate for mite control at various times.

The Applicant indicates that by having both materials available, growers could alternate miticides and reduce the buildup of resistance in the European red mite population.

The Applicants state that the result of not having an effective control of the European red mite would be decreased fruit size, loss of fruit set and reduced fruit quality. The Applicant estimates that losses of up to $128,398 in gross revenues for Delaware apple growers will result if Apollo or Savey is not available for use in 1988.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on applications involving an unregistered active ingredient. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: March 16, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6551 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180769; FRL-3364-5]

Receipt of Application for Emergency Exemption From North Dakota To Use Unregistered Chemical; 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received a request for an emergency exemption from the North Dakota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredients 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester to control wild mustard on 200,000 acres of sunflowers in North Dakota. Assert contains unregistered active ingredients and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before April 14, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180769," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA withut prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION: By mail: Jim Tompkins, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered herbicide, a mixture of 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) methyl ester (CAS 69969-22-8) and 2-(4-isopropyl4-methyl-5-oxo-2-imidazoline-2-yl) methyl ester (CAS 69969-628), manufactured as Assert, by American Cyanamid Company, on sunflowers in North Dakota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicates that 1.4 million acres of sunflowers will be grown throughout North Dakota in 1988. There are 200,000 acres economically infested with wild mustard (*Sinapis arvensis* L.) which the Applicant is proposing to treat. The Applicant states that most herbicides currently registered for use in sunflowers control annual grasses and some broadleaved weeds but provide little or no wild mustard control. According to the Applicant, chloramben is registered for wild mustard control in sunflowers, but gives inconsistent control. The Applicant states that wild mustard, when uncontrolled, competes vigorously with sunflowers.

The Applicant indicates that without adequate control wild mustard will cause a 20% potential yield loss over 200,000 acres in 1988. This would amount to approximately a loss of $4.32 million.

Assert will be applied postemergence by ground or air at a rate of 3 to 4 ounces active ingredient per acre. A single application will be made sometime between May 15 and July 31, 1988 to approximately 200,000 acres of sunflowers.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 14, 1988, and should bear the identifying notation "OPP-180769." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Dakota Department of Agriculture.

Dated: March 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-6552 Filed 3-29-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Investors Savings and Loan Association, a Federal Savings and Loan Association, El Reno, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Investors Savings and Loan Association, a Federal Savings and Loan Association, El Reno, Oklahoma, on March 24, 1988.

Dated: March 24, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-6937 Filed 3-29-88; 8:45 am]

BILLING CODE 6720-01-M

United Savings, a Federal Savings and Loan Association, Durant, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for United Savings, a Federal Savings and Loan Association, Durant, Oklahoma, on March 24, 1988.

Dated: March 24, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-6938 Filed 3-29-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-704; FHLBB No. 7643]

Community Federal Savings and Loan Association, Ft. Oglethorpe, GA; Final Action; Approval of Conversion Application

Date: March 24, 1988.

Notice is hereby given that on March 21, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Community Federal Savings and Loan Association, Ft. Oglethorpe, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-6939 Filed 3-29-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., April 19, 1988.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the January 12, 1988 meeting; Thrift Savings Plan participation and investment funds; proposed CSRS to FERS transfer period; 1988 Board legislative agenda; open season nomenclature and timing; COLA increases on the $7,000 limit; new Board publications; and regulations applicable to Federal employees in a non-pay status.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara on (202) 523-6367.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88-6978 Filed 3-29-88; 8:45 am]

BILLING CODE 6760-01-M

FEDERAL RESERVE SYSTEM

Home Bancorp, Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-6057) published at page 9143 of the issue for Monday, March 21, 1988.

Under the Federal Reserve Bank of New York, the entry for Bancorp New Jersey, Inc. is revised to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Home Bancorp, Inc.*, Brooklyn, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Home Savings Bank, Brooklyn, New York, which operates a savings bank life insurance department and has a subsidiary engaged in insurance agency activities. Bank will cease the insurance activities in two years.

Comments on this application must be received by April 8, 1988.

Board of Governors of the Federal Reserve System, March 24, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6881 Filed 3-29-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consumation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termintion of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN MAR. 7, 1988 AND MAR. 21, 1988

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
CHR plc, Milo L. Pike, Pike Industries, Inc	88-0923	03/07/88
The Industrial Bank of Japan, Limited, Morgan Stanley Group Inc., Execution Services Incorporated	88-0963	03/07/88
Nortek, Inc., Mohasco Corporation, Mohasco Corporation	88-0981	03/07/88
Source Perrier, S.A., Herbert Halperin, Herbert Halperin Distributing Corportation and Marel	88-1034	03/07/88
Masco Corporation, Allen S. Wyett, American Textile Company, Inc., Ametex Fabrics, Inc	88-1046	03/07/88
Masco Corporation, Robert J. Weissman, American Textile Company, Inc., Ametex Fabrics, Inc	88-1048	03/07/88
Allen S. Wyett, Masco Corporation, Masco Corporation	88-1050	03/07/88
Robert J. Weissman, Masco Corporation, Masco Corporation	88-1051	03/07/88
Communications Transmission, Inc., Cable & Wireless PLC, Eltra Communications Corporation	88-0907	03/08/88
Communications Transmission, Inc., Katy Industries Inc., Electra Communications Corporation	88-0999	03/08/88
David H. Monnich, The Philp Co. Trust, The Southland Corporation	88-0924	03/09/88
Furukawa Electric Co., Ltd., Bell Industries, Inc., Bell Industries, Inc	88-0960	03/09/88
Leggett & Platt, Incorporated, Richard A. Singer, Berkshire Furniture Co., Inc	88-1013	03/09/88
Foodmaker, Inc., Chi-Chi's, Inc., Chi-Chi's, Inc	88-1049	03/09/88
General Electric Company, HHC Holding Inc., Kip-Lee CATV, Inc., NTT, Inc., and Southwestern	88-1059	03/09/88
Skandia International Holding AB, ITT Corporation, Hartford Variable Annuity Life Insurance Company	88-1061	03/09/88
Talley Industries, Inc., John McMullen, McMullen Holdings, Inc	88-1075	03/09/88
John J. McMullen, Talley Industries, Inc., Talley Industries, Inc	88-1076	03/09/88
H. F. Lenfest, Cable Associates, Inc., Cable Associates, Inc	88-1078	03/09/88
Nu-West Holdings Co./Beker Industries Corp., Mississippi Chemical Corporation, Mississippi Chemical Corporation	88-0898	03/10/88
Narragansett Capital Partners-A.L.P., HHC Holdings Inc., UltraCom of Dade County, Inc	88-0922	03/10/88
Plessey Company plc, GEC Plessey Telecommunications Holdings Limited, GEC Plessey Telecommunications Limited	88-1002	03/10/88
The General Electric Company, p.l.c., GEC Plessey Telecommunications Holdings Limited, GEC Plessey Telecommunications Limited	88-1005	03/10/88
Glenn Golenberg, Fosaco Minsep plc, Fosaco Minsep plc	88-0132	03/10/88
Gary Golenberg, Fosaco Minsep plc, Fosaco Minsep plc	88-1033	03/10/88
M.D.C. Asset Investors, Inc., Guild Mortgage Investments, Inc., Guild Mortgage Investments, Inc	88-1040	03/10/88
Columbia International, Inc., William M. Bauce, Tidel Communications, Inc	88-1052	03/10/88
Sanden Corporation, The Vendo Company, The Vendo Company	88-1055	03/10/88
Digital Equipment Corporation, GTE Corporation, GTE Corporation	88-1063	03/10/88
John W. Kluge, PON Holding Corp., PON Holding Corp	88-1064	03/10/88
Lonrho Plc, Fletcher Oil and Refining Company, Fletcher Oil and Refining Company	88-1070	03/10/88
NUI Corporation, City Gas Company of Florida, City Gas Company of Florida	88-1101	03/10/88
M.D.C. Holdings, Inc., Southmark Corporation, J.M. Peters Company, Inc	88-1103	03/10/88
H Group Holding, Inc., Elsinore Corporation, Hyatt Tahoe, Inc	88-1105	03/10/88
John H. Streicker, c/o J.H. Streicker & Co., Inc., Security Capital Corporation, Security Capital Real Estate Corporation	88-0941	03/11/88
Staveley Industries plc, The Penn Central Corporation, Qualcorp, Inc. and PCC Technical Industries, Inc	88-0991	03/11/88
Hasib Sabagh, Joseph A. Morganti, The Morganti Group, Inc. and other assets of UPES	88-1010	03/11/88
Hasib Sabagh, Robert J. Morganti, The Morganti Group, Inc	88-1011	03/11/88
Intercare Health System, Inc., Hahnemann-Holden Health System, Inc., Hahnemann-Holden Health System, Inc	88-1021	03/11/88
Said Khoury, Joseph A. Morganti, The Morganti Group, Inc	88-1022	03/11/88
Said Khoury, Robert J. Morganti, The Morganti Group, Inc	88-1023	03/11/88
Sun Company, Inc., American Gas & Oil Investors, Brock Operating Company	88-1066	03/11/88
Susquehanna Broadcasting Co., Theodore Baum, Rankin County Cablevision and Southwest Cablevision	88-1112	03/11/88
Thomas J. Russell, Jr., The Dun & Bradstreet Corporation, The Dun & Bradstreet Corporation	88-0944	03/14/88
Robert Louis-Dreyfus, The Dun & Bradstreet Corporation, The Dun & Bradstreet Corporation	88-0945	03/14/88
Andrew L. Clark, The Dun & Bradstreet Corporation, The Dun & Bradstreet Corporation	88-0946	03/14/88
Christian Tourres, The Dun & Bradstreet Corporation, The Dun & Bradstreet Corporation	88-0947	03/14/88
Martin Steinmeyer, The Dun & Bradstreet Corporation, The Dun & Bradstreet Corporation	88-0948	03/14/88
Showa Denko K.K., The BOC Group, P.L.C., BOC Group, Inc	88-1025	03/14/88
American Exploration Company, Transco Energy Company, Transco Exploration Partners, Ltd	88-1041	03/14/88
Home Owners Federal Savings and Loan Association, Meritor Savings Bank, Meritor Mortgage Corporation-Central	88-1082	03/14/88
Marks and Spencer p.l.c., Robert Campeau, Brooks Brothers, Inc. and Garland Real Estate Company	88-1107	03/14/88
Robert Porcher, c/o Porcher Textile S.A., Morgan Stanley Group Inc., Burlington Glass Fabrics, Co	88-0995	03/15/88
Lomas & Nettleton Financial Corporation, Dollar Dry Dock Savings Bank, Dollar Dry Dock Savings Bank	88-1004	03/15/88
J.P. Stevens & Co., Inc., Morgan Stanley Group, Inc., Burlington Industries, Inc	88-0994	03/16/88
Systems Designers PLC, The British Petroleum Company plc, Scicon Corporation	88-1060	03/16/88
Olympia & York Developments Limited, Asamera Inc., Asamera Inc	88-1067	03/16/88
Logica plc, Data Architects, Inc., Data Architects, Inc	88-1090	03/16/88
Wickes Companies, Inc., J.P. Emco, Inc., J.P. Emco, Inc	88-1106	03/16/88
Outboard Marine Corporation, Joseph McHugh, Sea Nymph, Inc	88-1109	03/16/88
Schering-Plough Corporation, The Cooper Companies, INc. The Cooper Companies, Inc	88-1110	03/16/88
The Penn Central Corporation, Republic American Corporation, Republic American Corporation	88-1118	03/16/88
Hikoichi Kikuchi, Ronald L. Fenolio, IDG Realty Ltd	88-1083	03/17/88
Secom Co., Ltd., Hospital Corporation of America, Shepard Ambulance, Inc, Allied Ambulance Services	88-1087	03/17/88
Ruddick Corporation, GU Acquisition Corp., The Grand Union Company	88-1096	03/18/88
Repsol, S.A., Occidental Petroleum Corporation, Repsol Occidental Corporation	88-1114	03/18/88
William Davidson, CUE Industries, Inc., CUE Industries, Inc	88-1117	03/18/88
Jeffery Beresford-Wood, Cargill, Incorporated, First Horizon Insurance Company & Napoleon Services	88-1120	03/18/88
Southmark Corporation, Mark K. Posnick, Criterion Mortgage Holding Corporation	88-1129	03/18/88
NRM Energy Company, L.P., Mr. Gary L. Hall, Hall-Houston Oil Company	88-1130	03/18/88
Jacor Communications, Inc., Tampa Bay Broadcasting, Inc., Tampa Bay Broadcasting, Inc	88-1151	03/18/88
The Equitable Life Insurance Society of the U.S., SSI Associates, L.P., Safeway Little Rock, Inc	88-0916	03/19/88
Stuart's Drug and Surgical Supply, Inc., National Intergroup, Inc., FoxMeyer Corporation, hospital supply division	88-1057	03/21/88
Value Equity Associates I, L.P., Big Bear, Inc., Big Bear, Inc	88-1092	03/21/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By director of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-6890 Filed 3-29-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Suspension of Eligibility for Financial Assistance; Dr. Claudio Milanese

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of Suspension.

SUMMARY: This notice announces the suspension of Dr. Claudio Milanese from eligibility for direct or indirect financial assistance under any discretionary program awarded or administered by the Department of Health and Human Services.

DATES: The suspension became effective February 19, 1988 and is for a temporary period pending the completion of debarment proceedings.

FOR FURTHER INFORMATION CONTACT: Robert B. Lanman, Esq., Chief, National Institutes of Health Branch, Public Health Division, Office of General Counsel, 9000 Rockville Pike, Building 31, Room 2B-50, Bethesda, Maryland 20892. Telephone: (301) 496-4108.

SUPPLEMENTARY INFORMATION: Pursuant to 45 CFR Part 76, Dr. Claudio Milanese, Corso G. Marconi 24, 10125 Torino, Italy, has been suspended from receiving or applying for, directly or indirectly, any form of financial assistance under any discretionary program awarded or administered by the Department of Health and Human Services. It also suspends Dr. Milanese from service or participation in the conduct or performance of an assisted project. The suspension became effective on February 19, 1988 and is for a temporary period pending the completion of debarment proceedings. This action is being taken pursuant to the HHS Financial Assistance Debarment and Suspension Regulations pertaining to grants and other forms of financial assistance, 45 Code of Federal Regulations, Part 76.

The basis for the suspension action is that there is reasonable evidence Dr. Milanese has committed irregularities of a serious nature which are grounds for debarment under 45 CFR 76.10. The investigative report concluded that Dr. Milanese was responsible for three types of fabrication: (1) Frank invention of data; (2) supplying of fraudulent research materials to collaborators; and (3) tidying of data to improve the published results. The instances of serious deviation from accepted medical research practices set forth in the investigative report reflect his failure to comply with the fundamental duty of research scientists to report accurately the methods and results of their research and otherwise reflect a lack of integrity, care and judment that is so compelling as to seriously and directly affect his participation in HHS financial assistance.

Dated: March 23, 1988.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

[FR Doc. 88-6909 Filed 3-29-88; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Establishment of Extramural Science Advisory Board

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) the Secretary, Health and Human Services, announces the establishment of the Extramural Science Advisory Board, NIAAA, on March 8, 1988.

March 25, 1988.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-6931 Filed 3-29-88; 8:45 am]

BILLING CODE [illegible]

Food and Drug Administration

[Docket No. 88E-0067]

Determination of Regulatory Review Period for Purposes of Patent Extension; Novantrone™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Novantrone™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Novantrone™ (mitoxantrone hydrochloride), which is an antineoplastic agent used in the initial therapy of acute nonlymphocytic leukemia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Novantrone™ (U.S. Patent No. 4,278,689) from the American Cyanamid Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 7, 1988, advised the Patent and Trademark

Office that the human drug product had undergone a regulatory review period and that the active ingredient, mitoxantrone hydrochloride, represented the first commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Novantrone™ is 3,145 days. Of this time, 1,836 days occurred during the testing phase of the regulatory review period, while 1,309 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 16, 1979. The applicant claims April 16, 1979, as the date the investigational new drug application (IND) for the drug became effective. However, FDA records indicate that the IND was received on April 16, 1979 and pursuant to FDA regulations, became effective on May 16, 1979.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 24, 1984. The applicant claims that a new drug application for Novantrone™ (NDA 19–297) was initially submitted on May 18, 1984. However, FDA did not receive the application until May 24, 1984.

3. *The date the application was approved:* December 23, 1987. FDA has verified the applicant's claim that NDA 19–297 was approved on December 23, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 31, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 26, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88–6885 Filed 3–29–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M–0082]

Wesley-Jessen; Premarket Approval of Durasoft® 4 (Ofilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of a supplemental application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the spherical DURASOFT® 4 (ofilcon A) HYDROPHILIC CONTACT LENS (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by April 29, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA 305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On November 12, 1987, Wesley-Jessen, Chicago, IL 60610, submitted to CDRH a supplemental application for premarket approval of the DURASOFT® 4 (ofilcon A) HYDROPHILIC CONTACT LENS (clear and tinted) for an aphakic indication. The lens is indicated for daily wear and extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The tinted lens provides for ease of patient handling and does not affect iris color. The lens may be worn by persons who may exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −20.00 D to +20.00 D and is to be disinfected using either a chemical or heat lens care system. The tinted lens contains the color additive [phthalocyaninato(2-)] copper in accordance with the color additive listing provisions of 21 CFR 74.3045.

On January 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On February 24, 1988, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before April 29, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53)

Dated: March 22, 1988

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–6886 Filed 3–29–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88E-0078]

Determination of Regulatory Review Period for Purposes of Patent Extension; Terazol™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Terazol™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Terazol™ (terconazole) which is indicated for the local treatment of vulvovaginal candidiasis (moniliasis). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Terazol™ (U.S. Patent No. 4,358,449) from Johnson and Johnson and requested FDA's assistance in determining the patent's eligibility for patent term restoration. Johnson and Johnson filed the application on behalf of Janssen Pharmaceutica, N.V., the owner the patent and also a wholly-owned subsidiary of Johnson and Johnson.

Both the investigational new drug application (IND) and the new drug application (NDA) submissions were undertaken by the Ortho Corp., which is also a subsidiary of Johnson and Johnson. FDA, in a letter dated March 8, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, terconazole, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Terazol™ is 1,890 days. Of this time, 1,301 days occurred during the testing phase of the regulatory review period, while 589 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 30, 1982. The applicant claims November 29, 1982, as the date the IND for the drug became effective. However, FDA records indicate that the IND became effective on October 30, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 22, 1986. FDA has verified the applicant's claim that the NDA for Terazol™ (NDA 19–579) was initially submitted on May 22, 1986.

3. *The date the application was approved:* December 31, 1987. FDA has verified the applicant's claim that NDA 19–579 was approved on December 31, 1987.

This determination of the regulatory review period established the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations

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of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 31, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 26, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-6868 Filed 3-29-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Council on Graduate Medical Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies schedules to meet during the month of May 1988:

Name: Council on Graduate Medical Education.

Time: May 2–3, 1988, 8:30 a.m.–4:30 p.m. (Possibly May 4).

Place: Hyatt Regency—Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to: (A) The supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: Agenda items include: (1) A review, discussion and final assessment regarding all of the conclusions and recommendations (for the Council's first report) developed to date by the Physician Manpower, Foreign Medical School Graduates, and the Graduate Medical Education Programs and Financing Subcommittees; (2) discussion of tentative agenda for future COGME meetings.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5796.

Agenda Items are subject to change as priorities dictate.

Dated: March 25, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-6869 Filed 3-29-88; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Fiscal Year 1989 Federal Allotment to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 1989 Federal Allotment for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the individual allotment for States for Fiscal Year 1989 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotments for the States published herein are based upon the Fiscal Year 1988 funding levels, and are contingent upon Congressional appropriation action for Fiscal Year 1989. If Congress appropriates and the President approves an amount different from the Fiscal Year 1988 funding level, adjustments will be made accordingly. For example, should the funding level change, the statutory minimum funding provision would require changes to the percentages for individual States.

In addition, the amount to which the Trust Territories of the Pacific Islands are entitled under the Act is greater than the levels authorized for expenditures under the Compact of Free Association. The intent to reallot those funds which the Trust Territories will be unable to use is hereby promulgated. The additional amount which would be available to each State and Territory is also included. Any State or Territory which cannot use the additional funds for Fiscal Year 1989 should so notify the: Commissioner, Administration on Development Disabilities Room 351 D, HHH Building 200 Independence Ave. SW. Washington, DC 20201, within thirty days of this promulgation.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue SW., Room 341F–4 Washington, DC 20201, telephone (202) 245–7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2), of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data for issuance of fiscal Year 1989 formula grants. The data elements used in the update are:

A. The Number of Beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1984, are from Table 132 of the "Social Security Bulletin: Annual Statistical Supplement 1986" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Marshall Islands, and Palau), included under 'Abroad' in the

table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1983–85, are from Table 1, page 45, of the "Survey of Current Business", August 1987, issued by the Bureau of Economic Analysis, U.S. Department of Commerce comparable data for the Trust Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1986, are from table 6 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 1010, issued September 1987 by the Bureau of the Census, U.S. Department of Commerce. The Territories estimated total populations are from Table 1 of "Current Population Reports: Population Estimates and Projections, "Series P–25, Number 1009, issued July 1987 by the Bureau of the Census, U.S. Department of Commerce New data elements are not available for the Trust Territory of the Pacific Islands since each of the three areas contained therein (The Federated States of Micronesia, The Marshall Islands, and Palau) have either negotiated compacts of free association with the United States or severed their previous relationship with the Trust Territory. Therefore, the FY 1988 data base was used as the basis for the FY 1989 allocation. The above data are the most recent satisfactory data available at this time. The allotments are set forth below.

FISCAL YEAR 1989 FEDERAL ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Basic support	Reallotment	Revised allotment
Total	$56,401,000		$58,401,000
Alabama	1,189,911	4,161	1,194,072
Alaska	300,000	1,049	301,049
Arizona	674,847	2,360	677,207
Arkansas	681,340	2,382	683,722
California	4,732,564	16,550	4,749,114
Colorado	566,416	1,981	568,397
Connecticut	594,275	2,078	596,353
Delaware	300,000	1,049	310,049
District of Columbia	300,000	1,049	301,049
Florida	2,339,852	8,181	2,348,033
Georgia	1,455,746	5,090	1,460,835
Hawaii	300,000	1,049	301,049
Idaho	300,000	1,049	301,049
Illinois	2,377,602	8,313	2,385,915
Indiana	1,333,059	4,661	1,337,720
Iowa	721,810	2,524	724,334
Kansas	525,717	1,838	527,555
Kentucky	1,120,998	3,920	1,124,918
Louisiana	1,225,722	4,286	1,230,008
Maine	313,042	1,095	314,137
Maryland	838,540	2,932	841,472
Massachusetts	1,168,696	4,086	1,172,782
Michigan	2,121,598	7,418	2,129,016
Minnestoa	901,214	3,151	904,365
Mississippi	860,813	3,010	863,833
Missouri	1,201,187	4,200	1,205,387
Montana	300,000	1,049	301,049
Nebraska	368,948	1,290	370,238
Nevada	300,000	1,049	301,049
New Hampshire	300,000	1,049	301,049
New Jersey	1,397,951	4,888	1,402,839
New Mexico	369,368	1,292	370,660
New York	3,740,283	13,078	3,753,361
North Carolina	1,655,421	5,788	1,661,209
North Dakota	300,000	1,049	301,049
Ohio	2,573,903	9,000	2,582,903
Oklahoma	782,660	2,737	785,397
Oregon	588,689	2,058	590,747
Pennsylvania	2,866,449	10,026	2,876,472
Rhode Island	300,000	1,049	301,049
South Carolina	941,523	3,292	944,815
South Dakota	300,000	1,049	301,049
Tennessee	1,308,782	4,576	1,313,358
Texas	3,442,524	12,037	3,454,561
Utah	416,435	1,456	417,891
Vermont	300,000	1,049	301,049
Virginia	1,225,515	4,285	1,229,800
Washington	873,633	3,055	876,688
West Virginia	669,412	2,341	671,753
Wisconsin	1,147,336	4,012	1,151,348
Wyoming	300,000	1,049	301,049
Puerto Rico	2,250,287	7,868	2,258,155
American Samoa	160,000	559	160,559
Guam	160,000	559	160,559
No. Mariana Islands	160,000	559	160,559
Trust Territories*	296,923	−203,166	93,757
Virgin Islands	160,000	559	160,559

FISCAL YEAR 1989 FEDERAL ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Basic support	Reallotment	Revised allotment
*Trust Territories consist of:			
Palau	40,008		40,008
Micronesia	163,713	−129,478	34,235
Marshall Islands	93,172	−73,688	19,484

	Protection and Advocacy	Reallotment	Revised allotment
Total	$19,148,000		$19,148,000
Alabama	351,106	1,322	352,428
Alaska	185,250	698	185,948
Arizona	217,160	818	217,978
Arkansas	201,138	757	201,895
California	1,398,326	5,255	1,403,581
Colorado	194,756	733	195,489
Connecticut	194,555	733	195,288
Delaware	185,250	698	185,948
District of Columbia	185,250	698	185,948
Florida	691,458	2,604	694,062
Georgia	429,769	1,618	431,387
Hawaii	185,250	698	185,948
Idaho	185,250	698	185,948
Illinois	701,824	2,643	704,467
Indiana	393,536	1,482	395,018
Iowa	212,956	802	213,758
Kansas	185,250	698	185,948
Kentucky	330,672	1,245	331,917
Louisiana	361,832	1,362	363,194
Maine	185,250	698	185,948
Maryland	247,582	932	248,514
Massachusetts	344,674	1,298	345,972
Michigan	625,850	2,357	628,207
Minnesota	266,038	1,002	267,040
Mississippi	254,096	957	255,053
Missouri	354,493	1,335	355,828
Montana	185,250	698	185,948
Nebraska	185,250	698	185,948
Nevada	185,250	698	185,948
New Hampshire	185,250	698	185,948
New Jersey	412,427	1,553	413,980
New Mexico	185,250	698	185,948
New York	1,102,855	4,153	1,107,008
North Carolina	488,628	1,840	490,468
North Dakota	185,250	698	185,948
Ohio	759,423	2,860	762,283
Oklahoma	231,206	871	232,077
Oregon	188,735	711	189,446
Pennsylvania	845,499	3,184	848,683
Rhode Island	185,250	698	185,948
South Carolina	277,978	1,047	279,025
South Dakota	185,250	698	185,948
Tennessee	386,281	1,455	387,736
Texas	1,017,515	3,831	1,021,346
Utah	185,250	698	185,948
Vermont	185,250	698	185,948
Virginia	361,730	1,362	363,092
Washington	258,170	972	259,142
West Virginia	207,521	781	208,302
Wisconsin	338,527	1,275	339,802
Wyoming	185,250	698	185,948
Puerto Rico	684,723	2,503	687,226
American Samoa	98,800	372	99,172
Guam	98,800	372	99,172
No. Mariana Islands	98,800	372	99,172
Trust Territories*	105,263	−71,705	33,558
Virgin Islands	98,800	372	99,172
*Trust Territories consist of:			
Palau	16,738		16,738
Micronesia	58,038	−47,011	11,027
Marshall Islands	30,487	−24,694	5,793

Dated: March 18, 1988.

Carolyn Doppelt Gram,

Commissioner, Administration on Development Disabilities.

Approved: March 23, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-6908 Filed 3-29-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-10; C-45714]

Hearing on Withdrawal; Aspen Mountain Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on a pending Forest Service withdrawal application. This hearing will provide the opportunity for public involvement in the proposed withdrawal of National Forest System land for the protection of recreational values near Aspen, Colorado. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on May 12, 1988, at 7:00 p.m. All comments or requests to be heard should be made by close of business on April 27, 1988, to the Colorado State Office, Bureau of Land Management.

HEARING ADDRESS: Given Institute, 100 E. Francis, Aspen, Colorado 81611.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Aspen Mountain Ski Area which was published June 30, 1987 (52 FR 24348), is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.

This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, by April 27, 1988.

Richard D. Tate,

Acting Chief, Branch of Adjudication.

[FR Doc. 88-6916 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-725449

Applicant: Ron Surratt, Granbury, TX

The applicant requests a permit to export one male and one female captive born orangutan *(Pongo pygmaeus)* to the Guadalajara Zoo, Guadalajara, Jalisco, Mexico, for the purpose of conservation education and display.

PRT-725942

Applicant: Dr. John C. Avise, Athens, GA

The applicant requests a permit to take (collect and sacrifice) up to six Cape Sable seaside sparrows *(Ammoldrams (=Ammospiza) maritimus mirabilis)* from the Everglades National Park, Florida for the purpose of scientific research. The applicant will conduct genetic studies at the University of Georgia designed to aide in management decisions for this species.

PRT-725727

Applicant: Assistant Regional Director—Fish & Wildlife Enhancement, U.S. Fish and Wildlife Service, Portland, OR

The applicant requests a permit to experimentally release and recapture up to 24 captive-hatched female Andean condors *(Vultur gryphus)* in Ventura County, California to: (1) Refine release techniques for condors in the California environment and for the future re-introduction of Andean condors to their native habitat in South America; (2) test current condor rearing protocols; (3) train a team and develop protocols for the eventual release of captive-reared California condors; and (4) provide information relevant to the recovery of the California and Andean condors. All condors released will be tagged prior to releasing and will be recaptured periodically for replacement of transmitters, physical examinations, and to obtain blood samples. All Andean condors will be removed from the study area at the end of the experimental release study, approximately four years from the commencement date. As a last resort after all non-lethal capture techniques have failed, leathal means of removal may be considered if the existence of Andean condors in the wild is preventing the release of captive-reared California condors or jeopardizing other native species.

PRT-726028

Applicant: Woodland Park Zoo, Seattle, WA

The applicant requests a permit to import one captive-born female jaguar *(Panthera onca)* from Jardin Zooloqique de Grandy, Grandy, Canada to pair with a male jaguar now at Woodland Park Zoo for the enhancement of propagation.

PRT-726207

Applicant: Carol Philips, Gibsonton, FL

The applicant requests a permit to export, reimport and reexport three female grey wolves *(Canis lupus)* for exhibition in a manner designed to educate the public about the ecological role and conservation needs of the species and thereby enhancing the propagation or survival of the species.

PRT-725918

Applicant: The Peregrine Fund, Inc., Ithaca, NY

The applicant requests a permit to import from Mauritius up to 50 whole blood samples (each sample .5 ml or less) from captive and wild specimens of Mauritius kestrals *(Falco punctatus)* for genetic analysis to determine relationships betwen individual specimens thereby facilitating captive-breeding efforts.

PRT-726034

Applicant: Woodland Park Zoo, Seattle, WA

The applicant requests a permit to reexport one wild born male Brazilian tapir *(Tapirus terrestris)* to Metropolitan Toronto Zoo, Toronto, Canada. This specimen was imported by Woodland Park Zoo in 1978 on a breeding loan and now is being returned.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 303, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriae PRT number when submitting comments.

Date: March 24, 1988.

Larry La Rochelle,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-6911 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726229

Applicant: Toledo Zoological Gardens, Toledo, Ohio

The applicant requests a permit to import and then reexport one female and one male giant panda (Ailuropoda melancleuca) that have been held in captivity since 1978, from the Ministry of Forestry, Beijing, China for the purpose of exhibition and conservation education.

Documents and other information submitted with this application are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: March 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-6912 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-55-M

Intent to Prepare an Amendment to the Environmental Impact Statement for the Wilderness Review of the Alaska Peninsula National Wildlife Refuge

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an amendment to the Environmental Impact Statement for the Wilderness Review of the Alaska Peninsula National Wildlife Refuge in southwest Alaska. A public hearing regarding preparation of this amendment and the Environmental Impact Statement will be held. This notice is being furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement. Comments and participation in this scoping process are solicited.

DATE: Written comments on issues and concerns should be received by May 16, 1988.

A public hearing regarding the amendment to the Environmental Impact Statement on Wilderness Review will be held in the large conference room, U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road, Anchorage, Alaska, 7:00 p.m., April 29, 1988.

ADDRESS: Comments should be addressed to: Regional Director, Attn: Bill Knauer, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, Resource Support, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: This amendment to the Environmental Impact Statement for the Wilderness Review is being prepared to fulfill requirements of the Wilderness Act of 1964 and the Alaska National Interest Lands Conservation Act of 1980. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4371 et seq.] Council of Environmental Quality Regulations [40 CFR Parts 1500 through 1508], other appropriate Federal regulations, and Fish and Wildlife Service procedures for compliance with those regulations.

We estimate that the draft amendment will be made available to the public by August 1988.

Dated: March 21, 1988.

John P. Rogers,

Acting Regional Director.

[FR Doc. 88-6896 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-55-M

Intent to Prepare an Amendment to the Environmental Impact Statement for the Wilderness Review of the Becharof National Wildlife Refuge

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an amendment to the Environmental Impact Statement for the Wilderness Review of the Becharof National Wildlife Refuge in southwest Alaska. A public hearing regarding preparation of this amendment and the Environmental Impact Statement will be held. This notice is being furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public of the scope of issues to be addressed in the Environmental Impact Statement. Comments and participation in this scoping process are solicited.

DATES: Written comments on issues and concerns should be received by May 16, 1988.

A public hearing regarding the amendment to the Environmental Impact Statement on Wilderness Review will be held in the large conference room, U.S. Fish and Wildlife Service Regional Office, 1011 E. Tudor Road, Anchorage, Alaska, 7:00 p.m., April 29, 1988.

ADDRESS: Comments should be addressed to: Regional Director, Attn: Bill Knauer, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, Resource Support, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: This amendment to the Environmental Impact Statement for the Wilderness Review is being prepared to fulfill requirements of the Wilderness Act of 1964 and the Alaska National Interest Lands Conservation Act of 1980. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4371 et seq.]. Council of Environmental Quality Regulations [40 CFR Parts 1500 through 1508], other appropriate Federal regulations, and Fish and Wildlife Service procedures for compliance with those regulations.

We estimate that the draft amendment will be made available to the public by August 1988

Date: March 21, 1988

John P. Rogers,

Acting Regional Director

[FR Doc. 88-6897 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

[DES 88-16]

Gulf of Mexico Outer Continental Shelf Region; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings Regarding Proposed Central and Western Gulf of Mexico Oil and Gas Lease Sales 118 and 122

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf (OCS) oil and gas lease sales of available unleased blocks in the central and western Gulf of Mexico. The proposed Central Gulf Sale 118 will offer for lease approximately 33.5 million acres, and the Western Gulf Sale 122 will offer approximately 27.9 million acres. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

Copies of the draft EIS will be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; Texas State Library, U.S. Documents Section, Austin, Texas; Texas A&M University, Documents Division, Evans Library, College Station, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, Austin, Texas; University of Texas at Dallas, University Library, Richardson, Texas; Lamar University, Gray Library, Beaumont, Texas; Texas Tech University, Law Library, Lubbock, Texas; East Texas State University, University Library, Commerce, Texas; Stephen F. Austin State University, Steen Library, Nacogdoches, Texas; University of Texas, General Libraries/Documents, Austin, Texas; Baylor University Library, Documents Department, Waco, Texas; University of Texas at Arlington, Library Documents, Arlington, Texas; University of Houston-University Park, Library Documents Unit, 4800 Calhoun Boulevard, Houston, Texas; University of Texas at El Paso, Library Documents Division, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, Abilene, Texas; Texas Tech University Library, Lubbock, Texas; University of Texas at San Antonio, University Library, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, Documents Department, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Ruston, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State University, Nicholls State Library, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi; Auburn University at Montgomery, University Library, Montgomery, Alabama; University of Alabama Libraries, Government Documents, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; University of Florida Libraries, Documents Department, Gainesville, Florida; Florida A&M University, Coleman Memorial Library, Tallahassee, Florida; Florida Atlantic University, University Library, Division of Public Documents, Boca Raton, Florida; University of Miami Library, Government Publications, Miami, Florida; University of Florida, Holland Law Center Library, Legal Information Center, Gainesville, Florida; Peterson Public Library, 3745 Ninth Avenue, North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 N.W. Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 900 North Ashley Street, Tampa, Florida.

In accordance with 30 CFR 256.20, two public hearings pertaining to these lease sales will be held at the following locations and times: Minerals Management Service, Gulf of Mexico Region, Conference Room No. 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, on April 26, 1988, at 9 a.m.; and Corpus Christi State University, The Student Center, Conference Room No. 2, 6300 Ocean Drive, Corpus Christi, Texas 78412, on April 28, 1988, at 9 a.m. The purpose of these public hearings is to provide the Department of the Interior and the MMS with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 118 and 112.

Persons who wish to testify at these hearings are requested to contact the Regional Supervisor, Leasing and Environment (LE-2), Gulf of Mexico Region, at the above address, or by telephone (504) 736-2865, no later than 3:30 p.m., April 27, 1988. Others may have an opportunity to speak following testimony of those who have made arrangements in advance, if time permits.

Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which will be considered as part of the hearing record. Those unable to attend the hearing may submit written statements until the close of the comment period, May 16, 1988. Written statements receive the same degree of consideration in the final EIS as oral testimony presented at the hearing.

John B. Rigg,

Associate Director for Offshore Minerals Management.

Dated: March 24, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-6678 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chattahoochee River National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service, Interior. Chattahoochee River National Recreation Area.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 4:00 p.m. at the following location and date.

DATE: May 17, 1988.

ADDRESS: The Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394–7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of lands to be acquired within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Delouris J. West
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Ms. Linda Jo D. Mitchell
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins

Introductory meeting will include discussion of Commission Charter, sharing information on the Chattahoochee River National Recreation Area and discussion of current issues. Also, discussion of the selection of a chairperson.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: March 17, 1988.

Frank Catroppe,

Acting Regional Director, Southeast Region.

[FR Doc. 88-6941 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-70-M

Record of Decision; Grant Grove/Redwood Mountain Development Concept Plan; Sequoia-Kings Canyon National Parks Fresno County, CA

Decision

The selected alternative, Alternative 1, for future development and use at Grant Grove and Redwood Mountain, Sequoia-Kings Canyon National Parks, will expand and upgrade overnight accommodations at Grant Grove and provide additions and improvements to other visitor facilities and to National Park Service and concessioner support facilities in the area. The plan to be implemented provides for rehabilitation of some existing overnight units and construction of additional one and two story structures. These will provide for current and projected accommodation demands in the area plus the needs of winter visitors and tour groups. All accommodations will be more removed from the Grant Grove Meadow. The plan also involves relocating visitor support and other commercial facilities away from Grant Grove Meadow; consolidating and upgrading employee housing; expanding administrative and maintenance space; and improving access; circulation and visitor facilities at several critical sites. Redwood Mountain will remain essentially undeveloped.

Alternatives considered

The following alternatives were considered during the project development and environmental analysis. See pages 12 to 33 in the draft EIS and page 1, under *ERRATA*, in the final EIS for more information.

Alternative 1. The selected alternative as described above except for Redwood Mountain for which improvement proposals were minimized in the final EIS.

Alternative 2. No action except for minimum requirements for health and safety.

Alternative 3. Combine all overnight facilities into a single hotel and other support facilities such as gas station, laundry, market, post office, deli and gift shop into a single facility.

Alternative 4. Provide a significant expansion of overnight facilities in a combination of a hotel and detached lodging units. Support facilities would be as described for Alternative 3.

Two other alternatives were considered but rejected. These included elimination of overnight accommodations from Grant Grove and the replacement of existing accommodations without expansion. These were rejected due to the lack of substitute accommodations within a reasonable distance, the location of Grant Grove in relation to several key park attractions, the historic use of Grant Grove for overnight lodging, and the fact that the existing accommodations are at or near capacity with the area becoming increasingly popular for winter use.

Basis for Decision

The Development Concept Plan for Grant Grove/Redwood Mountain is in accord with the management objectives stated in the 1971 *Master Plan* for Sequoia-Kings Canyon National Parks. Implementation of the selected alternative will allow an increase in the number of overnight accommodations at Grant Grove, now at or near capacity, while preserving the rustic nature of the area. Impact on the Grant Grove Meadow, one of the prime natural resources of the area, will be reduced by removing some of the overnight accommodations and most of the visitor support facilities from the immediate vicinity of the meadow. In response to concerns raised in the public review of the draft EIS, improvements in the Redwood Mountain area will be confined to upgrading the comfort station and wastewater treatment to the degree necessary to eliminate potential public health problems. Otherwise, the area will remain in its existing condition. As compared with the other alternatives evaluated in the draft EIS, the selected alternative provides the best balance of providing the needed visitor services with retention of the overall natural character of the affected area of the park.

Measures to Minimize Harm

The following measures have been incorporated into the plan to reduce the impacts of construction of the new visitor service and support facilities in the Grant Grove/Redwood Mountain area.

1. Extensive criteria have been developed to guide the removal of trees in the path of construction and those trees which will pose a hazard to the new development. The criteria also provide measures for the protection of "leave" trees, and the minimization of size and number of skid trails.

2. To reduce the impact on finite water supplies in the area, water conservation and management measures, including the installation of low flow fixtures and supplementation with outside supplies during critical dry periods, have been adopted.

3. Disturbed areas not otherwise occupied by new construction will be revegetated with native species from park sources. Pathways and areas surrounding use sites will be delineated to minimize new "cross-country" use by vistors and its associated impact.

4. The Grant Grove Meadow and Giant Sequoias will be closely monitored during construction for unanticipated impacts. If these occur, necessary modifications will be made in the plan to negate such impacts.

Monitoring or Enforcement Program

An impact/mitigation matrix has been prepared to guide the construction specifications for the project and to assist in monitoring the implementation phase to ensure that the prescribed mitigation is carried out. The matrix identifies each expected impact of the project with its prescribed mitigation measure(s) and parties responsible for implementation.

Conclusion

The above factors and considerations justify the selection of Alternative 1, identified as the preferred alternative in the draft EIS, and as modified in the final EIS, for the Grant Grove/Redwood Mountain Development Concept Plan, Sequoia-Kings Canyon National Park, Fresno County, California.

Approved:

Date: March 16, 1988.

Stanley T. Albright,

Regional Director, Western Region, National Park Service.

[FR Doc. 88-6940 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-70-M

[A18 (GUIS-S)]

Gulf Islands National Seashore; Advisory Commission Meeting

March 7, 1988.

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 10:00 a.m., at the following location and date.

DATE: May 14, 1988.

ADDRESS: Visitor Center and Administration Building, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32561.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Eubanks, Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561, Telephone: (904) 934–2604.

SUPPLEMENTARY INFORMATION: The purpose of the Gulf Islands National Seashore Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and development of Gulf Islands National Seashore. The members of the Advisory Commission are as follows:.

Mrs. Courtney Blossman, Chairman (Mississippi)
Mr. Gorden D. Allen (Mississippi)
Mr. George Byars (Mississippi)
Mr. Lloyd Caillavet (Mississippi)
Dr. Ed Cake (Mississippi)
Mr. William H. Creel, Sr. (Mississippi)
Mr. Bill Davis (Mississippi)
Mr. Paul Delcambre, Sr. (Mississippi)
Ms. Betty S. Goodwin (Mississippi)
Mrs. Leewynn Hodges (Mississippi)
Mrs. Sara McGehee (Mississippi)
Mr. James E. Walker, Sr. (Mississippi)
Mrs. Lois Anderson (Florida)
Mr. Sherman Barnes (Florida)
Mr. J. Earle Bowden (Florida)
Mr. Lamar B. Cobb (Florida)
Mr. Paul A. Daniel (Florida)
Mrs. Betty Gerritz (Florida)
Mr. Michael Mitchell (Florida)
Mrs. Dianne Rittenhouse (Florida)
Mr. Roger Taylor Robinson (Florida)
Mr. Walter Francis Spence (Florida)
Mr. Britton Stamps (Florida)
Mr. Vince Whibbs (Florida)

The matters to be discussed at this meeting will include:

5(1) Status of Park Activities
(2) Review of Naval Live Oaks facilities
(3) Report on Resource Management Activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and it is expected that not more than 25 persons will be able to attend. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: March 17, 1988.

Frank Catroppe,

Acting Regional Director, Southeast Region.

[FR Doc. 88-6942 Filed 3-29-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[332-253]

Competitive Conditions in the U.S. Market for Asparagus, Broccoli, and Cauliflower

AGENCY: International Trade Commission .

ACTION: Notice of time and place of public hearing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Ingearsoll (202–252–1309) or Timothy P. McCarty (202–252–1324), Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1988, the Commission instituted the subject investigation and announced that a public hearing would be held at a time and place to be announced (53 FR 5474, Feb. 24, 1988). The public hearing is scheduled to begin at 9:30 a.m., Pacific Daylight Time, Tuesday, May 17, 1988, at the Monterey Sheraton, 350 Calle Principal, Monterey, California 93940. All persons shall have the right to appear in person or by counsel, to present information and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon, May 6, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 25, 1988.

[FR Doc. 88-6967 Filed 3-29-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–379 and 380 (Final)]

Certain Brass Sheet and Strip From Japan and The Netherlands

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–252–1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: Effective February 1 (Japan) and February 8 (Netherlands), 1988, the Commission instituted the subject investigations and established a schedule for their conduct (53 FR 5474, February 24, 1988).

Subsequently, the Department of Commerce extended the dates for its final determinations in the investigations from April 11 (Japan) and April 18 (Netherlands), 1988, to June 15 (Japan and the Netherlands), 1988 (53 FR 5207, February 22, 1988; and 53 FR 7771, March 10, 1988). The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than June 15, 1988; the public version of the prehearing staff report will be placed on the public record on June 14, 1988; the prehearing conference will be held in room 101 of the U.S. International Trade Commission Building on June 23, 1988, at 9:30 a.m.; the deadline for filing prehearing briefs is June 24, 1988; the hearing will be held in room 101 of the U.S. International Trade Commission Building on June 28, 1988, beginning at 9:30 a.m.; and the deadline for filing all other written submissions, including posthearing briefs, is July 6, 1988.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 22, 1988.

[FR Doc. 88-6965 Filed 3-29-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-278]

Certain Programmable Digital Clock Thermostats; Commission Decision Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of respondent Jameson Home Products, Inc. on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administrative law judge (ALJ) terminating respondent Jameson Home Products, Inc. from the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: George W. Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

SUPPLEMENTARY INFORMATION: On March 3, 1988, the presiding ALJ issued an ID terminating the investigation with respect to Jameson Home Products, Inc. The ID granted the joint motion of complainant Emerson Electric Co. and Jameson Home Products, Inc. to terminate the investigation with respect to Jameson on the basis of a settlement agreement. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 24, 1988.

[FR Doc. 88-6966 Filed 3-29-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31242]

CSX Transportation, Inc.—Exemption—Trackage Rights—Consolidated Rail Corp.; Notice of Exemption

Consolidated Rail Corporation has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost 46.2 at Crawfordsville, IN and milepost 0.4 at Indianapolis, IN, a distance of approximately 45.8 miles. The trackage rights became effective on March 18, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 17, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6547 Filed 3-29-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 224X)]

CSX Transportation, Inc.—Abandonment—Near Broadway Street, North Baltimore in Wood County, OH

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of approximately 0.53-miles of track in Wood County, OH, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this

exemption will be effective on April 29, 1988. Petitions to stay must be filed by April 14, 1988, and petitions for reconsideration must be filed by April 25, 1988. Formal expressions of an intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by April 11, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 224X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6913 Filed 3-29-88; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Managment and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Revision
Bureau/Office: Office of Proceedings
Title of Form: Small carrier transfer application

OMB Form No.: 3120-0025
Agency Form No.: OP-FC-1
Frequency: Non-recurring
Respondents: Regulated motor carrers of property
No. of Respondents: 700
Total Burden Hrs.: 4200
Brief Description of the need & proposed use: Data is required for Commission approval of mergers or transfers of motor passenger carrier operating authority between carriers with annual interstate transportation revenues not exceeding $2 million, transfers of such motor authority to non-carriers, and transfers of property broker authority.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6736 Filed 3-29-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 20, 1988, McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 29, 1988.

Dated: March 23, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-6863 Filed 3-29-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Arizona State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator-OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and the adoption of Subpart CC to Part 1952 containing the decision.

The Arizona plan provides for the adoption of Federal standards as State standards after public hearing. In response to Federal Standard changes, the State has submitted its changes by letter, with attachments, dated October 8, 1987, from Tim Arbogast, Director, to Frank Strasheim, Regional Administrator, and incorporated as part of the plan. The state standards reflect Federal standard changes to 29 CFR 1910.1001 and 29 CFR 1926.58, Asbestos, Tremolite, Anthophyllite, and Actinolite (June 20, 1986, 51 FR 22612); 29 CFR Part 1926, Subpart K, Electrical Standards for Construction, 51 FR 25294); 29 CFR 1910.145 Accident Prevention Tags (September 19, 1986, 51 FR 33251); 29 CFR Parts 1910 and 1915 Recordkeeping Requirements for Tests, Inspection, and Maintenance Checks (September 29, 1986, 51 FR 34552); and 29 CFR 1910.1200, Hazard Communications—Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses (September 30, 1986, 51 FR 34590).

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[1] See *Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2D 164 (198), and final rules published in the **Federal Register** on December 22, 1987 (52 F.R. 48440).

These standards are contained in the Arizona Occupational Safety and Health Standards, and the Construction Industry Standards, which were adopted after public hearings and the resolution adopted by the Industrial Commission of Arizona consistent with their authority under the Arizona Occupational Safety and Health Act of 1972.

2. Decision.

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Fourth Floor, San Francisco, California 94105; and Director, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, AZ 85007; and Directorate of Federal/State Operations, Room 3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Arizona plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective March 30, 1988.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 4th day of December 1987.

Frank Strasheim,

Regional Administrator.

[FR Doc. 88-6924 Filed 3-29-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Establishment of Advisory Committee

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the establishment of the Qualifications Review Panel for the Position of Director, Gerald R. Ford Library. The Archivist of the United States has determined that establishment of this advisory committee is in the public interest.

The Committee will solicit and review personal resumes of candidates for the position of Director of the Gerald R. Ford Library and recommend to the Archivist of the United States those applicants considered to be best qualified for final consideration in accordance with formal personnel procedures.

Dated: March 25, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-7013 Filed 3-29-88; 8:45 am]

BILLING CODE 7515-01-M

Establishment of Advisory Committee

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the establishment of the Advisory Committee on Presidential Libraries. The Archivist of the United States has determined that establishment of this advisory committee is in the public interest.

The Committee will provide ongoing advice to the National Archives and Records Administration on its Presidential library programs.

Dated: March 25, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-7014 Filed 3-29-88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given of a public meeting and a closed executive session (pursuant to 5 U.S.C. App. I, section 10(d)) of the National Commission for Employment Policy at the Radisson Hotel San Jose, 1471 North 4th Street, San Jose, California 95112.

DATE: Thursday, April 28, 1988, 8:00 a.m. to 5:00 p.m.

STATUS: The meeting is open to the public with the exception of the executive session.

MATTERS TO BE DISCUSSED: During the public meeting, the Commission members will discuss progress on the research agenda, budget and administrative matters, and legislative and governmental affairs. During the executive session the Commission members will discuss matters solely related to the internal personnel rules and practices of the Commission. Such issues are considered routine administrative matters, of no significance to the public. In addition, the session is closed in order to protect information of a personal nature, which if disclosed could constitute an unwarranted invasion of personal privacy.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara McQuown, Director, National Commission for Employment Policy, 1522 K St. N.W., Suite 300, Washington, DC 20005, 202-724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accomodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW., Suite 300, Washington, DC 20005.

Signed this 24th day of March, 1988.

Barbara McQuown,

Director.

[FR Doc. 88-6925 Filed 3-29-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions Boundary Changes of National Labor Relations Board Regional Offices

AGENCY: National Labor Relations Board.

ACTION: Notice of reorganization of regional offices.

SUMMARY: The National Labor Relations Board is reorganizing the territorial areas covered by, and the structure of, some of its Regional Offices. The Board previously published its proposed changes to the structure and boundaries of some of its Regional Offices in the **Federal Register** and received comments. Following consideration of those comments, the Board is now publishing the revised portion of its Statement of Organization and Functions in final form.

EFFECTIVE DATE: May 29, 1988.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Following an examination of its field organization to determine whether existing Regional Office structure and Regional Office boundaries permit those offices to process cases as efficiently and economically as possible, the Board published in the **Federal Register** proposed changes to the organization and boundaries of some of its Regional Offices, 52 FR 12271-12273 (April 15, 1987).

The Board received 61 comments to its proposed Regional Office changes. Some comments favored specific changes, while other comments objected to specific changes. The comments were fully considered. The Board, for the most part, did not find that the comments which objected to specific changes outweighed the economies and increased efficiencies that would be achieved. The Board found that the adjustments in the boundaries of its Regional Offices are necessary so that geographic areas can be served by the closest Regional or Resident Office, thereby reducing travel, overnight lodging expenses, and staff time spent in transit. In other offices, in addition to conserving resources, an adjustment is warranted to ensure that sufficient work is allocated to each field office. Finally, one Regional Office, Region 23, is being reorganized as a resident office because of insufficient case intake to warrant the office's present structure.

The changes are specifically set forth by each affected Regional Office in the publication of the proposed changes in the **Federal Register** (52 FR 12272-12273). The only revisions that have been made to the proposed changes are as follows.

Region 28, Phoenix—The El Paso Resident Office will not be closed.

Region 21, Los Angeles—The boundary in Los Angeles City and Los Angeles County for Region 21 will be redefined as "that portion of Los Angeles County lying east of Harbor Freeway and Gaffey Street, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30)."

Region 31, Los Angeles—The boundary in Los Angeles City and Los Angeles County for Region 31 will be redefined as "that portion of Los Angeles County lying west of Harbor Freeway and Gaffey Street, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30)."

The description of the changes in the boundaries of the Regional Offices in the proposed notice of reorganization are, in other respects, unchanged.

Cases which are pending as of the effective date of this new organization of Regional Offices will remain in the Regional Office in which they were originally filed for further processing unless the parties to a specific case are advised otherwise by an order transfering the case. Cases which are pending in Region 23, Houston, immediately prior to the effective date of this new organization of Regional Offices will automatically come under the authority of Region 16, Fort Worth as of the effective date of this notice.

The organization of Regional and Subregional offices was last published at 44 FR 34215-20 (June 14, 1979). The Board is publishing the areas served by Regional and Subregional Offices in their entirety because of the number of changes made to the boundaries and the age of the last publication.

Accordingly, the boundaries of the Agency's Regional and Subregional Offices are as follows:

Areas Served by Regional and Subregional Offices (Listed in Numerical Order Except That Subregions Appear Directly Under Respective Regions)

Region 1, Boston, Massachusetts—Services Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island.

Subregion 39, Hartford, Connecticut—Services Connecticut.

Region 2, New York, New York—In New York, services the boroughs of Manhattan and the Bronx, in New York City; and Orange, Putnam, Rockland, and Westchester Counties.

Region 3, Buffalo, New York—Services all New York State Counties except the New York City metropolitan area counties serviced by Regions 2 and 29.

Persons may also obtain service at the Resident Office located in Albany, New York.

Region 4, Philadelphia, Pennsylvania—In Pennsylvania, services Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, and Wyoming Counties; in New Jersey, services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties; and in Delaware, services New Castle County.

Region 5, Baltimore, Maryland—Services Maryland and the District of Columbia; in Delaware, services Kent and Sussex Counties; in Pennsylvania, services Adams, Cumberland, Franklin, and York Counties; in Virginia, services Accomack, Albemarle, Amelia, Arlington, Augusta, Brunswick, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Madison, Mathews, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York Counties, and the independently incorporated Virginia cities, not part of, but located within or adjacent to, the territory defined by these Virginia counties; and in West Virginia, services Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton Counties.

Persons may also obtain service at the Resident Office located in Washington, DC.

Region 6, Pittsburgh, Pennsylvania—In Pennsylvania, services Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Fulton,

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Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland Counties; and in West Virginia, services Barbour, Braxton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, and Wood Counties.

Region 7, Detroit, Michigan—In Michigan, services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Macomb, Manistee, Mason, Mecoste, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties.

Persons may also obtain service at the Resident Office located in Grand Rapids, Michigan.

Region 8, Cleveland, Ohio—In Ohio, services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Washington, Wayne, Williams, Wood, and Wyandot Counties.

Region 9, Cincinnati, Ohio—In Ohio, services Adams, Athens, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Mercer, Miami, Montgomery, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Vinton, and Warren Counties; in Indiana, services Clark, Dearborn, and Floyd Counties; and in West Virginia, services Boone, Cabell, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mingo, Nicholas, Putnam, Raleigh, Roane, Wayne, and Wyoming Counties; and in Kentucky, services Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Bullitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gellatin, Garrard, Grant, Greenup, Hardin, Harlan, Harrison, Henry, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Marion, Martin, Mason, Meade, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Spencer, Taylor, Trimble, Washington, Whitley, Wolfe, and Woodford Counties.

Region 10, Atlanta, Georgia—In Georgia, services Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, De Kalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lee, Liberty, Lincoln, Long, Lumpkin, McDuffie, McIntosh, Macon, Madison, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Stewart, Sumter Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth Counties; in Tennessee, services Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicol, Union, and Washington Counties; and in Alabama, services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties.

Persons may also obtain service at the Resident Office in Birmingham, Alabama.

Region 11, Winston-Salem, North Carolina—Services North Carolina and South Carolina. In Tennessee, services the city of Bristol in Sullivan County. In Virginia, services Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe Counties, and the independently incorporated Virginia cities, not part of, but located within or adjacent to, the territory defined by these Virginia counties; in West Virginia, services Greenbriar, Mercer, Monroe, and Summers Counties.

Region 12, Tampa, Florida—In Florida, services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla Counties; and in Georgia, services Appling, Atkinson, Bacon, Brantley, Brooks, Camden, Charlton, Clinch, Coffee, Davis, Decatur, Echols, Glynn, Grady, Jeff, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne Counties.

Persons may also obtain service at the Resident Offices in Miami and Jacksonville, Florida.

Region 13, Chicago, Illinois—Services Cook, Du Page, Kane, Lake and Will Counties in Illinois, and Lake County in Indiana.

Region 14, St. Louis, Missouri—In Illinois, services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson Counties; and in

Missouri, services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties, and the Independent City of St. Louis.

Region 15, New Orleans, Louisiana—Services Louisiana. In Mississippi, services Adams, Amite, Caliborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in Alabama, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; and in Florida, services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties.

Region 16, Forth Worth, Texas—Services the entire State of Texas with the exception of El Paso, Culberson, and Hudspeth Counties. Services Miller County in Arkansas.

Persons may also obtain service at the resident offices located in Houston and San Antonio.

Region 17, Kansas City, Kansas—Services Oklahoma and Kansas. In Missouri, services Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingstone, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Randolph, Ray, St. Clair, Saline, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright Counties; in Iowa, services Fremont, Mills, and Pottawattamie; and in Nebraska, services Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Filmore, Franklin, Frontier, Furnas, Gage, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Knox, Lancaster, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platt, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties.

Persons may also obtain service at the Resident Office in Tulsa, Oklahoma.

Region 18, Minneapolis, Minnesota—Services North Dakota, South Dakota, and Minnesota. In Iowa, services Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmett, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright Counties; and in Wisconsin, services Ashland, Barron, Bayfield, Buffalo, Burnett, Chippeawa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn Counties.

Persons may also obtain service at the Resident Office located in Des Moines, Iowa.

Region 19, Seattle, Washington—Services Alaska and all counties in Washington except Clark. In Idaho, services Adams, Benewah, Bonner, Boundary, Clark, Clearwater, Custer, Fremont, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Shoshone, and Valley Counties; and in Montana, services Beverhead, Broadwater, Cascade, Deer Lodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Pondera, Powell, Revalli, Sanders, Silver Bow, Teton, and Toole Counties.

Subregion 36, Portland, Oregon—Services Oregon and Clark County in Washington.

Persons may also obtain service at the Resident Office located in Anchorage, Alaska.

Region 20, San Francisco, California—In California, services Butte, Colusa, Del norte, Glenn, Humboldt, Lake, Lasson, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties.

Subregion 37, Honolulu, Hawaii—Services Hawaii.

Region 21, Los Angeles, California—In California, services Imperial, Orange, Riverside, and San Diego, and that portion of Los Angeles County lying east of Harbor Freeway and Gaffey Street, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30).

Persons may also obtain service at the Resident Office located in San Diego, California.

Region 22, Newark, New Jersey—In New Jersey, services Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

Region 24, Hato Rey, Puerto Rico—Services Puerto Rico and the U.S. Virgin Islands.

Region 25, Indianapolis, Indiana—Services Indiana, with the exception of Lake, Clark, Dearborn, and Floyd Counties; and in Kentucky, services Daviess and Henderson Counties.

Region 26, Memphis, Tennessee—Services all of Arkansas except for Miller County. In Tennessee, services Bedford, Benton, Bledsoe, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Marion, McNairy, Macon, Madison, Marshall, Maury, Montgomery, Moore, Obion, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson Counties; in Mississippi, services Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha Counties; and in Kentucky, services Adair, Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster Counties.

Persons may also obtain service at the Resident Offices in Little Rock, Arkansas, and in Nashville, Tennessee.

Region 27, Denver, Colorado—Services Wyoming, Colorado, and Utah. In Nebraska, services Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux Counties; in Idaho, services Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington Counties; and in Montana, services Big Horn, Blaine, Garbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Gold Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties.

Region 28, Phoenix, Arizona—Services Arizona and New Mexico. In Texas, services Culberson, El Paso, and Hudspeth Counties; and in Nevada, services Nye, Lincoln, and Clark Counties.

Persons may also obtain service at the Resident Offices in Albuquerque, New Mexico; El Paso, Texas; and Las Vegas, Nevada.

Region 29, Brooklyn, New York—In New York, services the boroughs of Queens, Brooklyn and Statten Island in New York City; and Kings, Nassau, Queens, Richmond, and Suffolk Counties.

Region 30, Milwaukee, Wisconsin—In Wisconsin, services Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Wallworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood Counties; and in Michigan, services Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties.

Region 31, Los Angeles, California—In California, services Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties and that portion of Los Angeles County lying west of Harbor Freeway and Gaffey Street, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30).

Region 32, Oakland, California—In California, services Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne Counties; and in Nevada, services Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine Counties.

Region 33, Peoria, Illinois—In Illinois, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankaee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermillion, Warren, Whiteside, Winnebago, and Woodford Counties; and in Iowa, services Clinton, Des Moines, Dubuque, Jackson, Lee Muscatine, Scott, and Louisa Counties.

Dated, Washington, DC, 23 March 1988.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-6694 Filed 3-29-88; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-14 and NPF-22, issued to Pennsylvania Power & Light Company, (the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) relating to the required tolerance for diesel generator loading timers for Residual Heat Removal (RHR) pumps.

The proposed action is in accordance with the licensee's application for amendment dated October 15, 1987, as supplemented by a letter dated October 30, 1987.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the licensee adequate upper timer setpoint tolerance for the RHR pumps to be loaded to the emergency diesel generators.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revisions would allow the licensee to adjust upward (from +10% to +20%) the upper margin of the sequencing timer setpoint for the RHR pump loading on the diesel generator. The proposed changes to the timer setpoint will have a 0.5 second margin in the time window available for RHR pump loading. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no signficant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the

Federal Register on January 20, 1988 (53 FR 2554). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmenal impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Susquehanna Steam Electric Station, Units 1 and 2, dated June, 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For futher details with respect to this action, see the application for amendment dated October 15, 1987 and a supplement dated October 30, 1987 which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 24th day of March 1988.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-6922 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Babcock and Wilcox Reactor Plants (Rancho Seco); Cancelled Meeting

The Federal Register published Friday, March 18, 1988 (53 FR 9014) contained notice of a meeting of the ACRS Subcommittee on Babcock and Wilcox Reactor Plants (Rancho Seco) scheduled for April 6, 1988 has been cancelled.

Date: March 25, 1988.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 88-6968 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on April 27, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 27, 1988—8:30 a.m. until 1:00 p.m.

The Subcommittee will be briefed and discuss SECY-88-57, "Proposed Commission Policy Statement on the Professional Conduct of Nuclear Power Plant Operators."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 24, 1988.

M.W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-6969 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on April 26, 1988, Room 1046, 1717 H Street, NW, Washington, DC. The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Tuesday, April 26, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 24, 1988.

Morton W. Liberkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-6970 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Rancho Seco Nuclear Generating Station; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated August 26, 1986, filed by the Honorable Tom Bradley, Mayor of Los Angeles, California. The Petitioner asked the NRC to hold public hearings and to shut down Rancho Seco permanently. The basis given by Mayor Bradley for the petition were allegations that: (1) Rancho Seco is a twin of the Three Mile Island Reactor, (2) Rancho Seco has had a troubled operating record, (3) Rancho Seco has suffered nearly 100 unplanned outages including two severe overcooling incidents in 1985, and (4) Rancho Seco is plagued by poor management, inadequate training, and sloppy maintenance.

On September 29, 1986, the Director, Office of Inspection and Enforcement, acknowledged receipt of the Petition. He informed Mayor Bradley that the Petition would be treated under 10 CFR 2.206 of the Commission's regulations and that appropriate action would be taken in a reasonable time. In a letter dated December 15, 1986, Mr. Taylor informed Mayor Bradley that a response to his petition would be make prior to a restart decision but after the Staff evaluated corrective actions undertaken by the licensee.

The Director of the Office of Nuclear Reactor Regulation has now determined that the Petitioner's request should be denied for the reasons set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-88-5), which is available for inspection and copying in the Commission's Public Document Room, 1717 H Street NW., Washington DC 20555 and at the Local Public Document Room for the Rancho Seco Nuclear Generating Station located at the Sacramento City-County Library 828 I Street, Sacramento, California 95814.

A copy of the Decision will be filed with the Secretary of the Commission for its review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 22nd day of March 1988.

[FR Doc. 88-6923 Filed 3-29-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of the Services Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish the Services Policy Advisory Committee. This Committee will be rechartered pursuant to Section 135(c)(1) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1)), as amended; the Federal Advisory Committee Act (5 USC App. 1); Section 4(d) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 121888.

The Services Committee will advise, consult with, and make recommendations to the U.S. Trade Representative on policy issues related to trade in services.

The Committee will meet at irregular intervals at the call of the U.S. Trade Representative. The frequency of committee meetings will be approximately three or four times per year, depending upon the needs of the U.S. Trade Representative.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600—17th Street, NW., Room 103, Washington, DC 20506, (202) 395-6120.

Barbara W. North,

Director, Office of Private Sector Liaison.

[FR Doc. 6819 Filed 3-29-88; 8:45 am]

BILLING CODE 3190-01-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/State of Florida Department of Labor and Employment Security.

AGENCY: United States Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/State of Florida Department of Labor and Employment Security

SUMMARY: The Postal Inspection Service intends to conduct a matching program to identify any postal employees who are improperly receiving dual compensation through (1) receipt of unemployment or state workers' compensation benefits to which they are not entitled; (2) misuse of sick leave to work at a second job; or (3) receipt of continuation of pay under the workers' compensation program while employed at a second job. The State of Florida Department of Labor and Employment Security will act as the matching agency and compare its file of wage earners, recipients of unemployment insurance benefits, and recipients of workers' compensation benefits against the Postal Service's file of postal employees within the State of Florida.

DATE: The match is expected to begin in April 1988.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 8121, Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office (202) 268-5161.

SUPPLEMENTARY INFORMATION: An individual's entitlement to workers' compensation or unemployment insurance benefits is subject to certain qualification factors and a requirement to report any change in employment status. For example, a requirement of eligibility for unemployment compensation benefits is that the recipient be unemployed or be employed less than full time with earnings less than a certain amount, as defined by each state's employment security law. The goals of the planned match are to detect fraud and abuse in unemployment compensation and state injury compensation programs by: (1) Identifying any employees who are receiving state workers' compensation benefits and have not reported their postal employment; and (2) identifying individuals who are receiving unemployment insurance relating to current or former postal employment and have been reemployed by the Postal Service or another employer. Further, the leave and continuation of pay records of current postal employees identified as simultaneously employed at another job will be examined to determine if there is misuse of sick leave or abuse of the federal workers' compensation program to attend that job.

The match will be made under written agreement between the Postal Service and State of Florida Department of Labor and Employment Security.

Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Florida Department of Labor and Employment Security (F-DLES)

A. *Authority.* 39 U.S.C. 401, 404.

B. *Program Description.* Under the planned program, a computer tape containing social security account numbers (SSAN) of postal employees within the State of Florida (extracted from USPS Privacy System 050.020, Finance Records—Payroll System) will be hand-carried to the F-DLES by authorized USPS personnel who will remain at the site during the actual computer run. The USPS source tape will be considered to remain in the custody of the USPS while physically at the F-DLES and must be returned to waiting USPS personnel immediately upon completion of the run. The USPS source tape will be matched against F-DLES' file of (1) wage earners as reported by Florida State employers, (2) recipients of unemployment insurance, and (3) recipients of workers' compensation through the State of Florida. For individuals common to matched files (i.e. "hits"), the F-DLES will provide the USPS with name, SSAN, date of birth, employer name and address (for matches conducted to determine unreported source of wages), and wage information related to that employment. Follow-up on hits will be conducted by the Postal Inspection Service and will include a review of USPS payroll records, checks with employers reporting payment of wages to those individuals identified as hits, and review of employees' sick leave and continuation of pay records against their attendance records at the second employment, as warranted. The Postal Inspection Service will conduct an investigation of those hits verified as suspect cases and case files may be established within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). The Postal Inspection Service may conduct joint investigations with the State of Florida or refer to it cases within the area of its jurisdiction. Corrective action may include suspension, reduction, or termination of benefits; collection of monies improperly received; disciplinary action; and prosecution, as appropriate. Any corrective action will be taken only after due process has been afforded to the individual. Disclosure of information from the Postal Service's system of records is authorized by routine use Nos. 26 and 28 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match.* The matching program will be on a one-time basis and is expected to begin in April 1988 and end no later than October 1989.

d. *Security.* USPS personnel will remain on-site at F-DLES during the computer matching run, retaining custody of the USPS source tape. During that time, F-DLES personnel who perform the match will (1) have the only access to the USPS tape; (2) use it only to accomplish the official stated purpose of the match and for no other purpose; and (3) safeguard it from unauthorized access. Further, information on the source and hit files will have security protection; storage of hard copy records will be in locked desks or file cabinets; and automated records will be in limited access computer facilities.

e. *Disposition of Records.* The source and hit files containing USPS information must be returned immediately upon completion of the match; no copies of these files will be made unless for processing requirements. Any copies made for processing purposes must be destroyed upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records exchanged in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-6873 Filed 3-29-88; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270-105, Form 18
File No. 270-249, Form F-1
File No. 270-250, Form F-2
File No. 272-251, Form F-3
File No. 270-108, Form 18-K
File No. 270-107, Form 6-K

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance of the following forms: 18, 18-K, 6-K, F-1, F-2, and F-3. The forms provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provide investors and the marketplace with adequate information about foreign issuers. Form 18 effects 5 filers at an estimated 8 burden hours per form; Form F-1 effects 20 filers at an estimated 2,385 burden hours per form; Form F-2 effects 8 filers at an estimated 910 burden hours per form; Form F-3 effects 5 filers at an estimated 323 burden hours per form; Form 18-K effects 11 respondents at an estimated 8 burden hours per form; and Form 6-K effects 983 respondents at an estimated 8 burden hours per form.

Submit comments to OMB Desk Officer, Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

March 24, 1988.

[FR Doc. 88-6906 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25495; File No. PHLX 88-7]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to CIP Indices and Trading Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 29, 1988 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or "Exchange") hereby proposes to trade Cash Index Participations (CIP) on two stock market indices. The CIPs will be traded pursuant to rules as set forth hereunder.

The proposed CIP trading rules will closely parallel PHLX options, rules, particularly index options rules. The following is the full text of the proposed rule change which establishes new Rule 1000B *et seq.* [Unless designated otherwise, all language is new text.]

Rules Applicable to Trading of Cash Index Participations

Applicability and Definitions

Rule 1000B. (a) Applicability. The Rules in this Section are applicable only to cash index participations. In addition, except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the following Options Rules applicable to stock options and options on indices shall be applicable to the trading on the Exchange of cash index participations: PHLX Options Rules 1000(b), 104, 1005, 1006, 1013, 1014, 1015, 1017, 1018, 1019, 1020, 1022, 1024, 1025, 1026, 1027, 1028, 1029, 1032, 1037, 1038, 1039, 1040, 1041, 1043, 1045, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1070, 1047A.

Compliance with Rules 1001, 1002 1003 shall be determined as set forth in Rules 1005B, 1006B and 1007B.

(b) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise indicate, have the meanings herein specified.

(1) *Cash Index Participation (CIP)*—The term "Cash Index Participation (CIP)" means a security based on the spot value of an index of stocks, of indeterminate duration, and paying its purchasers a proportionate share of dividends declared on the component stocks of the CIP.

(2) *Cash-Out Time*—The term "cash-out time" means the point in time each quarter of the year when a purchaser of a CIP may obtain the closing index value upon exercise of the cash-out privilege. The cash-out time for each quarter will be determined and made public by the Exchange before the beginning of the quarter.

(3) *Reporting Authority*—The term "reporting authority" in respect of a particular index means the institution or reporting service designated by the Exchange as the official source for calculating and determining the current index value or the closing index value and the proportionate share of dividends payable to CIP holders.

Designation of the Index

Rule 1001B. The stocks that are the basis for the calculation of the index shall be selected by the Exchange and may be revised from time to time in the Exchange's discretion as necessary or appropriate to maintain the quality and character of the index.

CIP Index Calculation

Rule 1002B. (a) The current index value in respect of a particular CIP index shall be derived from the reported prices of the underlying securities that are the basis of the index, as reported by the reporting authority for the index.

(b) The closing index value in respect of a particular CIP index shall be derived from the reported prices of the component stocks of the index at a time or times specified by the Exchange for determining the payment to which a CIP buyer is entitled to upon exercise of the CIP cash-out privilege.

Dissemination of Information

Rule 1003B. (a) The Exchange shall assure that the current index value is disseminated from time-to-time on days on which transactions in CIPs are made on the Exchange and that the closing index value is disseminated as promptly as it is available at the quarterly cash-out time.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks whose prices are the basis for the calculation of the index and the method used to determine the current index value.

Cash-out Privilege

Rule 1004B. The purchaser of a CIP may obtain on each cash-out time the CIP closing index value. The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.

Position Limits

Rule 1005B. In determining compliance with Rule 1001, CIPs shall be subject to a position limit of 15 million CIPs with respect to any particular underlying index.

Exercise Limits

Rule 1006B. In determining compliance with Rule 1002, exercise limits per CIPs shall be equivalent to the position limits set forth in Rule 1005B.

Reporting of CIP Positions

Rule 1007B. In determining compliance with Rule 1003, each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer, director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 CIPs (whether long or short) covering the same underlying index.

Exercise of Cash-Out Privilege

Rule 1008B. (a) Notice of exercise of the CIP cash-out privilege must be provided by a purchaser of a CIP on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the CIP is carried. Members and member organization, to the extent that they do not conflict with the rules and policies of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

(b) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise a CIP. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut–off time but prior to the cash-out time: (i) In order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange CIP transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise

instructions) prior to such time warrant such action.

Allocation of CIP Exercise Notices

Rule 1009B. (a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in CIPs in such member organization's customers' accounts. Such allocation shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for CIPs.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Bids and Offers

Rule 1010B. All bids and offers made on the trading floor for CIPs shall be deemed to be for one unit of trading unless a specified greater number of CIPs is expressed in the bid or offer. A bid or offer for more than a unit of trading of CIPs shall be deemed to be for the amount thereof or a smaller number of units of trading of CIPs. The unit of trading in CIPs shall be 100 CIPs unless otherwise designated by the Exchange.

Limitation of Exchange Liability

Rule 1011B. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error; omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.

Reserved Authority

Rule 1012B. The Exchange may, in the event of extreme CIP trading inactivity or under exceptional circumstances, require the purchasers and sellers to settle their CIP contracts at the closing index value determined by a designated cash-out time upon notice of at least one year.

[The following is proposed amendments of existing PHLX Rules; brackets indicate deletions; underscoring indicates additions.]

Limitation of Exchange Liability

Rule 1102A. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any [The Exchange shall have no] liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value resulting from an act, condition or cause beyond the reasonable control of the Exchange, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities, or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the reporting authority.

* * * * *

Security

Rule 7. The term "security" or "securities" includes, stocks, bonds, notes, certificates of deposit or participation, trust receipts, rights, options contracts, warrants, *Cash Index Participations* and other similar instruments.

* * * * *

Dealings Upon the Exchange

Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 a.m. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia. The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 p.m. except that Value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 p.m. each business day. *In addition, Cash Index Participations shall freely trade until 4:15 p.m. each business day.* The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the Options Committee or the Exchange official or officials designated by the Board) foreign currency option transactions may commence on the Exchange at 8:00 a.m. each business day and may be effected on the Exchange until 2:30 p.m. each business day at which time no further foreign currency option transactions may be made.

* * * * *

Margin Accounts

Rule 722.(a) * * *

(c)9. CIPs. The margin which must be maintained in margin accounts of customers, whether members, partners of members, member firms, member corporations or stockholders therein or non-members, shall be as follows:

1. 25% of the market value of all "long" CIP positions in the account plus;

2. 30% of the market value, in cash, of each "short" CIP position in the account;

3. No margin need be required in respect of a CIP carried "short" in a customer's account when the customer has delivered to the member organization carrying the account a letter of guarantee meeting the requirements of Rule 610 of The Options Clearing Corporation certifying that the guarantor holds for the customer as security for the letter 1) cash, 2) cash equivalents, 3) one or more qualified securities, or 4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the CIPs, and that the guarantor will

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promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Rule 722(c)(2)(G).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to establish CIP trading rules and to list for trading CIPs based on two broad-based stock indices developed by the Exchange.

A CIP is based on the current value of an index of stocks, is of indefinite duration, and entitles holders to cash payments equivalent to a proportionate share of any regular cash dividends declared on the component stocks of the underlying index. In the event of extreme trading inactivity or other exceptional circumstances, the Exchange may, upon one year's prior notice to the public, terminate a CIP contract.

Investors buying and selling a CIP may realize profits or limit losses on their investment by entering into an offsetting sale or purchase of a CIP in a closing transaction and receive payment of the difference between the price of purchase or sale and the price at which the closing transaction is effected, taking into account transaction costs. In addition, investors buying a CIP may elect instead to realize profits or limit losses on their investment through exercising a cash-out privilege. The cash-out privilege, which is available at one designated time each quarter, provides for a payment in cash based upon the value of the component stocks of the underlying index at a point in time specified by the Exchange. The Exchange has tentatively determined to establish the cash-out time to coincide with the expiration of the leading stock index futures contracts; that is, on the opening of trading of each quarterly expiration Friday. The Exchange has tentatively determined to establish the cut-off time for the submission of notices of exercise of a CIP cash-out privilege as the close of trading on the day before the cash-out time (that is, 4:15 p.m. on the Thursday before expiration). As a result, it should be cautioned that buyers of CIPs who elect to exercise the cash-out privilege ordinarily will be required to do so at a time when they do not know the closing index value. The reason for this is to permit the sellers of CIPs to receive notice of assignment of a CIP exercise before the cash-out time so that they can effect transactions, in the market for CIPs, component stocks, or other derivative product markets, to hedge themselves.

A CIP is intended to permit an investor to buy or sell the then current or spot value of an underlying index of stocks so as to replicate a purchase or sale of the underlying stocks as closely as possible, without an actual purchase or sale of such stocks. In this regard, the Exchange proposes that CIPs be margined substantially like common stocks. (*See* letter dated February 3, 1988 from Richard Chase, Executive Vice President, PHLX, to Laura Homer, Federal Reserve Board.)

Since an investment in a CIP will not constitute an actual purchase of any of the component stocks of the underlying index, such ownership interest will not confer any voting rights or right to receive actual dividends associated with ownership of those stocks. However, OCC on a quarterly basis will credit and debit the accounts of buyers and sellers of a CIP who are holders of record as of the day prior to the cash-out time a proportionate amount of any regular cash dividends declared on each component stock.

Bridge Data will be the Reporting Authority and will calculate the index and dividend payout dates. Transaction reporting for CIPs will occur through the Consolidated Tape Association's facilities.

Description of Specific CIP Indices

The Exchange has developed the following CIP indices: (1) The Blue Chip CIP and (2) The Stock Market CIP.

Blue Chip CIP

The Blue Chip CIP is a CIP based on a price-weighted index composed of 25 highly capitalized listed common stock issues representing primarily industrial corporations (a list of the specific stocks, together with their price and weight in the index as of February 22, 1988, is attached as *Exhibit A*).

CIP specifications and specific trading characteristics are as follows:

Ticker Symbol: BIG

Underlying Index: See Exhibit A and description above.

To compute the Blue Chip CIP Index the following formula is used:

$$\frac{P(1)+P(2)+P(3)+P(25)}{D} \times M = \text{Index Value}$$

where: P=Price of each share of stock in the index summed for all issues; D=the Divisor and M=the Multiplier.

The Index Divisor will be adjusted accordingly to account for stock splits, stock dividends and extraordinary cash dividends. If cash dividends are paid out to CIP holders, the Divisor will not be adjusted.

The Index value will be updated dynamically at least every minute during the trading day. The PHLX has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to PHLX Rule 1003B, updated Index values will be disseminated and displayed by means of primary market prints reported over the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. The Index value will also be available on broker-dealer interrogation devices to subscribers of the CIP information.

Unit of Trading: Each Blue Chip CIP will represent $\frac{1}{100}$, the Index multiplier, times the Index value. The standard unit of trading in such CIPS will be 100 CIPs. Bids and offers will be expressed in decimals. The Exchange expects to establish a starting Blue Chip CIP index value of approximately 2000, so that each Blue Chip CIP would be priced at approximately $20.00.

Specific Cash-Out Time: The third Friday of March, June, September and December. The deadline for exercising the cash-out privilege will be 4:15 p.m. on the business day immediately prior to the cash-out time. Upon due exercise of the cash-out privilege, the purchaser of a CIP may obtain on each cash-out time the CIP index value based on the opening index value on the third Friday of March, June, September or December as the case may be.

Replacement of Stocks in Index: If there has been any material and substantial change in the character of any stock in the Index caused by delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete this stock from the Index and substitute another stock which possesses characteristics so as to retain the integrity and representativeness of the index.

Stock Market CIP

The Stock Market CIP is a CIP based on a capitalization-weighted index composed of 100 of the most highly capitalized listed, non ADR, common stock issues on which the OCC has issued options (a list of the specific stocks, together with their price, market value and weight in the index as of February 18, 1988, is attached as *Exhibit B*).

CIP specifications and specific trading characteristics are as follows:

Ticker Symbol: MKT

Underlying Index: See Exhibit B and description above.

To compute the Stock Market CIP Index the following formula is used:

$$\frac{MV(1)+MV(2)+MV(3)+MV(N)}{BMV} \times \frac{1}{10} = \text{Index Value}$$

where:

MV=(Price × Publicly Held Shares Outstanding) for the instant computation summed for all issues.

BMV=Summation (Closing Price × Shares Outstanding) for the day prior to the start of the Index calculation.

The current market value of each component issue is multiplied by the number of outstanding shares. The resulting market values are added to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the Base Market Value ("BMV") and multiplied by $\frac{1}{10}$. In order to keep the Stock Market CIP Index current and representative of the most highly capitalized listed, non ADR, common stock issues on which the OCC has issued options, semi-annually, the Exchange will identify and rank the 125 most highly capitalized securities that meet the aforementioned criteria. The issues in the 125 ranking will be compared to the issues in the Index. An issue(s) in the Index that is not ranked within the 100 most highly capitalized issues will be deleted from the Index and replaced by the issue(s) that has increased in capitalization since the previous ranking. Additionally, any time an Index component issue is the subject of a merger or acquisition such issue will be deleted from the Index on the date that the issue permanently ceases trading on the primary Exchange and will be replaced by the next highly capitalized issue as identified on the most current semi-annual ranking of the top 125 issues.

The Index (BMV) will be adjusted accordingly to account for stock splits, stock dividends and extraordinary cash dividends. If cash dividends are paid out to CIP holders, the BMV will not be adjusted.

To account for changes in capitalization of any of the component issues resulting from mergers, acquisitions, listings, substitutions, etc., the BMV market value will be adjusted periodically. The following formula is used to make such adjustments:

$$NBMV = \frac{OBMV \times NMV}{OMV}$$

where:

NBMV=new base market value

OBMV=old base market value

NMV=new market value

OMV=old market value

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price x shares outstanding) of the relevant issue(s). The Index value will be updated dynamically at least every minute during the trading day. The PHLX has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to PHLX Rule 1003B, updated Index values will be disseminated and displayed by means of primary market prints reported over the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. The Index value will also be available on broker-dealer interrogation devices to subscribers of the CIP information.

Unit of Trading: Each Stock Market CIP will represent $\frac{1}{10}$, the Index multiplier, times the Index Value. The standard unit of trading in such ICPs will be 100 CIPs. Bids and offers will be expressed in decimals. The Exchange expects to establish a starting Stock Market CIP index value of approximately 300, so that each Stock Market CIP would be priced at approximately $30.00.

Specific Cash-Out Time: The third Friday of March, June, September and December. The deadline for exercising the cash-out privilege will be 4:15 p.m. on the business day immediately prior to the cash-out time. Upon due exercise of the cash-out privilege, the purchaser of a CIP may obtain on each cash-out time the CIP index value based on the opening index value of the third Friday of March, June, September or December as the case may be.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. In this regard, the Exchange believes that the proposed CIPs offer substantial benefits to the public not provided by currently traded derivative stock index products. CIPs are not high leverage instruments. Under the proposed margin rules governing CIPs, they afford no greater leverage than is available to an investor holding a portfolio of securities. This treatment is consistent with the conclusion that the markets for stock and derivative index products are indeed "one market," as emphasized in the reports on the October 1987 Market Break by the Brady Commission [1] and the General Accounting Office.[2] Hence the Exchange believes a low leverage index-related instrument like the proposed CIP, has the potential not only to be attractive to the investing public, but to ameliorate some of the volatility that has been associated with trading in the more highly leveraged derivative index products.[3] This is because of the possibility that, with adequate liquidity, CIPs may serve as an alternative for arbitrage and other program trading strategies involving orders to buy or sell baskets of stock. In this connection, one of the recommendations of the New York Stock Exchange's Katzenbach report on program trading was to create a cash index product with characteristics much like the proposed CIP [4] to deal with investor interest to invest in the "market" without, presumably, giving rise to the same adverse side effects found to have resulted from existing derivative index products.[5]

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[1] *See* Report of the Presidential Task Force on Market Mechanisms at vi, January 1988 (Brady Report).

[2] *See* U.S. General Accounting Office, Financial Markets, Preliminary Observations on the October 1987 Market Crash at 6, January 1988.

[3] *See* Brady Report at 64–66; the October Market Break, A Report by the Division of Market Regulation of the U.S. Securities & Exchange Commission at xv, February 1988.

[4] While the CIP resembles the product described in the Katzenbach Report, it was developed long before the report was issued.

[5] *See* Katzenbach, Nicholas deB., An Overview of Program Trading and Its Impact on Current Market Practices at 28 (December 21, 1987).

In addition to the CIP rules, the Exchange proposes to amend Rule 1102A, to limit the liability of an index options reporting authority under certain circumstances. The change will make the limitation in liability consistent with the corresponding provision for CIPs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PHLX has prepared this rule change in close coordination with the Options Clearing Corporation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 20, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 23, 1988.

EXHIBIT A.—THE BLUE CHIP CIP INDEX

[As of 2/22/88]

Symbol	Issue	$	%
ACY	American Cyamid	$47.00	3.71
AMX	AMAX, Inc	17.75	1.40
CAT	Caterpillar Inc	62.88	4.96
CRR	Consolidated Rail	31.88	2.51
DOW	Dow Chemical Co	86.38	6.81
EK	Eastman Kodak Co	40.63	3.20
F	Ford Motor Co	44.13	3.48
FIR	Firestone Tire & Rub	43.75	3.45
GE	General Electric Co	44.25	3.49
IBM	Int'l Business Mech	114.63	9.04
JCP	J.C. Penney Co	47.88	3.78
JNJ	Johnson & Johnson	80.75	6.37
KM	K Mart Corp	33.63	2.65
LIT	Litton Industries Inc	78.75	6.21
MCD	McDonalds Corp	45.75	3.61
MEA	Mead Corp	37.50	2.96
MOB	Mobil Corp	44.63	3.52
PEP	Pepsico Inc	35.00	2.76
PG	Proctor & Gamble	82.50	6.51
RLM	Reynolds Metals Co	41.88	3.30
SKB	Smithkline Beckman	57.63	4.54
STO	Stone Container Corp	39.25	3.10
T	AT&T	29.75	2.35
TRW	TRW Inc	47.63	3.76
X	USX Corp	32.25	2.54
25		50.72	100

EXHIBIT B.—THE STOCK MARKET CIP INDEX

[As of 2/18/88]

Symbol	Issue	Market value	%	$
AAPL	Apple Computer, Inc	5,116,774	0.46	$40.500
ABT	Abbott Laboratories	10,895,232	0.98	48.00
AEP	American Electric Power	5,442,172	0.49	28.250
AET	Aetna Life & Casualty	5,310,937	0.48	47.000
AHP	American Home Products	11,015,325	0.99	74.825
AIG	American International	9,397,168	0.84	57.125
AIT	Americh	12,930,696	1.16	92.750
AMB	American Brands Inc	4,979,859	0.45	45.250
AMP	AMP Incorp.	5,015,317	0.45	46.500
AN	Amoco Corp	19,288,126	1.73	75.000
ARC	Atlantic Richfield Corp	13,790,438	1.24	77.000
AXP	American Express Co	10,704,495	0.96	25,125
BA	Boeing Co	7,392,257	0.66	47.750
BAX	Baxter Travenol	5,738,404	0.51	23.625
BEL	Bell Atlantic Corp	14,443,130	1.30	72.125
BLS	Bell South Corp	19,735,350	1.77	40.625
BMY	Bristol-Myers Co	12,780,934	1.15	43.875
BNI	Burlington Northern, Inc	4,770,845	0.43	65.250
BUD	Anheuser-Busch Co	9,409,519	0.84	31.250
C	Chrysler Corp	5,717,686	.051	25.750
CAT	Caterpillar Tractor	6,025,189	0.54	60.375
CCB	Capital Cities Comm	5,601,632	0.50	346.000
CCI	Citicorp	6,256,484	0.56	18.750
CHV	Chevron Corp	15,651,467	1.40	46.000
CP	Canadian Pacific	5,249,545	0.47	17.625
CWE	Commonwealth Edison Co	5,750,835	0.52	27.750
DD	Du Pont (E.I.) De Nemours	19,683,624	1.76	82.500
DEC	Digital Equipment Corp	15,142,440	1.36	119.250
DIS	Disney (Walt) Co	7,701,663	0.69	56.500
DNB	Dun & Bradstreet Corp	7,453,047	0.67	49.000
DOW	Dow Chemical Co	15,867,466	1.42	82.250
ED	Consolidated Edision Co	5,184,675	0.46	44.875

EXHIBIT B.—THE STOCK MARKET CIP INDEX—Continued

[As of 2/18/88]

Symbol	Issue	Market value	%	$
EK	Eastman Kodak Co	14,445,911	1.30	42.500
EMR	Emerson Electric Co	7,494,545	0.67	32.000
F	Ford Motor Co	22,810,050	2.05	43.125
GCI	Gannett Co	5,667,165	0.51	35.000
GE	General Electric Co	39,245,544	3.52	42.625
GM	General Motors	21,162,566	1.90	67.125
GRN	General Re Corp	5,330,070	0.48	53.000
GTE	GTE Corp	12,414,670	1.11	37.500
HNZ	Heinz (H.J.) Co	5,076,200	0.46	39.625
HWP	Hewlett-Packard Co	14,745,539	1.32	57.000
IBM	Int'l Business Machines	68,454,008	6.14	112.750
ITT	ITT Corp	6,519,800	0.59	46.875
JCP	Penney (J.C.) Co	6,231,658	0.56	44.500
JNJ	Johnson & Johnson	13,836,466	1.24	79.625
JPM	Morgan (J.P.) & Co., Inc	6,387,550	0.57	35.250
K	Kellogg Co	6,465,101	0.58	52.000
KM	K Mart Corp	6,548,620	0.59	32.625
KO	Coca-Cola Co	13,749,355	1.23	36.125
KRA	Kraft, Inc	7,450,927	0.67	54.625
LLY	Lilly (Eli) & Co	10,644,307	0.95	75.500
LTR	Loews Corp	5,356,800	0.48	69.500
MCD	McDonald's Corp	8,675,618	0.78	45.750
MMM	Minnesota Mining & Mfg	13,421,733	1.20	58.500
MO	PHilip Morris Inc	21,653,058	1.94	90.625
MOB	Mobil Corp	18,097,948	1.62	44.000
MOT	Motorola Inc	5,686,918	0.51	43.875
MRK	Merck & Co	21,596,388	1.94	157.250
MTC	Monsanto Co	6,543,834	0.59	85.875
NCR	NCR Corp	5,490,965	0.49	60.125
NSC	Norfolk Southern Corp	5,261,872	0.47	27.250
NYN	Nynex Corp	14,228,635	1.28	69.500
OXY	Occidental Petroleum	5,363,190	0.48	26.500
PAC	Pacific Telesis Group	12,530,800	1.12	28.625
PCG	Pacific Gas & Electric	6,304,175	0.57	17.250
PEG	Public Service Enterprises	5,054,965	0.45	24.250
PFE	Pfizer Inc	8,621,615	0.77	52.000
PG	Procter & Gamble Co	14,170,248	1.27	83.000
RD	Royal Dutch Petroleum Co	29,852,620	2.68	111.500
RJR	Nabisco (RJR)	12,243,385	1.10	48.750
ROK	Rockwell International Corp	5,050,304	0.45	18.375
RTN	Raytheon Co	4,983,150	0.45	68.875
S	Sears & Roebuck & Co	13,467,960	1.21	35.625
SBC	Southwestern Bell	11,448,137	1.03	37.625
SCE	Southern Calif. Edison	7,165,059	0.64	33.125
SFX	Santa Fe Southern Pacific Corp	7,069,770	0.63	45.000
SGP	Schering-Plough	6,471,575	0.58	54.125
SKB	Smithkline Corp	7,288,191	.065	57.000
SLB	Schlumberger Ltd	9,649,018	0.87	34.500
SO	Southern Co	6,837,444	0.61	23.250
SQB	Squibb Corp	6,759,126	0.61	65.000
SUN	Sun Co	6,003,601	0.54	55.500
T	AT&T	31,271,658	2.80	28.875
TGT	Tenneco Corp	5,912,460	0.53	40.000
TL	Time, Inc	5,301,728	0.48	89.750
TX	Texaco Inc	9,471,033	0.85	39.000
UIS	Unisys Corp	5,483,223	0.49	34.125
UNP	Union Pacific Corp	5,948,512	0.53	56.750
UPJ	Upjohn Co	5,784,002	0.52	30.750
USW	US West	10,292,505	0.92	53.750
VO	Seagram Co. Ltd	5,252,225	0.47	55.000
WLA	Warner-Lambert Co	5,567,979	0.50	77.000
WMT	Wal-Mart Stores	15,240,796	1.37	27.125
WMX	Waste Management	7,898,211	0.71	34.750
WX	Westinghouse Electric	7,212,390	0.65	49.750
WY	Weyerhaeuser Co	5,487,272	0.49	39.875
X	USX Corp	8,271,043	0.74	30.500
XON	Exxon Corp	58,460,104	5.24	40.750
XRX	Xerox Corp	5,535,250	0.50	55.500

[FR Doc. 88-6890 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24606]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 24, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 18, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Power Company (70-7494)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44701, a subsidiary of American Electric Power Company, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

OPCo proposes to sell to Procter & Gamble Manufacturing Co. ("Buyer") a portion of its distribution system, which is located upon real estate owned by the Buyer in Lima, Ohio and which consists of lines and transformation and other related equipment ("Facilities"), for a total price of $141,048. In connection with the sale, the Facilities will be released from the lien of the Indenture of Mortgage and Deed of Trust of OPCo.

National Fuel Gas Company (70-7512)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed an application pursuant to sections 9(a), 10 and 13 of the Act and Rules 90 and 91 thereunder.

National proposes to purchase all of the authorized common stock of Data-Track Account Services, Inc. ("Data-Track"), a corporation formed under the laws of New York State. Data-Track's authorized stock is made up of 1,000 shares of common stock with a par value of $1.00 per share. National will pay $500,000 for the 1,000 shares of stock. It is proposed that Data-Track perform account collection services, at cost, for the National Fuel Gas system, particularly National Fuel Gas Distribution Corporation ("Distribution"). Distribution will provide computer capacity to Data-Track, at cost, for use in its collection activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6900 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16335; File No. 812-6965]

Sun Life Assurance Company of Canada (U.S.) et al.

March 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Sun Life Assurance Company of Canada (U.S.) (the "Company"); Money Market Variable Account ("MMVA"); High Yield Variable Account ("HYVA"); Capital Appreciation Variable Account ("CAVA"); Government Guaranteed Variable Account ("GGVA"); Government Markets Variable Account ("GMVA"); Total Return Variable Account ("TRVA"); Managed Sectors Variable Account ("MSVA") (collectively, the "Variable Accounts"); and Clarendon Insurance Agency, Inc. ("Clarendon").

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from sections 2(a)(35), 12(b) and 27(c)(2) of the 1940 Act and Rule 12b-1 thereunder.

Summary of Application: Applicants seek an order to permit the Company to deduct from the assets of the Variable Accounts the mortality and expense risk charge and the distribution expense risk charge assessed under certain variable annuity contracts ("Contracts").

Filing Date: The application was filed on January 22, 1988, and amended on March 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Company and the Variable Accounts, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181; and Clarendon, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Joyce M. Pickholz, (202) 272-3046 or Special Counsel Lewis B. Reich, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Company, a stock life insurance corporation incorporated under the laws of Delaware on January 12, 1970, issues life insurance policies and individual and group annuities. The Company is a wholly-owned subsidiary of Sun Life Assurance Company of Canada, a mutual life insurance company incorporated pursuant to Act of Parliament of Canada in 1865.

2. The Company established the Variable Accounts as separate accounts to act as the facility for issuing certain variable annuity contracts, including the Contracts. The Contracts, which will be initially marketed under the product name Compass 3, are individual deferred combination fixed/variable annuities which provide that annuity payments will begin on selected future dates. MMVA, CAVA, GGVA, and TRVA are registered under the 1940 Act as open-end, diversified, management investment companies. HYVA, GMVA and MSVA are registered as open-end, non-diversified management investment companies. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of the Company, is the investment adviser of the Variable Accounts.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by licensed insurance agents who will be registered representatives of broker-dealers who are members of the National Association of Securities Dealers, Inc., and registered under the Securities Exchange Act of 1934.

4. The Company will establish an accumulation account for each Contract. Net purchase payments will be credited to a Contract's accumulation account in the form of variable accumulation units of one or more of the Variable Accounts or fixed accumulation units of the Company's general account. The value of the variable portion of a Contract's accumulation account will vary with the investment performance of the respective Variable Accounts.

5. No initial sales charges are deducted from purchase payments. However, a contingent deferred sales charge ("CDSC"), when applicable, will be assessed in the event of a full or partial withdrawal from a Contract. All withdrawals will be processed on a first-in, first-out basis. All purchase payments held by the Company for seven contract years or more and up to 10% of purchase payments held for less than seven contract years may be withdrawn each year without the assessment of a withdrawal charge. Also, no CDSC is assessed upon annuitization or upon withdrawals from the Variable Accounts by the beneficiary after the death of the annuitant. All other full or partial withdrawals are subject to a withdrawal charge which varies according to the number of complete contract years between the contract year in which a purchase payment was credited to a Contract's accumulation account and the contract year in which it is withdrawn in accordance with the following table:

Number of contract years	Withdrawal charge (percent)
Less than 1	6
Less than 2	6
Less than 3	5
Less than 4	5
Less than 5	4
Less than 6	4
Less than 7	3

6. The Company assumes the risk that the CDSCs may be insufficient to compensate it for the costs of distributing the Contracts. For assuming that risk, the Company will make a deduction from the Variable Accounts with respect to the Contracts at the end of each valuation period for the first seven contract years (during both the accumulation period and, if applicable, after annuity payments begin) at an effective annual rate of 0.15% of the assets of the Variable Accounts attributable to the Contracts (the "Distribution Expense Risk Charge"). No deduction is made after the seventh contract anniversary. If the Distribution Expense Risk Charge is insufficient to cover the actual risk assumed, the Company will bear the loss; however, if the charge is more than sufficient, any excess will be a profit to the Company and would be available for any proper corporate purpose. Applicants represent that the amount of any withdrawal charges together with the Distribution Expense Risk Charges assessed under a Contract will not exceed 9% of purchase payments made under the Contract.

7. On each contract anniversary and on surrender of a Contract for full value on other than the contract anniversary, Sun Life (U.S.) deducts from the accumulation account a contract maintenance charge of $30.00 to reimburse it for administrative expenses relating to the issuance and maintenance of the Contract. This charge is designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts over their expected lifetime, is guaranteed never to be increased, and is not designed or expected to generate a profit.

8. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the Company will make a deduction from the Variable Accounts with respect to the Contracts at the end of each valuation period at an effective annual rate of 1.25% of the Variable Accounts' assets attributable to the Contracts.

9. The mortality risk assumed by the Company arises from the contractual obligation to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contracts may be insufficient to cover the actual administrative expenses incurred by the Company. The Company does not believe it feasible to identify precisely that portion of the deduction applicable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the administrative expense risk. If the mortality and expense risk charges are insufficient to cover the actual cost of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including, among other things, payment of distribution expenses.

10. The mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company has incorporated its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

11. The Company has concluded that there is a reasonable likelihood that the Variable Accounts' distribution financing arrangements will benefit the Variable Accounts and Contractowners and that the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion. Each Variable Account will have a Board of Managers, a majority of whom are not interested persons of the Variable Account, formulate and approve any plan adopted under Rule 12b-1 of the Act to finance distribution expenses.

12. Based on the foregoing, Applicants request exemption from section 27(c)(2) and section 12(b) of the 1940 Act and Rule 12b-1 thereunder to the extent deemed necessary or appropriate to permit imposition of the mortality and expense risk charge without compliance with Rule 12b-1, and from section 27(c)(2) and section 2(a)(35) to the extent deemed necessary or appropriate to permit imposition of the distribution expense risk charge.

Applicants' Conditions

1. Applicants agree that the representations set forth in the application and summarized in the last sentence of paragraph 6, paragraph 10 and paragraph 11 above, and paragraph

2 below may be made conditions of the order requested.

2. Applicants represent that, at such time as the Commission adopts Rule 26a–3 under the 1940 Act, they will no longer rely on any order issued in response to the application granting an exemption from section 12(b) of the 1940 Act and Rule 12b–1 thereunder for deduction after the effective date of that rule of the mortality and expense risk charge, unless Applicants are in compliance with the requirements of that rule, as adopted, with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6901 Filed 3–29–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16337; File No. 812–6974]

Sun Life Assurance Company of Canada (U.S.) et al.

March 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Sun Life Assurance Company of Canada (U.S.) (the "Company"); Government Markets Variable Account ("GMVA"), Total Return Variable Account ("TRVA"), Managed Sectors Variable Account ("MSVA") (collectively, the "Variable Accounts"); and Clarendon Insurance Agency, Inc. ("Clarendon").

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from sections 12(b) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder.

Summary of Application: Applicants seek an order to permit the Company to deduct the mortality and expense risk charge assessed under certain variable annuity contracts ("Contracts") from the assets of the Variable Accounts.

Filing Date: The application was filed on January 28, 1988 and amended on March 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Company and the Variable Accounts, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181, and Clarendon, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Joyce M. Pickholz, (202) 272–3046 or Special Counsel Lewis B. Reich, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland, (301) 258–4300).

Applicants' Representations

1. The Company is a stock life insurance corporation incorporated under the laws of Delaware on January 12, 1970, which issues life insurance policies and individual and group annuities. The Company is a wholly-owned subsidiary of Sun Life Assurance Company of Canada, a mutual life insurance company incorporated pursuant to Act of Parliament of Canada in 1865.

2. The Company established the Variable Accounts as separate accounts to act as the facility for issuing certain variable annuity contracts, including the Contracts. The Contracts are individual deferred combination fixed/variable annuities which provide that annuity payments will begin on selected future dates. The Contracts, currently marketed under the name "Compass II", have been offered since 1982 and are currently funded by four other separate accounts established by the Company: Money Market Variable Account ("MMVA"), High Yield Variable Account ("HYVA"), Capital Appreciation Variable Account ("CAVA"), and Government Guaranteed Variable Account ("GGVA") (collectively, the "original variable accounts"). The Applicant Variable Accounts have been established to offer Contract owners additional investment alternatives for allocation of account values. It is expected that the original variable accounts and the applicant Variable Accounts will also fund combination fixed/variable annuity contracts marketed under the product name Compass 3. TRVA is registered under the Act as an open-end, diversified, management investment company. GMVA and MSVA are registered as open-end, non-diversified management investment companies. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of the Company, is the investment adviser of the Variable Accounts and the original variable accounts.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by licensed insurance agents who will be registered representatives of broker-dealers registered under the Securities Exchange Act of 1934 who are members of the National Association of Securities Dealers, Inc.

4. The Company will establish an accumulation account for each Contract. Net purchase payments will be credited to a Contract's accumulation account in the form of variable accumulation units of one or more of the Variable Accounts (or the original variable accounts) or fixed accumulation units of the Company's general account. The value of the variable portion of a Contract's accumulation account will vary with the investment performance of the respective Variable Accounts.

5. No initial sales charges are deducted from purchase payments. However, a contingent deferred sales charge, ("CDSC") when applicable, will be assessed in the event of a full or partial withdrawal from a Contract. All withdrawals will be processed on a first-in, first-out basis. All purchase payments held by the Company for five contract years or more and up to 10% of purchase payments held for less than five contract years may be withdrawn each year without the assessment of a CDSC. Also, no CDSC is assessed upon annuitization or upon withdrawals from the Variable Accounts by the beneficiary after the death of the annuitant. All other full or partial withdrawals are subject to a CDSC equal to 5% of the amount withdrawn which is subject to the charge. In no event will the aggregate CDSC's assessed against a Contract exceed 5% of the aggregate purchase payments made under the Contract.

6. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the Company will make a deduction from the Variable Accounts with respect to the Contracts at the end of each valuation period at an effective annual

rate of 1.25% of the Variable Accounts' assets attributable to the Contracts.[1]

7. On each contract anniversary and on surrender of a Contract for full value on other than the contract anniversary, the Company deducts from the accumulation account a contract maintenance charge of $25.00 to reimburse it for administrative expenses relating to the issuance and maintenance of the Contract. This charge is designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts over their expected lifetime, is guaranteed never to be increased, and is not designed or expected to generate a profit.

8. The mortality risk assumed by the Company arises from the contractual obligation to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contracts may be insufficient to cover the actual administrative expenses incurred by the Company. The Company does not believe it feasible to identify precisely that portion of the deduction attributable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the administrative expense risk. If the mortality and expense risk charges are insufficient to cover the actual cost of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including, among other things, payment of distribution expenses.

9. The mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company has incorporated its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

10. Applicants represent that the Company has concluded that there is a reasonable likelihood that the Variable Accounts' distribution financing arrangements will benefit the Variable Accounts and Contract owners, and that the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion. Each Variable Account undertakes that its Board of Managers, a majority of whom are not interested persons of the Variable Account, will formulate and approve any plan adopted under Rule 12b–1 of the Act to finance distribution expenses.

Applicants' Conditions

1. Applicants agree that certain representations set forth in the Application and summarized in paragraphs 9 and 10 above and paragraph 2 below may be made conditions of the order requested.

2. Applicants represent that, at such time as the Commission adopts Rule 26a–3 under the 1940 Act, they will not rely on the order requested with respect to an exemption from section 12(b) of the 1940 Act and Rule 12b–1 thereunder for deduction after the effective date of such rule of the mortality and expense risk charge, unless Applicants are in compliance with the requirements of such rule, as adopted, with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–6902 Filed 3–29–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16338; File No. 812–6976]

Sun Life Insurance and Annuity Company of New York et al.

March 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Sun Life Insurance and Annuity Company of New York (the "Company"); Sun Life (N.Y.) Variable Account B (the "Variable Account"); and Clarendon Insurance Agency, Inc. ("Clarendon").

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from sections 2(a)(35), 26(a)(2) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit the Company to deduct the mortality and expense risk charge and the distribution expense risk charge assessed under certain variable annuity contracts ("Contracts") from the assets of the Variable Account.

Filing Date: The Application was filed on February 1, 1988 and amended on March 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on April 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, of, for lawyers, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Company and the Variable Account, 67 Broad Street, New York, New York 10004, and Clarendon, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Joyce M. Pickholz (202) 272–3046 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Company is a stock life insurance corporation incorporated under the laws of New York on May 25, 1983, which issues individual fixed and variable annuities only in the State of New York. The Company is a wholly-owned subsidiary of Sun Life Assurance Company of Canada (U.S.) ("Sun Life (U.S.)), a stock life insurance company incorporated under the laws of Delaware.

2. The Company established the Variable Account as a separate account to act as the facility for issuing certain variable annuity contracts, including the Contracts. The Variable Account is registered under the 1940 Act as a unit

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[1] Pursuant to orders of the Commission granting exemptive relief under section 6(c) of the 1940 Act, the Company will continue to deduct a mortality and expense risk charge with respect to the Contracts from MMVA, HYVA, CAVA and GGVA at an effective annual rate of 1.30% of such accounts' assets attributable to the Contracts.

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investment trust. The assets of the Variable Account are divided into Sub-Accounts, each of which invests exclusively in shares of one of several designated series of MFS/Sun Life Series Trust (the "Series Fund"), an open-end management investment company registered under the Act. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of Sun Life (U.S.), is the investment adviser to the Series Fund.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by insurance agents licensed in the State of New York who will be registered representatives of broker-dealers registered under the Securities Exchange Act of 1934 who are members of the National Association of Securities Dealers, Inc.

4. The assets of the Variable Account will be derived from the Contracts and Other Contracts [1] providing for investment in a Sub-Account of the Variable Account. The Contracts are individual deferred combination fixed/variable annuities which provide that annuity payments will begin on a selected future date. Such Contracts may be deemed "periodic payment plan certificates" as that term is defined in section 2(a)(27) of the 1940 Act. The Contracts are expected to be sold in April, 1988, and will be marketed initially under the name "Compass 3".

5. The Company will establish an accumulation account for each Contract. Net purchase payments will be credited to a Contract's accumulation account in the form of variable accumulation units of one or more of the Sub-Accounts or fixed accumulation units of the Company's general account (the "Fixed Account"). The value of the variable portion of a Contract's accumulation account will vary with the investment performance of the respective Sub-Account(s).

6. No initial sales charges are deducted from purchase payments. However, a contingent deferred sales charge ("CDSC"), when applicable, will be assessed in the event of a full or partial withdrawal from a Contract. All withdrawals will be processed on a first-in, first-out basis. All purchase payments held by the Company for seven contract years or more and up to 10% of purchase payments held for less than seven contract years may be withdrawn each year without the assessment of a CDSC. Also, no CDSC is assessed upon annuitization or upon withdrawals from the Variable Account by a beneficiary after the death of an annuitant. All other full or partial withdrawals are subject to a CDSC which varies according to the number of complete contract years between the contract year in which a purchase payment was credited to a Contract's accumulation account and the contract year in which it is withdrawn, in accordance with the following table:

Number of contract years	Withdrawal charge (percent)
Less than 1	6
Less than 2	6
Less than 3	5
Less than 4	5
Less than 5	4
Less than 6	4
Less that 7	3
7 or more	0

7. The Company assumes the risk that the withdrawal charges may be insufficient to compensate it for the costs of distributing the Contracts. For assuming that risk, the Company will make a deduction from the Variable Account with respect to the Contracts at the end of each valuation period for the first seven contract years (during both the accumulation period and, if applicable, after annuity payments begin) at an effective annual rate of 0.15% of the assets of the Variable Account attributable to the Contracts (the "Distribution Expense Risk Charge"). No deduction is made after the seventh contract anniversary. If the Distribution Expense Risk Charge is insufficient to cover the actual risk assumed, the Company will bear the loss; however, if the charge is more than sufficient, any excess will be a profit to the Company and would be available for any proper corporate purpose. Applicants represent that the amount of any CDSCs together with the Distribution Expense Risk Charges assessed under a Contract will not exceed 9% of purchase payments made under the Contract.

8. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the company will make a deduction from the Variable Account with respect to the Contracts at the end of each valuation period at an effective annual rate of 1.25% of the Variable Account's assets attributable to the Contracts.

9. On each contract anniversary and on surrender of a Contract for full value on other than the contract anniversary, Sun Life (N.Y.) deducts from the accumulation account a contract maintenance charge of $30.00 to reimburse it for administrative expenses relating to the issuance and maintenance of the Contract. This charge is designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts over their expected lifetime, is guaranteed never to be increased, and is not designed or expected to generate a profit.

10. Applicants state that the mortality risk assumed by the Company arises from the contractual obligation to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contracts may be insufficient to cover the actual administrative expenses incurred by the Company. The Company does not believe it feasible to identify precisely that portion of the deduction applicable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the administrative expense risk. If the mortality and expense risk charges are insufficient to cover the actual cost of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including, among other things, payment of distribution expenses.

11. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company undertakes to maintain and make available to the Commission upon request a memorandum setting forth the basis for its representations.

12. Applicants represent that the Company has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangement will benefit the Variable Account and Contract owners, and that the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion. The Variable Account will invest only in open-end management companies which have undertaken to have a Board of Directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan adopted under Rule 12b–1 of the 1940 Act to finance distribution expenses.

Applicants' Conditions

1. Applicants agree that the representations set forth in the last sentence of paragraph 12, the first 13 lines of paragraph 17, and paragraph 18 of the Application can be made conditions of the order requested herein. Those representations are summarized in the last three lines of paragraph 7, paragraph 11 and paragraph 12 above.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6903 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

Reinstatement

File No. 270–204, Rule 19d–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) as amended in 1986, the Securities and Exchange Commission has submitted for reinstatement of OMB clearance the following rule under the Securities Exchange Act of 1934. Rule 19d–2 prescribes the form and content of applications to the Commission for stays of final disciplinary sanctions and summary actions of self-regulatory organizations. Nine respondents incur an estimated average of three burden hours to comply with the Rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

March 3, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6956 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25501; File No. SR-CBOE-88-01]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change.

Pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on January 25, 1988, submitted to the Securities and Exchange Commission ("Commission") a proposed rule change to require an affirmative vote for the issuance of permits or other trading rights. This release grants approval to the CBOE's proposal.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25344 (February 11, 1988), 53 FR 5064. No comments were received on the proposed rule change.

The proposed rule change would amend section 2.1(a) of the Exchange's constitution to require an affirmative membership vote for the issuance of permits or any other rights granting holders access to the CBOE trading floor for the purpose of effecting securities transactions. In the past, the Exchange practice has been to issue trading rights when the membership approved them in an affirmative vote or when a quorum was not obtained at a membership meeting at which the issuance of trading rights was to be considered. The proposed rule change was submitted to the Commission after the CBOE membership voted for the revised procedures at a special membership meeting called for the purpose of pursuing such a constitutional amendment.

The Commission believes that the proposed constitutional amendment is reasonable. All rights or permits granting physical access to the Exchange floor, however limited in scope as to product access, duration, voting rights, interest in Exchange assets, and other features, grant holders the essential right associated with full Exchange membership—the right to transact business on the Exchange floor. The question of membership approval of such rights or permits arose last year in connection with a CBOE proposal to issue government security options permits ("GSOPs"). [3] The CBOE issued the permits based on a membership meeting at which a quorum was not obtained. In granting approval to the rule change, the Commission noted that it was a "close question" whether the CBOE was required to obtain membership approval prior to issuing special, limited trading permits.[4] The CBOE's proposed constitutional amendment should clarify and simplify the process of issuing trading permits while ensuring that the Exchange membership will have a voice in any such issuances.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [5] and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 23, 1988.

[FR Doc. 88-6904 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25503; File No. SR-Phlx-87-33]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 9, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would allow the execution of spread, straddle and combination ratio orders involving American Style and European Style foreign currency options.

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[1] The Variable Account currently is the investment medium for combination fixed/variable annuity contracts marketed under the product name Compass II.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] Securities Exchange Act Release No. 24904 (September 9, 1987), 52 FR 35013.

[4] 52 FR at 35015. Indeed, the Commission's approval of the issuance of GSOPs without an affirmative membership vote was limited explicity to GSOPs. *Id.*

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[1] 15 U.S.C. 78s(b)(1) (1982).

The proposed rule change was noticed in Securities Exchange Act Release No. 25218, 52 FR 49559 (December 31, 1987). No comments were received on the proposed rule change.

The proposed rule change would extend priority treatment under Phlx Rule 1033 to spread, straddle, and combination Foreign Currency Options ("FCC") ratio orders.

Currently, Phlx Rule 1033 provides that one leg of a spread, straddle or combination order involving stock or foreign currency options may be executed at the established bid or offer, thus taking priority over a booked customer or other crowd order, provided that the other leg of the order is simultaneously executed at a price which is better than the established bid or offer. The Exchange's proposal extends this treatment to ratio orders, but provides for a cap of three-to-one on permissible ratio FCO orders. The Exchange contends that the cap would prevent a trader seeking priority over an order on the book or in the crowd from restating an order as a ratio order. For example, such a cap would prevent a trader from recasting an order to buy 100 calls and sell one out-of-the money put. In addition, the Phlx's proposal authorizes the Exchange's Foreign Currency Options Committee to specify the ratios that would be permitted under the rule. Preliminarily, the Committee's Rules Subcommittee has determined that it would be appropriate to start by allowing only two-to-one and three-to-two ratio orders.

The Phlx states that the purpose of the proposed rule change is to allow Phlx market participants to utilize foreign currency options ("FCO") contracts more effectively as risk hedging instruments. The Exchange notes that the foreign currency options markets tend to attract and be utilized by sophisticated institutional and corporate investors. This is in part due to the nature of the instruments and the tremendous size of the underlying currency markets. Sophisticated institutional and corporate investors frequently effect ratio orders, in which different numbers of contracts may be purchased or sold on each leg of a multi-part order, rather than rely solely on one-to-one spreads and other multi-part orders. In this regard, the Phlx Market Surveillance Department surveyed several floor brokers during ten trading sessions in February 1987 to determine the extent to which ratio orders were received by them. The Market Surveillance Department found that, in 29.5% of the instances surveyed, spread, straddle or combination ratio orders were received.

The Phlx contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it will facilitate transactions in securities and protect investors and the public interest while being designed to promote just and equitable principles of trade. The Phlx believes that the ability to utilize ratio orders will increase liquidity and facilitate opportunities for risk hedging and arbitrage activities leading to a more efficiently priced foreign currency options market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6,[3] and the rules and regulations thereunder. The Commission recognizes the predominance of sophisticated institutional and corporate investors in the foreign currency options markets and the prevalence of combination ratio orders used by these investors. These ratio positions are usually established because an institutional or corporate investor intends to hold a hedged position. The Commission agrees that the ability to utilize FCO ratio orders will facilitate opportunities for risk hedging.

Although historically the Commission has been concerned about granting priority to ratio orders due to the fear that institutional orders would preempt public customer orders,[4] the Commission believes that approval of the exchange's proposal on an 18 month pilot basis is appropriate for several reasons. First, the Commission notes that the FCO market is dominated by institutions and sophisticated corporate investors who use ratio combinations, spreads and straddles. Retail investor interest in the FCO market is minimal. Second, the number of public orders placed on the books of foreign currency specialists is not significant,[5] so that preemption of customer orders is unlikely. To evaluate the pilot, the Exchange will submit a report to the Commission after the pilot has been in effect for a year. Among the information contained in such a report should be data regarding the number of customer orders by-passed as a result of granting trading priority to FCO spread, straddle and combination ratio orders, whether the number of booked orders on the specialist books are still relatively few and what action, if any, the Foreign Currency Options Committee has taken regarding the specification of ratios that would be permitted under the rule.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: March 23, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6905 Filed 3-29-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1179]

U.S. Organization For The International Telegraph and Telephone Consultative Committee (CCITT); Study Group B; Postponement and Rescheduling of Meeting

The Department of State announces that the previously announced meeting of Study Group B scheduled for April 6, 1988 is postponed and is rescheduled for April 20, 1988—9:30 a.m., Room 1408, U.S. Department of State. All other particulars of the meeting as previously announced remain the same.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202)653-6102. All attendees must use the C Street entrance to the building.

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[2] 17 CFR 240.19b-4 (1986).

[3] 15 U.S.C. 78f (1982).

[4] *See e.g.*, Amex-85-09; Release No. 34-22, 50 FR 19504 (May 8, 1985).

[5] In it's filing, Phlx indicated that a recent census of the specialist books indicated that on average there are 20 booked orders per American style currency options class and virtually none in the European Style options.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a), (12) (1986).

Date: March 11, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-6917 Filed 3-29-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1178]

U.S. State Department Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, April 6, 1988, at 8:30 a.m. in the Mobil Oil Corporation, 3225 Gallows Road, Fairfax, Virginia. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Ms. Marsha J. Atwater, Overseas Security Advisory Council, Department of State, Washington, DC 20520, phone: 202/663-1654.

Date: March 17, 1988.

Clark Dittmer.

Acting Director of the Diplomatic Security Service.

[FR Doc. 88-6918 Filed 3-29-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice: CM-8/1177]

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Partially Closed Meeting

Department of State officials responsible for international environmental policy regarding global warming and climate change will be present at 2:00 p.m. Tuesday, April 19, 1988 in Room 1105 of the Department of State at 2201 C Street NW., Washington, DC, to discuss key issues and problems in those fields and seek comments and advice. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public and will last until 4:00 p.m. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Science and Technology Support by contacting William Moody or Douglas Dearborn, telephone (202) 647-2764. All attendees must use the C Street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 9:00 a.m. on Wednesday, April 20, in a session which will not be open to the public. This session will include discussion of material classified under 5 U.S.C. 552b(c)(1) and U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of consideration which go into policy development could adversely affect the ability of the United States to achieve its foreign policy objectives. The purposes of these discussions will be to elicit views and discuss issues relating to the foreign policy implications of global warning and climate change. This portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on this meeting should be directed to Thomas Wajda or William Moody of the Office of Science and Technology Support of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. They may be reached by telephone on (202) 647-2764.

Richard J. Smith,

Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.

March 4, 1988.

[FR Doc. 88-6877 Filed 3-29-88; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-11]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 13, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 7XXXX, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 24, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
20049	T.B.M., Inc	14 CFR 91.211(a)(1)	To extend Exemption No. 2956, as amended, that allows petitioner to operate its Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under Part 137.
24041	Butler Aircraft Co	14 CFR 91.211(a)(1)	To extend exemption No. 2989, as amended, that allows petitioner to operate its Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under Part 137.
25522	Resort Air, Inc., dba Trans World Express	14 CFR 121.411 and 121.413	To allow petitioner to utilize qualified Aerospatiale pilots for the training of a selected number of petitioner's crewmembers in the ATR 42-type aircraft in Toulouse, France, and St. Louis, Missouri.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description relief sought; disposition
2547	Hawaiian Airlines, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with Hong Kong Aircraft Engineering Company, Ltd. (HAECO), Singapore Aero Components Overhaul Ltd., and Air Asia, which are all U.S. FAA-certificated foreign repair stations, for the inspection, repair, and overall of petitioner's DC8–62/63 airplanes, U.S. Registration Numbers N931 and N934. Grant, March 14, 1988.
25559	Aerospace Industries Association of America, Inc.	14 CFR 45.11(a)	To permit manufacturers of aircraft intended for operation under Part 121 or 128, or in commuter air carrier operations (as defined in Part 135 and SFAR 38–4), and which are maintained under an FAA-approved continuous airworthiness maintenance program, to not install identification plates during the production phase on the exterior of the aircraft as specified rule. The exemption would include aircraft manufactured for export and would include all activities until title is transferred. Grant, March 11, 1988.

[FR Doc. 88-6871 Filed 3–29–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Date: March 24, 1988.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-6982 Filed 3–29–88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations: Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Constitutional Origins of the American Legal System: A Study Tour for Indonesian Legal Experts

The Office of Private Sector Programs, Initiative Grants Division, will assist in supporting a two-week study tour (early fall 1988) for six to eight Indonesian legal experts to examine the Constitutional origins of the American legal system. Some of these experts will also hold official positions. Examining the role of law in a changing society, this program will focus on human rights, criminal procedure law, and constitutional protections for the individual. It will also evaluate the United States Constitution's impact on corporate and environmental issues. Indonesian participants should have the opportunity to meet with American colleagues to discuss these and other legal issues, visit American legal and advocacy institutions, and participate in at least one seminar during which they can compare their own findings with those of their American colleagues. A one-week follow-on program in Indonesia on comparative constitutional issues is envisioned for three American legal scholars.

The Indonesian participants will be selected by USIA representatives abroad. Americans travelling to Indonesia will be among those experts participating in the initial program. The American-Indonesian Exchange Foundation (AMINEF) and USIA representatives in Jakarata will assist in scheduling the American scholars' visit to Indonesia. A U.S. not-for-profit institution with expertise in comparative constitutional issues will design and execute this two-part project.

USIA is most interested in working with organizations that show promise for innovate and cost-effective programming; and with organizations that have potenital for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application material—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN; Initiative Programs—Indonesia Project), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Robert F. Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-6930 Filed 3–29–88; 8:45 am]

BILLING CODE 8230-01-M

Voice of America Broadcast Advisory Committee; Meeting

The Voice of America Broadcast Advisory Committee has scheduled a meeting for Tuesday, April 5, 1988. The meeting will take place at 330 Independence Avenue, SW., Washington DC 20547, in Room 3300.

This meeting will be closed to the public as a classified briefing will be conducted, and committee members will be provided a technical tour of the Voice of America through areas not open to the public.

Please contact Louise Wheeler on (202) 485–8889 for further information.

Dated: March 24, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88-6929 Filed 3–29–88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 61
Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Monday, April 4, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendment to the Board's Rules Regarding Delegation of Authority, that implement the Government Securities Act of 1986.

2. Consideration of renewal of temporary seasonal discount credit program.

Discussion Agenda

3. Proposals to implement the Expedited Funds Availability Act regarding indorsement standards. (Proposed earlier for public comment; Docket No. R-0620)

4. Proposals regarding returned check fees.

5. Publication for comment of the concept of universal payment terms for checks presented to paying banks by private sector banks.

6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7010 Filed 3-28-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Monday, April 4, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSONS FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7011 Filed 3-28-88; 11:07 am]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, April 5, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-389 (P) (3.5 inch Microdisks and Media Therefor from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

March 25, 1988.

[FR Doc. 88-6964 Filed 3-28-88; 8:49 am]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 55/Tuesday, March 22, 1988/9404.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, March 29, 1988.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item three and four has been added making the previous number three and four now five and six.

3. Public Hearing: Recommendation to Conduct a Hearing *re* the Hazardous Materials Incident Aboard American Airlines MD-80, Nashville, Tennessee, February 3, 1988.

4. FAA Notice of Proposed Rulemaking "Standards for Approval of a Reduced V_1 Methodology for Takeoff on Wet and Contaminated Runways."

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 28, 1988.

[FR Doc. 88-7045 Filed 3-28-88; 2:14 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 28, April 4, 11, and 18, 1988.

PLACE: Commissioner's Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 28

Thursday, March 31

10:00 a.m.
  Briefing on Proposed Final Rule on Station Blackout (Public Meeting)
2:00 p.m.
  Briefing on High Priority AEOD Issues (Public Meeting)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Petition for Hearing from Commonwealth of Pennsylvania on Peach Bottom Nuclear Power Station

Week of April 4—Tentative

Thursday, April 7

2:00 p.m.
  Briefing on Proposed Basic QA Rule with Representatives of NRC Advisory Committee on the Medical Uses of Isotopes and Industry Scientific Committees (Public Meeting)

3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 11—Tentative

Thursday, April 14

11:00 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 18—Tentative

Thursday, April 21

10:00 a.m.
  Briefing on Status of Program for Performance Indicators (Public Meeting)
2:00 p.m.
  Discussion of Management-Orgnization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Proposed Final Rule Revising Agency Procedures Governing Ex Parte Communications and Separation of Functions" (Public Meeting) was held on March 23.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

March 24, 1988.

[FR Doc. 88-6971 Filed 3-28-88; 8:49 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 9450 March 22, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Wednesday, March 16, 1988.

CHANGES IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting scheduled on Tuesday, March 22, 1988, at 2:30 p.m.

Dismiss institution of injunctive action
Regulatory matter regarding financial instititions.
Litigation matter.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2092.

Jonathan G. Katz,

Secretary.

March 23, 1988.

[FR Doc. 88-7059 Filed 3-28-88; 2:15 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 28, 1988:

A closed meeting will be held on Monday, March 28, 1988, at 9:00 a.m. and on Tuesday, March 29, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, March 28, 1988, at 9:00 a.m., will be:

Consideration of *amicus* participation.
Institution of administrative proceeding of an enforcement nature.
Settlement of adinistrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Tuesday, March 29, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Formal orders of investigation.
Consideratioin of *amicus* participation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272-2091.

Jonathan G. Katz,

Secretary.

March 25, 1988.

[FR Doc. 88-7060 Filed 3-28-88; 2:15 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 61
Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

Correction

In notice document 88-5366 beginning on page 7961 in the issue of Friday, March 11, 1988, make the following correction:

On page 7962, in the first column, in the table, in the right-hand column, the 11th line should read "2,500,000 pounds.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6659

[ES-960-07-4220-10; ES-11592]

Withdrawal of Public Land for Buffalo National River; Arkansas

Correction

In rule document 87-22451 appearing on page 36577 in the issue of Wednesday, September 30, 1987, make the following correction:

In the third column, under "T. 16 N., R. 22 W.", in Sec. 7, "SW ½NE¼" should read "SW¼NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-08-4220-10; Sacramento 054896]

California; Notice of Partial Termination and Reservation of Land

Correction

Notice document 88-5328 appearing on page 9152 in the issue of Monday, March 21, 1988, was published in error and should be disregarded. March 28, 1988 is the correct date for the relief of segregative effect in notice document 88-4058 on page 5654 in the issue of February 25, 1988.

BILLING CODE 1505-01-D

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federal register

Wednesday
March 30, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its existing training standards to require that persons be trained in complete donning procedures for the use of self-contained self-rescue (SCSR) units. The required training includes each person assuming a donning position, opening and activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece and putting on the nose clip. This training in the proper use of SCSR units, commonly referred to as "hands-on" training, is necessary to prepare underground miners to protect themselves from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion.

On June 30, 1987, MSHA published an emergency temporary standard (ETS) (52 FR 24374) which required "hands-on" training in the use of SCSR units for all persons entering an underground coal mine after September 28, 1987. In accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act), the ETS must be replaced by final standards within 9 months after the ETS has been issued. This final rule replaces the ETS.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration is revising its existing training requirements for use of self-contained self-rescue units. These revisions are promulgated pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), (30 U.S.C. 811).

On June 30, 1987, MSHA published an emergency temporary standard (ETS) (52 FR 24374) which required all persons who enter an underground coal mine after September 28, 1987, to have had "hands-on" training in the use of SCSR units. This training included properly opening the device, activating it, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece, and putting on the nose clip. The ETS was issued in accordance with section 101(b) of the Mine Act. The ETS was effective immediately upon publication and revised the existing safety standards for SCSR units at 30 CFR 75.1714. Under the Mine Act, publication of an ETS requires MSHA to commence rulemaking under section 101(a) of the statute, and to replace the ETS with final standards within 9 months. Consistent with this requirement, on June 30, 1987, MSHA also published a proposed rule (52 FR 24378). The proposed approach was to integrate the safety protection afforded by the training required by the ETS into the framework of existing Agency training standards. Under the proposal this was to be accomplished by codifying "hands-on" SCSR training in MSHA's training regulations, 30 CFR Part 48, and also by amending the training requirements for "certified persons" in 30 CFR 75.160–1.

The mining community did not request a public hearing and therefore none was held.

The Agency's final rule addresses the relevant comments received on the proposed rule and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

I. Discussion of the Final Rule

A. Background

Diligent compliance with mining safety standards and safety-conscious work practices provide a substantial measure of protection against toxic atmospheres associated with fires and explosions in underground coal mines. However, in the high-hazard work environment of underground coal mines, the danger of a fire or explosion is ever-present. Electricity or other sources of power can ignite coal dust or methane gas resulting in an explosion. Equipment can also be the source of a fire, which may involve fuel, lubricants and the surrounding coal. In caved and mined-out areas which contain coal and accumulated gas, explosions can be caused by rock falls and in some instances fires are started by spontaneous combustion. When active mine areas are connected into previously mined-out areas, there is also the risk of exposure to an oxygen-deficient atmosphere.

MSHA standards are designed to protect miners from these hazards, but if an emergency occurs because other measures have failed, SCSR units are the last protection available that facilitates escape. SCSR units are closed-circuit breathing apparatuses that provide a source of oxygen and greatly increase a person's chance of surviving a mine emergency involving an irrespirable atmosphere. Rapid and proper donning of an SCSR unit under such extreme adverse circumstances is essential to survival.

Existing standards at 30 CFR 75.1714 require that underground coal mine operators make SCSR devices available to the miners employed at their mine who go underground, as well as to the visitors who the operators authorize to go underground. The standard also specifies that mine operators must instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. Subjects included in miner training which must be conducted in accordance with MSHA training regulations in 30 CFR Part 48 include use, care and maintenance of the units. Until the ETS, however, the standard did not specifically require "hands-on training" with SCSR units.

The death of 27 miners in a mine fire on December 19, 1984, raised serious questions about the adequacy of miner training in the use of SCSR devices. MSHA's investigation into the accident was complicated by problems relating to extinguishing the fire, and later by the hazardous conditions created by the fire damage.

However, evidence gathered during the investigation (*Report of Investigation, Underground Coal Mine Fire, Wilberg Mine,* issued *August 7, 1987*) indicated that some of the 27 victims did not have basic knowledge about activating or using the SCSR devices available to them. They were also unaware of the critical need to protect their lungs from the smoke and carbon monoxide contaminated atmosphere created by the fire.

MSHA is aware that miners have in several instances successfully used SCSR devices to escape from mines following a mine fire or explosion. However, in November 1986, MSHA completed a nationwide evaluation of the effectiveness of SCSR training covering 1,174 underground coal mines. At each mine, a representative number of miners and supervisors were asked to respond to a series of questions concerning SCSR use and storage at the mine. The same miners and supervisors were then asked to don a SCSR unit provided by MSHA. When the evaluation was completed, a total of 6,064 persons had been interviewed and tested. Of this group nearly 29 percent, or 1,780 persons were graded as failing. At 249 mines where the evaluation indicated ineffective SCSR training, additional retraining was required for all underground personnel.

In addition to this evaluation, researchers from the University of Kentucky and the Bureau of Mines, U.S. Department of the Interior, have recently reported their findings based on a series of SCSR donning studies. (Cole and Vaught, "Training in the Use of Self-Contained Self-Rescuers," and Vaught and Cole, "Problems in Donning the Self-Contained Self-Rescuer" (USBM project H0034800040)). In cooperation with two coal companies, studies were made of miners' skill in the correct use of SCSR devices. Problem areas pointed out by the studies included heavy reliance by the industry on teaching methods that do not provide individual performance simulation. MSHA experience, prior to the ETS, confirmed that training in the use of SCSR devices typically consisted of a film, slide or tape presentation, or demonstration by an instructor to either a class or an individual. "Hands-on" training, which would familiarize miners with the skills necessary to successfully use the units in an emergency, was not an industry-wide practice.

B. General Discussion of the Final Rule

Because the effective use of SCSR devices is essential to successful evacuation in an immediately life-threatening situation, the Agency initially addressed the general lack of "hands-on" training through the immediate regulatory action of the ETS. Under the final rule, "hands-on" training requirements are integrated into the framework of existing MSHA standards for initial and annual retraining of miners and supervisors. The final rule codifies the "hands-on" training requirements in the training regulations for 30 CFR Part 48, and also in the training requirements for "certified persons" in 30 CFR 75.161.

With this approach, the majority of MSHA training requirements are maintained within 30 CFR Part 48, which is consistent with MSHA's goal of a comprehensive miner training program. However, in accordance with § 48.2(a)(1)(ii), supervisory personnel, subject to MSHA-approved state certification requirements, are generally not covered by Part 48. The regular training of these individuals is addressed by 30 CFR 75.160–1. Therefore, the final rule also revises § 75.160–1 to include "hands-on" training with SCSR units in the training and retraining requirements for certified persons. This will assure that all miners, including supervisors, receive "hands-on" training as an integral component of their training in the use, care and maintenance of SCSR's. The final rule also clarifies the existing requirement that visitors going underground must also receive "hands-on" training in the use of the SCSR's they are provided. This clarification and the revisions to Part 48 and § 75.160–1, which are separately discussed below, replace the amendments made by the ETS to § 75.1714.

One commenter recommended that the final rule include provisions which were not within the scope of the proposed rule. The commenter recommended that: (1) The operator make available to each miner an SCSR that can be comfortably worn at all times; (2) storage of SCSRs not be permitted; (3) MSHA establish criteria for the weight and size of SCSR units; (4) training in the use of SCSR units include a review of the mine's emergency evacuation procedures and escapeway routes and a practice drill from the working section to the surface; and (5) mine evacuation exercises be conducted at 6-month intervals to assure that all miners are simultaneously evacuated from the mine.

The suggestions concerning the size and weight of SCSR units which can be comfortably worn are the subject of ongoing research and development. The results of this work, being conducted through the Bureau of Mines, may form the basis for future rulemaking amendments to MSHA's existing SCSR approval regulations at 30 CFR Part 11. Improvements in SCSR technology that would reduce the size and weight of SCSR units could also raise the issue of SCSR units storage as permitted by existing MSHA standards. However, the basis for these revisions is not present in this rulemaking. Likewise, training and drills in emergency evacuation procedures and escapeway routes are addressed by existing Agency standards, and revisions to these requirements are not within the scope of this rulemaking. These issues will, however, be considered in the Agency's future review and revision of the existing standards.

C. Revisions to Part 48—Training and Retraining of Miners

Subpart A of 30 CFR Part 48, prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, providing annual refresher training and giving certain persons hazard training.

The existing training requirements for new miners (§ 48.5), newly-employed experienced miners (§ 48.6), annual refresher training (§ 48.8), and hazard training (§ 48.11) are revised by the final rule to include requirements for "hands-on" training in the use of SCSR devices. The "hands-on" training required includes complete donning procedures in which each person properly assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece and puts on the nose clip. The "hands-on" training will familiarize persons who go into underground coal mines with the skills necessary to successfully use the SCSR unit in an emergency situation.

The requirement that "hands-on" training include "complete donning procedures" was added to the final rule to clarify that comprehensive SCSR donning training is required. For "hands-on" SCSR training to be most effective, commenters and the studies cited above indicate that a start to finish, orderly step-by-step procedure is important to skill building and retention. An example of a complete donning procedure is the "3+3 method" developed as a result of the research conducted by the University of Kentucky and Bureau of Mines previously cited. This procedure directs the person being trained to assume a kneeling position with the neckstrap of the SCSR looped around the neck and to complete a six-step donning sequence: (1) Open and activate the unit; (2) insert mouthpiece; (3) put on nose clip; (4) put on goggles; (5) adjust neck and waist straps, and (6) replace miner's cap. The "3+3 method" can be used with all currently MSHA-approved SCSR units. MSHA has included the "3+3 method" of donning SCSR units in instructor guides and video tapes for the various types of SCSR units. These training aids are available at MSHA District Offices and MSHA's National Mine Health and Safety Academy in Beckley, West Virginia.

Commenters pointed out, and MSHA agrees, that proper body positioning can facilitate correct and prompt SCSR donning. The final rule does not, however, specify the body positioning to be used when donning an SCSR. Instead, this will be addressed in the training plan for each mine so that mining conditions and improved or alternative donning positions can be considered.

The final rule retains the proposed requirements that as part of the "hands-on" SCSR training sequence each person open the SCSR unit and activate it.

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These steps familiarize the person with the type of latch or closing device used, its location on the unit and the action necessary to release it. Likewise, activating the unit familiarizes the person with this procedure, which is different between compressed oxygen and chemical-type SCSR units as well as between different models within these two classes.

Consistent with the proposal, the final rule requires that each person receiving "hands on" training insert the mouthpiece or simulate this task while explaining proper insertion of it. The purpose of the final rule is to assure that each person is knowledgeable in proper procedures for inserting the mouthpiece and creating the necessary seal. Several commenters recommended deleting the provision permitting simulation of the mouthpiece. These commenters stated that because proper performance of this step is so essential to isolating the lungs from the outside atmosphere it should be experienced first hand. MSHA agrees that one of the most critical steps in donning a SCSR is quickly and properly creating a seal around the mouthpiece with the lips and gums. The Agency believes that a person can demonstrate this skill either by actual insertion of the mouthpiece or by explaining step-by-step how it is properly inserted. Either method can be effective in evaluating proficiency in performing this task. Maintaining the alternative to simulate proper insertion of the mouthpiece also recognizes some people would prefer not to insert the mouthpiece because of health concerns, even when proper sanitizing procedures are used.

Also retained in the final rule is the proposed requirement that as a part of "hands-on" SCSR training each person put on the nose clip. This is a vital part of isolating the lungs from the outside atmosphere and, therefore, an important element in proper use of SCSR units.

Some commenters recommended that the SCSR units used for "hands-on" training be fully charged. They stated that a fully charged unit would allow each person to experience the sensation of being under oxygen as provided by the unit. MSHA is not aware of any information which indicates that charged SCSR units are necessary for effective "hands-on" training. The Agency recognizes that some SCSR training models, particularly the compressed-oxygen type, are designed to permit the use of oxygen, while others do not. Studies conducted by the Bureau of Mines indicate that both charged and non charged types of training models can be effectively used to provide "hands-on" training. While experiencing the sensation of being under oxygen may afford some additional measure of preparedness, this is not central to the rule's purpose of teaching people simple, reliable donning skills that can be used in an emergency. Therefore, the final rule does not adopt this recommendation.

One commenter also recommended that "hands-on" training include a timed performance evaluation of the trainee's ability to don an SCSR. This commenter stated because of the high concentration of carbon monoxide resulting from a mine fire or mine explosion, each person should be capable of donning an SCSR in 60 seconds or less. MSHA agrees that because of the irrespirable atmosphere that is present following a mine explosion or fire, persons need to don their SCSR unit as quickly as possible. A review of MSHA's investigative reports on recent mine emergencies in which SCSR units were not successfully used indicates however that inadequate knowledge of how to properly use the SCSR units and of the danger involved was the cause of these failures and not inadequate donning time. Also, studies conducted by the Bureau of Mines indicate that the average time for a person who has received "hands-on" training to don an SCSR is about 60 seconds. The critical tasks necessary to isolate the lungs from the ambient atmosphere took less than 50 percent of the total time needed to don the units. For these reasons, the final rule does not adopt the recommendation for a timed performance evaluation.

D. Revisions to Section 75.161—Plans for Training and Retraining of Qualified and Certified Persons

Section 75.160 requires each operator to provide a program, approved by the Secretary, for training and retraining qualified and certified persons. This standard, published in 1970, addresses the training of persons who perform certain functions in underground coal mines prescribed by the Mine Act and MSHA standards. The Part 48 training regulations, published in 1978, do not apply to supervisors who are subject to MSHA approved state certification requirements, unless they perform non-supervisory tasks. The vast majority of supervisors at underground coal mines are certified persons. As a result, these persons are not subject to the training requirements of Part 48.

All persons working underground need proper training and retraining in the use of SCSR units to maintain the knowledge and skill necessary to effectively use these devices in an emergency. The final rule, therefore, retains the proposal to require "hands-on" SCSR training for certified persons as part of their regular training and retraining.

Existing § 75.160–1 sets forth the courses that must be included in the training program required by § 75.160 for certified and qualified persons. As a new paragraph (c), the final rule adds the same SCSR "hands-on" training requirements for certified persons as described above for the training and retraining of miners in Part 48. Thus, each certified person must receive training in the use of SCSR devices that includes complete donning procedures in which each person properly assumes a donning position, opens and activates the unit, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece and puts on the nose clip. This training must be received initially before certified persons go underground and at least annually thereafter. This training is required only for certified persons who go into underground coal mines.

Sections 75.160 and 75.160–1 address both qualified and certified persons and, under the proposal, persons in both of these skill classifications would have been required to receive "hands-on" SCSR unit training. As one commenter recognized, this would be duplicative in that qualified persons are subject to the SCSR training requirements of Part 48. The final rule corrects this by specifying that "hands-on" SCSR training under § 75.161 is required for certified persons only.

The reference in existing § 75.160–1 to December 31, 1970, is no longer applicable and has been deleted in the final rule. That date was the latest date by which operators had to submit the required training plan or program.

The final rule redesignates § 75.160–1 as § 75.161 to conform these standards with the Federal Register format.

E. Revisions to § 75.1714—Availability of Approved Self-Contained Self-Rescue Devices; Instruction in Use and Location

Section 75.1714 requires that underground coal mine operators make SCSR units available to the miners employed at their mines who go underground, and to the visitors who operators authorize to go underground. The existing standards also specify that mine operators instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. This training is required to include use, care and maintenance of the units, and is required to be conducted in accordance with MSHA training regulations in 30 CFR Part 48. To clarify that visitors are to receive the same type SCSR training as miners, the final rule revises the last sentence in paragraph (b) to include the term "visitors".

The ETS revised this section by adding a new paragraph (c) which required each person going into an underground coal mine after September 28, 1987 to have had "hands-on" training. As previously discussed, the final rule now addresses the "hands-on" training in 30 CFR Part 48 and 30 CFR 75.161. Therefore, the ETS is no longer necessary and is deleted by the final rule.

A commenter recommended that visitors not be subject to the same "hands-on" training that is required for miners. This commenter stated that groups of visitors, sometimes as many as 30 people, tour their mine and it is generally not feasible to provide comprehensive training for a large group of individuals. This commenter further stated that the safety of these individuals would be best served by providing visitors a brief familiarization with the SCSR unit available at the mine, and informing them that if it becomes necessary to don the SCSR unit while they are underground, the person assigned to accompany them underground would provide the necessary assistance.

Consistent with the existing standard and for the reasons stated in this rulemaking, MSHA believes that all persons should be completely trained in the use of the SCSR unit before they go into an underground coal mine. In the event of a mine fire or explosion or an inundation of oxygen-deficient air, it is often necessary to properly don an SCSR unit immediately or in a relatively short time. Relying on experienced persons to instruct visitors how to do this would not recognize the emergency nature of the circumstances. In addition, if the individual who is assigned to accompany the visitors underground became incapacitated, the visitors would not be able to obtain the additional instruction and direction needed to don their SCSR units. The final rule does not, therefore, adopt this suggestion.

II. Drafting Information

The principal persons responsible for preparing this document are: Douglas C. Altizer, Jr., Coal Mine Safety and Health, MSHA; Frank Schwamberger, Education Policy and Development, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and Robert Snashall and Edward C. Hugler, Office of the Solicitor, Department of Labor.

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the final rule. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the final rule will not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulations. MSHA has determined that compliance alternatives are not available for small mines for the "hands-on" training requirement of this final rule.

In the following summary of the Regulatory Flexibility Analysis MSHA addressed the cost impact on industry by factoring in, where applicable, all direct and indirect costs for equipment and labor. MSHA estimates are based primarily upon the expertise of senior MSHA personnel who provided estimates for the time required to perform specific tasks and the compliance level of the industry.

MSHA estimates that the total compliance cost for the final rule is $252,614 the first year and $244,979 annually thereafter. The cost for revising training plans ($21,900) comprises about 9 percent of the first year cost. The cost for SCSR training devices comprises about 6 percent of the recurring cost. The remaining cost ($230,714) is attributed to labor for the persons taking the training and for the instructors giving the training. A copy of the full analysis is available upon request.

IV. Paperwork Reduction Act

Codification of the "hands-on" training provision in 30 CFR Part 48 and in the training requirements for certified persons specified in 30 CFR 75.161 requires operators of underground coal mines to submit revised training plans and programs to MSHA for approval. MSHA estimates that it would take 30 minutes for each of the 1825 underground coal mines to revise the training plan and program.

The Office of Management and Budget (OMB) has approved this paperwork requirement under the Paperwork Reduction Act of 1980 and has assigned OMB control number 1219–0009. The requirement is approved through November 11, 1990.

List of Subjects in 30 CFR Part 75

Administrative practice and procedure, Education, Mine safety and health, Self-contained self-rescue devices.

Date: March 24, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Parts 48 and 75 of Chapter I, Title 30 of the Code of Federal Regulations are amended as follows:

PART 48—TRAINING AND RETRAINING OF UNDERGROUND MINERS

1. The authority citation to 30 CFR Part 48 is revised to read as follows:

Authority: 30 U.S.C. 811 and 825.

2. Section 48.5 is amended by revising paragraph (b)(2) to read as follows:

§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(2) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip. The course shall be given before the new miner goes underground.

* * * * *

3. Section 48.6 is amended by redesignating paragraph (b)(8) as (b)(9) and adding a new paragraph (b)(8) to read as follows:

§ 48.6 Training of newly employed experienced miners; minimum courses of instruction.

* * * * *

(b)(8) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices and at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

* * * * *

4. Section 48.8 is amended by revising paragraph (b)(8) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b)(8) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

* * * * *

5. Section 48.11 is amended by revising paragraph (a)(4) to read as follows:

§ 48.11 Hazard training.

* * * * *

(a)(4) Use of self-rescue and respiratory devices, with self-contained self-rescue device training that includes complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip; and

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.160–1 is redesignated as § 75.161 and is revised to read as follows:

§ 75.161 Plans for training programs.

Each mine operator shall submit to the District Manager a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be qualified or certified. The program shall provide—

(a) For certified persons, annual training courses in methane measurement and oxygen deficiency testing, roof and rib control, ventilation, first aid, principles of mine rescue, and the provisions of this Part 75;

(b) For qualified persons, annual courses in performance of the tasks which they perform as qualified persons; and

(c) For certified persons, annual training in the use of self-contained self-rescue devices used at the mine. This training shall include complete donning procedures in which each person assumes proper position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

3. Section 75.1714 is amended by revising paragraph (b) to read as follows and removing paragraph (c):

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

* * * * *

(b) Before any miner employed by the operator or visitor authorized by the operator goes underground the operator shall instruct and train such person in the use and location of the self-rescue device or devices made available at the mine. Instruction and training of miners and visitors shall be in accordance with provisions set forth in 30 CFR Part 48.

[FR Doc. 88-[illegible] Filed 3-29-88; 8:45 am]

BILLING CODE 4510-43-M

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federal register

Wednesday
March 30, 1988

Part III

Department of Justice

28 CFR Part 44

Unfair Immigration-Related Employment Practices; Interim Final Rule With Request for Comments

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DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1264-88]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends 28 CFR 44.101(c)(2)(ii), which defines who is a citizen or intending citizen protected from citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b), by adding a new sentence. It provides that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the receipt received when they paid their application fee.

Prompt implementation of this interim rule is required (1) to ensure that rights of aliens otherwise protected under section 102 of IRCA (8 U.S.C. 1324b) are not lost; (2) to make clear that eligible aliens may apply for temporary resident status and be protected from citizenship status discrimination, thus encouraging them to apply for legalization; (3) to make the date temporary resident status begins consistent with that used by the Immigration and Naturalization Service; and (4) and to effect Congressional intent. For these reasons, this rule is published as an interim final rule with a request for comments.

EFFECTIVE DATE: March 30, 1988.

Comments must be submitted on or before May 31, 1988.

ADDRESS: Written comments should be addressed to: Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490.

Comments received will be available for public inspection in suite 800, 1100 Connecticut Avenue, NW., Washington, DC from 9:00 a.m. to 5:30 p.m., Monday through Friday except legal holidays. Copies of this regulation are available on tape for those with impaired vision.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (202) 653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (202) 653-8246 (Voice) or (202) 653-5710 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1987, a final rule establishing standards and procedures for the enforcement of the antidiscrimination provisions of section 274B of the Immigration and Nationality Act, as amended by section 102 of the Immigration and Control Act of 1986 (IRCA) (8 U.S.C. 1324b) was published in 52 FR 37402 (to be codified at 28 CFR Part 44). Section 102 of IRCA protects aliens authorized to work in the United States from employment discrimination based on their national origin. It protects only U.S. citizens, nationals, and intending citizens from employment discrimination based on their citizenship status.

Subsection 44.101(c) of the existing rule defines the classes of aliens who are intending citizens under the Act. One of these classes consists of aliens who are granted the status of temporary residence under 8 U.S.C. 1255a(a)(1) (28 CFR 44.401(c)(2)(i)). The definition is silent as to whether aliens who have applied for temporary residence under 8 U.S.C. 1255a(a)(1), but who have not yet been granted that status, are intending citizens. Thus, the existing regulation is not clear whether applicants for temporary residence are protected against citizenship status discrimination. This interim final rule makes clear that temporary resident status, once granted, relates back to the time the application fee is paid, *i.e.*, from the time of application. Therefore successful applicants are protected against citizenship status discrimination from the time of application.

Reasons for the Amendment

The interim final rule comports with the language of section 102. Section 102 defines an intending citizen as an alien who "is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) [of the Immigration and Nationality Act, as amended, 8 U.S.C. 1255a(a)(1)]" (8 U.S.C. 1324b(3)(B)(i)). Section 245A(a)(1) is entitled "Timely Application" and only concerns the preliminary step of applying for temporary resident status or legalization, as the program is popularly known. Thus the words of the statute lend support to relating temporary resident status back to the time of application.

This rule makes the time temporary resident status begins for antidiscrimination purposes consistent with that used by the Immigration and Naturalization Service (INS) for legalization purposes. INS in its regulations implementing the Section 245A temporary resident program treats temporary residence, once granted, as relating back to the time the application fee is paid. This regulation implements the statutory requirement that there be an 18 month waiting period before a temporary resident can apply for permanent residence (8 U.S.C. 1255a(b)(1)(A)). The INS regulation sets forth when temporary resident status begins. It states:

> The status of an alien whose application for application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at [the] Service Legalization Office.
>
> (8 CFR 245a.2(s)).

The interim final rule tracks this INS regulation. This makes the treatment of when temporary resident status begins the same for legalization and antidiscrimination purposes.

This treatment of temporary resident status is also consistent with the intent of Congress in enacting the antidiscrimination provisions of IRCA. For example, the House Committee on the Judiciary stated in its report:

> The Committee does not believe barriers should be placed in the path of permanent residents and other aliens who are authorized to work and who are seeking employment, particularly when such aliens have evidenced an intent to become U.S. citizens. It makes no sense to admit immigrants and refugees to this country, require them to work and then allow employers to refuse to hire them because of their immigration (non-citizenship) status. Since Title VII does not provide any protection against employment discrimination based on alienage or non-citizen status, the Committee is of the view that the instant legislation must do so.

H.R. Rep. No. 99-682, 99th Cong., 2d Sess., pt. 1 at 70. The House Committee on Education and Labor quoted the same passage in its report and stated "the Committee on Education and Labor fully endorses the policy position on the Committee on the Judiciary * * *", *Id.*, pt. 2 at 12.

The reference to those "who are authorized to work and who are seeking employment" embraces applicants for temporary resident status. Those applicants must demonstrate proof of financial responsibility (8 CFR 245a.s(d)(4)). Documents accompanying their applications for temporary residence must "be employment-related if employment-related documents * * * are available to the applicant" (8 U.S.C. 1255a(c)(1)(B)). Permitting discrimination against them creates the very situation that Congress intended to avoid, *i.e.*, the Government requires them to work and, in many instances, to tell their employer they are legalization applicants, but leaves them exposed to discrimination. Such a situation would discourage eligible aliens from even applying for legalization and would undermine the purpose of the legalization program enacted by Congress.This interim final rule clarifies § 44.101(c) to avoid the possibility of this situation.

Justification for an Interim Final Rule

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for making this amendment effective immediately without prior public comment. This amendment is directed, in part, at those who would apply for legalization if they could be assured that they would be protected from discrimination by section 102 of IRCA. Because the time for applying for temporary resident status expires on May 4, 1988 (8 U.S.C. 1255a(a)(1)(A), 8 CFR 245a.2(a)), the delay in following public comment procedures may deny many potential applicants the opportunity for legalization. Consequently, it is impractical to follow the normal notice and comment procedure. Furthermore, any delay in effectuating this rule could deter victims of citizenship status discrimination from filing discrimination charges under section 102 because they believed they were not covered. In addition, because section 102 requires that charges be filed within 180 days of the alleged discrimination (8 U.S.C. 1324b(d)(3)), any delay in filing charges could result in the loss of rights.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Law enforcement officers, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, Chapter I, Part 44 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 44—[AMENDED]

1. The authority citation for Part 44 is revised to read as follows:

Authority: 8 U.S.C. 1324b, 8 U.S.C. 1103(a).

2. In § 44.101, paragraph (c)(2)(ii) is revised to read as follows:

§ 44.101 Definitions.

* * * * *

(c) * * *

(2) * * *

(ii) Evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen (INS Form N-315, "Declaration of Intention"; or INS Form I-772, "Declaration of Intending Citizen"). The status of an alien whose appplication for temporary resident status under 8 U.S.C. 1255a is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term citizen or intending citizen does not include an alien who—

* * * * *

Edwin Meese III,
Attorney General.

[FR Doc. 88-6947 Filed 3-29-88; 8:45 am]

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federal register

Wednesday
March 30, 1988

Part IV

Department of Labor

Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers; Proposed Rule; Reopening of Comment Period and Invitation for Comments on Additional Enforcement Provisions and Other Changes to Prior Proposal

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers

AGENCY: Employment Standards Administration, Wage and Hour Division, ESA, Labor.

ACTION: Proposed rule; reopening of comment period and invitation for enforcement provisions, and other changes to prior proposal.

SUMMARY: There are presently six industries in which homework is banned under section 11(d) of the Fair Labor Standards Act (FLSA), unless special individual certificates are obtained. The six industries are: Women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries. On August 21, 1986, the Department of Labor published proposed 29 CFR Part 530 which, if adopted, would lift the restrictions on the employment of homeworkers in these industries for employers who first obtain certificates authorizing homework from the Department. The proposal would expand the certification program currently in effect in the knitted outerwear industry under a rule promulgated in 1984. The period for public comment on the proposed rule, after having been extended, expired on December 4, 1986. Over 19,000 comments on the proposal were received, and were reviewed by the Department.

A number of the commenters indicated their belief that the Department would face substantial difficulty in enforcing the FLSA under the proposal. Specifically, these commenters argued that enforcement had been ineffective among employers of homeworkers in the knitted outerwear industry under a similar rule promulgated in 1984. The Department reviewed its enforcement experience in knitted outerwear in light of the issues raised in these comments and, recognizing the validity of some of the concerns raised, decided to modify the proposal by incorporating a number of provisions designed to improve and strengthen FLSA enforcement with respect to homeworkers. The question of lifting the ban on the employment of homeworkers in the women's apparel industry remains under review. Any further action with respect to women's apparel would be the subject of separate rulemaking proceedings. In addition, those manufacturing operations in the jewelry industry that may be hazardous are not included in this proposal. Those portions of the prior proposal relating to the women's apparel and jewelry industries (other than those operations identified herein) are hereby withdrawn.

DATE: Comments are due on or before April 29, 1988.

ADDRESS: Submit written comments (preferably in triplicate) to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The background of the current proposal is detailed in the Department's August 21, 1986, Notice of Proposed Rulemaking (51 FR 30036). The comments submitted in response to that Notice have been carefully reviewed by the Department.

Several commenters suggested that the times have changed considerably since the ban on homework was initially imposed. The Department believes that since the ban was implemented in the 1940s, there have been demographic and other changes that would either make enforcement of FLSA provisions easier than before, or indicate that there is now a greater need for the ban in these industries to be lifted.

For example, the percentage of surfaced roads has increased 58.2% to 89%, and the percentage of households with telephones has increased from 62% to 97%. A greater percentage of surfaced roads and the increased penetration rate of telephone technology indicate that travel and communication conditions are better now than when homework was initially banned. These changes increase the accessibility of homeworkers to compliance officers and make it easier for homeworkers to lodge complaints. Also, the Department expects that the passage of the Immigration Reform and Control Act of 1986 (IRCA), with its provisions for adjustment of status ("amnesty"), may reduce the leverage that certain employers have had over illegal aliens, in that the fear of deportation for filing a complaint will no longer be present for many individuals.

Since data collection began in this area in 1967, the unemployment rate for females who maintain families has doubled to 9.8%. Many women in this group may be unemployed because they have young children at home. Although there is no guarantee that women in this group will be more prone to want to work as homeworkers than other women, lifting the ban in the remaining industries will provide them with employment opportunities that would not conflict with their desire to stay at home and care for their children.

On the other hand, a number of the commenters expressed concerns about the Department's ability to enforce the FLSA with respect to homeworkers in these industries. The Department also reviewed its enforcement experience in knitted outerwear in light of these comments. Based on this review, and to address the concerns raised in the comments, the Department has decided to propose including in the rule a wider range of enforcement mechanisms to enhance FLSA compliance among employers of homeworkers in the restriced industries. In addition, the Department is proposing revisions to the homeworker handbook and other recordkeeping requirements in 29 CFR Part 516.

With respect to the women's apparel industry, the Department still has this matter under review and thus is not proposing herein to lift the ban on the employment of homeworkers in that industry. If the Department decides at a later date to lift the ban in women's apparel, such action would require separate rulemaking. With respect to the jewelry industry, the Department is withdrawing its proposal to lift the ban on the employment of homeworkers except with respect to those jewelry manufacturing operations which do not involve safety and health hazards. Nonhazardous operations have been identified as the stringing of beads and other jewelry, the attaching of jewelry to cards, and packaging. While the Department has tentatively identified these opearations as nonhazardous, it is recognized that there may be other such operations. Comment is specifically invited identifying any additional nonhazardous operations (as well as any operations that may be hazardous).

Finally, the Department proposes to adopt a policy whereby certain employers who utilize "model garment programs" will not be subject to any action by the Department for employing

homeworkers under certain specified conditions.

For these reasons, the comment period is being reopened to solicit views on the modifications to the proposal set forth below. All comments received in response to the previous notice will continue to be part of the rulemaking record and will be fully considered in preparation of the final regulation. Therefore, it is not necessary to resubmit any comments.

Phase in Industries

In order to more efficiently utilize available resources, it is proposed to phase in the certification program in the remaining restricted industries on an industry-by-industry basis. This would give the Department the time to implement in an orderly fashion the new proposed enforcement mechanisms discussed below. Also, this phase-in would allow the Department to conduct investigations of the employers who apply for certification promptly after the issuance of the certificate, thereby providing the necessary assistance to enable them to fully comply with the FLSA from the outset.

The phase-in of the certification program would take place on a graduated basis, beginning with the gloves and mittens industry and the embroideries industry, immediately upon the effective date of the final rule, and the permissible operations in the jewelry industry and the button and buckle manufacturing and handkerchief manufacturing industries six months later. Although the certification program is already in place in the knitted outerwear industry, the additional requirements proposed herein would apply immediately upon the effective date of the final rule.

Issue No Certificates in States Prohibiting Homework

Prior to the issuance of certificates pursuant to the proposed rule, the Department would contact those States with statutes which appear to prohibit homework in the federally-restricted industries in order to confirm whether such homework employment is illegal under State law. The States would be afforded thirty days in which to reply. The Department would not issue a certificate authorizing the employment of homeworkers in any State where the Governor (or authorized representative) has advised the Administrator in writing that the use of homeworkers in such an industry conflicts with a State labor standards or health and safety law. This proposal would avoid any possible confusion for employers in such States and eliminate any potential impact on State agency enforcement efforts.

Regular Renewal of Certificates

It is proposed that certificates issued to employers of homeworkers in the restricted industries would be renewable at two-year intervals. Also, at the time of application and at each renewal, employers would be required to furnish the Department with a listing of the names, addresses, and languages (other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. Thus, the Department would have an additional mechanism for close monitoring of certified employers of homeworkers in these industries, and a system for distributing information (handbooks, pamphlets, etc.) to homeworkers in appropriate languages. In addition, this requirement would assist the Department in assigning bilingual compliance officers to investigations of such employers.

Conditions of Certification

To insure that employers of homeworkers are fully aware of their regulatory and statutory obligations in employing homeworkers, the Department proposes to add a requirement to the process of application for certification that the employer provide written assurances that all homeworkers will be employed in compliance with the provisions of the FLSA and all applicable regulations with respect to the payment of wages, employment of minors, and recordkeeping. The employer would further assure compliance with the requirements of Parts 516 and 530 with respect to maintenance of homeworker handbooks and calculation of piece rates, and would encourage all homeworkers to cooperate with the Department in any investigation that may be made.

Wage-Hour Investigation Procedures

Any employer in a restricted industry who requests certification to employ homeworkers would be investigated promptly after the issuance of the certificate by the Department's Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, corrects the violation(s) and promises further compliance, the firm would be reinvestigated to further assure that full FLSA compliance has been achieved.

Improved Homeworker Handbook

The Department also proposes to adopt a number of initiatives to promote the accuracy of hours worked records for homeworkers employed under the certification program. A simplified homeworker handbook will be used to provide homeworkers with the information necessary to accurately record daily and weekly hours worked. While the current handbook requires a fairly detailed description of work done, e.g., style or lot number, article worked on, operation performed, etc. with a single "hours worked" total for each line entry, the revised handbook will give primary attention to accurate recording of daily and weekly hours worked by providing time sheets with sufficient space for a homeworker to log in and out several times a day. The Department believes that such a recordkeeping tool more closely approximates the reality of the homework situation in that it recognizes that homeworkers frequently start and stop working a number of times over the course of a day. The revised handbook will afford homeworkers a simple means to record their hours as they go, rather than reconstruct them at the end of the day or week. In addition, in contrast to the existing rule in 29 CFR Part 516 which requires that the employer personally enter the required information into the handbook, the proposed rule would require the employer to insure that the hours worked and other information required therein are accurately entered by the homeworker.

In addition to revising the format of the homeworker handbook, the Department plans to revise and clarify the instructions for filling it out and include a brief explanation of what constitutes "hours worked" under the FLSA. The homeworker handbook will also be published in a number of foreign languages, which is expected to reduce enforcement problems associated with language barriers.

Under the revised homework recordkeeping regulations, the Department proposes to require that employers insure that the homeworker handbooks are completed accurately and in a timely fashion. In this regard, employers will be required to sign a statement in each homeworker handbook that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. The Department believes that the signing of a statement attesting to the validity of the information in the handbook would encourage the maintenance of accurate records.

In addition, a number of clarifying changes are proposed to the homework recordkeeping rules in Part 516.

Piece Rates—Work Measurement

Experience in enforcement of the FLSA with respect to homeworkers has shown that many homeworkers do not earn sufficient amounts at piece rates to meet the minimum wage. One apparent reason is that employers have often not set their piece rates high enough to insure that all the homeworkers will be paid at least the required hourly minimum wage. Consequently, it is proposed that as a condition for obtaining a certificate, employers who wish to pay piece rates (as opposed to hourly rates) to their homeworkers would be required to establish the piece rates for the different types of items produced using stop watch time studies or other work measurement methods.

Denial or Revocation of a Homework Certificate

Upon finding violations of the FLSA, the Department has authorized under sections 16(c) and 17 of the Act to seek back wages and injunctive relief through court action. The Administrator also has the authority, codified in section 11(d), to ban homework if that is necessary to insure that homeworkers are not employed in violation of the minimum wage requirements of the Act. Instead of a total ban on homework, the Administrator is proposing at this time to allow it in four of the six remaining restricted industries and to a limited extent in a fifth, upon the condition that the employer obtain a certificate and comply with the requirements of these regulations. In this regard, another means to obtain compliance with the FLSA is a proposed provision for denial or revocation of a homework certificate upon a determination by the Administrator of the failure of the applicant or certificate holder to comply with the FLSA, regulations and the assurances the applicant makes as a condition of obtaining a certificate. Since certificate holders have made certain assurances as a condition of obtaining a certificate, revocation of the certificate is appropriate when these assurances are not observed. Depending on the circumstances, a certificate may be denied or revoked for a period of one to three years.

I. Serious Wage Violations

It is recognized by the Department that not all wage violations are so severe that revocation of a certificate is necessary to insure future compliance with the wage requirements of the FLSA. Thus, the proposed regulation differentiates between serious and non-serious violations for purposes of this rule.

Serious wage violations which would result in revocation are defined in three alternative ways. First, a serious wage violation is defined as one in which the back wages found due homeworkers during the investigation period total $10,000 or more. (The Department's investigations cover a two-year period, or a three-year period in the case of willful violations.) Thus, an employer with a large number of homeworkers may commit a serious wage violation even though the amount of back wages due a single homeowner is not substantial. A second standard measures a serious wage violation by means of a forumla based on wage and hour data obtained during an investigation. This standard measures the impact on homeworkers in terms of a percentage of the minimum wage for a specified period of time rather than an absolute dollar amount. The third definition of a serious wage violation is failure to pay the minimum wage or overtime pay to more than half of the homeworkers for a specified period of time.

II. Repeated Wage Violations

The Department believes that an employer's compliance history is a factor in predicting the likelihood of failure to comply with wage requirements in the future. Thus, a record of repeated violations is an indication that future compliance is doubtful and that revocation of a homework certificate is necessary.

III. Child Labor Violations

A major reason for the ban on homework in 1942 was the conclusion that homework resulted in increased illegal child labor in the home. In order to avoid the possibility that a certificate program will result in an increase in illegal child labor, and to discourage the use of illegal child labor by employers with certificates, child labor violations are made a basis for revoking a certificate.

IV. Failure To Pay Back Wages or Civil Money Penalties Judged Owing

The Department enforces the Fair Labor Standards Act in federal court and in administrative proceedings within the Department. Once the appropriate authority has made a final determination that a certificate holder is liable for back wages or civil money penalties, liability has been fixed in accordance with due process of law. Since the employer promised as a condition of receiving the certificate to comply with all the requiremnts of the Act and regulations issued thereunder, the employer is in violation of the conditions of the certificate until such payment is made. It is proposed that failure to make such payment within 60 days of a final order or agreement would lead to revocation of the certificate.

V. Failure To Cooperate in an Investigation

As a condition of obtaining a homework certificate, an employer provides assurances to cooperate with an investigation by the Department to determine compliance with the FLSA. Included in that cooperation is the responsibility not to impede or obstruct the investigation, and the requirement to make available to a compliance officer records or any other information under the employer's control necessary for a complete investigation.

VI. Serious Recordkeeping Violations

Because of the importance of accurate wage and hour records, the failure to keep records of wage information necessary for wage computations would be grounds for revocation of a certificate. Revocation may result from erroneous as well as incomplete or missing information. The Wage and Hour Division will not seek revocation of a certificate for an employer's failure to keep records not necessary for a determination of homeworkers' hours worked and wages earned and will not seek revocation of a certificate for minor or technical mistakes in the records.

Wage and Hour may exercise its discretion not to seek revocation for recordkeeping violations found in a first investigation upon evaluation of all the circumstances.

VII. Deliberate Misstatement in an Application for a Certificate or Other Documents

In order to enforce the FLSA, the Department must have accurate information from applicants and certificate holders about their employees. The Department is especially concerned with those facts that help it identify homeworkers and determine the hours worked by and the wages paid to such homeworkers. For example, if the employer fails to identify all of the homeworkers or has kept false records of hours worked or wages paid to homeworkers, he or she has misstated a material fact. Accordingly, a deliberate misstatement of a material fact in an application for a certificate, payroll records, or other documents will be grounds for denial or revocation of a certificate. Minor mistakes or omission of non-material facts in an application for a certificate or other documents will not be grounds for denial or revocation of a certificate.

VIII. Discrimination Against a Homeworker

Effective enforcement of the FLSA for homeworkers as with all workers is based on the freedom of employees to make complaints of violations to the Department or other appropriate authorities or to participate in the enforcement process without fear of reprisal. Accordingly, it is essential that employers who discriminate against homeworkers have their certificates revoked. Even if the homeworker's complaint is not subsequently substantiated, the homeworker is protected against discrimination.

Civil Money Penalties

The proposed regulations would establish a system of civil money penalties, to be assessed for any violation of the FLSA related to homework (except child labor) or for any violation of the homeworker regulations. Part 570 of this chapter, issued pursuant to section 12 of the FLSA, provides a system of civil money penalties for child labor violations. In setting the amount of any penalty, the Administrator would take into consideration the number of homeworkers affected, the history of prior violations, whether a violation was intentional or knowing, whether a violation was substantial (but not so serious as to warrant revocation of a certificate) or minor in nature, and mitigating or extenuating circumstances. A schedule would be prescribed for computation of such penalties, up to $500 per affected homeworker. Procedures for assessment and administrative hearings are included in the proposed regulation.

Authority for imposition of civil money penalties may be found in section 11(d) of the Act, enacted in 1949, which authorizes the Secretary to make "such regulations and orders regulating, restricting, or prohibiting industrial homework *as are necessary or appropriate to* prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in the Act." (emphasis added). Even before this provision was added to the Act the Supreme Court upheld, in *Gemsco* v. *Walling*, 324 U.S. 244 (1945), the Wage-Hour Administrator's authority to prohibit, outright, the practice of industrial homework, where the statute authorized the prescription in industry wage orders of "such terms and conditions as the Administrator finds necessary * * * to safeguard the minimum wage rates * * *."

By the same rationale, section 11(d) authorizes the Secretary to impose remedies short of outright prohibition, namely civil money penalties, where this is a reasonable alternative to prohibition, and reasonably necessary or appropriate to safeguard payment of the minimum wage to homeworkers. See also *Janik Paving & Construction, Inc.* v. *Brock*, 828 F.2d 84 (2nd Cir. 1987) (Secretary authorized to debar contractors under Contract Work Hours and Safety Standards Act, pursuant to statutory authority "to prescribe appropriate standards, regulations, and procedures * * * with respect to compliance with the enforcement of such labor standards, as he deems desirable," following *Steuart & Bros.* v. *Bowles*, 322 U.S. 398 (1944). As in *Gemsco*, the Secretary's utilization of a specially tailored remedy here is necessitated by the special enforcement problems posed by industrial homework, where these problems cannot be fully resolved by the use of more routine back wage or injunctive remedies.

The Department views civil money penalties as an important enforcement tool, to encourage employers of homeworkers to pay not less than the minimum wage and overtime pay as required by the Act, and to keep proper records as required by the regulations. This device would be used in those instances when revocation of a certificate seems inappropriate or unduly harsh under the circumstances of the violations.

A civil money penalty system also permits the imposition of a relatively moderate administrative remedy for violations, especially in situations where substantial back wages are not found to be owing to homeworkers. Full due process would be afforded to employers through prescribed administrative appeal procedures.

Administrative Procedures

The proposed regulations provide the administrative process for review of a determination to deny or revoke a homework certificate and for review of a decision to assess civil money penalties. The procedures include a right to a hearing before an Administrative Law Judge and an appeal of the Judge's decision to the Secretary.

Special procedures are proposed for an expedited proceeding when a hearing has been requested followed a determination to revoke a certificate on an emergency basis. In the case of a request for such a hearing, special time limits are provided for the Administrative Law Judge to hold a hearing and issue a decision, and for the Secretary to issue a final decision.

The proposed regulations also provide an informal procedure before the Administrator in lieu of a formal hearing before an Administrative Law Judge. This procedure is to be used when an applicant or certificate holder does not contest the factual findings of the Administrator and waives a formal hearing.

Bonding or Security Payments

The proposed regulations would authorize the Administrator to require employers to furnish a bond or cash security payment as a condition for issuance or renewal of a certificate. A bond would be compulsory prior to issuance or renewal of a certificate in the case of any employer whose application for a certificate had previously been denied, or whose certificate had previously been revoked. Such bond or cash payment would be in an amount up to $2500 for each homeworker to be employed under a certificate, and would be subject to payment or forfeiture in the event the employer failed to pay any minimum wages or overtime pay due homeworkers. The Administrator would be required to disburse any sums thus paid or forfeited to affected homeworkers in accordance with the procedures set forth in section 16(c) of the FLSA.

The Department considers a bonding or security requirement to be a significant enforcement tool which would not only provide a strong incentive for employers to pay homeworkers the minimum wage and overtime pay required by the FLSA, but also assure that in the event of nonpayment, funds would be available to satisfy the employer's back wage obligations.

In order to avoid unnecessary burdens on law-abiding employers, bonding would not be imposed as a routine requirement, but only in instances where it is questionable, based on Wage-Hour experience with the employers from past or current investigations, whether they will comply with their legal obligation, or whether money will be available to compensate homeworkers if violations occur. Bonding would be imposed, for example, in cases where an employer in the past has needed an installment plan to pay the back wages due. In such cases, the Administrator may relieve the employer from the bonding obligation and refund any amounts held as security where it is subsequently determined that the employer is in compliance with the law and the Administrator is satisfied that the employer will be financially able to remedy any back wage violations which may occur.

Homework in the Jewelry Industry

Many comments were received on the August 21, 1986, proposal opposing the lifting of the ban on jewelry homework based on safety and health issues. Specifically, commenters expressed the opinion that permitting homework in the jewelry industry would impose a grave danger to the health and safety of workers, their families and the community. They alleged that a number of the processes involved in jewelry manufacturing expose workers to toxic fumes and acids, many of which are known cancer-causing agents or are harmful to the reproductive processes. It was also argued that significant fire hazards and the potential for explosions are present due to the use of flammable solvents, propane tanks and acetylene torches.

The Department has carefully considered all of the comments submitted on this issue. In light of the potential for very serious safety and health hazards for homeworkers in the jewelry industry, and the Secretary's broad and multi-faceted responsibility for protecting and promoting the welfare of working people generally (29 U.S.C. 551), and in view of the potential adverse impact on the public at large, the Department is herein withdrawing its prior proposal to lift the ban on those aspects of this industry that may pose such hazards and the restrictions on homework will be retained therein. However, since there is no evidence in the record of safety and health hazards in jewelry assembly operations such as the stringing of beads and other jewelry, the attaching of jewelry to cards, and packaging operations, and since a number of comments advocated that homework should be permitted in such operations, the Department is herein proposing that the ban be lifted only on these operations.

Homework in the Women's Apparel Industry

Many comments were received on the August 1986 proposal opposing the lifting of the ban on homework in the women's apparel industry. The Department is still carefully reviewing all of the comments submitted on this issue. Accordingly, the prior proposal to lift that ban in the women's apparel industry is withdrawn. Should the Department decide to take further action with respect to this industry, separate rulemaking would be undertaken.

Model Garment Programs

Home sewing retailers (fabric stores) have for some time conducted model garment programs, which have been found to be in violation of the FLSA homework restrictions.

Typical model garment programs involve employees of retail fabric stores making garments in their homes for display in the stores. While there are many variations, usually the employee is given free patterns, notions and materials, and is allowed to keep the garment after the display period, which usually lasts three to six weeks. Such programs are voluntary, and the employee typically has wide discretion in selecting patterns, fabrics and notions.

Such display garment programs are considered beneficial by employers and employees. The employees consider the program a job benefit because many of them are enthusiastic home sewers. The display garment programs are of advantage to consumers because they can see finished products. The employers are pleased since they can provide this job benefit to employees, and display model garments—which are constructed with personal care—to their customers.

The Department agrees that a special provision appears to be appropriate for model garment programs and, therefore, proposes to adopt a policy whereby the Department will not take any action in situations where the criteria listed below are met. It must be emphasized, however, that time spent by employees in sewing model garments is hours worked under the FLSA and that such hours must be combined with hours worked at the establishment in recording the total hours in the workweek and calculating the payment of the minimum wage and overtime pay. This policy would apply only where:

(1) The employee's work is voluntary;

(2) The patterns, fabrics, and notions are provided by the employers at no cost to the employees;

(3) The employees retain ownership of the model garments after the display period;

(4) An accurate record in homeworker handbooks is maintained of all hours worked in the home-sewing activities; and

(5) The employees are paid for all hours worked, both in the stores and in the home-sewing activities, in accordance with the provisions of the FLSA.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The proposed rule, if promulgated, will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of homeworkers. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

The Chief Counsel for Advocacy filed comments in support of the prior proposed rule and indicated the belief that the certification program would provide significant benefits for small businesses in these industries by improving their competitive position and increasing their ability to offer flexibility in employment.

Similarly, the Bureau of Economics, Competition and Consumer Protection of the Federal Trade Commission filed comments in support of the prior proposed rule. The Bureaus concluded that a relaxation of the ban might improve the international competitiveness of the restricted industries and that total employment, possibly including that of factory workers, could increase.

In contrast, a number of manufacturers and associations of manufacturers in the restricted industries filed comments opposing the prior proposal. These commenters argued that adoption of the proposal would result in unfair competition between factory employers and employers of homeworkers in that the latter group would not be required to absorb the overhead costs of operating factories (e.g., rent and utilities). As a result of such competition, these commenters believed the prior proposal would severely damage their businesses.

The Department believes that modifying the restrictions on the employment of homeworkers would have a net benefit in the affected industries by providing greater flexibility in work arrangements. No reliable data have been identified to refute this belief. However, the ultimate effects of this rulemaking depend on the extent to which employers will seek to obtain cerfiticates and choose to employ homeworkers.

Consideration of Alternatives to Certification

Prior to the promulgation of the final rule lifting the ban on the employment of homeworkers in the knitted outerwear industry in 1984 (49 FR 44266) the Department carefully considered various alternatives to a total recission of the ban, namely, implementing an employer licensing or certification system, removing the restrictions only in rural areas, expanding the conditions for granting certificates for individual homeworkers, and transferring certification enforcement responsibilities to the States. After completing its analysis of the rulemaking record, the Department adopted the employer certification program in lieu of a total recission of the ban on homework in the knitted outerwear industry. The remaining alternatives were rejected as unworkable and/or less effective than employer certification. Other than comments in favor of lifting the restrictions which argued that special needs for homework exist in rural areas, no substantive comments on alternatives to the certification program were received in response to the prior proposal. While the Department believes the certification program, combined with the additional enforcement mechanisms discussed above, is the most desirable means to enforce the FLSA with respect to homeworkers, specific comments are again invited on the other alternatives.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in proposed 29 CFR Parts 516 and 530 have been or will be submitted for approval to the Office of Management and Budget (OMB).

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 516

Minimum wages, Reporting and recordkeeping requirements.

29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Accordingly, it is proposed to amend 29 CFR Parts 530 and 516 as set forth below.

Signed at Washington, DC, on this 25th day of March 1988.

Ann McLaughlin,
Secretary of Labor.

Fred W. Alvarez,
Assistant Secretary for Employment Standards.

Paula V. Smith,
Administrator, Wage and Hour Division.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

1. The authority citation for Part 530 is revised to read as set forth below and the authority citations following all of the sections in Part 530 are removed.

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

2. The table of contents is revised to read as follows:

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

Subpart A—General

Sec.
530.1 Definitions.
530.2 Restriction of homework.
530.3 Application forms for individual homeworker certificates.
530.4 Terms and conditions for the issuance of individual homeworker certificates.
530.5 Investigation.
530.6 Termination of individual homeworker certificates.
530.7 Revocation and cancellation of individual homeworker certificates.
530.8 Preservation of individual homeworker certificates.
530.9 Records and reports.
530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.
530.11 Petition for review.
530.12 Special provisions.

Subpart B—Homeworker Employer Certificates

530.101 General.
530.102 Requests for employer certificates.
530.103 Employer assurances.
530.104 Bonding or security payments.
530.105 Investigations.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

530.201 Conflict with State law.
530.202 Piece rates—work measurement.
530.203 Outstanding violations and open investigations.
530.204 Discretionary denial or revocation.
530.205 Mandatory denial or revocation.
530.206 Special circumstances.

Subpart D—Civil Money Penalties

530.301 General.
530.302 Amounts of civil money penalties.
530.303 Considerations in determining amounts.
530.304 Procedures for assessment.

Subpart E—Administrative Procedures

530.401 Applicability of procedures and rules.
530.402 Notice of determination.
530.403 Request for hearing.
530.404 Referral to Administrative Law Judge.
530.405 General.
530.406 Decision and order of Administrative Law Judge.
530.407 Procedures for initiating and undertaking review.
530.408 Notice of the Secretary to review decision.
530.409 Final decision of the Secretary.
530.410 Special procedures.
530.411 Emergency certificate revocation procedures.
530.412 Alternative summary proceedings.
530.413 Certification of the record.
530.414 Equal Access to Justice Act.

§ 530.1—530.12 (Subpart A) [Amended]

3. Sections 530.1 through 530.12 are designated as Subpart A and a new Subpart heading "General" is added.

4. In § 530.1 paragraphs (b) through (j) are redesignated as (c) through (k), new paragraph (b) is added, and newly redesignated paragraph (f)(1)(ii) is amended by changing the reference to "(e)(1)(i)" to read "(f)(1)(i)".

§ 530.1 Definitions.

* * * * *

(b) "Administrator" as used in this part means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or an authorized representative of the Administrator.

* * * * *

5. Section 530.2 is revised to read as follows:

§ 530.2 Restriction of homework.

Except as provided in Subpart B of this part, no work in the industries defined in paragraphs (e) through (k) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

§§ 530.3, 530.4, 530.6, 530.7, 530.8, and 530.10 [Amended]

6. The headings for §§ 530.3, 530.4, 530.6, 530.7, 530.8, and 530.10 are revised as follows:

* * * * *

§ 530.3 Application forms for individual homeworker certificates.

§ 530.4 Terms and conditions for the issuance of individual homeworker certificates.

* * * * *

§ 530.6 Termination of individual homeworker certificates.

§ 530.7 Revocation and cancellation of individual homeworker certificates.

§ 530.8 Preservation of individual homeworker certificates.

* * * * *

§ 530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.

7. In § 530.4, paragraph (c) in its entirety is removed.

8. The OMB information collection approval, which is displayed in parentheses at the end of § 530.4, is amended by removing the second sentence which refers to paragraph (c).

§ 530.13 [Removed]

9. Section 530.13 is removed.

10. New Subparts B, C, D, and E are added as follows:

Subpart B—Homeworker Employer Certificates

§ 530.101 General

Except as provided in subpart C, a certificate may be issued to an employer authorizing the employment of homeworkers in any industry defined in paragraphs (g) through (k) of § 530.1; and in the jewelry industry § 530.1(f)), where the employer's homeworkers are engaged exclusively in the stringing of beads and other jewelry and the carding and packaging of jewelry. This certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of § 530.4 of Subpart A. Unless suspended or revoked, such certificates are valid for two-year periods. Applications for renewals must be submitted no later than thirty (30) days prior to the expiration date of the current certificate. In the absence of a certificate, the employment of homeworkers in these industries is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in the Fair Labor Standards Act and in this part, including an injunction restraining the employment to homeworkers.

Certificates authorizing such employment may be issued on the following terms and conditions upon written application to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

§ 530.102 Requests for employer certificates.

The initial request for certification or renewal application shall be signed by the employer and shall contain the name of the firm, its mailing address, the physical location of the firm's principal place of business and a description of the business operations and items produced. In addition, the initial or renewal application shall contain the names, addresses, and languages (if other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. The employer shall also provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue NW., Washington, DC 20210.

§ 530.103 Employer assurances.

In order to be granted a certificate authorizing the employment of industrial homeworkers, the employer must provide written assurances concerning the employment of homeworkers subject to section 11(d) of the Fair Labor Standards Act to the effect that:

(a) All industrial homeworkers shall be paid in accordance with the provisions of the Act.

(b) All industrial homeworkers shall be employed in compliance with the child labor provisions contained in section 12 of the Act and regulations and orders issued pursuant to section 12. All homeworkers will be instructed not to permit minors to work in violation of such provisions.

(c) Records of hours worked and wages paid shall be maintained in accordance with section 11 of the Act and Part 516 of this chapter.

(d) All homeworkers shall complete homeworker handbooks in accordance with § 516.31 of Part 516.

(e) All records shall be made available for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.

(f) Piece rates paid to homeworkers shall be established using stop watch time studies or other work measurement methods.

(g) All homeworkers shall be encouraged to cooperate with the Department in any investigation that may be made.

§ 530.104 Bonding or security payments.

(a) Where in the Administrator's judgment there is not sufficient reason to believe that the Act will be complied with or that money will be available if violations of the Act occur, the Administrator may condition issuance or renewal of a certificate to an employer upon the furnishing of a bond with a surety or sureties satisfactory to the Administrator.

(b) The Administrator shall condition issuance or reinstatement of a certificate to any employer whose application for a certificate had previously been denied, or whose certificate had been revoked, upon the furnishing of a bond.

(c) Any bond required by the Administrator under paragraph (a) or (b) of this section shall be in an amount determined by the Administrator, up to $2500 for each homeworker to be employed by such employer under the certificate. In lieu of a bond, the employer may furnish a cash payment of equal amount, to be held in a special deposit account by the Administrator for the period during which the certificate is in effect. Such bond, or cash payment, shall be subject to payment or forfeiture, in whole or in part, upon a final determination that the employer has failed to pay minimum wages or overtime compensation to homeworkers in accordance with the Act. Any sums thus paid or forfeited to the Administrator shall be disbursed to affected homeworkers in accordance with section 16(c) of the Act.

(d) At the Administrator's discretion, the obligation of a bond may be relieved, and any cash payment held as security in lieu thereof may be refunded (together with any interest accrued thereon), upon a subsequent determination that the employer is in compliance with the Act and that sufficient funds will be available to meet back wage payment obligations in the event of violations of the Act.

§ 530.105 Investigations.

Any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the

certificate by the Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, and the violations are corrected and future compliance is promised, the firm will be reinvestigated to assure that full FLSA compliance has, in fact, been achieved.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

§ 530.201 Conflict with State law.

No certificate will be issued pursuant to § 530.101 of Subpart B above authorizing the employment of homeworkers in any State where the Governor (or authorized representative) has advised the Administrator of the Wage and Hour Division in writing that the employment of homeworkers in an industry defined in paragraphs (f) through (k) of § 530.1 is illegal by virtue of a State labor standards or health and safety law.

§ 530.202 Piece rates—work measurement.

(a) No certificate will be issued pursuant to § 530.101 of Subpart B to an employer who pays homeworkers based on piece rates unless the employer establishes the piece rates for the different types of items produced using stop watch time studies or other work measurement methods. Documentation of the work measurements used to establish the piece rates, and the circumstances under which such measurements were conducted shall be retained for three years and made available on request to the Wage and Hour Division.

(b) The fact that an employer bases piece rates on time studies which indicate that the homeworkers would receive at least the minimum wage at such piece rate(s) does not relieve the employer from the Act's requirement that *each* homeworker actually receive not less than the minimum wage for all hours worked.

§ 530.203 Outstanding violations and open investigations.

A homework certificate will not be issued or renewed by the Administrator if, within the previous three years, the Administrator has found and notified the applicant of a monetary violation of the Fair Labor Standards Act in an amount certain, or the Administrator has assessed a civil money penalty pursuant to Subpart D of these regulations or Part 579 of this chapter (child labor), and such amounts are unpaid, or if the applicant is the subject of a revocation proceeding at the time of the application for renewal, or the applicant is the subject of an open investigation.

§ 530.204 Discretionary denial or revocation.

Where the Administrator finds that the employment of homeworkers under a certificate is likely to result in violations of the Fair Labor Standards Act, the Administrator may deny or revoke the certificate.

§ 530.205 Mandatory denial or revocation.

The Administrator shall deny or revoke a certificate in accordance with the following standards and for the period specified in the standards:

(a) *Serious wage violations.* Upon a finding by the Administrator of a serious wage violation, a certificate shall be denied (including refusal to renew) or revoked for one year. A serious wage violation is defined as minimum wage or overtime pay violations of the Act totalling $10,000 or more with respect to homeworkers; or minimum wage violations where 10 percent or more of a certificate holder's homeworkers (but in all cases at least two homeworkers) failed to receive at least 80 percent of the minimum wage for all hours worked for 6 or more weeks in any 3 month period; or minimum wage or overtime pay violations affecting more than half of the homeworkers of the certificate holder for 6 or more weeks in any 3 month period. All other wage violations are deemed non-serious wage violations for purposes of this section.

(b) *Repeated wage violations.* For repeated wage violations found by the Administrator, a certificate shall be revoked for one to three years, depending on the seriousness and frequency of the violations.

(c) *Child labor violations.* Upon a finding by the Administrator of a violation of the child labor provisions of section 12 of the Fair Labor Standards Act and the regulations at Part 570 of this title, a certificate shall be revoked for one year. Upon a second finding by the Administrator of such a violation, the certificate shall be revoked for three years.

(d) *Failure to pay back wages or civil money penalties judged owing.* Upon the failure of a certificate holder to pay within 60 days back wages or civil money penalties finally judged by a court, administrative law judge or other appropriate authority, as the case may be, to be owed by the certificate holder, or agreed to be paid by the certificate holder, or within such longer period as may be specified in the final order or agreement, a certificate shall be revoked for up to one year or for such period as such obligation shall remain unpaid if longer than one year.

(e) *Failure to cooperate in an investigation.* Where the Administrator finds obstruction of or other failure to cooperate in a Wage and Hour investigation by a certificate holder which impedes the investigation, the certificate shall be revoked for a period of one to three years, depending on the circumstances. For purposes of this regulation, cooperation includes providing records upon request to Wage and Hour compliance officers, identifying homeworkers of the certificate holder, and encouraging homeworkers to make themselves available in connection with an investigation.

(f) *Serious recordkeeping violations.* Upon a finding by the Administrator that a certificate holder has engaged in a serious recordkeeping violation, the certificate may be revoked for up to one year. Upon a second finding by the Administrator of a serious recordkeeping violation, a certificate shall be revoked for one to three years A serious recordkeeping violation is defined as one where, either through errors in or omissions of required information, the data which is necessary for the accurate determination of hours worked by or wages paid to homeworkers or data necessary for the computation of wages owed to homeworkers is unavailable with respect to 10 percent or more of the homeworkers.

(g) *Deliberate misstatement in an application for a certificate or in other documents.* Upon a finding by the Administrator of a deliberate misstatement of a material fact in an application for a certificate, in payroll records, or in any other information submitted to the Wage and Hour Division or maintained by the employer pursuant to these regulations, the certificate shall be denied or revoked for one to three years.

(h) *Discrimination against a homeworker.* Upon a finding by the Administrator that a certificate holder has discharged or otherwise discriminated against a homeworker with respect to the homeworker's compensation or terms, conditions, or privileges of employment because the homeworkers engaged in protected activity, the certificates shall be revoked for three years. Protected activity is defined as:

(1) Any complaint of a violation of the Act to the employer, the Department or other appropriate authority, or;

(2) Any action which furthers the enforcement of or compliance with the Act, such as giving information to a Wage and Hour compliance officer.

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§ 530.206 Special circumstances.

At the discretion of the Administrator, a certificate need not be denied or revoked pursuant to § 530.204 or § 530.205 of this subpart if the Administrator finds all of the following:

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

Subpart D—Civil Money Penalties

§ 530.301 General.

A system of civil money penalties is established to provide a remedy for any violations of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to Part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this Part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See Subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed $500 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$10 to $100	$100 to $200	$200 to $500
Monetary violations	$10 to $100	$100 to $200	
Employment of homeworkers without a certificate		$100 to $200	$200 to $500
Other violations of statutes, regulations or employer assurances	$10 to $100	$100 to $200	$200 to $500

§ 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

(1) Good faith attempts to comply with the Act or regulations;

(2) Extent to which the violation is under the employer's control;

(3) Non-culpable ignorance of the requirements of the Act or regulations;

(4) False documents or representations; and

(5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

§ 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in Subpart E of this part.

Subpart E—Administrative Procedures

§ 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

§ 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administration shall become final and unappealable.

§ 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart shall be made in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and must be received no later than thirty (30) days after issuance of the notice referred to in § 530.402 of this subpart.

(b) No particular form is prescribed for any request for a hearing permitted by this part. However, any such request shall be typewritten or legibly written; specify the issue or issues stated in the notice of determination giving rise to such request; state the specific reason or reasons why the person requesting the hearing believes such determination is in error; be signed by the person making the request or by an authorized representative of such person; and

include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) In the case of an emergency revocation, a request for an administrative hearing shall be made in writing to the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street NW., Suite 700, Washington, DC 20036, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

§ 530.404 Referral to Administrative Law Judge.

Upon receipt of a timely request for a hearing, the request and a copy of the notice of administrative determination complained of, shall, by Order of Reference, be referred to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceedings, subject to any amendment that may be permitted under 29 CFR Part 18.

§ 530.405 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings described in this subpart.

§ 530.406 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. If the Administrative Law Judge finds that the Administrator has established by a preponderance of the evidence the factual basis for the determination to deny or revoke a certificate or to assess a civil money penalty, that determination shall be affirmed. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Secretary, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 Procedures for initiating and undertaking review.

Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. Copies of the petition shall be served on all parties and on the Chief Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 530.408 Notice of the Secretary to review decision.

Whenever the Secretary determines to review the decision and order of an Administrative Law Judge, the Secretary shall notify each party of the issue or issues raised; the form in which submission shall be made (i.e, briefs, oral argument, etc.); and, the time within which such presentation shall be submitted.

§ 530.409 Final decision of the Secretary.

The Secretary's final decision shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.410 Special procedures.

In a revocation proceeding pursuant to § 530.205(d) of Subpart C of this part arising as a result of a certificate holder's failure to pay back wages or civil money penalties judged owing, the Administrator may file a motion for expedited decision, attaching to the notice, by affidavit or other means, evidence that a final order has been entered or agreement signed requiring respondent to pay back wages or civil money penalties and that the back wages or civil money penalties have not been paid. The respondent in the proceeding shall have 20 days in which to file a countering affidavit or other evidence. If no evidence countering the material assertions of the Administrator has been submitted within 20 days, the Administrative Law Judge shall, within 30 days thereafter, affirm the revocation or denial of the certificate. If the respondent does timely file such evidence, the Administrative Law Judge shall schedule a hearing pursuant to § 530.411(c) of this subpart and the case shall be subject to the expeditious procedures following therein.

§ 530.411 Emergency certificate revocation procedures.

(a) When the Administrator determines that immediate revocation of a homework certificate is necessary to safeguard the payment of minimum wages to homeworkers, a notice of proposed emergency revocation of a certificate shall be sent to the certificate holder pursuant to § 530.402 of this subpart setting forth reasons requiring emergency revocation of the certificate.

(b) If no request for a hearing to § 530.403 of this subpart is received within 20 days of the date of receipt of the notice by the certificate holder, the proposed revocation of the certificate shall become final.

(c) The Office of Administrative Law Judges shall notify the parties at their last known address, of the date, time and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Secretary by certified mail and shall constitute the final order of the Department of Labor unless the Secretary determines to review the decision.

(e) Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision of the Administrative Law Judge. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 15 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition is filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

(f) The Secretary's decision shall be issued within 60 days of the notice by the Secretary accepting the submission, and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.412 Alternate summary proceedings.

In lieu of an administrative hearing before an Administrative Law Judge under the above procedures, an applicant or certificate holder who does not dispute the factual findings of the Administrator may, within 30 days of the date of issuance of the notice of denial, revocation, or assessment (or within 20 days in the case of a notice of emergency revocation) petition the Administrator instead to reconsider the denial or revocation of the certificate or the assessment of civil money penalties. An applicant or certificate holder electing this informal procedure may appear before the Administrator in person, make a written submission to the Administrator, or both. Such reconsideration by the Administrator shall be available only upon waiver by the applicant or certificate holder of the formal hearing procedures provided by the above regulations.

§ 530.413 Certification of the record.

Upon receipt of a complaint seeking review of a final decision issued pursuant to this part filed in a United States District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

§ 530.414 Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act. In any hearing conducted pursuant to these regulations, Administrative Law Judges shall have no power or authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

11. The authority citation for Part 516 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211, Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

12. Paragraphs (b) and (c) § 516.31 are revised to read as follows:

§ 516.31 Industrial homeworkers.

* * * * *

(b) *Items required.* In addition to all of the records required by § 516.2, every employer of homeworkers shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter applies, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun;

(ii) Date on which work is turned in by worker, and amount of such work;

(iii) Kind of articles worked on and operations performed;

(iv) Piece rates paid;

(v) Hours worked on each lot of work turned in;

(vi) Wages paid for each lot of work turned in.

(2) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(c) *Homeworker handbook.* In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homeworker. The employer is required to insure that the hours worked and other information required therein is entered by the homeworker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homeworker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages be paid. The handbooks shall include a provision for written verification by the employer attesting that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworker's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

* * * * *

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federal register

Wednesday
March 30, 1988

Part V

The President

Executive Order 12633—Amending the Code of Conduct for Members of the Armed Forces of the United States

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12633 of March 28, 1988

Amending the Code of Conduct for Members of the Armed Forces of the United States

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and as Commander in Chief of the Armed Forces of the United States, in order to remove gender specific terms, Executive Order No. 10631, of August 17, 1955, as amended, is further amended as follows:

Section 1. The second paragraph is amended to read as follows: "All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.".

Sec. 2. Articles I, II, and VI of the Code of Conduct for Members of the United States Armed Forces, attached to and made a part of Executive Order No. 10631, are amended to read as follows:

"I

"I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

"II

"I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

"VI

"I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.".

Ronald Reagan

THE WHITE HOUSE,
March 28, 1988.

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LIST OF PUBLIC LAWS

Last List March 28, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3889/Pub. L. 100-264

To designate the United States Post Office Building located at 300 Sycamore Street in Waterloo, Iowa, as the "H.R. Gross Post Office Building." (Mar. 25, 1988; 102 Stat. 38; 1 page) Price: $1.00

S.J. Res. 216/Pub. L. 100-265

Approving the location of the Black Revolutionary War Patriots Memorial. (Mar. 25, 1988; 102 Stat. 39; 1 page) Price: $1.00

S.J. Res. 219/Pub. L. 100-266

To designate March 25, 1988, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." (Mar. 25, 1988; 102 Stat. 40; 1 page) Price: $1.00

3-31-88
Vol. 53 No. 62

federal register

**Thursday
March 31, 1988**

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1064

Milk in the Greater Kansas City Marketing Area; Order Terminating Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This is an action concerning the termination of the advertising and promotion program of the Greater Kansas City Federal milk marketing order. Termination of the program was requested by Mid-America Dairymen, Inc., a cooperative association representing more than 95 percent of the dairy farmers who are producers under the order. Since a majority of the producers on the market no longer support the program to fund milk advertising and promotion activities, the program should be terminated.

EFFECTIVE DATES: Effective April 1, 1988—Amendments to §§ 1064.73 and 1064.107, with respect to marketings on and after March 1, 1988. Effective June 30, 1988—Removal of §§ 1064.105, 1064.106 and 1064.110 through 1064.122.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: On March 10, 1988, Assistant Secretary Kenneth A. Gilles issued the following determinations and order:

Determinations. It is hereby determined that termination of the advertising and promotion program of the Greater Kansas City order is favored by a majority of the producers engaged in the production of milk for sale in the marketing area in the representative period, determined to be December 1987, and that such producers produced more than 50 percent of the milk produced for sale in the Greater Kansas City marketing area during such representative period.

Section 608c(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended, requires that if a majority of the producers engaged in the production of a commodity for sale in the marketing area during a representative period determined by the Secretary favor termination of an order, and such producers produced more than 50 percent of the commodity produced for sale in the marketing area during the representative period, such order shall be terminated. Section 608c(5)(I) of the Act provides that milk marketing order provisions authorizing advertising and promotion may be terminated separately as provided in section 608c(16)(B).

The termination of the advertising and promotion provisions of the Greater Kansas City marketing area was requested by Mid-America Dairymen, Inc., a cooperative association which represents over 95 percent of the producers whose milk was pooled under the order during the representative period. Such producers produced more than 50 percent of the milk for sale in the market during such period. Therefore, the advertising and promotion provisions of the order should be terminated.

Order. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) it is hereby ordered that the funding provisions of the advertising and promotion program of the order (in § 1064.73 (a)(3) and (a)(4), the words ", and (4) deductions for advertising and promotion made pursuant to § 1064.107"; and § 1064.107) be terminated April 1, 1988, with respect to milk marketings on and after March 1, 1988. The remaining provisions of the advertising and promotion program (§§ 1064.105, 1064.106, and 1064.110 through 1064.122) are hereby terminated effective June 30, 1988.

List of Subjects in 7 CFR Part 1064

Milk marketing orders, Milk, Dairy products.

Therefore, 7 CFR Part 1064 is amended as follows:

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. The authority citation for 7 CFR Part 1064 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1064.73, paragraph (a) is amended by removing ", and" at the end of paragraph (3), and removing paragraph (4).

§ 1064.107 [Removed]

3. Section 1064.107 is removed.

§§ 1064.105, 1064.106, 1064.110 through 1064.122 [Removed]

4. Sections 1064.105, 1064.106, and 1064.110 through 1064.122 are removed.

Signed at Washington, DC, on March 28, 1988.

Edward T. Coughlin,
Director, Dairy Division.

[FR Doc. 88-7110 Filed 3-30-88; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1962 and 1965

Processing of Loan Assumptions

AGENCY: Farmers Home Administration, USDA

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the internal processing of loan assumptions. This action is being taken due to the automation of FmHA field offices and their ability to process these transactions. The intended effect is to provide field offices with guidance on how to process these transactions.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309 South Agriculture Building, Washington, DC 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in

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Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves matters relating to agency management making publication for comment unnecessary and impractical.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos.:

10.404	Emergency Loans
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10.407	Farm Ownership Loans
10.410	Low Income Housing Loans
10.416	Soil and Water Loans
10.421	Indian Tribes and Tribal Corporation Loans

Intergovernmental Consultation

Catalog Number 10.416 is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The remaining programs are excluded from Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Policy Act of 1949, Pub. L. 91–90, an Environmental Impact Statement is not required.

Current FmHA regulations provide guidance on how to process loan assumptions by completing various forms and remitting same to our Finance Office. With automation, these regulations are outdated and require revision. The purpose of these revisions is to update existing regulations consistent with automation efforts of the Agency.

List of Subjects

7 CFR Part 1962

Crops, Government property, livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

2. In § 1962.34, paragraphs (f)(9), (f)(13) and (g)(1) are revised to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(f) *Transfer and assumption docket.*

* * * * *

(9) Form FmHA 1965–8, "Release from Personal Liability," when appropriate.

* * * * *

(13) Form FmHA 1924–14, "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities."

(g) *Processing assumption agreements.* * * *

(1) Upon processing the assumption, the Finance Office will establish an account in the name of the assuming transferee and the County Supervisor will be notified.

* * * * *

PART 1965—REAL PROPERTY

3. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

4. In § 1965.27, the introductory text of paragraph (b)(5) is amended by removing the last sentence and adding in its place the following three sentences which read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(5) * * * Except as noted below, Form FmHA 1965–13, will be executed by the assuming parties. The name, case number, and address, as applicable, will be changed to that of the transferee's on the Finance Office records. In each of the following situations, Forms FmHA 465–5 and FmHA 1965–13 must be prepared and distributed in accordance with the applicable FMI.

* * * * *

Subpart C—Security Servicing for Single Family Rural Housing Loans

5. In § 1965.126, the introductory text of paragraph (c)(2) is revised to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

* * * * *

(c) * * *

(2) In the situations outlined in paragraphs (b)(12) and (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this section *only*, the assuming party will execute Form FmHA 460–9, "Assumption Agreement (Same Terms)." Upon processing the assumption, the name, case number, and address, as applicable, will be changed to that of the transferee's on Finance Office records. Assumptions under this paragraph are authorized without considering the assuming party's eligibility for program assistance. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule), and whether or not the loan is subject to recapture will not be changed by virtue of the assumption. After assumption, compliance with the loan conditions is required. Eligibility for interest credit will be considered or reevaluated at the time of assumption. Situations where these terms are authorized are:

* * * * *

Dated: March 2, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–6959 Filed 3–30–88; 8:45 a.m.]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–035]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Washington from Class A to Class Free. We have determined that Washington now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Washington.

DATES: Interim rule effective March 25, 1988. Consideration will be given only to comments postmarked or received on or before May 31, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–035. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

The standards for the different classifications of states or areas entail maintaining (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Washington was classified as a Class A state because of its herd infection rate and its MCI reactor prevalence rate. However, after reviewing its brucellosis program records, we have concluded that Washington meets the standards for Class Free status.

To attain and maintain Class Free status, a state or area must (1) remain free from field strain Brucella abortus infection for 12 consecutive months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. Washington now meets the standards for classification as Class Free.

Therefore, we are adding Washington to the list of Class Free states in § 78.41(a) and removing Washington from the list of Class A states in § 78.41(b). This action relieves certain restrictions on moving cattle interstate from Washington.

Emergency Action

James W. Glosser, Acting Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Washington.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Washington from Class A to Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Washington. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Washington, as well as buyers and importers of Washington cattle. Approximately 66,500 cattle are tested for brucellosis in Washington each year, at an average cost to the seller of $7 per test. Therefore, Class Free status could result in a potential savings of $465,500 for Washington's livestock industry. Since Washington has 23,000 herds, the annual savings to each herd owner will be approximately $20 per herd. We have therefore determined that changing Washington's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small cattle operations affected by this interim rule.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by adding "Washington" immediately before "West Virginia".

3. Section 78.41, paragraph (b) is amended by removing "Washington".

Done in Washington, DC, this 25th day of March, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–7042 Filed 3–30–88; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0 and 2

Revision to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the Commission's rules of practice by revising those regulations dealing with ex parte communications and separation of functions in formal adjudicatory proceedings. This amendment updates the existing rules by incorporating requirements imposed by the Government in the Sunshine Act as it relates to ex parte communications. The final rule also allows members of the NRC staff to serve as confidential advisors to the Commission with respect to a contested proceeding so long as those staff members do not act as investigators or litigators in the proceeding. This rule is intended to aid in maintaining effective communication between decisionmaking officials and NRC staff personnel and individuals outside the NRC while ensuring that proceedings are conducted in an impartial manner.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (202) 634–3224.

SUPPLEMENTARY INFORMATION:

I. Background

On March 26, 1986, the Nuclear Regulatory Commission published in the **Federal Register** (51 FR 10393–10402) proposed amendments to its Rules of Practice (10 CFR Part 2) that would revise substantially its regulatory restrictions on private communications between agency adjudicatory decisionmakers and members of the NRC staff or persons outside the agency with regard to matters that are the subject of a formal adjudicatory hearing. By notice published in the **Federal Register** on May 27, 1986 (51 FR 19067), the date for submitting comments on the proposed revisions was extended to June 26, 1986.

The Commission's March 1986 rulemaking proposal was the culmination of an extended agency effort to address concerns about its existing rules governing private communications with agency adjudicatory decisionmakers.

On March 7, 1979 (44 FR 12428), in response to the adoption of the Government in the Sunshine Act with its provisions placing specific restrictions on ex parte communications between adjudicatory decisionmakers and persons outside the agency (5 U.S.C. 551(14), 556(d), 557(d)), the Commission published a proposed rule to revise its existing regulations to incorporate the new statutory provisions. Thereafter, as a result of the accident in March 1979 at Three Mile Island, Unit 2, the Commission's operating procedures came under intense scrutiny. Recommendations were received from several quarters, including Three Mile Island inquiry groups, the American Bar Association, and the Commission's Office of the General Counsel and its Regulatory Reform Task Force, that suggested the Commission's existing rules on separation of adjudicatory and nonadjudicatory functions, which barred private contacts between any member of the NRC staff and the Commission regarding contested issues in an adjudicatory proceeding, were overly stringent as compared to the specific requirements of the Administrative Procedure Act (APA) (5 U.S.C. 554(d)). According to several of these reports, this too strict interpretation was impeding the agency's ability to protect the public health and safety by isolating the Commission unnecessarily from NRC staff knowledge and expertise.

Recognizing these concerns, a proposed rule was published in March 1986 that superseded and withdrew the 1979 proposed rule. This new proposal contained a number of suggested organizational and substantive changes in the existing regulations, 10 CFR 2.719 and 2.780, regarding communications precluded by ex parte and separation of functions considerations. In addition to consolidating these provisions into consecutive sections, §§ 2.780 and 2.781, common definitions were proposed for inclusion in § 2.4 in an effort to make both the ex parte and separation of functions strictures more understandable. Section 2.780 was to become the vehicle for implementation of the Sunshine Act's restrictions on ex parte communications, while private contacts between the NRC staff and Commission adjudicatory decisionmakers were to be restricted under § 2.781 to comply with the APA's separation of functions prohibition.

II. Comments and Commission Responses

The Commission received eleven letters of comment that set forth the views of interested utilities, professional organizations, private counsel, and individual members of the public. Ten of the eleven commenters expressed general support for the Commission's effort to revise its ex parte and separation of functions strictures and provided specific comments on particular provisions of the rule. One commenter expressed total dissatisfaction with the proposed rule as an improper attempt to give the NRC staff an opportunity to advise the Commission's hearing boards privately about Commission policy and "what the Commissioners want . . ." A review of the specific comments and the Commission's responses to those comments follows.

A. Definition of "Relevant to the Merits"

Five commenters provided their views on the Commission's discussion of the phrase "relevant to the merits of the proceeding" as it is used in the Sunshine Act, 5 U.S.C. 557(d), and the proposed rule, § 2.780(a), to define those matters

raised in the context of a hearing that are subject to the ex parte restriction. In the proposed rule, the Commission requested comments on whether this phrase should be interpreted to include any issue that must be considered in an uncontested construction permit proceeding even though it is not the object of a dispute among the NPC staff, the applicant, and any intervenors, and any issue that was not raised by any party but nonetheless is considering in an operating license hearing sua sponte by the presiding officer. Three of the commenters thought that the phrase should be interpreted to bar only those private communications relating to issues put into controversy by the parties to the proceeding. Two other commenters expressed the view that private communications should be barred with respect to any issue that a party or the presiding officer proposed to have considered in a particular proceeding, whether consideration is due to the Atomic Energy Act mandate to conduct a hearing on a construction permit or consideration is proposed by a party or the presiding officer.

Under existing practice, ex parte restrictions apply to any substantive matter at issue in a contested proceeding (10 CFR 2.780(a), (e)). A contested proceeding, in turn, is defined as one in which there is a controversy between the staff and the applicant concerning the issuance of or any of the terms and conditions of a license or is one in which a petition for leave to intervene to oppose the application is granted or is pending (10 CFR 2.4(n)). Under this definition, the elements of "controversy" and "matters at issue" are central. We believe this approach also should be applied in interpreting the section 557(d) phrase "relevant to the merits." Accordingly, in the context of a statutorily mandated construction permit proceeding in which no intervenor has sought to contest the application, private communications to adjudicatory employees from interested persons outside the agency relating to matters that are not the subject of controversy in the proceeding between the applicant and the NRC staff would not be considered ex parte. On the other hand, because the Commission has chosen as a matter of policy to allow issues in operating license proceedings to be admitted sua sponte by a presiding officer, as opposed to being resolved informally by the NRC staff, it makes little sense to abandon an important component of that process—the protection against off-the-record communications. Once a matter is "at issue" in an operating license proceeding, whether at the behest of the presiding officer or because it was admitted as a party's contention, a requirement that public disclosure of all communications to the presiding officer relative to the resolution of that contested issue serves to ensure that the proceedings are fairly and impartially conducted. Therefore, private communications to the presiding officer from persons outside the agency concerning sua sponte issues will be considered ex parte.

It should be added that the term "disputed issue" as it is used in the separation of functions provision relating to NRC staff contacts with a presiding officer also would be interpreted in a mandatory construction permit proceeding without intervening interested persons, to include only those matters that are the object of dispute between the applicant and the NRC staff and, in any operating licensing proceeding, those "sua sponte" issues properly raised by a presiding officer.

B. Distinction between Accusatory and Nonaccusatory Proceedings

In the proposed rule, the Commission indicated that, for purposes of applying the separation of functions bar, it would interpret APA section 554(d) as making separation of functions applicable both to accusatory proceedings, i.e., those in which the primary concern is the lawfulness of party conduct, and to nonaccusatory proceedings, such as initial licensing, in which the decision typically is reached on the basis of legislative facts and general policy considerations. (51 FR at 10395) As a result, separation of functions is applicable to anyone performing a "litigating" function in a particular proceeding, rather than being limited only to those acting as "prosecutors," as the language of section 554(d) might be read to suggest. Three commenters asserted that the Commission should not adopt such a narrow reading but rather should limit separation of functions only to accusatory proceedings. This effectively would permit private consultations between NRC staff members involved in litigating a case and adjudicatory officials regarding contested issues in at least some initial licensing cases, including reactor construction permit and operating license proceedings.

As the Commission indicated previously in the proposed rule (51 FR at 10395), to attempt to differentiate between accusatory and nonaccusatory proceedings would require the Commission to apply subtle and difficult distinctions in an effort to determine to what extent the focus of a particular proceeding will be "prosecutorial." We continue to believe that such an attempt is not a worthwhile use of Commission resources, particularly because considerable uncertainty exists about whether the application of the accusatory/nonaccusatory distinction is appropriate under section 554(d) (51 FR at 10397). Further developments in the case law governing this distinction may cause the Commission to revisit this issue in the future. At present, however, the Commission will impose separation of functions restrictions on private communications between agency adjudicatory officials and the NRC staff in all formal adjudicatory proceedings conducted under 10 CFR Part 2, Subpart G, without regard to whether the proceeding otherwise might appear to be accusatory or nonaccusatory.

C. Public Designation As an Adjudicatory Employee Only for Staff Advisors Consulted "On a Continuing Basis"

Although the Commission will not apply the separation of functions restriction on the basis of the accusatory/nonaccusatory distinction, it will limit that restriction as it applies to private communications with the Commission solely to those staff members who have performed "investigating or litigating" functions in a particular proceeding. Thus, a member of the NRC staff who was not involved in conducting or supervising the technical review of an application that is the subject of an adjudicatory proceeding or the litigation of the matter before an Atomic Safety and Licensing Board or an Atomic Safety and Licensing Appeal Board can serve as a confidential advisor to the Commission with respect to the application and the merits of the adjudication. Section 2.4(9) of the proposed rule stated that if a staff member was to be consulted by the Commission with respect to the issues in a particular proceeding "on a continuing basis," that person would be appointed as an adjudicatory employee and the parties to the proceeding would be given notice of that appointment. Two commenters asserted that public designation only for staff advisors consulted "on a continuing basis" was unfair and created a great potential for abuse. Upon further consideration, the Commission has decided that the purposes of the rule will be better served if each member of the staff who will be used as an advisor in an adjudication is appointed publicly as an adjudicatory employee without regard to the duration of anticipated service.

D. Limiting Designation As an Adjudicatory Employee to Particular Issues in a Proceeding

Two commenters also suggested that because the ex parte prohibition on private contacts with persons outside the agency will attach to any staff member designated as an adjudicatory employee, the Commission should act to limit the impact of the designation by making it applicable only to the specific issues about which the Commission wishes advice from the employee. After reviewing this comment carefully, the Commission has decided not to adopt such a provision.

This proposal for issue by issue adjudicatory advisors arguably would avoid the ex parte ban on outside contacts regarding the nondesignated issues. It also appears that, carried to its logical conclusion, this proposal would sanction staff members simultaneously assuming the dual role of adjudicator and investigator/litigator in the same proceeding, at least so long as different issues were involved. Neither the language of section 554(d), which states that a person performing an investigative or litigating function is not to advise in a "case or a factually related case," nor the Attorney General's Manual on the APA, which speaks of the bar in terms of "cases" or "proceedings" rather than "issues," *see* United States Dep't of Justice, *Attorney General's Manual on the Administrative Procedure Act* 54–55 & n.6 (1947), suggests that such an issue by issue application of the separation of functions bar is appropriate. Similarly, judicial precedent suggests that the separation of functions bar should be applied to prohibit participation in all aspects of a proceeding by a staff member performing an investigative or litigative function in that proceeding, not just with respect to those issues with which the individual has particular involvement. *See Trans World Airlines, Inc.* v. *CAB*, 254, F.2d 90, 91 & n.2 (D.C. Cir. 1958). This authority, in combination with the practical complications involved in drawing lines to separate investigating or litigating participation in part of a proceeding from decisionmaking participation in other parts, convinces the Commission that it should not adopt this suggestion.

E. Allowing Former Adjudicatory Advisors to Perform Litigative or Investigative Functions In the Same Proceeding

Related to the question of issue by issue designation of adjudicatory employees is the issue whether an employee who has put aside the mantle of adjudicatory employee can thereafter become a staff litigator or investigator in the same proceeding. The proposed rule did not contain any provision that addressed this question. However, in response to a Commission request for comments on the propriety of including language that would permit a switch in roles, three commenters supported the addition of a provision. Two commenters, however, opposed the suggestion citing the unfair advantage a former advisor would give the staff in accusatory proceedings because of the insights he or she had gained in the decisionmaking process and the detrimental effect allowing such a switch in roles would have in public confidence in the fairness of the proceeding.

The Commission is not convinced that the change from the rôle of an adjudicatory decisionmaker's advisor to a litigator or investigator necessarily is one the APA or constitutional due process would preclude. Nonetheless, we do agree with the observation of one of the commenters opposed to allowing this type of role change that present staffing levels make it unlikely that NRC staff members who previously have provided advice to agency adjudicatory decisionmakers will need to be pressed into service as litigators or investigators in the same proceeding. Accordingly, the Commission believes that the best course is to leave this issue for determination if and when it arises in a particular case.

F. Restriction on Communications Between Members of the Licensing Board and the Appeal Panel

The proposed rule would not change existing agency practice, embodied in § 2.719(c) and Part 2, App. A., IX(c), that precludes consultations between members of the Atomic Safety and Licensing Board assigned to a proceeding and members of the Atomic Safety and Licensing Appeal Panel on any fact in issue in the proceeding. The Commission, however, requested comments on whether this bar to communications was necessary or appropriate (51 FR at 10398). Six of the commenters addressed this issue and all supported retaining the present practice, citing the decisionmaking function of the Boards and the need to ensure fair review procedures that protect the integrity of the administrative record. The Commission will do so.

G. Exemptions for Private Staff Consultations with the Commission Regarding Late-filed Contentions and Motions to Reopen

In setting out a number of possible exemptions to the separation of functions provision of the proposed rule, the Commission proposed that private consultations between the NRC staff and Commission be permitted in instances when a request was made to add issues to a proceeding after an initial decision is rendered or to reopen the record after an initial or final decision. Proposed § 2.781(b)(2) (v) and (vi). In support of each of these exemptions, the Commission referenced judicial decisions allowing agency staff contacts with agency heads about the addition of issues to a proceeding or about reopening the record (51 FR at 10399). The three commenters that addressed these exemptions all questioned their validity, asserting that the Commission was going beyond what was sanctioned by the cases, at least prior to the time a final agency decision is rendered. Upon further consideration, the Commission has decided to delete these proposed exemptions as they relate to attempts to add issues or reopen the record prior to a final agency decision.

Nonetheless, the United States Court of Appeals for the District of Columbia Circuit's decision in *RSR Corp.* v. *FTC*, 656 F.2d 718 (D.C. Cir. 1981) (per curiam), fairly can be read as holding that once an agency adjudicatory proceeding, or a discrete portion of that proceeding, has become administratively final, which would include the conclusion of any Commission discretionary review of Appeal Board decisions under 10 CFR 2.786, the separation of functions bar effectively ends for the purpose of considering any later requests to reopen or otherwise reinstitute the proceeding. Two commenters suggested the Commission include a provsion in its proposed rule indicating when the separation of functions prohibition would end. In response to that comment, and in line with *RSR Corp.*, we have decided to add a sentence to § 2.781(d) that accomplish this purpose. Moreover, a parallel provision has been added to § 2.780 to indicate that the ex parte prohibition will be terminated at the same point.

H. Additional Comments by Particular Parties

In addition to the matters discussed above that were the subject of multiple comments, other commenters raised the specific issue addressed below.

1. Scientists and Engineers for Secure Energy, Inc.

The Scientists and Engineers for Secure Energy, Inc., ("SESE") questioned in general the agency's use of "accusatory" adversarial, trial-type procedures for nuclear power plant licensing. According to SESE, the trial-type hearing required by 10 CFR Part 2, Subpart G is unnecessarily legalistic and stands in the way of getting to the appropriate factual and analytical bases for making informed judgments about those technical disputes that form a great portion of the controversy in power plant licensing proceedings. This comment relates to matters that are beyond the bounds of this rulemaking proceeding; however, the Commission would note that in the context of its consideration of the certification process for standardized designs for nuclear power plants, it has been considering ways to simplify the procedural aspects of any hearings held as part of that process. In addition, it recently has taken steps in the area of materials licensing hearing procedures that are intended to address some of the criticisms of the formal adjudicatory process raised by SESE (52 FR 20089; May 29, 1987 (proposed rule on informal hearing procedures for materials licensing adjudications)).

2. Pars Associates, Inc.

Pars Associates, Inc. ("PAI") suggested that the proposed definition of "interested persons" subject to ex parte restrictions somehow acts to restrict unduly the participation of large numbers of the public in the adjudicatory process. In fact, that definition does not limit participation at all, but merely identifies those persons outside the agency whose communications to an adjudicatory decisionmaker must be made on the record to avoid being considered as improper ex parte communications.

3. Marvin Lewis

Commenter Marvin Lewis stated that he opposed the proposed rule because it would provide an opportunity for the Commission and the NRC staff to discuss policy matters and those discussions could be used by the staff to "continuously" update the hearing boards on the Commission's position with respect to particular hearings. This clearly is incorrect. As the discussion accompanying the proposed rule made apparent (51 FR at 10399), under § 2.781(e) staff members who become adjudicatory advisors cannot be the conduit for otherwise improper communications from the Commission to those staff members serving as litigators or investigators in a hearing proceeding. That provision is retained in the final rule.

4. Shaw, Pittman, Potts & Trowbridge

The law firm of Shaw, Pittman, Potts & Trowbridge, on behalf of its utility clients, noted that paragraph (6) of the proposed definition of "Commission adjudicatory employee" in § 2.4 should be revised to reflect the consolidation and reorganization of the Office of the General Counsel and the Office of the Executive Legal Director and suggested that the phrase "in a proceeding" be added to paragraph (8) to make it clear that the appointment of a staff member to serve as an adjudicatory employee applies only to the particular proceeding for which the appointment is made. This has been done. Further, in response to another of the firm's comments regarding the scope of the phrase "interested person" as it is used to define those outside the agency who are subject to the restriction on ex parte communications, the Commission notes that the phrase is intended to include coverage of the representative of an interested State, county, municipality, or an agency thereof, participating in a proceeding in accordance with 10 CFR 2.715(c).

5. Bishop, Liberman, Cook, Purcell & Reynolds

On behalf of several utility clients, the law firm of Bishop, Liberman, Cook, Purcell & Reynolds suggested that proposed §§ 2.780(f)(4) and 2.781(b)(iv), which provide an exception from the ex parte and separation of functions restrictions for communications on generic issues, be revised to delete language indicating that the communication must not be "associated by" the Commission adjudicatory employee, the NRC officer or employee performing investigative or litigating functions, or the person outside the agency "with the resolution of any proceeding under [10 CFR Subpart G] pending before the NRC." According to the commenter, this language improperly places the focus on how the NRC adjudicatory officials reviewing the communication or the NRC staff member or interested person making the communication view the generic issue in relation to an ongoing Subpart G formal adjudicatory proceeding.

As was explained in the proposed rule (51 FR at 10397), this language was added to make it clear that off the record communications regarding generic matters are not to be presented or used as a basis for resolving issues in a formal, "on the record" proceeding. Thus, a communicator's attempt to associate a communication purportedly relating to a generic matter with the resolution of matters in a proceeding or an adjudicator's association of an otherwise proper communication on generic matters with the resolution of issues in a formal proceeding would make those communications subject to the ex parte or separation of functions restrictions and require that the agency take appropriate measures, such as public disclosure of the communication, in accordance with § 2.780(c) or § 2.781(c). It was the Commission's intention, however, that a determination about whether a "generic" matter was in fact associated with the resolution of contested issues in a proceeding should not be governed solely by the perceptions of those making or using the communication. Accordingly, the suggested deletion will be made with the intent that it is only to dispell any ambiguity about the standard for determining whether a "generic" communication was, in fact, one actually associated with a licensing proceeding.

6. Leboeuf, Lamb, Leiby & MacRae

On behalf of a number of its utility clients, the law firm of LeBoeuf, Lamb, Leiby & MacRae questioned whether, given the designation of duties in 10 CFR 1.33 that suggests they are not involved in the decisional process, the Secretary of the Commission and employees of the Office of the Secretary should be designated as "Commission adjudicatory employees." The involvement of employees of the Office of the Secretary in the decision making process is in major part administrative. The Secretary nevertheless does have the authority to issue certain procedural orders that can have an important impact on a proceeding, *see* 10 CFR 2.772. Employees of that office also have access to otherwise confidential information concerning Commission decisions and oft times aid the Commission's decisional process by facilitating the exchange of views between Commissioner offices. Employees of the Office of Secretary therefore will continue to be designated as adjudicatory employees.

This commenter also suggested that the Commission delete § 2.780(d) that provides for sanctions against outside parties who knowingly make ex parte communications. The commenter opines that this provision is unnecessary because the appropriate remedy for these communications is to make them

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public and notify the parties. It has been the Commission's experience that this is the appropriate remedy for an ex parte communication. Nonetheless, it is not inconceivable, as the Congress recognized in adopting APA section 557(d)(1)(D), the statutory basis for § 2.780(d), that same violations may warrant the types of sanctions against the offending party that § 2.780(d) authorizes. The Commission therefore declines to delete this provision.

This commenter also declared that proposed § 2.781(b)(3), which states that "[n]one of the communications permitted by paragraph (b)(2) of this section is to be associated * * * with the resolution of any proceeding * * *." is unclear and suggested the substitution of the word "used" for "associated." The term "associated," which also is utilized in § 2.780(f)(4), is intended to have a somewhat broader meaning than "used" to the extent that it covers not only the use of prohibited communications, but also the act of making the communication, even if it is not used by the adjudicatory employee. The Commission likewise declines to change this provision.

Finally, this commenter suggested that in section VII of paragraph (c)(2) of Appendix A to Part 2 the reference to "matters certified" pursuant to §§ 2.720(h) and 2.744(e) should be deleted because neither referenced section calls certification of anything. Previously, these sections did provide for automatic certification to an Atomic Safety and Licensing Appeal Board or to the Commission of a presiding officer's order allowing discovery against the NRC staff under a subpoena or request for the production of documents (37 FR 15127, 15132, 15135; July 28, 1972). Under the terms of Appendix A, however, such a discovery dispute was not considered a substantive matter at issue in the proceeding requiring that there be no intraagency consultations and communications regarding the dispute (37 FR at 15124). Upon further consideration, we see no reason to retain this discovery distinction given the later revision of the Commission's discovery rules to provide the presiding officer with the discretion to order discovery against the NRC staff without mandatory Commission interlocutary review (40 FR 2973; Jan. 17, 1975). Accordingly, this discovery certification provision now is being deleted from Appendix A, section VII(c)(2).

7. Baltimore Gas and Electric Company

Commenter Baltimore Gas and Electric Company questioned the propriety of proposed § 2.781(f), which requires that the substance of a communication between an adjudicatory decisionmaker and an advisor that is properly made under the separation of functions bar nonetheless may be required to be disclosed if the adjudicatory decisionmaker's initial or final decision is stated to rest in whole or in part on information made known in the communication. The commenter suggests that this is insufficient because the communication is made public only if it is relied upon. However, this comment fails to recognize that the scope of this provision goes only to communications that otherwise are made in conformance with the separation of functions restriction. Under § 2.781(c) all private communications from a litigator or investigator to an adjudicatory decisionmaker barred by separation of functions considerations must be publicly disclosed. The § 2.781(f) provision is a different, border protection. It is designed to ensure that an adjudicatory decision is based upon the record developed during the hearing, not upon the otherwise proper but nonetheless private revelations of an adjudicatory advisor that provide a new factual or analytical basis for the decision. The Commission sees no basis for deleting this provision.

8. GPU Nuclear Corporation

GPU Nuclear Corporation suggested that the Commission include a definition of the conditions under which a licensee may participate in ex parte communications with the NRC staff on issues relating to an adjudicatory proceeding. Because it is clear from §§ 2.780 and 2.781 that the only ex parte/separation of functions restraint upon communications between an applicant or licensee and members of the NRC staff is for those staff members who are appointed as adjudicatory advisors, no further definition is needed to reiterate this point. Also unnecessary, the Commission finds, is this commenter's suggestion that a specific provision be included to allow the Commission to decide and announce the termination of the appointment of a staff member as an adjudicatory advisor. This power is inherent in the Commission's administrative authority to direct the activities of members of the NRC staff and need not be spelled out further.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Review

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Regulatory Analysis

Under the APA, 5 U.S.C. 554(d), 557(d), in formal adjudicatory proceedings, restrictions apply to communications between adjudicators and agency employees performing investigative or litigating functions or interested persons outside the agency. The revisions in this final rule's provisions on ex parte communications will conform the language of the agency's present regulations more closely to the Sunshine Act's provisions restricting communications with persons outside the agency. This amendment does not affect the substantive restrictions on outside communications applicable under present regulations. Under the revised separation of functions rule, however, there will be an increased possibility for adjudicator/staff communications because those staff members not involved in an investigative or litigating function in a particular proceeding can advise decisionmakers on matters at issue in that proceeding. The potential for increased information to adjudicators makes this rule change preferable to existing requirements. While other possible rule change options exist, notably invocation of the "initial licensing" exemption in the APA or reading the section 554(d) restriction to apply only to "prosecutors" rather than "litigators," serious questions about the efficacy of these particular revisions make them unacceptable both in terms of agency resources to defend the rules and the possibility of judicial reversal of licensing actions based on the application of the rules. The final rule thus is the preferred alternative and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

This final rule will not have a significant economic impact upon a substantial number of small entities. Most entities seeking or holding construction permits or Commission licenses that would be subject to the revised ex parte provisions would not fall within the definition of small

businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or in the NRC's size standards published December 9, 1985 (50 FR 50241). Although intervenors subject to the provision on ex parte communications likely would fall within the pertinent Small Business Act definition, the ex parte rule would not reduce or increase the litigation burden of intervenors because it is substantially the same as the restrictions now in effect. Although the revised restrictions on intraagency communications found in the separation of functions provision might result in some cost reduction in proceedings in that the increased availability to adjudicators of staff expertise may shorten the proceedings, that reduction probably will be negligible. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects

10 CFR Part 0

Conflict of interest, Penalty.

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC adopts the following amendments to 10 CFR Parts 0 and 2:

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for Part 0 is revised to read as follows:

Authority: Secs. 25, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96–28, 93 Stat. 76, 77 (18 U.S.C. 207).

2. Section 0.735—48 is revised to read as follows:

§ 0.735–48 Restricted communications.

Certain employee communications are prohibited in formal adjudicatory proceedings under §§ 2.780 and 2.781 of this chapter.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

3. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs 53, 62, 63, 81, 103 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.781 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.)

4. Section 2.4 is amended by removing the alphabetical paragraph designators, alphabetizing all words defined, and adding three new definitions to read as follows:

§ 2.4 Definitions.

* * * * *

"Commission adjudicatory employee" means—

(1) The Commissioners and members of their personal staffs;

(2) The members of the Atomic Safety and licensing Appeal Panel and staff assistants to the Panel;

(3) The members of the Atomic Safety and Licensing Board Panel and staff assistants to the Panel;

(4) A presiding officer appointed under § 2.704, including an administrative law judge, and staff assistants to a presiding officer;

(5) Special assistants (as defined in § 2.772);

(6) The General Counsel, the Solicitor, the Deputy General Counsel for Licensing and Regulation, and employees of the Office of the General Counsel under the supervision of the Solicitor or the Deputy General Counsel for Licensing and Regulation;

(7) The Secretary and employees of the Office of the Secretary; and

(8) Any other Commission officer or employee who is appointed by the Commission, the Secretary, or the General Counsel to participate or advise in the Commission's consideration of an initial or final decision in a proceeding. Any other Commission officer or employee who, as permitted by § 2.781, participates or advises in the Commission's consideration of an initial or final decision in a proceeding must be appointed as a Commission adjudicatory employee under this paragraph and the parties to the proceeding must be given written notice of the appointment.

* * * * *

"Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.

* * * * *

"Investigative or litigating function" means —

(1) Personal participation in planning, conducting, or supervising an investigation; or

(2) Personal participation in planning, developing, or presenting, or in supervising the planning, development or presentation of testimony, argument, or strategy in a proceeding.

* * * * *

§ 2.719 [Removed]

5. Section 2.719 is removed.

6. Part 2 is amended by revising the undesignated centerhead immediately after § 2.772 to read as follows:

Restricted Communications

7. Section 2.780 is revised to read as follows:

§ 2.780 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, and ex parte communication relevant to the merits of the proceeding.

(c) Any Commission adjudicatory employee who receives, makes, or knowingly causes to be made a communication prohibited by this section shall ensure that it and any responses to the communication promptly are served on the parties and placed in the public record of the proceeding. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(e) (1) The prohibitions of this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703.

(2) The prohibitions of this section cease to apply to ex parte communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the Atomic Safety and Licensing Appeal Board's decisions on the full or partial initial decision.

(f) The prohibitions in this section do not apply to—

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by Commission adjudicatory employees in the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

8. New § 2.781 is added to read as follows:

§ 2.781 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or advise a Commission adjudicatory employee about the intitial or final decision on any disputed issue in that proceeding, except—

(1) As witness or counsel in the preceeding;

(2) Through a written communication served on all parties and made on the record of the proceeding; or

(3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

(i) The status of a proceeding;

(ii) Matters with regard to which the communications specifically are permitted by statute or regulation;

(iii) Agency participation in matters pending before a court or another agency; or

(iv) Generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

(i) Initiation or direction of an investigation or initiation of an enforcement proceeding;

(ii) Supervision of agency staff to ensure compliance with the general policies and procedures of the agency;

(iii) Staff priorities and schedules or the allocation of agency resources; or

(iv) General regulatory, scientific, or engineering principles that are useful for an understanding of the issues in a proceeding and are not contested in the proceeding.

(3) None of the communications permitted by paragraph (b)(2) (i)–(iii) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication prohibited under paragraph (a) of this section shall ensure that it and any responses to the communication are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) (1) The prohibitions in this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703.

(2) The prohibitions of this section will cease to apply to the disputed issues pertinent to a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the Appeal Board's decision on the full or partial initial decision.

(e) Communications to, from, and between Commission adjudicatory employees not prohibited by this section may not serve as a conduit for a communication that otherwise would be prohibited by this section or for an ex parte communication that otherwise would be prohibited by § 2.780.

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion prior to the filing of the decision, a party may

controvert the fact or opinion by filing an appeal from an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate, a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

9. Appendix A to Part 2 is amended by revising paragraph (c) of section VII and paragraph (c) of section IX to read as follows:

Appendix A—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189A of the Atomic Energy Act of 1954, As Amended*

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VII. General

* * * * *

(c) Section 2.781 specifies when consultation between Commissioners or boards, on the one hand, and the staff, on the other hand, is permitted in licensing proceedings conducted under Subpart G. Section 2.781 also permits a board, in the same type of proceeding, to consult with members of the panel from which the members of the board are drawn.

* * * * *

IX. Licensing Proceedings Subject to Appellate Jurisdiction of Atomic Safety and Licensing Appeal Board

* * * * *

(c) Consultation between members of the Atomic Safety and Licensing Appeal Board for a particular proceeding and the staff is permitted on the conditions specified in 10 CFR 2.781. However, members of the atomic safety and licensing boards for particular proceedings may not consult on any disputed issue in those proceedings with members of the Appeal Panel.

* * * * *

Dated at Washington, DC, this 25th day of March, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 88-7099 Filed 3-30-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3222]

Preferred Physicians, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an association of doctors in Tulsa, Okla., from conspiring to restrain competition and from fixing or increasing the prices they charge third-party payers for their services. In addition, the respondent is prohibited, for five years, from advising its members on the desirability or appropriateness of any price to be paid for physicians' services by any third-party payers.

DATE: Complaint and Order issued February 26, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Toby G. Singer, FTC/S-3115, Washington, DC 20580. (202) 326-2762.

SUPPLEMENTARY INFORMATION: On Thursday, December 3, 1987, there was published in the **Federal Register**, 52 FR 45970, a proposed consent agreement with analysis In the Matter of Preferred Physicians, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: Section 13.345 Competitors; S.13.367 Members. Subpart—Combining Or Conspiring: S.13.384 Combining or conspiring; S.13.430 To enhance, maintain or unify prices; S.13.433 To fix prices; S.13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-50 Maintain means of communication; S.13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Enforcing Dealings Or Payments Wrongfully; S.13.1045 Enforcing dealings or payments wrongfully.

List of Subjects in 16 CFR Part 13

Physicians, Doctors, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 88-7078 Filed 3-30-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9199]

Rochester Anesthesiologists; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the anesthesiologists of Rochester, NY from boycotting third-party insurance providers by combining or taking any joint action against competing anesthesiologists; by engaging in price fixing or tampering with the reimbursement levels or terms of any third-party payor for anesthesia services; or by fixing or setting their fees.

DATE: Complaint issued September 30, 1985. Order issued March 8, 1988.[1]

FOR FURTHER INFORMATION CONTACT: David M. Narrow, FTC/S-3115, Washington, DC 20580. (202) 326-2744.

SUPPLEMENTARY INFORMATION: On Thursday, Nov. 19, 1987, there was published in the **Federal Register**, 52 FR 44408, a proposed consent agreement with analysis In the Matter of Rochester Anesthesiologists, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining Or Conspiring: Section 13.384

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Combining or conspiring; S.13.385 To boycott seller-suppliers; S.13.395 To control marketing practices and conditions; S.13.430 To enhance, maintain or unify prices. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–20 Disclosures; S.13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Anesthesiologists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 88–7079 Filed 3–30–88; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Rel. No. SIPA–143; File No. SIPC 87–1]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and approval order.

SUMMARY: The Commission approves a rule which was submitted to the Commission for approval by SIPC as required by section 3(e)(2) of the Securities Investor Protection Act of 1970 ("SIPC"). SIPC's proposed rule change establishes a uniform procedure for the satisfaction of claims for cash and claims for securities in a liquidation proceeding under SIPA. Because SIPC rules approved by the Commission have the force and effect as if promulgated by the Commission, those rules are published in this title of the Code of Federal Regulations.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harry Melamed, Division of Market Regulation (202/272–2412), Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Pursuant to section 3(e)(2) of SIPA, 15 U.S.C. 78 ccc(e)(2), on September 23, 1987 SIPC filed with the Securities and Exchange Commission a proposed rule change (File No. 87–1). The proposal, as amended on November 16, 1987, establishes a uniform procedure for the satisfaction of claims for cash and claims for securities in either a liquidation proceeding or a direct payment procedure pursuant to SIPA.

The new SIPC series 500 rules set forth the standards to determine whether a customer's securities transaction will be classified as a claim for cash or a claim for securities for purposes of a SIPA liquidation proceeding or direct payment procedure.

Proposed Rule 501 states that a customer having securities in an account with a SIPC member ("debtor") will have a claim for cash with respect to any sale if either (1) the debtor has sent written confirmation to the customer that the securities have been sold or (2) the securities have become the subject of a completed or executory contract for sale for the account (whether or not a confirmation has been sent to the customer). Proposed Rule 501 further states that a customer having cash in an account with a debtor will still have a claim for cash even though the customer has instructed the debtor to purchase securities for the account unless either (1) the debtor has sent written confirmation to the customer that securities have been purchased or (2) the securities have become the subject of a completed or executory contract for purchase for the account (whether or not a written confirmation has been sent to the customer).

Proposed Rule 502 states that a customer having cash in an account with a debtor will have a claim for securities with respect to any purchase if either (1) the Debtor has sent written confirmation to the customer that the securities have been purchased or (2) the securities have become the subject of a completed or executory contract for purchase for the account (whether or not a confirmation has been sent to the customer). Proposed Rule 502 further states that a customer having securities in an account with a debtor will still have a claim for securities even though the customer has instructed the debtor to sell the securities unless either (1) the debtor has sent written confirmation to the customer that the securities have been sold or (2) the securities have become the subject of a completed or executory contract for sale for the account (whether or not a confirmation has been sent to the customer).

Proposed Rule 503 provides that the series 500 rules shall neither limit the rights of a trustee in a SIPA liquidation to avoid any securities transaction as fraudulent, preferential, or otherwise voidable under applicable law nor limit the right of SIPC in a direct payment procedure to reject a claim for cash or a claim for securities if the claim arose from a securities transaction which would be avoided in a SIPA liquidation.

The proposed rule change together with the terms of substance was published for comment by the Commission in Release No. SIPA–141, January 19, 1988, which appeared in the **Federal Register** on January 22, 1988 (53 FR 1793). No comment letters were received.

I. SIPC Rationale for Proposed Rule Change

SIPC has provided the following rationale for the proposed rule change.

SIPC indicates that SIPC and trustees appointed under SIPA have frequently litigated questions concerning whether a customer with a claim in a SIPA proceeding is entitled to a claim for cash or a claim for securities.[1] In each instance, SIPC has successfully proposed that a customer be satisfied based upon the customer's legitimate expectation of what the customer had in his or her account at the time of the demise of the SIPC member firm.[2]

SIPC states that customers have sometimes objected to having their claim deemed a claim for cash, particularly when, as a claim for cash, the claim exceeds the maximum amount SIPC may advance to a trustee to satisfy a claim for cash. That limit is currently $100,000, while the limit on a claim for securities is $500,000.[3] Conversely, customers have sometimes objected to having their claims treated as a claim for securities when the underlying value of the security in question has declined.

SIPC believes that the proposed rules will provide both nationwide uniformity and reasonable certainty for customers as to how their claims will be treated in the event of the failure of a SIPC member, and will provide an objective standard for determining each claimant's legitimate expectations. SIPC indicates that the proposed rules are in complete accord with all final judicial decisions on this subject, including cases decided prior to SIPA's enactment.[4]

SIPC argues that the proposed rules also give full effect to the Congressional intent to "satisfy the customers' legitimate expectations" and "restore the customer to his position prior to the broker-dealer's financial difficulties."[5] Indeed, SIPC believes that the results reached under the proposed rules will affirmatively effectuate the Commission's previously stated view on this subject. In 1977, during hearings on extensive amendments to SIPA, Commissioner Philip A. Loomis stated that "*[w]hen a customer sells securities, his claim from that time until settlement and delivery of the funds is a claim for cash.*"[6] SIPC indicates that this is the precise result which the proposed rules will reach.

SIPC states that in an effort to reach a different result, customers seeking to disavow securities purchased for their account have sometimes argued that a purchase of securities for their accounts has not occurred until their broker has actually delivered cash to a contra broker and the contra broker has, in turn, actually delivered the securities to their broker. Similarly, customers seeking to disavow a sale of securities have sometimes argued that a sale for their accounts has not occurred until their broker has actually delivered the securities to a contra broker and the contra broker has in turn delivered cash to their broker. SIPC indicates that based upon an analysis of the Uniform Commercial Code ("UCC"), courts have invariably rejected this argument. Thus, SIPC states that sections 8–301 and 8–314(a) of the UCC, as enacted in most states, hold that a customer selling securities loses his rights to those securities simply by delivering the securities to his or her broker.

SIPC notes that at two places [Rules 501(a)(2) and Rule 502(b)(2)], the proposed rules use the phrase "completed or executory contract for sale for or purchase from the account". At two other places [Rules 501(b)(2) and Rule 502(a)(2)], the proposed rules use the phrase "completed or executory contract for purchase for or sale to the account." These phrases are designed to have the proposed rules cover any authorized purchase or sale of securities. The proposed rules thus apply in situations where the debtor is acting as either agent or principal. The proposed rules also apply whether or not the purchase or sale transaction has been completed as between the debtor acting as agent and any contra broker. Thus, for example the selling customer is entitled only to the contract price, regardless of the fact that, as between the customer's broker and another broker, the agreement for the sale is executory, that is, not yet complete. The proposed rules are thus in complete harmony with the results which would obtain under the UCC.[7]

II. Discussion-Commission Action

The Commission believes the proposed rules will satisfy customers' legitimate expectations. For example, a customer that orders securities in his account sold and receives written confirmation of that sale anticipates that his market risk has terminated and that he has a claim for cash in the event of a SIPC liquidation. On the other hand, a customer that orders securities purchased with the cash in his account and receives written confirmation of that purchase believes that he has the investment benefits and risks in that security and that he has a claim for securities in the event of a SIPC liquidation.

In addition to satisfying customers' legitimate expectations, the Commission believes that the proposed rules will provide nationwide uniformity and will allow each customer generally to know, with certainty, how their claims will be treated in the event of the failure of a SIPC member. The rules provide an objective standard for determining each customer's legitimate expectations. By providing such a standard, the rules alleviate potential uncertainty and improve investor confidence in the securities markets.

Accordingly, the Commission finds that the proposed SIPC rules are in the public interest and are consistent with the purposes of the Act.

It is therefore ordered by the Commission, pursuant to section 3(e)(2) of SIPA, that the above mentioned proposed rule change be approved. In accordance with section 3(e)(2) of SIPA, the approved rule change shall be given force and effect as if promulgated by the Commission.

To allow public access to SIPC's rules, SIPC rules that are approved by the Commission are published under Part 300 of 17 CFR Chapter II.

List of Subjects in 17 CFR Part 300

Brokers, Securities, Securities Investor Protection Corporation.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

1. The authority citation for Part 300 continues to read as follows:

Authority: Sec. 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

2. By adding §§ 300.500–300.503 as follows:

Rules Relating to Satisfaction of a "Claim for Cash" or a "Claim for Securities"

§ 300.500 General.
§ 300.501 Claim for cash.
§ 300.502 Claim for securities.
§ 300.503 Voidable securities transactions.

§ 300.500 General.

These rules will be applied in determining whether a securities transaction gives rise to a "claim for cash" or a "claim for securities" on the filing date of either a liquidation proceeding pursuant to the Securities Investor Protection Act (hereinafter referred to as "the Act") or a direct payment procedure pursuant to section 10 of the Act.

§ 300.501 Claim for cash.

(a) Where a SIPC member ("Debtor") held securities in an account for a customer, the customer has a "claim for cash" with respect to any authorized securities sale:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held cash in an account for a customer, the customer has a "claim for cash", notwithstanding the fact that the customer has ordered securities purchased for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the

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[1] *See In re Weis Securities, Inc.; Gans v. Reddington*, CCH Fed. Sec. L. Rep. ¶ 94,780, p. 96,576 (S.D.N.Y. 1974); *SIPC, SEC v. Morgan, Kennedy & Co., Inc.*, 3 B.C.D. 15 (S.D.N.Y. 1977); *In re June S. Jones Co.*, 52 B.R. 810 (Bkrtcy. D. Oregon, 1985); *In re Bell & Beckwith; Murray v. McGraw*, 821 F. 2nd 333 (6th Cir. 1987).

[2] SIPC indicates that one of the goals of SIPA is to allow a trustee to "purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities," where it is possible for the trustee to do so in a fair and orderly market. See SIPA section 8(d); 15 U.S.C. 78fff–2(d). This permits the trustee to fulfill one of the enumerated duties of a trustee under SIPA to "deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer" under SIPA section 7(b)(1), 15 U.S.C. fff–1(b)(1).

[3] *See* SIPA section 9(a)(1), 15 U.S.C. 78fff–3(a)(1).

[4] *See cases, supra; see also, Tepper v. Chichester*, 285 F.2d 309 (9th Cir. 1960); *In re Stanley B. Young & Co.*, 33 F. Supp. 444 (W.D. Ky., 1940).

[5] S. Rep. No. 763, 95th Cong., 2d Sess. 2, 3 U.S. Code Cong. & Admin. News, 95th Cong., 2d Sess., at 765 (1978).

[6] Hearings Before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 233 (1977), emphasis supplied.

[7] SIPC indicates that the proposed rules will apply to standardized options transactions (as well as other securities transactions) but are not intended to affect the satisfaction of customer claims for such options as provided in SIPC's Series 400 Rules, 17 CFR 300.400.

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securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

§ 300.502 Claim for securities.

(a) Where the Debtor held cash in an account for a customer, the customer has a "claim for securities" with respect to any authorized securities purchase:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held securities in an account for a customer, the customer has a "claim for securities", notwithstanding the fact that the customer has ordered the securities sold for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not written confirmation of the purchase has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase form the account.

§ 300.503 Voidable securities transactions.

(a) Nothing in these Series 500 Rules shall be construed as limiting the rights of a trustee in a liquidation proceeding under the Act to avoid any securities transaction as fraudulent, preferential, or otherwise voidable under applicable law.

(b) Nothing in these Series 500 Rules shall be construed as limiting the right of the Securities Investor Protection Corporation, in a direct payment procedure under section 10 of the Act, to reject a claim for cash or a claim for securities if such claim arose out of a securities transaction which could have been avoided in a liquidation proceeding under the Act.

By the Commission.

March 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7109 Filed 3-30-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 88-16]

User Fee Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the establishment of nine "user fee" airports. User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner of Customs to receive the services of Customs officers for the processing of aircraft entering the U.S. and their passengers and cargo. Inasmuch as the volume of business anticipated at these airports is insufficient to justify their designation as an international or landing rights airport, the availability of Customs services is not paid for out of the Customs appropriations from the general treasury of the U.S. Instead, the services of the Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airports on behalf of the recipients of the services. The Secretary of the Treasury was authorized to create up to 20 user fee airports by the Trade and Tariff Act of 1984 and the Consolidated Omnibus Budget Reconciliation Act of 1985. This authority was delegated to the Commissioner of Customs.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph E. O'Gorman, Office of Inspection and Control (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Part 122, Customs Regulations (19 CFR Part 122), sets forth regulations that relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. As part of a general revision of the Customs Regulations, by T.D. 88-12, published in the **Federal Register** on March 22, 1988 (53 FR 9285), the air commerce regulations formerly in Part 6, Customs Regulations (19 CFR Part 6), were deleted and revised air commerce regulations were set forth in Part 122 in a new format.

Under section 1109(b), Federal Aviation Act of 1958, as amended (49 U.S.C. 1509(b)), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States, and for merchandise carried on the aircraft. These airports are referred to as "international airports," and the location and name of each are listed in § 122.13, Customs Regulations (19 CFR 122.13). In accordance with § 122.33, Customs Regulations (19 CFR 122.33), the first landing of every civil aircraft entering the United States from a foreign area must be at one of these international airports, unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties and enforce the customs laws and regulations.

Other than if making an emergency or forced landing, if a civil aircraft desires to land at an airport not designated by Customs as an international airport, the pilot may request permission to land at a specific airport and, if granted, Customs assigns personnel to that airport for the aircraft. The airport where the aircraft is permitted to land is called a "landing rights" airport (19 CFR 122.34).

Section 236 of Pub. L. 98-573 (the Trade and Tariff Act of 1984), which is set forth in 19 U.S.C. 58b, creates another option for civil aircraft desiring to land at an airport other than an international airport. A civil aircraft arriving from a place outside the United States may ask Customs for permission to land at an airport designated by the Secretary of the Treasury as a "user fee" airport. Section 236 grants the Secretary of the Treasury authority to make Customs services available and to charge a fee for the services at the airport located at Lebanon, New Hampshire, and at four other airports to be designated by the Secretary. Section 13032 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), amended 19 U.S.C. 58b by increasing the number of airports that the Secretary has the authority to designate as user fee airports from four to twenty.

Pursuant to 19 U.S.C. 58b, as amended, an airport may be designated as a user fee airport if the Secretary determines that the volume of Customs busness at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a "user fee" airport would be one in which a company, such as an air courier service, has a specialized interest in regularly landing cargo.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the Customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing the Customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary to provide the Customs services. To implement this provision, generally, the airport seeking designation as a user fee airport or that airport's authority agrees to pay Customs a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically review its charges to ensure that they are in accord with the airport's expenses.

Pursuant to 19 U.S.C. 58b, as amended, a person who fails to pay any fee charged for using a user fee airport shall be guilty of a misdemeanor and, if convicted, shall pay a fine that does not exceed an amount equal to 200 percent of the fee.

Pursuant to Treasury Department Order No. 165, Revised (Treasury Decision 53564), all the rights, privileges, powers and duties vested in the Secretary of the Treasury by the Tariff Act of 1930, as amended, by the navigation laws, or by any other laws administered by Customs, are transferred to the Commissioner of Customs. Accordingly, the authority granted to the Secretary of the Treasury by virtue of Pub. L. 98-573 and Pub. L. 99-272 to designate user fee airports and determine appropriate fees, is delegated to the Commissioner of Customs.

Under this authority, Customs has determined that certain conditions must be met before an airport can be designated as a user fee airport. At least one full-time Customs officer must be requested and the airport must be responsible for providing Customs with satisfactory office space, equipment, and supplies, at no cost to the Federal Government. A flat fee of $73,350 has been set for the first year of service for full-time coverage by one Customs officer, with an estimated fee of $50,112 for subsequent years.

Eight airports, in addition to the one at Lebanon, New Hampshire, have already been designated as user fee airports. Accordingly, § 122.33, Customs Regulations (19 CFR 122.33), is being amended to state that the first landing of an aircraft entering the U.S. from a foreign area shall be at an international airport unless permission to land at a user fee airport designated in § 122.39, Customs Regulations (19 CFR 122.39), or elsewhere is granted. Further, § 122.1, Customs Regulations (19 CFR 122.1), is being amended to include a definition of the term "user fee airport" and a new § 122.39, Customs Regulations (19 CFR 122.39), is being added to list the airports that have been designated by Customs as user fee airports and to state that the landing procedures for user fee airports are the same procedures that exist now for landing rights airports. As other airports are designated, they will be added to the list by publication of a notice in the **Federal Register**.

The airports that have been designated as user fee airports and a phone number at which they can be contacted regarding service follows:

Airport	Contact
Natrona County International Airport, Casper WY.	Richard Stevens, (307) 472-6688.
Rickenbacker Airport, Columbus, OH.	N. Victor Goodman, (614) 461-9046.
Santa Teresa Airport, Dona Ana County, NM.	C.L. Crowder, (505) 589-2439.
Hector International Airport, Fargo, ND.	Joseph T. Parmer, (701) 241-1501.
Southwest Florida Regional Airport, Fort Myers, FL.	Gary LeTellier, (813) 768-1000.
Lebanon Municipal Airport, Lebanon, NH.	Robert Barnum, (603) 643-5454 Ext. 520.
Allentown-Bethlehem-Easton Airport, Lehigh Valley, PA.	Jack Yohe, (215) 264-2831
Midland International Airport, Midland, TX.	Victor White, (915) 563-1460.
Airborne Air Park, Wilmington, OH.	Joe Hete, (512) 382-5591.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. As the amendments reflect section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), and section 13032 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), any economic impact would be attributable to the actions of Congress and not Customs.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely implement the statutes and neither impose any additional burdens on, or take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports, Freight.

Amendments to the Regulations

Part 122, Customs Regulations (19 CFR Part 122), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations (19 CFR Part 122), is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. 1509.

2. Section 122.1 is amended by adding a new paragraph (m) to read as follows:

§ 122.1 General definitions.

* * * * *

(m) *User fee airport.* A "user fee airport" is an airport so designated by Customs and listed in § 122.39. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport.

3. Section 122.33 is revised to read as follows:

§ 122.33 Place of first landing.

The first landing of an aircraft entering the U.S. from a foreign area shall be at an international airport (see § 122.13, International airports), unless permission to land at a designated user fee airport listed in § 122.39 is granted. Permission to land at another place may also be granted under § 122.34 (Landing rights airport). Permission to land is not required for an emergency or forced landing (see § 122.35).

4. Part 122 is amended by adding a new § 122.39 to read as follows:

§ 122.39 User fee airports.

(a) The procedures for landing at a user fee airport are the same procedures as those set forth in § 122.34 for landing rights airports.

(b) The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. Information concerning service at any of these airports can be obtained by calling the airport or its authority directly.

Location	Name
Casper, Wyoming	Natrona County International Airport.
Columbus, Ohio	Rickenbacker Airport.
Dona Ana County, New Mexico.	Santa Teresa Airport.
Fargo, North Dakota	Hector International Airport.
Fort Myers, Florida	Southwest Florida Regional Airport.
Lebanon, New Hampshire.	Lebanon Municipal Airport.
Lehigh Valley, Pennsylvania.	Allentown-Bethlehem-Easton Airport.
Midland, Texas	Midland International Airport.
Wilmington, Ohio	Airborne Air Park.

Michael H. Lane,
Acting Commissioner of Customs.

Approved December 15, 1987.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 88–7108 Filed 3–30–88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 88-007]

Safety Zone Regulations; New Haven and Bridgeport, CT, Port Jefferson, NY, and the Offshore Platforms at Riverhead and Northport, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing safety zones within the harbors of Port Jefferson, NY, New Haven, CT, and Bridgeport, CT, and the offshore platforms of Long Island Lighting Company at Northport, NY, and Northville Industries at Riverhead, NY. These zones are needed to protect all controlled vessels from safety hazards during a perion when tug boat assistance is limited. The lack of tugboat assistance to commercial vessels presents increased dangers of vessel groundings and collisions. The purpose of establishing these safety zones is to prevent damage, destruction or loss of any vessel, bridge, or other structure on or in affected areas and to prevent environmental harm from such damage, destruction or loss.

EFFECTIVE DATES: This regulation becomes effective on 15 February 1988. It terminates 13 June 1988 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT. H.C. Deens (203) 773–2464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the pubic interest since immediate action is needed to respond to potential hazards to the controlled vessels involved.

Drafting Information

The drafters of this regulation are Lieutenant H. C. Deens, Project Officer, Captain of the Port, Long Island Sound and Commander M. A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the hazards to the public, port, and environment presented when tug-boats normally involved in assisting the movement of large commercial vessels in the confines of harbors in Long Island Sound are not used. Some of these commercial vessels carry dangerous cargo. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.T107 is revised to read as follows:

§ 165.T107 Safety Zones: Captain of the Port Long Island Sound zone.

(a) *Location.* The following areas have been declared safety zones:

(1) The Harbor of Bridgeport, CT, which includes the navigable waters of the United States north of Bridgeport Harbor channel buoys #2 and #3 and the land structures or shore area immediately adjacent to those waters.

(2) The Harbor of New Haven, CT, which includes the navigable waters of the United States north of New Haven Harbor channel buoys #1 and #2 and the land structures or shore area immediately adjacent to those waters.

(3) The Harbor of Port Jefferson, NY, which includes the navigable waters of the United States south of Port Jefferson Harbor channel buoys #1 and #2 and the land structures or shore area immediately adjacent to those waters.

(4) Those navigable waters of the United States within a five hundred yard radius of the offshore platform operated by Long Island Lighting Company at Northport, NY, at position 40–57.3 degrees Lat., 073–20.5 degrees Long.

(5) Those navigable waters of the United States within a five hundred yard radius of the offshore platform operated by Northville Industries at Riverhead, NY, at position 40–59.9 Lat., 072–38.8 Long.

(b) *Effective dates.* This regulation becomes effective on 15 February 1988. It terminates on 13 June 1988 unless terminated sooner by the Captain of the Port.

(c) *Regulations:*

(1) *Application:* (i) These directions apply only to non-public self propelled vessels both U.S. and foreign of 1600 gross tons and over, when not tugboat assisted within the safety zones established herein, except where noted in paragraphs (ii), (iii) and (iv) of this section.

(ii) All non-public self propelled vessels both U.S. and foreign of 1600 gross tons and over shall comply with the requirements of 2(c)(3)(v) of this section.

(iii) All tugs with barge(s) in tow or being pushed, must meet the requirements of paragraphs 2(c)(3) (xiv), (xv), (xvi), (xvii) and (xviii) of this section.

(iv) All other vessels must meet the requirements of paragraphs 2(c)(3) (xvii) and (xviii) of this section.

(2) *Definitions:* (i) *"Controlled vessels"* are all vessels to which these regulations are applicable.

(ii) *"Vessel"* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(3) *Directions Ordered:* (i) No controlled vessel may enter or depart a safety zone described in this rulemaking unless the owner, operator, agent, master or person in charge of the vessel gives the Captain of the Port Long Island Sound a six hour advance notice of the time of movement. Additionally, this notice shall advise the Captain of the Port Long Island Sound of deficiencies to the following items which may affect the safe transit of the vessel:

(A) Navigation equipment required by 33 CFR 164.35.

(B) Vessel conditions such as fire, flooding or unusual trim and stability.

(C) Vessel controllability and maneuverability.

(D) Any impairment to vessel or cargo.

(E) Vessel's propulsion equipment.

(ii) No controlled vessel carrying as cargo any of those certain dangerous cargoes as defined in 33 CFR 160.203, shall enter any of the safety zones described in this rulemaking except by special permission of the Captain of the Port Long Island Sound.

(iii) No controlled vessel, shall enter, transit, or depart the safety zones of New Haven or Bridgeport, CT, described in this rulemaking unless under the direction of a designated pilot from the New Haven-Bridgeport Pilots Association or Harbor Pilots Incorporated. No controlled vessel, shall enter, transit, or depart the safety zones of Port Jefferson, Riverhead, or Northport, NY, described in this rulemaking unless under the direction of a designated pilot from the Sound Pilots Incorporated or Interport Pilots Agency. With concurrence of the Captain of the Port Long Island Sound, special arrangements may be made to permit other properly licensed federal or state pilots to move controlled vessels provided such pilots have knowledge of the provisions of this rulemaking.

(iv) The aforesaid pilots shall schedule movements within safety zones to ensure maximum separation between vessels. The proximity of other shipping, the accessibility of the affected berth, and the availability of maneuvering area will be carefully weighed when scheduling a vessel's movement within a safety zone. No movement is authorized if there is any reasonable doubt as to the safety of the evolution.

(v) All controlled vessels will make the following reports to the Captain of the Port, Long Island Sound via channel 16 VHF–FM at the specified times:

(A) 30 minute report—prior to entry into a safety zone the vessel will report on-scene weather, vessel draft and intentions.

(B) Immediate report—upon docking or undocking in a safety zone or departure from a safety zone.

(vi) The pilot or vessel agent shall deliver a copy of this order to the master of a controlled vessel prior to its movement in a safety zone, advise him that these are effective emergency regulations, and specifically direct the attention of the master to the following requirements. The master of the vessel shall be on its bridge, ensure the following precautions have been taken, and inform the pilot of the status of these precautions:

(A) A ship's officer is at the anchor control station and in direct communication with the bridge of the vessel by telephone, radio, or by both visual means and amplified voice.

(B) The vessel's propulsion plant is in proper order and manned for maneuvering conditions.

(C) The steering machinery room will be manned and ready to assume control immediately should the vessels normal steering control be lost and will have immediate communications with the bridge.

(D) The vessel is in compliance with all other navigation safety regulations in 33 CFR 164.

(vii) All crossing, meeting and passing situations will be closely coordinated by the pilots to ensure that controlled vessels will not cross, meet, or pass in narrow channels or in areas where maneuvering room is restricted; that is, at entrances, channel turns, basin entrances, slips and bridges. Each of these situations will be treated as a "one-way traffic movement."

(viii) All pilots will, where practicable, maintain a minimum separation of 500 yards between vessels proceeding in the same direction.

(ix) Vessel traffic in the harbors shall be coordinated between the respective pilots and pilot stations.

(x) Due regard shall be given to underwater cable and pipeline crossings when utilizing vessel's anchor to assist in mooring operations.

(xi) The following regulations are effective during docking and undocking evolutions at all berths.

(A) Attention shall be given to other vessels moored close by and prevailing wind and sea conditions.

(B) Unless specifically prohibited by these regulations, vessel movements are at the discretion of the pilot.

(C) Embarked pilots will schedule and coordinate these evolutions to minimize vessel congestion and maximize safe maneuvering room.

(xii) In all cases, vessels should be berthed in such a manner as to facilitate an unassisted departure.

(xiii) When a vessel's anchor is set on the bottom to facilitate undocking, it shall be set so as not to obstruct other vessels.

(xiv) In all cases, good seamanship shall be practiced.

(xv) Emergency situations shall be immediately reported to the Captain of the Port including groundings, and collisions with any objects, fires, etc.

(xvi) Operators of all tug boats with barges in tow or pushed will make a report to the Captain of the Port on channel 16 VHF–FM at the specified times:

(A) Ten minute report—between five and ten minutes prior to entry into or undocking in a safety zone. The vessel will report name of tug, name of barge, position relative to the affected safety zone and intentions.

(B) Immediate report—upon docking in or departure from a safety zone.

(xvii) In an emergency any person may deviate from this rule to the extent necessary to avoid endangering persons, property or the environment.

(xviii) All vessels will immediately comply with any direction of the Captain of the Port.

(4) Specific directions for the Harbor of Bridgeport, CT, Harbor of New Haven, CT, and Port Jefferson, NY safety zones:

(i) Unless specifically authorized by the Captain of the Port Long Island Sound, no vessel shall enter the harbor with less than an anticipated under keel clearance of 5 ft. during the transit of the main channel.

(ii) Unless specifically authorized by the Captain of the Port Long Island Sound, no harbor movements shall be made when the wind speed exceeds 20 knots.

(iii) No harbor movements shall be made when the visibility is less than one-half mile unless specifically authorized by the Captain of the Port Long Island Sound. If visibility is so restricted as to making stopping within half of the limit of visibility impossible, that vessel will not be moved at all. Actual visibility determination will be made by the pilot aboard who is acting under the directions of the Captain of the Port.

(iv) Unless specifically authorized by the Captain of the Port, no movements of controlled vessels of 35,000 DWT or greater or with a draft greater than 35 ft.

are permitted in the safety zones of Bridgeport or New Haven.

(v) Unless specifically authorized by the Captain of the Port, no movements of controlled vessels of 30,000 DWT or greater or with a draft greater than 28 ft. are permitted in the safety zone of Port Jefferson, NY.

(vi) Vessel traffic within confined channels and basins shall only be permitted under the most favorable conditions of wind, visibility, vessel size and maneuverability, obstructions and other vessels, both moored and underway. In this regard:

(A) Ships shall be moored at the Wyatt Oil Co. Terminal in New Haven only during daylight slack water.

(B) Controlled vessel movements at United Illuminating Company, Bridgeport, CT must be specifically authorized by the Captain of the Port.

(5) Specific directions for the safety zones surrounding the offshore platforms at Northport, NY and Riverhead, NY:

(i) Unless specifically authorized by the Captain of the Port, no movements of controlled vessels over 60,000 DWT in the safety zones of Northport, NY and Riverhead, NY are permitted.

(6) Continuous liaison shall be maintained among the pilots and the Coast Guard Captain of the Port. The Captain of the Port shall monitor vessel dockings and undockings and may be assisted by other Coast Guard units for the purpose of keeping other vessels (pleasure craft and similar miscellaneous vessels) clear of the ships being docked and undocked. Escort may be provided in special cases. However, no assistance in any way resembling tugboat service or assistance will be provided.

Dated: March 14, 1988.

T.H. Collins,

Commander, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 88-7091 Filed 3-30-88; 8:45 am]

BILLING CODE 4910-14-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 902

Predisclosure Notification Procedures for Confidential Commercial Information Under the Freedom of Information Act

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final rule.

SUMMARY: This rule implements Executive Order 12600 which requires Federal agencies to establish predisclosure notification procedures governing compliance with Freedom of Information Act requests for release of records containing commercial or financial information that is privileged or confidential, disclosure of which can reasonably be expected to result in substantial competitive harm to the person who submitted the information. The procedures substantially conform to Executive Order 12600, 52 FR 23781 (25 June 1987).

EFFECTIVE DATE: March 30, 1988.

FOR FURTHER INFORMATION CONTACT: Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, (202) 724-9088.

SUPPLEMENTARY INFORMATION: Federal agencies are required to implement procedures to carry out the guidelines of Executive Order 12600. The proposed rule is based substantially upon Department of Justice procedures, 28 CFR 16.7. The definition of confidential commercial information is incorporated in the proposed revision of § 902.54(a)(1). The Corporation considered the proposed rule on this subject published by the Department of Justice in the **Federal Register** at 53 FR 9452 (March 23, 1988). The Corporation received no comments to its own proposed rule published at 53 FR 6012 (Feb. 29, 1988).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not constitute a "major rule" under Executive Order 12291.

List of Subjects in 36 CFR Part 902

Freedom of information, Confidential business information.

For the reasons set out in the preamble, 36 CFR Part 902 is amended as follows:

PART 902—FREEDOM OF INFORMATION ACT

1. The authority citation for 36 CFR Part 902 is revised to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012-10019 (March 27, 1987); E.O. 12600, 52 FR 23781 (June 23, 1987).

2. Section 902.03 is amended by adding the following definition to read as follows:

§ 902.03 Definitions.

"Submitter" means any person or entity that provides or has provided information to the Corporation or about which the Corporation possess records subject to Exemption 4 of the Freedom of Information Act.

3. Section 902.54 is amended by revising paragraph (a)(1) and by adding paragraph (c) to read as follows:

§ 902.54 Trade secrets and commercial or financial information that is privileged or confidential.

* * * * *

(a) * * *

(1) Commercial or financial information not customarily released to the public, furnished and accepted in confidence or disclosure of which could reasonably be expected to cause substantial competitive harm, or both;

* * * * *

(c) (1) *In general.* For commercial or financial information furnished to the Corporation on or after March 30, 1988, the Corporation shall require the submitter to designate, at the time the information is furnished or within a reasonable time thereafter, any information the submitter considers confidential or privileged. Commercial or financial information provided to the Corporation shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Notice to submitters.* The Corporation shall provide a submitter with prompt written notice of a request encompassing its commercial or financial information whenever required under paragraph (c)(3) of this section, and except as is provided in paragraph (c)(7) of this section. Such written notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the information. Concurrently with its notice to a submitter, the Corporation shall inform a requestor in writing that the submitter is afforded a reasonable period within which to object to disclosure and that the 10 workday initial determination period provided for in 36 CFR 902.60 may therefore be extended.

(3) *When notice is required.* (i) For information submitted to the Corporation prior to March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The information is less than ten years old;

(B) the information is subject to prior express commitment of confidentiality given by the Corporation to the submitter; or

(C) the Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

(ii) For information submitted to the Corporation on or after March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The submitter has in good faith designated the information as confidential, or

(B) the Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter. Notice of a request for information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration. The submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative that the information in question is in fact confidential and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (c)(2) of this section, the Corporation shall afford a submitter a reasonable period within which to provide the Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(5) *Notice of intent to disclose.* The Corporation shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose information. Whenever the Corporation decides to disclose information over the objection of a submitter, the Corporation shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the information to be disclosed; and

(iii) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(6) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information covered by paragraph (c) of this section, the Corporation shall promptly notify the submitter.

(7) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(i) The Corporation determines that the information should not be disclosed;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The designation made by the submitter in accordance with paragraphs (c)(1) and (c)(3)(ii) of this section appears obviously frivolous; except that, in such case, the Corporation shall provide the submitter with written notice of any final decision to disclose information within a reasonable number of days prior to a specified disclosure date.

M.J. Brodie,

Executive Director.

Date: March 25, 1988.

[FR Doc. 88-7069 Filed 3-30-88; 8:45 am]

BILLING CODE 7630-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Fees Charged When Responding to Requests for Records; Release of Records and Other Information Customarily Furnished the Public

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulations to change the fees that the VA can assess for responding to requests for records, and the procedures for determining the fees that can be charged. In addition, the regulation that requires the VA to process all requests for records under the Freedom of Information Act (FOIA), other than those requests made under other specific disclosure statutes, is being clarified to allow the VA more flexibility in releasing records or information outside the Agency.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Marjorie M. Leandri, Chief, Records Management Division, Paperwork Management and Regulations Service (733), Office of Information Management and Statistics, (202) 233-3648.

SUPPLEMENTARY INFORMATION: On pages 38474 through 38479 of the Federal Register of October 16, 1987, the VA published a notice of proposed rulemaking. Interested persons were given 30 days to comment on the proposed rule. The VA received one comment from the Reporters Committee for Freedom of the Press (from here on referred to as the Committee). The Committee addressed four paragraphs in the proposed regulation, § 1.555, "Fees." The VA has carefully reviewed the comments discussed below according to specific paragraphs of the proposed regulations.

1. Section 1.555(a) *Definition of terms.* The Committee asked the VA to eliminate its definition of representatives of the news media or to elect a new one. The Committee believes that the definition proposed by the VA will require the Agency to determine what is "news" in deciding whether a requester should be categorized as a "representative of the news media." The VA is required by the Freedom of Information Reform Act of 1986 to conform its fee schedule to the OMB Guidelines which include the definition of "representatives of the news media." Contrary to the Committee's statement that the OMB definition was not reviewed by the public, the definition in the OMB Guidelines was made final after a period of public notice and comment during which concerns similar to those expressed by the Committee were considered. (See OMB Analysis of Comments on Definitions, 52 FR 10014-10015 and OMB Fee Guidelines, sec. 6j., 52 FR 10018, March 27, 1987.) The VA firmly believes that the OMB definition of "representatives of the news media" properly implements the statutory terms used in the Freedom of Information Reform Act of 1986. For these reasons, the VA declines to change the definition of "representatives of the news media."

2. Section 1.555(f) *Waiving or reducing fees.* The proposed regulation incorporates the six factors which the Department of Justice (DOJ) recommended be considered in determining whether fees should be waived or reduced. The Committee recommends that the VA delete these six factors. The Committee gives two reasons for this recommendation. First, the Committee states that the proposed regulation violates the Paperwork Reduction Act because the VA must obtain additional information from requesters in order to evaluate their waiver requests. In response to a similar comment on their proposed fee regulations, the DOJ wrote that the requirement that such information be submitted in support of a fee waiver request is not affected by the Paperwork

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Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act so long as agencies do not specify the content of such requests. See also 5 CFR 1320.7(c) (1987) and the Department of Justice Analysis of Comments Received, paragraph 5, Waiver or reduction of fees (52 FR 33231, September 2, 1987).

Second, the Committee believes that by repeating DOJ's six factors in its regulations, the VA would not consider the "legitimacy of the public's interest in monitoring its activities as a criterion for granting a public interest fee waiver." While the DOJ criteria for determining public interest do not specifically identify "monitoring" of agency activities, three of the factors clearly encompass this type of activity. These three factors are: (1) The subject of the request; whether the subject of the requested records concerns the operations or activities of the government; (2) the information value of the information to be disclosed; whether the disclosure is likely to contribute to an understanding of government operations or activities; and (3) the significance of the contribution to public understanding of government operations or activities. Moreover, the statutory standard governing the waiver or reduction of FOIA fees is phrased largely in general evaluative terms. It is essential that the Agency set forth the factors to be used in deciding whether to grant a fee waiver or reduction. The factors set forth by DOJ are taken directly from the statute's plain language, and the VA finds they form a useful framework for evaluating requests for fee waivers or reductions. For these reasons, the six factors are being retained in the VA's regulations.

3. Section 1.555(f)(3)(ii) *Waiving or reducing fees.* Paragraph (3) of § 1.555(f) addresses the factors that will be considered in determining whether disclosure of information is primarily in the commercial interest of the requester. The Committee requests that the VA "make clear that news media who meet the so-called public interest tests will not fail the commercial tests applied to fee waivers." The Committee supports this request by citing that the DOJ guidance "states unambiguously that where a news media requester has satisfied the 'public interest' standard necessary for waiver, that will be the interest primarily served by disclosure to that requester." The DOJ Office of Legal Policy memorandum, "New FOIA Fee Waiver Policy Guidance," dated April 2, 1987, containing the six recommended factors to be considered when determining fee waivers, has been reviewed again. In comparing the magnitude of the public interest with the requester's commercial interest in disclosure, the DOJ states "the traditional process of news gathering and dissemination by established news media or organizations, as a rule, should not be considered to be 'primarily' in their commercial interest." See FOIA Update, Vol. VIII, No. 1, at 10 (1987). The VA agrees that in most cases, news media requests will satisfy the standards necessary for fee waiver; however, these determinations should be made on a case-by-case basis, rather than being pre-determined by regulation. It is essential that VA personnel have some discretion in order to correctly apply the statutory standards.

4. Section 1.555(g)(4) *Advance payments.* The Committee comments that the proposed regulation requiring advance payment of fees "interferes with the agency's prompt provision of information and with the media's timely dissemination of information." The Committee asks that the requirement for advance payment be abandoned. Both the FOIA Reform Act and the OMB Guidelines state that agencies *may not* require a requester to make an advance payment unless the charges "are likely to exceed $250," or a requester "has previously failed to pay a fee charged in a timely fashion." Thus the FOIA Reform Act and OMB Guidelines permit agencies to require advance payments, but they do so only in one of the above specified circumstances. The final VA regulation is written in a manner that provides some discretion in determining whether to require advance payments, but only in those circumstances. This wording ensures that VA regulations are consistent with the provisions of both the FOIA Reform Act and OMB guidelines.

With the change explained in paragraph number 4 above, and editorial changes, the VA adopts the proposed rules as final.

The Administrator has certified that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these changes simply implement, and make VA regulations consistent with, the requirements of Pub. L. 99–570; they impose no new administrative or paperwork burdens, independent of the requirements of the law. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on compensation, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are no Catalog of Federal Domestic Assistance numbers involved.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Employment, Government employees, Government property, Freedom of Information Act, Privacy.

Approved: February 26, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 1, *General,* is amended as follows:

PART 1—[AMENDED]

1. In § 1.526, paragraph (e)(3) is removed; paragraph (e)(4) is redesignated as paragraph (e)(3); and paragraphs (b) and (i) are revised and an authority citation is added to paragraph (i) to read as follows:

§ 1.526 Copies of records and papers.

* * * * *

(b) The types of services provided by the Veterans' Administration for which fees will be charged are identified in § 1.526(i) of this section.

* * * * *

(i) *Fees to be charged.*

(1) *Schedule of fees:*

Activity	Fees
(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" × 11"; 8½" × 14"; 11" × 14").	$0.15 per page after first 100 one-sided pages.
(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iii) Duplication of documents by any type of reproduction process not covered by paragraphs (i)(1) (i) and (ii) of this section to produce a copy in a form reasonably usable by a requester.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output.	Actual cost to the Agency including computer and manual search costs, copying costs, labor, and material and overhead expenses.
(v) Attestation under the seal of the Agency	$3.00 per document so certified.
(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes.	$10.00 per request.
(vii) Providing files under court subpoena	Actual direct cost to the Agency.

(NOTE.—If the VA regularly contracts for duplicating services related to providing the requested records, such as the duplication of microfilm or architect's plans and drawings, the contractor fees may be included in the actual direct cost to the Agency)

(2) *Benefit records.* When VA benefit records are requested by a VA beneficiary or applicant for VA benefits, the duplication fee for one complete set of such records will be waived.

(Authority: 38 U.S.C. 3302(b))

* * * * *

2. Section 1.553 is revised and an authority citation is added to read as follows:

§ 1.553 Public access to other reasonably described records.

(a) Except for requests for records which are processed under §§ 1.551 and 1.552 of this part, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, the VA will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§ 1.551 and 1.552 of this part, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in § 1.554 of this part, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Services Officer in the nearest VA regional office; the Director, or Chief, Medical Administration Service, or other responsible official of the VA medical facility where most recently treated; or to the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for VA Central Office and most field stations.

(Authority: 5 U.S.C. 552(a)(3))

3. Section 1.555 is revised and an authority citation is added to read as follows:

§ 1.555 Fees.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *"Commercial use request"* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.

(2) *"Direct costs"* means those expenditures which the VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.

(3) *"Duplication"* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) *"Educational institution"* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *"Non-commercial scientific institution"* means an institution that is not operated on a "commercial" basis (as that term is referenced under "Commercial use request" of this paragraph) and which is operated solely for the purpose of conducting scientific research, the results of which are not

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intended to promote any particular product or industry.

(6) *"Representative of the news media"* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication history can be considered also. In any case, freelancers who do not qualify for inclusion in the "representative of the news media" category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) *"Review"* means the process of examining documents located in response to a "commercial use request" (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a "commercial use request," e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term "review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *"Search"* means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to the VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term "search" does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in § 1.554 of this part.

(b) *Fees to be charged.* (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Veterans Administration will charge fees that recoup the full allowable direct costs for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in § 1.555(e) of this part are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each department and staff office upon approval of the Administrator is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the department, staff office, or field station performed the task, itself. In no case may a department, staff office, or field station contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from the VA.

(c) *Restrictions on assessing fees.* With the exception of commercial use requests no charges will be assessed for the first 100 pages of duplication and the first two hours of search time. Moreover, no fees are to be charged any requester, including commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of documents, fees can be charged for only 10 minutes of search time and for only five pages of reproduction. If this cost were equal to or less than the cost to the VA of billing the requester and processing the fee collected, no charges would be assessed. (NOTE: The cost of collecting fees are VA's administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Agency's determination.)

(1) For purposes of the restriction on assessing fees, the word "pages" refers to one-sided paper copies of the standard sizes 8½" × 11" or 8½" × 14" or 11" × 14". Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term "search time" in this context is based on manual searches. To calculate the "computer search time" for the purpose of applying the two-hour search restriction, the hourly cost of operating the computer's central processing unit will be combined with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) *Categories of requesters and fees to be charged each category.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

(1) *Commercial use requesters.* When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

(2) *Educational and non-commercial scientific institution requesters.* These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. In order to be considered a member of this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

(3) *Representatives of news media.* These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(vi) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field station heads, their designee, or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 3301 and 5 U.S.C. 552a and will be assessed fees in accordance with the applicable fee provisions of §§ 1.526(i) or 1.577(f) of this part. To the extent that records are not disclosable under these provisions, the disclosure of such records will be evaluated under §§ 1.550 through 1.559 of this part, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) *Schedule of fees:*

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" × 11"; 8½" × 14"; 11" × 14").	$0.15 per page.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.
(3) Duplication of documents by any type of reproduction process not covered by paragraphs (a)(1) and (2) of this section to produce a copy in a form reasonably usable by the requester	Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed $25.00, paragraph (b)(2) of this section.
(4) Document search by manual (non-automated) methods	Basic hourly salary rate of the employee(s) performing the search, plus 16 percent. (If costs are likely to exceed $25.00, see paragraph (g)(2) of this section.)
(NOTE.—If a department, staff office or field station uses exclusively a single class of personnel, e.g., all administrative/clerical or all professional/executive, an average rate for the range of grades involved may be used).	
(5) Document search using automated methods, such as by computer	Actual direct cost to perform search. (See paragraph (c)(2) of this section, and, if costs are likely to exceed $25.00, see paragraph (g)(2) of this section.)
(6) Document review (use only for commercial use requesters)	Basic hourly salary rate of employee(s) performing initial review to determine whether to release document(s) or portions of records, plus 16 percent.
(NOTE.—Charge for document reviews covers only the time spent reviewing the document(s) at the initial administrative level to determine applicability of a specific FOIA exemption to a particular record or portion of a record. It does not cover any review incurred at the administrative appeal level once the initial exemptions are applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review may be properly assessed).	
(7) Other charges: Certifying that records are true copies; Sending records by special methods such as express mail	Where applicable, assess under provisions of §§ 1.526(i) and (j) of this part, otherwise actual direct cost of service performed.

(f) *Waiving or reducing fees.* (1) Fees for records and services provided in response to a FOIA request will be waived or reduced when it is determined by responsible Central Office officials or field station heads or their designee that furnishing the document(s) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The following factors will be considered in sequence in determining whether disclosure of information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) The following factors will be considered in sequence in determining whether disclosure of information is primarily in the commercial interest of the requester:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) An appeal from an adverse fee waiver or reduction determination will be processed in the same manner as described in § 1.557 of this part.

(g) *Other administrative considerations to improve assessment and collection of fees.*—(1) *Charging interest—notice and rate.* The Veterans Administration may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field station head or designee. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the original building was sent. Interest will be at the rate prescribed in section 3717 of Title 31 United States Code and will accrue from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that the fee has been received by the VA, even if not processed, will suffice to stay the accrual of interest.

(2) *Charges for unsuccessful search.* When it is determined by the responsible Central Office official or field station head or designee, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. If it is determined that search charges are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating requests.* When the responsible Central Office official or field station head or designee reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official, or field station head or designee may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day time period that seek portion(s) of the same document(s) is an attempt to avoid payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will multiple requests on unrelated subjects from one requester be aggregated.

(4) *Advance payments.* The Veterans Administration may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Veterans Administration should either notify the requester of the likely cost and obtain satisfactory assurance of full payment, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, the Veterans Administration may require the requester to pay the full amount owed, plus any applicable interest as provided in paragraph (g)(1) of this section, or to demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the estimated fee before the Agency begins to process a new request or a pending request from that requester.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in § 1.553a of this part, for responding to initial requests and appeals from initial denials, will begin only after the Agency has received the advance fee payments.

(5) *Debt collection.* In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97–365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies.

(Authority: 5 U.S.C. 552(a)(4)(A))

4. In § 1.577, paragraph (f) is revised and paragraph (g) and an authority citation are added to read as follows:

§ 1.577 Access to records.

* * * * *

(f) Fees to be charged, if any, to any individual for making copies of his or her record shall not include the cost of any search for and review of the record, and will be as follows:

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½"×11"; 8½"×14"; 11"×14").	$0.15 per page after first 100 one-sided pages.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audio tapes, etc.), computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(3) Duplication of document by any type of reproduction process not covered by paragraphs (f)(1) or (2) of this section to produce a copy in a form reasonably usable by the requester.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.

Note.—Fees for any activities other than duplication by any type of reproducing process will be assessed under the provisions of § 1.526(i) or (j) of this part of any other applicable law.)

(g) When VA benefit records, which are retrievable by name or individual identifier of a VA beneficiary or applicant for VA benefits, are requested by the individual to whom the record pertains, the duplication fee for one complete set of such records will be waived.

(Authority: 5 U.S.C. 552a(f)(5))

[FR Doc. 88–7080 Filed 3–30–88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3357-6]

Approval and Promulgation of Implementation Plans; Oregon; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule relating to the Oregon State Implementation Plan which was published at 53 FR 1021, January 15, 1988. In FR Doc. 88–821, the table in § 52.1973 Attainment Dates for National Standards should be corrected.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Laurie M. Kral, Program Advisor, Air Programs Branch, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, AT–092, Seattle, Washington 98101, Telephone: (206) 442–0160. FTS: 399–0160.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Air pollution control.

Dated: March 17, 1988.

Robie G. Russell,

Regional Administrator.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1973 is amended by revising the table to read as follows:

§ 52.1973 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_x		NO_x	CO	O_x
	1st [1]	2nd [2]	1st [1]	2nd [2]			
Portland Interstate AQCR:							
1. Portland-Vancouver (Oregon portion)	a	f	a	b	b	h	i
2. Salem	a	b	a	b	b	e	e
3. Eugene-Springfield AQMA	a	i	a	b	b	h	b
4. Remainder of AQCR	c	c	a	b	b	d	c
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA	j	k	a	b	b	l	e
2. Grants Pass AQMA	c	c	a	b	b	i	b
2. Remainder of AQCR	c	c	a	b	b	b	b
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b
Central Oregon Intrastate AQCR	a	c	a	b	b	a	b
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b

1. 1st—Primary.
2. 2nd—Secondary.

a. Air designated as having air quality levels presently below the primary standards or area is unclassifiable.
b. Area designated as having air quality levels presently below secondary standards or area is unclassifiable.
c. May, 1975.
d. May 31, 1976.
e. Dec. 31, 1982.
f. Dec. 31, 1986.
g. Reserved.
h. Dec. 31, 1985.
i. Dec. 31, 1987.
j. Dec. 31, 1984.
k. Dec. 31, 2000.
l. Dec. 31, 1990.

[FR Doc. 88–7082 Filed 3–30–88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3357-5]

Ocean Dumping; Designation of Site

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the alternative dredged material disposal site located offshore of Virginia Beach, Virginia as an approved ocean dumping site for the dumping of dredged material. The Dam Neck Ocean Disposal Site (DNODS) is located approximately 3 nautical miles (nm) due east of the Dam Neck/Virginia Beach Section of the Virginia coast and is approximately 7 nm south of the mouth of the Chesapeake Bay. This action is necessary to provide an accepatable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time, but the site is subject to continued site management and monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on March 31, 1988.

ADDRESSES: The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU) Room 2904 (rear), 401 M Street, SW., Washington, DC
EPA Region III, 841 Chestnut Bldg., Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: William C. Muir, 215/597–2541.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is within Region III and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et. seq.) and was last extended on August 19, 1985 (50 FR 33338). The list included this site which has been in use for approximately 20 years.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq. ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. [See 39 FR 16186 (May 7, 1974).]

The Corps of Engineers prepared a draft and final supplement to the Final Environmental Impact Statement (EIS) entitled "Final Supplement 1 to the Final Environmental Impact Statement and Appendix: Dam Neck Ocean Disposal Site and Site Evaluation Study, Norfolk Harbor and Channels, Virginia, Deepening and Disposal." On April 3, 1981, the Final EIS for the Norfolk Harbor and Channels, Virginia, Deepening and Disposal was filed with EPA. A Draft Supplement to the Final EIS, which documents the use and proposed final designation of the expanded DNODS, was filed with EPA on December 14, 1984. The closing date for comments on the Draft EIS was January 28, 1985.

The Final Supplement was filed with EPA on June 7, 1985. A copy of these documents may be obtained from U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510–1096.

By letter of 19 February 1985, the State of North Carolina concurred with EPA's conclusion that this site designation, as proposed, would not affect coastal resources in North Carolina. The Virginia Council on the Environment was given opportunity to comment on the draft SFEIS and Site Designation Document. Since no comments were received, EPA assumed concurrence and consistency with Virginia's Coastal Zone Management plan.

The National Marine Fisheries Service (NMFS) has concurred with EPA's assessment that sea turtles are unlikely to be adversely affected by designation of the DNODS to receive materials meeting the ocean disposal criteria.

The action discussed in the FEIS is designation for continuing use of the ocean disposal site identified as DNODS for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The Final Supplement to the EIS presented the information needed to evaluate the suitablility of ocean disposal areas for final designation and was based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Site Designation

The Dam Neck Ocean Disposal Site is the primary disposal site for three Federal navigation channels; the Atlantic Ocean Channel, the Cape Henry Channel, and the Thimble Shoal Channel. These channels provide entrance to the ports of the Hampton Roads and Baltimore. Combined, these ports provide the largest export tonnage in the country. Maintenance of these ports for navigation is vital to the economy of the United States. Further, the channels provide entrance to the largest naval port in the world, the Norfolk Naval Shipyard, which is vital to national defense.

Boundary coordinates for the DNODS are as follows:

36° 51' 24.1" N.,	75° 54' 41.4" W.;
36° 51' 24.1" N.,	75° 53' 02.9" W.;
36° 50' 52.0" N.,	75° 52' 49.0" W.;
36° 46' 27.4" N.,	75° 51' 39.2" W.;
36° 46' 27.5" N.,	75° 54' 19.0" W.;
36° 50' 05.0" N.,	75° 54' 19.0" W.

On August 21, 1987, EPA proposed this final site designation in the **Federal Register** [52 FR 31636 (August 21, 1987)]. The preamble to this proposed rule presented the characteristics of the site in terms of the eleven specific factors identified in Section 228.5 of the Ocean Dumping Regulations which, taken together, constitute an assessment of the site's suitability as a repository for dredged material. That assessment concludes that this site is appropriate for final designation.

Three letters of comment were received on the proposed rule. Comments were received from the U.S. Army Corps of Engineers, the Hampton Roads Sanitation District, and the

National Marine Fisheries Service. The Corps of Engineers requested a slight modification of the boundary coordinates based upon their latest navigational survey. The boundary coordinates listed in this section are so modified. The National Marine Fisheries Service raised the issue of impacts to marine turtles which is addressed in Section "D", "Regulatory Requirements". The Hampton Roads Sanitation District presented concerns over sediment toxicity, monitoring, and the location of marker buoys designating the location of dumping. All three issues are addressed in Section "D"—"Regulatory Requirements".

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated as per 40 CFR Part 228.7–10.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are preferred. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site conforms to the five general criteria. However, there are no existing historically used sites beyond the edge of the Continental Shelf in this area. EPA has determined, based on the information presented in the FS–EIS that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that proposed in this action. Further, historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the 11 specific criteria for site selection.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(2).]

The boundary coordinates of the site are given above. The landward boundary of the Dam Neck Site is about 3 nm from the coastline and parallel to Virginia Beach, Virginia. Water depths in the area are generally between 9.5 and 15 meters and an area of 8 square nm. A small portion of the site is characterized by a disposal impression which is the result of the COE depositing dredged material. With the exception of this impression, the bottom near the DNODS has no significant features. Topography is typical of the inner Continental Shelf, with a smooth bottom and a gradual seaward slope.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

The DNODS is situated on the near shore Continental Shelf, surrounded by productive marine waters usually associated with shallow coastal areas. The dominant factor influencing the biological makeup of the study area is its position adjacent to the mouth of the Chesapeake Bay. The Bay "plume" contributes nutrients and detrital materials, resulting in enhanced primary production compared to areas farther from the Bay mouth.

Breeding, spawning, nursery, and passage activities of commercially important finfish and shellfish occur on a seasonal basis in the vicinity of the dump site. However, the most extensive breeding, spawning, and nursery activities occur either in offshore waters or in the adjacent Chesapeake Bay estuarine waters that is offshore or inshore of the dredged material disposal site. In addition, the total area of the disposal site represents only a small portion of the total breeding, spawning, and nursery areas along the mid-Atlantic coast for these species. The disposal site is within passage areas for anadromous adult fish and larval finfish and shellfish migrating from the ocean to the Chesapeake Bay. However, these passage areas are not confined or geographically limited to areas coinciding with the DNODS. The intensity of passage activities varies seasonally with peaks in spring and early fall for most important finfish and shellfish species.

The most important shellfish species to the lower Chesapeake Bay and to the DNODS is the blue crab *Callinectes sapidus.* Studies by EPA, the COE and others identified in the FS EIS showed that during larvae development a significant fraction of the blue crab reside in the Chesapeake Bay plume, only a fraction of which includes the DNODS. Therefore, the potential impacts would be very small, especially since the crab larvae are primarily in the surface waters.

The DNODS supports a productive benthic faunal population which is typical of the mid-Atlantic inner Continental Shelf. However, no commercial quantities of any shellfish were identified in the DNODS. A small conch fishery (*Busycon* sp. and *Strombus* sp.) occur inshore of the site and the surf clam (*spisula solidissima*) and sea scallop (*Placopecten magillanicus*) are found offshore of the site. The impact of dumping on breeding, spawning, nursery, and passage activities is therefore likely to be minimal for the reasons stated above. In addition, due to the mobility of adult finfish, it is unlikely that dumping will have a significant impact on either anadromous or pelagic species. In general, increases in suspended sediment concentrations following dumping are localized and are not expected to cause adverse long-term impacts. Consequently, interference of suspended sediments on the respiratory structures of fish are minimal. Some entrainment of larval fish and crabs within the disposal plume may occur, causing a minor detrimental effect within the disposal site. However, the population will not be adversely affected.

Studies indicate the migration of thousands of the loggerhead and ridley turtles into the Chesapeake Bay. However, there is little evidence that a significant number of turtles would in fact traverse the dump site during the migratory April–June period. During EPA's surveys over a four-year period, no turtles were sighted nor were any recovered from extensive benthic trawls at the site. This may be due to the colder water, 8 to 10 °C at the dump/ site during the period of May through June as opposed to the near shore waters where temperatures reach 20 °C, the temperature at which the turtles begin to migrate. Further, in conjunction with EPA, the COE has developed a site management plan which segments the site, thereby, only a two-square mile area would be impacted at any time. In view of the above, any impacts to the sea turtles would be infrequent and localized and, therefore, not a significant threat especially given the mobility of the turtles and the short-term water column effects. The impact on benthic communities will be localized to an area which is only a small portion of the total bottom area over which the migrating turtles pass. The turtles, being opportunistic feeders, should have no difficulty in finding adequate adjacent food resources to sustain their winter migration. The jellyfish, which both the loggerhead and ridley forage on near the

Bay mouth, should in no way be adversely impacted by disposal at Dam Neck Disposal Site, 10 miles away.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3)]

The DNODS is located offshore of Virginia Beach. The 3.3 nm of coastline between Rudee Inlet and 49th Street in Virginia Beach are highly developed ocean resort areas—the largest in Virginia. It includes an extensive tourist and resort trade. The dunes have been removed and developed. South of Rudee Inlet the shoreline is backed by sand dunes with residential development, a military installation and further south, a National Wildlife Refuge.

The DNODS is within 3 nm of the adjacent beach. Longshore, tidal, and storm generated currents may disperse the dredged materials dumped at the site. The center of the site is approximately 2 nm seaward of the active littoral drift zone with respect to the nearshore bottom profile. The mean annual current vectors for bottom circulation are toward shore along Virginia Beach. However, the vectors were of weak magnitude and the FS EIS predicted minimal material movement from the site by wave induced and tidal currents.

Sediment transport at the DNODS, while minimal, would become part of the littoral drift zone and incorporated into the natural beach process with minimal adverse environmental impacts. The majority of the sediments released would be expected to sink to the bottom and remain in place.

In addition, after 20 years of use, no apparent adverse impacts to beaches have been associated with the previous dredged material disposal at this site. Thus, use of the site should not adversely affect recreation, coastal development or other uses of the shoreline. Further, there are public amenities in the vicinity of the DNODS which are incompatible with continuing use of the disposal site.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4))

All dredged material dumped in ocean disposal sites must satisfy the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations [40 CFR Part 227].

The types of dredged material to be dumped at DNODS and method of release will be typical of previous dredging operations in the lower Chesapeake Bay channels that involved ocean disposal since 1967. The dredged materials will consist of uncontaminated sediments removed from the existing Thimble Shoal and Cape Henry Channels and the planned Atlantic Ocean Channel.

Thimble Shoal Channel is approximately 12 nm long and is maintained 45 feet deep and 1,000 feet wide. The channel extends between deep water just to the east of Hampton Roads and deep water at the Chesapeake Bay mouth. West of the Chesapeake Bay Bridge Tunnel the channel sediments are clays and silts (50–75%), but fine to medium sands are present (75–90%), within the eastern end of the channel. The planned deepening to 55 feet would result in approximately 23.5 million cubic yards for disposal with maintenance expected to average about 900,000 cubic yards every 5 years. The project is projected to be phased with approximately 3.6 million cubic yards to be disposed from the outboard Thimble Shoal Channel to 50 feet for 1987 and 1988.

Cape Henry Channel is about 2.5 nm long and is maintained to 42 feet deep and 1,000 feet wide. The channel is at the Chesapeake Bay mouth and is the start of the route north to Baltimore. The channel sediments are predominately fine sand (80–90%) with some silt, clay and shell. The planned deepening will require approximately 3.2 million cubic yards to be disposed with maintenance expected to average about 1,000,000 cubic yards every 4 years.

The Atlantic Ocean Channel is in the vicinity of the present southeast sea lanes. The planned deepening to 57 feet and 1,000 feet wide will involve dredging of about 10 million cubic yards of fine sand (80–90%) with silt, some clay, and some gravel. Maintenance dredging is predicted to average 1,000,000 cubic yards to material every 5 years.

The dredging and release of dredged material will be removed from the channels by self-propelled trailing suction hopper dredges and transported to the DNODS by these same seagoing vessels. The materials will be released at the site by bottom dumping. Split hopper dredges accomplish this by opening the hull.

The dredged material from the Hampton Roads is a finer grained material which often contains contaminants. As a result, all inner harbor dredge disposal will occur in the Craney Island contained disposal area.

Chemical and biochemical studies conducted on the channels proposed for ocean disposal at DNODS were shown to meet EPA criteria. Further, suspended solid phase bioassays conducted on sediments from the Thimble Shoals and Cape Henry Channels indicated that sediments exhibited low levels of acute toxicity for the grass shrimp, *Palaemonetes pugio* and the blue mussel, *Mytilus edulis*. In all cases, the mortalities of test organisms exposed to the various elutriate concentrations was not significantly different from that exhibited by the controls. The solid phase bioassay experiments also indicated a low degree of toxicity for sediments from Thimble Shoals and Cape Henry Channels. Osmoregulation studies on suspended solid phase bioassays indicated that materials did not produce significant sublethal effects. Elutriates of sediments did not affect the ability of *P. pugio* to hyperregulate at low salinities or hyporegulate at high salinities.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5))

The Dam Neck Site does not currently have surveillance by the U.S. Coast Guard. Instead, the COE employs qualified personnel for contractor surveillance on the dredge. To assist in assurance that all disposal takes place in the proper location, the U.S. Coast Guard has placed two special buoys to mark the location of actual discharge within the dump site. The Coast Guard will monitor these buoys periodically.

The Corps of Engineers conducts bathymetric survey monitoring of the channels and dumpsite. Surveys are conducted on a minimum annual basis and more frequently as needed during the channel construction phase, pre- and post-dump surveys for each major segment of the project. Also included in the monitoring of transport, the EPA with the assistance of the Corps has placed sediment traps around the site to assure no significant transport toward the beach. Traps will be monitored semi-annually.

EPA has a continuing monitoring program at the site for annual assessment of benthic communities, chemical characterization and biological changes near the site. This program will continue through the construction phase of the project. In addition, in conjunction with the National Marine Fisheries Service, EPA will conduct a two-year study to assess the actual sea turtle migration through the site during the spring migration.

Water quality monitoring will continue by both the EPA and Corps to assure no changes in water quality due to ocean disposal during the critical summer periods.

Bioassays and bioaccumulation analyses and appropriate monitoring of the site sediments and dredged materials will be determined on a case-by-case basis by EPA and the Corps as necessary. Should evidence of

significant adverse environmental effects occur, EPA will take appropriate steps as provided in 40 CFR Part 228.

Last, EPA and the Corps of Engineers are entering into a Memorandum of Understanding for a joint site management and monitoring plan. Anyone interested or wishing to comment on the monitoring program can request copies from EPA.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

The physical oceanographic characteristics of the DNODS are typical of the inner continental shelf circulation seaward of the littoral zone. The inner shelf circulation seaward of the 10 meter contour is generally aligned with the bathymetric contours, with a negligible onshore-offshore component. The dispersal, horizontal transport, and vertical mixing characteristics of the DNODS are influenced by a net southward oceanic circulation rather than the nearshore littoral forces.

Near surface currents in the vicinity of the site range from 5 to 9 cm/s during the summer, and 4 to 6 cm/s during the fall. Bottom currents during those periods averaged 0 to 2 cm/s during summer and between 1 to 3 cm/s during the fall. Bottom currents are oriented north-south at 3 to 12 cm/s during the presence of moderate wave action. The threshold for transport of medium grained sand is taken at 20 cm/s and it is therefore concluded that wave induced sediment movement is oscillatory and should produce no net translation of sediment. However, as noted in the previous section, monitoring will be conducted to assure no impacts to amenities due to sediment transport.

Immediate dispersal and horizontal transport of the dredged material are influenced primarily by the method of placement, type of dredged material, and depth of water at the disposal site. The material is expected to be released by bottom dumping hopper dredges at depths of 6 to 9 meters below the water surface and rapidly descend to the bottom at depths of about 10 to 15 meters. Noncohesive materials such as sand and shell would descend as high density flow, whereas cohesive sediments would descend as a cohesive mass of material. The sediments that are proposed for disposal vary from cohesive to non-cohesive material. The length of the bottom impact zone depends on the speed of the dredge and time required to release the load and is typically less than 1,500 feet for a split hull dredge and less than 3,000 feet for a conventional bottom door dredge. Deposition of the dredged material typically occurs no more than 500 feet laterally from the path of the hopper dredge. Field studies show losses at the site as less than one percent.

Long-term disposal and horizontal transport of dredged material should not be significant at the DNODS due to currents which are insufficient to transport significant amounts of dredged materials. Numerous pre and post-dump bathymetric surveys indicate optimal retention at the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7))

The DNODS has been used for over 20 years with approximately 19 million cubic yards of dredged material being disposed at the site. Based upon studies by EPA, the COE and the Hampton Roads Sanitation District, there appears to be no significant difference in benthos, fisheries, water quality, and sediment quality between the disposal site and adjacent areas which have not been disposed on. Dredging records indicate that most of the materials dumped at the site came from Cape Henry and Thimble Shoal Channel. The lack of any statistically significant difference between the disposal site and adjacent areas tends to indicate that there have been little long-term adverse impacts associated with disposal.

The only detected long-term effects from previous dredged material disposed at the site were limited to physical effects. The materials dumped at the site have been varying mixtures of uncontaminated fine sand, silts, and clays. The immediate effects of disposing of these materials have been restricted to minor short-term increases in water column suspended solids, and the burial of limited bottom areas with a thin layer of dredged material.

Investigations by the U.S. Army Corps of Engineers Waterways Experiment Station have indicated the suspended solids levels typically return to ambient levels shortly after open water disposal operations are completed. Studies have also indicated that bottom areas buried by dredged material are typically repopulated within several months.

The cumulative effects of disposal at this DNODS are limited to bathymetric changes. Operational control of previous disposal and the relatively stable environment have resulted in a measurable buildup of dredged material deposits in the northern end of the DNODS. Studies by EPA have, however, indicated that during the 20-year period of dumping, there may have been some dumping outside the site as evidenced by REMOTS camera photographs. Except for these changes, there were no biological, or chemical effects from previous disposal at the site.

Motile finfish and shellfish generally are capable of escaping from released sediments. No existence of any significant adverse impacts were identified. No fish kills were identified to occur in the vicinity of the site during the 20-year period. No shellfish beds, existing or relic were found in the area. No evidence of any significant adverse impacts on macrofauna or microfauna abundance due to previous dredged material disposal was apparent during site surveys.

The results of bioassay and sediment quality at the Thimble Shoal Channel indicate a relatively uncontaminated sediment and it is unlikely that previous disposal either directly was toxic to marine organisms or contributed significant amounts of contaminants to the ecosystem.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The mouth of the Chesapeake Bay and near shore waters are heavily utilized for shipping, fishing and recreational boating. However, the DNODS is located south and inshore of the shipping lanes and offshore of the primary near shore fishery and inshore of the major sport fishery.

Conch, blue crabs, and menhaden as well as croaker, spot and sea trout are caught in the area. Further, an extensive summer flounder fishery occurs inshore of the site. However, there are restrictions to use of the area as it is near a Navy firing range. While this would not restrict disposal, it does limit commercial trawling operations.

The prime recreational fishing areas are near the mouth of the bay and further off shore, 10 to 15 nm, according to published fishing records. Dredged material disposal will be fairly frequent over the next five years; however, it would not restrict any fishing activity around the site. Further, due to the mounding that will occur, the trawling would be difficult within the site.

Use of the DNODS should not affect the traffic into the Chesapeake Bay or along the coast. Deep draft shipping to and from the ports of Baltimore or Hampton Roads must comply with the Chesapeake Bay Traffic Separation Scheme. The DNODS is located south of these channels. The DNODS is inshore of the deep draft coastal shipping routes. Further, shallow draft commercial fishing and sport boats will not be affected since their drafts are typically 15 feet or less.

All considerations for mineral extraction in Virginia waters are in the exploratory stages. The DNODS is not expected to interfere with these uses as it is well inshore of the proposed oil and natural gas drilling lease areas.

Presently there are no desalination plants within the study area. EPA is, however, currently investigating the use of reverse osmosis for desalination in the Norfolk area. The location for the pilot facility has not been chosen. It is doubtful that the intake would be in the ocean rather than the bay where salinities are much lower.

Concerning areas of special scientific importance, the area does not contain any unique physical or biological features. However, the area has been studied as part of the Hampton Roads Sanitation District ocean outfall located one mile from the site. Use of the site for disposal should not interfere with the operation of the ocean outfall. A separate monitoring program was established between the U.S. Corps of Engineers and the EPA to assure there are no synergistic effects of dredge material disposal and the ocean outfall.

There are no fish and shellfish mariculture activities in or around the site. Last, the only other known use of the area is by the U.S. Navy military firing range. Since the firing area encompasses the DNODS, the COE and its contractor coordinate with the Navy to schedule disposal operations. The Navy also conducts underwater explosive ordnance in the area which must also be coordinated with the disposal schedule.

9. *The existing quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

The existing water quality of the DNODS area has been classified by the State of Virginia as non-degraded, suitable for public water supplies, primary contact recreation, propagation of fish and other beneficial uses. The surface dissolved oxygen concentrations in the area are generally at or near saturation. However, background levels of dissolved oxygen in the bottom waters of the area are periodically below 5 mg/1. Nitrogen and phosphorus levels are moderate, exhibiting mean concentrations of 0.3 mg N/1 and 0.06 mgP/1. During summer to early fall, a strong thermal-salinity density stratification during winter to spring with significant vertical mixing.

The water quality in the area of the site is primarily affected by discharges from the Hampton Roads Sanitation District which discharges effluent from secondary treatment and filtration facilities and by the DNODS which has been used for the past 20 years. The near coastal waters of the site are also affected by the outflow from Chesapeake Bay which constitutes over 50% of the freshwater inflow to the Continental Shelf of the Mid-Atlantic Bight.

The ecology of the DNODS is greatly influenced by its position adjacent to the mouth of the Chesapeake Bay. The outflow from the Bay enhances primary production by contributing nutrients and detrital material to the inner continental shelf region. Phytoplankton cell concentrations in the Bay plume are significantly higher than in shelf waters outside the plume. Seasonal changes in phytoplankton composition is related to the Bay plume changes in composition, quantity of flow, temperature, and salinity.

The meroplankton in the DNODS area is dominated by the blue crab, bay anchovy, and sand shrimp larvae. The blue crab megalope were found in the center of the area but the zoea were found in greatest numbers offshore and to the north of the site. The DNODS does not appear to represent a major larval transport route for any commercially significant species except for the blue crab. Commercial and sport fishes were found to use the area during migration but no important spawning occurs.

The benthos of the area supports a productive benthic faunal population which is typical of benthos of the mid-Atlantic inner continental shelf. Commercial benthos abundances were found to be low and only species of marginal commercial importance were collected with none in significant numbers. The non-commercial benthic macroinfaunal community was found to be a typical sandy substrate assemblage.

Dumping of dredged material over 20 years has not significantly affected water quality. Therefore, use of the site is not expected to have significant water quality or ecology impacts. The benthic community would have short-term changes due to increased sediment loading. However, due to natural recolonization of the benthos, these impacts are not expected to be significant.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Dredged material has been placed in the DNODS since the mid-1960's. Monitoring in this area has not detected the development or recruitment of nuisance species. Further, the sediments placed in the site and which will be disposed in the future, meets ocean disposal criteria as specified by the COE and EPA.

Benthic organisms in the disposal area are typical of benthic faunal populations of the inner continental shelf. The open ocean conditions at the DNODS including low bottom temperatures, high salinities, and coarse grained dredged materials with low organic content should not favor microbial activity or proliferation and are not expected to develop as nuisance species. In addition, annual monitoring for potential nuisance species will be conducted by EPA.

11. *Existence at or in proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11)).

The area extending from Assateague Island to Fisherman's Island and offshore for 10 nm is on the National Oceanographic and Atmospheric Administration's site evaluation list for consideration as a marine sanctuary. Most of Fisherman's Island, located on the north side of the Bay mouth, is a National Wildlife Refuge known for having a wide variety of birds which are particularly abundant during seasonal migratory periods. The Back Bay National Wildlife Refuge and False Cape State Park are located south of the study area. Neither of these areas would be affected by long-term disposal at the DNODS.

There are 17 known historic vessels that have been lost in the vicinity of the disposal area. Within the site boundaries of the DNODS there are no known wrecks, obstruction, or other significant natural or cultural features. The nearest known wreck is located about ¼ nm east of the proposed eastern boundary and has been tentatively identified as a 500-ton vessel called Kingston Celonite which sank in June 1942. A second obstruction has been located about ¾ nm north-northwest of the proposed northwest corner of the site and is listed as wreck, unknown. The disposal of dredged material at the DNODS is not likely to adversely disturb or otherwise impact marine archaeological resources.

E. Action

The designation of the Dam Neck Ocean Disposal Site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region III.

It should be emphasized that, when the ocean dumping site is designated, such a site designation does not

constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, other than that already approved under Section 103 of the Marine Protection, Research, and Sanctuaries Act, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 23, 1988.

James M. Seif,

Regional Administrator for Region III.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Material Sites Listing in section 228.12 is proposed to be amended by removing the "Dam Neck" site from the Dredged paragraph (a)(3) and by adding paragraph (b)(55) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(55) Dam Neck, Virginia, Dredged Material Disposal Site—Region III. Location: 36°51′24.1″ N., 75°54′41.4″ W.; 36°51′24.1″ N., 75°53′02.9″ W.; 36°50′52.0″ N., 75°52′49.0″ W.; 36°46′27.4″ N., 75°51′39.2″ W.; 36°46′27.5″ N., 75°54′19.0″ W.; 36°50′05.0″ N., 75°54′19.0″ W.;

Size: 8 square nautical miles.

Depth: Averages 11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the mouth of the Chesapeake Bay.

[FR Doc. 88–7078 Filed 3–30–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 712

[OPTS–82030A; FRL–3357–2]

Chemical Information Rules; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding eighteen chemical substances to the list of substances identified in the Preliminary Assessment Information Rule (PAIR, 40 CFR Part 712). Manufacturers and importers who produce or import the listed substances are required to submit production volume, end use, and exposure data to EPA. The Agency will use the reported data to evaluate risks associated with these substances.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 14, 1988. This rule shall become effective on May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404.

SUPPLEMENTARY INFORMATION: EPA is adding eighteen chemical substances to the list of chemicals identified in PAIR. After the effective date of this rule, manufacturers and importers of these substances are required to provide EPA with a Preliminary Assessment Information Manufacturer's Report for each plant site at which these substances are manufactured or imported.

This rule was originally proposed (52 FR 18245, May 14, 1987) together with the proposed Addition of Chemicals to Information Rules; Pesticide Inert Ingredients. The Pesticides Inert Ingredients proposal included establishment of a new paragraph (v) in 40 CFR 712.30 in which chemical suhstances would be listed. The proposed rule for these eighteen chemical substances would have added the eighteen to the new paragraph (v). Due to changes in the final publication schedule for the Pesticide Inert Ingredients rule, this final rule establishes 40 CFR 712.30(w) rather than adding to § 712.30(v) as originally proposed.

The proposed rule included 24 substances. Six substances are not included in the final rule for the reasons discussed in Unit IV below.

I. Authority

Pursuant to section 8(a) of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2607(a)), EPA promulgated PAIR (40 CFR Part 712). This model section 8(a) rule established standard reporting requirements for manufacturers and importers of chemical substances listed in § 712.30. These manufacturers and importers are required to submit a one-time report on production volume, end use, and exposure using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on substances of concern.

II. Summary of This Rule

EPA is adding eighteen chemical substances to the list of chemicals identified in PAIR. Manufacturers and importers of these substances are required to provide EPA with a Preliminary Assessment Information Manufacturer's Report for each plant site at which these substances are produced or imported. A separate form must be completed for each substance. Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the reporting form and a question and answer document to assist submitters in completing the form are available from the TSCA Assistance Office at the address and telephone number preceding Unit I of this rule. Reports must be submitted to the following address by July 13, 1988: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M

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St., SW., Washington, DC 20460, ATTN: PAIR Reporting.

SUBSTANCES ADDED TO PAIR

[Listed alphabetically by TSCA Inventory name]

Substance	CAS No.
Barium chloride	10361-37-2
Bromine	7726-95-6
Cyclohexene, 4-ethenyl-	100-40-3
Ferromanganese	12604-53-4
Hydrocyanic acid	74-90-8
Hydrofluoric acid	7664-39-3
Manganese oxide	1313-13-9
Molybdenum oxide	1313-27-5
Nitric acid, silver (1+) salt	7761-88-8
Palladium chloride	7647-10-1
Phosphorus	7723-14-0
Selenium	7782-49-2
Silver	7440-22-4
Sodium fluoride	7681-49-4
Sulfuric acid, cobalt (2+) salt (1:1)	10124-43-3
Sulfuric acid, manganese (2+) salt (1:1)	7785-87-7
Tungsten carbide	12070-12-1
Vanadium oxide	1314-62-1

As part of an ongoing effort to coordinate information gathering requests from different offices in EPA, this rule includes chemical substances nominated by the Office of Air Quality Planning and Standards and the Office of Toxic Substances. This coordination will lead to efficient use of resources for both industry and the government by avoiding duplicative information requests by multiple offices in EPA. This savings will be reflected in reduced Agency implementation costs and industry reporting costs.

The nominating office and the particular reasons for each office's information request on the substances listed in this rule are discussed in Unit III of this preamble.

III. Agency Rationale and Objectives

A. Office of Air Quality Planning and Standards

EPA's Office of Air Quality Planning and Standards (OAQPS) needs basic data on the production and emissions of seventeen chemical substances and has requested that this information be gathered through adding these substances to the list of substances identified in the PAIR. After the effective date of this rule, persons who manufacture or import the listed substances are required to submit production volume, end use, and exposure data to EPA.

A necessary step in the regulatory program for addressing toxic air pollutants is a preliminary ranking and screening of substances that have been identified as potential air pollutants. The purpose of ranking and screening is to select, from a large number of candidates, those substances most deserving of closer attention and further analysis by EPA. Ideally, a full range of toxicological and epidemiological information, coupled with detailed estimates of current emissions and human exposure, would be utilized to rank and screen the identified substances. However, such complete information is seldom, if ever, available. Furthermore, the number of candidates is potentially very large, and the resources required to develop complete information are prohibitive. For these reasons, early prioritization and screening must be based on limited, readily available data and an evaluation process subsequently used that provides opportunity for further refinement of the list of candidates.

Twelve of the seventeen chemical substances nominated by OAQPS are currently included in the prioritization and screening effort to determine which chemicals are to receive regulatory assessment. Several types of readily available information are used in making this determination. These include health effects information and estimates of the potential for population exposure. The potential for population exposure may be estimated from volatility information and from production volume such as that obtained under this rule. The twelve substances (listed here by the common name with the TSCA Chemical Substances Inventory name in parentheses) which are being added to PAIR are: Barium Chloride, Cobaltous Sulfate (Sulfuric acid, cobalt (2+) salt (1:1)), Ferromanganese, Manganese Dioxide (Manganese oxide), Manganese (II) Sulfate (1:1) (Sulfuric acid, manganese (2+) salt (1:1)), Molybdenum Trioxide (Molybdenum oxide), Palladium (II) Chloride (Palladium chloride), Silver, Silver Nitrate (Nitric acid, silver (1+) salt), Sodium Fluoride, Tungsten Carbide, and Vanadium Pentoxide (Vanadium oxide).

The extent of the information needed is similar to the data gathered through the Final Rule, Partial Updating of the TSCA Chemical Inventory Data Base (Inventory Update Rule), published in the **Federal Register** of June 12, 1986 (51 FR 21438). However, the Inventory Update Rule specifically exempts manufacturers and importers of most inorganic substances (including those substances nominated by OAQPS for this rule) from reporting. This exemption was included to avoid unnecessary reporting on the many inorganic substances not currently of interest to EPA for risk assessment review. By using PAIR to selectively obtain needed production, end use, and exposure data on those inorganic substances identified by Agency programs for possible review, EPA can efficiently obtain the data it needs on those specific substances while minimizing overall reporting burdens.

The remaining five chemical substances nominated by OAQPS have already been selected for regulatory assessment. These substances (again, listed by common name with the TSCA Chemical Substance Inventory name in parentheses) are: Bromine, Hydrocyanic Acid, Hydrogen Fluoride (Hydrofluoric acid), Phosphorus, and Selenium. The information gathered on these substances will serve as part of the basis for decisions on the need to further assess the substances as toxic air pollutants under the Clean Air Act (42 U.S.C. 7401–7626). Listing these substances under PAIR does not indicate that they are going to be regulated under the Clean Air Act or TSCA, only that they are undergoing regulatory assessment with a view to determining whether regulatory action is appropriate under TSCA or the Clean Air Act.

B. Office of Toxic Substances

EPA's Office of Toxic Substances (OTS) needs up-to-date information on the manufacture and import of one chemical substance whose common name (with the TSCA Chemical Substance Inventory name in parentheses) is: 4-vinylcyclohexene (Cyclohexene, 4-ethenyl-). Because OTS needs end use and exposure data, the Inventory Update Rule will not provide the necessary information. The data obtained on this substance will be used by OTS in risk analysis. This substance is discussed in the paragraph below.

4-Vinylcyclohexene. EPA is adding 4-vinylcyclohexene, CAS No. 100-40-3, to the list of chemical substances identified in PAIR. The primary use of 4-vinylcyclohexene is as a site-limited intermediate in the production of 4-vinylcyclohexene diepoxide, which is then used to make epoxy resins. 4-vinylcyclohexene is also a byproduct of synthetic rubber production. Exposure could occur dermally or through inhalation. Studies on 4-vinylcyclohexene showed limited evidence of carcinogenicity. No data are available on worker exposure during manufacture, processing, or use in the United States. This data is necessary to determine if a risk assessment is required.

IV. Comments on Proposed Rule

All of the comments received from the public on the proposed rule were chemical-specific, and some contained additional information on the chemical substances. The nominating offices reviewed the material received and determined whether the additional data met their needs. No chemical substances were removed from the list as a result.

A. Comments on OAQPS Substances

The comment received opposing inclusion of barium chloride (CAS No. 10361–37–2) states that it has relatively low toxicity and potential for human exposure as an air pollutant. The Agency notes that the data collection effort under PAIR is intended to enable EPA to assign a priority to the need to assess barium chloride as an air pollutant relative to other chemicals. The type of data being requested for barium chloride is gathered for many other compounds and does not imply that it will be considered to be a hazardous air pollutant. However, information is needed to assess exposure potential, and the comment does not provide information adequate to conduct the assessment necessary for barium chloride.

Several commenters opposed the inclusion of titanium dioxide (CAS No. 13463–67–7) in PAIR. Information developed in response to a proposal to delist titanium dioxide from specific reporting requirements under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, "SARA") has addressed the information needs of the Agency. For this reason, titanium dioxide is not included in this final rule.

One commenter opposed the inclusion of sodium hydroxide (CAS No. 1310–73–2), asserting that it is not a hazardous air pollutant. As a result of additional information developed subsequent to proposal by the Agency in support of a decision on the chemical substance, sodium hydroxide is not included in this final rule.

The Agency has determined that supplemental information which has become available through another Agency program is adequate to address its information needs on mercuric chloride (CAS No. 7487–94–7). For this reason, mercuric chloride is not included in this final rule.

Because of concerns that the health effects data for magnesium hydroxide (CAS No. 1309–42–8) does not associate inhalation exposure to this compound with adverse health effects not controlled against by the National Ambient Air Quality Standard for particulate matter, the Agency is deferring a decision on whether the substance will be included in a future PAIR rule until further health effects data is obtained. For this reason, magnesium hydroxide is not included in this final rule.

B. Comments on OTS Substances

The proposed rule contained two other substances nominated by OTS. Two commenters submitted teratology studies on phenylethyl alcohol (CAS No. 60–12–8). Since teratological effects are of major concern to OTS, pending review of these studies the Agency is deferring a decision on whether phenylethyl alcohol and phenylethyl acetate (CAS No. 103–45–7) will be included in a future PAIR rule. Thus, phenylethyl alcohol and phenylethyl acetate are not included in this final rule.

V. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than July 13, 1988.

VI. Economic Analysis

EPA estimates the total reporting cost of this rule is $328,560. To calculate this figure EPA used the nonconfidential TSCA Inventory data base, plus current information from other published sources, to generate a list of manufacturers and importers of these chemical substances. After excluding firms which reported no production or importation, 180 companies were listed as manufacturers or importers of the chemical substances. Since 32 of these companies qualify as a small business as defined in 40 CFR 712.25(c), EPA expects 148 firms to report a total of 222 reports.

The estimated total reporting costs are as follows:

222 reports @ $807/report	$179,154
+222 familiarization cases @ $673 case	149,406
Total	328,560
Average cost per site	1,480
Average cost per firm	2,220

VII. Rulemaking Record

The following documents constitute the rulemaking record for this rule (docket control number OPTS–82030A). All of these documents are available to the public in the OTS Public Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC.

1. Preliminary Assessment Information Rule (40 CFR Part 712).
2. This rule.
3. Economic analysis of this rule.
4. The proposed rule (52 FR 18250, May 14, 1987).
5. A chemical hazard information profile for 4-Vinylcyclohexene.
6. Health effects and use information on the OAQPS chemical substances nominated for this rule.
7. Public Comments.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it will not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA expects only 148 companies to report under this rule, well within Regulatory Flexibility Act guidelines. The rule exempts "small" manufacturers and importers (as defined in 40 CFR 712.25(c)) from reporting on these chemical substances. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2070–0054.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

Dated: March 21, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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Therefore, 40 CFR Part 712 is amended as follows:

PART 712—[AMENDED]

1. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 712.30 is amended by adding paragraph (w) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) Manufacturers and importers of the substances listed below must submit a Preliminary Assessment Information Manufacturer's Report for each site at which they manufacture or import each substance by the reporting date shown in the table below. The substances are listed in Chemical Abstracts Service Registry Number order. Typically EPA lists the trivial or common name first, then, following the symbol "—", EPA lists the substance by its TSCA Chemical Substance Inventory name. Whenever EPA lists a single name, the name may be either the TSCA Chemical Substance Inventory name, a trivial name, or a common name. Generally, when a single name is listed, it is the TSCA Chemical Substances Inventory name.

CAS No.	Substance	Effective date	Reporting date
74-90-8	Hydrocyanic acid	5-16-88	7-13-88
100-40-3	4-vinylcyclohexene—cyclohexene, 4-ethenyl	5-16-88	7-13-88
1313-13-9	Manganese dioxide—manganese oxide	5-16-88	7-13-88
1313-27-5	Molybdenum trioxide—molybdenum oxide	5-16-88	7-13-88
1314-62-1	Vanadium pentoxide—vanadium oxide	5-16-88	7-13-88
7440-22-4	Silver	5-16-88	7-13-88
7647-10-1	Palladium (II) chloride—palladium chloride	5-16-88	7-13-88
7664-39-3	Hydrogen fluoride—hydrofluoric acid	5-16-88	7-13-88
7681-49-4	Sodium fluoride	5-16-88	7-13-88
7723-14-0	Phosphorus	5-16-88	7-13-88
7726-95-6	Bromine	5-16-88	7-13-88
7761-88-8	Silver nitrate—nitric acid, silver (1+) salt	5-16-88	7-13-88
7782-49-2	Selenium	5-16-88	7-13-88
7785-87-7	Manganese (II) sulfate (1:1)—sulfuric acid, manganese (2+) salt (1:1)	5-16-88	7-13-88
10124-43-3	Cobaltous sulfate—sulfuric acid, cobalt (2+) salt (1:1)	5-16-88	7-13-88
10361-37-2	Barium chloride	5-16-88	7-13-88
12070-12-1	Tungsten carbide	5-16-88	7-13-88
12604-53-4	Ferromanganese	5-16-88	7-13-88

[FR Doc. 88-6914 Filed 3-30-88; 8:45 am]

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40 CFR Parts 761 and 796

[OPTS 29001; FRL-3358-1]

Polychlorinated Biphenyls and Chemical Fate Testing Guidelines; Incorporation by Reference; Reapproved Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyls (PCB) regulations, 40 CFR Part 761, and in the Chemical Fate Test Guidelines, 40 CFR Part 796. Incorporated test methods that are subsequently reviewed and reapproved by ASTM need not be proposed for reapproval by the Director of the Office of the Federal Register. Instead, such test methods must be announced through publication in the Federal Register. This document announces those incorporated test methods that have been reviewed and reapproved by ASTM.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St. SW., Washington, DC 20460, Telephone: 202-554-1404.

SUPPLEMENTARY INFORMATION: EPA is announcing the reapproval of two ASTM test methods which are incorporated by reference (IBR) in the PCB regulations, and in the Chemical Fate Test Guidelines. The reapproved IBRs are ASTM D 1193-77, Standard Specification for Reagent Water, and ASTM E 258-67 (Reapproved 1982), Standard Test Method for Total Nitrogen in Organic Material by Modified KJELDAHL Method. The reapproved test methods are available from the Public Reading Room, in Room NE-G004, at the address above.

The designations of the old test methods and the equivalent new designations are as follows:

Old designation	New designation
ASTM E 258-67	ASTM E 258-67 (reapproved 1987).
ASTM D 1193-77	ASTM D 1193-77 (reapproved 1983).

A. Executive Order 12291

Under E.O. 12291, issued February 17, 1981, EPA must judge whether a rule is a major rule and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as the term is defined in section 1(b) of E.O. 12291. Therefore, EPA has not prepared a Regulatory Impact Analysis for this rule. This rule has not been sent to OMB for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis. This rule merely updates certain American Society for Testing and Materials (ASTM) test methods, which are incorporated by reference in the PCB regulations and in the Chemical Fate Test Guidelines to current ASTM test methods. Since no negative economic effect is expected upon any business entity from the promulgation of this rule, I certify that this rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, does not apply to this final rule since no information collection or recordkeeping is involved.

List of Subjects in 40 CFR Parts 761 and 796

Environmental protection, Chemical, Hazardous substances, Health, Labeling, Laboratories, PCB, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: March 14, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR, Chapter I is amended as follows:

PART 761—[AMENDED]

1. In part 761:

a. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.19 [Amended]

b. In § 761.19, paragraph (b), the reference to "ASTM E 258-67 (Reapproved 1982)" is revised to read "ASTM E 258-67 (Reapproved 1987)".

§ 761.60 [Amended]

c. In § 761.60, paragraph (a)(3)(iii)(B)(*6*), the reference to "ASTM E 258-67", is revised to read "ASTM E 258-67 (Reapproved 1987)".

PART 796—[AMENDED]

2. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 796.1550 [Amended]

b. In § 796.1550 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(iii).

§ 796.1570 [Amended]

c. In § 796.1570 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(ii).

§ 796.1720 [Amended]

d. In § 796.1720 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraphs (b)(1)(ii), and (b)(2)(i).

§ 796.1840 [Amended]

e. In § 796.1840 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(ii).

§ 796.1860 [Amended]

f. In § 796.1860 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(ii).

§ 796.3500 [Amended]

g. In § 796.3500 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(ii).

§ 796.3700 [Amended]

h. In § 796.3700 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(2)(i)(B).

§ 796.3780 [Amended]

i. In § 796.3780 by revising "ASTM D 1193-77" to read "ASTM D 1193-77 (Reapproved 1983)", in two places in paragraph (b)(1)(iv)(A).

[FR Doc. 88-7064 Filed 3-30-88; 8:45 am]

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40 CFR Part 799

[OPTS-52099; FRL-3358-4]

Testing Consent Order on Methyl Tert-Butyl Ether and Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed an enforceable Testing Consent Order for methyl tert-butyl ether (MTBE) with five manufacturers of the MTBE Health Effects Testing Task Force. These manufacturers have agreed to perform certain health effects tests on MTBE. This rule adds MTBE to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR Part 707 apply. This document constitutes EPA's response to the Interagency Testing Committee's (ITC) recommendation that EPA consider health effects and chemical fate testing of MTBE.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M Street SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, five manufacturers have entered into a Testing Consent Order with EPA in which these five manufacturers have agreed to perform certain health effects testing of MTBE. This rule amends 40 CFR 799.5000 to add MTBE to the list of chemical substances and mixtures subject to Testing Consent Orders.

I. ITC Recommendations

In its 19th report to EPA, published in the Federal Register of November 14, 1986 (51 FR 41417), the ITC recommended with intent to designate that MTBE (also identified as 2-methoxy-2-methyl propane) (CAS No. 1634-04-4) be considered for health effects and chemical fate testing. In the ITC's 20th Report to EPA, published in the Federal Register of May 20, 1987 (52 FR 19020), MTBE was designated for response within 12 months. The ITC designated MTBE based on concerns of widespread human exposure to low-level fugitive emissions of MTBE at gasoline pumps and the lack of chronic health effects information. The health effects test recommended by the ITC was a chronic inhalation toxicity test including neurotoxic, hematologic, and oncogenic effects. The chemical fate test recommended was a monitoring study to determine typical concentrations of MTBE vapor at representative gasoline terminals and service stations.

II. Testing Consent Order Negotiations

Previous to the publication of "Procedures Governing Testing Consent Agreements and Test Rules Under the Toxic Substances Control Act" (51 FR 23706) on June 30, 1986, EPA made findings under TSCA section 4 as the basis for rulemaking in response to the ITC's designation of chemical substances for priority testing. A finding was made under either section 4(a)(1)(A) (with evidence of unreasonable risk of injury to health or to the environment) or section 4(a)(1)(B) (with evidence of substantial quantities being produced and significant or substantial exposure to health or the environment). EPA has amended the regulations for rulemaking to expedite the development of data for risk assessment by establishing the TSCA section 4 testing consent order process. The Consent Order is not based on a formal finding and expedites testing while retaining the same TSCA penalty provisions applicable under rulemaking.

In accordance with the procedures in 40 CFR 790.22, EPA held a public "focus meeting" on December 17, 1986, to discuss the ITC's testing recommendations for MTBE and to obtain comments. On February 3, 1987, a notice soliciting interested parties for the consent order negotiations was published in the Federal Register (52 FR 3343). The MTBE Health Effects Testing Task Force (MTBE Task Force) presented its review of chemical fate and health effects data at a public meeting on March 5, 1987. EPA's tentative testing decisions were presented in a public meeting on April 21, 1987.

Negotiations on a Testing Consent Order (Order) were initiated at a May 8, 1987, public meeting when producers of MTBE, represented by the MTBE Task

Force under the Oxygenated Fuels Association Inc., outlined their proposed testing program. The MTBE Task Force also listed items for discussion with the Agency. Subsequently, negotiation meetings were held on May 19 and July 14, 1987, to discuss the draft order. A comment resolution meeting was held October 1, 1987, to resolve questions on test protocols in the draft. On January 22, 1988, five MTBE manufacturers: Amoco Corporation; ARCO Chemical Company; Exxon Chemical Company, a Division of Exxon Corporation; Sun Refining and Marketing Company; and Texaco Chemical Company signed a Testing Consent Order with EPA. Under this Order the principal test sponsors agreed to conduct or provide for the conduct of the following health effects tests: An *in vivo* mammalian bone marrow cytogenetics test; a sex-linked recessive lethal assay in *Drosophila melanogaster;* a rodent dominant lethal assay; pharmacokinetics tests to relate oral, dermal, and inhalation routes of exposure; a 90-day inhalation subchronic test including: Neuropathology, motor activity and the functional observational battery tests; and inhalation developmental toxicity study in two species; and inhalation oncogenicity test in two species; and an inhalation two-generation reproduction and fertility effects study. The specific test standards to be followed and the testing schedule for each test are included in the Order. It is EPA's determination that this testing battery is more than adequate to evaluate MTBE for the effects identified by the ITC. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions are also included in the Order as specified in 40 CFR 790.60.

III. Use and exposure

MTBE is a clear liquid with a vapor pressure of 245 mm/Hg at 25° C. MTBE is used almost exclusively as a blending component in high octane gasoline. Typical concentrations of MTBE in gasoline range from 2 to 8 percent by volume. EPA has approved up to 11 percent MTBE by volume (45 FR 67443; October 10, 1980). An estimated 3 to 13 percent of the gasoline sold in 1985, about 3 to 13 billion gallons, contained MTBE (Ref. 1).

Annual plant capacity of MTBE production was estimated at about 4 billion pounds in 1986. The growth rate in production of MTBE was estimated to be 19 percent per year from 1985 to 1990. However, between 1982 and 1985, production increased over 140 percent (Ref. 1).

The 1980 National Occupational Exposure Survey estimated 2,571 workers were exposed to MTBE in the work place (Ref. 2). This estimate only included: Life scientists, clinical laboratory technicians, and production testers. The life scientist and laboratory technician exposures would probably occur as a result of the relatively small amount of MTBE used in procedures to dissolve cholesterol gallstones and to extract metabolic organic acids. EPA estimates that as many as 35,000 more workers may be exposed during bulk loading, unloading, and shipment of MTBE-containing gasoline (Ref. 3). Gas station attendants and consumers who pump their own gasoline would also be exposed to MTBE vapor from MTBE-containing gasoline (Refs. 5 and 9).

Although the Occupational Safety and Health Administration (OSHA) has not established any standards for exposure to gasoline or MTBE, the American Conference of Governmental Industrial Hygienists (ACGIH) has established a Threshold Limit Value of 300 ppm (900 mg/m^3) for gasoline (Ref. 3). Sun Refining and Marketing Company recommends an 8-hour time weighted average (TWA) exposure limit of 100 ppm (300 mg/m^3) for MTBE (Ref. 10). However, Texaco Chemical Company recommends a limit of 200 ppm (600 mg/m^3) for MTBE (Ref. 11).

Worker exposure to MTBE vapor measured in refineries has been generally less than 1 ppm (3 mg/m^3) for an 8-hour TWA. The highest exposure level to MTBE vapor reported was a TWA of 33 ppm (100 mg/m^3) and a short-term exposure of 45 ppm (135 mg/m^3) (Ref. 4). Approximately 50 percent of the MTBE produced is shipped off-site before blending (Ref. 3). Short-term exposure to MTBE vapor during bulk loading and unloading operations has been estimated to be as high as 550 ppm (1,650 mg/m^3) (Ref. 3). However, such high exposure could be decreased if engineering controls are used in the loading operations. No data were available from industry for MTBE vapor exposure during the loading, unloading, or shipping of MTBE.

Exposure to MTBE vapor during transfer of MTBE-containing gasoline has been estimated from gasoline vapor measurements, assuming 7 percent MTBE concentration by volume. During bulk loading and delivery of MTBE-containing gasoline, exposure to MTBE vapor was estimated to be short-term exposure of 8 ppm (23 mg/m^3) for the truck drivers 98 percent of the time (Refs. 1 and 3). Service station attendants' exposure to MTBE vapor has been estimated to be as high as 8.6 ppm (31 mg/m^3) for an 8-hour TWA (Ref. 1). Total MTBE vapor release can be calculated from volatile organic carbon (VOC) emissions estimated for gasoline (52 FR 31162; August 19, 1987). Assuming MTBE accounts for 8 to 11 percent of total VOC emissions from gasoline, MTBE vapor release would be 3 to 17 million kg/yr (Ref. 5).

MTBE vapor exposure *via* gasoline was the major concern expressed in the 19th ITC report. However EPA has an additional concern about MTBE contamination of ground water. Although only a few cases of ground water contamination are currently documented, the rapid growth in production, transport, and use of MTBE will probably contribute to an increase in incidents of contamination. The relatively recent appearance of MTBE in the market place has hampered the documentation of ground water contamination because laboratory analyses do not typically screen for this compound and gasoline is composed of more than 50 different hydrocarbon compounds (Ref. 9). MTBE is relatively water soluble (40,000 to 51,260 mg/L) compared to other gasoline components (Ref. 1). This solubility, coupled with the fact that an estimated 35 percent of the approximately 638,000 non-farm underground motor fuel tanks would not pass the EPA tightness test, indicates the potential ground water contamination problem (Ref. 1).

The largest identified population affected by MTBE-contaminated water was Rockaway Township in New Jersey, population 20,000 (Ref. 6). The level of MTBE contamination in the township wells ranged from 25 to 40 ppb and required aeration treatment before delivery to the township's residents. EPA has received requests for information on MTBE as a result of other well water contamination reports in New Jersey and New Hampshire (Ref. 7). A leaking underground storage tank in a rural area of Maine has contaminated household wells in the vicinity with MTBE concentrations as high as 690 ppb (Ref. 8). Maine and New Jersey have set a maximum contaminant level of 50 ppb for MTBE (Refs. 6 and 8).

IV. Testing Program

A. Chemical Fate

In the ITC's 19th Report to EPA (51 FR 41417), the ITC recommended that monitoring studies be conducted at sites where MTBE-containing gasoline is transferred. In comments submitted at the Focus Meeting, industry representatives claimed that worst-case exposures to MTBE from gasoline

vapors can be accurately calculated from existing data. As indicated in Unit III, exposure to MTBE vapor can be estimated from measurements of gasoline vapor and the proportion of MTBE in the gasoline mixture (Ref. 5). On August 19, 1987, EPA proposed systems to limit gasoline vapor emissions during refueling (52 FR 31162) and evaporative emissions (52 FR 31274). The implementation of these regulations would decrease levels of consumer exposure to MTBE vapors in service stations. Promulgation of these regulations is expected in 1989.

The Agency concluded that MTBE exposure in service stations can be estimated from existing data. The number of parameters affecting a vapor monitoring study would probably yield highly variable results. It would be difficult to obtain nationally representative data. Currently the Agency believes that it can reasonably rely on models to conservatively estimate worker exposure as presented in Unit III (Ref. 3). However, changes in gasoline fuel composition in the future may require a re-evaluation of this estimate.

B. Health Effects

The 19th ITC Report recommended a chronic inhalation toxicity test including neurotoxic, hematologic and oncogenic effects. In response to the TSCA section 8(d) Health and Safety Data Reporting Rule for MTBE, triggered by the ITC recommendation, the following studies were submitted to EPA: two inhalation developmental toxicity studies (one in rats and one in mice); and inhalation single generation reproduction/fertility study in rats; acute toxicity data; gene mutation and chromosomal aberration studies; two 90-day inhalation toxicity studies; and a dermal sensitization study. Several studies were submitted which used gasoline mixtures containing different amounts of MTBE.

The Agency has reviewed these studies and determined that additional testing is necessary to determine whether the distribution and use of MTBE presents an unreasonable risk of injury to health. As discussed above, producers of MTBE, represented by the MTBE Task Force, have agreed to perform the necessary tests to determine the effects, if any, associated with the use and distribution of MTBE (see Unit II).

The testing conducted under this Order will be used by EPA to determine the risk of adverse health effects associated with the use and distribution of MTBE.

V. Export Notification

The issuance of this Testing Consent Order subjects any person who exports or intends to export MTBE to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In the June 30, 1986, Interim Final Rule (51 FR 23706) establishing the Testing Consent Order process, EPA added and reserved Subpart C of Part 799 for a listing of testing consent orders issued by EPA. This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule (docket number OPTS–42098). This record contains the basic information considered by the Agency in developing this rule.

A. Supporting Documentation

(1) Testing Consent Order for Methyl tert-Butyl Ether.

(2) **Federal Register** notices pertaining to this rule consisting of;

(a) Notice containing the ITC recommendation with intent-to-designate MTBE (51 FR 41417; November 14, 1986).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on MTBE (51 FR 41328; November 14, 1986).

(c) Notice soliciting interested parties for developing a Testing Consent Order for MTBE (52 FR 3343; February 3, 1987).

(d) Notice containing the ITC designation of MTBE for response within 12 months (52 FR 19020; May 20, 1987).

(e) Notice of procedures governing testing consent agreements and test rules under the Toxic Substances Control Act (51 FR 23706; June 30, 1986).

(f) Notice proposing refueling emission regulations for gasoline fueled light-duty vehicles and trucks and heavy-duty vehicles (52 FR 31162; August 19, 1987).

(g) Notice proposing volatility regulations for gasoline and alcohol blends sold in 1989 and later calendar years and control of air pollution from new motor vehicles and new motor vehicle engines: evaporative emissions regulations for 1990 and later model year gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty vehicles (52 FR 31274; August 19, 1987).

(h) Notice on fuels and fuel additives; definition of substantially similar (45 FR 67443; October 10, 1980).

(3) Comunications consisting of:

(a) Written letters

(b) Contact reports of telephone conversations

(c) Meeting summaries

(4) Reports—published and unpublished materials.

B. References

(1) Neal, M.W., Anatra, M., Jacobson, R.A. *et al.* Draft Final Technical Support Document Methyl tert-Butyl Ether. Contract No. 68–02–4209. Prepared by Syracuse Research Corporation, Syracuse, New York for the Environmental Protection Agency, Office of Toxic Substances, Washington, DC. (February 28, 1987).

(2) National Occupational Exposure Survey (1980 to 1983). Department of Health and Human Services, National Institute for Occupational Safety and Health, Cincinnati, OH. (1984).

(3) U.S. Environmental Protection Agency (USEPA). Worker Exposure Assessment of Methyl tert-Butyl Ether. Environmental Protection Agency, Chemical Engineering Branch, Office of Toxic Substances, Washington, DC. (May 7, 1987).

(4) Texaco Chemical Company. TSCA section 8(d) submission 86–870000242. Memorandum from R.T. Richards to: F.E. Bentley, R.J. Breglia, R.A. Cox, *et al.* (November 24, 1986).

(5) Furey, R.L., and King, J.B. "Evaporative and exhaust emissions from cars fueled with gasoline containing ethanol or methyl tert-butyl ether". Society of Automotive Engineers, Inc. Paper 800261 presented at the International Congress and Exposition, Detroit, Michigan. (February, 1980).

(6) McKinnon, R.J., and Dyksen, J.E. "Removing organics from ground water through aeration plus GAC." *Journal of the American Water Works Association* 76:42–47. (1984).

(7) USEPA. Memorandum from F.D. Kover to M.B. Cooke and M. Mlay. (May 23, 1986).

(8) Garrett, P., Moreau, M., and Lowry, J.D. "Methyl tertiary butyl ether as a ground water contaminant". Proceedings of Petroleum Hydrocarbons and Organic Chemicals in Ground Water Conference. NWWA–API pg. 227–238. (November 1986).

(9) Tironi, G., Nebel, G.J., and Williams, R.L. "Measurement of vapor exposure during gasoline refueling". Society of Automotive Engineers, Inc. Paper 860087 presented at the International Congress and Exposition, Detroit, Michigan. (February, 1986).

(10) Sun Refining and Marketing Company, Philadelphia, PA 19102. Letter from Brian C. Davis to Beth Anderson, Environmental Protection Agency, Office of Toxic Substances, Washington, DC. (February 10, 1987).

(11) Texaco Chemical Company. TSCA section 8(d) submission 86–870000239.

Memorandum from J.E. Wiki to M.M. Simer (November 13, 1986).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OTS Public

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Information Office, Rm. NE–G004, 401 M Street SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Testing procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: March 16, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by revising the table to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS Number	Substance or mixture name	Testing	FR citation
328-84-7	3,4-Dichlorobenzotrifluoride	Environmental effects	June 23, 1987
		Chemical fate	June 23, 1987
1634-04-4	Methyl tert-butyl ether	Health effects	March 31, 1988.

[FR Doc. 88-7063 Filed 3-30-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

[AA-340-08-4333-02; Circular No. 2605]

Use Authorization; Amendment to the Appeals Provisions of the Regulations for Special Recreation Permits Other Than on Developed Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends § 8372.6(b) to clarify that petitions for a stay of decisions relating to the issuance of a permit for a competitive use or event on the public lands shall be filed in the Office of Hearing and Appeals, Department of the Interior.

EFFECTIVE DATE: May 2, 1988.

ADDRESS: Inquiries and suggestions should be sent to: Director (340), Bureau of Land Management, Room 3360, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Traylor, (202) 343-9353.

SUPPLEMENTARY INFORMATION: A proposed rulemaking published in the **Federal Register** on September 16, 1985 (50 FR 37555), would have amended the provisions of § 8372.6(b) of Part 8370 to allow only decisions on competitive events or uses to remain in effect pending appeal unless the Secretary rules otherwise.

The proposed rulemaking also provided that a petition for a stay shall be filed with the Director, Office of Hearings and Appeals. This Office is part of the Office of the Secretary of the Interior.

The proposed rulemaking requested that public comments be submitted by November 15, 1985. During this comment period, 9 comments were received: 3 from offices of the Federal Government, 4 from recreation associations, and 2 from individuals. All of the comments objected to the provision that only decisions relating to competitive events would remain effective pending appeal unless the Secretary ruled otherwise. The comments pointed out that both noncompetitive events and decisions denying permits for management purposes would be equally subject to frivolous appeals, effectively "hamstringing" the management of the public lands with regard to recreation and environmental protection. After consideration of the comments, this provision in the proposed rulemaking has not been adopted and the existing regulations remain in effect. This final rulemaking does, however, clarify that petitions for stay of decisions shall be filed with the Office of Hearings and Appeals.

The principal author of this final rulemaking is Richard Traylor of the Division of Recreation, Cultural and Wilderness Resources, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes made by this final rulemaking will equally affect all members of the public affected by a decision of the Bureau of Land Management regarding the issuance of special recreation permits other than on developed sites.

There are no additional information collection requirements contained in this final rulemaking that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 8370

Public land—recreation, Recreation areas, Surety bonds.

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Land Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g–n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*–6a) and the National Trails System Act (16 U.S.C. 1241 *et seq.*), Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 8370—[AMENDED]

1. The authority citation for part 8370 is revised to read:

Authority: 16 U.S.C. 460*l*–6a, 16 U.S.C. 670(g–n), 16 U.S.C. 1271–1287, 6 U.S.C. 1241–1249, 43 U.S.C. 1181(a), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

2. Section 8372.6(b) is revised to read:

§ 8372.6 Appeals.

* * * * *

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for stay of decisions shall be filed with the Office of Hearings and Appeals, Department of the Interior.

March 22, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88-7097 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-84-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 507 and 552

[Acquisition Circ. AC-87-1; Supp. 2]

General Services Administration Acquisition Regulation; Comparison of Retirement Costs Under OMB Circular A-76

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-87-1 extends the expiration date to March 8, 1989. The intended effect is to extend the policies and procedures as established in AC-87-1, which temporarily implemented the Office of Management and Budget (OMB) Transmittal Memorandum No. 4 which revised OMB Circular A-76 procedures for calculation and comparison of retirement costs in GSA pending a revision to the Federal Acquisition Regulation.

DATES: *Effective Date:* March 9, 1988.

Expiration Date: March 8, 1989, unless cancelled earlier or extended.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-87-1 was originally issued, the GSA certified that under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the document would not have a significant economic effect on a substantial number of small entities. This rule will not have a significant impact because of the limited number of solicitations subject to the requirement (approximately 21 in the next year).

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control No. 0348-0036.

List of Subjects in 48 CFR Parts 507 and 552.

Government procedure.

PARTS 507 AND 552—[AMENDED]

1. The authority citation for 48 CFR Parts 507 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c)

2. 48 CFR Parts 507 and 552 are amended by adding the following supplement to Acquisition Circular AC-87-1:

General Services Administration Acquisition Regulation, Acquisition Circular AC-87-1, Supplement No. 2

March 21, 1988.

To: All GSA contracting activities.

Subject: Comparison of retirement costs under OMB Circular A-76.

1. *Purpose*. This supplement extends the expiration date of General Services Administration Acquisition Regulation Acquisition Circular AC-87-1.

2. *Effective*: March 9, 1988.

3. *Expiration date*: The General Services Administration Aquisition Regulation Acquisition Circular AC-87-1 and this supplement will expire on March 8, 1989, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-6989 Filed 3-30-88; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003 and 1043

[Ex Parte No. MC-5 (Sub-8)]

Property Broker Security for the Protection of the Public

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: After a review of the initial comments received in this proceeding and or desire to provide brokers with an alternative to filing a surety bond, Form BMC 84, the Commission is amending 49 CFR 1043.4 to adopt procedures for brokers to file other evidence of security. Because brokers cannot operate without a surety bond on file with the Commission and because many brokers have had serious difficulties obtaining or renewing surety bonds, we adopted the proposed changes as interim rules at 52 FR 27,351 (7-21-87) as corrected at 52 FR 28,476 (7-30-87). The interim rules immediately authorized the filing of a trust fund agreement as an alternative security. Comments were subsequently received and evaluated. Modifications have been made to the interim rules based on these comments. The Commission now adopts final rules which will permit the filing of a $10,000 surety bond or $10,000 trust fund agreement. The interim rules will remain in effect until the effective date of the final rules.

DATES: The rules are effective April 30, 1988.

FOR FURTHER INFORMATION CONTACT:

Sidney L. Strickland, Jr., (202) 275-7614

or

Patricia B. Kuhlmann, (202) 275-7819

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Energy and Environmental Considerations

This action does not appear to affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that adoption of these final rules will have a significant impact on a substantial number of small entities. However, we expect the economic impact will be beneficial, since the costs to brokers for complying with our security requirements should not increase while availability of required coverage will increase.

The prescribed trust fund agreement is being submitted to OMB for approval. We will continue to accept agreements which comply with this decision pending OMB approval of our prescribed agreement.

List of Subjects

49 CFR Part 1003

Brokers, Motor carriers, Securities, Surety bonds, Trust fund agreements.

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds, Trust fund agreements.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 10927, 11701, and 5 U.S.C. 553.

Decided: March 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett was absent and did not participate.

Noreta R. McGee,

Secretary.

Title 49 of the CFR is amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for Part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

2. Section 1003.3 is revised by inserting the following form entry after the entry for Form B.M.C. 84 and before the entry for Form B.M.C. 90 (Rev. 1982):

§ 1003.3 [Amended]

* * * * *

B.M.C. 85.

Broker Trust Fund Agreement under 49 U.S.C. 10927 or Notice of Cancellation of the Agreement.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for Part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 10927, 11701; 5 U.S.C. 553.

4. Section 1043.4 is revised to read as follows:

§ 1043.4 Property broker surety bond or trust fund.

(a) *Security.* A property broker must have a surety bond or trust fund in effect for $10,000. The Commission will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker.

(b) *Evidence of Security.* Evidence of a surety bond must be filed using the Commission's prescribed Form BMC 84. Evidence of a trust fund with a financial institution must be filed using the Commission's prescribed Form BMC 85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) *Financial Institution*—when used in this section and in forms prescribed under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean—Each agent, agency, branch or office within the United States of any person, as defined by the Interstate Commerce Act, doing business in one or more of the capacities listed below:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a));

(5) A thrift institution (savings bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) A loan or finance company; or

(8) A person subject to supervision by any state or federal bank supervisory authority.

(d) *Forms and Procedures*—(1) *Forms for broker surety bonds and trust agreements.* Form BMC-84 broker surety bond will be filed with the Commission for the full security limits under subsection (a); or Form BMC-85 broker trust fund agreement will be filed with the Commission for the full security limits under paragraph (a) of this section.

(2) *Broker surety bonds and trust fund agreements in effect continuously.* Surety bonds and trust fund agreements shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided.

(i) *Cancellation notice.* The surety bond and the trust fund agreement may be cancelled as only upon 30 days' written notice to the Commission, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trustor/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at the Commission's Washington, DC office.

(ii) *Termination by replacement.* Broker surety bonds or trust fund agreements which have been accepted by the Commission under these rules may be replaced by other surety bonds or trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of the replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(3) *Filing and copies.* Broker surety bonds and trust fund agreements must be filed with the Commission in duplicate.

[FR Doc. 88-7032 Filed 3-30-88; 8:45 am]

BILLING CODE [illegible]

Proposed Rules

Federal Register

Vol. 53, No. 62

Thursday, March 31, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of amendments submitted by the State of Iowa to amend its permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments to Iowa's regulations are intended to render Iowa's regulations consistent with the revised Federal regulations contained in 30 CFR Chapter VII. The proposed regulation changes rescind in their entirety the State's existing rules related to the regulatory program for surface coal mining and reclamation operations. These rescinded rules are replaced by rules that adopt by reference most of the Federal regulations at 30 CFR Part 700 through Part 850.

This notice sets forth the times and locations that the Iowa program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Iowa's proposed modification of its program not received on or before 4:00 p.m. c.s.t. on May 2, 1988 will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on April 25, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of business on or before April 15, 1988. If no one has contacted Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106. Copies of the Iowa program, the proposed amendments to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. c.s.t., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets, Des Moines, Iowa 50319; Telephone: (515) 281-6142.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Iowa program on January 21, 1981 (46 FR 5885). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register** (46 FR 5885). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 915.10, 915.15 and 915.20.

II. Submission of Amendments

On February 9, 1988 (Administrative Record No. IA-305) the State of Iowa submitted to OSMRE amendments to its approved regulatory program. The proposed changes would rescind rules at 780—Chapter 4 within the Soil Conservation Department of the Iowa Administrative Code (IAC) and adopt Chapters 140 through 149 within the Agriculture and Land Stewardship Department of the IAC relating to the State regulatory program for surface coal mining and reclamation operations.

The Iowa Division of Soil Conservation (DSC) has incorporated by reference into the Iowa program, applicable sections of the July 1, 1987 Code of Federal Regulations (CFR) at 30 CFR Part 700 through Part 850. Iowa has made additions to some of the references in the Federal regulations in order to address concerns specific to the State of Iowa. Iowa has also amended Chapter 149 on public hearings and contested cases that gives procedures specific to the State of Iowa and does not incorporate the Federal regulations by reference.

These revisions are proposed by the State of Iowa in response to a letter (Administrative Record No. IA-280) under 30 CFR Part 732 from OSMRE dated August 1, 1986 concerning regulatory reform. The revisions are also in response to a letter (Administrative Record No. IA-367) under 30 CFR Part 732 from OSMRE dated June 9, 1987 concerning the protection of historic properties during coal exploration as required in the final rule published by OSMRE in the **Federal Register** dated February 10, 1987 (52 FR 4244).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Iowa satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Iowa program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. c.s.t. April 15, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons present in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 17, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–7037 Filed 3–30–88; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 931

New Mexico Permanent Regulatory Program; Reopening of Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on the substantive adequacy of program amendments submitted by the State of New Mexico to modify the New Mexico Permanent Regulatory Program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to hydrologic balance, disposal of noncoal waste, inspection and enforcement, and backfilling and regrading (rills and gullies). OSMRE is reopening the comment period because the State has made revisions to the proposed amendments and submitted clarifying statements regarding the amendments since OSMRE announced receipt of the original proposed amendments in the July 28, 1987, **Federal Register**.

DATES: Written comments not received on or before 4:00 p.m. April 15, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendments.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102.

Copies of the New Mexico program, the proposed amendments to the program, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES**. The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343–5492; and

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501 Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background for the New Mexico State Program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459).

Actions taken subsequent to the approval of the New Mexico program concerning the conditions of approval, regulations disapproved in accordance with court order, preempted laws and regulations, approved amendments, and required amendments, can be found at 30 CFR 931.11, 931.12, 931.13, 931.15, and 931.16.

II. Proposed Amendments

By letter dated June 17, 1987, New Mexico submitted proposed amendments to the New Mexico program for OSMRE's review and approval (Administrative Record No. NM–358). OSMRE published a notice in the **Federal Register** announcing receipt of the proposed amendments to the New Mexico program on June 19, 1987, and invited public comment on the adequacy of the proposed amendments (52 FR 28163, Administrative Record No. NM–372) After reviewing the proposed amendments and all comments received, OSMRE notified New Mexico by letter dated November 10, 1987, of several provisions in its proposal that appeared to be inconsistent with the Federal Regulations (Administrative Record No. NM–390). By letter dated February 18, 1988, New Mexico provided clarification of the amendment contents (Administrative Record No. NM–393). These proposed changes at CSMC Rule 80–1, sections 20–42(a) (1), (3), (5), (6)(ii), and (8); 20–42 (b)(1) and (b)(2); 20–89(c); 29–11 (b) and (c); and 20–106 (a), (b), and (c) pertain to hydrologic balance, disposal of noncoal waste, inspection and enforcement, and backfilling and regrading (rills and gullies), respectively. Due to the changes in the proposed amendments, OSMRE is reopening and extending the comment period to allow the public an opportunity to comment on the additional material.

The full text of the proposed program amendments and subsequent clarification submitted by New Mexico is available for public inspection at the locations listed under "**ADDRESSES**," or a copy of the proposed amendments and subsequent clarification can be obtained from the OSMRE Albuquerque Field Office as explained under "**ADDRESSES**."

The Director is seeking public comment on the adequacy of these proposed amendments. If OSMRE finds the amendments to be no less stringent than SMCRA and no less effective than the Federal regulations, OSMRE will approve them and they will become part of the New Mexico program.

III. Written Comments

Written comments on the issues proposed in this rulemaking should be specific, pertain only to the issues proposed, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSMRE Albuquerque Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 10, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–7036 Filed 3–30–88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland REG 87–02]

Safety Zone; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed regulation; extension of comment period.

SUMMARY: The Captain of the Port, Cleveland, is extending the comment period until June 8, 1988, to receive comments on this proposed regulation to create ten safety zones in the Old River and the Cuyahoga River. This action is being taken at the request of several commenters who attended a public hearing on March 7, 1988. They have expressed a desire to form a working committee to examine the Cuyahoga River situation, and submit a joint proposal to the Captain of the Port regarding the proposed rulemaking.

DATE: Written comments may be submitted on or before June 8, 1988.

ADDRESSES: (a) The mailing address for comments is the U.S. Coast Guard Marine Safety Office, 1055 E. 9th St., Cleveland, OH 44114. Comments may also be hand-delivered to this address. (b) All comments received will be available for examination at the above address.

FOR FURTHER INFORMATION CONTACT: CDR John H. Distin, Captain of the Port, Cleveland (216) 522–4406.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the **Federal Register** on December 3, 1987 at page 45974 and was distributed to each of the affected entities. The response to the proposed rulemaking indicated that the comment period should be extended and a public hearing scheduled. The public hearing and comment period extension were announced in the **Federal Register** on February 8, 1988 at page 3609. A public hearing was held on March 7, 1988, at which twenty-six commenters spoke. Several commenters expressed a desire to form a working group to examine the Cuyahoga River situation, and submit an alternative to the proposed regulations. The comment period, therefore, has again been extended until June 8, 1988 in order to permit the comments of this working group to be entered into the record and considered as an alternative. All comments received will be considered before final action is taken on the proposed regulation.

Authority: 33 U.S.C. 499; 40 CFR 1.46; 33 CFR 1.05–1(g).

Dated: March 11, 1988.

J.H. Distin,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.

[FR Doc. 88–7092 Filed 3–30–88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–3355–9]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In response to EPA's call for a plan revision under section 110(a)(2)(H) of the Clean Air Act, the state of Kansas submitted a revision to the carbon monoxide (CO) plan for Wichita, Kansas, on Februry 28, 1985. Included in the plan revision are transaportation control measures (TCM) and a request to redesignate the Wichita nonattainment area to attainment. The state submitted air quality data and modeling to support the area redesignation. EPA proposed approval of that submittal on December 20, 1985 (50 FR 51887). However, the state withdrew the redesignation request because the CO standard was exceeded in March 1986.

Today's action reproposes approval of the Wichita CO state implementation plan (SIP) revision which includes two new TCMs adopted by the city of Wichita. These new TCMs are a computerized signalization system for downtown Wichita and a downtown overpass over Kellogg Avenue. These TCMs replace the left-turn ban contained in the February 28, 1985, submittal. This action also withdraws the proposal to redesignate the Wichita area to attainment.

EFFECTIVE DATE: Comments must be received no later than May 2, 1988.

ADDRESSES: Copies of the state submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8964), EPA designated a portion of Wichita, Kansas, nonattainment with respect to the CO primary National Ambient Air Quality Standard as required by section 107(d) of the Clean Air Act, as amended in 1977.

The state submitted an approvable CO plan for Wichita on April 16, 1981. This plan projected attainment by December 31, 1982, as required under the Act. Since there were no significant stationary CO sources in Wichita, some form of TCMs was required to reduce CO concentrations enough to meet the standard. The plan contained 11 TCMs. These measures included plans to improve traffic flow; an improved transit system; a voluntary inspection and maintenance (I/M) program; traffic signal retiming to speed up traffic flow; and on-street parking restrictions. On January 22, 1982, EPA approved this plan (47 FR 3113).

On February 3, 1983 (48 FR 4972), EPA identified Wichita, Kansas, as a nonattainment area unlikely to attain the CO standard by the December 31, 1982, attainment date. This determination was based upon air quality data from 1980, 1981, and 1982. Violations were found in each of those years.

On February 29, 1984, EPA notified the state of Kansas under authority of section 110(a)(2)(H) of the Act, that the CO State Implementation Plan (SIP) for Wichita was substantially inadequate to attain the CO standard. EPA extended the time required under section 110(c)(1)(C) for plan revision to one year. EPA requested that the state submit a schedule for plan development within 60 days of the date of notification. EPA received that schedule on May 23, 1984.

In response to the call for a SIP revision, the state of Kansas submitted a revised CO SIP for Wichita on February 28, 1985. The plan submittal contained a commitment to continue the voluntary I/M program through 1986; a TCM to improve traffic flow in the downtown area; a contingency plan for additional TCMs if additional CO violations should be found; and a request to redesignate the CO nonattainment areas as attainment. Additionally, the plan revision contained a contractor's report showing that the CO standard would be attained at the special purpose monitor (SPM) location by 1987 because of projected automobile emission reductions expected from the Federal Motor Vehicle Pollution Control Program, and air quality data from two other monitor locations showing no CO violations in 1983 and 1984. The contractor's study report was included as part of the attainment demonstration.

The redesignation was supported by air quality data from three monitor locations in Wichita and modeling data which projected attainment had been achieved in 1984 and indicated continued attainment through 1986. The modeling also predicted that the CO standard could be attained by 1987 with reliance on only the Federal Motor Vehicle Emission Control Program to reduce motor vehicle CO emissions. Since the 1987 attainment date was not as expeditious as practicable, the city of Wichita instituted an additional TCM and continued the voluntary I/M program through 1986. Modeling for the Wichita nonattainment area used state-of-the-art methods for CO; i.e., MOBILE 3 and CALINE 3 with proper queuing considerations.

EPA proposed approval of the Wichita CO SIP revision and the redesignation request in the **Federal Register** on December 20, 1985 (50 FR 51887). The basis for the proposed approval was that the additional TCM and the continuance of the voluntary I/M program were added assurance of further reduced CO emissions in downtown Wichita. The CO air quality data from the neighborhood site and the area site showed no violations in 1983 or 1984. The special purpose moitor (SPM) site showed no violations in 1984 and modeling predicted no violation in 1984, 1985, or 1986 and the SPM site. No violations were expected for 1985. EPA believed the redesignation policy criteria had been satisified. EPA believed that the CO standard had been attained in Wichita and that the TCM in the plan revision would provide for maintenance of the standard. However, in its December 20, 1985, proposed rulemaking, EPA included a caveat that final approval of the plan and promulgation of the redesignation to attainment would depend upon continued monitored data showing no violations during the period prior to final rulemaking. EPA received no public comments on that proposed rulemaking.

On January 14, 1986, EPA was advised that the Kansas Department of Health and Environment (KDHE) invalidated the fourth quarter 1984 CO data from the SPM site. Those data were invalidated upon finding that the CO monitor was malfunctioning. However, quality-assured CO data for 1985 show four quarters with no violation. Likewise, no violations were found at either of the two other monitor locations. Eight consecutive quarters of CO data were expected to be available by December 31, 1986.

The state of Kansas advised EPA on May 14, 1986, that since exceedances of the eight-hour CO standard occurred during March 1986, the data do not support redesignation of the area. Also, the state advised EPA that the SPM operation had ceased on April 30, 1986, and that a new site was being selected. This monitor had been located in vacant space in a privately owned building. The building owners requested removal of the monitor in order to lease the space. Because recent data show that the CO standard was violated at the SPM and EPA stated that its proposal to accept the state's redesignation request was predicated on a continued showing that there are no violations in the CO nonattainment area prior to final action, EPA has determined that a redesignation is not appropriate. EPA withdraws the redesignation proposal because the state withdrew its redesignation request on May 14, 1986.

With the exception of on-street parking restrictions, all of the Part D Plan TCMs in the 1981 SIP have been completed. As discussed above, the modeling submitted with the 1985 CO SIP revision projected attainment of the standard without additional TCMs; thus, the parking ban seemed unnecessary for attainment of the CO standard. The last TCM completed was the traffic signal retiming. That program was completed in 1984. EPA believes that the TCMs have contributed significantly to the CO emissions reductions that have occurred. The voluntary I/M program continued through 1986.

On September 3, 1987, the KDHE submitted supplemental information applicable to the Wichita CO SIP. The submittal includes two TCMs adopted by the Wichita City Council. These new TCMs are: (1) A computerized signalization system for downtown Wichita, and (2) a downtown overpass over Kellogg Avenue. These new TCMs replace the left-turn ban contained in the February 28, 1985, submittal. The downtown overpass is expected to reduce street traffic in the central business district by approximately two-thirds of the current 40,000 vehicles per day. The computerized signalization should further enhance traffic flow in the central business district.

Among the TCMs in the SIP approved by EPA in 1982 was a traffic signalization project. CO air quality improvements were measured after completion of that project. The second maximum CO value at the SPM in 1982 was 15.1 mg/m^3; in 1983 this value was

11.5 mg/m^3; and in 1984 this value was 8.5 mg/m^3. The number of violations for these same years were 9, 6, and 0, respectively. Future reductions may be smaller, but the new computerized signalization system should further enhance CO air quality in the downtown Wichita area.

As discussed above and in the December 20, 1985, proposed rulemaking (50 FR 51887), there are three CO monitor sites in Wichita. The two older sites recorded no violations from 1983 through 1985; however, each recorded one exceedance in 1986. No exceedances were found in the first two quarters of 1987. The SPM site is relocated near the original location. The new location has measured no exceedances in the last three quarters of 1986 and the first three quarters of 1987.

EPA believes the attainment demonstration proposed for approval on December 20, 1985 (50 FR 51887) remains approvable and satisfies the requirements of section 110(a)(2)(B) of the Clean Air Act, as amended. Despite discontinuities in the CO data and exceedances found in 1986, it appears that the CO standard may actually have been attained in Wichita. EPA believes the two new TCMs adopted by the city to replace the TCM contained in the February 28, 1985, SIP revision should provide for maintenance of the CO standard in the long term.

These two newly adopted TCMs are consistent with the commitments included in the Wichita CO SIP submitted by the KDHE on February 28, 1985. That submittal identified several alternative TCMs which would be considered should further CO exceedances be found. It appears that the city has met its original commitment.

Although this notice proposed approval for, among other things, an attainment demonstration for the end of 1987, Wichita still appears on the list of potential SIP call areas in Appendix A of EPA's proposed post-1987 ozone and carbon monoxide policy (52 FR 45044, November 24, 1987). A preliminary screening of the air quality data from the first three quarters of 1987 shows no exceedances of the standard, so EPA and the state believe that, when all of the data from the last quarter of 1987 and the first quarter of 1988 are available, it is highly probable that Wichita will be shown to be attaining the standard.

If this is not the case, however, Wichita will be subject to whatever remedies are prescribed either by EPA policy or the Clean Air Act. In any event, final rulemaking will not be made until the 1987–1988 winter CO data are reviewed.

EPA solicits public comments on this proposed action.

Proposed Action

EPA proposed to approve the Wichita CO SIP revision submitted on February 28, 1985, with the two new TCMs replacing the left-turn ban contained in the control strategy in that submittal. These new TCMs are: (1) Computerized signalization project, and (2) the overpass over Kellogg Avenue as part of the Wichita CO SIP.

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–2642.

Date: February 3, 1988.

Morris Kay,
Regional Administrator.

[FR Doc. 88-6905 Filed 3–30–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 280

[FRL-3357-4]

Underground Storage Tanks; Financial Responsibility Requirements for Petroleum Tank Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplement to proposed rule; request for comments.

SUMMARY: On April 17, 1987, EPA proposed financial responsibility requirements for underground storage tanks containing petroleum (52 FR 12786). These regulations require owners and operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from their USTs.

Today the Agency is requesting comment on an additional issue not previously raised in the April 17 proposal: a phase-in of the compliance date for the financial responsibility regulations. Any comments in response to this notice will be considered by EPA in developing the final rule.

DATE: EPA will accept comments submitted on or before May 2, 1988.

ADDRESSES: Send three copies of written comments to Docket Clerk, Office of Underground Storage Tanks (WH562-A), Docket 3–3, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments received by EPA, and all references used in this document, may be inspected in the public docket, located in Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Mondays through Fridays, excluding legal holidays. Appointments can be made by calling (202) 475–9720.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: The contents of today's preamble appear in the following outline:

I. Authority
II. Background
III. Phase-In of Compliance with the Underground Storage Tank Financial Responsibility Requirements

I. Authority

This supplemental notice is issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6912, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(g), 6991(h)).

II. Background

On April 17, 1987, EPA proposed financial responsibility requirements for underground storage tanks (USTs) containing petroleum (52 FR 12786). These regulations require owners and operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from their USTs. Owners and operators are permitted to use one, or a combination, of the following mechanisms: financial test of self-insurance, guarantee, indemnity contract, insurance (including risk retention group coverage), surety bond, letter of credit, state-required mechanisms, and/or state funds (or other state insurance). Section 9003(a) of RCRA indicates that EPA should provide at least 90 days between promulgation of the final UST rules and the effective date of such regulations.

In the interval since publication of the proposal, the Agency has decided to raise an additional topic for public comment. We are requesting comment

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on a phase-in of the financial responsibility regulations under which different groups of owners/operators must come into compliance with these rules at different times after publication of the final rules.

This notice discusses the Agency's current thinking on this topic and requests public comment on the issue. All of the comments and data that the Agency receives (and the comments already received in response to the proposal) will be considered in developing the final rules, which the Agency expects to promulgate later this year.

III. Phase-In of Compliance with the Underground Storage Tank Financial Responsibility Requirements

In the preamble to the April 17, 1987 proposed rule, EPA described the extremely large and diverse regulated community that will be affected by this rule (see 52 FR pp. 12791–12795). In response to the proposal, EPA has received numerous comments indicating that compliance with the financial responsibility requirements by many UST owners/operators within 90 days of promulgation would be very difficult. In developing the final rule, the Agency has reviewed the characteristics of the regulated community and the amount of time necessary for UST owners/operators currently without financial assurance to obtain such assurance after promulgation of the final rule. On the basis of this review, the Agency is considering phasing in the date of compliance of the final financial responsibility rules. Under a phase-in, different groups of owners/operators would come into compliance at different times after publication of the final rules. The Agency's rationale for phasing in the financial responsibility requirements is presented below.

Compliance with the financial responsibility regulations will require approximately 285,000 firms to demonstrate financial assurance for 1.7 million USTs located at 488,000 separate facilities. Firms owning USTs range from some of the largest corporations in the world to extremely small businesses with no reported payroll. These USTs may be integral to the running of the business (as is the case for retail gas stations) or act as a convenience because they eliminate the need to travel offsite to obtain fuel.

EPA estimates that approximately 95 percent of UST-owning firms and 65 percent of the USTs for which financial assurance must be provided do not currently have pollution liability insurance and would not qualify to use the financial test for self-insurance included in the April 17, 1987 proposal. Due to the very small number of companies currently offering coverage, it is clear that many of those currently not insured will have difficulty obtaining such coverage within 90 days of promulgation of the final rule. Even for those owners and operators who already have pollution liability insurance, this insurance may not conform in all respects to the requirements that may be specified by EPA in the final rule. Additionally, while the proposal allows the use of other financial assurance instruments, the Agency recognizes that the general availability of these instruments to certain classes of owners/operators is limited.

Therefore, the Agency believes that it would be difficult to implement this regulation properly if all owners and operators are required to come into compliance within 90 days after the regulation is published. The Agency believes that, given the very large number of firms that will be affected by this regulation and the diverse nature of these firms, it will be necessary both to provide assistance and outreach programs and to provide certain groups of owners/operators with additional time to demonstrate compliance. A phase-in will also give providers of financial assurance more time to respond to market demands and to develop financial instruments (e.g., insurance policies, letters of credit, etc.) that meet EPA's requirements.

The Agency has used a phase-in strategy successfully in the past. The RCRA Subtitle C liability requirement for nonsudden occurrences was phased-in over a 30-month period to give owners and operators subject to new coverage requirements sufficient time to respond. In addition, in April, 1987, EPA proposed to phase-in some of the UST technical standards for similar reasons. Even with a phase-in compliance schedule, however, the suspension of enforcement provisions (52 FR 12823–12832) remain available to owners and operators who can meet the requirements of the suspension provision. This will provide them with relief if they are able to demonstrate that assurance mechanisms are not available when required by the final rule.

A phase-in schedule could be based on a number of different criteria, including financial strength (e.g., annual revenue), size e.g., number of tanks owned or operated), risk (e.g., age of tanks, type of tank, tank location), or industry (e.g., retail or non-retail operation). The Agency requests comments on these criteria and on any other criteria that should be used as a basis for defining different groups and their associated compliance dates. The Agency also requests data on how these criteria should be measured. In evaluating any criteria forming the basis for a phase-in schedule the Agency will consider such factors as how easy the criteria are to ascertain and implement.

The Agency must also consider the appropriate time frame for a phase-in compliance program, and requests comments on the appropriateness of the time period between different compliance groups (e.g., six months) and the final date by which all UST owners-operators must be in compliance.

The following example illustrates how a phase-in program could be based on the number of tanks owned or operated. Owners/operators of 1,500 or more USTs might be expected to comply by the effective date of the regulation. The owners/operators in this first compliance group will most likely be large corporations that have the financial strength to pass the financial test. Thus, this group will most likely be able to self-insure or to obtain a guarantee. Owners/operators using these mechanisms should not need additional time to come into compliance with the financial responsibility requirements.

Owners/operators of between 50 and 1,499 USTs might be required to come into compliance 6 months after the effective date of the regulation. Owners/operators in the second compliance group include oil jobbers and convenience store owners/operators. Many of these owners/operators may also have the financial strength to use the financial test of self-insurance or the guarantee. These groups are also most likely to already have pollution liability insurance or have the easiest access to the current supply of such insurance.

Owners/operators of between 6 and 50 USTs might be required to come into compliance within 12 months of the effective date of the regulation. Owners/operators in this group typically include smaller oil jobbers. Twelve months will give the owners/operators in this group that do not have insurance enough time to contact insurers and to perform any assesements or tank upgrading necessary for them to get insurance.

Owners/operators of 5 or fewer USTs (single station owners and operators for example) may be given 18 months to comply because, if they are unable to get insurance, they will have to rely on forming risk retention groups or obtaining assurance from a State fund. EPA estimates that it takes approximately one year to form a risk

retention group and between one and two years for a State to implement a State fund. (EPA assumes that letters of credit, surety bonds, and other private mechanisms will only rarely be available to these owners/operators at a price they can afford.) A phase-in will also allow these owners/operators the necessary time to close tanks before they become subject to these requirements.

As indicated above, the number of USTs owned or operated is only one criterion for scheduling compliance dates. EPA requests comments on this approach as well as any alternative phase-in programs based on other criteria.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88–7066 Filed 3–30–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3357-5]

40 CFR Parts 280 and 281

Underground Storage Tanks; Availability of Information and Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: On April 17, 1987, the Environmental Protection Agency (EPA) proposed regulations (52 FR 12662, 12786, and 12853) for underground storage tank systems (USTs) containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA has obtained additional technical information since publication of the proposal as a result of research and meetings. Today's notice announces the availability of information pertaining to the technical areas of general operating requirements, release detection and tank closure. Any comments in response to this Notice will be considered by EPA in developing the final rule.

DATE: Comments must be received by May 2, 1988.

ADDRESSES: Send three copies of written comments to Docket Clerk, Office of Underground Storage Tanks (WH–562A), Docket No. UST 2–4, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. New information identified in today's Notice may be inspected by appointment in room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC from 9:00 am to 5:00 pm, Monday through Friday except legal holidays.

Appointments can be made by calling (202) 475–9720.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline, (800) 424–9346; or in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION: Since the publication of the proposed technical standards for underground storage tanks (52 FR 12662) EPA has acquired new information relevant to several areas of the proposed rule, including: general operating requirements, release detection and tank closure. This information has been submitted by commenters, gathered in meetings or conferences and produced by Agency research programs. The titles of the new information available for inspection follows:

HWERL Volumetric Leak Detection Methods Evaluation: Material for Docket Supporting Final UST Technical Standards.

Protocol for Evaulating Volumetric Leak Detection Methods for Underground Storage Tanks.

An Approach to Evaluating Leak Detection Methods in Underground Storage Tanks.

Quality Assurance Project Plan: Evaluate Leak Detection Methods for Petroleum USTs.

U.S. EPA Evaluation of Volumetric UST Leak Detection Methods.

Performance and Detection Criterion Analysis of the Tank Test Data on the U.S. Environmental Protection Agency National Survey of Storage Tanks.

Review of Effectiveness of Static Tank Testing.

Analysis of Manual Inventory Reconciliation: Executive Summary.

A Leak Detection Performance Evaluation of Automatic Tank Gauging Systems and Product Line Leak Detectors at Retail Stations.

Fuel Vapor Background Concentration Measurement and Tracer Testing in Underground Storage Tank Backfill.

Evaluation of U-tube Underground Tank Monitoring Systems for Soil Vapor Testing.

Draft Final Report: Background Hydrocarbon Vapor Concentration Study for Underground Fuel Storage Tanks.

Appendices for Background Hydrocarbon Vapor Concentration Study for Underground Fuel Storage Tanks.

Draft Final Report: Phase 1 of Modeling Vapor Phase Movement in Relation to UST Leak Detection.

Draft Report: Development of Procedures to Assess the Performance of External Leak Detection Devices.

1. Performance Test Procedures.

2. Executive Summary for Resuts of Laboratory Evaluation.

Soil Vapor Monitoring for Fuel Leak Detection.

Demonstration Tracer Leak Testing of 50,000 Gallon JP4 Tanks Davis Monthan AFB, Tuscon, Arizona.

Leak Test of an 60,000 Gallon Fuel Storage Facility at Tuscon International Airport.

Tracer Leak Test of Underground Tanks at Langley AFB.

Underground Tank and Pipeline Test: Certification Report of POL Facilities at Shaw AFB, South Carolina.

Pipeline Leak Test Using Tracers at Langley Air Force Base, Virginia.

Demonstration Tracer Leak Test on 600,000 Gallon Underground Fuel Tank, Patuxent River Naval Air Station, Patuxent River, Maryland.

Free Product Release Detection for Underground Storage Tank Systems.

Volume 1: Capabilities and Limitations of Wells for Detecting and Monitoring Product Releases.

Volume 2: The Effectiveness of Petroleum Tank Release Detection with Wells in Florida.

Simulation of Gasoline Leakage.

Background Document of Bottom Liner Performance in Double Lined Landfulls and Surface Impoundments.

Criteria to be Considered for Granting Variances to Hazardous Substance Underground Storage Tanks.

Progress Report on Suffolk County, New York, Tank Deflection measurements.

Progress Report on Suffork County, New York, Tank Autopsy Study.

State Survey of Contaminated Soil Programs.

Determining if Soils Contaminated with Petroleum Products are Hazardous Waste.

Technical Memorandum: Near-Term In-Service Structural Performance of Underground Fiberglass Reinforced Plastic Storage Tanks.

EPA invites the public to view this new information and requests that any public comments on it be submitted to EPA on or before May 2, 1988. Please contact the Docket Clerk in the Office of Underground Storage Tanks (WH–562A), U.S. Environmental Protection Agency, 401 M Street SW., Washington,

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DC 20460, (202) 475–9720 for an appointment.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88-7007 Filed 3-30-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Care Financing Administration

42 CFR Parts 74, 405 and 441

[HSQ–150–P]

Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules

AGENCY: Public Health Service (PHS) and Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate the requirement that a laboratory maintain the name and other identification of individuals undergoing testing to determine the presence of the Human Immunodeficiency Virus (HIV) antibody or causative agent, if the laboratory is *not* seeking Medicare or Medicaid payment for these tests. However, it would not excuse a laboratory from maintaining such information if it is required to do so by State law. It would propose that those laboratories or entities seeking payment from the Medicare or Medicaid programs for HIV testing must continue to provide the name and other identification of persons tested to assure proper payment of claims. However, State Medicaid programs my choose to approve the use of alternative identifiers in place of the patient's name for HIV testing of Medicaid recipients. We also propose laboratories licensed under CLIA also would not be required to maintain the names and other identification of individuals being tested to determine the presence of the HIV antibody or causitive agent. The intent of this change is to add further protection of confidentality of HIV test results and to encourage voluntary testing.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 31, 1988.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: HSQ–150–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code HSQ–150–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Pam Renner, (301) 966–6818.

SUPPLEMENTARY INFORMATION:

I. Background

Acquired Immune Deficiency Syndrome (AIDS) is a major public health issue. In order to promote the laboratory testing of persons who suspect they may have been exposed to HIV, the virus associated with AIDS, current public health practice is to protect the privacy of these individuals and to maintain the strictest confidentiality concerning their health records. A number of States have enacted statutes that protect the anonymity of persons tested for the presence of the HIV antibody.

However, most facilities performing HIV testing are approved as hospital or independent laboratories in the Medicare program. The Medicare regulations (42 CFR 405.1316(f)(2) for independent laboratories and 42 CFR 482.27(b) for hospital based facilities) specify that the names and other identification of the individuals whose specimens are being tested must be obtained and maintained by the testing facility, and the regulations at § 405.1316(f) (2) and (3) and § 482.27(b) require laboratories to maintain the name of the licensed physician or other authorized person or clinical laboratory that submitted the specimen and the names of individuals presenting themselves for testing. Also, laboratories that test specimens for Medicaid recipients must meet the Medicare requirements for these facilities (section 1902(a)(9)(C) of the Social Security Act). Laboratories testing specimens in interstate commerce under the provisions of the Clinical Laboratories Improvement Act of 1967 (CLIA) must meet similar recordkeeping requirements, as specified at 42 CFR 74.53 (b) and (c).

II. Changes to the Regulations

As a result of the growing need to heighten public understanding of AIDS and to encourage voluntary testing for the disease, we propose to amend § 405.1316 by deleting the requirement for laboratories to maintain names and identification of individuals undergoing testing to determine the presence of the HIV antibody or the causative agent, provided that Medicare or Medicaid payment for testing is not sought. We propose that laboratories or entities seeking payment for HIV testing under the Medicare program would have to continue to provide the name and other identification of persons tested to assure proper payment of claims but would not be required to maintain records linking the results of the test with any patient identifier. We propose to add a new § 441.16 to set forth in regulations the Medicaid requirements for laboratores under section 1902(a)(9)(C) of the Act, and to allow States the flexibility under their Medicaid programs to provide a mechanism that assures anonymity while maintaining the integrity of the payment process: State Medicaid programs may choose to approve the use of alternative identifiers in palce of the patient's name for HIV testing of Medicaid recipients.

Further, we propose to use this occasion to announce that CLIA licensed laboratories would not be required to maintain the names and other identification of individuals being tested for the presence of the HIV antibody or causative agent. Specifically, we are proposing to amend § 74.53(b) by deleting the requirement for CLIA licensed laboratories to maintain the names and other identification of individuals undergoing testing to determine the presence of the HIV antibody or for the isolation and identification of the causative organism. We also are proposing to amend § 74.53(c) to permit individuals who submit their own specimens for testing to maintain their anonymity.

Since § 482.27(b), the laboratory management requirement of the hospital conditions of participation, is cross-referenced to the independent laboratory requirement at § 405.1316, the proposed change to § 405.1316 would also apply to records maintained in hospital-based laboratories, without a specific revision to the conditions of participation for hospitals. Also, the change would be applicable to records maintained by clinical laboratories located in skilled nursing facilities (SNFs) because SNFs that maintain laboratories are required, by cross reference, to meet the conditions of participation of hospital-based laboratories (see §405.1128, Condition of Participation—laboratory and radiologic services, Standard (a). Provision for services). Of course, these proposed changes would not excuse laboratories from maintaining records required by State law. Therefore, they provide flexibility for the State to elect whether or not to require reporting of positive test results.

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule." A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of $100 million or more (2) cause a major increase in costs or prices for consumers, individuals, industries, government agencies, or geographic regions, or (3) result in significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises in domestic or export markets.

We have determined that this proposed rule will neither result in an annual economic impact of $100 million or more nor meet any other criteria of the Executive Order 12291. A regulatory impact analysis is not required.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an alalysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hosptial as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

This rule would allow affected laboratories to conform their operations to accepted public health practices regarding the confidentiality of HIV testing. It would not impose any burdens or costs on affected entities. Therefore, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we recieve by the date and time specified in the "DATE" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

Sections 74.53, 405.1316, and 441.16 contain information collection requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980 as amended, 44 U.S.C. 3507–3511. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of this preamble.

V. List of Subjects

42 CFR Part 74

Laboratories, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 441

Family planning, Grant programs-health, Infants and childen, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 42 of the Code of Federal Regulations is proposed to be amended as follows:

A. Part 74 is amended as set forth below:

PART 74—CLINICAL LABORATORIES

1. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690; 42 U.S.C. 216.

2. In § 74.53 the introductory language is republished and paragraphs (b) and (c) are revised to read as follows:

§ 74.53 Specimen records.

Daily accession records shall contain the following information:

* * * * *

(b) The name and other identification of the person from whom the specimen was taken, if available. However, the name and other identification is not required of an individual whose specimen is tested for—

(1) The presence of the Human Immunodeficiency Virus (HIV) antibody; or

(2) The isolation and identification of the HIV causative agent.

* * * * *

(c) The name of the licensed physician or other person or clinical laboratory who or which submitted the specimen, except the name of the other person is not required if the other person is an individual submitting his or her own specimen to be tested for—

(1) The presence of the HIV antibody; or

(2) The isolation and identification of the HIV causative agent.

B. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for Part 405 Subpart M is revised to read as follows:

Authority: Sec. 1102, 1861(s)(3), (12), and (13), 1864, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395x(s)(3), (11), and (12), 1395aa, and 1395hh).

2. In § 405.1316(f), the introductory language is republished and paragraphs (f)(2) and (3) are revised to read as follows:

§ 405.1316 Condition—clinical laboratory; management.

* * * * *

(f) Standard; specimens—records. The laboratory maintains a record indicating the daily accession of specimens, each of which is numbered or otherwise appropriately identified. The factor explaining the standard is as follows:

Records contain the following information:

* * * * *

(2) The name and other indentification of the person from whom the specimen was taken, except for individuals for whom a request for payment is not being made under the Medicare program and whose specimens are being tested for—

(i) The presence of the Human Immunodeficiency Virus (HIV) antibody; or

(ii) The isolation and identification of the HIV causative agent.

(3) The name of the licensed physician or other authorized person or clinical laboratory who or which submitted the specimen, except that when request for Medicare payment is not being made, the name of the other authorized person is not required, if the other authorized person is an individual submitting his or her own specimen to be tested for—

(i) The presence of the HIV antibody; or

(ii) The isolation and identification of the HIV causative agent.

* * * * *

C. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act; 42 U.S.C. 1302.

2 Section 441.16 is added to Subpart A to read as follows:

§ 441.16 Laboratory services.

(a) The plan must provide for payment of laboratory services as defined in § 440.30 of this subchapter if provided by—

(1) An independent laboratory that meets the requirements for participation in the Medicare program found in § 405.1316 of this chapter;

(2) A hospital-based laboratory that meets the requirements for participation in the Medicare program found in § 482.27 of this chapter;

(3) A rural health clinic, as defined in § 491.9 of this chapter; or

(4) A skilled nursing facility—based clinical laboratory, as defined in § 405.1128(a) of this chapter.

(b) Except as provided under paragraph (c), if a laboratory or other entity is requesting payment under Medicaid for testing for the presence of the human immunodeficiency virus (HIV) antibody or for the isolation and identification of the HIV causative agent as described in § 405.1316(f) (2) and (3) of this chapter, the laboratory records must contain the name and other identification of the person from whom the specimen was taken.

(c) An agency may choose to approve the use of alternative identifiers, in place of the requirement for patient's name, in paragraph (b) of this section for HIV antibody or causative agent testing of Medicaid recipients.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13773, Medicare—Hospital Insurance Program; and No. 13.744; Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 3, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7094 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-17-M, 4120-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 85-019]

Delegation of Authority to United States Classification Societies

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of Advanced Notice of Proposed Rulemaking.

SUMMARY: This notice announces the Coast Guard's intention not to proceed with the rulemaking "Delegations of Authority to United States Classification Societies." An Advance Notice of Proposed Rulemaking was published on October 3, 1985 [50 FR 40413] seeking input on the criteria for a "similar United States classification society" and the framework through which a classification society could request and be granted authority to work on behalf of the Coast Guard under 46 U.S.C. 3316. The reasons for not proceeding with a rulemaking action are the adverse impact on Coast Guard resources and the apparent lack of support by shipowners and operators.

ADDRESSES: Materials related to the Advance Notice of Proposed Rulemaking [CGD 85-019] are available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington DC 20593-0001, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: CDR R.S. Tweedie, Office of Marine Safety, Security and Environmental Protection, (202) 267-1181.

SUPPLEMENTARY INFORMATION: An Advance Notice of Proposed Rulemaking (ANPRM) [CGD 85-019] was published in the **Federal Register** on Thursday, October 3, 1985, soliciting comments on the merits of defining a "similar United States classification society," the framework and criteria that should be used in such a determination, and its probable effects. The ANPRM also advised that an analysis of the economic effects of the proposal was necessary along with an analysis of the intent of the applicable governing law, 46 U.S.C. 3316.

Drafting Information

The principal persons involved in drafting this notice are Mr. John M. Kinsey, Project Manager, Office of Marine Safety, Security and Environmental Protection and CDR Gerald A. Gallion, Project Counsel, Office of Chief Counsel.

Background

The ANPRM explained the necessity of an analysis of the economic effect of further delegations of authority to classification societies and an analysis of the intent of the applicable governing law. It also presented 9 questions for comment and discussion. The Coast Guard received 97 comments. In summary—31 comments were received which favored defining a "similar United States classification society" and delineating how they could seek authority to work on behalf of the Coast Guard; 54 comments opposed doing so; and, 12 submittals took no position.

Many comments reflected or repeated the views of major classification societies. There were comments on all of the issues presented in the ANPRM. There were also comments generally discussing whether the action under consideration was necessary at this time.

The most significant and repeated positions opposing the action are summarized below:

a. In this era of reduced funding, the Coast Guard does not have resources to expand its delegation program to other classification societies.

b. ABS is a prominent, technically superior classification society which is quite capable of expanding the range and volume of its services if needed.

c. There is no compelling need to delegate to other classification societies, nor is there any discernible economic or technical benefit to shipowners or shipbuilders.

d. A classification society whose parent organization is foreign will not have the expertise or qualification necessary to interpret U.S. law and regulations.

e. Delegating work to other classification societies would result in less consistency than we now have in the interpretation of the standards.

f. The use of foreign nationals as agents of the government presents national security issues in times of national emergency and because of the interest of foreign intelligence communities in all aspects of shipping.

The most significant and repeated comments supporting the action under consideration are summarized below:

a. Competition will result in freedom of choice, more services and lower fees for owners and builders of U.S. flag vessels.

b. Competition between classification societies will spur technological advances as increasingly sophisticated ship builders seek solutions to their needs.

c. The proposal will not endanger national security because it does not relate to U.S. government owned vessels, nor would it result in any unfavorable technology transfer.

d. International shipping statistics show that there is no correlation between countries with a high vessel loss rate and countries that promote third party competition. In fact, the loss ratio for the United States is higher than for some countries that permit competition (Canada, Netherlands, and Norway).

After considering all of the comments and analyzing the legal, economic, and practical issues presented, the Coast Guard has decided to withdraw this docket based on the anticipated economic impact on the Coast Guard of recognizing additional classification societies and the lack of support from industry.

Discussion

Analysis of the Economic Impact of the Action Under Consideration

The Coast Guard performed a sensitivity analysis to study and anticipate the impact on agency resources that might result if the Coast Guard should delegate plan review and inspection of new vessels to classification societies other than the American Bureau of Shipping (ABS). Assumptions were that present oversight of ABS is 10% and that the rate of new vessel construction would remain constant at an average of the 1984–1986 rates. The change of staff years of effort that would result from recognizing a new society was calculated with scenarios that varied the anticipated U.S. vessel market share a newly recognized society might obtain and the effect of doubling the domestic and foreign construction rates. The calculations assumed declining oversight of 100%, 50%, 25% and 10% for the 1st-2nd, 3rd-4th, 5th-6th, and 7th years after recognition of a new society.

The analysis demonstrated that the Coast Guard would incur substantial resource costs by recognizing one or more similar classification societies. The increase in headquarters staff year requirements and the increase in field plan review and inspection oversight requirements would considerably exceed the savings of plan review and inspection hours realized by recognizing a class society to work on our behalf. The Coast Guard would be required to devote 2 to 3 staff years to complete a rulemaking, and 2 to 3 staff years to implement the rule for each new society. The Coast Guard would also require an initial 4 to 11 staff years annually for the first years of oversight under a scenario where a new class society captures 25% of the U.S. built new vessel construction market and 50% of the foreign built market. The actual increase in workload would depend upon the market share a new society may obtain and any change in U.S. shipbuilding trends. The analysis demonstrated that the need for these resources would decrease over time as Coast Guard oversight decreases.

Assuming that another society would achieve the present status of ABS by the 7th year, the total cumulative additional plan review and inspection oversight costs for the preceding years would be between 15 and 30 staff years of effort. Therefore, the total cost to the Coast Guard of recognizing a single additional society would be between 19 (15 oversight and 4 up front) and 36 (30 oversight and 6 up front) staff years of effort before we reach the present level of effort under the ABS MOU.

The main reason for the high cost is that work would shift from the ABS (with 10% Coast Guard oversight) to the other classification society (with 100% initial oversight). The only long term gain to the Coast Guard would be a reduction of the work we now spend on new vessels currently being classed with another society—about one per year. This would equal a maximum benefit of one to two staff years.

The higher degree of initial operational oversight would be required to evaluate the general knowledge of Coast Guard regulations by classification society staff surveyors and management. The Coast Guard would be required to evaluate how well a newly recognized society knows, interprets, and applies Coast Guard regulations on its behalf. This would be a measure of overall professional ability to act on behalf of the Coast Guard as opposed to technical ability and the adequacy of structural rules. The Coast Guard has developed confidence in the way ABS understands and deals with our regulations over years of field experience—marine inspector to class surveyor. Other classification societies would have to develop and implement a system to train, examine and evaluate class surveyors in the knowledge and application of CG regulations. The Coast Guard would have to evaluate the training, competency and effectiveness of surveyors from another society through the oversight process. It is anticipated that it would take at least 7 years to develop the level of confidence that exists with ABS.

The sensitivity analysis showed that further recognition and delegations by the Coast Guard would have the most pronounced, positive effect if or when additional class societies gain a share of the existing available market. The data used for the sensitivity analysis showed only three new inspected vessels classed by a society other than ABS between 1983 and 1986. This resulted in an average of one new building per year. Unless other class societies can increase their market shares substantially, further delegations would require an extended investment of resources and would not result in a net savings to the Coast Guard.

Industry Reaction

The action under consideration received relatively little industry support. In all, 23 ship owners, operators and builders were opposed to the project, 10 favored it, 4 took no position. Comments of the offshore exploration and drilling industry interests were included in this count. Various drilling industry vessels, especially MODU's, have been designed and built to the rules of other classification societies in recent years. Ten comments were received from drilling industry interests. These comments represented the greatest, proportionate base of support for the action under consideration; five commentators supported the action under consideration and five opposed it. Six underwriters, insurers and banks commented on the ANPRM. Five opposed the action under consideration; one supported it. Likewise, eight industry associations commented on the

ANPRM. Five opposed the action under consideration; three supported it. There was overall opposition to the ANPRM, particularly from industry sectors with the greatest interest in the outcome.

Analysis of Other Issues in the ANPRM

While not factors in the decision to withdraw this rulemaking action, certain other issues were raised in the ANPRM and bear brief discussion.

Issue: What is a "similar U.S. classification society?"

Discussion: Comments received and review of 46 U.S.C. 3316 suggest that, irrespective of any affiliation with a foreign classification society, the mere incorporation of an organization in the United States which will offer ship classification services and set standards for the design, construction and survey of merchant vessels, will not make that organization a "similar United States classification society." The Coast Guard has not taken final agency action on this issue, but it now appears that a better preliminary definition of a "similar U.S. classification society is one that:

a. Is a non-profit entity organized under the laws of a state;

b. Has no capital stock and pays no dividends to its members;

c. Has on its board of directors at least two representatives of the U.S. government;

d. Peforms classification functions similar to those performed by the American Bureau of Shipping (ABS); and

e. Is organized like ABS.

When Congress used ABS as a model in section 3316, it contemplated that U.S. citizen involvement be dominant in the management and membership of a similar classification society. To determine if a similar classification society is organized like ABS, the Coast Guard would be guided by the Congressional concern that American interests be dominant in a U.S. classification society. In addition, in making a determination, the Coast Guard would focus on whether the organization was a non-profit entity under the law of the state of incorporation rather than whether it had tax exempt status under the Internal Revenue Code.

Issue: Ramifications of using foreign nationals as classification society surveyors to enforce United States marine inspection regulations.

Discussion: Some commenters opposing the proposed rule raised the issue of national defense. The Coast Guard does not consider this a real issue. U.S. vessels are designed, built, launched and outfitted in many parts of the world. Many of them are surveyed by ABS employed foreign nationals.

Commercial ship design, equipment, and propulsion systems are advertised and marketed worldwide. Vessel characteristics and construction techniques are thoroughly discussed in numerous maritime industry publications with world wide circulation.

The Department of the Navy commented on the proposal, and did not express any national defense concerns. In fact, the Military Sealift Command has purchased and reflagged several ships previously classed by other societies and which are now ABS classed. 46 U.S.C. 3316(b) provides for the ABS as the classification society for U.S. government vessels.

Any future national security concerns over foreign interest in U.S. shipbuilding can be dealt with using existing policy, law and procedures.

Issue: Acceptance of a similar U.S. classification society that has a foreign affiliation should be contingent upon reciprocal acceptance of ABS by the society's home government.

Discussion: The vast majority of comments strongly recommended that reciprocity or equal access to foreign markets be a consideration in the decision to recognize another classification society, particularly if it was affiliated with or related to a foreign society. Some comments alluded to restrictions imposed by agencies of one government and noted that several nations require classification by their national class societies.

The Coast Guard discussed this issue with the Office of The U.S. Trade Representative, Technical Trade Barriers Section. The U.S. Trade Representative favored the concept of requiring a foreign classification society's home administration to document that ABS had been successful in gaining access to its market, as opposed to simply declaring that access was available, prior to considering delegation to a foreign class society. From a trade perspective there is concern that there be genuine reciprocity, and not the mere willingness to accept ABS, among the requirements for a society affiliated with or related to a foreign society to obtain approval to work on the Coast Guard's behalf.

Technical and Administrative Issues

Comments on other technical or administrative issues which would have been pertinent in developing the rule, but did not relate to the decision whether to proceed with a rulemaking action, are not discussed in this notice.

Withdrawal of Proposals

In accordance with the preceeding, the Advance Notice of Proposed Rulemaking, CGD 85-019 (50 FR 40413; October 3, 1985) is hereby withdrawn.

Dated: March 23, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88-6880 Filed 3-30-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Federal Acquistion Regulation Supplement; Contracting by Negotiation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Department of Defense is proposing to revise DFARS Subpart 215.6 and 215.8 to clarify the existing coverage on Adequate Price Competition. Clarification is needed to explain that adequate priced competition may exist even where price is not a primary factor in evaluation of proposals, regardless of the type of contract contemplated. A definition of cost realism is proposed which is distinguished from the detailed cost analysis typically conducted in sole source procurements.

DATE: Public comments are solicited and should be received by May 2, 1988 to ensure their consideration in the development of the final rule. Please cite DAR Case 87-97 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, OASD (P&L), DASD (P)/DARS, c/o Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Deputy Assistant Secretary of Defense for Procurement issued a memorandum dated May 1, 1987, on Adequate Price Competition. The memorandum expressed concern that contracting officers were requesting detailed cost or pricing data and then conducting detailed cost and profit analysis even though adequate price competition had resulted or was expected to result on the procurement. The memorandum stated that there should rarely be a need to obtain certified cost or pricing data in a competition although some cost data may be required to determine cost realism to ensure that the offeror adequately understands the scope of the work. Unnecessarily requiring cost or pricing data is not in the best interest of DoD because it leads to increased proposal preparation costs, extends procurement lead time, and wastes both contractor and Government resources.

When the intent of this proposed rule is finalized, it will implement the policy statement of the OASD (P) memorandum.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because most contracts are awarded to small entities on a competitive basis, and the detailed cost or pricing data will seldom, if ever, be required under these proposed regulations. Therefore, an initial Regulatory Flexibility Act Analysis has not been performed. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

Present DFARS coverage expects that contracting officers will not ask for detailed cost and pricing data as a substitute for requesting cost data on competitive procurements when such cost data is required to determine cost realism to ensure that an offeror adequately understands the scope of work. This proposed rule is issued to clarify that fact. Therefore, the rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 215

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.608 is amended by adding paragraph (a)(1) to read as follows:

215.608 Proposal evaluation.

(a)(1) See also 215.805-70 regarding use of cost realism analysis.

* * * * *

3. Section 215.801 is added to read as follows:

215.801 Definitions.

"Cost realism analysis", as used in this subpart, means a review of the cost portion of an offeror's proposal to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, or if the costs are consistent with the various elements of the technical proposal.

4. Section 215.804-3 is amended by adding paragraph (b)(1) to read as follows:

215.804-3 Exemption from or waiver of submission of certified cost or pricing data.

* * * * *

(b)(1) Adequate price competition may exist for any contract, including cost reimbursement contracts, even though price is not the primary factor in the evaluation of proposals, provided that price is a substantial factor in the source selection criteria.

* * * * *

5. Section 215.805-1 is added to read as follows:

215.805-1

(b) See also 215.805-70 regarding use of cost realism analysis.

6. Section 215.805-70 is added to read as follows:

215.70 Cost realism analysis.

(a) Even when adequate price competition exists, it may be appropriate to perform a cost realism analysis (see 215.801) to ensure that there is a reasonable expectation that the proposed costs are consistent with the technical proposal, especially for cost-reimbursement contracts. Cost realism analysis should also be used: when the solicitation contains new requirements that may not be fully understood by competing contractors; when there are quality concerns; or when past experience has indicated that contractors have proposed costs which have resulted in quality or service shortfalls.

(b) Information necessary to perform a cost realism analysis should be determined during procurement planning and development of the solicitation based upon the circumstances of the particular procurement. There are instances where they may be information available from government sources to perform a cost realism analysis; in other instances information will have to be obtained from the offerors.

[FR Doc. 88-7057 Filed 3-30-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Part 245

Department of Defense Federal Acquisition Regulation Supplement; Government Property, No Cost Storage Agreements

AGENCY: Department of Defense (DoD).

ACTION: Proposed Rule and request for comment.

SUMMARY: The DAR Council is considering a change to DFARS 245.612-3 that would prohibit storage of Government property under "no-cost" storage agreements. Costs are obviously incurred in the care and control of stored Government property. These storage costs should be reflected in separately priced and funded contracts.

DATE: Comments must be received by the DAR Council at the address shown below on or before May 2, 1988, to be considered in developoing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-122 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Under Secretary of Defense for Acquisition issued a memorandum on November 25, 1986, that made a number of recommendations to the military departments and DLA in the area of property management. One of those was to cease using "no-cost" storage

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agreements which permit Government property to remain idle for long periods with little review to determine actual need. Many of these agreements become convenient holding areas for property where future requirements are unknown. The GAO and the DoD IG found instances where Government property, particularly tooling, was stored for many years with little or no use. The proposed DFARS changes will require Contracting Officers to thoroughly analyze their decisions to retain or dispose of property and to fund storage directed by the Government. Contractors would be required to submit proposals for storage contracts.

B. Regulatory Flexibility Act Information

The proposed change to 245.612–3 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because contractors will now be required to prepare cost/price proposals when storage agreements are contemplated. An Initial Regulatory Flexibility Analysis has been prepared and a copy submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does contain information collections requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. A paperwork burden package is being prepared for submission to OMB for approval.

List of Subjects in 48 CFR Part 215

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 245 as follows:

1. The authority citation for 48 CFR Part 245 continues to read as follows

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 245—GOVERNMENT PROPERTY

2. Section 245.612–3 is added to read as follows:

245.612–3 Special storage at the Government's expense.

(a) Before authorizing retention of items in storage for anticipated future use, the contracting officer shall ensure that sufficient funds are available to pay the storage and any related tasks required of the contractor. The contracting officer shall review retention decisions at least annually to determine whether continued storage is appropriate.

(b) All storage contracts shall be fully funded and separately priced to include all allocable costs.

[FR Doc. 88–7058 Filed 3–30–88; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[No. 40165]

Adoption of the Railroad Accounting Principles Board's Recommendation on Its Data Integrity Principles in Reports Prepared Using Agreed Upon Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to adopt the recommendation by the Railroad Accounting Principles Board (RAPB) regarding its Data Integrity principle. Specifically, the Commission would require that independent public accountants (IPA's) comply with Statements on Auditing Standards No. 35 (SAS No. 35) and the American Institute of Certified Public Accountants' *Statement on Standards for Attestation Engagements* (Attestation Standards) [1] when preparing railroad audit reports using agreed-upon procedures.[2]

DATES: Comments must be filed on or before April 30, 1988.

ADDRESS: Comments should be sent to Docket No. 40165, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William F. Moss, III, (202) 275–7510. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to The Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 275–7428. (Assistance for the hearing impaired is available through TDD service on (202) 275–1721).

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

This revision will be submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform System of Accountants.

For the reasons set forth in the preamble, Title 49, Part 1201 is proposed to be amended as described above.

Authority: 49 U.S.C. 11142 and 11145; and 5 U.S.C. 553.

Decided: March 24, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–7033 Filed 3–30–88; 8:45 am]

BILLING CODE 7035-01-M

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[1] SAS No. 35, *Special Reports—Applying Agreed Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement,* was issued by the Auditing Standards Board of the American Institute of Certified Public Accountants in April, 1981.

Statement on Standards for Attestation Engagements was issued by the Auditing Standards Board and the Accounting and Review Services Committee under the authority of the AICPA in March 1986.

[2] Ex Parte No. [illegible], *Certification of Railroad Annual Report R–1 by Independent Accountant,* served on October 11, 1985, established that IPA's shall perform rail audits using agreed-upon procedures.

Notices

Federal Register
Vol. 53, No. 62
Thursday, March 31, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776); the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine
Date and Time:
  May 18, 1988, 8:30 a.m.–5:00 p.m.
  May 19, 1988, 8:30 a.m.–2:00 p.m.
Place:
  U.S. Department of Agriculture
  May 18—Room 104A, Administration Building
  May 19—Room 107A, Administration Building
  Washington, DC 20250–2200
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.
Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 223 Justin Smith Morrill Building, Washington, DC 20251–2200, Telephone: 202/447–4587.

Done at Washington, DC this 18th day of March 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88–7043 Filed 3–30–88; 8:45 am]

BILLING CODE 3410-22-M

Federal Grain Inspection Service

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATE: Applications to be postmarked on or before May 2, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647, South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulations do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Louisville, located at 1400 Oldham Street, Louisville, KY 40210; Minot, located at 601 Third Avenue, SW., Minot, ND 58701; and Tri-State, located at 3906 River Road, Cincinnati, OH 45204; were each designated under the Act as an official agency to provide inspection functions on October 1, 1985.

Each official agency's designation terminates on September 30, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Louisville, in the States of Indiana and Kentucky, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana: Clark, Crawford, Floyd, Harrison, Jackson, Jennings, ge Jefferson, Lawrence, Martin, Orange, Scott, and Washington Counties.

In Kentucky: Allen, Anderson, Barren, Breckinridge, Bullitt, Butler, Carroll, Edmonson, Fayette, Franklin, Grayson, Hardin, Hart, Henry, Jefferson, Jessamine, Larue, Mead, Nelson, Oldham, Scott, Shelby, Simpson, Spencer, Trimble, Warren, and Woodford counties.

The geographic area presently assigned to Minot, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the North Dakota State line east to State Route 14;

Bounded on the East by State Route 14 south to State Route 5; State Route 5 east to State Route 60; State Route 60 southeast to State Route 3; State Route 3 south to State Route 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83 northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment:

Farmers Elevator Company, Bottineau, Bottineau County; Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County; Farmers Union, Rugby, Pierce County (located inside Grand Forks Grain Inspection Department's area); and Farmers Elevator & Mercantile Co., and Coast Trading Company, both in Underwood, and Merle A. Larson Elevator, Inc., Washburn, all in McLean County (located inside Grain Inspection, Inc.'s area).

The geographic area presently assigned to Tri-State, in the States of Indiana, Kentucky, and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana: Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties.

In Kentucky: Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties.

In Ohio: Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S.22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

Interested parties, including Louisville, Minot, and Tri-State, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning October 1, 1988, and ending September 30, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: March 4, 1988.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 88-7039 Filed 3-30-88; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Lincoln (NE) and Omaha (NE) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Lincoln Inspection Service, Inc. (Lincoln) and Omaha Grain Inspection Service, Inc. (Omaha), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: May 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Lincoln's and Omaha's designations terminate on April 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the November 2, 1987, Federal Register (52 FR 42023). Applications were to be postmarked by December 2, 1987. Lincoln and Omaha were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the December 31, 1987, Federal Register (52 FR 49459) and requested comments on the applicants' designation. Comments were to be postmarked by February 16, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) o fthe Act; and, in accordance with section 7(f)(1)(B), determined that Lincoln and Omaha are able to provide official services in the geographic area for which the Service is renewing their designation. Effective May 1, 1988, and terminating April 30, 1991, Lincoln and Omaha will provide official inspection services in their entire specified geographic areas, previously described in the November 2 Federal Register.

Interested persons may obtain official services by contacting the agencies at the following addresses: Lincoln located at 505 Garfield Street, Lincoln, NE 68502; and Omaha located at 2525 South 13th Street, Omaha, NE 68108.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: March 4, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-7040 Filed 3-30-88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Jamestown (ND) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Grain Inspection, Inc. (Jamestown).

DATE: Comments to be postmarked on or before May 16, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken.

TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the February 2, 1988, Federal Register (53 FR 2862). Applications were to be postmarked by March 3, 1988. Jamestown was the only applicant for designation and it applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicant's designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicant will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: March 4, 1988.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 88-7041 Filed 3-30-88; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Mine Development Plan, Lolo National Forest; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to identify the specific operating stipulations under which the Bagdad Mine will be developed.

The Lolo National Forest has received a proposed plan to develop a gold mine along Williams Gulch within the Rock Creek drainage basin. Because of the sensitive resource values of Rock Creek, the possibility of adverse cumulative effects along the Clark Fork River system, and the controversial nature of development within this area, the Forest Supervisor, Lolo National Forest intends to assess the mining proposal using an environmental impact statement. Upon identification of public issues and management concerns, a full range of alternatives will be considered, including a no-action alternative.

Federal, State, local agencies, local landowners, and other interested individuals and groups who may be affected by the decision will be encouraged to participate in the process. Written comments should be mailed to Orville L. Daniels, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, Montana, 59801 by May 13, 1988.

A draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by July 15, 1988. At that time, EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the DEIS will be 30 days from the date the EPA notice of availability appears in the Federal Register. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have been established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. vs. NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS), *Wisconsin Heritages, Inc. vs. Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when such input can be meaningfully considered and responded to in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental statement (FEIS). The FEIS is scheduled to be completed by September 15, 1988. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official, Orville L. Daniels, Forest Supervisor, Lolo National Forest, will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Questions about the proposed action and environmental impact statement should be directed to Greg L. Munther, Acting District Ranger, Missoula Ranger District, Lolo National Forest, at telephone (406) 329-3750.

Date: March 23, 1988.

Charles W. Spoon,

Acting Forest Supervisor.

[FR Doc. 88-7052 Filed 3-30-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cocodrie-Grand Louis Watershed Supplement, Louisiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cocodrie-Grand Louis Watershed Supplement, Evangeline and St. Landry Parishes Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these fundings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environment impact statement are not needed for this project.

The supplement concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for installation of land treatment on 3,000 acres of critically eroding cropland and 2,500 acres of pasture land with gully erosion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Horace J. Austin,

State Conservationist.

Date: March 24, 1988.

[FR Doc. 88-6985 Filed 3-30-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Transmittal No. 06-10-88015-01, Project I.D. No. 06-10-88015-01]

Tulsa Minority Business Development Center (MBDC)

Summary: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of August 1, 1988 to July 31, 1989. The MBDC will operate in the Tulsa Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Tulsa SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is April 30, 1988.

Address: MBD—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

For Further Information, Contact: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767/8001.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on April 15, 1988 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development.

Project Name: Tulsa MBDC (Geographic Area or SMSA).

Project Identification Number: 06-10-88015-01.

Project Start and End Dates: 08/01/88 to 07/31/89.

Project Duration: 12 months.

Total Federal Funding (85%): $165,000.

Minimum Non-Federal Share (15%): $29,118.

Total Project Cost (100%): $194,118.

Closing Date for Submission of this Application: April 30, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Tulsa, Oklahoma* SMSA.

Eligibility Criteria: There are no eligiblity restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MDBA's minimum level of effort:

Financial packages: $2,747,000.

Billable M&TA: $84,000.

Number of Professional Staff: 3.

Procurements: $5,493,000.

M&TA Hours: 1,680.

Number of Clients: 76.

[FR Doc. 88-7031 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Application; Washington, DC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of August 1, 1988 to July 31, 1989. The MBDC will operate in the Richmond, Virginia Metropolitan Statistical Area. The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 03-10-88006-10.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is May 9, 1988. Applications must be postmarked on or before May 9, 1988.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377-8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

Date: March 25, 1988.

[FR Doc. 88-6986 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Receipt of a Petition for Rulemaking; Atlantic Bluefin Tuna Fisheries

NOAA announces receipt of a petition for rulemaking to amend the regulations implementing the Atlantic Tunas Convention Act.

A group of 11 Atlantic bluefin tuna fishermen has requested a rulemaking that would ban the use of spotter aircraft in all permit categories of the Atlantic bluefin tuna fishery except the purse seine category which traditionally uses aircraft. The association contends that the use of aircraft introduces a new gear category to the fishery, which is contrary to the intent and purpose of the regulations governing Atlantic bluefin tuna as set forth at 50 CFR Part 285. In addition, during the summer when hundreds of vessels are concentrated on the grounds fishing for Atlantic bluefin tuna, several aircraft circling in the area at low altitudes cause a hazard by further concentrating boats around those using aircraft. Further, it is asserted that the use of aircraft may tend to concentrate the catch of Atlantic bluefin tuna among a very few fishermen, contrary to NOAA's intent to spread harvest of the limited quota among the greatest number of fishermen.

NOAA requests comments from all interested parties on this petition. Specifically, NOAA would like comments regarding the impacts of using aircraft on the fishery for giant Atlantic bluefin tuna. All comments will be considered in determining whether to undertake the rulemaking. If the Assistant Administrator determines that the rulemaking should be pursued, a Notice of Proposed Rulemaking and a schedule of public hearings will be published in the **Federal Register**.

Copies of the petition and further information can be obtained by contacting Kathi L. Rodrigues, at 617-281-3600, ext. 324, or by writing to the following address. Comments on the petition and on the management measures outlined below should be sent to the Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark the outside of the envelope, "Comments, Atlantic Bluefin Tuna".

In addition, NOAA uses this opportunity to solicit comments and recommendations from all Atlantic bluefin tuna permit holders and industry members on other measures being considered. Comments should be sent to the same address as above. These measures would:

(1) Limit the incidental longline catch amount of Atlantic bluefin tuna landed from the southern part of the Regulatory Area to 2 percent by weight of all other fish on board. Currently, vessels fishing in this area, south of 36°00′ N. latitude, may retain two Atlantic bluefin tuna per trip. This may have permitted a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico, contrary to the intent of the regulations and the United States' obligations to the International Commission for Conservation of Atlantic Tunas (ICCAT) under the Atlantic Tunas Convention Act.

(2) Close all or a portion of the Gulf of Mexico to longline gear during a specified spawning season.

(3) Restate and clarify in the regulations the United States' obligation to prohibit directed fishing for Atlantic bluefin tuna in the Gulf of Mexico as recommended by ICCAT.

(4) Reestablish the scientific quota administered by the Southeast Fisheries Center for research purposes.

Dated: March 25, 1988.

Richard H. Schaefer,

Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-7093 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Liposome Co.; Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Liposome Company, Inc., having a place of business in Princeton, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "New Antiretroviral Agents and Delivery System for the Same," U.S. Patent Application Serial Number 7-037,178. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-7056 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of New Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

March 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new limits.

EFFECTIVE DATE: April 1, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; and Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports, posted on the bulletin boards of each Custom port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and Mauritius have agreed in consultations to amend further their current Bilateral Textile Agreement, as amended, to establish new limits for Categories 337/637, 342/642/842 and 442.

A copy of the Bilaterial Textile Agreement, as amended, is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1997.

See 52 FR 22868, published in the **Federal Register** on November 10, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 28, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of November 5, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton and man-made fiber textile products in Categories 337/637 and 342/642, produced or manufactured in Mauritius and exported during the twelve-month periods which began, in the case of Categories 337/637 on June 18, 1987 and extends through June 17, 1988; and, in the case of Categories 342/642, on June 22, 1987 and extends through June 21, 1988.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Bilateral Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of the Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the periods which began, in the case of Categories 337/637 and 342/642/842 on August 1, 1987; and, in the case of Category 442, on April 1, 1988; and extend through September 30, 1988.

Category	Import restraint limit [1]
337/637	140,000 dozen.
342/642/842	192,500 dozen.
442	5,344 dozen.

[1] The limits for Categories 337/637 and 342/642/842 have not been adjusted to account for any imports exported after July 31, 1987.

Textile products which have been exported to the United States prior to August 1, 1987 for Categories 337/637 and 342/642/842 and April 1, 1988 for Category 442 shall not be subject to this directive.

Textile products in Categories 442 and 842 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not not be denied entry under this directive.

These limits may be adjusted in the future under the provisions of the bilateral agreement.

Also effective on April 1, 1988, you are directed to make the following charges to the limits established in this directive for Categories 337/637 and 342/642/842. These charges are for the import period August 1, 1987 through January 31, 1988.

Category	Amount to be charged
337	5,320 dozen.
342	58,456 dozen.
637	2,279 dozen.
642	1,596 dozen.
842	295 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7072 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports, posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 336 is being increased by application of swing. The limits for Categories 647 and 648 for the January 1, 1988 through May 31, 1988 period are being reduced to account for

the swing being applied to Category 336. As a result of the adjustments, the limit for Category 336, which is currently closed, will re-open.

A description of textile categories in terms of T.S.U.S.A. members is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 18413, published on May 15, 1987 and 53 FR 52 and 53 FR 53, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 28, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends through May 31, 1988.

Effective on April 1, 1988, the directive of December 30, 1987 is hereby amended to adjust limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended:

Category	Adjusted limit [1]
336	32,378 dozen.
647	220,668 dozen.
648	85,103 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7073 Filed 3-30-88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval for Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through July 31, 1991, of a collection of information about product-related injuries.

Section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses involving consumer products. The Commission uses this information to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnessed accidents associated with consumer products are an important source of information about deaths, injuries, and illnesses resulting from such accidents. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face interviews with accident victims or witnesses, or telephone interviews with those persons.

Additional Details About the Requested Extension of Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207

Title of Information Collection: Follow-Up Activities for Product-Related Injuries.

Type of Request: Extension of approval.

Frequency of Collection: One time for each respondent.

General Description of Respondents: Persons who have been involved in, or who have witnessed, accidents associated with consumer products.

Estimated Number of Respondents: 3,000.

Total Estimated Number of Hours for All Respondents: 4,267.

Comments: Comments on this request for extension of approval for collection of information should be addressed to Pamella Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for extension of approval for collection of information are available from Francine Shacter, Office of Program Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 23, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-7044 Filed 3-30-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Dates of Meeting: May 9, 1988.

Place of Meeting: Washington, DC.

Start Time of Meeting: 9:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1988.

All proceedings are open. For further information, contact Colonel Larry Donnithorne, United States Military Academy, West Point, New York 10996-5000, (914) 938-4723.

For the Board of Visitors:

Larry R. Donnithorne,

Col. En, Executive Secretary, USMA Board of Visitors.

[FR Doc. 88-6967 Filed 3-30-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board.

Date of Meeting: May 2–6, 1988.

Place: Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.

Time: 1:00 p.m. to 5:00 p.m. on May 2; 8:00 a.m. to 5:00 p.m. on May 3; 8:30 a.m. to 4:00 p.m. on May 4; 8:30 a.m. to 4:00 p.m. on May 5; 8:30 a.m. to 12:00 noon on May 6.

Proposed Agenda: The 1989 Program Review is to be held the first week in May 1988. On Monday, May 2, the Coastal Research and Development Programs will be discussed. They include Coastal Flooding and Storm Protection, and Harbor Entrances and Coastal Channels.

Review of these programs continues on Tuesday, May 3, with the remainder of Harbor Entrances and Coastal Channels, Shore Protection and Restoration, and Coastal Structures Evaluation and Design.

On Wednesday, May 4, the Coastal Field Data Collection Program will be reviewed, including review of current and proposed activities.

The session on Thursday, May 5, reviews the Monitoring Completed Coastal Programs. There will be discussions of review of current and proposed activities.

On Friday, May 6, there will be a review of activities of the Coastal Geology and Geotechnology Program.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Inquiries and notice of intent to attend the meeting may be addressed to Dr. James R. Houston, Chief, Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 88–6988 Filed 3–30–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.073E]

National Diffusion Network Program; Application for New Dissemination Process Awards for Fiscal Year 1988

ACTION: Extension of Deadline Date for Transmittal of Applications.

The Secretary extends the deadline date for transmittal of applications from April 1, 1988 to June 1, 1988.

On January 28, 1988 the Secretary published in the **Federal Register** (53 FR 2532) a notice inviting applications for new Dissemination Process awards. Detailed information is included in that notice.

The purpose of this notice is to extend the closing date for transmittal of applications so that potential applicants may have additional time to complete their applications.

For Applications or Information Contact: Mrs. Linda Jones, U.S. Department of Education, 555 New Jersey Avenue NW, Room 510, Washington, DC 20208. Telephone: (202) 357–6153.

Program Authority: 20 U.S.C. 3851.

Dated: March 29, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88–7189 Filed 3–30–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.128H]

Extension of the Closing Date for Transmittal of Applications for New Awards Under the Vocational Rehabilitation Service Projects for American Indians With Handicaps Program for Fiscal Year 1988

Deadline for Transmittal of Applications: The closing date for applications is extended from March 31, 1988 to April 14, 1988.

On December 21, 1987, a notice was published that established the closing date for transmittal of applications for the fiscal year 1988 competition under the Vocational Rehabilitation Service Projects for American Indians With Handicaps Program (52 FR 48375). Detailed information concerning this program was included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications due to a delay in the availability of application packages.

For Applications or Further Information Contact: Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Deparatment of Education, 400 Maryland Avenue, SW., Room 3332, (Switzer Building, M/S–2312), Washington, DC 20202. Telephone: 732–1343.

Program Authority: 29 U.S.C 750.

Dated: March 25, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–7098 Filed 3–30–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI75–311–002 et al.]

APX Western Corp. (Formerly Panhandle Western Gas Company); Corporate Name Change

March 25, 1988.

Take notice that on February 29, 1988, APX Western Corporation (APX), of P.O. Box 1330, Houston, Texas 77251–1330, filed an application pursuant to section 7(c) of the Natural Gas Act and § 154.94 of the Federal Energy Regulatory Commission's Regulations, notifying the Commission that Panhandle Western Gas Company has changed its name to APX Western Corporation.

Effective January 8, 1988, the corporate name of Panhandle Western Gas Company was changed to APX Western Corporation as evidenced by the Certificate of Amendment of Certificate of Incorporation dated January 6, 1988.

Notice is hereby given that all the certificates and related rate schedules as listed in the attached Exhibit "A" are hereby redesignated to reflect the corporate name change from Panhandle Western Gas Company to APX Western Corporation.

Lois D. Cashell,

Acting Secretary.

EXHIBIT "A".—APX WESTERN CORPORATION

Formerly: Panhandle Western Gas Company, FERC Gas Rate Schedule No. — Now: APX Western Corporation, FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser	State	County/Parish
1	CI 75–311	Panhandle Eastern Pipe Line Company	Colorado	Weld & Adams.
2	CI 78–333	do	Wyoming	Sweetwater
3	CI 78–1035	do	do	Do.
4	CI 78–1036	do	do	Do.
5	CI 78–1037	do	do	Do.
6	CI 78–1044	do	do	Do.
7	CI 78–1045	do	do	Do.
8	CI 78–957	do	do	Do.
9	CI 78–959	do	do	Do.
10	CI 78–958	do	do	Do.
11	CI 78–1107	do	do	Do.
12	CI 78–1127	do	do	Do.
13	CI 79–54	do	do	Do.
14	CI 79–612	do	do	Do.
15	CI 79–632	do	do	Do.

[FR Doc. 88–7102 Filed 3–30–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–5917–001 et al.]

EP Operating Co. (Successor to Enserch Exploration, Inc.); Petition To Amend Certificates and Redesignate Rate Schedules

March 25, 1988.

Take notice that on February 19, 1988, EP Operating Company (EPO), of 1817 Wood Street, Dallas, Texas 75201, filed an application for certificates of public convenience and necessity to render service previously authorized by the Commission under certificates of public convenience and necessity heretofore issued to a company then known as Enserch Exploration, Inc. (old EEI) as listed in the attached appendix and for redesignation of Enserch Exploration, Inc.'s related rate schedules as those of EP Operating Company.

EPO states that on April 26, 1985, old EEI was merged into its parent company, ENSERCH Corporation and on April 30, 1985, ENSERCH Corporation assigned all of the properties subject to the certificates of public convenience and necessity and rate schedules listed in the attached appendix to EPO, a newly-formed limited partnership. According to EPO a new Delaware corporation was formed with the name Enserch Exploration, Inc. to act as Managing General Partner of EPO.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 12, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX—CERTIFICATES AND RATE SCHEDULES TO BE REDESIGNATED

Gas rate schedule No.	Certificate docket No.	Purchaser	Well or field and county
55	G–5917	National Fuel Gas Supply	Sheridan Gas Unit, Colorado Co., TX.
71	C162–972	Northern Natural Gas	Lucy Boston #1, Beaver Co., OK.
79	C167–220	Arkansas Louisiana Gas Co	Johnnie Jones #1–9, Leflore Co., OK.
82	C167–1621	Panhandle Eastern Pipeline	Clay Gore #1, Dewey Co., OK.
84	C166–689	Texas Eastern Transmission	Whelan Field, Harrison Co., TX.
87	G–6304	do	Do
90	C170–326	do	Do
88	C169–1006	Natural Gas Pipeline Co. of America (NGPLA)	High Is. Blk. 129, Offshore, TX.
91 and 92	CP71–90	NGPLA	Buffalo Wallow, Hemphill Co., TX.
95	C172–524	Arkansas Louisiana Gas Co	Dunn B–1, Harrison Co., TX.
98	C171–819	NGPLA	Feshing Field, Atascosa Co., TX.
100	C173–380	United Gas Pipeline Co	Fagan Field, Refugio Co., TX.
101	C173–181	Nicor Supply Inc	Elk City—East Beckham and Washita Cos., OK.
107	C174–492	Arkansas Louisiana Gas Co	Wilburton, So., Latimer Co., OK.
108	C175–50	Northern Natural Gas Co	Sawyer (Canyon), Sutton Co., TX.
109, 110, 111, 112, and 113.	C175–387	NGPLA	S. Warwink, Ward Co., TX.
117	C175–426	Tennessee Gas Pipeline Co	Ship Shoal 154 Fld., Offshore, LA.
118	C175–645	NGPLA	Sawyer (Canyon), Sutton Co., TX.
120	C176–148	NGPLA	Hansford (Morrow), Hansford Co., TX.
121	C176–307	Transwestern Pipeline Co	Higgins, South, Hemphill Co., TX.

APPENDIX—CERTIFICATES AND RATE SCHEDULES TO BE REDESIGNATED—Continued

Gas rate schedule No.	Certificate docket No.	Purchaser	Well or field and county
122	C176-356	NGPLA	Warwink, So., Ward Co., TX.
123	C176-444	Cities Service Gas Co	H.H. Moore 1-27, Woodward Co., OK.
124	C177-128	Transwestern Pipeline Co	Higgins, So., Hemphill Co., TX.
125	C177-198	NGPLA	Bilberry #1, Jack Co., TX.
127	C178-167	NGPLA	High Is. 369/370, Offshore, TX.
129	C178-314	NGPLA	High Is. 327/332, Offshore, TX.
130	C178-315	NGPLA	High Is. 511, Offshore, TX.
131	C178-355	NGPLA	Sawyer (Canyon), Sutton Co., TX.
132	C176-1025	Panhandle Eastern Pipeline	Dilts-Cooke Fed. 1-1, Converse Co., WY.
133	C179-74	NGPLA	Lambirth #1, 3 & 4, Roosevelt Co., NM.
134	C179-231	NGPLA	Bonanza Field, Uintah Co., UT.

[FR Doc. 88-7103 Filed 3-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-80-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 25, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 22, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 52
First Revised Sheet Nos. 53–99
First Revised Sheet No. 400
First Revised Sheet No. 482
First Revised Sheet No. 483
First Revised Sheet Nos. 484–599

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover the take-or-pay charges approved by the FERC to be billed by United Gas Pipe Line Company (United) and paid by Texas Eastern under United's Docket No. RP88–27, plus any subsequent flow-through by either Texas Gas Transmission Corporation or Southern Natural Gas Company to Texas Eastern of a portion of their share of United's take-or-pay charges.

Texas Eastern states that on November 17, 1987, United filed in Docket No. RP88–27 tariff sheets to incorporate a fixed charge, herein called "Fixed Take-or-Pay Charge", designed to recover 50 percent of United's claimed take-or-pay costs from United's jurisdictional customers.

It further states that in an "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Convening Technical Conference, Granting Late Interventions and Waiver, and Establishing Hearing," issued December 31, 1987 in Docket No. RP88–27, 41 FERC ¶ 61,381 (1987), the Commission directed United to refile its tariff sheets to remedy several defects in the November 17, 1987 filing. United made a filing in purported compliance with the Commission's December 31, 1987 order on February 3, 1988. A copy of that filing is included as Attachment A to Texas Eastern's filing in the instant docket, and incorporated by reference therein.

On February 18, it filed a motion to reject United's February 3, 1988 filing on the basis that (1) the total amount of take-or-pay costs claimed by United is improper, (2) United has not allocated take-or-pay costs to non-jurisdictional customers "on the same basis" as to jurisdictional customers as required by the December 31 order, nor on a deficiency basisas required by Order No. 500, and (3) United's allocation methodology improperly ignores the impact of customer's contract demand quantities on incurrence of take-or-pay costs. Nevertheless, Texas Eastern maintains that it must establish promptly the procedures to recover these additional costs charged by United if the Commission permits United to implement these additional charges.

Texas Eastern states that Sheet No. 52 sets forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover United's take-or-pay charges billed to Texas Eastern by United, or flowed through to Texas Eastern by Texas Eastern's other pipeline suppliers. Consistent with the Commission's February 29, 1988 order in *Mississippi River Transmission Corporation,* Docket No. TA88–2–25–000, ——FERC—— (1988), these principal amounts were developed by utilizing the same procedure that United developed in Docket No. RP88–27. In applying United's procedure, Texas Eastern has recognized interruptible purchases of Texas Eastern's customers during the relevant time periods. Workpapers setting forth Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Attachments B and C.

Texas Eastern states that if at any time United is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from United in Docket No. RP88–27.

The proposed effective date of the tariff sheets listed above is April 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before April 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7104 Filed 3–30–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-81-000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

March 25, 1988.

Take notice that Texas Eastern Transmission Corportation (Texas Eastern) on March 24, 1988, tendered for filing the tariff sheets listed in Appendix A as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2.

Texas Eastern states that the tariff sheets set forth (i) the rates, terms and conditions which Texas Eastern desires to have on file with the Commission, as required by 18 CFR 284.7 of the Commission's Regulations, to enable Texas Eastern at its election to render firm and interruptible self-implementing transporation pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) on an "open access" basis as required by Order No. 500 [1] and to render self-implementing transportation pursuant to 18 CFR 284.225 of gas released under the Commission's good faith negotiation procedures set forth in 18 CFR 270.201, and (ii) the proposed rates for Texas Eastern's other existing rate schedules reflecting the allocation to the proposed self-implementing transportation rate schedules of approximately $44.9 million of Texas Eastern's Docket No. RP85–177 settlement cost of service (settlement cost of service).

Texas Eastern submits that the rates and tariff sheets submitted satisfy the Commission's concerns as expressed in its February 8, 1988 Order Clarifying Prior Orders, Rejecting Filed Tariff Sheets, and Granting Motion for Practical Severance.[2]

Texas Eastern states that Sheet Nos. 300 through 315 and 328 through 337 set forth, respectively, the provisions of the new Rate Schedules FT–1 and IT–1 under which it will provide, at its election, self-implementing transportation pursuant to section 311 of the NGPA, or pursuant to 18 CFR 248.10, or 18 CFR 248.225. The FT–1 and IT–1 Form of Service Agreements are set forth on Sheet Nos. 676 and 681A and Sheet Nos. 735 through 742 respectively. Texas Eastern proposes to provide self-implementing transportation on a firm basis under Rate Schedule FT–1 and self-implementing transportation on an interruptible basis under Rate Schedule IT–1.

Texas Eastern also states that it is proposing limited revisions to its General Terms and Conditions necessary in order to reflect the addition of Rate Schedules FT–1 and IT–1, and to render transportation consistent with the requirements of Order No. 500 and the Commission's orders of December 19, 1986, October 15, 1987, and December 31, 1987 in Docket No. RP85–177. Texas Eastern states that while it is waiving the take-or-pay crediting provisions of Order No. 500 until at least June 1, 1988, it reserves the right to file revised tariff sheets to require such take-or-pay crediting offers prior to rendering transportation service under Rate Schedule FT–1 and IT–1 for transportation to be provided on June 1, 1988 or any date thereafter.

Texas Eastern states that the rates which it proposes to charge for service udner the new self-implementing transportation rate schedules set forth on Sheet No. 51 are based upon the settlement cost of service approved by the Commission in Docket No. RP85–177 by order dated February 8, 1988, which settlement allocated approximately $19,106,859 to be recovered pursuant to self-implementing transportation rate schedules. In the instant filing, Texas Eastern proposes to allocate an additional $25,839,547 of its settlement cost of service to the proposed self-implementing transportation rate schedules. In order to reflect the reduction in the settlement cost of service allocated to existing rate schedules, Texas Eastern proposes the rates shown on Sheet No. 50 of Fifth Revised Volume No. 1 and the Original Volume No. 2 tariff sheets included in the filing.

Texas Eastern states that upon issuance of the Commission's order establishing an effective date for Rate Schedule FT–1 and IT–1, on terms and conditions acceptable to Texas Eastern, it will notify all parties of record in this proceeding by telegram (Transportation Availability Notice) whether such order is acceptable to Texas Eastern and whether it is accepting requests for section 311 transportation. It further states that requests received prior to the first busiess day following the issuance of the Transportation Avialability Notice will not be processed and will be deemed moot. All requests for section 311 transportation received by Texas Eastern within five business days of the issuance of the Transportation Availability Notice shall, if the request is found to be complete and in compliance with the applicable tariff provisions, be deemed to have the same "first-come/first-served" priority of service as any other valid transportation request received in said five-day time period. Texas Eastern states all requests should be mailed to:

Texas Eastern Transportation
Corporation, Attention: R.E. Davis,
Vice President, Transportation
Service, RE: Self-Implementing
Transportation Request Form, 1331
Lamar, 4 Houston Center, P.O. Box
2521, Houston, Texas 77252.

Texas Eastern states that for the convenience of shippers, standardized request forms are available from Texas Eastern but that use of the standardized request form is not required by the tariff.

Texas Eastern requests the Commission to waive all necessary rules and regulations to permit the tariff sheets to become effective as of March 30, 1988. In particular, Texas Eastern requests that the Commission issue an order accepting these tariff sheets, with an effective date of March 30, 1988 on or before March 30, 1988.[3]

Copies of the filing have been served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern is also serving by overnight mail all prior shippers under Texas Eastern's Rate Schedule TS–3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before April 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

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[1] Texas Eastern states that the filing is predicated upon its understanding that it is permitted pursuant to Commission policy and regulation to commence open-access transportation pursuant to section 311 of the NGPA and to cease such transportation without further Commission approval, and that the conversion rights pursuant to 18 CFR 284.10 may be exercised only during the period in which Texas Eastern is performing section 311 transportation.

[2] 42 FERC 61,174 (1988).

[3] Texas Eastern states that if Commission approval is obtained after March 30, 1988, it will nevertheless deem all requests for transportation received within five business days of the Transportation Availability Notice issued following such Commission approval as having the same "first-come/first-served" priority.

Lois D. Cashell,
Acting Secretary.

Appendix A

Fifth Revised Volume No. 1

First Revised Sheet No. 1
Third Revised Sheet No. 50
Third Revised Sheet No. 50A
Third Revised Sheet No. 50B
Third Revised Sheet No. 50C
Third Revised Sheet No. 50D
Second Revised Sheet No. 51
Original Sheet No. 51A
Original Sheet No. 51B
Original Sheet No. 51C
Original Sheet No. 51D
First Revised Sheet No. 114
First Revised Sheet No. 300–316
First Revised Sheet Nos.. 326–337
First Revised Sheet Nos. 401–405
First Revised Sheet No. 421
First Revised Sheet No. 439
First Revised Sheet Nos. 442–443
First Revised Sheet Nos. 460–464
Second Revised Sheet Nos. 463–464
First Revised Sheet Nos. 466–467
First Revised Sheet No. 474
First Revised Sheet No. 600
First Revised Sheet Nos. 676–681
Original Revised Sheet No. 681A
First Revised Sheet Nos. 735–761

Original Volume No. 2

Thirtieth Revised Sheet No. 235
Twenty-second Revised Sheet No. 241
Thirtieth Revised Sheet No. 322
Ninth Revised Sheet No. 688
Seventh Revised Sheet No. 970
Seventh Revised Sheet No. 971
Eighth Revised Sheet No. 1017
Eighth Revised Sheet No. 1018
Fourth Revised Sheet No. 1274.

[FR Doc. 88–7105 Filed 3–30–88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3357-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Information Requirements for 404 State Permit Applications. (EPA ICR #020)

Abstract: Application Information Requirements are necessary to obtain sufficient information to determine if proposed discharges are in compliance with the 404(b)(1) Guidelines and, thus, may be permitted under the Clean Water Act.

Respondents: Private citizens, businesses, and State Governments.

Estimated Burden: 59,700 hours.

Frequency of Collection: On occasion.

Title: Prenotification Prior to Discharge or Reporting Pursuant to General Permit. (EPA ICR #1108)

Abstract: In certain circumstances, the State may require prenotification or reporting of activities conducted under a general permit. This advance notice or reporting is used to evaluate the individual and cumulative impacts of the general permit and can be used to modify ro revoke a general permit.

Respondents: Private citizens, businesses, and State Governments.

Estimated Burden: 1,000 hours.

Frequency of Collection: On occasion.

Title: Transmission of Information to Federal Agencies. (EPA ICR #1109)

Abstract: Section 404 of the Clean Water Act provides for Federal review of applications for State wetlands permits. The State will transmit the application information to EPA for transmission to the other Federal review agencies. EPA will evaluate all Federal comments and forward official Federal recommendations/objections to the State.

Respondents: Private citizens, businesses, and State Governments.

Estimated Burden: 2,500 hours.

Frequency of Collection: On occasion.

Title: 404 State Program Annual Report. (EPA ICR #1168)

Abstract: The State will annually review the administration of its approved 404 program. This review will include basic permit data, including number of applications received, issued, modified, or denied: assessment of cumulative impacts of the program and identification of problems encountered and recommendations for their resolution.

Respondents: Private citizens, businesses, and State Governments.

Estimated Burden: 2,000 hours.

Frequency of Collection: Annually.

Comments on the ICRs should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: March 23, 1988.

Odelia Funke,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–7068 Filed 3–30–88; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-140093; FRL-3357-9]

Access to Confidential Business Information by Arthur D. Little, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Arthur D. Little, Inc., (ADL) of Cambridge, MA for access to information which has been submitted to EPA under sections 5 and 6 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street, SW., Washington, DC 20460 (202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract number 68–03–3293, EPA's contractor ADL, 25 Acorn park, Cambridge, MA will assist the Office of Research and Development, (ORD), in developing, evaluating and improving standards for the development and production of chemical protective clothing and equipment. ADL will also assist in generating procedures to enhance the safety and cost-efficiency of working conditions.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–03–3293 contractor ADL will require access to CBI submitted to EPA under sections 5 and 6 of TSCA to perform successfully the duties specified as a contractor.

Clearance for access by ADL to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

EPA is issuing this notice to inform all submitters of information under sections 5 and 6 of TSCA that EPA may provide ADL access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

ADL personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures, and must pass a test on those security procedures before they are permitted access to TSCA CBI.

Dated: March 23, 1988.

Charles L. Elkins,
Director, Office of Toxic Substances.

[FR Doc. 88–7070 Filed 3–30–88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Implementation Subcommittee of the FCC Advisory Committee on Advanced Television Service; Meeting

The second meeting of the Implementation Subcommittee of the FCC Advisory Committee on Advanced Television Service will be held on April 25, 1988, in the Commission Meeting Room (Room 856) at 1919 M Street NW., Washington, DC, beginning at 1:00 p.m. All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

The agenda for the second meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1—Policy and Regulation
4. Report of Working Party 2—Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

Any questions regarding this meeting should be directed to Implementations Subcommittee Chairman Dr. James J. Tietjen, (609) 734–2237, or Mr. David Siddal, (202) 632–7792.

Federal Communications Commission.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88–7017 Filed 3–30–88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88–97]

Applications for Consolidated Hearing; Don H. Barden et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Don H. Barden; Vassar, MI.	BPH-860507MG	88–97
B. Julie G. Wrenn; Vassar, MI.	BPH-860507MH	
C. Michael Joseph Shumpert; Vassar, MI.	BPH-860507MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized as is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below applicant.

Issue Heading	Applicants
1. Air Hazard	A, B.
2. Comparative	All Applicants.
3. Ultimate	All Applicants.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Apendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal busiess hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7018 Filed 3–30–88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 88–91]

Applications for Consolidated Hearing; JBD, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. JBD Incorporated; Harrogate, TN.	BPH-851114MG	88–91
B. Donald Lee Miracle and Verlan Lee Gray; Harrogate, TN.	BPH-851115MO	
C. Linda F. McCulley; Harrogate, TN.	BPH-851115NF	
D. New South Communications, Ltd.; Harrogate, TN.	BPH-851115MM (Dismissed Herein).	
E. Harrogate Broadcast Group, Inc.; Harrogate, TN.	BPH-85111MN (Previously Dismissed).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicants
1. Comparative	A, B, C
2. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor,

International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7019 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–94]

Applications For Consolidated Proceeding; David O'Connor et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. David O'Connor; Fredonia, New York.	BPH-851114ME	88–94
B. Chautauqua Communications Corporation, Inc.; Fredonia, New York.	BPH-851114MF	
C. Catoctin Broadcasting Corporation; Fredonia, New York.	BPH-851115MG	
D. Hector Rivera & Vincent T. Ridikas d/b/a Chautauqua Radio Limited Partnership; Fredonia, New York.	BPH-851115MH	
E. Lake Shore Broadcasting Company, Inc.; Fredonia, New York.	BPH-851115MI	
F. Robert M. Bennett; Fredonia, New York.	BPH-851115MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Misrepresentation, C
2. Contingent Misrepresentation, C
3. Air Hazard, E
4. Comparative, All
5. Ultimate, All

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7020 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–93]

Applications For Consolidated Hearing; Old Eureka Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Old Eureka Broadcasting, Inc.; Lakeville, MN.	BPH-860314MH	88–93
B. Gayle M. Gjovik; Lakeville, MN.	BPH-860317MN	
C. Lakeville Broadcasting Foundation; Lakeville, MN.	BPH-860317MO	
D. Lakeville Broadcasting, Inc.; Lakeville, MN.	BPH-860317MP	
E. Family Stations, Inc.; Lakeville, MN.	BPH-860317MQ	
F. Southern Twin Cities Area Radio, Inc.; Lakeville, MN.	BPH-860317ML (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated preceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, B,C
2. Comparative, A-E
3. Ultimate A-E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7021 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–100]

Applications For Consolidated Proceeding; Sierra Shingle Springs Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Sierra-Shingle Springs Broadcasting; Shingle Springs, CA.	BPH-860926MC	88–100
B. Donna M. Crosson; Shingle Springs, CA.	BPH-860929MA	
C. Chris W. Kidd and James O'Brien d/b/a Kidd Broadcasting Company; Shingle Springs, CA.	BPH-860929MG	
D. Leo Kesselman; Shingle Springs, CA.	BPH-860929MH	
E. Robert Simpson; Shingle Springs, CA.	BPH-860929MI	
F. Los Banos Broadcasting; Shingle Springs, CA.	BPH-860929MJ	
G. Lobster Communications Corporation; Shingle Springs, CA.	BPH-860929MK	
H. Tours Broadcasting Company; Shingle Springs, CA.	BPH-860930MC (Previously Dismissed).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, All
2. Ultimate, All

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW, Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7022 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–98]

Applications for Consolidated Hearing; Wiregrass Educational Radio, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Wiregrass Educational Radio, Inc.; Dothan, AL.	BPED-860606ML	88–98
B. James Smith Ministries; Dothan, AL.	BPED-861031ME	
C. Bethany Bible College & Bethany Theological Seminary, Inc.; Dothan, AL.	BPED-861229MH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), B
2. Air Hazard, A, C
3. Comparative-Noncommercial Educational FM, All
4. Ultimate, All

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

To determine: (a) Whether B (Smith) complies with the licensing requirements and service provisions of 47 CFR 73.503 of the Rules, and (b), in light of the evidence adduced pursuant to the foregoing issue, whether B (Smith) is qualified to construct and operate the requested facilities as proposed.

[FR Doc. 88–7023 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–92]

Applications For Consolidated Hearing; William L. Zawila et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, City, and State	File No.	MM Docket No.
A. William L. Zawila; Templeton, CA.	BP-851126AF	88–92
B. Garry &Virginia Infante Brill; Templeton, CA.	BP-860627AD	
C. Marlene V. Bormen; Lake Isabella, CA.	BP-860724AE	
D. Jerry J. Collins; Atascadero, CA.	BP-860218AJ (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Site Availability, A
2. Blanketing (§ 73.24)(g), A,B
3. 307(b), A,B,C
4. Contingent Comparative, A,B,C
5. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7024 Filed 3–30–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224–200078–001.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration, Clark Maryland Terminals, Inc.

Synopsis: The proposed agreement will provide a special credit to Orient Overseas Container Line, Inc. (OOCL) of $50 per container for containers loaded/unloaded from OOCL oceangoing vessels and drayed to/from Conrail or CSX facilities in Baltimore. The credit applies only to containers moving between Baltimore and the inland points of Chicago, Louisville, or Detroit.

Agreement No. 224–200103.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), A/S Ivarans Rederi.

Synopsis: The proposed agreement provides that GPA will provide container handling services at Savannah, Georgia for A/S Ivarans Rederi at a consolidated rate of $123.00 per container.

Agreement No. 224–010968–001.

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA), Hapag-Lloyd Ag/Atlantic Division.

Synopsis: The proposed agreement amends the basic agreement to reflect MPA discounts of billings for port charges by $50.00 per container for loaded containers moved by Hapag-Lloyd into and out of the Port of Baltimore (the Port) and drayed to either the CSX or CONRAIL railheads in Baltimore. The discount is restricted to containers moving in either direction by rail between the Port and Louisville, Kentucky; Chicago, Illinois or Detroit, Michigan.

By Order of the Federal Maritime Commission.

Dated: March 28, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–7036 Filed 3–30–88; 8:45 am]

BILLING CODE 6730-01-M

Inquiry Into Laws, Regulations and Policies of the Republic of Korea Affecting Shipping in the United States/Korea Trade

March 28, 1988.

By service of an order pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714, ("Sectionf 15 Order") on April 14, 1987, the Federal Maritime Commission ("Commission" or "FMC") initiated an inquiry into the existence and impact of laws, regulations and rules of the Government of the Republic of Korea ("ROK") affecting the ancillary maritime activities carried on in the ROK by common carriers serving the U.S. foreign trade with Korea ("Trade"). The Commission here reports on the information it has received in response to its section 15 Order and requests further comments and data from interested parties.

Background

In its section 15 Order, the Commission noted its responsibilities pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, ("Section 19") to act in response to unfavorable conditions affecting shipping in the U.S. foreign trades. The Commission expressed its concern that laws, regulations or rules, as well as policies or interpretations by administrative authorities, which prevent U.S.-flag and other non-ROK-flag carriers from establishing, owning or operating ancillary maritime activities in the manner they believe to be most efficient for their Trade operations unfairly burden these carriers and may result in conditions unfavorable to shipping within the meaning of section 19. In order to inform itself as to the existence and actual impact of such laws, rules, regulations and policies, the Commission requested each of the non-ROK-flag carriers serving the Trade to respond to a series of questions concerning ROK laws, regulations, administrative interpretations and policies affecting specific areas of shore-side shipping operations, as well as the possibly discriminatory impact of laws and regulations dealing generally with taxation of shipping revenue, immigration and business operations.

There appeared to be a number of ROK-generated obstacles to the carriers' efficient operation of container services in the ROK. The major problems which appeared to exist were organizational restrictions on the carriers which require operation through a Korean-owned general agent and prevent non-ROK-flag carriers from performing their own sales, marketing, contracting, warehousing, trucking and equipment maintenance and repair functions; the "waiver" system of cargo preference for ROK-flag carriers;[1] and restrictions which prevent ownership and operation of terminal facilities by non-ROK-flag carriers. Attempts to form an organization, the "Korean Foreign Steamship Owners Association," through which to express the collective views of non-ROK-flag carriers to the ROK Government had also been unsuccessful due to the refusal of the Korean Maritime Port Administration ("KMPA") to register its charter.

The Department of State ("DOS") and the Department of Transportation ("DOT") also were requested to provide the Commission with information regarding their past and current talks with the ROK Government on these maritime issues. At the same time that information was sought from carriers operating in the Trade through the section 15 Order, the views of other interested persons were solicited through a Notice Published in the Federal Register (52 FR 13520, April 23, 1987).

Discussions between the U.S. and the ROK government representatives on shipping matters were held on May 6–7, 1987. The U.S. delegation led by Administrator John Gaughan of the Maritime Administration ("MARAD") met with an ROK delegation chaired by KMPA Deputy Administrator Hahn Tae-Youl. The Agreed Minutes of those talks reflect a commitment by the ROK Government to revise the necessary laws and regulations to permit the operation within Korea of branch offices of U.S.-flag carriers which may conduct direct business activities, including cargo booking, marketing, negotiation and contracting for warehousing and railroad services. These authorizing revisions were to be effected by January 1, 1988, or "at the earliest possible date in 1988" based upon the utmost effort of the ROK Government. The Agreed Minutes reflected no progress with respect to ROK prohibition of foreign participation in trucking operations within Korea. The ROK did, however, agree to remove all discrimination against U.S.-flag carriers in the operation of container terminals, berthing terms and CFS facilities. Agreement to permit the formation of a foreign carriers' association was also reached in these meetings.

These developments were reported to the Commission by then Deputy Secretary of Transportation Jim Burnley and Deputy Assistant Secretary of State Jeffrey N. Shane in their responses to letters from former FMC Chairman Edward V. Hickey, Jr. requesting information.

Responses to the Section 15 Order

All of the carriers served with the section 15 Order responded to it. The only comment received in response to the Federal Register Notice was from the members of the U.S. Flag Far East Discussion Agreement, FMC No. 203–010050 ("Agreement No. 10050").

Responses to the Section 15 Order collectively detail the various laws, rules and regulations which govern the carriers' operations in the ROK. Less information is provided regarding the impact of these enactments on the manner in which the various carriers

might otherwise wish to operate in Korea, or the effect on shipping generally in the Trade.

Most of the carriers who responded evinced little interest in conducting the shoreside maritime activities into which the Commission inquired and provided little or no information concerning the specific legislation, regulations or agencies which govern such activities. Detailed and informative responses, however, were received from a few of the carriers. English language copies of most of the relevant enactments have been provided by one carrier or another.

A complex pattern of legislation, regulations and administrative agency oversight affecting the transaction of maritime-related business activities in the ROK emerges upon analysis of the carriers' responses. Some 10 laws and 6 sets of implementing decrees have been identified. The laws, regulations and administrative responsibilities which most affect ancillary maritime operations in the ROK are summarized below.

The Road Carriage Vehicles Act (1962, as amended) reportedly requires the registration of motor vehicles with the ROK Ministry of Transportation ("MOT") and prohibits operation of a vehicle unless it is registered. Article 4 of that Act is said to require that registration be withheld for any vehicle intended for business use unless the business is registered under the Automobile Transportation Business Act. The Automobile Transportation Business Act (1961, as amended), regulates the carriage of cargo by motor vehicle within Korea. Article 4 of that Act reportedly requires that such business must be licensed and registered with the MOT.

The Foreign Capital Inducement Act (1983, as amended), governs the investment in or acquisition of an equity interest in any business by a non-ROK national or company. Article 7 of that Act permits foreign investment except when it equals or exceeds a 50 percent interest or when it is in a project in which foreign investment is "restricted." Projects in which foreign investment is restricted are to be identified and notice of them published by the Minister of Finance ("MOF") in consultation with the competent minister for the industry affected. Foreign investment in such projects may nevertheless be granted upon request under such conditions as the MOF deems necessary. Article 9 prohibits foreign investments in projects to be carried out by the nation or public entities.

Guidelines For Foreign Investment, Ministry of Finance Notification 87–6), (April 6, 1987), contains guidelines for Government approval of foreign investment issued pursuant to Article 3 of the Foreign Capital Inducement Act. The Guidelines constitute the so-called "negative list" of projects in which foreign investment is restricted pursuant to Article 7 of the Foreign Capitol Inducement Act or prohibited pursuant to Article 9. The transportation enterprises on the list of prohibited projects, listed with the "relevant ministry," include port operation (KMPA). The far more extensive list of restricted projects includes: freight transport, regularly scheduled (MOT); special freight transport, non-regularly scheduled (MOT); general local freight transport (MOT); local general cargo pick-up delivery transport (MOT); freight transport by road, N.E.C. (MOT); freight terminal services (MOT); land stevedoring (MOT); supporting services to land transport, N.E.C. (MOT); freight forwarding (MOT/KMPA); freight brokerage (MOT/KMPA); and services incidental to transport, N.E.C. (KMPA).

The Maritime Transportation Business Act, (1983, as amended), regulates the maritime transportation business including freight forwarding, shipping agency, vessel chartering, maritime cargo and passenger transportation, vessel managing and maritime cargo brokering. Enterprises engaging in such businesses must be licensed by the KMPA. Article 35 of that Act specifies as one of the conditions for registration of a business to conduct freight forwarding, vessel management, vessel chartering, shipping agency or maritime cargo brokering, that the equity be entirely Korean owned, except that foreign investment in a vessel chartering enterprise is permitted but may not exceed 49 percent.

The Maritime Transportion Industry Fostering Act, (1967, as amended), requires the annual establishment of a plan for fostering the maritime transportation industry. Article 16 of that Act requires that "designated cargoes" (to be designated by Presidential Decree) move on ROK-flag vessels. Under the Maritime Transportation Industry Fostering Act Enforcement Decree and Enforcement Regulations, goods designated in the Decree may reportedly move only on ROK-flag vessel unless freight exceeds 110 percent of the low bid for such movements. KMPA is authorized to "designate" additional categories of goods. Designated cargoes reportedly include imports of crude oil; raw materials for the manufacture of steel and chemicals; fertilizer; grain; coal; refrigerated cargoes for agricultural, fish or dairy associations; LNG; and government cargoes. Designated export cargoes reportedly include cement and steel products. KMPA Notice No. 85–15, *Operating Guidelines for Regulations for Adjustment of Cargo Carriage by Korean Flag Vessels* (March, 1985), establishes procedures for compliance with the Maritime Transportation Industry Fostering Act and Enforcement Decree and regulations thereunder, including provision for obtaining waivers through the Korean Shipowners Association for the carriage of designated cargoes when no ROK-flag vessels serve the area or are available.

The Harbor Act (1967) reportedly requires that port facilities be ROK Government owned. There is apparently also a Harbor Transportation Business Act whose content and effect were not further identified in the responses.

The Alien Land Acquisition Act, (1961, as amended), states that acquisition of land by non-ROK nationals or companies must be approved in advance by the Minister of Home Affairs. Approval may be denied or conditioned as necessary for reasons of national defense, industry or other public purpose. Article I of the Alien Land Acquisition Act Enforcement Decree, (1970, as amended), reportedly requires the Ministry of Home Affairs to expedite approval of land purchases by business enterprises approved by the MOF under the Foreign Capital Inducement Act.

The Customs Act, Section 3: Licensed Bonded Areas, regulates the establishement and requires licensing of bonded storage areas for goods to be subjected to customs clearance procedures, and bonded warehouses for storage of foreign goods. The Customs Act requires that one wishing to transport goods from one bonded area to another must be licensed to do so by the customs collector and must file a manifest for each such movement. Article 3 of the Storage Business Act reportedly requires a license to operate a container terminal for which application must be made to the KMPA.

The Foreign Exchange Control Act, (1961, as amended), requires that contracts for services between non-ROK nationals and ROK nationals be approved in advance by the MOF. Article 21 of that Act requires that remittance of currency out of Korea must be in conformity with MOF regulations. Foreign Exchange Control Act Enforcement Decree, Article 33, also requires that contracts for services between foreigners and ROK nationals be approved in advance by the MOF. Ministry of Finance Regulations under the Foreign Exchange Control Act reportedly require at Articles 16–1 and

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[1] Navios Management, Inc., d/b/a Pacific America Line (PACAM), a carrier by water in the Trade, has filed a petition under section 19 alleging that conditions unfavorable to shipping have been created by the waiver system of cargo preference for ROK-flag carriers with respect to the carriage of steel products. By Notice of Filing of Petition published in the Federal Register on March 16, 1988, 53 FR 8687, the Commission requested interested persons to file comments, views and data on the petition within 30 days. This petition, and the waiver system to which it relates, will be treated as a separate matter from this inquiry.

16-6 that the establishment of a branch office in Korea by a foreign enterprise must be reported in advance to the Bank of Korea if the branch office will remit profits out of Korea.

Discussion

The responses to the Section 15 Order thus detail an interlocking fabric of enactments that, by preserving certain business opportunities in the ROK for Korean nationals, may effectively handicap non-Korean international shipping lines in their competition with ROK-flag carriers. For example, regulation of the trucking industry appears to be contained in the Automobile Transportation Business Act and the Road Carriage Vehicles Act. The latter requires that any vehcile to be used for the business of cargo transportation be registered with the Ministry of Transportation, which will not register any such vehicle if the business enterprise itself has not been registered and approved under the Automobile Transporation Business Act. Neither of these Acts prohibits foreign nationals or companies from entering the business. However, another statute, the Foreign Capital Inducement Act, regulates the degree to which foreign nationals and companies may engage in economic activity within Korea. This Act authorizes the Ministry of Finance in conjunction with other appropriate concerned government authorities, to identify and give public notice of business activities in which foreign investment is "restricted".[2] Foreign investment in the businesses listed apparently is limited to participation under criteria which may be promulgated by MOF for some industries in consultation with other authorities, and then only with prior MOF approval.

All forms of cargo transportation by motor vehicle are on the list published by the MOF, and the MOT is shown as the concerned ROK Government authority. As a practical matter, several carriers report, no foreign participation in businesses reflected on the "restricted" or "negative" list has ever been permitted. It appears, therefore, that non-ROK-flag carriers cannot own or operate trucking services to provide pick-up and delivery of cargo within Korea, or to dray loaded containers to and from the docks. One further apparent result of this fabric of laws, decrees, and administrative interpretations is that U.S. carrier-owned container chassis cannot be registered in the carriers' names, but must be transferred in some fashion to the Korean-owned trucking companies with whom they must contract for trucking services.

The ways in which the various enactments may hamper and restrict those non-ROK-flag carriers who wish to carry on their own ancillary maritime activities and are willing to make the significant investment necessary for such operations are discernible. Although, as is also clear from the responses, most of the carriers operating in the Trade do not envision undertaking such operations and do not desire to make such investments, the U.S.-flag carriers are among those few who do.[3]

While the responses reflect the discriminations practiced, they are far less detailed or informative as to any detrimental impacts these practices visit on U.S. interests protected by Section 19. The responses contain little quantitative information regarding the costs to the carriers of operating under the constraints imposed by these enactments rather than their preferred manner of operations, such as, for example, the costs of using Korean agents as opposed to the costs of these operations performed in-house in other countries. Nor did the Commission's **Federal Register** Notice elicit *any* response from shippers who believed themselves disadvantaged by the non-ROK-flag carriers' inability to provide these services. Nevertheless, the record thus far compiled by the Commission with respect to the laws and practices of the ROK suggests that conditions unfavorable to shipping exist in the Trade.

It should, however, be noted that in May 1987, the ROK undertook to make changes in these laws and practices which could significantly affect and apparently resolve at least some of these conditions. As reflected in the Agreed Minutes of the May talks, the ROK side agreed to permit the establishment of branch offices by U.S.-flag carriers in Korea to act as full-service shipping agencies, which may directly engage in sales, marketing, contracting, negotiations with railroads and trucking firms and contracting for warehousing. These measures, including legislative changes, were to become effective January 1, 1988 or "at the earliest possible date in 1988." The ROK also agreed to end all discriminatory practices concerning the use of container yards and CFS facilities and berthing rights at Pusan.[4] Approval of the Korean Foreign Steamship Owners Association (to be named the "Association of Foreign Shipowners Representatives") was agreed to by the ROK.

Although the participation of U.S.-flag carriers in inland trucking operations and the ownership of container terminals by U.S.-flag carriers were also discussed, no progress was made on these issues.

The timing of changes to be undertaken following the May 1987 talks appears to have suffered some slippage. These issues were most recently addressed in talks held in November 1987 in Seoul, by a U.S. delegation representing the Departments of State and Transportation and representatives of the ROK. In a recent letter to inform the Commission of the results of these talks, Maritime Administrator Gaughan reported that legislative action and implementing regulations to be undertaken by the ROK Government to permit U.S. flag carriers to open and operate branch offices could be expected by June 30, 1988.

The Commission is heartened by the progress which has been made with respect to the equal treatment of U.S.-flag and ROK-flag carriers in the use of container yards and other port facilities at Pusan, and expects that further progress will emerge as a result of legislative and regulatory changes which the ROK Government has committed itself to make. Nevetheless, the Commission continues to be concerned with practices and activities of the ROK affecting ancillary maritime activities in the Trade, particularly with respect to the trucking of containers. We are also concerned that some uncertainty appears to exist as to the precise nature and extent of the activities which having branch office status will permit U.S.-flag carriers to undertake. These issues will, no doubt, be clarified once the legislative changes contemplated by the ROK Government are in place.

Intergovernmental consultations are again scheduled to take place when a delegation representing the U.S. Departments of Transportation/MARAD and State visit Korea next month. It is hoped that further progress on the outstanding issues will be made, and that at least some clarification of the

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[2] The Foreign Capital Inducement Act also prohibits foreign investment in activities to be undertaken by the ROK. Another enactment, the Harbor Act, apparently reserves for national or local governments the authority to build or operate piers and harbors. The concerned ROK authority, KMPA, interprets this to include on-dock CY/CFS facilities, thus precluding foreign-flag carriers from providing these services.

[3] However, this is not to say that other major operators would not take advantage of, and benefit competitively from, liberalization of these restrictive practices.

[4] These measures were completed by the ROK effective on February 1, 1988.

status of non-ROK carriers to be expected from the proposed legislative actions will be clarified in these discussions. The Commission has communicated these concerns by a letter to Maritime Administrator Gaughan, and has requested early notification of the outcome of these meetings.

While the Commission has decided not to initiate action pursuant to section 19 at this time, based on the ROK's commitments and the progress on some of these issues which has been realized or is expected, the Commission will reassess the need for such action later this year after the ROK Government has had the opportunity to fully act on its May 1987 commitments. To assist the Commission in this inquiry, interested parties, including those carriers affected by the relevant ROK laws, rules and policies, are requested to submit information, comments and data concerning the current status and effects of ROK laws, rules and policies on the operations of international ocean carriers in the ROK on or before July 15, 1988.

By the Commission.[5]

Joseph C. Polking,

Secretary.

Dissenting Opinion of Commissioner Ivancie

The response to the section 15 order reveals some progress in the areas of concern to the Commission. It appears that the issue relating to the formation of a foreign shipowners' association seems to have been favorably resolved. Similarly, information in the record seems to indicate that some of the preferential treatment afforded to Korean-flag carriers in their use of container yards, terminals and container freight stations has been ended. In addition, the intergovernment consulations between representatives of both countries seem to indicate a willingness on Korea's part to try to accommodate most of the Commission's concerns.

However, in spite of these developments, many important areas of concern to the Commission remain unresolved. Non-ROK nationals cannot own or operate trucking services to provide short-haul services in Korea. Non-ROK nationals cannot register their chassis in their names but must, instead, transfer this equipment to Korean-owned trucking companies. In addition, non-ROK nationals cannot operate their own branch offices in Korea. Instead they must appoint a Korean-national "general agent". Clearly, these restrictions seem to impose unfair and discriminatory restrictions on non-Korean nationals that, in my view, constitute conditions unfair to shipping within the meaning of section 19 of the Merchant Marine Act of 1920.

Since the responses to the Commission's inquiry seem to reveal that conditions unfavorable to shipping exist in the Trade, I would have authorized the initiation of a notice of proposed rulemaking pursuant to section 19 of the Merchant Marine Act of 1920 against the unfair shipping practices that exist in Korea with respect to Korea's restrictions in relation to (1) the operation of branch offices, (2) short-haul trucking, and (3) equipment registration issues.

[FR Doc. 88-7111 Filed 3-30-88; 8:45 am]

BILLING CODE 6730-01-M

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[5] Commissioner Ivancie's dissenting opinion is attached.

FEDERAL RESERVE SYSTEM

Affiliated Banc Corp. et. al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 21, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Affiliated Banc Corporation,* Holyoke, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Vanguard Savings Bank, Holyoke, Massachusetts.
2. *Citizens Financial Group, Inc.,* Providence, Rhode Island; to acquire 100 percent of the voting shares of Citizens Savings Bank, Providence, Rhode Island.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community First Financial, Inc.,* Maysville, Kentucky; to acquire 66.70 percent of the voting shares of The Citizens National Bank, Ripley, Ohio.
2. *Farmmerc, Inc.,* Caldwell, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers and Merchants Bank, Caldwell, Ohio.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Delmar Bancorp,* Delmar, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Delmar, Delmar, Maryland.
2. *Golden Bancorp, Inc.,* Milton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Commercial Bank of Bluefield, Bluefield, West Virginia. Comments on this application must be received by April 15, 1988.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Ready Bancorp, Inc.,* Hialeah, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Ready State Bank, Hialeah, Florida.

E. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire 100 percent of the voting shares of Grand Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Grand Bank R.L. Thornton at Grand, Dallas, Texas; Grand Bank, N.A., Dallas, Texas; and Grand Bank Northeast, Dallas, Texas.
2. *First Peoria Corp.,* Peoria, Illinois; to acquire 100 percent of the voting shares of Farmers State Bank of Benson, Benson, Illinois.
3. *Midwest Financial Group, Inc.,* Peoria, Illinois; to acquire 100 percent of the voting shares of First Morton Bancorp, Inc., Morton, Illinois, and thereby indirectly acquire First National Bank of Morton, Morton, Illinois.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice

BEST COPY AVAILABLE

President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Junction City Bancshares, Inc.*, Junction City, Kansas; to become a bank holding company by acquiring 86.68 percent of the voting shares of Junction City First National Company, Junction City, Kansas, and thereby indirectly acquire The First National Bank & Trust Company of Junction City, Junction City, Kansas.

G. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gustine-DeLeon Bancshares, Inc.*, Gustine, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First State Bank, Gustine, Texas.

Board of Governors of the Federal Reserve System, March 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6980 Filed 3-30-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the Offices of the Board of Governors. Comments must be received not later than April 15, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Donald C. Bauerle, Sr.*, Cashiers, North Carolina; to acquire up to 19.9 percent of the voting shares of Carolina Mountain Holding Company, Highlands, North Carolina, and thereby indirectly acquire Carolina Mountain Bank, Highlands, North Carolina.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Guy R. Mosely*, Camden, Arkansas; to acquire an additional 3 percent of the voting shares of Montgomery County Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire The Bank of Montgomery County, Mount Ida, Arkansas, and First National Bank of Mena, Mena, Arkansas.

Board of Governors of the Federal Reserve System, March 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6981 Filed 3-30-88; 8:45 am]

BILLING CODE 6210-01-M

Key Centurion Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any qustions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 21, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Centurion Bancshares, Inc.*, to acquire Reliable Mortgage Company, Charleston, West Virginia, and thereby engage in making mortgage loans for the Company's account and selling such loans and the servicing functions therefor to other entities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

2. *MNC Financial, Inc.*, Baltimore, Maryland; to acquire Applewood U.S. Industrial Bank, Golden, Colorado; Aurora U.S. Industrial Bank, Aurora, Colorado; Boulder U.S. Industrial Bank, Boulder, Colorado; Colorado Springs U.S. Industrial Bank, Colorado Springs, Colorado; Fort Collins U.S. Industrial Bank, Fort Collins, Colorado; Littleton U.S. Industrial Bank, Littleton Colorado; Pueblo U.S. Industrial Bank, Pueblo, Colorado; and Thornton U.S. Industrial Bank, Thornton, Colorado; and thereby operate as an industrial bank in the manner authorized by Colorado law. The industrial banks will not both accept demand deposits and make commercial loans, including but not limited to secured and unsecured consumer and business-purpose lending, including second mortgages and servicing loans; acceptance of savings deposits (i.e. passbook, IRA) and issuance of certificates of deposits (i.e. money market, investment); secured and unsecured open-end lending without overdraft credit lines; sales of travelers checks and money orders, engaging in the sale as agent or broker of credit life, credit disability, credit accident and health insurance pursuant to § 225.25 (b)(1), (b)(2), (b)(8) and (b)(12) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire RE Services, Inc., and thereby engage in making and servicing loans by a mortgage company pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y and expand the geographic scope to a nationwide basis.

Board of Governors of the Federal Reserve System, March 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-6982 Filed 3-30-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on March 3, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7025 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-01-M

Radiopharmaceutical Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Radiopharmaceutical Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on February 28, 1990, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 25, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7026 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88D-0060]

Requests for Portions of Intermediate or End Product Resulting From FDA Sample Analysis; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7150.18 (the Guide). The Guide advises that a portion of an intermediate or end product resulting from an FDA sample analysis will not be provided to persons outside the agency.

ADDRESS: A copy of Compliance Policy Guide 7150.18 is available for public examination at, and written requests for a single copy of the Guide may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Mischelle B. Ledet, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1500.

SUPPLEMENTARY INFORMATION: FDA has prepared the Guide to advise that a portion of an intermediate or end product resulting from an FDA sample analysis will not be provided to persons outside the agency. Exception to this policy may be considered when the agency determines that providing a portion of an intermediate or end product from an FDA sample analysis to a person outside the agency would help resolve a serious public health matter or would otherwise benefit the public well-being.

Requests for single copies of the Guide should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

This notice is issued under 21 CFR 10.85.

Dated: March 23, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7027 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Termination of Capital Expenditure Review Agreements Under Section 1122 of the Social Security Act

The Department of Health and Human Services announces that, as of October 1, 1987, it has terminated agreements between the Secretary and participating States to carry out provisions of Section 1122 of the Social Security Act (the Act) and will no longer withhold Medicare and Medicaid funds based on past determinations under such agreements. With repeal of Title XV of the Public Health Service (PHS) Act, effective on January 1, 1987, the Department no longer appropriated funds available to support State capital expenditure review activities or for administration of the program.

The section 1122 program was an early cost containment measure established under section 221 of the Social Security Amendments of 1972 (Pub. L. 92-603). The intent of legislation was to deter unwarranted capital expenditures by health care facilities and to support health planning activities in various States by requiring review and approval of proposed capital expenditures based upon plans, standards, and criteria developed by State and local health planning agencies. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 165 (1972).) Section 1122 of the Act created a voluntary capital expenditure review program in which States were able to participate by entering into an agreement with the Secretary under section 1122(b). Agreements with sixteen States and one territory were terminated as of October 1, 1987. Under the section 1122 agreements, the Health Financing Administration (HCFA) has withheld the capital portion of Medicare and Medicaid reimbursements for services furnished by a facility that proceeded with a disapproval capital project. The regulations pertinent to the section 1122 program are codified at 42 CFR Part 100 and 42 CFR 405.1890, 413.161, and 447.35.

The statutory background for the Federal funding of section 1122 reviews is as follows. When section 1122 of the Act was first enacted by section 221 of Pub. L. 92-603, section 1122(c) provided that the costs of State reviews under section 1122 would be paid by the Secretary from the Medicare Hospital Insurance Trust Fund. In fact, payments were made from the Trust Fund for the initial years of implementation: Fiscal years (FYs) 1974, 1975, and part of 1976. When Title XV of the PHS Act was enacted in 1975, establishing a comprehensive National Health Planning Program, Congress provided that, for States that chose to participate in the section 1122 program, the conduct of section 1122 reviews was to be one of the required functions of the State Health Planning and Development Agencies under their Title XV designation agreements. Accordingly, the State agency grants under section 1525 of the PHS Act would be available to pay the costs of the section 1122 reviews. Based on that Congressional action, the Department ceased making payments for section 1122 reviews from the Medicare Trust Fund.

Under section 607(a) of the Social Security Amendments of 1983 (Pub. L. 98–21), Congress amended section 1122(c) to authorize payments to States for the costs of their reviews from the general fund of the Treasury, rather than from the Medicare Hospital Insurance Trust Fund. Nothing in the legislative history of that amendment suggests that Congress took issue with the Department's position that the costs of section 1122 reviews were payable from a State's section 1525 grant.

On November 14, 1986, the President signed Pub. L. 99–660. Section 701(a) of Pub. L. 99–660 repealed the comprehensive health planning authority, Title XV of the PHS Act, effective January 1, 1987. However, under Chapter VIII of Title I of the Urgent Supplemental Appropriations Act for Fiscal Year 1986 (Pub. L. 99–349), enacted on July 2, 1986, States were permitted to use unobligated funds available for carryover to continue Title XV functions, including section 1122 reviews, through September 30, 1987. The elimination of Title XV health planning authority and the lack of any other funds appropriated to support these reviews effectively leave the section 1122 program without a mechanism of funding. While section 1122(c) may be viewed as an authorization of appropriations for section 1122 activities, apart from Title XV, Congress has not chosen to appropriate funds under that authority. Therefore the Department terminated section 1122 agreements with States effective October 1, 1987.

For several reasons, the repeal of Title XV also makes administration of section 1122 impossible even if a State were to fund its own activities. First is the lack of any continuing entity that could serve as the designated planning agency. Section 1122(b) of the Act, which makes reference to section 1122(d)(1)(B)(ii), provides that the designated planning agency must be either a State agency established pursuant to section 314(a) or section 604(a) of the PHS Act, or a local agency established under section 314(b) of the PHS Act. The 314(a) and 314(b) agencies were the predecessors to the State Health Planning and Development Agency and the Health Systems Agency provided for under Title XV. The 604(a) agency was the agency charged with administration of the former Hill-Burton program. Since the agencies funded under Title XV no longer are designated or funded under that title, if is apparent that there is not longer an entity eligible to be designated for purposes of section 1122 of the Act. Chapter VIII of Title I of Pub. L. 99–349 provided an interim measure to permit the former State Health Planning and Development Agencies to carry out these activities during FY 1987, but this amendment has no further effect.

In addition, it is important to note that, under section 1122, designated planning agencies were required to review proposed capital expenditures to determine their conformity with applicable "standards, criteria, or plans developed pursuant to the Public Health Service Act (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1966) to meet the need for adequate health care facilities * * *" (Section 1122(b).) The agencies are not authorized to apply any other criteria in their reviews. As a practical matter, this requirement called for the designated planning agency to review proposed expenditures for conformity with the State health plan and the health systems plan developed under Title XV, given that the plans developed long ago under sections 314(a), 314(b), and 604 of the PHS Act and under the Community Mental Health Centers Act have been out of date for many years. Because no plans, criteria, or standards are currently being developed under any of these statutory authorities, there is nothing against which a proposed capital expenditure may properly be judged for conformity.

Finally, in the absence of funding under Title XV of the PHS Act, the only source of funds for payment to States for their costs in carrying out section 1122 of the Act would be a general fund appropriation under the authorization of section 1122(c). Yet no such appropriation exists. Thus, a critical element of the statutory scheme ("The Secretary shall pay * * *" States for their costs of conducting reviews) is lacking. Accordingly, the agreements envisioned by the statute cannot be complied with by the Secretary. Thus, even if a State were willing to continue its participation under section 1122 using solely State funds for its administrative costs, the Department believes that section 1122 no longer contains an adequate basis for the agreements.

For similar reasons, the Department concludes that it would be inappropriate to continue withholding Medicare and Medicaid payments as sanctions for past disapprovals under section 1122 agreements. These reasons are (1) the lack of previously available remedies to modify or challenge a prior disapproval, and (2) the lack of current plans against which to judge a disapproved project that could claim a right to a new review.

The first consideration stems from the regulations that implement section 1122. These regulations provide certain procedural rights to disapproved applicants that would be eliminated by a decision to contiunue withholding. Under 42 CFR 100.109(c)(1)(iii), a facility that has been subjected to withholding may seek reconsideration of that finding at any time following the later of three years from the date of the finding or three years from the date of the last reconsideration by the designated planning agency. Similarly, under subparagraphs (i) and (ii) of that paragraph, if there has been a substantial change in facilities or services in the area or a substantial change in the need for facilities or services in the area, a reconsideration would be available to the applicant. Given the termination of the agreements with all remaining States and the fact that there are no longer any Title XV State agencies, this process will no longer be available to applicants previously disapproved. Since there is no longer any legally appropriate mechanism to review previously disapproved projects, the Department concludes that all prior sanctions should be terminated effective October 1, 1987.

Moreover, as noted above, there are no longer any current plans against which a proposed expenditure may be judged. Thus, even if a means could be found to afford an applicant a new review, there would be no substantive criteria with which to conduct the review.

Accordingly, beginning October 1, 1987, capital costs associated with previously disapproved projects will not be subject to further Medicare and Medicaid withholding. Any capital costs that are related to a period prior to

October 1, 1987 and are associated with a disapproved expenditure may not be allowed.

A State may choose to continue a capital expenditure review program so long as it does not involve Federal participation or Federal funding. For further information on this policy, please contact Emily Haley on (301) 443–5400.

Dated: January 22, 1988.

Robert E. Windom,

Assistant Secretary for Health.

March 8, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7095 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-16-M

Health Resources and Services Administration

Project Grants for Renovation or Construction of Non-Acute Care Intermediate and Long Term Care Facilities for Patients With Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year 1988 funds are available for project grants for the renovation or construction of non-acute care intermediate and long term care facilities for patients with AIDS. Funds were appropriated for this purpose by Pub. L. 100–202, under the authority of section 1610(b) of the Public Health Service (PHS) Act.

DATE: To receive consideration, applications for section 1610(b) grants for the renovation or construction of facilities for patients with AIDS must be received by the close of business May 31, 1988, by Ms. Dorothy Hodgkin at the address below. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Ms. Katharine Buckner, Office of Health Facilities, BMCHRD, Room 11A-10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0271. Requests for grant application materials should be made in writing to Ms. Dorothy Hodgkin, Grants Management Specialist, BMCHRD, Room 11A–10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0271. Applicants for section 1610(b) grants will use Form PHS 5162–1 with revised face sheet HHS Form 424, approved under OMB Control Number 0348–0006.

SUPPLEMENTARY INFORMATION:

Authority

Public Law 100–202 provides funds for grants, under the authority of section 1610(b) of the Public Health Service Act, for the renovation or construction of non-acute care intermediate and long term care facilities for AIDS patients. Section 1610(b) requires that such grants will provide services for medically underserved populations and that the amount of any grant may not exceed 80 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 percent of such costs. (Urban or rural poverty area is defined as a medically underserved area (MUA) designated by the Secretary (42 CFR 51c.102).) For information regarding the current MUA list, contact Mr. Richard C. Bohrer, Director, Division of Primary Care Services, Rm. 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, or telephone (301) 443–2260.

Review Criteria

Grants will be awarded to fund the following types of projects that demonstrate a comprehensive and cost-effective approach to providing non-acute intermediate and/or long term care for patients with AIDS, or HIV infection.

(1) Projects for the expansion, renovation or modernization of existing, traditional medical facilities such as hospitals, nursing homes or hospices. Funds might be used to convert a small number of existing beds (i.e., 5–10) or to expand a facility to include several new beds for AIDS patients;

(2) Projects for the renovation, conversion or modernization of facilities other than traditional medical facilities including existing housing. Applicants must demonstrate that regular medical care, rather than just emergency or episodic care, will be provided in the facility under the general direction of a physician. Although a physician is not required to be at the facility on a full-time basis, space must be available in the facility for a physician or other type of health professional under the general direction of a physician to examine and/or provide treatment to a resident of the facility; and

(3) Projects for the construction, renovation, conversion or expansion of a facility that provides a full spectrum of services necessary during all or most stages of illness of the AIDS patient including residential care, outpatient services, long-term care, skilled nursing care, and hospice care. A physician, or other type of health professional under the general direction of a physician, must be present at the facility on a full-time basis.

Evaluation Criteria

Proposed projects will be evaluated and rated by an objective review committee according to: (1) The documentation of the extent of need and demand for the project; (2) the extent to which the project proposes to deliver to the greatest number of AIDS patients the health care services which best meet the demonstrated need and demand; (3) the appropriateness of the project design and construction; (4) the reasonableness of the cost of the project; (5) the proximity of the proposed facility to a Standard Metropolitan Statistical Area with a known high prevalence of AIDS as reported by the Centers for Disease Control; (6) the documentation of integration of the proposed facility's services with the services provided by the other public and private AIDS service organizations within the community; (7) the degree to which patients in the proposed project area are medically underserved; (8) the experience of the applicant in working with AIDS patients; (9) the ability of the applicant to ensure that staff of the facility will receive appropriate training; and (10) the ability of the applicant to obtain resources other than section 1610(b) grant funds.

Availability of Funds

A total of $6,702,000 is available to be expended by grantees for the renovation and construction of non-acute care intermediate and long-term care facilities for AIDS patients. It is anticipated that awards will be made for a minimum amount of $25,000.

Eligible Applicants

Public and nonprofit private entities are eligible to apply for these grant awards. Applicants must agree in writing to provide:

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(1) An assurance that at all times after such application is approved the facility or portion thereof to be constructed, modernized, or renovated will be made available to all persons residing or employed in the area served by the facility, in accordance with 42 CFR Part 124, Subpart G; and

(2) An assurance that there will be made available in the facility or portion thereof to be modernized or renovated, a reasonable volume of services to persons unable to pay for care, in accordance with 42 CFR Part 124, Subpart F. (OMB Clearance Number 0915–0077).

Allowable Costs

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and the PHS applicable to grants; the applicable Office of Management and Budget (OMB) circular for non-profit grantees, and Appendix II of the PHS Grants Policy Statement applicable to construction.

Other Award Information

Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for section 1610(b) is 13.887.

Date: February 17, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88–7028 Filed 3–30–88; 8:45 a.m.]

BILLING CODE 4160–15–M

Designation of Medically Underserved Populations Recommended by the Chief Executive Officer and Local Officials of a State

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: Under the provisions of section 330(b) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as recently amended by Pub. L. 99–280, the Governors of the States of Colorado, Illinois, Massachusetts, Michigan, Oregon and Texas have asked the Secretary of Health and Human Services (HHS) to designate specific populations within their States as medically underserved populations (MUPs). This notice provides an opportunity for local officials and appropriate Community Health Center organizations of the States of Colorado, Illinois, Massachusetts, Michigan, Oregon, and Texas to comment on the recommendations of the Governors of these States to designate as MUPs the populations described in this notice. Also, this notice provides the vehicle for "local officials" to recommend MUP designations for the populations which are specified in this notice.

DATE: Comments should be in writing and should be received by May 2, 1988. If no objections are received within this period, the populations specified in this notice will be designated as MUPs by the Secretary. If valid objections are received, the Secretary will publish responses to them within 75 days from the date of publication of this notice and will grant, modify or deny designation of the population(s) as MUPs, as appropriate.

ADDRESS: Mail comments to Mr. James Purvis, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7–15, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A–55, Rockville, Maryland 20857, (301) 443–2260.

SUPPLEMENTARY INFORMATION: Section 330 of the PHS Act provides that grants may be made to public and nonprofit private entities to plan, develop and operate Community Health Centers which serve medically underserved populations. The PHS Act and implementing regulations define a medically underserved population as the population of an urban or rural area designated by the Secretary as having a shortage of personal health services. The PHS Act, as recently amended by Pub. L. 99–280, provides at section 330(b)(6) that the Secretary may designate a medically underserved population that does not meet medically underserved population criteria (HHS is promulgating regulations which will specify these criteria), if the chief executive officer and the local officials of the State in which such a population is located recommend the designation of that population, based on unusual local conditions which are a barrier to access to, or availability of, personal health services.

The amendments to section 330 made by Pub. L. 99–280 also provide that the Secretary must notify and consult with the chief executive officer of the State, local officials of the State, and the State organization, if any, which represents a majority of Community Health Centers in such State, before designating or terminating designation of MUPs. HHS is currently developing regulations to specify procedures for providing such notice and opportunity for comment. The Secretary has determined that it would be inappropriate to delay acting on requests of Governors Romer, Thompson, Dukakis, Blanchard, Goldschmidt, and Clements until the regulations are published. Therefore, the Secretary is specifically seeking comments and recommendations from local officials of the particular areas involved as well as from the organization which represents a majority of the Community Health Centers in the State on these proposed designations and other interested or affected parties.

The populations which have been recommended for designation are:

(1) Colorado—The service population of the proposed Denver Metropolitan Provider Network located in the six low-income neighborhoods of West Adams (census tracts 85.06, 92.01, 92.03, 92.04 and 93.11 in Adams County), Westminster (census tracts 96.04, 96.06 and 97.5 in Adams County), Aurora (census tracts 73 in Arapahoe County and 78, 79, and 83.06 in Adams County), Sheridan (census tracts 54.03, 55.51 and 55.52 in Arapahoe County), Englewood (census tracts 58, 59.5, 61 and 63 in Arapahoe County) and Edgewater (census tracts 105.2, 106.4, 107, 110, 114 and 115.5 in Jefferson County).

This population is being recommended for designation as a medically underserved population because of the extremely limited availability of physicians to serve the medically indigent population in the counties surrounding the city of Denver. Only 8.13 full-time equivalent physicians provide primary care services to the 231,600 low-income people in this area. There are no obstetricians or gynecologists in the area who provide services to Medicaid or medically indigent patients. This situation is further exacerbated by the large proportion of women in childbearing years residing in the service area. Medicaid patients represent only two percent and medically indigent patients comprise only one percent of the total patient volume among primary care physicians located in the Denver metropolitan area. Furthermore, only half of the primary care physicians are accepting new medical assistance patients.

It is expected that the number of people in the Denver area who are experiencing problems of access will be increasing. The Denver area continues to experience severe unemployment.

(2) Illinois—The Asian-American population of five Chicago community areas: Uptown, Lincoln Square, North Park, Albany Park and Edgewater. These five contiguous community areas are located in the northeastern section of Chicago. The total population in this community is 228,277 according to the 1980 Census. This service and contiguous area population represents approximately 62.1% of the city's Asian-American residents, including Chinese, Japanese, Filipino, Koreans, Vietnamese, and all other Asian extractions.

One concern is the need for additional health care services for the young and older population groups. The infant mortality rate is higher than the average for the City of Chicago and for the State of Illinois. A second concern is that Asian Americans experience a great deal of difficulty in accessing the existing health care systems, much like other minority groups in metropolitan areas. The effects of poverty, the existence of poor housing, and the need for adequate and responsive health services are among the major barriers to access to health care. In addition, the Asian community also faces burdens posed by language and cultural barriers.

Many of the recently arrived Asian-Americans suffer immensely from lack of availability of health services tailored to their needs and also from inadequate accessibility to health care. Their limited financial capability poses serious problems to purchasing existing health services. Most Asian immigrants are not familiar with the American health care system. Catchment area restrictions and bureaucratic rules and procedures cause serious accessibility problems. Very often these immigrants lack transportation to available facilities. Even if transportation is not a problem, language is frequently a barrier. These recent immigrants find only English speaking providers who are incapable of communicating to Asian patients.

(3) Massachusetts—The populations of the towns of Wellfleet and Eastham are situated on the 72 mile peninsula of Cape Cod. These towns are located three quarters of the way to the outermost point of the peninsula. There is only one major road to this area of the Cape, and only two bridges connecting the Cape to the mainland.

The nearest hospital to Wellfleet and Eastham is located 32 miles away in Hyannis. There is no readily available transportation to Hyannis.

The AIM Medical Center in Wellfleet is the only facility within a reasonable and accessible distance to the residents of Eastham and Wellfleet. While there is a health clinic located in Provincetown, approximately 18 miles east of Wellfleet and Eastham, this is one of the most geographically isolated spots in the Commonwealth. Provincetown is on the outermost point of the Cape Cod Peninsula. There is no public transportation from Wellfleet and Eastham to Provincetown. It should be noted that the Cape Cod Planning and Economic Development Commission estimates that the population of this part of Cape Cod increases by approximately five times during the summer, thereby greatly exacerbating any transportation problems.

The demographics of the towns' population, combined with the geographical considerations, demonstrate that the designation of a medically underserved population is merited. Based upon the 1980 U.S. Census, the percentage of the populations living at or below 200% of the poverty level is 33.4% in Eastham and 37.7% in Wellfleet. In addition, the towns have an approximately 8% higher population of elderly than the statewide average. According to the 1980 U.S. Census, 20.5% of Wellfleet and Eastham's residents were age 65 or over compared with the statewide average of 12.7%.

The ratio of primary care physicians per 1,000 population for Wellfleet and Eastham is 0.156. This is based upon the Massachusetts 1985 Census which counted 3,870 residents in Eastham and 2,530 residents in Wellfleet for a total of 6,400 permanent year-round residents. There is only one physician with a full time, year round practice in the area at the AIM Medical Clinic.

(4) Michigan—The population of the area served by the Downriver Community Service Clinic in Macomb County which includes New Haven Village, Census Tract 2061, part of Lennox Township, Census Tract 2062 and Ray Township, Census Tract 2060.

This population is recommended for designation as a medically underserved population because it does not have a clinic, hospital, drugstore, dentist, or full-time physician. They have 50% greater incidence of cancer in the service population than in the Detroit Metropolitan area for leukemia and cancer of the mouth, lungs, bladder, prostate, colon, breast and cervix; the infant mortality rate was 19.1/1,000 live births; 17.2% of the population has income at or below 100% of the poverty rate and 13% of the population has a disability that affects their work.

(5) Texas—The population of Nacogdoches County, which is the service population of the East Texas Community Health Services, Incorporated.

The population of the entire county of Nacogdoches is recommended for designation as a medically underserved population because of limitations to the accessibility of health services. The unmet need for primary care visits in the county as a whole is due principally to financial barriers, although two of the four divisions within the county, Cushing-Douglass and Chireno-Martinsville, are already designated as medically underserved areas based on their scores using the index of medical underservice. According to the 1980 United States Census, 73.4 percent of the entire county population has incomes at or below 200 percent of the poverty level and 41.7 percent has incomes below 100 percent of the poverty level. According to the Texas Department of Health, the per capita income in 1984 was $9,978, compared to $12,575 for the State. For seven years the number of unemployed in Nacogdoches has grown, and the unemployment rate currently is over 8 percent. Lack of health insurance coverage is a problem not only for the unemployed but for the working poor found in the agriculture-based economy. Furthermore, according to the most recently available information, Medicaid patients are served by only one general/family practitioner, two pediatricians, and no obstetricians or internists. Nacogdoches County has higher rates than the state of Texas for every major cause of death except homicide, and it is of particular concern to the community that limited or no prenatal services are provided to a significant number of the women who give birth in Nacogdoches County.

(6) Oregon—The population of Hood River County in North Central Oregon—Hood River County is located in North Central Oregon. The area has one principal population center, Hood River, which contained 27% of the county's

16,280 people in 1980. Supplementing permanent residents for ½ of the year is a migrant population engaged in seasonal agricultural activities. The estimate for peak migrant presence in Hood River County is 9,371. If this peak number for migrants is adjusted to an average daily presence, the migrant population brings the total population to 19,714. Estimates of the percent of the population age 65 and over range from 11.6% to 11.8%. The infant mortality rate for the county for the 5-year period 1981–1985 was 12.1%.

Based on a telephone survey of all primary care physicians in Hood River County, 7.4 full time equivalent physicians are available to the population of 19,714. This is a ratio of 1 physician to 2,664 persons—a ratio which is approximately 35 percent of the national average.

The 1980 Census, which reports 1979 economic data, estimates the poverty rate for Hood River County at 9.5%. This estimate is not realistic today as the area has experienced a severe depression beginning in 1980 and lasting through the present time. Data from the Oregon Employment Division showed an unemployment rate of 13.6% for Hood County in 1986.

This economic downturn is the result of heavy reliance on the timber and wood products industry, and the closure of numerous manufacturing and food processing plants. Numerous retail stores have also closed. Many of those who are employed are working fewer hours, are working for reduced wages, and have no fringe benefits such as health insurance.

Dated: March 25, 1988.

David N. Sundwall,

Administrator.

[FR Doc. 88-7029 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Tribal Management Program For American Indian/Alaska Native Tribal Organizations; Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for the Tribal Management Program for American Indian/Alaska Native Tribal Organizations.

SUMMARY: The Indian Health Service (IHS) announces that competitive applications are now being accepted for the Tribal Management Program for American Indian/Alaska Native Tribal Organizations established by Section 104(b)(2) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450h(b)(2)). The regulations governing these grants are codified at 42 CFR Part 36, Subpart H. This program is within the Catalog of Federal Domestic Assistance Number 13.228. There will be only one funding cycle during Fiscal Year 1988.

DATE: An original and two (2) copies of the completed grant application must be submitted to the Grants Management Specialist in the appropriate IHS Area Office by close of business on June 1, 1988. Close of business means 4:00 p.m. local time of the IHS Area Office receiving the application.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: M. Kay Carpentier, Grants Management Office, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5204. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Tribal Management Program for American Indian/Alaska Native Tribal Organizations for Fiscal Year 1988.

A. General Program Purpose

To increase the management capacity of an American Indian/Alaska Native tribal organization to enter into an agreement under the provisions of Pub. L. 93–638 to assume operational control of all or part of an existing IHS direct operated health program.

B. Programmatic Priorities

The IHS has established the following general priorities that will be observed in the award of tribal management grants. For activities designed to improve the capacity of a tribal organization to enter into an assumption agreement, preference in funding will be accorded in the following priority order:

1. Tribal organizations with the stated intention of entering into assumption agreements for the first time.

2. Tribal organizations with the stated intention of increasing their operation of health programs by negotiating additional assumption agreements with the IHS.

3. Tribal organizations that need assistance in improving existing management systems under their operational control.

C. Eligibility Requirements

Any federally recognized Indian tribe or tribal organization as defined in section 4(b) and (c) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act of 1975, and in 42 CFR Part 36, Subpart H, 36.102, is eligible to apply for a tribal management grant from the IHS.

D. Fund Availability

Approximately $1.8 million is available in fiscal year 1988 during this cycle for award of tribal management grants under section 104(b)(2). the average funding level for tribal management projects in FY 1987 was approximately $25,000. The approximate amount of funding available from each of the eleven IHS Area Offices and the Office of Health Program Development is:

Aberdeen Area Office:	$300,000
Alaska Native Health Service:	280,000
Albuquerque Area Office:	100,000
Billings Area Office:	120,000
California Area Office:	220,000
Bemidji Area Office:	150,000
Nashville Area Office:	150,000
Navajo Area Office:	120,000
Oklahoma City Area Office:	240,000
Phoenix Area Office:	120,000
Portland Area Office:	170,000
Office of Health Program Development	20,000

E. Type of Program Activities Considered for Support

Grants will be awarded for projects in five general categories. Tribal management grants are awarded for the purposes of feasibility studies, planning, the development of tribal health management structures, training and staff development, and evaluation studies. Additionally, the IHS Area Offices may establish area-specific categories for accomplishing area wide program objectives. These area-specific categories will fall within the five general categories above.

The area-specific categories will be published and made available with the application packages distributed by the IHS Area Offices.

F. Application Process

1. An *IHS Tribal Management Grant Application Kit*, including Standard Form 424 Page 1 (Rev. 4–84) and General Information and Instructions for Grant Application Form PHS 5161–1 (Rev. 3–86), may be obtained from the Grants Management Specialist in the IHS Area Office that serves the applicant. The address and telephone number of the IHS Area Offices are:

Aberdeen Area Indian Health Service, Federal Building, 115 4th Avenue SE., Aberdeen, South Dakota 57401, (605) 225–0250, ext. 567
Alaska Area Native Indian Health Service, P.O. Box 107741, Anchorage, Alaska 99501–7741, (907) 257–1139
Albuquerque Area Indian Health Service, 505 Marquette NW., Suite 1502, Albuquerque, New Mexico 87102, (505) 474–2151
Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601, (218) 751–7701 ext. 230
Billings Area Indian Health Service, P.O. Box 2143, Billings, Montana 59103, (406) 657–6123
California Area Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821, (916) 978–4202
Nashville Area Indian Health Service, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217, (615) 736–5104
Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515, (602) 871–5865
Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street N.W., Oklahoma City, Oklahoma 73102, (405) 231–5227
Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016, (602) 241–2075
Portland Area Indian Health Service, 1220 S.W. Third Avenue, Room 476, Portland, Oregon 97204, (503) 221–2018
Office of Health Research and Development, 7900 S. J. Stock Road, Tucson, Arizona 85746, (602) 629–6600

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed by the Contract Proposal Liaison Officer (CPLO) for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluated in accordance with established objective review procedures. The Tribal Management Program is not subject to E.O. 12372.

4. All applicants will be notified regarding the status of their applications (approved, approved unfunded, disapproved or deferred) by Augst 26, 1988. Projects will begin September 1, 1988.

G. Criteria for Review and Evaluation

1. Applications will be evaluated in accordance with 42 CFR Part 36, Subpart H, § 36.106, Grant Award and Evaluation, as addressed under the following headings:

—Need: § 36.106(a)(5),
—Method: § 36.106(a)(2) and (a)(4),
—Qualification of Key Personnel: § 36.106(a)(1),
—Adequacy of Management Controls: § 36.106(a)(1) and (a)(3), and
—Internal Evaluation: § 36.106(a)(1) and (a)(2).

These headings are defined and clarified in the Program Guidelines, Part V, which are contained in the IHS Tribal Management Grant Application Kit.

2. The project period for any proposal will not exceed one year.

Date: March 8, 1988.

Everett R. Rhoades,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 88-7030 Filed 3-30-88; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Cancer Institute; Developmental Therapeutics Contracts Review Committee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, May 5–6, 1988, Forest Hills Conference Room, Linden Hill Hotel & Racquet Club, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on May 5 from 8 a.m. to 8:30 a.m., to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 5 from 8:30 a.m. to recess; and on May 6 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7575) will provide substantive program information, upon request.

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-7083 Filed 3-30-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on April 15, 1988, from 8:30 a.m. to 1:00 p.m., at the Mary Lasker Center, Building 60, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. A final review will take place of the report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: March 21, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88-7084 Filed 3-30-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 14, 15, and 16, 1988, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on April 14 from 8 p.m. to 10 p.m., April 15 from 8 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and April 16 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 14 from 7:30 p.m. to 8 p.m., April 15 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and April 16 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: March 18, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–7085 Filed 3–30–88; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 2 and 3, 1988, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on May 2 and from 8:30 a.m. to approximately 12 noon on May 3 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 2, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Date: March 18, 1988.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 88–7086 Filed 3–30–88; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for April through May 1988, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	April–May 1988 meetings	Time	Location
Behavioral and Neurosciences-1, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352.	May 9–10	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences-2, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352.	May 3	8:30	Do.
Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301–496–7287	Apr. 25–26	8:30	Westpark Hotel, Rosslyn, VA.
Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	Apr. 26–28	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-5, Dr. Bert Wilson, Rm. A25, Tel. 301–496–7600	Apr. 15	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-6, Dr. Syed M. Amir, Rm. A10, Tel. 301–496–3117	May 4–6	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510	Apr. 28–29	8:30	Do.
Clinical Sciences-2, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	Apr. 18–19	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Clinical Sciences-3, Dr. Nicholas Mazzarella, Rm. A27, Tel. 301–496–1069	Apr. 29	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	May 12–13	8:30	Do.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–7087 Filed 3–30–88; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on June 9–10, 1988, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 9 from 9 a.m. until recess and from 8:30 a.m. until approximately 11 a.m. on June 10 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; and review of budget and legislative updates. There will be a presentation on the Animal Resources Program led by Dr. William Gay, Director, which will include several guest speakers. Attendance by the public will be limited to space available.

In accordence with provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 10 from approximately 11 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research: 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–7088 Filed 3–30–88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet April 21, 1988.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: April 21, 1988, 9:00 AM to 4:00 PM.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Open April 21, 9:00 AM to Noon, and 1:30 PM to 4:00 PM. Closed from Noon to 1:30 PM.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This meeting will be the first meeting of the Secretary's Council. The Council will receive a briefing on progress to date relating to the 1990 Health Objectives for the Nation, development of a new set of objectives for the year 2000, plans for implementation of preventive clinical service recommendations resulting from the work of the U.S. Preventive Services Task Force and the Public Health Service, and progress on preparation of the Surgeon General's Report on Nutrition and Health. The Council will consider a plan of operation for its subsequent work.

During its closed session at the lunch hour, the Council is scheduled to meet privately with the Secretary.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. James Harrell, Office of Disease Prevention and Health Promotion, Public Health Service, Department of Health and Human Services, Washington, DC 20201. Telephone (202) 245–7611.

Agenda items are subject to change as priorities dictate.

Date: March 24, 1988.

J.M. McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 88–7034 Filed 3–30–88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised procedures implementing the National Environmental Policy Act (NEPA) for the Bureau of Indian Affairs (BIA).

SUMMARY: This notice announces a final revision of Appendix 4 to the Department's NEPA procedures (516 DM 6, Appendix 4) which were published in the **Federal Register** on January 23, 1981 (46 FR 7490).

DATE EFFECTIVE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, DC 20240; Telephone (202) 343–3891, FTS 343–3891. For the Bureau of Indian Affairs, contact George Farris, Telephone (202) 343–6574, FTS 343–6574.

SUPPLEMENTARY INFORMATION: This revised Appendix 4 to the Departmental Manual (516 DM 6) provides more specific NEPA compliance guidance to the BIA. In particular, it updates information about BIA organizational responsibilities for NEPA compliance, updates guidance to applicants, identifies, without change, actions normally requiring the preparation of an EIS, and updates, revises, and adds to those actions categorically excluded from the NEPA process. The additions reflect continued BIA experience with the NEPA process and are primarily in the forestry and land conveyance areas. The Appendix 4 must be used in conjunction with the Departmental procedures and the Council on Environmental Quality regulations (40 CFR Parts 1500–1508). In addition, the BIA has prepared a Handbook (30 BIAM, Supplement 1) to provide technical guidance on how to apply these procedures to its principal programs at the Area and Agency levels.

A Notice of a proposed revision was published in the **Federal Register** on November 4, 1987 (52 FR 42349). No comments were received on the proposal. Two minor changes to Section 4.4F, Rights-of-Way, were made as a result of internal BIA review. Any comments concerning these changes are welcome.

Outline

Part 516 National Environmental Policy Act
Chapter 6 Managing the NEPA Process
Appendix 4 Bureau of Indian Affairs
4.1 NEPA Responsibility
4.2 Guidance to Applicants and Tribal Governments
4.3 Major Actions Normally Requiring an EIS
4.4 Categorical Exclusions

Date: March 24, 1988.

Martin L. Smith,

Deputy Assistant Secretary—Policy, Budget and Administration.

516 DM 6, Appendix 4

4.1 NEPA Responsibility

A. *Assistant Secretary—Indian Affairs* is responsible for the NEPA compliance of Bureau of Indian Affairs (BIA) activities and programs.

B. *Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development)* is responsible for oversight of the BIA program for achieving compliance with NEPA. The Deputy determines the adequacy of all EIS's which come before the Assistant Secretary before making decisions for implementing proposed actions.

C. *The Environmental Services Staff,* (Washington), in the Office of Trust and Economic Development is the focal point for overall NEPA guidance within BIA and is responsible for advising and assisting Area Offices, Agency Superintendents, and other field support personnel in their environmental activities, providing training and acting as the Central Office's liaison with Indian tribal governments on environmental and NEPA compliance matters. Information about BIA NEPA documents or the NEPA process can be obtained by contacting the Environmental Services Staff.

D. *Other Central Office Directors and Division Chiefs* are responsible for ensuring that the programs and activities within their jurisdiction comply with NEPA.

E. *Area Directors and Project Officers* are responsible for conducting all activities under their jurisdiction in compliance with NEPA and providing advice and assistance to Agency Superintendents and consulting with the Indian tribes on environmental matters related to NEPA; and assigning sufficient trained staff to ensure that these responsibilities are carried out. An Environmental Coordinator is located in the agriculture resources division or, in its absence, the realty division.

F. *Agency Superintendents and Field Unit Supervisors* are responsible, as directed and delegated by the Area Directors, for implementation and enforcement of the BIA environmental policy at the Agency or field unit level, including field inspection and preparation of environmental documents. These documents should be reviewed to the extent practicable for procedural adequacy by the Environmental Coordinator of the Area Office before release to the public.

4.2 Guidance to Applicants and Tribal Governments

A. *Relationship with Applicants and Tribal Governments.*

1. *Guidance to Applicants.*

a. An "applicant" is any entity which proposes to undertake any activity which will at some point require BIA action. These may include tribal governments, private entities, state and local governments or other Federal agencies. BIA compliance with NEPA is a Federal responsibility. Compliance is triggered when there will be a BIA decision required to implement an action.

b. Applicants should contact the BIA official at the appropriate level for assistance. This will be the Agency Superintendent, Area Director or Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), in the Central Office.

c. If the applicant's proposed action will affect responsibilities of more than one tribal government, one government agency, one BIA Agency, or where the action may be of State-wide or regional significance, the applicant may contact the respective Area Director(s). The Area Director, in his sole discretion, may assign the environmental responsibilities to one Agency Superintendent to act as the lead office for the proposal. From that point, the Applicant will deal with the designated lead office.

d. Since much of the applicant's planning may take the place outside the BIA planning system, it is the applicant's responsibility to prepare a milestone chart for BIA use at the earliest possible stage in order to coordinate the efforts of both parties. Early communication with the BIA responsible office will expedite determination of such matters as the scope, depth and sources of data for an environmental document.

2. *Guidance to Tribal Government.*

a. Tribal governments may be applicants, and/or be affected by a proposed action of BIA or another Federal agency. Tribal governments affected by a proposed action shall be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents. Notwithstanding the above, the BIA retains sole responsibility and discretion in all NEPA compliance matters.

b. Proposed Tribal actions that do not require BIA or other Federal approval or funding are *not* subject to the NEPA process.

B. *Prepared Program Guidance.*

BIA has implemented regulations for environmental guidance for surface mining in 25 CFR Part 216 (Surface Exploration, Mining and Reclamation of Lands.) Environmental guidance for Forestry activities is found in 25 CFR 163.27 and 53 BIAM Supplement 2 and Supplement 3.

C. *Other Guidance.*

Programs under 25 CFR for which BIA has not yet issued regulations or directives for environmental information for applicants are listed below. These programs may or may not require environmental documents and could involve submission of applicant information to determine NEPA applicability. Applicants for these types of programs should contact the nearest affected BIA office for information and assistance:

1. Loans to Indians from the Revolving Loan Fund (25 CFR Part 101).

2. Loan guaranty, insurance, and interest subsidy (25 CFR Part 103).

3. Leasing and permitting (Lands) (25 CFR Part 162).

4. Sale of lumber and other forest products produced by Indian enterprises from the forests on Indian reservation (25 CFR Part 164).

5. Sale of forest products, Red Lake Indian Reservation, Minn. (25 CFR Part 165).

6. General grazing regulations (25 CFR Part 166).

7. Navajo grazing regulations (25 CFR Part 167).

8. Grazing regulations for the Hopi partitioned lands area (25 CFR Part 168).

9. Rights-of-way over Indian lands (25 CFR Part 169).

10. Roads of the Bureau of Indian Affairs (25 CFR Part 170).

11. Concessions, permits and leases on lands withdrawn or acquired in connection with Indian irrigation projects (25 CFR Part 173).

12. Colorado River Irrigation Project, Arizona (25 CFR Part 175).

13. Flathead Indian Irrigation Project, Montana (25 CFR Part 176).

14. Leasing of tribal lands for mining (25 CFR Part 211).

15. Leasing of allotted lands for mining (25 CFR Part 212).

16. Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma, for mining (25 CFR Part 213).

17. Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas (25 CFR Part 214).

18. Lead and zinc mining operations and leases, Quapaw Agency (25 CFR Part 215).

19. Leasing of Osage Reservation lands for oil and gas mining (25 CFR Part 226).

20. Leasing of certain lands in Wind River Indian reservation, Wyoming, for oil and gas mining (25 CFR Part 227).

21. Off-reservation treaty fishing (25 CFR Part 249).

22. Preservation of antiquities (25 CFR Part 261).

23. Contracts under Indian Self-Determination Act (25 CFR Part 272).

24. Grants under Indian Self-Determination Act (25 CFR Part 272).

25. School construction or services for tribally operated perviously private schools (25 CFR Part 274).

26. School construction contracts for public schools (25 CFR Part 277).

27. Indian Business Development Program (25 CFR Part 286).

4.3 Major Actions Normally Requiring an EIS

A. The following BIA actions normally require the preparation of an Environmental Impact Statement (EIS):

1. Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit for:

a. New mines of 640 acres or more, other than surface coal mines.

b. New surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.

2. Proposed water development project which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.

B. If, for any of these actions, it is proposed not to prepare an EIS, an Environmental Assessment (EA) will be prepared and handled in accordance with § 1501.4(e)(2).

4.4 Categorical Exclusions

In addition to the actions listed in the Department's categorical exclusions in Appendix 1 of 516 DM 2, many of which the BIA also performs, the following BIA actions are hereby designated as categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2:

A. *Operation, maintenance, and replacement of existing facilities.* Examples are normal renovation of buildings, road repairs and limited rehabilitation of irrigation structures.

B. *Transfer for Existing Federal Facilities to Other Entities.* Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, follow BIA policy, and no change in operations or maintenance is anticipated.

C. *Human resources programs having primarily socio-economic effects.* Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities.

D. *Administrative actions and other activities relating to trust resources.* Examples are: Management of trust funds, issuance of such documents as certificates of competency, allotments and fee patents; renewal of agricultural and other leases when environmental impacts are addressed in an earlier environmental document.

E. *Self-Determination Act Grants and Contracts.*

1. Self-Determination Act Grants.

2. Self-Determination Act contracts for BIA programs which are listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in an earlier environmental document.

F. *Rights-of-Way.*

1. Rights-of-way inside another right-of-way, or amendments to rights-of-way where minor deviations from or additions to the original right-or-way are involved and where there is an existing environmental document covering the same or similar impacts in the right-of-way area.

2. Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles or lines.

3. Renewals, assignments and conversions of existing rights-of-way where would be essentially no change in use and continuation would not lead to environmental degradation.

G. *Minerals.*

1. Approval of permits for geologic mapping, inventory, reconnaissance and surface collecting.

2. Approval of unitization agreements, pooling or communitization agreements.

3. Approval of mineral lease adjustments and transfers, including assignments and subleases.

H. *Forestry.*

1. Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure.

2. Approval and issuance of free-use cutting permits for forest products not to exceed $2,500 in value.

3. Approval and issuance of paid timber cutting permits for products valued at less than $10,000 when in compliance with policies and guidelines established by a current management plan covered by an environmental document.

4. Approval of annual logging plans when in compliance with policies and guidlines established by a current management plan covered by an environmental document.

5. Approval of *Normal Fire Year Plans* and/or *Mobilization Plans* detailing emergency fire suppression activities.

6. Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres.

7. Approval of timber stand improevement projects of less than 200 acres when in compliance with policies and guidlines established by a current management plan covered by an environmental document.

8. Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan covered by an environmental document.

9. Approval of prescribed burning plans of less than 200 acres when in compliance with policies and guidlines established by a current management plan covered by an environmental document.

10. Approval of tree planting projects and associated protection and site preparation activities on less than 200 acres when consistent with policies and guidelines established by a current management plan covered by an environmental document.

I. *Land Conveyance.*

1. Land transfers from Federal or State Agencies or other DOI Bureaus to the BIA as land to be held in trust for the Indian tribe(s) involving no

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development, physical alteration, or change in land use.

2. Purchase, sale, abandonment or exchange of tracts of land, mineral rights or other interests in land in which no change in land use or operation is planned.

3. Lands acquired pursuant to 25 U.S.C. 465, 35 U.S.C. 501, and 25 U.S.C. 2202 where no development, physical alteration, or change of land use after acquisition is known or planned.

J. *Other.*

1. Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, archeological, paleontological and cadastral surveys.

2. Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

3. Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

4. Approval of an Application for Permit to Drill for a new water source or observation well.

5. Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

[FR Doc. 88-6983 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR-130-08-4410-08; GP8-097]

Availability of Draft Planning Analysis for Iceberg Point and Point Colville, Lopez Island, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Planning Analysis for Iceberg Point and Point Colville and Invitation to Comment.

SUMMARY: Oregon and Washington; Spokane District; Draft Planning Analysis for Iceberg Point and Point Colville.

Notice is hereby given of the availability of the Draft Planning Analysis and Environmental Assessment for Iceberg Point and Point Colville, located on Lopez Island in San Juan County, Washington. The public comment period will close June 4, 1988, (60 days).

SUPPLEMENTARY INFORMATION: This Planning Analysis addresses the management of the following lands under the jurisdiction of the BLM on Lopez Island, San Juan County, Washington: Section 23, Lot 4, Section 24, Lots 6 and 7, T. 34 N., R. 2 W., containing 55.59 acres on Iceberg Point, and Section 21, Lot 6, T. 34 N., R. 1 W., containing 60.0 acres on Point Colville. The issues addressed in this Planning Analysis are Legal Access and Recreation Management. The Preferred Alternative would designate two parcels as Areas of Critical Environmental Concern (ACEC). Under this alternative the emphasis would be on preserving the natural values. Opportunities for primitive recreation would be provided to the extent they are compatible with the preservation of natural values, particularly scientific and educational values. Where a choice must be made between preservation of the natural values and allowing visitor use, preservation of the natural resources will be the primary consideration.

Two other alternatives are considered in addition to the Preferred Alternative. They are a Research Alternative (Alternative No. 2), and No Action Alternative (Alternative No. 3). Under the Research Alternative the ACEC designation would also be made, but the primary management emphasis would be for research and educational purposes and opportunities for primitive dispersed recreation would not be provided. Any uses of Iceberg Point and Point Colville under this alternative must focus on research and educational purposes. Under the No Action Alternative no formal protective designations would be made and the existing situation would continue. If the Preferred Alternative were adopted the following resource use limitations would occur:

—Motorized vehicles would not be allowed on either area except as follows: Emergency vehicles; Motorized vehicles along the existing road crossing the Point Colville parcel; Coast Guard vehicular access to maintain navigational aids on Iceberg Point.
—All fires and overnight camping would be prohibited.
—Fuelwood cutting and commercial timber sales would be prohibited.
—No rights-of-way would be permitted.
—Permits would be required for groups of ten or more persons.

FOR FURTHER INFORMATION CONTACT:

Joseph K. Buesing, District Manager,
Spokane District Office, East 4217
Main Avenue, Spokane, Washington
99202.

Or

James F. Fisher, Area Manager,
Wenatchee Resource Area Office,
1133 North Western Avenue,
Wenatchee, Washington 98801.

Copies of the Draft are available for review at the following offices and libraries:

U.S. Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202;

U.S. Bureau of Land Management, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, Washington 98801;

Washington State Library, State Library Building, Olympia, Washington 98504;

San Juan County Court House Annex Library, 135 Rhone Street, Friday Harbor, Washington 98250.

A limited supply of copies of the Planning Analysis are available upon request to the Spokane District Manager and the Wenatchee Resource Area Manager.

DATES: Written comments concerning issues pertinent to this Planning Analysis will be accepted for 60 days.

A public meeting has been scheduled at the Islander Lopez Marina Resort on April 26, 1988 from 5:00 p.m. to 9:00 p.m.

David E. Sinclair,

Acting District Manager.

[FR Doc. 88-6891 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-88-M

Intent To Prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) and To Hold Scoping Meetings; Vernal District, UT

AGENCY: Vernal District, Utah, Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an EA or EIS and notice of scoping meetings.

SUMMARY: The BLM intends to prepare an EA or EIS for a proposal by Questar Pipeline Co. (QPC) to construct and operate approximately 77 miles of buried 20-inch natural gas pipeline. The purpose of the pipeline is to provide a transmission pipeline link between QPC's existing northern and southern transmission systems. The pipeline would begin in Section 10, T. 13 N., R. 24 E., SLB & M in Daggett County, Utah, and would terminate in Section 16, T. 9 S., R. 22 E., SLB & M in Uintah County, Utah. Construction is scheduled to begin in the Spring of 1989 and would take about four months to complete.

The EA or EIS will analyze the environmental impact of constructing and operating the pipeline along the proposed route, and along at least three alternative routes identified by the applicant. All routes would cross Federal lands and would require

issuance of Federal rights-of-way. It has not yet been determined if the granting of proposed rights-of-way would constitute a major Federal action requiring the preparation of an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) regulations. The BLM will be the lead agency and the Federal Energy Regulatory Commission and the Forest Service will be cooperating agencies in preparation of the document.

The Vernal District of BLM will hold two public meetings to receive input for the preparation of the document, and to identify issues, concerns, and additional alternatives. The first meeting will be held on April 27, 1988 at 7:00 p.m. at the Vernal, Utah BLM Office, 170 South 500 East, Vernal. The second meeting will be held on April 28, 1988 at 7:00 p.m. at Flaming Gorge Dam, Utah at the Visitors Center. Scoping packets are available. Scoping comments will be received until May 14, 1988. They should be addressed to: Mr. Ralph Brown, Project Manager, Vernal District BLM, 170 South 500 East, Vernal, Utah.

For more information or to obtain a scoping packet, contact Mr. Ralph Brown at the above address or call (801) 789-1362 between the hours of 7:45 a.m. to 4:30 p.m.

Date: March 24, 1988.

Craig M. Hansen,

Assistant District Manager for Minerals.

[FR Doc. 88-7046 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-08-4220-10; GP-08-100; OR-41565 and OR-41566 (WASH)]

Transfer of Jurisdiction of Lands; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice identifies and describes the Bureau of Land Management public lands that were transferred to the jurisdiction of the Forest Service by Public Law 99-663 which established the Columbia River Gorge National Scenic Area.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: 1. The Act of November 17, 1986 (Pub. L. 99-663), 100 Stat. 4274; 16 U.S.C. 544, established the Columbia River Gorge National Scenic Area. Section 14(f) of said Act transferred all public lands administered by the Bureau of Land Management within the established boundary of the national scenic area to the jurisdiction of the Forest Service, U.S. Department of Agriculture, effective on November 17, 1986, the date of the Act. Said lands are identified and described as follows:

Willamette Meridian, Oregon

Surface and Mineral Estates

T. 1 N., R. 5 E.,
  Sec. 13, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼; except for approximately 3 acres conveyed to Multnomah County for road purposes by deed recorded in P.S. Book 1798 at Page 22, Records of Deeds for the County of Multnomah.
T. 2 N., R. 12 E.,
  Sec. 3, lot 3;
  Sec. 11, lot 2 and NE¼SE¼.
T. 2 N., R. 13 E.,
  Sec. 32, lot 5.
T. 2 N., R. 15 E.,
  Sec. 16, S½ of lot 2, S½ of lot 3, and S½ of lot 4.

Surface Estate Only

T. 1 N., R. 4 E.,
  Sec. 29, that portion of the NW¼NE¼ as described in deed recorded as Document No. 18364 in Book 2061 at Page 554, Records of Deeds for the County of Multnomah;
  Sec. 30, lot 4 and those portions of lots 3, 5, and 6 as described in deed recorded as Document No. 18364, supra.
T. 1 N., R. 5 E.,
  Sec. 13, S½SW¼NW¼, W½SW¼, and those portions of the NW¼NE¼ and NE¼NW¼ as described in deed recorded as Document No. 18364, supra.;
  Sec. 14, SE¼ and those portions of lot 1 and SE¼ and NE¼ as described in deed recorded as Document No. 18364, supra.;
  Sec. 21, those portions of lots 1, 2, and SE¼NE¼ as described in deed recorded as Document No. 18364, supra.;
  Sec. 22
  Sec. SW¼SW¼;
  Sec. 27, N½NW¼NW¼ and those portions of the E½NW¼, SW¼NW¼, and NW¼SW¼ as described in deed recorded as Document No. 18364, supra.;
  Sec. 28, that portion of the N½NE¼, as described in deed recorded as Document No. 18364, supra.;
  Sec. 29, those portions of the NE¼SE¼ and SW¼SE¼ as described in deed recorded as Document No. 18364, supra.;
  Sec. 32, SW¼NE¼ and that portion of the NW¼NE¼ as described in deed recorded as Document No. 18364, supra.

Mineral Estate Only

T. 2 N., R. 9 E.,
  Sec. 1, lots 3, 4 and SE¼NW¼.

Willamette Meridian, Washington

Surface and Mineral Estates

T. 1 N., R. 5 E.,
  Sec. 12, unsurveyed island known as Skamania Island.
T. 1 N., R. 6 E.,
  Sec. 7, unsurveyed island known as Skamania Island.
T. 2 N., R. 7 E.,
  Sec. 10., NW¼NW¼ and NW¼SW¼.
T. 3 N., R. 11 E.,
  Sec. 25, NE¼SW¼.
T. 3 N., R. 12 E.,
  Sec. 30, lot 4.
T. 2 N., R. 13 E.,
  Sec. 4, SE¼NE¼
T. 2 N., R. 14 E.,
  Sec. 13, lot 4, NE¼NW¼, and those portions of lot 3 and SE¼NE¼ lying outside the U.S. Army Corps of Engineers withdrawal made by Public Land Order No. 1260 of December 1, 1955;
  Sec. 14, lots 6 and 7;
  Sec. 17, that portion of lot 2 lying outside the U.S. Army Corps of Engineers withdrawal made by Public Land Order No. 1260 of December 1, 1955;
  Sec. 18, the fractional SW¼SW¼;
  Sec. 19, that portion of the NW¼NW¼ lying outside the U.S. Army Corps of Engineers withdrawal made by Public Land Order No. 1260 of December 1, 1955.
T. 2 N., R. 15 E.,
  Sec. 8, NW¼;
  Sec. 9, W½NE¼, NW¼, and W½SW¼;
  Sec. 14, NW¼SE¼ and those portions of lots 6, 7, 8, and 9 lying outside the U.S. Army Corps of Engineers withdrawal made by Public Land Order No. 1260 of December 1, 1955;
  Sec. 15, NW¼NE¼.

Mineral Estate Only

T. 2 N., R. 6 E.,
  Sec. 12, SE¼;
  Sec. 13, NE¼NE¼, NE¼NW¼, and SE¼SE¼;
  Sec. 24, NE¼SW¼.
T. 2 N., R. 7 E.,
  Sec. 7, lot 4.
T. 2 N., R. 13 E.,
  Sec. 8, lots 2, 3, NE¼, N½NW¼, SE¼NW¼, and E½SE¼.
T. 2 N., R. 14 E.,
  Sec. 4, S½NW¼, N½SW¼, and E½SE¼;
  Sec. 10, NW¼NW¼;
  Sec. 30, SW¼SE¼.
T. 2 N., R. 15 E.,
  Sec. 10, SW¼.

Geothermal, Oil, and Gas Estate Only

T. 3 N., R. 11 E.,
  Sec. 10, SW¼.

The areas described aggregate approximately 1,197.11 acres in Hood River, Multnomah, and Wasco Counties, Oregon, and approximately.

2. Sections 8(a), 9(a), 9(e), and 14(f) of Pub. L. 99-663 made the above described lands within the State of Oregon part of the Mt. Hood National Forest and the above described lands within the State

of Washington part of the Gifford Pinchot National Forest.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: March 22, 1988.

[FR Doc. 88-6992 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-33-M

[AZ-010-08-4410-02; 1784-010]

Arizona Strip Advisory Council; Meeting and Field Tour

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of meeting and field tour.

SUMMARY: The Arizona Strip District Advisory Council will discuss cultural resources and general resource management planning, and tour special management areas.

DATES: Meeting Tuesday, April 26, 1988 at 1 p.m. in Four Seasons Inn, 747 East St. George Blvd., St. George, Utah. Field tour Wednesday, April 27, 1988 leaving the Four Seasons Inn at 7:30 a.m. and returning to St. George around 5 p.m.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The meeting and tour are open to the public. Interested people must provide their own transportation and food for the tour. Council will consider both oral and written statements at 5 p.m. Tuesday or anytime during Wednesday's tour. Arrangements to attend or comment should be made at least 5 days in advance.

G. William Lamb,

Arizona Strip District Manager.

March 18, 1988.

[FR Doc. 88-6993 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-010-08-4322-02; 1784-010]

Arizona Strip District Field Tour

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of field tour.

SUMMARY: The Arizona Strip District Grazing Advisory Board will tour the southern portion of the Shivwits Resource Area to view and discuss grazing management allotments.

DATE: Thursday, April 28, 1988 leaving from the district office at 8 a.m. and returning about 5 p.m.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: Interested publics may accompany the tour; however, they must provide their own transportation and food. The Board will consider written and oral statements anytime during the tour. Arrangements to comment or attend should be made at least 5 days in advance.

G. William Lamb,

Arizona Strip District.

March 18, 1988.

[FR Doc. 88-6994 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-32-M

[ID-040-4321-04-2410]

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Thursday, May 19, 1988, at 9:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The main purpose for the meeting is to review and discuss the District Agricultural Unauthorized Use Abatement Plan, the Herd Management Area Plan for the Challis Wild Horse Herd, the District Pilot Riparian Plan, and the State land exchanges in the District. Current Salmon District issues will also be discussed.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 a.m. and 10:30 a.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by May 16, 1988.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Jerry W. Goodman, District Manager, Bureau of Land Management, Salmon District Office P.O. Box 430, Salmon, Idaho 83467.

Dated: March 25, 1988.

Alan R. Wood,

Acting District Manager.

[FR Doc. 88-7065 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-GG-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48979-V has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 20 S., R. 8 E.,
  Sec. SW¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48979-V as set out is section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, affective February 1, 1988, subject to the terms and conditions cited above.

Dated: March 23, 1988.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 88-6995 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-JA-M

[MT-920-07-4111-13; MTM 75828]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 75828, Carbon County, Montana, was timely filed and accompained by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cites above, and reimbursement for cost of publication of this Notice.

Dated: March 16, 1988.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 88-6996 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-DN-M

[ES-30-08-4212-11; ES-00157-013; ES-31803]

Realty Action; Recreation and Public Purposes Classification; Land Classification for Recreation and Public Purposes, Chippewa County, MN

SUMMARY: The following described parcel has been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (U.S.C. 869):

Fifth Principal Meridian, Minnesota

ES-31803 Chippewa County: T1.115N.,
  R.39W., Sec. 13, Lot 6, total of 8.17 acres (Scout Island).

The purpose of the conveyance is the island's management as a portion of the Minnesota Wild and Scenic River Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act.

This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this notice, or upon publication of a Notice of Termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

For Further Information: Detailed information concerning this application is available for review at the Milwaukee District Office, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Larry Johnson at (414) 291-4413.

Bert Rodgers,

District Manager.

[FR Doc. 88-6997 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-GT-M

[UT-060-08-4212-14, U-59971]

Realty Action; Sale of Public Land, Carbon County, UT

AGENCY: Moab, Bureau of Land Management, Interior.

ACTION: Amended notice of Realty Action U-59971, sale of public land in Carbon County, Utah.

SUMMARY: A Notice of Realty Action was published in the Federal Register on July 23, 1987 (Volume 52, No. 141, pages 27733-27734) offering the following described parcels of public land for direct sale to Wellington City, Utah. The subject sale was under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713):

Salt Lake Meridian, Utah

T. 15 S., R. 10 E.,
  Sec. 12, S½SE¼,
  Sec. 13, N½,
  Sec. 14, NE¼NE¼.
  The described land contains 440 acres.

The notice segregated the land from all forms of appropriation under the public land laws, including the mining laws. The segregation will expire on April 18, 1988. This notice extends the segregation until October 1, 1988 or until issuance of patent, whichever comes first. This extension is necessary in order to protect the subject lands until the purchaser, Wellington City, Utah receives the necessary grant funds to complete the sales transaction.

Additional Information: Additional information concerning the land and the terms and conditions of the sale may be obtained from mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584 or from Brad Groesbeck, District Realty Specialist, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Date: March 25, 1988.

Gene Nodine

District Manager.

[FR Doc. 88-7047 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-930-08-5420-10-ZKAC; W-104357]

Recordable Disclaimer of Interest in Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application for a Recordable Disclaimer of Interest in Land.

SUMMARY: Eugene A. Linn, Wilson, Wyoming, has filed an application for a Recordable Disclaimer of Interest by the United States.

DATE: Comments or objections to this application should be submitted on or before June 29, 1988.

ADDRESS: Send comments to Chief, Branch of Land Resources, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, Wyoming State Office, (307) 772-2074.

SUPPLEMENTARY INFORMATION: Pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, and Title 43 CFR, Subpart 1864, Eugene A. Linn, has filed an application for a Recordable Disclaimer of Interest in the following described land:

Sixth Principal Meridian

T. 41 N., R. 117 W.,
That land riparian to lots 2 and 3 of section 13 lying between the meander lines shown on the Plat of Survey approved April 2, 1903, and the subsequent Plat of Survey accepted August 21, 1907, and the thread of the Snake River.

The Bureau of Land Management has determined that the United States has no claim to nor interest in the above described land and issuance of the proposed disclaimer would help remove a cloud on the title to that land.

For a period of 90 days from date of publication of this notice, interested persons may submit written comments on or objections to the proposed disclaimer. If no objections are submitted, the disclaimer will be issued to Eugene Albert Linn, Connie Elizabeth Linn, Bennie Lars Linn, Peter V. Linn, and Ellen Wells Linn, their successors or assigns, after the 90 day comment period ends.

John A. Naylor,

Chief, Branch of Land Resources.

March 21, 1988.

[FR Doc. 88-6990 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-4333-12]

Arizona; Closing of Area to Camping

AGENCY: Bureau of Land Management, Interior.

ACTION: Close an area to camping.

SUMMARY: The area north of Senator Wash Road and south of McKinley Road west of the All American Canal is closed to camping. The exception to this closure will be the area known as Cozy Cove in the Imperial Dam Long-Term Visitor Area. The closed area is located in T. 15 S., R. 24 E., secs. 8 and 17, San Bernardino Meridian, California.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION: Sue E. Richardson, Area, Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: Authority for this action is contained in 43 CFR 8364.1. This area is being closed to protect wildlife and wildlife habitat. The area being closed is immediately adjacent to priority wildlife habitat as described in the Yuma District Resource Management Plan. The resourse is being adversely impacted because of heavy camping. Maps of the area are available at the Yuma BLM office.

Sondra L. Berger,

Acting District Manager.

Date: March 23, 1988.

[FR Doc. 88-6999 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-22-M

[CA-027-08-4050-90]

Susanville, CA District, Plan Amendment For Alturas Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to initiate a plan amendment for the Alturas Resource Area Resource Management Plan.

SUMMARY: The Alturas Resource Management Plan (RMP) amendment would propose changes to the planning decisions relating to the Ash Valley Research Natural Area.

The amendment would change the designation of the natural area to the Ash Valley Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC). This reflects the Bureau's present policy on special area designations. The Ash Valley Research Natural Area was designated to provide protection for six sensitive plant species.

The amendment would remove 51 acres of timber producing lands from the timber base lands thus excluding these lands from timber harvesting or management practices.

The amendment recommends withdrawal of the Ash Valley Research Natural Area from location under the U.S. Mining Laws. The area would remain open to leasing under mineral leasing laws.

These amendments will exclude activities that could be detrimental to the resources in the natural area and help insure that the area remains in its natural state.

The Ash Valley Research Natural Area consists of 1,100 acres of public lands in Lassen County midway between Adin and Madeline, California.

FOR FURTHER INFORMATION CONTACT: No public meetings are planned at this time. The public is invited to comment on the plan amendment by contacting Richard J. Drehobl, BLM Alturas Resource Area Manager, 120 S. Main Street, Alturas, CA 96101 or at (916) 233-4666. More detailed information concerning the Ash Valley Research Natural Area and the Alturas Resource Area Management Plan can also be obtained by contacting the Alturas Resource Area Office.

Richard J. Drehobl,

Area Manager.

[FR Doc. 88-7000 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

March 23, 1988.

The official filing of the following described plats is hereby stayed, pending final resolutions of objections to the survey. The plats will not be officially filed until further notice. They were originally to be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 25, 1988.

The plat representing the dependent resurvey of a portion of the east, west, and north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections and an island designated as Tract 37, T. 7 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

The plat representing the dependent resurvey of portions of the Twelfth Guide Meridian West (west boundary) and the subdivisional lines, and the survey of islands designated as Tracts 37, 38, 39, 40, and 41, T. 8 S., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-7001 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

March 21, 1988.

The plats of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., March 21, 1988.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary), portions of the west boundary and the subdivisional lines and the survey of the subdivision of sections 30 and 31, T. 5 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 772, was accepted March 7, 1988.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary) and the subdivisional lines and the survey of the subdivision of sections 25 and 36, T. 5 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 772, was accepted March 7, 1988.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of sections 23 and 24, T. 4 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 838, was accepted March 10, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-7002 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-08-4220-10; CA-19403]

Proposed Withdrawal; California

March 25, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,880.10 acres of public land in San Benito County to protect the unique soils and botanic community of the San Benito Mountain Natural Area. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4815.

SUPPLEMENTARY INFORMATION: On March 15, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from location and entry under the the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 18 S., R. 12 E.,
  Sec. 4, NW¼SW¼, S½SW¼, and SW¼SE¼;
  Sec. 5, lots 5 and 12;
  Sec. 9, lots 1 to 13, inclusive, lots 18 to 20, inclusive, and NE¼;
  Sec. 10, lots 4 to 7, inclusive, S½SW¼NW¼NW¼, SW¼NW¼, S½NE¼SE¼NW¼, NW¼NW¼SE¼NW¼, S½NW¼SE¼NW¼, S½SE¼NW¼, S½SW¼, and SE¼SE¼;
  Sec. 14, lots 2 and 3, NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, and NW¼SE¼;
  Sec. 15, E½E½ and NW¼NE¼.

The area described contains 1,880.10 acres in San Benito County.

The purpose of the proposed withdrawal is to protect the unique soils and botanic community of the San Benito Mountain Natural Area for scientific and research purposes. Until an application is filed, no further action will be taken on this proposal.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land use permits for off-road vehicle events on the existing trail, and special recreational use permits for the gathering of various plants and shrubs.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-7053 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Final Environmental Impact Statement for Gorda Ridge, California; and Oregon Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Termination of final environmental impact statement on development of Gorda Ridge Polymetallic Sulfides.

SUMMARY: This Notice announces the cancellation of the preparation of a final Environmental Impact Statement (EIS) pertaining to a proposal to offer mineral leases for the development of polymetallic sulfide resources on the Gorda Ridge offshore southern Oregon and northern California.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia, 22091, Telephone: (703) 648-7816, FTS 959-7816.

SUPPLEMENTARY INFORMATION: In January 1984, MMS made available a draft EIS concerning a polymetallic sulfide lease sale on the Gorda Ridge offshore southern Oregon and northern California. The lease sale was planned to be held later in 1984. After the release of the draft EIS, work on the final EIS and the sale were deferred pending the completion of studies by a joint Federal/State Task Force on the engineering, economic, and environmental effects of developing the polymetallic sulfide deposites at Gorda Ridge. The studies coordinated by the Task Force were reviewed at a symposium in May 1987. Information and comments obtained during this symposium indicated that industry is not prepared to participate in a lease sale for polymetallic sulfides at this time. In view of this lack of interest, MMS has suspended plans for a lease offer for the polymetallic sulfide deposits on the Gorda Ridge. Therefore, no further efforts will be undertaken to prepare a final EIS. If interests are renewed in the leasing of polymetallic sulfide deposits on the Gorda Ridge, a new draft EIS will be prepared in preparation for a lease offering.

(Sec. 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C))

Dated: March 18, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 88-7003 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Development Operations Coordination Document From Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G-3197, Block 120, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Venice an Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on March 23, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 120 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-7004 Filed 3-30-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Laskin et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 17, 1988 a proposed consent decree in *United States* v. *Laskin, et al.,* Civil Action No. C84-2035Y was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree concerns the recovery of response costs incurred by the United State Environmental Protection Agency at the Laskin/Poplar Oil site in Jefferson, Ohio. The proposed consent decree requires the settling defendants to pay $1.47 million for costs incurred at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Laskin, et al.,* D.J. Ref. 90-11-3-38. Copies of comments should also be forwarded to Steven D. Bell, Assistant U.S. Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio 44114.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio, and at the Region 5 Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-7005 Filed 3-30-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endownment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by May 2, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Arts in Education Application Guidelines FY 1989.

Frequency of Collection: Annually.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations, state arts and local arts agencies and regional organizations that apply for funding under specific program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 330.

Estimated Hours for Respondents to Provide Information: 5,597.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-7096 Filed 3-30-88; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts/Dance & Music Section) to the National Council on the Arts will be held on April 19-April 21, 1988 from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 19, 1988, from 9:00 a.m.-11:30 a.m. and on April 21, 1988, from 2:00 p.m.-5:30 p.m. for a general program overview and guidelines discussion.

The remaining sessions of this meeting on March 19, 1988 from 11:30 a.m.-5:30 p.m., and on April 20, 1988 from 9:00 a.m.-5:30 p.m., and on April 21, 1988 from 9:00 a.m.-1:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 24, 1988.

[FR Doc. 88-7006 Filed 3-30-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On February 12, 1988, the National Science Foundation published notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on March 21, 1988: Bob Reiss.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88-7007 Filed 3-30-88; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Advisory Panel for Genetic Biology is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel for Genetic Biology.

Purpose: Primarily, to advise on the merit of proposals for research and research-related purposes submitted to the Foundation for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance to the Genetic Biology Program.

M. Rebecca Winkler,

Committee Management Officer.

March 25, 1988.

[FR Doc. 88-7035 Filed 3-30-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors

The **Federal Register** published Friday, March 18, 1988 (53 FR 9014) contained notice of a meeting of the ACRS Subcommittee on Advanced Pressurized Water Reactors scheduled for April 5, 1988 has been *rescheduled for Wednesday, April 6, 1988, 8:30 a.m., Room 1046, 1717 H Street NW., Washington, DC.*

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss Westinghouse proprietary information. All other items pertaining to this meeting remain the same as previously published.

Date: March 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-7100 Filed 3-30-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on April 19-21, 1988, at the Best Western Stardust Hotel, 700 Lindsay Blvd., Idaho Falls, ID.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 19, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review the draft Models and Correlations Document for the RELAP-5/MOD 2 thermal hydraulic code.

Wednesday, April 20, 1988—8:30 a.m. until 1:00 p.m.

The Subcommittee will review the final version of the proposed revision to the ECCS Rule.

Wednesday, April 20, 1988—1:00 p.m. until the conclusion of business and Thursday, April 21, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss a proposed report on thermal hydraulic research for consideration by the ACRS.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-7101 Filed 3-30-88; 8:45 am]

BILLING CODE 7590-01-M

Relocation of NRC Offices

Effective March 28, 1988, the NRC's Office of the Executive Director for Operations has been relocated at the agency's new office building located at One White Flint North, 11555 Rockville

BEST COPY AVAILABLE

Pike, Rockville, Maryland. In addition, the following portions of the Office of Governmental and Public Affairs (GPA) have been relocated at One White Flint North: The Director of GPA and the Public Affairs staff. The agency's mailing address remains unchanged—U.S. Nuclear Regulatory Commission, Washington, DC 20555. The new telephone number for the Public Affairs staff is 301–492–0240. Specific telephone numbers for the remaining relocated NRC personnel may be obtained from the NRC Operator on 301–492–7000. A new NRC Telephone Directory (NUREG/BR–0046) is expected to be issued in the near future.

Dated at Bethesda, Maryland, this 28th day of March 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Cheif, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–7074 Filed 3–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–424]

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–68, issued to the Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Unit 1 located in Burke County, Georgia.

The amendment would add a footnote to Technical Specification 3.7.6, "Control Room Emergency Filtration System," in order to allow pre-operational testing of the Vogtle Electric Generating Plant (VEGP) Unit 2 hearing, ventilation, and air conditioning (HVAC) system. The footnote will state the following:

> The verification activity specified by Paragraph 4.7.6.e.3 is waived with respect to the Unit 1 Control Room/Unit 2 Control Room differential pressure during periods of operation of the Unit 2 Emergency HVAC System while conducting pre-operational testing of that system. The waiver is contingent upon the capability to shut down the applicable Unit 2 HVAC systems within 4.5 minutes after receipt of a Unit 1 Control Room Isolation signal.

VEGP Unit 1 is protected from VEGP Unit 2 construction and testing activities by physical barriers and administrative controls. In particular, the VEGP Unit 1 and Unit 2 control room areas are separated by a temporary wall and the HVAC systems are separated by a series of dampers, removed duct sections, and caps on open ducts.

The licensee plans to remove the temporary wall separating the VEGP Unit 1 and VEGP Unit 2 control room areas during the first VEGP Unit 1 refueling outage, in order to minimize the negative impact of the wall removal on the operation of VEGP Unit 1. This schedule requires that pre-operational testing of the VEGP Unit 2 HVAC systems begin prior to the VEGP Unit 1 refueling outage. The VEGP Unit 2 testing activities will result in occasional positive pressures in the VEGP Unit 2 control room, which could negate the positive pressure requirement for the VEGP Unit 1 control room and is the reason that the proposed amendment is necessary. These testing activities are scheduled to begin immediately and end just in time to remove the temporary wall during the VEGP Unit 1 refueling outage scheduled to begin in September 1988.

The licensee initially believed that the required pre-operational testing of the VEGP Unit 2 emergency HVAC systems could be performed during full power operation of VEGP Unit 1 without the need for a Technical Specification amendment for VEGP Unit 1. This belief was based on the temporary nature of the VEGP Unit 2 pressurization testing and the continued compliance with the VEGP Unit 1 Technical Specification Bases through compensatory operator action. The Nuclear Regulatory Commission (NRC) staff informed the licensee on March 17, 1988 of their position that a Technical Specification amendment was necessary. Therefore, approval of the proposed amendment on an exigent basis is necessary to avoid a potential extension of the planned VEGP Unit 1 refueling outage or a separate outage for removal of the temporary wall.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed amendment and has determined that it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because dedicated operators will shut down the VEGP Unit 2 emergency HVAC systems in the event of a control room isolation signal to ensure that radiation doses are not increased above those previously evaluated. Also, chlorine gas will not be stored on site in a quantity that requires any chlorine protection. In addition, the NRC staff has found that the proposed amendment would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the change does not involve any physical alteration of the plant. Therefore, a failure mode which could lead to a new or different type of accident is not introduced. Finally, the proposed amendment would not (3) involve a significant reduction in a margin of safety because dedicated operators with no other duties will be stationed to shut down the VEGP Unit 2 emergency HVAC systems in the event of an accident.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a haering.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 15, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be a made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioners's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to invervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Westion Union operator should be given Datagram Identification Number 3737 and the following message addressed to Darl Hood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street NE., Atlanta, Georgia 30043.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 25th day of March, 1988.

For The Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–7075 Filed 3–30–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would delete reference to electrical power and change the scram bypass set points to 50% of rated thermal power. The Average

Power Range Monitor Flux Scram Trip Setting will also be changed to maintain consistency throughout the Technical Specifications.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing or a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularlity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Gerald R. Garfield, Esq., Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 17, 1987, which is available for public inspection at the Commission's Public Document Room 1717, H Street NW., Washington, DC and at the Waterford Public Libray, 49 Rope Ferry Road, Waterford Connecticut 06385.

Dated at Rockville, Maryland, this 24th day of March 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7076 Filed 3-30-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Neclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego, California. The requests for amendments were submitted by letters dated December 14, 1987 and January 28, 1988, and ideintified by you as Proposed Change Numbers 231, 232, 233, 234 and 240. Each proposed change is discussed below.

Proposed Change No. NPG-10/15-23 would revise Figure 3.1-2 of Technical Specification 3/4.1.2.6, "Regulating CEA Insertion Limits." The existing Technical Specification Figure 3.1-2 provides the CEA withdrawal sequence and insertion limits when the Core Operating Limit Supervisory System (COLSS) is in or out of service. The figure also delineates the Short Term and Long Term Steady State Insertion Limits. The revised Technical Specification figure would relax the CEA insertion at low power levels (at or below 25% power).

Proposed Change No. NPF-10/15-232 would revise Surveillance Requirement 4.3.3.2 of Technical Specification 3.3.3.2, "Incore Detectors." The existing Technical Specification defines the operability requirements for the incore detection system. The surveillance requirements identify the system tests and the frequency with which they are to be performed. These surveillance tests demonstrate the operability of the detection system. The purpose of the Specification is to ensure the measurements from the use of this system accurately represent the nuclear conditions within the reactor core.

Surveillance Requirement 4.3.3.2(a) requires that the incore detection system be domonstrated operable by performance of a channel check within 24 hours prior to its use if 7 or more days have elapsed since the previous check and at least once per 7 days thereafter when required for monitoring the Azimuthal Power Tilt, radial peaking factors, local power density or DNB margin. Thus, the channel check is required weekly independent of the parallel surveillances required for monitoring the other parameters listed above. Technical Specification 3/4.2.2, "Planar Radial Peaking Factors—Fxy," requires that the measured Planar Radial Peaking Factors ($F^{m}xy$) shall be less than or equal to the Planar Radial Peaking Factors ($F^{c}xy$) used in the COLSS and in the Core Protection Calculators (CPC) when the reactor is in Mode 1 (critical) above 20 % of rated thermal power. The measured Planar Radial Peaking Factors ($F^{m}xy$) are obtained by using the incore detection system after each fuel loading with thermal power greater than 40% but prior to operation above 70% of rated thermal power, and at least once every 31 Effective Full Power Days (EFPD). Technical Specification 3/4.2.3, "Azimuthal Power Tilt—tq," requires that the Azimuthal Power Tilt (Tq) be less than or equal to the Azimuthal Power Tilt Allowance used in the CPC when the reactor is in Mode 1 above 20% of rated thermal power. Similarly, Surveillance Requirement 4.2.3(c) requires that the Azimuthal Power Tilt be determined by using the incore detectors at least once per 31 EFPD to independently confirm the validity of the COLSS calculated Azimuthal Power Tilt. The proposed change to Surveillance Requirement 4.3.3.2(a) would change the frequency of performance of the channel check to within 24 hours of its use if 31 EFPD or more had elapsed since the previous check and at least one per 31 EFPD there after when required for monitoring the above listed parameters. The proposed change allows verification of incore detector operability to be performed in conjunction with other routine surveillances.

Proposed Change NPF-10/15-233 would revise Technical Specification 3/4.10.2, "Group Height, Insertion and Power Distribution Limits," and Tables 2.2-1 and 3.3-1. Physics testing requires the measurement of various Control Element Assemblies (CEAs) bank reactivity worths at low reactor power levels. This evolution is currently performed under Technical Specification Special Test Exception 3.10.3. However, that specification test exception was written for partial RCS flow conditions which are not applicable during normal physics testing. The more appropriate test exception to be utilized is 3/4.10.2; however, this test exception references footnote (C) to Table 3.3-1. This footnote allows manual bypass of the trip below 5 percent of rated thermal power only for conduct of special test exception 3/4.10.3. Since the Core Protection Calculators (CPCs) are programmed to trip the reactor on abnormal CEA configurations, it is necessary to raise the Plant Protection System (PPS) 10^{-4} percent power bistable to 5 percent power. This bistable prevents CPC generated trips from causing a reactor trip below the PPS bistable setpoint. The first part of the proposed change would reference Tables 2.2-1, "Reactor Protective Instrumentative Trip Setpoint Limits," and 3.3-1, "Reactor Protective Instrumentation," in the body of Special Test Exception 3.10.2, thus allowing this exception to be used for physics testing. This part of the change would also modify footnote (5) of Table 2.2-1 to indicate that the bypass setpoint be changed during testing pursuant to Special Test Exception 3.10.2. This footnote affects the Local Power Density-High and DNBR-Low entries in the table. Finally, this part of the proposed change would also affect footnote (C) of Table 3.3-1 to indicate that, during testing pursuant to Special Test Expection 3.10.2 (as well as 3.10.3), the trip may be manually bypassed below 5 percent of rated thermal power. This footnote affects the "channels to trip" column for Local Power Density-High, DNBR-Low and the Core Protection Calculator entries in this table.

The second part of Proposed Change 233 would change Surveillance 4.10.2.2. The existing Surveillance 4.10.2.2 requires determination of linear heat rate by monitoring it continuously with the Incore Detector Monitoring System pursuant to the requirements of Specification 4.2.1.3. Specifications 4.2.1.3 is a surveillance requirement in Specification 3/4.2 which requires that the Core Operating Limit Supervisory System Margin Alarm be verified to actuate at the specified interval. This part of the proposed Technical Specification change would change surveillance 4.10.2.2 to reference surveillance 4.2.1.2. This surveillance specifies conditions within which linear heat rate is to be determined.

The third part of Proposed Change 233 would change Table 3.3-1 of the Technical Specifications to exempt Control Element Assembly Calculators (CEACs) from Specifications 3.0.4. Action 6 of the table requires that, with one CEAC inoperable, operation may continue for up to 7 days provided that at least once per 4 hours each CEA is verified to be within 7 inches (indicated position) of all other CEAs in its group. After 7 days the action allows continued operation provided that certain conditions are met. These conditions are the same as those conditions required for operation when both CEACs are inoperable. Under the conditions of Action 6b, operation may continue indefinitely. CEA inoperability has in itself the ability to delay plant startup since the specification is not 3.0.4 exempt. An exemption for CEACs from Specification 3.0.4 would preclude this possible startup delay. This part of the proposed change would modify Action 6 of Table 3.3-1 by inserting a Specification 3.0.4 exemption for inoperability of one of both CEACs (thus allowing plant mode changes to be made).

Proposed Change No. NPF-10/15-234 would revise Technical Specification 3/4.5.1, "Safety Injection Tanks". The existing Limiting Condition for Operation (LCO) 3.5.1.d requires that each reactor coolant system safety injection tank be operable with a nitrogen cover-pressure of between 600 and 625 psig. This requirement in conjunction with other requirements of the LCO ensures that a sufficient volume of borated water will be immediately forced into the reactor core through the cold legs of the Reactor Coolant System (RCS) in the event that the RCS pressure falls below the pressure of the safety injection tanks (SITs). This initial surge of water into the core provides the initial cooling mechanism during large pipe ruptures within the reactor coolant pressure boundary. The proposed change would revise the required upper limit of the nitrogen cover-pressure from 625 psig to 640 psig. This change would prevent possible violation of the pressure limit in the other SITs due to inleakage from the common fill header when one of the tanks is being filled to maintain its pressure within limits. In addition, the proposed change would revised the units of pressure from pounds per square inch gauge (psig) to pounds per square inch absolute (psig). This would make the units of measurement consistent with other units on the control room panel. Finally, the proposed change would delete the Unit 3 Cycle-2 specific lower SIT boron concentration requirement from the Limiting Condition for Operation.

Proposed Change NPF-10/15-240 would revise Technical Specification 3/4.4.4, "Steam Generators." The surveillance requirements for inspection of the steam generator tubes ensure that the structural integrity of this portion of the RCS will be maintained. The program for inservice inspection of steam generator tubes maintains surveillance of the condition of the tubes in the event that there is evidence of mechanical damage or progressive degradation due to design, manufacturing errors, or inservice conditions that lead to corrosion. In SCE's letter dated April 5, 1985, SCE documented the existence of and the corrective action for steam generator tube wear caused by vibration of an integral diagonal support ("batwing wear"). The corrective action program includes a full 100 percent eddy current inspection of all tubes falling within the "batwing wear" area during every refueling outage and the preventative plugging of tubes.

The Technical Specifications currently require that at least 50% of the tubes selected for the routine inservice inspection shall be located in those areas where experience has indicated potential problems. This would require, for a 3% random sample, more than half of the sample be located in the "batwing wear" area which reduces the size of the first random sample throughout the generator to be less than 1.5%. Additionally, since the "batwing wear" area contains tubes which are subject to the known wear mechanism, the sample base may be increased beyond the initial 3%. However, any additional tube inspection would focus exclusively on the problem areas. Thus, although the tubes experiencing "batwing wear" have been enveloped by the aforementioned program, the current Technical Specifications, when applied as written, would effectively reduce the extent of the random sample outside the wear area and cause unnecessary expansion of the steam generator tube inspection sample basis into the wear area for each inservice inspection.

The proposed change would revise the Technical Specification surveillance requirements to require a special "batwing wear" area inspection and remove this area from the general tube sample selection. This increases the random tube selection outside this well-defined area and provides for a better inspection program. In addition, because the wear phenomenon in the "batwing wear" area is well understood, the results would not be included in the inspection results classification. In summary, the proposed change would revise the Technical Specification surveillance requirements to exclude tubes from the "batwing wear" area from the first tube inspection sample base.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 2, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to particpate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the applications for amendments which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 23rd day of March, 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-7077 Filed 3-30-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25512; File No. SR-NASD-87-18]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission ("Commission") on April 8, 1987, and amended on March 17, 1988, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would eliminate Section B.3 from Part IV of Schedule D to the NASD By-Laws, which currently allows a refund of issuer fees for securities removed from the NASDAQ System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would delete from Schedule D to the NASD By-Laws the provision that allows for a refund upon request by an issuer of that portion of the annual quotation fee attributable to the months following the date on which a security is removed from the NASDAQ System. This amendment was adopted by the NASD Board of Governors at the recommendation of the NASD Corporate Advisory Board. The Corporate Advisory Board is comprised of representatives of NASDAQ issuers and advises the Board of Governors on issuer-related questions. Under the current rule, it has been the practice of the NASD to refund fees, upon request, in instances where companies are removed from the NASDAQ system based upon their failure to meet maintenance requirements for continued inclusion. The NASD has noted, however, that few issuers seek refund of these fees. In 1987, for example, only 31 issuers requested a refund and the average refund was $1,377. In reviewing this policy, both the Corporate Advisory Board and the Board of Governors concluded that the small number of requests for refund did not justify the costs and effort expended in computing and processing refund requests, and that in the Board's business judgment, the refunds should be eliminated.

The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act, which states that the rules of the NASD must provide for the equitable allocation of fees and other charges among members, issuers and other persons using any facility or system which the NASD operates or controls. The NASD believes that the retention of the balance of issuer fees is consistent with the section.

(B) Self-Regulatory Organization's Statement On Burden on Competition

The NASD does not believe that the proposed amendment will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement On Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-18 and should be submitted by April 21, 1988.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 25, 1988.

[FR Doc. 88-7061 Filed 3-30-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1161]

Secretary of State's Advisory Committee on Private International Law; Meeting in New York

The 41st meeting of the subject Advisory Committee will take place at 10:15 a.m. on Friday, April 29, 1988, in the conference room on the 12th floor of the United States Mission to the United Nations at 45th Street and First Avenue, New York City. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will include a review of domestic and international developments relevant to international unification or harmonization of private law, including the status of the four conventions for which the Senate gave advice and consent to U.S. ratification in October, 1986 and of related Administration-proposed federal legislation pending in Congress. The agenda will also include the following topics: the May, 1988 diplomatic conference on international financial leasing and international factoring; developments concerning the 1973 International Wills Convention; litigation relating to the interpretation of the Hague Service and Evidence Conventions; the draft convention on the liability of operators of transport terminals; the treaties and protocols relating to maritime bills of lading and carriage of goods by sea; UNCITRAL work relating to electronic funds transfers and an international procurement code; developments related to the draft UNCITRAL convention on international negotiable instruments; the draft convention on the law applicable to decedents' estates, and the future work program of the Hague Conference on Private International Law. The Advisory Committee will review the work of its study groups on some of the above topics. There will also be the first step of a review of international conventions produced by the Hague Conference and other international organizations with a view to determining whether the United States might benefit from becoming a party to some of these conventions.

Entry to the U.S. Mission buiding is controlled and will be possible only by advance arrangement. Therefore, members of the general public planning to attend should, prior to April 29, notify the Office of the Assistant Legal Adviser for Private International Law (L/PIL), Department of State, Washington, DC 20520 (telephone: (202)653-9852) of their name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88-7012 Filed 3-30-88; 8:45 am]

BILLING CODE 4710-08-M

[CM-8/1180]

Shipping Coordinating Committee, Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on Thursday, April 14, 1988, at the Office of Marine and Estuarine Protection of the Environmental Protection Agency. The meeting will convene at 2:00 p.m. in the OMEP Conference Room, 8th Floor, 499 South Capitol Street, Washington, DC 20003. Members of the public are invited and free to attend up to the seating capacity of the room.

The purpose of the meeting is to review and discuss the U.S. positions for the Eleventh Meeting of the Scientific Group on Dumping, to be held April 25-29, 1988. The Scientific Group is an advisory body to the London Dumping Convention.

For further information, contact Dr. Al Wastler, Office of Marine and Estuarine Protection (WH-556F), Environmental Protection Agency, Washington, DC 20460. His telephone number is (202) 382-7166.

Date: March 22, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-7050 Filed 3-30-88; 8:45 am]

BILLING CODE 4710-08-M

[CM-8/1183]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes, Bulk Cargoes Panel; Open Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 27, 1988 at 9:30 a.m. in Room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of this meeting is to finalize preparations for the 29th session of the Subcommittee on Containers and Cargoes of the International Maritime Organization (IMO) which is scheduled for May 9-13, 1988. In particular, the Bulk Cargoes panel will discuss the development of U.S. positions dealing with, inter alia, the following topics:

1. Proposed revision of Chapter VI of the International Convention on Safety of Life at Sea (SOLAS) to include basic regulations for the safe carriage of cargoes which owing to their particular hazards to ships or persons on board may require special precautions (except liquids, gases, and those aspects otherwise covered by the Convention).

2. Proposed amendments to the Code of Safe Practice for Solid Bulk Cargoes, including:

—Development of new criteria in respect of liquefaction and sliding failures in solid bulk cargoes;
—Requirements of materials posing chemical hazards; and
—Consideration of requirements for any new cargoes.

3. Carriage of Grain.

4. Revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.

5. IMO activities related to bulk cargoes of a continuing nature. Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Joseph J. Angelo or Commander Richard S. Tweedie, U.S. Coast Guard Headquarters (G-MVI), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 267-2978 or 267-1181.

Date: March 17, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-7048 Filed 3-30-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1184]

U.S. Organization For The International Telegraph and Telephone Consultative Committee (CCITT); Joint Working Party and Study Group C; Meeting

The Department of State announces that the Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 21, 1988 at Bellcore, Room B1 and B, 2102 L St. NW., Washington, DC. The meeting will begin at 9:30 a.m.

The purpose of the meeting is to consider U.S. contributions and prepare U.S. positions for the final meeting of CCITT Study Group XI 16-27 May, Geneva, Switzerland. Contributions for the June meeting of Study Group XVIII as well as any other relevant business may also be considered.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the meeting rooms is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Ms. Larrie McMullen (201) 758-2468.

Date: March 13, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 88-7051 Filed 3-30-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1182]

U.S. Organization For The International Telegraph and Telephone Consultative Committee (CCITT); Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 22, 1988 at 9:30 a.m. in Room 3524, Department of State, 2201 C Street NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting is to consider U.S. contributions and prepare U.S. positions for the final meeting of CCITT Study Group I, May 10-18, 1988 and CCITT Study Group III May 30 to June 7, Geneva, Switzerland.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC.; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: March 16, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 88-7049 Filed 3-30-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-016]

Disestablishment of Regional Boating Standards Units (RBSU) South, Central and West; Assumption of Recreational Boating Standards Duties by Coast Guard Marine Safety and Marine Inspection Offices

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is reorganizing implementation of the Recreational Boating Standards program in the field by disestablishing its three Regional Boating Standards Units (RBSU): RBSU South located in Miami, FL; RBSU Central located in St. Louis, MO; and RBSU West located in Long Beach, CA. The recreational boating standards duties performed by the three RBSUs will be performed by the Coast Guard Marine Safety and Marine Inspection Offices located throughout the United States.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kerlin, Boating Safety Division (G-BBS-1/43), Room 4306, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001; (202) 267-0988.

SUPPLEMENTARY INFORMATION: As a result of a serious budget shortfall, the Coast Guard is closing the three Regional Boating Standards Units (RBSU): RBSU West in Los Angeles/Long Beach, California; RBSU Central in St. Louis, Missouri; and RBSU South in Miami, Florida. The periodic inspections of recreational boat manufacturing plants and other duties that were formerly done by the three RBSUs will now be accomplished by personnel from Coast Guard Marine Safety and Coast Guard Marine Inspection Offices located throughout the United States.

Dated: March 28, 1988.

W. P. Hewel,

Captain, U.S. Coast Guard Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 88-7090 Filed 3-30-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Washburn and Douglas Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this Notice to Advise the public that an environmental impact statement will be prepared for a proposed highway project in Washburn and Douglas Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Jaclyn D. Lawton, Environmental Coordinator, Wisconsin Division, FHWA, 4502 Vernon Boulevard, Madison, WI 53705-4905, Telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in coopration with the Wisconsin Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 53 (U.S. 53) in Washburn and Douglas Counties, Wisconsin. The proposed improvement would involve the construction of additional lanes to upgrade U.S. 53 from its present two-lane facility to a four-lane expressway beginning where the existing four-lane ends, approximately 2.5 miles north of the north intersection of U.S. Route 63 (U.S. 63) with U.S. 53 and extending northerly about 44.7 miles to the end of the existing four-lane in the town of Hawthorne, 3.5 miles north of the intersection of CTH "B" and U.S. 53.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demand and economic benefits. Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; (3) upgrade the existing highway to provide a four-lane, divided roadway; and (4) upgrade the existing two-lane highway to provide a four-lane, divided roadway with relocation around villages. Incorporated into and studied with the various building alternatives will be designed variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to provide organizations and citizens who have previously expressed or are known to have interest in this proposal. Meetings with public officials will be held in Minong, Gordon, and Solon Springs between April and July 1988, along with public informational meetings. In addition, a public hearing will be held at a later date. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is tentatively planned for April 27, 1988, at a facility close to the project area.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on March 23, 1988.

Frank M. Mayer,

Division Administrator.

[FR Doc. 88-7008 Filed 3-30-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 25, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0140.

Form Number: None.

Type of Review: Reinstatement.

Title: Collective Investment Fund Plan/Financial Report.

Description: The written plan for a Collective Investment Fund provides the operating framework for the fund. The Financial Report reflects, on an annual basis, the investment status; including investment changes. Both documents serve as the basic disclosure documents for fund participants.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 14,600 hours.

Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7106 Filed 3-30-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 25, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0216

Form Number: 5713, Schedules A, B, and C.

Type of Review: Extension.

Title: International Boycott Report.

Description: Form 5713 and its related Schedules A, B, and C are used by persons who have operations in a "boycotting" country. If that person cooperates or participates in the boycott, he or she loses a portion of the foreign tax credit, the deferral of income under subpart F, DISC benefits, or FSC benefits. IRS uses Form 5713 to determine if any of the above tax benefits should be lost. The information is also used as the basis of a report to the Congress.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Burden: 12,490 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7107 Filed 3-30-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Career Development Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Mezzanine Room #4 of the Sheraton National Hotel, Columbia Pike and Arlington Boulevard, Arlington, Virginia, April 27 through 29, 1988, starting at 8 a.m., April 27. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:45 a.m. on April 27, 1988, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (202-233-2317) prior to April 20, 1988. The meeting will be closed from 8:45 a.m. to 5 p.m., April 27; 8 a.m. to 5 p.m. on April 28; 8 a.m. to 3 p.m. on April 29, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92-463 as amended, in

accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (phone 202-233-2317).

Dated: March 23, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-7081 Filed 3-30-88; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration Facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue NW., Washington, DC, on April 22, 1988, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Structural Engineering Service, Office of Facilities, Veterans Administration Central Office (phone 202-233-2864) prior to April 15, 1988.

Dated: March 23, 1988.

By the direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-7082 Filed 3-30-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 62
Thursday, March 31, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:15 p.m. on Monday, March 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clark (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 29, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-7104 Filed 3-29-88; 12:55 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 5, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
International personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, April 7, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1987-34—Leslie J. Kerman on behalf of Telenet Communications Corporation.
Draft AO 1988-10—William E. Taylor.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-7188 Filed 3-29-88; 3:28 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, April 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSONS FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7186 Filed 3-29-88; 2:56 pm]

BILLING CODE 6210-01-M

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federal register

Thursday
March 31, 1988

Part II

Department of Commerce

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of New Applications for Filing and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provisions of Title III, Part IV, of the Communications Act of 1934, as amended (47 U.S.C. 399–94) and in accordance with 15 CFR Part 2301. All of the applications listed in this section were received by January 20, 1988. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Date Received". Applications are listed by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of either the Act or 15 CFR Part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP). Acceptance for filing does not ensure that an application will be funded; it merely qualifies that application to compete for funding with other applications which have also been accepted for filing.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in 15 CFR 2301.5(a).

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Scott Mason,

Chief, Management Branch.

AK (Alaska)

File No. 8008 CRB Raven Radio Foundation, 102 B Lincoln Street, Sitka, AK 99835. Signed By: Mr. Richard McClear, Chief Executive Officer. Funds Requested: $29,886. Total Project Cost: $39,848. To extend and improve the translator network of station KCAW–FM, which operates on 104.7 MHz in Sitka, AK. The project will activate three translators in Sitka itself to overcome multipath interference and shadowing problems which affect about half of the community's residents. It will also activate a satellite-fed translator to Port Alexander, AK, which will be the first public radio signal to that community. Finally, it will purchase satellite receive equipment for KCAW translators in Angoon, Pelican and Tenakee Springs, all in southeast AK, which are currently fed by telephone lines.

File No. 8089 CRB Kachemak Bay Broadcasting, Inc., 215 East Main Court, Homer, AK 99603. Signed By: Mr. Ed Todd, President. Funds Requested: $35,205. Total Project Cost: $51,205. To replace worn-out and obsolete studio production equipment at radio station KBBI–AM, which operates on 890 kHz from Homer, AK. The project will purchase an on-air console, cartridge machines, telephone interfaces, reel-to-reel tape machines, cassette decks, CD players, turntables and diverse associated equipment.

File No. 8186 CTB Capital Community Brdcstg., Inc., 224 Fourth Street, Juneau, AK 99801. Signed By: Mr. Peter Frid, President & General Manager. Funds Requested: $360,000. Total Project Cost: $486,507. To replace worn-out and obsolete studio and field production equipment at television station KTOO, Ch. 3, Juneau, AK. The project will purchase studio cameras, field cameras, 1" VTRs, a studio editing system, a video switcher, an audio mixer, and associated equipment.

File No. 8208 CRB Silakkuagvik Communications, Inc., 1695 Okpik Street, P.O. Box 109, Barrow, AK 99723. Signed By: Ms. Molly Pederson, President. Funds Requested: $25,751. Total Project Cost: $34,335. To extend the signal of radio station KBRW–AM, which operates on 680 kHz from Barrow, AK, to the unserved northern Alaskan communities of Nuiqsut, Kaktovik, and Point Lay. The project will install FM translators in these communities and will bring the first public radio signal to 700 residents of these extremely remote and isolated areas.

AL (Alabama)

File No. 8140 CRB Spring Hill College, 4000 Daupin Street, Mobile, AL 36608. Signed By: Rev. Paul Tipton, President. Funds Requested: $54,545. Total Project Cost: $79,545. To activate a new Radio Reading Service for the print-handicapped. Project will use subcarrier of WHIL–FM in Mobile. Reading Service will extend the Alabama Radio Reading Service Network.

AZ (Arizona)

File No. 8045 CRB Maricopa County Comm. College, 1435 S. Dobson Road, Mesa, AZ 85202. Signed By: Mr. Dan Whittemore, Vice Chancellor. Funds Requested: $86,100. Total Project Cost: $172,200. To improve the transmission capabilities of KJZZ–FM operating on 91.5 MHz Phoenix, Arizona by replacing aging antenna and transmitter units to continue to deliver the only public radio service to the Phoenix area.

File No. 8147 CRB Tuba City High School Board, Inc., P.O. Box 160, Warrior Drive, Tuba City, AZ 86045. Signed By: Mr. Lee "F" Johnson, President. Funds Requested: $72,555. Total Project Cost: $96,740. To establish an educational FM Station operating on 91.5 MHz in Tuba City, Arizona to provide specialized programming to 15,000 residents of the Western Navajo Agency.

File No. 8199 CRB Maricopa Community College Dist., 3124 East Roosevelt Street, Phoenix, AZ 85008. Signed By: Mr. Dan Whittemore, Vice Chancellor. Funds Requested: $12,587. Total Project Cost: $25,174. To improve the production and transmission capabilities for Sun Sound, a radio reading service for the blind, operating in Phoenix, Arizona by replacing a defective audio control board in order to serve 10,000 print handicapped persons in Maricopa County.

File No. 8258 CRB University of Arizona, Modern Language Building, Tucson, AZ 85721. Signed By: Mr. William Noyes, Associate Vice President. Funds Requested: $66,500. Total Project Cost: $88,667. To establish a new noncommercial FM radio station in Tucson and a Satellite station in Sierra Vista, Arizona operating on 89.1 and 91.3 respectively to provide additional public radio service to the greater Tucson area.

File No. 8300 CRB University of Arizona, Modern Language Building, Tucson, AZ 85721. Signed By: Mr. William Noyes, Associate Vice President. Funds Requested: $6,375. Total Project Cost: $8,500. To extend the signal of public radio station KUAT–FM, Tucson, Arizona by installing an FM translator in Duncan, Arizona operating on 89.7 MHz to bring a first public radio service to 16,113 residents of Graham and Greenlee Counties in Arizona and Grant County, New Mexico.

CA (California)

File No. 8015 CTB KMTF Channel 18, Inc., 733 L Street, Fresno, CA 93721. Signed By: Mr. Colin Dougherty, General Manager. Funds Requested: $50,000.

Total Project Cost: $95,851. To extend the service of KMTF, Ch. 18, Fresno, CA to western Kern County by the construction of a 1,000 watt translator on Ch. 36 to serve some 421,000 people in the greater Bakersfield area.

File No. 8026 CTN Los Angeles Office of Education, 9300 East Imperial Highway, Downey, CA 90242. Signed By: Mr. Kenneth Forkos, Assistant Administrator. Funds Requested: $320,662. Total Project Cost: $429,731. To construct a Ku band satellite uplink for use by the Educational Telecommunications Network, Los Angeles County Office of Education. The project would extend the current program service of the Regional Educational Television Council and would provide satellite delivered instructional materials to some 354 school districts in 12 counties which serve 3 million students.

File No. 8039 CTB Mono County Service Area # 5, Corner School Street and US 395, Bridgeport, CA 93517. Signed By: Mr. Michael Kingston, Acting Chair. Funds Requested: $89,853. Total Project Cost: $119,805. To establish a low power television station operating on Ch. 22, Bridgeport, CA to provide first service to 1,000 residents of Mono County. The project will be affiliated with the Rural Television Service project bringing public television to rural communities through the western United States. The project will replace an unreliable double hop translator system which rebroadcasts the signal of KVIE, Ch. 9 Sacramento and will provide opportunity for local origination in Mono County.

File No. 8042 CRB Redwood Community Radio, Inc., 971 Redwood Drive, Garberville, CA 95440. Signed By: Mr. Tom McBride, President. Funds Requested: $40,943. Total Project Cost: $54,591. To improve the production facilities of KMUD, 91.1 MHz in Garberville, CA. The project will replace outmoded and loaned equipment in master control and construct a full studio and control room for the production of local programming to serve portions of three counties in northern California.

File No. 8083 CTB Rural California Brdcstg. Corp., 5850 Labath, P.O. Box 2838, Rohnert Park, CA 94927. Signed By: Mr. Leroy Lounibos, President. Funds Requested: $84,556. Total Project Cost: $112,741. To improve the production capability of KRCB–TV, Ch. 22 in Rohnert Park CA, by purchasing additional equipment for master control, editing and test use. KRCB serves residents of Sonoma, Marin and Napa counties in northern California.

File No. 8097 CTN Compton Community College, 1111 E. Artesia Blvd., Compton, CA 90221–5393. Signed By: Mr. Edison Jackson, President. Funds Requested: $115,831. Total Project Cost: $154,442. To provide television programming to minority audiences via cable distribution. The project will serve some 38,000 people in the Compton area of metropolitan Los Angeles.

File No. 8106 CRB Pasadena Area Comm. Col. Dist., 1570 East Colorado Blvd., Pasadena, CA 91106. Signed By: Mr. Jack Scott, President. Funds Requested: $81,588. Total Project Cost: $123,177. To extend the service area and improve the facilities of KPCC, 89.3 MHz, Pasadena, CA. The project will fund equipment required to relocate the transmission site to Mt. Wilson, thereby greatly extending the station's service area. Replacement of obsolete studio and test equipment is also included in the project. KPCC serves the greater Los Angeles metropolitan area.

File No. 8125 CRB Escuela de la Raza Unida, 137 N. Broadway, Blythe, CA 92225. Signed By: Ms. Carmela Garnica, Director. Funds Requested: $77,911. Total Project Cost: $103,882. To activate the first public radio station to serve the community of Blythe, CA through the increase in power of 10 watt station KERU–FM, 88.5 MHz, Blythe. The project will include the purchase of master control and studio equipment for the production of local programs. The station will serve an estimated 20,000 people in La Paz County, Arizona and Imperial, County CA.

File No. 8128 CRB Mono County Service District, School & Bryant Streets, Bridgeport, CA 93517. Signed By: Mr. Dean Whitmore, Chairman. Funds Requested: $7,470. Total Project Cost: $9,961. To establish a translator on 91.1 MHz, Bishop CA to provide first public radio service to some 20,000 people living in Bishop and southern Mono County. The translator will rebroadcast the program service of KUNR–FM, Reno, Nevada.

File No. 8151 CRB University of California, M–11 Wheeler Hall, Berkeley, CA 94720. Signed By: Ms. Nancy Caputo, Contracts and Grants Officer. Funds Requested: $45,381. Total Project Cost: $75,555. To improve the facilities of KALX, 90.7 MHz, Berkeley, CA by replacing obsolete studio production equipment and purchasing additional production capacity. The project will also fund a back-up transmitter exciter to insure continued service to 3 million people in the San Francisco Bay area.

File No. 8167 CTN Foothill-DeAnza Comm. Col. Dist., 21250 Stevens Creek Blvd., Cupertino, CA 95014. Signed By: Mr. Robert De Hart, President. Funds Requested: $171,922. Total Project Cost: $229,230. To establish a Ku band satellite uplink at DeAnza College, Cupertino CA to provide instructional materials, teleconferencing and staff development programs to 106 community colleges in the California Community College Satellite Network.

File No. 8173 CTN Imperial County Office of Ed., 1398 Sperber Road, El Centro, CA 92243. Signed By: Mr. William Fisher, Associate Superintendent. Funds Requested: $317,004. Total Project Cost: $422,673. To activate a two channel Instructional Television Fixed Service facility in El Centro, CA to serve Imperial County. The project is a partnership of the Imperial County Office of Education, Imperial Valley College and the Calexico campus of San Diego State University and will distribute programming from all three sources. The project will provide bilingual instruction service to some 58,000 residents of Imperial County.

File No. 8177 CTB Los Angeles Unified School Dist., 1061 West Temple Street, Los Angeles, CA 90012. Signed By: Ms. Lorna Round, Associate Superintendent. Funds Requested: $78,658. Total Project Cost: $157,316. To improve the production facilities of KLCS, Ch. 58, Los Angeles by replacing obsolete production switcher, audio console and lighting equipment. KLCS provides instructional programming for use in the Los Angeles County schools and educational programming to audiences in the Los Angeles metropolitan area.

File No. 8197 CTB KVIE, Inc., 2480 Garden Highway, Sacramento, CA 95833. Signed By: Mr. John Hershberger, President & General Manager. Funds Requested: $110,781. Total Project Cost: $221,562. To improve the programming facilities of KVIE, Ch. 6, Sacramento, by replacing obsolete master control switcher, character generator, film chain and related master control equipment. KVIE serves four million people in 29 counties in north central California.

File No. 8228 CRB California Lutheran University, 60 West Olsen Road, Thousand Oaks, CA 91360–2787. Signed By: Mr. Jerry Miller, President. Funds Requested: $190,762. Total Project Cost: $254,350. To activate a new radio station on 88.3 MHz, Thousand Oaks, California. The project would provide first local origination and will provide some 485,000 people with noncommercial radio service.

File No. 8257 CRB Golden Valley Comm. Brdcstrs., 4950 Cohasset Road #10, Chico, CA 95926. Signed By: Mr.

Erik Mathisen, President. Funds Requested: $87,327. Total Project Cost: $116,437. To activate radio station KZFR, 90.1 MHz, Chico, CA. KZFR will provide alternative radio programming to 200,000 people in Butte, Glenn and Tehama counties.

File No. 8290 CTB Comm. TV of Southern California, 4401 Sunset Blvd., Los Angeles, CA 90027. Signed By: Mr. Donald Youpa, Executive Vice President. Funds Requested: $281,880. Total Project Cost: $563,760. To improve the facilities of KCET, Ch. 28, Los Angeles by replacing obsolete studio cameras with four new cameras for use in program production. KCET serves the greater Los Angeles metropolitan area and southern California.

File No. 8294 CRB San Francisco Unified Sch. Dist., 2905 21st Street, San Francisco, CA 94110. Signed By: Mr. Daniel Del Solar, General Manager. Funds Requested: $57,113. Total Project Cost: $117,113. To improve the facilities of KALW–FM, 91.7 MHz, San Francisco, by replacing obsolete program production equipment. The project will fund a studio console, tape recorders and related equipment used in the production of local programming. The applicant serves some five million people in the San Francisco Bay area.

CO (Colorado)

File No. 8022 CRB Western Colorado Public Radio, 1048 Independent Avenue, Grand Junction, CO 81505–7185. Signed By: Ms. Marsha Thomas, Station Manager. Funds Requested: $51,955. Total Project Cost: $69,274. To improve the programming capabilities of public radio station KPRN–FM operating on 89.5 MHz in Grand Junction, Colorado by installing new studio, production and satellite receive facilities to better serve 250,000 residents of the Western slope of Colorado.

File No. 8029 CTN University of Colorado, Folsom Drive & Colorado Ave., Boulder, CO 80309–0379. Signed By: Mr. Kaye Howe, Vice Chancellor. Funds Requested: $186,240. Total Project Cost: $486,240. To extend and improve the transmission capabilities of the University of Colorado ITFS System in Boulder, Colorado by installing new studio equipment, connecting the system to area cable franchises and adding 6 new ITFS transmitters to provide greater instructional service to 1,000,000 Front Range residents.

File No. 8155 PRTN Native American Satellite Ntwrk., 1328 West Alaska Place, Denver, CO 80223. Signed By: Mr. Albert White Hat, Sr., President. Funds Requested: $72,205. Total Project Cost: $94,785. To plan for the development of a Native American Satellite Network which will provide educational and instructional programming to at least 17 native American institutions of higher education nationally.

File No. 8160 CRB North Fork Valley Public Radio, 213 Grand Avenue, P.O. Box 538, Paonia, CO 81428. Signed By: Ms. Elizabeth Lilien, President. Funds Requested: $21,000. Total Project Cost: $28,000. To extend and improve the signal of public radio station KVNF–FM operating on 90.9 MHz in Paonia, Colorado by increasing the transmitter power from 500 watts to 3kW and installing additional production equipment to provide an improved service to the residents of Delta and Gunnison Counties.

File No. 8188 PTN Region 10 League for Eco. Asst., 301–B North Cascade, Drawer 849, Montrose, CO 81402. Signed By: Mr. William Nesbitt II, Chairman of the Board. Funds Requested: $28,749. Total Project Cost: $29,411. To plan for the establishment of microwave service to the 20 Western Colorado Counties to maintain public TV service to 77,698 and to provide a first public TV service to 168,661 additional residents.

CT (Connecticut)

File No. 8043 CTN Area Cooperative Ed Services, 205 Skiff Street, Hamden, CT 06517. Signed By: Mr. Peter Young, Executive Director. Funds Requested: $375,000. Total Project Cost: $500,000. To extend a pilot distance learning fiber optics project to five additional high school sites. Project will interconnect sites which will share course offerings and staff training.

DC (District of Columbia)

File No. 8080 CRB The American University, 4400 Massachusetts Ave. NW., Washington, DC 20016. Signed By: Mr. Donald Myers, Vice President. Funds Requested: $49,000. Total Project Cost: $99,696. To improve WAMU–FM, operating on 88.5 MHz, in Washington, DC by replacing a worn out antenna and transmission line. WAMU–FM also seeks funding to improve station's remote recording capability as well as studio origination equipment. In addition, station seeks funding to improve the reliability and quality of its satellite recording system.

File No. 8156 PTN Gallaudet University, 800 Florida Avenue, NE., Washington, DC 20002. Signed By: Mr. Raymond Trybus, Dean, Graduate Studies. Funds Requested: $34,207. Total Project Cost: $47,019. To plan/evaluate acquisition of satellite teleconferencing capabilities by examining technical requirements of 2-way interactive. The 2-way interactive telecommunication would be for the use and benefit of the deaf and hearing-impaired. Planning will also evaluate the potential conference sites for teleconference reception and origination capabilities. Project will also evaluate specific programmatic needs.

FL (Florida)

File No. 8003 CTB School Board of Pinellas County, 1960 East Druid Road, Clearwater, FL 34624. Signed By: Dr. Scott Rose, Superintendent. Funds Requested: $150,000. Total Project Cost: $200,000. To construct a new Low Power Television station on either channel 14 or channel 47 in Largo. Station will provide alternative educational service and locally originated programming for Pinellas County and the school district.

File No. 8044 CTB Coastal Educational Broadcasters, 1200 Volusia Ave., P.O. Box 111, Daytona Beach, FL 32015. Signed By: Dr. Don Thigpen, President. Funds Requested: $682,496. Total Project Cost: $1,100,800. To improve WCEU–TV, operating on Channel 15, in New Smyrna Beach. New station requires studio-to-transmitter link (STL), master control equipment and test equipment. Current master control equipment is on loan to the station from the Daytona Beach Community College. Station serves 365,637 residents of Volusia and Flagler Counties. Approximately 4,000 residents of the service area are not covered by the Grade B contour of any other public television station.

File No. 8046 CTB Pensacola Junior College, 1000 College Blvd., Pensacola, FL 32504. Signed By: Dr. Charles Atwell, Executive Vice President. Funds Requested: $175,000. Total Project Cost: $350,000. To improve the facilities of WSRE–TV, Channel 23, by replacing three industrial grade portable cameras. Cameras will be used to upgrade the quality of WSRE's local remote productions.

File No. 8164 CRB Florida State University, 2561 Pottsdamer Street, Tallahassee, FL 32304–6046. Signed By: Mr. Robert Johnson, Vice President. Funds Requested: $207,312. Total Project Cost: $276,416. To activate a new public radio station, to operate on 88.9 MHz, in Tallahassee. Station will repeat the signal of WFSU–FM for six hours/day and for the remainder of the time will broadcast news and information. Station will be connected with WFSU–FM by a two-hop microwave system. Proposed facility will provide first radio service to approximately 201,000 residents.

File No. 8176 CTB WJCT, Inc., 100 Festival Park Avenue, Jacksonville, FL 32202. Signed By: Mr. Fred Rebman, President. Funds Requested: $236,741. Total Project Cost: $473,482. To improve

WJCT–TV, Channel 7, in Jacksonville. Project would replace waveform monitors, camera pedestals, video production switcher, timebase correctors, switching and ENG equipment. WJCT–TV serves approximately 1.275 million residents of Northeast Florida and Southeast Georgia.

File No. 8205 CTB FL West Coast Pub. Brdcstg., Inc., 1300 North Blvd., Tampa, FL 33607. Signed By: Mr. Mark Damen, President. Funds Requested: $304,480. Total Project Cost: $608,961. To improve WEDU–TV, Channel 3, in Tampa-St. Petersburg. Project would replace failing transmitter and acquire necessary test equipment. WEDU–TV serves approximately 3.4 million residents of the Tampa-St. Petersburg area.

File No. 8218 CTB University of Florida, 219 Grinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard Marshall, Assistant Director of Research. Funds Requested: $71,610. Total Project Cost: $143,220. To improve WUFT–TV, Channel 5, in Gainesville by replacing a Machine Control/Routing Switcher in the station's Master Control. Station serves 600,000 residents of north central Florida. The current model is no longer available and replacement parts are impossible to obtain.

File No. 8223 CTB University of South Florida, 4202 Fowler Ave., SVC 116, Tampa, FL 33620. Signed By: Mr. Frank Lucarelli, Director Sponsored Research. Funds Requested: $582,551. Total Project Cost: $1,165,101. To improve WSFP–TV, Channel 30, in Fort Myers. Project will acquire studio production equipment, a studio-to-transmitter (STL) microwave link and basic test equipment.

File No. 8233 CTN Panhandle Area Ed. Cooperative, 411 West Boulevard, Chipley, FL 32428. Signed By: Ms. Kelly Brock, Chairman of the Board. Funds Requested: $1,389,191. Total Project Cost: $1,852,255. To activate a regional Instructional Television Fixed Service (ITFS) for 9 counties, 96 schools, 2 colleges and 1 university. ITFS telecommunications facilities will serve approximately 219,000 people of northwest Florida. PAEC has obtained the necessary FCC ITFS authorizations for this project.

File No. 8259 CTN Jacksonville University, 2800 University Blvd. N., Jacksonville, FL 32211. Signed By: Dr. Frances Bartlett Kinne, President. Funds Requested: $87,037. Total Project Cost: $116,050. To activate an Instructional Television Fixed Service (ITFS) telecommunications facility in Jacksonville.

GA (Georgia)

File No. 8105 CTB Georgia Public T/C Commission, 1540 Stewart Avenue, SW., Atlanta, GA 30310. Signed By: Mr. Richard Ottinger, Executive Director. Funds Requested: $719,012. Total Project Cost: $1,370,512. To expand and improve the facilities of WCLP–TV, Channel 18, in Chatsworth. Project will replace the existing General Electric transmitter system and extend the signal to an additional 120,000 residents. Station serves approximately 1.4 million residents of north Georgia and southeastern Tennessee.

File No. 8118 CRB Georgia Public Radio, Inc., 409 East Liberty Street, Savannah, GA 31401. Signed By: Mr. Lawrence Roberts, General Manager. Funds Requested: $12,625. Total Project Cost: $25,250. To improve and extend the radio reading service carried on the subcarrier of WSVH–FM, operating on 91.1 MHz, in Savannah. Project will acquire 150 SCA receivers and origination equipment for the radio reading service for the print handicapped. In addition, will replace the old transmitter exciter with a new design and use the older model for backup purposes. Station serves approximately 500,000 residents of the Savannah area.

File No. 8282 CTB Atlanta Board of Education, 740 Bismark Road, NE, Atlanta, GA 30324. Signed By: Mr. Alonzo Crim, Superintendent. Funds Requested: $1,566,135. Total Project Cost: $2,088,180. To improve WPBA–TV, Channel 30, in Atlanta by replacing worn-out, obsolete broadcast equipment. Project would replace transmitter, antenna, transmission line and a variety of origination equipment that is worn-out. WPBA–TV provides an instructional and public television service to approximately 2.5 million residents of the Atlanta area.

GU (Guam)

File No. 8091 CTB Guam Educational T/C Corp., Sesame Street, G.M.F., GU 96921. Signed By: Mr. Joseph Tighe, General Manager. Funds Requested: $66,236. Total Project Cost: $88,315. To improve the facilities of KGTF, Ch. 12, Guam by the purchase of test equipment to maintain the station transmitter. KGTF serves the 115,000 residents of Guam.

HI (Hawaii)

File No. 8024 CRB Hawaii Public Radio, 738 Kaheka Street, Honolulu, HI 96814–3726. Signed By: Mr. Clarence Eblen, President & General Manager. Funds Requested: $67,500. Total Project Cost: $90,000. To purchase 1,000 SCA receivers for use with a new radio reading service for the blind to be broadcast on a subcarrier of KHPR, 88.1 MHz in Honolulu. The radio reading service will be operated by the State Library and will serve the island of Oahu.

IA (Iowa)

File No. 8187 CRB IA Radio-Reading Infor. Service, 1109 Woodland Park Drive, West Des Moines, IA 50265. Signed By: Mr. F.A.D. Kelseyr, President. Funds Requested: $61,573. Total Project Cost: $82,098. To establish a Radio Reading Service for the Blind to serve residents of Des Moines and surrounding areas of Iowa. The project will fund construction of a studio and purchase of 500 specialized radio receivers. This project will replace a 15 hour per week reading service on KDPS Des Moines with a full reading service that will reach 35% of the state's population.

File No. 8253 CTN Hawkeye Institute of Technology, 1501 E. Orange Road, Waterloo, IA 50704. Signed By: Dr. John Hawse, President. Funds Requested: $999,000. Total Project Cost: $2,070,336. To activate a two channel Instructional Television Fixed Service. The project will include five transmission sites in Waterloo, Waverly, Grundy Center, Independence and Allison, IA and equipment for reception and interactive response from 22 sites. Programming will originate from a studio to be constructed at Hawkeye Institute of Technology in Waterloo and from five classrooms. The project will serve 218,000 people in ten counties.

ID (Idaho)

File No. 8005 CRB Boise State University, 1910 University Drive, Boise, ID 83725. Signed By: Dr. Asa M. Ruyle, Vice President. Funds Requested: $34,972. Total Project Cost: $46,630. To extend the signal of public radio station KBSU–FM operating on 91.3 MHz in Boise, Idaho by constructing four translators to provide a first public radio service to 6,487 residents of seven communities in central Idaho.

File No. 8113 CTB Idaho Educational PBS, 1910 University Drive, Boise, ID 83725. Signed By: Mr. Jerold Garber, General Manager. Funds Requested: $511,119. Total Project Cost: $681,493. To improve the programming capabilities of the Idaho Educational Public Broadcasting System by replacing obsolete and inoperative broadcast and production apparatus used to deliver public television service to the residents of the state.

File No. 8170 CRB Idaho State Board of Education, 1910 University Drive, Boise, ID 83725. Signed By: Dr. Asa Ruyle, Vice President. Funds Requested: $32,343. Total Project Cost: $43,125. To extend to signal of public radio station KBSU–FM operating on 91.3 MHz in Boise, Idaho by constructing a repeater station in Twin Falls to bring a first public radio service to 59,112 residents of south central Idaho.

File No. 8171 CRB Idaho State Board of Education, 1910 University Drive, Boise, ID 83725. Signed By: Dr. Asa Ruyle, Vice President. Funds Requested: $55,278. Total Project Cost: $73,705. To extend the signal of KBSU–FM operating on 91.3 MHz in Boise, Idaho by constructing an associated station in McCall, Idaho to provide a first public radio service to 7,201 residents of Adams and Valley Counties.

IL (Illinois)

File No. 8077 CRB Open Media Corporation, 1813 W. Cortland Street, Chicago, IL 60622. Signed By: Mr. Mitchell Lieber, President. Funds Requested: $293,544. Total Project Cost: $399,379. To activate an FM community radio station, the coverage area of which will encompass south Chicago and extreme northeast Indiana. The station will operate on 90.5 MHz with an ERP of 30 kw. Its programming, which will serve the interests of minorities and women, will originate from a main studio in Chicago and a second studio in Gary, IN.

File No. 8087 CTB Southern Illinois University, 1048 Communications Bldg., SIU–C, Carbondale, IL 62901. Signed By: Mr. John Guyon, President. Funds Requested: $105,225. Total Project Cost: $210,450. To purchase a video slide projector, a character generator, two remote video cameras, and two ¾" remote video tape recorders for television station WSIU, which broadcasts on Ch. 8 from Southern Illinois University, Carbondale. The project would improve WSIU's production capability by replacing worn-out and obsolete equipment.

File No. 8090 CRB Northern Illinois University, DeKalb, IL 60115–2874. Signed By: Mr. Robert Albanese, Controller. Funds Requested: $235,015. Total Project Cost: $391,691. To activate an FM radio station that would bring primarily news and jazz programming to the Rockford-DeKalb area of north central Illinois. The new station will operate on 90.5 MHz with an ERP of 50 kw. With the new station's establishment, station WNIU–FM, the signal of which already covers the same area on 89.5 MHz, will change its programming to a full-time classical music format.

File No. 8211 CRB Prairie Air, Inc., 113 N. Market, Champaign, IL 61820. Signed By: Ms. Shaya Zucker, Station Coordinator. Funds Requested: $8,449. Total Project Cost: $11,265. To improve the remote broadcast capabilities of community FM station WEFT, which operates on 90.1 MHz from Champaign, IL, by purchasing a transmitter/mixing console and the accompanying receiver, two hand-carried transmitters, two cassette decks, and two open reel machines. The requested items would replace equipment that is inadequate for WEFT–FM's remote broadcast needs.

File No. 8235 CTB West Central IL Ed. T/C Corp., 434 Brookens, Springfield, IL 62794–9243. Signed By: Dr. Jerold Gruebel, President. Funds Requested: $288,351. Total Project Cost: $384,469. To construct two television translators, one on Ch. 85 in Springfield, IL, and the second on Ch. 51 in Kirksville, MO, along with associated microwave. The Springfield translator will transmit the signal of WJPT–TV, Ch. 14, Jacksonville, IL and the Kirksville translator that of WQEC–TV, Ch. 27, Quincy, IL. The translators will bring a first PTV signal to over 88,000 residents of central IL and northeast MO. WJPT and WQEC are part of the "CONVOCOM" public television network.

File No. 8246 CRB Community High School Dist. 217, 7329 West 63rd Street, Summit, IL 60501. Signed By: Mr. Donald Childs, Principal. Funds Requested: $22,920. Total Project Cost: $31,670. To improve the local origination capabilities of station WARG–FM, Summit, IL, by purchasing the equipment necessary for a production studio. WARG–FM operates on 88.9 MHz with an ERP of 500 w. Its signal reaches approximately 1,500,000 residents of the suburban areas to the immediate southwest of Chicago.

File No. 8266 CRB University of Illinois, 354 Administration Building, Urbana, IL 61801. Signed By: Mr. H. J. Stapleton, Secretary Campus Research. Funds Requested: $33,397. Total Project Cost: $66,794. To improve the program production capability of stations WILL–AM, 580 kHz, and WILL–FM, 90.9 MHz, Urbana, IL, by replacing worn-out and obsolete studio equipment. The project will purchase a master control console, an audio routing switcher, and two reel-to-reel audio tape recorders.

File No. 8267 CRB Western Illinois University, Memorial Hall 401, 900 W. Adams, Macomb, IL 61455. Signed By: Dr. Ralph Wagoner, President. Funds Requested: $42,012. Total Project Cost: $84,025. To install a transmitter and directional antenna for station WIUM–FM, 91.3 MHz, Macomb, IL. The project will increase the station's ERP from 7.2 kW to 50 kW and will bring a first public radio signal to over 120,000 residents of western Illinois, southeast Iowa, and northeast Missouri. The project will also purchase 50 SCA receivers for WIUM's radio reading service for the print-handicapped.

File No. 8281 CTB Chicago Educational TV Assoc., 5400 North St. Louis Avenue, Chicago, IL 60625. Signed By: Mr. John Rahmann, Executive Vice President. Funds Requested: $280,000. Total Project Cost: $560,000. To replace worn-out and obsolete studio and field production equipment at TV station WTTW, Ch. 11, Chicago. The project will purchase two ½" field cameras with associated VTRs, field audio and lighting equipment, a studio editing system, a light board system, a studio production lighting package, a TV demodulator, and diverse test equipment.

IN (Indiana)

File No. 8095 CTB Indiana University, Bryan 215E, Bloomington, IN 47401. Signed By: Mr. William Farquhar, Director Contract Adm. Funds Requested: $62,500. Total Project Cost: $125,000. To upgrade the transmission capabilities of public television station WTIU–TV 30, Bloomington, Indiana by replacing an aging and defective antenna needed to provide programming to 500,000 residents of central Indiana.

File No. 8138 CTB Fort Wayne Public Television, P.O. Box 39, Fort Wayne, IN 46801. Signed By: Mr. William Harris, President. Funds Requested: $629,897. Total Project Cost: $1,244,845. To extend and improve the signal of public television station WFWA–TV channel 39, Fort Wayne, Indiana by installing a 60 kW transmitter, adding new master control, production and satellite receive equipment to provide enhanced local service to 665,000 residents of northeastern Indiana and western Ohio.

File No. 8161 CTB SW Indiana Public Brdcstg., Inc., 405 Carpenter Street, Evansville, IN 47708. Signed By: Mr. David Dial, President & General Manager. Funds Requested: $76,762. Total Project Cost: $102,350. To upgrade the production and transmission capabilities of public television station WNIN–TV channel 9 in Evansville, Indiana by replacing obsolete studio equipment used to deliver programming to 750,000 residents of southern Indiana and southwesten Kentucky.

File No. 8190 CTB Michiana Public Brdcstg. Corp., 2300 Charger Blvd., Elkhart, IN 46514. Signed By: Mr. Don Checots, Executive Director. Funds Requested: $420,700. Total Project Cost: $601,000. To improve the transmission facilities of public television station WNIT–TV channel 34, Elkhart, Indiana by replacing aging tower, feed line amd antenna needed to deliver programming to 768,000 residents of northern Indiana and southern Michigan.

File No. 8192 CTB Vincennes University, 1002 N. 2nd Street, Vincennes, IN 47591. Signed By: Dr. Phillip Summers, President. Funds Requested: $206,250. Total Project Cost: $275,000. To improve the production and transmission facilities of public TV station WVUT–TV channel 22, Vincennes, Indiana by replacing aging video tape recorders, routing switcher and distribution equipment needed to deliver programming to 296,000 residents of southwestern Indiana and eastern Illinois.

KS (Kansas)

File No. 8086 CRB Kanza Society Incorporated, One Broadcast Plaza, Pierceville, KS 67868. Signed By: Mr. Dale Bolton, Executive Director. Funds Requested: $17,278. Total Project Cost: $34,556. To replace a worn-out transmission line and five audio tape recorders at station KANZ–FM, which operates on 91.1 MHz in Pierceville, KS.

File No. 8213 CTN Kansas Board of Regents, 400 S.W. Eighth Street, Topeka, KS 66603–3911. Signed By: Mr. Stanley Koplik, Executive Director. Funds Requested: $638,912. Total Project Cost: $851,883. To activate a video network transmitting digital, broadband, 1.5 Mgb T1 signals over the existing KANS–A–N voice/data network. The system would be part of the Kansas State Board of Regents Instructional Network and would interconnect nine Regents institutions statewide and Washburn University of Topeka. The network would allow the schools to transmit their instructional programming via a satellite uplink and to share this programming in real time in a two-way video/audio format.

File No. 8214 CTB Washburn University, 301 N. Wanamaker Road, Topeka, KS 66606. Signed By: Dr. John Green, Jr., President. Funds Requested: $49,140. Total Project Cost: $75,600. To replace four worn-out ¾" video tape recorders and purchase a stand-by aural exciter for television station KTWU, which operates on channel 11 in Topeka, KS and is licensed to Washburn University.

File No. 8297 CTB Smoky Hills Public TV Corp., 6th & Elm Streets, P.O. Box 9, Bunker Hill, KS 67626–0009. Signed By: Mr. Kenneth Gardner, Vice President & Gen. Manager Funds Requested: $500,000. Total Project Cost: $777,445. To install four TV translators to extend the signal of station KOOD–TV, which operates on Ch. 9 in Bunker Hill, KS. The translators will be located in Norton, KS (Ch. 39), Oberlin, KS (Ch. 32), Oakley, KS (Ch. 15), and Goodland, KS (Ch. 23). They will bring a first public television signal to over 67,000 residents of northwest Kansas, southwest Nebraska, and eastern Colorado.

KY (Kentucky)

File No. 8030 CRB Louisville Free Public Library, Fourth and York Streets, Louisville, KY 40203. Signed By: Mr. William Ptacek, Director of Library. Funds Requested: $63,829. Total Project Cost: $91,183. To improve the shared facilities of WFPK–FM (91.9 MHz) and WFPL–FM (89.3 MHz) in Louisville. Equipment will replace worn-out, obsolete on-air master control equipment, an optimode and test equipment. Stations serve north central Kentucky and south central Indiana.

File No. 8066 CTB Western Kentucky University, College Heights, Bowling Green, KY 42101. Signed By: Dr. Paul Cook, Executive Vice President. Funds Requested: $276,997. Total Project Cost: $369,330. To acquire loca1 production equipment to assist in the activation of WKYU–TV, channel 24, in Bowling Green. Station will provide first local origination capability for the Bowling Green area. The transmission system for the station has already been purchased.

File No. 8100 CTB Kentucky Educational Television, 600 Cooper Drive, Lexington, KY 40502. Signed By: Ms. Sandra Welch, Deputy Executive Director. Funds Requested: $478,406. Total Project Cost: $956,813. To replace and augment origination and test equipment used by the Kentucky Educational Television state system. KET seeks funding for expansion of routing equipment, replacement of videotape machines and a variety of origination and test items. In addition, seeks assistance to purchase closed video captioning equipment to be used to caption for the deaf and hearing impaired.

File No. 8260 CTB Fifteen Telecommunications Inc., 4309 Bishop Lane, Louisville, KY 40218. Signed By: Mr. John Robert Curtin, General Manager. Funds Requested: $249,156. Total Project Cost: $498,313. To improve WKPC–TV, Channel 15, in Louisville by replacing worn-out, obsolete production equipment. Station serves approximately 1.2 million residents of northern Kentucky and southern Indiana.

File No. 8265 CRB Appalshop, Inc., 306 Madison Street, Whitesburg, KY 41858. Signed By: Mr. R. Raymond Moore, Administrative Director. Funds Requested: $47,067. Total Project Cost: $62,757. To improve WMMT–FM, operating on 88.7 MHz, in Whitesburg. Project would activate 5 translators and acquire a satellite downlink. FM translators would be activated in Virginia at Big Stone Gap (on 88.1 MHz) and in Norton (on 88.3 MHz). In KY, translators would be activated at Harlan (on 88.3 MHz), Hazard (on 89.3 MHz) and Pikesville (on 89.1 MHz). Translators would repeat the signal of WMMT–FM in cities where reception is not of acceptable quality due to terrain.

File No. 8280 CRB University of Kentucky, 340 McVey Hall, Lexington, KY 40506. Signed By: Mr. John Darsie, Jr., Assistant Secretary. Funds Requested: $181,112. Total Project Cost: $241,483. To expand and improve WBKY–FM, operating on 91.3 MHz, in Lexington. WBKY–FN seeks to increase power from 50 KW to 100 KW by relocating and replacing the transmission facilities. Project will improve reception and provide first service to 114,940 residents not currently receiving public radio. Project will also replace worn-out, obsolete production equipment.

LA (Louisiana)

File No. 8096 CRB Northeast Louisiana University, 700 University Blvd., Monroe, LA 71209. Signed By: Dr. Dwight Vines, President. Funds Requested: $505,281. Total Project Cost: $873,708. To activate a new non-commercial FM public radio station, on 90.3 MHz, in Monroe. This proposed full-service station will provide a first service to the northeast section of the state.

File No. 8219 CTB LA Educational TV Authority, 7860 Anselmo Lane, Baton Rouge, LA 70810. Signed By: Ms. Beth Courtney, Executive Director. Funds Requested: $72,675. Total Project Cost: $145,350. To improve the remote capacity of the Louisiana Public Television Network by acquiring six ½-inch portable recording machines. The six machines and associated equipment will support increased activity in educational and instructional television productions. The new machines will replace worn-out, obsolete ¾-inch machines and associated equipment. The six-station state network serves approximately 4.4 million residents of Louisiana.

MA (Massachusetts)

File No. 8101 CRB University of Massachusetts, Harbor Campus, University Drive, Boston, MA 02125–

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3393. Signed By: Ms. Dolores Miller, Assistant Director. Funds Requested: $72,609. Total Project Cost: $98,417. To improve WUMB–FM in Boston, by replacing obsolete transmitter and production equipment and to install an STL to replace telephone lines.

File No. 8277 CTN North Shore Community College, 3 Essex Street, Beverly, MA 01915. Signed By: Dr. George Traicoff, President. Funds Requested: $282,525. Total Project Cost: $376,700. To construct a four channel ITFS system in Beverly which would deliver post secondary and continuing education programs to local cable systems. Dissemination and production equipment is requested.

MD (Maryland)

File No. 8302 CTB Maryland Public Brdcstg. Comm., 11767 Bonita Avenue, Owings Mills, MD 21117. Signed By: Mr. Raymond K. K. Ho, President. Funds Requested: $257,500. Total Project Cost: $515,000. To improve WMPB–TV, Channel 67, and the state television network by replacing 3 worn-out video switchers and 2 lighting systems. The switchers were purchased in 1975 and the lighting system was purchased in 1966.

File No. 8103 CRB Frostburg State University, Alumni House, Bradock Road, Frostburg, MD 21532. Signed By: Dr. Herb Reinhard, President. Funds Requested: $41,050. Total Project Cost: $59,490. To vastly improve the origination and test equipment of WFWM–FM, operating on 91.5 MHz, in Frostburg. WFWM–FM, now operating at 165 watts, was originally a carrier current station thus origination and test equipment is quite limited.

File No. 8243 CRB Morgan State University, Cold Spring Lane & Hillen Road, Baltimore, MD 21239. Signed By: Mr. Abraham Moore, Vice President. Funds Requested: $128,248. Total Project Cost: $170,995. To improve WEAA–FM, operating on 88.9 MHz, in Baltimore. WEAA–FM seeks funding to replace worn-out and obsolete origination equipment and to improve the quality of the on-air sound. WEAA–FM operates at 12.5 KW and serves a predominately Black audience in the Baltimore metropolitan area.

MI (Michigan)

File No. 8085 PTN Saginaw Valley State University, 2250 Pierce Road, University Center, MI 48710. Signed By: Mr. Jack Ryder, President. Funds Requested: $45,500. Total Project Cost: $45,500. To plan for an interconnected video network to link six educational institutions serving northeast-central Michigan. Project will provide for an engineering study and legal analysis and FCC application filing.

File No. 8141 CTN Community T/C Network, 7441 Second Blvd., Detroit, MI 48202. Signed By: Dr. Roy Butz, Executive Director. Funds Requested: $920,250. Total Project Cost: $1,227,000. To establish a Technical Operating Center serving the seven members of the Community Telecommunications Network, a consortium of regional ITFS licensees. Project will purchase an automated video cassette library system, switching and test equipment, video tape recorders, amplifiers and a computer.

File No. 8200 CRB University of Michigan, 5500 LSA Building, Ann Arbor, MI 48109. Signed By: Mr. Martin Tobin, Acting Director. Funds Requested: $38,085. Total Project Cost: $76,170. To replace obsolete and worn-out production equipment for radio station WUOM–FM in Ann Arbor, Michigan. The project will purchase ten audio tape recorders and provide necessary audio test equipment.

File No. 8222 CRN Newspapers for the Blind, Inc., 4384 Lapeer Road, Burton, MI 48509. Signed By: Mr. James Doherty, Executive Director. Funds Requested: $272,500. Total Project Cost: $383,400. To extend the Talking Newspaper service to eight unserved metropolitan communities in Michigan. Project will purchase 65 digital record/playback and 19 record/playback, voice-storage machine.

File No. 8234 CRB University of Michigan, 5500 LSA Building, Ann Arbor, MI 48109. Signed By: Mr. Martin Tobin, Acting Director. Funds Requested: $21,865. Total Project Cost: $43,730. To replace worn-out transmission equipment for radio WVGR–FM in Grand Rapids, Michigan. Project will replace the 630-foot transmission line and purchase an air compressor/hydrator to service the line.

File No. 8250 CTN Lake Superior State University, 1000 College Drive, Sault Ste. Marie, MI 49783. Signed By: Mr. H. Erik Shaar, President. Funds Requested: $750,000. Total Project Cost: $1,500,000. To establish a two-way interactive television system to serve eleven communities in the eastern section of Michigan's Upper Peninsula.

MN (Minnesota)

File No. 8051 CRB Minnesota Public Radio, 45 East Seventh Street, Saint Paul, MN 55101. Signed By: Mr. Thomas Kigin, Vice President. Funds Requested: $169,250. Total Project Cost: $226,173. To extend to signal of Minnesota Public Radio operating throughout the state by constructing a repeater station in Appleton, Minnesota to provide a first public radio service to 156,291 residents of west central Minnesota and eastern South Dakota.

File No. 8061 CRB University of Minnesota, 10 University Drive, Duluth, MN 55812. Signed By: Ms. Mary Lou Weiss, Assistant Director. Funds Requested: $28,055. Total Project Cost: $56,111. To upgrade and improve the production facilities of KUMD–FM operating on 103.3 MHz in Duluth, Minnesota by replacing obsolete production equipment needed to deliver programming to 412,000 residents of northeastern Minnesota, northern Michigan and northern Wisconsin.

File No. 8184 CTB Staples Technical Institute, Airport Road, Staples, MN 56479. Signed By: Dr. Stanley Edin, Director. Funds Requested: $345,900. Total Project Cost: $461,200. Staples Technical Institute wishes to establish a two-way interactive fiberoptic television network between Brainerd and Wadena, Minnesota to provide instructional programming between various educational institutions in Crow Wing and Wadena Counties in Minnesota.

File No. 8202 CTB Twin Cities Public TV, Inc., 1640 Como Avenue, St. Paul, MN 55108. Signed By: Mr. Richard Moore, President & General Manager. Funds Requested: $248,500. Total Project Cost: $497,000. To improve the production and transmission facilities of public television station KTCA–TV operating channels 2 and 17 in St. Paul, Minnesota by replacing obsolete equipment essential to station operation as part of a move to a new facility.

File No. 8203 CRB St. Olaf College, Northfield, MN 55057. Signed By: Mr. Melvin George, President. Funds Requested: $282,112. Total Project Cost: $564,225. To extend the signal of public radio station WCAL–FM operating on 89.3 Mhz Northfield, Minnesota into the Twin Cities Metropolitan area by replacing their existing transmission facilities and test equipment and moving their transmitter site 17 miles north in order to provide signal coverage to 910,000 additional listeners.

File No. 8248 CTN State Brd. of Vo-Tech Education, 17 W. Exchange, St. Paul, MN 55102. Signed By: Mr. Joseph Graba, Director. Funds Requested: $149,439. Total Project Cost: $249,439. The Minnesota State Board of Vocational Technical Education wishes to establish a statewide Ku band satellite network to provide educational and teleconferencing services to 154,000 residents.

MO (Missouri)

File No. 8025 CRB The School of the Ozarks, Point Lookout, MO 65726.

Signed By: Dr. William Todd, President. Funds Requested: $54,005. Total Project Cost: $79,005. To purchase a studio-to-transmitter microwave link, with a return telemetry link, for FM radio station KSOZ, which operates on 91.7 mHz and is licensed to The College of the Ozarks, Point Lookout, MO. The microwave link would replace a telephone line STL. The project would also purchase lightning surge protection equipment.

File No. 8162 CTN St. Louis Community College, 5801 Wilson Ave., St. Louis, MO 63110. Signed By: Mr. Michael Crawford, Chancellor. Funds Requested: $502,787. Total Project Cost: $837,978. To establish TV production studios on the three campuses and in the administrative center of St. Louis Community College. The project will activate 12 classroom studios, 1 master production studio, and 1 master control studio, and it will purchase ITFS receive equipment for 5 sites. The studios will produce instructional programming that will be disseminated via diverse media—ITFS, cable TV, broadcast TV, and telephone technology—to sites located throughout greater St. Louis.

File No. 8189 CTB Public Television 19, Inc., 125 East 31st Street, Kansas City, MO 64108. Signed By: Mr. Robert Fuzy, President. Funds Requested: $265,040. Total Project Cost: $530,080. To replace worn-out, obsolete, or inadequate production equipment for television station KCPT, Ch. 19, Kansas City, MO. The project will purchase a master control switcher, a routing switcher, three 1" VTRs, two ¾" VTRs, a film chain, a sync generator, a character generator, a portable camera, color monitors, and diverse items of audio and test equipment.

File No. 8244 CRB Double Helix Corp., 3504 Magnolia Avenue, St. Louis, MO 63118. Signed By: Mr. Brian Costello, Manager. Funds Requested: $36,285. Total Project Cost: $48,385. To purchase a satellite receive-only earth station and equipment for a news/documentary studio and remote production for community radio station KDHX–FM, 88.1 mHz, St. Louis, MO. Station KDHX–FM's programming is designed to meet the needs and interests of the minority groups and women of the greater St. Louis area.

MS (Mississippi)

File No. 8157 CRB Rust College, 150 Rust Avenue, Holly Springs, MS 38635. Signed By: Mr. W. A. McMillan, President. Funds Requested: $102,411. Total Project Cost: $136,548. To improve/upgrade and expand the facilities of WURC–FM, operating on 88.1 MHz, in Holly Springs. WURC–FM has been on the air since July 1987 with equipment that does not provide satisfactory service. Proposal would acquire a new transmitter, 300 ft. tower and transmission line and related equipment as well as origination equipment. Station seeks to serve the Black population of its coverage area.

File No. 8166 CTN Mississippi University for Women, 6th Ave. South & 10th St. South, Columbus, MS 39701. Signed By: Dr. James Strobel, President. Funds Requested: $207,686. Total Project Cost: $276,915. To activate a cable access facility in Columbus. Facility will provide first local origination for Columbus and Lowndes County in east-central Mississippi. Programming will be carried on Columbus TV Cable, Inc.

File No. 8283 CTN Miss. Band of Choctaw Indians, Route 7, Box 21, Philadelphia, MS 39350. Signed By: Mr. Phillip Martin, Tribal Chief. Funds Requested: $222,335. Total Project Cost: $296,473. To activate a production facility to program a cable access channel on the system owned by Northland Cable Television. Production facility will be connected with the cable company by microwave. The cable access facility will provide the first local origination for the area. Programming will be produced in both the Choctaw and English languages.

MT (Montana)

File No. 8062 CTB Boulder TV Translator Assoc., 215 North Madison, Boulder, MT 59632. Signed By: Mr. Ralph Simons, President. Funds Requested: $83,447. Total Project Cost: $111,262. To establish a lowpower noncommercial television K27CD in Boulder, Montana to provide first public television service to 1441 residents of Boulder and surrounding Jefferson County.

File No. 8064 CTB Fort Benton Comm. Improve. Assoc., 515 River, P.O. Box 1062, Fort Benton, MT 59442. Signed By: Mr. Patrick Flanagan. Funds Requested: $90,470. Total Project Cost: $120,626. To establish a noncommercial lowpower TV station K28CD operating on channel 28 Fort Benton, Montana to bring first public television service to 1800 residents of Choteau County.

File No. 8185 CRB KGLT–FM, Strand Union Building, Bozeman, MT 59717. Signed By: Mr. Gordon Stroh, MSU Grants and Contracts. Funds Requested: $3,602. Total Project Cost: $4,862. To extend the signal of public radio station KGLT–FM, 91.9 Mhz Bozeman by constructing a translator in Ennis, Montana to provide a first public radio service to 500 residents.

File No. 8236 CTB Ed. Opportunities for Cen. MT, 215 7th Avenue South, Lewistown, MT 59457. Signed By: Ms. Denna Strong, Secretary. Funds Requested: $90,470. Total Project Cost: $120,626. To establish a remotely controlled lowpower public televison operating on channel 28 in Lewistown, Montana to bring a first locally originated service to 8,000 residents of Fergus and Judith Basin Counties.

File No. 8276 CTB Hot Springs TV District, 100 East Broadway, P.O. Box 259, Hot Springs, MT 59845. Signed By: Mr. Manford Tempero, President. Funds Requested: $83,447. Total Project Cost: $111,262. To establish a remotely controlled low-power public television station operating on channel 33 in Hot Springs, Montana to provide a first public television service to 750 residents of Sanders County, Montana.

NC (North Carolina)

File No. 8111 CTN Winston-Salem State University, P.O. Box 13026, Winston-Salem, NC 27110. Signed By: Dr. Cleon Thompson, Chancellor. Funds Requested: $86,870. Total Project Cost: $116,870. To establish an Instructional Television Fixed Service (ITFS) facility to transmit video-based instruction in the Forsyth County area. ITFS will allow for in-house training of professionals as well as the traditional student population. The project is an outgrowth of the Micro-Electronic Center of NC's Teleclass-Teleconference Microwave Network.

File No. 8122 CRB SE NC Radio Reading Service, Inc., Rt. 1, Box 180–H, Carthage, NC 28327. Signed By: Ms. Era Mae Rickman, Chairperson. Funds Requested: $40,000. Total Project Cost: $80,000. To acquire 750 subcarrier radio receivers to be used by the newly established Radio Reading Service for the print handicapped. The reading service will utilize the subcarrier of WFSS–FM, operating on 89.1 MHz, in Fayetteville. Initially the radio reading service will use the In Touch satellite network for most of its programming.

File No. 8212 CTB Charlotte-Mecklenburg PB Auth., 42 Coliseum Drive, Charlotte, NC 28205. Signed By: Mr. Robert Goodale, Chairman. Funds Requested: $295,008. Total Project Cost: $393,344. To improve WTVI–TV, Channel 42, in Charlotte. Project seeks to replace local origination equipment, including a studio lighting system, and also acquire necessary test equipment. WTVI–TV serves approximately 1.3 million residents of Charlotte and Mecklenburg County.

NE (Nebraska)

File No. 8055 CTB NE Educational T/C Commission, 1800 North 33rd Street, Lincoln, NE 68501. Signed By: Mr. Jack

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McBride, Secretary & General Manager. Funds Requested: $131,765. Total Project Cost: $175,687. To replace diverse items of worn-out studio equipment in the mobile production van of the Nebraska Educational Telecommunications Commission, based in Lincoln. The project will purchase a production switcher, a routing switcher, color monitors, a frame syncronizer, a 1" video tape recorder, and an audio cassette recorder.

NJ (New Jersey)

File No. 8084 CRB Elec. Information & Educ. Ser., 59 Scotland Road, South Orange, NJ 07079. Signed By: Mr. John Mulvihill, Jr., General Manager. Funds Requested: $17,441. Total Project Cost: $23,255. To add additional production capacity which will enable the radio reading service to expand programming to 24 hours a day and to provide individualized cassette recordings for specialized audiences.

File No. 8261 CTB NJ Public Brdcstg. Authority, 1573 Parkside Avenue, CN 777, Trenton, NJ 08625. Signed By: Mr. Robert Ottenhoff, Executive Director. Funds Requested: $197,550. Total Project Cost: $263,400. To improve production facilities and to add local origination to network studio in Pomona; to extend coverage of the network by establishing a translator in Cape May, NJ. This request includes cameras, vtr's, switchers, microwave, translator and other equipment.

NM (New Mexico)

File No. 8112 PRB COMUN, Inc., 1609 6th Street, NW, Albuquerque, NM 87102. Signed By: Mr. Vicente Silva, Secretary. Funds Requested: $18,550. Total Project Cost: $35,250. To plan for the activation of a noncommercial FM community radio station to serve Albuquerque, NM, and Bernalillo and Valencia Counties immediately to the south of Albuquerque, with an FM translator bringing the signal to Socorro. The station's programming would be designed to serve the interests of the vast Hispanic population in the coverage area. The project will also explore how to bring a radio reading service to the affected area's print-handicapped.

File No. 8152 CTB Eastern New Mexico University, Station #52, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director of Broadcasting. Funds Requested: $27,575. Total Project Cost: $55,150. To replace a worn-out and obsolete audio production console and a spectrum analyzer at television station KENW, channel 3, licensed to Eastern New Mexico University, Portales.

File No. 8208 CTB University of New Mexico, 1130 University Blvd. NE, Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Research Administration/UNM. Funds Requested: $75,000. Total Project Cost: $150,000. To purchase three 1" video tape recorders as well as associated time base correctors and monitoring equipment for television station KNME, Ch.5, operated from the University of New Mexico, Albuquerque. The requested items will replace worn-out and obsolete equipment.

NV (Nevada)

File No. 8036 CTB Eureka County Television Dist., 10204 Main Street, Eureka, NV 89316. Signed By: Mr. Mike Rebaleati, Auditor. Funds Requested: $61,728. Total Project Cost: $82,305. To establish a noncommercial lowpower TV station operating on channel 48 to bring a first public television service to 1000 persons in Eureka and surrounding Eureka county.

File No. 8038 CTB Lander County Improvement Dist 1, 315 S. Humbolt, Battle Mountain, NV 89820. Signed By: Ms. Gloria Derby, Chair. Funds Requested: $84,622. Total Project Cost: $112,830. To establish a remotely controlled lowpower TV station operating on channel 32 in Battle Mountain, Nevada to provide a first public television service to 3,500 residents of Lander county.

File No. 8099 CRB Nevada Rehabilitation Division, 505 E. King Street, Room 503, Carson City, NV 89710. Signed By: Mr. Mervin Flander, Chief, BBS. Funds Requested: $62,163. Total Project Cost: $83,163. The Nevada Rehabilitation Division, Bureau of Services to the Blind wishes to establish the first SCA radio reading service by using the signals of KNPR–FM Las Vegas and KUNR–FM Reno to bring specialized programming to 1,000 visually handicapped residents statewide.

File No. 8107 CTB Clark County School District, 2832 E. Flamingo Road, Las Vegas, NV 89121. Signed By: Mr. John Hill, Director Television Services. Funds Requested: $9,000. Total Project Cost: $12,000. To improve the programming capabilities of public Television station KLVX–TV operating on channel 10 in Las Vegas, Nevada by interconnecting the station with the University of Nevada-Las Vegas via microwave to provide additional instructional and informational programming to the residents of greater Clark County.

File No. 8129 CTB Northern Nevada Community Coll., 901 Elm Street, Elko, NV 89801. Signed By: Mr. William Berg, President. Funds Requested: $84,352. Total Project Cost: $112,470. To extend the signal of Public radio station KUNR–FM Reno by establishing an associated station in Elko, Nevada on 91.5 Mhz to provide a first public radio service to 10,000 residents of Elko County.

File No. 8196 CTB Channel 5 Public Brdcstg., Inc., Evans Avenue, P.O. Box 14730, Reno, NV 89507. Signed By: Mr. James Pagliarini, General Manager. Funds Requested: $72,220. Total Project Cost: $96,294. To extend the signal of Public Television station KNPB–TV operating on channel 5 in Reno, Nevada by constructing a microwave fed repeater station to provide a first public television service to 11,996 residents of northern Lyon County and to replace an aging microwave feed presently serving Mineral County.

File No. 8216 CRB Nevada Public Radio Corporation, 5151 Boulder Highway, Las Vegas, NV 89122. Signed By: Mr. Lamar Marchese, General Manager. Funds Requested: $33,588. Total Project Cost: $44,784. To extend the signal of public radio station KNPR–FM operating on 89.5 Mhz Las Vegas, Nevada by constructing a new "associated station" in Panaca, Nevada to provide the first public radio service to 3,500 residents of Lincoln County.

NY (New York)

File No. 8074 CRB Rochester Area Ed. TV Assoc., 280 State Street, Rochester, NY 14601. Signed By: Mr. William Pearce, President. Funds Requested: $66,640. Total Project Cost: $136,000. To improve the transmission quality of WXXI–AM in Rochester by replacing four deteriorated towers and ground system.

File No. 8116 CTB Long Island ETV Council, Inc., 1425 Old Country Road, Plainview, NY 11803. Signed By: Mr. Samuel Francis, President & General Manager. Funds Requested: $405,846. Total Project Cost: $811,692. To improve WLIW–TV in Plainview, New York by replacing worn-out dissemination and origination equipment. Request includes UHF exciter, high efficiency klystron, cameras and production switcher.

File No. 8231 CTB Educational Broadcasting Corp., 356 West 58th Street, New York, NY 10019. Signed By: Mr. George Miles, Jr., Chief Operating Officer. Funds Requested: $130,200. Total Project Cost: $260,400. To upgrade WNET–TV in New York by replacing four obsolete ½ inch videocassette machines and adding three additional machines.

File No. 8273 CTB West. NY Public Brdcstg. Assoc., 184 Barton Street, Buffalo, NY 14213. Signed By: Mr. J.

Michael Collins, President. Funds Requested: $764,912. Total Project Cost: $1,529,824. To improve WNED–TV and WNEQ–TV located in Buffalo, by replacing worn-out and obsolete origination equipment. The request includes switchers, chyron generator, still store and other production equipment.

File No. 8278 CTN NY Institute of Technology, Old Westbury, NY 11568. Signed By: Dr. Matthew Schure, President. Funds Requested: $1,669,181. Total Project Cost: $2,225,575. To develop a telecommunications system which will produce educational programs for historically black colleges and American indian reservations that will be delivered and received by satellite up/down links. The system will allow sharing of institutional resources.

File No. 8286 CTB NE NY Public T/C Council, Inc., One Sesame Street, Plattsburgh, NY 12901. Signed By: Mr. Gerald Bates, President & General Manager. Funds Requested: $180,446. Total Project Cost: $240,715. To improve WCFE–TV, located in Plattsburgh, by replacing industrial grade obsolete studio cameras with EFP cameras and to acquire an editing controller.

File No. 8288 CRB St. Lawrence University, Park Street, Payson Hall, Canton, NY 13617. Signed By: Ms. Ellen Rocco, General Manager. Funds Requested: $39,130. Total Project Cost: $53,853. To extend the signal of WSLU–FM, located in Canton, to the unserved communities of Malone, Saranac Lake, and Long Lake. Service will be provided by two low watt transmitters and one translator.

File No. 8289 CTB Public Brdcstg. Coun. Central NY, 506 Old Liverpool Road, Liverpool, NY 13088. Signed By: Mr. Richard Russell, President & General Manager. Funds Requested: $185,295. Total Project Cost: $370,590. To improve WCNY–TV serving the Liverpool, Syracuse area by replacing worn out and obsolete studio and field equipment. Request includes one-inch vtr's and field equipment.

OH (Ohio)

File No. 8017 CTB Ohio University, 9 S. College Street, Athens, OH 45701. Signed By: Mr. T. Lloyd Chesnut, Associate Provost. Funds Requested: $885,990. Total Project Cost: $1,771,980. To replace a fourteen year old transmission system at WOUC, Ch. 44 Cambridge, Ohio with a new antenna, transmitter and related equipment. The project would also upgrade the four hop STL connecting WOUC with master control in Athens and to enable both WOUC and WOUB, Ch. 20 Athens, to broadcast in stereo. WOUC serves residents in 11 counties in southeast Ohio.

File No. 8023 CRB Youngstown State University, Cushwa Hall, Youngstown, OH 44555. Signed By: Mr. Neil Humphrey, President. Funds Requested: $69,003. Total Project Cost: $138,006. To extend the service area of WYSU–FM, 88.5 MHz, Youngstown, OH and provide first service to areas of northeast Ohio and western Pennsylvania by the construction of a transmission system at a higher elevation. The project will also construct a translator in Ashtabula to provide first service to that area of northeastern Ohio.

File No. 8048 PRB Wilberforce University, 1055 Bickett Road, Wilberforce, OH 45384. Signed By: Mr. Robert Walker, Director of Media Services. Funds Requested: $10,000. Total Project Cost: $13,790. To plan for the activation of a public radio station operated by Wilberforce University which would address cultural, intellectual and social/political events that are of interest to the Black community. The proposed station would serve some 50,000 people in portions of Green, Montgomery and Clark Counties, OH.

File No. 8052 CRB Cleveland Society for the Blind, 1909 East 101st Street, Cleveland, OH 44106. Signed By: Mr. Thomas Cristal, President. Funds Requested: $16,355. Total Project Cost: $32,710. To replace obsolete production equipment, including consoles and tape recorders, used in the production of radio reading service program material. The Cleveland Radio Reading Service serves some 1,200 sight-impaired people in the greater Cleveland OH area.

File No. 8054 CTB NE Educational TV of Ohio, Inc., 275 Martinel Drive, Kent, OH 44240. Signed By: Mr. Torey Southwick, President & General Manager. Funds Requested: $515,000. Total Project Cost: $1,030,000. To replace the 15 year old transmitter and antenna system of WNEO–TV, Ch. 45, Alliance Ohio which serves residents of ten counties in eastern Ohio and western Pennsylvania.

File No. 8070 CTB Greater Dayton Public TV, Inc., 3440 Office Park Drive, Dayton, OH 45439. Signed By: Mr. Jerrold Wareham, President & General Manager. Funds Requested: $324,564. Total Project Cost: $649,128. To improve the transmission system of WPTD, Ch. 16 in Dayton OH, by replacing unreliable exciter and pulsar portions of the transmitter. The project will also provide STL microwave systems for WPTD and WPTO–TV, Ch. 14 Oxford, which are required due to the relocation of the WPTD/WPTO technical center. Additional microwave and switching equipment are included to enable the broadcast of separate programming on each of the two stations.

File No. 8071 CTB The Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale Ouzts, General Manager. Funds Requested: $476,584. Total Project Cost: $1,042,168. To replace the 15 year old transmission and antenna system of WPBO–TV, Ch. 42, Portsmouth OH, which serves residents in portions of 21 counties in Ohio, Kentucky and West Virginia.

File No. 8110 CRB Toledo Society for the Blind, 1819 Canton Avenue, Toledo, OH 43624. Signed By: Mr. Barry McEwen, Executive Director. Funds Requested: $73,220. Total Project Cost: $97,630. To establish an audio reading service for the visually impaired using the Second Audio Program (SAP) channel of WBGU–TV, Ch. 27, Bowling Green, OH. The project intends to provide the first reading service to some 13,000 residents of the greater Toledo area.

File No. 8134 PTB Cuyahoga Community College, 700 Carnegie Avenue, Cleveland, OH 44115–2878. Signed By: Dr. Nolen Ellison, President. Funds Requested: $254,466. Total Project Cost: $349,460. To plan for the production and dissemination of career information in science, technology and engineering through hardware and programmatic linkages with WVIZ–TV, Ch. 25, Cleveland OH.

File No. 8256 CTB Greater Cincinnati TV Ed. Found., 1223 Central Parkway, Cincinnati, OH 45214. Signed By: Mr. Charles Vaughan, President & General Manager. Funds Requested: $127,680. Total Project Cost: $255,365. To improve the facilities of WCET, Ch. 48, Cincinnati, OH, by replacing a thirty five year old lighting system and expanding the station's routing switcher. WCET serves two million people in the greater Cincinnati area.

File No. 8298 CTB Greater Dayton Public TV., Inc., 3440 Office Park Drive, Dayton, OH 45439. Signed By: Mr. Jerrold Wareham, President & General Manager. Funds Requested: $1,486,752. Total Project Cost: $1,982,336. To improve the facilities of WPTO, Ch. 14, Oxford, OH by relocation of the transmission system and power increase to five megawatts. The project will enable WPTO to provide alternative programming to 2.7 million people in the Cincinnati and Dayton metro areas in southwest Ohio and in 17 counties in Indiana and Kentucky. First service will also be provided to 28,000 people in Decator, Rush and Fayette counties, Indiana.

OK (Oklahoma)

File No. 8193 CTB Rogers State College, Will Rogers & College Hill, Claremore, OK 74017–2099. Signed By: Dr. Richard Mosier, President. Funds Requested: $82,500. Total Project Cost: $165,000. To improve the studio production capability of station KXON–TV, which operates on Ch. 35 from Rogers State College, Claremore, in northeast Oklahoma, by purchasing two 1" video tape recorders.

OR (Oregon)

File No. 8020 CTB Oregon Public Broadcasting, 2828 SW Front Avenue, Portland, OR 97201. Signed By: Mr. Maynard Orme, Executive Director. Funds Requested: $375,857. Total Project Cost: $751,751. To establish a new television facility operating on Ch. 28 in Eugene, OR to provide first public television service to approximately 68,000 residents in Lane and Douglas Counties. The station will broadcast programs from the Oregon Public Broadcast network and will also provide improved reception to 242,000 people in a five county area.

File No. 8146 CRB Tillicum Foundation, 1445 Exchange/Box 269, Astoria, OR 97103. Signed By: Mr. Doug Sweet, Station Manager. Funds Requested: $12,325. Total Project Cost: $16,433. To improve the facilities of KMUN, 91.9 MHz, Astoria, by constructing a news production facility and acquiring compact disk playback capacity. KMUN provides service to some 100,000 people living in northwest Oregon.

File No. 8227 CRB Southern Oregon State College, 1250 Siskiyou Blvd., Ashland, OR 97520. Signed By: Ms. Wilma Foster, Secretary. Funds Requested: $95,302. Total Project Cost: $127,070. To extend the service of KSOR, 90.1 MHz Ashland, by the construction of a repeater station serving Roseburg on 91.5 MHz. The Roseburg repeater will replace a low power translator and will provide first service to 36,307 people. The project will also increase program production facilities at the network operation center in Ashland for the production of programming to serve repeater stations KSKF, Klamath Falls and KSBA Coos Bay which are currently under construction as well as the proposed Roseburg facility.

PA (Pennsylvania)

File No. 8058 PTN Cheyney University of PA, Cheyney Road, Cheyney, PA 19319. Signed By: Dr. Vernon Clark. Funds Requested: $124,640. Total Project Cost: $124,640. To plan for the construction of a 24 channel cable system to serve the University and nearby communities. The system will provide educational programming.

File No. 8059 CTN Cheyney University of PA, Cheyney Road, Cheyney, PA 19319. Signed By: Mr. Vernon Clark. Funds Requested: $544,264. Total Project Cost: $725,686. To plan and construct a 24 channel public cable system and production center that will serve Cheyney University and nearby communities. The system will distribute educational programming.

File No. 8067 CRB University of Pennsylvania, 3905 Spruce Street, Philadelphia, PA 19104. Signed By: Dr. Kim Morrisson, Acting Vice Provost. Funds Requested: $92,353. Total Project Cost: $184,707. To improve WXPN–FM serving Philadelphia, by expanding coverage area by colocating signal site with commercial channel 6 and diplexing signal through their antenna. Project requests diplexer, transmitter, and STL.

File No. 8098 CRB Bux-Mont Educational Radio Assoc, P.O. Box 2012, Warminster, PA 18974. Signed By: Mr. Charles Loughery, President. Funds Requested: $12,822. Total Project Cost: $25,645. To improve the efficiency of WRDV–FM in Warminster, by replacing the 30 year old transmitter.

File No. 8102 CTB Metro. Pittsburgh Pub. Brdcstg., 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Lloyd Kaiser, President. Funds Requested: $22,000. Total Project Cost: $44,000. To improve WQED–TV channel 13 serving Pittsburgh, by replacing an obsolete character generator with two new ones.

File No. 8108 CTN Fox Chapel Area School District, 611 Field Club Road, Pittsburgh, PA 15238. Signed By: Dr. Daniel Freeman, Superintendent. Funds Requested: $258,680. Total Project Cost: $344,907. To provide production capability for local access via cable to six communities in Allegheny County.

File No. 8137 CRB Metro. Pittsburgh Pub. Brdcstg., 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Lloyd Kaiser, President. Funds Requested: $18,390. Total Project Cost: $36,780. To improve the operation of WQED–FM, serving Pittsburgh, by replacing a worn-out audio console and audio tape recorders.

File No. 8143 CTN PA Public TV Network Commission, 169 W. Chocolate Avenue, Hershey, PA 17033. Signed By: Mr. H. Sheldon Parker, General Manager. Funds Requested: $32,906. Total Project Cost: $43,875. To provide three major PA public television stations with line 21 captioning systems thereby completing a statewide text network that would provide services for the deaf and hearing impaired.

File No. 8242 CTB Independ. Pub. Media of Phil., 6445 Green St., C101, Philadelphia, PA 19119. Signed By: Ms. Patricia Mae Watkins, President IPMOP. Funds Requested: $638,499. Total Project Cost: $851,332. To construct a television station, WYBE channel 35, serving Philadelphia, which will provide programming to minorities, ethnic neighborhoods, instructional consumers and other underserved audiences.

File No. 8264 CTB WHYY, Inc., 150 North 6th Street, Philadelphia, PA 19106. Signed By: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: $398,100. Total Project Cost: $796,200. To improve the Wilmington, DE studios of WHYY–TV by replacing out-moded and deteriorating production and master control equipment. Request includes cameras, vtr's, switcher and other production equipment.

PR (Puerto Rico)

File No. 8120 CRTB Puerto Rico Telephone Authority, P.O. Box 998, San Juan, PR 00936. Signed By: Mr. Pedro Galaraza, Exective Director. Funds Requested: $323,218. Total Project Cost: $646,435. To replace the damaged antenna of WIPR–FM, 91.3 MHz, San Juan which has forced the station to reduce power to 18 kw and provide service to one third of the island's population. The new antenna will be shared with WIPR–TV, Ch. 6, and will permit WIPR–FM to broadcast the fully authorized power of 125 kw and serve more than three million residents of Puerto Rico.

RI (Rhode Island)

File No. 8060 CTB R.I. Public T/C Authority, 24 Mason Street, Providence, RI 02903. Signed By: Mr. John Renza, Chairman. Funds Requested: $413,790. Total Project Cost: $551,721. To improve WSBE–TV in Providence by replacing obsolete production equipment; request includes switcher, character generator, audio board and other production equipment.

SC (South Carolina)

File No. 8009 CTB South Carolina ETV Commission, 2712 Millwood Ave., Columbia, SC 29205. Signed By: Mr. Robert Frierson, Senior Vice President. Funds Requested: $430,000. Total Project Cost: $985,920. To replace the 25 year old transmitter and antenna system of WNTV, Channel 29, in Greenville.

SD (South Dakota)

File No. 8209 PTN South Dakota State University, Box 2218, Brookings, SD 57007. Signed By: Mr. C.P. Sword, Graduate Dean. Funds Requested: $15,000. Total Project Cost: $20,035. To plan for an interactive video system that would interconnect South Dakota public post-secondary academic institutions, selected off-campus sites, and Native American tribal colleges in the State.

TN (Tennessee)

File No. 8018 CTB Chattanooga Public TV Corp., 4411 Amnicola Highway, Chattanooga, TN 37406. Signed By: Mr. Walter Alley, President & General Manager. Funds Requested: $267,700. Total Project Cost: $535,400. To improve WTCI–TV, Channel 45, in Chattanooga by replacing a 19 year old worn-out, obsolete RCA transmitter.

File No. 8019 PRB Memphis/Shelby Co. Pub. Lib., 1850 Peabody Avenue, Memphis, TN 38104. Signed By: Ms. Judith Drescher, Director of Libraries. Funds Requested: $4,125. Total Project Cost: $5,500. To investigate/plan possible alternative means of delivering programming for the print-handicapped in southwest Tennessee. Possible choices include building new FM or AM station or purchase of existing station. Applicant currently uses the subcarrier of WKNO–FM in Memphis.

File No. 8027 CRB Memphis Community TV Foundation, 900 Getwell Street, Memphis, TN 38111. Signed By: Mr. W. Wayne Godwin, President & Treasurer. Funds Requested: $49,200. Total Project Cost: $98,400. To improve WKNO–FM, operating on 91.1 MHz, in Memphis. WKNO–FM will replace 16 year old RCA transmitter, replace test equipment and acquire transmitter remote control unit.

File No. 8056 CTN East Tennessee State University, Lake Street at Maple, Johnson City, TN 37614. Signed By: Dr. Ronald Beller, President. Funds Requested: $436,798. Total Project Cost: $873,596. To establish an instructional telecommunications system using the combined technologies of 2 channel ITFS, satellite, and compressed video. Satellite technology will use a Ku-band satellite up/down link and the compressed video will use designated T1 telephone lines. Project will provide instructional services to 15 area public schools, colleges/universities, businesses for job training and GED.

File No. 8169 CTB East TN Pub. Communications Corp, 209 Communications Bldg., Knoxville, TN 37996–0321. Signed By: Mr. Neal Branch, Chairman. Funds Requested: $1,205,531. Total Project Cost: $1,607,375. To activate a new public television station on Channel 15 in Knoxville. The proposed station will provide an estimated 937,057 persons with a first-time City Grade/Grade A local signal.

File No. 8183 CTB Memphis Community TV Foundation, 900 Getwell, Memphis, TN 38111. Signed By: Mr. Wayne Godwin, President & Treasurer. Funds Requested: $361,544. Total Project Cost: $911,544. To improve the facilities of WKNO–TV, Channel 45, in Memphis by purchasing equipment to outfit a new mobile production unit. Present mobile unit and equipment have been in use since 1975 and is no longer capable of meeting the needs of the station.

File No. 8198 CTB Upper Cumberland Broadcast Coun., SW Corner Tucker Stadium, Cookeville, TN 38502. Signed By: Mr. Richard Castle, Jr., President & General Manager. Funds Requested: $440,000. Total Project Cost: $880,000. To augment the facilities of WCTE–TV, operating on Channel 22, in Cookeville. Equipment would augment the studio production equipment and ENG equipment to increase instructional and news productions. In addition, would acquire a back-up studio-to-transmitter link (STL) and Ku-band uplink satellite equipment. WCTE–TV provides the only source of regular local television programming for its coverage area.

File No. 8301 CRB University of Tennessee, 615 McCallie Avenue, Chattanooga, TN 37403. Signed By: Mr. Frederick Obear, Chancellor. Funds Requested: $48,712. Total Project Cost: $97,425. To augment the facilities of WUTC–FM, operating on 88.1 MHz, in Chattanooga. Project would augment the on-air control room and production facilities as well as acquire some remote recording equipment.

TX (Texas)

File No. 8021 CRB Taping for the Blind, Inc., 3935 Essex Lane, Houston, TX 77027. Signed By: Mr. Donald Knowlton, President & CEO. Funds Requested: $14,550. Total Project Cost: $19,400. To extend and improve the radio reading service for the print-handicapped of the greater Houston area provided by Taping for the Blind, Inc. by purchasing 200 SCA receivers and two reel-to-reel audio tape recorders.

File No. 8034 CTB Alamo Public T/C Council, 801 S. Bowie, San Antonio, TX 78205. Signed By: Mr. Richard Bothe, Jr., Chairman. Funds Requested: $43,500. Total Project Cost: $87,000. To replace worn-out and obsolete studio equipment for television station KLRN, Ch. 9, San Antonio. The project will purchase a master control room switcher and a package of picture monitors.

File No. 8168 CRB Central Texas College, Highway 190 West, Killeen, TX 76542. Signed By: Mr. Phillip Swartz, President. Funds Requested: $92,152. Total Project Cost: $122,870. To purchase a transmitter, master control room equipment, an audio test set, and an oscilloscope for FM radio station KNCT, which operates on 91.3 MHz from the campus of Central Texas College, Killeen. The requested items will replace worn-out and obsolete equipment.

File No. 8228 CTB Texas A&M University, Bldg. 519, Houston Street, College Station, TX 77843. Signed By: Dr. Donald McDonald, Provost and Vice President. Funds Requested: $353,535. Total Project Cost: $721,500. To replace worn-out and obsolete studio equipment for television station KAMU, Ch. 15, at Texas A&M University, College Station. The project will purchase three studio cameras, two 1" video tape recorders, a routing switcher, a still store, a production switcher, and a number of monitors.

File No. 8249 CTB North Texas Public Brdcstg., Inc, 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Richard Meyer, President. Funds Requested: $112,600. Total Project Cost: $225,200. To purchase four ½" field camera systems, with associated playback units, and four RF microphones for television station KERA, Ch. 13, Dallas, TX. The requested items will replace worn-out and obsolete equipment.

File No. 8254 CTB South Texas Public Brdcstg. Sys., 4455 S. Padre Island Drive, Corpus Christi, TX 78411. Signed By: Mr. Terrel Cass, President & General Manager. Funds Requested: $289,185. Total Project Cost: $385,580. To purchase three 1" video tape recorders, with an associated editing unit, for television station KEDT, Ch. 16, Corpus Christi, TX. The requested VTRs will replace worn-out and obsolete units.

File No. 8263 CRB RGV Educational Brdcstg., Inc., 1701 Tennessee Ave., Harlingen, TX 78550. Signed By: Mr. Randall Feldman, President & General Manager. Funds Requested: $152,681. Total Project Cost: $203,575. To establish an FM radio station that will operate from Harlingen, TX, on 88.9 MHz with an ERP of 2.58 kW. The station will bring a first public radio signal to over 150,000 residents of the Rio Grande Valley in south Texas.

File No. 8272 CRB Amarillo Jr. College District, P.O. Box 447, 2408 S. Jackson, Amarillo, TX 79178. Signed By: Mr. W.L. Prather, Vice President. Funds Requested: $124,800. Total Project Cost: $166,400. To extend the coverage of radio station KACV–FM, which operates on 89.9 MHz and is licensed to Amarillo College, Amarillo, TX. The project will purchase a transmitter that will increase KACV's ERP to 100 kW, a transmission line that will allow the station to raise its antenna height from 565' to 1000', and remote control equipment. The project will bring a first public radio signal to over 47,000 residents of the Texas Panhandle.

UT (Utah)

File No. 8150 CRB University of Utah, 103 Kingsbury Hall, Salt Lake City, UT 84112–1107. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $33,098. Total Project Cost: $44,128. To improve the transmission capabilities of public radio station KUER–FM operating on 90.1 Mhz in Salt Lake City, Utah by establishing a first separate STL for the station in order to insure proper legal operation.

File No. 8179 CRTBN University of Utah, 205 Talmage Building, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $678,765. Total Project Cost: $905,021. To extend the signals of KUED–TV, KULC–TV operating on Channels 7 & 9 respectively in Salt Lake City, Utah by continuing the construction of the state microwave system to St. George and Gunnison, adding additional translators and installing additional production facilities.

File No. 8181 CTB University of Utah, 101 Gardner Hall, Salt Lake City, UT 84112–1107. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $716,348. Total Project Cost: $955,131. To improve the Transmission capability of public Television station KUED–TV Salt Lake City, Utah by replacing an obsolete transmitter STL and Test Equipment to continue to serve over 2,300,000 persons in five rocky mountain states.

File No. 8251 CRB Dixie College, 225 South 700 East, St. George, UT 84770. Signed By: Dr. Max Rose, Vice President. Funds Requested: $41,277. Total Project Cost: $55,036. To extend the signal of public radio station KUER–FM Salt Lake City, Utah by increasing the power of an "associated station" KRDC–FM St. George, Utah from 10 watts to 105 watts thus providing a first locally originated public radio service to 21,000 residents of Washington County.

VA (Virginia)

File No. 8032 CRB Central VA Educational TV Corp., 23 Sesame Street, Richmond, VA 23235–0028. Signed By: Mr. Richard Hall, Vice President, Broadcasting. Funds Requested: $227,034. Total Project Cost: $302,713. To construct a radio station in Richmond which will provide the only public service; current station providing public signal is on a commercial frequency and has recently been sold.

File No. 8053 PRN Hampton University, Hampton, VA 23668. Signed By: Mr. William Harvey, President. Funds Requested: $10,125. Total Project Cost: $10,125. To plan and purchase equipment for a radio production facility at WHOV–FM in Hampton that would research listener interest and produce minority programming.

File No. 8078 CTB Shenandoah Valley ETV Corp., 298 Port Republic Road, Harrisonburg, VA 22801. Signed By: Mr. Arthur Albrecht, President. Funds Requested: $226,905. Total Project Cost: $453,810. To upgrade current translator near Front Royal to a 5 kW transmitter which will operate as a satellite of WVPT–TV located in Harrisonburg.

File No. 8094 CRB Saint Paul's College, 406 Windsor Avenue, Lawrenceville, VA 23868. Signed By: Mr. Marvin Scott, President. Funds Requested: $78,312. Total Project Cost: $104,416. To activate a public radio station on 91.7 which will provide first service to the community of Lawrenceville.

File No. 8121 CRB Virginia Tech Foundation, 4235 Electric Road, S.W., Roanoke, VA 24014. Signed By: Mr. Charles Forbes, Executive Vice President. Funds Requested: $187,629. Total Project Cost: $250,173. To extend the signal of WVTF–FM, located in Roanoke, to the unserved community of Charlottesville by replacing an inefficient translator with a repeater transmitter.

File No. 8154 CTB Central VA Educational TV Corp., 8101A Lee Highway, Falls Church, VA 22042. Signed By: Mr. Daniel Ward, Corporate Vice President. Funds Requested: $752,167. Total Project Cost: $1,504,334. To improve WNVT–TV, channel 53 serving the greater Washington, DC area by replacing the obsolete transmission system and upgrading it. The request includes transmitter, antenna and backup STL.

File No. 8221 CTB Hampton Roads Ed. T/C Assoc., 5200 Hampton Blvd., Norfolk, VA 23508. Signed By: Mr. John Morison, President & General Manager. Funds Requested: $116,970. Total Project Cost: $233,940. To improve the operation of WHRO–TV in Norfolk by replacing worn-out and obsolete routing switcher and vtr's.

File No. 8224 CTN Hampton Roads Ed. T/C Assoc., 5200 Hampton Blvd., Norfolk, VA 23508. Signed By: Mr. John Morison, President & General Manager. Funds Requested: $435,320. Total Project Cost: $580,426. To expand the ITFS educational services provided by Hampton Roads Educational T/C Association into the rural minority areas of southeast VA by adding a system of 10 transmitters, 8 repeaters and cable carriage.

VT (Vermont)

File No. 8014 PRB Goddard College, Route 214, Plainfield, VT 05667. Signed By: Mr. Jack Lindquist, President. Funds Requested: $16,050. Total Project Cost: $21,400. For WGDR–FM of Goddard College to survey the needs and interests of their community and to plan the most efficient means of improving their transmission system.

File No. 8180 CTB University of Vermont, 88 Ethan Allen Avenue, Winooski, VT 05404. Signed By: Ms. Patricia Armstrong, Director. Funds Requested: $631,937. Total Project Cost: $842,583. To improve services of the statewide network by replacing the 20 year old antenna and transmitter located in Windsor. The increased power of the new transmitter will substantially improve coverage within the coverage area.

WA (Washington)

File No. 8131 CRB Northern Sound Public Radio, 119 N. Commercial St., Suite 310, Bellingham, WA 98225. Signed By: Ms. Gayle Thompson, General Manager. Funds Requested: $21,440. Total Project Cost: $29,588. To improve the programming capabilities of the new radio station under construction in Bellingham, WA which will serve northern Puget Sound communities through broadcasts on 91.7 MHz, by the addition of a satellite receive terminal. This equipment will permit direct station receipt of national programming from National Public Radio and other program sources.

File No. 8163 CTN Educational Service District 112, 1313 NE 134th Street, Vancouver, WA 98685. Signed By: Mr. Charles Fromhold, Superintendent. Funds Requested: $62,758. Total Project Cost: $98,554. To extend the program distribution of the Instructional Materials Cooperative, Educational Service District 112, Vancouver, to five school districts in Cowlitz County. The applicant will construct a two hop microwave to provide its programming to Cableview Entertainment, Longview for cable carriage to some 15,000 students. The applicant currently provides service to some 35,000 students in five school districts in Clark County through a similar interconnection with the Columbia Cable system.

File No. 8201 CTB Washington State University, Administration Drive, Pullman, WA 99164–2530. Signed By: Mr. Robert Smith, Vice Provost for Research. Funds Requested: $384,800. Total Project Cost: $769,600. To improve the facilities

of KWSU, Ch. 10 Pullman, WA by replacing obsolete dissemination and production equipment. The project will fund a new transmitter and STL, master control switcher, studio cameras and 1" videotape machines. KWSU and its repeater station KTNW serve some 634,000 residents of southeastern Washington, north-central Idaho and northeastern Oregon.

File No. 8210 CRB KPBX Spokane Public Radio, N. 2319 Monroe Street, Spokane, WA 99205. Signed By: Mr. Brian Flick, General Manager. Funds Requested: $49,943. Total Project Cost: $66,591. To improve the facilities of KPBX, 91.1 MHz, Spokane WA by replacing obsolete studio equipment, including tape recorders and audio console. The project will also purchase a back-up STL to ensure continued station service to some 769,000 residents of the Inland Northwest area of Washington State.

WI (Wisconsin)

File No. 8132 CTN Gateway Technical College, 3520 30th Avenue, Kenosha, WI 53141. Signed By: Mr. John Birkholz, District Director. Funds Requested: $98,587. Total Project Cost: $131,450. To establish a video production studio to be associated with the Instructional Television Fixed Services (ITFS) system of Gateway Technical Institute, Kenosha, WI. The ITFS system will transmit a variety of instructional programming to the Institute's campuses as well as to secondary public schools and business/industrial sites throughout the Kenosha area.

File No. 8268 CTB University of Wisconsin, 821 University Avenue, Madison, WI 53706. Signed By: Mr. Gerald L. Praedel, Adm. Officer, Res. Adm.-Finan. Funds Requested: $200,640. Total Project Cost: $401,280. To replace a worn-out and obsolete routing switcher for television station WHA, Ch. 21, Madison, WI. Besides bringing the sole PTV signal to the Madison area, WHA–TV is one of the stations providing locally-produced programming to the State's public television network, which is administered by the Wisconsin Educational Communications Board.

WV (West Vinginia)

File No. 8012 CRB West Virginia Library Commission, Cultural Center, Capitol Complex, Charleston, WV 25302. Signed By: Mr. Frederic Glazer, Director. Funds Requested: $4,387. Total Project Cost: $8,774. To extend the radio reading service for the print handicapped by purchasing 100 SCA receivers.

File No. 8296 CTB WV Educational Brdcstg. Auth., 191 Scott Avenue, Morgantown, WV 26507. Signed By: Mr. Kenneth Jarvis, Executive Director. Funds Requested: $636,716. Total Project Cost: $1,061,193. To improve WNPB–TV in Morgantown by replacing their obsolete 20 year old transmission system and increasing power to provide a better signal within their coverage area and extending that signal beyond its current reach.

WY (Wyoming)

File No. 8104 CTB Central Wyoming College, 2660 Peck Avenue, Riverton, WY 82501. Signed By: Mr. Edward Donovan. Funds Requested: $778,205. Total Project Cost: $1,037,606. To extend the signal of public television station KCWC–TV, operating on channel 4, Riverton, Wyoming, by constructing two microwave-fed translators to serve Gillette and Sheridan providing a first over-the-air service to 50,000 residents of northern Wyoming.

AK (Alaska)

File No. 8229 CRB, Old File Nos. 7113, Alaska Public Radio Network, Anchorage, AK.

AL (Alabama)

File No. 8182 CTB, Old File Nos. 7270, Alabama ETV Commission, Birmingham, AL.

File No. 8303 CRB, Old File Nos. 7002, 6013, Sable Community Brdcstg. Corp., Hobson City, AL.

AR (Arkansas)

File No. 8040 CRB, Old File Nos. 7329, 6261, University of Central Arkansas, Conway, AR.

AS (American Samoa)

File No. 8232 CTB, Old File Nos. 7313, American Samoa Government, Pago Pago, AS.

CA (California)

File No. 8010 CRB, Old File Nos. 7038, KXOL, Chico, CA.

File No. 8031 CRB, Old File Nos. 7077, 6188, University of Southern CA, Los Angeles, CA.

File No. 8109 PRB, Old File Nos. 7190, WATTS Communication Network, Los Angeles, CA.

File No. 8124 CTB, Old File Nos. 7297, 6135, Minority Television Project, Inc, San Francisco, CA.

File No. 8274 CRB, Old File Nos. 7059, Pacifica Foundation, North Hollywood, CA.

CO (Colorado)

File No. 8033 CTB, Old File Nos. 7145, Kit Carson County, Burlington, CO.

File No. 8299 CTB, Old File Nos. 7160, Front Range Ed. Media Corp., Broomfield, CO.

CT (Connecticut)

File No. 8075 CTB, Old File Nos. 7228, Connecticut Public Brdcstg. Corp, Hartford, CT.

FL (Florida)

File No. 8016 CRB, Old File Nos. 7135, University of Central Florida, Orlando, FL.

File No. 8035 CRB, Old File Nos. 7025, 6240, School Board of Dade County, FL, Miami, FL.

File No. 8088 CTB, Old File Nos. 7026, 6321, School Board of Dade County, FL, Miami, FL.

File No. 8114 CRB, Old File Nos. 7024, 6286, School Board of Dade County, FL, Miami, FL.

File No. 8262 CRB, Old File Nos. 7007, University of Florida, Gainesville, FL.

GA (Georgia)

File No. 8233 CRB, Old File Nos. 7244, Radio Free GA Brdcstg. Found., Atlanta, GA.

File No. 8220 CRB, Old File Nos. 7082, Atlanta Board of Education, Atlanta, GA.

IA (Iowa)

File No. 8049 CTN, Old File Nos. 7174, 6162, 5090, Eastern Iowa Comm. College Dist., Davenport, IA.

File No. 8081 CTB, Old File Nos. 7109, Iowa Public Broadcasting Board, Johnston, IA.

ID (Idaho)

File No. 8115 CRB, Old File Nos. 7181, 6332, Wood River Public Broadcasting, Ketchum, ID.

File No. 8245 CRB, Old File Nos. 7251, Idaho Migrant Council, Inc., Caldwell, ID.

IL (Illinois)

File No. 8085 CRB, Old File Nos. 7334, Southern Illinois University, Carbondale, IL.

File No. 8148 CTB, Old File Nos. 7018, Black Hawk College, Moline, IL.

IN (Indiana)

File No. 8119 CTB, Old File Nos. 7214, 6019, 5106, 4093, Metro. Indianapolis PB, Inc., Indianapolis, IN.

MA (Massachusetts)

File No. 8013 CRB, Old File Nos. 7322, 6229, WICN Public Radio, Inc., Worcester, MA.

File No. 8194 CTB, Old File Nos. 7147, WGBH Educational Foundation, Springfield, MA.

MD (Maryland)

File No. 8175 CRB, Old File Nos. 7012, Salisbury State College Foundation, Salisbury, MD.

File No. 8247 CTN, Old File Nos. 7330, 6338, 5401, Chesapeake College, Wye Mills, MD.

ME (Maine)

File No. 8004 CTB, Old File Nos. 7011, University of Maine System, Bangor, ME.

File No. 8057 CRB, Old File Nos. 7237, Salt Pond Comm. Brdcstg. Co., South Blue Hill, ME.

MI (Michigan)

File No. 8006 CTB, Old File Nos. 7047, University of Michigan-Flint, Flint, MI.

File No. 8068 CRB, Old File Nos. 7209, 6311, 5411, 4066, 3026, 2109, Delta College, University Center, MI.

File No. 8252 CRTBN, Old File Nos. 7097, Northern Michigan University, Marquette, MI.

File No. 8295 CRB, Old File Nos. 7056, 6111, 5289, 4254, 3105, 2048, Central Michigan University, Mt. Pleasant, MI.

MN (Minnesota)

File No. 8217 CTB, Old File Nos. 7332, Northern MN Public TV, Inc., Bemidji, MN.

MO (Missouri)

File No. 8136 CRB, Old File Nos. 7222, University of Missouri, Rolla, MO.

MS (Mississippi)

File No. 8204 CRB, Old File Nos. 7112, Mississippi Valley State University, Itta Bena, MS.

MT (Montana)

File No. 8063 CTB, Old File Nos. 7034, Meagher County Public TV, Inc., White Sulphur Springs, MT.

File No. 8089 CTB, Old File Nos. 7102, Choteau School District #1, Choteau, MT.

File No. 8225 CTB, Old File Nos. 7277, Whitehall Low Power TV, Inc., Whitehall, MT.

File No. 8237 CTB, Old File Nos. 7131, Bitter Root Valley Public TV, Hamilton, MT.

File No. 8279 CTB, Old File Nos. 7074, Thompson Falls TV District, Thompson Falls, MT.

NC (North Carolina)

File No. 8302 CRB, Old File Nos. 7196, University of North Carolina, Chapel Hill, NC.

ND (North Dakota)

File No. 8165 CTB, Old File Nos. 7243, Prairie Public Broadcasting, Inc, Fargo, ND.

NE (Nebraska)

File No. 8050 CTN, Old File Nos. 7169, 6086, Metropolitan Tech. Comm. College, Omaha, NE.

File No. 8304 PRB, Old File Nos. 7226, Nebraska Educational T/C Comm., Lincoln, NE.

NJ (New Jersey)

File No. 8135 CTN, Old File Nos. 7116, Board of Education of Township of Union, Union, NJ.

NM (New Mexico)

File No. 8093 CRB, Old File Nos. 7261, San Juan College, Farmington, NM.

File No. 8176 CTB, Old File Nos. 7162, New Mexico State University, Las Cruces, NM.

File No. 8239 CTN, Old File Nos. 7104, 6195, 5098, University of New Mexico, Albuquerque, NM.

NV (Nevada)

File No. 8145 CTB, Old File Nos. 7326, 6009, 5028, 4256, Lyon County, Yerington, NV.

File No. 8195 CTB, Old File Nos. 7051, Channel 5 Public Brdcstg., Inc., Reno, NV.

File No. 8215 CRB, Old File Nos. 7029, Nevada Public Radio Corporation, Las Vegas, NV.

NY (New York)

File No. 8041 CRB, Old File Nos. 7267, Shawangunk Communications, Otisville, NY.

File No. 8142 CRB, Old File Nos. 7240, Radio Catskill, Jeffersonville, NY.

File No. 8172 CRB, Old File Nos. 7194, State University of New York, Oswego, NY.

File No. 8269 CTB, Old File Nos. 7139, WSKG Public T/C Council, Conklin, NY.

File No. 8285 CRB, Old File Nos. 7290, NE NY Public T/C Council, Inc., Plattsburgh, NY.

File No. 8291 CTN, Old File Nos. 7233, Columbia-Greene Comm. College, Hudson, NY.

OH (Ohio)

File No. 8072 CTN, Old File Nos. 7234, Lorain County Community College, Elyria, OH.

File No. 8076 CRB, Old File Nos. 7268, Public Brdcstg. Found. of NW OH, Toledo, OH.

File No. 8275 CRB, Old File Nos. 7049, 6098, Miami University, Oxford, OH.

OK (Oklahoma)

File No. 8126 CRB, Old File Nos. 7017, 6044, Cameron University, Lawton, OK.

OR (Oregon)

File No. 8007 CRB, Old File Nos. 7073, KBOO Foundation, Portland, OR.

PA (Pennsylvania)

File No. 8001 CTB, Old File Nos. 7028, NE Pennsylvania ETV Association, Pittston, PA.

File No. 8123 CRB, Old File Nos. 7185, Widener University, Chester, PA.

File No. 8139 CRB, Old File Nos. 7262, Muhlenberg College, Allentown, PA.

File No. 8149 CRB, Old File Nos. 7257, Public Broadcasting of NW PA, Erie, PA.

File No. 8230 CTB, Old File Nos. 7020, Pennsylvania State University, University Park, PA.

File No. 8236 CRB, Old File Nos. 7285, Pennsylvania State University, University Park, PA.

File No. 8292 CRB, Old File Nos. 7307, WITF, Inc., Harrisburg, PA.

PR (Puerto Rico)

File No. 8241 CTB, Old File Nos. 7232, 6280, Fundacion Educativa Ana Mendez, Cupey, Rio Piedras, PR.

SC (South Carolina)

File No. 8174 CRB, Old File Nos. 7091, SC Educational TV Commission, Columbia, SC.

SD (South Dakota)

File No. 8117 CTB, Old File Nos. 7201, State Bd. of Dir. for ETV, Vermillion, SD.

File No. 8255 CRB, Old File Nos. 7211, State Brd. of Dir., Educ. TV, Vermillion, SD.

TN (Tennessee)

File No. 8092 CTN, Old File Nos. 7284, Chattanooga St. Tech. Comm. Col., Chattanooga, TN.

File No. 8144 CTB, Old File Nos. 7103, West TN Public TV Council, Inc., Martin, TN.

TX (Texas)

File No. 8158 CTB, Old File Nos. 7033, Texas Tech University, Lubbock, TX.

File No. 8191 CTB, Old File Nos. 7069, Capital of TX Pub. T/C Council, Austin, TX.

File No. 8284 CTB, Old File Nos. 7311, El Paso Public Television Found, El Paso, TX.

VA (Virginia)

File No. 8028 CRB, Old File Nos. 7309, 6272, VA Voice for Print Handicapped, Richmond, VA.

WI (Wisconsin)

File No. 8130 CRB, Old File Nos. 7142, Gateway Technical College, Kenosha, WI.

File No. 8287 CTB, Old File Nos. 7133, Wisconsin Educational Comm. Brd, Madison, WI.

WY (Wyoming)

File No. 8159 CRB, Old File Nos. 7187, University of Wyoming, Laramie, WY.

[FR Doc. 88-6822 Filed 3-30-88; 8:45 am]

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Part III

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 72, 178, and 179
Commerce in Firearms and Ammunition; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 72, 178, and 179

[T.D. ATF–270; Ref: Temporary Rules T.D. ATF–241 and 247]

Commerce in Firearms and Ammunition

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR Parts 72, 178, and 179 to implement provisions of various new statutory requirements. These new statutory requirements concern commerce in firearms and machine guns, interstate transportation of firearms, commerce in armor piercing ammunition, and changes in forfeiture and bond amounts under the Internal Revenue Code and under Customs laws.

EFFECTIVE DATE: The final rule is effective May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566–7591.

SUPPLEMENTARY INFORMATION: Some of the new statutory provisions which necessitated regulation changes are:

(1) Nonlicensees may acquire rifles and shotguns, but not handguns, from Federal firearms licensees outside their State of residence if the sale complies with State and local laws applicable at the place of sale and where the purchaser resides. The interstate shipment or delivery of firearms to nonlicensees is still prohibited.

(2) The licensing requirement for those dealing in ammunition only is eliminated. Ammunition recordkeeping requirements for a firearms licensee are eliminated. Licenses are required of manufacturers and importers of ammunition.

(3) For licensing and other purposes under the Gun Control Act, the term "engaged in the business" is now defined as those who regularly deal in firearms with the "principal objective of livelihood and profit" through the "repetitive purchase and resale of firearms."

(4) There is specific statutory authority allowing licensees to deal in firearms at gun shows located in the State in which their licensed premises are located.

(5) Licensed manufacturers, licensed importers and licensed dealers need only maintain a "bound book" record of disposition of "personal firearms" where the firearm has been kept in the licensee's personal collection for one year after its transfer from the business inventory or otherwise acquired. The requirement for licensees to obtain an ATF Form 4473 covering such sales is eliminated. The sale is otherwise subject only to the requirements imposed on unlicensed persons selling firearms.

(6) Licensed collectors need only maintain a "bound book" record of firearms transactions and the requirement for licensed collectors to obtain an ATF Form 4473 is eliminated.

(7) An inspection warrant is now required to inspect the records and inventory of licensed manufacturers, licensed importers and licensed dealers except for a criminal investigation of a person other than the licensee, one annual inspection, or in firearms tracing. An inspection warrant is now required to inspect the records and collection of curio or relic firearms of licensed collectors except for one annual inspection or in firearms tracing.

(8) All persons, whether licensed or not, are prohibited from selling or delivering firearms to those persons specifically prohibited from shipping, transporting, receiving or possessing firearms.

(9) Relief from Federal firearms disabilities may be applied for by any proscribed person and the automatic bar to relief is removed for felons whose crimes involved the use of a firearm or other weapon, or whose conviction was for a violation of the Gun Control Act or the National Firearms Act.

(10) Effective May 19, 1986, the possession or transfer of a machine gun is prohibited except for (a) a transfer to or by, or possession by or under the authority of, government entities, or (b) any lawful transfer or lawful possession of a machine gun lawfully possessed before May 19, 1986.

(11) Revised and streamlined license revocation procedures are provided for in view of *de novo* review of the agency action by the United States district courts.

(12) No person may manufacture or import armor piercing ammunition and no manufacturer or importer may sell or deliver such ammunition except:

(a) For the use of the United States or any department or agency thereof or any State or any department, agency or political subdivision thereof;

(b) For the purpose of exportation; or

(c) For the purposes of testing or experimentation as authorized by the Director.

(13) Armor piercing ammunition may only be manufactured, imported, sold or delivered by licensed manufacturers and importers. Such licenses have a fee of $1,000 per year.

(14) Licensed importers and licensed manufacturers must mark all armor piercing projectiles and packages containing such projectiles for distribution.

(15) The Director may, after notice and opportunity for hearing, revoke the license of a licensed dealer who willfully transfers armor piercing ammunition. The Director must furnish information to each licensed dealer defining which projectiles are considered armor piercing ammunition. Provision is made for dealers to dispose of existing inventories of armor piercing ammunition to governmental entities only.

(16) Recordkeeping provisions are provided for all armor piercing ammunition dispositions.

(17) Procedures are established for approval to receive armor piercing ammunition for testing or experimentation.

(18) The dollar amounts for seized property and carriers are increased to conform to the Tax Reform Act of 1986 and the Trade and Tariff Act of 1984.

Notice of Proposed Rulemaking

On October 29, 1986, the Bureau published a notice of proposed rulemaking, Notice No. 609, cross-referenced to Temporary Rule T.D. ATF–241 (51 FR 39612, 39635) with a 90-day comment period. This temporary rule related to firearms, ammunition, forfeiture and bond amounts. The original 90-day comment period was extended an additional 60 days by Notice No. 618 (52 FR 2865, Jan. 28, 1987) and Notice No. 624 (52 FR 6006, Feb. 27, 1987). On January 16, 1987, the Bureau published a notice of proposed rulemaking, Notice No. 616, cross-referenced to Temporary Rule T.D. ATF–247, relating to armor piercing ammunition (52 FR 2048, 2053).

Comments Received

During the comment period on T.D. ATF–241, 1510 written comments with 2563 additional signatures were received. Comments were received from two United States Senators with one additional Senator signing, eight members of the House of Representatives, two firearms licensee associations, five other firearms interest groups, a manufacturer's association, a law enforcement association, and a medical interest group. In addition, there were 13 sporting use firearms associations, a firearms collectors association and 44 comments from persons identifying themselves as licensees. During the comment period on T.D. ATF–247, 42 comments were received with three additional signatures. The comments were from two firearms interest groups, a medical interest group, a sporting use firearms association and four persons identifying themselves as licensees.

General

Several comments on the temporary regulations in Parts 178 and 179 applied to numerous sections of the regulations. The comment was made that, based on an amendment to 18 U.S.C. 926 by Pub. L. 99–308, the regulations should not merely repeat a statutory provision and should be limited to implementing requirements where expressly authorized by statute. Repeating statutory provisions in the regulations is not contrary to the statute and is often helpful to the public in understanding and interpreting the regulations. For example, repeating the statutory definition of "firearm" in the regulations informs the public what is subject to regulation under Parts 178 and 179. With respect to numerous sections of the temporary regulations, the comment was also made that the requirement for executing various ATF forms and letter applications under the penalties of perjury be eliminated. The stated reason for the comment was that the requirement unlawfully created a criminal offense by regulation that is unsupported by statute. The requirement has a basis in law, specifically, 18 U.S.C. 1746, and thus has been retained. An objection was made to the promulgation of regulations under Part 179 implementing any section of 26 U.S.C. Chapter 53 unless that section expressly authorizes the Secretary to prescribe regulations. This comment fails to recognize that 26 U.S.C. 7805(a) authorizes the Secretary to issue all needful rules and regulations for the enforcement of Title 26 U.S.C.

Summary of Proposed Regulations, Comments, and Changes Pursuant to Part 178

Definitions

Armor Piercing Ammunition.

It was suggested that the definition be expanded to state the specific types of projectiles or projectile cores covered by the definition, the types that may be exempted from regulation because they are primarily intended for sporting or industrial purposes, and the standards used to determine these types. It was further suggested that the definition be revised to remove shotgun ammunition from its scope. The definition was not changed in the final rule because it provides adequate notice of those projectiles covered by the definition, as well as those that may be exempted from regulation. Also, § 178.99(e) provides for the Director furnishing each licensed dealer information defining those projectiles considered to be armor piercing. With respect to shotgun ammunition, the definition correctly recognizes that shotgun ammunition that may be used in handguns would constitute armor piercing ammunition if it otherwise meets the definition.

Business Premises.

The most frequent comment related to the definition of the term "Business premises." The concern expressed was that the temporary regulations disqualified private residences as a business premises for licensing purposes by requiring that they be open to the public. The requirement that private residences be "open to the public" for licensing purposes has existed since 1968 and was not changed by the temporary regulations. The only change in the definition was to delete a reference to dealing in ammunition which no longer requires a Federal firearms license. Because the amendments to the law did not otherwise affect the definition, the definition in the temporary regulations is appropriate. Moreover, it has been the consistent position of ATF that "open to the public" means that a residence need only be open to that segment of the public the business is designed to serve.

The suggestion was also made that the regulation should include a statement that persons acquiring firearms for personal use should not be considered to be "engaged in the business" and having a business premises. This suggestion was not adopted because the temporary regulations made it clear that a person making occasional sales or purchases of firearms for the enhancement or disposition of a personal firearms collection does not, under these circumstances, have a business premises subject to licensing.

The comment was also made that the definition include a statement that a private dwelling located in an area where business activity is prohibited by a zoning ordinance shall not be recognized as a "business premises" for Part 178 purposes. This change could not be made because compliance with zoning ordinances and other State and local requirements is not a criterion for licensing of a premises under the Act.

Crime Punishable By Imprisonment For a Term Exceeding 1 Year.

An objection was made to the inclusion in the definition of this term the phrase "unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from possessing firearms." The phrase is retained in the final rule since it comports with legislative intent that a person convicted of a crime punishable by imprisonment for a term exceeding one year should continue to have Federal firearms disabilities unless the person's rights to receive and possess firearms have been restored by the jurisdiction where the conviction occurred. In accord with the legislative intent, the word "receiving" was added to the phrase.

An objection was also made to the inclusion of foreign offenses within the definition of the term. The final rule retains the reference to these offenses because the Act imposes Federal firearms disabilities on persons convicted of a crime punishable by imprisonment for a term exceeding 1 year "in any court," which term has been held by the courts to include foreign, as well as Federal and State, courts.

Dealer.

A comment was made that the last sentence of the definition of the term "dealer" should be stricken as going beyond the statutory definition. This sentence provides that the term includes any person who engages in a firearms dealing business on a part-time basis, and, thus, makes it clear such person must have a Federal firearms license to conduct such business. The final rule retains the sentence since it comports with legislative intent as expressed in committee reports.

Engaged in the Business.

The suggestion was made that the definition list examples illustrating when a license is required. No examples have been added since the definition adequately addresses this concern by expressly delineating the activity requiring licensing from that of a firearms collector not subject to licensing.

Handgun.

An objection was made to this definition on the basis that it is overly broad in its application of the term for all purposes under Part 178. It was suggested that the term be narrowed to apply only to the classification of armor piercing ammunition under section 921(a)(17)(B) of the Act. It is appropriate for the regulations to contain a handgun definition for purposes of Part 178 generally. As written, the final rule utilizes the term "handgun", not only as it relates to armor piercing ammunition, but to the importation of barrels for nonsporting handguns as well. Consequently, the definition of handgun has been retained but revised to eliminate that portion of the definition referring to a combination of handgun parts. The deleted language serves no purpose with respect to a classification of armor piercing ammunition or the importability of firearm barrels.

Also, the suggestion that the term be modified to expressly exclude large pistols, which although designed to be fired by a single hand, are commonly fired by 2 hands and firearms designed to be fired from the shoulder was not adopted. Excluding such pistols from the definition would be contrary to Section 10 of Pub. L. 99–408, which covers firearms "designed" to be fired by the use of a single hand. The regulation as written clearly excludes firearms designed to be fired from the shoulder.

Pistols and Revolvers.

Comments were made concerning the definitions of the terms "pistol" and "revolver", stating that they are technically flawed and proposing alternative definitions. The alternate definitions were not adopted since they are overly broad and could be interpreted to include some weapons other than pistols and revolvers. However, the definitions of "pistol" and "revolver" were changed pursuant to comment by deleting the word "small" before the word "projectile." (A corresponding change was also made to these definitions in Part 179.)

State of Residence.

Comments received on the definition of the term "State of residence" suggested that the term provide that a "State of residence" includes a State *or States* in which an individual resides; that the word "sojourn" be deleted from the regulation because it is an incorrect usage of the term; and that additional examples of persons acquiring a State of residence for Part 178 purposes be shown. The first suggestion was not adopted since the language could be erroneously interpreted to mean that a person could at the same time have more than one State of residence. The second comment was adopted and the word "sojourn" changed to "stay." We have also added several suggested examples of persons acquiring a State of residence to cover members of the Armed Forces and persons having homes in a State where weekends are spent.

Other Definitions.

The following additional comments on the definitions were received and the suggested changes were adopted. In the first sentence of the definition of "Curios and relics", the language "is associated with" was added after the words "quality other than." This language was inadvertently omitted from the definition in the temporary regulations.

A definition of the term "manufacture" has been added to § 178.11 which is consistent with the definition of the term "make" in Part 179. In addition, the definition of "felony" is removed in the final rule because the term is no longer used in the regulations.

Administrative and Miscellaneous Provisions

Forms

A comment was made that § 178.21 be revised to state that any form prescribed by the Director shall contain, in the headings or pertaining to the form, the statutory language of the Act authorizing the form. There is no requirement to place such information on forms, and the comment was not adopted. OMB review and approval of ATF forms satisfies legal requirements.

Alternate Methods and Emergency Variations

The comment was made that § 178.22 (and 27 CFR 179.28), providing for the Director's approval of emergency variations in lieu of the methods and procedures prescribed by regulation, be revised to delete the provision that an emergency variation automatically terminates if the licensee fails to comply with the terms of the variance. The commenter believes this provision unjust to the licensee. The comment was not adopted because the regulation provides for automatic termination of the variance when the licensee fails to comply with the conditions of the variance "in good faith."

It was also suggested that regulations be changed to provide for submission of variance requests directly to the Director, rather than to the regional director (compliance). According to the commenter, this change would save time. Because of the need for coordination between the Director and the regional director (compliance) with respect to any request for variance, this change would not expedite variance requests and was not adopted.

Right of Entry and Examination

The comment was made that not all firearms on the premises of licensed importers, manufacturers, and dealers should be subject to examination during a routine compliance examination, but only business inventory firearms. With respect to licensed collectors, it was suggested that the regulations be clarified to reflect that the premises of a licensed collector is not a business premises, that a licensed collector technically does not maintain "business hours" and that an inspection of the firearms of a licensed collector is limited to firearms curios or relics and should not extend to other personal firearms.

It was also suggested that, with respect to warrantless inspections for the purpose of determining the disposition of firearms in the course of a criminal investigation, the regulations should describe these investigations as "bona fide" criminal investigations as stated in section 923(g)(1) of the Act. These comments have been adopted and § 178.23 modified to reflect these changes. However, proposals were not adopted that warrantless inspections to determine the disposition of firearms in aid of a criminal investigation be conditioned on establishing certain specific facts about the criminal investigation and the completion of a form reflecting these facts. As a practical matter, some of this information would not be available for a timely inspection. Adoption of the proposal may also result in an unwarranted disclosure of information pertaining to a pending criminal investigation.

State Laws and Published Ordinances

The Act requires the Secretary to publish in the **Federal Register** a "list" of published laws of political subdivisions of the States which are determined to be relevant to enforcement of the Act. The Act also provides that the Secretary shall publish a "compilation" of State laws and published ordinances of which licensees are presumed to have knowledge pursuant to the Act. A suggestion was made to change the description of the publication as a "list" to a "compilation." This comment was adopted.

It was also suggested that the regulations be revised to require ATF to provide a complete list or compilation of such laws annually to all licensees whether or not such laws have been amended. Because section 110 of Pub. L. 99–308 expressly provides for furnishing amendments of these laws to licensees, the regulation was not revised. In other words, if the licensee has been furnished with a complete set of these laws and ordinances, ATF is required to furnish the licensee only amendments of these laws and ordinances.

Disclosure of Information

An objection was made to the provision in § 178.25 that the regional director (compliance) may, upon request, provide any Federal, State or local law enforcement agency any information contained in the records required to be maintained by the Act or this part. The person commenting interprets the Act to restrict ATF's disclosure to information pertaining to the identification of persons prohibited from purchasing firearms. The objection is based upon a misinterpretation of the Act, specifically section 923(g)(1)(D), and therefore was not adopted.

Curio or Relic Determination

Section 178.26 provides that a licensed collector may submit a request to the Director for a determination whether a particular firearm is a curio or relic. Pursuant to comment, this section was revised to permit any person to make such request.

Out-of-State Acquisition of Firearms by Nonlicensees

Section 178.29 provides that nonlicensees may not lawfully transport into or receive in their State of residence firearms obtained outside of that State, but also sets out the exceptions to this prohibition. The temporary regulations inadvertently omitted the exception for a firearm loaned or rented to a person for temporary use for lawful sporting purposes. Therefore, a new paragraph (c) has been added to provide for this exception. Also, an erroneous citation was corrected in paragraph (b) by changing "§ 178.97" to "§ 178.96(c)."

Transportation of Destructive Devices and Certain Firearms

The regulations in § 178.28 require the Director's authorization for persons other than licensees to transport these weapons in interstate commerce and require that the person seeking authorization provide, among other things, information that the transportation or possession of the weapon is not inconsistent with the laws of the place of destination. A comment was made that this information be dispensed with in connection with obtaining such authorization. This comment was not adopted since the information is necessary to determine whether the transportation meets statutory requirements, that is, the transportation would be "consistent with public safety and necessity" as required by 18 U.S.C. 922(a)(4).

Delivery by Common or Contract Carrier

It was suggested that § 178.31 be revised to delete the requirement for passengers, who carry firearms aboard carriers in carry-on baggage, to give notice to the carrier that firearms are being transported. This comment was not adopted because the requirement is imposed by statute, 18 U.S.C. 922(e). As held by the courts, the notice requirement applies whether a firearm is contained in a passenger's carry-on baggage or checked baggage.

Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons

The regulation in § 178.32(a)(1) describes the disabilities imposed by law on persons convicted of a crime punishable by imprisonment for a term exceeding 1 year. It was suggested that the language "in any court" be added after the word "convicted." The suggested language has been incorporated into the regulation because it conforms the regulation to the provisions of law, 18 U.S.C. 922(g), and makes it clear that disabling convictions may occur in foreign courts as well as Federal and State courts.

Stolen Firearms and Ammunition

The regulation in § 178.33 generally covers the statutory prohibition against the interstate transportation and receipt of stolen firearms and ammunition. Pursuant to the suggestion of one commenter, the regulation was revised to more fully state the statutory prohibitions with respect to stolen firearms and ammunition. Specifically, the regulation has been expanded to cover the pledge or acceptance as security for a loan of any stolen firearm or ammunition.

Transportation of Firearms

At the suggestion of one commenter, the final rule includes for informational purposes the provisions of section 926A of the Act which provides for a Federal right to transport an unloaded, inaccessable firearm and preempts State and local laws to the contrary if the possession and carrying of the firearm comply with the laws applicable at the origin and destination of the journey. (See § 178.38.)

Licenses

With respect to licensing, a number of comments have been incorporated into the regulations, including (1) the deletion of the statement in § 178.41(a) that licensing of firearms collectors authorizes "privileges granted by the Act"; (2) expanding § 178.43 to expressly provide that license fees be refunded to an applicant whose application is withdrawn prior to being acted upon; (3) providing in § 178.47(a) that the regional director (compliance) "shall", rather than "may", issue a license to a qualified applicant; (4) correcting a statement in § 178.47(b)(2) concerning the licensing of business entities having no individual under Federal firearms disabilities in a position directing the management and policies of an entity ("management or policies" has been changed to "management and policies" to comport with statutory provisions); and (5) changing "§ 178.82" to "§ 178.78" in § 178.47(c) to correct an erroneous citation to regulations.

However, a suggestion was not adopted to delete the second sentence of § 178.45 which provides that the regional director (compliance) may require an applicant for license renewal to file an original license application form, ATF Form 7, as well as a renewal application form, ATF Form 8. Contrary to the comment, there are occasions when the ATF Form 7 would contain information necessary to determine eligibility for license renewal that would not be shown on ATF Form 8, *e.g.*, where there has been a change of control over a licensee. Nor was a suggestion adopted that the regulation specify each item of information required by Forms 7 and 8 to be furnished by a license applicant. It is appropriate that the regulation require an applicant to provide the information called for by the forms. This in no way circumvents the provision in section 923(a) of the Act that a license application shall contain only that information necessary to determine eligibility for licensing. Furthermore, the regulations were not revised to incorporate a comment that licenses should not be issued to persons unless they have commenced a firearms business. Section 923(d)(1)(E) of the Act mandates the issuance of a license to a person who, among other things, has a business premises from which the applicant "intends" to conduct business within a reasonable period of time, although the person may not have commenced business at the time the license application is filed. Moreover, the Act prohibits engaging in a firearms business without a Federal license.

License Proceedings

The comment was made to allow additional time within which to request an administrative hearing on a notice of denial of a license application or notice of revocation and to extend the time for the hearing subsequent to the applicant or licensee being notified of the hearing. Other procedural changes suggested included amending the regulations to further clarify the reasons for denial or revocation, giving additional time elements in the administrative process, permitting the applicant or licensee to file a brief subsequent to receipt of the hearing officer's findings and recommendations, establishing rights of discovery of information in the possession of the Government, and providing for hearings before an administrative law judge. These suggested changes and additional procedures were not adopted because they would unnecessarily delay the administrative process and because they are not required by law. Current regulations adequately provide for informing the applicant of the factual and legal matters which are the basis of the administrative action. Moreover, the person has the right within 60 days after receipt of the final notice of denial or revocation to file a petition for review of the administrative decision in the U.S. district court which may hold a *de novo* hearing.

The comment was made that § 178.78 should be changed to eliminate the requirement that the representative of an applicant or licensee be recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8. The legal authority for the requirement was questioned by those commenting. We have retained the requirement in the regulations because 31 U.S.C. 330 provides that the Secretary of the Treasury may adopt rules of practice before the Department and 31 CFR Part 8 implements the statutory authority.

The suggestion was also made to change § 178.78 to provide that the filing of a petition in the district court to review an administrative license revocation shall postpone the effective date of revocation of a license until a final judgment in the courts. Because the statute, 18 U.S.C. 923(f)(3), providing for judicial review does not provide for a stay of revocation pending action by the district court or appellate review of the courts, the comment was not adopted. However, as the regulation provides, the regional director (compliance) may postpone the effective date of revocation in the interest of justice. In addition, a reviewing court may postpone the effective date of agency action pursuant to 5 U.S.C. 705.

Several changes were made in the final rule pursuant to comments. In § 178.71, the regulation stated that the regional director (compliance), believing that an applicant is not "eligible" to receive a license, may issue a notice of denial. The word "eligible" has been replaced with "qualified." In § 178.73, the regulation stated that the regional director (compliance), believing that a licensee has violated any provision of the Act, may issue a notice of license revocation. This section has been revised to expressly require that the notice of revocation be based only upon a willful violation.

This section has also been revised to substitute "has reason to believe" for "believes" in connection with the regional director (compliance) issuing a notice of revocation. This change restores language which was inadvertently altered by the temporary regulations. The regulation in § 178.75 provided for service on the applicant or licensee of all notices and other "formal" documents. The word "formal" has been deleted. An obsolete citation to § 178.75(b) has been removed from § 178.76.

Conduct of Business

Identification of Firearms and Armor Piercing Ammunition.

A number of commenters expressed a concern that a strict interpretation of the identification requirements would tend to lower the value of imported curio and relic firearms and suggested a number of alternative language changes. ATF has interpreted current regulations to permit a licensed importer to adopt the serial number appearing on a foreign firearm if it does not duplicate the number on any other firearm imported by the licensee. Furthermore, the new regulation in § 178.22(a), authorizing ATF to accept alternate methods or procedures in lieu of the requirements of the regulations, is available to permit variances in identifying firearms and other requirements. Therefore, the suggested changes were not adopted. A cross reference to regulations in 27 CFR 179.102 which also contains identification requirements was included.

Authorized Operations by a Licensed Collector

The comment was made that licensed collectors should be provided more information in § 178.93 with regard to activities involving armor piercing ammunition. This comment was adopted and a sentence was added to explain that a collector's license is unnecessary to collect ammunition and that a licensed collector is not precluded by the Act from receiving or disposing of armor piercing ammunition.

Sales or Deliveries Between Licensees

The temporary regulations provided that a licensee returning a firearm to another licensee need not obtain a certified copy of the transferee's license prior to the return or transfer. Pursuant to a comment, the regulation in § 178.94 was expanded to eliminate the certified copy when the firearm is transferred to a licensee for return to a third licensee.

Out-of-State and Mail Order Sales

At the suggestion of a commenter, the language in section § 178.96(a) was simplified. Several commenters suggested that the first sentence of § 178.96(c) be revised by deleting the words "at the licensee's premises." This change was not made because it would erroneously suggest that licensed importers, manufacturers and dealers could lawfully sell firearms at unlicensed locations. Such licensees may only sell firearms from their licensed premises or at a gun show held in their State in accordance with § 178.100.

Comments were also received to the effect that the regulations should state that delivery of a rifle or shotgun sold to an out-of-State unlicensed individual could be accomplished by an interstate shipment to the purchaser. The Act does not allow the interstate shipment or delivery of rifles and shotguns by licensees to nonlicensees. While 18 U.S.C. 922(b)(3) as amended permits licensees to sell rifles and shotguns to out-of-State unlicensed individuals in compliance with State and local laws, 18 U.S.C. 922(a)(2) still prohibits licensees from transporting or delivering firearms interstate to nonlicensees.

A further comment objected to the provision in paragraph (c) which restricts interstate sales of rifles and shotguns by licensed collectors to nonlicensees to only those that are curios or relics. This restriction is retained in the final rule since the license issued to a collector covers only transactions in curios or relics. With respect to firearms other than curios or relics, a licensed collector is in the same position as a nonlicensee who, among other things, may not lawfully dispose of firearms to other nonlicensees residing out-of-State.

Sales or Deliveries of Destructive Devices and Certain Firearms

Several commenters suggested that the requirement for nonlicensees to furnish a sworn statement showing a reasonable necessity to purchase from licensees destructive devices, machine guns, and certain other weapons as described in § 178.98 be eliminated. This comment was not adopted since the regulation implements 18 U.S.C. 922(b)(4) which makes it unlawful for a Federal firearms licensee to sell or deliver such weapons to a nonlicensee except as specifically authorized by the Secretary consistent with public safety and necessity.

Other commenters believed that the requirement is inadequate and should be expanded to require an agency determination of "reasonable necessity" pursuant to established criteria. In view of the requirements imposed by Part 179 on transactions in these types of weapons, the suggestion was not adopted.

Transfer of Armor Piercing Ammunition by Licensed Dealers

The suggestion was made that § 178.99(e) be revised to require that, in any proceeding to revoke the license of a dealer who violates the Act by willfully transferring armor piercing ammunition, the Government prove that the Director had furnished the dealer information defining what projectiles are considered to be armor piercing. While the Director is required by the Act to furnish such information to licensed dealers, the Government would not be precluded from revoking the license of a dealer who had not received the information if it could be established by other available evidence that the dealer willfully transferred such ammunition in violation of the Act. Consequently, the comment was not adopted.

Conduct of Business Away From Licensed Premises

The comment was made that the regulation in § 178.100 is invalid in that it restricts the "temporary location" at which a licensee's firearms business may be conducted to only gun shows. Furthermore, those commenting believe that the term "gun show" is defined too narrowly by the regulation. Pursuant to those comments, the regulation has been revised in the final rule to more closely conform to section 923(j) of the Act which permits licensees to conduct business at temporary locations away from their licensed premises if such locations are the location for a gun show or event sponsored by any national, State, or local organization devoted to the collection, competitive use, or other sporting use of firearms. Specifically, the regulations have been revised to allow the conduct of business at such "events."

Comments were also made that the regulation should be worded to allow out-of-State licensees displaying guns at a gun show to transfer guns to resident licensees. While it is true that licensees are not confined to their licensed premises when acquiring a firearm, they may not lawfully consummate sales of firearms at an unlicensed location other than a gun show located in the same State specified on their license. The Act expressly restricts licensees' firearms sales at gun shows to those shows held in the State wherein the licensed premises is located (18 U.S.C. 923(j)).

The comment was also made that § 178.100(c) be modified to the effect that records or inventory examinations are not authorized at any location other than that specified on the license. This comment was not adopted since the Act expressly provides for the inspection of licensee records relating to firearms held or disposed of at gun shows and firearms held or disposed of at such locations.

A comment that § 178.100(c) be revised to more clearly describe the records to be maintained by a licensee engaging in business at a gunshow was not adopted. Section 178.100(c), together with the regulations in Subpart H, sufficiently explain the recordkeeping requirements to be met by licensees engaging in business at gun shows. A licensed dealer receiving a firearm at a gun show has 7 days to record the acquisition in the licensee's bound record if a commercial record of the transaction is kept. A licensed dealer selling or disposing of a firearm has 7 days to record the disposition in the licensee's bound record if Form 4473 is obtained by the dealer and is readily available for inspection in the case of a sale to a nonlicensee, or a commercial record of the transaction is readily available for inspection in the case of a sale to another licensee. Therefore, a licensed dealer engaging in business at a gun show need not take the bound record to the show if these requirements are met. A licensed dealer selling or disposing of a firearm to a nonlicensee at a gun show must, while the licensee is attending the show, maintain the Form 4473 completed in connection with the transaction at the show.

Importation

Importation By Licensees and Members of the U.S. Armed Forces

With respect to importation by licensees, it was suggested that several sections of the regulations be revised to remove the importation restrictions on firearms barrels for other than nonsporting firearms or handguns. The temporary regulations proscribed the importation of barrels for all nonimportable firearms. Those commenting on this point were of the view that the new statutory prohibition on the importation of barrels in 18 U.S.C. 925(d)(3) was not intended to apply to barrels of all nonimportable firearms, but was intended by the Congress to apply only to nonsporting firearms or handguns. In accord with the suggestion several changes were made in the regulations to preclude the importation of barrels only if they are for nonsporting handguns. In order to enforce the prohibition against the importation of such barrels, the regulations will continue to require a permit to import all firearms barrels.

The regulations in §§ 178.112, 178.113 and 178.114 were also changed pursuant to suggestions that those importing firearms and ammunition establish why these items are particularly suitable for or readily adaptable to sporting purposes without a statement that the importer "believes" this to be the case.

Several technical errors in the temporary regulations have also been corrected in the final rule. These include restoring the language in § 178.112 precluding the importation of surplus military firearms and nonsporting ammunition and deleting an erroneous statement in § 178.113 that unlicensed persons may not engage in the business of importing firearm barrels. Moreover, the temporary regulations did not prescribe the procedure for nonlicensees to import firearm barrels. Section § 178.113a has been included in the final rule to provide such procedures. This new section provides for the issuance of permits to nonlicensees importing firearm barrels under procedures similar to those applicable to licensees under §§ 178.112 and 178.113.

Several comments related to the administrative criteria, or so-called "factoring criteria", for determining whether handguns are importable as firearms which are particularly suitable for or readily adaptable to sporting purposes. Some commenters suggested eliminating the criteria and replacing them with more clear and precise criteria, although no alternative criteria were suggested. Others suggested publishing the existing criteria in the regulations. These comments were not adopted. The existing criteria were established in the manner contemplated by the Congress in 1968 when enacting the Act. The Secretary established a council comprised of representatives of the firearms industry, including firearms importers, the sporting fraternity, and firearms research organizations. The administrative criteria devised by the council are detailed, clear and precise. The criteria are available on an ATF form and are well known by the

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firearms industry. Further, the factoring criteria have worked well to preclude the importation of nonsporting handguns.

Exempt Importation

Section 178.115(a) provides that a firearm or ammunition may be brought into the United States by any person who can establish to the satisfaction of Customs that it was previously taken out of the United States by such person. The regulation states that a bill of sale or other commercial document showing a transfer of the firearm or ammunition in the United States to the person may be used to establish that it was taken out of the United States by the person. A comment suggested that the regulation be revised to allow an affidavit or sworn statement by the person, in lieu of a bill of sale or other commercial document, as the requisite proof. The current regulation does not require a bill of sale or other commercial document as the exclusive proof that the firearm or ammunition was taken out of the United States by the importer. As written, the regulation would allow proof of this fact by other documentation satisfactory to Customs, including a Customs Form 4457 completed before the person departed the United States with the firearm or ammunition. Therefore, it was unnecessary to adopt this comment.

A comment concerning paragraph (b), which provides for the importation of firearms, ammunition, and firearm barrels by governmental entities, suggested that firearm barrels be deleted from the regulation as unnecessary since barrel importability depends upon the importability of the firearm for which the barrel is intended. Because barrels for nonsporting handguns are generally prohibited from importation, the regulation appropriately provides that importation of firearm barrels by governmental entities is exempt from regulation.

Conditional Importation

The comment was made that the term "firearm barrel" should be deleted from § 178.116, which permits the conditional importation of firearms, ammunition, and firearm barrels to determine whether these items may lawfully be imported. Since the burden of establishing the importability of firearm barrels is upon the importer, it is advantageous and fair to the importer to permit the conditional importation of barrels to determine whether they meet the importation criteria. Otherwise, where doubt existed with respect to importability, an application to import the barrels would be disapproved. Consequently, this suggested change in the regulations was not made.

Records

Records Maintained by Importers and Manufacturers

The comment was made to delete information as to the gauge of shotgun ammunition from the records required to be kept for armor piercing ammunition. The belief was expressed that "armor piercing ammunition" does not cover shotgun ammunition, but rather pertains to handgun ammunition only. This comment was not adopted since the armor piercing ammunition definition in the Act covers projectiles or projectile cores that "may be used in a handgun" and, therefore, includes ammunition interchangeable between handguns and longguns. Since there are handguns which will chamber and fire shotgun ammunition, the information as to the gauge of ammunition is necessary to describe armor piercing shotgun ammunition in the required records.

Firearms Transaction Record

Section 178.124 contains the requirement for licensees to record their dispositions of firearms to nonlicensees on Forms 4473, except when firearms received "for the sole purpose of repair or customizing" are returned. It was suggested that based upon section 922(a)(2)(A) of the Act and Rev. Rul. 69-248, 1969-1 C.B. 360, any return of a firearm to a person or the person's agent be excepted from the Form 4473 requirement. Section 922(a)(2)(A) provides for the lawful interstate shipment or transportation of firearms being returned by licensees to nonlicensees and the revenue ruling held that the Act does not preclude a licensee from shipping firearms to its own employees interstate in connection with the licensee's business. Neither the statute nor the ruling relate to the recordkeeping requirements imposed on licensees when selling or disposing of firearms. Consequently, the comment was not adopted. Adoption of the proposal could facilitate the return of a firearm to a prohibited person or underaged person.

Record of Receipt and Disposition

With respect to paragraph (e) of § 178.125, it was suggested that additional language be added to require licensed dealers to record their receipt and disposition of firearms which are "business inventory" rather than those comprising a "personal collection" of firearms. No change was made in this section as the temporary regulations added a new section, § 178.125a, covering licensees' acquisition and disposition of personal firearms.

It was also suggested that paragraph (f) of § 178.125, relating to the receipt and disposition of firearms by licensed collectors, be revised to require licensed collectors to record only their interstate transactions in curio or relic firearms. This suggested change was not made because sections 922(b)(5) and 923(g) of the Act imposing recordkeeping requirements require licensed collectors to record their acquisition and disposition of all curio or relic firearms whether or not the transactions occurred in interstate commerce.

Further comment was made that the requirement imposed on licensed collectors to record their inventory of curio or relic firearms before commencing licensed operations should be deleted. This requirement is necessary to ensure that those curio or relic firearms are properly recorded when later disposed of. Paragraphs (e) and (f), including the recordkeeping formats, have been changed by removing the description of firearms by "type of action." The "type of action" has been replaced by a requirement to record the "type" of firearm. Recording the type of action of a firearm has not served any purpose under Part 178.

Personal Firearms Collection

The comment was made that new § 178.125a covering sales by licensed dealers, importers, and manufacturers of "personal" firearms should be replaced. The change was not adopted as the suggested language would not reflect the dates of the transactions which are necessary to substantiate the statutory requirement that a licensee hold a personal firearm for a period of one year after receiving it prior to disposing of it as personal property rather than business inventory. Furthermore, the suggested language would not provide for verification of the identity of the purchaser of the personal firearm as contemplated by the Act. However, the section has been changed by removing the description of firearms by "type of action." For reasons previously stated, the "type of action" has been replaced by a requirement to record the "type" of firearm.

Reporting Multiple Sales or Other Disposition of Pistols and Revolvers

Section 178.126a has been revised to relax the requirement that licensees report to ATF their multiple sales and other dispositions of pistols and revolvers to unlicensed persons. Specifically, an exception is made where firearms are returned by

licensees to their owners, *e.g.*, the redemption of pawned firearms.

Discontinuance of Business

Section 178.127 provides that upon the discontinuance of a firearms or ammunition business the records kept pursuant to Subpart H shall be delivered to the ATF Firearms Records Repository. At the suggestion of a commenter, this section has been revised to permit the delivery of the records to any local ATF office or to the regional director (compliance), as well as to the repository.

Record Retention

Comments were received which objected to the requirement that Forms 4473 be retained for 20 years by licensed firearms importers, manufacturers, and dealers. A 3-year retention period was suggested in place of the 20-year period. This comment was based upon the regulations implementing The Paperwork Reduction Act which provide that OMB will not approve a retention period exceeding 3 years unless the period is necessary to satisfy statutory requirements or other substantial need is demonstrated. Other comments stated that the form should be eliminated and merged into the bound book record of firearms acquisitions and dispositions. OMB has approved the record retention period in the regulations and, therefore, no change was made in § 178.129. Contrary to the comments made on this section, Forms 4473 implement specific statutory requirements designed to ensure that firearms are distributed by licensees only to those qualified to receive them under the Act. The 20-year retention period is necessary to assist State and local law enforcement officials in the enforcement of their own laws through the tracing of firearms involved in crime as well as providing similar assistance to Federal law enforcement agencies.

Exemptions, Seizures, and Forfeitures

Effect of Pardon and Expunction of Convictions

Pursuant to comment, § 178.142(b) was revised to include restorations of civil rights among the various means by which a person convicted of a crime punishable by imprisonment for a term exceeding one year may have Federal firearms disabilities removed. A comment that paragraph (b)(2) of § 178.142 be deleted in its entirety was not adopted. This paragraph provides that pardons, expunctions, or other proceedings with respect to a conviction do not remove Federal firearms disabilities if the person is not restored to firearms rights in the jurisdiction where such proceeding occurred. The paragraph correctly interprets section 921(a)(20), which provides that State law, including State firearms restorations, be determinitive of whether a convicted person should continue to be treated as convicted for Federal purposes. If the convicted person is still under State firearms disabilities with respect to the possession or receipt of firearms, the person should be treated as having Federal firearms disabilities. However, the reference to State law concerning shipment and transportation of firearms was deleted from paragraph (b)(2).

Relief From Disabilities Under the Act

One commenter suggested that paragraph (c)(2) of § 178.144 be revised to delete the requirement that a relief applicant, having firearms disabilities for reasons other than an adjudication of mental defectiveness or a commitment to a mental institution, furnish written consent to examine the applicant's medical records. This requirement is retained in the final rule because the mental condition of any applicant may bear upon the granting of relief, regardless of whether the applicant was adjudicated mentally defective or committed to a mental institution.

A comment concerning paragraph (c)(5) that a person having such disabilities should not be disqualified from relief even though the person has not been restored to mental competency and all rights which were lost as a result of the commitment or adjudication restored was not adopted. In the case of such persons, the statutory criteria would preclude the granting of relief.

Another commenter suggested that § 178.144(c)(3) be revised by adding a statement that the information required by paragraph (c)(3) be confined to that which is relevant and material to a determination whether relief from Federal firearms disabilities should be granted. The paragraph requires that an applicant for relief from disabilities incurred by reason of an indictment submit a copy of the indictment with the application. The suggestion was not adopted because a complete copy of the indictment is necessary to determine whether the person has Federal disabilities.

Pursuant to another comment, we have included in paragraph (d) some of the administrative criteria employed by the Director in determining whether relief from disabilities should be granted.

Return of Firearm

For informational purposes, a reference to § 178.124(a) was added to § 178.147. This change informs a licensee of the need to obtain Forms 4473 when certain firearms are returned.

Armor Piercing Ammunition Intended for Sporting or Industrial Purposes

In the temporary regulations, § 178.148 provided procedures for the Director to exempt armor piercing ammunition from the recordkeeping requirements if the ammunition was found to be primarily intended for sporting or industrial purposes. A comment pointed out that the definition of armor piercing ammunition in the Act provides that an exemption granted pursuant to this section exempts such ammunition from all regulatory controls imposed on armor piercing ammunition and not just the recordkeeping requirements. The section was changed to reflect the comment.

Pursuant to comment, the final rule more fully describes the ammunition to be exempted by expressly including charges used in oil and gas well perforating devices.

Exportation

Section 178.171 has been rewritten to clarify recordkeeping requirements imposed by Part 178 on the exportation of armor piercing ammunition.

Summary of Proposed Regulations, Comments, and Changes Pursuant to Part 179

Definitions

The suggestion was made to add language to the definition of machine gun which would expressly exclude from the definition "semiautomatic" firearms, which by wear, alteration, or elimination of certain parts, may fire more than one shot without manual reloading by a single function of the trigger. The suggested language was not added to the definition because it would exclude machine guns as defined by the Act.

It was also suggested that the term muffler or silencer be defined by an objective standard reflecting a significant reduction in sound level of the firearm to which attached, *i.e.*, a 25% reduction in number of decibels. Because courts have interpreted the term to include any device which is designed as a silencer and which will reduce the sound level of a firearm to any degree, the suggestion was not adopted.

Administrative and Miscellaneous Provisions

Right of Entry and Examination

A comment was made objecting to the regulation in § 179.22 which authorizes ATF officers to enter without a warrant the premises of firearms importers, manufacturers and dealers to examine records and firearms subject to Part 179. The basis of the objection is the absence in 26 U.S.C. Chapter 53 of statutory authority for such inspections and the fact that Public Law No. 99–308 did not provide for these inspections. This comment was not adopted because statutory authority for these entries and examinations are provided for in the Internal Revenue Code of 1986, specifically 26 U.S.C. 7606. Public Law 99–308 did not address and, therefore, did not alter any inspection rights under the Internal Revenue Code.

Tax on Making and Transfer of Firearms

Application to Make

In connection with applications to make firearms, it was suggested that § 179.62 be revised to delete the statement relative to the applicant furnishing his or her social security number, as well as the statement why the applicant intends to make the firearm. The regulation has been revised to adopt these suggestions. However, the FBI fingerprint card which must accompany an individual's application would still require the applicant's social security number.

Identification of Applicant

Numerous commenters objected to the requirement in §§ 179.63 and 179.85 that an application to make or transfer a firearm be accompanied by the certificate of a law enforcement official stating that the official has no information that possession of the firearm by the maker or transferee would be in violation of State or local law or that the maker or transferee would use the firearm for other than lawful purposes. Those commenting stated that the regulations have no statutory or constitutional basis. The requirement has a legal basis and has not been deleted. The requirement has existed in regulations since the National Firearms Act was enacted in 1934, and the Congress in amending and reenacting the Act has not disapproved it. The requirement does not unconstitutionally delegate Federal functions to State officials by mandating that these officials approve or disapprove transactions. On the contrary, these officials have the discretion to execute or not execute the required certifications. A United States district court has upheld the validity of the certification requirement.

The suggestion was also made to expand the list of officials whose certifications would be acceptable under the regulations. Specifically, it was suggested that judges, attorneys, and ATF personnel be specified. This suggestion was not adopted. As currently written, the regulations permit the Director to accept in a particular case the certificate of an official other than those enumerated. Consequently, the Director has accepted the certificate of certain judges having law enforcement functions or criminal jurisdiction and judges having access to criminal records. Therefore, whether or not the certificate of a judge is acceptable depends on the circumstances of the particular case. The certificate of an attorney would not suffice and ATF personnel have not been permitted to make these certifications because of their lack of information about the maker or transferee in his or her community.

Registration and Identification of Firearms

Identification of Firearms

The suggestion was made to clarify § 179.102 relating to the identification of component parts of machine guns and silencers which in and of themselves are subject to regulation as machine guns and silencers. Accordingly, language has been added to permit the Director to authorize alternate means of identifying these component parts pursuant to a letter application of a licensed importer or licensed manufacturer. Thus, a licensee could, for example, be relieved of the requirement to place the required identifying markings on each part of a silencer kit if marking a single component of the kit would be reasonable and would not hinder the effective administration of Part 179. However, the frame or receiver of a machine gun would continue to be subject to the identification requirements.

Registration of Firearms by Certain Governmental Entities

A number of commenters objected to language in § 179.104 limiting the registration of weapons for "official use only" by State and local governmental entities that acquired the weapons by forfeiture or abandonment.

An objection was also made to the restriction placed on any subsequent transfer of these weapons to other governmental entities for official use only. This comment was not adopted. The suggested change would permit the introduction of previously unregistered, contraband weapons into commercial channels in violation of law. The restriction placed on the distribution of these weapons has been upheld by the courts.

Transfer and Possession of Machine Guns

A number of commenters suggested that § 179.105 be changed to allow the transfer of machine guns manufactured after May 19, 1986, to any person if the requirements of Part 179 have been met or to any person authorized or permitted to possess a machine gun by any State or a department, agency, or political subdivision thereof. Permitting the transfer of machine guns to any person pursuant to Part 179 or to any person permitted to possess machine guns by State authorities or State law would fail to recognize the prohibition against the possession and transfer of machine guns in 18 U.S.C. 922(o). Restricting transfers of these firearms to government entities or to qualified dealers as "sales samples" is a reasonable interpretation of section 922(o). Therefore, no change was made in this section.

The comment was also made that paragraph (f) of section 179.105 be expanded to allow qualified manufacturers, importers, and dealers, who go out of business and have in their inventory machine guns manufactured after May 19, 1986, to transfer such firearms to any person if the requirements of this part are met and the person may legally possess machine guns under State law. This suggested change was not adopted because it would violate the prohibition in section 922(o) and place persons in violation of the law.

Importation

Registration of Imported Firearms

The comment was made that paragraph (d) of section 179.112 is too restrictive in requiring that firearms imported for use as sales samples by qualified importers and dealers be "particularly" suitable for use of governmental entities. The suggested change has been incorporated in new paragraph (c) by requiring that these firearms be "suitable or potentially suitable" for use of such entities.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it is not required to be preceded by a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information contained in this final rule have been reviewed and approved by the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Drafting Information

The principal author of this document is Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 72

Administrative practice and procedure, Authority delegation, Seizures and forfeitures, Surety bonds.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, ATF is issuing a final rule to amend Title 27 of the Code of Federal Regulations Parts 72, 178 and 179 as set forth below

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

Paragraph 1. The authority citation for Part 72 continues to read as follows:

Authority: Sec. 6, 53 Stat. 1293, sec. 1, 62 Stat. 761, as amended, sec. 7805, 68A Stat. 917, sec. 921, 82 Stat. 1214; 49 U.S.C. App. 788, 18 U.S.C. 1261, 26 U.S.C. 7805, 18 U.S.C. 926, unless otherwise noted.

* * * * *

Subpart F—Administrative Sale or Disposition of Personal Property

* * * * *

Sec.
72.69 Alternate disposition of seized carriers.

* * * * *

Par. 2–3. Section 72.21 is revised to read as follows:

§ 72.21 Personal property and carriers subject to seizure.

(a) Personal property may be seized by duly authorized ATF officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which ATF officers are empowered to enforce, including Title 18 U.S.C. Chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 114 (contraband cigarettes), 229 (liquor); Title 26 U.S.C. Chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and Title 27 U.S.C. 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used in violation of Title 49 U.S.C. App., Chapter 11 (transportation, et cetera) of contraband firearms or contraband cigarettes.

(b) Any action or proceeding for the forfeiture of firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be commenced within 120 days of such seizure.

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

Par. 4. Section 72.22 is amended to change "$10,000.00" or "$2,500.00" to "$100,000.00" wherever it appears in paragraphs (a) (1), (2) and (3) and paragraphs (a)(6) and (b) are revised to read as follows:

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* * * *

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Director a claim stating the interest in the articles or carrier seized, and may execute a bond to the United States, conditioned that, in case of condemnation of the articles or carrier so seized, the obligators shall pay all the costs and expenses of the proceedings to obtain such condemnation. The amount of the cost bond is $2,500.00, unless the seized property is a vehicle, vessel, or aircraft seized for a violation of 49 U.S.C. App., Chapter 11, in which case the cost bond shall be in the amount of $2,500 or ten percent of the value of the claimed property, whichever is lower, but not less than $250.00. Both the claim and the cost bond shall be executed in quadruplicate.

(b) *Judicial condemnation.* The Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, shall authorize institution of forfeiture proceedings in those instances where the appraised value of the seized personal property or carrier exceeds $100,000.00 or where a claim and cost bond are filed.

Par. 5. The heading for Subpart F is revised and § 72.61 is amended by revising the heading for paragraph (a) and paragraph (b), to read as follows:

Subpart F—Administrative Sale or Disposition of Personal Property

§ 72.61 Alternative methods of sale.

(a) *Sale by auction or competitive bid.*

* * * * *

(b) *Sale by General Services Administration.* When a vessel, vehicle, or aircraft seized under 49 U.S.C. App., Chapter 11 is forfeited administratively, the Director may authorize the General Services Administration to conduct the sale pursuant to such conditions as the Director deems proper.

Par. 6. Section 72.69 is revised to read as follows:

§ 72.69 Alternative disposition of seized carriers.

(a) *State or local proceedings.* The Director may discontinue forfeiture proceedings instituted under the Customs laws for seizures of carriers under 49 U.S.C. App., Chapter 11 in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. If such forfeiture proceedings are discontinued or dismissed, the

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Director may transfer the seized property to the appropriate State or local official, and notice of discontinuance or dismissal shall be provided to all known interested parties.

(b) *Transfer to State or local law enforcement agency.* Any carrier forfeited under the Customs laws for seizures under 49 U.S.C. App., Chapter 11 may be transferred by the Director to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

(19 U.S.C. 1616)

PART 178—[AMENDED]

Par. 7. The authority citation for Part 178 continues to read as follows:

Authority: 18 U.S.C. 926.

Pars. 8–9. Section 178.1 is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766) and Pub. L. 99–408 (100 Stat. 920).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in firearms and ammunition;

(2) The licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms;

(3) The conduct of business or activity by licensees;

(4) The importation of firearms and ammunition;

(5) The records and reports required of licensees;

(6) Relief from disabilities under this part;

(7) Exempt interstate and foreign commerce in firearms and ammunition; and

(8) Restrictions on armor piercing ammunition.

Par. 10. Section 178.2 is revised to read as follows:

§ 178.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in firearms or ammunition. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 47 of this chapter. For statutes applicable to nonmailable firearms, see 18 U.S.C. 1715 and regulations thereunder.

Par. 11. Section 178.11 is amended by revising the definitions for Business premises, Collector, Crime punishable by imprisonment for a term exceeding 1 year, Curios or relics, Dealer, Importer, Licensed dealer, Licensed importer, Licensed manufacturer, Machine gun, Manufacturer, Pawnbroker, Pistol, Revolver, and State of residence, Armor piercing ammunition, Engaged in the business, Firearm muffler or firearm silencer, Handgun, and Principal objective of livelihood and profit; adding the definition Manufacture; and removing the definition for Felony to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Armor piercing ammunition. Projectiles or projectile cores which may be used in a handgun and which are constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, projectiles which the Director finds are primarily intended to be used for sporting purposes, or any other projectiles or projectile cores which the Director finds are intended to be used for industrial purposes, including charges used in oil and gas well perforating devices.

* * * * *

Business premises. The property on which the manufacturing or importing of firearms or ammunition or the dealing in firearms is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term.

* * * * *

Collector. Any person who acquires, holds, or disposes of firearms as curios or relics.

* * * * *

Crime punishable by imprisonment for a term exceeding 1 year. Any Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Curios or relics. Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

(a) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

* * * * *

Dealer. Any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The

term shall include any person who engages in such business or occupation on a part-time basis.

* * * * *

Engaged in the business—(a) *Manufacturer of firearms.* A person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(b) *Manufacturer of ammunition.* A person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(c) *Dealer in firearms other than a gunsmith or a pawnbroker.* A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(d) *Gunsmith.* A person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(e) *Importer of firearms.* A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and,

(f) *Importer of ammunition.* A person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

* * * * *

Firearm muffler or firearm silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

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Handgun. Any firearm including a pistol or revolver designed to be fired by the use of a single hand.

* * * * *

Importer. Any person engaged in the business of importing or bringing firearms or ammunition into the United States. The term shall include any person who engages in such business on a part-time basis.

* * * * *

Licensed dealer. A dealer licensed under the provisions of this part.

Licensed importer. An importer licensed under the provisions of this part.

Licensed manufacturer. A manufacturer licensed under the provisions of this part.

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Manufacture. This term and the various derivatives thereof shall include making, putting together, altering, any combination of these, or otherwise producing a firearm.

Manufacturer. Any person engaged in the business of manufacturing firearms or ammunition. The term shall include any person who engages in such business on a part-time basis.

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. The term shall include any person who engages in such business on a part-time basis.

* * * * *

Pistol. A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

Principal objective of livelihood and profit. The intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents such as improving or liquidating a personal firearms collection: *Provided,* That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this part, the term "terrorism" means activity, directed against United States persons, which—

(a) Is committed by an individual who is not a national or permanent resident alien of the United States;

(b) Involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(c) Is intended—

(1) To intimidate or coerce a civilian population;

(2) To influence the policy of a government by intimidation or coercion; or

(3) To affect the conduct of a government by assassination or kidnapping.

* * * * *

Revolver. A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

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State of residence. The State in which an individual regularly resides, or maintains a home, or if such person is on active duty as a member of the United States Armed Forces, the State in which the person's permanent duty station is located: *Provided,* That an alien who is legally in the United States shall be considered to be a resident of the State in which (a) the alien is residing or has so resided for a period of at least 90 days prior to the date of sale or delivery of a firearm, or (b) the alien's embassy or consulate is located if the principal officer of such embassy or consulate issues a written statement to such alien authorizing the alien to acquire a firearm. Temporary stay in a State does not make the State of temporary stay the State of residence.

Example 1. A maintains a home in State X. A travels to State Y on a hunting, fishing, business or other type of trip. A does not become a resident of State Y by reason of such trip.

Example 2. A maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that

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A actually resides in State Y, A is a resident of State Y.

Example 3. A is a member of the Armed Forces whose permanent duty station is located in State X. However, A actually resides and maintains a home in State Y and commutes daily to the permanent duty station in State X to perform military duties. A is a resident of both State X and State Y at the same time.

Par. 12. Section 178.21 is amended by revising paragraph (c) to read as follows:

§ 178.21 Forms prescribed.

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

Par. 13. Section 178.22 is revised to read as follows:

§ 178.22 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The licensee, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when it is found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Where the licensee desires to employ an alternate method or procedure, a written application shall be submitted to the appropriate regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. The licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation from the specified requirements are necessary and the proposed variations (1) will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the licensee shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where the licensee desires to employ an emergency variation, a written application shall be submitted to the appropriate regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The licensee shall retain, as part of the licensee's records, available for examination by ATF officers, any application approved by the Director under this section.

Par. 14. Section 178.23 is revised to read as follows:

§ 178.23 Right of entry and examination.

(a) Except as provided in paragraph (b), any ATF officer, when there is reasonable cause to believe a violation of the Act has occurred and that evidence of the violation may be found on the premises of any licensed manufacturer, licensed importer, licensed dealer, or licensed collector, may, upon demonstrating such cause before a Federal magistrate and obtaining from the magistrate a warrant authorizing entry, enter during business hours (or, in the case of a licensed collector, the hours of operation) the premises, including places of storage, of any such licensee for the purpose of inspecting or examining:

(1) Any records or documents required to be kept by such licensee under this part and

(2) Any inventory of firearms or ammunition kept or stored by any licensed manufacturer, licensed importer, or licensed dealer at such premises or any firearms curios or relics or ammunition kept or stored by any licensed collector at such premises.

(b) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during business hours the premises, including places of storage, of any licensed manufacturer, licensed importer, or licensed dealer for the purpose of inspecting or examining the records, documents, ammunition and firearms referred to in paragraph (a) of this section:

(1) In the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee,

(2) For insuring compliance with the recordkeeping requirements of this part not more than once during any 12-month period, or

(3) When such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(c) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during hours of operation the premises, including places of storage, of any licensed collector for the purpose of inspecting or examining the records, documents, firearms, and ammunition referred to in paragraph (a) of this section (1) for ensuring compliance with the recordkeeping requirements of this part not more than once during any 12-month period or (2) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. At the election of the licensed collector, the annual inspection permitted by this paragraph shall be performed at the ATF office responsible for conducting such inspection in closest proximity to the collectors premises.

(d) The inspections and examinations provided by this section do not authorize an ATF officer to seize any records or documents other than those records or documents constituting material evidence of a violation of law. If an ATF officer seizes such records or documents, copies shall be provided the licensee within a reasonable time.

Par. 15. Section 178.24 is revised to read as follows:

§ 178.24 Compilation of State laws and published ordinances.

(a) The Director shall annually revise and furnish Federal firearms licensees with a compilation of State laws and published ordinances which are relevant to the enforcement of this part. The Director annually revises the compilation and publishes it as "State Laws and Published Ordinances—Firearms" which is furnished free of charge to licensees under this part. Where the compilation has previously been furnished to licensees, the Director need only furnish amendments of the relevant laws and ordinances to such licensees.

(b) "State Laws and Published Ordinances—Firearms" is incorporated by reference in this part. It is ATF Publication 5300.5, revised yearly. The current edition is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register.

Par. 16. Section 178.25 is revised to read as follows:

§ 178.25 Disclosure of information.

The regional director (compliance) may make available to any Federal, State or local law enforcement agency any information which is obtained by reason of the provisions of the Act with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition. Upon the request of any Federal, State or local law enforcement agency, the regional director (compliance) may provide such agency any information contained in the records required to be maintained by the Act or this part.

Par. 17. Section 178.26 is revised to read as follows:

§ 178.26 Curio and relic determination.

Any person who desires to obtain a determination whether a particular firearm is a curio or relic shall submit a written request, in duplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require the submission of the firearm for examination and evaluation. If the submission of the firearm is impractical, the person requesting the determination shall so advise the Director and designate the place where the firearm will be available for examination and evaluation.

Par. 18. Section 178.29 is revised to read as follows:

§ 178.29 Out-of-State acquisition of firearms by nonlicensees.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, shall transport into or receive in the State where the person resides (or if a corporation or other business entity, where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State: *Provided,* That the provisions of this section:

(a) Shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State,

(b) Shall not apply to the transportation or receipt of a rifle or shotgun obtained from a licensed manufacturer, licensed importer, licensed dealer, or licensed collector in a State other than the transferee's State of residence in an over-the-counter transaction at the licensee's premises obtained in conformity with the provisions of § 178.96(c) and

(c) Shall not apply to the transportation or receipt of a firearm obtained in conformity with the provisions of §§ 178.30 and 178.97.

Par. 19. Section 178.32 is revised to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) No person may ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802),

(4) Has been adjudicated as a mental defective or has been committed to a mental institution,

(5) Is an alien illegally or unlawfully in the United States,

(6) Has been discharged from the Armed Forces under dishonorable conditions, or

(7) Having been a citizen of the United States, has renounced citizenship.

(b) No person who is under indictment for a crime punishable by imprisonment for a term exceeding one year may ship or transport any firearm or ammunition in interstate or foreign commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(c) Any individual, who to that individual's knowledge and while being employed by any person described in paragraph (a) of this section, may not in the course of such employment receive, possess, or transport any firearm or ammunition in commerce or affecting commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(d) No person may sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802),

(4) Has been adjudicated as a mental defective or has been committed to a mental institution,

(5) Is an alien illegally or unlawfully in the United States,

(6) Has been discharged from the Armed Forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

Par. 20. Section 178.33 is revised to read as follows:

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§ 178.33 Stolen firearms and ammunition.

No person shall transport or ship in interstate or foreign commerce any stolen firearm or stolen ammunition or pledge or accept as security for a loan any stolen firearm or ammunition knowing or having reasonable cause to believe that the firearm or ammunition was stolen, and no person shall receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition which is moving as, which is a part of, or which constitutes interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

Par. 21. Section 178.36 is revised to read as follows:

§ 178.36 Transfer or possession of machine guns.

No person shall transfer or possess a machine gun except:

(a) A transfer to or by, or possession by or under the authority of, the United States, or any department or agency thereof, or a State, or a department, agency, or political subdivision thereof. (See Part 179 of this chapter); or

(b) Any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986 (See Part 179 of this chapter).

Par. 22. Section 178.37 is revised to read as follows:

§ 178.37 Manufacture, importation and sale of armor piercing ammunition.

No person shall manufacture or import, and no manufacturer or importer shall sell or deliver, armor piercing ammunition, except:

(a) The manufacture or importation, or the sale or delivery by any manufacturer or importer, of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department, agency or political subdivision thereof;

(b) The manufacture, or the sale or delivery by a manufacturer or importer, of armor piercing ammunition for the purpose of exportation; or

(c) The sale or delivery by a manufacturer or importer of armor piercing ammunition for the purposes of testing or experimentation as authorized by the Director under the provisions of § 178.149.

Par. 23. Section 178.38 is added to read as follows:

§ 178.38 Transportation of firearms.

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where such person may lawfully possess and carry such firearm to any other place where such person may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided,* That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

Par. 24. Section 178.41 is amended by revising paragraphs (a) and (b) to read as follows:

§ 178.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of firearms or ammunition, or a dealer in firearms shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who desires to obtain a license as a collector of curios or relics may obtain such a license under the provisions of this subpart.

(b) Each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application, with the required fee (see § 178.42), with ATF in accordance with the instructions on the form (see § 178.44), and, pursuant to § 178.47, receive the license required for such business from the regional director (compliance). Except as provided in § 178.50, a license must be obtained for each business and each place at which the applicant is to do business. A license as an importer or manufacturer of firearms or ammunition, or a dealer in firearms shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce and to engage in the business specified by the license, at the location described on the license, and for the period stated on the license. However, it shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer's license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by the license to be imported or manufactured. Payment of the license fee as an importer or manufacturer of destructive devices, ammunition for destructive devices or armor piercing ammunition or as a dealer in destructive devices includes the privilege of importing or manufacturing firearms other than destructive devices and ammunition for other than destructive devices or ammunition other than armor piercing ammunition, or dealing in firearms other than destructive devices, as the case may be, by such a licensee at the licensed premises.

* * * * *

Par. 25. Section 178.42 is revised to read as follows:

§ 178.42 License fees.

Each applicant shall pay a fee at a yearly rate for obtaining a firearms license or ammunition license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

(a) For a manufacturer:

(1) Of destructive devices, ammunition for destructive devices or armor piercing ammunition—$1,000 per year.

(2) Of firearms other than destructive devices—$50 per year.

(3) Of ammunition for firearms other than ammunition for destructive devices or armor piercing ammunition—$10 per year.

(b) For an importer:

(1) Of destructive devices, ammunition for destructive devices or armor piercing ammunition—$1,000 per year.

(2) Of firearms other than destructive devices or ammunition for firearms other than destructive devices or ammunition other than armor piercing ammunition—$50 per year.

(c) For a dealer:

(1) In destructive devices—$1,000 per year.

(2) Who is a pawnbroker dealing in firearms other than destructive devices—$25 per year.

(3) Who is not a dealer in destructive devices or a pawnbroker—$10 per year.

(d) For a collector of curios and relics—$10 per year.

Par. 26. Section 178.43 is revised to read as follows:

§ 178.43 License fee not refundable.

No refund of any part of the amount paid as a license fee shall be made where the operations of the licensee are, for any reason, discontinued during the period of an issued license. However, the license fee submitted with an application for a license shall be refunded if that application is denied or withdrawn by the applicant prior to being acted upon.

Par. 27. Section 178.44 is revised to read as follows:

§ 178.44 Original license.

(a) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms) may be obtained from any ATF office.

(b) Any person who desires to obtain a license as a collector under the Act and this part, or who has not timely submitted an application for renewal of the previous license issued under this part, shall file an application, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7 (Firearms) may be obtained from any ATF office.

(18 U.S.C. 926 (82 Stat. 1226))

Par. 28. Section 178.45 is revised to read as follows:

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, the licensee shall, unless otherwise notified in writing by the regional director (compliance), execute and file prior to the expiration of the license an application for a license renewal, ATF Form 8 Part II, accompanied by the required fee, with ATF in accordance with the instructions on the form. The regional director (compliance) may, in writing, require the applicant for license renewal to also file completed ATF Form 7 in the manner required by § 178.44. In the event the licensee does not timely file an ATF Form 8 Part II, the licensee must file an ATF Form 7 as required by § 178.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 Part II is not timely received through the mails, the licensee should so notify the regional director (compliance).

(18 U.S.C. 926 (82 Stat. 1226))

Par. 29. Section 178.47 is amended by revising paragraphs (a), (b) (1) and (2), and (c) to read as follows:

§ 178.47 Issuance of license.

(a) Upon receipt of a properly executed application for a license on ATF Form 7, or ATF Form 8 Part II, the regional director (compliance) shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is qualified, issue the appropriate license. Each license shall bear a serial number and such number may be assigned to the licensee to whom issued for so long as the licensee maintains continuity of renewal in the same location (State).

(b) The regional director (compliance) shall approve a properly executed application for license on ATF Form 7, or ATF Form 8 Part II, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited under the provisions of the Act from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition, or from receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce;

* * * * *

(c) The regional director (compliance) shall approve or deny an application for license within the 45-day period beginning on the date the properly executed application was received: *Provided,* That when an applicant for license renewal is a person who is, pursuant to the provisions of § 178.78, § 178.143, or § 178.144, conducting business or collecting activity under a previously issued license, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or license application, final determination of the applicant's criminal case, or final action by the Director on an application for relief submitted pursuant to § 178.144, as the case may be.

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Par. 30. Section 178.49 is revised to read as follows:

§ 178.49 Duration of license.

The license entitles the person to whom issued to engage in the business or activity specified on the license, within the limitations of the Act and the regulations contained in this part, for a three year period, unless terminated sooner.

§ 178.71 [Amended]

Par. 31. Section 178.71 is amended by replacing in the first sentence the word "eligible" with the word "qualified".

Par. 32. Section 178.73 is revised to read as follows:

§ 178.73 Notice of revocation.

Whenever the regional director (compliance) has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may be issued. The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The regional director (compliance) shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to revocation of the license. If the licensee does not file a timely request for a hearing, the regional director (compliance) shall issue a final notice of revocation, ATF Form 4501, as provided in § 178.74.

Par. 33. Section 178.74 is revised to read as follows:

§ 178.74 Request for hearing after notice of revocation.

If a licensee desires a hearing after receipt of a notice of revocation of a license, the licensee shall file a request, in duplicate, with the regional director (compliance) within 15 days after receipt of the notice of revocation. On receipt of such request, the regional director (compliance) shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held. Such notification shall be made not less than 10 days in advance of the date set for hearing. On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the regional director (compliance) shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation on ATF Form 4501. If the decision is that the license should not be revoked, the licensee shall be notified in writing.

Par. 34. In § 178.75, the word "formal" is removed from the first sentence, § 178.76, the words "under § 178.75(b)" are removed and § 178.77 is revised to read as follows:

§ 178.77 Designated place of hearing.

The designated place of the hearing shall be a location convenient to the aggrieved party.

Par. 35. Section 178.92 is revised to read as follows:

§ 178.92 Identification of firearms and armor piercing ammunition.

(a) *Firearms.* Each licensed manufacturer or licensed importer of any firearm manufactured or imported shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer; in the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) wherein the licensed manufacturer maintains its place of business; and in the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) of the importer: *Provided,* That the Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part: *Provided further,* That in the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of letter application, in duplicate, from the licensed manufacturer or licensed importer showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable. A firearm frame or receiver, or any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a licensed manufacturer or licensed importer, shall be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(b) *Armor piercing ammunition.*— (1) *Marking of ammunition.* Each licensed manufacturer or licensed importer of armor piercing ammunition shall identify such ammunition by means of painting, staining or dying the exterior of the projectile with an opaque black coloring. This coloring must completely cover the point of the projectile and at least 50 percent of that portion of the projectile which is visible when the projectile is loaded into a cartridge case.

(2) *Labeling of packages.* Each licensed manufacturer or licensed importer of armor piercing ammunition shall clearly and conspicuously label each package in which armor piercing ammunition is contained, e.g., each box, carton, case, or other container. The label shall include the words "ARMOR PIERCING" in block letters at least ¼ inch in height. The lettering shall be located on the exterior surface of the package which contains information concerning the caliber or gauge of the ammunition. There shall also be placed on the same surface of the package in block lettering at least ⅛ inch in height the words "FOR GOVERNMENTAL ENTITIES OR EXPORTATION ONLY." The statements required by this subparagraph shall be on a contrasting background.

Par. 36. Section 178.93 is revised to read as follows:

§ 178.93 Authorized operations by a licensed collector.

The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also § 178.50.) A collectors license is not necessary to receive or dispose of ammunition, and a licensed collector is not precluded by law from receiving or disposing of armor piercing ammunition. However, a licensed collector may not dispose of any ammunition to a person prohibited from receiving or possessing ammunition (see § 178.99(c)). Any licensed collector who disposes of armor piercing ammunition must record the disposition as required by § 178.125 (a) and (b).

Par. 37. Section 178.94 is revised to read as follows:

§ 178.94 Sales or deliveries between licensees.

A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise disposing of firearms, and a licensed collector selling or otherwise disposing of curios or relics, to another licensee shall verify the identity and licensed status of the transferee prior to making the transaction. Verification shall be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by such other means as the transferor deems necessary:

Provided, That it shall not be required (a) for a transferee who has furnished a certified copy of its license to a transferor to again furnish such certified copy to that transferor during the term of the transferee's current license, (b) for a licensee to furnish a certified copy of its license to another licensee if a firearm is being returned either directly or through another licensee to such licensee and (c) for licensees of multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization:

Provided further, That a multilicensed business organization may furnish to a transferor, in lieu of a certified copy of each license, a list, certified to be true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the transferor may sell or otherwise dispose of firearms as provided by this section to any licensee appearing on such list without requiring a certified copy of a license therefrom. A transferor licensee who has the certified information required by this section may sell or dispose of firearms to a licensee for not more than 45 days following the expiration date of the transferee's license.

(Approved by the Office of Management and Budget under control number 1512–0387)

Par. 38. Section 178.95 is revised to read as follows:

§ 178.95 Certified copy of license.

The license furnished to each person licensed under the provisions of this part contains a purchasing certification statement. This original license may be reproduced and the reproduction then certified by the licensee for use pursuant to § 178.94. If the licensee desires an additional copy of the license for certification (instead of making a reproduction of the original license), the licensee may submit a request, in writing, for a certified copy or copies of the license to the regional director (compliance) for the region in which the premises is located. The request must set forth the name, trade name (if any) and address of the licensee, and the number of license copies desired. There is a charge of $1 for each copy. The fee paid for copies of the license must accompany the request for copies. The fee may be paid by (a) cash, or (b) money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(Approved by the Office of Management and Budget under control number 1512–0387)

Par. 39. Section 178.96 is amended by revising paragraphs (a) and (c) to read as follows:

§ 178.96 Out-of-State and mail order sales.

(a) The provisions of this section shall apply when a firearm is purchased by or delivered to a person not otherwise prohibited by the Act from purchasing or receiving it.

* * * * *

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun which is a curio or relic, to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if the purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale and delivery of the rifle or shotgun and the sale, delivery and receipt fully comply with the legal conditions of sale in both such States. For purposes of this paragraph, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

(Approved by the Office of Management and Budget under control number 1512–0130)

Par. 40. Section 178.98 is revised to read as follows:

§ 178.98 Sales or deliveries of destructive devices and certain firearms.

The sale or delivery by a licensee of any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, to any person other than another licensee who is licensed under this part to deal in such device or firearm, is prohibited unless the person to receive such device or firearm furnishes to the licensee a sworn statement setting forth

(a) The reasons why there is a reasonable necessity for such person to purchase or otherwise acquire the device or weapon; and

(b) That such person's receipt or possession of the device or weapon would be consistent with public safety. Such sworn statement shall be made on the application to transfer and register the firearm required by Part 179 of this chapter. The sale or delivery of the device or weapon shall not be made until the application for transfer is approved by the Director and returned to the licensee (transferor) as provided in Part 179 of this chapter.

Par. 41. Section 178.99 is revised to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

(a) *Interstate sales or deliveries.* A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver any firearm to any person not licensed under this part and who the licensee knows or has reasonable cause to believe does not reside in (or if a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business or activity is located: *Provided,* That the foregoing provisions of this paragraph (1) shall not apply to the sale or delivery of a rifle or shotgun (curio or relic, in the case of a licensed collector) to a resident of a State other than the State in which the licensee's place of business or collection premises is located if the requirements of § 178.96(c) are fully met, and (2) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes (see § 178.97).

(b) *Sales or deliveries to underaged persons.* A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver (1) any firearm or ammunition to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm, or ammunition, is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age, or (2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery, or other disposition, unless the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance.

(c) *Sales or deliveries to prohibited categories of persons.* A licensed manufacturer, licensed importer, licensed dealer, or licensed collector shall not sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is, except as provided by § 178.143, under indictment for, or, except as provided by § 178.144, has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act, 21 U.S.C. 802);

(4) Has been adjudicated as a mental defective or has been committed to any mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced citizenship.

(d) *Manufacture, importation, and sale of armor piercing ammunition by licensed importers and licensed manufacturers.* A licensed importer or licensed manufacturer shall not import or manufacture armor piercing ammunition or sell or deliver such ammunition, except:

(1) For use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(2) For the purpose of exportation; or

(3) For the purpose of testing or experimentation authorized by the Director under the provisions of § 178.149.

(e) *Transfer of armor piercing ammunition by licensed dealers.* A licensed dealer shall not willfully

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transfer armor piercing ammunition: *Provided,* That armor piercing ammunition received and maintained by the licensed dealer as business inventory prior to August 28, 1986, may be transferred to any department or agency of the United States or any State or political subdivision thereof if a record of such ammunition is maintained in the form and manner prescribed by § 178.125(c). Any licensed dealer who violates this paragraph is subject to license revocation. See Subpart E of this part. For purposes of this paragraph, the Director shall furnish each licensed dealer information defining which projectiles are considered armor piercing. Such information may not be all-inclusive for purposes of the prohibition on manufacture, importation, or sale or delivery by a manufacturer or importer of such ammunition or 18 U.S.C. 929 relating to criminal misuse of such ammunition.

Par. 42. Section 178.100 is revised to read as follows:

§ 178.100 Conduct of business away from licensed premises.

(a) A licensee may conduct business temporarily at a gun show or event as defined in paragraph (b) if the gun show or event is located in the same State specified on the license: *Provided,* That such business shall not be conducted from any motorized or towed vehicle. The premises of the gun show or event at which the licensee conducts business shall be considered part of the licensed premises. Accordingly, no separate fee or license is required for the gun show or event locations. However, licensees shall comply with the provisions of § 178.91 relating to posting of licenses (or a copy thereof) while conducting business at the gun show or event.

(b) A gun show or an event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(c) Licensees conducting business at gun shows or events shall maintain firearms records in the form and manner prescribed by Subpart H of this part. In addition, records of firearms transactions conducted at gun shows or events shall include the location of the sale or other disposition and be entered in the acquisition and disposition records of the licensee and retained on the premises specified on the license.

Par. 43. Section 178.101 is revised to read as follows:

§ 178.101 Record of transactions.

Every licensee shall maintain firearms and armor piercing ammunition records in such form and manner as is prescribed by Subpart H of this part.

Par. 44. Section 178.111 is revised to read as follows:

§ 178.111 General.

(a) Section 922(a)(3) of the Act makes it unlawful, with certain exceptions not pertinent here, for any person other than a licensee to transport into or receive in the State where the person resides any firearm purchased or otherwise obtained by the person outside of that State. However, section 925(a)(4) provides a limited exception for the transportation, shipment, receipt or importation of certain firearms and ammunition by certain members of the United States Armed Forces. Section 922(1) of the Act makes it unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition except as provided by section 925(d) of the Act, which section provides standards for importing or bringing firearms or ammunition into the United States. Section 925(d) also provides standards for importing or bringing firearm barrels into the United States. Accordingly, no firearm, firearm barrel, or ammunition may be imported or brought into the United States except as provided by this part.

(b) Where a firearm, firearm barrel, or ammunition is imported and the authorization for importation required by this subpart has not been obtained by the person importing same, such person shall:

(1) Store, at the person's expense, such firearm, firearm barrel, or ammunition at a facility designated by U.S Customs or the regional director (compliance) to await the issuance of the required authorization or other disposition; or

(2) Abandon such firearm, firearm barrel, or ammunition to the U.S. Government; or

(3) Export such firearm, firearm barrel, or ammunition.

(c) Any inquiry relative to the provisions or procedures under this subpart, other than that pertaining to the payment of customs duties or the release from Customs custody of firearms, firearm barrels, or ammunition authorized by the Director to be imported, shall be directed to the regional director (compliance) for reply.

Par. 45. Section 178.112 is revised to read as follows:

§ 178.112 Importation by a licensed importer.

(a) No firearm, firearm barrel, or ammunition shall be imported or brought into the United States by a licensed importer (as defined in § 178.11) unless the Director has authorized the importation of the firearm, firearm barrel, or ammunition.

(b) An application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel, or ammunition into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain (1) the name, address, and license number of the importer, (2) a description of the firearm, firearm barrel, or ammunition to be imported, including type (e.g.; rifle, shotgun, pistol, revolver; and in the case of ammunition only, ball, wadcutter), model, caliber, size or gauge, barrel length (if a firearm or firearm barrel), country of manufacture, and name of the manufacturer, (3) the unit cost of the firearm, firearm barrel, or ammunition to be imported, (4) the country from which to be imported, (5) the name and address of the foreign seller and the foreign shipper, (6) verification that if a firearm, it will be identified as required by this part, and (7)(i) if a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purposes, or (ii) if a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use, or (iii) if an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece, or (iv) if a firearm other than a surplus military firearm, of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986, and is for sporting purposes, an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes, or (v) if ammunition being imported for sporting purposes, a statement why the ammunition is particularly suitable for or readily adaptable to sporting purposes, or (vi) if a firearm barrel, and is for a handgun, an explanation why the handgun is generally recognized as particularly suitable for or readily adaptable to sporting purposes. If the Director approves the application, such approved application shall serve as the permit to import the firearm, firearm barrel, or ammunition described therein, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the licensed importer under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the licensed importer shall be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States by a licensed importer may be released from Customs custody to the licensed importer upon showing that the importer has obtained a permit from the Director for the importation of the firearm, firearm barrel, or ammunition to be released. In obtaining the release from Customs custody of a firearm, firearm barrel, or ammunition authorized by this section to be imported through use of a permit, the licensed importer shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name, address, and license number of the importer, the name of the manufacturer of the firearm, firearm barrel, or ammunition, the country of manufacture, the type, model, and caliber, size or gauge, and the number of firearms, firearm barrels, or rounds of ammunition released.

(d) Within 15 days of the date of release from Customs custody, the licensed importer shall (1) forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, (2) pursuant to § 178.92, place all required identification data on each imported firearm if same did not bear such identification data at the time of its release from Customs custody, and (3) post in the records required to be maintained by the importer under Subpart H of this part all required information regarding the importation.

Par. 46. Section 178.113 is revised to read as follows:

§ 178.113 Importation by other licensees.

(a) No person other than a licensed importer (as defined in § 178.11) shall engage in the business of importing firearms or ammunition. Therefore, no firearm or ammunition shall be imported or brought into the United States or a possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm or ammunition. No barrel for a handgun not generally recognized as particularly suitable for or readily adaptable to sporting purposes shall be imported or brought into the United States or a possession thereof by any person. Therefore, no firearm barrel shall be imported or brought into the United States or possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm barrel.

(b) An application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel or ammunition into the United States or a possession thereof by a licensee, other than a licensed importer, shall be filed, in triplicate, with the Director. The application shall contain (1) the name, address, and license number of the applicant, (2) a description of the firearm, firearm barrel or ammunition to be imported, including type (e.g.; rifle, shotgun, pistol, revolver; and in the case of ammunition only, ball, wadcutter), model, caliber, size or gauge, barrel length (if a firearm or firearm barrel), country of manufacture, and name of the manufacturer, (3) the unit cost of the firearm, firearm barrel or ammunition to be imported, (4) the name and address of the foreign seller and the foreign shipper, (5) the country from which the firearm, firearm barrel, or ammunition is to be imported, and (6)(i) if a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purposes, or (ii) if a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use, or (iii) if an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece, or (iv) if a firearm other than a surplus military firearm, of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986 and is for sporting purposes, an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes, or (v) if ammunition being imported for sporting purposes, a statement why the ammunition is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or (vi) if a firearm barrel, and is for a handgun, an explanation why the handgun is generally recognized as particularly suitable for or readily adaptable to sporting purposes. If the Director approves the application, such approved application shall serve as the permit to import the firearm, firearm barrel or ammunition described therein. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States or a possession thereof under the provisions of this section may be released from Customs custody to the licensee importing the firearm, firearm barrel, or ammunition upon showing that the licensee has obtained a permit from the Director for the importation. In obtaining the release of the firearm, firearm barrel, or ammunition from Customs custody, the licensee importing same shall furnish ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name, address, and the license number of the licensee, the name of the manufacturer, the country of manufacture, and the type, model, and caliber, size (if ammunition) or gauge of the firearm, firearm barrel or ammunition so released, and, if applicable, the number of firearms, firearm barrels, or rounds of ammunition released.

Par. 47. Section 178.113a is added to read as follows:

§ 178.113a Importation of firearm barrels by nonlicensees.

(a) A permit will not be issued for a firearm barrel for a handgun not generally recognized as particularly suitable for or readily adaptable to sporting purposes. No firearm barrel shall be imported or brought into the United States or possession thereof by any nonlicensee unless the Director issues a permit authorizing the importation of the firearm barrel.

(b) An application for a permit, ATF Form 6, to import or bring a firearm barrel into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain (1) the name and address of the applicant, (2) a description of the firearm barrel to be imported, including type (e.g.; rifle, shotgun, pistol, revolver), model, caliber, size or gauge, barrel length, country of manufacture, and name of the manufacturer, (3) the unit cost of the firearm barrel, (4) the name and address of the foreign seller and the foreign shipper, (5) the country from which the firearm barrel is to be imported, and (6) if a handgun barrel, an explanation of why the barrel is for a handgun that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. If the Director approves the application, such approved application shall serve as the permit to import the firearm barrel. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

(c) A firearm barrel imported or brought into the United States or a possession thereof under the provisions of this section may be released from Customs custody to the person importing the firearm barrel upon showing that the person has obtained a permit from the Director for the importation. In obtaining the release of the firearm barrel from Customs custody, the person importing same shall furnish ATF Form 6A to the Customs officer releasing the firearm barrel. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of the person importing the firearm barrel, the name of the manufacturer, the country of manufacture, and the type, model, and caliber or gauge of the firearm barrel so released, and, if applicable, the number of firearm barrels released.

Par. 48. Section 178.114 is revised to read as follows:

§ 178.114 Importation by members of the U.S. Armed Forces.

(a) The Director may issue a permit authorizing the importation of a firearm or ammunition into the United States to the place of residence of any military member of the U.S. Armed Forces who is on active duty outside the United States, or who has been on active duty outside the United States within the 60-day period immediately preceding the intended importation: *Provided*, That such firearm or ammunition is generally recognized as particularly suitable for or readily adaptable to sporting purposes and is intended for the personal use of such member. An application for such a permit, ATF Form 6, shall be filed, in triplicate, with the Director. The application shall contain (1) the name and current address of the applicant, (2) certification that the transportation, receipt, or possession of the firearm or ammunition to be imported would not constitute a violation of any provision of the Act or of any State law or local ordinance at the place of the applicant's residence, (3) a description of the firearm or ammunition to be imported, including type (e.g.; rifle, shotgun, pistol, revolver; and in the case of ammunition only, ball, wadcutter), model, caliber, size or gauge, barrel length (if a firearm), country of manufacture, and the name of the manufacturer, (4) the unit cost of the firearm or ammunition to be imported, (5) the name and address of the foreign seller (if applicable) and the foreign shipper, (6) the country from which the firearm or ammunition is to be imported, (7)(i) that the firearm or ammunition being imported is for the personal use of the applicant, and (ii) if a firearm, a statement that it is not a surplus military firearm, that it does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986, and an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes, or (iii) if ammunition, a statement why it is generally recognized as particularly suitable for or readily adaptable to sporting purposes, and (8) the applicant's date of birth, rank or grade, place of residence, present foreign duty station or last foreign duty station, as the case may be, the date of the applicant's reassignment to a duty station within the United States, if applicable, and the military branch of which the applicant is a member. If the Director approves the application, such approved application shall serve as the permit to import the firearm or ammunition described therein. The Director shall furnish the approved application (permit) to the applicant and shall retain the two copies thereof for administrative purposes. If the Director disapproves the application, the applicant shall be notified of the basis for the disapproval.

(b) Upon receipt of an approved application (permit) to import the firearm or ammunition, the applicant may obtain the release of same from Customs custody upon showing that the applicant has obtained a permit from the Director for the importation. In obtaining the release of the firearm or ammunition from Customs custody, the military member of the U.S. Armed Forces importing same shall furnish ATF Form 6A to the Customs officer releasing the firearm or ammunition. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of such military member, the name of the manufacturer, the country of manufacture, and the type, model, and caliber, size or gauge of the firearm or ammunition so released, and, if applicable, the number of firearms or rounds of ammunition released. However, when such military member is on active duty outside the United States, the military member may appoint, in writing, an agent to obtain the release of the firearm or ammunition from Customs custody for such member. Such agent shall present sufficient identification of the agent and the written authorization to act on behalf of such military member to the Customs officer who is to release the firearm or ammunition.

(c) Firearms determined by the Department of Defense to be war souvenirs may be imported into the United States by the military members of the U.S. Armed Forces under such provisions and procedures as the Department of Defense may issue.

Par. 49. Section 178.115(b) is revised to read as follows:

§ 178.115 Exempt importation.

* * * * *

(b) Firearms, firearm barrels, and ammunition may be imported or brought into the United States by or for the United States or any department or agency thereof, or any State or any department, agency, or political subdivision thereof. A firearm, firearm barrel or ammunition imported or brought into the United States under this paragraph may be released from Customs custody upon a showing that the firearm, firearm barrel or ammunition is being imported or brought into the United States by or for such a governmental entity.

* * * * *

Par. 50. Section 178.116 is revised to read as follows:

§ 178.116 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States or any possession thereof of any firearm, firearm barrel, or ammunition for the purpose of examining and testing the firearm, firearm barrel, or ammunition in connection with making a determination as to whether the importation or bringing in of such firearm, firearm barrel, or ammunition will be authorized under this part. An application on ATF Form 6 for such conditional importation shall be filed, in duplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm, firearm barrel, or ammunition be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm, firearm barrel, or ammunition must agree to either export the firearm, firearm barrel, or ammunition or destroy same if a determination is made that the firearm, firearm barrel, or ammunition may not be imported or brought in under this part. A firearm, firearm barrel, or ammunition imported or brought into the United States or any possession thereof under the provision of this section shall be released from Customs custody upon the payment of customs duties, if applicable, and in the manner prescribed in the conditional authorization issued by the Director.

Par. 51. Section 178.121 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 178.121 General.

(a) The records pertaining to firearms transactions prescribed by this part shall be retained on the licensed premises in the manner prescribed by this subpart and for the length of time prescribed by § 178.129. The records pertaining to ammunition prescribed by this part shall be retained on the licensed premises in the manner prescribed by § 178.125.

(b) ATF officers may, for the purposes and under the conditions prescribed in § 178.23, enter the premises of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of examining or inspecting any record or document required by or obtained under this part. Section 923(g) of the Act requires licensed importers, licensed manufacturers, licensed dealers, and licensed collectors to make such records available for such examination or inspection during business hours or, in the case of licensed collectors, hours of operation, as provided in § 178.23.

(c) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of firearms and such records of the disposition of ammunition as the regulations contained in this part prescribe. Section 922(m) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain any such record.

* * * * *

Par. 52. Section 178.122 is revised to read as follows:

§ 178.122 Records maintained by importers.

(a) Each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacture, and the serial number of each firearm imported or otherwise acquired, and the date such importation or other acquisition was made.

(b) A record of firearms disposed of by a licensed importer to another licensee and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provisions of § 178.149 shall be maintained by the licensed importer on the licensed premises. For firearms, the record shall show the quantity, type, manufacturer, country of manufacture, caliber or gauge, model, serial number of the firearms so transferred, the name and license number of the licensee to whom the firearms were transferred, and the date of the transaction. For armor piercing ammunition, the record shall show the date of the transaction, manufacturer, caliber or gauge, quantity of projectiles, and the name and address of the purchaser. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the following formats:

IMPORTER'S FIREARMS DISPOSITION RECORD

Quantity	Type	Manufacturer	Country of manufacture	Caliber or gauge	Model	Serial No.	Name and license No. of licensee to whom transferred	Date of the transaction

IMPORTER'S ARMOR PIERCING AMMUNITION DISPOSITION RECORD

Date	Manufacturer	Caliber or gauge	Quantity of projectiles	Purchaser—Name and address

(c) Notwithstanding the provisions of paragraph (b) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed importer to record the disposal of firearms and armor piercing ammunition when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the regional director (compliance).

(d) Each licensed importer shall maintain separate records of the sales or other dispositions made of firearms to nonlicensees. Such records shall be maintained in the form and manner as prescribed by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512–0387)

Par. 53. Section 178.123 is revised to read as follows:

§ 178.123 Records maintained by manufacturers.

(a) Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

(b) A record of firearms disposed of by a manufacturer to another licensee and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provision of § 178.149 shall be maintained by the licensed manufacturer on the licensed premises. For firearms, the record shall show the quantity, type, model,

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manufacturer, caliber, size or gauge, serial number of the firearms so transferred, the name and license number of the licensee to whom the firearms were transferred, and the date of the transaction. For armor piercing ammunition, the record shall show the manufacturer, caliber or gauge, quantity, the name and address of the transferee to whom the armor piercing ammunition was transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the format prescribed by § 178.122, except that the name of the manufacturer of a firearm or armor piercing ammunition need not be recorded if the firearm or armor piercing ammunition is of the manufacturer's own manufacture.

(c) Notwithstanding the provisions of paragraph (b) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed manufacturer to record the disposal of firearms and armor piercing ammunition when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate record and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the regional director (compliance).

(d) Each licensed manufacturer shall maintain separate records of the sales or other dispositions made of firearms to nonlicensees. Such records shall be maintained in the form and manner as prescribed by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512–0369)

Par. 54. Section 178.124 is amended by revising paragraphs (a)–(f) and (i) to read as follows:

§ 178.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearms transaction record, Form 4473: *Provided,* That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received.

(b) A licensed manufacturer, licensed importer, or licensed dealer shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of the required records, each Form 4473 obtained in the course of transferring custody of the firearms.

(c) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the name, address (including county or similar political subdivision), date and place of birth, height, weight, and race of the transferee, and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce. The licensee shall identify the firearm to be transferred by listing in the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. Before transferring the firearm described in the Form 4473, the licensee:

(1) Shall cause the transferee to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the form the method used, and

(2) If the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm, shall sign and date the form.

(d) Prior to making an over-the-counter transfer of a shotgun or rifle under the provisions contained in § 178.96(c) to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, the licensee so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee's business premises is located, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, or licensed dealer so furnishing the firearm, and such transferee, shall comply with the provisions of paragraph (c) of this section.

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, and who is a resident of the State in which the licensee's business premises is located. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing that, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; that, in case the firearm to be transferred is a shotgun or rifle, the tranferee is 18 years or more of age; that the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and that the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. Upon receipt of such Forms 4473, the licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the copy of the Form 4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.

* * * * *

(i) A licensee may obtain, upon request, an emergency supply of Forms 4473 from any regional director (compliance). For normal usage, a licensee should request a year's supply from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

Par. 55. Section 178.125 is revised to read as follows:

§ 178.125 Record of receipt and disposition.

(a) *Armor piercing ammunition sales by licensed collectors to nonlicensees.* The sale or other disposition of armor piercing ammunition by licensed collectors shall be recorded in a bound record at the time a transaction is made. The bound record shall be maintained in chronological order by date of sale or disposition of the armor piercing ammunition, and shall be retained on the licensed premises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the armor piercing ammunition. The bound record entry shall show:

(1) The date of the transaction;

(2) The name of the manufacturer;

(3) The caliber or gauge;

(4) The quantity of projectiles;

(5) The name, address, and date of birth of the nonlicensee; and

(6) The method used to establish the identity of the armor piercing ammunition purchaser.

The format required for the bound record is as follows:

DISPOSITION RECORD OF ARMOR PIERCING AMMUNITION

Date	Manufacturer	Caliber or gauge	Quantity of projectiles	Purchaser		Enter a (x) in the "known" column if purchaser is personally known to you. Otherwise, establish the purchaser's identification		
				Name and address	Date of birth	Known	Driver's license	Other type (specify)

However, when a commercial record is made at the time a transaction is made, a licensee may delay making an entry into the bound record if the provisions of paragraph (d) of this section are complied with.

(b) *Armor piercing ammunition sales by licensed collectors to licensees.* Sales or other dispositions of armor piercing ammunition from a licensed collector to another licensee shall be recorded and maintained in the manner prescribed in § 178.122(b) for importers: *Provided,* That the license number of the transferee may be recorded in lieu of the transferee's address.

(c) *Armor piercing ammunition sales by licensed dealers to governmental entities.* A record of armor piercing ammunition disposed of by a licensed dealer to a governmental entity pursuant to § 178.99(e) shall be maintained by the licensed dealer on the licensed premises and shall show the name of the manufacturer, the caliber or gauge, the quantity, the name and address of the entity to which the armor piercing ammunition was transferred, and the date of the transaction. Such information shall be recorded under the format prescribed by § 178.122(b). Each licensed dealer disposing of armor piercing ammunition pursuant to § 178.99(e) shall also maintain a record showing the date of acquisition of such ammunition which shall be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. The records required by this paragraph shall be retained on the licensed premises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the armor piercing ammunition.

(d) *Commercial records of armor piercing ammunition transactions.* When a commercial record is made at the time of sale or other disposition of armor piercing ammunition, and such record contains all information required by the bound record prescribed by paragraph (a) of this section, the licensed collector transferring the armor piercing ammunition may, for a period not exceeding 7 days following the date of such transfer, delay making the required entry into such bound record: *Provided,* That the commercial record pertaining to the transfer is:

(1) Maintained by the licensed collector separate from other commercial documents maintained by such licensee, and

(2) Is readily available for inspection on the licensed premises until such time as the required entry into the bound record is made.

(e) *Firearms receipt and disposition by licensed dealers.* Each licensed dealer shall enter into a record each receipt and disposition of firearms. In addition, before commencing or continuing a firearms business, each licensed dealer shall inventory the firearms possessed for such business and shall record same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a firearm shall, except as provided in paragraph (g) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm. The sale or other disposition of a firearm shall be recorded by the licensed dealer not later than 7 days following the date of such transaction. When such disposition is made to a nonlicensee, the firearms transaction record, Form 4473, obtained by the licensed dealer shall be retained, until the transaction is recorded, separate from the licensee's Form 4473 file and be readily available for inspection. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensed dealer, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if Forms 4473 filed numerically

(f) *Firearms receipt and disposition by licensed collectors.* Each licensed collector shall enter into a record each receipt and disposition of firearms curios or relics. In addition, before commencing or continuing a firearms curio or relic collection, each licensed collector shall inventory the curios or relics possessed in such collection and shall record same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a curio or relic shall, except as provided in paragraph (g) of this section, be recorded not later than the close of the next business day following the date of such purchase or other acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm curio or relic. The sale or other disposition of a curio or relic shall be recorded by the licensed collector not later than 7 days following the date of such transaction. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensee, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm curio or relic, the name and address of the person to whom the firearm curio or relic is transferred, or the name and license number of the person to whom transferred if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the record the method used.

FIREARMS COLLECTORS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition			
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name and address or name and license No.	Date of birth if nonlicensee	Driver's license No. or other identification if nonlicensee

(g) *Commercial records of firearms received.* When a commercial record is held by a licensed dealer or licensed collector showing the acquisition of a firearm or firearm curio or relic, and such record contains all acquisition information required by the bound record prescribed by paragraphs (e) and (f) of this section, the licensed dealer or licensed collector acquiring such firearm or curio or relic, may, for a period not exceeding 7 days following the date of such acquisition, delay making the required entry into such bound record: *Provided,* That the commercial record is, until such time as the required entry into the bound record is made, (1) maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) readily available for inspection on the licensed premises: *Provided further,* That when disposition is made of a firearm or firearm curio or relic not entered in the bound record under the provisions of this paragraph, the licensed dealer or licensed collector making such disposition shall enter all required acquisition information regarding the firearm or firearm curio or relic in the bound record at the time such transfer or disposition is made.

(h) *Alternate records.* Notwithstanding the provisions of paragraphs (a), (e), and (f) of this section, the regional director (compliance) may authorize alternate records to be maintained by a licensed dealer or licensed collector to record the acquisition and disposition of firearms or curios or relics and the disposition of armor piercing ammunition when it is shown by the licensed dealer or the licensed collector that such alternate records will accurately and readily disclose the required information. A licensed dealer or licensed collector who proposes to use alternate records shall submit a letter application, in duplicate, to the regional director (compliance) and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer or licensed collector until approval in such regard is received from the regional director (compliance).

(i) *Requirements for importers and manufacturers.* Each licensed importer and licensed manufacturer selling or otherwise disposing of firearms or armor piercing ammunition to nonlicensees shall maintain such records of such transactions as are required of licensed dealers by this section.

(Approved by the Office of Management and Budget under control number 1512–0387)

Par. 56. Section 178.125a is added to read as follows:

§ 178.125a Personal firearms collection.

(a) Notwithstanding any other provision of this subpart, a licensed manufacturer, licensed importer, or licensed dealer is not required to record on a firearms transaction record, Form 4473, the sale or other disposition of a firearm maintained as part of the licensee's personal firearms collection: *Provided,* That (1) the licensee has maintained the firearm as part of such collection for 1 year from the date the firearm was transferred from the business inventory into the personal collection or otherwise acquired as a personal firearm, (2) the licensee recorded in the bound record prescribed by § 178.125(e) the receipt of the firearm into the business inventory or other acquisition, (3) the licensee recorded the firearm as a disposition in the bound record prescribed by § 178.125(e) when the firearm was transferred from the business inventory into the personal firearms collection or otherwise acquired as a personal firearm, and (4) the licensee enters the sale or other disposition of the firearm from the personal firearms collection into a bound record, under the format prescribed below, identifying the firearm transferred by recording the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge, and showing the date of the sale or other disposition, the name and address of the transferee, or the name and license number of the transferee if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a drivers license), and shall note on the record the method used. The format required for the disposition record of personal firearms is as follows:

DISPOSITION RECORD OF PERSONAL FIREARMS

Description of firearm					Disposition			
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date of birth if nonlicensee	Driver's license No. or other identification if nonlicensee

(b) Any licensed manufacturer, licensed importer, or licensed dealer selling or otherwise disposing of a firearm from the licensee's personal firearms collection under this section shall be subject to the restrictions imposed by the Act and this part on the dispositions of firearms by persons other than licensed manufacturers, licensed importers, and licensed dealers.

(Approved by the Office of Management and Budget under control number 1512–0387)

Par. 57. Section 178.126a is amended by revising the first sentence of the section to read as follows:

§ 178.126a Reporting multiple sales or other dispositions of pistols and revolvers.

Each licensee shall prepare a report of multiple sales or other disposition whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totaling two or more, to an unlicensed person: *Provided,* That a report need not be made where pistols or revolvers, or any combination thereof, are returned to the same person from whom they were received.

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Par. 58. Section 178.127 is revised to read as follows:

§ 178.127 Discontinuance of business.

Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records prescribed by this subpart shall be delivered within 30 days following the business discontinuance to the regional director (compliance) for the region in which the business was located, any other ATF office located in that region, or the ATF Firearms Out-of-Business Records Center, 3361 75th Avenue, Landover, Maryland 20785: *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the regional director (compliance) may arrange for the delivery of the records required by this subpart to such authority.

Par. 59. Section 178.128 is revised to read as follows:

§ 178.128 False statement or representation.

(a) Any person who knowingly makes any false statement or representation in applying for any license or exemption or relief from disability, under the provisions of the Act, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(b) Any person other than a licensed manufacturer, licensed importer, licensed dealer, or licensed collector who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(c) Any licensed manufacturer, licensed importer, licensed dealer, or licensed collector who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

Par. 60. Section 178.141(d) is revised to read as follows:

§ 178.141 General.

* * * * *

(d) The transportation, shipment, receipt, possession, or importation of any antique firearm.

Par. 61. Section 178.142 is revised to read as follows:

§ 178.142 Effect of pardons and expunctions of convictions.

(a) A pardon granted by the President of the United States regarding a Federal conviction for a crime punishable by imprisonment for a term exceeding 1 year shall remove any disability which otherwise would be imposed by the provisions of this part with respect to that conviction.

(b) A pardon granted by the Governor of a State or other State pardoning authority or by the pardoning authority of a foreign jurisdiction with respect to a conviction, or any expunction, reversal, setting aside of a conviction, or other proceeding rendering a conviction nugatory, or a restoration of civil rights shall remove any disability which otherwise would be imposed by the provisions of this part with respect to the conviction, unless:

(1) The pardon, expunction, setting aside, or other proceeding rendering a conviction nugatory, or restoration of civil rights expressly provides that the person may not ship, transport, possess or receive firearms; or

(2) The pardon, expunction, setting aside, or other proceeding rendering a conviction nugatory, or restoration of civil rights did not fully restore the rights of the person to possess or receive firearms under the law of the jurisdiction where the conviction occurred.

Par. 62. Section 178.144 is revised to read as follows:

§ 178.144 Relief from disabilities under the Act.

(a) Any person may make application for relief from the disabilities under section 922 (g) and (n) of the Act (see § 178.32).

(b) An application for such relief shall be filed, in triplicate, with the Director. It shall include the information required by this section and such other supporting data as the Director and the applicant deem appropriate.

(c) Any record or document of a court or other government entity or official required by this paragraph to be furnished by an applicant in support of an application for relief shall be certified by the court or other government entity or official as a true copy. An application shall include:

(1) In the case of an applicant who is an individual, a written statement from each of 3 references, who are not related to the applicant by blood or marriage and have known the applicant for at least 3 years, recommending the granting of relief;

(2) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, and criminal record;

(3) In the case of an applicant under indictment, a copy of the indictment or information;

(4) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding 1 year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored;

(5) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(6) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's summary of service record (Department of Defense Form 214), charge sheet (Department of Defense Form 458), and final court martial order; and

(7) In the case of an applicant who, having been a citizen of the United States, has renounced his or her citizenship, a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States was in a state of war (see 8 U.S.C. 1481(a) (5) and (6)).

(d) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest. The Director will not ordinarily grant relief if the applicant has not been discharged from parole or probation for a period of at least 2 years. Relief will not be granted to an applicant who is prohibited from possessing all types of firearms by the law of the State where such applicant resides.

(e) In addition to meeting the requirements of paragraph (d) of this section, an applicant who has been adjudicated a mental defective or committed to a mental institution will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored.

(f) Upon receipt of an incomplete or improperly executed application for relief, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned.

(g) Whenever the Director grants relief to any person pursuant to this section, a notice of such action shall be promptly published in the Federal Register, together with the reasons therefor.

(h) A person who has been granted relief under this section shall be relieved of any disabilities imposed by the Act with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms or ammunition and incurred by reason of such disability.

(i)(1) A licensee who is convicted of a crime punishable by imprisonment for a term exceeding 1 year during the term of a current license or while the licensee has pending a license renewal application, and who files an application for removal of disabilities resulting from such conviction, shall not be barred from licensed operations for 30 days after the date upon which the conviction becomes final, and if the licensee files the application for relief as provided by this section within such 30-day period, the licensee may further continue licensed operations during the pendency of the application. A licensee who does not file such application within 30 days from the date the conviction becomes final shall not continue licensed operations beyond 30 days from the date the conviction becomes final.

(2) In the event the term of a license of a person expires during the 30-day period following the date upon which the conviction becomes final or during the pendency of the application for relief, a timely application for renewal of the license must be filed in order to continue licensed operations. Such license application shall show that the applicant has been convicted of a crime punishable by imprisonment for a term exceeding 1 year.

(3) A licensee shall not continue licensed operations beyond 30 days following the date the Director issues notification that the licensee's application for removal of disabilities resulting from a conviction has been denied.

(4) When as provided in this section a licensee may no longer continue licensed operations, any application for renewal of license filed by the licensee during the term of the indictment or the pendency of the application for removal of disabilities resulting from such conviction shall be denied by the regional director (compliance).

Par. 63. Section 178.145 is revised to read as follows:

§ 178.145 Research organizations.

The provisions of § 178.98 with respect to the sale or delivery of

destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles shall not apply to the sale or delivery of such devices and weapons to any research organization designated by the Director to receive same. A research organization desiring such designation shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and address of the research organization, the names and addresses of the persons directing or controlling, directly or indirectly, the policies and management of such organization, the nature and purpose of the research being conducted, a description of the devices and weapons to be received, and the identity of the person or persons from whom such devices and weapons are to be received.

Par. 64. Section 178.147 is revised to read as follows:

§ 178.147 Return of firearm.

A person not otherwise prohibited by Federal, State or local law may ship a firearm to a licensed importer, licensed manufacturer, or licensed dealer for any lawful purpose, and, notwithstanding any other provision of this part, the licensed manufacturer, licensed importer, or licensed dealer may return in interstate or foreign commerce to that person the firearm or a replacement firearm of the same kind and type. See § 178.124(a) for requirements of a Form 4473 prior to return. A person not otherwise prohibited by Federal, State or local law may ship a firearm curio or relic to a licensed collector for any lawful purpose, and, notwithstanding any other provision of this part, the licensed collector may return in interstate or foreign commerce to that person the firearm curio or relic.

Par. 65. Section 178.148 is revised to read as follows:

§ 178.148 Armor piercing ammunition intended for sporting or industrial purposes.

The Director may exempt certain armor piercing ammunition from the requirements of this part. A person who desires to obtain an exemption under this section for any such ammunition which is primarily intended for sporting purposes or intended for industrial purposes, including charges used in oil and gas well perforating devices, shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the ammunition, the name and address of the manufacturer or importer, the purpose of and use for which it is designed and intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require that a sample of the ammunition be submitted for examination and evaluation.

Par. 66. Section 178.149 is revised to read as follows:

§ 178.149 Armor piercing ammunition manufactured or imported for the purpose of testing or experimentation.

The provisions of §§ 178.37 and 178.99(d) with respect to the manufacture or importation of armor piercing ammunition and the sale or delivery of armor piercing ammunition by manufacturers and importers shall not apply to the manufacture, importation, sale or delivery of armor piercing ammunition for the purpose of testing or experimentation as authorized by the Director. A person desiring such authorization to receive armor piercing ammunition shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and addresses of the persons directing or controlling, directly or indirectly, the policies and management of the applicant, the nature or purpose of the testing or experimentation, a description of the armor piercing ammunition to be received, and the identity of the manufacturer or importer from whom such ammunition is to be received. The approved application shall be submitted to the manufacturer or importer who shall retain a copy as part of the records required by Subpart H of this part.

Par. 67. Section 178.150 is revised to read as follows:

§ 178.150 Seizure and forfeiture.

(a) Any firearm or ammunition involved in or used in any knowing violation of subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 of the Act, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) of the Act, or knowing violation of section 924 of the Act, or willful violation of any other provision of the Act or of this part, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against such person other than upon motion of the Government prior to trial, the seized firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or the delegate of the owner or possessor in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within 120 days of such seizure.

(b) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of the Act or this part, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture and disposition.

(c) The offenses referred to in paragraphs (a) and (b) of this section for which firearms and ammunition intended to be used in such offenses are subject to seizure and forfeiture are:

(1) Any crime of violence, as that term is defined in section 924(c)(3) of the Act;

(2) Any offense punishable under the Controlled Substances Act (21 U.S.C. 801 *et seq.*) or the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*);

(3) Any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act, where the firearm or ammunition intended to be used in such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act;

(4) Any offense described in section 922(d) of the Act where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(5) Any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of the Act; and

(6) Any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

Par. 68. Section 178.171 is revised to read as follows:

§ 178.171 Exportation.

Firearms and ammunition shall be exported in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C.

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2778) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting firearms shall maintain records showing the manufacture or acquisition of the firearms as required by this part and records showing the name and address of the foreign consignee of the firearms and the date the firearms were exported. Licensed manufacturers and licensed importers exporting armor piercing ammunition shall maintain records showing the name and address of the foreign consignee and the date the armor piercing ammunition was exported.

PART 179—[AMENDED]

Par. 69. The authority citation for Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Pars. 70–71. In § 179.11 the following definitions are revised to read as follows:

§ 179.11 Meaning of terms.

* * * * *

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

* * * * *

Muffler or silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

* * * * *

Pistol. A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

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Revolver. A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

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Par. 72. Section 179.21 is amended by revising paragraph (c) to read as follows:

§ 179.21 Forms prescribed.

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(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

Par. 73. Section 179.26 is revised to read as follows:

§ 179.26 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* Any person subject to the provisions of this part, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when it is found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Where such person desires to employ an alternate method or procedure, a written application shall be submitted to the appropriate regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. Such person shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation from the specified requirements are necessary and the proposed variations (1) will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the person granted the variance shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the variation. Where a person desires to employ an emergency variation, a written application shall be submitted to the appropriate regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The person granted the variance shall retain and make available for examination by ATF officers any application approved by the Director under this section.

Par. 74. Section 179.61 is revised to read as follows:

§ 179.61 Rate of tax.

Except as provided in this subpart, there shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made. This tax shall be paid by the person making the firearm. Payment of the tax on the making of a firearm shall be represented by a $200 adhesive stamp bearing the words "National Firearms Act." The stamps are maintained by the Director.

Par. 75. Section 179.62 is revised to read as follows:

§ 179.62 Application to make.

No person shall make a firearm unless the person has filed with the Director a written application on Form 1 (Firearms), Application to Make and Register a Firearm, in duplicate,

executed under the penalties of perjury, to make and register the firearm and has received the approval of the Director to make the firearm which approval shall effectuate registration of the weapon to the applicant. The application shall identify the firearm to be made by serial number, type, model, caliber or gauge, length of barrel, other marks of identification, and the name and address of original manufacturer (if the applicant is not the original manufacturer). The applicant must be identified on the Form 1 (Firearms) by name and address and, if other than a natural person, the name and address of the principal officer or authorized representative and the employer identification number and, if an individual, the identification must include the date and place of birth and the information prescribed in § 179.63. Each applicant shall identify the Federal firearms license and special (occupational) tax stamp issued to the applicant, if any. The applicant shall also show required information evidencing that making or possession of the firearm would not be in violation of law. If the making is taxable, a remittance in the amount of $200 shall be submitted with the application in accordance with the instructions on the form. If the making is taxable and the application is approved, the Director will affix a National Firearms Act stamp to the original application in the space provided therefor and properly cancel the stamp (see § 179.67). The approved application will be returned to the applicant. If the making of the firearm is tax exempt under this part, an explanation of the basis of the exemption shall be attached to the Form 1 (Firearms).

Par. 76. Section 179.63 is revised to read as follows:

§ 179.63 Identification of applicant.

If the applicant is an individual, the applicant shall securely attach to each copy of the Form 1 (Firearms), in the space provided on the form, a photograph of the applicant 2 × 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1⅛ inches, and which shall have been taken within 1 year prior to the date of the application. The applicant shall attach two properly completed FBI Forms FD–258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 1 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that possession of the firearm by the maker would be in violation of State or local law or that the maker will use the firearm for other than lawful purposes.

Par. 77. Section 179.64 is revised to read as follows:

§ 179.64 Procedure for approval of application.

The application to make a firearm, Form 1 (Firearms), must be forwarded directly, in duplicate, by the maker of the firearm to the Director in accordance with the instructions on the form. The Director will consider the application for approval or disapproval. If the application is approved, the Director will return the original thereof to the maker of the firearm and retain the duplicate. Upon receipt of the approved application, the maker is authorized to make the firearm described therein. The maker of the firearm shall not, under any circumstances, make the firearm until the application, satisfactorily executed, has been forwarded to the Director and has been approved and returned by the Director with the National Firearms Act stamp affixed. If the application is disapproved, the original Form 1 (Firearms) and the remittance submitted by the applicant for the purchase of the stamp will be returned to the applicant with the reason for disapproval stated on the form.

§ 179.84 [Amended]

Par. 78. Section 179.84 is amended by removing the last two sentences of the section.

Par. 79. Section 179.85 is revised to read as follows:

§ 179.85 Identification of transferee.

If the transferee is an individual, such person shall securely attach to each copy of the application, Form 4 (Firearms), in the space provided on the form, a photograph of the applicant 2 × 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1⅛ inches, and which shall have been taken within 1 year prior to the date of the application. The transferee shall attach two properly completed FBI Forms FD–258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 4 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that the receipt or possession of the firearm would place the transferee in violation of State or local law or that the transferee will use the firearm for other than lawful purposes.

Par. 80. Section 179.86 is revised to read as follows:

§ 179.86 Action on application.

The Director will consider a completed and properly executed application, Form 4 (Firearms), to transfer a firearm. If the application is approved, the Director will affix the appropriate National Firearms Act stamp, cancel it, and return the original application showing approval to the transferor who may then transfer the firearm to the transferee along with the approved application. The approval of an application, Form 4 (Firearms), by the Director will effectuate registration of the firearm to the transferee. The transferee shall not take possession of a firearm until the application, Form 4 (Firearms), for the transfer filed by the transferor has been approved by the Director and registration of the firearm is effectuated to the transferee. The transferee shall retain the approved application as proof that the firearm described therein is registered to the transferee, and shall make the approved Form 4 (Firearms) available to any ATF officer on request. If the application, Form 4 (Firearms), to transfer a firearm is disapproved by the Director, the original application and the remittance for purchase of the stamp will be returned to the transferor with reasons for the disapproval stated on the application. An application, Form 4 (Firearms), to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law.

Par. 81. In § 179.90, paragraphs (a) and (b) are revised to read as follows:

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§ 179.90 Certain government entities.

(a) A firearm may be transferred without payment of the transfer tax to or from any State, possession of the United States, any political subdivision thereof, or any official police organization of such a governmental entity engaged in criminal investigations.

(b) The exemption provided in paragraph (a) of this section shall be obtained by the transferor of the firearm filing with the Director an application, Form 5 (Firearms), Application for Tax-exempt Transfer and Registration of Firearm, in duplicate, executed under the penalties of perjury. The application shall (1) show the name and address of the transferor and of the transferee, (2) identify the Federal firearms license and special (occupational) tax stamp, if any, of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that the transferor is entitled to the exemption because either the transferor or the transferee is a governmental entity coming within the purview of paragraph (a) of this section. In the case of a transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under this part, the transferee shall be further identified in the manner prescribed in § 179.85. If the Director approves an application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the approval noted thereon. Approval of an application, Form 5 (Firearms), by the Director shall effectuate the registration of that firearm to the transferee. Upon receipt of the approved Form 5 (Firearms), the transferor shall deliver same with the firearm to the transferee. The transferor shall not transfer the firearm to the transferee until the application, Form 5 (Firearms), has been approved by the Director and the original thereof has been returned to the transferor. If the Director disapproves the application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the reasons for the disapproval stated thereon. An application by a governmental entity to transfer a firearm shall be denied if the tranfer, receipt, or possession of a firearm would place the transferee in violation of law.

* * * * *

Par. 82. Section 179.92 is revised to read as follows:

§ 179.92 Transportation of firearms to effect transfer.

Notwithstanding any provision of § 178.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the transfer of a firearm authorized under the provisions of this subpart.

Par. 83. Section 179.102 is amended by revising the last sentence of the section and adding a new sentence to the end to read as follows:

§ 179.102 Identification of firearms.

* * * A firearm frame or receiver or any other part defined as a machine gun or a muffler or silencer for the purposes of this part which is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by a manufacturer, importer, or maker shall be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

Par. 84. Section 179.104 is amended by revising the last sentence to read as follows:

§ 179.104 Registration of firearms by certain governmental entities.

* * * The registration of any firearm under this section is for official use only and a subsequent transfer will be approved only to other governmental entities for official use.

Par. 85. Section 179.105 and the undesignated center heading preceding it are revised to read as follows:

Machine Guns

§ 179.105 Transfer and possession of machine guns.

(a) *General.* As provided by 26 U.S.C. 5812 and 26 U.S.C. 5822, an application to make or transfer a firearm shall be denied if the making, transfer, receipt, or possession of the firearm would place the maker or transferee in violation of law. Section 922(o), Title 18, U.S.C., makes it unlawful for any person to transfer or possess a machine gun, except a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986. Therefore, notwithstanding any other provision of this part, no application to make, transfer, or import a machine gun will be approved except as provided by this section.

(b) *Machine guns lawfully possessed prior to May 19, 1986.* A machine gun possessed in compliance with the provisions of this part prior to May 19, 1986, may continue to be lawfully possessed by the person to whom the machine gun is registered and may, upon compliance with the provisions of this part, be lawfully transferred to and possessed by the transferee.

(c) *Importation and manufacture.* Subject to compliance with the provisions of this part, importers and manufacturers qualified under this part may import and manufacture machine guns on or after May 19, 1986, for sale or distribution to any department or agency of the United States or any State or political subdivision thereof, or for use by dealers qualified under this part as sales samples as provided in paragraph (d) of this section. The registration of such machine guns under this part and their subsequent transfer shall be conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State or local governmental entities. Subject to compliance with the provisions of this part, manufacturers qualified under this part may manufacture machine guns on or after May 19, 1986, for exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778) and regulations prescribed thereunder by the Department of State.

(d) *Dealer sales samples.* Subject to compliance with the provisions of this part, applications to transfer and register a machine gun manufactured or imported on or after May 19, 1986, to dealers qualified under this part will be approved if it is established by specific information the expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Applications to transfer more than one machine gun of a particular model to a dealer must also establish the dealer's need for the quantity of samples sought to be transferred.

(e) *The making of machine guns on or after May 19, 1986.* Subject to compliance with the provisions of this part, applications to make and register machine guns on or after May 19, 1986, for the benefit of a Federal, State or local governmental entity (e.g., an invention for possible future use of a governmental entity or the making of a weapon in connection with research and development on behalf of such an entity) will be approved if it is established by specific information that the machine gun is particularly suitable for use by Federal, State or local governmental entities and that the making of the weapon is at the request and on behalf of such an entity.

(f) *Discontinuance of business.* Since section 922(o), Title 18, U.S.C., makes it unlawful to transfer or possess a machine gun except as provided in the law, any qualified manufacturer, importer, or dealer intending to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any machine gun manufactured or imported after May 19, 1986, to a Federal, State or local governmental entity, qualified manufacturer, qualified importer, or, subject to the provisions of paragraph (d) of this section, dealer qualified to possess such, machine gun.

Par. 86. Section 179.112 is amended by revising paragraphs (a) and (c) to read as follows:

§ 179.112 Registration of imported firearms.

(a) Each importer shall file with the Director an accurate notice on Form 2 (Firearms), Notice of Firearms Manufactured or Imported, executed under the penalties of perjury, showing the importation of a firearm. The notice shall set forth the name and address of the importer, identify the importer's special (occupational) tax stamp and Federal firearms license, and show the import permit number, the date of release from Customs custody, the type, model, length of barrel, overall length, caliber, gauge or size, serial number, and other marks of identification of the firearm imported, and the place where the imported firearm will be kept. The Form 2 (Firearms) covering an imported firearm shall be filed by the importer no later than fifteen (15) days from the date the firearm was released from Customs custody. The importer shall prepare the notice, Form 2 (Firearms), in duplicate, file the original return as prescribed herein, and keep the copy with the records required by Subpart I of this part at the premises covered by the special (occupational) tax stamp. The timely receipt by the Director of the notice, Form 2 (Firearms), and the timely receipt by the Director of the copy of Form 6A (Firearms), Release and Receipt of Imported Firearms, Ammunition and Implements of War, required by § 178.112 of this chapter, covering the weapon reported on the Form 2 (Firearms) by the qualified importer, shall effectuate the registration of the firearm to the importer.

* * * * *

(c) Subject to compliance with the provisions of this part, an application, Form 6 (Firearms), to import a firearm by an importer or dealer qualified under this part, for use as a sample in connection with sales of such firearms to Federal, State or local governmental entities, will be approved if it is established by specific information attached to the application that the firearm is suitable or potentially suitable for use by such entities. Such information must show why a sales sample of a particular firearm is suitable for such use and the expected governmental customers who would require a demonstration of the firearm. Information as to the availability of the firearm to fill subsequent orders and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular firearm would establish suitability for governmental use. Applications to import more than one firearm of a particular model for use as a sample by an importer or dealer must also establish the importer's or dealer's need for the quantity of samples sought to be imported.

Par. 87. Section 179.113 is revised to read as follows:

§ 179.113 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States of any firearm for the purpose of examining and testing the firearm in connection with making a determination as to whether the importation or bringing in of such firearm will be authorized under this subpart. An application under this section shall be filed on Form 6 (Firearms), in triplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm must agree to either export the weapon or destroy it if a final determination is made that it may not be imported or brought in under this subpart. A firearm so imported or brought into the United States may be released from Customs custody in the manner prescribed by the conditional authorization of the Director.

Par. 88. Section 179.119 is revised to read as follows:

§ 179.119 Transportation of firearms to effect exportation.

Notwithstanding any provision of § 178.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the exportation of a firearm authorized under the provisions of this subpart.

Par. 89. Section 179.122(a) and the undesignated center heading are revised to read as follows:

Arms Export Control Act

§ 179.122 Requirements.

(a) Persons engaged in the business of importing firearms are required by the Arms Export Control Act (22 U.S.C. 2778) to register with the Director. (See Part 47 of this chapter.)

* * * * *

Par. 90. Sections 179.161 and 179.162 are revised to read as follows:

§ 179.161 National Firearms Act stamps.

"National Firearms Act" stamps evidencing payment of the transfer tax or tax on the making of a firearm are maintained by the Director. The remittance for purchase of the appropriate tax stamp shall be submitted with the application. Upon approval of the application, the Director will cause the appropriate tax to be paid by affixing the appropriate stamp to the application.

§ 179.162 Stamps authorized.

Adhesive stamps of the $5 and $200 denomination, bearing the words "National Firearms Act," have been prepared and only such stamps shall be used for the payment of the transfer tax and for the tax on the making of a firearm.

Par. 91. Sections 179.171 and 179.172 are revised to read as follows:

§ 179.171 Redemption of or allowance for stamps.

Where a National Firearms Act stamp is destroyed, mutilated or rendered useless after purchase, and before liability has been incurred, such stamp may be redeemed by giving another stamp in lieu thereof. Claim for redemption of the stamp should be filed on ATF Form 2635 (5620.8) with the Director. Such claim shall be accompanied by the stamp or by a satisfactory explanation of the reasons why the stamp cannot be returned, and shall be filed within 3 years after the purchase of the stamp.

(68A Stat. 830; 26 U.S.C. 6805)

§ 179.172 Refunds.

As indicated in this part, the transfer tax or tax on the making of a firearm is ordinarily paid by the purchase and affixing of stamps, while special tax stamps are issued in payment of special (occupational) taxes. However, in exceptional cases, transfer tax, tax on the making of firearms, and/or special (occupational) tax may be paid pursuant to assessment. Claims for refunds of such taxes, paid pursuant to assessment, shall be filed on ATF Form 2635 (5620.8) within 3 years next after payment of the taxes. Such claims shall be filed with the regional director (compliance) serving the region in which the tax was paid. (For provisions relating to hand-carried documents and manner of filing, see 26 CFR 301.6091-1(b) and 301.6402-2(a).) When an applicant to make or transfer a firearm wishes a refund of the tax paid on an approved application where the firearm was not made pursuant to an approved Form 1 (Firearms) or transfer of the firearm did not take place pursuant to an approved Form 4 (Firearms), the applicant shall file a claim for refund of the tax on ATF Form 2635 (5620.8) with the Director. The claim shall be accompanied by the approved application bearing the stamp and an explanation why the tax liability was not incurred. Such claim shall be filed within 3 years next after payment of the tax.

(68A Stat. 808, 830; 26 U.S.C. 6511, 6805)

Par. 92. Section 179.182 is revised to read as follows:

§ 179.182 Forfeitures.

Any firearm involved in any violation of the provisions of 26 U.S.C. Chapter 53, shall be subject to seizure, and forfeiture under the internal revenue laws: *Provided, however,* That the disposition of forfeited firearms shall be in conformance with the requirements of 26 U.S.C. 5872. In addition, any vessel, vehicle or aircraft used to transport, carry, convey or conceal or possess any firearm with respect to which there has been committed any violation of any provision of 26 U.S.C. Chapter 53, or the regulations in this part issued pursuant thereto, shall be subject to seizure and forfeiture under the Customs laws, as provided by the act of August 9, 1939 (49 U.S.C. App., Chapter 11).

Par. 93. Section 179.193 is revised to read as follows:

§ 179.193 Arms Export Control Act.

For provisions relating to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see the Arms Export Control Act (22 U.S.C. 2778), and the regulations issued pursuant thereto. (See also Part 47 of this chapter.)

January 19, 1988.

Stephen E. Higgins,

Director.

Approved: February 5, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88-6579 Filed 3-30-88; 8:45 am]

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federal register

Thursday
March 31, 1988

Part IV

The President

Proclamation 5781—Cancer Control Month, 1988

Proclamation 5782—Education Day, U.S.A., 1988

Proclamation 5783—Fair Housing Month, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5781 of March 28, 1988

Cancer Control Month, 1988

By the President of the United States of America

A Proclamation

In the continuing struggle against cancer, Americans have put their trust in research; today we can affirm that the public trust has been rewarded. Just a few years ago, the cancer cell was seen as a deadly, unsolvable mystery. The mystery is still complex, but today it is considered solvable. We now know a good deal about what the cancer cell does and how it does it.

We have begun to see cancer not as a random event, but as an error in the normal process of growth and development. Researchers have found minute but critical differences in the genes of normal and cancer cells. They have identified and isolated oncogenes, which play a role in changing normal, healthy cells to cancer. And, with every passing day, scientists come closer to understanding how and when oncogenes "turn on" and transform cells.

In time, our knowledge of how oncogenes work may help cure many patients, improve the quality of life for others, stave off recurrences for still others, and enable us to prevent cancer before it starts.

New knowledge about cancer prevention and treatment has improved the outlook for cutting the cancer death rate. With regard to prevention, we now know that type of diet, exposure to the sun, and use of tobacco can trigger events in the cell that cause up to 80 percent of all cancers.

We can reduce our risk of cancer if we take a few sensible steps. Adding fiber and reducing fat in our diet can significantly cut cancer incidence and mortality; we should choose more fruits, vegetables, and whole-grain breads and cereals and cut down on fatty meat, eggs, dairy products, and oils in cooking and salads. Researchers have shown that overexposure to the sun's rays causes skin cancer; they advise us all to wear protective clothing and to use sunscreens to reduce the risk of this illness. The biggest culprit—responsible for 30 percent of all cancer deaths—is smoking and other tobacco use. The scientific evidence linking cigarette smoking to cancers of the lung and mouth is undeniable. Smoking also contributes to cancers of the bladder, pancreas, and kidney. The message is clear: stop smoking or, better yet, don't start.

The U.S. Public Health Service has found that when people are warned about health hazards, they tend to change their habits for the better. More and more of our citizens want information to help protect their health. Of course, the ideal solution is not to let cancer happen; by modifying the way we live, we can greatly reduce our chances of developing this disease.

This year, the American Cancer Society celebrates its 75th anniversary. The work of the American Cancer Society, the National Cancer Institute, and other organizations devoted to cancer research and control has made a difference. Only a few years ago, it was hard to imagine the tremendous progress we see today. Survival rates have improved for 7 of the 10 major forms of cancer; more than 5 million Americans diagnosed with cancer are alive in 1988. Early detection continues to improve the chances of successful treatment; some 385,000 Americans diagnosed with cancer in 1988 will be alive 5 years from now. Once deadly forms of cancer are now yielding to combined treatments of surgery, radiation, drugs, and new biological agents, such as interleukin-2. A diagnosis of breast cancer no longer requires an inevitable mastectomy. Children with leukemia are being treated successfully and living to become productive adults.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 38 U.S.C. 150) requesting the President to issue an annual proclamation declaring April to be "Cancer Control Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1988 as Cancer Control Month. I invite the Governors of the fifty States and the Commonwealth of Puerto Rico, and the appropriate officials of all other areas under the United States flag, to issue similar proclamations. I also ask the health care professionals, communications industry, food industry, community groups, and all other interested organizations and individual citizens to unite during this month to reaffirm publicly our Nation's continuing commitment to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7270
Filed 3-30-88; 11:50 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5782 of March 29, 1988

Education Day, U.S.A., 1988

By the President of the United States of America

A Proclamation

Education that emphasizes the ethical values and principles upon which America was founded, and upon which all civilization rests, remains as vital to our country today as ever in our past. History, reason, experience, and the desires of the human heart teach us that individuals and nations alike need, in addition to technical knowledge and skills, all the wisdom, guidance, and inspiration that ethical values provide. We ourselves possess these treasures only because our ancestors cherished and preserved them through the ages; we are duty-bound to pass them along to our children, who need them and seek them just as much as we and members of every generation have needed them and sought them.

These truths are known and practiced now by more and more citizens and educators. One group that exemplifies this is Hasidic Judaism's worldwide Lubavitch movement, led by Rabbi Menachem Mendel Schneerson. It is fitting that we salute his lasting achievements in education, as well as those of his late wife, the Rebbetzin Chaya Moussia Schneerson; of their many colleagues; and of everyone who fosters education that incorporates our prized heritage of ethical values.

In recognition of Rabbi Schneerson's dedication to our educational system, and in celebration of his 86th birthday, the Congress, by House Joint Resolution 470, has designated March 29, 1988, as "Education Day, U.S.A." and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 29, 1988, as Education Day, U.S.A., and call upon the people of the United States, and in particular our teachers and other educational leaders, to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7271
Filed 3-30-88; 11:51 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5783 of March 29, 1988

Fair Housing Month, 1988

By the President of the United States of America

A Proclamation

This April is a milestone in the history of civil rights. It marks the 20th anniversary of the passage of Title VIII of the Civil Rights Act of 1968, popularly called the "Fair Housing Act," which declared as a national policy that housing throughout our country be made available to all citizens on the basis of equality and fairness. The Act outlaws any discrimination in the sale, rental, or financing of housing because of race, color, religion, sex, or national origin.

The Fair Housing Act reflects Americans' willingness and determination to make sure that housing is available to all without discrimination. In the 2 decades since its passage, judicial and administrative enforcement and public and private efforts to induce voluntary compliance with the law have helped countless people obtain the housing they desire. America truly has succeeded in moving closer to the ideal of a society open to all.

Every American is entitled to freedom from discrimination in housing; the 20th anniversary of the Act is an appropriate time for all of us to reaffirm our dedication as a Nation to the principles of equal opportunity on which the Fair Housing Act is grounded.

The Congress, by Public Law 100-248, has designated April 1988 as "Fair Housing Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 1988 as Fair Housing Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7272
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Thursday, March 31, 1988

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S.J. Res. 225/Pub. L. 100–267

Approving the location of the Korean War Memorial (Mar. 28, 1988; 102 Stat. 41; 1 page) Price: $1.00

S.J. Res. 229/Pub. L. 100–268

To designate the day of April 1, 1988, as "Run to Daylight Day." (Mar. 28, 1988; 102 Stat. 42; 1 page) Price: $1.00

S.J. Res. 253/Pub. L. 100–269

Designating April 9, 1988, as "National Former Prisoners of War Recognition Day." (Mar. 28, 1988; 102 Stat. 43; 1 page) Price: $1.00

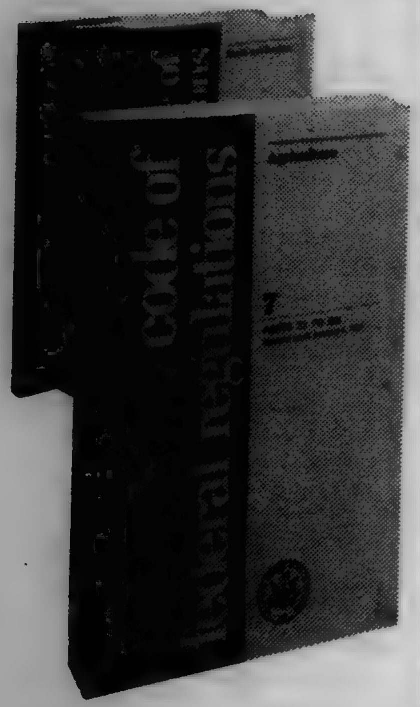

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Friday
April 1, 1988

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
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Presidential Documents

Title 3—

The President

Proclamation 5784 of March 30, 1988

Actors' Fund of America Appreciation Month, 1988

By the President of the United States of America

A Proclamation

For more than a century, the members and friends of the Actors' Fund of America have served the entertainment world by helping show people to aid their own in time of need. This long tradition of concern and compassion for fellow workers truly touches the lives of thousands for the better, exemplifies and perpetuates America's volunteer spirit, and is worthy of every recognition.

The Actors' Fund assists, in addition to actors, true entertainment professionals who work in any capacity in ballet, circus, the legitimate stage, motion pictures, opera, radio, television, and variety. Its many services and benefits are designed to accommodate the unique needs of those in show business. In wartime and in peacetime, the members of the Actors' Fund have sought to foster the well-being of their fellow entertainers and of all their fellow countrymen. Their active and effective service remains a tribute to them and a blessing for countless people.

The Congress, by Public Law 100-195, has designated the month of April 1988 as "Actors Fund of America Appreciation Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 1988 as Actors' Fund of America Appreciation Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord nineteen and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7384
Filed 3-31-88; 11:11 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5785 of March 30, 1988

National Know Your Cholesterol Month, 1988

By the President of the United States of America

A Proclamation

Coronary heart disease is the leading cause of death in the United States—each year responsible for more than 1.5 million heart attacks, 500,000 of them immediately fatal. High blood cholesterol is one of the three controllable risk factors for coronary heart disease, along with high blood pressure and cigarette smoking.

More than a quarter of adult Americans have blood cholesterol levels that put them at a significantly increased risk of coronary heart disease. Most Americans are aware of their blood pressure levels, but less than half have had their cholesterol checked and less than 10 percent know their blood cholesterol level. Extensive studies have shown that elevated levels of blood cholesterol lead to early development of hardening of the arteries and coronary heart disease, and that the higher the cholesterol, the higher the risk. Now there is firm evidence that lowering high blood cholesterol reduces that risk.

The National Cholesterol Education Program, a joint program by the Federal government, medical groups, voluntary health organizations, industry, and State and local health agencies, has undertaken a campaign to educate professional, patient, and public audiences about the importance of lowering a high blood cholesterol level. The program urges all Americans to learn about the relationship among blood cholesterol, diet, and heart disease; to have their cholesterol level checked; and to know what their number means. The program's long-term goal is to reduce the death and disability from coronary heart disease that is attributable to elevated levels of blood cholesterol.

Each American should know his or her cholesterol level and should take measures to reduce too-high levels. The test is simple and quick; a sample of blood is obtained and the total blood cholesterol level is measured. A high level can be reduced, with diet as the primary approach and drug therapy if needed.

To make all Americans aware of the importance of monitoring their cholesterol, the Congress, by Senate Joint Resolution 244, has designated April 1988 as "National Know Your Cholesterol Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1988 as National Know Your Cholesterol Month. I invite the American people to join with me in reaffirming our commitment to the resolution of the problem of high blood cholesterol.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7365
Filed 3-31-88; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5786 of March 30, 1988

Run to Daylight Day, 1988

By the President of the United States of America

A Proclamation

Each year, up to 1.8 million Americans, most of them under age 30, suffer head injuries; and more than 50,000 survivors of such injuries will experience long-term physical and mental difficulties and often need extended care and rehabilitation in returning to productive lives. Advances in medical treatment now save the lives of many people with severe head injuries; improvements in long-term rehabilitation need to continue.

Run to Daylight, a nonprofit organization concerned with improving rehabilitation for survivors of head injuries, is sponsoring a 3,600-mile run across the United States this year—the "Run to Daylight." This event will begin in San Francisco on April 1 and end in Boston on June 30.

The "Run to Daylight" will remind Americans about the rehabilitation needs of survivors of head injuries and will help the National Head Injury Foundation, which is dedicated to improving life for survivors of head injuries and their families and to developing and supporting programs to prevent such injuries.

The Congress, by Public Law 100-268, has designated April 1, 1988, as "Run to Daylight Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 1, 1988, as Run to Daylight Day. I urge the people of the United States to learn more about head injuries; to foster appropriate efforts to discover more effective ways to prevent and treat head injuries and rehabilitate head-injured persons; and to aid head injury victims and their families who suffer the severe physical, psychological, and financial burdens of such injuries.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7306
Filed 3-31-88; 11:13 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 88-036]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Protection and Quarantine regulations by revising the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) to include a hot water dip as an acceptable treatment for mangoes from Mexico, except mangoes from the State of Chiapas. The PPQ Treatment Manual is incorporated by reference in the regulations at 7 CFR 300.1.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: E. Elliott Crooks, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 601, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8249.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of Title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service (APHIS). Section 300.1 incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles so that they may move into or within the United States without presenting a plant pest risk.

Mangoes from Mexico are a regulated article that must be treated for two species of fruit flies, *Anastrepha obliqua* and *A. ludens*, before being imported into the United States. Presently, there are no treatments listed in the PPQ Treatment Manual for importing Mexican mangoes. However, recent research indicates that treating Mexican mangoes with a hot water dip destroys *A. obliqua* and *A. ludens*.

On February 10, 1988, we published in the **Federal Register** (53 FR 3896–3897, Docket Number 87–162), a document proposing to amend § 300.1 of the regulations to give notice that we are revising the PPQ Treatment Manual to include this hot water dip as an acceptable treatment for mangoes from Mexico, with one exception; we are not including mangoes from the State of Chiapas because Mediterranean fruit fly, *Ceratitis capitata*, occurs there and hot water dip has not been proven effective in destroying this fruit fly. There are no other treatments available that will destroy Mediterranean fruit fly without damaging mangoes.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before March 11, 1988. We received 87 comments. Seventy-seven commenters were in favor of the proposed rule, and ten commenters suggested changes in the proposal.

The State of California Department of Food and Agriculture, commented that prior to treatment, mango lots should be sampled for infestation using cutting and inspection techniques, and lots containing larvae should be rejected. We are not making any change based on this comment. Pre-treatment sampling is not necessary, because the hot water dip treatment we proposed is effective in destroying *A. obliqua* and *A. ludens* when conducted in accordance with the procedures set forth in the PPQ Treatment Manual.

Several commenters, including researchers at the University of Florida, Florida Mango Forum, and Kendall Foods, were concerned that, because the hot water dip treatment is not effective against Mediterranean fruit fly in mangoes, Mexican mangoes containing Mediterranean fruit fly could be shipped to the U.S. as a result of either the transshipment of mangoes from Chiapas or migration of Mediterranean fruit fly from Chiapas, where Medfly occurs, into other Mexican regions. To counter this possibility, Mexico is, in cooperation with the USDA, quarantining fruit fly host material (including mangoes) in the State of Chiapas, with quarantine stations in operation along main roads to prevent the artificial spread of the Medfly in Mexico. Mangoes from Chiapas will not be eligible for hot water dip treatment and export to the U.S. Also, USDA and Mexico cooperate in a Medfly trapping program in Mexico which would detect the Medfly if it were to migrate from its present location in Chiapas.

Another commenter, Blind Hog Groves of Pine Island, Florida, suggested that import requirements include inspection and cutting of mangoes at the point of entry. Under the authority of 7 CFR 319.56–6, all importations of fruits are already subject to inspection at ports of arrival. Blind Hog Groves also believes that the Regulatory Flexibility provision is inadequate because an introduction of Mediterranean fruit fly would have an effect on the economy of over $100 million, making this a "major rule" with risks outweighing the benefits. APHIS does not anticipate any economic effects from an introduction of this pest; this regulation is designed to ensure that Mediterranean fruit fly is *not* introduced into the United States. Other commenters felt that the treatment process should be "adequately supervised", and USDA should continue to oversee and verify pre-treatment sampling and inspection of mangoes by the Mexican government. We agree that the treatment process should be supervised. The entire treatment procedure will be under the general supervision of PPQ, APHIS, and must utilize equipment and procedures approved by USDA as set out in the PPQ Treatment Manual. APHIS and the Mexican government cooperate to ensure the effectiveness of this hot water dip treatment and all other treatment methods used on fruit imported into the United States. APHIS used to verify the pre-treatment sampling and inspection of mangoes undergoing ethylene dibromide (EDB) treatment. EDB treatment is no longer used. It required pre-treatment inspection for full effectiveness. However, the hot water dip treatment does not require such inspection or verification.

Blind Hog Groves also requested that a public hearing be held to address the risks, benefits, and potential dangers associated with the proposal and to consider any alternative solutions. We did not hold a public hearing on the proposal. The purpose of a public hearing on a rule is not to provide further details on a proposed rule or to consider alternatives during the hearing, but to accept comments from the public. We have made our reasoning and the basis for the rule available through publication in the **Federal Register**, have accepted and considered written comments on the proposed rule, and have weighed the risks, benefits, and potential dangers associated with the proposed rule. Interested parties had an opportunity to submit comments on all issues associated with the rule during the comment period.

Other commenters were concerned that the temperature range allowed for the hot water dip treatment is too narrow and cannot be easily maintained. However, research and equipment testing by the Agricultural Research Service (ARS) indicates that the required temperature range can be maintained.

Other commenters further suggested that all boxes of treated fruit should be labeled with the treatment facility, date of treatment, and other information to trace the origin of the fruit. APHIS does not believe that tracing fruit back to its origin will be necessary. The hot water dip is effective when conducted in accordance with the procedures in the PPQ Treatment Manual which also requires that all boxes of Mexican mangoes imported following hot water treatment must be marked "Treated With Hot Water, APHIS, USDA." If live pests are found in boxes of Mexican mangoes so labeled, APHIS will recheck all treatment facilities in Mexico to ensure that they are following the procedures in the PPQ Treatment Manual.

Based on the rationale in the proposal, we are adopting the provisions of the proposal as a final rule.

Effective Date

The Acting Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature. This action is necessary to allow the importation from Mexico of mangoes that have undergone an approved hot water dip treatment. Because the shipping season for this fruit has begun, delays in making the rule effective could cause substantial economic losses for some persons.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Most mangoes consumed in the United States are imported. Historically, about 65 percent of the mangoes consumed annually have come from Mexico. Haiti provides about 11 percent, and 4 percent come from other countries. Domestic production is limited to 2,100 acres in Florida. In fiscal year 1986, this area produced about 20 million pounds of the fruit, approximately 20 percent of the mangoes consumed in the United States. Because of the growing conditions necessary for mangoes, we do not expect U.S. production of mangoes to increase. Most of our supply will continue to come from foreign sources, if not from Mexico, then from other countries. We do not anticipate that this rule will result in any decrease in the demand for Florida mangoes, which have a well-established market.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic effect on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

Accordingly, Title 7, Chapter III is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for Part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. Section 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions issued through April, 1988, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

Done in Washington, DC, on this 28th of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-7163 Filed 3-31-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 52415]

General Administrative Regulations; Crop Insurance; Debt Management; Delinquent Debts; Credit Reporting Procedures; Collection Procedures; Salary Offset; IRS Tax Refund Offset

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on January 4, 1988. The interim rule amended the Debt Management regulations contained in 7 CFR Part 400, Subpart K, to: (1) Provide procedures to be followed in complying with 31 U.S.C. 3720A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against Federal income tax refunds owed to named persons; and (2) provide procedures permitting salary offset for the collection of debts as provided in the Debt Collection Act of 1982 (enacted on October 25, 1982), and the regulations issued by the United States Department of Agriculture (USDA) on March 17, 1986 (51 FR 8995) (7 CFR Part 3, Subpart C).

The intended effect of this rule is to: (1) Increase debt collections and reduce delinquencies; and (2) advise the public of the procedures to be used by FCIC.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The word "not" was inadvertently omitted from the previous sentence in the interim rule. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In 52 FR 2, January 4, 1988, FCIC published an interim rule amending the Debt Management regulations contained in 7 CFR Part 400, Subpart K, to: (1) Provide procedures to be followed in complying the 31 U.S.C. 3720A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against Federal income tax refunds owed to named persons; and (2) provide procedures permitting salary offset for the collection of debts as provided in the Debt Collection Act of 1982 (enacted on October 25, 1982), and the regulations issued by the United States Department of Agriculture (USDA) on March 17, 1986 (51 FR 8995) (7 CFR Part 3, Subpart C). The interim rule was effective December 31, 1987.

Written comments on the interim rule was solicited by FCIC for 30 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 400, Subpart K

General administrative regulations; Crop insurance; Debt management; Delinquent debts; Credit reporting procedures; Collection procedures; Salary offset; IRS tax refund offset.

Final Rule

Accordingly, the interim rule published in the **Federal Register** on Monday, January 4, 1988, at 52 FR 2, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC., on March 23, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-7206 Filed 3-31-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 607]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 607 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period April 3 through April 9, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 607 (§ 910.907) is effective for the period April 3 through April 9, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on March 29, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13–0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good, but with discounting occurring on smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

[NOTE: This section will not appear in the Code of Federal Regulations.]

2. Section 910.907 is added to read as follows:

§ 910.907 Lemon Regulation 607.

The quantity of lemons grown in California and Arizona which may be handled during the period April 3, 1988, through April 9, 1988, is established at 330,000 cartons.

Dated: March 30, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–7299 Filed 3–31–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AGL–30]

Transition Area Alteration; Grantsburg, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Grantsburg, WI, transition area to accommodate a new VOR–A Standard Instrument Approach Procedure (SIAP) to Grantsburg Municipal Airport, Grantsburg, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, February 12, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Grantsburg, WI, transition area (53 FR 4179).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the existing transition area to accommodate a new VOR–A instrument approach procedure predicated on the Siren, WI VOR/DME. The modification consists of eliminating the existing extension to the transition area and increasing the present radius from 6.5 miles to 7.5 miles.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Grantsburg, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of the Grantsburg Municipal Airport, Grantsburg, WI, (lat. 45°47′55″N, long. 92°39′51″W).

Issued in Des Plaines, Illinois, on March 18, 1988.

Peter H. Salmon,

Acting Manager, Air Traffic Division.

[FR Doc. 88–7156 Filed 3–31–88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 2—Exchange Visitor Boards]

Functions of Exchange Visitor Policy Boards; Technical Amendment

AGENCY: United States Information Agency.

ACTION: Interim final rule, technical amendment.

SUMMARY: The United States Information Agency is correcting an error in the description of the cases which will be transmitted to the Exchange Visitor Waiver Review Board which appeared in the **Federal Register** February 27, 1987 (52 FR 5952, 5954).

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, United States Information Agency, 301 4th Street SW., Washington, DC 20547. Telephone: (202) 485–8829.

EFFECTIVE DATE: February 27, 1987.

SUPPLEMENTARY INFORMATION: The United States Information Agency created a Waiver Review Board by interim final notice and described the type of cases which the Board would consider. The interim final rule contained an error which is discussed briefly below and is corrected by this notice.

22 CFR 514.32(b) Action by the Director on requests for waivers.

The regulation as it was published reads, in part:

> The recommendation of the Supervising Attorney shall constitute the final recommendation of the Agency and shall be transmitted to the Attorney General or his or her designee for decision except in: * * * cases in which a "no objection" letter from the Government of the exchange visitor's country of nationality or last legal residence appears in the file and whose participation in any program is financed by the United States Government in an amount *exceeding* $2,000, and as to which the recommendation of the Supervisory Attorney is unfavorable, * * * [Emphasis added.]

The word "exceeding" should be "under."

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

The United States Information Agency amends the Regulations in Chapter V, Part 514 of Title 22, Code of Federal Regulations as set forth below.

PART 514—[AMENDED]

1. The authority citation for 22 CFR Part 514 continues to read as follows:

Authority: U.S. Information and Education Exchange Act of 1948, as amended, Pub. L. 80–402 as amended (22 U.S.C. 1431–1442); Mutual Education and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, as amended, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j) and 1258); Pub. L. 91–225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

§ 514.32 [Amended]

2. In § 514.32(b) the words "exceeding $2,000" are revised to read "under $2,000."

Dated: March 9, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88–7009 Filed 3–31–88; 8:45 am]

BILLING CODE 8230-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Freedom of Information Policy and Procedures; Miscellaneous Revisions

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: Revisions are being made (1) in the authority citation to reflect that 31 U.S.C. 483a is now 31 U.S.C. 9701 (due to recodification of Title 31 of the United States Code by Pub. L. 97–258), and (2) to show the current location and hours for making requests in person.

DATE: This rule is effective April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walter L. Baumann, Assistant General Counsel, (202) 647–3530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 602

Freedom of information.

Title 22, Chapter VI, Part 602 is amended to read as follows:

PART 602—[AMENDED]

1. The authority citation for 22 CFR Part 602 is revised to read as follows:

Authority: Sec. 1, 81 Stat. 54, as amended by sec. 1, 88 Stat. 1561 (5 U.S.C. 552); sec. 41, 75 Stat. 635 (22 U.S.C. 2581), and sec. 501, 65 Stat. 290 (31 U.S.C. 9701).

2. Section 602.11 is revised to read as follows:

§ 602.11 Requests in person.

A member of the public may request an Agency record by applying in person between the hours of 8:30 a.m. and 4:30 p.m. on weekdays (holidays excluded) at the ACDA Library located in Room 5840, Department of State Building, 320 21st Street, NW., Washington, DC 20451. Form ACDA–21, Public Information Service Request, is available at the ACDA Library for the convenience of members of the public in requesting Agency records.

Dated: March 29, 1988.

William J. Montgomery,

Administrative Director.

[FR Doc. 88–7203 Filed 3–31–88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–88–1297; FR–2214]

Nonentitlement to Distributive Shares in the Event of Foreclosure

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises 24 CFR 203.423 to insert a provision inadvertently deleted from that section in January of 1987. The deleted provision set forth a circumstance under which a mortgagor is not entitled to receive a share from the Mutual Mortgage Insurance Fund's participating reserve account. If the mortgage is foreclosed and title to the property is conveyed to a person or an entity other than the Federal Housing Commissioner, no distributive share is payable.

EFFECTIVE DATE: May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Falkenstein, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Telephone (202) 755–6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: 24 CFR 203.423 describes the circumstances under which a mortgagor would be entitled to receive a distributive share from the Mutual Mortgage Insurance Fund's participating reserve account.

On December 9, 1986, HUD promulgated a final rule (51 FR 44286) adding a provision to § 203.423 which prohibits mortgagors who default on their mortgage obligation from receiving a share of the participating reserve account, when the mortgage is foreclosed, simply because title has not been conveyed to the Commissioner and a mortgage insurance claim has not been filed. The Department took the position that mutuality benefits should be linked to successful completion of the mortgagor's obligations as a debtor—not merely to whether an insurance claim is filed. Under the final rule, a mortgagor default leading to foreclosure or a deed-in-lieu of foreclosure would end the mortgagor's entitlement to a distributive share.

This denial to a mortgagor of a distributive share of the participating reserve under these circumstances is consistent with section 205(d) of the National Housing Act, which states that no mortgagor or mortgagee of any mortgage insured under section 203 shall have any vested right in a credit balance in any such account.

The restrictions contained in the final rule were to apply only after the rule's effective date. That date would have been March 2, 1987, except that on January 13, 1987, the Department promulgated a final rule authorizing the filing of FHA insurance claims without conveyance of title to the Secretary (52 FR 1320). That rule contained a supervening revision to § 203.423 of a conforming nature. Through an inadvertence, the prohibition against a share in the participating reserve in circumstances of foreclosure, contained in the earlier December 9, 1986 rule, was omitted. This rule corrects that error.

Since this rule is of a technical nature and presents no new substantive or policy questions, it is being published as a final rule to take effect on May 19, 1988. It should be noted that both earlier rules revising § 203.423 were first issued as proposed rules with opportunity for public comment. No public comments were received by the Department with respect to the December 9, 1986 (51 FR 44286) distributive share rule. None of the public comments on the January 13, 1987 (52 FR 1320) claims without conveyance rule addressed its revision to § 203.423.

Findings and Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours at the Office of the Rules Docket Clerk at Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. It merely re-inserts an earlier regulatory prohibition denying a defaulting mortgagor a share of the participating reserve, thus appropriately distributing the costs of providing mortgage insurance.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs; Housing and community development, Mortgage insurance, Solar energy.

Accordingly, the Department amends 24 CFR Part 203 as follows:

PART 203—[AMENDED]

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 211 of the National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Paragraph (a) of § 203.423 is revised to read as follows:

§ 203.423 Distribution of distributive shares.

(a) The Commissioner may provide for the distribution to the mortgagor of a share of the participating reserve account if the contract of insurance is terminated by:

(1) Conveyance to one other than the Commissioner and a claim for the insurance benefits is not presented by the mortgage (§ 203.315), provided, however, in the case of a mortgage insured pursuant to an application for a conditional commitment received on or after May 19, 1988, (or, as appropriate, an application for mortgage insurance endorsement under the Single Family Direct Endorsement program, as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after May 19, 1988, no distribution shall be made if the mortgagee forecloses the mortgage or accepts a deed-in-lieu of foreclosure;

(2) Prepayment of the mortgage (§ 203.316); or

(3) Voluntary agreement of the mortgagor and mortgagee (§ 203.317).

* * * * *

Dated: March 24, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88–7136 Filed 3–31–88; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the interest rate applicable to late premium payments and employer liability underpayments and overpayments beginning April 1, 1988. The interest rate is established by the Internal Revenue Service and is computed quarterly. This amendment is needed to notify pension plan administrators of the new interest rate.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; telephone 202–778–8850 (2020–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.

Section 6601(a) of the Code imposes interest on the underpayment of taxes at the "underpayment rate established

under section 6621." Section 6621 (a)(2) prescribes this rate: The sum of the short-term Federal rate (average interest rate on Federal securities with a maturity of three years or less) plus three percentage points. This rate is computed quarterly by the Internal Revenue Service.

On March 1, 1988, the Internal Revenue Service announced that for the calendar quarter beginning April 1, 1988, the interest charged on the underpayment of taxes will be at the rate of 10 percent. Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth this rate for the period beginning on April 1, 1988. This rate will be in effect for at least the three-month period ending on June 30, 1988, and will continue in effect after that time if the Internal Revenue Service, in its next quarterly review, determines that no change is needed.

The appendices to 29 CFR Part 2610 and 29 CFR Part 2622 do not prescribe the interest rates under these regulations; the rates prescribed by those parts are the rates under section 6601(a) of the Code. The appendices merely collect and republish the rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that neither of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small business.

In consideration of the foregoing, Appendix A to Part 2610 and Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 11005, Pub. L. 99–272, 100 Stat. 82, 240.

2. Appendix A to Part 2610 is amended by revising the January 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
Jan. 1, 1988	Mar. 31, 1988	11
Apr. 1, 1988		10

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for Part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 11011, 11016, Pub. L. 99–272, 100 Stat. 253, 268.

4. Appendix A to Part 2622 is amended by revising the January 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
Jan. 1, 1988	Mar. 31, 1988	11
Apr. 1, 1988		10

Issued in Washington, DC, the 29th day of March, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–7213 Filed 3–31–88; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from April 1, 1988, to June 30, 1988.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 8½ percent, which will be effective from April 1, 1988, through June 30, 1988. This rate represents a decrease of ¼ percent from the rate in effect for the first quarter of 1988. See 52 FR 49396 (December 31, 1987). This rate is based on the prime rate in effect on March 15, 1988.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A—Table of Interest Rates [Amended]

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (percent)
* * * * *			
03/01/88	06/30/88	03/15/88	8.50

Issued at Washington, DC, on this 29th day of March, 1988.

Kathleen P. Utgoff,
Executive Director.

[FR Doc. 88-7214 Filed 3-31-88; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 84

[CGD 87-051]

Annex I; Positioning and Technical Details of Lights and Shapes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the horizontal positioning and spacing of lights in 33 CFR 84.05(b) to include certain navigable "waters specified by the Secretary." This rulemaking extends the applicability of the horizontal positioning and spacing of lights regulations in the Inland Navigation Rules to the "specified waters." Vessels of 50 meters but less than 60 meters in length operating on Western Rivers as well as the "specified waters" shall comply with the horizontal positioning and spacing of lights provisions of the Inland Navigation Rules.

EFFECTIVE DATE: May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Peter S. Palmer, Office of Navigation, (202) 267-0362.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on October 22, 1987 (52 FR 39541), and interested parties were given until December 7, 1987, to comment. The Coast Guard received no comments to the proposal.

Discussion of the Regulation

The Inland Navigation Rules are codified in Chapter 34 of Title 33 of the United States Code (33 U.S.C. 2001 *et seq.*). The Inland Rules contain several provisions which are unique to the Great Lakes, Western Rivers or other waters as may be designated by the Secretary. The Tennessee-Tombigbee Waterway and certain connecting rivers were previously designated as waterways to which the existing Western Rivers provisions apply (CGD 83-038, 49 FR 33875, August 27, 1984). That designation appears in § 89.25 of Title 33, Code of Federal Regulations.

Annex I of the Inland Rules, which appears in Part 84 of Title 33, Code of Federal Regulations, contains the positioning and technical details of lights and shapes on vessels. Section 84.05 prescribes the horizontal positioning and spacing of lights on power-driven vessels and paragraph (b) of this section provides for the positioning of masthead lights for certain size vessels operating on the Western Rivers.

This rulemaking amends 33 CFR 84.05(b) to include the waters specified in 33 CFR 89.25, and completes application of the "Western Rivers" provisions to the "specified waters." This amendment extends the provisions for the horizontal spacing of masthead lights on power-driven vessels 50 meters but less than 60 meters in length to the specified waters.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Peter S. Palmer, Project Manager, and LCDR Don M. Wrye, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely updates Annex I, § 84.05(b) to include waters specified by the Secretary as a provision applicable to the Tennessee-Tombigbee Waterway and connecting waters. Since the impact is expected to be minimal, the Coast Guard certifies that this rule will not

have a significant economic impact on a substantial number of small entities.

Federalism

This section has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 84

Navigable (waters) waterways.

PART 84—[AMENDED]

For the reasons stated above, the Coast Guard is amending Title 33 CFR Part 84 to read as follows:

1. The authority citation for Part 84 is revised to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

2. In § 84.05, paragraph (b) is revised to read as follows:

§ 84.05 Horizontal positioning and spacing of lights.

* * * * *

(b) On power-driven vessels 50 meters but less than 60 meters in length operated on the Western Rivers, and those waters specified in § 89.25, the horizontal distance between masthead lights shall not be less than 10 meters.

* * * * *

Date: March 28, 1988.

A.B. Smith,
Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 88-7196 Filed 3-31-88; 8:45 am]
BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 1-88-001]

Temporary Drawbridge Operation Regulations; Reynolds Channel, NY

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of Long Island Rail Road (LIRR), the Coast Guard is issuing temporary regulations governing the Wreck Lead railroad drawbridge over Reynolds Channel, at mile 4.4, between Island Park and Long Beach, New York, to provide that the draw need not be opened for the passage of vessels for 28 days from April 4 through April 30, 1988. This change is being made to facilitate the construction of a new bascule bridge adjacent to the existing swing bridge which will be removed. This action will relieve the bridge owner of the burden of opening the draw during part of the construction of the new bridge and still provide for the reasonable needs of navigation. It is fully recognized that the closure will only allow the transit of marine traffic which can pass under the fixed span. However, an alternate route via Jones Inlet is available.

EFFECTIVE DATE: These regulations become effective on April 4, 1988, and terminate April 30, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District at (212) 668-7994.

SUPPLEMENTARY INFORMATION: On February 1, 1988, the Coast Guard published a proposed temporary rule (53 FR 20) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1-664 dated January 28, 1988. In each notice, interested persons were given until February 28, 1988, to submit comments. Public Notice 3-646 dated February 5, 1987, which proposed the replacement and relocation of the draw indicated that a 60 day closure between December and March was anticipated to facilitate construction. The Coast Guard Bridge Permit 5-87-3 was issued March 24, 1987, with the draw relocated to the center of the waterway to enhance the safety of navigation on this waterway.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR R.B. Ellard, project attorney.

Discussion of Comments

Two responses, one favoring and one opposing were received in response to the public notice. One respondent, a marina owner indicated that he would be inconvenienced but could work with the closure so long as it did not extend beyond the scheduled opening date. The other respondent, a mariner, objected to the closure and asserted that it could have an economic impact on his operation and an effect on the safety of fishermen in their everyday operations especially during inclement weather. The respondent acknowledged Jones Inlet as an alternate route but asserted that it was impassable, and East Rockaway Inlet, a tributary of Reynolds Channel, would be the only safe way to transit. Historically, Jones Inlet is heavily used by both recreational and commercial fishing and clamming vessels, whereas East Rockaway Inlet, because of its location, is more extensively used by tanker and tug and barge traffic. Both Jones and East Rockaway Inlets experience shoaling and shifting of the channels. Therefore, the Coast Guard continually adjusts the buoy markers to reflect the location of the channels. A newspaper article, promoted by a local state assemblyman in Long Beach and published at the time of the Coast Guard's Public Notice, urged local residents to request that the Coast Guard extend the closure period long enough to allow completion of the new structure between Long Beach and Island Park. Five comments in favor of the closure were received in response to the newspaper article. The state assemblyman also contacted the Coast Guard and urged that construction be permitted for a longer period than allowed in the existing Coast Guard permit to ensure completion by the summer of 1988.

On March 17, 1988, the LIRR requested that the proposed closure period be delayed slightly. The LIRR's originally proposed closure was for 60 days between December and March. In November 1987, the railroad and the contractor being aware of the concerns of some of the clammers, agreed to redesign the work and authorize extensive overtime to reduce the length of the bridge outage. At that time, they requested that the bridge be closed for 31 days from March 23rd through April 23, 1988, to complete bridge construction. Since the contractor was slightly behind schedule and in response to marine concerns regarding the length of the closure period, the railroad indicated that they could reduce the closure period from 31 to 28 days if they could delay the beginning of the closure until 6 a.m. on April 14, 1988. Additionally, the railroad stated that this would permit implementing the 10 day railroad outage immediately after the evening rush hour on Friday, April 29, 1988. Consultation with local Coast Guard commands, marine interests, and the railroad has been performed during this regulatory review process in an attempt to assess and minimize the impacts.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. As of March 31, 1988, construction progress was approximately one week behind schedule due to unfavorable weather conditions. The LIRR requested that the

BEST COPY AVAILABLE

closure period be changed to April 4th through April 30, 1988, to assure timely opening of the channel for vessels. Jones Inlet is regularly used by both commercial and recreational vessels under all weather conditions. Additionally, Jones Inlet is considered only slightly more hazardous than East Rockaway Inlet and timely replacement of the Wreck Lead bridge before the peak of the boating season will have a substantially greater benefit on marine safety. The LIRR has stated that they will have expended more than two million dollars in reducing the length of the closure period and providing increased draw opening width and improved draw location. The 11 day shift in the closure start will allow the five day reduction in the closure period by permitting more preparatory work to be completed prior to the closure period and will permit the Coast Guard to complete adjustments to the markers in both Inlets. The LIRR will provide bus service for their passengers during the railroad shutdown period beginning April 29, 1988.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations (CFR) is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.799(j) is added for the period of April 4, 1988 to April 30, 1988. Because this is a temporary rule, the following amendments will not be codified in the CFR:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal

* * * * *

(j) The draw of the existing and proposed LIRR (Wreck Lead) bridges, mile 4.4, at Island Park, New York need not be opened for the passage of vessels from 6 a.m., April 4, 1988, through 6 a.m., April 30, 1988, inclusive, during replacement of the new and removal of the old bridge.

Dated: March 25, 1988.

J.N. Faigle,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 88–7194 Filed 3–31–88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD13 88–03]

Drawbridge Operation Regulations; Lake Washington Ship Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Seattle Engineering Department (SED), the Coast Guard is changing regulations governing the Ballard Bridge, mile 1.1; Fremont Bridge, mile 2.6; University Bridge, mile 4.3; and the Montlake Bridge, mile 5.2; across the Lake Washington Ship Canal, at Seattle, Washington. This change is editorial and will clarify the intent of the existing regulation.

DATE: This regulation becomes effective on May 1, 1988. Comments on this regulation must be received on or before May 25, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, ATON and Waterways Management Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b), a Notice of Proposed Rulemaking was not published for this regulation because the change is editorial and merely clarifies the intent of the existing regulation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of Regulation

SED expressed concern that the term "1,000 tons", as used in the existing regulation, does not accurately reflect the intent of the regulation. They believe the proper term should be "1,000 gross tons". They are concerned that this inaccuracy may cause confusion between vessel operators and drawtenders. Upon our review of the wording of the existing regulation, and that of other similar local regulations, we concurred with SED that the wording should be changed to avoid possible confusion.

Therefore, we are changing the phrase "vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons," to read: "any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over,".

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The change is editorial and would have no substantive effect on the operation of the bridge. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46.

2. Revise § 117.1051(d)(2) to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) * * *

(2) The draws need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal Holidays for any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over, except under emergency conditions when the Seattle City Engineer is notified.

* * * * *

Dated: March 22, 1988.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 88–7195 Filed 3–31–88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6670

[ID-943-07-4220-10; I-7322]

Withdrawal of Public Lands and Minerals for Protection of Lower Salmon River, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 6,102.01 acres of public land from surface entry and mining and 3,626.52 acres of reserved mineral interests in private land from mining for 20 years to protect the recreational and scenic values of the Lower Salmon River. The withdrawal will not create any impacts or conflicts, since it would result in a continuation of the present situation. The subject area has been temporary segregated from mineral entry since 1968. The lands have been and will remain open to mineral leasing. Most potential uses and management actions on these lands, such as rights-of-way, grazing, recreation, private exchanges, and so forth, will not be affected.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under mineral leasing laws:

Boise Meridian

T. 24 N., R. 1 E.,
  Sec. 2, lots 5 to 8, inclusive;
  Sec. 13, lots 6, 7, and 9;
  Sec. 14, lots 1, 4, 8, 11 and 12.
T. 24 N., R. 2 E.,
  Sec. 13, lots 1, 4, 5, and 7;
  Sec. 20, lots 6 and 7;
  Sec. 21, lots 3, 4, 6, and 10;
  Sec. 22, lots 3, 4, 5, 9, 10, 11, and SE¼SE¼;
  Sec. 23, lots 1 and SW¼NW¼;
  Sec. 27, NW¼NE¼ and N½NW¼;
  Sec. 28, NW¼NW¼.
T. 24 N., R. 3 E.,
  Sec. 13, lots 5 and 6, and N½SW¼;
  Sec. 14, lots 5, 6, and 8, S½SW¼, and N½SE¼;
  Sec. 15, lots 4 and 5;
  Sec. 18, lots 4 to 7, inclusive, and lot 10;
  Sec. 19, lot 7, NW¼SE¼, and SE¼SE¼;
  Sec. 20, lots 6 to 9, inclusive;
  Sec. 21, lot 5 and SE¼SE¼;
  Sec. 22, lots 1, 3, and 4, N½NE¼, and N½SW¼;
  Sec. 28, NW¼NW¼;
  Sec. 29, N½N½.
T. 25 N., R. 1 E.,
  Sec. 2, lots 1, 8, and 9, S½SE¼NW¼, and SW¼SE¼;
  Sec. 11, lots 1, 3, 4, 5, 6, and 8, NW¼NE¼, and NW¼SE¼;
  Sec. 14, lots 1, 7, and 8, and SE¼SE¼;
  Sec. 22, lots 3 and 4, and NE¼SW¼;
  Sec. 23, lots 1, 2, and 6;
  Sec. 26, lots 1 and 2;
  Sec. 27, lots 1, 2, and 3, and E½SE¼;
  Sec. 34, E½E½;
  Sec. 35, lots 1 to 5, inclusive, lots 7 and 8, and E½SW¼.
T. 26 N., R. 1 E.,
  Sec. 1, lots 6 to 9, inclusive;
  Sec. 2, lots 1 to 5, inclusive, lots 7 to 10, inclusive;
  Sec. 12, lots 2 and 9, and SW¼SW¼;
  Sec. 13, lots 2 to 5, inclusive;
  Sec. 14, lots 1 and 3;
  Sec. 22, E½SE¼;
  Sec. 23, lots 2, 3, 6, 7, and 8, and SE¼SW¼;
  Sec. 26, lots 1 to 4, inclusive, lots 6 and 7;
  Sec. 27, E½NE¼;
  Sec. 34, lots 1 and 2, and E½NE¼;
  Sec. 35, lots 3 and 4.
T. 27 N., R. 1 E.,
  Sec. 3, lots 2, 6, 7, and 10;
  Sec. 14, lot 1, and SW¼SE¼;
  Sec. 15, lot 4;
  Sec. 22, lot 4, and SW¼NW¼;
  Sec. 23, lots 2 and 3, and SE¼SW¼;
  Sec. 24, lot 3;
  Sec. 26, lots 2, 3, and 7, and NE¼NW¼;
  Sec. 34, SE¼SE¼;
  Sec. 35, lots 2 to 7, inclusive, W½SE¼NE¼, and N½SW¼.
T. 28 N., R. 1 E.,
  Sec. 26, lots 1 and 3, and NE¼SW¼;
  Sec. 27, lots 1, 2, and 3;
  Sec. 34, lots 2, 4, 5, and 7, and NE¼SW¼.

The areas described aggregate 6,102.01 acres in Idaho County

2. Subject to valid existing rights, the federally reserved mineral interests in the following-described private lands are hereby withdrawn from the United States mining laws, but not from the mineral leasing laws:

Boise Meridian

T. 24 N., R. 1 E.,
  Sec. 2, lots 1 and 4, SE¼NW¼, and NE¼SW¼;
  Sec. 3, lots 1, 5, 6, and 7;
  Sec. 10, lots 1, 4, and 6, NE¼SW¼, and SW¼SE¼;
  Sec. 11, lots 2 to 5, inclusive;
  Sec. 13, lots 8 and 10, NE¼SW¼, and NW¼SE¼;
  Sec. 14, lots 2, 5, and 14, NW¼NE¼, NE¼NW¼, SW¼NW¼, and NW¼SW¼;
  Sec. 15, lots 5, 6, and 7;
  Sec. 22, lots 1 and 2, and NW¼NE¼;
  Sec. 23, lots 2, 3, and 4, and S½NW¼.
T. 25 N., R. 1 E.,
  Sec. 2, lots 6 and 10;
  Sec. 11, lot 2, SW¼NE¼, and SW¼SW¼;
  Sec. 14, NW¼NW¼, W½SE¼NW¼, and W½NE¼SW¼;
  Sec. 22, lots 1 and 2, and NE¼NE¼;
  Sec. 23, lots 3 and 4;
  Sec. 26, lots 3, 4, and 5, NW¼NW¼, SE¼NW¼, and W½SE¼;
  Sec. 27, SW¼NE¼;
  Sec. 35, NW¼NE¼.
T. 26 N., R. 1 E.,
  Sec. 2, lots 6, 11, 12, and 13, N½SW¼, and SW¼SE¼;
  Sec. 3, lots 1 and 2, SE¼NE¼, and NE¼SE¼;
  Sec. 11, NE¼NE¼;
  Sec. 13, lot 1;
  Sec. 14, lots 5, 6, and 7, NE¼NE¼, SE¼NW¼, and NE¼SW¼;
  Sec. 22, E½NE¼;
  Sec. 23, NW¼NW¼;
  Sec. 26, lots 5 and 8, and W½SE¼;
  Sec. 35, lots 1 and 2, and E½SE¼NW¼.
T. 24 N., R. 2 E.,
  Sec. 13, SE¼NE¼, SE¼SW¼, and NW¼SE¼;
  Sec. 18, lots 5 to 8, inclusive, lot 10, and SE¼SW¼;
  Sec. 19, lot 1;
  Sec. 20, lot 2;
  Sec. 21, lot 9;
  Sec. 23, NW¼NE¼ and NW¼SW¼.
T. 24 N., R. 3 E.,
  Sec. 14, lot 7.

The areas described aggregate 3,626.52 acres in Idaho County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resource other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary

determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

March 25, 1988.

[FR Doc. 88-7159 Filed 3-31-88; 8:45 am]

BILLING CODE 4310-GO-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 65)]

Applications for Motor Common Carrier Authority To Transport Passengers; Recipients of Governmental Financial Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts its interim rules published December 2, 1987 (52 FR 45827). This action implements section 339 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (the Act), Pub. L. 100-17, 101 Stat. 132, enacted April 2, 1987. Section 339 amended the Interstate Commerce Act to change the entry policy for motor common carriers of passengers that are recipients of governmental financial assistance. The Act established two types of assistance recipients, public and private, and adopted additional public interest factors to be considered under the current public interest test in evaluating their applications. The additional public interest factors require that the Commission consider: (1) The amount and extent of governmental financial assistance received by an applicant for a certificate; and (2) in applications by public recipients, whether those opposing an application are motor common carriers willing and able to provide the transportation proposed. The final rules provide procedures by which public and private recipients may apply for common carrier authority and by which such applications may be opposed. Final changes to Application Form OP-1 are adopted to correspond to the revised application rules. Pending reissuance of the OP-1, the changes are contained in an addendum to the OP-1 that an applicant for motor common carrier passenger authority is required to complete and include in any application filed after December 2, 1987.

EFFECTIVE DATE: Final rules are effective April 1, 1988. Interim rules were effective December 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Judy Ann Barnes (202) 275-7962

or

Rich Felder, (202) 275-7691
(TDD—(202) 275-1721)

SUPPLEMENTARY INFORMATION: Comments on the interim rules were received from The United Bus Owners of America and the American Bus Association. Neither party suggests any changes, and both support adoption of the interim rules. A complete discussion of the new statutory changes, revised regulations and OP-1 is contained in the Commission's decision adopting the interim rules, *Passenger Comm. Car. Appl. Recipients Gov. Assist.*, 4 I.C.C.2d 114 (1987).

Environmental and Energy Considerations

The rules adopted here will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We confirm our preliminary assessment and certify that the final rules will not have a significant economic impact on a substantial number of small entities because they are not required to file applications that are substantially different from those currently filed.

List of Subjects in 49 CFR Part 1160

Administrative practice and procedure, Buses, Motor carriers.

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559, 16 U.S.C. 1456.

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

Accordingly, the interim rules amending 49 CFR Part 1160, Subparts D and E which were published at 52 FR 45827-45829 on December 2, 1987, are adopted as final rules without change.

Decided: March 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7137 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 80351-8051]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 29, 1988.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Government of Canada. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The substantive changes from the previous regulations, published at 52 FR 16268 (May 4, 1987), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) "fishery officer" and "fishing period limit" are defined; (3) an in-season management

authority is established which authorizes the IPHC, within certain limits, to establish or modify in the course of the fishing year fishing periods, fishing period limits, recreational bag limits, closed areas, size limits, or gear restrictions; (4) new restrictions are imposed upon vessels when fishing period limits are in effect; (5) sport fishing season dates are changed and the minimum size limit for sport-caught halibut in all waters off the coasts of California, Oregon, and Washington is abolished; (6) new daily sport fishing bag limits and possession limits are established; (7) regulations governing fishing by United States Treaty Indian tribes are modified; and (8) regulations authorizing special commercial fisheries for 1987 in Regulatory Areas 3A and 3B (52 FR 33831, September 8, 1987; 52 FR 36940, October 2, 1987) are superseded.

The Northern Pacific Halibut Act of 1982 (the Act), Pub. L. 97-176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the Under Secretary of Commerce asked the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary.

In compliance with this request, the Pacific Fishery Management Council (PFMC) developed a catch-sharing plan to allocate the total allowable catch between treaty Indian and non-Indian fisheries and between commercial and recreational non-Indian fishermen for Convention statistical area 2A off Washington, Oregon, and California, in the Strait of Juan de Fuca, and in Puget Sound. The PFMC plan distributes the halibut catch between treaty Indian and non-Indian fisheries for 1988 and between non-Indian commercial and recreational fisheries for 1988 and 1989.

The PFMC plan provides a commercial fishing season for treaty Indians from March 31 through October 31 with no quota. It divides the non-Indian catch limit by apportioning 55 percent to the commercial fishery and 45 percent to the recreational fishery up to a total non-Indian catch limit of 600,000 pounds. For catch limits higher than 600,000 pounds, the commercial share increases. It also divides the recreational catch between the States of Oregon (90,000 pounds) and Washington (210,000 pounds).

The PFMC adopted the catch-sharing plan for public review at its November 18-19, 1987, meeting in Portland, Oregon. The proposed plan was subsequently submitted to the Secretary of Commerce (Secretary) for review and approval. The Secretary published the proposed catch-sharing plan in the **Federal Register** (53 FR 156), on January 5, 1988 with a request for public comments. On January 14, 1988, the PFMC, following review of public comments and a public hearing, adopted a final catch-sharing plan which it forwarded to the Secretary for review and approval and to the IPHC for implementation. The Secretary approved the final catch-sharing plan and published it in the **Federal Register** on March 9, 1988 (53 FR 7528). Regulations which implement the catch-sharing plan were adopted by the IPHC and are included in this action. Also, included in this action at § 301.19(i) is a regulation promulgated by the Secretary of Commerce which provides notice of treaty Indian tribes' usual and accustomed fishing places as prescribed under Federal judicial decisions. These areas may be revised as ordered by a Federal court.

In July, 1987, the North Pacific Fishery Management Council (NPFMC) invited the public to submit halibut allocation proposals in Convention waters off Alaska for the 1988 fishery. The NPFMC received and reviewed 73 proposals, and decided at its September, 1987, meeting to only consider modifications to certain allocative measures already in place in Regulatory Areas 4C and 4E. The NPFMC adopted the allocation measures for public review at its September meeting and requested comments on the allocation measures, draft environmental assessment, and regulatory impact review (52 FR 41485, October 28, 1987). At its December 8-11, 1987, meeting, the NPFMC, following review of public comments and advice from its advisory panels, adopted allocation measures which it forwarded to the Secretary for approval. The Secretary has published the NPFMC allocation measures as proposed regulations at (53 FR 8938, March 18, 1988) for public comment. Final rules will be codified with these IPHC regulations at 50 CFR Part 301. Sections of these regulations are being reserved for the later insertion of the NPFMC allocation measures.

Allocation measures contained in the NPFMC proposal include (1) preventing commercial fishermen who do not land all of their total annual commercial halibut catch in Regulatory Area 4E or the adjacent closed area from participating in the 4E fishery until 80 percent of the 4E catch limit has been taken; (2) establishing trip limits for vessels fishing in Regulatory Areas 4E and 4C; and (3) requiring commercial fishermen who do not land all of their total annual commercial halibut catch in Regulatory Area 4, Regulatory Area 4E (or the adjacent closed area) or Regulatory Area 4C to obtain vessel clearance and hold inspection in Dutch Harbor or Akutan, Alaska, before and after fishing in those areas. The IPHC has also adopted, and the Secretary of State has approved, identical vessel clearance and hold inspection regulations for the 1988 fishery.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, Jensen v. National Marine Fisheries Service, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. Section 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations. These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

The Secretarial rule included at § 301.19(i) merely provides notice of the boundaries of treaty Indian tribes' usual and accustomed fishing places as prescribed under Federal judicial decisions. Therefore, opportunity for prior public comment and a delayed effectiveness period are unnecessary and are not being provided under the Administrative Procedure Act, 5 U.S.C. 553. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. No collection of information under the Paperwork Reduction Act is included in the Secretarial rule.

This notice of final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: March 25, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the following changes are made to 50 CFR Chapter III: Sections 301.1 to 301.20 are revised, § 301.21 is added, and the Appendix to Part 301 is republished without change to read as follows (in effect, Part 301 is revised):

PART 301—PACIFIC HALIBUT FISHERIES

Sec.
301.1 Short title.
301.2 Interpretation.

Sec.
301.3 In-season actions.
301.4 Application.
301.5 Regulatory areas.
301.6 Fishing periods.
301.7 Closed periods.
301.8 Closed area.
301.9 Catch limits.
301.10 Fishing period limits.
301.11 Size limits.
301.12 Licensing of vessels.
301.13 Vessel clearance and hold inspection.
301.14 Logs.
301.15 Receipt and possession of halibut.
301.16 Fishing gear.
301.17 Retention of tagged halibut.
301.18 Supervision of unloading and weighing.
301.19 Fishing by United States treaty Indian tribes.
301.20 Sport fishing for halibut in all waters.
301.21 Previous regulations superseded.
Appendix to Part 301

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part, *Automated hook stripper* (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks;

Charter vessel means a vessel used for hire in sport fishing for halibut, not including a vessel without a hired operator;

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Fishery officer means any state, federal, or provincial officer authorized to enforce this Part, including, but not limited to the National Marine Fisheries Service (NMFS), Canadian Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Fishing period limit means the maximum amount of halibut that may be caught and landed by a vessel during one fishing period;

Land with respect to halibut means to bring to shore and to offload;

License means a halibut fishing license issued by the Commission pursuant to §§ 301.12 and 301.20 of this part;

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

Person includes an individual, corporation, firm, or association;

Regulatory area means an area referred to in § 301.5 of this part;

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached;

Sport fishing means all fishing other than commercial fishing;

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are magnetic and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

§ 301.3 In-season actions.

(a) The Pacific halibut fishery will be managed so as not to exceed the catch limits established preseason for each regulatory area.

(b) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(1) Will not result in exceeding catch limits;

(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and,

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(c) In-season actions may include, but are not limited to, establishment or modification of the following:

(1) Fishing periods;

(2) Fishing period limits (trip limits);

(3) Recreational bag limits;

(4) Closed areas;

(5) Size limits; or,

(6) Gear restrictions.

(d) In-season changes will be effective at the time and date specified by the Commission.

(e) The Commission will announce in-season actions under this section by providing notice to major halibut processors, Federal, State, United States treaty tribal, and Provincial fishery officials, and the media.

§ 301.4 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.5 to 301.18 of this part apply to commercial fishing for halibut.

(c) Section 301.19 applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.

(d) Section 301.20 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.5 Regulatory areas.

The following areas shall be regulatory areas (refer to figure in Appendix following § 301.21 of this part) for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the States of California, Oregon, and Washington.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N., longitude 155°35′00″ W.) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29′00″ N., longitude 164°20′00″ W.) and south of latitude 54°49′00″ N. in Isanotski Pass.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.8 of this part that are east of longitude 172°00′00″ W. and south of latitude 56°20′00″ N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20′00″ N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.8 of this part which are east of longitude 171°00′00″ W., south of latitude 58°00′00″ N., and west of longitude 168°00′00″ W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00′00″ W.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.8 of this part, east of longitude 168°00′00″ W., and south of latitude 65°34′00″ N.

§ 301.6 Fishing periods.

(a) The fishing periods for each regulatory area are set out in Table 1 and apply where the catch limits specified in § 301.9 of this part have not been taken.

TABLE 1.—REGULATORY AREA FISHING PERIODS

2A	2B	2C-3A-3B	4A	4B	4D
5/25-7/01	5/06-5/14	5/23-5/24	5/23-5/24	5/23-5/24	8/02-8/09
7/25-7/30	[1]-6/12	6/20-6/21	6/20-6/21	6/20-6/21	9/16-[1]
8/31-[1]	[1]-8/25	9/07-9/08	8/05-8/06	8/04-8/07	
		10/03-10/04	9/07-9/08	9/07-9/08	
		10/17-[1]	9/16-[1]	9/16-[1]	
	4C			4E	
6/20-6/21	8/03-8/04	9/16-9/17	6/01-6/03	7/22-7/24	9/11-9/13
6/22-6/23	8/05-8/06	9/18-9/19	6/04-6/06	7/25-7/27	9/14-9/16
6/24-6/25	8/07-8/08	9/20-9/21	6/07-6/09	7/28-7/30	9/17-9/19
6/26-6/27	8/09-8/10	9/22-9/23	6/10-6/12	7/31-8/02	9/20-9/22
6/28-6/29	8/11-8/12	9/24-9/25	6/13-6/15	8/03-8/05	9/23-9/25
6/30-7/01	8/13-8/14	9/26-9/27	6/16-6/18	8/06-8/08	9/26-9/28
7/02-7/03	8/15-8/16	9/28-9/29	6/19-6/21	8/09-8/11	9/29-10/01
7/04-7/05	8/17-8/18	9/30-10/01	6/22-6/24	8/12-8/14	10/02-10/04
7/06-7/07	8/19-8/20	10/02-10/03	6/25-6/27	8/15-8/17	10/05-10/07
7/08-7/09	8/21-8/22	10/04-10/05	6/28-6/30	8/18-8/20	10/08-10/10
7/10-7/11	8/23-8/24	10/06-10/07	7/01-7/03	8/21-8/23	10/11-10/13
7/12-7/13	8/25-8/26	10/08-10/09	7/04-7/06	8/24-8/26	10/14-10/16
7/14-7/15	8/27-8/28	10/10-10/11	7/07-7/09	8/27-8/29	10/17-10/19
7/16-7/17	8/29-8/30	10/12-10/13	7/10-7/12	8/30-9/01	10/20-10/22
7/18-7/19	8/31-9/01	10/14-10/15	7/13-7/15	9/02-9/04	10/23-10/25
7/20-7/21	9/02-9/03	10/16-10/17	7/16-7/18	9/05-9/07	10/26-10/28
7/22-7/23	9/04-9/05	10/18-10/19	7/19-7/21	9/08-9/10	10/29-10/31
7/24-7/25	9/06-9/07	10/20-10/21			
7/26-7/27	9/08-9/09	10/22-10/23			
7/28-7/29	9/10-9/11	10/24-10/25			
7/30-7/31	9/12-9/13	10/26-10/27			
8/01-8/02	9/14-9/15	10/28-10/29			
		10/30-10/31			

[1] Date to be announced by the Commission.

(b) [Reserved]

(c) Each fishing period in Areas 2A and 2B shall begin and terminate at 1200 hours Pacific Daylight Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(d) Each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin and terminate at 1200 hours Alaska Standard or Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(e) All commercial fishing for halibut in Areas 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(f) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.7 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.6 of this part in respect to that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.16(f) and (g) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.8 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.) to a point at latitude 56°20′00″ N., longitude 168°30′00″ W., south of a line from the latter point to Cape Newenham (latitude 58°39′00″ N., longitude 162°10′25″ W.), and north of latitude 54°49′00″ N. in Isanotski Pass are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.9 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.6 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	330,000	150
2B	12,500,000	5,670
2C	11,500,000	5,216
3A	36,000,000	16,329
3B	8,000,000	3,629
4A	1,900,000	862
4B	2,000,000	907
4C	700,000	318
4D	700,000	318
4E	100,000	45

(b) The weights in each catch limit shall be computed on the basis that the heads of the fish are off and their entrails removed.

(c) Notwithstanding paragraph (a), the total allowable catch in Area 2A will be limited to 750,000 pounds (340 metric tons) for the treaty Indian, non-Indian commercial, and sport fisheries combined.

(d) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(e) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24–hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(f) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 44,000,000 pounds (19,958 metric tons) for the combined areas is taken.

(g) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,900,000 pounds (1,769 metric tons) for the combined areas is taken.

(h) When under paragraphs (d), (e), (f) or (g) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.10 Fishing period limits.

(a) It shall be unlawful for any licensed vessel to catch or land more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b)–(c) [Reserved]

(d) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(e) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

§ 301.11 Size limits.

(a) No person shall take or possess any halibut that,

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.12 Licensing of vessels.

(a) No person shall fish for halibut from a vessel, nor possess halibut aboard a vessel used to fish for halibut, unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(b) A license issued in respect of a vessel referred to in paragraph (a) of this section must be carried on that vessel at all times and the holder of it shall permit is inspection by customs and fishery officers of the Contracting Parties.

(c) The Commission shall issue a license without fee from its office in Seattle, Washington, upon receipt of a completed written and signed "Application for Vessel License for the Halibut Fishery" form.

(d) Application forms may be obtained from customs of fishery officers of either Contracting Party, or from the Commission.

(e) Licenses issued under this section shall be valid only during the year in which they are issued.

(f) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(g) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(h) The United States may suspend, revoke, or modify any permit issued under this section under policies and procedures in 15 CFR Part 904.

§ 301.13 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.8 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.8 of this part may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section are mutually exclusive.

(e) The vessel clearance and hold inspections required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(f) The vessel operator shall specify the specific fishing period and regulatory area(s) in which fishing will take place.

(g) Vessel clearances and hold inspections required under paragraphs

(a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) No halibut shall be on board at the time of inspection required by paragraph (g) of this section.

(i) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(j) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

§ 301.14 Logs.

(a) The operator of any vessel five (5) net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following offloading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.15 Receipt and possession of halibut.

(a) No person shall receive halibut from a vessel that does not have the license required by § 301.12 on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State or Provincial fish ticket referred to in paragraph (b) of this section.

(d) A copy of the fish tickets referred to in paragraph (b) of this section shall be

(1) Retained by the person making them for a period of two years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be illegal to enter a Halibut Commission license number on a State or Provincial fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.16 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number, which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(e) All setline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing shall be

(1) Floating and visible on the surface of the water; and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in § 301.5 (h) and (j) of this part.

(i) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(j) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.17 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.18 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.19 Fishing by United States treaty Indian tribes.

(a) Relation to other laws. Except as provided in this section, all regulations of the Commisson in this part apply to halibut fishing by members of United States treaty Indian tribes from the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Squamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 46°53'18" N. and east of longitude 125°44'00" W.

(d) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 1 through October 31.

(e) Subsistence and ceremonial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from February 1 through December 31, except that from February 1 through February 29 and November 1 through December 31, treaty Indians may take and retain, but not sell, not more than two halibut per day.

(f) Notwithstanding paragraphs (d) and (e) of this section, the use of setlines is prohibited from March 1 through March 31 in the Strait of Juan de Fuca and Puget Sound east of a line from Bonilla Point (latitude 48°55'44" N., longtitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.).

(g) Size limit. All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the size limits specified in § 301.11.

(h) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section who is engaged in commercial, subsistence or ceremonial fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must fish from a vessel properly identified and marked with the treaty Indian vessel identification as required by 25 CFR Part 249, Subpart A.

(i) The following table (Table 2) sets forth the fishing areas of each of the twelve United States treaty Indian tribes fishing pursuant to this § 301.19. Within Subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TABLE 2.—FISHING AREAS FOR U.S. TREATY INDIAN TRIBES

Tribe	Boundaries
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Swinomish.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1351–1352, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.
Squamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Squamish Tribe may fish under rights secured by treaties with the United States.
Skokomish.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
Makah	North of 48°02'15" N. latitude (Norwegian Memorial), west of 123°42'30" W. longitude, and east of 125°44'00" W. longitude.
Quileute	Between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude.
Hoh	Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W. longitude.
Quinault	Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude.
L. Elwha	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Tribe may fish under rights secured by treaties with the United States.
Jamestown.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1466, to be places at which the Jamestown Tribe may fish under rights secured by treaties with the United States.
Port Gamble.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Tribe may fish under rights secured by treaties with the United States.

§ 301.20 Sport fishing for halibut in all waters.

(a) Sport fishing for halibut in all waters

(1) Off the coasts of Alaska and British Columbia is only permitted from February 1 to December 31;

(2) In Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°55'44" N., longitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.) is only permitted from March 1 to June 15;

(3) Off the North Washington Coast west of the line described in paragraph (a)(2) of this section and north of the Queets River (latitude 47°32'00" N., longitude 124°21'15" W.) is only permitted from May 1 to June 30;

(4) South of the Queets River, including the South Washington Coast, Oregon, and California is only permitted from April 1 to September 30.

(b) Notwithstanding paragraph (a) of this section the catch limit for halibut.

(1) For Washington waters north of the Queets River, including the Strait of Juan de Fuca and Puget Sound, is 207,000 pounds (93.9 metric tons);

(2) For waters between the Queets River and the Oregon/Washington border is 3,000 pounds (1.4 metric tons);

(3) For waters south of the Oregon/Washington border is 60,000 pounds (27.2 metric tons).

(c) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(d) The daily bag limit in waters described in paragraphs (a)(1), (a)(3), and (a)(4) of this section is two halibut of any size per day per person.

(e) The daily bag limit in waters described in paragraph (a)(2) of this section is one halibut of any size per day per person.

(f) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(g) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(h) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

(i) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(j) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(k) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(l) A license issued in respect of a vessel referred to in paragraph (k) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(m) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed written and signed "Application for Vessel License for the Halibut Fishery" form.

(n) Licenses issued under this section shall be valid only during the year in which they are issued.

§ 301.21 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

BILLING CODE 3010-23-M

Appendix to Part 301

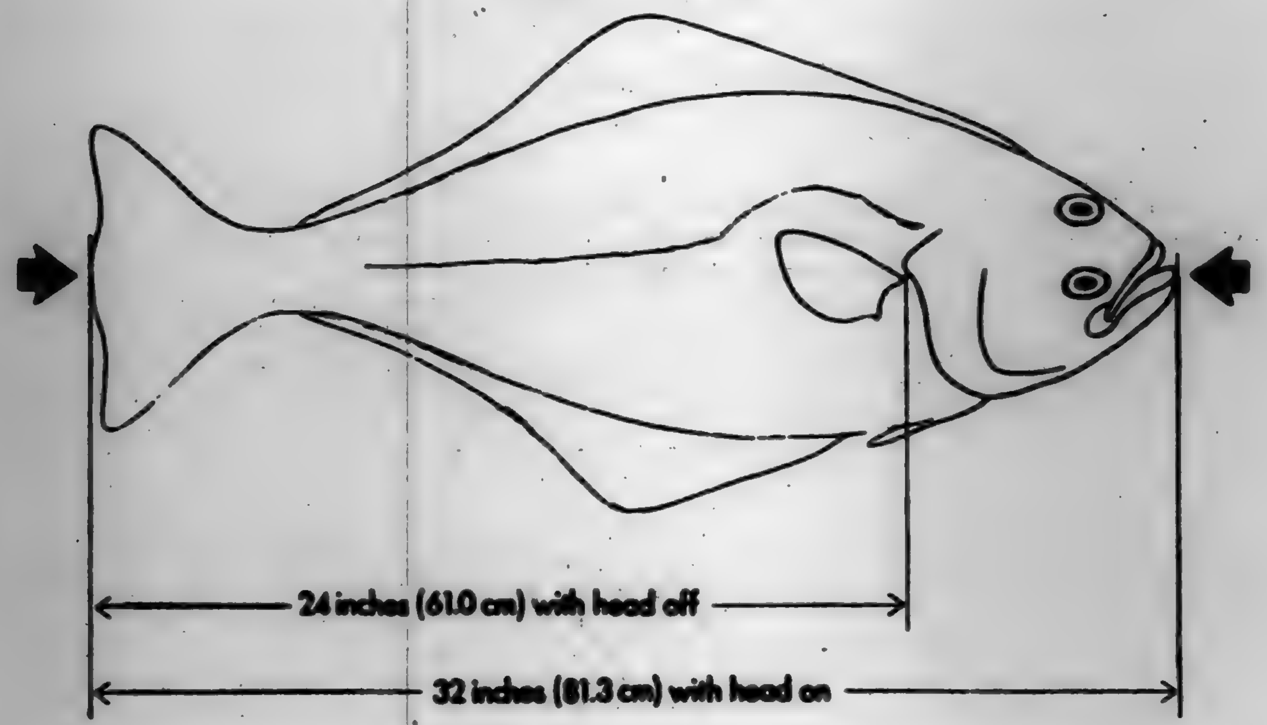
24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on

Minimum commercial size.

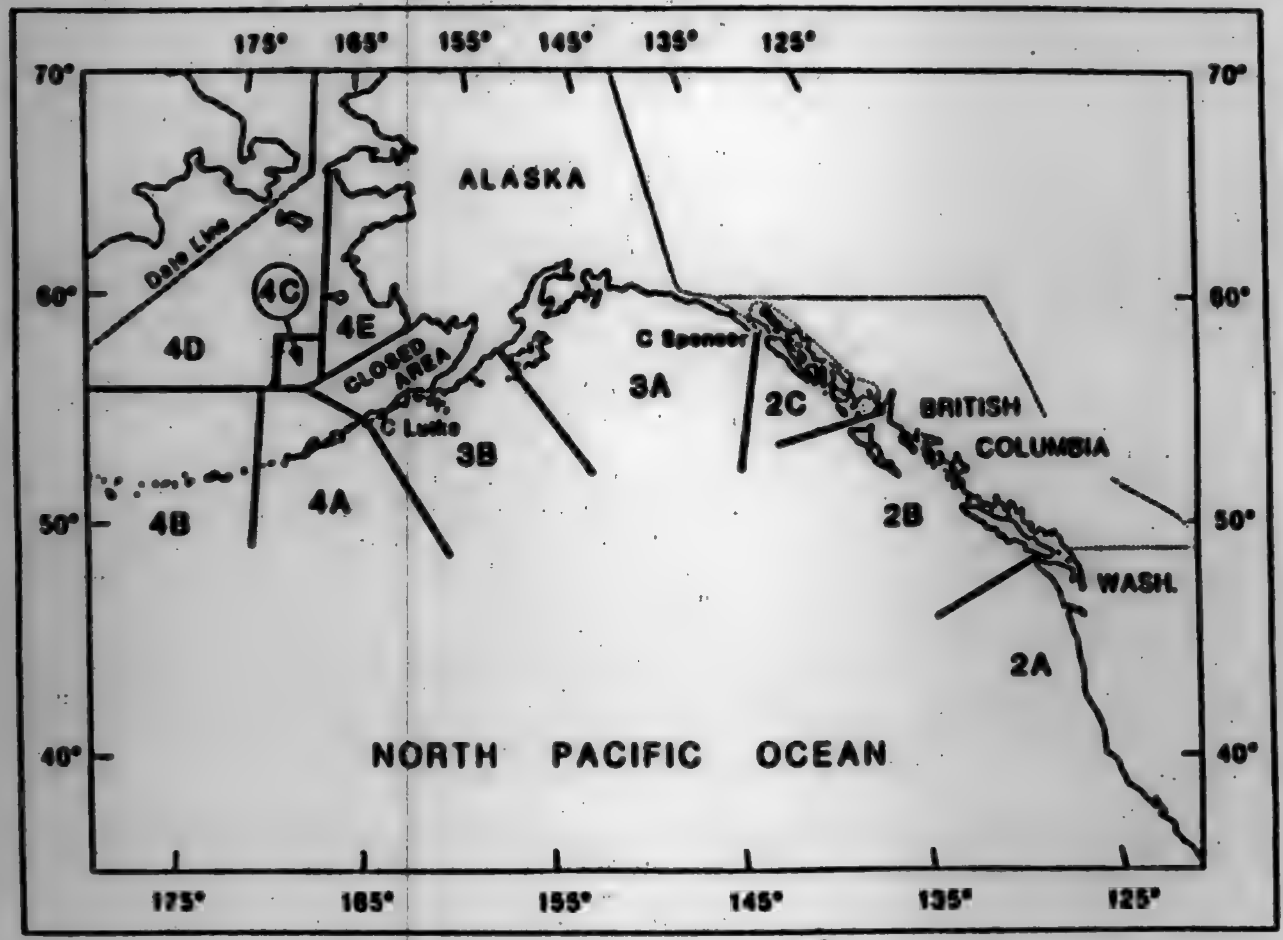

Regulatory areas for the Pacific halibut fishery.

[FR Doc. 88-7191 Filed 3-29-88; 5:04 pm]

BILLING CODE 3510-22-C

Proposed Rules

Federal Register

Vol. 53, No. 63

Friday, April 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 3, 1988, the Agricultural Marketing Service (AMS) published a proposed rule to amend the official U.S. standards for grades of beef carcasses and the related standards for grades of slaughter cattle. The proposed rule would allow for the separate application of either the quality grade and/or the yield grade for beef carcasses and for slaughter cattle without changing either the quality grade or yield grade requirements. The AMS is extending the comment period to June 6, 1988, because a major trade organization requested additional time to evaluate the proposal and file comments.

DATE: Comments must be received on or before June 6, 1988.

ADDRESS: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2649 South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, 202-447-4406.

SUPPLEMENTARY INFORMATION: On February 3, 1988, the AMS published a proposed rule in the **Federal Register** (53 FR 3025-3028) to amend the beef carcass (7 CFR Part 54) and the slaughter cattle (7 CFR Part 53) standards. The proposed rule would provide for the separate application of either the quality grade and/or the yield grade for steer, heifer, cow, and bullock carcasses and for slaughter cattle without changing either the quality grade or yield grade requirements. These changes would provide more flexibility in using the grading service by permitting the voluntary use of either the beef quality grades and/or the yield grades.

The original comment period was scheduled to end on April 4, 1988. However, an industry trade organization requested additional time to study the proposal and to develop comments. The AMS has determined that there is sufficient justification for extending the comment period until June 6, 1988.

Done at Washington, DC, on: March 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-7205 Filed 3-31-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Aministration

7 CFR Part 1701

Special Equipment Contract (REA Form 397) (Including Installation); Special Equipment Contract (REA Form 398) (Not Including Installation); Revision of Existing Contract Forms

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) is proposing to revise REA Form 397, Special Equipment Contract (Including Installation), and REA Form 398, Special Equipment Contract (Not Including Installation), to update the terms and conditions to reflect the current technological and market environment. REA Forms 397 and 398 are used by REA telephone borrowers to purchase voice frequency repeaters, trunk and subscriber carrier, microwave radio, mobile & fixed dial radio, line concentrators and lightwave electronic equipment. Forms 397 and 398 were last revised in December 1967 and November 1962, respectively. Public comments or suggested changes are invited.

DATE: Public comments must be received by REA no later than May 2, 1988.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunicatons Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500.

FOR FURTHER INFORMATION CONTACT: Lamar Moore, Chief, Transmission Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2840 South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone (202) 382-8665.

SUPPLEMENTARY INFORMATION: REA Forms 397 and 398 have become outdated due to technological advancements and other market changes. Advanced technology and equipment concepts have introduced new legal issues that need to be addressed. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues that need to be addressed in updating these contracts are: Expansion of patent infringement protection to include copyrights, trade marks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provision; and support of discontinued product. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarentees, and 10.852, Rural Telephone Bank Loans.

Further public comment will be solicited when the proposed rule is published.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: March 28, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-7162 Filed 3-31-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ASW–55]

Proposed Amendment of Transition Area; Levelland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area located at Levelland, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Levelland Airport utilizing the Levelland Nondirectional Radio Beacon (NDB) has made this proposed amendment necessary. The intended effect of this proposed amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the airport.

DATES: Comments must be received on or before May 5, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–55, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–55." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area located at Levelland, TX. The development of a new SIAP to Runway 35 at the Levelland Airport utilizing the Levelland NDB has necessitated this proposed amendment. The existing transition area would remain unchanged, but would have a new arrival extension added to the south. The intended effect of this proposed amendment is to provide adequate controlled airspace to aircraft executing all SIAP's serving the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Levelland, TX [Amended]

By adding to the end of the legal description: "and within 3.5 miles each side of the 175° bearing of the Levelland NDB, extending from the 7-mile radius to 11.5 miles south of the Levelland NDB."

Issued in Fort Worth, TX on March 19, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–7157 Filed 3–31–88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS–62036D; FRL 3360–1]

Asbestos; Release of Information for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments on documents placed into public docket.

SUMMARY: EPA is providing an opportunity for public comment on four major documents containing analyses EPA will be using to support its rulemaking under section 6 of the Toxic Substances Control Act (TSCA) for the ban and phaseout of certain uses of asbestos. These documents are: the Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis.

DATES: Comments on the four documents must be received by EPA on or before May 31, 1988.

ADDRESS: Submit written comments, identifying by the docket number (OPTS–62036D), in triplicate to: TSCA Public Docket Office (TS–793), Attention: TSCA Docket Officer, Rm. G–004 NE. Mall, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202 554–1404.

SUPPLEMENTARY INFORMATION: On January 29, 1986, EPA proposed a rule under section 6 of TSCA which would ban immediately the manufacture, import, and processing of certain asbestos products, and would phase out the remaining products over a 10-year period (51 FR 3738). This proposal outlined several options for impementing the ban and phase out and allowed 5 months for public comment. EPA received approximately 200 written comments. EPA received further public comment on the proposal in legislative and cross-examination hearings held in July and October of 1986.

Some of the information upon which the proposal was based was gathered in the years 1979, 1980, and 1981. EPA has updated its information base with data collected during 1986 and 1987. Using this updated information base, EPA has revised many of the analyses supporting the rulemaking proceeding. EPA is placing four major documents which contain the revised analyses in the public rulemaking docket for comment: The Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis (RIA). The Asbestos Exposure Assessment analyzes the occupational exposure to asbestos and asbestos releases from manufacturing plants and commerical operations in the United States. The Asbestos Modeling Study analyzes the ambient exposure levels resulting from the release of asbestos to the atmosphere from industrial and commerical sources. The Nonoccupational Asbestos Exposure Report analyzes the level of consumer and ambient exposures to asbestos. The RIA contains discussions of the costs and benefits of various regulatory options; a regulatory flexibility analysis, including distribution analysis, community impact analysis, small business impacts, and international trade impacts; appendices on models and computational procedures, survey results, use and substitutes analyses, health effects and studies, the cost of converting capital equipment from asbestos-using processes, producer surplus loss determination, economic impacts data and analyses, and sensitivity analysis. EPA is also placing in the rulemaking docket, and accepting comments on, information that was relied on in producing those analyses and which is referenced in the four major documents.

After reviewing these four documents, interested persons may submit comments on them for EPA's consideration. The Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis set forth well documented analyses based on factual information obtained from public and private sources. In particular, persons are encouraged to take this opportunity to point out any factual inaccuracies and omissions in EPA's exposure and cost data set forth in these documents. Any such comments should reference the appropriate document and state with specificity any factual problems with data that led to EPA's conclusions and provide specific information or references to support the comments. The Agency will consider any such comments and supplement or modify the analysis if appropriate.

This notice is intended to advise the public of the availability of these four documents and to fully disclose the information that provides the technical support for the asbestos ban and phase out rulemaking. Comments should be limited to the information in the documents which are the subject of this notice. It is unnecessary to duplicate previous comments on the proposed rule except to the extent they are affected by these four documents.

List of Subjects in 40 CFR Part 763

Environmental protection,
Hazardous substances,
Reporting and recordkeeping requirements,
Asbestos.

Dated: March 29, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–7289 Filed 3–31–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Elevated Building Coverage

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program by providing that the limitation in flood insurance coverage in the SFIP currently applicable to all elevated buildings having enclosures, contents, machinery, building components, equipment, or fixtures below the elevated floor, be applicable only to elevated Post-FIRM buildings. Post-FIRM buildings are buildings for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map for the community in which the building is located or occurred after December 31, 1974, if that is later. This also includes buildings substantially improved (i.e., improved or repaired where the cost is at least 50% of the market value of the building), as well as new construction. This proposed rule would add a definition of "Post-FIRM building" to the SFIP.

DATES: Comments must be received on or before May 31, 1988.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: On October 1, 1983, the Standard Flood Insurance Policy (SFIP) was amended by providing a limitation of flood insurance coverage as to buildings elevated above grade by means of posts, pilings, piers and other foundation walls (see Vol. 48, **Federal Register**, at page 39066 et seq., August 29, 1983). The coverage limitation excludes flood insurance coverage under the SFIP for enclosed areas below the elevated floors of such buildings and for the contents in such areas, while retaining coverage for essential foundation and other elements in such areas. What follows is a current enumeration of both the covered elements in such areas and the elements which are excluded from coverage:

National Flood Insurance Program—Scope of Elevated Building Enclosure Coverage

Elements Covered

- Foundation Elements
- Required Utility Connections
- Sump Pumps
- Well Water Tanks and Pumps
- Oil Tanks and the Oil in Them
- Cisterns and the Water in Them
- Natural Gas Tanks and the Gas in Them
- Pumps and or Tanks Used in Conjunction With Solar Energy
- Furnaces
- Hot Water Heaters
- Clothes Washers and Dryers
- Food Freezers and the Food in Them
- Air Conditioners
- Heat Pumps
- Electrical Junction and Circuit Breaker Boxes
- Clean-up
- Elevators and Equipment, Except for Such Equipment Located Below the Base Flood Level if Such Equipment was Installed on or After October 1, 1987

Elements Not Covered

- Contents
- Improvements Such as Finished Walls, Floors, and Ceilings
- Building Equipment and Fixtures not Specifically Covered

The 1983 limitation was made applicable to both the regular and emergency programs of the NFIP. However, subsequent review of these regulations in the light of the essential character of the NFIP's emergency program compels that FEMA propose a degree of equitable relief with respect to the limitation as to buildings that were built when the community was in the emergency program of the NFIP. Simply stated, the problem is that the limitation affects property owners, many of whose elevated buildings were enclosed below the elevated floor by former owners in good faith, and in ignorance of the flood insurance exposure to risk because the buildings were constructed prior to the issuance by FEMA of a Flood Insurance Rate Map (FIRM) depicting the degree of flood risk by risk zones which would have provided valuable information to those property owners as to the need to elevate structures under construction in those zones. Typically, such buildings were constructed at a time when the community was participating in the NFIP's emergency program, under which the degree of flood risk was largely unknown and FEMA had not provided information relative to the degree to which, if any, buildings should be elevated above grade so as to be relatively safe from damage occasioned by the "base flood", i.e., the so-called "100-year" flood, or flood having a one per cent per annum chance of occurring. Such buildings, under the NFIP, may be characterized as "Pre-FIRM" buildings, whereas buildings newly constructed or substantially improved after the issuance of the FIRM, may be characterised as "Post-FIRM" buildings and are required to be elevated above grade based on the information provided to the community through the issuance of the FIRM.

The unintended disparity in treatment brought about by the current rule is that it excludes coverage for enclosures at grade and the contents therein for elevated buildings constructed prior to the issuance of the FIRM ("Pre-FIRM" buildings) while, at the same time, affording coverage to the owner of a neighboring non-elevated Pre-FIRM building with its lowest floor at grade because that building was not constructed as elevated and subsequently enclosed down to grade level.

Under NFIP rules, a house constructed as an elevated house can not lose its identity as an "elevated" house. In the case of Pre-FIRM houses this has presented a serious problem in terms of effective and workable administration because when an insured purchases what appears to be a two story house, not until he has a claim does he discover that the insurance protection he paid for, and thought he had, does not exist for the damage to the ground level because it had been subsequently enclosed. In the absence of definitive building records, the NFIP looks to see if the architecture of the house indicates that it was originally elevated and at some later time enclosed. The NFIP also looks for building records to show if, regardless of the appearance of the building, the lower level was enclosed at the time that the building was built, so that the building was not and therefore is not an "elevated" house. This type of proof is often virtually impossible to obtain for Pre-FIRM houses, because building records for these older houses are not uniformly available, and when available will not necessarily provide evidence of building history. This produces a disparity in the treatment of insureds because an insured who purchases a one story house is paid for the losses to his one and only floor, while the insured who purchased what reasonably looked to him as a two story house and has purchased an identical insurance policy is denied recovery for losses to his first floor.

By contrast, in the case of a Post-FIRM house, the community has been required to adopt ordinances prescribing to what elevation new construction must be built in areas of special flood hazard. Whether a house is elevated is much easier to determine because the community is required to keep building records which show to what elevation the building was required to be built. The enclosure of space below the elevated floor is strictly regulated. Since any enclosed space will constitute a violation of local ordinances, there is no inequity for a denial of coverage by the NFIP for the enclosed floor of an "elevated" building.

FEMA believes that, in the interest of treating equally the owners of both kinds of Pre-FIRM buildings (i.e., a building initially built at grade and a building initially elevated above grade and subsequently enclosed), it is necessary to amend the coverage limitation so that it will not apply to enclosures and contents below the elevated floors of elevated Pre-FIRM buildings, i.e., buildings constructed prior to the issuance of the FIRM or on or before December 31, 1974, whichever is later. (This, of course, must be done through the rulemaking process, as the SFIP is contained in the Code of Federal Regulations.) Put another way, the proposed rule, if adopted, will limit the SFIP's exclusionary language as to coverage for enclosures and contents below the elevated portions of elevated buildings, to only those enclosures and contents below the elevated portions of Post-FIRM buildings, i.e., buildings that the start of construction or substantial improvement of which occurred on or after the effective date of the FIRM, or after December 31, 1974, whichever is later.

Since Pre-FIRM buildings with enclosures would no longer be subject to the limitation coverage under the SFIP, FEMA intends to increase the premium rates for such buildings as part of future premium rate changes after this rule becomes final. Thus, the existing premium rate differential between the rates for Pre-FIRM elevated buildings without enclosures and the higher rates for Pre-FIRM elevated buildings with enclosures would be increased.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule will not have a significant economic impact on a substantial number of small entities and therefore has not undergone regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collecton of information requirement as described in section 3504(h) of the Paper work Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Chapter I, Subchapter B, is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 61.5 is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph (f)(9) the word "Post-FIRM" and by adding to the end of paragraph (f)(9) the following sentence:

§ 61.5 Special terms and conditions.

* * * * *

(f) * * *

(9) * * * "Post-FIRM building" means, as used in this paragraph (f)(9), a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

Appendix A(1) of Part 61—[Amended]

3. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. Article II—*Definitions* is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

* * * * *

b. Article V—*Property Not Covered* is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

Appendix A(2) of Part 61—[Amended]

4. Appendix A(2) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. The *Definitions* section is amended by adding, alphabetically, a definition of "Post-FIRM building" to read as follows:

* * * * *

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever, is later.

* * * * *

b. The *Property not Covered* section is amended by adding between the word "elevated" and the word "building" in the phrase "elevated building" each of the four times it appears in paragraph F the word "Post-FIRM".

Dated: March 25, 1988.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-7127 Filed 3-31-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[DA 88-52]

Motions for Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Order granting NECA's request for an extension of the pleading cycle established in the *City of Brookings* remand proceeding.

SUMMARY: By delegated authority, Chief of the Common Carrier Bureau adopted an Order on January 22, 1988 (Order DA 88-52 (released February 1, 1988)), granting NECA's request that the pleading cycle established in the *City of Brookings* Remand Proceeding be extended. The Order requested that interested parties file reply comments in this proceeding on or before March 4, 1988.

DATES: Reply comments must have been filed on or before March 4, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (DA 88-52), adopted January 22, 1988 and released February 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Affairs Office (Room 202), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, Suite 140, 2100 M Street, NW., Washington, DC 20037.

Summary of Order

1. On October 17, 1987, the Commission requested comments and replies on data that the Commission had requested in response to the *City of Brookings Municipal Telephone Company et al.* v. *Federal Communications Commission*, 822 F.2d 1153 (D.C. Cir. 1987) remand proceeding.[1] On January 13, 1988, NECA requested that the Commission extend the pleading cycle established for filing reply comments in this proceeding. NECA claimed that proper analysis of technical material contained in comments filed in this proceeding will require additional time and resources, including the assistance of outside statistical experts. The Commission granted the request to extend the pleading cycle for filing reply comments to March 4, 1988.

Ordering Clauses

2. *Therefore, it is ordered,* that reply comments in the *City of Brookings* Remand Proceeding may be filed on or before March 4, 1988.

3. Accordingly, *it is hereby ordered,* pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the motion of NECA, described in paragraph 1, *is granted.*

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[1] Not pubished in the Federal Register.

Federal Communications Commission.

Carl Lawson,

Deputy Chief, Common Carrier Bureau, Acting Secretary.

[FR Doc. 88-7015 Filed 3-31-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Ch. I

[DA 88-279]

Motions for Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Order permitting supplemental comments that are directed to factual or methodological inaccuracies that may be contained in the reply comments in the *City of Brookings* remand proceeding.

SUMMARY: By delegated athority, the Chief of the Common Carrier Bureau adopted an order on February 26, 1988, (Order DA 88-249 (released Mar. 2, 1988)), granting, in large measure, an ICORE request that would permit interested parties to file supplemental comments to the reply comments in the *City of Brookings* Remand Proceeding. As a consequence, interested parties may file supplemental comments that are strictly limited to questions of fact or methodology that are contained in the reply comments on or before April 4, 1988.

DATES: Supplemental comments may be filed on or before April 4, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (DA 88-279), adopted February 26, 1988 and released March 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Affairs Office (Room 202), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, Suite 140, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. On October 17, 1987, the Commission requested comments and replies on data that the Commission had requested in response to the *City of Brookings Municipal Telephone Company et al.* v. *Federal Communications Commission*, 822 F.2d 1153 (D.C. Cir. 1987) remand proceeding.[1] The Commission issued two orders extending time in this proceeding (Order DA 87-1781 (released December 4, 1987), Order DA 88-52 (released February 1, 1988)).[1] On January 21, 1988, the ICORE local exchange companies requested that the pleading cycle be modified to allow interested parties thirty days to respond to reply comments filed in this proceeding. ICORE contended that important issues may be raised in the reply comments that would merit further comment. The Commission granted the request to permit interested parties to file supplemental comments, but strictly limited the comments to questions of fact or methodology that are raised in the reply comments.

Ordering Clauses

2. *Therefore, it is ordered,* that supplemental comments to the reply comments in the *City of Brookings* Remand Proceeding may be filed on or before April 4, 1988.

3. Accordingly, *it is hereby ordered,* pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the motion of ICORE, described in paragraph 1, *is granted* to the extent described in paragraph 4 *infra*, and is otherwise *denied.*

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-7016 Filed 3-31-88; 8:45 am]

BILLING CODE 6712-01-M

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[1] Not published in the Federal Register.

Notices

Federal Register

Vol. 53, No. 63

Friday, April 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Council on Rural Development; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary schedules the fourth meeting of the National Advisory Council on Rural Development:

Name: National Advisory Council on Rural Development.

Date: April 27-28, 1988.

Time and Place: April 27-28, 1988; Wichita Airport Hilton Hotel, P.O. Box 12690, 2098 Airport Road, Wichita, Kansas. April 27, 7:30 a.m.-5:00 p.m.; April 28, 8:00 a.m.-2:00 p.m.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advise the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multistate, State, substate and local organizations and jurisdictions. The Council will provide the Secretary with assistance in identifying rural problems and supporting efforts and initiatives in rural development.

Contact Person: Leslie Schuchart, Confidential Assistant, Office of the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219-A, Administration Building, Washington, DC 20250, telephone (202) 447-5371.

Done at Washington, DC, this 29th day of March, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-7204 Filed 3-31-88; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 49, Newark/Elizabeth, NJ; Boundary Modification

Notice is hereby given that the Port of New York and New Jersey (the Port) has requested authority pursuant to the regulations of the Foreign-Trade Zones (FTZ) Board (the Board) (15 CFR 400.1301(j)), for a modification of the boundary of FTZ 49 at the Port Newark/Elizabeth Port Authority Marine Terminal (port complex) on Newark Bay, within the New York City Customs port of entry.

The change would involve the inclusion of a 124-acre tract owned by the Port and located within the port complex at a site situated west of Kapkowski Road and south of Bay Avenue in Elizabeth, New Jersey. The tract, which would be used for industrial activity, was part of an application filed by the Port in January 1982 for expansion of FTZ 49 (47 FR 2898, January 20, 1982), but the request for this tract was withdrawn due to a delay in receiving approval for use of the site from the New Jersey Department of Environment Protection (NJDEP), because it contained landfill contaminated with polychlorinated biphenyls. In withdrawing the tract in question from the 1982 application, the Port had indicated its intention of applying for a boundary modification as soon as the State's approval was obtained. The FTZ Board approved the remaining part of the application (2106 acres) on May 26, 1983 (48 FR 24958, June 3, 1983). There had been no opposition from the public on record with regard to the original proposal in its entirety.

The Port has informed the Board that NJDEP has approved use of the site under an agreement with the Port, which sets forth procedures and conditions (Port/NJDEP Agreement, August 6, 1985), and the Port now requests inclusion of the 124-acre tract within FTZ 49 as a boundary modification. No manufacturing authority is being requested at this time. Such authority would be requested from the Board on a case-by-case basis.

The request has been reviewed by the Newark Area Director of Customs (February 2, 1988) and the Army District Engineer (August 25, 1987) and they concur in the request, subject to specific clearances or permits required from these officials as activity occurs.

The request has also been reviewed by the FTZ Staff, and it has preliminarily determined that it should be approved by the Executive Secretary pursuant to (§ 400.1301 (j)), subject to the conditions of the Port-NJDEP Agreement, August 6, 1985. Prior to the issuance of a final determination, comments are invited from interested parties. They must be submitted to the office below in writing (in triplicate) and postmarked on or before April 29, 1988.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: March 28, 1988.

[FR Doc. 88-7198 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 36-84]

Foreign-Trade Zone 23, Buffalo, NY; Withdrawal of Application for a Subzone for Robinson Knife Co.

The County of Erie, New York, grantee of Foreign-Trade Zone 23, has requested the withdrawal of its application to the Foreign-Trade Zones Board for a subzone at the plant of Robinson Knife Company in Springville, Erie County, New York, due to changed circumstances. The application was filed August 22, 1984 (49 FR 34380, August 30, 1984).

The request is approved, without prejudice, and FTZ Board Docket No. 36-84 is closed.

Dated: March 28, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-7199 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Withdrawal of Application for Duty-free Entry of Scientific Instruments; Agricultural Research Center, Russell Research Center

The Russell Research Center, ARS, USDA has withdrawn Docket Number 88-031 (53FR 1810) an application for duty-free entry of a Single Kernel Grain Moisture Tester. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-7202 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-705]

Final Determination of Sales at Less Than Fair Value; Bimetallic Cylinders From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202) 377-3965 or Raymond Busen (202) 377-3464, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230

Final Determination

We have determined that bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 7, 1987, we presented a letter to the respondent stating that the response to our antidumping duty questionnaire continued to be deficient and that, in accordance with section 776(b) of the Act, if the deficient response was not corrected by the January 11, 1988 preliminary determination date, we might not be able to verify the information and might have to rely on best information available for our final determination. No further information was received from the respondent.

On January 11, 1988, we made an affirmative preliminary determination (53 FR 1046 January 15, 1988), using petitioners' information as the best information available.

In accordance with section 353.47 of our regulations (19 CFR 353.47), interested parties were provided an opportunity to comment on our preliminary determination by requesting a public hearing. No requests for a hearing were received and no further information or written views were received from petitioners or the respondent.

Scope of Investigation

The products covered by this investigation are bimetallic cylinders which are provided for in TSUSA items 678.3570, 678.3575, and 678.3580. The corresponding Harmonized System (HS) number is 8477.90.0000. The bimetallic cylinder is defined as a hollow metal cylinder which serves as part of a machine used to process various materials including plastic resins and various types of food either by injection molding, extrusion, or by blow molding. The product consists of an outer sheet of steel and an inner lining being of an alloy which are metallurgically bonded, the inner lining of a material which is resistant to a corrosive and abrasive environment. Nitrided cylinders, those cylinders whose inner surfaces have been hardened and tempered by a nitriding process, are not included in this investigation.

Fair Value Comparisons

To determine whether sales of bimetallic cylinders in the United States were made at less than fair value, we compared the United States price with the foreign market value, both of which were based on the best information available. We used the best information available as required by section 776(b) of the Act for the reasons stated in the "Case History" section of this notice.

The period of investigation for bimetallic cylinders from Japan was March 1, 1987 through August 31, 1987.

United States Price

As best information available for United States price, we used the U.S. price information provided in the petition. The petition provided prices for four sizes of bimetallic cylinders.

Foreign Market Value

As the best information available for foreign market value, we used home market prices provided in the petition. An adjustment was made to petitioners' home market prices to reflect exchange rates as certified by the Federal Reserve Bank.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We did not verify respondent's information because we did not receive a sufficient response to our antidumping duty questionnaire and subsequent deficiency letters.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of bimetallic cylinders from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Hitachi Metals, Ltd.	17.42
All Others	17.42

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on bimetallic cylinders from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

March 28, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-7200 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 80227-8027]

Discontinuance of Daily License List Publication

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

SUMMARY: Due to the high financial burden and low consumer interest in the Department of Commerce's daily publication of the list of Export Licenses Approved and Reexports Authorized, the Department is discontinuing further publication of the list.

EFFECTIVE DATE: This notice is effective May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Fred Thornberry, Director of Administration, Office of Security and Management Support, Room 3889, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 377-1900.

SUPPLEMENTARY INFORMATION: Since 1961, the Department of Commerce has published a daily list of Export Licenses Approved and Reexports Authorized. The list contains a general description of the commodities licensed for export within the previous 24-hour period, the dollar value of each export, and the countries of ultimate destination. Currently, some forty private sector subscribers receive the list at a total annual fee of $1500 ($37.50 per subscriber). The annual cost to the Government of publishing the list runs approximately $20,000, making the activity almost wholly government subsidized. The Department cannot justify the high cost of producing the daily list in light of the low public interest associated with it. The Department feels that it will best serve the public interest and minimize costs by discontinuing publication of the daily list, effective 30 days after publication of this notice. Future action amending § 390.4 of the Export Administration Regulations is contemplated by the Department.

The Department will on its own initiative refund current subscription balances. Those subscribers who do not receive a refund within approximately six months following the effective date of this notice should contact Johnson Jerry, Processing Branch, Bureau of Export Administration, Room 2099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 377-3000. This notice is authorized under Section 4(f) of the Export Administration Act of 1985.

Dated: March 30, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-7297 Filed 3-30-88; 2:54 pm]

BILLING CODE 3510-DT-M

Subcommittee on Export Administration of the President's Export Council; Amended Notice of Partially Closed Meeting

Federal Register citation of previous announcement: 53 FR 7956-7957 March 11, 1988.

Previously announced date of notice of determination: October 17, 1985.

Corrected date of notice of determination: October 27, 1987.

Date: March 25, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-7201 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Agdia, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Agdia Incorporated, having a place of business at Mishawaka, Indiana, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Monoclonal Antibodies Against Potyvirus-Associated Antigens, Hybrid Cell Lines Producing These Antibodies, and Use Therefore," U.S. Patent Application S.N. 7-082,591. The patent rights in this invention have be assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-7112 Filed 3-31-88; 8:45 am]

BILLING CODE 3510-04-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 621]

Marine Mammals; Modification of Permit; Miami Seaquarium (P35F)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 621 issued to Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149 on December 18, 1987 (52 FR 48746) is modified in the following manner:

Section A.1.b. is deleted and A.2 is added:

A.2. Four (4) Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) may be taken from the Monterey Bay, California area as described in the modification request of December 28, 1987.

Section B.1. is modified to read:

B.1. The animals authorized in Section A.1 shall be imported from Japan by the means described in the application.

Sections B.4., B.5, and B.6 are added:

B.4. The Holder or Collector shall notify the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731 (tel 213-514-6196) at least two weeks in advance of any proposed activity. The advance notification should include a list of the anticipated field days scheduled, vessels, and areas of operation.

B.5. All vessels used in the collecting activities shall fly a yellow triangular pennant. The dimensions of the pennant shall be no smaller than 18"w × 26"l × 26"l with the Permit Number displayed on the pennant in 6" high black numerals.

B.6. In the event of mortality during the collection and transport phases, a necropsy shall be performed and the Permit Holder shall contact the Director, Southwest Region to arrange for disposition of the specimen material. This will provide an opportunity to coordinate disposition of specimen material with the California Marine Mammal Stranding Network.

BEST COPY AVAILABLE

This modification becomes effective upon signature.

Documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Conn. Avenue NW., Suite 805, Washington, DC 20235;
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: March 25, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–7192 Filed 3–31–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Panama

March 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit.

EFFECTIVE DATE: April 1, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1987 and October 3, 1987, between the Governments of the United States and Panama establishes an import limit for wool and man-made fiber sweaters in Categories 445/446/645/646.

A copy of the bilateral agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 29, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated October 3, 1987, between the Governments of the United States and Panama; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 445/446/645/646, produced or manufactured in Panama and exported during the twelve-month period which begins on April 1, 1988 and extends through March 31, 1989, in excess of the following restraint limit:

Category	12-mo restraint limit
445/446/645/646	160,000 dozen of which not more than 25,250 dozen shall be in Categories 445/446.

Trade falling into the category limit for the period April 1, 1987 through March 31, 1988 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit is subject to adjustment in the future under the provisions of the bilateral textile agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–7197 Filed 3–31–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 2, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 26, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 24049) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988:

Service

Commissary Warehouse Service

Mountain Home Air Force Base, Idaho.

C.W. Fletcher,

Executive Director.

[FR Doc. 88–7122 Filed 3–31–88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: May 2, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1988, December 10, 1987 (52 FR 46926):

Services

Litter Pick-up

Edwards Air Force Base, California.

Commissary Warehouse Service

Little Rock Air Force Base, Arkansas.

C.W. Fletcher,

Executive Director.

[FR Doc. 88–7123 Filed 3–31–88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 143. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, and possessions of the United States. Bulletin Number 143 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 1988.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 143 to the Heads of the Executive Departments and Establishments

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 142 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	[illegible]
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
* Barrow	146
* Bethel	127
Bettles	110
Cold Bay	120
Coldfoot	122
* College	114
* Cordova	130
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
* Eielson AFB	114
Elmendorf	125
* Fairbanks	114
Ft. Richardson	125
* Ft. Wainwright	114
Homer	115
* Juneau	114
Katmai National Park	148
* Kenai	119
* Ketchikan	111
King Salmon [3]	134
Kodiak	118
Walker Lake	136
* Wrangell	111
Yakutat	110
All Other Localities [3, 4]	91
American Samoa	81
Guam M.I.	95
Hawaii:	
Hawaii, Island of:	
Hilo	66
Other	86
Kauai, Island of:	
12-20—3-31	127
4-1—12-19	91
Oahu, Island of	102
All Other Islands	88
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107

Locality	Maximum rate
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	180
5-1—11-30	144
Wake Island ²	20
All Other Localities	20

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[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1988.

[FR Doc. 88-7176 Filed 3-31-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

March 29, 1988.

The USAF Scientific Advisory Board Study on Integrated Avionics will meet on 18–19 April 1988, from 8:00 a.m. to 5:00 p.m., at The Lockheed California Company, Burbank CA, and the Northrup Corporation, Hawthorne, CA.

The purpose of this meeting is to review the status of technology programs and demonstration/validation programs pertinent to Air Force efforts in Integrated Avionics.

This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-7165 Filed 3-31-88; 8:45 am]

BILLING CODE 3910-01-M

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Logistics Composite Model software programming function at Randolph AFB, TX will be examined for conversion to contract.

For further information contact Mr. Jerry Hines, HQ AFMEA/MERC, Randolph AFB, TX 78150-6431, telephone (512) 652-2497.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-7113 Filed 3-31-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS).

Dates of Meeting: 27–29 April 1988.

Time: 1300–1700 hours, 27 April 1988; 0830–1700 hours, 28 April 1988; 0830–1600 hours, 29 April 1988.

Place: U.S. Army Test and Evaluation Command (USATECOM), Aberdeen Proving Ground, MD with excursions to the Pentagon, Washington, DC.

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet at USATECOM, Aberdeen Proving Ground, MD for the purpose of gathering facts in the third phase of the study. The purpose of the visit is to assess the adequacy and/or effectiveness of the implementation of test and evaluation policies promulgated by HQDA, OSD and Congress. The assessment will be accomplished through briefings and discussions with Program Executive Officers (PEO) and Selected Project Managers from U.S. Army Tank Automotive Command. The critical items of interest for the assessment include progress in implementing T&E policies and initiatives, HQDA promulgation of policy, policy concerns, review of test planning and execution for selected systems, and possible areas for improvement. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202)695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-7114 Filed 3-31-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.168D]

Notice Inviting Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1988

Purpose: To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics, science, computer learning and critical foreign languages.

Deadline for Transmittal of Applications: June 3, 1988.

Applications Available: April 14, 1988.

Available Funds: $1,000,000.

Estimated Range of Awards: $75,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 10.

Project Period: 12 months.

Applicable Regulations: (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages Regulations, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78.

Absolute Priority: In accordance with 34 CFR 755.11(b)(2), 755.13(b), and 75.105(c)(3), the Secretary has chosen as an absolute priority projects that improve teacher qualifications and skills in the fields of mathematics, science, computer learning and critical foreign languages. Only applications proposing activities under this priority will be considered.

Within this absolute priority, the Secretary is particularly intersted in applications that through workshops, seminars and institutes familiarize teachers and administrators with outstanding examples of the uses of technology for educational instruction in the fields of mathematics, science, computer learning, and critical foreign languages.

The Secretary is interested in supporting projects that will:

- Conduct State, regional or local workshops, seminars, or institutes to strengthen teachers' and administrators' mastery of technology and to encourage them to use technology effectively in their schools for instruction in mathematics, science, computer learning and critical foreign languages.
- Utilize computers and/or other innovative technologies (including closed circuit television systems, educational television and radio broadcasting, cable television satellite transmission, computer/laser discs and video and audio discs and tapes), to improve instruction in mathematics, science and computer learning and critical foreign languages.
- Involve noneducation personnel, including technology training specialists from industry and other fields, to assist teachers and administrators in developing understanding of and using technological concepts, processes and instructional systems in mathematics, science, computer learning and critical foreign languages.
- Demonstrate the effective integration of mathematics and science with new technology to improve instruction in elementary and secondary classrooms.

The above examples are only suggestions. Applicants are encouraged to submit applications that expand upon or combine these activities, or to propose activities other than these examples.

Selection Criteria: The program regulations at § 755.30 (b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. (§ 755.32(f)) Ten (10) additional points will be added for a possible total of 35 points for the criterion.

National significance. (§ 755.32(g)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW, Room 4132, Washington, DC 20202. Telephone (202) 732-3566.

Program Authority: 20 U.S.C. 3972.

Dated: March 29, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88-7190 Filed 3-31-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 207(f), Title 18, United States Code

Section 207(f), Title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, Title 18, United States Code, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Philip E. Coyle III, formerly Deputy Assistant Secretary for Defense Programs, has a unique combination of outstanding scientific and technological qualifications in the fields of nuclear explosives and nuclear weapons technology, and extensive experience in management and administration of programs involving nuclear weapons research, development, testing, and production. I am further satisfied that it will serve the national interest to permit him, in his capacity as Associate Director of Lawrence Livermore National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of the Laboratory. I am satisfied that these activities are in a scientific or technological field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, Title 18, United States Code (in consultation with the Director of the Office of Government Ethics), with respect to contact by Mr. Coyle with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Date: March 25, 1988.

John S. Herrington,

Secretary of Energy.

[FR Doc. 88-7124 Filed 3-31-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-04-NG]

Amtran Gas Transmission, Inc.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order extending blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Amtran Gas Transmission, Inc.'s (Amtran) existing blanket authorization to import 100 Bcf of natural gas. The order issued in ERA Docket No. 88-04-NG is effective April 30, 1988, through April 30, 1990.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 25, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-7125 Filed 3-31-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Tesoro Petroleum Corp.

AGENCY: U.S. Department of Energy, Economic Regulatory Administration.

ACTION: Notice of proposed remedial order to Tesoro Petroleum Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO), as amended on February 11, 1988, issued to Tesoro Petroleum Corporation (Tesoro), 8700 Tesoro Drive, San Antonio, Texas 78286.

Tesoro is a refiner engaged in the production, transportation, refining and marketing of crude oil and petroleum products. The PRO alleges that Tesoro overstated its increased costs and understated its recoveries for the period

August 1973 through December 1980. ERA's recalculation of Tesoro's costs and recoveries results in estimated overcharges for all products of $4 to $6 million.

Specifically, ERA has determined that Tesoro: (1) Claimed excess marketing non-product costs in the amount of $67,466,000 for the period from December 1974 through December 1980 in violation of the cents-per-gallon limits of 10 CFR 212.83(c)(2)(iii)(E); (2) improperly claimed $17,805,597 in non-product costs from August 1973 through November 1974 in violation of the pre-notification requirements of 10 CFR 212.82(c); (3) understated its recoveries for general refinery products for the period August 1973 through January 1976 by $2,785,000 in violation of 10 CFR 212.83(c); (4) misallocated crude costs to product categories in violation of 10 CFR 212.126(b) and 212.130(a); (5) retroactively changed its original reallocation of increased costs from one product category to another product category in violation of 10 CFR 212.83(c), 210.62(c), and 212.126(b); and (6) failed to report its increased costs and recoveries on a firm-wide basis for all of the entities and subsidiaries Tesoro controlled, in violation of 10 CFR 212.126(b). The impact of the alleged violations is nationwide.

As a remedy for these violations, the PRO directs Tesoro to take the following remedial action to eliminate and compensate for the effects of the violations: refile its Refiners' Monthly Cost Allocation Reports with supporting schedules and workpapers for each month from August 1973 through January 28, 1981 in accordance with the Regulations; compute its increased costs in a manner consistent with the discussion of the issues in the PRO; compute the maximum allowable price for each product to each class of purchaser; compile a list of potential overcharge amounts which may have to be refunded; compute recoveries in accordance with the equal application/deemed recovery rule; and, after being advised by ERA, pay the amount to be remitted, with interest, to the Department of Energy.

A copy of the amended Proposed Remedial Order may be obtained from the DOE Freedom of Information Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-019, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with DOE's Office of Hearings and Appeals, U.S. Department of Energy, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on: Diana D. Clark, Director of Administrative Litigation, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., RG-32, Room 3H-017, Washington, DC 20585.

Issued in Washington, DC this 24th day of March, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-7126 Filed 3-31-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3357-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared March 14 Through March 18, 1988

Availability of EPA comments prepared March 14, 1988 through March 18, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-K65112-CA, Rating EC1, Modoc National Forest, Land and Resource Management Plan, Implementation, Modoc, Lassen and Siskiyou Counties, CA.

SUMMARY: EPA expressed environmental concerns because timber harvest levels and road construction, proposed under the preferred alternative, has the potential to exacerbate existing water quality problems. However, EPA commends the document disclosure of current water quality problems and Forest Service measures to improve water quality.

ERP No. D-AFS-L65115-OR, Rating EC2, Fremont National Forest, Land and Resource Management Plan, Implementation, Lake and Klamath Counties, OR.

SUMMARY: EPA is concerned that the proposed action will allow numerous activities that are likely to degrade water quality and sensitive beneficial uses. It was requested that the proposal be modified to include a commitment/mitigation that provides adequate water quality protection. It was also requested that there be a commitment to maintain an adequate water quality and fisheries monitoring plan.

ERP No. D-FHW-D40232-MD, Rating EO2, MD-100 Extension, US 29 to I-95, Funding and 404 Permit, Howard County, MD.

SUMMARY: EPA is not convinced, because of the preferred alternative's environmental impact, that this document gives sufficient consideration to reasonable and feasible project alternatives. In particular, the other preferred alternative is inconsistent with the "avoidance first policy" regarding wetlands and makes no commitment to mitigation for unavoidably impacted wetlands.

ERP No. D-FHW-G40121-LA, Rating EC2, I-10 at College Drive Interchange Modifications and College Drive Widening, just north of Bawell Drive to just north of Concord Avenue, Funding, Baton Rouge, East Baton Rouge Parish, LA.

SUMMARY: EPA expression concern that this document did not address HC emissions in the air pollution model nor is enough information presented concerning possible excavation of a closed municipal solid waste landfill.

ERP No. DS-FHW-L40153-OR, Rating EC2, North Roseburg Interchange/I-5 Construction Project, Skewed Diamond Alternative, Funding, Douglas County, OR.

SUMMARY: EPA had no new comments regarding the new alternative. EPA continues to have concerns regarding significant traffic noise and potential for water quality and quantity effects from secondary gorwth.

(Note: The above summary should have appeared in the March 18, 1988 FR Notice.)

ERP No. D-MMS-A02223-CA, Rating EO2, Northern California Oil and Gas Sale No. 91, Lease Offerings, Humboldt and Mendocino Counties, CA.

SUMMARY: EPA is concerned that the proposed lease sale alternative could cause significant adverse environmental

impact without full implementation of the proposed stipulations. EPA is also concerned that an oil spill from the proposed alternative could result in significant impacts to sensitive land and marine resources of the Northern California coast. Further agency comments focused on oil skill analysis, oil spill cleanup, biological and physical background information, ocean dumping, National Pollution Discharge Elimination System permits and air quality considerations. EPA proposed that MMS further analyze alternatives to the proposed action which could eliminate or reduce the potential adverse environmental impacts of the lease sale and requested that MMS commit to the lease sale stipulations described in this document.

Final EISs

ERP No. F-BLM-K61058-CA, Central California Section 202 Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Sheep Ridge, Milk Ranch/Case Mountain and Ventana Contiguous WSAs, Tulare and Monterey Counties, CA.

SUMMARY: EPA requested that the BLM's state-wide wilderness recommendation document state that air and water quality are better protected under wilderness status since a variety of BLM-permitted activities (future mineral/energy resource developments, timber harvesting, off-road vehicles use) have the potential to degrade air and water quality.

ERP No. F-NPS-K70003-CA, Decker Canyon Management and Development Concept Plan, Santa Monica Mountains National Recreation Area, Implementation, Los Angeles and Ventura Counties, CA.

SUMMARY: EPA encouraged the National Park Service, in its ROD, to commit itself to mitigation measures to protect water quality, beneficial uses and wetland areas.

Regulations

ERP No. R-USA-A11066-00, 32 CFR Part 651; Revision of Army Regulation 200-2, Environmental Effects of Army Actions (53 FR 4646).

SUMMARY: EPA supports the proposal and offered several minor clarifications.

Dated: March 29, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-7215 Filed 3-31-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL 3357-5]

Availability of Environmental Impact Statements Filed March 21 Through March 25, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5074.

EIS No. 880091, Draft, BLM, WY, Cody Resource Area Land Management Plan, Implementation, Big Horn and Park Counties, WY, Due: June 29, 1988, Contact: Bob Ross (307) 527-2216.

EIS No. 880092, DSuppl, COE, LA, Lake Pontchartrain and Vicinity Hurricane Protection Project, Fish and Wildlife Mitigation Plan, Implementation, Jefferson, St. John The Baptist, St. Charles, Orleans and St. Bernard Parishes, LA Due: May 18, 1988, Contact: Larry Hartzog (504) 862-2524.

EIS No. 880093, FSuppl, IBR, CO, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, Implementation and 404 Permit, Summit, Grand and Eagle Counties, CO, Due: May 2, 1988, Contact: Robert Schroeder (406) 657-6558.

EIS No. 880094, FSuppl, FAA, IN, Indianapolis International Airport Development, 4R-22L 10,000 Foot Runway Construction, Project Change, Approval and Funding, Marion County, IN, Due: May 2, 1988, Contact: Jerry Mork (312) 694-7522.

EIS No. 880095, Final, UMT, FL, Miami Metromover Automated Transportation System, Construction and Improvement, Omni and Brickell Legs, Dade County, FL, Due: May 2, 1988, Contact Peter Stonewall (404) 347-3948.

EIS No. 880096, Final, COE, NM, Cuchillo Dam/Cuchillo Negro Creek and Rio Grande Flood Control Plan, Truth or Consequences and Williamsburg Areas, Implementation Sierra County, NM, Due: May 2, 1988, Contact James White (505) 766-3577.

EIS No. 880097, DSuppl, DPA, MA, Boston Metropolitan Area Wastewater Treatment Facilities Expansion, Boston Harbor Wastewater Conveyance and Outfall System Site Selection, Construction Grant, Suffolk County, MA, Due: May 16, 1988, Contact: David Tomey (617) 565-4420.

EIS No. 880098, Draft, BOP, KY, Manchester Federal Correctional Institution Complex, Construction and Operation, Clay County, KY, Due: May 19, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880099, Draft, MMS, MXG, AL, MS, TX, LA, 1989 Central and Western Planning Areas Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales No. 118 and 122, Lease Offerings offshore the coast of Alabama, Mississippi, Louisiana and Texas, Due: May 27, 1988, Contact: Jesse L. Hunt (504) 736-0557.

Amended Notices

EIS No. 870393, Draft, SFW, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT, Due: October 1, 1988, Contact: Ralph Abele, Jr. (617) 965-5100.

Published FR November 13, 1987—Review period extended.

EIS No. 880069, Final, COE, Saw Mill River Basin Flood Control Plan, Old Nepperan Avenue Bridge to near the former Tompkins Avenue Bridge, Nepara Park, City of Yonkers, Westchester County, NY, Due: April 25, 1988, Contact: Peter Doukas (212) 264-4662.

Published FR March 25, 1988—Refiled and Review Period Reestablished. The 30 day review period is calculated from March 25, 1988.

Dated: March 29, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-7216 Filed 3-31-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3358-8]

Science Advisory Board; Steering Committee of the Research Stategies Subcommittee Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Steering Committee of the Research Strategies Subcommittee of the Science Advisory Board will meet from 9:00 a.m. to 4:30 p.m. on April 25 in Room 1101, Administrator's Conference Room, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to enable the Subcommittee to review the five workgroup draft reports including: Ecological Effects, Risk Reduction, Exposure Assessment, Health Effects and Sources, Transport and Fate.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Donald G. Barnes, Director, Science Advisory Board, at

202–382–4126 or Joanna Foellmer by April 18, 1988.

Date: March 24, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–7171 Filed 3–31–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3358-9]

Science Advisory Board; Executive Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet from 9:00 a.m. to 4:30 p.m. on April 26 and from 9:00 a.m. to approximately 12:00 noon on April 27th in Room 1101, Administrator's Conference Room, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to enable the Committee to review SAB Committee reports on Unsaturated Zone; Mine Waste Screening; and Underground Storage Tanks. There will be a briefing on the activities of the Research Strategies Subcommittee by its Chairman. Topics that will be discussed for possible future SAB reviews include: Male/Female Reproductive Effects Guidelines; Global Climate; Thyroid Carcinogenesis; Dioxin Reassessment; and Radionuclides NESHAPS.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Donald G. Barnes, Director, Science Advisory Board, at 202–382–4126 or Joanna Foellmer by April 18, 1988.

Date: March 24, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–7172 Filed 3–31–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3359-1]

Woodward Property Site; Proposed Superfund Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Woodward Property Site, Myrtle Beach, South Carolina, with Dr. Ralph E. Payne and Dr. Kent T. Woodward. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Timothy Dixon, Environmental Engineer, Investigations and Cost Recovery Unit, U.S. EPA, Region IV, 345 Courtland Street NE, Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above by May 2, 1988.

Date: March 25, 1988.

Lee A. De Hihns, III,

Acting Regional Administrator.

[FR Doc. 88–7173 Filed 3–31–88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59257A; FRL-3358-3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–88–7. The test marketing conditions are described below.

EFFECTIVE DATE: March 22, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–88–7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–88–7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–88–7

Date of Receipt: February 16, 1988.

Notice of Receipt: March 18, 1988 (53 FR 8972).

Applicant: Confidential.

Chemical: (G) Functional lignin derivative.

Use: (G) Industrial applications.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 22, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–7071 Filed 3–31–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Survey.

Title: Temporary Housing Post-Assistance Survey.

Abstract: Recipients of temorary housing assistance will complete the survey to document how monies received from FEMA are being used. FEMA will use this survey to evaluate whether it is effective in providing timely and adequate assistance to victims of Presidentially declared major disasters and emergencies; to determine if disaster victims' temporary housing needs are being met; and to identify disaster victims' needs for continuing rent assistance.

Type of Respondents: Individuals or households.

Number of Respondents: 6,000.

Burden Hours: 1,000.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: March 18, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–7128 Filed 3–31–88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-209]

Accepting Things of Value; Bank Bribery Law, Compliance Guidelines

Date: March 15, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of final guidelines.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), adopts the following guidelines to assist financial institution officials in complying with the Bank Bribery Amendments Act of 1985 ("Act") as required by Congress. The guidelines were developed jointly by the federal banking supervisory agencies and describe the prohibitions of the Federal bank bribery law, as well as actions that, in the opinion of the Board, do not constitute violations of the Act. The Board encourages all institutions the accounts of which are insured by the FSLIC and all Federal savings banks ("insured institutions") and savings and loan holding companies to adopt codes of conduct that describe the prohibitions of the bank bribery law and incorporate the guidelines set forth in this policy statement.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Maureen Cooney, Attorney, (202) 653–2643; or John Downing, Assistant Director, Office of Enforcement, (202) 653–2604, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 28, 1987, the Board proposed amending Parts 571 and 588 of Title 12 of the *Code of Federal Regulations* ("CFR") (12 CFR 571 and 588) by adding new §§ 571.19 and 588.2. These new sections would have provided guidelines, as required by Congress, to assist employees, officers, directors, agents, and attorneys ("officials") of financial institutions in complying with the Bank Bribery Amendments Act of 1985, Pub. L. No. 99–370, 100 Stat. 779, Aug. 4, 1986, which amended the Federal bank bribery law at 18 U.S.C. 215 (1986). The guidelines encourage insured institutions and savings and loan holding companies to establish codes of conduct designed to alert financial institution officials to the Federal bank bribery statute's proscriptions against acts of giving, offering, or promising anything of value to officials of insured institutions and savings and loan holding companies with the intent corruptly to influence or reward such officials in connection with the institution or holding company's business, or seeking, accepting, or agreeing to accept the same, intending to be influenced or rewarded in connection with such business or transaction.

The purpose of the proposed policy statement was to provide insured institutions and holding companies with the guidance required by the Act in order to make it possible for them to provide a degree of assurance that their employees will not be prosecuted for accepting routine benefits that do not amount to a corrupting influence.

The legislative history of the Act, as amended, makes it clear that the guidelines will be relevant to, but not dispositive of, any prosecutorial decision the Department of Justice ("DOJ") may make in any particular case. DOJ however, can be expected to take into account the financial institution regulatory agencies' expertise and judgment in defining those activities or practices that the agencies believe do not undermine the duty of an employee, officer, director, agent, or attorney to the financial institution. *United States Attorneys' Manual,* section 9–40.439. Based on discussions with DOJ officials, the Board believes that if reasonable codes of conduct are adopted and complied with, the likelihood of criminal prosecution will be diminished. The Board has no intent to create an inference that all acts not expressly permitted by the codes of conduct are criminal. Under the bank bribery statute no act is criminal unless done corruptly.

In response to the Act, the Interagency Bank Fraud Enforcement Working Group (the "Working Group"), consisting of representatives from the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Farm Credit Administration, the Department of Justice, the Federal Bureau of Investigation, and the Board, jointly developed uniform draft guidelines for consideration by each of the banking agencies.

The proposed guidelines cover three principal areas. First, they encourage all insured institutions and savings and loan holding companies to adopt or amend internal codes of conduct or written policies that include provisions that explain the general prohibitions of the Act.

Second, the proposed guidelines suggest that certain benefits may be accepted without causing a risk of corruption that would violate the prohibitions of the Act and that these exceptions may be included in an institution's code or policy. These exceptions include, but are not limited to, business lunches, receptions, and gift-giving for special occasions. An institution also could approve of the receipt of benefits that are disclosed to it and are consistent with the statute.

Third, the proposed guidelines suggest that compliance with the Act would be enhanced if insured institutions and savings and loan and holding companies maintain copies of their codes and policies, require periodic written acknowledgments from their officials regarding their responsibilities under the codes and policies, and maintain contemporaneous records of all disclosures by officials made pursuant to the insured institution or company's codes and policies. The Board also encourages institutions and holding companies to prohibit self-dealing or otherwise trading on one's position by their officials and to require disclosure of all potential conflicts of interest.

After a review of the public comments submitted in response to the proposed policy statement, the Board has adopted the policy statement with the modifications discussed below.

Discussion of Comment Letters

The Board received ten comment letters on the proposed policy statement: five from federally chartered institutions, three from state chartered institutions, and two from thrift trade groups. Five of the commenters strongly approved of the guidelines, though two requested modifications. Five commenters disapproved of the Board's proposed guidelines because of their perception that the Board was imposing regulatory requirements not mandated by the Act or because of the commenters' desire to have the "corrupt intent" requirement of the Act more clearly expressed in the guidelines.

All commenters expressed an opinion that supported the concept of financial institutions' responding to the bank bribery statute by adopting internal codes of conduct.

Issuing Guidelines

Several commenters suggested that the Board's proposed policy statement amounts to a rigid regulatory scheme that departs from Congress' intent in requiring the Federal financial institution regulatory agencies to publish "guidelines." The guidelines are not intended and will not be promulgated as regulations. They simply encourage insured institutions and holding companies to adopt codes of conduct. However, in order to alleviate any anxiety the industry may have that the guidelines are in fact regulations, the Board has decided not to publish them in the CFR, and has, therefore, revised them to appear in narrative form.

In addition, one commenter argued that the Board is not required to issue guidelines. It is unnecessary to decide whether Congress has mandated or only suggested strongly that guidelines be issued because Congress has clearly given the Board the authority to issue such guidelines and the Board, like the other federal banking agencies, has determined that it is both appropriate and beneficial to the industry to issue them.

Corrupt Intent

Several commenters expressed the opinion that the guidelines failed to emphasize sufficiently the corrupt intent element added in the 1986 amendment. In order to clarify and emphasize that the guidelines are not meant to imply that any non-corrupt activity would violate the statute, the Board has expanded the phrase "consistent with the statute" in the introductory paragraph to the guidelines to include an express reference to the corrupt intent element.

Additionally, the Board has clarified the phrase "other than normal authorized compensation" used in the guidelines. The final guidelines identify that this exclusion from the prohibitions applies to things of value "other than bona fide salary and fees referred to in 18 U.S.C. 215(c)."

Periodic Acknowledgement

The guidelines recommend that insured institutions and savings and loan holding companies require periodic written acknowledgement of the institutions' code or policy from their officials and the officials' agreement to comply with the code or policy. Commenters expressed concern that the concept of periodic written acknowledgement was unclear and burdensome. Several commenters stated that the acknowledgement would be demeaning to the officials and is unlikely to achieve actual compliance with the Federal bank bribery law.

However, the Board has modified the guidelines to encourage insured institutions and savings and loan holding companies to require their officials to execute a written acknowledgement of the institution or company's code or policy and agreement to comply with the policy only upon initial employment and to require additional acknowledgments only when there are material changes to the code or policy.

The Board believes that notice to employees of an institution's expectations of their ethical conduct, and information on the proscriptions of the Federal bank bribery law, will be useful to financial institution officials in carrying out their duties.

Travel Arrangements and Accommodations

One commenter pointed out that the proposed guidelines failed to provide a specific exception for the reimbursement of travel-related expenses, such as lodging and air fare for a loan officer who visits a borrower's property. The Board recognizes that such reimbursement, when made for *bona fide* business travel, does not violate the intent of the statute to prohibit corruption. Therefore, the final guidelines contain a specific exception for accepting travel accommodations of a reasonable value that are provided in the course of a meeting or other occasion the purpose of which is to hold *bona fide* business discussions. The Board also added the proviso that the expenses related to the exception for meals, refreshments, entertainment, and travel must be expenses that would be paid for by the insured institution or savings and loan holding company as a reasonable business expense, if not paid for by another party. This language was added because the Board believes that there is no threat of a violation of the Act if the benefit accepted is reasonable and would otherwise be paid for by the insured institution or holding company.

Disclosure of Offers

Two commenters expressed concern about the suggestion that anticipated or unaccepted offers of things of value should be disclosed to the institution or holding company. The Board agrees that disclosing anticipated meals or gifts is impractical and does not further the purpose of the guidelines. However, an offer of a thing of value made to a financial institution official, with the corrupt intent to influence the business of the institution, comes within the proscription of the bank bribery statute whether or not the offer is accepted by the official. Thus, in the final guidelines the Board has urged the disclosure of offers of things of value that could not be accepted under the provisions of the institution's or holding company's code.

Some commenters also pointed out that disclosure should not be limited to instances of receiving something from a customer, but, rather, disclosure also should be required when an insured institution or savings and loan holding company official is offered or receives something from a supplier. The final guidelines are not limited to customers. They apply to benefits received from third parties regardless of the source.

As proposed, the guidelines suggested that an insured institution or holding company official's full disclosure evidences good faith on his or her part, provided that such disclosure is made in the context of properly exercised supervision and control. Representatives from DOJ, who reviewed the proposal and comments, expressed concern that this proposal could provide a complete defense to an allegation of a violation of the bank bribery statute. For example, an individual could corruptly accept something of value in connection with a business transaction with the intent to be influenced but maintain that by fully disclosing the activity to his or her management he or she has obtained protection from prosecution, even though the institution did not review or approve the acceptance. In order to avoid any inference that disclosure of a corrupt transaction without review by the institution establishes a defense to a bank bribery charge, the Board has clarified the final guidelines in accordance with the suggestions of the DOJ. In addition, in response to the suggestions of several commenters that the policy statement should discuss the consequences of adopting a code of conduct in the event of criminal prosecution, the Board has incorporated language from the SUPPLEMENTARY INFORMATION section of its proposal. Similarly, the discussion in the SUPPLEMENTARY INFORMATION section of the proposal that encourages financial institutions to require that potential conflicts of interest be disclosed is incorporated in the final guidelines.

Some commenters suggested that the guidelines' use of terms such as "nominal," "reasonable" or "modest," was confusing and those terms created vague, ambiguous, and inconsistent standards. While the Board does not believe it is appropriate further to define these standards to make them consistent it has replaced the words "nominal" and "modest" in exceptions (d) and (f), with the term "reasonable."

One commenter questioned whether the Board in its initial regulatory flexibility analysis properly considered the expense of complying with the guidelines as well as the existence of conflicting federal rules. The guidelines are discretionary. To the extent compliance is in any way required, it is compliance with the Federal bank bribery statute. While the commenter suggested that there may be a conflict with the Federal rules of criminal procedure, the commenter did not identify the nature of such perceived conflict. The Board is unaware of any conflict and believes there is none. Lastly, under the provisions of the Regulatory Flexibility Act and the Administrative Procedure Act no regulatory flexibility statement is required for general statements of policy (5 U.S.C. 553(b) and 601(2)) and thus no such statement is contained in this document.

Guidelines for Compliance With the Federal Bank Bribery Law

The Board encourages all insured institutions and savings and loan holding companies to adopt internal codes of conduct or written policies or to amend their present codes of conduct to include the provisions suggested in the guidelines. An insured institution or holding company's code of conduct or policies should be designed to alert its officials about the Federal bank bribery law ("Act"), as well as to establish and enforce written policies on acceptable business practices. Consistent with the intent of the Act to prescribe corrupt activity within financial institutions, the code of conduct should prohibit any employees, officers, directors, agents or attorneys from (1) Soliciting for themselves or for a third party (other than the institution or holding company itself) anything of value from anyone in return for any business, service or confidential information of the institution or holding company and (2) accepting anything of value (other than bona fide salary, wages, fees or other compensation paid in the usual course of business referred to in the Act at 18 U.S.C. 215(c)) from anyone in connection with the business of the institution or holding company. Codes of conduct, issued pursuant to this policy statement including the exceptions described below, would be relevant to, but not dispositive of, any prosecutorial decision the Department of Justice may make in any particular case. While they are not a substitute for the legal standards set forth in the statute, in adopting its own prosecution policy, the Department of Justice can be expected to take into account the Board's expertise and judgment in defining those activities or practices that the Board believes do not undermine the duty of institution officials. *United States Attorneys' Manual*, section 9–40.439.

In its code of conduct, an insured institution or holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with its business. There are a number of instances where an official, without risk of corruption or breach of trust, may accept something of value from someone doing or seeking to do business with the institution or holding company. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution or holding company; if the benefit is available to the general public under the same conditions on which it is available to the official; or if the benefit would be paid for by the institution or holding company as a reasonable business expense if not paid for by another party.

Other exceptions to the general prohibition regarding acceptance of things of value in connection with the institution or holding company's business may include:

(a) Acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those with the parents, children or spouse of an official) when the circumstances make it clear that it is those relationships, rather than the business of the institution or holding company concerned that are the motivating factors;

(b) Acceptance of meals, refreshments, travel arrangements or accommodations, or entertainment, all of reasonable value, in the course of a meeting or other occasion, the purpose of which is to hold bona fide business discussions or to foster better business relations, provided that the expense would be paid for by the institution or holding company as a reasonable business expense if not paid for by another party (the institution or holding company may establish a specific dollar limit for such occasions);

(c) Acceptance of loans from other financial institutions on customary terms to finance proper and usual activities of their officials, such as home mortgage loans, except where prohibited by law;

(d) Acceptance of advertising or promotional material of reasonable value such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Acceptance of gifts of reasonable value related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the institution or holding company may establish a specific dollar limit for such occasions); or

(g) Acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the institution or holding company may establish a specific dollar limit for such occasions).

By adopting a code of conduct with appropriate allowances for such circumstances, an insured institution or holding company recognizes that acceptance of certain benefits by its officials does not amount to a corrupting influence on its transactions. The policy or code may also provide that, on a case-by-case basis, an insured institution or holding company may approve of other circumstances, not identified above, in which an official accepts something of value in connection with the institution or holding company's business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

In issuing guidance under the statute in the area of business purpose, entertainment or gifts, the Board is not establishing rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. An insured institution or holding company should seek to embody the highest ethical standards in its code of conduct. In doing this, it may establish in its own code of conduct a range of dollar values which cover the various benefits that its officials may receive from those doing or seeking to do business with it.

The code of conduct should provide that, if an official is offered, or receives something of value beyond what is authorized in the code of conduct or written policy, the official should disclose that fact to an appropriately designated official of the insured institution or holding company. The insured institution or holding company should keep contemporaneous written reports of such disclosures. An effective reporting and reviewing mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the insured institution or holding company to better protect itself from self-dealing. However, an official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what has been accepted is reasonable and does not pose a threat to the integrity of the institution or holding company. Thus, individuals cannot avoid the prohibitions of the bank bribery statute by simply reporting to management the acceptance of various gifts.

The Board recognizes that a serious threat to the integrity of an insured institution or holding company occurs when its officials become involved in outside business interests or employment that give rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the Act. Accordingly, institutions and holding companies are encouraged to prohibit, in their codes of conduct or policies, their officials from self-dealing or otherwise trading on their positions with them or accepting from someone doing or seeking to do business with the institution or holding company a business opportunity not available to other persons or that is made available because of the official's position with the institution or holding company. In this regard, an institution or holding company's code of conduct or policy should require that its officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed because of business or personal relationships with the institution's or holding company's customers, suppliers, business associates or competitors.

Disclosures and Reports

To make effective use of these guidelines, the Board recommends the following additional procedures:

(a) Insured institutions and holding companies should maintain a copy of any code of conduct or written policy they establish for their officials, including any modifications thereof.

(b) The insured institutions and holding companies should require from their officials an initial written acknowledgment of their code or policy plus written acknowledgment of any subsequent material changes to the code or policy and the officials' agreement to comply therewith.

(c) Insured institutions and holding companies should maintain contemporaneous written reports of any disclosures made by their officials in connection with a code of conduct or written policy.

By the Federal Home Loan Bank Board.

John F. Chizzoni,

Assistant Secretary.

[FR Doc. 88-7177 Filed 3-31-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 25, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. *Statistical Report on Medical Care:* Eligibles, Recipients, Payments, and Services—0938-0345—These data are required to monitor past and future trends in the Medicaid Program. They are used as the basis of the analyses and cost savings estimates for cost sharing legislative initiatives to Congress. They also are the basis for DHHS and HCFA's actuarial forecasts for Medicaid. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: One-time; Estimated Annual Burden: 19,602 hours.

2. State Agency (SA) Sheets for Verifying Exclusions from the Prospective Payment System (PPS)—0938-0358—Onsite verifications by State Agency need to be conducted to ensure that rehabilitation units meet criteria for exclusion from PPS. *Respondents:* State or local governments. *Number of Respondents:* 1,593; *Frequency of Response:* Annually; *Estimated Annual Burden:* 398 hours.

3. Methodology for Estimating Waiver Costs of Health Care Financing Administration Demonstration Projects—0938-0408—The information collected is intended to provide guidance to individuals responsible for the preparation of waiver costs estimates for HCFA demonstrations. *Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. *Number of Respondents:* 50; *Frequency of Response:* Occasionally; *Estimated Annual Burden:* 4,000 hours.

4. Statement of Cumulative Expenditures for Demonstration Projects—0938-0402—This report requires awardees of grants, cooperative agreements and contracts to report actual expenditure data to HCFA. *Respondents:* State or local governments, Businesses or other for-profit, Nonprofit institutions, Small businesses or organizations. *Number of Respondents:* 25; *Frequency of Response:* Quarterly; *Estimated Annual Burden:* 200 hours.

OMB Desk Officer: Allison Herron.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Health Resources Services Administration

1. Request for Collection Assistance Under the Health Education Assistance (HEAL) Loan Program—0915-0100—This form provides HHS with data on delinquent borrowers. The HHS uses this information to assist the lenders in the collection of overdue accounts, helping to ensure sound management of the HEAL program. *Respondents:* Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions. *Number of Respondents:* 66; *Frequency of Response:* Occasionally; *Burden:* 264 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. *Attn:* (name of OMB Desk Officer)

Date: March 29, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-7178 Filed 3-31-88; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Vessel Sanitation Program; Meeting

ACTION: Notice of public meeting between the Centers for Disease Control (CDC) and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9:30 a.m.—Wednesday, May 4, 1988.

Place: Conference Room, Best Western-Sunrise Motor Hotel, 525 So. Harbor Blvd., San Pedro, California 90731.

Status: Open to the public for participation, comment, and observation, limited only by space available.

SUPPLEMENTARY INFORMATION: As part of the revised Vessel Sanitation Program, CDC announced its intention to conduct quarterly public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is the fourth in a continuation of that series of public meetings.

Matters to be Considered: Experience to date with the operation of the Vessel Sanitation Program.

For a period of 12 days following the meeting, through May 16, 1988, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

Contact Person for More Information: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236-4111; Commercial: (404) 488-4111.

Dated: March 28, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-7121 Filed 3-31-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[HSQ-155-CN]

Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest From In-State Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of general notice.

SUMMARY: This document corrects an omission from the general notice that was published in the **Federal Register** on March 11, 1988 (53 FR 7976). The notice, in accordance with section 4092 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, gave six months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) will end. It also gave the period of time in which in-State organizations could submit statements of interest so that they could receive Requests for Proposals (RFPs) and compete for those contracts. The notice indicated that the States affected were Delaware, Kentucky, South Carolina, and Wyoming. The State of Nebraska appears to have been inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Bill Roskey, (301) 966-4679.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 88-5433, beginning on page 7976, in the March 11, 1988 issue, make the following corrections:

1. On page 7976, in the first column, the last sentence in the Summary should read, "The States currently affected are Delaware, Kentucky, South Carolina, Wyoming, and Nebraska."

2. On page 7977, in the first column, the first sentence under Provisions of the Notice should read, "This notice announces that current contracts (including intended extensions) between HCFA and out-of-State PROs responsible for review in the States of Delaware, Kentucky, South Carolina, Wyoming, and Nebraska will expire on October 1, 1988."

Because the State of Nebraska appears to have been inadvertently omitted from the general notice that was published on March 11, 1988, organizations in that State may file a statement of interest up to April 22, 1988.

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c-2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 24, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-7179 Filed 3-31-88; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Adverse Event Reporting for Childhood Vaccines

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is announcing the interim procedures developed to implement section 2125 of the Public Health Service Act (the Act) enacted by the National Childhood Vaccine Injury Act of 1986 and amended on December 22, 1987. Under section

2125 of the Act, health care providers must record certain information concerning the administration of specified childhood vaccines and health care providers and manufacturers must report specified events to the Secretary, DHHS. This notice informs health care providers and vaccine manufacturers of how they may fulfill their obligations under section 2125 of the Act. DHHS is issuing this notice as required under section 2125 of the Act.

DATE: The recording and reporting requirements in section 2125 of the Act are effective on March 21, 1988.

ADDRESSES: Reports of the specified events for vaccines purchased with private funds are to be sent as Adverse Reaction Reports (FDA Form 1639) to Food and Drug Administration (HFN–730), Rockville, MD 20857. Reports of the specified events for vaccines purchased with public funds are to be sent as Reports of Adverse Events Following Immunication (CDC Form 71.19) through State health departments to MSAEFI/IM (E05), Centers for Disease Control, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT:

Food and Drug Administration

Kay Pearson, Center for Drugs Evaluation and Research, HFN–730, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4580.

Centers for Disease Control

Chief, Surveillance, Investigations, and Research Branch, Division of Immunization, Center for Prevention Services (E05), Centers for Disease Control, Atlanta, GA 30333, 404–639–1860, FTS 236–1860.

SUPPLEMENTARY INFORMATION:

I. Background

On November 14, 1986, Congress enacted as an amendment to the Act the National Childhood Vaccine Injury Act of 1986 (Title III of PUb. L. 99–660), which created a new Title XXI of the Act. Subtitle 2 (The National Vaccine Injury Compensation Program) was not to take effect until the effective date of a tax to be enacted to provide funds for the compensation system established by the Act. On December 22, 1987, the President signed the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). The Vaccine Compensation Amendments of 1987 (Subtitle D of Title IV of Pub. L. 100–203) further amended Subtitle 2 of Title XXI of the Act. Under this most recent legislation, Parts A and B of Subtitle 2 are effective October 1, 1988, and Parts C and D are effective December 22, 1987.

Part C of Subtitle 2 of Title XXI of the Act is entitled "Assuring a Safer Childhood Vaccination Program in the United States." Within Part C, section 2125 requires that health care providers maintain specific records related to the administration of certain childhood vaccines. Section 2125 also requires health care providers and manufacturers to report certain events related to the administration of these vaccines. Section 2125 of the Act provides that reports of such event shall be made beginning 90 days after the effective date of Part C, i.e., beginning March 21, 1988. Under section 2125 the Secretry is to publish in the **Federal Register** a notice of these reporting requirements. DHHS is issuing this notice to comply with this provision.

In addition to this notice, DHHS is providing health care providers and manufacturers with information concerning the recordkeeping and reporting requirments of section 2125 by other means. Articles announcing these requirements of section 2125 by other means. Articles announcing these requirements are being published in the FDA *Drug Bulletin* and the *Morbidity and Mortality Weekly Report*. Letters are being sent to individuals and professional societies known to have an interest in these matters.

DHHS describes below the interim procedures for health care providers and manufacturers to comply with the requirements of section 2125 of the Act. The procedures set forth below are adapted from existing procedures previously used for the voluntary reporting of adverse events associated with vaccines. As with the voluntary system, the interim procedures provide for health care providers to report adverse events by one of two routes, depending on whether vaccine administered is publicly or privately puchased. "Publicly purchased" vaccine is purchased using Federal, State, or local public funds. Adverse events after administration of publicly purchased vaccine are to be reported through local, county, or State health departments to the Centers for Disease Control (CDC). Adverse events occurring after administration of privately purchased vaccine are to be reported to FDA on an Adverse Reaction Report (FDA form 1639).

These interim procedures are currently under review within DHHS, and the reporting system may be revised at a later date, after the Department has considered the feasibility of a single adverse event reporting system for childhood vaccines.

II. Description of Recordkeeping Requirements of Section 2125

A. For Which Vaccines Must Records Be Kept?

Records must be kept for vaccines listed in the Vaccine Injury Table (section 2114(a) of the Act). These vaccines are listed at paragraph III(D) below in the "Reportable Events Chart" developed for the convenience of the reader. The requirements apply only to licensed vaccines, including licensed vaccines being used in a clinical study, for example as a control or to support new indications for use of an already licensed vaccine.

B. Who Must Keep The Records?

Each health care provider who administers a vaccine identified in the Vaccine Injury Table must keep the records or ensure that the records are kept. A "health care provider" is defined in section 2133 of the Act as "any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered."

C. What Must Be Recorded?

The following information must be recorded for each vaccine listed in the Vaccine Injury Table:

1. Date of administration of the vaccine;
2. Vaccine manufacturer and lot number of the vaccine;
3. Name and address and, if appropriate, the title of the health care provider.

D. Where Must The Records Be Kept?

The records must be kept in the permanent medical record of the person receiving the vaccine or in a permanent office log or file. The records must be accessible upon request to the legal representative (parent or legal guardian) of the vaccine recipient. The records may be kept at a centralized location, such as a hospital, State health office, or other institution under whose authority the vaccine was administered.

III. Description of Reporting Requirements of Section 2125

A. For Which Vaccines Must Adverse Events Be Reported?

Adverse events must be reported for the vaccines identified in the Reportable Events Chart in paragraph III(D) below (see also paragraph II(A)). These procedures apply only to licensed vaccines, including any licensed vaccine

being used in a clinical study. Adverse events associated with licensed vaccines used in double-blind clinical studies in which the identity of the vaccine is encoded should be reported as soon as the code is broken. Adverse events associated with unapproved vaccines under clinical study are to be reported in accordance with 21 CFR 312.32 *IND safety reports.*

B. Who Must Report Adverse Events?

The adverse events described in III(D) must be reported by the health care provider who administered the vaccine and by the vaccine manufacturer. As described in II(B), a health care provider may be a licensed health care professional, organization, or institution under whose authority a vaccine is administered. In some cases a health care professional other than the administrator of the vaccine will be the first to determine that a reportable adverse event has occurred. The person identifying the adverse event should notify immediately the health care provider who administered the vaccine to assure that the obligations under the Act can be fulfilled.

C. How Should Adverse Events Be Reported?

For vaccines purchased with public funds, the legal representative of the child receiving the vaccine is given the phone number of a local or State health department to call in the event of an adverse reaction to the vaccine. Upon receiving a report over the telephone, a public health official is required to complete CDC Form 71.19 and send the form to CDC.

This procedure for publicly purchased vaccines is unchanged from procedures currently used. For privately purchased vaccines, the health care provider who administered the vaccine is required to report the adverse events on FDA Form 1639 (Adverse Reaction Report) and mail the form to FDA.

Vaccine manufacturers who receive, by whatever means, notice of a reportable event shall report the event on FDA Form 1639 to the FDA, consistent with current voluntary reporting procedures. Manufacturers needing additional information should consult with the FDA contact person identified above in this document.

D. Which Adverse Events Must Be Reported?

The Act requires that the following events be reported: (1) The occurrence of any contraindicating reaction to a vaccine as specified in the manufacturer's package insert; and (2) the occurrence of any event set forth in the Vaccine Injury Table in section 2114 (a) of the Act.

Events in the Vaccine Injury Table that are also set forth in section 2114(b) (Qualifications and Aids to Interpretation) must be reported if they occur within 7 days of administration of the vaccine or within a longer period of time specified in section 2114(a) or (b).

For the convenience of the reader, DHHS has developed a "Reportable Events Chart" to reflect the reporting requirements and to respond more directly to the needs of health care providers and manufacturers who will be reporting adverse events.

DHHS is also reprinting section 2114(b) in edited form as "Aids to Interpretation." "Aids to Interpretation" from section 2114(b) is intended to clarify certain of the terms used to identify reportable events in the "Reportable Events Chart." DHHS emphasizes, however, that it is ultimately the responsibility of the health care provider or vaccine manufacturer to determine whether a reportable event has occurred and the "Aids to Interpretation" is included for guidance purposes.

REPORTABLE EVENTS CHART

Vaccine	Event	Interval from vaccination
DTP; P; DTP/polio combination [1] or any other vaccine containing whole cell pertussis bacteria extracted or partial cell bacteria, or specific pertussis antigen(s) [1]	A. Anaphylaxis or anaphylactic shock	24 hours.
	B. Encephalopathy (or encephalitis)	7 days.
	C. Shock-collapse or hypotonic-hyporesponsive collapse	Do.
	D Residual seizure disorder	See aids to interpretation.
	E. Any acute complication or sequela (including death) of above events.	No limit.
	F. Any contraindicating reaction to a vaccine as specified in package insert.	See package insert.
Measles, mumps, and/or rubella; DT; Td; or tetanus toxoid.	A. Anaphylaxis or anaphylactic shock	24 hours.
	B. Encephalopathy (or anencephalitis)	15 days (for mumps, measles, and/or rubella); 7 days (for DT, Td, or tetanus toxoid).
	C. Residual seizure disorder	See aids to interpretation.
	D. Any acute complication or sequela (including death) of above events.	No limit.
	E. Any contraindicating reaction to a vaccine as specified in package insert.	See package insert.
Oral polio vaccines	A. Paralytic polio:	
	—In a non immunodeficient receipient	30 days.
	—In an immunodeficient recipient	6 months.
	—In a vaccine-associated community case	No limit.
	B. Any acute complication or sequela (including death) of above events.	Do.
	PC. Any contraindicating reaction to a vaccine as specified in package insert.	See package insert.
Inactivated polio vaccine	A. Anaphylaxis or anaphylactic shock	24 hours.
	B. Any acute complication or sequela (including death) of above events.	No limit.
	C. Any contraindicating reaction to a vaccine as specified in package insert.	See package insert.

[1] Certain vaccines, i.e., DTP/Polio Combination and vaccines containing partial cell Pertussis bacteria or specific Pertussis antigens are not licensed for use in the United States. The chart would apply if these vaccines become available.

Aids to Interpretation

The following qualifications and aids to interpretation shall apply to the Reportable Events Chart:

1. A shock-collapse or a hypotonic-hyporesponsive collapse may be evidenced by indicia or symptoms such as decrease or loss of muscle tone, paralysis (partial or complete), hemiplegia or hemiparesis, loss of color or turning pale white or blue, unresponsiveness to environmental stimuli, depression of consciousness, loss of consciousness, prolonged sleeping with difficulty arousing, or cardiovascular or respiratory arrest.

2. A person may be considered to have suffered a residual seizure disorder if the person did not suffer a seizure or convulsion unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit before the first seizure or convulsion after the administration of the vaccine involved and if—

a. In the case of a measles, mumps, or rubella vaccine or any combination of such vaccines, the first seizure or convulsion occurred within 15 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit, and

b. In the case of any other vaccine, the first seizure or convulsion occurred within 3 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit.

3. The term "encephalopathy" means any significant acquired abnormality of, or injury to, or impairment of function of the brain. Among the frequent manifestations of encephalopathy are focal and diffuse neurologic signs, increased intracranial pressure, or changes in level of consciousness lasting at least 6 hours, with or without convulsions. The neurological signs and symptoms of encephalopathy may be temporary with complete recovery, or may result in various degrees of permanent impairment. Signs and symptoms such as high pitched and unusual screaming, persistent unconsolable crying, and bulging fontanel are compatible with an encephalopathy, but in and of themselves are not conclusive evidence of encephalopathy. Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.

4. For purposes of paragraphs (2) and (3), the terms 'seizure' and 'convulsion' include grand mal, petit mal, absence, myoclonic, tonic-clonic, and focal motor seizures and signs.

E. What Information Must Be In A Report?

A report must contain the following information:

1. The information requested on the form necessary to describe the event;
2. The time interval between vaccination and onset of the event;
3. Name of the manufacturer of the vaccine; and
4. Lot number of the vaccine.

Health care providers and manufacturers are requested *not* to provide the names or other personal identifiers of patients on FDA Form 1639. This information will be reported for publicly purchased vaccines to State and local health departments, which in turn will remove the names and personal identifiers when submitting CDC Form 71.19.

CDC Form 71.19 already specifically requests all information required by the Act. The lot number of the vaccine must be added to the information specifically requested on FDA Form 1639.

F. Where Must Reports Be Sent?

FDA Form 1639 must be sent to: Food and Drug Administration (HFN–730), Rockville, MD 20857

CDC Form 71.19 must be sent by the local or State health department to CDC at: MAEFI/IM (E05), Centers for Disease Control, Atlanta, GA 30333

G. Where May Forms Be Obtained?

Multiple copies of FDA Form 1639 are available from: PHS Forms and Publications Distribution Center (HFA–268), 12100 Parklawn Drive, Rockville, MD 20852

Single copies of FDA Form 1639 are available from: FDA (HFN–730), 5600 Fishers Lane, Rockville, MD 20857.

Copies of FDA Form 1639 are also included in the FDA *Drug Bulletin* and in current editions of the *Physician's Desk Reference* (PDR), physician's edition; *Drug Evaluations;* and the *USP Drug Information for the Health Care Provider.* Photocopies and other facsimilies of FDA Form 1639 are acceptable for use.

CDC Form 71.19 is available at each State health department.

H. How Will DHHS Use This Information?

FDA and CDC will file and analyze these data to monitor the safety of childhood vaccines. The information received, except for information which may identify a person receiving a vaccine or that person's legal representative (such as, name, street address, phone number, and related medical records) will be available to the public.

IV. Paperwork Reduction

In accordance with section 321 of Pub. L. 99–660, the recordkeeping and reporting requirements described above are not subject to the Paperwork Reduction Act.

Dated: March 14, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: March 25, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–7181 Filed 3–31–88; 8:45 am]

BILLING CODE 4160-17-M

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: April 11, 1988, 9:00 a.m. to 2:00 p.m.

ADDRESS: Longworth House Office Building, Room 1302, Independence Avenue & South Capitol Street, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ash Hayes, Ed.D., Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW., Suite 7103, Washington, DC 20001, Telephone: (202) 272–3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The Functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Dated: March 28, 1988.

Ash Hayes,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 88–7129 Filed 3–31–88; 8:45 am]

BILLING CODE 4160-17-M

Office of the Assistant Secretary for Health, Statement of Organization, Functions and Delegations of Authority; National AIDS Program Office

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 13318, April 22, 1987) is amended to reflect the establishment of a National AIDS Program Office (NAPO) within the Office of the Assistant Secretary for Health. The new NAPO will serve as the focus in DHHS for all programmatic and policy activities on AIDS for the Assistant Secretary for Health as part of the Federal integrated management structure on AIDS.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization, add to the list of organizations, item 19. National AIDS Program Office (HAA).

Under Section HA–20, Functions, after the title and statement for the Office of the Assistant Secretary for Health (HA), add the following title and statement:

National AIDS Program Office (HAA). Under the direction of a Director who reports directly to the Assistant Secretary for Health (ASH), the National AIDS Program Office: (1) Coordinates all PHS AIDS activities and serves as principal advisor to the ASH on AIDS-related issues; (2) identifies for ASH critical issues, advises ASH on how to resolve the issues, and monitors PHS progress toward achieving established goals; (3) provides liaison with other Federal organizations; (4) responds to inquiries related to PHS AIDS activities; (5) provides analytic and administrative support to the PHS AIDS Executive Task Force and each of its subgroups; (6) maintains relationships with State and local agencies involved with AIDS activities; (7) assures exchange of accurate scientific information with public health interest groups and professional and private sector organizations; and (8) reviews and makes recommendations on PHS agency budget requests and on research priorities as incorporated in planning documents.

Date: March 24, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–7180 Filed 3–31–88; 8:45 am]

BILLING CODE 4160-17-M

Agency for Toxic Substances and Disease Registry

[ATSDR–4]

Request for Comments on Chemicals Nominated for Toxicological Evaluation

SUMMARY: On August 3, 1987, the Hazardous Waste Information Evaluation Subcommittee (HWIES) of the PHS Committee to Coordinate Environmental Health and Related Programs (CCEHRP) met to review eight chemicals nominated for toxicology studies and to recommend the types of studies to be performed by the National Toxicology Program (NTP) under funding from the Agency for Toxic Substances and Disease Registry (ATSDR). With this notice, the ATSDR solicits public comments on the eight chemicals listed herein.

DATE AND ADDRESS: Written comments bearing docket control number ATSDR–4 should be submitted by June 30, 1988 to: Dr. Barry L. Johnson, Associate Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), and Chairman, Hazardous Waste Information Evaluation Subcommittee (HWIES), Building 27 South, Chamblee (F–38), 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–4590. Submissions received after this date will be considered where possible.

All written comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 28 South, Room 1103, 4770 Buford Highway, NE., Chamblee, Georgia, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499, section 104(i)(5)(A)) amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*). SARA authorizes ATSDR to obtain toxicological data for assessing potential human health effects and to support toxicological testing of relevant chemicals for which toxicological data are incomplete. As one method to fulfill these statutory responsibilities under CERCLA, ATSDR, through the Hazardous Waste Information Evaluation Subcommittee (HWIES), recommends the types of studies to be performed by the National Toxicology Program (NTP) under funding from the Agency for Toxic Substances and Disease Registry (ATSDR). The HWIES of the PHS CCHERP is responsible for coordinating Public Health Service activities as they relate to meeting the health objectives of Superfund. The HWIES provides an important forum for review, coordination, and evaluation of informational materials on hazardous wastes that involve affected PHS programs, particularly those of ATSDR, Centers for Disease Control, the Food and Drug Administration, and the National Institutes of Health, as well as those of the Environmental Protection Agency. Chemicals are nominated to HWIES by agencies with Statutory responsibilities under CERCLA. Each chemical is reviewed by the HWIES and resulting recommendations are made to the NTP.

Nominated chemicals are published with request for comment in the **Federal Register** to encourage public participation in the HWIES chemical evaluation process. Through this process, HWIES can make better informed decisions whether to select, defer, or reject chemicals for toxicology study. Comments and secondary data submitted in response to this request are reviewed and summarized by HWIES and forwarded to ATSDR and NTP for further evaluation.

On August 3, 1987, the HWIES evaluated eight chemicals nominated by the U.S. Environmental Protection Agency for toxicology studies. The following table lists the chemicals and their Chemical Abstract Service (CAS) registry numbers.

Chemical	CAS No.
Barium chloride (dihydrate)	10326–27–9
Copper sulfate	7758–98–7
Xachlorocyclopentadiene	77–47–4
Manganese sulfate (monohydrate)	10034–96–5
Monochlorobenzene	108–90–7
Phenol	108–95–2
Selenium (two valences):	
Sodium selenate	13410–01–0
Sodium selenite	10102–18–8
Xylene (commercial mixture)	1330–20–7

The HWIES recommended no further testing at this time for the following: Xylene, manganese sulfate, barium chloride, and hexachlorocyclopentadiene. Testing of monochlorobenzene for reproductive toxicity was deferred until the results of an EPA-sponsored inhalation teratology study are available. Prechronic (90-day) toxicity tests via drinking water were recommended for copper sulfate and selenium. Two valence states of selenium (+4 and +6) were recommended for comparative toxicity testing. Recommendations regarding the testing of phenol were tabled for a future meeting.

Interested parties are requested to submit pertinent information and data. The following types of data and information are of particular relevance:

(1) Modes of production, current production levels, and environmental exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results in the case of completed studies; and

(4) Results of toxicological studies of structurally related compounds.

Dated: March 25, 1988.

James O. Mason,

Administrator, Agency for Toxic Substances Disease Registry.

[FR Doc. 88-7120 Filed 3-31-88; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-08-4220-10; U-62507]

Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 4,877.12 acres of public land in Grand County, to protect Westwater Canyon and a potential river take-out. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and request for a public meeting should be received by June 30, 1988.

ADDRESS: Comments and meeting requests should be sent to the State Director, BLM, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM, Utah State Office, 801-524-3074.

SUPPLEMENTARY INFORMATION: On March 28, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Salt Lake Meridian

T. 21 S., R. 24 E.,
  Sec. 13, S½SW¼SW¼;
  Sec. 22, SW¼SW¼;
  Sec. 24, lots 10-21, W½SW¼NE¼, W½NE¼NW¼, S½NE¼SE¼;
  Sec. 25, lot 2, NW¼NE¼, N½NE¼NW¼;
  Sec. 27, lot 6, E½NW¼NW¼, SE¼NW¼.
T. 20 S., R. 25 E.,
  Sec. 22, lots 1, 2, 4-6, NW¼NE¼, E½SE¼NW¼, E½SW¼;
  Sec. 23, lots 7, 8, SW¼NW¼;
  Sec. 26, lots 1-5, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, W½SE¼SW¼;
  Sec. 27, lots 1-5, SW¼NE¼, E½NE¼NW¼, NE¼SE¼NW¼;
  Sec. 33, lots 2-4, E½NW¼SE¼, E½SW¼SE¼;
  Sec. 34, lots 1-8, NW¼NE¼, SW¼NW¼, N½NE¼SE¼, SE¼SW¼, NW¼SW¼SE¼;
  Sec. 35, lot 1, W½NE¼NW¼, SW¼NW¼.
T. 21 S., R. 25 E.,
  Sec. 3, lots 1-4, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, SE¼SW¼SW¼, NW¼SW¼, W½E½SE¼, NW¼SE¼, E½SW¼SE¼;
  Sec. 4, lots 1, 2, 5;
  Sec. 8, SE¼NE¼, E½SE¼;
  Sec. 9, lots 1-15, SE¼SW¼, N½SE¼SE¼;
  Sec. 10, lots 1-6, W½NE¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼, N½SW¼SW¼;
  Sec. 16, lots 1-4;
  Sec. 17, lots 1-12, N½N½SE¼;
  Sec. 18, E½NE¼SE¼, SE¼SE¼;
  Sec. 19, lots 1, 2, 6-13, NE¼SE¼, SW¼SE¼;
  Sec. 20, lots 1, 3, W½NE¼NW¼;
  Sec. 30, lots 1, 2, NE¼NW¼.

The area described aggregates 4,877.12 acres in Grand County.

The purpose of the proposed withdrawal, in conformance with the Grand Area Resource Management Plan,is to protect Westwater Canyon currently being considered by Congress to designate it as a wild and scenic river.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request of the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which will not alter existing values of the land.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-7158 Filed 3-31-88; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1988, through October 31, 1988. The List of Restricted Joint Bidders published in the **Federal Register** on October 19, 1987, at 52 FR 38819 covered the bidding period of November 1, 1987, through April 30, 1988.

Group I. Chevron Corp.; Chevron U.S.A. Inc.
Group II. Exxon Corp.
Group III. Texaco Inc.; Texaco Producing Inc.; Getty Oil Co.
Group IV. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.

Group V. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.
Group VI. Standard Oil Co.; Sohio Petroleum Co.; Standard Oil Production Co.; Standard Alaska Production Co.

Date: March 29, 1988.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 88-7193 Filed 3-31-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

[DES 88-17]

Availability of Draft Environmental Impact Statement for Lake Clark National Park and Preserve, Alaska

Action: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Lake Clark National Park and Preserve, Alaska and the holding of public hearings and a public meeting.

For Lake Clark National Park and Preserve, three alternatives were examined ranging from no action, which means no additional wilderness designation, to designating most lands within the study area as wilderness. Alternative 1, the proposed action and no-action alternative, recommends no study area lands for wilderness designation.

Dates and Addresses: The public is invited to comment on the DEIS. The public comment period will end July 18, 1988. Written comments should be mailed to Mr. Q. Boyd Evision, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, AK 99503. Comments must be received by July 8, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Wrangell-St. Elias National Park and Preserve and Gates of the Arctic National Park and Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing has been tentatively scheduled for Tuesday, June 7, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive. The actual date and time will be verified in the local newspapers.

In addition, a public meeting will be held on Lake Clark National Park and Preserve Wilderness DEIS in Port Allsworth on Wednesday June 8, 1988. A section 810 review will also be conducted as part of the meeting. The exact time and location will be announced in local news media.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257-2654. The headquarters at 701 C Street, Box 61, Anchorage, Alaska 99513, phone (907) 271-3751 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Approved:

Bruce Blanchard

Director, Office of Environmental Project Review, United States Department of the Interior.

Dated: March 28, 1988.

[FR Doc. 88-7210 Filed 3-31-88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, April 14, at 1:00 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW, Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
John Alderson, Administrator, General Services Administration, Washington, DC
Honorable Frank Carlucci, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Legislative Proposals—Comments to the Secretary of the Interior.

a. S.J. Res 232, and H.J. Res 403, Providing for a memorial to Raoul Wallenberg.

b. H.R. 3742, Providing for a memorial to Americans Who Served in World War II.

c. H.R. 3604, Providing for the erection of the Largest American Flag in the World at Oxon Cove Park, Maryland.

d. H.R. 1600, Providing for the erection of a flag pole at the apex of the Vietnam Veterans Memorial.

e. H.R. 3455, Providing for a memorial to Mahatma Gandhi.

f. H.J. Res. 433, Providing for a memorial to General Draza Mihailovich.

II. Discussion of Regulations Pursuant to Pub. L. 99-652.

III. Design approval of Authorized Memorials.

e. Public Law 99-620, The American Armored Force Memorial.

IV. Status reports of pending memorials.

Manus J. Fish, Jr.

Regional Director, National Capital Region

Date: March 28, 1988.

[FR Doc. 88-7211 Filed 3-31-88; 8:45 am]

BILLING CODE 4311-70-M

Delegation of Concessions Permit Authority; North Atlantic Region

Pursuant to National Park Service Order 77, dated February 27, 1973, the authority to execute, amend, assign, and terminate concessions contracts and permits was delegated to Regional Directors.

In accordance with the provisions of National Park Service Order 77, the authority to execute, amend, assign and terminate concessions permits of less than five years duration or when anticipated annual gross receipts will amount to less than $100,000 is hereby redelegated to park superintendents in the North Atlantic Region, National Park Service.

Questions concerning this authority should be directed to Mr. Stephen G. Crabtree, Chief, Division of Concession Program Management, North Atlantic Region, telephone 617-565-8865.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

Date: March 9, 1988.

[FR Doc. 88-7212 Filed 3-31-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Tillotson Corporation, 59 Waters Avenue, Everett, Massachusetts, which corporation includes the following divisions:

Moss Point Glove Company
Moss Point Transportation Co.
Best Manufacturing Company

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary name	State of incorporation
HPI, inc.	Alabama.
Tillotson Rubber Company	Massachusetts.
Hevea Transport, Inc.	Massachusetts.
Moss Point Transportation Co., Inc.	Mississippi.
Heveatex Corporation	Massachusetts.
Borden & Remington Corp.	Massachusetts.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7160 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-284 (Sub-No. 1X)]

Iowa Northern Railway Co., Abandonment, in Blackhawk County, IA

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Iowa Northern Railway Company of approximately 6.5 miles of track in Blackhawk County, IA, subject to standard labor protective conditions and the condition that salvage that may affect the Cedar River, Blackhawk Creek, or any wetlands may not commence without consultation with the City of Waterloo and the Army Corps of Engineers.

DATES: This exemption will be effective on April 4, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-284 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Rm. 1224, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 6th & Locust, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

(TTD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary

[FR Doc. 88-7161 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 226X)]

CSX Transportation, Inc.; Abandonment in Williamson County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of approximately 1.29 miles of track in Williamson County, TN, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 1, 1988: Petitions to stay must be filed by April 18, 1988, and petitions for reconsideration must be filed by April 26, 1988. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must file by April 11, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 226X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TTD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 28, 1988.

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[1] See *Exempt or Rail Abandonment—Offers of Finan. Asst.*, 4 I.C.C. 2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440, 48446).

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7138 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-No. 97)]

The Chesapeake and Ohio Railway Co.; Abandonment Between Alma and Edmore in Gratiot and Montcalm Counties, MI

The Commission has found that the public convenience and necessity permit The Chesapeake and Ohio Railway Company to abandon its 14.58-mile line of railroad between Elwell (milepost 45.5) and Edmore, MI (milepost 60.08) in Gratiot and Montcalm Counties, MI.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Rail Section, AB-OFA.**" Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: March 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons, joined by Commissioner Lamboley, dissented with a separate expression.

Noretta R. McGee,

Secretary.

[FR Doc. 88-7139 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33, (Sub-No. 50X)]

Union Pacific Railroad Co.; Abandonment Exemption in Spokane County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption..

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Union Pacific Railroad Company (UP) of 1.10 miles of railroad between milepost 1.39 and milepost 2.49 in Spokane, WA, subject to standard labor protection conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 1, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 11, 1988. Petitions to stay must be filed by April 18, 1988, and petitions for reconsideration must be filed by April 25, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-33 (Sub-No. 50X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge St., Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7140 Filed 3-31-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application; Mallinckrodt, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 2, 1988, Mallinckrodt, Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 2, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 28, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-7187 Filed 3-31-88; 8:45 am]

BILLING CODE 4410-09-M

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[1] See *Exempt or Rail Abandonment—Offers of Finan. Asst.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440, 48446).

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committees; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 27 and 28, 1988. All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 27, 1988

9:30 a.m.—Committee on Productivity/Foreign Labor—Room S-4215 A and B

1. BLS work on measuring productivity in service industries
2. Current developments in multi-factor productivity
3. International Productivity Symposium III
4. Work on capital analysis
5. Work on productivity of older workers

2 p.m.—Committee on Employment and Unemployment Statistics—Room S-4215 A and B

1. Need for review of employment and unemployment concepts and measures
2. Update on BLS plans for an improved business directory
3. Status of the Standard Industrial Classification revision
4. Results of BLS survey of day care practices in industry
5. Plans of BLS survey of substance abuse programs in industry
6. Progress in developing a revision in local area unemployment statistics methodology

2 p.m.—Committee on Price Indexes—Room N-3437 B and C

1. International Price Program
   (a) Monthly pricing
   (b) IPP revision
2. Producer Price Index—Computer project
3. Consumer Price Index—Status report
4. Consumer Expenditures—Status report

Thursday, April 28, 1988

9:30—Committee on Occupational Safety and Health Statistics—Room N-5437 A and B

1. Progress report on implementing National Academy of Sciences recommendations
2. Records check project
3. Fatality project—NCHS/NIOSH
4. Revised guidelines plan
5. Inhalation WIR
6. Supplementary Data System—Reference year 1985
7. Bibliography of research on OSHA
8. Other business

9:30—Committee on Wages and Industrial Relations—Room N-3437 B and C

1. The Office of Compensation and Working Conditions FY 1988 Congressional Budget and the President's FY 1989 Budget
2. Results of the Temporary Help Survey
3. Report on the Bureau's First Time Survey of Employee Benefits
4. Other business

1:30 p.m.—BRAC Board—Room N-5437 A and B

1. Chairpersons opening remarks
2. Commissioner's remarks—Janet L. Norwood
3. Committee Reports
   a. Productivity/Foreign Labor
   b. Employment and Unemployment Statistics
   c. Price Indexes
   d. Occupational Safety and Health Statistics
   e. Wages and Industrial Relations
4. Other business
5. Chairperson's closing remarks.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, DC, the 28th day of March 1988.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 88-7182 Filed 3-31-88; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. VA88-19 and UT88-3 (Heavy Construction) dated January 8, 1988.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize General Wage Determination No. VA88-20 and, projects to which General Wage Determination No. UT88-3 (Heavy Construction) would have been applicable, agencies should request a project wage determination using form SF-308 (Part 1, 29 CFR 1.5). Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawn decision in contract specifications, the opening of bids for which is within ten (10) days of this notice, need not be affected.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Virginia:	
VA88-21	pp. 1160m-1160n.
VA88-22	pp. 1160o-1160p.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:	
CT88-1 (Jan. 8, 1988)	pp. 62-74.
District of Columbia:	
DC88-1 (Jan. 8, 1988)	pp. 78.84.
New Jersey:	
NJ88-2 (Jan. 8, 1988)	pp. 614-619.
NJ88-3 (Jan. 8, 1988)	pp. 634-639.
NJ88-4 (Jan. 8, 1988)	pp. 658-660.
New York:	
NY88-9 (Jan. 8, 1988)	p. 768.
NY88-10 (Jan. 8, 1988)	pp. 770-773.
NY88-14 (Jan. 8, 1988)	p. 810.
Virginia:	
VA88-1 (Jan. 8, 1988)	pp. 1117-1118.
VA88-2 (Jan. 8, 1988)	pp. 1121-1122.
VA88-3 (Jan. 8, 1988)	p. 1124.
VA88-4 (Jan. 8, 1988)	pp. 1125-1126.
VA88-5 (Jan. 8, 1988)	p. 1128.
VA88-6 (Jan. 8, 1988)	pp. 1131-1132.
VA88-7 (Jan. 8, 1988)	pp. 1133-1134.
VA88-9 (Jan. 8, 1988)	pp. 1137-1139.
VA88-11 (Jan. 8, 1988)	pp. 1143-1144b.
VA88-13 (Jan. 8, 1988)	pp. 1147-1148b.
VA88-15 (Jan. 8, 1988)	pp. 1154-1155.
VA88-16 (Jan. 8, 1988)	pp. 1157-1159.
VA88-17 (Jan. 8, 1988)	pp. 1160b.
VA88-18 (Jan. 8, 1988)	pp. 1160f.
VA88-20 (Jan. 8, 1988)	pp. 1160k-1160l.
Listing by Location (index)	pp. xliii-xlv.
Listing by Decision (index)	pp. lix-lx.

Volume II

Michigan:	
MI88-5 (Jan. 8, 1988)	p. 463.
Texas:	
TX88-10 (Jan. 8, 1988)	p. 980.
TX88-28 (Jan. 8, 1988)	p. 1004.

Volume III

Utah	
UT88-3 (Jan. 8, 1988)	pp. 347,352.
Listing by Location (index)	p. xxix.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of March 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc 88-6920 Filed 3-31-88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-32]

Calendar Year 1987 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the NASA advisory committees that held closed or partially closed meetings in 1987, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC Aeronautics Advisory Committee, NAC Life Sciences Advisory Committee, NAC Space Applications Advisory Committee, NAC Space and Earth Science Advisory Committee and the NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Kathryn Newman, Code NPN, National

Aeronautics and Space Administration, Washington, DC 20546 (202/453-2880).

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-7184 Filed 3-31-88; 8:45 am]

BILLING CODE 7510-01-M

[88-33]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Informal Executive Advisory Subcommittee.

DATE AND TIME: April 13, 1988, 9 a.m. to 5 p.m.

ADDRESS: Center for Space Research, Massachusetts Institute of Technology, Room 37-696, 70 Vassar Street, Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washignton, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee consults with and advises NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Sciences programs. The Committee's Executive Subcommittee will meet to review Office of Space Science and Applications (OSSA) issues that require response from the Committee, future plans for the Committee under the OSSA committee restructuring plan and to prepare in detail an agenda of the Full Committee scheduled for June 1-3, 1988. The Subcommittee is chaired by Dr. Louis Lanzerotti and is composed of 5 members. The meeting will be closed at 3 p.m. until adjournment to allow for a discussion on qualifications of individuals being considered for membership to the Space Science and Applications Committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 10 people including members of the committee). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

April 13, 1988.

- 9 a.m.—Discussion of major OSSA issues that require review and comment by the Committee.
- 1 p.m.—Planning of agenda items for the June 1-3, 1988 Committee meeting.
- 3 p.m.—Closed session.
- 5 p.m.—Adjourn

Ann Bradley,

Advisory Committee Management Officer National Aeronautics and Space Administration.

[FR Doc. 88-7185 Filed 3-31-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on NSF Radio Astronomy Facilities; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences, Subcommittee on NSF Radio Astronomy Facilities.

Date and Time: April 21, 1988, 9:00 am-6:30 pm; April 22, 1988, 8:30 am-6:30 pm; April 23, 1988, 8:30 am-6:00 pm.

Place: Rosemont O'Hare Exposition Center, O'Hare Airport, Chicago, Illinois, Room 6.

Type of Meeting: April 21 and 22, 1988, Open; April 23, 1988, 8:30 am-10:00 am, Open; 10:00 am-6:00 pm, Closed.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy and Solar System Astronomy, Division of Astronomical Sciences, National Science Foundation, 1800 G Street NW., Room 615, Washington, DC 20550 (202/357-7620)

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To advise NSF on support of radio astronomy facilities.

Agenda:

Thursday, April 21, 1988

9:00 am-6:30 pm Presentations from representatives of the facilities.

Friday, April 22, 1988

8:30 am-6:30 pm Presentations from representatives of the facilities.

Saturday, April 23, 1988

8:30 am-10:00 am Presentations from representatives of the facilities.

10:00 am-6:00 pm Closed: Discussion of the facilities under review.

March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7141 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: April 18-19, 1988—10:30 a.m.-5:00 p.m., April 18, 1988; 10:00 a.m.-3:00 p.m., April 19, 1988.

Place: National Science Foundation, 1800 "G" Street NW, Room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9571

Minutes: Mrs. Mary Poats at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineerng Directorate budget situation as well as other items. On April 18 from 2:00-5:00 p.m. the Subcommittees will meet to hear prepared presentations on several issues of interest to the Engineering Directorate and prepare their reports on these issues to be given at the Full Committee meeting on April 19.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7145 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry.

Date: Monday, Tuesday and Wednesday, April 18, 19 and 20, 1988 from 9:00 am to 5:00 pm.

Place: Historic Inns of Annapolis, Maryland.

Type of Meeting: Closed.

Contact Person: H.T. Huang, Program Director, Harold Segal, Program Director and Estella Engel, Associate Program director, Biochemistry Program, Room 325, Telephone (202) 357-7945.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7142, Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for the Biophysics Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: April 21 and 22, 1988, from 8:00 a.m. to 6:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 325, Phone: (202) 357-7777.

Summary Minutes: May be obtained from the Contact Person at the above address.

To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7143 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience Program.

Date and Time: April 20-21, 1988: 9:00 a.m.—5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1243, Washington, DC.

Type of Meeting: Part Open—Closed 04/20—9:00 a.m. to 5:00 p.m. Closed 04/21—9:00 a.m. to 1:30 p.m. and 2:30 to 5:00 p.m. Open 4/21—1:30 p.m. to 2:30 p.m. Closed 04/22—9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Rodney K. Murphey, Program Director, Developmental Neuroscience Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7042.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the developmental program.

Agenda: Open—General discussion of the current status and future plans of the Developmental Neuroscience Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature; including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7144 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for History and Philosophy of Science; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science.

Date and Time: April 22, 1988, 9:00 a.m. to 5:00 p.m.; April 23, 1988, 9:00 a.m. to 5:00 p.m.

Place: Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130.

Type of Meeting: Closed.

Contact Person: Ronald J. Overmann, Program Director, History and Philosophy of Science, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9677.

Purpose of Panel: To provide advice and recommendations concerning research in the History and Philosophy of Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7146 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Linguistics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date and Time: April 18-20, 1988, 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Rm 523, Washington, DC 20550.

Type of Meeting: Part Open—Closed 4/18—9:00 a.m. to 5:00 p.m.; Closed 4/19—9:00 a.m. to 5:00 p.m.; Open 4/20—9:00 a.m. to 12:00 noon; Closed 4/20—12:00 noon to 5:00 p.m.

Contact Person: Dr. Frances Karttunen, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7696.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Manager Officer.

March 28, 1988.

[FR Doc. 88-7147 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Law and Social Studies

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.

Date and Time: April 22-23, 1988: 8:30 a.m. to 5:00 p.m., Closed.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, National Science Foundation, Washington DC., 20550, Room 336, Telephone (202) 357-9567.

Purpose of Panel: To provide advice and recommendations concerning research in Law and Social Science

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries;

and personal information concerning individuals associated with the proposals. These matters, are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7148 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Ocean Sciences Research

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: April 19–21, 1988.

Place: American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005. Rooms: First Floor Conference Room, Tenth Floor Conference Room, Eleventh Floor Conference Room.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 611, National Science Foundation, Washington, DC 20550, Telephone (202) 357–[illegible]

Summary of Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7149 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Physical Anthropology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Physical Anthropology.

Date and Time: April 18–19, 1988, 9:00 am–5:00 pm each day.

Place: National Science Foundation, 1800 G Street, NW., Room 540–B, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7150 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Population Biology and Physiological Ecology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time: April 20–22, 1988—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Martyn M. Caldwell, Program Director, Population Biology and Physiological Ecology (202) 357–9728, Room 215, National Science Foundation, Washington, DC 20550.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7151 Filed 3-31-88: 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Sensory Physiology and Perception Program.

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology & Perception Program.

Date and Time: April 18, 19 & 20, 1988. 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in Conference Room 643.

Type of Meeting: Part Open—Open 4/19, 1:00 p.m. to 3:00 p.m.; Closed 4/18, 9:00 a.m. to 5:00 p.m.; Closed 4/19, 9:00 a.m. to 1:00 p.m., 3:00 p.m. to 5:00 p.m.: Closed 4/20 9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Steven Price, Program Director, Sensory Physiology & Perception Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7428.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations cncerning support for research in the Sensory Physiology & Perception Program.

Agenda: Open—General discussion of the current status and future plans of the Sensory Physiology and Perception Program.

Closed—Review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

March 28, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7152 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Social and Developmental Psychology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and time: April 18–20, 1988, 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G St., NW., Room 642, Washington, DC.

Type of meeting: Closed 4/18–9:00 a.m.–5:00 p.m.; Closed 4/19–9:00 a.m.–12:00 p.m.; Part Open–Open 4/19–1:00 p.m.–4:00 p.m.; Closed 4/19–4:00 p.m.–5:00 p.m.; Closed 4/20–9:00 p.m.–5:00 p.m.

Contact person: Dr. Jean B. Intermaggio, Program Director, Social and Developmental Psychology, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9485.

Minutes: May be obtained from contact person listed above.

Purpose of meeting: To provide advice and recommendations concerning support for research in social and developmental psychology.

Agenda: Open—General discussion of research trends and opportunities in Social and Developmental Psychology.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7153 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Systematic Biology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: April 18 & 19, 1988—8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Acting Program Director, Systematic Biology (202) 357–9588, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1988.

[FR Doc. 88-7154 Filed 3-31-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-295 and 50-304]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company, (the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would allow the installation of steam generator tube repair sleeves in the Zion Nuclear Power Station Units 1 and 2.

The proposed action is in accordance with the licensee's application for amendment dated December 24, 1987 and February 11, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to permit installation of steam generator tube repair sleeves.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications (TS), and has concluded that the proposed changes to the Technical Specification provide reasonable assurance that the facility can be operated safely. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 2, 1988 (53 FR 6715). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

Since the Commission has concluded that there are no significant effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2, dated February 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this Environmental Assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated December 24, 1987 as supplemented February 11, 1988 which are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC 20555; and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland this 25th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-7163 Filed 3-31-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on the "HIV Pandemic" Monday, April 18, 1988, at 8:45 a.m. to 5:30 p.m.; Tuesday, April 19, 1988, 9:00 a.m. to 6:00 p.m.; and Wednesday, April 20, 1988, 9:00 a.m. to 3:30 p.m. at the Pan American Health Organization, 525 23rd Street NW., Main Auditorium, Washington, DC.

The purpose of the meeting is to review U.S. bilateral and multilateral research and assistance programs and to discuss the impact of the epidemic on the movement of people internationally.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655–15th Street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88–7240 Filed 3–31–88; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Elana, Inc., Order of Suspension of Trading

March 28, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Elana, Inc. ("Elana") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Elana's financial statements, financial condition, assets, net worth, and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Elana.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in Elana, over-the-counter or otherwise, is suspended for the period from 2:00 p.m., March 28, 1988 through 2:00 p.m. (EST) on April 7, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–7175 Filed 3–31–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

SUMMARY: The Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is accepting applications/proposals under it's 7(j) Program to provide innovative forms of management and technical assistance, nationally, to individuals and businesses eligible to receive such assistance under sections 7(i) and 8(a) of the Small Business Act, as amended.

Projects are to start on or after October 1, 1988, subject to the availability of fiscal year 1989 funds.

The announcement number is MSB-89-003-01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (Pub. L. 95–224) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance to eligible individuals and enterprises, including socially and economically disadvantaged persons, and/or businesses operating in areas of low income or high unemployment, or owned by low-income individuals.

In general, management and technical assistance includes, but is not limited to, business and financial counseling, loan packaging, marketing assistance, management training, legal and related services, planning and research, identification and development of new business opportunities, furnishing centralized services with regard to public services and Federal government programs, and establishing and strengthening of business service agencies (including trade associations and cooperatives).

In specific, this solicitation seeks innovative proposals to provide assistance in the following areas: transition management for 8(a) firms; competitive procurement development; export development; rural small business development; and financial management.

This announcement is national in scope. Proposals to render service under this solicitation should deal substantively with long term problems and/or opportunities within the socially/economically disadvantaged business community. Efforts proposed under this request must be unique in concept, content, and/or methodology, and must address one or more of the following developmental areas:

Transition Management for 8(a) Firms. Efforts that will assist firms in more effectively preparing for fully competitive operation after graduation from the 8(a) government contracting program;

Competitive Procurement Development. Efforts that will assist firms in more effectively marketing to Federal, state, and local governments, and to non-profit and commercial sectors;

Export Development. Efforts that will assist firms in accessing foreign markets, and/or increasing foreign market penetration;

Rural Small Business Development. Efforts that will assist firms located in rural areas in more effectively responding to change, and in improving operations; or

Financial Management. Efforts that will assist firms in accessing debt and equity financing.

Particular consideration will be given to proposals which positively impact and leverage the efforts of minority business development organizations, especially Historically Black Colleges and Universities, such that the range, quality, and quantity of available service is increased. Successful proposals shall complement and enhance existing minority business development initiatives.

Closing Date: Applicants must submit their application/proposal on or before June 13, 1988, at 5:00 p.m., local time, at the U.S. Small Business Administration Regional Office, or Central Office, as specified in the announcement, in accordance with geographic scope of the proposed effort.

Eligible Applicants: This announcement is open to for-profit businesses, business development and trade associations, non-profit organizations, state and local governments and colleges and universities.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Mr. Arthur E. Collins, at (202) 653–6524 or Ms. Gail Britt at (202) 653–6361 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, OMTA, 1441 L Street, NW., Room 602, Washington, DC 20416. All awards will be announced in the Federal Register and the Commerce Business Daily.

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA review panel. The awarding of MSB&COD Cooperative Agreements is discretionary. Awards are based upon merit, and are made subject to the availability of funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance for disadvantaged Businesspersons.)

Dated: March 28, 1988.

Jeffrey L. Weiss,

Director, Office of Management and Technical Assistance, Minority Small Business and Capital Ownership Development, Small Business Administration.

[FR Doc. 88–7119 Filed 3–31–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Baker, OR; Closing

Notice is hereby given that on or about March 10, 1988, the Baker, Oregon Flight Service Station will be closed. Services to the aviation public formerly provided by this facility will be provided by the Automated Flight Service Station in McMinnville, Oregon. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

Issued in Seattle, Washington, on February 2, 1988.

[FR Doc. 88–7155 Filed 3–31–88; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA General Docket No. H–88–1]

Petition for Exemption or Waiver of Compliance To Conduct Test Program; Intermodal Concepts, Inc.; New York Cross Harbor Railroad Terminal Corp.; Long Island Rail Road Co.

In accordance with 49 CFR 211.9, 211.41, and 211.51 and relevant statutory provisions, including 45 U.S.C. sections 1–16, 431(c), and 1013, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Communications received before May 3, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Intermodal Concepts, Incorporated;
New York Cross Harbor Railroad Terminal Corporation; Long Island Rail Road Company, FRA General Docket Number H–88–1

The Federal Railroad Administration (FRA) is considering a waiver request filed by Intermodal Concepts, Incorporated (ICI), New York Cross Harbor Railroad Terminal Corporation (CH), and the long Island Rail Road Company (LI) (collectively, "the petitioners"). That waiver request seeks authority from FRA to operate railroad vehicles that ICI has designated as ICI System, without compliance with § 232.2 of the power brakes and drawbars regulations (49 CFR 232.2).

The ICI System is designed for the purpose of transporting highway trailers and/or containers by rail to their destinations within major city complexes to divert heavy truck traffic from the congested city streets.

During the period 1983 through 1986, limited testing of an earlier model of the ICI System vehicle was performed on the Burlington Northern at Springfield, Missouri, the Pittsburgh and Shawmut Railroad in Pennsylvania, and the Iowa Interstate Railroad in Iowa, by authority of an FRA waiver granted under FRA General Docket Number H–82–1. These tests were not performed on a continual basis as there were many out-of-use periods between test assignments.

The original ICI System trains were powered by a highway/railway tractor. In railroad service the tractive effort was provided by the contact of the tractor's rubber tires on the rails, which were guided by small diameter steel flanged wheels. The original ICI System vehicle was a small railroad flatcar which is referred to as a "bogie." The original ICI bogies were slightly smaller than the redesigned models, and they had a flat surface with chocks and a trailer hitch stand. The bogies were equipped with ABS type air brake valves which did not provide emergency application capability, and they used a drawbar between units during empty movements rather than couplers. All of the original ICI System vehicles including the rail/highway prime mover have been permanently removed from service, and an improved design of the ICI System is being manufactured. In addition, the center of gravity is lower on the redesigned bogie, which should provide for improved train stability. It is the improved design that is the subject of this waiver petition.

The improved ICI System vehicle is a bogie 22 feet and 4 inches in length between end sills, with two axles and 28-inch diameter railroad wheels. The bogie deck is designed with a depressed, or well, area to accept and retain the highway trailer wheels and rubber tires. The opposite end of the bogie is equipped with a trailer hitch stand, which is identical in design to the type used on conventional railroad flatcars that are equipped to transport highway trailers.

The improved ICI System is designed so that each bogie can support the rear portion of a highway trailer with the trailer wheels located in the depressed well area and secured by chocks, and the forward portion of another highway trailer can rest on the trailer hitch stand and be secured by a kingpin and locking device. This system utilizes the highway trailer body as the structure through which longitudinal train forces are transmitted, whereby the highway trailer serves as the center sill used in conventional freight equipment.

The bogie is equipped with Westinghouse AB type air brake valves. The brake pipe or train line is of ¾-inch diameter, and a hose connection is used between the bogies. These flexible air lines are retained in a retractable reel to allow for different length highway trailers or containers spanning the bogies.

The petitioners propose that the forward end of the lead bogie in a train and the trailing end of the rear bogie in a train be equipped with Type F couplers of standard height. The intermediate couplers would be Type E, and their height would be 27 inches rather than the established standard of 31½ to 34½ inches. The intermediate couplers would be used only during switching activity and/or movement of empty bogies. The coupler height of 27 inches is proposed to guard against the bogies becoming separated from the bogie consist of like equipment. All couplers would be equipped with uncoupling levers of approved type. The ICI trains would be powered by conventional locomotives.

The proposed test program using ICI equipment would involve operations from Greenville, New Jersey, through Brooklyn, New York, to Farmingdale, Long Island, New York. Containers on chassis would be loaded at the Greenville, New Jersey, yard on the CH. These bogies would be switched some 200–300 yards onto car floats and floated to the CH Yard at Brooklyn, New York, where they would be switched off the car floats and placed for interchange to the LI some quarter to a third of a mile away. LI would move the ICI train to Farmingdale, Long Island. The rail distance form Brooklyn to Farmingdale is about 35 miles. The speed of the operation would be 30 mph. The petitioners do not plan to ship hazardous materials at this time. Containers would move general merchandise. The project would be managed by the Freight Department of the LI in conjunction with the CH, with the LI in overall control.

FRA is considering the possibility of granting this waiver request subject to the following conditions and/or requirements:

1. During the initial test operations, CH and LI are limited to operating trains composed of no more than 15 bogies. After sufficient operational experience has been obtained, depending on test results, the use of additional units will be considered.

2. The test period must not exceed one year from the date of FRA's approval letter.

3. ICI units may not be commingled with conventional railroad rolling equipment. (Note: For the purpose of this waiver, "commingled" means that ICI bogies may only be operated in trains consisting exclusively of locomotive(s) and ICI bogies.)

4. The petitioners must determine effectiveness of train handling and vehicle tracking ability at various speeds over various track conditions (such as horizontal and vertical curves and low joints) and ability to traverse spring frogs, spring switches, self-guarded frogs, etc.

5. The petitioners must determine the degree of shunting effectiveness in block signal systems and at road crossing protection and advise FRA of its findings.

6. The petitioners must report immediately to FRA in detail any problems encountered during testing. They must provide written monthly reports relative to information compiled from operational testing and make the engineer's locomotive trip inspection reports available to FRA representatives.

7. FRA will permit the hauling of hazardous materials in ICI vehicles provided: (1) That the particular commodities are limited to those listed in table 2 of 49 CFR 172.504; and (2) that the shipment of such hazardous materials complies with other relevant provisions of the hazardous materials regulations. Additionally, FRA will permit the operation of the ICI vehicles under the placarding provisions of 49 CFR Part 172 Subpart F during rail movement of these vehicles; however, it should be understood that cargo tanks, multi-unit tank car tanks, portable tanks and intermodal (IM) portable tanks handling hazardous materials are not permitted in this service.

8. Each ICI bogie unit that has two couplers of non-standard height must be stenciled toward the ends of each side, in clearly legible letters not less than 3 inches high, "NON-STANDARD COUPLER HEIGHT" in any location that is visible to a person walking at track level beside the unit. Each ICI bogie unit that has only one coupler of non-standard height must be stenciled at a location on each side toward the end of the side near the coupler of non-standard height, in clearly legible letters not less than 3 inches high, "NON-STANDARD COUPLER HEIGHT" in any location that is visible to a person walking at track level beside the unit.

Issued in Washington, DC, on March 25, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-7117 Filed 3-31-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 7-88]

Treasury Notes, Series Y-1990

Washington, March 24, 1988.

The Secretary announced on March 23, 1988, that the interest rate on the notes designated Series Y-1990, described in Department Circular—Public Debt Series—No. 7-88 dated March 17, 1988, will be 7⅜ percent. Interest on the notes will be payable at the rate of 7⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-7115 Filed 3-31-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 8-88]

Treasury Notes, Series M-1992

Washington, March 25, 1988.

The Secretary announced on March 24, 1988, that the interest rate on the notes designated Series M-1992, described in Department Circular—Public Debt Series—No. 8-88 dated March 17, 1988, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-7116 Filed 3-31-88; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 63
Friday, April 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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TIME AND DATE: Friday, April 8, 1988.

PLACE: 1111 20th Street, NW. Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken March 14, 1988.

MATTERS TO BE CONSIDERED: Adjudication of the 1986 jukebox distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW. Suite 450, Washington, DC 20036, 202-653-5175.

Dated: March 30, 1988.

Edward W. Ray,

Acting Chairman.

[FR Doc. 88-7273 Filed 3-30-88; 12:14 pm]

BILLING CODE 1410-09-M

NUCLEAR REGULATORY COMMISSION

DATE: Week April 4, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 4

Wednesday, April 6

2:00 p.m.
  Briefing on Basic Safety Principles for Nuclear Power Plants (Public Meeting)

Thursday, April 7

2:00 p.m.
  Briefing on Proposed Basic QA Rule with Representatives of NRC Advisory Committee on the Medical Uses of Isotopes and Industry Scientific Committees (Public Meeting)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note:—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

March 29, 1988.

[FR Doc. 88-7306 Filed 3-30-88; 3:36 pm]

BILLING CODE 7590-01-M

federal register

Friday
April 1, 1988

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250 and 256

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General; and Outer Continental Shelf Orders for All Regions of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule restructures and consolidates into one document the existing multitier rules of the Offshore program of the Minerals Management Service (MMS) that govern oil, gas, and sulphur exploration, development, and production operations in the Outer Continental Shelf (OCS). The new rule is intended to eliminate redundant, burdensome, unnecessary, and counterproductive requirements imposed by the existing rules; introduce more performance standards; introduce new and updated requirements; and simplify the language of the rules.

EFFECTIVE DATE: May 31, 1988. (The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1988.)

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The MMS is restructuring and consolidating the rules governing oil, gas, and sulphur exploration, development, and production operations in the OCS. This effort is directed towards minimizing the recordkeeping and reporting burden on industry while maintaining or increasing the existing levels of safety and protection provided for the environment. This was accomplished by addressing issues identified by MMS as well as issues raised by industry in response to a request from the Secretary of the Interior (Secretary) for the identification of regulations in need of change.

The MMS established the goal of minimizing the recordkeeping and reporting burden on industry while maintaining the levels of safety and environmental protection mandated by statute through the following specific objectives:

(1) To restructure and consolidate past lease operating requirements placed upon OCS oil, gas, and sulphur lessees into a single document (i.e., eliminating the multitier structure of existing rules);

(2) To establish performance standards in preference to detailed technical standards to the extent that protection of the environment and safety of operations permit;

(3) To update safety and environmental requirements, recognize needs identified by technological advances, improve operating practices and experience;

(4) To eliminate unnecessary reporting and recordkeeping requirements; and

(5) To clarify and simplify the language of the rule and eliminate redundant and inappropriate provisions.

Current regulations at 30 CFR Part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf; OCS Orders developed to govern operations conducted in each of MMS's four OCS Regions; and portions of selected Notices to Lessees and Operators (NTL) issued by MMS's regional offices were combined into a restructured and expanded Part 250 of Title 30 of the Code of Federal Regulations. This rule is organized into 16 subparts reflecting specific subject matter; e.g., Drilling Operations and Remedies and Penalties. Fourteen of these subparts (A through N) are being promulgated by this action while two subparts (O and P) are still under development.

The following summarizes the major changes from current rules:

(1) *Performance Standards.* Performance standards were added which describe the safety, environmental, property, and resource protection goals intended to be achieved by specified design and engineering requirements. These additions are intended to identify the purpose of the detailed requirements and thus provide a basis for approving an alternative method for achievement of the stated purpose. New, different, better, and more efficient techniques and practices are intended to be available to lessees on the basis of these performance standards.

(a) *Performance Requirements.* A "Performance requirements" section was added. This section clarifies that the specific detailed requirements of the rule do not preclude the approval for use of alternate or new techniques, procedures, equipment, or activities when the lessee satisfies MMS that the proposed alternate approach provides equal or greater protection than that provided by the requirements specified in the rule. The establishment of performance standards in addition to specific detailed requirements is intended to remove obstacles to innovation and ensure that MMS's regulations are not unnecessarily prescriptive.

(b) *Well Casing Performance Characteristics.* A performance standard has been substituted for the reference in existing regulations which incorporates the requirements contained in eight American Petroleum Institute (API) documents. The MMS's review and approval/disapproval of lessee's Applications for Permit to Drill (APD) and subsequent MMS compliance inspections will provide for review and control over the quality of casing being used.

(c) *Well Casing Setting Depths.* Specified depths for setting the conductor and surface casing in a well have been deleted. A lessee's proposed casing programs, including the proposed setting depths for conductor and surface casing, will be carefully reviewed by MMS technical personnel before the lessee's APD is approved.

(d) *Well Completions and Well Workovers.* New and updated requirements have been added to this portion of the regulations (Subparts E and F), together with new performance standards for well-control fluids, blowout-prevention equipment, tubing, and wellhead equipment. This approach was considered more appropriate than the detailed prescriptive requirements proposed by MMS in May 1983.

(e) *Blowout-Prevention Systems.* Performance standards replace the requirement practices found in API recommended documents for blowout-prevention systems previously incorporated by reference.

(2) *New Requirements.* New or updated requirements have been adopted on the basis of operating experiences and recommendations made by MMS and U.S. Coast Guard (USCG) accident investigation panels. Whenever possible, these new requirements have been described in terms of minimum acceptable performance standards rather than prescribed design details.

(a) *Periodic Inspections and Maintenance.* Existing MMS regulations and rules contain no specific provisions spelling out the lessee's obligation to periodically inspect and maintain offshore platforms. The new rule anticipates problems that may develop as platforms become older and are built in deeper waters and more hazardous areas by inclusion of a minimal regulatory approach with simple reporting to MMS.

(b) *Well-Completion and Well-Workover Operations.* More accidents occur in association with well-completion and wellworkover operations than with drilling operations. In May 1983, MMS proposed a comprehensive set of rules for these activities. This rule establishes performance standards together with other new requirements which represent widespread accepted practices. During well-completion and well-workover operations, new requirements are applicable with respect to equipment movement, emergency shutdown systems, hydrogen sulfide protection, subsea completions, crew instructions, welding and burning, electrical requirements, structures on fixed platforms, prevention of diesel engine "runaway," simultaneous operations, field rules, well control, blowout prevention, and tubing and wellhead equipment. The rule also includes requirements which must be observed during well-workover wireline operations. Many of the requirements prescribed for well-completion and well-workover operations are patterned after similar requirements which are applicable to drilling operations.

(c) *Hydrogen Sulfide (H_2S).* The H_2S protection requirements and procedures have been expanded to include production, well-completion, and well-workover operations as well as drilling operations. Hydrogen sulfide represents a threat to human life and safety and to the survival of equipment. The final rule concerning H_2S protection was tailored to be applicable to operations being conducted in an area known to contain H_2S, an area where the presence (absence) of H_2S is unknown, or an area where H_2S is known not to be present.

(d) *Diverter Equipment.* This equipment maintains a degree of control by diverting the gas flow to the side and away from the rig and personnel to provide for safe evacuation of the crew and to avoid hydrocarbon flow at the rig floor while steps may be taken to regain well control. This action is designed to prevent the destruction of the facility, loss of life or injury, and loss of resources which could result from an uncontrolled blowout. The new rule requires the use of diverters of a specific minimum size configuration (large diameter pipe and minimum turns).

(e) *Extension of Lease Terms.* Under the revised rule, the MMS Director is authorized to grant a request allowing more than 90 days between drilling or well-reworking operations which serves to continue a lease beyond its fixed term. In the absence of such an approval, the time allowed between drilling or well-reworking operations that earn lease continuance remains 90 days.

(f) *Additions to Development and Production Plans.* Development and Production Plans (DPP) are now required to include narrative descriptions of any new or unusual technology which the lessee proposes to employ and technology and practices considered by the lessee as a means intended to increase the ultimate recovery of oil and gas.

(g) *Pollution Prevention and Control.* New provisions include restrictions on the rate of discharge for drilling fluid, requirements for berms on artificial islands, and additional information requirements for oil spill contingency plans.

(h) *Additional Safety Devices.* Requirements have been added for crown block safety devices and for devices to mitigate hazards due to diesel engine "runaway" (i.e., stop a runaway diesel engine).

(i) *Pipelines.* Provisions governing offshore pipelines include expanded requirements governing design, installation, testing, safety equipment, abandonment, and reporting.

(j) *Flaring and Venting.* Provisions relating to the flaring and venting of gas were revised to clarify the intent of requirements in OCS Order No. 11.

(k) *Enhanced Recovery of Oil and Gas.* Clarifying details were added to provisions concerning enhanced recovery previously contained in OCS Order No. 11.

(l) *Site Security.* Provisions are designed to ensure against the loss or theft of produced minerals. Provisions to assure accurate measurement of mineral products for royalty purposes have been included in the final rule.

(m) *Enclosed Mud Rooms.* Requirements for gas detection systems in enclosed mud-handling rooms are included in the final rule.

(3) *Reduced or Eliminated Requirements.* Operating requirements contained in the previous rules have been reduced or eliminated where there would be no adverse impact on the safety of operations or protection of the environment. Operating requirements are eliminated only when the requirements are no longer needed or where the objectives of a detailed prescriptive requirement are better accomplished by the substitution of a performance standard.

(a) *Determination of Producibility.* Lessees are no longer required to request a determination of producibility for each well drilled on an OCS oil and gas lease. A determination of producibility will continue to be needed before a suspension of production will be granted. Elimination of the requirement for producibility determination for every well completed in the OCS will save lessees and MMS considerable time and money.

(b) *Maximum Efficient Rate (MER) on Nonsensitive Reservoirs.* Provision is made for reservoirs to be classified as sensitive or nonsensitive. A MER will be established only for the reservoirs which are classified as sensitive.

(c) *Orientation and Motivational Training.* The orientation and motivational training requirements previously contained in OCS Order No. 7 have been deleted. This eliminates the requirement found in API's Recommended Practice, Orientation Program for Personnel Going Offshore for the First Time (API RP T–1) and API Bulletin, Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations (API Bull. T–5), that were incorporated by reference under the previous rules. The training requirements for oil spill response teams contained in OCS Order No. 7 continue to apply. They are contained in Subpart C, Pollution Prevention and Control. Training requirements for lessee's drilling and production personnel are contained in Subparts D, H, and O.

(4) *Reduced Recordkeeping and/or Reporting.* Recordkeeping and reporting requirements have been reduced or eliminated when that action would not adversely impact MMS's ability to obtain required information or reduce the level of safety or environmental protection.

(a) *Critical Operation and Curtailment Plan.* The requirement for the submission of a Critical Operation and Curtailment Plan has been eliminated. The information contained in that plan is properly part of the lessee's proposed Exploration Plans (EP), Development and Production Plans (DPP), and APD's.

(b) *Exploration Plan and Development and Production Plan.* The rule permits the MMS Director, after consultation with the affected States, to reduce the amount of information a lessee must submit in support of its EP or DPP (Development Operations Coordination Document (DOCD) in the western Gulf of Mexico).

(c) *Changes to Plans.* The rule permits a lessee to submit only the portions of approved EP's or DPP's which are actually proposed for change. In the past, some lessees have felt obliged to resubmit a complete new plan when a change from approved operations was proposed.

(d) *Erosion-Control Program Report.* An annual report by the lessee on its erosion-control programs is no longer required. Lessees are still required to have erosion-control programs, to maintain records of the results obtained, and to make the records available for examination by MMS personnel.

(e) *Pipeline-Safety Reports.* The new rule does not require the submission of semiannual reports on pipeline-safety devices and annual reports of monthly pipeline inspections. The information on pipeline installation, maintenance, operation of safety devices, and conduct of the monthly inspections would continue to be required to be available for examination by MMS personnel.

(5) *References to Technical Documents.* The rule incorporates technical documents by specific reference to the relevant portions of the document.

(a) *Well-Casing Requirements.* The new rule uses a performance standard in lieu of the eight API documents concerning well casing. The API documents do not provide sufficient flexibility to allow a lessee to meet the desired standard of performance in the most effective manner.

(b) *Electrical Systems.* The rule incorporates essential requirements for electrical systems by reference in API RP 14F, Design and Installation of Electrical Systems for Offshore Production Platforms, and API RP 500B, Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms.

(c) The proposed rule published in the **Federal Register** on March 18, 1986 (51 FR 9316), identified numerous documents developed by various standard writing groups which were incorporated by reference. These documents are listed in Subpart A of the final rule at § 250.1, Documents incorporated by reference. A supplemental notice of proposed rulemaking was published in the **Federal Register** on September 22, 1987 (52 FR 35559), to update the identification of specific editions of incorporated documents. Comments received in response to the supplemental notice of proposed rulemaking are included in the discussion of comments received regarding Subpart D. References to API Spec 14A, Specification for Subsurface Safety Valve Equipment, and API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, have been deleted since they are not referred to in the final rule.

(6) *Simplified Format and Wording.* Restructuring and consolidation of MMS's multitier system of rules into a single comprehensive system of rules greatly simplifies the format of the new rule. Portions of the previous rules have been restructured and reworded for increased clarity. For example, in Subpart N, Remedies and Penalties, the language has been streamlined and simplified. Portions of the previous rules which constituted instructions to MMS personnel were removed.

(7) *Other Changes.* A number of other changes were made in the new rule in an attempt to meet established objectives.

(a) *Preliminary Activities.* The new rule defines preliminary activities—those activities which occur prior to the activities described in an EP or a DPP—to permit seabed penetrations of up to 500 feet. Preliminary activities do not require prior notification to MMS or prior MMS approval except as may be required by the Regional Supervisor. In areas where shallow gas or other hazards might be present, the District Supervisor may specify appropriate notification and approval procedures.

(b) *Environmental Reports.* Under the new rule, an EP or DPP may be combined with the supporting Environmental Report as a single document. The combined document must contain the information required when the Environmental Report and corresponding EP or DPP are submitted as separate documents.

(c) *Changes in Approved Plans.* The new rule recognizes the possible significance of proposed modifications to approved EP's or DPP's and provides for Coastal Zone Management agency review of proposed modifications.

(d) *Model Unit Agreements (MUA).* Two MUA's are included in the final rule. The previously approved MUA was updated and adopted to two basic situations, one for the unitization of operations for exploration, development, and production and one for the unitization of operations after discovery and delineation of a reservoir(s).

(e) *Extension of Lease Term by Production, Drilling, or Well Reworking.* Current rules provide that continuous production, drilling, or well reworking with no time lapse greater than 90 days will serve to continue a lease in effect beyond the term specified in the lease. The new rules permit the MMS Director to allow a time lapse of up to 180 days between continuous drilling or well reworking operation when circumstances warrant.

(f) *Criteria for Determinations.* The rule spells out the criteria to be considered by the District or Regional Supervisor when making certain determinations.

(g) *Identification of Specific Authorities and Responsibilities.* The regulations identify MMS's officials delegated specific authorities and responsibilities. Where an authority has been delegated to a specific MMS official, that authority may be exercised by any MMS or Department of the Interior (DOI) officer in the line of authority above the officer identified in the regulations. Delegations of authority in DOI are effected through DOI manual publications. The new rule simply identifies the responsible official named in DOI manual chapters on delegated authority.

(h) *Timing of the Exploration Plan.* The requirement that an EP be submitted by the fourth year of a lease term has been deleted. Lessees are fully aware that the failure to explore, discover, develop, and produce by the end of the primary term will result in the expiration of the lease.

(i) *Pipelines and Pipeline Rights-of-Way.* The rule applies to the permitting of pipelines on a lease as well as the granting of pipeline rights-of-way off the lease. The granting of pipeline rights-of-way were previously covered in 30 CFR Part 256, Outer Continental Shelf Minerals and Rights-of-Way Management, General.

Background

Executive Order (E.O.) 12291, February 17, 1981, requires Agencies to "initiate reviews of currently effective rules in accordance with the purposes of the Order." One of the stated purposes of the Order is to reduce the burdens of existing regulations. Since the issuance of E.O. 12291, MMS has been reviewing and revising its rules governing operations in the OCS on an individual subject matter basis. The changes made prior to March 18, 1986, were itemized in the preamble of the notice of proposed rulemaking.

On February 22, 1983, the Secretary asked the public for suggestions and recommendations for reform of DOI's rules, including MMS's rules governing oil, gas, and sulphur operations in the OCS found in 30 CFR Part 250. Numerous comments, recommendations, and suggestions were submitted in response to the Secretary's request.

During the summer of 1983, the MMS Director appointed a Regulatory Reform Task Force of senior MMS personnel from headquarters, regional, and district offices to examine those recommendations and to look at the system of rules governing offshore postlease mineral operations, particularly those found in 30 CFR Part 250, Oil and Gas and Sulphur

Operations in the Outer Continental Shelf, the Regional OCS Orders (including standards and other reference documents), and appropriate NTL's. The Task Force reviewed the various rules and related documents with the view toward restructuring and consolidating the multitiered system of rules into a single set of rules.

Current Rules

Offshore operating rules developed since 1954 took the form of regulations, OCS Orders, Standards, NTL's, conditions of approval, and related documents. The rule codified in Title 30 Part 250 of the Code of Federal Regulations underwent major revisions following the enactment of amendments to the OCS Lands Act (Act) in 1978. They are rules of general applicability often stated in general policy terms. The OCS Orders are rules of general applicability adopted in compliance with rulemaking requirements, published in the **Federal Register**, but not codified in the Code of Federal Regulations. The OCS Orders were adopted on a Region-specific basis with separate sets of OCS Orders for the Alaska, Atlantic, Gulf of Mexico (GOM), and Pacific OCS Regions. The OCS Orders implemented provisions of the regulations in 30 CFR Part 250 in more specific detail—often in terms of particular technical requirements. The requirements were essentially consistent from Region to Region; however, there were variations to accommodate local environmental conditions, e.g., severe arctic weather in portions of the Alaska OCS Region. Standards are documents developed by MMS and referenced in the OCS Orders, thereby becoming requirements. Standards included statements of recommended practices adopted by the offshore industry and trade associations, such as API, or professional standards writing organizations, such as the American National Standards Institute (ANSI). Initially, NTL's were used to inform lessees of DOI's interpretations of its requirements. The NTL's were not intended to impose new requirements. However, NTL's and the conditions placed upon required approvals occasionally imposed new requirements. In this restructuring and consolidation of MMS's multitier system of rules into a new expanded 30 CFR Part 250, efforts were made to eliminate any inconsistency and redundancy in the current rules. References to incorporated material were eliminated or the materials referenced specifically identified as narrowly as possible.

It is recognized that implementation of the restructured offshore operating rules will necessitate increased effort on the part of OCS lessees and the Government. It is also expected that after some initial difficulty the long-term benefits from use of the consolidated and comprehensive presentation of those rules will far outweigh the initial inconveniences.

Proposed Changes to Rules

The MMS published a **Federal Register** Notice on March 18, 1986 (51 FR 9316), soliciting comments on the proposed rule. This notice provided for receipt of comments through June 16, 1986. At the request of several respondents, MMS published a **Federal Register** Notice on May 2, 1986, which extended the comment period through September 15, 1986.

Public meetings were held in Los Angeles, California, on August 5, 1986, and in New Orleans, Louisiana, on August 7, 1986. At each of the meetings, MMS summarized major points in the proposed rule and responded to the questions which had been received and additional questions from the attendees at the meetings.

The MMS received numerous comments from various interested parties. Based on the notices which had been published, MMS was precluded from considering a number of comments because they were received or postmarked after September 15, 1986. It was apparent that a great deal of thought had been expended in preparing those late comments, and MMS wanted to consider all significant comments. It was also recognized that other parties may have prepared significant comments and then chose not to submit their comments because they could not be delivered or postmarked by September 15, 1986. A **Federal Register** Notice on November 10, 1986 (51 FR 40819), reopened the comment period until November 25, 1986. This enabled MMS to consider all comments received while providing all parties with an equal opportunity to submit additional comments.

A total of 84 comments were received from various groups including the offshore petroleum industry, support contractors, training companies, State and local governments, Federal Agencies, environmental groups, and various other parties. The comments were considered by the Task Force which developed the proposed rule. The proposed rule was modified where warranted to adopt specific recommendations or to clarify specific provisions.

Discussion of General Comments

Comment—Many commenters agreed with the objectives of the proposed rulemaking—the restructuring and consolidation of existing rules into a single document, elimination of redundancy, reduction of paperwork, introduction of additional performance standards, and simplification of the rules—and commended MMS for its efforts toward those objectives. However, many of these same commenters felt that the proposed rules, in general, continued to be too detailed and prescriptive in nature. They provided numerous suggestions and recommendations for further changes to the proposed rules.

Response—The MMS is encouraged by the positive response to the proposed rule. The MMS appreciates the time, effort, skill, and cooperation of the commenters in reviewing the proposed rule and offering constructive suggestions for improvement. Where suggestions were adopted, they are reflected in the final rule. A constant guide for the task force was a balance of reducing the regulatory burden while maintaining or increasing the level of safety in operations and environmental protection.

Comment—One commenter observed that many of the proposed changes are in response to expressed concerns.

Response—The MMS has tried to be responsive to legitimate concerns when they can be accommodated without diminishment of the safety of operation or environmental and resource protection.

Comment—One commenter submitted extensive new suggestions for the regulation of sulphur exploration, development, and production activities.

Response—These comments have been considered during the development of revised and restructured rules to govern sulphur operations in the OCS. Since MMS intends to publish those proposed rules for comment, the provisions for OCS Order No. 10, Sulphur Drilling Procedures, are being incorporated into the proposed rule for sulphur operations. The GOM OCS Order No. 10 continues in force until a revised and restructured final rule is published to govern sulphur operations in the OCS.

Comment—One commenter objected to MMS's failure to make an Environmental Assessment (EA) available with the proposed rule. Also, the commenter inquired as to when the EA would be available and how copies could be obtained.

Response—An EA was in preparation at the time the proposed rule was prepared. An EA is being issued in connection with the final rule. The EA is available to the public for inspection at each MMS Regional Director's office and MMS headquarters office.

Comment—A number of commenters recommended that NTL's should be rescinded and a new set issued consistent with the new regulations. They also recommended that NTL's be limited to interpretations and administrative information.

Response—The MMS plans to review all NTL's in light of the new regulations. Those NTL's that are out of date will be rescinded and new NTL's will be issued as needed under the new rules.

Comment—One commenter expressed concern about MMS's relationship to the Environmental Protection Agency (EPA) and USCG. The commenter recommended that detailed Memoranda of Understanding (MOU) be developed with those Agencies.

Response—The MMS is aware of the continuing need to coordinate its efforts with those of EPA and USCG. To this end, MMS has developed MOU's with those Agencies and continues to work with those Agencies as much as possible.

Comment—A number of commenters responded to a question posed in the proposed rule as to whether it would be desirable to refer to equipment by a brand name, model number, or other standardized designation in the interest of reducing reporting and recordkeeping burdens. All commenters who responded to this question expressed a desire that the rules continue to use specifications and descriptions for equipment rather than brand names or model numbers. It was the commenters' view that more paperwork would be generated by the use of brand names or model numbers.

Response—The MMS will continue to use specifications and descriptions of equipment rather than brand names or model numbers.

Comment—In response to a question posed in the proposed rule as to whether MMS should retain its role as intermediary between lessees and States for reporting of information used by States in making determinations under the Coastal Zone Management Act (CZMA) and other purposes, one commenter recommended that lessees not be obliged to deal with multiple State information requirements.

Response—The MMS will continue to cooperate with OCS mineral lessees and States so that all entities with legitimate review responsibilities are provided the information required for their review. The MMS cannot relieve OCS lessees of their obligations to meet both Federal and State information requirements.

Discussion of Specific Comments

A discussion of the significant comments that were received on the proposed changes to the Consolidated Offshore Operating Rule published March 18, 1986 (51 FR 9316), follows: Comments and responses are grouped on the basis of subject matter, first by subpart for general comment and then by section when the comments relate to a specific section or paragraph.

Subpart A—General

This subpart sets out requirements that basically apply to all operations. The sections span from § 250.0, Authority for information collection, to § 250.24, Appeals, general.

Thirty-three comments responding to the Notice of March 18, 1986 (51 FR 9316), were received concerning Subpart A—26 from the oil and gas industry or related associations, 4 from States, 2 from Federal Agencies, and 1 from an environmental group. Generally, the comments were favorable; therefore, the majority of the subpart remains as proposed. The changes that were made are reflected in the final rule. Five comments were received in response to the supplemental notice of September 22, 1987 (52 FR 35559), from members of the oil and gas industry and related associations. A summary and analysis of the comments received follows.

Comment—Several comments were received concerning incorporations by reference in § 250.1. The practice of incorporating documents by reference was questioned on the basis that "many have never been subjected to public review and comment as required by [Administrative Procedure Act]," and a number of commenters recommended that MMS incorporate the "latest edition" of a document rather than a document of a specific date. It was claimed that this would relieve MMS and the regulated industry of a large administrative burden.

Response—Documents are incorporated by reference only through the rulemaking process. That action exposes them to public review and comment, in accordance with the legal requirements of the Administrative Procedure Act. Compliance with these requirements, precludes the incorporation of the "latest edition" of a document or standard. It should also be noted that the rules of the **Federal Register** governing incorporation by reference require that the Director of the Federal Register approve the documents and that copies of the documents be on file with the **Federal Register**.

Comment—Objection was raised to the incorporation by reference of "recommended practice" documents which are intended only as *recommendations,* not as rules.

Response—When MMS adopts the specific provisions of a document through the rulemaking process, that incorporation by reference establishes the recommended practice as a minimum standard which must be observed.

Comment—A number of commenters expressed the view that with respect to documents incorporated by reference, it should be clear to what extent references within such incorporated documents are also binding. It was pointed out that documents proposed to be incorporated by reference in turn reference other documents, which reference other documents, down through numerous tiers.

Response—Under the final rule, the material that is incorporated by reference is specifically identified. Adherence to documents referenced within an incorporated document is mandatory if such adherence is necessary for compliance with the document referenced in the rule.

Comment—A number of commenters recommended newer editions and/or supplements for cited documents, and recommended additional documents for incorporation by reference.

Response—Some of the documents suggested for incorporation by reference are not yet available for public review. Thus, it is premature to consider incorporation of those documents by reference. As new editions and supplements to existing documents and new documents are recommended for incorporation by reference, consideration will be given to the incorporation of those documents by reference.

Comment—It was recommended that any conflicts between the USCG and MMS, with respect to their respective regulations incorporating documents by reference, should be resolved before the final rule is published—especially as the rules relate to mobile offshore drilling units (MODU). There are instances where the USCG incorporates one part of a document, and MMS incorporates another part of the same document.

Response—The USCG and MMS regulations may correctly incorporate by reference different parts of the same document into their respective regulations based on different uses and purposes. However, an effort has been made and will continue to be made to

identify and eliminate any conflicts between USCG and MMS regulations.

Comment—A number of commenters recommended that all definitions be grouped in Subpart A rather than in each of the subparts.

Response—To better assist the users of these regulations, we have grouped the definitions in Subpart A. Specific definitions appropriate to each subpart will be repeated with that subpart.

Comment—Specific recommendations were made to add certain definitions.

Response—The definitions of "Competitive reservoir" and "Lessee" have been added to Subpart A.

Comment—Commenters suggested certain changes in proposed definitions.

Response—The suggestions to amend "Affected State" and "Development" and "Fair market value" were not adopted because these terms are defined in the Act. The definition of the term "Fair market value" has been deleted from the rule since it is not used in Part 250. In these cases, use of the definitions as they appear in the Act best meets the intent of the law.

Comment—It was suggested that we combine the definition of "Interpreted geological information" with "Interpreted geophysical information" and "Processed geological information" with "Processed geophysical information" to eliminate repetitive language.

Response—By combining the definitions (which are largely, but not entirely, redundant), ambiguity would result. Only parts of the definition would relate to a defined term while other parts would not. The basic function of the definition would be defeated. Therefore, the four definitions have been left separate.

Comment—Several commenters recommended that the definition of "Operator" be amended by adding the word "operating" to characterize "rights" under an "operating agreement." It was pointed out that not all interests or rights under an operating agreement are operating rights.

Response—The word "operating" has been inserted.

Comment—The view was expressed that the performance standards lack specificity and so do many of the requirements. Vague terms such as "sound conservation practice," "probably cause serious harm," "satisfactory," and "soon" should not be used. The commenter recommended use of terms such as "best available control technology" (BACT), "standard industry practice," "maximum extent feasible," and other widely accepted terms.

Response—Performance standards for most aspects of the Offshore Operating Program cannot be stated with numerical precision, as is available in the case of emissions limitations. For that reason, the performance standards supplement, but do not replace, appropriate prescriptive requirements. The recommended phrases such as "standard industry practice" provide no more specificity than phrases such as "sound conservation practice." Care must be taken in using phrases such as BACT which has legal significance in the context of the Clean Air Act and the Clean Water Act and is used in §§ 250.45 and 250.46 concerning air quality. It should not be confused with "Best available and safest technologies" (BAST) which is addressed in § 250.22.

Comment—The use of performance standards as a substitute for detailed requirements is objectionable because the proposed performance standards are "so general and vague."

Response—In almost all cases, the performance standards are not in substitution of, but in addition to, detailed requirements. We believe that inclusion of the performance standards helps to identify the underlying purpose of the specific requirements. Because the nature of the activities regulated are not readily amenable to performance standards, these standards are fairly general. They are descriptions of the safety, environmental, property, and resource protection goals intended to be achieved by the design and engineering requirements. They are intended to identify the purpose of the detailed requirements and provide a basis for alternative achievement of such purpose. New, different, better, and more efficient techniques and practices can be available to lessees on the basis of these performance standards.

Comment—A number of commenters agreed with the performance-standard approach whereby alternatives to prescribed requirements are available if shown by lessees to be equal or superior to those requirements, but it was suggested that a mechanism be provided whereby alternatives be demonstrated to produce equal or superior results.

Response—Demonstrations may be required by the Regional or District Supervisor as evidence necessary for obtaining approval for use of alternative equipment or techniques. However, we do not believe that demonstrations need be required in every case.

Comment—While supporting the general performance standards as providing "a desirable amount of flexibility," the suggestion was made that procedures should be spelled out and should include public review and comment and written findings.

Response—This comment was not adopted. In reviewing a request under the performance standard provision, the specific procedure to be followed by MMS will depend on the character and scope of the requested change. When changes impact on the plan of development and production, they will be discussed in the plan, and the public will have an opportunity to comment on the performance standard criteria when they comment on the plan. Comments received will be considered by MMS in evaluating the lessee's request. In most cases, approval under the performance standard provision will be needed by the lessee soon after the request is made, and public comment will not be practical. The MMS will evaluate the request based on available information and will approve the request only if MMS can determine that the requested action or equipment provides for equivalent or better levels of safety of operations and environmental protection than that which is provided for in the rules. Public comment will be requested if needed to make such a determination. When MMS believes that a particular request or series of requests warrants consideration as an amendment to the regulations, the change will be published as a proposed rule, and interested parties will have an opportunity to comment.

Comment—It was commented that authorizing performance standards "may lead to any and all alternative practices," and that the EPA or a State agency should review all alternatives to assure that environmental protection will not be diminished.

Response—This recommendation was not adopted. There is adequate provision for review of proposed alternatives by EPA, State agencies, or others. The responsibility for implementation of requirements under the Act, including environmental protection, is placed with the Secretary, who consults with other Federal and State agencies, as appropriate. For example, procedures for the evaluation of EP's and DPP's specifically provide for consultation and review by States and other Federal Agencies.

Comment—One commenter requested that a provision for oral approval with subsequent written confirmation be available for performance standard alternatives.

Response—Oral approvals are available in § 250.6 and could be used by Regional or District Supervisors for performance-standard approvals.

Comment—The criteria for granting departures were characterized as broad. Commenters also suggested that departures should be limited to emergencies and should not be available to facilitate "the proper development of a lease." Commenters believed that such authority appeared to undercut the value of having a comprehensive set of operating regulations.

Response—The MMS recognizes that the "proper development of a lease" criterion is broad and provides considerable discretion to District and Regional Supervisors. However, this is not new authority, and there has been no history of abuse. On the contrary, it has provided the desired flexibility and has been used with restraint only when dictated by circumstances. Therefore, the section has not been changed.

Comment—Several commenters recommended that all information and data submitted in connection with departures should be protected as proprietary in accordance with § 250.18(a).

Response—Section 250.18(a) and any other provisions apply, as appropriate, by their own terms to § 250.3 and other provisions in this part. There is no need to repeat such provisions with respect to every section where they apply.

Comment—A number of commenters recommended that "Director" be replaced with "Regional or District Supervisor, as appropriate," in §§ 250.4, Jurisdiction, and 250.5, Functions.

Response—This recommendation was not adopted. The final rule is not the instrument by which authority is delegated within the DOI. Also, §§ 250.4 and 250.5 are too general to refer to Regional or District Supervisor. The authority of the Secretary has generally been delegated to the Director with respect to OCS operations. Regional Directors, Regional Supervisors, and District Supervisors (all of whom have responsibilities under the regulations in this part) exercise the Director's authority through further specific delegations.

Comment—It was recommended that the jurisdiction of the Department of Transportation (DOT) with respect to the transportation of oil and gas to shore be recognized and stated in § 250.4.

Response—This recommendation has not been adopted. The jurisdiction addressed in § 250.4 is MMS's jurisdiction. The MMS recognizes the responsibilities of other Agencies in this area, including EPA's, USCG's, and DOT's. However, it would be inappropriate for MMS to address the jurisdictions of other Agencies in this rule. Those other Agencies can best address their respective jurisdictions in their own rules.

Comment—Comments on frequency of inspections in § 250.5 ranged from suggestions that unannounced inspections be conducted at least annually to characterization of the annual announced inspections as arbitrary and wasteful.

Response—Scheduled onsite inspections "at least once a year" are required by the Act. Unannounced inspections are also required under the Act, but when and how often are properly left to the discretion of DOI.

Comment—Recommendations were made that procedures for inspections, standards, forms, recourse by operator, and other pertinent information concerning inspections should be specifically outlined in the regulations.

Response—The MMS recognizes that a degree of flexibility is necessary for an effective inspection program. However, the subject of the inspections is the operating requirements of Part 250. Those requirements are often very specific. Forms used in connection with inspections are adopted pursuant to DOI approval requirements and are made available to lessees and operators. Lessees' and operators' recourse is setout fully in § 250.24, Appeals, general, and in Subpart N, Remedies and Penalties, if a civil penalty is involved.

Comment—A commenter suggested that monthly reports of inspections, specifically addressing environmental regulatory compliance, should be required and made available to the public. It was felt that such reports would build public confidence and understanding.

Response—Consideration is being given to preparation of periodic reports of inspection results which would be available to the public. However, a requirement for such reports need not and has not been included in this rule.

Comment—A number of commenters recommended that "oral orders" be deleted from § 250.6 because such orders are synonymous with "oral approval."

Response—Oral orders are necessary and are different from oral approvals. There are cases where MMS must take the initiative, as in the case where an order to shut in a well or platform must be issued. Oral orders are issued in such cases and are distinguished from oral approvals. For clarity, the provisions governing oral orders and oral approvals have been separated into separate paragraphs (a) and (b) of § 250.6 in the final rule.

Comment—Another commenter suggested that when oral approvals are granted, notice should be provided to those who had expressed a desire to be kept informed.

Response—This suggestion was not adopted. Since oral approvals are subsequently confirmed by written application and approved, those who are normally apprised of written approvals will be informed when the oral approval is confirmed in writing.

Comment—The requirement to confirm oral approvals in writing should have a specific timeframe.

Response—The last sentence of § 250.6, Oral approvals, has been revised to require confirmation of the requested approval by the lessee within 72 hours.

Comment—It was observed that the granting of a right of use and easement may involve offlease sites and should be subject to the same requirements as the initial leasing of tracts; i.e., National Environmental Policy Act (NEPA) requirements, environmental studies, and public review and comment.

Response—It is true that a right of use and easement may be granted for operations at a site off the lease. Although the activity may be located off the lease, the activities usually involve operations so closely related to the lease operations that they will have been embraced by an environmental documentation that was prepared for lease operations. Of course, if that should not be the case, the NEPA procedures already in place would be pursued, as appropriate. Review and comment on any offlease facility would be accomplished to the same extent as any onlease facility; i.e., through review and approval of EP's and DPP's. It should be noted that the rule clarifies that all the requirements of this part are applicable to such offlease facilities.

Comment—One commenter recommended that the regulations require that any lessee as a holder of a right of use and easement not interfere unreasonably with any OCS users.

Response—That requirement is already provided in § 250.40 which states: "The lessee shall not create conditions which will pose unreasonable risk to the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean." Section 250.7(d) requires the holder of a right of use and easement to exercise rights under the right of use and easement in accordance with the requirements of the regulations in Part 250 including § 250.40.

Comment—Section 250.7 requires that a lessee be notified and have an opportunity to comment if a right of use and easement is sought on the lessee's lease. A number of commenters recommended adding a provision that if the lessee fails to respond within 30 days, the lessee is deemed to have

concurred with the granting of the easement. The commenters were of the view that operations should not be held up by a nonresponsive lessee.

Response—The recommended language is not necessary. The response or concurrence of the lessee is not required for the Regional Supervisor to be able to grant a requested right of use and easement.

Comment—A number of commenters recommended that platforms built on rights of use and easement land conform to Subpart I requirements to the same extent as platforms built on leases; i.e., in § 250.7(c) change "may" to "shall."

Response—This recommendation was adopted. There is no reason to distinguish between platforms located on a lease or off a lease. The recommended change from "may" to "shall" was made.

Comment—Numerous comments were received concerning suspensions under § 250.10. Several new reasons for granting suspensions were recommended.

Response—A new § 250.10(a)(3) has been added to specifically allow for suspensions for a reasonable time to enter into a sales contract when good faith efforts have been made to secure such a contract. A new § 250.10(a)(4) has also been added to specifically allow for suspensions to commence drilling operations when a lessee's good faith efforts have been hampered by reasons beyond the lessee's control. Suspensions have been granted for these reasons under the prior regulations even though they were not specifically identified.

Comment—It was recommended that a provision be added for suspensions due to changes in market conditions that impact profitable lease development.

Response—This recommendation was not adopted. Suspensions should not be granted for temporary market fluctuations alone. However, it should be noted that the new criteria concerning inability to secure a sales contract goes to the heart of the problem.

Comment—Comments were submitted which proposed changing the language in § 250.10(b)(i) to state "The lessee has demonstrated gross negligence or serious disregard to compliance with applicable laws, regulations, or provisions of leases or permits." The concern is that failure to comply with a provision could be unintentional and beyond the reasonable control of the lessee and should not be cause for a suspension of operations. Commenters further state that section 5(a)(2)(i)(B) of the Act is explicit with regard to when the Secretary can suspend operations on a lease and failure to comply is not one of the statutory reasons.

Response—The recommendation was not adopted. A suspension or temporary prohibition of any operation or activity may be appropriate to correct the situation regardless whether the violation was intentional or not. Section 5(a)(1) of the Act provides that no permit or lease shall be extended when the suspension or prohibition is the result of gross negligence or a willful violation. It is the obligation of the lessee to be familiar with the requirements under the law, lease, and governing regulations. While section 5(a)(1)(B) of the Act lists certain suspension criteria, section 5(a) also clearly states that the Secretary is not limited to the provisions under this section when approving suspensions.

Comment—A commenter recommended that the Regional Supervisor shall (not may) suspend operations if the criteria in § 250.10(b)(2) "threat of serious, irreparable, or immediate damage to life," are met. At the very least, the regulation should contain criteria for when the Supervisor could allow operations to continue in the face of such threats, e.g., in an extremely serious energy shortage. Another problem identified with this section is with the level of threat (i.e., serious) that has to be shown before a suspension may occur. In addition, the regulation should provide for immediate notice to the affected State of any suspension, any request for suspension, or any report of a situation which results in consideration of a suspension. Finally, the Secretary should be required to take action within 5 days of learning of any situation which may warrant suspension and immediately where serious harm is threatened.

Response—The regulation gives the Regional Supervisor flexibility to review the degree of threat involved and to take appropriate action in a timely manner which may or may not be in the form of a suspension. All factors would be taken into consideration when making this final decision. It is not necessary to immediately notify the affected State(s) of every suspension, request for a suspension, and situation where consideration is given to directing a suspension.

Comment—A number of commenters suggested adding to § 250.10(b)(6) the following "If any of these permits preclude drilling, then a suspension of operations can be granted without having a commercially producible well." It was felt that the situation now exists where lessees cannot economically develop discovered reserves in a timely manner, especially those in 900- to 1300-foot water depths. Further, with the dramatic decline in oil prices in 1986, these reserves may not be profitable to develop.

Response—The recommendation was not adopted. The addition of the suggested language would not alter MMS's ability to approve a suspension in the absence of a well capable of producing in paying quantities. As proposed in paragraph (d), a well of this type will be required only when approving a suspension of production (SOP) under paragraph (a). Further, a suspension will not be approved based solely on the profitability of lease development. Whether a venture is economical or not is a risk the lessee assumes.

Comment—Section 250.10(b)(6) criteria should include delays due to administrative or judicial challenges or appeals as well as permits or consents.

Response—The recommendation has been adopted and the rule has been so amended.

Comment—Several commenters recommended adding a clause in § 250.10(b)(6) for a suspension for an inordinate delay whenever such delay halts activities for more than 6 months.

Response—The recommendation was not adopted. There may be situations where more than 6 months might reasonably be required for the processing of a permit application. Each situation will be judged on its merits.

Comment—Several commenters suggested that a suspension should also be available in § 250.10(b) when a lessee can show that it is uneconomic for a well to produce at current market prices. The commenters felt temporary market conditions could result in the premature plugging and abandonment of a well.

Response—A new § 250.10(a)(5) has been added to cover producing wells. Premature abandonment of producing wells and loss of recoverable resources should be avoided. Similar relief was granted by DOI in 1986 for both onshore and offshore oil and gas leases.

Comment—A new paragraph was suggested to authorize suspensions when judicial decrees prohibit or delay lease activity.

Response—A new paragraph (b)(7) has been added to § 250.10.

Comment—A commenter suggested a new paragraph be added to § 250.10 to authorize suspension for "any other good cause shown." The commenter felt this was necessary in situations such as the unforeseen rapid fall in prices.

Response—This recommendation was not adopted. Inclusion of this language would render the rest of the section meaningless; there would be no need to

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list the conditions under which suspensions could be approved. The phrase "any other good cause shown" is too broad and open to many interpretations. Further, as already discussed, poor economic conditions will not be considered as the sole reason for granting a suspension. It is in the national interest to have exploration and development continue to assure future domestic energy sources.

Comment—Numerous commenters objected to the use of meters in § 250.10(c) in lieu of feet.

Response—The use of the term "meters" is retained. The National Oceanic and Atmospheric Administration (NOAA) bathymetric maps are prepared in meters. The MMS has adopted this system of measurement for consistency with NOAA and the international system of measurement.

Comment—Several commenters felt that the phrase in § 250.10(c) concerning suspensions not exceeding a total of 5 years was redundant with § 250.10(e) which limits suspensions to "periods of time each of which shall not exceed 5 years."

Response—The provisions are not redundant. Paragraph (c) suspensions are limited to a total of 5 years no matter how many suspensions are granted within the 5-year period. Paragraph (e) provides that for all other types of suspensions no one suspension can be granted for more than 5 years, but there is no limit on the total number of suspensions or years.

Comment—It was commented that the requirement for a producible well in § 250.10(d) could preempt a progressive evolution of 3D geophysical technology that offers a significant contribution to cost-efficient petroleum exploration and exploitation and, therefore, contributes to national energy security. The commenters suggest that the rules allow for suspension of operations on tracts prior to drilling even if that suspension would extend the initial lease term.

Response—The suggestion was not adopted. The main mechanism for extending the term of a lease in order for it to be developed and placed on production is an SOP. Before a suspension which would extend a lease beyond the primary term will be considered, the lessee must make the commitment to develop and produce. This cannot be accomplished until oil or gas has been discovered in paying quantities through the drilling of a well(s). At this time, the technology of 3D geophysical exploration has not reached the point where it can be substituted for the evidence obtained by drilling a well.

Comment—Several commenters proposed eliminating the requirement to have a well capable of producing in paying quantities in accordance with § 250.11 when requesting a suspension in § 250.10(a). The commenters felt that additional flexibility is needed to grant a suspension to encourage expeditious exploration and development of a lease under unusual circumstances.

Response—Section 250.10(a) allows for the granting of suspensions to facilitate proper development of a lease and to allow for the construction of or negotiations for use of transportation facilities. The intent of this section is to allow a lessee additional time, after a discovery has been made, to complete development and place a lease on production. If a discovery in paying quantities has not been made, an SOP under paragraph (a) is not in order. The remaining provisions in § 250.10 for granting a suspension of operations do not require the existence of a well capable of producing in paying quantities.

Comment—It was suggested that § 250.10(d) was repetitious because if it is determined that a suspension is necessary to facilitate proper development or to allow for construction or negotiation for transportation facilities, it would seemingly be as a result of a well being drilled and a determination having been made that the well is producible. Certainly no lessee would develop a lease and construct or negotiate for transportation facilities if a producible well has not been drilled. The commenters, therefore, felt that paragraph (d) was not required since the conditions which need to be met in order for a suspension to be issued would by their nature involve the drilling of a well and its producibility.

Response—Section 250.10(d) is not redundant. In the absence of paragraph (d) a lessee might request a suspension for a lease with a well that discovered hydrocarbons but not in paying quantities, as required in (d). Paragraph (d) clearly states the requirement for a producible well which has long been the policy of DOI, rather than rely on the implication of other provisions.

Comment—Several sections from the prior rules concerning suspensions were inadvertently omitted from the proposal.

Response—An explanation of what is required of a lessee after submittal of a site-specific study concerning hazards has been added as § 250.10(h)(2). It is the same language as the prior § 250.12(e)(2). Also, the prior paragraphs (d)(2) and (d)(3) in § 250.12 were omitted from the proposal; therefore, two new paragraphs (j) and (k) have been added to cover termination of a suspension.

Comment—A number of commenters recommended that § 250.11 concerning determinations of producibility should be eliminated. Since such determinations are only relevant to the granting of SOP's, the request for an SOP should in and of itself be sufficient evidence of the commercial viability of a lease. Lessees would not expend time and money on a lease that showed no promise of commercial production.

Response—This recommendation was not adopted. A request for an SOP does not serve the same purpose as a determination of producibility. The determination provides assurance that an SOP, if otherwise warranted by the lessee's commitment to develop and initiate production relates to a lease for which some evidence of potential for future production has been established.

Comment—It was commented that determinations of producibility should not be obtained at the lessee's option but should be required on a case-by-case basis. It was thought this could help MMS perform its obligations.

Response—This suggestion was not adopted. The MMS currently receives all log, core, test, and production data, along with the Well (Re) Completion Report (MMS Form 330), separate and apart from the request for determination of producibility. Therefore, reliance is not placed totally on the request for data or information, regulatory, or lease evaluation purposes. The determination of producibility primarily serves to trigger changing of the lease from rental to minimum royalty status and as a basis for the approval of an SOP when requested to extend the lease beyond the primary term. The rule permits the lessee to seek a determination of producibility for these purposes and will not impair MMS's performance of its obligations.

Comment—Several commenters felt that the bases for determining that a well is producible should not be limited to those listed but should include paragraph (2) of OCS Order No. 4 that allows a determination based on "sound log-interpretation techniques * * * even though the well might not qualify" under the listed criteria.

Response—The suggestion was not adopted. It is true that additional well tests may be required in some instances in order to establish producibility. However, the specific requirements and alternatives in § 250.11(b) are intended to ensure that any well qualified as producible by the application of this criteria (without the benefit of a well test) would unquestionably produce in paying quantities if tested. If the requirements are not met, then an actual

test is necessary to establish producibility. Also, if a lease cannot qualify as producible on the basis of test or log data from a zone encountered in an existing well drilled on the lease, the drilling of additional wells might be necessary if the lessee wishes to qualify the lease as producible for purposes of obtaining an SOP beyond the primary term. However, it is the prerogative of the lessee to decide whether or not to drill such additional wells in an attempt to obtain an SOP. In any event, during the primary term, the lessee should be encouraged to run a test on any encountered sands which are evaluated as producible but which will not meet the specific requirements or criteria in § 250.11(b). Such zones should necessarily be tested to establish producibility before abandonment of the bore hole if the possibility exists that the lessee may later wish to obtain an SOP to continue a lease beyond the primary term.

Comment—It was questioned whether the requirements of paragraph (b) in § 250.11 were to be used individually or collectively as bases for a determination of producibility.

Response—The rule has been amended to add the word "collectively" to § 250.11(b).

Comment—A comment was submitted to delete the requirement for a minimum of 15 feet of producible sand in one section on the grounds that the height (thickness) of the sand has very little to do with the producibility of the sand, does not consider downdip reserve potential or reservoir characteristics, and does not consider everchanging industry economics. Another commenter suggested that the words "which appears to be water-saturated" be deleted from the first sentence in § 250.11(b)(1) on the basis that all reservoir rocks are to some extent water-saturated. Therefore, it would be impossible to identify a producible sand section which is not water-saturated.

Response—The first suggestion has been adopted to allow a less than 15-foot section based on approval of the District Supervisor. The second suggestion has not been adopted. The intent of the section is to identify 15 net-feet of sand interval in the same reservoir or sand body which will produce hydrocarbons rather than water. While this language may be somewhat imprecise, it is recognized oil field terminology which has served well as part of the GOM OCS Order No. 4.

Comment—Commenters questioned the requirement of a gamma-ray log deflection of at least 70 percent. Suggestions included a decrease to 40 percent or to say 70 percent or less of the maximum deflection.

Response—The rule has not been changed. The gamma-ray log deflection requirement of 70 percent is a substitute for a negative 20 millivolt spontaneous potential (SP) deflection, in cases where the mud salinity is such that the SP current is suppressed or not developed. The formation water might also be too "fresh." The gamma-ray deflection from the shale base line is not a mathematically perfect indication of formation lithology. A deflection of 70 percent is used as a minimum figure in the absence of a test. It is recognized that lesser percentages may in some cases be productive at commercial rates. However, the MMS should not have the burden of identifying those productive intervals which will produce with less than 70 percent deflection. In such questionable cases, the lessee should test the well in lieu of reliance on log parameters.

Comment—It was suggested to change the true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1 to 3:1. The concern is that variable parameters and industry practice would be better reflected by the lower ratio.

Response—The suggested change was not adopted. This provision has been utilized in the GOM OCS Region since 1969 and has worked well. Further depending upon how silty and fine grained a sand may be and upon its porosity and permeability, a true resistivity ratio of 3:1 may or may not indicate producibility and therefore has not been adopted.

Comment—A new paragraph was suggested to be added to § 250.11(b)(l) to read: "A log response analogous to the same or similar horizon in a lease in the near vicinity which has proven to be capable of producing in paying quantities." The concern is that some sands have been found to be commercial which do not meet the listed criteria.

Response—This suggestion has not been adopted. While some sands may produce, many others do not. Additionally, if there is a close-enough producer nearby to apply the log parameters unconditionally, then a development, not exploration situation exists, and the well should be completed to allow the well to be tested through casing.

Comment—Comments were received on § 250.11(b)(2) suggesting evidence that an attempt was made to obtain a porosity log be sufficient in cases where a porosity log cannot be obtained.

Response—This suggestion has not been adopted. The log indicating porosity is vital to the determination of producibility and, in many cases, is run simultaneously with the induction log. The MMS has been somewhat flexible in the past (and certainly would continue to be so) in accepting a Thermal Decay Time Log, or a through-pipe neutron log to meet this requirement. Without a production test, the lessee must show well data supporting a producible section.

Comment—It was commented the required evidence of sidewall core analysis be changed from "is capable of producing oil or gas" to "contains rock that is petrophysically capable of producing oil or gas." The concern is that sidewall cores are often not definitive in identifying water-content because of flushing, etc.

Response—This suggestion has not been adopted. While it is true that the cores are often flushed or the hydrocarbons lost, this is taken into account in evaluation. The cores, as well as the sampling, in § 250.11(b)(4) are pieces of evidence that are requested an operator attempt to obtain. A request has never been denied solely on the grounds of "wet cores."

Comment—It was suggested that "or evidence that an attempt was made to obtain such tests" in § 250.11(b)(4) be replaced with "which indicated that the section is capable of producing oil and gas" on the basis that a multiformation test or mud-log analysis per se does not constitute producibility, nor does an attempt to obtain such tests.

Response—The "evidence" phrase has not been deleted. The intent of paragraph (b) is that the lessee be required to meet all criteria collectively; i.e., the lessee must meet the specific requirements in § 250.11(b)(1) and (b)(2) and must at least attempt to obtain sidewall cores and a wireline formation test and/or mud-logging analysis, as required by paragraphs (b)(3) and (b)(4). The substantiating data provided by paragraphs (b)(3) and (b)(4) are considered highly desirable in making a determination of producibility but are not deemed essential, provided the well is clearly producible on the basis of an analysis of those logs required by § 250.11(b)(1) and (b)(2). However, the suggestion to require that if a wireline formation test and/or mud-logging analysis is successfully obtained, such data must establish that the well is capable of producing oil and gas as a criteria for determining producibility has been adopted. Therefore, § 250.11(b)(4) has been reworded as follows:

> (4) A wireline formation test and/or mud-logging analysis which indicates that the section is capable of producing oil or gas or

evidence that an attempt was made to obtain such tests.

Comment—It was commented that § 250.12, Cancellation of leases, should provide that the Secretary "shall" rather than "may" cancel a lease based on the criteria contained in this section. The commenters believe that the itemized conditions for cancellation are sufficiently serious that the authority should be exercised whenever such conditions exist. Further, the commenters suggest the addition of a provision specifying that a lessee shall not be entitled to compensation when a lease expires or is cancelled where the owner of a producing lease fails to comply with a provision of the Act, the lease, or regulations issued under the Act.

Response—The recommendations were not adopted. The Secretary should exercise discretion in the cancellation of leases. The ultimate enforcement action, lease cancellation, should not be a mechanical process. It is not always in the national interest to cancel a lease, even though the criteria for cancellation are present. The Act uses the word "may" in describing the Secretary's authority to cancel leases. The rule provides that no compensation is due a lessee when a producing lease is cancelled for a willful and knowing violation of the law, lease, or regulations.

Comment—It was suggested that § 250.12 could allow serious harm to continue without action being taken, and that the rule is very open-ended. The commenters feel it should specify that harm must be reduced to the point where marine life is not threatened and that this reduction must take place before serious harm occurs. Also, a threat of serious harm or damage should not be permitted to continue for any period.

Response—The suggestion has not been adopted. The rule does not provide for continued operations which could harm the environment. The suspension imposed is for the purpose of suspending the activity which was threatening or causing serious harm or damage to life, property, other mineral deposits, or the marine, coastal, or human environment. The language of the rule repeats the language of the Act.

Comment—It was suggested that a lessee should not risk losing a lease through cancellation due to the action or inaction of a regulatory agency that prohibits drilling. During such time, a lease should be tolled and no rental owed except royalty on existing wells.

Response—By definition, a producing lease term cannot be tolled while production continues. Once a lease enters minimum royalty status, rental is normally no longer due. In § 250.12(c)(1)(i), the term of the lease can be extended 5 years, and the lessee shall be compensated pursuant to § 250.12(e) when the lease is cancelled. This is adequate relief when the conditions in § 250.12(c)(1)(i) apply. When the conditions in paragraph (d)(1) apply, the lease is not extended and the lessee is not compensated in any way. This is fair since the lessee should have been familiar with the requirements of the State's Coastal Zone Management (CZM) program before submitting a DPP.

Comment—Several commenters recommended that § 250.13, which provides for keeping a lease in effect if production, drilling, or well reworking occurs within 90 days, be changed to 180 days. It was claimed that this is especially needed in the Arctic because of environmental and regulatory constraints. In addition, it was suggested that the criteria used for allowing 180 days instead of 90 days between drilling for a lease beyond its primary term should be "interest of conservation, prevention of waste, and the protection of correlative rights." Such criteria would allow more discretion, would be consistent with proposed MUA's, and are more likely reasons for lease extension.

Response—The comment has been adopted. In most instances, 90 days have been adequate. Under the new rule, the Director has discretion in § 250.13(b) to extend time to 180 days or beyond where environmental conditions warrant and it is in the national interest and in the interest of conservation, prevention of waste, and the protection of correlative rights.

Comment—Several commenters suggested in § 250.13(b) which authorizes the Director to extend 90 days to 180 days, between production, drilling, or well-reworking, that "Director" be changed to "Regional or District Supervisor," as appropriate.

Response—The rule has not been changed. This decision should be made by the Director to assure consistency and equity in the application of the policy.

Comment—Several comments were submitted concerning the requirement for a storage agreement and the payment of a storage fee or rental. It was recommended to delete § 250.14(b)(2) in its entirety, because if left intact, the MMS would have the lessee pay storage on reinjection of gas—a process inherent to the production process and implied in the granting of a lease. It was claimed that lessees should not be required to pay storage or rental if such storage is in the subsurface of a lease owned by that lessee. It was also recommended that royalty payments be made only when reinjected gas is recovered and sold.

Response—The comment has not been adopted. Section 250.14(b)(1) proposes subsurface storage of gas for later commercial benefit only. Paragraph (b)(2) requires a storage agreement and the payment of storage fee or rental for the storage of gas for later commercial benefit. Since such storage is a "use right" other than the production of oil or gas, the requirement for the storage fee or rental remains as proposed. The payment of royalty on gas injected or stored offlease prior to injection does not present payments in the form of a penalty. Under the Act, royalties are due when production is "saved, removed, *or* sold" from the lease.

Comment—It was recommended that the phrase "made up of proportionate amounts of injected or stored gas, and gas original to the reservoir in accordance with a formula approved by the Regional Supervisor," be replaced in § 250.14(c) with the phrase "totally injected or stored gas on which royalties have been paid has been recovered." It was claimed that this would prevent overpayment of royalty in case the amount of gas originally in the reservoir, in which gas is injected or stored, is less than estimated.

Response—This recommendation has not been adopted. The commenter's suggestion would allow full recovery of the stored gas before any royalty from the production of the native gas from the reservoir would be paid. This would delay receipt of royalty revenues by the Government and cause the risk of loss of stored gas to be transferred to the Government. The regulation codifies current practice which has been in effect for many years.

Comment—Numerous commenters recommended revisions to the requirement that royalty be paid on gas stored or reinjected off the lease from which it is produced. The commenters recommended adding a new paragraph on storage on contiguous leases within the same field with same operator, same royalty rates, and same (or approximately the same) lease ownership. It was also recommended that royalty only be paid (on or offlease) when the stored or reinjected gas is sold. It was claimed that gas utilized for these purposes is usually commingled from different leases and reservoirs, and to avoid the resultant problems, the rule should permit the leases to be operated together.

Response—The revisions have not been adopted. Unitization under Subpart M should be an adequate solution to the potential problems cited by the commenters. Therefore, the phrase "or unit" has been inserted after the word "lease" in the first sentence of § 250.14(c).

Comment—Commenters recommended that the following sentence be added to § 250.14(c):

> While gas remains in storage, the lessee will have the same recourse under paragraph 250.10 and paragraph 250.13 to maintain the lease in force as any lessee producing naturally occurring hydrocarbons, whether royalty is due or not.

Response—The recommendation has not been adopted as it does not appear to be permissible under section 8(b)(2)(B) of the Act.

Comment—Several commenters recommended the lease number and well number requirements be deleted from platform identification as required in § 250.15.

Response—This recommendation was adopted. The lease number and well numbers are not necessary for the platform identification sign. Therefore, the requirement has been deleted.

Comment—It was suggested that the platform identification requirement for the area designation based on OCS Official Protraction Diagrams be deleted because it provides no assistance for helicopter navigation.

Response—The recommendation was not adopted. Platform identification is not only for the benefit of helicopter navigation but also for vessels. It not only aids MMS but also the other traffic in the area. In addition, all reports are facilitated by including area designations.

Comment—It was suggested to change the criteria in § 250.15 for allowing signs of 3-inch height from smaller facilities to those without helicopter landing facilities.

Response—This recommendation was adopted. The rule has been so changed.

Comment—A time limit of 90 days for request of reimbursement for food, transportation, and lodging was suggested to be added to § 250.21.

Response—A 90-day time limit for requests for reimbursement has been added as a reasonable administrative requirement.

Comment—Several commenters suggested adding the following to § 250.17, Information and forms:

> Computer generated forms which are equal in size readability and paper quality, and which arrange the data in identical format, may be submitted in lieu of the forms available from the Regional or District Supervisor.

Response—This recommendation was adopted. The sentence has been added at the end of § 250.17(a).

Comment—Several commenters questioned various aspects of the release of proprietary data in § 250.18. It was recommended that determinations of producibility not be made public and that data should not be released at the end of the proprietary term if the tract is not then under lease.

Response—These recommendations were not adopted. Determinations of producibility are made by MMS and, therefore, have been and should continue to be public information. This issue has been addressed in several appeals decisions by the Director. The Solicitor has also concluded that determinations of producibility are governmental decisions available to the public. It should be noted that the geological and geophysical (G&G) data and information which are submitted by lessees and which form the basis for those determinations are protected from release to the public pursuant to the regulations. The lessee evaluated the information and based its action or inaction on that evaluation. Thus, neither the lessee nor the lessor would benefit from continued protection.

Comment—A commenter questioned whether bathymetry maps, discussions of geohazards, and specific and general geology will be discussed in EP's in view of the prohibitions in § 250.18.

Response—To the extent that material contained in an EP falls within categories for which protection from release to the public is provided in § 250.18, such material will be protected within the terms of that section.

Comment—Numerous commenters recommended different methods or times for determining the time period for protection. A number of commenters recommended that the 10-year period of protection be changed to twice the primary lease term because deep water leases have 10-year lease terms, and the period of protection should be correspondingly longer.

Response—This recommendation was not adopted. It does not necessarily follow that longer primary terms indicate a need for longer periods of protection for data and information. The purpose for protecting G&G data and information is to provide lessees who acquired such data and information with the possible commercial benefit of such data and information insofar as it is relevant to subsequent sales. This does not necessarily correspond to the length of the primary term of other leases.

Comment—Numerous commenters suggested that the 2-year period of protection be extended by 3 years and/or by periods of time during which drilling is restricted or suspensions are in effect. They also recommended all G&G data and information from leases issued prior to June 11, 1976, be exempt from disclosure as they are under section 3.1 of OCS Order No. 12.

Response—The 2-year provision has been supplemented by a provision based on occurrence of a subsequent sale within 50 miles of the well or for leases in their primary term. This change incorporates an amendment to prior regulations which was published as a final rule in the **Federal Register** on April 22, 1987 (52 FR 13235). Provision has also been made for protection for the period of the primary term as that term may be extended on the basis of certain suspensions of operations. With respect to pre-June 11, 1976, leases, the commenters are mistaken that OCS Order No. 12 provided protection from release of all G&G data and information. The Order by its own terms provided protection from release "Except as provided in 30 CFR 250.3." Prior § 250.3 provided limited periods of protection, and there is no reason to change this.

Comment—High resolution data submitted in compliance with lease stipulations concerning protection of the environment are released 60 days after submittal in § 250.18(c). It was recommended that these data not be released until several years thereafter.

Response—This recommendation was not adopted. Section 250.18(c) is not a change from prior rules, and there is no reason to change the policy.

Comment—Several commenters indicated that data and information on Form MMS–330 were available upon commencement of production under OCS Order No. 12, but under the proposed rule, such data and information would be withheld for 10 years. It was recommended that the rule not be changed from OCS Order No. 12.

Response—There appears to be no particular reason for departing from OCS Order No. 12 as to the specific items to be afforded protection. Therefore, the same items will continue to be protected.

Comment—A number of commenters suggested that § 250.18(d) be amended to reflect the requirements of OCS Order No. 12 whereby information identified in the paragraph would be protected until production is commenced (except for "Summary of Porous Zones" and "Geologic Markers") or after 5 years if production has not commenced (except for "Summary of Porous Zones" and Geologic Markers").

Response—The reference in § 250.18(d) should have been to paragraph (b) of that section and not (a). Proposed paragraph (b) provided for a 2-year term. However, it appears that the commercial value of the protected information relates essentially to its potential use in a subsequent sale in the area. That being so, any term of protection should be related to subsequent sales as it is in the final rule.

Comment—It was suggested that data and information obtained from beneath unleased land as a result of a well deviation *which has not been approved by the Regional Supervisor* shall be available to the public.

Response—This recommendation was adopted. The phrase has been added to § 250.18(f).

Comment—A commenter suggested that MMS and USCG should coordinate and that both Agencies should use the same report form for accident reporting in § 250.19.

Response—This recommendation was not adopted. The MMS and USCG do coordinate through an MOU but have different needs relative to accident reporting because of their different areas of responsibility.

Comment—Several commenters indicated that operators of pipelines on rights-of-way are obliged to report "all serious accidents, any death or serious injury, and all fires, explosions, and blowouts * * * to the Regional Supervisor." Such operators must report the same facts to the National Response Center under DOT regulations at 49 CFR 191.5. The commenters believe that one report should be sufficient.

Response—This recommendation was not adopted. Because of its responsibility, MMS needs to have the earliest possible notice of incidents described in § 250.19.

Comment—It was recommended that a requirement be added for the use of BAST in § 250.20, Safe and workmanlike operations, "to detect and control all leaks to prevent the emission of gases and other pollutants into the atmosphere, especially those that pose a danger to personnel and/or the environment."

Response—This recommendation was not adopted. Gas leakage prevention and detection are addressed adequately in the specific operating requirements (see Subparts D, Drilling and H, Production Safety Systems).

Comment—Several commenters suggested that paragraph (c) of § 250.21, Access to facilities, be amended as follows:

> The lessee, *subject to availability*, shall, on request, furnish food, quarters, and transportation * * * [Upon request,] thelessee will be reimbursed * * *.

(Underscored to be added; bracketed to be deleted.)

Response—The suggested changes have not been adopted. As to availability, lessees obviously cannot make available that which is not available. As to requests for reimbursement, they are necessary because costs will vary widely and could not be determined in the absence of requests.

Comment—A commenter stated that § 250.22, Best available and safest technologies, is at odds with the Act. The regulations require that a "significant incremental benefit be provided before BAST is required," but the statute require BAST wherever failure of equipment would significantly affect safety, health, or the environment. The commenter also stated that "No systematic analysis has been undertaken to show that these standards and practices [those in Part 250] indeed are BAST."

Response—The language in § 250.22 has been amended to conform more closely to the statute. However, as a practical matter, MMS does systematically monitor and identify BAST, taking the economic feasibility and cost-effectiveness into account. This is largely accomplished through multidisciplinary groups such as Regional Operations Technology Assessment Committees and Regional Technical Working Groups.

Comment—Commenters also requested an amendment to § 250.22(a) whereas the technologies involved must be *demonstrated by OCS lessees and approved by the Regional Supervisor*. The commenters believe that the rule should clarify who determines what is significant and cost-effective and that industry should have a significant role in doing so.

Response—The change is not needed. All BAST requirements will be adopted through rulemaking in which lessees, the public, and other interested parties will have full opportunity to participate.

The final rule also differs from the proposed rule because of two amendments which were made to prior rules after the March 18, 1986, proposal. They are incorporated without substantive changes into this final rule.

On June 25, 1987 (52 FR 23815), MMS published a final rule to require a report of cessation of production when the last well on a lease goes off production. In the absence of the monthly report of operation, this new report is needed to enable MMS to enforce new § 250.13. This requirement is incorporated in the final rule as § 250.23, Report of cessation of production.

Revised requirements relating to conduct of accident investigations were published in the Federal Register on June 11, 1987 (52 FR 22305). These new requirements are incorporated in the final rule as § 250.19(c).

Subpart B—Exploration and Development and Production Plans

This subpart combines the provisions at current §§ 250.14, Well spacing, and 250.34, Exploration, development, and production activities, and selected OCS Orders and NTL's.

In general, the new rules combine reporting requirements, eliminate unnecessary and redundant requirements, eliminate descriptions of internal MMS procedures, and simplify format and language.

There were 21 comments received in response to the solicitation. Of those, 13 were received from the oil and gas industry, 4 from States, 3 from Federal Agencies, and 1 from an environmental group. In general, the commenters agreed with proposed changes. However, some specific comments were made and are addressed below. The final rule reflects the changes made after careful consideration of the comments received.

Comment—Some commenters expressed concern that important site-specific environmental information might not be submitted if lessees are authorized to jointly submit information.

Response—The MMS does not share this view. Joint submittals are only authorized for plans in areas with similar environmental conditions. The same detailed environmental information will apply only to leases covered by this plan(s). The intent of the joint submittal option is to facilitate data gathering and report preparation. Reduction in data quality or specificity will not be acceptable.

Comment—Some commenters felt that the requirement for a Development Operations Coordination Document (DOCD) for the western GOM appeared to be an administrative tactic to avoid the congressional exemption from the requirement to submit a Development and Production Plan for the western GOM.

Response—The provision for a DOCD has been retained. The DOCD is required so that MMS approval of proposed development and production activities meets the environmental review requirements of NEPA. Without such notice, MMS would have to conduct environmental reviews for each individual pipeline and platform application and APD. Such a process would be unduly burdensome for MMS, lessees, and reviewing Federal and State agencies. The DOCD is also necessary for State consistency review pursuant to the CZMA.

Comment—Some commenters objected to the revised definition of preliminary activities allowing seafloor penetrations to depths of 500 feet without an approved plan. They questioned the legality of allowing activities prior to plan approval and objected to the 500-foot depth allowance for such activities. It was also recommended that preliminary activities be exempted only if they do not affect the land and water uses of the coastal zone.

Response—It has always been recognized that certain preliminary activities are necessary in order to develop data and information needed to prepare a plan. Lessees cannot develop comprehensive work plans until preliminary seismic surveys, soil borings, and other site reconnaissance have been performed. This information is particularly important in preparing DPP's. Piles which support offshore production platforms may be driven to depths of 500 feet or more. To properly design offshore structures, it is necessary to perform geotechnical analyses of the supporting sediments. Some of the cores necessary for such analyses must be obtained by drilling to depths of several hundred feet. The ambiguity of the previous requirement (300 feet of unconsolidated sediments or 50 feet of consolidated sediments) has proven troublesome for MMS and lessees. The 500-foot limit is more easily understood and enforced. Soil borings and core holes are unlikely in areas where potentially hazardous accumulations of hydrocarbons are found within 500 feet of the seafloor. Such areas are most unfavorable for installing production platforms. The Regional Supervisor retains the authority to prohibit borings in potentially hazardous areas or to require additional information before boring activities are initiated. The Regional Supervisor must also consider potential effects on the land and water uses of the coastal zone when determining information and notification requirements for preliminary activities.

Comment—Comments were received regarding the provision that the Regional Supervisor may require prior notification of the type, scope, and timing of any survey. It was proposed that language be added to stipulate that prior notification will be required only for exceptional circumstances and that procedures specified in NTL's would cover most surveys. Commenters also questioned when MMS would require prior notification.

Response—The option for the Regional Supervisor to require prior notification before surveys are carried out is necessary to assure that proper consideration has been given to commercial fishing activity, marine wildlife, sea ice, and other concerns. Prior notifications are required under present practices in the Pacific and Alaska OCS Regions and will continue to be required in these Regions. Each Regional Supervisor will be responsible for determining the type of prior notification that is required based on the needs of the area involved.

Comment—Some commenters felt that if a lessee's well spacing program is disapproved, the Regional Supervisor should be required to provide alternative plans with analyses that demonstrate the superiority of the MMS plan.

Response—Sections 250.33(j) and 250.34(m) require the Regional Supervisor to notify the lessee in writing of the reasons for disapproving or requiring modification of a proposed plan. This notification will specifically advise the lessee of the conditions that must be met for plan approval.

Comment—A commenter objected to the language "minimization of unreasonable risk" in § 250.32 because risks should be avoided, and risks deemed significant should be predicted.

Response—We concur that the proposed language was confusing. The provision now reads "minimization of risk to the environment, and unreasonable interference with other uses of the OCS."

Comment—Several commenters felt that the provision which pertains to wells which could intersect offset properties should apply only to production wells completed within 500 feet of the offset property and that only directional survey information should be released for such wells.

Response—Section 250.32(b) provides lessee with prior notice that special measures may be required with respect to wells that could intersect or drain offset property. Lessees must not be permitted to drill exploratory wells into adjacent State or Federal properties (leased or unleased) and obtain information on such properties unless prior arrangements are made to protect the rights of the adjacent lessee, the Federal Government, and the States (where applicable). A specific provision has been added to Subpart K (§ 250.171) requiring the Regional Supervisor's approval to produce wells in the GOM and Alaska OCS Regions in which the completed interval is less than 500 feet from a lease line. In other Regions, decisions regarding allowable locations for wells near lease lines will be made on a case-by-case basis. The last sentence of § 250.32, which included examples of special measures the Regional Supervisor may require to protect offsetting leases, has been deleted because each case must be considered separately.

Comment—One commenter suggested that lessees retain the option of submitting environmental information as an attendant Environmental Report.

Response—Lessees may continue to submit the necessary information in more than one volume. Each volume would be considered a part of a plan rather than a separate Environmental Report. The intent is to eliminate unnecessary duplication, not to unduly limit a lessee's options regarding the preparation or format for submitting the required information. Under existing rules, certain information submitted is approved by MMS while other information, such as that contained in an Environmental Report, is submitted as supporting information. This rule is not intended to change the scope of an MMS approval. Sections 250.33 and 250.34 were revised and restructured to clearly identify the portions of a plan which will be subject to specific approval and the portions which will be received as supporting information. However, note that even though the supporting information is not subject to specific MMS approval, MMS can disapprove a plan based on inadequate or inaccurate supporting information.

Comment—Several commenters suggested that the EP include a tentative timetable for the first well only, not all wells proposed in the plan.

Response—No change has been made in this paragraph. It is recognized that there is a high degree of uncertainty involved in projecting future wells; the information is necessary to give plan reviewers a general idea of the potential frequency and duration of drilling activities pursuant to the plan. The information also assists MMS in preparing a review under NEPA which will not require extensive supplementation at a later date.

Comment—One commenter felt that air emissions might be underestimated because lessees need only describe the type of drilling unit to be used and not the specific drilling unit.

Response—Recognizing this possibility, the proposed and final rules require a worst case emissions estimate when a specific drilling unit is not identified in the plan.

Comment—Several commenters recommended deletion of the requirements for information on new or unusual technology to be employed in the proposed operation. The respondents are concerned about the proprietary nature of some new technologies and the large volume of information that might have to be submitted.

Response—This recommendation was not adopted. Information on new technology is necessary for MMS to properly assess the proposed activity and make environmental determinations pursuant to NEPA. The Regional Supervisor can provide guidance as to what constitutes new or unusual technology in the Region. However, the provision has been moved from being part of the plan to being part of the accompanying information. Language has also been included which requires the lessee to identify portions of the information believed to be exempt from disclosure pursuant to the Freedom of Information Act. To allow for transmittal of plan copies to reviewers, the lessee will be required to include a written discussion of the general subject matter of the deleted portions in such a manner as to protect its proprietary nature.

Comment—Comments were received objecting to the requirement for projected bottomhole locations in § 250.33(a)(4) (now § 250.33(a)(3)).

Response—The requirement has been deleted and the word "appropriate" has been corrected to "approximate."

Comment—Comments were submitted concerning the required structure contour maps drawn to the top of each prospective hydrocarbon accumulation. They recommended submission of a map of a representative prospective hydrocarbon accumulation.

Response—This recommendation was not adopted. The MMS believes that maps to the top of each accumulation are necessary. Structure maps provide detailed geologic data on the structure that is to be drilled. It is necessary to have the same maps that the lessee is using to define the parameters of its drilling program and not a representative map that would limit MMS's understanding of the prospect.

Comment—A commenter recommended adding "if such lines are available" in § 250.33(a)(5)(ii) concerning submission of seismic lines at or near the primary well locations because the information is not available if it is not needed.

Response—This recommendation was not adopted. While MMS recognizes that seismic lines may not always be available that intersect "at" the location, lines should be available which intersect "at or near" the location. At a minimum, a lessee should submit the seismic lines which were used to select well locations.

Comment—Comments recommended deletion of the requirement for submission of specific geologic data and information under § 250.33(a)(5) (i) through (vi) as duplicative and unnecessary for all wells.

Response—This recommendation was not adopted. While detailed comprehensive information is needed in frontier areas primarily, even in developed areas significant amounts of information are needed to evaluate a plan. The final rule allows the Regional Supervisor to inform the lessee what specific information is needed. If the information is unavailable because the lessee did not feel a need to obtain it, the Regional Supervisor can consider that fact while evaluating the work proposed in a plan.

Comment—A commenter objected to the submittal of interpreted or analyzed data which is subjective analytical work that might later be found to be inaccurate. Initial analyses and interpretations prepared prior to drilling are subject to reevaluation, therefore, submittals of G&G data should be limited to processed data.

Response—The suggested change was not adopted. If interpreted or analyzed data were eliminated from an EP, very little would remain because much of the information is interpreted. While recognizing that G&G interpretations are subject to change, the submittal of interpreted information with a plan gives MMS the most current reasoning behind the lessee's decision to drill a well. The lessee could state that the interpretations may change after additional data are obtained from the well(s).

Comment—Comments were received that the requirement for a bathymetry map in § 250.33(a)(5)(viii) (now § 250.33(b)(1)(viii)) is redundant with the § 250.51(d) requirement for a submittal of a hazards survey. Also, the requirement for analysis of geological hazards is redundant with § 250.51(d).

Response—It is recognized that where previous hazards surveys have been run and reported and other data are available, an additional survey may not be needed. The bathymetry map required in this section is not intended for the same purpose as the one required in § 250.51(d). A bathymetry map is needed to show the water depths and seafloor topography at each well site as a general overview of the area for approval of an EP. Accurate bathymetry maps are available from multiple sources, not limited to those generated during the hazards survey. However, it would be preferable that, if a hazards survey has been conducted, the bathymetry map be generated during the survey. The requirement for a shallow hazards survey has been clarified in this subpart because geologic hazards must be addressed in EP's. The requirement for a shallow hazards survey has been deleted from § 250.51(d).

Comment—There was concern expressed that reference to an approved Oil Spill Contingency Plan (OSCP) may not be satisfactory for a new plan and that this practice might make it difficult for the USCG to perform an OSCP review. There was also concern that State agencies have current OSCP information.

Response—No change was made in the final rule. The MMS believes that the commenter's concerns are adequately addressed by the rules as proposed. If an approved OSCP does not adequately cover the proposed activity, the Regional Supervisor will not approve the proposed plan until the OSCP has been updated. As required by § 250.42, all OSCP's must be reviewed and updated annually. All annual or interim updates that accompany proposed plans are transmitted to the USCG for comment. All approved OSCP's and revisions are also routinely provided to the affected States.

Comment—Several commenters requested deletion of the requirement that information on drilling fluid components and projected discharge rates be included in EP's because such discharges are regulated by the EPA and the information could be redundant.

Response—This recommendation was not adopted. Drilling fluid information is necessary for MMS's personnel performing NEPA reviews of the proposed project and for States conducting coastal zone consistency reviews. Discharges authorized by EPA are not always specific to the project. Any attempt to evaluate an exploratory drilling proposal without information on a major operational and environmental issue, such as drilling fluids to be used, is likely to result in avoidable and unnecessary delays. The same reasoning applies to information required in DPP's under § 250.34(b)(8)(ii).

Comment—Commenters felt the explanation of information required in § 250.33(a)(10) (now § 250.33(b)(7)), concerning onshore facilities and traffic, was confusing.

Response—The requirement has been rewritten to better describe the needed information.

Comment—Several commenters questioned the criteria that would be used to determine when an onshore facility is being significantly expanded under §§ 250.33(a)(11) and 250.34(a)(10)(iv) (now §§ 250.33(b)(8) and 250.34(b)(8)(iv)).

Response—Because this provision was intended to exempt established support facilities in the western GOM from the information submission requirement, the section has been revised to require inclusion of the information only in plans for areas other than the western GOM. The phrase "new or significantly expanded" has been deleted.

Comment—Several commenters felt that submission of historic weather and oceanographic data and certain types of environmental data could be repetitive, especially in the GOM.

Response—Lessees are authorized to incorporate by reference previously submitted information under § 250.33(c). Furthermore, the Regional Director can limit the information requirements under § 250.33(d) if the information is found to be unnecessarily repetitive.

Comment—Several commenters felt that the cultural survey requirements should be reduced and/or the results should not be required in the discussion of archaeological and cultural resources.

Response—Decisions regarding cultural resource survey and report requirements are made by the Regional Supervisor on a case-by-case basis. The MMS, in consultation with affected States, continually reviews policies and procedures for imposing such requirements in an effort to limit surveys to those areas where cultural resources are most likely to be impacted. To the extent that a survey is required, the results should be included in the plan.

Comment—Several commenters indicated that an assessment of the cumulative effects expected to result from the proposed activities would be unduly burdensome and that such assessments would duplicate information already included in environmental documents.

Response—Because assessments of cumulative impacts are required elements of the NEPA review process, this information is necessary for completion of MMS's environmental assessment of the project. As indicated in § 250.33(c), lessees may fulfill this requirement by referencing Environmental Impact Statements (EIS) and other environmental documents, as appropriate.

Comment—Numerous comments were received on the air emissions sections of the proposed rules.

Response—No changes were proposed and none are being made in these sections pending completion of the negotiated rulemaking process now underway. These comments have been provided to MMS's personnel working with the negotiated rulemaking process.

Comment—Objections were received to the provision allowing lessees to incorporate documents by reference, indicating that such practices could impede reviewers in State agencies.

Response—The intent of the subject provision is to minimize redundant filings. Any documents submitted to MMS in support of previous plans or prepared by MMS, such as EIS's or other widely referenced documents, should have been made available previously to the reviewers in State agencies. However, recognizing the possibility that documents that are not readily available might be incorporated, a phrase has been added requiring that documents incorporated by reference be readily available to State agencies.

Comment—Several commenters requested a provision to exempt operations adjacent to States without approved CZM plans or the entire GOM from some of the requirements of § 250.33 concerning EP's. Other commenters indicated that the amount of information should not be limited unless all State CZM concerns are satisfied by agreement of the State(s) and not simply after consultation.

Response—This recommendation was not adopted. Rather than identifying specific exemptions, the Regional Director can limit information requirements. Because some States may not have CZM programs, some information may not be needed for operations adjacent to those States. However, the decision on exemptions should be left to the Regional Director after consultation with the State(s). The MMS believes that consultation is adequate because provisions of current laws, regulations, and procedures are sufficient to assure that the Regional Director is fully attentive to State information needs. Unwarranted information reductions would only result in unnecessary delays in satisfying NEPA environmental review requirements and CZM consistency determinations.

Comment—It was requested that the commenting period for affected States be extended beyond 20 days.

Response—The Regional Supervisor is required by the Act to act upon EP's within 30 days of submission. Unless State comments are received in advance of that deadline, they cannot be considered in MMS's environmental assessment or in the Regional Supervisor's approval/disapproval action on the plan. Under some circumstances, the Regional Supervisor may be able to consider comments received after the 20-day commenting deadline but within the 30-day limit imposed by the Act. The language of the final rule has been revised to require that comments be submitted prior to a deadline specified by the Regional Supervisor who will consider State needs, calendar considerations (i.e., weekends and holidays), and the time necessary for incorporating comments in NEPA review documents before establishing deadlines.

Comment—A commenter suggested that the Regional Supervisor be required to disapprove an EP if State CZM concurrence has not been received.

Response—This recommendation was not adopted. The Act requires action on an EP within 30 days. It also prohibits the approval of APD's and other permits until CZMA consistency concurrence requirements are satisfied. This precludes any drilling activity pending completion of the CZMA review.

Comment—It was commented that the entire EP should not have to be resubmitted if modifications are being made to only one section.

Response—Section 250.33(k)(1) provides that only the modified information need be submitted. The same is true for DPP modifications under § 250.34(l)(2).

Comment—Several commenters recommended that the clause "and that the proposed activity cannot be modified to avoid the condition(s)." be added to the end of § 250.33(h)(3) (now § 250.33(i)(3)) so that the plan would not have to be disapproved if the identified problems could be avoided or otherwise mitigated.

Response—This recommendation was adopted. The proposed language is consistent with the Act.

Comment—Another commenter recommended that plans be disapproved if any significant harm would occur or be threatened.

Response—This recommendation was not adopted. Addition of the suggested language would not be consistent with section 5(a)(2)(A)(i) of the Act.

Comment—It was commented that the rules describing the procedures to be followed when EP's need modification or are disapproved were too complicated and confusing.

Response—The final rule has been modified for the purpose of clarifying this situation. A new paragraph (l) has been added to § 250.33 to cover the procedures to be followed when a State objects to a coastal zone consistency certification.

Comment—One commenter stated that any special survey required under § 250.33(m) (now § 250.33(n)) to ensure safety and environmental protection be justified.

Response—Under the final rule, the Regional Supervisor is to advise the lessee of the reasons why special surveys are necessary. The lessee may appeal such decisions pursuant to § 250.24.

Comment—A commenter proposed limits on the Regional Supervisor's authority to approve plan departures in emergency situations.

Response—These proposed limits were not adopted. The wide range of possible emergencies and the need for full authority to act in emergency situations preclude the specification of limits over the Regional Supervisor's authority to authorize departures from approved plans. Supervisors must be able to act promptly, and as necessary, in emergency situations.

Comment—Commenters suggested that DPP's should include a discussion of proposed drilling and completion programs.

Response—The MMS has adopted the recommendation and added a new § 250.34(b)(6). In addition, proposed §§ 250.34 (a)(2) and (a)(4) through (a)(16) now make up § 250.34(b) of the final rule.

Comment—Several commenters recommended that the description of practices intended to increase ultimate recovery of oil and gas be deleted because such practices cannot be effectively planned until extensive well data have been gathered and production history has been established.

Response—This recommendation was not adopted. Although final planning for secondary and tertiary recovery is normally dependent upon well history and performance data, provisions for gas injection, gas lift, waterflooding, and other procedures for enhancing the effects of natural reservoir energy must be considered in the design of the platform, wells, and production equipment. For some types of reservoirs, maximum recoveries cannot be achieved unless gas reinjection or other procedures are implemented at the outset. If MMS is to fulfill its mandate regarding conservation of resources, it must have some information about enhanced recovery options prior to approval of DPP's.

Comment—A commenter interpreted the rule at proposed § 250.34(a)(5)(iii) (now § 250.34(b)(1)(iii) concerning release of data and information to only require submittal of data and information collected under a lease and not data or information collected prelease. This commenter felt, however, that if data and information obtained under a prelease permit were required to be submitted, they should be covered by Part 251 and not Part 250 of 30 CFR.

Response—The MMS does not share these views. The release of data and information obtained under a prelease permit and submitted to fulfill the requirements of § 250.34 will be governed by the provisions of Part 250 and not those of Part 251. The same is true of data and information submitted in support of an EP under § 250.33.

Comment—It was pointed out that the requirement to provide shallow hazards analysis was redundant with a similar requirement for OCS structures in Subpart I, Platforms and Structures.

Response—The potential for redundancy has been recognized and a sentence added to § 250.34(b)(1)(vii) which provides that the shallow hazards information required for the plan shall be derived from the report for § 250.139.

Comment—Several commenters questioned the requirements under proposed § 250.34(a)(9) concerning environmental data and information.

Response—Section 250.34(b)(8) (proposed § 250.34(a)(9)) has been reformatted. Proposed § 250.34(a)(9)(i) (D) and (E) have been renumbered § 250.34(b)(8) (ii) and (iii). Proposed § 250.34(a)(9)(ii) has been renumbered § 250.34(b)(8)(iv) with the western GOM excluded from the requirement. Proposed § 250.34(a)(9)(iii) has been renumbered § 250.34(b)(8)(v). Furthermore, proposed § 250.34(a)(9)(iii)(A) has been revised to conform with the parallel section on archaeology in § 250.33 for EP's and renumbered § 250.34(b)(8)(v)(A). Section 250.34(a)(9)(iii)(B) has been revised and renumbered § 250.34(b)(8)(v)(B), and a new § 250.34(b)(8)(v)(C) has been added to more explicitly describe information requirements for environmentally sensitive areas. Proposed § 250.34(a)(9)(iii)(E) has been revised to assure that air temperature, visibility, and wave height information are included and renumbered § 250.34(b)(8)(v)(F), and proposed § 250.34(a)(9)(iii)(F) has been revised to assure that commercial fishing, recreation, and shipping are considered and renumbered § 250.34(b)(8)(v)(G).

Comment—One commenter recommended deletion of the requirement in proposed § 250.34(a)(11) to discuss alternatives that were considered during the development of the plan.

Response—The requirement has not been deleted because such a consideration of alternatives is necessary for MMS to prepare the environmental documentation for the proposed activity. Proposed § 250.34(a)(11) is now § 250.34(b)(10).

Comment—One commenter recommended that the requirement for DOCD's applicable to States with approved CZMA plans not be left to the discretion of the Regional Supervisor.

Response—This recommendation was not adopted. Although the Act contains language which excludes GOM OCS leases from the statutory requirement to submit a DPP, the lessee is required to provide data and information to satisfy NEPA and CZMA requirements. Specific requirements can best be determined by the Regional Supervisor in consultation with the States as reflected in a lessee's submittal of a DOCD, as required.

Comment—One commenter requested that coastal resource service areas (CRSA) boards be included with local governments and affected States in receiving DPP's. They further proposed that plans and EIS's be routinely provided to local communities and that specific prior requests for such documents not be required.

Response—These concerns can be addressed under the rule as proposed. Where no formal local governments exist, the Regional Supervisor will assume that CSRA boards will be responsible for local input. Also, local governments can make a single initial request for all plans and EIS's for a planning area. Separate requests for each document are not required.

Comment—Different commenters requested that the 60-day comment period for affected States either be extended or shortened.

Response—Neither recommendation was adopted. Sections 19(b) and 25(g) of the Act specifically limit the comment period to 60 days for plans not requiring an EIS. When an EIS is required, it is important to receive early notice of issues that should be addressed.

Comment—One commenter proposed that the Regional Supervisor only be allowed 45 days after the release of the final EIS or close of the comment period to act on the DPP.

Response—This recommendation was not adopted. The 60-day period is specified by section 25(h) of the Act.

Comment—Comments were received concerning the procedures for resubmittal of modified plans and procedures to follow if a plan is disapproved because CZM consistency has not been received.

Response—Clarifying language contained in existing regulations and

omitted from the proposed rule has been added under § 250.33(l) and 250.34(i)(2).

Subpart C—Pollution Prevention and Control

Subpart C, Pollution Prevention and Control, incorporates requirements from OCS Order No. 7, Pollution Prevention and Control; § 250.43, Pollution and waste disposal; § 250.57, Air quality; § 250.54, Marking of equipment; and portions of OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects as they relate to the marking of equipment.

Comments were received from 25 commenters, 18 from industry, 4 from States, 2 from Federal Agencies, and 1 from an environmental group.

Generally, the commenters agreed with the proposal; however, certain changes were suggested, some of which were made in the final rule. A discussion of specific comments and MMS responses follow.

Comment—One commenter requested inclusion of a requirement that lessees submit a copy of a valid Certificate of Financial Responsibility (COFR) for pollution liability as required by the USCG.

Response—No change has been made pending completion of a review of the MOU between MMS and the USCG. The collection of COFR's is being considered in this review. Any changes necessitating rulemaking will be proposed for public comment prior to final promulgation.

Comment—Several commenters questioned the ability of lessees to assure that their actions do not adversely affect the public health as required in § 250.40(a).

Response—The MMS recognizes that guarantees cannot be made. However, the intent of this paragraph is to prevent situations in which there is an unreasonable risk to the public health and provide a basis for requiring mitigation if such adverse conditions are created. Therefore, the rule has been changed accordingly.

Comment—One commenter recommended that pollution be defined and prohibited.

Response—Lessees are forbidden to discharge any water pollutants in unauthorized quantities. The language of § 250.40(a) prohibits such practices and has been revised to clarify its intent.

Comment—Numerous commenters indicated that total removal of pollution is not possible and that requiring "immediate corrective action" is not necessary in all cases of pollution.

Response—This recommendation was partially adopted. The MMS recognizes that total removal is not always possible and has changed the language to require that the pollution be removed to the satisfaction of MMS. The MMS will, in accordance with the terms of the MOU, consult with the USCG in making this judgment. It is recognized that corrective action is not always possible and that required actions are to be corrective in nature (e.g., control or removal).

Comment—One commenter indicated that the USCG, not MMS's District Supervisor, would be responsible for modifying corrective actions.

Response—This view fails to recognize the scope of the situations covered by § 250.40(a). Section 250.40(a) applies to all forms of pollution and not just major oil spills. In the event of a major oil spill, the USCG would, in accordance with the MOU's between MMS and USCG, be responsible for containment and cleanup activities. The MMS would be responsible for abating the source of the spill and corrective action to protect personnel and facilities involved in the abatement operation. For minor spills and other forms of pollution, MMS is authorized to take prompt action to assure a proper response.

Comment—Several commenters felt that § 250.40(a)(2) implied that failure by the lessee to control pollution was a foregone conclusion.

Response—The MMS has revised the first sentence of the section to read "If the lessee fails to control and remove the pollution" in order to eliminate the implications raised by the commenters. Also, the phrase "at the expense of the lessee" was inadvertently left out of the paragraph and has been returned to the final rule to clarify that the lessee will have to pay for removal activities carried out by the Government if the lessee fails to control and remove the pollution.

Comment—Numerous commenters requested deletion of MMS's regulation of drilling fluid discharge because it is an EPA responsibility.

Response—The MMS recognizes the potential for redundancy between EPA and MMS requirements in this area but also realizes the possibility of gaps in exercise of responsibilities. Until the MOU between MMS and EPA has been fully implemented, MMS believes the redundancy is unavoidable. The MMS's Offshore Minerals Management program is founded upon effective environmental protection practices and procedures. The MMS funds extensive monitoring programs, prepares detailed environmental statements, attaches special stipulations to leases to protect sensitive habitats, and is responsible for assuring that the impacts of its Offshore Minerals Management program to the marine environment are minimized. The MMS cannot ignore drilling fluid discharges. Therefore, MMS inspection personnel have the authority under the Act to prevent improper discharge practices in violation of EPA regulations. For example, certain operations in the GOM, although the lessee believed itself to be in compliance with EPA discharge criteria, have created an oil sheen. In such cases, MMS inspectors will require lessees to take corrective action necessary to meet any MMS requirements and will take actions in accordance with any agreements with EPA to assure that the discharges meet EPA requirements. Also, if a problem is not covered by the EPA permit, MMS has the regulatory authority to require corrective action until the permit has been revised. It should be noted that the provision does not authorize MMS to approve practices prohibited by EPA.

Comment—Several commenters objected to the prior approval requirement for the addition of petroleum substances to mud systems because many additives contain hydrocarbons in low concentrations and are approved for use by EPA. They also are concerned about the time that might be required to obtain approval in the event of an emergency.

Response—Studies have indicated that the presence of diesel fuel in drilling fluids greatly increases their toxicity. The MMS is concerned about unnecessary and excessive use of diesel fuel and the lessees' ability to identify and recover diesel contaminated mud and cuttings. Prior approval can be obtained with the APD. Lessees may identify, in their plan or APD, the petroleum substances which may be used, conditions under which they would be used, concentrations (range), and special recovery methods and procedures. The use of such components will have to be consistent with EPA requirements, applicable lease stipulations, and MMS regulations and conditions of approval. The MMS officials will inspect to assure that approved methods and procedures are being followed. Oral approvals are also on a viable alternative under § 250.6, when appropriate.

Comment—Several commenters objected to the requirement that maintenance or repairs be undertaken immediately when necessary to prevent pollution. They indicated that the most expeditious means of correcting a problem may not be a repair but some other type of procedure (e.g., a component shut in).

Response—The MMS believes that any type of action that corrects the underlying source of pollution should be considered maintenance or repairs and has not revised the language.

Comment—A number of commenters objected to the requirement that curbs, gutters, and drip pans be installed in all deck areas. They argue that certain areas on drilling rigs and production platforms may not be exposed to spilled oil and thus should be exempt from the draining collection requirement. They are also concerned that automatic maintenance of an oil level in a sump may not always be practical.

Response—The language of the rule has been revised to make it more performance oriented. Lessees will be required to install curbs, gutters, drip pans, and drains as necessary to collect all contaminants. Sump systems must be designed to prevent unauthorized discharges of oil or waste. The requirement that sump systems automatically maintain the oil at a level sufficient to prevent oil discharges has been retained. Automatic oil level controls on sumps are necessary to prevent unauthorized oil discharges, and such automatic level controls are feasible.

Comment—It was recommended that the drainage collection requirement for artificial islands be deleted because the requirement to place hydrocarbon vessels inside impervious berms was sufficient.

Response—This recommendation was not adopted. The requirement to place hydrocarbon vessels such that spills are contained does not assure that contaminated drainage will be properly collected. The drainage collection requirement is necessary to assure that contaminated drainage will be directed away from the rig to a suitable sump system.

Comment—One commenter requested more specificity regarding garbage disposal.

Response—Unauthorized discharges of garbage would be precluded by the requirements in § 250.40(a) and (b)(6).

Comment—One commenter objected to the equipment marking requirements as unnecessary. Another recommended that markings be durable enough to withstand environmental conditions. Several commenters requested that lessees be authorized to keep small tools in a suitable storage area, not just in a marked container.

Response—Equipment marking is specifically mandated by section 403(a) of the Act Amendments of 1978 (43 U.S.C. 1843). A performance standard concerning durability is included in § 250.40(c)(4). The rule has been changed to allow storage in a suitable area.

Comment—Numerous commenters felt that equipment or materials that are lost in greater than 1,000 feet of water, weighing less than 40 pounds, or within 150 feet of a fixed structure should not have to be reported or that any such reports should be made only to the USCG.

Response—No change has been made in this requirement. In some OCS areas, commercial trawling is frequently performed in water depths up to 3,000 feet. Also, materials lost in 1,000 feet of water may settle to the bottom at much lesser depths. Some work baskets, tires, and other objects weigh less than 40 pounds but can seriously interfere with commercial fishing.

The Act requires MMS to protect other users of the OCS. This cannot be accomplished without complete and accurate debris reporting. If the "loss" overboard of materials, equipment, tools, containers, and other items used in the OCS is held to a minimum, reporting their loss should not be burdensome.

Because MMS does not enforce reporting to other Agencies, the requirement that lessees report material losses to the USCG has been deleted. Lessees should refer to USCG regulations for their requirements on this matter.

Comment—Several commenters recommended that pollution inspections be required only at manned facilities during the course of normal operations rather than daily at all facilities.

Response—This recommendation was not adopted. The MMS believes pollution inspections should be a scheduled daily activity and documented at the facility. Observations during normal operations may not cover the entire facility and visible surrounding waters and would be difficult to document. Should daily inspections not be necessary at certain facilities with limited production equipment, the rule allows the District Supervisor to approve a lesser frequency.

Comment—One commenter recommended that the District Supervisor never allow more than 7 days to elapse between pollution inspections.

Response—This recommendation was not adopted. The rule allows the District Supervisor to set a frequency for pollution inspections other than daily for certain facilities. Instead of setting a maximum required interval, MMS believes that based on the circumstances, the District Supervisor is best qualified to set the interval.

Comment—The 2-year record retention period for pollution inspections and repairs was questioned.

Response—The retention time is necessary to allow for adequate analysis of pollution occurrences and is consistent with other similar recordkeeping requirements.

Comment—Several comments were received concerning oil spill reporting. Some commenters felt the requirement to report to MMS is redundant with USCG reporting requirements. Another commenter proposed that spills be reported to States as well as the District Supervisor.

Response—The MMS agrees that redundant reporting should be avoided if possible. However, MMS personnel must have immediate and accurate information on spills to fulfill their regulatory responsibilities. Also, there are often specific operational questions about an incident that cannot be answered by USCG personnel. It is, therefore, necessary for MMS to receive spill reports. Arrangements for reporting to State or other Federal Agencies can be provided for in OSCP's. Affected States can also arrange with MMS for reports of significant oil spills.

Comment—It was recommended that all oil spills, regardless of size, be reported immediately and confirmed in writing. Other commenters recommended that spills of 10 barrels or less be reported within 12 hours as proposed or, if on a weekend, on the first working day after the spill occurs.

Response—While immediate reporting is not necessary for every spill, the proposed threshold spill size of 10 barrels was too large. The rule has been revised to require immediate reporting for spills of more than 1 barrel. Spills of less than 10 barrels can create conditions for which some level of immediate spill response may be necessary. Spills of less than 10 barrels may also be indicative of operational practices that demand immediate attention. It is, therefore, imperative that the District Supervisor receive prompt notification of these spills. The rule for reporting small spills, now less than 1 barrel, requires a report within 12 hours. Although the cleanup options for spills of less than 1 barrel are limited, MMS may be alerted by other parties to the presence of a slick near a facility. Absent a spill report, the District Supervisor would be concerned about the possibility of an undetected (or unreported) large spill. An investigation would not be necessary if MMS had been advised of a minor spill at the facility.

Oil and gas drilling and production operations continue around the clock; therefore, a spill is as likely to occur on a weekend as a weekday. Based on the circumstances, the District Supervisor may choose to inspect the facility and verify that appropriate corrective action has been initiated. This would not be possible if the report was delayed until the following Monday morning. In addition, MMS has revised the requirement for written confirmation of spills to indicate that such written reports must be received within 15 days after the spillage has been stopped. The OCS Order No. 7 does not specify a timeframe for the transmittal of written reports. The 15-day requirement is necessary to assure that details on a spill are provided on a timely basis.

Comment—One commenter argued that "nuisance spills" of less than 50 barrels should not have to be confirmed in writing.

Response—Spills of 1 to 50 barrels are not considered to be "nuisance" spills. They can create extensive sheens and adversely impact marine life. It is expected that the infrequency of such spills should not make their reporting burdensome. Lessees should normally perform an internal review of such events, a copy of which should be sufficient written documentation for MMS's purposes.

Comment—One commenter suggested that lessees be required to notify the District Supervisor of observed pollution resulting from another lessee's operation.

Response—The recommendation was adopted and the provision added.

Comment—Commenters suggested that dispersant-use plans be specifically required as a part of the OSCP.

Response—The recommendation was adopted. The final rule requires dispersant-use plans.

Comment—One commenter questioned the need for any changes in OSCP requirements in light of the industry's excellent spill record.

Response—Although the number of large spills has been low, the success in responding to such spills has been limited. The changes in OSCP requirements are intended to improve overall response capabilities. Continued improvements in spill response capabilities are essential if the leasing and development objectives of the Act are to be accomplished.

Comment—It was recommended that the BAST requirement be cited in the OSCP requirements.

Response—This recommendation was not adopted. The BAST provision of the Act applies to all safety and pollution prevention requirements and need not, therefore, be specifically cited in the OSCP requirements. The Regional Supervisor will consider BAST capabilities in reviewing OSCP's.

Comment—A commenter suggested that lessees be required to install monitoring equipment to obtain oceanographic data for spill trajectory analyses.

Response—This recommendation was not adopted. The rule specifies the information required in a plan. Monitoring will be done when required to meet the requirements of the rule. When MMS requires oceanographic data beyond that required under the rule, MMS will contract for the data.

Comment—A commenter suggested that MMS and EPA avoid duplication and conflicts between OSCP's and the Spill Prevention Control and Countermeasures (SPCC) plan required by EPA.

Response—The MMS does not believe that SPCC plans are appropriate for the OCS and is reviewing this matter with EPA as part of the MOU implementation process and efforts to avoid duplication and conflicts with other Agencies' requirements.

Comment—Numerous commenters objected to the requirement for costly oil spill risk and trajectory analyses.

Response—The intent of this requirement is not to conduct new risk and trajectory analyses but to summarize applicable trajectory analyses published in EIS's or other public documents. Section 250.42(a) has been revised to require that applicable trajectory analyses be referenced and their results summarized.

Comment—Commenters were concerned that the trajectory analyses might not be sufficiently specific to be useful.

Response—The rule has been revised to require that the analyses discussed be specific to the area of operations and areas of potential onshore impact.

Comment—It was suggested that drogues, which could be used in tracking a spill at night, be kept at offshore facilities.

Response—This recommendation was not adopted. While night tracking is important and should be addressed in oil spill contingency planning, MMS has not included requirements for specific response methods or types of equipment in these rules. Lessees will include specific equipment and procedures for spill tracking and cleanup in their contingency plans, and the adequacy of such plans will be reviewed by MMS, USCG, and the affected State(s).

Comment—Another commenter suggested that trajectory analyses include estimates of the time it would take for a spill to reach environmentally sensitive areas.

Response—Such information may be included in MMS lease-sale trajectory analyses and other such analyses contracted for by lessees. If additional trajectory information needs are determined during the leasing or plan review process, the Regional Supervisor can require supplemental trajectory data.

Comment—Numerous commenters requested deletion of the requirement that equipment capable of recovering at least 1,000 barrels of oil per day be located so as to assure a 12-hour response time. They indicated that environmental conditions do not always permit such recovery rates and that it may not be practical to locate such equipment within 12-hour transit time of all facilities. They further stated that spills 100 miles from shore do not require such rapid response. Another commenter stated that a 12-hour response time is inadequate in some coastal areas.

Response—This recommendation has been adopted. The specific response time and recovery capability requirements have been deleted. Because of the wide range of environmental settings in which facilities are located and the large differences among such facilities, permissible response times and capabilities vary between and within Regions. The Regional Supervisor, in consultation with the USCG and other reviewers, will determine response capability requirements.

Comment—One commenter indicated that lessees should be able to reference oil spill cooperative plans in identifying response equipment.

Response—Such referencing is authorized under the rules as written. In addition, a provision has been added to require inspection of equipment at least monthly.

Comment—One commenter questioned the necessity of the requirement for listing uncommitted spill response equipment available for use.

Response—Upon reconsideration, it was recognized that the proposed requirement could be confusing. The language regarding the listing of uncommitted equipment is not contained in the final rule.

Comment—A commenter suggested that names, not just positions, be used in designating response personnel because individuals can be questioned regarding their training experience but positions cannot.

Response—This recommendation was not adopted. It is not practical or feasible to require designations by name. On a rig or platform, numerous individuals may fill a specified position during the course of a year. As long as the position title is specific enough, MMS inspectors can ascertain whether the person that is functioning in that capacity has had the required level of training.

Comment—Commenters indicated that personnel supervising oil spill response operations need not receive extensive training in the deployment of equipment but need to be trained in directing the deployment and use of equipment. Only those supervising the actual cleanup operations should be required to receive the supervisory level response training.

Response—The rule has been revised to acknowledge that the knowledge and skills required for response supervisors differ from those needed by the response team. All personnel identified in the OSCP as cleanup response supervisors are required to receive the supervisory level training regardless of what phase they are supervising.

Comment—Several commenters requested deletion of the requirement that training records be retained at the lessee's field office nearest the facility. They noted that many of the people receiving such training are contract personnel and that the lessee's nearest field office may not be the appropriate location for such records.

Response—The rule has been changed to require that such records be maintained for 2 years at a site designated in the lessee's OSCP.

Comment—Numerous commenters recommended that oil spill drill frequency be reduced from semiannually to annually as this frequency has proven adequate under existing rules.

Response—This recommendation was adopted. One scheduled drill each year is sufficient. Response personnel will also be participating in annual hands-on training exercises, and the Regional Supervisor may require additional scheduled drills or initiate unscheduled drills. The Regional Supervisor can evaluate the scheduled and unscheduled drills to determine optimal frequencies for drills at different areas or facilities.

Comment—Several commenters opposed the provision for unscheduled drills initiated by the Regional Supervisor. Other commenters felt that surprise drills should be required.

Response—The MMS believes that unscheduled drills are an effective means of evaluating personnel and equipment readiness. The MMS personnel will evaluate conditions and the status of operations in advance to assure that such drills do not impair operations or impose unusual risks to lessee personnel.

Comment—Objections were raised to the necessity of requiring MMS approval of the equipment to be deployed and the drill schedule.

Response—This recommendation was adopted. The Regional Supervisor will receive notification of the drills and equipment to be deployed. If changes are desired, the Regional Supervisor can request them or require additional drills. The Regional Supervisor can also require changes in the OSCP which describes training procedures. Through this process, the supervisor can modify drill-training procedures.

Comment—Comments were received requesting more detailed requirements on the conduct of response drills.

Response—This recommendation was not adopted. Because of the inter and intraregional differences in environmental conditions and types of operations, the Regional Supervisor must be permitted sufficient latitude to assure that prescribed drill procedures are appropriate for the specific circumstances at the site. The MMS, therefore, chose not to list criteria that the Regional Supervisor must utilize in evaluating drill performance. A provision has been included for the Regional Supervisor to evaluate drill results. Objective evaluation criteria will be developed on a regional basis. All surprise drills and many scheduled drills will be monitored and evaluated by MMS personnel. To assist States in their review process, the Regional Supervisor may offer State representatives the opportunity to witness response drills. In addition, local government representatives and members of interest groups or the public may be permitted to witness drills. They should contact the Regional Supervisor to ascertain whether such arrangements can be made.

Comment—Numerous comments were offered regarding the air quality regulations.

Response—No action is being taken on the air quality regulations pending completion of the negotiated rulemaking process. These comments have been forwarded for their consideration to MMS personnel involved with these proceedings.

Subpart D—Drilling Operations

During the review of the proposed rule and public comments thereon, a number of points were noted that could be addressed by minor revision of the text of the proposed rule. Generally, these changes are not substantive in nature, are viewed as editorial, and are presented without detailed discussion. A discussion of the public comments on proposed Subpart D and responses to those comments are provided following the discussion of the editorial changes.

Proposed § 250.123(d) in Subpart H, Production Safety Systems, required submittal of a general and a supplemental plan for simultaneous operations which applied to drilling and other operations on production facilities. The proposed requirement for such plans has been eliminated and replaced with specific requirements which appear in Subparts D, E, and F. Two new paragraphs, § 250.51(b), Equipment movement, and § 250.51(i), Emergency shutdown system, have been added to Subpart D to provide the specific requirements.

A new paragraph (4) is added to § 250.52(a) which provides for relocation of equipment which contains hydrocarbons or other flammable substances 35 feet from the welding site. It also requires relocation of such items 35 feet horizontally from decks underlying the work area. If relocation is impractical, the equipment is to be shielded or the contents rendered inert. Similarly, the clause "and areas at elevations below the work area where slag, sparks, or other hot materials could fall" is added following "shall inspect the work areas" in § 250.52(d)(1).

A provision is added to § 250.54(a)(2) specifying that cement placed across permafrost zones is to be of a type that will set before freezing and has a low heat of hydration. This makes the paragraph consistent with § 250.112(k) in Subpart G, Abandonment of Wells.

The reference to a minimum setting depth of 100 feet for drive or structural casing is deleted from § 250.54(b) to make the regulation consistent in its reference to setting depths of various casing strings. No such minimums are given at § 250.54 (c), (d), or (e). The language at § 250.54(c)(1) was changed from reference to a "correlatable well" to an "offset well" to clarify the intent of the paragraph. The language at § 250.54(c)(2) was changed from "ocean floor" to "mud line" to make the regulations internally consistent.

The language of § 250.56(d)(7)(ii) was revised to make clear that choke manifold systems are to be heated, drained, or filled with antifreeze only if there is a chance of freezing.

Language was added to § 250.57(e)(2) to clarify that in cases where cement is not to be drilled out, blowout preventer (BOP) systems shall be pressure tested before continuing operations.

The language at § 250.57(e)(5) addressing testing of variable-bore pipe rams was changed to recognize that there could be more than two sizes of drill pipe in a string but to clarify that testing of the rams against drill collars or tools in the string is not required.

A new § 250.60(b)(8) was added to require an operable gas separator. The requirement had previously been omitted under the assumption that all rigs carry this equipment as standard. However, it is sufficiently critical as to be explicitly required.

The title of § 250.61 was changed from "Well security" to "Securing of wells" to avoid any confusion with requirements relative to theft of oil or equipment as used in § 250.184 of Subpart L.

The phrase "type of connection" was added to § 250.64(f)(4)(i). This casing factor was inadvertently omitted from the proposed rule and is a factor which bears directly on the strength of the casing joints.

The language at § 250.65(b) requiring a subsequent report of work to be filed was changed from "After completion of the work" to "Within 30 days after completion of the work" to make clear that the report must be submitted within a reasonable period of time.

The language of § 250.66(c)(2) was revised to clearly require that upon request, a lessee is to furnish paleontological reports and/or washed samples of cuttings. The language of § 250.66(f) is revised to indicate that the lessee may, in some circumstances, be required to submit other reports and paleontological interpretations based upon identification of microscopic fossils.

The first sentence in § 250.67(h)(6)(vi) regarding emergency breathing air systems was revised to clarify that the requirements are to conform to any particular operation, i.e., drilling, well-completion, well-workover, or any combination thereof.

Similarly, § 250.67(m)(8) was expanded to clarify that the corrosion mentioned refers to corrosion caused by acid gases such as H_2S and carbon dioxide.

Section § 250.68, Training in well control, has been removed from Subpart D, Drilling Operations, and combined with sections from other subparts dealing with training into a separate Subpart O, Training in OCS Operations.

Comment—There were many comments concerning § 250.50, Control of wells. One commenter stated that this section appears to be in order. One commenter recommended use of the term "BAST" only and deletion of the words "state-of-the-art," and references the National Academy of Science (NAS) study "Safety and Offshore Oil" (1981) and requests a specific MMS response to this recommendation. Other commenters would delete references to BAST and state-of-the-art methods and allow lessees some latitude in selecting the appropriate technology best suited to a particular well on the basis that all wells do not require the same degree of technology.

Several commenters believe that the regulations themselves should be more specific with less reliance upon the discretion of the District Supervisor.

Several commenters would delete the word "assure" regarding safety and protection of personnel and equipment and would delete the word "competent" regarding personnel.

One commenter recommended the use of objective, verifiable performance standards since the proposed section has no objective standards that would not already be subject to § 250.3, Performance requirements; does not call for notice to the affected State if alternative procedures or departures were approved by the MMS District Supervisor; and states that §§ 250.52(b), 250.54(a)(3), and 250.62 are not sufficiently precise to provide objective standards.

Response—These recommendations have not been adopted. The commenters who expressed concern regarding the balance between performance standards and specific requirements in this section are referred to the discussions presented in §§ 250.3, 250.20, and 250.22 in Subpart A of this part.

Section 250.50, Control of wells, was intentionally worded generally. The purpose of this section is to provide stated goals, direction, and meaning to the more specific requirements which are presented in subsequent sections of Subpart D.

Many of the decisions within the context of the regulations involve situations which require evaluation of varying engineering and other parameters unique to the situation and require a decision by an informed and responsible MMS official.

Proposed casing programs and welding and burning plans submitted for approval are carefully reviewed for safety and environmental protection within the overall picture prior to approval. Section 250.64, Applications for Permit to Drill, requires lessees to submit substantial additional information which MMS personnel use in making approval decisions. Welding and burning plans must also satisfy the specific requirements in § 250.52. The requirements in § 250.52 of the final rule have been revised to add specifics and increase stringency.

Section 250.62 enables the District Supervisor to determine specific operating requirements different from these in the regulations when sufficient drilling geologic and engineering information is available to clearly demonstrate that rigid compliance with a specific requirement as written is no longer necessary to maintain the required levels of safety in operations and environmental protection. Section 250.62 also allows the District Supervisor to invoke additional and/or more stringent requirements when drilling and other experience in the area reveals the existence of special problems not specifically addressed in the basic requirements.

Although the only revision to the text of proposed § 250.50 was deletion of the words "and state-of-the-art methods * * * appropriate methods" revisions to § 250.52 were made in response to comments received on both sections.

The BAST requirement in Part 250 is mandated by section 21(b) of the Act, as amended, on September 18, 1978.

Section 21(b) recognizes that in a given situation more than one technology may provide an acceptable level of protection and provides an exception where the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

In response to comments regarding the NAS Study of 1981, MMS has had standing committees and organization units which address offshore technological assessment for more than 8 years. The function of these groups is to identify, evaluate, and report on the use of BAST on a continuous basis. Literature on BAST is researched; continuous observations of field practices are made; meetings are held with industry representatives and vendors of oil field equipment and services for this purpose; and meetings are conducted routinely with MMS personnel and others to disseminate and utilize BAST information.

Technology which permits the measurement of wellbore characteristics while actively drilling, termed "measurement while drilling" (MWD), has developed to field-proven status and continues to be improved. The voluntary use of MWD technology by lessees is increasing on the strength of its utility and cost effectiveness in the drilling process. This technology may be required at some future date when circumstances warrant its use in specific drilling situations.

Comment—A commenter recommended that MMS adopt standards (Section VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel

Code, and ANSI/ASME B31.3—Chemical Plant and Refining Piping) in § 250.51 to provide design standards for pressure vessels and piping for drilling systems on fixed OCS facilities, as the USCG requires conformance with these standards on MODU's and floating facilities in 46 CFR Part 54.

Response—This suggested change was not adopted because it does not appear justified for drilling systems.

Comment—There were several comments concerning the proposed requirement at § 250.51(a)(2) for a drilling unit to be "made ready" and available for a complete inspection by MMS personnel before commencing operations. Some commenters suggested deleting the words "made ready" as unnecessary and undefined. One commenter requested clarification as to whether the inspection would occur prior to moving onto location or prior to spud.

Response—Drilling unit inspection by MMS personnel, for the purpose of evaluating the fitness of the drilling unit for approval to operate in an area, can be conducted before the unit moves on location or concurrently with the predrill inspection prior to spud. Any deficiencies found at the time of these inspections are noted, and a copy is given to the operator. Approval for use of the drilling unit is contingent upon the lessee correcting all noted deficiencies prior to spudding a well. Modifications that are required as a result of deficiencies noted during a predrill inspection could be costly as well as time consuming to accomplish and could delay the spudding of a well if conducted concurrently with a predrill inspection immediately prior to the planned spudding date. When requested by the lessee, MMS personnel have conducted such inspections well in advance of the movement of equipment into an area.

To avoid any undue delay in spudding the first well to be drilled with a drilling unit, the lessee should notify the District Supervisor and arrange for an inspection of the unit as soon as the expected date of drilling unit arrival on location becomes known with reasonable certainty.

Comment—There were a number of comments concerning the lessee submittal of information and data with the APD on the fitness of the drilling unit to perform the proposed drilling operation at § 250.51(a)(3). All the commenters suggested deleting this proposed requirement, since they believe the lessee is best equipped to evaluate the drilling unit and its capabilities and believe that the proposed requirement would cause an unnecessary paperwork burden.

Response—The recommendations to delete the requirement were not adopted. The MMS, along with other Federal Agencies, has responsibilities for evaluating the safety and environmental protection aspects of drilling operations in the OCS. Fitness of drilling units is an important part of this evaluation. The provision for the District Supervisor to require a third-party review of a drilling unit when the submitted information is insufficient to demonstrate the suitability of or the site-specific use has been made applicable to cases when the drilling unit has not been proven in the proposed environment. As originally proposed, the requirement applied only to arctic operations.

Comment—There were many comments submitted concerning the proposed requirement at § 250.51(b)(2) to equip all diesel-engine air intakes with an automatic shutdown device to prevent diesel engine runaway. A few commenters recommended deletion of the proposed requirement since it is believed that it would require modification of numerous engines without adequate justification. Some commenters suggested more detailed studies are needed to assure that the right problem is being addressed and that the proposed remedial action will not inadvertently create additional safety hazards. Several commenters recommended rewording the proposed requirement to include only unattended diesel engines within 1 year from the effective date of the regulations and to exclude engines involved in emergency functions. One commenter suggested amending the proposed requirement to waive such a requirement where overspeed shutdown mechanisms are installed or where gases necessary to cause engine overspeed and fires would not normally be present. One commenter suggested that it is doubtful that a case can be made for the proposed requirement and that hardware requirements for drilling units should be located in the USCG's Title 46 of the Code of Federal Regulations to avoid conflicting requirements.

Response—The recommendations have not been adopted. However, the regulation has been revised to exempt those diesel engines which are continuously attended from automatic shutdown device requirements but will include other diesel engines in all areas including those intended for emergency use. It was recognized that a rule which would require automatic shutdown devices is not appropriate for diesel engines which are continuously attended. Often, diesel engines which power emergency activities will be continuously attended, in which case they would be exempted from automatic shutdown devices. Diesel engines located in an area where combustible gas is not likely to be present have not been exempted from the requirement for automatic shutdown devices unless they are continuously attended.

Comment—There were several comments submitted concerning the proposed requirement at § 250.51(d)(1) for a survey strategy to be submitted to the District Supervisor. All of the commenters recommended deletion of the proposed requirement regarding survey strategy since it is believed to be too vague and not an MMS responsibility. Minimum requirements should be given for the required survey so the lessee can meet the requirements.

Response—This suggestion has been adopted, and proposed § 250.51(d)(1) was deleted. The title has been changed to "Foundation requirements" and reference made to the requirements for shallow hazards surveys pursuant to §§ 250.33 and 250.34. The NTL's on shallow hazards surveys now outstanding are retained and remain in effect.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.51(d)(2) for the District Supervisor to optionally require soil boring tests prior to moving jack-up rigs on location. Several of the commenters recommended that the proposed requirement be amended to require that the lessee "have sufficient knowledge of the ability of the seafloor to support the rig prior to commencing drilling operations" and that soil borings may be excessive if area data are available. One commenter suggested that a diver survey could satisfy the proposed requirement.

Response—These recommendations have not been adopted. However, the text of the final rule has been revised to clarify the intent and facilitate compliance. It is understood that some soil borings are taken with the jack-up rig in place before preloading, and in certain areas, soil boring data may exist from offset wells or platform locations. In practice, existing data concerning soil competency are taken into account on a case-by-case basis before the authority specified in this rule is invoked.

Comment—There were several comments submitted concerning the requirement for the lessee to obtain the information proposed in § 250.51(e)(1). All the commenters recommended that the proposed requirement be deleted, since it is believed that it is in the

lessee's best interest to evaluate totally the formations encountered and that the District Supervisor should not be allowed to require additional logs, tests, and surveys. Also, it was suggested that the reference to casing, tubing, and other pressures is misplaced.

Response—The recommendation has not been adopted. Evaluation of the formations encountered is in the lessee's and the Government's best interest in order for each of the parties to assess resource potential and to inventory reserves of hydrocarbons. Agreement between the District Supervisor and the lessee at the time of APD approval assures that those interests are well served. The specific tests and surveys necessary for the evaluation of formations penetrated by a well are different for each well depending on the specific circumstances unique to that well. The District Supervisor considers many factors including well site, wellbore conditions, and drilling equipment capabilities before requiring additional tests, samples, or surveys which are not proposed by the lessee in an APD. The reference to "casing, tubing, and other pressures" was deleted as inappropriate.

Comment—There were several comments submitted concerning the proposed requirement at § 250.51(e)(3) that a composite dipmeter directional survey is acceptable on vertical wells. The commenters recommended that an MWD composite survey also be acceptable. One commenter suggested that language should be added to clarify that MWD directional surveys without further checkshots (at the benchmark) are acceptable while drilling, rather than no more than every 200 feet (due to present day long-life bits) and that confirmation (at the benchmark) can be obtained using multishot surveys at each casing point.

Response—These recommendations have been adopted, and § 250.51(e)(3) of the final rule has been revised accordingly. The MWD technology has proved to be an accurate and reliable method of tracking the migration of a borehole in those cases where a confirming multishot survey is run at each casing point.

Comment—Several comments were submitted concerning the proposed requirement at § 250.51(e)(4) to classify wells as vertical if inclination does not exceed an average of 3 degrees. All the commenters recommended clarification as to how the average of 3 degrees is determined.

Response—The text of the provision has been revised to clarify the intent of the rule. It is intended that the average of 3 degrees be calculated by averaging the inclination readings weighted by the interval length between readings. Minimum interval lengths between readings are given in § 250.51(e) (2) and (3) of the final rule. Wells being drilled are classified as directional when the calculated weighted average inclination from the surface to measured drilled depth exceeds 3 degrees. It is possible that during the course of drilling operations, a borehole's classification may vary between vertical and directional.

Comment—There were several comments submitted concerning the proposed requirement at § 250.51(e)(5) for the Regional Supervisor to provide a lessee of an adjoining lease a copy of the directional survey, if requested. All the commenters believe that the proposed requirement should be deleted and that MMS, not the adjoining leaseholder, should determine that wells are drilled within legal confines.

Response—The recommendation to delete was not adopted. The responsibility of the lessee to confine its drilling to the legal boundaries of a lease is clear. However, when the technical method and procedures by which a survey was obtained are susceptible to credible alternate interpretations by lessees and MMS, and a dispute develops between leaseholders over the question of a wellbore's path, the adjoining lessee has a right to know the basis for an MMS determination that a wellbore did or did not cross the lease boundary.

Comment—There were many comments submitted concerning the proposed requirements at § 250.51(g) relating to crane operations on fixed platforms. Several of the commenters recommended deletion of the proposed requirement since it is believed to be a USCG responsibility. The USCG recommended the proposed requirement be retained until the USCG "Offshore Cranes" regulatory project (CGD 79-059) is completed.

Response—The recommendation to delete was not adopted. Deletion of this requirement at this time would create a regulatory gap and confusion over the need for compliance. The MMS regulations will be left in place until the USCG regulations become effective. That action by the USCG will permit MMS to delete the requirement from its rules.

Comment—There were several comments submitted concerning the proposed requirements at § 250.52(a)(2) on welding and burning offshore. One commenter recommended that MMS and USCG jointly develop one set of regulations for MODU's. The remainder of the comments recommended deleting the proposed requirement regarding onshore fabrication since it is believed that economics will ensure that offshore fabrication is minimized, and it is also believed that the requirement could cause problems in interpretation.

Response—The recommendation to delete was not adopted. If economics alone ensure that offshore fabrication is minimized, then this regulation does not impose an undue burden. Onshore fabrication is required only "when feasible." This requirement has been part of the regulations for many years, and there have been no known problems regarding its interpretation.

Comment—There were several comments submitted concerning the proposed requirement at § 250.52 (b), (c), and (d) to submit a welding, burning, and hot-tapping plan designating safe-welding and burning areas. One commenter recommended that the plan be approved by the Regional Supervisor rather than by each District Supervisor.

Several commenters would revise the requirement so that the welder rather than the welding supervisor be thoroughly familiar with the plan and also suggest that the proposed requirement is inappropriate for welding equipment on drilling rigs except during simultaneous operations. A few commenters suggested deleting the second sentence of the proposed paragraph regarding welders qualifications since it is believed that welding operations on drilling facilities require no special certification.

One commenter would delete the proposed requirement for welding and burning equipment to be inspected by the welding supervisor or the lessee's person-in-charge since it is believed a performance standard could address this concern. One commenter recommended that a copy of the plans be kept in the field rather than on the facility to provide access to the plan for all subject operations.

Response—These recommendations were not adopted. The MMS Regional Supervisors are "one-step removed" from the scene of operations. Welding, burning, and hot-tapping operations are more appropriately regulated close to the scene of activities where the best information is available. If the lessee believes a plan prepared for approval is applicable to all Districts within a Region after considering site-specific conditions which may vary from District to District, copies of the same plan may be submitted for approval to all Districts within the Region.

The intent of the words "welding supervisor or lessee's designated person-in-charge" was to assure lessee's management control (accountability) over welding operations, to assure that the duties and responsibilities of lessee and contractor employees are clearly defined, and that lines of authority and accountability be established and maintained. Accidents in welding and burning operations are chronic, of relatively high frequency, and are believed to be reducible. Accident investigation reports often show that the lack of a clear-cut definition of responsibilities, coordination, and supervisory control are factors of the cause of the accident.

The requirements for engine-driven welding machines are applicable to welding operations on all offshore facilities. On facilities where only drilling operations are taking place, there remains a potential for explosions and fires due to the presence of flammable materials such as trip gas, chemicals, solvents, diesel fuel, produced well test fluids, and oxygen and fuel gas used for welding operations. Accidents have occurred while torch-cutting on casing as gas was evolving from the mud in the casing. The chances of a fire or an explosion are increased while conducting simultaneous drilling and production operations.

For safety reasons, it is believed that welding and burning equipment must be inspected prior to conducting operations by a knowledgeable person who also has supervisory responsibility. There is no intent to specify any particular party, only that the lessees recognize their accountability by formally designating a person in a supervisory capacity as being responsible.

A readily accessible plan is more likely to be followed. To be readily accessible, a plan needs to be at the worksite. The lessee has a responsibility to establish and maintain its plan(s) and to assure that current copies are readily available at drilling and production facilities, and that the personnel on these facilities are familiar with the content of the plan(s).

Comment—There were several comments submitted concerning the proposed requirement at § 250.52(d)(1) to certify the welder's qualifications for operations in undesignated welding areas. A few commenters suggested deleting the proposed requirement in the belief that welders on typical drilling operations are not certified for pressure vessel or piping welding, and that the requirement is not necessary. Also, there is no "welding supervisor" on a drilling unit. One commenter suggested adding that a one-time establishment of a safe-welding and burning area on an MODU should suffice and not require a submittal to each MMS district.

Response—These recommendations were not adopted. This provision does not require a formal welding certification for high-pressure piping or vessels. It requires that the lessee's standards for qualifying rig welders be included in the Welding, Burning, and Hot-Tapping Safe Practices and Procedures Plan. The primary concern about rig welders who perform day-to-day operations is that all necessary safety measures be taken with respect to each welding action.

Once approved by a District Supervisor, a designated safe-welding and burning area for an MODU is applicable within the jurisdiction of that District Supervisor; and it need not be resubmitted for approval unless modifications are made to the MODU which mandate reconsideration of the approval or the MODU moves to another District. In recognition of the fact that some drilling units and structures have no space which could be designated as safe, the first sentence of § 250.52(c) in the final rule was revised by changing the phrase "The lessee shall" to "The lessee may."

Comment—There were many comments submitted concerning the proposed requirement at § 250.52(d)(2) for a fire watch. Several commenters would add language to clarify that the fire watch shall not have other duties during actual welding and burning operations. One commenter would add that the fire watch be on duty for 30 minutes after welding and cutting to be able to determine a potential fire near confined spaces and would require two or more fire watches to cover all exposures, both outside and inside confined spaces.

Response—These recommendations have been adopted. The text of the proposed rule has been revised to clarify the requirement by inserting the words "welding or burning" before the word "operation" in the first sentence and substituting them for the word "such" in the third sentence. The rule was also revised by adding the words "actual welding or burning" after the word "while" in the second sentence.

The text of § 250.52(d)(2) of the final rule was also revised by adding a requirement for the fire watch to remain on duty for a period of 30 minutes after welding or burning operations have been completed. Fires and explosions have occurred because the heat generated by the process ignited combustible substances which flared-up after the person performing the welding or burning left the area.

A recommendation that *every* operation have at least two fire watches is considered excessive. The requirement regarding the number of fire watches on duty is intentionally flexible. The welding supervisor or person-in-charge is responsible for determining the appropriate number of persons to name as fire watches.

Comment—There were several comments submitted regarding the proposed requirements at § 250.52(d) (5) and (6) concerning welding operations during drilling, well-completion, well-workover, wireline operations, and in well-bay or production areas.

Several commenters recommended deletion of paragraphs (5) and (6) on grounds that the regulations provide the performance criteria applicable to welding in undesignated areas and, therefore, the paragraphs are unnecessary. One commenter recommended revision of the proposed requirement in § 250.52(d)(6) to prohibit welding and burning *within* 10 feet of the well-bay or production area.

Response—The recommendations to delete these requirements have not been adopted; however, the recommendation to expand the safety area to 10 feet around a well-bay or production area has been adopted. Well-bays and production areas contain sources of highly flammable substances, usually under pressure. Welding or burning creates a high-temperature source of potential ignition. Previous interpretations made by MMS restricted welding and burning operations within 10 feet of the well-bay.

Comment—One commenter stated that § 250.53 contains requirements applicable to both drilling and production operations and is, therefore, out of place in this subpart and should appear in Subpart A—General.

Response—This recommendation has not been adopted. Subpart A contents, in general, are not as field-related and specific as those in this subpart. This and similar other requirements are applicable to drilling, well-completion, well-workover, wireline, and production operations. There is no clear "best" location for the provision and reiteration of the requirement in each subpart is not desirable.

The location of requirements for electrical equipment is unchanged; however, this section is directly referenced in Subpart E, Well-Completion Operations at § 250.78 and in Subpart F, Well-Workover Operations, at § 250.98.

Comment—There were several comments submitted concerning the provision at § 250.53(a) requiring low-tension ignition systems on all engines with electrical ignition systems. All the commenters objected to the proposed rule which specifically requires a shielded ignition system. One commenter would replace "combustible mixture" with "ignitable concentration of gas or vapor" to agree with the language of API 500B.

Response—These recommendations have been adopted in part. The text of the regulation has been revised to require that all engines with electrical ignition systems be equipped with a low-tension ignition system or a shielded-ignition system.

This revision allows lessees an option to continue to use existing shielded-ignition systems. The text of the paragraph was changed to "combustible mixture or substance" since gas or vapor might not be interpreted to include volatiles from a liquid.

Comment—There was one comment concerning the proposed requirement at § 250.53(c) that all electrical installations be made in accordance with API RP 14F, except sections 7.4 and 9.3. The commenter would amend the proposed requirement to clarify that existing installations are not subject to the proposed requirement.

Response—This recommendation has not been adopted. The National Electrical Code (NEC) and API RP 500B have been incorporated by reference in the rules for more than 15 years. The contents of these documents are the basis for API RP 14F. The API RP 14F focuses on offshore operations in contrast to the NEC. No compliance problems during the transition period are expected, and on this basis, stating a lead time for compliance is considered unnecessary. Recourse to § 250.3 is available in the event a transition problem should develop.

Comment—There were many comments submitted concerning the required integrity testing of the cement fill at § 250.54(a)(2). Several commenters suggested that the required formation-integrity test is sufficient and that the required 500 feet of annular cement fill and 500 psi compressive strength are arbitrary. One recommended that the reference to waiting time be deleted from the last sentence because additives can be used to reduce the time needed to reach the required compressive strength. Finally, one commenter urged that the words "after 12 hours waiting on cement" be added to the end of the paragraph.

Most of the commenters on §§ 250.54(a)(2), 250.55(d), and 250.64(f)(6) recommended the deletion of the requirements for 500 psi cement compressive strength, 500 feet of cement fill above the casing shoe, 8- and 12-hour waiting times, and submittal of a cementing program on the grounds that these specific requirements are arbitrary and have no basis in current technology. They further asserted that the cementing program should have no bearing on the permit to drill and that the formation-integrity test alone is sufficient for evaluation.

Response—These recommendations have not been adopted. All of the proposed requirements are and have been required for many years in one combination or another in Federal and State oil and gas regulatory programs. The standards specified in § 250.54 of the final rule are considered reasonable and prudent without being excessive.

The quality and quantity of cement placed behind casing during well drilling operations are of vital importance from the time of setting conductor casing through all drilling, completion, and workover operations, over the producing life of the well, and through and after well abandonment. Zones must be isolated, casing laps sealed, and fluid migration behind casing prevented.

Comment—There were many comments submitted concerning casing program design and the associated safety factors at § 250.54(a)(3). Several commenters recommended that the term "sufficient magnitude" in reference to safety factors be deleted. They claimed that the term is extremely vague and ambiguous and that the listing of anticipated loads adds no meaning to the requirement. One commenter agreed with MMS in that a performance standard is indicated. Finally, one commenter suggested that some design criteria must be agreed on especially in the area of maximum anticipated surface pressure.

Response—These recommendations have not been adopted. The list of loads and stresses are given for purposes of communicating to the lessee the factors to be considered while preparing a casing design for submittal for the District Supervisor's approval. The factors listed are some that the District Supervisor takes into account during the review and approval/disapproval process. The main purpose of the list is to minimize the number of design rejects and resubmittals.

Lessees are free to select between the various acceptable design methodologies, criteria, and specifications. The MMS considers it unwarranted and unwise to lay down prescriptive rules in this area. The lack of specificity in parts of § 250.54 is deliberate. The purpose is to give direction toward reaching minimum goals, not specific design methodologies, criteria, and specifications.

Comment—There were a number of comments submitted concerning the pressure-integrity and pore-pressure tests provisions at § 250.54(a)(6). Several commenters recommended that the pore-pressure test and hole behavior observations related to pore pressure not be included on the driller's report. They believe that this requirement is unnecessary documentation and not the responsibility of the drill crew. One commenter noted that the situation of equivalent mud weight exceeding the pressure-integrity test could occur if the formation is only tested to a predetermined pressure value rather than testing to true leak-off.

Response—These recommendations have been adopted in part. Hole conditions will ultimately determine the optimum casing setting depth. This is a primary reason for the District Supervisor's need to have the required information. It is the lessee's responsibility to obtain the required information and to record and transmit that information to the District Supervisor whether on the driller's report, enclosed with the driller's report, or by separate dispatch.

New language has been added to the paragraph to explicitly provide for maintenance of a safe margin between the equivalent mud weight as determined in the pressure-integrity test and the mud weight in use. Drilling operations are to be suspended when the safe margin is not maintained.

Comment—There were many comments submitted concerning conductor and surface casing setting depths at § 250.54(c)(1). Several commenters recommended that the requirement to submit a revised casing program when unexpected formation pressures are encountered be eliminated on the grounds that it represented an unnecessary paperwork burden. Their position is that when unexpected formation pressure is encountered, the casing is normally set at a shallower depth and does not require a complete casing program revision. Another commenter would ask for verbal approval in these situations but would want the leeway to use sound engineering practice. Another commenter believed that if requirements for specific setting depths for surface casing are deleted, a cement bond log should be required to provide increased assurance of an adequate cement job. One commenter suggested that MMS establish objective and verifiable standards for the setting depths of conductor and surface casings. Finally, a commenter requested that the regulations provide a means to obtain approval for the elimination of conductor casing.

Response—These recommendations have not been adopted. Encountering unexpected formation pressure during drilling may necessitate the initiation of actions that range from a minor to a major revision in the casing program. Casing programs and major changes in those programs must be approved by the District Supervisor. Provision is made in § 250.3 for oral request and approval provided the action is subsequently confirmed in writing.

A cause-and-effect relationship between removal of specified setting depth ranges and a consequent requirement that a cement bond log be run in every case as the commenter suggests is of questionable validity.

The rationale for removing specified casing setting depths as given in the preamble to the proposed rule was that the specificity of the rule did not contribute to increased safety, yet it generated unnecessary paperwork in the form of requests for departures.

Section 250.54(a)(5) permits the lessees to select between several of the available methods of evaluating a cement job other than a cement bond log. A regulatory requirement that a cement bond log be run in every case is not justified.

To satisfy the provisions and allowances in this paragraph, the lessee may request permission to eliminate the conductor casing in the APD and enclose the necessary engineering and geological information to justify the request.

Comment—There were several comments submitted concerning the conductor casing requirements at § 250.54(c)(2). All commenters recommended the deletion of the requirement regarding verification of cement fill by observing cement returns. Their position is based on the following rationales:

1. Circulation of cement in conductor holes is sometimes impossible, and large cement quantities can be required with no apparent benefits.
2. Final cement displacement could not begin until cement returns are established; hence, large quantities of cement might be circulated to the surface.
3. Additional cement and storage which may or may not be used add unnecessarily to the cost of the well.
4. Top-fill jobs are sometimes impractical.

Response—This recommendation was not adopted. A good cement job on the conductor is an important safety and well-control matter, particularly when high-pressure shallow gas may be encountered. It is recognized that top-fill jobs are sometimes impractical. The rule is written for and applies to the vast majority of cases. Exceptions are provided for by the general departure mechanism in § 250.3 of this part.

Comment—A few commenters recommended that the last sentence of § 250.54(c)(3) be deleted because attempting to pump additional cement may establish communication with a fault or fracture and cause well-control problems.

Response—This recommendation was not adopted. The MMS recognizes the commenter's point but believes that the necessary flexibility is provided in the proposed rule by the phrase "or as approved by the District Supervisor."

Comment—There were several comments submitted concerning the setting of intermediate casing at § 250.54(d)(1). All commenters suggested that the reference to the capabilities of the drilling unit is unnecessary and should be deleted.

Response—This recommendation was adopted. Reference to the drilling unit capability within the context of § 250.54(d)(1) is unnecessary and may cause confusion. Drilling unit capability is addressed in § 250.51. Therefore, the reference to drilling unit capability was deleted from § 250.54(d)(1) of the final rule.

Comment—There were several comments submitted concerning the use of a liner as an intermediate string as provided at § 250.54(d)(3). A number of the commenters suggested the requirement be changed to read "If a liner is used as an intermediate string below a surface casing string, it shall be lapped." Their position is based on the reasoning that some intermediate liners are set inside another intermediate string and can be safely designed such that an intermediate liner can be utilized for production without a tie-back to the surface. The remaining commenter stated that there is nothing inherently wrong with utilizing a combination of a liner and surface casing if the casing design is sufficient for production purposes.

Response—These recommendations have been adopted in part. The commenters' proposed revision captures the intent of the proposed rule and enlarges its scope to allow an acceptable practice without making a departure request necessary. The language of the proposed rule was revised to explicitly allow the use of an intermediate liner without a tie-back when used inside an intermediate string. The unusual case of using a combination of surface casing and a liner for a production well is better handled under the provision of § 250.3, Performance requirements.

Comment—There were several comments submitted concerning the use of a liner as production casing below intermediate casing which is addressed at § 250.54(e)(2). All commenters recommended that the specific requirement of lapping 100 feet into the previous casing string be deleted. Their position is based on the reasoning that the performance requirement of 100 feet could cause the lessee to have two strings of casing opposite a potential producing zone.

Response—This recommendation was not adopted. The rule as written provides a minimum specified lap distance. Exceptions can be approved where the lessee can demonstrate why and how a shorter liner lap serves to preserve safety of operations while reaching other operational goals.

Comment—There was one comment of a general nature which recommended that the title of § 250.55 be changed to "Testing of casing" since § 250.55(c) permits a caliper survey to determine casing integrity.

Response—This suggestion was adopted. The content of the paragraph addresses both pressure testing and logging. The paragraph heading suggested is more descriptive of the contents.

Comment—There were many comments submitted concerning the proposed requirement at § 250.55(a) to pressure test all casing strings (except the drive or structural casing) to 70 percent of the minimum internal-yield pressure of the casing. All the commenters would change the proposed requirement and substitute a variety of requirements as follows:

1. Utilize a table of surface pressure test values:

Conductor	200 psi.
Surface	1000 psi.
Intermediate	1500 psi minimum or 0.22 psi/foot.

2. Test to maximum anticipated surface pressure or 70 percent of minimum internal-yield pressure, whichever is less.
3. Utilize a table of surface pressure test values:

Conductor	200 psi.
Surface	1000 psi.
Intermediate	1500 psi.

together with a provision that "the test pressure shall not exceed 70 percent of the minimum internal-yield pressure of the casing including the surface pressure, internal and external fluids, and pressures."

4. Use the proposed requirement and add "or to the maximum anticipated surface pressure to be encountered while the casing is exposed during drilling operations to the next casing point, whichever is less,".
5. Delete the proposed requirement and substitute "500 psi above the pressure to yield an equivalent mud weight at the casing shoe of the estimated fracture gradient plus 1.0 pound per gallon (ppg), or the pressure required to exert a differential pressure across the exposed casing to 50 percent of the minimum internal-yield of the casing, whichever is less." The commenter's reason for recommending changes to the proposed requirement is essentially that testing to the rated capacity of casing that may be used in the string which *exceeds* the design parameters could cause the failure of other casing in the string which *meets* the design parameters.

Response—These recommendations have been adopted by revising the paragraph to require testing to 70 percent of the minimum internal yield pressure of the casing or as otherwise approved or required by the District Supervisor. The OCS Order No. 2, Drilling Operations, placed into effect on January 1, 1980, gave a table of minimum pressure test values for various casing strings. In an effort to find a better approach and reduce the need for, and frequency of departures, the proposed rules set forth for comment another method based on the minimum internal-yield pressure of the casing.

It is concluded that there are acceptable alternate approaches for determining appropriate test values and that greater flexibility than was provided in the proposed rule is warranted. The rule has been revised to permit the District Supervisor to approve alternative tests.

Comment—There were many comments submitted concerning the proposed requirement at § 250.55(b) to test the liner lap to 70 percent of the minimum internal-yield pressure of the casing into which the liner is lapped. The commenters would amend the proposed requirement with a variety of substitutions as follows:

1. Test to 0.22 psi/foot, or maximum anticipated liner-top pressure, whichever is less.
2. Each liner lap shall be tested to 500 psi above the intermediate casing formation fracture pressure, or 2500 psi, whichever requires a lesser surface pressure.
3. The liner shall be tested to the mud weight equivalent expected when performing the leak-off test of the liner shoe, or to 1.0 ppg over the equivalent mud weight test obtained in the leak-off test performed at the casing shoe into which the liner is lapped, whichever is greater. The pressure test should not exceed 70 percent of the minimum internal-yield pressure of the larger casing, including surface pressure, internal and external fluids, and pressures.
4. The casing and/or liner top should be tested to the maximum anticipated leak-off pressure that will be encountered when conducting a formation leak-off test.
5. Add to the proposed requirement "or to the maximum anticipated surface pressure to be encountered while the casing is exposed during drilling operations to the next casing point, whichever is less."
6. Substitute the following requirement with "500 psi above the intermediate casing shoe fracture pressure or 2500 psi, whichever is less surface pressure."
7. Substitute the following requirement: "500 psi above the pressure required to yield an equivalent mud weight at the liner shoe of the estimated fracture gradient plus 1.0 ppg, or the pressure required to exert a differential pressure across the exposed casing equal to 50 percent of the minimum internal-yield pressure of the casing, whichever is less."

Also, a few commenters would amend the proposed requirement to squeeze cement the liner lap, if necessary, and allow other remedial measures, such as use of other materials for squeezing or mechanical means.

Response—In response to these recommendations, § 250.55(b) of the final rule was revised to allow a lower test pressure and to permit remedial actions other than squeeze cementing. Commenters present convincing arguments that the proposed test pressure values may be too high to be in a rule formulated to govern a wide range of applications. It is recognized that the required test pressure must consider mud weight, casing burst strengths, differential pressure across casing walls, fracture pressure at the casing shoe below the liner lap, and fracture pressure at the liner shoe. It is also recognized that squeeze cementing is not the only or necessarily the most appropriate remedial action available to correct an improper liner lap seal. The rule has been revised to clarify that production-liner laps shall be tested to a minimum of 500 psi above the formation fracture pressure at the shoe of the casing into which it is lapped. In addition, a provision was added to test the drilling-liner lap against pressures which would be encountered when conducting subsequent pressure-integrity tests below the liner.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.55(c) to pressure test or evaluate the casing after prolonged operations. Many of the commenters would revise the proposed requirement in some manner in the belief that "30 days" is somewhat arbitrary, other factors such as dog legs, mud properties, etc., are more important and that this requirement does not contribute to the safety of the well. Some commenters thought the proposed requirement adequate. One commenter would specify verifiable repeat sections with accuracies within 0.03 inch, repeatability to 0.02 inch, and circumferential arm spacing not to exceed 0.5 inch, in order to detect maximum wall loss or damage. One commenter would substitute "every 600 rotating hours" for "every 30 days."

Response—These recommendations have not been adopted. From a technical standpoint, casing wear may be more related to actual rotating hours than to the number of hours (days) which have elapsed. However, the use of actual hours of rotation would create a greater recordkeeping and administrative burden than that created by the proposed rule.

Prescriptive rules regarding caliper survey specifications are considered unnecessarily confining to the lessee's freedom to choose survey instrumentation and may stifle innovation.

It is realized that casing wear is a result of many complex and interacting factors and that no definitive formula for general application exists. Reliance must be placed on drilling knowledge, experience, attentiveness to the effect of operations on casing, periodic assessments, and human judgment. The main purpose of the 30-day rule is to alert workers and supervisors to be continuously aware of the effect of operations on casing integrity.

Comment—There were several comments submitted concerning the proposed requirement at § 250.55(d) regarding cement setting times. All the commenters would amend the proposed requirement for holding cement under pressure for 8 or 10 hours in the belief that the formation-integrity test would determine cement integrity and that the

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subject holding times have no basis in current technology.

Response—This recommendation was not adopted. If either or both waiting times and compressive strengths are deleted, the amount and type of information otherwise needed to satisfy § 250.54(f)(6) would need to be expanded. Errors such as mistakes in formulation, excesses in proportion, and improper blending of accelerators together with job execution and equipment shortfalls can result in "flash sets," other cement placement failures, and consequent adverse well-control situations even under "current technology."

Comment—There were many comments submitted concerning the proposed requirement at § 250.56(c) on BOP working pressure. Most of the commenters recommended the deletion of the proposed requirement which authorizes an MMS District Supervisor to require an annular BOP with a working pressure above 5000 psi based on the belief that annular preventers are not designed for use at pressures greater than 5000 psi. One commenter noted that the calculated anticipated surface pressure varies between lessees and MMS depending upon the assumptions used. One commenter would correct and clarify the wording of the requirement regarding BOP working pressure exceeding anticipated surface pressure (ASP) to read "to which it may be subjected" rather than the proposed "to which it may be anticipated to be subjected."

Response—The recommendation that the requirement be deleted was not adopted. The rule on annular preventers was revised to clarify that the rated working pressure (RWP) of the annular preventer must exceed the ASP. In those cases where a lessee proposes to use an annular preventer with a RWP that is less than the ASP, the lessee must demonstrate to the District Supervisor under the provisions of § 250.64(f)(3)(ii), that wellbore conditions, operating procedures (e.g. ram-to-ram stripping), or other factors are such that installation of an annular preventer with a higher RWP is not warranted.

The calculated ASP value depends upon a number of assumptions which vary widely because the assumptions are based upon the experiences and biases of the person(s) making the estimate. Estimates involve assumptions that must be made regarding key factors such as formation fluids, pore pressures, fracture gradients, mud gradients, percent of hole filled with mud, and casing points. Varying approaches to the methodology, analytical techniques, and methods of calculation inherently contain elements which require human judgment.

Until more consistent methodologies are developed and field-proven, it would be unwise and disruptive to prescribe specific methods and techniques via regulations. Lessees are asked to submit the basis of their approach together with the calculations used and assumptions made using their best efforts to determine an ASP.

Comment—There were several comments submitted concerning the proposed requirement at § 250.56(d)(1) that the accumulator system provide sufficient capacity to supply 1.5 times the volume necessary to close all BOP equipment with a minimum pressure of 200 psi above the precharge pressure. The commenters recommended clarifying the requirement by adding "without assist from a charging system." One commenter suggested requiring a periodic accumulator-volume test and a minimum output from the accumulator pump.

Response—The recommendations have been adopted in part. Commenters pointed out unclear wording in the proposed rule. The intent of the rule is that the accumulator have sufficient capacity without assist from a charging system. The language was revised for added clarity.

Periodic accumulator-volume and pump-output tests certainly are good operating practice and are done by many operators. The MMS has insufficient cause-and-effect data on failures at this time to justify mandating specific requirements which would require additional recordkeeping, record retention, and inspection burdens without a demonstrable increase in the level of safety.

Comment—There were several comments submitted concerning the proposed requirement at § 250.56(d)(2) for a backup to the accumulator system "which shall be automatic, supplied by a power source independent from the power source to the required accumulator system." All of the commenters would revise the requirement for clarity by using the words "supplied by a power source independent from the power source to the primary accumulator charging system."

Response—The descriptive terms "primary" and "charging" have been added to the text of § 250.56(d)(2) of the final rule as a means of eliminating any ambiguity. To make clear the intent that accumulators be operable at all times, language has been added to require that accumulator regulators supplied by rig air have some device to ensure uninterrupted functional capability in case rig air is lost.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.56(d)(5) to equip both the choke and kill lines with two full-opening valves and that at least one of the valves on each line be remotely controlled. Several commenters recommended amending the requirement to equip the kill line with a 150 check valve in lieu of a remotely controlled valve. This recommendation was based on the view that the remotely controlled valve on the kill line is unnecessary, because the kill line's primary function is to provide means of pumping into the annulus. One commenter suggested that the choke line(s) should be at least 3 inches in internal diameter as per API RP 53.

Response—The text of the rule has been modified to permit the use of a check valve in lieu of a remotely controlled valve on the kill line of a surface BOP system, provided there are two readily accessible manual full-opening valves in place and the check valve is placed between the manual valves and the pump. The requirement for subsea BOP systems remains the same. The proposed rule regarding remotely controlled valves as written applied to both surface and subsea choke and kill lines.

A check valve installed in the kill line of a subsea BOP system would destroy a capability needed in many subsea BOP system configurations to be able to pump down the choke line with returns up the kill line. This capability is important to safety in many situations such as when it becomes necessary to remove kick gas trapped below a closed preventer or when, in an emergency situation, a malfunction or other event occurs which leaves the choke line unusable.

Manual valves, which are normally easily operated, are often inaccessible in emergency situations.

Comment—There were several comments submitted concerning the proposed requirement for installation of a fill-up line above the uppermost BOP. All the commenters recommended that this requirement be deleted as unnecessary and not a part of the BOP system.

Response—This recommendation has not been adopted. It is important that the fill-up line be located above the uppermost preventer to discourage use of the kill line for routine fill-up purposes. A requirement for fill-up lines to the extent that they are a standard and integral part of rig equipment is not considered a burden.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.56(d)(7)(i) that the manifold and choke equipment subject to well and/or pump pressure have a rated working pressure at least as great as the rated working pressure of the ram-type BOP's. All of the commenters would revise the requirement to provide that the subject manifold and choke equipment have a rated working pressure at least as great as the maximum anticipated surface pressure to which it may be subjected. A reason for this view is the potential to utilize a BOP of greater than necessary rated working pressure due to equipment availability.

Response—This recommendation was not adopted. A related concern about required test values being excessively high in some cases because the lessee, for convenience, proposes to use higher rated equipment than is necessary is discussed in response to comments received under § 250.57. It is recognized that, in some cases, higher rated BOP system components, wellhead equipment, choke manifolds, and/or upper parts of casing strings are used than would be required by the regulations for well control. When this is the case, it may be permissible that the equipment pressure ratings and field test pressures as stated in the rules be related to that lower rated equipment which would meet the requirements of the regulations if based on the approved well-control design.

The rule at § 250.56(c)(7)(i) is that the rated working pressure of the manifold and choke equipment be at least as great as the rated working pressure of the ram-type BOP's or as otherwise approved by the District Supervisor.

Comment—There were many comments submitted concerning the proposed requirement at § 250.56(d)(8) that "valves, pipes, flexible steel hoses, and other fittings upsteam of, and including, the choke manifold shall have a pressure rating at least as great as the rated working pressure of the ram-type BOP's." Several of the commenters recommended revision of the requirement to provide that the upstream equipment have a pressure rating at least as great as the maximum anticipated surface pressure. A reason for this recommendation is the potential to utilize a BOP of greater than necessary rated working pressure due to availability. One commenter would include Coflexip pipe™ or its equivalent for use as choke and kill lines.

Response—These recommendations were not adopted. These situations may be accommodated under the rule as written. Also, § 250.56(d)(8) allows for the use of flexible pipe. See the response to similar comments under § 250.56(d)(7)(i). The rule at § 250.56(d)(8) is revised by adding the phrase "or as otherwise approved by the District Supervisor."

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.56(d)(9) for the wellhead assembly to have a rated working pressure that exceeds the anticipated surface pressure to which it may be subjected. All the commenters recommended revision to base the requirement for the wellhead assembly pressure rating on maximum anticipated surface pressure. The reason for this recommendation is the potential to utilize greater than necessary pressure-rating casing due to present inventory of materials or availability.

Response—The recommendation was adopted to require that the rated working pressure of the wellhead assembly exceed the anticipated surface pressure to which it may be subjected.

Comment—There were several comments submitted concerning the proposed requirement at § 250.56(d)(10)(i) to install a kelly cock below the swivel and also below the kelly. All of the commenters recommended amending the proposed requirement to address the use of top-drive systems. One remotely controlled safety valve (kelly cock) would be installed in this assembly in which there is no kelly. One commenter suggested that a manual valve should be used as a "mud-saver" valve to prevent wear on the remotely controlled upper kelly cock (safety valve).

Response—The provisions of § 250.56(d)(10)(i) of the final rule include requirements for safety valves on top-drive systems and explicit requirements for kelly cocks while drilling with a mud motor on rotary-table drive rigs in the absence of a kelly. Drilling with a mud motor on rotary-table drive rigs in the absence of a kelly creates functionally the same need for kelly cocks as if a kelly were in use.

Some operators with top-drive systems routinely use a remotely controlled valve as a mud saver. The frequency of opening and closing of a valve when used for this purpose causes a rapid rate of wear and deterioration. This decreases the dependability of the valve and hydraulic system for use as a safety closure device below an acceptable level of safety.

By virtue of design, some remotely controlled valves are not satisfactory as safety valves when used alone. Choke manifold valves represent an inferior backup because valve closure exposes the swivel assembly and hose to well pressure. Installation of a second valve of a kelly cock type, either manually or remotely controlled, is considered necessary.

Comment—There were several comments submitted concerning the requirements at § 250.56(d)(10)(ii) to have drill-string safety valves in the open position on the rig floor to fit all connections in the drill string. All commenters recommended changing the proposed requirement to permit the use of crossover connections to comply with this proposed requirement.

Response—This recommendation was not adopted. The use of crossovers is of minimal value toward reducing the net number of pieces kept on the floor, may increase the length and weight of the device, and make emergency installation difficult. Stripping in and out with crossovers whose inside and outside diameters are at variance with those of the drill string and/or valves without due cause is not considered good operating practice.

Comment—There were several comments submitted concerning the proposed requirement at § 250.56(d)(10)(iv) to install locking devices on the ram-type BOP's. All commenters would relocate the requirement as a new subparagraph, 250.56(d)(11), with the view that these devices are an integral part of the BOP and not a system component.

Response—The recommendation was adopted. Proposed subparagraph 250.56(d)(10)(iv) was rewritten as 250.56(d)(11) of the final rule.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.56(e)(1) on subsea BOP's. Several commenters recommended deletion of the sentence requiring subsea accumulator-type closing units on the basis that the subject closing unit is not the only way to close subsea BOP's quickly and would not ensure closure in the event of loss of hydraulic fluid. The commenters also recommended the deletion of the District Supervisors' authority to require a subsea BOP to be installed before drilling below conductor casing. One commenter would address the subject of closing the BOP where the BOP is run on conductor casing while drilling the surface hole. This commenter would include pilot holes in water over 500 feet deep (without use of a riser) for safety reasons.

Response—These recommendations were adopted in part. At shallow water depths and some other situations, a sufficiently fast closure rate is obtainable without employing subsea accumulators. Loss of hydraulic fluid may or may not result in loss of control function depending upon equipment design and the point(s) of equipment and/or hydraulic failure. The text of § 250.56(e)(1) of the final rule has been revised to make clear that the District Supervisor may approve alternate approaches when justified.

It is understood that installation of a BOP stack on conductor casing is common industry practice and has been fully accepted by MMS. Lessees commonly install BOP's on conductor casing for reasons of convenience and not to provide capability to close the preventers on a kick. Closing in on a kick may cause new fractures or the opening of existing fractures at the conductor shoe resulting in uncontrolled flow through the fractures to the surface. For these reasons, this rule was written to recognize that the installation of a BOP stack is not required on a conductor unless, for example, the conductor is to be set deep where closure of the BOP on a mild kick may be a practical safety measure.

Comments—There were many comments submitted concerning the proposed provision at § 250.56(e)(2) to require the BOP system to include operable dual-pod control systems when drilling below surface casing, and "each control pod shall contain all valves and regulators necessary to ensure proper and independent operation of the BOP system function and to prevent movement of the hydraulic fluid between the two control pods."

All the commenters recommended that the proposed requirement be revised to provide that "the BOP system shall include operable dual-pod control systems necessary to ensure proper and independent operation of the BOP stack functions when drilling below surface casing." This recommendation is based on the shuttle valve location which is not in the pods; the reference to "all" is therefore inappropriate. One commenter observed that this requirement would cause drilling operations to be halted while repairs are made to the control pods and that this would be an excessive cost to operations.

Response—These recommendations were adopted in part. The text of § 250.56(e)(2) has been rewritten to more clearly describe the requirements to be met.

It is recognized that in some cases, the marine riser may have to be pulled and rerun in order to repair the pods and that the proposed rule would require that drilling operations be suspended while repairs are made. These are uncommon occurrences. Depending on total circumstances including well and wellbore status, and whether the well is fully cased a or new hole is to be drilled, the District Supervisor may approve a departure provided certain specified conditions of approval are met.

Comment—There were several comments submitted concerning the proposed requirement at § 250.56(e)(3) to displace the marine riser with seawater prior to its removal and to maintain sufficient hydrostatic pressure within the wellbore to maintain a safe well condition. The commenters recommended that the requirement be revised to allow for other suitable precautions, such as mechanical or cement plugs, to be taken to maintain a safe well condition, since a low fracture gradient at the casing shoe would preclude the use of mud hydrostatic to contain well pressures.

Response—Section 250.56(e)(3) has been revised to allow the use of other alternatives.

Comment—There were a few comments submitted concerning the proposed requirement at § 250.56(g)(3) that surface BOP's servicing a tapered drill string, and with only two sets of conventional pipe rams of one size, must have shear rams and a crossover sub to the smaller drill pipe size, which is to be readily available. The commenters recommended deletion of the proposed rule or the amendment of it to require that the small size or variable-bore pipe rams be used to close in on the smaller drill pipe since installing a crossover sub is time consuming and is highly undesirable during well flow.

Response—Proposed § 250.56(g)(3) was deleted. Section 250.56 (g)(1) and (g)(2) of the final rule provides conciseness in language and the proper degree of flexibility in compliance. When shutting in a well, it is faster and, therefore, safer to utilize a ram which seals directly on the pipe rather than picking up a crossover sub and making it up on the drill pipe before ram closure. Proposed § 250.56(g)(3) has been in OCS Order No. 2 since 1960. Its purpose was to exempt a few older rigs and BOP systems from a requirement which would require major and costly structural changes to allow for the increased BOP system height or replacement of ram preventer bodies which could not be retrofitted with variable bore rams. This exemption is no longer considered justifiable.

Comment—There was one comment of a general nature submitted concerning the proposed requirements of § 250.57. The commenter recommended that all operations such as abandonment and BOP tests be monitored by MMS inspectors.

Response—The recommendation has not been adopted. The MMS does not have the staff to witness all tests and special operations and relies on an inspection program designed to maximize the effectiveness of inspection efforts over a wide area by scheduling complete inspections of each facility once a year and by conducting periodic unannounced inspections of selected operations on a random basis.

Comment—There were many comments submitted concerning the proposed requirements at § 250.57(b) to test surface ram-type BOP's and the choke manifold to no less than 70 percent of the minimum internal-yield pressure of the casing and to test the annular BOP to 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less. One commenter suggested that surface BOP stacks should be tested with water.

Other commenters recommended various changes to revise the rule to require the testing of BOP's and choke manifold to:

1. The anticipated surface pressure.
2. The anticipated surface pressure or 70 percent of the minimum internal-yield pressure, whichever is less.
3. The lesser of:
   a. The rated working pressure of the BOP's,
   b. The rated working pressure of the wellhead, or
   c. 70 percent minimum internal-yield pressure of the casing.

The commenters would revise the requirement and suggest testing the annular BOP to:

1. Anticipated surface pressure or 70 percent of its rated working pressure.

2. Anticipated surface pressure or 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less.

3. As required for ram-type BOP's, except that the test pressure need not exceed 70 percent of its rated working pressure.

The commenters' views were that 70 percent of minimum internal-yield pressure of the casing could cause excessively high test pressure on other components if higher than design strength casing is installed because it is more readily available. One commenter would clarify the requirement as to whether the test pressure is calculated at the casing shoe or casinghead.

Response—The recommendations that the rule be revised from testing to BOP rated working pressure to testing to anticipated surface pressure were not adopted. However, to recognize that alternate methods of arriving at BOP test pressures may be acceptable, the rule is revised to require that surface

ram-type BOP's be tested to their rated working pressure or as otherwise approved by the District Supervisor and that surface annular preventers be tested to 70 percent of their rated working pressure or as otherwise approved by the District Supervisor. A recommendation that surface BOP stacks be tested with water because the use of water increases the validity of the test results as compared to test results when mud is used has been adopted.

Responses to the substance of the commenters' concerns appear in the discussion of § 250.56(d)(7)(i).

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.57(c) to test subsea BOP's after installation to 70 percent of the minimum internal-yield pressure of the casing. All of the commenters recommended that the proposed requirement be revised in a manner similar to that suggested for the testing of surface BOP systems. They recommended revising § 250.57(c) to require testing to maximum anticipated surface pressure on subsea ram-type BOP's (or to 70 percent minimum internal-yield pressure of the casing, whichever is less) and subsea annular BOP tests to 70 percent of its rated working pressure. Their rationale was the same as expressed in comments on testing surface BOP's.

Response—To provide for consistency with the revisions made for surface BOP system test pressures, the proposed rule was revised to state that BOP test pressures be related to rated working pressure or as otherwise approved by the District Supervisor. This revision allows the lessee flexibility in the method used in arriving at BOP test pressure values.

Comment—There were several comments submitted concerning the proposed requirements at § 250.57(d) to test kelly cocks and safety valves weekly to pipe-ram test pressure and to actuate casing valves prior to running casing. All commenters would clarify that the casing safety valve could be equipped with the proper connection to fit the casing in use. Due to wear potential and length of time for replacement, one commenter suggested a monthly test for safety valves on top-drive systems, excluding the remotely controlled safety valve.

Response—The recommendation to revise pressure-test criteria was amended to state that choke manifold valves, upper and lower kelly cocks, top-drive safety valves, inside BOP, and drill-string safety valves be pressure tested to pipe-ram test pressures or as otherwise approved by the District Supervisor. The recommendation to amend test frequency requirements was not adopted because these devices are all important components of well-control equipment. Considering that many wells are drilled within 6 weeks, a 7-day test frequency on these components imposes minimal wear and cost factors. Inspection reports by MMS personnel indicate a tendency toward laxity in the care, maintenance, and availability of these valves. Regarding the Varco™ valve used as a mud saver, other components could be added to the string to serve this function or the valve may be redesigned.

Comment—Several commenters noted that the last sentence in § 250.57(d) could be interpreted as requiring a full-opening casing safety valve and recommended that the sentence be revised.

Response—The recommendation was adopted and the last sentence was revised accordingly.

Comment—There were several comments submitted concerning the proposed requirements in § 250.57(e)(3) to test subsea and surface BOP's.

All the commenters recommended that the text of the proposed requirement be amended to clarify that pods and control stations are different equipment and to delete the reference to a dual-system accumulator. They also recommended deletion of the provision to allow each crew to perform the test, due to less than rigid scheduling of BOP tests. One commenter would delay testing when logging or casing-setting operations are in progress. One commenter suggested that the last sentence in § 250.57(e)(3) regarding blind rams and blind-shear rams should read, "These rams need to be pressure tested only when installed and prior to drilling out after each casing string has been set for surface BOP stacks, and prior to drilling out after each casing string has been set or within the preceding 7 days for subsea BOP stacks."

Response—These recommendations were adopted in part. The text in § 250.57(e)(3) was modified to clarify that reference to dual-system accumulators is not intended. The phrase "if either control system" was replaced by the phrase "if either control station or pod."

Well-control safeguards must be operable during logging operations, particularly in open hole or if the casing is perforated. While it is true that BOP testing while casing is being run and cemented would be impractical, the proposed rule allows flexibility in scheduling tests. Lessees can schedule BOP tests to avoid having a test deadline occur during the running or cementing of casing.

The BOP pressure testing is necessary before drilling out from under a casing shoe because during the 7 days preceding readiness to drill out, the blind and/or blind-shear BOP assembly and controls may have been subjected to considerable use or abuse and reliability must be ascertained before proceeding.

Comment—One commenter agreed with the requirement in § 250.57(e)(4) for function testing of blind and blind-shear rams as part of the weekly BOP stack test.

Response—No response is necessary.

Comment—There were a number of comments submitted concerning the proposed requirement at § 250.57(e)(5) to test variable-bore pipe rams against both sizes of pipe. Based on the view that testing is already required, all the commenters recommended that the proposed requirement be deleted, the lessee should be able to use the pipe in the BOP stack at the time of testing, and testing on each pipe size is unnecessary. One commenter would specify that only the larger size pipe be used for testing. One commenter recommended testing only when variable pipe-bore rams are used for operations described in § 250.56(g) (when actual drilling operations are in progress).

Response—These recommendations were not adopted. However, the proposed rule was revised to specifically exclude drill collars and bottomhole tools from the testing requirements. The proposed rule is intended to apply to all sizes of pipe being used in a tapered string with the exception of drill collars and bottomhole tools.

Comment—Several comments were submitted concerning the proposed requirement in § 250.57(e)(6) to test BOP's or the wellhead following disconnection or repair of pressure containment seals. The commenters recommended amendment of the proposed requirement to limit testing to the seal which was affected by the repair or disconnection. One commenter would revise the rule to test to the maximum anticipated surface pressure or 70 percent of minimum internal-yield pressure of the casing, whichever is less.

Response—The recommendation to limit testing to the affected component has been adopted and the text of the proposed rule has been revised accordingly.

The recommendation to revise the proposed rule to require testing to anticipated surface pressure as an alternative to 70 percent of minimum internal-yield pressure was not adopted.

Comment—There were several comments submitted concerning the proposed requirement in § 250.57(f) to inspect BOP systems and the marine riser daily. The commenters recommended the deletion of this proposed requirement, based on the lack of support for this provision by experience, and that the requirement would be time consuming and only large leaks would be detected by television. One commenter would clarify that "riser" does not mean the casing riser used on bottom-supported rigs but refers to the marine riser on subsea BOP's.

Response—The rule is revised (1) to require inspections of marine risers on dynamic-positioned rigs only upon a determination by the District Supervisor that circumstances warrant an inspection(s) and (2) to clarify that the required inspections do not apply to casing risers on either bottom-supported drilling units or structures. In other than dynamic-positioned rigs, routine daily inspections of the marine riser by underwater television is considered a worthwhile practice even though no symptoms of a problem have been manifested at the surface. Small mud leaks, riser deformation, and other early warnings of incipient problems may not be manifested at the surface and may go unnoticed if observations are made only at the surface. Since BOP systems must be inspected daily, the modest incremental cost of including the riser in the underwater television survey is more than offset by the potential benefits. Inspection of the marine riser in dynamic-positioned rigs would require the use of remotely operated or manned vehicles. The routine daily use of these vehicles would increase costs substantially and, as a rule of general applicability, a requirement for daily inspections is considered unwarranted at this time. Nevertheless, it should be understood that the District Supervisor has the authority to require periodic inspections when it is determined that circumstances warrant that action. Section 250.57(f) of the final rule was also revised by deleting the reference to manufacturer's recommendations as acceptable guidelines for compliance.

Comment—There were a number of comments submitted concerning recording of all pressure tests, actuations, and inspections of the BOP and related systems, system components, and marine risers as provided in § 250.57(g). The commenters recommended revision of the proposed regulation to exclude marine riser inspections. Their comments relative to § 250.57(f) reflect their rationale to delete riser inspections.

Response—These recommendations were not adopted. Inspections of marine risers by underwater television can be combined with the daily underwater television inspections of the BOP system. The results of all inspections must be recorded even though the specific inspection may not have been required by the regulation.

Comment—There were several comments submitted concerning proposed § 250.58(b) providing for well-control test drills to be required by an MMS representative. The commenters recommended revision of the proposed requirement to conduct test drills during periods selected to minimize endangering the operations in progress. In general, the commenters objected to the authority of the inspector to require a well-control drill at any time. One commenter recommended that requirements for drills be limited to the point of completion of the initial actions.

Response—The proposed rule has been modified to clarify what may be required. The phrase "at any time during the drilling operations" has been deleted from the rule, and the phrase "after notifying and consulting" has been changed to "after consulting." It is MMS's policy and practice that only authorized MMS representatives are permitted to require a lessee to conduct unscheduled well-control drills. Once a drill is called for, it should be carried through to completion. Initial actions are an important part of a drill but are not considered sufficient to satisfy a standard to maintain fully trained personnel.

Comment—Several comments of a general nature were submitted concerning the proposed requirements for diverter systems in § 250.59. A few commenters recommended deletion of the proposed detailed specifications. They would utilize a performance-oriented approach. The API draft document on diverter systems would be used as a base on which to develop performance-oriented requirements. One commenter recommended adding a paragraph (h) which would allow the diverter unit and/or vent line to be positioned subsea, subject to approval by the District Supervisor. Another commenter essentially supported the proposed requirements regarding line size, number of turns, use of remote-controlled and full-opening valves, and advocates proper design, selection, installation, maintenance, function 170 testing, enforcement, well planning, and personnel training on the diverter system.

Response—These recommendations were not adopted. The data available to MMS do not support a claim that diverters have performed fairly well under a wide variety of operating conditions. Data available to MMS on diverter failures indicate that more than one-half have failed to perform satisfactorily upon demand. The nature and variety of the over-pressured situations for which diverter systems serve as a "safety valve" limits the use of the performance standard approach. Performance standards for diverter systems that would assure the safety of operations would need to be worded in a way that requires the use of specific minimum size diverter lines (e.g. 10 inch and 12 inch diverter lines). The text of the final rule simply specifies these minimum sizes. The draft API RP document will be reviewed when it becomes final. At that time consideration will be given to the adoption of the requirements in that document or portions thereof. Under § 250.3 a lessee/operator may obtain approval for the use of a diverter system which would provide equal or better protection than a diverter system which meets the minimum design specified in § 250.59. The rule has been revised to provide a 2-year period for compliance with the new diverter requirements.

Comment—There were a few comments submitted concerning the proposed requirement in § 250.59(a) to install a diverter system when drilling both conductor and surface hole from floating drilling operations, unless otherwise approved by the District Supervisor. The commenters pointed out the undesirability of bringing gas up the riser to the drilling facility and recommended flexibility in dealing with well control prior to setting conductor casing. One commenter recommended the addition of language to this paragraph which would allow removal of the diverter (annular sealing assembly) if a pilot hole is drilled and the hole is stable, in order to perform hole-opening operations prior to running casing. One commenter recommended that language be added to the proposed rule to address the situation where the subsea BOP is run before drilling surface hole. The diverter system would be inoperable if the subsea BOP were closed.

Response—These recommendations were not adopted. The situations described by the commenter are better handled on a case-by-case basis. The diverting of an uncontrolled flow into the ocean to avoid the flow of gas at the surface may or may not be the better choice, depending upon the particular circumstances.

The recommendation to revise the rule to allow rigging down the diverter system to open the hole was not adopted on the grounds that the increased exposure to risk is not justified.

Comment—There were numerous comments submitted concerning the proposed requirements in § 250.59(c) for the diverter system to include remote-controlled valves in flow lines, limit the number of turns to two in the flow path, utilize a minimum radius of curvature of three pipe diameters in any turn, install fail-safe open automatic valve actuators, and protect the system controls and control lines from damage. The commenters recommended revision of the rule to require a "minimum" number of turns in the flow path, delete minimum radius of curvature, delete the requirement for fail-safe-open automatic valve actuators, and clarify the language regarding protection of system controls and lines. One commenter recommended 90-degree turns which are "targeted."

Response—These recommendations have been adopted in part and the paragraph revised to read:

(c) The diverter system shall be equipped with remote-controlled valves in the flow and vent lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. Any valve used in a diverter system shall be full opening. No manual or butterfly valve shall be installed in any part of the diverter system. There shall be a minimum number of turns in the vent line(s) downstream of the spool outlet flange and the radius of curvature of turns shall be as large as practicable. All right-angle and sharp turns shall be targeted. Flexible hose may be used for diversion lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported to prevent whipping and vibration. All diverter control instruments and lines shall be protected from physical damage from thrown and falling objects.

Comment—There were many comments submitted concerning the proposed requirements in § 250.59 (d)(1) and (d)(2) regarding spool outlet size, branch lines for downwind diversion, and diverter line sizes. The commenters recommended use of the term "wellhead" rather than "BOP" for clarity. Several commenters recommended a decrease in the proposed minimum line and spool sizes, and others would increase the minimum line size to 12 inches. The advocates of smaller sizes believe that, from past experience, spool outlets and lines of 6-inch diameter and branch line diameters of 6 inches are adequate and states that it would be costly to comply with the rule. One commenter would add that diverter units that serve also as BOP's should comply with the annular type BOP design requirements specified in Section III G3 of API Spec 16A.

Response—The recommendation to substitute "wellhead" for "BOP" was adopted. The remaining recommendations were not adopted. There are occasions when the lessee elects to retain a diverter system above the BOP after surface casing is set. However, this is not a requirement. The information available to MMS does not support the belief that diverters have performed well. The API Spec 16A is not considered applicable as a basis for low-pressure annular preventers used only for flow-diversion purposes.

Comment—There were several comments submitted concerning the proposed requirement in § 250.59(e)(1) to equip a one-spool outlet system with branch lines for downwind diversion. All of the commenters recommended revision of the proposed requirement so that branch lines would not be required on dynamically positioned drill ships.

Response—The recommended revision was adopted and the proposed rule was revised accordingly. The rule allows for branch lines off of a single spool. The heading of a dynamically positioned drill ship can be controlled so as to be into the wind. In this case, downwind diversion capability can be provided with only one vent line.

Comment—There were many comments concerning the proposed requirement in § 250.59(e)(2) to utilize 12-inch diverter spools and lines. Several commenters recommended revision of the proposal to require two 6-inch spools and lines or a single spool outlet with flow area equivalent to two 6-inch diameter lines and full-opening valves. One commenter agreed that line size should be at least 12 inches. The former commenters believed that their recommended sizes have proven adequate in the past and that to refit would be costly.

Response—The recommendations have not been adopted. The MMS has no evidence supportive of a requirement which would allow smaller spool or line sizes.

Comment—There were numerous comments submitted concerning the proposed requirement in § 250.59(f) to actuate the diverter system and flow test the lines. Several commenters recommended revision of the rule to require a pressure test when nippled up on conductor casing, require actuation prior to spud, and delete the proposed daily actuation and flow tests. One commenter recommended a functional test when installed and weekly thereafter. The commenters believed daily actuation and flow tests will cause wear to the sealing element and deposit cuttings in the system lines.

Response—The text and requirements in § 250.59(f) have been revised to differentiate between surface conductor diverter systems and other surface wellhead and subsea configurations and to require that diverter systems on surface wellhead and configurations be pressure-tested to 200 psi when nippled up on conductor casing. Daily function testing is not considered excessive after taking into account the short period of time a diverter is required during drilling of the well. Further, flow tests serve to clear mud, cuttings, and other obstructions from the diverter system lines.

Comment—One commenter recommended adding a new § 250.59(h) to permit the use of subsea diverters.

Response—The recommendation was not adopted. Subsea diverters involve a new technology that is being evaluated by MMS. Subsea diverter systems may be permitted on a case-by-case basis as alternative technology in § 250.3.

Comment—Several commenters recommended that the entire text of § 250.60(b)(1)(iii) be deleted. Their position was that drilling fluid programs are variable and change due to well conditions, and specified ranges and tests may not apply. They believed that the lessee can best determine the acceptable drilling fluid to accomplish desired wellbore conditions.

One commenter recommended the paragraph be changed to read "Mud properties are suitable for tripping" and "are within the specified ranges required by the mud program." They believed the mud program as approved may change as the well is drilled.

Response—Section 250.60(b)(1)(iii) was revised by deletion of the phrase "in effect at the time." It is recognized that the lessee's mud program is subject to modification during the course of drilling and that the ranges in mud properties specified far in advance of actual drilling operations may not continue to be applicable. The intent of the rule is to recognize that mud properties are to be monitored continuously and corrections made if and when needed. Mud is to be properly conditioned and suitable for tripping before proceeding with any trip.

Comment—Several of the commenters recommended deleting § 250.60(b)(2) requiring the driller to note the circulation of mud in the hole. They claimed that the requirement has no benefit and should be deleted.

Response—This recommendation was not adopted. This record of mud circulation is useful for retrospective analysis of causes of well-control problems and as a supervisory control over performance.

Comment—One commenter claimed that the requirement in § 250.60(b)(3) for filling the annulus with mud when 5 stands of drill pipe have been removed in no way relates to the 75 psi or any other logical requirement. When 10 stands of 5-inch pipe are pulled from a 12¼-inch hole, the hydrostatic head is reduced by only 22 psi. The commenter recommended, however, that there be some provision for continuous filling of the hole from a trip tank.

Response—The proposed rule was not changed. The rule for 5 stands is based on the practicalities under field conditions where the hole may change from taking to making fluid. Pulling and running drill pipe can destabilize the hole by a "swabbing" action on the wellbore. The time required to pull 5 stands is considered to be an appropriate time lapse between separate measurements of the amount of fluid required to fill the hole for purposes of comparison against pipe displacement volumes. Continuous-fill trip tanks are acceptable provided equivalent regular measurements, checks, and balances are made on pipe displacement volumes versus volumes of fluid required to fill the hole.

Comments—All of the commenters recommended that § 250.60(b)(4) be deleted. They noted that the control of pipe running and pulling speeds to preserve stability of the hole requires discretion, judgment, and adjustments to fit the prevailing conditions. They claimed that it is already an industry practice but is subject to differing interpretations by drilling crew members and not an item which is enforceable under a regulation.

Response—These recommendations were not adopted. It is recognized that selecting proper running and pulling speeds requires knowledge of hole conditions and judgment. Nevertheless, swabbing and surging remain the most common primary causes which lead to loss of well control. Flagrantly excessive running and pulling speeds are recognizable, and compliance at these extremes is enforceable.

Comment—Some commenters on proposed § 250.60(b)(6) stated that having the maximum pressure to be contained under the BOP posted near the driller's control panel as required in this paragraph could lead someone to open the choke when this pressure was exceeded while the well condition was actually safe. Opening the choke would reduce the back-pressure on the formation and thus allow additional formation fluid to flow into the wellbore creating another kick, and compounding the existing problem. For these reasons, the commenter recommended that § 250.60(b)(6) be deleted.

One commenter agreed that the maximum allowable pressure should be posted but accompanied by further explanation as to under what conditions the pressure applies, e.g., to prevent formation breakdown or to prevent burst of casing.

A few commenters recommended deleting the entire paragraph because they believe indiscriminate use of the posted maximum pressure could create problems with misapplication. They stated that the maximum pressure to be contained under the BOP is dependent on a number of variables and could change due to a change in well conditions. The plan to bleed excess pressure through the choke during well-control operations should be carefully reviewed and approved by the lessee as a part of the well-control plan.

One commenter expressed the belief that if the well can be shut in and stabilized, the casing seat pressure will decrease or increase only slightly until the influx reaches the casing seat, provided the bottomhole pressure remains constant. As the influx passes the casing seat, the pressure at that point will decline and then remain constant, regardless of the surface pressure. Limiting casing pressure for fear of leak-off will most likely result in a hydrostatic pressure drop and allow further influx of fluid from the kicking zone. They recommended that the regulations clearly define the casing limits and lessee options. The value to be posted on the driller's control panel should be defined as a maximum of 80 percent of the casing internal-yield pressure. A lesser value may be required by the APD or from results of a casing integrity survey.

Response—The recommendation to delete § 250.60(b)(6) was not adopted. However, the phrase "before controlling excess pressure by bleeding through the choke" was deleted. The portion of the proposed rule which would require the value of maximum allowable pressure be posted near the driller's control panel and which identifies the maximum pressure to be contained under the BOP before bleeding through the choke failed to make clear the circumstances under which bleeding would be an appropriate action. The posting of the maximum pressure should include appropriate explanations to assure a clear understanding by users of its use and implications. The posting of a maximum allowable pressure is considered of value and was not deleted. The lessee remains under an obligation to include the maximum pressure to be contained under the BOP with respect to each casing string as a factor in well control contingency plans.

Comment—Many commenters recommended deleting the reference to hydrate zones in § 250.60(b)(7). They claimed the technology does not currently exist for total control of hydrates. This type of drilling is highly specialized and must be planned and effected on a case-by-case basis. Mud temperatures may not need to be controlled.

Response—Section 250.60(b)(7) has been revised to permit measures of safety to be utilized other than monitoring or control of drilling fluid temperatures. Permafrost and hydrate zones exist in the OCS. Mud-program design and well control in permafrost and hydrate zones are more appropriately customized to fit site-specific conditions and are better handled on a case-by-case basis as the commenters noted.

Comment—Many commenters recommended that § 250.60(b)(8) be revised to require the installation of an operable degasser prior to commencement of drilling operations for use throughout the drilling of the well. They believed degasser equipment may not be necessary during well-completion operations.

Response—This recommendation was adopted. Once casing has been set and all zones have been cemented off, an influx of formation fluid would not be expected to occur. Therefore, if completions are defined as operations after production casing has been set and cemented, degassers may not be needed. The text in § 250.60(b)(8) of the final rule has been revised accordingly.

Comment—One commenter suggested an alternative to the procedures in § 250.60(b)(9) would be to bullhead kill fluids back through the drill-stem test tools in order to push produced fluids back into the formation. They stated that there are cases where lost circulation exists after drill-stem tests and mud/fluid circulation is not possible. The attempt to circulate would merely push oil and gas into the annulus.

One commenter recommended that there should be a provision for pulling drill pipe "to the fluid" after a drill-stem test that does not flow to the surface.

Response—Section 250.60(b)(9) was revised to recognize that bullheading test fluids back into the source formation with a kill fluid pumped through the test tools is an acceptable procedure in those cases where circulation of the well-control fluid is not possible.

The commenter who suggested a provision for pulling pipe "to the fluid" did not indicate a procedure for safe and pollution-free disposal of the fluids after they are brought to the surface. Provisions which allow for such situations appear in § 250.3.

Comment—A few commenters recommended that the phrase "and other tests as may be deemed necessary by the District Supervisor" in § 250.60(c)(1) be deleted. They believe the operator should determine which tests are necessary for mud quality and control and that onsite judgment is necessary to do so.

Several commenters recommended that the entire text of § 250.60(c)(1) be deleted or revised. They believed that the lessee is the best authority to determine what testing equipment is necessary and what tests are required for proper evaluation of the drilling fluid system. They did not believe that the District Supervisor is in an appropriate position to prejudge or determine onsite what drilling fluid tests are needed and the testing frequency required. They recommended that the revised rule include performance-oriented requirements for having testing equipment available at the rig site, specifying that appropriate tests be conducted and recorded in the driller's report.

Response—The recommendations were not adopted. Mud properties and conditions are the first line of protection against loss of control over the well. The District Supervisor must retain the authority to order tests to be made on mud characteristics and condition based upon a determination that such tests are needed.

Comment—Several commenters suggested the word "accurately" be deleted from § 250.60(c)(2)(ii) because the word is too open to interpretation, and the word "used" clarifies the function of the device.

Response—The recommendation was not adopted. The accuracy of measuring devices is important. Simple deletion of the word would not resolve the commenters' expressed concerns about openness to interpretation.

The intent of the rule is that the measuring device be of sufficient accuracy to suit the purpose for which the information is used. Neither precision at a laboratory level nor crude approximation is intended. Attempts to quantify the word "accurately" would lead to lengthy and detailed specifications and would be contrary to the concept of performance standards.

Comment—Several commenters recommended that § 250.60(c)(2)(iii) be revised to read, "Mud-return indicator with a visual and audible warning device, and." They claimed that a mud-return indicator is simply a warning device used to sense whether drilling fluid returns are present. Therefore, the mud-return indicator equipment cannot determine quantitative flow rates, and the reference to volumes should be deleted.

Response—These recommendations were adopted in part. The device referred to is envisioned to be a flowline sensor, alternately known as a "flow/no flow," "flow show," and "mud-return indicator" which can be combined with pump discharge rate measuring devices to indicate a relationship between mud input and mud output. The first sentence in § 250.60(c)(2)(iii) of the final rule has been revised.

Comment—Several commenters expressed a belief that the quantity of mud required in § 250.60(d)(1) should be left to the discretion of the lessee who will be exposed to economic loss if adequate mud volume is not maintained.

Several commenters would delete the entire text of § 250.60(d)(3). They believed that the reference to "sufficient quantities of mud and materials" is too open to individual interpretation. The maintenance of well control is covered in § 250.50 where it states, "The lessee shall take necessary precautions to keep its wells under control at all times."

Response—These recommendations were not adopted. "Sufficient mud quantities," standing alone is open to interpretation. Section 250.64(f)(7) of the final rule requires the lessee to propose in the APD the mud quantities to be kept at the site. In the approval process, the District Supervisor considers drilling and wellbore conditions, geographical location, nearness to sources of resupply, and infrastructure factors. Section 250.50 is written in general terms and lacks the specificity required for this important well-control requirement.

Comment—One commenter desired clarification of the use of the word "following" in § 250.60(e). The use of the word "following" in the proposed rule seems to raise some questions as to what is and what is not required during the first year after the effective date.

Several commenters desired clarification of "enclosed mud-handling areas." On many rigs, the solids removal area is typically open on one or more sides. However, during bad weather, tarps are often erected, and this could be interpreted as an enclosed mud-handling area. Also, this section appears to overlap into USCG regulations for enclosed-mud areas in the barge area of the rigs.

One commenter claimed that this is an example of two Federal Agencies writing independent regulations on the same subject, i.e., safety precautions in enclosed mud-handling areas. They also claimed that pressure-sensitive alarms are not reliable or practical. They further stated that if MMS believes that the USCG regulations are inadequate, input to the USCG is appropriate.

Response—Section 250.60(e) of the final rule has been modified to make clear the date when the listed requirements become effective and to indicate that current requirements will remain in effect until that date.

Since the proposed regulations were written, an API committee has been actively reviewing API RP 500B which classifies areas based on their potential for the accumulation of combustible concentrations of gases. The MMS adopted API RP 500B for production operations under Subpart H. To retain consistency between the drilling and production regulations, the MMS has revised Subpart D to reference the ventilation specifications found in API RP 500B. The RP is similar to the USCG existing rule for ventilation on MODU's and does not pose any substantial conflicts with those requirements, while providing similar requirements for structures and facilities that are not subject to USCG jurisdiction.

The MMS believes that the capability to prevent the buildup of combustible concentrations of gas which may be released from the mudhandling system is necessary to mitigate a serious threat to human life and safety on a drilling unit. Accordingly, § 250.60(e) requires that all mud-handling areas which are classified as per API RP 500B where dangerous concentrations of combustible gas may accumulate, shall be adequately ventilated. This requirement is consistent with USCG regulations.

It is recognized that clarification of "enclosed mud-handling areas" is desirable. However, the multiple factors which affect the ability of an area to accumulate dangerous concentrations of combustible gas, including airtight seals, number and sizes of accesses, amount of ventilation available, and adequacy of circulation make it difficult to define an "enclosed area" for the purpose of establishing minimum ventilation requirements. To clarify the intent of the

§ 250.60(e), the term "enclosed" has been deleted and minimum ventilation requirements have been established for mud-handling areas which can be achieved by either natural or artificial means. This provides for a minimum level of safety in mud-handling areas.

Recognizing that areas which achieve the minimum requirements through natural ventilation may not be maintained at a negative pressure, only those areas using mechanical ventilation are subject to negative pressure requirements. The regulations do not prohibit the use of tarps or other temporary barriers for use as windbreaks, etc., providing these barriers do not result in a level of ventilation by natural or mechanical means which is below the minimum required for safety of operation.

The USCG in 46 CFR Part 108 "*Design and Equipment*" addresses, in part, classified locations and "ventilation for enclosed classified locations." The USCG regulates these items for MODU's. The USCG plans to introduce similar rules for all other manned/fixed platforms and structures on the OCS. Once USCG rules are in place and applicable to other drilling units (e.g., landtype rigs used on gravel islands, ice islands, arctic structures, MODU's which have their jacking equipment removed, and other fixed/bottom founded platforms), MMS will evaluate the need to modify its requirements for those facilities.

The MMS continues to work with the USCG in an effort to update existing MOU's addressing the separate and overlapping areas of responsibilities of the two Agencies.

Comment—Several commenters recommended revising the § 250.60(e)(1) to read, "Be ventilated with high-capacity mechanical ventilation systems capable of replacing the air once every 5 minutes while drilling fluid is being circulated." They suggested that the revision would provide a simple, inherently safe area which would be well-ventilated during drilling fluid circulation. The safety of the area would not be dependent on equipment responding to an alarm from gas detection equipment.

Response—Section 250.60(e)(1) has been revised to include the recommended change as an acceptable alternate approach. The revision provides for simpler and inherently safer operations. However, in the arctic, a required high-capacity ventilation circulating system would create an enormous heating requirement to keep the circulating mud from freezing during the winter.

Comment—Several commenters recommended deleting the last sentence in § 250.60(e)(2) which requires pressure-sensitive alarm equipment on the grounds that this equipment is difficult to maintain at offshore locations.

Response—Section 250.60(e)(2) of the final rule has been revised to permit the use of open-door alarms, automatic-door closing devices, air locks, or other devices as approved by the District Supervisor. The rule recognizes that pressure sensors may not be the only mechanism that can be used to ensure that negative pressure is being maintained.

Comment—Several commenters recommended deleting the entire text of § 250.60(e)(3). With gas detector equipment installed at the shale shaker, this type of equipment is not necessary in the drilling fluid handling area. An alarm at the shale shaker would be the only device needed for this area.

Response—This recommendation was not adopted. The shale shaker area may not be located in the only enclosed mud-handling area. However, the proposed rule was revised to exempt open areas ventilated by natural means from the requirement for gas detectors and alarms. As a necessary corollary to a requirement for gasdetection systems, an operational test and recalibration at least once every 90 days is required in § 250.60(e)(6) of the final rule.

Comment—There were several comments submitted concerning the proposed requirements in § 250.61 to provide for securing of wells by various tools. Some of the commenters would revise the proposal to allow the use of pipe rams and an inside BOP in lieu of the use of blind-shear rams. One commenter would delete the word "timely" as unnecessary regarding the installation of well securing tools. One commenter believed the proposal is in order.

Response—The recommendation to allow the use of pipe rams and inside BOP's was adopted, given special circumstances. In floating drilling operations, the use of pipe rams and an inside preventer may be an acceptable alternate to the use of blind-shear rams to secure the well, provided there is a lack of sufficient lead time or special circumstances.

The word "timely" is meant to convey to the lessee the importance of taking full advantage of available lead time. The suggestion to delete the word "timely" from the proposed rule was not adopted.

Comment—There were several comments submitted concerning the proposed requirements in § 250.64 for lessee submittal of information regarding the maximum adverse environmental and operational conditions the rig is designed to withstand in § 250.64(b)(1) and vessel certification documentation in § 250.64(b)(2). The commenters recommended deletion of these requirements since they view them as a USCG concern. Another commenter recommended revision of § 250.64(b)(2) to delete references to U.S.-flag vessels and foreign-flag vessels.

There were numerous comments submitted concerning the proposed requirement in § 250.64(b)(3) to submit data with an APD related to design and operating limits and contingency plans to be followed, if necessary. Several commenters recommended deletion of the proposal, on the grounds that it is beyond the scope of MMS jurisdiction. Other commenters would revise the rule to require the submission of only the design and operating limits. One commenter would revise the rule to provide for the acceptance of the appropriate parts of the USCG approved MODU operating manual.

Response—Section 250.64(b)(2) of the final rule has been revised to clarify that "documentation of operational limitations" rather than "classification" is the intent. The recommendations to delete § 250.64(b) (1), (2), and (3) were not adopted, but the paragraphs were revised to make the requirements in (b)(3) applicable only to frontier areas. In frontier areas, the operational limitations under the environmental conditions anticipated for the area and rig operating manual are evaluated as part of the review and approval process of the lessee's contingency plans. The MMS does not approve MODU Operating Manuals. The MMS asks the operator to supply a copy of this manual along with information requested in § 250.64(b) which will be used for reference by MMS personnel in reviewing and evaluating the lessee's contingency plans.

The references to U.S.-flag vessels and foreign-flag vessels were deleted.

Comment—There were several comments received concerning the proposed requirement in § 250.64(b)(4) to submit a program with an APD which provides for safety in floating drilling operations, including seismic and geologic data. A few commenters recommended deletion of the proposal as unnecessary and duplicative of information contained in the shallow hazards report. Other commenters would delete the proposed seismic and geologic data, water depth, drilling fluid hydrostatic pressure, etc., in the belief

that the data have been furnished in other reports and the APD.

Response—The recommendation to delete these requirements was not adopted. The information collections suggested for deletion are considered critical to MMS's ability to assure operational safety. When information is already available in MMS files, it is only necessary for the lessee to reference the documents containing the needed information.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(e). The commenters recommended that a lessee not be required to resubmit data on a drilling unit once approval is obtained in an OCS Region, unless equipment changes are made which affect the rated capacity of the unit.

Response—These recommendations were not adopted. Each of MMS's OCS Regions represents a large geographical area with diverse local environmental and geological drilling conditions. For these reasons, each District Supervisor must retain the authority to inspect drilling units to assure that they are equipped to handle local conditions and specific circumstances. In frontier areas, rig approval may be considered on a case-by-case basis.

Comment—There was one comment submitted concerning the proposed requirement in § 250.64(f)(1) to submit a plat showing surface and subsurface locations of the proposed wellbore to be drilled and of all the wells previously drilled in the vicinity from which information is available. The commenter would delete as unnecessary the locations of all wells previously drilled in the vicinity.

Response—The recommendation was not adopted. The District Supervisor may need the required information in order to expedite the evaluation and approval of the lessee's APD.

Comment—Comments were submitted concerning the proposed requirement in § 250.64(f)(2) that lessees submit the anticipated surface pressure and calculations used to determine the anticipated surface pressure. One commenter would delete the proposal to submit the calculations as impractical. One commenter would better define "anticipated surface pressure."

Response—These recommendations were not adopted. The lessee's estimate of the anticipated surface pressure is a primary factor in design of its well casing program, BOP's, and other well-control equipment and has a bearing on well-control procedures.

Comment—One commenter believed that the referenced data records required in § 250.64(f)(2)(vii) should not be submitted unless requested on a case-by-case basis by the Regional Supervisor.

Several other commenters recommended that this paragraph be deleted since the information is already required to be submitted with the Exploration Plan.

Response—These recommendations were not adopted. Information submitted in support of the APD is applicable to a site-specific location and includes many site-specific details not submitted with an Exploration Plan. Specific information previously submitted with the Exploration Plan need not be resubmitted but should be referenced.

Comment—There were a few comments submitted concerning the proposed requirement in § 250.64(f)(3)(ii) to submit a well-control procedure if the anticipated surface pressure exceeds the annular BOP rated working pressure. The commenters recommended deletion of the proposed requirement on the grounds that the annular BOP would not be used at surface pressures exceeding the anticipated surface pressure.

Response—These recommendations were not adopted. The information required under this paragraph relates to the requirements in § 250.56(c) which may allow the rated working pressure of the annular preventer to be less than the anticipated surface pressure.

The information required in § 250.64(f)(3)(ii) of the final rule is necessary. Its purpose is to provide evidence to the District Supervisor that the lessee is prepared to use other well-control measures and procedures to assure that the installation of a lower rated annular preventer would not compromise safety.

Comment—There were numerous comments submitted concerning the proposed requirement in § 250.64(f)(3)(iv) to submit a dimensioned schematic drawing of the diverter system. The commenters recommended that the proposal require less detailed information on the grounds that such detail is unnecessary, and the relationship of the wellhead to the rig is not known until the rig is moved on location.

Response—These recommendations were adopted in part. If the diverter system dimensions "as-built" differ from those given in the APD, submittal of a Sundry Notice (Form MMS-331) is in order. The direction, length, and turns throughout the path of flow, including that through hoses, are necessary information. The rule is revised to delete the word "dimensioned" and to include valve size in the list of information needed.

The size of the valves in a diverter system and the number and radius of turns are critical factors in the diverter system's performance capabilities.

Comment—One commenter recommended deletion of the proposed requirement in § 250.64(f)(3)(v) to submit a detailed schematic of the BOP stack and recommended that a brief description be submitted instead.

Response—The recommendation was not adopted. The BOP stack components, arrangement, and bore sizes are essential information about vital well-control equipment.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(f)(4)(ii) to submit assumptions made to determine casing design values. The commenters recommended the deletion of this requirement as burdensome and beyond MMS scope of jurisdiction. They would revise the rule to require the submission of design factors only.

Response—These recommendations were not adopted. Calculations are no better than their underlying assumptions. Therefore, the assumptions are necessary for proper evaluation by MMS personnel.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(f)(5)(i) and (ii) to submit the drilling prognosis, including plans for coring and logging. The commenters recommended revision of the rule to require submittal of "projected plans" for coring and logging as those plans may change as the drilling operations progress.

Response—The provision has been modified to require projected plans for coring and logging. It is understood that coring and logging plans given in support of the APD are informational. But, it is important and useful information. The use of the term "prognosis" was intended to recognize that plans were subject to change.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(f)(5)(iv) to submit estimated depths at which encounters with water, oil, or gas are expected. The commenters would delete this proposed requirement as having no significance.

Response—The recommendation was not adopted, however, § 250.64(f)(5)(iv) in the final rule was revised to recognize the need for such information.

The estimated depths of hydrocarbon occurrences are useful in following the progress of a well, anticipating possible problem zones, and for resource evaluation. Estimated depth of hydrocarbon zones are used in some instances for seasonal drilling restrictions.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(f) (6), (7), and (8) to submit details of the cementing program, mud program, and directional drilling program, respectively. The commenters recommended deletion of these requirements on the grounds that the accuracy of detailed information may change as the well progresses; therefore, the requirement would cause unnecessary paperwork.

Response—The recommendations were not adopted. It is understood that certain aspects of the programs are, by their nature, projections. The program plan is needed for an informed and proper review of the proposed drilling program. The type of cement to be used is pertinent information for this review.

Certain aspects of the mud program including the minimum quantities of mud and mud materials to be kept onsite are needed as part of a contingency plan. In some cases, there are stipulations for discharges and disposal of the mud materials that may be relevant and which are necessary to address in the mud program. When the mud program described in the APD is deficient, there is sufficient cause for not approving the APD.

Directional survey programs provide important and indispensable information for the District Supervisor to use to evaluate concerns such as the potential for encroachment of lease boundaries, for unnecessary penetration of problem zones, for locating the drill site, and of the course and targets for possible relief wells. Lessees routinely prepare directional drilling programs in their own self-interest. The burden imposed by requiring submittal of copies of the program is therefore minimal.

Comment—There were several comments submitted concerning the proposed requirement in § 250.64(f)(11) to submit other information as may be required by the District Supervisor. The commenters recommended the deletion of this requirement on the basis that individual Supervisor's prerogatives would create inconsistency in submittal requirements.

Response—The recommendation was not adopted. The MMS recognizes the need to avoid disparities in interpretation and nonuniform enforcement measures. However, the unique nature of drilling operations requires that the District Supervisor exercise a degree of independence when considering site specific conditions during their review and approval of drilling plans and the revision of such plans.

Comment—There were a few comments submitted concerning the proposed requirements in § 250.65 for submittal of Form MMS–331, Sundry Notices and Reports on Wells.

One commenter recommended that the coastal State affected receive a copy of the proposed change in plans from the lessee or MMS. One commenter stated that Form MMS–330, Well (Re)Completion Report and Log, would satisfy the proposed requirement for completed or recompleted wells.

Response—This recommendation was not adopted. The lessee's plan (EP and DPP) and major revisions of approved plans are sent to the coastal State(s) for review and consultation or coastal consistency as appropriate. The Form MMS–331, Sundry Notices and Reports on Wells, is used for a variety of requests for approval or subsequent reports of performing certain operations pursuant to an approved EP or DPP. The MMS has revised reporting Forms MMS–330, MMS–331, MMS–331C, and MMS–332 to improve clarity in the information being sought and to minimize duplicative and overlapping information collections.

Comment—Several comments were submitted concerning the proposed requirement in § 250.65(c) to submit a certified plat regarding the final surveyed well location, water depth, and rotary kelly bushing elevation once they have been determined. The commenters recommended clarification of the term "certified plat."

Response—Section 250.65(c) of the final rule has been revised to provide for the submission of a plat certified by a registered land surveyor.

Comment—One commenter recommended that a provision should be added to § 250.66 that specifically sets the record retention period. Storage problems could result from indefinite retention periods.

Response—This recommendation has been adopted. The first sentence in § 250.66(a) of the final rule has been revised by inserting the words "for a period of 2 years" between the word "keep" and before the word "at."

Comment—There were several comments submitted concerning the proposed requirement in § 250.66 for the lessee to keep well records at the field office nearest the OCS facility or other locations conveniently available to the District Supervisor. The commenters recommended that the proposed rule be revised to allow the lessee complete discretion as to where operating records are kept, as long as they are available and can be inspected by MMS personnel during normal business hours. One commenter would delete the proposal regarding other information required by the District Supervisor.

Response—These recommendations were not adopted. Records of operations kept at a location which is far from the District and the operations to which the records apply would adversely affect the ability of the operator's personnel and MMS's District Supervisor to carrying out their responsibilities. Recordkeeping at field offices is allowed as an alternative to lessees being required to maintain a set of records on each offshore facility.

Comment—There were several comments submitted concerning the proposed requirement in § 250.66(b) for the lessee to transmit duplicate copies to the District Supervisor of the records of all activities related to and conducted during the suspension or temporary prohibition of drilling operations or attached to Form MMS–330 or MMS–331. The commenter recommended that this proposed rule be clarified to ensure consistency in submittal.

Response—The recommendation was adopted. The information referred to is that which pertains to activities conducted under a suspension of operations as described in § 250.10. To make this clear, § 250.66(b) of the final rule has been revised by inserting the phrase "under the provisions of 30 CFR 250.10, Suspension of production and other operations," between the words "prohibited" and "the lessee."

Comment—There were a number of comments submitted concerning the proposed requirement at § 250.66(c)(3) to furnish copies of the daily drilling report showing location, description, and status of all wells on leased land upon request by the Regional or District Supervisor. The commenters recommended that the proposed rule be revised to provide the daily drilling report only, and exclude the requirement for status of all wells on the lease, as the daily drilling report does not show this.

Response—This recommendation was adopted and § 250.66(c)(3) of the final rule has been revised accordingly. The location, description, and status of all wells on leased lands other than drilling wells are available to the District Supervisor from other documents and sources.

Comment—There were numerous comments submitted concerning the proposed requirement at § 250.66(c)(4) to furnish copies of service company reports on cementing, perforating, acidizing, analyses of cores, testing, or other similar services. The commenters recommended that the proposed rule be

revised to provide that lessee reports be furnished rather than copies of the service company reports on the grounds that service company reports may be inexact, limited, or unavailable, and the requirement consequently would be burdensome.

Response—This recommendation was not adopted. Service company reports are especially important documentation regarding operations that are not witnessed by MMS personnel. The information contained in those documents is also useful for verifying and interpreting other data submitted by the operator.

Comment—There were several comments submitted concerning the proposed requirement at § 250.66(d) to transmit, as soon as available, copies of logs or charts of electrical, radioactive, sonic and other well-logging operations, directional-well surveys, and analysis of cores. Also, composites of multiple runs and directional-well surveys are required to be transmitted to the District Supervisor as soon as available but not later than 30 days after completion of such operations for each well. The commenters recommended that the requirement be revised to provide for the submittal of the listed material as soon as available and composites within 30 days after completion of operations on the well. The proposal, as written, is considered by the commenter to be redundant, and the commenter's proposed revision is considered to be consistent with other required submittals of information. One commenter pointed out that this information is required in § 250.66(a) and is required to be submitted upon request in § 250.66(c) (1) and (4). The first sentence of § 250.66(d) is presently in effect, and the information is required within 30 days after well-completion. One commenter suggested that MMS bear the cost of additional copies.

Response—Minor changes were made in § 250.66(d) of the final rule. The intent of the rule is that composite logs be submitted as soon as available but not later than 30 days after completion of the well. The words "such operations for" have been deleted from the last sentence to clarify the intent. Minor elements of apparent redundancy among the paragraphs of § 250.66 are present for the sake of added clarity.

Comment—There was one comment concerning the proposed requirement at § 250.66(f) for the lessee to submit any other reports and records of operation requested by the District Supervisor.

The commenter recommended that this part of the proposed rule be deleted on the grounds that the requirement is too broad or arbitary, and the lessee should know specific requirements "up front."

Response—This recommendation was not adopted. The unique nature of each drilling and production operation makes it important that lessees and MMS recognize its authority and responsibility to require a lessee to provide any and all the information needed to assure that the lessee's proposed activity can be conducted safely.

Comment—Several commenters recommended deleting the word "all" between the words "take" and "necessary" from § 250.67(a)(1) on the grounds that the use of the inclusive term "all necessary precautions" places the lessee in an untenable liability position in the event an H_2S incident occurs.

Response—This recommendation was not adopted. The purpose of § 250.67(a)(1) is similar to that of § 250.50 in that it is intended to provide direction and to state goals. In order to reduce any problems in interpretation that the word "all" may cause, § 250.67(a)(1) of the final rule has been revised by adding the words "and practicable" between the words "necessary" and "precautions."

Comment—A commenter recommended the word "unknown" be changed to "suspected" for clarification of the intent of § 250.67(a)(2).

Response—This recommendation was not adopted. Section 250.67(b)(3) outlines the meaning of "zones where the presence of H_2S is unknown."

Comment—One commenter, referring to the definition of the word "facility" in § 250.67(b), contended that since satellite-well protection structures utilized by it do not meet the criteria that would cause them to be defined as a production facility, those satellite structures should not be subjected to the requirements for the installation of H_2S protection, warning devices, and safety equipment specified under the proposed rules. The commenter argued that since these satellite structures do not hold pressurized vessels or any other type of equipment for the separation, processing, or transport of produced liquids or gas, they should be exempt from the current definition of a "facility" and be addressed separately as to the requirements for H_2S detection, monitoring, and protective-breathing equipment.

One commenter recommended changing the criteria of H_2S atmospheric concentration from 20 ppm to 50 ppm contending this is an acceptable concentration for the protection of health for an 8-hour day, 5-day week.

A few commenters contended that the proposed definitions for "zones known to contain H_2S" and "zones where the presence of H_2S is unknown" assume that the technology used in forecasting the actual conditions is based on highly reliable methods of determining zone classification. These forecasts rely on data validity, personnel experience, and some judgment which must be applied. The commenter recommended that these definitions be revised to reflect that forecasts are made using the best available data and judgments.

One commenter stated that the definition of "zones where the absence of H_2S has been confirmed" needs further classification. A strict interpretation of the proposed regulations would require use of all H_2S precautionary measures for all wildcats. An alternative might be to require H_2S detection and monitoring equipment only for wildcat wells or zones where the presence of H_2S requirements down to a specific geologic area, such as Miocene, where H_2S has historically not been encountered throughout OCS waters, specifically in the GOM Region.

Several commenters referring to § 250.67(b)(3) recommended substituting the phrase "continuous and homogeneous bedding exists" with the phrase "equivalent stratigraphic units" on the grounds that continuous and homogeneous bedding is often totally undefinable over short geographic distances, therefore, proof of that continuity may rarely be possible. Geologic units, on the other hand, are often correlative over much greater distances.

Response—These recommendations have not been adopted other than to modify § 250.67(b)(3). Section 250.67(b)(3) of the final rule has been revised by replacing the words "continuously and homogeneous bedding exists" with "equivalent stratigraphic units exist." It is recognized that faults, salt domes, and other breaks in continuity can prevent correlation of geologic and seismic data to show an absence of H_2S.

Satellite well-protection structures meet the essential criteria to be defined as production facilities. However, there may be situations where some of the requirements concerning H_2S protection and warning devices may not be necessary. Satellite structures can be treated as special cases, and according to § 250.3, the lessee may request and the District Supervisor may grant departures from some of the operational requirements.

Recommended practices developed by the oil industry consider 20 ppm as an acceptable concentration for 8 hours of exposure. Those recommended practices do not include 50 ppm as being an acceptable exposure level for 8 hours. Current Occupational Safety and Health Administration Permissible Exposure Limit for H_2S is a 20-ppm ceiling or 50-ppm peak exposure for 10 minutes in an 8-hour shift only if no other measurable exposure occurs.

The final rule is designed to protect human health and life by requiring the use of H_2S precautionary measures for proposed drilling in "zones where the presence of H_2S is unknown."

Comment—In § 250.67(c), one commenter recommended revising the first sentence to read:

> Based on data furnished by the District Supervisor, operations will be classified as those in an area that is known to contain H_2S, where the presence of H_2S is unknown, or where the absence of H_2S has been confirmed. Should there be disagreement with the data furnished by the District Supervisor, a classification of operations can be made supported by applicable information such as geologic and geophysical data and correlations, well logs, formation tests, cores, and analyses of formation fluids on a case-by-case basis.

The commenter contended that it would be an undue burden on the operator and lead to the creation of massive paperwork to request a classification from the District Supervisor prior to any operation. The MMS should provide a master list classifying each geologic formation and areas as containing H_2S, as not containing H_2S, or the presence of H_2S is unknown. Then, if an operator has data that are in conflict with this master list, the operator can present that data on a case-by-case basis.

Several commenters recommended that MMS's approval of the "request for classification of probability of encountering hydrogen sulfide" be based on revised zone definitions as discussed in comments submitted under § 250.67(b).

One commenter recommended changing the word "unknown" to "suspected" concerning H_2S zones.

Response—These recommendations have not been adopted; however, § 250.67(c) of the final rule has been modified by the addition of a sentence which reads:

> The classification shall be updated when additional data indicate there is cause for a change in an approved classification.

It is the lessee's responsibility to demonstrate that its proposed drilling activity can be conducted in a safe and environmentally acceptable manner.

It is unfortunate that, except in a few localized areas, no organized body of geologic and drilling information base exists on which MMS can make advance categorizations of the probability that H_2S will be encountered. Thus, forecasts must be made using the best available data and judgments.

The recommendation to change the word "unknown" to "suspected" has not been adopted. The H_2S incidents could very well occur in zones where the presence of H_2S is "unsuspected." Requirements in zones where the presence of H_2S is only "suspected" is insufficient as well as vague.

Commenters are referred to §§ 250.33(a)(9) and 250.34(a)(6) which require lessees to request the Regional Supervisor's approval of a classification in connection with the approval of EP's and DPP's.

Comment—Several commenters recommended adding a sentence at the end of § 250.67(d) to read:

> These requirements shall be implemented at least 1,000 feet prior to entering any zone known to contain H_2S.

The commenters contended that since H_2S containing zones may be deeply buried and require months of drilling operations before it becomes necessary to prepare the rig and crew for H_2S operations, expenses for installation and maintenance of equipment and training personnel for long periods of time prior to the point of need are not reasonable or justifiable.

Several commenters recommended implementing the requirements of § 250.67(e) 1,000 feet before entering a zone where the presence of H_2S is unknown.

Response—This recommendation has not been adopted. The proposed criteria of 1,000 feet prior to entering an H_2S zone or encountering a zone where the presence of H_2S is unknown is too arbitrary for general application, may not provide sufficient time for preparation, and assumes that the depths of such zones are accurately known. A shut-down of drilling operations while preparations are completed could be more expensive than preparing equipment and personnel earlier. The intent of the rule is that the lessee be fully prepared to cope with H_2S before drilling into an H_2S bearing zone and while that zone is open to the wellbore. The lessee's proposed H_2S Contingency Plan is the best means of addressing the particular circumstances.

Comment—A commenter recommended deleting the words "approval" from the first sentence of § 250.67(h)(1) and "approved" in the second sentence on the grounds that the approval process could interfere with the proposed timing of an operation. A plan should be on file but not necessarily approved.

Response—This recommendation has not been adopted. The planned operations along with the H_2S Contingency Plan must be approved by the authorized MMS official prior to start of operations.

Comment—A commenter recommended that under § 250.67(h)(1)(ii), the job position responsible for the overall safety of the personnel should be a part of the platform owner/operator's organization and not part of the lessee's organization.

Response—The responsibility for any and all activities on a lease ultimately rests with the lessee. Although the operator of a platform may not be a part of a lessee's organization, the lessee remains responsible for the actions of the platform operator.

Comment—In § 250.67(h)(1)(iii), one commenter recommended changing the word "air" to "atmosphere." Another commenter recommended deleting the 10-ppm concentration level cited in (A), claiming that the relatively high incidence of false alarms inherent with the use of a 10-ppm sensor will lead to a undesirable degree of complacency.

Another commenter contended that it is important that the presence of the three distinct levels in § 250.67(h)(1)(iii) be indicated through the visual and audible alarms discussed in § 250.67(h)(3), (4), and (5) and suggested that these paragraphs be changed to better support the intent of § 250.67(h)(1)(iii).

Response—The recommendation to change the word "air" to "atmosphere" was adopted. The recommended modification to § 250.67(h)(1)(iii) was not adopted.

The 10-ppm concentration level requirement in 250.67(h)(1)(iii)(A) remains. According to § 250.67(h)(5)(i), the H_2S detection and monitoring system activates audible and visible alarms when the concentration of H_2S exceeds 20 ppm. Sensors are available which perform at 10 ppm without nuisance signals, provided they are appropriately protected and maintained.

Section 250.67(h)(3) of the final rule has been revised to require that a visual alarm be activated by detection equipment at 20 ppm. Section 250.67(h)(4) of the final rule has been revised to require that an audible alarm be activated by detection equipment at 20 ppm, and § 250.67(h)(5) of the final rule has been revised to clarify that the detection system be capable of accurately sensing a minimum concentration of 10 ppm of H_2S in the atmosphere.

Comment—A commenter recommended deleting the last two sentences from § 250.67(h)(1)(iv) concerning briefing areas on the grounds that the requirement is too specific and that any prudent operator will have safe briefing areas in its plan.

Response—This recommendation was not adopted. The specification for two briefing areas actually clarifies and defines the minimum number required.

Comment—Two commenters recommended revising § 250.67(h)(2) to say that the requirements would be implemented 1,000 feet prior to entering any zone known or suspected to contain H_2S that would produce a concentration of 20 ppm in the ambient work atmosphere. One of the commenters also suggested that training of crews weeks before penetrating an H_2S zone could result in the personnel becoming complacent.

Response—The recommendation has not been adopted. Waiting to implement the onsite safety training program 1,000 feet prior to encountering a zone which contains H_2S is arbitrary and not practicable as a rule. Drilling rates may be in excess of 2,000 feet per day and the depth of the zone may not be known with accuracy. Required preparation must be accomplished well in advance of the actual drilling of H_2S bearing formations. It is intended in § 250.67(h)(2) of the final rule that training be initiated, completed, and reviewed as appropriate before a H_2S bearing zone is encountered.

Comment—One commenter recommended deleting the phrase "H_2S detectors and" from § 250.67(h)(2)(iii) on the grounds that the location of detectors is not relevant to all personnel, e.g., the cook does not need to know an H_2S detector is located on the bell nipple.

Response—This recommendation was not adopted. All personnel should be as knowledgeable as reasonably possible about the location of H_2S detectors and the steps and protective measures to be initiated when an alarm is sounded.

Comment—In § 250.67(h)(2)(vi), several commenters recommended replacing the phrase "prior to beginning operations" with the phrase "within 24 hours after duty begins" contending that the MMS requirement, as proposed, is onerous.

One commenter recommended deleting the phrase "and training session" claiming it to be redundant with § 250.67(h)(2) (i), (ii), (iii), and (iv). This commenter recommended replacing the phrase "each crew prior to beginning operations" with the phrase "all personnel at the facility" contending that a drill should include everyone on board and not just the crew.

One commenter recommended changing § 250.67(h)(2)(vi) to require weekly training sessions for drilling or workover operations and monthly sessions for production operations contending that since contract people are coming and going frequently during drilling and workover operations, drills and training sessions on a weekly basis would be necessary. However, since production operations are conducted at a more moderate pace, monthly sessions would be more appropriate inasmuch as personnel on the facility are well trained, and the risk of an H_2S release is less than during drilling operations.

Another commenter claims that the requirement to conduct a drill and training session once every 7 days for each crew is excessive.

Response—The recommendation was adopted to allow the conduct of a drill for each crew member within 24 hours after their duty begins. The recommendation that a training session be conducted within 24 hours was not adopted. With contract and other personnel coming and going frequently, training for all personnel upon arrival is considered vital. Problems with H_2S may arise at any time.

The recommendation that drills include all personnel on the facilities was adopted.

The recommendation that drill and training sessions for drilling and workover operations be conducted more frequently or at different intervals than those for production operations has not been adopted.

Comment—In § 250.67(h)(3), a commenter pointed out that there is no mention of visual indicators (i.e., flashing lights) to be activated by the H_2S monitoring system as required in § 250.67(h)(5).

Response—The comment has been duly noted, and § 250.67(h)(3) of the final rule has been revised to include a requirement for a visual alarm.

A new § 250.67(h)(3)(ii)(E) is added to make clear that production facilities with wells capable of producing H_2S be marked with warning signs under nonemergency as well as emergency conditions.

Comment—In § 250.67(h)(4), several commenters contended that there is no reason to install explosion-proof warning devices in an unclassified location where they would be surrounded by other nonexplosion-proof electrical equipment. Only warning devices installed in classified locations, as defined in 46 CFR 108.70 through 108.77, should be required to be explosion-proof.

One commenter recommended that the warning devices required in the paragraph have a unique sound used only for H_2S warning; otherwise, the same device would be used for a production alarm and for H_2S warning which would be confusing.

One commenter recommended that it be made clear that the audible devices and paging systems are intended to complement, not reduce or eliminate the need for the visual warning devices.

Response—The recommendations have been adopted, and § 250.67(h)(4) of the final rule has been modified to incorporate the suggestions.

Comment—One commenter recommended adding the phrase "including various sensor locations for production platforms" to the last sentence in § 250.67(h)(5)(i) on the grounds that, for safety reasons, production platforms as well as drilling rigs should be equipped with H_2S sensors.

One commenter recommended inserting the phrase "as appropriate" after the phrase "poorly ventilated" contending that production or workover/completion operations will not have some of these areas. The sensing points specified apply to drilling operations only.

Several commenters recommended deleting the phrase "in hazardous quantities" in § 250.67(h)(5)(i) contending that this improves clarity and is consistent with the phrase "may accumulate" in § 250.67(h)(8).

One commenter recommends that H_2S detection and monitoring equipment should be provided on mobile drilling rigs at all times contending that the cost to install the equipment is minimal.

Response—These recommendations have been adopted with the exception of the one relating to mobile drilling rigs. The phrase "as appropriate" has been added and the phrase "in hazardous quantities" deleted from § 250.67(h)(5)(i) in the final rule.

The H_2S detection and monitoring equipment need not be provided on mobile drilling rigs where the absence of H_2S has been confirmed.

Comment—In § 250.67(h)(5)(ii), several commenters contended that it is unnecessary and counterproductive to calibrate detection and monitoring equipment every 8 hours or even every day.

One commenter contended that the majority of available equipment is capable of staying in calibration for over a week but most only recommended calibration every 2 weeks. This time span could be shortened if it is found that the instruments are substantially out of calibration each week.

A few commenters recommended changing the calibration frequency for drilling and production to "monthly with an operational check" contending that the calibration frequencies specified are totally unjustified and could lead to a reduction in safety because some sensors reduce their sensitivity to H_2S each time they are exposed to it. Some manufacturers of detectors recommend a calibration schedule of 30 to 90 days depending on the installation.

Several commenters recommended initial calibration with daily functional checks and weekly field calibrations thereafter contending that it can take up to 3 hours to calibrate all equipment. This would require additional personnel to run calibrations.

Several commenters recommended changing the wording in the first two sentences to read:

> The H_2S detection and H_2S monitoring equipment shall be initially field calibrated when drilling approaches a potential H_2S bearing zone and functionally tested at least once daily with weekly field calibrations when drilling, well completion, and/or well workover operations are being conducted in an H_2S environment. The H_2S detectors for production operations shall be field calibrated at least weekly.

The commenters contended that MMS's requirements for sustained equipment calibration once every 8 hours can render the sensors inoperative by burning them up. Calibration of the equipment every 8 hours will require two full-time people to test and service the equipment with little or no increase in safety or equipment reliability.

Another commenter recommended that the calibration frequency be curtailed to once every 12 hours when drilling, completion, and/or workover operations are being conducted in an H_2S environment. This is more than adequate for most systems available and suits the work shifts involved.

Response—After careful consideration of these recommendations, § 250.67(h)(5)(ii) of the final rule has been revised to require a calibration frequency of 24 hours when approaching an H_2S bearing horizon or drilling a horizon whose H_2S content is unknown; 12 hours when drilling, well-completion, and well-workover operations are being conducted in an H_2S environment; and at least once every 7 days during production operations. Manufacturers' recommendations concerning calibration frequency vary widely. The range is from once each week to once every 3 months. However, technology has not advanced to the point where the performance of H_2S sensors is predictable enough for reliability. The environment in which the device is placed is a major factor. Therefore, frequent calibration of these devices must be required to assure safety of operations.

Comment—In § 250.67(h)(5)(iii), several commenters recommended changing the second sentence to read:

> After H_2S has been initially detected, poorly ventilated areas not equipped with fixed H_2S detection equipment shall be evaluated, utilizing a portable H_2S detection instrument.

The commenters contended that areas with fixed detection equipment do not need to be checked with portable equipment.

One commenter recommended inserting the phrase "concentration of 20 ppm" after H_2S in the second sentence to define inspection frequencies. The commenter contended that smaller concentrations of H_2S are not harmful.

Response—The recommendation to permit the use of portable equipment to test poorly ventilated areas not equipped with fixed H_2S detection equipment has been adopted, and § 250.67(h)(5)(iii) of the final rule has been revised accordingly.

The recommendation to insert the phrase "concentration of 20 ppm" in the second sentence of § 250.67(h)(5)(iii) has not been adopted. The addition of that phrase could mislead personnel into assuming that a lower concentration would be acceptable and frequent inspections unnecessary. Concentrations of H_2S increase by accumulation of gases in low-lying and unventilated areas.

Comment—In § 250.67(h)(6), one commenter suggested that consideration should be given to installing an H_2S detection/monitoring system equipped with visual and audible alarms on all workboats attendant to facilities operating in known or unknown H_2S environments.

Response—This recommendation has been adopted. The proposed rules failed to include adequate safety measures for the protection of crews on standby vessels, crew boats, and workboats and for the safe evacuation of personnel from a facility. Therefore, § 250.67(h)(1)(v) and 250.67(h)(6)(iv) of the final rule have been revised to provide that protection.

Comment—In § 250.67(h)(6)(i), (iv) and (v), several commenters recommended deleting the phrase "and/or SO_2" in those paragraphs contending that sulphur dioxide (SO_2) results from burning H_2S and that normally SO_2 zones do not exist. Therefore, the phrase would be unnecessary.

Response—This recommendation has been adopted, and the phrase "and/or SO_2" has been deleted from § 250.67(h)(6)(i), (iv), and (v) of the final rule.

Comment—Several commenters recommended deleting § 250.67(h)(6)(ii) because it deals with the storage location of protective-breathing apparatus that is sufficiently addressed in § 250.67(h)(6)(i) where it is required that personnel have immediate access to protective-breathing apparatus.

Response—This recommendation was not adopted. In order for personnel to have immediate access to respirators, the storage location must be easily accessible.

Comment—In § 250.67(h)(6)(iv), several commenters recommended the deletion of the second sentence which states:

> When 20 ppm or more of H_2S is detected, workboats shall be notified to move upwind and stay under power until the H_2S is brought under control at the source.

The commenters contended that requirements/actions to be performed by workboats during emergency releases should be defined in the H_2S Contingency Plan and are specific to the installation and hazards.

Response—This recommendation has been adopted. The second sentence in § 250.67(h)(6)(iv) has been deleted from the final rule. In order to make the requirement less restrictive, the words "pressure-demand type respirator" have been replaced with the words "appropriate protective-breathing equipment."

Comment—In § 250.67(h)(6)(v), a commenter recommended the use of the phrase "flight crews" in lieu of the words "pilots" and "pilots and co-pilots" contending that the language would provide for the safety of personnel who are not pilots or copilots but may be assigned to the helicopters.

Several commenters recommended that the paragraph be revised to include the phrase "immediately accessible to the heliport for the use of flight crews," contending that the phrase would provide for clearer language.

One commenter suggested deleting the last sentence in the paragraph contending that there are numerous different types of respirator equipment and there would not be a way to ensure that pilots and copilots are trained to operate and use the equipment placed on a facility for them.

Response—The recommendations to substitute the phrase "flight crew" for

"pilots" and "pilots and co-pilots" have been adopted. The recommendation to delete the last sentence of § 250.67(h)(6) was not adopted.

Section 250.67(h)(6) of the final rule requires that all flight crew members be trained in the use of the particular type(s) of respirator equipment made available for them.

Comment—In § 250.67(h)(7)(iii), several commenters recommended substituting the phrase "chalkboards and note pads" with the phrase "chalkboards and/or note pads" contending the language provides flexibility and clarity for the use of that equipment at various locations under different climatic conditions.

Response—This recommendation has been adopted.

Comment—In § 250.67(h)(9), several commenters recommended that the provision be revised to account for incidents of short-term releases of H_2S (e.g., sampling, purging, etc.) that can result in a short duration atmospheric concentration in excess of 50 ppm but do not dictate initiation of emergency procedures and regulatory agency notifications.

Response—This recommendation has been adopted.

Comment—In § 250.67(i)(2), one commenter recommended deleting the entire provision contending that the Garrett-Gas-Train Test and other analysis techniques for soluble sulfides simply measure the quantity of soluble sulfides present in the fluid and that there is not a direct correlation between a soluble sulfides measurement and ambient H_2S measurements.

One commenter recommended that in the first sentence of the subparagraph the phrase "and the results * * * the other sensors." be replaced with the phrase "to confirm the presence of H_2S, if the concentration of H_2S detected by air sensors is in excess of 20 ppm" contending that measurements of soluble sulfides are meaningless once H_2S has broken out and is detectable on the surface and that the Garrett-Gas-Train analysis detects soluble sulfides and not H_2S.

Response—The substitution of "to confirm * * * in excess of 20 ppm" for "and the results * * * the other sensors" has been adopted. The recommendation that § 250.67(i)(2) be deleted has not been adopted. Detection of H_2S in the mud system is a key defense against exposure since the toxic gas must enter the mud systems before it can be released at the surface. The Garrett-Gas-Train method is one of several detection methods that may be used to confirm and quantify the amount of soluble sulfides in the mud.

Comment—In § 250.67(i)(3)(i), one commenter recommended revising the provision to read: "When drilling within 100 feet of a known H_2S-bearing zone, drilling fluid additives, such as lime and caustic soda for control of H_2S, shall be available at the facility. When H_2S has been detected, the additives should be added as needed," contending that caustic soda and lime have proven effective in mud systems without the use of any so-called scavengers.

One commenter recommended revising the provision to read: "When H_2S is detected, scavengers for the control of H_2S may be added to the oil or water base mud system," contending that the use of scavengers should not be mandatory.

Several commenters recommended that the phrase "added to * * * mud systems" in the first sentence of the provision be replaced with the phrase "available on the facility. When H_2S has been detected, scavengers shall be added to the drilling fluid only after H_2S is detected" contending that arbitrary addition of a scavenger before H_2S is detected could mask the detection of sulfides in the drilling fluid.

Response—These recommendations have been adopted, and § 250.67(i)(3)(i) of the final rule has been revised accordingly.

Comment—In § 250.67(i)(3)(ii), one commenter recommended deleting the entire paragraph contending that control of pH should be dependent on exact mud type, and an arbitrary pH level of 10 is not recommended for some mud types.

One commenter recommended revising the paragraph to read: "Additives for the control of fluid density and pH should be added to the water-base control fluids to eliminate the influx of fluids containing H_2S and maintain a pH of at least 10," contending that controlling the influx of H_2S by increasing the mud weight is the most effective program when dealing with H_2S.

Response—These recommendations were not adopted. Maintaining a high pH is an effective way to control H_2S, and muds that are compatible with a pH of 10 are available. It is unnecessary to include in the rule that adding weighting materials to the mud system is an effective control against influx.

Comment—In § 250.67(i)(4), several commenters recommended revising the second sentence in the provision to read, "The gases so removed shall be collected and vented to the atmosphere in a well-ventilated location away from personnel."

One commenter contended that the requirement for a closed flare system with pilots and automatic igniter in operation during essentially all operations is not reasonable. A closed flare system is not needed until the operator approaches a suspected H_2S-bearing zone. One commenter agreed that gases containing H_2S should not merely be "vented" in a well-ventilated location, away from personnel, but should also be burned.

Response—The recommendation to revise the rule to allow direct venting without burning the gases has not been adopted. The intent of the rule is that H_2S gas be fully contained until exhausted at the flare outlet where it is to be burned. Approval for direct venting, if justified, can be handled on a case-by-case basis. Degassing is not required until the well-control fluids contain H_2S.

Comment—In § 250.67(k)(1), one commenter recommended changing "an H_2S zone" in the paragraph heading to "a zone known to contain H_2S" for consistency in the rule. The rewording would make tests that are performed in a zone where the H_2S concentration is 50 ppm comply with the mandate of the rule.

Several commenters recommended deleting the words "competent" and "knowledgeable" from the last sentence in the paragraph contending that competence and knowledge implies the lessee can guarantee personnel whose response to training results in adequate performance on the job. Personnel can be trained, but competence and knowledge can only be assumed.

Response—The recommendation to revise the heading to "Well testing a zone known to contain H_2S" has been adopted as being consistent with § 250.67(b) where such a zone is defined.

The recommendation to delete the words "competent" and "knowledgeable" from the last sentence of § 250.67(k)(1) of the final rule has not been adopted. Competence and knowledge can be ascertained, and incompetent or inexperienced personnel should not be employed in the hazardous well testing of zones known to contain H_2S.

Comment—In § 250.67(k)(5), one commenter recommended replacing the word "tubing" with the word "tubulars" in the first sentence contending that the terms "tubing" and "drill pipe" are not defined. Tubulars encompasses tubing, drill pipe, and casing.

One commenter recommended replacing the words "treated fluid" with the words "fluid treated" in the last sentence for clarity.

Several commenters recommended the deletion of the second sentence contending there is no technical reason not to use drill pipe in testing oil wells containing H_2S. This has been common practice in the past and should be continued subject to the provisions contained in API RP 49, draft 2nd edition. There are many instances, such as in low-pressure wells, where certain types of drill pipe are perfectly safe.

Response—The recommendations have been adopted to replace "tubing" with "tubulars" in the first sentence and "treated fluid" with "fluid treated" in the last sentence of § 250.67(k)(5) of the final rule.

The recommendation to delete the second sentence from § 250.67(h)(5) was not adopted. The District Supervisor can approve the use of drill pipe for H_2S oil-well testing as an alternate methodology under § 250.3 when that action is justified.

Comment—In § 250.67(l)(1), one commenter recommended replacing the phrases "H_2S zone" in the heading and "H_2S environments" in the first sentence of the provision with the phrase "a zone known to contain H_2S" for consistency in the rule and because the meaning of the words H_2S environments has not been defined.

Another commenter recommended adding a new sentence to read: "New technology may be used with the approval of the District Supervisor." This would increase flexibility for the use of new standards as they develop.

Response—The recommendation to replace the phrase "an H_2S zone" in the heading with the phrase "zones known to contain H_2S" has been adopted. The revised heading is consistent with § 250.67(d) that requires operations in accordance with § 250.67(l)(1) in zones known to contain H_2S.

The recommendation to add a new sentence specifically allowing the use of new technology upon approval by the District Supervisor has not been adopted. Section 250.3 permits this action so there is no need to include similar provisions in § 250.67 of the final rule.

Comment—In § 250.67(l)(2), several commenters recommended revising the heading and the paragraph to add drill pipe to the tubular goods to be designed according to NACE MR–01–75 requirements for use in H_2S environments.

Response—The recommendation has been adopted.

Comment—In § 250.67(l)(3), several commenters recommended the paragraph be revised to exclude bolts, nuts, and fittings not subjected to exposure to H_2S from the requirement to conform to NACE standard MR–01–75 contending that this is an unnecessary requirement for those components that can only be exposed to H_2S bearing fluids at atmospheric pressure in the event of a leak or component failure.

Response—This recommendation was adopted.

Comment—In § 250.67(l)(6), several commenters recommended adding the following sentence to the end of the paragraph "Welding and burning operations should comply with § 250.52" contending that this addition will provide more complete guidance to the lessee.

Response—This recommendation was not adopted. Compliance with NACE MR–01–75 is specified in the paragraph. Section 250.52 addresses safety precautions only in welding and burning operations and is not a useful reference in § 250.67(l)(6) of the final rule.

Comment—In § 250.67(m)(2), one commenter recommended adding the word "conventional" before the phrase "coring operations" contending that the requirements of the paragraph do not apply to sidewall coring.

Response—This recommendation has been adopted.

Comment—In § 250.67(m)(4), one commenter recommended adding the phrase "or if the well is under pressure" at the end of the paragraph contending that stripping operations are normally performed to remove tubing utilized to initiate flow. If the well does flow or exhibit pressure, the potential for H_2S being released is increased in the areas of the stripping rubbers.

Response—This recommendation has been adopted.

Comment—In § 250.67(m)(6), one commenter recommended deleting the last two sentences of the paragraph contending that they are redundant since high stresses mentioned in the third sentence are the result of the conditions listed in the last two paragraphs.

Several commenters recommended revising the third sentence by replacing the word "employed" with the word "taken" stating that the proposed revision would provide consistency with the sentence that follows.

Response—The recommendation to delete the last two sentences of § 250.67(m)(6) has not been adopted. The items listed in those sentences recite some of the conditions that expose drill strings to high stresses. The purpose of the partial list is to provide clarity.

The recommendation to replace the word "employed" with the word "taken" has been adopted. This change provides continuity with the subsequent sentence.

Comment—In § 250.67(m)(7), several commenters recommended changing the phrase "flare lines" in the second sentence with the phrase "flare line outlets" contending that the location or path of the flare line will be dictated by the design of the facility and will undoubtedly be away from critical areas.

One commenter recommended replacing the phrase "flare lines" with the phrase "the flare line used" contending that multiple flare lines will likely exist.

Several commenters recommended rewording the fourth sentence to read: "Alternate methods for igniting the flare shall be available" contending that the method(s) of flare ignition should be left to the discretion of the operator.

Response—These recommendations have been adopted.

Comment—In § 250.67(m)(10), several commenters recommended revising the paragraph to read: "The H_2S content in the fuel and/or instrument gas should not exceed 50 ppm" contending that the cost of a gas-sweetening system for fuel to fire gas turbines may not be justified. The commenters further stated that the lessee should be required to demonstrate the safety and reliability of use of this gas in the specific situation and that the 50 ppm level is selected for safety reasons in circumstances requiring instrument bleed or pressure relief.

Response—This recommendation has not been adopted. The use of gas containing H_2S for instruments is considered an unsafe practice because of its toxicity and characteristic of accumulating in low or unventilated places. The use of gas containing H_2S for fuel is more appropriately handled on a case-by-case basis.

Comment—In § 250.67(m)(11), one commenter recommended replacing most of the paragraph consisting of the phrase "either externally coated * * * in corrosive concentrations" with the word "protected" contending that the word eliminates ambiguity.

Several commenters recommended revising the paragraph to provide for internal and external protection for corrosion and suggested wording for the paragraph.

Response—The recommendation to substitute the word "protected" for "either externally coated * * * in corrosive concentrations" has not been adopted. The regulation needs to specify the acceptable means of corrosion protection.

The recommendation to revise the paragraph to provide for internal and external protection for corrosion has been adopted.

Comment—In § 250.67(m)(12), several commenters suggested the paragraph pertaining to threaded connections be deleted. The commenters contended that there is no technical justification to limit the use of tapered thread designs. This will preclude use of autoclave type or Hydril™ and other proprietary-type threads.

Response—This recommendation has been adopted and the succeeding paragraphs renumbered in the final rule.

Comment—In § 250.67(m)(13), several commenters recommended that the paragraph be revised by replacing the phrase; "of H_2S-resistant materials" with the phrase, "suitable for use in H_2S environments," contending that H_2S resistant materials cannot be specifically defined for elastomer applications.

Response—The recommendation has not been adopted. The recommended change is not viewed as adding clarity to the intent of the paragraph.

Section 250.68, Training in well control, has been deleted from Subpart D and its provisions have been transferred to Subpart O.

Subpart E—Well-Completion Operations

Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, incorporate and update requirements contained in § 250.92 and OCS Order No. 6 regarding well-completion and well-workover operations. The updated requirements reflect experience in the field and technological advances. Well-completion and well-workover operations are a significant portion of oil and gas operations and involve a number of critical and dangerous tasks. Over 20 blowouts occurred in the OCS between 1966 and July 1, 1987, during well-completion and well-workover operations.

Portions of Subparts E and F have been revised in the final rule in response to comments received. Additional changes were made in an effort to clarify the requirement of the rule.

In response to the **Federal Register** Notice of March 18, 1986 (51 FR 9316), 14 comments were received from industry concerning Subpart E, 12 comments were received from industry concerning Subpart F, and 4 comments were received from other interested parties concerning Subparts E and F. A discussion of specific comments and MMS responses follows.

Comment—Several commenters offered general observations. One commenter strongly supported promulgation of Subparts E and F. One commenter expressed concern over the specific well-shutdown requirements during equipment movement. One commenter recommended that Subparts E and F be combined. One commenter recommended that the performance standards be compatible with all conditions and circumstances that may exist (i.e., freezing conditions, storms, age of equipment).

Response—The specific well-shutdown requirements during equipment movement are addressed in §§ 250.72 and 250.92 of the final rule. The recommendation to combine Subparts E and F was not adopted. These subparts deal with two separate and distinct types of operations; therefore, the requirements should be kept separate to avoid confusion. The performance standards in Subparts E and F are applicable to conditions and circumstances relating to well-completion and well-workover activities.

Comment—One commenter concurred with the methodology in § 250.70 of using performance-type standards to regulate operations. Another commenter thought that the proposed performance standards were too general in that (1) the wording "harm or damage" should be defined to mean any adverse impact, and (2) the wording should prohibit instead of just protect against "harm or damage."

Response—The recommendation to define the meaning of "harm or damage" was not adopted. The proposed definition is interpretive, as would be most definitions, unless numerical quantities are identified. Performance standards supplement but do not replace specific regulatory requirements. The title of § 250.70 has been changed to "General requirements."

Comment—The only commenter on § 250.71 concurred with the paragraph.

Response—The commenter's concurrence is appreciated. The text of § 250.71 was modified to more clearly define "well-completion."

Comment—Several commenters submitted suggestions on § 250.72 concerning the activities required or permitted during the movement of well-completion rigs on and off a production platform. Several commenters suggested that specific requirements be deleted and that the equipment movement be conducted in accordance with operators' approved General Plan for Conducting Simultaneous Operations. A number of commenters suggested that the well-shutdown requirements were excessive in that (1) the equipment required to shut in the producing wells was redundant, and (2) the shutting in of all producing wells on a platform was unnecessary. One commenter suggested that the movement of certain types of well-completion and workover rigs onto or off a platform should be exempt from the shutdown requirements for producing wells.

Response—The movement of a completion rig onto or off of a producing platform is a critical operation. However, recognizing that some platforms have more than one well-bay, the final rule only requires that wells in the same well-bay that are capable of producing be secured during rig movement operations. A General Plan for Conducting Simultaneous Operations does not normally include sufficiently specific detailed procedures for equipment movement. Thus, that document would be unsatisfactory for use in regulating such operations. It is recognized that a shut-in back-pressure valve may be a redundant piece of safety equipment. However, the final rule only requires the back-pressure valve on wells from which a rig or related equipment is to be moved prior to removing the BOP system and installing the tree. A shut down limited to the well that is to be worked on or to those wells in the area adjacent to that well leaves the other producible wells in the wellbay too vulnerable to damage during equipment movement. Also, it should be noted that a well that is shut in at the surface by closing the master valve would not be shut in should the wellhead be knocked off.

Comment—Many commenters concurred with the requirement for an emergency shutdown system (ESD). Several commenters suggested that a specific location for an ESD station be deleted. They suggested that using the "General Plan for Conducting Simultaneous Operations" required in proposed § 250.123 was sufficient as a regulatory requirement.

Response—The recommendation to delete the requirement for an ESD station near the driller's console or the well-servicing unit operator's work station in § 250.73 was not adopted. The location of the ESD station at a less accessible location may delay the activation of an ESD. Since the General Plan for Conducting Simultaneous Operations does not contain specific procedures for ESD stations, it is not an acceptable alternative. Moreover, the requirement for a General Plan for Conducting Simultaneous Operations found in proposed § 250.123 has been deleted from the final rule (see also the discussion for proposed § 250.82 that follows).

Comment—Several commenters suggested that swabbing and tubing pulling be added to § 250.74 as additional operations that require the lessee to take appropriate precautions against the potential release of H_2S gas. One commenter suggested the phrase "on a well" between "conducted" and "in" be deleted. One commenter concurred with the requirement as written.

Response—These recommendations have been adopted. The operations added to the listing in § 250.74 of the final rule may lead to H_2S exposure. Section 250.74 has been modified by deletion of the phrase "on the well" from between "conducted" and "in" and by substituting "including but not limited to" for "especially during." Section 250.74 was also revised by replacing the phrase "and pulling pumps and packers" with the phrase "swabbing, and pulling tubing, pumps, and packers" in the next to the last sentence.

Comment—One commenter concurred with the requirement in § 250.75 for subsea completions as written. Another suggested that subsea well completions be designed and operated in accordance with proposed API RP 17A, Design and Operation of Subsea Production Systems.

Response—This recommendation was not adopted. Proposed API RP 17A is a new document and can be considered for incorporation by reference after appropriate review of the final API RP 17A to ascertain that the recommended practice provides for the desired level of safety and environmental protection. Section 250.75 was revised to assure a better understanding of what is required.

Comment—Several commenters objected to the specific requirement in § 250.76 that safety meetings be recorded in the operations log, suggesting that the operators should have the option of determining the document to be used to record safety meetings.

Response—The recommendation was adopted. The operator must record the date and time that each safety meeting is held. Revised § 250.76 requires that the information be recorded and available at the facility for review by MMS representatives.

Comment—Several commenters suggested that welding and burning operations should be conducted in accordance with § 250.52 and that other requirements contained in § 250.77 were redundant. One commenter concurred with the present wording.

Response—The recommendation that § 250.77 simply require that welding and burning operations be conducted in accordance with § 250.52 was adopted and the text of the section modified accordingly.

Comment—Several commenters suggested that certain requirements in § 250.78 pertaining to electrical requirements be deleted as redundant. One commenter concurred with the present language.

Response—Upon reconsideration, it was decided that § 250.78 should simply incorporate by reference the electrical requirements contained in § 250.53. Section 250.78 of the final rule has been revised accordingly.

Comment—One commenter concurred with the requirement in § 250.79 for well-completion structures on fixed platforms as written.

Several commenters recommended that the second and third sentences be deleted as items which the operator will consider as appropriate.

Response—The recommendation that the second sentence of § 250.79 be deleted was adopted. The text of that sentence merely enumerated conditions that affect platform loading. The recommendation to delete the third sentence of § 250.79 was not adopted. Platforms deteriorate with time and use; hence, in the interest of safety, it is necessary to ascertain that a structure continues to be capable of withstanding the loads that it is expected to experience during its continued use.

Comment—Several commenters suggested that the requirements in § 250.80 be expanded to allow the use of manually operated shutdown devices for diesel engines used in emergency situations or for continuously attended diesel engines. These commenters also recommended that further detailed studies be conducted on diesel-engine runaways prior to implemention of any requirements. A number of commenters suggested that the regulation be deleted, contending that it is a significant increase in regulatory burden without sufficient evidence that the requirement is necessary. One commenter stated that the shutdown device does not prevent engine runaway but only stops the engine in the event of it.

Response—The recommendation to expand the language of § 250.80 to allow continuously attended diesel engines to be equipped with manually operated shutdown devices was adopted. This change should cover most of the diesel engines being used in emergency situations. The recommendation to delete the requirement was not adopted. It is recognized that the function of a shutdown device does not prevent diesel engine runaway, but it can shut down a diesel engine before a fire occurs. Section 250.80 in the final rule permits the use of either remote operated manual or automatic shutdown devices for continuously attended diesel engines.

Comment—One commenter questioned the effectiveness of the safety device required in § 250.81. Several commenters suggested that the phrase "all units" be replaced with the phrase "conventional rigs," stating that the required safety device would not apply to all rigs and that hydraulic units that pull doubles are used for well-completion operations and the proposed safety feature is built in.

Response—It is recognized that units which do not have both a traveling block and a crown block do not need the safety device. Section 250.81 has been revised to provide that units which have both a traveling block and a crown block shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block.

Comment—One commenter concurred with the provisions of § 250.82 as written. Other commenters addressing other provisions of this subpart suggested that the General Plan for Conducting Simultaneous Operations mentioned in § 250.123(d) supersedes the requirements in § 250.82.

Response—To avoid confusion, the requirement for submitting a General Plan for Conducting Simultaneous Operations has been eliminated. Therefore, proposed §§ 250.82 and 250.123(d) have been eliminated and submission of the plan is not required in the final rule.

Comment—Several commenters recommended that the authority in § 250.83 (now § 250.82) for the District Supervisor to initiate field rules be deleted. They contend that the operator is best equipped to evaluate the geological and engineering information and propose specific operating requirements for a field. One commenter commended the provisions of the regulation.

Response—The recommendation to delete the District Supervisor's authority to initiate the establishment of field rules was not adopted. In fields where there is more than one operator, MMS personnel have access to all the available geological and engineering data and information required to determine whether field rules are needed. Section 250.82 of the final rule has been modified to clarify that field rules may modify the specified requirements of Subpart E. Due to the deletion of proposed § 250.82, proposed § 250.83 has been renumbered § 250.82 in the final rule.

Comment—One commenter suggested that the requirement in § 250.84(a) (now

§ 250.83(a)) of prior approval of well-completion operations be deleted. Several commenters recommended that a provision for oral approval be added to the section. Many of these commenters also suggested that the last sentence giving criteria for approval be deleted so as to streamline the approval process, contending that the 30-day subsequent report contains all necessary information. Also, they suggested that approval requirements for MMS's Districts be standardized. One commenter suggested that the phrase "the completion objective" be substituted for the word "conditions" in the third sentence.

Response—The recommendation to delete the requirements prior to approval of well-completion operations was not adopted. These operations represent significant changes that require prior MMS review and approval. Oral approvals are provided for in § 250.6. The approval requirements of MMS's Districts have been standardized to the extent that the information to be supplied by the operator for a proposed completion (e.g., operating procedures and OCS subsurface conditions) has been standardized. The third sentence of § 250.83(a) in the final rule has been revised by replacing the phrase "conditions or plans" with the phrase "the completion objective or plans." Section 250.83 has been further modified by deleting the fourth sentence.

Comment—One commenter recommended in proposed § 250.84(b) (now § 250.83(b)) that the wording be revised to require submittals only for multiple completions and completions begun after a suspension of drilling operations, contending that simple single and selective single completions should be allowed to commence without prior approval. Several commenters suggested that the entire paragraph be revised to require only a brief description of the work to be performed, the completion objectives, and a statement on expected surface pressures. The commenters contend that further technical review by MMS is unnecessary and is both paper and manpower intensive since operators thoroughly review their well-completion plans, designs, and procedures. Several commenters suggested that proposed § 250.84(b)(4) (now § 250.83(b)(4)), dealing with H_2S precautions, is unnecessary and duplicative of § 250.74.

Response—The recommendation to allow certain well-completion operations to be conducted without prior approval was not adopted. In the past, single well-completion operations have been conducted and the rig moved off location without the driving of protective casing. Situations have occurred where these types of completions have then been damaged. Prior approval of these operations allows the District Supervisor to review the proposed procedures and require necessary protective measures. The recommendation that only minimal information be submitted was not adopted. Review of a brief description of proposed well-completion procedures by MMS representatives will assure the use of minimum standards for the safety of operations. It also permits MMS to conduct an analysis and comparison of the lessee's data and information with data and information not available to the lease operator. The required information is needed to provide for a comprehensive technical analysis of the proposed operation. Consistency in information submittal will aid in the consistency of the MMS-approval process. To further clarify what information is needed, the "type and weight of completion fluids" has been added to the information to be submitted for MMS review. The recommendation to delete proposed § 250.84(b)(4) (now § 250.83(b)(4)) was not adopted. The purpose of this provision was to require that information be submitted pursuant to § 250.67 of the final rule.

Comment—Several commenters recommended that § 250.85(b) be deleted, stating that the requirement is covered in § 250.85(a) and that prudent operations dictate that sufficient quantities of well-control fluids be maintained.

Response—The recommendation was adopted, and proposed § 250.85(b) was deleted.

Comment—One commenter recommended that proposed § 250.85(c)(2) be deleted, while several commenters recommended that proposed § 250.85(c)(3) be deleted. The commenters stated that these requirements pertain primarily to drilling operations, would be difficult and unnecessary to comply with in many operations, and that trip tanks would be sufficient for monitoring returns in cased-hole operations. One commenter recommended that the audible alarm device be eliminated as it would give too many false alarms because of fluid movement. Several commenters suggested that proposed § 250.85(c)(4) be renumbered as a separate provision not directly related to proposed § 250.85(c) (1), (2), and (3), since they reviewed this requirement as an operation which did not deal with equipment. One commenter proposed to delete the five stands as criteria for filling the hole because in some cases this may amount to a minimal decrease in pounds per square inch (psi). Several commenters suggested that a new paragraph be added that would exempt operations conducted under pressure (i.e., snubbing and coiled-tubing operations) from the requirements in proposed § 250.85.

Response—The recommendations to make proposed § 250.85(c)(4) a separate provision was adopted. The recommendation to eliminate proposed § 250.85(c) (2) and (3) was not adopted. Trip tanks are normally used to monitor the fill up when pipe is being removed from the hole. Returns need to be monitored at all times including when going in the hole on trips. That monitoring should include warning devices which minimize the chance of human error. The equipment required by the regulation can usually be installed without major modifications. The recommendation to delete the five stands as criteria for filling the hole was also not adopted. The pulling of stands and assuming a minimal decrease in psi may lead to a failure to recognize a swabbing action in the well.

The recommendation that a paragraph be added to exempt operations conducted under pressure was not adopted. The majority of completion operations are not conducted under pressure. When a completion operation is conducted under pressure, it will normally be conducted with a completion rig that is required to have the equipment. Due to the deletion of proposed §§ 250.85(b) and 250.82, § 250.85(c) (1), (2), and (3) have been renumbered as § 250.84(b) (1), (2), and (3) and proposed § 250.85(c)(4) has been redesignated as § 250.84(c).

Comment—Several commenters recommended deletion in § 250.86(a) (now § 250.85(a)) of the requirement to submit a well-control procedure if the expected surface pressure exceeds the working pressure of the annular preventer. They stated that prudent operations dictate that the annular preventer would not be used in this situation. Therefore, the requirement is an unnecessary paperwork burden.

Response—This recommendation was not adopted. The submittal of a well-control procedure simply requires an additional statement on a form that will already be submitted. The well control procedure will serve to notify both the operator and MMS inspection personnel of the limited protection provided by an annular preventer. The second sentence of § 250.85(a) of the final rule requires that the working pressure rating of a

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BOP system and the system components must "exceed" not just "equal or exceed" expected surface pressure to which they may be subjected. This change will provide a greater degree of protection for the operation and is consistent with the requirements contained in § 250.56 of the final rule. The phrase "except that the working pressure of the annular preventer need not exceed 5,000 psi" was deleted since this point should be covered by the operator's well-control procedures.

Comment—Several commenters recommended the deletion of § 250.86(b)(3) (now § 250.85(b)(3)) and the incorporation of requirements for tapered drill string into § 250.86(b)(2). The commenters stated that four preventers are adequate for safety when using a tapered drill string. One commenter questioned the need for additional preventers other than the ones required in proposed § 250.86(b)(1) when using tapered drill string. That commenter also suggested that provisions be included for the use of variable bore rams.

Response—The recommendation that only four preventers (one pipe ram for each size of string) be required when using tapered drill string was adopted for those instances where the expected surface pressure is less than 5,000 psi. In this situation, stripping could be done with a pipe ram and the annular preventer. Therefore, MMS has revised tapered drill string requirements in § 250.85(b)(3) (proposed § 250.86(b)(3)). The recommendation to include a provision for the use of variable bore rams was adopted. On the basis of comments received on § 250.56(g)(3) on drilling which recommended deletion of the use of a crossover sub, the provision for the use of a crossover sub was deleted from § 250.85(b)(3)(ii) of the final rule.

Comment—Several commenters stated that the locking devices in proposed § 250.86(c) (now § 250.85(c)) are not normally installed on the preventer stack and recommended that the word "on" be replaced with the word "for" in proposed § 250.86(c)(3). The commenters also suggested that the equipment described in proposed § 250.86(c)(5) be allowed to have a pressure rating equivalent to the ram preventers or anticipated surface pressures, whichever is less. They stated that higher pressure-preventer equipment may be in use than is required.

Response—The recommendation to replace the word "on" with the word "for" was adopted. However, the recommendation that the equipment specified in proposed § 250.86(c)(5) be allowed to have a pressure rating less than the pressure rating of preventer equipment was not adopted. Allowing associated equipment to have lesser pressure rating than the pressure rating of a preventer may lead to catastrophic failures when unexpected high pressures are encountered. In order to be consistent with § 250.56(d)(5), § 250.85(c)(5) in the final rule (proposed § 250.86(c)(5)) was modified to require that at least one of the valves on the kill line be remotely controlled, except that a check valve may be used in specific situations.

Comment—A commenter stated that there is no wrench to fit an inside blowout preventer as required by § 250.86(d) (now § 250.85(d)). Therefore, it was recommended that the phrase "inside BOP and" should be deleted.

Response—The recommendation was adopted and the phrase "inside BOP and" deleted from § 250.85(d) of the final rule.

Comment—Several commenters recommended that ram-type BOP's and related equipment required by proposed § 250.87(a) (now § 250.86(a)) be pressure tested to the lesser of (1) the rated working pressure of the equipment, (2) the maximum anticipated surface pressure, and (3) 70 percent of the minimum internal yield pressure of the casing. They also recommended that maximum anticipated surface pressure be included as criteria for determining the test pressure of the annular-type BOP's. They contend that the single-testing criteria of 70 percent of the minimum internal yield pressure of the casing for ram-type BOP's may be greater than 5,000 psi and would, therefore, require an upgrade in BOP equipment to 10,000 psi. They also contend that maximum anticipated surface pressure is a prime consideration in selecting a BOP stack and should, therefore, be included as a pressure-testing criteria. One commenter suggested that the rated working pressure of the casinghead or components in the BOP assembly be included as testing criteria for ram-type BOP's, contending that testing should not be conducted above the working pressure of the weakest link in the system.

Response—These recommendations have been adopted to the extent that "the rated working pressure of the equipment" has been incorporated as pressure-testing criteria for the ram-type BOP's and related equipment, and recognition is given to the fact that testing to "70 percent of the minimum internal-yield pressure of the casing" criteria may cause a considerable upgrade in equipment. The recommendation to add "the maximum anticipated surface pressure" as pressure-testing criteria for both ram-type and annular-type BOP's was not adopted. Methodologies used in determining the maximum anticipated surface pressure have been too varied for general acceptance as testing criteria. Those methodologies have included such concepts as (1) detailed technical calculations, (2) percentages of the anticipated bottomhole pressures, and (3) zero psi with the rationale that if proper mud weights are maintained, no surface pressures will exist. It is generally recognized that test pressures should not exceed the maximum working pressure of the weakest link. However, the recommended changes were not adopted since all associated equipment is required to have a rated working pressure at least equal to that of the ram-type BOP's pursuant to § 250.85(c) of the final rule. In order to avoid confusion or an excessive upgrade of equipment, "the rated working pressure of the equipment" should be the basis for determining the testing criteria for ram-type and annular preventers. However, in recognition of the limitations of these criteria, language has been added to § 250.86(a) which allows the District Supervisor to approve other testing criteria. Since variable bore rams were added in § 250.85(b) (proposed § 250.86(b)), a requirement was added to test surface BOP system components with water as this is deemed more appropriate than mud in detecting leaks. Section 250.86(a) (proposed § 250.87(a)) has been revised to incorporate the appropriate recommendations.

Comment—Several commenters suggested that stuck pipe and pressure-control situations should only be listed as examples of operations that may cause delays in BOP testing under proposed § 250.87(b) (now § 250.86(b)). The commenters stated that these two situations are not the only operations that may cause delays, and additional flexibility is needed. The commenters also recommended that only the affected seal be tested following repairs as provided in proposed § 250.87(b)(3). Their rationale is that the entire BOP system should not require retesting merely to verify the integrity of a pressure seal.

Response—The recommendation to treat stuck pipe and pressure-control operations as examples of operations that may cause delays in BOP testing was not adopted. Any other operations require the prior approval of the District Supervisor before BOP testing is delayed. Section 250.86(b)(2) of the final rule (proposed § 250.87(b)(2)) was revised to permit delay in the testing of blowout preventer equipment other than blind or blind shear rams. The recommendation that proposed § 250.87(b)(3) specify that only the affected pressure seal will be pressure tested after repairs requiring the disconnecting of a pressure seal was adopted. Section 250.86(b)(2) and (3) of the final rule have been revised accordingly.

Comment—One commenter suggested that the paragraph in proposed § 250.88(a) (now § 250.87(a)) requiring that tubing strings have the necessary strength and pressure integrity and be otherwise suitable for its intended use be deleted because no operator would use unsafe equipment. One commenter concurred with the regulation. Several commenters recommended replacing the word "into" with the word "in" and deleting the phrase "or continued to be used." They stated that the wording is vague and that the requirement is duplicative and unnecessary. Also, they contend that economic justification for equipment replacement should be vested with the operator.

Response—The recommendation for deletions was not adopted. The regulation states the performance requirement that tubing be suitable for its intended use. Safety of operations and protection of the environment are major factors in decisions regarding equipment replacement. Economic justification must be considered, but it cannot supersede safety. The recommendation to replace the word "into" with the word "in" was adopted. Due to the deletion of § 250.82, § 250.88(a) has been renumbered § 250.87(a) in the final rule.

Comment—Many commenters recommended that the requirement in proposed § 250.88(b) (now § 250.87(b)) be deleted, stating that the regulation departs from performance-type standards, is open to various interpretations, and prescribes operations that a prudent operator would routinely do. Several commenters suggested that the phrase "every 30 days and the results submitted to the District Supervisor" be deleted from the requirement and replaced with the sentence "results of the evaluation will be maintained in the operator's well file." They stated that it is an unnecessary reporting requirement to submit the results to the District Supervisor. They also contend that the operator is best able to determine when the casing should be evaluated and that a time factor only serves as a basis for issuing Incidents of Noncompliance. Another commenter suggested that the phrase "30 days" should be replaced with the phrase "30 operating days," and the pressure-testing requirement be deleted from the regulation.

Response—The recommendation to delete the casing testing requirements from proposed § 250.88(b) was not adopted. If operators routinely evaluate the casing as they should, the regulation will not require any additional operations. The recommendation to delete the requirement from proposed § 250.88(b) to submit the results of casing tests to the District Supervisor was not adopted. The District Supervisor needs this information to evaluate the safety of continued operations on a well. The recommendation to either delete the 30-day timeframe or revise it to 30 operating days was also not adopted. Failure to include a timeframe in the final rule could lead to nonevaluations or different interpretations as to what is meant by prolonged operations. In recognition that pressure testing is only one of the possible methods of evaluating the casing integrity, it has been retained in the final rule as an acceptable method of testing. The limiting phrase "drilling or extended" has been deleted from § 250.87(b) of the final rule to clarify the requirements of the provision.

Section 250.88(c) (now § 250.87(c)) has been modified to include a requirement that the District Supervisor be notified immediately when a sustained casing pressure is observed. The District Supervisor needs this information to assess the situation and, if necessary, require the development and initiation of corrective action.

Comment—One commenter concurred with the regulation in proposed § 250.88(d) (now § 250.87(d)). Several commenters suggested that the phrase "in the vertical run of" be replaced with the word "on" stating that the number of blowouts attributable to wing valves was not given in the MMS rationale and, therefore, no data were presented to support the additional expense. They also stated that the requirement is not consistent with API RP 14C.

Response—The recommendation that the rule permit surface safety valves to be located on the tree and not specifically in the vertical run was not adopted. The surface safety valve is normally used to shut in wells. If it is located on the wing, it is more susceptible to damage than it would be if it were located in the tree. Additionally, this location will serve to contain well pressure in the lower part of the tree near the casinghead which is the strongest point.

Subpart F—Well-Workover Operations

Comment—One commenter concurred with the methodology in § 250.90 of using performance-type standards to regulate well-workover operations. Another commenter thought that the performance standards were too general in that (1) the wording "harm or damage" should be defined to mean any adverse impact, and (2) the wording should prohibit instead of just protect against "harm or damage." This commenter also recommended that specific training be included as regulatory requirements.

Response—The recommendation to define the meaning of "harm or damage" was not adopted. The definition proposed by the commenter is interpretive, as would be most definitions, unless numerical qualities are identified. Performance standards supplement but do not replace specific regulatory requirements. The need for specific training requirements is discussed elsewhere. The title of § 250.90 has been changed to "General requirements."

Comment—Several commenters recommended in § 250.91 that additional items be included as routine operations and that the additional operations should not require prior MMS approval. One commenter suggested that MMS approval only be required for work which affects the well-completion zone, stating that this would be simpler than enumerating routine operations.

Response—The recommendation to include additional activities in the list of routine operations was not adopted. All operations which involve pressure and affect a zone must be reviewed and approved by MMS personnel. The recommendation to eliminate the enumeration of routine operations and to only require approval of work that affects the well-completion zone was not adopted. The suggested elimination would lead to confused interpretations regarding what activity affects the zone and thus what activity requires prior approval.

Comment—Several commenters suggested that the specific requirement in § 250.92 to shut in producing wells be deleted and that the regulation simply require that equipment movement be conducted in accordance with an operator's approved General Plan for Conducting Simultaneous Operations. Several commenters suggested that the well shut-in requirements were excessive in that (1) the equipment required to shut in the wells was redundant, and (2) the shut-in of all wells on the platforms was unnecessary. One commenter suggested that the movement of certain type well-workover rigs (snubbing units, wireline units) on or off a platform should exclude that platform from the well shut-in requirements.

Response—The movement of well-workover rigs onto or off of a producing platform is a critical operation. However, recognizing that some platforms have more than one well-bay, the final rule only requires that wells in the same well-bay that are capable of producing hydrocarbons to be secured during rig movement operations. A General Plan for Conducting Simultaneous Operations does not normally include sufficiently specific procedures for equipment movement. Thus, that document would be unsatisfactory for use in regulating such operations. It is recognized that a shut-in back-pressure valve may be a redundant piece of safety equipment. However, the final rule only requires this piece of equipment on a well when the tree or BOP stack is removed. Shutting in only the well that is to be worked on or only those in the area adjacent to the well to be worked on leaves the other wells too vulnerable to damage and subsequent loss of control during equipment movement. Shutting wells in only at the surface would not provide adequate protection, since there would be no protection if the wellhead should be knocked off. However, recognizing that some workover operations may involve movement of minimal equipment, a provision has been added which authorizes the District Supervisor to limit the application of the shut-in requirements during the movement of specific types of equipment.

Comment—Two commenters concurred with the requirement of § 250.93 concerning ESD's. Several commenters suggested that the specific location of the ESD station near the driller's console be deleted. They suggested that using the General Plan for Conducting Simultaneous Operations required in proposed § 250.123 was sufficient as a regulatory requirement.

Response—The recommendation to delete the requirement for an ESD station near the driller's console or the well-servicing unit operator's work station in § 250.93 was not adopted. Any other location of the ESD station may not be immediately accessible and may prevent, or at least delay, activation of an ESD. Since the General Plan for Conducting Simultaneous Operations does not contain specific procedures for ESD stations, it is not an acceptable alternative. It should also be noted that the requirement for submitting a General Plan for Conducting Simultaneous Operations has been deleted from the final rule.

Comment—Several commenters suggested that swabbing and pulling tubing be added to § 250.94 as additional operations that require the lessee to take appropriate precautions against the potential release of H_2S gas. One commenter suggested that the phrase "on a well" be deleted from the second line for clarity. One commenter concurred with the requirement as written.

Response—The recommendations have been adopted. The operations suggested by commenters that may lead to H_2S exposure have been added to the operations listed in the final rule (§ 250.94) that require appropriate precautions. Section 250.94 of the final rule also incorporates language which clarifies that an operator is not required to institute the required precautions to protect against H_2S exposure when a workover operation involves a well and zone which are known not to contain H_2S gas.

Comment—Several commenters recommended in § 250.95 that routine operations be deleted from the requirement for approval of subsea operations, stating that, as written, such operations as pulling the safety valves for inspection every 6 months will require MMS approval.

Response—The recommendation that routine operations for subsea completions be allowed without prior MMS approval was not adopted. When subsea technology and operations become routine, MMS will consider deleting "routine" operations from the prior approval process. The text of § 250.95 has been modified to assure a better understanding of what is required.

Comment—Several commenters objected to the requirement in § 250.96 that safety meetings be recorded in the operations log, suggesting that the operators should have the option of determining the document to be used to record safety meetings.

Response—The recommendation was adopted. The operator should be permitted to decide where to verify that safety meetings are held. Therefore, MMS has changed § 250.96 in the final rule to simply require that the information be recorded and available at the facility for review by MMS representatives.

Comment—Several commenters suggested in § 250.97 that welding and burning operations should be conducted in accordance with § 250.52 and that other requirements contained in § 250.97 were redundant. One commenter concurred with the present wording.

Response—The recommendation that § 250.97 simply requires that welding and burning operations be conducted in accordance with § 250.52 was adopted. Section 250.97 of the final rule has been revised accordingly.

Comment—Several commenters recommended that certain requirements in § 250.98 pertaining to electrical requirements be deleted as redundant. One commenter concurred with the present language.

Response—Upon reconsideration, it was decided that § 250.98 should simply incorporate the requirements of § 250.53 by reference in § 250.98. Under the final rule, § 250.98 requires that operations be conducted in accordance with the electrical requirements contained in § 250.53.

Comment—One commenter concurred with the requirement in § 250.99 for structures on fixed platforms as written. Several commenters recommended that the last two sentences of the requirement be deleted, stating that it should be left to the operator to determine the structural capability of the platform.

Response—The recommendation to delete the second sentence of § 250.99 was adopted. This sentence enumerated some of the conditions that affect loading and is not necessary. The recommendation to delete the last sentence of § 250.99 was not adopted. Platforms deteriorate with time and use; hence, in the interest of safety, it is necessary to ascertain that a structure is capable of withstanding the loads that it is expected to experience during its continued use.

Comment—Several commenters suggested that the requirement in § 250.100 be modified to allow for the use of manually operated shutdown devices for diesel engines used in emergency situations or diesel engines continuously attended. These commenters also recommended that further detailed studies be conducted on diesel-engine runaways prior to implementation of any requirements. A number of commenters suggested that the regulation be deleted, contending that it is a significant increase in regulatory burden without sufficient evidence that the requirement is necessary. One commenter stated that the shutdown device does not prevent diesel-engine runaway but only stops the engine in the event of runaway.

Response—The recommendation to modify the language of § 250.100 to allow diesel engines which are continuously attended to be equipped with manually operated shutdown devices was adopted. This change should also cover most diesel engines that are being used in emergency situations. The recommendation to delete the requirement was not adopted. It is recognized that the function of a shutdown device does not prevent diesel-engine runaway, but it can shut down a diesel engine before a fire occurs. Section 250.100 of the final rules permits the use of automatic or remote operated manual shutdown devices for continuously attended diesel engines.

Comment—One commenter questioned the effectiveness of the safety device required in § 250.101. Several commenters suggested that the phrase "all units" be replaced with the phrase "conventional rigs," stating that the required safety device would not apply to all rigs and that hydraulic units that pull doubles are used for well-workover operations; therefore, the proposed safety feature is built in.

Response—It is recognized that units which do not have both a traveling block and a crown block do not need the required safety device. Section 250.101 has been revised to provide that units which have both a traveling block and a crown block shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block.

Comment—One commenter concurred with the provisions of § 250.102 as written. Commenters, addressing other provisions of this subpart, suggested that the General Plan for Conducting Simultaneous Operations mentioned in § 250.123(d) supersedes the requirement of § 250.102.

Response—To avoid confusion, the requirement for submitting a General Plan for Conducting Simultaneous Operations has been eliminated. This action results in the deletion of § 250.102, which necessitates the renumbering of §§ 250.103 through 250.109.

Comment—Several commenters recommended that the authority in proposed § 250.103 (now § 250.102) for the District Supervisor to initiate field rules be deleted. They contend that the operator is best equipped to evaluate the geological and engineering information and propose specific operating requirements for a field. One commenter commended the provisions of the regulation.

Response—The recommendation to delete the District Supervisor's authority to initiate the establishment of field rules was not adopted. In fields where there is more than one operator, MMS personnel have access to all the available geological and engineering data and information required to determine whether field rules are needed. Section 250.102 of the final rule has been revised to clarify that field rules may modify the specified requirements of Subpart F. Proposed § 250.103 has been renumbered § 250.102.

Comment—Several commenters recommended that provision be made in proposed § 250.104(a) (now § 250.103(a)) for oral approval. Many of these commenters also suggested that the last sentence giving criteria for approval be deleted so as to streamline the approval process contending that the 30-day subsequent report contains all necessary information. Also, they suggested that approval requirement for MMS's Districts be standardized. One commenter suggested that the enumeration of routine operations listed in § 250.91 be deleted and that prior approval only be required for work that affects the well-completion zone. The commenter contends that such an approach would be simpler.

Response—The recommendation that a specific provision for an oral-approval process be added to proposed § 250.104(a) was not adopted. Section 250.6 authorizes oral approvals.

The approval requirements of MMS's Districts have been standardized to the extent that the information supplied by the operator for a proposed workover (e.g., operating procedures and OCS subsurface conditions) has been standardized. The recommendation to only require prior approval for work that affects the well-completion zone and to delete the definition of routine operations was not adopted. Such a procedure would lead to significant inconsistencies in operators' determinations of what affects the zone, or it would require MMS to enumerate what operations should be submitted for approval. Section 250.103 (proposed § 250.104) of the final rule has also been revised by deleting the third sentence. Due to the deletion of § 250.102, proposed § 250.104 has been renumbered § 250.103 in the final rule.

Comment—Several commenters recommended that the entire paragraph in proposed § 250.104(b) (now § 250.103(b)) be revised to require only a brief description of the work to be performed, the workover objectives, and a statement on expected surface pressures. The commenters contend that further technical review by MMS is unnecessary and both paper and manpower intensive since the operators thoroughly review their well-workover plans, designs, and procedures. Several commenters suggested that proposed § 250.104(b)(3) is unnecessary and duplicative of § 250.94.

Response—The recommendation that only minimal information be submitted was not adopted. A review of a brief description of proposed well-workover procedures by MMS representatives will assure the use of minimum standards for the safety of operations. It also permits MMS to conduct an analysis and comparison of data not available to the lease operator. The required information is needed to provide for a comprehensive technical analysis of the proposed operation. Consistency in information submittal will help in the consistency of the MMS-approval process. To further clarify what information is needed, the "type and weight of workover fluids" has been added to the information to be submitted for MMS's review. The recommendation to delete proposed § 250.104(b)(3) was not adopted. The purpose of the provision was to require that information be submitted pursuant to § 250.67.

Comment—Several commenters recommended that the additional information required in proposed § 250.104(c) (now § 250.103(c)) not be submitted separately but as part of the well-workover objective. They contend that further technical review by MMS is unnecessary and is both paper and manpower intensive since the operators thoroughly review their well-workover plans, designs, and procedures. One commenter was concerned that MMS's requirement of submitting a reason for abandonment of the present zone may lead to MMS forcing lessees to produce uneconomic zones.

Response—The recommendation was adopted to the extent that the additional information is to be submitted as part of Form MMS–331. The recommendation to drop the requirement for prior MMS review and approval of workover proposals was not adopted. Review of proposed well-workover operations is needed to assure the safety of those operations. That review and analysis may include data and information available to MMS personnel but not available to the operator proposing the work. It is not the intent of MMS to force lessees to produce uneconomic zones but to have all pertinent information submitted to MMS for the review and approval process. Therefore, § 250.103(c) of the final rule has been revised to incorporate appropriate language changes.

Comment—Several commenters recommended that the proposed § 250.105(b) be deleted stating that the requirement is covered and that prudent operations dictate that sufficient quantities of well-control fluids be readily available.

Response—The recommendation to delete proposed § 250.105(b) was adopted.

Comment—One commenter proposed to delete from § 250.105(c) (now § 250.104(b)) the five stands as criteria for filling the hole because, in some cases, this may amount to a minimal decrease in psi.

Response—This recommendation was not adopted. The pulling of stands and assuming a minimal decrease in psi may lead to failure to recognize a swabbing action in the well. Due to the deletion of §§ 250.102 and 250.105(b), § 250.105(c) has been renumbered § 250.104(b).

Comment—Several commenters recommended that proposed § 250.105(d)(3) (now § 250.104(c)(3)) be deleted, and one commenter also recommended that § 250.105(d)(2) (now § 250.104(d)(2)) be deleted. The commenters stated that these requirements pertain primarily to drilling operations, would be difficult and unnecessary in many operations, and that trip tanks would be sufficient for monitoring returns in cased hole operations. One commenter recommended that the audible alarm device be eliminated as it would give too many false alarms because of fluid movement. Several commenters suggested that a new paragraph be added that would exempt operations conducted under pressure (i.e., snubbing and coiled tubing operations) from the requirements of proposed § 250.105 (now renumbered § 250.104).

Response—The recommendation to eliminate proposed § 250.105(d)(2) and (d)(3) (now § 250.104(c)(2) and (c)(3)) was not adopted. Trip tanks are normally used to monitor fill up when drill pipe is being removed from the hole. Returns need to be monitored at all times including when going in the hole on trips. That monitoring should include warning devices which minimize the chance for human error.

The equipment required by the regulations can usually be installed without major modifications. The recommendation that a paragraph be added to exempt operations conducted under pressure was not adopted. If operations are conducted under pressure on a workover rig, the required equipment will already be installed. If they are not conducted on a workover rig, the equipment requirements can be discussed with the District Supervisor. Due to the deletion of §§ 250.102 and 250.105(b), § 250.105(d) has been renumbered § 250.104(c).

Comment—Several commenters recommended deletion of the requirement to submit a well-control procedure from proposed § 250.106(a) (now § 250.105(a)), if the expected surface pressure exceeds the working pressure of the annular preventer. They stated that prudent operations dictate that the annular preventer would not be used in this situation; therefore, the requirement is an unnecessary paperwork burden.

Response—The recommendation was not adopted. The submittal of a well-control procedure simply requires an additional statement on a form that will already be submitted. The well-control procedure will serve to notify both the operator and MMS inspection personnel of the limited protection provided by an annular preventer. The second sentence of § 250.105(a) of the final rule requires that the working pressure rating of the BOP system and system components must "exceed" not just "equal or exceed" expected surface pressure to which they may be subjected. This change will provide a greater degree of protection for the operation and is a change consistent with requirements contained in § 250.56. The phrase "except that the working pressure of the annular preventer need not exceed 5,000 psi" was deleted since this point should be covered by the operator's well-control procedures. Due to the deletion of § 250.102, § 250.106 has been renumbered § 250.105.

Comment—Several commenters recommended the deletion of proposed § 250.106(b)(3) (now § 250.105(b)(3)) and the incorporation of the requirements for a tapered drill string into § 250.106(b)(2) (now § 250.105(b)(2)). The commenters stated that four preventers are adequate for safety when using a tapered drill string. One commenter questioned the need for any additional preventers than those required in proposed § 250.106(b)(1) when using tapered drill string. That commenter also suggested that provisions be included for the use of variable bore rams.

Response—The recommendation to require only four preventers (one pipe ram for each size drill string) when using tapered drill string was adopted where the expected surface pressure is less than 5,000 psi. In this situation, stripping could be done with a pipe ram and an annular preventer. Therefore, MMS has revised tapered drill string requirements in § 250.105(b)(3) of the final rule. The recommendation to include a provision for the use of variable bore rams was adopted. On the basis of comments received on proposed § 250.56(g)(3) on drilling which recommended deletion of the use of a crossover sub, the provision for the use of a crossover sub was deleted from § 250.105(b)(3) of the final rule.

Comment—In proposed § 250.106(c) (now § 250.105(c)), several commenters stated that locking devices are not normally installed on the preventer stack and recommended that the word "on" be replaced by the word "for" in § 250.105(c)(3). All commenters also suggested that the equipment in § 250.106(c)(5) be allowed to have a pressure rating equivalent to the ram preventers or anticipated surface pressure, whichever is less. They stated that higher pressure preventer equipment may be in use than is required.

Response—The recommendation to replace the word "on" with the word "for" in proposed § 250.106(c)(3) was adopted. However, recommendations that the equipment specified in proposed § 250.106(c)(5) be allowed to have a pressure rating less than the preventer equipment were not adopted. If associated equipment were allowed to have a lesser pressure rating than the preventer catastrophic failures might occur when unexpected high pressures are encountered. In order to be consistent with § 250.56(d)(5), proposed § 250.106(c)(5) (now § 250.105(c)(5)) was modified to require that at least one of the valves on the kill line be remotely controlled, except that a check valve may be used in specified situations.

Comment—Several commenters recommended that the BOP requirements in proposed § 250.106(d) (now § 250.105(d)) be reduced to one set of pipe rams and a tubing stripper or annular preventer. They contend that one pipe ram is sufficient and that the crown valve can serve as the blind ram on concentric workovers. Also, they state that on older platforms, there is not sufficient room to stack the equipment required and work in safety.

Response—The recommendations to lessen the BOP requirements of proposed § 250.106(d) were not adopted. If problems develop during the operations, equipment must be available that can be activated immediately. Two sets of pipe rams should always be available to allow for stripping into the hole. If safe operations dictate an alternate configuration, the alternative may be submitted for approval under § 250.3, Performance requirements; however, MMS believes that in some cases, platform modification may be necessary to provide levels of safety and environmental protection equal to or exceeding that provided for in the regulations. Proposed § 250.106(d) is now § 250.105(d) of the final rule.

Comment—In proposed § 250.106(g) (now § 250.105(g)), several commenters stated that there is no wrench to fit an inside blowout preventer. Therefore, the phrase "inside BOP and" should be deleted.

Response—The recommendation has been adopted and the phrase "inside BOP and" deleted from § 250.105(g) of the final rule.

Comment—Several commenters recommended that ram-type BOP's and related equipment required by proposed § 250.107(a) (now § 250.106(a)) be pressure tested to the lesser of (1) the rated working pressure of the equipment, (2) the maximum anticipated surface pressure, and (3) 70 percent of the minimum internal yield pressure of the casing. They also recommended that maximum anticipated surface pressure be included as criteria for determining the test pressure of the annular-type BOP's. They contend that the single testing criteria of 70 percent of the minimum internal yield pressure of the casing for ram-type BOP's may be greater than 5,000 psi and would, therefore, require an upgrade in BOP equipment to 10,000 psi. They also contend that maximum anticipated surface pressure is a prime consideration in selecting a BOP stack and should, therefore, be included as pressure-testing criteria. One commenter suggested that the rated working pressure of the casinghead or components in the BOP assembly be included as testing criteria for ram-type BOP's, contending that testing should not be conducted above the working pressure of the weakest link in the system.

Response—These recommendations have been adopted to the extent that "the rated working pressure of the equipment" has been incorporated as pressure-testing criteria for the ram-type BOP's and related equipment, and recognition is given to the fact that testing to "70 percent of the minimum internal-yield pressure of the casing" criteria may cause a considerable upgrade in equipment. The recommendation to add "the maximum anticipated surface pressure" as pressure-testing criteria for both ram-type and annular-type BOP's was not adopted. Methodologies used in determining the maximum anticipated surface pressure have been too varied for general acceptance as testing criteria. These methodologies have included such concepts as (1) detailed technical calculations, (2) percentages of the anticipated bottomhole pressures, and (3) zero psi with the rationale that if proper mud weights are maintained, no surface pressures will exist. It is generally recognized that test pressure should not exceed the maximum working pressure of the weakest link. However, the recommended changes were not adopted since all associated equipment is required to have a rated working pressure at least equal to that of the ram-type BOP's pursuant to § 250.105(c) of the final rule. In order to avoid confusion or an excessive upgrade of equipment, "the rated working pressure of the equipment" should be the basis for determining testing criteria for ram-type and annular preventers. However, in recognition of the limitations of these criteria, language has been added to § 250.106(a) to allow the District Supervisor to approve other testing criteria. Since variable bore rams were added in § 250.105(b) (proposed § 250.106(b)), a requirement was added to test surface BOP system components with water as this is deemed more appropriate than mud in detecting leaks. Section 250.106(a) (proposed § 250.107(a)) has been revised to incorporate the appropriate recommendations.

Comment—Several commenters suggested that stuck pipe and pressure control situations should only be listed as examples of operations that may cause delays in BOP testing under new § 250.106(b) (proposed § 250.107(b)). The commenters stated that these two situations are not the only operations that may cause delays, and additional flexibility is needed. The commenters also recommended that only the affected seal be tested following repairs as provided in proposed § 250.107(b)(3). Their rationale is that the entire BOP system should not require retesting merely to verify the integrity of a pressure seal.

Response—The recommendation to treat stuck pipe and pressure control operations as examples of operations that may cause delays in BOP testing was not adopted. Any other operations require the prior approval of the District Supervisor before BOP testing is delayed. Section 250.106(b)(2) of the final rule (proposed § 250.107(b)(2)) was revised to permit a delay in the testing of blowout prevention equipment other than blind or blind shear rams. The recommendation that the proposed § 250.107(b)(3) specify that only the affected pressure seal will be tested after repairs requiring the disconnection of a pressure seal was adopted. Section 250.106(b)(2) and (3) of the final rule have been revised accordingly.

Comment—One commenter suggested that in proposed § 250.108(a) (now § 250.107(a)) the paragraph requiring that tubing strings have the necessary strength and pressure integrity and be otherwise suitable for its intended use be deleted because no operator would use unsafe equipment. One commenter concurred with the regulation. Several commenters recommended replacing the word "into" with the word "in" and deleting the phrase "or continued to be used." They stated that the wording is vague, and the requirement is duplicative and unnecessary. Also, they contend that economic justification for equipment replacement should be vested with the operator.

Response—The recommendations for deletion were not adopted. The regulation states the performance requirement that tubing be suitable for its intended use. Safety of operations and protection of the environment are major factors in decisions regarding equipment replacement. Economic justification must be considered but it cannot supersede safety. The recommendation to replace the word "into" with the word "in" was adopted. Due to the deletion of § 250.102, § 250.108 has been renumbered § 250.107 in the final rule.

Comment—Many commenters recommended that the requirement in proposed § 250.108(b) (now § 250.107(b)) be deleted, stating that the regulation departs from performance-type standards, is open to various interpretations, and prescribes operations that a prudent operator would routinely do. Several commenters suggested that the phrase "every 30 days and the results submitted to the District Supervisor" be deleted from the requirement and replaced with the sentence "results of the evaluation will be maintained in the operator's well file." They stated that it is an unnecessary reporting requirement to submit the results to the District Supervisor. They also contend that the operator is best able to determine when the casing should be evaluated and that a time factor only serves as a basis for issuing Incidents of Noncompliance. Another commenter suggested that the phrase "30 days" should be replaced with the phrase "30 operating days" and the pressure testing requirement be deleted from the regulation.

Response—The recommendation to delete the casing testing requirement from proposed § 250.108(b) was not adopted. If operators routinely evaluate the casing as they should, the regulation will not require any additional operations. The recommendation to delete the requirement from proposed § 250.108(b) to submit the results of casing tests to the District Supervisor was not adopted. The District Supervisor needs this information to evaluate the safety of any future operations on a well. The recommendation to either delete the 30-day timeframe or revise it to 30 operating days was also not adopted. Failure to include a timeframe in the final rule could lead to nonevaluations or different interpretations as to what is meant by prolonged operations. In recognition that pressure testing is only one of the possible methods of evaluating the casing integrity, it was retained in the final rule as an acceptable method of testing. The limiting phrase "drilling or extended" was deleted from § 250.107(b) of the final rule to clarify the requirement of the rule.

Section 250.108(c) (now § 250.107(c)) has been modified to include a requirement that the District Supervisor be notified immediately when a sustained casing pressure is observed. The District Supervisor needs this information to assess the situation and, if necessary, require the development and implementation of corrective action.

Comment—One commenter concurred with the regulation in proposed § 250.108(d) (now § 250.107(d)). Several commenters suggested that the phrase "in the vertical run of" be replaced with the word "on" stating that the number of blowouts attributable to wing valves was not given in the MMS rationale. Therefore, no data were presented to support the additional expense. They also stated that the requirement is not consistent with API RP 14C. One commenter recommended that the word "removed" be changed to "replaced" stating that it should not be necessary to change tree configuration unless the tree is to be replaced.

Response—The recommendation that the rule permit surface safety valves to be located on the tree and not specifically in the vertical run was not adopted. The surface safety valve is normally used to shut in wells. If it is located on the wing, it is more susceptible to damage than it would be if it were located in the tree. Additionally, this location will contain well pressure in the lower part of the tree near the casinghead which is the strongest point. The recommendation to require the equipment only if the tree is replaced was not adopted. When a tree is removed, it is an excellent time to make equipment improvements. Section 250.107 of the final rule has been modified by deleting the phrase "If the tree is removed during a well-workover operation," from the second sentence of proposed § 250.108(d).

Comment—In proposed § 250.109(b) (now § 250.108(b)), several commenters suggested that it is unnecessary to test the lubricator each time it is installed, stating that the lubricator union may be broken several times during workover operations on a well while changing wireline tools and that retesting after each change would create unnecessary delays. Many commenters also recommended changing the word "wellhead" to the word "well" stating that lubricators are not installed on the wellhead but on either the tree or the blowout preventer.

Response—These recommendations were adopted. Testing the lubricator each time it is installed would be time consuming and would not enhance the safety of the operation. Testing upon initial installation is all that should be required. A provision has been added which clarifies the condition under which a lubricator assembly is required. This is a commonly used piece of equipment and should present no major modifications in wireline operations. If there is well pressure, the assembly allows for the removal of the wireline and tools without stripping the annular preventer. Therefore, the section has been revised accordingly. Due to the deletion of § 250.102, § 250.109(b) has been renumbered § 250.108.

Subpart G—Abandonment of Wells

The provisions of this subpart were addressed in comments received in response to the proposed revision of the rule published in the **Federal Register** on March 18, 1986 (51 FR 9316), and a proposed revision to 30 CFR 250.44, Wellbore abandonment, published in the **Federal Register** on August 21, 1986 (51 FR 29947). The provisions of the proposed revision of § 250.44 have been incorporated into this consolidated rulemaking rather than being promulgated as a separate action. Subpart G now includes the provisions for protective structures on the seafloor where required and reporting requirements for wells that remain in a temporarily abandoned status. The latter revision provided the specific requirements for the temporary abandonment of a well pending a determination as to whether the well will be completed or permanently abandoned.

The final rule provides for the isolation of resource-bearing and freshwater-bearing zones to ensure protection of the environment and conservation of these resources. Further, the subpart provides for the minimization of structures on the OCS and the prevention of conflicts with other uses of the seafloor and the OCS. It provides for the temporary abandonment of a drilling well and allows the suspension of a former producing well until all of the wells of a particular structure are to be abandoned so that the abandonments may be accomplished in the most efficient manner while maintaining protection of the environment.

During the review of the proposed rule, several changes were identified that should make the language of the regulation clearer.

Subtitles were added to some sections to enhance readability and ease of reference. The phrase "including supportive well logs and test data" was added to § 250.111(a) to ensure that submittals include specific information needed by the District Supervisor to make the approvals where warranted. For the same reason, § 250.111(b) was changed from "results obtained" to "size of casing removed, depth of the casing removal point, and the amount of casing removed from the well."

The various paragraphs were reworded to indicate a specific volume of fill to be used as a minimum in each instance where needed, and wording was changed in some paragraphs to provide consistency in language when describing amounts of cement used.

Comment—One commenter proposed the deletion of a sentence in § 250.110 that no producing well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor. This commenter stated that a well can be profitable for one company to operate but not for another company with different overhead costs and that MMS should not have the authority to make a company continue to operate a marginal well or field when it is no longer in the best economic interest of that company to do so.

Response—This recommendation was not adopted. It is recognized that lessees may have different operating costs. The final rule provides for consideration of these differences by allowing the operator to demonstrate to the satisfaction of the District Supervisor that the well is no longer profitable to the operating company. It is not the intent of these regulations to require a lessee/operator to produce wells at a loss. However, the lessor, in exercising its responsibility for conservation of natural resources and prevention of waste, needs the opportunity to review the abandonment of producible wells or fields prior to action being undertaken.

Comment—Several commenters requested deletion of the general

requirement in § 250.110 to plug and abandon any well which is no longer used or useful for lease operations. Commenters felt this requirement was unreasonable. They stated that over the life of a structure, the number of nonfunctional wells on many platforms is large; production would be lost in an effort to individually plug each abandoned well; and a better method is to wait until all wells on a platform are nonproductive before plugging and abandoning, unless a well poses a hazard to safety or the environment.

Response—Section 250.110 has been modified to clarify the requirement. The purpose of the general requirements of this subpart is to ensure that all wells drilled will be plugged promptly and abandoned when no longer of use to the operator. It is recognized that, as a reservoir is depleted, the abandonment of individual platform wells completed in other reservoirs is not an efficient means of operation and, further, may result in a loss of production. As long as those wells that have been shut in due to a lack of productive capability do not pose a safety hazard and are not causing pollution of the environment, there is no compelling reason to require them to be abandoned individually.

Comment—Several commenters recommended the insertion of the phrase "written or oral" approval in the first paragraph in § 250.111. These commenters stated that former OCS Order No. 3 allowed plugging and abandonment operations to commence after obtaining an oral approval from the District Supervisor. This is critical from a practical standpoint when dealing with dry holes and well workovers where downhole conditions may dictate immediate action such as plugging and abandonment. Waiting for written approval before proceeding with these operations is considered impractical from a safety standpoint and onerous from an economic standpoint.

Response—This recommendation has not been adopted. Provisions for oral approval have been deleted from this section and consolidated in Subpart A, § 250.6, Oral approvals, since oral approvals apply to more than one section of the regulations.

Comment—One commenter recommended the addition of a provision for the abandonment of zones set up as through-tubing alternates, utilizing through-tubing bridge plugs and cement deposited by a dump bailer. This would be an abandonment method other than to clean out and abandon the wellbore as provided in § 250.112. This commenter suggested adding that the cement and plug set for isolation must be tested to a minimum of the calculated pressure differential of the two zones involved. This would satisfy the requirement of permanent abandonment.

Response—This recommendation was not adopted. The comment appears to address abandonment of a lower production zone by placing a bridge plug in the tubing and placing a cement plug within the tubing on top of the bridge plug by means of a wireline bailer. In general, MMS provides for the use of alternative technologies in § 250.3, Performance requirements. However, the suggested abandonment would not meet the requirements of the regulations under any circumstances. Abandonment of a single zone completion within a multiple-completion well by means of plugging the tubing is not sufficient to ensure the isolation of zones within the wellbore. The tubing must be removed and the casing perforations plugged as provided in this section.

Comment—Several commenters felt that the placement and setting depths of additional cement plugs should not be left to the discretion of the District Supervisor. The commenters contend that the requirement for cement plugs to isolate oil, gas, or fresh water zones should be sufficient and, therefore, the last sentence in § 250.112(a) should be deleted.

Response—This comment was not adopted. Well conditions like abnormal pressure, large pressure differentials, long sections of open hole, or other conditions may be encountered which may dictate additional cement plugs to prevent migration of formation fluids.

In meeting its responsibility to ensure safety of operations and prevention of pollution, MMS must retain the discretion to exercise an engineering judgment to require additional plugs where necessary.

Comment—Some commenters recommended a modification in § 250.112(b)(2) which would eliminate the 50-foot minimum cement plug inside the casing on the basis that it "will eliminate many nuisance requests for a deviation to the District Supervisor."

Response—This recommendation was not adopted. This section establishes minimum guidelines for cement plugs and retainers and establishes the requirement for a minimum of 50 feet of cement above the retainer. The MMS believes that a minimum cement plug of at least 50 feet will normally be necessary to assure the integrity of the cement plug across the casing shoe.

Comment—One commenter suggested new wording for the last sentence in § 250.112(b)(2) to clarify this requirement.

Response—The suggestion was adopted and the last sentence revised. In addition, § 250.112 has been restructured, and this requirement is now contained in paragraph (b)(1).

Comment—One commenter recommended changes in § 250.112(c)(1) to set the retainer above the uppermost perforated interval instead of above the top of the perforated interval and proposed a revision of the last sentence for clarification.

Response—The recommended language was not adopted. The abandonment of a well with multiple perforated intervals requires all perforated intervals to be isolated to prevent migration of fluids and pressure between zones in accordance with § 250.112(a). Minor editorial changes were adopted to provide the clarity sought by the commenter and to maintain consistency with the language of previous paragraphs.

Comment—One commenter proposed that the words "if set by displacement, or 10 feet on top of the bridge plug if placed with a dump bailer" be added to § 250.112(c)(2). The commenter asserts that when laying a balanced plug with tubing or drill pipe, 50 feet may be necessary to assure a good plug but that when spotting cement with a dump bailer, 10 feet should be adequate for corrosion protection and the formation of a redundant pressure seal.

Response—This recommendation was not adopted. The MMS has insufficient information to verify that a lesser volume of cement placed by the dump bailer method would provide equivalent safety of a 50-foot plug placed by the displacement method and has elected to maintain the 50-foot guideline for minimum protection against leakage.

Comment—Several commenters suggested an additional abandonment method of "A 200-foot cement plug shall be set by the displacement or bullhead method within 100 feet above the perforations." These commenters stated that this is often the way wells are abandoned in routine operations; yet special approval to effect this type of well abandonment operation is currently required.

Response—The recommended alternative provides for isolation of perforated intervals consistent with § 250.112(c). The recommendation was adopted in part as an additional alternative plugging method. However, the MMS cannot verify the use of the bullhead method as a common practice among OCS operators and has elected not to adopt this part of the commenter's recommendation.

Comment—At § 250.112(d), several commenters suggested an additional abandonment method by placement of a 200-foot long plug within the first 100 feet above the stub. This is often the method used for abandoning wells in routine operations. Currently, special approval is required to effect this type of well abandonment. The addition would simplify the paperwork and approval process.

Response—The recommendation was adopted because it provides the same degree of protection as a cement retainer or permanent bridge plug with cement cap. The paragraph has been rewritten accordingly. The recommended language has been modified to clarify that a plug 200 feet long is a minimum requirement.

Comment—Several commenters proposed the deletion of the word "mud" from § 250.112(h). They stated that a fluid of sufficient hydrostatic pressure should be all that is required by the regulations. "Mud" offers no advantage in some well-abandonment operations.

Response—This recommendation was adopted and the word "mud" was deleted. Although most drilling fluids are referred to as "mud," it is recognized that operators may use other fluids, such as seawater, in place of "mud."

Comment—One commenter recommended that § 250.112(h) be deleted entirely because the requirement that the density of this fluid be sufficient to exert a hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs has no bearing on the effectiveness of the plugs and that the length of the cement plugs and/or appropriate mechanical devices should be sufficient to withstand any differential pressure exerted across them.

Response—It is recognized that fluid density and hydrostatic pressure should be based on the well conditions at the time of abandonment and not necessarily on the formation pressure encountered while drilling. The text in § 250.112(h) has been revised accordingly.

Comment—Several comments were received regarding § 250.112(i). One commenter said that the proposed flexibility for site clearance requirements on abandonments in § 250.112(i) is a desirable feature but that a uniform 15 feet below mud-line requirement is not consistent with rules allowing platforms to remain in place in deeper waters where there is no concern for interference with fishing or navigation. The commenter recommended that the second sentence of this subparagraph be changed since it refers to "all obstructions" being removed, contrary to the flexibility provided in the first sentence. It was recommended that the sentence be revised as follows:

> The lessee shall verify in accordance with § 250.114 that the location has been cleared to the extent required by the District Supervisor.

Response—The recommendation was adopted. It was not intended to require site clearance procedures where the requirement for removal of a wellhead has been reduced or eliminated.

Comment—One commenter recommended that § 250.112(i) be modified to require that the District Supervisor consult with the affected States prior to making a determination on wellhead removal to assist the District Supervisor in determining whether a waiver of wellhead removal would affect other seafloor user groups, particularly commercial fishing interests.

Response—This recommendation was not adopted. The rule provides that removal of a subsea wellhead may be reduced or eliminated when its presence would not constitute a hazard to other users or multiple users, including commercial fishing. Commercial fishing or other uses would have been addressed in the lease sale environmental impact statements and specifically addressed in the EP's or DPP's which described the well. In addition, each plan is reviewed in detail by MMS, other Federal and State agencies, and local agencies and organizations through the mandates of the Act, the NEPA, and the CZMA. The MMS will consult with States and other interests when that action is appropriate with respect to a determination that a subsea wellhead need not be removed.

Comment—One commenter advised that they believe all equipment should be removed from the seafloor, unless it can be shown that removal would be more environmentally damaging than leaving the equipment in place and that this determination by the Regional Supervisor should be subject to consistency with the affected State's coastal management program.

Response—This recommendation was not adopted. The conditions of the requirement, as written, will substantially satisfy the concerns of the commenter for protection of the environment. The waiver of wellhead removal would be approved only when the remaining material would not result in a hazard for other users of the seafloor. This reduction in removal and site clearance procedures will not be permitted in any fishing, multiple use, or known hazards area. Further coastal zone consistency review does not appear to be necessary.

Comment—Some commenters felt that the depth at which the temporary plug is required to be set in § 250.113(a)(2) should be allowed to be deeper than the first 200 feet below the mud line. They recommended that the plug be allowed to be set within the first 500 feet below the mud line. This would allow for more weight when drilling the cement plug, particularly in shallow waters.

Response—This recommendation was not adopted. The MMS believes that, for temporary abandonment of wells which might be reentered, this recommendation would not provide any additional safety margin for reentry without significantly diminishing the objectives of the top plug requirement.

Comment—Several commenters proposed addition of an exemption from this requirement for casing strings which have not been drilled out. This addition would clarify the intent that casing which has not been drilled out needs no cement plug or bridge plug added at the base of the casing string. The float equipment and/or cement left in the casing would provide adequate isolation.

Response—The proposed addition was adopted for clarification. The proposed rule was not intended to require a plug where casing had been cemented, and the casing shoe and cement remaining in the casing had not been drilled out.

Comment—A commenter stated that the "site clearance" requirement in § 250.114 should be tempered by the "rigs to reefs" program.

Response—The "rigs to reefs" policy envisions circumstances under which a few offshore platforms might be left in place where the required artificial reef construction and maintenance permits are obtained from the U.S. Army Corps of Engineers (Corps). The U.S. position on offshore platform removal was developed in interdepartmental policy group meetings with representatives of the USCG, EPA, Corps, and State Department. Significant changes were not required in Title 30 of the Code of Federal Regulations to implement MMS's Rigs to Reefs policy.

Comment—Several commenters stated that it should not be necessary to submit a letter from a service company in order to verify site clearance in § 250.114. A sundry notice with the pertinent information should suffice. It is impractical to hold up submittal of required forms while trying to secure materials from outside sources when

certification by the lessee on a sundry notice is required. Therefore, they suggested a new paragraph (b) that would accept the certification by the lessee or operator submitted on Form MMS–331, Sundry Notices and Report on Wells.

Response—This recommendation was adopted. A Form MMS–332 with pertinent information filed by the lessee bearing the signed certification of the lessee as to the accuracy of data is legally binding and should suffice.

In the **Federal Register** Notice of August 21, 1986 (51 FR 29947), MMS solicited comments on a proposed rule amending § 250.44. Comments and responses to those comments follow.

Comment—Several commenters mentioned the relationship of the August 21, 1986, proposal with the March 18, 1986, proposal, noting that the requirements are different.

Response—The proposed rule in § 250.44 published on August 21, 1986, and the comments received from that proposal have been considered in developing the final rule to the March 18, 1986, proposed rule. This final rule, therefore, integrates the two proposals into a single final rule.

Comment—One commenter indicated that language should be added to the regulation to make it clear that the decision to temporarily abandon the well is that of the lessee.

Response—The rule has been revised to make it clear that the decision to complete or abandon the well is that of the lessee/operator.

Comment—A suggestion was made by several commenters to change the wording of the regulation to indicate that oral approval for the temporary abandonment may be granted. Some indicated that written application and approval would follow the oral approval.

Response—The operating regulations at 30 CFR 250.6 provide that, when written approval is required by the regulations, the lessee may obtain oral approval provided that it is followed by written confirmation. It is not necessary to repeat such a provision at each point in the regulations where a written approval is required.

Comment—A few commenters felt that approval authority for temporary abandonment should be delegated in writing from the Director to the District Supervisor.

Response—The delegation of authority is accomplished through the Department of the Interior Manual and the MMS Manual. The final rule reflects the authority delegated to the District Supervisor to approve temporary abandonment and the method for protection of obstructions left above the seabed resulting from a temporary abandonment.

Comment—One commenter felt that the rule as structured would preclude the lessee from doing additional testing of the well or using the well to test technology, such as recovery technology, while temporarily abandoned.

Response—The final rule establishes minimum requirements for temporary abandonment of wells and does not preclude reentering a well for any purpose, including testing or trial use of new technology. Upon the completion of such testing or trial use, the well must be properly conditioned for temporary or permanent abandonment.

Comment—One commenter felt that the regulation should specifically address redrilling or deepening of the well. Another commenter felt that two distinct classes should be addressed—that of the former exploration or delineation well and that of the former producer.

Response—The suggested distinctions are not necessary. The final rule does not distinguish between the type of well when obtaining approval for temporary abandonment. A well which is redrilled or deepened or a former producer would be treated in the same manner as any other well. The rule is directed at the preparation of the wellbore for temporary abandonment independent of the status of the well prior to abandonment.

Comment—One commenter suggested adding "glory hole" to the list of protective structures.

Response—The MMS recognizes that a "glory hole" may be viewed as a protective structure. Also, MMS recognizes that a protective structure could consist of means other than a mechanical structure. The MMS does not believe that the regulations prohibit techniques or mechanisms other than mechanical structures to protect an obstruction. Wellheads and other equipment located in a "glory hole" that places the structure far enough below the mud line to preclude their being an "obstruction" would not be subject to the protection requirements of this regulation or require additional protection.

Comment—Several commenters felt that a report every 6 months was excessive and that an annual report would suffice. Another commenter felt that such a report was duplicative of an existing requirement to report all casing stubs on the OCS on an annual basis.

Response—This recommendation was adopted. In lieu of individual reports, the requirement is changed to an annual report which lists all such temporary abandonments and describes the lessee's intentions to reenter and complete, or permanently abandon each of the wells.

Comment—Several commenters felt that the requirements for navigation marking were addressed by the USCG.

Responses—After further review, it is recognized that the USCG has authority for regulating the marking of structures on the seafloor and that these areas of concern are adequately addressed at 33 CFR Part 67, Aids to Navigation on Artificial Islands and Fixed Structures. The final rule was changed to read that markings must conform to USCG requirements.

Comment—One commenter felt that it should be made clear that protective structures were not required in water depths greater than 100 feet. Another felt that the depth of the requirement should be at the discretion of the Director.

Response—The requirement for a protective structure was changed in the final rule to be at the discretion of the District Supervisor based on water depth, type and location of a subsea wellhead or other obstruction, and the type and timing of fishing activities in the area. The water depth of 100 feet was based primarily upon past consultations with the fishing industry in the Gulf of Mexico, but the water depth may be deeper in other OCS Regions. The OCS Lands Act Amendments of 1978, 43 U.S.C. 1801(13), established that "the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation [of oil and gas resources]." Since fishing activities and, subsequently, the necessity for protective structures will vary from Region to Region, the installation of protective structures will be based on need rather than on arbitrary water depth criteria. As discussed in the response to a comment in § 250.112(i), commercial fishing activities and other uses of the OCS would have been addressed in the lease sale EIS. Such activities will also be discussed in more detail in site specific exploration or development and production plans and effects of the proposal evaluated in the NEPA environmental review. The permit for drilling and abandonment of the well, including any requirement for protective structures, would be approved by the District Supervisor based on the findings of environmental documents and site specific plan reviews. The District Supervisor will have the opportunity to consult with other interested parties, as appropriate, prior to making final decisions on requirements for protective structures.

Comment—One commenter responded that the rule should make it clear that witnessing is a requirement for permanent abandonment not temporary abandonment.

Response—The section has been restructured to clarify that point.

Subpart H—Production Safety Systems

The requirements relating to production safety systems contained in OCS Order No. 5, "Production Safety Systems," and 30 CFR 250.41(b) have been revised to remove unnecessary and redundant provisions and are incorporated into Subpart H, Production Safety Systems, of the final rule.

Comments concerning proposed Subpart H were received from 21 commenters. This included eight oil and gas companies, nine companies from related industries, two trade organizations, one environmental group, and one Federal Agency.

The comments received suggested both editorial and substantive changes. The comments received and the changes from the proposed rule to the final rule are discussed below.

Comment—In § 250.120, four commenters objected to the requirement in the first sentence that "state-of-the-art methods" be used. Their objections were that the wording can be misinterpreted so as to require the continual retrofitting of existing facilities and that the use of BAST is already specifically addressed in § 250.22. In addition, several commenters objected to the requirement in the last sentence that production not commence until after a preproduction inspection. They felt that this could cause unnecessary startup delays.

Response—The recommendation has been adopted. The first sentence has been deleted and the last sentence modified accordingly. The modification to the last sentence adds some flexibility to the timing of the approval process for the production safety system and preproduction inspection.

Comment—In § 250.121, one commenter recommended adding the phrase "other devices, specifically safety valve locks and subsurface safety valve (SSSV) landing nipples" to the last sentence of paragraph (a). The commenter's position is that well completions that require a wireline retrievable SSSV must have attached to them a safety valve lock and be installed in a SSSV landing nipple to work properly in the completion installation.

Response—For the past several years, there appears to have been some confusion as to the requirements associated with safety valve landing nipples and locks. These requirements are not clearly stated in OCS Order No. 5 but are included in two referenced documents (i.e., API Spec 14A and ANSI/ASME SPPE–1). The requirements were defined in the referenced documents prior to their inclusion in OCS Order No. 5 in January 1980. Therefore, the proposed paragraphs (a) and (b) have been revised to incorporate the requirements for locks and landing nipples. This is a clarification of an existing requirement rather than a new requirement mandating retrofit of existing equipment. Therefore, existing wells not previously equipped with safety and pollution-prevention equipment (SPPE) certified landing nipples and locks will be allowed to continue to operate until such time as mechanical well problems develop which dictate their replacement.

Comment—There were several comments submitted concerning the specifications for surface safety valves (SSV's). Five commenters recommended that § 250.121(b) should not require operators with pre-SPPE SSSV's in inventory to replace them solely on the basis of this requirement. Their position is that operators have many valves in inventory which are performing safely and satisfactorily. Some of the commenters also recommended that a definition of the word remanufacture be included.

Response—The use of the pre-SPPE inventory valves will continue to be permitted. This issue is dealt with in § 250.126. The reference to API Spec 14A and valves which enter the manufacturer's inventory within 3 years of its qualifying performance test date has been deleted since this situation is covered in the SPPE Program documents. A definition for the term "remanufacture" has been added to § 250.126(b)(2) of the final rule.

Comment—In § 250.121 (c) and (d), several comments were submitted concerning surface- and subsurface-controlled SSSV's. They suggested revisions for the sake of clarity, and the change is not substantive.

Response—These suggestions were adopted and appropriate revisions made in the final rule.

Comment—Several commenters suggested that § 250.121(e)(1) should require the SSSV to be installed within 15 days in lieu of 2 days. Their reasoning was that the provision should be consistent with § 250.121(i) which allows removal of a wireline or pumpdown retrievable subsurface safety device for a period of 15 days without further authorization or notice.

Response—The recommendation was not adopted. The intent is to have the SSSV installed within 2 days after the well is stabilized. It should be noted that specific language was incorporated into paragraph (e)(1) to define actions that are considered critical and thus must be approved by the District Supervisor.

Comment—There were several comments submitted concerning § 250.121(e)(2). All comments suggested revisions for the sake of clarity.

Response—These recommendations have been adopted and incorporated into the final rule.

Comment—One commenter suggested rewording § 250.121(e)(3) so as to give the lessee complete discretion as to the necessity of flowing a well while the subsurface safety device is removed. The commenter contends that shutting in the well could cause damage to the well. The commenter also stated that since the platform must be manned when the safety valve is out of the well, there is no reason to require it to be shut in.

Response—This recommendation was not adopted. It is believed that the well should be kept shut in while the subsurface safety device is out of the well unless it can be shown that allowing the well to flow is necessary for a particular operation. The District Supervisor can address specific situations on a case-by-case basis.

Comment—In § 250.121(e)(4), several commenters suggested deleting reference to § 250.126 concerning SPPE–1.

Response—This recommendation was adopted. It is recognized that the SPPE–1 program constitutes requirements for quality assurance programs, attendant accreditation of producers of SPPE, and receiving malfunction/failure reports by operators; the SPPE–1 document does not include requirements for inspection, installation, maintenance, testing, removal, or field repair. In SPPE–1, only paragraph OE–2620 stipulates operator's responsibilities. The rest of the document is applicable to the producer of SPPE equipment. Any reference to operations such as inspection, installation, or testing of SSSV's should be in accordance with the appropriate API RP 14 document.

Comment—Several commenters suggested moving the text from § 250.121(f) to § 250.124. Their position is that this revision would enhance consistency within the document.

Response—This recommendation has been adopted since the provisions of § 250.124 address production safety-system testing and records. The text of proposed § 250.121(f) has been moved to § 250.124(a)(1)(ii) of the final rule.

Comment—In § 250.121(g), several comments were received which recommend the inclusion of the phrase "an injection valve capable of preventing backflow." The commenters' position is that an injection valve installed in an injection well should adequately satisfy the intent of this section.

Response—This recommendation has been adopted. Paragraph (g) has been redesignated (f) in the final rule.

Comment—Several commenters suggested revisions to the wording of § 250.121(h) for the sake of accuracy and clarity of subject matter.

Response—This recommendation has been adopted and the suggestion incorporated into the rule. Paragraph (h) has been redesignated (g). In addition, language was incorporated to define actions that are considered critical and thus must be approved by the District Supervisor.

Comment—In § 250.121(i), one commenter suggested deleting the last sentence in paragraph (i)(3) which sets different requirements for satellite wells the same as other wells. Their position is that satellite wells need to be covered in the same fashion as platform wells. They also contend that operators should not have to deploy personnel to man a well in inclement weather conditions where there are not any accommodations.

Response—This suggestion has not been adopted. The response time for reaction to an undesirable event on a satellite well will be considerably longer than for a platform well. If circumstances warrant relief from this requirement, the District Supervisor has the authority to grant relief from the requirement. Paragraph (i) has been redesignated (h).

Comment—In § 250.121(i)(4), one commenter suggested that the wording "or unless the well is attended" should be incorporated at the end of the first sentence in the paragraph. The commenter's position is that flowing a well to maintain production and prevent loading up should be allowed if the well is attended.

Response—This suggestion has not been adopted. This type of operation should be approved by the District Supervisor on a case-by-case basis.

Comment—In § 250.121(j), two commenters recommended that the wording "other fire detection devices" be added to the last sentence. In addition, wording was suggested that would provide qualifications to cover older existing wells.

Response—The recommendation has been adopted. The proposed requirement may be too restrictive. Platforms exist with other types of systems which have been approved. It is also recognized that the recommended changes would allow industry to take advantage of new advancements in technology. The suggested wording has been incorporated into the rule. Paragraph (j) has been redesignated (i) and paragraph (k) has been redesignated (j).

Comment—In § 250.122, several commenters recommended adding a reference to the pipeline section. Their position is that pipeline safety devices are an integral part of the surface production-safety system.

Response—This suggestion has been adopted. Since requirements for those devices are contained in § 250.154, a reference to that section in § 250.122(b) would be appropriate.

Comment—In § 250.122(c), several commenters recommended adding wording which defined remanufacture.

Response—This suggestion has been adopted and a definition incorporated into § 250.126(b)(2).

Comment—In § 250.122(d), several commenters suggested deleting reference to § 250.126.

Response—The suggestion has been adopted. The SPPE–1 program constitutes requirements for quality assurance program, attendant accreditation of producers of SPPE, and receiving malfunction/failure reporting by the operator. The SPPE–1 document is not the primary source document for requirements for inspection, installation, maintenance, testing, removal, and field repair. In SPPE–1, only paragraph OE–2620 stipulates operator responsibilities. The rest of the document is applicable to the producer of SPPE equipment. Any reference to inspection, installation, testing, etc., of underwater safety valves (USV) and SSV's should be in accordance with the appropriate API RP 14 document, not SPPE–1. In addition, after reviewing the proposed rules, it was realized that § 250.122(d) could be interpreted as allowing leakage from SSV's and USV's. Even though API Recommended Practices allow leakage rates, MMS's current rule does not allow leakage from SSV's or USV's. Section 250.122(d) has been modified to maintain MMS's policy in the final rule.

Comment—In § 250.122(e), several commenters suggested that a number of provisions be deleted. Their position is that submittal of detailed design information for mechanical and electrical systems is a burdensome regulatory requirement for both Government and industry. The commenters also believe that this information has limited regulatory utility and should not be required. The requirement, "Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers," should suffice as evidence of proper design.

Response—This recommendation was not adopted. Detailed design information is needed in the evaluation of production facilities. However, in paragraphs (e)(4)(i)(A) and (B) of § 250.122, the wording regarding the required electrical system information was changed to make it consistent with wording incorporated in the Third Edition of API RP 500B, Recommended Practices for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms.

Comment—In § 250.123(b)(1), several commenters suggested revisions to the wording of this provision for the sake of clarity of the subject matter. They suggested that paragraphs (b)(1) and (b)(1)(iv) should be consolidated. In addition, they suggested that a grandfather clause be added so as to cover uncoded vessels.

Response—The suggestion has been adopted in part. Section 250.123(b)(1)(iv) was modified and merged into § 250.123(b)(1). However, a grandfather clause was not included in these regulations since all nonstamped vessels have been grandfathered in prior regulations. The intent of excluding the grandfather clause is to preclude the installation of any future uncoded vessels. A provision has been included in the rules which would allow the continued use of uncoded vessels only after justification is presented, and the prior approval of the District Supervisor is obtained.

Comment—One commenter suggested adding wording in § 250.123(b)(1)(i) to address redundant relief valves and to exempt them from pressure setting requirements.

Response—This suggestion has been adopted. It has been MMS's policy to exclude redundant relief valves from such requirements. Therefore, language was incorporated into the paragraph to exclude redundant relief valves from the requirement.

Comment—In § 250.123(b), several commenters suggested revisions to the wording for the sake of accuracy and clarity of subject matter. Four commenters suggested that the retention of obsolete pressure recorder charts serves no useful purpose. Their position is that the MMS requirement should be revised so as to require retention of the most recent applicable charts. One commenter questioned when to run a chart so as to establish a pressure range.

Response—The recommendations concerning obsolete pressure recorder charts were adopted and appropriate wording incorporated to address this topic. With regard to when a chart must be run to establish a pressure range, MMS's position is that a new chart needs to be run when the pressure conditions change. This may be required weekly, monthly, yearly, or whenever the conditions change. Appropriate language has been incorporated into paragraphs (b)(1)(iii) and (b)(2)(i) of § 250.123 of the final rule to address this topic.

Comment—In paragraphs (b)(2)(ii)(A) and (B) of § 250.123, several commenters suggested editorial revisions for the sake of clarity of the subject matter.

Response—These editorial revisions have been incorporated into the rule. The wording "two automatic shutdown valves" was replaced with "two SSV's." This is a clarification of an existing requirement rather than a new requirement. The regulatory intent has been to consider the second valve as an SSV since it is used as alternate protection. Therefore, MMS will require the additional valve on the wellhead to meet the ANSI/ASME SPPE–1 requirements.

Comment—In § 250.123(b)(3), one commenter suggested that the paragraph be more specific when addressing safety sensors. In addition, it was recommended that safety sensors be equipped so as to permit testing with an external pressure source.

Response—These suggestions have been adopted, and appropriate language changes have been incorporated into the document.

Comment—In § 250.123(b), several commenters recommended deleting the regulation in paragraph (b)(4)(iii) requiring that the ESD schematic be kept on the platform. Their position is that this schematic will serve no purpose on the platform. In addition, all other schematics, safe charts, deck plans, etc., required by § 250.122(e) can be maintained in offshore field offices.

Response—This suggestion has been adopted. Maintenance of this type of information on unmanned platforms is generally not practical, and the current regulatory requirement, which allows the information to be maintained on the platform *or* nearest field office, has worked well. In addition, in paragraph (b)(4)(ii), language has been incorporated to address the closure requirements of the SSV. The regulatory intent has been to require closure of the SSV within 45 seconds after automatic detection of an abnormal condition or activation of an ESD. This is a clarification of an existing regulation rather than a new requirement.

Comment—In § 250.123(b)(5)(ii), several commenters suggested deleting the automatic shutdown device on diesel engine air intakes. Their position is that the use of automatic air intake shutdown devices on attended engines and those intended for emergency use is not necessary and in some instances (cranes, fire pumps, etc.), may be highly undesirable from a standpoint of safety.

Response—This suggestion has been adopted to the degree that language has been incorporated into the regulation which permits continuously attended diesel engines to be equipped with either remotely operated manual or automatic shutdown devices. Diesel engines which are not continuously attended must be equipped with automatic shutdown devices. Diesel engines in emergency use are normally continuously attended.

Comment—In § 250.123(b)(6), one commenter recommended that the word "dehydration" in the first sentence be changed to "regeneration." The commenter's position is that this change would clarify the intent of the regulation, that is, to protect the reboiler section.

Response—The suggestion has been adopted. As proposed, the protection would have been required to extend to components such as contact towers, flash tanks, filters, and pumps. The object of the requirement is to protect the reboiler section. Therefore, to clarify MMS's intent, MMS has deleted the words "of all glycol dehydration units" from the final rule.

Comment—Several commenters recommended revisions to the wording in § 250.123(b)(7) for the sake of accuracy. In addition, four commenters recommended that reference be made to the requirements of API RP 14C. Their position is that there are requirements for pressure safety high, pressure safety low, and level safety low that are not always needed on vapor recovery compressors. The 1986 Edition of API 14C allows one to eliminate certain devices if conditions described in the safety analysis checklist are met.

Their position is that the proposed rules should continue to allow this exception procedure.

Response—These proposed regulations were based on the 1981 Edition of API RP 14C. The recognition of the provisions of the 1986 Edition of API RP 14C is being handled by a separate rulemaking action. The requirement of paragraph (ii) has been included in paragraph (i), and the subsequent paragraphs have been redesignated accordingly.

Comment—In § 250.123(b)(8), several commenters recommended editorial revisions to the wording.

Response—The text of this provision has been revised for clarification of its meaning. A sentence was added to address closed platform installations. The API RP 14G only addresses "open" platform installations. In addition, a statement concerning subfreezing conditions was included in paragraph (v). These changes provide flexibility in design while still requiring the use of proven equipment.

Comment—In § 250.123(b)(9), several commenters proposed wording which reflects MMS's policy presently followed. In addition, three commenters recommended that the proposed flow rates to define "adequate ventilation" exceed those rates included in API RP 500A, 500B, and 500C.

Response—It is recognized that API has investigated what constitutes adequate ventilation. The rule has been revised to recognize accepted standards for adequate ventilation. The revised paragraph defines adequate ventilation in an enclosed area and references API RP 500B in defining a classified area. It is believed that these changes will address the concerns of the commenters.

Comment—Several commenters recommended the addition of a reference to the electrical requirements under Subpart D in § 250.123(b). Editorial revisions to paragraph (b)(9) and the redesignation of paragraph (b)(10) as paragraph (b)(11) were also recommended. Their position is that this would make it consistent with the revisions made under fire- and gas-detection systems.

Response—This recommendation has been adopted to assure that production personnel are aware of these requirements. A new paragraph (b)(10), Electrical Equipment, has been added and paragraph (b)(10), Erosion, redesignated to paragraph (b)(11) in the final rule.

Comment—In § 250.123(b)(10), several commenters recommended changes to provide additional flexibility in maintaining erosion control records.

Response—These suggestions have been adopted in that the development and implementation of an information program of this type is usually handled by the technical staff at an onshore office. Since much of the data collected under an erosion control program requires extensive technical analysis and evaluation, maintenance of such

records in an offshore field office would serve no practical purpose. The lessee should have the flexibility to maintain such records at the most appropriate location. Therefore, appropriate revisions have been incorporated into paragraph (b)(10) (now designated (b)(11)).

Comment—Several commenters recommended deleting the word "installation" in paragraphs (c)(2)(i), (ii), and (iii) of § 250.123. Their position is that operations such as testing, recordkeeping, and inspections are not necessary if devices are not required to be installed. In addition, it was recommended that the words "downstream of the choke" be deleted from paragraph (c)(2)(ii) to permit covering pressure sensors which could be located on the upstream side of the choke.

Response—These recommendations have been adopted, and the rule has been revised accordingly. If a well is shut in, downstream sensors serve no useful purpose. Paragraph (c)(2)(iii) was eliminated. A flow safety valve (FSV) is required on a header if a well is disconnected since this safety device is designed to prevent backflow.

Comment—Several commenters suggested that simultaneous operations be approved by the Regional Supervisor in lieu of the District Supervisor. Their position is that approval by each MMS District Supervisor presents an unnecessary administrative burden and results in different requirements within each District. They conclude that regional approval would result in consistent and safer simultaneous operations.

Other commenters suggested that the "general plan for conducting simultaneous operations" supersede various requirements in other subparts.

Response—In order to clarify that a general plan does not supersede the requirements in other subparts of the regulation, the requirement that a plan be submitted in § 250.123 has been eliminated.

Comment—Several commenters recommended adding a new paragraph entitled "Welding and burning practices and procedures." Their position is that specific requirements for welding and burning operations are now found only under Subpart D, Drilling Operations. To assist production personnel in locating these requirements, a reference to § 250.52 of Subpart D should be included in Subpart H.

Response—This recommendation has been adopted, and a new paragraph (d) entitled "Welding and burning practices and procedures" has been added.

Comment—Several commenters recommended referencing API RP 14B in paragraph (a)(1)(i) of § 250.124. This is necessary for clarity and completeness since SPPE–1 does not contain the necessary information to comply with the requirements of this paragraph. Additional editorial changes were also recommended.

Response—These recommendations have been adopted. In addition, as discussed earlier, the text of proposed paragraph (f) in § 250.121 is transferred to paragraph (a)(1)(ii) in § 250.124. This will consolidate the testing requirements for subsurface safety devices. Paragraphs (iii) and (iv) are added to include testing requirements for tubing plugs and injection valves. These requirements are in OCS Order No. 5 and were inadvertently omitted from the proposed rules. The API RP 14 B which permits leakage rates for SSV's, USV's, SSSV's, and FSV's has not been adopted. This recommended practice permits leakage rates of up to 400 cc/min. for liquid and 15 cubic feet/min. for gas. On a heat release basis, both of these rates equate to approximately 900,000 Btu/hr. Since these leakage rates are unacceptably high, language has been incorporated into the regulations to permit leakage rates for SSSV's and FSV's of up to 200 cc/min. for liquid and 5 cubic feet/min. for gas. No leakage is permitted from SSV's and USV's.

Comment—Several commenters recommended changes in § 250.124(a)(2) and (3). They stated that the pressure safety valve (PSV) test tolerance in API RP 14C Appendix D required by paragraph (a) is ±2 psi. Their position is that this is not suitable for testing PSV's on atmospheric tanks which are usually set at less than one psi. Therefore, they recommended that disassembly and inspection of these devices should satisfy the intent of this section. In addition, it was recommended to include a paragraph to address shutdown valves located in liquid discharge lines which are activated by a vessel low-level sensor.

Response—This recommendation has been adopted in order to assure consistency with current regulatory requirements.

Comment—Several commenters recommended that § 250.124(a)(4) reference API RP 14C instead of § 250.126. This is because § 250.126 references SPPE–1 which in itself does not contain the information necessary to comply with the paragraph. Their position is that the SPPE–1 program constitutes requirements for quality assurance programs, attendant accreditation of producers of SPPE, and receiving a malfunction/failure reporting by the operator.

Response—This recommendation has been partly adopted. The SPPE–1 document does not include requirements for inspection, installation, maintenance, testing, removal, and field repairs. In SPPE–1, only paragraph OE–2620 stipulates operator's responsibilities. The rest of the document is applicable to the producer of SPPE equipment. Any reference to operations such as inspection, installation, and testing of SSV's should be in accordance with the appropriate API RP 14 document, not SPPE–1. The appropriate section of API RP 14H was referenced since this section specifically covers testing of SSV's.

Comment—Several commenters suggested word changes in § 250.124(a)(5) in the interest of clarity. Other commenters suggested that the leakage rates be increased from 200 cc/min. to 400 cc/min. for liquid and from 5 cubic feet/min. to 15 cubic/min. for gas.

Response—This suggestion has not been adopted. The API permitted leakage rates of up to 400 cc/min. for liquid and 15 cubic feet/min. for gas are considered to be excessive. On a heat release basis, both of these rates equate to approximately 900,000 Btu/Hr. Therefore, the rule permits leakage rates for FSV's of up to 200 cc/min. for liquid and 5 cubic feet/min. for gas.

Comment—Two commenters recommended deleting the phrase "which can be nondestructively tested" in § 250.124(a)(6). Their position was that Temperature Safety Highs that cannot be nondestructively tested would be replaced every 6 months.

Response—This suggestion has not been adopted. The proposed change may require a process component to be shut in every 6 months.

Comment—Three commenters recommended addressing testing of fire detectors in § 250.124(a)(8).

Response—This recommendation has been adopted. Specific wording addressing "nondestructive" and "open flame" testing has been included in the final rule.

The requirements of § 250.125, Safety device training, have been transferred from Subpart H to Subpart O.

Comment—Several commenters recommended the API Quality Program API Spec Q1 as an option to the ANSI/ASME SPPE–1 program in § 250.126. Their position is that the new API program for equipment quality is comparable in many respects to MMS's proposed requirements in § 250.126.

Response—The MMS agrees that it may be appropriate to recognize other quality assurance programs for the manufacture of safety and pollution-control equipment as being acceptable alternatives under the rule. Information has been added to § 250.126 directing interested parties where to submit alternate quality assurance programs for evaluation. The MMS is currently evaluating the API SPEC Q1 program as a possible alternate option to the ANSI/ASME SPPE-1 program.

Comment—There was one comment to delete the grandfather provision in the ANSI/ASME SPPE program.

Response—The MMS recognizes that the grandfather provision of existing rules has not been clearly understood. A new clarifying provision has been added to § 250.126 to resolve this matter. Under § 250.126, each lessee is to submit a list of SSV's, USV's, and SSSV's in its inventory as of the publication date of this rule. Safety and pollution-prevention equipment will remain on the list until the equipment is removed from service as a result of failure or malfunction or for remanufacture at which time the equipment will be removed from the list. Valves on that list will be acceptable for use in the OCS. All other SSV's, USV's, and SSSV's installed after the effective date of this rule must be manufactured, installed, and maintained in accordance with an MMS approved quality assurance program.

Subpart I—Platforms and Structures

Subpart I, Platforms and Structures, merges the provisions of the four regional OCS Orders No. 8 into a single set of regulations which apply generally to platforms and structures in the OCS. However, different geological and environmental conditions in the Regions continue to make it necessary to retain certain specialized requirements, e.g., icing effects in colder areas.

During MMS's review of the proposed rule and public comments, several revisions were identified in Subpart I that were editorial in nature and serve to more accurately reflect the intent of the regulation. These changes were not substantive and were made to the final rule. All references to MODU's and mobile drilling units were classified in this subpart as MODU's to achieve internal consistency and consistency with Subpart D. Similar editorial revisions were made to change the references to fixed platforms, fixed drilling platforms, platform, drilling unit, and structure to "platform" throughout this subpart and Subpart D.

Numerous comments to the proposed rule recommending changes editorial in nature, correcting referenced paragraphs, adding clarifying words or phrases, or revising the language of the regulation to increase clarity or eliminate redundancy were adopted by MMS, and the final rule has been revised accordingly. Many of those revisions are identified in the following discussion. Substantive comments and the respective responses are discussed under the heading of Comments and Responses.

Paragraph (f) of § 250.130 was rewritten to clarify the intent and eliminate redundant language. A new item (D) was added to § 250.131(b)(1)(v) requiring lessees in Alaska to submit plans for periodic inspections of platforms in accordance with § 250.142. The phrase "gravel or silt islands" was changed to "manmade islands" throughout the subpart since islands can be constructed of materials other than gravel or silt.

Section 250.131(b)(4)(iv) was modified to more accurately reflect the design criteria information that is to be submitted. The reference to inspection of platforms in § 250.132(a) was deleted since inspection requirements are addressed elsewhere in the subpart. Paragraph (c)(2)(iv) of § 250.134 was restructured to make it clear that, in general, the risk of experiencing maximum specified design events is to be held constant.

The words "construction and" were replaced with the words "fabrication or" in the introductory paragraph of § 250.135(c)(2) to better describe when the live loads would be encountered.

A phrase to better define the platforms to which the section applies, i.e., those located in areas associated with ice movement, was added to § 250.135(d)(4)(i). Similarly, the phrase "where appropriate" was added to § 250.135(e)(2). A phrase "for structural purposes" was inserted between the phrases "are used" and "the mechanical" in § 250.137(a)(2)(iv) to clarify when properties of material data are to be submitted.

The phrase "design earthquake loads" was changed to "loads induced by earthquake ground motions" to clarify the intent of § 250.137(c)(2)(iii).

The word "than" was inserted between the phrases "allowable stress less" and "the yield stress" at § 250.137(c)(4)(iv). While this does change the meaning of the sentence, the original omission was an error which could be inferred from reading the sentence. Paragraph (c)(5) of § 250.137 was restructured and revised to clarify the purpose of the required ductility analysis. The language of § 250.139(a)(1) was corrected to avoid unintentional exclusion of certain types of piles and platforms.

In § 250.139(b)(1)(i), the phrase "characteristics of the site" was added, and the phrase "familiarity of the area" corrected to "similarity of the area" to allow the use of appropriate available data and more clearly reflect the intent of the paragraph. The term "seafloor survey" was changed to "shallow hazard" survey in § 250.139(b)(1)(i)(A) and § 250.139(b)(2) to better characterize the survey to be conducted. Section 250.139(b)(1)(ii) was reworded to make clear that existing data could be used where deemed applicable and sufficient. The wording of § 250.139(b)(2)(ii)(B) was revised for clarity. The last sentence of § 250.139(b)(4)(i) was revised to clarify the intent.

In § 250.139(c)(1)(i), the phrase "analysis of the safety of the foundation" was changed to "design of the foundation" to more accurately reflect the intent of the requirement. Similarly, the phrase "with respect to changes in soil characteristics" was added to § 250.139(c)(2) to make clear the factors to which cyclic loading effects apply. The order of paragraphs (i) and (ii) of § 250.139(c)(3) was reversed to enhance clarity. Section 250.139(c)(4)(i) was rephrased to clarify the intent of the paragraph. The phrase "deteriorating soil strength" was corrected to "deterioration of strength" in § 250.139(c)(5)(ii).

The phrase "Post installation loadings" was changed to "In-place platform loadings" to more clearly define the loadings that are to be addressed by § 250.139(c)(6)(ii). The phrase "and between piles in a group" was added to § 250.139(d)(1)(iii) to clarify the interactive behaviors to be addressed by the regulation.

The title of § 250.139(e) was changed from "Gravity platform" to "Gravity platform foundations" to make it consistent with similar paragraph titles in this section. The phrase "local contact pressure due to irregular contact" was changed to "local pressures due to irregular contact" in § 250.139(e)(3)(iii).

The comments of a more substantive nature and MMS's response to those comments are presented below.

Comment—In the preamble to Subpart I, the MMS invited recommendations as to whether the requirements of the proposed Subpart I or the requirements of API RP 2A or those of the American Bureau of Shipping (ABS) would best assure the desired structural integrity of offshore platforms. Several commenters recommended the use of API RP 2A, and one commenter recommended the use of ABS rules for offshore installations.

Response—A new paragraph (g) has been added to § 250.130 which requires that in addition to, and where they do not conflict with, the requirements in Subpart I, the requirements for platform design, fabrication, and installation specified in the documents entitled API RP 2A: Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms; or American Concrete Institute (ACI) 357R, "Guide for the Design and Construction of Fixed Offshore Concrete Structures," shall be followed when appropriate. These documents are widely used and are frequently updated to reflect the knowledge and experience of the offshore industry as it evolves. The specific design and construction details they contain can aid operators to meet several of the performance-oriented requirements of Subpart I.

The ABS rules were not deemed appropriate for inclusion in the final rule. The ABS's rules are similar to the requirements under Subpart I and also reference, in general, the API and ACI codes and standards.

Comment—The MMS also invited comments "as to whether alternatives to the third-party verification program are available which would better and more economically accomplish the purpose of that program." Several commenters responded to this invitation with essentially identical comments. Their response was that this program, or any alternative program, was unnecessary, costly, time consuming, and contributed little to the safety, security, and integrity of OCS platforms. They recommended the program be eliminated. A few of the commenters felt that the program had functioned well and recommended the program be continued. One commenter stated that the third-party verifier had supplemented existing company programs with a minimum of added burden.

Response—The recommendations to eliminate the program were not adopted. Experience since 1980 has shown that numerous problems have occurred in the design and construction of many of the structures subject to the requirements of the program. Technical oversight by MMS ensures that such problems are acknowledged and resolved. Further, it is our opinion that the level of effort and expertise of some lessees has risen, in part because of the existence of the Platform Verification Program. Several favorable comments were received from respondents who have had experience with the program. Further, incorporation of fabrication and installation Certified Verification Agent (CVA) inspections into an operator's inspection effort can minimize the lessee's economic burden.

Comment—One commenter suggested that a statement should be included in § 250.130(b) requiring that written approval by the Regional Supervisor be received by the lessee prior to installation of the platform or structure. The commenter also noted that timeframes were not specified for submittals or approvals.

Response—This recommendation that the written approval of the Regional Supervisor be obtained prior to platform installation was adopted and § 250.130(b) was revised accordingly. The recommendation that timeframes be specified for submittals and approvals for platform installation plans was not adopted. These plans are very complex, and each is designed to address problems unique to a specific platform proposed for a specific offshore location.

Comment—One commenter recommended that all platforms should be subject to the Platform Verification Program in § 250.130(c). The commenter suggested that the determination of whether or not a platform design is "novel" to a particular "area" as specified in paragraph (c)(4) is difficult to make since neither "novel" nor "area" is defined. The respondent also suggested that the determination of whether an area is seismically active requires the establishment of a threshold level in § 250.130(c)(5).

Response—This recommendation has not been adopted. Platforms installed in the shallow waters of the mature areas of the GOM need not be subject to the Platform Verification Program. Hundreds of these platforms have been installed over the years. A substantial number of designers and construction firms have a significant amount of experience in the design, fabrication, and installation of these platforms. The present MMS approval process provides adequate review of the plans for these platforms.

Good engineering judgment coupled with guidance found in documents such as API RP 2A are used to determine when the seismicity of an area is to be a significant design consideration. In seismically active areas, wave, wind, and current induced loads greatly exceed seismically induced loads. All loading conditions need to be checked. Thus it is not necessary to define a specific threshold level of seismic activity.

Comment—Several commenters expressed the view that industry has gained enough experience to change the threshold water depth limit for platform verification from 400 to 600 feet in § 250.130(c)(1). A few respondents suggested new wording for paragraph (c) which they deemed to be simpler and more straightforward than the proposed language.

Response—The recommendation to extend the threshold water depth from 400 to 600 feet has not been adopted. It is recognized that operations in the shallow water 400 feet and less of the GOM have a well documented record of satisfactory performance. That record is the reason for limiting the application of the detailed requirements of the Platform Verification Program to structures that are to be installed in over 400 feet of water. It is premature to extend the threshold water depth from 400 to 600 feet. The number of platforms installed in water deeper than 400 feet is relatively small, and the operating history of these platforms is relatively short. The modified rewording for § 250.130(c) was adopted.

Comment—One commenter recommended that the last sentence of § 250.130(d) be changed so that the definition of "major modifications" includes changes which "exceed or may cause to exceed the original design loading of the platform."

Response—This recommendation was not adopted. The wording of paragraph (d), as written, adequately covers the cited contingency. Such changes referred to by the commenter would indeed constitute a major alteration of the original plan, but they need not be specifically cited in the regulations.

Comment—One commenter recommended that major repairs of damage not require the approval of the Regional Supervisor as specified by § 250.130(e)(1) if such repairs restore a platform to original conditions.

Response—This recommendation was not adopted. A determination of whether the platform has been restored to its original condition is a matter of judgment, and the Regional Supervisor is responsible for making or concurring in that determination. For those cases where restoration exactly duplicates the original fabrication, the Regional Supervisor's approval should be readily obtained unless it is determined that the original conditions provide insufficient protection.

Comment—A new paragraph was proposed for inclusion in § 250.130 by a few commenters who felt that implementation of § 250.134 through 250.144 can best be accomplished by reference to well developed codes, standards, and practices which represent the constantly evolving knowledge and experience of the offshore industry. Two codes they consider most appropriate for this purpose are API RP 2A and ACI 357R.

Response—This recommendation was adopted with minor modifications, and a new paragraph (g) was added to

§ 250.130. The use of API RP 2A is a recognized means to fulfill Platform Verification Program requirements. The MMS's personnel participated in the development of the ACI 357R document.

Comment—A few commenters recommended that grid coordinates, as required at § 250.131(b)(1)(ii), be given in only one of the three grid coordinate systems with the selection based on the site location. They felt that any duplication of latitude and longitude coordinates, the Univeral Transverse Mercator, State Transverse Mercator, or State Lambert Coordinate systems is unnecessary.

Response—This recommendation was not adopted. The MMS, USCG, adjacent coastal States, and other users of marine location information utilize the different coordinate systems. The reporting of a platform location in all three systems reduces the potential for error, provides a quick and reliable mechanism for crosschecking the reported location, and ensures greater accuracy in the location of platforms on maps using one of the different coordinate systems.

Comment—A few commenters recommended that § 250.131(b)(4)(v) be deleted in its entirety because they believed that it could result in large volumes of work to prepare extensive drawings to satisfy this requirement. They further stated that they felt it to be an unnecessary submittal since "a platform is either designed within the requirements or it is not."

Response—This recommendation has not been adopted. Satisfying this requirement does not result in large work volumes or extensive sets of drawings. The sketches called for are small, one-line sketches with only the bent or row numbers indicated, which need not be to scale and can be drawn on size 8 ½" x 11" paper. For further details, the CVA or MMS can simply refer to the structural drawings called for in § 250.131(b)(1)(iii). While all platforms must be designed within the requirements, they are designed with varying degrees of conservativeness. These simple sketches allow the CVA and MMS to grasp the degree of conservativeness used in a particular design (or for selected members in a design). In many cases, this knowledge can be used to justify what may otherwise be judged questionable assumptions or results in other aspects of a platform's design. Such information aids the reviewer in evaluating all assumptions and results. The MMS has, in the past, required these sketches of lessees and has not received any negative comments regarding unreasonable workloads.

Comment—A few commenters recommended that the wording of the last sentence of § 250.131(b)(1)(iv)(B) be slightly modified to clarify the intent of this requirement. One commenter recommended its deletion, claiming fulfillment of § 250.131(b)(3)(ii) will make a fatigue analysis unnecessary.

Response—The recommendation to modify the last sentence was adopted. The respondent who recommended deletion did not demonstrate how a description of the effect of environmental and functional loads on the soil foundation required under § 250.131(b)(3)(ii) relates to the need for a structural fatigue analysis.

Comment—A few commenters felt that the requirement for certification of plans and specifications proposed at § 250.131(d) would greatly increase the volume of documentation to be submitted. They recommended that the requirement found in OCS Order No. 8 be retained, as it was more appropriate and addressed maintenance of the structure whereas the proposed language did not. They further felt that the term "detailed structural plans" needed to be defined.

Response—This recommendation was adopted and appropriate language changes made.

Comment—One commenter recommended that the notification period be changed from 1 week to 48 hours since the 48-hour notification is current practice and is sufficient notification.

Response—This recommendation was not adopted. Current practice, as found in OCS Order No. 8 requirements, is one week. This has been the practice since at least 1980 for GOM and Pacific OCS Regions and since 1982 for the Alaska OCS Region. Reducing this requirement to 48 hours would make MMS's scheduling its witnessing of load-out and tow-out activities difficult. Should this notification period present a problem on a particular project, then a waiver may be requested.

Comment—One commenter recommended that a section of the dispute procedures from the present MMS document "Operating Procedures for the OCS Platform Verification Program" be incorporated into § 250.132. This commenter felt that a means for settling disputes is needed.

Response—This recommendation has not been adopted. Disputes are inherent to the lessee/lessor relationship, and procedures for handling them are covered in the lease contract, the law, and the regulations.

Comment—One commenter expressed some concerns about the qualification and selection process for identification of a CVA as given at § 250.132(b)(1). The commenter felt that companies, as well as the individuals within the companies, should be qualified for verification projects. Further, the commenter recommended that a maximum of six to eight CVA companies should be prequalified by MMS and that only these companies should be allowed to act as CVA's. All of these companies would be required to maintain the capability to function as CVA's for all three facets of verification namely design, fabrication, and installation. The commenter further recommended that a uniform system of verification should be developed such that all projects are verified in essentially the same manner and with the same amount of CVA effort for each project.

Response—This recommendation was not adopted. It is not considered desirable to limit competition between CVA's. The respondent failed to demonstrate any significant benefit to the Government or to the lessee that would result if CVA's were required to perform all three CVA functions. Such a move could serve to prevent some of the more qualified CVA's from participating in the Platform Verification Program. Under current procedures, companies, as well as individuals within companies, can be qualified for CVA projects. However, the emphasis is placed on the individuals who provide the expertise and actually carry out the work. The qualifications of those individuals are of paramount importance to assuring effective implementation of the program. The Platform Verification Program was designed to allow lessees a degree of flexibility in defining the extent of the verification effort for a particular project. It is MMS's responsibility to assure that proposed verification plans satisfy these minimum requirements. Any specific CVA effort which exceeds these minimum requirements is at the lessee's option.

Comment—One commenter recommended that paragraphs (C) and (D) be deleted from § 250.132(b)(1)(ii) since company size and computer capability are not the only indications of qualifications.

Response—This recommendation has not been adopted. These paragraphs identify a total of six indications of qualifications for a CVA. All play a part in determining the ability of an applicant to properly function as a CVA, and the criteria cited in paragraphs (C) and (D) are indicative of the resources available to the person or company to accomplish the task.

Comment—One commenter recommended that the word "abstracts" in § 250.132(b)(2)(ii) be changed to "description" since it may, as used in this paragraph, imply that a lessee must reveal the actual computer programs.

Response—This recommendation has not been adopted. Webster's New Collegiate Dictionary defines abstract as "a summary of points usually presented in skeletal form." That definition describes the nature of the information to be submitted pursuant to this paragraph.

Comment—A few commenters recommended that the wording of § 250.132(c) be changed to allow resubmittal of only those portions of the plan which are affected by a change in status. Such an allowance would reduce the lessee's burden of resubmittal considerably in some cases. Several commenters also suggested the CVA should be able to substitute project personnel as necessary without having to resubmit the plan.

Response—This recommendation was adopted in modified form. A change in personnel assigned to carry out a particular project will require the submittal of the qualifications of the newly assigned personnel to MMS for approval. This procedure is necessary to assure that qualified personnel are being substituted for personnel previously approved by MMS. Other portions of the plan need not be resubmitted when there are no changes from those portions of the approved plan.

Comment—A few commenters expressed opinions regarding the requirements of paragraphs (1)(v), (2)(v), and (3)(iv) of § 250.133(a). One felt that the specified 6-week period, within which the CVA must submit his design report to MMS, is too short; the other felt that it is too long. Also, one considered the requirement that the CVA include a recommendation to MMS in the report to either accept request modification(s) or reject the proposed design to be an excessive and expensive burden to the operator. Each commenter applied their respective lines of reasoning to the fabrication and installation phases.

Response—These recommendations were not adopted. The 6-week submittal period is considered to be adequate for the CVA and reasonable for the lessee. To date, no serious problems have developed as a result of this requirement. Further, a CVA's recommendation to MMS regarding a lessee's platform design or construction can be construed as being burdensome and expensive only if the lessee fails to meet the minimum standards for safety. The CVA's recommendation is an informed opinion based on observed data and activities. The MMS needs this informed opinion to assure that the owner/operator has in fact complied with minimum safety requirements.

Comment—A few commenters feel that CVA's should not notify MMS of changes to design specifications or fabrication procedures as provided at § 250.133(a)(2)(iv) unless they have first informed the lessee of such changes, and the lessee has decided to accept them. Both commenters proposed new wording for this requirement.

Response—This recommendation was adopted. Any changes which the CVA might propose, which are unacceptable to the lessee, must be made acceptable to the lessee and MMS prior to MMS's approval of the fabrication plan.

Comment—One commenter recommended that the words "individuals or" be deleted from § 250.133(a)(5). This commenter found the wording regarding conflict of interest less specific than the commenter's suggested wording. The commenter felt that the suggested wording will be less likely to be misinterpreted by lessees.

Response—This recommendation was not adopted. As stated in the response to comments concerning paragraphs (b)(1) and (c) of § 250.132, the individual(s) who actually carries out the work is more critical to the success or failure of a platform verification effort than the company for which that person works. The number of different circumstances in which conflict of interest judgments must be made is too large to allow the development of a very specific all inclusive statement on the subject. Thus each situation must be judged on its own merit. However, the text of this paragraph has been revised to indicate that its provisions include the appearance of a conflict(s) of interest.

Comment—One commenter recommended that in § 250.133(b)(1) only one CVA be retained on each project, and that CVA's be used for all three phases (design, fabrication, and installation). The commenter doubted that a fabrication CVA can adequately judge the acceptability of deviations from the verified design documentation.

Similarly, the commenter feels that CVA's without design experience can have difficulty in assessing such things as the severity or the possible damage to the jacket during transport from the yard to the site.

Response—This recommendation was not adopted. The reasons are stated in the response to comments regarding proposed § 250.132(b)(1). Fabrication and installation CVA's do not necessarily have to have design experience in order to properly carry out their responsibilities. A design consultant or the design CVA can be consulted by the construction CVA's or lessee should a need for that expertise become apparent.

Comment—One commenter noted that only reasonably anticipated loadings should be considered under § 250.135 (e.g., earthquake loads in California and Alaska but not the Gulf of Mexico).

Response—No change was made in § 250.135. The requirements as presently worded do not require the consideration of loads which cannot reasonably be anticipated on the leasehold. Note response to the comment of § 250.137(c)(5).

Comment—One commenter recommended that the requirement at § 250.135(c)(4), regarding accidental loads, be eliminated in its entirety.

Response—This recommendation was not adopted. Use of accidental loads is not required, only the consideration of those loads. There have been cases where accidental loads were incorporated into the design of a platform. Quantification was necessary in those cases.

Comment—A few commenters recommended that the requirements of subparagraphs (iv), (v), and (vi) of § 250.135(c)(4) be eliminated due to the lack of viable estimated load data with which to accurately quantify loads.

Response—The recommendation was not adopted. The difficulties of accurately quantifying the loads addressed in these subparagraphs is recognized. For this reason, the requirement is worded to permit the lessee to make its best effort. Special problems require special treatment on a case-by-case basis. The MMS is aware of one platform design which considered and quantified explosive overpressure loads and of another platform design which incorporated mechanisms to dissipate the energy of colliding icebergs.

Comment—One commenter recommended that the requirement at § 250.135(c)(5)(ii) be eliminated since it precludes the consideration of wave directionality and platform orientation.

Response—This recommendation was not adopted. The MMS interprets § 250.135 to permit site specific studies to use wave directionality and platform orientation when warranted.

Comment—A few commenters recommended minor revision to § 250.135(d)(1)(vi) so as to allow the use of engineering judgment when applying the requirement to address hydrostatic loading.

Response—This recommendation was adopted, and appropriate language was added.

Comment—One commenter recommended that the requirement at § 250.136(c)(4) be eliminated because it "greatly increases up front design requirements and decreases future flexibility unnecessarily."

Response—This recommendation was not adopted. Basically, the considerations enumerated in this requirement involve common sense engineering judgment and will not greatly increase design costs or decrease future flexibility.

Comment—A few commenters recommended that the last sentence of § 250.137(c)(6)(ii) be deleted since the measure of redundancy is qualitative.

Response—This recommendation was not adopted. Although methods have been proposed which would quantify redundancy, this paragraph does not require the quantification of redundancy. In many cases, good engineering judgment is all that is necessary to determine whether or not a platform can be expected to fail catastrophically as a direct result of the failure of a particular structural member or joint. For those instances where such a condition is suspected, but is not intuitively or unquantifiably clear, the lessee should discuss the matter with the CVA and/or MMS.

Comment—A few commenters recommended that paragraphs (2), (3), and (4) of § 250.138(c) be deleted and replaced with two requirements which reference existing codes (ACI 357R and ACI 318–83).

Response—This recommendation was adopted, and paragraph (c) was revised accordingly.

Comment—Several commenters recommended that waiver provisions be stipulated at § 250.139(b)(1)(ii) for those instances where platforms are set in close proximity to each other, therefore, requiring only one site investigation.

Response—This recommendation was not adopted. Departures from specific requirements may be granted by the Regional Supervisor in accordance with § 250.3(b).

Comment—One commenter recommended a revision to § 250.139(b)(4)(iii) which would allow the use of existing borehole data where good engineering judgment deemed those data sufficient.

Response—This recommendation was adopted and the provision modified to specify that the Regional Supervisor may authorize a lessee to use existing borehole data.

Comment—One commenter recommended modification of the requirement at § 250.139(b)(4)(iv) to limit the required depth of soil boring to include only the depth of influence of a particular structure.

Response—This recommendation was not adopted. Departures from the specific requirements may be granted by the Regional Supervisor in accordance with § 250.3(b) in those instances where compliance with a specified requirement may not be necessary.

Comment—Two commenters recommended revising § 250.139(b)(4)(v) to add a requirement regarding packing of samples which will enhance the integrity of shipped soil samples.

Response—This recommendation was adopted. The text of the paragraph was modified to recognize that the careful packing of samples is important.

Comment—One commenter recommended that a number of requirements be added to § 250.140 including state-of-the-art motion instrumentation and barge motion monitoring equipment, post-tow destructive testing of selected nodes, and nondestructive examination (NDE) and destructive testing of all mill plate for main member nodes.

Response—This recommendation was not adopted. Under § 250.140(c), anticipated tow conditions and structure response analyses are required. Under § 250.133(a)(3), the CVA is required to review towing records and conduct a postlaunch survey of the jacket. Should the CVA have reason to suspect the jacket might have been damaged during the tow or launch, MMS can require a more thorough inspection of the jacket, including NDE and/or destructive testing. Based on our experience to date, more stringent written requirements do not appear to be justified.

Comment—Several commenters objected to the last two sentences of § 250.140(b). One commenter wanted these sentences eliminated; whereas others proposed alternative wording.

Response—The recommendation for alternate wording of this provision was adopted.

Comment—One commenter recommended modification of the requirements at § 250.141(b)(7) (iv) and (v) to eliminate review of towing records as a means of indicating whether or not possible overstressing of the platform has occurred. The commenter feels that visual inspection alone should be sufficient to detect damage.

Response—This recommendation was not adopted. Visual inspection alone is not sufficient to detect damage. The majority of the members and joints of a platform cannot be accessed while it is on a launch barge or under water. Tight fatigue cracks are difficult to detect visually. Therefore, determination as to whether or not actual tow conditions exceeded assumed conditions is important in that a more stringent visual and/or nondestructive examination may be necessary. If assumed tow conditions were not exceeded, then a routine visual inspection by the CVA, as called for in § 250.133(a)(3), is generally all that is necessary for platforms subject to Platform Verification Program requirements.

Comment—One commenter felt that the wording of paragraph (a) of § 250.142 did not clearly indicate whether it applied to all existing platforms or just to future platforms. This commenter felt that all platforms should be inspected at least once every 5 years unless circumstances dictate that an inspection be performed sooner. The respondent also felt that cathodic protection surveys should be carried out on a quarterly basis. Further, this commenter felt that more detailed inspections should be carried out for platforms older than 5 years. One commenter considered the wording of the requirement too vague and recommended that MMS adopt the ABS Rules for Offshore Installations. One commenter recommended that MMS require more frequent periodic inspections as a platform becomes older. One commenter recommended that inspections be carried out in periods of 3 to 5 years.

Response—The final rule has been revised to require approval of Regional Supervisor for any inspection interval greater than 5 years. This requirement applies to all platforms and structures, existing and future. The MMS is aware of the fact that many lessees already have their own periodic inspection programs in operation. As experience is gained under this rule, consideration can be given to whether there is a need to require more frequent inspections.

Comment—One commenter recommended that the requirement for submission of inspection records to MMS in § 250.142(b) be deleted because it is too vague. Several commenters recommended that inspection records be maintained by the lessee but not submitted to MMS. Such records would be made available to MMS upon request. This would minimize the lessee's paperwork burden.

Response—This recommendation was not adopted. Section 250.142 does not require the submission of inspection records. It requires the reporting of the platforms that were inspected during a 12-month period.

Comment—One commenter questioned the range of applicability of

the requirements for the submission of NDE testing records under § 250.144. Further, the commenter requested clarification of the term "NDE records."

Response—This requirement, as in the past, applies to all platforms and structures. "NDE records" applies to weld and, possibly, plate NDE results on all platforms and structures. It is recognized that only a minimum NDE may be carried out on many structures which are not subject to the verification program. The records must be retained by the lessee and copies made available to MMS when requested.

Subpart J—Pipelines and Pipeline Rights-of-Way

The DOI and DOT share responsibility for safety and prevention of pollution associated with offshore pipelines. The DOI has the responsibility for the approval of the installation and modification, including repair or abandonment of pipelines, under DOI's jurisdiction on the OCS. In addition, DOI grants or approves the modification of all rights-of-way for pipelines on the OCS.

At present, there are two classifications of pipelines on the OCS. They are as follows:

1. Lease term—These pipelines are owned and operated by a lessee or operator and are wholly contained within a single lease, a group of unitized leases, or contiguous (not cornering) leases of that lessee or operator.
2. Right-of-way—These pipelines are those which are contained within (a) the boundaries of a single lease or a group of unitized leases but are not owned and operated by a lessee or operator of that lease or unit, (b) the boundaries of contiguous (not cornering) leases which do not have a common lessee or operator, (c) the boundaries of contiguous (not cornering) leases which have a common lessee or operator but are not owned and operated by that common lessee or operator, or (d) a block(s) which is (are) unleased.

Subpart J incorporates and updates requirements currently contained in 30 CFR 250.20, Pipeline approval; OCS Order No. 9, Oil and Gas Pipelines; and 30 CFR Part 256, Subpart N, Grants of Pipeline Rights-of-way on the Outer Continental Shelf.

Final Subpart J differs from the proposed Subpart J in that—

1. The numbering of some sections has been changed as a consequence of reorganizations, modifications, and minor editorial changes needed to consolidate technical, inspection, and reporting requirements for DOI pipelines and pipeline rights-of-way. As a consequence of this action, some other sections had to be renumbered to maintain sequence. Where a comment pertains to a section which has been redesignated, this fact has been noted in the response to the comment.
2. Specific requirements concerning right-of-way applications have been added with respect to shallow hazards, preservation of cultural resources, and nondiscrimination in employment forms. In addition, requirements concerning acceptance of rights-of-way have been clarified with respect to site, structures, or objects of historical or archeological value, and improvement and maintenance of the area covered by the right-of-way. As a consequence of this action, one section has been expanded and three new sections added. These provisions include clarification of requirements under the provisions of the March 18, 1986, proposed rule. Rather than relying on general wording of the requirements contained in the proposed rule, the specifications in these provisions will better inform the right-of-way applicant of what is expected and required.

In response to the **Federal Register** Notice of March 18, 1986 (51 FR 9316), comments were received from 18 companies and special-interest groups. These comments addressed various provisions of Subpart J. The comments and actions taken are discussed below.

Comment—Several commenters indicated that clarification was necessary in §§ 250.150 and 250.151 with regard to definitions and jurisdictional boundaries and the application of DOT requirements to pipelines approved under DOI regulations.

Response—These recommendations were adopted to the extent that § 250.150 has been modified to clarify the Regional Supervisor's role and to incorporate language of the MOU dated May 6, 1976, between DOI and DOT. Definitions have been addressed in § 250.151.

Comment—One commenter suggested more stringent terminology in § 250.150(a) in regard to pipeline interference with other uses on the OCS.

Response—This recommendation was not adopted. Its adoption would unnecessarily restrict the use of pipelines on the OCS. This would interfere with the multiple-use concept and would not allow OCS resources to be utilized in an equitable manner.

Comment—Several commenters recommended the deletions of the incorporation by reference in § 250.152 (a) and (b) of API RP 14E, Design and Installation of Offshore Production Platform Piping Systems, and of API RP 1111, Design, Construction, Operation and Maintenance of Offshore Hydrocarbon Pipelines. It was stated that the design parameters would be too stringent for this design of risers and submerged components.

Response—These recommendations were adopted. Section 250.152(a) has been modified to incorporate by reference pertinent parts of the ANSI Code for Pressure Piping, B31.8, Gas Transmission and Distribution Piping Systems. The modification ensures that regulations reflect current BAST as reflected by recommended safe industry practice. Incorporation by reference of API RP 1111 in § 250.152(a) and API RP 14E in § 250.152(b) has been deleted.

Comment—Several commenters recommended the deletion in § 250.152(c) of the reference to Table 3.1 in API RP 14E concerning internal design pressure of valves since it had been eliminated from the Fourth Edition of API RP 14E referenced in § 250.152(b).

Response—This recommendation was adopted. Since the reference to API RP 14E in § 250.152(b) was deleted, a more appropriate reference concerning valves has been incorporated. Section 250.152(c) is now designated § 250.152(b) (1), (2), and (3).

Comment—Several commenters suggested the need for requirements in § 250.152(d) that would allow for redundant overpressure protection on a platform.

Response—Upon reconsideration, it was decided that clarification of the requirements in proposed § 250.152(d) was needed. Therefore, the paragraph was modified to indicate that the requirements contained in that section apply only to pipelines connected at subsea tie-ins. The paragraph has been redesignated § 250.152(c)(3).

Comment—Several commenters expressed concern that proposed § 250.152(g) appeared to require that pipelines withstand every environmental factor listed.

Response—The proposed rule was not intended to require that pipelines withstand every environmental factor listed. Therefore, in the interest of clarifying the intent, the paragraph was modified to require that operators design and maintain pipelines using technologies and precautions that would provide protection against reasonably anticipated environmental factors. The paragraph was redesignated § 250.152(f).

Comment—Several commenters recommended that the requirement in § 250.153(a)(3) of a minimum of 18-inch separation between pipelines be modified to allow the use of pipeline bundles.

Response—Pipeline bundles are considered as a single pipeline. Section

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250.153(a)(3) was rewritten to clarify that 18-inch separations are required at pipeline crossings and obstructions. The rule does not apply to pipeline spacings within a bundle.

Comment—Several commenters suggested that the requirement in § 250.153(a)(4) for riser protection for those installed prior to the effective date of these regulations be deleted since there is no historical data of risers being damaged by floating vessels.

Response—This recommendation was not adopted. It is recognized that there have been few documented incidents of risers being damaged by floating vessels. However, the proposed rule merely states the Regional Supervisor's option of requiring protection when significant potential for damage is present.

Comment—In § 250.153(b) (1) and (3), several commenters recommended changes of the pressure test requirements for new, repaired, and out-of-service pipelines. These recommendations include the following:

1. That the test duration for new pipelines be limited to 2 hours in lieu of the 8-hour test proposed by MMS,
2. That the pressure test requirements on pipelines following repairs be modified to be consistent with pertinent DOT regulations,
3. That pressure test requirements on pipelines that have been out-of-service for more than 6 months be eliminated, and
4. That no pressure test be required if bolt-on-clamps or replaced components have been manufactured under a rigid quality assurance program.

Response—These recommendations were not adopted. However, upon reconsideration some modifications were made in the proposed rule. In general, pipelines under DOI jurisdiction operate at pressures equal to or greater than those pipelines under DOT jurisdiction. Products transported by DOI pipelines are also generally more corrosive than those products transported by DOT pipelines. Furthermore, the final regulations have not incorporated the welding requirements that are contained in DOT regulations. Therefore, MMS must rely heavily on the results of a pressure test. This reliance on the pressure test justifies maintaining the test duration at 8 hours in the final rule.

However, in light of some of the economic and environmental considerations raised by the commenters, the final rule has been modified with regard to pipeline repairs and to the placement of an out-of-service pipeline. These changes are as follows:

1. It was recognized that, under normal operations, a pipeline could be taken out-of-service for a period exceeding 6 months due to several reasons including development drilling, workover operations, or market constraints. Therefore, § 250.153(b)(1) has been modified to require a pressure test only after a pipeline has been out-of-service for more than 1 year.
2. Pipeline repairs will require a pressure test with water or processed natural gas to 1.25 times the maximum allowable operating pressure (MAOP) for 2 hours.
3. Section 250.153(c) was rewritten to require utilization of a full encirclement clamp able to withstand the anticipated pipeline pressure.
4. The Regional Supervisor has the option of requiring a pressure test to verify the integrity of the system if there is a reasonable likelihood to suspect that the pipeline has been weakened by external or internal conditions.

Comment—One commenter recommended the deletion in § 250.153(b)(2) of the pressure test saying that temperature changes at the surface would have little bearing on the changes occurring in the rest of the pipeline. Another commenter recommended that the required temperature recorders in § 250.153(b)(3) should only be used if temperature changes are anticipated.

Response—These recommendations were not adopted. It is recognized that during a pressure test, temperature recordings at the surface may have little bearing on changes occurring in the submerged portion of the pipeline. However, the riser piping exposed to ambient weather conditions could exhibit variations in pressure which may be interpreted as a leak in the pipeline. Utilizing a temperature recorder synchronized with a pressure recorder would serve as an additional aid in analyzing those variations in pressure.

It was not considered to be technically feasible to require the use of a temperature recorder only to measure anticipated temperature changes since weather conditions could not be accurately predicted. In addition, temperature recorders are relatively inexpensive and would not place an undue economic burden on the operator. These recorders provide useful and cost-effective data. The paragraph was redesignated § 250.153(b)(3).

Comment—Several commenters recommended the deletion of § 250.153(c) where it is required that a 48-hour notice be given to the Regional Supervisor prior to making pipeline repairs. The commenters indicated that repairs often need to be made quickly to reduce pollution making the 48-hour notice not practical.

Response—This recommendation was adopted. Flexibility is necessary for repair requirements. Therefore, the 48-hour notice requirement has been amended to require notification prior to the repair or as soon as practicable. The requirement has been moved to § 250.158(e) of the final rule.

Comment—Several commenters objected to the requirement in § 250.154(a) that the lessee be responsible for installing, operating, and maintaining safety devices on pipelines located on a lease but not owned by the lessee. The commenters recommended that § 250.154(a) be modified to require lessees to only ensure that regulatory requirements are fulfilled. In addition, the commenters recommended the elimination of the requirement that compliance with the new regulations be required for existing pipelines within 1 year of the effective date of the new regulations. The increases in cost and pollution potential were cited as the reasons for this recommendation.

Response—It is recognized that, in some situations, a lessee cannot physically install, operate, and maintain safety equipment on pipelines owned by others. The intent of § 250.154(a) was to require lessees to ensure that others provide for these safety devices when such pipelines are installed on their leases. The wording of the final rule reflects that intent. The proposed requirement that existing pipelines be required to comply with the new requirements within a year was deleted from the final rule.

Comment—Several commenters recommended that an additional subparagraph be added in § 250.154(b) to state that a pipeline would not have to be equipped with a high- and low-pressure sensor (PSHL) if a PSHL on an upstream component would sufficiently protect the pipeline.

Response—This recommendation was not adopted. Section 250.154(b)(3) states that departing pipelines shall be protected by high- and low-pressure sensors. Section 250.154(b)(3) does not necessarily require that pipeline sensors be installed. Upstream sensors on production equipment can be utilized when those sensors provide the required protection for the pipeline.

Comment—Several commenters recommended that § 250.154(b)(1) be modified to require that FSV be located downstream of automatic shutdown valves on incoming pipelines. This would allow the valves to be checked and repaired without increasing the

pollution potential by depressuring the line.

Response—This recommendation was adopted. Therefore, the phrase "located upstream of all safety equipment" does not appear in the final rule.

Comment—One commenter recommended that § 250.154(b)(1), (2), (3), (4), (7), (8), and (9) be moved to Subpart H since pipeline safety requirements are really part of the production safety systems and that the current division is confusing and redundant.

Response—This recommendation was not adopted. In order to facilitate the rapid location of pipeline requirements, most of the requirements pertaining to pipeline matters were consolidated under Subpart J.

Comment—One commenter recommended the deletion of the requirements in § 250.154(b)(3) and (9) to shut in all production facilities on a platform with a high- and low-pressure sensor on a pipeline. The commenter stated that the continuation of gas production would not present any safety or pollution hazard if oil production operations were shut in. The only shut-in valve needed on the oil system would be the pipeline pumps since most systems have storage capacity. In addition, the commenter noted that MMS approves Safety Analysis Function Evaluation (SAFE) charts which designate those production facilities that are shut in by a PSHL on a pipeline.

Response—This recommendation was not adopted. The use of the words "directly" or "indirectly" in § 250.154(b)(3) allows the operator adequate flexibility in designing safety shutdown systems. Section 250.154(b)(3) does not require that in every case the entire production facility be shut in immediately. Factors such as storage can be considered on a case-by-case basis when SAFE charts are submitted.

Comment—One commenter requested that set points for high- and low-pressure sensors on pipelines and pipeline pumps be specified in § 250.154(b)(3) and (9).

Response—This recommendation was adopted. The set points for high- and low-pressure sensors on pipelines and pipeline pumps are now included in § 250.154(b)(3) and (9). These set points will be 15 percent above and below the normal operating pressure range of the pipeline; however, the high pilot shall not be set above the MAOP of the pipeline. These settings will coincide with those specified in Subpart H for processing equipment.

Comment—Several commenters requested that in § 250.154(b)(5) the requirement for oil pipelines to have a volumetric metering system that would compare the input at the platform with deliveries onshore be eliminated. Their rationale was as follows:

1. There would be no technically feasible way of measuring input and output in a reliable manner (flashing liquids and two-phase flow).
2. Many pipelines are interconnected with many platforms, and therefore, attempts to compare inputs and outputs would be complex or impossible.
3. Any workable system would be too expensive.
4. The PSHL's already protect pipelines from leaks.

On the other hand, another commenter proposed that the requirement be made mandatory for all OCS facilities rather than discretionary as proposed.

Response—The recommendation to eliminate the requirement was not adopted. Under this provision Regional Supervisors may, at their discretion, require a volumetric metering system where one is practical and necessary to protect the environment. Due to the complexity of the Gulf of Mexico OCS Region's liquid hydrocarbon transportation systems, it is not anticipated that a volumetric system will be required on old pipeline systems in that Region. The requirement has been modified to give lessees the flexibility to utilize alternative leak detection systems. The recommendation to make the requirement mandatory was also not adopted since a mandatory requirement would not be practical in every instance.

Comment—Several commenters requested that the requirement in § 250.154(b)(6) to locate the FSV upstream of a block valve for a pipeline incoming to a subsea tie-in be modified to allow the FSV to be located upstream or downstream of the block valve. This would give the lessee maximum flexibility to design a system to prevent pollution. The commenters also requested that the requirement allow an exception for bidirectional pipelines. This change would help to reduce departure requests.

Response—The recommendation was adopted and the rule was amended accordingly.

Comment—Several commenters requested that the proposed rule in § 250.154(b)(7) allowing the installation of only an FSV for gas-lift and water-injection pipelines on unmanned well jackets be expanded to include all unmanned platforms. The commenters stated that the FSV would still provide effective protection from backflow. In addition, it was recommended that the paragraph be modified to indicate that a FSV would be needed upstream at the first inlet valve on the tree.

Response—The recommendation was adopted and the rule was amended accordingly.

Comment—Several commenters recommended that only verbal approval in § 250.154(c) be required in order to continue operations when safety equipment is placed out-of-service longer than 12 hours. The commenters noted that there would not be sufficient lead time to obtain written approval.

Response—This recommendation was adopted. The rewritten requirement is in a new § 250.158(d). Under the final rule the operator is required to notify the Regional Supervisor when pipeline safety equipment is taken out of and returned to service.

Comment—Several commenters recommended that the written approval requirement before pipelines are taken out-of-service in § 250.155(a) be deleted since, in many cases, there would not be sufficient time to obtain written approval from the Regional Supervisor. The commenters also noted that the phrase "temporarily out-of-service" was subject to misinterpretation.

Another commenter recommended that applications for abandonment be subject to consistency review by the relevant State.

Response—These recommendations have been partially adopted. The rewritten requirement is in a new § 250.158(c). Under the final rule the operator is required to notify the Regional Supervisor when a pipeline is taken out-of-service; however, a written confirmation is required when a pipeline is out-of-service longer than 60 days.

The recommendation for consistency review was not adopted. The abandonment of a pipeline is not an activity affecting land and water uses in the coastal zone.

Comment—Several commenters recommended that § 250.155(b) be rewritten to exempt abandoned pipelines in water depths greater than 200 feet since it is provided in § 250.153(a)(1) that pipelines installed in water depths of 200 feet or greater do not need to be buried.

Another commenter proposed that the regulation require the District Supervisor to consult with the States (for consistency purposes) prior to making a determination concerning abandonment.

Response—The recommendation to exempt pipelines in deeper water was not adopted. In the final rule the requirement is found in § 250.156(a)(1). It should be noted that § 250.153(a)(2) requires all subsea valves and obstructions to be buried under at least 3 feet of cover in any water depth when they present a hazard to trawling operations. Unburied pipeline ends of abandoned pipelines in water depths greater than 200 feet may present the same hazard and, therefore, must also be buried. However, if the pipeline is located in waters where no trawling is done, a waiver from this requirement could be granted.

Consultation with States for coastal consistency review purposes is not necessary at the time of abandonment since abandonment of a pipeline is not an activity affecting land and water uses in a coastal zone. In cases where a pipeline is discussed in a Plan of Development and Production, issues relating to coastal consistency would have been addressed at the time of plan approval and would be a matter of record.

Comment—Several commenters objected to the specification of 6-month periods in § 250.155 (d) and (e). The commenters recommended the deletion of requirements for pipelines that were out-of-service for less than 6 months as specified in § 250.155(d) and proposed the deletion of the requirement in § 250.155(e) to flush and fill the pipeline with seawater because seawater would increase the corrosion rate of the pipeline.

Response—The recommendation was adopted. The revised requirements were redesignated § 250.156(b) (1) and (2). The final rule requires that all out-of-service pipelines, independent of time, be blind flanged or isolated with a closed block valve at each end and that they be flushed and filled with inhibited seawater if they are out-of-service for more than 1 year.

Comment—One commenter recommended that § 250.156 provides for notice to the affected State of corrective plans submitted to the Regional Supervisor for approval.

Response—The recommendation was not adopted. The MMS believes that incorporation of the recommended requirement into the regulations is unnecessary. The Regional Supervisor will consider the subject matter of corrective plans on a case-by-case basis. When the significance of the impact of activities described in a corrective plan warrants, the Regional Supervisor will consult with appropriate State officials. (This subject matter has been moved to § 250.157.)

Comment—Several commenters recommended the deletion in § 250.156(b)(1) of the requirement that plats submitted with new pipeline or right-of-way applications indicate the location of all other pipelines within 1,000 feet of the proposed pipelines.

Response—This recommendation was adopted. The final rule requires the depiction on the location plat of only those pipelines connected to or crossed by a proposed pipeline. The paragraph was redesignated § 250.157(a)(1).

Comment—Several commenters recommended the deletion of the requirement in § 250.156(b)(2) that the lessee include pilot settings and associated control lines on new pipeline or right-of-way applications since this information is not available at the time of application.

Response—This recommendation was adopted. Under the final rule it is not necessary to submit the proposed settings on sensing devices. However, the requirement for the depiction of associated pressure-control lines remains so that MMS can determine what specific shut-in functions are to be performed. The paragraph was redesignated § 250.157(a)(2).

Comment—Several commenters recommended the deletion in § 250.156(b)(3)(v) of the requirement that a new pipeline or right-of-way application include information on maximum and minimum operating pressures since this information is not known at the time of the application.

Response—This recommendation was adopted and the requirement deleted.

Comment—A commenter recommended that a new pipeline or right-of-way application in § 250.156(b)(4) require only a description of design precautions needed for unusual environmental factors.

Response—This recommendation was adopted. The final rule requires the operator to submit only those additional design precautions, other than the specified requirements, which were taken to withstand any environmental factor(s). The paragraph in the final rule is redesignated § 250.157(a)(4).

Comment—Several commenters recommended deleting the requirement in § 250.156(d) for the submission of an application to take a pipeline out-of-service.

Response—The MMS has adopted this recommendation to the extent that the submission of an application for approval to take a pipeline out-of-service was deleted. Under the final rule written notification is required if a pipeline is taken out-of-service when the out-of-service period exceeds 60 days. (See MMS response for § 250.155 (a), (d), and (e).) The requirement was redesignated § 250.158(c).

Comment—Two commenters objected to the requirement in § 250.157(b) of monthly pipeline route inspections. One commenter recommended that the inspections be made weekly in environmentally sensitive areas, and the other commenter recommended the deletion of the requirement since it was ineffective and costly.

Response—These recommendations were not adopted. Upon reconsideration it is recognized that to require a specific time interval for pipeline route inspections does not consider the different environmental factors which must be taken into account. Therefore, the final rule is written to allow the Regional Supervisor latitude to prescribe a time interval and method for conducting pipeline route inspections. Periodic inspection of pipeline routes serves as a means of detecting potential problems and avoiding major spills and leakages from pipelines. In the past, these periodic inspections discovered minor leaks which were repaired before they became major spillage. This requirement was redesignated as § 250.155(a).

Comment—Several commenters recommended that the requirement in § 250.157(c) for submittal of oral and written reports for spills and leakages to the Regional Supervisor be deleted because it duplicates the requirements in § 250.41(b) and doubles the paperwork burden on lessees. On the other hand, another commenter recommended that all spills and leakages, whether or not pipeline related, be reported to the Regional Supervisor.

Response—The recommendation to delete the requirement for the reporting of spills and leakages in § 250.157(c) was adopted. The recommendation to require the reporting of leaks and spills that are unrelated to a pipeline was not adopted. The reporting of unrelated spills and leakage to the Regional Supervisor would impose unnecessary additional reporting requirements on industry. Lessees are still under the reporting requirement in § 250.41(b).

Comment—Several commenters recommended in § 250.157(d) that lessees be given 30 days to file a report on the repair of pipelines rather than the 15 days listed in the proposed regulations. The commenters explained that once a repair has been made there is no need for urgency.

Response—This recommendation was adopted. In the final rule the reporting period is 30 days. The requirement is currently designated § 250.158(e).

Comment—Several commenters recommended that § 250.157(d)(2) be modified to indicate that pressure tests are not required after all pipeline repairs.

Response—This recommendation was adopted and the final rule modified (see response § 250.153(b) (1) and (3)). The requirement is designated § 250.158(e)(2) in the final rule.

Comment—A commenter recommended the deletion of § 250.157(f) which requires the lessee to file a plan for corrective action if environmental factors are detrimentally affecting a pipeline since requirements for damage, repair, relocation, and modification reports are already contained in the regulations.

Response—This recommendation was not adopted. The requirement is necessary to implement corrective action on a pipeline. The various reports cited by the commenter do not require corrective action from the lessees or operators. The requirement is designated § 250.158(g) in the final rule.

Comment—Several commenters objected to the requirement in § 250.157(g) that pipelines be inspected annually for corrosion by taking pipe-to-electrolyte potential measurements if the life expectancy of the cathodic protection cannot be determined. One commenter recommended that this requirement be made applicable only to those pipelines installed after the effective date of these regulations. In addition, the commenter recommended that the results and conclusions only be submitted to the Regional Supervisor upon request. One commenter recommended that the requirement be eliminated since the data only apply to a short interval of the pipeline being tested.

Response—These recommendations were not adopted. Corrosion is one of the primary causes of damage to existing pipelines. Intermittent inspection and submittal of reports would only partially address the problem of corrosion.

It is recognized that data readings taken at the platform provide information for only short intervals of the pipeline being tested; however, those readings serve as an indication of the effectiveness of the cathodic protection for the entire pipeline.

Comment—Several commenters stated in § 250.158(b)(5) that clarification was necessary to establish the frequency with which rental payments can be made on pipeline rights-of-way.

Response—The text of proposed § 250.158(b)(5) has been modified to indicate that the payments can be made on an annual basis, for a 5-year period, or for multiples of 5 years. These provisions are now contained in § 250.159(c)(2) of the final rule.

Comment—Several commenters observed under § 250.158(b)(8) that common carrier pipeline owners could be required by the Federal Energy Regulatory Commission (FERC) to purchase rather than transport hydrocarbons. They recommended that the regulation be amended to retain the common carrier's position as a transporter and not a purchaser of OCS hydrocarbons. One commenter proposed deletion of § 250.158(b) (8), (9), and (10) stating that they were included in the FERC regulations and should be omitted.

Response—These recommendations were adopted to the extent that the text of the proposed rule was modified to more precisely reflect the provisions of the Act. The revised provisions of proposed § 250.158(b) (8), (9), and (10) have been retained in the final rule to draw attention to FERC's authority to regulate pipelines in the OCS. Proposed § 250.158(b)(8) is designated § 250.159(c)(7)(i); proposed § 250.158(b)(9) is designated § 250.159(c)(7)(ii)(A); and proposed § 250.158(b)(10) is designated § 250.159(c)(7)(ii)(B) in the final rule.

Comment—Several commenters considered the filing fee of $1,400 mentioned in § 250.159(a) to be excessive.

Response—The requirement for a nonrefundable $1,400 filing fee was retained in the final rule. The amount was determined after conducting an in-house cost study. The study concluded that an average of 110 manhours were being spent to process each right-of-way application and that the $1,400 fee represented an appropriate user type fee to assess the pipeline applicant. The requirement is currently designated § 250.160(a) in the final rule.

Comment—A commenter recommended in § 250.159(e)(1) that the right-of-way applicant be allowed to give notice to the designated operator rather than to each lessee affected by a right-of-way application.

Response—This recommendation was not adopted. The MMS believes that it is important to ensure that all lessees receive notice of a proposed right-of-way across their leases. However, notice may be provided to the operator if the applicant provides documentation which indicates that the operator has been designated as an agent of the lessee(s) and is authorized to receive notice. The first two paragraphs of proposed § 250.159(e)(1) are designated § 250.160(c); the remainder of proposed § 250.159(e)(1) is designated § 250.161(d) in the final rule.

Comment—Several commenters recommended in § 250.160 (c) and (d) that the right-of-way granting process be revised to only require the applicant to submit evidence to the Regional Supervisor that an application has been submitted to the State(s). One commenter recommended that paragraphs (c) and (d) be combined and streamlined.

Response—These recommendations were not adopted. Section 250.160(c) and (d) address two distinct topics. Proposed § 250.160(c) has been rewritten for clarity while retaining content and is designated § 250.161(b). This provision provides that when a proposed pipeline route will adjoin and subsequently cross any State submerged lands, the applicant must submit evidence that the State has reviewed the application and submit any comments received as a result of that review.

Proposed § 250.160(d) has been deleted. This provision which requires CZM review of right-of-way applications, is not within CZMA jurisdiction by itself. Therefore, the provision was deleted for legal reasons. The CZM review of Plans of Development and Production will continue and pipelines which are discussed in such plans will be reviewed by CZM agencies when the plan is reviewed. In addition, pipelines entering State submerged lands will be reviewed by the State under provision § 250.161(b) and will also be reviewed by the State in connection with procedures governing pipelines in State submerged lands.

Comment—A commenter recommended that § 250.164 be limited to significant changes in use. The commenter also recommended that a change in flow direction not be considered a significant change. This would eliminate the need for approval of a change in flow direction by the Regional Supervisor.

Response—This recommendation was not adopted. A change in the direction of flow within a pipeline bears upon the safety equipment required under various regulations in Part 250. Since the modification of the safety equipment requires the approval of the Regional Supervisor, the change in flow direction through a pipeline also requires similar approval. Proposed § 250.164 is designated § 250.160 in the final rule.

Comment—One commenter proposed the establishment of procedures in Subpart J regarding documentation of pipeline locations and a mechanism for transferring information about the location of pipelines to contractors. The commenter stated that design standards were needed for pipeline risers as well as the establishment of procedures to ensure that operators will not produce into a pipeline network without first being certain of its pressure integrity.

Response—This recommendation was not adopted. Subpart J is written to incorporate general performance standards on the design, installation, operation, and maintenance of pipelines in the OCS. An objective by MMS in drafting the final rule was to leave out unnecessary detailed procedural requirements where possible. Procedural guidelines can be addressed in an NTL or by developing a handbook of guidelines and procedures for pipeline applications. The incorporation of reference to technical documents which represent the state-of-the-art standards for riser design provide the design standards needed for pipeline risers. Also, the required safety systems, pressure test, and maximum allowable operating pressure limitations placed on pipelines are designed to protect the pressure integrity of pipelines in the OCS.

Comment—One commenter recommended that MMS modify Subpart J to clearly require the use of BAST to assure maximum environmental protection. The commenter stated that the regulations concerning pipeline burial, abandonment, and right-of-way did not satisfy the requirements of section 5(e) of the Act.

Response—This recommendation was not adopted. The provisions of Subpart J satisfy the requirements of section 5(e) of the Act. The referenced technical standards and practices that represent the BAST are incorporated into the final rule.

Subpart K—Production Rates

Subpart K, Production Rates, addresses in general, conservation of the hydrocarbon resources recoverable under Federal oil and gas leases. Specifically, the subpart addresses classification of reservoirs as sensitive or nonsensitive, establishment of Maximum Production Rates (MPR), the flaring and venting of gas, downhole commingling of oil and gas production, and enhanced oil and gas recovery operations.

Proposed Changes and Explanations The requirements of §§ 250.16, 250.39, 250.55, 250.68, and former OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, in the GOM and Pacific OCS Regions were revised and incorporated into this subpart. The discussion of the subpart proposed in the **Federal Register** on March 18, 1986 (51 FR 9316), included responses to comments received as a result of the publication of a proposed revision of OCS Order No. 11 in the **Federal Register** on May 4, 1984 (48 FR 20151). Subpart K of this final rule includes revisions made after consideration of the comments received in response to the publication of the proposed rule on March 18, 1986.

Reconsideration of the proposed rule identified minor changes in the text of the proposed rule which would clarify the meaning of some of the provisions of Subpart K. Upon reconsideration of the proposed rule, it was decided that the final rule should include restrictions on the commencement of production from a well completion located within 500 feet of a property line. Compliance with these restrictions can avoid drainage situations across common property lines. Under GOM OCS Order No. 11, paragraph 14B, it was necessary for an operator to consult with adjacent lessees and obtain approval from the Regional Supervisor before a well less than 500 feet from a property line could be produced. These limitations force lessees to consider the correlative rights of adjoining lessees during the planning and execution of development drilling operations.

As a result, the provisions in 30 CFR 250.171(b) require lessees to submit letters of acceptance or rejection from the operators of offsetting properties and obtain the Regional Supervisor's approval before commencing production of wells whose completed interval is closer than 500 feet to the lease line. The identification of the subsequent paragraphs in § 250.171 has been changed accordingly.

In a recent State District Court decision in Lafayette, Louisiana, the court found that curtailment of gas production from gas reservoirs producing under a water drive mechanism will result in loss of otherwise recoverable gas reserves if the reservoirs are not produced at the maximum rate consistent with good engineering practice. Although the court found that these types of reservoirs were sensitive to low production rates, the court held that any attempt to calculate the damages caused by the curtailment of production would be too speculative. The proposed definition of "sensitive reservoir" in § 250.170 was not intended to include gas reservoirs similar to those addressed in the aforementioned State court opinion. The definitions of "sensitive reservoir" and "nonsensitive reservoir" in the final rule were revised accordingly. Under the final rule, a reservoir would be classified as sensitive and an MER required for reservoirs when the ultimate recovery of oil and gas would be decreased by high production rates.

Additionally, the following changes were made for clarity and accuracy. The word "released" was changed to "flared or vented" in 30 CFR 250.175(a)(1) to more accurately describe the manner in which vapors may be disposed of from the system as a part of normal operations. In order to address the flaring of gas in gas-lift wells and in other normal pressure venting situations, the word "abnormal" was deleted from § 250.175(a)(2) to enable the lessee to relieve normal system pressure during temporary situations. These changes clarify that limits and records for flaring and venting apply to a facility and that various flaring or venting locations on a facility should not be treated as separate flare or vent points.

A total of 11 commenters submitted comments on the provisions proposed as Subpart K, Production Rates. The comments and responses follow.

Comment—One commenter recommended that the definitions of oil and gas reservoirs and of sensitive and nonsensitive reservoirs in § 250.170 be based on quantifiable performance standards such as gas-oil ratio (GOR) and the percentage of recoverable reserves subject to loss due to inappropriate production rate.

Response—This recommendation was not adopted. Performance standards in the context of these proposed regulations are meant to provide flexibility, not rigidity. Specific limits on the information used to classify reservoirs would be unduly restrictive. The more general definitions found in the final rule allow the use of all available information and the consideration of individual circumstances in classifying reservoirs as sensitive or nonsensitive.

Comment—Two commenters recommended that the word "original" be inserted before the term "associated" in the classification "Oil Reservoir with an Associated Gas Cap" in § 250.170 and 250.171. This revision would avoid potential misclassification of a reservoir in which a secondary gas cap is subsequently created.

Response—This recommendation was not adopted. A reservoir with a gas cap may be sensitive to unduly high rates of recovery regardless of whether the associated gas cap exists when production starts or subsequently develops as dissolved gas comes out of solution in the reservoir. The goal of the MER program is to maximize the ultimate recovery of oil and gas from a reservoir.

Comment—There were several comments concerning the classification

of reservoirs as sensitive or nonsensitive and the practice of requiring MER's on sensitive reservoirs only. Some commenters supported this proposal because it would reduce the MER filing requirements and would adequately prevent waste of oil or gas. One commenter objected to the proposal stating that all reservoirs, regardless of their sensitivity, have maximum rates that should not prudently be exceeded.

Response—The latter comment was not adopted. The MER is intended to prevent waste due to the inefficient, excessive, improper use of or the unnecessary dissipation of reservoir energy. It has been demonstrated that production rates do not adversely affect the ultimate recovery of oil and gas from reservoirs with certain predominant drive mechanisms. Therefore, MER's are not needed for such nonsensitive reservoirs. The MPR program addresses other limitations to well production rates together with the efficient and effective use of reservoir energy.

Comment—There were many comments submitted concerning the MPR requirements. Several commenters proposed deleting all the MPR requirements but retaining the submittal of Form MMS–1868, Well Potential Test Report. One commenter proposed deleting MPR requirements for nonsensitive reservoirs. Their reasoning was that the MPR program has no visible impact on present day operations and very little informational value. They contended that the quarterly oil-well tests and semiannual gas-well tests are sufficient to indicate production rates from each well and that the modified MER program is adequate to determine if there is waste of oil or gas.

Response—These recommendations were not adopted. The MPR program allows MMS to approve or disapprove the operator's proposed maximum rate of production for each well. Such oversight is necessary for the OCS program to assure safe operations and the prevention of waste. Well test information without MPR requirements would not be sufficient for managing OCS operations. The MER program addresses only waste due to the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy. The MPR program is intended to prevent waste by recognizing MER limitations and limitations imposed by well and surface equipment, sand production, GOR and water-oil ratio, location of perforated intervals, and prudent operating practices. Such limitations are present in all wells completed in nonsensitive as well as sensitive reservoirs. The MPR requirements provide for notifying the Regional Supervisor when changes in these limitations warrant changes in the approved MPR.

Comment—Several commenters proposed redesigning the existing MER Form MMS–1866 to include and better describe all the reservoir's parameters for an oil reservoir with an associated gas cap.

Response—This recommendation was recognized as having merit. The current Form MMS–1866 is functional for the reporting of reservoir data for all classifications. However, it could better describe the reservoir parameters for oil reservoirs with an associated gas cap. Form MMS–1866 will be reviewed and appropriate changes proposed.

Comment—There were several recommendations concerning specific MER requirements. First, some commenters suggested that a revised MER be submitted on Form MMS–1866 showing only the required information that has changed in the basic reservoir data. The commenters' position is that there is no need to duplicate the same basic reservoir data in proposing to revise an MER. Second, one commenter recommended that failure to submit Form MMS–1866 with appropriate supporting information should result in immediate reclassification of the reservoir as sensitive for the ensuing 6-month period. Third, one commenter suggested that for reclassification of a reservoir, a similar requirement as that specified in § 250.176(b) (Downhole commingling) should be included requiring notification of all concerned parties that an application is being filed with MMS to reclassify a reservoir. The commenter is concerned that the operator's views are not always the same as those of other partners.

Response—These three recommendations were not adopted. First, MMS's approving official should have correct and current verifying information on the request to authorize and approve. All of the required data are used in verifying that the proposed MER is appropriate. Incomplete applications could lead to significant errors, mishandling of the data, and misclassification of reservoirs. Concerning the second comment, reclassification of a reservoir based upon an absence of information is not appropriate. Other punitive action can be initiated against a lessee for failure to timely submit data and information. The third comment suggests the inclusion in § 250.171(d) of a notification of all concerned parties similar to the requirement in § 250.176(b). Section 250.176(b) concerns a competitive situation in which one operator may have no knowledge of the intentions of the offset competing operator. In § 250.171(d) addressing the case of partners in the same lease, the designated operator acts on behalf of the partners according to such a designation, and differences of opinion among partners are internal matters to be resolved among themselves. The MMS will always consider any evidence submitted by any interested party. Nevertheless, in order to clarify MMS's right to initiate action to change a classification, the first sentence in § 250.171(d) will have the words "by MMS" added following the phrase "may be reclassified." This paragraph is currently designated § 250.171(e).

Comment—There were several recommendations concerning specific MPR requirements. First, in § 250.172(b), several commenters proposed that well tests not be required for shut-in well completions. Second, two commenters recommended that the requirement for submitting well tests within 45 days of the day the test was conducted should be deleted. The commenters felt this would eliminate excessive and unnecessary regulations and reduce the paperwork burdens. Third, one commenter suggested that "first continuous production" as used in this section be defined as "twenty-four (24) hours, excluding the required well test period." Fourth, one commenter suggested that more information should be supplied on the forms submitted for MPR's. The commenter wanted to include all parameters and/or correction factors obtained and/or estimated, sand production, and well and surface equipment capacities. Also, this same commenter requested inclusion of other items of information.

Response—The first recommendation that well tests not be required for shut-in well completion was adopted. The regulation was changed at § 250.172(b)(3) to read "producing oil-well" and "producing gas-well." Concerning the second comment, the 45-day requirement in § 250.172(b)(3) remains unchanged. Current well test data are needed for the OCS program to assure safety of operations and the prevention of waste. Regarding the third comment, setting a fixed hourly limit for continuous production would ignore the nature and complexity of offshore operations. Some wells are flowed for weeks or longer and then temporarily abandoned for a year or more, waiting on a platform, pipeline, production facilities, etc. Other wells can be considered on continuous production after 24 hours. The more general term allows a case-by-case determination. Last, the inclusion of additional items of information on the forms as suggested by one commenter was not adopted. The information is already required on the forms, is provided to MMS on some other document, or is not needed by MMS on a routine basis. Data such as correction factors or sand volumes may and will be required by MMS on a case-by-case basis when it is determined that the data or information is necessary.

Comment—One commenter asked for an exact definition of "temporary" and "normal variations" as used in § 250.172(c), Temporary rates.

Response—This recommendation was not adopted. The very nature and complexity of all factors affecting the production rates of offshore wells make rigid definitions or guidelines impractical. The fact that MPR's are normally set at 110 percent of the well test automatically provides room for upward variations. In questions of this nature, it is best to leave room in the regulations for a case-by-case evaluation of individual problems and circumstances. An approximate limit for the term "temporary" in § 250.172(c) is established by a reference to provisions in § 250.172(a)(5) which indicates that efforts to balance production should be initiated the month following the month in which over production occurred.

Comment—There were many comments concerning § 250.173, Well production testing. First, several commenters suggested that the requirement concerning the pretest period and recovery of fluids introduced into the formation be clarified. Further, this stipulation should apply only to fluids introduced during completion, recompletion, reworking, or treatment operations. Fluids introduced for storage or enhanced recovery need not be recovered prior to the testing. Second, one commenter disagreed that the well tests must be witnessed by MMS. Third, one commenter suggested that MMS needed to be more strict in the testing requirements. The commenter suggested that any test less than 4 hours duration or with less than 6 hours stabilized flow prior to that test should be unacceptable. Fourth, some commenters expressed concern because the predetermined 6-hour stabilization period applied to all well tests. Fifth, one commenter felt prolonged well tests would often be necessary for wells with a high water cut and/or low gravity. Sixth, some commenters observed that stabilization periods are essentially different for every well and vary from less than 6 hours to more than 6 hours. They contend that the lessee is in the best position to determine a stabilization period for each well and that approval by the Regional Supervisor adds unnecessary paperwork burden to both industry and MMS. Seventh, one commenter recommended a multipoint back-pressure test to determine open flow potential for all new and recompleted gas completions. Eighth, some commenters agreed with using 15.025 pounds per square inch absolute (psia) as a pressure base; however, these commenters noted that the draft version of the MMS Royalty Valuation Procedure proposes a pressure of 14.73 psia.

Response—The first recommendation concerning the recovery of fluids introduced into the formation was adopted, and the regulation was revised. The second comment appears to be based upon a misreading of the proposed rule which stipulated that well tests *may* be witnessed by MMS personnel. The remaining five recommendations in the comments were not adopted. Concerning the third, fourth, fifth, and sixth comments, the stipulated testing requirements have proven effective under the previous regulations. Under the final rule, testing requirements may be modified by the Regional Supervisor for individual wells when the stipulated requirements are determined to be too restrictive or when the test results are found to be unreliable. Regarding the seventh comment, the final rule does not require a multipoint back-pressure test unless requested by the Regional Supervisor since this information is not needed on a routine basis. Last, historically, a pressure base of 15.025 psia and adjustments to that base have been used in the GOM OCS Region. The Pacific OCS Region has used a pressure base of 14.73 psia. A mandatory change in that pressure base would create a substantial administrative burden on the industry to change company production records, company accounting records, and existing gas contracts in the GOM, many of which were negotiated using a pressure base of 15.025 psia with little, if any, demonstrable benefit to the Federal Government from such a change. The final rule calls for the use of a pressure base of 14.73 psia, except in the GOM where a pressure base of 15.025 psia is to be used. Should MMS Royalty Valuation Procedures call for a pressure base of 14.73 psia, a conversion factor can be used in order to convert to that pressure base.

Comment—There were several recommendations concerning § 250.174, Bottomhole pressure survey. First, several commenters recommended inserting the word "static" before "bottomhole pressure surveys" in order to make it clear that lease operators need to submit the results of only static bottomhole pressure surveys and not flowing bottomhole pressure surveys. Second, several commenters recommended adding a sentence stating that waivers to static bottomhole pressure surveys may be approved by the Regional Supervisor if justified by the operator. In some cases, shutting in a well to run a static bottomhole pressure survey may damage the well and ultimate recovery. Third, one commenter proposed that bottomhole pressures be required for all reservoirs and not just those with three or more wells. Fourth, one commenter proposed interference tests in the case of significantly different bottomhole pressures reported in wells which are supposed to be completed in the same reservoir.

Response—The first recommendation was adopted, and the regulations were changed accordingly. The remaining three recommendations were not adopted. Concerning the second recommendation, bottomhole waivers do not need to be provided for in this particular section because approval for departures is authorized in § 250.3(b). Regarding the last two recommendations, bottomhole pressure surveys and interference tests are valuable tools used by reservoir engineers. However, in the interest of reducing the recording and reporting burden on the operator and the amount of paperwork for all concerned, routine bottomhole pressure testing has been limited to reservoirs with three or more well completions. Also, the special difficulties and hazards of the offshore environment, such as deep high pressure wells which are highly deviated, production platforms with densely spaced wellheads, and the difficulties of transportation, make it advisable to limit bottomhole pressure testing operations as much as possible to be consistent with good reservoir management. Section 250.174 provides for obtaining pressure surveys from specific wells upon the request of the Regional Supervisor. The Supervisor's request could include interference tests when deemed necessary.

Comment—There were many comments submitted concerning the requirement in § 250.175(a) that during certain stipulated situations gas shall not be flared for more than 24 hours without the approval of the Regional Supervisor. Several commenters said that 48 hours should be the limit for continuous flaring without approval while one commenter suggested 72

hours. Their position is that a greater time period would allow time for routine compressor maintenance and repairs, well repairs, and drill-stem testing without obtaining special approvals and shutting in oil wells. Paperwork and recordkeeping would also be reduced.

Response—The recommendation to extend the limit to 48 hours was adopted in § 250.175 (a)(2)(i) and (a)(3) with provisions to allow the Regional Supervisor to establish a limit of less than 48 hours when necessary to prevent degradation of the air quality and the language has been revised accordingly. Further, § 250.175 (a)(3) and (a)(4) have been combined.

Comment—Some comments were received concerning the requirement that flaring at a point (from a facility) shall not continue beyond a cumulative time of 144 hours during any calendar month without the approval of the Regional Supervisor. The commenters stated that the requirement should be eliminated because it restricts time for routine compressor maintenance without obtaining special approvals and shutting-in oil wells which results in added recordkeeping.

Response—The recommendation was not adopted. It has been determined that 144 hours of cumulative flaring and venting time from a facility during any calendar month provides sufficient time to perform routine maintenance on compression and related production equipment. This rule is designed to identify repeated short-time flaring and venting instances which can result in extensive cumulative flaring and venting time and large volumes of gas being flared or vented.

Comment—Several comments were submitted concerning the proposed regulation dealing specifically with the flaring and venting of gas-well gas. Those commenters stated that the phrase referring to the alternative course of action of shutting-in gas wells was unnecessary and should be deleted.

Response—The recommendation was adopted and the regulation revised accordingly. Language was added to provide for the extension of flaring and venting of gas on a case-by-case basis with the approval of the Regional Supervisor.

Comment—Several comments were submitted concerning the specific records of flared and vented gas which are to be kept and made available for inspection by MMS's representatives. These records include daily volumes of flared and vented gas, number of hours of flaring or venting on a daily basis, reasons for flaring or venting, and a list of producing wells contributing to the flare or vent along with respective GOR data. Each of the commenters recommended that only minimal records providing daily volumes of flared or vented gas be required to be maintained. They argue that the additional data required in the new regulations are not now available, would require a massive and costly data collection and recordkeeping effort, and represent an increased recordkeeping burden over the present regulations without any resulting benefits.

Response—The recommendation was not adopted. The NTL No. 75-9, dated May 13, 1975, required that records detailing flaring and venting occurrences be available at the platform where the equipment is located for the purpose of monitoring gas flaring and venting. Sections 250.57-1(k) and 250.57-2(g) in the existing rules require the submittal of similar information to MMS in order to effectively monitor emissions and air quality. The detailed recordkeeping requirements in the new rule do not represent an increased data collection burden but only aim to clearly detail the specific information which has been required in the past and which represents the minimum data and records necessary to effectively monitor gas flaring and venting occurrences and approvals. Past experience with most operators and lessees indicates that these kinds of records *have* been kept routinely and can be made readily available to MMS either by telephone or through field inspections.

Comment—There were several comments concerning § 250.177, Enhanced oil and gas recovery operations. One commenter recommended that the requirement to timely initiate enhanced recovery operations be eliminated from § 250.177(a). The commenter stated that a prudent operator will always pursue economic tertiary projects and, therefore, the requirement is not necessary. Another commenter contended that enhanced recovery data must be maintained confidential.

Response—The first recommendation was not adopted. The purpose of the requirement to initiate enhanced recovery operations in § 250.177(a) is to require operators to demonstrate prudence and ensure that operators initiate enhanced recovery operations where such operations would result in an increase in the ultimate recovery of oil and gas from a reservoir using sound engineering and economic principles. Regarding the second comment, the enhanced recovery data submitted to MMS is maintained confidential.

Subpart L—Production Measurement, Surface Commingling, and Security

Subpart L, Production Measurement, Surface Commingling, and Security, includes rules to ensure the accuracy and completeness of measurements used for royalty payment purposes. These rules govern the equipment and procedures to be used to measure the quantity of production leaving a lease or entering a storage tank, the procedures to be used if production from two or more leases is combined prior to measurement for royalty purposes (commingling), and the equipment to be used and procedures to be followed in establishing a site security program.

Subpart L of the final rule replaces current §§ 250.60, Measurement of oil; 250.61, Measurement of gas; and 250.68, Commingling production; and current OCS Order No. 13, Production Measurement and Commingling. The proposed provisions for measurement of sulphur have been moved to proposed Subpart P. The merging and revising of these rules eliminate redundancy, clarify requirements, and address use of new technology.

Comments from 21 interested parties were received concerning this subpart. The majority were from companies engaged in offshore operations or related industries. These included several engineering organizations which, together with operating companies, provided a thorough review of the mechanisms, procedures, and standards prescribed in the proposed rule. There were numerous suggestions for revisions to the proposed rule to improve the operational requirements and, in some cases, the clarity of language. Many of the recommendations were adopted in the final rule. A discussion of comments on individual paragraphs of Subpart L follows.

Comment—One commenter suggested revising the title of Subpart L by adding the word "surface" before the word "commingling" to distinguish Subpart L from § 250.176 of Subpart K which pertains to downhole commingling.

Response—This recommendation has been adopted. The title of Subpart L in the final rule reads "Production Measurement, Surface Commingling, and Security."

Comment—There were two comments concerning all of § 250.180 in general. One commenter remarked that there are significant differences between the rule as proposed and requirements in the API Manual of Petroleum Measurement Standards (MPMS). Another commenter stated that self-interest of the operator will tend to assure proper measurement and that the use of performance standards would be proper rather than detailed procedures.

Response—These recommendations were not adopted. The MMS recognizes that the API MPMS should be used in conjunction with § 250.180 to ensure accurate measurement. However, items detailed in § 250.180 such as the handling of malfunction meter factors or meter proving frequency have been mentioned in less detail in the MPMS leaving them open to differing interpretations as to proper procedures and methods of operation. As to the supposition that self-interest of the operator assures proper measurement, this may not always be the case. Sales transactions in the OCS are not always arms length agreements. In addition, there have been numerous instances where commingled production from State leases and Federal leases may be "properly measured" from the common lessee's point of view but not from MMS's point of view. Detailed procedures are necessary because royalty measurement points sometime differ from custody transfer points.

Comment—Four commenters suggested two changes to clarify the meaning of § 250.180(a). It was recommended to add the word "surface" before the word "commingling" and the word "liquid" before the word "hydrocarbons."

Response—The recommendation to add the word "liquid" to modify the term "hydrocarbons" has been adopted in order to clarify that this paragraph is under the general section referring to measurements of liquid hydrocarbons. However, there is no need to change the reference to commingling because the general requirements for this are addressed in § 250.182.

Comment—There were two comments on § 250.180(b) concerning application and approval requirements for measurements of liquid hydrocarbons. One commenter suggested that the term "commingling" be replaced with the term "surface commingling." The other expressed uncertainty about the meaning of the term "liquid hydrocarbons" and suggested that a definition of this term be included.

Response—The recommendation to replace the term "commingling" with the term "surface commingling" has not been adopted. That change is not necessary here because the word "surface" has been added to the title of Subpart L. The terms "commingling" and "liquid hydrocarbons" have been defined in this final rule for clarification.

Comment—Two commenters suggested that the title of § 250.180(c) be changed to "Liquid Sales Meter Facility Requirements" from "Sales Meter Facility Requirements" for clarity.

Response—This recommendation was not adopted. The title of § 250.180 is "Measurement of liquid hydrocarbons," and the requirements apply only to liquid metering facilities.

Comment—Four commenters made suggestions for rewording § 250.180(c)(1) which states that a meter upon which royalty is based shall be considered a sales meter. All suggested that a sales meter be described as one that transfers custody and upon which royalty is based because this definition better distinguishes a sales meter from an allocation meter. Two commenters also suggested that the paragraph be reworded to include a requirement that a meter meet the standards of groups such as API, American Gas Association, and Gas Processors Association.

Response—These recommendations were not adopted. Although the vast majority of meter locations that are designated by the MMS as royalty measurement points are also custody transfer points in contracts between sellers and buyers, this is not always the case. A sales meter is one on whose measurements royalty is directly based, while an allocation meter is one that is used to determine the proportion of production to be credited to a lease or leases in a commingling situation. Although the final rule does not distinguish between liquid allocation meters and liquid sales meters, differentiations between allocation and sales meters are addressed on a case-by-case basis during the approval of measurement facilities. Each application concerning liquid measurement facilities must be evaluated and a determination made as to whether the equipment and procedures the operator proposes to use conform to the production measurement equipment and procedures currently approved for other leases and operators within the particular transportation system. There must be a certain degree of flexibility in making determinations as to the liquid sales and royalty measurement point. The MMS does agree that a liquid sales meter should be designed, operated, and maintained within certain industry guidelines and standard practices, but these requirements are addressed in other sections of this subpart.

Comment—There were five comments on § 250.180(c) suggesting the addition of a requirement for temperature compensator systems in sales meter facilities because this would ensure or provide for temperature compensation for the meter reading in the design and installation or operation of sales meter facilities for liquid hydrocarbons.

Response—This recommendation has been adopted to the extent that a new item (iv) has been added to § 250.180(c)(2) to provide for either direct temperature measurement systems or temperature compensation systems to allow existing systems to remain in place without immediate modification.

Comment—There were three comments on § 250.180(c)(2)(i) concerning sales meter facility requirements that suggested the addition of turbine meters and their associated electronic equipment. The rationale for these comments stated that turbine meters are utilized extensively in the Gulf of Mexico OCS for surface commingling measurement.

Response—It is recognized that turbine meters are currently in extensive use in the GOM to measure liquids but not for sales purposes. The subject of § 250.180(c) is sales meter facility requirements not allocation meter facility requirements. Since the final rule provides for use of an "other meter" with approval of the Regional Supervisor, the use of turbine meters can be approved under this provision when appropriate. The suitability of a particular measurement device for a given location can be addressed on a case-by-case basis with attention given to the applicability of established industry standards and practices.

Comment—Five commenters suggested two changes to § 250.180(c)(2)(ii) concerning the requirement for meter proving equipment. Three suggested that the paragraph be deleted because proving requirements are covered elsewhere in paragraph (d), and proving equipment is not always part of the onsite facility. Two commenters suggested revision of the paragraph to include a portable master meter among the types of equipment specified for meter proving.

Response—The recommendation to delete § 250.180(c)(2)(ii) has not been adopted. This provision establishes the basic requirement that there must be a provision for meter calibration. In contrast, paragraph (d) contains requirements for proving conducted with various types of equipment. Although the vast majority of sales meter facilities have prover equipment as part of the facility, the paragraph does not state that it must be one of the permanent components. The text of the final rule has been modified to specify that required meter proving devices may be permanently installed or portable.

Comment—There were five comments on § 250.180(c)(2)(iii) concerning the type of sampling device to be used with

the sales meter facility. Four commenters suggested that the word "counter" be deleted after the word "meter" in describing the device used to pulse the sampler system. One commenter observed that a proportional-to-flow "isokinetic" type sampling device will give the most accurate sample.

Response—The recommendation to delete the word "counter" has been adopted and the word "output" substituted for it. This reference in the proposed rules to the meter "counter" meant the device that makes a pulsed output in response to the turning meter assembly not the meter counter register. Other devices may be used to pulse the sampler system but they must be closely reviewed prior to approval since the use of a timed sampling device, for example, would greatly affect the location of the sample point with respect to the meter and diverter if so equipped.

With respect to the comment about "isokinetic" types of sampling devices, there seems to be no reason to further specify the type of proportional-to-flow sampling device. The API MPMS, Chapter 8—Sampling, covers recommended practice for sampling methods used to obtain representative samples of petroleum and petroleum products. Although the document addresses many considerations for obtaining accurate samples including sampling frequency, probe location, probe design, and design of automatic oil sampling systems, there is no mention of "isokinetic" samplers. The specific sampling system to be used at a particular liquid measurement station is approved on a case-by-case basis by the Regional Supervisor. The applicability and ability of a sampler to obtain representative samples are reviewed at the time of approval. If the word "isokinetic" in this comment refers to a static mixer, then it is an acceptable device for the inducement of turbulent flow.

Comment—Four commenters suggested several revisions to § 250.180(c)(3) which concerns the design and installation of sales meters for liquid hydrocarbons. The proposed paragraph (c)(3) contained five separate provisions designated (i) through (v). Three of the commenters suggested rewording the heading in paragraph (c)(3) to state that sales meters shall be "designed and operated to accomplish" the requirements specified in (i) through (v), rather than the proposed wording which stipulated that sales meters shall be "designed and installed to include" the listed requirements. One commenter suggested the addition of a provision for the measurement of temperature or direct compensation of the liquid hydrocarbon measurement for change in temperature. Changes were also suggested to items (iv) and (v). In the proposed rule, provision (iv) required that all meters be operated within the gravity range specified by the manufacturer. The commenter suggested that this provision be modified by the additional requirement that the operation of meters be within 10 percent of the pressure and flow rate at which they were approved. The suggestion on provision (v) was that it be changed to reflect that the pressure and flow rate through each meter be maintained within manufacturer's maximum and minimum specifications recommended for accurate measurement.

Response—The suggestion to change the wording of § 250.180(c)(3) to specify that the design of sales meters "accomplish" certain requirements is an improvement in clarity and is a more appropriate expression of MMS's objective in the case of provisions (i) through (iii). This wording has been adopted. However it is a cumbersome heading for provisions (iv) and (v). In view of this and specific comments discussed below pertaining to provisions (iv) and (v), § 250.180(c)(3) has been revised in the final rule by dividing it so that § 250.180(c)(3) contains the language suggested for the heading, and a new § 250.180(c)(4) contains the performance standards to be achieved by maintenance of meter facilities. Subsequent paragraphs have been renumbered as appropriate.

Section 250.180(c)(3) of the final rule contains provisions (i) through (iii) substantially as these appeared in the proposed rule and a new provision (iv) which is an added requirement. Section 250.180(c)(4) contains three provisions, (i) through (iii). The first provision, (i), was previously designated § 250.180(c)(3)(iv) in the proposed rule. Section 250.180(c)(4)(ii) in the final rule is a revision of § 250.180(c)(3)(v) of the proposed rule, reflecting the recommendation that a meter be operated within the manufacturer's specifications for minimum and maximum flow rate for linear accuracy. Section 250.180(c)(4)(iii) was added in response to one of the comments received on § 250.180(c)(3)(iv) of the proposed rule. The final rule contains a new requirement at § 250.180(c)(4)(iii), which addresses the need to reprove meters when changes in conditions such as pressure, temperature, density, viscosity, and flow rate may result in inaccurate readings.

The recommendation that a provision be added for the measurement of temperature or direct compensation of the liquid hydrocarbon measurement for change in temperature was also adopted. This provision is more appropriate in § 250.180(c)(2), and the requirement has been added there as item (iv).

Comment—Four commenters made two suggestions about proposed § 250.180(c)(4)(i) concerning sampling devices. One commenter stated that the sampling point should be downstream of the divert valve. The other commenter stated that it should be located in accordance with accepted industry practice or the API MPMS, Section 8.2.

Response—The sample point can be upstream of the divert valve because if the sampler is pulsed by the meter itself, then the meter would not be turning and no samples could be taken during the diversion of the bad oil upstream of the meter. Therefore, the first comment has not been adopted. The recommendation that the sampling of oil during sales and royalty measurements conform to industry standards was adopted. Proposed § 250.180(c)(6) was revised to cite API MPMS, Chapter 8—Sampling, and redesignated as § 250.180(c)(5).

Comment—Three commenters suggested five changes to proposed § 250.180(c)(4)(iii) concerning the location of the sample probe in the installation of sampling devices. (This is renumbered (c)(5)(iii) in the final rule.) One commenter stated that the sample probe should not be limited to a vertical run of piping since sufficient mixing can be obtained with the use of devices to induce turbulent flow (mixers).

Response—This recommendation was not adopted. This use of devices to induce turbulent flow is not common enough to make their use a requirement.

Comment—Another commenter suggested the deletion of the phrase "where a region of turbulent flow exits," stating that it implies that if Reynolds Number is less than 2000, it is acceptable to install the sample probe immediately adjacent to a pipe fitting.

Response—This suggestion was not adopted. The final rule has been modified to state that the sample probe is to be located within a region of turbulent flow. The sample probe must also be at least three pipe diameters distant from a pipe fitting.

Comment—A third commenter suggested the addition of further requirements that the probe be installed downstream of any divert valve, that the three pipe diameters requirement apply to installations after the effective date of the regulations, and that the Reynolds

Number value of 2000 be stated to define a turbulent region.

Response—This recommendation was not adopted. It is not necessary for a sample probe to be installed downstream of any divert valve to prevent excessive sampling of water provided the divert valve is upstream of the meter and the sampler is being pulsed by the meter itself. No high water content oil would be sampled if the meter is not turning. This topic is further addressed in comments on § 250.180(c)(4)(i). Since it is common industry practice to locate the sample probe more than three pipe diameters from any fitting, as suggested in the API MPMS, Chapter 8, the regulation will be enforced as of the effective date of the rule. Finally, there is no reason to specify the Reynolds Number of 2000 to define turbulent flow.

Comment—There were three identical comments concerning proposed § 250.180(c)(5) requiring the Regional Supervisor's approval of equipment. Each recommended that it be deleted on the basis that it is redundant with paragraph (b).

Response—The recommendation has been adopted and § 250.180(c)(5) has been deleted from the final rule. At the same time, § 250.180(b) has been revised to clarify that the application must be submitted to the Regional Supervisor for approval and contain information sufficient to demonstrate that the requirements of this section will be met.

Comment—There were 19 comments by 8 commenters concerning § 250.180(c)(6) pertaining to the documents incorporated by reference for the purpose of establishing standards for procedures to obtain net volume and other measurements. One commenter suggested changing the term "net volume" to "net standard volume." There were five comments suggesting the deletion of provision (i) of paragraph (c)(6) referencing API 2543, American Standards Method of Measurement of Petroleum Liquid Hydrocarbons by Positive Displacement Meter, because these documents are no longer in print. They were replaced subsequent to the issuance of the proposed regulations by new chapters of the API MPMS.

Response—The recommendation to revise § 250.180(c)(6) to reflect references to current documents was adopted. References to obsolete documents have been removed, and several new references to chapters in the API MPMS have been added. Some of these specific additional references were also suggested in other comments to Subpart A which compiles all documents incorporated by reference in all of the subparts of Part 250.

Comment—There were two identical comments submitted concerning § 250.180(c)(7) which is a requirement that sales meter facilities shall be appropriately located as approved by the Regional Supervisor. The comments suggested that this paragraph be deleted since a duplicate requirement is found in paragraph (d).

Response—This recommendation has not been adopted. While it is true that § 250.180(d) concerns sales meter facilities, it pertains to proving requirements for meters not to the location of meters. However, upon considering the issue of the most appropriate location for this requirement, it was decided that the requirement falls within the scope of § 250.180(b), Application and approval. Therefore, § 250.180(c)(7) has been deleted in the final rule, and the requirement found there in the proposed rule has been incorporated into § 250.180(b) of the final rule.

Comment—There was one comment concerning § 250.180(d)(3). It suggested the referencing of API MPMS, Chapter 4—Proving Systems.

Response—This recommendation has been adopted. Section 250.180(c)(6) of the final rule incorporates API MPMS, Chapter 4 by reference.

Comment—There were six commenters who submitted recommendations on § 250.180(d)(3)(i) concerning the calibration of master meters. Three of the commenters recommended that master meters be calibrated using not only similar gravity fluid but also fluid of similar viscosity and temperature. Two commenters recommended use of fluids other than crude but having similar physical properties. Three other commenters suggested changing the requirement for frequency of calibration from "within 42 days" to "within 45 days" since 45 days is used for gas meters. One commenter recommended adding the phrase "at the required flow rate" to assure calibration at or near the test flow rate.

Response—These recommendations were adopted in part, and the second sentence in § 250.180(d)(3)(i) was changed to provide that the master meter be calibrated with a fluid of similar gravity, viscosity, and temperature as flows through the operating meter and with a similar flow rate monthly but that the period between calibration is not to exceed 6 weeks unless a longer period is approved by the Regional Supervisor. Master meters should be calibrated under conditions that are as close to producing conditions as possible. Sometimes this may be difficult because the same master meter is often used to calibrate meters at more than one location, and the physical properties may change from location to location. To achieve the desired results, the conditions at the various locations should approximate the properties of fluids used in calibrating the master meter. As long as the fluids are of similar gravity, temperature, and viscosity as the fluids available during normal operating conditions, other fluids may be used to calibrate the master meter. There is no "42-day" requirement. The requirement is that meters be proven each month. However, up to 42 days (6 weeks) may elapse between provings. This provides leeway so that the provings do not have to occur on the same day each month. The "45 days" for gas meters cannot be compared to the liquid meter monthly requirement. Gas meters do not have to be calibrated monthly but rather at least once every 45 days. The addition of the phrase "at the required flow rate," is considered to be unnecessary. The flow rate requirements are covered by manufacturer's specifications.

Comment—Three commenters on § 250.180(d)(3)(ii) suggested revising the first sentence of the subject paragraph to add a phrase to clarify that the provision refers to the difference in the meter factors between the runs.

Response—This recommendation has been adopted.

Comment—Three commenters on § 250.180(d)(3)(iii) recommended revising the paragraph to provide that the "master meter may be installed either upstream or downstream of the operating meter, but shall be upstream of any back-pressure or reverse flow check valves associated with the operating meter."

Response—This recommendation has been adopted, and § 250.180(d)(3)(iii) has been revised accordingly.

Comment—There were two comments on § 250.180(d)(3)(iv) concerning calibration of mechanical-displacement provers. The first comment recommends that mechanical provers be calibrated after the first year of operation and then every 5 years. The second comment recommends that MMS not require calibration of provers every 5 years but rather a visual inspection every 2 years.

Response—These comments are diametrically opposed to each other. The first one recommends more stringent requirements, and the second one recommends less stringent requirements. The MMS believes that these provers should be calibrated every 5 years. This requirement would not only provide for calibration every 5 years but would also mean a visual

inspection of the prover sphere and the internal coating at least every 5 years. The MMS's position is based on measurement experiences, discussions with measurement experts, and widespread industry practice. Therefore, § 250.180(d)(3)(iv) has been revised to require that mechanical-displacement provers be calibrated as least every 5 years in accordance with the API MPMS, Chapters 4 and 11.2.3.

Comment—There were four comments concerning the provisions in § 250.180(d)(3)(v)(C). One comment recommended revising the phrase "The change in tank shell dimension with the change in temperature (Cts)" to "The change in prover volume due to the change in temperature (Cts)." The other three comments recommend deleting the last sentence of paragraph (3)(v)(C) concerning the use of a combined correction factor of Cts and Cts.

Response—These recommendations have been adopted. The last sentence of the proposed paragraph was deleted because API has not published the tables referred to in the sentence and API Standard 2541 has been withdrawn.

Comment—There were six identical comments concerning § 250.180(d)(3)(v)(D) regarding the reference to API Standard 1101, Appendix B, Table II which was proposed to be used in calculating the change in volume of the test liquid with the change in pressure (Cpl). This document is no longer in print.

Response—The final rule removes reference to API Standard 1101 and substitutes a reference to Chapters 11.2.1 and 11.2.2 of the API MPMS.

Comment—There were three comments on § 250.180(d)(4) concerning the requirement for frequency of sales meter proving. One suggested changing the phrase "not to exceed 42 days" to "not to exceed 45 days." In addition, two comments suggested changing the monthly meter proving requirement to quarterly for meters registering less than 7800 bbl/month. The reasons given for these comments were to make liquid meter proving frequency consistent with gas meter calibration frequency and to remove an unnecessary burden on the lessee by allowing low volume meters to be proved quarterly.

Response—These recommendations were not adopted. It would not be appropriate to make these revisions simply to bring the frequency requirements for proving liquid meters in line with those for gas meter calibration because the two types of metering cannot be equated in this manner. For gas orifice meters, the chart recorder is tested for accuracy at various pressure values. For liquid meters, the meter itself is proved for accurate measurement of a known volume. The MMS believes the appropriate frequency for proving liquid meters should be once each month with no more than 6 weeks (42 days) between provings. The previous requirement was for submission of the results of meter proving for a meter measuring liquid hydrocarbons monthly but within 15 days of the prover test. Some operators may have interpreted this to mean every 45 days. This could result in proving the meter 8 times a year rather than 12 times a year. The 42-day period was proposed to give the operators a 2-week grace period to be in compliance if for some reason, such as weather, personnel, or mechanical problems, the scheduled monthly proving had to be delayed. We understand that meter provings for gas and liquid meters are more often than not scheduled by the product buyer or transporter. However, in the case of liquid hydrocarbon sales, companies sell to themselves much more often than in the case of gas sales and therefore can schedule the provings to be in compliance. The suggestion that the frequency of meter proving be quarterly for meters registering less than 7800 bbl/month may have merit under given circumstances. Relief from the monthly requirement may be obtained on a case-by-case basis when warranted.

Comment—There were three comments concerning establishing an operating meter factor in § 250.180(d)(4)(ii). Two comments concerning the first sentence suggested revising the requirement for proof run results to require that the difference in the meter factors between runs is not greater than 0.0005 rather than the proposed requirement that the difference between results is not greater than 0.0005. The third commenter stated that existing GOM OCS Order No. 13 requires a tolerance of 0.0002.

Response—The recommendation that the first sentence of § 250.180(d)(4)(ii) be revised to establish that it is the meter factor for three consecutive runs that must be compared and be within tolerance was adopted and the sentence revised accordingly in the final rule.

The third comment concerning existing OCS Order No. 13 is in error. Section 2.C.(3)(b) of OCS Order No. 13 was vague as to whether the tolerance 0.0002 applied to runs proving a master meter or proving a meter with a master meter. It was clarified by GOM NTL No. 79-10 to mean the tolerance for proving a master meter. This is corrected in proposed § 250.180(d)(3)(ii).

Comment—There were three comments concerning proof runs to establish a meter factor for a mechanical displacement prover as required in § 250.180(d)(4)(iii). They all suggested revising the first sentence to remove the requirement that the difference between results in proof runs not be greater than 0.0005. The comments all suggested substituting a requirement that the results of proof runs be such that the difference in the meter factor is not greater than 0.0005.

Response—These recommendations were not adopted. It is not standard procedure to calculate individual meter factors for each run with a mechanical displacement prover. It is standard procedure to compare the results of the high speed pulse generator from consecutive runs for the tolerance of 0.0005.

Comment—There were six comments on § 250.180(d)(5) concerning the submittal of meter proving reports to the Regional Supervisor. Three comments suggested deleting the requirement. Two comments suggested changing the submittal period from 10 to 15 days, and one suggested changing it from 10 to 30 days. Five of the six comments recommended maintaining files of meter proving reports in field offices for 1 or 2 years.

Response—These recommendations have not been adopted. However, § 250.180(d)(5) of the final rule has been revised to require the submittal of meter proving reports monthly within 15 days following the end of the month. These operator-submitted documents are kept on file in the Regional Offices and ensure lessee compliance with § 250.180(d)(4). The proposed § 250.180(d) restated the requirements contained in the current GOM OCS Order No. 13. These are not added requirements and do not suggest that meter proving reports, run tickets, and prover calibration documents should be submitted to MMS District Offices.

Comment—There were suggestions from five commenters for various additions and changes to § 250.180(d)(5)(i). This paragraph establishes the deviation level at which a meter factor is considered a malfunction factor and prescribes appropriate procedures to address a malfunction situation including the method to determine the appropriate production measurement during a period of malfunction.

Two comments suggested changing the first sentence to read:

> A meter factor is considered a malfunction factor when the deviation between the factor and the previous factor exceeds 0.0025, unless other known conditions exist that would account for the factor difference.

This would add to the proposed sentence the phrase "unless other known conditions exist that would account for the factor difference."

Three sets of comments suggested revising the second sentence by adding the phrase "checked for damage or wear" after the phrase "removed from service" in prescribing procedures to be undertaken in the event of a malfunction.

Another commenter addressed generally the provisions of both the first and second sentences. These comments suggest that since there may be other causes for a malfunction meter factor, such as changes in flow conditions and fluid properties, these should be investigated prior to removing a meter from service. Further, if any of these possible causes are discovered and are corrected, then the meter should be reproved. Only if the meter shows results of excessive factor deviation after the second proving would it be removed from service and repaired.

There were three sets of comments that suggested inserting the following language for clarification between the second and third sentences.

> If the date of the malfunction can be determined, the previous factor shall be applied to the production measured through the meter to that date, and the malfunction factor shall be applied to the time the malfunction factor was established. If the date of the malfunction cannot be determined, the arithmetic average * * *

Another commenter suggested adding the phrase "unless the date the malfunction occurred can be determined" to the third sentence which concerns averaging of previous and current malfunction factors.

Response—The recommendation to add the phrase "unless other known conditions exist that would account for the factor difference" was not adopted. It is recognized that a deviation greater than 0.0025 between successive meter factors can be caused by problems other than those involving the meter or its associated components. However, the addition of the suggested phrase would mean that if other known conditions cause the deviation, then the current factor would not be considered a malfunction, thus eliminating the basis for factor averaging. The term "malfunction factor" should not be confused with a malfunctioning meter although this is usually the cause of a malfunction factor. A malfunction factor results when the difference between the meter's previous and present capability to accurately measure a known volume of fluid exceeds a certain value (0.0025).

The recommendation that the rule be revised to specify "checked for damage or wear" after the reference to "removed from service" has been adopted. This change was made because the proposed language presumed that this step would necessarily follow removal from service.

The recommendation that a malfunctioning meter not be removed from service until investigated to discover possible causes, or the meter has been reproved but excessive deviation continues has not been adopted. It is not appropriate for a meter with a malfunction factor to be left in service until it can be determined if the malfunction factor can be explained. Although not specifically required by § 250.180, this situation is one where a standby meter would normally be put into service.

The recommendation of alternate approaches to the application of the arithmetic average of the malfunction factor and the previous factor to determine production measurement in the event of a malfunction was not adopted. The method proposed in the regulations is a better way to obtain a representative meter factor over a run period when a malfunction factor has occurred. The method proposed by the comments would require specific procedures and standards to determine the point in time when the malfunction occurred.

Comment—Two commenters each submitted the same two comments concerning § 250.180(d)(6). The first commenter suggested changing the term "(standard conditions are 0 psig and 60 °F)" to "(standard conditions are 14.73 psia and 60 °F)."

Both commenters also suggested that the following be added, "Alternatively the observed API gravity and temperature of the hydrometer may be reported on the run ticket when the calculations are performed separately."

The reason presented for this suggestion states that run tickets should report observed data as a minimum and permit calculations with remote computers to reduce errors.

Response—These recommendations were not adopted. Regarding the first comment, MMS sees no reason to confuse the issue by defining atmospheric pressure by specifying an absolute pressure value. Standard conditions for pressure means atmospheric pressure or 0 psig. The API MPMS Chapter 12, Section 2, Calculation of Liquid Petroleum Quantities Measured by Turbine on Displacement Meters defines standard conditions as 60 °F and atmospheric (0 psig) with a qualification concerning liquids with an equilibrium pressure above 0 psig. However, in the definition of equilibrium pressure it is defined to be zero for liquids with an equilibrium vapor pressure less than 14.73 psia. Since, for these purposes, they are the same, 0 psig should be used. The third sentence of this paragraph states "The Ctl factors shall be listed on the appropriate run ticket when the meter is not automatically temperature compensated."

It is not clear exactly what the second commenters meant by the suggested addition. It is agreed that run tickets should report observed data but a run ticket should also include the net standard volume as calculated from the observed data. The recording of observed gravity and temperature of the volume-weighted sample cannot possibly substitute for the change in temperature (Ctl) factor, although these hydrometer readings along with the volume-weighted average temperature are used to determine the Ctl factor. All factors including basic sediment and water (BS&W) measurements that are used to obtain net standard volume should be shown on the run ticket. Therefore, the addition of this sentence especially the way it is worded would be wrong. It is not necessary that the net standard volume calculations be done in the field, but eventually all factors and calculations should be shown on the ticket.

Comment—There were five sets of comments concerning § 250.180(d)(7) which deals with pulling run tickets and sending them to the Regional Supervisor. Two commenters suggested that the requirement to submit run tickets to the Regional Supervisor be deleted and that tickets simply be kept on file in the company field offices for a period of 2 years. The rationale for this suggestion by two commenters was that the proposed rule would add a "mind-boggling" amount of paperwork to the MMS District Offices and that the suggested change would reduce paperwork.

The other three sets of comments suggested the submittal of copies of run tickets rather than the original.

Reponse—The recommendation to delete the requirement for submitting run tickets was not adopted. The review of run tickets is handled in the regional offices not the district offices and is not an added requirement. The MMS recognizes that deleting this requirement would reduce paperwork. However, it would also impede MMS from ensuring that lessees and operators are operating metering facilities and calculating sales volumes in a manner compliant with § 250.180.

The recommendation to permit the submission of copies rather than original run tickets has been adopted and § 250.180(d)(7) revised accordingly. Respondents' comments brought to our attention a problem that was not considered in the drafting of the proposed rules. The comment suggested possible misunderstanding of the information to be shown on run tickets. It has been decided to expand the text of the final rule to reduce the opportunity for misunderstanding. The recording of only observed data on run tickets may defeat their purpose. The buyer and seller must reach some understanding on the use of observed data to calculate net standard volume. The MMS is concerned that the run tickets clearly show the gross volume registered by the meter (opening and closing), the current meter factor, correction factors for temperature and pressure if necessary, correction for BS&W content, and observed gravity and temperature from the shake-out, gravity at standard conditions, the operator and location names, dates and times of opening and closing readings, and the net standard volume which forms the basis for royalty due from lessees for the leases having liquid hydrocarbons being measured at the location. In the final rule, the information required to be shown on the run ticket has been described more fully. In addition, to alleviate some burden, the 10-day submittal requirement has been changed to monthly.

Comment—There were five commenters on § 250.180(e)(1) concerning allocation meter facilities. Three commenters recommend that MMS should not require a device capable of proving these meters but rather provide for use of a device because of the availability of portable equipment. These same commenters and another commenter also recommend that either continuous or periodic sampling be allowed instead of only continuous samplings. One commenter suggested defining an allocation meter as "one at which custody does not transfer but is the basis for royalty determination." Another commenter recommended a definition for continuous sampling.

Response—The recommendation that the regulation permit the use of a portable device capable of proving the meter was adopted. The recommendation to replace the "continuous sampling" with a "continuous" or "periodic" sampling requirement was also adopted, however, the "periodic" sampling will be at a minimum daily sampling.
Section 250.180(e)(1) was revised in the final rule to incorporate the adopted recommendations including the recommendation to define the term "allocation meter."

Comment—Three commenters suggested revisions to proposed § 250.180 (e)(2) concerning allocation meters. All suggested deleting the provision in both § 250.180(e)(2)(i) and (e)(2)(ii) requiring that allocation meters meet the same proving and tolerance requirements as sales meters. It was suggested that the revision be accomplished by deleting the last part of the first sentence in both § 250.180 (e)(2)(i) and (e)(2)(ii) beginning with the phrase "in accordance with." The reason given for this suggestion was that it is not necessary for allocation meters to have the same level of accuracy as sales meters, and the cost and difficulty of bringing allocation meters to the same proving and tolerance criteria is unjustified.

Response—The recommendation to delete the requirement that meter proving for allocation meters meet the same proving and tolerance standards as sale meters was adopted, and § 250.180 (e)(2)(i) and (e)(2)(ii) were revised accordingly.

Comment—It was suggested that a third provision be added to § 250.180(e)(2) to exclude allocation meters of facilities or wells having the same ownership and royalty interest from the meter proving requirements of this paragraph because precise metering is not necessary in this circumstance.

Response—This suggestion was not adopted. There is no need for a different standard for allocation meters for facilities or wells having the same ownership and royalty interest.

Comment—There were four comments on § 250.180(e)(3) recommending that the requirement for 6-year retention of allocation meter proving reports be changed. Three of the comments recommend a 1-year retention, and one comment recommended a 2-year retention.

Response—The recommendation to reduce the 6-year retention period for meter proving reports for allocation meters has been adopted. A reduced retention period of 2 years is contained in the final rule.

Comment—One comment recommended that § 250.180(f)(2)(i) be deleted because this standard is not part of API MPMS, Chapter 7. Three comments suggested adding Chapter 7 of the API MPMS to the list of other API Chapters referenced in § 250.180(f)(2)(ii).

Response—These recommendations have been adopted. Section 250.180(f)(2)(i) was deleted, and Chapter 7 was added to the list of other Chapters of the API MPMS which were listed in § 250.180(f)(2)(ii) in the proposed regulations. Because of the deletion of § 250.180(f)(2)(i), the individual provisions of proposed § 250.180(f)(2)(ii) designated as items (A) through (F) have been redesignated in the final rule as items § 250.180(f)(2) (i) through (vii).

Comment—There were four comments submitted on § 250.180(f)(3) concerning run tickets from tank measurement determinations. Three of the comments recommended that copies of the run tickets and not the originals should be submitted monthly, instead of within 10 days of being written. The fourth comment recommended that these run tickets should be kept at the field office for a period of 2 years. The comments state that run-ticket tabulations for tanks are done monthly, and the requirement as proposed would mean unnecessary expenses to the operators.

Response—The recommendations were adopted to the degree that copies of run tickets are to be submitted monthly with submission to be within 15 days of the run ticket being written.

Comment—There were several general comments concerning § 250.281, Measurement of gas. One of the comments addressed the subject of working-interest owner's self-interest in dictating performance standards. Two other comments concerned the questions of whether only orifice and turbine meters are acceptable and whether mass measurement is to be permitted. Another comment suggested that there are significant differences between § 250.181 as proposed and the API MPMS, Chapter 14.

Response—No changes were made in the proposed rule on the basis of these commments. The subject of working-interest owners' influencing the development of performance standards to serve their own interests was addressed in the general comments for § 250.180. It has been concluded that MMS requirements used together with industry performance standards provide the most viable set of rules to be followed in assuring the accurate measurement of hydrocarbons on the OCS.

Regarding the comment concerning alternative methods of gas measurement, MMS is unaware of any methods of sales gas measurement in the OCS other than turbine meters and orifice meters. However, § 250.181(c) states that applications shall contain information sufficient to demonstrate that the method of gas measurement proposed meets the requirements in § 250.181. It is conceivable that mass measurement could be approved if an applicant demonstrated that approach would provide an accurate measurement.

Finally, MMS is unaware of any major conflicts between the proposed rules and the API Standard cited in the last comment. Many provisions of the proposed rule references API's MPMS, some in greater detail and some in lesser detail.

Comment—There were four comments on proposed § 250.181(c)(1) which required that measuring equipment be installed and operated in accordance with recommendations in the API MPMS, Chapter 14. One comment recommended that gas orifice meter charts be used as backup when electronic gas flow measurement equipment is used for measurement purposes.

Another comment proposed that this paragraph specifically cite all the documents pertaining to meter standards of the American Gas Association (AGA) and ANSI which are the same as the current API MPMS Chapter 14 and are referenced in that document. The rationale for separately citing AGA and ANSI documents was to assure continued consistency between API Standards and those of the other groups in view of the possibility that API might soon revise MPMS Chapter 14 to change the current flow equation utilizing new data. The commenter observed that a revised API Standard might not be adopted by AGA or ANSI and suggested that the citation of AGA and ANSI Standards in the MMS rule would ensure that the API Standards in Chapter 14 would not be changed without AGA approval.

Two comments suggested incorporating ASME Standards into the proposed regulations. One comment offered a substitute for API MPMS Chapter 14. The recommended document, ASME Standard MCF–3M–1985, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi was claimed to give more accurate results than the API/ANSI 2530 document referenced in the subject section. The other comment requested incorporation of several other ANSI/ASME Standards addressing gas measurement by turbine meters, transit time ultrasonic meters, calculation of reported uncertainties in fluid flow in pipes, and a glossary of terms. The comment also cited several documents on these subjects which are in preparation.

Response—The recommendations have not been adopted. The recommendation for use of gas orifice meter charts as backup for electronic gas measurement equipment will be given full consideration on a case-by-case basis in the approval process required by § 250.180(c) of this subpart. In the event API Chapter 14 is revised, that revision will not be required by these regulations. A new rulemaking would be required. The AGA could point out any objectionable features of a revised Chapter 14 at that time.

On September 18, 1986, the ANSI Board of Review refused to replace the API 2530 Standard in favor of the ASME Standard MCF–3M–1985. The ANSI/API 2530 document also known as AGA Committee Report No. 3 is the cited standard in most gas sales contracts.

The incorporation by references to several additional ANSI/ASME standards for a variety of meters is not justified since few, if any, of these meters are actually in use on the OCS. Currently, there are two types of gas sales meters in use on the OCS—orifice and turbine meters. Of approximately 1,800 gas meters, less than 5 percent are turbine. Approval by Regional Supervisors for use of turbine or other meters may be sought in accordance with § 250.180(c). Applications and approvals and alternative standards, may be approved if shown to result in an acceptable degee of accuracy.

Comment—There were two comments on § 250.181(c)(2) concerning base pressure for gas measurement. Both suggested changing the base pressure for gas volume calculations for the GOM OCS Region from 15.025 pounds psia to 14.73 psia. The reason for the suggestion is that base data for calculation of gas volumes and existing standards are referenced to 14.73 psia and that all other Regions within MMS, except the GOM OCS Region, use this pressure base.

Response—These recommendations were not adopted. It is recognized that the base pressures designated for use in the regulations are not used by all operators in the GOM or Pacific OCS Regions. However, the 15.025 psia pressure base has been historically used in the GOM OCS Region, and prominent industry trade associations support the retention of the 15.025 psia pressure base in Subpart K, § 250.173, Well production testing. These comments recommended retaining the 15.025 psia pressure base. In addition, 30 CFR 252.152, Standards for Reporting and Paying Royalties on Gas, conforms to § 250.181(c)(2) as proposed. Therefore, to avoid the unnecessary paperwork that a change in the regulation would cause and to maintain conformity with other regulations, this provision is retained unchanged.

Comment—There were three comments of the same nature on § 250.181(c)(3)(ii) concerning calibration equipment. All comments recommend that the entire paragraph be deleted because it is redundant.

Response—The MMS believes that the paragraph should be kept. This paragraph refers specifically to the equipment used to calibrate the meters; § 250.181(c)(1) refers to the royalty meter or measuring equipment. This paragraph assures that not only the meters but also the equipment used to calibrate the meters should be in accordance with standards.

Comment—There were 7 commenters who sent in 12 comments on § 250.181(c)(3)(iii) concerning the requirements for calibration interval, flow rate, and retention of calibration results. Three comments recommended that allocation gas meters should not be calibrated as frequently as sales meters. Three other comments stated that the 6-year retention period is too long and recommended 1-year and 2-year retention periods, respectively. Six commenters questioned the flow rate requirement during calibration. All seven commenters recommended that the term "the average hourly rate" for calibration should be deleted or reworded.

Response—The recommendation that allocation gas meters be calibrated at intervals longer than 45 days was not adopted. Most of the gas meters on the OCS are sales meters so there are relatively few gas allocation meters. Since allocation meters are used in the allocation of gas sold back to the source lessees, which have different ownerships and royalty rates, they should be calibrated.

The recommendation for a shorter retention period for calibration reports was adopted. The reason for requiring retention of these reports at field locations is to enable inspectors to spot-check the reports. The final rule calls for the retention of calibration test data at the field location for a period of 2 years.

The recommendation to revise the wording concerning the average hourly rate was adopted, and § 250.181(c)(3)(iii) was revised to provide that, for orifice meter calibrations, the differential range and static range shall be consistent with the hourly flow rate.

Comment—Three commenters submitted two comments on § 250.181(c)(3)(v). One comment suggested the deletion of the words "the meter" in the phrase "During calibration, if *the meter* readings." This was suggested for greater consistency with § 250.181(c)(3)(iii). One comment stated that this paragraph is poorly worded and may be misinterpreted to mean that the average volume from the period prior to the last calibration check should be used if the meter is found to be out of specification.

Response—This recommendation to delete the word was adopted.

Comment—Four comments were submitted concerning commingling requirements in § 250.182. Three recommended that the term "surface commingling" replace the term "commingling" everywhere that "commingling" appears in § 250.182. One comment stated that "self-interest of the working interest owners will prevail here."

Response—The recommendation to substitute the term "surface commingling" in the title of Subpart L was adopted. The title of Subpart L and in the heading of § 250.182 has been revised in the final rule. We do not think it is necessary to change the term "commingling" to "surface commingling" throughout the body of the rule since it is understood to apply in view of the headings.

The comment regarding the self-interest of working-interest owners prevailing was too general to permit a meaningful response.

Comment—Four commenters submitted seven comments recommending changes in § 250.182(c) concerning well tests. Three of the comments recommended that the requirement for testing wells once every 2 months be changed to the same requirements as proposed in § 250.172(b)(3) which contains the requirements for determining the Maximum Production Rates based on quarterly tests for oil wells and semiannual tests for gas wells. The four other comments recommend changing the 6-year well test retention period to either 1 or 2 years.

Response—For the most part, these recommendations were not adopted. The testing requirement in § 250.182(c) is for allocation purposes and, therefore, reflects the need to test more frequently to take into account the various changes in production rates that wells may experience specifically during the month for which allocations are made. Since most lessees test their wells more frequently than every 2 months, this should not impose any extra burden on lessees. The recommendations to shorten the time period for retaining test data was adopted and the final rule revised accordingly. Section 250.182(c) has also been changed in the final rule by the addition of a provision specifying that tests are to be conducted in accordance with procedures outlined in Subpart K, § 250.173, Well testing production, and can be used when submitting well tests as required in § 250.173.

Comment—One comment concerning § 250.183, Measurement of sulphur, was favorable.

Response—It has been decided to consolidate all rules concerning sulphur operations into a new Subpart P which is being developed and will be issued as a separate rulemaking. Therefore, the provisions for the measurement of sulphur have been deleted from Subpart L, and § 250.184 of the proposed rule has been redesignated in the final rule as § 250.183.

Comment—Five commenters submitted comments on proposed § 250.184 (now § 250.183) concerning site security. The comments were general in nature. Some commenters believe that site security regulations are not needed because operators will take the necessary steps to provide for site security or there is little possibility of theft of hydrocarbons. Several commenters also recommended that a specific security plan for each site not be required.

Response—The recommendation to not have site security regulations was not adopted. The recommendation to not require specific site security plans was adopted. Some regulatory provisions concerning site security are required to implement the recommendations of the Linowes Commission which reviewed allegations of theft of oil from Indian and Federal lands. The proposed requirements are intended to conform to the Commission's recommendations to (1) eliminate detailed requirements for site security and require instead that operators take the necessary steps to provide for site security and meet minimum standards and (2) require by regulation that all operators develop lease-site plans detailing how the operator would ensure security of the site. The plans would be required to be consistent with minimum Government standards and would be submitted to managers of the Federal royalty program. It appears that regulations are needed on site security, however, individual plans may not be needed for each site. The requirements in § 250.184 (now § 250.183) for protection of sales measurement devices and site security appear to provide sufficient protections. Accordingly, the second sentence in § 250.184 (now § 250.183) has been deleted.

Comment—There were five commenters on proposed § 250.184(a) (now § 250.183(a)) concerning site security provisions pertaining to the requirement for seals on sales measuring devices. Four commenters recommended that the seals not be numbered, therefore precluding a need to keep the records of numbered seal changes. A fifth commenter recommended that only seals that impact volumetric or quality measurements be required to be numbered and records kept. The commenters stated that there is little probability or possibility of hydrocarbon theft on an offshore location.

Response—These recommendations have not been adopted. If and when seals are used, they should be numbered and records of changes maintained as a precaution-even though there have not been many known instances of theft of offshore oil. Situations have been observed where seals have been missing and the responsibility for this could not be determined. Some of the major pipeline companies have already initiated this requirement.

The proposed rule says that the list of seals should be maintained by the lessee at the lessee's field office nearest the OCS facility and be available for inspection by MMS respresentatives. The lessees seem to have a problem with this because it would require that they keep records which now are handled mostly by pipeline company personnel. In addition, this may be difficult at some locations which are unmanned and remotely located. Since the intent is for the list to be available when an MMS representative inspects the location, the final rule has been revised by replacing the phrase "by the lessee at the lessee's field office" with the phrase "at the field location."

Since the seals required by these regulations impact volumetric or quality measurement, they are all required to be numbered.

Comment—There were three commenters who submitted eight comments on § 250.184(a)(1) (now § 250.183(a)(1)) which contained a list of the metering unit components which must be sealed. Two commenters recommended adding the phrase "and sampling unit" to the first sentence of the subject paragraph. Three comments recommended revising § 250.184(a)(1) (ii) through (xii) with a more general description of the equipment because the proposed rule contained an unnecessary level of detail.

Response—These recommendations have been adopted. The equipment has been more broadly described, the number of items has been condensed, and the paragraph redesignated as § 250.183(a)(1) (i) through (iv).

Comment—There were three comments on § 250.184(a)(2) concerning the required sealing of lines on oil storage tanks. All three recommended that this entire paragraph be deleted. They state that there is little benefit to be derived from sealing tank outlets for tanks on inaccessible OCS facilities.

Response—This recommendation was not adopted. The proposed requirement is consistent with another recommendation in the Linowes Commission Report which states that security plans should include a procedure for installing and monitoring locks and seals on access points. Section 250.184(a)(2) is issued as § 250.183(a)(2).

Comment—Four commenters submitted remarks on § 250.184(b) which is concerned with identification of storage tanks. Three of the comments state that this paragraph should be deleted because identification of structures, etc., is covered under other OCS regulations. A fourth comment recommends that small holding tanks and surge tanks be exempted from this requirement.

Response—The recommendation to delete this requirement was not adopted. Although identification of structures, platforms, etc., is covered in Subpart A, § 250.15, it does not cover tanks. Tank identification is needed to help identify tanks during sales verification and site security inspections, particularly at onshore custody transfer facilities. These regulations were only intended to govern tanks specifically used in royalty determination. Therefore, proposed § 250.184(b) (now designated § 250.183(b)) has been revised to specify that it includes only storage (sales or inventory) tanks used in the royalty determination process.

Comment—Four commenters submitted suggestions on § 250.184(c) concerning the recording of deliveries from meters and sales tanks.

Three of the commenters recommend retaining deliverability records for 1 year, and the fourth commenter recommends retaining these records for 2 years.

Response—Review of this provision resulted in a decision to delete it as redundant since run tickets are required under other regulations. Therefore, this provision is not contained in the final rule.

Comment—There were three comments recommending removal of liquid allocation meters from the provision in § 250.184(d) prohibiting a bypass around liquid allocation meters, royalty sales meters, and tanks. The reason for the suggestion was that most facilities have only one allocation meter in use and facilities must be shut in to repair the meter without the use of a bypass.

There was one other comment submitted concerning this paragraph. The comment recommended inserting the word "sales" before the word "tanks" in this paragraph.

Response—These recommendations were adopted.

Subpart M—Unitization

Subpart M consolidates provisions and requirements for the unitization of operations on OCS oil and gas leases previously located separately in OCS Order No. 11 and in regulations in Part 250. The final regulations in this subpart are being promulgated without major substantive changes from the proposed regulations. However, there were many revisions to clarify the wording and to improve the identification of the authorities, requirements, and procedures for various aspects of the unitization of operations. The most extensive change from current rules to the unitization rules proposed earlier and adopted herein is the incorporation of two MUA's into the regulations. One MUA is to serve as a pattern for the text of agreements executed by lessees for the unitization of OCS exploration, development, and production operations in all functions while the other is to serve as a model for unitization agreements for development and production operations within a single reservoir. These are based on the MUA which was published in the Federal Register on June 26, 1980 (45 FR 43256).

Comments and suggestions were received from 12 commenters regarding over 50 separate provisions of the subpart as proposed. Where the suggestions were determined to be improvements to the provisions of the proposed rules, appropriate modifications were made. However, none of the comments proposed major changes in the organization and structure of the subpart or the basic approach to the unitization of OCS oil and gas lease operations. The changes incorporated in the final rule, therefore, represent modifications of particular provisions for greater clarity or improvement in specific procedures or requirements. A discussion of specific individual comments follows.

Comment—One commenter suggested that the Regional Supervisor's authority to approve unitization be modified by adding the phrase "when the right of capture does not apply" in § 250.190(b).

Response—This suggestion was not adopted, and the phrase has not been added. The right of capture applies in any competitive situation. Inclusion of the language could prevent the Regional Supervisor from meeting his/her responsibility for the prevention of waste, protection of OCS natural resources, and protection of Federal royalty interests.

Comment—Deletion of the word "minimum" from the phrase "minimum number of leases" in § 250.190(c) was suggested by one commenter on the basis that it is restrictive of efforts to form large exploratory units.

Response—This suggestion has not been adopted because an exploratory unit is approved only if MMS determines that unitized operations promote exploration and development of a common geologic structure. The area to be covered by unitized operations should include only those leases needed to accomplish that objective, hence, use of the word "minimum." The language used is found in the present regulation.

Comment—Another commenter on the same point suggested that the subsection be revised to read "shall include, at a minimum, the number of leases" which would allow a greater than minimum number of leases to be included in a unit.

Response—This comment was not adopted. The proposed wording could prevent the unitization of operations where the proposed agreement included less than the entire geologic structure.

Comment—Four comments were received suggesting a revision of language in § 250.190(c) to allow portions of leases to be included in a unit. This change was recommended as necessary to allow the unitization of operations within a single reservoir that underlies parts of two or more leases.

Response—The suggested change has been adopted to make it clear that operations on less than an entire lease can be made subject to a unit agreement.

Comment—One commenter suggested that in § 250.190(d) the Regional Supervisor should not have to approve cost allocations between working-interest owners in a unit because each lease owner would have a similar goal of fair, equitable cost distribution.

Response—The commenter's views are correct when one considers agreements which relate to operations on OCS oil and gas leases which do not include net-profit-share (NPS) provisions. When an agreement covers operations on leases with NPS provisions, the Regional Supervisor must approve the provisions for the allocation of costs and credits in order to assure the protection of the Federal NPS. This is accomplished by the approval of the way in which the unit operating agreement would allocate costs and credits for capital recovery purposes relating to leases with NPS provisions. This approval is particularly important when unit and nonunit wells are drilled and produced from a common facility using common production equipment.

To clarify this point, the last sentence in § 250.190(d) has been changed to read as follows:

> In units involving one or more net-profit-share leases, the unit operating agreement shall be approved by the Regional Supervisor as to the way that costs and credits are attributable to the net-profit-share leases.

Comment—One commenter expressed the view that some reasonable period of time must be allowed for engineering studies before the expiration of individual leases pursuant to § 250.190(e).

Response—The MMS does not share this view. When a lease is removed from a unit area by either the termination of the agreement or contractions of the area subject to the agreement, the lessee is not entitled to more time to conduct additional studies. At that point in time, the lessee would have had the life of the lease as extended by unitized operations to evaluate the lease's potential for production. The lessee would also have advance knowledge of the approaching contraction of the unit to permit it to commence drilling operations on the lease. In the absence of additional drilling operations, additional evaluation time would not be justified.

Comment—Three commenters suggested the inclusion of certain provisions from the current regulations concerning some essential attributes of and rights resulting from unitization. These provisions, which were incorporated in the MUA's but were not included elsewhere in the proposed regulations, deal with effective dates of initiations and terminations of unit agreements; the effect of these dates on individual lease terms; requirements concerning drilling, production and well-reworking operations performed in accordance with a unit agreement; and the effect of cessation of drilling operations on leases in a unit beyond their primary term. Commenters believe that these fundamental principles of unitization should be retained in the regulations so that they cannot be modified without a rulemaking process.

Response—The MMS has adopted these suggestions and added new paragraphs (f), (g), (h), and (i) to § 250.190 of the final rule to clearly state the impact of unitization in the regulations. The unit agreements to unitize operations in a particular area can depart from the text of the MUA when justified. These revisions to the regulations specifically address the impacts of unitization on OCS oil and gas leases.

Comment—Four commenters suggested deleting the definition of "competitive reservoir" in § 250.191(a) because that term is defined elsewhere in the regulations. Another commenter submitted a revised § 250.191(a) which has been rewritten for clarity.

Response—These suggestions were not adopted. However, the paragraph has been modified for clarity and by including the definitions of a "competitive reservoir" and a "producible well completion" as found in OCS Order No. 11. The MMS believes both definitions should be included in § 250.191(a) to eliminate any possible confusion as to the application of the paragraph.

Comment—Four commenters suggested the addition of language in § 250.191(c) concerning unitization of a competitive reservoir to provide discretion for a Regional Supervisor to determine whether or not a joint plan for drilling and production should be submitted and to direct lessees to submit such a plan if an agreement cannot be reached.

Response—This suggestion has merit and is needed for instances when lessees do not agree on a plan. The proposed paragraph has been modified to include provisions for the Regional Supervisor to direct the submission of a joint plan.

Comment—Also in § 250.191(c), referring to submission of a joint plan, the same commenters suggested replacing the word "drilling" in the first sentence with the word "development."

Response—This change was not adopted because a joint plan should be specific as to the type of development activity described in the plan. Both drilling and production are types of development activity.

Comment—Four commenters suggested the addition of language to allow for the extension of time for the submission of a joint plan for drilling and production operations.

Response—The MMS did not incorporate this suggestion into the rule. Lessees will have ample foreknowledge of the need for the development of a plan for drilling and development operations.

Comment—Four commenters suggested revising § 250.191(c) concerning unitization of a competitive reservoir when lessees cannot agree on a joint DPP. The revision proposed that in this situation each lessee shall submit a separate plan and, if the differences in the separate plans are not resolved at a subsequent hearing and the Regional Supervisor determines that conservation will be best served by unitization of operations, unitization will be required.

The commenters supported this procedure because it allows for a hearing to discuss the reasons for differences and permits the issues to be presented. Adjudication by the Regional Supervisor furnishes an alternative to unitization if no conservation matters are at stake.

In the same paragraph, one commenter suggests that the phrase "unitization may be required" in the last sentence be revised to read "unitization *will* be required." The commenter believes that if lessees/operators of a competitive reservoir cannot agree on a joint plan of operations and MMS has determined "conservation will be served by unitization," MMS should require unitization.

Response—The MMS believes that both suggestions have merit and has modified the language in § 251.191(c) accordingly. A hearing will provide opportunity for discussion and possible resolution of differences and for adjudication by the Regional Supervisor. The initiation of steps to require compulsory unitization of operations is appropriate when the determination has been made identifying the conservation purpose to be served.

Comment—One commenter recommended that § 250.192(a) be revised to provide that a proposed initial plan of operations be included in the information to be filed with a request for approval of unitization. This would be consistent with the requirements in section 9.3 of the MUA.

Response—This recommendation was adopted.

Comment—Four commenters suggested that in § 250.192(b) the discretion of a Regional Supervisor to approve variations from the MUA be conditioned by adding the requirement that such variations be "for good cause."

Response—This recommendation was adopted. The addition of this phrase requires that variations from the MUA be justified by good and logical reasons. Examples of instances where there may be significant departures from the texts of the MUA in § 250.194 include unit agreements which include both State and Federal submerged lands

Comment—There was a recommendation by one commenter that language revisions be made to § 250.192(c) to clarify that a Regional Supervisor will not approve a unit agreement until it is first executed by the lessees.

Response—This suggestion was adopted and the appropriate changes made.

Comment—Several commenters suggested revisions to § 250.193(a) which provides for compulsory unitization if the Regional Supervisor determines that unitization is necessary to achieve the three criteria specified in the Act or if it is proposed by fewer than all the lessees of a proposed unit area.

The commenters believed that § 250.193(a) should provide for compulsory unitization when only one of the three listed criteria is satisfied, rather than requiring all three. It was suggested, therefore, that the word "or" replace the word "and" in the listing of the criteria.

Response—This suggestion has been adopted. The unitization of operations may be required to prevent waste, conserve natural resources of the OCS, or protect correlative rights.

Comment—Four commenters suggested that § 250.193(a) be revised to clarify that compulsory unitization be evaluated by the same criteria whether initiated by a request of fewer than all lessees or by the Regional Supervisor. To accomplish this, the phrase "is necessary for the reasons stated above" should be inserted in § 250.193(a) to refer to the application of the same criteria for units proposed by fewer than all lessees as are applied when a Regional Supervisor acts independently to impose compulsory unitization.

Response—This suggestion was not adopted, but the paragraph has been revised to make this a clear requirement.

Comment—Four commenters suggested that proposed § 250.193(a)(2) be deleted because a "previously approved unit agreement executed by less than all lessees" could include an agreement approved 20 or more years ago in a field that may have no relationship to the unit now being proposed, said agreement having been executed by one of the lessees.

Response—The MMS has reviewed the provisions of § 250.193(a) and decided to delete § 250.193(a)(2) and restructure the paragraph by merging proposed paragraph (a)(1) into paragraph (a).

Comment—Four commenters suggested that § 250.193(b)(1) concerning the proposed unit agreement required to be filed by lessees seeking compulsory unitization be modified to allow the same flexibility for variations from the MUA as are provided for in § 250.193(a). These commenters also suggested the addition of language requiring that lessees seeking compulsory unitization provide nonconsenting lessees with the same information at the same time as it is filed with the Regional Supervisor.

Response—These suggestions were adopted to recognize the provision for proposed unit agreements for compulsory unitization under § 250.193(a). Appropriate language changes have been made in § 250.193(b)(1). The suggestion for requiring timely notification of nonconsenting lessees also has been incorporated into the final rule by adding the word "simultaneously" so that the phrase "shall simultaneously serve copies" appears in the last sentence of § 250.193(b)(1).

Comment—One commenter proposed revisions to § 250.193(b)(1) which would require that notice be served to nonconsenting lessees within 24 hours of filing with MMS and would require proof of the date of filing and date of notice to nonconsenting lessees.

Response—These suggestions were not adopted. The objective of the first suggestion is accomplished by adoption of the suggestion in the previous comment to require that notice to nonconsenting lessees be given simultaneously with filing a request with the Regional Supervisor.

Comment—Four commenters proposed a revision to § 250.193(c)(2) to require that a transcript be made by a court reporter. The reason given for this suggestion was for the protection and satisfaction of all concerned parties.

Response—This suggestion was adopted. The rule has been revised to require the Regional Supervisor to cause a verbatim transcript be prepared by a court reporter. The cost of the transcript is to be borne by the party seeking compulsory unitization.

Comment—Two commenters objected to the variations in the combinations in which the terms "oil," "gas," and "hydrocarbons" are used throughout § 250.194. For example, "oil or gas, or both," "oil and/or gas," "oil and gas," "gas or oil and/or condensate" are described as being used in a seemingly interchangeable and random manner. Both commenters recommended replacing such terms with the term "unitized substances" throughout the MUA's.

Response—The suggestion has not been adopted. The term "unitized substances" is not specific enough for all applications in the agreements. A closer reading of the model agreements should show that there are reasons for the variation, i.e., they are not randomly interchangeable.

Comment—In § 250.194, Model unit agreements, four commenters suggest the word "unit" be inserted between the words "conduct" and "operations" in the definition for unit operator. They state there are instances where individual tract owners reserve the right to conduct nonconsent and/or tract operations to explore for or delineate new reservoirs or extensions of old reservoirs.

Response—The suggested revision has been adopted for both § 250.194(a), Model unit agreement for exploration, development, and production units (MUA–E), and § 250.194(b), MUA for development and Production (MUA–D/P) for consistency. The commenters' reasons for the revision are more applicable to § 250.194(b) MUA–D/P. Section 250.194(a), MUA–E, requires that all strata bearing hydrocarbons in paying quantities be unitized. All unit operations and those conducting them require the approval of the Regional Supervisor.

Comment—One commenter suggests the definition for the term "participating area" be revised to clarify that the participating area is the part of a reservoir in the unit area that is reasonably proven (to be capable of producing hydrocarbons in paying quantities).

Response—This recommendation has not been adopted. An exploration/development unit may contain more than one reservoir within the unit area. Producible wells, geologic information, and engineering data determine the extent of the reservoir covered by a participating area and the nonproductive portions of the formation involved.

Comment—Several commenters suggest inserting the term "and the unit operating agreement" after the word "agreement" in the first sentence of section 4.2 in both MUA's. This would expand on the relationship between the working interest owners and the unit operator.

Response—This suggestion was not adopted. The unit agreement recognizes the existence of the unit operating agreement, and these should be two separate, distinct documents with the unit agreement taking precedence when a conflict occurs.

Comment—One commenter recommends revising section 5.1 in both MUA's by making the resignation of the unit operator subject to the unit operating agreement.

Response—The recommended revision has not been adopted. When there is a conflict, the unit agreement prevails over the unit operating agreement. If the working-interest owners of a unit desire to place restriction on the resignation of a unit operator in the unit operating agreement, such restrictions should be enforced by that instrument. The terms of unit operating agreements vary from agreement to agreement, depending on

the negotiations of the parties. The terms of the unit agreement should not be limited by variations in unit operating agreements.

Comment—Several commenters suggested adding language to section 5.1 in both MUA's to provide for transfer of operations when a unit operator resigns. The proposed rule provided for only suspension or abandonment of operations.

Response—The proposed revision has been adopted. This revision makes section 5.1 more consistent with section 6.2.

Comment—One commenter recommends that section 5.2 in § 250.194(a), MUA–E, and § 250.194(b), MUA–D/P, be changed by revising the first sentence to read as follows "The unit operator may be subject to removal pursuant to the provisions of the unit operating agreement."

Response—This revision has not been adopted because it conflicts with the requirements of Article VI which allows options for the removal of the unit operator to the working-interest owners including the provisions of the unit operating agreement.

Comment—Four commenters suggested revisions to section 5.3 of both MUA's concerning the obligations of unit operators who resign or are removed. Language was suggested to modify the proposed regulation which applied to "any obligation." The commenters said that this application is so broad it could result in unjustly imposing working-interest obligations on the unit operator.

Response—The suggested change has not been adopted. The unit operator is delegated and charged with the authority and responsibility to perform on behalf of all working-interest owners. Therefore, the unit operator is responsible to carry out any and all obligations under the unit.

Comment—Three commenters suggested revising the last sentence in section 5.4 in both MUA's by replacing the phrase "other assets used for conducting operations for the unit area" with "other assets all owned solely by the unit joint account."

The reasons given for this suggestion were that "several events could occur all of which would be detrimental to the safe and orderly conduct of operations." One situation described by the commenters was the instance where wells which may be subject to one or more unit agreements are drilled from a platform which contains lease wells owned and operated by the lessee who is also the Unit Operator under the unit agreement (j). Under the provisions of the proposed MUA, the former unit operator would be required to relinquish all assets used for conducting operations for the unit area. The commenters suggest that this would mean that the successor unit operator would be required to assume the operation of the lease wells and unit wells "with no contractual relationship in existence and no vested interest in much of the production, wells, and facilities that it would suddenly be required to operate. The commenters see in these potential problems a set of circumstances which might significantly delay or prevent the formation of voluntary unit agreements for the prevention of waste of natural resources.

Response—This recommendation has been adopted in order to facilitate the formation of voluntary unit agreements.

Comment—One commenter suggested revising section 6.1 in both MUA's to replace the requirement for the designation of successor unit operators by vote of the owners of a majority of the working interests with the requirement that the "operator shall be designated * * * pursuant to the provisions of the unit operating agreements."

Response—This suggestion has not been adopted. Section 6.1 provides options and flexibility for designations (and removal) of successor unit operators. The commenter's suggested revision is one of the options provided for by proposed section 6.1.

Comment—Four commenters suggested revising both MUA's in section 6.2 by replacing the word "resignation" with the phrase "unit operator's intent to resign" in order to parallel more closely the language in section 5.1.

Response—This change has been adopted.

Comment—Four commenters suggested changing section 6.2 in both MUA's by deleting the phrase "or may declare this unit terminated" and replacing it with "and if such successor unit operator is unwilling or unable to serve, then the Regional Supervisor may terminate this agreement," because MMS should only terminate as a last resort.

Response—This proposal was not adopted. First, the proposal would dilute the agreement and the Regional Supervisor's authority. Second, MMS does not automatically terminate a unit if its purpose has not been accomplished without considerable effort to maintain that unit in an active status.

Comment—Four commenters stated that section 7.3 in both MUA's should be made compatible with the provisions in § 250.192(c).

Response—This suggestion has not been adopted. Section 7.3 refers to previously executed unit operating agreements which are required to be filed with the unit agreement. The provisions of § 250.192(c) address unit agreements prior to approval.

Comment—Four commenters suggested correcting section 8.1 of both MUA's to change the word "appeal" to "appear" in the first sentence which concerns the right of a unit operator to appeal before DOI or any other legally empowered body on behalf of the working interest owners.

Response—The correct word is "appear" and the correction has been noted.

Comment—Four commenters suggested revising section 8.1 of both MUA's to give nonoperators the right to appear by replacing the third sentence with a new one to read as follows: "However, the unit operator's right to appear shall be without prejudice to the right of any affected working-interest owner who shall have the right, at his own expense, to be heard in any proceeding on their own behalf."

Response—This change was not adopted because it is unnecessary. Under the existing language, all working-interest owners already have the right to appear and to be heard in any proceeding at their own expense.

Comment—Four commenters proposed a revision of both MUA's in section 9.2 by adding at the end of the first sentence, the phrase "or unless extended by the Director pursuant to 30 CFR 250.13(b)." This revision would bring the model agreement into conformance with the revised regulations at § 250.13(b) under which the Director may approve up to a 180-day period between operations.

Response—The proposed language has been added to conform with the provision of § 250.13(b).

Comment—There were four comments that the first sentence of section 9.3 in Article IX of both MUA's conflicts with § 250.192(c) and, therefore, should be modified.

Response—No change has been made to section 9.3. The unit operator must submit an initial plan of operation at the time the unit agreement is submitted for approval. The Regional Supervisor may approve the unit agreement and require modification of the proposed plan of operation when deemed appropriate pursuant to § 250.192(c).

Comment—One commenter recommends that the first sentence of section 11.1 of the MUA–E concerning the identification of lands to constitute a participating area be revised. It was

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suggested that the word "sustained" be added before the word "production" in the phrase "Prior to commencement of sustained production of unitized substances." This refers to the timing of the unit operator's submission of information required to constitute the initial participating area. The reason for the suggestion was that in order to protect the interest of all parties, a participating area should be established prior to commencement of production. Additionally, it should be clarified that "production" does not mean production testing.

Response—This recommendation has not been adopted. Section 11.1 allows flexibility in the submission of the participating area subject to the Regional Supervisor's approval. All parties are protected as section 11.1 requires the participating area to be approved by the Regional Supervisor effective the date production commences.

Comment—Two commenters suggested revising the second sentence in section 11.2 of § 250.194(a), MUA–E, by replacing the phrase, "in which the information is obtained which provides the basis for the" with the phrase "following the date of." The date of acquiring knowledge or information is subjective and can be argued whereas the date of approval is not.

Response—This recommendation has not been adopted. This section provides the Regional Supervisor the flexibility to establish an alternative effective date for a revision of a participating area when that action is justified.

Comment—One commenter recommended replacing the phrases "accumulation of unitized substances" and "pool or zone" with the term "reservoir" in section 11.3 of § 250.194(a), MUA–E.

Response—This recommendation has not been adopted. This type of unit may (and usually does) include more than one reservoir or zone within a participating area. The language proposed and adopted in the final rule is flexible enough to meet the requirements of the majority of circumstances that arise. The commenter's proposed revision was determined to be too restrictive.

Comment—Two parties commented on the royalty payment provisions in § 250.194(a), MUA–E, section 12.1, and § 250.194(b), MUA–D/P, section 10.4. Both commenters feel that the payment of royalty by the unit operator should be at the discretion of the unit operator and the various nonoperators and that it must be the subject of an agreement between unit operator and the respective individual unit's working-interest owners. One commenter recommended deletion of the requirement that the unit operator make all royalty payments for reasons stated.

Response—These recommendations have not been adopted. The payment of royalty provision is flexible, and language suggested by the commenters may be approved for a specific unit agreement when justified. Therefore, the "Model Agreement" remains unchanged.

Comment—Several parties commented on the basis for allocation of unitized substances in § 250.194(a), MUA–E, section 12.1 (section 10.1 of § 250.194(b), MUA–D/P). The comments suggested that allocations be based on equivalent net-acre feet of oil and gas in place. The allocation would be based on the volumes of oil or gas in place as of the effective date of the unit. The reason given for the suggestion is that an acre foot of oil and an acre foot of gas do not have the same value, and therefore, allocations should be based on current reservoir conditions.

Response—This suggestion was not adopted. The MUA is sufficiently flexible that the Regional Supervisor may approve the suggested method of allocation or other variations from the model agreement when the alternate formula is justified as better representing equities.

Comment—One commenter recommended that it should be made clear in the second sentence of section 12.1 of § 250.194(a), MUA–E, who makes the decision to allocate production on a volumetric basis or a surface-area basis.

Response—This recommended change has not be adopted. All of the exploration/development units have been voluntary, and the unitization agreements have defined the basis for the allocation of unit production.

Comment—Several parties commenting on § 250.194(a), MUA–E, section 12.1, suggested adding the following:

> However, unless the parties agree specifically to the contrary, committing leases hereto shall not be regarded as pooling royalty obligations under the committed leases nor as treating such royalty obligations as a unit expense.

The suggestion was based on a perceived need for clarification to resolve a difference in interpretation that has arisen recently.

Response—This suggestion was not adopted. The MMS believes the calculation of royalty for each lease, as stated in the model agreement, does not require further elaboration.

Comment—Four commenters proposed the addition of the phrase "either currently or previously" to the first sentence of section 13.1 of the MUA–E referring to the time when a lease is not entitled to receive an allocation of unit production. The reason given for the suggestion was to make section 13.1, which provides for the adjustment of a unit area by the automatic elimination of any lease that has not been entitled to receive an allocation, consistent with section 10.2 which states that unit areas shall not be reduced on account of the depletion of unitized substances.

Response—The proposed change has not been adopted because it is not necessary. As provided in section 10.2, once a lease is recognized as being in a participating area and is allocated production, that allocation cannot be reduced because of depletion of the unitized substances for which it was established. Under section 13.1, only those leases which never had an allocation or which received an allocation but was subsequently determined not to be entitled to an allocation would be eliminated from a unit. The two provisions are not inconsistent with each other.

Article XIV of the MUA–E addresses relinquishment of leases. This provision has generally appeared in past MUA's. For consistency, a similar provision has been added as Article XI of the MUA–D/P in the final rule. As a result, all Articles after X in the MUA–D/P have been renumbered accordingly.

Comment—One commenter recommended that section 16.2 of the MUA–E concerning requirements for termination of agreements be revised to substitute language which would provide for termination "at any time by the working interest owners as provided in the unit operating agreement." The same suggestion was made for section 12.2 (now 13.2) of the MUA–D/P.

Response—This recommendation has not been adopted. The proposed language is flexible and provides the working-interest owners two options in terminating the unit. Termination of the unit agreement should be in accordance with the terms of the unit agreement and not the unit operating agreement.

Comment—One commenter recommended modifying the last sentences of section 17.2(c) of the MUA–E and section 13.2(c) (now 14.2(c)) of the MUA–D/P to read as follows: This subsection shall not operate to continue any lease wholly excluded from the unit area by adjustment pursuant to Articles X or XIII.

Response—For clarity, the phrase "pursuant to Articles X or XIII" has been added to the end of the last sentence of section 17.2(c) of the MUA–E and "pursuant to Article X" has been added to the end of the last sentence of section 13.2(c) (now 14.2(c)) of the MUA–D/P.

Comment—One commenter recommended modifying section 20.1 of the MUA–E and section 16.1 (now 17.1) of the MUA–D/P concerning the effective date of automatic termination for failure to remedy default. The recommendation was to make the termination effective as of the day the notice of default is received by the unit operator.

Response—This recommendation has not been adopted. The proposed language to effect termination as of the first day of the default makes termination effective only after the failure of the unit operator to remedy a default within a reasonable time following notice of the default.

Comment—Several commenters recommended the deletion of § 250.194(a) MUA–E, section 22.2, and 194(b) MUA–D/P, section 18.2 (now 19.2) because they deal exclusively with the relationship between a unit operator and working-interest owners. Therefore, these requirements properly belong in a unit operating agreement.

Response—These recommendations have not been adopted. The MMS believes that the provision of this article is necessary because it tells how covenants are to be interpreted under the unit agreement.

Comment—One commenter recommended that § 250.194(b), MUA–D/P, Article II be retitled as "Incorporation and application" and a new section 2.2 be added to state that the unit agreement shall not apply to any operations conducted on leases within the unit area and conducted solely for the purpose of exploring for, developing, or producing oil or gas on any portion of such leases other than the unitized reservoir.

The commenter also recommends the last two lines of § 250.194(b) MUA–D/P, section 3.1, which describes the area of the unitized reservoir for a specific unit agreement be revised to add the phrase "insofar as it underlies the unit areas" to further define the unitized reservoir. No reason was given for either suggestion.

Response—The proposed revisions have not been adopted because they are unnecessary. The "area" covered by an agreement to unitize operations in a single reservoir includes only those portions of leases that envelope the productive or hydrocarbon-bearing portions of the unitized formation in accordance with the provision of § 250.190(c). This MUA is designed to govern only operations pertaining to the development and production of oil and gas from the unitized formation(s).

Comment—Several commenters suggested the addition of the term "OCS____" after the words "Well No." in § 250.194(b), MUA-D/P, section 3.1. This would identify the lease on which the referenced well is located.

Response—This suggestion has been adopted and the changes made.

Comment—Several commenters suggested revisions to § 250.194(b), MUA–D/P, section 3.4. In the third sentence referring to Exhibit C, they proposed adding the word "equivalent" before the word "productive" in the phrase "number of productive net acre-feet." It was also suggested that the word "equivalent" be added to the fourth sentence in this same paragraph before the word "net" in the phrase "number of net ____ acre feet." The reason given for this suggestion was that, in instances of unitization of an oil reservoir containing associated gas and of multiple reservoirs containing oil or gas, acre-feet of different hydrocarbons do not have the same value. In order to avoid unfair and unjust treatment of both the royalty owner (in the case of different royalty rates and net profit leases) and the lessees, an equivalent acre-foot value for each type of hydrocarbon must be determined. The equivalence ratios must recognize that recovery factors vary as a function of the type of hydrocarbon and of the reservoir-drive mechanism.

Response—The suggested revision has not been adopted. Although it is true that the same volumes of different hydrocarbons do not have the same value, MMS believes that section 3.4 should reflect the general wording as proposed in the model form. It is also recognized that the actual method of allocation proposed may vary, and changes in the specific wording must be approved by the Regional Supervisor as appropriate and justified.

Comment—One commenter recommended that in the second sentence of section 9.2, in § 250.194(b), MUA–D/P, the words "a reservoir" be changed to "this unitized reservoir."

Response—This revision has been adopted for clarity and specificity.

Comment—Several commenters believe that § 250.194(b), MUA–D/P, section 10.1, should be revised to provide for allocations to be based on equivalent net-acre feet of oil and gas in place rather than a volumetric basis. Also, the allocations should be based on the then-current oil or gas in place as of the effective date of the unit. The reason is that an acre-foot of oil, as compared to gas, does not have the same value, and further, value should be based on current reservoir conditions.

Response—This suggestion has not been adopted. The supervisor may approve or require use of the method of allocation proposed by these commenters or other variations from the model agreement when it is warranted and justified.

Comment—Commenters also propose to insert the following at the end of section 10.1:

> However, unless the parties agree specifically to the contrary, committing leases hereto shall not be regarded as pooling royalty obligations under the committed leases not as treating such royalty obligations as a unit expense.

Rationale is clarification to resolve a difference in interpretation that has arisen recently.

Response—This proposal has not been adopted. The change is not necessary because the agreement covers operations only. It does not result in any changes in the ownership of interests and the assignments of obligations under individual leases. The royalty and NPS due under each lease are to be calculated and paid on the basis of the oil and gas production allocated to that lease.

Comment—In § 250.194(b), MUA–D/P, section 10.2, several commenters suggested changing the effective date for revision of a unit area from the first day of the month in which is obtained the knowledge or information on which such a revision is predicated to the first day of the month following the date of approval of the revision by the Regional Supervisor. The reason for the suggestion was that the date of acquiring knowledge or information is subjective and open to dispute whereas the date of approval is not.

Response—This proposal has not been adopted. Because it is not necessary to change the provision in order to use the effective date for revisions suggested by the comment. Section 10.2 provides for flexibility in identifying an effective date for changes in the allocation of production when that effective date is justified and is approved by the Regional Supervisor.

Comment—Four commenters proposed that § 250.194(b), section 10.3, concerning revision of a unit area and allocation of production, be revised to add the word "equivalent" before the words "net-acre feet" in each instance where that phrase appears in this article.

Response—This suggestion has not been adopted. Any parameter used in section 10.3 will have to be compatible with the method approved to establish the original allocation. Therefore, the word "equivalent" has not been inserted in the model form.

Comment—Three commenters suggested the deletion of the last two sentences of § 250.194(b), MUA–D/P, section 10.3. These sentences provide that the net acre-feet credited to land originally in a revised unit area will not be subject to change, that increasing the total number of net acre-feet of the new lands will be the only change, and that there shall never be any retroactive allocation of interest in the unitized substances produced because of a revision of the unit area.

These commenters proposed replacing these sentences with provisions calling for a determination of the total number of equivalent net acre-feet in the expanded unitized reservoir, a redetermination of the total number of equivalent net-acre feet in the reservoir(s) underlying the original unit area as of the date of expansion, and a determination of the equivalent net-acre feet in the portion of the reservoir underlying the area being added to the unit. It was further suggested that the resulting numerical values be used as factors in equations or ratios which were proposed for use in two separate calculations for allocations of produced substances—one for allocations to tracts in the original unit area and the other for tracts added to the unit area.

The reason given for this suggestion was that the method in the proposed regulations for determining tract percentages of participation would result in gross inequities to working-interest owners and royalty owners if leases having different royalty rates or net-profit shares are brought into the unit as a result of expansion. Also, there would be at least two different values of acre-feet in the official fields—one value for unit participation allocation and another value for MER purposes. Lessees should not be required to place in official records data which they believe to be technically incorrect. The commenters stated that proposed replacement for a portion of section 10.3 allows the best technical interpretation to be utilized for both purposes and maintains the established equity relationship between participants in the original unit area and the area added to the unit.

Response—This suggestion has not been adopted. The method proposed by MMS has been used in many existing approved unit agreements, and no inequity to working-interest owners has been demonstrated, whereas the method proposed by the commenters has not been shown to be a superior method. The provisions of proposed section 10.3 assure equitable allocation of production to each lease affected within the unit area upon expansion of the participating area.

Also, the unit operator is responsible for submitting an MER for the unitized reservoir(s). When a reservoir expansion is affected, the MER should be revised to reflect the same value of acre-feet for unit participation and for MER purposes. Therefore, no change is necessary for this reason.

Comment—One commenter recommends adding the phrase "in the unitized reservoir" between the word "hereto" and the word "and" in the first sentence of section 18.1 (now 19.1) of § 250.194(b).

Response—This addition has been adopted.

Subpart N—Remedies and Penalties

Subpart N combines the provisions in current §§ 250.80–1, Remedies, and 250.80–2, Penalties.

There were eight comments received, six from the oil and gas industry, one from a State agency, and one from an environmental group. The final rule is essentially the same as the proposed rule with minor changes based primarily on the comments. The specific comments are addressed below. The final rule has eliminated unnecessary and redundant provisions, especially those which contained MMS internal procedures and provisions that merely repeated provisions in the Act.

Comment—Several commenters objected to various aspects of the rule concerning Reviewing Officers, including the choice of person and authority of the Reviewing Officer to investigate a potential violation. Some commenters objected to the appointment of an MMS employee as a Reviewing Officer and suggested appointment of an administrative law judge to handle civil-penalty matters. They expressed concern with possible bias, the placing of unreasonable burdens on MMS employees, and a lack of education and training to handle judicial matters.

Response—The suggestion was not adopted. Reviewing Officers will continue to be selected from experienced, senior MMS employees with a background in regulatory and operational activities. Experience has shown that such personnel are able to properly conduct the review and analysis of information in the case file, conduct a fair hearing, and arrive at an impartial decision based upon the evidence in the record. Provision is made in § 250.201(e) for a party to request transfer of the case to another Reviewing Officer if there is any question of bias or partiality. Additionally, § 250.200(a)(3) assures that the Reviewing Officer will have no other involvement for the investigation or prosecution of the alleged violation. Therefore, MMS believes that ample safeguards are provided to assure the selection of a qualified, impartial Reviewing Officer. These cases are quasi-judicial proceedings within the context of administrative law. If a hearing is requested, it is an informal meeting to receive evidence from the party accused of the alleged violation. The MMS employees that will serve as Reviewing Officers have had experience with similar hearings concerning a variety of regulatory matters and, therefore, assignment of an administrative law judge is not necessary.

Comment—Several commenters objected that the authority provided to the Regional Director and chairmen of investigative panels is too broad. They contend that it went beyond that which is granted in the Act, it will lengthen and complicate the proceedings, and it will allow the Regional Director to conduct a trial and violate due process.

Response—The authority provided to the Regional Director and others is in keeping with the responsibilities of those officials and is provided in section 22 of the Act. This authority is to conduct investigations of alleged violations and accidents in the enforcement of regulatory activities. The Regional Director must see that an alleged violation is thoroughly investigated prior to the preparation of a civil-penalty case file and appointment of a Reviewing Officer. The exercise of this authority need not result in formal judicial proceedings resembling a trial.

Comment—Numerous commenters requested deletion of § 250.200(a)(2) concerning possible violations for which the granting of any time for correction would be unreasonable. They felt the authority is contrary to the Act and specifically the judicial interpretation of section 24(b). Another commenter suggested that there should be a positive showing that a reasonable time for corrective action is not in order.

Response—The recommendation was adopted in light of *Chevron, Inc.* v. *Watt*, 564 F. Supp. 1256 (E.D. La. 1983).

Comment—One commenter supported the provision in § 250.200(a)(2) and further suggested that all violations which result in increased risk to human safety and the environment result in the preparation of a civil-penalty case. To ensure environmental protection, penalties must be pursued even though reasonable corrective action has been taken. It was also requested that affected States be given notice of violations.

Response—It is believed that § 250.200 provides appropriate coverage for the variety of situations that have and may occur. The law and interpretive court decisions require notification of a violation and the expiration of a reasonable period allowed for corrective action before liability for of a civil-penalty. The vast majority of violations detected by MMS officials are corrected within 7 days of detection, and a large number are corrected immediately (i.e., before the MMS official leaves the facility) or within a few hours. The civil-penalty provisions are intended for those situations where, after notice of a violation, there is undue delay in taking corrective action or where corrective action is not useful or possible. A periodic report of civil-penalty activities will be made available to the public. A special additional notification to affected States of individual violations is unnecessary. All violations are not threatening to human safety or the environment. Historically, most violations are minor and have not warranted the initiation of civil-penalty proceedings.

Comment—A commenter objected to the third example cited in the preamble to the proposed rule of a violation where corrective action cannot be accomplished in a reasonable period of time. The cited example concerns excessive rig movement or anchor-line tension prior to disconnect during floating drilling operations. They felt a civil-penalty was not warranted when the cause was a "freak environmental event."

Response—The MMS continues to consider the example to be a valid one. All contributing factors including cause must be taken into account in the determination of whether to assess a civil penalty. In the circumstance cited by the commenter, a civil penalty would not be forthcoming. The examples were intended to demonstrate where action should be taken for violations over which the lessee had control and failed to act; i.e., when the operator's failure to take corrective action could be expected to result in an accident, or otherwise create undue risk to the safety of rig personnel or the environment.

Comment—Several commenters suggested deleting § 250.200(a)(5) because section 24 of the Act does not provide for subpoena authority.

Response—The suggestion was not adopted. Section 22(f) grants the authority to summon witnesses and produce evidence for an investigation. Such authority may be needed to fairly and impartially determine whether a civil-penalty should or should not be assessed based upon the evidence in the case file. The initial evidence prepared by MMS or submitted by a party in writing or at a hearing may be contradictory or incomplete; and therefore, the Reviewing Officer may determine that additional evidence is necessary. This authority is also implied in the provision of section 24 that a party charged with a violation be given an opportunity for a hearing.

Comment—Several commenters made suggestions for word changes, namely the substitution of "significant" for "sufficient" in § 250.200(a)(1) and deletion of "probably" in § 250.200(a)(1) and (b).

Response—The suggested changes in language were not adopted. Past experience has shown that the initiation of civil-penalty cases is not undertaken frivolously. Civil-penalty proceedings have been initiated only when the level of evidence is adequate to support such action.

Comment—It was suggested to add language in § 250.201(f) to provide for cross-examination of witnesses by any party to a civil-penalty case to assure due process and full and true disclosure of the facts.

Response—The suggestion to allow cross-examination of witnesses was not adopted. These hearings are administrative and informal and are intended to provide opportunity for the party(s) to offer any facts, statements, explanations, or other materials which bear on the issues or which may be relevant to the amount of the penalty which might be assessed. They are not formal proceedings on the record, and rules of evidence need not apply. Cross-examination would introduce procedural and evidentiary requirements beyond the scope and capacity of these hearings and would elevate the proceedings to an unnecessarily high level of formality.

Comment—Commenters suggested that the regulations in § 250.202 concerning hearing procedures stipulate that the Government's case be complete at the time of a hearing and that the alleged violator be consulted in regard to "notice" of matters not presented at the hearing.

Response—The suggestions were not adopted. The case against the alleged violator will basically be complete at the time the opportunity for a hearing is offered. However, the party accused of the violation may present evidence at a hearing that could alter the perception of the case. New evidence may present the need for additional information to resolve conflicts, and the alleged violator must be provided an opportunity to comment. To not allow new evidence would be detrimental to all parties. Section 250.202 already provides for consultation on all matters presented to the Reviewing Officer, either at a hearing or subsequently submitted in the case file.

Comment—Several commenters requested deletion of the reference in § 250.203, Reviewing Officer's decision, to § 250.200(a)(2) concerning situations when no time for corrective action is reasonable.

Response—The reference has been deleted for the same reasons that the provision (§ 250.200(a)(2)) was deleted, with the understanding that in some circumstances it may be unreasonable to allow any time for corrective action after notice has been given.

Comment—Some commenters objected to the provision in § 250.204 that payment of a civil-penalty is not due until 30 working days after receipt of the Director's decision. It was also suggested that the alternative of posting of a bond in lieu of payment be provided for and that payment not be due until the appellant has fully exhausted all administrative relief and/or any related litigation has been finalized. Similar comments were received concerning payments of civil-penalties in § 250.206.

Response—The suggestions have been adopted in part. In order to conform to the hearings and appeals procedures in 30 CFR 290.3 and 290.5, the filing of an appeal with the Director must be done within 30 calendar days after receipt of a decision by the Reviewing Officer. Therefore, the word "working" has been deleted from the first sentences in §§ 250.201(a), 250.204(a)(1), and 250.206(b). Similarly, paragraph (2) and the parenthetical reference in the proposed paragraph (3) in § 250.204(a) have been deleted. After the receipt of the Director's decision in response to an appeal of a Reviewing Officer's decision, the appellant may take an appeal to the DOI Board of Land Appeals within 30 days (thus, the 30-day payment requirement). Provision has been made in § 250.206 for the posting of a bond in lieu of payment of a civil-penalty when the Director's decision is appealed under 30 CFR Part 290. Once administrative relief is exhausted through the appeals process, payment of the civil-penalty becomes due and should be made and not postponed pending appellant's initiation of litigation. Section 250.204(e) has been revised to avoid repetition of the provisions in § 250.23 and to include a previously omitted provision.

Comment—A number of commenters disagreed with the provision to allow the Regional Director to reopen a case based on newly found evidence. They felt that only the non-Government party should be able to reopen a case because of the constitutional protection against double jeopardy.

Response—The MMS does not share this view. Either party in a civil-penalty case should be allowed to reopen the case based upon newly found evidence that was not available at the time of any previous proceedings. It is fair and equitable to provide for reopening the record for reconsideration of previous action when the initial action was based on inaccurate or incomplete evidence. Section 250.205(c) has been revised by substituting the phrase "pursuant in § 250.203(a)" for the phrase "at anytime." A civil penalty is a sanction that is applied when justified by a failure to comply with requirements and is based upon evidence gathered by MMS or submitted for the record by the alleged violator. The concern over double jeopardy is misplaced as these are civil not criminal proceedings.

Comment—Commenters objected to the deletion of the content of the preexisting regulations covering penalties and recommended that the specific monetary penalties be retained in the rules to emphasize the serious nature of such violations.

Response—While MMS agrees with the need to emphasize the serious nature of violations, it is not felt that specific monetary penalties need to be iterated in the regulations. Reference has been added to the applicable penalty provisions in section 24 of the Act.

Comment—It was requested that public notice be provided of any civil-penalty proceedings to be held and that any affected person(s) having a valid legal interest be allowed to intervene.

Response—The request was not adopted. The alleged violator is afforded an opportunity for a hearing to present witnesses and other evidence. Such hearings are not intended to be highly structured legal proceedings but rather an informal method of accepting evidence for the case file. However, MMS agrees to maintain a listing of current and completed actions related to civil-penalty proceedings which will be available to the public. Copies of listings will be available upon request from the Offices of MMS's Regional Directors.

Subpart O—Training

Provisions contained in §§ 250.68, Training in well control, and 250.125, Safety device training, of the proposed rule published in the **Federal Register** on March 18, 1986, have been moved to a new Subpart O in the final rule. Proposed § 250.68 has been deleted and proposed § 250.125 has been modified to simply require compliance with the requirements of Subpart O.

Subpart P—Sulphur Operations

The final rule contains a new Subpart P, Sulphur Operations, which governs sulphur exploration, development, and production operations. The provisions of Subpart P require compliance with the Gulf of Mexico OCS Region Order No. 10 and with pertinent requirements of 30 CFR Part 250.

National Environmental Policy Act

The MMS prepared an EA and determined that the consolidation of the offshore operating rules will not have a significant effect on the environment and that an EIS is not required.

Executive Order 12291

As the major purpose of the rule to reduce or eliminate unnecessary burdens on lessees, it is expected to reduce costs of operating on the OCS. It is not expected to cause an increase in costs or prices to consumers, other industries, or governmental entities and, in fact, could cause a slight decrease as cost savings might be passed on.

The DOI has determined that this document does not constitute a major rule under Executive Order 12291, and therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection requirements contained in 30 CFR Parts 250 have been approved by the OMB under 44 U.S.C. 3504(h).

Authors

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List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Minerals Management Service, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administration practice and procedure, Continental shelf, Environmental protection, Government contracts, Minerals royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Date: January 28, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

DERIVATION TABLE

New Section	Old Section
Subpart A—General	
250.0	250.0.
250.1	New Provision.
250.2	250.2.
250.3	New Provision.
250.4	250.10 [1].
250.5	250.11 [1].
250.6	250.13 [1].
250.7	250.18 [1].
250.8	250.31 [1].
250.9	250.32 [1].
250.10	250.12 [1].
250.10(d)	New Provision [2].
250.11	OCS Order No. 4.
250.12	250.12 [1].
250.13	250.35.
250.13(b)	New Provision.
250.14	250.53.
250.15	250.37; OCS Order No. 1.
250.16	250.58.
250.17	250.90.
250.18	250.3; OCS Order No. 12.
250.19	250.45.
250.20	250.46 [1].
250.21	250.19.
250.22	OCS Order No. 5, paragraph 1
250.23	250.93.
250.24	250.81.
Subpart B—Exploration and Development and Production Plans	
250.30	250.34-1 and -2.
250.31	250.34-1 and -2.
250.32	250.17; OCS Order No. 11.
250.33	250.34-1 and -3(a).
250.33(d)	New Provision.
250.34	250.34-2 and -3(b).
250.34(a)(2)	New Provision.
250.34(a)(5)	New Provision.
Subpart C—Pollution Prevention and Control	
250.40	250.43; OCS Order No. 7; OCS Order No. 1, paragraph 5.
250.40(b)(1)	New Provision.

DERIVATION TABLE—Continued

New Section	Old Section
250.40(b)(5)	New Provision.
250.40(c)(1)	New Provision.
250.40(c)(2)	New Provision.
250.40(c)(3)	New Provision.
250.40(c)(4)	New Provision.
250.40(d)	New Provision.
250.41	OCS Order No. 7.
250.42	250.43; OCS Order No. 7.
250.42(b)	New Provision.
250.42(c)	New Provision.
250.42(d)	New Provision.
250.42(i)	New Provision.
250.42(j)	New Provision.
250.43	OCS Order No. 7.
250.44	250.2 [1].
250.45	250.57-1 [1].
250.46	250.57-2 [1].
Subpart D—Drilling Operations	
250.50	250.30; 250.42; 250.46.
250.51	
250.51(a)	OCS Order No. 2, paragraph 2, Alaska OCS Order.
250.51(b)	New Provision.
250.51(c)	OCS Order No. 2, paragraph 2.4.
250.51(d)	OCS Order No. 2, paragraph 2.3.
250.51(e)	250.30; 250.40; OCS Order No. 2, paragraph 4.
250.51(f)	OCS Order No. 6.
250.51(g)	OCS Order No. 5, paragraph 7.
250.51(h)	OCS Order No. 5, paragraph 5.3.
250.51(i)	OCS Order No. 5, paragraph 5.3.
250.52	OCS Order No. 2, Alaska OCS Region, paragraph 2.1.6, OCS Order No. 5, paragraph 5.4.
250.53	OCS Order No. 2, Alaska OCS Region, paragraphs 12 (a), (b), (e), and (f); OCS Order No. 5, paragraph 5.1.10.
250.54	250.41; OCS Order No. 2, paragraph 3.
250.55	OCS Order No. 2, paragraph 3.6.
250.56	250.41; OCS Order No. 2, paragraph 5.
250.57	OCS Order No. 2, paragraph 5.7.
250.58	OCS Order No. 2, paragraph 5.9.
250.59	OCS Order No. 2, paragraphs 5.2, 5.3, 5.4.1, and 5.5.
250.60	250.41; OCS Order No. 2, paragraph 6.
250.61	250.44.
250.62	250.11; OCS Order No. 2, paragraph 10.
250.63	250.41; OCS Order No. 2, paragraph 7.
250.64	250.36; OCS Order No. 2, paragraphs 1.2 and 2.
250.65	250.92.
250.66	250.36; 250.92; 250.95.
250.67	OCS Order No. 2, paragraph 8; GSS-OCS-1.
Subpart E—Well Completion Operations	
250.70	New Provision.
250.71	New Provision.
250.72	New Provision.
250.73	New Provision.
250.74	New Provision.
250.75	New Provision.
250.76	New Provision.
250.77	New Provision.
250.78	New Provision.
250.79	New Provision.
250.80	New Provision.
250.81	New Provision.
250.82	New Provision.
250.83	250.92.
250.84	New Provision.
250.85	New Provision.
250.86	New Provision.
250.87	OCS Order No. 6, paragraphs 1 and 2.
Subpart F—Well-Workover Operations	
250.90	New Provision.
250.91	New Provision.
250.92	New Provision.
250.93	New Provision.
250.94	New Provision.
250.95	New Provision.
250.96	New Provision.
250.97	New Provision.
250.98	New Provision.
250.99	New Provision.
250.100	New Provision.
250.101	New Provision.
250.102	New Provision.
250.103	250.92.
250.104	New Provision.
250.105	New Provision.
250.106	New Provision.
250.107	OCS Order No. 6, paragraphs 1 and 2.
250.108	New Provision.
Subpart G—Abandonment of Wells	
250.110	250.15; 250.44; OCS Order No. 3.
250.111	250.44; 250.92; OCS Order No. 3.
250.112	OCS Order No. 3.
250.113	OCS Order No. 1, OCS Order No. 3.
250.114	250.92; OCS Order No. 3.
Subpart H—Production Safety Systems	
250.120	OCS Order No. 5.
250.121	250.41; OCS Order No. 5, paragraph 3.
250.122	250.41(b); OCS Order No. 5, paragraph 4.
250.123	OCS Order No. 5, paragraph 5.
250.124	OCS Order No. 5, paragraphs 5.5 and 5.6.
250.125	OCS Order No. 5, paragraph 5.7 [2].
250.126	OCS Order No. 5, paragraph 2.
250.127	New Provision.
Subpart I—Platforms and Structures	
250.130	OCS Order No. 8, paragraph 1.
250.130(g)	New Provision.
250.131	OCS Order No. 8, paragraphs 2 and 3.
250.132	OCS Order No. 8, paragraphs 1.4.1, 3.2.2, 3.3, and 3.4.
250.133	OCS Order No. 8, paragraph 1.4.1.
250.134	OCS Order No. 8, paragraph 1.4.2.
250.135	OCS Order No. 8, paragraph 1.4.2.
250.136	OCS Order No. 8, paragraph 1.4.2.
250.137	OCS Order No. 8, paragraph 1.4.2.
250.138	OCS Order No. 8, paragraph 1.4.2.
250.139	OCS Order No. 8, paragraph 1.4.2.
250.140	OCS Order No. 8, paragraph 1.4.2.
250.141	OCS Order No. 8, paragraph 1.4.2.
250.142	New Provision.
250.143	OCS Order No. 3, paragraph 2.9.
250.144	OCS Order No. 8, paragraph 4.
Subpart J—Pipelines and Pipeline Rights-of-Way	
250.150	250.20; 256.8(a).
250.150(a)	New Provision.
250.150(c)	New Provision.
250.151	New Provision.
250.152	OCS Order No. 9.
250.152(a)	New Provision.
250.152(b)	New Provision.
250.152(c)	New Provision.
250.152(d)	New Provision.
250.152(f)	New Provision.
250.153	OCS Order No. 9, paragraph 1.C.
250.153(a)(2)	New Provision.
250.153(a)(3)	New Provision.
250.153(a)(4)	New Provision.
250.153(b)	New Provision.
250.153(c)	New Provision.
250.154	OCS Order No. 9, paragraphs 1.A(2) (a) and (c).
250.154(a)	New Provision.
250.154(b)(6)	New Provision.
250.154(b)(7)	New Provision.
250.154(b)(8)	New Provision.
250.154(b)(9)	New Provision.
250.154(c)	New Provision.
250.155	OCS Order No. 9, paragraph 1.E.
250.155(b)	New Provision.
250.156	New Provision.
250.157	OCS Order No. 9, paragraph 2.
250.157(a)(5)	New Provision.
250.157(b)	New Provision.
250.158	256.95; OCS Order No. 9, paragraph 1.E.
250.158(a)	New Provision.
250.158(c)	New Provision.
250.158(d)	New Provision.
250.150(f)	New Provision.
250.158(g)	New Provision.
250.158(h)	New Provision.
250.159	256.83; 256.89 [1]; 256.101.
250.160	256.92; 256.94; 256.100.
250.160(d)	New Provision.
250.161	256.85; 256.92; 256.94.
250.162	256.95.
250.163	256.97.
250.164	256.98.
Subpart K—Production Rates	
250.170	OCS Order No. 11, paragraph 1.
250.171	OCS Order No. 11, paragraphs 2 and 14.
250.171(a)	New Provision.
250.171(c)	New Provision.
250.172	250.16; OCS Order No. 11, paragraphs 3 and 4.
250.172(a)(1)	New Provision.
250.172(a)(3)	New Provision.
250.172(a)(5)	New Provision.
250.172(a)(7)	New Provision.
250.172(a)(8)	New Provision.
250.172(b)(3)	New Provision.
250.172(b)(4)	New Provision.
250.172(b)(5)	New Provision.
250.172(c)	New Provision.
250.173	250.39; OCS Order No. 11, paragraphs 5, 6, 7, and 8.
250.174	OCS Order No. 11, paragraph 9.
250.174(a)	New Provision.
250.175	250.55; OCS Order No. 11, paragraph 10; NTL 75-8 (5/13/75).
250.175(a)(2)(i)	New Provision.
250.175(a)(2)(ii)	New Provision.

DERIVATION TABLE—Continued

New Section	Old Section
250.175(c)	New Provision.
250.176	250.68; OCS Order No.11, paragraph 12.
250.177	OCS Order No. 11, paragraph 15.
250.177(b)	New Provision.
250.177(c)	New Provision.
Subpart L—Production Measurement, Commingling, and Security	
250.180	250.60; OCS Order No. 13, paragraphs 2, 3, and 4.
250.181	250.61; OCS Order No. 13, paragraph 5.
250.182	250.68; OCS Order No. 13, paragraph 6 [1].
250.183	New Provision.
Subpart M—Unitization	
250.190	250.50; 10 CFR 390.014(d).
250.191	OCS Order No. 11, paragraph 16.
250.192	250.51-1.
250.193	250.51-2.
250.194	Model Unit Agreement.
Subpart N—Remedies and Penalties	
250.200	250.80-1.
250.200(a)(2)	New Provision.
250.201	250.80-1.
250.202	250.80-1.
250.203	250.80-1.
250.204	250.80-1.
250.205	250.80-1.
250.206	250.80-2.
Subpart O—Training	
250.210	250.42.
250.211	250.42.
250.212	250.42.
Subpart P—Sulphur Operations	
250.250	New Provision.

[1] No substantive change.

[2] Codification of existing policy.

Note: The following old sections were deleted as unnecessary and redundant with no substantive change intended: 250.1, 250.4, 250.5, 250.82, and 250.96.

For the reasons set forth above, the OCS Orders are rescinded and 30 CFR Parts 250 and 256 are amended as shown:

1. The following OCS Orders are rescinded:

OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects for all Regions.

OCS Order No. 2, Drilling Operations, for all Regions.

OCS Order No. 3, Plugging and Abandonment of Wells, for all Regions.

OCS Order No. 4, Determination of Well Producibility, for all Regions.

OCS Order No. 5, Production Safety Systems, for all Regions.

OCS Order No. 6, Completion of Oil and Gas Wells, for the Gulf of Mexico OCS Region.

OCS Order No. 6, Procedure for Completion of Oil and Gas Wells, for the Pacific OCS Region.

OCS Order No. 7, Pollution Prevention and Control, for all Regions.

OCS Order No. 8, Platforms and Structures, for all Regions.

OCS Order No. 9, Oil and Gas Pipelines, for the Gulf of Mexico OCS Region.

OCS Order No. 9, Approval Procedure for pipelines, for the Pacific OCS Region.

OCS Order No. 10, Drilling of Twin Core Holes, for the Pacific OCS Region.

OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, for the Gulf of Mexico and Pacific OCS Regions.

OCS Order No. 12, Public Inspection of Records, for all Regions.

OCS Order No. 13, Production Measurement and Commingling, for the Gulf of Mexico OCS Region.

OCS Order No. 14, Approval of Suspensions of Production, for the Gulf of Mexico OCS Region.

2. Part 250 of Title 30 is revised to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Sec.
250.0 Authority for information collection.
250.1 Documents incorporated by reference.
250.2 Definitions.
250.3 Performance requirements.
250.4 Jurisdiction.
250.5 Functions.
250.6 Oral approvals.
250.7 Right of use and easement.
250.8 Designation of operator.
250.9 Local agent.
250.10 Suspension of production or other operations.
250.11 Determination of well producibility.
250.12 Cancellation of leases.
250.13 Effect of production, drilling, or well reworking on lease term.
250.14 Reinjection and subsurface storage of gas.
250.15 Identification.
250.16 Reimbursement.
250.17 Information and forms.
250.18 Data and information to be made available to the public.
250.19 Accident reports.
250.20 Safe and workmanlike operations.
250.21 Access to facilities.
250.22 Best available and safest technologies.
250.23 Report of cessation of production.
250.24 Appeals, general.

Subpart B—Exploration and Development and Production Plans

Sec.
250.30 General requirements.
250.31 Preliminary activities.
250.32 Well location and spacing.
250.33 Exploration Plan.
250.34 Development and Production Plan.

Subpart C—Pollution Prevention and Control

250.40 Pollution prevention.
250.41 Inspections and reports.
250.42 Oil spill contingency plans.
250.43 Training and drills.
250.44 Definitions concerning air quality.
250.45 Facilities described in a new or revised Exploration Plan or Development and Production Plan.
250.46 Existing facilities.

Subpart D—Drilling Operations

250.50 Control of wells.
250.51 General requirements.
250.52 Welding and burning practices and procedures.
250.53 Electrical equipment.
250.54 Well casing and cementing.
250.55 Pressure testing of casing.
250.56 Blowout preventer systems and system components.
250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.
250.58 Well-control drills.
250.59 Diverter systems.
250.60 Mud program.
250.61 Securing of wells.
250.62 Field drilling rules.
250.63 Supervision, surveillance, and training.
250.64 Applications for Permit to Drill.
250.65 Sundry notices and reports on wells.
250.66 Well records.
250.67 Hydrogen sulfide.
250.68 Training in well control.

Subpart E—Well-Completion Operations

250.70 General requirements.
250.71 Definition.
250.72 Equipment movement.
250.73 Emergency shutdown system.
250.74 Hydrogen sulfide.
250.75 Subsea completions.
250.76 Crew instructions.
250.77 Welding and burning practices and procedures.
250.78 Electrical requirements.
250.79 Well-completion structures on fixed platforms.
250.80 Diesel engine air intakes.
250.81 Traveling-block safety device.
250.82 Field well-completion rules.
250.83 Approval and reporting of well-completion operations.
250.84 Well-control fluids, equipment, and operations.
250.85 Blowout prevention equipment.
250.86 Blowout preventer system testing, records, and drills.
250.87 Tubing and wellhead equipment.

Subpart F—Well-Workover Operations

250.90 General requirements.
250.91 Definitions.
250.92 Equipment movement.

Sec.
250.93 Emergency shutdown system.
250.94 Hydrogen sulfide.
250.95 Subsea workovers.
250.96 Crew instructions.
250.97 Welding and burning practices and procedures.
250.98 Electrical requirements.
250.99 Well-workover structures on fixed platforms.
250.100 Diesel engine air intakes.
250.101 Traveling-block safety device.
250.102 Field well-workover rules.
250.103 Approval and reporting for well-workover operations.
250.104 Well-control fluids, equipment, and operations.
250.105 Blowout prevention equipment.
250.106 Blowout preventer system testing, records, and drills.
250.107 Tubing and wellhead equipment.
250.108 Wireline operations.

Subpart G—Abandonment of Wells

250.110 General requirements.
250.111 Approvals.
250.112 Permanent abandonment.
250.113 Temporary abandonment.
250.114 Site clearance verification.

Subpart H—Production Safety Systems

250.120 General requirements.
250.121 Subsurface safety devices.
250.122 Design, installation, and operation of surface-production safety systems.
250.123 Additional production system requirements.
250.124 Production safety-system testing and records.
250.125 Safety device training.
250.126 Quality assurance and performance of safety and pollution-prevention equipment.
250.127 Hydrogen sulfide.

Subpart I—Platforms and Structures

250.130 General requirements.
250.131 Application for approval.
250.132 Platform Verification Program requirements.
250.133 Certified Verification Agent duties and nomination.
250.134 Environmental conditions.
250.135 Loads.
250.136 General design requirements.
250.137 Steel platforms.
250.138 Concrete-gravity platforms.
250.139 Foundation.
250.140 Marine operations.
250.141 Inspection during construction.
250.142 Periodic inspection and maintenance.
250.143 Platform removal and location clearance.
250.144 Records.

Subpart J—Pipelines and Pipeline Rights-of-Way

250.150 General requirements.
250.151 Definitions.
250.152 Design requirements for DOI pipelines.
250.153 Installation, testing and repair requirements for DOI pipelines.
250.154 Safety equipment requirements for DOI pipelines.
250.155 Inspection requirements for DOI pipelines.

Sec.
250.156 Abandonment and out-of-service requirements for DOI pipelines.
250.157 Applications.
250.158 Reports.
250.159 General requirements for a pipeline right-of-way grant.
250.160 Applications for a pipeline right-of-way grant.
250.161 Granting a pipeline right-of-way.
250.162 Requirements for construction under a right-of-way grant.
250.163 Assignment of a right-of-way grant.
250.164 Relinquishment of a right-of-way grant.

Subpart K—Production Rates

250.170 Definitions for production rates.
250.171 General requirements and classification of reservoirs.
250.172 Oil and gas production rates.
250.173 Well production testing.
250.174 Bottomhole pressure survey.
250.175 Flaring and venting of gas.
250.176 Downhole commingling.
250.177 Enhanced oil and gas recovery operations.

Subpart L—Production Measurement, Surface Commingling, and Security

250.180 Measurement of liquid hydrocarbons.
250.181 Measurement of gas.
250.182 Surface commingling of production.
250.183 Site security.

Subpart M—Unitization

250.190 Authority and requirements for unitization.
250.191 Competitive reservoir operations.
250.192 Voluntary unitization.
250.193 Compulsory unitization.
250.194 Model unit agreements.

Subpart N—Remedies and Penalties

250.200 Remedies.
250.201 Hearings.
250.202 Hearing procedures.
250.203 Reviewing Officer's decision.
250.204 Appeals from Reviewing Officer's decision.
250.205 Reopening a case.
250.206 Civil penalties.

Subpart O—Training

250.210 Documents incorporated by reference.
250.211 Well control training.
250.212 Safety device training.

Subpart P—Sulphur Operations

250.250 Requirements for sulphur operations.

Authority: Sec. 204, Pub.L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Subpart A—General

§ 250.0 Authority for information collection.

(a) The information collection requirements in Subpart A, General, have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1010-0030. The information is being collected to inform the Minerals Management Service (MMS) of general operations on the Outer Continental Shelf (OCS). The information is used to ensure that operations on the OCS will meet statutory and regulatory requirements, provide for safety and protection of the environment, and result in diligent exploration, development, and production on OCS leases. The requirement to respond is mandatory.

(b) The information collection requirements in Subpart B, Exploration and Development and Production Plans, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010-0049. The information is being collected to inform MMS, States, and the public of the planned exploration, development, and production activities on the OCS. The information is used to ensure that operations on the OCS will meet statutory and regulatory requirements, provide for safety and protection of the environment, and result in diligent development of leases. The requirement to respond is mandatory.

(c) The information collection requirements in Subpart C, Pollution Prevention and Control, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010-0057. The information is being collected to inform MMS of potential pollution of the environment. The information is used to identify potential sources of pollution for the purpose of preventing incidents of pollution. The requirement to respond is mandatory.

(d) The information collection requirements in Subpart D, Drilling Operations, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010-0053. The information is being collected to inform MMS of the equipment and procedures lessees plan to use in drilling activities on the OCS. The information is used to ensure that drilling operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory.

(e) The information collection requirements in Subpart E, Well-Completion Operations, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010-0067. The information is being collected to inform MMS of the equipment and procedures lessees plan to use during well-completion operations. The information is used to ensure that well-completion operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory.

(f) The information collection requirements in Subpart F, Well-

Workover Operations, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0043. The information is being collected to inform MMS of the equipment and procedures lessees plan to use during well-workover operations. The information is used to ensure that well-workover operations are safe and comply with standards to limit pollution. The requirement to respond is mandatory.

(g) The information collection requirements in Subpart G, Abandonment of Wells, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0079. The information is collected to inform MMS of the lessees' plans for temporarily abandoned wells. The requirement to respond is mandatory.

(h) The information collection requirements in Subpart H, Production Safety Systems, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0059. The information is being collected to inform MMS of the equipment and procedures lessees plan to use during the production operations. The information is used to ensure that oil and gas are produced in a manner which provides for safety of operations and protection of the environment. The requirement to respond is mandatory.

(i) The information collection requirements in Subpart I, Platforms and Structures, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0058. The information is being collected to inform MMS of the design, fabrication, and installation of platforms on the OCS. The information is used to ensure the structural integrity of platforms installed on the OCS. The requirement to respond is mandatory.

(j) The information collection requirements in Subpart J, Pipelines and Pipeline Rights-of-Way, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0050. The information is being collected to inform MMS of the location, design, and operation of pipelines on the OCS. The information is used to ensure that pipelines on the OCS will transport oil and gas in a manner which provides for safety of operations and protection of the environment. The requirement to respond is mandatory.

(k) The information collection requirements in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0041. The information is being collected to inform MMS of production rates for hydrocarbons produced on the OCS. The information is used to ensure that wells are produced at rates which provide for efficient production of available hydrocarbons. The requirement to respond is mandatory.

(l) The information collection requirements in Subpart L, Production Measurement, Surface Commingling, and Security, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0051. The information is being collected to inform MMS of the measurement of production, the commingling of hydrocarbons, and site-security plans and is used to ensure that produced hydrocarbons are measured and commingled in a manner which results in accurate royalty payments. The requirement to respond is mandatory.

(m) The information collection requirements in Subpart M, Unitization, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0068. The information is being collected to inform MMS of the unitization of leases. The information is used to ensure that unitization is conducted in a manner which prevents waste, conserves natural resources, and protects correlative rights. The requirement to respond is mandatory.

(n) The information collection requirements in Subpart N, Remedies and Penalties, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0038. The information is being collected to inform MMS of evidence relating to violations of provisions of the Act, leases, and MMS rules. The information is used to review violations and to determine whether the imposition of civil-penalties is appropriate. The requirement to respond is mandatory.

(o) The information collection requirements for Form MMS–330, Well (Re)Completion Report, contained in Subpart D, Drilling Operations, and Subpart E, Well-Completion Operations, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0046. The information is used to evaluate the technical, safety, and environmental factors involved in completing or recompleting a well. The obligation to respond is mandatory.

(p) The information collection requirements for Form MMS–331, Sundry Notices and Reports on Wells, contained in Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, and Subpart G, Abandonment of Wells, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0045. The information is used to evaluate the technical, safety, and environmental factors involved with well-completion and workover operations offshore. The obligation to respond is mandatory.

(q) The information collection requirements for Form MMS–331C, Application for Permit to Drill, contained in Subpart D, Drilling Operations, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0044. The information is used to evaluate the technical, safety, and environmental factors involved in the lessees' proposal to drill a well. The obligation to respond is mandatory.

(r) The information collection requirements for Form MMS–332, Notice of Intent/Report of Well Abandonment, contained in Subpart G, Well Abandonment, has been approved by OMB and assigned clearance number 1010–0077. The information is used to evaluate the technical, safety, and environmental factors involved during well abandonment. The obligation to respond is mandatory.

(s) The information collection requirements for Form MMS–1866, Request for Reservoir Maximum Efficient Rate, contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0018. The information is collected to provide MMS with data concerning oil or gas well completion in a rate-sensitive reservoir and is used to ensure that a requested production rate will not waste oil or gas. The obligation to respond is mandatory.

(t) The information collection requirements for Form MMS–1867, Request for Well Maximum Production Rate, contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0019. The information is collected to establish a maximum production rate for a well to prevent waste of oil and gas. The obligation to respond is mandatory.

(u) The information collection requirements for Form MMS–1868, Well Potential Test Report, contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0039. The information is collected to provide MMS with data concerning the production potential of an oil or gas well for the purpose of verifying the requested production rate. The obligation to respond is mandatory.

(v) The information collection requirements for Form MMS–1869, Quarterly Oil Well Test Report, contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0016. The information is collected to provide MMS with data concerning the status and capacity of oil wells. The information is used to verify the production capacity of each oil well. The obligation to respond is mandatory.

(w) The information collection requirements for Form MMS–1870, Semiannual Gas Well Test Report, contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0017. The information is collected to provide MMS with data concerning the status and capacity of gas wells. The information is used to verify the production capacity of each gas well. The obligation to respond is mandatory.

§ 250.1 Documents incorporated by reference.

The documents listed below are incorporated by reference as requirements in this part. The Director of the Federal Register approved the incorporation by reference of these documents on [*Insert date of Federal Register approval*]. These documents are incorporated as they exist on the date of the approval, and a notice of any change in these documents will be published as a rule change in the **Federal Register**. Each document or specific portion thereof is incorporated by reference in the corresponding sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part call for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement cited in this section. In accordance with § 250.3, Performance requirements, a lessee may comply with a later edition of a specific document incorporated by reference provided the lessee demonstrates that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition and provided the lessee obtains the prior written approval of the authorized MMS official, for such alternative compliance. The list includes the name and address of at least one organization from whom the reference document may be obtained. These documents are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408. In order to facilitate correlation of the text of the corresponding sections with the list of documents incorporated by reference, the documents are listed in alphanumerical order.

(a) *American Concrete Institute (ACI) Document.* The ACI document listed in this paragraph may be purchased from the American Concrete Institute, P.O. Box 19150, Detroit, Michigan 48219.

(1) ACI Standard 318–83, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–83), Incorporated by Reference at: § 250.138(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i).

(2) ACI Standard 357–R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984, Incorporated by Reference at: §§ 250.130(g) and 250.138 (c)(2) and (c)(3).

(b) *American Institute of Steel Construction (AISC) Document.* The AISC document listed in this paragraph may be purchased from the American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, Illinois 60680.

AISC Standard S326, Specification for the Design, Fabrication and Erection of Structural Steel for Buildings, 1978 Edition, Incorporated by Reference at: § 250.137(b)(1)(ii), (c)(4)(ii), and (c)(4)(vii).

(c) *American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Documents.* The ANSI/ASME documents listed in this paragraph may be purchased from the American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, New York 10018, and from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

(1) ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addendas, Incorporated by Reference at: § 250.123 (b)(1) and (b)(1)(i).

(2) ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J and the Guide to Manufacturers Data Report Forms, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addendas, Incorporated by Reference at: § 250.123 (b)(1) and (b)(1)(i).

(3) ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2 including Nonmandatory Appendices, 1983 Edition, with Summer and Winter 1983 and 1984 and Summer 1985 Addendas, Incorporated by Reference at: § 250.123 (b)(1) and (b)(1)(i).

(4) ANSI/ASME B 31.8–1986, Gas Transmission and Distribution Piping Systems, Incorporated by Reference at: § 250.152(a).

(5) ANSI/ASME SPPE–1–1985, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at: §§ 250.121(b) and 250.126.

(6) ANSI B 16.5–1981, Pipe Flanges and Flanged Fittings, Incorporated by Reference at: § 250.152(b)(2).

(7) ANSI Z88.2–1980, Practices for Respiratory Protection, Incorporated by Reference at: § 250.67 (h)(2)(iv) and (h)(6)(i).

(d) *American Petroleum Institute (API) Documents.* The API documents listed in this paragraph may be purchased from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005. (Paragraphs (d)(19) through (d)(46) of this section refer to the API Manual of Petroleum Measurement Standards.)

(1) API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms, Seventeenth Edition, April 1, 1987, API Stock No. 811–00200, Incorporated by Reference at: § 250.130(g).

(2) API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 1984, API Stock No. 811–00500, Incorporated by Reference at: § 250.51(g).

(3) API RP T–2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised October 1975, API Stock No. 811–13710, Incorporated by Reference at: §§ 250.210 (a) and 250.212 (a) and (c).

(4) API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Fifteenth Edition, April 1, 1986, with Supplement 1, December 1986, API Stock No. 811–03100, Incorporated by Reference at: § 250.152 (b)(1) and (b)(2).

(5) API Spec 6D, Specification for Pipeline Valves, End Closures, Connectors and Swivels, Eighteenth Edition, January 1982 with Supplement 3, July 1985, API Stock No. 811–03200, Incorporated by Reference at: § 250.152(b)(1).

(6) API RP 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems, Second Edition, November 1981 with Supplement 3, June 1986, API Stock No. 811–07160, Incorporated by Reference at: §§ 250.121(e)(4) and 250.124(a)(1)(i).

(7) API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180, Incorporated by Reference at: §§ 250.122(b) and (e)(2); 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v) and (c)(2); 250.124(a) and (a)(5); and 250.152(d).

(8) API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 15, 1984, API Stock No. 811–07185, Incorporated by Reference at: § 250.122(e)(3).

(9) API RP 14F, Recommended Practice for Design and Installation of Electrical Systems

for Offshore Production Platforms, Second Edition, July 1, 1985, API Stock No. 811-07190, Incorporated by Reference at: §§ 250.53(c) and 250.123 (b)(9)(v).

(10) API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Second Edition, May 1, 1986, API Stock No. 811-07194, Incorporated by Reference at: §§ 250.123(b)(8) and (b)(9)(v).

(11) API RP 14H, Recommended Practice for Use of Surface Safety Valves and Underwater Safety Valves Offshore, Second Edition, April 30, 1984, API Stock No. 811-07196, Incorporated by Reference at: § 250.122(d).

(12) API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, July 1973 with Supplement 2, May 1981, API Stock No. 811-06000, Incorporated by Reference at: §§ 250.53(b); 250.122(e)(4)(i), and 250.123(b)(9)(i).

(13) API Standard 2545, Method of Gaging Petroleum and Petroleum Products, October 1965, also available as ANSI/ASTM D 1085-65, API Stock No. 852-25450, Incorporated by Reference at: §§ 250.180 (f)(2)(ii).

(14) API Standard 2550, Method for Measurement and Calibration of Upright Cylindrical Tanks, First Edition, October 1965, also available as ANSI/ASTM D 1220-65, API Stock No. 852-25500, Incorporated by Reference at: 250.180 (f)(2)(i).

(15) API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, also available as ANSI/ASTM D 1410-65, API Stock No. 852-25510, Incorporated by Reference at: § 250.180(f)(2)(i).

(16) API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, also available as ANSI/ASTM D 1408-65, API Stock No. 852-25520, Incorporated by Reference at: §§ 250.180(f)(2)(i).

(17) API Standard 2555, Method for Liquid Calibration of Tanks, First Edition, September 1966, also available as ANSI/ASTM D 1406-65, API Stock No. 852-25550, Incorporated by Reference at: §§ 250.180(f)(2)(i).

(18) API RP 2556, Recommended Practice for Correcting Gage Tables for Incrustation, First Edition, August 1968, API Stock No. 852-25560, Incorporated by Reference at: § 250.180(f)(2)(i).

(19) Chapter 4, Proving Systems, First Edition, May 1978, also available as ANSI/API MPMS 4-1978, API Stock No. 852-30080, Incorporated by Reference at: §§ 250.180(c)(6)(i) and (d)(3)(iv).

(20) Chapter 5.1, Foreword, General Considerations and Scope, First Edition, November 1976, also available as ANSI/API MPMS 5.1-1976, API Stock No. 852-30101, Incorporated by Reference at: §§ 250.180(c)(6)(ii).

(21) Chapter 5.2, Measurement of Liquid Hydrocarbons by Displacement Meter Systems, First Edition, January 1977, also available as ANSI/API MPMS 5.2-1977, API Stock No. 852-30102, Incorporated by Reference at: § 250.180(c)(6)(ii).

(22) Chapter 5.3, Turbine Meters, First Edition, July 1976, API Stock No. 852-30103, Incorporated by Reference at: § 250.180(c)(6)(ii).

(23) Chapter 5.4, Instrumentation or Accessory Equipment for Liquid Hydrocarbon Metering Systems, First Edition, July 1976, also available as ANSI/API MPMS 5.4-1976, API Stock No. 852-30104, Incorporated by Reference at: § 250.180(c)(6)(ii).

(24) Chapter 5.5, Fidelity and Security of Flow Measurement Pulsed Data Transmission Systems, First Edition, June 1982, API Stock No. 852-30105, Incorporated by Reference at: § 250.180(c)(6)(ii).

(25) Chapter 6.1, LACT Systems, First Edition, February 1981, also available as ANSI/API MPMS 6.1-1981, API Stock No. 852-30121, Incorporated by Reference at: § 250.180(c)(6)(iii)(A).

(26) Chapter 6.6, Pipeline Metering Systems, First Edition, August 1981, also available as ANSI/API MPMS 6.6-1981, API Stock No. 852-30126, Incorporated by Reference at: § 250.180(c)(6)(iii)(B).

(27) Chapter 6.7, Metering Viscous Hydrocarbons, First Edition, January 1981, also available as ANSI/API MPMS 6.7-1981, API Stock No. 852-30127, Incorporated by Reference at: § 250.180(c)(6)(iii)(C).

(28) Chapter 7.2, Dynamic Temperature Determination, First Edition, June 1985, API Stock No. 852-30142, Incorporated by Reference at: § 250.180 (c)(6)(iv)(A) and (f)(2)(iii)(A).

(29) Chapter 7.3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, API Stock No. 852-30143, Incorporated by Reference at: § 250.180 (c)(6)(iv)(B) and (f)(2)(iii)(B).

(30) Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products, First Edition, October 1981, also available as ANSI/ASTM D 4057, API Stock No. 852-30161, Incorporated by Reference at: § 250.180 (c)(6)(v) and (f)(2)(iv).

(31) Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products, First Edition, April 1983, also available as ANSI/ASTM D 4177, API Stock No. 852-30162, Incorporated by Reference at: § 250.180 (c)(6)(v) and (f)(2)(iv).

(32) Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, also available as ANSI/ASTM D 1298, API Stock No. 852-30181, Incorporated by Reference at: § 250.180 (c)(6)(vi) and (f)(2)(v).

(33) Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, API Stock No. 852-30182, Incorporated by Reference at: § 250.180 (c)(6)(vi) and (f)(2)(v).

(34) Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, also available as ANSI/ASTM D 473, API Stock No. 852-30201, Incorporated by Reference at: § 250.180 (c)(6)(vii)(A) and (f)(2)(vi)(A).

(35) Chapter 10.2, Determination of Water in Crude Oil by the Distillation Method, First Edition, April 1981, also available as ANSI/ASTM D 4006, API Stock No. 852-30202, Incorporated by Reference at: § 250.180 (c)(6)(vii)(B) and (f)(2)(vi)(B).

(36) Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, also available as ANSI/ASTM D 4007, API Stock No. 852-30203, Incorporated by Reference at: § 250.180 (c)(6)(vii)(C) and (f)(2)(vi)(C).

(37) Chapter 10.4 (Publ 2542), Standard Methods of Test for Water and Sediment in Crude Oils, October 1970, also available as ANSI/ASTM D 96-68, API Stock No. 825-30204, Incorporated by Reference at: § 250.180 (c)(6)(vii)(D) and (f)(2)(vi)(D).

(38) Chapter 11.1—Volume Correction Factors, Volume I, Table 5A—Generalized Crude Oils and JP-4 Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A—Generalized Crude Oils and JP-4 Correction of Volume to 60 °F Against API Gravity at 60 °F, First Edition, August 1980, API Stock No. 852-27000, Incorporated by Reference at: § 250.180 (c)(6)(viii)(A), (d)(3)(v)(B), and (f)(2)(vii).

(39) Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0-90° API Gravity Range, First Edition, August 1984, API Stock No. 852-27300, Incorporated by Reference at: § 250.180(c)(6)(viii)(B).

(40) Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350-0.637 Relative Density (60 °F/60 °F) and −50 °F to 140 °F Metering Temperature, Second Edition, October 1986, also available as GPA 8286-86, API Stock No. 852-27307, Incorporated by Reference at: § 250.180(c)(6)(viii)(C).

(41) Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, 1984, API Stock No. 852-27310, Incorporated by Reference at: § 250.180(d)(3)(iv).

(42) Chapter 12.2, Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters, First Edition, September 1981, also available as ANSI/API MPMS 12.2-1981, API Stock No. 852-30302, Incorporated by Reference at: § 250.180 (c)(6)(ix), (d)(3)(v)(A), and (d)(3)(v)(C).

(43) Chapter 14.3, Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Second Edition, September 1985, also available as ANSI/API 2530-1985, API Stock No. 852-30343, Incorporated by Reference at: § 250.181(c)(1).

(44) Chapter 14.5, Calculation of Gross Heating Value, Specific Gravity, and Compressibility of Natural Gas Mixtures From Compositional Analysis, First Edition, January 1981, also available as AGA 2172 and ANSI/API MPMS 14.5-1981, API Stock No. 852-30345, Incorporated by Reference at: § 250.181(c)(1).

(45) Chapter 14.6, Installing and Proving Density Meters Used To Measure Hydrocarbon Liquid With Densities Between 0.3 to 0.7 gm/cc at 15.56 °C (60 °F) and Saturation Vapor Pressure, First Edition, September 1979, API Stock No. 852-30346, Incorporated by Reference at: § 250.181(c)(1).

(46) Chapter 14.8, Liquefied Petroleum Gas Measurement, First Edition, February 1983, API Stock No. 852-30348, Incorporated by Reference at: § 250.181(c)(1).

(e) *American Society for Testing and Materials (ASTM) Documents.* The ASTM documents listed below may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(1) ASTM Standard C33-86, Standard Specification for Concrete Aggregates including Nonmandatory Appendix, 1986, Incorporated by Reference at: § 250.138(b)(4)(i).

(2) ASTM Standard C94-86b, Standard Specification for Ready-Mixed Concrete, 1986, Incorporated by Reference at: § 250.138(e)(2)(i).

(3) ASTM Standard C150-86, Standard Specification for Portland Cement, 1986, Incorporated by Reference at: § 250.138(b)(2)(i).

(4) ASTM Standard C330-87, Standard Specification for Light-weight Aggregates for Structural Concrete, 1987, Incorporated by Reference at: § 250.138(b)(4)(i).

(5) ASTM Standard C595-86, Standard Specification for Blended Hydraulic Cements, 1986, Incorporated by Reference at: § 250.138(b)(2)(i).

(f) *American Welding Society (AWS) Documents.* The AWS documents listed in this paragraph may be purchased from the American Welding Society, 550 NW. LeJeune Road, P.O. Box 351040, Miami, Florida 33135.

(1) D1.1-86, Structural Welding Code—Steel, 1986 including Commentary, Incorporated by Reference at: § 250.137(b)(1)(i).

(2) D1.4-79, Structural Welding Code—Reinforcing Steel, 1979, Incorporated by Reference at: § 250.138(e)(3)(ii).

(g) *National Association of Corrosion Engineers (NACE) Documents.* The NACE documents listed in this paragraph may be purchased from the National Association of Corrosion Engineers, P.O. Box 218340, Houston, Texas 77218.

(1) NACE Standard MR-01-75 (1984 Editorial Revision), Material Requirements, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment with Supplement 1 issued January 1985, Supplement 2 issued February 1985, Supplement 3 issued March 1985, Supplement 4 issued May 1985, Supplement 5 issued July 1985, Supplement 6 issued August 1985, Supplement 7 issued February 1986, and Supplement 8 issued September 1986. Incorporated by Reference at: § 250.67(l)(1), (l)(2), (l)(3), and (l)(6).

(2) NACE Standard RP-01-76 (1983 Revision), Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production, Incorporated by Reference at: § 250.137(d).

§ 250.2 Definitions.

Terms used in this part shall have the meanings given in the Act and as defined below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary of the Interior (Secretary) as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

"Air pollutant" means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

"Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analysis of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

"Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The BACT shall be verified on a case-by-case basis by the Regional Supervisor and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

"Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

"Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

"Competitive reservoir" means a reservoir in which there are one or more well completions on each of two or more leases from which the lessees plan future production.

"Correlative rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

"Data" means facts and statistics or samples which have not been analyzed or processed.

"Development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior.

"District Supervisor" means the MMS officer with authority and responsibility for a district within an MMS Region.

"Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

"Emission offsets" means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan or Development and Production Plan.

"Enhanced recovery operations" means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

"Existing facility" as used in § 250.45 is an OCS facility described in an Exploration Plan or a Development and Production Plan submitted or approved prior to June 2, 1980.

"Exploration" means the process of searching for minerals, including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals; and

(2) Any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

"Facility" as used in § 250.45 concerning air quality means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

"Facility" as used in § 250.67(b) concerning hydrogen sulfide (H_2S) means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

"Gas reservoir" means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

"Gas-well completion" means a well completed in a gas reservoir or in the gas-cap of an oil reservoir with an associated gas cap.

"Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

"Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

"Information" when used without a qualifying adjective, includes analyzed geological information, processed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

"Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

"Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

"Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals or the area covered by that authorization, whichever is required by the context.

"Lease term pipelines" are those pipelines owned and operated by a lessee or operator and are wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of that lessee or operator.

"Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this part.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Maximum efficient rate" (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

"Maximum production rate" means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

"Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

"Nonsensitive reservoir" means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

"Oil reservoir" means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

"Oil reservoir with an associated gas cap" means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

"Oil-well completion" means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessees, or holder of operating rights under an approved operating agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

"Pipelines" are the piping, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced waters.

"Processed geological information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over operations.

"Projected emissions" means emissions, either controlled or uncontrolled, from a source or sources.

"Right-of-way pipelines" are those pipelines which: (1) Are contained within the boundaries of a single lease or unitized leases but are not owned and operated by a lessee or operator of that lease or unit, (2) are contained within the boundaries of contiguous (not cornering) leases which do not have a common lessee or operator, (3) are contained within the boundaries of contiguous (not cornering) leases which have a common lessee or operator but are not owned and operated by that common lessee or operator, or (4) are contained within a block(s) which is unleased.

"Regional Director" means the MMS officer with responsibility and authority for a Region within MMS.

"Regional Supervisor" means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

"Routine operations" means for the purposes of Subpart F, any of the following operations conducted on a well with the tree installed: (1) cutting paraffin; (2) removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations; (3) bailing sand; (4) pressure surveys; (5) swabbing; (6) scale or corrosion treatment; (7) caliper and gauge surveys; (8) corrosion inhibitor treatment; (9) removing or replacing subsurface pumps; (10) through-tubing logging (diagnostics); (11) wireline fishing; and (12) setting and retrieving other subsurface flow-control devices.

"Sensitive reservoir" means a reservoir in which ultimate recovery is decreased by high reservoir production rates. A high reservoir production rate is one which exceeds the MER.

"Waste of oil and gas" means (1) the physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well(s) in a manner which causes or tends to cause a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or (4) the inefficient storage of oil.

"Well-completion operations" means the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

"Well-control fluid" means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

"Workover operations" means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

"Zones known to contain H_2S" means geologic formations where prior drilling operations or logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that could potentially result in atmospheric concentrations of 20 parts per million (ppm) or more of H_2S.

"Zones where the absence of H_2S has been confirmed" means one of the following: (1) Geologic formations where prior drilling operations or logging, coring, testing, or producing operations have indicated that H_2S-bearing zones have not been encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, (2) geologic formations where analysis of produced gas samples have indicated the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, or (3) an area in a geological province in which there has been no prior drilling but from prior drilling in the surrounding area, it can be shown by correlation of geological and seismic data that equivalent stratigraphic units exist with an absence of H_2S throughout the area to be drilled.

"Zones where the presence of H_2S is unknown" means geologic formations where neither the presence nor absence of H_2S has been confirmed.

§ 250.3 Performance requirements.

(a) Nothing in this part shall preclude the use of new or alternative techniques, procedures, equipment, or activities other than those prescribed in the regulations of this part; if such other techniques, procedures, equipment, or activities afford a degree of protection, safety, or performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee or right-of-way holder obtains the prior written approval of the District or Regional Supervisor, as appropriate, for the use of such new or alternative techniques, procedures, equipment, or activities.

(b) The appropriate MMS official may prescribe or approve departures from the operating requirements of the regulations of this part when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

§ 250.4 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations, handling, measurement, transportation of production, and other operations and activities conducted pursuant to a lease or right-of-way by or on behalf of a lessee or right-of-way holder are subject to the regulations in this part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part to issue either written or oral orders to govern lease and right-of-way operations and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practice and are conducted in a manner which will preserve, protect, and develop mineral resources of the OCS in a manner which is consistent with the following need to:

(1) Make such resources available to timely meet the Nation's energy needs;

(2) Balance orderly energy resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public a fair and equitable return on the resources of the OCS;

(4) Preserve and maintain free enterprise competition; and

(5) Minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas and the recovery of other resources such as fish and shellfish.

§ 250.5 Functions.

The Director, in accordance with the regulations in this part, shall accomplish the following:

(a) Regulate all operations conducted under a lease, right of use and easement, or right-of-way to promote orderly exploration, development, and production of mineral resources and to prevent unreasonable harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b) Require on all new drilling and production operations and, whenever practicable, existing operations, the use of BAST, which the Director determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental cost of utilizing such technologies.

(c) Conduct a scheduled onsite inspection at least once a year of each offshore facility which is subject to environmental or safety regulations promulgated pursuant to the Act. The inspection shall be to determine that environmental protection equipment and safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents have been installed and are operating properly in accordance with the requirements of this part.

(d) Conduct periodic onsite inspection without advance notice to the operator of such facility as determined necessary to assure compliance with applicable regulations.

(e) Cooperate and consult with or solicit advice from affected States, executives of affected local governments, other interested parties, and relevant Departments and Agencies of the Federal Government.

(f) Identify for those activities under the jurisdiction of the Director those States which are deemed to be affected States.

§ 250.6 Oral approvals.

(a) The appropriate MMS official may give an oral approval whenever the regulations in this part require a lessee or other applicant to obtain such official's approval before commencing an operation or activity. If an oral approval is given in response to an oral request, the lessee or applicant shall confirm the oral request by submitting a written request within 72 hours of the oral approval and the MMS official shall approve that request subject to any conditions that were placed upon the oral approval. In the event a written application is given oral approval by an MMS official, the MMS official shall forward the approval and any conditions placed theron to the applicant.

(b) The appropriate MMS official may give oral orders to lessees in connection with requirements of this part whenever circumstances do not permit the time needed to prepare and issue such orders in writing. Oral orders shall be confirmed in writing by the appropriate MMS official.

§ 250.7 Right of use and easement.

(a) In addition to the rights and privileges granted to a lessee under a lease issued or maintained under the Act, the Regional Supervisor may grant a lessee, subject to conditions prescribed by the Regional Supervisor, a right of use and easement on the OCS to construct and maintain off the lease platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed and which are used for conducting exploration, development, and production activities or other operations on or off the lease which are related to such activities. Rights of use and easement on the OCS shall be issued and exercised in accordance with the provisions of this section.

(b) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(c) The Regional Supervisor shall require compliance with Subpart I and MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed as a condition of the granting of a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(d) The right granted by a right of use and easement shall be exercised in accordance with the requirements placed upon lessees by the regulations in this part.

(e) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(f) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it can be demonstrated to the Regional Supervisor that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right of use and easement may be situated or on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right of use and easement.

§ 250.8 Designation of operator.

In all cases where operations are not conducted by an exclusive owner of record, a designation of operator shall be submitted to the Regional Supervisor prior to the commencement of operations. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the Regional Supervisor. In case of a termination or in the event of a controversy between the lessee and the designated operator, both the lessee and the operator will be required to protect the interests of the lessor.

§ 250.9 Local agent.

When required by the Regional Supervisor or at the option of the lessee, the lessee shall designate a representative empowered to receive notices and comply with orders issued pursuant to the regulations in this part.

§ 250.10 Suspension of production or other operations.

(a) The Regional Supervisor may, on the Regional Supervisor's initiative or at the request of the lessee, suspend or temporarily prohibit production or any other operation or activity on all or any part of a lease (suspension) when the Regional Supervisor determines that such suspension is in the national interest and that the suspension is necessary as follows:

(1) To facilitate proper development of a lease including reasonable time to construct production facilities;

(2) To allow for the construction or negotiation for use of transportation facilities;

(3) To allow reasonable time to enter into a sales contract for oil or gas, or both, when good faith efforts to secure such contract(s) are made;

(4) To allow reasonable time to commence drilling operations when good faith efforts are prevented by reasons beyond the lessee's control, such as unexpected weather or unavoidable accidents; or

(5) To avoid continued operations which would result in premature abandonment of a producing well(s) or would not be economic.

(b) The Regional Superviser may also direct or, at the request of the lessee, approve a suspension of any operation or activity, including production, because of the following:

(1) The lessee failed to comply with a provision of any applicable law, regulation, or order, or provision of a lease or permit;

(2) There is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment;

(3) The suspension is in the interest of national security or defense;

(4) The suspension is necessary for the implementation of the requirements of the National Environmental Policy Act or to conduct an environmental analysis;

(5) The suspension is necessary to facilitate the installation of equipment necessary for safety and environmental reasons;

(6) The suspension is necessary to allow for inordinate delays encountered by the lessee in obtaining required permits or consents, including administrative or judicial challenges or appeals; or

(7) The suspension is necessary to comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.

(c) If provided for by lease stipulation, the Regional Supervisor shall suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when such lease is in water depths of 400 to 900 meters, provided that the suspension or temporary prohibition shall be for such period of time as is necessary to complete the activities described in a Development and Production Plan approved by the Regional Supervisor in accordance with § 250.34. However, in no case shall the suspension under this paragraph be for periods of time which exceed a total of 5 years.

(d) A suspension of production pursuant to paragraph (a)(1), (2), or (3) of this section may not be issued unless a well on the lease for which the suspension is requested has been drilled and determined to be producible in paying quantities in accordance with § 250.11.

(e) Except as provided in paragraph (c) of this section, suspensions under this section may be granted for periods of time each of which shall not exceed 5 years.

(f) When the Regional Supervisor orders or approves a suspension pursuant to paragraphs (a), (b), or (c) of this section, the term of the lease shall be extended for a period of time equal to the period that the suspension is in effect, except that no lease shall be so extended when the suspension is the result of the lessee's gross negligence or willful violation of the lease or governing regulations.

(g) The Regional Supervisor may, at any time within the period prescribed for a suspension issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a plan for approval, disapproval, or modification in accordance with Subpart B, Exploration and Development and Production Plans.

(h)(1) When the Regional Supervisor directs or grants a suspension pursuant to paragraph (b)(2) of this section, the Regional Supervisor may require the lessee to conduct a site-specific study(s) to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). A reasonable scope of the study(s) shall be approved or prescribed by the Regional Supervisor. The lessee shall furnish copies and all results of the study(s) to the Regional Supervisor. The cost of the study(s) shall be borne by the lessee unless the Regional Supervisor arranges for the cost of the study(s) to be borne by a party(s) other than the lessee. The Regional Supervisor shall make such results available to interested parties and to the public.

(2) On the basis of the results of the study or studies conducted in accordance with paragraph (h)(1) of this section and other information available to and identified by the Regional Supervisor, the Regional Supervisor shall require the lessee to take appropriate measures to mitigate or avoid the damage or potential damage, which resulted in the suspension or temporary prohibition of production or of any other operation or activity, as a condition for permitting the resumption of exploration, development, or production activities on the lease. The lessee shall submit, when deemed appropriate by the Regional Supervisor, a revised Exploration Plan or a revised Development and Production Plan in accordance with § 250.34 of this part. The revised plan shall incorporate the mitigating measures required by the Regional Supervisor. In choosing between alternative mitigating measures, the Regional Supervisor will balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage or harm to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(i) The lessee must submit with a request for a suspension of production the reasons for requesting the suspension, a schedule of work leading to the commencement or restoration of production or any other operation or activity, and any other information the Regional Supervisor may require.

(j) Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

(k) Any suspension shall terminate automatically upon the commencement of production or any other suspended operation or activity.

§ 250.11 Determination of well producibility.

Upon receiving a written request from the lessee, the District Supervisor will determine whether a well is capable of producing in paying quantities (production of oil, gas, or both in quantities sufficient to yield a return in excess of the costs, after completion of the well, of producing the hydrocarbons at the wellhead.) Such a determination shall be based upon the following:

(a) A production test for oil wells shall be of at least 2 hours' duration following stabilization of flow. A deliverability test for gas wells shall be of at least 2 hours' duration following stabilization of flow or a four-point back-pressure test. The lessee shall provide the District

Supervisor a reasonable opportunity to witness all tests. Test data accompanied by the lessee's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided prior approval is obtained from the District Supervisor.

(b) In the Gulf of Mexico OCS Region, the following shall also be considered collectively as reliable evidence that a well is capable of producing oil or gas in paying quantities:

(1) A resistivity or induction electric log of the well showing a minimum of 15 feet of producible sand in one section that does not include any interval which appears to be water-saturated. In some cases, wells with less than 15 feet of producible sand in one section may be approved by the District Supervisor. All of the section counted as producible shall exhibit the following properties:

(i) Electrical spontaneous potential exceeding 20-negative millivolts beyond the shale base line. If mud conditions prevent a 20-negative millivolt reading beyond the shale base line, a gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean water-bearing sand may be substituted.

(ii) A minimum true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1.

(2) A log indicating sufficient porosity in the producible section.

(3) Sidewall cores and core analyses which indicate that the section is capable of producing oil or gas or evidence that an attempt was made to obtain such cores.

(4) A wireline formation test and/or mud-logging analysis which indicates that the section is capable of producing oil or gas, or evidence that an attempt was made to obtain such tests.

§ 250.12 Cancellation of leases.

(a)(1) The Secretary may terminate a suspension and cancel a lease as follows after notice and opportunity for a hearing when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), property, other mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time;

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force; and

(iv) The suspension has been in effect for at least 5 years, or the termination of suspension and lease cancellation are at the request of the lessee.

(2) If a lease is cancelled under this section or under Part 256 of this title, the lessee shall be entitled to compensation pursuant to the provisions of this section.

(b) Whenever an Exploration Plan is disapproved because the Regional Supervisor determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environment and the proposed activity cannot be modified to avoid these dangers, the Secretary, once the primary lease term has been extended continuously for a period of 5 years following the disapproval or upon request of the lessee at an earlier time, may terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (f) of this section.

(c)(1) Where a Development and Production Plan is submitted before the subsequent approval of a Coastal Zone Management (CZM) program for an affected State, pursuant to the CZMA, and the plan is disapproved by the Regional Supervisor pursuant to § 250.34(k)(3)(ii), the following may occur:

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Regional Supervisor shall approve, disapprove, or require modification of the plan in accordance with the provisions in § 250.34.

(ii) Upon expiration of the 5-year period described in paragraph (c)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Regional Supervisor has not approved a plan or required the lessee to submit a Development and Production Plan for approval or modification, the Secretary shall cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (f) of this section.

(d) The lessee shall not be entitled to compensation when a lease expires.

(e) The lessee shall not be entitled to compensation when a lease is cancelled where the following circumstances exist:

(1) A Development and Production Plan submitted after approval of a State's CZM program, pursuant to the CZMA, is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B)(i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA;

(2) A lessee fails to submit a Development and Production Plan in accordance with § 250.34 or fails to comply with an approved plan;

(3) The owner of a nonproducing lease fails to comply with a provision of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lessee;

(4) A Development and Production Plan is disapproved because of a failure to demonstrate compliance with the requirements of applicable Federal law, or

(5) A producing lease is forfieted or is cancelled pursuant to section (5)(d) of the Act.

(f) Cancellation of a lease under paragraphs (a), (b), and (c) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of the following:

(1) The fair value of the cancelled rights as of the date of cancellation, taking into account both anticipated revenues from the lease and costs reasonably anticipated on the lease, including costs of compliance with all applicable regulations and operating orders and liability for cleanup costs or damages, or both, in the case of an oil spill; or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except as follows:

(i) With respect to leases issued before September 18, 1978, compensation shall be equal to the amount specified in paragraph (f)(1) of this section, and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, innocent party(s) shall have the right to seek damages for losses from the responsible party(s) and the right to acquire the interests of the negligent party(s) and be issued the lease in question.

§ 250.13 Effect of production, drilling, or well-reworking on lease term.

(a) Producing, drilling, or well-reworking operations on a leased area shall continue the lease in effect so long as the producing, drilling, or well-reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production, drilling, or well-reworking operations shall be continued in effect by production, drilling, or well-reworking operations which are commenced on or before the 90th day after the date of completion of the last production, drilling, or well-reworking operation. No time lapse in production, drilling, or well-reworking operations of greater than 90 days shall continue the lease in effect unless production or other operations on the lease have been suspended pursuant to § 250.10.

(b) Notwithstanding the limitations of paragraph (a) of this section, the Director may approve such other time periods between operations, not to exceed 180 days from the date of the last production, drilling, or well-reworking operations, or beyond 180 days where environmental conditions warrant, provided the Director determines that such lease extension is in the national interest and would be in the interest of conservation, or prevent waste and protect correlative rights.

(c) Nothing in the section obviates the necessity of obtaining approval of plans or notices required by this part.

§ 250.14 Reinjection and subsurface storage of gas.

(a) (1) The Regional Supervisor may authorize the reinjection of gas on the OCS to promote conservation of natural resources and to prevent waste when it can be shown that no undue interference with operations under existing leases will result.

(2) An application for reinjection of gas may be approved for the purpose of the following:

(i) Enhanced recovery projects,

(ii) Preventing of the flaring of casinghead gas, or

(iii) Other conservation measures approved by the Regional Supervisor.

(b) (1) The Regional Supervisor may authorize subsurface storage of gas on the OCS for later commercial benefit when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case authorized in paragraph (b)(1) of this section, a storage agreement will be required, and the authorization for storage will provide for the payment of a storage fee or rental.

(c) Reinjection or storage of gas may be approved for locations on- or off-lease, provided that when gas is reinjected or stored off the lease or unit from which it was produced, royalties shall be paid at the time the gas is first produced. Gas produced from a reservoir containing both reinjected or stored gas and gas original to the reservoir shall be presumed to be made up of proportionate amounts of injected or stored gas and gas original to the reservoir in accordance with a formula approved or prescribed by the Regional Supervisor.

(d) The use of all or any part of a lease area for subsurface storage of gas shall not affect the continuance or expiration of such lease.

(e) Gas may not be stored on unleased lands unless a right of use and easement for that purpose has been approved by the Regional Supervisor in accordance with § 250.7.

§ 250.15 Identification.

(a) Platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for units without helicopter landing facilities shall use letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator,

(2) The area designation based on OCS Official Protraction Diagrams (except in the Pacific OCS Region),

(3) The block number (lease number in the Pacific OCS Region) in which the facility is located, and

(4) Platform, structure, or rig name.

(b) For each singly completed well, the lease number and well number shall be painted on the wellhead or on a sign affixed to the wellhead. In wells with multiple completions, each completion shall be individually identified at the wellhead. For subsea wellheads, the required sign shall be affixed to the flowline at a convenient surface location on the platform to which it is connected. All identifying signs shall be maintained in a legible condition.

§ 250.16 Reimbursement.

(a) When geological data, geophysical data, analyzed geological information, processed geological and geophysical information, reprocessed geological and geophysical information, and interpreted geological and geophysical information are submitted to MMS pursuant to the requirements of this part (whether or not retained by MMS) and upon receipt of a request for reimbursement no later than 90 days from the date of delivery and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs of reproducing such data and information at the lessee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) When processed or reprocessed geological or geophysical information is submitted to MMS pursuant to the requirements of this part (whether retained by the Regional Supervisor or not) and upon receipt of a request for reimbursement no later than 90 days from the date of delivery and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition) but only if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of the lessee's business and was done at the specific request of the Regional Supervisor.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The lessee shall not be reimbursed for the costs of analyzing geological information or for interpreting geological or geophysical information.

§ 250.17 Information and forms.

(a) Information required to be submitted pursuant to the regulations in this part shall be furnished in the manner and form prescribed in the regulations in this part or as ordered by the Director. Copies of forms may be obtained from the Regional or District Supervisor and shall be filled out completely and filed punctually with the Regional or District Supervisor. Computer generated forms which are equal in size, readability, and paper quality, and which arrange the data in identical format, may be submitted in lieu of the forms available from the Regional or District Supervisor.

(b) Reports submitted on forms prescribed under this part or otherwise required by the Director shall include a copy marked "Public Information" which shall include all required information except that exempt from public disclosure in § 250.18 or otherwise exempt from public disclosure under law or regulation.

§ 250.18 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geological and geophysical information, submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect, or for a period of 10 years after the date of submission, whichever is less, unless the Director determines that (i) the data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protection of the environment, and the data and information are shown only to persons with an interest in the issue, (ii) the geological and geophysical data and information are necessary for specific scientific or research purposes for the Government and the release of such data and information would further the nation interest without unduly damaging the competitive position of the lessee.

(b) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geological data and analyzed geological information submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee except under one of the following conditions based on the status of the lease at the time of release of the data and information:

(1) For leases no longer in effect, the data and information will be released.

(2) For a lease in effect, and within the primary term specified in the lease, the data and information may be released 2 years after submission of the data or information or 60 days after a lease sale such that any portion of an offered block is within 50 miles of a well, whichever is later. For the purpose of this paragraph 2, the primary term specified in a lease shall be deemed to be extended for a period of time equal to the period of time for which a suspension of operations is granted pursuant to § 250.10 of this part; provided that the primary term specified in a lease shall not be deemed to be extended for a suspension of operations directed in accordance with § 250.10 (b) (1) of this part.

(3) For leases in effect and beyond the primary term specified in the lease, except as provided in paragraph (b)(2) of this section, data and information will be released 2 years after submission.

(4) For all leases, the data and information may be released if the Director determines that:

(i) The data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protection of the environment, and the data and information are shown only to persons with an interest in the issue;

(ii) The geological data and information are necessary for specific scientific or research purposes for the Government and the release of such data and information would further the national interest without unduly damaging the competitive position of the lessee.

(c) Geophysical data, geological data, processed geological and geophysical information, and interpreted geological and geophysical information collected on a lease with high-resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler, and magnetometer) in compliance with requirements concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Regional Supervisor. However, unless the lessee can demonstrate to the satisfaction of the Regional Supervisor that release of the data or information would unduly damage the lessee's competitive position, the Regional Supervisor may release the data and information at an earlier time if the Regional Supervisor determines it is needed by affected States to make determinations under Subpart B, Exploration and Development and Production Plans, of this part.

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

(1) On Form MMS–330, Well (Re) Completion Report

(i) item 1a. Type of well,

(ii) The following entries under Item 4, LOCATION OF WELL:

—At top Prod. interval reported below, and
—At total depth,

(iii) Item 18, TOTAL DEPTH, MD & TVD,

(iv) Item 19, PLUG BACK, T.D., MD & TVD,

(v) Item 20, IF MULTIPLE COMPL., HOW MANY,

(vi) Item 21, PRODUCING INTERVAL(S), OF THIS COMPLETION—TOP, BOTTOM, NAME (MD AND TVD),

(vii) Item 23, TYPE OF ELECTRIC AND OTHER LOGS RUN,

(viii) Item 25, CASING RECORD,

(ix) Item 26, LINER RECORD,

(x) Item 27, TUBING RECORD,

(xi) Item 28, PERFORATION RECORD,

(xii) Item 29, ACID, FRACTURE, CEMENT SQUEEZE, ETC.,

(xiii) The following entries under Item 30, PRODUCTION:

—HOURS TESTED,
—CHOKE SIZE, SEPARATOR PRESSURE-SEPARATOR TEMPERATURE,
—PROD'N. FOR TEST PERIOD: OIL—BBL., GAS—MCF., and WATER—BBL.,
—GAS-OIL RATIO—AT SEPARATOR CONDITIONS
—FLOW. TUBING PRESS.,
—CASING PRESSURE,
—CALCULATED 24-HOUR RATE:
—OIL GRAVITY-API (CORR.)

(xiv) Item 35, SUMMARY OF POROUS ZONES, and

(xv) Item 36, GEOLOGIC MARKERS.

(2) On Form MMS–331, Sundry Notices and Reports on Wells—

(i) The following entries under Item 4, LOCATION OF WELL:

—AT TOP PROD. INTERVAL; and
—AT TOTAL DEPTH; and

(ii) Item 15, PROPOSED DEPTH MD AND TVD.

(iii) Portions of Item 16 pertaining to subsurface locations and measured and true vertical depths for all markers and zones.

(iv) Item 16, DESCRIBE PROPOSED OR COMPLETED OPERATIONS.

(3) On Form MMS–331C, Application for Permit to Drill—

(i) Item 4, LOCATION OF WELL: At proposed prod. zone, and

(ii) Item 20, PROPOSED CASING AND CEMENTING PROGRAM.

(e) Directional survey data released to the owner of an adjacent lease pursuant to § 250.51(e)(5) shall not be released to the public without the consent of the lessee from whose lease the directional survey was taken.

(f) Data and information obtained from beneath unleased land as a result of a well deviation which has not been approved by the Regional Supervisor shall be available to the public.

§ 250.19 Accident reports.

(a) The lessee shall notify the District Supervisor of all serious accidents, any death or serious injury, and all fires, explosions, and blowouts connected with any activities or operations on the lease. All spills of oil or other liquid pollutants shall be reported as described in § 250.41(b).

(b) The owner of an easement, right-of-way, or other permit shall comply with paragraph (a) of this section by notification and report submittal to the Regional Supervisor for such incidents occurring on the area covered by the easement, right-of-way, or other permit.

(c) Unless otherwise specifically ordered by the Director, all investigations conducted under the authority of sections 22(d) (1) and (2) of the Act shall be fact-finding proceedings with no civil or criminal issues and no adverse parties. The purpose of the investigation is to prepare a public report. Such investigations shall satisfy the following requirements:

(1) Any meetings shall be conducted in the appropriate MMS regional or district office or at some other convenient location determined by the panel chairperson. The chairperson may open a meeting or any part of it to the public if the chairperson determines that it would aid the panel in its work.

(2) All members of the panel shall be present at such meetings if possible. The chairperson may designate a member(s) of the panel to conduct meetings without all members present if the chairperson finds it to be appropriate.

(3) Appropriate oaths shall be administered by the chairperson or his/her designeee to all persons giving testimony.

(4) A verbatim transcript shall be made of any oral testimony.

(5) Each person giving testimony shall be allowed to have legal and/or other representative(s) present to advise or counsel when giving testimony to the panel.

(6) Only the following persons shall address questions to any person giving testimony:

(i) The panel members, the panel's legal advisors, any experts the panel deems necessary; and

(ii) The testimony transcriber.

(7) The chairperson of the panel may, if necessary, issue a subpoena to any witness or person who has knowledge of the accident pursuant to section 22(l) of the Act. A witness or a person who has knowledge of the accident may be required to attend a meeting at a place not more than 100 miles from the place where the subpoena is served.

(8) Any witness or person who has knowledge of the accident and is subpoenaed to testify under this subsection shall be entitled to be paid the same fees and mileage paid for similar services in the U.S. District Courts. The MMS shall pay fees and mileage for those persons that MMS has called if the persons so request.

(9) When the witness(es) or person(s) who has knowledge of the accident cannot appear to testify due to injury or who is not required to appear as provided in paragraph (c)(7) of this section, the panel may then move the meeting site to a location more convenient to the witness(es) or person(s), or the panel may accept a sworn written statement in lieu of oral testimony.

§ 250.20 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, the health and safety of all persons, and the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.21 Access to facilities.

(a) The lessee shall make available for inspection by MMS representatives, all platforms, artificial islands, and other installations located on offshore leases. For installations equipped with helicopter landing sites and refueling facilities, the lessee shall provide the use of those facilities for helicopters used by the MMS in the supervision of offshore operations.

(b) Lessee and nonlessee owners of easements, rights-of-way, or other permits shall make available at all reasonable times for inspection by MMS the area covered by the lease, easement, right-of-way, or permit, all improvements, structures, and fixtures thereon, and all records relative to the design, construction, operation, maintenance, repairs, or investigations on or with regard to such area.

(c) The lessee shall, on request, furnish food, quarters, and transportation for MMS representatives to inspect lease facilities and operations. Upon request no later than 90 days after furnishing food, quarters, and transportation, the lessee will be reimbursed for the costs incurred for the food, quarters, and transportation provided MMS representatives as determined by the Regional Director.

§ 250.22 Best available and safest technologies (BAST).

(a) The Director shall require on all new drilling and production operations and, wherever practicable, on existing operations, the use of the BAST, which the Director determines to be economically feasible, where ever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(b) Conformance to the standards, codes, and practices referenced in this part will be considered to be the application of BAST. Specific equipment and procedures or systems not covered by standards, codes, or practices will be analyzed to determine if the failure of such would have a significant effect on safety, health, or the environment. If such are identified and until specific performance standards are developed by MMS and as directed by the Regional Supervisor on a case-by-case basis, the lessee shall submit such information necessary to indicate the use of BAST, the alternatives considered to the specific equipment or procedures, and the rationale as to why one alternative technology was considered in place of another. This analysis shall include a discussion of the costs involved in the use of such technology and the incremental benefits to be gained.

§ 250.23 Report of cessation of production.

When a lease is in its extended term in § 256.37(b), a report shall be submitted to the District Supervisor when the last well on the lease ceases production. Such a report shall contain the number of the well and the date that the last well ceased production and shall be submitted within 15 days after the end of the first month in which no production occurs. A report is not required when production resumes within 15 days after the end of the first month in which no production occurs or when production ceases as a result of a suspension of production.

§ 250.24 Appeals, general.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil-penalty. This requirement for compliance shall take precedence over any stay that may be granted other than a stay granted by the Secretary.

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Subpart B—Exploration and Development and Production Plans

§ 250.30 General requirements.

All exploration, development, and production activities except for preliminary activities shall be conducted in accordance with an Exploration Plan or a Development and Production Plan approved by the Regional Supervisor. A proposed plan may apply to one or more leases held by an individual lessee or may be submitted by a group of lessees. The Regional Supervisor may authorize lessees to jointly submit environmental information for leases that are in the same planning area and have similar environmental conditions. Any reference in this part to a Development and Production Plan shall be considered to include the Development Operations Coordination Document used in the western Gulf of Mexico (GOM) (see § 250.34(c)).

§ 250.31 Preliminary activities.

Preliminary activities are geological, geophysical, and other surveys necessary to develop a comprehensive Exploration Plan or Development and Production Plan. Such preliminary activities are those which do not result in any physical penetration of the seabed of greater than 500 feet and which do not result in any significant adverse impact on the natural resources of the Outer Continental Shelf (OCS). The Regional Supervisor may require prior notification of the type, scope, and timing of any survey.

§ 250.32 Well location and spacing.

(a) The Regional Supervisor is authorized to approve well location and spacing programs necessary for exploration and development of a lease or reservoir giving consideration to, among other factors, the location of drilling units and platforms, geological and other reservoir characteristics, number of wells that can be economically drilled, protection of correlative rights, minimization of risk to the environment, and unreasonable interference with other uses of the OCS. Well location and spacing programs shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and avoid the drilling of unnecessary wells.

(b) For wells which could intersect or drain an offset property, the Regional Supervisor may require special measures to protect the rights of the lessor and objecting offset lessees.

§ 250.33 Exploration Plan.

(a) The lessee shall submit for approval an Exploration Plan which includes the following:

(1) The proposed type and sequence of exploration activities to be undertaken together with a timetable for their performance from commencement to completion.

(2) A description of the type of mobile drilling unit, platform, or artificial island to be used including a discussion of the drilling program and important safety and pollution-prevention features. In the Alaska OCS Region, lessees shall include provisions for—

(i) Drilling a relief well should a blowout occur,

(ii) Loss or disablement of a drilling unit, and

(iii) Loss or damage to support craft.

(3) A table indicating the approximate location of each proposed exploratory well, including surface locations, proposed well depths, and water depth at well sites.

(b) The lessee shall submit the following supporting information to accompany the Exploration Plan:

(1) Data and information described below which the Regional Supervisor deems necessary to evaluate geologic conditions:

(i) Current structure contour maps drawn to the top of each prospective hydrocarbon accumulation showing the approximate surface and bottomhole location of each proposed well.

(ii) Full-scale interpreted, and if appropriate, migrated Common Depth Point seismic lines intersecting at or near the primary well locations.

(iii) A time versus depth chart based on the appropriate velocity analysis in the area of interpretation.

(iv) Interpreted structure sections corresponding to each seismic line submitted in paragraph (b)(1)(ii) of this section showing the location and proposed depth of each well.

(v) A generalized stratigraphic column from the surface to total depth.

(vi) A description of the geology of the prospect.

(vii) A plat showing exploration seismic coverage of the lease.

(viii) A bathymetry map showing surface locations of proposed wells.

(ix) An analysis of seafloor and subsurface geologic and manmade hazards. Unless the lessee can demonstrate to the satisfaction of the Regional Supervisor that data sufficient to determine the presence or absence of such conditions are available, the lessee shall conduct a shallow hazards survey in accordance with the Regional Supervisor's specifications. The Regional Supervisor may require the submission of a shallow hazards report and the data upon which the analysis is based.

(2) An Oil Spill Contingency Plan (OSCP) as described in § 250.42 or reference to an approved regional plan.

(3) A discussion of the measures that have been or will be taken to satisfy the conditions of lease stipulations.

(4) A list of the proposed drilling fluids, including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal.

(5) Information concerning the presence of hydrogen sulfide (H_2S) and the following proposed precautionary measures:

(i) A classification of the lease area as to whether it is within an area known to contain H_2S, an area where the presence of H_2S is unknown, or an area where the absence of H_2S has been confirmed as described in § 250.67 of this part and the documentation supporting the classification; and

(ii) If the classification is an area known to contain H_2S or an area where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67 of this part.

(6) A detailed discussion of new or unusual technology to be employed. The lessee shall indicate which portions of the supporting information the lessee believes are exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2). The lessee shall include a written discussion of the general subject matter of the deleted portions for transmittal to the recipients of plan copies.

(7) A brief description of the onshore facilities to be used to support the exploration activities including information as to whether the facilities are existing, proposed, or are to be expanded; a brief description of support vessels to be used and information concerning their frequency of travel; and a map showing the lease relative to the shoreline and depicting proposed transportation routes.

(8) For onshore support facilities, except in the western GOM, indicate the following:

(i) The location, size, number, and land requirements (including rights-of-way and easements) of the onshore support and storage facilities and, where possible, a timetable for the acquisition of lands and the construction or expansion of any facilities.

(ii) The estimated number of persons expected to be employed in support of offshore, onshore, and transportation activities and, where possible, the approximate number of new employees and families likely to move into the affected area.

(iii) Major supplies, services, energy, water, or other resources within affected States necessary for carrying out the related plan.

(iv) The source, composition, frequency, and duration of emissions of air pollutants.

(9) The quantity, composition, and method of disposal of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transportation operations.

(10) Historic weather patterns and other meteorological conditions of offshore areas including temperature, sky cover and visibility, precipitation, storm frequency and magnitude, wind direction and velocity, and freezing and icing conditions listing, where possible, the means and extremes of each.

(11) Physical oceanography including onsite direction and velocity of currents and tides, sea states, temperature, and salinity, water quality, and icing conditions, where appropriate.

(12) Onsite flora and fauna including both pelagic and benthic communities, transitory birds and mammals that may breed or migrate through the area when proposed activities are being conducted, identification of endangered and threatened species and their critical habitats that could be affected by proposed activities, and typical fishing seasons and locations of fishing activities. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into this discussion.

(13) Environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act (CZMA) which may be affected by the proposed activities.

(14) Onsite uses of the area based on information available, e.g., shipping, military use, recreation, boating, commercial fishing, subsistence hunting and fishing, and other mineral exploration in the area.

(15) Archaeological and cultural resources (including any cultural resource reports or survey information required by the Regional Supervisor and not previously submitted) located within the area that may be disturbed by the proposed activities.

(16) Existing and planned monitoring systems that are measuring or will measure environmental conditions and provide data and information on the impacts of activities in the geographic areas.

(17) An assessment of the direct and cumulative effects on the offshore and onshore environments expected to occur as a result of implementation of the Exploration Plan, expressed in terms of magnitude and duration, with special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment. Measures to minimize or mitigate impacts should be identified and discussed.

(18) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930.

(19) For each OCS facility, the lessee shall submit the information described below when it is needed to make the findings under § 250.45 of this part:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and the basis for all calculations to include (if the drilling unit has not yet been determined, the lessee shall use worst-case estimates for the type of unit proposed):

(*1*) For each source, the amount of the emission by air pollutant expressed in tons per year and the frequency and duration of emissions.

(*2*) For each facility, the total amount of emissions by air pollutant expressed in tons per year and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s).

(*3*) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned.

(*4*) A schematic drawing which identifies the location and elevation of each source.

(*5*) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (b)(18)(iv) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the results obtained through the use of the model(s). Only model(s) that has been approved by the Director may be used.

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the data and information selected.

(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45 of this part) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable to include the status of each area by air pollutant, the class of attainment area, and the air-pollution control agency whose jurisdiction covers the area identified.

(iv) The emission-reduction controls available to reduce emissions, including the source, the emission-reduction control technology, reductions to be achieved, and monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.

(20) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be made.

(21) Such other information and data as the Regional Supervisor may require.

(c) Information and data discussed in other documents previously submitted to MMS or otherwise readily available to reviewers may be referenced. The material being referenced shall be cited, described briefly, and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be so referenced.

(d) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the CZM agency of affected State(s), and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration (NOAA) may limit the amount of information required to be included to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions.

(e) The Regional Supervisor shall determine within 10 working days after receipt of the Exploration Plan whether additional information is needed. If no deficiencies are identified and the required number of copies have been received, the plan will be deemed submitted.

(f) Within 2 working days after the date an Exploration Plan has been deemed submitted, the Regional

Supervisor shall transmit by receipted mail a copy of the plan, except for those portions determined to be exempt from disclosure under the FOIA and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the CZM agency of each affected State.

Receipt of the plan by the CZM agency initiates the State coastal zone consistency review period.

(g) In accordance with the National Environmental Policy Act (NEPA), the Regional Supervisor shall evaluate the environmental impacts of the activities described in the Exploration Plan.

(h) In the evaluation of an Exploration Plan, the Regional Supervisor shall consider written comments from the Governor of an affected State or the Governor's designated representative which are received prior to the deadline specified by the Regional Supervisor. The Regional Supervisor may consult directly with affected States regarding matters contained in the comments.

(i) Within 30 days of submission of a proposed Exploration Plan, the Regional Supervisor shall accomplish one of the following:

(1) Approve the plan;

(2) Require the lessee to modify any plan which is inconsistent with the provisions of the lease, the Act, or the regulations prescribed under the Act including air quality, environmental, safety, and health requirements; or

(3) Disapprove the plan if the Regional Supervisor determines that a proposed activity would probably cause serious harm or damage to life (including fish and other aquatic life), property, natural resources offshore including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment, and that the proposed activity cannot be modified to avoid the condition(s).

(j) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving an Exploration Plan or for requiring modification of a plan. For plans requiring modification, the Regional Supervisor shall also notify the lessee in writing of the conditions that must be met for plan approval.

(k)(1) The lessee may resubmit an Exploration Plan, as modified, to the Regional Supervisor in the same manner as for a new plan. Only information related to the proposed modifications need be submitted. The Regional Supervisor shall approve, disapprove, or require modification of the resubmitted plan based upon the criteria in paragraph (i) of this section within 30 days of the resubmission date.

(2) An Exploration Plan which has been disapproved pursuant to paragraph (i)(3) of this section may be resubmitted if there is a change in the conditions which caused it to be disapproved. The Regional Supervisor shall approve, require modification, or disapprove such a plan within 30 days of the resubmission date.

(l) When a State objects to a lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to—

(1) The Regional Supervisor for review pursuant to the criteria in paragraphs (h), (i), and (j) of this section; and

(2) Through the Regional Supervisor to the State for review pursuant to the CZMA and the implementing regulations (15 CFR 930.83 and 930.84). Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the CZMA and the implementing regulations (Subpart H of 15 CFR Part 930). The Regional Supervisor shall approve or disapprove a plan as resubmitted within 30 days of the resubmission date.

(m) If the Regional Supervisor disapproves an Exploration Plan, the Secretary may, subject to the provisions of section 5(a)(2)(B) of the Act and the implementing regulations in § 250.12 and 256.77 of this Chapter II, cancel the lease(s), and the lessee shall be entitled to compensation in accordance with section 5(a)(2)(c) of the Act.

(n)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Exploration Plan and may request updated information on schedules and procedures. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in other onshore or offshore conditions affecting or affected by exploration activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require the needed revision.

(2) Revisions to an approved or pending Exploration Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated or requires additional permits, the revisions shall be subject to all of the procedures in this section.

(o) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, biological, or other surveys or monitoring programs. The lessee shall provide the Regional Supervisor, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.

(p) The lessee may not drill any well until the District Supervisor's approval of an Application for Permit to Drill (APD), submitted in accordance with the requirements of § 250.64 of this part, has been received. The District Supervisor shall not approve any APD until all affected States with approved CZM programs have concurred or have been conclusively presumed to concur with the applicant's coastal zone consistency certification accompanying a plan, or the Secretary of Commerce has made the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The APD's must conform to the activities described in detail in the approved Exploration Plan and shall not be subject to a separate State coastal zone consistency review.

(q) Nothing in this section or in an approved plan shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Exploration Plan.

§ 250.34 Development and Production Plan.

(a) The lessee shall submit for approval a Development and Production Plan which includes the following:

(1) A description of and schedule for the development and production activities to be performed including plan commencement date, date of first production, total time to complete all development and production activities, and dates and sequences for drilling wells and installing facilities and equipment.

(2) A description of any drilling vessels, platforms, pipelines, or other facilities and operations located offshore which are proposed or known by the lessee (whether or not owned or operated by the lessee) to be directly related to the proposed development, including the location, size, design, and important safety, pollution prevention, and environmental monitoring features of the facilities and operations.

(b) The lessee shall submit the following supporting information to accompany the Development and Production Plan:

(1) Geological and geophysical (G&G) data and information, including the following:

(i) A plat showing the surface location of any proposed fixed structure or well.

(ii) A plat showing the surface and bottomhole locations and giving the measured and true vertical depths for each proposed well.

(iii) Current interpretations of relevant G&G data.

(iv) Current structure map(s) showing the surface and bottomhole location of each proposed well and the depths of expected productive formations.

(v) Interpreted structure sections showing the depths of expected productive formations.

(vi) A bathymetric map showing surface locations of fixed structures and wells or a table of water depths at each proposed site.

(vii) A discussion of seafloor conditions including a shallow hazards analysis for proposed drilling and platform sites and pipeline routes. This information shall be derived from the shallow hazards report required by § 250.139 of this part.

(2) Information concerning the presence of H_2S and proposed precautionary measures, including the following:

(i) A classification of the lease area as to whether it is within an area known to contain H_2S, an area where the presence of H_2S is unknown, or an area where the absence of H_2S has been confirmed as described in § 250.67 of this part and the documentation supporting the classification; or

(ii) If the classification is an area known to contain H_2S or an area where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67 of this part.

(3) A description of the environmental safeguards to be implemented including an updated OSCP as described in § 250.42 of this part or reference to an approved plan.

(4) A discussion of the steps that have been or will be taken to satisfy the conditions of lease stipulations.

(5) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas, i.e., secondary, tertiary, or other enhanced recovery practices.

(6) A discussion of the proposed drilling and completion programs.

(7) A detailed description of new or unusual technology to be employed. The lessee shall indicate which portions of the information the lessee believes are exempt from disclosure under the FOIA (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2). The lessee shall include a written discussion of the general subject matter of the deleted portions for transmittal to recipients of plan copies.

(8) A brief description of the following:

(i) The location, description, and size of any offshore, and to the maximum extent practicable, land-based operations to be conducted or contracted for as a result of the proposed activity, including the following:

(A) The acreage required within a State for facilities, rights-of-way, and easements.

(B) The means proposed for transportation of oil and gas to shore, the routes to be followed by each mode of transportation, and the estimated quantities of oil or gas, or both, to be moved along such routes.

(C) An estimate of the frequency of boat and aircraft departures and arrivals, the onshore location of terminals, and the normal routes for each mode of transportation.

(ii) A list of the proposed drilling fluids including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal. If the information is provided in an approved Environmental Protection Agency, National Pollutant Discharge Elimination System permit, or a pending permit application, the lessee may reference these documents.

(iii) The quantities, types, and plans for disposal of other solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations and, regarding any wastes which may require onshore disposal, the means of transportation to be used to bring the wastes to shore, disposal methods to be utilized, and location of onshore waste disposal or treatment facilities.

(iv) The following information on onshore support facilities, except in the western GOM:

(A) The approximate number, timing, and duration of employment of persons who will be engaged in onshore development and production activities, an approximate number of local personnel who will be employed for or in support of the development activities (classified by the major skills or crafts that will be required from local sources and estimated number of each such skill needed), and the approximate total number of persons who will be employed during the onshore construction activity and during all activities related to offshore development and production.

(B) The approximate number of people and families to be added to the population of local nearshore areas as a result of the planned development.

(C) An estimate of significant quantities of energy and resources to be used or consumed including electricity, water, oil and gas, diesel fuel, aggregate, or other supplies which may be purchased within an affected State.

(D) The types of contractors or vendors which will be needed, although not specifically identified, and which may place a demand on local goods and services.

(E) The source, composition, frequency, and duration of emissions of air pollutants.

(v) A narrative description of the existing environment with an emphasis placed on those environmental values that may be affected by the proposed action. This section shall contain a description of the physical environment of the area covered by the related plan. This portion of the plan shall include data and information obtained or developed by the lessee together with other pertinent information and data available to the lessee from other sources. The environmental information and data shall include the following, where appropriate:

(A) Archaeological and cultural resources (including any cultural resource reports or survey information required by the Regional Supervisor and not previously submitted) located within the area that may be disturbed by the proposed activities.

(B) The aquatic biota, including a description of fishery and marine mammal use of the lease and the significance of the lease, and a description of any threatened and endangered species and their critical habitat. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into these discussions.

(C) Environmentally sensitive areas (e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, coastal habitat, beaches, and areas of particular environmental concern) which may be affected by the proposed activities.

(D) The predevelopment, ambient water-column quality and temperature data for incremental depths for the areas encompassed by the plan.

(E) The physical oceanography, including ocean currents described as to prevailing direction, seasonal variations, and variations at different water depths in the lease.

(F) Historic weather patterns and other meteorological conditions, including storm frequency and magnitude, wave height and direction, wind direction and velocity, air temperature, visibility, freezing and icing conditions, and ambient air quality listing, where possible, the means and extremes of each.

(G) The other uses of the area known to the lessee, including military use for national security or defense, subsistence hunting and fishing, commercial fishing, recreation, shipping, and other mineral exploration or development.

(H) The existing or planned monitoring systems that are measuring or will measure impacts of activities on the environment in the planning area.

(9) An assessment of the effects on the environment expected to occur as a result of implementation of the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts. Such impacts shall be quantified to the fullest extent possible including magnitude and duration and shall be accumulated for all activities for each of the major elements of the environment (e.g., water or biota).

(10) A discussion of alternatives to the activities proposed that were considered during the development of the plan including a comparison of the environmental effects.

(11) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930.

(12) For each OCS facility, such information described below needed to make the findings under § 250.45 of this part:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and basis for all calculations to include the following:

(*1*) For each source, the amount of the emission by air pollutant expressed in tons per year and frequency and duration of emissions;

(*2*) For each proposed facility, the total amount of emissions by air pollutant expressed in tons per year, the frequency distribution of total emissions by air pollutant expressed in pounds per day and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s);

(*3*) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned;

(*4*) A schematic drawing which identifies the location and elevation of each source; and

(*5*) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (b)(9)(iv)(A) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the result obtained through the use of the model(s). Only model(s) that has been approved by the Director may be used.

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the information and data selected.

(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45 of this part) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable listing the status of each area by air pollutant, the class of attainment areas, and the air pollution control agency whose jurisdiction covers the area identified.

(iv)(A) The emission-reduction controls available to reduce emissions including the source, emission-reduction control technology, reductions to be achieved, and monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.

(B) The ownership of the offshore and onshore offsetting source(s) and the reduction obtainable from each offsetting source.

(13) A brief discussion of any approved or anticipated suspensions of production necessary to hold the lease(s) in an active status.

(14) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be directed.

(15) Such other data and information as the Regional Supervisor may require.

(c) Data and information discussed in other documents previously submitted to MMS or otherwise readily available to reviewers may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.

(d)(1) Development and Production Plans are not required for leases in the western GOM. For these leases, the lessee shall submit to the Regional Supervisor for approval a Development Operations Coordination Document with all information necessary to assure conformance with the Act, other laws, applicable regulations, lease provisions, or as otherwise needed to carry out the functions and responsibilities of the Regional Supervisor.

(2) Any information required in paragraph (d)(1) of this section shall be considered a Development and Production Plan for the purpose of references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.

(e) The Regional Director, after consultation with the Governor(s) of the affected State(s) or the Governor's designated representative, the CZM agency of the affected State(s), and the Office of Ocean and Coastal Resource Management of NOAA may limit the amount of information required to be included in a Development and Production Plan to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions. In determining the information to be included in a plan, the Regional Director shall consider current and expected operating conditions together with experience gained during past operations of a similar nature in the area of proposed activities.

(f) The Regional Supervisor shall determine within 20 working days after receipt whether additional material is needed. If no deficiencies are identified and the requested number of copies have been received, the plan shall be deemed submitted.

(g) Within 5 working days after a Development and Production Plan has been deemed submitted, the Regional Supervisor shall transmit a copy of the plan, except for those portions of the plan determined to be exempt from disclosure under the FOIA and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the CZM agency of each affected State and to the executive of each affected local government that requests a copy. The Regional Supervisor shall make copies available to appropriate Federal Agencies, interstate entities, and the public. The plan will be available for review at the appropriate MMS Regional Public Information Office.

(h) The Governor or the Governor's designated representative and the CZM agency of each affected State and the executive of each affected local government shall have 60 days from the date of receipt of the Development and Production Plan to submit comments and recommendations to the Regional Supervisor. The executive of any affected local government must forward all recommendations to the Governor of the State prior to submitting them to the Regional Supervisor. The Regional Supervisor shall accept those recommendations from the Governor that provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Regional Supervisor shall explain in writing the reasons for accepting or rejecting any recommendations. In addition, any interested Federal Agency or person may submit comments and recommendations to the Regional Supervisor. All comments and recommendations shall be made available to the public.

(i) The plan will be processed in accordance with the regulations in this section and the regulations governing Federal CZM consistency procedures (15 CFR Part 930).

(j) The Regional Supervisor shall evaluate the environmental impact of the activities described in the Development and Production Plan and prepare the appropriate environmental documentation in accordance with NEPA. At least once in each planning area, as identified by the Director, other than the western and central GOM planning areas, the Director shall determine that an Environmental Impact Statement (EIS) is required. A determination by the Director that approval of a Development and Production Plan requires proceedings under NEPA shall have no effect upon the timeframe that a State has to complete its coastal zone consistency review. Copies of the draft EIS shall be transmitted to the Governor of each affected State and the executive of each affected local government that requests a copy. The Regional Supervisor shall also make copies of the draft EIS available to any appropriate Federal Agency, interstate entity, and the public.

(k) Prior to or immediately after a determination by the Director that approval of a Development and Production Plan requires that the procedures under NEPA shall commence, the Regional Supervisor may require lessees of tracts in the vicinity, for which Development and Production Plans have not been approved, to submit preliminary or final plans for their leases.

(l) No later than 60 days after the last day of the comment period provided in paragraph (h) of this section or within 60 days of the release of the final EIS describing the proposed activities, the Regional Supervisor shall accomplish the following:

(1) Approve the plan;

(2) Require modification of the plan if it is determined that the lessee has failed to make adequate provisions for safety, environmental protection, or conservation of resources including compliance with the regulations prescribed under the Act; or

(3) Disapprove the plan if one or more of the following occurs:

(i) The lessee fails to demonstrate that compliance with the requirements of the Act, provisions of the regulations prescribed under the Act, or other applicable Federal laws is possible;

(ii) State concurrence with the applicant's coastal zone consistency certification has not been received, the State's concurrence has not been conclusively presumed, or the State objects to the consistency certification, and the Secretary of Commerce does not make the determination authorized by section 307(c)(3)(B)(iii) of the CZMA;

(iii) Operations threaten national security or defense; or

(iv) Exceptional geological conditions in the lease area, exceptional resource value in the marine or coastal environment, or other exceptional circumstances exist, and all of the following:

(A) Implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environments.

(B) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time.

(C) The advantages of disapproving the plan outweigh the advantages of development and production.

(m) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving a Development and Production Plan or for requiring modification of a plan and the conditions which must be met for plan approval.

(n) The lessee may resubmit a Development and Production Plan, as modified, to the Regional Supervisor. Only information related to the proposed modifications need be submitted. Within 60 days following the 60-day comment period provided for in paragraph (h) of this section, the Regional Supervisor shall approve, disapprove, or require modification of the modified plan.

(o)(1) If a Development and Production Plan is disapproved for the sole reason that a State consistency certification has not been obtained, the Regional Supervisor shall approve the plan upon receipt of the concurrence, at the time when concurrence is conclusively presumed, or when the Secretary of Commerce makes a finding authorized by section 307(c)(3)(B)(iii) of the CZMA.

(2) If a Development and Production Plan is disapproved because a State objects to the lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to (i) the Regional Supervisor for review pursuant to the criteria in paragraph (l) of this section; and (ii) through the Regional Supervisor, to the State for review pursuant to the CZMA and the implementing regulations (15 CFR 930.83 and 930.84). Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the CZMA and the implementing regulations (Subpart H of 15 CFR Part 930). The Regional Supervisor shall approve, disapprove, or require modification of a plan as revised within 60 days following the 60-day comment period provided for in paragraph (h) of this section.

(p) Development and Production Plans disapproved pursuant to paragraph (l)(3) of this section are subject to the provisions of section 25(h)(2) of the Act and the implementing regulations in §§ 250.12 and 256.77 of this chapter.

(q)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Development and Production Plan. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and onshore or offshore conditions affecting or impacted by development or production activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require the needed revisions.

(2) Revisions to an approved or pending Development and Production Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional

Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated requires additional permits, or proposes activities not previously identified and evaluated, the revision shall be subject to all of the procedures in this section.

(3) When any revision to an approved Development and Production Plan is proposed by the lessee, the Regional Supervisor may approve the revision if it is determined that the revision is consistent with the protection of the marine, coastal, and human environments and will lead to greater recovery of oil and natural gas; will improve the efficiency, safety, and environmental protection of the recovery operation; is the only means available to avoid substantial economic hardship to the lessee; or is otherwise not inconsistent with the provisions of the Act.

(r) Whenever the lessee fails to submit a Development and Production Plan in accordance with provisions of this section or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5 (c) and (d) of the Act and the implementing regulations in §§ 250.12 and 256.77 of this Chapter.

(s) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, or other surveys. The lessee shall give the Regional Supervisor, upon request, copies of any data obtained as a result of the surveys.

(t) The lessee may not drill any well until the District Supervisor's approval of an APD, filed in accordance with the requirements of § 250.64 of this part, has been received. All applications for an APD to drill and applications to install platforms and structures, pipelines, and production equipment must conform to the activities described in detail in the approved Development and Production Plan and shall not be subject to a separate State coastal zone consistency review.

(u) Nothing in this section or approved plans shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Development and Production Plan.

Subpart C—Pollution Prevention and Control

§ 250.40 Pollution prevention.

(a) During the exploration, development, production, and transportation of oil and gas, the lessee shall take measures to prevent unauthorized discharge of pollutants into the offshore waters. The lessee shall not create conditions which will pose unreasonable risk to the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and removal of the pollution to the satisfaction of the District Supervisor shall be at the expense of the lessee. Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action shall be subject to modification when directed by the District Supervisor.

(2) If the lessee fails to control and remove the pollution, the Director, in cooperation with other appropriate Agencies of Federal, State, and local governments, or in cooperation with the lessee, or both, shall have the right to control and remove the pollution at the lessee's expense. Such action shall not relieve the lessee of any responsibility provided for by law.

(b)(1) The District Supervisor may restrict the rate of drilling fluid discharges or prescribe alternative discharge methods. The District Supervisor may also restrict the use of components which could cause unreasonable degradation to the marine environment. No petroleum-based substances, including diesel fuel, may be added to the drilling mud system without prior approval of the District Supervisor.

(2) Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

(3) All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed, installed, and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of offshore waters shall be undertaken immediately.

(4) Curbs, gutters, drip pans, and drains shall be installed in deck areas in a manner necessary to collect all contaminants not authorized for discharge. Oil drainage shall be piped to a properly designed, operated, and maintained sump system which will automatically maintain the oil at a level sufficient to prevent discharge of oil into offshore waters. All gravity drains shall be equipped with a water trap or other means to prevent gas in the sump system from escaping through the drains. Sump piles shall not be used as processing devices to treat or skim liquids but may be used to collect treated-produced water, treated-produced sand, or liquids from drip pans and deck drains and as a final trap for hydrocarbon liquids in the event of equipment upsets. Improperly designed, operated, or maintained sump piles which do not prevent the discharge of oil into offshore waters shall be replaced or repaired.

(5) On artificial islands, all vessels containing hydrocarbons shall be placed inside an impervious berm or otherwise protected to contain spills. Drainage shall be directed away from the drilling rig to a sump. Drains and sumps shall be constructed to prevent seepage.

(6) Disposal of equipment, cables, chains, containers, or other materials into offshore waters is prohibited.

(c) Materials, equipment, tools, containers, and other items used in the Outer Continental Shelf (OCS) which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(1) All loose material, small tools, and other small objects shall be kept in a suitable storage area or a marked container when not in use and in a marked container before transport over offshore waters;

(2) All cable, chain, or wire segments shall be recovered after use and securely stored until suitable disposal is accomplished;

(3) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over offshore waters; and

(4) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they may be exposed.

(d) Any of the items described in paragraph (c) of this section that are lost overboard shall be recorded on the facility's daily operations report, as appropriate, and reported to the District Supervisor.

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§ 250.41 Inspections and reports.

(a) Drilling and production facilities shall be inspected daily or at intervals approved or prescribed by the District Supervisor to determine if pollution is occurring. Necessary maintenance or repairs shall be made immediately. Records of such inspections and repairs shall be maintained at the facility or at a nearby manned facility for 2 years.

(b) Pollution response equipment shall be inspected at least monthly. Records of such inspections shall be kept for at least 2 years at a site designated in the Oil Spill Contingency Plan (OSCP).

(c) All spills of oil and liquid pollutants, including pipeline spills, spills onto the surface of sea ice, and spills penetrating the surface of an artificial island, shall be reported orally to the District Supervisor. Spills of more than 1 barrel shall be confirmed in writing. Such written confirmation shall be received by the District Supervisor by the 15th day after the spillage has been stopped. All reports shall include the cause, location, volume of spill, and remedial action taken. Reports of spills of more than 50 barrels shall include information on the sea state, meteorological conditions, size, and appearance of the slick.

(1) Spills shall be reported orally within the following time limits:

(i) Within 12 hours, if spills are 1 barrel or less; and

(ii) Without delay, if spills are more than 1 barrel.

(2) Lessees shall notify the responsible party and the District Supervisor of observed pollution resulting from operations other than those conducted by the lessee.

§ 250.42 Oil spill contingency plans.

The lessee shall submit an OSCP for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. If an OSCP covering the area, such as a regional plan, has already been approved, it may be referred to in the Exploration Plan or the Development and Production Plan. An OSCP shall be reviewed and updated annually, and all modifications of the OSCP shall be submitted to the Regional Supervisor for approval. The OSCP shall contain the following:

(a) Oil spill trajectory analyses which are specific to the area of operations shall be referenced and summarized. The summaries shall specify those environmentally sensitive areas which may be impacted and strategies to be used for their protection.

(b) Identification of response equipment and response times together with materials, support vessels, and procedures to be employed in responding to continuous oil discharges (e.g., well blowout) and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). Response equipment and strategies shall be suitable for anticipated environmental conditions in the area of operations.

(c) A dispersant-use plan including an inventory of the dispersants which might be proposed for use, a summary of toxicity data for each dispersant, a description of the types of oil on which each dispersant is effective, a description of application equipment and procedures, and an outline of the procedures to be followed in obtaining approval for dispersant-use.

(d) Provisions for inspecting and maintaining response equipment.

(e) Establishment of procedures for the purpose of early detection and timely notification of an oil spill, including a current list of names, telephone numbers, and addresses of the responsible persons and alternates who are to receive notification of an oil spill and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

(f) An inventory of applicable equipment, materials, and supplies which are available locally and regionally.

(g) Well-defined and specific actions to be taken after discovery of an oil spill including the following:

(1) Designation (by name or position) of an oil spill response operating team comprised of trained personnel available within a specified response time and a description of the training that such personnel will receive,

(2) Designation (by name or position) of a trained oil spill response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations, and

(3) A planned location for an oil spill response operations center and a reliable communications system for directing the coordinated overall response operations.

(h) Provisions for disposal of recovered oil, oil-contaminated material, and other oily wastes.

(i) Provisions for monitoring and predicting spill movement.

(j) In the Alaska OCS Region only, provisions for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

§ 250.43 Training and drills.

(a) The lessee shall ensure that the oil spill response operating team is provided with hands-on training classes at least annually in the deployment and operation of the pollution control equipment to which they are assigned. The personnel responsible for supervising the oil spill response operations shall be knowledgeable about the location and intended use of available response equipment, spill reporting procedures, and deployment strategies for the facilities under their jurisdiction. Such supervisory personnel shall be trained in directing the deployment and use of all response equipment. The lessee shall retain, at the site designated in the OSCP, course-completion certificates or attendance records issued by the organization providing the instructions. These records shall be made available to any authorized MMS representative upon request.

(b) Drills for familiarization with pollution-control equipment and operational procedures shall be held when the equipment is placed initially and at least once every 12 months by the lessee or a contractor serving the lessee. The personnel identified as the oil spill response operating team in the OSCP shall participate in these drills. The drills shall simulate conditions in the area of operations and shall include deployment and operation of equipment. A time schedule for familiarization drills with a list of equipment to be deployed shall be submitted to the Regional Supervisor. The schedule shall provide sufficient advance notice to allow MMS personnel to witness any of the scheduled drills. Drill conditions, results, and the names of the participants in the drill shall be recorded, and the records shall be maintained for 2 years at a site designated in the OSCP and made available to MMS personnel. The Regional Supervisor may initiate unscheduled drills and may require an increase in the frequency or a change in the location of the drills, equipment to be deployed, or deployment procedures and strategies. The Regional Supervisor will evaluate the results of drills and advise the lessee of any necessary changes in response equipment, procedures, or strategies.

§ 250.44 Definitions concerning air quality.

For purposes of §§ 250.45 and 250.46 of this part:

"Air pollutant" means any combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

"Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The BACT shall be verified on a case-by-case basis by the Regional Supervisor and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

"Emission offsets" means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan or Development and Production Plan.

"Existing facility" is an OCS facility described in an Exploration Plan or a Development and Production Plan submitted or approved prior to June 2, 1980.

"Facility" means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

"Projected emissions" means emissions, either controlled or uncontrolled, from a source(s).

"Source" means an emission point. Several sources may be included within a single facility.

"Temporary facility" means activities associated with the construction of platforms offshore or with facilities related to exploration for or development of offshore oil and gas resources which are conducted in one location for less than 3 years.

"Volatile organic compound" (VOC) means any organic compound which is emitted to the atmosphere as a vapor. The unreactive compounds are exempt from the above definition.

§ 250.45 Facilities described in a new or revised Exploration Plan or Development and Production Plan.

(a) *New plans.* All Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section, and the lessee shall comply with the requirements of this section as necessary.

(b) *Applicability of § 250.45 to existing facilities.* (1) The Regional Supervisor may review any Exploration Plan or Development and Production Plan to determine whether any facility described in the plan should be subject to review under this section and has the potential to significantly affect the air quality of an onshore area. To make these decisions, the Regional Supervisor shall consider the distance of the facility from shore, the size of the facility, the number of sources planned for the facility and their operational status, and the air quality status of the onshore area.

(2) For a facility identified by the Regional Supervisor in paragraph (b)(1) of this section, the Regional Supervisor shall require the lessee to refer to the information required in §§ 250.33(a)(22) or 250.34(a)(14) of this part and to submit only that information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(c) *Revised facilities.* All revised Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall comply with the requirements of this section as necessary.

(d) *Exemption formulas.* To determine whether a facility described in a new, modified, or revised Exploration Plan or Development and Production Plan is exempt from further air quality review, the lessee shall use the highest annual-total amount of emissions from the facility for each air pollutant calculated in §§ 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A) of this part and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxides (NO_x), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt from further air quality review required under paragraphs (e) through (i) of this section.

(e) *Significance levels.* For a facility not exempt under paragraph (d) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether the projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS (μg/m³)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5	25		
TSP	1	5			
NO_2	1				
CO			500		2,000

(f) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (e) of this section for that air pollutant, shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (d) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(g) *Controls required.* (1) The projected emissions of any air pollutant other than VOC from any facility, except a temporary facility, which significantly affect the quality of a nonattainment area, shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(2) The projected emissions of any air pollutant other than VOC from any facility which significantly affect the air quality of an attainment or unclassifiable area shall be reduced through the application of BACT.

(i) Except for temporary facilities, the lessee also shall use an approved air quality model to determine whether the emissions of TSP or SO_2 that remain after the application of BACT cause the following maximum allowable increases over the baseline concentrations established in 40 CFR 52.21 to be exceeded in the attainment or unclassifiable area:

MAXIMUM ALLOWABLE CONCENTRATION INCREASES (μG/M³)

Air pollutant	Averaging times		
	Annual mean [1]	24-hour maximum	3-hour maximum
Class I:			
TSP	5	10	
SO_2	2	5	25
Class II:			
TSP	19	37	
SO_2	20	91	512
Class III:			
TSP	37	75	
SO_2	40	182	700

[1] For TSP—geometric; For SO_2—arithmetic.

No concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one onshore location.

(ii) If the maximum allowable increases are exceeded, the lessee shall apply whatever additional emission controls are necessary to reduce or offset the remaining emissions of TSP or SO_2 so that concentrations in the onshore ambient air of an attainment or unclassifiable area do not exceed the maximum allowable increases.

(3)(i) The projected emissions of VOC from any facility, except a temporary facility, which significantly affect the onshore air quality of a nonattainment area shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(ii) The projected emissions of VOC from any facility which significantly affect the onshore air quality of an attainment area shall be reduced through the application of BACT.

(4)(i) If projected emissions from a facility significantly affect the onshore air quality of both a nonattainment and an attainment or unclassifiable area, the regulatory requirements applicable to projected emissions significantly affecting a nonattainment area shall apply.

(ii) If projected emissions from a facility significantly affect the onshore air quality of more than one class of attainment area, the lessee must reduce projected emissions to meet the maximum allowable increases specified for each class in paragraph (g)(2)(i) of this section.

(h) *Controls required on temporary facilities.* The lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affect the air quality of an onshore area of a State.

(i) *Emission offsets.* When emission offsets are to be obtained, the lessee must demonstrate that the offsets are equivalent in nature and quantity to the projected emissions that must be reduced after the application of BACT; a binding commitment exists between the lessee and the owner or owners of the source or sources; the appropriate air quality control jurisdiction has been notified of the need to revise the State Implementation Plan to include the information regarding the offsets; and the required offsets come from sources which affect the air quality of the area significantly affected by the lessee's offshore operations.

(j) *Review of facilities with emissions below the exemption amount.* If, during the review of a new, modified, or revised Exploration Plan or Development and Production Plan, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(k) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(l) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

§ 250.46 Existing facilities.

(a) *Process leading to review of an existing facility.* (1) An affected State may request that the Regional Supervisor supply basic emission data from existing facilities when such data are needed for the updating of the State's emission inventory. In submitting the request, the State must demonstrate that similar offshore and onshore facilities in areas under the State's jurisdiction are also included in the emission inventory.

(2) The Regional Supervisor may require lessees of existing facilities to submit basic emission data to a State submitting a request under paragraph (a)(1) of this section.

(3) The State submitting a request under paragraph (a)(1) of this section may submit information from its emission inventory which indicates that emissions from existing facilities may be significantly affecting the air quality of the onshore area of the State. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the facility is not significantly affecting the air quality of the State.

(4) The Regional Supervisor shall evaluate the information submitted under paragraph (a)(3) of this section and shall determine, based on the basic emission data, available meteorological data, and the distance of the facility or facilities from the onshore area, whether any existing facility has the potential to significantly affect the air quality of the onshore area of the State.

(5) If the Regional Supervisor determines that no existing facility has the potential to significantly affect the air quality of the onshore area of the State submitting information under paragraph (a)(3) of this section, the

Regional Supervisor shall notify the State of and explain the reasons for this finding.

(6) If the Regional Supervisor determines that an existing facility has the potential to significantly affect the air quality of an onshore area of the State submitting information under paragraph (a)(3) of this section, the Regional Supervisor shall require the lessee to refer to the information requirements under § 250.33(a)(22) or 250.34(a)(14) of this part and submit only that information required to make the necessary findings under paragraphs (b) through (e) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(b) *Exemption formulas.* To determine whether an existing facility is exempt from further air quality review, the lessee shall use the highest annual total amount of emissions from the facility for each air pollutant calculated in § 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A) of this part and compare these emissions to the emission exemption ambunt "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for CO; and $E=33.3D$ for TSP, SO_2, NO_x, and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the facility from the closest onshore area of the State expressed in statute miles). If the amount of projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt for that air pollutant from further air quality review required under paragraphs (c) through (e) of this section.

(c) *Significance levels.* For a facility not exempt under paragraph (b) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS (μG/M³)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5		25	
TSP	1	5			
NO_2	1				
CO			500		2,000

(d) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance levels determined under paragraph (c) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (b) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(e) *Controls required.* (1) The projected emissions of any air pollutant which significantly affect the air quality of an onshore area shall be reduced through the application of BACT.

(2) The lessee shall submit a compliance schedule for the application of BACT. If it is necessary to cease operations to allow for the installation of emission controls, the lessee may apply for a suspension of operations under the provisions of § 250.10 of this part.

(f) *Review of facilities with emissions below the exemption amount.* If, during the review of the information required under paragraph (a)(6) of this section, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(g) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility following the installation of emission controls. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(h) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

Subpart D—Drilling Operations

§ 250.50 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. The lessee shall utilize the best available and safest drilling technology in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.51 General requirements.

(a) *Fitness of drilling unit.* (1) Drilling units shall be capable of withstanding the oceanographic, meteorological, and ice conditions for the proposed season and location of operations.

(2) Prior to commencing operation, drilling units shall be available for complete inspection by the District Supervisor.

(3) The lessee shall provide information and data on the fitness of the drilling unit to perform the proposed drilling operation. The information shall be submitted with or prior to the submission of Form MMS-331C, Application for Permit to Drill (APD), in accordance with § 250.64. The District Supervisor may require the submission of a third-party review of the design of drilling units which are of a unique design and/or not proven for use in the proposed environment if the District Supervisor believes that the information submitted by the lessee is insufficient to demonstrate suitability of the unit for use at the proposed drill site. A design Certified Verification Agent approved in accordance with § 250.133 of this part shall be used for any required third-party review.

(b) *Drilling unit safety devices.* (1) No later than [insert date 1 year from the effective date of these regulations], all drilling units shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the driller's report.

(2) No later than [insert 1 year after the effective date of these regulations], diesel-engine air intakes shall be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines which are continuously attended shall be equipped with either

remote operated manual or automatic shutdown devices. Diesel engines which are not continuously attended shall be equipped with automatic shutdown devices.

(c) *Oceanographic, meteorological, and drilling unit performance data.* Where such information is not otherwise readily available, upon request of the District Supervisor, lessees shall collect and report oceanographic, meteorological, and drilling unit performance data, and monitor ice conditions, if applicable, during the period of operations. The type of information to be collected and reported will be determined by the District Supervisor in the interests of safe conduct of operations and the structural integrity of the drilling unit.

(d) *Foundation requirements.* When the lessee fails to provide sufficient information pursuant to §§ 250.33 and 250.34 of this part to support a determination that the seafloor is capable of supporting a specific bottom-founded drilling unit under the site-specific soil and oceanographic conditions, the District Supervisor may require that additional surveys and soil borings be performed and the results be submitted for review and evaluation by the District Supervisor before approval is granted for commencing drilling operations.

(e) *Tests, surveys, and samples.* (1) The lessee shall conduct tests, obtain well and mud logs or surveys, and take samples to determine the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, and water; and the amount of pressure in the formations penetrated. The lessee shall take formation samples or cores to determine the identity, fluid content, and characteristics of any penetrated formation in accordance with requirements approved or prescribed by the District Supervisor.

(2) Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 1,000 feet during the normal course of drilling. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 500 feet during the normal course of drilling and at intervals not exceeding 100 feet in all portions of the hole when angle-changes are planned.

(3) On both vertical and directionally drilled wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet prior to or upon setting surface or intermediate casing, liners, and at total depth. Composite directional surveys shall be prepared with the interval shown from the bottom of the conductor casing or, in the absence of conductor casing, from the bottom of the drive or structural casing to total depth. In calculating all surveys, a correction from the true north to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey or a composite measurement-while-drilling (MWD) directional survey including a listing of the directionally computed inclinations and azimuths on a well classified as vertical will be acceptable as fulfilling the applicable requirements of this paragraph. In the event a composite MWD survey is run, a multishot survey shall be obtained at each casing point in order to confirm the MWD results.

(4) Wells are classified as vertical if the calculated average of inclination readings weighted by the respective interval lengths between readings from surface to drilled depth does not exceed 3 degrees from the vertical. When the calculated average inclination readings weighted by the length of the respective interval between readings from the surface to drilled depth exceeds 3 degrees, the well is classified as directional.

(5) The Regional Supervisor at the request of a holder of an adjoining lease may, for the protection of correlative rights, furnish a copy of the directional survey for a well drilled within 500 feet of the adjacent lease to that leaseholder.

(f) *Fixed drilling platforms.* Applications for installation of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with the provisions of Subpart I, Platforms and Structures, of this part. Mobile drilling units which have their jacking equipment removed or have been otherwise immobilized are classified as fixed drilling platforms.

(g) *Crane operations.* Cranes installed on fixed drilling platforms shall be operated and maintained in accordance with the provisions of American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D) to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operator qualifications in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the Outer Continental Shelf (OCS) facility for a period of 2 years.

(h) *Equipment movement.* The movement of drilling rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving such rigs and related equipment, unless otherwise approved by the District Supervisor. A closed surface-controlled subsurface safety valve of the pump-through-type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out.

(i) *Emergency shutdown system.* When drilling operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an Emergency Shutdown System (ESD) manually controlled station shall be installed near the driller's console.

§ 250.52 Welding and burning practices and procedures.

(a) *General requirements.* (1) For the purpose of this rule, the terms "welding" and "burning" are defined to include arc or fuel-gas (acetylene or other gas) cutting and arc or fuel-gas welding.

(2) All offshore welding and burning shall be minimized by onshore fabrication when feasible. The requirements set forth in paragraphs (b), (c), and (d) of this section shall be applicable to any welding or burning practice or procedure performed on the following:

(i) An offshore mobile drilling unit during the drilling mode;

(ii) A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity;

(iii) A platform, structure, artificial island, or other installation during any drilling, well-completion, well-workover, or production operation; and

(iv) A platform, structure, artificial island, or other installation which contains a well open to a hydrocarbon-bearing zone.

(3) All water-discharge-point sources from hydrocarbon-handling vessels shall be monitored in order to stop welding and burning operations in case flammable fluids are discharged as a result of equipment upset or malfunction.

(4) Equipment containing hydrocarbons or other flammable substances shall be relocated at least 35 feet horizontally from the work site. Similar equipment located at a lower elevation where slag, sparks, or other burning materials could fall shall be relocated at least 35 feet from the point

of impact. If relocation is impractical, either the equipment shall be protected with flame-proofed covers or otherwise shielded with metal or fire-resistant guards or curtains, or the contents shall have been rendered inert.

(b) *Welding, burning, and hot tapping plan.* Each lessee shall submit for approval by the District Supervisor a "Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan" prior to beginning the first drilling and/or production operations on a lease. The plan shall include the qualification standards or requirements for personnel who the lessee will authorize to conduct welding, burning, and hot tapping operations and the methods by which the lessee will assure that only trained personnel who meet such standards or requirements are utilized. A copy of this plan and approval letter shall be available on the facility where the welding is conducted. Any person designated as a welding supervisor shall be thoroughly familiar with this plan. An approved plan is required prior to conducting any welding, burning, or hot tapping operation. All welding and burning equipment shall be inspected by the welding supervisor or the lessee's designated person in charge prior to beginning any welding, burning, or hot tapping. All engine-driven welding machines shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition, oxygen and fuel gas bottles shall be secured in a safe place, and leak-free hoses shall be equipped with proper fittings, gauges, and regulators.

(c) *Designated safe-welding and burning areas.* The lessee may establish and designate areas determined to be safe-welding areas. These designated areas shall be identified in the plan, and a drawing showing the location of these areas shall be maintained on the facility.

(d) *Undesignated welding and burning areas.* All welding and burning, which cannot be done in an approved safe-welding area, shall be performed in compliance with the following:

(1) Prior to the commencement of any of these operations, the lessee's designated person in charge at the installation shall inspect the qualifications of the welder(s) to assure that the welder(s) is properly qualified in accordance with the approved qualification standards or requirements for welders. The designated person in charge and the welder(s) shall inspect the work area and area(s) at elevations below the work area where slag, sparks, or other hot materials could fall for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding and burning operation, the designated person-in-charge shall issue a written authorization for the work.

(2) During these welding or burning operations, one or more persons shall be designated as a fire watch. The person(s) assigned as a fire watch shall have no other duties while actual welding or burning operations are in progress. If the operation is to be in an area which is not equipped with a gas detector, the fire watch shall also maintain a continuous surveillance with a portable gas detector during the welding and burning operation. The fire watch shall remain on duty for a period of 30 minutes after welding or burning operations have been completed.

(3) Prior to any of these operations, the fire watch shall have in their possession firefighting equipment in a usable condition.

(4) No welding or burning operation, other than approved hot tapping, shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered inert and are determined to be safe for welding or burning by the designated person in charge.

(5) If drilling, well-completion, well-workover, or wireline operations are in progress, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) in the area where drilling, well-completion, well-workover, or wireline operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the wellbore is precluded.

(6) If welding or burning operations are conducted in or within 10 feet of a well-bay or production area, all producing wells in the well-bay or production area shall be shut in at the surface safety valve.

§ 250.53 Electrical equipment.

The following requirements shall be applicable to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities:

(a) All engines with electrical ignition systems shall be equipped with a low-tension ignition system designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture or substance.

(b) All areas shall be classified in accordance with API RP 500B for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms.

(c) All electrical installations shall be made in accordance with API RP 14F, Design and Installation of Electrical Systems for Offshore Production Platforms, except Sections 7.4, Emergency Lighting and 9.3, Aids to Navigation Equipment.

(d) Maintenance of electrical systems shall be by personnel who are trained and experienced with the area classifications, distribution system, performance characteristics and operation of the equipment, and with the hazards involved.

§ 250.54 Well casing and cementing.

(a) *General requirements.* (1) For the purpose of this subpart, the casing strings in order of normal installation are as follows:

(i) Drive or structural,
(ii) Conductor,
(iii) Surface,
(iv) Intermediate, and
(v) Production casing.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing and quantity and quality of cement in a manner necessary to prevent release of fluids from any stratum through the wellbore (directly or indirectly) into offshore waters, prevent communication between separate hydrocarbon-bearing strata, protect freshwater aquifers from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids. Cement composition, placement techniques, and waiting time shall be designed and conducted so that the cement in place behind the bottom 500 feet of casing or total length of annular cement fill, if less, attains a minimum compressive strength of 500 pounds per square inch (psi). Cement placed across permafrost zones shall be designed to set before freezing and have a low heat of hydration.

(3) The lessee shall install casing designed to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof. Safety factors in the casing program design shall be of sufficient magnitude to provide well control during drilling and to assure safe operations for the life of the well. Any portion of an annulus opposite a permafrost zone which is not protected by cement shall be filled with a liquid which has a freezing point below the minimum permafrost temperature to prevent internal freezeback and which is treated to minimize corrosion.

(4) In cases where cement has filled the annular space back to the mud line, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment if the District Supervisor determines that subsurface protection against damage to freshwater aquifers and permafrost zones and against damage caused by adverse loads, pressures, and fluid flows is not jeopardized.

(5) If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temperature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall re-cement or take other remedial actions as approved by the District Supervisor.

(6) A pressure-integrity test shall be run below the surface casing, the intermediate casing(s), and liner(s) used as intermediate casing(s). The District Supervisor may require a pressure-integrity test to be run at the conductor casing shoe due to local geologic conditions or planned casing setting depths. Pressure-integrity tests shall be made after drilling new hole below the casing shoe and before drilling more than 50 feet of new hole below a respective casing string. These tests shall be conducted either by testing to formation leak-off or by testing to a predetermined equivalent mud weight as specified in the approved APD. A safe margin, as approved by the District Supervisor, shall be maintained between the mud weight in use and the equivalent mud weight at the casing shoe as determined in the pressure-integrity test. Drilling operations shall be suspended when the safe margin is not maintained. Pressure-integrity and pore-pressure test results and related hole-behavior observations, such as gas-cut mud and well kicks made during the course of drilling, shall be used in adjusting the drilling mud program and the approved setting depth of the next casing string. The results of all tests and of hole-behavior observations made during the course of drilling related to formation integrity and pore pressure shall be recorded in the driller's report.

(b) *Drive or structural casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth as may be prescribed or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, a quantity of cement sufficient to fill the annular space back to the mud line shall be used.

(c) *Conductor and surface casing requirements*—(1) *Conductor and surface casing setting depths.* Conductor and surface casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons, potential hazards, and water depths. The approved casing setting depths may be adjusted when the change is approved by the District Supervisor to permit the casing shoe to be set in a competent formation or below formations which should be isolated from the wellbore by casing for safer drilling operations. However, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas or, if the presence of oil or gas is unknown, upon encountering a formation containing oil or gas. Upon encountering unexpected formation pressures, the lessee shall submit a revised casing program to the District Supervisor for approval. The District Supervisor may permit a lessee to drill a well without setting conductor casing provided the information from approved logging and mud-monitoring programs for wells previously drilled in the immediate vacinity combined with other available geologic data are sufficient to demonstrate the absence of shallow hydrocarbons or hazards.

(2) *Conductor casing cementing requirements.* Conductor casing shall be cemented with a quantity of cement that fills the calculated annular space back to the mud line except as applicable to the bottom of an excavation (glory hole) or to the surface of an artificial island. Cement fill in annular spaces shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible, additional quantities of cement shall be used to assure fill to the mud line.

(3) *Surface casing cementing requirements.* (i) Surface casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near-surface fractures and faulting exist, surface casing shall be cemented with a quantity of cement that fills the calculated annular space to the mud line, or as approved or prescribed by the District Supervisor.

(ii) For floating drilling operations, a lesser volume of cement may be used to prevent sealing the annular space between the conductor casing and surface casing if the District Supervisor determines that the uncemented space is necessary to provide protection from burst and collapse pressures which may be applied inadvertently to the annulus between casings during blowout preventer (BOP) testing operations. Any annular space open to the drilled hole shall be sealed in accordance with the requirements for abandonment in Subpart G, Abandonment of Wells, of this part.

(d) *Intermediate casing requirements.* (1) Intermediate casing string(s) shall be set for protection when geologic characteristics or wellbore conditions, as anticipated or as encountered, so indicate.

(2) Quantities of cement that cover and isolate all hydrocarbon-bearing zones in the well and isolate abnormal pressure intervals from normal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 500 feet above the zones to be isolated or 500 feet above the casing shoe in wells where zonal coverage is not required.

(3) If a liner is to be used as an intermediate string below a surface casing string, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for intermediate casing. When a liner is to be used as production casing below a surface casing string, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

(e) *Production casing requirements.* (1) Production casing shall be cemented to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a volume sufficient to fill the annular space at least 500 feet above the uppermost hydrocarbon-bearing zone shall be used.

(2) When a liner is to be used as production casing below intermediate casing, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for the production casing.

§ 250.55 Pressure testing of casing.

(a) Prior to drilling the plug after cementing and in the cases of plugs in production casing strings and liners not planned to be subsequently drilled out, all casings, except the drive or structural casing, shall be pressure tested to 70 percent of the minimum internal-yield pressure of the casing or as otherwise approved or required by the District Supervisor. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run and the casing pressure tested again. Additional remedial actions shall be taken until a satisfactory pressure test is obtained. The results of all casing pressure tests shall be recorded in the driller's report.

(b) Each production liner lap shall be tested to a minimum of 500 psi above formation fracture pressure at the shoe of the casing into which the liner is lapped, or as otherwise approved or required by the District Supervisor. The drilling liner-lap test pressure shall be equal to or exceed the pressure that will be encountered at the liner lap when conducting the planned pressure-integrity test below the liner shoe. The test results shall be recorded on the driller's report. If the test indicates an improper seal, remedial action shall be taken which provides a proper seal as demonstrated by a satisfactory pressure test.

(c) In the event of prolonged drill-pipe rotation within a casing string run to the surface or extended operations such as milling, fishing, jarring, washing over, and other operations which could damage the casing, the casing shall be pressure tested or evaluated by a logging technique such as a caliper log every 30 days. The evaluation results shall be submitted to the District Supervisor with a determination of effects of operations on the integrity of the casing for continued service during drilling operations and over the producing life of the well. If the integrity of the casing in the well has deteriorated to an unsafe level, remedial operations shall be conducted or additional casing set in accordance with a plan approved by the District Supervisor prior to continuing drilling operations.

(d) After cementing any string of casing other than the structural casing string, drilling shall not be resumed until there has been a time lapse of 8 hours under pressure for the conductor casing string and 12 hours under pressure for all other casing strings. Cement is considered under pressure if one or more float valves are shown to be holding the cement in place or when other means of holding pressure are used.

§ 250.56 Blowout preventer systems and system components.

(a) *General.* The BOP systems and system components shall be designed, installed, used, maintained, and tested to assure well control.

(b) *BOP stacks.* The BOP stacks shall consist of an annular preventer and the number of ram-type preventers as specified under paragraphs (e)(1), (f), and (g) of this section. The pipe rams shall be of a proper size(s) to fit the drill pipe in use.

(c) *Working pressure.* The working-pressure rating of any BOP component shall exceed the anticipated surface pressure to which it may be subjected. The District Supervisor may approve a lower working pressure rating for the annular preventer if the lessee demonstrates that the anticipated or actual well conditions will not place demands above its rated working pressure. (Refer to related requirements in § 250.64(f)(3)(ii) of this part.)

(d) *BOP equipment.* All BOP systems shall be equipped and provided with the following:

(1) An accumulator system which shall provide sufficient capacity to supply 1.5 times the volume of fluid necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. No later than December 1, 1988, accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, shall be equipped with manual overrides or alternately, other devices provided to ensure capability of hydraulic operations if rig air is lost,

(2) A backup to the primary accumulator-charging system which shall be automatic, supplied by a power source independent from the power source to the primary accumulator-charging system, and possess sufficient capability to close all BOP components and hold them closed.

(3) At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

(4) A drilling spool with side outlets if side outlets are not provided in the body of the BOP stack to provide for separate kill and choke lines.

(5) For surface BOP systems, a choke and a kill line each equipped with two full-opening valves. At least one of the valves on the choke line shall be remotely controlled. At least one of the valves on the kill line shall be remotely controlled except that a check valve may be installed on the kill line in lieu of the remotely controlled valve provided two readily accessible manual valves are in place and the check valve is placed between the manual valves and the pump. For subsea BOP systems, a choke and a kill line each equipped with two full-opening valves. At least one of the valves on the choke line and at least one of the valves on the kill line shall be remotely controlled.

(6) A fill-up line above the uppermost preventer.

(7) A choke manifold suitable for the anticipated pressures to which it may be subjected, method of well control to be employed, surrounding environment, and corrosiveness, volume, and abrasiveness of fluids. The choke manifold shall also meet the following requirements:

(i) Manifold and choke equipment subject to well and/or pump pressure shall have a rated working pressure at least as great as the rated working pressure of the ram-type BOP's or as otherwise approved by the District Supervisor;

(ii) All components of the choke manifold system shall be protected from the danger, if any, of freezing by heating, draining, or filling with proper fluids; and

(iii) When buffer tanks are installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together, isolation valves shall be installed on each line.

(8) Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold with pressure ratings at least as great as the rated working pressure of the ram-type BOP's or as otherwise approved by the District Supervisor.

(9) A wellhead assembly with a rated working pressure that exceeds the anticipated surface pressure to which it may be subjected.

(10) The following system components:

(i) On a conventional drilling rig, a kelly cock installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve of such design that it can be run through the BOP stack (strippable) installed at the bottom of the kelly (lower kelly cock). With a mud motor in service and while using drill pipe in lieu of a kelly, one kelly cock located above and one strippable kelly cock located below the joint of drill pipe employed in lieu of a kelly. On a top-drive system equipped with a remote controlled valve, a second and lower strippable valve of a conventional kelly cock or comparable type either manually or remotely controlled. All required manual and remotely controlled valves of a kelly cock or comparable type in a top-drive system shall be essentially full-opening and tested according to the test pressure and test frequency as stated in § 250.57(d) of this part. A wrench to fit each manually operable valve in a conventional drilling rig, mud motor, and top-drive system shall be stored in a location readily accessible to the drilling crew.

(ii) An inside BOP and an essentially full-opening drill-string safety valve in the open position on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew.

(iii) A safety valve available on the rig floor assembled with the proper connection to fit the casing string being run in the hole.

(11) Locking devices installed on the ram-type preventers.

(e) *Subsea BOP requirements.* (1) Prior to drilling below surface and intermediate casing, a BOP system shall be installed consisting of at least four remote controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind-shear rams, and one annular type. A subsea accumulator closing unit or a suitable alternate approved by the District Supervisor is required to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface. When proposed casing setting depths or local geology indicate the need for a BOP to provide safety during the drilling of the surface hole, the District Supervisor may require that a subsea BOP system be installed prior to drilling below the conductor casing.

(2) The BOP system shall include operable dual-pod control systems necessary to ensure proper and independent operation of the BOP system functions when drilling below the surface casing.

(3) Prior to the removal of the marine riser, the riser shall be displaced with seawater. Sufficient hydrostatic pressure or other suitable precautions, such as mechanical or cement plugs or closing the BOP, shall be maintained within the wellbore to compensate for the reduction in pressure and to maintain a safe controlled well condition.

(4) Any necessary repair or replacement of the BOP system or a system component after installation shall be accomplished under safe controlled conditions, (e.g., after casing has been cemented but prior to drilling out the casing shoe or by setting a cement plug, bridge plug, or a packer).

(5) When a subsea BOP system is to be used in an area which is subject to ice scour, the BOP stack shall be placed in an excavation (glory hole) of sufficient depth to assure that the top of the stack is below the deepest probable ice-scour depth.

(f) *Surface BOP requirements.* Prior to drilling below surface or intermediate casing, a BOP system shall be installed consisting of at least four remote controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind rams, and one annular type.

(g) *Tapered drill-string operations.* (1) Prior to commencing tapered drill-pipe operations, the BOP stack shall be equipped with conventional and/or variable-bore pipe rams installed in two or more ram cavities to provide the following:

(i) Two sets of pipe rams capable of sealing around the larger size drill string, and

(ii) One set of pipe rams capable of sealing around the smaller size drill string.

(2) Subsea BOP systems shall have blind-shear ram capability. Surface BOP systems shall have blind ram capability.

§ 250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.

(a) Prior to conducting high-pressure tests, all BOP systems shall be tested to a low pressure of 200 to 300 psi.

(b) Surface ram-type BOP's and the choke manifold shall be pressure tested with water to rated working pressure or as otherwise approved by the District Supervisor. The annular-type BOP shall be pressure tested with water to 70 percent of its rated working pressure or as otherwise approved by the District Supervisor.

(c) Subsea BOP system components shall be stump pressure tested at the surface with water to their rated working pressure, except that the annular-type BOP shall not be pressure tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the seafloor, the ram-type BOP's and choke manifold shall be pressure tested to rated working pressure or as otherwise approved by the District Supervisor. The annular preventer shall be pressure tested to 70 percent of its rated working pressure or as otherwise approved by the District Supervisor.

(d) In conjunction with the weekly pressure test of surface and subsea BOP systems required in paragraph (e) of this section, the choke manifold valves; upper and lower kelly cocks; top-drive, inside-BOP, and the drill-string safety valves shall be pressure tested to pipe-ram test pressures or otherwise approved by the District Supervisor. Safety valves assembled with proper casing connections shall be actuated prior to running casing.

(e) Surface and subsea BOP systems shall be pressure tested as follows:

(1) When installed.

(2) Before drilling out each string of casing or before continuing operations in cases where the cement is not drilled out.

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations and pods. If either control station or pod is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when there is stuck drill pipe or pressure-control operations and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible and before normal operations resume. The reason for postponing pressure testing shall be entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams.

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than that necessary to indicate proper operation of the rams is not required.

(5) Variable bore-pipe rams shall be pressure-tested against all sizes of pipe in use, excluding drill collars and bottom-hole tools.

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly but limited to the affected component.

(f) All BOP systems and marine risers shall be inspected and maintained to assure that the equipment will function properly. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of BOP systems and marine risers may be accomplished by the use of television equipment. The District Supervisor may approve alternate methods of inspection of marine risers on dynamic-positioned rigs. Casing risers on fixed structures and jackup rigs are not subject to the daily underwater inspection requirement.

(g) The results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine risers shall be recorded in the driller's report.

§ 250.58 Well-control drills.

(a) Well-control drills shall be conducted for each drilling crew in accordance with the following requirements:

(1) Drills shall be designed to acquaint each crew member with each member's function at the particular test station so each member can perform their functions promptly and efficiently.

(2) A well-control drill plan, applicable to the particular site, shall be prepared for each crew member outlining the assignments each member is to fulfill during the drill and establishing a prescribed time for the completion of each portion of the drill. A copy of the complete well-control drill plan shall be posted on the rig floor and/or bulletin board.

(3) The drill shall be carried out during periods of activity selected to minimize the risk of sticking the drill pipe or otherwise endangering the operation. In each of these drills, the reaction time of participants shall be measured up to the point when the designated person is prepared to activate the closing sequence of the BOP system. The total time for the crew to complete its entire drill assignment shall also be measured. This operation shall be recorded on the driller's report as "Well-Control Drill." All drills shall be initiated by the toolpusher through the raising of the float on the pit-level device, activating the mud-return indicator, or its equivalent. This operation shall be performed at least once each week (well conditions permitting) with each crew. The drills shall be timed so they will cover a range of different operations which include on-bottom drilling and tripping. A diverter drill shall be developed and conducted in a similar manner for shallow operations.

(4) *On-bottom drilling.* A drill conducted while on bottom shall include the following as practicable:

(i) Detect kick and sound alarm;

(ii) Position kelly and tool joints so connections are accessible from floor, but tool joints are clear of sealing elements in BOP systems, stop pumps, check for flow, close in the well;

(iii) Record time;

(iv) Record drill-pipe pressure and casing pressure;

(v) Measure pit gain and mark new level;

(vi) Estimate volume of additional mud in pits;

(vii) Weight sample of mud from suction pit;

(viii) Check all valves on choke manifold and BOP system for correct position (open or closed);

(ix) Check BOP system components and choke manifold for leaks;

(x) Check flow line and choke exhaust lines for flow;

(xi) Check accumulator pressure;

(xii) Prepare to extinguish sources of ignition;

(xiii) Alert standby boat or prepare safety capsule for launching;

(xiv) Place crane operator on duty for possible personnel evacuation;

(xv) Prepare to lower escape ladders and prepare other abandonment devices for possible use;

(xvi) Determine materials needed to circulate out kick; and

(xvii) Time drill and enter drill report on driller's report.

(5) *Tripping pipe.* A drill conducted during a trip shall include the following as practicable:

(i) Detect kick and sound alarm;

(ii) Install safety valve, close safety valve;

(iii) Position pipe, prepare to close annular preventer;

(iv) Install inside preventer, open safety valve;

(v) Record time;

(vi) Record casing pressure;

(vii) Check all valves on choke manifold and BOP system for correct position (open or closed);

(viii) Check for leaks on BOP system component and choke manifold;

(ix) Check flow line and choke exhaust lines for flow;

(x) Check accumulator pressure;

(xi) Prepare to extinguish sources of ignition;

(xii) Alert standby boat or prepare safety capsule for launching;

(xiii) Place crane operator on duty for possible personnel evacuation;

(xiv) Prepare to lower escape ladders and prepare other abandonment devices for possible use;

(xv) Prepare to strip back to bottom; and

(xvi) Time drill and enter drill report on driller's report.

(b) A well-control drill may be required by a Minerals Management Service (MMS) authorized representative after consulting with the lessee's senior representative present.

§ 250.59 Diverter systems.

(a) When drilling a conductor or surface hole, all drilling units shall be equipped with a diverter system consisting of a diverter sealing element, diverter lines, and control systems unless otherwise approved by the District Supervisor for floating drilling operations. The diverter system shall be designed, installed, and maintained so as to divert gases, water, mud, and other materials away from the facilities and personnel.

(b) No later than May 31, 1990, diverter systems shall be in compliance with the requirements of this section. The requirements applicable to diverters which were in effect April 1, 1988 shall remain in effect until May 31, 1990.

(c) The diverter system shall be equipped with remote-controlled valves in the flow and vent lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. Any valve used in a diverter system shall be full-opening. No manual or butterfly valve shall be installed in any part of the diverter system. There shall be a minimum number of turns in the vent line(s) downstream of the spool outlet flange and the radius of curvature of turns shall be as large as practicable. All right-angle and sharp turns shall be targeted. Flexible hose may be used for diverter lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported to prevent whipping and vibration. All diverter control instruments and lines shall be protected from physical damage from thrown and falling objects.

(d) For drilling operations conducted with a surface wellhead configuration, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability; and

(2) No spool outlet or diverter line internal diameter shall be less than 10 inches, except that dual spool outlets are acceptable provided that each outlet has a minimum internal diameter of 8 inches and that both outlets are piped to overboard lines and that each line downstream of the changeover nipple at the spool has a minimum internal diameter of 10 inches.

(e) For drilling operations conducted where a floating or semisubmersible type of drilling vessel is used and drilling fluids are circulated to the drilling vessel, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability;

(2) No spool outlet or diverter line internal diameter shall be less than 12 inches; and

(3) Dynamically positioned drill ships may be equipped with a single vent line provided appropriate vessel heading is maintained to allow for downwind diversion.

(f) The diverter sealing element and diverter valves shall be pressure tested to a minimum of 200 psi when nippled up on conductor casing with a surface

wellhead configuration. No more than 7 days shall elapse between subsequent similar pressure tests. For surface and subsea wellhead configurations, the diverter sealing element, diverter valves, and diverter-control systems, including the remote control system, shall be actuation-tested and the vent lines flow tested when first installed. Subsequent actuation tests shall be conducted not less than once every 24-hour period thereafter alternating between control stations. All pressure test, flow test, and actuation results shall be recorded in the driller's report.

(g) Diverter systems and components for use in subfreezing conditions shall be suitable for use under these conditions.

§ 250.60 Mud program.

(a) *General requirements.* The quantities, characteristics, use, and testing of drilling mud and the related drilling procedures shall be designed and implemented to prevent the loss of well control.

(b) *Mud control.* (1) Before starting out of the hole with drill pipe, the mud shall be properly conditioned by circulation with the drill pipe just off bottom to the extent that a volume of drilling mud equal to the annular volume is displaced. This procedure may be omitted if proper documentation in the driller's report shows the following:

(i) There is no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole.

(ii) The weight of the returning mud is essentially the same as the weight of the mud entering the hole. In the event that the returning mud is lighter than the entering mud by a weight differential equal to or greater than 0.2 pounds per gallon (1.5 pounds per cubic foot), the mud shall be circulated until a volume of drilling mud equal to the annular volume is displaced, and the mud properties measured to assure that there has been no influx of gas or liquid.

(iii) Other mud properties recorded on the daily drilling log are within the limits established by the approved mud program.

(2) When mud in the hole is circulated, the driller's report shall be so noted.

(3) When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted near the driller's station. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

(4) Drill pipe and downhole tool running and pulling speeds shall be at controlled rates so as not to induce an influx of formation fluids from the effects of swabbing nor cause a loss of drilling fluid and corresponding hydrostatic pressure decrease from the effects of surging.

(5) When there is an indication of swabbing or influx of formation fluids, the safety devices and measures necessary to control the well shall be employed. The mud shall be circulated and conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

(6) For each casing string, the maximum pressure to be contained under the BOP shall be posted near the driller's station.

(7) In areas where permafrost and/or hydrate zones may be present or are known to be present, drilling fluid temperatures shall be controlled or other measures taken to drill safely through those zones.

(8) An operable mud-gas separator and operable degasser shall be installed in the mud system prior to commencement of drilling operations and shall be maintained for use throughout the drilling of the well.

(9) The mud in the hole shall be circulated or reverse-circulated prior to pulling the drill-stem test tools from the hole. If circulating out test fluid is not feasible, test fluids may be bullheaded out of the drill-stem test string and tools with an appropriate kill fluid prior to pulling the test tools.

(c) *Mud-testing and monitoring equipment.* (1) Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with industry-accepted practices and shall include mud density, viscosity, and gel strength, hydrogen-ion concentration (pH), filtration, and other tests as may be deemed necessary by the District Supervisor in the interests of monitoring and maintaining mud quality for safe operations, prevention of downhole equipment problems, and for kick detection. The results of these tests shall be recorded in the driller's report.

(2) The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

(i) Recording mud-pit level indicator to determine mud-pit volume gains and losses. This indicator shall include both a visual and an audible warning device.

(ii) Mud-volume measuring device to accurately determine mud volumes required to fill the hole on trips.

(iii) Mud-return indicator devices which indicate the relationship between mud-return flow rate and pump discharge rate. This indicator shall include both a visual and an audible warning device.

(iv) Gas-detecting equipment to monitor the drilling mud returns with indicators located in the mud-logging compartment or on the rig floor. If the indicators are only in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the gas-detecting equipment shall be continually manned. If the indicators are on the rig floor only, an audible alarm shall be installed.

(d) *Mud quantities.* (1) Quantities of mud and mud materials at the drill site shall be utilized, maintained, and replenished as necessary to ensure well control. Those quantities shall be based on known or anticipated drilling conditions to be encountered, rig storage capacity, weather conditions, and estimated time for delivery.

(2) Daily inventories of mud and mud materials including weight materials and additives at the drill site shall be recorded and those records maintained at the well site.

(3) Drilling operations shall be suspended in the absence of sufficient quantities of mud and mud materials to maintain well control.

(e) *Safety precautions in enclosed mud-handling areas.* Mud-handling areas which are classified as per API RP 500B where dangerous concentrations of combustible gas may accumulate shall be equipped with ventilation systems and gas monitors as described below no later than May 31, 1989. Regulatory requirements in effect on April 1, 1988 are applicable until May 31, 1989.

(1) Be ventilated with high-capacity mechanical ventilation systems capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute per square foot of area, whichever is greater, unless such ventilation is provided by natural means. If not continuously activated, mechanical ventilation systems shall be activated on signal from gas detectors that are operational at all times indicating the presence of 1 percent or more of gas by volume.

(2) Be maintained at a negative pressure relative to an adjacent area if mechanical ventilation is installed to

meet the requirements in paragraph (e)(1) of this section and discharges may be hazardous. The negative pressure areas shall be protected with at least one of the following: (i) A pressure-sensitive alarm, (ii) open-door alarms on each access to the area, (iii) automatic door-closing devices, (iv) air locks, or (v) other devices as approved by the District Supervisor.

(3) Be fitted with gas detectors and alarms except in open areas where adequate ventilation is provided by natural means.

(4) Be equipped with either explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressuring, the air intake shall be located outside of, and as far as practicable from, hazardous areas.

(5) Mechanical ventilation systems shall be fitted with alarms which are activated upon a failure of the system.

(6) Gas detection systems shall be tested for operation and recalibrated at a frequency such that no more than 90 days shall elapse between tests.

§ 250.61 Securing of wells.

A downhole safety device such as a cement plug, bridge plug, or packer shall be timely installed when drilling operations are interrupted by events such as those which force evacuation of the drilling crew, prevent station keeping, or require repairs to major drilling or well-control equipment. In floating drilling operations, the use of blind-shear rams or pipe rams and an inside BOP may be approved by the District Supervisor in lieu of the above requirements if supported by evidence of special circumstances and/or the lack of sufficient time.

§ 250.62 Field drilling rules.

When geological and engineering information available in a field enables a District Supervisor to determine specific operating requirements appropriate to wells to be drilled in the field, field drilling rules may be established on the initiative of the District Supervisor, or in response to a request from a lessee. Such rules may modify the requirements of this subpart. After field drilling rules have been established, development wells to which such rules apply shall be drilled in accordance with such rules and other requirements of this subpart. Field drilling rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the approval of a request by a lessee.

§ 250.63 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations on a 24-hour per day basis.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packers, or cement plugs.

(c) Lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of Subpart O of this part and MMS Training Standard MMS–OCS–T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling Offshore Locations (Second Edition). Records of specific training which lessee and drilling contractor personnel have successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

§ 250.64 Applications for Permit to Drill.

(a) Prior to the initial drilling of a well under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, the lessee shall file a Form MMS–331C, APD, with the District Supervisor for approval. Prior to commencing operations, written approval from the District Supervisor must be received by the lessee unless oral approval is given.

(b) The APD's for wells to be drilled from mobile drilling units shall include the following:

(1) An identification of the maximum environmental and operational conditions the rig is designed to withstand.

(2) Applicable current documentation of operational limitations imposed by the American Bureau of Shipping classification or other appropriate classification society and either a U.S. Coast Guard Certificate of Inspection or a U.S. Coast Guard Letter of Compliance.

(3) For frontier areas, the design and operating limitations beyond which suspension, curtailment, or modification of drilling or rig operations are required (e.g., vessel motion, offset, riser angle, anchor tensions, wind speed, wave height, currents, icing or ice-loading, settling, tilt or lateral movement, resupply capability) and the contingency plans which identify actions to be taken prior to exceeding the design or operating limitations of the rig.

(4) A program which provides for safety in drilling operations where a floating or semisubmersible type of drilling vessel is used and formation competency at the structural and/or conductor casing setting depth(s) is (are) not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor and/or surface hole. This program shall include all known pertinent information including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to the proposed conductor and/or surface casing seat(s), and the contingency plan for moving off location.

(c) The APD's shall include rated capacities of the proposed drilling unit and of major drilling equipment.

(d) In those areas which are subject to subfreezing conditions, the lessee shall furnish evidence that the drilling equipment, BOP system and components, drilling safety systems, diverter systems, and other associated equipment and materials are suitable for drilling operations under subfreezing conditions.

(e) After a drilling unit has been approved for use in an MMS District, the information listed in paragraphs (b)(1), (2), and (3), (c), and (d) of this section need not be resubmitted unless required by the District Supervisor or there are changes in equipment that affect the rated capacity of the unit.

(f) An APD shall include the following in addition to a fully completed Form MMS–331C:

(1) A plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well to be drilled and of all the wells previously drilled in the vicinity from which information is available. Locations shall be indicated in feet from the block line.

(2) The design criteria considered for the well and for well control, including the following:

(i) Pore pressures.

(ii) Formation fracture gradients.

(iii) Potential lost circulation zones.

(iv) Mud weights.

(v) Casing setting depths.

(vi) Anticipated surface pressures (which for purposes of this section are defined as the pressure which can reasonably be expected to be exerted upon a casing string and its related wellhead equipment). In the calculation of an anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. The lessee shall consider mud densities to be used below various casing strings, fracture gradients of the

exposed formations, casing setting depths, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressures the calculations used to determine these pressures during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design.

(vii) If a shallow hazards site survey is conducted, the lessee shall submit with or prior to the submittal of the APD, two copies of a summary report describing the geological and manmade conditions present. The lessee shall also submit two copies of the site maps and data records identified in the survey strategy.

(viii) Permafrost zones, if applicable.

(3) A BOP equipment program including the following:

(i) The pressure rating of BOP equipment.

(ii) A well-control procedure for use of the annular preventer for those wells where the anticipated surface pressure exceeds the rated working pressure of the annular preventer.

(iii) A description of subsea BOP accumulator system or other type of closing system proposed for use.

(iv) A schematic drawing of the diverter system to be used (plan and elevation views) showing spool outlet internal diameter(s); diverter-line lengths and diameters, burst strengths, and radius of curvature at each turn; valve type, size, working pressure rating, and location; the control instrumentation logic; and the operating procedure to be used by lessee or contractor personnel.

(v) A schematic drawing of the BOP stack showing the inside diameter of the BOP stack, and the number of annular, pipe ram, variable-bore pipe ram, blind ram, and blind-shear ram preventers.

(4) A casing program including the following:

(i) Casing size, weight, grade, type of connection, and setting depth;

(ii) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values; and

(iii) In areas containing permafrost, casing programs that incorporate setting depths for conductor and surface casing based on the anticipated depth of the permafrost at the proposed well location and which utilize the current state-of-the-art methods to safely drill and set casing. The casing program shall provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control.

(5) The drilling prognosis including the following:

(i) Projected plans for coring at specified depths;

(ii) Projected plans for logging;

(iii) Estimated depths to the top of significant marker formations; and

(iv) Estimated depths at which encounters with significant porous and permeable zones containing fresh water, oil, gas, or abnormally pressured water are expected.

(6) A cementing program including type and amount of cement in cubic feet to be used for each casing string.

(7) A mud program including the minimum quantities of mud and mud materials, including weight materials, to be kept at the site.

(8) A directional survey program for directionally drilled wells.

(9) A plot of the estimated pore pressures and formation fracture gradients and the proposed mud weights and casing setting depths on the same sheet.

(10) A H_2S Contingency Plan, if applicable, and not submitted previously.

(11) Such other information as may be required by the District Supervisor.

(g) Public information copies of the APD shall be submitted in accordance with § 250.17 of this part.

§ 250.65 Sundry notices and reports on wells.

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, deepen or plug back a well, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS-331, Sundry Notices and Reports on Wells. Prior to commencing operations, written approval must be received from the District Supervisor unless oral approval is obtained.

(b) The Form MMS–331 submitted shall contain a detailed statement of the proposed work that will materially change from the approved work described in the APD. Information submitted shall include the present status of the well, including the production string or last string of casing, the well depth, the present production zones and productive capability, and all other information specified on Form MMS–331. Within 30 days after completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) A Form MMS–331 with a plat, certified by a registered land surveyor, shall be filed as soon as the well's final surveyed surface location, water depth, and the rotary kelly bushing elevation have been determined.

(d) Public information copies of Sundry Notices and Reports on Wells shall be submitted in accordance with § 250.17 of this part.

§ 250.66 Well records.

(a) Complete and accurate records for each well and of all well operations shall be retained for a period of 2 years at the lessee's field office nearest the OCS facility or at another location conveniently available to the District Supervisor. The records shall contain a description of any significant malfunction or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; all well logs and surveys run in the wellbore; and all other information required by the District Supervisor in the interests of resource evaluation, waste prevention, conservation of natural resources, protection of correlative rights, safety, and environment.

(b) When drilling operations are suspended, or temporarily prohibited under the provisions of § 250.10 of this part, the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS–330, Well (Re)Completion Report, or Form MMS–331, as appropriate.

(c) Upon request by the Regional or District Supervisor, the lessee shall furnish the following:

(1) Copies of the records of any of the well operations specified in paragraph (a) of this section;

(2) Paleontological reports identifying microscopic fossils by depth and/or washed samples of drill cuttings normally maintained by the lessee for paleontological determinations;

(3) Copies of the daily driller's report at a frequency as determined by the District Supervisor. Items to be reported include spud dates, casing setting depths, cement quantities, casing characteristics, pressure integrity tests, mud weights, kicks, lost returns, and any unusual activities; and

(4) Legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, testing, or other similar services.

BEST COPY AVAILABLE

(d) As soon as available, the lessee shall transmit copies (field or final prints of individual runs) of logs or charts of electrical, radioactive, sonic, and other well-logging operations, directional-well surveys, and analyses of cores. Composite logs of multiple runs and directional-well surveys shall be transmitted to the District Supervisor in duplicate as soon as available but not later than 30 days after completion of each well.

(e) If the drilling unit moves from the wellbore prior to completing the well, the lessee shall submit to the District Supervisor copies of the well records with completed Form MMS–331, within 30 days after moving from the wellbore.

(f) If the Regional or District Supervisor determines that circumstances warrant, the lessee shall submit any other reports and records of operations, including paleontological interpretations based upon identification of microscopic fossils, in the manner and form prescribed by the Regional or District Supervisor.

(g) Records relating to the drilling of a well shall be retained for a period of 90 days after drilling operations are completed. Records relating to the completion of a well or of any workover activity which materially alters the completion configuration or materially affects or alters a hydrocarbon-bearing zone shall be kept until the well is permanently plugged and abandoned.

§ 250.67 Hydrogen sulfide.

(a) *General requirements and applicability.* (1) The lessee shall take all necessary and practicable precautions and measures to protect personnel from the toxic effects of H_2S and to mitigate the adverse effects of H_2S to property and the environment.

(2) The requirements of this section apply, as appropriate, to drilling, well-completion, well-workover (including well-servicing), and production operations in zones known to contain H_2S and to drilling, well-completion, and well-workover operations in zones where the presence of H_2S is unknown. The requirements are not applicable to operations in zones where the absence of H_2S has been confirmed.

(b) *Definitions.* As used in this section, terms shall have the meanings given below:

"Facility" means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

"Well-control fluid" means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

"Zones known to contain H_2S" means geologic formations where prior drilling operations or logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that could potentially result in atmospheric concentrations of 20 parts per million (ppm) or more of H_2S.

"Zones where the absence of H_2S has been confirmed" means one of the following:

(1) Geologic formations where prior drilling operations or logging, coring, testing, or producing operations have indicated that H_2S-bearing zones have not been encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S;

(2) Geologic formations where analysis of produced gas samples have indicated the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S; or

(3) An area in a geological province in which there has been no prior drilling but from prior drilling in the surrounding areas, it can be shown by correlation of geological and seismic data that equivalent stratigraphic units exist with an absence of H_2S throughout the area to be drilled.

"Zones where the presence of H_2S is unknown" means geologic formations where neither the presence nor absence of H_2S has been confirmed.

(c) *Request for classification of probability of encountering H_2S during operations.* Prior to beginning operations in an area, the lessee shall submit to the Regional Supervisor for approval a request for determination as to whether the proposed operations will be in areas classified as "Zones known to contain H_2S," "Zones where the presence of H_2S is unknown," or "Zones where the absence of H_2S has been confirmed." The classification request shall be supported by a recommendation drawn from available information such as geologic and geophysical data and correlations, well logs, formation tests, cores, and analyses of formation fluids. The classification shall be updated when additional data indicate there is cause for a change in an approved classification.

(d) *Drilling, well-completion, and well-workover operations in zones known to contain H_2S.* Drilling, well-completion, and well-workover operations in zones known to contain H_2S shall be conducted in accordance with the requirements of this paragraph (d) and of paragraphs (h), (i), (j), (k), (l) (1) through (5), and (m) (1) through (13) of this section.

(e) *Drilling and well-completion operations in zones where the presence of H_2S is unknown.* When drilling or completing in zones where the presence of H_2S is unknown, only the requirements of paragraph (h) of this section shall apply. In the event that H_2S is encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, the requirements of paragraph (d) of this section shall apply.

(f) *Production operations in zones known to contain H_2S.* Production operations in zones known to contain H_2S shall comply with the requirements in paragraphs (h), (l) (1) through (6), and (m) (7) through (16) of this section.

(g) *Simultaneous operations.* Any combination of drilling, well-completion, well-workover, and production operations conducted simultaneously shall comply with all the requirements in this section applicable to each individual operation and in conformance with the coordinated H_2S Contingency Plan as required in paragraph (h)(1) of this section.

(h) *Personnel safety and protection.* The following measures shall be implemented for personnel safety and protection.

(1) *H_2S Contingency Plan.* An H_2S Contingency Plan shall be submitted for approval to the District Supervisor prior to the commencement of operations and, as applicable, encompass simultaneous drilling, well-completion, well-workover, and production operations. A copy of the approved plan shall be made available in the field area until operations are completed. The H_2S Contingency Plan shall include the following:

(i) Safety procedures and equipment, training, drills, and smoking rules.

(ii) Identity of the job position, title of the person responsible for the overall safety of personnel, and a description of the organization and assignments of functions, duties, and responsibilities of other identified job positions.

(iii) Duties, responsibilities, and operating procedures to be initiated when the concentration of H_2S in the atmosphere reaches the following:

(A) 10 ppm level,

(B) 20 ppm level, and

(C) 50 ppm level.

(iv) Designation of briefing areas as locations for assembly of personnel during conditions of 20-ppm and 50-ppm concentrations of H_2S. At least two briefing areas shall be established on each facility. The briefing area that is upwind of the H_2S source at any given time shall be the designated briefing area.

(v) Procedures for the evacuation of personnel which shall be comprehensive and provide for the deboarding and safe evacuation of all personnel from the facility. The procedures shall address the positioning of all vessels attendant to the facility, their reactions to an emergency, and the provisions for protective-breathing equipment for personnel.

(vi) Agencies to be notified in case of an emergency.

(vii) A list of medical personnel and facilities including addresses and telephone numbers.

(2) *Training Program.* An onsite H_2S-safety training program shall be established that includes the following:

(i) All personnel whether regularly assigned, contracted for, or employed on an unscheduled basis shall be informed of the hazards of H_2S and of SO_2 resulting from burning H_2S and instructed in the provisions for personnel safety contained in the H_2S Contingency Plan.

(ii) All personnel shall be instructed in the proper use of safety equipment which they may be required to use.

(iii) All personnel shall be informed of the location of protective-breathing equipment, H_2S detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds.

(iv) All personnel shall be informed of the restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with American National Standard Institute (ANSI), Practices for Respiratory Protection (ANSI Z88.2).

(v) Safety information shall be prominently posted on the facility and on vessels serving the facility.

(vi) A drill shall be conducted for each person at the facility within 24 hours after duty begins and at least once during every subsequent 7-day period. A training session shall be conducted for each person upon arrival at the facility and at least once during every subsequent 7-day period. Records of attendance for drilling, well-completion, and workover operations shall be kept at the facility until operations are completed. Records of attendance for production operations shall be maintained at the facility or at the nearest field office for a period of 1 year. Drills and training may be conducted in conjunction with other safety meetings or with rig/facility abandonment drills.

(vii) Personnel shall be instructed in basic first-aid procedures applicable to victims of H_2S exposure. During all drills and training sessions, procedures for rescue and first aid for H_2S victims shall be addressed. Each facility shall have the following equipment readily available, and personnel shall be instructed as to the location and use of the following items:

(A) A first-aid kit of appropriate size and content for the number of personnel on the facility;

(B) Resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles; and

(C) At least one litter or an equivalent device.

(viii) Personnel shall be informed of the meaning of all warning signals.

(3) *Visual warning system.* Visual warning systems shall comply with the following:

(i) Wind-direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the facility, the wind direction at all times to determine safe upwind areas in the event that H_2S or SO_2 is present in the vicinity; and

(ii) Operational danger signs shall be displayed from each side of the facility and a sufficient number of rectangular red flags shall be hoisted in a manner visible to vessels and aircraft and shall comply with the following:

(A) Each sign shall be of a minimum width of 8 feet and a minimum height of 4 feet and shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER—HYDROGEN SULFIDE—H_2S

(B) Each red flag shall be of a minimum width of 3 feet and a minimum height of 2 feet.

(C) All signs and flags shall be illuminated at night and under conditions of poor visibility.

(D) Only signs shall be displayed when cases where the concentration in the atmosphere reaches 20 ppm. Visual alarms shall be activated when atmospheric concentration reaches 20 ppm. Signs and flags shall be displayed when the concentration in the atmosphere reaches 50 ppm.

(E) On facilities with wells capable of producing H_2S, warning signs differentiated from those required under paragraph (A) above shall be permanently installed at the heliport and at boat landings.

(4) *Audible warning system.* A public address system and a siren, horn, or other similar warning device with a unique sound used only for H_2S warnings shall be installed at appropriate locations on the facility. The warning devices (audible and visual) shall be suitable for the electrical classification of the area and shall be activated by the H_2S-detection and H_2S-monitoring equipment when the atmospheric concentration reaches 20 ppm. When the warning devices are activated, the designated responsible persons shall inform personnel of the level of danger and issue instructions on the initiation of appropriate protective measures.

(5) *H_2S-detection and H_2S-monitoring equipment.* (i) Each facility shall have an H_2S-detection and H_2S-monitoring system which activates audible and visual alarms when the atmospheric concentration reaches 20 ppm. The detection systems shall be capable of sensing a minimum 10 ppm of H_2S in the atmosphere with sensing points located at the bell nipple, shale shaker, well-control fluid pit area, driller's station, living quarters, and all areas as appropriate including those which are low, poorly ventilated, or confined where H_2S may accumulate.

(ii) The H_2S-detection and H_2S-monitoring equipment shall be calibrated at least once every 24 hours when drilling approaches a potential H_2S-bearing zone and at least once every 12 hours when drilling, well-completion, and/or well-workover operations are being conducted in an H_2S environment. The H_2S detectors for production operations shall be calibrated at a frequency such that no more than 7 days shall elapse between calibrations. The calibration shall be conducted by a person trained to calibrate the particular H_2S-detection and H_2S-monitoring equipment being used. All calibrations shall be recorded in the driller's or production operations report as applicable.

(iii) H_2S-detection ampoules or any other comparable H_2S-monitoring devices capable of detecting 20 ppm shall be available for use by all personnel. After H_2S has been initially detected, poorly ventilated areas which are not equipped with fixed H_2S monitoring/detection equipment shall be promptly surveyed and evaluated with appropriate frequency using a portable H_2S-detection instrument.

(6) *Protective-breathing equipment.* Protective-breathing equipment and its use shall conform to the following:

(i) Personnel on a facility operating in known or unknown H_2S zones shall have immediate access to pressure-demand-type respirators. The design, selection, use, and maintenance of these respirators shall conform to ANSI Z88.2, Practices for Respiratory Protection. Accessory equipment such as voice-transmission devices and spectacle kits shall be made available as needed.

(ii) The storage location of protective-breathing equipment shall be quickly and easily accessible to all personnel.

(iii) All breathing-air bottles shall be labeled as containing breathing-quality air for human use.

(iv) Vessels attendant to facilities operating in known or unknown H_2S zones shall carry appropriate protective-breathing equipment for each crew member. The District Supervisor may require additional protective-breathing equipment on certain vessels attendant to the facility.

(v) Helicopters attendant to facilities operating in known H_2S zones shall carry pressure-demand-type respirators for the flight crews. Facilities operating in unknown H_2S zones shall store pressure-demand-type respirators immediately accessible to the heliport for the use of flight crews. All members of flight crews shall be trained in the use of the particular type(s) of respirator equipment made available.

(vi) As appropriate to the particular operation(s) (drilling, well-completion, or well-workover operation or any combination thereof), a system of breathing-air manifolds, hoses, and masks shall be provided on the facility and in the briefing areas. A cascade air-bottle system shall be provided for the breathing-air manifolds and to refill individual protective-breathing apparatus bottles. The cascade air-bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air provided the compressor suction is located in an uncontaminated atmosphere.

(7) *Additional personnel-safety equipment.* The following additional personnel-safety equipment shall be available:

(i) Portable H_2S detectors;

(ii) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas;

(iii) Chalkboards and/or note pads for communication purposes located on the rig floor, shale-shaker area, the cement-pump rooms, well-bay areas, production processing equipment area, gas compressor area, and pipeline-pump area;

(iv) Bull horns and flashing lights; and

(v) Resuscitators.

(8) *Ventilation equipment.* All ventilation devices shall be explosion-proof and situated in areas where H_2S or SO_2 may accumulate. Movable ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H_2S or SO_2 vapors away from working personnel.

(9) *Notification of regulatory Agencies.* The MMS and U.S. Coast Guard shall be notified as soon as possible in the event of a non routine release of H_2S which results in an atmospheric concentration of 20 ppm and 50 ppm levels.

(i) *Drilling, completion, and workover fluids program when operating in zones known to contain H_2S.*—(1) *Well-control fluid base.* Either water- or oil-base muds may be used in drilling formations containing H_2S.

(2) *Well-control fluid testing.* If water-base, well-control fluids are used, and if H_2S is detected by air sensors, either the Garrett-Gas-Train test or comparable test techniques for soluble sulfides shall be conducted immediately to confirm the presence of H_2S. If the concentration detected by air sensors is in excess of 20 ppm, personnel conducting the tests shall don protective-breathing equipment conforming to paragraph (h)(6)(i) of this section.

(3) *Additives.* Sufficient quantities of additives for the control of H_2S, well-control fluid pH, and corrosion of equipment shall be maintained on the facility.

(i) *Scavengers.* Prior to drilling into a known H_2S-bearing zone, scavengers for control of H_2S shall be available on the facility. When H_2S is detected, scavengers shall be added as needed. Drilling shall be suspended until the scavenger is circulated throughout the system.

(ii) *Control of pH.* Additives for the control of pH shall be added to water-base well-control fluids in sufficient quantities to maintain a pH of at least 10.0.

(iii) *Corrosion inhibitors.* Additives for the control of corrosion shall be added to the well-control fluid system as needed.

(4) *Degassing.* Well-control fluids containing H_2S shall be degassed at the optimum location for the particular facility. The gases so removed shall be collected and burned in a closed flare system conforming to paragraph (m)(7) of this section.

(j) *Kick detection and well control.* In the event of a kick, the disposal of the well-influx fluids shall be accomplished by one of the following alternatives giving consideration to personnel safety, possible environmental damage, and possible facility well-equipment damage:

(1) Contain the well-fluid influx by shutting in the well and pumping the fluids back into the formation.

(2) Control the kick by using appropriate well-control techniques to prevent formation fracturing in an open hole within the pressure limits of the well equipment (drill pipe, work string, casing, wellhead, BOP system, and related equipment). The disposal of H_2S and other gases shall be through pressurized or atmospheric mud-gas separator equipment depending on volume, pressure, and concentration of H_2S. The equipment shall be designed to recover well-control fluids and to vent to the atmosphere and burn the gases separated from the well-control fluid. The well-control fluid shall be treated to neutralize H_2S and restore and maintain the proper quality.

(k) *Well testing in a zone known to contain H_2S.* (1) Prior to initiation of a well test, safety meetings shall be conducted for all personnel who will be on the facility during the test. The meetings shall emphasize the use of personnel protective-breathing apparatus, first-aid procedures, and the Contingency Plan. Only competent personnel who are trained and are knowledgeable of the hazardous effects of H_2S shall be engaged in these tests.

(2) Well testing shall be performed with the minimum number of personnel in the immediate vicinity of the rig floor and with the appropriate test equipment to safely and adequately perform the test. During the test, H_2S levels shall be continuously monitored.

(3) All produced gases shall be vented and burned through a flare which meets the requirements of paragraph (m)(7) of this section. Gases from stored test fluids shall be vented into the flare outlet.

(4) Downhole test tools and wellhead equipment shall be suitable for H_2S service.

(5) Tubulars suitable for H_2S service shall be used for well testing. Drill pipe shall not be used for well testing without the prior approval of the District Supervisor. Water cushions shall be thoroughly inhibited in order to prevent H_2S attack on metals. The test string shall be flushed with fluid treated for this purpose after completion of the test.

(6) All surface test units and related equipment shall be designed for H_2S service.

(l) *Metallurgical properties of equipment for use in a zone known to contain H_2S.*—(1) *General provisions.* Equipment used in H_2S environments shall be constructed of materials whose metallurgical properties resist or prevent sulfide stress cracking (also known as hydrogen embrittlement, stress corrosion cracking, and/or H_2S embrittlement). The metallurgical properties of the materials shall conform to National Association of Corrosion Engineers (NACE) Standard MR–01–75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.

(2) *Tubulars and other equipment.* Casing, tubing, drill pipe, couplings, flanges, and related equipment shall be designed for H_2S service as specified in Table 4, Acceptable API and American Society of Testing and Materials Specifications for Tubular Goods of NACE Standard MR–01–75. Approval of the District Supervisor is required prior to commencing field welding on such casing (except conductor and surface strings).

(3) *Wellhead, BOP System Components, and pressure-control equipment.* The BOP system components, wellhead, pressure-control equipment, and related equipment exposed to H_2S-bearing fluids shall conform to NACE Standard MR–01–75. However, the BOP system components manufactured prior to April 1978, which are not in compliance with NACE Standard MR–01–75, may be used in an H_2S environment provided the BOP system components incorporate the manufacturer's own design considerations for H_2S service.

(4) *Downhole well-security equipment.* Temporary downhole well-security devices such as retrievable packers and bridge plugs shall be designed for H_2S service.

(5) *Production equipment.* Equipment used when producing zones bearing H_2S shall be constructed of materials capable of resisting or preventing sulfide stress cracking.

(6) *Installation or modification.* The use of welding shall be kept to a minimum during the installation or modification of the producing facility. Weldments shall be annealed and stress relieved according to the requirements of NACE Standard MR–01–75.

(m) *General requirements when operating in an H_2S zone*—(1) *Additional precautions after penetration of an H_2S-bearing zone.* The H_2S levels shall be continuously monitored in the work areas in addition to monitoring requirements in paragraph (h)(5)(i) of this section during the following operations:

(i) When it is necessary to pull a wet string of drill pipe or workover string,

(ii) Circulating bottoms-up after a drilling break,

(iii) Cementing operations,

(iv) Logging operations, and

(v) Circulating to condition mud or other well-control fluid.

(2) *Coring operations.* When conventional coring operations are conducted in H_2S-bearing zones, protective-breathing equipment shall be worn by those personnel in the working area at least 10 stands in advance of retrieving the core barrel. Cores to be transported shall be sealed and marked for the presence of H_2S.

(3) *Logging operations.* Well-control fluid in use for logging operations shall be conditioned and treated to minimize the effects of H_2S on the logging equipment.

(4) *Stripping operations.* Displaced well-control fluid returns shall be monitored, and protective-breathing equipment shall be worn by those personnel in the working area when the atmospheric concentration of H_2S reaches or exceeds 20 ppm or if the well is under pressure.

(5) *Gas-cut well-control fluid or well kick from H_2S-bearing zone.* Should a decision be made to circulate out a kick, protective-breathing equipment shall be worn by those personnel in the working area prior to and subsequent to bottoms-up and during an extended-kill operation.

(6) *Drill-string and workover-string design and precautions.* Drill- and workover-strings shall be designed consistent with the anticipated depth, conditions of the hole, and reservoir environment to be encountered. Care shall be taken to minimize exposure of the drill- or workover-string to high stresses as much as is practical and consistent with well conditions. Proper handling techniques shall be taken to minimize notching and stress concentrations. Precautions shall be taken to minimize stresses caused by doglegs, improper stiffness ratios, improper torque, whip, abrasive wear on tool joints, and joint imbalance.

(7) *Flare system.* The flare outlet shall be of such diameter to allow easy nonrestricted flow of gas. Flare line outlets shall be located on the downwind side and as far from the facility as is feasible, taking into account the prevailing wind directions, the wake effects caused by the facility and adjacent structure(s), and the height of all such facilities and structures. The flare outlet shall be equipped with an automatic ignition system including a pilot-light gas source or an equivalent system. Alternate methods shall be available for igniting the flare. All vents from production process equipment, tanks, relief valves, burst plates, and similar devices shall be piped to the flare system used for H_2S.

(8) *Corrosion mitigation.* An effective means of monitoring and controlling corrosion caused by acid gases (H_2S and CO_2) shall be used in both the downhole and surface portions of a production system. Specific corrosion monitoring and mitigating measures shall be taken in areas of unusually severe corrosion where accumulation of water and/or higher concentrations of H_2S exist.

(9) *Wireline lubricators.* Lubricators which may be exposed to fluids containing shall be of H_2S-resistant materials.

(10) *Fuel and/or instrument gas.* Gas containing H_2S shall not be used for instrument gas. No gas containing H_2S shall be used for fuel gas without the prior approval of the District Supervisor.

(11) *Sensing lines and devices.* Metals used for sensing line and safety-control devices which are necessarily exposed to H_2S-bearing fluids shall be constructed of H_2S-corrosion resistant materials or coated with appropriate materials so as to resist H_2S corrosion.

(12) *Elastomer seals.* All seals which may be exposed to fluids containing H_2S shall be of H_2S-resistant materials.

(13) *Water disposal.* Produced water disposed of by means other than subsurface injection shall be treated for removal of H_2S.

(14) *Deck drains.* Open deck drains shall be equipped with traps or similar devices to prevent the escape of H_2S gas into the atmosphere.

(15) *Sealed voids.* Precautions shall be taken to eliminate sealed spaces in piping designs (e.g., slip-on flanges, reinforcing pads) which can be invaded by atomic hydrogen when H_2S is present.

Subpart E—Well-Completion Operations

§ 250.70 General requirements.

Well-completion operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.71 Definition.

When used in this subpart, the following term shall have the meaning given below:

"Well-completion operations" mean the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.

§ 250.72 Equipment movement.

The movement of well-completion rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-completion rigs and related equipment, unless otherwise approved by the District Supervisor. A closed surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation. The well from which the rig or related equipment is to be moved shall also be equipped with a shut-in back-pressure valve prior to removing the blowout preventer (BOP) system and installing the tree.

§ 250.73 Emergency shutdown system.

When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

§ 250.74 Hydrogen sulfide.

When a well-completion operation is conducted in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67 of this part), the lessee shall take appropriate precautions to protect life and property on the platform or completion unit, including, but not limited to operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, swabbing, and pulling tubing, pumps, and packers. The lessee shall comply with the requirements in § 250.67 of this part as well as the appropriate requirements of this subpart.

§ 250.75 Subsea completions.

No subsea well completion shall be commenced until the lessee obtains written approval from the District Supervisor in accordance with § 250.83 of this part. That approval shall be based upon a case-by-case determination that the proposed equipment and procedures will adequately control the well and permit safe production operations.

§ 250.76 Crew instructions.

Prior to engaging in well-completion operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available at the facility for review by MMS representatives.

§ 250.77 Welding and burning practices and procedures.

All welding, burning, and hot tapping activities involved in well-completion operations shall be conducted in accordance with the requirements in § 250.52 of this part.

§ 250.78 Electrical requirements.

All electrical equipment and systems involved in well-completion operations shall be designed, installed, equipped, protected, operated, and maintained in accordance with the requirements in § 250.53 of this part.

§ 250.79 Well-completion structures on fixed platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the proposed operations. Prior to moving a well-completion rig or equipment onto a platform, the lessee shall determine the structural capability of the platform to safety support the equipment and proposed operations, taking into consideration the corrosion protection, age of platform, and previous stresses to the platform.

§ 250.80 Diesel engine air intakes.

No later than May 31, 1989, diesel engine air intakes shall be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines which are continuously attended shall be equipped with either remote operated manual or automatic-shutdown devices. Diesel engines which are not continuously attended shall be equipped with automatic-shutdown devices.

§ 250.81 Traveling-block safety device.

After May 31, 1989, all units being used for well-completion operations which have both a traveling block and a crown block shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.82 Field well-completion rules.

When geological and engineering information available in a field enables the District Supervisor to determine specific operating requirements, field well-completion rules may be established on the District Supervisor's initiative or in response to a request from a lessee. Such rules may modify the specific requirements of this subpart. After field well-completion rules have been established, well-completion operations in the field shall be conducted in accordance with such rules and other requirements of this subpart. Field well-completion rules may be amended or canceled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.83 Approval and reporting of well-completion operations.

(a) No well-completion operation shall begin until the lessee receives written approval from the District Supervisor. If completion is planned and the data are available at the time the Application for Permit to Drill, Form MMS–331C (see § 250.64 of this part), is submitted, approval for a well completion may be requested on that form. If the completion has not been approved or if the completion objective or plans have significantly changed, approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells.

(b) The following information shall be submitted with Form MMS–331 (or with Form MMS–331C):

(1) A brief description of the well-completion procedures to be followed, a statement of the expected surface pressure, and type and weight of completion fluids;

(2) A schematic drawing of the well showing the proposed producing zone(s) and the subsurface well-completion equipment to be used;

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted; and

(4) When the well-completion is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.67 of this part.

(c) Within 30 days after completion, Form MMS–330, Well (Re)Completion Report, including a schematic of the tubing and subsurface equipment and the results of any well tests, shall be submitted to the District Supervisor.

§ 250.84 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-completion operations and shall not be left unattended at any time unless the well is shut in and secured.

(b) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP;

(2) A well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

(c) When coming out of the hole with drill pipe, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.

§ 250.85 Blowout prevention equipment.

(a) The BOP system and system components and related well-control equipment shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure rating of the BOP system and BOP system components shall exceed the expected surface pressure to which they may be subjected. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS–331 or Form MMS–331C, as appropriate, a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP system for well-completion operations shall include the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams.

(2) Four preventers, when the expected surface pressure is 5,000 psi or greater, or for multiple tubing strings consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers.

(3) When tapered drill string is used, the minimum BOP system shall include either of the following:

(i) Four preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, two sets of pipe rams, one capable of sealing around the larger size drill string and one capable of sealing around the smaller size drill string (one set of variable bore rams may be substituted for the two sets of pipe rams), and one preventer equipped with blind or blind shear rams; or

(ii) Five preventers, when the expected surface pressure is 5,000 psi or greater, consisting of an annular preventer, two sets of pipe rams capable of sealing around the larger size drill string, one set of pipe rams capable of sealing around the smaller size drill string (one set of variable bore rams may be substituted for one set of pipe rams capable of sealing around the larger size drill string and the set of pipe rams capable of sealing around the smaller size drill string), and a preventer equipped with blind or blind-shears rams.

(c) The BOP systems for well completions shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. No later than December 1, 1988, accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, shall be equipped with manual overrides, or alternately, other devices provided to ensure capability of hydraulic operations of rig air is lost.

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP system components and hold them closed.

(3) Locking devices for the pipe-ram preventers.

(4) At least one remote BOP-control station and one BOP-control station on the rig floor.

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. At least one of the valves on the choke line shall be remotely controlled. At least one of the valves on the kill line shall be remotely controlled, except that a check valve on the kill line in lieu of the remotely controlled valve may be installed provided that two readily accessible manual valves are in place and the check valve is placed between the manual valves and the pump. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve in the open position shall be maintained on the rig floor at all times during well-completion operations. A wrench to fit the work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string.

§ 250.86 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP system components shall be successfully tested to a low pressure of 200 psi to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill manifolds, and safety valves shall be successfully tested to the rate working pressure of the BOP equipment or as otherwise approved by the District Supervisor. Variable bore rams shall be pressure-tested against all sizes of drill pipe in the well excluding drill collars. Surface BOP systems shall be pressure-tested with water. The annular BOP shall be successfully tested at 70 percent of its rated working pressure or as otherwise approved by the District Supervisor. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed.

(2) At least every 7 days, alternating between control stations and at staggered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional system is operable. To test every 7 days is not required for blind or blind-shear rams. the blind or blind-shear rams shall be tested at least once every 30 days during operation. A longer period between blowout preventer tests is allowed when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log.

(3) Following repairs that require disconnecting a pressure seal in the assembly, the affected seal will be pressure tested.

(c) All personnel engaged in well-completion operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.87 Tubing and wellhead equipment.

(a) No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged operations such as milling, fishing, jarring, or washing over that could damage the casing, the casing shall be pressure-tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When the tree is installed, the wellhead shall be equipped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the lessee shall immediately notify the District Supervisor.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve, installed above the master valve, in the vertical run of the tree.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121 of this part.

Subpart F—Well-Workover Operations

§ 250.90 General requirements.

Well-workover operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the Outer Continental Shelf (OCS) including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.91 Definitions.

When used in this subpart, the following terms shall have the meanings given below:

"Workover operations" mean the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

"Routine operations" mean any of the following operations conducted on a well with the tree installed:

(a) Cutting paraffin;

(b) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations;

(c) Bailing sand;

(d) Pressure surveys;

(e) Swabbing;

(f) Scale or corrosion treatment;

(g) Caliper and gauge surveys;

(h) Corrosion inhibitor treatment;

(i) Removing or replacing subsurface pumps;

(j) Through-tubing logging (diagnostics);

(k) Wireline fishing; and

(l) Setting and retrieving other subsurface flow-control devices.

§ 250.92 Equipment movement.

The movement of well-workover rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-workover rigs and related equipment unless otherwise approved by the District Supervisor. A closed surface-controlled subsurface safety valve of the pump-through-type may be used in lieu of the pump-through-type tubing plug provided that the surface control has been locked out of operation. The well to which a well-workover rig or related equipment is to be moved shall also be equipped with a back-pressure valve prior to removing the tree and installing and testing the blowout-preventer (BOP) system. The well from which a well-workover rig or related equipment is to be moved shall also be equipped with a back pressure valve prior to removing the BOP system and installing the tree. Coiled tubing units, snubbing units, or wireline units may be moved onto a platform without shutting in wells.

§ 250.93 Emergency shutdown system.

When well-workover operations are conducted on a well with the tree removed, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well or other hydrocarbon flow on the platform.

§ 250.94 Hydrogen sulfide.

When a well-workover operation is conducted in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67 of this part), the lessee shall take appropriate precautions to protect life and property on the platform or rig, including but not limited to operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, swabbing, and pulling tubing, pumps and packers. The lessee shall comply with the requirements in § 250.67 of this part as well as the appropriate requirements of this subpart.

§ 250.95 Subsea workovers.

No subsea well-workover operation including routine operations shall be commenced until the lessee obtains written approval from the District Supervisor in accordance with § 250.103 of this part. That approval shall be based upon a case-by-case determination that the proposed equipment and procedures will maintain adequate control of the well and permit continued safe production operations.

§ 250.96 Crew instructions.

Prior to engaging in well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available at the facility for review by a Minerals Management Service representative.

§ 250.97 Welding and burning practices and procedures.

All welding, burning, and hot-tapping activities involved in well-workover operations shall be conducted in accordance with the requirements of § 250.52 of this part.

§ 250.98 Electrical requirements.

All electrical equipment and systems involved in well-workover operations shall be designed, installed, equipped, protected, operated, and maintained in accordance with the requirements in § 250.53 of this part.

§ 250.99 Well-workover structures on fixed platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and

maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations proposed. Prior to moving a well-workover rig or well-servicing equipment onto a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and proposed operations, taking into consideration the corrosion protection, age of the platform, and previous stresses to the platform.

§ 250.100 Diesel engine air intakes.

No later than May 31, 1989, diesel engine air intakes shall be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines which are continuously attended shall be equipped with either remote operated or automatic-manual shutdown devices. Diesel engines which are not continuously attended shall be equipped with automatic shutdown devices.

§ 250.101 Traveling-block safety device.

After May 31, 1989, all units being used for well-workover operations which have both a traveling block and a crown block shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.102 Field well-workover rules.

When geological and engineering information available in a field enables the District Supervisor to determine specific operating requirements, field well-workover rules may be established on the District Supervisor's initiative or in response to a request from a lessee. Such rules may modify the specific requirements of this subpart. After field well-workover rules have been established, well-workover operations in the field shall be conducted in accordance with such rules and other requirements of this subpart. Field well-workover rules may be amended or canceled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.103 Approval and reporting for well-workover operations.

(a) No well-workover operation except routine ones, as defined in § 250.91 of this part, shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells.

(b) The following information shall be submitted with Form MMS–331:

(1) A brief description of the well-workover procedures to be followed, a statement of the expected surface pressure, and type and weight of workover fluids;

(2) When changes in existing subsurface equipment are proposed, a schematic drawing of the well showing the zone proposed for workover and the workover equipment to be used; and

(3) Where the well-workover is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.67 of this part.

(c) The following additional information shall be submitted with Form MMS–331 if completing to a new zone is proposed:

(1) Reason for abandonment of present producing zone including supportive well test data, and

(2) A statement of anticipated or known pressure data for the new zone.

(d) Within 30 days after completing the well-workover operation, except routine operations, Form MMS–331, Sundry Notices and Reports on Wells, shall be submitted to the District Supervisor, showing the work as performed. In the case of a well-workover operation resulting in the initial recompletion of a well into a new zone, a Form MMS–330, Well (Re)Completion Report, shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic of the tubing subsurface equipment if any subsurface equipment has been changed.

§ 250.104 Well-control fluids, equipment, and operations.

The following requirements apply during all well-workover operations with the tree removed:

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-workover operations and shall not be left unattended at anytime unless the well is shut in and secured.

(b) When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hold shall be utilized.

(c) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP;

(2) A well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

§ 250.105 Blowout prevention equipment.

(a) The BOP system, system components and related well-control equipment shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure rating of the BOP system and system components shall exceed the expected surface pressure to which they may be subjected. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS–331, requesting approval of the well-workover operation, a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP system for well-workover operations with the tree removed shall include of the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams.

(2) Four preventers, when the expected surface pressure is 5,000 psi or greater, or for multiple tubing strings consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers.

(3) When a tapered drill string is used, the minimum BOP system shall include either of the following:

(i) Four preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, two sets of pipe rams, one capable of sealing around the larger size drill string, and one capable of sealing around the smaller size drill string (one set of variable bore rams may be substituted for the two sets of pipe rams), and one preventer equipped with blind or blind-shear rams; or

(ii) Five preventers, when the expected surface pressure is 5,000 psi or greater, consisting of an annular preventer, two sets of pipe rams capable of sealing around the larger size drill string, one set of pipe rams capable of sealing around the smaller size drill string (one set of variable bore rams may be substituted for one set of pipe rams capable of sealing around the larger size drill string and the set of pipe rams capable of sealing around the smaller size drill string), and a preventer equipped with blind or blind-shear rams.

(c) The BOP systems for well-workover operations with the tree removed shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. No later than December 1, 1988, accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, shall be equipped with manual overrides, or alternately, other devices provided to ensure capability of hydraulic operations of rig air is lost;

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP system components and hold them closed;

(3) Locking devices for the pipe-ram preventers;

(4) At least one remote BOP-control station and one BOP-control station on the rig floor; and

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. At least one of the valves on the choke-line shall be remotely controlled. At least one of the valves on the kil! line shall be remotely controlled, except that a check valve on the kill line in lieu of the remotely controlled valve may be installed provided two readily accessible manual valves are in place and the check valve is placed between the manual valves and the pump. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) The minimum BOP-system components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually ¾ inch to 1¼ inch) as a work string, i.e., small-tubing operations, shall include the following:

(1) Two sets of pipe rams, and

(2) One set of blind rams.

(e) The minimum BOP-system components for well-workover operations with the tree in place and performed by manipulating spooled, nonjointed pipe through the wellhead, i.e., coiled-tubing operations, shall include the following:

(1) One set of pipe rams hydraulically operated,

(2) One two-way slip assembly hydraulically operated,

(3) One pipe-cutter assembly hydraulically operated,

(4) One set of blind rams hydraulically operated,

(5) One pipe-stripper assembly, and

(6) One spool with side outlets.

(f) The minimum BOP-system components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall include the following:

(1) One set of pipe rams hydraulically operated, and

(2) Two sets of stripper-type pipe rams hydraulically operated with spacer spool.

(g) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve in the open position shall be maintained on the rig floor at all times during well-workover operations when the tree is removed or during well-workover operations with the tree installed and using small tubing as the work string. A wrench to fit the work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string. The full-opening safety valve is not required for coiled tubing or snubbing operations.

§ 250.106 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP system components shall be successfully tested to a low pressure of 200 to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill manifolds, and safety valves shall be successfully tested to the rated working pressure of the BOP equipment or as otherwise approved by the District Supervisor. Variable bore rams shall be pressure-tested against all sized of drill pipe in the well excluding drill collars. Surface BOP systems shall be pressure tested with water. The annular-type BOP shall be successfullly tested at 70 percent of its rated working pressure or as otherwise approved by the District Supervisor. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed;

(2) At least every 7 days, alternating between control stations and at staggered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional, system is operable. The test every 7 days is not required for blind or blind-shear rams. The blindor blind-shear rams shall be tested at least once every 30 days during operation. A longer period between blowout preventer tests is allowed when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log.

(3) Following repairs that require disconnecting a pressure seal in the assembly, the affected seal will be pressure tested.

(c) All personnel engaged in well-workover operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of the BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.107 Tubing and wellhead equipment.

The lessee shall comply with the following requirements during well-workover operations with the tree removed:

(a) No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged operations such as milling, fishing, jarring, or washing over that could damage the casing, the casing shall be pressure tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When reinstalling the tree, the wellhead shall be equiped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the lessee shall immediately notify the District Supervisor.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. The tree shall be equipped with a minimum of one master valve and one surface safety valve in the vertical run of the tree when it is reinstated.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121 of this part.

§ 250.108 Wireline operations.

The lessee shall comply with the following requirements during routine, as defined in § 250.91 of this part, and nonroutine wireline workover operations:

(a) Wireline operations shall be conducted so as to minimize leakage of well fluids. Any leakage that does occur shall be contained to prevent pollution.

(b) All wireline perforating operations and all other wireline operations where communication exists between the completed hydrocarbon-bearing zone(s) and the wellbore shall use a lubricator assembly containing at least one wireline valve.

(c) When the lubricator is initially installed on the well, it shall be successfully pressure tested to the expected shut-in surface pressure.

Subpart G—Abandonment of Wells

§ 250.110 General requirements.

The lessee shall abandon all wells in a manner to assure downhole isolation of hydrocarbon zones, protection of freshwater aquifers, clearance of sites so as to avoid conflict with other uses of the Outer Continental Shelf (OCS), and prevention of migration of formation fluids within the wellbore or to the seafloor. Any well which is no longer used or useful for lease operations shall be plugged and abandoned in accordance with the provisions of this subpart. However, no production well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor. No well shall be plugged if the plugging operations would jeopardize safe and economic operations of nearby wells, unless the well poses a hazard to safety or the environment.

§ 250.111 Approvals.

The lessee shall not commence abandonment operations without prior approval of the District Supervisor. The lessee shall submit a request on Form MMS–332, Notice of Intent/Report of Well Abandonment, for approval to abandon a well and a subsequent report of abandonment within 30 days from completion of the work in accordance with the following:

(a) *Notice of Intent to Abandon Well.* A request for approval to abandon a well shall contain the reason for abandonment including supportive well logs and test data, a description and schematic of proposed work including depths, type, location, length of plugs, the plans for mudding, cementing, shooting, testing, casing removal, and other pertinent information.

(b) *Subsequent report of abandonment.* The subsequent report of abandonment shall include a description of the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging, and all information listed in paragraph (a) of this section with a revised schematic. If an attempt was made to cut and pull any casing string, the subsequent report shall include a description of the methods used, size of casing removed, depth of the casing removal point, and the amount of the casing removed from the well.

§ 250.112 Permanent abandonment.

(a) *Isolation of zones in open hole.* In uncased portions of wells, cement plugs shall be set to extend from a minimum of 100 feet below the bottom to 100 feet above the top of any oil, gas, or freshwater zones to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata or to the seafloor. The placement of additional cement plugs to prevent the migration of formation fluids in the wellbore may be required by the District Supervisor.

(b) *Isolation of open hole.* Where there is an open hole below the casing, a cement plug shall be placed in the deepest casing by the displacement method and shall extend a minimum of 100 feet above and 100 feet below the casing shoe. In lieu of setting a cement plug across the casing shoe, the following methods are acceptable:

(1) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the casing shoe. The cement plug shall extend at least 100 feet below the casing shoe and at least 50 feet above the retainer.

(2) If lost circulation conditions have been experienced or are anticipated, a permanent-type bridge plug may be placed within the first 150 feet above the casing shoe with a minimum of 50 feet of cement on top of the bridge plug. This bridge plug shall be tested in accordance with paragraph (g) of this section.

(c) *Plugging or isolating perforated intervals.* A cement plug shall be set by the displacement method opposite all perforations which have not been squeezed with cement. The cement plug shall extend a minimum of 100 feet above the perforated interval and either 100 feet below the perforated interval or down to a casing plug, whichever is the lesser. In lieu of setting a cement plug by the displacement method, the following methods are acceptable, provided the perforations are isolated from the hole below:

(1) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the top of the perforated interval. The cement plug shall extend at least 100 feet below the bottom of the perforated interval with 50 feet placed above the retainer.

(2) A permanent-type bridge plug shall be set within the first 150 feet above the top of the perforated interval with at least 50 feet of cement on top of the bridge plug.

(3) A cement plug which is at least 200 feet long shall be set by the displacement method with the bottom of the plug within the first 100 feet above the top of the perforated interval.

(d) *Plugging of casing stubs.* If casing is cut and recovered leaving a stub, the stub shall be plugged in accordance with one of the following methods:

(1) A stub terminating inside a casing string shall be plugged with a cement plug extending at least 100 feet above and 100 feet below the stub. In lieu of setting a cement plug across the stub, the following methods are acceptable:

(i) A cement retainer or a permanent-type bridge plug shall be set not less than 50 feet above the stub and capped with at least 50 feet of cement, or

(ii) A cement plug which is at least 200 feet long shall be set with the bottom of the plug within 100 feet above the stub.

(2) If the stub is below the next larger string, plugging shall be accomplished as required to isolate zones or to isolate an open hole as described in paragraphs (a) and (b) of this section.

(e) *Plugging of annular space.* Any annular space communicating with any open hole and extending to the mud line shall be plugged with at least 200 feet of cement.

(f) *Surface plug.* A cement plug which is at least 150 feet in length shall be set with the top of the plug within the first 150 feet below the mud line. The plug shall be placed in the smallest string of casing which extends to the mud line.

(g) *Testing of plugs.* The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

(1) The lessee shall place a minimum pipe weight of 15,000 pounds on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer is not required to be tested.

(2) The lessee shall test the plug with a minimum pump pressure of 1,000 pounds per square inch with a result of no more than a 10-percent pressure drop during a 15-minute period.

(h) *Fluid left in hole.* Each of the respective intervals of the hole between the various plugs shall be filled with fluid of sufficient density to exert a hydrostatic pressure exceeding the greatest formation pressure in the intervals between the plugs at time of abandonment.

(i) *Clearance of location.* All wellheads, casings, pilings, and other obstructions shall be removed to a depth of at least 15 feet below the mud line or to a depth approved by the District Supervisor. The lessee shall verify that the location has been cleared of all obstructions in accordance with § 250.114 of this part. The requirement for removing subsea wellheads or other obstructions and for verifying location clearance may be reduced or eliminated when, in the opinion of the District Supervisor, the wellheads or other obstructions would not constitute a hazard to other users of the seafloor or other legitimate uses of the area.

(j) *Requirements for permafrost areas.* The following requirements shall be implemented for permafrost areas:

(1) Fluid left in the hole adjacent to permafrost zones shall have a freezing point below the temperature of the permafrost and shall be treated to inhibit corrosion.

(2) The cement used for cement plugs placed across permafrost zones shall be designed to set before freezing and to have a low heat of hydration.

§ 250.113 Temporary abandonment.

(a) Any drilling well which is to be temporarily abandoned shall meet the requirements for permanent abandonment (except for the provisions in §§ 250.112 (f) and (i), and 250.114) and the following:

(1) A bridge plug or a cement plug at least 100 feet in length shall be set at the base of the deepest casing string unless the casing string has been cemented and has not been drilled out. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole.

(2) A retrievable or a permanent-type bridge plug or a cement plug at least 100 feet in length, shall be set in the casing within the first 200 feet below the mud line.

(b) Subsea wellheads, casing stubs, or other obstructions above the seafloor remaining after temporary abandonment will be protected in such a manner as to allow commercial fisheries gear to pass over the structure without damage to the structure or fishing gear. Depending on water depth, nature and height of obstruction above the seafloor, and the types and periods of fishing activity in the area, the District Supervisor may waive this requirement.

(c) In order to maintain the temporarily abandoned status of a well, the lessee shall provide, within 1 year of the original temporary abandonment and at successive 1-year intervals thereafter, an annual report describing plans for reentry to complete or permanently abandon the well.

(d) Identification and reporting of subsea wellheads, casing stubs, or other obstructions extending above the mud line will be accomplished in accordance with the requirements of the U.S. Coast Guard.

§ 250.114 Site clearance verification.

(a) The lessees shall verify site clearance after abandonment by one or more of the following methods as approved by the District Supervisor:

(1) Drag a trawl in two directions across the location,

(2) Perform a diver search around the wellbore,

(3) Scan across the location with a side-scan or on-bottom scanning sonar, or

(4) Use other methods based on particular site conditions.

(b) Certification that the area was cleared of all obstructions, the date the work was performed, the extent of the area searched around the location, and the search method utilized shall be submitted with Form MMS-332.

Subpart H—Production Safety Systems

§ 250.120 General requirements.

Production safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety and protection of the human, marine, and coastal environments. Production safety systems operated in subfreezing climates shall utilize equipment and procedures selected with consideration of floating ice, icing, and other extreme environmental conditions that may occur in the area. Production shall not commence until the production safety system has been approved and a preproduction inspection has been requested by the lessee.

§ 250.121 Subsurface safety devices.

(a) *General.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after application and justification, the well is determined by the District Supervisor to be incapable of natural flowing. These devices may consist of a surface-controlled subsurface safety valve (SSSV), a subsurface-controlled SSSV, an injection valve, a tubing plug, or a tubing/annular subsurface safety device, and any associated safety valve lock or landing nipple.

(b) *Specifications for SSSV's.* Surface-controlled and subsurface-controlled SSSV's and safety valve locks and landing nipples installed in the OCS shall conform to the requirements in § 250.126 of this part.

(c) *Surface-controlled SSSV's.* All tubing installations open to a hydrocarbon-bearing zone which is capable of natural flow shall be equipped with a surface-controlled SSSV, except as specified in paragraphs (d), (f), and (g) of this section. The surface controls may be located on the site or a remote location. Wells not previously equipped with a surface-controlled SSSV and wells in which a surface-controlled SSSV has been replaced with a subsurface-controlled SSSV in accordance with paragraph (d)(2) of this section shall be equipped with a surface-controlled SSSV when the tubing is first removed and reinstalled.

(d) *Subsurface-controlled SSSV's.* Wells may be equipped with subsurface-controlled SSSV's in lieu of a surface-controlled SSSV provided the lessee demonstrates to the District Supervisor's satisfaction that the following criteria are met:

(1) Wells not previously equipped with surface-controlled SSSV's shall be so equipped when the tubing is first removed and reinstalled,

(2) The subsurface-controlled SSSV is installed in wells completed from a

single-well or multiwell satellite caisson or seafloor completions, and

(3) The subsurface-controlled SSSV is installed in wells with a surface-controlled SSSV that has become inoperable and cannot be repaired without removal and reinstallation of the tubing.

(e) *Design, installation, and operation of SSSV's.* The SSSV's shall be designed, installed, operated, and maintained to ensure reliable operation.

(1) The device shall be installed at a depth of 100 feet or more below the seafloor within 2 days after production is established. When warranted by conditions such as permafrost, unstable bottom conditions, hydrate formation, or paraffins, an alternate setting depth of the subsurface safety device may be approved by the District Supervisor.

(2) Until a subsurface safety device is installed, the well shall be attended in the immediate vicinity so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

(3) The well shall not be open to flow while the subsurface safety device is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

(4) All SSSV's shall be inspected, installed, maintained, and tested in accordance with American Petroleum Institute Recommended Practice 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems.

(f) *Subsurface safety devices in shut-in wells.* New completions (perforated but not placed on production) and completions shut in for a period of 6 months shall be equipped with either (1) a pump-through-type tubing plug; (2) a surface-controlled SSSV, provided the surface control has been rendered inoperative; or (3) an injection valve capable of preventing backflow. The setting depth of the subsurface safety device shall be approved by the District Supervisor on a case-by-case basis, when warranted by conditions such as permafrost, unstable bottom conditions, hydrate formations, and paraffins.

(g) *Subsurface safety devices in injection wells.* A surface-controlled SSSV or an injection valve capable of preventing backflow shall be installed in all injection wells. This requirement is not applicable if the District Supervisor concurs that the well is incapable of flowing. The lessee shall verify the no-flow condition of the well annually.

(h) *Temporary removal for routine operations.* (1) Each wireline- or pumpdown-retrievable subsurface safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Form MMS-331, Sundry Notices and Reports on Wells, in § 250.91 of this part for a period not to exceed 15 days.

(2) The well shall be identified by a sign on the wellhead stating that the subsurface safety device has been removed. The removal of the subsurface safety device shall be noted in the records as required in § 250.124(b) of this part. If the master valve is open, a trained person shall be in the immediate vicinity of the well to attend the well so that emergency actions may be taken, if necessary.

(3) A platform well shall be monitored, but a person need not remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mud line and the master valve closed, unless otherwise approved by the District Supervisor.

(4) The well shall not be allowed to flow while the subsurface safety device is removed, except when flowing the well is necessary for that particular operation. The provisions of this paragraph are not applicable to the testing and inspection procedures in § 250.124 of this part.

(i) *Additional safety equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface safety device is installed after the effective date of this subpart shall be equipped with a landing nipple with flow couplings or other protective equipment above and below to provide for the setting of the SSSV. The control system for all surface-controlled SSSV's shall be an integral part of the platform Emergency Shutdown System (ESD). In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled SSSV's shall close in response to shut-in signals from the ESD and in response to the fire loop or other fire detection devices.

(j) *Emergency action.* In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device and which is capable of natural flow shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

§ 250.122 Design, installation, and operation of surface production-safety systems.

(a) *General.* All production facilities, including separators, treaters, compressors, headers, and flowlines shall be designed, installed, and maintained in a manner which provides for efficiency, safety of operation, and protection of the environment.

(b) *Platforms.* All platform production facilities shall be protected with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms. If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system. Safety device requirements for pipelines are contained in § 250.154 of this part.

(c) *Specification for surface safety valves (SSV) and underwater safety valves (USV).* All wellhead SSV's, USV's, and their actuators which are installed in the OCS shall conform to the requirements in § 250.126 of this part.

(d) *Use of SSV's and USV's.* All SSV's and USV's shall be inspected, installed, maintained, and tested in accordance with API RP 14H, Recommended Practice for Use of Surface Safety Valves and Underwater Safety Valves Offshore. If any SSV or USV does not operate properly or if any fluid flow is observed during the leakage test, the valve shall be repaired or replaced.

(e) *Approval of safety-systems design and installation features.* Prior to installation, the lessee shall submit, in duplicate for approval to the District Supervisor a production safety system application containing information relative to design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or other location conveniently available to the District Supervisor. All approvals are subject to field verifications. The application shall include the following:

(1) A schematic flow diagram showing tubing pressure, size, capacity, design working pressure of separators, flare scrubbers, treaters, storage tanks, compressors, pipeline pumps, metering

devices, and other hydrocarbon-handling vessels.

(2) A schematic flow diagram (API RP 14C, Figure E1) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c).

(3) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP 14E, Design and Installation of Offshore Production Platform Piping Systems.

(4) Electrical system information including the following:

(i) A plan of each platform deck outlining all hazardous areas classified in accordance with API RP 500B, Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information:

(A) All major production equipment, wells, and other significant hydrocarbon sources and a description of the type of decking, ceiling, walls (e.g., grating or solid) and firewalls; and

(B) Location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the primary wiring method (e.g., type cable, conduit, or wire).

(ii) Elementary electrical schematic of any platform safety shut-down system with a functional legend.

(5) Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that new installations conform to the approved designs of this subpart.

(6) The design and schematics of the installation and maintenance of all fire- and gas-detection systems shall include the following:

(i) Type, location, and number of detection sensors;

(ii) Type and kind of alarms, including emergency equipment to be activated;

(iii) Method used for detection;

(iv) Method and frequency of calibration; and

(v) A functional block diagram of the detection system, including the electric power supply.

§ 250.123 Additional production system requirements.

(a) *General.* Lessees shall comply with the following production safety system requirements (some of which are in addition to those contained in API RP 14C), incorporated by reference in § 250.122(b) of this part.

(b) *Design, installation, and operation of additional production systems*—(1) *Pressure and fired vessels.* Pressure and fired vessels shall be designed, fabricated, code stamped, and maintained in accordance with applicable provisions of Sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. All existing uncoded vessels in use must be justified and approval for continued use obtained from the District Supervisor no later than June 30, 1988.

(i) Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of Sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves, except completely redundant relief valves, shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

(ii) Steam generators operating at less than 15 pounds per square inch gauge (psig) shall be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. Steam generators operating at greater than 15 psig require, in addition to an LSL, a water-feeding device which will automatically control the water level.

(iii) The lessee shall use pressure recorders to establish the new operating pressure ranges of pressure vessels at any time when there is a significant change in operating pressures. The pressure-recorder charts used to determine current operating pressure ranges shall be maintained at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor shall be set no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the vessel. This setting shall also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the pressure source is shut in before the relief valve activates. The low-pressure shut-in sensor shall activate no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range. The activation of low-pressure sensors on pressure vessels which operate at less than 5 psi shall be approved by the District Supervisor on a case-by-case basis.

(2) *Flowlines.* (i) Flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located in accordance with section A.1 and Figure A1 of API RP 14C. The lessee shall use pressure recorders to establish the new operating pressure ranges of flowlines at any time when there is a significant change in operating pressures. The most recent pressure-recorder charts used to determine operating pressure ranges shall be maintained at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor(s) shall be set no higher than 15 percent or 5 psi, whichever is greater, above the highest operating pressure of the line. But in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the SSV. The low-pressure shut-in sensor(s) shall be set no lower than 15 percent or 5 psi, whichever is greater, below the lowest operating pressure of the line in which it is installed.

(ii) If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of and including the header inlet valve(s) shall have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the flowline is protected by one of the following:

(A) A relief valve which vents into the platform flare scrubber or some other location approved by the District Supervisor. The platform flare scrubber shall be designed to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid hydrocarbons which may be relieved to the vessel.

(B) Two SSV's with independent high-pressure sensors installed with adequate volume upstream of any block valve to allow sufficient time for the valve(s) to close before exceeding the maximum allowable working pressure.

(3) *Safety sensors.* All shutdown devices, valves, and pressure sensors shall function in a manual reset mode. Sensors with integral automatic reset shall be equipped with an appropriate device to override the automatic reset mode. All pressure sensors shall be equipped to permit testing with an external pressure source.

(4) *ESD.* The ESD shall conform to the requirements of Appendix C, section C1, of API RP 14C, and the following:

(i) The manually operated ESD valve(s) shall be quick-opening and

nonrestricted to enable the rapid actuation of the shutdown system. Only ESD stations at the boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve.

(ii) Closure of the SSV shall not exceed 45 seconds after automatic detection of an abnormal condition or actuation of an ESD. The surface-controlled SSSV shall close in not more than 2 minutes after the shut-in signal has closed the SSV. Design-delayed closure time greater than 2 minutes shall be justified by the lessee based on the individual well's mechanical/production characteristics and be approved by the District Supervisor.

(iii) A schematic of the ESD which indicates the control functions of all safety devices for the platforms shall be maintained by the lessee on the platform or at the lessee's field office nearest the OCS facility or other location conveniently available to the District Supervisor.

(5) *Engines*—(i) *Engine exhaust.* Engine exhausts shall be equipped to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arresters.

(ii) *Diesel engine air intake.* No later than May 31, 1989, diesel engine air intakes shall be equipped with a device to shutdown the diesel engine in the event of runaway. Diesel engines which are continuously attended shall be equipped with either remote operated manual or automatic shutdown devices. Diesel engines which are not continuously attended shall be equipped with automatic shutdown devices.

(6) *Glycol dehydration units.* A pressure relief system or an adequate vent shall be installed on the glycol regenerator (reboiler) which will prevent overpressurization. The discharge of the relief valve shall be vented in a nonhazardous manner.

(7) *Gas compressors.* Compressor installations shall be equipped with the following protective equipment as required in API RP 14C, section A8.

(i) A Pressure Safety High (PSH), a Pressure Safety Low (PSL), a Pressure Safety Valve (PSV), and a Level Safety High (LSH), and an LSL to protect each interstage and suction scrubber.

(ii) A Temperature Safety High (TSH) on each compressor discharge cylinder.

(iii) The PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers shall be designed to actuate automatic shutdown valves (SDV) located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Supervisor, gas-well gas affected by the closure of the automatic SDV on a compressor suction shall be diverted to the pipeline or shut in at the wellhead.

(iv) A blowdown valve is required on the discharge line of all compressor installations of 1,000 horsepower (746 kilowatts) or greater.

(8) *Firefighting systems.* Firefighting systems for both open and totally enclosed platforms installed for extreme weather conditions or other reasons shall conform to subsection 5.2, Firewater systems, of API RP 14G, Fire Prevention and Control Open Type Offshore Production Platforms, and shall require approval of the District Supervisor. The following additional requirements shall apply for both open- and closed-production platforms:

(i) A firewater system consisting of rigid pipe with firehose stations or fixed firewater monitors shall be installed. The firewater system shall be installed to provide needed protection in all areas where production-handling equipment is located. A fixed waterspray system shall be installed in enclosed well-bay areas where hydrocarbon vapors may accumulate.

(ii) Fuel or power for firewater pump drivers shall be available for at least 30 minutes of run time during a platform shut-in. If necessary, an alternate fuel or power supply shall be installed to provide for this pump-operating time unless an alternate firefighting system has been approved by the District Supervisor.

(iii) A firefighting system using chemicals may be used in lieu of a water system if the District Supervisor determines that the use of a chemical system provides equivalent fire-protection control.

(iv) A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the facility or structure.

(v) For operations in subfreezing climates, the lessee shall furnish evidence to the District Supervisor that the firefighting system is suitable for the conditions.

(9) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation which is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit (LEL). One approved method of providing adequate ventilation is a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500B.

(ii) All detection systems shall be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(iii) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility which are provided with fuel gas. Living quarters and doghouses not containing a gas source and not located in a classified area do not require a gas detection system.

(iv) The District Supervisor may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(v) Fire- and gas-detection systems shall be an approved type, designed and installed in accordance with API RP 14C, API RP 14G, and API RP 14F, Design and Installation of Electrical Systems for Offshore Production Platforms.

(10) *Electrical equipment.* Electrical equipment and systems shall be designed, installed, and maintained in accordance with the requirements in § 250.53 of this part.

(11) *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. Records by lease, indicating the wells which have erosion-control programs in effect and the results of the programs, shall be maintained by the lessee for a period of 2 years and shall be made available to MMS upon request.

(c) *General platform operations.* (1) Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged.

(2) When wells are disconnected from producing facilities and blind flanged, equipped with a tubing plug, or the master valves have been locked closed, compliance is not required with the provisions of API RP 14C or this regulation concerning the following:

(i) Automatic fail-close SSV's on wellhead assemblies, and

(ii) The PSH and PSL shut-in sensors in flowlines from wells.

(3) When pressure or atmospheric vessels are isolated from production facilities (e.g., inlet valve locked closed or inlet blind-flanged) and are to remain isolated for an extended period of time, safety device compliance with API RP 14C or this subpart is not required.

(4) All open-ended lines connected to producing facilities and wells shall be plugged or blind-flanged, except those lines designed to be open-ended such as flare or vent lines.

(d) *Welding and burning practices and procedures.* All welding, burning, and hot-tapping activities shall be conducted according to the specific requirements in § 250.52 of this part.

§ 250.124 Production safety-system testing and records.

(a) *Inspection and testing.* The safety-system devices shall be successfully inspected and tested by the lessee at the interval specified below or more frequently if operating conditions warrant. Testing shall be in accordance with API RP 14C, Appendix D, and the following:

(1) Testing requirements for subsurface safety devices are as follows:

(i) Each surface-controlled subsurface safety device installed in a well, including such devices in shut-in and injection wells, shall be tested in place for proper operation when installed or reinstalled and thereafter at intervals not exceeding 6 months. If the device does not operate properly, or if a liquid leakage rate in excess of 200 cubic centimeters per minute or a gas leakage rate in excess of 5 cubic feet per minute is observed, the device shall be removed, repaired and reinstalled, or replaced. Testing shall be in accordance with API RP 14B to ensure proper operation.

(ii) Each subsurface-controlled SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced at intervals not exceeding 6 months for those valves not installed in a landing nipple and 12 months for those valves installed in a landing nipple. If a liquid leakage rate in excess of 200 cubic centimeters per minute or a gas leakage rate in excess of 5 cubic feet per minute is observed, the device shall be removed, repaired and reinstalled, or replaced.

(iii) Each tubing plug installed in a well shall be inspected for leakage by opening the well to possible flow at intervals not exceeding 6 months. If a liquid leakage rate in excess of 200 cubic centimeters per minute or a gas leakage rate in excess of 5 cubic feet per minute is observed, the device shall be removed, repaired and reinstalled, or replaced. An additional tubing plug may be installed in lieu of removal.

(iv) Injection valves shall be tested in the manner as outlined for testing tubing plugs in paragraph (a)(1)(iii) of this section. Leakage rates outlined in paragraph (a)(1)(iii) of this section shall apply.

(2) All PSV's shall be tested for operation at least once every 12 months. These valves shall be either bench-tested or equipped to permit testing with an external pressure source. Weighted disk vent valves used as PSV's on atmospheric tanks may be disassembled and inspected in lieu of function testing.

(3) The following safety devices shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests:

(i) All PSH or PSL,

(ii) All LSH and LSL controls,

(iii) All automatic inlet SDV's which are actuated by a sensor on a vessel or compressor, and

(iv) All SDV's in liquid discharge lines and actuated by vessel low-level sensors.

(4) All SSV's and USV's shall be tested for operation and for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The testing shall be in accordance with the test procedures specified in API RP 14H, Section 4, Table 2. If the SSV or USV does not operate properly or if any fluid flow is observed during the leakage test, the valve shall be repaired or replaced.

(5) All flowline Flow Safety Valves (FSV) shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedure specified in API RP 14C, Appendix D, section D4, Table D2, subsection D. If the leakage measured exceeds a liquid flow of 200 cubic centimeters per minute or a gas flow of 5 cubic feet per minute, the FSV's shall be repaired or replaced.

(6) The TSH shutdown controls installed on compressor installations which can be nondestructively tested shall be tested every 6 months and repaired or replaced as necessary.

(7) All pumps for firewater systems shall be inspected and operated weekly.

(8) All fire- (flame, heat, or smoke) detection systems shall be tested for operation and recalibrated every 3 months provided that testing can be performed in a nondestructive manner. Open flame or devices operating at temperatures which could ignite a methane-air mixture shall not be used. All combustible gas-detection systems shall be calibrated every 3 months.

(9) All TSH devices shall be tested at least once every 12 months, excluding those addressed in paragraph (a)(6) of this section and those which would be destroyed by testing. Burner safety low and flow safety low devices shall also be tested at least once every 12 months.

(10) The ESD shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The test shall be conducted by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation.

(11) Prior to the commencement of production, the lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a complete inspection may be conducted.

(b) *Records.* The lessee shall maintain records for a period of 2 years for each subsurface and surface safety device installed. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the District Supervisor. These records shall be available for review by a representative of MMS. The records shall show the present status and history of each device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

§ 250.125 Safety device training.

Personnel installing, inspecting, testing, and maintaining these safety devices and personnel operating the production platforms shall be qualified in accordance with subpart O.

§ 250.126 Quality assurance and performance of safety and pollution prevention equipment.

(a) Safety and pollution prevention equipment installed on the OCS shall meet the quality assurance requirements identified in paragraph (c) of this section. The MMS will consider approval of other quality assurance programs for the manufacture of safety and pollution prevention equipment. Quality assurance programs proposed for consideration by MMS shall be submitted to the Deputy Associate Director for Offshore Operations; Minerals Management Service; Mail Stop 647; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

(b)(1) By June 30, 1988, each lessee shall submit to the Deputy Associate Director for Offshore Operations a list of all certified and noncertified SSV's (both actuator and valve), USV's (both actuator and valve), and SSSV's (including safety valve locks and landing nipples) in the lessee's inventory as of June 30, 1988. The list shall indicate which items of the safety and pollution-prevention equipment were manufactured under American National Standards Institute/American Society of Mechanical Engineers Standard ANSI/ASME SPPE–1, Quality Assurance and Certification of Safety and Pollution-Prevention Equipment Used in Offshore Oil and Gas Operations and shall identify each listed item by manufacturer, serial number, model, the date the item entered inventory, and whether the item is in service on the OCS or in stock for installation on the OCS.

(2) Lists received from lessees under paragraph (b)(1) of this section shall be maintained by MMS. An SSSV shall be removed from the list when it is removed from service for a failure or malfunction. A USV or an SSV shall be removed from the list when it is removed from service for remanufacture (repairs employing machining, welding, heat treating, or other manufacturing operations). Lessees shall notify the Deputy Associate Director for Offshore Operations when an SSSV is removed from service for a failure or malfunction or a USV or SSV is removed from service for remanufacture (repairs employing machining, welding, heat treating, or other manufacturing operations).

(c) Safety and pollution-prevention equipment used in the OCS shall meet one of the following:

(1) Be identified on the list submitted under paragraph (b) of this section by a lessee of the lease on which the item is to be installed, or

(2) Be certified by the manufacturer as having been produced under a quality assurance program that meets ANSI/ASME SPPE–1 or an alternate program approved by MMS. The installation, inspection, maintenance, testing, removal, field repair, remanufacture, and documentation of SPPE–1 certified safety and pollution-prevention equipment shall be in accordance with the applicable standard in Appendix I, Referenced Standards.

§ 250.127 Hydrogen sulfide.

Production operations in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.67 of this part, shall be conducted in accordance with that section and other relevant requirements of Subpart H, Production Safety Systems.

Subpart I—Platforms and Structures

§ 250.130 General requirements.

(a) The lessee shall design, fabricate, install, use, inspect, and maintain all platforms and structures (platforms) on the Outer Continental Shelf (OCS) to assure their structural integrity for the safe conduct of drilling, workover, and production operations, considering the specific environmental conditions at the platform location.

(b) All new fixed or bottom-founded platforms (i.e., platforms or other structures, e.g., single-well caissons, artificial islands), shall be designed, fabricated, installed, inspected, and maintained in accordance with all the requirements of this section and §§ 250.131 and 250.134 through 250.144 of this subpart. Applications submitted pursuant to § 250.131 shall require the approval by the Regional Supervisor prior to platform installation.

(c) All new platforms which meet any of the conditions listed below shall be subject to the Platform Verification Program and shall be designed, fabricated, and installed in accordance with the requirements of §§ 250.131 through 250.144 of this part.

(1) Platforms installed in water depths exceeding 400 feet,

(2) Platforms having natural periods in excess of 3 seconds,

(3) Platforms installed in areas of unstable bottom conditions,

(4) Platforms having configurations and designs which have not previously been used or proven for use in the area, or

(5) Platforms installed in seismically active areas.

(d) Major modification to any platform shall be subject to the requirements of this subpart and shall require the approval of the Regional Supervisor. Major modification means any structural changes which materially alter the approved plan or causes a major deviation from approved operations.

(e)(1) Major repairs of damage to any platform shall require the prior approval of the Regional Supervisor. Major repairs of damage means corrective operations involving structural members affecting the structural integrity of a portion or all of the platform.

(2) Under emergency conditions, repairs to primary structural elements may be made to restore an existing permitted condition without prior approval. The Regional Supervisor shall be notified within 24 hours of the damage that occurred and repairs that were made. The Regional Supervisor's approval for repairs shall be obtained.

(f) The requirements for an application for approval for the reuse or conversion of the use of an existing fixed or mobile platforms shall be determined on a case-by-case basis. An application shall be submitted to the Regional Supervisor for approval and shall include location, intended use, and demonstrate the adequacy of the design and structural condition of the platform.

(g) In addition to the requirements of this subpart, platform design, fabrication, and installation shall conform to API RP 2A, Recommended Practice For Planning, Designing, And Constructing Fixed Offshore Platforms, or American Concrete Institute (ACI) 357R, Guide for the Design and Construction of Fixed Offshore Concrete Structures, as appropriate. Alternative codes or rules may be utilized with approval of the Regional Supervisor. The requirements contained in these documents (API RP 2A and ACI 357R) are incorporated herein insofar as they do not conflict with other provisions of this subpart.

§ 250.131 Application for approval.

(a) All applications under the provisions of this subpart shall be submitted to the Regional Supervisor for approval. All significant changes or modifications to approved applications shall be submitted to the Regional Supervisor for approval.

(b) Applications for all new platforms or major modifications shall be submitted in triplicate and shall contain the following information:

(1) General platform information including the following:

(i) The platform designation, lease number, area name, and block number;

(ii) Longitude and latitude coordinates, Universal Transverse Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection system, and a plat drawn to a scale of 1 inch = 2,000 feet showing surface location of the platform and distance from the nearest block lines;

(iii) Drawings, plats, front and side elevations of the entire platform, and plan views that clearly illustrate essential parts, i.e., number and location of well slots, design loadings of each deck, water depth, nominal size and thickness of all primary load-bearing jacket and deck structural members, and nominal size, makeup, thickness, and design penetration of piling;

(iv) Corrosion protection or durability details which consist of the corrosion-protection method; expected life; and durability criteria for the submerged, splash, and atmospheric zones; and

(v) In the Alaska OCS Region, the following additional information shall be submitted:

(A) Slope protection and berm elevation for manmade islands,

(B) Wall thickness with size and placement of major steel reinforcement for concrete-gravity structures,

(C) Shell thickness with size and location of major reinforcement members for steel-gravity structures, and

(D) A plan for periodic inspections of the installed platforms in accordance with § 250.142 of this part.

(2) A summary of environmental data, as addressed in § 250.134 of this part, which has a bearing on the platform's design, installation, and operation, e.g., wave heights and periods, current, vertical distribution of wind and gust velocities, water depth, storm and astronomical tide data, marine growth, snow and ice effects, and air and sea temperatures;

(3) Foundation information including the following:

(i) A geotechnical investigation report containing a brief summary of the major strata encountered at the location by bore holes presented in tabular form, a detailed subsurface profile illustrating results of field and laboratory testing, a listing of field and laboratory investigations and tests with a basic summary of resultant determinations, the identification of properties and conditions of the seabed and the subsoil, and the identification of any manmade hazards or obstructions;

(ii) A description of the effect of the environmental and functional loads on the foundation;

(iii) A determination, with supporting information, of the susceptibility of the area to soil movement and, if susceptible, an analysis of slope and soil stability;

(iv) A summary of the foundation design criteria as specified in § 250.139 of this part; and

(v) A summary of the seafloor survey results specified in § 250.139(b)(2) of this part.

(4) Structural information including the following:

(i) The design life of the platform and the basis for such determination.

(ii) A summary description of the design load conditions and design load combinations, taking into consideration the worst environmental and operational conditions anticipated over the service life of the platform.

(iii) A listing and description of the appropriate material specifications.

(iv) A description of the design methodologies, e.g., elastic, inelastic, and ultimate strength, used in design of the platform.

(v) A summary of pertinent derived factors of safety against failure for major structural members, e.g., unity check ratios exceeding 0.85 for steel-jacket platform members, indicated on "line" sketches of jacket sections.

(vi)(A) In the Alaska, Atlantic, and Pacific OCS Regions, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139 of this part. The specific requirements for a fatigue analysis shall be determined by the Regional Supervisor on a case-by-case basis to determine the adequacy of the design and to assure the structural integrity of the platform.

(B) In the Gulf of Mexico OCS Region, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139 of this part. A fatigue analysis shall be performed for each steel template, pile-supported platform with natural periods greater than 3 seconds, and for each platform to be fabricated of high-strength steel (i.e., over 50 thousand pounds per square inch minimum yield) where components of high-strength steel are subjected to cyclic loading. The specific requirements for a fatigue analysis for other platforms shall be determined by the Regional Supervisor on a case-by-case basis to determine adequacy of the design and to assure the structural integrity of the platform.

(c) The information shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. Additional detailed data and information may be required by the Regional Supervisor when needed to determine the adequacy of the design.

(d) The lessee shall have detailed structural plans as called for in paragraph (b)(1)(iii) of this section and specifications for new platforms or other structures and major modifications certified by a registered professional structural engineer or civil engineer specializing in structural design. The lessee shall also sign, date, and submit the following certification Lessee certifies that the design of the structure/modification has been certified by a registered professional structural or a civil engineer specializing in structural design, and the structure/modification will be fabricated, installed, and maintained as described in the application and any approved modification thereto. Certified design and as built plans and specifications will be on file at .

(e) The lessee shall notify the Regional Supervisor at least 1 week prior to transporting the platform to the installation site.

§ 250.132 Platform Verification Program requirements.

(a) *Requirements*. These requirements apply to the design, fabrication, and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms. The applicability of these requirements to other types of platforms shall be determined by the MMS on a case-by-case basis. For all new platforms or major modifications which meet any of the conditions contained in § 250.130(c) of this part, the lessee shall submit the design, fabrication, and installation verification plans to the Regional Supervisor for approval in accordance with paragraph (b) of this section. The design plan shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. The fabrication and installation plans shall be submitted and approval obtained before such operations are initiated.

(b) *Verification plan requirements*—(1) *General plan requirements*. Each verification plan shall be submitted in triplicate and include the following:

(i) A nomination of a Certified Verification Agent (CVA) who shall conduct specified reviews in accordance with § 250.133 of this part,

(ii) The CVA qualification statement consisting of the following:

(A) Previous experience in third-party verification or experience in the design, fabrication, and/or installation of

offshore oil and gas platforms, manmade islands, or other marine structures;

(B) Technical capabilities of the individual or the primary staff to be associated with the CVA functions for the specific project;

(C) Size and type of organization or corporation;

(D) In-house availability of, or access to, appropriate technology, i.e., computer programs and hardware and testing materials and equipment;

(E) Ability to perform the CVA functions for the specific project considering current commitments; and

(F) Previous experience with MMS requirements and procedures.

(iii) The level of work to be performed by the CVA, and

(iv) A list of documents to be furnished to the CVA.

(2) *Design verification plan requirements*. The design plan shall also include the following:

(i) All design documentation specified in § 250.131(b) of this part, and

(ii) Abstracts of the computer programs used in the design process.

(3) *Fabrication verification plan requirements*. The fabrication plan shall also include fabrication drawings and material specifications for artificial island structures, major members of concrete- and steel-gravity structures, all the primary load-bearing members included in the space-frame analysis for jacket structures, and a summary description of the following:

(i) Structural tolerances,

(ii) Welding procedures,

(iii) Material (concrete, gravel, or silt) placement methods,

(iv) Fabrication standards,

(v) Material quality-control procedures,

(vi) Methods and extent of nondestructive examinations (NDE) for welds and materials, and

(vii) Quality assurance procedures.

(4) *Installation verification plan requirements*. Additionally, the installation plan shall include a summary description of the planned marine operations, contingencies considered, alternate courses of action, and the inspections to be performed including a graphical identification of areas to be inspected and the acceptance/rejection criteria.

(c) *Requirements for resubmittal*. All such plans or the appropriate part affected shall be resubmitted for approval if the CVA is changed, if the CVA's or assigned personnel's qualifications change, or if the level of work to be performed changes. The summary of technical details need not be resubmitted, unless changes are made in the technical details.

(d) *Combining of plans*. For manmade islands or platforms fabricated and installed in place, the fabrication and installation verification plans shall be combined.

§ 250.133 Certified Verification Agent duties and nomination.

(a) *CVA duties*. The CVA nominated by the lessee and approved by the Regional Supervisor shall conduct the appropriate reviews in accordance with the following:

(1) *Design phase*. (i) The CVA shall conduct the design verification to ensure that the proposed platform or major modification has been designed to withstand the maximum environmental and functional load conditions anticipated during the intended service life at the proposed location.

(ii) The design verification shall be conducted by, or be under the direct supervision of, a registered professional civil or structural engineer.

(iii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 of this part and use good engineering practice in conducting an independent assessment of the adequacy of all proposed planning criteria, environmental data, load determinations, stress analyses, material designations, soil and foundation conditions, safety factors, and other pertinent parameters of the proposed design.

(iv) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee.

(v) Upon completion of the design verification, a final report shall be prepared which summarizes the material reviewed by the CVA and the findings and includes a recommendation that the Regional Supervisor either accept, request modification(s), or reject the proposed design. In addition, the report shall include the particulars of how, by whom, and when the independent review was conducted and any special comments considered necessary. The final report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 6 weeks of the receipt of the design data or from the date the approval to act as a CVA was issued, whichever is later.

(2) *Fabrication verification*. The CVA shall monitor the fabrication of the platform or major modification to ensure that it has been built in accordance with the approved design plans and specifications and the fabrication plan, including the following:

(i) Periodic onsite inspections shall be made while fabrication is in progress. The following of the fabrication items, as appropriate, shall be verified:

(A) Quality control by lessee and builder,

(B) Fabrication site facilities,

(C) Material quality and identification methods,

(D) Fabrication procedures specified in the approved plan and adherence to such procedures,

(E) Welder and welding procedure qualification and identification,

(F) Structural tolerances specified and adherence to those tolerances,

(G) The NDE requirements and evaluation results of the specified examinations,

(H) Destructive testing requirements and results,

(I) Repair procedures,

(J) Installation of corrosion-protection systems and splash-zone protection,

(K) Erection procedures to ensure that overstressing of structural members does not occur,

(L) Alignment procedures,

(M) Dimensional check of the overall structure, and

(N) Status of quality-control records at various stages of fabrication.

(ii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 of this part and use good engineering practice in conducting an independent assessment of the adequacy of the fabrication of the platform or major modification.

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee.

(iv) If the CVA finds that fabrication procedures are changed or design specifications are modified, the lessee shall be informed. If the lessee prefers to accept the modifications as informed by the CVA, the Regional Supervisor shall also be informed.

(v) A final report shall be prepared by the CVA covering the adequacy of the entire fabrication phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report is not required to cover aspects of the fabrication already included in interim reports. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the design specifications and the approved fabrication plan, and a recommendation to accept or reject the fabrication. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor immediately after completion of the fabrication of the platform.

(3) *Installation phase.* The CVA shall witness the loadout of the jacket, deck(s), and piles from the fabrication site(s); review the towing records; conduct an onsite survey after transportation to the approved location; witness the actual installation of the platform or major modification; determine that the platform has been installed at the approved location in accordance with the approved design and the installation plan; and shall comply with the following:

(i) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 of this part and use good engineering practice in conducting an independent assessment of the adequacy of the installation activities. The following parts of the overall installation process, as appropriate, shall be verified:

(A) Loadout and initial flotation operations, if any;

(B) Towing operations to the specified location;

(C) Launching and uprighting operations;

(D) Submergence operations;

(E) Pile installation; and

(F) Final deck and/or component installation.

(ii) The CVA shall observe the installation activities; spot-check equipment, procedures, and recordkeeping, as necessary, to determine compliance with §§ 250.134 through 250.141 of this part and the approved plans, and immediately report to the Regional Supervisor and the lessee any discrepancies or damage to structural members. Approval for modified installation procedures or for major deviation from approved installation procedures shall be obtained from the Regional Supervisor.

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee.

(iv) A final report shall be prepared by the CVA covering the adequacy of the entire installation phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the approved installation plan, and a recommendation to accept or reject the installation. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 2 weeks of completion of the installation of the platform.

(4) All data provided to the CVA shall be handled in the strictest confidence and not be released by the CVA without the consent of the lessee.

(5) Individuals or organizations acting as CVA's for a particular platform shall not function in any capacity other than that of a CVA for that specific project, whenever the additional activities would create a conflict, or appearance of a conflict of interest.

(b) *CVA nomination*—(1) *Nomination.* Individuals or organizations shall be nominated by the lessee planning to use their services. The lessee shall specify whether the nomination is for the design, fabrication, or installation phase of verification; for two phases; or for all three phases.

(2) *Qualifications.* Qualification submissions shall contain sufficient information to determine compliance with § 250.132(b)(1)(ii) of this part.

§ 250.134 Environmental conditions.

(a) *General.* The performance standards of this section pertain to all platforms covered by these requirements regardless of the fabrication material.

(1) *Environmental considerations.* All environmental phenomena appropriate to the areas of fabrication, transportation, and installation of an offshore platform shall be considered and their influence on the platform accounted for. Such phenomena shall include wind, waves, current, temperature, tide, marine growth, chemical components of air and water, snow and ice, earthquakes, tsunami, seiche, and other appropriate phenomena.

(2) *Environmental data.* Statistical data and defensible statistical and mathematical models shall be employed to describe the range of pertinent expected variations of environmental phenomena. Defensible data supplied by meteorologists, oceanographers, or other appropriate specialists are acceptable as the basis for design. Where possible, environmental phenomena shall be described by the characteristic parameters most relevant in the evaluation of effects on the platform.

(b) *Statistical methods.* (1) When statistical methods are employed in the determination of parameters characterizing environmental phenomena, the statistical methods and distributions employed shall be appropriate to their application as evidenced by relevant statistical tests, confidence limits, and other measures of statistical significance.

(2) Short-term and long-term variations of environmental phenomena such as wind, waves, and current shall be described by statistical distributions relevant to the parameter considered. Defensible statistical modeling techniques shall be used in the prediction of extreme values.

(3) When hindcasting techniques are employed to approximate environmental parameters, the validity of the model used shall be defensible.

(c) *Design considerations*— (1) *General.* A thorough assessment of the environment in the vicinity of the installation site shall be made to determine the conditions expected to occur at the site over the life of the platform.

(2) *Design environmental condition.* (i) "Design environmental condition" means the environmental factors producing the most unfavorable effects on the platform. Parameters describing the design environmental condition are given in paragraphs (c)(2)(ii)(A), (B), and (C) of this section.

(ii) The design environmental condition shall reflect the various environmental events that individually or collectively represent the most severe conditions the platform is anticipated to experience. Such conditions shall be formulated with a set of parameters that describe the relevant environmental events, including the following:

(A) The maximum wave corresponding to a selected recurrence period together with the associated wind, current, and appropriate ice and snow effects;

(B) The minimum air and sea temperatures appropriate to the event being treated; and

(C) The maximum water level due to tide and storm surge.

(iii) Consideration shall be given to other combinations of the parameters specified in paragraph (c)(2)(ii)(A) of this section involving either maximum wind, maximum current, or maximum ice load which may cause a greater response of the platform.

(iv) In general, the recurrence period chosen for the events specified in paragraphs (c)(2)(ii)(A) and (C) of this section shall primarily be based on the design service life of the platform. For platforms designed for a service life of 20 years, the recurrence period chosen for the determination of these events shall not be less than 100 years. For other service lives, the design event recurrence interval shall generally be adjusted to provide for a risk of occurrence which does not exceed the risk of occurrence for the 20-year/100-year combination.

(v) For installation sites located in seismically active areas, see paragraph (d)(8) of this section.

(3) *Operating environmental conditions.* Operating environmental conditions means the set of characteristic parameters of environmental conditions associated with a normal function or operation to be conducted on the platform. For each such intended normal function or operation, the lessee shall determine a set of characteristic parameters of environmental conditions.

(d) *Specific environmental conditions.* (1) Waves information including the following: (i) Wave conditions considered for design shall be described by defensible statistical and/or deterministic methods.

(ii) Parameters characterizing design environmental waves shall be based on wave statistics or the results of defensible analytic prediction methods such as hindcasting techniques.

(iii) When using probabilistic analyses, the probability of occurrence of various wave-height groups classified by directionality and for a wide range of possible periods (i.e., tables of exceedance) shall be determined. Where required by the method selected to predict extreme values, the average duration of various wave-height groups (i.e., persistence data) shall be determined. All extrapolations and long-term wave data analyses shall use defensible techniques, and available data on extreme values measured in the vicinity of the site shall be included in the long-term prediction.

(iv) When using deterministic methods, waves shall be described by the parameters, height, period, and other relevant shape characteristics. The design-wave formulation used shall be valid for the problem considered.

(v) Breaking-wave criteria appropriate to the installation site shall be determined using defensible formulations.

(vi) If spectral wave data are established for the dynamic analysis of structural response to waves, such data shall be derived in accordance with defensible methods. If spectral data are not available in adequate quantities for the intended application, defensible mathematical formulations that best fit the available data shall be used.

(2) Wind information including the following:

(i) Wind velocities shall be classified on the basis of their duration. Wind velocities having a duration of less than 1 minute are referred to as gust winds. Wind velocities having a duration equal to or greater than 1 minute are referred to as sustained winds. The reference elevation is 33 feet above still-water level.

(ii) Wind conditions considered for design shall be described by defensible statistical or deterministic methods.

(iii) Wind profiles shall be determined on the basis of defensible statistical or mathematical models. Corrections of wind velocity data to averaging periods other than those employed in the collections of data shall be based on defensible methods.

(iv) Distribution of the direction and speed of wind approach to the platform shall be determined, or alternatively, winds shall be considered to approach from any direction.

(3) Current information including the following:

(i) Current velocities to be used in design shall be determined on the basis of the best statistics available. Tidal current, wind-generated current, density current, circulation current, and river-outflow current shall be combined on the basis of their probability of simultaneous occurrence in arriving at current velocities to be used in design.

(ii) Current velocity profiles shall be determined on the basis of site-specific studies or defensible empirical relationships. Unusual profiles due to bottom currents and stratified effects in regions near the mouth of large rivers shall be accounted for.

(iii) Directional data on currents which exist in the absence of waves shall be described for each month or by season. Unless a detailed study of current directions is made, currents shall be assumed to run in any direction.

(4) Tide information including the following:

(i) The design storm-tide elevation shall be identified for the installation site. For design purposes, the design environmental wave height shall be superimposed on the storm-tide elevation.

(ii) Variations in the elevation of the daily lunar tide shall be used in determining the elevations of boat landings, barge fenders, and the corrosion-prevention treatment of platforms in the splash zone (see § 250.138(c)(5) of this part).

(iii) The assumed maximum or storm tide shall include astronomical tide, wind tide, and pressure-induced storm surge. Minimum-tide estimates shall be based on either the astronomical or lunar tide only. The water depth shall be referenced to a datum (e.g., mean low/water or mean low low/water) consistent with all other references to elevations and depths.

(iv) If data directly applicable to the installation site are not available, the best estimate based on data for nearby locations shall be used.

(5) Temperature information including the following:

(i) Extreme values of low temperatures shall be expressed in terms of the most probable, lowest values with their corresponding recurrence periods;

(ii) Air, sea surface, and seabed temperatures shall be accounted for in describing the environment and in justifying the temperatures used in design.

(6) Snow and ice information including the following:

(i) If the platform is to be located in an area where sea ice may develop or drift, ice conditions shall be accounted for. Data shall be derived from actual field investigations, laboratory analyses, or other appropriate analogous sources;

(ii)(A) Relevant statistical and physical data on the sea-ice and snow conditions shall be described with particular attention to the following:

(*1*) Concentration and distribution of ice and snow,

(*2*) Morphology of sea ice (e.g., ice floes, ice ridges, or rafted ice),

(*3*) Mechanical properties of ice (mode of failure),

(*4*) Drift speed and direction,

(*5*) Thickness of ice and keel depth of pressure ridges, and

(*6*) Probability of encountering icebergs, ice floes, ice-floe fragments, and hummocks.

(B) The weight of the maximum snow and ice anticipated to accumulate on the platform shall be determined.

(7) Marine growth information including the following:

(i) When assessing the potential for marine growth, account shall be taken of relevant observations and experience in the area. In the absence of such information, defensible analytical techniques shall be employed to assess the potential for marine growth. These techniques shall take into account salinity, oxygen content, hydrogen-ion concentration value, current, temperature, water turbidity, and other appropriate factors.

(ii) Consideration shall be given to the selection of surface coatings which resist breakdown by micro-organisms which reduce the onset of corrosion.

(iii) Particular attention shall be paid to the effects that marine growth has on surface roughness characteristics of submerged structural members.

(8) Earthquake information including the following:

(i) The effects of earthquakes on platforms located in areas known to be seismically active shall be addressed.

(ii) Except for the provision of § 250.135(d)(5)(ii) of this part, the seismicity of the site shall be determined. Preferably, this shall be based on site-specific data. However, regional data shall be deemed

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acceptable for use when site-specific data are not available and the regional data are interpreted in a manner to produce the most adverse effect on a platform at the specific site. The following data shall be obtained:

(A) Recurrence interval of seismic events appropriate to the design life of the structure,

(B) Proximity to active faults,

(C) Type of faulting,

(D) Attenuation of ground motion between the faults and the site,

(E) Subsurface soil conditions, and

(F) Records from past seismic events at the site or from analogous sites.

(iii) The use of available data to describe the seismic characteristics of the site is permitted where it can be shown that such data are consistent with the requirements of paragraph (d)(8)(ii) of this section.

(iv) The seismic data shall be used to establish a quantitative design earthquake criterion describing the design earthquake-induced ground motion. In addition to ground motion and as applicable to the installation site, the following earthquake-related phenomena shall be taken into account:

(A) Liquefaction of subsurface soils,

(B) Submarine slides,

(C) Tsunamis, and

(D) Fluid motions in tanks.

§ 250.135 Loads.

(a) *Introduction.* This section covers the identification, definition, and determination of the loads to which a fixed offshore platform may be exposed during and after its transportation and installation. The requirements contained in paragraphs (b) through (d) of this section apply to both steel-piled platforms and concrete-gravity platforms. Additional requirements covering steel-piled platforms are contained in paragraph (e) of this section. Additional requirements covering concrete-gravity platforms are contained in paragraph (f) of this section.

(b) *General.* (1) All types of loads specified in paragraphs (c)(1) through (c)(5) of this section shall be accounted for in the design and operation of the platform.

(2) Where applicable, the effects of increased dimensions and weight due to marine growth and snow and ice accumulation shall be addressed in the design.

(c) *Load definition*—(1) *Dead loads.* Dead loads associated with the platform are loads that do not change during the mode of operation under consideration. Dead loads include the following:

(i) Weight in the air of the platform (refer to paragraphs (e)(1) and (f)(1) of this section for itemizations of weight for pilefounded platforms and gravity platforms, respectively).

(ii) Weight of permanent ballast and the weight of permanent machinery including liquids at operating levels.

(iii) External hydrostatic pressure and buoyancy in calm sea conditions calculated on the basis of the design waterline.

(iv) Static earth pressure.

(2) *Live loads.* Live loads associated with the normal operation and use of the platform are loads that could change during the mode of operation considered. Live loads acting after fabrication or installation include the following:

(i) Weight of drilling and production equipment that can be removed such as derrick, draw works, mud pumps, mud tanks, separators, and tanks,

(ii) Weight of crew and consumable supplies such as mud, chemicals, water, fuel, pipe, cable, stores, drill stem, and casing.

(iii) Weight of liquids in storage tanks.

(iv) Forces exerted on the platform due to drilling, e.g., the maximum derrick reaction when placing or pulling casing.

(v) The forces exerted on the platform during the operation of cranes and vehicles.

(vi) The forces exerted on the platform by vessels moored to the platform.

(vii) The forces exerted on the platform by helicopters during takeoff and landing or while parked on the platform. When applicable, the dynamic effects on the platform of the forces specified in paragraphs (c)(2)(iv) through (vii) of this section shall be taken into account. Live loads occurring during transportation and installation shall be determined for each specific operation involved, and the dynamic effects of such loads shall be addressed (see § 250.140 of this part).

(3) *Deformation loads.* Deformation loads are loads due to deformations imposed on the platform. For an itemization of deformation loads applicable to steel-piled platforms and concretegravity platforms, see paragraphs (e)(2) and (f)(2) of this section, respectively.

(4) *Accidental loads.* Consideration shall be given to accidental loadings; and where such loadings are determined to be a factor, they shall be quantified and incorporated into the design. Accidental loads are loads that could occur as the result of an accident or exceptional conditions, such as the following:

(i) Extreme impact loads caused by supply boats, barges, and other craft anticipated to work in the vicinity of the platform;

(ii) Impact loads caused by dropped objects, such as drill collars, casing, blowout-preventer stacks;

(iii) Loss of internal pressure required to resist hydrostatic loading and to maintain buoyancy during the installation of the platform;

(iv) Explosion;

(v) Effects of fire; and

(vi) Iceberg collision.

(5) Environmental load information including the following:

(i) Environmental loads are loads due to wind, waves, current, ice, snow, earthquake, and other environmental phenomena.

(ii) The characteristic parameters defining an environmental load shall be appropriate to the installation site as determined by the studies required by § 250.134 of this part. Operating environmental loads are loads derived from the parameters characterizing operating environmental conditions (see § 250.134(c)(3) of this part). Design environmental loads are loads derived from the parameters characterizing the design environmental condition (see § 250.134(c)(2) of this part).

(iii) Environmental loads shall be applied to the platform from directions producing the most unfavorable effects on the platform unless site-specific studies allow for a less stringent requirement.

(iv) The combination and severity of design environmental loads shall be consistent with the likelihood of their simultaneous occurrence. The simultaneous occurrence of environmental loads shall be modeled by appropriate superposition methods.

(v) Earthquake loads and loads resulting from accidental or rare environmental phenomena need not be combined with other environmental loads unless site-specific conditions indicate that such combination is appropriate.

(d) *Determination of environmental loads.* (1) Wave load information including the following:

(i) Wave-induced loads shall be calculated using defensible methods or shall be obtained from adequate model or field test data;

(ii) A sufficient range of waves and wavecrest positions relative to the platform shall be investigated to ensure an accurate determination of the maximum wave load on the platform;

(iii) Wave impact loads on structural members below the design wave crest elevation shall be accounted for by defensible theoretical methods or relevant model test of full-scale data;

(iv) Where applicable, the possibility of dynamic excitation of the platform due to flow-induced cyclic loading shall be addressed;

(v) For additional requirements pertaining to steel-piled platforms and concrete gravity-platforms, see paragraphs (e)(3) and (f)(3) of this section, respectively; and

(vi) Where applicable, additional hydrostatic loading effects shall be addressed.

(2) Wind load information including the following:

(i) Wind loads, local wind pressures, and wind profiles shall be determined on the basis of defensible analytical methods or wind tunnel tests on a representative model of the platform,

(ii) In determining design environmental loads on the overall platform, wind loads calculated on the basis of the design-sustained wind velocity shall be combined with other design environmental loads,

(iii) The design gust wind load shall be used in the design of local structure unless the effects of the load combination described in paragraph (d)(2)(ii) of this section are more severe,

(iv) Where appropriate, the dynamic effects due to the cyclic nature of gust wind and cyclic loads due to vortex shedding shall be computed by defensible methods before computing the total force, and

(v) Where appropriate, flutter and load amplification due to vortex shedding shall be addressed.

(3) Ice and snow load information including the following:

(i) For platforms located in areas associated with ice movement, contact loads caused by floating ice shall be determined according to defensible theoretical methods, model test data, or full-scale measurements;

(ii) In locations where platforms are subject to ice and snow accumulation, the additional weight of snow and ice on the platform shall be addressed;

(iii) The effects of ice accumulation and ice jam, including the effects of changes in configuration due to adhesion, shall be accounted for in the determination of the total environmental load; and

(iv) The incident pressure due to pack ice, pressure ridges, and where appropriate, ice island fragments impinging on the platform shall be addressed.

(4) Earthquake load information including the following:

(i) For platforms located in seismically active areas, design earthquake-induced ground motions shall be determined on the basis of seismic data applicable to the installation site. Design earthquake ground motions shall be described by either applicable ground motion records or response spectra consistent with the recurrence period appropriate to the design life of the platform.

(ii) Available and defensible standardized spectra applicable to the region of the installation site are acceptable if such spectra reflect those site-specific conditions affecting frequency content and energy distribution. These conditions include the type of active faults in the region, the proximity of the site to the potential source faults, the attenuation or amplification of ground motion between the faults and the site, and the soil conditions at the site.

(iii) Ground-motion descriptions shall consist of three components corresponding to two orthogonal horizontal directions and the vertical direction. All three components shall be applied to the platform simultaneously.

(iv)(A) When the response spectrum method is used for structural analysis, input values of ground motion (spectral acceleration representation) shall not be less severe than the following:

(*1*) One hundred percent in a principal horizontal direction,

(*2*) Sixty-seven percent in the orthogonal horizontal direction, and

(*3*) Fifty percent in the vertical direction.

(B) The horizontal components shall also be applied in the alternative orthogonal horizontal directions.

(v) If the time history method is used for structural analysis, at least three sets of ground-motion time histories shall be employed. The manner in which the time histories are used shall account for the potential sensitivity of the platform's response to variations in the phasing of the ground-motion records.

(vi) When applicable, effects of soil liquefaction and/or loads resulting from submarine slides or creep, tsunamis, and earthquake motions shall be addressed.

(e) *Loads on steel pile-supported platforms.* The following requirements apply to loads on steel pile-supported platforms and shall be applied together with the requirements in paragraphs (b), (c), and (d) of this section:

(1) The dead load of the platform shall include, as appropriate, the weight in air of the jacket, piling, grout, superstructure modules, stiffeners, decking, piping, heliport, and any other fixed structural part less buoyancy, with due allowance for flooding.

(2) Where appropriate, the deformation loads to be accounted for are those resulting from temperature variations leading to thermal stresses in the platform, and those resulting from soil displacements (e.g., differential settlements or lateral displacements).

(3) Wave load information including the following:

(i) For platforms composed of members having diameters that are negligible in relation to the wave lengths considered, semiempirical formulations accounting for wave-induced drag and inertia forces based on the water particle velocities and accelerations on an undisturbed, incident flow field are acceptable;

(ii) When a method as described in paragraph (e)(3)(i) of this section is used, the wave field shall be described by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site;

(iii) The coefficients of drag and inertia used in calculating wave loads shall be determined on the basis of model test results, published data, or full-scale measurements appropriate to the structural configuration, surface roughness, and wave field; and

(iv) For platforms composed of members whose diameters are not negligible in relation to the wave lengths considered and for structural configurations that will substantially alter the undisturbed, incident flow field, diffraction forces and the hydrodynamic interaction of structural members shall be taken into account.

(f) *Loads on concrete-gravity platforms.* The following requirements apply to loads on concrete-gravity platforms and shall be applied together with the requirements described in paragraphs (b), (c), and (d) of this section.

(1) The dead load of the platform shall include, as appropriate, the weight in air of the foundation, skirts, columns, superstructure modules, decking, piping, heliport, and any other fixed structural part less buoyancy with due allowance for flooding. Weight calculations based on nominal dimensions and mean values of density are acceptable.

(2) The deformation loads to be accounted for are those due to prestress, shrinkage and expansion, creep, temperature variations, and differential settlements.

(3) Wave load information including the following:

(i) For platforms composed of large gravity bases and one or more columns whose diameters are not negligible in relation to the wave lengths considered, defensible wave-load theories which account for the drag, inertia, and diffraction forces on the platform shall be employed;

(ii) For complex structural configurations, the hydrodynamic interaction of large, immersed structural members shall be addressed;

(iii) When diffraction forces and hydrodynamic interaction are negligible, only semiempirical formulations comparable to those mentioned in paragraphs (e)(3)(i) and (iii) of this section accounting for drag and inertia forces are acceptable; and

(iv) The undisturbed, incident flow field shall be addressed by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site.

§ 250.136 General design requirements.

(a) *General.* This section specifies the general concepts and methods of analysis to be incorporated in the design of a platform.

(b) *Analytical approaches.* (1) Structural response information including the following:

(i) Methods of analysis employed in association with the specifications of these requirements shall treat geometric and material nonlinearities in a defensible manner. When nonlinear methods of analysis are used to assess collapse mechanisms, it shall be demonstrated that the platform has sufficient ductility to develop the required resistance or structural displacements.

(ii) Where theoretically based analytical procedures covering the platform or parts thereof are unavailable or not well defined, model studies shall be utilized. The acceptability of model studies depends on the procedures employed, including enumeration of the possible sources of errors, the limits of applicability of the model test results, and the methods of extrapolation to full-scale data.

(2) Loading format information including the following:

(i) Either a deterministic or spectral format shall be employed to describe various load components. When a static approach is used, it shall be demonstrated, where appropriate, that the general effects of dynamic amplification were addressed. The influence of waves other than the highest waves shall be investigated for their potential to produce maximum peak stresses resulting from possible resonance with the platform.

(ii) When considering the design earthquake as discussed in § 250.135 of this part, a dynamic analysis shall be performed. A dynamic analysis shall also be performed to assess the effects of environmental or other types of loads if significant dynamic amplification is expected.

(iii) For fatigue analysis, the long-term distribution of the stress range, with proper consideration of dynamic effects, shall be obtained for relevant loadings anticipated during the design life of the platform (see §§ 250.137(c)(6) and 250.138(c)(6) of this part).

(3) Combinations of loading components information including the following:

(i) Loads imposed during and after installation shall be taken into account. Of the various loads described in § 250.134, of this part, those loads to be considered for design shall be combined in a manner consistent with their probability of simultaneous occurrence. However, earthquake loadings shall be applied without consideration of other environmental effects unless conditions at the site necessitate their inclusion. The direction of applied environmental loads shall be that producing the highest possible influences on the platform, considering the platform's orientation and location with respect to bottom topography, direction of fetch, and nearby land masses.

(ii) While it is required to obtain and use those loading components which produce realistic maximum effects on the platform, loading combinations corresponding to conditions after installation shall reflect both operating and design environmental loadings. Sections 250.137, 250.138, and 250.139 of this part give the minimum load combinations to be considered.

(iii) The operating environmental conditions and the maximum tolerable environmental loads during installation shall be specified.

(c) *Overall design considerations*—(1) *Design life.* The design service life of the platform shall be specified as prescribed in § 250.134(c)(2)(iv) of this part.

(2) *Air gap.* An air gap of 5 feet shall be provided between the maximum crest elevation of the design wave (including tidal effects) and the lowest portion of the platform upon which wave forces have not been included in the design. After accounting for the initial and long-term settlements resulting from consolidation and subsidence, the elevation of the crest of the design wave shall be based on the elevation of the mean low-water line, astronomical and storm tides, wave runup, the tilting of the platform, and where necessary, tsunamis.

(3) *Long-term and secondary effects.* The following effects shall be addressed, as appropriate, for the planned platform:

(i) Local vibration due to machinery, equipment, and vortex shedding;

(ii) Stress concentrations at critical joints;

(iii) Secondary stresses induced by large deflections (P-Δ effects);

(iv) Cumulative fatigue;

(v) Corrosion;

(vi) Marine growth; and

(vii) Ice abrasion.

(4) *General arrangement.* The platform and equipment shall be arranged to minimize the potential of structural damage and personal injury resulting from accidents. In this regard, the consequences of the arrangement or placement of the following components and their effects shall be addressed:

(i) Equipment and machinery—noise and vibration,

(ii) High-pressure piping—leakage in closed spaces,

(iii) Lifting devices—dropped loads, and

(iv) Vessel mooring devices—line breakage and tripping quick-release mechanisms.

(5) *Corrosion-protection zones.* Measures taken to mitigate the effects of corrosion as required by §§ 250.137(d) and 250.138(c)(5) of this part shall be specified and described in terms of the following definitions for corrosion-protection zones:

(i) Submerged zone—that part of the platform below the splash zone,

(ii) Splash zone—that part of the platform between the highest and lowest water levels reached by sea states exceeded for 1 percent of the time annually when superimposed on the highest and lowest levels of tide with due allowance for high and low installation of the platform,

(iii) Atmospheric zone—that part of the platform above the splash zone,

(iv) Ice zone—that part of the platform which can reasonably be expected to come into contact with floating or submerged ice annually.

§ 250.137 Steel platforms.

(a) *Materials*—(1) *General.* (i) This section covers specifications for materials used for the construction of steel pile-supported platforms. Steels shall be suitable for their intended service as demonstrated by testing under relevant service conditions or previous satisfactory performance under service conditions similar to those intended. Steels shall be of good commercial quality, defined by specification, and free of injurious defects.

(ii) Steels shall exhibit satisfactory formability and weldability characteristics and fracture toughness satisfactory for the intended applications. Materials for structural members which are fracture critical or for members which sustain significant tensile stress and whose fracture would pose a threat to the survival of the

platform shall have sufficient toughness to guard against brittle fracture. Materials selected for members which are subjected to significant tensile stress shall have toughness suitable to their intended application.

(iii) In cases where principal loads from either service or weld residual stresses are imposed normal to the plate, appropriate precautions shall be taken to avoid lamellar tearing parallel to the plate surface.

(2) Material selection information including the following:

(i) Steels for structural members shall be selected according to criteria that take into account the required yield strength, fracture toughness, service temperature (see paragraph (a)(3) of this section), and intended application;

(ii) Bolts and nuts shall have mechanical and corrosion properties comparable to the structural elements being joined. Materials for bolts and nuts shall be defined by and tested in accordance with material standards compatible with those for the joined structural members;

(iii) When new alloys are used, the adequacy of fracture toughness shall be supported by appropriate fracture tests; and

(iv) When materials other than steel are used for structural purposes, the mechanical and durability properties necessary for their intended function shall be designated, including toughness and fatigue characteristics, where necessary.

(3) *Service temperature.* Service temperature means the temperature that the material is expected to achieve in the operational environment.

(i) For material at or below the waterline, the minimum service temperature shall be the lowest average daily water temperature applicable to the particular depth. For material above the waterline, the minimum service temperature shall be the lowest 1-day average daily atmospheric temperature over a 10-year period, unless the material is warmed by auxiliary heating.

(ii) In all cases where material temperature is reduced by localized cryogenic storage or other cooling means, such factors shall be accounted for in establishing minimum service temperature.

(4) *Classification of applications.* When considering the welding requirements given in subsequent sections, materials shall be considered as "Weld Class A" if the members are critical or special structural elements, "Weld Class B" if the members are primary load-carrying members of the platform, or "Weld Class C" if the members are secondary structural elements.

(5) *Material designation.* All material employed in platform construction shall be described and designated by a material specification.

(b) *Fabrication and welding*—(1) *General.* (i) Welding shall be performed in accordance with the applicable provisions of the American Welding Society (AWS) publication, AWS D1.1, Structural Welding Code—Steel, or other appropriate welding codes.

(ii) Fabrication other than welding shall be performed in accordance with the American Institute of Steel Construction (AISC) publication, S326, Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, or other appropriate codes. The code to be followed during fabrication and construction shall be specified on design documents.

(2) *Welding.* (i) Welding procedures and filler metals shall be selected to produce sound welds, and the filler metal shall have strength and toughness compatible with the base metal. Workmanship shall be in compliance with paragraph (b)(1)(i) of this section.

(ii) Forming processes shall not degrade the base metals below their minimum required properties. A heat treatment shall be employed to provide the required properties, where necessary.

(iii) Misalignment between parallel (abutting) members shall be minimized. Weld size for fillet welds shall be sufficient to compensate for the gap between faying surfaces of the members. Lapped joints shall possess sufficient overlaps. Both edges of an overlap joint shall have continuous fillet welds.

(iv) When arc-air gouging is employed, the carbon buildup and burning of the weld or base metals shall be minimized.

(v) Peening shall not be used for single-pass welds or for the root or cover passes of multipass welds. Peening shall be used only after cleaning of weld passes. Fairing by heating, flame shrinking, or other methods, when applied to Weld Class A or B structural elements, shall be performed without damaging the base metals. Such corrective measures shall be kept to a minimum when treating high-strength steels.

(3) *Quality assurance.* A documented inspection plan shall be prepared and followed and shall cover the following items:

(i) A suitable system for material identification and quality control during all stages of construction,

(ii) Requirements for welding procedures and welder qualifications,

(iii) The extent of weld inspection (including nondestructive examination methods) and the criteria for weld acceptance or rejection, and

(iv) Necessary dimensional tolerances.

(4) *Weld nondestructive examination.* (i) All welds shall be subjected to visual examination. Nondestructive examination shall be conducted to the extent indicated in paragraph (b)(4)(ii) of this section after all forming and postweld heat treatments have been completed. Weld examination procedures shall be adequate to detect delayed weld cracking in cases involving high-strength steels or high-hydrogen welding processes.

(ii) As called for in paragraph (b)(3)(iii) of this section, a plan for nondestructive examination of the welds shall be prepared and followed. The extent of inspection of Weld Classes A and B structural elements shall be consistent with the applications involved. Important welds of Weld Classes A and B structural elements are those inaccessible or very difficult to inspect in service. Important welds shall be subjected to an increased level of nondestructive examination during fabrication.

(iii) If the proportion of unacceptable welds becomes excessive, the frequency of nondestructive examination shall be increased.

(c) *Design and analysis*—(1) *General.* (i) Steel platforms shall be adequately designed and analyzed to withstand the loads to which they are likely to be exposed during their design life. The effects on the platform shall be determined for a minimum set of loading conditions by using a defensible method to ensure that the resulting responses do not exceed the safety criteria appropriate to the methods employed.

(ii) The use of design methods, other than those specifically covered in this section, and their associated safety criteria are allowed if it can be demonstrated that such alternative methods will result in a structural safety level equivalent to that provided by the direct application of these requirements.

(iii) Sections 250.135 and 250.136 of this part shall be consulted regarding definitions and requirements pertinent to the determination of loads and general design requirements.

(2) *Loading conditions.* (i) Appropriate loading conditions that produce the most adverse effects on the platform during and after fabrication and installation shall be considered;

(ii) Loadings corresponding to conditions after installation shall include at least those relating to both the operating and design environmental conditions, combined with other pertinent loads in the following manner:

(A) Operating environmental conditions combined with dead and live loads appropriate to the function and operation of the platform;

(B) Design environmental conditions combined with dead and live loads appropriate to the function and operation of the platform:

(C) Design environmental conditions combined with dead loads and minimum live loads appropriate to the function and operation of the platform; and

(iii) For platforms located in seismically active areas, loads induced by earthquake ground motions shall be combined with dead and live loads appropriate to the operation and function of the platform.

(3) *Methods of design and analysis.* (i) The nature of loads and loading combinations as well as the local environmental conditions shall be considered in the selection of design methods. Methods of analysis and their associated assumptions shall be compatible with the overall design principles.

(ii) Linear, elastic methods (working stress methods) of design and analysis are acceptable if proper measures are taken to prevent general and local buckling failure. Regarding structural instability as a possible mode of failure, the effects of initial stresses and geometric imperfection shall be taken into account.

(iii) Dynamic effects shall be accounted for if the wave energy in the frequency range of the structural resonance frequencies is of sufficient magnitude to produce significant stresses in the platform. The determination of dynamic effects shall be accomplished either by computing the dynamic amplification effects in conjunction with a deterministic analysis or by a random dynamic analysis based on a spectral formulation. In the latter case, the analysis shall be accompanied by a statistical description and evaluation of the relevant input parameters.

(iv) The interaction of the soil with the platform's piles shall be included in the analytical model used to obtain the structural response (see § 250.139(d)(1)(iv) of this part).

(v) For static loads, plastic methods of design and analysis shall be employed only when the properties of the steel and the connections exclude the possibility of brittle fracture and allow for formation of plastic hinges with sufficient plastic rotation capacity and adequate fatigue resistance.

(vi) Whenever plastic analysis is used, it shall be demonstrated that the collapse mode (mechanism) corresponding to the smallest loading intensities has been used for the determination of the ultimate strength of the platform. The effect of buckling and other destabilizing nonlinear effects shall be taken into account in the plastic analysis of platforms with compressive forces. Whenever nonmonotonic or repeating loads are present, it shall be demonstrated that the structure will not fail by incremental collapse or fatigue.

(vii) Under dynamic loads when plastic strains may occur, the considerations specified in paragraph (c)(3)(v) of this section shall be satisfied and any buckling and destabilizing nonlinear effects shall be taken into account.

(4) *Allowable stresses and load factors.* (i) When the design is based on a working-stress method (see paragraphs (c)(1)(ii) and (c)(3)(ii) of this section), the safety criteria shall be expressed in terms of appropriate basic allowable stresses in accordance with requirements specified in paragraphs (c)(4)(ii) through (vi) of this section.

(ii) For structural members and loadings covered by the AISC publication, S326, Part 1, with the exception of earthquake loadings (see paragraph (c)(4)(v) of this section) and tubular structural members under the combined loading of axial compression and bending, the basic allowable stresses of the members shall be obtained using the AISC specification. For tubular members subjected to the aforementioned interaction, stress limits shall be set in accordance with a defensible formulation.

(iii) Where stresses in members listed in paragraph (c)(4)(ii) of this section are shown to result from forces imposed by the design environmental conditions acting alone or in combination with dead and live loads (see paragraph (c)(2)(ii) of this section), the basic allowable stresses cited in paragraph (c)(4)(ii) of this section, modified by a factor of four-thirds, are permitted for the design environmental load contribution if the resultung structural member sizes are not less than those required for dead and live loads plus operating environmental conditions without the one-third increase in allowable stresses.

(iv) For any two- or three-dimensional stress fields within the scope of the working-stress formulation, the equivalent stress (e.g., the von Mises stress intensity) shall be limited by an appropriate allowable stress less than the yield stress, with the exception of stresses of a highly localized nature. In the latter case, local yielding of the structure is acceptable if it can be demonstrated that such yielding does not lead to progressive collapse of the overall platform and that the general structural stability can be maintained.

(v) When considering loading combinations on individual members or on the overall platform, which include loads defined as accidental (see § 250.135(c)(4) of this part), or in pursuing structural analysis for earthquake loads (see paragraph (c)(2)(iii) of this section), the allowable stress set at a level of the minimum yield or buckling strength of the material shall be considered appropriate.

(vi) Whenever elastic instability, overall or local, may occur before the compressive stresses reach the minimum specified yield strength of the material, appropriate allowable buckling stresses shall govern.

(vii) Whenever the ultimate strength of the platform is used as the basis for the design of its members, the safety factors or the factored loads shall be formulated in accordance with the requirements of AISC publication, S326, Part 2, or an equivalent code. The capability of the primary structural members to develop their predicted ultimate load capacity shall be demonstrated.

(viii) For details of high-stress concentration, consideration shall be given to safety against brittle fracture and to material quality-control procedures.

(5) *Structural response to earthquake loads.* (i) Platforms located in seismically active areas shall be designed to possess adequate strength and stiffness to withstand the effects of an earthquake which has a reasonable likelihood of not being exceeded during the lifetime of the structure (see paragraph (c)(2)(iii) of this section) and remain stable during rare motions of greater severity;

(ii) The adequacy of structural strength shall be demonstrated by analysis to verify that no significant structural damage occurs; and

(iii) Platforms shall also possess adequate ductility to withstand a rare intense earthquake.

(6) *Fatigue assessment.* (i) Structural members and joints for which fatigue is a probable mode of failure and for which past experiences are insufficient to ensure safety from possible cumulative fatigue damage shall be analyzed. Emphasis shall be given to joints and members in the splash zone, those that are difficult to inspect and repair after the platform is in service,

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and those susceptible to corrosion-accelerated fatigue, and

(ii) For structural members and joints which require a detailed analysis of cumulative fatigue damage, the results of the analysis shall indicate a minimum calculated life of twice the design life (see § 250.136(c)(1) of this part) of the platform if there is sufficient structural redundancy to prevent catastrophic failure of the platform as a result of fatigue failure of the member or joint under consideration. If such redundancy does not exist or if the desirable degree of redundancy is significantly reduced as a result of fatigue damages, the results of a fatigue analysis shall indicate a minimum calculated life of three times the design life of the platform.

(d) *Corrosion protection.* All materials shall be protected from the effects of corrosion by a corrosion-protection system. The design of such systems shall take into account the possible existence of stress corrosion, corrosion fatigue, and galvanic corrosion. If the intended sea environment contains unusual contaminants, any special corrosive effects of such contaminants shall also be considered. Protection systems shall be designed in accordance with the National Association of Corrosion Engineers (NACE) publication, NACE Standard RP-01-76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated With Petroleum Production, or other comparable standards.

(e) *Connection of piles to structure.* The attachment of the jacket structure to the piles shall be accomplished by positive, controlled means. Such attachments shall be capable of withstanding the static and long-term cyclic loadings to which they will be subjected.

§ 250.138 Concrete-gravity platforms.

(a) *General.* (1) This section covers the materials, analysis, design, and construction of reinforced and/or prestressed concrete-gravity platforms.

(2) Materials, structural systems, methods of design, and methods of construction that do not conform to the requirements of this section shall not be used unless it is shown that they will result in a safety level at least equivalent to that provided by the direct application of the requirements of this section.

(b) *Materials*—(1) *General.* All materials shall be selected with due attention to their strength and durability in the marine environment. All material tests shall be performed in accordance with the latest, applicable standards of the American Society for Testing and Materials (ASTM).

(2) *Cement.* (i) Cement shall be equivalent to Type I, II, or III portland cement as specified by ASTM C150, Specification for Portland Cement, or portland-pozzolan cement as specified by ASTM C595, Specification for Blended Hydraulic Cements. However, the suitability of Type III cement to serve its intended function shall be demonstrated.

(ii) The tricalcium aluminate content of the cement shall be such as to enhance the corrosion protection of reinforcing steel without impairing the durability of concrete.

(iii) If oil storage is planned and the oil is expected to contain soluble sulfates in amounts that may impair the durability of concrete, the tricalcium content shall be reduced or a suitable coating employed to protect the concrete.

(3) *Water.* (i) Water used in mixing concrete shall be clean and free from injurious amounts of oils, acids, alkalis, salts, organic materials, or other substances that may be deleterious to concrete or steel.

(ii) If nonpotable water is used, the proportions of materials in the concrete shall be based on test concrete mixes using water from the same source. The strength of mortar test cubes made with nonpotable water shall not be significantly below the strength of similar cubes made with potable water.

(iii) Water for reinforced or prestressed concrete or grout shall not contain chlorides and sulfates in amounts detrimental to the durability of the platform.

(4) *Aggregates.* (i) Aggregates shall conform to the requirements of ASTM C33, Specifications for Concrete Aggregates. Lightweight aggregates conforming to ASTM C330, Specifications for Lightweight Aggregates for Structural Concretes, shall only be permitted if they do not pose durability problems and where they are used in accordance with the applicable provisions of the ACI publication, ACI 318–83, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary.

(ii) Marine aggregates shall be washed with fresh water before use to remove the surface and soluble chlorides and sulfates so that the total chloride and sulfate content of the concrete mix water does not exceed the limits of paragraph (b)(3)(iii) of this section.

(iii) The maximum size of the aggregate shall be such that the concrete can be placed without voids.

(5) *Admixtures.* The admixture shall be shown capable of maintaining essentially the same composition and performance throughout the work as the product used in establishing concrete proportions. Admixtures containing chloride ions shall not be used in prestressed concrete or in concrete containing aluminum embedments.

(6) *Reinforcing and prestressing systems.* (i) Reinforcing and prestressing systems shall conform to the requirements of ACI 318–83, and

(ii) Structural steel used in composite structures shall conform to the requirements of § 250.137 of this part.

(7) *Concrete.* The concrete shall be designed to ensure sufficient strength and durability. The quality control of concrete shall conform to ACI 318–83. The mixing, placing, and curing of concrete shall conform to the requirements of paragraph (e) of this section. The water-cement ratio shall be strictly controlled and in no case shall it exceed 0.45.

(8) *Grout for bonded tendons.* (i) Grout for bonded tendons shall conform to ACI 318–83, and

(ii) The maximum allowable contents of chlorides and sulfates determined in accordance with paragraph (b)(3)(iii) of this section shall also apply to grout mixes.

(9) *Post-tensioning ducts.* Post-tensioning ducts shall conform to the requirements of ACI 318–83. Ducts and duct splices shall be watertight and grout-tight and shall be of suitable thickness to prevent crushing, deformation, and blockage.

(10) *Post-tensioning anchorages and couplers.* Post-tensioning anchorages and couplers shall conform to the requirements of ACI 318–83.

(c) *Design requirements*—(1) *General.* (i) The strength of the platform shall be adequate to resist failure of the platform or its components. Among the modes of possible failure that shall be considered are the following:

(A) Loss of overall equilibrium,

(B) Failure of critical sections, and

(C) Instability (buckling).

(ii) Additionally, the following items shall be considered in relation to their potential influences on the platform:

(A) Cracking or spalling,

(B) Deformations,

(C) Corrosion of reinforcement or deterioration of concrete, and

(D) Vibrations.

(2) *Required strength.* The required strength shall conform to requirements of ACI 357R.

(3) *Design strength.* The design strength shall conform to requirements of ACI 318–83 and ACI 357R.

(4) *Other design requirements.* (i) In considering those items listed in

paragraph (c)(1)(ii) of this section, the ability of the platform to withstand unfactored loads in the following combination shall be demonstrated:

$$D+T+L+E_o$$

where L represents the most unfavorable live load; D, the dead load; T, the deformation load; and E_o, the operating environmental load, and

(ii) Crack control design shall be achieved by limiting the crack width in concrete subjected to tension or by limiting the tensile stress in reinforcing steel and prestressing tendons.

(5) *Durability.* (i) Materials, design, construction procedures, and quality control shall be such as to produce satisfactory durability of platforms in a marine environment, and

(ii) The following items shall be considered in the four zones of exposure (see § 250.136(c)(5) of this part):

(A) Submerged zone—chemical deterioration of the concrete, corrosion of the reinforcement and hardware, and abrasion of the concrete;

(B) Splash zone—freeze-thaw durability, corrosion of the reinforcement and hardware, the chemical deterioration of the concrete, and fire hazards;

(C) Atmospheric zone—freeze-thaw durability, corrosion of reinforcement and hardware, and fire hazards; and

(D) Ice zone—mechanical deterioration resulting from the abrasive action of moving ice.

(6) *Fatigue.* Platforms for which fatigue is a probable mode of failure shall be designed to limit the effects of cumulative material fatigue. The effects of fatigue induced by normal stress and those resulting from shear and bond stress shall be considered. Particular attention shall be given to submerged areas subjected to the low-cycle, high-stress components of the anticipated loading history. If an analysis of the fatigue life is performed in lieu of employing other methods to obviate the possibility of fatigue damage, the calculated fatigue life of the platform shall be at least twice the design life (see § 250.136(c)(1) of this part).

(d) *Analysis and design*—(1) *General.* (i) The analysis of platforms shall be pursued under the assumptions of linearly elastic materials and linearly elastic structural behavior, except as listed in paragraphs (d)(1) (ii) and (iii) of this section.

(ii) The inelastic behavior of concrete, based on the true variation of the modulus of elasticity with stress, shall be taken into account whenever its effect reduces the strength of the platform.

(iii) The geometric nonlinearities and the effect of initial deviation of the platform from the design geometry shall be taken into account whenever their effects reduce the strength of the platform.

(iv) Where appropriate, dynamic effects shall be taken into account. The dynamic response shall be determined by a defensible method that includes the effects of the foundation—platform interaction and the effective mass of the surrounding water.

(v) The material properties used in the analysis shall be based on actual laboratory tests or shall follow the appropriate sections of ACI 318–83.

(2) *Analysis of frames.* The analysis of frames shall be performed by a defensible method of structural mechanics. The buckling strength of the frame shall be assessed, and the safety against buckling failure shall be ensured to a degree consistent with the requirements in paragraphs (c)(2) and (c)(3) of this section.

(3) *Analysis of plates, shells, and folded plates.* The buckling strength of these plates shall be determined and a sufficient safety margin against instability shall be ensured.

(4) *Determination of deflections.* Deflections shall be determined by a defensible method. In addition to the immediate (instantaneous) deflections, the long-term deflections due to creep shall be accounted for.

(5) *Analysis and design for bending and axial loads.* The provisions of ACI 318–83 shall apply to the analysis and design of members subject to flexure or axial loads or to combined flexure and axial loads.

(6) *Analysis and design for shear and torsion.* The provisions of ACI 318–83 shall apply to the analysis and design of members subject to shear or torsion or to combined shear and torsion.

(7) *Analysis and design of prestressed concrete.* The analysis and design of prestressed concrete members and structures shall comply with ACI 318–83. In addition, the safety requirements of paragraph (c) of this section shall be satisfied.

(8) *Details of reinforcement and prestressing systems.* Details of reinforcement and prestressing systems shall conform to the requirements of ACI 318–83 with special attention given to the fatigue resistance and ultimate behavior of offshore structures.

(9) *Minimum reinforcement.* The minimum amount of reinforcement shall conform to the requirements of ACI 318–83. Additionally, sufficient reinforcement shall be provided to control crack growth, especially at surfaces exposed to severe hydraulic pressures.

(10) *Concrete cover of reinforcement and prestressing tendons.* The concrete cover of reinforcement and prestressing tendons shall be sufficient to provide for corrosion protection of the steel.

(11) *Seismic analysis.* A dynamic analysis shall be performed to determine the response of the platform to design-earthquake loading. The platform shall be designed to withstand this loading without damage. In addition, a ductility check shall also be performed to ensure that the platform has sufficient ductility to experience deflections more severe than those resulting from the design-earthquake loading without the collapse of the platform or its foundation or any primary structural component.

(12) *Seismic design.* The design of structural members and details of platforms subjected to seismic loading shall ensure maximum ductility at critically loaded sections.

(e) *Construction*—(1) *General.* (i) Construction methods and workmanship shall conform to the provisions of ACI 318–83 and to the following requirements.

(ii) At each stage of construction, i.e., fabrication, initial flotation, towing, and installation in situ, the forces acting on the platform shall be kept within the safety limits listed in paragraph (c) of this section. Appropriate static and/or dynamic analysis shall be performed for the operating loading conditions of each of the construction operations mentioned above. Buoyancy and stability shall be considered during all phases of construction.

(2) *Mixing, placing, and curing of concrete.* (i) Mixing of concrete shall conform to the requirements of ACI 318–83 and ASTM C94, Specification for Ready Mixed Concrete;

(ii) When concreting in cold weather, the temperature of the fresh concrete shall be maintained sufficiently above freezing until the process of hardening is well in progress;

(iii) In hot weather, the temperature of the fresh concrete shall be controlled so that it does not impair attainment of the desired strength and durability;

(iv) The methods for curing concrete shall ensure maximum compressive and tensile strength, durability, and a minimum of cracking; and

(v) The location and workmanship of construction joints shall not impair the strength, crack resistance, and watertightness of the platform.

(3) *Reinforcement.* (i) Reinforcement shall be free from loose rust, grease, oil, deposits of salt, or any other material

that may adversely affect the strength, durability, or bond of the reinforcement. The specified cover of reinforcement shall be maintained accurately. The cutting, bending, and fixing of reinforcement shall ensure that it is correctly positioned and rigidly held.

(ii) The welding of reinforcement shall conform to the requirements of AWS publication, AWS D1.4, Structural Welding Code— Reinforcing Steel.

(4) *Prestressing tendons, ducts, and grouting.* (i) Steps shall be taken to ensure that the achieved prestressing force is that specified in the design.

(ii) Tendons and ducts shall be in a condition that ensures the required strength, durability, and bond.

(iii) The grouting procedures shall produce the required bond strength of the tendons and provide permanent corrosion protection for the tendons. Anchorages shall also be protected adequately against corrosion.

§ 250.139 Foundation.

(a) *General*—(1) *Coverage.* Soil investigations, design considerations for the supporting soil, and the influence of the soil on the foundation structure are addressed in this section, including criteria for the strength and deformation characteristics of the foundation employed by both pile founded and gravity platforms.

(2) *Guidelines.* (i) The degree of design conservatism shall reflect prior experience under similar conditions, the manner and extent of data collection, the scatter of design data, and the consequences of failure;

(ii) For cases where the limits of applicability of any method of calculation employed are not well defined or where the soil characteristics are quite variable, the use of more than one method of calculation or a parametric study of the sensitivity of the important design variables shall be considered, and

(iii) A listing of design parameters, necessary calculations, and test results shall be retained by the designer.

(b) *Site investigation*—(1) *General* (i) The actual extent, depth, and degree of precision to be obtained in the site investigation program shall reflect the type and intended use of the platform, characteristics of the site, similarity of the area based on previous site studies or platform installations as well as the consequences of a failure of the foundation. The site investigation program shall generally consist of three major phases as follows:

(A) Shallow hazards (see paragraph (b)(2) of this section) to obtain relevant geophysical data.

(B) Geological survey (see paragraph (b)(3) of this section) to obtain data of a regional nature concerning the site.

(C) Subsurface investigation and testing (see paragraph (b)(4) of this section) to obtain the necessary geotechnical data. The results of these investigations shall be the basis for the additional site related studies specified in paragraph (b)(5) of this section.

(ii) A complete site-investigation program shall be furnished for each platform. The positioning devices used on the vessel employed in the site investigation as well as those used during the installation of the platform shall have sufficient accuracy to ensure that the data obtained are pertinent to the actual final location of the platform.

(2) *Shallow hazard survey.* (i) Consistent with the objectives of paragraph (b)(1)(i) of this section, a high-resolution or acoustic-profiling survey shall be performed to obtain information on the conditions existing at and near the surface of the seafloor; and

(ii) The information to be obtained from this survey shall include the following items, as appropriate, for the planned platform:

(A) Contours of the sea bed,

(B) Presence of any seafloor surface or near-surface anomaly or obstructions which would adversely affect platform installation at the site,

(C) Shallow faults,

(D) Gas seeps,

(E) Slump blocks,

(F) Occurrence of shallow gas, and

(G) Ice scour of seafloor sediments.

(3) *Geological survey.* (i) Background geological data shall be obtained to provide regional information that can affect the design and siting of the platform. The data shall be considered in planning the subsurface investigation.

(ii) Where necessary, the seismic activity at the site shall be assessed. Fault zones, the extent and geometry of faulting, and attenuation effects of conditions in the vicinity of the site shall be identified.

(iii) For platforms located in a producing area, the possibility of seafloor subsidence shall be considered.

(4) *Subsurface investigation and testing.* (i) The primary objective of the subsurface investigation and testing program shall be the attainment of reliable geotechnical data concerning the stratigraphic and engineering properties of the soil. These data shall be used to properly design the foundation to the desired structural safety level.

(ii) The subsurface investigation and soil testing program shall consist of adequate in situ testing, boring, and sampling to examine all important soil and rock strata. The testing program shall reveal the necessary strength, classification, and deformation properties of the soil. Further tests, as needed, shall describe the dynamic characteristics of the soil.

(iii) At least one borehole having a minimum depth of the anticipated length of the pile plus a zone of influence shall be drilled at the installation site for a pile-supported platform. Previously gathered borehole data may be used on a case-by-case basis, when approved by the Regional Supervisor. The zone of influence shall be sufficient to ensure that punch through failures will not occur. Additional boreholes of a lesser depth shall be required by the Regional Supervisor if discontinuities in the soil are indicated to exist in the area of the platform.

(iv) For a gravity-type platform foundation, the required depth of the borehole shall be equal to at least the depth of the zone of influence which the structure imposes on the supporting soil. Where possible, in situ tests shall be performed to a depth that will include the anticipated shearing failure zone.

(v) When samples from the field are sent to a laboratory for further testing, they shall be packed carefully and accurately labeled, and the results of visual inspections shall be recorded.

(vi) A summary report showing the results of the soil testing program shall be prepared. The report shall describe briefly the various field and laboratory test methods employed and shall indicate the applicability of these methods as they relate to the quality of the sample, the type of soil, and the anticipated design application.

(vii) The engineering properties of the soil to be used in the design shall be listed for each stratum. The selected design properties shall specify the uncertainties inherent in the overall testing program and in the reliability and applicability of the individual test methods.

(5) *Additional requirements.* Based on the results of the overall site investigation program, studies shall be performed, as applicable, to assess the following effects of the installed platform:

(i) Scouring potential of the seafloor.

(ii) Hydraulic instability and the occurrence of sand waves.

(iii) Instability of slopes in the area where the platform is to be placed.

(iv) Liquefaction and/or possible reduction of soil strength due to increased pore pressures, and

(v) Degradation of subsea permafrost layers.

(c) *Foundation design requirements*—(1) *General.* (i) The loadings used in the design of the foundation shall include those defined in paragraph (c)(6)(ii) of this section.

(ii) Foundation displacements shall be evaluated to ensure that they are within limits that do not impair the intended function and safety of the platform.

(iii) The soil and the platform shall be considered as an interactive system, and the results of the analysis as required in paragraphs (c)(2) through (c)(6) of this section shall be evaluated from this point of view.

(2) *Cyclic loading effects.* Evaluation of the short-term and long-term effects of cyclic loading with respect to changes in soil characteristics, whether caused by conditions during installation, seismic activity, or storms, shall be accomplished by using defensible methods.

(3) *Scour.* (i) For unprotected foundations, the depth and lateral extent of scouring, as determined in the site investigation program, shall be accounted for in design; and

(ii) If scour is not accounted for in design, either effective protection shall be furnished soon after the installation of the platform or frequent visual inspection shall be carried out, particularly after major storms.

(4) *Settlements and displacements.* (i) Based on the type and function of the platform, tolerable limits shall be established for settlements and lateral deflections. Due consideration shall be given to the effect of these movements on risers, pilings, and other components which interact with the platform;

(ii) Maximum allowable values of platform movements, as limited by these structural considerations or overall platform stability, shall be considered in the design.

(5) *Dynamic considerations.* (i) For dynamic-loading conditions, a defensible method shall be employed to simulate the interactive effects between the soil and the platform, and

(ii) The evaluation of the dynamic response of the platform shall account for, as appropriate, the nonlinear and inelastic characteristics of the soil, the possible deterioration of strength, the increased or decreased damping due to cyclic soil loading, and the influence of nearby platforms.

(6) *Loading conditions.* (i) Loadings producing the worst effects on the foundation during and after installation shall be addressed; and

(ii) In-place platform loadings to be checked shall include at least those relating to both the operating and design environmental conditions, combined in accordance with the following:

(A) Operating environmental conditions with dead and live loads appropriate to the function and operation of the platform,

(B) Design environmental conditions with dead and live loads appropriate to the function and operation of the platform, and

(C) Design environmental conditions with dead and minimum live loads appropriate to the function and operation of the platform.

(d) *Pile foundations*—(1) *General.* The following requirements apply to pile-founded platforms. Pertinent parts of these requirements dealing with steel design shall be consulted regarding the design of the steel piles.

(i) In the design of individual piles and piles in a group, the effects of axial, bending, and lateral loads shall be addressed.

(ii) The design of a pile shall reflect the interactive behavior between the soil and the pile, between the pile and the platform, and between piles in a group.

(iii) Methods of pile installation shall be consistent with the type of soil at the site and the installation equipment available. If unexpectedly high-driving resistance or other conditions lead to a failure of the pile to reach the desired penetration, the pile's capacities shall be reevaluated by considering the actual installation situation.

(iv) Pile driving shall be performed and supervised by qualified and experienced personnel. Driving records which include such information as blowcounts and estimated hammer performance and stoppages shall be retained.

(v) Where necessary, the effects of bottom instability in the vicinity of the platform shall be assessed.

(2) *Axial piles.* (i) For piles in compression, the axial capacity shall be considered to consist of the skin friction, Q_f, developed along the length of the pile and the end bearing, Q_p, at the tip of the pile. The various parameters needed to evaluate Q_f and Q_p shall be predicted by using a defensible analytical method that employs reliably obtained soil data consistent with the prediction method selected. The acceptability of any method used to predict the components of pile resistance shall be demonstrated by showing satisfactory performance of the method under conditions similar to those existing at the actual site.

(ii) The results of the dynamic pile driving analysis alone shall not be used to predict the axial load capacity of a pile.

(iii) For piles driven through clay, the estimated skin friction developed over any increment of the pile surface shall not exceed the shear strength of the clay.

(iv) The capacity of the internal plug of an open-ended pile shall be considered since it may limit the estimated end bearing to the pile.

(v) When combining side friction and end-bearing effects in determining axial pile capacity, the load deflection response of the soil-pile system shall be addressed.

(vi) For piles subjected to pullout loads, the contribution of the end resistance of the pile to its axial capacity shall not be considered. The possible variation of predicted pile-skin friction between the compressive and tensile modes of the axial-pile loading shall be considered.

(3) *Laterally loaded piles.* (i) In evaluating the pile's behavior when acted upon by lateral loadings, the combined load deflection characteristics of the soil and the pile and the pile and the platform shall be addressed.

(ii) The representation of the soil's lateral displacement when it is subjected to lateral loads shall adequately reflect the deterioration of the lateral load capacity when the soil is subjected to cyclic loading.

(iii) The description of the lateral load versus displacement characteristics for the various soil strata shall be based on constitutive data obtained from suitable soil tests. The use of empirical methods to provide the description of the soil's lateral response shall be permitted if such methods are documented.

(iv) Where applicable, the rapidly deteriorating cyclic lateral load capacity of stiff clays, especially those exhibiting the presence of a secondary structure, shall be addressed in the design.

(v) Calculation of pile deflection and stress induced by lateral loads shall account for the nonlinear interaction between the soil and the pile.

(4) *Pile groups.* Where applicable, the effects of close spacing on the load and deflection characteristics of pile groups shall be determined. The allowable load for a group, both axial and lateral, shall not exceed the sum of the apparent individual pile allowable loads.

(5) *Plastic analysis.* When the design of a platform is based on the formation collapse mechanisms associated with a plastic analysis method, influence of the soil's support on the pile shall be addressed.

(e) *Gravity platforms foundations*—(1) *General.* The following requirements apply to soil foundations for gravity platforms. Section 250.138 of this part shall be consulted regarding the design of the base slab.

(i) The influence of hydraulic and slope instability, if any, shall be determined for the structural loading cases that include the design environmental loading.

(ii) The effects of adjacent platforms and the variation of soil properties in the horizontal direction shall be considered, as appropriate.

(iii) The stability of the foundation with regard to bearing and sliding failure modes shall be investigated by employing the soil shear strengths determined with consideration of paragraphs (b)(4) and (c)(2) of this section.

(iv) When an underpressure or overpressure is experienced by the seafloor under the platform, provisions shall be made to prevent piping that could impair the integrity of the foundation.

(v) Initial, consolidation, and secondary settlements, as well as permanent horizontal displacements, shall be determined.

(vi) If the intended site is not level, the predicted tilt of the overall platform shall be based on the average bottom slope of the seafloor and the tolerance of the measuring device used in the site-investigation program. Differential settlement shall also be calculated and the tilting of the platform caused by this settlement shall be combined with the predicted structural tilt of the overall platform. Any increased loading effects caused by tilting of the platform shall be addressed in stability requirements specified for the foundation.

(2) *Stability.* (i) The bearing capacity and lateral resistance shall be calculated by considering the most unfavorable combination of loads. The long-term redistribution of bearing pressures under the base slab shall be considered to ensure that the maximum edge pressures are used in the design of the base.

(ii) The lateral resistance of the platform shall be investigated considering various potential shearing planes. The presence of any soft layers shall require special consideration.

(iii) Calculations for overturning moment and vertical forces induced by the passage of a wave shall include the vertical pressure distribution across the top of the foundation and along the seafloor. The foundation shall not lose contact with the soil due to uplift created by the maximum overturning moment.

(iv) The capacity of the foundation to resist a deep-seated bearing failure shall be analyzed.

(v) Where present, the additional effects of penetrating walls or skirts that transfer vertical and lateral loads to the soil shall be investigated for their contribution to bearing load capacity and lateral resistance.

(3) *Soil reaction on the platform.* (i) For conditions during and after installation, the reaction of the soil against all structural members seated on or penetrating into the seafloor shall be determined and accounted for in the design of these members.

(ii) The distribution of soil reactions shall be based on the results obtained in paragraphs (b)(2) and (b)(4) of this section, and the calculations of soil reactions shall account for any deviation from a plane surface, the load-deflection characteristics of the soil, and the geometry of the platform base.

(iii) Where applicable, effects of local soil stiffening, nonhomogeneous soil properties, and boulders and other obstructions shall be addressed in the design. During installation, the possibility of local contact pressures due to irregular contact between the base and the seafloor shall be considered. Contact pressures shall be added to the hydrostatic pressure.

(iv) The penetration resistance of structural elements projecting into the seafloor below the foundation structure shall be analyzed. The design of the ballasting system shall reflect uncertainties associated with achieving the required penetration of the platform.

§ 250.140 Marine operations.

(a) *General*—(1) Marine operations means all activities necessary for the transportation and installation of a platform from the time it enters the marine environment until it is fixed in place at its final destination. Marine operations generally include such activities as follows:

(i) Lifting and mooring,
(ii) Loadout or initial flotation,
(iii) Fabrication afloat,
(iv) Towing,
(v) Launching and uprighting,
(vi) Submergence,
(vii) Pile installation, and
(viii) Final field erection.

(2) The requirements of this section apply to all platforms covered by this subpart, regardless of structural type or material of construction.

(b) *Objective.* The structural strength and integrity of a platform shall not be reduced or otherwise jeopardized by the performance of the activities required to install the platform on site. The type and magnitude of loads and load combinations to which a platform will be exposed during marine operations shall be the subject of an analysis pursuant to paragraph (c) of this section, except where the use of proven and well-controlled methods of fabrication and installation are proposed and justified. Sufficient equipment shall be provided to ensure installation of the platform in a safe and well-controlled manner.

(c) *Analysis.* (1) Analyses shall be performed to determine the type and magnitude of the loads and load combinations to which the platform will be exposed during the performance of marine operations.

(2) Analyses shall be performed to ensure that the structural design is sufficient to withstand the type and magnitude of the loads and load combinations determined, in accordance with paragraph (c)(1) of this section, without loss or degradation of structural integrity.

(3) Analyses shall be performed to ensure that the platform or its means of support has sufficient hydrostatic stability and reserve buoyancy to allow for successful execution of all phases of marine operations.

§ 250.141 Inspection during construction.

(a) *General*—(1) *Coverage.* All pile-supported and gravity platforms covered by this subpart shall be inspected during the construction phase. Additional requirements for steel pile-supported platforms are contained in paragraph (b) of this section, and additional requirements pertaining to concrete-gravity platforms are contained in paragraph (c) of this section. The phases of construction subject to inspection include material manufacture, fabrication, loadout, transportation, positioning, installation, and final field erection.

(2) *Objective.* Inspections during construction are to verify that the platform is constructed in accordance with the approved construction plan. Any unusual or innovative application of materials or methods of construction not adequately covered by the requirements of this section shall receive special attention during compliance inspections relevant to its effect on the integrity of the platform.

(3) *Remedial action.* If construction inspection results reveal that materials, procedures, or workmanship deviate significantly from the approved design, remedial action shall be taken.

(4) *Identification of materials.* The origin of materials used in the platform and the results of relevant material tests for all significant structural materials shall be retained and made readily available for inspection by MMS representatives during all stages of construction. Records shall be kept of the locations throughout the platform of

the various heat numbers for such materials.

(b) *Steel pile-supported platforms*—(1) *Scope*. Inspections of steel pile-supported platforms shall address the following topics, as appropriate:

(i) Material quality and forming,

(ii) Welder and welding procedure qualifications,

(iii) Weld inspection,

(iv) Tolerances and alignments, and

(v) Corrosion-control systems.

(2) *Material quality and forming*. Inspection shall verify that all materials employed are of good quality and suitable for their intended service as specified in the approved design. Inspection shall ensure the compliance of materials to the relevant material standards selected in the design of the platform. Inspection shall ensure that formed members satisfy the dimensional tolerances listed in the design.

(3) *Welder and welding-procedure qualifications*. (i) Welders shall be tested and possess a current welder's certification.

(ii) All welding procedures to be employed shall be tested and certified for the production of satisfactory welds. Welding procedures previously tested and certified shall be considered prequalified.

(4) *Weld inspection*. (i) Inspection shall include, but not be limited to, visual inspection of all welds and representative magnetic particle or dye penetrant inspection of welds of Weld Classes A and B materials (see § 250.137(a)(4) of this part) not subjected to ultrasonic or radiographic inspection. The extent of ultrasonic or radiographic inspection shall be specified and shall emphasize, but not be confined to, welds of Weld Class A materials.

(ii) The extent and methods of inspection shall be consistent with the classification of applications (see § 250.137(a)(4) of this part) of the area being examined.

(iii) Any welding not meeting the acceptance criteria specified in the inspection plan shall be rejected and appropriate remedial action taken.

(5) *Tolerances and alignments*. Overall dimensional tolerances, forming tolerances, and local alignment tolerances shall be commensurate with those considered in developing the structural design. Inspections shall ensure that the dimensional tolerance criteria are being met. Out of roundness of structural elements for which buckling is the anticipated mode of failure shall receive individual inspection.

(6) *Corrosion-control systems*. Corrosion-control systems employed on the platform shall be inspected to ensure that they are installed as specified in the approved design. Inspection shall ensure that proper protection against galvanic effects, especially in locations where nonferrous materials are used in conjunction with steel, has been provided in the corrosion-control system.

(7) *Additional inspection items*. (i) The provisions of paragraphs (b)(2) through (b)(6) of this section relate only to matters directly affecting the onshore construction phases of the platform. Other items relating to the onshore construction site and the construction phases from loadout to final erection shall also be performed.

(ii) The construction site shall be inspected to ensure that adequate consideration has been given to the following items:

(A) Support of the platform during construction,

(B) Employment of a sufficient number of certified welders and inspectors to maintain an adequate quality of work, and

(C) Weathertight storage of welding consumables under conditions specified by their manufacturers.

(iii) Inspection shall verify that the following operations have been accomplished in a manner conforming to approved plans or drawings:

(A) Loadout,

(B) Tie down,

(C) Positioning at the site,

(D) Installation (see § 250.139(d)(1)(v) of this part for piles), and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during towing operations exceeded those employed in the analyses required by § 250.140(c) of this part.

(v) When the inspections indicate that overstressing has occurred during loadout, transportation, or installation, the affected parts of the platform shall be surveyed to determine the extent of actual damage, if any. Where necessary, a reevaluation of the structural capacity shall be carried out, considering the results of the survey.

(8) *Records*. The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Mill certificates,

(ii) Weld-procedure qualification records,

(iii) Weld inspection records,

(iv) Dimensional tolerance reports,

(v) Towing records, and

(vi) Pile driving records.

(c) *Concrete-gravity platforms*. (1) *Scope*. Inspection of concrete-gravity platforms shall address the following topics, as appropriate:

(i) Preparation for concrete production and placement;

(ii) Batching, mixing, and placing concrete;

(iii) Form removal and concrete curing;

(iv) Pretensioning and grouting;

(v) Joints; and

(vi) Finished concrete.

(2) *Preparation for concrete production and placement*. (i) Inspection shall ensure that the pertinent physical properties of cement, reinforcing steel, prestressing tendons, and appurtenances comply with those specified in the approved design.

(ii) Forms and shoring supporting the forms shall be inspected to ensure that they are adequate in number and type and are located correctly.

(iii) The dimensional tolerances of the forms shall be inspected to ensure that the finished dimensional tolerances are comparable to those allowed for in the approved design.

(iv) Reinforcing steel, prestressing tendons, post-tensioning ducts, anchorages, and any other embedded steel shall be inspected, as appropriate, for size, bending, spacing, location, firmness of installation, surface condition, vent locations, proper duct coupling, and duct capping.

(3) *Batching, mixing, and placing concrete*. (i) Inspections shall be performed to ensure that the procedures for the production and placement of concrete provide a well-mixed and well-compacted concrete. The procedures shall also limit segregation, loss of material, contamination, and premature initial set during all operations.

(ii) Inspection shall verify that the mix components of each batch of concrete are properly proportioned and within allowable variations specified in the approved design. Inspection shall ensure that the water/cement ratio of each batch is within the limit specified in § 250.138(b)(7) of this part.

(iii) Aggregate gradation, cleanliness, moisture content, and unit weight shall be tested. The frequency of testing shall be determined taking into account the uniformity of the supply source, volume of concrete used, and variations of atmospheric conditions.

(iv) Mix water shall be tested for purity following specified methods and schedules.

(v) Testing during the production of concrete shall be performed to monitor, as a minimum, the following concrete qualities:

(A) Consistency,

(B) Air content, and

(C) Strength.

(4) *Form removal and concrete curing*. (i) Inspection shall ensure that forms and form supports are not removed until the platform has attained sufficient strength to bear its own weight, construction loads, and anticipated environmental loads without undue deformation and that they are removed according to schedule.

(ii) Inspection shall ensure that curing of concrete is accomplished in accordance with the provisions of a predetermined procedure.

(iii) Where the construction procedures require the submergence of recently placed concrete, inspection shall ensure that methods for protecting the concrete from the effects of salt water are properly executed.

(5) *Pretensioning and grouting*. (i) Inspection shall verify that the sequence of tendon tensioning and the resulting elongation and force are in accordance with provisions specified in the approved design.

(ii) Pretensioning or post-tensioning stress shall be determined by measuring both tendon elongation and tendon force. Inspection shall verify that the variation of measurements does not exceed a specified amount.

(iii) Inspection shall verify that grout mix proportions and ambient conditions during mixing are in accordance with provisions designated in the approved design. Tests for grout, viscosity expansion, bleeding, compressive strength, and setting time shall be performed to ensure compliance with design requirements. Procedures shall be observed to ensure that ducts are completely filled.

(iv) Anchorages shall be inspected to ensure that they are located and sized as specified in the design and are provided with adequate cover to mitigate the effects of corrosion.

(6) *Joints*. Where appropriate, leak testing of construction joints shall be performed by using specified procedures. When deciding which joints to inspect, consideration shall be given to the hydrostatic head on the subject joint during normal operation, the consequence of a leak at the subject joint, and the ease of repair once the platform is in service.

(7) *Finished concrete*. (i) The surface of the hardened concrete shall be completely inspected for cracks, honeycombing, popouts, spalling, and other surface imperfections.

(ii) The platform shall be examined by using a calibrated rebound hammer or a similar nondestructive examination device. Inspection shall verify that the results of surface inspection, cylinder strength test, or nondestructive examination are in accordance with the approved design criteria.

(iii) The completed sections of the platform shall be checked for compliance to specified design tolerances of thickness and alignment and, to the extent practicable, the location of reinforcing and prestressing steel and post-tensioning ducts.

(8) *Additional inspection items*. (i) While the provisions of paragraphs (c)(2) through (c)(7) of this section relate only to some matters directly affecting the onshore or nearshore construction phases of the platform, other items relating to such phases and from loadout to final erection shall also be considered.

(ii) Inspection shall ensure that adequate consideration has been given the following items:

(A) Support of the structure during construction,

(B) Employment of a sufficient number of competent workmen and inspectors to maintain an adequate quality of work,

(C) Storage of cement and prestressing tendons in weathertight areas,

(D) Storage of admixtures and epoxies according to manufacturers' specifications, and

(E) Storage of aggregates to limit segregation, contamination by deleterious substances, and moisture variations within the stockpile.

(iii) Inspection shall verify that the following operations, as applicable to the planned platform, have been accomplished in a manner conforming to approved plans or drawings developed for these operations:

(A) Loadout,

(B) Towing arrangements,

(C) Positioning at the site,

(D) Installation, and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during the towing operations exceeded those employed in the analyses required by § 250.140(c) of this part.

(9) *Records*. The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Material certificates and test reports;

(ii) Tensioning and grouting records;

(iii) Concreting records including weight, moisture content, mix proportions, test methods and results, ambient conditions during the pour, and test equipment calibration data;

(iv) Deviations from design or fabrication specifications and repairs carried out;

(v) Towing records; and

(vi) Data on initial structural settlements.

§ 250.142 Periodic inspection and maintenance.

(a) All platforms installed in the OCS shall be inspected periodically in accordance with the provisions of API RP2A, section 7, Surveys. However, use of an inspection interval which exceeds 5 years shall require approval by the Regional Supervisor. Proper maintenance shall be performed to assure the structural integrity of the platform as a workbase for oil and gas operations.

(b) A report shall be submitted annually on November 1 to the Regional Supervisor stating which platforms have been inspected in the preceding 12 months, the extent and area of inspection, and the type of inspection employed, i.e., visual, magnetic particle, ultrasonic testing. A summary of the testing results shall be submitted indicating what repairs, if any, were needed and the overall structural condition of the platform.

§ 250.143 Platform removal and location clearance.

(a) The lessee shall remove all structures in a manner approved by the Regional Supervisor to assure that the location has been cleared of all obstructions to other activities in the area.

(b) All platforms (including casing, wellhead equipment, templates, and piling) shall be removed by the lessee to a depth of at least 15 feet below the ocean floor or to a depth approved by the Regional Supervisor based upon the type of structure or ocean-bottom conditions.

(c) The lessee shall verify by appropriate means that the location has been cleared of all obstructions. The results of the location clearance survey shall be submitted to the Regional Supervisor by means of a letter from the company performing the work certifying that the area was cleared of all obstructions, the date the work was performed, the extent of the area surveyed, and the survey method used.

§ 250.144 Records.

The lessee shall compile, retain, and make available to Minerals Management Service representatives for the functional life of all platforms, the as-built structural drawings, the design assumptions and analyses, a summary of the nondestructive examination records, and the inspection results from platform inspections required by § 250.142 of this part.

Subpart J—Pipelines and Pipeline Rights-of-Way

§ 250.150 General requirements.

(a) Pipelines and associated valves, flanges, and fittings shall be designed, installed, operated, maintained, and abandoned to provide safe and pollution-free transportation of fluids in a manner which does not unduly interfere with other uses in the Outer Continental Shelf (OCS).

(b) An application shall be submitted to the Regional Supervisor and approval obtained prior to the installation, modification, or abandonment of a pipeline which qualifies as a lease term pipeline (see § 250.151, Definitions) and prior to the installation of a right-of-way pipeline or the modification or relinquishment of a pipeline right-of-way.

(c) A pipeline which qualifies under the Department of the Interior's (DOI) jurisdiction (DOI pipeline) shall meet the requirements of § 250.150 through 250.158 of this subpart. The DOI's exclusive jurisdiction with respect to pipeline activities extends upstream from the outlet flange at each facility where produced hydrocarbons are first separated, dehydrated, or otherwise processed to each production well in the OCS. In addition, those pipelines necessary for the development of a lease, e.g., gas-lift gas or supply pipelines, are under DOI's exclusive jurisdiction.

(d) A pipeline which qualifies as a right-of-way pipeline (see § 250.151, Definitions) shall not be installed until a right-of-way has been requested and granted in accordance with this subpart.

(e)(1) The Regional Supervisor may suspend any pipeline operation upon a determination by the Regional Supervisor that continued activity would threaten or result in serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, mineral deposits, or the marine, coastal, or human environment.

(2) The Regional Supervisor may also suspend pipeline operations or a right-of-way grant if the Regional Supervisor determines that the lessee or right-of-way holder has failed to comply with a provision of the Act or any other applicable law, a provision of these or other applicable regulations, or a condition of a permit or right-of-way grant.

(3) The Secretary of the Interior (Secretary) may cancel a pipeline permit or right-of-way grant in accordance with 43 U.S.C. 1334(a)(2). A right-of-way grant may be forfeited in accordance with 43 U.S.C. 1334(e).

§ 250.151 Definitions.

Terms used in this subpart shall have the meanings given below:

"Lease term pipelines" are those pipelines owned and operated by a lessee or operator and are wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of that lessee or operator.

"Pipelines" are the piping, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced water. (Piping confined to a production platform or structure is covered in Subpart H, Production Safety Systems, and is excluded from this subpart.)

"Right-of-way pipelines" are those pipelines which—

(a) Are contained within the boundaries of a single lease or group unitized leases but are not owned and operated by the lessee or operator of that lease or unit,

(b) Are contained within the boundaries of contiguous (not cornering) leases which do not have a common lessee or operator,

(c) Are contained within the boundaries of contiguous (not cornering) leases which have a common lessee or operator but are not owned and operated by that common lessee or operator, or

(d) Crosses any portion of an unleased block(s).

§ 250.152 Design requirements for DOI pipelines.

(a) The internal design pressure for steel pipe shall be determined in accordance with the following formula:

$$P=\frac{2(S)(t)}{D}\times(F)(E)(T)$$

For limitations see section 841.121 of American National Standards Institute (ANSI) B31.8 Where—

P=Internal design pressure in pounds per square inch (psi).
S=Specified minimum yield strength, in psi, stipulated in the specification under which the pipe was purchased from the manufacturer or determined in accordance with section 811.253(h) of ANSI B31.8.
D=Nominal outside diameter of pipe, in inches.
t=Nominal wall thickness, in inches.
F=Construction design factor of 0.72 for the submerged component and 0.60 for the riser component.
E=Longitudinal joint factor obtained from Table 841.1B of ANSI B31.8. (See also section 811.253(d)).
T=Temperature derating factor obtained from Table 841.1C of ANSI B31.8.

(b)(1) Pipeline valves shall meet the minimum design requirements of American Petroleum Institute (API) Spec 6A, API Spec 6D, or the equivalent. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those standards.

(2) Pipeline flanges and flange accessories shall meet the minimum design requirements of ANSI B16.5, API Spec 6A, or the equivalent. Each flange assembly must be able to withstand the maximum pressure at which the pipeline is to be operated and to maintain its physical and chemical properties at any temperature to which it is anticipated that it might be subjected in service.

(3) Pipeline fittings shall have pressure-temperature ratings based on stresses for pipe of the same or equivalent material. The actual bursting strength of the fitting shall at least be equal to the computed bursting strength of the pipe.

(c) The maximum allowable operating pressure (MAOP) shall not exceed the least of the following:

(1) Internal design pressure of the pipeline, valves, flanges, and fittings;

(2) Eighty percent of the hydrostatic pressure test (HPT) of the pipeline; or

(3) If applicable, the MAOP of the receiving pipeline when the proposed pipeline and the receiving pipeline are connected at a subsea tie-in.

(d) If the maximum source pressure (MSP), exceeds the pipeline's MAOP, redundant safety devices meeting the requirements of section A9 of API RP 14C shall be installed and maintained. Pressure safety valves (PSV) may be used only after a determination by the Regional Supervisor that the pressure will be relieved in a safe and pollution-free manner. The setting level at which the primary and redundant safety equipment actuates shall not exceed the pipeline's MAOP.

(e) Pipelines shall be provided with an external protective coating capable of minimizing underfilm corrosion and a cathodic protection system designed to mitigate corrosion for at least 20 years.

(f) Pipelines shall be designed and maintained to mitigate any reasonably anticipated detrimental effects of water currents, storm or ice scouring, soft bottoms, mud slides, earthquakes, subfreezing temperatures, and other environmental factors.

§ 250.153 Installation, testing, and repair requirements for DOI pipelines.

(a)(1) Pipelines greater than 8-5/8 inches in diameter and installed in water depths of less than 200 feet shall be buried to a depth of at least 3 feet

unless they are located in pipeline congested areas or seismically active areas as determined by the Regional Supervisor. Nevertheless, the Regional Supervisor may require burial of any pipeline if the Regional Supervisor determines that such burial will reduce the likelihood of environmental degradation or that the pipeline may constitute a hazard to trawling operations or other uses. A trawl test or diver survey may be required to determine whether or not pipeline burial is necessary or to determine whether a pipeline has been properly buried.

(2) Pipeline valves, taps, tie-ins, capped lines, and repaired sections that could be obstructive shall be provided with at least 3 feet of cover unless the Regional Supervisor determines that such items present no hazard to trawling or other operations. A protective device may be used to cover an obstruction in lieu of burial if it is approved by the Regional Supervisor prior to installation.

(3) Pipelines shall be installed with a minimum separation of 18 inches at pipeline crossings and from obstructions.

(4) Pipeline risers installed after [Insert date of publication in the **Federal Register**] shall be protected from physical damage that could result from contact with floating vessels. Riser protection on pipelines installed on or before [Insert date of publication in the **Federal Register**] may be required when the Regional Supervisor determines that significant damage potential exists.

(b)(1) Pipelines shall be hydrostatically tested with water at a stabilized pressure of at least 1.25 times the MAOP for at least 8 hours when installed, relocated, uprated, or reactivated after being out-of-service for more than 1 year.

(2) Prior to returning a pipeline to service after a repair, the pipeline shall be pressure tested with water or processed natural gas at a minimum stabilized pressure of at least 1.25 times the MAOP for at least 2 hours.

(3) Pipelines shall not be pressure tested at a pressure which produces a stress in the pipeline in excess of 95 percent of the specified minimum-yield strength of the pipeline. A temperature recorder measuring test fluid temperature synchronized with a pressure recorder along with deadweight test readings shall be employed for all pressure testing. When a pipeline is pressure tested, no observable leakage shall be allowed. Pressure gauges and recorders shall be of sufficient accuracy to verify that leakage is not occurring.

(c) When a pipeline is repaired utilizing a clamp, the clamp shall be a full encirclement clamp able to withstand the anticipated pipeline pressure.

(4) The Regional Supervisor may require pressure testing of pipelines to verify the integrity of the system when the Regional Supervisor determines that there is a reasonable likelihood that the line has been damaged or weakened by external or internal conditions.

§ 250.154 Safety equipment requirements for DOI pipelines.

(a) The lessee shall ensure the proper installation, operation, and maintenance of safety devices required by this section on all incoming, departing, and crossing pipelines on platforms.

(b)(1) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV).

(2) Incoming pipelines delivering to a production platform shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform. The SDV shall be connected to the automatic- and remote-emergency shut-in systems.

(3) Departing pipelines receiving production from production facilities shall be protected by high- and low-pressure sensors (PSHL) to directly or indirectly shut in all production facilities. The PSHL shall be set at 15 percent above and below the normal operating pressure range. However, high pilots shall not be set above the pipeline's MAOP.

(4) Crossing pipelines on production or manned nonproduction platforms which do not receive production from the platform shall be equipped with an SDV immediately upon boarding the platform. The SDV shall be operated by a PSHL on the departing pipelines and connected to the platform automatic- and remote-emergency shut-in systems.

(5) The Regional Supervisor may require that oil pipelines be equipped with a metering system to provide a continuous volumetric comparison between the input to the line at the structure(s) and the deliveries onshore. The system shall include an alarm system and shall be of adequate sensitivity to detect variations between input and discharge volumes. In lieu of the foregoing, a system capable of detecting leaks in the pipeline may be substituted with the approval of the Regional Supervisor.

(6) Pipelines incoming to a subsea tie-in shall be equipped with a block valve and an FSV. Bidirectional pipelines connected to a subsea tie-in shall be equipped with only a block valve.

(7) Gas-lift or water-injection pipelines on unmanned platforms need only be equipped with an FSV installed immediately upstream of each casing annulus or the first inlet valve on the christmas tree.

(8) Bidirectional pipelines shall be equipped with a PSHL and an SDV immediately upon boarding each platform.

(9) Pipeline pumps shall comply with Section A7 of API RP 14C. The setting levels for the PSHL devices are specified in paragraph (b)(3) of this section.

(c) If the required safety equipment is rendered ineffective or removed from service on pipelines which are continued in operation, an equivalent degree of safety shall be provided. The safety equipment shall be identified by the placement of a sign on the equipment stating that the equipment is rendered ineffective or removed from service.

§ 250.155 Inspection requirements for DOI pipelines.

(a) Pipeline routes shall be inspected at time intervals and methods prescribed by the Regional Supervisor for indication of pipeline leakage. The results of these inspections shall be retained for at least 2 years and be made available to the Regional Supervisor upon request.

(b) When pipelines are protected by rectifiers or anodes for which the initial life expectancy of the cathodic protection system either cannot be calculated or calculations indicate a life expectancy of less than 20 years, such pipelines shall be inspected annually by taking measurements of pipe-to-electrolyte potential measurements.

§ 250.156 Abandonment and out-of-service requirements for DOI pipelines.

(a)(1) A pipeline may be abandoned in place if, in the opinion of the Regional Supervisor, it does not constitute a hazard to navigation, commercial fishing operations, or unduly interfere with other uses in the OCS. Pipelines to be abandoned in place shall be flushed, filled with seawater, cut, and plugged with the ends buried at least 3 feet.

(2) Pipelines abandoned by removal shall be pigged, unless the Regional Supervisor determines that such procedure is not practical, and flushed with water prior to removal.

(b)(1) Pipelines taken out-of-service shall be blind flanged or isolated with a closed block valve at each end.

(2) Pipelines taken out-of-service for a period of more than 1 year shall be flushed and filled with inhibited seawater.

(3) Pipelines taken out-of-service shall be returned to service within 5 years or be abandoned in accordance with the

requirements of paragraphs (a) (1) or (2) of this section.

§ 250.157 Applications.

(a) Applications for the approval of the installation of a lease term pipeline or for the granting of a right-of-way shall be submitted in quadruplicate to the Regional Supervisor and shall include the following:

(1) Plat(s) drawn to a scale specified by the Regional Supervisor showing major features and other pertinent data including area, lease, and block designations; water depths; route; length in Federal waters; width of right-of-way, if applicable; connecting facilities; size; product(s) to be transported with anticipated gravity or density; burial depth; direction of flow; X-Y coordinates of key points; and the location of other pipelines that will be connected to or crossed by the proposed pipeline(s). The initial and terminal points of the pipeline and any continuation into State jurisdiction shall be accurately located even if the pipeline is to have an onshore terminal point. A plat(s) submitted for a pipeline right-of-way shall bear a signed certificate upon its face by the engineer who made the map that certifies that the right-of-way is accurately represented upon the map and that the design characteristics of the associated pipeline are in accordance with applicable regulations.

(2) A schematic drawing showing the size, weight, grade, wall thickness, and type of line pipe and risers; pressure-regulating devices (including back-pressure regulators); sensing devices with associated pressure-control lines; PSV's and settings; SDV's, FSV's, and block valves; and manifolds. This schematic drawing shall also show input source(s), e.g., wells, pumps, compressors, and vessels; maximum input pressure(s); the rated working pressure, as specified by ANSI or API, of all valves, flanges, and fittings; the initial receiving equipment and its rated working pressure; and associated safety equipment and pig launchers and receivers.

(3) General information as follows:

(i) Description of cathodic protection system. If pipeline anodes are to be used, specify the type, size, weight, number, spacing, and anticipated life;

(ii) Description of external pipeline coating system;

(iii) Description of internal protective measures;

(iv) Specific gravity of the empty pipe;

(v) MSP;

(vi) MAOP and calculations used in its determination;

(vii) Hydrostatic test pressure, medium, and period of time that the line will be tested;

(viii) MAOP of the receiving pipeline or facility,

(ix) Proposed date for commencing installation and estimated time for construction; and

(x) Type of protection to be afforded crossing pipelines, subsea valves, taps, and manifold assemblies, if applicable.

(4) The application shall include a description of any additional design precautions which were taken to enable the pipeline to withstand the effects of water currents, storm or ice scouring, soft bottoms, mudslides, earthquakes, permafrost, and other environmental factors.

(5) The application shall include a shallow hazards survey report and, if applicable, an archaeological resource report which covers the entire length of the pipeline. However, with approval of the Regional Supervisor, a shallow hazards analysis may be included in a lease term pipeline application in lieu of the shallow hazards survey report. In addition, the Regional Supervisor may require the submission of the data upon which the report or analysis is based.

(b) Applications to modify an approved lease term pipeline or right-of-way grant shall be submitted in quadruplicate to the Regional Supervisor. These applications need only address those items in the original application affected by the proposed modification.

(c) Applications to abandon a lease term pipeline or relinquish a right-of-way grant shall be submitted in triplicate to the Regional Supervisor and shall include the following:

(1) Reason for operation,

(2) Proposed procedures,

(3) "As-built" location plat,

(4) Length in feet of segment to be abandoned or relinquished, and

(5) Length in feet of segment remaining.

§ 250.158 Reports.

(a) The lessee, or right-of-way holder, shall notify the Regional Supervisor at least 48 hours prior to commencing the installation or relocation of a pipeline or conducting a pressure test on a pipeline.

(b) The lessee or right-of-way holder shall submit a report to the Regional Supervisor within 90 days after completion of any pipeline construction. The report, submitted in triplicate, shall include an "as-built" location plat drawn to a scale specified by the Regional Supervisor showing the location, length in Federal waters, and X-Y coordinates of key points; the completion date; the proposed date of first operation; and the HPT data. Pipeline right-of-way "as-built" location plats shall be certified by a registered engineer or land surveyor and show the boundaries of the right-of-way as granted. If there is a substantial deviation of the pipeline route as granted in the right-of-way, the report shall include a discussion of the reasons for such deviation.

(c) The lessee or right-of-way holder shall report to the Regional Supervisor any pipeline taken out of service. If the period of time in which the pipeline is out of service is greater than 60 days, written confirmation is also required.

(d) The lessee or right-of-way holder shall report to the Regional Supervisor when any required pipeline safety equipment is taken out of service for more than 12 hours. The Regional Supervisor shall be notified when the equipment is returned to service.

(e) The lessee or right-of-way holder shall notify the Regional Supervisor prior to the repair of any pipeline or as soon as practicable. A detailed report of the repair of a pipeline or pipeline component shall be submitted to the Regional Supervisor within 30 days after completion of the repairs. The report shall include the following:

(1) Description of repairs,

(2) Results of pressure test, and

(3) Date returned to service.

(f) The Regional Supervisor may require that DOI pipeline failures be analyzed and that samples of a failed section be examined in a laboratory to assist in determining the cause of the failure. A comprehensive written report of the information obtained shall be submitted by the lessee to the Regional Supervisor as soon as available.

(g) If the effects of scouring, soft bottoms, or other environmental factors are observed to be detrimentally affecting a pipeline, a plan of corrective action shall be submitted to the Regional Supervisor for approval within 30 days of the observation. A report of the remedial action taken shall be submitted to the Regional Supervisor by the lessee or right-of-way holder within 30 days after completion.

(h) The results and conclusions of measurements of pipe-to-electrolyte potential measurements taken annually on DOI pipelines in accordance with § 250.155(b) of this part shall be submitted to the Regional Supervisor by the lessee before March of each year.

§ 250.159 General requirements for a pipeline right-of-way grant.

(a)(1) In addition to applicable requirements of §§ 250.150 through 250.158 and other regulations of this

part, regulations of the Department of Transportation, Department of the Army, and the Federal Energy Regulatory Commission (FERC), when a pipline qualifies as a right-of-way pipeline, the pipeline shall not be installed until a right-of-way has been requested and granted in accordance with this subpart. The right-of-way grant is issued pursuant to 43 U.S.C. 1334(e) and may be acquired and held only by citizens and nationals of the United States; aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); private, public, or municipal corporations organized under the laws of the United States or territory thereof, the District of Columbia, or of any State; or associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

(2) A right-of-way shall include the site on which the pipeline and associated structures are to be situated, shall not exceed 200 feet in width unless safety and environmental factors during construction and operation of the associated right-of-way pipeline require a greater width, and shall be limited to the area reasonably necessary for pumping stations or other accessory structures.

(b)(1) The applicant shall furnish the Regional Supervisor a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant in the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in 30 CFR Part 256.

(2) For the purposes of this paragraph, listed below are the four areas:

(i) The Alaska OCS Region,

(ii) The Atlantic OCS Region,

(iii) The Gulf of Mexico OCS Region, and

(iv) The Pacific OCS Region

(3) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(4) After a default, a new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the Regional Supervisor may direct. Failure to post a new bond shall be grounds for forfeiture of all grants covered by the defaulted bond.

(c) An applicant, by accepting a right-of-way grant, agrees to comply with the following requirements:

(1) The right-of-way holder shall comply with applicable laws and regulations and the terms of the grant.

(2) For the first calendar year, or fraction thereof, and annually thereafter, the right-of-way holder shall pay MMS, in advance, an annual rental of $15 for each statute mile, or fraction thereof, traversed by the right-of-way and $75 for each area to be used as a site for an accessory to the right-of-way pipeline including, but not limited to, a platform. Payments may be on an annual basis, for a 5-year period, or for multiples of 5 years.

(3) The granting of the right-of-way shall be subject to the express condition that the rights granted shall not prevent or interfere in any way with the management, administration, or the granting of other rights by the United States, either prior or subsequent to the granting of the right-of-way. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees, or other right-of-way holders, of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration, or the enjoyment of such other granted rights.

(4) If any site, structure, or object of historical or archeological significance should be discovered during the conduct of any operations within the right-of-way, the right-of-way holder shall immediately report such findings to the Regional Supervisor and make every reasonable effort to preserve and protect the cultural resource from damage until the Regional Supervisor has given directions as to its preservation.

(5) The Regional Supervisor shall be kept informed at all times of the right-of-way holder's address and, if a corporation, the address of its principal place of business and the name and address of the officer or agent authorized to be served with process.

(6) The right-of-way holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value of all damages to the property of the United States or its said lessees or right-of-way holders and shall indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way grant.

(7)(i) The holder of a right-of-way oil or gas pipeline shall transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the FERC may, after a full hearing with due notice thereof to the interested parties, conservation and the prevention of waste.

(ii) Unless otherwise exempted by FERC pursuant to 43 U.S.C. 1334(f)(2), the holder shall—

(A) Provide open and nondiscriminatory access to a right-of-way pipeline to both owner and nonowner shippers, and

(B) Comply with the provisions of 43 U.S.C. 1334(f)(1)(B) under which FERC may order an expansion of the throughput capacity of a right-of-way pipeline which is approved after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(8) The area covered by a right-of-way and all improvements thereon shall be kept open at all reasonable times for inspection by the Minerals Management Service (MMS). The right-of-way holder shall make available all records relative to the design, construction, operation, maintenance and repair, and investigations on or with regard to such area.

(9) Upon relinquishment, forfeiture, or cancellation of a right-of-way grant, the right-of-way holder shall remove all platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way. All of these improvements shall be removed by the holder within 1 year of the effective date of the relinquishment, forfeiture, or cancellation unless this requirement is waived in writing by the Regional Supervisor. All such improvements not removed within the time provided herein shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Furthermore, the holder is responsible for accidents or damages which might occur as a result of failure to timely remove improvements and equipment and restore a site. An application for relinquishment of a right-of-way grant shall be filed in accordance with § 250.164 of this part.

(d) Failure to comply with the Act, regulations, or any conditions of the right-of-way grant prescribed by the Regional Supervisor shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any U.S. District Court having jurisdiction in accordance with the provisions of 43 U.S.C. 1349.

(e) Any right-of-way granted under the provisions of this subpart remains in effect as long as the associated pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension of pipeline operations shall not cause the grant to expire. However, if the purpose of the grant ceases to exist or use of the associated pipeline is permanently discontinued for any reason, the grant shall be deemed to have expired.

§ 250.160 Applications for a pipeline right-of-way grant.

(a) An application for a new or modified pipeline right-of-way grant shall be submitted in quadruplicate to the Regional Supervisor. It shall address those items required by § 250.157 (a) or (b) of this part, as applicable. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced, by whom, and the date the applicant obtained control of the improvement. A nonrefundable filing fee of $1,400 and the rental required under § 250.159(c)(2) of this part shall accompany a new right-of-way application. An application to modify an approved right-of-way grant shall be accompanied by the additional rental required under § 250.159(c)(2), if applicable. A seperate application shall be filed for each right-of-way.

(b)(1) An individual applicant shall submit a statement of citizenship or nationality with the application. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit evidence of such status with the application.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to a copy of such articles already filed with MMS and a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the application shall also include the following:

(i) A statement certified by the Secretary or Assistant Secretary of the corporation with the corporate seal showing the State in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) In lieu of such a statement, an appropriate reference to statements or records previously submitted to MMS (including material submitted in compliance with prior regulations).

(c) The application shall include a list of every lessee and right-of-way holder whose lease or right-of-way is intersected by the proposed right-of-way. The application shall also include a statement that a copy of the application has been sent by registered or certified mail to each such lessee or right-of-way holder.

(d) The applicant shall include in the application an original and three copies of a completed Nondiscrimination in Employment form (YN 3341-1 dated July 1982). These forms are available at each MMS regional office.

§ 250.161 Granting a pipeline right-of-way.

(a) In considering an application for a right-of-way, the Regional Supervisor shall consider the potential effect of the associated pipeline on the human, marine, and coastal environments, life (including aquatic life), property, and mineral resources in the entire area during construction and operational phases. The Regional Supervisor shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the Regional Supervisor may request and consider views and recommendations of appropriate Federal Agencies, hold public meetings after appropriate notice, and consult, as appropriate, with State agencies, organizations, industries, and individuals. Before granting a pipeline right-of-way, the Regional Supervisor shall give consideration to any recommendation by the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) Should the proposed route of a right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit evidence to the Regional Supervisor that the State(s) so affected has reviewed the application. The applicant shall also submit any comment received as a result of that review. In the event of a State recommendation to relocate the proposed route, the Regional Supervisor may consult with the appropriate State officials.

(c)(1) The applicant shall submit photocopies of return receipts to the Regional Supervisor that indicate the date that each lessee or right-of-way holder referenced in § 250.160(c) of this part has received a copy of the application. Letters of no objection may be submitted in lieu of the return receipts.

(2) The Regional Supervisor shall not take final action on a right-of-way application until the Regional Supervisor is satisfied that each such lessee or right-of-way holder has been afforded at least 30 days from the date determined in paragraph (d)(1) of this section in which to submit comments.

(d) If a proposed right-of-way crosses any lands not subject to disposition by mineral leasing or restricted from oil and gas activities, it shall be rejected by the Regional Supervisor unless the Federal Agency with jurisdiction over such excluded or restricted area gives its consent to the granting of the right-of-way. In such case, the applicant, upon a request filed within 30 days after receipt of the notification of such rejection, shall be allowed an opportunity to eliminate the conflict.

(e)(1) If the application and other required information are found to be in compliance with applicable laws and regulations, the right-of-way may be granted. The Regional Supervisor may prescribe, as conditions to the right-of-way grant, stipulations necessary to protect human, marine, and coastal environments, life (including aquatic life), property, and mineral resources located on or adjacent to the right-of-way.

(2) If the Regional Supervisor determines that a change in the application should be made, the Regional Supervisor shall notify the applicant that an amended application shall be filed subject to stipulated changes. The Regional Supervisor shall determine whether the applicant shall deliver copies of the amended application to other parties for comment.

(3) A decision to reject an application shall be in writing and shall state the reasons for the rejection.

§ 250.162 Requirements for construction under a right-of-way grant.

(a) Failure to construct the associated right-of-way pipeline within 5 years of the date of the granting of a right-of-way shall cause the grant to expire.

(b)(1) A right-of-way holder shall ensure that the right-of-way pipeline is constructed in a manner that minimizes deviations from the right-of-way as granted.

(2) If, after constructing the right-of-way pipeline, it is determined that a deviation from the proposed right-of-way as granted has occurred, the right-of-way holder shall—

(i) Notify the operators of all leases and holders of all right-of-way grants in which a deviation has occurred, and within 60 days of the date of the acceptance by the Regional Supervisor

of the completion of pipeline construction report, provide the Regional Supervisor with evidence of such notification; and

(ii) Relinquish any unused portion of the right-of-way.

(3) Substantial deviation of a right-of-way pipeline as constructed from the proposed right-of-way as granted may be grounds for forfeiture of the right-of-way.

(c) If the Regional Supervisor determines that a significant change in conditions has occurred subsequent to the granting of a right-of-way but prior to the commencement of construction of the associated pipeline, the Regional Supervisor may suspend or temporarily prohibit the commencement of construction until the right-of-way grant is modified to the extent necessary to address the changed conditions.

§ 250.163 Assignment of a right-of-way grant.

(a) Assignment may be made of a right-of-way grant, in whole or of any lineal segment thereof, subject to the approval of the Regional Supervisor. An application for approval of an assignment of a right-of-way or of a lineal segment thereof, shall be filed in triplicate with the Regional Supervisor.

(b) Any application for approval for an assignment, in whole or in part, of any right, title, or interest in a right-of-way grant shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant for a right-of-way in § 250.160 of this subpart and shall be supported by a statement that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. The assignee shall satisfy the bonding requirements in § 250.159(b) of this part. No transfer shall be recognized unless and until it is first approved, in writing, by the Regional Supervisor. A non refundable filing fee of $50 shall accompany the application for the approval of an assignment.

§ 250.164 Relinquishment of a right-of-way grant.

A right-of-way grant or a portion thereof may be surrendered by the holder by filing a written relinquishment in triplicate with the Regional Supervisor. It shall contain those items addressed in § 250.157(c) of this part. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all outstanding debts, fees, or fines and the requirements in § 250.159(c)(9) of this part.

Subpart K—Production Rates

§ 250.170 Definitions for production rates.

Terms used in this subpart shall have meanings given below:

"Enhanced Recovery Operations" means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

"Gas Reservoir" means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

"Gas-Well Completion" means a well completed in a gas reservoir or in the gas cap of an oil reservoir with an associated gas cap.

"Maximum Efficient Rate" (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

"Maximum Production Rate" (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

"Nonsensitive Reservoir" means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

"Oil Reservoir" means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

"Oil Reservoir with an Associated Gas Cap" means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

"Oil-Well Completion" means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

"Sensitive Reservoir" means a reservoir in which ultimate recovery is decreased by high reservoir production rates. A high reservoir production rate is one which exceeds the MER.

"Waste of Oil and Gas" means: (1) The physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well(s) in a manner which causes or tends to cause a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or (4) the inefficient storage of oil.

§ 250.171 General requirements and classification of reservoirs.

(a) Wells and reservoirs shall be produced at rates that will provide economic development and depletion of the hydrocarbon resources in a manner that would maximize the ultimate recovery without adversely affecting correlative rights.

(b) For directionally drilled wells in which the completed interval is closer than 500 feet from a unit or lease line or for vertically drilled wells in which the surface location is closer than 500 feet from a unit or lease line, for which the unit, lease, or royalty interests are not the same, the prior approval by the Regional Supervisor is required before production is commenced. An operator requesting such an approval shall furnish the Regional Supervisor with letters expressing acceptance or objection from operators of offset properties.

(c) The lessee shall propose a classification for each reservoir as an oil reservoir, an oil reservoir with an associated gas cap or a gas reservoir, and as sensitive or nonsensitive.

(d) All oil reservoirs with associated gas caps shall be initially classified as sensitive and shall require establishing a maximum efficient production rate and balancing of production in accordance with § 250.172(a) (1) and (5) of this part. All other oil reservoirs and all gas reservoirs shall be initially classified as nonsensitive.

(e) A reservoir may be reclassified by the Minerals Management Service (MMS) as to type and sensitivity at any time during its productive life when information becomes available showing that reclassification is warranted.

§ 250.172 Oil and gas production rates.

(a) *MER*. (1) The lessee shall propose an MER for each producing sensitive reservoir and submit Form MMS–1866, Request for Reservoir MER, with the appropriate supporting information to the Regional Supervisor for approval on or before December 1, 1988. Thereafter, the lessee shall determine an MER and submit Form MMS–1866 within 45 days of discovering that a reservoir is sensitive.

(2) The lessee may propose to revise an MER by submitting Form MMS–1866 with appropriate supporting information.

(3) The effective date of an MER for a reservoir or revision thereof shall be the first day of the month in which Form MMS–1866 is submitted.

(4) When approved, the MER shall not be exceeded, except as provided in paragraph (a)(5) of this section.

(5) If a reservoir is produced at a rate in excess of the MER for any month, the lessee should initiate measures necessary to balance production (offset overproduction by underproduction) during the next succeeding month. All overproduction shall be balanced by the end of the next succeeding calendar quarter following the quarter in which the overproduction occurred. Any operation in an overproduction status in any reservoir for two successive calendar quarters shall be shut in from that reservoir until the actual production is equal to that which would have occurred under the approved MER, unless an alternative plan is approved by the Regional Supervisor.

(6) The lessee shall review the MER for each producing sensitive reservoir at least once a year and submit Form MMS–1866 with appropriate supporting information.

(7) The lessee may request the reclassification of a reservoir from sensitive to nonsensitive and request approval for termination of an MER by submitting Form MMS–1866 with information supporting the reclassification and termination.

(8) At the request of the Regional Supervisor, the lessee shall furnish the information specified on Form MMS–1866 for any producing nonsensitive reservoir.

(b) *MPR*. (1) The lessee shall propose an MPR for each producing well completion together with full information on the method used in its determination. The MPR shall be based on well tests and any limitations imposed by well and surface equipment, sand production, gas-oil and water-oil ratios, location of perforated intervals, and prudent operating practices. The sum of the MPR's of wells completed in a sensitive reservoir shall not exceed the approved MER.

(2) The lessee shall conduct a well-flow potential test on all new, recompleted, and reworked well completions within 30 days of the date of first continuous production. Within 15 days after the end of the test period, the lessee shall submit a proposed MPR for the individual well completion on Form MMS–1867, Request for Well MPR, with the results of the well-flow potential test on Form MMS–1868, Well Potential Test Report. The initial MPR shall not exceed 110 percent of the test rate submitted and shall be effective on the first day of the month following the end of the test period if approved by the Regional Supervisor. During the 30-day period allowed for testing, the lessee may produce a new, recompleted, or reworked completion at rates necessary to establish the MPR. After the 30-day period and prior to approval of the initial MPR, a well completion may be produced at a rate not to exceed the proposed rate. The lessee shall report the total production obtained during the test period on Form 1868 and shall identify in the Remarks section of the form all wells completed in the reservoir.

(3) At least one well test shall be conducted during a calendar quarter for producing oil-well completions and results submitted on Form MMS–1869, Quarterly Oil Well Test Report, and conducted during a calendar half for producing gas-well completions and results submitted on Form MMS–1870, Semiannual Gas Well Test Report. Well tests shall be submitted within 45 days of the day the test was conducted.

(4) Unless otherwise ordered by the Regional Supervisor, a revised MPR shall automatically be approved for each well completion for each well test submitted equal to 110 percent of the test rate. The revised MPR will be effective on the first day of the month following the date the well test was conducted. Prior to the approval of a proposed increase of the MPR, a well completion may be produced at a rate not to exceed the proposed increased rate.

(5) When a well test is not submitted during a calendar quarter for an oil-well completion or during a calendar half for a gas-well completion, the MPR will be automatically cancelled effective on the first day of the appropriate following calendar period.

(6) When the results of a quarterly well test for an oil-well completion or a semiannual well test for a gas-well completion cannot be submitted within the specified time, the lessee shall request an extension of time for submitting those test results. The extension must be approved in advance by the Regional Supervisor to continue production under the last approved MPR.

(7) When approved by the Regional Supervisor, an MPR shall not be exceeded, except as provided in paragraphs (b)(4) and (c) of this section.

(c) *Temporary rates*. Temporary production rates resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation, provided that such production in excess of an approved MER is balanced by production in accordance with the provisions of paragraph (a)(5) of this section.

§ 250.173 Well production testing.

(a) The required well testing shall be conducted for a period of not less than four consecutive hours. Immediately prior to the 4-hour test period, the well completion shall have produced under stabilized conditions for a period of not less than six consecutive hours. The 6-hour pretest period shall not begin until after the recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation during completion, recompletion, reworking, or treatment operations. Measured gas volumes shall be adjusted to the standard conditions of 14.73 pounds per square inch absolute (psia) (15.025 psia in the Gulf of Mexico OCS Region) and 60 °F for all tests. When orifice meters are used, a specific gravity for the gas shall be obtained or estimated, and a specific gravity-correction factor shall be applied to the orifice coefficient. The Regional Supervisor may require a prolonged test or retest of a well completion if the test is determined to be necessary for the establishment of a well MPR or a reservoir MER. The Regional Supervisor may approve test periods of less than 4 hours and pretest stabilization periods of less than 6 hours for well completions provided that test reliability can be demonstrated under such procedures.

(b) At the request of the Regional Supervisor, the lessee shall conduct a multipoint back-pressure test to determine the theoretical open-flow potential of a gas well. The test shall be conducted within 30 days of the Regional Supervisor's request or within the time period specified by the Regional Supervisor.

(c) An MMS representative may witness any well test of oil-well and gas-well completions. Upon request, a lessee shall provide advance notice to the Regional Supervisor of the time and date of well tests.

§ 250.174 Bottomhole pressure survey.

(a) For each new reservoir, the lessee shall conduct a static bottomhole pressure survey within 3 months after the date of first continuous production.

(b) For each producing reservoir with three or more producing completions, the lessee shall conduct annual static bottomhole pressure surveys in a sufficient number of key wells to establish an average reservoir pressure. The Regional Supervisor may require that a survey be performed on specific wells.

(c) The results of all static bottomhole pressure surveys obtained by the lessee shall be filed with the Regional Supervisor within 60 days after the date of the survey.

§ 250.175 Flaring and venting of gas.

(a) Oil-well and gas-well gas shall not be flared or vented without the approval of the Regional Supervisor except in the following situations:

(1) When gas vapors are flared or vented in small volumes from storage or other low-pressure production vessels and cannot be economically recovered.

(2) During temporary situations such as a compressor or other equipment failure or the relief of system pressures except the following:

(i) Oil-well gas shall not be flared or vented for more than 48 continuous hours without the approval of the Regional Supervisor. The Regional Supervisor may specify a limit of less than 48 hours when necessary to prevent degradation of the air quality. Flaring or venting gas from a facility shall not continue beyond a cumulative time of 144 hours during any calendar month without the approval of the Regional Supervisor.

(ii) Gas-well gas shall not be flared or vented beyond the time required to eliminate a temporary emergency without the approval of the Regional Supervisor.

(3) During the unloading or cleaning of a well, drill-stem testing, production-testing, or other well-evaluation testing for periods not to exceed 48 continuous hours unless a lesser period is specified by the Regional Supervisor to prevent degradation of the air quality.

(b) Except as provided in paragraph (a) of this section, oil-well gas shall not be flared or vented unless the flaring or venting will be for a period not exceeding 1 year and is approved by the Regional Supervisor in the following situations:

(1) The lessee has initiated an action which, when completed, will eliminate flaring and venting; or

(2) The lessee has submitted an evaluation supported by engineering, geologic, and economic data indicating that the oil and gas produced from the well(s) will not economically support the facilities necessary to save and/or sell the gas, or that sufficient quantities of gas are not available for marketing.

(c) Records detailing flaring or venting occurrences shall be maintained for each facility and shall be available for inspection by MMS representatives. These records shall include daily volumes of gas flared or vented, number of hours of flaring or venting on a daily basis, reasons for flaring or venting, and a list of producing wells contributing to the flaring and venting along with respective gas-oil ratio data. These records shall be maintained by the lessee for a minimum of 2 years at the lessee's field office nearest the Outer Continental Shelf facility or other locations conveniently available to the Regional Supervisor.

§ 250.176 Downhole commingling.

(a) An application to commingle hydrocarbons produced from multiple reservoirs within a common wellbore shall be submitted to the Regional Supervisor for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. The application shall provide the estimated recoverable reserves as well as any available alternate drainage points which might be used to produce the reservoirs separately.

(b) For a competitive reservoir, notice of intent to submit the application shall be sent by the applicant to all other lessees having an interest in the reservoir prior to submitting the application to the Regional Supervisor.

(c) The application shall specify the well-completion number to be used for subsequent reporting purposes.

§ 250.177 Enhanced oil and gas recovery operations.

(a) The lessee shall timely initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles.

(b) A proposed plan for pressure maintenance, secondary and tertiary recovery, cycling, and similar recovery operations to increase the ultimate recovery of oil and/or gas from a reservoir shall be submitted to the Regional Supervisor for approval before such operations are initiated.

(c) Periodic reports of the volumes of oil, gas, or other substances injected, produced, or reproduced shall be submitted as required by the Regional Supervisor.

Subpart L—Production Measurement, Surface Commingling, and Security

§ 250.180 Measurement of liquid hydrocarbons.

(a) *General*. Measurement equipment shall be designed, installed, used, maintained, and tested so as to accurately and completely measure the liquid hydrocarbons produced on a lease for purposes of royalty determination. For purposes of this subpart, a liquid hydrocarbon is a mixture of hydrocarbons produced in liquid form after passing through surface separating facilities which is marketed or used as such.

(b) *Application and approval*. The lessee shall not commence production of liquid hydrocarbons unless the Regional Supervisor has approved an application for the measurement of liquid hydrocarbons and for commingling, if applicable. The application shall contain information sufficient to demonstrate that the requirements of this section will be met. Sales meter facilities shall be appropriately located with respect to the lease(s) and transportation system(s) involved.

(c) *Sales meter facility requirements*. (1) A meter upon which royalty is based shall be considered a sales meter.

(2) Sales meter facilities shall include the following components which shall be compatible with the systems to which they are connected:

(i) A positive-displacement or other meter approved by the Regional Supervisor. The meter shall be equipped with a nonreset totalizer.

(ii) A calibrated prover tank, a master meter, a mechanical displacement prover, or other device permanent or portable capable of proving the meter approved by the Regional Supervisor.

(iii) A proportional-to-flow sampling device which is pulsed by the meter output.

(iv) A temperature measurement or temperature compensation device.

(3) Sales meter facilities shall be designed to accomplish the following:

(i) Prevent reversal of flow through the meter;

(ii) Adequately protect meters subjected to pressure pulsation or surges by the use of surge tanks, expansion chambers, or similar devices;

(iii) Prevent the meter from being subjected to shock pressures which are greater than the maximum working pressure; and

(iv) Prevent bypassing of the meter.

(4) Sales meter facilities shall be maintained to ensure the following:

(i) Meters are operated within the gravity range specified by the manufacturer;

(ii) Meters are operated within the manufacturer's specifications for maximum and minimum flow rate for linear accuracy; and

(iii) Meters are reproven when changes in metering conditions affect the meters performance such as changes in pressure, temperature, density (water content), viscosity, pressure, and flow rate.

(5) The required sampling device shall conform to the following:

(i) The sampling device shall be installed such that the sampling point is in the flowstream immediately upstream

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or downstream of the meter or divert valve,

(ii) The sample container for the sampling device shall be vapor-tight and include a mixing device to permit complete mixing of the sample prior to removal from the container, and

(iii) The sampling device is installed such that the sample probe is in the center of the flow piping in a vertical run and is located at least three pipe diameters downstream of any pipe fitting within a region of turbulent flow.

(6) When obtaining net standard volume and associated measurement parameters, the lessee shall use procedures and correction factors in accordance with the following chapters of the API Manual of Petroleum Measurement Standards (MPMS):

(i) Chapter 4, Proving Systems;

(ii) Chapter 5, Metering;

(iii)(A) Chapter 6.1, LACT System;

(B) Chapter 6.6, Pipeline Metering Systems;

(C) Chapter 6.7, Metering Viscous Hydrocarbons;

(iv)(A) Chapter 7.2, Dynamic Temperature Determination;

(B) Chapter 7.3, Static Temperature Determination Using Portable Electronic Thermometers;

(v) Chapter 8, Sampling;

(vi) Chapter 9, Density Determination;

(vii)(A) Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method;

(B) Chapter 10.2, Determination of Water in Crude Oil by Distillation;

(C) Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure);

(D) Chapter 10.4, (Publication 2542) Methods of Test for Water and Sediment in Crude Oils;

(viii)(A) Chapter 11.1, Volume 1, Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60 °F and Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F;

(B) Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90 ° API Gravity Range;

(C) Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.500–0.611 Relative Density Range (60 °F/60 °F) and -20 °F to 128 °F;

(ix) Chapter 12.2, Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters.

(7) All run tickets pulled and/or completed during a particular month shall be sent to the Regional Supervisor, within 15 days following the end of the month and shall clearly identify all observed data, all correction factors not included in the meter factor, the net standard volume, and all calculations and factors utilized.

(d) *Sales meter provings*. Sales meters for liquid hydrocarbons shall be proved and calibrated in accordance with the following requirements:

(1) The Minerals Management Service (MMS) representatives shall be permitted to witness regularly scheduled provings or any proving requested by the Regional Supervisor.

(2) The integrity of the calibration of each mechanical displacement prover, prover tank, master meter, or other type of prover shall be traceable to test measures which have been certified by the National Bureau of Standards.

(3) Master meters, mechanical-displacement provers, and prover tanks shall be calibrated in accordance with the following requirements:

(i) The master meter shall be calibrated to obtain a master meter factor before using the master meter to establish an operating meter factor. The master meter shall be calibrated with a fluid of similar gravity, viscosity, and temperature as flows through the operating meter and with a similar flow rate. This calibration shall be conducted monthly but the time between calibration shall not exceed 6 weeks unless a longer period of time is approved by the Regional Supervisor.

(ii) The lessee shall calibrate a master meter by conducting and recording runs until the results of two consecutive runs, if a prover tank is used, or five out of six consecutive runs, if a mechanical-displacement prover is used, produce results such that the greatest difference in the meter factors between the runs is not greater than 0.0002. The average of the two or the five runs which produced the acceptable results shall be used to compute the master meter factor.

(iii) The master meter may be installed either upstream or downstream of the operating meter but shall be upstream of any back-pressure or reverse flow check valves associated with the operating meter.

(iv) Mechanical-displacement provers and prover tanks shall be calibrated at least every 5 years in accordance with the API MPMS, Chapters 4 and 11.2.3. A copy of each calibration report shall be submitted to the Regional Supervisor within 15 days following calibration.

(v) When calibrating meters with a mechanical-displacement prover, prover tank, or master meter, the following appropriate correction factors shall be taken into account:

(A) The change in prover volume due to pressure in the steel pipe (Cps) using API MPMS, Chapter 12, Section 2, Appendix A, Table A–3, Pressure Correction Factors for Steel, Cps;

(B) The change in volume of the test liquid with the change in temperature (Ctl) using API MPMS, Chapter 11.1, Volume I, Table 6A, Generalized Crude Oils Correction of Volume to 60 °F Against API Gravity at 60 °F;

(C) The change in prover volume due to the change in temperature (Cts) using API MPMS, Chapter 12, Section 2, Appendix A, Table A–1, Temperature Correction Factors of Mild Steel, and Table A–2, Temperature Correction Factors for Stainless Steel; and

(D) The change in volume of the test liquid with the change in pressure (Cpl) using Chapter 11.2.1 or 11.2.2, API MPMS, as appropriate.

(4) Each operating sales meter shall be proved to determine the meter factor each month, however, the time between meter factor determinations is not to exceed 42 days. Meter provings shall be in accordance with the following:

(i) When establishing an operating meter factor with a prover tank, proof runs shall be made and recorded until two consecutive runs produce results such that the difference between results is not greater than .05 percent of the prover tank volume. The average of the results of these two runs shall be used to compute the meter factor.

(ii) When establishing an operating meter factor with a master meter, proof runs shall be made until three consecutive runs produce results such that the difference in the meter factor between all runs is not greater than 0.0005. The volume of each of these runs shall be at least 10 percent of the hourly rated capacity of the operating meter and shall be of sufficient amount for the determination of an accurate operating meter factor. The average of the results of these three runs shall be used to compute the meter factor.

(iii) When establishing an operating meter factor with a mechanical-displacement prover, proof runs shall be made and recorded until five out of six consecutive runs produce results such that the difference between results is not greater than 0.0005. The average of the results of the five runs shall be used to compute the meter factor.

(5) The lessee shall submit copies of all meter proving reports for sales meters and master meters to the Regional Supervisor monthly within 15 days following the end of the month. Meter factors which are determined to be in tolerance shall be applied from the date of proving.

(i) A meter factor is considered a malfunction factor when the deviation between the factor and the previous factor exceeds 0.0025. In the event of such a malfunction, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and reproven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

(ii) When a malfunction results in the failure of the meter to register production, the meter shall be immediately removed from service, repaired, and reproven prior to returning it to service. The previous meter factor shall be applied to the production run between the date of that factor and the date of the failure. Any unregistered production shall be estimated by the best possible means and shall be reported as estimated production.

(iii) When the results of a sales meter proving exceed the repeatability (run tolerance) criteria and all measures excluding the adjustment and/or repair of the meter and meter components cannot bring results to within tolerance (failure to obtain repeatability of runs), a factor shall be established using proving results made prior to any adjustment and/or repair of the meter and meter components. The established factor shall be considered a malfunction factor and treated in accordance with paragraph (d)(5)(i) of this section.

(6) To correct gross volumes metered under nonstandard conditions (standard conditions are 0 pounds per square inch gauge (psig) and 60 °F), Cpl factors shall be calculated into the meter factor or listed on the appropriate run ticket. The Ctl factors shall be listed on the appropriate run ticket when the meter is not automatically temperature compensated.

(7) Run tickets shall be pulled at the time of any proving which is conducted for the purpose of establishing a monthly meter factor or which results in the establishment of a malfunction meter factor. A copy of the subject run ticket shall be submitted in accordance with § 250.180(c)(7) of this part.

(e) *Allocation meter facility requirements*. (1) For purposes of this subpart, an allocation meter is a meter whose volume measurement is used to substantiate which portion of the volume measured by a royalty meter is attributable to a particular lease, measurement point, or well. Allocation meter facilities shall include a meter, provisions for use of a device capable of proving the allocation meter, and equipment for continuous or daily sampling. Samples shall be taken continuously or daily.

(2)(i) Allocation meters measuring 50 barrels of oil per day or more shall be proven monthly, and

(ii) Allocation meters measuring less than 50 barrels of oil per day shall be proven quarterly.

(3) A copy of allocation meter proving reports must be kept at the field location for a period of 2 years.

(4) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount greater than 0.02 and less than 0.07, the allocation meter shall be adjusted and reproven prior to return to service.

(5) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount equal to or greater than 0.07, the allocation meter shall be repaired and reproven prior to return to service.

(f) *Sales tank requirements*. (1) Sales tank facilities designated by the Regional Supervisor as a sales location on which royalty shall be equipped with a vapor-tight thief hatch and vent-line valve and a fill line designed to minimize free fall and splashing.

(2) A complete set of calibration charts (tank tables) shall be submitted to the Regional Supervisor prior to use of the tank for sales measurement purposes. The volume and other measurement parameters of the liquid production in sales tanks shall be obtained using correction factors and procedures in accordance with the following chapters of API MPMS:

(i) Chapter 2, Tank Calibration (including Standards 2550, 2551, 2552, 2555, and 2556),

(ii) Chapter 3, Tank Gauging (Standard 2545);

(iii)(A) Chapter 7.2, Dynamic Temperature Determination;

(B) Chapter 7.3, Static Temperature Determination Using Portable Electronic Thermometers;

(iv) Chapter 8, Sampling;

(v) Chapter 9, Density Determination;

(vi)(A) Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method;

(B) Chapter 10.2, Determination of Water in Crude Oil by Distillation;

(C) Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure);

(D) Chapter 10.4, (Publication 2542) Methods of Test for Water and Sediment in Crude Oils;

(vii) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A, Generalized Crude Oils Correction of Volume to 60 °F, Against API Gravity at 60 °F.

(3) A copy of each completed run ticket written from tank gaugings shall be submitted to the Regional Supervisor within 15 days of the run ticket being written.

§ 250.181 Measurement of gas.

(a) *General*. The lessee shall maintain all gas sales or allocation meters designated by the Regional Supervisor in accordance with the requirements of this section.

(b) *Applications and approvals*. The lessee shall not commence production of gas hydrocarbons unless the Regional Supervisor has approved an application for measurement of gas production. The application shall be submitted to the Regional Supervisor for approval and shall contain information sufficient to demonstrate that the requirements of this section will be met.

(c) *Gas meter requirements*. (1) The measuring equipment shall be installed and operated in accordance with the recommendations contained in the API MPMS, Chapter 14, Natural Gas Fluids Measurement.

(2) The unit of volume for gas measurement shall be 1 cubic foot at a base temperature of 60 °F and at a base pressure of 15.025 pounds per square inch absolute (psia) (14.73 psia for Pacific OCS Region), and the measurement unit shall be 1,000 cubic feet (Mcf) of gas.

(3) Gas meters shall be operated in accordance with the following requirements;

(i) The Minerals Management Service representatives shall be permitted to witness regularly scheduled calibrations and any calibration requested by the Regional Supervisor.

(ii) The integrity of the calibration equipment shall be in accordance with the standards in paragraph (c)(1) of this section.

(iii) Each gas meter shall be calibrated at reasonable intervals not to exceed 45 days. For positive displacement or turbine meters, the calibration shall be conducted at the average hourly rate of flow since the last calibration. For orifice meter installations, the differential range and static range shall be consistent with the hourly flow rate. The lessee shall retain calibration test data at the field location for a period of 2 years.

(iv) Whenever a meter is not functioning or not registering within the limits of accuracy prescribed by the manufacturer, it shall be immediately removed from service and not returned to service until repaired or adjusted to read accurately.

(v) During calibration, if readings of static and differential pressure are found to be within contractual tolerances with respect to test device readings, previous meter readings shall be considered correct in computing deliveries of gas since the previous calibration. If the readings are greater than contractural tolerances, the volume measured since the last calibration shall be corrected as follows:

(A) If the time the error occurred is ascertainable, the volume adjustment shall be calculated for that period of time. No retroactive adjustment of volumes metered for allocation beyond a 23-day period is required.

(B) If the time the error occurred is not ascertainable, the volume adjustment shall be applied to one-half of the time elapsed since the last date of calibration or 23 days, whichever is less.

§ 250.182 Surface commingling of production.

(a) *General requirements.* For purposes of this subpart, surface commingling is the surface mixing of production from two or more leases prior to measurement for royalty purposes. The commingling of production from different leases prior to measurement for royalty sales determination shall be in accordance with this section.

(b) *Applications and approvals.* (1) The lessee shall not commence commingling of production unless the Regional Supervisor has approved the commingling and the method of measurement. The lessee shall submit an application for commingling to the Regional Supervisor for approval, and the application shall contain appropriate information regarding the method of allocation measurement, processing, if applicable, and the manner of entry into the particular commingling system.

(2) All allocation methods and procedures and changes thereto shall be approved by the Regional Supervisor.

(c) *Well tests.* The lessee shall conduct a well test for allocation purposes at least once every 2 months or other period of time as determined by the Regional Supervisor and shall retain test data at the field location for a period of 2 years. These tests are to be conducted in accordance with procedures outlined in § 250.173 of this part and can be used when submitting well tests as required in § 250.173.

§ 250.183 Site security.

All locations where oil, gas, or both are measured shall be operated and maintained to ensure against the loss or theft of production and to assure accurate measurement for royalty purposes. Production, transportation to shore, and sales activities shall comply with the following requirements:

(a) The components of sales measuring devices (metering units and tanks) shall be sealed in a manner to preclude tampering. Wire or other acceptable types of seals shall be numbered and recorded. The list of seal numbers and the installation location shall be maintained at the field location and be available for inspection by MMS representatives.

(1) The following metering and sampling unit components shall be sealed in such a manner that the component cannot be opened, closed, or altered in any way without destroying the seal:

(i) All meter stack component connections from the base of the stack to the register;

(ii) Sampling system including packing device, fittings, chains, sight glass, and container lid;

(iii) Components of the temperature and gravity compensation device;

(iv) Additional components as required by the Regional Supervisor;

(2) All valves on lines leaving an oil storage tank including load-out line valves, drain-line valves, and connection-line valves between sale and nonsale tanks shall be sealed in such a manner that the valve is closed and cannot be opened without destroying the seal.

(b) Each storage tank (sales or inventory) used in the royalty determination process shall be clearly identified by a sign that contains the name of the facility operator, the size of the tank, and the tank number.

(c) No one shall bypass MMS-approved royalty sales meters and sales tanks.

(d) Evidence of theft or mishandling of production from an offshore lease, or of tampering or bypassing with metering or proving devices, or of falsifying any measurement of production from an offshore lease shall be reported to the Regional Supervisor as soon as possible but not later than the next business day after discovery of evidence of theft or mishandling.

Subpart M—Unitization

§ 250.190 Authority and requirements for unitization.

(a) Unitization may be approved or required by the Regional Supervisor for the prevention of waste, the conservation of the natural resources of the Outer Continental Shelf (OCS), or for the protection of correlative rights therein, including the protection of Federal royalty interests. Lessees may agree among themselves to unitization, subject to the Regional Supervisor's approval (voluntary unitization), or the Regional Supervisor may require unitization on the initiative of one or more lessees or on the Regional Supervisor's own initiative (compulsory unitization).

(b) Unitized operations may be approved when the Regional Supervisor has determined that such action will expedite and promote exploration and development efforts. Unitized operations may also be approved or required by the Regional Supervisor when a reservoir has been determined to be reasonably delineated and productive and such action is found to be necessary for the prevention of waste, conservation of natural resources of the OCS, or for the protection of correlative rights.

(c) A unit area shall include the minimum number of leases or portions of leases required to permit one or more mineral reservoirs or potential hydrocarbon accumulations to be served by a minimum number of platforms, facility installations, and wells necessary for the efficient exploration for or development and production of oil and gas.

(d) A unit agreement shall provide for the appointment of a unit operator and the allocation of benefits to the unitized leases. The unit operator and the owners of working-interests shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to the unit agreement shall be apportioned. In units involving one or more net-profit-share leases, the unit operating agreement shall be approved by the Regional Supervisor as to the way that costs and credits are attributable to the net-profit-share leases.

(e) Upon the expiration or termination of a unit agreement, or when there is an adjustment of a unit area that results in the elimination of a lease from the unit agreement, each lease that was but is no longer subject in whole or in part to the unit agreement shall expire unless—

(1) Its initial term has not expired,

(2) Drilling, production, or well-reworking operations are being conducted thereon in accordance with applicable regulations, or

(3) A suspension of production or operations has been ordered or approved for the excluded lease.

(f) Drilling, production, and well-reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the

benefit of all leases that are subject in whole or in part to the unit agreement. Plans may provide for the cessation of actual drilling activities for a reasonable period between the discovery and delineation of one or more reservoirs and the initiation of actual development and production operations. When plans that call for the cessation of drilling prior to actual production involve one or more leases beyond their primary term, the plans shall be accompanied by a request and supporting justification for a suspension of production pursuant to § 250.10 of this part.

(g) A unit agreement shall be effective on the date specified in the unit agreement and shall terminate when unitized substances are no longer being produced from the unit area and drilling or well-workover operations are no longer being conducted under the unit agreement, unless the Director has ordered or approved a suspension of production pursuant to § 250.10 of this part.

(h) If a lease is subject in whole or in part to unitization, the entire lease shall continue in force for the term provided in the lease and as long thereafter as any portion of the lease remains part of the unit area, and as long as there are operations which serve to continue the unit in effect.

(i) When a lease that is subject in whole or in part to a unit agreement is beyond the initial fixed term of the lease and unitized substances are not being produced, the lease shall expire unless—

(1) The unit operator conducts a continuous drilling or well reworking program designed to develop or restore the production of unitized substances, or

(2) A suspension of operations has been ordered or approved in accordance with § 250.10 of this part.

§ 250.191 Competitive reservoir operations.

(a) The Regional Supervisor may require development and production operations in a competitive reservoir (i.e., a reservoir in which there are one or more producing or producible well completions on each of two or more leases, or portions thereof, in which the lease operating interests are not the same), to be conducted under either a voluntary joint Development and Production Plan or unitization agreement. For purposes of this paragraph, a producible well completion is a well which is capable of production and which is shut in at the wellhead or at the surface but not necessarily connected to production facilities, and from which the operator plans future production.

(b) Lessees may request at any time that the Regional Supervisor make a preliminary determination as to whether a reservoir is competitive. The Regional Supervisor shall notify the lessees upon making such determination. The lessees, within 30 days of such notice or such time as approved by the Regional Supervisor, shall advise the Regional Supervisor of their concurrence or submit an objection with supporting evidence. The Regional Supervisor will make a final determination and notify the lessees.

(c) When drilling or production operations are conducted in a competitive reservoir, the lessees, on their own initiative or at the direction of the Regional Supervisor, shall submit a joint plan for approval governing the applicable operations. The joint plan shall be submitted within 90 days after the final determination by the Regional Supervisor that the reservoir is competitive and shall provide for the development and/or production of the reservoir and may provide for the submittal of supplemental plans for approval by the Regional Supervisor. If agreement on a joint Development and Production Plan cannot be reached by the lessees within the approved period of time, each lessee shall submit a separate plan. If the differences in the separate plans are not resolved at a subsequent hearing and the Regional Supervisor determines that unitization is necessary pursuant to § 250.190(b) of this subpart, steps to require unitization will be initiated pursuant to § 250.193 of this part.

§ 250.192 Voluntary unitization.

(a) Lessees who seek approval of unitization shall file a request with the Regional Supervisor accompanied by a draft of the proposed unit agreement; a proposed initial plan of operation supporting geological, geophysical, and engineering data; and any other information that may be necessary to show that the unitization proposal meets the criteria of § 250.190 of this part.

(b) The proposed unit agreement shall conform to the appropriate Model Unit Agreement (MUA) in § 250.194 of this part. For good cause, the Regional Supervisor may require or upon request approve variations from the MUA. Any request for variation shall be made at the time the proposed unit agreement is submitted to the Regional Supervisor.

(c) After the Regional Supervisor approves the unitization proposal, lessees shall execute the unit agreement and file with the Regional Supervisor for approval such copies of the unit agreement, unit operating agreement, and the initial plan of operation as the Regional Supervisor may require.

§ 250.193 Compulsory unitization.

(a) If it is determined by the Regional Supervisor that unitization of operations within a proposed unit area is necessary for the prevention of waste, conservation of the natural resources of the OCS, or the protection of correlative rights therein, unitization shall be imposed according to a unitization plan. This plan shall conform to the appropriate MUA form in § 250.194 of this part, unless variations from the model agreement have been approved for good cause by the Regional Supervisor.

(b)(1) Lessees who seek compulsory unitization shall file a request with the Regional Supervisor accompanied by a proposed unit agreement as described in § 250.193(a) of this part, a proposed unit operating agreement, and a proposed initial plan of operation together with supporting geological, geophysical, and engineering data, and any other information that may be necessary to show that unitization meets the criteria of § 250.190 of this part. The proposed unit agreement shall include a counterpart executed by each lessee seeking compulsory unitization. Lessees seeking compulsory unitization shall simultaneously serve copies of the request, the proposed unit agreement with executed counterparts, the proposed unit operating agreement, and the proposed initial plan of operation on the nonconsenting lessees.

(2) If the Regional Supervisor initiates compulsory unitization, all lessees of the proposed unit area shall be served with a copy of the unitization plan and a statement of reasons for the proposed unitization.

(c)(1) The Regional Supervisor may not require compulsory unitization until all lessees of the proposed unit area are provided reasonable notice and an opportunity for a hearing. Any lessee owning an interest in the proposed unit area may request a hearing within 30 days of service of notice by the Regional Supervisor or service of a request for compulsory unitization by a lessee.

(2) No hearing may be held pursuant to this paragraph until at least 30 days after written notice have been provided to all parties owning interests which would be made subject to the unit agreement. The Regional Supervisor shall afford all lessees of the proposed unit area an opportunity to submit views orally and in writing and to question both those seeking and those opposing compulsory unitization. Adjudicatory procedures are not required, but the

decision of the Regional Supervisor shall be based upon a record of the hearing including any written information made a part of the record. The Regional Supervisor will cause a verbatim transcript to be made by a court reporter, the cost of which will be borne by the party seeking compulsory unitization. Three copies of the transcript shall be provided to the Regional Supervisor without charge within 10 days after the hearing.

(d) The Regional Supervisor may issue an order(s) that requires or disapproves compulsory unitization. Any such order shall include a statement of reasons for the action taken including identification of those parts of the record which form the basis of the decision. The final order of the Regional Supervisor may be appealed in accordance with 30 CFR Part 290.

§ 250.194 Model unit agreements.

(a) *Model unit agreement for exploration, development, and production units.*

UNIT AGREEMENT FOR OUTER
CONTINENTAL SHELF EXPLORATION,
DEVELOPMENT, AND PRODUCTION
OPERATIONS ON THE ——— UNIT
BLOCKS ———, ——— AREA
OFFSHORE ———————————
CONTRACT NO.———————————

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, *et seq.*, it is deemed to be in the interest of conservation, prevention of waste, or the protection of correlative rights to unitize the oil and gas interest in the unit area; and

WHEREAS, it is deemed to be necessary in the interest of conservation, for the prevention of waste, or for the protection of correlative rights to conduct exploration, development, and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—*Definitions*

The following definitions of terms shall apply to this Agreement:

"Act" means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, *et seq.*

"Agreement" means this unit agreement, approved by the Regional Supervisor for conducting exploration, development, and production operations within the unit area.

"Block" means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

"Participating area" is that part of the unit area that is reasonably proven by drilling and completion of producible wells, geological and geophysical information, and engineering data to be capable of producing hydrocarbons in paying quantities.

"Paying quantities" as used herein means the production of oil and/or gas in quantities sufficient to yield a return in excess of operating costs.

"Regional Supervisor" means the Regional Supervisor of the MMS, Department of the Interior (DOI), or a designee, authorized and empowered to regulate and approve unit operations.

"Regulations" means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

"Reservoir" means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

"Unit area" means the area of the OCS which is made subject to this Agreement and described in Article III.

"Unit operating agreement" means an agreement made between the working-interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

"Unit operator" means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct unit operations within the unit area in accordance with plans of operation approved pursuant to the Act, applicable regulations, and this Agreement.

"Unitized substances" means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

"Working interest" means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working interest.

"Working-interest owner" means a party to this agreement that owns a working interest.

Article II—*Incorporation*

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—*Unit area and exhibits*

3.1 The following described offshore area as shown on the U.S. Official Leasing Protraction Diagram is subject to valid leases and constitutes the unit area.

3.2 Exhibit "A", which is attached to this Agreement and made a part hereof, is a plat identifying the unit area and component blocks and leases.

3.3 Exhibit "B", which is attached to this Agreement and made a part hereof, is a schedule listing the component leases and the ownership of each.

3.4 Exhibit "C", which will be submitted in accordance with the provisions of this Agreement and will be made a part hereof, is a schedule listing the component parts of the participating area(s) by lease and the percentage of oil or gas, or both, that is to be allocated to each lease.

3.5 Exhibits "A", "B", and "C" shall be revised by the unit operator whenever changes in the unit area, changes in the participating area, changes in the ownership of one or more leases, or changes in the percentages of oil or gas, or both, allocated to the individual leases render such changes necessary. Four copies of the revised exhibits shall be submitted to the Regional Supervisor for approval.

Article IV—*Designation of unit operator*

4.1 ——— is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to explore for, develop, and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and conditions of approved plans of operations, the exclusive rights and obligations of the owners of working-interests to conduct unit operations to explore for, develop, and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—*Resignation or removal of unit operator*

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working-interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area, are placed in a condition satisfactory to the Regional Supervisor for the transfer of operations, or, if no successor unit operator has been designated, for suspension or abandonment of operations. If a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working-interests as provided by Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working-interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and any other assets all owned solely by the unit joint account.

Article VI—*Successor unit operator*

6.1 Whenever the unit operator tenders its resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working-interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volume of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreements, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of the unit operator's intent to resign or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—*Unit operating agreement*

7.1 The owners of working-interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working-interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and the unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first section of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor within 30 days of final execution.

Article VIII—*Appearances and notices*

8.1 The unit operator shall, after notice to other parties affected, have the right to appear on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in the unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working-interests shall be deemed properly given if given in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—*Plan of operation*

9.1 The unit operator shall submit plans of operation which are consistent with the requirements for Exploration Plans or Development and Production Plans as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operation has been ordered or approved by the Regional Supervisor or unless extended by the Director pursuant to 30 CFR 250.13(b). Plans may call for a cessation of drilling operations for a reasonable period of time after the discovery and delineation of a reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operation has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operation shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operation shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operation or approval in accordance with this Article.

Article X—*Revision of unit area*

10.1 The unit area may be further revised by additions necessary for unit operations or for the inclusion of an area capable of producing oil and/or gas in paying quantities whenever such action appears proper to include additional lands or may be further revised by the contraction of the unit area when such contraction is necessary or advisable to conform with the purposes of this Agreement. Such additions or contractions shall be effected by the unit operator on its own motion after preliminary concurrence of the Regional Supervisor or on demand of the Regional Supervisor. The effective date of any expansion or contraction of the unit area shall be the first of the month following the date of approval of the expansion or contraction by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.2 The unit area shall not be reduced on account of the depletion of the unitized substances for which it was established, but the unit area established under the provisions of this article shall terminate automatically whenever operations are permanently abandoned in the unit.

Article XI—*Participating areas*

11.1 Prior to commencement of production of unitized substances, or as soon thereafter as required by the Regional Supervisor, the unit operator shall submit to the Regional Supervisor, as Exhibit "C," a schedule by lease of (a) all land reasonably proven to be productive of unitized substances in paying quantities by the drilling and completion of producible wells, geological and geophysical information, and engineering data, and (b) the percentage of unitized substances to be allocated as provided in Article XII to each lease. All lands in said schedule, upon approval thereof by the Regional Supervisor, shall constitute the initial participating area, effective as of the date such production commences. The participating area shall be described in parcels no smaller than ¼ x ¼ x ¼ blocks.

11.2 Subject to approval of the Regional Supervisor, the participating area(s) so established shall be revised from time to time to include additional land reasonably proven to be productive in the same manner as provided in section 11.1 of this Article, or lands proven not to be productive to be excluded in the same manner, and Exhibit "C" shall be revised accordingly. The effective date of any revision shall be the first of the month in which the information is obtained which provides the basis for the approval of the revision by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor. No land shall be excluded from the participating area(s) on account of depletion of the unitized substances.

11.3 A separate participating area may be established for each accumulation of unitized substances or for any group thereof which is produced as a single pool or zone and any two or more participating areas so established may be combined into one, all subject to approval of the Regional Supervisor.

11.4 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

Article XII—*Allocation of production*

12.1 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States. Unitized substances shall be allocated within the participating area(s) on (a) a volumetric basis of oil and gas in place under original reservoir conditions, or (b) a surface area basis, and proportionally credited to the respective leases committed hereto. The unit operator shall furnish the Regional Supervisor geological and engineering maps and data sufficient to support the net-acre feet determination for volumetric allocation between leases. Oil and gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases subject hereto shall be based and calculated upon the production allocated to the leases as specifically provided herein. The oil and gas saved, removed, or sold from a unit area shall be allocated in this manner, regardless of where any well is drilled and produced in the unit area.

12.2 For the purpose of determining royalty obligations, unitized substances on which royalty has been paid and which are used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operation, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operation and the amounts of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid-hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XIII—*Automatic adjustment of unit area*

13.1 Any lease(s) not entitled to receive an allocation of unit production on the fifth/tenth anniversary of the effective date of the initial participating area established under this Agreement shall be eliminated automatically from the unit area as of said fifth/tenth anniversary; and thereafter, the unit area shall only be comprised of the participating area(s) subject to the provisions of Articles X and XVII.

13.2 If a lease is no longer subject to this Agreement in accordance with the provisions of this Article, that lease shall only be maintained and continued in force and effect in accordance with the terms and provisions contained in the Act, regulations, and the lease.

Article XIV—*Relinquishment of leases*

Pursuant to the provisions of the leases and applicable regulations, a lessee of record shall, subject to the provisions of the unit operating agreement, have the right to relinquish any of its interests committed hereto, in whole or in part, provided that no relinquishment shall be made of any interests within a participating area without the prior approval of the Regional Supervisor. In the event such relinquishments result in the leasehold interest of only one lease remaining committed hereto, this Agreement shall terminate automatically effective as of the date that only one lease remains subject to the Agreement.

Article XV—*Rentals and minimum royalties*

15.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefor at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

15.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XVI—*Effective date and termination*

16.1 This Agreement shall be effective on ——— and shall terminate when oil or gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered or approved a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for a period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

16.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working-interests in each lease or portion thereof committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XVII—*Leases and contracts conformed and extended*

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

17.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands, pursuant to direction or consent of the Secretary or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Suspension of drilling or producing operations on less than all unitized lands, pursuant to direction or consent of the Secretary or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent only as to unitized lands specified in the document providing direction or consent.

(d) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate is produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment pursuant to Articles X or XIII.

17.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XVIII—*Counterparts*

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XIX—*Subsequent joinder*

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XX—*Remedies*

20.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operation, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

20.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XXI—*No waiver of certain rights*

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

Article XXII—*Covenants run with the land*

22.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

22.2 No assignment or transfer of any working-interest or other interest subject hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

ACCEPTANCE OF RIGHTS AND OBLIGATIONS BY UNIT OPERATOR

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated: ____________
Authorized Signature: ____________
Name: ____________
Title: ____________
Corporation: ____________
Subscribed and sworn to me this — day of 19 —.
Notary Public: ____________
My Commission Expires: ____________

APPROVAL BY WORKING-INTEREST OWNER(S)

As an owner of a working-interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: ____________
Authorized Signature: ____________
Name: ____________
Title: ____________
Corporation: ____________
Address: ____________
Subscribed and sworn to me this — day of 19 —.
Notary Public: ____________
My Commission Expires: ____________

(b) *Model unit agreement for development and production units.*

UNIT AGREEMENT FOR OUTER CONTINENTAL SHELF DEVELOPMENT AND PRODUCTION OPERATIONS ON THE ——— UNIT

BLOCKS ———, ——— AREA
OFFSHORE ____________
CONTRACT NO. ____________

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, *et seq.*, it is deemed to be in the interest of conservation, prevention of waste, or protection of correlative rights to unitize the oil and gas interests in the unit area; and

WHEREAS, it is deemed to be necessary in the interest of conservation, for the prevention of waste, or for the protection of correlative rights to conduct development and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—*Definitions*

The following definitions of terms shall apply to this Agreement:

"Act" means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, *et seq.*

"Agreement" means this unit agreement, approved by the Regional Supervisor for conducting development and production operations within the unit area.

"Block" means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

"Paying quantities" as used herein means the production of oil and/or gas in quantities sufficient to yield a return in excess of operating costs.

"Regional Supervisor" means the Regional Supervisor of MMS, Department of the Interior (DOI), or a designee authorized and empowered to regulate and approve unit operations.

"Regulations" means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

"Reservoir" means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

"Unit area" means the area of the OCS which is made subject to this Agreement and described in Article III.

"Unit operating agreement" means an agreement made between the working-interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

"Unit operator" means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct unit operations within the unit area in accordance with a plan of operation approved pursuant to the Act, applicable regulations and this agreement.

"Unitized substances" means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

"Working-interest" means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working-interest.

"Working-interest owner" means a party to this agreement that owns a working-interest.

Article II—*Incorporation*

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—*Unitized reservoir, unit area, and exhibits*

3.1 The (________, reservoir ________) is defined as that productive zone occurring within the interval ____ feet to ____ feet, electric log depths, in Well No. ____, Lease OCS ____, hereinafter referred to as the unitized reservoir.

3.2 The area specified in Exhibit "A" is hereby designated and recognized as overlying the unitized reservoir and as constituting the unit area containing ____ acres, more or less. All oil and/or gas produced from the unitized reservoir, which lies within the unit area, are unitized under the terms of this Agreement and are referred to herein as unitized substances.

3.3 The above unit area may, subject to appropriate approval, be expanded to include therein additional acreage whenever such expansion is necessary or advisable to conform with the purposes of this Agreement.

3.4 Exhibit "A," attached hereto and made a part hereof, is a plat showing the unit area, boundaries, and oil and gas leases in said area. Exhibit "B," attached hereto and made a part hereof, is a schedule showing the acreage, percentage, and kind of ownership of oil and gas interests in all land in the unit area. Exhibit "C," attached hereto and made a part hereof, is a schedule setting out the number of productive net ____ acre-feet creditable to each tract under original reservoir conditions and the percentage of unit participation credited to each tract in the unit area. The number of net ____ acre-feet and the percentage of unit participation credited to each tract in Exhibit "C" are accepted and approved by the Regional Supervisor. Exhibits "A," "B," and "C" shall be revised by the unit operator whenever changes render it necessary, and four copies shall be filed with the Regional Supervisor for approval.

Article IV—*Designation of unit operator*

4.1 ________ is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to develop and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and conditions of approved plans of operations, the exclusive rights and obligations of the owners of working-interests to conduct unit operations to develop and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—*Resignation or removal of unit operator*

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working-interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area are placed in a condition satisfactory to the Regional Supervisor for the transfer of operations, or, if no successor unit operator has been designated, for suspension or abandonment of operations. If a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working-interests as provided in Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working-interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and other assets all owned solely by the unit joint account.

Article VI—*Successor unit operator*

6.1 Whenever the unit operator tenders a resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working-interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volumes of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreement, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of the unit operator's intent to resign or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—*Unit operating agreement*

7.1 The owners of working-interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working-interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and the unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor within 30 days of final execution.

Article VIII—*Appearances and notices*

8.1 The unit operator shall, after notice to other parties affected, have the right to appear on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in the unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any Order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working-interests shall be deemed properly given if in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—*Plan of operation*

9.1 The unit operator shall submit plans of operation which are consistent with the requirements for a Development and Production Plan as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operation has been ordered or approved by the Regional Supervisor, or unless extended by the Director pursuant to 30 CFR 250.13(b). The plan may call for a cessation of drilling operations for a reasonable period of time after the discovery and delineation of this unitized reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operation has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operation shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operation shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operation for approval in accordance with this Article.

Article X—*Revision of unit area and allocation of production*

10.1 Unitized substances produced from the unit area shall be allocated on the basis of net acre-feet, under original reservoir conditions, credited to the respective tracts committed hereto. A net acre-foot as used in this Agreement means one acre of producing formation which contains one foot of net ____ pay. Oil and/or gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases committed hereto shall be based and calculated upon the production allocated to the tracts as specifically provided herein.

10.2 The unit area so established shall be revised from time to time, subject to the approval of the Regional Supervisor, whenever such action appears proper as a result of further drilling operations or otherwise to include additional lands or to exclude lands. The effective date of any revision of the unit area shall be the first day of the month in which is obtained the knowledge or information on which such revision is predicated, provided that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.3 In the event any lands are added to the unit area a reasonable and fair participation shall be allocated to the new lands on the basis of net acre-feet. The determination of the net acre-feet creditable to such lands shall be done in the same manner and by the same procedures used to determine the tract percentages of participation as shown on Exhibit "C." If the unit area is so expanded, the net acre-feet credited to land originally in the unit area shall not be subject to change. The only change will be to increase the total number of net acre-feet in the unit area by adding to the original total the total number of net acre-feet allocated to new lands, provided that there shall never be any retroactive allocation of interest in the unitized substances produced, or the proceeds thereof, by reason of any revision.

10.4 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States.

10.5 For the purpose of determining royalty obligations, gas and liquid-hydrocarbon substances on which royalty has been paid and which are used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operation, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operation, and the shares of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid-hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XI—*Relinquishment of leases*

Pursuant to the provisions of the lease and applicable regulations a lessee of record shall, subject to the provisions of the unit operating agreement, have the right to relinquish any of its interests committed hereto, provided that no relinquishment shall be made of any interests within the unit area without the prior approval of the Regional Supervisor.

Article XII—*Rentals and minimum royalties*

12.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefor at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

12.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XIII—*Effective date and termination*

13.1 This Agreement shall be effective on ________ and shall terminate when oil and/or gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for a period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

13.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working-interests in each lease or portion thereof committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XIV—*Leases and contracts conformed and extended*

14.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

14.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands, pursuant to direction or consent of the Secretary or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Suspension of drilling or producing operations on less than all unitized lands pursuant to direction or consent of the Secretary, or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent only as to those unitized lands specified in the document providing direction or consent.

(d) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate are produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein, and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment pursuant to Article X.

14.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XV—*Counterparts*

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XVI—*Subsequent joinder*

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XVII—*Remedies*

17.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operation, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

17.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XVIII—*No waiver of certain rights*

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

Article XIX—*Covenants run with the land*

19.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto in the unitized reservoir and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

19.2 No assignment or transfer of any working-interest or other interest subject hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

ACCEPTANCE OF RIGHTS AND OBLIGATIONS BY UNIT OPERATOR

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated: ______________________________
Authorized Signature: ____________________
Name: ______________________________
Title: ______________________________
Corporation: __________________________
Address: ____________________________
Subscribed and sworn to me this ____ day of
____, 19____.
Notary Public: _________________________
My Commission Expires: _________________

APPROVAL BY WORKING-INTEREST OWNER(S)

As an owner of a working-interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: ______________________________
Authorized Signature: ____________________
Name: ______________________________
Title: ______________________________
Corporation: __________________________
Address: ____________________________
Subscribed and sworn to me this ____ day of
____, 19 ____.
Notary Public: _________________________
My Commission Expires: _________________

Subpart N—Remedies and Penalties

§ 250.200 Remedies.

(a) (1) Whenever the Regional Director determines, on the basis of available evidence, that a violation of or failure to comply with any provision of the Outer Continental Shelf Lands Act (Act), or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation issued under the Act (hereinafter referred to as "violation") probably occurred and that such violation continued beyond actual notice of the violation and the expiration of any reasonable period allowed for corrective action, the Regional Director may direct the preparation of a case file, and appoint a Minerals Management Service (MMS) employee to serve as a Reviewing Officer. In making this determination, the Regional Director shall have the authority to summon witnesses, administer oaths, and issue orders to produce evidence. Chairmen of investigative panels appointed by the Regional Director to investigate violations or other matters shall also have authority to summon witnesses, administer oaths, and issue orders to produce evidence while conducting investigations.

(2) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of the case.

(3) The Reviewing Officer shall decide each case on the basis of the evidence of record.

(4) The Reviewing Officer may administer oaths and issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions and may issue orders to produce evidence.

(5) The Reviewing Officer may assess civil penalties and, when appropriate, recommend the initiation of criminal proceedings.

(b) If the Reviewing Officer determines that there is sufficient evidence that a violation probably occurred and that the violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, the Reviewing Officer shall notify in writing the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(2) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available to the Reviewing Officer;

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(4) The fact that, subject to the provisions in § 250.201 of this part, the party has a right to a hearing before the

Reviewing Officer prior to any finding of fact regarding the alleged violation.

(c) A party has the right to be represented by counsel, qualified to practice before the Department of the Interior (DOI) under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

§ 250.201 Hearings.

(a) Within 30 days after receipt of a notice pursuant in § 250.200(b) of this part, the party may accomplish one of the following:

(1) Request a hearing before the Reviewing Officer,

(2) Provide any written evidence and arguments in lieu of a hearing, or

(3) Pay the amount specified in the notice.

(b) A request for a hearing before the Reviewing Officer shall be in writing and specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration except as the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(1) The Reviewing Officer may grant the party additional time to submit a request for a hearing.

(2) The Reviewing Officer shall promptly schedule all requested hearings to be held in the office of the Reviewing Officer or such other location as the Reviewing Officer may designate. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(c) Prior to a hearing, the party may examine all evidence in the case file except material that would disclose or lead to the disclosure of the identity of a confidential informant.

(d)(1) Confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is as follows:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);

(ii) Information required to be held in confidence by these regulations; or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment of information shall submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure.

(e) The Regional Director may, upon request of a party, transfer the case to another Reviewing Officer or direct that the hearing be held at a location other than that specified by the Reviewing Officer.

(f) (1) The testimony of any witness may be presented either through a personal appearance or through a written statement.

(2) A witness may be required to attend a hearing or the taking of a deposition at a place not more than 100 miles from the place of service.

(3) Witnesses subpoenaed shall be paid the same fees and mileage paid for similar services in the U.S. District Courts. These expenses shall be paid by the party at whose insistence the witness appears.

(4) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose request the witness appears.

(5) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

§ 250.202 Hearing procedures.

(a) Material in the case file which is pertinent to the issues shall be presented to the party who may respond to or rebut this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(b) The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received.

(c) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matter of which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(d) In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence but is not bound by strict rules of evidence.

(e) (1) A verbatim transcript of hearings before a Reviewing Officer need not be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made and the Reviewing Officer's decision is appealed, the party shall submit a copy of the verbatim transcript with the appeal to the Director and to the Reviewing Officer for inclusion in the case file.

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for them. Any decision shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation occurred, or that the required notice of the alleged violation was not provided, or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, the Reviewing Officer shall dismiss the case and remand it to the Regional Director. A dismissal is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to 30 CFR Part 290 of this title. The party shall be advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

§ 250.204 Appeals from Reviewing Officer's decision.

(a) (1) Any appeal from a decision of the Reviewing Officer, together with any supporting argument, shall be submitted by a party to the Director within 30 days after the date of receipt of the decision. The appellant shall provide a copy of the notice of appeal and supporting brief to the Reviewing Officer. Except as provided in § 250.205 of this part, the only issues which will be considered on appeal are jurisdictional questions and those issues specified in the notice of appeal which were properly raised before the Reviewing Officer.

(2) The failure to file a notice of appeal within the time prescribed shall result in the action of the Reviewing Officer becoming the final action of the DOI in the case.

(b) A copy of all of the Reviewing Officer's comments on the appeal submitted to the Director shall be provided to the appellant.

(c) (1) The Director may affirm, reverse, or modify the Reviewing Officer's decision or remand the case for new or additional proceedings.

(2) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(d) The Director's decision shall be in writing, and copies shall be provided to the appellant and the Reviewing Officer.

(e) In the absence of an appeal from the Director's decision pursuant to 30 CFR Part 290, the Director's decision on an appeal shall be final. (See § 250.23 of this part.)

§ 250.205 Reopening a case.

(a) (1) At any time prior to final MMS action in a civil-penalty case, a party may petition to reopen the proceedings on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner shall state whether the evidence was known to the petitioner at the time of the proceedings and, if not, why the newly found evidence could not have been discovered during the previous proceedings. The party shall submit the petition to the Reviewing Officer and provide a copy to the Regional Director.

(3) The Reviewing Officer shall consider a petition to reopen a case unless an appeal has been filed. In those cases where an appeal has been timely filed, a petition to reopen a case shall be considered by the Director.

(4) A petition to reopen a case shall be granted only when the Reviewing Officer or Director determines that the petition explains why newly found evidence that would have a direct and material bearing on the issue(s) of the case was not and could not have been produced at the time of the previous proceedings. A decision on a petition to reopen a case shall be in writing. A new decision issued by the Reviewing Officer, on the basis of newly found evidence, may be appealed to the Director in accordance with § 250.204 of this part.

(b) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant in § 250.204 of this part or 30 CFR Part 290 of this title.

(c) The Regional Director may, on the basis of newly found evidence, that would probably produce a different result, reopen a case pursuant to § 250.203(a) of this part.

§ 250.206 Civil-penalties.

(a) (1) If the Reviewing Officer determines that a civil-penalty is to be assessed, the penalty shall be determined in accordance with the provisions of section 24(b) of the Act.

(2) If the Reviewing Officer's decision is appealed to the Director, payment of a civil-penalty shall not be due until after the Director's decision on the appeal is issued. If administrative relief is pursued following the Director's decision, a bond guaranteeing payment may be posted in lieu of actual payment.

(3) The MMS's Associate Director for Royalty Management shall collect civil-penalties assessed by a Reviewing Officer, the Director, or DOI's Board of Land Appeals.

(4) Payment of a civil-penalty shall be in accordance with instructions that accompany the Bill for Collection (Form DI–10406) sent to the party upon whom the penalty is imposed.

(b) Within 30 days after receipt of the bill issued by MMS's Royalty Management Program Accounting Division, the party shall submit payment of the assessed penalty to MMS's Accounting Center unless an appeal is filed in accordance with § 250.204 of this part. Failure to either make timely payment or file a timely appeal will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment as determined by MMS. Interest shall be computed on a daily basis at the rate applicable under section 6621 of the Internal Revenue Code of 1954. Such failure may also result in the initiation of additional enforcement proceedings including, if appropriate, cancellation of the lease or permit or forfeiture of a bond under this part.

Subpart O—Training

§ 250.210 Documents incorporated by reference.

The documents listed below are incorporated by reference as requirements in this subpart. The Director of the Federal Register approved the incorporation by reference of these documents on May 31, 1988. These documents are incorporated as they existed on the date of the approval, and a notice of any change in these douments will be published as a rule change in the **Federal Register**. Each document or specific portion thereof is incorporated by reference in the corresponding sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement cited in this section. In accordance with § 250.3, performance requirements, the lessee may comply with a later edition of a specific document incorporated by reference provided the lessee can demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition and provided the lessee obtains the prior written approval of the authorized Minerals Management Service (MMS) official, as appropriate, for such alternative compliance. The list includes the name and address of at least one organization from whom the document may be purchased. These documents are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408. In order to facilitate correlation of the test of the corresponding sections with the list of documents incorporated by reference, the documents are listed in alphanumerical order.

(a) *American Petroleum Institute (API) Document.* The API document listed in this paragraph may be purchased from the American Petroleum

Institute, Production Department, 211 N. Ervay, Suite 1700, Dallas, Texas 75201, or American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

API RP T–2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised October 1975, API Stock No. 811–13710, Incorporated by Reference at: § 250.212 of this subpart.

(b) *Minerals Management Service Document.* The MMS document listed in this paragraph may be obtained from the Minerals Management Service, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, Virginia 22091, or from one of the Regional Offices of MMS's Offshore Minerals Management Program.

MMSS–OCS–T–1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations, Second Edition, May 1982, Incorporated by Reference at: § 250.211 of this subpart.

§ 250.211 Well control training.

Lessee and drilling contractor personnel shall be trained in accordance with MMS Standard MMSS–OCS–T–1, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," Second Edition, May 1982.

§ 250.212 Safety device training.

(a) Lessee and contract personnel installing, inspecting, testing, and maintaining antipollution safety devices and systems and personnel operating offshore production platforms shall be qualified under a program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices. The aforementioned personnel shall repeat the basic API RP T–2 course every 4 years.

(b) Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area or other locations conveniently available to the District Supervisor.

(c) Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company, provided they have received training and are qualified by the manufacturer to install, service, or repair the specific safety device or safety system and if they are accompanied by an API RP T–2–qualified person who is capable of evaluating the impact of the work on the total system.

(d) On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

Subpart P—Sulphur Operations

§ 250.250 Requirements for sulphur operations.

Lessees shall conduct sulphur exploration, development, and production operations in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region in accordance with the GOM OCS Order No. 10 and with the requirements of this part.

PART 256—[AMENDED]

3. The authority for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

4. In Part 256, Subpart N of Title 30, consisting of §§ 256.83–256.101, is removed.

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Friday
April 1, 1988

Part III

Department of Defense

48 CFR Parts 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights; Interim Rule and Request for Comments

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is issuing interim changes to Subpart 227.4 and Part 252 of the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 808 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100–180).

DATE: April 2, 1988. The interim rule is effective for contracts resulting from solicitations issued on or after April 2, 1988. Comments received by May 31, 1988 in response to this Notice will be considered in formulating the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(P&L)(MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 87–303 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements section 808, Rights In Technical Data, of Pub. L. 100–180 which requires the Department of Defense to make certain revisions to DFARS Subpart 227.4 and Part 252. The statute provides that:

1. The terms "exclusively with Government funds" and "exclusively at private expense" be defined and that the definitions specify how indirect costs are to be treated.

2. A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition for award, to refrain from offering to use, or from using, an item or process developed exclusively at private expense and to which the contractor or subcontractor is entitled to restrict the Government's rights.

3. The regulation may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense.

4. A contractor or subcontractor may be permitted to license directly the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

5. The respective rights of the Government and of the contractor or subcontractor in technical data pertaining to an item or process developed in part with Government funds and in part at private expense must be established on the basis of negotiation, except where a determination is made that negotiations would not be practicable. Reasonable and flexible guidelines can be prescribed for the conduct of the negotiations, including negotiation objectives.

In addition to the regulatory changes required by section 808 of Pub. L. 100–180, the interim rule was drafted in consideration of Executive Order 12591, entitled: Facilitating Access to Science and Technology, issued on April 10, 1987.

The interim rule also addresses two issues raised by public comments. When the final rule implementing section 953 of Pub. L. 99–500 was published on April 16, 1987 (52 FR 12391), the DAR Council indicated that commercialization and non-disclosure agreements required additional consideration.

1. *Commercialization.* This interim rule provides additional procedures and criteria whereby a contractor may be granted exclusive commercial rights in technical data, while considering the public interest in obtaining access to the data and the administrative burden to the Government in protecting the contractor's exclusive commercial interests.

2. (a) *Standard Non-Disclosure Agreements.* The interim rule contains a standard agreement which must be executed by a prospective recipient of Government Purpose License Rights (GPLR) data prior to release of the data to the concern.

(b) *Alternative Approach to Non-Disclosure Agreements.* The DAR Council is considering, and specifically requests public comment with respect to, an alternative approach to the use of non-disclosure agreements where data subject to GPLR are involved. Under this alternative approach, a solicitation provision would notify offerors that the solicitation includes technical data subject to restrictions on further use or disclosure, and would require offerors to safeguard the data. It is envisioned that the solicitation provision, together with the restrictive legends placed on the technical data, would sufficiently protect the contractor retaining exclusive commercial rights, and would adequately notify recipients of the solicitation of their responsibility to safeguard the data.

Finally, the interim rule was developed based on direction from the Deputy Assistant Secretary of Defense (Procurement) that DFARS Subpart 27.4 be simplified and streamlined.

B. Regulatory Flexibility Act Information

The interim rule may have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* An Initial Regulatory Flexibility Analysis has therefore been deemed necessary and will be provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Analysis may contact the individual listed above. Comments received from the public concerning the Analysis will be considered in drafting a final rule and in performing a Final Regulatory Flexibility Analysis.

Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610 in correspondence.

C. Paperwork Reduction Act Information

The interim rule contains information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Accordingly, an information collection clearance request has been submitted to OMB pursuant to 5 CFR 1320.13. Public comments concerning that request will be invited by OMB through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 227 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 227.4 is revised to read as follows.

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

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227.477 Contracts for acquisition of existing works.
227.478 Architect-engineer and construction contracts.
227.478–1 General.
227.478–2 Acquisition and use of plans, specifications and drawings.
227.478–3 Contracts for construction supplies and research and development work.
227.478–4 [Reserved]
227.478–5 Approval of restricted designs.
227.479 Small business innovative research program (SBIR Program).
227.480 Copyrights.
227.481 Acquisition of rights in computer software.
227.482 [Reserved]

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

227.470 Scope.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This part does not apply to rights in computer software acquired under GSA schedule contracts.

227.471 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or method of the recording.

"Detailed design data", as used in this subpart, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

"Detailed manufacturing or process data", as used in this subpart, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

"Developed", as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

"Developed Exclusively with Government Funds", as used in this subpart, means, in connection with an item, component, or process, that the cost of developnent was directly paid for in whole by the Government or that the development was required as an element of performance under a Government contract or subcontract.

"Developed Exclusively at Private Expense", as used in this subpart, means, in connection with an item, component, or process, that no part of the cost of developnent was paid for by the Government and that the development was not required as an element of performance under a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All indirect costs of development are considered Government funded when development was required as an element of performance in a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required as an element of performance under a Government contract or subcontract.

"Form, fit, and function data", as used in this subpart, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose license rights" (GPLR), as used in this subpart, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: Released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except when:

(a) Release, disclosure, or use is necessary for emergency repair or overhaul; provided that the release, disclosure, or use outside the Government shall be made subject to a prohibition against further use, release, or disclosure, and that the party asserting limited rights be notified by the contracting officer of such release, disclosure, or use; or

(b) Release or disclosure to a foreign government that is in the interest of the United States and is required for evaluational or informational purpose under the conditions of (a) above, except that the release or disclosure may not include detailed manufacturing or process data.

"Required as an Element of Performance Under a Government Contract or Subcontract", as used in this subpart, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was necessary for performance of a Government contract or subcontract.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)–(d) above that are listed or described in a contract or described in a license agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

227.472 Acquisition policy for technical data and rights in technical data.

227.472-1 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's Interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users. The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's Interests.* Commercial and non-profit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The Balancing of Interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

227.472-2 Establishing minimum Government needs.

The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be

considered: Whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items; or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see Subpart 217.72).

227.472-3 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limited rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as enumerated in (a)(1) below. The Government will obtain limited rights as discussed in (b)(1) below. Government purpose license rights may be established in accordance with (a)(2), (b)(2), or (c) below.

(a) *Unlimited Rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under a Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under any Government contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations;

(viii) Technical data previously delivered subject to limited rights or Government purpose license rights which have expired; and

(ix) Technical data delivered under the contract which, at the time of delivery, are not identified in the listing described in paragraph (k) of the clause at 252.227–7013.

(2) *Exception to unlimited rights—Government purpose license rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government purposes only for a stated period of time. After the time period has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) In cases where the Government would otherwise be entitled to unlimited rights, the contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2), the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) above.

(2) *Exception to limited rights—obtaining greater rights in technical data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in technical data pertaining to items, components, and processes developed with mixed funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227–7035 or 252.227–7013 with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

227.473 General procedures.

227.473-1 Procedures for establishing rights in technical data.

(a) *Notification requirements*—(1) *Background.* The provision at 252.227–7035 and the clause at 252.227–7013 require offerors and contractors to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights.

(2) *Preaward notification.* If a solicitation will result in a contract requiring delivery of technical data, the provision at 252.227–7035, Preaward Notification of Rights in Technical Data and Computer Software, shall be included in the solicitation. This

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provision requires the offeror to identify items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the certification described in (a)(4) below.

(3) *Postaward notification.* The Government needs continuing information about the contractor's intent to use items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights. The clause at 252.227–7013 requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the contractor's certification as described in (a)(4) below.

(4) *Certifications.* (i) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227–7028, Requirement for Technical Data Certification, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered with other than unlimited rights, and the place of delivery; and

(B) Identification of the limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(ii) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the Certification at 252.227–7038, "Listing and Certification of Technology Developed with Private Funding."

(iii) This certification authorizes the contracting officer to request additional information needed to evaluate the assertions.

(iv) This certification assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227–7037.

(b) *Establishing rights in technical data*—(1) *General.* The contracting officer shall review and evaluate assertions contained in preaward or postaward notifications to determine the likely impact on the Government's ability to meet its needs. The contracting officer shall then either—

(i) Agree with the assertions;

(ii) Enter into negotiations to establish the respective rights of the parties; or

(iii) Determine that negotiations are not practicable, in which case the rights will be established in accordance with (d) below.

(2) *Negotiations*—(i) *Negotiation factors.* The contracting officer shall consider the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(A) The acquisition strategy for the item or system (including logistics support);

(B) Whether the item or system (or related logistics support) will be competed;

(C) Timing of such competition;

(D) Whether the technology can be commercialized;

(E) Funding contributions of the respective parties;

(F) Development of alternative sources for industrial mobilization or other purposes;

(G) Burden on the Government of protecting the contractor's rights in technical data.

(ii) *Negotiation situations.* The following are examples of how the negotiation factors in (b)(2)(i) above may be applied:

(A) When the Government does not have an immediate need to use the data for competition and the contractor has not requested exclusive commercial rights in the data, the Government will negotiate to establish limited rights which, upon expiration of a time limitation, shall become unlimited rights.

(B) Where the Government requires use of data for immediate competition, the contractor has requested exclusive commercial rights in the data (i.e., the data has commercial application), and protecting the contractor's rights is not unduly burdensome on the Government, the contracting officer will negotiate GPLR which will expire after a specified period of time and become unlimited rights.

(C) Where the Government requires immediate use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights.

(iii) *Negotiation of time periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(A) The time limitations will be based on the following factors:

(*1*) Relative funding contribution of the parties;

(*2*) Anticipated date the technical data will be needed for competition;

(*3*) The economic life of the technology;

(*4*) The contractor's or subcontractor's agreement to establish or assist in establishing additional sources of supply;

(*5*) The burden on the Government in restricting disclosure;

(*6*) The potential commercial uses of the technology;

(B) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(*1*) The technical data will not be needed for competition; and

(*2*) Longer periods are approved by the chief of the contracting office.

(C) Time limitations for limited rights and GPLR may be extended, if:

(*1*) Other interested parties have not requested access to the technical data;

(*2*) The technical data need not be publicly disclosed to meet a specified Government need; and

(*3*) The contractor provides adequate consideration for remarking any technical data with revised legends.

(iv) *Non-standard license rights.* Unlimited rights, government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated unless approved by the head of the contracting activity.

(c) *Contract documentation*—(1) *Listing.* (i) The contracting officer shall incorporate into the contract a list of any items, components, processes, (and rights therein) to be delivered with other than unlimited rights.

(ii) During the life of the contract, a bilateral modification of the contract may be appropriate to incorporate the privately developed items, components, processes, or computer software identified by the contractor under the notification procedures. Also, during contract performance, changing conditions (e.g., schedule or cost) may require bilaterial modification of the list.

(iii) By the time the technical data are delivered to the Government, the list must—

(A) Identify the items components, processes, or computer software to which the technical data pertains;

(B) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(C) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use or disclosure of the technical data or computer software.

(2) *Standard Non-disclosure agreements.* (i) Technical data subject to other than unlimited rights shall not be released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data is subject to GPLR, the recipient must sign the Standard Non-disclosure Agreement shown below. This Agreement must be executed by an official authorized to bind the contractor.

(ii) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(iii) The contracting officer shall require each contractor receiving data subject to GPLR to execute the Standard Non-disclosure Agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Non-disclosure Agreement

The undersigned,

(name)

---

as the authorized representative of
(company name)

(hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefor:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The Licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the Standard Non-disclosure Agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR data supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires).

Signed this ___ day of _______, 19___.

Licensee

(d) *Negotiation impracticable.* (1) The contracting officer may determine that negotiations are impracticable when there are numerous offerors or when an award must be made under urgent circumstances. This determination must be approved by the chief of the contracting office. In such cases the contracting officer will notify the contractor. The contracting officer's notification shall provide that if, after receiving the notice, the contractor elects to use the item, component, or process that is asserted to be developed in part at private expense, it shall provide written notice to the contracting officer. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of the respective rights of the parties.

(2) Data rights need not be negotiated for small purchases and contracts awarded using sealed bidding.

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(1) When existing works are to be acquired in accordance with 227.477;

(2) When special works are to be acquired in accordance with 227.476;

(3) When the work will be performed by foreign sources in accordance with 227.475–5; and

(4) For architect-engineer services or construction in accordance with 227.478.

227.473–2 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.472–3(b)(2)).

(c) Prime contractors and higher-tier subcontractors are prohibited from using their power to award subcontracts as economic leverage to acquire rights in technical data from their subcontractors. A subcontractor, who would have the right pursuant to 227.472–3(b) to furnish technical data with limited rights, may furnish data directly to the Government rather than through the prime contractor.

227.473–3 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227–7018 and 252.227–7029 in all contracts which also contain the clause at 252.227–7013. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227–7018 shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227–7030 for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.473–4 and the clause at 252.227–7037.

(e) *Non-conforming markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. Copyright notices which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly.

227.473–4 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227–7037 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data; but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation".

(b) *Prechallenge request for information.* (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227–7037.

227.473–5 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to 10 percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) If delivery of technical data is required, the clause at 252.227–7036, Certification of Technical Data Conformity, shall be included in solicitations and any resultant contract.

227.473–6 [Reserved]

227.474 [Reserved]

227.475 Other procedures.

227.475–1 Data requirements.

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423 is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the

Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223–3.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423 and data deliverable under clauses prescribed in the FAR and DFARS.

227.475–2 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software is expensive to prepare, maintain and update. By delaying the delivery of technical data or software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227–7026 "Deferred Delivery of Technical Data and Computer Software", shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all items (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data or computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery of the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227–7027, "Deferred Ordering of Technical Data or Computer Software", should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the data and computer software is ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

227.475–3 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246–7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with section 246.708.

227.475–4 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.475–5 Overseas contracts with foreign sources.

The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). However, the clause at 252.227–7013, "Rights in Technical Data and Computer Software", shall be used whenever the rights to be obtained are those which would be obtained if contracting with United States firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition: *Provided,* it is consistent with sections 227.472 and 227.481.

227.475–6 [Reserved]

227.475–7 [Reserved]

227.475–8 Publication for sale.

Alternate I of the clause at 252.227–7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.476 Special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.477 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-shelf acquisition of books and similar items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.478 Architect-engineer and construction contracts.

227.478–1 General.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.478–2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural designs and data clauses for architect-engineer or construction contracts*—(1) *Plans and specifications and as-built drawings.* (i) Except as provided in (a)(1)(ii) below, use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(2) *Shop drawings for construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

227.478–3 Contracts for construction supplies and research and development work.

The provisions and clauses required by this section shall not be used when the acquisition is limited to either (a) construction supplies or materials, (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both.

227.478–4 [Reserved]

227.478–5 Approval of restricted designs.

The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.479 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97–219, "Small Business Innovation Developnent Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65–01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of non-disclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgment and disclaimer statement.

(d) The clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

277.480 Copyrights.

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in (a) above may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227–7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227–7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227–7013 and 252.227–7020 provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.481 Acquisition of rights in computer software.

227.482 [Reserved]

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 252.227–7013, 252.227–7018 through 252.227–7024, 252.227–7026 through 252.227–7037 are revised; sections 252.227–7016, 252.227–7017 and 252.227–7025 are removed and reserved; and section 252.227–7038 is added to read as follows:

252.227–7013 Rights in technical data and computer software.

As prescribed at 227.472–3(e) and 227.479(d), insert the following clause:

Rights in Technical Data and Computer Software (APR 1988)

(a) *Definitions.*

(1) "Commercial computer software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) "Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) "Computer data base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) "Computer program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) "Computer software", as used in this clause, means computer programs and computer data bases.

(6) "Computer software documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) "Data", as used in this clause, means recorded information, regardless of form or method of the recording.

(8) "Detailed design data", as used in this clause, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) "Detailed manufacturing or process data", as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) "Developed", as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(11) "Developed Exclusively with Government Funds", as used in this clause, means, in connection with an item, component, or process, that the cost of development was directly paid for in whole by the Government or that the development was required as an element of performance under a Government contract or subcontract.

(12) "Developed Exclusively at Private Expense", as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required as an element of performance under a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All indirect costs of development are considered Government funded when development was required as an element of performance in a Government contract or subcontract. They are considered funded at private expense when development was not required as an element of performance under a Government contract or subcontract.

(13) "Form, fit, and function data", as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) "Government purpose license rights" (GPLR), as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) "Limited rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: Released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except when:

(i) Release, disclosure, or use is necessary for emergency repair or overhaul; provided that the release, disclosure, or use outside the Government shall be made subject to a prohibition against further use, release, or disclosure, and that the party asserting limited rights be notified by the contracting officer of such release, disclosure, or use; or

(ii) Release or disclosure to a foreign government that is in the interest of the United States and is required for evaluational or informational purpose under the conditions of (a) above, except that the release or disclosure may not include detailed manufacturing or process data.

(16) "Required as an Element of Performance Under a Government Contract or Subcontract", as used in this clause, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was necessary for performance of a Government contract or subcontract.

(17) "Restricted rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights. In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17) (i)–(iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) "Technical data", as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) "Unlimited rights", as used in this clause, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) "Unpublished", as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) *Rights in Technical Data*—(1) *Unlimited Rights*. Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations;

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired; and

(ix) Technical data delivered under the contract, which at the time of delivery, are not identified in the listing required by paragraph (k) of this clause.

(2) *Government Purpose License Rights*. The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has executed the Standard Non-Disclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

Government Purpose License Rights Legend

Contract No. ______

Contractor: ______

______

______

Government purpose license rights shall be effective until

______

(insert date certain)

thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Limited Rights*. Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (a)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

Limited Rights Legend

Contract No. ______

Contractor: ______

______

______

(For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate).

Limited rights shall be effective until

______

(insert date certain)

thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) above. (For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraphs (a)(15) and (a)(14) above, insert the following statement:

In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227–7013, the Government shall have the rights described in the license or agreement made a part of Contract No. ______

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) *Rights in Computer Software*—(1) *Restricted Rights*. (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ______ with ______ (Name of Contractor) ______

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227–7013.

______

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights*. The Government shall have unlimited rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction*. Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyright*. (1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227–7013 (date).

(f) *Removal of Unjustified and Nonconforming Markings*—(1) *Unjustified Technical Data Markings*. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227–7037.

(2) *Nonconforming Technical Data Markings*. Correction of nonconforming markings is not subject to this clause. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) *Unjustified and Nonconforming Computer Software Markings*. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software*. The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.* (1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) *Notice of Limitations on Government Rights.* (1) The Contractor shall notify the Contracting Officer of the Contractor's or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds which the Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) With respect to each item, component, process, or computer software identified in (j)(1)(ii) above, the Contractor shall also notify the Contracting Officer of the total development cost known to the Contractor of the item, component, process, or computer software and the percentage of the total development cost known to the Contractor which was contributed by the Contractor.

(3) Such notification is not required with respect to items, components, processes or computer software for which such notice was given pursuant to preaward notification of rights in technical data in connection with this contract.

(4) Such notification shall be accompanied by the appropriate listing and certification required by the clause at DFARS 252.227-7035.

(k) *Identification of restrictions on Government rights.* Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are contained in a listing made part of this contract. This listing is intended to facilitate acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227-7037. As a minimum, this listing must—

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(l) *Postaward Negotiation—Disputes.* If, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of clause)

Alternate I (APR 1988)

As prescribed at 227.475-6, add the following paragraph to the basic clause:

(m) *Publication for sale.* If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate II (APR 1988)

As prescribed at 227.473(d), substitute the following paragraphs (b) and (c) for the existing paragraphs (b) and (c) in the basic clause.

(b) *Rights in Technical Data*—(1) *Unlimited Rights.* The Government is entitled to and will receive unlimited rights in:

(i) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(ii) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data; and

(iv) Technical data which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(1) above. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. ____________________

Contractor: ____________________

____

____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS clause at 252.227-7013. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in any technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to unlimited or limited rights pursuant to subparagraph (b)(1) or (b)(2) above. The Government shall not be liable for unauthorized use or disclosure of the data by third parties. Government Purpose License Rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. ____________________

Contractor: ____________________

For a period of two (2) years after delivery and acceptance of the last deliverable item under the above contract, this technical data shall be subject to the restrictions contained in the definition of "Limited Rights" in DFARS clause at 252.227-7013. After the two-year period, the data shall be subject to the restrictions contained in the definition of "Government Purpose License Rights" in DFARS clause at 252.227-7013. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ______. with ______ (Name of Contractor) ______.

And the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to this unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided,* that the unmodified portions shall remain subject to these restrictions.

(2) Government Purpose License Rights. For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have restricted rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) Any other computer software required to be prepared or delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein. Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

252.227-7014 [Reserved]

252.227-7015 [Reserved]

252.227-7016 [Reserved]

252.227-7017 [Reserved]

252.227-7018 Restrictive markings on technical data.

As prescribed at 227.473-3(a), insert the following clause:

Restrictive Markings on Technical Data (APR 1988)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as a minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized;

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.481, insert the following provision:

Identification of Restricted Rights Computer Software (APR 1988)

The Offeror is required to identify in his proposal, to the extent feasible, any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. Any restrictions on the Government's use or disclosure of computer software developed at private expense and to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. If no such computer software is identified, all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.476(a), insert the following clause:

Rights in Data—Special Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b), and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

© (*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the © will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.477(b), insert the following clause:

Rights in Data—Existing Works (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.478-2(a)(1)(i), insert the following clause:

Government Rights (Unlimited) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of Government.

As prescribed at 227.478-2(a)(1)(ii), insert the following clause:

Drawings and Other Data to Become Property of Government (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.478-5, insert the following clause:

Notice and Approval of Restricted Designs (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 [Reserved]

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.475-2(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.475-2(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data certification.

As prescribed at 227.473-4(a), insert the following provision:

Requirement for Technical Data Certification (APR 1988)

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data with other than unlimited rights included in its offer; if so, the Offeror shall identify:

(a) One existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(b) The limitation on the Government's right to use the data, including identification of the earliest date the limitation expires.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.473-3(a), insert the following clause:

Identification of Technical Data (MAR 1975)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.473-5(b), insert the following clause:

Technical Data—Withholding of Payment (APR 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.475-1, insert the following clause:

Data Requirements (APR 1988)

The Contractor is required to deliver the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (Foreign).

As prescribed in 227.475-5, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (JUN 1979)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.478-2(a)(2), insert the following clause:

Rights in Shop Drawings (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—subcontracts.

As prescribed at 227.304-4, insert the following clause:

Patents—Subcontracts (APR 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 Preaward notification of rights in technical data and computer software.

As prescribed at 227.473-1(a)(2), insert the following provision:

Preaward Notification of Rights in Technical Data and Computer Software (APR 1988)

(a) The Offeror shall in its response to this solicitation, notify the Contracting Officer of the Offeror's or its potential subcontractor's proposed use of items, components, processes and computer software in the performance of the contract that—

(1) Have been developed exclusively at private expense;

(2) Have been developed in part at private expense; or

(3) Embody technologies that have been developed exclusively with Government funds which the Contractor or subcontractor requests the Government to grant commercial exclusive rights.

(b) With respect to each item, component, process, or computer software identified in (a)(ii) above, the Contractor shall also notify the Contracting Officer of the total development cost known to the Contractor of the item, component, process, or computer software and the percentage of the total development cost known to the Contractor which was contributed by the Contractor. This notification shall be accompanied by the appropriate certification at DFARS 252.227-7038.

(c) If the Offeror asserts other than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the Contracting Officer, evidence to support any such assertion. Such notification shall be accompanied by the appropriate certification at DFARS 252.227-7038.

(End of provision)

252.227-7036 Certification of technical data conformity.

As prescribed at 227.473-5, insert the following clause:

Certification of Technical Data Conformity (MAY 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, __________, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. __________ is complete, accurate, and complies with all requirements of the contract.

Date ____________________

Name and Title of Certifying Official __________

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.473-4(a) insert the following clause:

Validation of Restrictive Markings on Technical Data (APR 1988)

(a) *Definitions.* The terms used in this clause are defined in the clause at DFARS 252.227-7013 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2)(ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

252.227-7038 Listing and certification of development of technology with private funding.

As prescribed at 227.473-1(a)(4), insert the following provision:

Listing and Certification of Development of Technology With Private Funding (APR 1988)

(a) All technical data pertaining to the items, components, processes, and computer software identified on the listing attached to this certification shall be subject to the written certification below. Upon request by the Contracting Officer, the Contractor shall provide sufficient descriptive information to enable the Contracting Officer to identify and evaluate the Contractor's assertions.

Certification of Development of Technology With Private Funding

(1) The Offeror/Contractor certifies that, to the best of its knowledge and belief, the following information is current, accurate and complete:

(i) Identification of items, components, processes and computer software which the Offeror/Contractor intends to use in the performance of the contract which were developed exclusively at private expense if the unpublished technical data pertaining thereto will be delivered to the Government marked with other than unlimited rights.

(ii) Identification of items, components, processes and computer software which the Offeror/Contractor intends to use in the performance of the contract which were developed in part at private expense if the unpublished technical data pertaining thereto will be delivered to the Government marked with other than unlimited rights.

(iii) Development cost contributed by the Offeror/Contractor for each item, component, process, and computer software identified in (a)(1)(ii) above.

(iv) Percentage of total development cost known to the Offeror/Contractor contributed by the Offeror/Contractor for each item, component, process and computer software identified in (a)(1)(ii) above.

(2) Except for technical data pertaining to items, components, processes, or computer software for which notice will be provided pursuant to DFARS 252.227-7013(j), all other technical data will be delivered to the Government subject to unlimited rights.

(3) Date ____________

Name and Title of Certifying Official ____________

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor.

(End of certificate)

(End of provision)

[FR Doc. 88-7054 Filed 3-31-88; 8:45 am]

BILLING CODE 3810-01-M

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federal register

Friday
April 1, 1988

Part IV

Department of Education

Rehabilitation Services Administration

Rehabilitation Service Projects for 1988; Combined Notice of Final Funding Priorities

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Service Projects for 1988

AGENCY: Department of Education.

ACTION: Combined notice of final funding priorities.

SUMMARY: The Secretary of Education announces funding priorities in fiscal year 1988 for service activities to be supported under the following programs of the Rehabilitation Services Administration (RSA):

- Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals; and
- Projects With Industry.

EFFECTIVE DATE: These final funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The contact person listed below under each of the two programs.

SUPPLEMENTARY INFORMATION: The authorities for these two service programs of RSA that are included in this notice are contained in the Rehabilitation Act of 1973, as amended, aa follows:

Section 311(a)(1): Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals; and

Section 621: Projects With Industry.

Under the Special Projects program, awards are made to State and other public and nonprofit agencies and organizations. Under the Projects with Industry program, awards are made to individual employers, State vocational rehabilitation agencies, and other profit-making and nonprofit organizations. Awards will be made for up to 36 months.

The purposes of these awards are to expand or otherwise improve rehabilitation services to individuals with the most severe handicaps and to work cooperatively with industry and organized labor to provide individuals with handicaps with training, employment, and supportive services in order to prepare them for and place them in competitive employment.

On January 4, 1988, the Secretary published a notice of proposed priorities for these programs in the **Federal Register** (53 FR 104). Except for minor technical revisions, there are no significant differences between these final priorities and the proposed priorities.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed funding priorities, five parties submitted comments. The comments and the Secretary's responses follow.

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals

Comment: One commenter recommended that priority be given to services focused on the mobility, communication, and employment needs of individuals who are severely handicapped with cerebral palsy, muscular dystrophy, and multiple sclerosis. Another commenter recommended that priority be given to the special vocational needs of young people residing in long-term care facilities.

Discussion: The Secretary establishes annual funding priorities each fiscal year in order to ensure the most effective use of program funds. In response to identified service delivery needs and Departmental initiatives, the Secretary has established two priorities that are considered to best meet needs of this program for fiscal year 1988. These priorities emphasize overcoming barriers to employment of Persons who suffer from traumatic head injuries and innovative job development and placement services for chronically mentally ill individuals that will result in or lead to competitive permanent placement. Regarding services to individuals with cerebral palsy, muscular dystrophy, and multiple sclerosis, the Secretary established a priority in fiscal year 1986 in the area of neuromuscular disabilities; four projects initiated under that priority were funded in fiscal years 1986 and 1987 and will be continued with fiscal year 1988 funding.

Changes: None.

Projects With Industry

Comment: Two commenters expressed concern that current Projects With Industry grantees do not have resources to meet increased salary and other operating costs and suggested that all or a portion of the funds available for new awards in 1988 be used to cover these costs.

Discussion: In accordance with Pub. L. 99–506, all projects funded in fiscal year 1987 will again be funded in fiscal year 1988. The Department does not support using additional funds for ongoing projects at the expense of funding new projects. The major goal of the Projects With Industry program is to encourage new industries to employ persons with disabilities, which can best be accomplished by continually supporting new projects. Since existing projects must be continued, thereby reducing the amount of funds available for new projects, only one program priority is needed for fiscal year 1988. A priority emphasizing assisting individuals with the most severe disabilities to secure employment has been selected.

Changes: None.

Comment: All three commenters expressed concern that in view of the great need for Projects With Industry services in underserved areas across the country, the large number of individuals with varying disabilities that require a wide range of services, and the need to develop new or enhanced Projects With Industry service models, it is not reasonable to establish a funding priority that requires a fixed set of services that may not be needed by a large segment of the disabled population.

Discussion: In order to better ensure success in development of new employment opportunities for and placement of individuals having the most severe disabilities, the Secretary has determined that current Projects With Industry models must be expanded to provide, or arrange through linkages with cooperating public or private agencies, the five services specified in the priority.

Further, because these projects are approved for specified periods of time, it is considered crucial that these projects establish linkages which can ensure that on-going services will be provided after completion of Federal assistance. The thrust of this priority of establishing Projects With Industry projects that provide supported employment services to the severely handicapped is consistent with Pub. L. 99–506 which gives emphasis to increasing opportunities for supported employment.

Pub. L. 99–506 also provides that priority be given to geographical areas among the States that are not served or are underserved by the Projects With Industry program. In order to carry out this mandate, the Projects With Industry application package states that a competitive preference will be given to those applications that demonstrate that the proposed project will serve disabled individuals located in geographical areas which are currently not served or are underserved by the Projects With Industry Program. Any applicant who wishes to be accorded a competitive preference must demonstrate in the

application that it is proposing to serve disabled individuals in an unserved or underserved area. This competitive preference will be implemented by awarding to those applications meeting this priority up to 20 points in addition to those earned by the applicant under 34 CFR 379.30.

Changes: None.

Comment: One commenter stated that five-year funding periods were more conducive to developing on going working relationships between the rehabilitation and industry communities and suggested that the proposed project funding period be extended from three years to five years, as allowed by the 1986 Amendments to the Rehabilitation Act.

Discussion: Although Pub. L. 99–506 authorizes maximum project periods of five years, the Secretary has determined that the best interests of the program are served if the termination dates of these new projects are the same as all other projects currently funded under this program. It is expected that funding for all existing projects will terminate after the fiscal year 1990 funding period. For fiscal year 1991 and subsequent fiscal years, all new grants will be made on a competitive basis. At that time, the Secretary will determine appropriate periods of support for new Projects with Industry projects.

Changes: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference to applications that respond to the three final priorities under the two programs included in this notice for fiscal year 1988; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

The following three final priorities represent areas in which RSA will support service activities through new grants under two programs: Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals, and Projects With Industry. Brief descriptions of these two programs follow.

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals support projects that expand or otherwise improve vocational rehabilitation and other rehabilitation services for individuals with severe handicaps. This is accomplished through the support of projects that will demonstrate new procedures and desirable employment outcomes. It is expected that successful project results will be replicated, in whole or in part, to resolve or alleviate rehabilitation problems that are nationally significant or common to several States.

Projects With Industry support the provision of training, employment and supportive services within a business, industry, or other realistic work setting to prepare individuals with handicaps for competitive employment and to secure and maintain employment. The projects focus on the establishment of a partnership arrangement between the rehabilitation community and the private sector in order to expand vocational training and job opportunities for individuals with handicaps. A major objective of the program is to enlist the support of business, industry, and organized labor and utilize their management, leadership and technical expertise to expand employment opportunities for individuals with handicaps.

Final Priorities for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (2)

Traumatic Head Injury

Persons who suffer traumatic head injuries often have severe problems obtaining and maintaining employment. According to information released by the National Institute on Disability and Rehabilitation Research, 400,000 to 682,000 persons suffer severe traumatic head injury each year. Of these, from 30,000 to 50,000 are left with disabilities so severe as to preclude return to a normal life. Although these individuals may vary significantly in the manifestation of their disability, they frequently have severe learning impairments coupled with loss of short-term memory and limited attention span. This final priority solicits applications for projects that demonstrate the best practices known today to overcome these barriers to employment, and, in so doing, document those approaches that appear to work best with individuals with various behavioral characteristics, and disseminate this information to other rehabilitation agencies and personnel. Because some individuals who have been traumatically brain-injured also have residual motor impairments, applicants must consider ways in which they will utilize rehabilitation engineering methods and techniques if these services are needed by an individual in order to secure and maintain employment.

Chronically Mentally Ill

There is increasing awareness that in order for chronically mentally ill persons to live independently in the community, there must be adequate job opportunities and service procedures that will lead to competitive employment. This final priority solicits applications that demonstrate innovative job development and placement services for chronically mentally ill persons that result in or lead to competitive, permanent employment. A primary concern is that the applicant provide or arrange for the necessary job development and placement services in the community. Projects funded under this priority must actively identify and utilize permanent, competitive placement opportunities, or transitional employment leading to permanent placement, with local public and private enterprise employers. Special emphasis must be given to the provision of project services to the chronically mentally ill who are at risk of being unserved, institutionalized, or reinstitutionalized.

Contact Person: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education 400 Maryland Avenue SW., Room 3322, Switzer Building, Mailstop 2312, Washington, DC 20202. Telephone: (202) 732–1349.

Final Priority for Projects With Industry

Many individuals having the most severe disabilities either have not been considered for, or have not had, competitive employment opportunities in an integrated work setting, or have had interrupted or intermittent employment as a result of a severe disability. Currently, however, entry-level employment opportunities for these individuals are increasing in many areas of the private sector in order to meet critical employer needs that are shared by similar or related industries. This final priority solicits applications that will develop employment opportunities for and place individuals with severe disabilities in the private sector, through the establishment of partnership arrangements between the rehabilitation community and the private sector. Projects also must enlist the support of business, industry, and organized labor and utilize their management, leadership and technical expertise in order to expand or develop new models of vocational training and job opportunities for individuals with severe disabilities.

Project resources must be directed to the placement of these individuals in a number of different major or smaller businesses, industries, or coalitions of independent industries with formal agreements to provide training and job placement, labor unions having agreements with a number of different industries, or single industries with one or multiple work sites. Since projects approved under this final priority will be assisting individuals with the most severe disabilities to secure employment, the following services must be provided or arranged through linkages with cooperating public or private agencies: (1) On-site job coaches or trainers; (2) job skill training; (3) necessary support services; (4) time-limited post-employment services; and (5) on-going support services required to sustain employment of these individuals. Appropriate consideration also must be given to the utilization of rehabilitation engineering techniques in developing employment opportunities for specific individuals needing this assistance.

Projects funded under this authority are approved for specific periods of time; therefore, it is crucial that each project establish linkages with public or private agencies, or other resources, that can ensure that on-going services will in fact be provided both during the approved project period and after completion of Federal assistance.

Contact Person: Leo J. Eger, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., Room 3330, Switzer Building, Mailstop 2312, Washington, DC 20202. Telephone: (202) 732–1344.

(29 U.S.C. 777a(a)(1) and 795g)

(Catalog of Federal Domestic Assistance Nos. 84.128A and 84.128B, Rehabilitation Services Administration)

Dated: March 16, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–7134 Filed 3–31–88; 8:45 am]

BILLING CODE 4000-01-M

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federal register

Friday
April 1, 1988

Part V

Department of Education

National Adult Education Discretionary Programs; Notices

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

National Adult Education Discretionary Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities and selection criterion for fiscal year 1988.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes to establish absolute priorities for the fiscal year 1988 grant competition under the National Adult Education Discretionary Program. Under the priorities, funds would be reserved for applied research and evaluation projects focusing on instructional approaches to adult basic education. The Secretary also proposes to use a new criterion, evaluation plan, to be used in evaluating applications submitted for this competition.

DATE: Comments must be received on or before May 16, 1988.

ADDRESS: Comments should be addressed to Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519 Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5516. Telephone (202) 732–2362.

SUPPLEMENTARY INFORMATION:

Program Information

Instructional approaches used in adult basic education programs vary according to State or local policy, teacher preference, or student goals. Instruction may be offered in classroom settings, small group sessions, or on an individualized basis. Although many adult basic education programs use traditional print-based materials, more and more programs are using various kinds of technology ranging from computer-assisted instruction to education at a distance, such as instruction via interactive television or satellite.

Some instructional approaches to adult basic education appear to work well with particular groups of adults but less well with other groups. For example, some instructional approaches seem to be more effective with urban-based populations while others appear to work better with rural populations. The effectiveness of other instructional approaches seems to vary on the basis of socioeconomic factors. Several States have taken steps to determine which instructional approaches work best with particular types of adults. In conjunction with these efforts, a number of projects funded under section 310 of the Adult Education Act (State-administered Special Experimental Demonstration Projects and Teacher Training) have developed instructional techniques that have proven successful for the groups for whom they were designed. However, little research has been conducted on why a particular approach to adult basic instruction has had positive results with a particular segment of the adult population. Results of research projects addressing the priorities proposed in this notice should provide information needed for determining which adult basic education instructional approaches enhance learning for different groups of adults.

For additional information on projects funded under section 310 of the Adult Education Act, a fact sheet is included as part of the application package for this program. Also included in the application package is a list of State Directors of Adult Education, whom prospective applicants can contact for specific information about and comments on section 310 projects, particularly those deemed suitable for replication.

Priorities

In accordance with 34 CFR 75.105(c)(3), the Secretary proposes to establish absolute priorities by reserving funds under the National Adult Education Discretionary Program in fiscal year 1988 for projects that—

(1) Develop and evaluate instructional approaches, especially those using educational technology and computer software; or

(2) Replicate projects funded under section 310 of the Adult Education Act using a research design that will determine which instructional approaches work best with various groups of adults. Applicants electing to replicate section 310 projects are required to obtain and submit, along with their application, comments from the appropriate State Adult Education Agency indicating that the section 310 project is worthy of replication.

Criteria for Evaluating Applications

The Secretary proposes to use the selection criteria in 34 CFR 431.31 (a), (b), (c), (e), (f), and (g), and, for this competition only, the Secretary also proposes to use the following criterion: *Evaluation Plan* (20 points).

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The applicant's methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(2) The applicant provides—

(i) A clear and specific description of the instructional approach, including the reasons for its selection;

(ii) A clear identification of the population groups to be served by the instructional approach, including size, characteristics, and methods of recruitment and selection;

(iii) The estimated costs per student of the instructional approach; and

(iv) A complete description of the measures and standards of comparison to be used in evaluating the effectiveness of the instructional approach.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed reservation of funds for applied research projects focusing on the issues identified under the priorities; and (b) the proposed selection criterion—Evaluation Plan.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 519, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 9:30 a.m. and 3:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1207a)

Dated: November 3, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–7132 Filed 3–31–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.191]

Notice Inviting Applications for New Awards Under the National Adult Education Discretionary Program for Fiscal Year 1988

Purpose: Provides assistance to support projects that contribute to the improvement and expansion of adult education.

Deadline for Transmittal of Applications: June 6, 1988.

Deadline for Intergovernmental Review Comments: August 5, 1988.

Applications Available: April 8, 1988.

Available Funds Anticipated: $400,000.

Estimated Range of Awards: $50,000 to $100,000.

Estimated Average Size of Awards: $67,000.

Estimated Number of Awards: 6.

Project Period: Up to 18 months.

Applicable Regulations: (a) When adopted in final, the proposed priorities and selection criterion published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priorities and selection criterion. If substantive changes are made in the final priorities or selection criterion, applicants will be given an opportunity to revise or resubmit their applications; (b) the regulations in 34 CFR Part 431; and (c) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Richard F. DiCola, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 519, Reporters Building), Washington, DC 20202–5516. Telephone (202) 732–2362.

Program Authority: 20 U.S.C. 1207a.

Dated: March 29, 1988.

Bonnie Guiton,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 88–7133 Filed 3–31–88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
April 1, 1988

Part VI

Department of Education

34 CFR Part 105

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Education; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 105

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the Department of Education operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

DATES: Comments must be received in writing on or before May 31, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary M. Rose, Deputy Under Secretary, Office of Management, Federal Building No. 6, 400 Maryland Ave. SW., Washington DC 20202. Copies of this notice will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 724–2222 (voice) or (202) 724–7678 (TDD).

FOR FURTHER INFORMATION CONTACT: Hazel Fiers, (202) 732–2057.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Education (hereinafter "the Department"): As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (section 119, Pub. L. 95–602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> ((29 U.S.C. 794) (1978 amendment italicized).)

The substantive nondiscrimination obligations of the Department, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance, although minor editorial changes have been made to conform to the Department's regulatory style requirements. (*See* 28 CFR Part 41, the section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same Section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Department's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis,* 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and Section 504. *See Dopico v. Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis,* 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority,* 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate,* 469 U.S. 287 (1985), in which the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" *id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing Section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted program regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis,* by lower courts interpreting *Davis,* and by the Supreme Court in *Alexander;* therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Thus, because the Department interprets the federally assisted program regulations to reflect the judicial rulings described earlier, the Department believes that there are no significant differences between this proposed rule for federally conducted programs and the Department's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary of Education certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These regulations apply only to

programs or activities conducted by the Department of Education.

Section-by-Section Analysis

Section 105.1 Purpose.

Section 105.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 105.2 Application.

The regulation applies to all programs or activities conducted by the Department. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing Department operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 105.3 Definitions.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Department's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 105.40(a)(1), they also may be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Department to investigate the complaint. The definition is necessary, because the 180-day period for the Department's investigation (*see* § 105.41(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Department regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Department. The term "facility" is used in §§ 105.31, 105.32, and 105.41(f).

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § 105.32 (a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute, as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (*see, e.g.,* 34 CFR 104(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the Department, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or Department policy to receive these services from the Department. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the Department.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In those programs, a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Department can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis.* In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410. We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Department. The Department is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Department does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The Department has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity.

Furthermore, in demonstrating that a modification would result in such an alteration, the Department must follow the procedures established in § 105.32(a) and § 105.40(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Secretary or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Secretary determines that an action would result in a fundamental alteration, the Department must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 105.30. Nothing in this part changes existing regulations applicable to employment.

"Secretary" refers to the Secretary or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the Department and not to programs or activities to which it provides Federal financial assistance.

Section 105.10 Self-evaluation.

The Department shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 105.11 Notice.

Section 105.11 requires the Department to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Department's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 105.20 General prohibitions against discrimination.

Section 105.20 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 105.20 establish the general principles for analyzing whether any particular action of the Department violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Department violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 105.20. If there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) of this section prohibits overt denials of equal treatment of individuals with handicaps. The Department may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the program or activity in question. It would be permissible, therefore, to exclude, without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 105.31 through 105.33) and communications (§ 105.40) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Department administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Department to develop separate or different aids, benefits, or services if necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Department's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only if necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even if separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program or activity that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Department from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Department from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by

others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Department from utilizing criteria or methods of administration that deny individuals with handicaps access to the Department's programs or activities. The phrase "criteria or methods of administration" refers to official written Department policies and to the actual practices of the Department. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 105.20(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Department. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Department, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the Department from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 105.3).

In addition, the Department may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the Department must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the Department must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the Department for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individual with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Department must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 105.30 Employment.

Section 105.30 prohibits discrimination on the basis of handicap in employment by the Department. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 105.30 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 105.41(b) specifies that the Department will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 105.31 Program accessibility: Discrimination prohibited.

Section 105.31 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 105.32 and 105.33.

Section 105.32 Program accessibility: Existing facilities.

This regulation adopts, with certain modifications, the program-accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57). Thus, § 105.32 requires that each Department program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Department is not required to make each of its existing facilities accessible (§ 105.32(a)(1)). However, § 105.32, unlike 28 CFR 41.57, places explicit limits on the Department's obligation to ensure program accessibility (§ 105.32 (a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the Department's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Department is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 105.40(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs 105.32(a)(3) and 105.40(d) are also supported by the Supreme

Court's decision in *Alexander v. Choate,* 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis,* the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *Id.* at 301 and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program'." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Department of all obligations to individuals with handicaps. Although the Department is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is the Department's view that compliance with § 105.32(a) would in most cases not result in undue financial and administrative burdens on the Department. In determining whether financial and administrative burdens are undue, all of the Department's resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 105.32(a) would fundamentally alter the nature of a program or activity, or would result in undue financial and administrative burdens, rests with the Department. The decision that compliance would result in that alteration, or those burdens, must be made by the Secretary, or his or her designee, and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Secretary's decision, or failure to make a decision, may file a complaint under the compliance procedures established in § 105.41.

Paragraph (b)(1) sets forth a number of means by which program-accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Department shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Department's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Department may comply with the program-accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Section 105.32(a)(2) provides an additional limitation on the obligation to ensure program-accessibility that is applicable only to historic preservation programs or activities. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 105.32(a)(2) provides that in historic preservation programs the Department is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 105.32(b)(2) requires the Department to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the Department administer programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 105.20(d)). Only if providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the Department adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 105.32(b)(2).

The special limitation on program accessibility set forth in § 105.32(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* discussion of definition of "historic preservation program," § 105.3). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. If historic preservation is not a primary purpose of the program, the Department is not bound to a particular facility. It can relocate all or part of its program in an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Department must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. If structural modifications are required, a transition plan must be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance must be taken within 60 days.

Section 105.33 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 105.33 provides that those buildings that

are constructed or altered by, on behalf of, or for the use of the Department must be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Department after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 105.32. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 105.33.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Department believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service,* 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Department may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 105.40 Communications.

Section 105.40 requires the Department to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps must include procedures for determining whether auxiliary aids are necessary under § 105.40(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Department's program or activity. They must also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice must be given primary consideration by the Department (§ 105.40(a)(1)(i)). The Department shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 105.40(d). That paragraph limits the obligation of the Department to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 105.32(a)(3)). Unless not required by § 105.40(d), the Department shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 105.32(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 105.40.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.,* a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Department intends to inform the public of: (1) The communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the Department's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Department shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Department. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Department may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 105.40(a)(1)(ii)). For example, the Department need not provide eyeglasses or hearing aids to applicants or participants in its programs or activities. Similarly, the regulation does not require the Department to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Department to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Department to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 105.41 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Department will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the Deputy Under Secretary, Office of Management, as the official responsible for coordinating implementation of this Section. Complaints may be sent to the Department of Education, Office of Management, Federal Building No. 6, 400 Maryland Ave. SW., Washington, DC 20202.

The Department is required to accept and investigate all complete complaints (§ 105.41(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 105.40(e)).

Paragraph (f) requires the Department to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the Department to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 105.40(g)). One appeal within the Department must be provided (§ 105.40(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (l) permits the Department to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the Department to make a final determination of compliance or noncompliance may not be delegated.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in *Rm. 3021, FOB–6,* Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department with the specific requirements of Executive Order 12291 and the Paperwork Burden Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 105

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, National register of historic places, Nondiscrimination, Physically handicapped.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: January 8, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 105 to read as follows:

PART 105—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF EDUCATION

Sec.
105.1 Purpose.
105.2 Application.
105.3 Definitions.
105.4–105.9 [Reserved]
105.10 Self-evaluation.
105.11 Notice.
105.12–105.19 [Reserved]
105.20 General prohibitions against discrimination.
105.21–105.29 [Reserved]
105.30 Employment.
105.31 Program accessibility: Discrimination prohibited.
105.32 Program accessibility: Existing facilities.
105.33 Program accessibility: New construction and alterations.
105.34–105.39 [Reserved]
105.40 Communications.
105.41 Compliance procedures.

Authority: 29 U.S.C. 794, unless otherwise noted.

§ 105.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105.2 Application.

This part applies to all programs or activities conducted by the Department, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105.3 Definitions.

For purposes of this part, the following definitions apply:

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Historic preservation programs" means programs conducted by the Department that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism;

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities; and

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Department as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the Department, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or Department policy to receive education services from the Department;

(2) With respect to any other Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other Department program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105.140.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the Department and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 105.4–105.9 [Reserved]

§ 105.10 Self-evaluation.

(a) The Department shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any of those policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Department shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 105.11 Notice.

The Department shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make that information available to them in such manner as the Secretary finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 105.12–105.19 [Reserved]

§ 105.20 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, use criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(b) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105.21–105.29 [Reserved]

§ 105.30 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 105.31 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 105.32, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 105.32 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the Department to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3)(i) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Department has the burden of proving that compliance with § 105.32(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Secretary after considering all of the Department's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Department shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* (i) The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(ii) The Department is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(iii) The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing that Act.

(iv) In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 105.32(a) in historic preservation programs, the Department shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 105.32 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audiovisual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The Department shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete those changes.

(2) The Department shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan must be made available for public inspection.

(3) The plan must, at a minimum—

(i) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

§ 105.33 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Department must be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 105.34–105.39 [Reserved]

§ 105.40 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public, as follows:

(1)(i) The Department shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(ii) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the request of the individual with handicaps.

(iii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) If the Department communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective telecommunication systems must be used.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility must be used at each primary entrance of an accessible facility.

(d)(1) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(2) The Department has the burden of proving that compliance with § 105.40 would result in that alteration or those burdens.

(3) The decision that compliance would result in that alteration or those burdens must be made by the Secretary after considering all Department resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

(4) If an action required to comply with this section would result in that alteration or those burdens, the Department shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 105.41 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Department.

(b) The Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Under Secretary for Management is responsible for coordinating implementation of this Section. Complaints may be sent to the Office of Management, Federal Building No. 6, 400 Maryland Ave., SW., Washington, DC 20202.

(d) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the letter required by § 105.41(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Secretary.

(j) If the Secretary determines that additional information is needed from the complainant, he or she shall notify the complainant of the additional information needed to make his or her determination on the appeal.

(k) The Secretary shall notify the complainant of the results of the appeal.

(l) The time limit in paragraph (g) of this section may be extended by the Secretary.

(m) The Secretary may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

[FR Doc. 88–7131 Filed 3–31–88; 8:45 am]

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Part VII

Department of Education

34 CFR Part 657

Foreign Language and Area Studies Fellowships Program, Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 657

Foreign Language and Area Studies Fellowships Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Foreign Language and Area Studies Fellowships Program. These amendments are needed to implement changes made in Title VI of the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1986, Pub. L. 99–498. The statute and the revised regulations increase the program's emphasis on language training and permit awards only to students taking languages for which their institution has developed or is developing competency-based instruction. The Higher Education Amendments of 1986 also authorized a new Direct Individual Foreign Language and Area Studies Fellowship program for which regulations are being developed in another part.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–3308. Telephone: 732–3283.

SUPPLEMENTARY INFORMATION: The Foreign Language and Area Studies Fellowships Program was originally established under the National Defense Education Act of 1958 and has been included in the Higher Education Act authorization since 1980. Under this program institutions of higher education apply to the Secretary for allocations of fellowship funds which are in turn awarded to students undergoing advanced training in study of a modern foreign language in combination with either area studies, international studies, or international aspects of professional fields.

On October 2, 1987 the Secretary published a Notice of Proposed Rulemaking for the Foreign Language and Area Studies Fellowship Program in the **Federal Register** (52 FR 37067). The major regulatory change in the proposed regulations was the additional requirement that any student receiving a fellowship be enrolled in a program that has developed or is developing competency-based language instruction. Except for minor technical and editorial changes, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, fourteen parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes which the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 657.3 Who is eligible to receive a fellowship?

Comment: Four commenters point out that the proposed regulations do not appear to allow eligibility for students doing dissertation research, either at their home institution or overseas—situations for which students have been eligible to receive fellowships. They point out that section 602(b)(1)(C) of the statute explicitly anticipates the use of the fellowship awards both "in the United States and abroad."

Discussion: The Secretary agrees that the regulations should not exclude the possibility of fellowship holders' use of their awards overseas for dissertation research as well as for language study; indeed, the conditions for those situations are described in § 657.33.

It is important, however, for students to attain sufficient language competency before undertaking research overseas, and the law requires that fellowship recipients be enrolled in programs which have, or are developing, competency-based language instruction. The regulations will therefore be interpreted to consider the dissertation research as another stage in the students' language training, included within a program which has developed or is developing competency-based instruction.

Changes: Section 657.3(d) has been revised to begin "Is enrolled in a program of modern foreign language * * *."

Section 657.5 What definitions apply?

Comments: Eleven commenters expressed concern about the requirement for competency-based language instruction, noting the many practical difficulties in training faculty and in achieving any kind of national agreement on standards. Several emphasized the need to interpret the word "develop" broadly, and some suggested the following addition to § 657.5(f), which defines "competency-based language training": "For many of the less commonly taught languages, it is recognized that the first step in developing competency-based language training is to create adequate training of instructors and learning materials (such as dictionaries or texts and grammars) for all levels of instruction." Another commenter urged the addition of a phrase which would permit systematic use of a locally developed evaluation standard.

Discussion: It is noted that no comments urged the deletion of any part of the proposed definition of competency-based language training—a definition which was prepared in consultation with leaders in the field of language pedagogy. The suggested changes indicate commenters' concerns that interpretation of the statutory concept of "developing" a competency-based language program may be excessively demanding or inflexible. The Secretary recognizes that national standards for language competence have not yet been established for a large number of individual languages and that many stages are required—including extensive faculty training and preparation of appropriate grammars and tests—in the development of a competency-based instruction program. However, some general national standards are available and can be considered acceptable as the linkages needed for evaluation measures. The Secretary therefore does expect applicants to demonstrate their efforts to develop competency-based programs and cannot accept use of a locally developed standard as meeting the requirements of the law.

Changes: None.

Section 657.31 What is the amount of a fellowship?

Comment: One commenter suggested that a ceiling of $8,000 for the fellowship subsistence allowance for an academic year will certainly prove inadequate by the end of the next application cycle.

Discussion: The Secretary agrees that the proposed ceiling for fellowship subsistence allowances was low, and notes that these regulations may in fact affect several cycles of funding. Applicants should be aware, however, that these regulations simply establish a possible range for the subsistence allowance and that the actual level for each year is set in the application notice.

Changes: The upper limit of the range for subsistence allowances has been increased to $10,000 for an academic year.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 657

Colleges and universities, Education, Educational study program, Fellowships, Foreign languages, Grant program—Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.015, Foreign Language and Area Studies Fellowships)

Dated: March 16, 1988.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 657 of Title 34 of the Code of Federal Regulations to read as follows:

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.
657.1 What is the Foreign Language and Area Studies Fellowship Program?
657.2 Who is eligible to receive an allocation of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply?
657.5 What definitions apply?

Subpart B—How Does an Institution or a Student Submit an Application?

657.10 What combined applications may an institution submit?
657.11 How does a student apply for a fellowship?

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?
657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?
657.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met By a Grantee and a Fellow?

657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?
657.31 What is the amount of a fellowship?
657.32 What is the payment procedure for fellowships?
657.33 What are the limitations on the use of funds for overseas fellowships?
657.34 Under what circumstances must an institution terminate a fellowship?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowship Program?

Under the Foreign Language and Area Studies Program, the Secretary awards fellowships, through institutions of higher education, to students who are—

(a) Enrolled for advanced training in a center or program approved by the Secretary under this part; and

(b) Undergoing competency-based modern foreign language training or training in a program for which competency-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

§ 657.2 Who is eligible to receive an allocation of fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a combination of institutions of higher education that—

(1) Operates a center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of competency-based training or developing a competency-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program 34 CFR Part 656, or the Undergraduate International Studies and Foreign Language Program, 34 CFR Part 658, to receive an allocation of fellowships under this part.

(Authority: 20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(d) Is enrolled in a program of modern foreign language training in a language for which the institution has developed or is developing competency-based instruction.

(Authority: 20 U.S.C. 1122)

§ 657.4 What regulations apply?

The following regulations apply to the program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 657.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1122)

§ 657.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.

(c) "Fellow" means a person who receives a fellowship under this part.

(d) "Fellowship" means the payment a fellow receives under this part.

(e) "Program" means a concentration of educational resources and activities in modern foreign language training and related studies.

(f) "Competency-based language training" means a training program which has defined functional language use objectives and whose evaluation measures for students can be linked to established national standards.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR Part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

(a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's center or program. The applicant's center or program is evaluated and approved under the criteria in § 657.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary selects applicants for an allocation of fellowships on the basis of the quality of the applicant's center or program. The Secretary uses the following criteria in evaluating the applicant's center or program:

(a) *Plan of operation.* (5) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(d) *Commitment to the subject area on which the center or program focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area of the center or program as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution provides financial and other support to the center or program, to faculty members of the center or program, and to qualified students in fields related to the center or program.

(e) *Strength of library.* (15) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area of the center or program; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(f) *Quality of the center's or program's instructional program.* (40) The Secretary reviews each application to determine—

(1) The quality and extent of the course offerings (15);

(2) The quality of the modern foreign language training program, as measured by the scope of the competency-based language instruction which is being used or developed, the adequacy of instructional resources, and the nature of language proficiency requirements (15);

(3) The extent to which a sufficient number of scholars or teaching faculty are employed to enable the center or program to carry out its purposes (5); and

(4) The relationship of the language program to area studies, international studies, or international aspects of professional studies (5).

(g) *Quality of the center's or program's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which multi- and interdisciplinary instruction is included; and

(2) The extent to which cooperative arrangements with departments, schools, and professional programs of the institution exist.

(h) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(i) *Need and potential impact.* (5) The Secretary reviews each application to determine—

(1) The extent to which the center or program supports training that is needed nationwide;

(2) The extent to which the center or program's plans for selection and training of fellows in language and area studies or language and international studies will foster an improved supply of specialists in the subject area of the center or program.

(j) *Priorities.* (20) If one or more priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the center or program meets these priorities.

(Authority: 20 U.S.C. 1122)

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships—

(1) Specific world areas, or countries, such as East Asia or Mexico;

(2) Languages, such as Chinese;

(3) Levels of language offerings;

(4) Academic disciplines, such as linguistics or sociology;

(5) Professional studies, such as business, law, or education;

(6) Particular subjects, such as population growth and planning, or international trade and business; or

(7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?

§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?

(a) *Duration.* An institution may award a fellowship to a student for—

(1) One academic year; or

(2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.3; and

(2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester or summer session as described in paragraph (a) (2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a fellowship in an amount that covers the cost of the fellow's tuition and fees and an allowance for subsistence.

(2) If permitted by the Secretary, the institution may include an allowance for travel and an allowance for dependents.

(b) The Secretary announces in the annual application notice published in the **Federal Register**—

(1) The amount of subsistence allowances which may range from $5,000 to $10,000 for an academic year and from $1,250 to $2,000 for a summer session;

(2) Whether dependents' and travel allowances will be permitted; and

(3) The amount of dependents' and travel allowances which may be up to $500 per dependent for the dependency allowance and up to the lesser of $750 or the actual travel cost for the travel allowance.

(c) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center or program focuses.

(Authority: 20 U.S.C. 1122)

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(Authority: 20 U.S.C. 1122)

§ 657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an advanced overseas modern foreign language program approved by the institution at which the student is enrolled in the United States; or

(2) Engaged in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§ 657.34 Under what circumstances must an institution terminate a fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

[FR Doc. 88–7130 Filed 3–31–88; 8:45 am]

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federal register

Friday
April 1, 1988

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Emergency Medical Services Configuration in Airworthiness and Operational Forum; Occupant Restraint in Normal and Transport Rotorcraft; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Emergency Medical Services (EMS) Configuration Airworthiness and Operational Forum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting; change of location.

SUMMARY: A notice announcing a public meeting to discuss current EMS issues that are related to the application of rotorcraft airworthiness and operational standards for both normal and transport category rotorcraft was published in the **Federal Register** on March 8, 1988 (53 FR 7479). Due to more participants than previously anticipated, the FAA is announcing that the location of the meeting has been changed.

DATES: The public meeting will be held on April 20, 1988.

ADDRESSES: The new location for the meeting is the Holiday Inn North/Conference Center, 2540 Meacham Boulevard, Fort Worth, Texas, telephone (817) 625-9911.

FOR FURTHER INFORMATION CONTACT: Mr. J. H. Major, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5117 or Mr. Max Halliburton, FAA, Operations Branch, Flight Standards Division, Fort Worth, Texas 76193-0265, telephone (817) 624-5265.

SUPPLEMENTARY INFORMATION: In the interest of conservation of time and travel resources of meeting participants, the FAA has scheduled this EMS meeting to immediately follow a meeting to discuss Notice of Proposed Rulemaking No. 87-4 (52 FR 20938; June 3, 1987) on occupant restraint in rotorcraft which will begin at 9 a.m. on April 20, 1988. (See notice, 53 FR 7479; March 8, 1988.) The EMS discussion will begin immediately following the close of discussion of the occupant restraint proposals and may continue the following day, if necessary.

Registration for this meeting will begin at 7:30 a.m. on April 20 and will continue until the EMS discussion begins.

Issued in Fort Worth, Texas, on March 22, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-7207 Filed 3-31-88; 8:45 am]

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14 CFR Parts 27 and 29

[Docket No. 25287; Notice No. 87-4]

Occupant Restraint in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; notice of public meeting; change of location.

SUMMARY: A notice announcing a public meeting to discuss proposed rulemaking on occupant restraint in normal and transport category rotorcraft was published in the **Federal Register** on March 8, 1988 (53 FR 7479). Due to more participants than previously anticipated, the FAA is announcing that the location of the meeting has been changed.

DATES: Registration will begin at 7:30 a.m., and the meeting will begin at 9 a.m. on April 20, 1988.

ADDRESSES: The new location for the meeting is the Holiday Inn North/Conference Center, 2540 Meacham Boulevard, Fort Worth, Texas, telephone (817) 625-9911.

FOR FURTHER INFORMATION CONTACT: Mr. J. H. Major, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5117.

Issued in Fort Worth, Texas, on March 22, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-7208 Filed 3-31-88; 8:45 am]

BILLING CODE 4910-13-M

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federal register

Friday
April 1, 1988

Part IX

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 15, 31, and 52

Federal Acquisition Regulation (FAR); Truth in Negotiations Act Amendments and Organization Costs and Compensation Incidental to Business Acquisitions; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 31, and 52

[Federal Acquisition Circular 84–35]

Federal Acquisition Regulation (FAR); Truth in Negotiations Act Amendments and Organization Costs and Compensation Incidental to Business Acquisitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84–35 amends the Federal Acquisition Regulation (FAR) to incorporate amendments to the Truth in Negotiations Act of 1986 required by the Defense Acquisition Improvement Act, and incorporate amendments to the DoD FY 88 Authorization Act to clarify the allowability of extraordinary compensation and certain organization costs incurred in connection with mergers and other business combinations.

EFFECTIVE DATES:

Item I—*(Parts 15 and 52)* April 4, 1988, for DoD, NASA, and Coast Guard.
—May 2, 1988, for all other agencies.
Item II—(Part 31) April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

FAC 84–35, Item I

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule does not change existing paperwork requirements.

FAC 84–35 Item II

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

B. Regulatory Flexibility Act

FAC 84–35, Item I

This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.)* because the revisions apply to contracts requiring submission and certification of cost or pricing data, and a substantial number of small entities do not submit cost or pricing data. Public comments were solicited on the Regulatory Flexibilty Act statement published in the **Federal Register** on July 14, 1987 (52 FR 26446), and none were received that addressed the Regulatory Flexibility Act Statement.

FAC 84–35, Item II

This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because the incidence of special compensation costs relating to business acquisitions and the costs of resisting takeovers and reorganizations have been concentrated in large businesses. Public comments were solicited on the proposed rule published in the **Federal Register** on May 13, 1987 (52 FR 18158), and no comments from small businesses were received.

D. Public Comments

FAC 84–35, Item I

A notice of the proposed rule was published in the **Federal Register** on July 14, 1987 (52 FR 20446). The comments that were received as a result of the proposed rule were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84–35, Item II

A notice of the proposed rule was published in the **Federal Register** on May 13, 1987 (52 FR 18158), recommending revisions to FAR 31.205–6 and 31.205–27 to control costs and clearly state the policy of the Government regarding the allowability of these costs. Of the 20 comments received, 17 either concurred or had no objection or comment. Two commenters partially objected to the proposed rules and one commenter totally disagreed. Minor editorial changes were made to the definitions of the proscribed costs, and the slang terms, "golden parachutes" and "golden handcuffs," were deleted.

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.

Dated: March 29, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–35]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–35 is effective as follows:

Item I—April 4, 1988, for DoD, NASA, and Coast Guard. May 2, 1988, for all other agencies.
Item II—April 4, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

[Number 84–35]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–35 is effective as follows:

Item I—April 4, 1988, for DoD, NASA, and Coast Guard. May 2, 1988, for all other agencies.
Item II—April 4, 1988.

Paul Trause,

Deputy Administrator, GSA.

[Number 84–35]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–35 is effective as follows:

Item I—April 4, 1988, for DoD, NASA, and Coast Guard. May 2, 1988, for all other agencies.
Item II—April 4, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–35 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Truth in Negotiations Act Amendments

The FY 87 and FY 88/89 DoD Authorization Acts (Pub. L. 99–500 and 100–180) have amended the Truth in Negotiations Act to prohibit certain contractor defenses when defective pricing has occurred, to allow contractor offsets to price reductions otherwise due the Government in certain situations and to prohibit such offsets in other situations. The definition of "cost or pricing data" has also been modified.

These requirements have been extended through FAR implementation to the contracts of all Federal agencies. Changes have been made to FAR 15.800

and the clauses at 52.215–2 (Audit-Negotiation), 52.215–22 (Price Reduction for Defective Cost or Pricing Data), 52.215–23 (Price Reduction for Defective Cost or Pricing Data-Modifications), and 52.214–27 (Price Reduction for Defective Cost or Pricing Data-Modifications-Sealed Bidding).

These revised clauses shall be included in contracts or contract modifications entered into by DoD, NASA, or the Coast Guard on or after April 4, 1988. With respect to all other agencies, these provisions shall be included in solicitations issued on or after May 2, 1988.

Item II—Organization Costs and Compensation Incidental to Business Acquisitions

There has been a proliferation of business combinations leading to concomitant questions regarding appropriate costing on Government contracts. The Government found that the previous cost principles at FAR 31.205–6 and 31.205–27, lacked specificity regarding certain costs. FAR 31.205–6 did not address the issue of special compensation in conjunction with a planned or executed merger or business combination. FAR 31.205–27 did not prescribe the treatment to be accorded costs resulting from resistance or planned resistance to the reorganization of the corporate structure of a business or change in the controlling interest in the ownership of a business.

These final rules clarify the policy of the Government regarding these costs and specifically describe the costs which are unallowable. The revisions do not reflect or result from a change in allowability policy. Therefore, 48 CFR Parts 15, 31, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.801 [Amended]

2. Section 15.801 is amended by removing in the first sentence of the definition "cost or pricing data" the word "time" and inserting in its place the word "date".

15.802 [Amended]

3. Section 15.802 is amended by removing in the first sentence of paragraph (a) the citation "10 U.S.C. 2306(f)" and inserting in its place the citation "10 U.S.C. 2306a".

4. Section 15.804–2 is amended by adding a second sentence in paragraph (a)(1)(iii); by revising paragraph (a)(2); and by adding paragraph (c) to read as follows:

15.804–2 Requiring certified cost or pricing data.

(a) * * *
(1) * * *
(iii) * * * (But see 15.804–3(i).)

* * * * *

(2) If certified cost or pricing data are needed for pricing actions over $25,000 and not in excess of $100,000, they may be obtained. There should be relatively few instances where certified cost or pricing data and inclusion of defective pricing clauses would be justified in awards between $25,000 and $100,000. The data which the contracting officer requires to be submitted shall be limited to that data necessary to determine the reasonableness of the price. Whenever certified cost or pricing data are required for pricing actions of $100,000 or less, the contracting officer shall document the file to justify the requirement. When awarding a contract of $25,000 or less, the contracting officer shall not require certified cost or pricing data.

* * * * *

(c) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

5. Section 15.804–3 is amended by revising paragraph (i) to read as follows:

15.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

* * * * *

(i) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804–2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed $100,000 requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804–3.

6. Section 15.804–7 is amended by revising paragraphs (b) and (e) to read as follows:

15.804–7 Defective cost or pricing data

* * * * *

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.804–8 and set forth at 52.215–22, Price Reduction for Defective Cost or Pricing Data, and 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider (i) the time by which the cost or pricing data became reasonably available to the contractor and (ii) the extent to which the Government relied upon the defective data.

(3) The clauses referred to in subparagraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each such item procured under such contract; or

(iv) The prime contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to subparagraphs (b)(5) and (b)(6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (for example, the initial

pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor (i) certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested, and (ii) proves that the cost or pricing data were available before the date of agreement on price but were not submitted. Such offsets need not be in the same cost groupings (e.g., material, direct labor, or indirect costs).

(6) An offset shall not be allowed if (i) the understated data was known by the contractor to be understated when the Certificate of Current Cost or Pricing Data was signed, or (ii) the Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

* * * * *

(e) If (1) both contractor and subcontractor submitted and (2) the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215–22, Price Reduction for Defective Cost or Pricing Data, and 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

* * * * *

7. Section 15.804–8 is amended by revising paragraphs (a) and (b) to read as follows:

15.804–8 Contract clauses.

(a) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–22, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804–2).

(b) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when (1) it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804–2) for the pricing of contract modifications, and (2) the clause prescribed in paragraph (a) of this subsection has not been included.

* * * * *

8. Section 15.806 is amended by revising paragraph (b) to read as follows:

15.806 Subcontract pricing considerations.

* * * * *

(b) Except when the subcontract prices are based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public or are set by law or regulation, any contractor required to submit certified cost or pricing data or for whom a waiver was granted under 15.804–3(i) also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed $100,000 or issuing any modification involving a price adjustment expected to exceed $100,000 (see example of pricing adjustment at 15.804–2(a)(1)(ii) and see 15.804–6(g) through (i)). To waive subcontractor cost or pricing data, follow the procedures at 15.804–3(i).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

9. Section 31.205–6 is amended by adding paragraph (l) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(l) *Compensation incidental to business acquisitions.* The following costs are unallowable:

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

* * * * *

10. Section 31.205–27 is amended by revising paragraph (a) to read as follows:

31.205–27 Organization costs.

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.214–27 is amended by removing in the title of the clause the date "(APR 1985)" and inserting in its place the date "(APR 1988)" and by adding paragraphs (d)(1) and (d)(2) to read as follows:

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

12. Section 52.215–2 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(APR 1988)"; by adding in the first sentence of paragraph (b) of the clause the word "proposing," following the words "related to"; and by removing all the derivation lines following "(End of clause)" to read as follows:

52.215–2 Audit—Negotiation.

As prescribed in 15.106–2(b), insert the following clause:

* * * * *

13. Section 52.215–22 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(APR 1988)"; by adding paragraphs (c)(1) and (c)(2); and by removing both derivation lines following "(End of clause)" to read as follows:

52.215–22 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.804–8(a), insert the following clause:

* * * * *

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

14. Section 52.215–23 is amended by removing in the title of the clause the date "(APR 1985)" and inserting in its place the date "(APR 1988)"; and by adding paragraphs (d)(1) and (d)(2) to read as follows:

52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications.

* * * * *

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost of pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

[FR Doc. 88–7217 Filed 3–31–88; 8:45 am]

BILLING CODE 6820-61-M

federal register

Friday
April 1, 1988

Part X

Department of Justice

Drug Enforcement Administration

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21 CFR Part 1308

Exempt Chemical Preparations and Schedules of Controlled Substances; Table of Exempt Prescription Products; Final Rules

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final Rule.

SUMMARY: This rule amends § 1308.24 of Title 21 of the Code of Federal Regulations. The below listed chemical preparations and mixtures which contain controlled substances replaces the list of exempt chemical preparations set forth in § 1308.24(i). This action is in response to DEA's periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA. Those preparations included in the list are exempted from the application of various provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

DATE: The effective date of this rule is April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: On February 4, 1988, a notice of proposed rulemaking was published in the **Federal Register** (53 FR 3292). This proposed rule provided the opportunity for interested parties to submit comments or objections to the proposed list of exempt chemical preparations to replace § 1308.24(i) of Title 21 of the Code of Federal Regulations.

Comments were received from Ortho Diagnostic Systems Inc. stating that Ortho Abnormal Coagulation Control Levels I and II have undergone name changes to Ortho Plasma Coagulation Control Levels I and II and stating that one additional product has been discontinued. E.I. DuPont de Nemours & Co. (Inc.) commented that E.I. DuPont de Nemours & Co. (Inc.) NEN Products should be listed under the revised manufacturer name: E.I. DuPont de Nemours & Co. (Inc.), Medical Products. In addition, products listed under the manufacturer New England Nuclear are currently manufactured by DuPoint, Medical Products. E.I. DuPont de Nemours & Co. (Inc.) also commented that 13 products have been discontinued and should be deleted from the listing. The list of exempt chemical preparations has been modified to include these changes.

The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General at 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. These applications have been received by the Deputy Assistant Administrator, Office of Diversion Control. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes; is not intended for general administration to man or animal; and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing of other means so that the controlled substance cannot in practice be removed, and therefor the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysis, and suppliers of these products.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget (OMB) has determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(B) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Dated: March 10, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

§ 1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

EXEMPT CHEMICAL PREPARATIONS

Manufacturer or supplier	Product name/description	Form of product	Date of application
ABBOTT LABORATOTIES			
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7818.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	125I-Thyroxine Reagent Solution	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution	Bottle: 3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution	Bottle: 3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No. 9671–55)	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack (No. 9670–55).	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution	Bottle: 3.2ml	12/02/86
Abbott Laboratories	ADx Opiates Reagent Pack (No. 9673-55)	Reagent Pack:50 tests	12/02/86
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Flask: 2 liter	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	Amphetamine/Metamphetamine QC Primary Bulk Control M, No. 9668–M.	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary Standard Control M, No. 9668–M.	Bottle: 5ml	11/10/87
Abbott Laboratories	Barbital Buffer 0.05 Molar	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669–M.	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669–M.	Bottle: 5ml	11/10/87
Abbott Laboratories	Benzodiazepines Bulk Calibrators, A–F No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674–M.	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674–M.	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182	Bottle: 125ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids Bulk Calibrators B–F	Flasks: 2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Calibrators B–F	Flask: 6 liter	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M, and H	Flask: 6 liters	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M,H	Flasks: 2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Flasks: 4 liters	10/27/86
Abbott Laboratories	Cannabinoids Stock Standard (94568)	Bottle: 125ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No. 94193)	Bottle: 125ml	10/24/86
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flask:5ml	10/27/86
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B–F No. 9670	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670.	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 9670	Flask: 4 liter	10/29/85
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670–M.	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670–M.	Bottle: 5ml	11/10/87
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 9670	Vial: 5ml	10/29/85
Abbott Laboratories	Digoxin I125 Imusay R Diagnostic Kit No.7649	Kit: 100 units	06/06/74
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Multiconstituent Bulk Controls L,M,H (No. 9687–L,M,H).	Flask: 10 liters	09/03/87
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B–F No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiates Bulk Tracer, No. 97458	Flask: 4 liter	05/07/86
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673–M	Flasks: 1 liter, 250ml, and 200ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673–M.	Bottle: 5ml	11/10/87
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Bottle: 30ml	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B–F No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M No. 9672	Flask: 2 Liters	09/26/85
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312.	Plastic Bottle: 125ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313.	Plastic Bottle: 125ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300ml, 150ml.	09/21/77
Abbott Laboratories	Secobarbital Bulk Calibrator, B–F No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II–VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L,M,H).	Bottle: 4ml	10/03/85
Abbott Laboratories	T 4 RIA (PEG) Diagnostic Kit	Kit: 500 tests, 100 tests, 50 tests.	04/22/76
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668–01.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668–10.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Barbiturates Calibrators, B–F No. 9669	Bottle: 4ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669	Bottle: 4ml	10/08/85
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674–01	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674–10	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Cannabinoids Calibrators B–F (9671–02)	Bottle: 5ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B–F (No. 9671–01)	Bottles: 5ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L,M, and H (9671–11)	Bottle: 5ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L,M,H (No. 9671–10)	Bottles: 5ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671–T).	Bottle: 5ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671–20)	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B–F No. 9670	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669.	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent Well: 5ml	10/02/85
Abbott Laboratories	TDx Multiconstituent Controls L,M,H (No. 9687–L,M,H).	Bottle: 5ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators, B–F No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673–20	Reagent Well; 5ml	05/07/86
Abbott Laboratories	TDx Phencyclidine Calibrators, B–F No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml.	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10).	Kit: 6 Bottles	09/03/87
Abbott Laboratories	Thyroxine Antiserum (Sheep, Rabbit, or Goat)	Plastic Bottle: 200ml, 20ml	04/22/76
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Adri/Technam			
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml.	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial: 10ml	04/16/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine–BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine–RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM–BSA and CMM–RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Vial: 6ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Vial: 6ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6ml	09/19/84
Adri/Technam	Drug Standards, Acid/Neutral Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial: 10ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle: 10ml	05/03/73
American Monitor Corporation			
American Monitor Corporation	Qualify I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Qualify II	Glass Vial: 10ml	10/09/75
Amersham Corporation			
Amersham Corporation	Amerlex T–3 RIA Kit, IM 2000, IM 2001, IM 2004	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Amerlex T–4 RIA Kit, IM 2010, IM 2011, IM 2014	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex–M B-hCG Radioimmunoassay Kit IM 3091, IM 3094.	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit: 100 Tests 400 Tests	08/27/86
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA–363.	Vial: 0.32 to 1.89mg	03/27/72
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537	Vial: 0.39 to 5.85mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	T–3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5-95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002mg to 0.015mg	02/26/74
Amersham Corporation	[1(n)-3H]Morphine, No. TRK–447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1,7,8(n)-3H]Dihydromorphine, No. TRK–450	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476	Vial: 3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476	Vial: 13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461.	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA. 591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK. 572	Multidose Glass Vial: 56mm x 25mm	09/28/77
Analytical Systems, Div. Marion Laboratories, Inc.			
Analytical Systems, Div. Marion Laboratories, Inc.	Proficiency Sample	Plastic Bottle Containing 40ml	06/22/82
Analytical Systems, Div. Marion Laboratories, Inc.	Special Toxi-Discs	Plastic Vial or Bottle Containing 50 Standard Discs.	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Control	Plastic Bottle Containing 50ml	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Control THC	Plastic Bottle Containing 50ml	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Disc A Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Disc B Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Discs THC	Plastic Vial Containing 50 Standard Discs	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms.	09/24/80
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Applied Sciences Laboratories			
Applied Sciences Laboratories	Allylisobutylbarbituric Acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Alphenal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alprazolam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Amobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Amphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Applied Sciences Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Butabarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Butethal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clonazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Cocaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Codeine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diallybarbituric acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Diazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Drug Mix Four	Ampoule: 1ml	11/03/86
Applied Sciences Laboratories	Drug Mix One	Ampoule: 1ml	10/21/86
Applied Sciences Laboratories	Drug Mix Three	Ampoule: 1ml	11/03/86
Applied Sciences Laboratories	Drug Mix Two	Ampoule: 1ml	10/21/86
Applied Sciences Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethinamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Fenfluramine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Fentanyl	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Flurazepam HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Glutethimide	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Halazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Levorphanol Tartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lorazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid diethylamide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mephobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meprobamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mescaline	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methohexital	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methyprylon	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Morphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Nalorphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Norcodeine HCL	Vial: 1ml	04/*6/85
Applied Sciences Laboratories	Normorphine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Oxazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pemoline	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentazocine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phenazocine HBr	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Applied Sciences Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phentermine	Vial: 1ml	04/15/85
Applied Sciences Laboratories	Prazepam	Vial: 1ml	04/15/85
Applied Sciences Laboratories	Psilocybin	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocyn	Vial: 1ml	11/06/87
Applied Sciences Laboratories	Secobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Temazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Thebaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Thiamytal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Triazolam	Vial: 1ml	04/16/85
Armed Forces Institute of Pathology			
Armed Forces Institute of Pathology.	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems			
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
BHP Diagnostix			
BHP Diagnostix	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Baxter Healthcare Corporation, Dade Division			
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer (Lyophilized), Catalog No. CA-2691.	Glass Vial: 10ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer, Catalog No. CA-2611	Glass Vial: 10ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit (Catalog No. B4233-2).	Kit: 5 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit B4233-2.	Glass Vial: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Anticonvulsant Drug Controls, Levels I and II, Catalog No. CA-2419 and CA-2420.	Glass Vial: 3.5ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control I.X Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Buffered Thrombin (Bovine) Catalog No. B4233-40.	Bottle: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenobarbital Radioimmunoassay Kits Catalog No. CA-2545, CA-2565.	Kit: 50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenytoin Radioimmunoassay Kit Catalog No. CA-2537, CA-2557.	Kit: 50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) T3 Uptake Radioimmunoassay Kit Catalog No. CA-2539, CA-2539J, CA-2559, CA-2559J.	Kit: 100 Assays, 100 Assays, 500 Assays, 500 Assays.	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HS-HTSH Radioimmunoassay Kit Catalog No. CA-1573.	Kit: 125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HTSH Radioimmunoassay Kit Catalog No. CA-2591J.	Kit: 125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Dade Tri-Rac R Tri Level Immunoassay Controls	Bottle: 9ml 6 bottles per kit (Lyophilized Material).	04/11/85
Baxter Healthcare Corporation, Dade Division.	Data-Fi Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38.	Glass Vial: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233-30).	Kit: 10 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material)	05/18/81
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle: 9ml (Lyophilized Material)	07/20/83
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2752.	Glass Vial: 3.5ml	09/09/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2780.	Glass Vial: 3.5ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Human TSH Controls Levels I and II, Catalog No. CA-2452 and CA-2453.	Glass Vial: 3.5ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103-XXX.	Bottle: 9ml (Lyophilized Material)	01/20/84
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level I.X Special Order Request B5106-5X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103-XXX, B5113-XXX.	Bottle: 9ml (Lyophilized Material)	01/20/84
Baxter Healthcare Corporation, Dade Division.	Moni-Trol Level II.X Special Order Request B5106-6X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level I Chemistry Control, Assayed	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level II Chemistry Control, Assayed	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Owren's Veronal Buffer	Bottle: 18ml	08/16/71
Baxter Healthcare Corporation, Dade Division.	Rabbit Anti-Human TSH Serum, Catalog No. CA-2109.	Glass Vial: 20 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level II-Intermediate.	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level III-High	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Calibrators B, C, D, E, & F	Glass Vial: 3ml	06/27/83
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Conjugate	Glass Vial: 6ml	01/25/82
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700-22).	Kit: 120 tests	03/10/87
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level I-Low B5700-2	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level II-Intermediate B5700-3.	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level III-High B5700-4	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700-1).	Kit: 9 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level II Intermediate.	Bottle: 9ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level III High	Bottle: 9ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri-Rac R Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/11/85
Beckman Instruments, Inc.			
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g.	05/22/79
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g.	04/24/71
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles.	11/11/80
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Becton Dickinson & Company			
Becton Dickinson & Company	Antibody Coated Tubes	Metallized Plastic Bag: 50 Tubes/Bag	02/13/76
Becton Dickinson & Company	Barbital Buffer Solution, Catalog No. 246514	Bottle: 1 ounce	08/01/84
Becton Dickinson & Company	Euthyroid Reference Standard, Catalog No. 237418.	Vial: 4ml	09/27/76
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262994.	Kit: 200 tubes	09/04/86
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I)Catalog No. 258423.	Kit: 250 tubes	08/01/84
Becton Dickinson & Company	IQ Immunochemistry System, Thyroid Stimulating Hormone Catalog No. 3010.	Kit: 25 tests	06/30/87
Becton Dickinson & Company	Neonatal TSH Antiserum, Catalog No. 244716	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Precipitating Antiserum, Catalog No. 247618	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Simul Trac Free T4/TSH Antiserum, No. 262641	Vial: 1 oz	02/21/86
Becton Dickinson & Company	Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625.	Kit: 200 tubes	02/21/86
Becton Dickinson & Company	T3 Antibody Coated Tubes, Catalog No. 237213	Box containing 100 tubes	09/27/76
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125ml	09/27/76
Becton Dickinson & Company	T4 Tracer Solution Catalog No. 232611	White NALGENE Polypropylene Bottle: 125 ml.	02/13/76
Becton Dickinson & Company	TSH (125I) Tracer, Catalog No. 243621	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Antiserum Catalog No. 263001	Clear Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Antiserum, Catalog No. 258431	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Standard A, Catalog No. 259829	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard B, Catalog No. 259837	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard C, Catalog No. 259845	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard D, Catalog No. 259853	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard E, Catalog No. 263052	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard F, Catalog No. 263061	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259624	Clear vial: 10ml	09/04/86
Behring Diagnostics			
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g.	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013	Foil Pouch: "5.35" x "5.25"	09/17/79
Bio-Rad Laboratories			
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	08/20/84
Bio-Rad Laboratories	Lypochek Immunoassay Control Levels I, II, III	Vial: 10 ml	09/24/87
Bio-Rad Laboratories	Lypochek Quantitative Urine Control Levels I and II.	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine Immunobeads.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	08/24/82
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Urine Toxicology Control No. C-470-25	Amber Vial: 50ml	09/19/79
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250 ml	08/09/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g.	05/09/74
Bio-Rad Laboratories, (Chemical Division).	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Electrophoresis Buffer, Dry-Pack	Package: 6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer I, pH 8.6	Dry-pack: 25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer II, pH 8.6	Dry-pack: 15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III, pH 8.6	Dry-pack: 6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III-a, pH 8.8.	Dry-pack: 15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Reagent No. 3	Bottle: 165ml	12/14/72
Biodiagnostic International			
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Biodiagnostic International	Urine—Tox Control	Vial: 5ml	04/01/85
Bioscientific, Corporation			
Bioscientific, Corporation	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box.	07/14/77
California Bionuclear Corporation			
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
Cambridge Medical Diagnostics			
Cambridge Medical Diagnostics, Incorporated.	125I Human Parathyroid Hormone 44-68	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetraiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triiodo]thyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1-84) Standard	6 Vials: 5ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1ml	03/29/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1ml	03/29/85
Ciba Corning Diagnostics Corp.			
Ciba Corning Diagnostics Corp.	AACC Tox	Glass Vial: 30ml	01/20/86
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/Antiasthmatic Control.	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/Antiasthmatic Control, Level I & II.	Vials: 10ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control	Kit Contains: 5 Vials each level	12/16/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control, Level I & II	Vials: 10ml	12/16/85
Ciba Corning Diagnostics Corp.	Gilford TDM Control Levels I–III	Vial: 6ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Tri Level TDM Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Urine Control II	Vial: 30ml	05/22/85
Ciba Corning Diagnostics Corp.	Gilford Urine Toxicology Control	Vial: 30ml	12/16/85
Ciba Corning Diagnostics Corp.	Immophase Ferritin Controls	Glass Vial: 3ml	01/19/87
Ciba Corning Diagnostics Corp.	Immophase Ferritin Standards	Glass Vial: 5ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin 2000 Standard	Plastic Vial: 1ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Controls	Plastic Vial: 5ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Standards	Polypropylene Vial: 3ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin Zero Standard	Plastic Vial: 50ml	01/19/87
Ciba Corning Diagnostics Corp.	Reagent A—Alt 14	Vial: 15ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A—Alt 7	Vial: 15ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A—Ammonia 10	Vial: 10ml	03/24/79
Ciba Corning Diagnostics Corp.	Special Barbital Buffer Set, Catalog No. 470182	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal PHAB Buffer Set Catalog No. 470180	Kit: 3 vials per kit	09/26/79
Cone Biotech, Inc.			
Cone Biotech, Inc.	QCM–UTI	Vial: 20ml	03/07/85
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls	Vials: 8ml	02/27/84
Cone Biotech, Inc.	UDM-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle:60 ml	08/31/87
Diamedix Corporation			
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709–317	Package: 20 envelopes—10.65 g. per envelope.	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730–274.	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709–339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.014M)-GVB Buffer, 753–034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753–031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753–037	Bottle: 50ml	08/09/73
Diamedix Corporation	Glucose-GVB 1 Buffer, 753–036	Bottle: 50ml	08/09/73
Duo Research, Inc			
Duo Research, Inc	Drug Testing Assessment Program—Quality Control Samples.	Kit: 25 bottles	12/26/86
Duo Research, Inc	Drug Testing Assessment Program—Quality Control Sample.	Bottle: 65ml	02/27/86
Duo Research, Inc	Drug Testing Assessment Program—Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86
E.I. du Pont de Nemours & Co., Incorporated			
E.I. du Pont de Nemours & Co., Incorporated.	(1) PREP Sample Preparation and Analysis Kit	Kit containing following:	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(2a) PREP Liquid Chromatography Verifier	Vial: 10ml (1 vial/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(3) PREP Calibrators	Box containing following:	09/25/78

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EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
E.I. du Pont de Nemours & Co., Incorporated.	(3a) PREP Calibrator—Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(3b) PREP Calibrator—Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(3c) PREP Calibrator—Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(3d) PREP Calibrator—Level 4	Vial: 10ml (1 vial/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(4) PREP Controls	Box containing following:	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(4a) PREP Control—Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	(4b) PREP Control—High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. du Pont de Nemours & Co., Incorporated.	DuPont Drug Calibrators-Levels 1 through 5	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. du Pont de Nemours & Co., Incorporated.	DuPont Phenobarbital Assay	Vial: 6 ml	10/13/86
E.I. du Pont de Nemours & Co., Incorporated.	DuPont U Amp Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont U Barb Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont U Benz Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont U COC Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont U OPI Enzyme Pack Reagent	Bottle: 1 liter	08/26/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont Urine Drugs-of-Abuse Calibrator (Levels 0, 1, 2).	Box: 6 Vials, 6ml Vial	07/27/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont Urine Drugs-of-Abuse Control	Vial: 6 ml	08/03/87
E.I. du Pont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen Analytical Test Pack.	Plastic Packs: 25 tests	12/23/84
E.I. du Pont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. du Pont de Nemours & Co., Incorporated.	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. du Pont de Nemours & Co., Incorporated.	Phenobarbital Calibrator— Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. du Pont de Nemours & Co., Incorporated.	Phenobarbital Calibrator— Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. du Pont de Nemours & Co., Incorporated.	Phenobarbital Calibrator— Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. du Pont de Nemours & Co., Incorporated.	Phenobarbital Calibrator— Level 4	Vial: 6ml (1 vial/box)	04/02/86
E.I. du Pont de Nemours & Co., Incorporated.	Phenobarbital Calibrator— Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. du Pont de Nemours & Co., Incorporated.	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge.	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. du Pont de Nemours & Co., Incorporated.	Urine Amphetamine (U Amp) Test Pack	Carton:50 tests	08/27/87
E.I. du Pont de Nemours & Co., Incorporated.	Urine Barbiturate (U Barb) Test Pack	Carton:50 tests	08/27/87
E.I. du Pont de Nemours & Co., Incorporated.	Urine Benzodiazepine (U Benz) Test Pack	Carton:50 tests	08/27/87
E.I. du Pont de Nemours & Co., Incorporated.	Urine Cocaine (U COC) Test Pack	Carton:50 tests	08/27/87
E.I. du Pont de Nemours & Co., Incorporated.	Urine Opiate (U OPI) Test Pack	Carton:50 tests	07/08/87
E.I. du Pont de Nemours & Co., Incorporated.	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. du Pont de Nemours & Co., Incorporated.	aca Thryonine Uptake Analytical Test Pack	Plastic Pack: 1 test	08/25/83
E.I. du Pont de Nemours & Co., Inc., Medical Products.	5-Cyclohexenyl-3,5 Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510.	Combi-Vial: 100 microcuries, 250 microcuries.	01/04/77
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Diazepam [Methyl-3H] Catalog No. NET-564	Combi-Vial: 0.250 millicuries, 1.0 millicurie 09/06/79.	
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Dihydromorphine [7,8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie	01/04/77
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Flunitrazepam [Methyl-3H] NET 567	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	04/29/87
E.I. du Pont de Nemours & Co., Inc., Medical Products.	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	11/06/79
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Mazindol (4'-3H) Catalog No. NET-816	Combi-Vial: 0.250 millicurie, 1.0 millicurie	05/17/84
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Methylphenidate, +/- threo[methyl-3H]NET-857	Combi-Vial: 0.250 millicurie, 1.0 millicurie	06/11/84
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicurie, 1.0 millicurie	02/29/80
E.I. du Pont de Nemours & Co., Inc., Medical Products.	N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H)NET-886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. du Pont de Nemours & Co., Inc., Medical Products.	Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No.NET-630.	Combi-Vial: 0.250 millicurie, 1.0 millicurie	09/06/79
E.I. du Pont de Nemours & Co., Inc., Medical Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
EM Diagnostic Systems, Inc.			
EM Diagnostic Systems, Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems, Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton: 48 Test Packs	09/09/85
EM Diagnostic Systems, Inc.	Easytest Phenobarbital Assay Item No. 67534/93	Cuvette:1.8ml (40 cuvettes /carton)	06/11/86
Eastman Kodak Company			
Eastman Kodak Company	Kodak Ektachem Specialty Calibrator	Vial: 3ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control	Vial: 3ml	09/13/85
Electro-Nucleonics Laboratories, Incorporated			
Electro-Nucleonics Laboratories, Incorporated.	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital.	Kit	11/30/82
Endocrine Metabolic Center			
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/26/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/26/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle: 3000 ml	05/26/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle: 3000 ml	05/26/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle: 1 or 2 liter	05/26/87
Environmental Diagnostics, Inc.			
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Enzyme Conjugate	Ampule:1 ml	02/03/87
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Kit Catalog No. 216-2BP	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Positive Control	Ampule: 1 ml	02/03/87
Fisher Scientific			
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.16 g.	10/27/72
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial:10 ml	08/18/66
Fisher Scientific	Owren's Veronal Buffer, CS1094-38	Vial:25 ml	08/18/66
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5ml	04/16/52

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 Vials	11/26/86
Fisher Scientific	TDM Cal (B–F)	Vials: 5 ml	11/26/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840–58.	Kit: 6 vials	01/12/84
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845–94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848–31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842–31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846–31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841–31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847–31.	Vial: 5ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935–80.	Vial: 25ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950–61	Vial: 25ml	04/06/78
Flow Laboratories			
Flow Laboratories	DGV No. 28–010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human "O" DGV (Dextrose Gelatin Veronal Buffer) No. 28–080.	Glass Vial: 100ml	10/14/76
GIBCO Laboratories			
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3–7.4, NDC 0118115–0247–1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3–7.4, NDC 011815–0247–2.	Bottle: 500 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No. 815–0566–1 and No. 815–0566–2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815–0245–1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815–0246–1	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc.			
Gelman Sciences, Inc	Drug Control Set No. 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc	Drug Standard Set, No. 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc	Hi-Phore Buffer	Glass Vial: 15 g.	02/11/82
Gelman Sciences, Inc	High Resolution Buffer-Tris Barbital Buffer No. 51104.	Vial: 10 dr	12/22/71
Gumm Chem. Co.			
Gumm Chem. Co.	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Niflow Maintenance Additive	Drums: 5 Gallons	09/30/85
Hach Chemical Co.			
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No. 898–98	Pillow: 1 g. each	11/30/71
Helena Laboratories			
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet: 18.332 g. , 10 packets/box	03/26/86
Helena Laboratories	Electra B1 Buffer, Catalog No. 5016	Packet: 12.14 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra B2 Buffer , Catalog No. 5017	Packet: 18.2 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/ box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet: 9.7 g.	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470).	Kit: 3 Packages buffer 36 g.	01/24/86
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet: 25.9 g.	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit: 10 Plates (90mm X 75mm), 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate: (90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet: 25.9 g.	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate: (90mm X 75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No. 3046	Kit: 10 Plates (90mm X 75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet: 19.6 g.	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No.3062	Kit: 10 Plates (90mm X 75mm), 1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet: 21.5 g.	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle: 10 ml.	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g.	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial: 2ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet: 17.3 g.	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No. 3045	Kit: 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90 x 75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo–17 Kit Catalog No. 3095	Kit: 10 plates (81 x 143mm) 1 packet buffer (21.6 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo–17 Plate	Plate: (81 x 143mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP–17 Kit Catalog No. 3091	Kit: 10 plates (81 x 143mm) 1 packet buffer (29.1 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP–17 Plate	Plate: 81 x 143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet: 29.1 g.	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041	Kit: 10 Plates (90mm X 75mm), 1 Packet Buffer.	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet: 25.9g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No. 3035	Kit: 10 Plates (90mm X 75mm), 2 Packets Buffer.	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate: (90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053.	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate: (90mm X 75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet: 5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates, 1 box B1 Buffer.	12/28/73
Hoffman-LaRoche, Inc			
Hoffman-LaRoche, Inc	125I T3 (for T3 Uptake Radioassay)	Vial: 15ml	07/22/81
Hoffman-LaRoche, Inc	Abuscreen 125I Amphetamine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Benzoylecgonine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Methaqualone Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Morphine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Oxazepam Reagent	Vial: 30ml, 500ml	03/06/87
Hoffman-LaRoche, Inc	Abuscreen 125I Phencyclidine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Secobarbital Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen 125I Tetrahydrocannabinol Reagent	Vial: 500ml, 30ml	08/14/81
Hoffman-LaRoche, Inc	Abuscreen 125I–LSD Reagent	Vial: 500ml, 30ml	01/28/84
Hoffman-LaRoche, Inc	Abuscreen EIA Barbiturate Conjugate Reagent	Vial: 30 ml	10/02/86
Hoffman-LaRoche, Inc	Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites.	Kit: 100 Tests	10/02/86
Hoffman-LaRoche, Inc	Abuscreen EIA Barbiturate Negative Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Barbiturate Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Hoffman-LaRoche, Inc	Abuscreen EIA Barbiturate Positive Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Cannabinoid Positive Calibrator 50–1200 (in increments of 50) ng of THC derivative/ml.	Vial: 4ml	08/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cannabinoid THC Conjugate Reagent.	Vial: 30ml	08/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids.	Kit: 100 Tests	08/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cannabinoids Negative Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Cannabinoids Positive Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent.	Vial: 30 ml	05/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4ml	05/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine.	Kit: 100 tests	05/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Cocaine Metabolite Negative Control.	Vial: 4 ml	04/15/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Hoffman-LaRoche, Inc	Abuscreen EIA Cocaine Metabolite Positive Control.	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Morphine Conjugate Reagent	Vial: 30ml	05/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites.	Kit: 100 tests	05/26/86
Hoffman-LaRoche, Inc	Abuscreen EIA Morphine Negative Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen EIA Morphine Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4ml	05/28/86
Hoffman-LaRoche, Inc	Abuscreen EIA Morphine Positive Control	Vial: 4 ml	04/15/87
Hoffman-LaRoche, Inc	Abuscreen Positive Ref. Control (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150–1000 (in increments of 50) ng/ml.	Vial: 5ml, 100ml	03/06/87
Hoffman-LaRoche, Inc	Abuscreen Positive Ref. Control (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial: 5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Amphetamine) 100, 500, 750, 1000, 1500, or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 600, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial: 6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Morphine) 40, 50, 100, 150, 200, 300, 500, 600,or 1000 ng/ml..	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Control Cannabinoid 20, 25, 50, 100, 150, 200, 300, 400, or 500 ng/ml.	Vial: 6.6ml, 100 ml	02/20/84
Hoffman-LaRoche, Inc	Abuscreen Positive Reference Controls for Amphetamine (Single Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Amphetamine) 100, 500, 750, 1000, 1500, or 2000 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Methaqualone) 100, 300, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600, or 1000 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial: 6.6ml, 2 oz	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150–1000 (in increments of 100) ng/ml.	Vial: 5ml, 100ml	06/28/86
Hoffman-LaRoche, Inc	Abuscreen Positive Urine Reference Std. (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml.	Vial: 5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Amphetamine	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit: 100 tests, 2500 tests	09/13/85
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Barbiturates	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Benzodiazepines.	Kit: 100 tests, 2500 tests	03/06/87
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Cannabinoids	Kit: 100 Tests 2500 Tests	08/14/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Cocaine Metabolite.	Kit: 100 Tests, 2500 Tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Methaqualone	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Morphine	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Radioimmunoassay for Phencyclidine (PCP).	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Amphetamine (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Barbiturate (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Barbiturate (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Benzodiazepines (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Cannabinoids (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Cannabinoids (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Cocaine (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Cocaine Metabolite (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Methaqualone (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Morphine (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Morphine (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Phencyclidine (PCP) (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc	Abuscreen Reference Controls for Phencyclidine (PCP) (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc	Agglutex Amphetamine Latex Reagent	Vial: 2ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Amphetamine Positive Human Urine Control.	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	02/15/83
Hoffman-LaRoche, Inc	Agglutex Barbiturate Latex Reagent	Vial: 2ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Barbiturate Positive Human Urine Control	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Barbiturate Test Kit	Kit: 20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc	Agglutex Methaqualone Latex Reagent	Vial: 2ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Methaqualone Positive Human Urine Control.	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Methaqualone Test Kit	Kit: 20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc	Agglutex Morphine Latex Reagent	Vial: 2ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Morphine Positive Human Urine Control	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Morphine Test Kit	Kit: 20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc	Agglutex Phencyclidine (PCP) Test Kit	Kit: 20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc	Agglutex Phencyclidine Latex Reagent	Vial: 2ml	06/27/83
Hoffman-LaRoche, Inc	Agglutex Phencyclidine Positive Human Urine Control.	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc	Amerifluor Floorescent Immunoassay -Phenobarbital.	Kit: 100 tests	04/30/82
Hoffman-LaRoche, Inc	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay).	Vial: 15ml	07/22/81
Hoffman-LaRoche, Inc	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay).	Vial: 15ml	07/22/81
Hoffman-LaRoche, Inc	Barbiturate Roche EIA Positive Reference Standards 50–1200 (in increments of 50) ng Secobarbital/ml.	Vial: 4ml	10/02/86
Hoffman-LaRoche, Inc	COBAS FP Phenobarbital Calibrators	Kit: 6 Vials	11/13/84
Hoffman-LaRoche, Inc	COBAS FP Phenobarbital Calibrators B through F	Vials: 5ml	11/13/84
Hoffman-LaRoche, Inc	COBAS FP Phenobarbital Tracer Reagent	Vial: 5ml	11/13/84
Hoffman-LaRoche, Inc	COBAS FP Reagents for Phenobarbital	Kit: 100 tests	11/13/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Hoffman-LaRoche, Inc	COBAS FP TDM Controls	Kit: 6 Vials	11/13/84
Hoffman-LaRoche, Inc	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8	Vial: 10, 20, 50, or 100ml	01/25/83
Hoffman-LaRoche, Inc	Immunizing Preparation No. 9	Vial: 10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche, Inc	Immunizing Preparation No. 9A	Vial: 10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche, Inc	Immunizing Preparation No.10	Vial: 10ml, 20ml, 50ml,or 100ml	04/02/86
Hoffman-LaRoche, Inc	Immunizing Preparation No.10A	Vial: 10ml, 20ml, 50ml, or 100ml	04/02/86
Hoffman-LaRoche, Inc	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A, & 8A.	Vial: 10ml, 20ml, 50ml,or 100ml	07/12/83
Hoffman-LaRoche, Inc	NSB Reagent	Vial: 2ml	07/22/81
Hoffman-LaRoche, Inc	TDM Controls, Levels I through III	Vials: 5ml	11/13/84
ICL Scientific			
ICL Scientific	Therapeutic Drug Control I, TDC I (High-Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack.	Glass Vials (12): 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low-Level)	Glass Vial: 10ml	08/14/85
Industrial Analytical Laboratory, Inc.			
Industrial Analytical Laboratory, Inc.	11-Nor-Carboxy-Delta-9-Tetrahy drocannabinol	Ampule: 1ml	09/04/85
Industrial Analytical Laboratory, Inc.	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule: 1 ml	02/18/87
Industrial Optical			
Industrial Optical	Opti-Kleen	Bottle: 5 gallon	06/24/81
Innotron of Oregon, Inc.			
Innotron of Oregon, Inc	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
Innotron of Oregon, Inc	Phenobarbital Stock Tracer	Vial: 5ml	09/23/87
Janssen Pharmaceutica, Inc.			
Janssen Pharmaceutica, Inc	3H Alfentanil	Vial: 0.5ml	02/01/87
Janssen Pharmaceutica, Inc	3H Fentanyl	Vial: 0.5ml	02/01/87
Janssen Pharmaceutica, Inc	3H Sufentanil	Vial: 0.5ml	02/01/87
Janssen Pharmaceutica, Inc	Alfentanil Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc	Fentanyl Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc	Sufentanil Radioimmunoassay Kit	Kit: 500 tests	05/13/85
Kallestad			
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	IEP Buffer No. 900	Vial: 7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No. 910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	Styrofoam Container: 25 film	06/22/87
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012.	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Kit, Catalog No. 823	Kit: 400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Kit, Catalog No. 833	Kit: 100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Reagent Catalog No. 785.	Bottle: 500ml	12/16/85
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Reagent No. 834	2 Glass Bottles: 110ml	06/24/81
LKB Instrument, Inc.			
LKB Instruments,Inc	Tris-barbiturate Buffer pH 8.8	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company			
Lemmon Company	Etorphine Standard Solution	Plastic Carboy: 1 Liter	10/31/83
MCI Biomedical			
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package: 6.510 grams	08/28/72
Mallinckrodt Inc.			
Mallinckrodt Inc	(1) RIA–MAT Circulating T3 I125 Kit, Catalog No. 501:	KIT CONTAINS THE FOLLOWING 8 ENTRIES:	01/28/74
Mallinckrodt Inc	(2) RIA–MAT T3 Antiserum	Vial: 2.5ml	01/28/74
Mallinckrodt Inc	(3) RIA–MAT T3 Buffer	Bottle: 100ml	01/28/74
Mallinckrodt Inc	(4) RIA–MAT T3 Reaction Vial	Vial: 1ml	01/28/74
Mallinckrodt Inc	(5) RIA–MAT T3 Standard 0.5ng/ml	Vial: 1.5ml	01/28/74
Mallinckrodt Inc	(6) RIA–MAT T3 Standard 0ng/ml	Vial: 1.5ml	01/28/74
Mallinckrodt Inc	(7) RIA–MAT T3 Standard 1.0ng/ml	Vial: 1.5ml	01/28/74
Mallinckrodt Inc	(8) RIA–MAT T3 Standard 2.0ng/ml	Vial: 1.5ml	01/28/74
Mallinckrodt Inc	(9) RIA–MAT T3 Standard 6.0ng/ml	Vial: 1.5ml	01/28/74

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Mallinckrodt Inc	RIA–MAT T4 I-125 Kit	Kit Containing: 100 Tests and 250 tests	04/03/75
Mallinckrodt Inc	Res–O–Mat ETR Solution	Vial: 1.5 dram	02/17/72
Mallinckrodt Inc	Res–O–Mat ETR Solution	Bottle: 16 oz and imperial gallon	08/28/74
Mallinckrodt Inc	Res–O–Mat T4 Solution	Vial: 1.5 dram	02/17/72
Mallinckrodt Inc	Res–O–Mat T4 Solution	Bottle: 16 oz and imperial gallon	08/28/74
Mallinckrodt Inc	SPAC T4 RIA Kit	Kit: 50 tests,100 tests	02/01/77
Mallinckrodt Inc	SPAC T4 RIA Kit	Kit: 500 tests	09/15/77
Mallinckrodt Inc	T4 I125 Reaction Solution	Screwcap Bottle: 2 ounce	02/01/77
Mallinckrodt Inc	T4 I125 Reaction Solution	Screwcap Bottle: 8 ounce	09/15/77
Mallinckrodt Inc	T4 Standard (10.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc	T4 Standard (10.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc	T4 Standard (2.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc	T4 Standard (2.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc	T4 Standard (20.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc	T4 Standard (20.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc	T4 Standard (40.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc	T4 Standard (40.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc	T4 Standard (5.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc	T4 Standard (5.0 ug%)	Screwcap Vial: 5ml	09/15/77
Materials & Technology Systems			
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid Sensitized RBC.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Benzoyl Ecgonine	Screw Cap Vial: 25mg and 100 mg	04/18/74
Materials & Technology Systems	Benzoylecgonine Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Carboxymethyl-Morphine	Screw Cap Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial: 50ml	05/03/73
Materials & Technology Systems	Methadone Standard	Screwcap Vial: 10ml	09/17/76
Materials & Technology Systems	Morphine Standard	Screw Cap Vial: 10ml	07/17/73
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial: 8ml, 10ml	05/03/73
Medi-Chem, Inc.			
Medi-Chem, Inc	Barbiturate Test Set (Sodium Secobarbital Standard 10mg% w/v) Catalog No. 250.	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc.			
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 1	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 2	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 3	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc	ChemTrak Liquid Unassayed	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control Assayed, Level 1, 2, & 3	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control, Level 1, 2, & 3	Vial: 15ml	04/30/85
Medical Analysis Systems, Inc	Liquid Urine Calibrator Level 1 and 2	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc	Liquid Urine Control Level 1	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc	TD Control Level 1	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc	TD Control Level 2	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc	TD Control Level 3	Vial: 5ml	10/08/86
Meloy Labs, Inc.			
Meloy Labs, Inc	Counterelectrophoresis Plates, G–301	Plates: 10 determinations	09/05/73
Meloy Labs, Inc	Immunoelectrophoresis Plates, G–201	Plates: 6 / unit	09/05/73
Micromedic Systems			
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution	Nalgene Bottle: 4 oz.	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz.	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8 ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial: 30ml	12/14/76

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial: 30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Miles Laboratories,Inc.			
Miles Laboratories, Inc	Ames Phenobarbital Assay, Kit Contains: Phenobarbital Standards; 10, 20, 40, & 60mcg/ml.	6.1 ml Vials	03/01/79
Miles Laboratories, Inc	Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml.	Vial: 6.1ml	05/21/80
Miles Laboratories, Inc	Clinira T-3 Uptake Test, Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent.	200ml Bottles	11/10/78
Miles Laboratories, Inc	Clinistat Calibrator Nos. 1 and 2	Vial: 1ml	12/19/80
Miles Laboratories, Inc	Clinistat Control B,C,D, and E	Vial: 1ml	12/19/80
Miles Laboratories, Inc	Seraluto Total T-4 (RIA) 125I Reagent Kit, No. 3304, No. 3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Control	Vial: 1ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay High Calibrator	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Low Calibrator	Vial: 0.5ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories, Inc	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories, Inc	TDA Cross-Reactivity Cocktails	Glass Vial: 1ml	02/01/83
Miles Laboratories, Inc	TEK-CHEK Special Urine Control (supplemental).	Vial: 25ml	05/01/70
Miles Laboratories, Inc	Tetralute	Bottle: 4.9 g.	07/29/70
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No. 5250	Kit: 20 columns	12/02/74
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No. 5252	Kit: 100 columns	12/02/74
Monobind, Inc.			
Monobind, Inc	Monobind T3 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind, Inc	Monobind T4 Antibody Reagent	Test Tube w/Cap: 70ml	11/08/77
Monobind, Inc	Monobind T4 Tracer Reagent	Wheaton Glass Container 55ml	11/08/77
Monobind, Inc	Monobind TSH Antibody Reagent	Test Tube w/Cap: 10.5ml	11/08/77
Monobind, Inc	Monobind TSH Non-Specific Buffer	Wheaton Glass: 1.05ml	11/08/77
Monobind, Inc	Monobind TSH Precipitating Reagent	Plastic Container w/Cap: 105ml	11/08/77
Monobind, Inc	Monobind TSH Tracer Reagent	Wheaton Glass Container 10.5ml	11/08/77
Monobind, Inc	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml.	05/15/78
Monobind, Inc	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml.	05/15/78
Monobind, Inc	TSH Radioimmunoassay Test System	Kit: 100 Tests	11/08/77
Monobind, Inc	Thyroxine Radioimmunoassay Test System	Kit: 100 Tests	11/08/77
Monoclonal Antibodies, Inc.			
Monoclonal Antibodies, Inc	Test Kit for Cocaine Metabolites in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Opiates in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Tetrahydrocannabinol (THC) in Urine	Kit: 50 tests	10/17/86
Nuclear Diagnostics, Inc.			
Nuclear Diagnostics, Inc	SPINSEP-TBG Reagent Catalog No. 17100	Polypropylene Bottle: 105ml	12/15/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Antiserum Catalog No. 16100A	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100	Polypropylene Bottle: 105ml	07/08/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100R	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Antiserum Catalog No. 12100A	Polypropylene Bottle: 55ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Reagent Catalog No.12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation			
OMI International Corporation	Compound N Solution	Steel Drum: 55 gallon	10/01/75
Organon Teknika Corp.			
Organon Teknika Corp.	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp.	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/28/80
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 16 ounce	01/20/76
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/18/79
Organon Teknika Corp.	Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials / kit	04/16/81
Organon Teknika Corp.	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp.	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp.	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp.	Platelin	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	Platelin Plus Activator	Vial: 7.3ml	03/13/72

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Organon Teknika Corp	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp	Profile General—Levels I & II	Vial: 5 ml	02/22/82
Organon Teknika Corp	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp	Simplastin	Vial: 4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr..	01/20/76
Organon Teknika Corp	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr..	01/20/76
Organon Teknika Corp	TETRA-TAB-RIA T4 Diagnostic Kit	Kit: 40 tests, 200 tests	01/20/76
Organon Teknika Corp	TETRA-TUBE RIA T4 Diagnostic Kit	Kit: 100 tests, 500 tests	06/03/83
Organon Teknika Corp	TGTR Set	Package: 4 Tests per set	03/13/72
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp	Unassayed Chemistry Serum Control, Levels I & II	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems, Inc.			
Ortho Diagnostic Systems,Inc	Activated ThromboFAX No.721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems,Inc	Ortho Activated PTT Reagent	Glass Vial: 30 determination size, 100	05/23/83
Ortho Diagnostic Systems,Inc	Ortho Plasma Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems,Inc	Ortho Plasma Coagulation Control Level II	Glass Vial: 5ml	10/25/83
Pacific Hemostasis			
Pacific Hemostasis	Barbital Buffered Saline	Vial: 100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial: 90ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial: 20ml	05/24/84
Pantex			
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit: 2nd Antiserum	Bottle: 50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle: 100ml, 1000ml	01/04/79
Perkin-Elmer Corporation			
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Opiates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Princeton Seperations, Inc.			
Princeton Seperations, Inc	Panagel 16	Pouch: 1 slide	06/29/87
Princeton Seperations, Inc	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Seperations, Inc	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Seperations, Inc	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Seperations, Inc	Panagel LD Isoenzyme Electrode Buffer	Pouch: 11.85 gms	06/29/87
Princeton Seperations, Inc	Panagel LD Isoenzyme Slide	Pouch: 1 slide	06/29/87
Quantimetrix			
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2.	Polyethylene Dropper Bottle: 15ml	04/16/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Quantimetrix	Urine Drugs of Abuse Control Catalog No. 12-2411-1.	Dropper Bottle: 15 ml	02/20/87
Quin-Tec, Inc.			
Quin-Tec, Inc	Additive SB-1	Drum: 55 gals.	05/11/87
Quin-Tec, Inc	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Quin-Tec, Inc	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Research Triangle Institute			
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 28-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing: 24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2- 250ml Bottles.	06/27/80
Rowley Biochemical Institute, Inc.			
Rowley Biochemical Institute, Inc	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc	Aldehyde Thionin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc	Mayer's Hematoxylin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Schering Corp.			
Schering Corp.	Hepaquik	Vial: 8 Dram and Plate	07/16/72
Serono Diagnostics, Inc.			
Serono Diagnostics, Inc	rT3 Barbital Buffer	Glass Vial: 120ml	10/26/84
Serono Diagnostics, Inc	rT3-125I	Glass Vial: 13ml	10/26/84
Serono Diagnostics, Inc	rT3-Antiserum	Glass Vial: 13ml	10/26/84
Sherwood Medical Company			
Sherwood Medical Company	Lancer Fibrinogen Determination, Reagent Kit Catalog No. 8889-007608.	Kit	04/17/75
Sigma Chemical Co.			
Sigma Chemical Co	1-Tetrahydrocannabinol, Product No. T-4764	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	1-Tetrahydrocannabinol, Product No. T-4764	Vial: 1ml	05/11/81
Sigma Chemical Co	5,5-Diallylbarbituric Acid, Product No. D-6013	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	6-Tetrahydrocannabinol, Product No. T-4888	Vial: 1ml	05/11/81
Sigma Chemical Co	ALT Reagent A, Stock No. 57-10	Vial: 30ml	06/27/79
Sigma Chemical Co	ALT Reagent A, Stock No. 57-2	Vial: 10ml	06/27/79
Sigma Chemical Co	AST Reagent A, Stock No. 58-10	Vial: 30ml	06/27/79
Sigma Chemical Co	AST Reagent A, Stock No. 58-2	Vial: 10ml	06/27/79
Sigma Chemical Co	Acid Hematoxylin Solution, No. 285-2	Bottle: 25ml, 100ml	08/06/73
Sigma Chemical Co	Adenosine Phosphate Substrate, Product No. 675-1.	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co	Allylisobutylbarbituric Acid (A-1036)	Sealed Ampule: 1ml	04/10/85
Sigma Chemical Co	Alphaprodine Hydrochloride (A-1537)	Ampule: 1ml	08/27/84
Sigma Chemical Co	Alphenal (A-1163)	Ampule: 1ml	04/10/85
Sigma Chemical Co	Ammonia Reagent ,Stock No. 170-10	Vial: 10ml	02/17/77
Sigma Chemical Co	Ammonia Reagent Kit: Stock No. 170-10	Kit: 10 Vials	02/17/77
Sigma Chemical Co	Ammonia Reagent Stock No. 170-10	Vial: 30ml	12/13/77
Sigma Chemical Co	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co	Amobarbital, Product No. A-5142	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Antibody Sensitized Sheep Erythrocytes (EA7S)	Vials: 2ml and 5X 2ml	04/02/86
Sigma Chemical Co	Aprobarbital, Product No. A-7929	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Barbital Buffer, Product No. B-6632	Polyethylene Vial: 30ml	05/11/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Sigma Chemical Co	Barbital Buffer with Albumin Stock No. 880-3	Vial: 20ml	07/11/80
Sigma Chemical Co	Barbital, Product No. B-8632	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Benzphetamine Hydrochloride, Product No. B-8765.	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Bufotenine Monooxalate,Product No. B-8757	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Butabarbital ,Product No. B-8882	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Butalbital, Product No. B-5514	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Butethal (B-7516)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Cannabidiol, Product No. C-6395	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co	Cannabidiol, Product No. C-6395	Vial: 1ml	05/11/81
Sigma Chemical Co	Cannabinol, Product No. C-6520	Sealed Ampule: 1ml	08/29/79
Sigma Chemical Co	Cannabinol, Product No. C-6520	Vial: 1ml	05/11/81
Sigma Chemical Co	Chloral Hydrate , Product No. C-6516	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Chlorazepam Dipotassium Salt, (C-9531)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Chlordiazepoxide (C-4782)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Clonazepam, Product No. C-4404	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Cocaine Hydrochloride Product No. C-1528	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Codeine Product No. C-1653	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	D-Amphetamine Sulfate, Product No. A-3278	Vial: 1ml	05/11/81
Sigma Chemical Co	DL-Amphetamine HCL , Product No. A-5017	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Dextropropoxyphene Hydrochloride (D-8901)	Ampule: 1ml	09/27/84
Sigma Chemical Co	Diazepam, Product No. D-8900	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Diethylpropion Hydrochloride, Product No. D-7274	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Diphenoxylate (D-0780)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Drug Standard Mix 1, D-3155	Ampule: 2ml	04/18/86
Sigma Chemical Co	Drug Standard Mix 2, D-3030	Ampule: 2ml	04/18/86
Sigma Chemical Co	Ethinamate (E-8508)	Ampule: 1ml	04/10/85
Sigma Chemical Co	Fenfluramine Hydrochloride, Product No. F-1884	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Flunitrazepam No. F-8763	Vial: 1 ml	06/30/87
Sigma Chemical Co	Flurazepam Dihydrochloride, Product No. F-9134	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Gelatin Veronal Buffer (GVB2+) No. G-6514	Vial: 50 ml,250ml	09/15/86
Sigma Chemical Co	Glutethimide, Product No. G-3134	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Glycerophosphate Substrate, Product No. 675-2	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Glycerophosphate Substrate, Product No. 704-1	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Hexobarbital, Product No. H-2007	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Hydromorphone Hydrochloride No. H-7141	Vial: 1 ml	06/30/87
Sigma Chemical Co	Ibogaine HCL, Product No. I-4630	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	LDH Electrophoresis Buffer, Stock No. 705-1	Amber Jar: 30ml	01/04/77
Sigma Chemical Co	LDH-P Reagent No. 125-10	Vial: 30ml	05/29/73
Sigma Chemical Co	LDH-P Reagent No. 125-100	Vial: 100ml	05/29/73
Sigma Chemical Co	Lorazepam (L-0140)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Lysergic Acid, Product No. L-5881	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Mayer's Hematoxylin Solution, No. MHS-1	Bottle: 25ml, 100ml	08/06/73
Sigma Chemical Co	Mebutamate (M-3772)	Ampule: 1ml	09/05/85
Sigma Chemical Co	Medazepam (M-7646)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Meperidine Hydrochloride (M-1020)	Ampule: 1ml	08/27/84
Sigma Chemical Co	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co	Meprobamate (M-0271)	Ampule: 1ml	05/24/85
Sigma Chemical Co	Mescaline HC1, Product No. M-5153	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Methadone Hydrochloride, Product No. M-3268	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Methamphetamine HC1 , Product No. M-5260	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Methaqualone Hydrochloride, Product No. M-3393	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Methylphenidate Hydrochloride (M-1145)	Ampule: 1ml	10/31/84
Sigma Chemical Co	Methyprylon, Product No. M-1769	Sealed Ampule: 1ml	06/08/84
Sigma Chemical Co	Morphine-3-B-D Glucuronide, Product No. M-4286	Ampule: 1ml	10/21/82
Sigma Chemical Co	N,N-Diethyltryptamine, Product No. D-0392	Vial: 1ml	05/11/81
Sigma Chemical Co	N,N-Dimethyltryptamine, Product No. D-6263	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Nalorphine Hydrochloride	Ampule: 1ml	08/27/84
Sigma Chemical Co	Oxazepam, No. O-1755	Vial: 1 ml	06/30/87
Sigma Chemical Co	Oxycodone Hydrochloride, Product No. O-2628	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82
Sigma Chemical Co	Pemoline, Product No. P-3518	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Pentazocine Hydrochloride, Product No. P-7530	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Pentobarbital, Product No. P-3393	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Phencyclidine, No. P-7043	Vial: 1 ml	06/30/87
Sigma Chemical Co	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co	Phenobarbital Prod. No.P-3643	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Phentermine Hydrochloride, Product No. P-7655	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Phenylacetone, Product No. P-2024	Vial: 1ml	05/11/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Sigma Chemical Co	Prazepam, No. P-7168	Vial: 1 ml	06/30/87
Sigma Chemical Co	SGOT 10 Assay Vial No. 55-10	Vial: 30ml	05/29/73
Sigma Chemical Co	SGOT Reagent No. 155-10	Vial: 30ml	05/29/73
Sigma Chemical Co	SGOT Reagent No. 155-100	Vial: 100ml	05/29/73
Sigma Chemical Co	SGOT Single Assay Vial No. 55-1	Vial: 3ml	05/29/73
Sigma Chemical Co	SGOT Single Assay Vial No. 55-5	Vial: 15ml	05/29/73
Sigma Chemical Co	SGPT 10 Assay Vial No. 55-10P	Vial: 30ml	05/29/73
Sigma Chemical Co	SGPT Assay Vial No. 55-5P	Vial: 15ml	05/29/73
Sigma Chemical Co	SGPT Reagent No. 155-100P	Vial: 100ml	05/29/73
Sigma Chemical Co	SGPT Reagent No. 155-10P	Vial: 30ml	05/29/73
Sigma Chemical Co	SGPT Single Assay Vial No. 55-1P	Vial: 3ml	05/29/73
Sigma Chemical Co	Secobarbital, Product No. S-4006	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co	Temazepam, No. T-4903	Vial: 1 ml	06/30/87
Sigma Chemical Co	Thebaine, Product No. T-5270	Sealed Ampule: 1ml	09/19/83
Sigma Chemical Co	Thiamylal Sodium, Product No. T-6896	Sealed Ampule: 1ml	06/05/84
Sigma Chemical Co	Thiopental (T-1022)	Ampule: 1ml	08/27/84
Sigma Chemical Co	Trizma-Barbital Buffer, Stock No. 710-1	Amber Jar: 30ml	01/04/77
Sigma Chemical Co	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Smart Chemical Co.			
Smart Chemical Co	Regal 180XL	Plastic Drum: 55 gallon	06/12/86
Supelco, Inc.			
Supelco, Inc.	Alk Mix No. 04-9210	Vial: 1ml	08/28/73
Supelco, Inc.	Amobarbital, No. 04-9170	Ampule: 1ml	12/22/72
Supelco, Inc.	Amph. Mix Catalog No. 4-9205	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Amphetamine No. 04-9165	Ampule: 1ml	12/22/72
Supelco, Inc.	Anticonvulsant Mixture No. 1; No. 04-9202	Glass Serum Bottle: 50ml	06/16/77
Supelco, Inc.	Antiepileptic Calibration Standard Kit, No. 4-9259	Kit: 3 Ampules	05/21/80
Supelco, Inc.	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule: 5ml	05/21/80
Supelco, Inc.	Aprobarbital No. 04-9171	Ampule: 1ml	12/22/72
Supelco, Inc.	Barb. Mix 1,Catalog No. 4-9200	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barb. Mix 2,Catalog No. 4-9201	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barbital,Catalog No. 4-9279	Glass Ampule: 10ml	06/09/86
Supelco, Inc.	Barbiturates Test Mix Catalog No. 4-9295	Ampule: 2 ml	02/25/87
Supelco, Inc.	Cannabidiol, No. 04-9221	Ampule: 1ml	11/27/74
Supelco, Inc.	Cannabinol, No. 04-9235	Ampule: 1ml	11/27/74
Supelco, Inc.	Cocaine, No. 04-9188	1000 mcg/Glass Ampule	06/05/75
Supelco, Inc.	Codeine No. 04-9161	Ampule: 1ml	12/22/72
Supelco, Inc.	Cyclobarbital No. 04-9175	Ampule: 1ml	12/22/72
Supelco, Inc.	Delta-1 THC, No. 04-9237	Ampule: 1ml	11/27/74
Supelco, Inc.	Delta-6 THC, No. 04-9238	Ampule: 1ml	11/27/74
Supelco, Inc.	Dextroamphetamine, No. 4-9185	Glass Ampule: 1ml	05/21/80
Supelco, Inc.	Glutethimide No. 04-9173	Ampule: 1ml	12/22/72
Supelco, Inc.	Heroin No. 04-9162	Ampule: 1ml	12/22/72
Supelco, Inc.	Hexobarbital No. 04-9177	Ampule: 1ml	12/22/72
Supelco, Inc.	Mephobarbital No. 04-9178	Ampule: 1ml	12/22/72
Supelco, Inc.	Meprobamate, No. 4-9184	Glass Ampule: 1ml	05/21/80
Supelco, Inc.	Methadone No. 04-9163	Ampule: 1ml	12/22/72
Supelco, Inc.	Methamphetamine No. 04-9168	Ampule: 1ml	12/22/72
Supelco, Inc.	Methaqualone, No. 04-9183	1000 mcg/Glass Ampule	06/05/75
Supelco, Inc.	Morphine No. 04-9160	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc.	Pentobarbital No. 04-9179	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc.	Phenobarbital No. 04-9181	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc.	Psilocybin, No. 04-9191	1000 mcg/Glass Ampule	06/05/75
Supelco, Inc.	Secobarbital No. 04-9180	Glass Ampule: 1000 mcg	03/08/78
Syva Co.			
Syva Co.	AccuLevel Phenobarbital Test Control Stock Solution.	Flask: 50ml	10/31/85
Syva Co.	AccuLevel Phenobarbital Test Kit (Catalog No. 10C019) Contains: (1) AccuLevel Phenobarbital Control (2) AccuLevel Reagent I.	(1) Glass Vial: 8ml; (2) Glass Vial: 9ml, 12 Vials per test kit.	01/24/86
Syva Co.	Advance T-3 Uptake Assay	Kit: 100 tests	05/11/82
Syva Co.	Advance Thyroxin Assay	Kit: 100 tests	05/11/82
Syva Co.	Antiepileptic Drug Control	Vial: 10ml, Lyophilized	08/27/74
Syva Co.	Emit 700 Amphetamine Assay Catalog No. 3C919	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Barbiturate Assay Catalog No. 3D919	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Calibrator A Catalog No. 3A919	Bottle: 3ml	10/05/84
Syva Co.	Emit 700 Calibrator B Catalog No. 3A969	Bottle: 3ml	10/05/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Syva Co.	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969.	Bottle: 3ml	10/09/84
Syva Co.	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959.	Plastic Bottle: 180ml	09/15/86
Syva Co.	Emit 700 Cannabinoid Control Set Catalog No. 3M989.	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Control Set A Catalog No. 3A939	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Control Set B Catalog No. 3A989	2 Bottles: 3ml	10/09/84
Syva Co.	Emit 700 Methaqualone Assay Catalog No. 3Q919	Bottle: 180ml	10/19/84
Syva Co.	Emit 700 Opiate Assay Catalog No. 3B919	Bottle: 180ml	10/12/84
Syva Co.	Emit 700 Phencyclidine Assay Catalog No. 3J919	Bottle: 180ml	10/12/84
Syva Co.	Emit AED-No. 1 Calibrator	Vial: 3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 2 Calibrator	Vial: 3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 3 Calibrator	Vial: 3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 4 Calibrator	Vial: 3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 5 Calibrator	Vial: 3ml, Lyophilized	08/27/74
Syva Co.	Emit Phenobarbital Enzyme Reagent B	Vial: 6ml, Lyophilized	08/27/74
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent	Steel Drum: 7 gallon	06/05/86
Syva Co.	Emit Qst Primidone Assay Catalog No. 60819	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	Emit Serum Barbiturate-Enzyme Reagent B	Bottle: 3ml	05/22/79
Syva Co.	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle: 3ml	02/01/79
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119.	Kit: 1000 tests	09/12/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619.	Kit: 100 tests	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B	Vial: 10ml Lyophilized Powder	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019	Kit: 100 tests	09/24/84
Syva Co.	Emit d.a.u. Cannabinoid Urine Calibrator Set	Kit: 3 Vials, 3ml Each	01/03/80
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit d.a.u. Medium Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit: 100 tests, 1000 tests	10/05/84
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Phencyclidine Assay Kit Containing: (1) Emit Phencyclidine Enzyme Reagent B.	Bottle: 6ml	02/01/79
Syva Co.	Emit d.a.u.Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator B	Bottle: 5ml	08/03/84
Syva Co.	Emit d.a.u. Medium Calibrator A	Bottle: 5ml	07/20/84
Syva Co.	Emit-Tox Serum Barbiturate Assay	Kit: 50 tests	05/22/79
Syva Co.	Emit-Qst Phenobarbital Assay, Catalog Number 6D019.	Kit: 50 Vials	01/18/84
Syva Co.	Emit-Tox Serum Calibrators; Low and Medium	Bottle: 3ml	02/01/79
Syva Co.	Emit-d.a.u. Methaqualone Assay	Kit: 100 tests	04/27/82
Syva Co.	Emit-st Amphetamine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Barbiturate Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Cannabinoid Assay Catalog No. 3M319	Vial: 6ml, 80 vials/Kit	09/27/84
Syva Co.	Emit-st Cannabinoid Calibrator	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Cannabinoid Controls	Vial: 3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Opiate Assay	Kit: 3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Phencyclidine Assay	Vial: 3ml, 80 vials/kit	01/07/81
Syva Co.	Emit-st Serum Barbiturate Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Benzodiazepine Assay	Vial: 3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Calibrator	Vial: 3ml	02/16/81
Syva Co.	Emit-st Serum Controls	Vial: 3ml, 2 vials/kit	02/16/81
Syva Co.	Emit-st Serum Phencyclidine Assay	Vial: 3ml, 80 vials/kit	02/16/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Syva Co.	Emit-st Urine Calibrator A	Vial: 1ml, 3 vials/kit	10/03/80
Syva Co.	Emit-st Urine Cocaine Metabolite Assay	Vial: 3ml, 80 Vials/Kit	03/16/82
Syva Co.	Emit-st Urine Controls A	Vial: 1ml, 6 vials/kit	10/03/80
Syva Co.	Emit-st Urine Methadone Assay	Vial: 3ml,80 vials/kit	03/22/82
Syva Co.	Emit-st Urine Methaqualone Assay	Kit: 80 Vials	04/27/82
Syva Co.	Emit-st Urine Methaqualone Calibrator	Vial: 3ml	04/27/82
Syva Co.	Emit-st Urine Methaqualone Controls	Vial: 3ml	04/27/82
Technicon			
Technicon	Ammonium Sulfate Reagent No. T01-1139	Glass Bottle: 1 and 4 liters	01/31/80
Technicon	Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01.	Glass Bottles: 5ml (Standard 1 Fill Volume=5ml) (Standards 2-6 Fill Volume=1.5ml).	06/02/85
Technicon	T4 Agglutinator Reagent No. T11-1484	Glass Bottle: 10ml	06/02/85
Technicon	TQC T.D.M. Calibrator 1, No. T13-1150	Glass Vial: 15ml	01/31/80
Technicon	TQC T.D.M. Control A, No. T13-1115	Glass Vial: 15ml	01/31/80
Technicon Instruments Corporation			
Technicon Instruments Corporation.	Agar Gel Plates No. 8794	Plate: 25ml	08/01/72
Technicon Instruments Corporation.	Agar Gel Plates, No. 7114	Plate: 15 ml	01/15/87
Technicon Instruments Corporation.	Buffer No. 3017	Vial 250 ml	08/31/71
Technicon Instruments Corporation.	Buffer No. 8793	Vial: 250ml	08/01/72
Technicon Instruments Corporation.	Diluting Fluid No. 3400	Vial: 10ml	08/31/71
Technicon Instruments Corporation.	Electrode Buffer, DR07172	Bulk	12/26/74
Technicon Instruments Corporation.	LD Electrode Buffer, DR07173	Bulk	02/12/79
Technicon Instruments Corporation.	Ligand Control I-No. 4814, II-No. 4824, and III-No. 4834..	Vials: 5ml	02/24/81
Technicon Instruments Corporation.	Partial Thromboplastin (Dried), No. 3491	Vial: 1ml and 5 ml	08/31/71
Technicon Instruments Corporation.	Therapeutic Drug Monitoring Survey (Z Series)	Vials: 5ml	09/24/86
Technicon Instruments Corporation.	Therapeutic Monitor Level I No. 4881	Vial: 3ml	01/20/83
Technicon Instruments Corporation.	Therapeutic Monitor Level II No. 4882	Vial: 3ml	01/20/83
Technicon Instruments Corporation.	Therapeutic Monitor Level III No. 4883	Vial: 3ml	01/20/83
Technicon Instruments Corporation.	Toxicology Survey (T Series)	Vials: 20ml, 50ml	09/24/86
Technicon Instruments Corporation.	Toxicology Urine Control No. 0841	Vial: 10ml	06/11/82
Technicon Instruments Corporation.	Toxicology Urine Control No. 0842	Vial: 3ml	06/11/82
Technicon Instruments Corporation.	Urine Control No. 0277	Vial: 25ml	04/14/81
Technicon Instruments Corporation.	Urine Toxicology Survey (UT Series)	Vials: 50ml	09/24/86
Tempil Division, Big Three Industries, Inc.			
Tempil Division. Big Three Industries, Inc..	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Theta Corp.			
The Theta Corp.	Allobarbital No. FP305	Vial: 2ml	04/10/73
The Theta Corp.	Amobarbital No. FP313	Vial: 2ml	04/10/73
The Theta Corp.	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp.	Anileridine No. FP203	Vial: 2ml	04/10/73
The Theta Corp.	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp.	Barbital No. FP314	Vial: 2ml	04/10/73
The Theta Corp.	Benzoylecgonine FP-1001	Vial: 2ml	01/24/87
The Theta Corp.	Butabarbital No. FP315	Vial: 2ml	04/10/73
The Theta Corp.	Butalbital No. FP307	Vial: 2ml	04/10/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
The Theta Corp.	Chloral Betaine No. FP502	Vial: 2ml	04/10/73
The Theta Corp.	Chloral Hydrate No. FP501	Vial: 2ml	04/10/73
The Theta Corp.	Cocaine No. FP601	Vial: 2ml	04/10/73
The Theta Corp.	Codeine No. FP102	Vial: 2ml	04/10/73
The Theta Corp.	Cyclobarbital No. FP308	Vial: 2ml	04/10/73
The Theta Corp.	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73
The Theta Corp.	Diphenoxylate No. FP205	Vial: 2ml	04/10/73
The Theta Corp.	Ethchlorvynol No. FP508	Vial: 2ml	04/10/73
The Theta Corp.	Ethylmorphine No. FP106	Vial: 2ml	04/10/73
The Theta Corp.	FP207	Vial: 2ml	09/04/80
The Theta Corp.	FP210	Vial: 2ml	05/15/84
The Theta Corp.	FP214	Vial: 2ml	04/10/84
The Theta Corp.	FP327	Vial: 2ml	04/10/84
The Theta Corp.	FP405	Vial: 2ml	03/08/79
The Theta Corp.	FP411	Vial: 2ml	05/15/84
The Theta Corp.	FP412	Vial: 2ml	05/15/84
The Theta Corp.	FP416	Vial: 2ml	05/15/84
The Theta Corp.	FP512	Vial: 2ml	03/08/79
The Theta Corp.	FP513	Vial: 2ml	03/08/79
The Theta Corp.	FP514	Vial: 2ml	05/15/84
The Theta Corp.	FP515	Vial: 2ml	03/08/79
The Theta Corp.	FP556	Vial: 2ml	04/10/84
The Theta Corp.	FP601A	Vial: 2ml	05/15/84
The Theta Corp.	FP607	Vial: 2ml	05/15/84
The Theta Corp.	FP609	Vial: 2ml	05/15/84
The Theta Corp.	Fentanyl No. FP211	Vial: 2ml	04/10/73
The Theta Corp.	Glutethimide No. FP404	Vial: 2ml	04/10/73
The Theta Corp.	Heptabarbital No. FP309	Vial: 2ml	04/10/73
The Theta Corp.	Hexobarbital No. FP303	Vial: 2ml	04/10/73
The Theta Corp.	Hydrocodone No. FP107	Vial: 2ml	04/10/73
The Theta Corp.	Hydromorphone No. FP103	Vial: 2ml	04/10/73
The Theta Corp.	Levorphanol No. FP208	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-104	Vial: 2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-201	Vial: 2ml	04/10/73
The Theta Corp.	Meperidine No. FP201	Vial: 2ml	04/10/73
The Theta Corp.	Mephobarbital No. FP301	Vial: 2ml	04/10/73
The Theta Corp.	Meprobamate No. FP402	Vial: 2ml	04/10/73
The Theta Corp.	Methadone No. FP206	Vial: 2ml	04/10/73
The Theta Corp.	Methamphetamine No. FP603	Vial: 2ml	04/10/73
The Theta Corp.	Metharbital No. FP302	Vial: 2ml	04/10/73
The Theta Corp.	Methohexital No. FP304	Vial: 2ml	04/10/73
The Theta Corp.	Methylphenidate No. FP605	Vial: 2ml	04/10/73
The Theta Corp.	Monthly Urine Test No. FPM-103	Vial: 2ml	04/10/73
The Theta Corp.	Morphine No. FP101	Vial: 2ml	04/10/73
The Theta Corp.	Oxycodone No. FP109	Vial: 2ml	04/10/73
The Theta Corp.	Oxymorphone No. FP104	Vial: 2ml	04/10/73
The Theta Corp.	Paraldehyde No. FP506	Vial: 2ml	04/10/73
The Theta Corp.	Pentobarbital No. FP318	Vial: 2ml	04/10/73
The Theta Corp.	Phenazocine No. FP213	Vial: 2ml	04/10/73
The Theta Corp.	Phenmetrazine No. FP606	Vial: 2ml	04/10/73
The Theta Corp.	Phenobarbital No. FP320	Vial: 2ml	04/10/73
The Theta Corp.	Piminodine No. FP202	Vial: 2ml	04/10/73
The Theta Corp.	Probarbital No. FP319	Vial: 2ml	04/10/73
The Theta Corp.	Secobarbital No. FP310	Vial: 2ml	04/10/73
The Theta Corp.	Talbutal No. FP311	Vial: 2ml	04/10/73
The Theta Corp.	Test Mixture SM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 3	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 4	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 1	Vial: 2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 2	Vial: 2ml	06/19/74
The Theta Corp.	Thiamylal No. FP322	Vial: 2ml	04/10/73
The Theta Corp.	Thiopental No. FP321	Vial: 2ml	04/10/73
The Theta Corp.	Vinbarbital No. FP312	Vial: 2ml	04/10/73
The Theta Corp.	Weekly Urine Test (FDA) No. FPM-101	Vial: 2ml	04/10/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
The Theta Corp.	Weekly Urine Test (States) No. FPM-102	Vial: 2ml	04/10/73
Travenol Labs (Clinical Assays Division)			
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Radioimmunoassay kit	Kit: 125 determinations	11/16/77
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Tracer	Glass Vial: 6ml	11/16/77
Travenol Labs (Clinical Assays Division).	Anticonvulsant Drug Controls	Kit: 500 determinations, 50 determinations.	11/16/77
Travenol Labs (Clinical Assays Division).	Assay buffer CA-742	Polypropylene Bottle: 150ml	03/14/77
Travenol Labs (Clinical Assays Division).	CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml.	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml.	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml.	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml.	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-384 Phenobarbital 1:101 dilution of 100 ug/ml	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-419 Anticonvulsant Drug Control, Level I	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-420 Anticonvulsant Drug Control, Level II	Septom sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	Human TSH standards, 2.0 uIU/ml, 5.0 uIU/ml, 10 uIU/ml, 20 uIU/ml, 50 uIU/ml.	Glass vials: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	Rabbit Anti-Human TSH Serum	Glass vial: 20ml	11/16/77
Utak Laboratories			
Utak Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Barbiturates No. 71916.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle: 10ml	04/14/80
Utak Laboratories	Toxicology Serum Control Dried #88112	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried #88113	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried #88120	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658.	In Bottles	05/24/76
Utak Laboratories	Toxicology Urine Control Dried #88100	Bottle: 20ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried #88121	Bottle: 10ml	07/29/82
Utak Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle: 1 oz	05/24/76
Wescor, Inc.			
Wescor, Inc.	Osmocoll	Bottle: 9 ml	12/05/86
Wien Laboratories, Inc.			
Wien Laboratories, Inc.	ANS Buffer pH 8.6 Catalog No. T-5144	Plastic Bottle: 100ml	05/14/75
Wien Laboratories, Inc.	Buffer Reagent pH 8.6 Catalog No. T-5065	Bottle: 4oz.	12/22/72
Wien Laboratories, Inc.	Coated Charcoal Suspension No. T-5077	Bottle: 4oz.	12/22/72
Wien Laboratories, Inc.	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial: 20ml	09/13/78
Windsor Laboratories, Inc.			
Windsor Laboratories, Inc.	Calibrators FPR Phenobarbital	Kit: 6 Vials	10/30/86
Windsor Laboratories, Inc.	Phenobarbital Fluorescence Polarization Immunoassay Kit.	Kit: 100 tests	11/20/85

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21 CFR Part 1308

Schedules of Controlled Substances; Table of Exempt Prescription Products

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule updates the Table of Exempt Prescription Products found in § 1308.32 of the Code of Federal Regulations by adding those prescription products to the list that have been granted exempt status since April 1, 1987.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt, from specific provisions of the Act, a preparation or mixture if that preparation or mixture: (1) Contains a nonnarcotic controlled substance; (2) is approved for prescription use; and (3) meets certain criteria. An exemption may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to the Drug Enforcement Administration per 21 CFR 1308.31.

The current Table of Exempt Prescription Products found in 21 CFR Part 1308 lists those products that have been granted exempt status as of April 1, 1987 (47 FR 53728). A Notice of Proposed Rulemaking was published on February 4, 1988 (53 FR 3314) requesting comments on the updated Table of Exempt Prescription Products. Since that time, one comment regarding a minor change was received along with a number of applications for new exemptions. The final Table of Exempt Prescription Products reflects this change and adds those prescription products to the list that have been granted exempt status since February 4, 1988 (pursuant to 21 CFR 1308.31).

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The addition of products to the list of exempt prescription products has the effect of exempting them from certain measures of control imposed by the Controlled Substances Act of 1970 and its implementing regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

March 21, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.32 the list of products found in the Table of Exempt Prescription Products is revised to read as follows:

§ 1308.32 Exempted prescription products.

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TABLE OF EXEMPT PRESCRIPTION PRODUCTS

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Adria Laboratories	Axotal	00013-1301	TB	Butalbital	50.00
Alpha Scriptics Inc.	Butacet Capsules	53121-0133	CA	Butalbital	50.00
American Urologicals Inc	Butace	00539-0906	CA	Butalbital	50.00
Apotheca	Theophen	12634-0101	TB	Phenobarbital	8.00
Arco Pharmaceuticals	Arco-Lase Plus	00275-0045	TB	Phenobarbital	8.00
Arlo Interamerican	Espasmotex	11475-0835	TB	Phenobarbital	20.00
Ascher and Co	Anaspaz PB	00225-0300	TB	Phenobarbital	15.00
Ascot Pharmaceuticals	Antispasmodic Tablets	47679-0158	TB	Phenobarbital	16.20
Ascot Pharmaceuticals	Chlordiazepoxide Hydrochloride + Clidinium Bromide.	47679-0268	CA	Chlordiazepoxide HCl	5.00
Ayerst Laboratories	PMB-200	00046-0880	TB	Meprobamate	200.00
Ayerst Laboratories	PMB-400	00046-0881	TB	Meprobamate	400.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Barre Drug Co	Barophen	00472-0981	EL	Phenobarbital	3.24
Barre Drug Co	Isolate Compound	00472-0929	EL	Phenobarbital	0.40
Beecham Laboratories	Hybephen	00029-2360	TB	Phenobarbital	15.00
Bioline Labs Inc	Anti-Spas	00719-1091	TB	Phenobarbital	16.20
Bioline Labs Inc	Anti-Spas Elixir	00719-4090	EL	Phenobarbital	3.24
Bioline Labs Inc	Chlordinium	00719-1208	CA	Chlordiazepoxide HCl	5.00
Blaine Co	Spaslin	00165-0029	TB	Phenobarbital	16.20
Blansett Pharm Co	Anolor 300 Capsules	51674-0009	CA	Butalbital	50.00
Bock Pharmacal Co	Broncholate	00563-0277	CA	Phenobarbital	8.00
Bowman Pharmaceutical	Private Formula No 3095	00252-3095	TB	Phenobarbital Sodium	15.00
Breon Labs	Isuprel Compound	00057-0674	EL	Phenobarbital	0.40
Caldwell & Bloor Co	Hyosital White	00361-2131	TB	Phenobarbital	16.20
Camrick Labs Inc	Phrenilin	00086-0050	TB	Butalbital	50.00
Camrick Labs Inc	Phrenilin Forte	00086-0056	CA	Butalbital	50.00
Chelsea Laboratories	Chlordiazepoxide with Clidinium Bromide.	46193-0946	CA	Chlordiazepoxide HCl	5.00
Columbia Drug Co	Isopap Capsules	11735-0400	CA	Butalbital	50.00
Consolidated Midland	Bellalphen	00223-0425	TB	Phenobarbital	16.20
Dorsey Laboratories	Donalixir	00471-0095	EL	Phenobarbital	3.24
Dunhall Pharmacal Inc	Triaprin	00217-2811	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Capsules	00642-0163	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Tablets	00642-0162	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 325mg/Butalbital 50mg	00456-0674	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 500mg/Butalbital 50mg	00456-0671	TB	Butalbital	50.00
Forest Pharmacal Inc	Bancap	00456-0546	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Capsules	00456-0631	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Forte Tablets	00456-0673	TB	Butalbital	50.00
Forest Pharmacal Inc	Esgic Tablets	00456-0630	TB	Butalbital	50.00
Forest Pharmacal Inc	G.B.S.	00456-0281	TB	Phenobarbital	8.00
Forest Pharmacal Inc	Soniphen	00456-0429	ET	Phenobarbital	16.00
Gen-King Products	Antispasmodic	03547-0777	TB	Phenobarbital	16.20
Geriatric Pharmacal Corp	Bilezyme Plus	00249-1112	TB	Phenobarbital	8.00
Geriatric Pharmacal Corp	Gustase Plus	00249-1121	TB	Phenobarbital	8.00
Glenlawn Laboratories	Chlordinium Sealets	00580-0084	CA	Chlordiazepoxide HCl	5.00
Goldline Laboratories	Antispasmodic Elixir	00182-0888	EL	Phenobarbital	3.24
Goldline Laboratories	Antispasmodic Tablets	00182-0129	TB	Phenobarbital	16.20
Goldline Laboratories	Bel-phen-ergot s Tablets	00182-1847	TB	Phenobarbital	40.00
Goldline Laboratories	C.D.P. Plus Capsules	00182-1956	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Butalbital and Acetaminophen Tablets	00879-0543	TB	Butalbital	50.00
Halsey Drug Co Inc	Butalbital, Acetaminophen and Caffeine Tablets.	00879-0567	TB	Butalbital	50.00
Halsey Drug Co Inc	Clinoxide	00879-0501	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Susano	00879-0059	EL	Phenobarbital	3.24
Halsey Drug Co Inc	Susano	00879-0058	TB	Phenobarbital	16.20
Horizon Products Co	Spastrin Tablets	54580-0124	TB	Phenobarbital	40.00
Hyrex Pharmaceutical	Panzyme	00314-0310	TB	Phenobarbital	8.10
Hyrex Pharmaceutical	Two-Dyne Revised	00314-2229	TB	Butalbital	50.00
Interstate Drug Exchange	IDE-Cet Tablets	00814-3630	TB	Butalbital	50.00
Interstate Drug Exchange	Spastolate	00814-7086	TB	Phenobarbital	16.20
Intetlab	CON-TEN	11584-1029	CA	Butalbital	50.00
Kaiser Foundation Hosp	Belladonna Alkaloids with Phenobarbital	00179-0045	EL	Phenobarbital	3.24
Keene Pharmacal Inc	Endolor	00588-7777	CA	Butalbital	50.00
Knoll Pharmaceutical	Quadrinal Suspension	00044-4580	SS	Phenobarbital	2.40
Knoll Pharmaceutical	Quadrinal Tablets	00044-4520	TB	Phenobarbital	24.00
Kraft Pharmacal Co Inc	Digestokraft	00796-0237	TB	Butabarbital Sodium	8.00
Kremers Urban Co	Levsin with Phenobarbital Elixir	00091-4530	EL	Phenobarbital	3.00
Kremers Urban Co	Levsin with Phenobarbital Tablets	00091-3534	TB	Phenobarbital	15.00
Kremers Urban Co	Levsin-PB	00091-4536	DP	Phenobarbital	15.00
Kremers Urban Co	Levsinex with Phenobarbital	00091-3539	XC	Phenobarbital	45.00
Landry Pharmacal Inc	Febridyne Plain Capsules	05383-0001	CA	Butalbital	50.00
Lanpar Co	PB Phe-Bell	12908-7006	TB	Phenobarbital	16.20
Lasalle Laboratories	Pacaps Modified Formula	49534-0884	CA	Butalbital	50.00
Lemmon Pharmacal Co	Donphen	00093-0205	TB	Phenobarbital	15.00
Life Laboratories	Belladonna Alkaloids with Phenobarbital	00737-1293	EL	Phenobarbital	3.00
Lunsco Inc	Pacaps Capsules	10892-0116	CA	Butalbital	50.00
Major Pharmaceuticals	Fabophen Tablets	00904-3290	TB	Butalbital	50.00
Mallard Inc	Anoquan Modified Formula	00166-8881	CA	Butalbital	50.00
Mallard Inc	Malatal	00166-0746	TB	Phenobarbital	16.20
Marlop Pharmacal Inc	Broncomar	12939-0126	EL	Butabarbital	1.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Marlop Pharmacal Inc	Dolmar	12939-0612	CA	Butalbital	50.00
Marnel Pharmacal Inc	Margesic Capsules	00682-0804	CA	Butalbital	50.00
Mayrand Pharmacal Inc	B-A-C Tablets	00259-1256	TB	Butalbital	50.00
Mayrand Pharmacal Inc	Sedapap-10 Tablets	00259-1278	TB	Butalbital	50.00
Mead Johnson Pharmacal	Quibron Plus Capsules	00087-0518	CA	Butabarbital	20.00
Mead Johnson Pharmacal	Quibron Plus Elixir	00087-0511	EL	Butabarbital	1.33
Medco Supply Co	Phenobarbital & Hyoscyamine Sulfate	00764-2057	TB	Phenobarbital	16.20
Mikart Inc	Butalbital and Acetaminophen Tablets 50/325.	46672-0099	TB	Butalbital	50.00
Mikart Inc	Butalbital and Acetaminophen Tablets 50/650.	46672-0098	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen and Caffeine Capsules.	46672-0103	CA	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen, and Caffeine Tablets II.	46672-0059	TB	Butalbital	50.00
Moore Drug Exchange	Antispasmodic Tablets	00839-5055	TB	Phenobarbital	16.00
Moore Drug Exchange	Theophenyllin	00839-5111	TB	Phenobarbital	8.00
Nejo Pharmaceutical	Spasmalones	00653-0002	TB	Phenobarbital	16.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/2	00071-0531	CA	Phenobarbital	32.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/4	00071-0375	CA	Phenobarbital	16.00
Parke-Davis & Co	Tedral SA	00071-0231	XT	Phenobarbital	25.00
Parmed Pharmaceutical	Sedapar Elixir	00349-4100	EL	Phenobarbital	3.24
Parmed Pharmaceutical	Sedapar Tablets	00349-2355	TB	Phenobarbital	16.20
Pasadena Research	Seds	00418-4072	TB	Phenobarbital	16.20
Pharmaceutical Basics Inc	Clinibrax Capsules	00832-1054	CA	Chlordiazepoxide HCl	5.00
Poythress & Co Inc	Antrocol	00095-0041	CA	Phenobarbital	16.00
Poythress & Co Inc	Antrocol Elixir	00095-0042	EL	Phenobarbital	3.00
Poythress & Co Inc	Antrocol Tablets	00095-0040	TB	Phenobarbital	16.00
Poythress & Co Inc	Mudrane	00095-0050	TB	Phenobarbital	8.00
Poythress & Co Inc	Mudrane GG Elixir	00095-0053	EL	Phenobarbital	0.50
Poythress & Co Inc	Mudrane GG Tablets	00095-0051	TB	Phenobarbital	8.00
Private Formula Inc	Sangesic	00511-1627	TB	Butalbital	30.00
Qualitest Products Inc	Butalbital, Acetaminophen and Caffeine Tablets.	52446-0544	TB	Butalbital	50.00
Qualitest Products Inc	Chlordiazepoxide HCl 5 mg and Clidinium Br 2.5 mg.	52446-0096	CA	Chlordiazepoxide HCl	5.00
Redi-Med	Butalbital Compound Capsules	53506-0103	CA	Butalbital	50.00
Richlyn Laboratories	Aminophylline & Phenobarbital	00115-2156	ET	Phenobarbital	15.00
Richlyn Laboratories	Aminophylline & Phenobarbital Tablets	00115-2154	TB	Phenobarbital	15.00
Richlyn Laboratories	Bellophen	00115-2400	TB	Phenobarbital	16.20
Richlyn Laboratories	Spasmolin	00115-4652	TB	Phenobarbital	15.00
Robins A H Co Inc	Donnatal Capsules	00031-4207	CA	Phenobarbital	16.20
Robins A H Co Inc	Donnatal Elixir	00031-4221	EL	Phenobarbital	3.24
Robins A H Co Inc	Donnatal Extentabs	00031-4235	XT	Phenobarbital	48.60
Robins A H Co Inc	Donnatal No 2	00031-4264	TB	Phenobarbital	32.40
Robins A H Co Inc	Donnatal Tablets	00031-4250	TB	Phenobarbital	16.20
Robins A H Co Inc	Donnazyme	00031-4649	ET	Phenobarbital	8.10
Roche Labs	Librax	00140-0007	CA	Chlordiazepoxide HCl	5.00
Roche Labs	Menrium 10-4	00140-0025	TB	Chlordiazepoxide	10.00
Roche Labs	Menrium 5-2	00140-0023	TB	Chlordiazepoxide	5.00
Roche Labs	Menrium 5-4	00140-0024	TB	Chlordiazepoxide	5.00
Rondex Laboratories	Antispasmodic	00367-4118	TB	Phenobarbital	16.20
Rolex Pharmacal Inc	Rogesic Capsules	31190-0006	CA	Butalbital	50.00
Ruckstuhl Co	Sederex No 3	00144-1575	TB	Phenobarbital	16.20
Rugby Laboratories	Clindex	00536-3490	CA	Chlordiazepoxide HCl	5.00
Rugby Laboratories	Hyosophen Capsules	00536-3926	CA	Phenobarbital	16.00
Rugby Laboratories	Hyosophen Tablets	00536-3920	TB	Phenobarbital	16.20
Rugby Laboratories	ISOCET Tablets	00536-3951	TB	Butalbital	50.00
Rugby Laboratories	Theodrine Tablets	00536-4648	TB	Phenobarbital	8.00
Russ Pharmacal Inc	Lorprn Capsules	50474-0702	CA	Butalbital	50.00
Sandoz Pharmacal Corp	Belladenal	00078-0028	TB	Phenobarbital	50.00
Sandoz Pharmacal Corp	Belladenal-S	00078-0027	XT	Phenobarbital	50.00
Sandoz Pharmacal Corp	Bellergal-S	00078-0031	XT	Phenobarbital	40.00
Sandoz Pharmacal Corp	Cafergot P-B Suppository	00078-0035	SU	Pentobarbital	60.00
Sandoz Pharmacal Corp	Cafergot P-B Tablets	00078-0036	TB	Pentobarbital Sodium	30.00
Sandoz Pharmacal Corp	Fioricet	00078-0084	CA	Butalbital	50.00
Schein Henry Inc	Antispasmodic	00364-0020	TB	Phenobarbital	16.00
Schein Henry Inc	Antispasmodic Elixir	00364-7002	EL	Phenobarbital	3.20
Schein Henry Inc	Isolate Compound Elixir	00364-7029	EL	Phenobarbital	0.40

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TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Schein Henry Inc	T-E-P	00364-0266	TB	Phenobarbital	8.10
Shoals Pharmacal Co.	Tencet	47649-0370	TB	Butalbital	50.00
Shoals Pharmacal Co.	Tencet Capsules	47649-0560	CA	Butalbital	50.00
Stewart-Jackson Pharmacal	Ezol	45985-0578	CA	Butalbital	50.00
Stuart Pharmaceutical	Kinesed	00038-0220	TB	Phenobarbital	16.00
Towne Paulsen & Co	T. E. P.	00157-0980	TB	Phenobarbital	8.00
Trimen Labs	Amaphen Capsules (reformulated)	11311-0954	CA	Butalbital	50.00
Truxton C O Inc	Atropine Sulfate with Phenobarbital	00463-6035	TB	Phenobarbital	15.00
Truxton C O Inc	Ephedrine with Phenobarbital	00463-6086	TB	Phenobarbital	15.00
Truxton C O Inc	Spastemms Elixir	00463-9023	EL	Phenobarbital	3.24
Truxton C O Inc	Spastemms Tablets	00463-6181	TB	Phenobarbital	15.00
U.S. Pharmaceuticals Inc	Medigesic Plus	52747-0311	TB	Butalbital	50.00
UAD Laboratories Inc	Bucet Capsules	00785-2307	CA	Butalbital	50.00
UAD Laboratories Inc	Bucet Tablets	00785-2307	TB	Butalbital	50.00
UAD Laboratories Inc	Triad	00785-2306	TB	Butalbital	50.00
UAD Laboratories Inc	Triad Capsules	00785-2305	CA	Butalbital	50.00
UDL Laboratories	Belladonna Alkaloids with Phenobarbital	51079-0168	TB	Phenobarbital	16.20
University of Iowa	Bladder Mixture Plus Phenobarbital	11326-1624	LQ	Phenobarbital	2.92
Vale Chemical Co	Alkaloids of Belladonna and Phenobarbital.	00377-0527	TB	Phenobarbital	16.20
Vale Chemical Co	Antispas	00377-0622	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid (Revised) Green	00377-0365	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid Yellow	00377-0496	TB	Phenobarbital	16.20
Vale Chemical Co	Charspast	00377-0500	TB	Phenobarbital	16.20
Vale Chemical Co	Digestokraft	00377-0460	TB	Butabarbital Sodium	8.00
Vale Chemical Co	Ephedrine & Sodium Phenobarbital	00377-0109	TB	Phenobarbital Sodium	16.20
Vale Chemical Co	Panzyme	00377-0491	TB	Phenobarbital	8.10
Vale Chemical Co	Pulsaphen	00377-0552	TB	Phenobarbital	15.00
Vale Chemical Co	Truxaphen	00377-0541	TB	Phenobarbital	16.20
Vale Chemical Co	Wescophen S-II	00377-0628	TB	Phenobarbital	30.00
Vale Chemical Co	Wesmatic Forte	00377-0426	TB	Phenobarbital	8.10
Vortech Pharmacal Co	Donna-Sed	00298-5054	EL	Phenobarbital	3.24
Vortech Pharmacal Co	Hypnaldyne	00298-1778	TB	Phenobarbital	16.20
Vortech Pharmacal Co	Isophed	00298-5680	LQ	Phenobarbital	0.40
Vortech Pharmacal Co	Phedral C. T.	00298-1173	TB	Phenobarbital	8.10
W.E. Hauck Inc	G-1 Capsules	43797-0244	CA	Butalbital	50.00
Wallace Laboratories	Barbidonna Elixir	00037-0305	EL	Phenobarbital	3.20
Wallace Laboratories	Barbidonna No 2	00037-0311	TB	Phenobarbital	32.00
Wallace Laboratories	Barbidonna Tablets	00037-0301	TB	Phenobarbital	16.00
Wallace Laboratories	Butibel Elixir	00037-0044	EL	Butabarbital Sodium	3.00
Wallace Laboratories	Butibel Tablets	00037-0046	TB	Butabarbital Sodium	15.00
Wallace Laboratories	Lufyllin-EPG Elixir	00037-0565	EL	Phenobarbital	1.60
Wallace Laboratories	Lufyllin-EPG Tablets	00037-0561	TB	Phenobarbital	16.00
Wallace Laboratories	Milprem-200	00037-5501	TB	Meprobamate	200.00
Wallace Laboratories	Milprem-400	00037-5401	TB	Meprobamate	400.00
Wesley Pharmacal Co	Hytrophen	00917-0244	TB	Phenobarbital	16.20
Wesley Pharmacal Co	Pulsaphen Gray	00917-0113	TB	Phenobarbital	15.00
Wesley Pharmacal Co	Wescophen-S	00917-0135	TB	Phenobarbital	30.00
Wesley Pharmacal Co	Wesmatic Forte	00917-0645	TB	Phenobarbital	8.00
West-ward Inc	Belladonna Alkaloids & Phenobarbital	00143-1140	TB	Phenobarbital	16.20
West-ward Inc	Butalbital with Acetaminophen and Caffeine Tablets.	00143-1787	TB	Butalbital	50.00
West-ward Inc	Theophylline Ephedrine & Phenobarbital	00143-1695	TB	Phenobarbital	8.00
Winthrop Labs	Isuprel	00024-0874	EL	Phenobarbital	0.40
Zenith Labs Inc	Azpan	00172-3747	TB	Phenobarbital	8.00

[FR Doc. 88-6571 Filed 3-31-88; 8:45 am]

BILLING CODE 4410-09-D

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federal register

Friday
April 1, 1988

Part XI

Department of Energy

Bonneville Power Administration

Lost Power Revenue Mitigation Charge and Cost Recovery Adjustment Clause; Notices

DEPARTMENT OF ENERGY

Bonneville Power Administration

Lost Power Revenue Mitigation Charge and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Request for Comments. *BPA File No.* MC–88. BPA requests that all comments and documents submitted for the record compiled in the process of developing the Lost Power Revenue Mitigation Charge reference the file designation MC–88.

SUMMARY: At the request of utilities seeking firm wheeling (Assured Delivery) service under the proposed Long-Term Intertie Access Policy (IAP), BPA proposes an optional Lost Power Revenue Mitigation Charge (MC–88). The charge would be available—at the option of the requesting utility—to operate as a supplement to, or replacement for, certain "Operational Mitigation" measures contained in the proposed IAP. The charge is intended to provide a new source of revenue to mitigate BPA power sales lost when Federal Intertie capacity is made available for long-term, firm transactions of utilities that would prefer not to be subject to Operational Mitigation. BPA views the charge as an accommodation to those utilities seeking relative certainty in Assured Delivery mitigation requirements under the IAP.

Responsible Official: John A. Cameron, Jr., Intertie Access Project Manager, is the official responsible for the development of the MC–88 charge.

DATE: Any interested person may submit written comments to BPA no later than 5:00 p.m., Monday, May 2, 1988, at the address listed below.

ADDRESS: Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Sugai, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98801, 509–662–4377, extension 379.
Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, Suite 400, Seattle, Washington 98109, 206–442–4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.
Mr. Tom Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is currently finalizing a Long-Term Intertie Access Policy (IAP) that will govern use of BPA's share of the Pacific Northwest-Pacific Southwest Intertie—a system of three high-voltage transmission lines. Under the IAP, BPA proposes to provide approximately 800 MW of capacity to facilitate long-term, firm power transactions and exchanges between utilities in the Northwest and California. A detailed description of BPA's current revised draft Long-Term IAP may be found at 53 FR 1660 (January 21, 1988).

When this transmission capacity is made available to nonfederal utilities, BPA will at times be unable to use Intertie capacity for the transmission of its own surplus firm power or nonfirm energy. As a consequence, BPA's revenues will be reduced, payments to the Federal Treasury may be impaired, and rates for sales to BPA's firm power customers may tend to increase more rapidly than would otherwise be the case. To reduce these adverse impacts in a way that balances the many competing interests at stake in development of an IAP, BPA has proposed various forms of "operational mitigation" in its revised draft Long-Term IAP. 53 FR 1660 (January 21, 1988).

During the public process on BPA's revised draft IAP, some Northwest utilities requesting Assured Delivery transmission service have further requested that BPA develop a mitigation charge to supplant, or replace, Operational Mitigation measures. MC–88 was developed in response to these requests. The concept of the proposed charge, together with its quantitative support, was explained and reviewed during a series of public meetings conducted in January 1988.

The proposed charge is intended to serve the special needs of utilities requesting Assured Delivery service. The charge will not be imposed involuntarily on any utility that prefers Operational Mitigation measures under the IAP. BPA also stands ready to negotiate case-by-case mitigation measures that incorporate varying combinations of Operational Mitigation measures and Mitigation Charges at commensurately lower levels. BPA staff have already explained the concept and derivation of the charge in several public meetings. BPA study results were reviewed by the staff of the Pacific Northwest Utility Conference Committee. It is BPA's hope that parties will help reduce the time needed to complete this proceeding through appropriate informal means to ensure prompt answers to questions about the proposal.

II. Procedures Governing This Rate Adjustment

Pursuant to section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), MC–88 rate issues will be subject to a hearing to be concluded by the time the final IAP is issued in May of 1988. Thereafter, any final rate proposal will be filed with the Federal Energy Regulatory Commission with a request for confirmation and approval as provided by the Act. BPA hopes to honor the requests of certain utilities that the proposed charge be available for inclusion in certain Assured Delivery contracts to be executed concurrent with the release of the final IAP. Pursuant to Rule 1010.1(d) of Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611, 7614 (March 5, 1986), the Administrator hereby notifies interested persons that procedures in the following sections are waived: §§ 1010.2(c); 1010.2(k); 1010.4(d); 1010.8; 1010.13(d).

The Administrator has determined, and hereby gives notice, that pursuant to § 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings, this hearing will be conducted on an expedited basis under § 1010.10 of BPA's procedures. A final record of decision will be issued by the Administrator on May 16, 1988.

The basis for the Administrator's decision to adopt these expedited

procedures is twofold. First, the proposed MC–88 charge involves a single discrete rate of limited application. It will apply only to those parties who seek Assured Delivery contracts with BPA and who elect to incorporate the MC–88 charge into their contracts in conjunction with, or as a replacement for, Operational Mitigation. Second, BPA must establish the MC–88 charge so as to incorporate it in contracts to be executed about the time the final IAP is adopted.

A prehearing conference has been scheduled before an independent hearing officer on April 6, 1988, at 10 a.m. in Room 106, BPA Headquarters Building, 905 NE. 11th Street, Portland, Oregon. The hearing officer will rule on all intervention petitions and oppositions to intervention petitions, establish any special rules of procedure considered appropriate, establish a service list and a procedural schedule, and consolidate parties with similar interests into groups for the purpose of jointly sponsoring testimony and expediting cross-examination.

Before publication of this notice in the **Federal Register**, BPA provides copies of the prefiled direct testimony of BPA witnesses; supporting studies; and this notice to all individuals who have previously submitted comments on BPA's revised draft IAP. Copies of these documents are available to other interested individuals through BPA's Public Information Center, 905 NE. 11th, Portland, Oregon, telephone number: 503–230–7334. BPA will make its witnesses available for transcribed clarification immediately following the prehearing conference.

Those seeking "party" status must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest. Parties may participate in the prehearing conference, may call and cross-examine witnesses, and receive service of documents from other parties. Parties are subject to cross-examination and are required to serve documents on other parties.

Intervention petitions must be filed with the hearing officer, c/o IAP Project—AM, Bonneville Power Administration, 905 NE. 11th Street, Portland, Oregon 97232 and served on Mr. James P. Fama, Acting Assistant General Counsel—APR, at the above address. Petitions for intervention must be filed and served so as to be received no later than 9 a.m., April 6, 1988. Pursuant to § 1010.1(d) of BPA's Procedures, BPA waives the requirement in § 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Opposition to an intervention petition may be registered at the prehearing conference. Any party, including BPA, may oppose a petition for intervention.

Apart from the formal hearing process, BPA will receive comments and recommendations from "participants", who are defined in BPA's procedures as persons who wish to express their views, but who do not intervene as formal "parties." This category affords the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to cross-examine parties' witnesses or be served with documents. However, copies of all testimony, studies and other relevant documents will be available to any interested person for review in BPA's Public Information Center. Participants need not attend the hearings in order to have their views included in the record. Written comments will be included in the record provided they are received by May 2, 1988. Procedures for submitting written comments are detailed in the Dates and Addresses sections of this notice.

III. Rate Proposal—Schedule MC–88

Introduction

The proposed Lost Power Revenue Mitigation Charge is expected to operate in conjunction with, or as a replacement for, Operational Mitigation provisions of the final IAP. The imposition of Operation Mitigation requirements depends on various operational conditions on the Northwest power system. In order to provide more planning certainty when negotiating transactions, utilities may elect to incorporate the Mitigation Charge into their Assured Delivery contracts as an alternative to the uncertainty of changing conditions on the Northwest power system. BPA also will consider combinations of Operational Mitigation and, correspondingly, reduced Mitigation Charges negotiated on a case-by-case basis. Hence, the proposed MC–88 charge is a flexible rate, but one that contains an "upper limit" as applied to billing determinations of a particular Assured Delivery contract. The rate will be applicable to Assured Delivery contracts involving both power sales and exchanges.

Lost Power Revenue Mitigation Charge

Section I.—Availability

This schedule is available for all customers who have executed an Assured Delivery contract with BPA for firm transmission service on the Southern Intertie for which such contract specifies the use of this schedule. This schedule is subject to BPA's General Rate Schedule Provisions.

Section II.—Rate

The charge shall be agreed upon in advance by BPA and the customer, but shall not exceed the sum of A and B:

A. *The Demand Charge shall be:* $0.53 per kilowatt per month of billing demand.

B. *The Energy Charge shall be:* 1.32 mills/kWh of billing energy.

The above demand and energy charge are applicable to both north-to-south and south-to-north transactions. The agreed upon billing determinants may differ from those above as long as the total dollar charge does not exceed the total dollar charge that would result from A and B above.

Section III.—Billing Factors

The billing demand shall be the Transmission Demand as defined in the Assured Delivery contract. The billing energy shall be the monthly sum of scheduled kilowatthours, unless otherwise specified in the contract.

Section IV.—Term of the Rate

This rate schedule shall take effect on May 17, 1988, and shall terminate May 16, 1993, or the effective date of any general rate charge proposed by BPA during 1993, whichever occurs later.

IV.—Statement of Issues

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the MC–88 charge. See Rule 1010.2(j) of BPA's Procedures. Neither the forms of proposed Operational Mitigation measures nor any term of the IAP are rate matters for the purposes of this hearing. *California Energy Commission v. BPA*, 831 F.2d 1467 (9th Cir. 1987). Similarly, the form or terms of Assured Delivery contracts are not rate matters to be considered in this proceeding.

Issued in Portland, Oregon, March 25, 1988.

Jack Robertson,

Acting Administrator.

[FR Doc. 88–7337 Filed 3–31–88; 9:20 am]

BILLING CODE 6450-01-M

Cost Recovery Adjustment Clause

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of possible rate adjustment.

SUMMARY: BPA is announcing a possible rate adjustment as provided for under the Cost Recovery Adjustment Clause applicable to certain 1987 wholesale power rates. The provision authorizes the BPA Administrator to implement a formula adjustment to these rates. The formula is applied to values obtained from BPA's official audited financial statements for fiscal year 1988. Although notice is given at this time, the BPA Administrator will make no decision regarding whether or not to implement this provision until completion of a public process commencing on November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann C. Scott, Public Involvement Manager, at Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.
Mr. Terry G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, N., Suite 400, Seattle, Washington 98109, 206–442–4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.
Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION: BPA's *1987 General Rate Schedule Provisions* includes a Cost Recovery Adjustment Clause applicable to the Priority Firm Power (Exchange and Preference), Industrial Firm Power, Variable Industrial Power, Firm Capacity, and New Resource Firm Power rate schedules. This rate schedule provision includes a formula that allows a one-time upward or downward adjustment to these rate schedules based upon BPA's fiscal year 1988 financial performance. This provision is part of the BPA Administrator's Risk Mitigation Strategy on which the 1987 wholesale power rates were developed in part. Implementation of this provision is governed by the *1987 General Rate Schedule Provisions* which provides for a public process commencing on November 1, 1988. If this provision is implemented, adjusted rates will be in effect during the period January 1, 1989 through September 30, 1989.

BPA's *1987 Final Rate Proposal, Administrator's Record of Decision* states that BPA will publish a **Federal Register** notice in early 1988 of a possible rate adjustment pursuant to the Cost Recovery Adjustment Clause. This notice addresses the concerns of some of BPA's customers whose power sales contracts include a provision for a nine-month notice of rate adjustments. Although any decision to implement the Cost Recovery Adjustment Clause cannot be made until completion of a public process commencing on November 1, 1988, notice of a possible rate adjustment is given at this time in accordance with the Administrator's Record of Decision.

Issued in Portland, Oregon, on March 24, 1988.

Jack Robertson,
Acting Administrator.

[FR Doc. 88–7338 Filed 3–31–88; 8:45 am]

BILLING CODE 6450-01-M

Reader Aids

Federal Register
Vol. 53, No. 63
Friday, April 1, 1988

INFORMATION AND ASSISTANCE

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Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
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Code of Federal Regulations	
Index, finding aids & general information	523–5227
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TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

10519–10868	1

LIST OF PUBLIC LAWS

Last List March 31, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S.J. Res. 244/Pub. L. 100–270

To designate the month of April 1988, as "National Know Your Cholesterol Month." (Mar. 29, 1988; 102 Stat. 44; 1 page) Price: $1.00

H.R. 3967/Pub. L. 100–271

To amend the Department of Defense Authorization Act, 1985, to extend medical benefits for certain former spouses. (Mar. 29, 1988; 102 Stat. 45; 1 page) Price: $1.00

CFR ISSUANCES 1988
January 1988 Editions and Projected April, 1988 Editions

This list sets out the CFR issuances for the January 1988 editions and projects the publication plans for the **April, 1988** quarter. A projected schedule that will include the **July, 1988** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1987–1988 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1988 editions:

Title

CFR Index*

1-2

3 (Compilation)*

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26*
27–45
46–51
52
53–209
210–299*
300–399*
400–699*
700–899
900–999*
1000–1059
1060–1119
1120–1199
1200–1499*
1500–1899
1900–1939
1940–1949
1950–1999*
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599*
600–End

13

14 Parts:
1–59
60–139*
140–199
200–1199
1200–End*

15 Parts:
0–299
300–399*
400–End

16 Parts:
0–149
150–999
1000–End

Projected April 1, 1988 editions:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599
600–End

27 Parts:
1–199
200–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 18	May 2	May 16	May 31	June 30
April 4	April 19	May 4	May 19	June 3	July 5
April 5	April 20	May 5	May 20	June 6	July 5
April 6	April 21	May 6	May 23	June 6	July 5
April 7	April 22	May 9	May 23	June 6	July 6
April 8	April 25	May 9	May 23	June 7	July 7
April 11	April 26	May 11	May 26	June 10	July 11
April 12	April 27	May 12	May 27	June 13	July 11
April 13	April 28	May 13	May 31	June 13	July 12
April 14	April 29	May 16	May 31	June 13	July 13
April 15	May 2	May 16	May 31	June 14	July 14
April 18	May 3	May 18	June 2	June 17	July 18
April 19	May 4	May 19	June 3	June 20	July 18
April 20	May 5	May 20	June 6	June 20	July 19
April 21	May 6	May 23	June 6	June 20	July 20
April 22	May 9	May 23	June 6	June 21	July 21
April 25	May 10	May 25	June 9	June 24	July 25
April 26	May 11	May 26	June 10	June 27	July 25
April 27	May 12	May 27	June 13	June 27	July 26
April 28	May 13	May 31	June 13	June 27	July 27
April 29	May 16	May 31	June 13	June 28	July 28

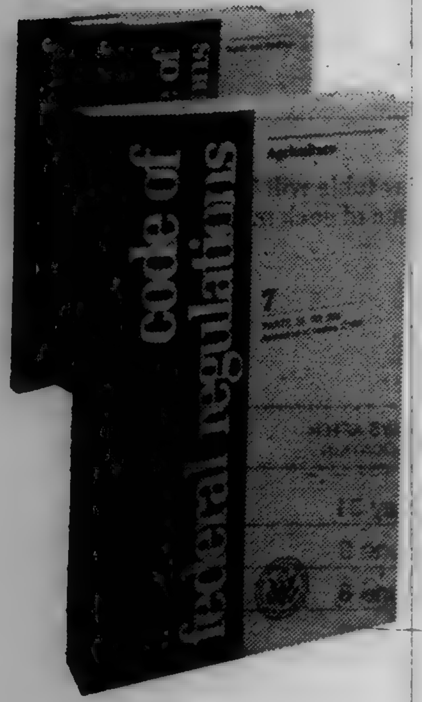

Just Released

Code of Federal Regulations

Revised as of January 1, 1988

Quantity	Volume	Price	Amount
	Title 7—Agriculture		
	Parts 46–51 (Stock No. 869-004-00009-0)	$16.00	$
	Part 52 (Stock No. 869-004-00010-3)	23.00	
	Parts 1000–1059 (Stock No. 869-004-00017-1)	15.00	
		Total Order	**$**

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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List of CFR Sections Affected

January 1988

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List of CFR Sections Affected

January 1988

Titles 1-16
Changes January 4, 1988
through January 29, 1988

Titles 17-27
Changes April 1, 1987
through January 29, 1988

Titles 28-41
Changes July 1, 1987
through January 29, 1988

Titles 42-50
Changes October 1, 1987
through January 29, 1988

**Parallel Table of
Authorities and Rules**

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

LSA—LIST OF CFR SECTIONS AFFECTED

The LIST OF CFR SECTIONS AFFECTED is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LIST OF CFR SECTIONS AFFECTED for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the current year from the previous year.

Cite a page reference from this publication as 52 FR for 1987 page numbers and 53 FR for 1988 page numbers. Example: 24727 cite as 52 FR 24727; **1272** cite as 53 FR 1272.

ISSUES TO BE SAVED

There is no single annual issue of the LIST OF CFR SECTIONS AFFECTED. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1988.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the inclusive page numbers and corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Loren S. Myers was Chief Editor of the LSA. The LSA was prepared under the direction of Martha B. Girard, assisted by Ruth C. Pontius. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to John E. Byrne, Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a complete CFR set)

Title	*Price*	*Revision Date*
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 (Parts 1-1199)	25.00	Jan. 1, 1987
(Parts 1200-End), 6 (6 Reserved)	9.50	Jan. 1, 1987
7 (Parts 0-45)	25.00	Jan. 1, 1987
(Parts 46-51)	16.00	Jan. 1, 1987
(Part 52)	23.00	Jan. 1, 1987
(Parts 53-209)	18.00	Jan. 1, 1987
(Parts 210-299)	22.00	Jan. 1, 1987
(Parts 300-399)	10.00	Jan. 1, 1987
(Parts 400-699)	15.00	Jan. 1, 1987
(Parts 700-899)	22.00	Jan. 1, 1987
(Parts 900-999)	26.00	Jan. 1, 1987
(Parts 1000-1059)	15.00	Jan. 1, 1987
(Parts 1060-1119)	13.00	Jan. 1, 1987
(Parts 1120-1199)	11.00	Jan. 1, 1987
(Parts 1200-1499)	18.00	Jan. 1, 1987
(Parts 1500-1899)	9.50	Jan. 1, 1987
(Parts 1900-1944)	25.00	Jan. 1, 1987
(Part 1945-End)	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 (Parts 1-199)	18.00	Jan. 1, 1987
(Part 200-End)	16.00	Jan. 1, 1987
10 (Parts 0-199)	29.00	Jan. 1, 1987
(Parts 200-399)	13.00	Jan. 1, 1987
(Parts 400-499)	14.00	Jan. 1, 1987
(Part 500-End)	24.00	Jan. 1, 1987
11	11.00	Jul. 1, 1987
12 (Parts 1-199)	11.00	Jan. 1, 1987
(Parts 200-299)	27.00	Jan. 1, 1987
(Parts 300-499)	13.00	Jan. 1, 1987
(Part 500-End)	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 (Parts 1-59)	21.00	Jan. 1, 1987
(Parts 60-139)	19.00	Jan. 1, 1987
(Parts 140-199)	9.50	Jan. 1, 1987
(Parts 200-1199)	19.00	Jan. 1, 1987
(Part 1200-End)	11.00	Jan. 1, 1987
15 (Parts 0-299)	10.00	Jan. 1, 1987
(Parts 300-399)	20.00	Jan. 1, 1987
(Part 400-End)	14.00	Jan. 1, 1987
16 (Parts 0-149)	12.00	Jan. 1, 1987
(Parts 150-999)	13.00	Jan. 1, 1987
(Part 1000-End)	19.00	Jan. 1, 1987
17 (Parts 1-199)	14.00	April 1, 1987
(Parts 200-239)	14.00	April 1, 1987
(Part 240-End)	19.00	April 1, 1987
18 (Parts 1-149)	15.00	April 1, 1987
(Parts 150-279)	14.00	April 1, 1987
(Parts 280-399)	13.00	April 1, 1987
(Part 400-End)	8.50	April 1, 1987
19 (Parts 1-199)	27.00	April 1, 1987
(Part 200-End)	5.50	April 1, 1987

(Comprising a complete CFR set)

Title	*Price*	*Revision Date*
20 (Parts 1-399)	$12.00	April 1, 1987
(Parts 400-499)	23.00	April 1, 1987
(Part 500-End)	24.00	April 1, 1987
21 (Parts 1-99)	12.00	April 1, 1987
(Parts 100-169)	14.00	April 1, 1987
(Parts 170-199)	16.00	April 1, 1987
(Parts 200-299)	5.50	April 1, 1987
(Parts 300-499)	26.00	April 1, 1987
(Parts 500-599)	21.00	April 1, 1987
(Parts 600-799)	7.00	April 1, 1987
(Parts 800-1299)	13.00	April 1, 1987
(Part 1300-End)	6.00	April 1, 1987
22 (Parts 1-299)	19.00	April 1, 1987
(Part 300-End)	13.00	April 1, 1987
23	16.00	April 1, 1987
24 (Parts 0-199)	14.00	April 1, 1987
(Parts 200-499)	26.00	April 1, 1987
(Parts 500-699)	9.00	April 1, 1987
(Parts 700-1699)	18.00	April 1, 1987
(Part 1700-End)	12.00	April 1, 1987
25	24.00	April 1, 1987
26 (Part 1 §§ 1.0-1—1.60)	12.00	April 1, 1987
(§§ 1.61—1.169)	22.00	April 1, 1987
(§§ 1.170—1.300)	17.00	April 1, 1987
(§§ 1.301—1.400)	14.00	April 1, 1987
(§§ 1.401—1.500)	21.00	April 1, 1987
(§§ 1.501—1.640)	15.00	April 1, 1987
(§§ 1.641—1.850)	17.00	April 1, 1987
(§§ 1.851—1.1000)	27.00	April 1, 1987
(§§ 1.1001—1.1400)	16.00	April 1, 1987
(§§ 1.1401—End)	20.00	April 1, 1987
(Parts 2-29)	20.00	April 1, 1987
(Parts 30-39)	13.00	April 1, 1987
(Parts 40-49)	12.00	April 1, 1987
(Parts 50-299)	14.00	April 1, 1987
(Parts 300-499)	15.00	April 1, 1987
(Parts 500-599)	7.50	*April 1, 1980
(Part 600-End)	6.00	April 1, 1987
27 (Parts 1-199)	21.00	April 1, 1987
(Part 200-End)	13.00	April 1, 1987
28	23.00	July 1, 1987
29 (Parts 0-99)	16.00	July 1, 1987
(Parts 100-499)	7.00	July 1, 1987
(Parts 500-899)	24.00	July 1, 1987
(Parts 900-1899)	10.00	July 1, 1987
(Parts 1900-1910)	28.00	July 1, 1987
(Parts 1911-1925)	6.50	July 1, 1987
(Part 1926)	10.00	July 1, 1987
(Part 1927-End)	23.00	July 1, 1987
30 (Parts 0-199)	20.00	July 1, 1987
(Parts 200-699)	8.50	July 1, 1987
(Part 700-End)	18.00	July 1, 1987
31 (Parts 0-199)	12.00	July 1, 1987
(Part 200-End)	16.00	July 1, 1987
32 (Parts 1-189)	20.00	July 1, 1987

Footnotes at end of table.

(Comprising a complete CFR set)

Title	*Price*	*Revision Date*
(Parts 190-399)	$23.00	July 1, 1987
(Parts 400-629)	21.00	July 1, 1987
(Parts 630-699)	13.00	**July 1, 1986
(Parts 700-799)	15.00	July 1, 1987
(Parts 800-End)	16.00	July 1, 1987
33 (Parts 1-199)	27.00	July 1, 1987
(Part 200-End)	19.00	July 1, 1987
34 (Parts 1-299)	20.00	July 1, 1987
(Parts 300-399)	11.00	July 1, 1987
(Part 400-End)	23.00	July 1, 1987
35	9.00	July 1, 1987
36 (Parts 1-199)	12.00	July 1, 1987
(Part 200-End)	19.00	July 1, 1987
37	13.00	July 1, 1987
38 (Parts 0-17)	21.00	July 1, 1987
(Part 18-End)	16.00	July 1, 1987
39	13.00	July 1, 1987
40 (Parts 1-51)	21.00	July 1, 1987
(Part 52)	26.00	July 1, 1987
(Parts 53-60)	24.00	July 1, 1987
(Parts 61-80)	12.00	July 1, 1987
(Parts 81-99)	25.00	July 1, 1987
(Parts 100-149)	23.00	July 1, 1987
(Parts 150-189)	18.00	July 1, 1987
(Parts 190-399)	29.00	July 1, 1987
(Parts 400-424)	22.00	July 1, 1987
(Parts 425-699)	21.00	July 1, 1987
(Part 700-End)	27.00	July 1, 1987
41 (Chapters 1—100)	10.00	July 1, 1987
(Chapter 101)	23.00	July 1, 1987
(Chapters 102-200)	11.00	July 1, 1987
(Chapter 201-End)	8.50	July 1, 1987
42 (Parts 1-60)	15.00	Oct. 1, 1986
(Parts 61-399)	5.50	Oct. 1, 1987
(Parts 400-429)	20.00	Oct. 1, 1986
(Part 430-End)	15.00	Oct. 1, 1986
43 (Parts 1-999)	15.00	Oct. 1, 1987
(Parts 1000-3999)	24.00	Oct. 1, 1987
(Part 4000-End)	11.00	Oct. 1, 1986
44	18.00	Oct. 1, 1987
45 (Parts 1-199)	14.00	Oct. 1, 1987
(Parts 200-499)	9.00	Oct. 1, 1987
(Parts 500-1199)	18.00	Oct. 1, 1986
(Part 1200-End)	13.00	Oct. 1, 1986
46 (Parts 1-40)	13.00	Oct. 1, 1987
(Parts 41-69)	13.00	Oct. 1, 1987
(Parts 70-89)	7.00	Oct. 1, 1987
(Parts 90-139)	12.00	Oct. 1, 1987
(Parts 140-155)	12.00	Oct. 1, 1987
(Parts 156-165)	14.00	Oct. 1, 1987
(Parts 166-199)	13.00	Oct. 1, 1987
(Parts 200-499)	19.00	Oct. 1, 1986
(Part 500-End)	10.00	Oct. 1, 1987
47 (Parts 0-19)	17.00	Oct. 1, 1986
(Parts 20-39)	18.00	Oct. 1, 1986

Footnotes at end of table.

(Comprising a complete CFR set)

Title	*Price*	*Revision Date*
(Parts 40-69)	$10.00	Oct. 1, 1987
(Parts 70-79)	17.00	Oct. 1, 1986
(Part 80-End)	20.00	Oct. 1, 1986
48 (Chapter 1, Parts 1-51)	26.00	Oct. 1, 1987
(Chapter 1, Parts 52-99)	16.00	Oct. 1, 1987
(Chapter 2)	27.00	Dec. 31, 1986
(Chapter 2, Parts 201-251)	17.00	Oct. 1, 1987
(Chapters 3-6)	17.00	Oct. 1, 1987
(Chapters 7-14)	23.00	Oct. 1, 1986
(Chapter 15-End)	22.00	Oct. 1, 1986
49 (Parts 1-99)	10.00	Oct. 1, 1987
(Parts 100-177)	25.00	Oct. 1, 1987
(Parts 178-199)	19.00	Oct. 1, 1987
(Parts 200-399)	17.00	Oct. 1, 1987
(Parts 400-999)	22.00	Oct. 1, 1987
(Parts 1000-1199)	17.00	Oct. 1, 1987
(Parts 1200-End)	18.00	Oct. 1, 1987
50 (Parts 1-199)	15.00	Oct. 1, 1986
(Parts 200-599)	12.00	Oct. 1, 1987
(Part 200-End)	25.00	Oct. 1, 1986
CFR Index and Findings Aids	27.00	Jan. 1, 1987
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1987. Additions during 1987 are in the December 1987 List of CFR Sections Affected.

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INQUIRIES AND SUGGESTIONS

Loren S. Myers was Chief Editor of the LSA. The LSA was prepared under the direction of Martha B. Girard, assisted by Ruth C. Pontius. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to John E. Byrne, Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

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45309-45442	27
45443-45596	30
45597-45800	Dec. 1
45801-45934	2
45935-46050	3
46051-46342	4
46343-46444	7
46445-46584	Dec. 8
46585-46730	9
46731-46982	10
46983-47364	11
47365-47544	14
47545-47686	15
47687-47890	16
47891-48078	17
48079-48178	18
48179-48390	21
48391-48510	22
48511-48660	23
48661-48792	24
48793-48958	28
48959-49128	29
49129-49340	30
49340-49654	31

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1-106	Jan. 4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19
1467-1600	20
1601-1738	21
1739-1908	22
1909-1996	25
1997-2212	26
2213-2476	27
2477-2578	28
2579-2718	29
2719-2816	Feb. 1
2817-2994	2
2995-3182	3
3183-3324	4
3325-3570	5
3571-3720	8
3721-3844	9
3845-3996	10
3997-4104	11
4105-4372	12
4373-4588	16
4589-4826	17
4827-4952	18
4953-5148	19
5149-5268	22
5269-5356	23
5357-5566	24
5567-5748	25
5749-5968	26
5969-6114	29